



Sydney Metro

PROFESSIONAL SERVICES CONTRACT

PSC No. 00013/11723 – TRANSACTION MANAGEMENT SERVICES

Between

Sydney Metro

PRINCIPAL

ABN 12 354 063 515

and

KPMG Australia

SERVICE PROVIDER

ABN 51 194 660 183

Level 43, 680 George Street
Sydney NSW 2000

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PROFESSIONAL SERVICES CONTRACT – GENERAL CONDITIONS

This Agreement is between the Principal and the Service Provider set out in the Contract Particulars.

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"Additional Further Term" means the period specified in the Contract Particulars.

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

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

"Authority" means any Federal, State or local government, semi-government, or other body, authority or person, statutory or otherwise, including any court or tribunal, having jurisdiction over the Project, the Services or the performance by the Service Provider of its obligations under this Agreement or with whose utility services the Services are or will be connected.

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

- (a) already in existence at the date of this Agreement; or
- (b) brought into existence other than by virtue of the performance of the Services,

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

"Business Day" means any day other than:

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

"Commencement Date" means the date stated in the Contract Particulars.

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

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

but does not include:

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

"Contract Material" means those documents, drawings, designs, plans, materials and other Intellectual Property Materials (including, but not limited to, information stored by electronic and other means) created or required to be created under this Agreement by or on behalf of the Service Provider.

"Contract Particulars" means the particulars in Schedule 1.

"Defect" means any:

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

"Event of Insolvency" means if:

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

"Expiry Date" means the date stated in the Contract Particulars.

"Fee" means the amount payable to the Service Provider for the performance of the Services in accordance with clause 17.

"Further Term" means the period specified in the Contract Particulars.

"Governance Group" means the group referred to in clause 11.4.



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

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

"Key People" means the person(s) nominated in Part A of Schedule 9 who are engaged by the Service Provider under clause 11.2.

"Key People Services" means the services to be performed by the Key People as described in the Services Brief.

"Nominated Personnel" has the meaning given in Schedule 11.

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

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

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

[REDACTED]

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

"Portion" means a portion of the Services as described in the Contract Particulars or as directed under clause 18.9.

[REDACTED]

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

"Principal's Representative" means the person nominated in the Contract Particulars or any other person appointed from time to time by the Principal under clause 11.3.

"Program" means, in respect of each Transaction Package, the program submitted by the Service Provider to the Principal's Representative as part of the relevant Transaction Package Proposal, as updated by the Service Provider in accordance with clause 18.1 and the Services Brief.

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

[REDACTED]

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

[REDACTED]

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

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

"Service Provider Associate" means:

- (a) any subcontractor of the Service Provider; and
- (b) any employees, agents, consultants, contractors or officers of the Service Provider or any of its subcontractors.

"Service Provider's Representative" means the person nominated in the Contract Particulars, or any substitute approved by the Principal under clause 11.1.

"Services" means the whole of the services to be carried out and completed by the Service Provider in accordance with this Agreement, including any changes required as a result of the exercise of an Option by the Principal's Representative under clause 16.5 or due to variations provided for by this Agreement, as generally described in the Contract Particulars.

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

"Services Management Plan" means the plan of that name, which meets the requirements set out in section 4.1 (Services Management) of the Services Brief and in respect of which the Principal's Representative has responded "no comments" in accordance with clause 3.10, as amended or updated from time to time in accordance with this Agreement.

"Statutory Requirements" include:

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

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

"Term" has the meaning given in clause 2.2.

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

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

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

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

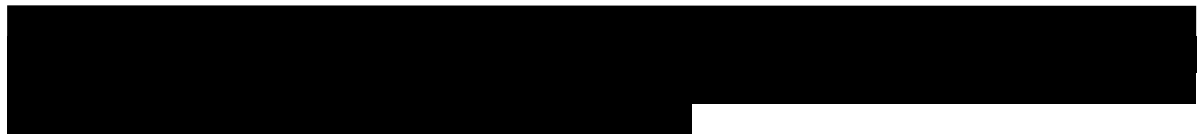
"Transaction Package" means works and services to be carried out by the Service Provider in accordance with a Transaction Package Order.

"Transaction Package Brief" means the document setting out the scope of, and the Principal's requirements in relation to, a proposed Transaction Package.

"Transaction Package Order" has the meaning given in clause 3.1C(a)(i).

"Transaction Package Proposal" has the meaning given in clause 3.1B(a).

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



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

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

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

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

“**worker**” has the same meaning as in the WHS Act.

1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an Authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) a reference to any party to this Agreement includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
- (e) a reference to this Agreement or to any other deed, agreement, document or instrument is deemed to include a reference to this Agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:
 - (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) headings are for convenience only and do not affect the interpretation of this Agreement;
- (i) a reference to:
 - (i) a party, clause, Schedule or Exhibit is a reference to a party, clause, Schedule or Exhibit of or to this Agreement; and

- (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (k) for all purposes (other than where otherwise designated as a Business Day), "day" means calendar day and "week" means a period of 7 calendar days;
- (l) a reference to \$ is to Australian currency;
- (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Agreement or any part;
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (o) a reference to writing includes an email and any other means of reproducing words in a tangible and permanently visible form;
- (p) a reference to obligations includes indemnities, warranties, representations and undertakings and a reference to breach or breach of obligations includes breach of any indemnities, warranties, representations and undertakings; and
- (q) any reference in this Agreement to "the Contract" or "this Contract" will be taken to be a reference to this Agreement.

1.3 Authorities

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

2 TERMS OF ENGAGEMENT

2.1 Engagement

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

2.2 Term

- (a) This Agreement comes into effect on the Commencement Date and continues until the Expiry Date, unless it is extended in accordance with clause 2.3 or terminated earlier in accordance with its terms (**Term**).
- (b) The expiry of this Agreement by effluxion of time will not affect the Service Provider's obligations relating to any Transaction Package in respect of which a Transaction Package Order has been issued and which remains to be completed at that time.

2.3 Extension

- (a) The Principal may, in its absolute discretion, extend the operation of this Agreement for the period of the Further Term by giving the Service Provider written notice, no later than 20 Business Days prior to the Expiry Date, that the Principal has elected to extend the operation of this Agreement for the Further Term.
- (b) If the Principal exercises its discretion under clause 2.3(a), the Principal may, in its absolute discretion, further extend the operation of this Agreement for the period of the Additional Further Term by giving the Service Provider written notice, no later than 20 Business Days prior to expiry of the Further Term, that the Principal has elected to extend the operation of this Agreement for the Additional Further Term.
- (c) If the Principal gives a valid notice to extend the operation of this Agreement:
 - (i) for the Further Term under clause 2.3(a), this Agreement continues in full force and effect until the expiration of the Further Term; and
 - (ii) for the Additional Further Term under clause 2.3(b), this Agreement continues in full force and effect until the expiration of the Additional Further Term.
- (d) In considering whether to extend the operation of this Agreement in accordance with clause 2.3(a) or clause 2.3(b) (as applicable), the Principal may take into account, without limitation, the Service Provider's performance under this Agreement, including its performance against the KPIs [REDACTED] and the Principal's upcoming program of work and ongoing requirements.

3 SERVICE PROVIDER'S OBLIGATIONS

3.1 General

The Service Provider must:

- (a) perform the Services in accordance with this Agreement (including the Services Brief) in consideration of the payments to be made by the Principal under clause 17;
- (b) perform the Services in compliance with the TfNSW Statement of Business Ethics;
- (c) perform the Services to that standard of skill, care and diligence to be expected of a Service Provider who regularly acts in the capacity in which the Service Provider is engaged and who possesses the knowledge, skill and experience of a service provider qualified to act in that capacity;
- (d) use all reasonable efforts to inform itself of the requirements of the Principal and regularly consult with the Principal during the performance of the Services;
- (e) liaise, co-operate and confer with others as directed by the Principal;

- (f) promptly give written notice to the Principal if and to the extent the Service Provider becomes aware that any document or other information provided by the Principal is ambiguous or inaccurate or is otherwise insufficient to enable the Service Provider to carry out the Services;
- (g) make reasonable enquiries to ascertain the requirements of the Principal regarding the Services, including in respect of any hazards and risks at the site upon which the Project is to be constructed of which the Principal is aware;
- (h) regularly consult the Principal regarding the carrying out of the Services;
- (i) as soon as practicable after becoming aware of any matter or circumstances which may adversely affect or has adversely affected the scope, Fee, timing or carrying out of the Services, give written notice to the Principal detailing the matter or circumstances and its anticipated effect on the Services; and
- (j) ensure that any person employed or engaged by the Service Provider and its subcontractors who undertakes any work in connection with the Services complies with all Statutory Requirements.

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

3.1A Transaction Package Brief

- (a) The Principal's Representative may, at any time during the Term, issue to the Service Provider:
 - (i) a Transaction Package Brief in respect of a proposed Transaction Package; and
 - (ii) any other information applicable to the preparation of a Transaction Package Proposal in accordance with clause 3.1B.
- (b) The Service Provider acknowledges and agrees that:
 - (i) the Principal is not obliged to issue any Transaction Package Briefs to the Service Provider under clause 3.1A(a) or accept any Transaction Package Proposals submitted by the Service Provider under clause 3.1B(a);
 - (ii) the Principal may terminate a Transaction Package at any time and for any reason;
 - (iii) the Service Provider is not entitled to make, nor will the Principal be liable upon, any claim in respect of the Principal:
 - A. not issuing any Transaction Package Briefs to the Service Provider or accepting any Transaction Package Proposals submitted by the Service Provider; or
 - B. terminating any Transaction Package; and
 - (iv) the Principal is entitled to engage other service providers to perform services similar to the Services in relation to any Transaction Package at any time.

3.1B Transaction Package Proposal

- (a) The Service Provider must, within 10 Business Days of receiving a Transaction Package Brief under clause 3.1A(a), submit to the Principal a proposal in respect of the proposed Transaction Package ("**Transaction Package Proposal**") which must include:
 - (i) the Service Provider's proposed [REDACTED] fee for the performance of the Services in respect of the Transaction Package, which must:

- [REDACTED]
- B. be calculated in accordance with the Schedule of Rates; and
 - C. include a cash flow forecast for payment of the Fee in respect of each Quarter;
- (ii) a list of the key activities and deliverables in respect of the Transaction Package;
 - (iii) the proposed Program for the performance of the Services in respect of the Transaction Package, which must include dates for the completion of key activities and milestones for delivery of the Services in respect of the Transaction Package (including dates for the submission of key deliverables and review periods in consultation with the Principal and other project service providers);
 - (iv) a resourcing plan, which must include:
 - A. the Service Provider's proposed allocation of resources for the duration of the relevant Transaction Package; and
 - B. a table setting out the minimum number of days that each role will be committed to the delivery of the Services in respect of the relevant Transaction Package; and
 - (v) any supporting documentation or other information requested by the Principal.
- (b) The Service Provider must provide all pricing, costing and other information to the Principal to enable an assessment of proposed rates [REDACTED] in a clear and transparent manner.

3.1C Review of Transaction Package Proposal

- (a) Within a reasonable period after receiving a Transaction Package Proposal, the Principal's Representative may (in its absolute discretion), by written notice to the Service Provider:
 - (i) accept the Transaction Package Proposal by instructing the Service Provider to undertake the Services in respect of the Transaction Package in accordance with the Transaction Package Proposal ("**Transaction Package Order**");
 - (ii) set out the aspects of the Transaction Package Proposal which require amendment and request the Service Provider to submit an amended Transaction Package Proposal; or
 - (iii) reject the Transaction Package Proposal.
- (b) If the Principal does not issue any notice under clause 3.1C(a) to the Service Provider within 60 Business Days after receiving a Transaction Package Proposal, the Principal will be deemed to have rejected the Transaction Package Proposal.
- (c) If the Principal requests the Service Provider to submit an amended Transaction Package Proposal under clause 3.1C(a)(ii), the Service Provider must, within 5 Business Days, submit an amended Transaction Package Proposal that addresses the issues identified in the Principal's notice under clause 3.1C(a)(ii).
- (d) Where the Service Provider submits an amended Transaction Package Proposal under clause 3.1C(c), this clause 3.1C will reapply.

3.2 Complying with Statutory Requirements

The Service Provider must comply with:

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

3.3 Non-Complying Services

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

- (a) require the Service Provider to:
 - (i) re-perform the non-complying Services (including by amending the Contract Material) within a specified time period; and
 - (ii) take all such steps as are reasonably necessary to:
 - A. mitigate the effect on the Principal of the failure to perform the Services in accordance with this Agreement; and
 - B. put the Principal (as closely as possible) in the position in which it would have been if the Service Provider had performed the Services in accordance with this Agreement; or
- (b) advise the Service Provider that the Principal will accept the non-complying Services despite the non-compliance, in which event the Principal will be entitled to recover from the Service Provider any additional costs which will be incurred by the Principal as a result of the non-compliance, including any costs incurred by the Principal in having the non-complying Services re-performed by an Other Contractor; or
- (c) advise the Service Provider that the Principal will accept the non-complying Services despite the non-compliance, in which event:
 - (i) the value of the non-complying Services, as determined by the Principal's Representative or in accordance with clauses 16.3(b) or 16.3(c), will be a debt due and payable by the Service Provider to the Principal which may be deducted from the Fee; and
 - (ii) the Service Provider will have no entitlement to make any payment claim against the Principal arising out of or in connection with the non-complying Services.

3.4 Re-performance of the Non-complying Services

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

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

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

3.5 Health and Safety

- (a) The Service Provider must:
- (i) comply with and ensure that each of its workers, officers and the Service Provider's subcontractors and their workers engaged in providing the Services, comply with the WHS Legislation, the Rail Safety National Law and the Agreement as a minimum;
 - (ii) continuously promote a safer, healthier, more productive workplace;
 - (iii) provide strong leadership and promote safety as a core value, establishing and enforcing high standards of performance and ensuring relevant expertise is available;
 - (iv) ensure open and effective consultation and further mutual trust with the Principal, providing timely response to safety issues and concerns;
 - (v) provide the Principal with all information and documents the Principal requests and consult with the Principal as requested, so that the Principal may comply with its duties under the WHS Legislation and Rail Safety National Law including creating any document the Principal may request;
 - (vi) consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter; and
 - (vii) if required by the Principal, develop, implement and comply with, a Safety Management Plan that complies with the requirements of the PSMP.
- (b) Safety Risk Management
- The Service Provider must manage risks in accordance with the WHS Legislation, the Rail Safety National Law and the PSMP.
- (c) Failure to comply
- If the Principal's Representative is of the opinion that the Service Provider, the Service Provider's workers or a subcontractor have not complied, or are not complying with, any health and safety requirements in this Agreement, under the Rail Safety National Law or WHS Legislation, including the requirement to eliminate or minimise risks so far as is reasonably practicable, then the Principal's Representative or their delegate or nominee may:
- (i) direct the Service Provider to immediately comply (and, where applicable, procure that the relevant worker or subcontractor immediately complies) with the obligation; and
 - (ii) where there is an immediate risk to the health, safety or welfare of any persons as a result of the non-compliance, direct the Service Provider to immediately suspend carrying out all or any part of the Services until such time as the Service Provider (and, where applicable, the relevant worker or subcontractor) is compliant,
- and the Service Provider must immediately comply with any such direction.
- (d) Personnel management
- The Service Provider must:
- (i) prior to appointing any subcontractor, assess the work health and safety management capability of such subcontractor and institute systems to obtain regular written assurances from all subcontractors about their ongoing compliance with the WHS Legislation and Rail Safety National Law;
 - (ii) prior to providing the Services on any site of the Project, ensure that all Key People have undertaken any induction or training required by the Principal;

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

3.6 Licensing and Authorisation

The Service Provider must:

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

3.7 Not Used**3.8 Not Used****3.9 Reliance on Contract Material and other deliverables**

- (a) The Service Provider acknowledges and agrees that the Contract Material and any other deliverables to be provided as part of the Services will be relied upon by the Principal.
- (b) Not used.
- (c) The Service Provider warrants the accuracy and adequacy of the Contract Material and all other deliverables to be provided as part of the Services and warrants that all such Contract Material and deliverables will be fit for the purpose intended under this Agreement.
- (d) The Service Provider acknowledges that the Principal has entered into this Agreement in reliance upon the acknowledgments and warranties in this clause 3.9.

3.10 Services Management Plan

- (a) The Service Provider must within 20 Business Days of the Commencement Date, provide the Principal with a draft Services Management Plan.
- (b) The Principal's Representative may:
 - (i) respond "no comments" in respect of the draft Services Management Plan; or
 - (ii) comment on the draft Services Management Plan, in which case the Service Provider must amend and re-submit the draft Service Management Plan with 10 Business Days or such other period as may be directed by the Principal's Representative and the process in clause 3.10(a) and this clause 3.10(b) will re-apply until the Principal has responded "no comments" in respect of the draft Services Management Plan.
- (c) The Service Provider must:
 - (i) implement and comply with the Services Management Plan; and
 - (ii) update the Services Management Plan as directed by the Principal's Representative.

4 JOINT AND SEVERAL LIABILITY

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

5 SUBCONTRACTING

- (a) The Service Provider must not subcontract any part of the Services without the prior written approval of the Principal.
- (b) An approval given by the Principal permitting the Service Provider to subcontract any portion of the Services does not relieve the Service Provider from its obligations and liabilities pursuant to this Agreement and the Service Provider will be vicariously liable for the acts and omissions of its subcontractors and consultants.

6 CONTRACTOR PERFORMANCE REPORTING**6.1 Performance review**

6.2 Exchange of Information between Government Departments and Agencies

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

The Service Provider acknowledges that:

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

7 INTELLECTUAL PROPERTY

7.1 Contract Material

The Intellectual Property Rights in or relating to the Contract Material (excluding any Background Intellectual Property Rights or Third Party Intellectual Property Rights) will vest in the Principal at the time of its creation and at each and every stage of its development.

To the extent that such Intellectual Property Rights vest in the Principal pursuant to the foregoing, the Principal grants to the Service Provider an irrevocable licence to Use those Intellectual Property Rights for the purposes of carrying out the Services and performing the Service Provider's obligations under this Agreement. The Service Provider must not Use such Intellectual Property Rights for any other purpose.

7.2 Background Intellectual Property Rights and Third Party Intellectual Property Rights

Subject to clause 7.3 (which applies in relation to Third Party Licensed Software), the Service Provider hereby grants to the Principal an irrevocable, perpetual, royalty-free licence (which includes the right to grant sub-licences) to Use the Background Intellectual Property Rights and the Third Party Intellectual Property Rights for any purposes in connection with the Services, the Project or this Agreement.

7.3 Third Party Licensed Software

Clause 7.2 does not apply in relation to any Third Party Licensed Software.

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

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

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

- (d) grant a sub-licence in favour of the Principal in respect of such Third Party Licensed Software for the purposes set out above and on such terms as are reasonably acceptable to the Principal; or

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

7.4 Warranty and Indemnity

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

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

- (a) the performance of the Services or the Service Provider's obligations under this Agreement;
- (b) the Use by the Principal or any of its licensees or sub-licensees of the Contract Material (excluding any Background Intellectual Property Rights, Third Party Intellectual Property Rights or Third Party Licensed Software) for any purposes whatsoever; or
- (c) the Use by the Principal or any of its licensees or sub-licensees of any Background Intellectual Property Rights, Third Party Intellectual Property Rights or Third Party Licensed Software in accordance with the terms of the relevant licence granted under clause 7.2 or 7.3 (as applicable).

The Principal warrants that documents and materials provided by the Principal to the Service Provider under this Agreement (but excluding any documents or materials which are the subject of the licence granted by the Principal pursuant to clause 7.1) will not infringe the Intellectual Property Rights of a third party, provided that such documents and materials are only used by the Service Provider for the purposes of providing the Services.

7.5 Moral Rights

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

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

8 CONFLICT OF INTEREST

- (a) The Service Provider warrants that no conflict of interest exists in relation to the Services at the date of this Agreement.
- (b) The Service Provider must immediately provide the Principal written notice upon becoming aware of the existence, or possibility, of an actual or perceived conflict of interest in the performance of the Services.
- (c) On receipt of a notice under clause 8(b), the Principal may:
 - (i) approve the Service Provider continuing to perform the Services, which approval may be subject to conditions specified by the Principal (including requirements relating to separation arrangements) to ensure appropriate management of the conflict; or
 - (ii) where in the Principal's view the conflict of interest cannot be appropriately managed, and without limiting clause 21, terminate this Agreement by notice in writing to the Service Provider effective from the date specified in the notice.
- (d) The Principal may, at its sole discretion and at any time, require the Service Provider to sign and procure that each of its officers, employees, subcontractors or agents involved in the performance of the Services signs and delivers to the Principal a Statement of Interests and Associations in the form attached in Schedule 4.

9 INDEMNITY BY SERVICE PROVIDER

The Service Provider must indemnify the Principal against:

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

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

10 INSURANCE

10.1 Professional Indemnity Insurance

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

The policy and such level of cover must be maintained until the Service Provider completes carrying out the Services and thereafter for a period as stated in the Contract Particulars.

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

10.2 Public Liability Insurance

The Service Provider must maintain a public liability policy for an amount in respect of any one claim or series of claims arising from one original cause of not less than the sum stated in the Contract Particulars. The policy must be maintained until the Service Provider completes carrying out the Services.

The policy must cover the Service Provider in respect of liability to the Principal and third parties in respect of any claim arising from the acts or omissions of the Service Provider, its employees, subcontractors and consultants in the course of carrying out the Services and must extend to indemnify the Principal as one of the class of persons constituting the Insured.

10.3 Insurance of Employees

Before the Service Provider commences carrying out the Services, the Service Provider must insure against liability for death or injury to persons employed by the Service Provider including, but not limited to, liabilities, under statute including relevant workers compensation legislation and at common law. The insurance cover must be maintained until the Service Provider completes carrying out the Services.

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

10.4 Service Provider's Insurance Obligations

The Service Provider must:

- (a) provide the Principal's Representative with a certificate of currency for, any insurance policies required by this clause 10 prior to commencement of the Services and evidence satisfactory to the Principal's Representative that the policy is current as required by the Principal's Representative from time to time; and
- (b) ensure that it:
 - (i) does not do anything (or fail to do anything) which prejudices any of the insurance policies;
 - (ii) if necessary, promptly rectifies anything which might prejudice any insurance;
 - (iii) immediately reinstates any insurance policy if it lapses or is cancelled for any reason;
 - (iv) does not cancel, vary or allow an insurance policy to lapse without providing prior written notification to the Principal's Representative. Such notification will not constitute a waiver of the Principal's rights under this Agreement;
 - (v) immediately notifies the Principal's Representative of any event which may result in an insurance policy lapsing or being cancelled; and
 - (vi) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

10.5 Risk of deductibles or excesses

The Service Provider must pay all insurance deductibles, excesses or self-insured retentions in respect of any event and claim made under an insurance policy which the Service Provider is required to effect under this clause 10.

11 REPRESENTATIVES

11.1 Service Provider's Representative

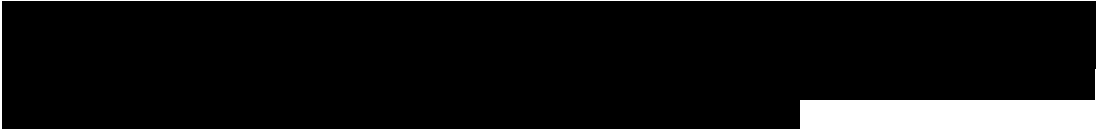
The person nominated in the Contract Particulars is the Service Provider's Representative for this Agreement, and:

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

- (c) is competent to be the Service Provider's Representative; and
- (d) must not be discharged or replaced as the Service Provider's Representative without the prior written consent of the Principal, which cannot be unreasonably withheld.

11.2 People

The Service Provider must:

- (a) engage the Key People specified in Schedule 9 in the performance of the Services and in the positions (if any) specified in Schedule 9;
- (b) engage the Nominated Personnel specified in the resourcing plan submitted as part of the relevant Transaction Package Proposal in the performance of the Services and in the positions (if any) specified in relevant Transaction Package Proposal;
- (c) ensure the Key People and Nominated Personnel (including any replacement) will devote sufficient time to the services they are retained to do such that the Services are performed promptly, efficiently, skilfully, in a timely fashion and in accordance with this Agreement;
- (d) ensure that the Key People specified in Part A of Schedule 9 are available to perform the Services for at least the percentage of time, and with effect from the dates, specified in Part A of Schedule 9 for the remainder of the Term;
- (e) 
- (f) subject to clause 11.2(g), not replace the Key People or Nominated Personnel without the Principal's Representative's prior written approval which will not be unreasonably withheld;
- (g) if any of the Key People or Nominated Personnel:
 - a. dies;
 - b. becomes unable to continue in their positions due to illness; or
 - c. resigns from the employment of the Service Provider (other than to accept other employment with the Service Provider or any "related body corporate" of the Service Provider (as that term is defined in section 9 of the Corporations Act 2001 (Cth))),

promptly notify the Principal's Representative and replace those Key People or Nominated Personnel with personnel of at least equivalent experience, ability, knowledge and expertise approved by the Principal's Representative; and
- (h) immediately take steps to replace any Key People or Nominated Personnel who are requested by the Principal, acting reasonably, to be removed from the Services with a replacement of equivalent expertise and experience, and obtain the written approval of the Principal, which will not be unreasonably withheld, to the replacement prior to engaging the replacement.

11.3 Principal's Representative

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

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

11.4 Governance Group

- (a) Within three months of the Commencement Date, the parties must establish a Governance Group consisting of:
- (i) the Principal's Representative;
 - (ii) the Principal's Contract Delegate;
 - (iii) two other representatives of the Principal;
 - (iv) the Service Provider's Representative;
 - (v) the Key People; and
 - (vi) such other persons as the Principal and the Service Provider agree.
- (b) The role of the Governance Group is to:
- (i) facilitate the development of a collaborative working relationship between the parties;
 - (ii) monitor and discuss the overall performance and progress of the Services, including the Service Provider's performance against the KPIs [REDACTED] and the Principal's upcoming program of work and ongoing requirements;
 - (iii) assist with the resolution of any differences or disputes between the parties prior to a party giving a Dispute Notice to the other party in accordance with clause 19.1; and
 - (iv) review and consider such other matters relating to the Services as are agreed by the parties from time to time.
- (c) The Governance Group must meet monthly until the expiry of the Term, unless the parties agree otherwise.
- (d) The Principal's Contract Delegate will convene meetings of the Governance Group and will act as chairperson.
- (e) At the Principal's request, the Service Provider must procure the attendance of any additional representatives of the Service Provider at meetings of the Governance Group.
- (f) The parties acknowledge and agree that the Principal's Representative and the Service Provider's Representative are not required to attend meetings of the Governance Group unless the agenda for the meeting includes the resolution of any differences or disputes between the parties as referred to in clause 11.4(b)(iii).

12 DIRECTIONS

12.1 Directions

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

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

12.2 Programming

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

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

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

13 RECORD KEEPING AND PROGRAM REPORTING

The Service Provider must:

- (a) keep, and ensure its subcontractors keep, accurate records of the performance of the Services;
- (b) ensure that all persons engaged in the performance of the Services produce and maintain:
 - (i) a daily diary record of tasks performed; and
 - (ii) where the Fee is time based, a daily timesheet accurately recording the time spent in the performance of the Services;
- (c) at the Principal's request, provide, and ensure that its subcontractors provide, the records referred to in this clause 13 for their inspection and copying by the Principal;
- (d) if required, provide the Principal's Representative with periodic program reports on the engagement as required by this Agreement;
- (e) ensure that all records required to be kept by this Agreement are current and accurate; and
- (f) whenever requested by the Principal's Representative provide the Principal's Representative with a written report containing details on all work health and safety matters arising out of the Services, including in respect of any matters concerning or arising out of clause 3.2 and clauses 3.5 to 3.6.

The records referred to in this clause 13 must be retained for seven (7) years after completion of the Services.

14 COLLABORATIVE AUDITING PROCESS

The Service Provider and the Principal will, on a collaborative basis, develop, agree and implement, a scope and program for the Principal's Representative to undertake audits of the Service Provider's compliance with the requirements of the Service Provider's quality management system (if applicable) as these may apply to the Services and obligations under this Agreement and:

- (a) the Service Provider agrees to participate and assist in the development and completion of these audits; and
- (b) the Service Provider and the Principal's Representative shall when requested share the results of any self-verification by the Service Provider and/or the outcome of any audits completed.

15 ACCESS TO SERVICE PROVIDER'S PREMISES

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

16 VARIATIONS

16.1 Proposal

- (a) The Principal may direct in writing that the Service Provider vary the Services, including, but not limited to, addition to, omission from or deletion of any part of the Services, or the timing of the Services (or part of the Services) or both ("variation"), and may include the addition of Services in relation to a Sydney Metro project other than the Project.

- (b) If a variation the subject of a direction by the Principal omits or deletes any part of the Services, the Principal may thereafter carry out the omitted or deleted Services either itself or engage an Other Contractor to carry out the omitted or deleted Services or part of the Services and the Service Provider will have no entitlement to make any payment claim against the Principal arising out of or in connection with the omitted or deleted Services or any part thereof.
- (c) If the Principal gives such a direction where the need for the variation is in order to overcome any Defect in or from the Services, any costs or losses suffered or incurred by the Principal in having the Services which have been deleted or omitted carried out by an Other Contractor will be a debt due and payable by the Service Provider to the Principal which may be deducted from the Fee.
- (d) Nothing in clause 16.1(c) limits the Principal's rights under clauses 3.3(b) and (c).
- (e) If the Principal directs a variation, the Principal will specify in the direction a reasonable time by which the Service Provider must provide a written estimate of the time, cost [REDACTED] and programming effects of the proposed variation. If no time is specified, the Service Provider must provide the estimate within 14 days.

16.2 Variation Direction

Whether or not the Service Provider provides a written estimate under clause 16.1(e), the Principal may direct in writing the Service Provider to carry out a variation, and the Service Provider must comply with such direction.

A variation excludes any changes to the Services that are required due to the exercise of an Option by the Principal's Representative under clause 16.5.

16.3

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]


16.4 Variation due to a Change in a Statutory Requirement

If a new Statutory Requirement or a change in a Statutory Requirement after the date of this Agreement:

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

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

16.5 Option

- (a) The Principal's Representative may, by written notice given to the Service Provider at any time within the period stated in Schedule 7, exercise any Option.
- (b) Where the Principal's Representative gives notice under clause 16.5(a), the parties must comply with their respective obligations and the process set out in clause 3.1A, 3.1B and 3.1C in respect of the Option.
- (c) 
- (d) For the avoidance of doubt:
 - (i) any services contemplated by an Option do not form part of the Services unless or until the Principal has issued a Transaction Package Order in accordance with clause 3.1C(a)(i);
 - (ii) the Principal is not under any obligation whatsoever to exercise any Option; and
 - (iii) the Service Provider is not entitled to make, nor will the Principal be liable upon, any claim in respect of the Principal not exercising any Option.
- (e) 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.
- (f) The exercise of an Option by the Principal's Representative under this clause 16.5 will not:
 - (i) relieve the Service Provider from its liabilities or obligations (including those arising out of any warranties given under this Agreement); or
 - (ii) limit or otherwise affect the Principal's rights against the Service Provider or the Service Provider's rights against the Principal (including those arising out of any warranties given under this Agreement);

whether under this Agreement or otherwise according to any law.
- (g) Without limiting or otherwise restricting clause 18.9, the Service Provider acknowledges and agrees that the work contemplated by an Option may be directed as a separable Portion under clause 18.9.

16.6 Notice of potential variation

- (a) If the Service Provider considers that any direction given by the Principal or the Principal's Representative (excluding any direction specifically expressed to be given under clause 16.1, 16.2 or 16.5) constitutes or involves a variation for the purposes of this clause 16, the Service Provider must provide notice to this effect to the Principal within 3 Business Days of receipt of the relevant direction.
- (b) Within 3 Business Days after receipt of a notice from the Service Provider pursuant to clause 16.6(a), the Principal must notify the Service Provider in writing that:
 - (i) it agrees that the direction constitutes or involves a variation, in which case the foregoing provisions of this clause 16 will apply;
 - (ii) it disagrees that the direction constitutes or involves a variation, in which case either the Principal or the Service Provider may refer the matter for resolution in accordance with the Dispute Procedure; or
 - (iii) it withdraws the direction.
- (c) If the Service Provider does not provide a notice in accordance with clause 16.6(a), the Service Provider:
 - (i) will not be entitled to claim that the direction constitutes or involves a variation;

- (ii) must comply with the direction in accordance with its terms; and
- (iii) will not be entitled to any relief, [REDACTED], additional payment or other compensation in connection therewith.

17 PAYMENT OF FEE

17.1 Payment Claim issued by Service Provider

- (a) Subject to the Service Provider performing the Services, the Principal must in accordance with this clause 17 pay the Service Provider:
 - (i) in respect of each Transaction Package, the Fee [REDACTED]; and
 - (ii) any disbursements referred to in the Contract Particulars for which it is entitled to payment, [REDACTED]
- (b) The Service Provider may prepare and submit to the Principal's Representative a payment claim in respect of Services completed calculated in accordance with clause 17.1(a) upon the later of:
 - (i) satisfaction of each of the following which is a condition precedent to the Service Provider's right to submit a payment claim under this clause 17.1:
 - A. providing the Principal with a duly completed and signed subcontractor's statement in the form contained in Schedule 3 (or in any other form requested and/or approved by the Principal's Representative); and
 - B. the Service Provider providing the Principal with certificates of currency in respect of its workers compensation, public liability, professional indemnity and any other insurances which must be effected by the Service Provider under this Agreement; and
 - (ii) the times set out in the Contract Particulars.
- (c) Each payment claim must:
 - (i) contain the details required by the Principal;
 - (ii) be addressed to the Principal;
 - (iii) refer to the Professional Services Contract No. on the cover page of this Agreement;
 - (iv) in respect of each Transaction Package:
 - A. itemise the Fee [REDACTED] and any disbursements payable; and
 - B. set out the aggregate of all amounts claimed for Services in respect of that Transaction Package up to and including the relevant month, [REDACTED]; and
 - (v) set out the aggregate of all amounts claimed for Services in respect of all Transaction Packages up to and including the relevant month, [REDACTED].

- (d) Payment claims on a time basis must be for the period up to the last calendar day of the month prior to the issue of the payment claim and accompanied by timesheets and a summary of the Services performed in the time period of the claim.

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

17.2 Payment Schedule of Fee issued by Principal

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

- (a) the value of the Services completed in accordance with this Agreement;
- (b) the amount already paid to the Service Provider;
- (c) the amount that the Principal is entitled to retain, deduct, withhold or set-off under this Agreement [REDACTED];
- (d) the amount (if any) which the Principal proposes to pay to the Service Provider;
- (e) the reason why the amount under clause 17.2(d) is less than the amount claimed in the payment claim; and
- (f) if the reason for the difference is that the Principal is retaining, deducting, withholding or setting-off payment for any reason [REDACTED], the reason for the Principal retaining, deducting, withholding or setting-off payment.

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

17.3 Payments

The Principal must, within 25 Business Days following receipt of a payment claim, pay the amount stated in the payment schedule or the amount claimed by the Service Provider in its payment claim (as the case may be).

The making of a payment by the Principal under this clause 17.3 is not evidence of the value of the Services performed, does not constitute an admission by the Principal that any Services provided by the Service Provider conform with the requirements of this Agreement and is a payment on account only.

17.4 Not used

17.5 Set Off

The Principal may, at any time withhold, set-off or deduct from amounts otherwise payable to the Service Provider any debt or other moneys due from the Service Provider to the Principal under this Agreement or in respect of the Services.

17.6 Not used

17.7

[REDACTED]

■ [REDACTED]

■ [REDACTED]

18 TIME

18.1 Time for Commencement and programming

- (a) The Service Provider must:
 - (i) not commence the performance of any Services in respect of a Transaction Package until the Principal has issued a Transaction Package Order to the Services Provider under clause 3.1C(a)(i) in respect of that Transaction Package; and
 - (ii) immediately commence the performance of the Services in respect of each Transaction Package from the date set out in the relevant Transaction Package Order (or if no date is stated, the date of the Transaction Package Order) and thereafter regularly and diligently progress the Services with due expedition and without delay.
- (b) The Service Provider must, without limiting or otherwise restricting clauses 12.2, 13 and 14, regularly update the Program for each Transaction Package and provide the Principal's Representative with an updated Program in respect of each Transaction Package on the first Business Day of each calendar month which contains such details as may be required by this Agreement.
- (c) The Principal's Representative may:
 - (i) comment on any updated Program submitted by the Service Provider in accordance with clause 18.1(b), and the Service Provider must respond to those comments within 10 Business Days or such other period as may be directed by the Principal's Representative; or
 - (ii) reject any updated Program submitted by the Service Provider in accordance with clause 18.1(b) if, in the Principal's opinion, the updated Program (or any part) does not comply with the requirements of this Agreement, and the Service Provider must submit an amended Program to the Principal's Representative within 10 Business Days of receiving such rejection, in which case this clause 18.1(c) will re-apply.
- (d) Without limiting clause 18.1(a), the Service Provider must not depart from the current version of the Program that has been submitted to the Principal's Representative under clause 18.1(b) and has not been rejected by the Principal's Representative, except to the extent agreed by the Principal's Representative.

18.2 Not used

18.3 Not used

18.4 Not used

18.5 Not used

18.6 Not used

18.7 Not used

18.8 Suspension

- (a) The Principal may, at any time by prior written notice to the Service Provider, suspend the carrying out of the Services or any part thereof. Subject to clause 18.8(c), the Principal must, unless the suspension arose due to an act or omission of the Service Provider (or its employees, agents or subcontractors), pay the Service Provider any costs and expenses reasonably incurred by the Service Provider by reason of the suspension.
- (b) Not Used
- (c) The Principal may, at any time after giving a notice in accordance with clause 18.8(a), give the Service Provider reasonable notice to recommence carrying out those Services so suspended.

18.9 Portions

Portions may be directed by the Principal's Representative, who shall clearly identify for each, the portion of the Services.

19 DISPUTE RESOLUTION

19.1 Dispute Notice

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

19.2 Negotiation

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

19.3 Expert Determination

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

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

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

Except where the parties otherwise agree in writing:

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

- (d) the determination is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in clause 19.4 below.

19.4 Litigation

If the determination of the expert is not final and binding on the parties, but without limiting clause 19.3(d), either party may commence litigation in relation to the dispute.

19.5 Continuation

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

20 NOTICE OF BREACH

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

- (a) that it is a notice under this clause 20;
- (b) the breach relied upon; and
- (c) that this Agreement will be terminated unless the breach is remedied within the period set out in the notice, which must be no less than 10 Business Days.

21 TERMINATION


21.1 Termination for Breach or Financial Difficulty

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

- (a) the Service Provider fails to remedy a breach of this Agreement within the time stated in a notice under clause 20; or
- (b) an Event of Insolvency occurs to the Service Provider whether or not there has been a breach of contract by the Service Provider.

If this Agreement is terminated pursuant to this clause 21.1 the parties' remedies, rights and liabilities will be the same as they would have been under the law governing this Agreement had the Service Provider repudiated this Agreement and the Principal elected to treat this Agreement as at an end and recover damages.

21.2 Termination for Any Reason

- (a) The Principal may terminate this Agreement at any time for any reason, by written notice to the Service Provider.
- (b) If the Principal terminates this Agreement pursuant to this clause 21.2, the Principal:
 - (i) may, in its absolute discretion, complete the uncompleted part of the Services itself or by engaging any third party; and
 - (ii) 

21.3 Consequences of termination

- (a) If the Principal terminates this Agreement pursuant to clause 21.1 or 21.2, the Service Provider must immediately hand over to the Principal all copies of any documents provided by the Principal to the Service Provider and all Contract Material (whether complete or not).

- (b) This clause 21 survives the termination of this Agreement by the Principal under clause 21.1 or 21.2.

22 CONFIDENTIALITY

22.1 Acknowledgement

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

22.2 Warranty and Covenant

- (a) The Service Provider warrants and covenants that it will treat and keep the Confidential Information in the strictest of confidentiality and expressly acknowledges and agrees that the Confidential Information is of a confidential nature.
- (b) The Service Provider warrants and covenants that it will do everything reasonably necessary to protect and maintain the confidentiality of the Confidential Information.
- (c) The Service Provider may not disclose to any person other than:
- (i) the Principal; or
 - (ii) a person who has signed a Confidentiality Deed Poll in the form of Schedule 2 in favour of the Principal,

any Confidential Information, that the Confidential Information has been made available to the Service Provider or that discussions or negotiations are taking place concerning this Agreement, and undertakes:

- (iii) to protect and safeguard Confidential Information against unauthorised publication or disclosure;
- (iv) not to use Confidential Information for any reason or purpose except as directed by the Principal; and
- (v) to comply with any security measures in connection with Confidential Information that may be required by the Principal.

22.3 Personal Information

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

22.4 Authorised Disclosure

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

22.5 Return of Confidential Information

If the Principal requests it, the Service Provider must:

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

Notwithstanding this clause 22.5 or any other provision in this Agreement, the Principal authorises the Service Provider to retain for record purposes, one copy of material provided to the Service Provider by the Principal and one copy of the Contract Material. The Service Provider is entitled to retain its work papers, which may contain Confidential Information, for quality assurance and risk management purposes. The Service Provider must treat all information under this clause as Confidential Information.

22.6 Confidentiality Deed Poll

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

22.7 Obligations To Continue

The obligations of the Service Provider under this clause 22 survive completion of the Services or termination of this Agreement and are enforceable at any time at law or in equity and continue to the benefit of and are enforceable by the Principal.

22.8 Injunctive Relief

In the event of a breach by the Service Provider of the Service Provider's obligations under this clause 22, then in addition to, and without prejudice to, any other remedy that the Principal may have, the Principal will be entitled to seek and obtain injunctive relief in any court of competent jurisdiction.

22.9 Further Assurances

The Service Provider must do all things and execute all documents, including, but not limited to, executing any agreements of assignment, or agreements under hand or seal, which may reasonably be required by the Principal, to give effect to the provisions of this Agreement.

23 DISCLOSURE OF CONTRACT INFORMATION

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

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

24 GOVERNING LAW

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

25 GST

The Principal and the Service Provider agree:

- (a) unless otherwise stated all dollar amounts referred to in this Agreement are GST exclusive;
- (b) except where an amount is stated to be GST inclusive, if either party ("supplier") is or becomes liable to pay GST arising out of or in connection with any supplies under or in connection with this Agreement or the Services, the supplier will, in addition to any amount it may be entitled to recover for the relevant supply ("consideration"), also be entitled to recover the amount of any GST liability incurred as a result of the supply;
- (c) where under this Agreement a party is entitled to any adjustment to the Fee or otherwise to the payment of money and such adjustment is based on the reasonable or actual cost to the party of performing any work, any input tax credits available to the party in relation to performing such work will be deemed to reduce the cost of such work;

- (d) the supplier must as a condition precedent to the obligation of the other party to make a payment under clause 25(b) provide the other party with a valid tax invoice in respect of the supply;
- (e) the Service Provider must ensure that each insurance policy referred to in clause 10 covers any liability to GST such that the proceeds of any claim under the policy (after payment of GST) are sufficient to fully indemnify the party who suffers the loss that is claimed; and
- (f) in this clause 25:
 - (i) "GST" means the tax payable on taxable supplies under GST Law;
 - (ii) "GST Law" means the *A New Tax System (Goods & Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax; and
 - (iii) terms which are defined in GST Law have the meaning provided by GST Law.

Subject to clauses 25(a) to 25(f) (inclusive), the Service Provider must pay all taxes, duties, levies, imposts and charges which may be payable arising out of or in any way in connection with the Services.

26 LIMITATION OF LIABILITY

■ [REDACTED]

■ [REDACTED]

27 NO WAIVER

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

28 RETURN OF DOCUMENTS

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

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

29 ENTIRE AGREEMENT

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

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

30 PROPORTIONATE LIABILITY

- (a) To the extent permitted by law, part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under this Agreement whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

Without limiting the above, the rights, obligations and liabilities of the Service Provider and the Principal under this Agreement with respect to proportionate liability are as specified in this Agreement and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

- (b) To the extent permitted by law:
- (i) the Service Provider must not seek to apply the provisions of part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by the Principal against the Service Provider (whether in contract, tort or otherwise); and
 - (ii) if any of the provisions of part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by the Principal against the Service Provider (whether in contract, tort or otherwise), the Service Provider will indemnify the Principal against any loss, damage, cost or expense which the Principal is not able to recover from the Service Provider because of the operation of part 4 of the *Civil Liability Act 2002* (NSW).

31 SEVERABILITY

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

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

32 ASSIGNMENT AND NOVATION

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

33 COUNTERPARTS

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

34 NOT USED

35 EXCLUSIVITY

- (a) For the purposes of this clause 35, 'Related Body Corporate' has the meaning given to that term in section 9 of the *Corporations Act 2001* (Cth).
- (b) [REDACTED] the Service Provider must not, and must procure that:
 - (i) any Related Body Corporate of the Service Provider; and

- (ii) any employees, agents, Subcontractors and consultants who are involved in the provision of the Services,

prior to the earlier of the date that is:

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

do not:

- (vi) have any direct or indirect involvement in the Project other than for the Principal; or
- (vii) provide services to or advise any other person in relation to the Project,

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

- (c) The Service Provider agrees that:

- (i) having regard to the Project and the Services, clause 35(b) is reasonable as regards the nature of the involvement restrained and the duration and scope of the restraint and that the restraints are reasonably necessary for the probity of the Project and to ensure the best value for money for the Project; and
- (ii) damages may not be a sufficient remedy for the breach of clause 35(b) and the Principal may be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Service Provider, in addition to any other remedies available at law or in equity.

