

Schedule 11. Form of Warranty

(Clause 2.2(f))

This Deed Poll is made the _____ day of _____ 20____

To: **Sydney Metro (ABN 12 354 063 515)** of Level 43, 680 George Street, Sydney NSW 2000 ("**Principal**")

[Add other beneficiaries as nominated by Sydney Metro] ("Beneficiary**").**

By: That person described in Item 1 of the Schedule ("**Warrantor**") which expression will include its successors and assigns)

Recitals

- A. The Warrantor has supplied the items described in Item 2 of the Schedule ("**Equipment**") to the person described in Item 3 of the Schedule ("**CN Contractor**") or the person described in Item 4 of the Schedule, a subcontractor of the CN Contractor ("**Subcontractor**"), for the works ("**Works**") being carried out by the CN Contractor under the contract described in Item 5 of the Schedule ("**Contract**") with the Principal.
- B. It is a requirement of the Contract that the CN Contractor procure the Warrantor to give the following warranties in favour of the Principal and the Beneficiary with respect to the Equipment.

Operative

1. Quality

The Warrantor:

- (a) warrants to the Principal and the Beneficiary that the Equipment will be to the quality and standard stipulated by the contract between the Warrantor and the CN Contractor ("**Warrantor Contract**") and will be of merchantable quality and fit for the purpose for which it is required; and
- (b) gives the warranty more particularly set out in Item 6 of the Schedule with respect to the Equipment.

The above warranties are in addition to and do not derogate from any warranty implied by law in respect of the Equipment.

2. Replacement

The Warrantor warrants to the Principal and the Beneficiary that it will replace so much of the Equipment as within the period described in Item 7 of the Schedule:

- (a) is found to be of a lower quality or standard than that referred to in clause 1; or
- (b) shows deterioration of such extent that in the opinion of the Principal or the Beneficiary the Equipment ought to be made good or replaced in

order to achieve fitness for the purpose for which it is required, whether on account of utility, performance, appearance or otherwise.

3. Warrantor to bear cost

The Warrantor covenants to the Principal and the Beneficiary that it will bear the cost of any work necessary to any part of the Works to enable the requirements of clause 2 to be carried out or to make good the Works afterwards.

4. Principal not liable

The Warrantor acknowledges to the Principal and the Beneficiary that nothing contained in this deed poll is intended to nor will render either the Principal or the Beneficiary in any way liable to the Warrantor in relation to any matters arising out of the Contract or otherwise.

5. This deed poll may not be revoked

This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal and the Beneficiary.

6. Governing Law

This deed poll is governed by the laws of the State of New South Wales.

7. Jurisdiction

The Warrantor irrevocably submits to the non-exclusive jurisdiction of the Courts of New South Wales.

8. Enforcement of this deed poll

For the avoidance of doubt this deed poll is enforceable by any of the Principal or the Beneficiary.

9. Limit of Liability

The aggregate of the Warrantor's liability to the Principal and Beneficiary under this deed poll and the Warrantor's liability to the CN Contractor under the Warrantor Contract will not exceed the liability that the Warrantor would have had under the Warrantor Contract if the Warrantor Contract had named, as parties having the benefit of the performance of the obligations of the Warrantor:

- (a) the Principal;
- (b) the Beneficiary; and
- (c) the CN Contractor.

Schedule

- Item 1: Name and Address of Warrantor
- Item 2: Equipment
(Recital A)
- Item 3: CN Contractor
(Recital A)
- Item 4: Subcontractor
(Recital A)
- Item 5: Contract
(Recital A)
- Item 6: Detailed Warranty of Warrantor
(Clause 1(b))
- Item 7: Period of Years
(Clause 2)

[insert period] years from the expiry of the final "Defects Rectification Period" as defined in the General Conditions (including any extension under clause 8.6 of the General Conditions).

Executed as a deed poll.

**Executed by [insert name of Warrantor]
(ABN [insert ABN])** by or in the presence
of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Schedule 12. Form of Statutory Declaration

(Clause 11.6(a)(ii))

<p>Statutory Declaration</p> <p style="text-align: right;"><i>Oaths Act 1900 (NSW) Ninth Schedule</i></p> <p>I, of do solemnly and sincerely declare that:</p> <p>1. I am the representative of: ("the CN Contractor") in the Office Bearer capacity of: </p> <p>2. The CN Contractor has a contract with the [.....]: ("the Contract")</p> <p>3. I personally know the facts which I have set out in this declaration.</p> <p>4. All employees who have at any time been engaged by the CN Contractor for work done under the Contract: a) have been paid all remuneration and benefits to the date of this declaration payable to them by the CN Contractor in respect of their employment on work under the Contract, and b) have otherwise had accrued to their account all benefits to which they are entitled from the CN Contractor as at the date of this declaration in respect of their employment on work under the Contract pursuant to any award, enterprise agreement, act or regulation, with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below: Employee: Amount unpaid or not accrued:</p> <p>4A. All subcontractors who have at any time been engaged by the CN Contractor for work done under the Contract have been paid to the date of this declaration in accordance with the relevant subcontracts and any applicable industrial instruments (as defined in the Industrial Relations Act 1996 (NSW)), with the exception of the subcontractors and respective amounts unpaid for each subcontractor listed below: Subcontractor: Amount unpaid:</p> <p>..... 5. Attached to and forming part of this declaration, as Annexure A, is a supporting statement for the purposes of section 13(7) of the Building and Construction Industry Security of Payment Act 1999 (NSW).</p> <p>5A. Where the CN Contractor holds any retention money from a subcontractor, the CN Contractor has complied with all requirements under Part 2 of the Building and Construction Industry Security of Payment Regulation 2008 (NSW), with the exception of the items listed below:</p>	
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6. In all cases where a subcontractor or supplier to the CN Contractor has provided services and/or materials in respect of the Contract and has submitted a claim to the CN Contractor for these services or materials which as at the date of this statutory declaration would have been due and payable but which the CN Contractor disputes, the reasons for such dispute have been notified in writing to the subcontractor or supplier by the CN Contractor prior to the date of this statutory declaration. Where such dispute relates to part only of the subcontractor or supplier's claim, that part of the claim not in dispute has been paid by the CN Contractor to the subcontractor or supplier as at the date of this statutory declaration except for the amounts listed in 5 above.

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

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

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

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

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

- i) have been paid all remuneration and benefits due and payable to them by; or
- ii) had accrued to their account all benefits to which they are entitled from;

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

(c) of details of any amounts due and payable or benefits due to be received or accrued described in 8(a1) and 8(b) above which have not been paid, received or accrued, except for the following subcontractors to the CN Contractor who have failed to provide such a declaration:

Subcontractor:

Due amount unpaid:

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

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

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

Employee, subcontractor or supplier:

Amount unpaid or not accrued:

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

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

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

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

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

- (b) under section 18(6) of part 5 of schedule 2 of the Payroll Tax Act 2007 in the form and providing the detail required by that legislation; and
 - (c) under section 127 of the Industrial Relations Act 1996 in the form and providing the detail required by that legislation.
12. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.
13. All statutory declarations and Subcontractor's Statements received by the CN Contractor from subcontractors were:
- (a) given to the CN Contractor in its capacity as 'principal contractor' as defined in the Workers Compensation Act 1987, the Payroll Tax Act 2007 and the Industrial Relations Act 1996 ("Acts"); and
 - (b) given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.
14. I am not aware of anything which would contradict the statements made in the statutory declarations or written statements provided to the CN Contractor by its subcontractors, as referred to in this declaration.

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

Declared at on

(place) (day) (month) (year)

.....
(Signature of Declarant)

Before me:

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

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

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

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

[*strike out the text that does not apply]

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

2. *I have known the declarant for at least 12 months.
OR
*I confirmed the declarant's identity using the following identification document:

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

Signature of person before whom the declaration is made

Before me:

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

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

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

* The declaration must be made before one of the following persons:
- where the declaration is sworn within the State of New South Wales:

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

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

- (i) a notary public; or*
- (ii) any person having authority to administer an oath in that place.*

Annexure A

Supporting statement by head contractor regarding payment to subcontractors

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

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

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

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

ABN: *[ABN]*

Contract number/identifier: *[contract number/identifier]*

OR

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

* *[Delete whichever of the above does not apply]*

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

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

Signature: Date:

Full name: Position/Title:
.....

Attachment

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

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

Annexure B

SUBCONTRACTOR'S STATEMENT

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

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

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, 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 9)

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 13. Property Owner's Certificate

(Clauses 2.5A and 3.4(c)(ii))

This deed poll is made the _____ day of _____ 20

To: **Sydney Metro (ABN 12 354 063 515)** of Level 43, 680 George Street, Sydney NSW 2000 ("**Principal**")

By: [_____].

Property Address:

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

[Insert description of Property Works]

2. I/We confirm that our land has been rehabilitated and all damage and degradation on it repaired.

3. I/We release the Principal from all claims and actions which I/we may have arising out of or in connection with the works referred to in paragraph 1.

4. This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal.

Executed as a deed poll.

Signed sealed and delivered
by _____ in the presence
of: _____

Signature

Signature of Witness

Name of Witness in full

Schedule 14. Form of Subcontractor Deed

(Clause 2.2(e)(iv))

THIS DEED POLL is made on, 20..... by

..... ACN..... of

..... (the "**Subcontractor**").

RECITALS:

- A. **Sydney Metro (ABN 12 354 063 515)** of Level 43, 680 George Street, Sydney NSW 2000 (the "**Principal**") and **A.W. Edwards Pty Ltd (ABN 76 000 045 849)** of Level 2, 131 Sailors Bay Road, Northbridge, NSW 2063 ("**CN Contractor**") have entered into the deed titled "Sydney Metro City & Southwest – Crows Nest Station Development – Construct Only Delivery Deed" dated [*insert*] ("**Contract**") under which the CN Contractor is required to construct and handover to the Principal the "Works" as defined in the Contract ("**Works**").
- B. The Subcontractor has an agreement (the "**Subcontract**") with the CN Contractor for the execution and completion of the [] (the "**Subcontract Works**") for the Works.
- C. It is a condition of the Subcontract that the Subcontractor executes this Deed Poll.

THIS DEED WITNESSES THAT THE SUBCONTRACTOR HEREBY COVENANTS, WARRANTS AND AGREES with and for the benefit of the persons named in the Schedule as follows:

- 1. It will comply with its obligations under the Subcontract and upon completion of the Works, the Subcontract Works will satisfy the requirements of the Subcontract.
- 2. The persons named in the Schedule may assign or charge the benefits and rights accrued under this Deed Poll.
- 3. The Subcontractor:
 - (a) must if required by a written notice by the Principal to sign a deed in the form of the attached Deed of Novation (Attachment 1) with such substitute contractor as the Principal may nominate; and
 - (b) for this purpose irrevocably appoints the Principal to be its attorney with full power and authority to complete the particulars in and sign the attached Deed of Novation.
- 4. This Deed Poll is governed by the laws of the State of New South Wales.
- 5. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Principal.

6. The Subcontractor's liability in respect of a breach of a particular obligation under this Deed Poll will be reduced to the extent to which the Subcontractor has already paid money to or performed work for the CN Contractor in respect of that breach.



PERSONS NAMED IN THE SCHEDULE TO THE DEED POLL

Sydney Metro (ABN 12 354 063 515)

EXECUTED AS A DEED POLL.

Executed by [insert name] (ABN [insert ABN]) by or in the presence of:

Signature of Director

Name of Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

Attachment 1 (to Schedule 14)

THIS DEED OF NOVATION is made on [] 20[] between the following parties:

1. [] ("**Substitute Contractor**")
2. [] ("**Original Contractor**")
3. [] ("**Subcontractor**").

RECITALS:

A. By deed dated [] (the "**Deed**") between:

(i) **Sydney Metro (ABN 12 354 063 515)** of Level 43, 680 George Street, Sydney NSW 2000 (the "**Principal**"); and

(ii) Original Contractor,

the Principal engaged the Original Contractor to undertake the Works (as defined in the Deed).

B. The Original Contractor has entered into an agreement ("**Subcontract**") with the Subcontractor for the execution and completion of the [] ("**Subcontract Works**") as part of the Works.

C. The Principal has terminated the Deed and has engaged Substitute Contractor to complete the Works.

D. The Principal and Substitute Contractor wish to effect a novation of the Subcontract.

THIS DEED WITNESSES that in consideration, among other things, of the mutual promises contained in this deed, the parties agree:

1. Substitute Contractor must perform all of the obligations of the Original Contractor under the Subcontract which are not performed at the date of this deed. Substitute Contractor is bound by the Subcontract as if it had originally been named in the Subcontract in place of Original Contractor.
2. The Subcontractor must perform its obligations under, and be bound by, the Subcontract as if Substitute Contractor was originally named in the Subcontract in place of Original Contractor.
3. This deed is governed by the laws of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of that state.

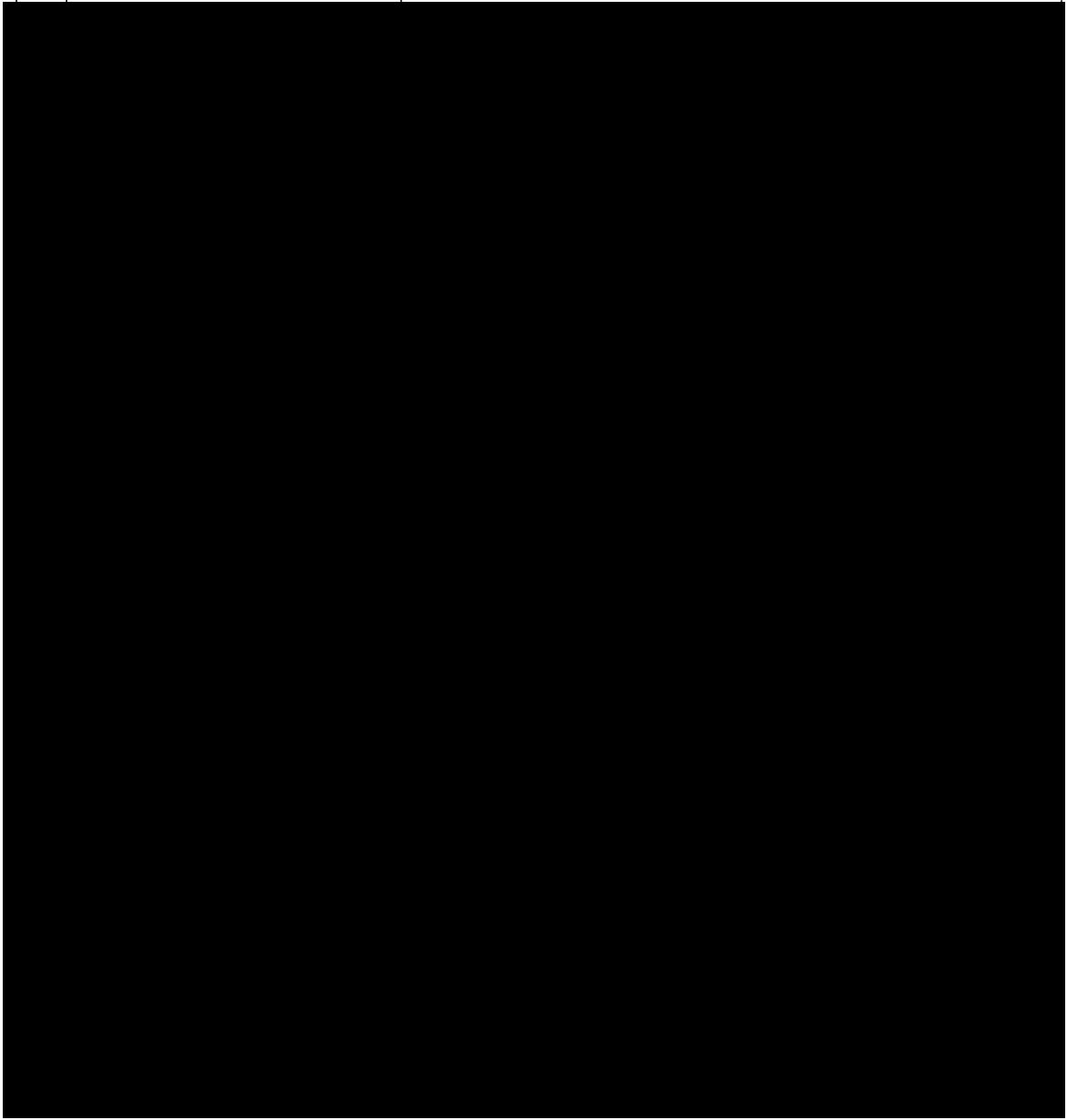
EXECUTED by the parties as a deed:

[Insert appropriate execution clauses]

Schedule 15. Options

(Clause 6.3)

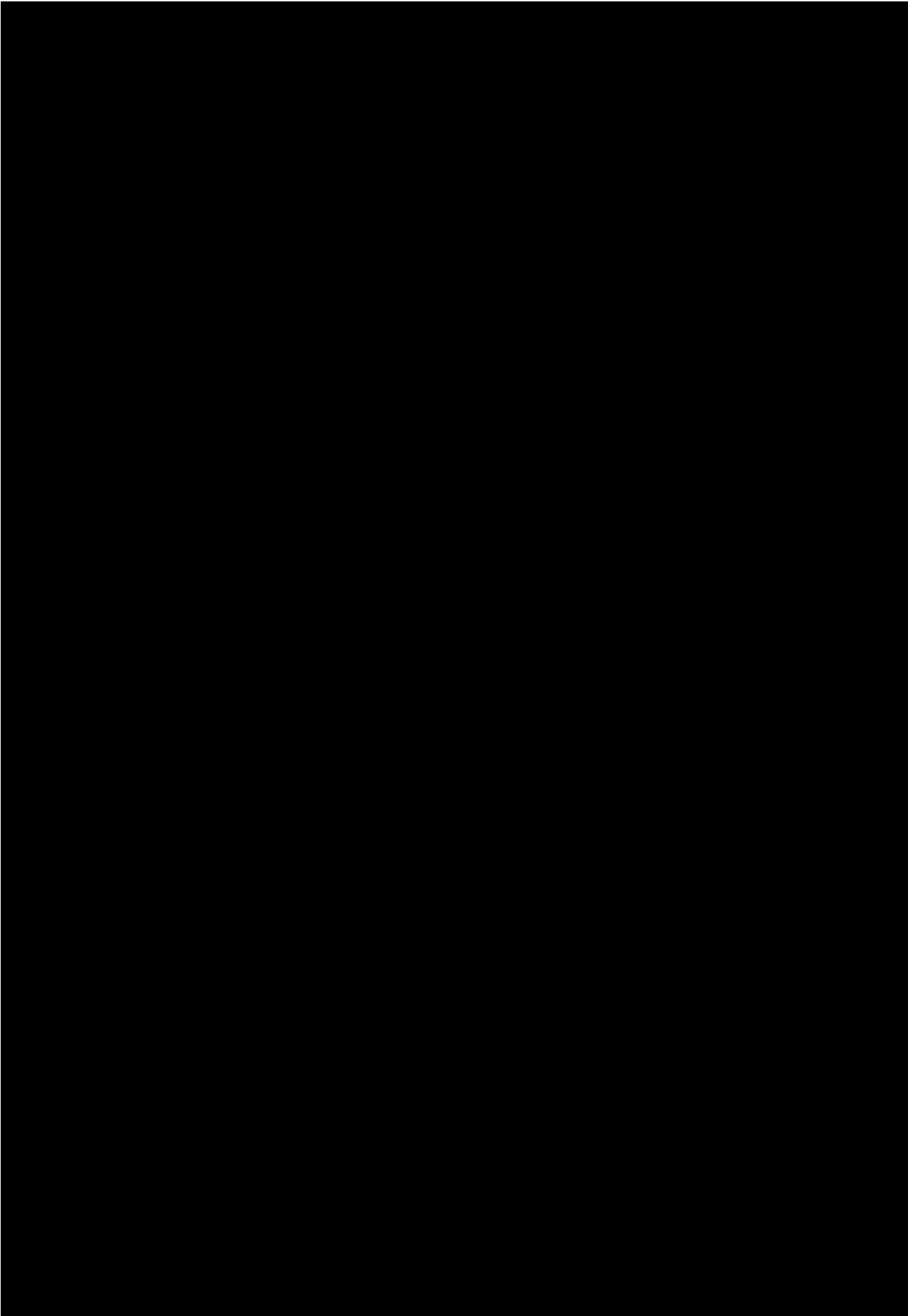
OPTION 1		
1.	Description:	Construction of the Site C OSD above the Clark Street entrance.

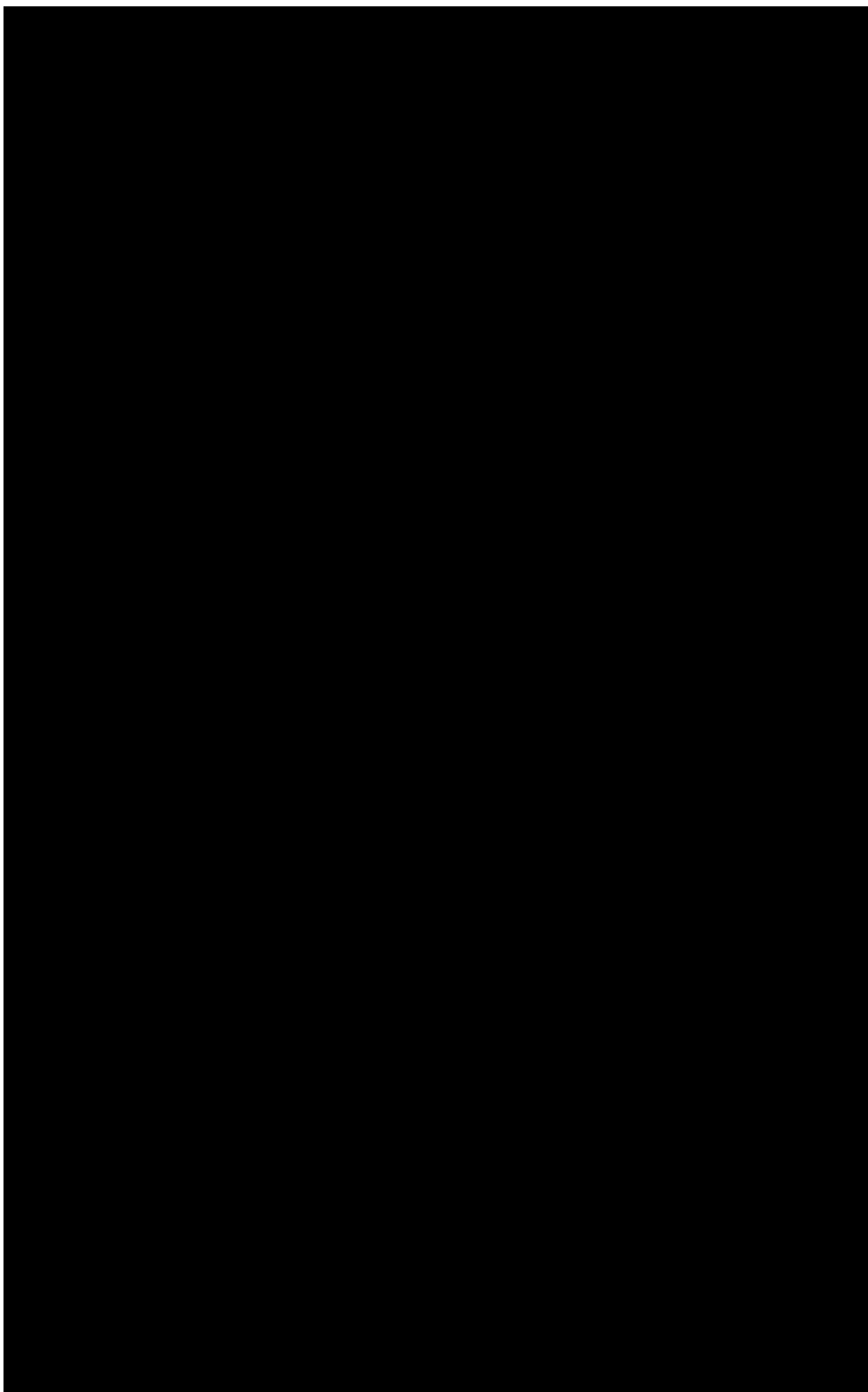


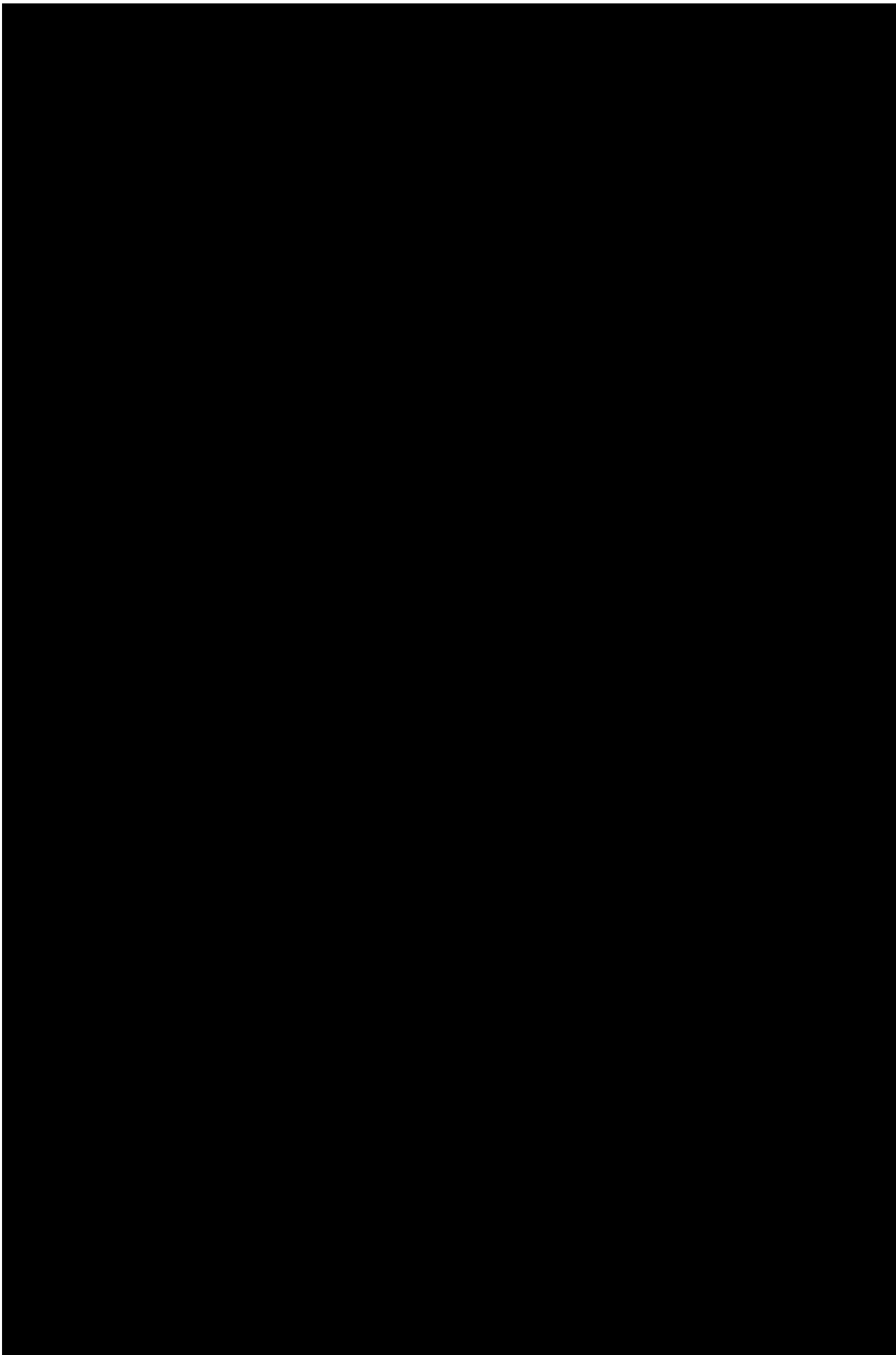
Schedule 16. Not used



Schedule 17. Deed of Guarantee and Indemnity

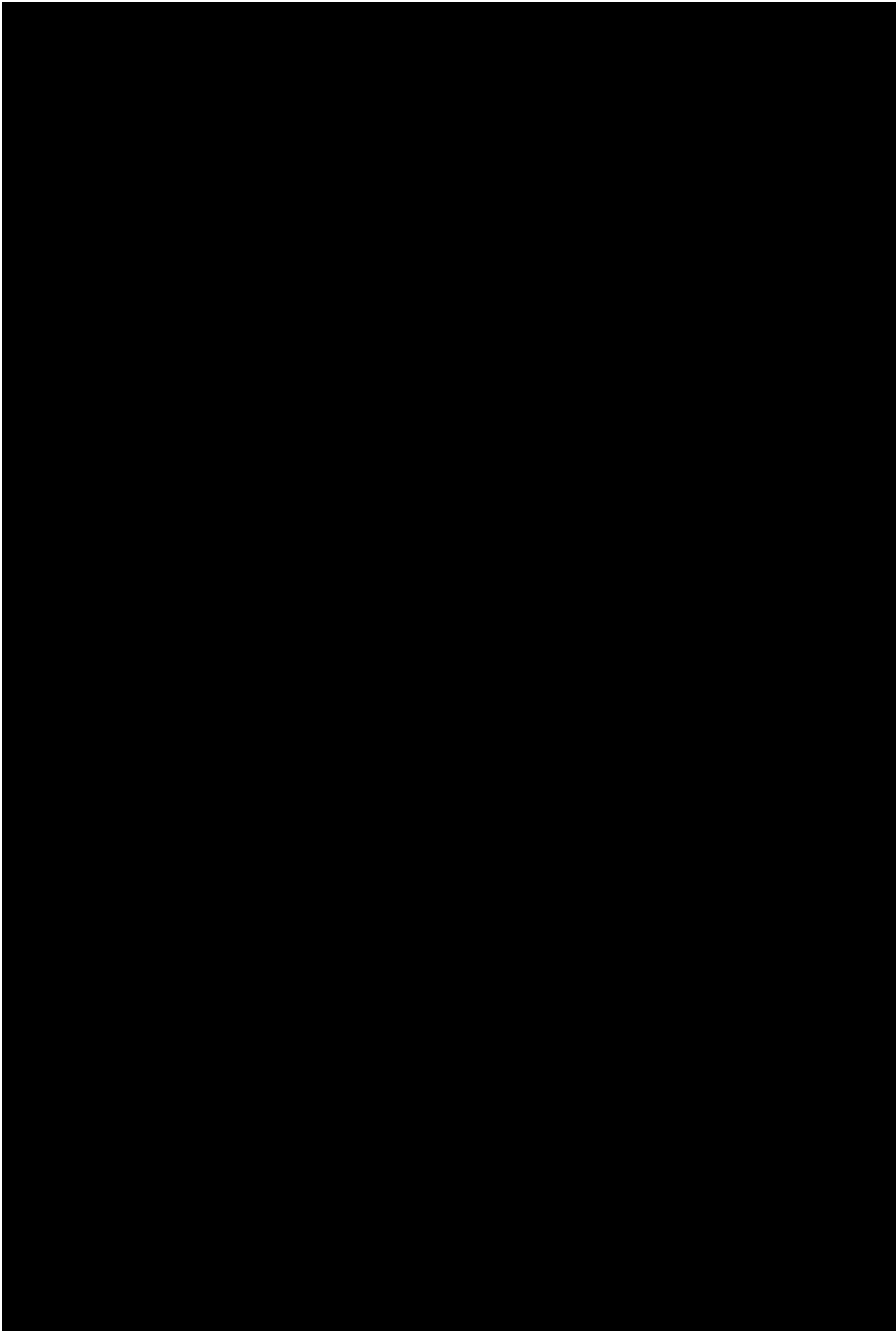


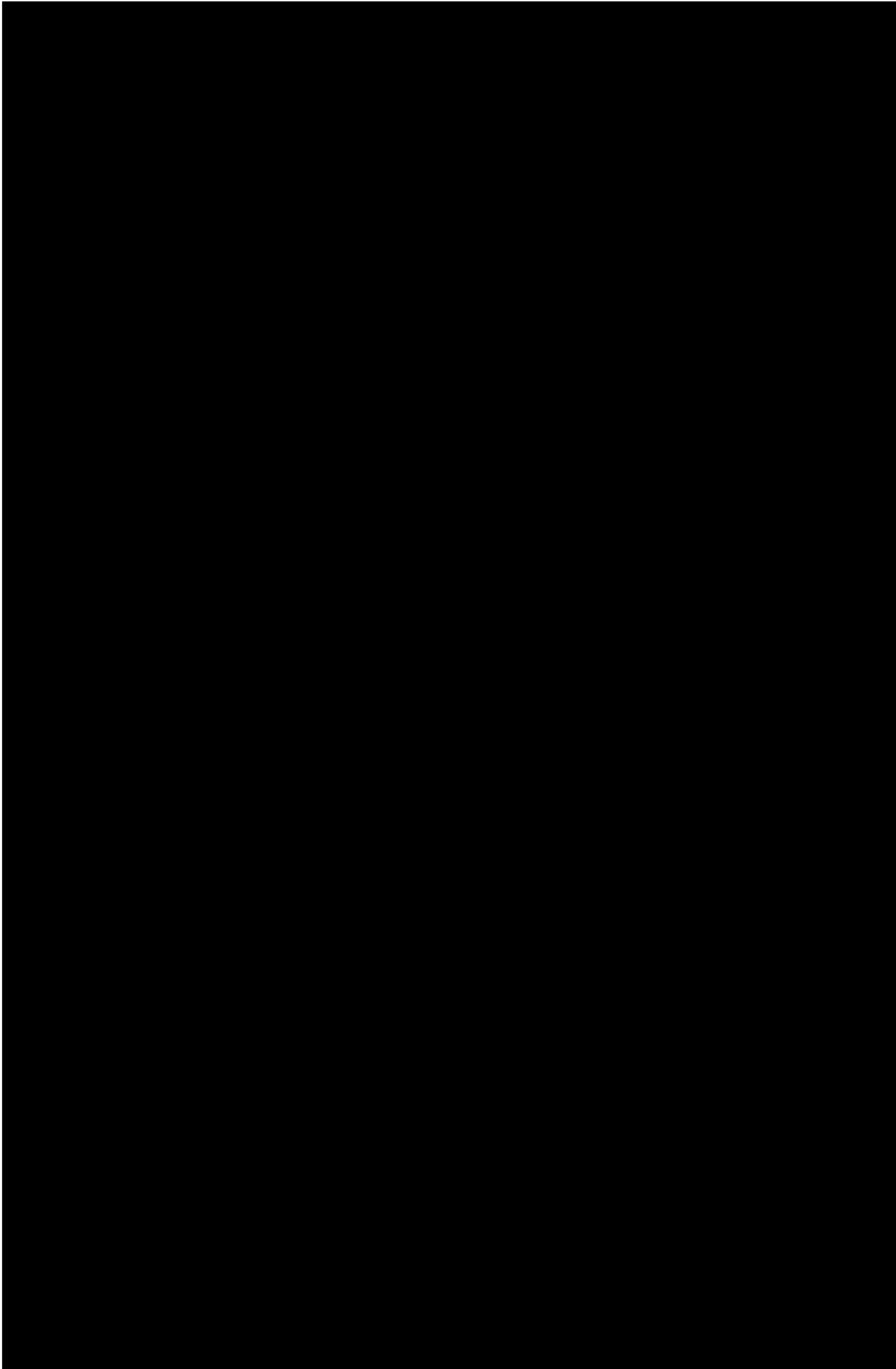


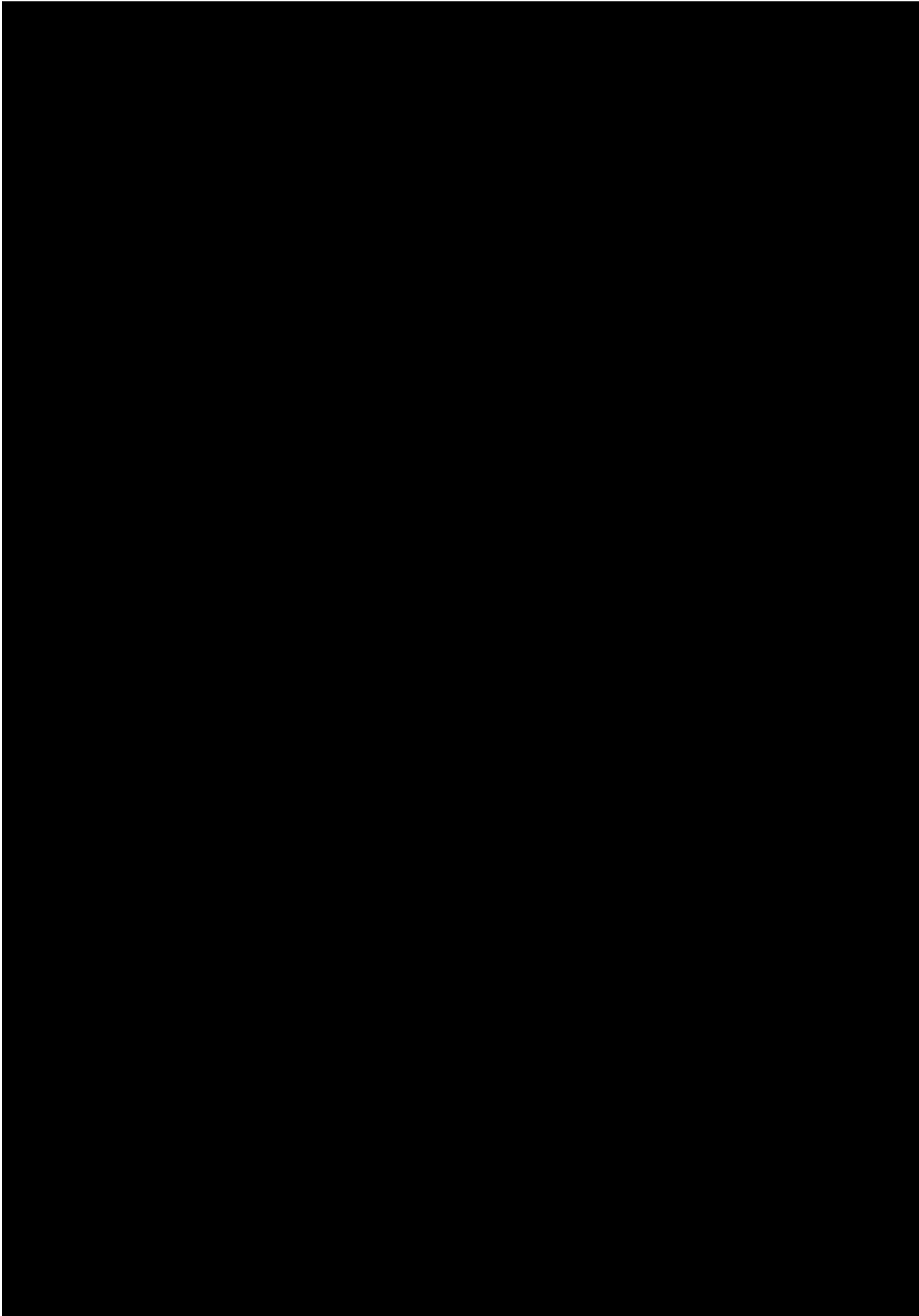


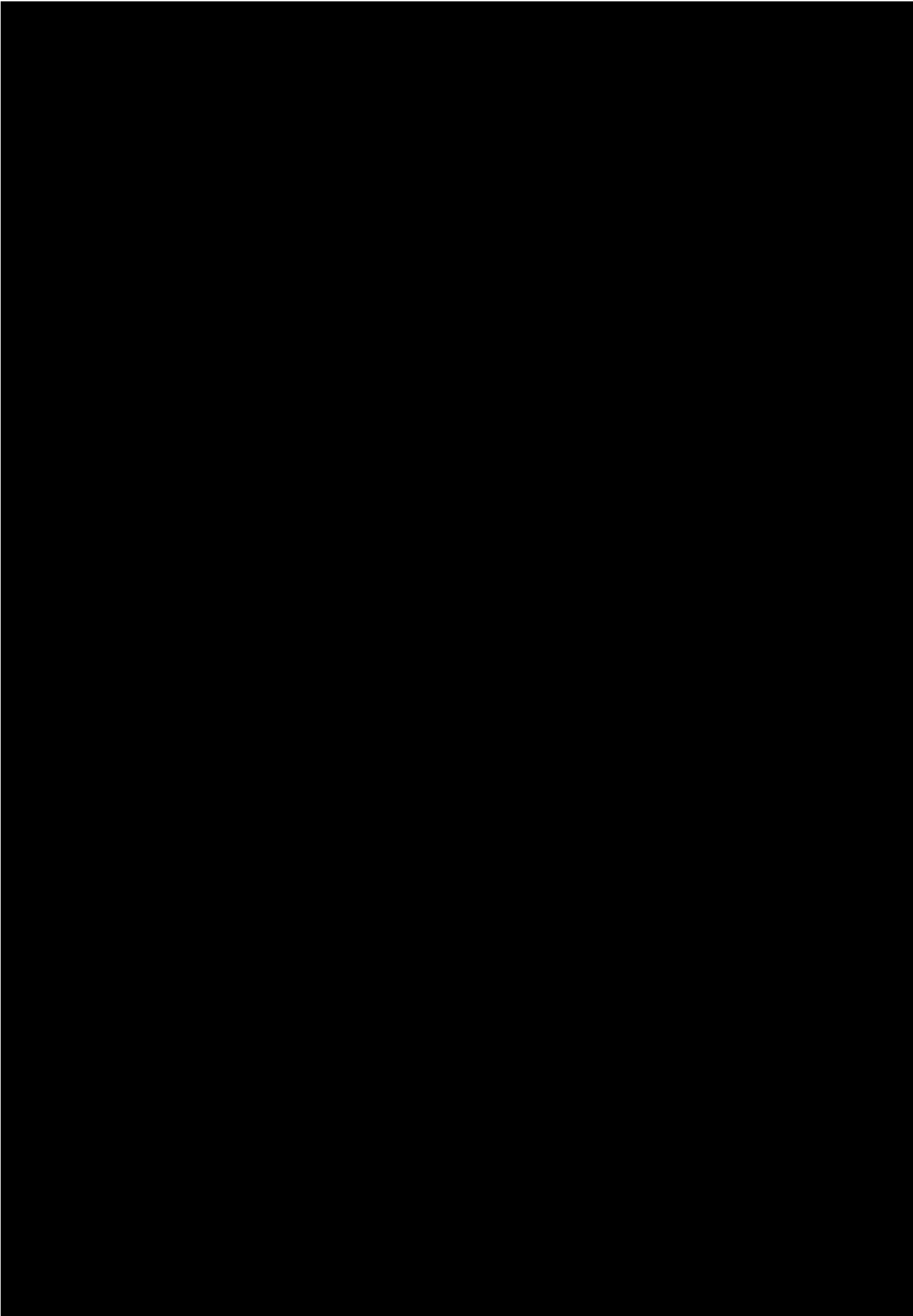


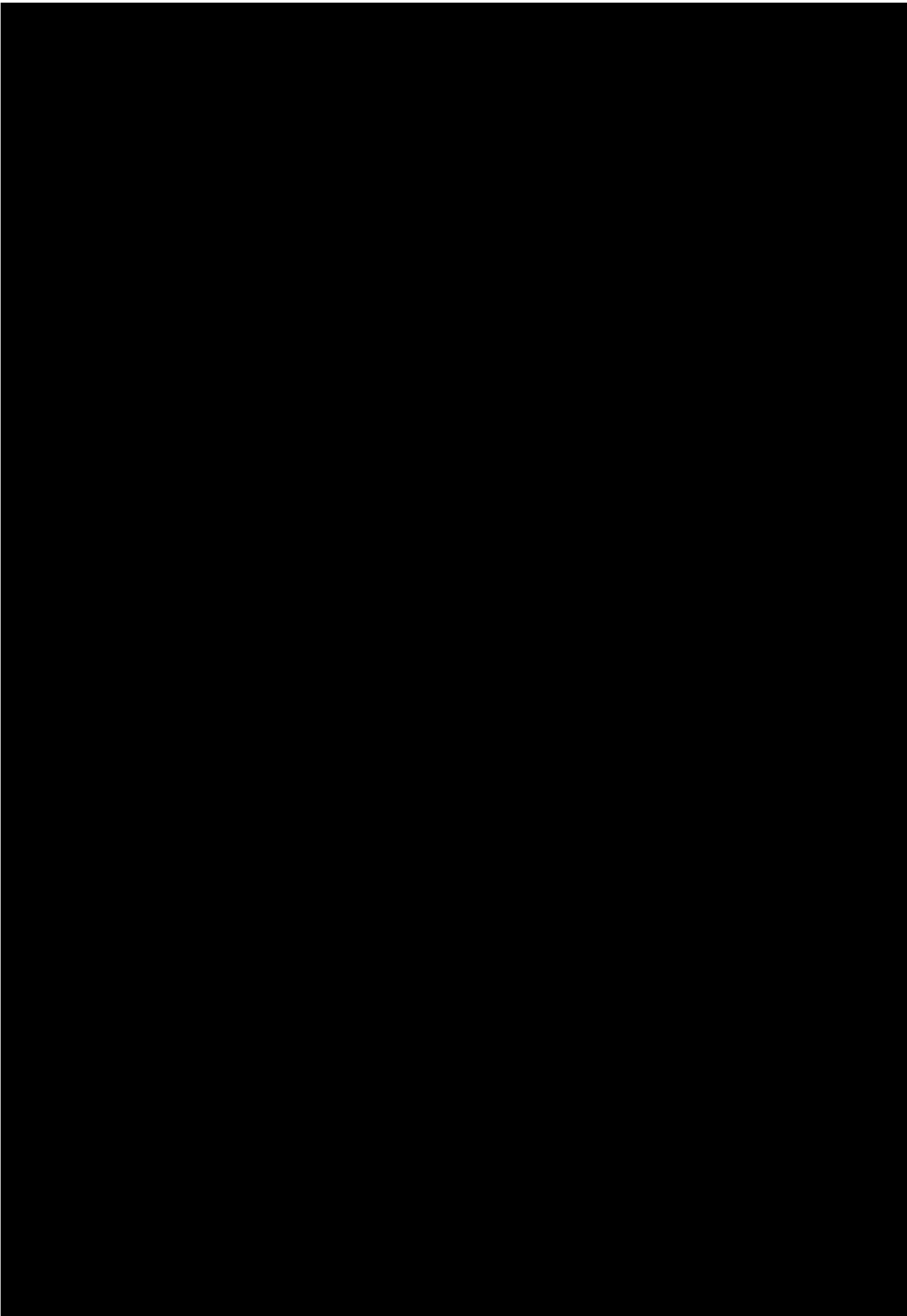


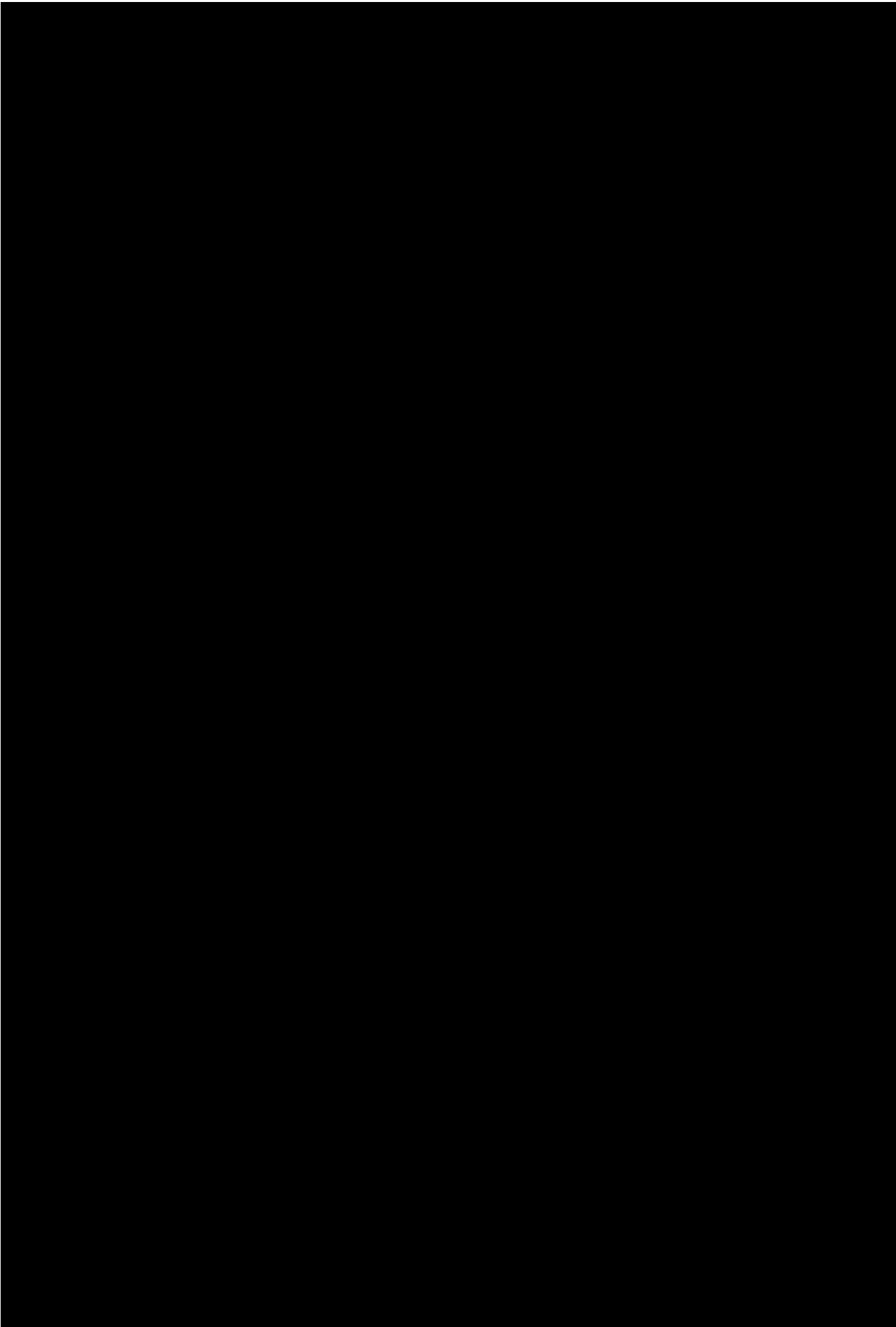


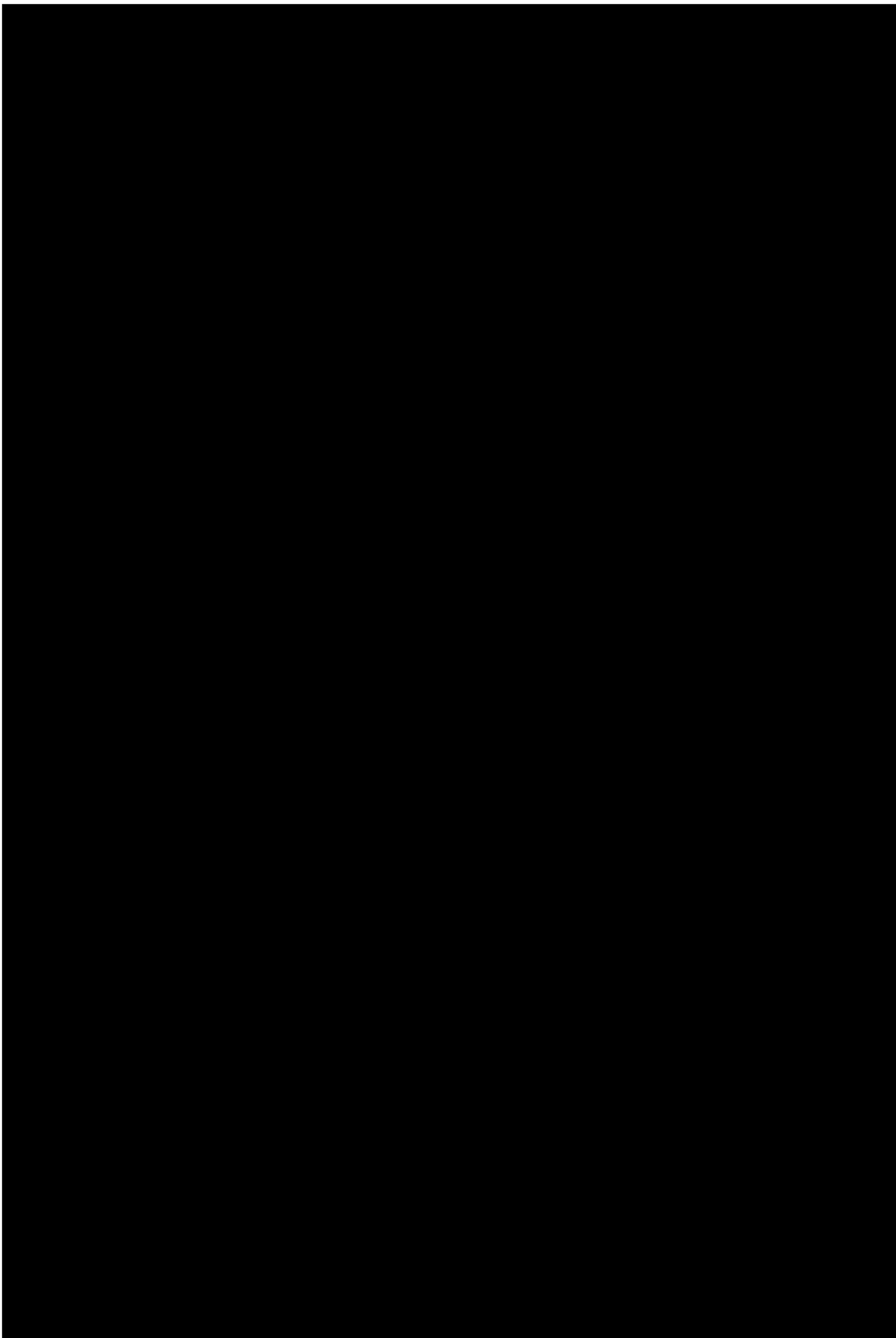


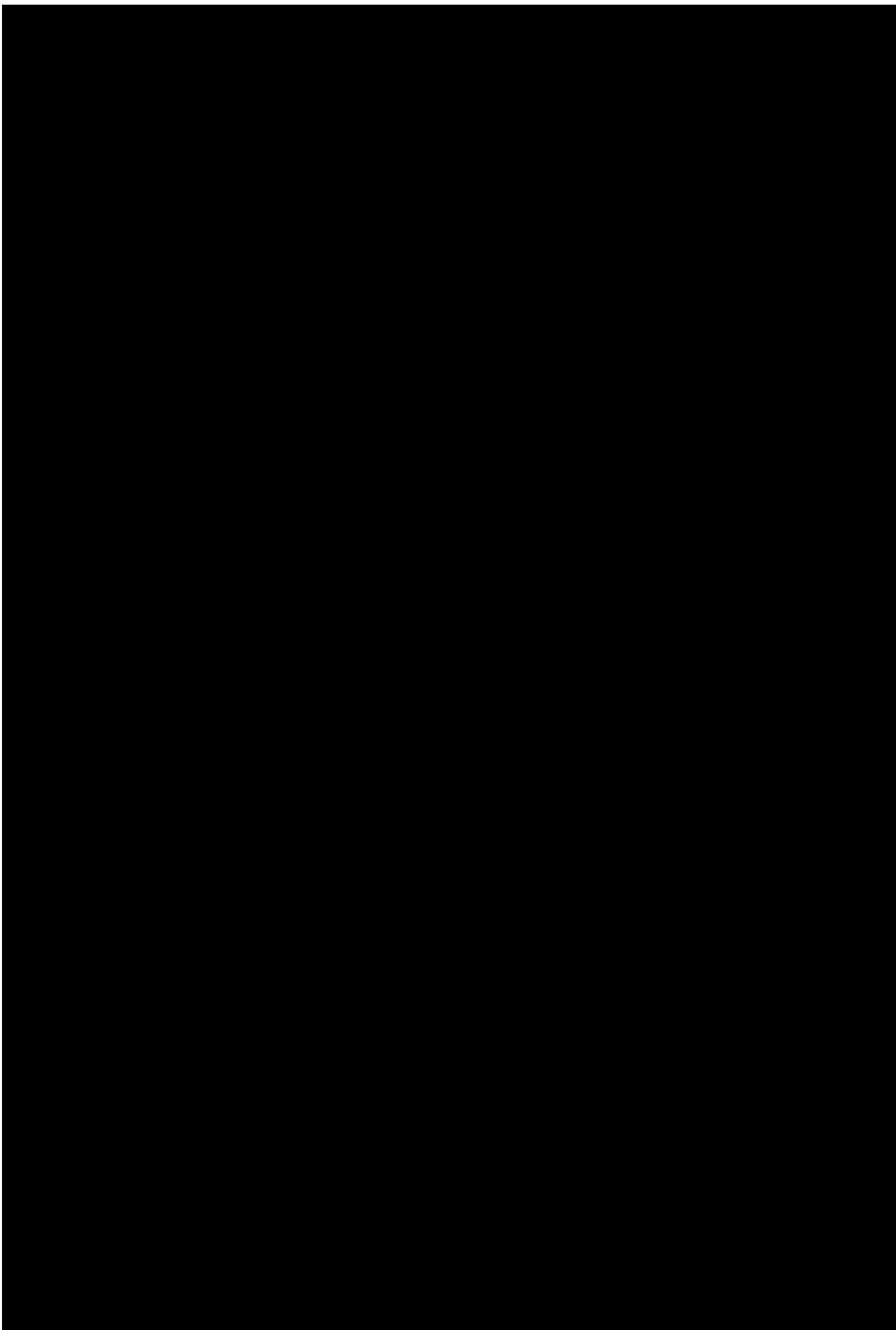


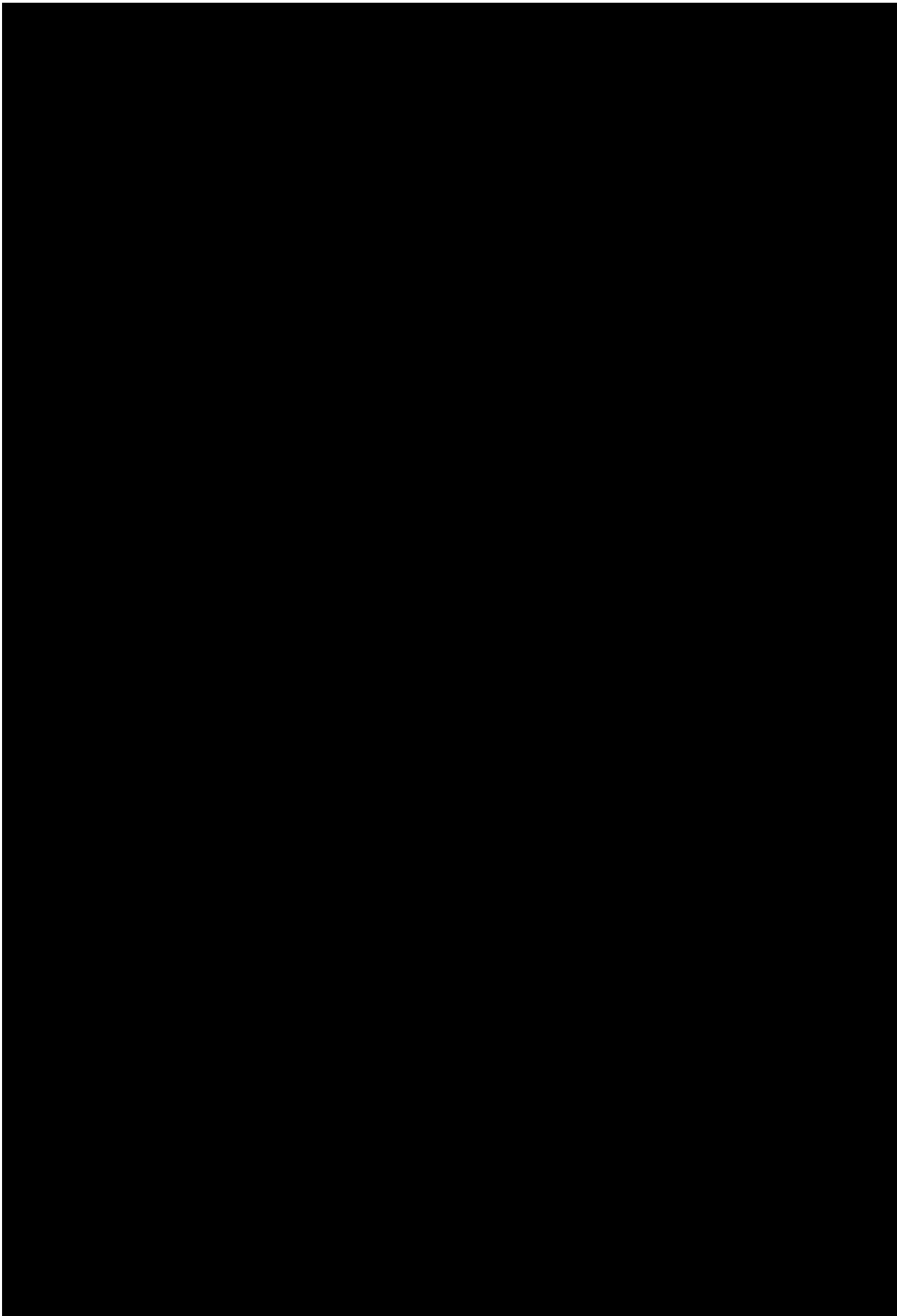


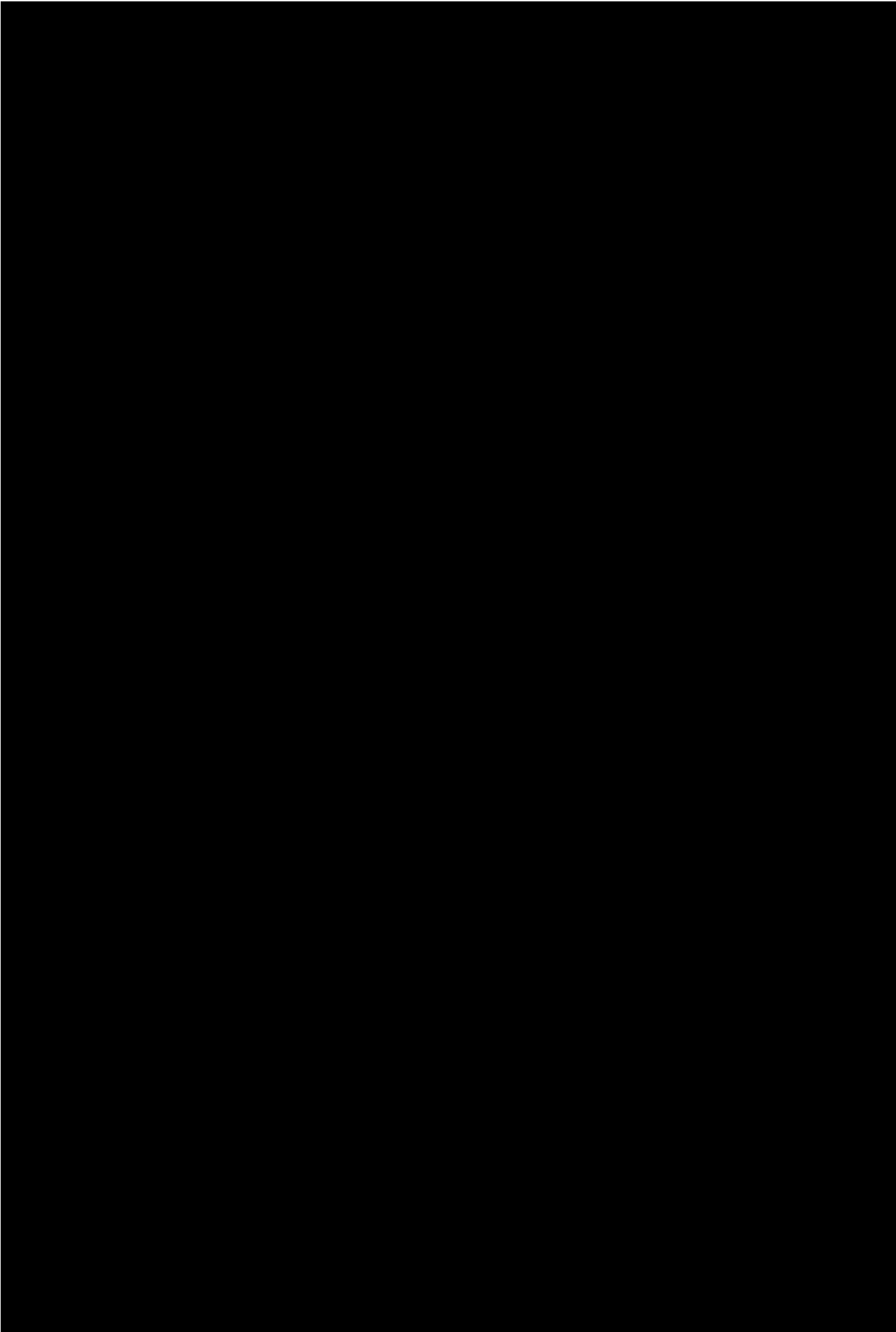


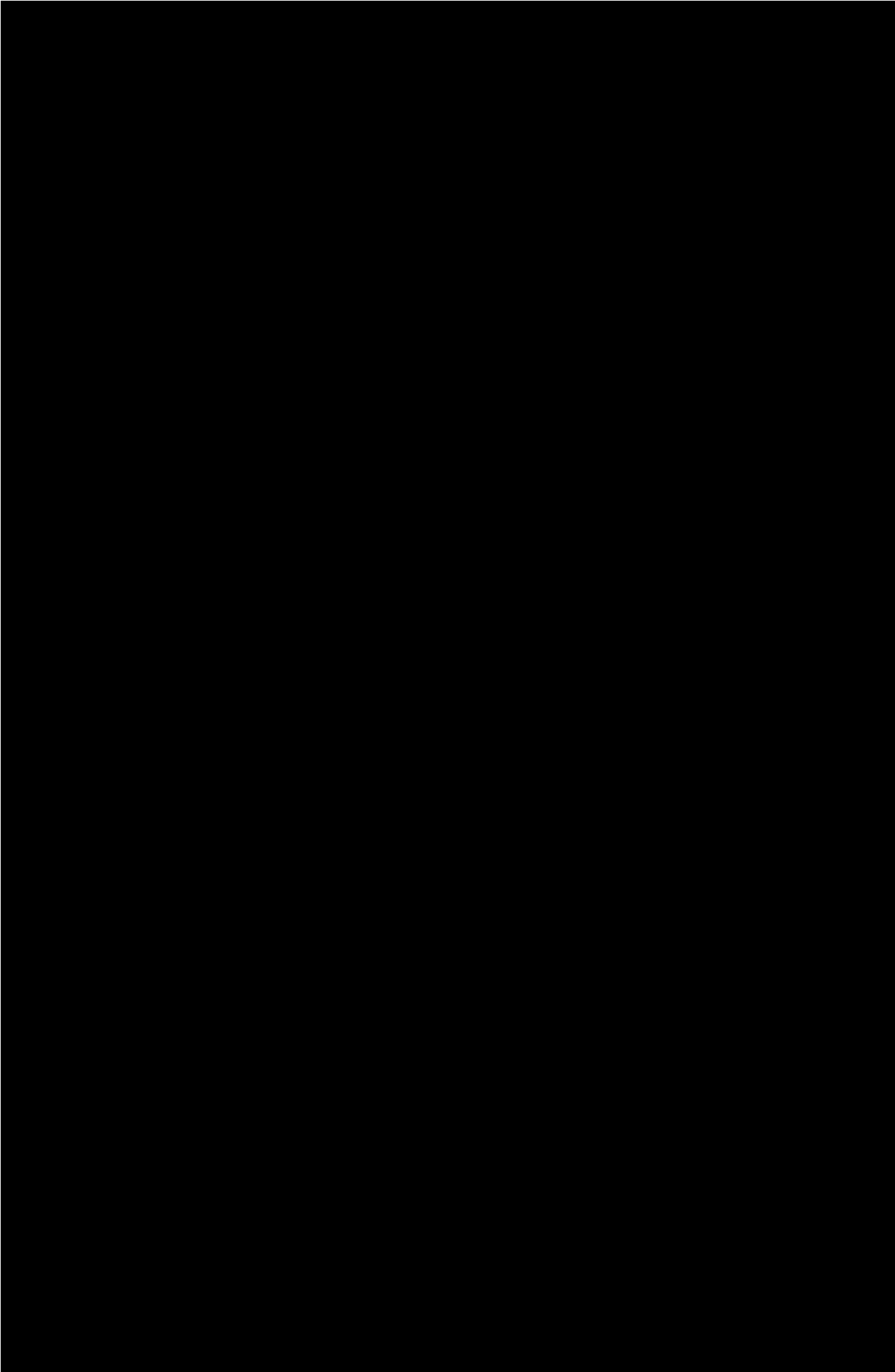


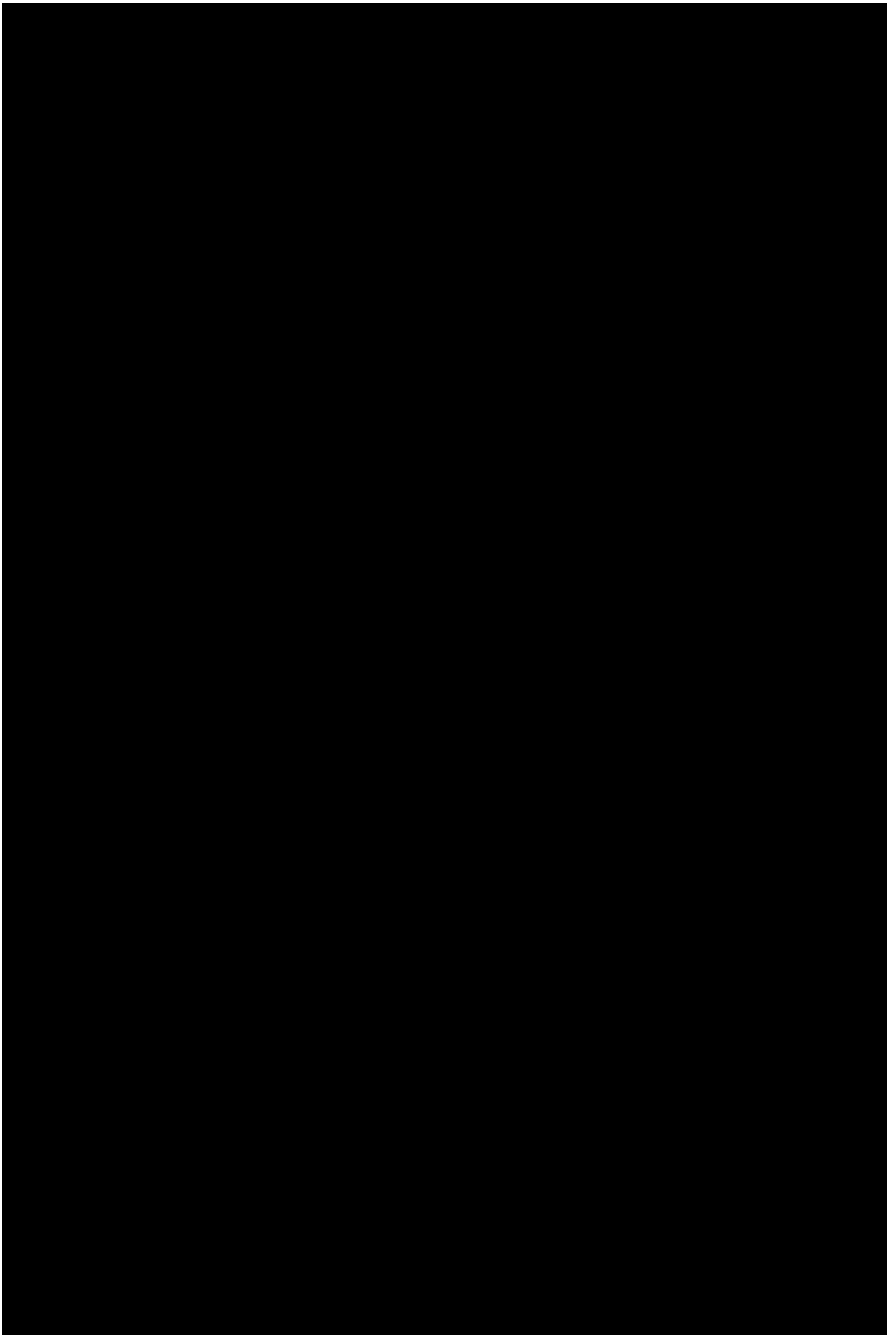


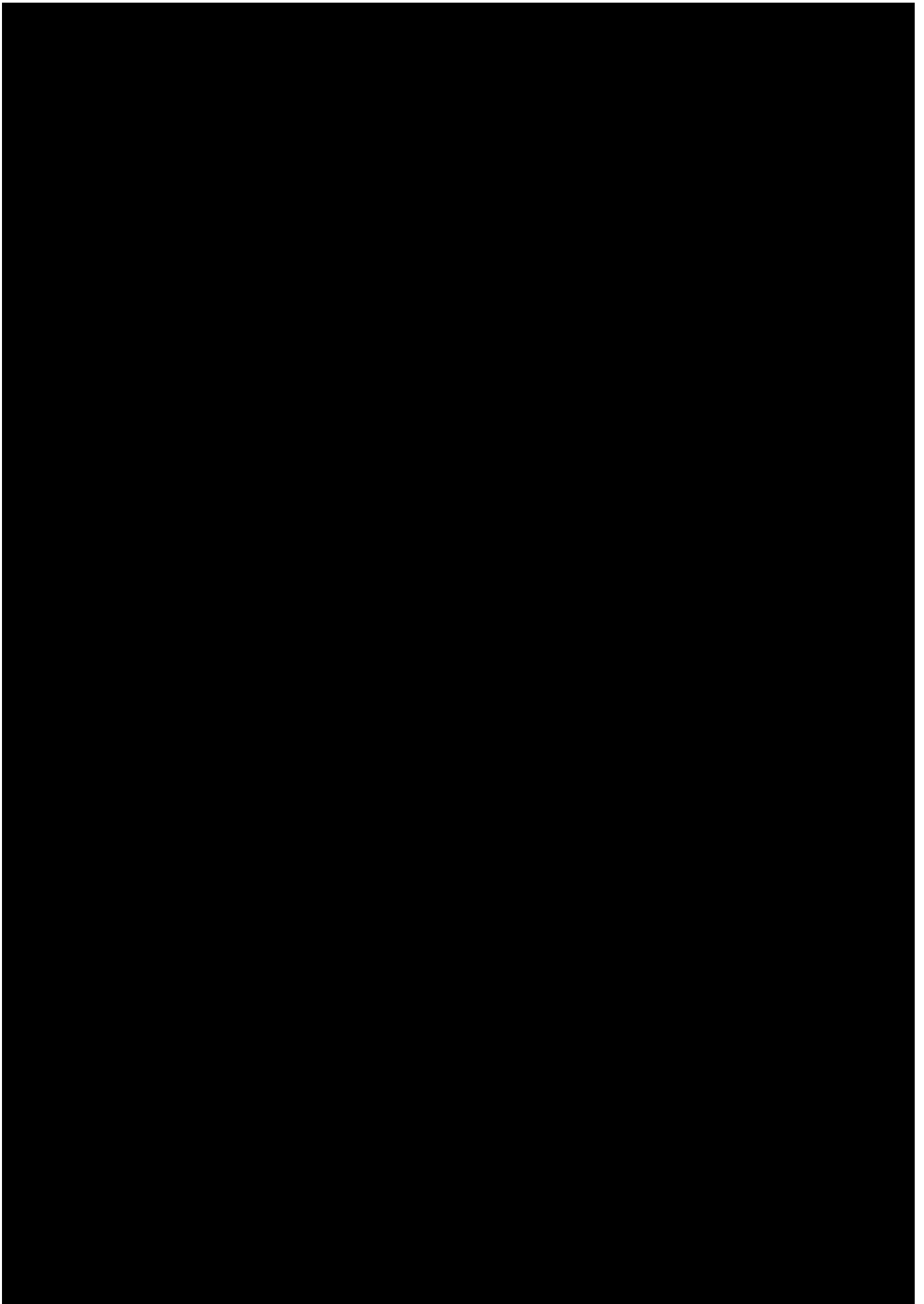












Schedule 18. Deed of Novation (Principal, Contractor and Subcontractor)

(Clause 2.2(g))

THIS DEED OF NOVATION is made on [] between the following parties:

1. **Sydney Metro (ABN 12 354 063 515)** of Level 43, 680 George Street, Sydney NSW 2000 ("Principal")
2. [] ABN [] of [] ("CN Contractor"); and
3. [] ABN [] of [] ("Subcontractor").

Recitals

- A. By agreement dated [] (the "**Subcontract**"), the Principal engaged the Subcontractor to, and the Subcontractor agreed to, undertake certain works for the Principal (the "**Subcontract Works**").
- B. By agreement dated [] (the "**Contract**"), the Principal engaged the CN Contractor to, and the CN Contractor agreed to, undertake certain works for the Principal, which includes the Subcontract Works.
- C. Under the Contract and the Subcontract, the CN Contractor and the Subcontractor must enter into this deed when the Principal requires them to do so.
- D. Subject to this deed, the Subcontractor agrees to accept the CN Contractor in place of the Principal for the performance of all the obligations of the Principal and to release completely and discharge the Principal from all of its obligations under the Subcontract and from all claims and demands in respect of it.

THIS DEED WITNESSES that in consideration, among other things, of the mutual promises contained in this deed, the parties agree:

1. The Subcontractor must perform its obligations under, and be bound by, the Subcontract as if the CN Contractor was originally named in the Subcontract as the Principal.
2. The Subcontractor:
 - (a) releases and forever discharges the Principal from its obligations under the Subcontract and from all claims and demands in respect of the Subcontract; and
 - (b) accepts the liability of the CN Contractor in place of the liability of the Principal in respect of the Subcontract.
3. The CN Contractor must perform all the obligations of the Principal under, and be bound by, the Subcontract as if the CN Contractor were originally named in the Subcontract as the Principal.
4. Upon the execution and exchange of this deed:

- (a) the Principal must release any securities given to it by the Subcontractor in accordance with the Subcontract;
- (b) the Subcontractor must give the CN Contractor security in the same form and for the same amounts as any security required by the Subcontract; and
- (c) the Subcontractor must ensure that the CN Contractor is appropriately noted on all relevant insurance policies as required by the Subcontract.

5. This deed is governed by the laws of New South Wales and the parties agree to submit to the non exclusive jurisdiction of the courts of that state.

EXECUTED by the parties as a deed:

Executed by [] ABN []
by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Executed by [] ABN []
by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Executed by [] ABN [] by
or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Schedule 19. Not used



Schedule 20. CN Contractor's Certificate of Construction Compliance

(Clauses 7.1(c) and 11.6(a)(ii)(B))

CONTRACTOR'S CERTIFICATE OF CONSTRUCTION COMPLIANCE	
CONTRACTOR:	
<u>WORK PACKAGE</u>	<u>DESCRIPTION</u>
<i>(Attach schedule of work packages if insufficient space)</i>	
<p>I certify that the procurement/construction of the work packages or part thereof described above have been completed to the extent indicated above in accordance with the requirements of the "Sydney Metro City & Southwest – Crows Nest Station Development – Construct Only Delivery Deed" (Contract No: 505) dated <u>[insert]</u> (as amended from time to time) (Contract) between the Principal and _____, and comply with the requirements of the Contract, subject to the register of outstanding minor construction non conformance and unresolved issues attached.</p> <p>I further certify that the attached compliance records as required by the Contract reflect the true status of the work packages.</p> <p>NAME: _____ SIGNATURE: _____ DATE: / / <i>(Contractor's Representative)</i></p>	
THIS SECTION MUST BE COMPLETED BY THE RELEVANT CONTRACTOR'S SUBCONTRACTOR	
<p>I certify that the procurement/construction of the work packages (one certificate per work package) or part thereof described above have been completed to the extent indicated above in accordance with the requirements of the Contract between the Principal and _____, and comply with the requirements of the Contract, subject to the register of outstanding minor construction non-conformances and unresolved issues attached.</p> <p>I further certify that the attached compliance records as required by the Contract reflect the true status of the work packages.</p> <p>SIGNATURE: _____ <i>(Contractor's Subcontractor)</i></p> <p>DATE: _____</p>	

Schedule 20A. CN Contractor's Certificate of Milestone Achievement

(Clause 12.1A)

To: The Principal's Representative and the Independent Certifier

From: *[Insert name of CN Contractor]* (ABN [])

This certificate is given in accordance with the "Sydney Metro City & Southwest – Crows Nest – Station Development – Construct Only Delivery Deed" (Contract No: 505) dated *[insert]* (as amended from time to time) (**Construct Only Delivery Deed**). Words defined in the Construct Only Delivery Deed have the same meaning in this certificate.

In accordance with the terms of clause 12.1A of the Construct Only Delivery Deed, we hereby certify that Milestone Achievement *[insert number]* has been achieved by the CN Contractor on *[insert date]* in accordance with the terms of the Construct Only Delivery Deed.

.....
Signed for and on behalf of
[Insert name of the CN Contractor]

Schedule 20B. Notice of Milestone Achievement

(Clauses 1.1 and 12.1A(e)(i))

[ON INDEPENDENT CERTIFIER LETTERHEAD]

[Insert date]

Sydney Metro
[Insert address]

CN Contractor
[Insert address]

Dear [Insert name]

**NOTICE OF MILESTONE ACHIEVEMENT
Sydney Metro City & Southwest
Crows Nest Construct Only Delivery Deed
Milestone [insert number]**

This Notice of Milestone Achievement is given in accordance with the "Sydney Metro City & Southwest – Crows Nest Station Development – Construct Only Delivery Deed" (Contract No: 505) dated [insert] (as amended from time to time) (**Construct Only Delivery Deed**). Words defined in the Construct Only Delivery Deed have the same meaning in this certificate.

In accordance with clause 12.1A(e)(i) of the Construct Only Delivery Deed, the Independent Certifier confirms that Milestone Achievement in respect of Milestone [insert number] has been achieved. The Date of Milestone Achievement in respect of Milestone [insert number] is [insert date].

A list of Minor Defects, Agreed Defects and Accepted Defects is **attached**.

This Notice of Milestone Achievement does not relieve the CN Contractor of its obligation to rectify Defects (including Minor Defects and Agreed Defects listed in this notice) under clause 8 of the Construct Only Delivery Deed and to complete any other outstanding obligations under the Construct Only Delivery Deed.

Yours sincerely

.....
[Insert name]
for and on behalf of the Independent Certifier

Attachment – List of Minor Defects, Agreed Defects and Accepted Defects

No. Minor Defects	
1.	
2.	
No. Agreed Defects	
1.	
2.	
No. Accepted Defects	
1.	
2.	

Schedule 21. CN Contractor's Certificate of Substantial Completion

(Clause 12.2(d))

To: The Principal's Representative and the Independent Certifier

From: *[Insert name of CN Contractor]* (ABN [])

This certificate is given in accordance with the "Sydney Metro City & Southwest – Crows Nest Station Development – Construct Only Delivery Deed" (Contract No: 505) dated *[insert]* (as amended from time to time) (**Construct Only Delivery Deed**). Words defined in the Construct Only Delivery Deed have the same meaning in this certificate.

In accordance with the terms of clause 12.2(d) of the Construct Only Delivery Deed, we hereby certify that Substantial Completion of Portion *[insert number]* has been achieved by the CN Contractor on *[insert date]* in accordance with the terms of the Construct Only Delivery Deed.

.....
Signed for and on behalf of
[Insert name of the CN Contractor]

Schedule 21A. Notice of Substantial Completion

(Clauses 1.1 and 12.2(e)(i))

[ON INDEPENDENT CERTIFIER LETTERHEAD]

[Insert date]

Sydney Metro
[Insert address]

CN Contractor
[Insert address]

Dear [Insert name]

**NOTICE OF SUBSTANTIAL COMPLETION
Sydney Metro City & Southwest
Crows Nest Construct Only Delivery Deed
Works – Portion [insert number]**

This Notice of Substantial Completion is given in accordance with the "Sydney Metro City & Southwest – Crows Nest Station Development – Construct Only Delivery Deed" (Contract No: 505) dated [insert] (as amended from time to time) (**Construct Only Delivery Deed**). Words defined in the Construct Only Delivery Deed have the same meaning in this certificate.

In accordance with clause 12.2(e)(i) of the Construct Only Delivery Deed, the Independent Certifier confirms that Substantial Completion in respect of Portion [insert number] has been achieved. The Date of Substantial Completion in respect of Portion [insert number] is [insert date].

A list of Minor Defects, Agreed Defects and Accepted Defects is **attached**.

This Notice of Substantial Completion does not relieve the CN Contractor of its obligation to rectify Defects (including Minor Defects and Agreed Defects listed in this notice) under clause 8 of the Construct Only Delivery Deed and to complete any other outstanding obligations under the Construct Only Delivery Deed.

Yours sincerely

.....
[Insert name]
for and on behalf of the Independent Certifier

Attachment – List of Minor Defects, Agreed Defects and Accepted Defects

No. Minor Defects	
1.	
2.	
No. Agreed Defects	
1.	
2.	
No. Accepted Defects	
1.	
2.	

Schedule 22. CN Contractor's Certificate of Completion

(Clause 12.3(d))

To: The Principal's Representative and the Independent Certifier

From: *[Insert name of CN Contractor]* (ABN [])

This certificate is given in accordance with the "Sydney Metro City & Southwest – Crows Nest Station Development – Construct Only Delivery Deed" (Contract No: 505) dated *[insert]* (as amended from time to time) (**Construct Only Delivery Deed**). Words defined in the Construct Only Delivery Deed have the same meaning in this certificate.

In accordance with the terms of clause 12.3(d) of the Construct Only Delivery Deed, we hereby certify that Completion of Portion *[insert number]* has been achieved by the CN Contractor on *[insert date]* in accordance with the terms of the Construct Only Delivery Deed.

.....
Signed for and on behalf of
[Insert name of the CN Contractor]

Schedule 22A. Notice of Completion

(Clauses 1.1 and 12.3(e)(i))

[ON INDEPENDENT CERTIFIER LETTERHEAD]

[insert date]

Sydney Metro
[Insert address]

CN Contractor
[Insert address]

Dear [Insert name]

**NOTICE OF COMPLETION
Sydney Metro City & Southwest
Crows Nest Construct Only Delivery Deed
Works – Portion [insert number]**

This Notice of Completion is given in accordance with the "Sydney Metro City & Southwest – Crows Nest Station Development – Construct Only Delivery Deed" (Contract No: 505) dated [insert] (as amended from time to time) (**Construct Only Delivery Deed**). Words defined in the Construct Only Delivery Deed have the same meaning in this certificate.

In accordance with clause 12.3(e)(i) of the Construct Only Delivery Deed, the Independent Certifier confirms that Completion in respect of Portion [insert number] has been achieved. The Date of Completion in respect of Portion [insert number] is [insert date].

A list of Minor Defects, Agreed Defects and Accepted Defects is attached. **[Note: A list of Minor Defects, Agreed Defects and Accepted Defects must only be provided for Station Portions. For the Trackway Portion the rectification of all Minor Defects and Agreed Defects is a requirement for the achievement of Completion.]**

This Notice of Completion does not relieve the CN Contractor of its obligation to rectify Defects (including Minor Defects and Agreed Defects listed in this notice) under clause 8 of the Construct Only Delivery Deed and to complete any other outstanding obligations under the Construct Only Delivery Deed.

Yours sincerely

.....
[Insert name]

for and on behalf of the Independent Certifier

Attachment – List of Minor Defects, Agreed Defects and Accepted Defects

No. Minor Defects	
1.	
2.	
No. Agreed Defects	
1.	
2.	
No. Accepted Defects	
1.	
2.	

Schedule 23. Form of Site Interface Deed Poll

(Clauses 2.9(a)(ii)A, 2.11(b)(i)C and 3.1(g)(ii))

THIS DEED POLL is made on [year]

IN FAVOUR OF:

- (1) [Insert name] ABN [number] of [address] (Site Contractor);
 - (2) [Insert name] ABN [number] of [address] (Appointed Principal Contractor); and
 - (3) **Sydney Metro** ABN 12 354 063 515 a New South Wales Government agency constituted by section 38 of the Transport Administration Act 1988 (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (Principal),
- (together, the **Beneficiaries**)

GIVEN BY:

- (1) [Insert name] ABN [number] of [address] (Accessing Contractor)

RECITALS:

- (A) Pursuant to the deed titled "[insert]" between the Principal and the Site Contractor dated [insert] (Contract), the Site Contractor agreed to, among other things, **Opt**[design and] construct certain works and carry out certain activities (**Project Works**) on the land more particularly described in the Contract (the **Construction Site**). **[Note: Where the "Site Contractor" is the CN Contractor, the reference to design should be removed.]**
- (B) The Accessing Contractor has been appointed under a contract to undertake certain works and activities on the Construction Site (**Construction Site Interface Work**).
- (C) For the purposes of the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW) (together, the **WHS Legislation**), the Project Works and the Construction Site Interface Work are a 'construction project' within the meaning of the WHS Legislation.
- (D) The Appointed Principal Contractor is authorised to have management and control of the workplace for the purpose of discharging the duties imposed on a principal contractor for the construction project.
- (E) Under the provisions of the Contract, the Principal is required to procure the provision of this deed poll from certain contractors that undertake Construction Site Interface Work.

This deed poll witnesses that the Accessing Contractor hereby covenants, warrants and agrees with and for the benefit of the Beneficiaries as follows:

1. In consideration of the Site Contractor and the Appointed Principal Contractor accepting this deed poll, the Accessing Contractor agrees that:
 - (a) the Accessing Contractor, its subcontractors and their respective personnel while they are on the Construction Site, will comply with Construction Site safety regulations, any

Construction Site rules or regulations and with all directions of the Site Contractor and the Appointed Principal Contractor with respect to work health and safety;

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

2. The Accessing Contractor indemnifies the Site Contractor and the Appointed Principal Contractor against any delay, damage, expense, loss, penalty or liability suffered or incurred by the Site Contractor and the Appointed Principal Contractor as a result of:
 - (a) any failure by the Accessing Contractor to comply with any direction given by the Site Contractor or the Appointed Principal Contractor in accordance with this deed poll; or
 - (b) any breach by the Accessing Contractor, any of its subcontractors or their respective personnel of:
 - (i) their respective contractual or legislative work health and safety obligations; or
 - (ii) the provisions of this deed poll.

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

EXECUTED as a deed poll.

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

Signature of director

Signature of company secretary/other director

Full name of director

Full name of company secretary/other director

Schedule 24. Not used



Schedule 25. Not used



Schedule 26. Modification to the Expert Determination Rules

(Clause 15.5)

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

Modifications are underlined or ~~struck out~~.

RULE 1 Definitions

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

"IDAR Panel Agreement" means the agreement titled "Independent Dispute Avoidance and Resolution Panel Agreement" between the Principal, the Members, the CN Contractor and any other party that accedes to the agreement from time to time.

"Member" has the meaning given in the IDAR Panel Agreement.

"Relevant Proportionate Liability Legislation" means:

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

"Relevant Security of Payment Legislation" means:

- (a) the *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (b) the *Building and Construction Industry Security of Payment Act 2002* (Vic);
- (c) the *Building and Construction Industry Payments Act 2004* (Qld);
- (d) the *Construction Contracts Act 2004* (WA);
- (e) the *Construction Contracts (Security of Payment) Act 2004* (NT);
- (f) the *Building and Construction Industry (Security of Payment) Act 2009* (ACT);

- (g) the Building and Construction Industry Security of Payment Act 2009 (SA);
- (h) the Building and Construction Industry Security of Payment Act 2009 (Tas); and
- (i) any Regulations enacted pursuant to the Acts listed in (a)-(h) above.

"Subject-Matter Expert" means those persons listed in Schedule 3 to the IDAR Panel Agreement.

"the Contract" mean the deed titled "Crows Nest Construct Only Delivery Deed" (Contract No: 505) between the Principal and the CN Contractor dated 16 October 2020.

RULE 2 Appointment of the Expert

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

who accepts appointment as Expert.
2. Rule 2.2 is deleted in its entirety.
3. [no modification]
4. [no modification]
5. [no modification]

RULE 3 Agreement to be bound

1. [no modification]
2. Rule 3.2 is deleted in its entirety.

RULE 5 Role of the Expert

1. The Expert shall determine the Dispute as an expert in accordance with these Rules, the Contract, the requirements of procedural fairness and according to law.
2. [no modification]
3. [no modification]
4. (a) The Expert shall be independent of, and act fairly and impartially as between the parties, giving each a reasonable opportunity of putting its case and dealing with that of any opposing party, and a reasonable opportunity to make submissions on the conduct of the Process.

(b) The Expert must take all reasonable steps to avoid any conflict of interest, potential conflict of interest or other circumstances that might reasonably be considered to

adversely affect the Expert's independence or capacity to act fairly and impartially in relation to the Dispute.

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

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

5. [no modification]

RULE 9 Conduct of the Process

1. [no modification]

2. [no modification]

3. ~~If The parties agree in writing (in the Agreement or otherwise), that the procedure in Schedule B shall~~ will apply.

4. The rules of evidence do not apply to the Process.

RULE 10 The Expert's Determination

1. ~~As soon as reasonably practicable after receiving the submissions and evidentiary material from the parties pursuant to Rule 9, t~~The Expert shall determine the Dispute between the parties and notify such determination in writing to the parties within the time period specified in the Contract.

2. [no modification]

3. ~~Subject to any rule of law or equity or written agreement of the parties to the contrary, Unless otherwise agreed by the parties,~~ the Expert's determination:

a. may include for the payment of interest on any monetary sum determined, in such amount as the Expert considers reasonable;

b. must allow for any amount already paid to a party under or for the purposes of any Relevant Security of Payment Legislation;

c. may make such orders as he or she considers appropriate for the restitution of any amount so paid, and such other orders as he or she considers appropriate; and

d. to the extent permitted by law, will not apply or have regard to the provisions of any Relevant Proportionate Liability Legislation.

4. [no modification]

RULE 12 Waiver of Right to Object

Rule 12 is deleted in its entirety.

RULE 14 Extension of Limitation Period

Rule 14 is deleted in its entirety.

SCHEDULE B

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

Schedule 27. Not used



Schedule 28. Not used



Schedule 29. Site Access Schedule

(Clause 3.1)

1. OVERVIEW AND SCOPE

1.1 General

- (a) This Schedule 29 identifies:
- (i) the Site including Temporary Areas;
 - (ii) the Early Site Access Date, Site Access Date, and Site Access Expiry Date for each part of the Site;
 - (iii) the restrictions upon access, possession and use that will apply to the CN Contractor's access to or use of each part of the Site; and
 - (iv) the restrictions on the type of Works or Temporary Works that may be constructed on each part of the Site.
- (b) This Schedule 29 is subject to the requirements of:
- (i) this Contract; and
 - (ii) any other document or condition referred to in this Schedule 29 (including in the "Restrictions upon access, possession and use" column of the tables contained in sections 3 and 4 of this Schedule 29).

1.2 References

In this Schedule 29, a reference to:

- (a) an **Area** is a reference to an area of land depicted in the Site Drawings with an individual Area reference (e.g. Area 'A4');
- (b) **Site Drawings** is a reference to the drawings described in Table 1 of section 2.1 of this Schedule 29;
- (c) **Lot [No.] DP [No.]** are references to land contained in the lots and deposited plans (DPs) registered with LRS as at the date of this Contract under the *Real Property Act 1900* (NSW); and
- (d) **Lot [No.] in Draft DP [No.]** is a reference to the area contained in the lot so numbered in the unregistered plan so numbered in Table 2 of section 2.1 of this Schedule 29.

2. CONSTRUCTION SITE – DRAWINGS

2.1 Drawings and Unregistered Plans of Acquisition

- (a) This Schedule 29 contains the drawings identified in Table 1 of this section 2.1 and the Unregistered Plans of Acquisition identified in Table 2 of this section 2.1, which are included in Schedule 50 as electronic files.

Table 1 Drawings

Drawing number	Revision	Drawing title (number of sheets)	Electronic reference	file
NWRLSRT-RPS-SCN-SR-DWG-000030-CROWS NEST ISD SITE ACCESS PLAN-A3-Exploded Tables.dwg	A.3	SMC & SW CROWS NEST STATION ISD SITE ACCESS PLAN (Sheet 1 of 2)	NWRLSRT-RPS-SCN-SR-DWG-000030-CROWS NEST ISD SITE ACCESS PLAN-A3-Exploded Tables	
NWRLSRT-RPS-SCN-SR-DWG-000030-CROWS NEST ISD SITE ACCESS PLAN-A3-Exploded Tables.dwg	A.3	SMC & SW CROWS NEST STATION ISD SITE ACCESS PLAN (Sheet 2 of 2)	NWRLSRT-RPS-SCN-SR-DWG-000030-CROWS NEST ISD SITE ACCESS PLAN-A3-Exploded Tables	

Table 2 Unregistered Plans of Acquisition

Draft DP No.	Plan number	Drawing title (number of sheets)	Electronic reference	file
N/A	N/A	N/A	N/A	

2.2 Explanation of Tables 3 and 4

- (a) Tables 3 and 4 in this Schedule 29 comprise 6 columns as follows:
 - (i) "Area of Site" specifies the specific parcel of land within the Site;
 - (ii) "Early Site Access Date" is the earliest date on which, if the Principal's Representative gives the CN Contractor a notice under clause 3.1B(d), the Construction Licence in respect of the land referred to in the corresponding "Area of Site" column may commence, and must be read in conjunction with the corresponding "Site Access Expiry Date" and "Restrictions upon access, possession and use" columns;
 - (iii) "Site Access Date" is the date on which the Principal must give the CN Contractor access to the land referred to in the corresponding "Area of Site" column, and must be read in conjunction with the corresponding "Site Access Expiry Date" and "Restrictions upon access, possession and use" columns;
 - (iv) "Site Access Expiry Date" is the date on which the Principal is no longer required to give the CN Contractor access to the land referred to in the corresponding "Area of Site" column;

- (v) "Restrictions upon access, possession and use" either:
 - (A) contains a cross reference to a document; or
 - (B) specifies terms and conditions,

with which the CN Contractor must comply in accessing or occupying the land referred to in the corresponding "Area of Site" column; and
- (vi) "Restrictions on type of work" are the restrictions on the type of work that may be carried out by the CN Contractor on the land referred to in the corresponding "Area of Site" column.

2.3 **General terms and restrictions upon access**

The "Restrictions upon access, possession and use" columns of Tables 3 and 4 in this Schedule 29 do not limit the CN Contractor's obligations to comply with this Contract (including the Station Specification) or the Project Plans.

2.4 **Boundaries**

- (a) Subject to section 2.4(b) of this Schedule 29, each Area in the Site Drawings contains the land enclosed by the plan area represented for that Area in the Site Drawings.
- (b) Areas in the Site Drawings are unrestricted in height and depth above and below the plan area represented in the Site Drawings, unless a limit is specified in the Site Drawings or this Schedule 29.
- (c) Where boundaries of the Site are identified as curved in the Site Drawings, the boundary is defined by the schedule of curved boundaries included in the Site Drawings.

3. **SITE**

Table 3 Site

No	Area of Site	Early Site Access Date	Site Access Date	Site Access Expiry Date	Restrictions upon access, possession and use	Restrictions on type of work
1.	Areas 'SA-L1', 'SA-L2', 'SA-L3', 'SA-L4', 'SA-L5' and 'SA-L6'				N/A	N/A
2.	Areas 'SA-L7' and 'SA-L8'				N/A	N/A

4. TEMPORARY AREAS FORMING PART OF THE SITE

Table 4 Temporary Areas

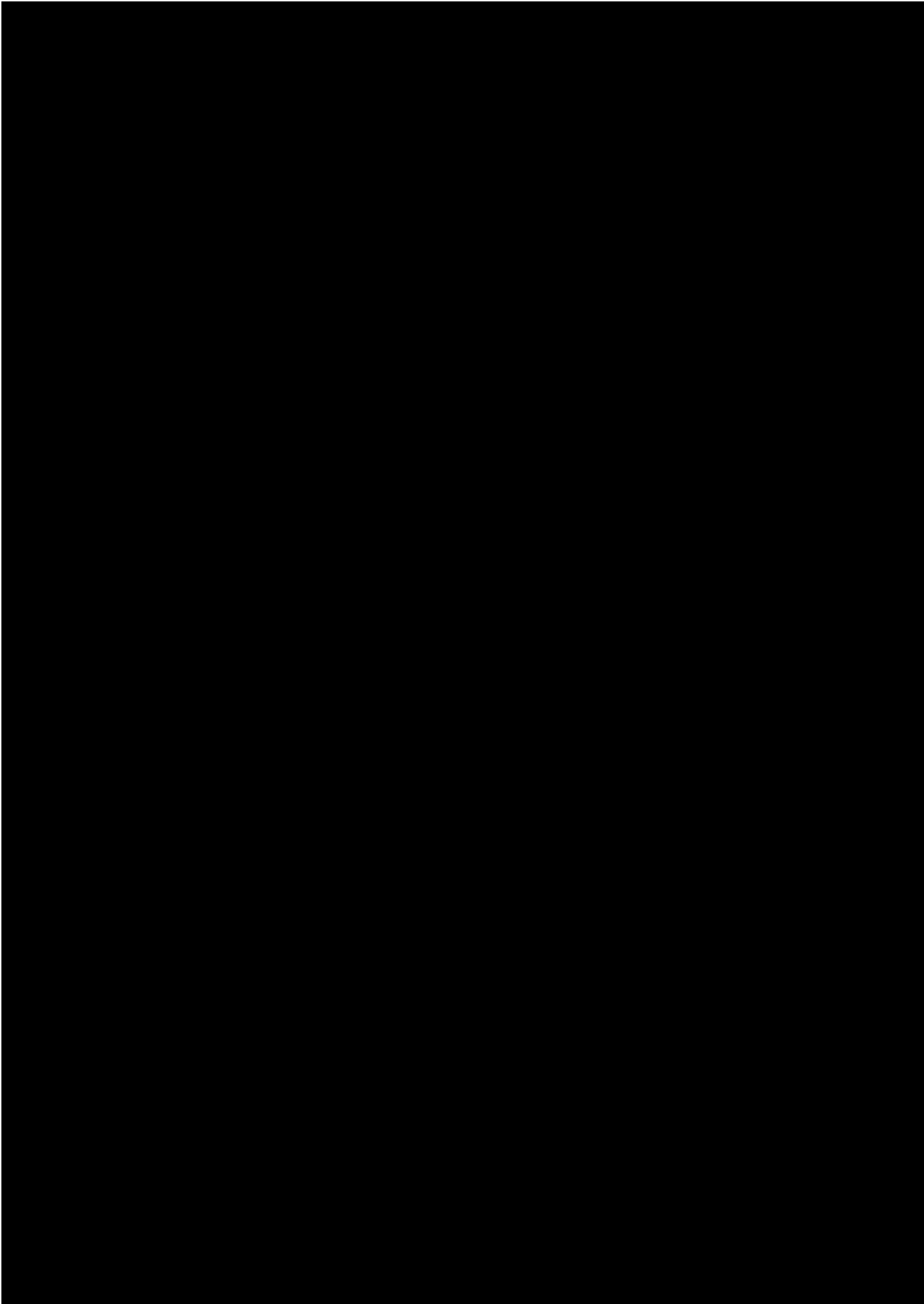
No	Area of Site	Early Site Access Date	Site Access Date	Site Access Expiry Date	Restrictions upon access, possession and use	Restrictions upon type of work
1.	N/A	N/A	N/A	N/A	N/A	N/A

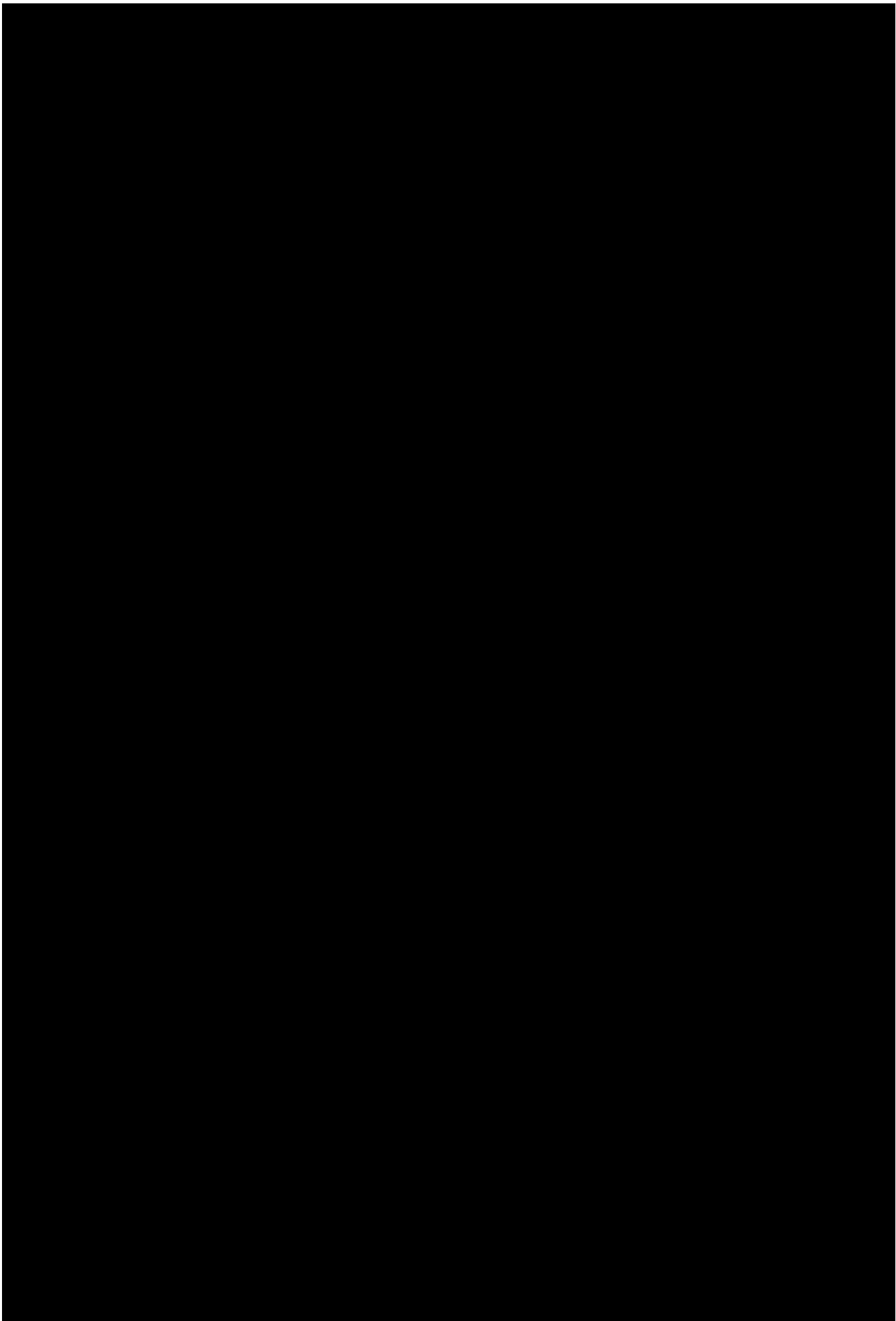
Schedule 30. Nominated Subcontracts

(Clause 2.2)

Nominated Subcontractor Work	Nominated Subcontractor	Form of Nominated Subcontract
Lifts and Escalators Work		The template form of L&E Supply and Installation Contract included in electronic form in Schedule 50, to be entered into by the CN Contractor in accordance with clause 2.2A.
BMCS Work		The template form of BMCS Supply and Installation Contract included in electronic form in Schedule 50, to be entered into by the CN Contractor in accordance with clause 2.2B.
Videography, filming and editing services		The Professional Services Contracts included in electronic form in Schedule 50 with the following references: PSC No.00013/11009; PSC 0013/10221; PSC No.00013/10454s; and PSC No.00013/10882.