- (d) [REDACTED]

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

36 NOTICES

- (a) Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement must:
 - (i) be in writing;
 - (ii) be delivered or posted by prepaid post to the address, or sent by email to the email address, set out in the Contract Particulars (or as otherwise notified by either party from time to time); and
 - (iii) be signed by the party making it (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party.
- (b) A communication is taken to be received by the addressee:

- (i) (in the case of prepaid post) on the third working day after the date of posting to an address within Australia, and on the fifth working day after the date of posting by airmail to an address outside Australia;
- (ii) (in the case of delivery by hand) on delivery; and
- (iii) (in the case of email):
 - A. if it is transmitted by 5:00pm (Sydney time) on a Business Day – on that Business Day; or
 - B. if it is transmitted after 5:00pm (Sydney time) on a Business Day, or on a day that is not a Business Day – on the next Business Day.

SCHEDULE 1 – CONTRACT PARTICULARS

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

Service Provider: **KPMG Australia**
ABN 51 194 660 183
Address: Tower Three, International Towers Sydney
300 Barangaroo Avenue
Sydney NSW 2000
Tel: 02 9335 7000 [REDACTED]

Commencement Date: 26 May 2020
(clause 1)

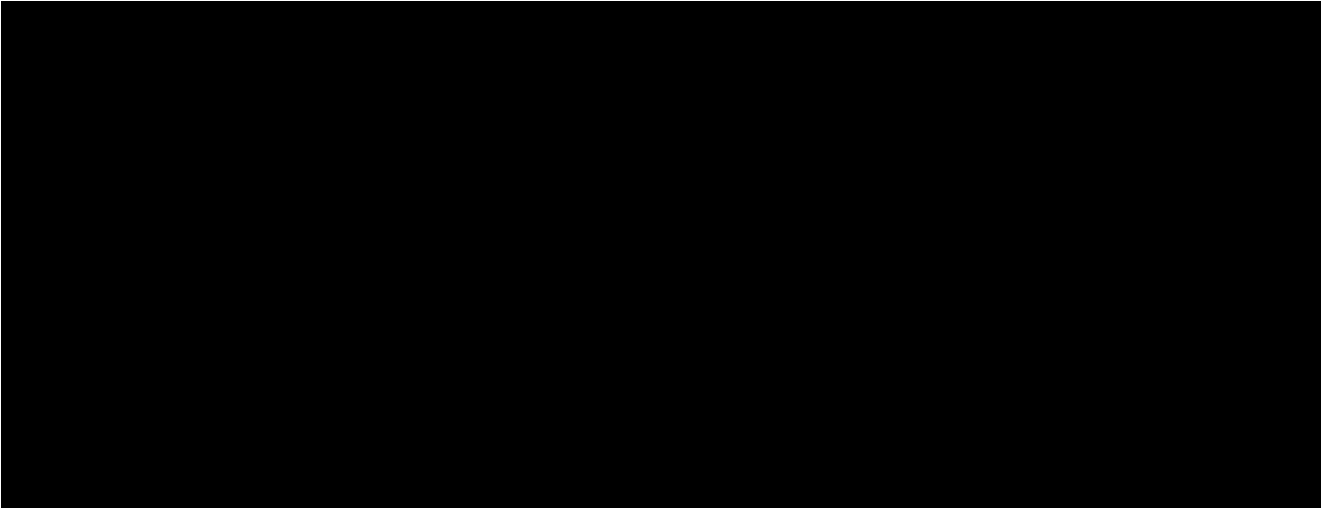
Expiry Date: The date that is 2 years after the Commencement Date
(clause 1)

Further Term: 2 years commencing on the Expiry Date
(clause 1)

Additional Further Term: 1 year commencing on the expiry of the Further Term
(clause 1)

Confidential Information: Not applicable
(clause 1)

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



Portions: None
(clause 1)

Project: Sydney Metro West
(clause 1)

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

Minimum Level of Professional Indemnity Insurance: [REDACTED] for each occurrence and in the annual aggregate
(clause 10.1)

Time for maintaining Professional Indemnity Insurance: [REDACTED]
(clause 10.1)

Minimum Level of Public Liability Insurance: [REDACTED] for each and every occurrence
(clause 10.2)

Service Provider's Representative: [REDACTED]
(clause 11.1)

[REDACTED] [REDACTED]
[REDACTED]

Principal's Representative:
(clause 11.3)

[REDACTED]
[REDACTED] [REDACTED]

Principal's Contract Delegate:
(clause 11.3)

[REDACTED]
[REDACTED]
[REDACTED]

Hourly rates for the valuation of variations:
(clause 16.3)

[REDACTED]

Disbursements for which the Service Provider is entitled to be paid:
(clause 17.1)

[REDACTED]
[REDACTED]

Times for Payment Claims: (clause 17.1)

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

Expert Determination final and binding amount:
(clause 19.3(c))

[REDACTED]

Limit of Service Provider's Liability:
(clause 26)

See clause 26

Address for notices: Principal:

(clause 36)

Address: Level 43, 680 George Street
Sydney NSW 2000

Email: [REDACTED]

Attention: [REDACTED]

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

[REDACTED]

Service Provider:Address: Tower Three
International Towers Sydney
300 Barangaroo Avenue
Sydney NSW 2000

Email: [REDACTED]

Attention: [REDACTED]

SCHEDULE 2 – CONFIDENTIALITY DEED POLL

Sydney Metro

Confidentiality Deed Poll

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

1. Background

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

2. Agreed Covenants

2.1. Definitions and Interpretation

2.1.1. Definitions

In this Deed, unless the context otherwise requires:

- (a) **Confidential Information** means:
 - i. information disclosed by or on behalf of Sydney Metro to the Recipient or its Representatives (or of which the Recipient or its Representatives becomes aware) in the course of discussions in relation to the Permitted Use;
 - ii. information acquired by the Recipient or its Representatives in the course of discussions prior to the date of this Deed in relation to the Permitted Use;

- iii. information designated as confidential by Sydney Metro from time to time; and
 - iv. any other information or Documents which by its nature should reasonably be considered to be the confidential information of Sydney Metro, whether or not marked as "Commercial in Confidence", "Proprietary" or "Confidential", and which may be provided in writing, electronically, verbally or otherwise, but does not include any information which the Recipient can demonstrate to be in the public domain or was known to the Recipient at the time of disclosure other than through a breach of this Deed.
- (b) **Deed** means this Deed Poll.
- (c) **Document** includes:
- i. paper or other material on which there is writing, printing, marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
 - ii. any notes which include the Confidential Information or any summary, extract or part of it; or
 - iii. any material from which sounds, images, writing or messages can be reproduced.
- (d) **Law** means any statute, law, order of a court, tribunal, governmental or regulatory body or the listing rules of the ASX Limited.
- (e) **Representative** means an employee, officer, agent, adviser or consultant of the Recipient engaged in connection with the Permitted Use.

2.2. Interpretation

Except where the context otherwise requires:

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

2.3. Disclosure and Use of Confidential Information

2.3.1. Recipient obligations

The Recipient warrants and represents that it will:

- (a) keep confidential and not disclose to any person the Confidential Information;

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

2.3.2. Security measures

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

2.3.3. When Recipient may disclose

The Recipient may disclose the Confidential Information:

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

2.3.4. Disclosure required by Law

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

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

2.4. Representatives

2.4.1. Breach by Representative

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

2.4.2. Inspections

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

2.5. Return of Confidential Information

If requested by Sydney Metro, the Recipient must:

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

2.6. Sydney Metro may enforce Deed

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

2.7. No Exclusion of Law or Equity

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

2.8. Waiver

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

2.9. Governing Law

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

2.10. Continuing Obligation

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

2.11. Indemnity

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

2.12. Breach of Confidentiality Obligations

- (a) The Recipient must immediately notify Sydney Metro of, and take all steps necessary to prevent, any actual, threatened or suspected breach of this Deed by the Recipient or its Representatives and comply with any directions issued by Sydney Metro or its authorised representative regarding any unauthorised use or disclosure of the Confidential Information by the Recipient or its Representatives.
- (b) The Recipient must provide such assistance as may be reasonably requested by Sydney Metro in relation to any claim or proceedings that Sydney Metro may take against any third party for unauthorised use or disclosure of the Confidential Information.

2.13. Further Assurances

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

2.14. No Revocation

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

Executed as a deed poll

Signature of Recipient:	
Name of Recipient:	
Signature of Witness:	
Name of Witness:	

SCHEDULE 3 – FORM OF SUBCONTRACTOR’S STATEMENT

SUBCONTRACTOR’S STATEMENT

Note to the parties
 For the purpose of this Subcontractor’s Statement:
 - “the subcontractor” is the Service Provider; and
 - “the principal contractor” is Sydney Metro

REGARDING WORKERS COMPENSATION, PAYROLL TAX AND REMUNERATION

(Note 1 - see back of form)

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

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

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

Subcontractor: ABN:
 (Business name)

of:
 (Address of subcontractor)

has entered into a contract with: ABN:
 (Business name of principal contractor) (Note 2)

Contract number/identifier: (Note 3)

This Statement applies for work between:/...../..... and/...../..... inclusive, (Note 4)

subject of the payment claim dated:/...../..... (Note 5)

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

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

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

Notes

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

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

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

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

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

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

Statement Retention

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

Offences in respect of a false Statement

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

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

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

Further Information

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

SCHEDULE 4 – FORM OF STATEMENT OF INTERESTS AND ASSOCIATIONS

Sydney Metro

Statement of Interests and Associations

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

I _____, [insert full name] of
 _____ [insert business address]

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

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

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

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

Disclosure

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____

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

I undertake to:

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

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

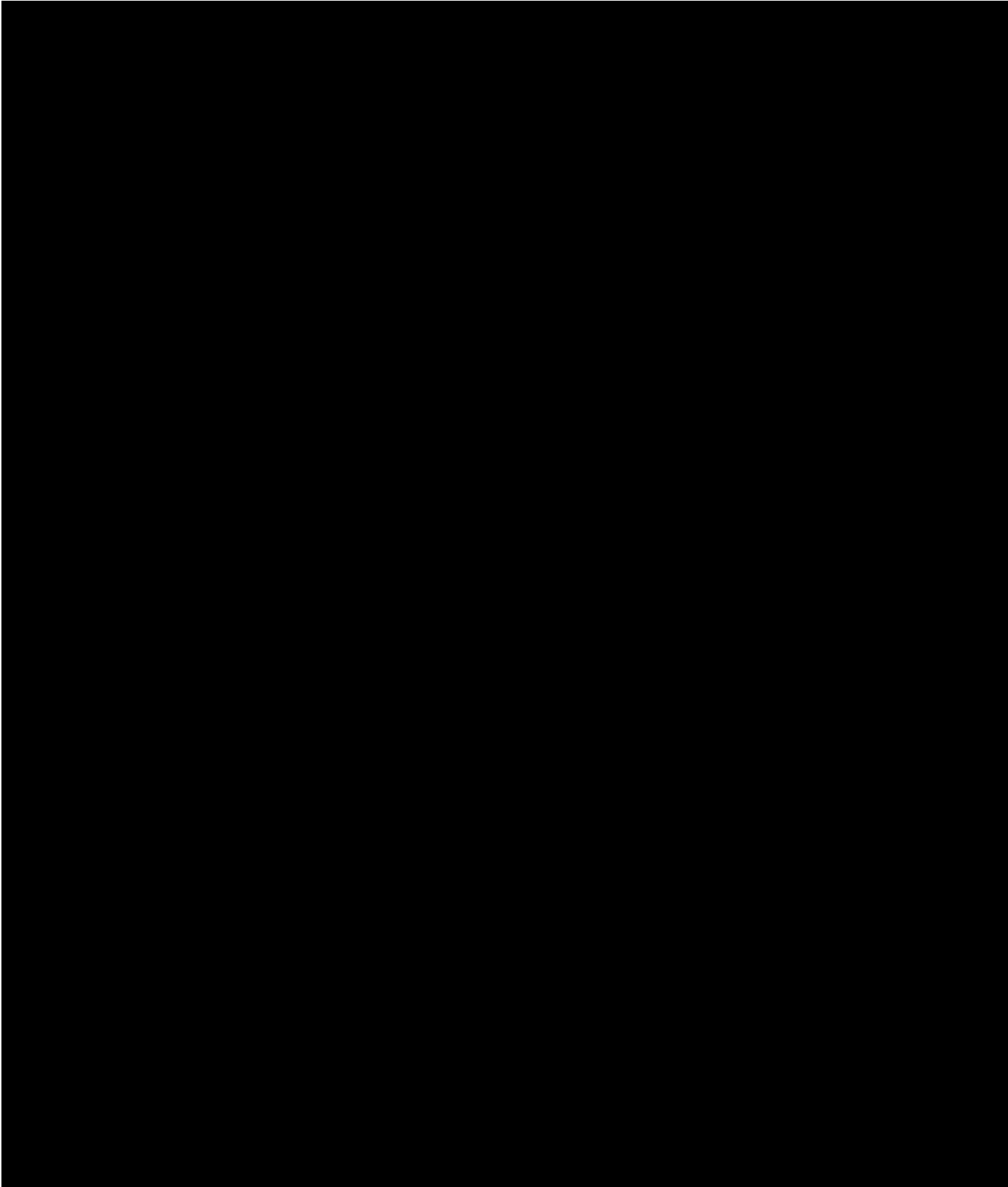
Executed as a Deed

Signed, sealed and delivered

Signature of Declarant:	
Name of Declarant:	
Signature of Witness:	
Name of Witness:	

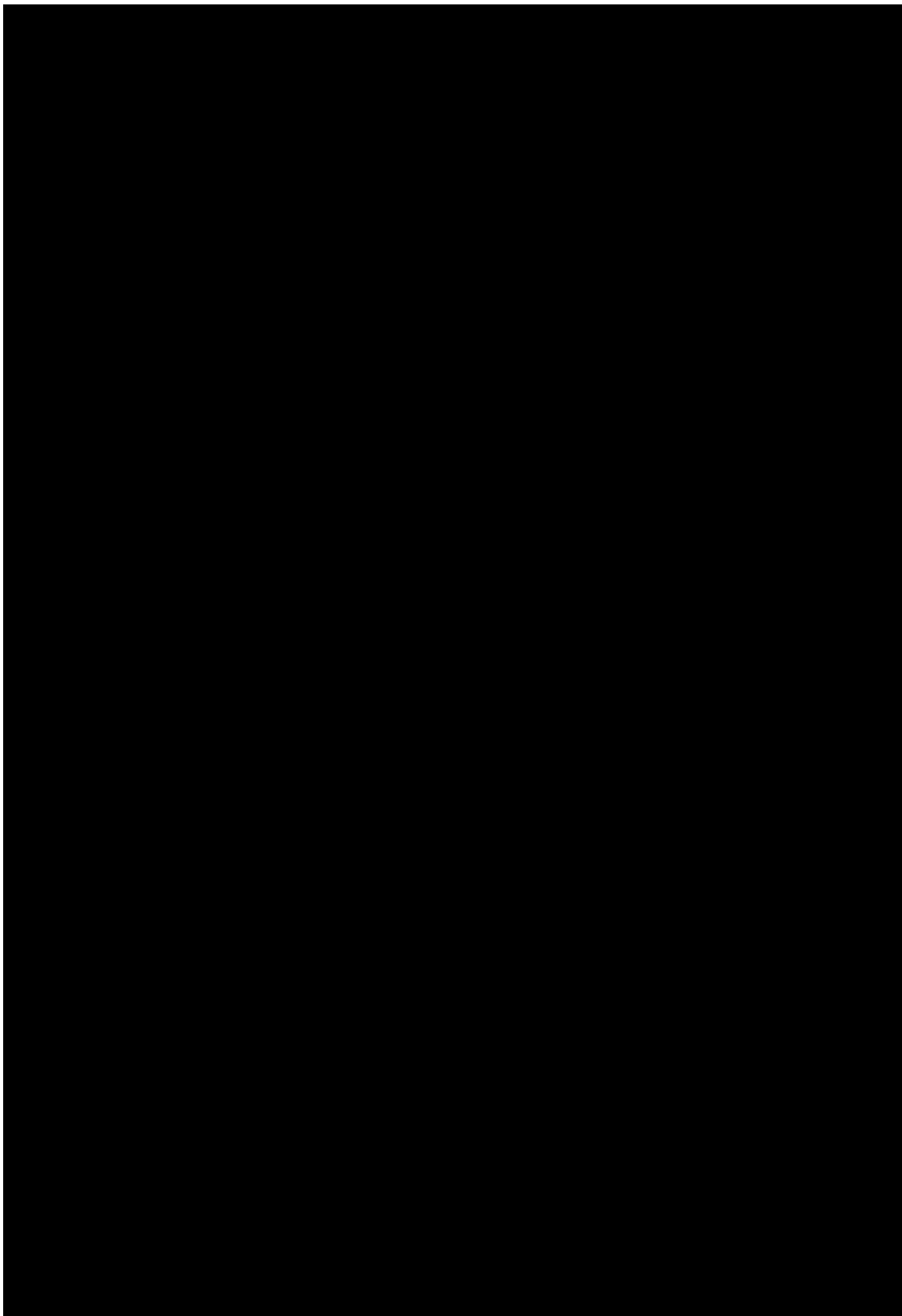
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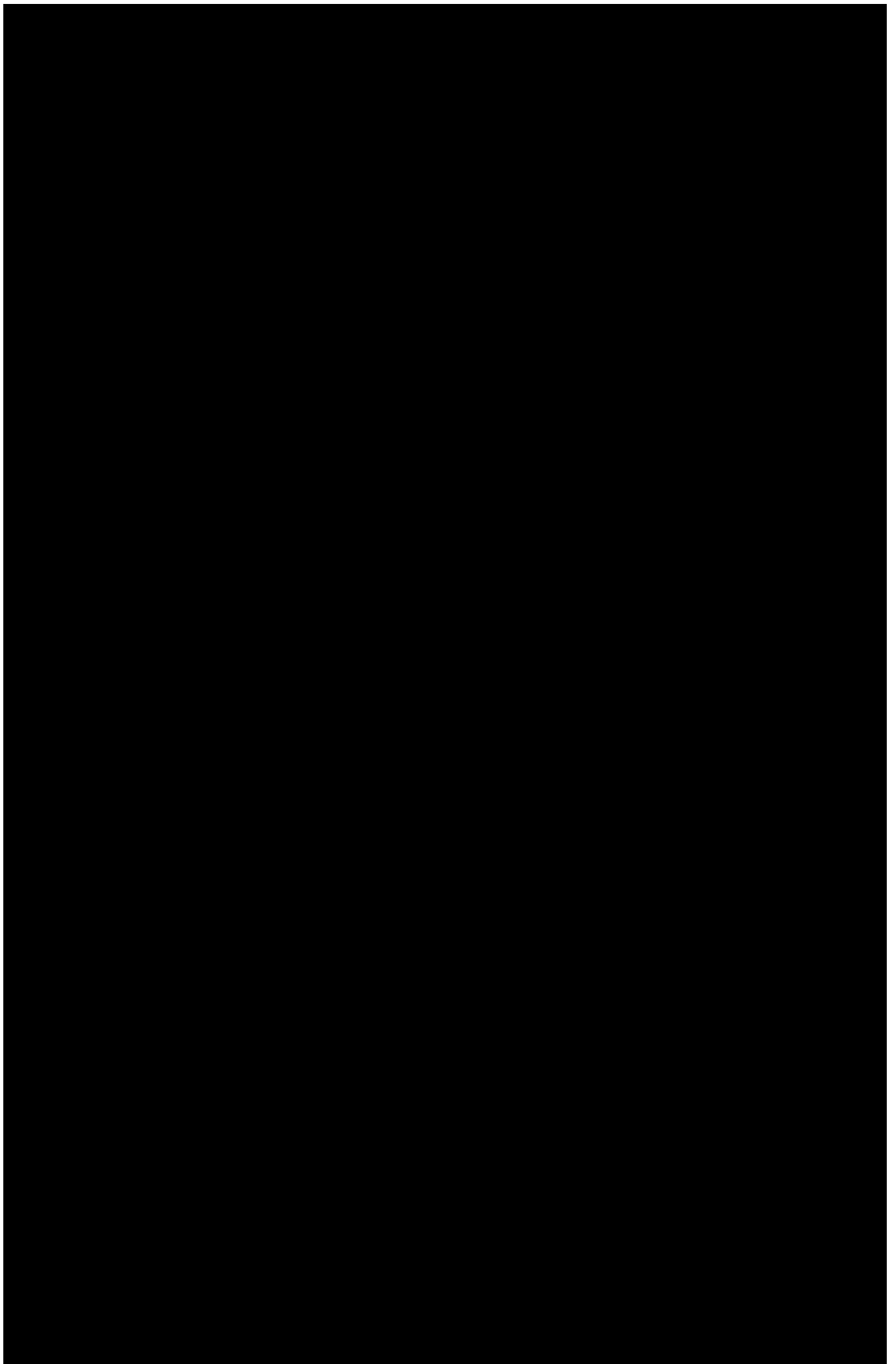
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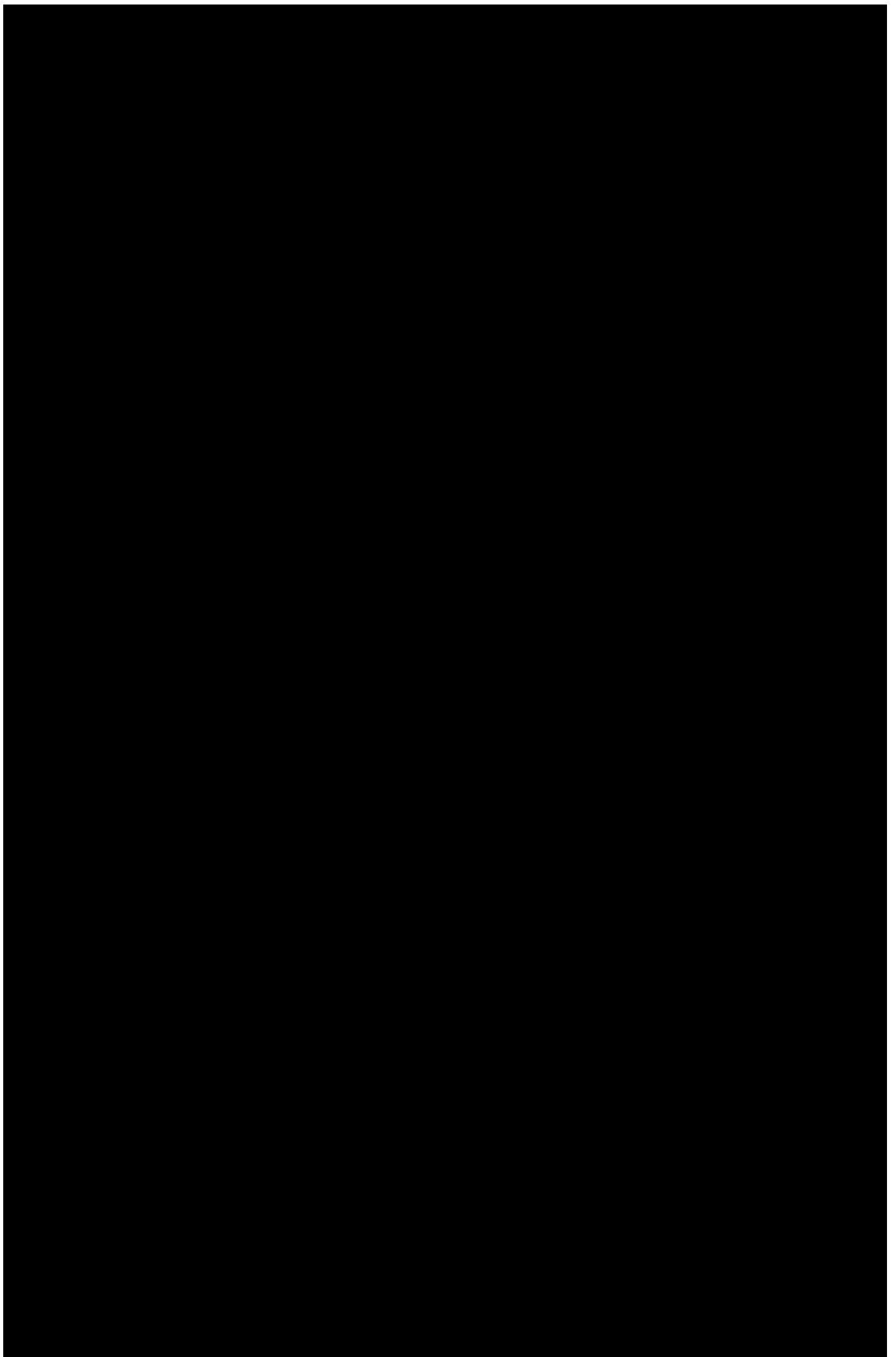


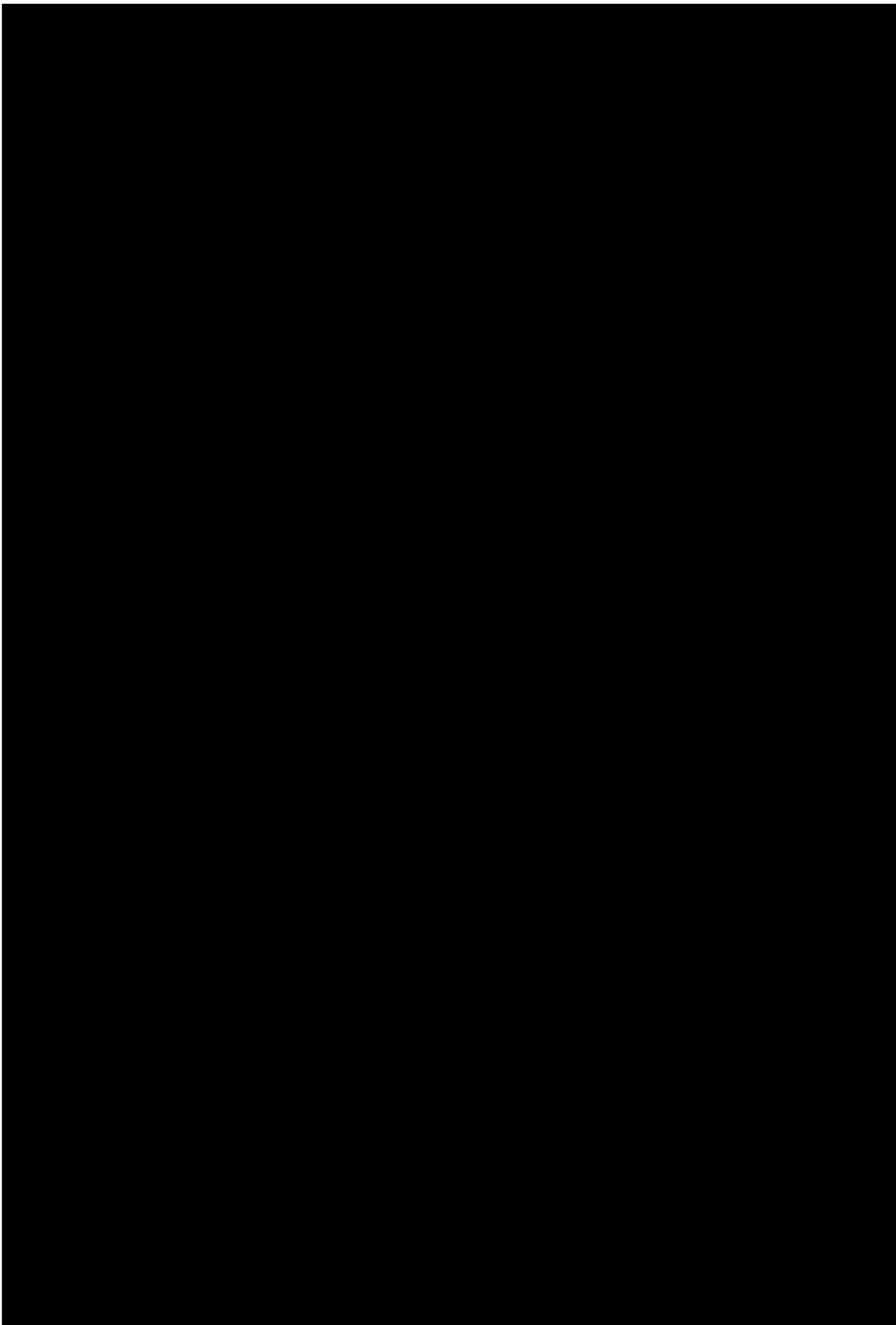
SCHEDULE 6 – SERVICES BRIEF

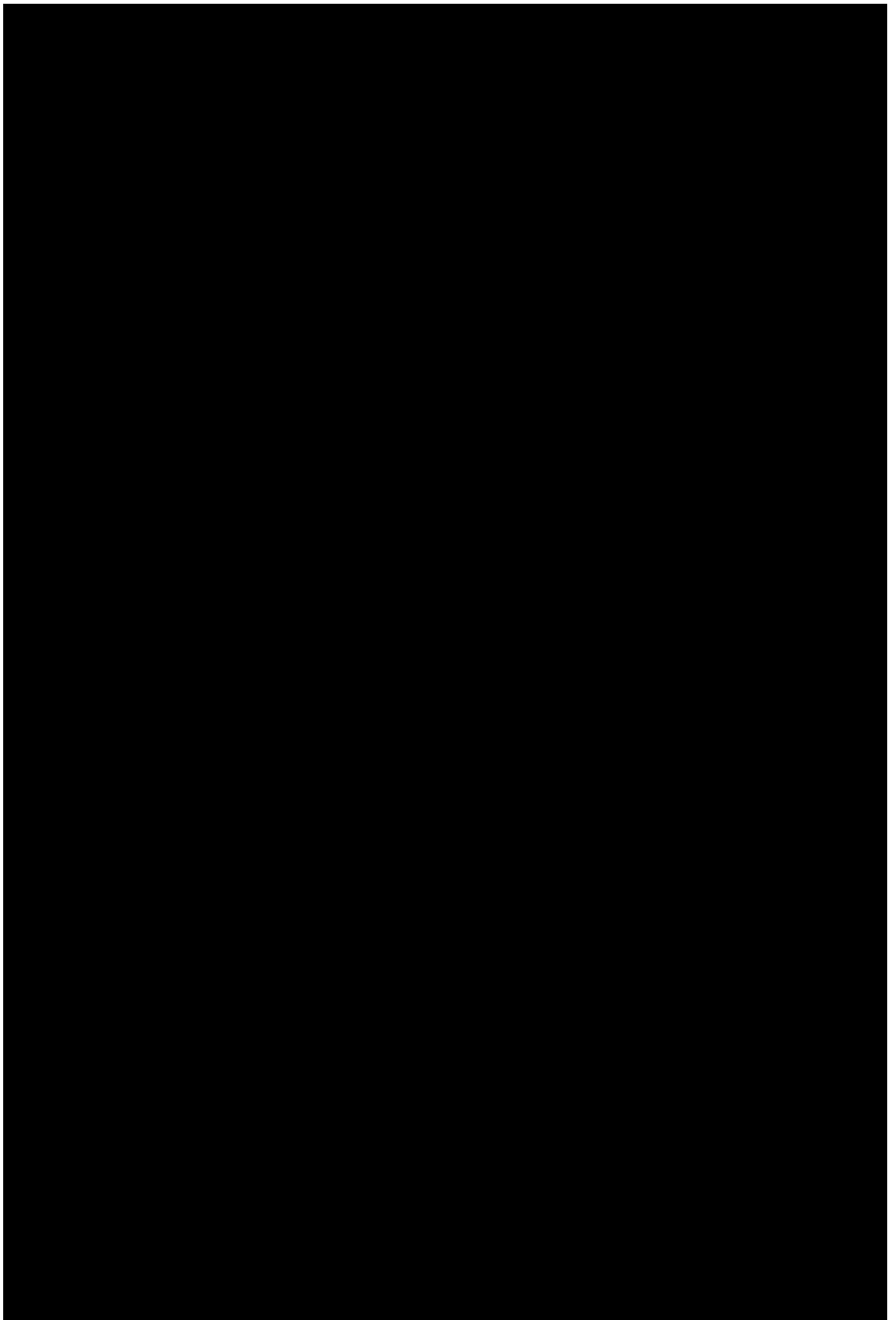
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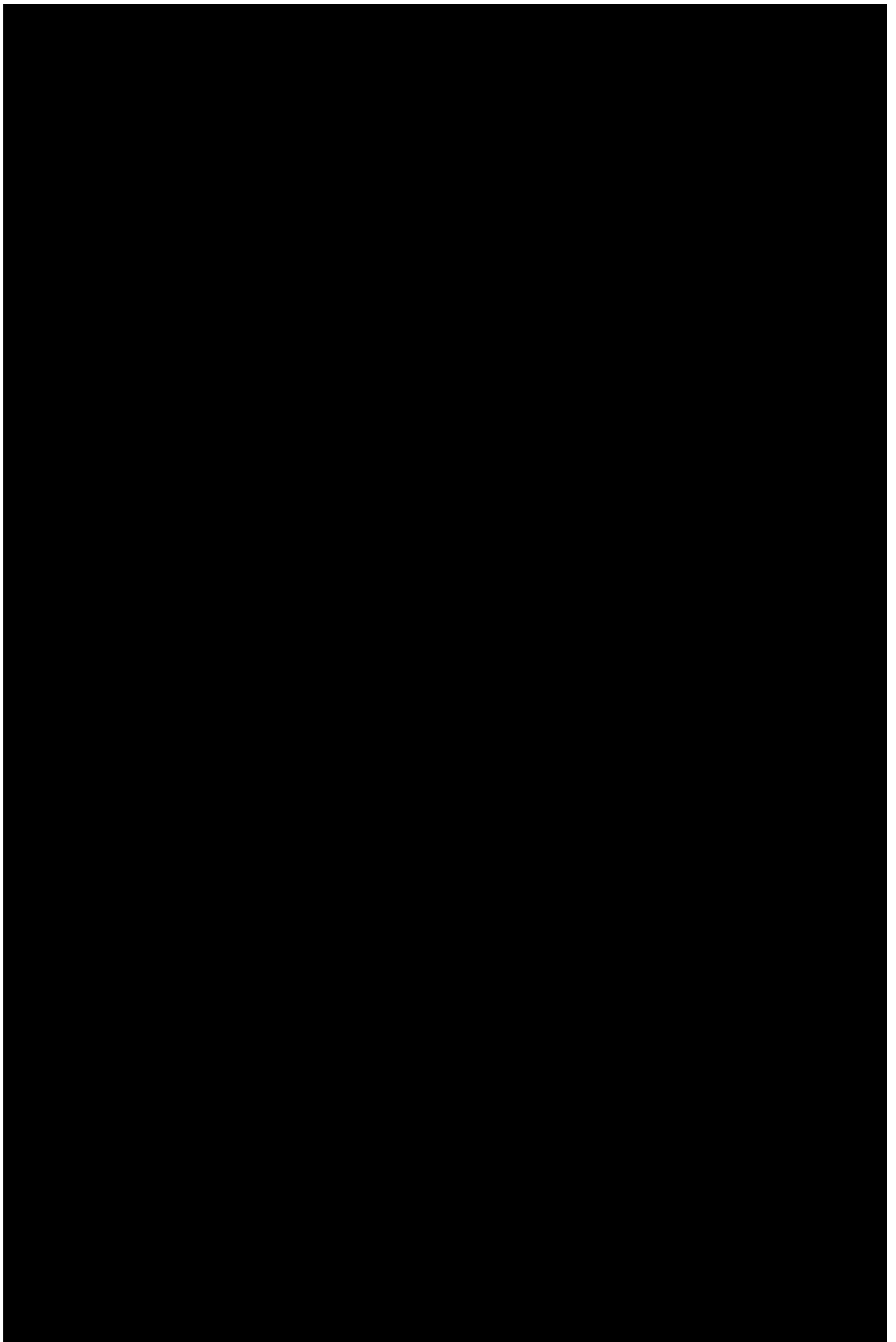


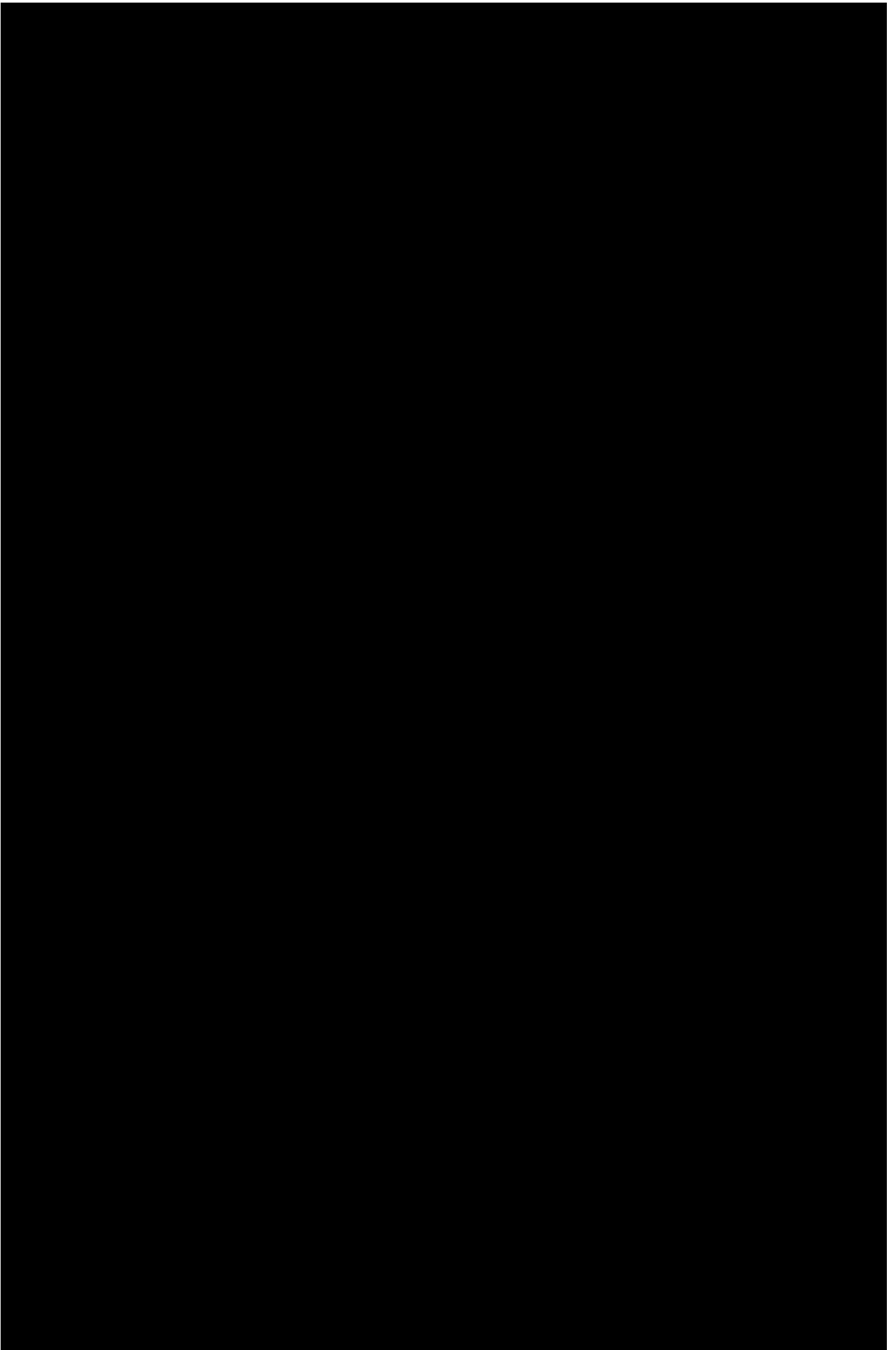


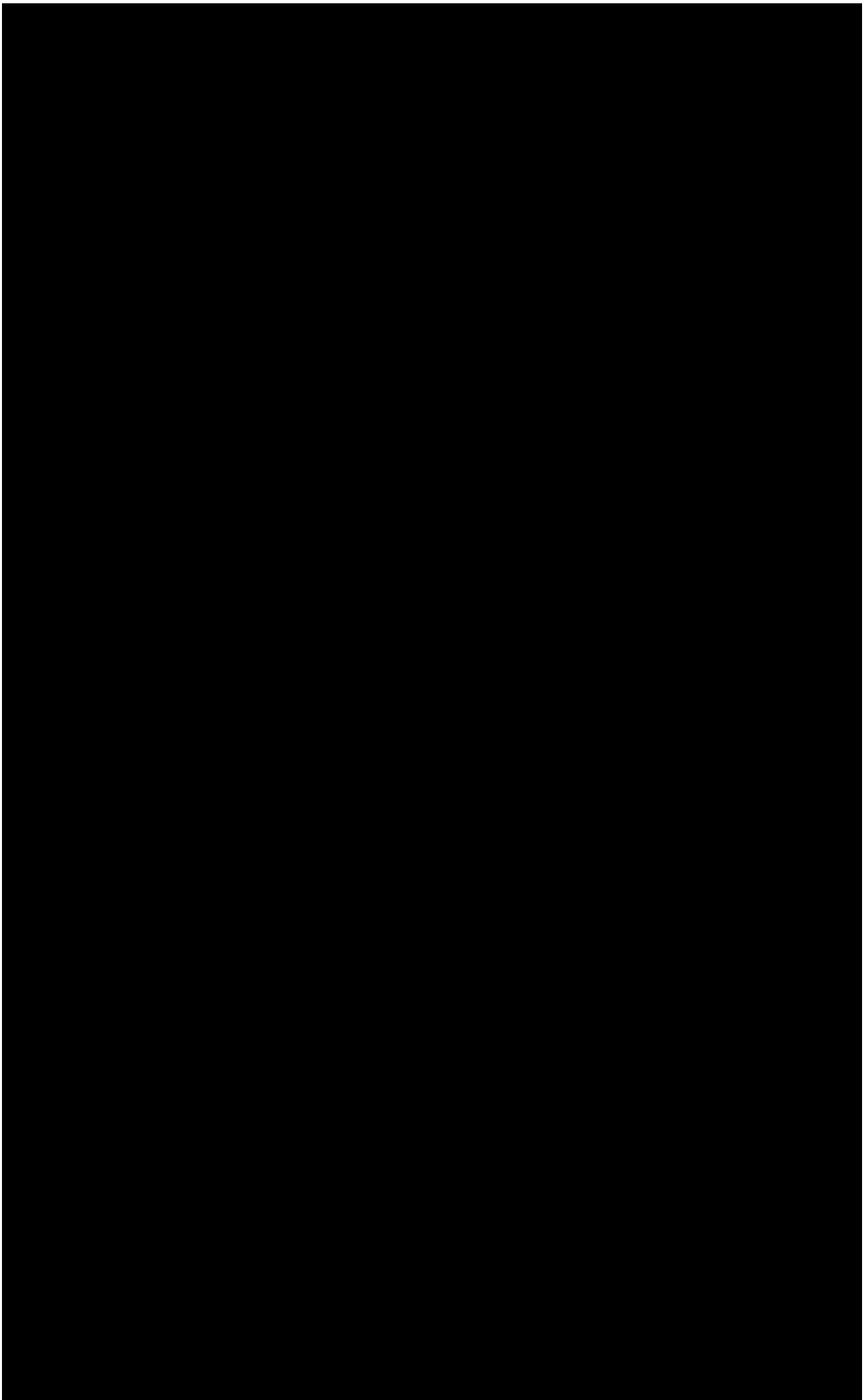


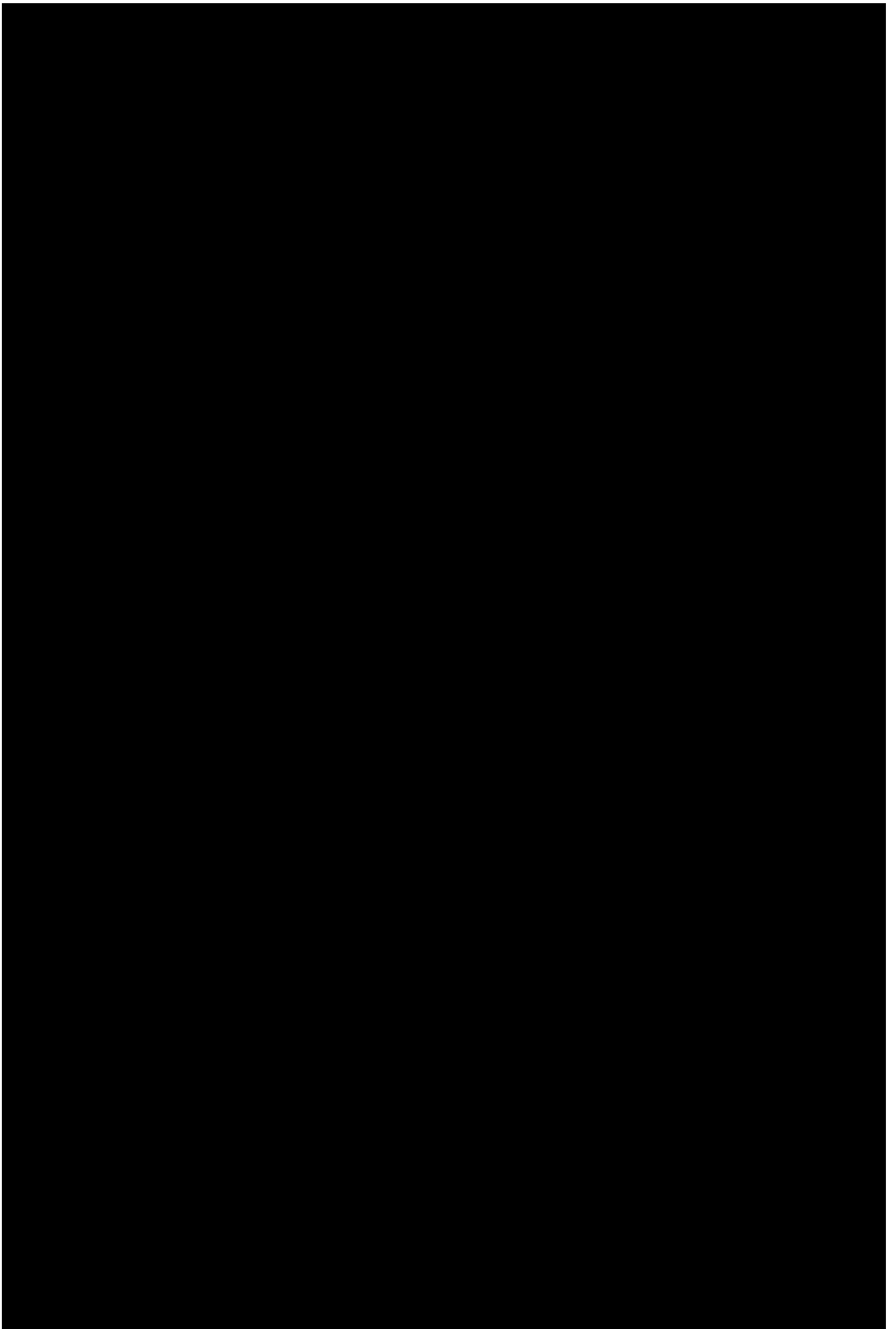


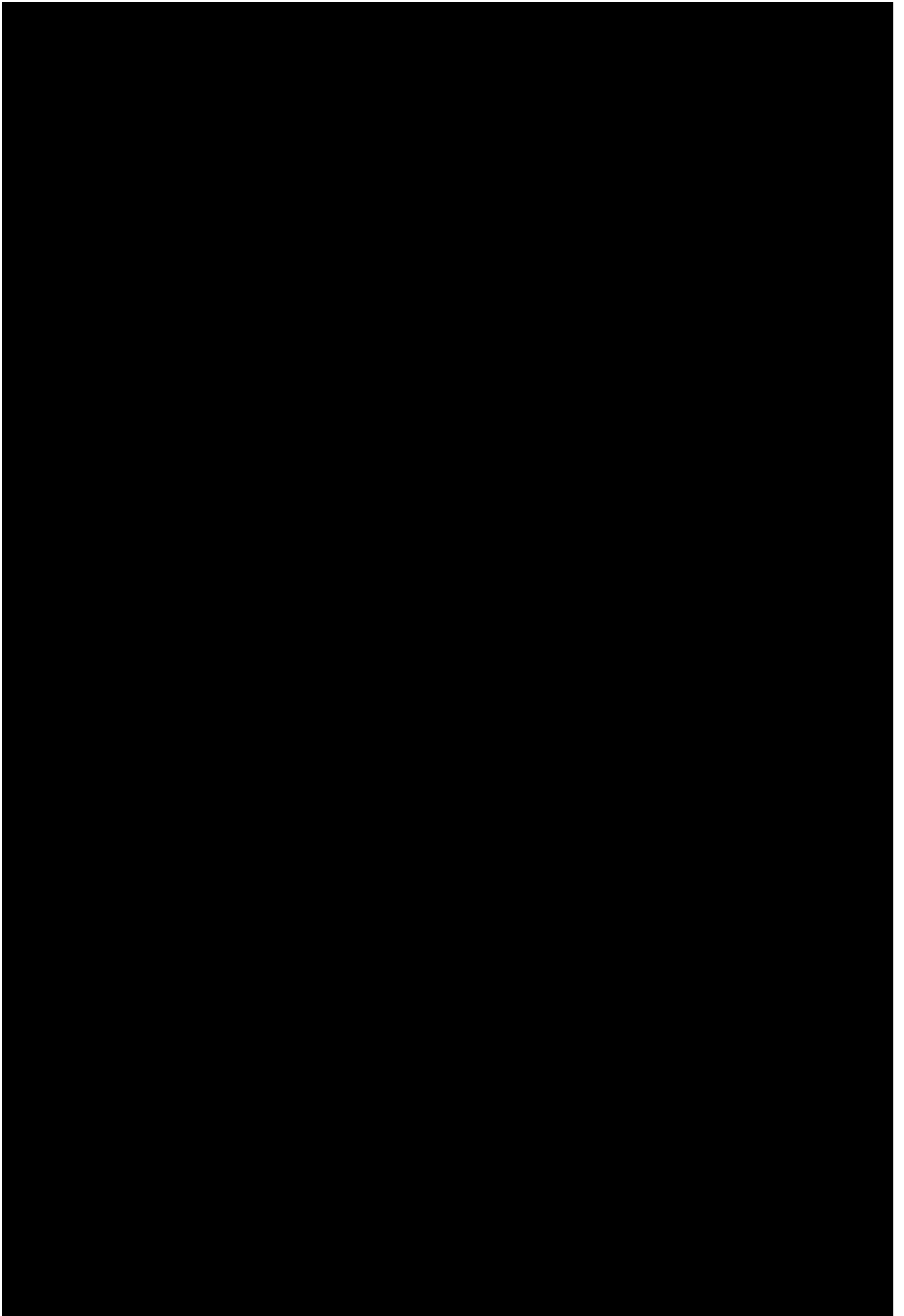


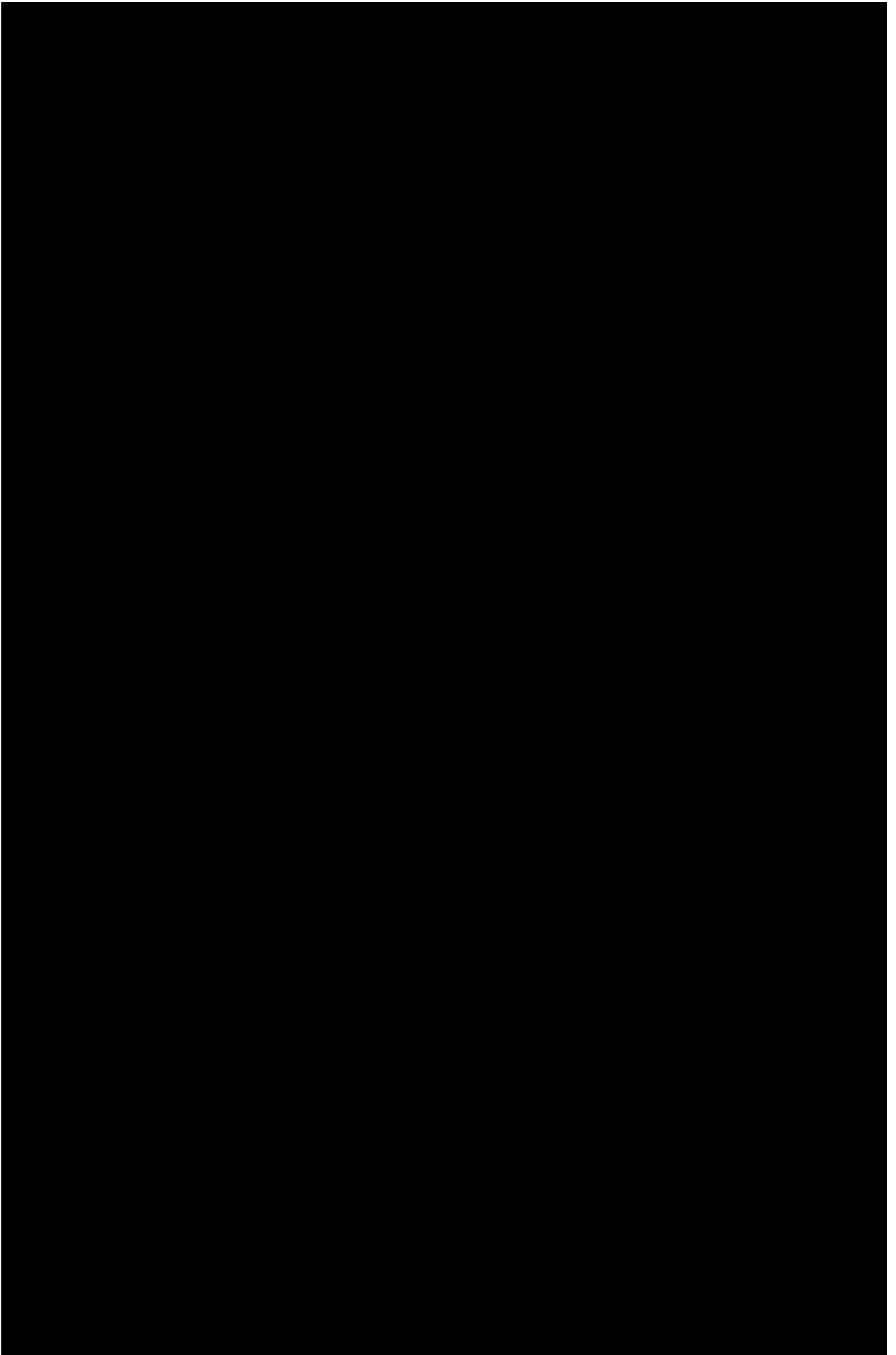


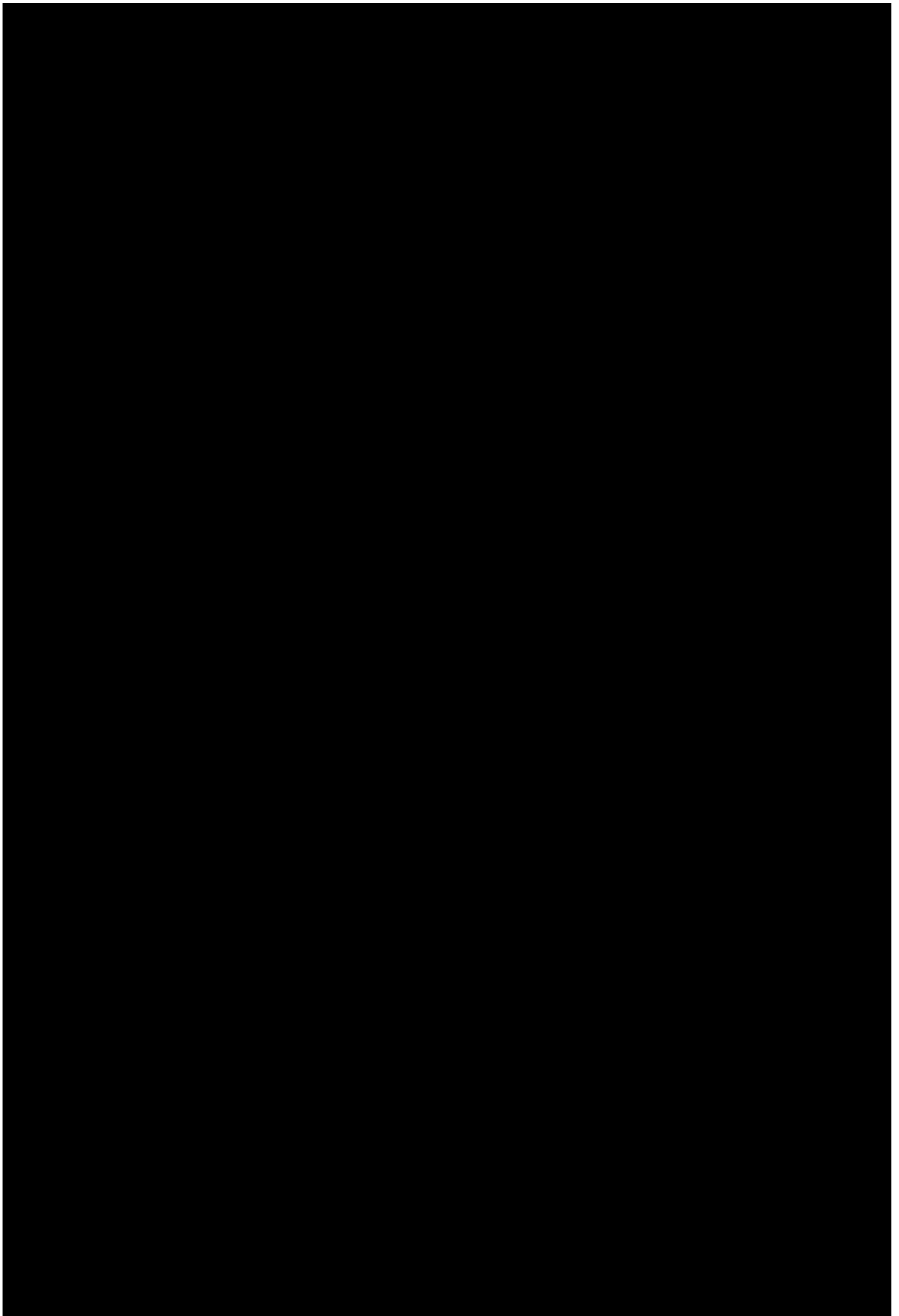


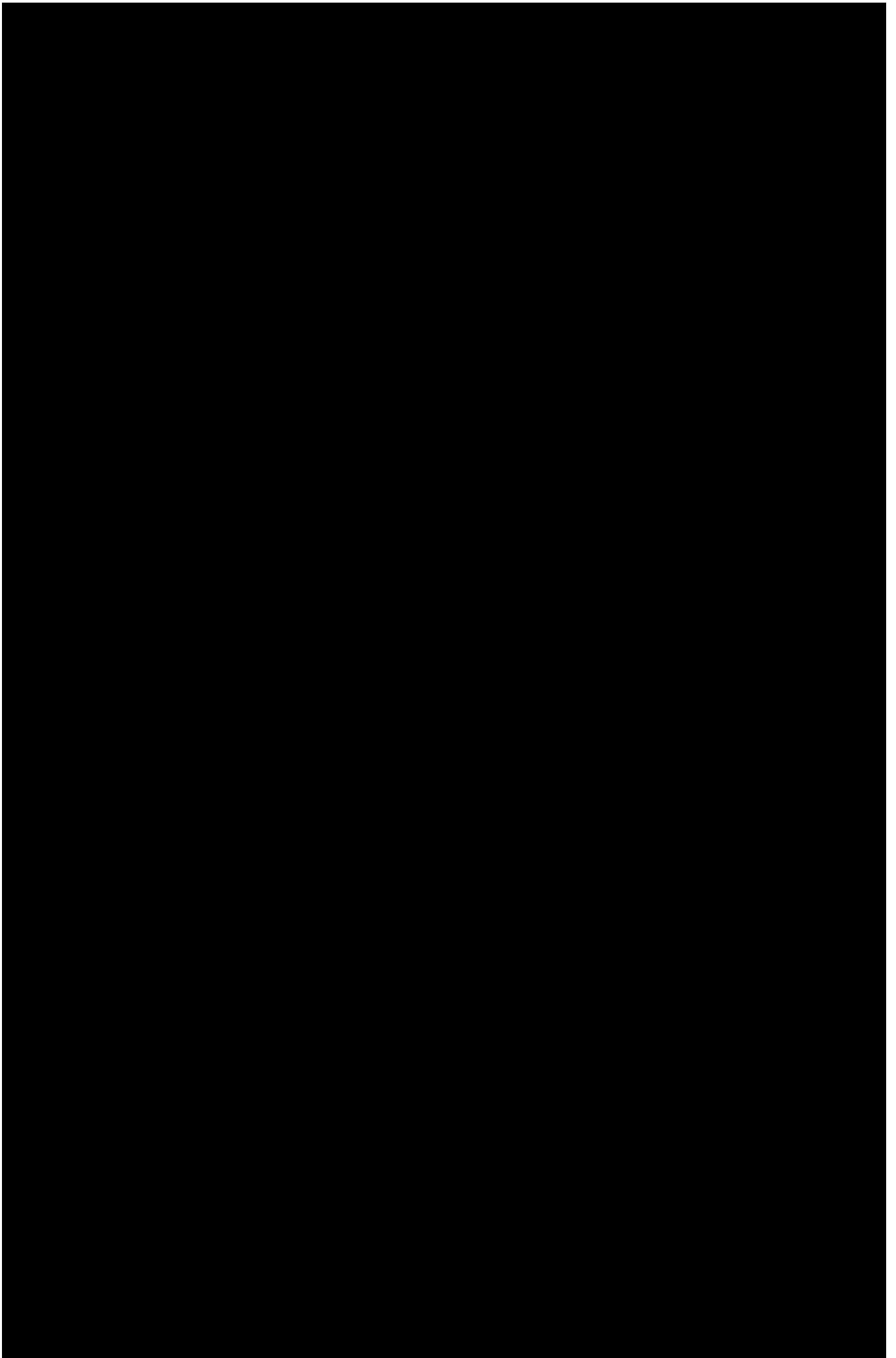


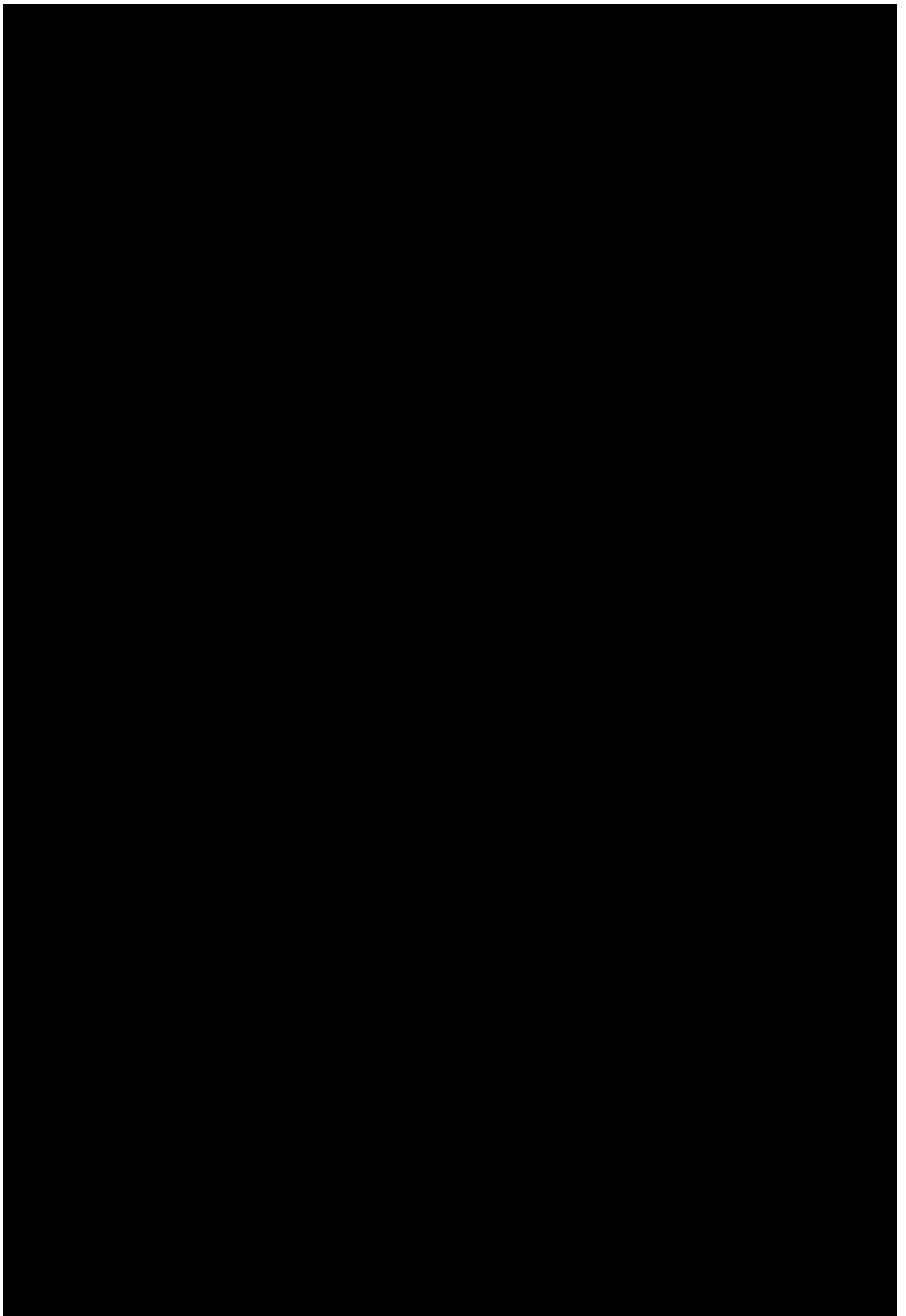


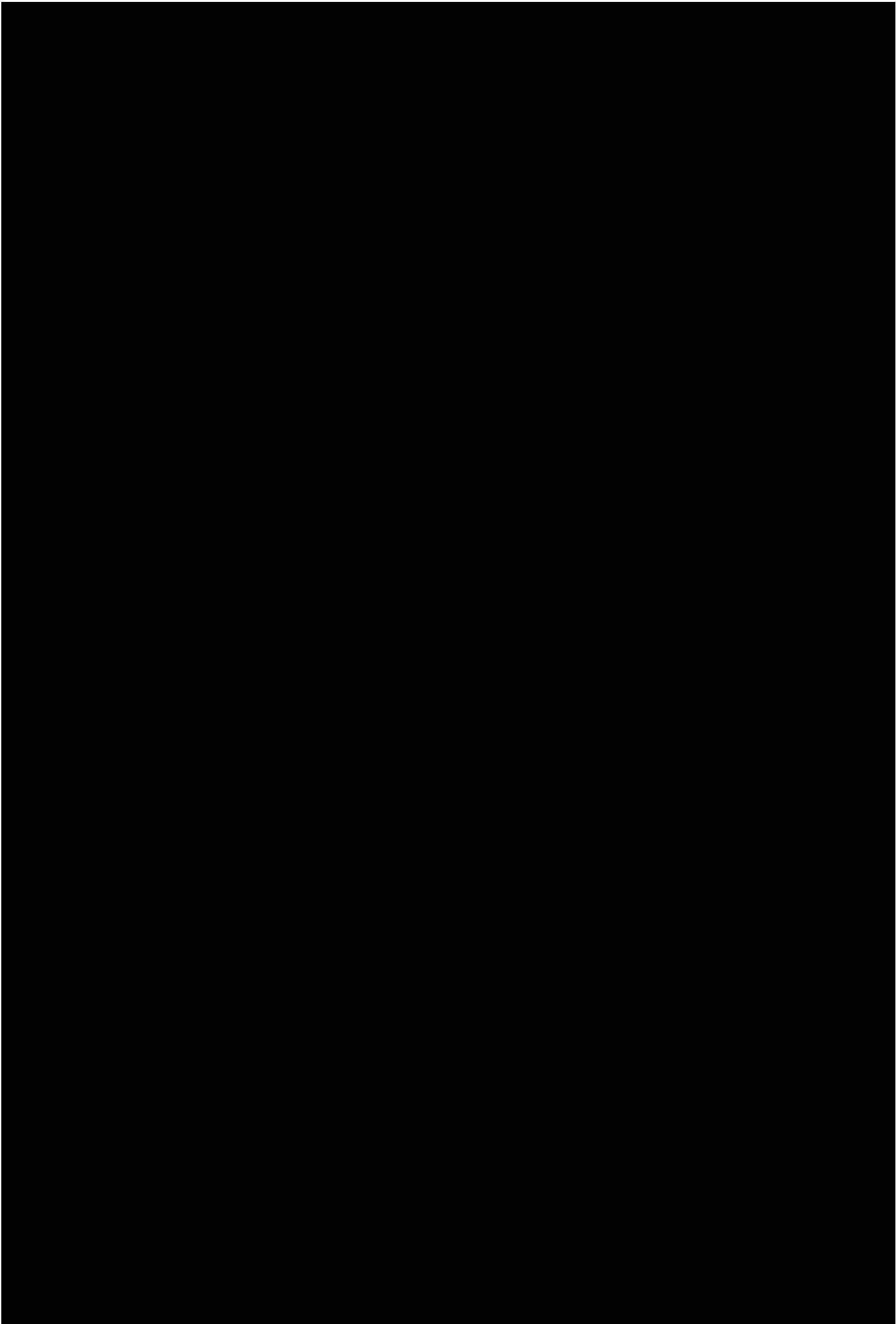


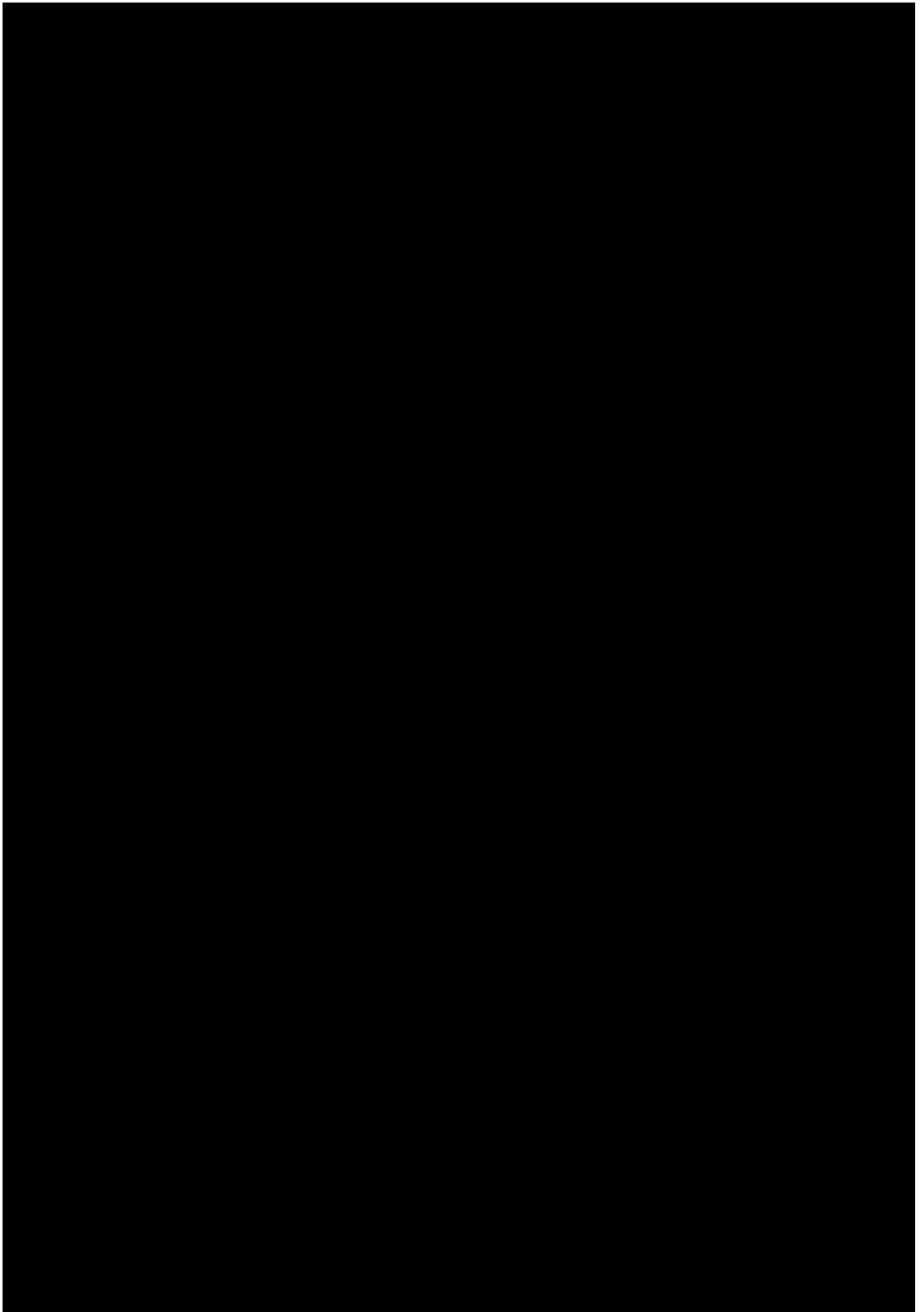


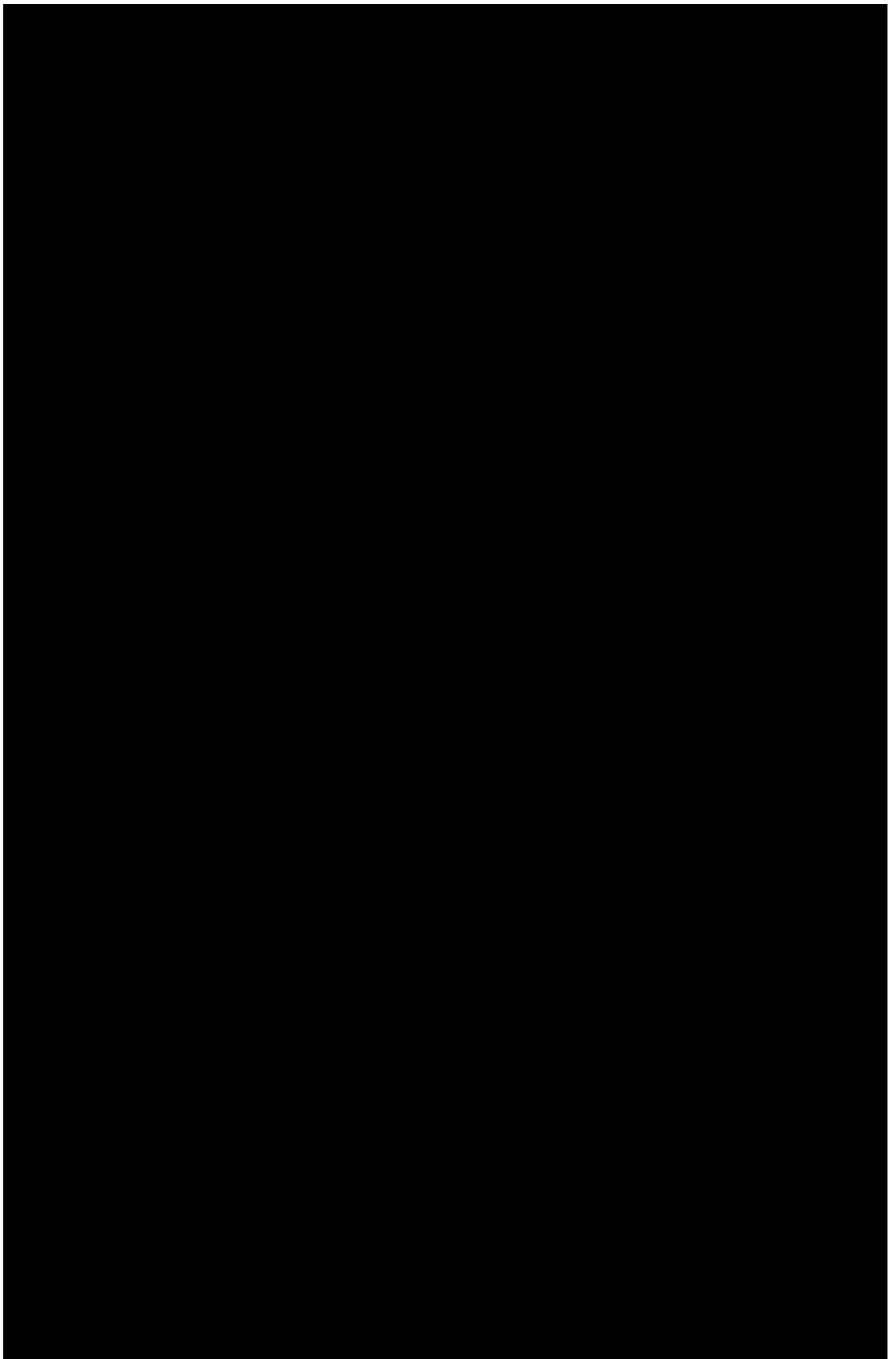


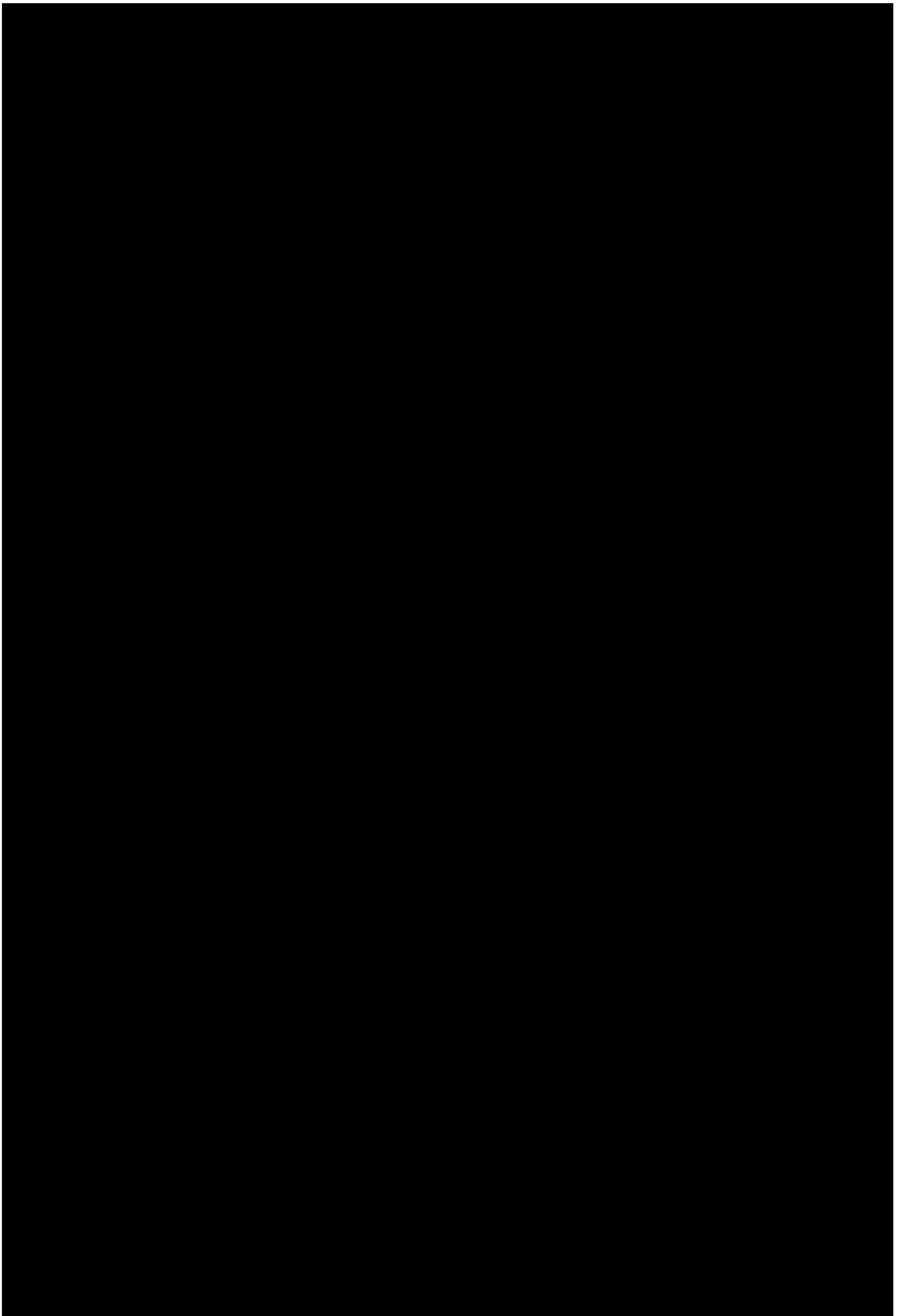