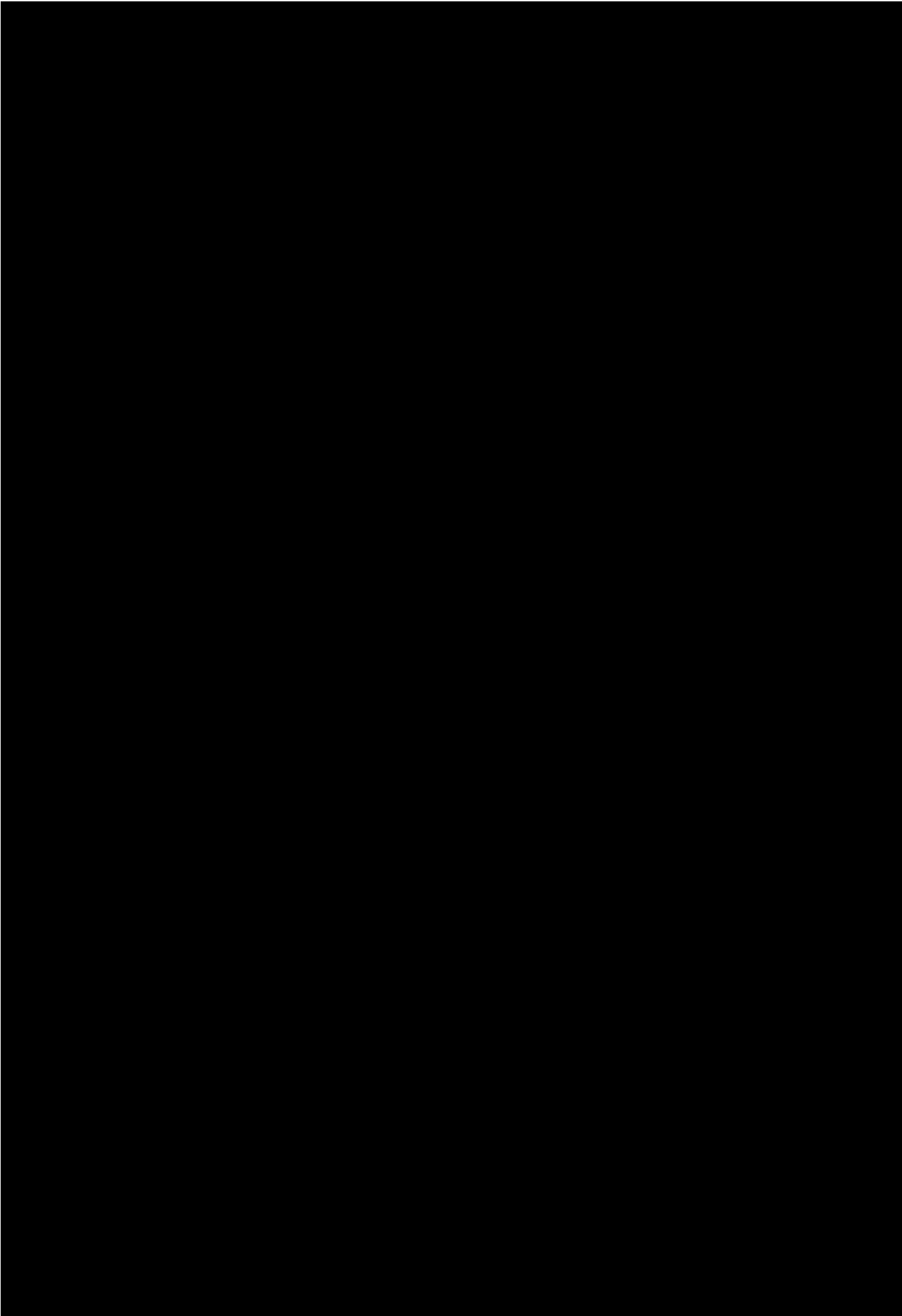
Schedule 31. Forms of Collateral Warranty Deed Poll

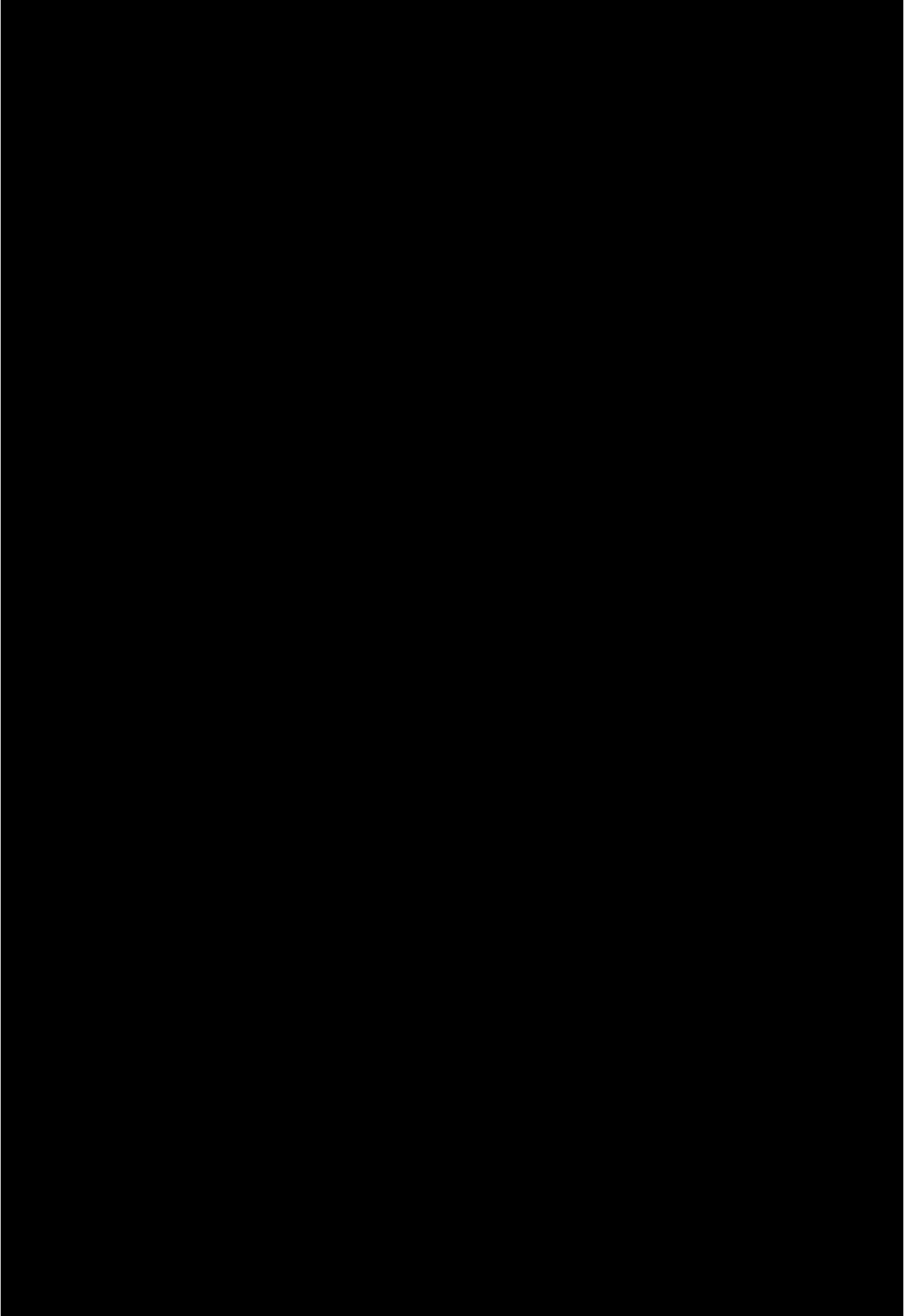


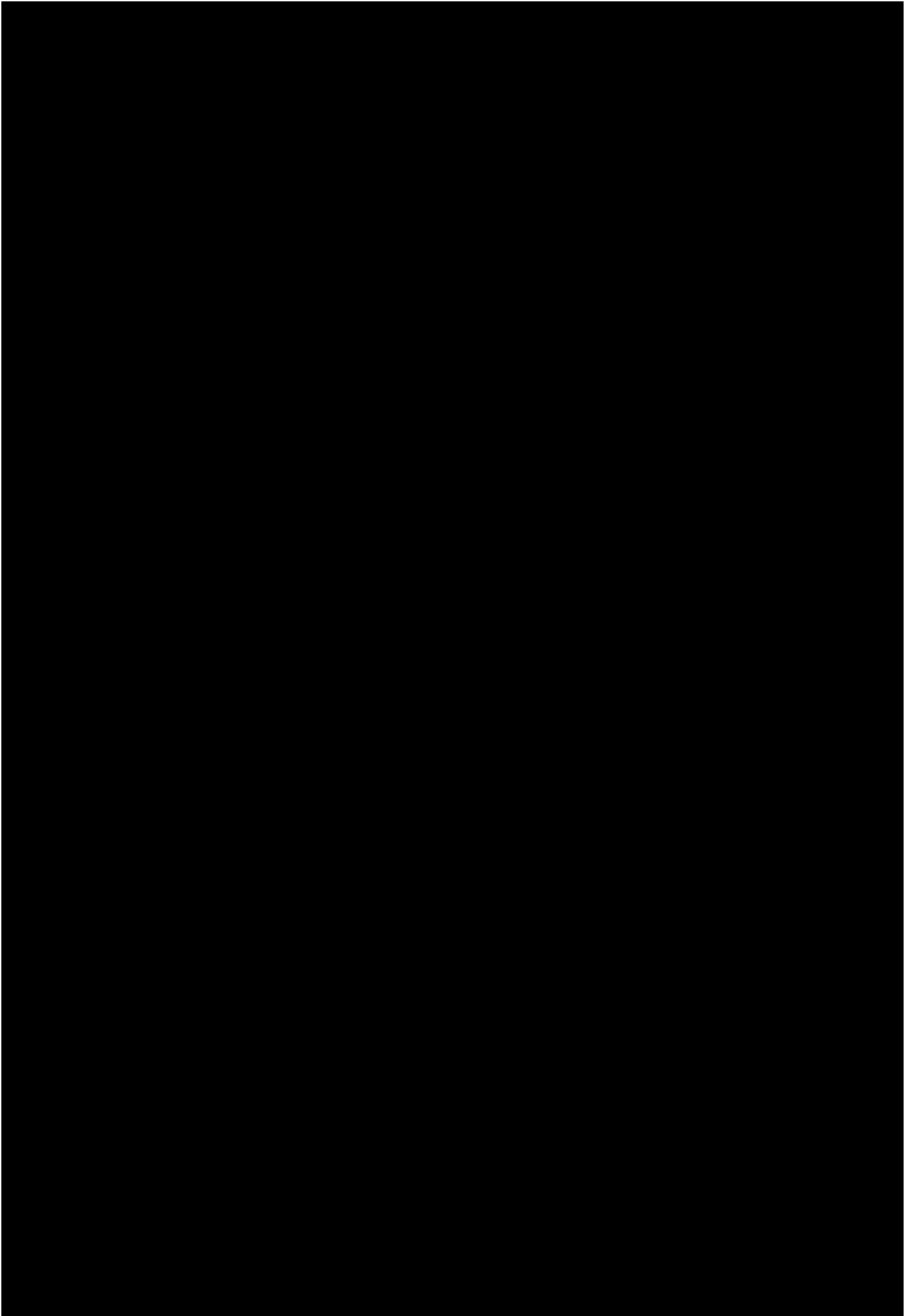




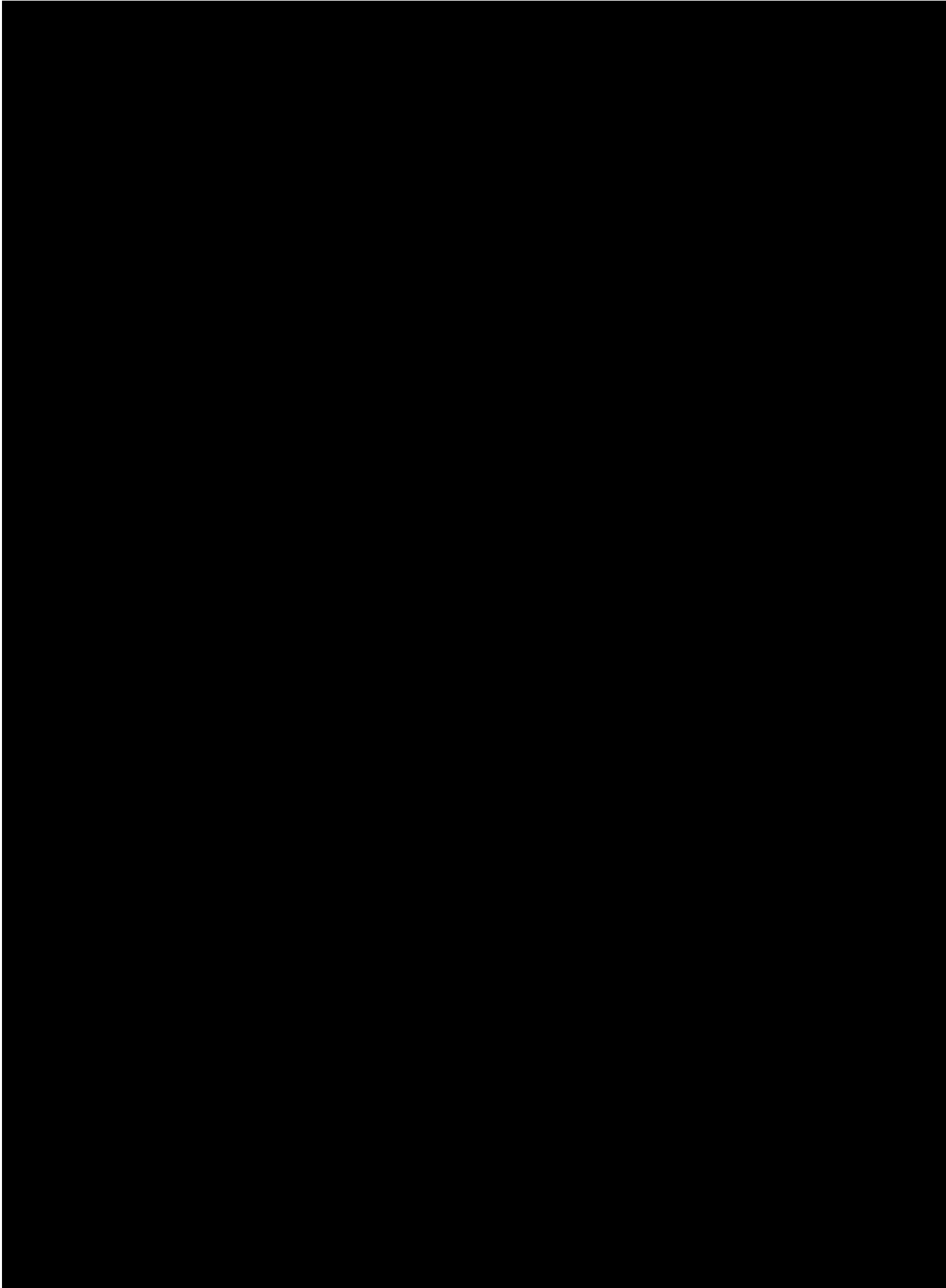


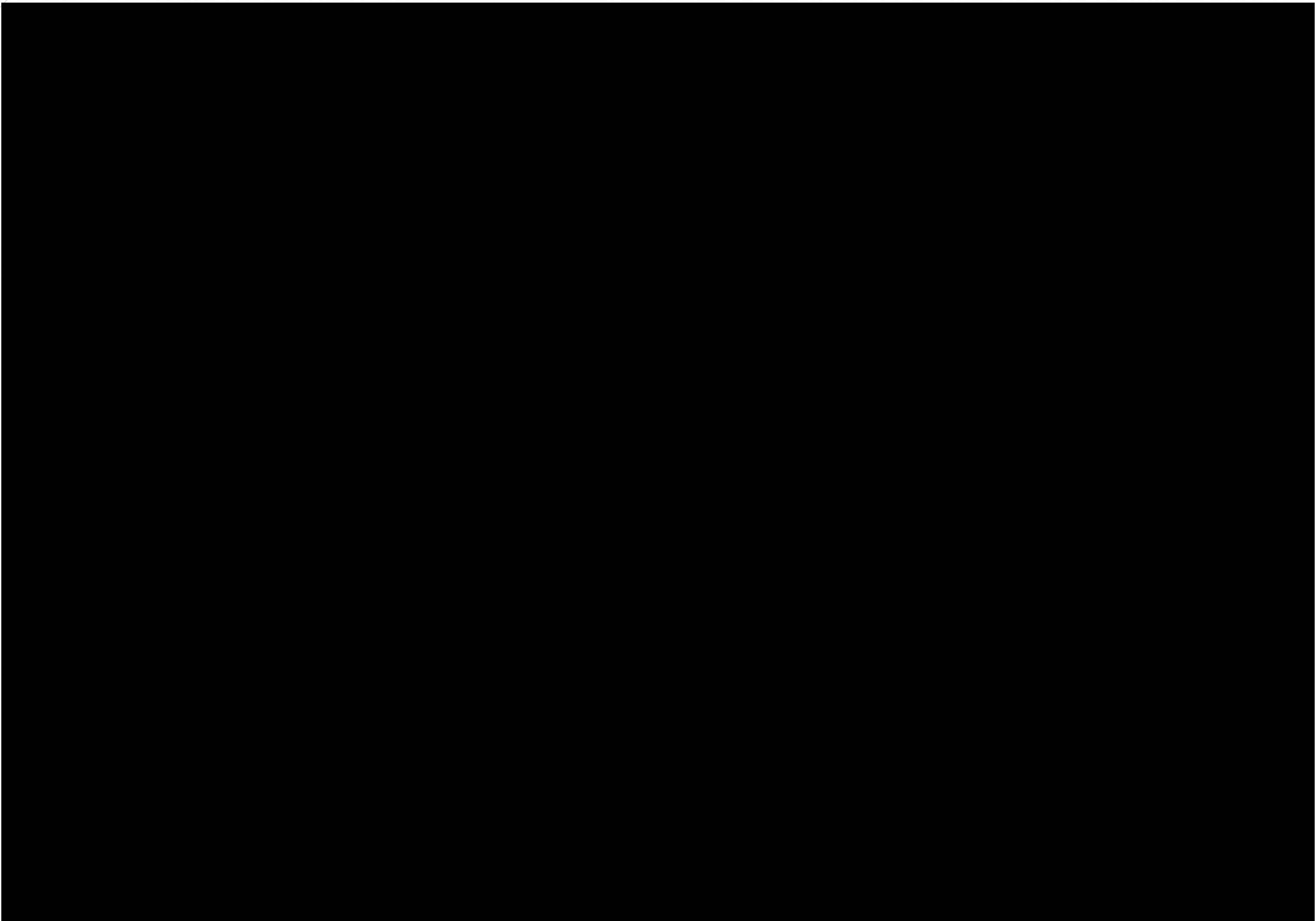


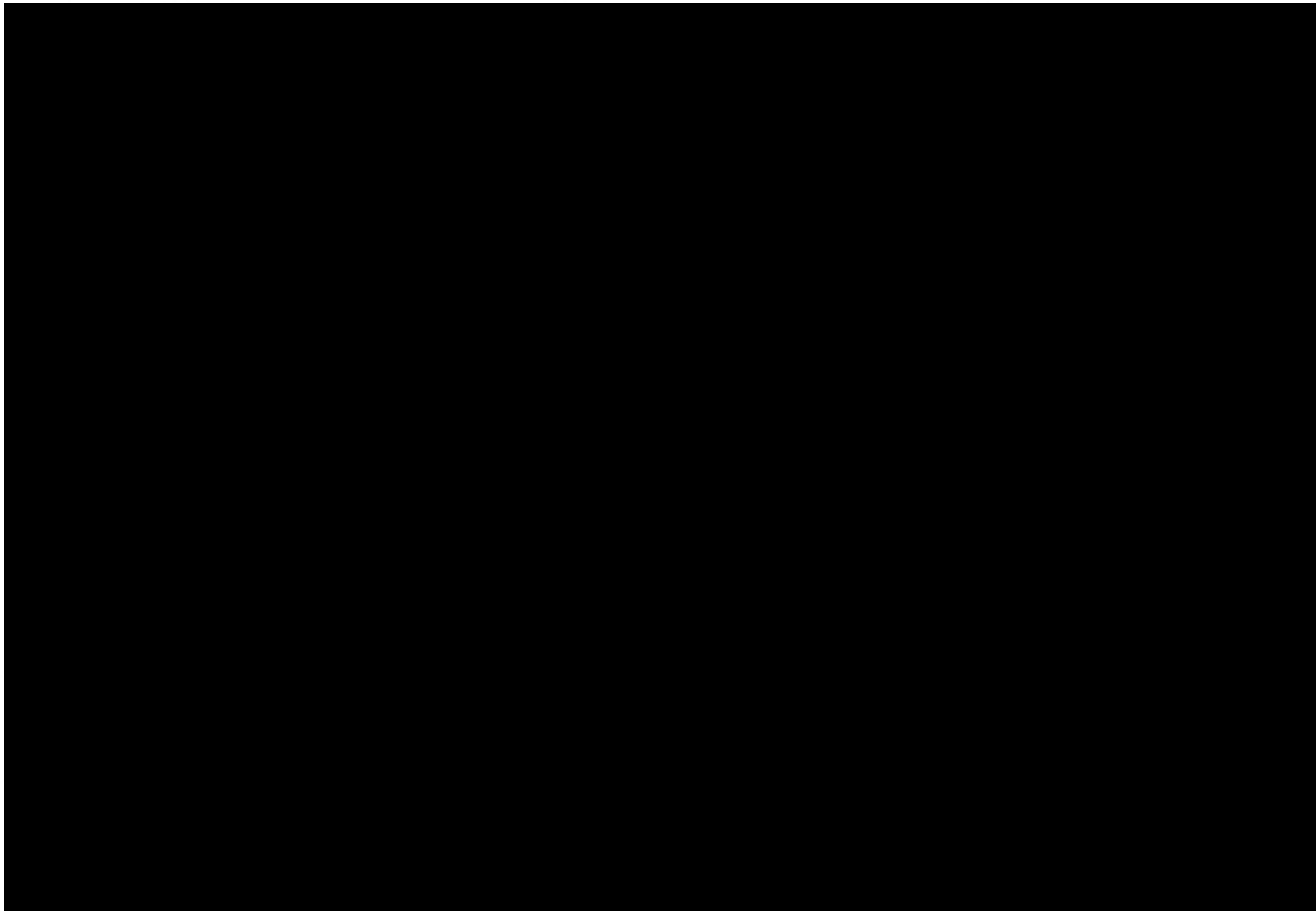


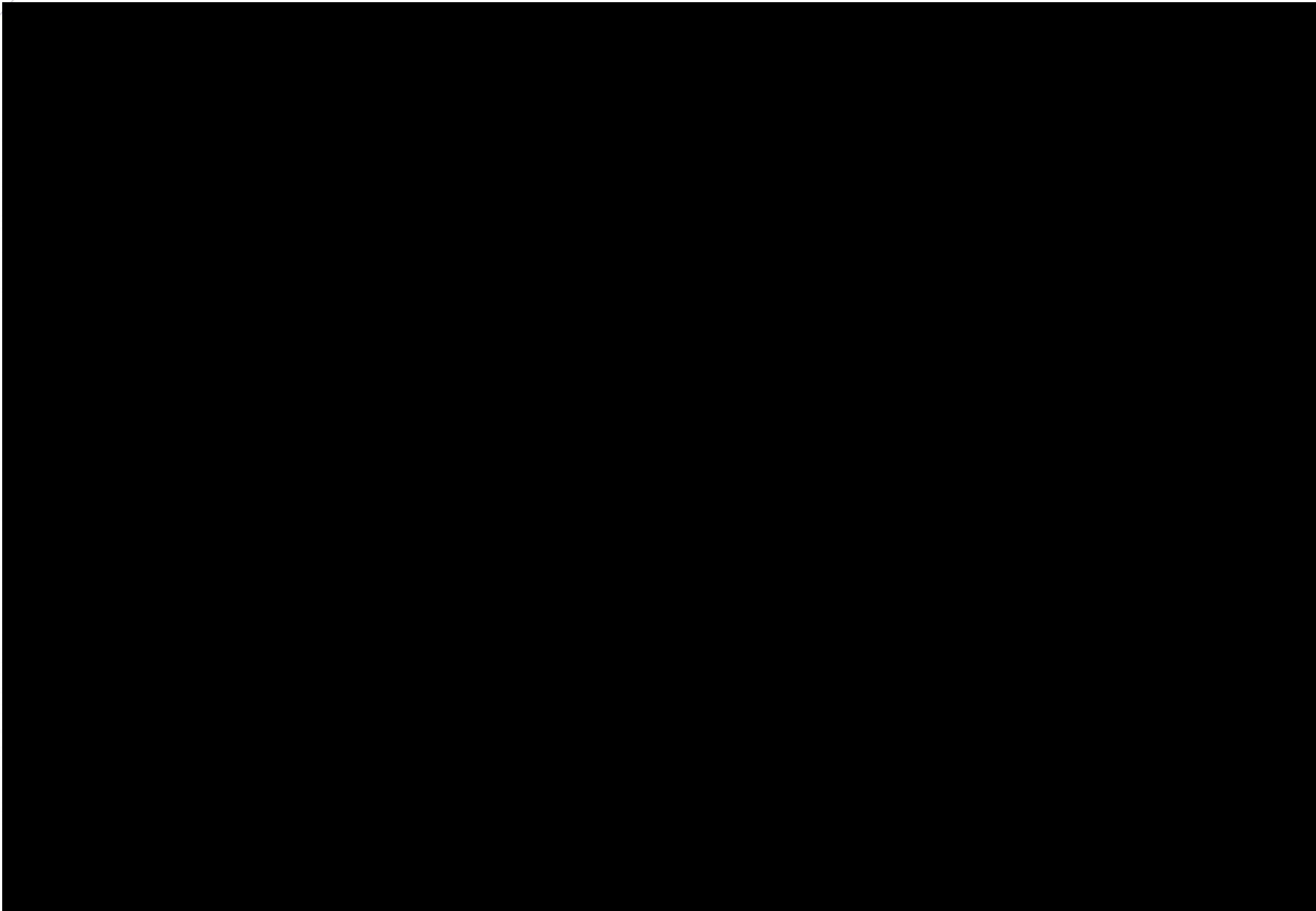


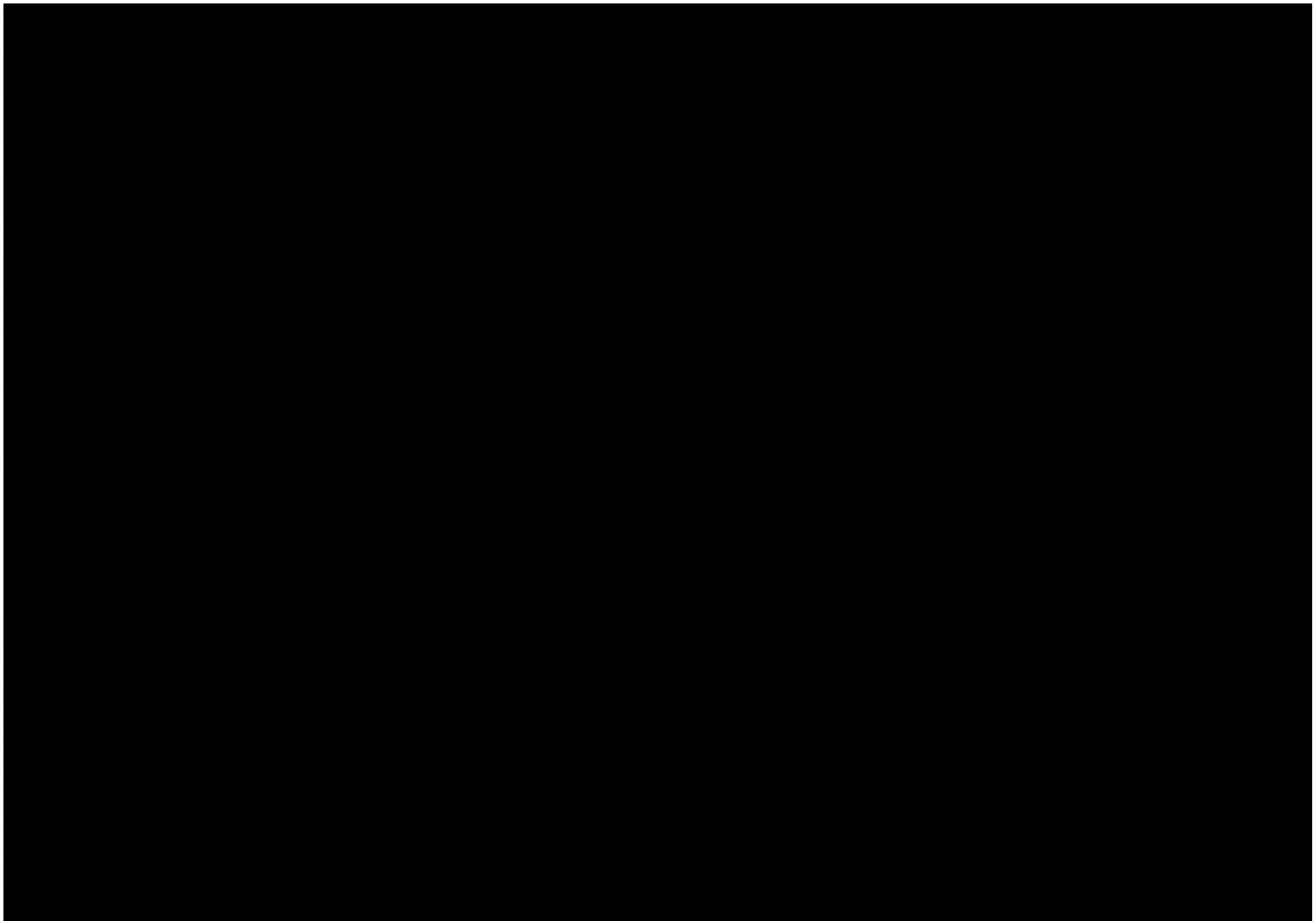
Schedule 33. Initial CN Contractor's Program