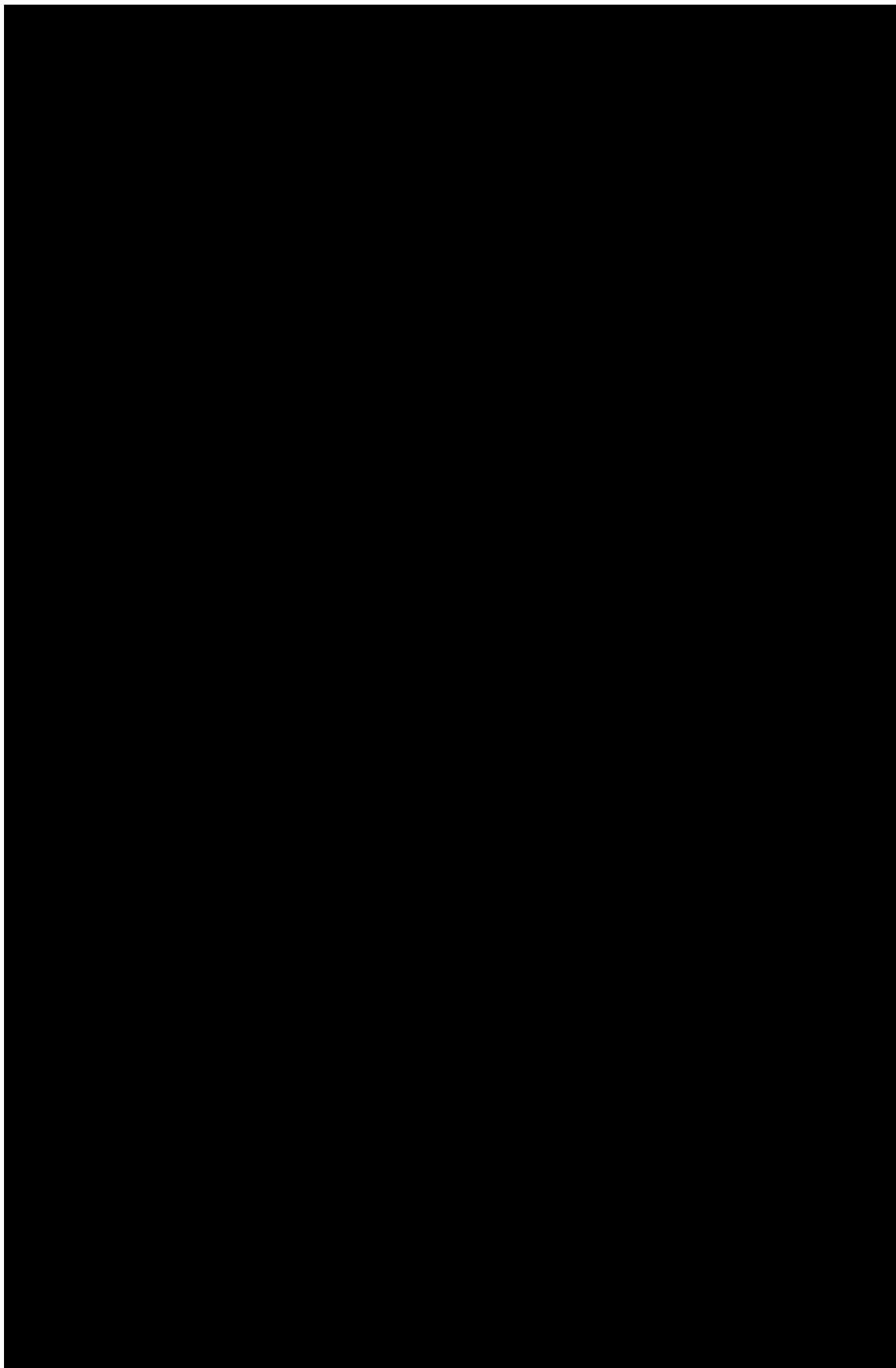


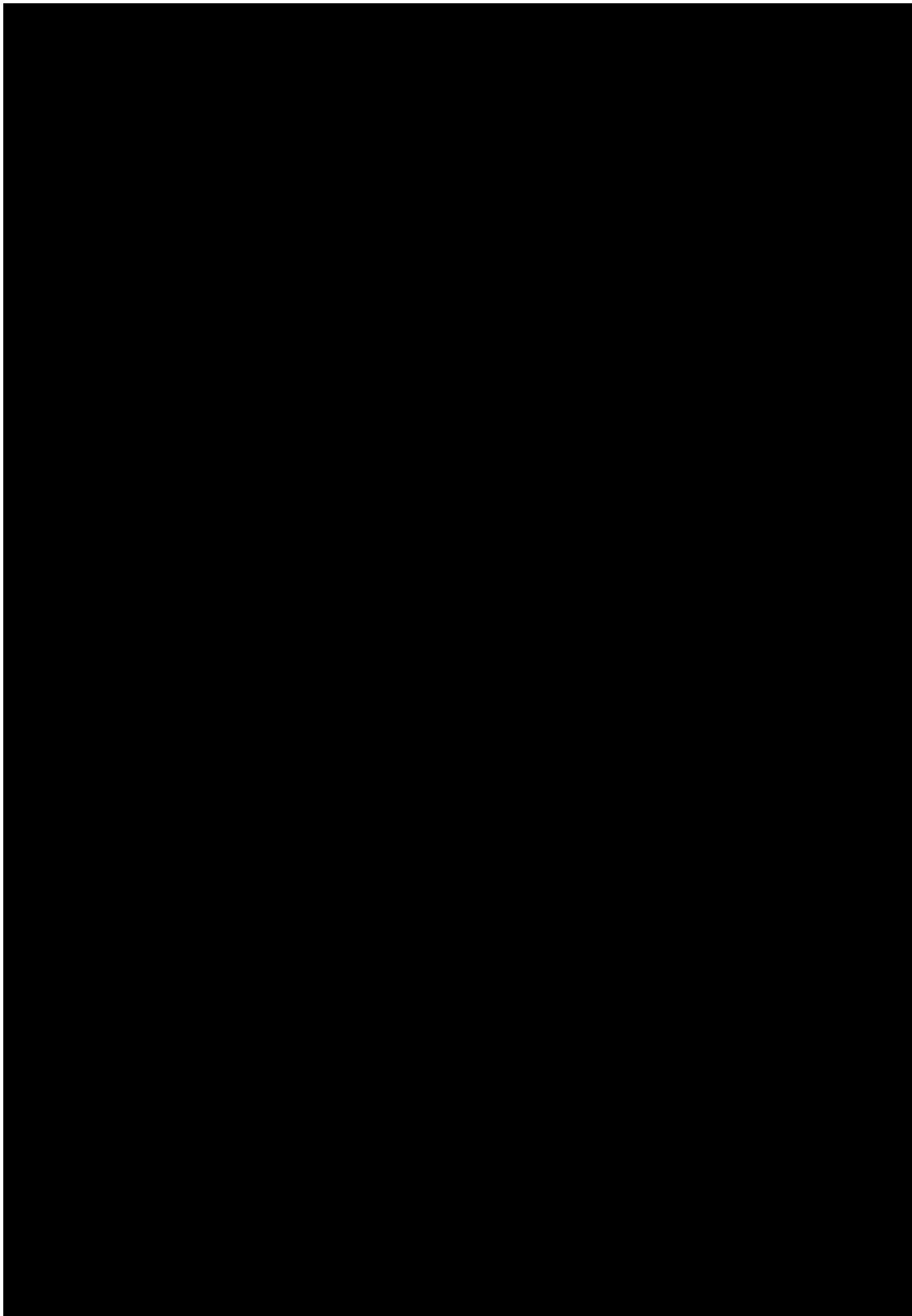


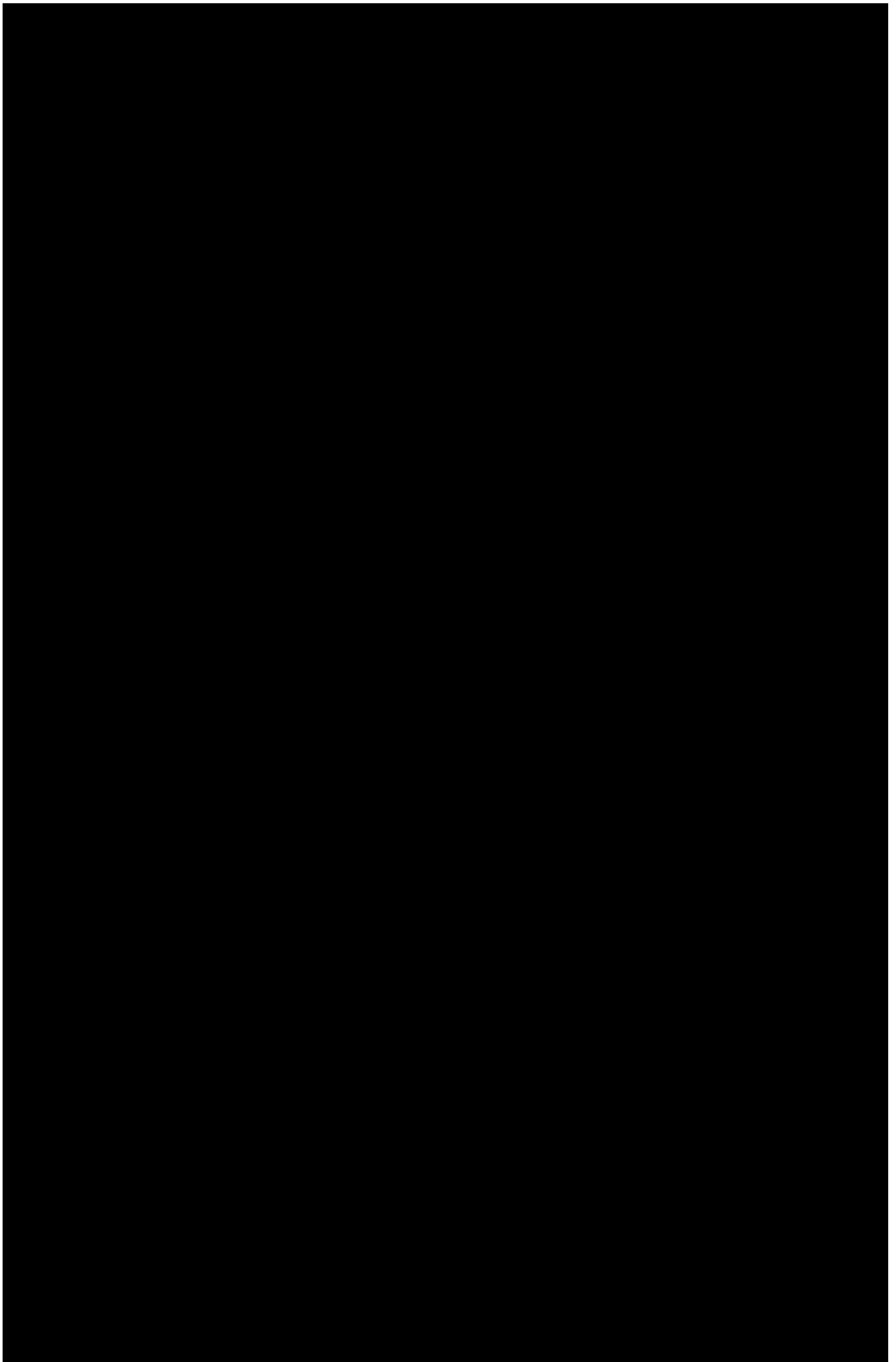


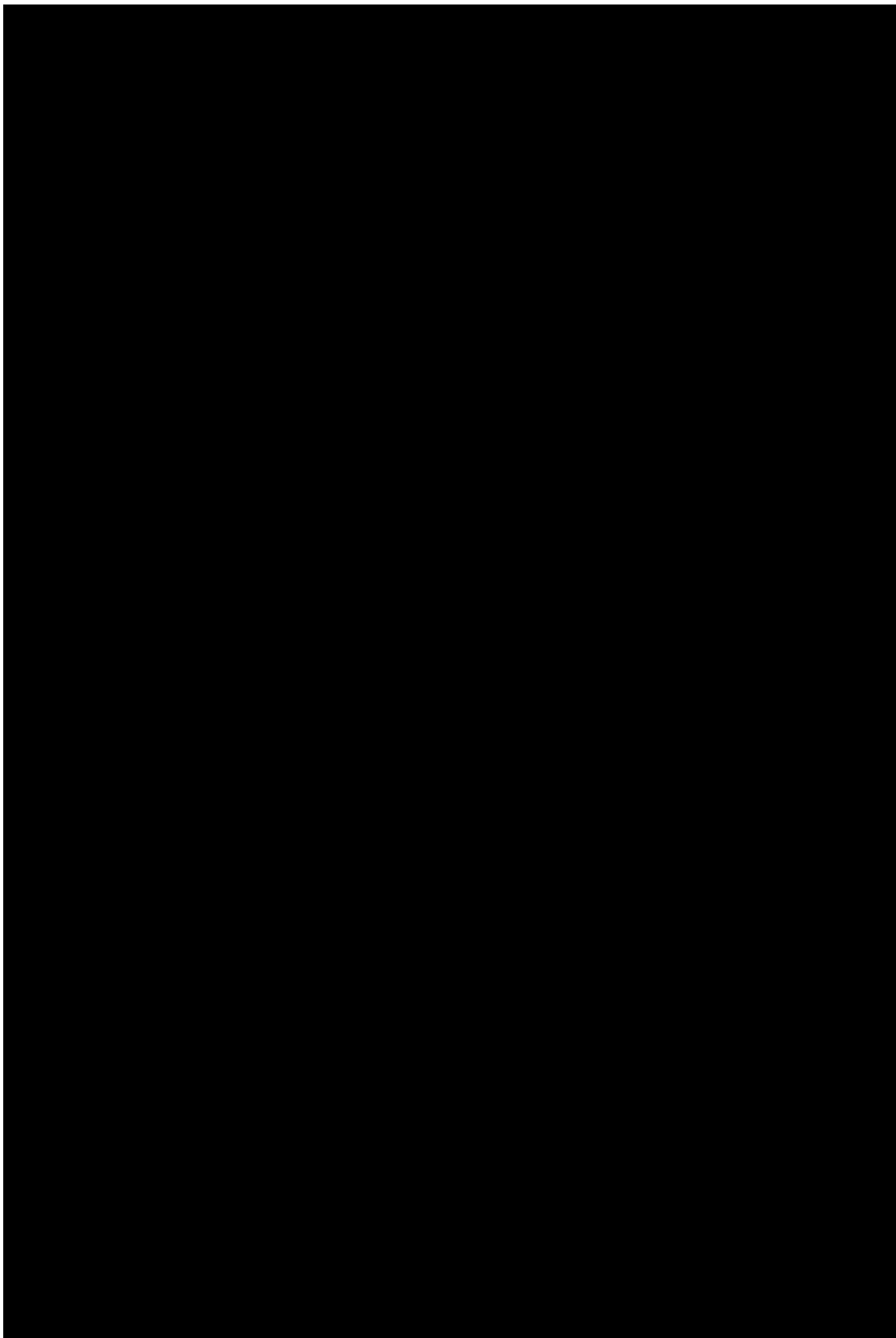


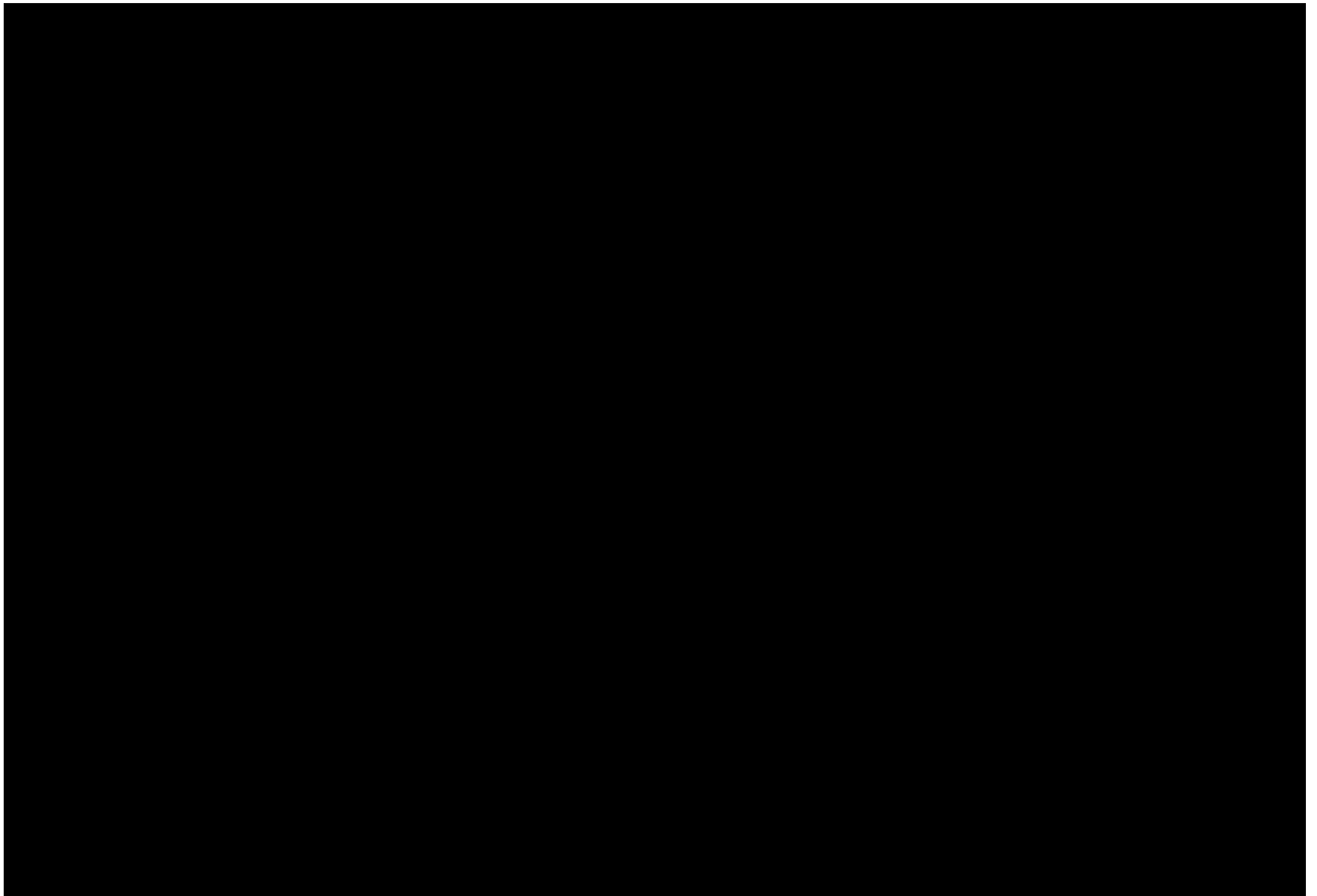


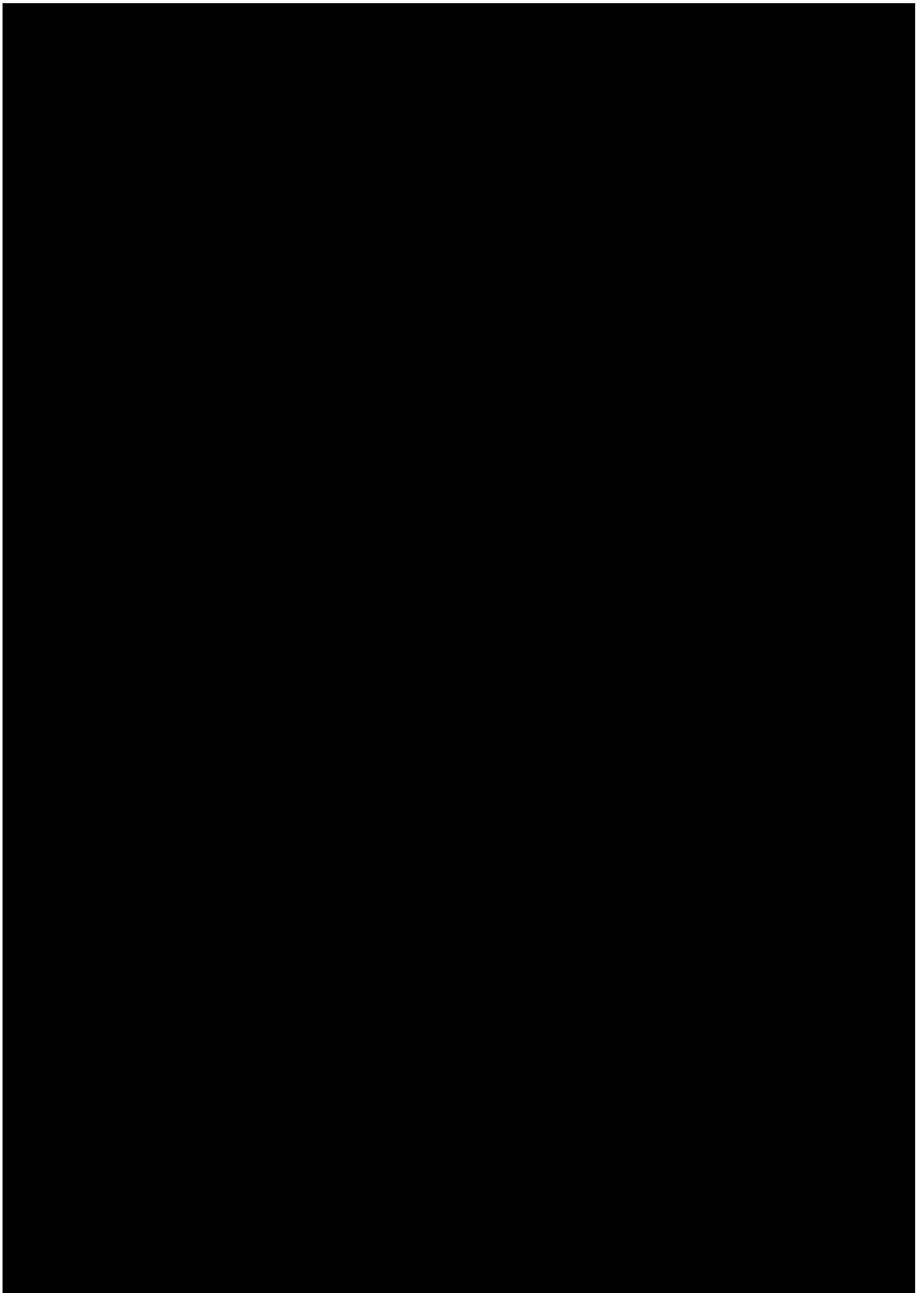


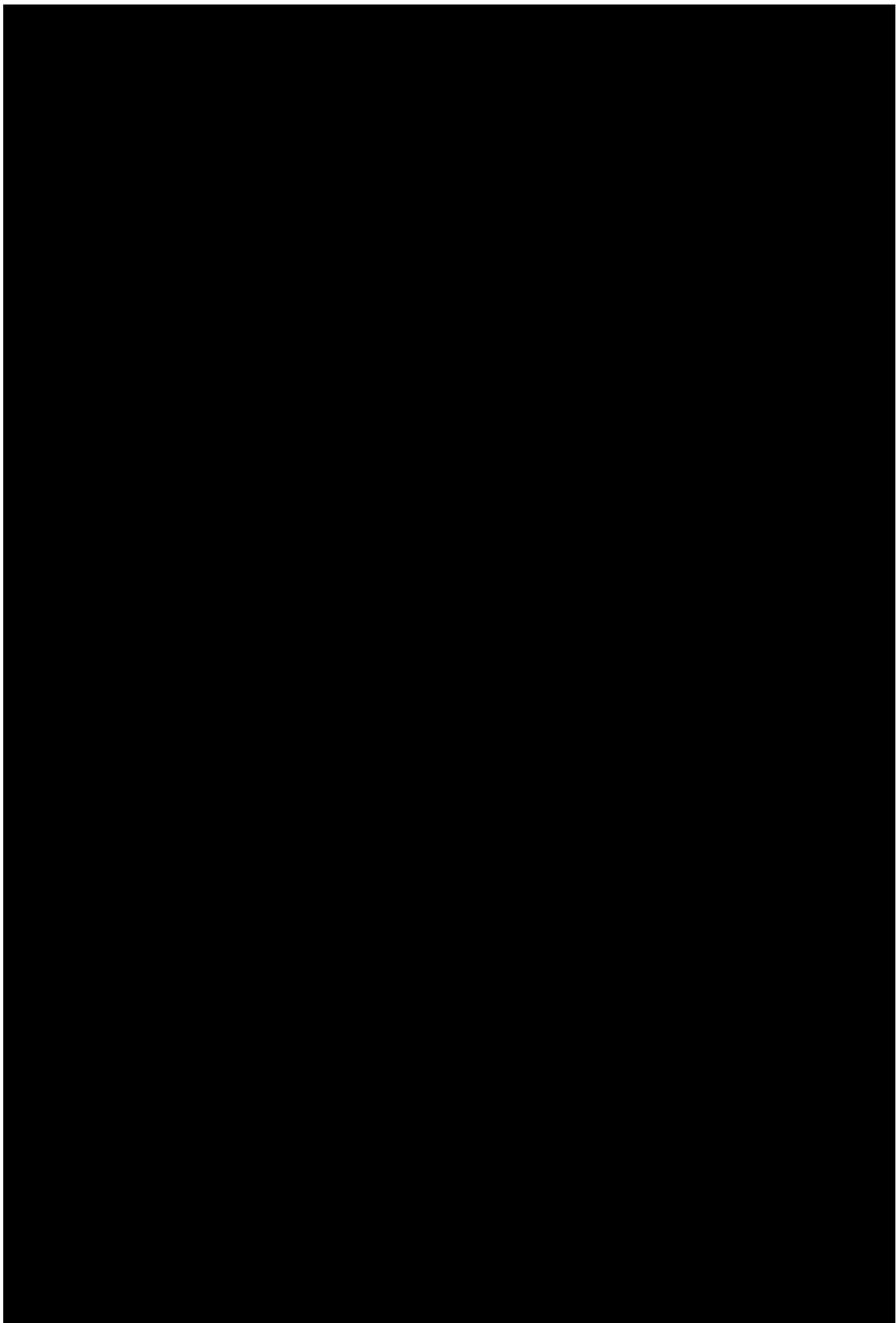


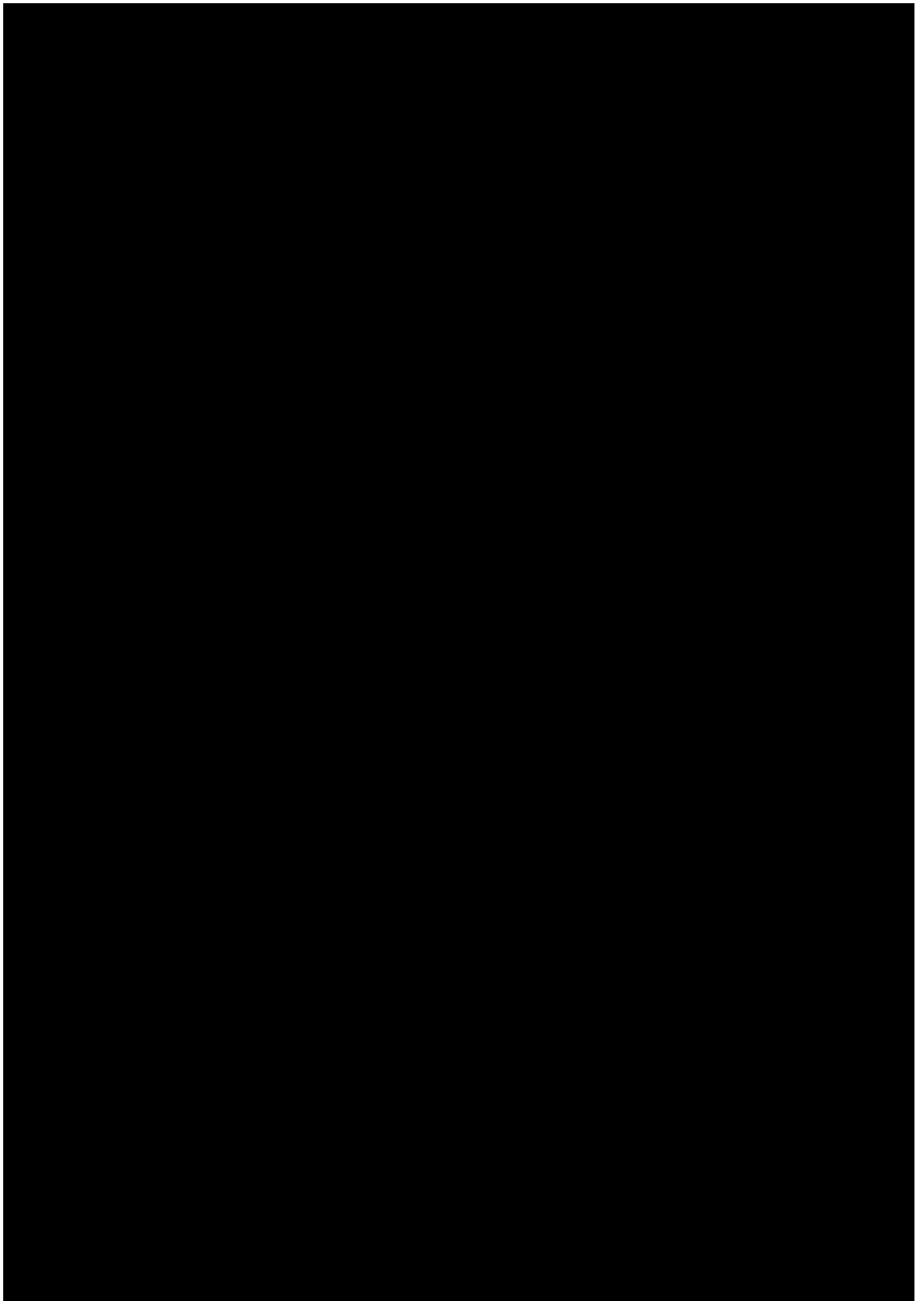


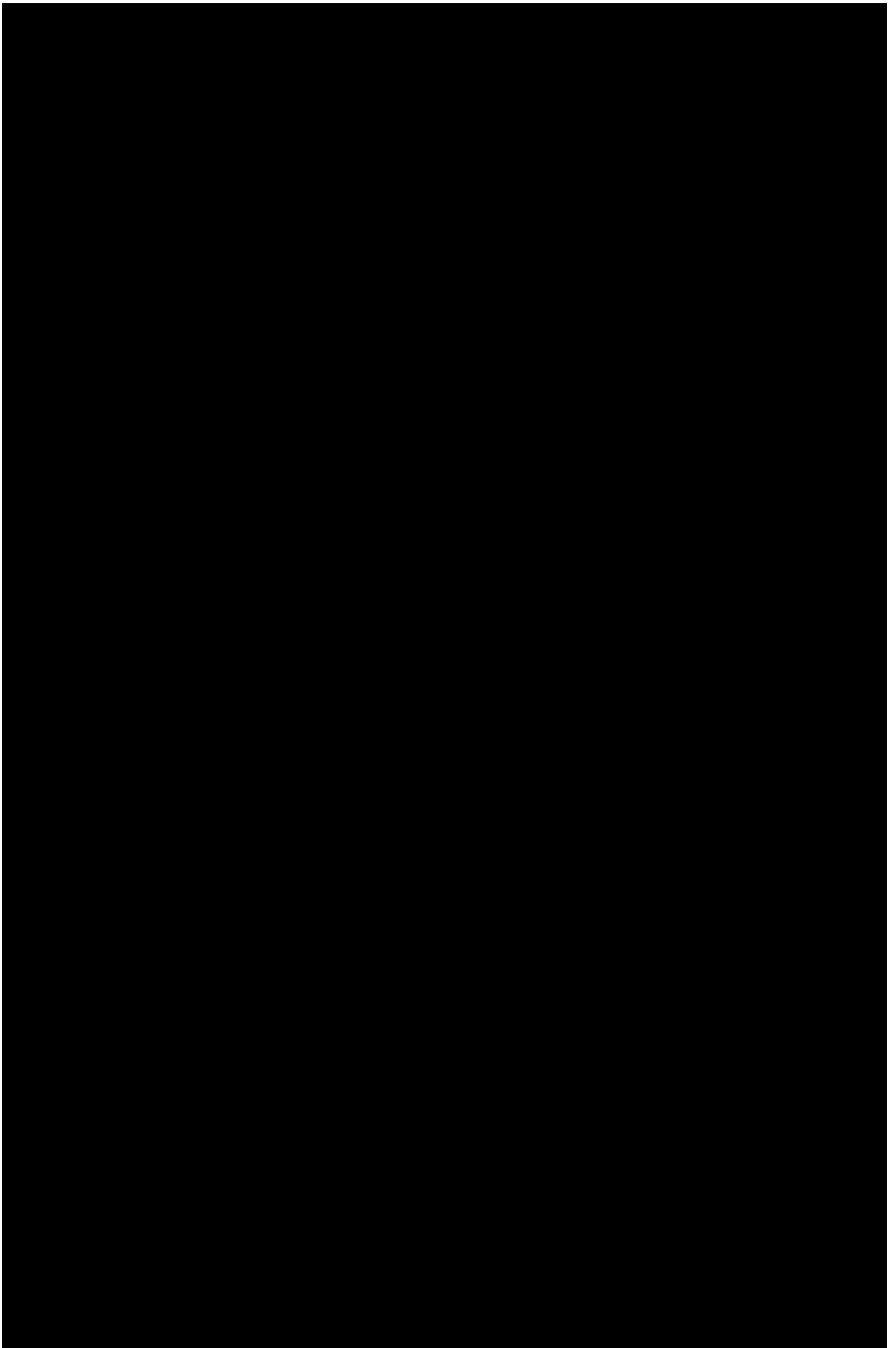


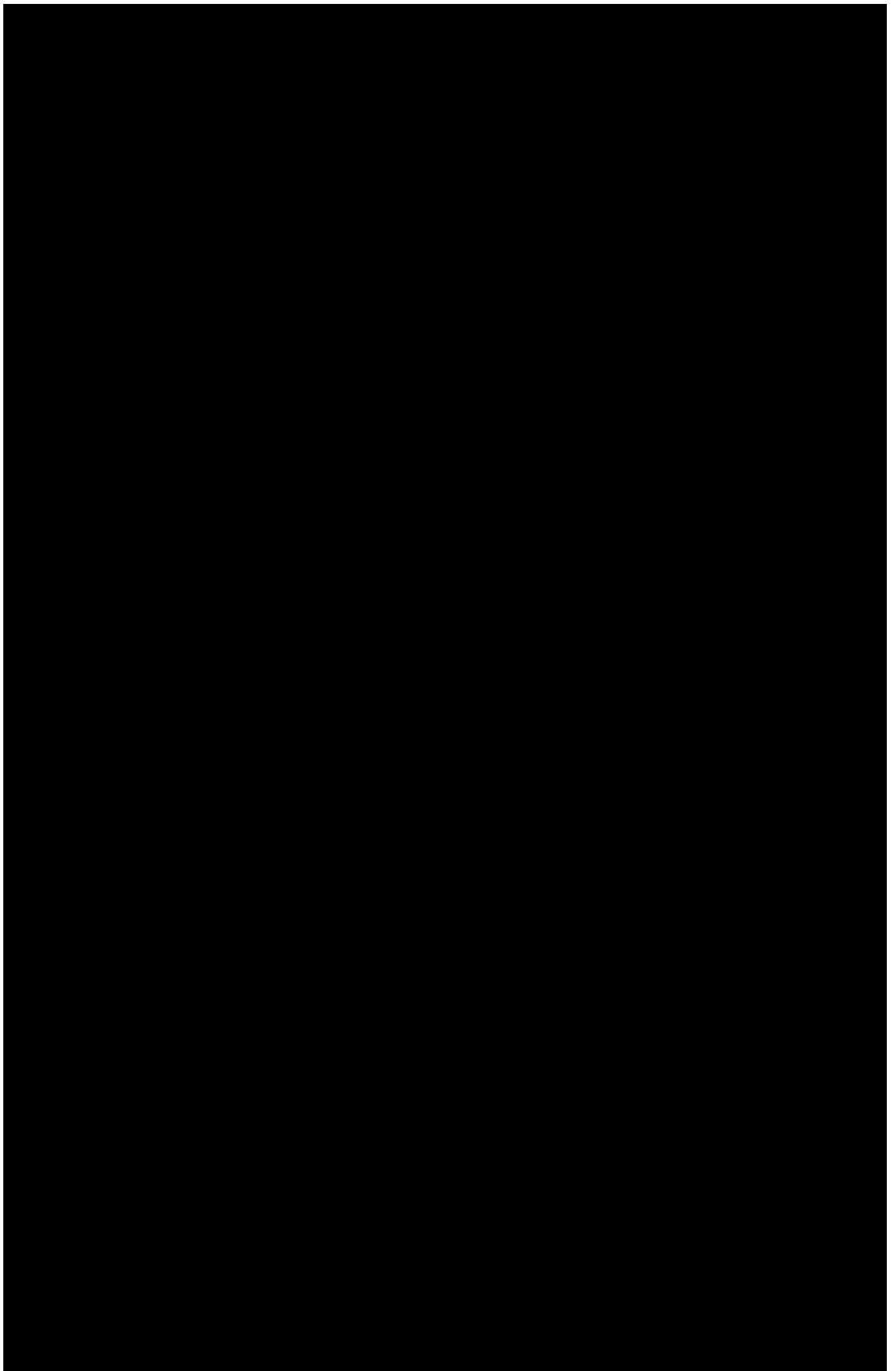


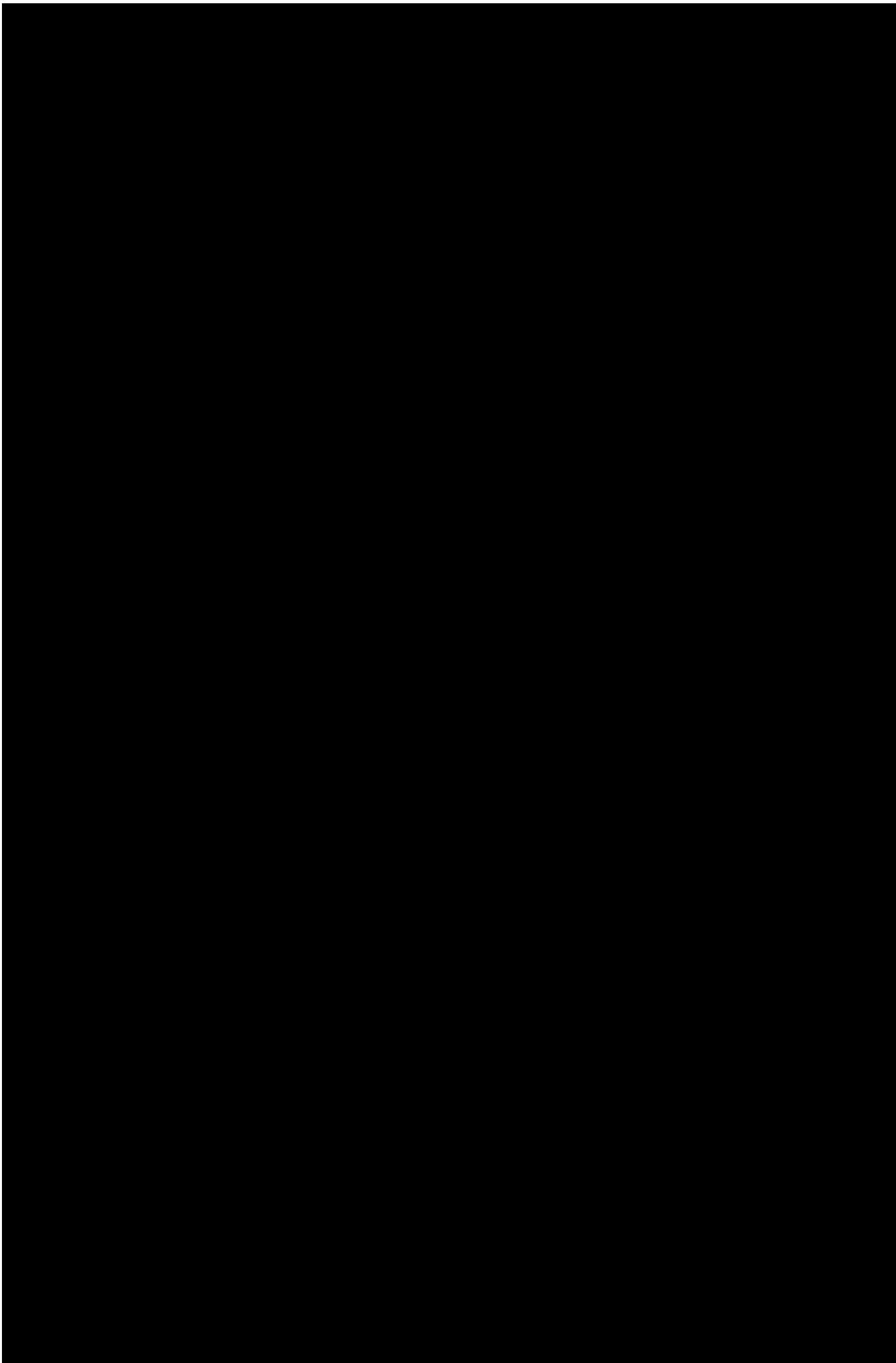


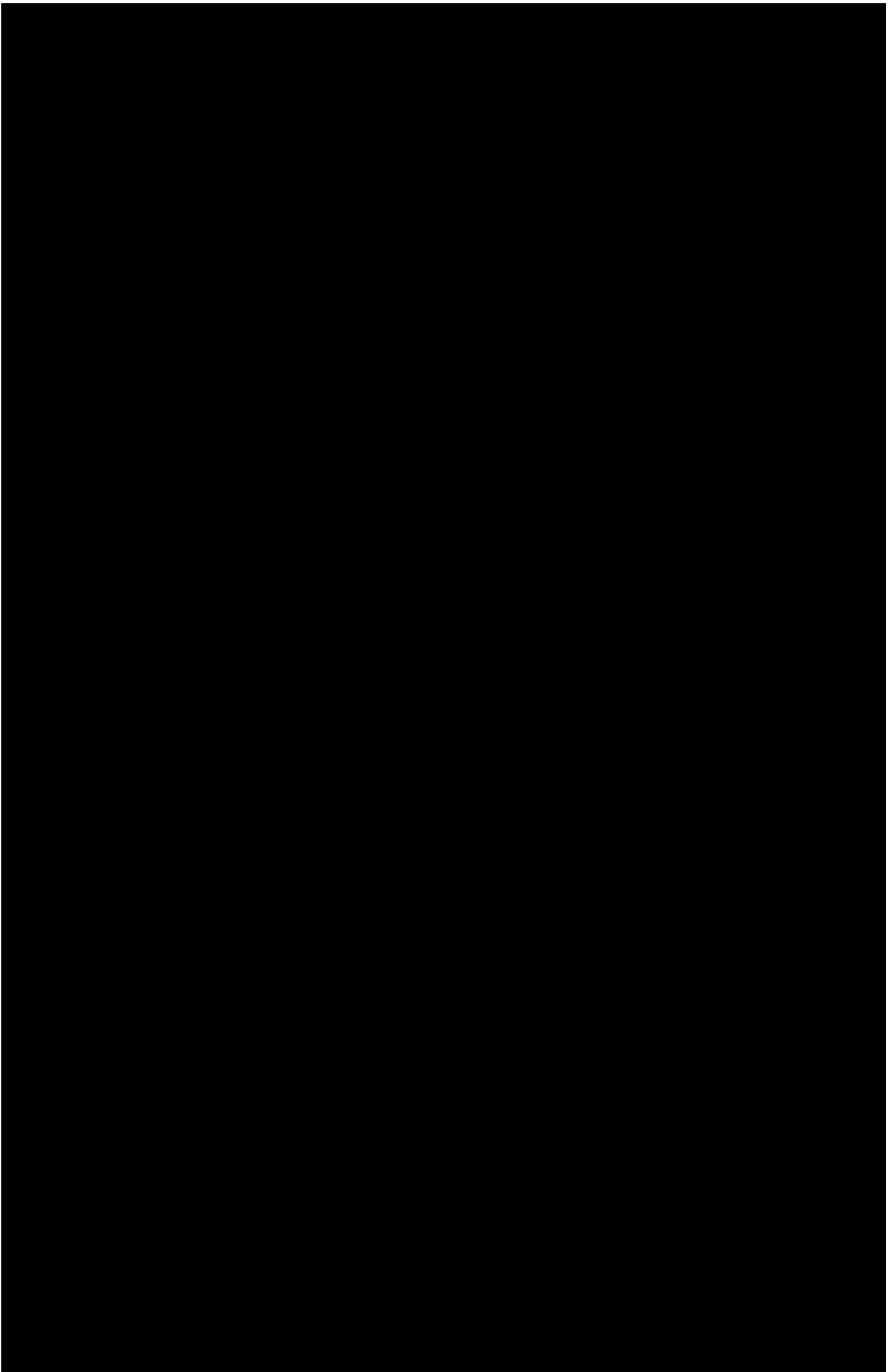


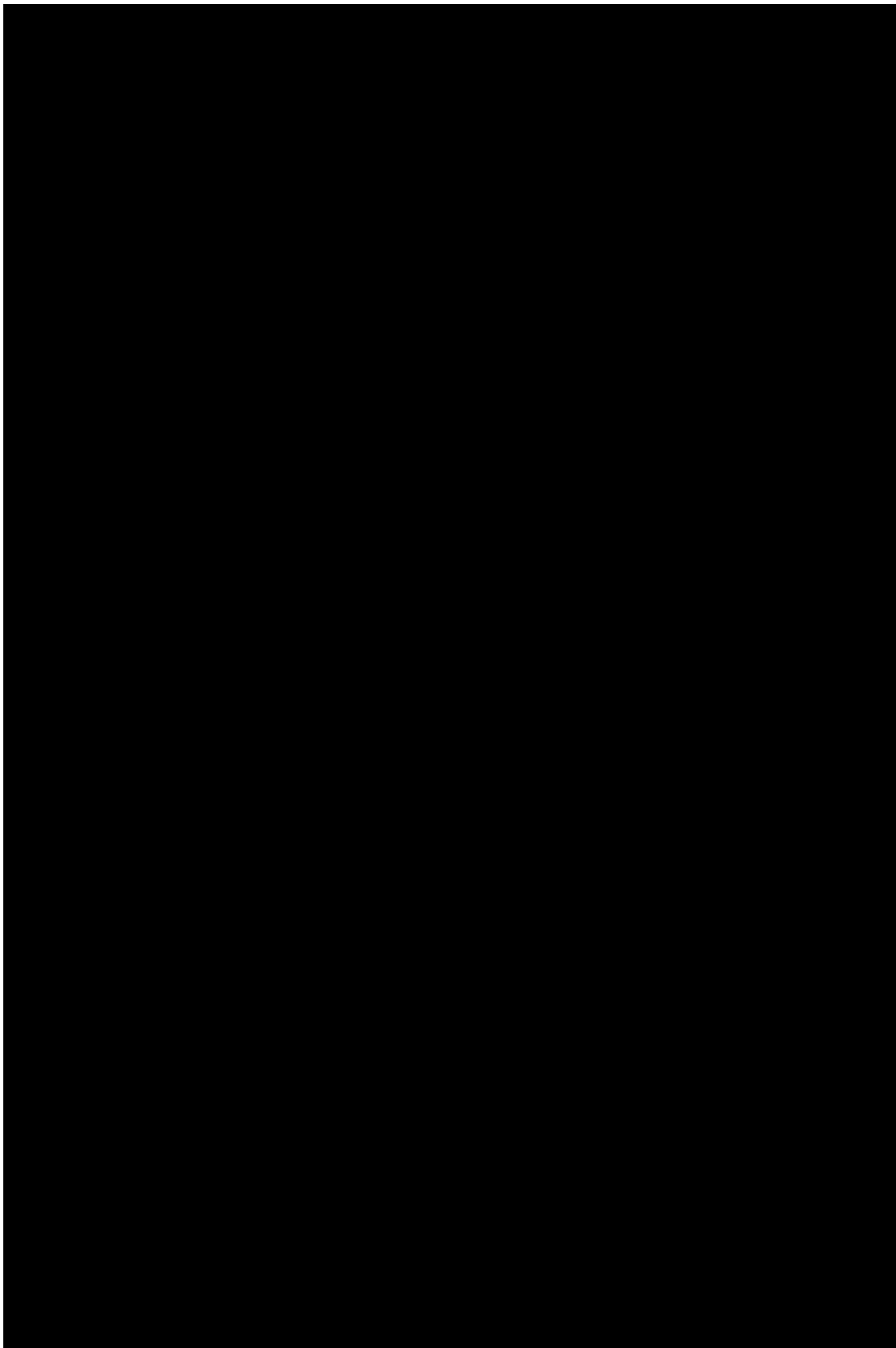