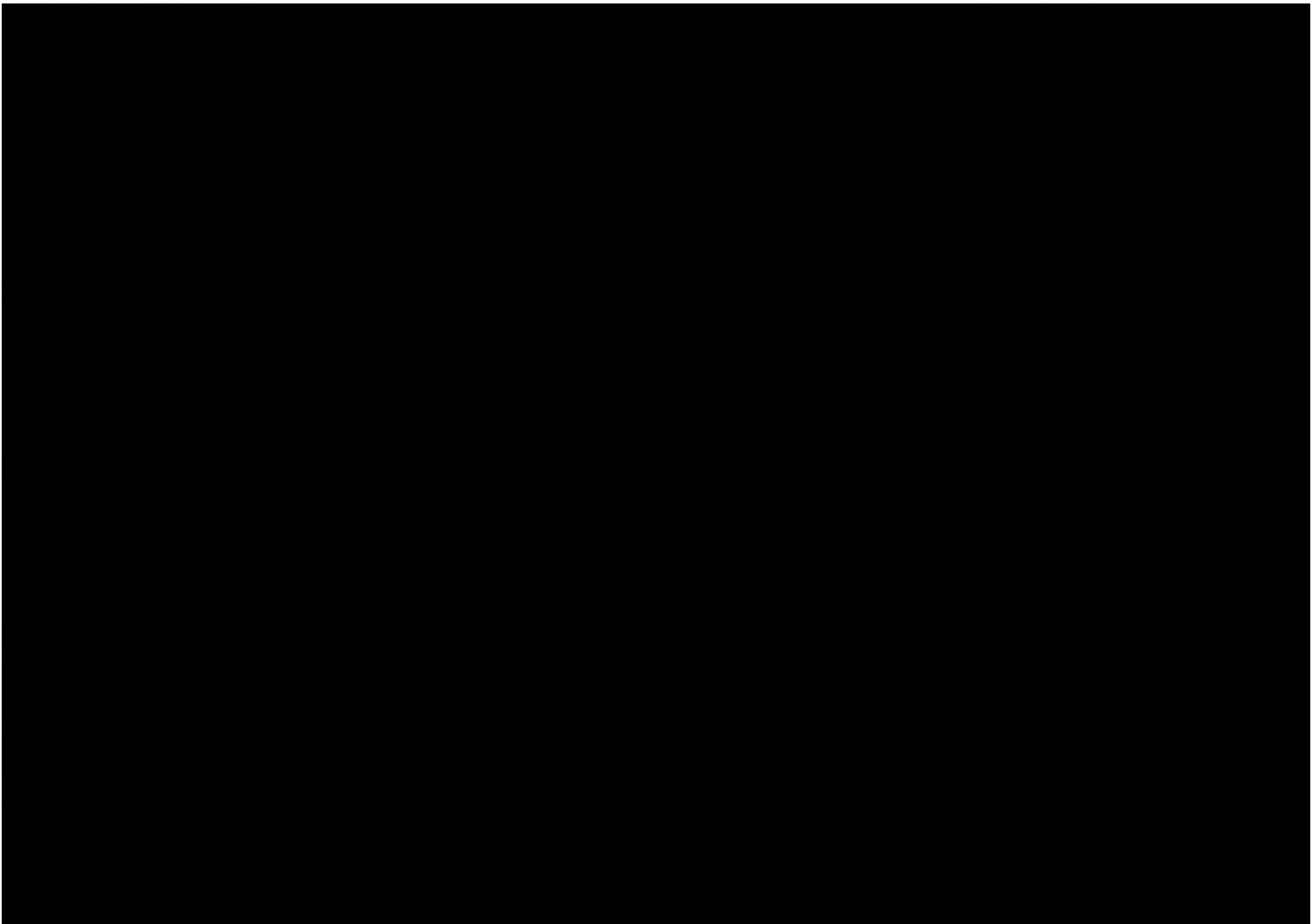


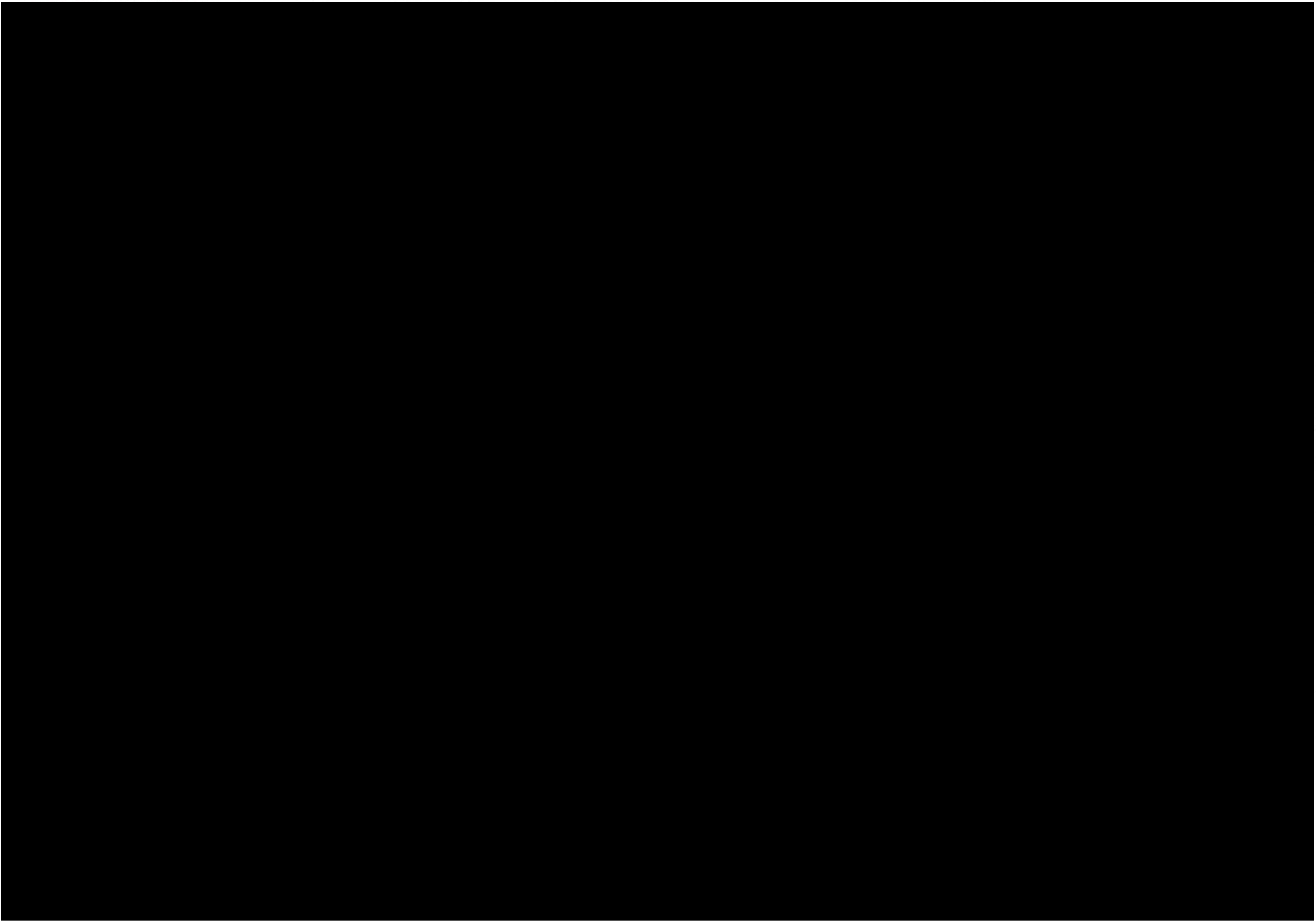


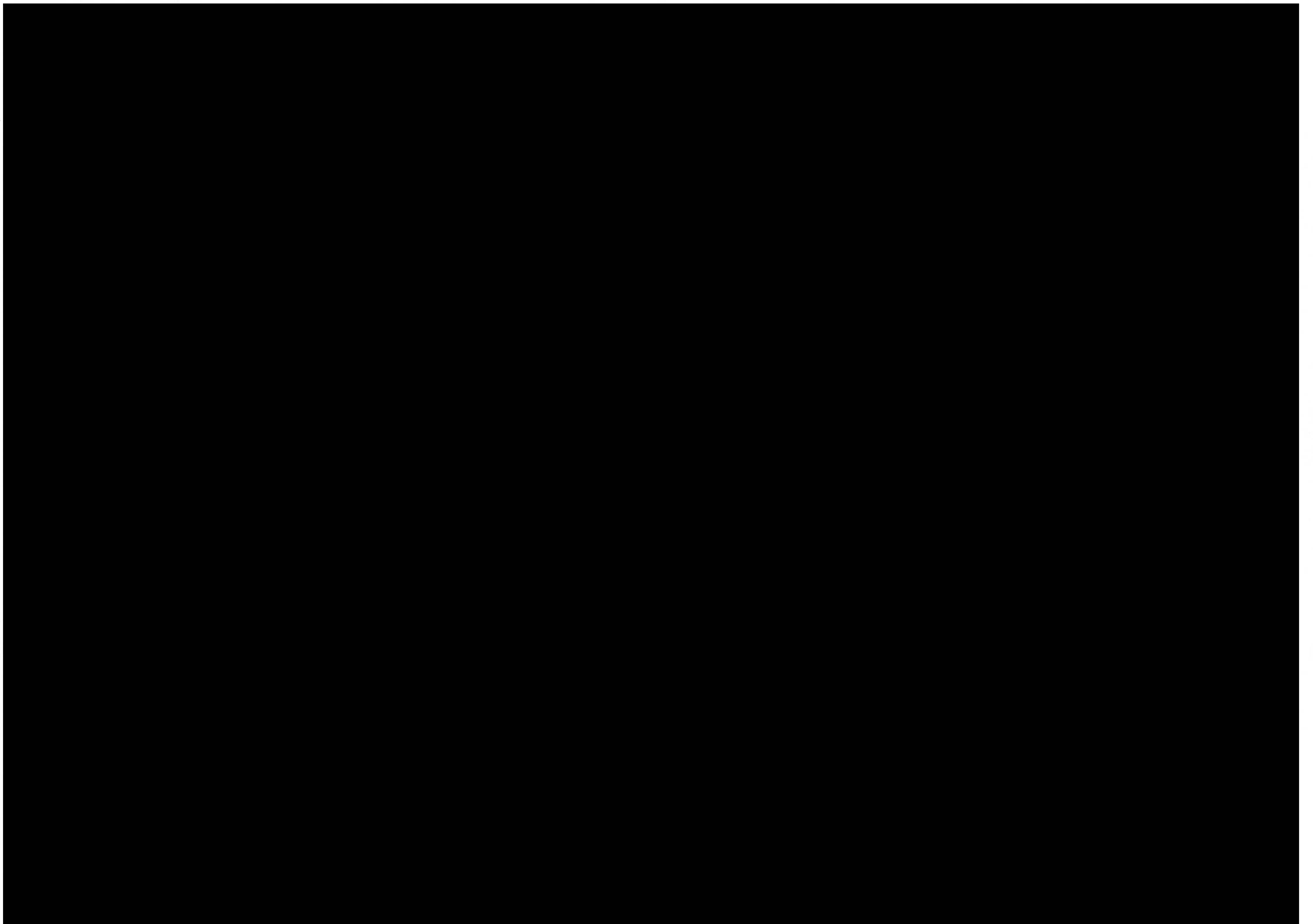


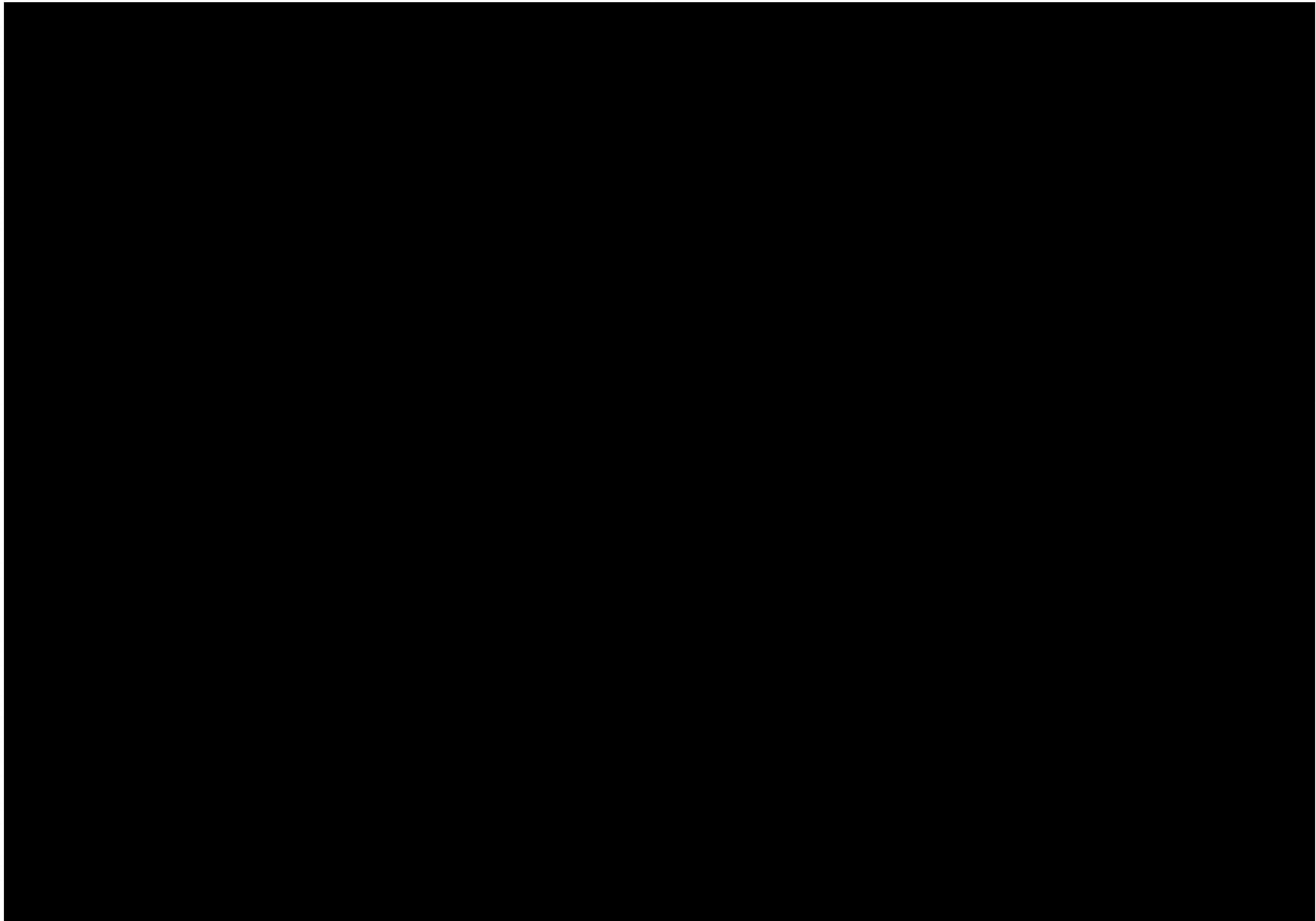




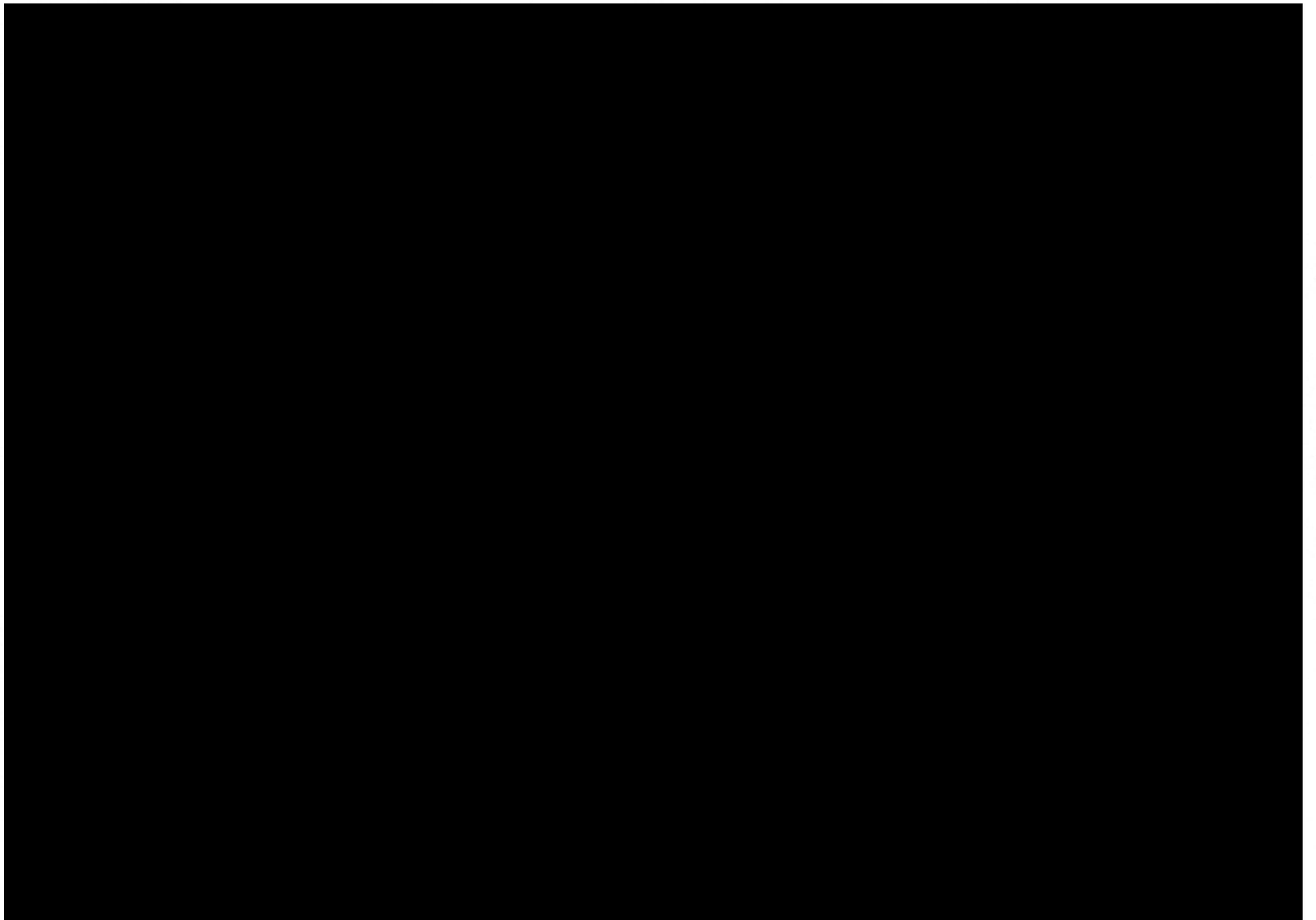


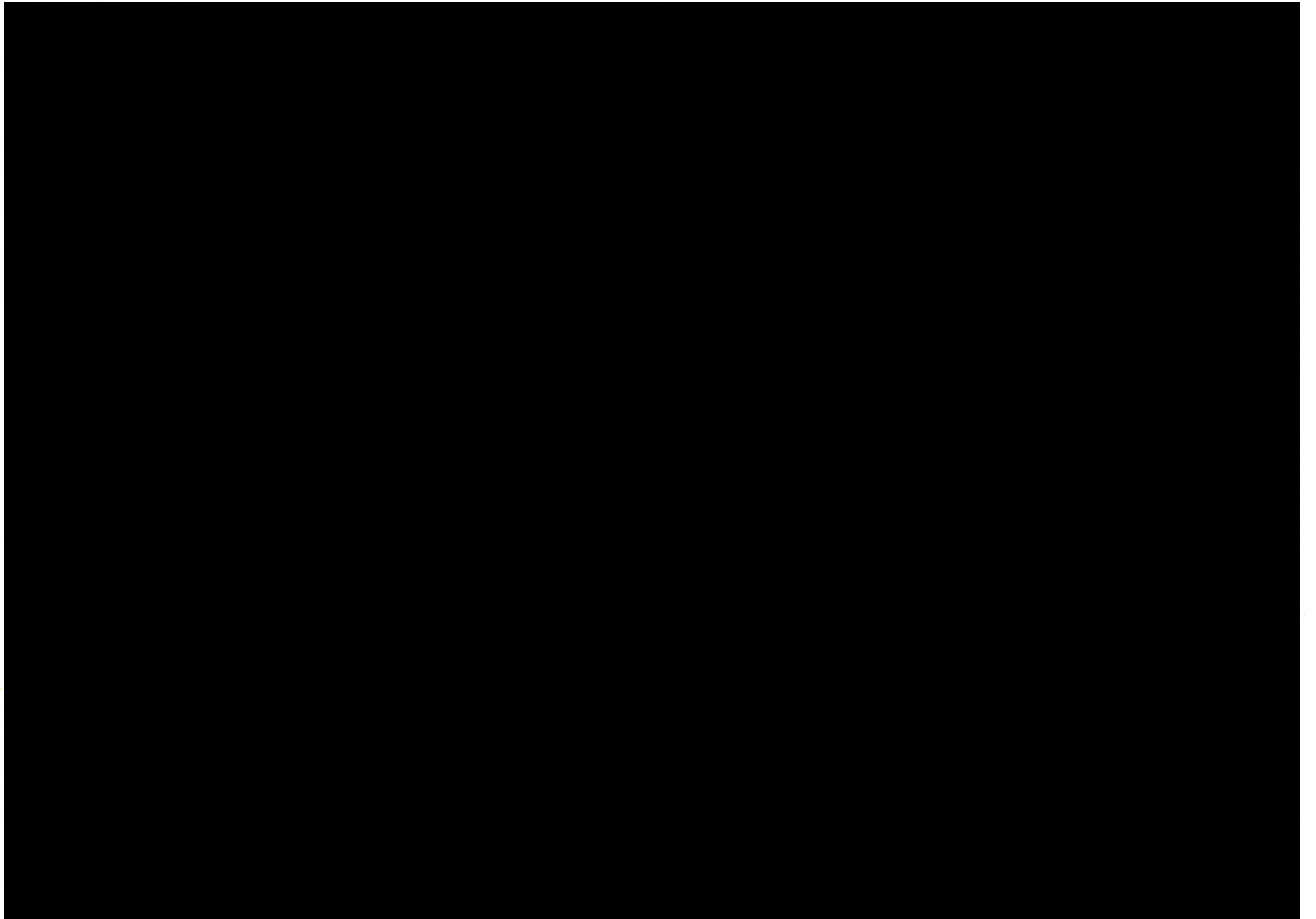


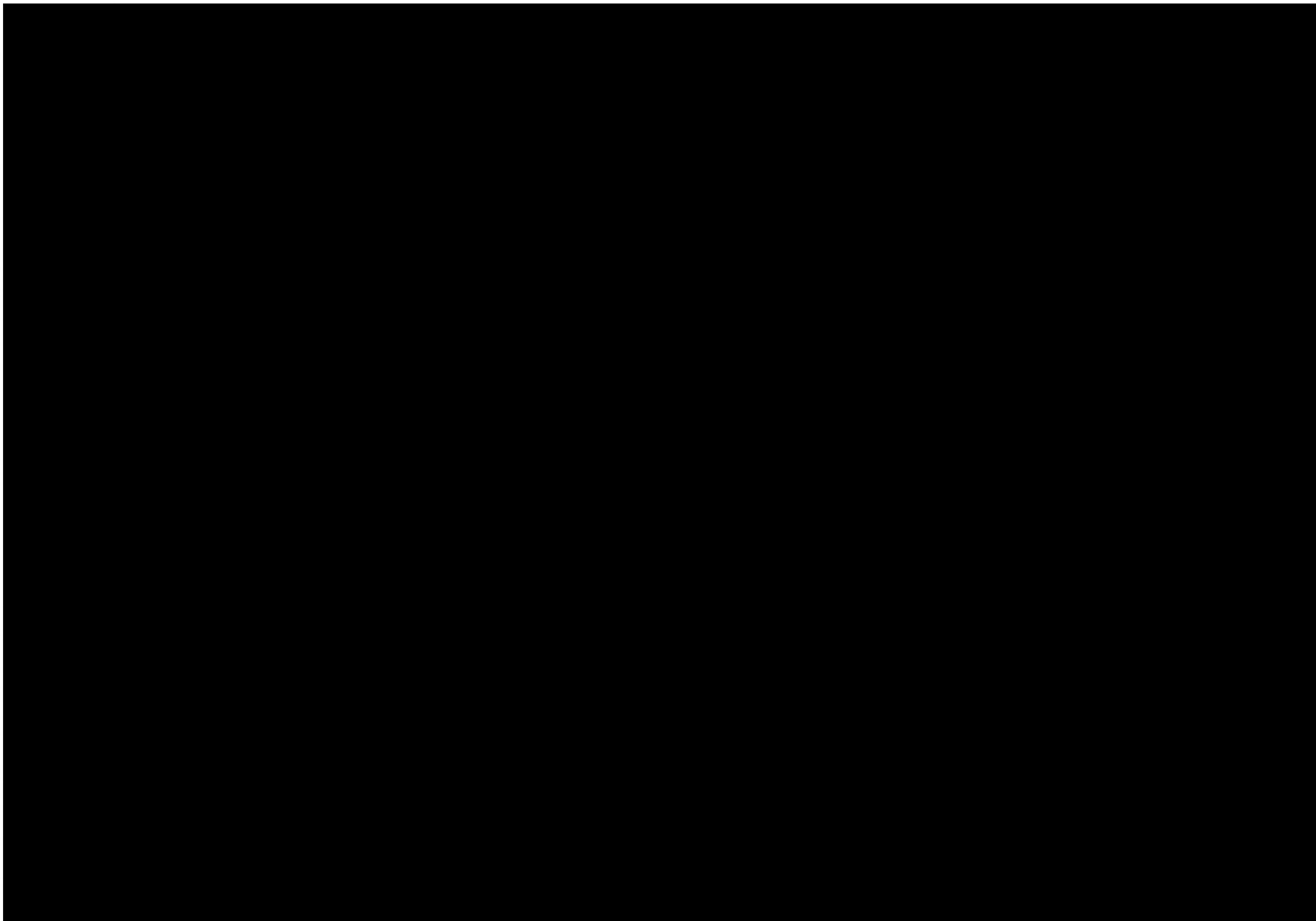


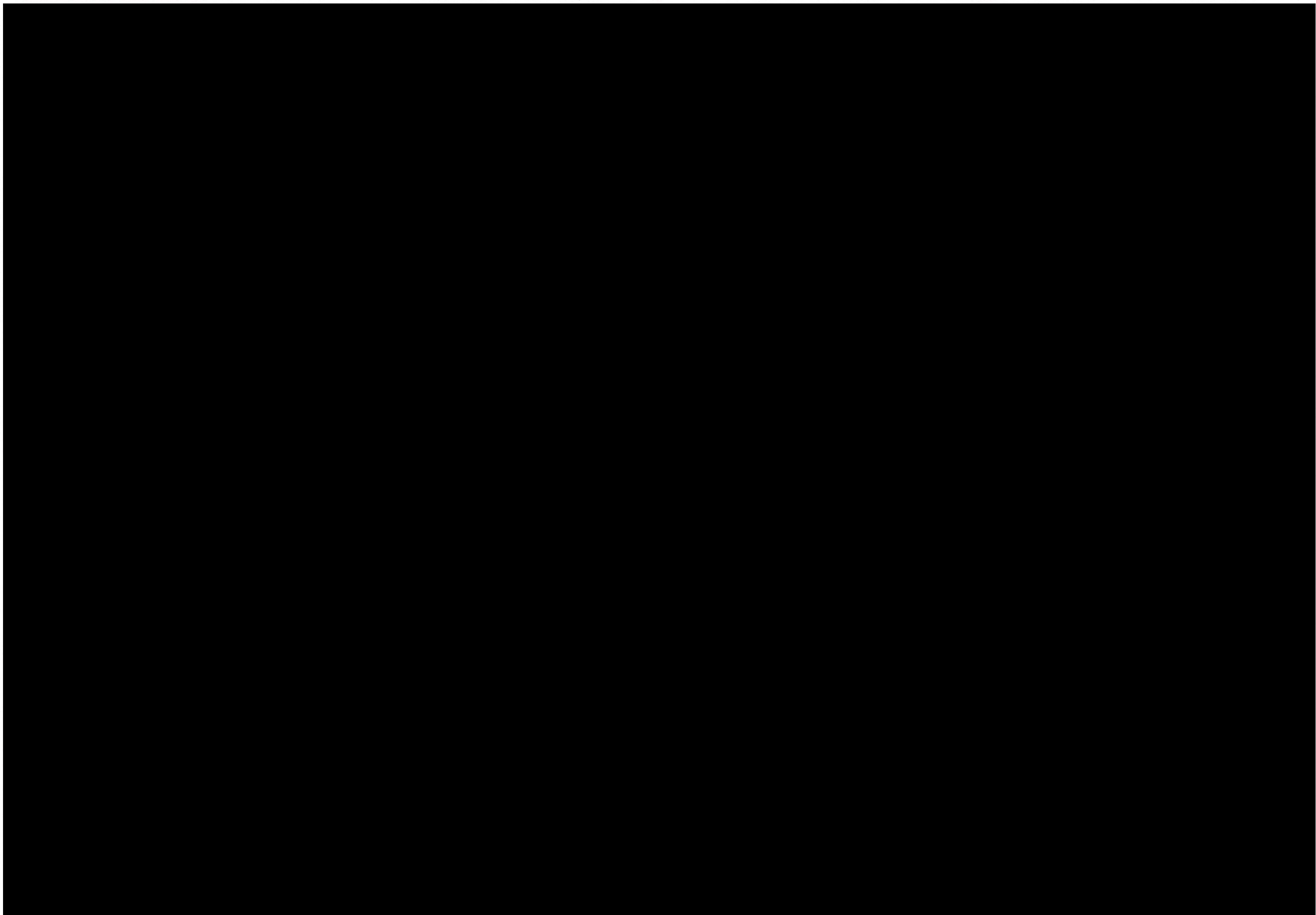


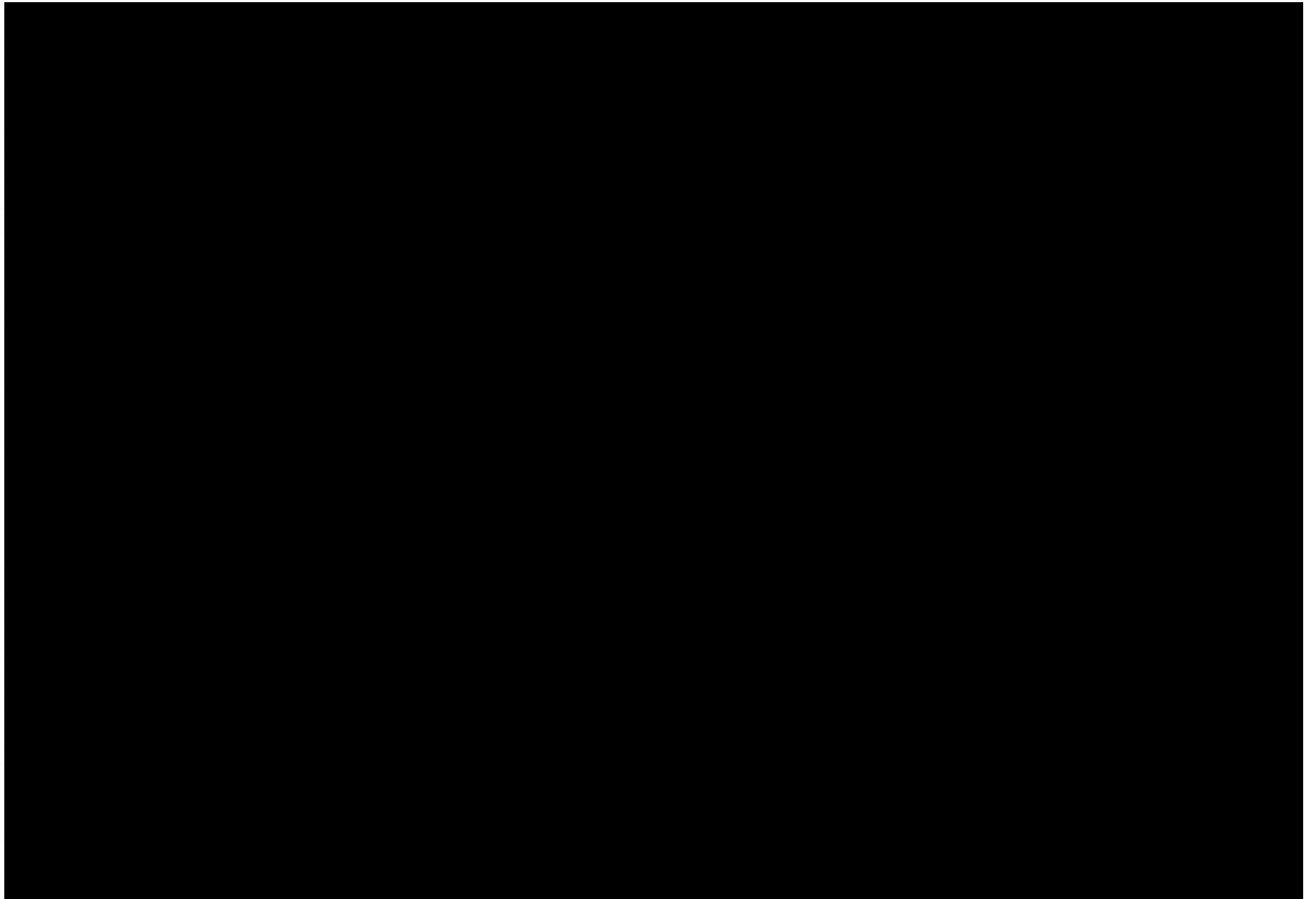


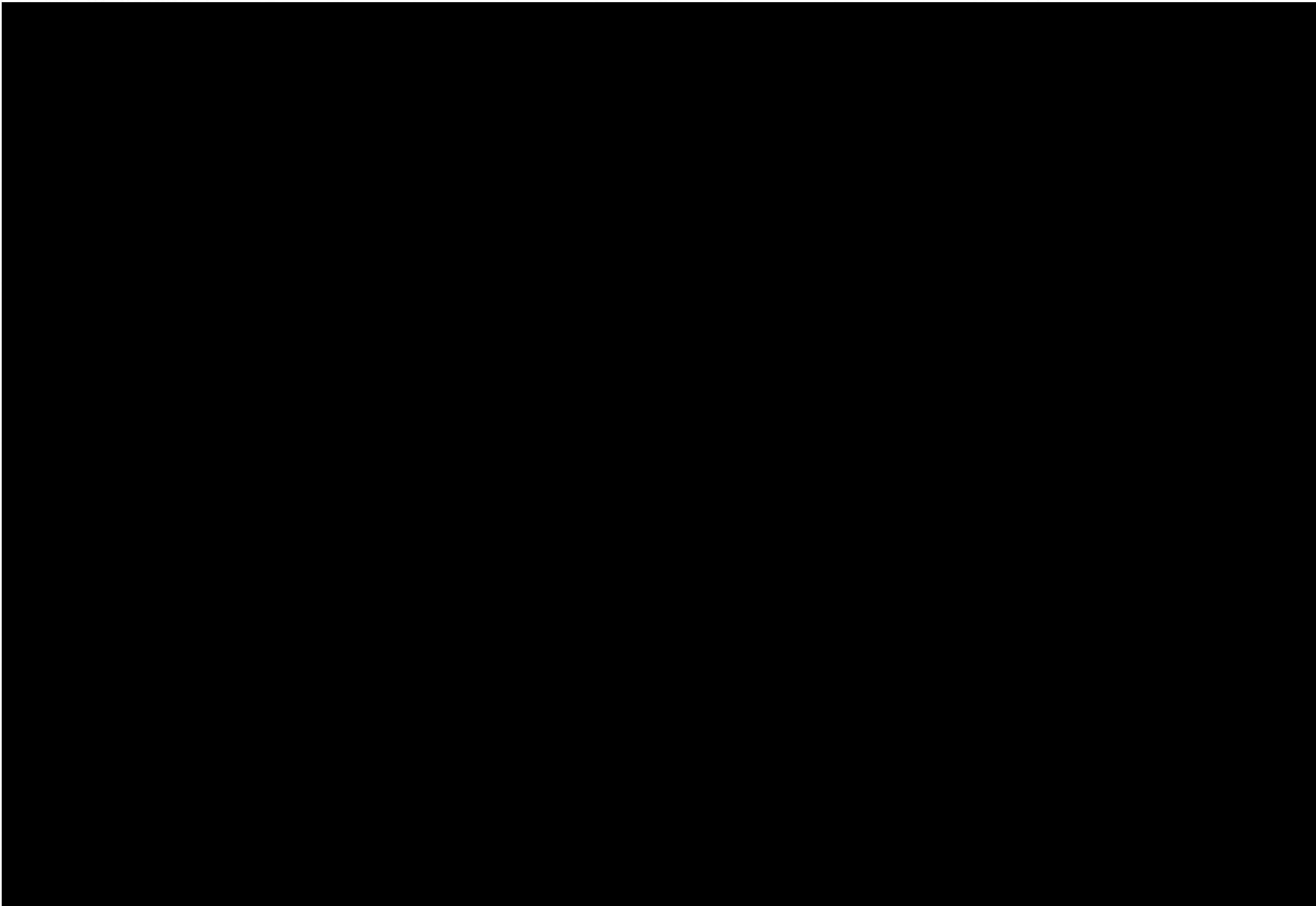


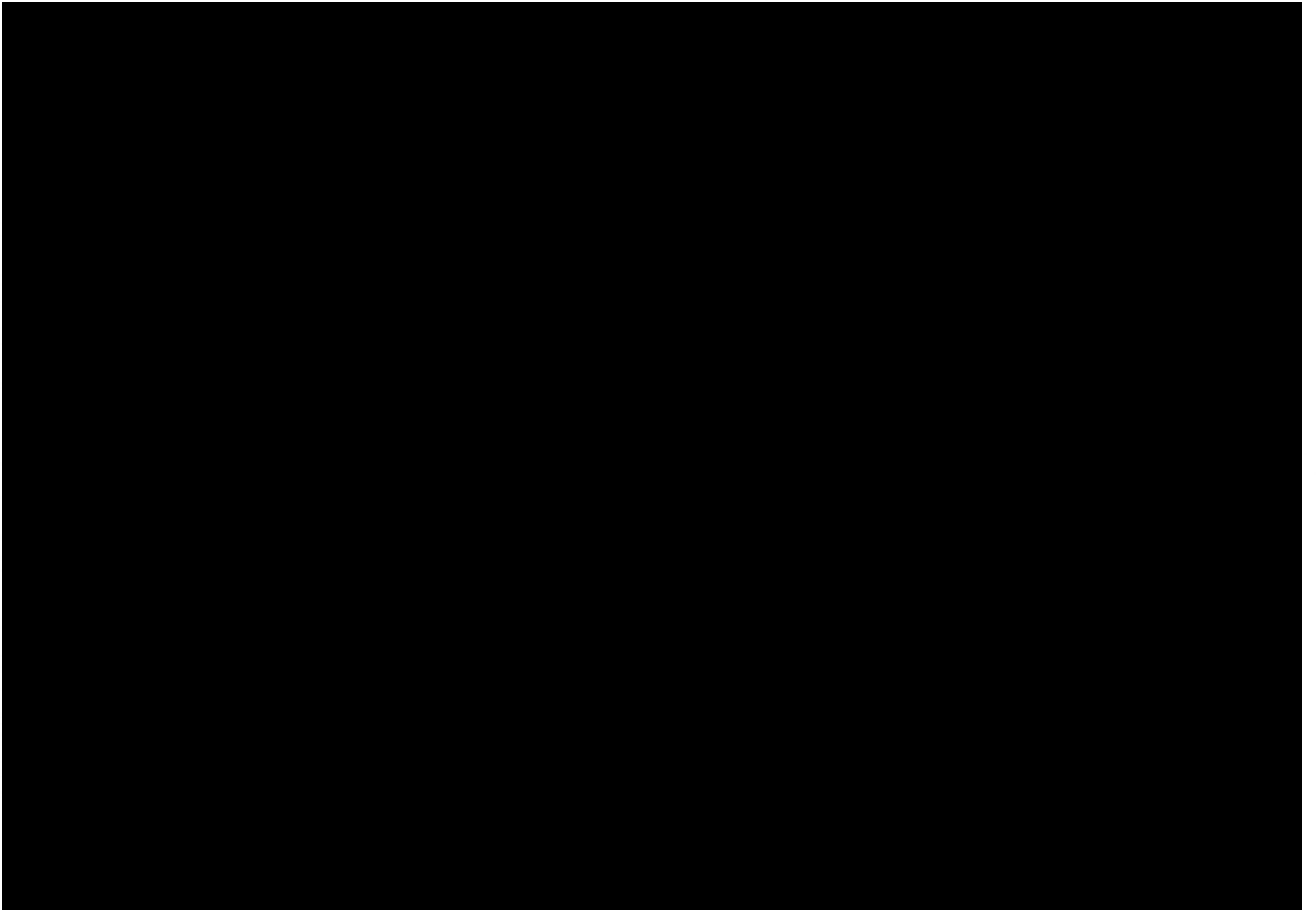


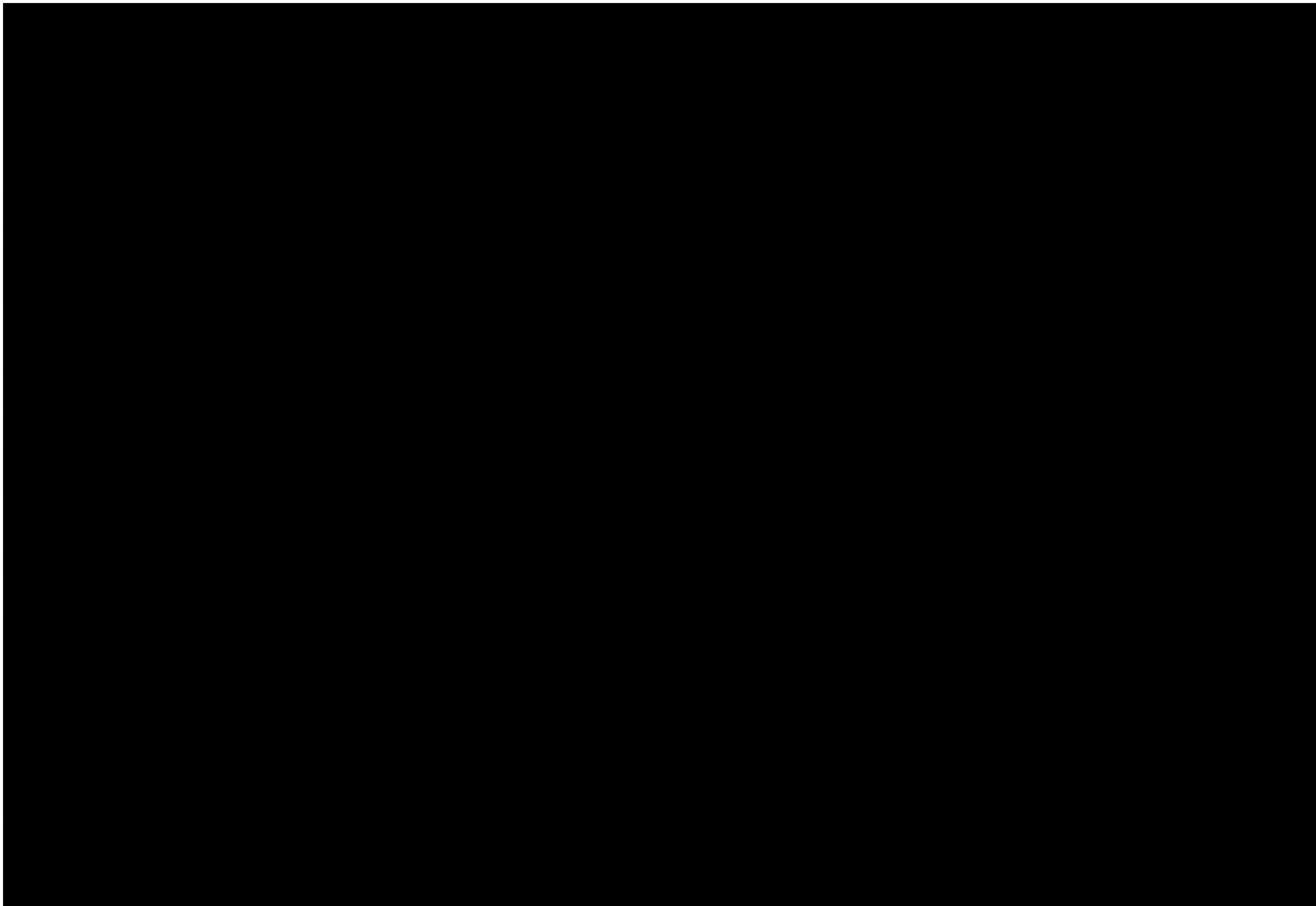




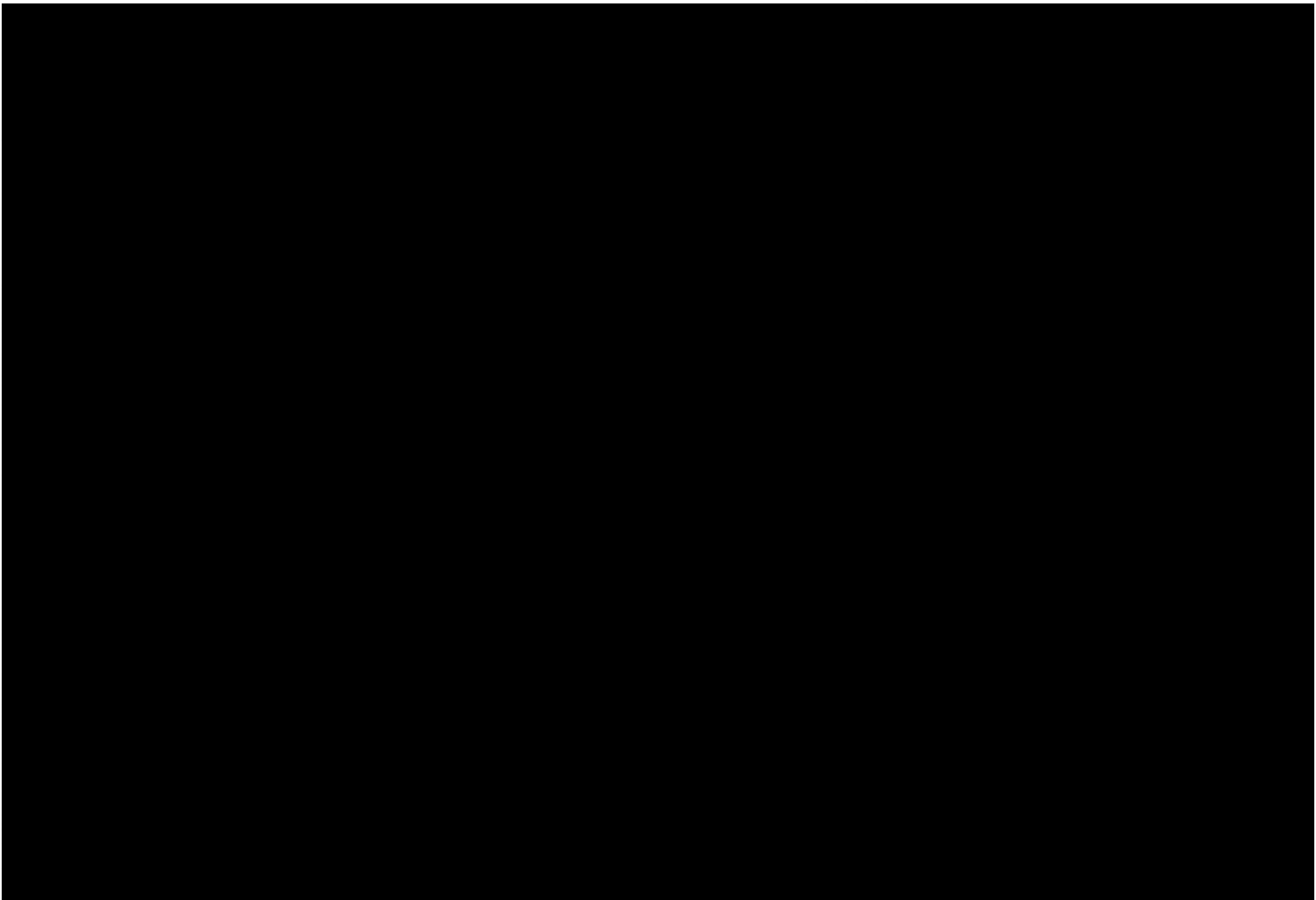


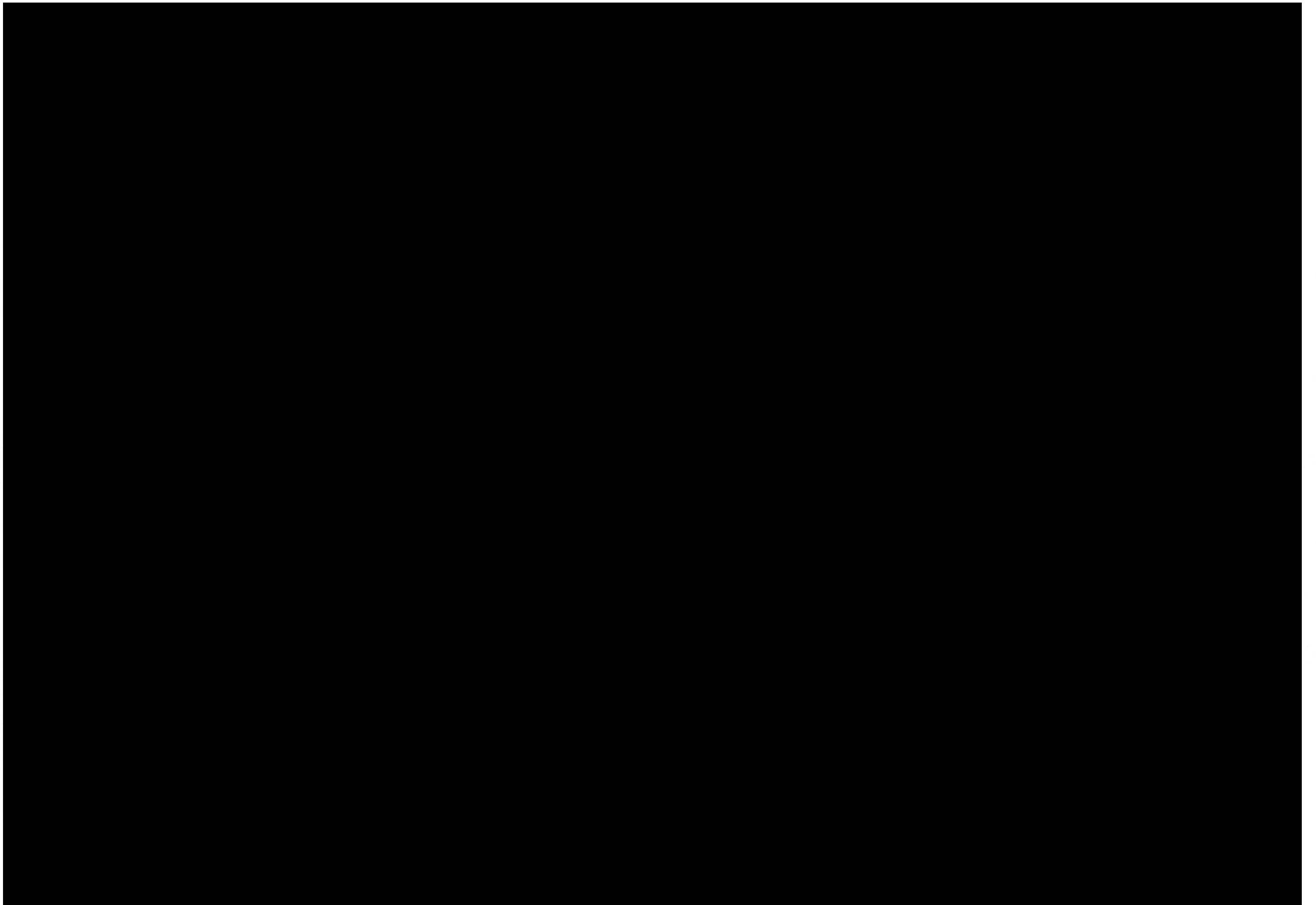


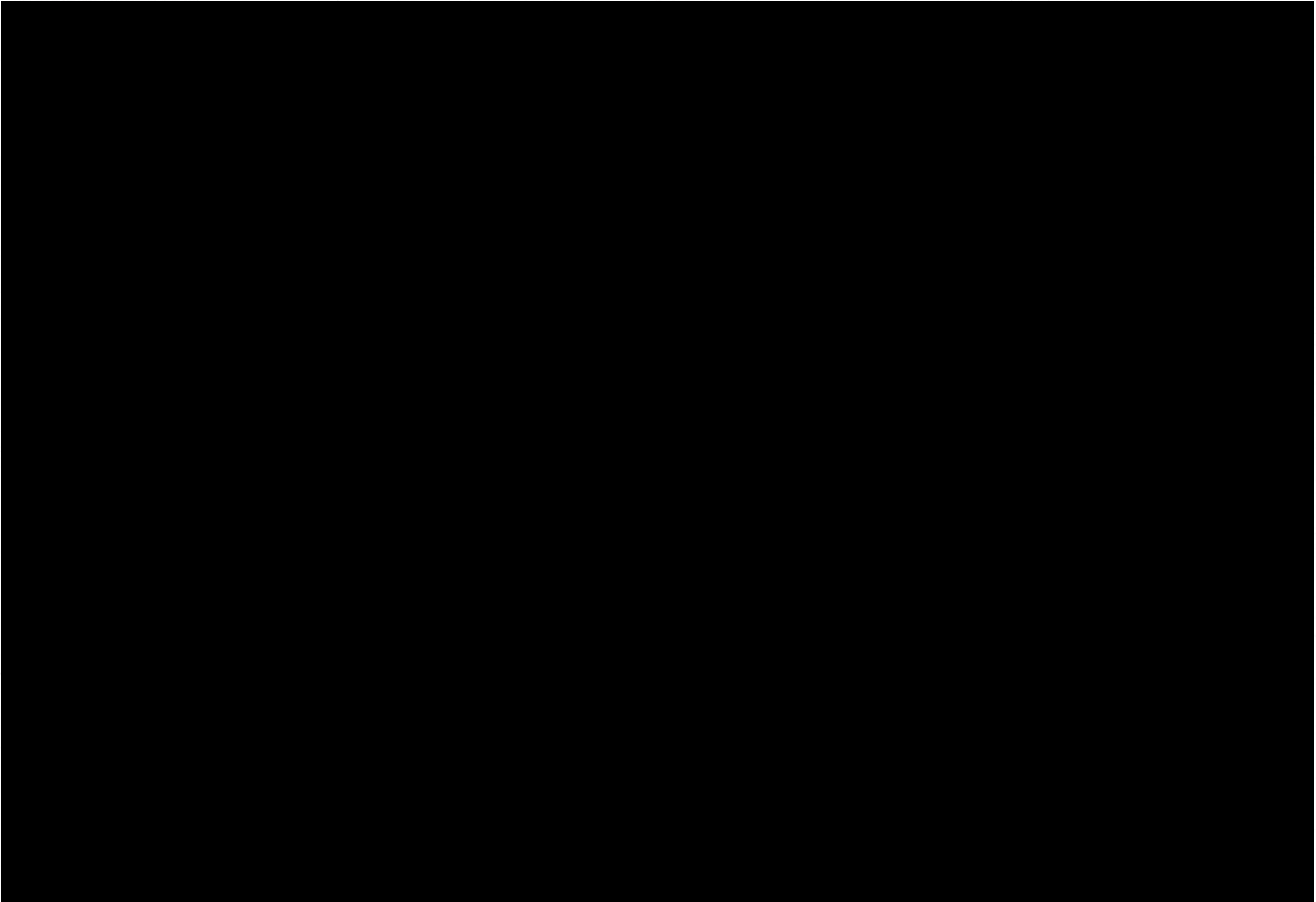


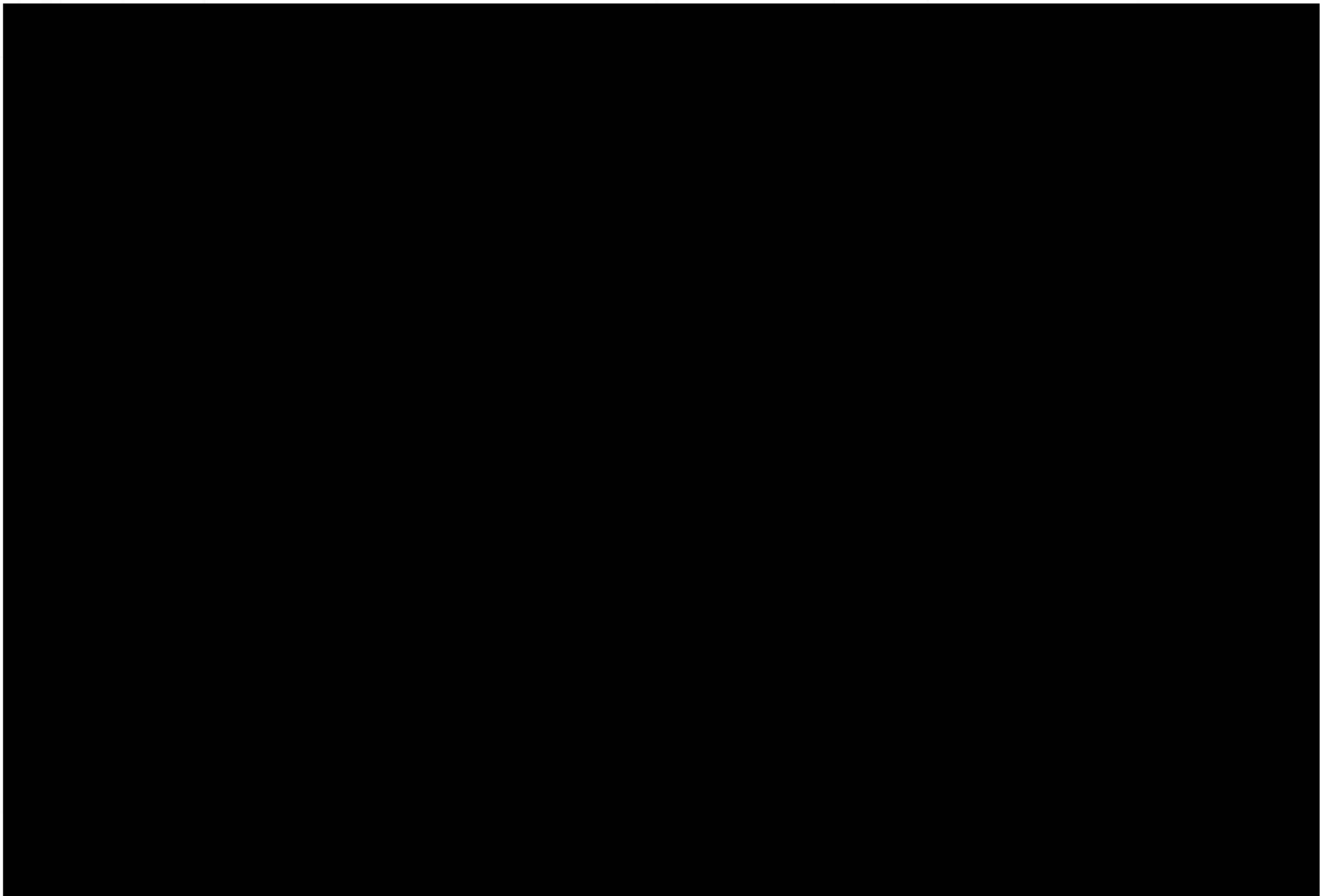


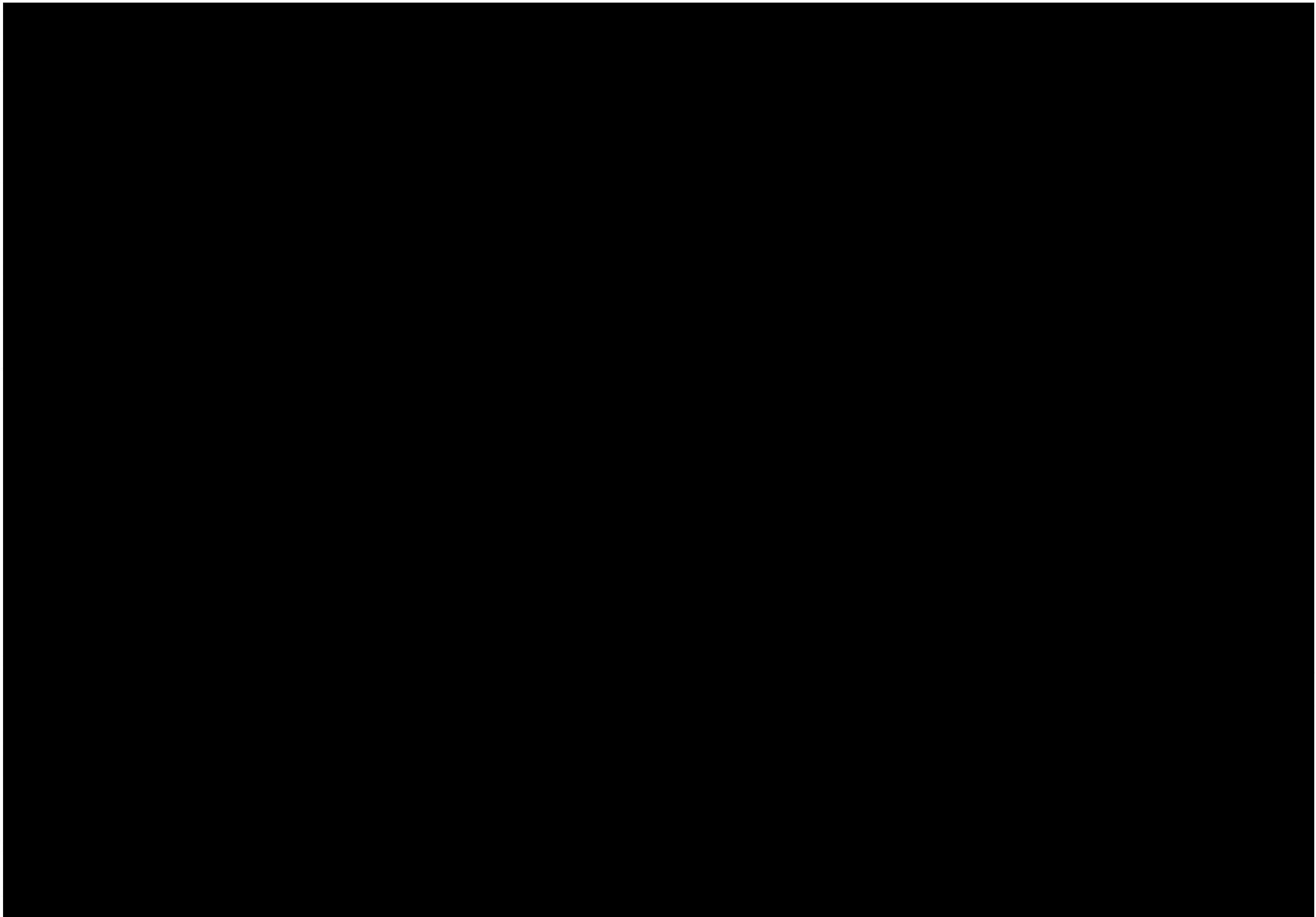


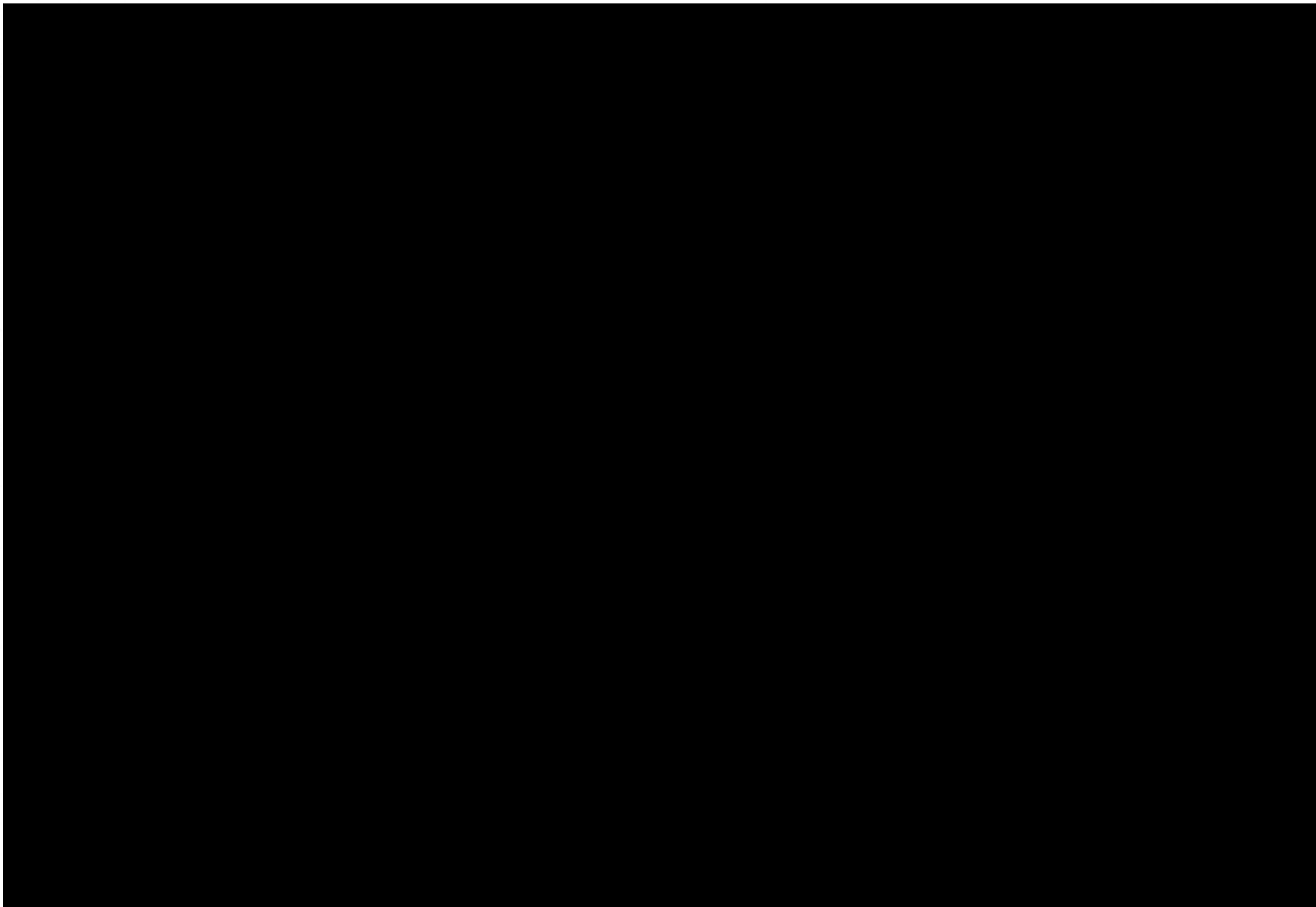