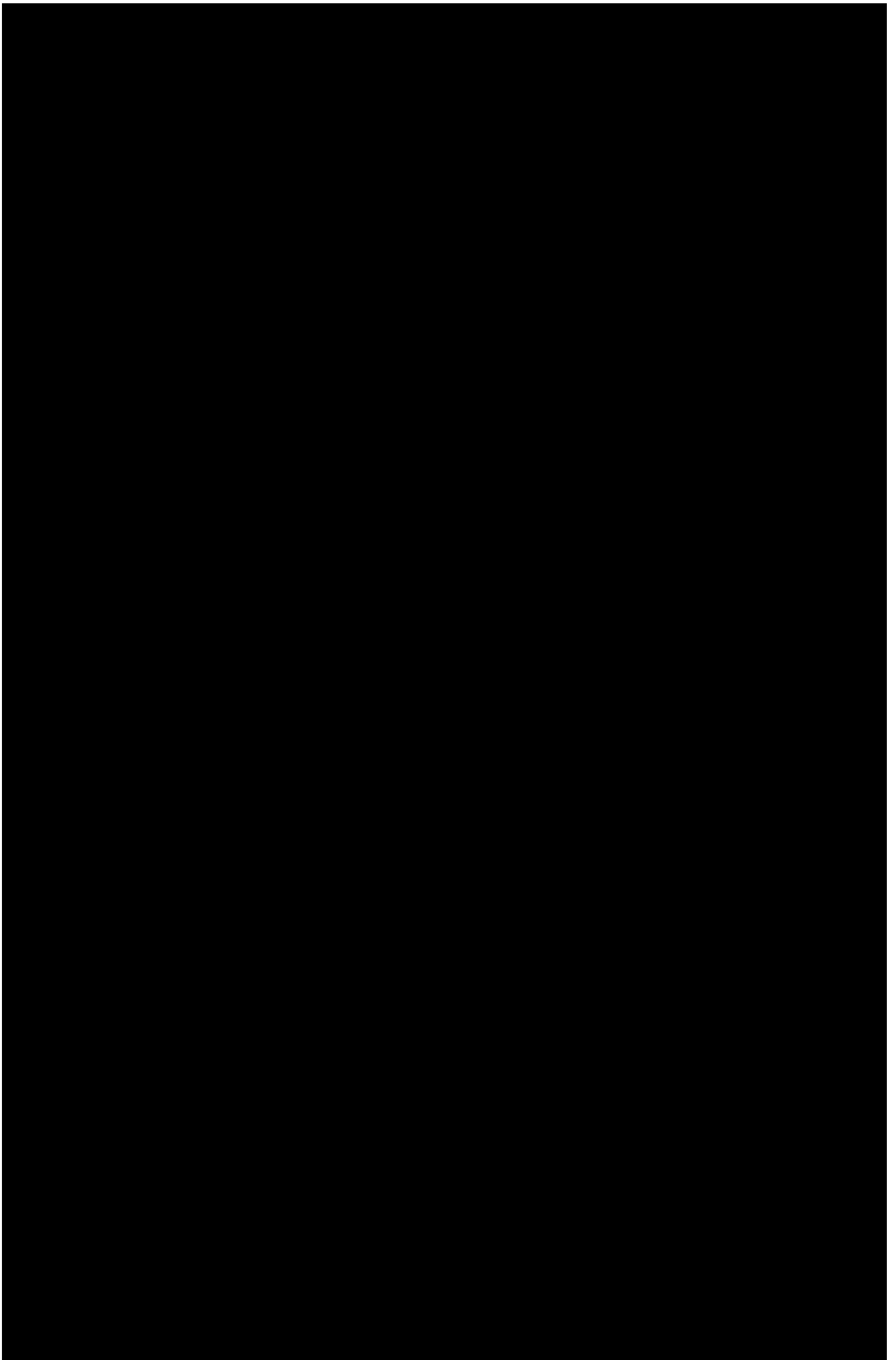


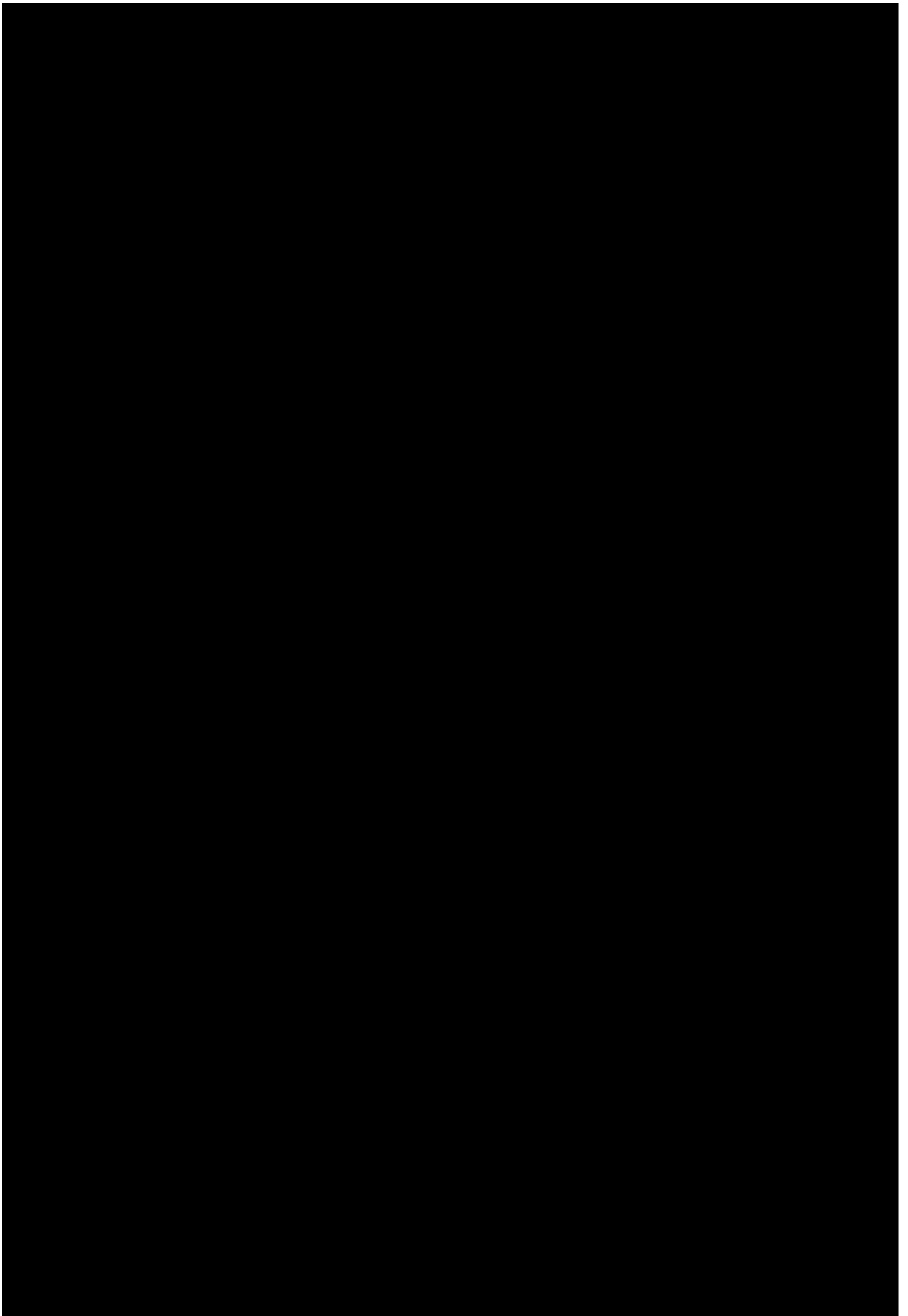




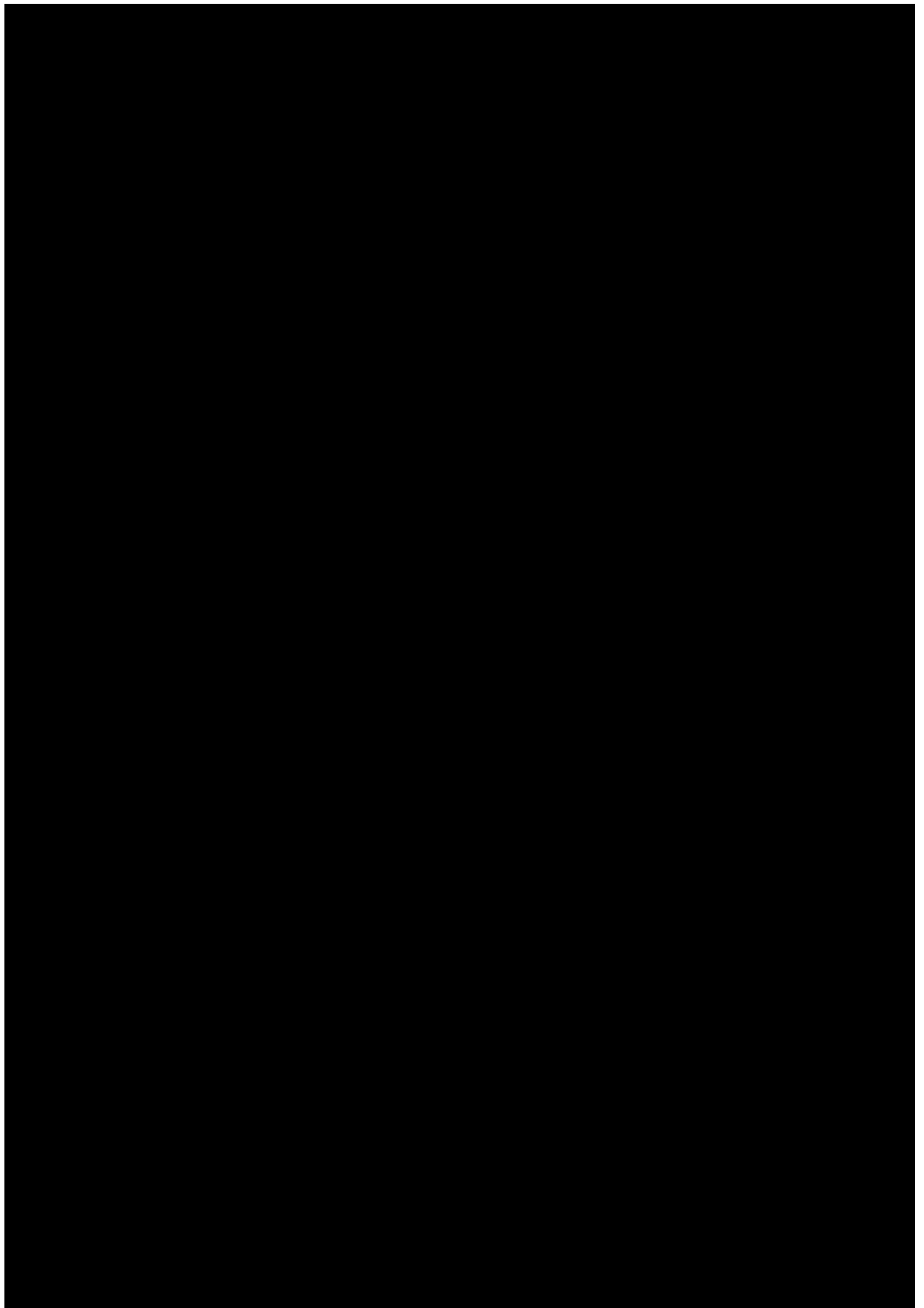


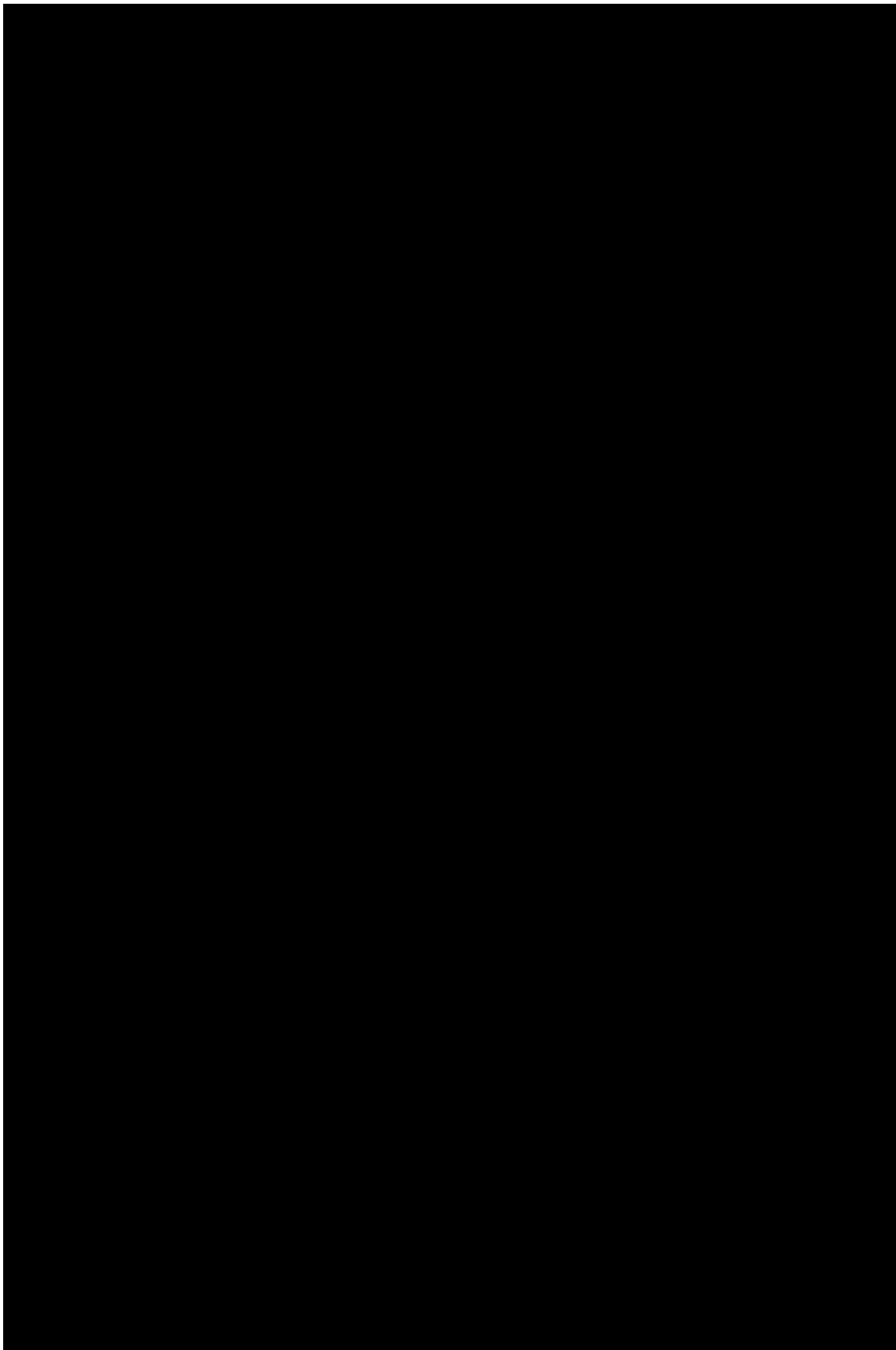


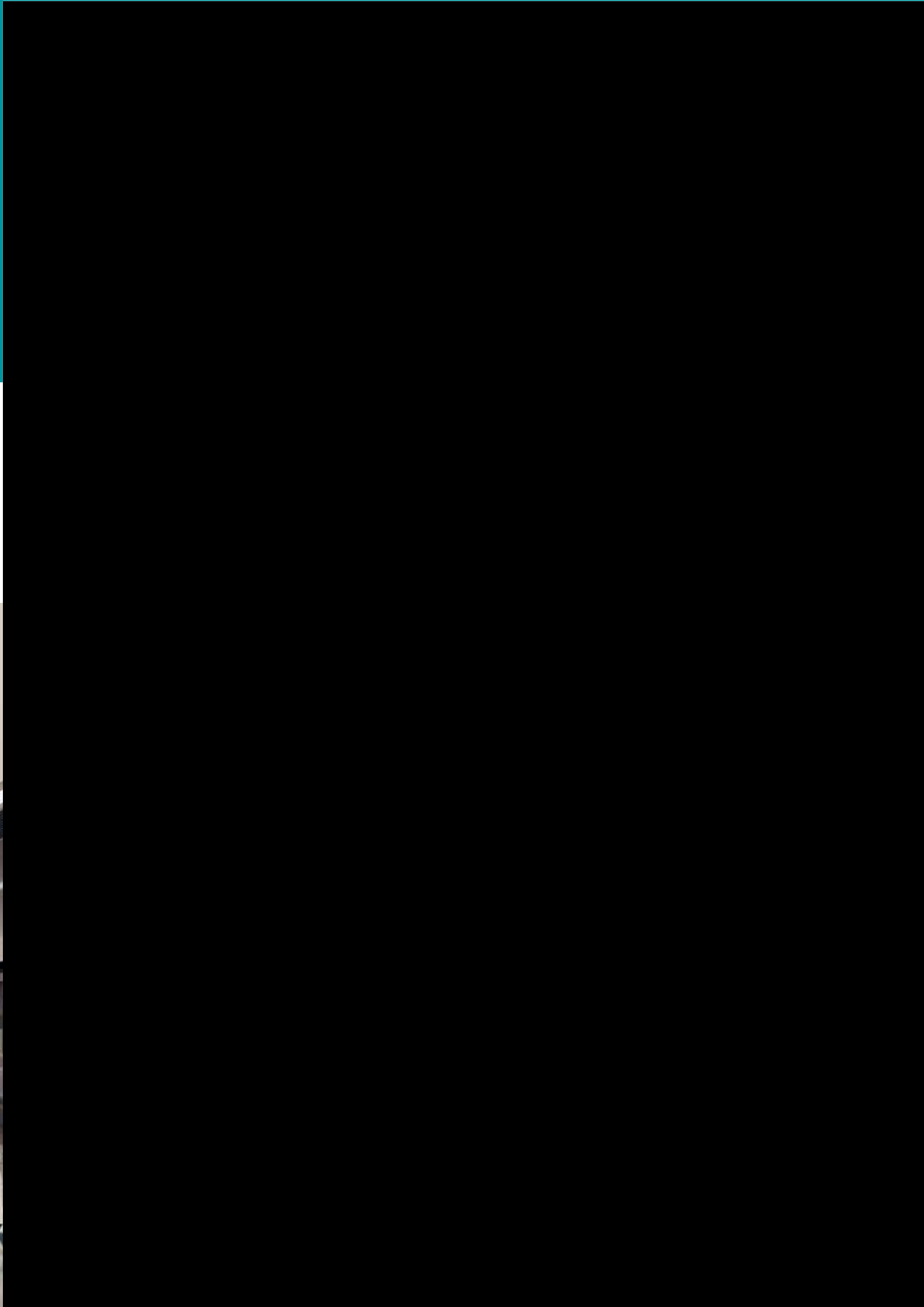


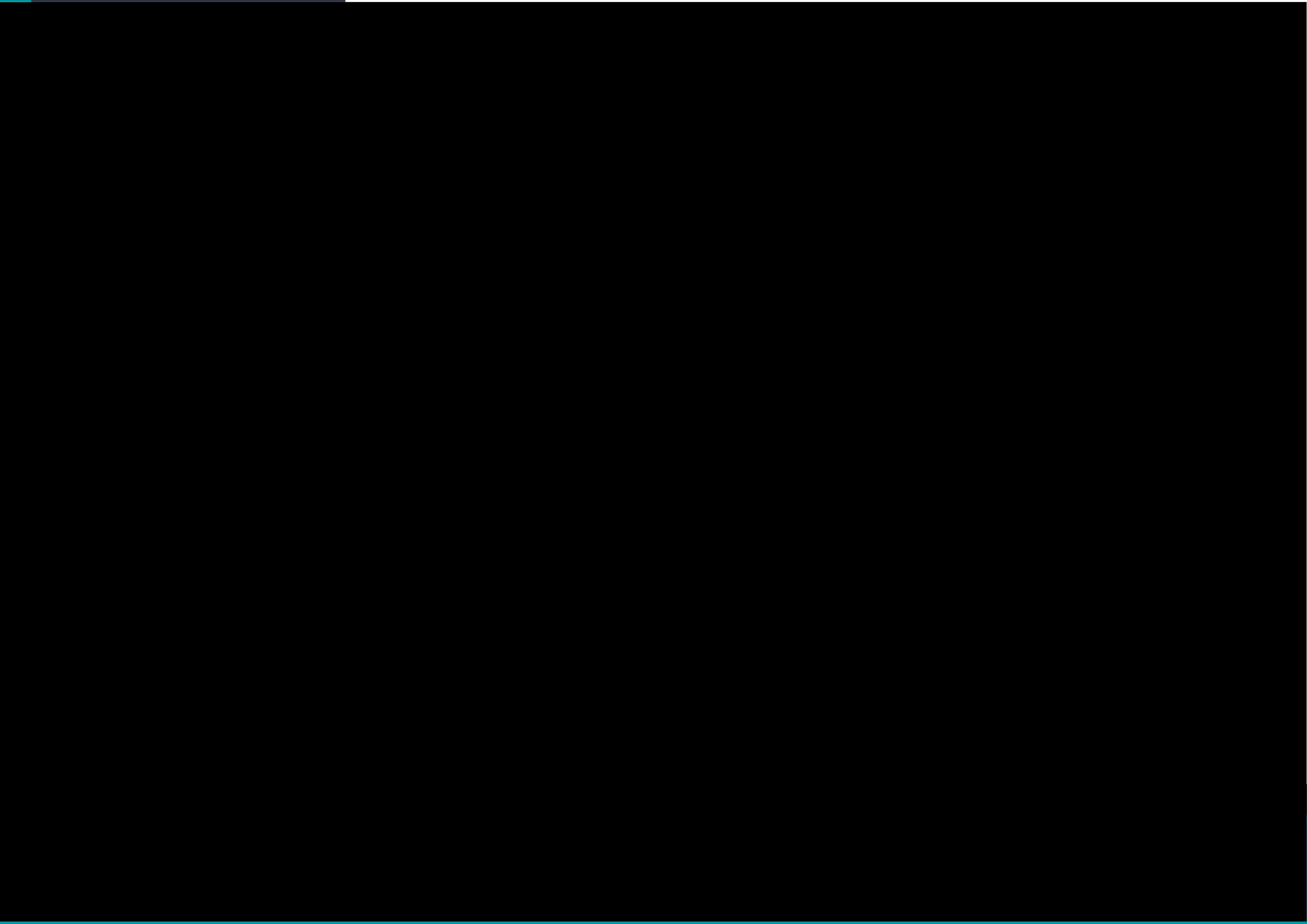




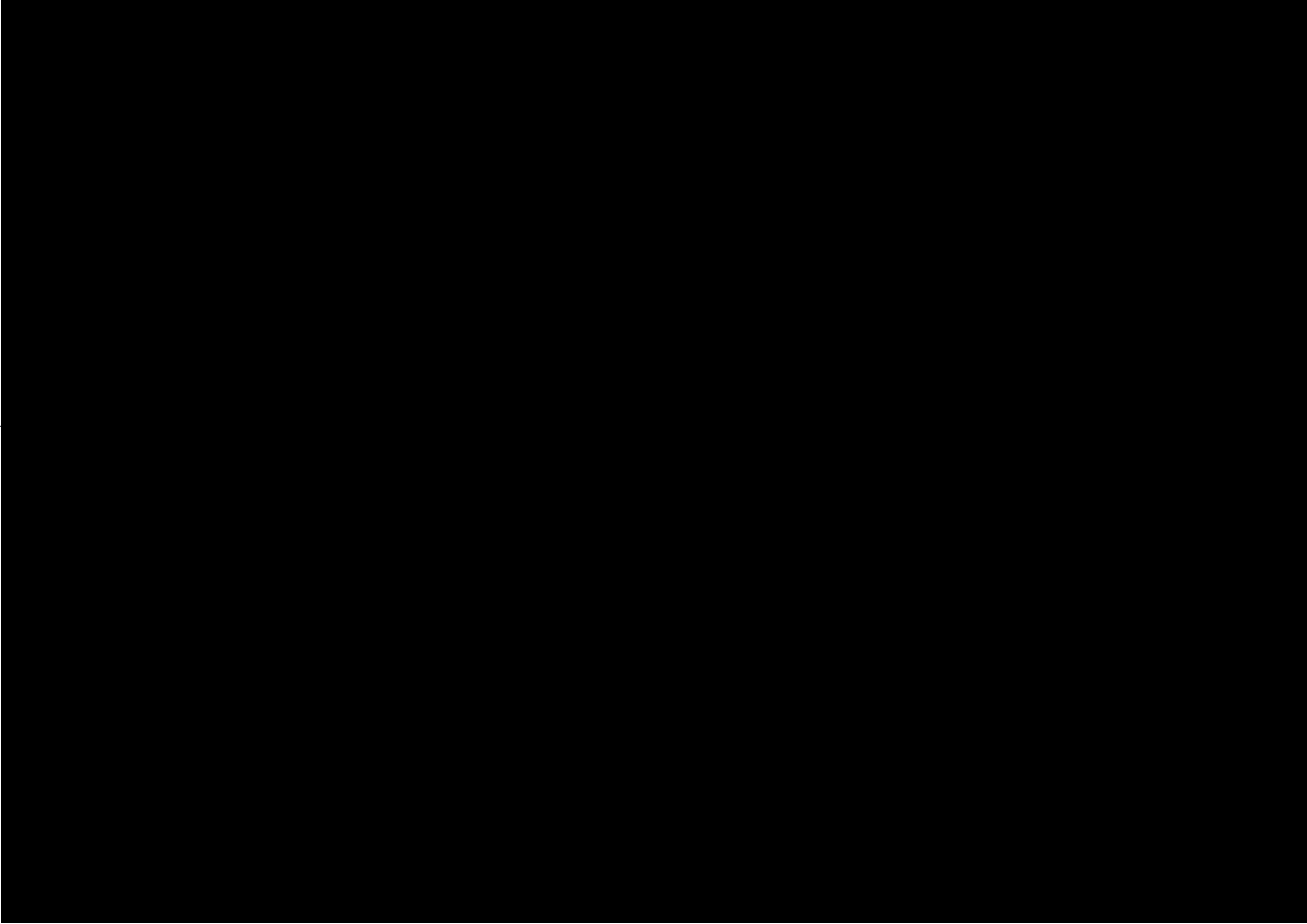


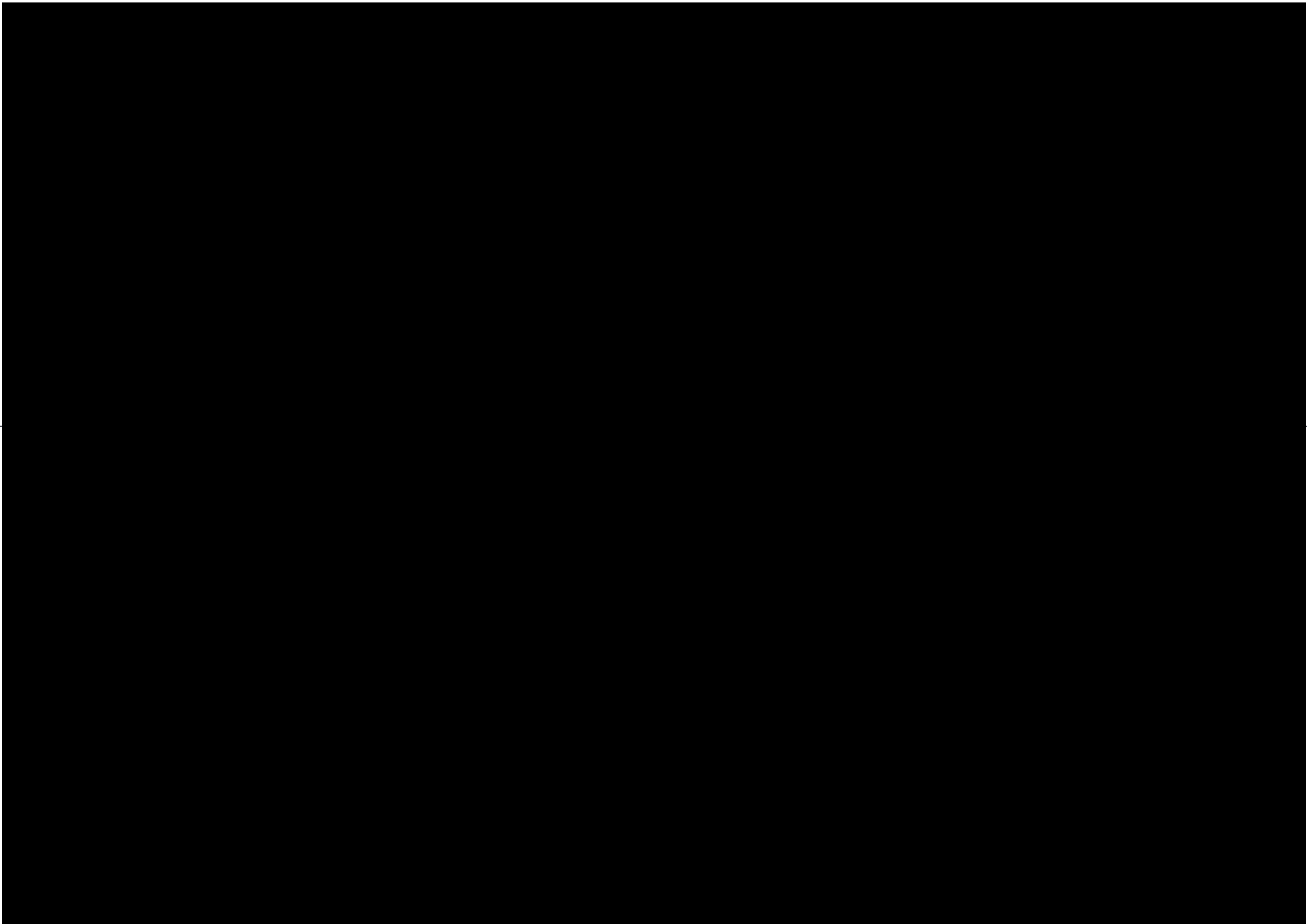


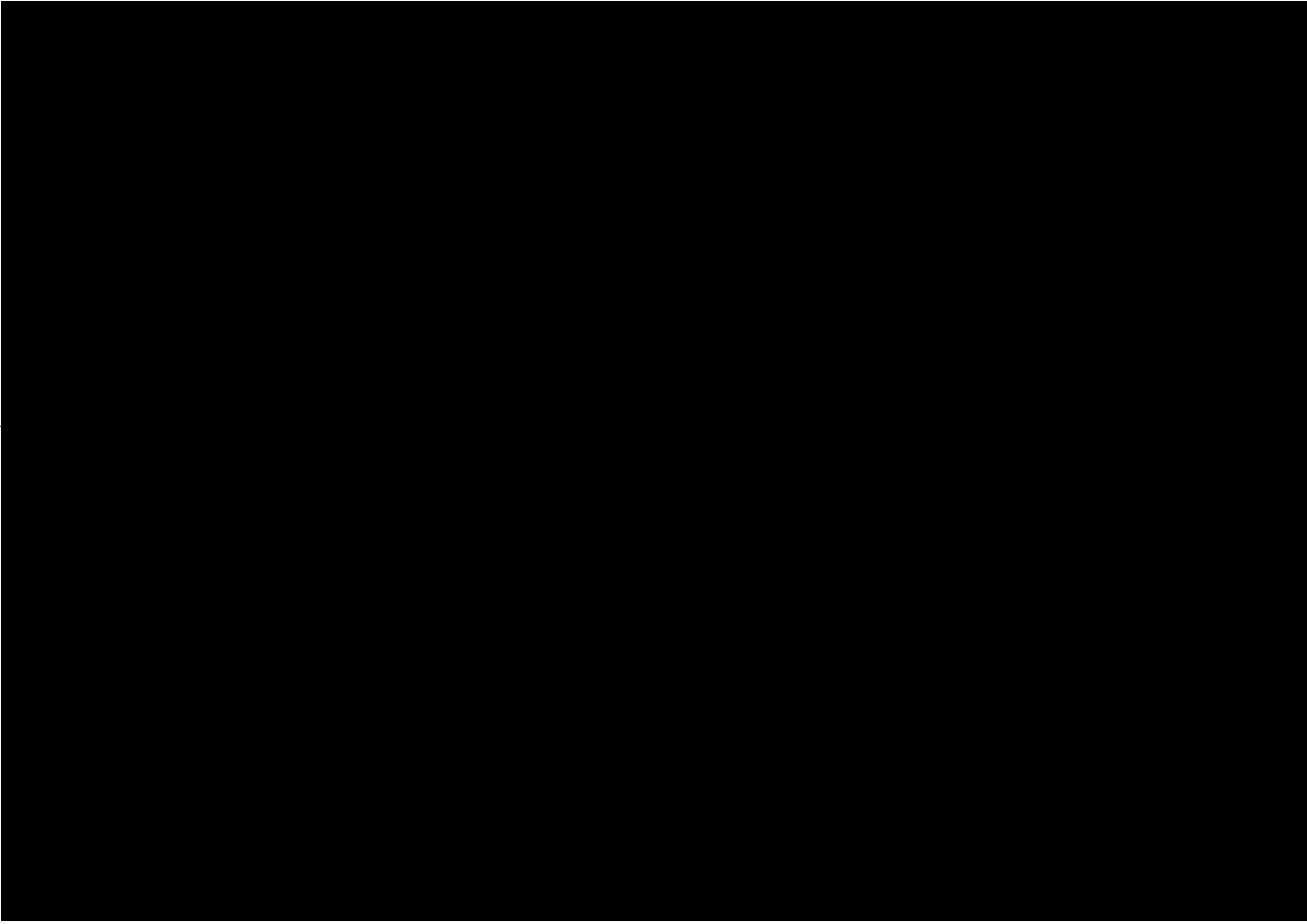


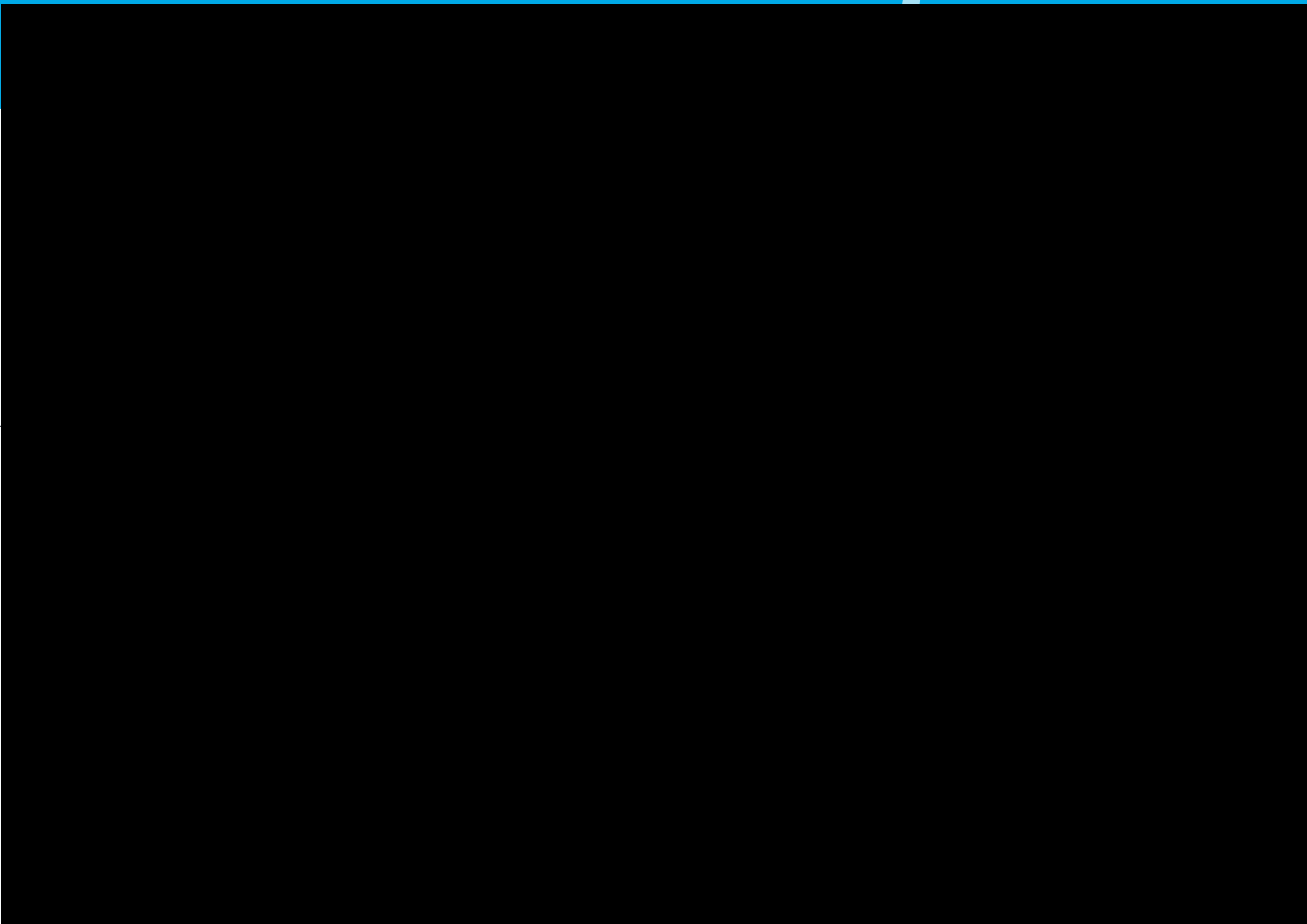


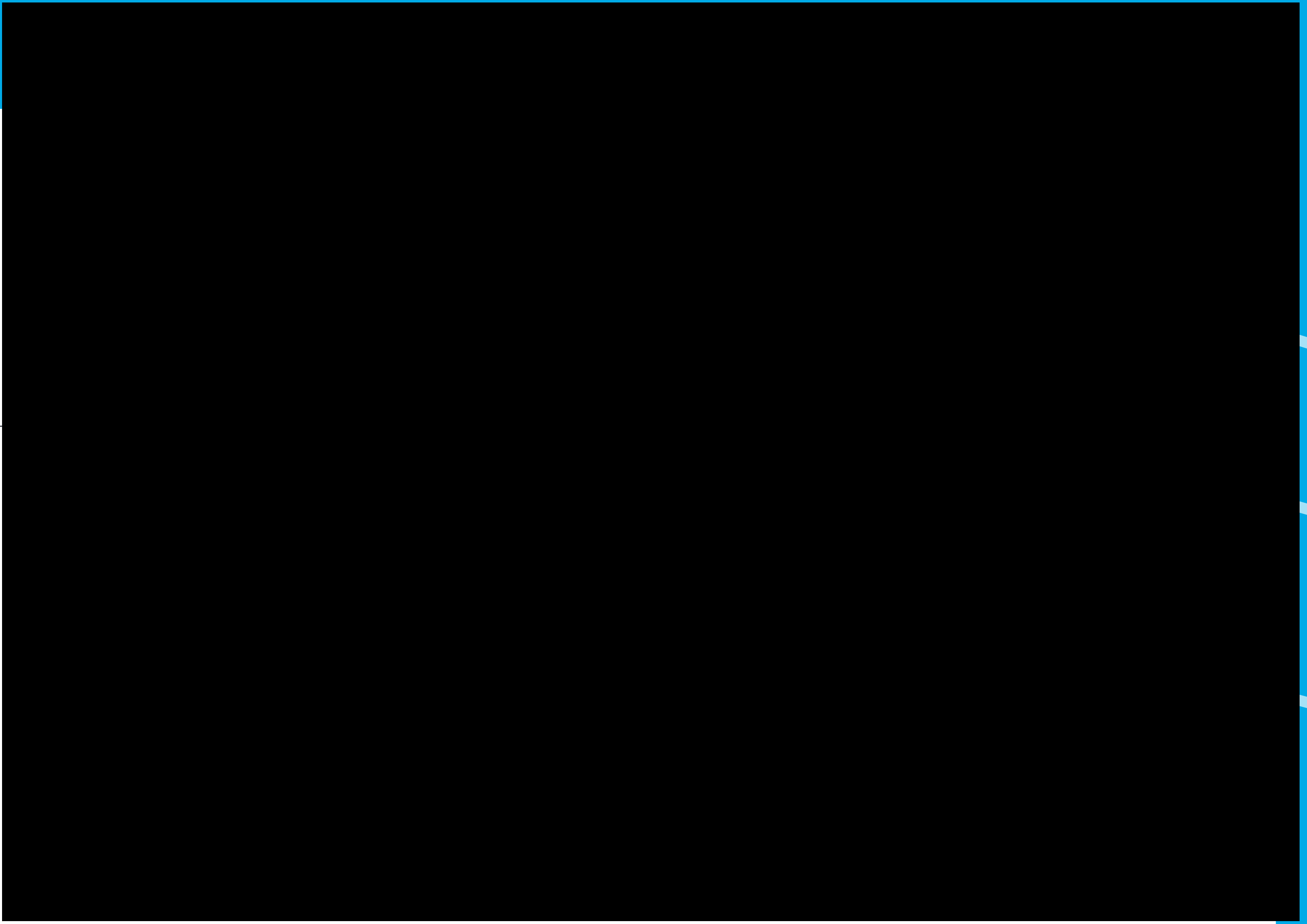


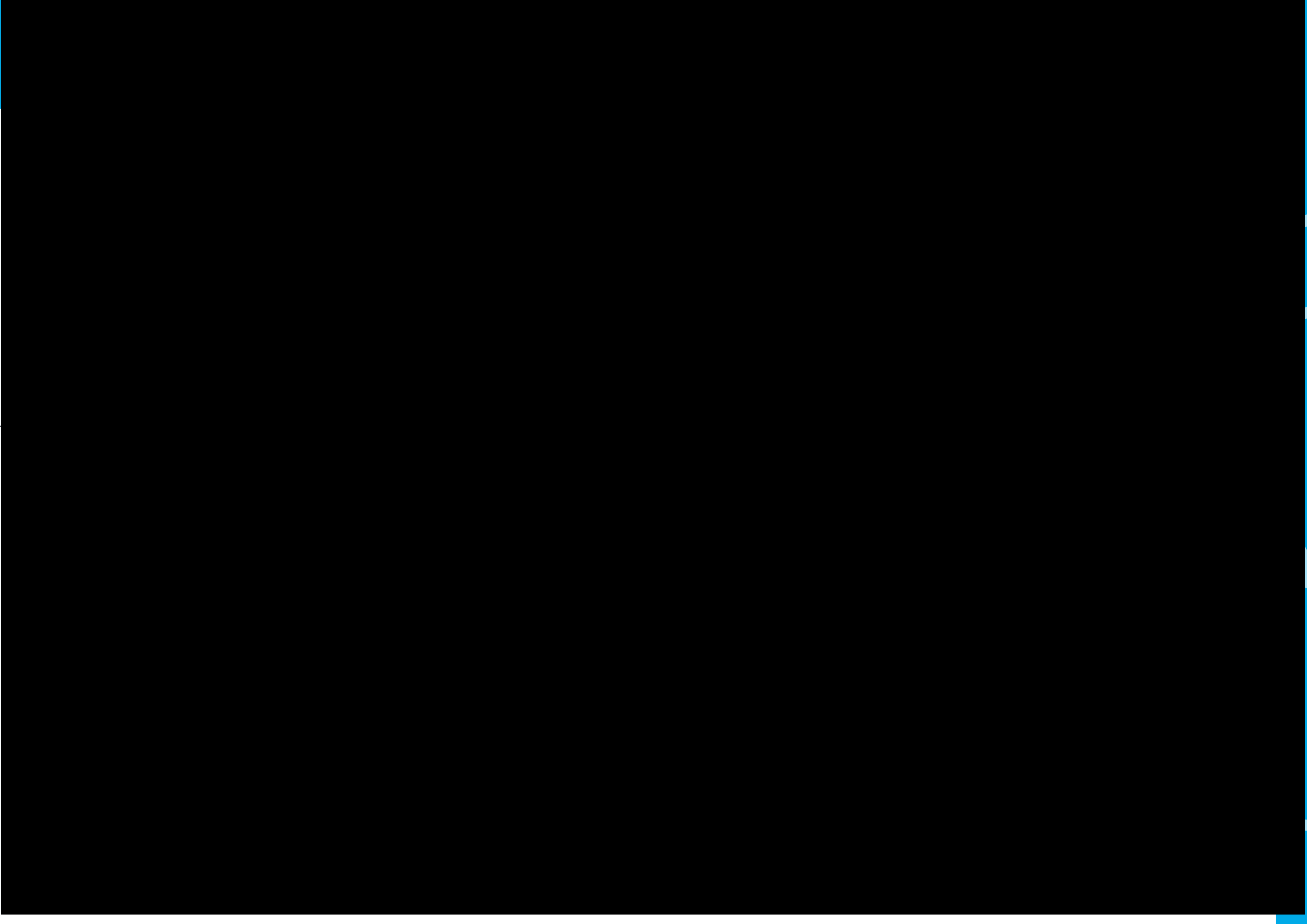