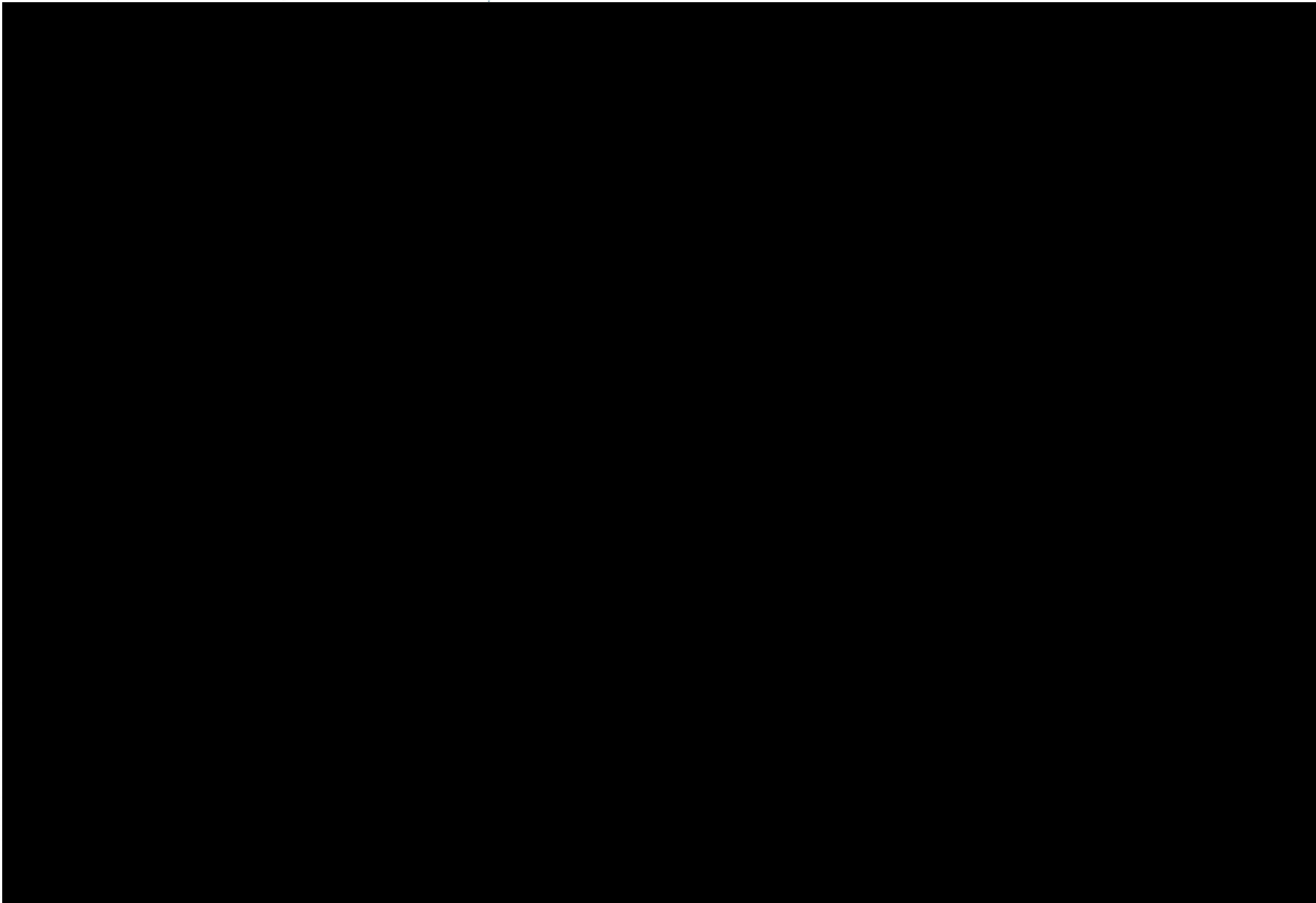


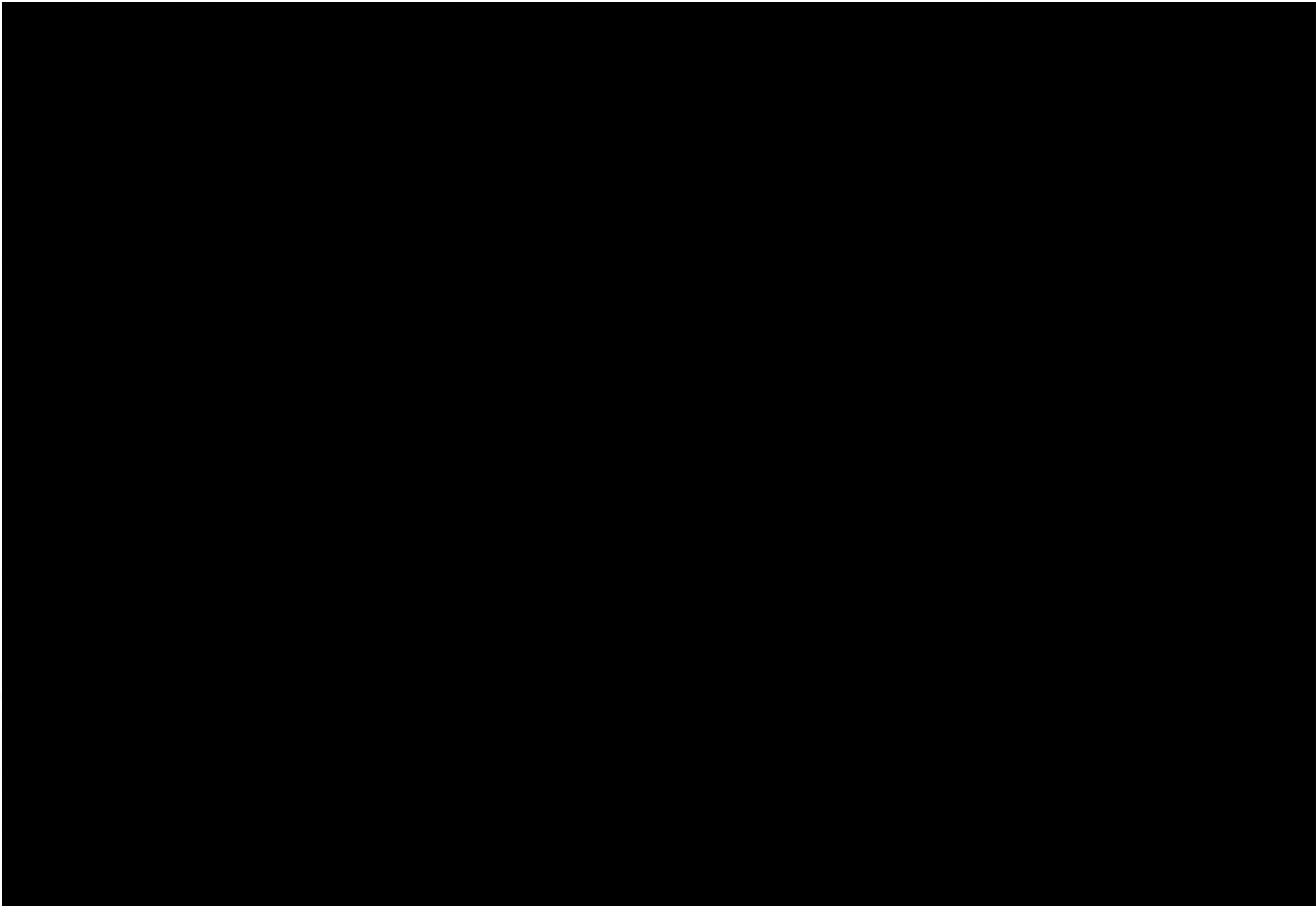


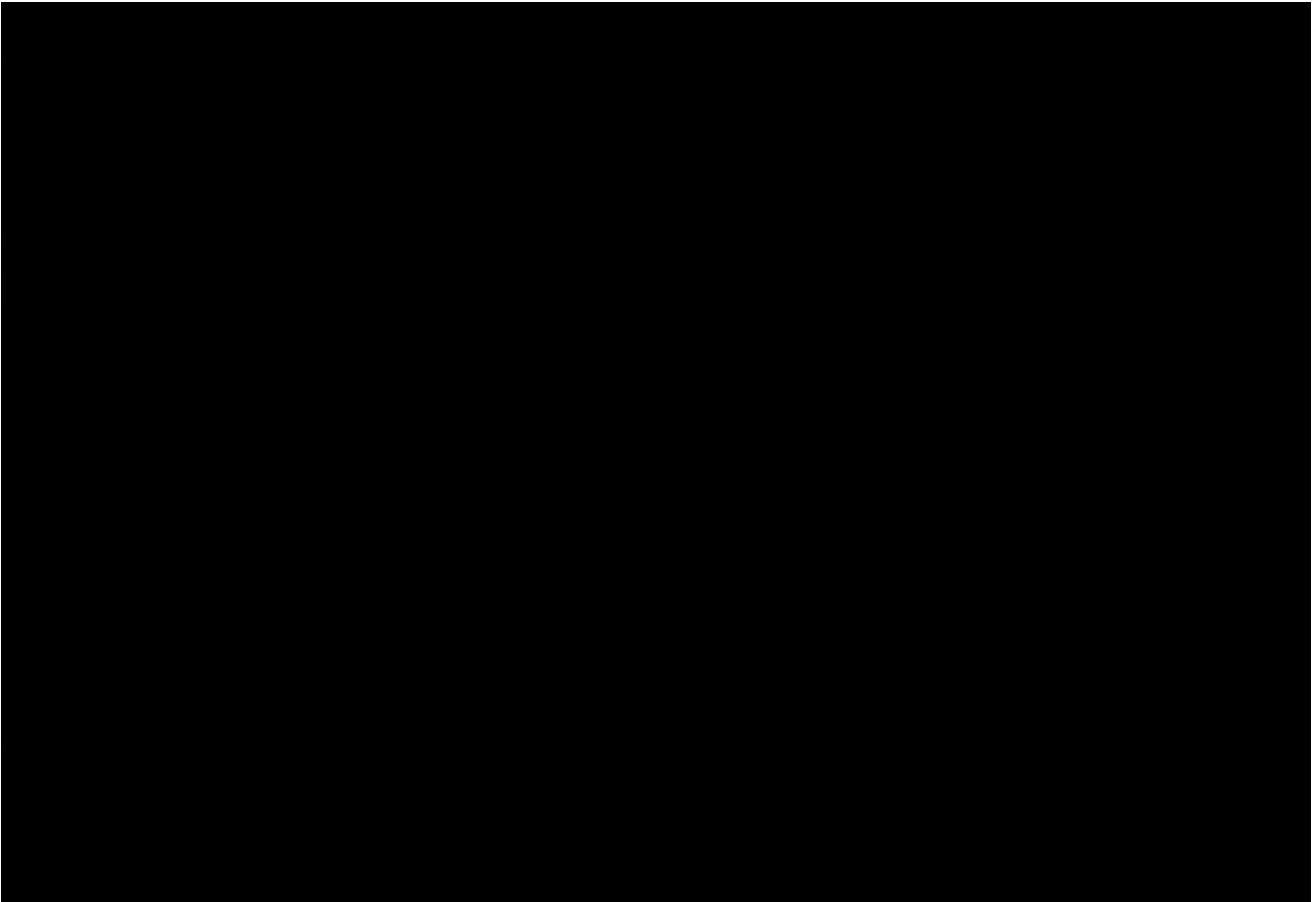


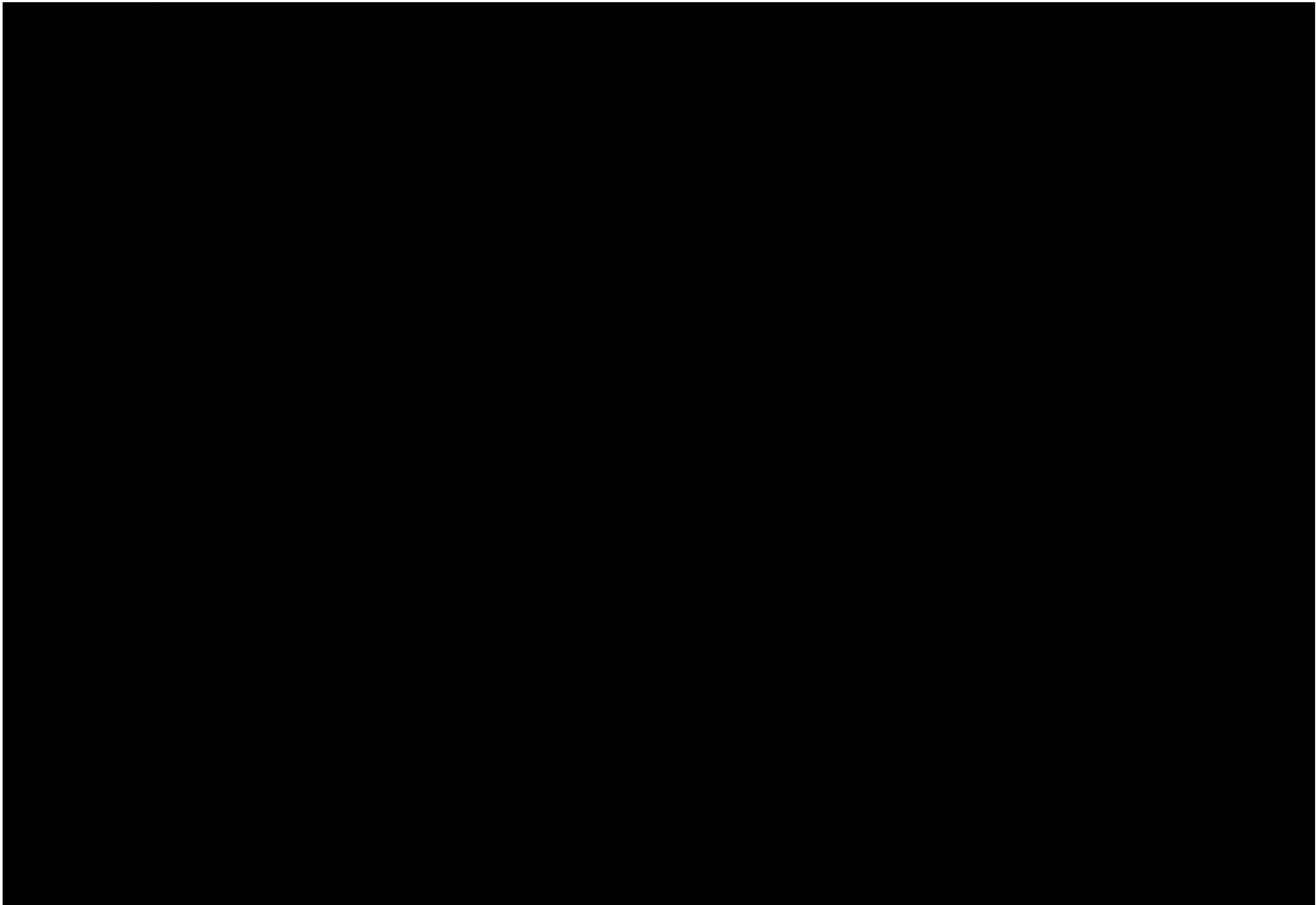


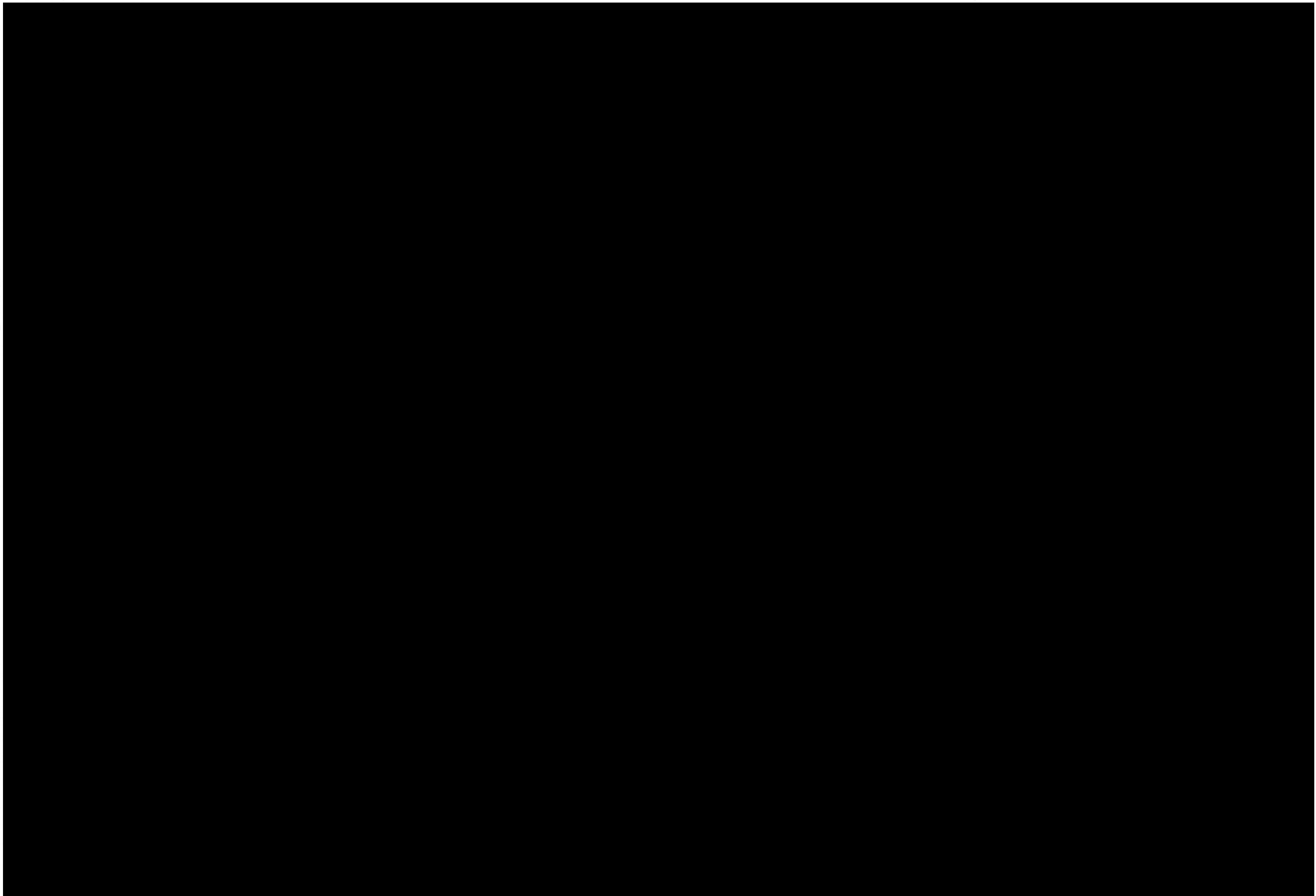


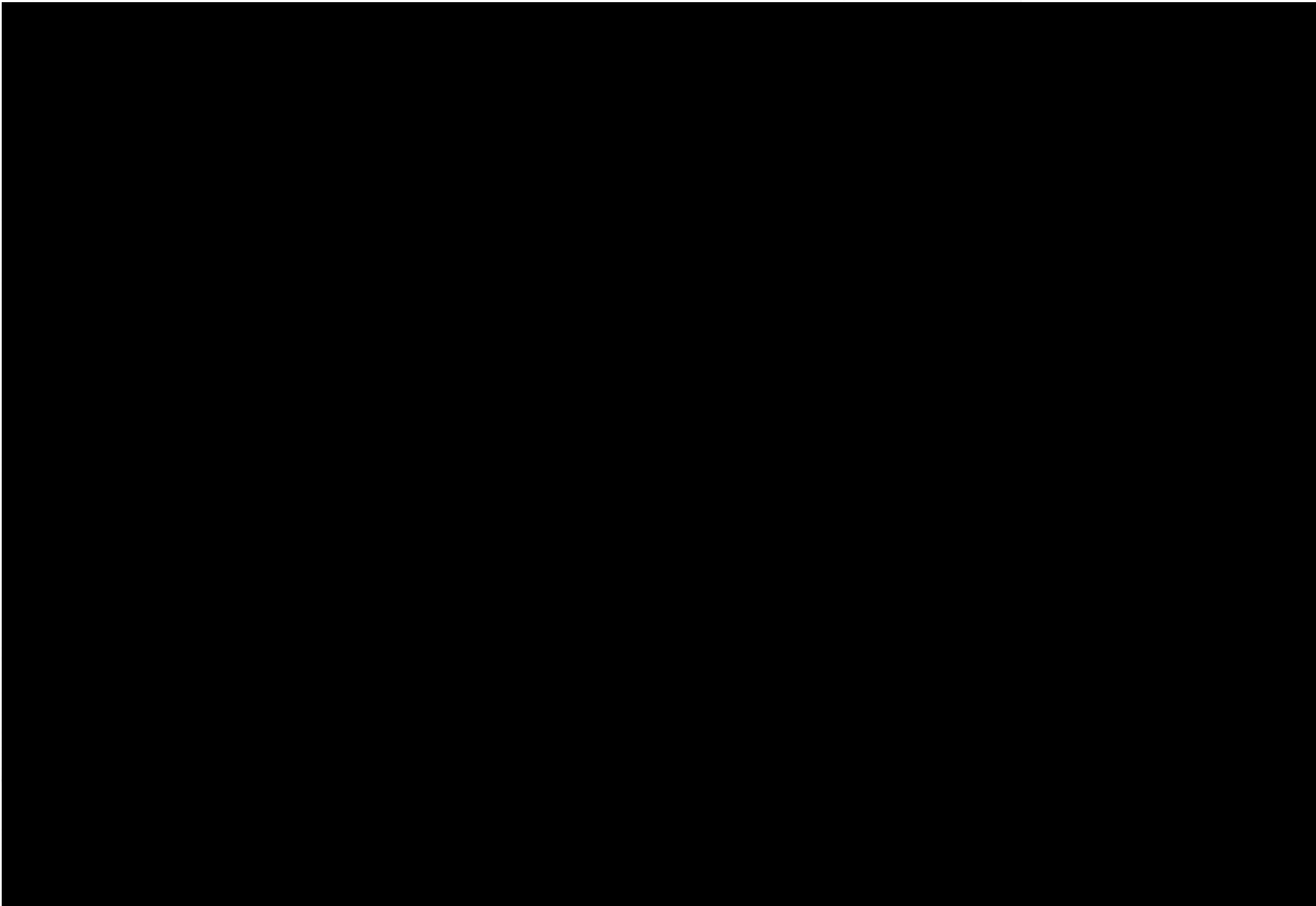


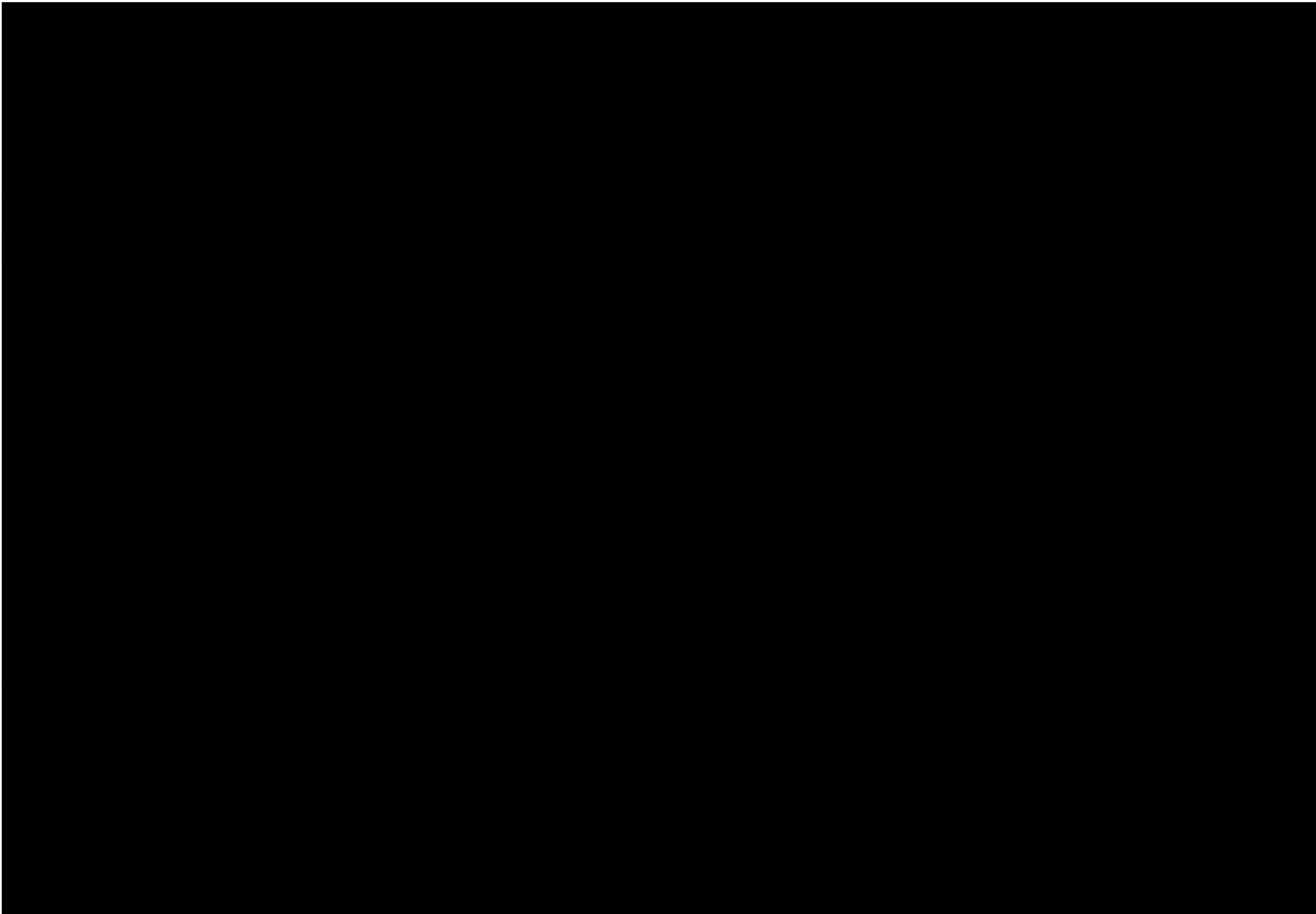


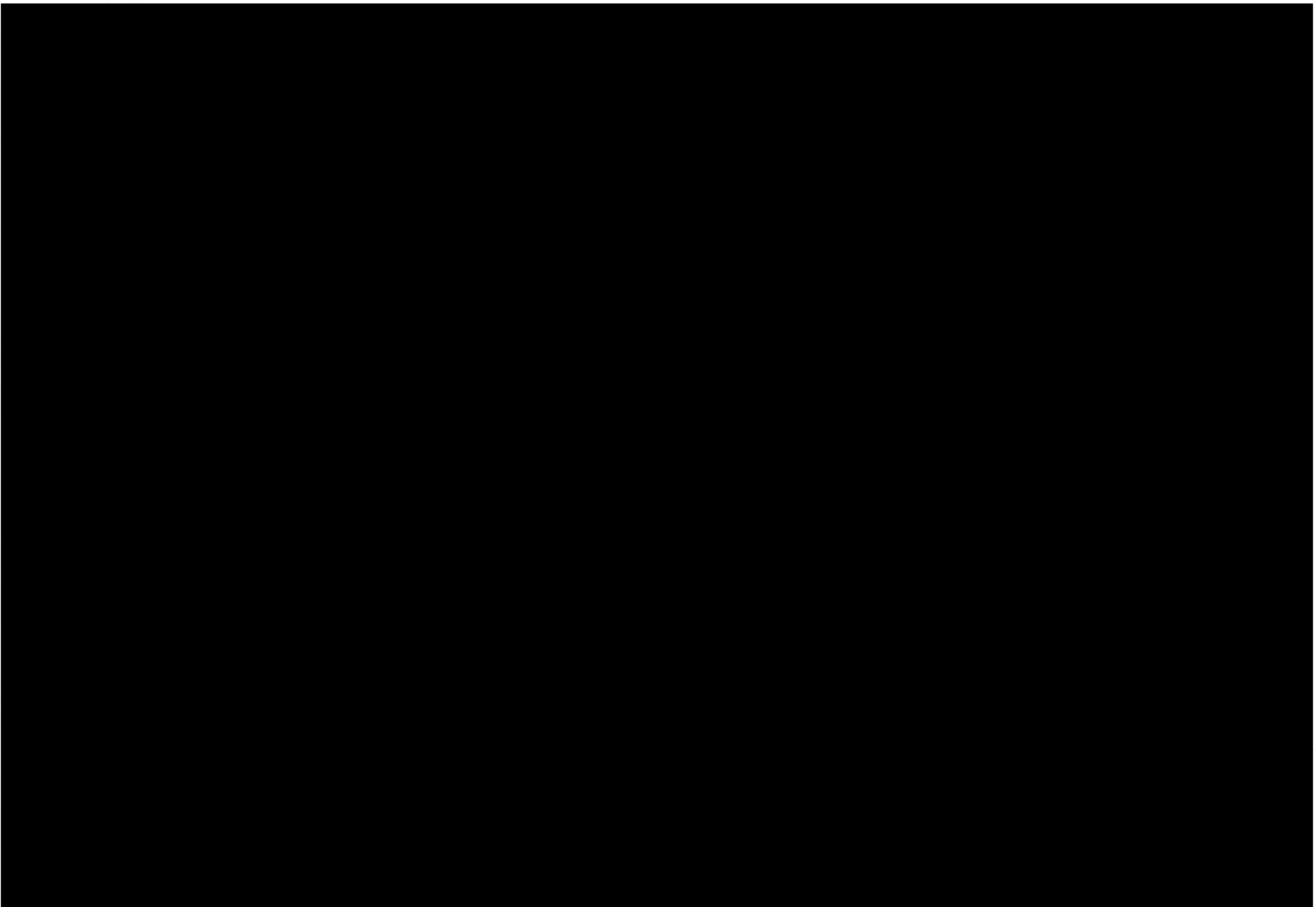


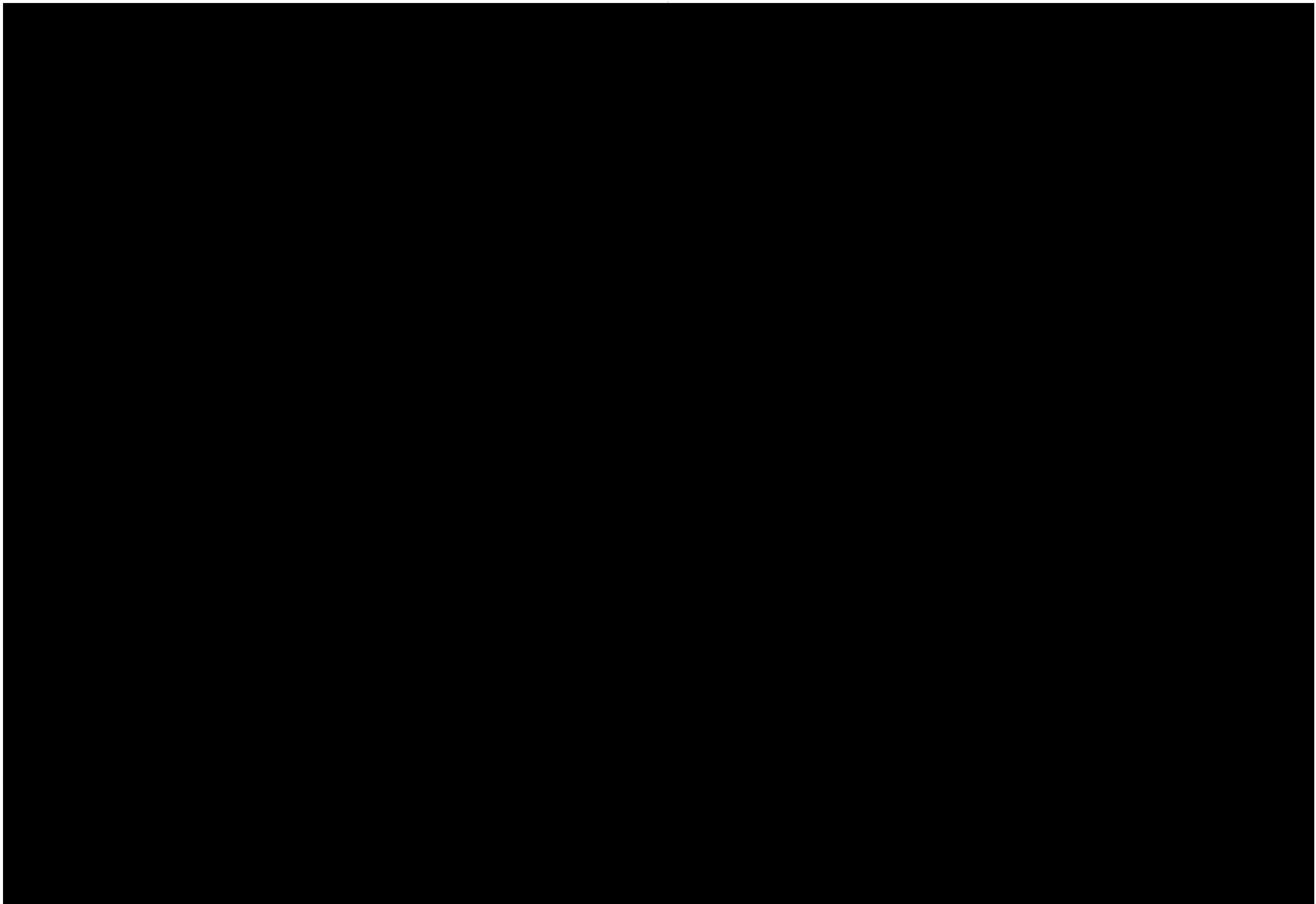


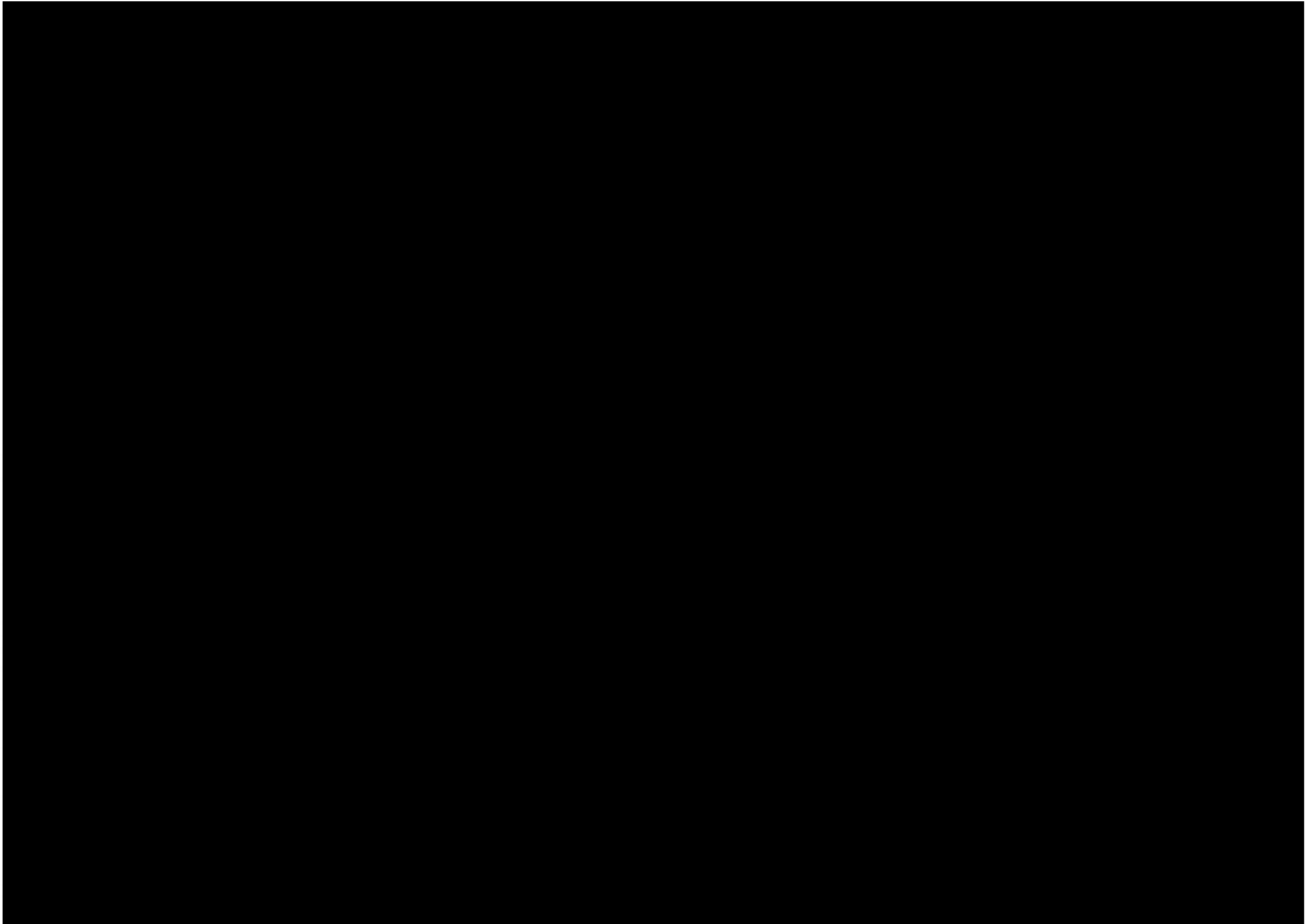


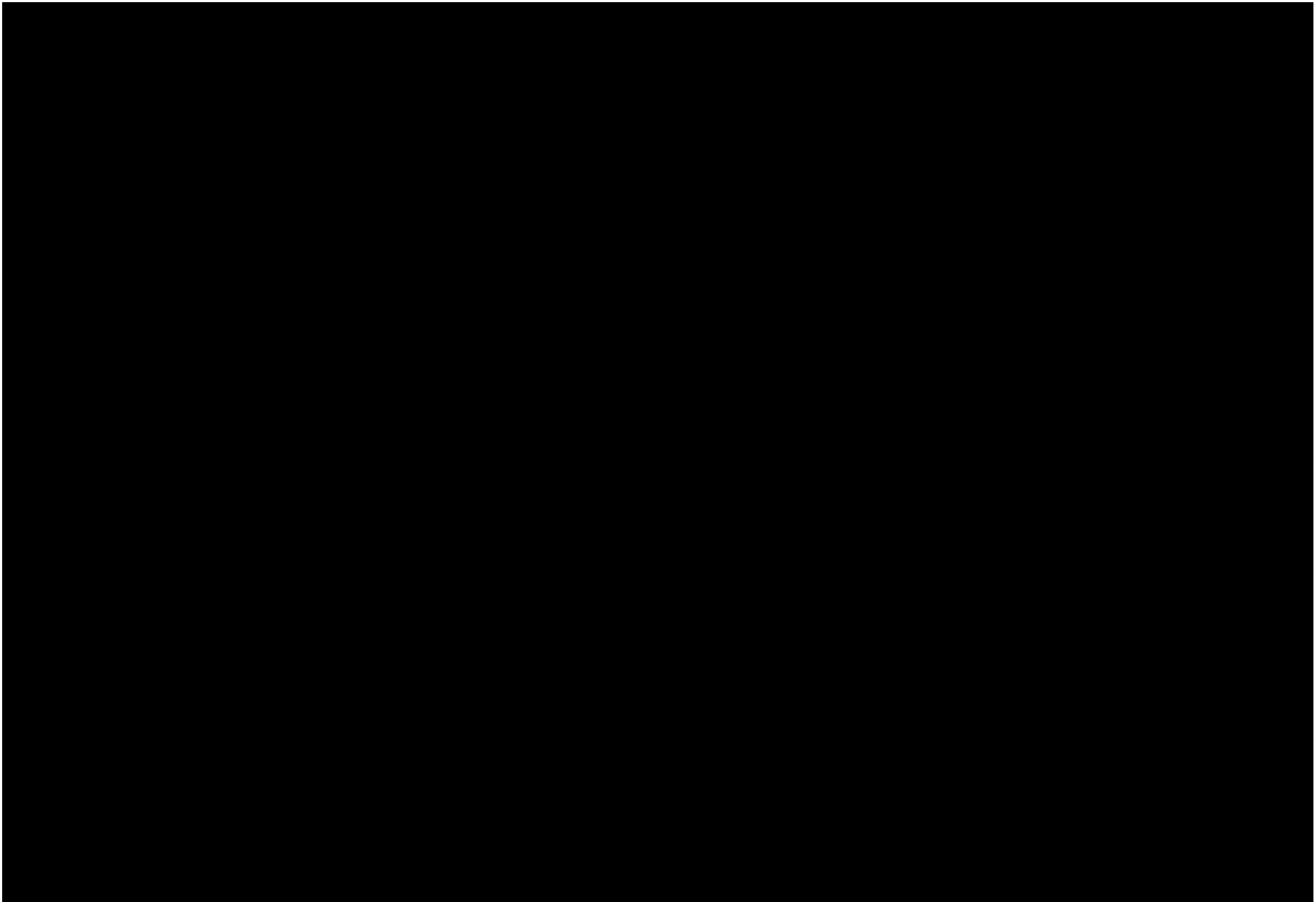


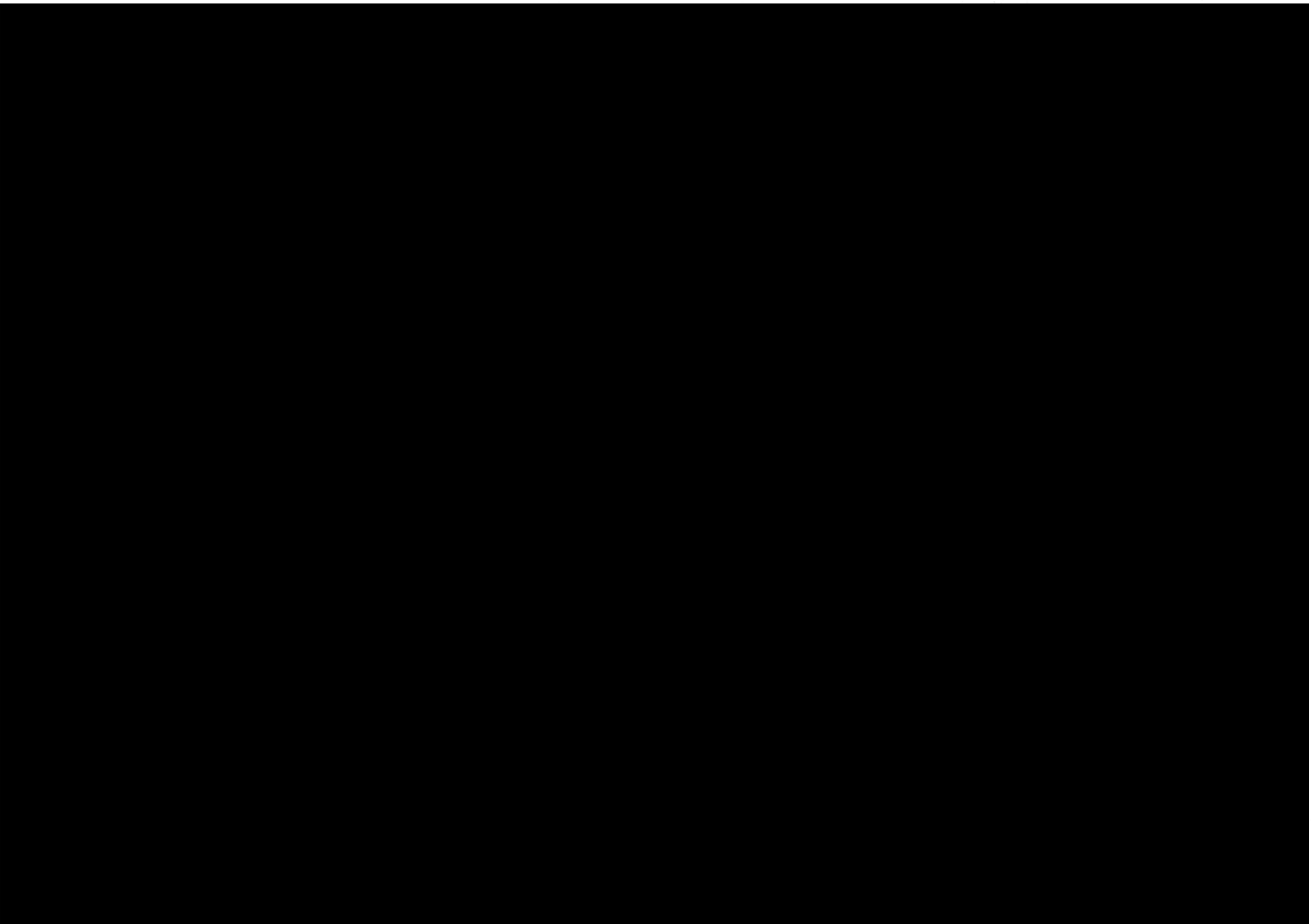


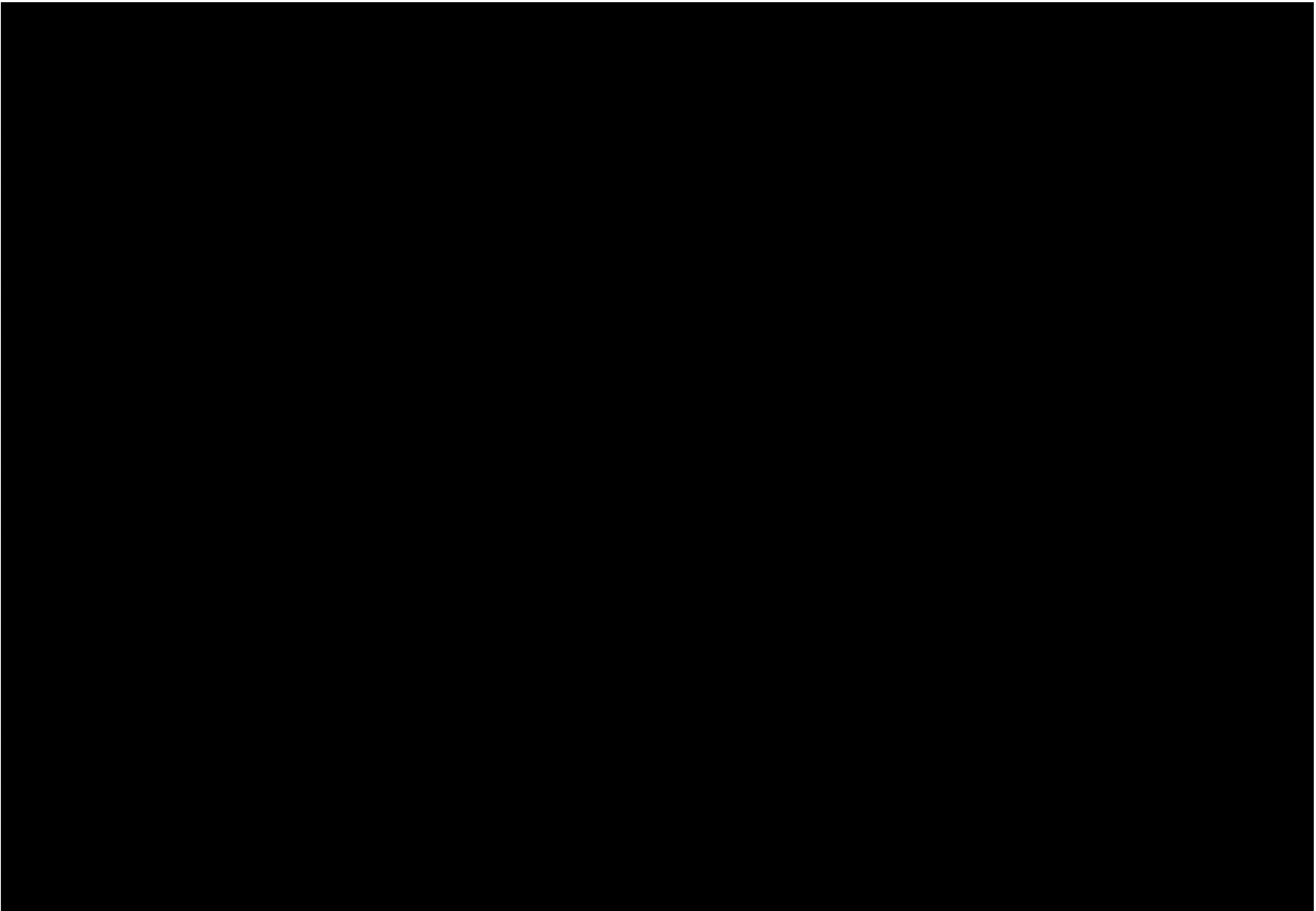


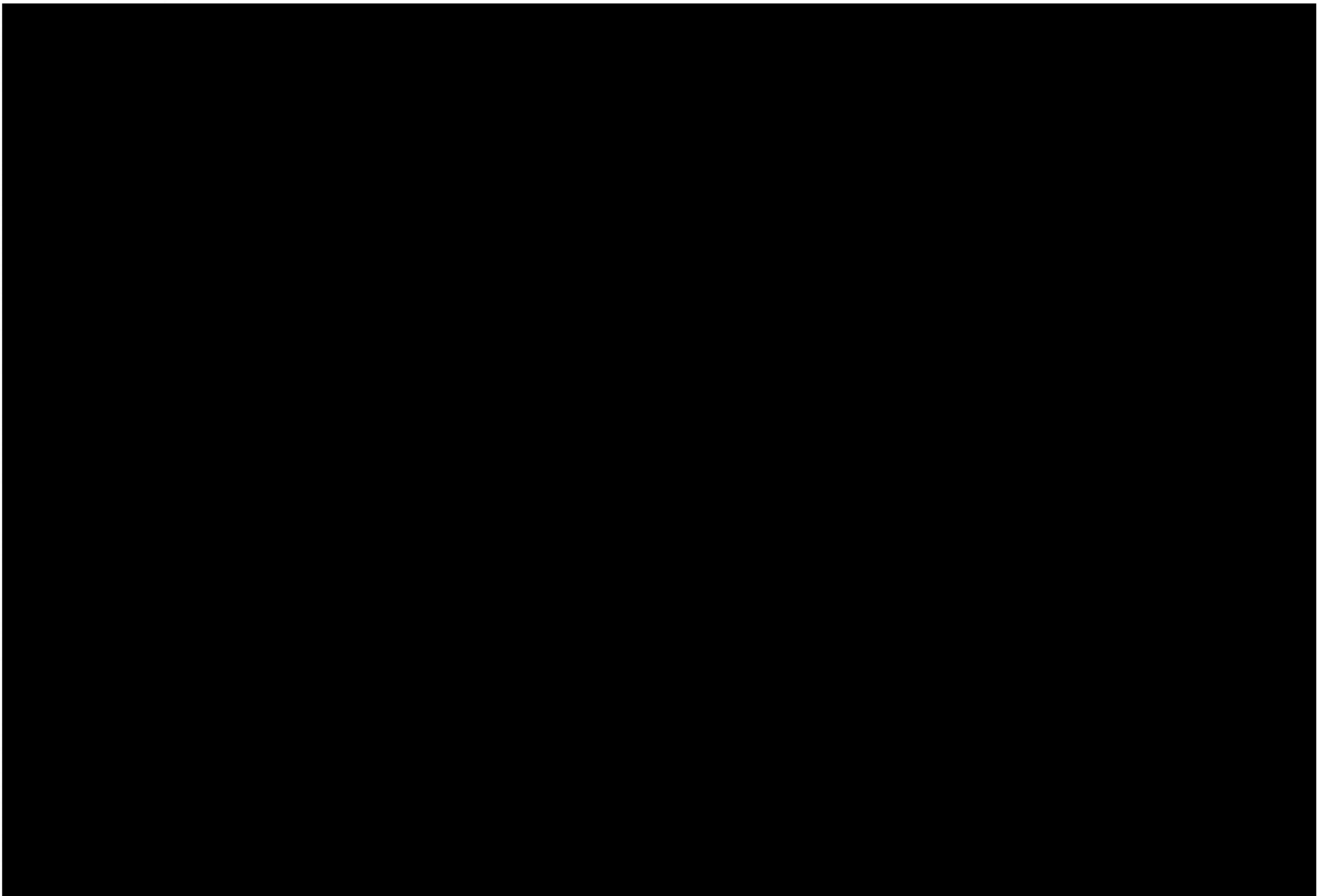


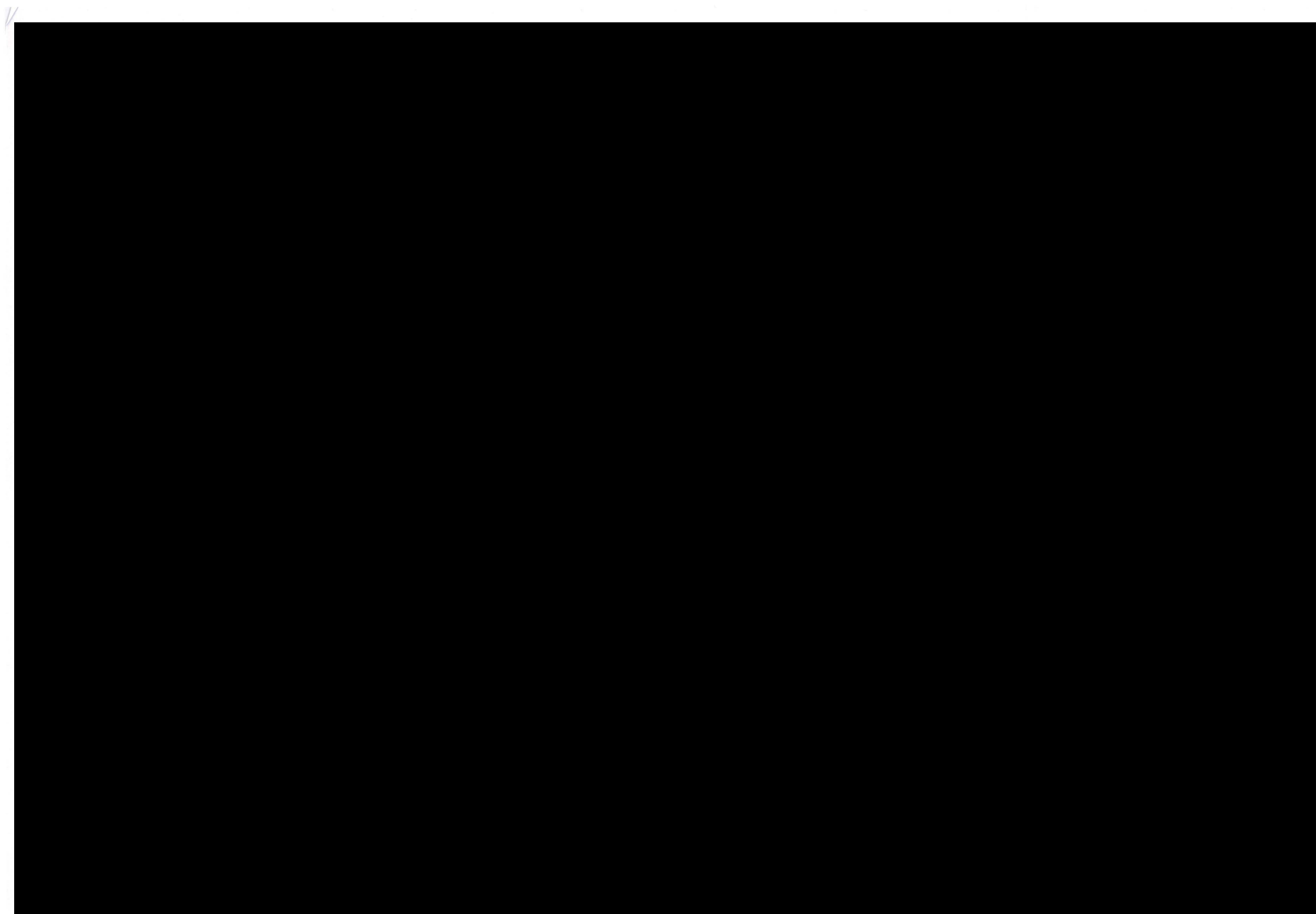




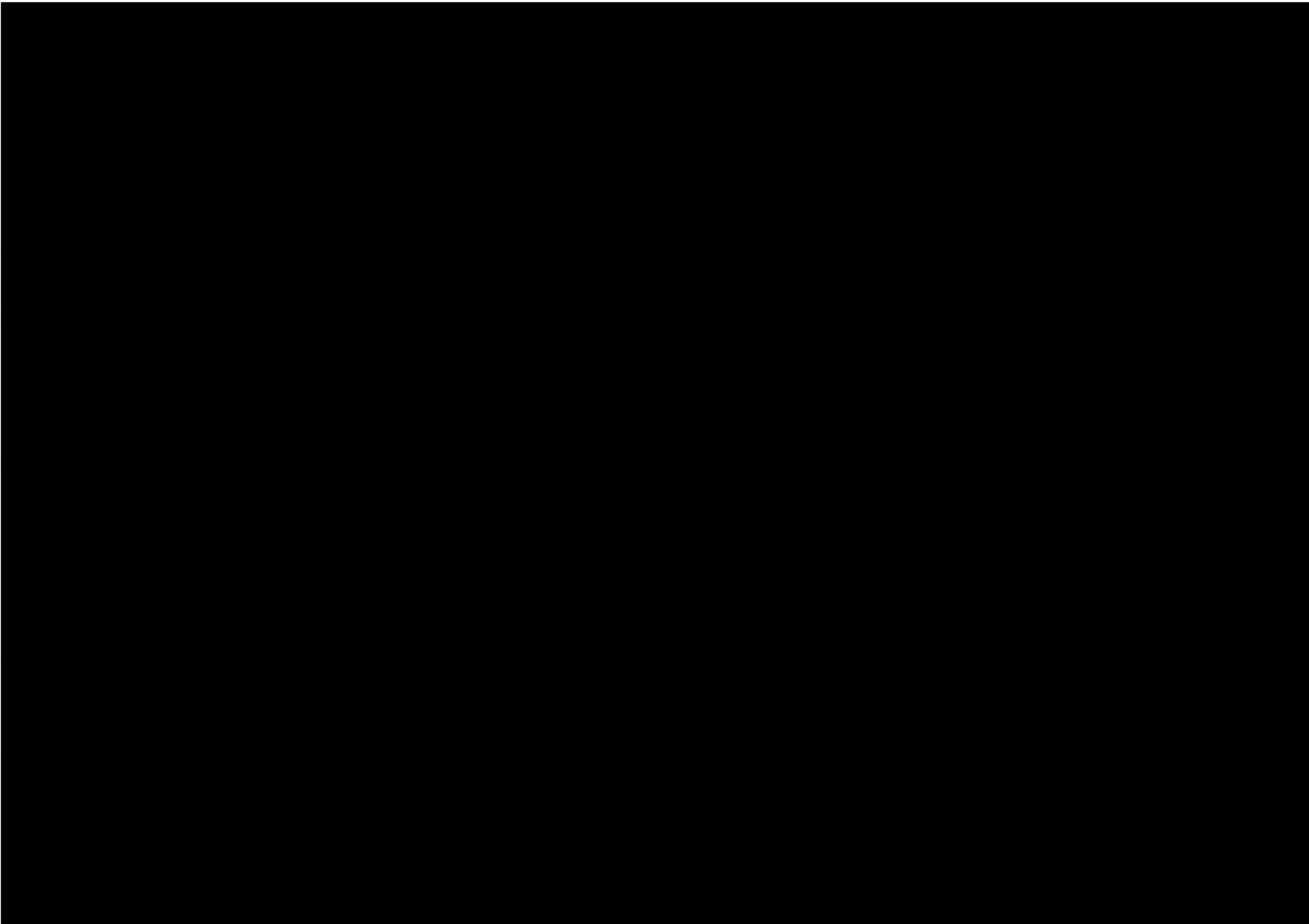


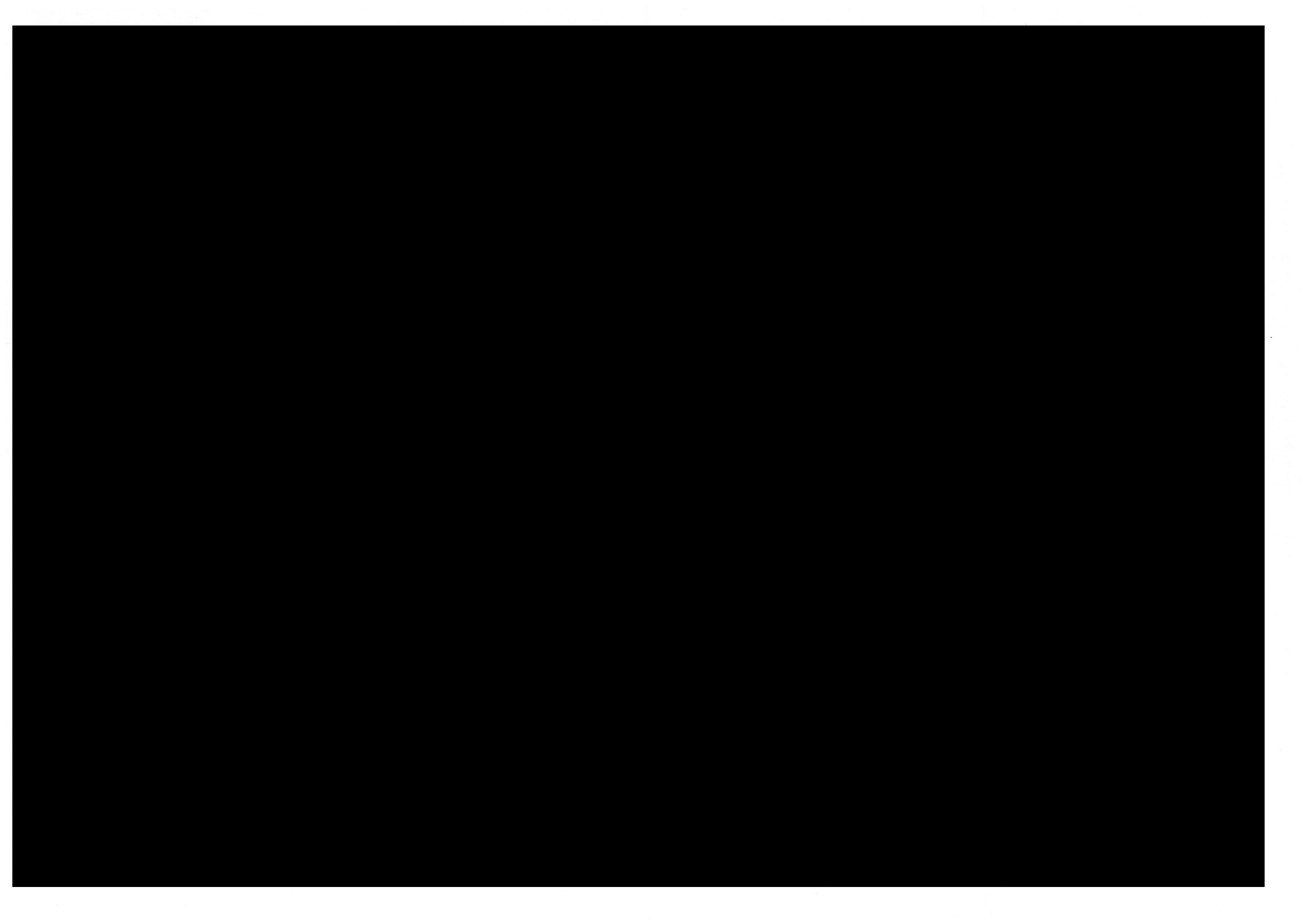


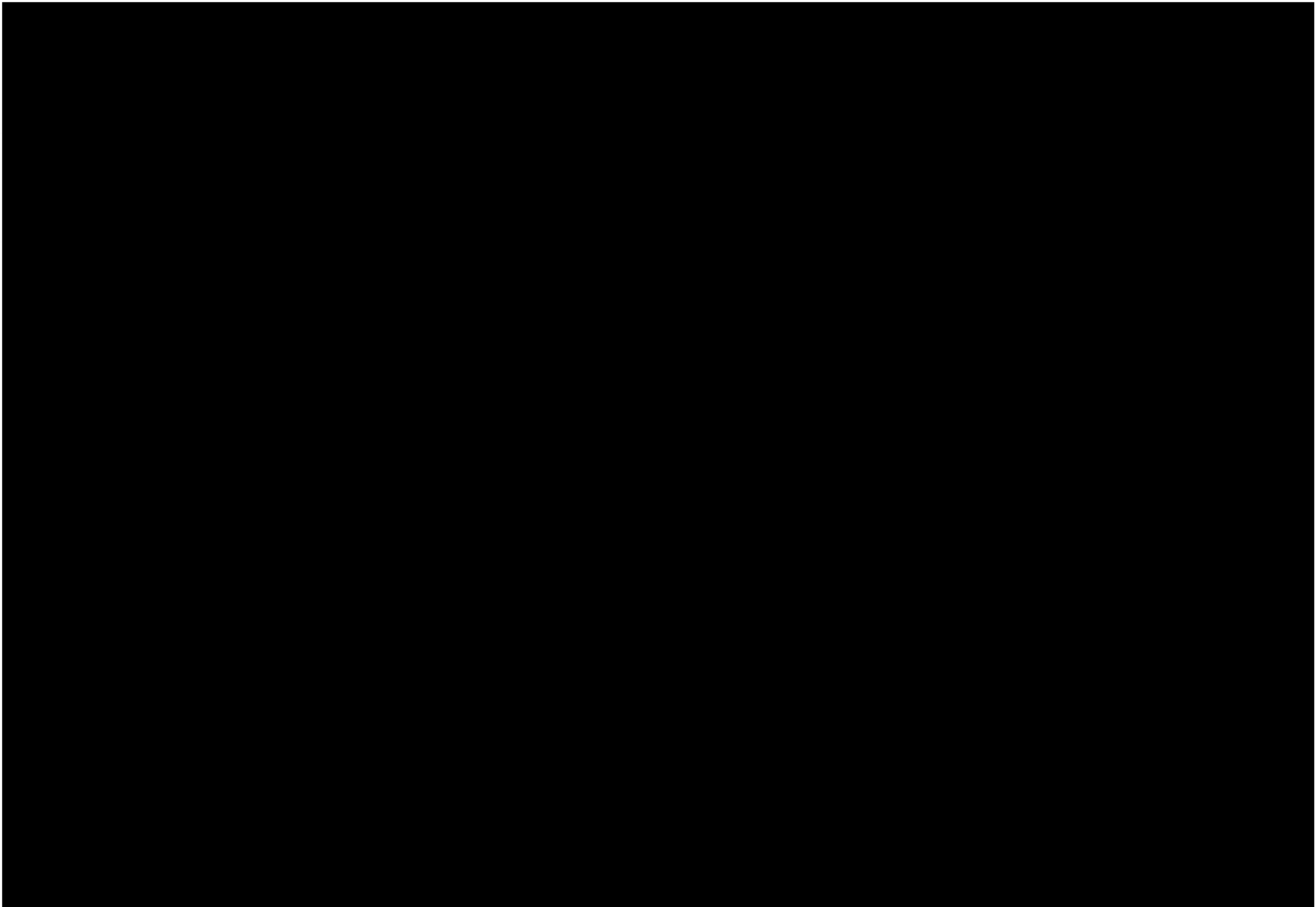