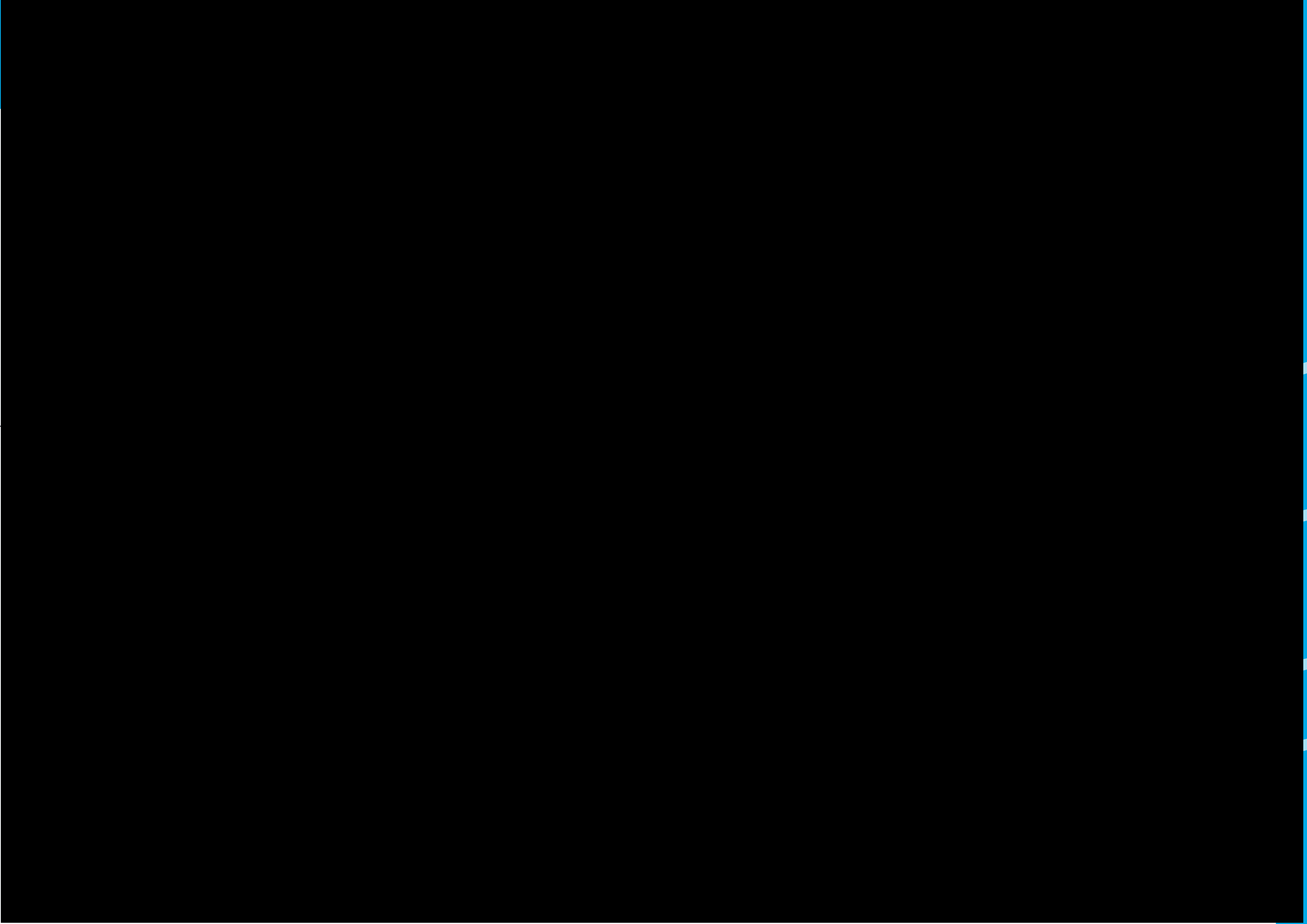


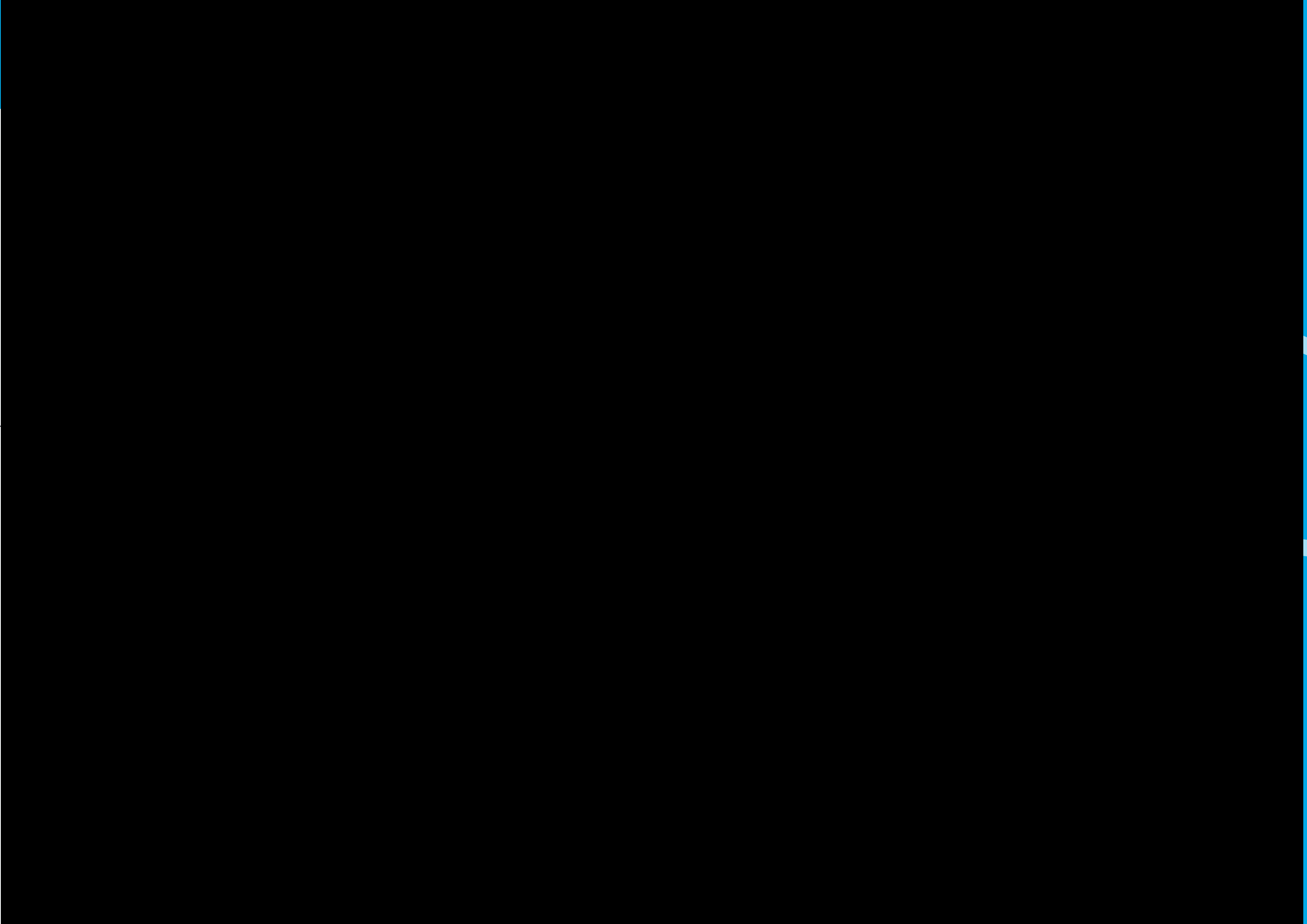


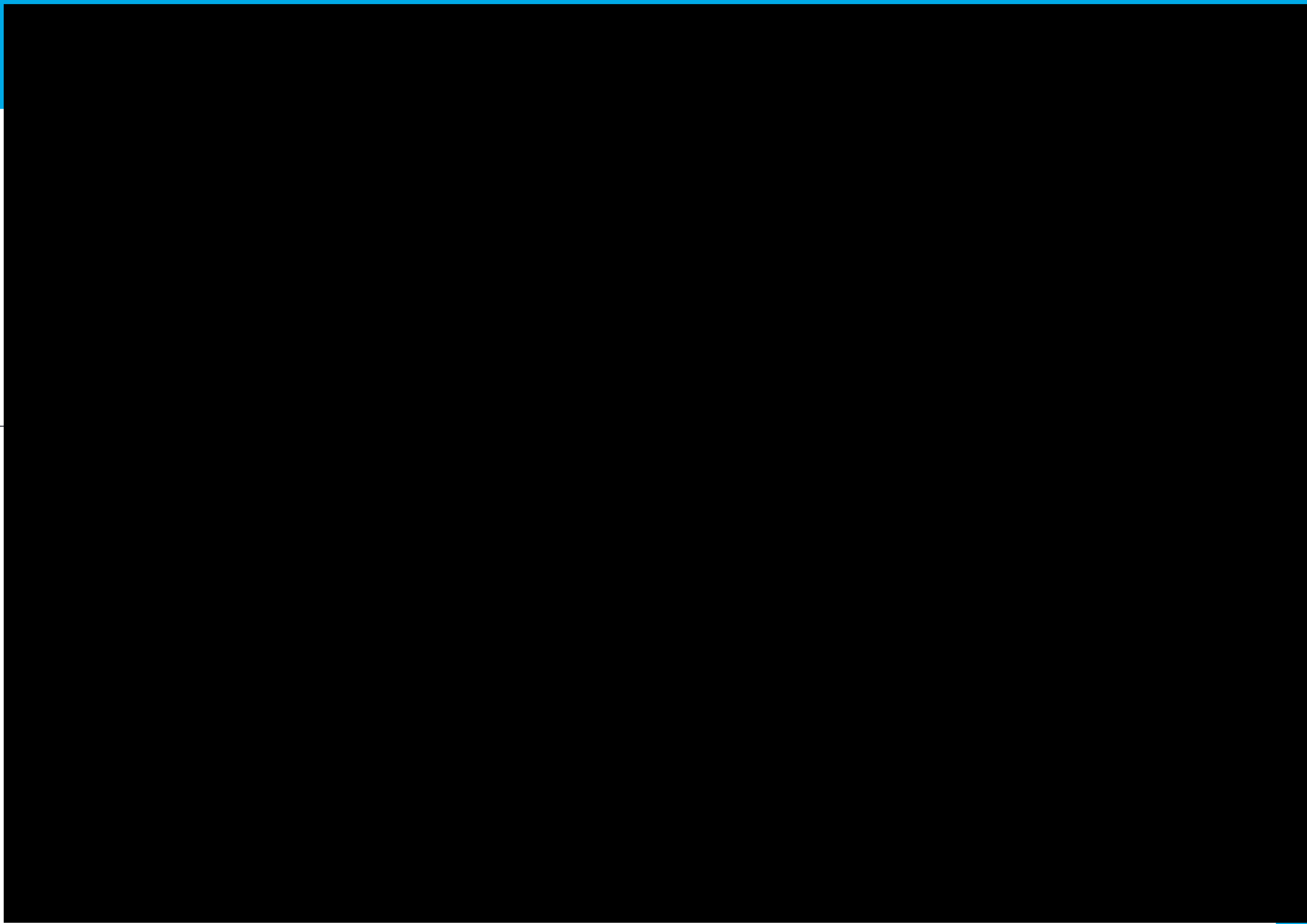


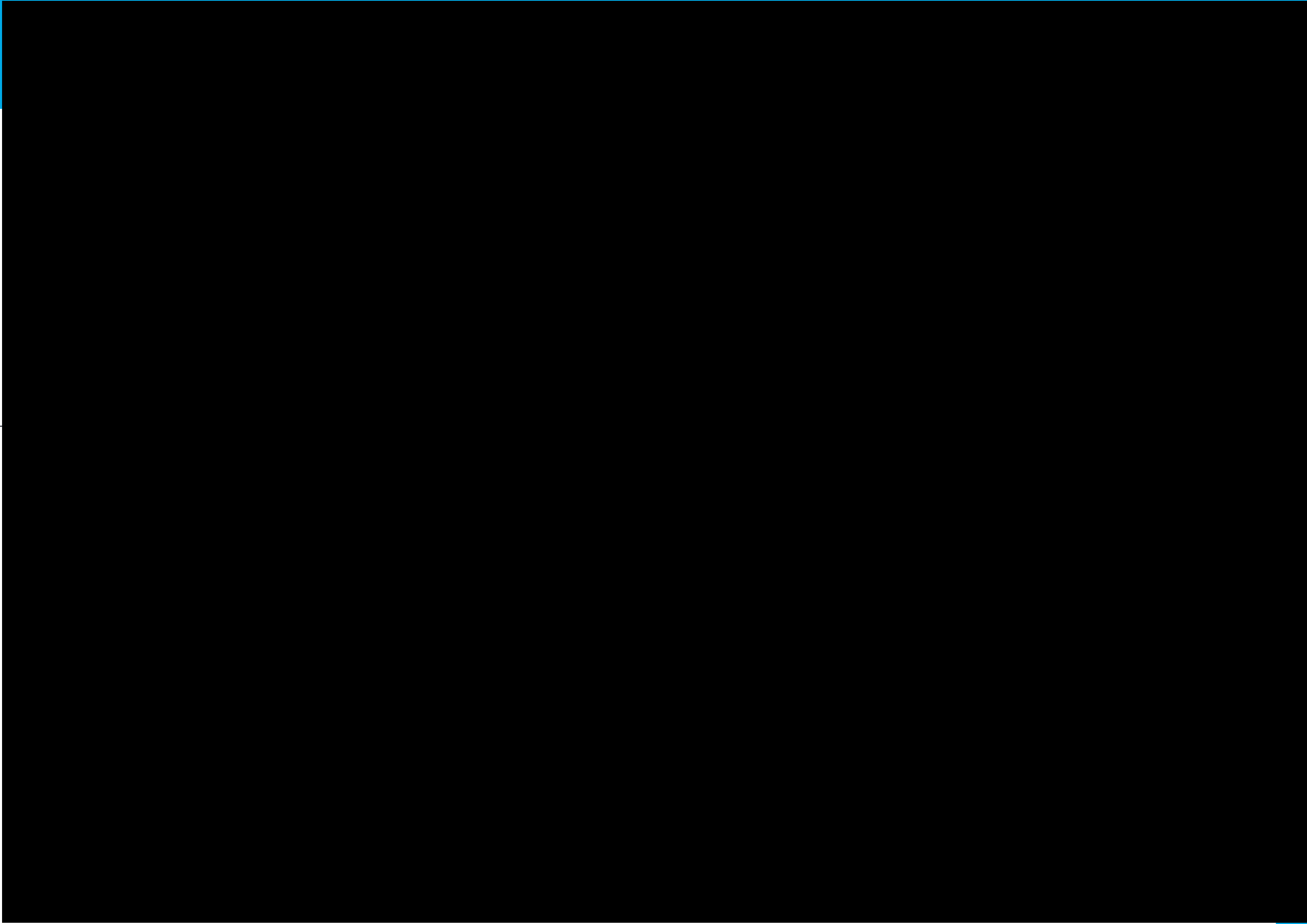


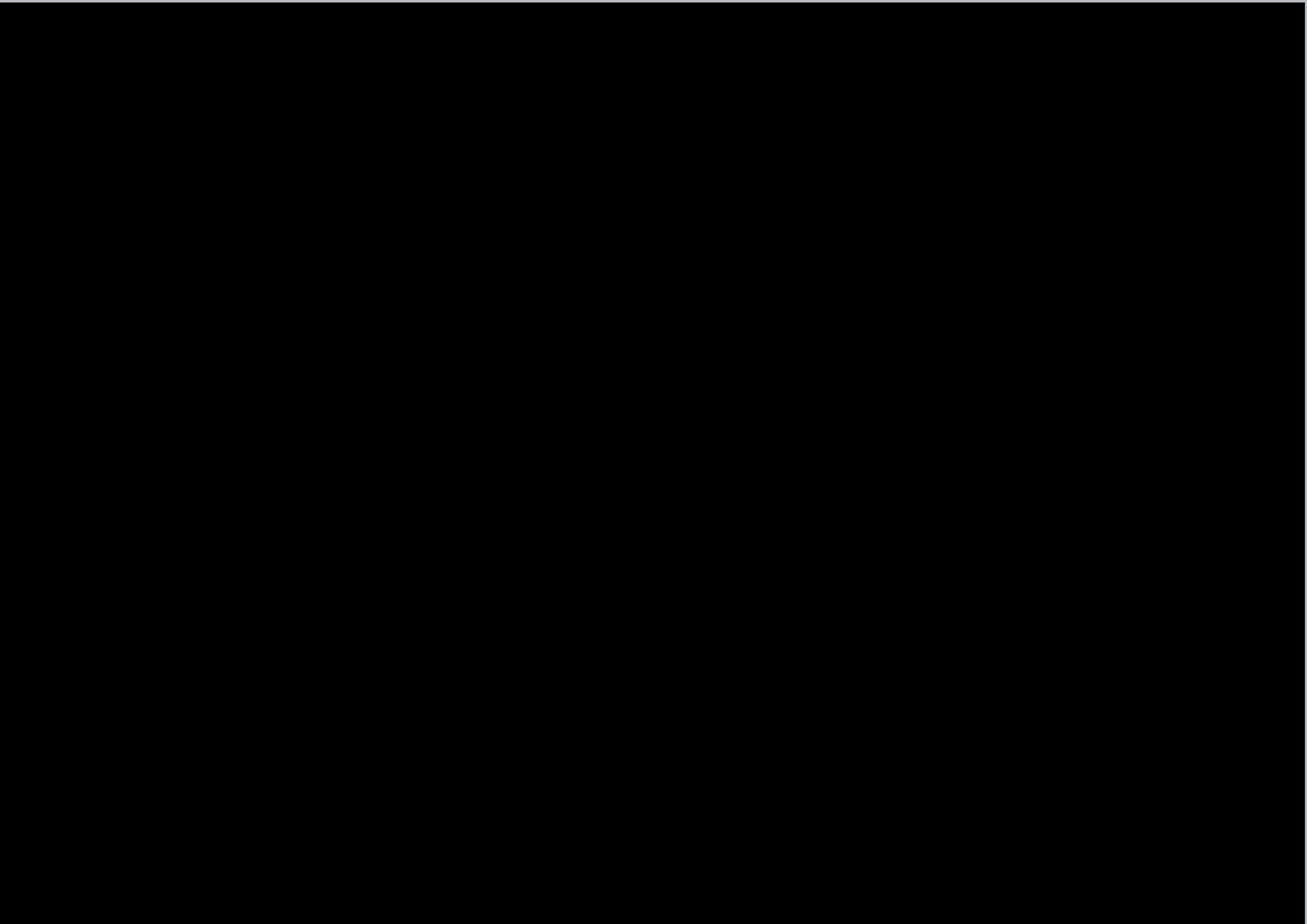


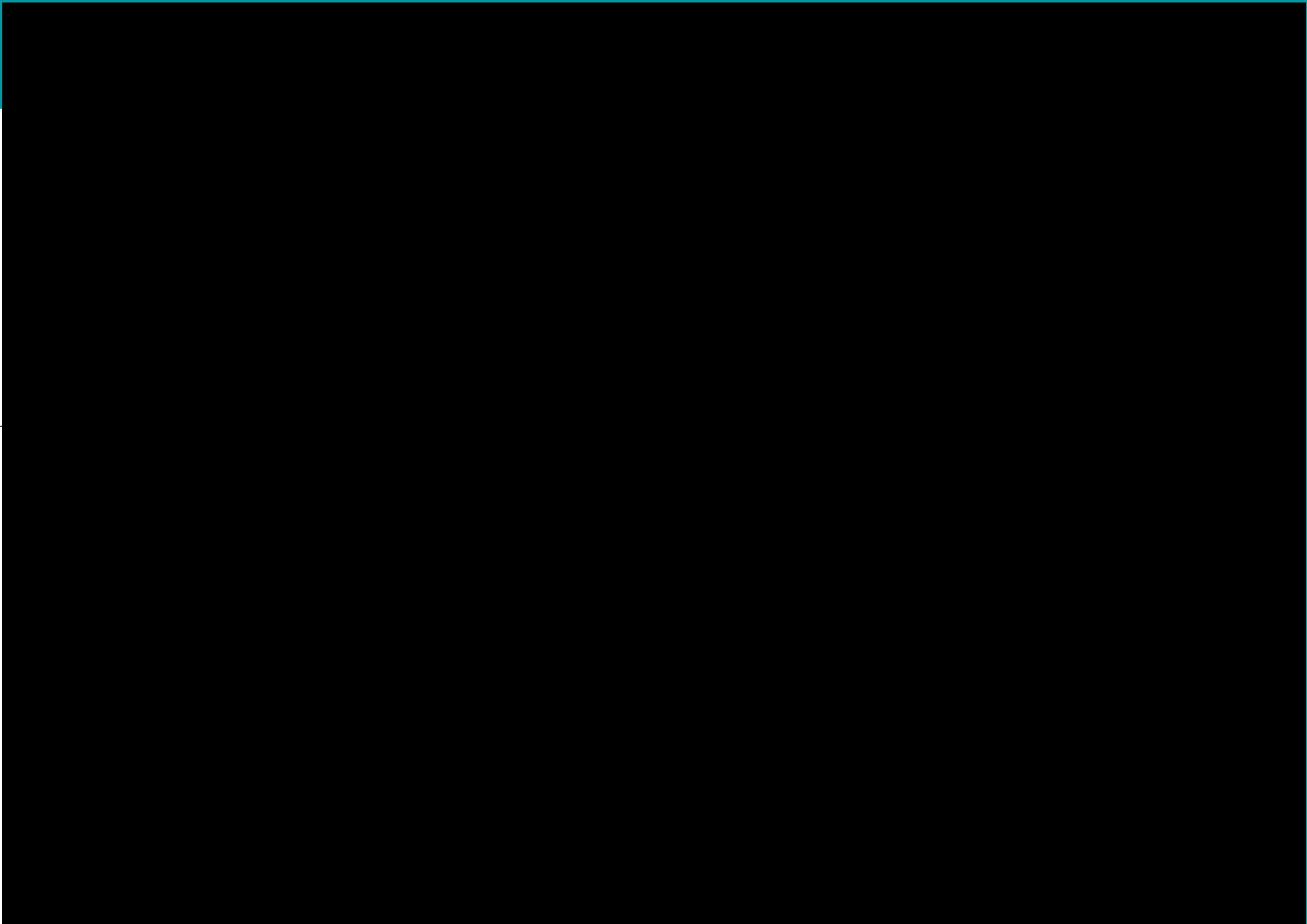


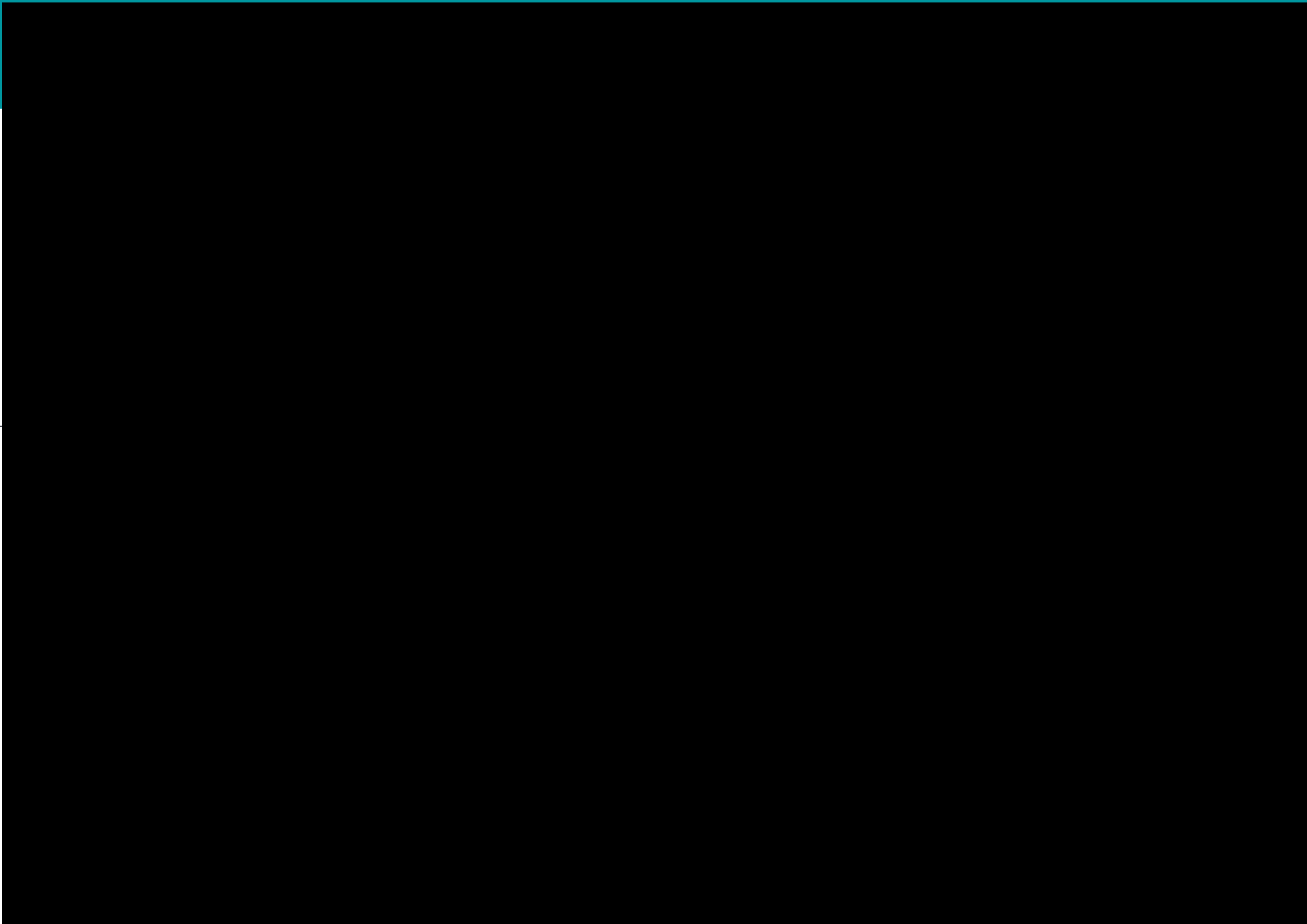


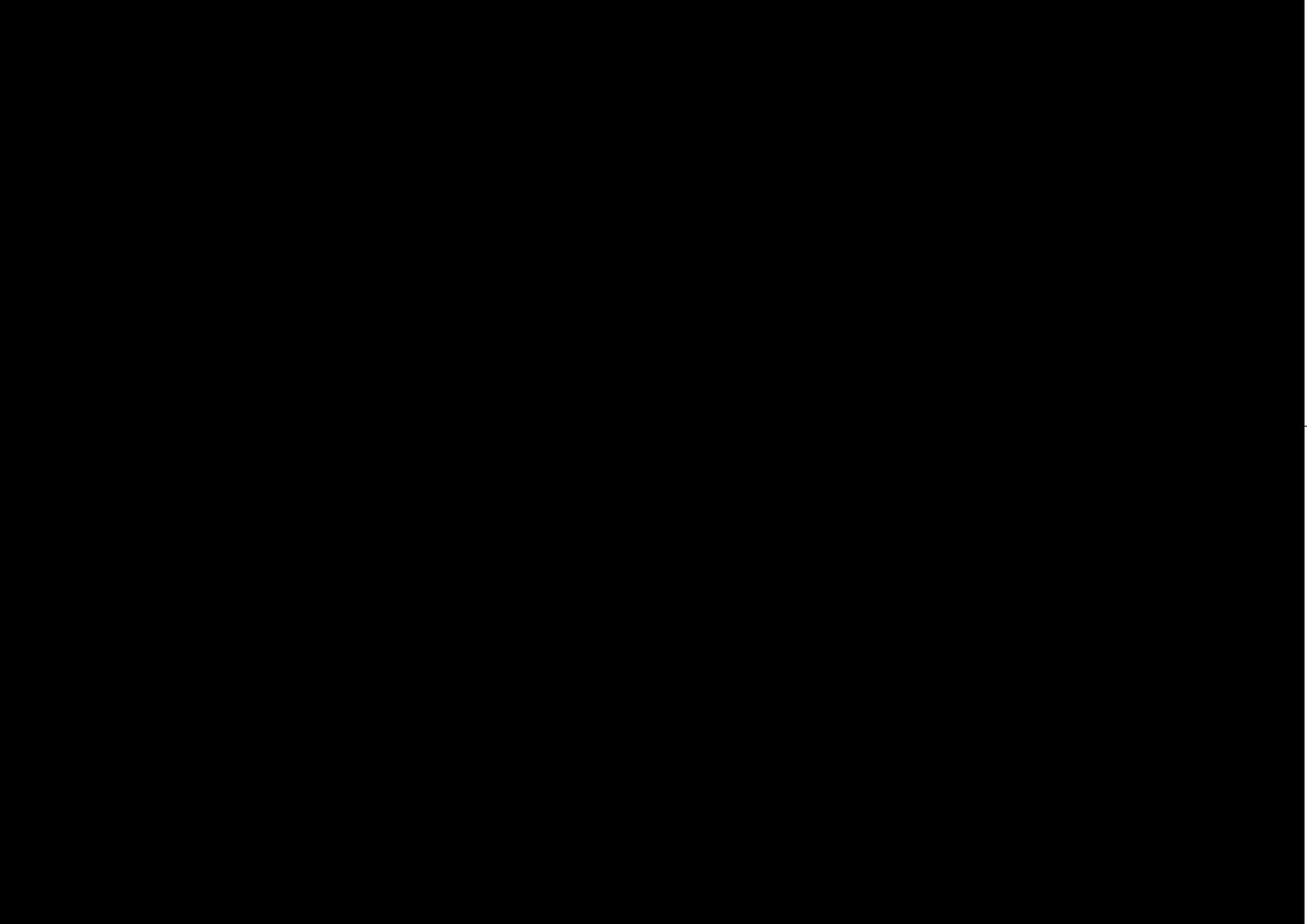


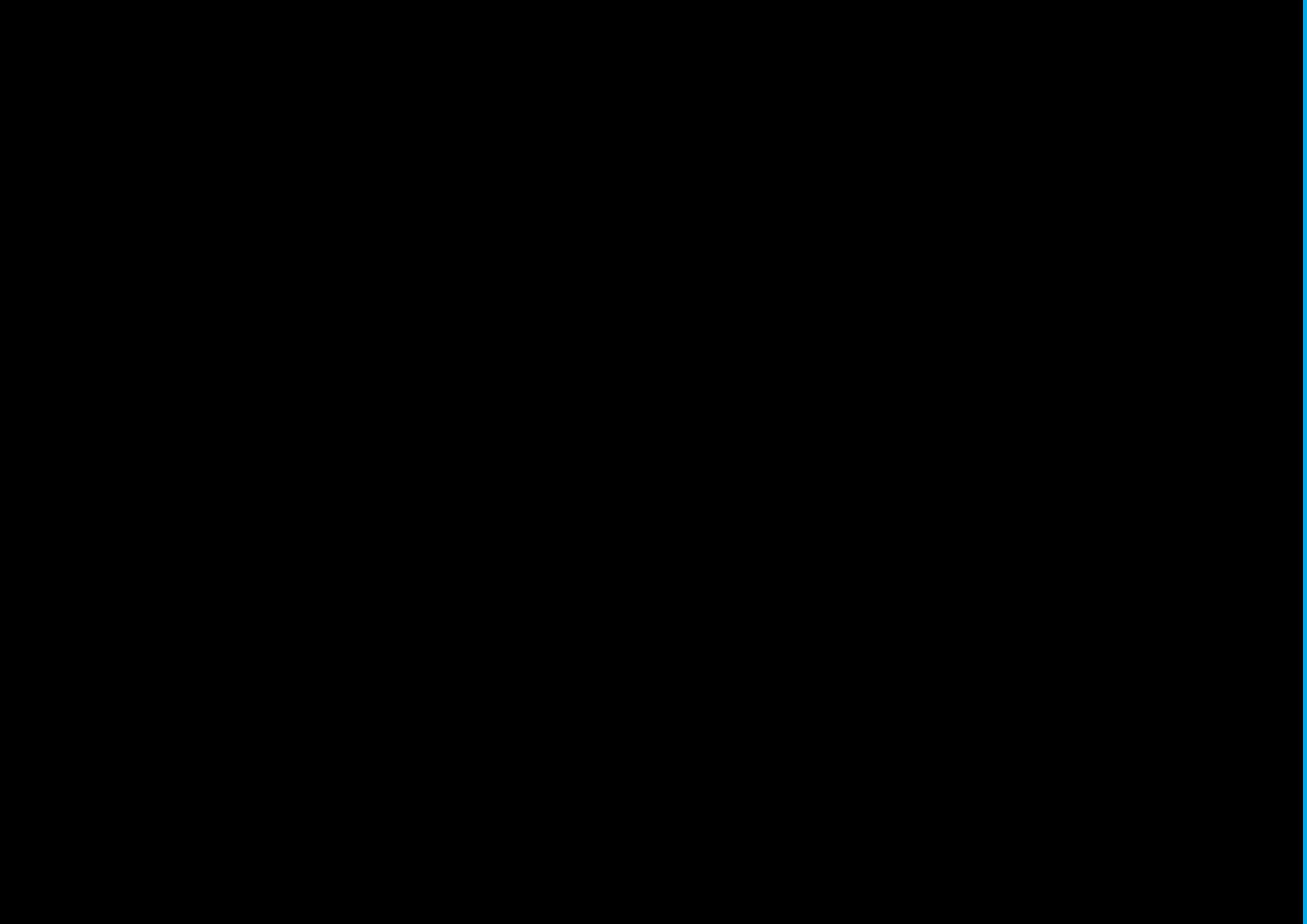




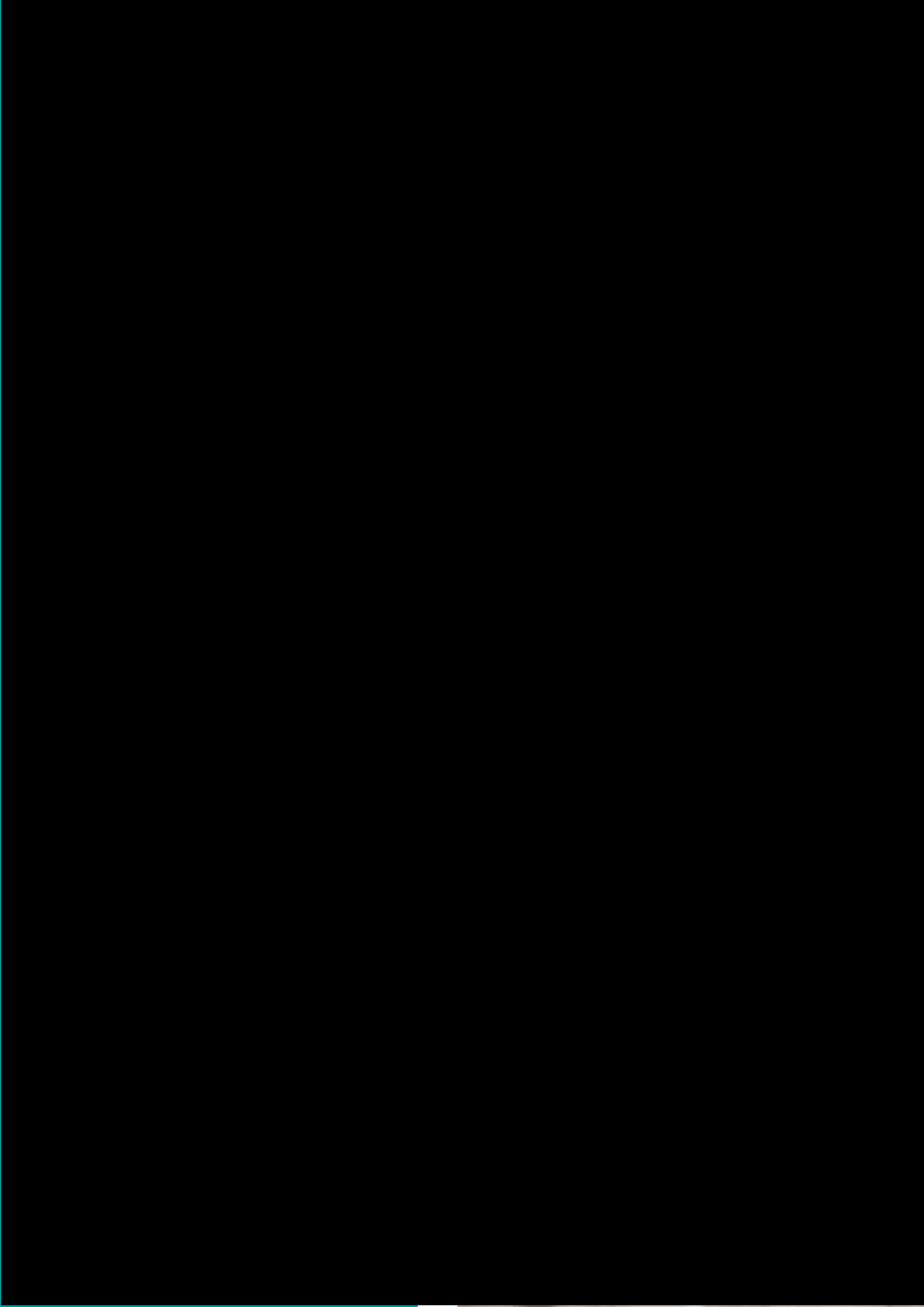


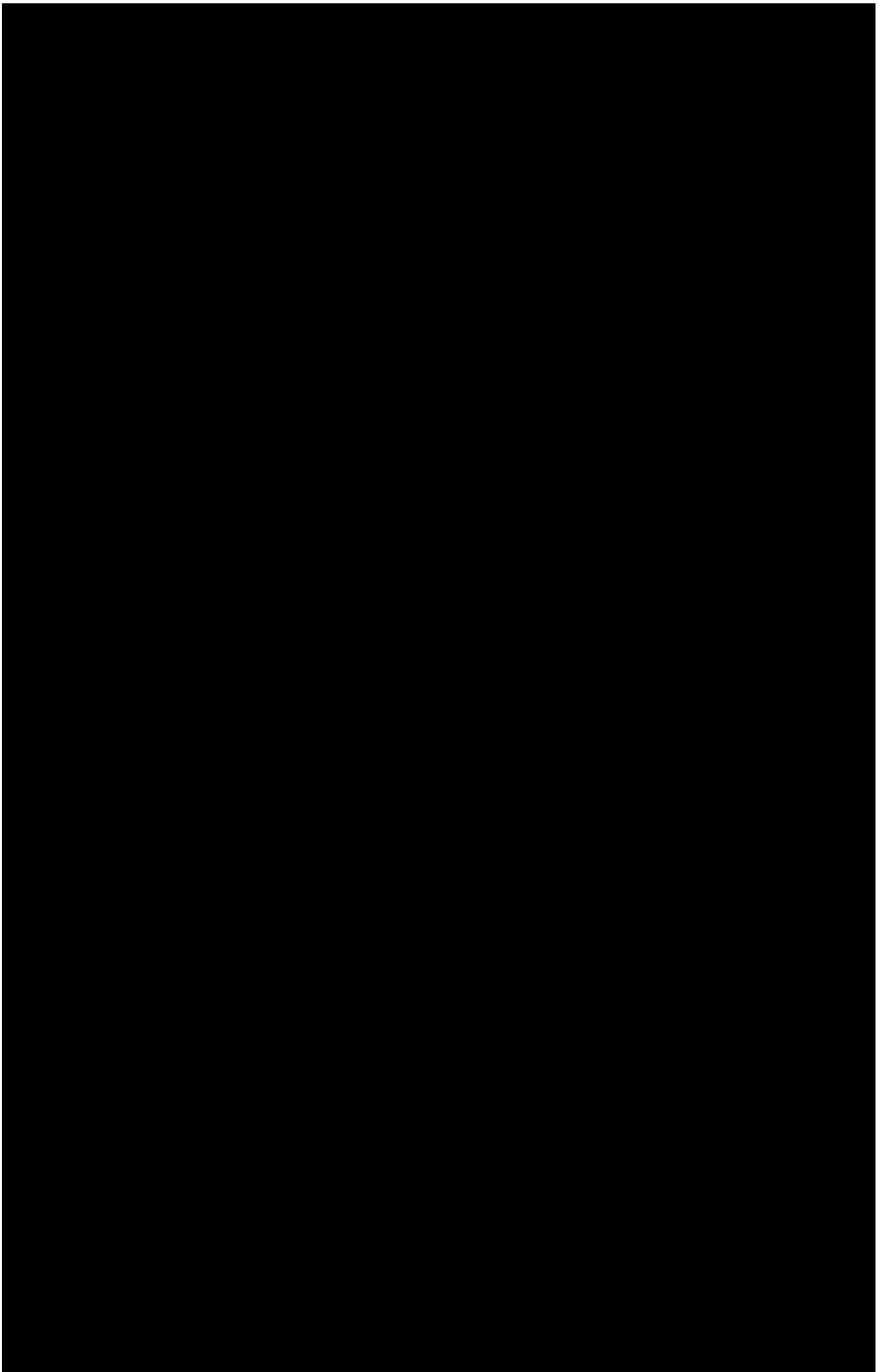


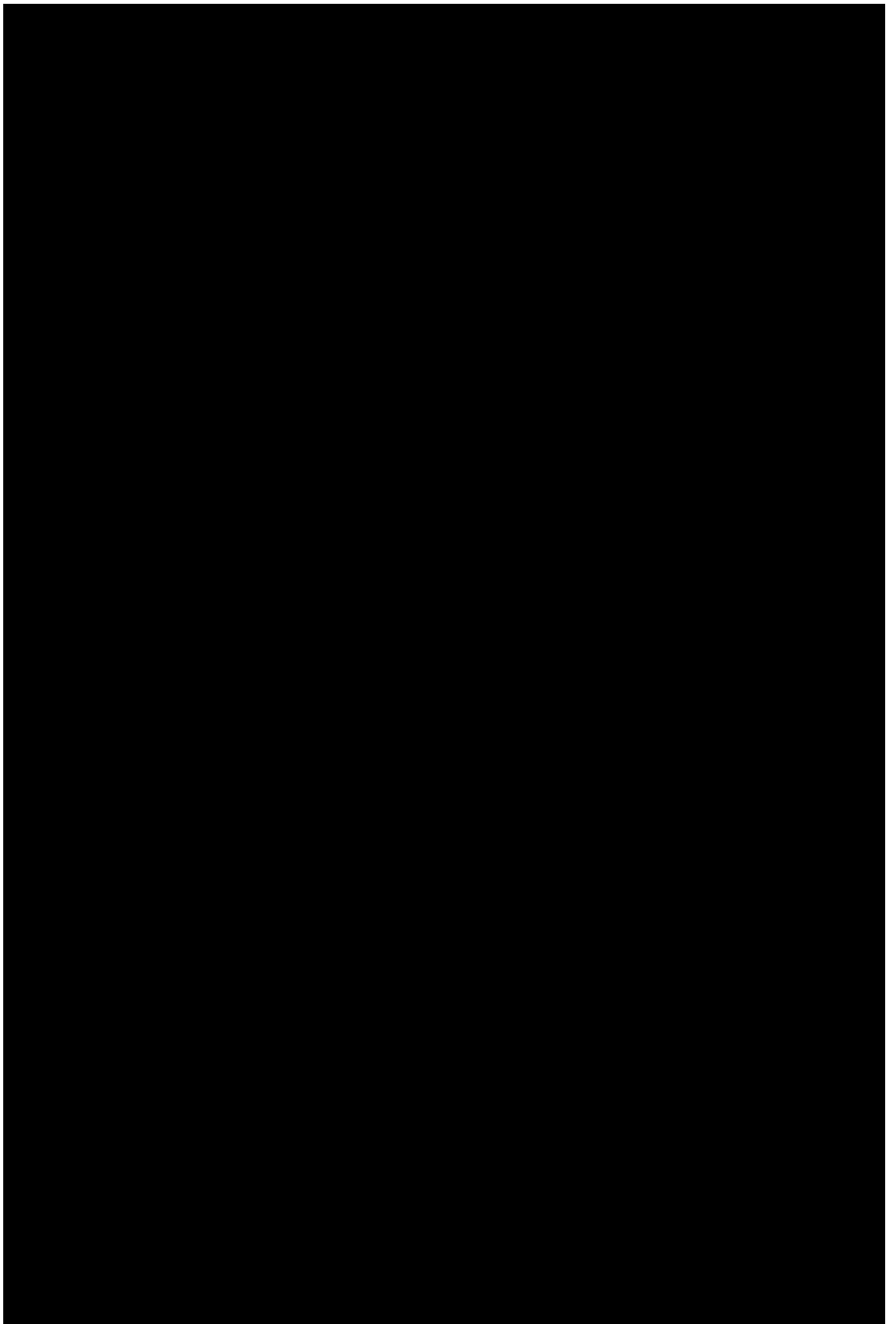


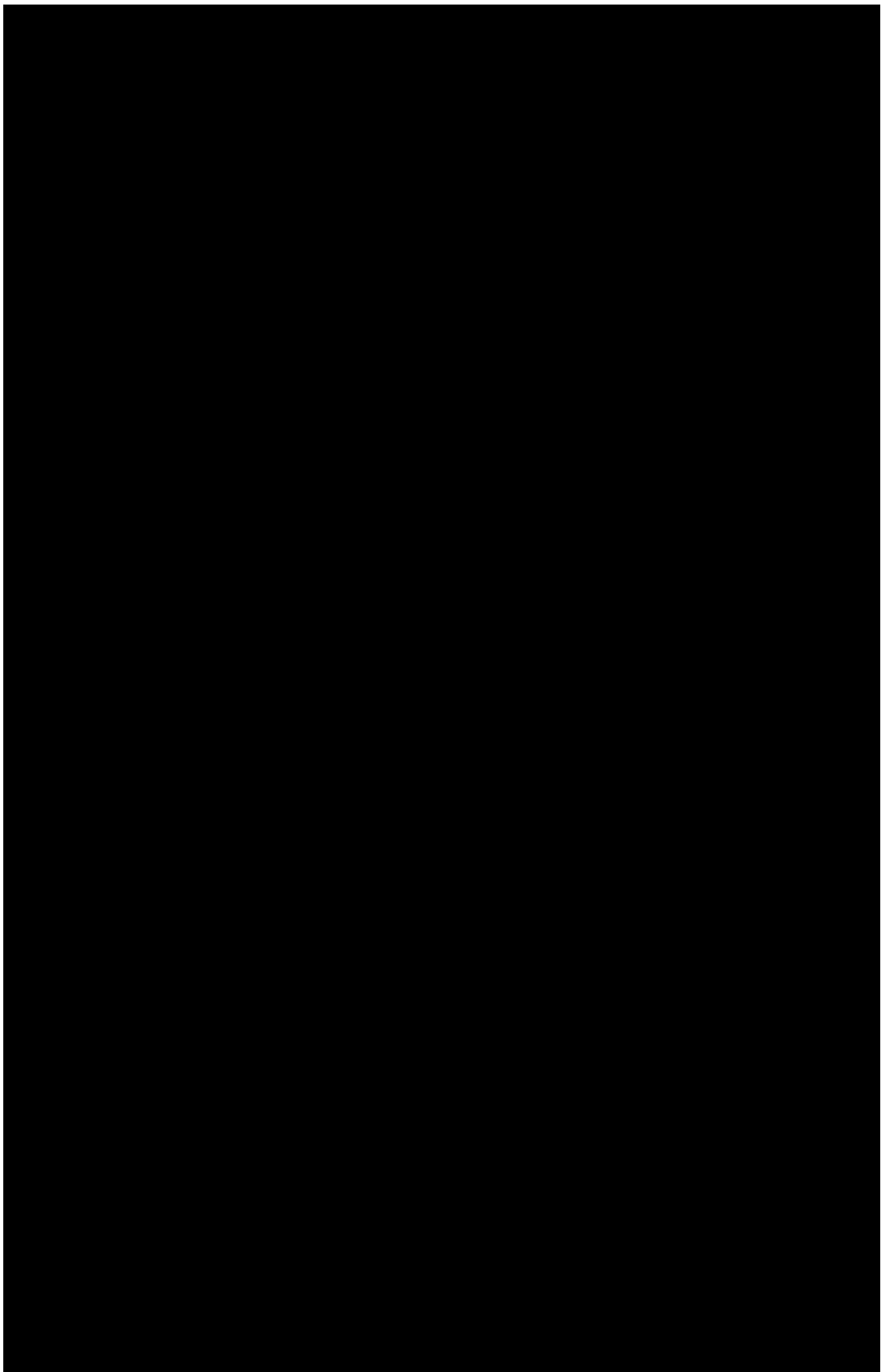


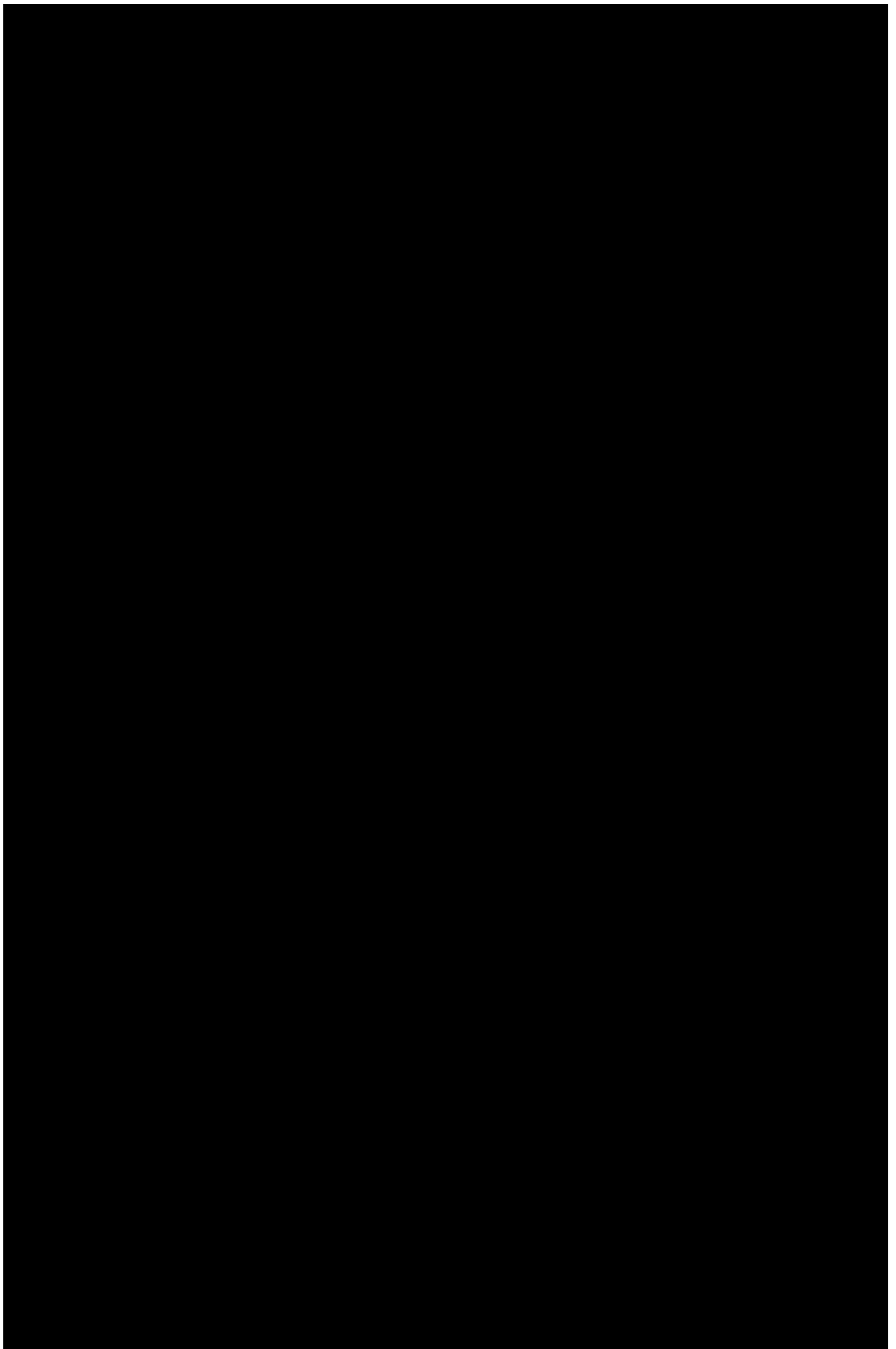


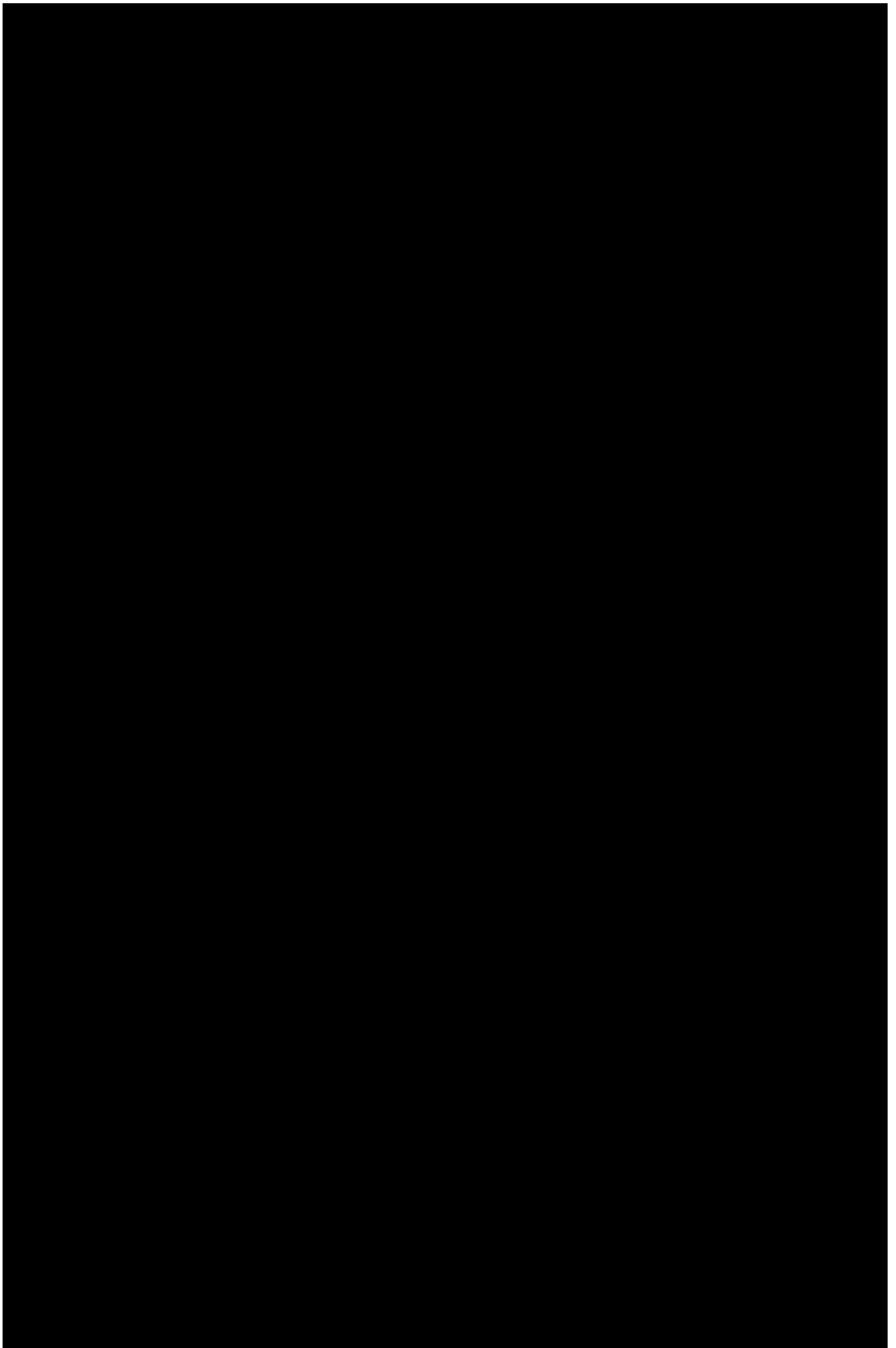


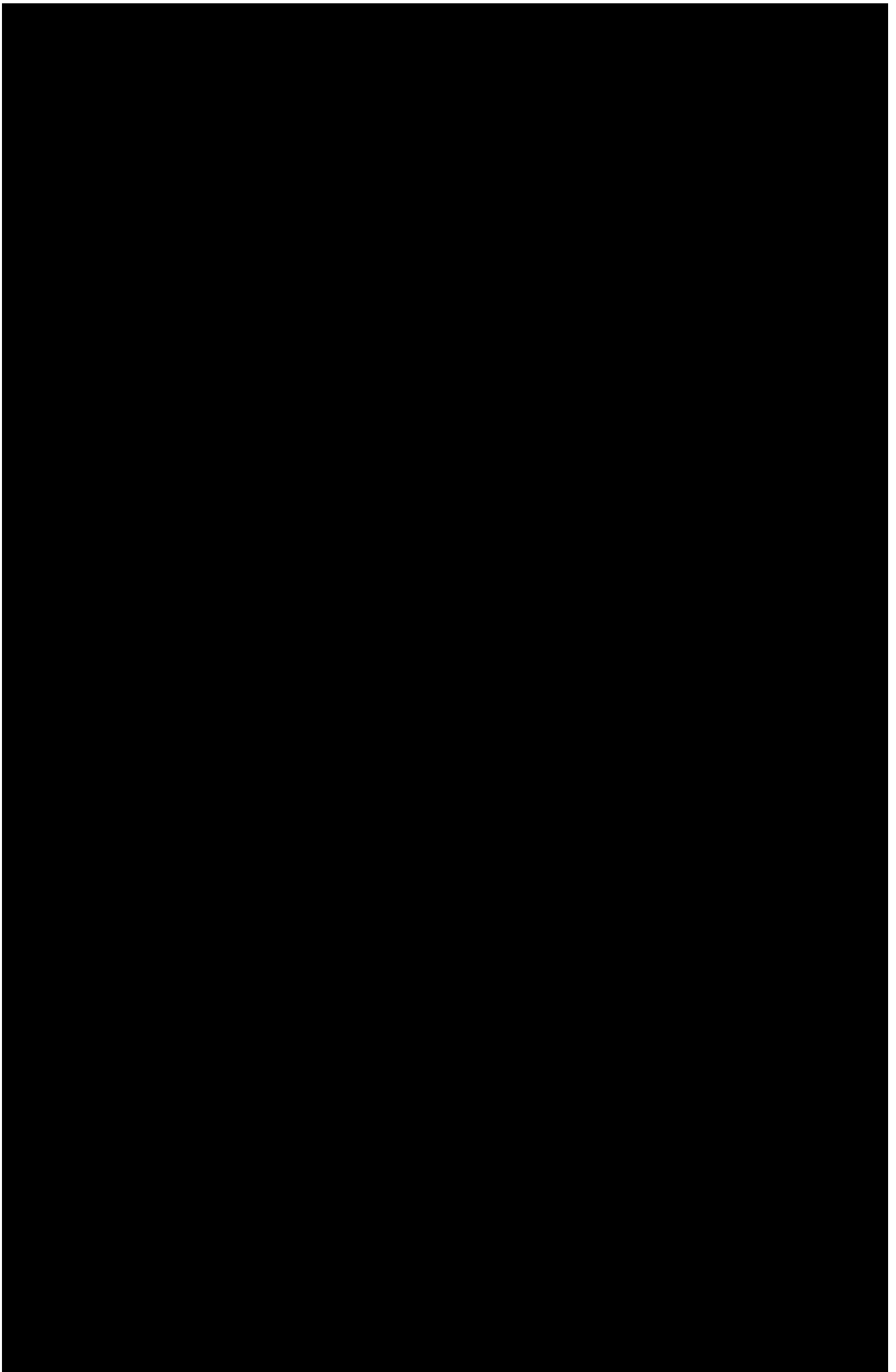


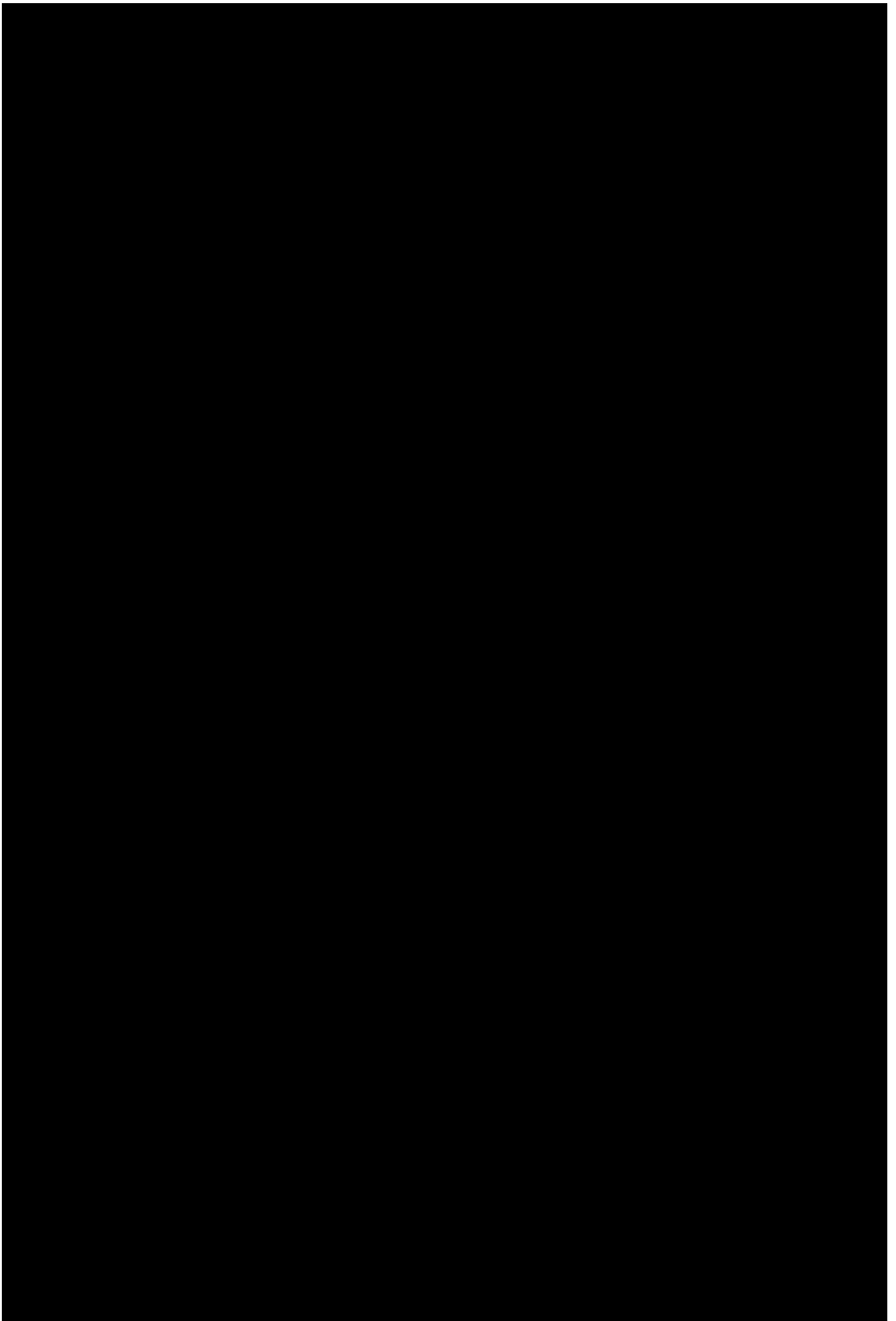


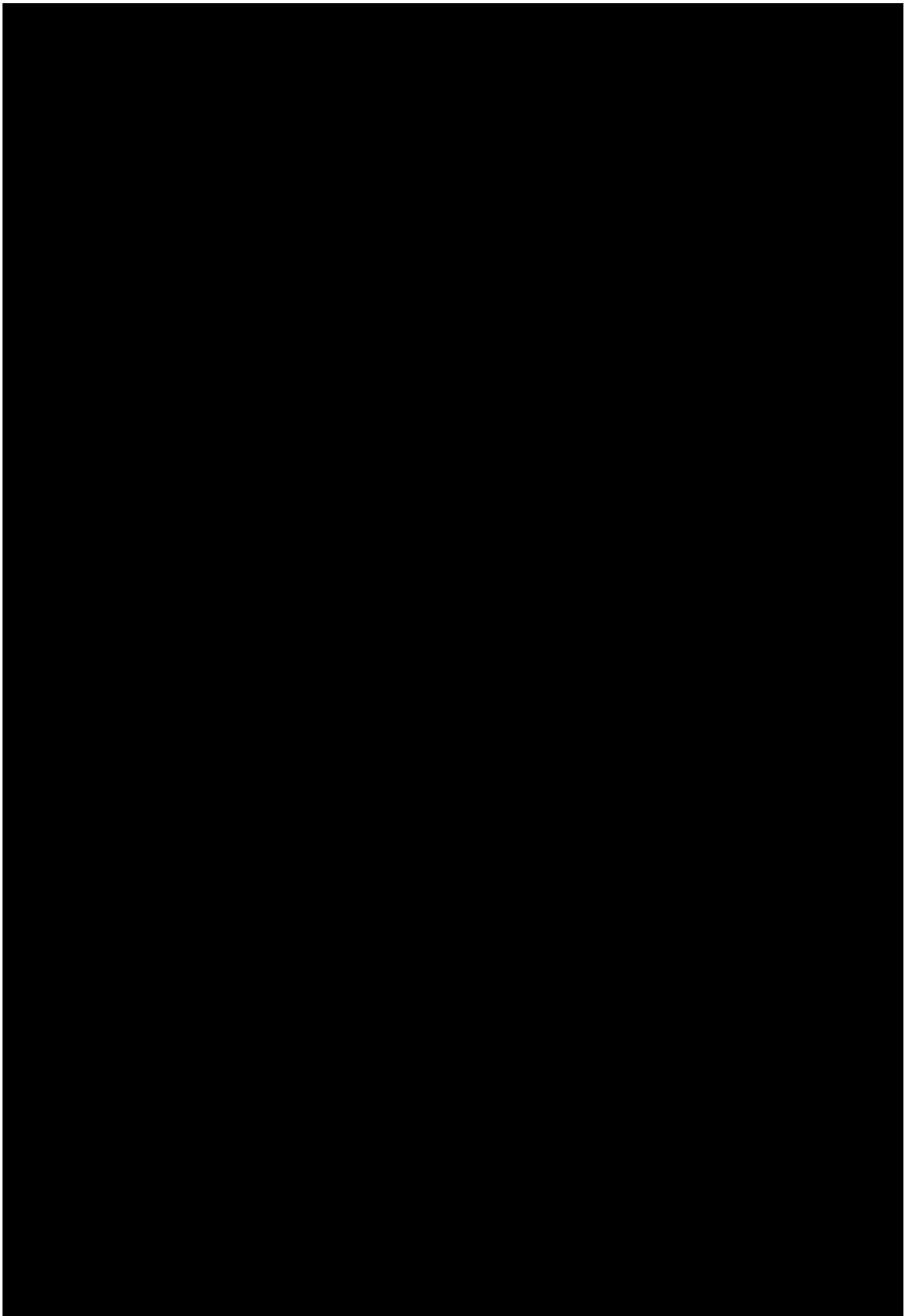


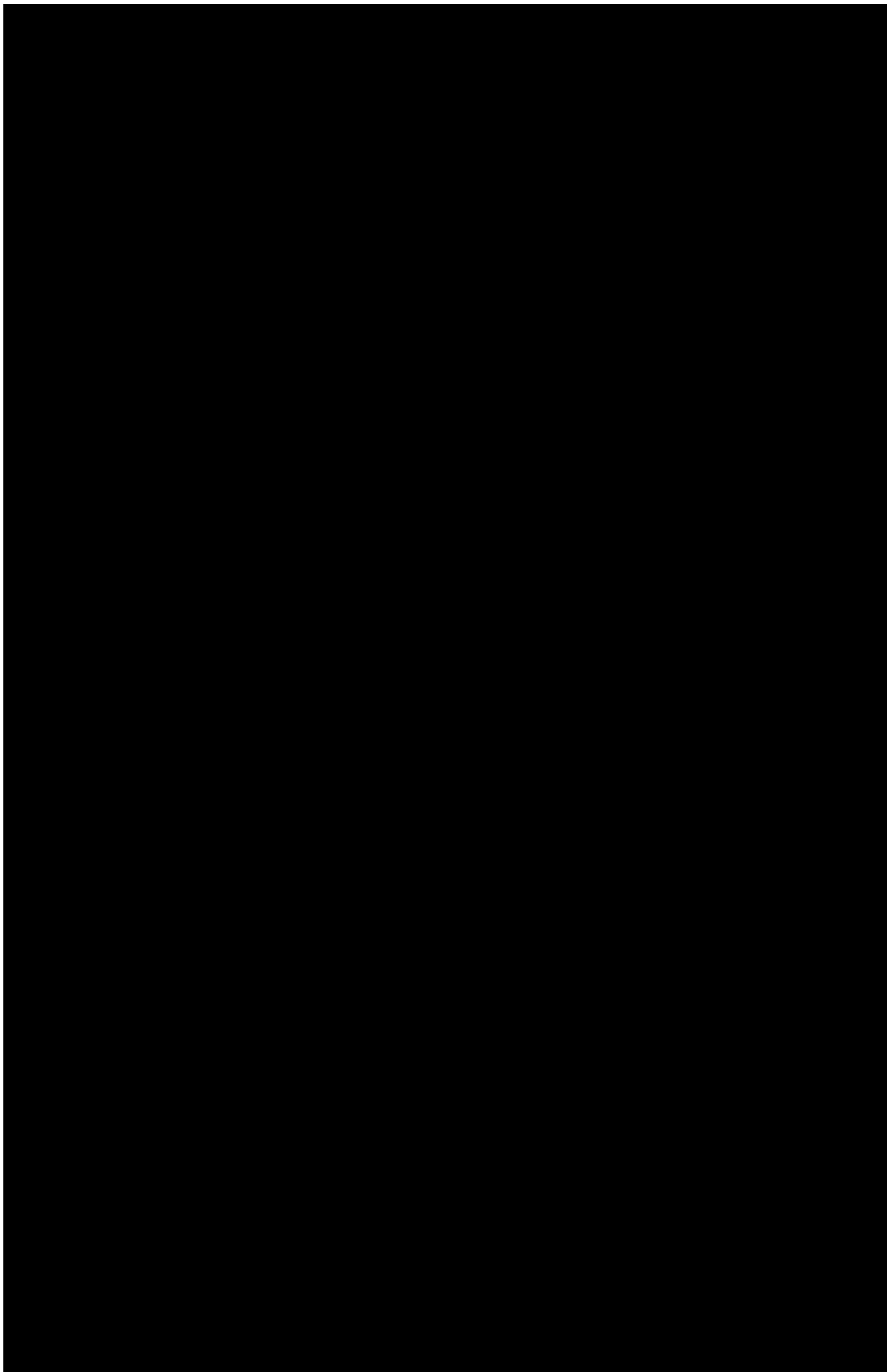


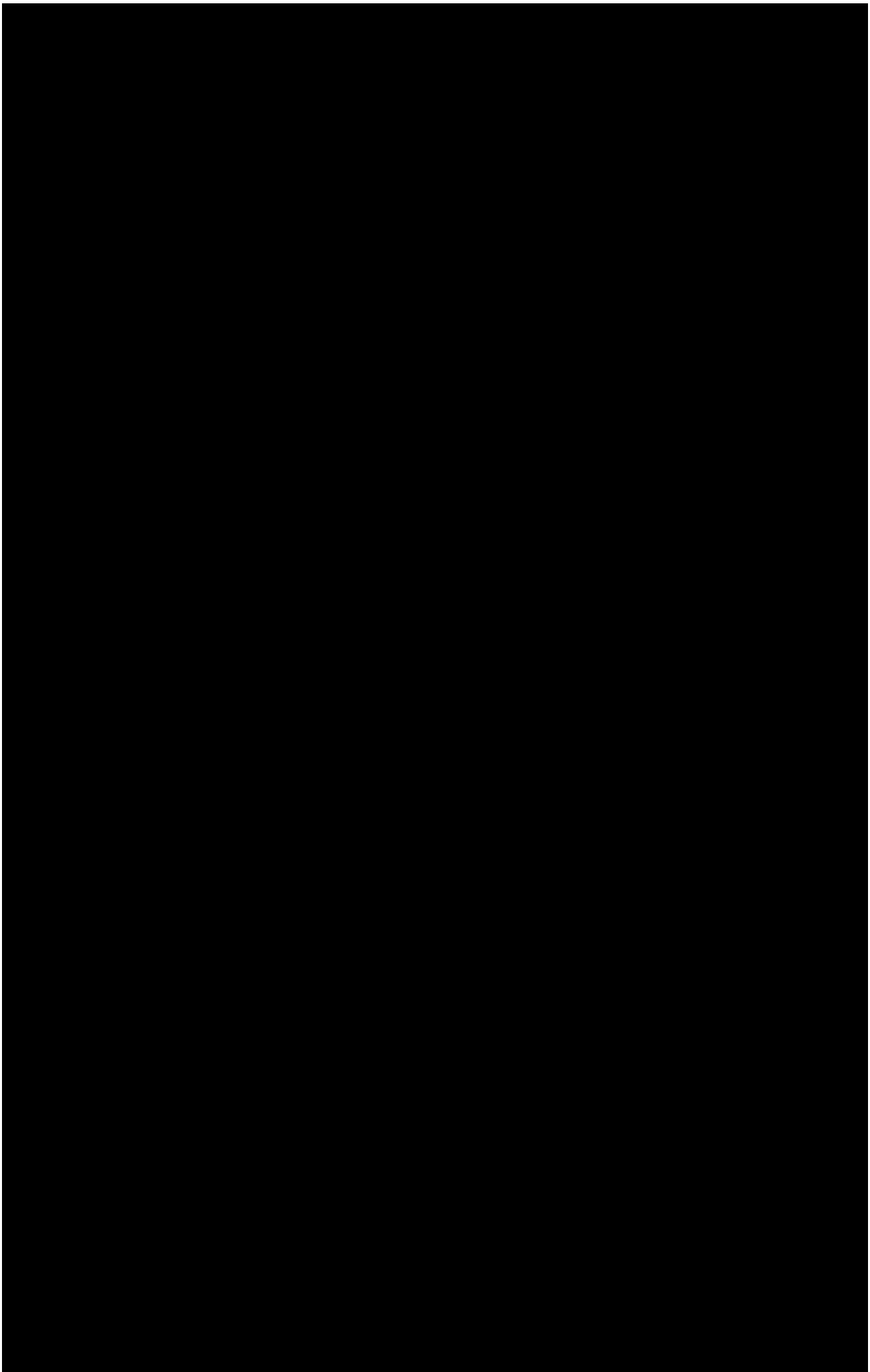


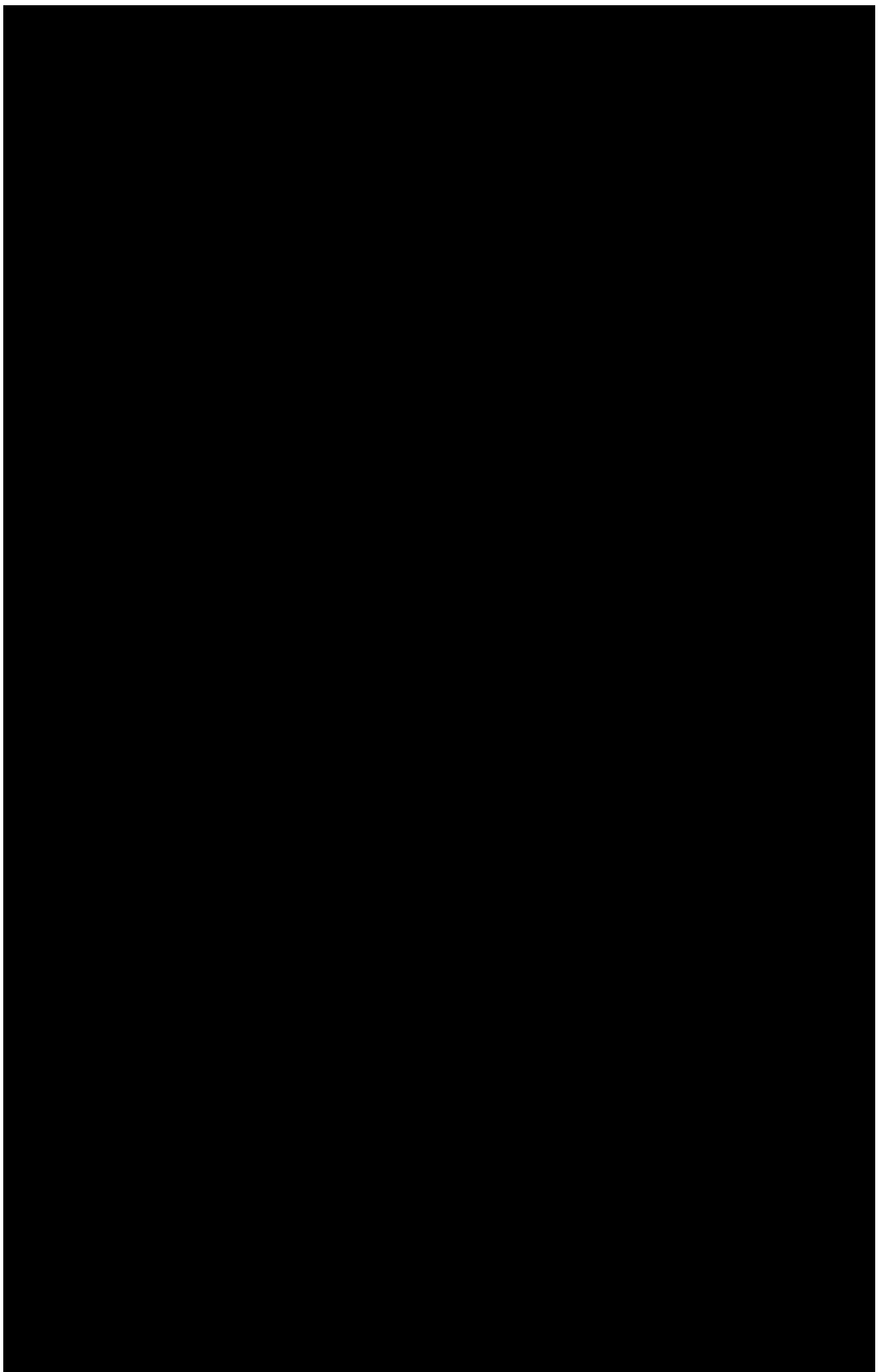






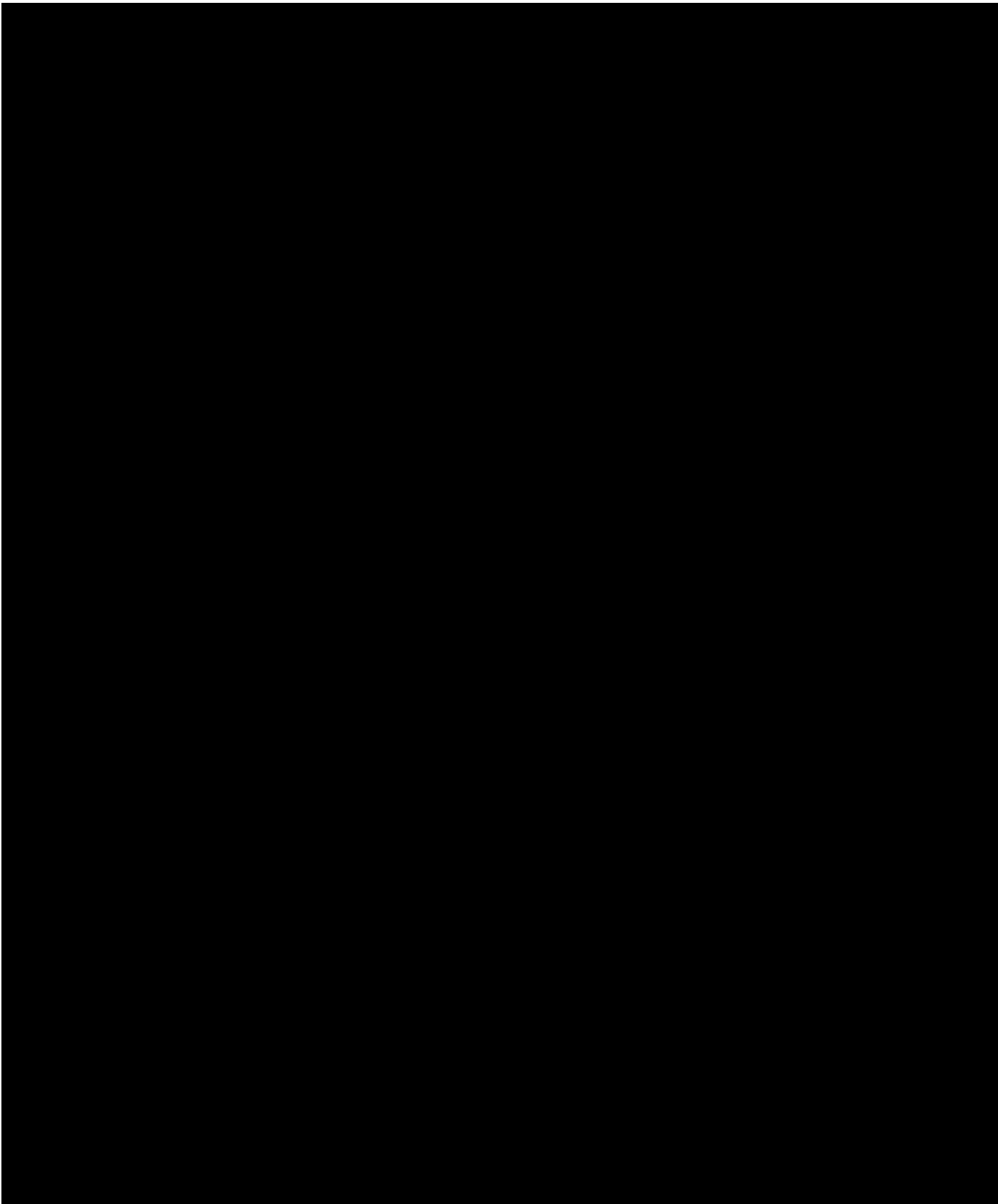


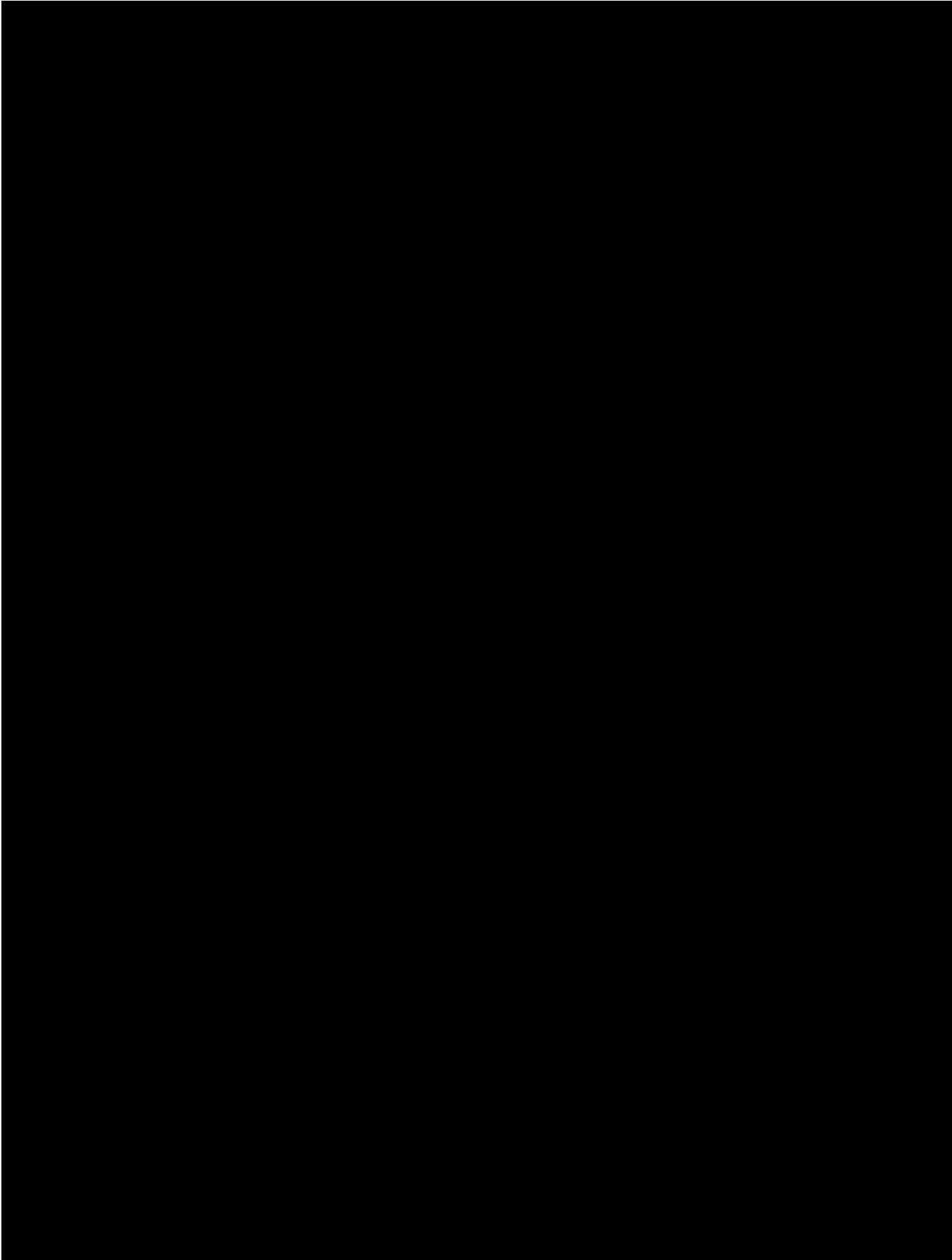




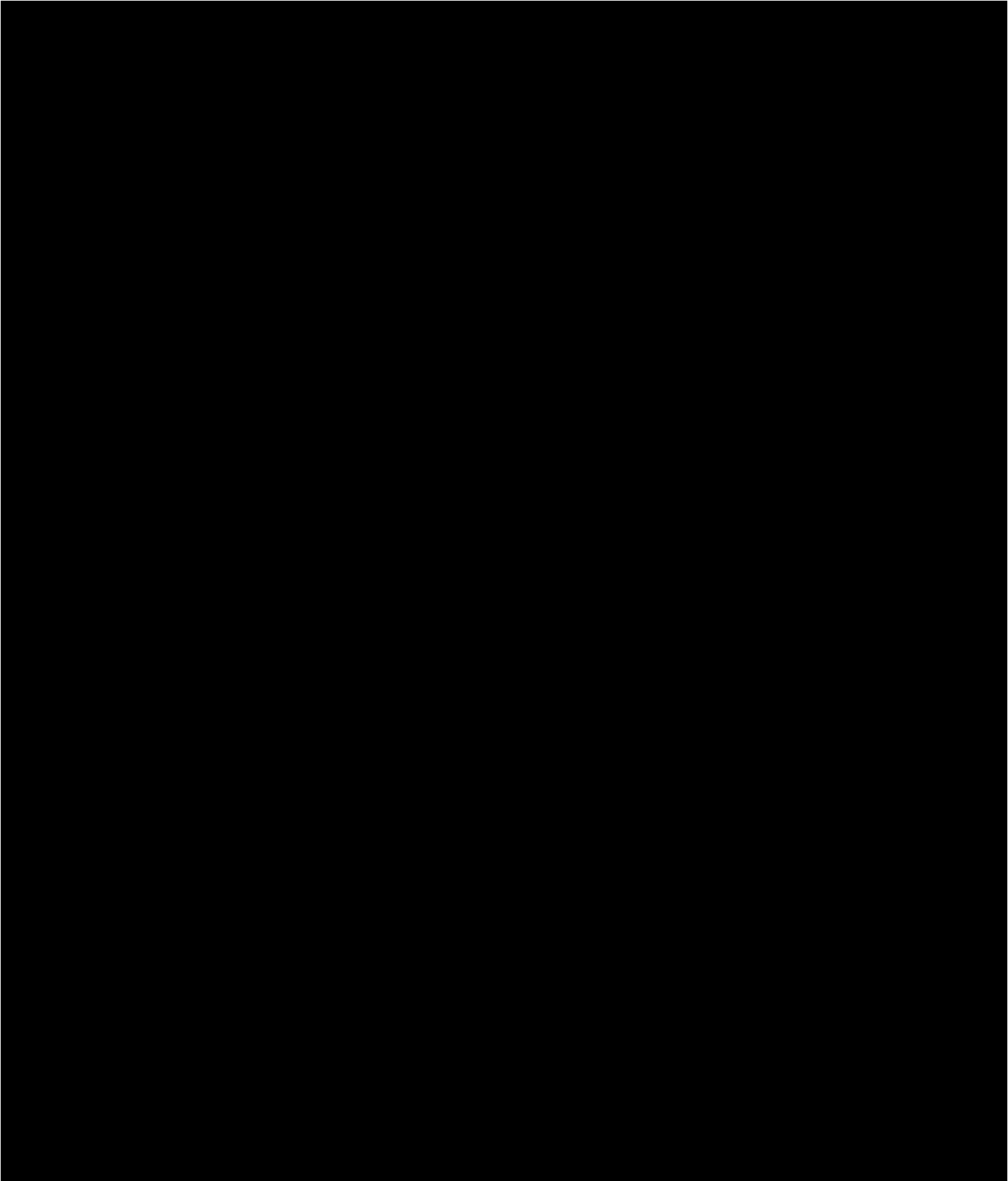
SCHEDULE 7 – OPTIONS

(Clause 16.5)