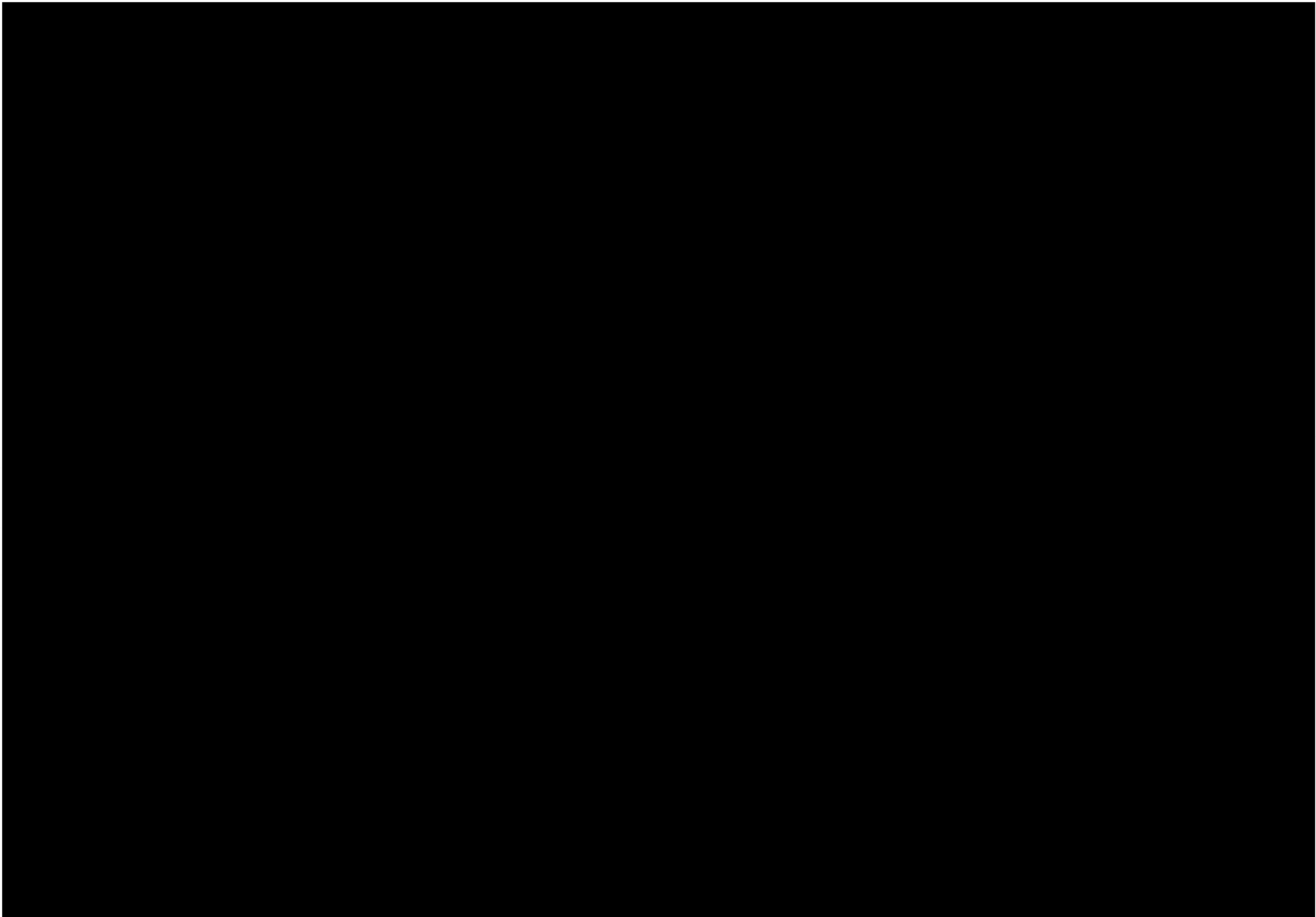


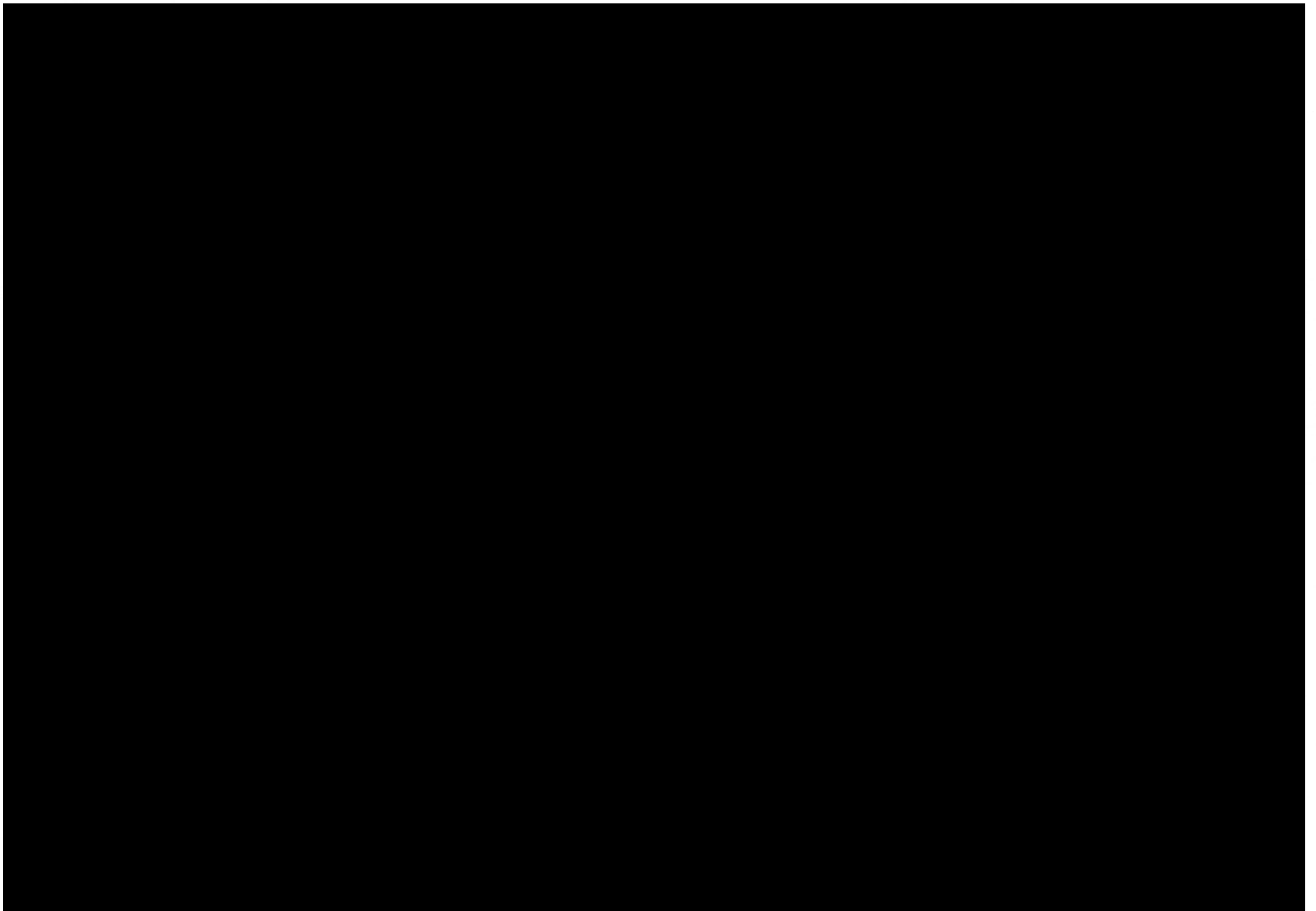


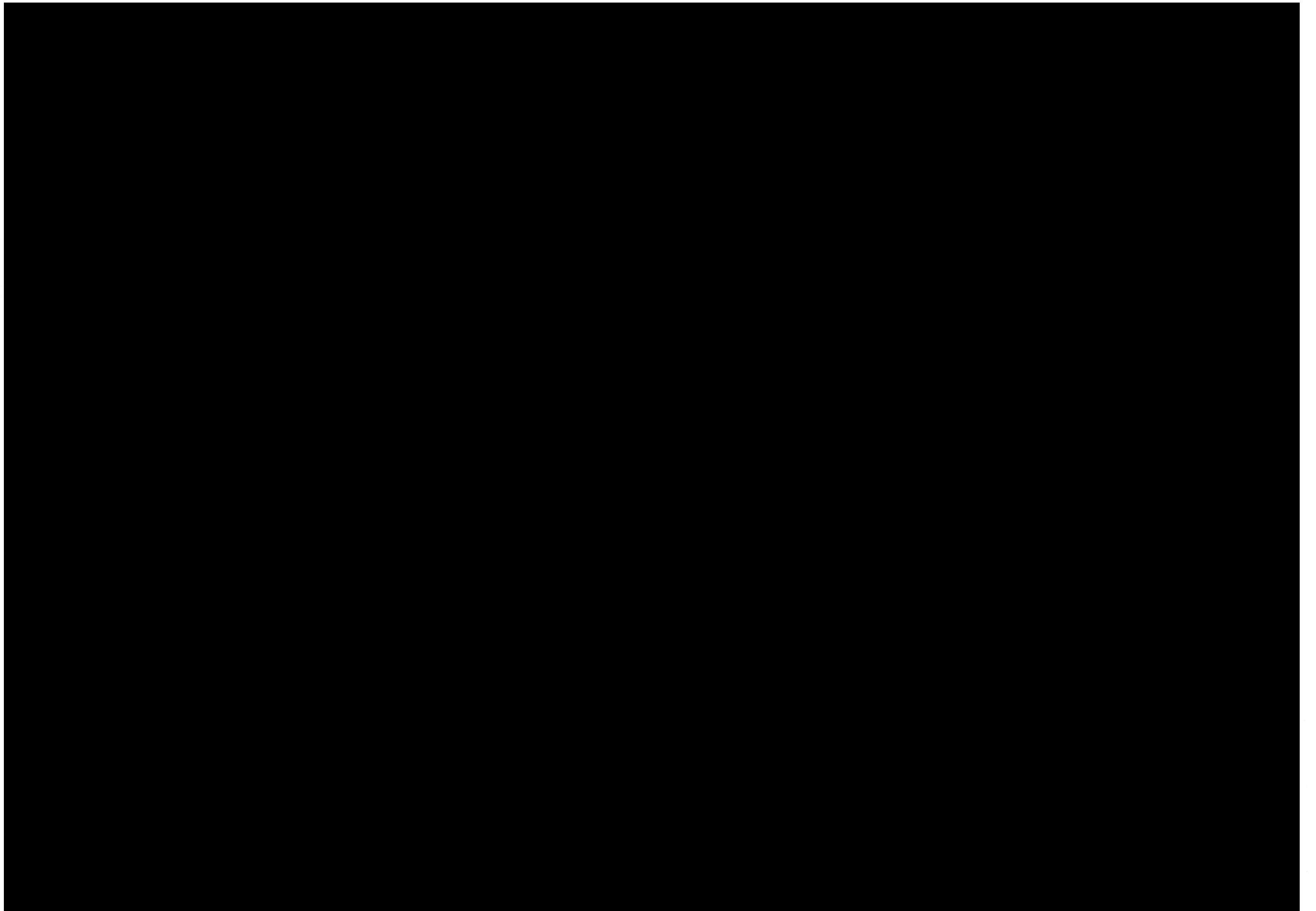




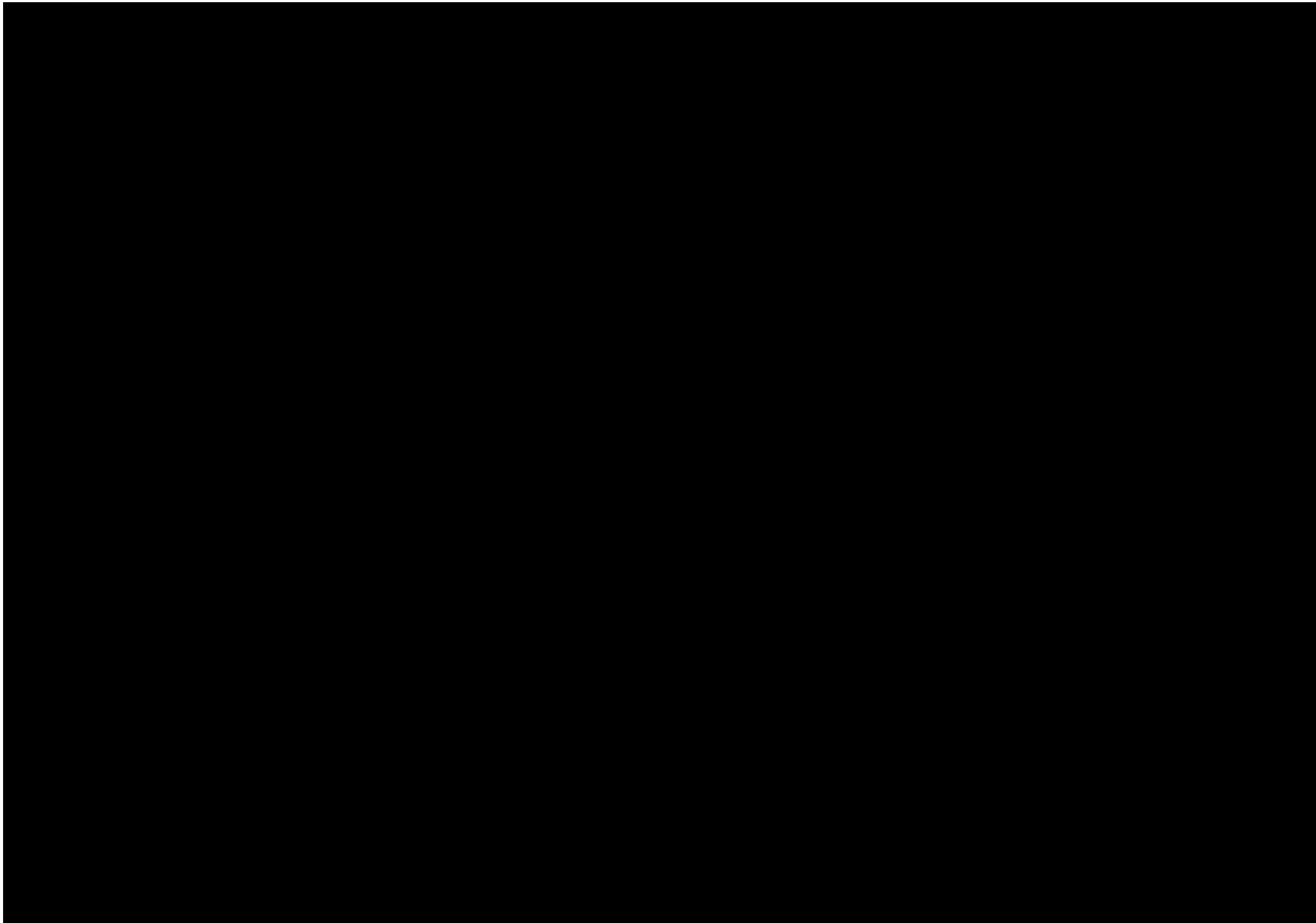


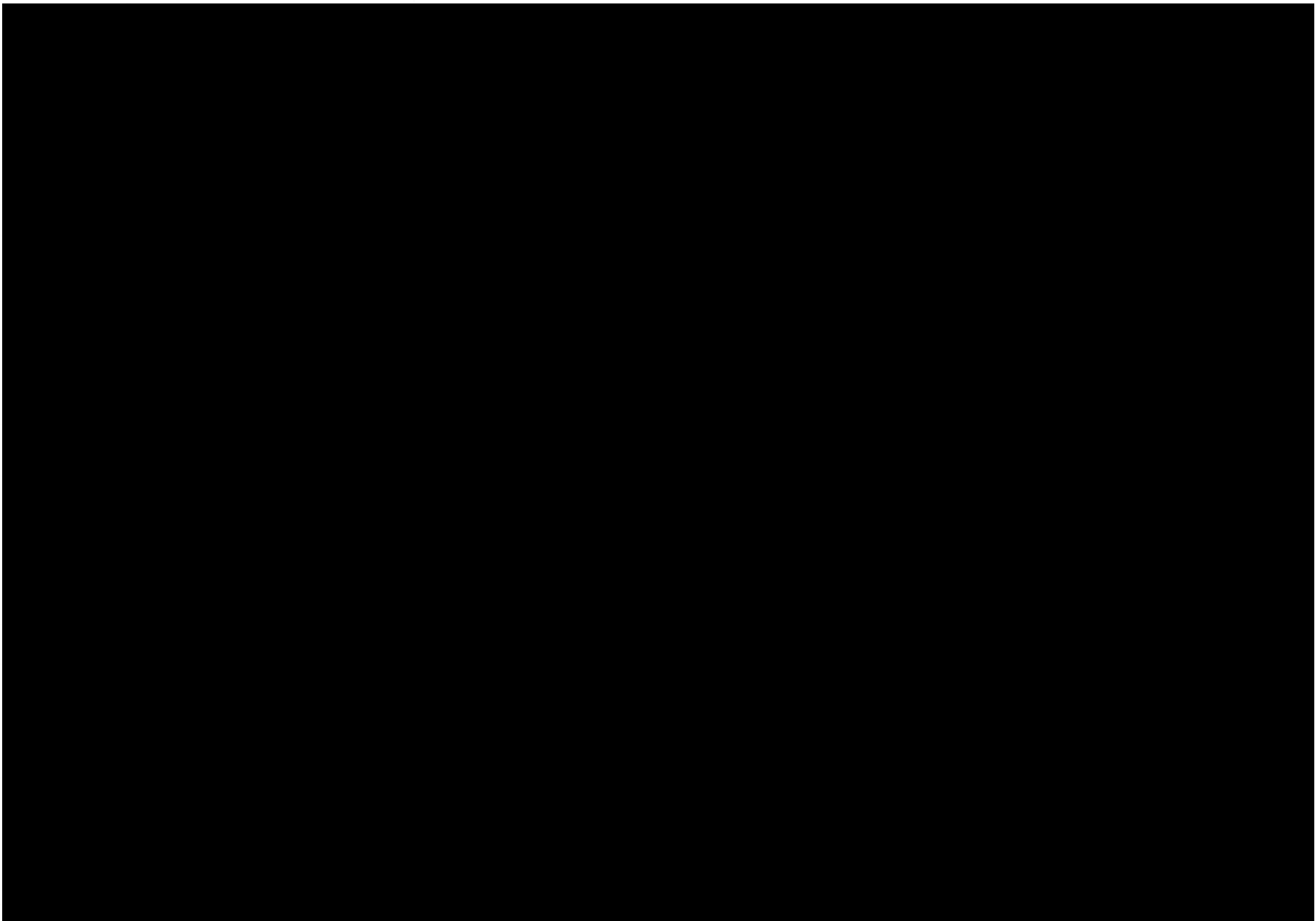




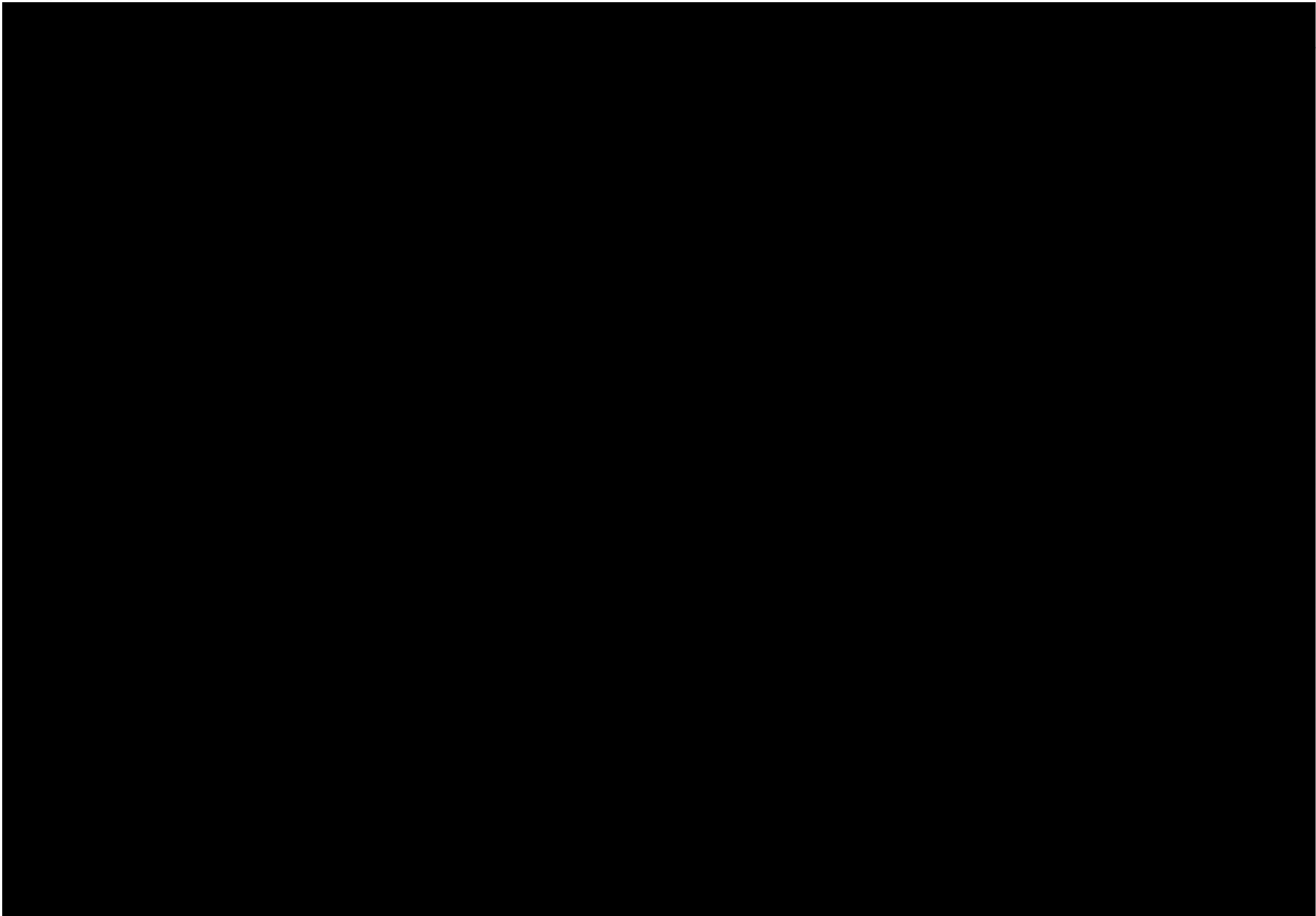


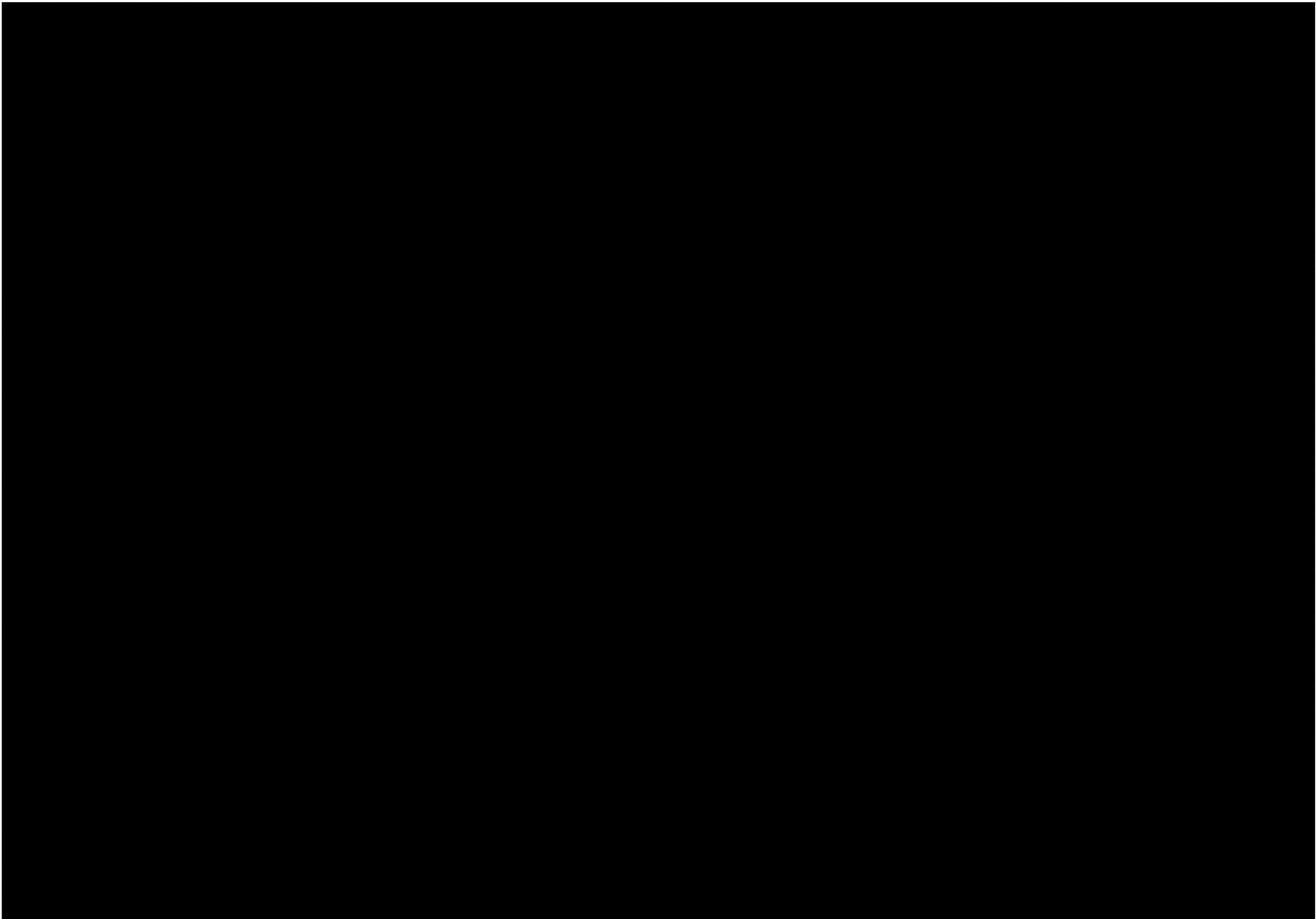


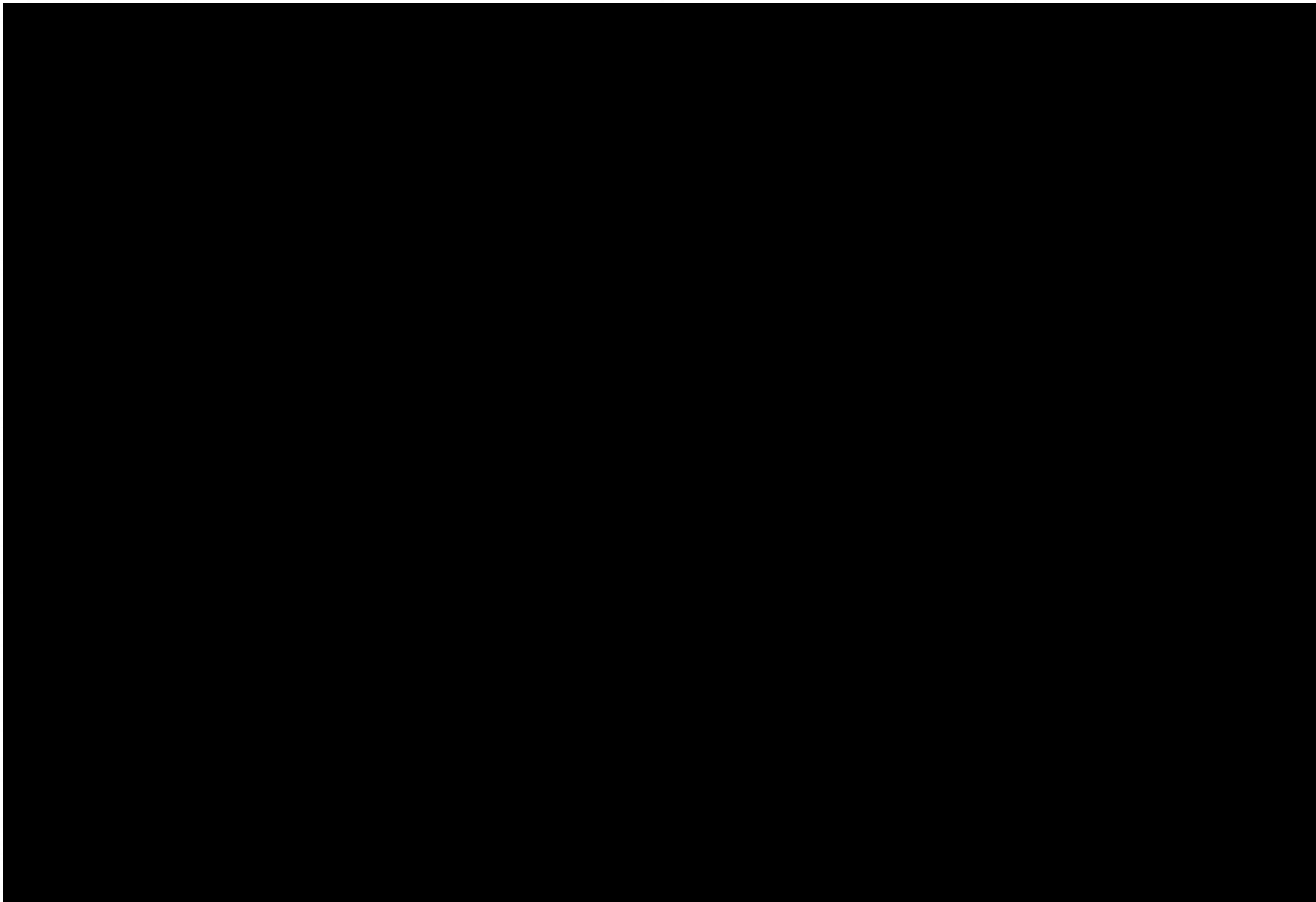


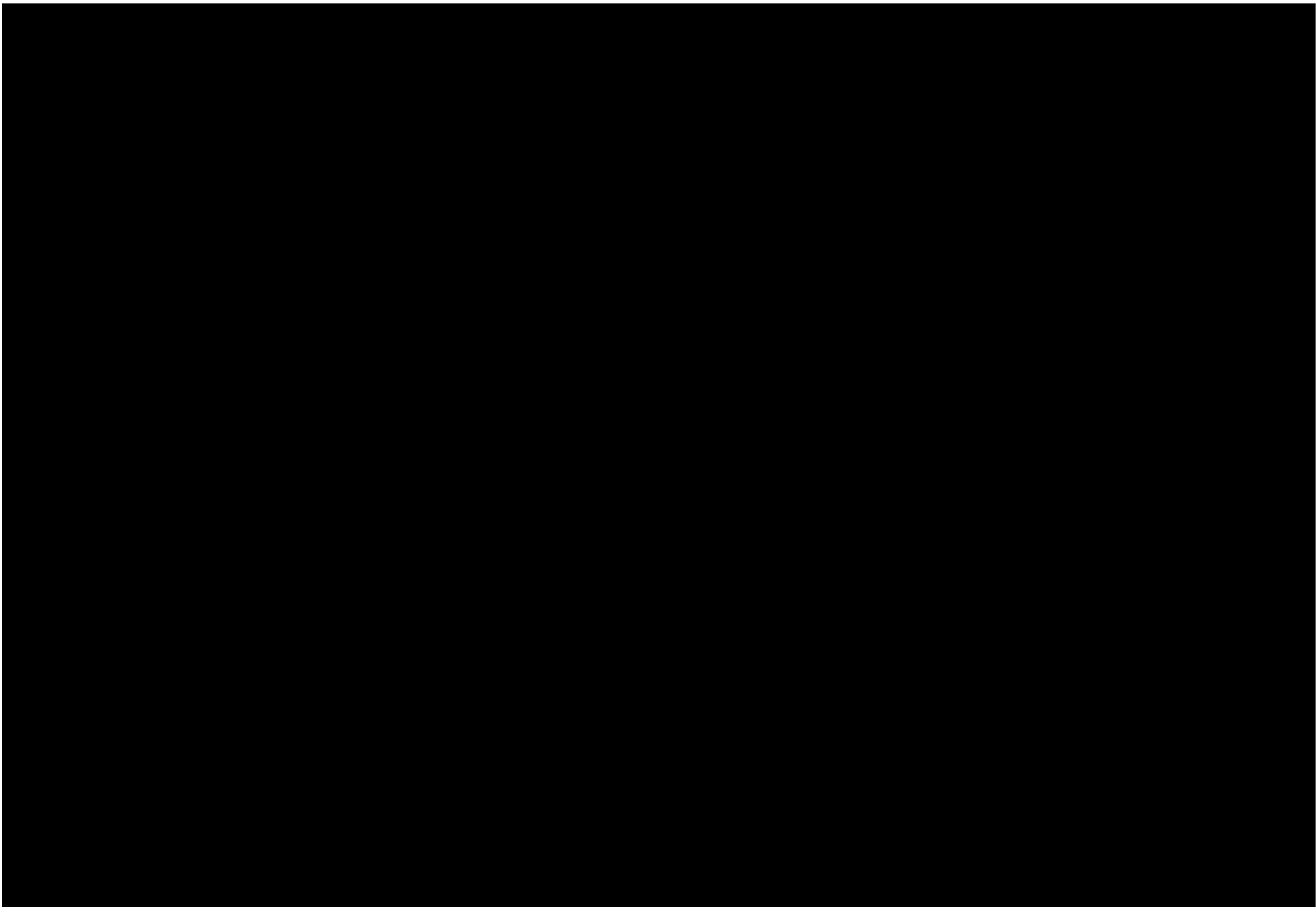


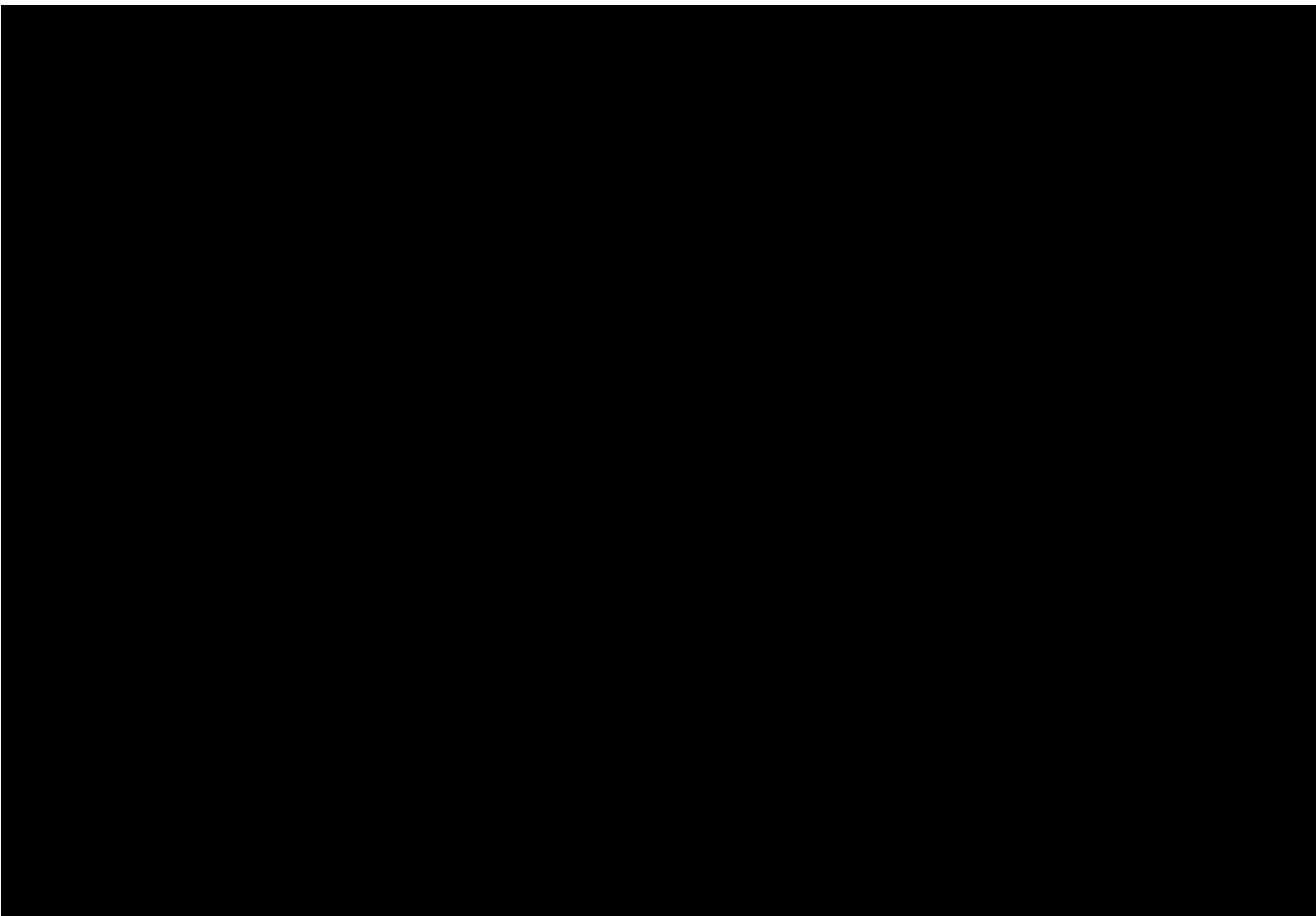




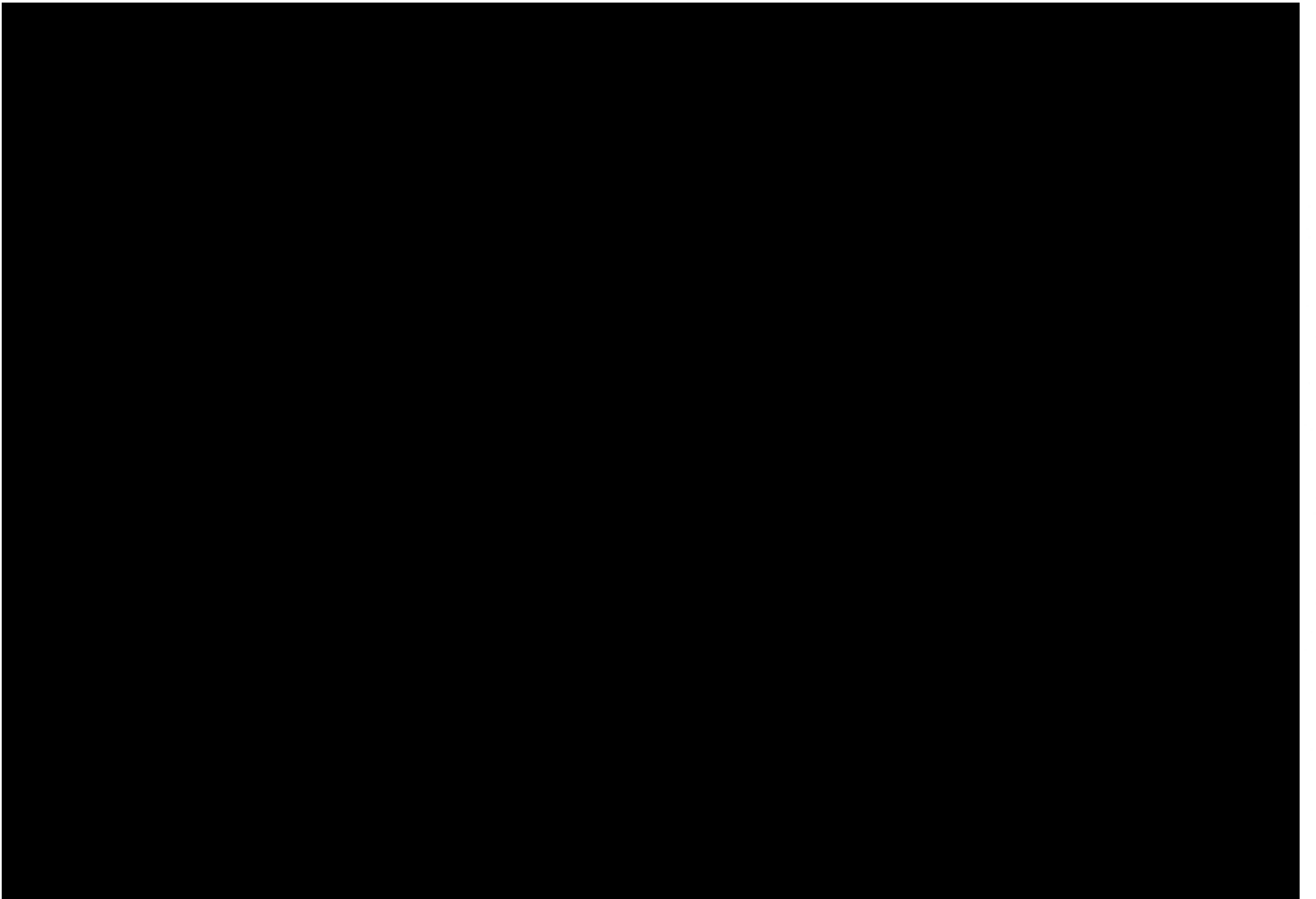


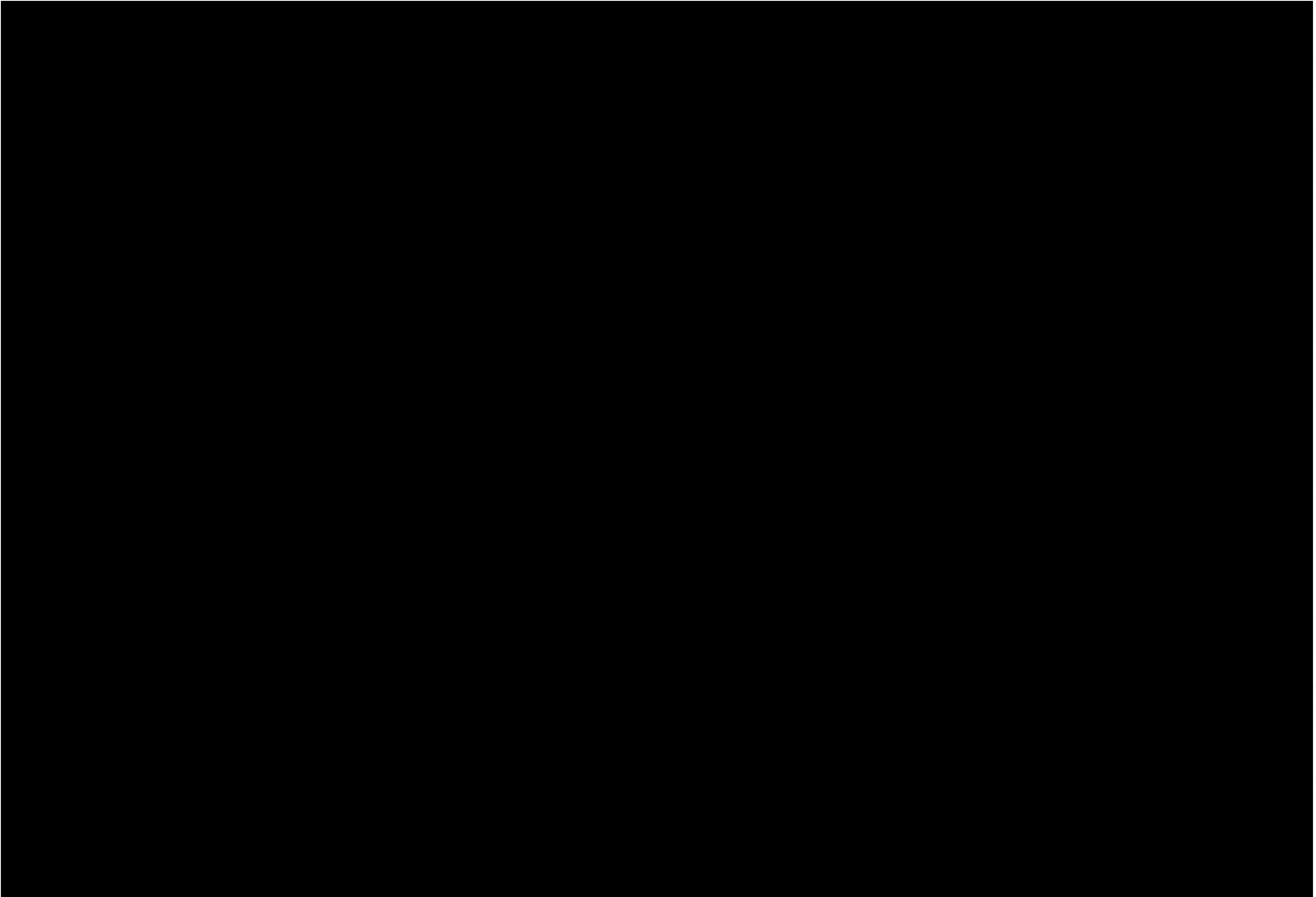


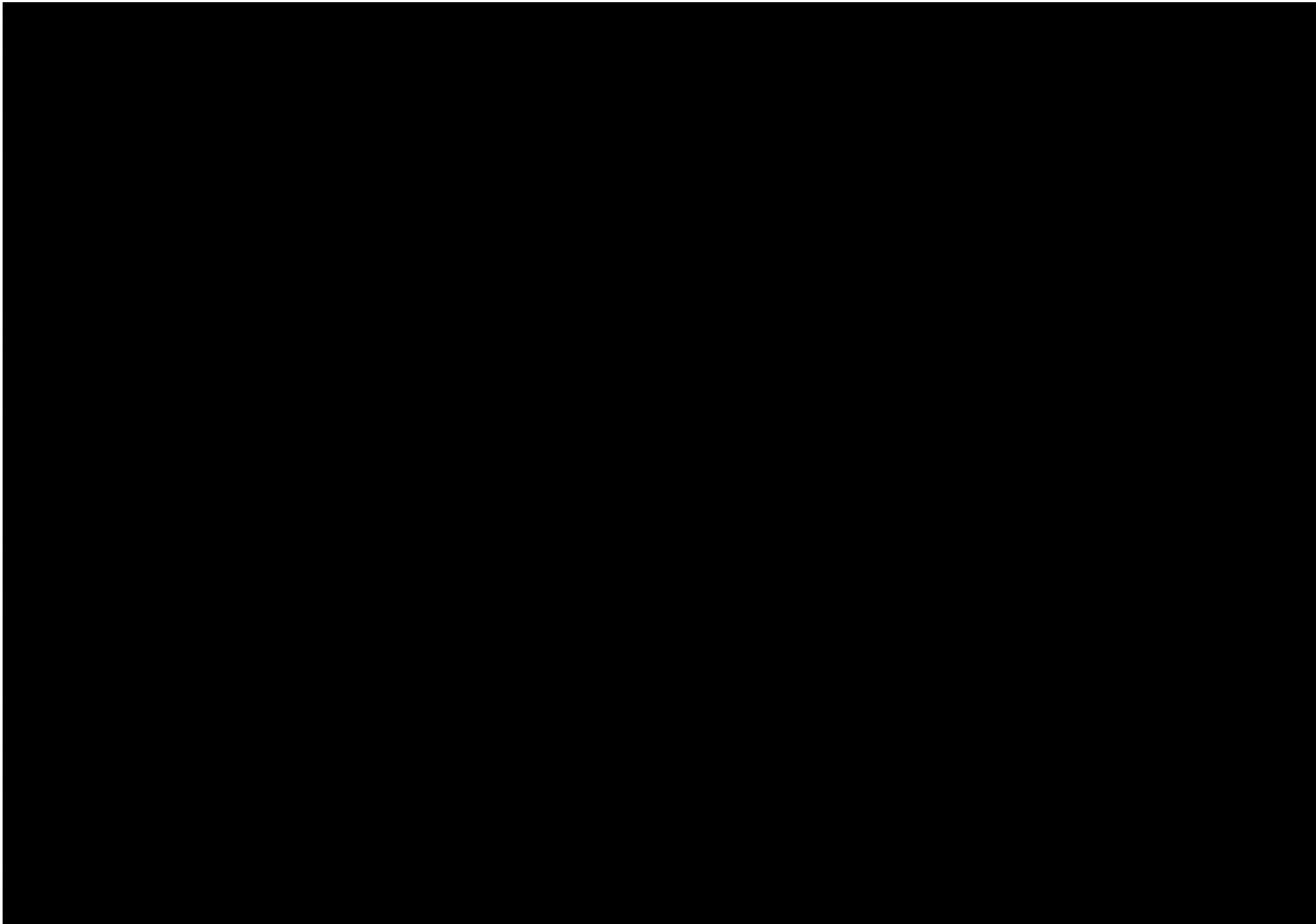


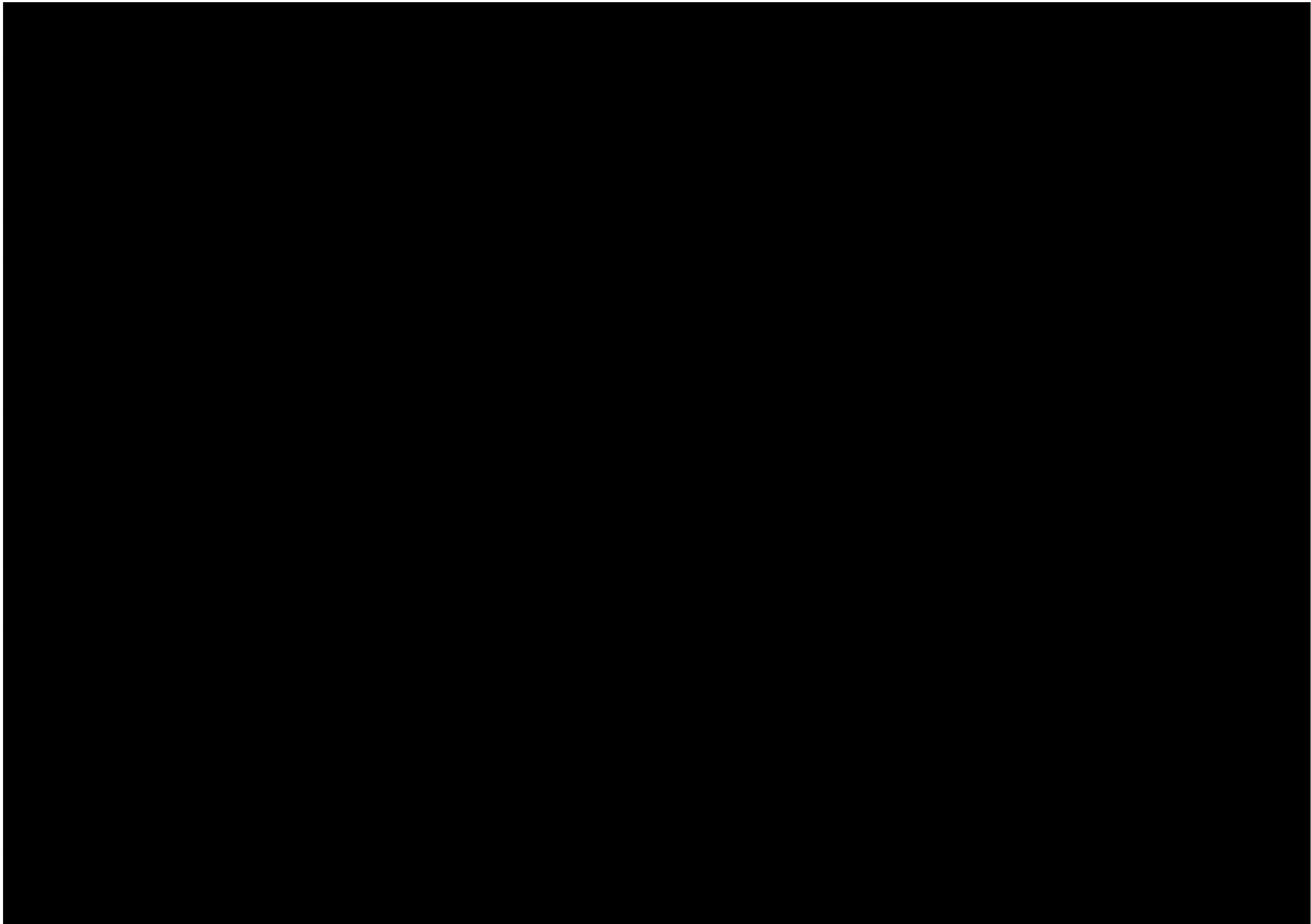


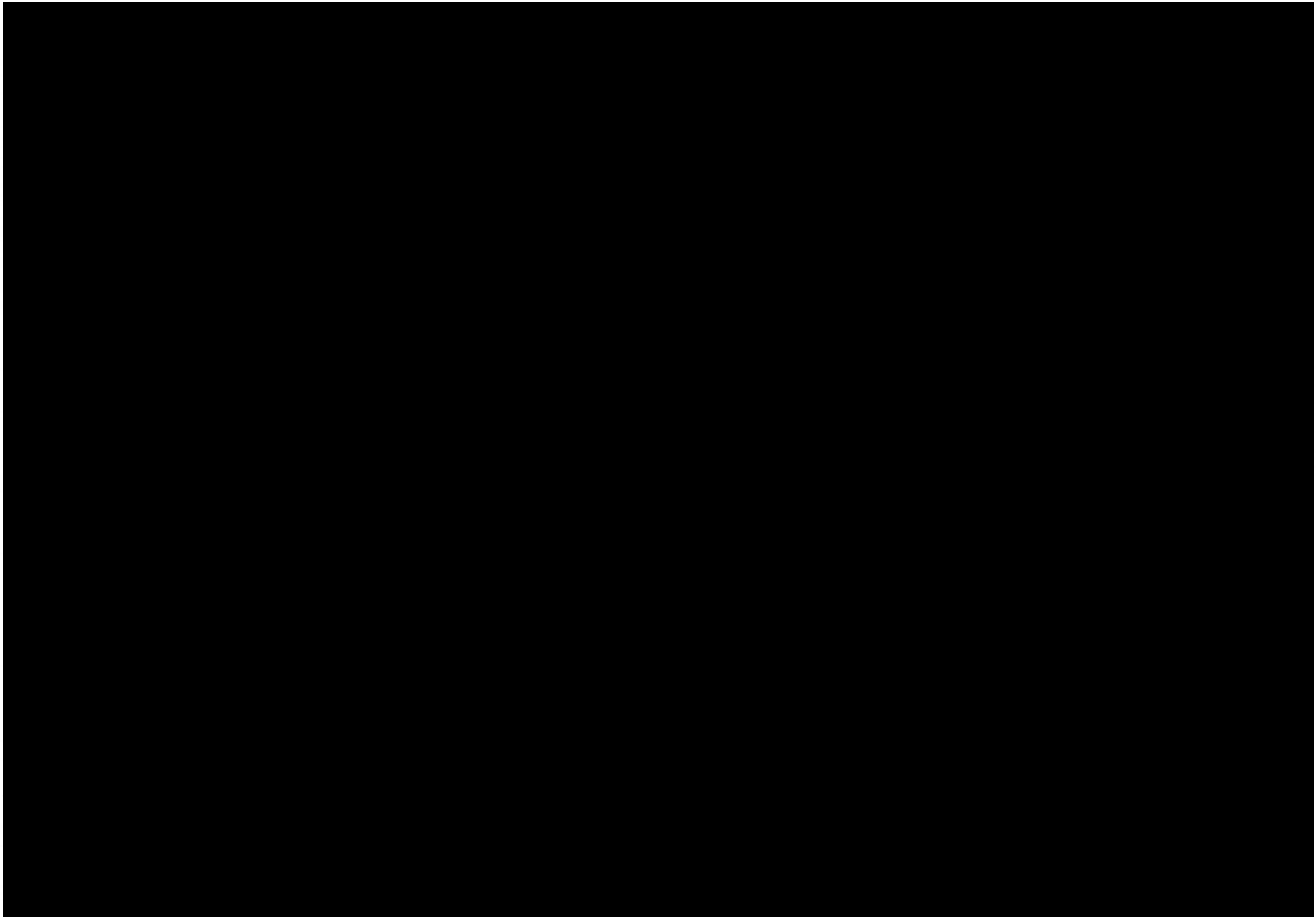




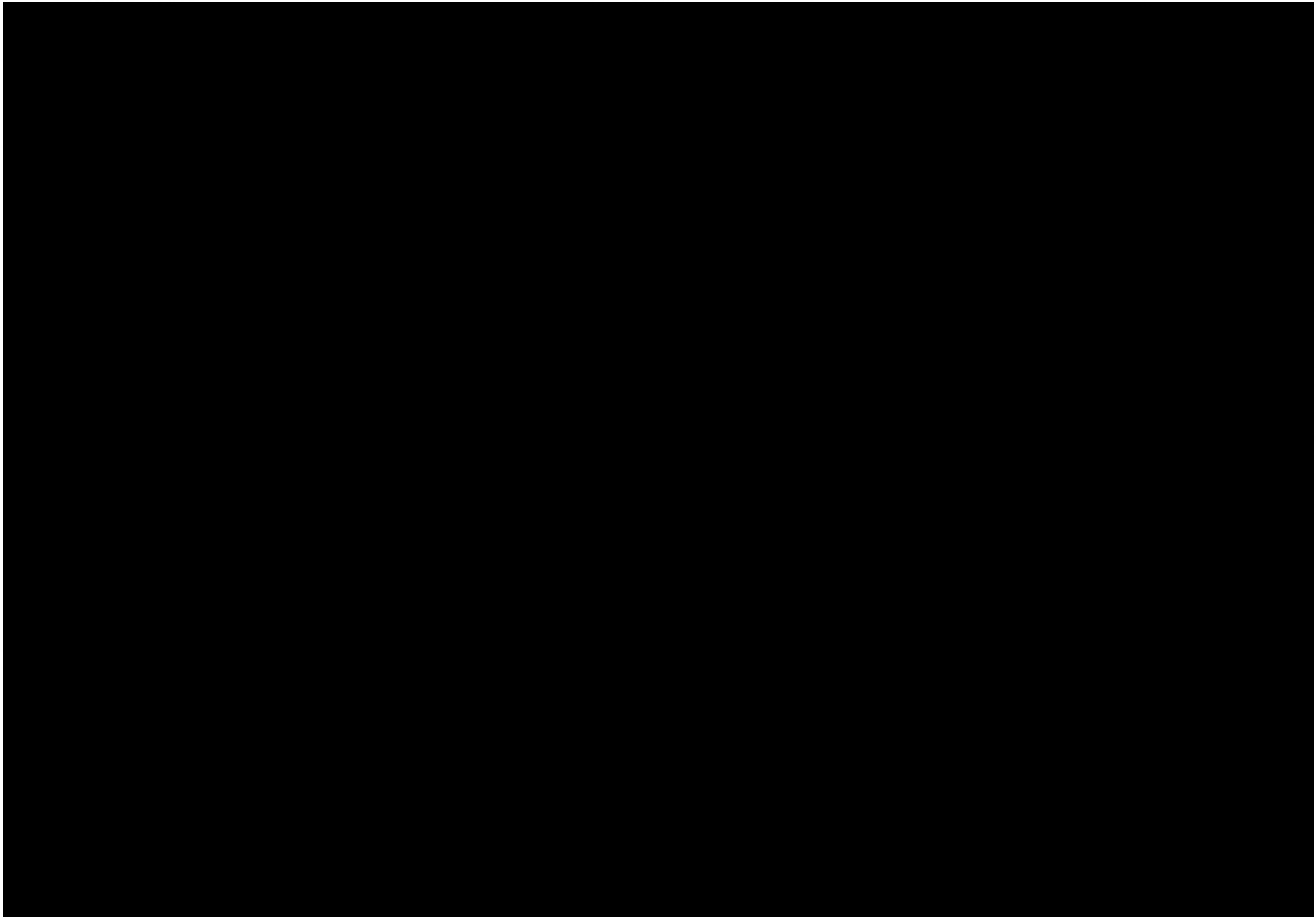




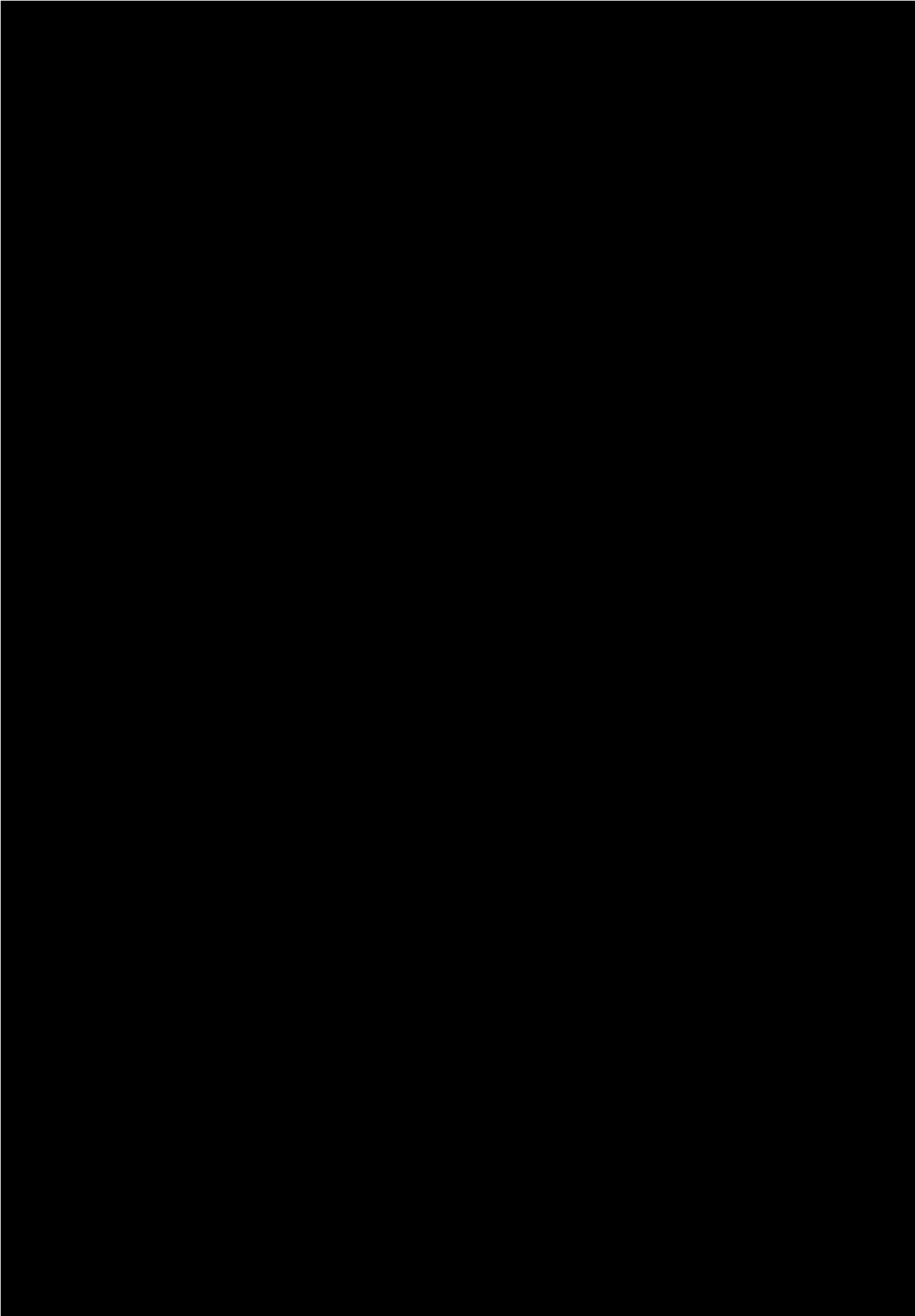


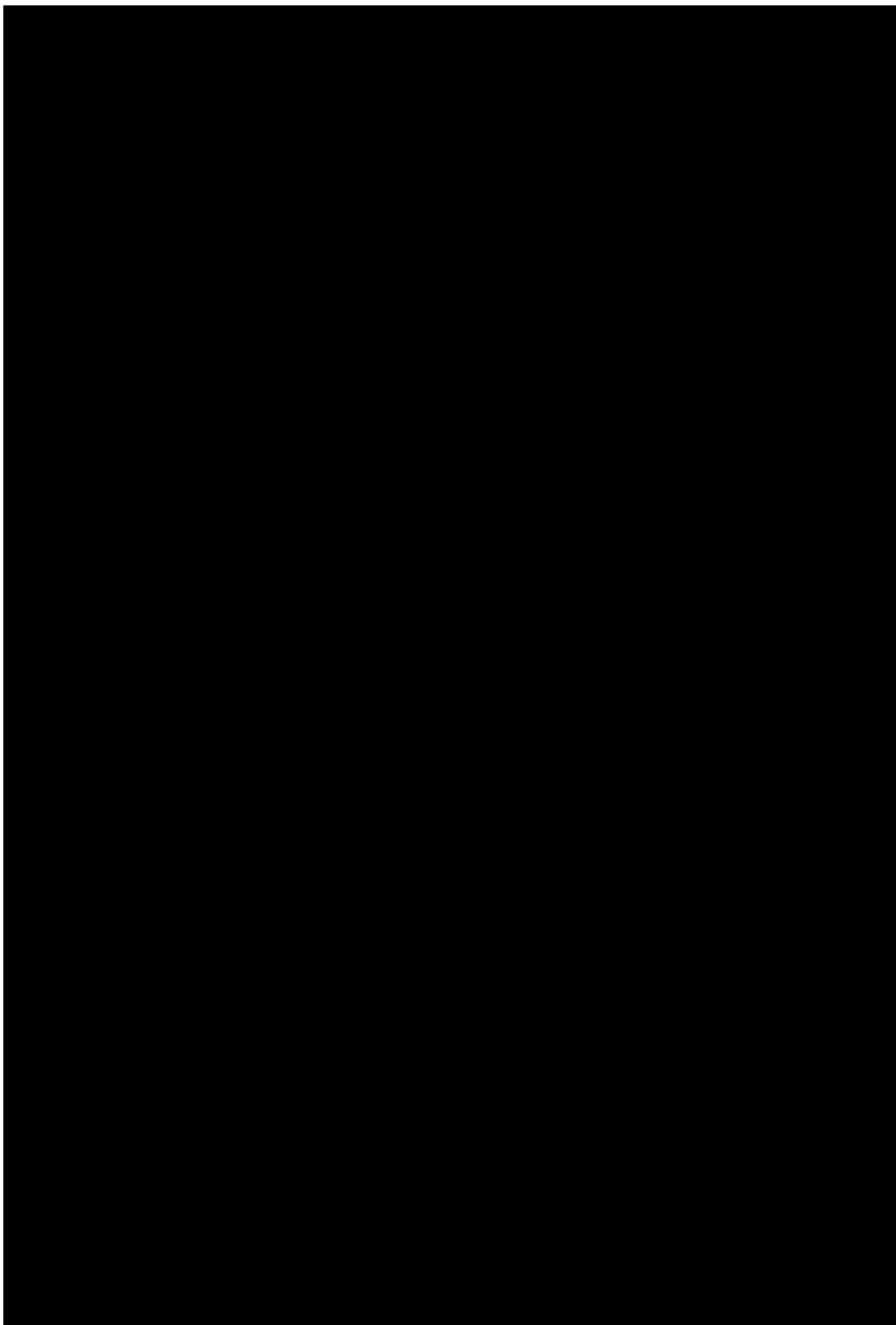




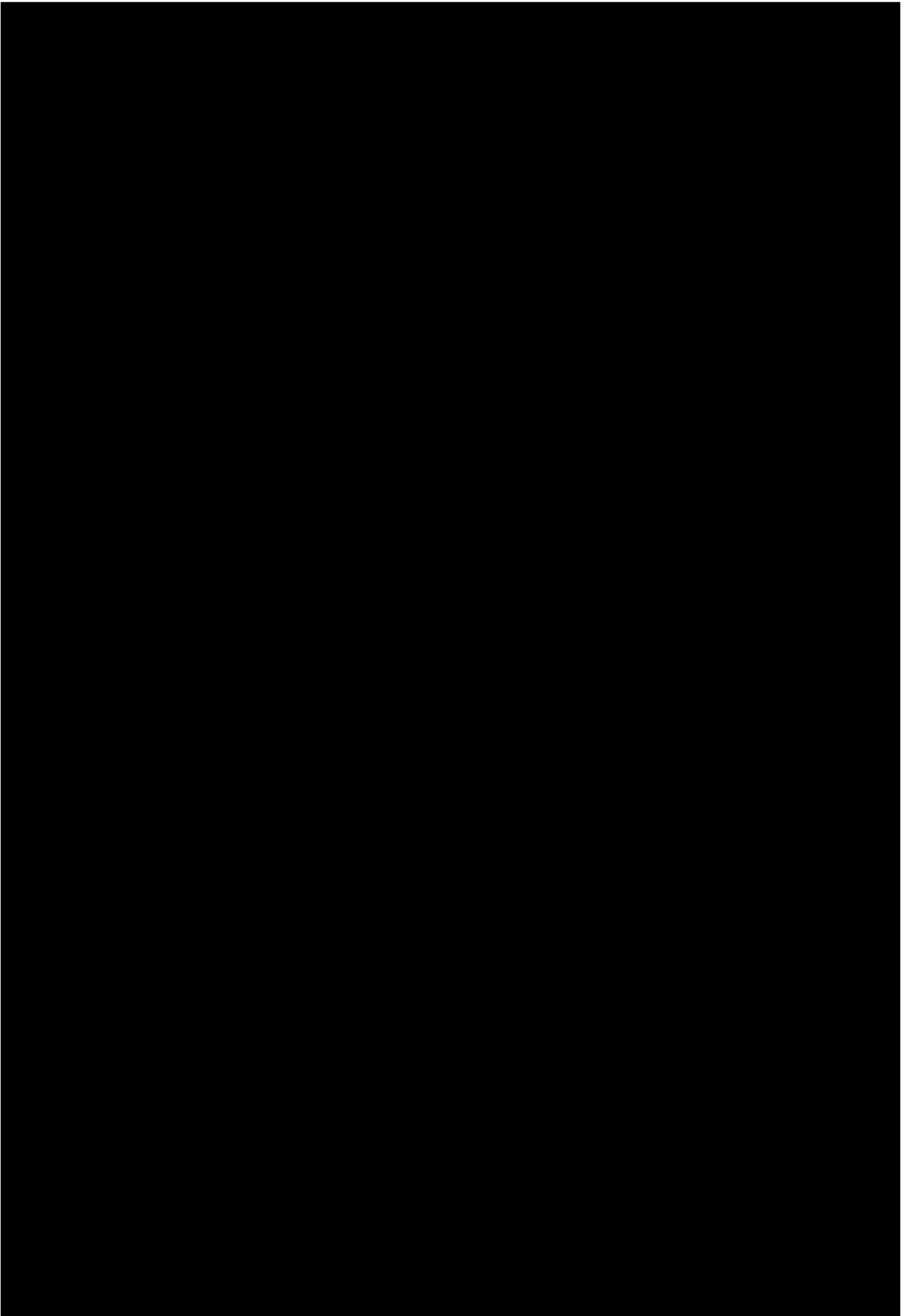


Schedule 34. LW Contractor Cooperation and Integration Deed





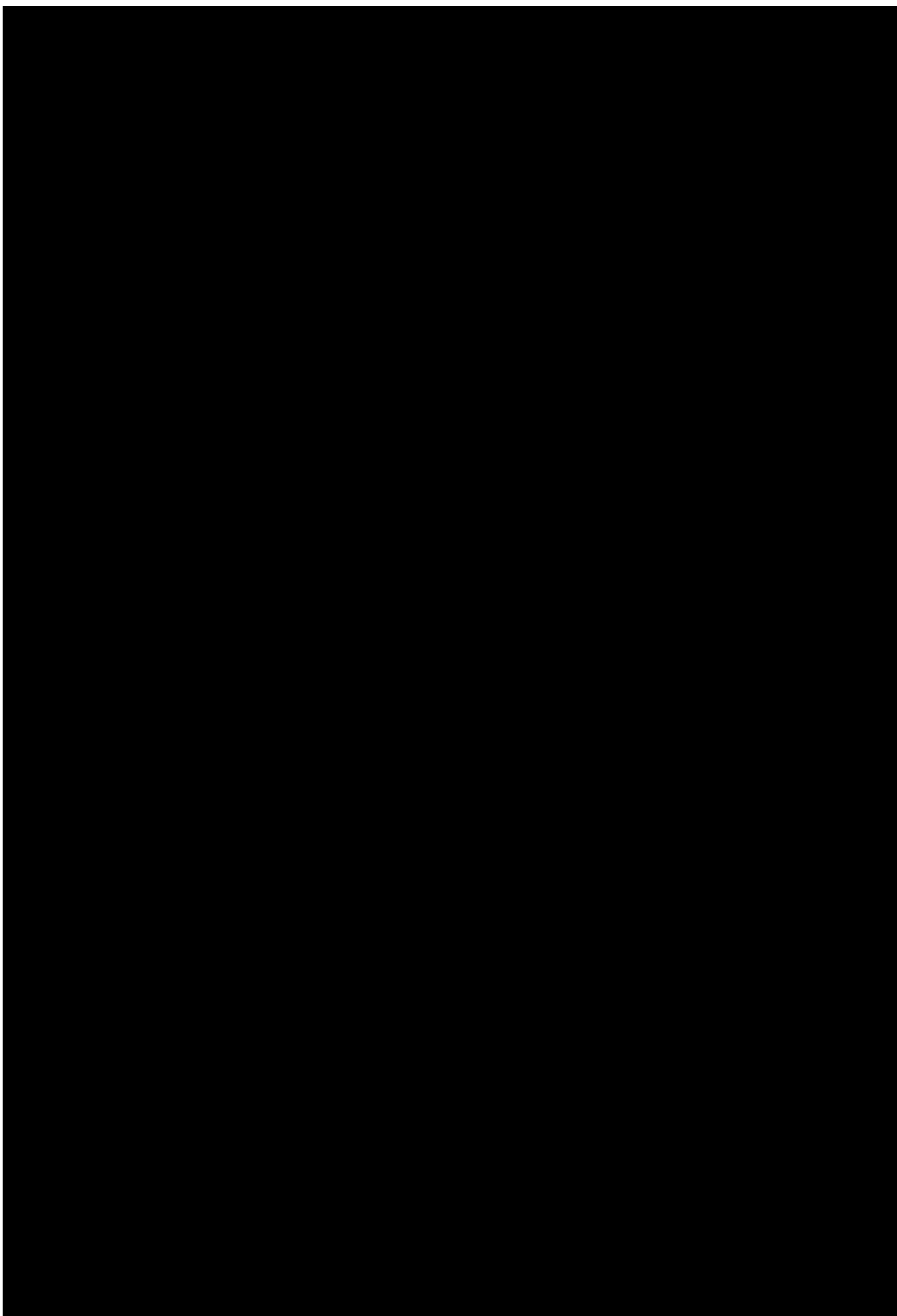


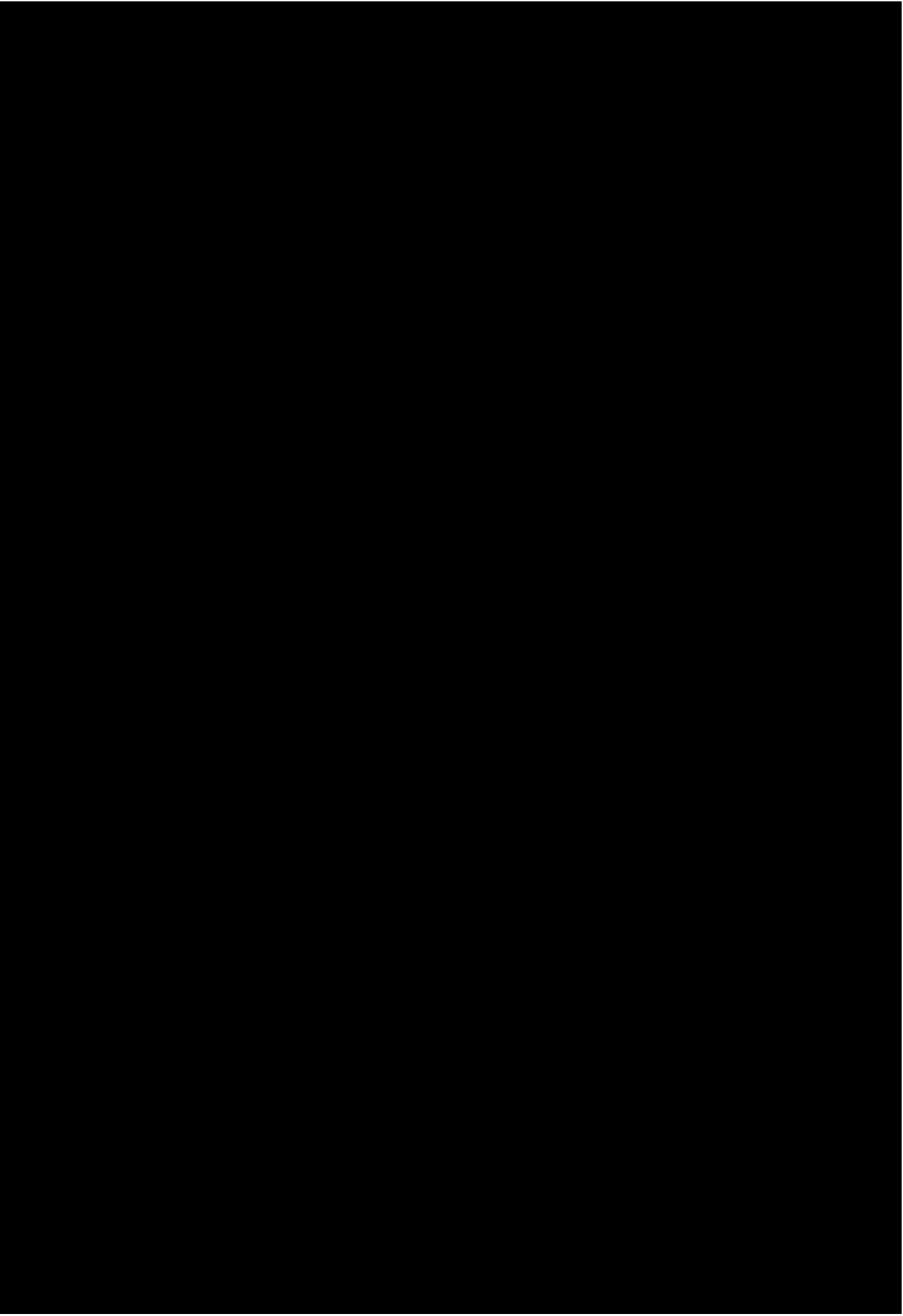


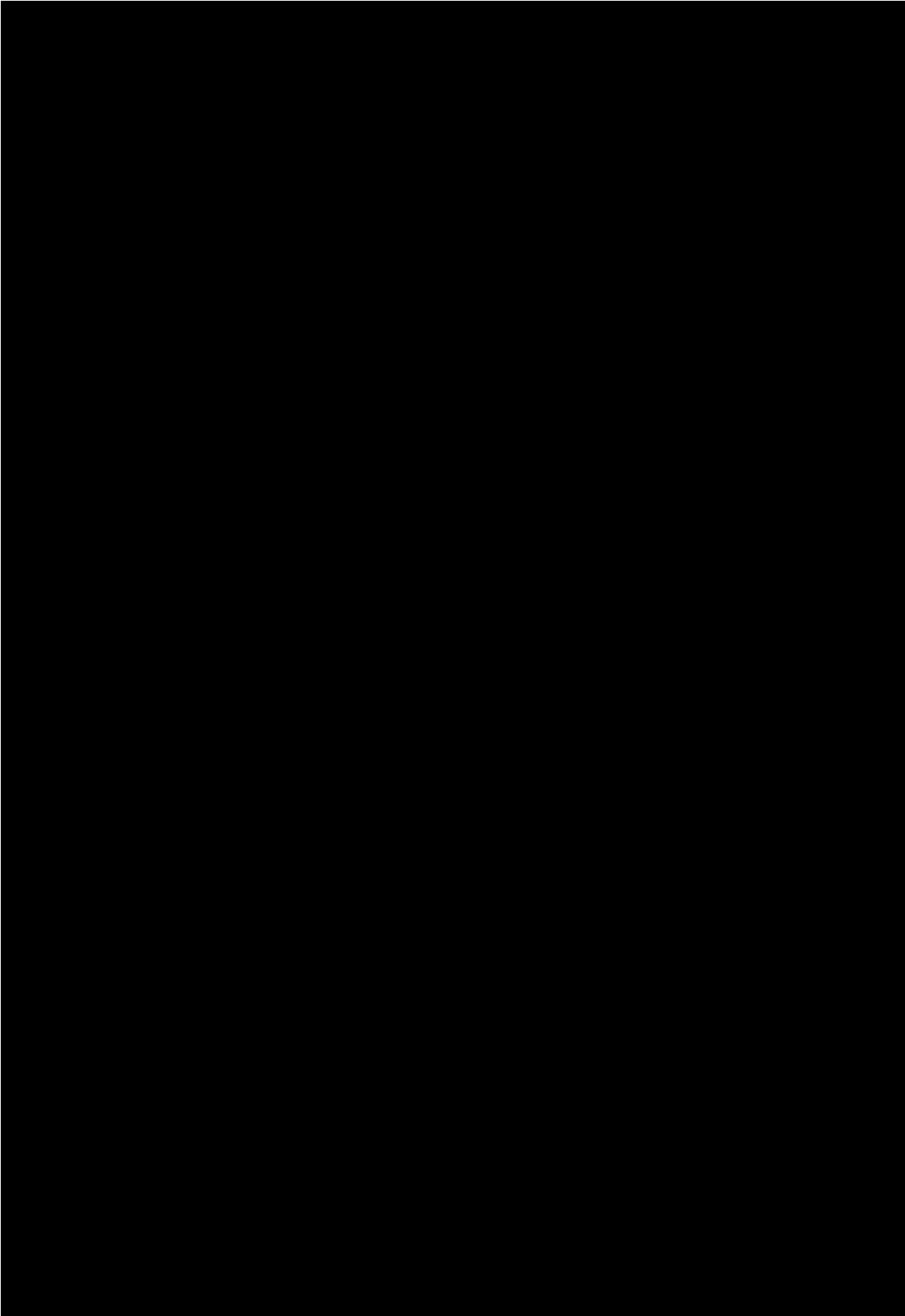


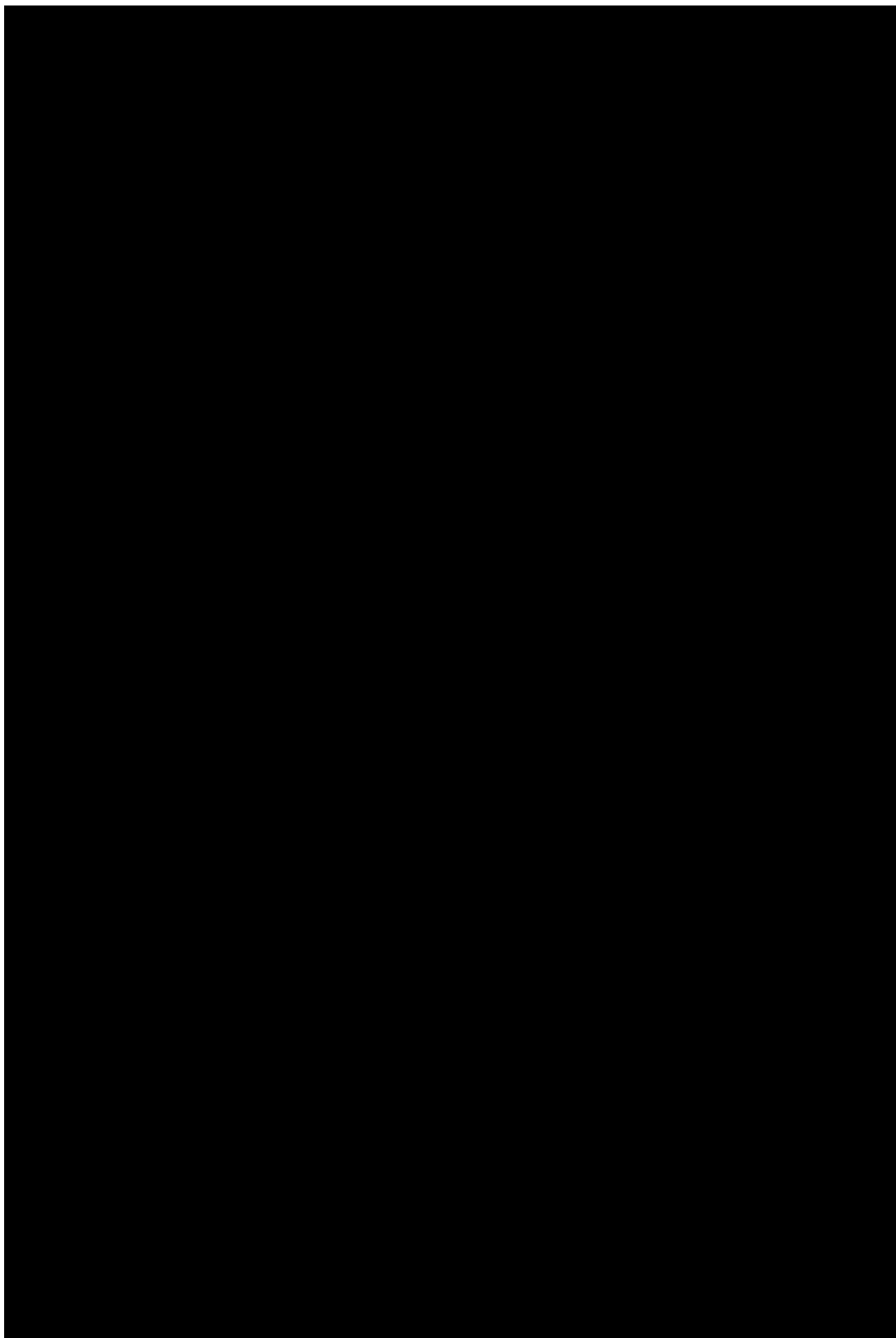


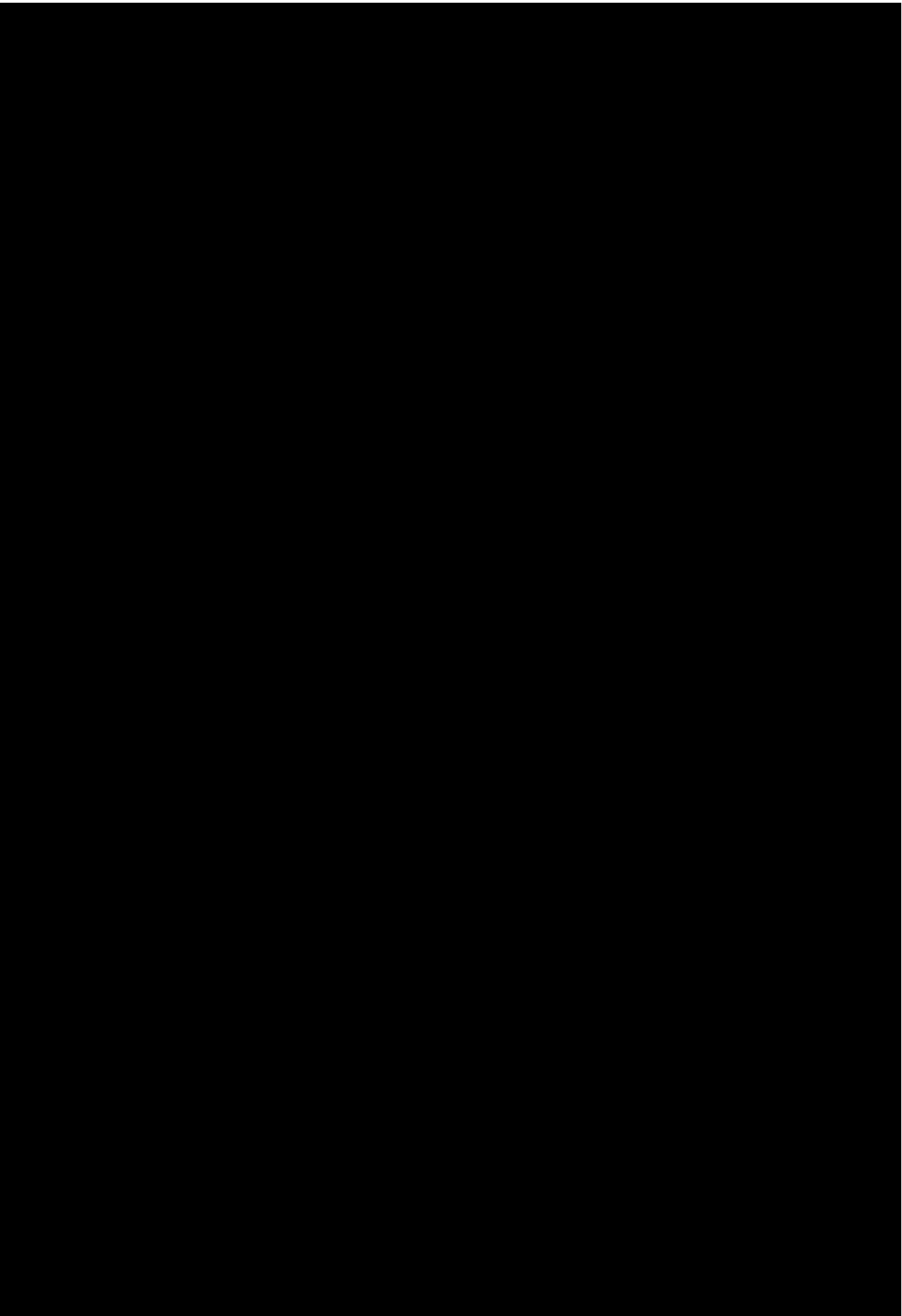


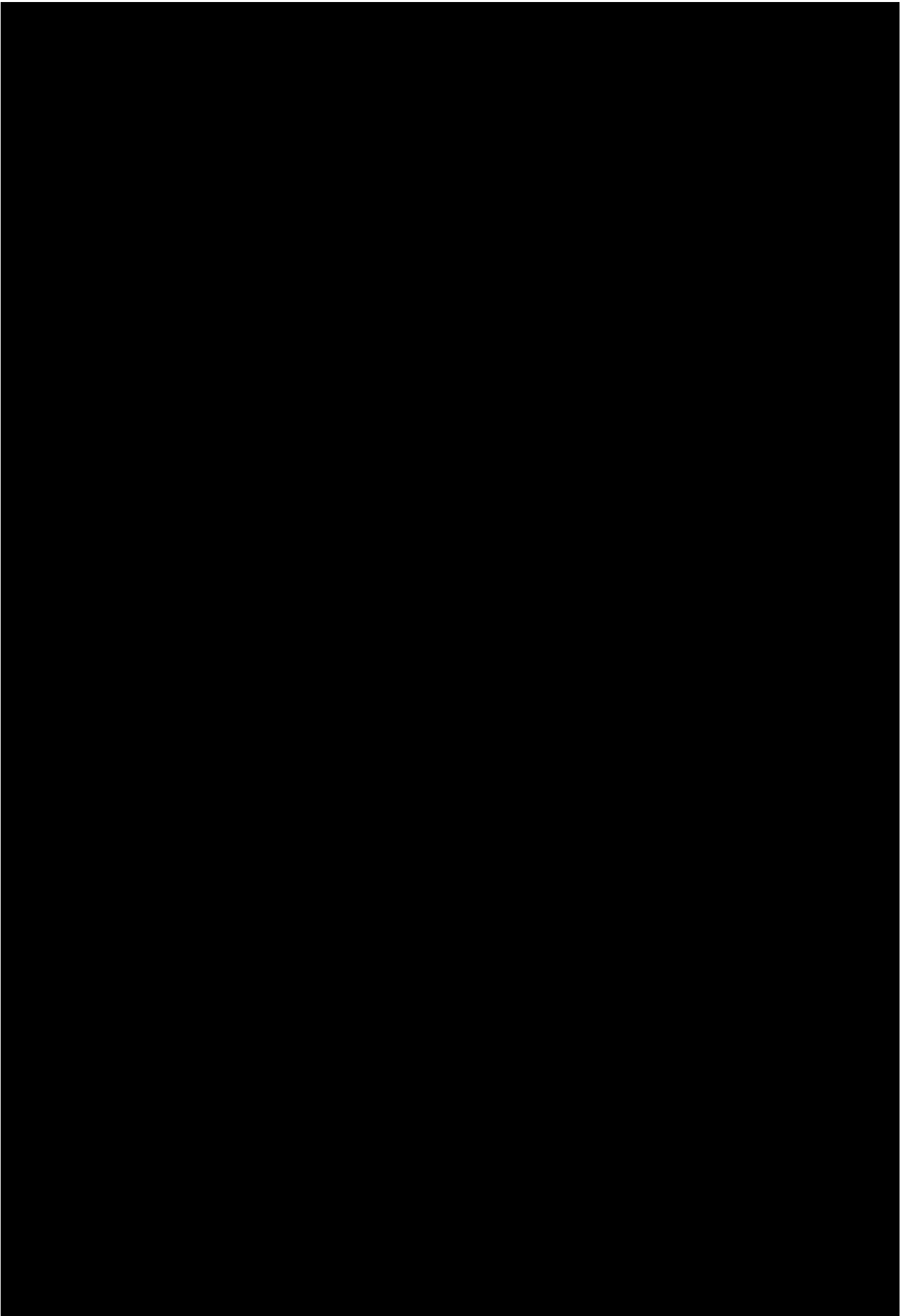


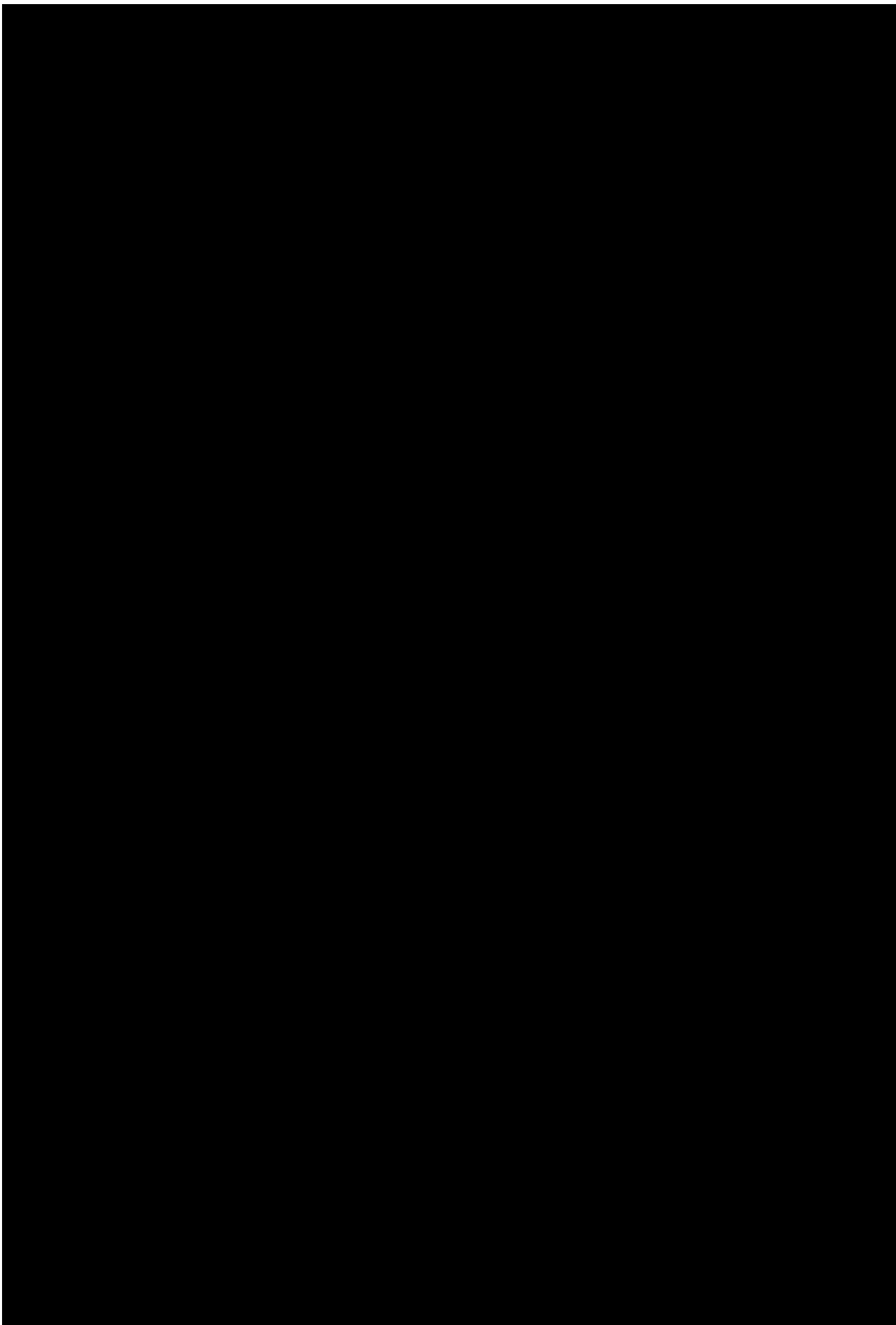


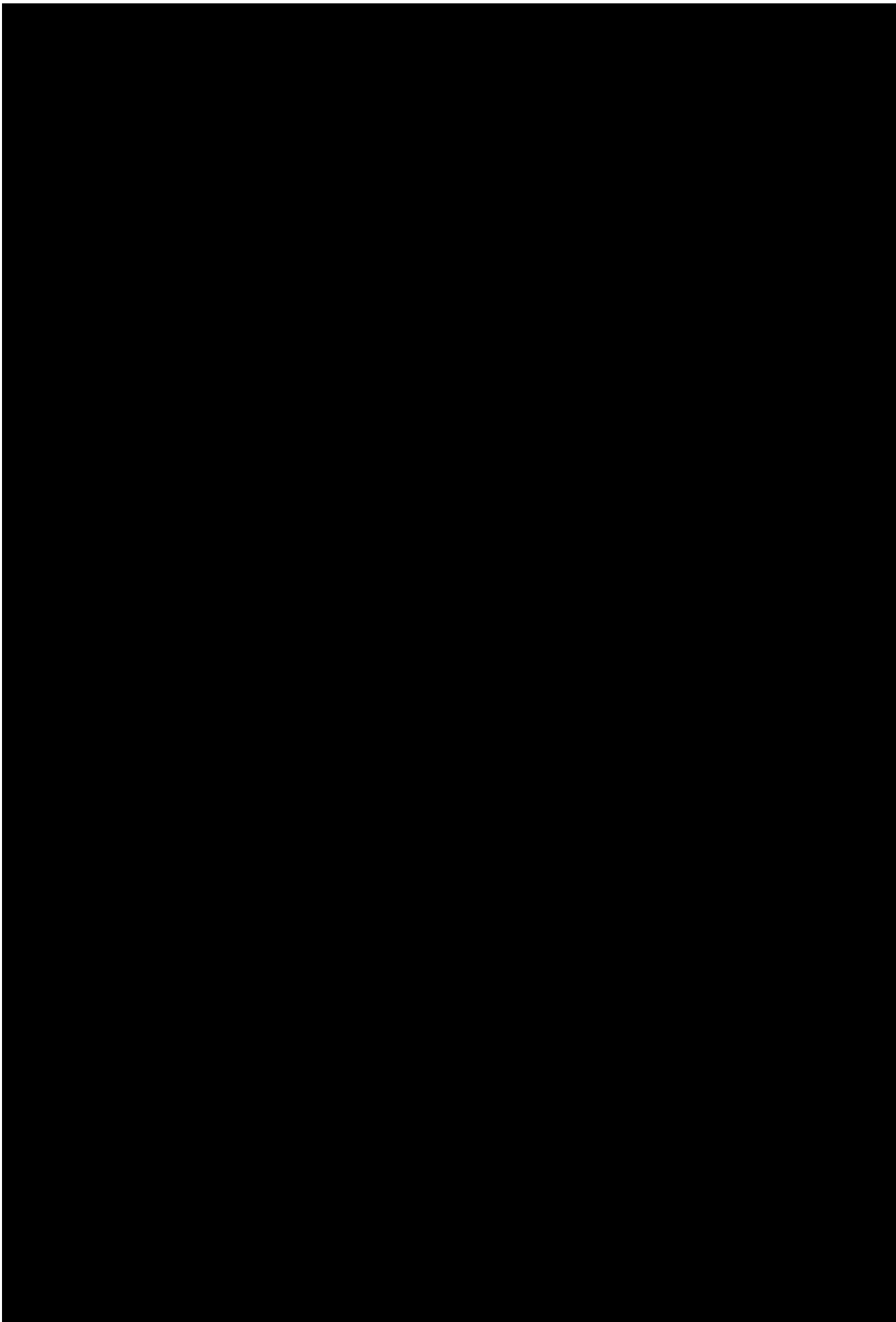






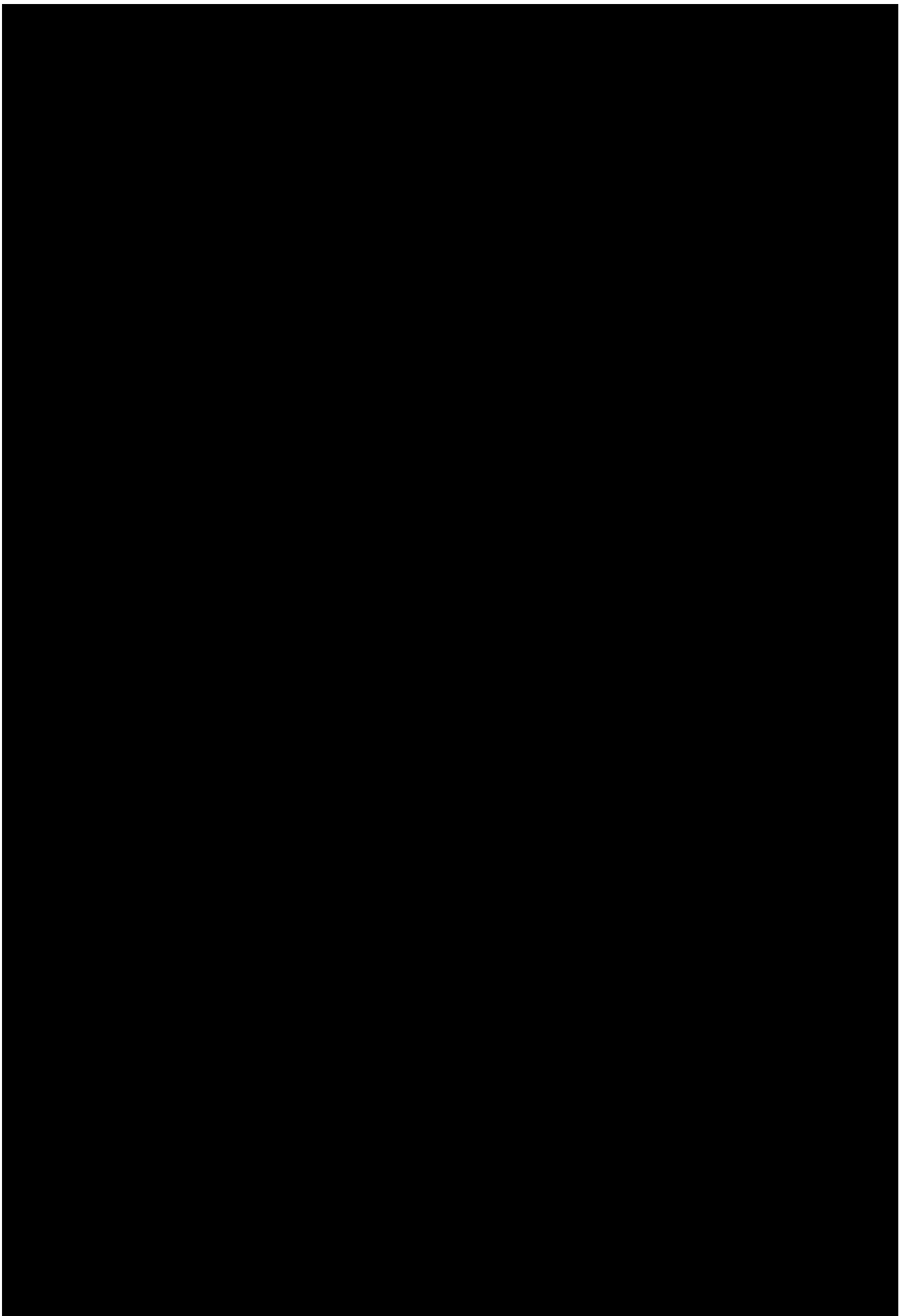


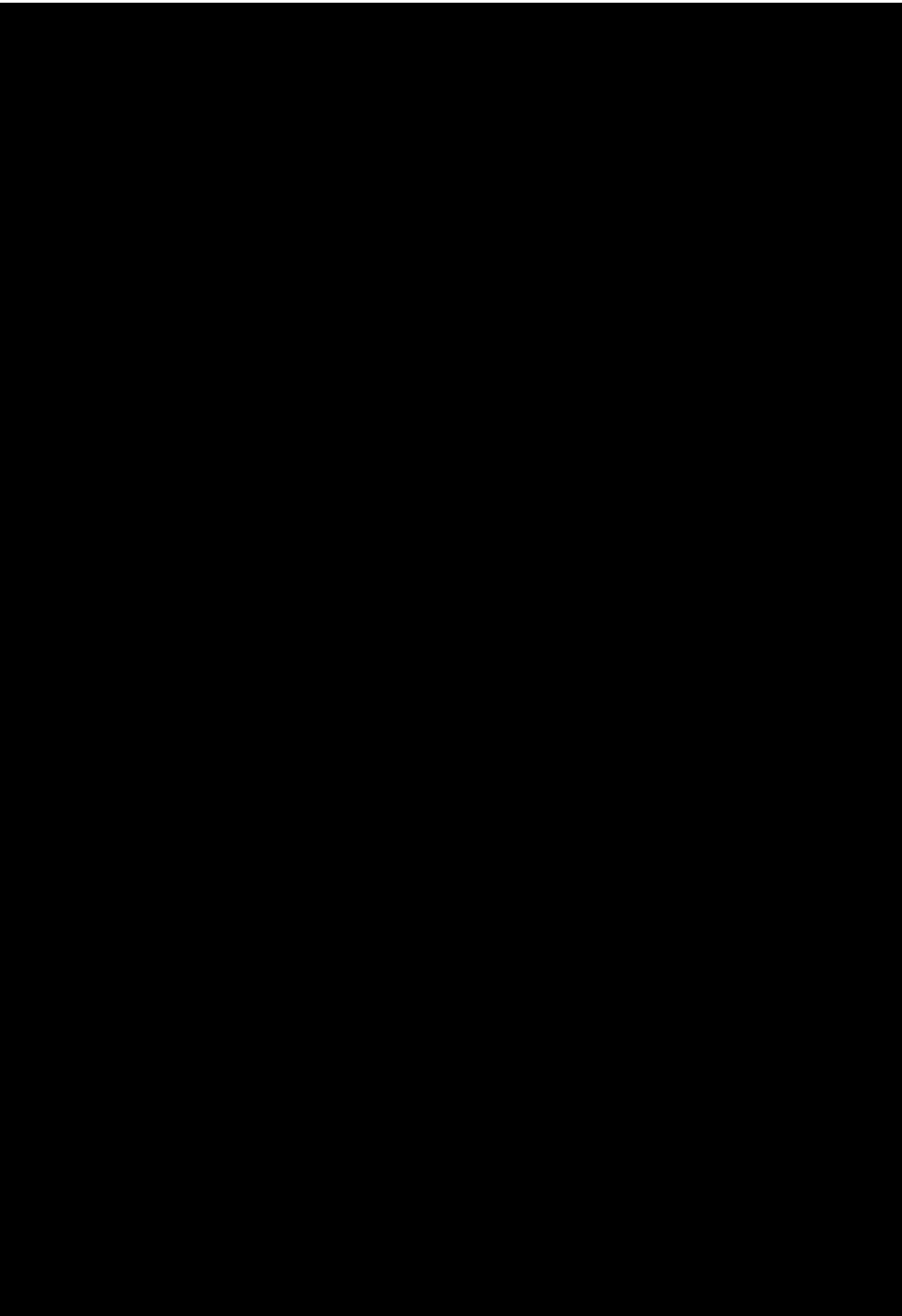


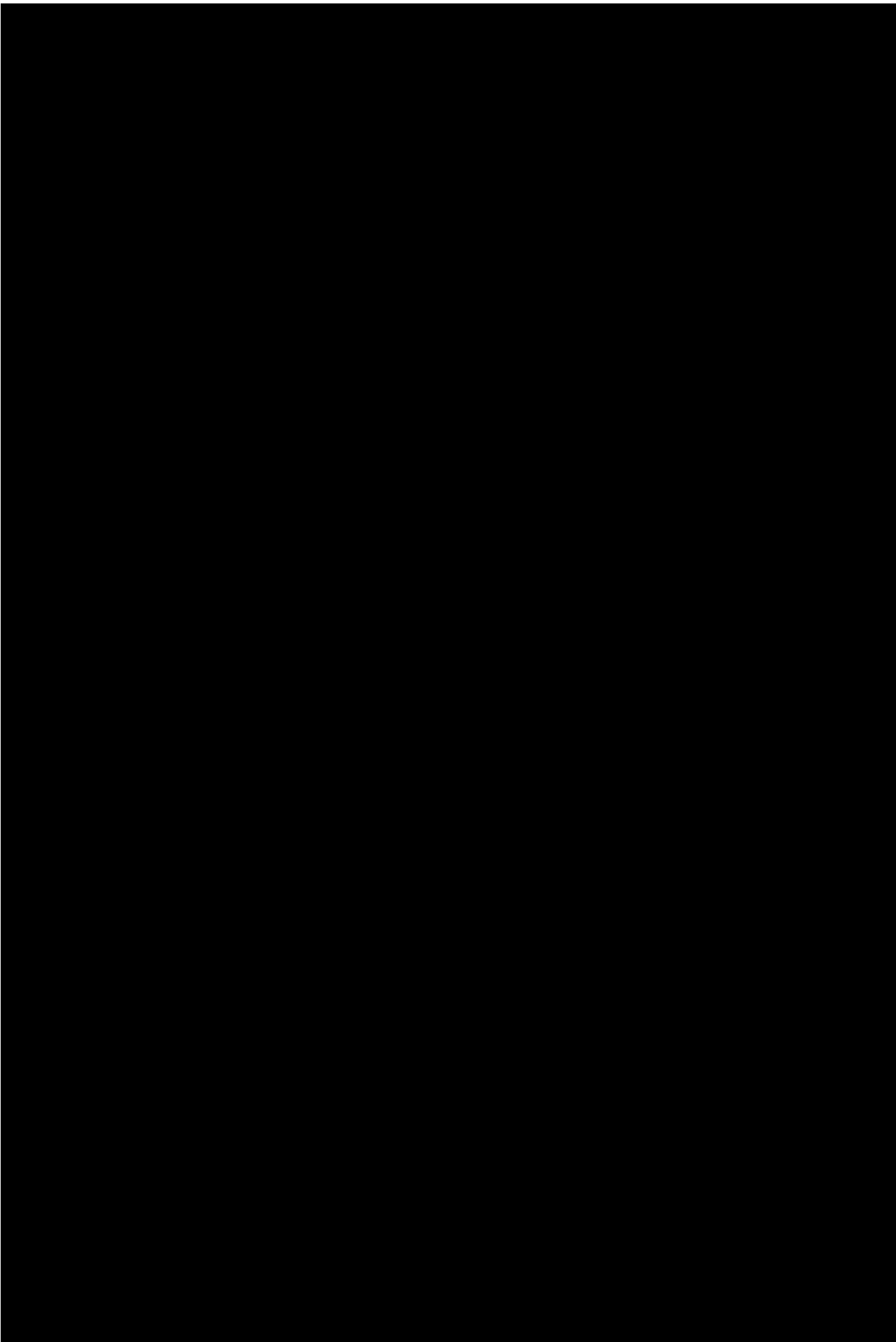




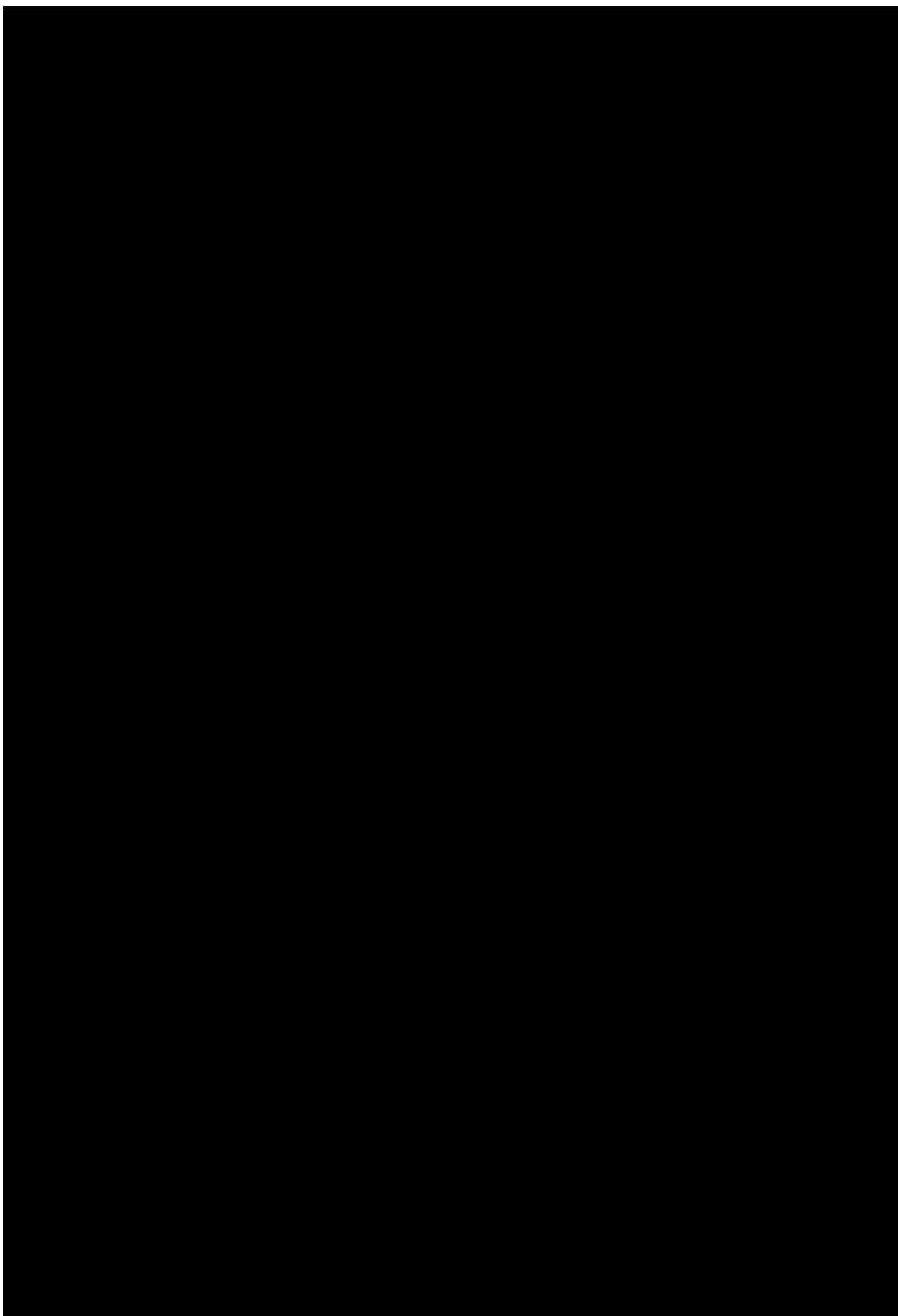


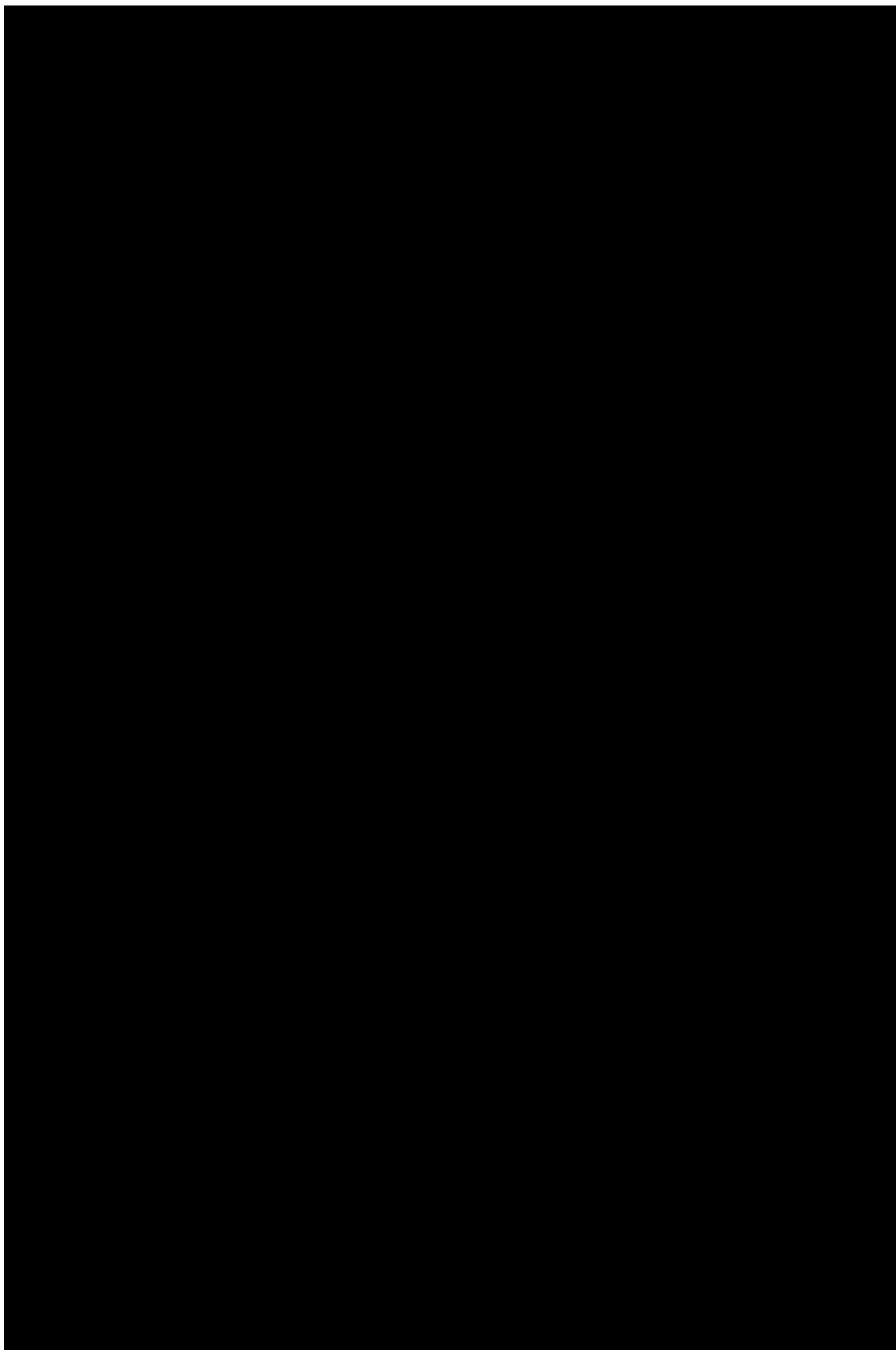


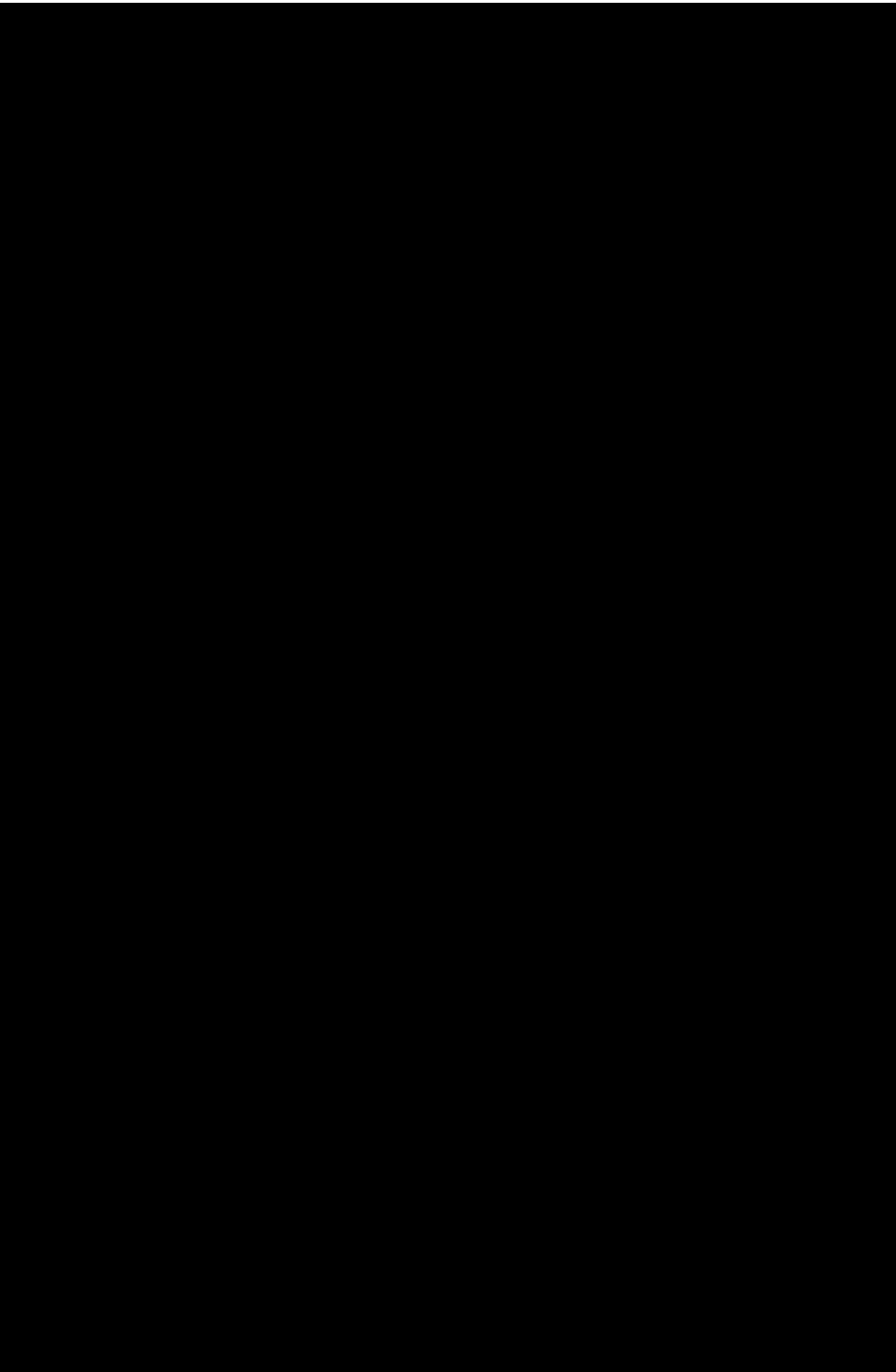




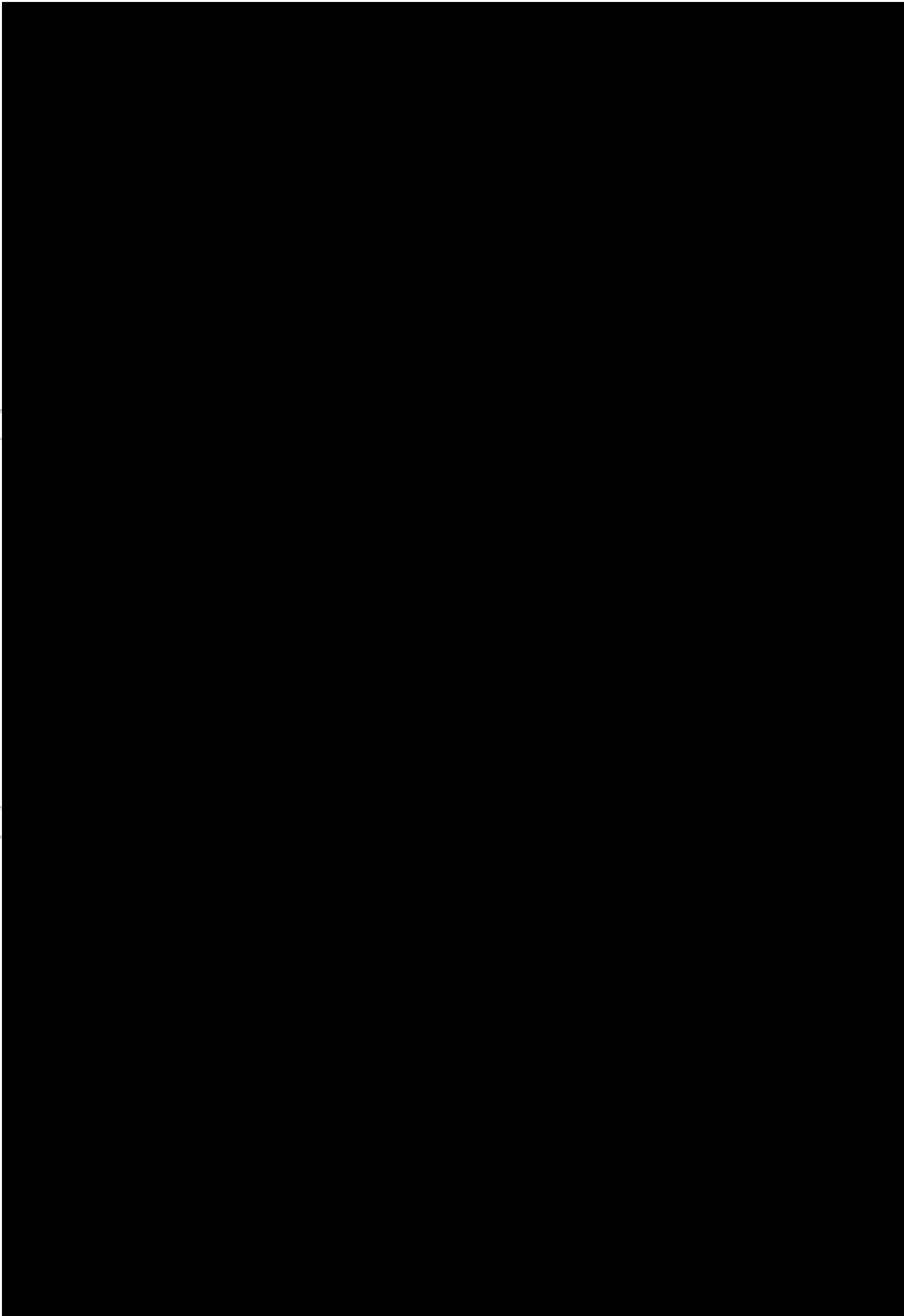


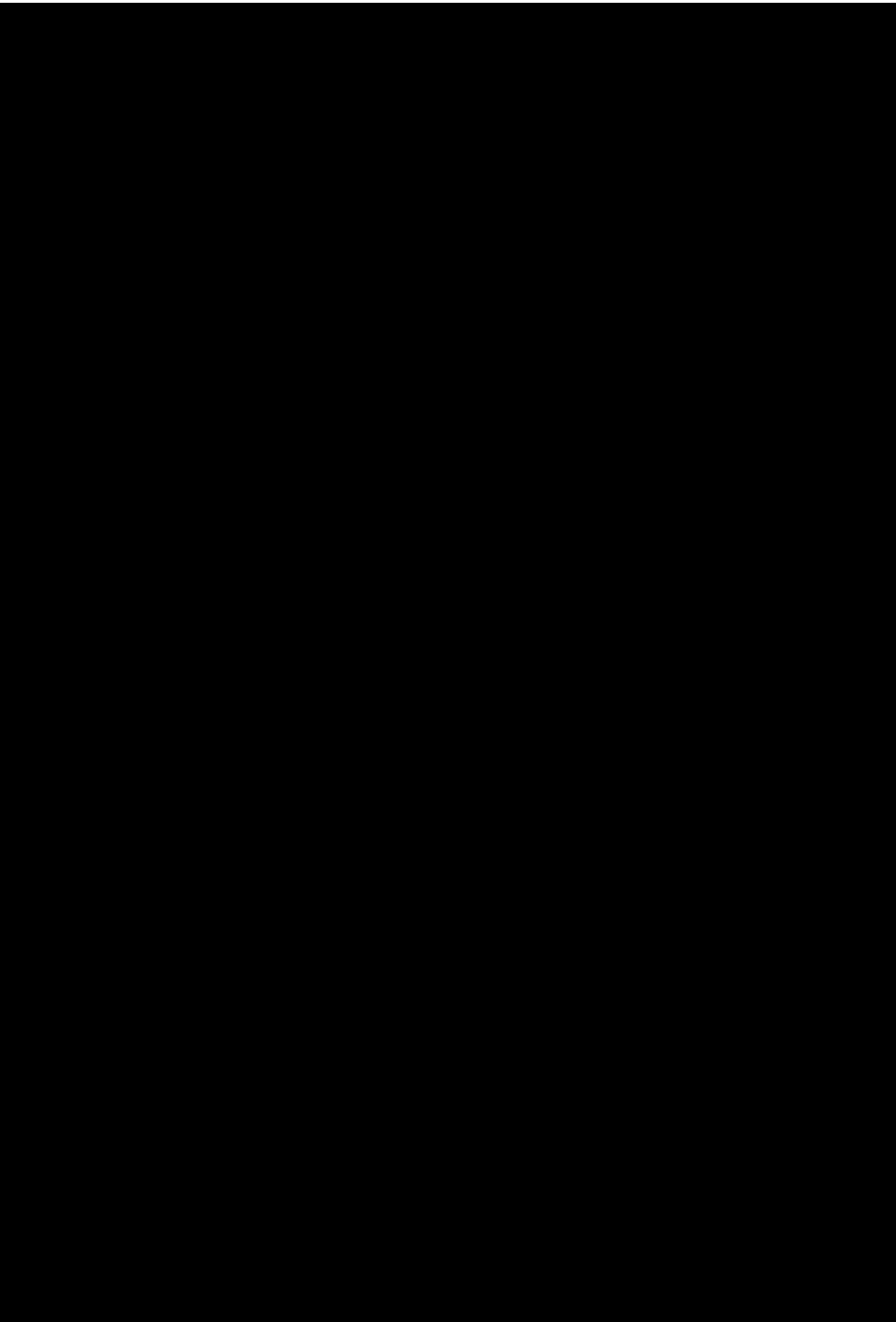