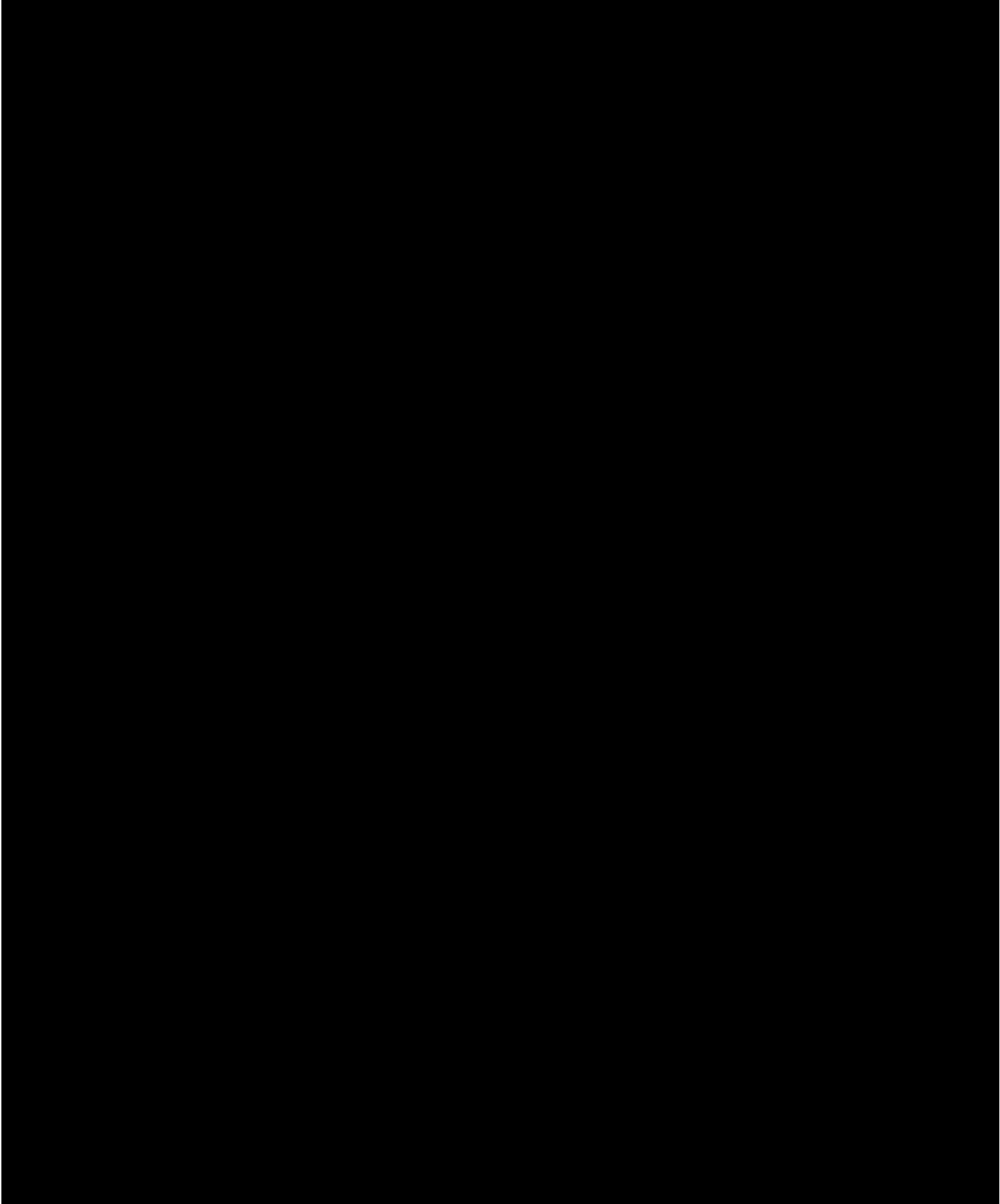


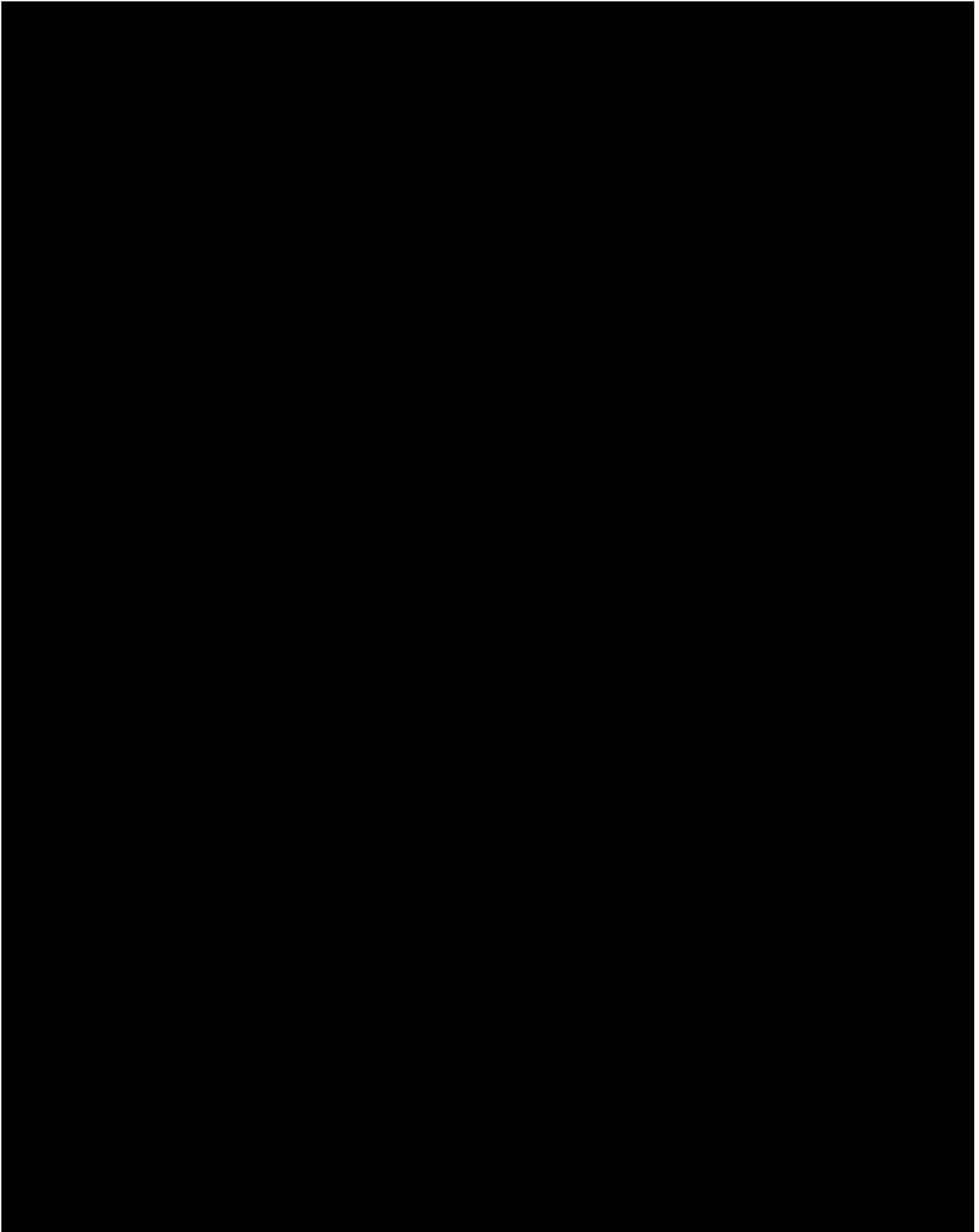


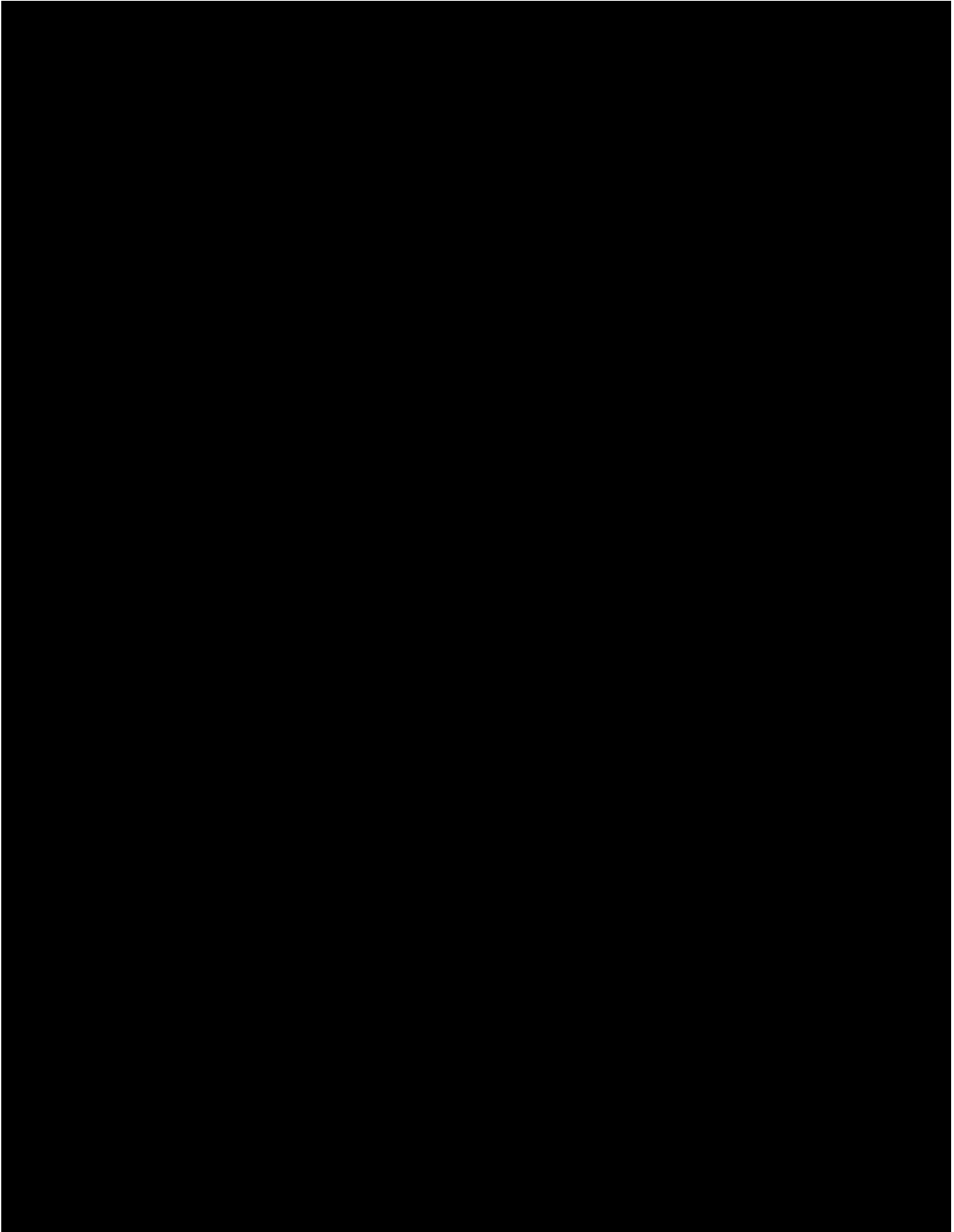
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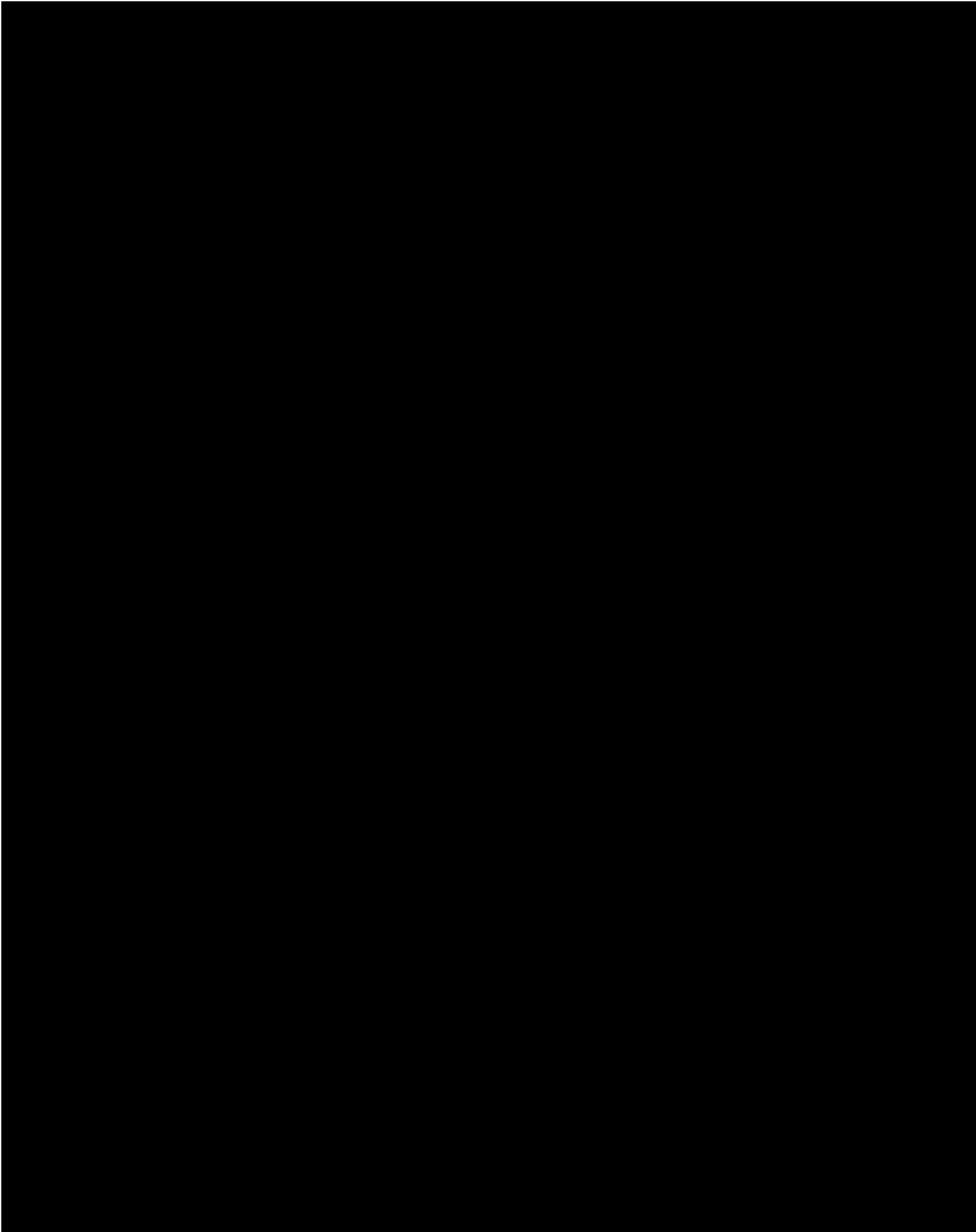


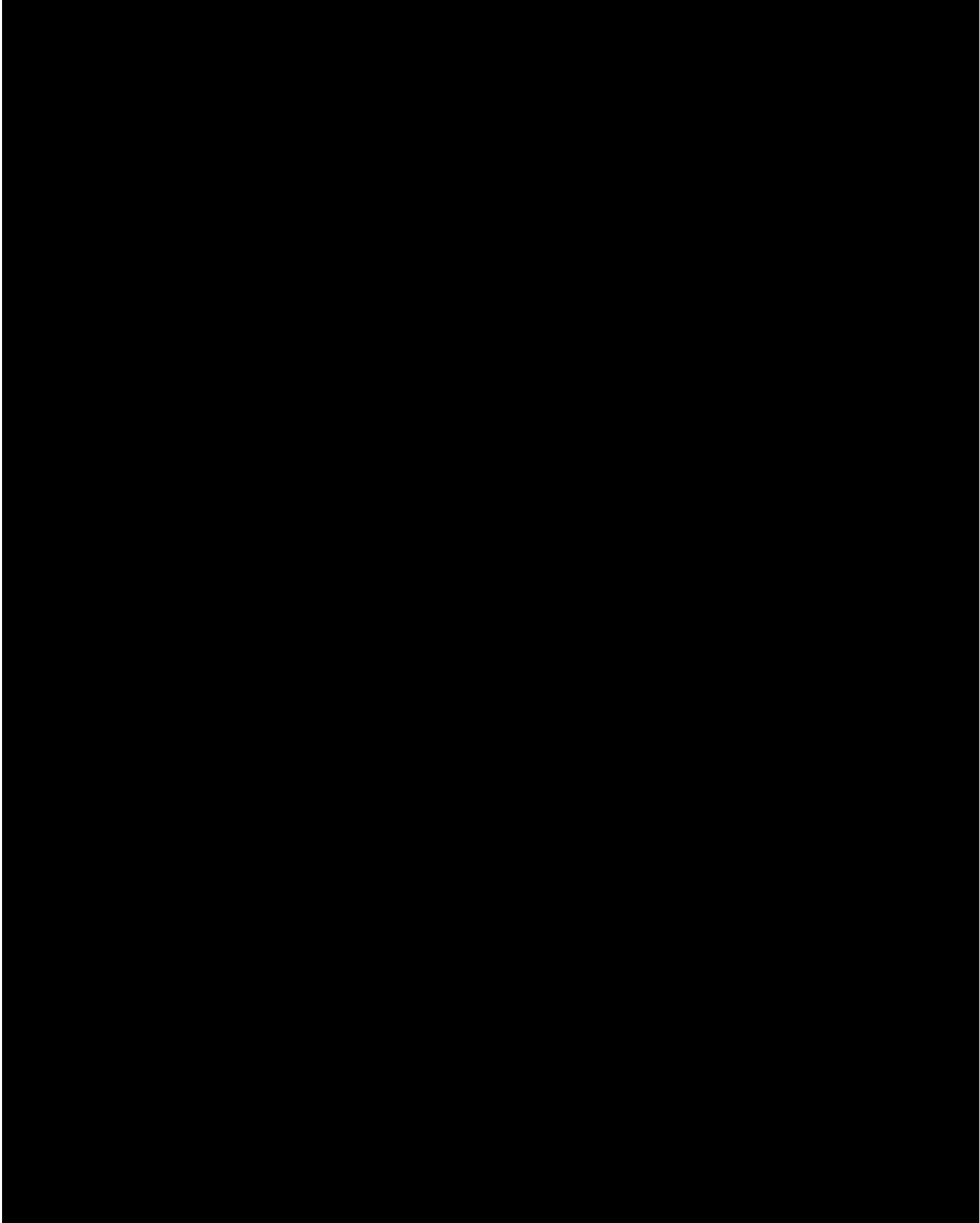
SCHEDULE 9 – PERSONNEL

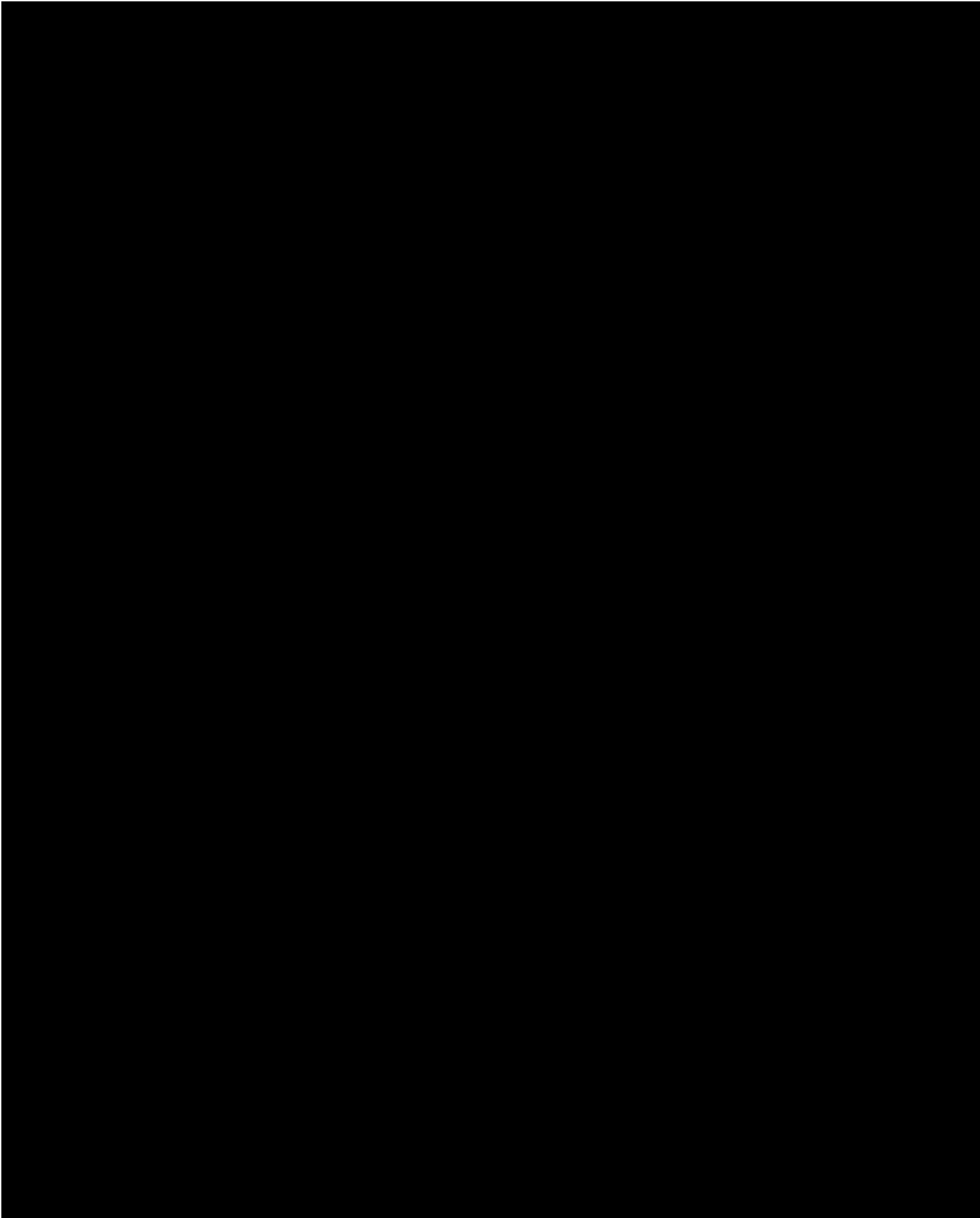












SCHEDULE 10 - EXPERT DETERMINATION AGREEMENT

Expert Determination Agreement

[Insert name of Principal]

Principal

[Insert name of Service Provider]

Contractor

[Insert name of Expert]

Expert

Expert Determination Agreement made at _____ on _____

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

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

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

Recitals

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

Operative part

1. APPOINTMENT OF EXPERT

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

2. CONFIDENTIALITY

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

3. COSTS AND FEES

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

4. EXCLUSION OF LIABILITY AND INDEMNITY

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

5. CO-OPERATION OF THE PARTIES

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

6. GOVERNING LAW

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

7. JURISDICTION

- (a) The Parties and the Expert irrevocably submit to the non-exclusive jurisdiction of the courts of the State of New South Wales and the courts to which the appeals from those courts may be made.
- (b) The Parties and the Expert irrevocably waive any objection they may now or in the future have to the venue of any proceedings, and any claim they may now

or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within clause 7(a).

Schedule 1 - The Matter

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

Schedule 2 - Rules for Expert Determination Process

1. Commencement

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

2. Written Submissions

2.1 Within 7 days after the date this process begins, Party A (ie the Party who gave notice of dispute under clause 19.1 of the PSC Contract) must, in addition to any particulars provided by Party A under clause 19.1 of the PSC Contract, give the other Party and the Expert a written statement of the Matter referred for Expert determination, any agreed statement of facts and a written submission on the Matter in support of Party A's contentions.

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

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

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

3. Conference

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

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

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

3.4 The Parties:

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

3.5 The conference must be held in private.

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

4. **General**

- 4.1 In making a determination or calling or holding a conference, the Expert must proceed in accordance with the PSC Contract.
- 4.2 All proceedings and submissions relating to the Expert determination process must be kept confidential except:
- (a) with the prior consent of the Parties;
 - (b) as may be required by law; or
 - (c) as may be required in order to enforce the determination of the Expert.
- 4.3 The Expert must:
- (a) inform the Parties of:
 - (i) any relationship or interest with the Parties or their respective officers, employees, contractors, consultants or agents;
 - (ii) any interest the Expert has in the matters in dispute; and
 - (iii) any circumstance which might reasonably be considered to adversely affect the expert's capacity to act independently or impartially,immediately upon becoming aware of any such circumstances; and
 - (b) upon making any disclosure under this clause 4.3, unless and until the Parties agree otherwise terminate the proceedings.

5. **The Determination**

- 5.1 As soon as possible after receipt of the submissions or after any conference and, in any event not later than 90 days after the Expert's acceptance of appointment, the Expert must:
- (a) determine the Matter between the Parties; and
 - (b) notify the Parties of that determination.
- 5.2 The determination of the Expert must:
- (a) be in writing stating the Expert's determination and giving reasons;
 - (b) be made on the basis of the submissions (if any) of the parties, the conference (if any) and the Expert's own expertise; and
 - (c) meet the requirements of the PSC Contract.
- 5.3 Subject to clause 5.4, to the extent permitted by law, the Expert's determination will be final and binding on the Parties in the circumstances set out in clause 19.3(c) of the PSC Contract.

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

6. **Costs**

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

7. **Modification**

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

APPENDIX 1 TO RULES FOR EXPERT DETERMINATION PROCESS

Code of Conduct for an Expert

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

Schedule 3 - The Expert's Fees and Disbursements

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

Signed as an agreement.

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

[Signature]

[Name of witness]

[Signature of witness]

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

[Signature]

[Name of witness]

[Signature of witness]

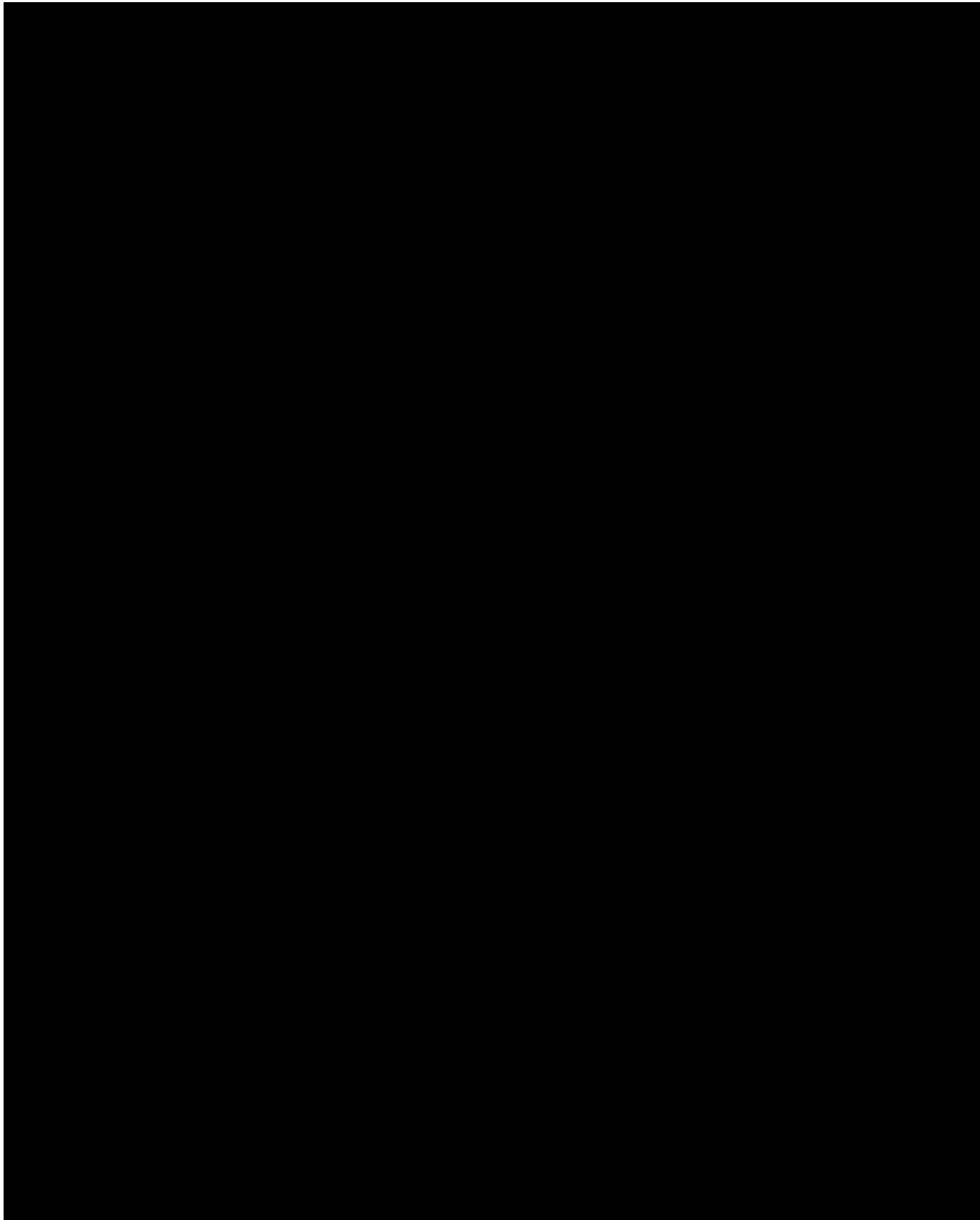
Signed by the Expert *[insert name]* in the presence of:

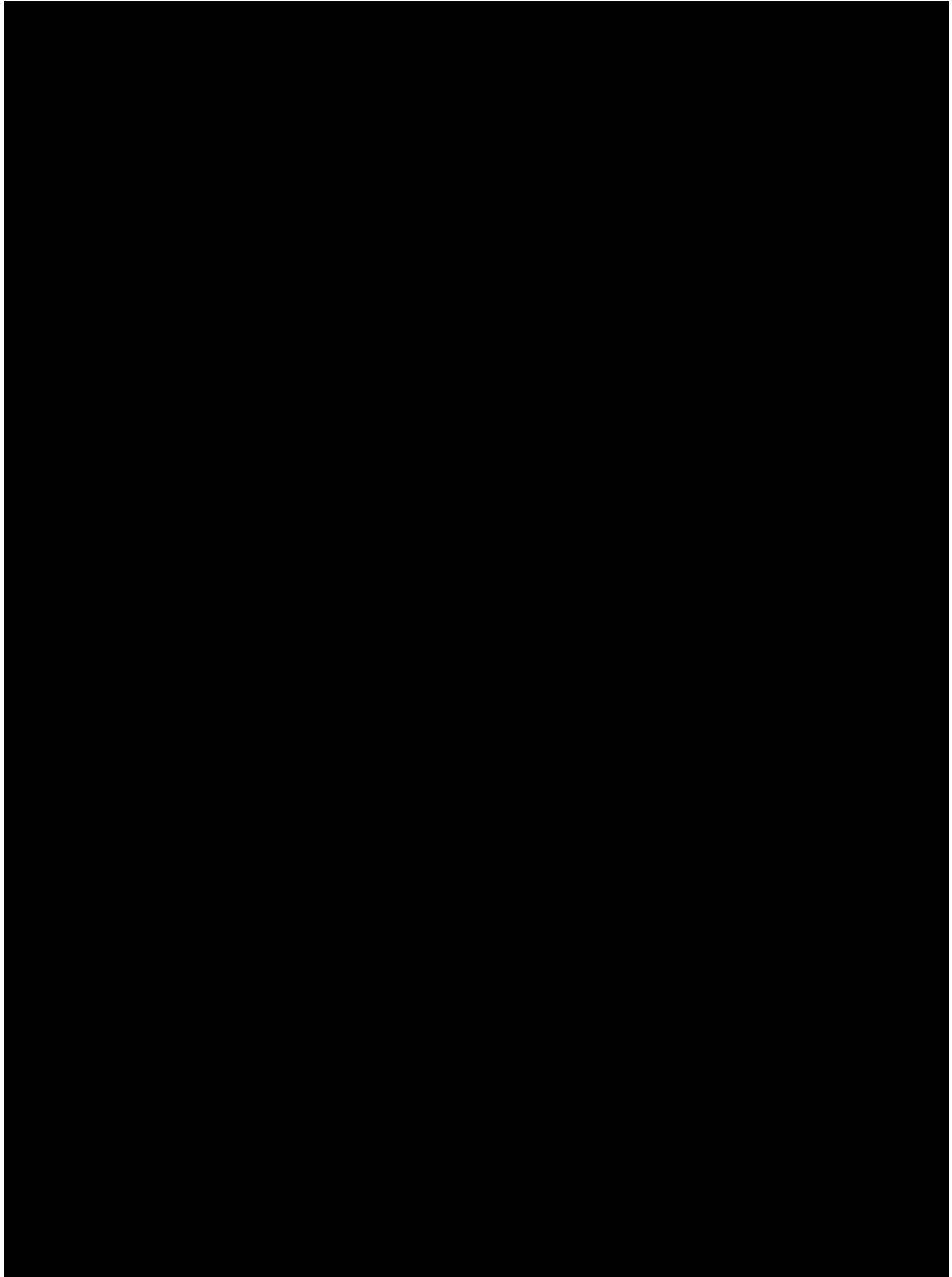
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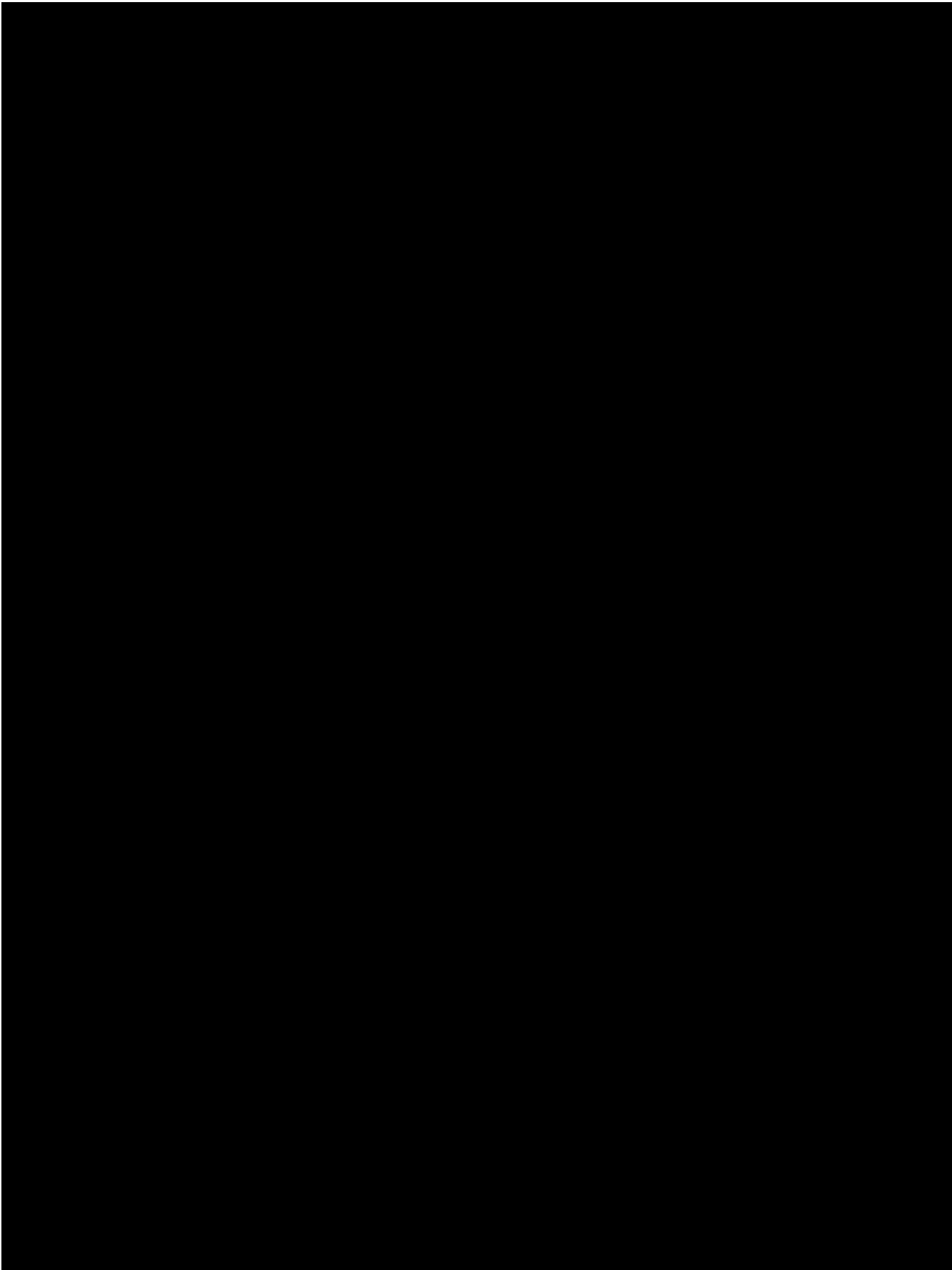
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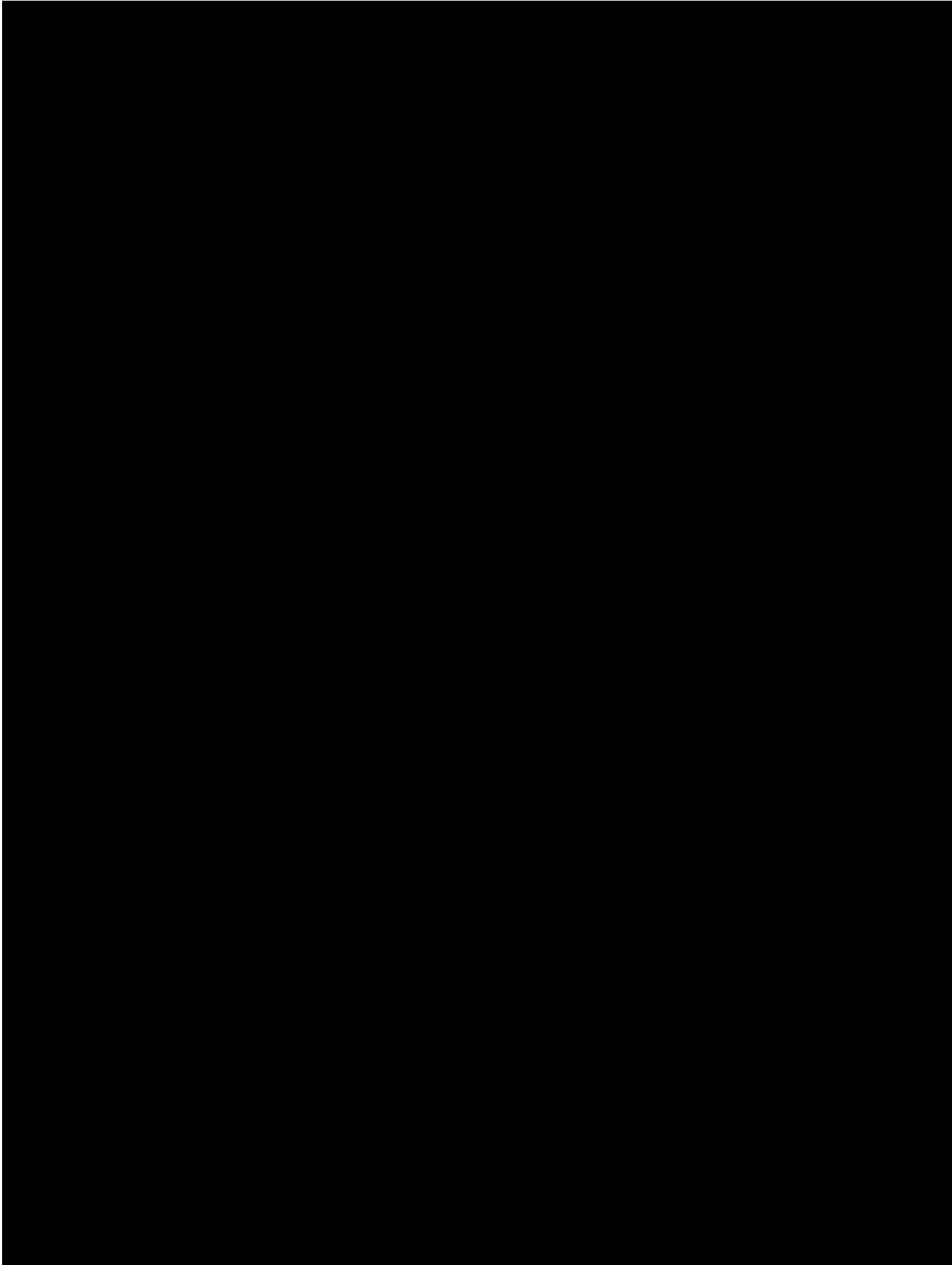
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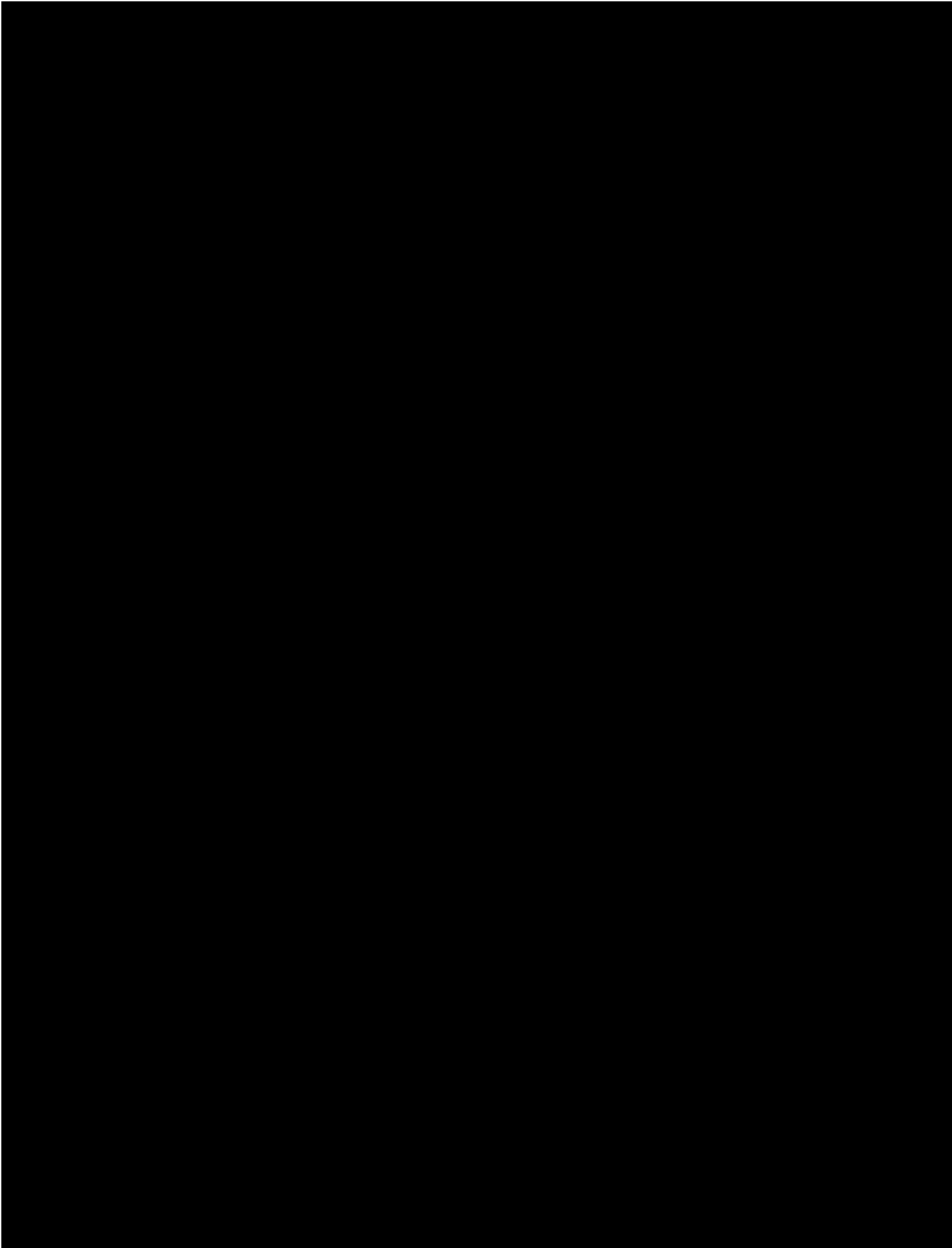
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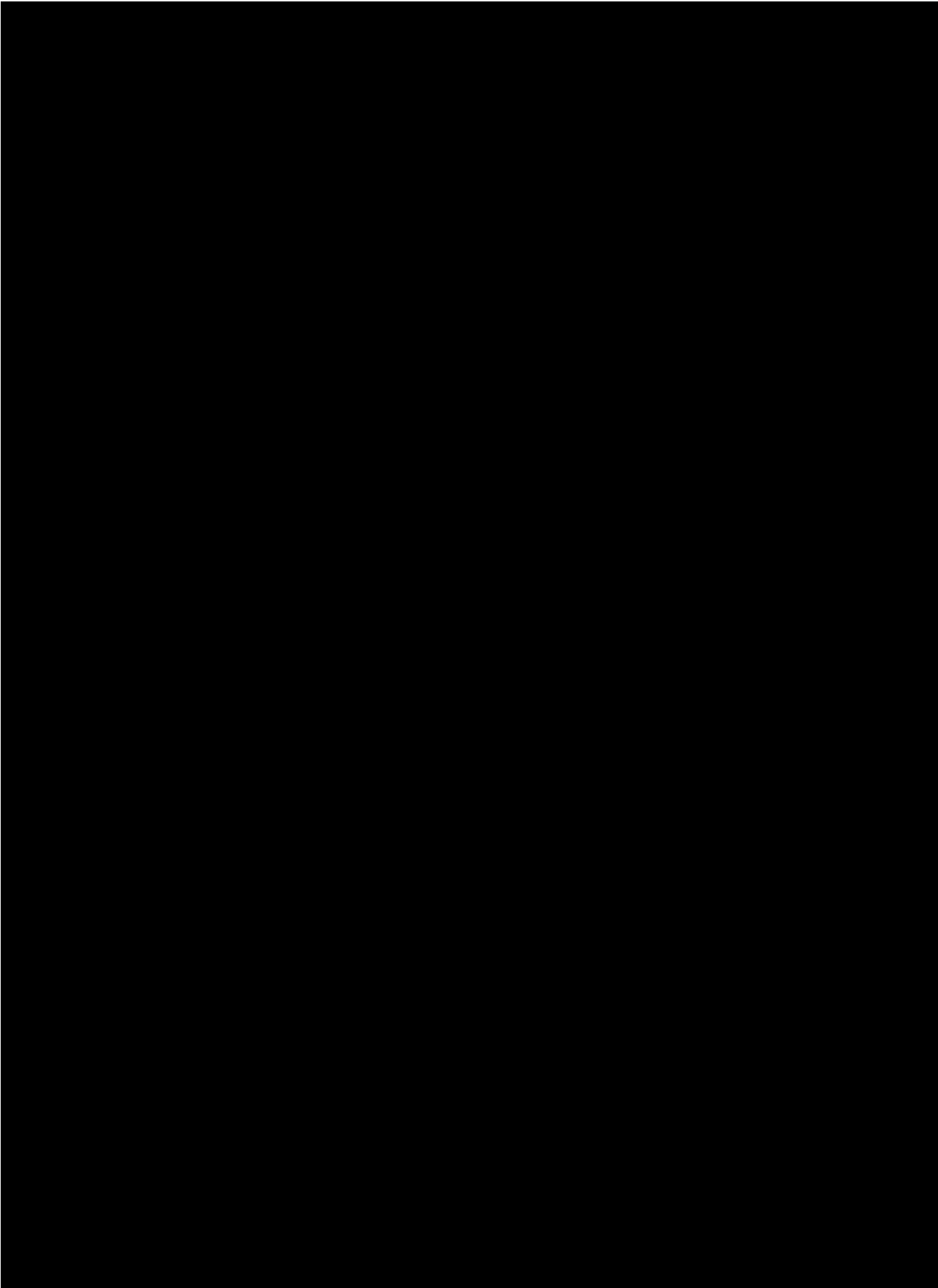


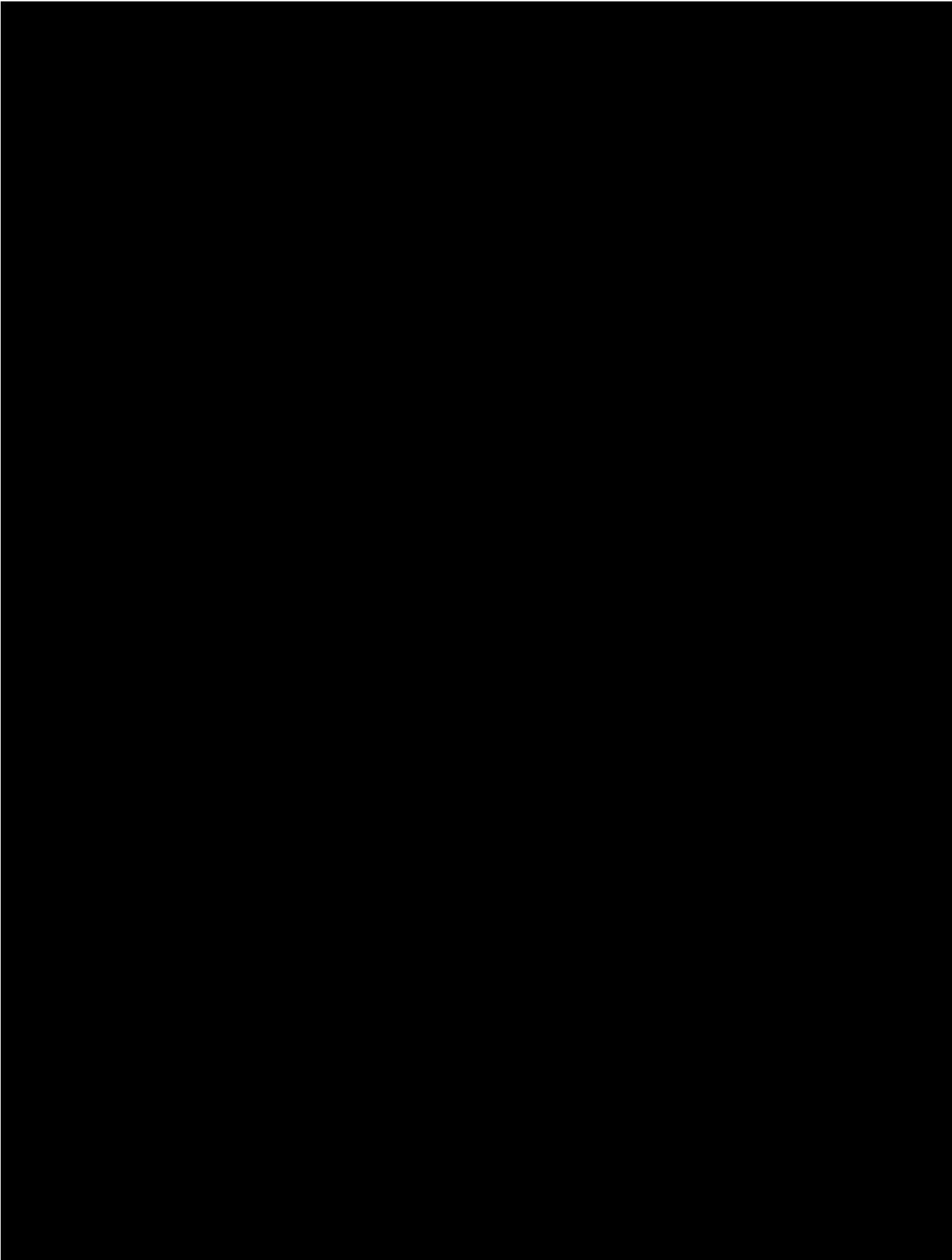












AGREEMENT EXECUTION PAGE