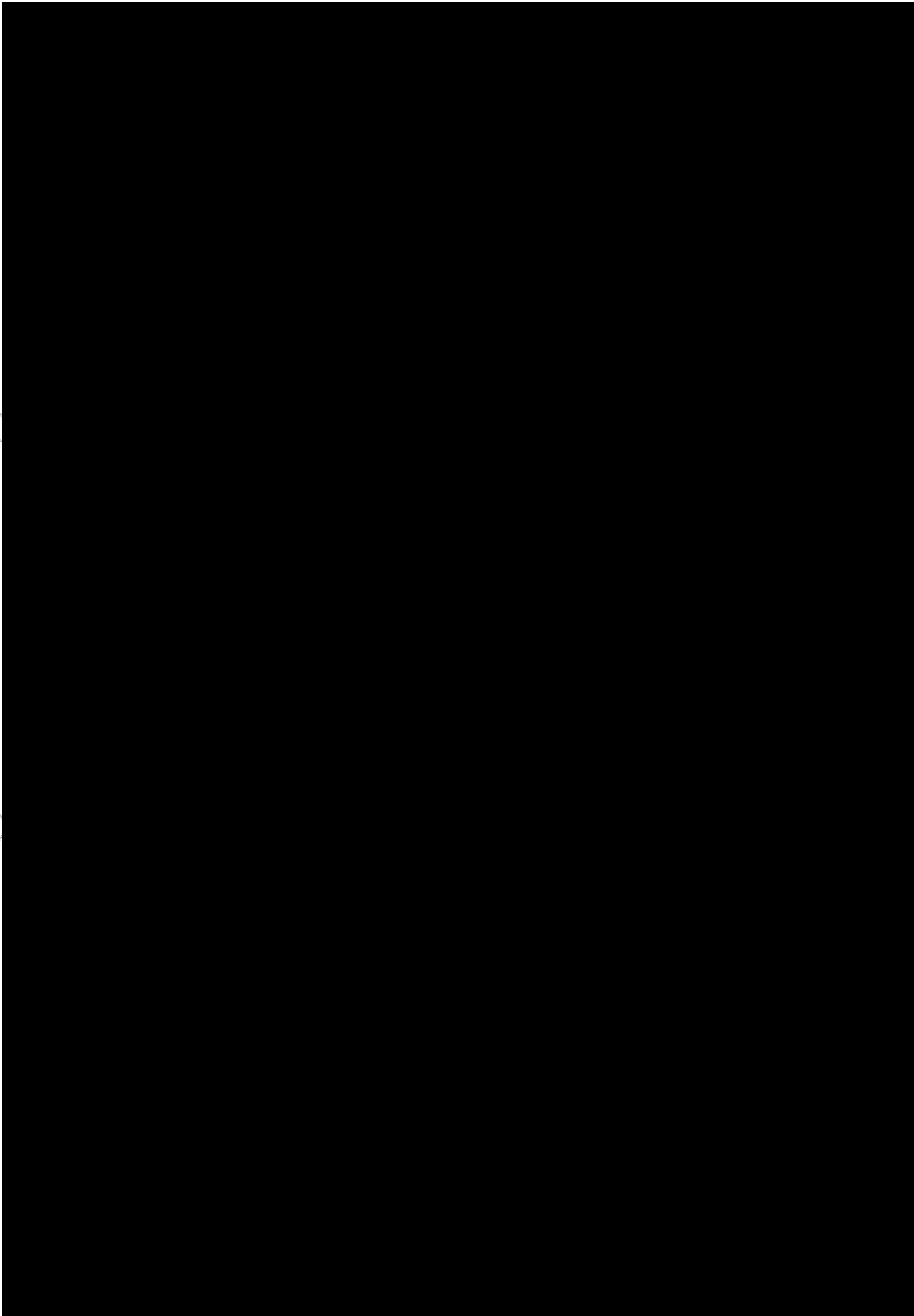


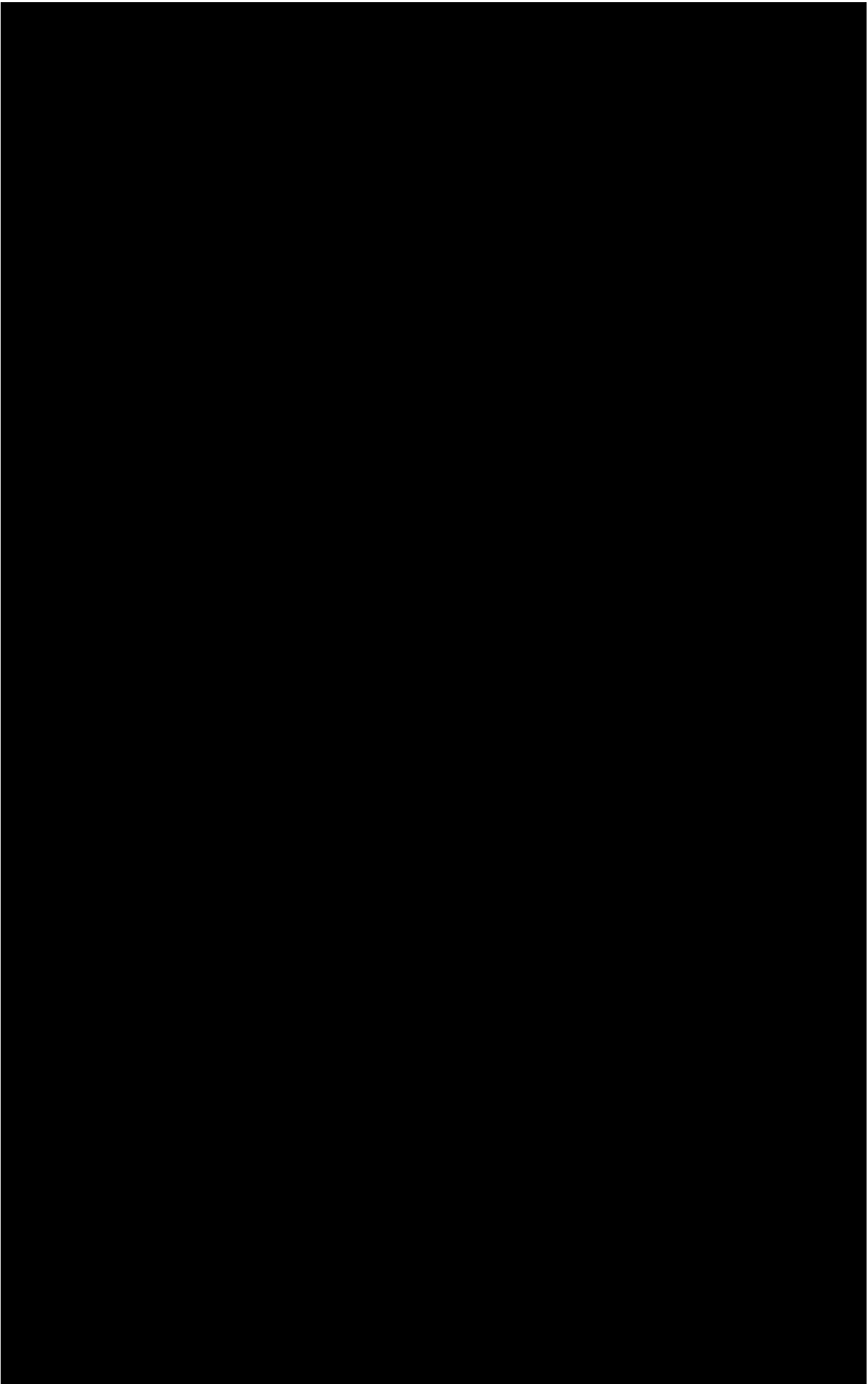


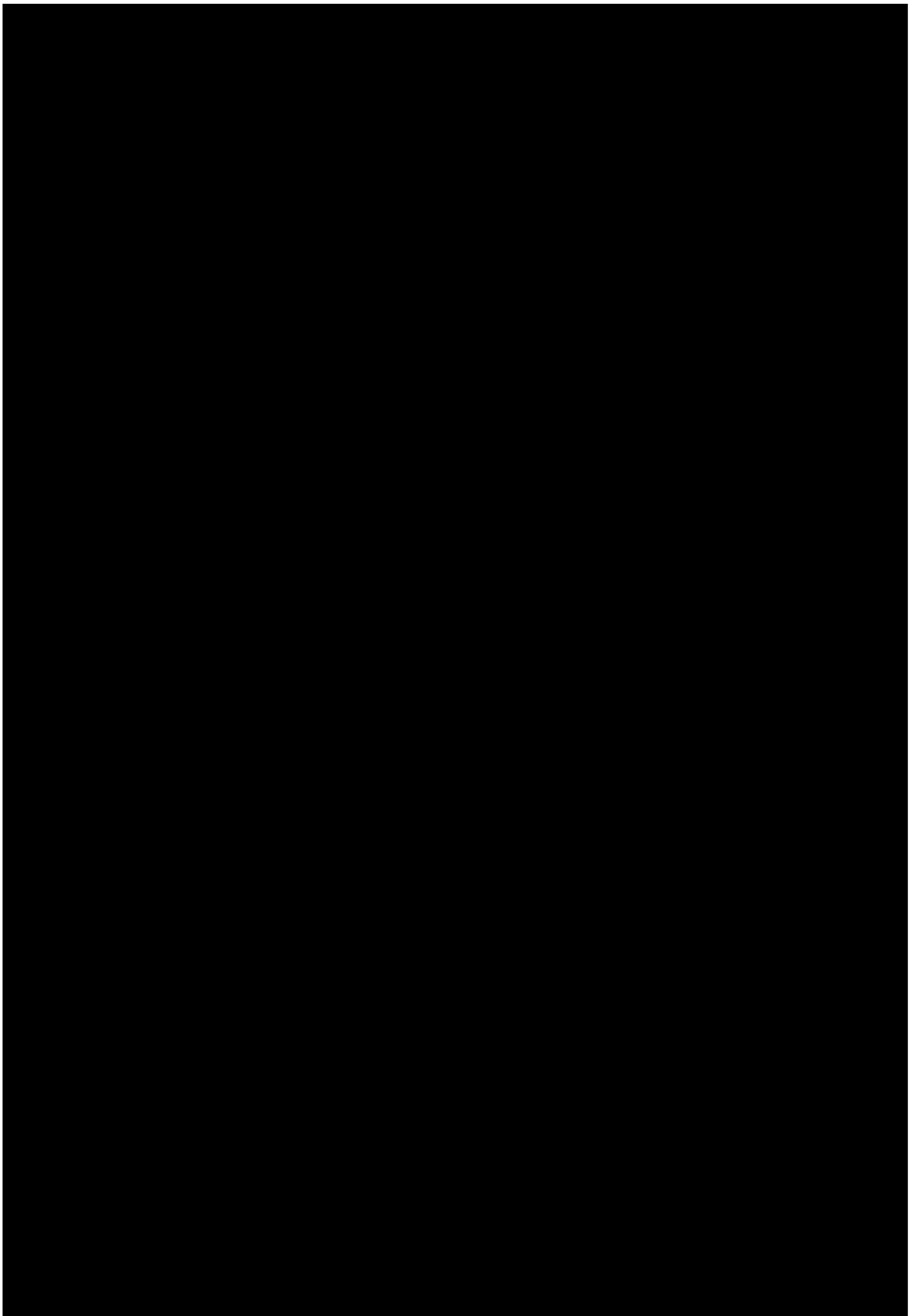


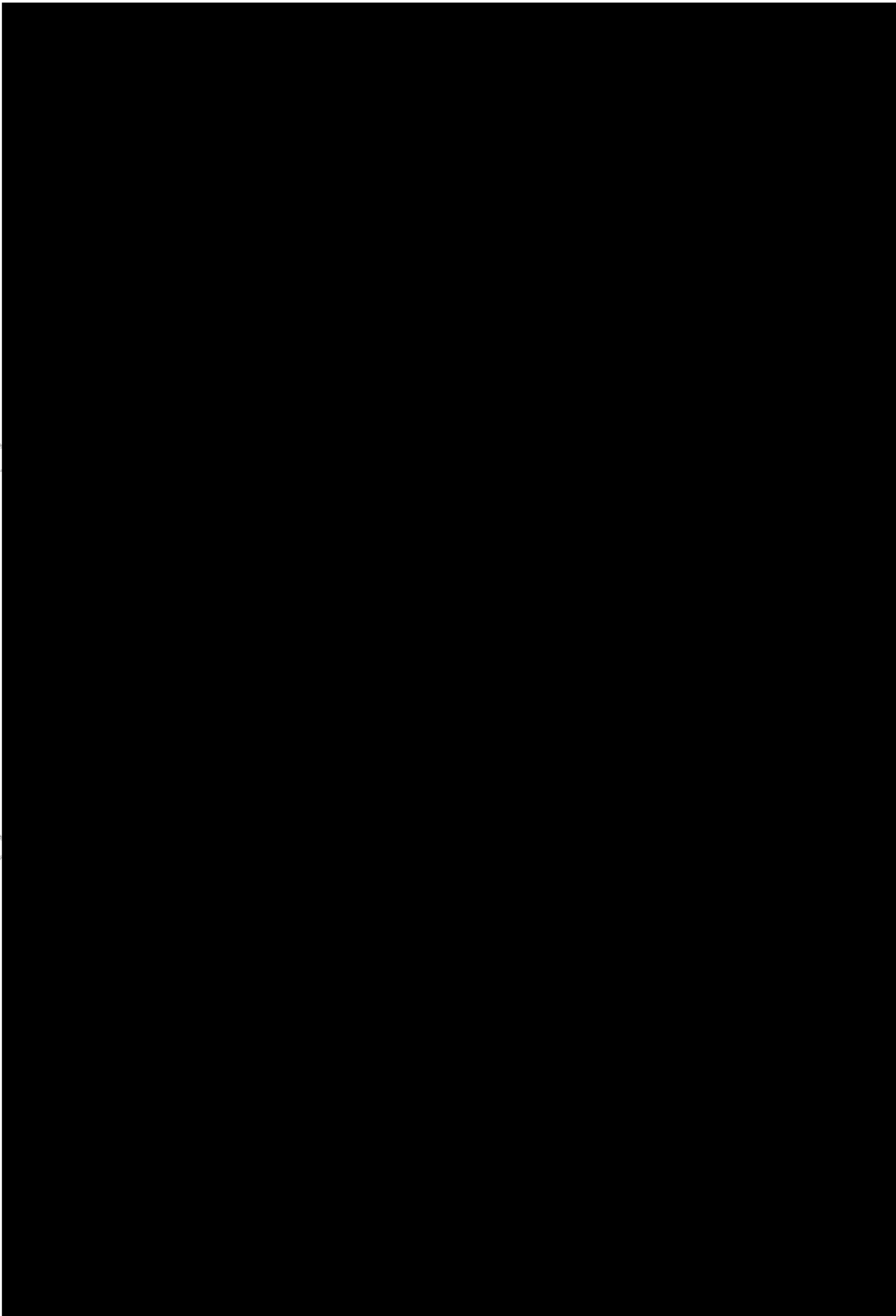


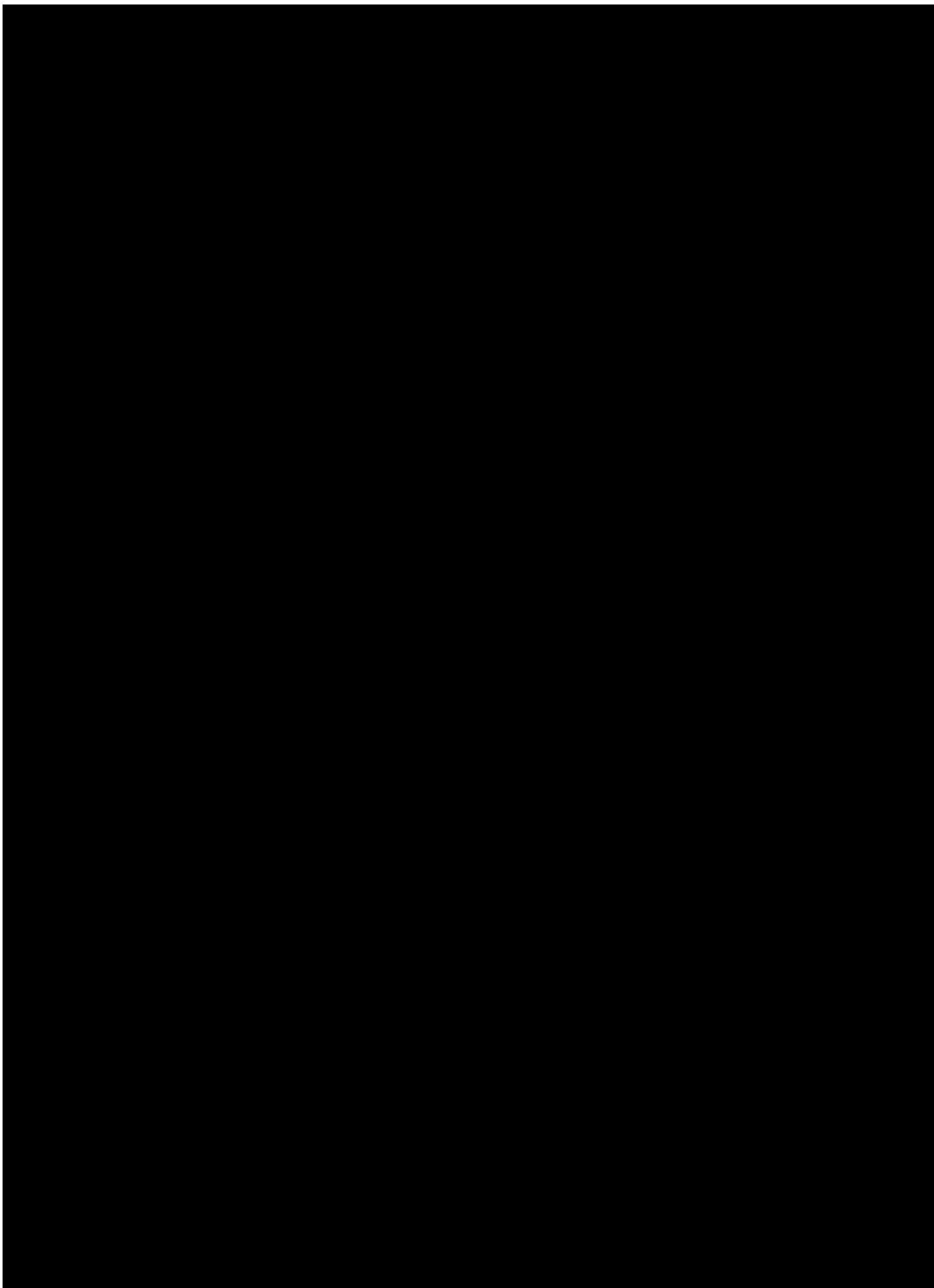


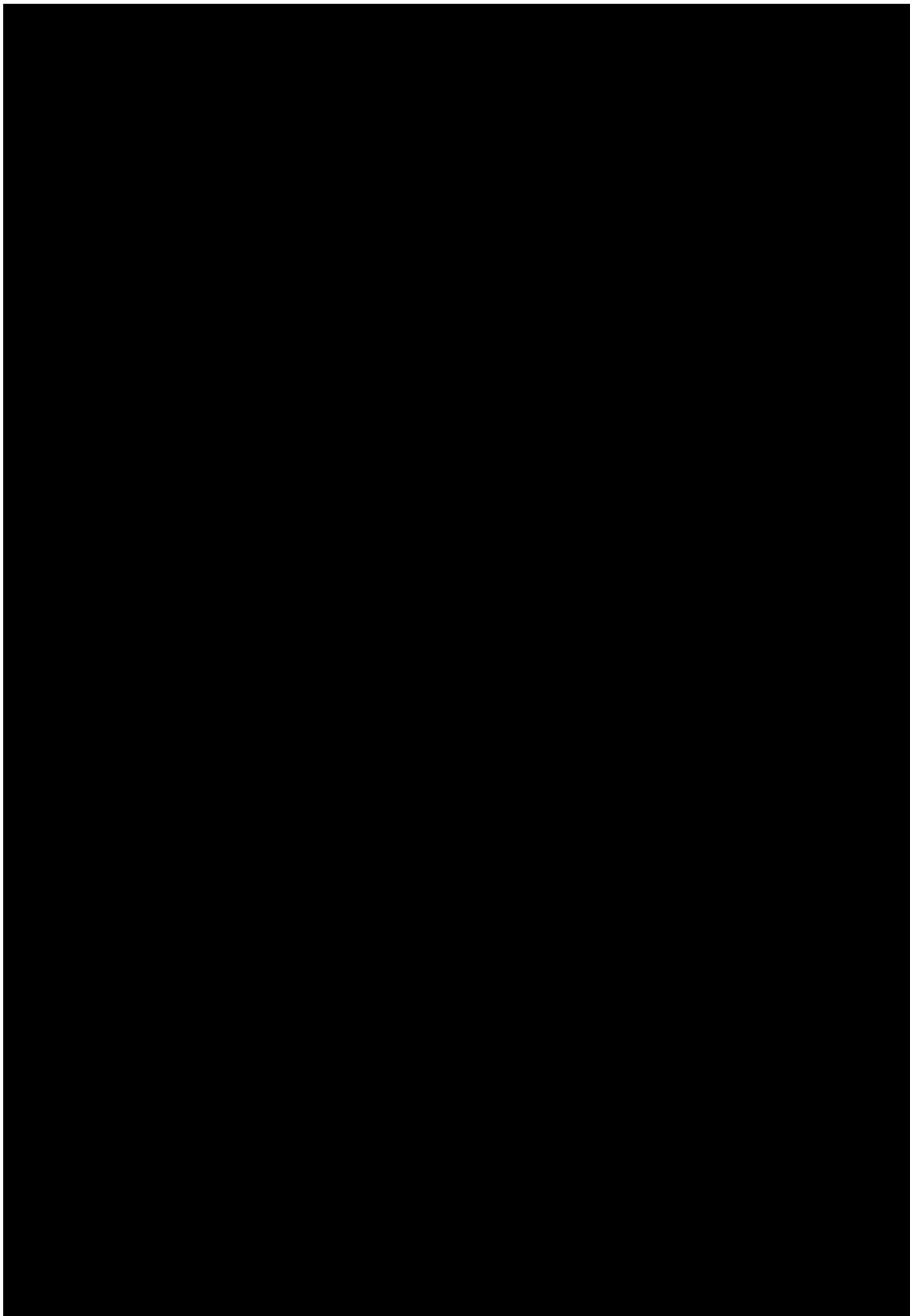


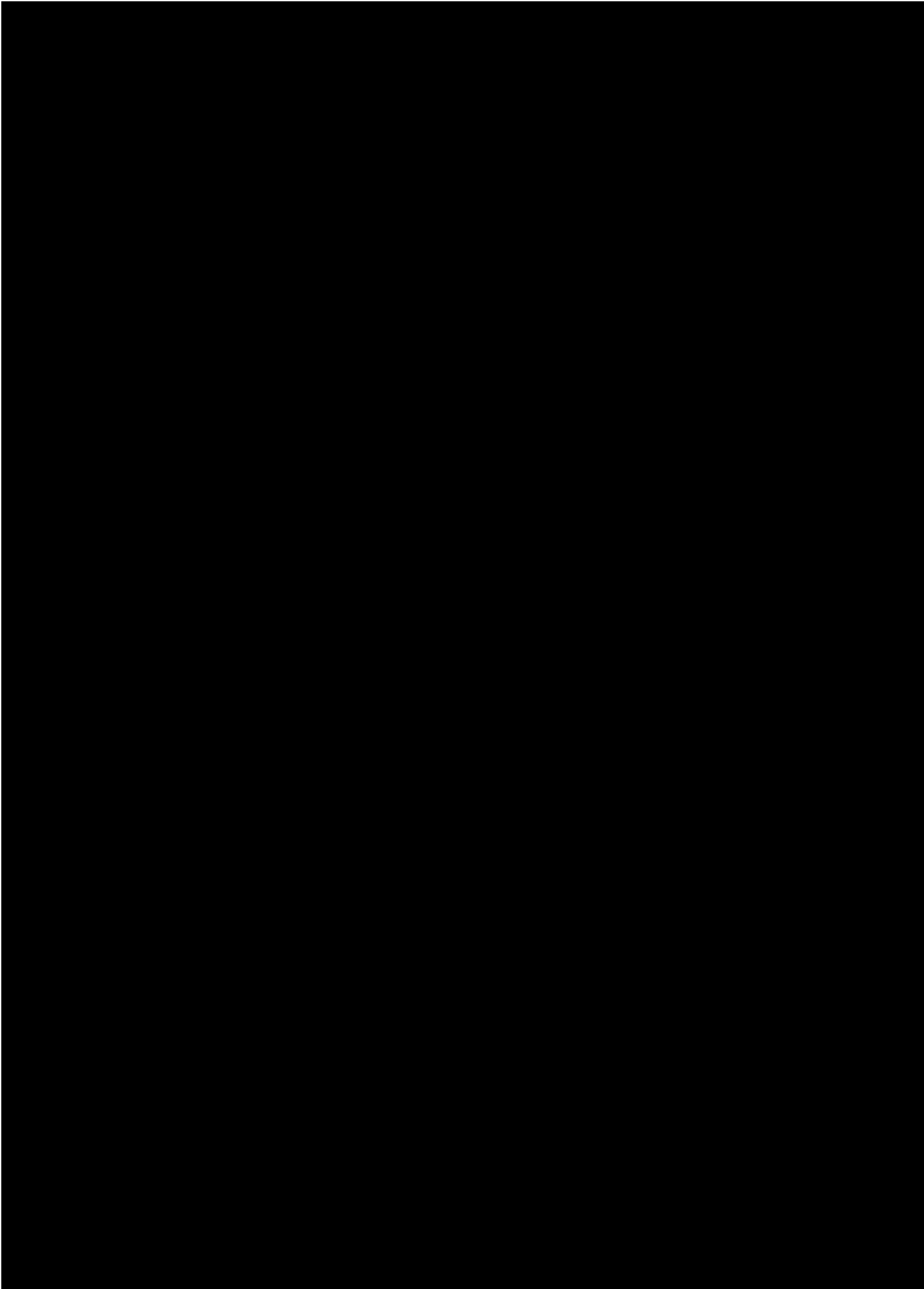




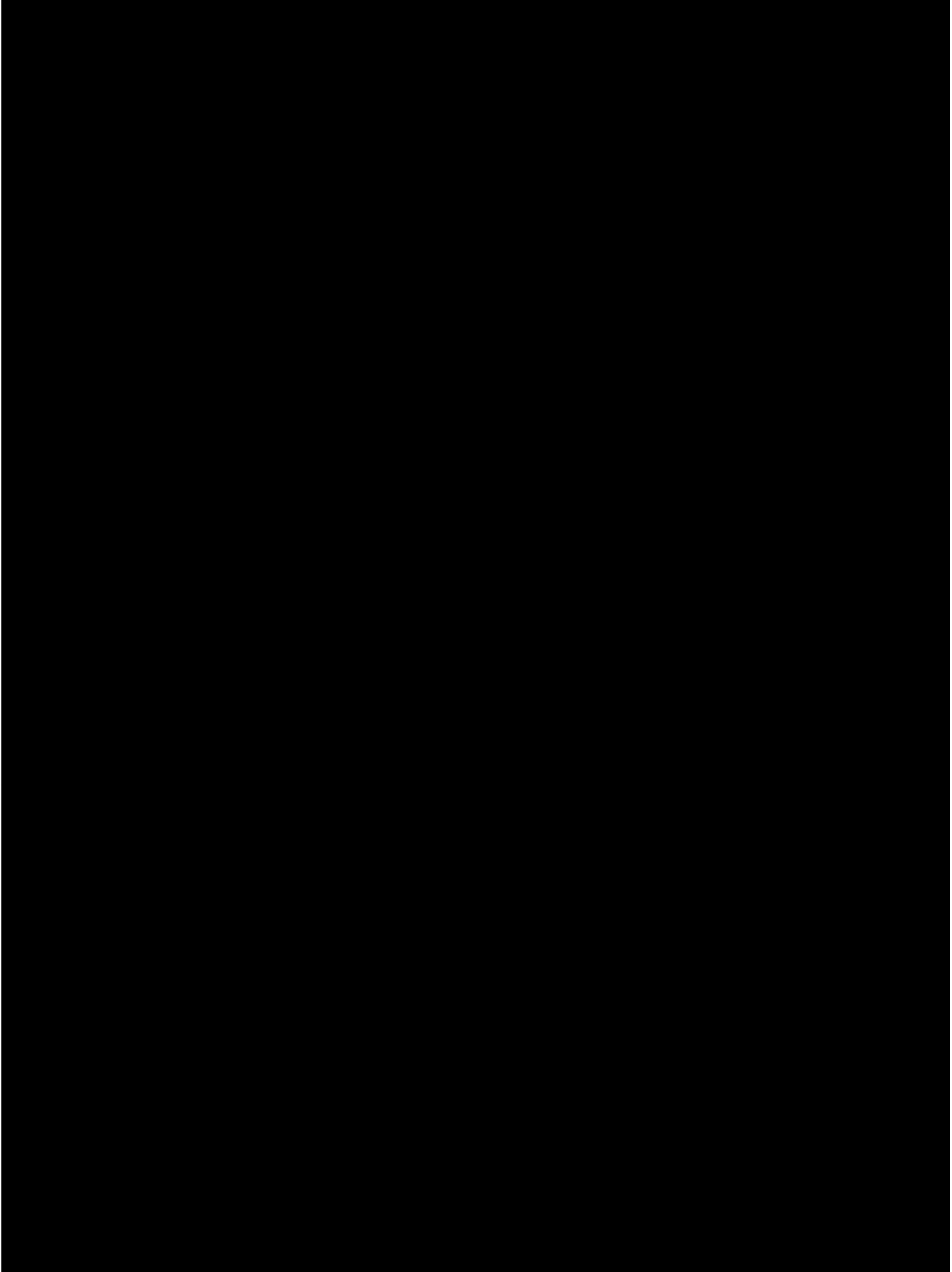


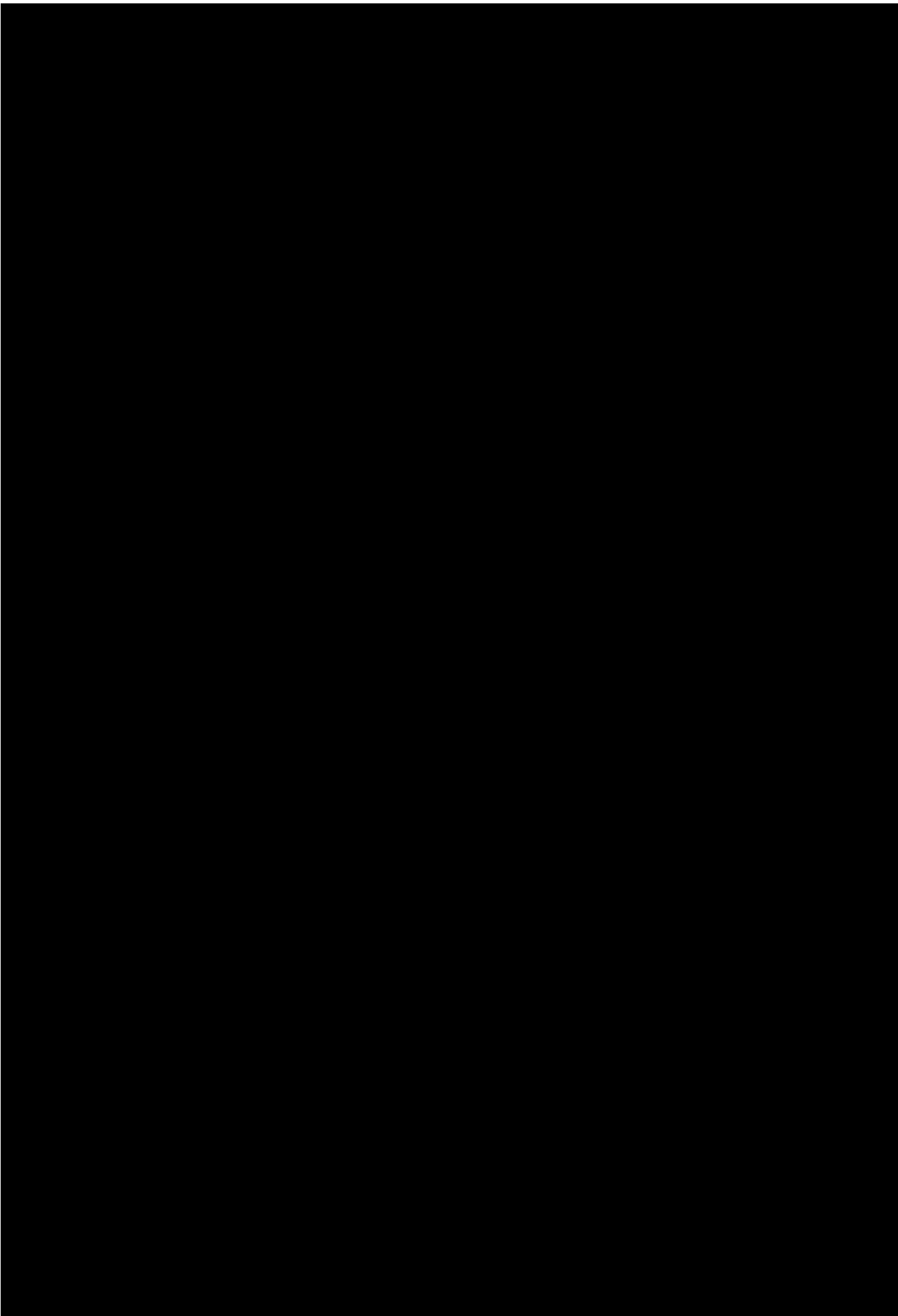


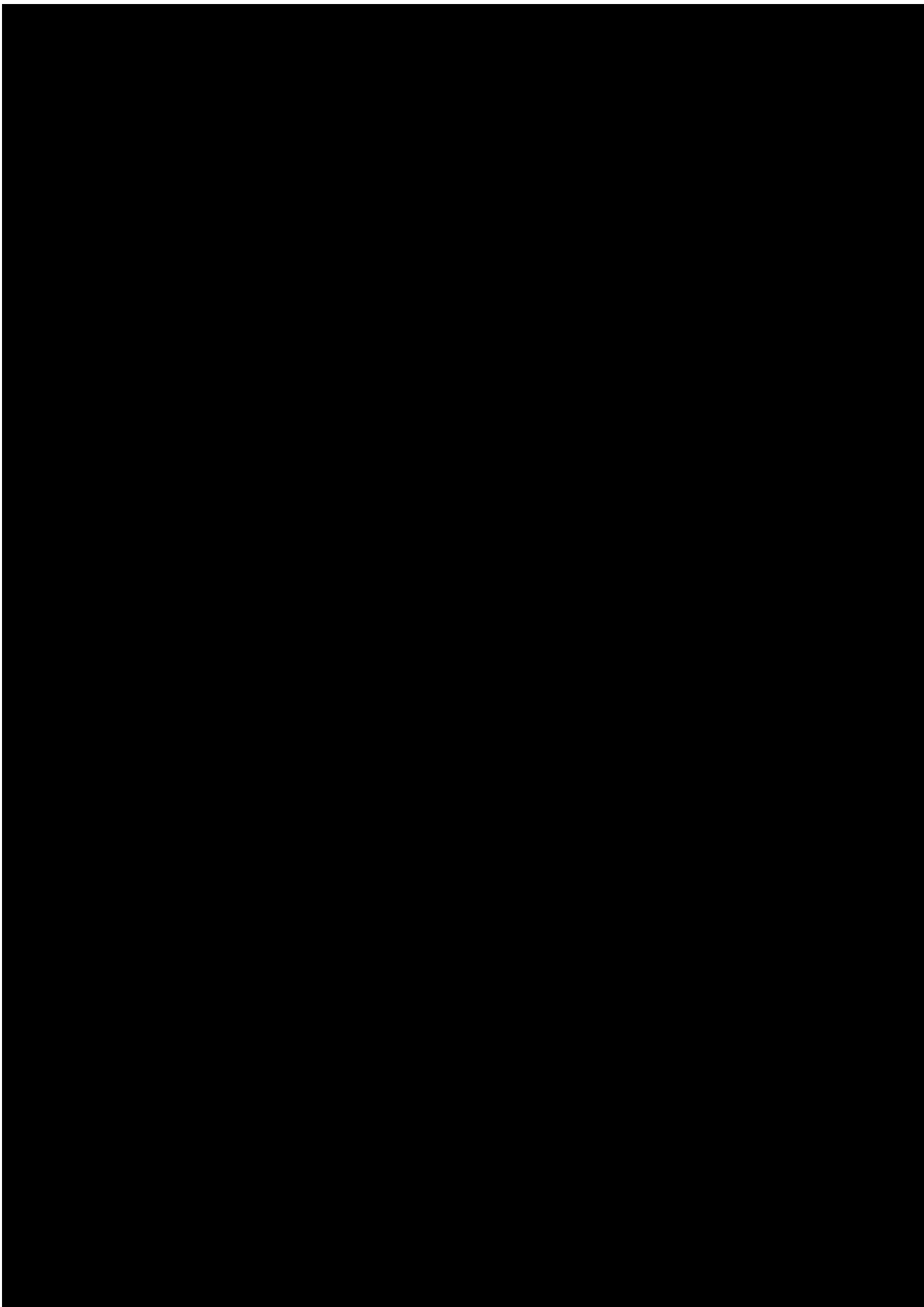


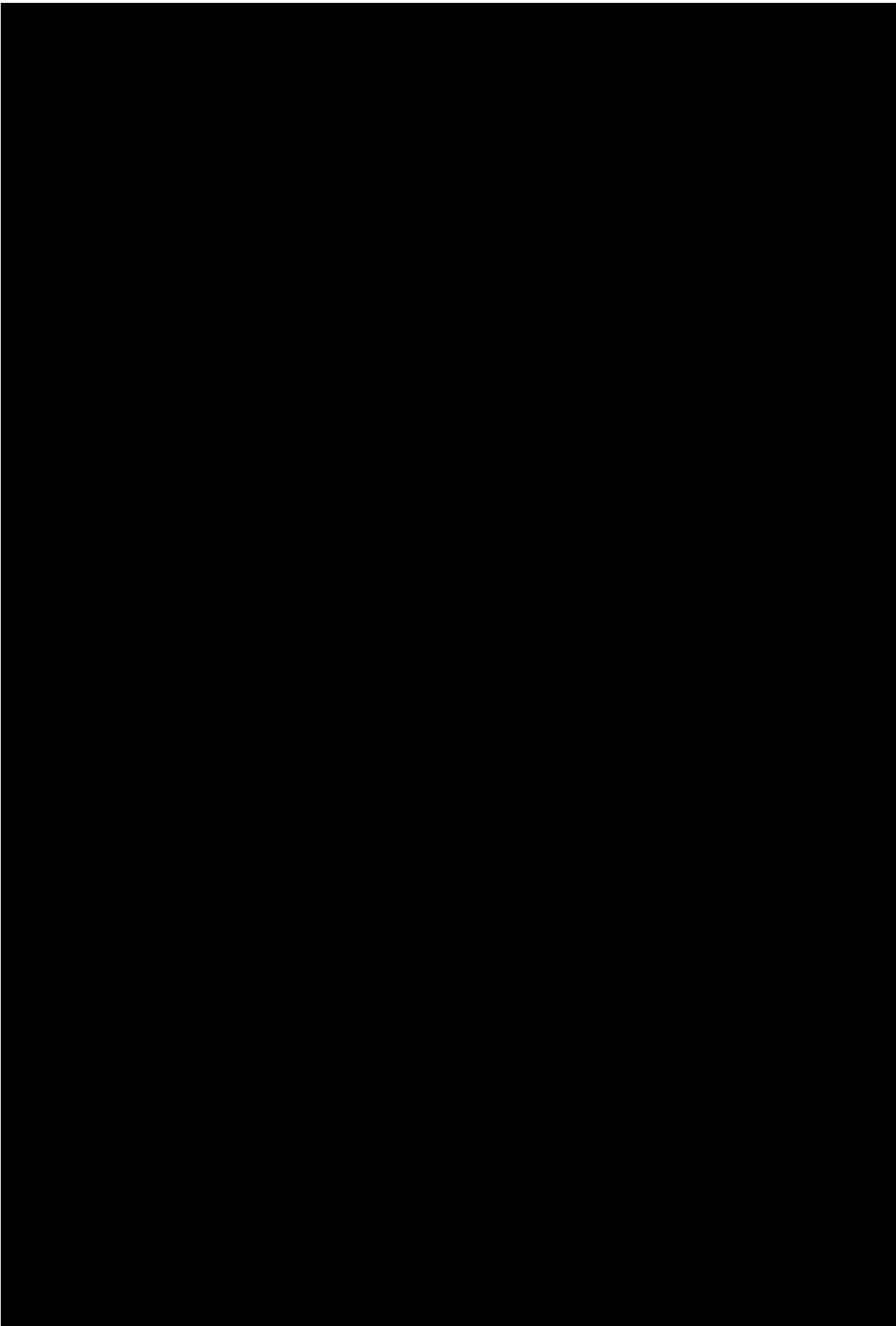


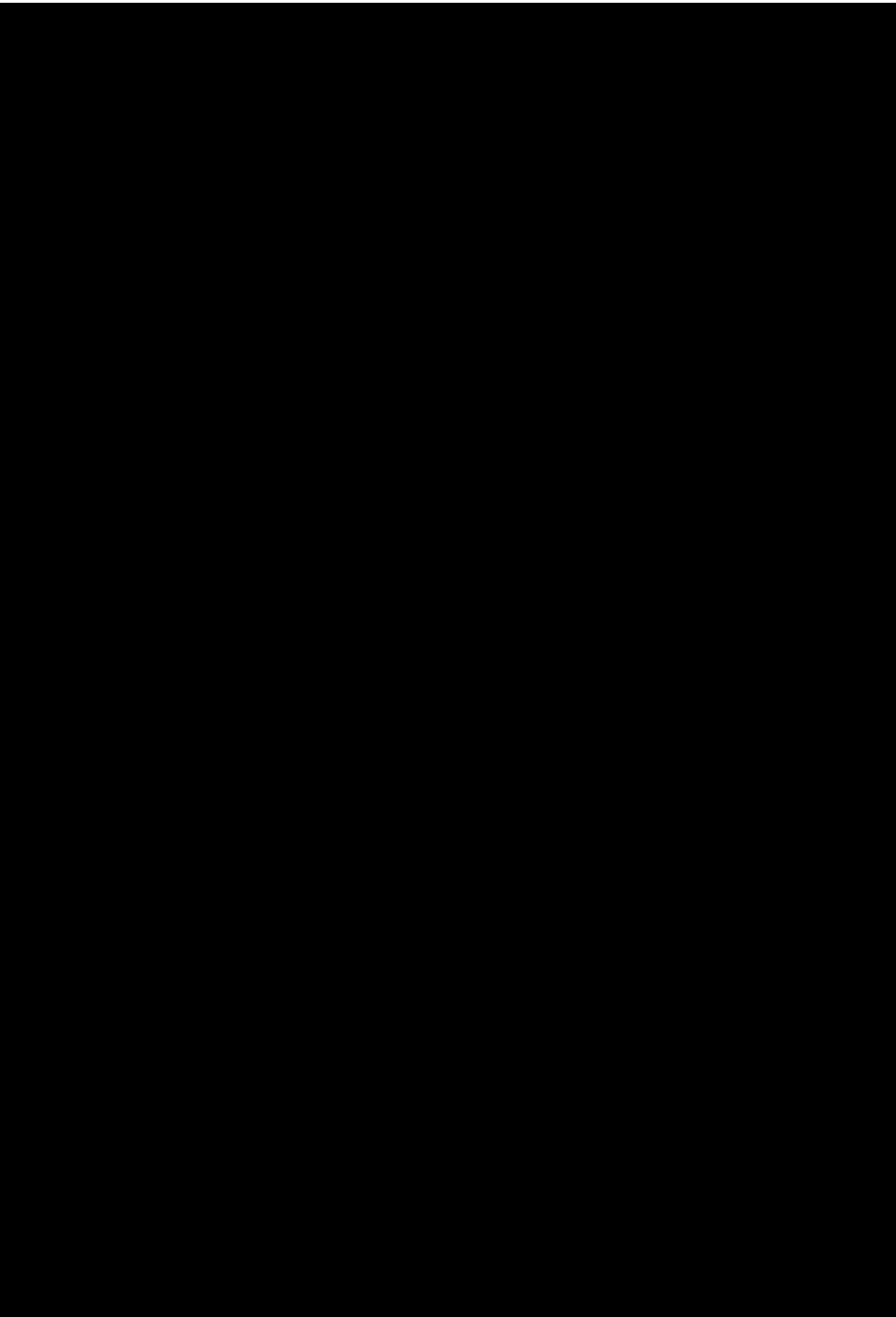
Schedule 35. Operator Cooperation and Integration Deed



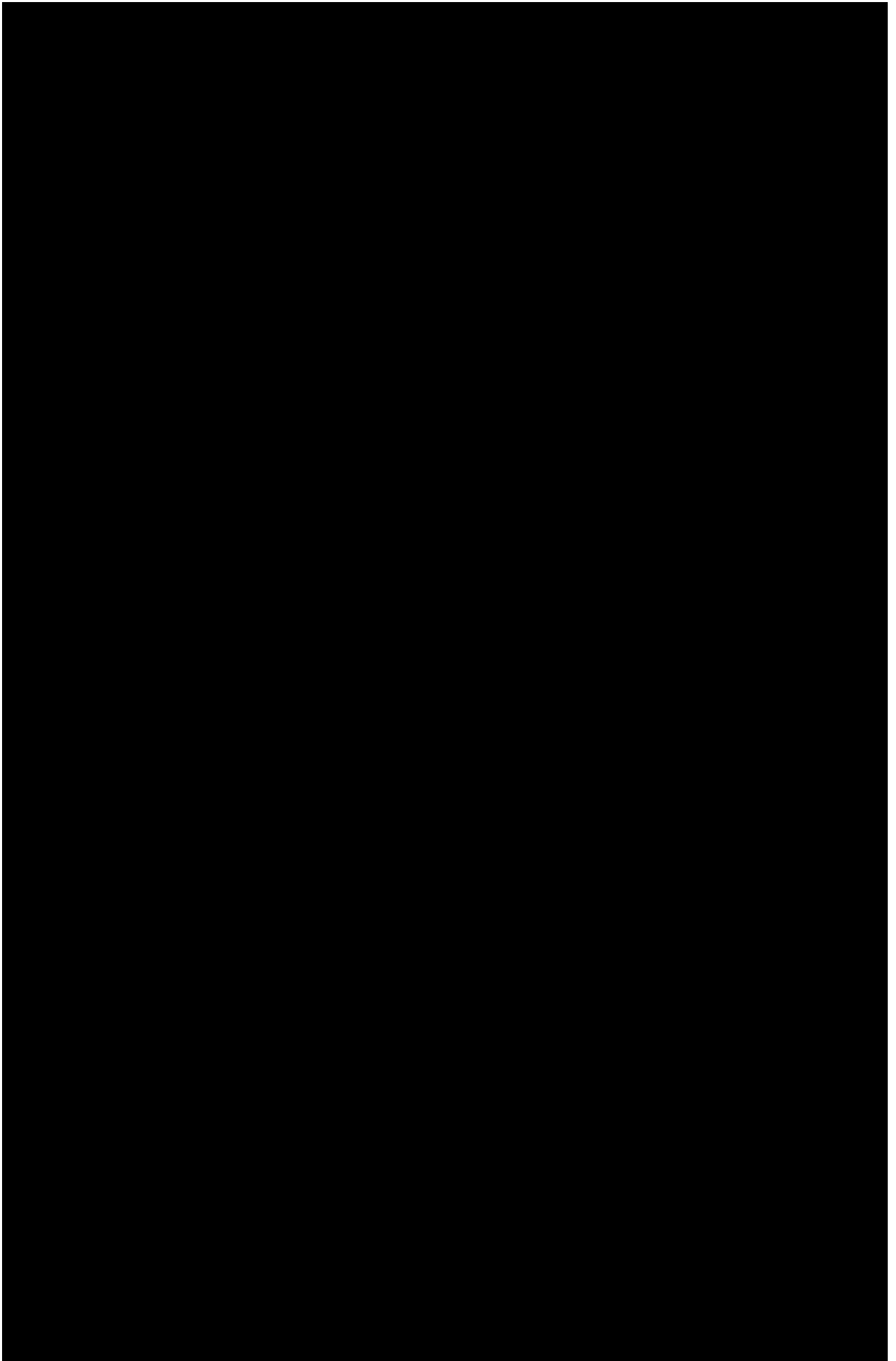


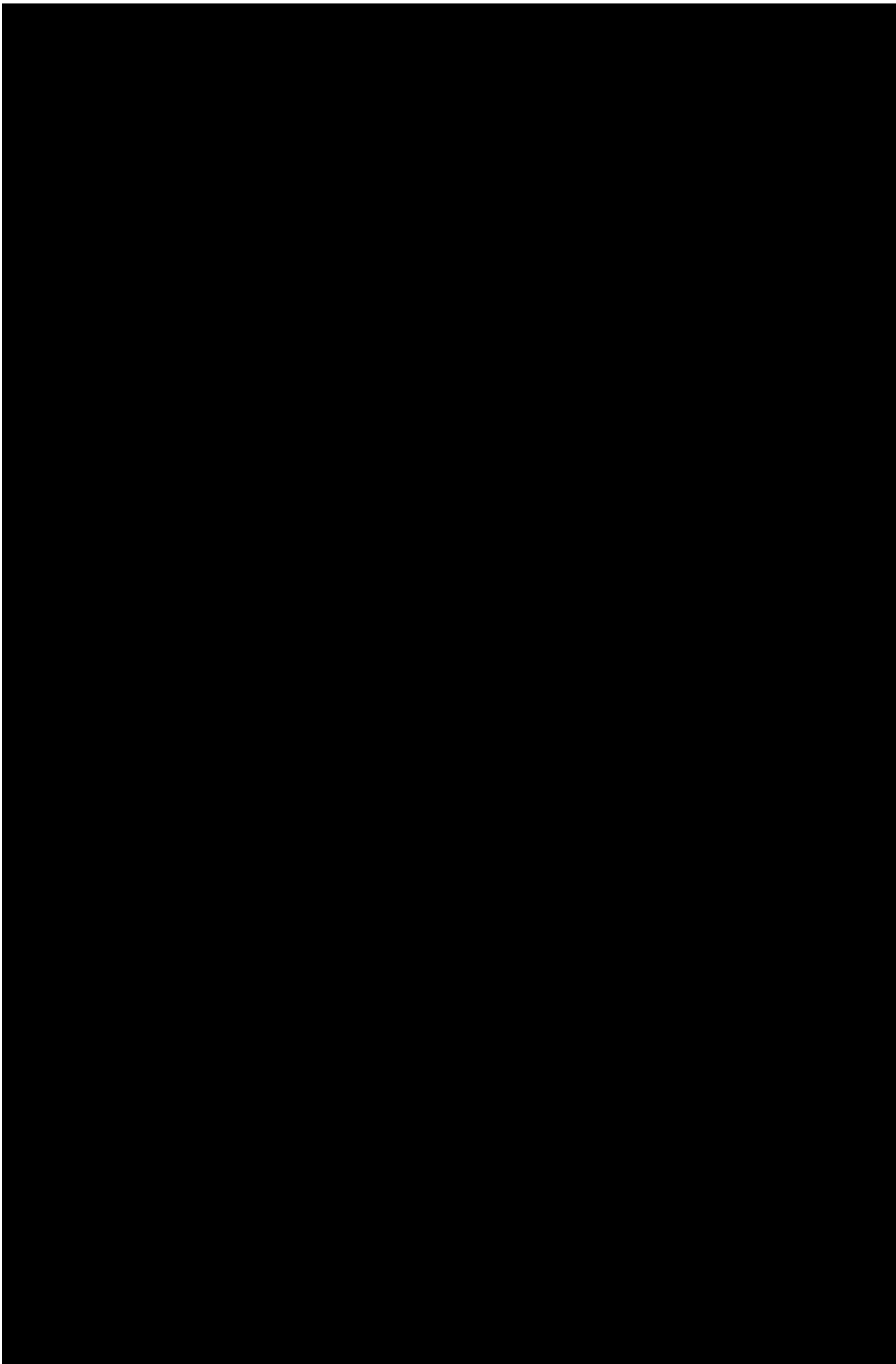


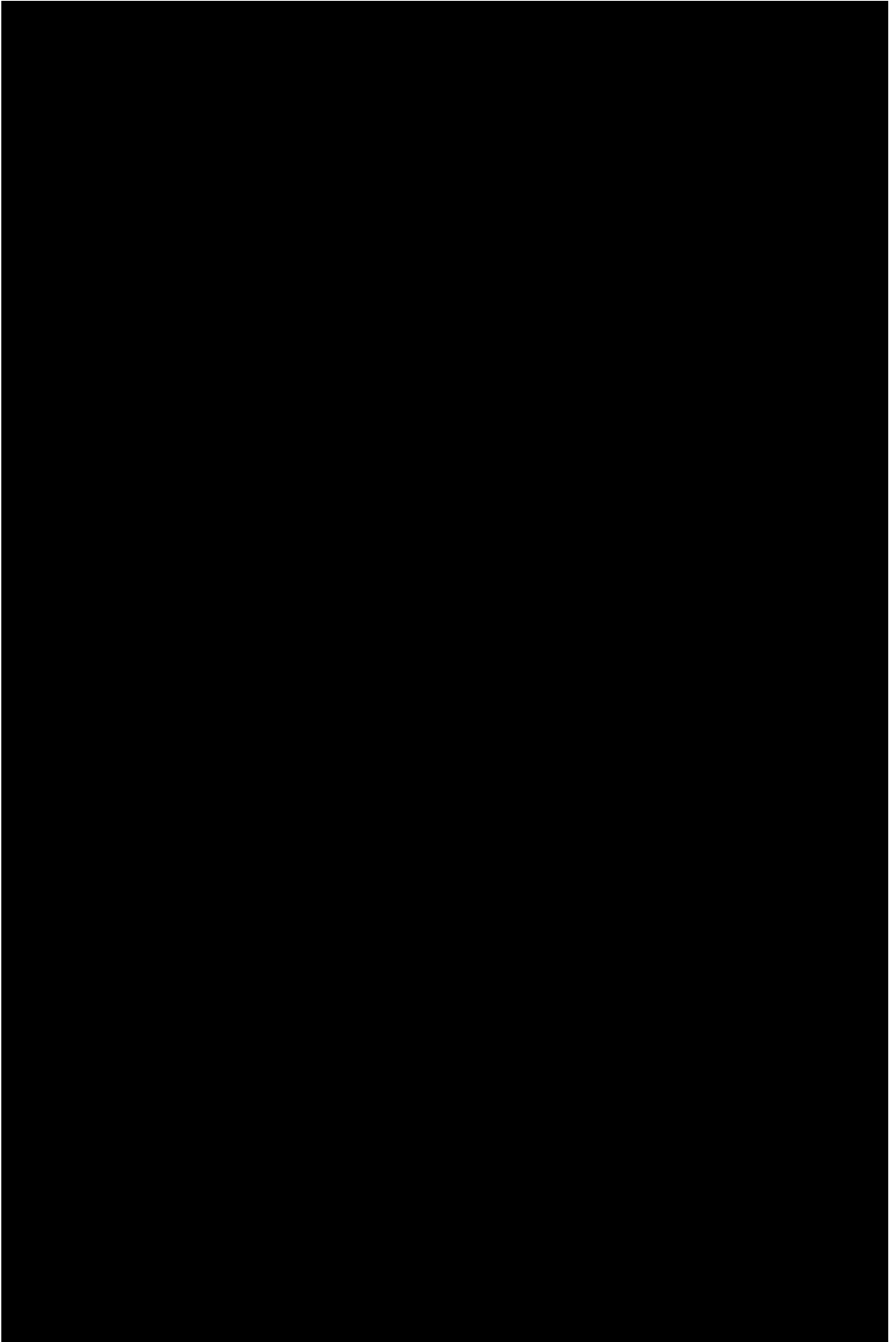




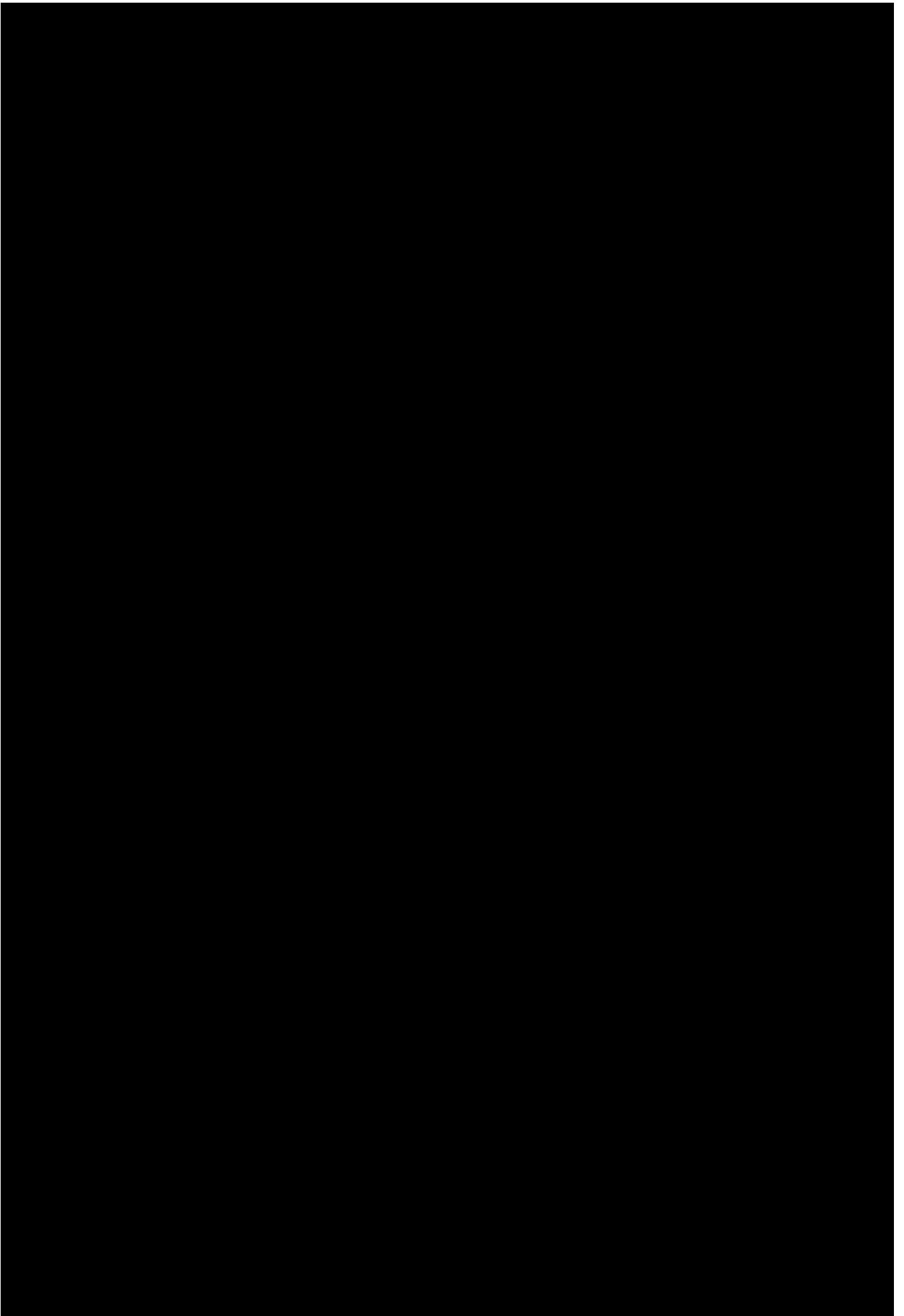


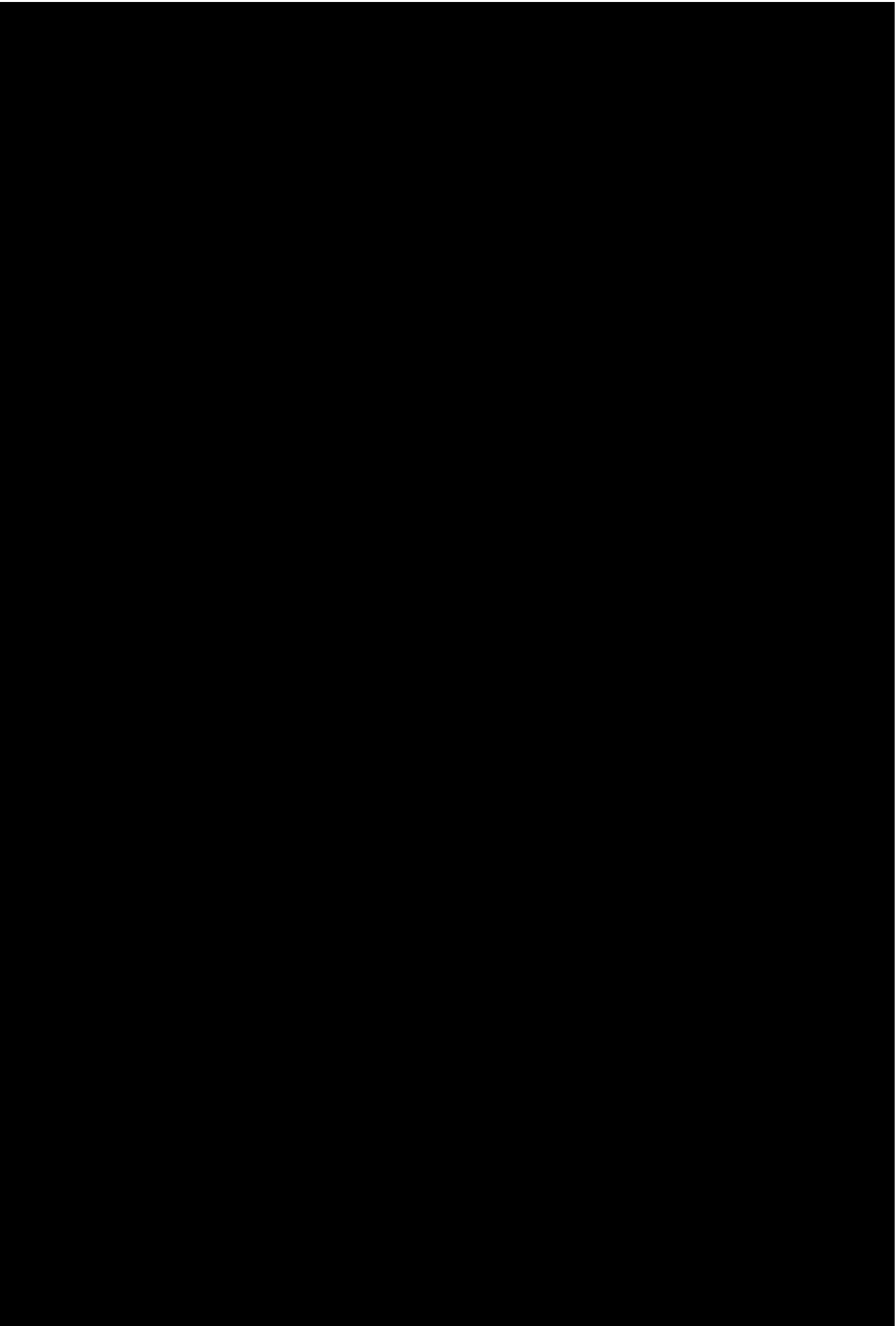


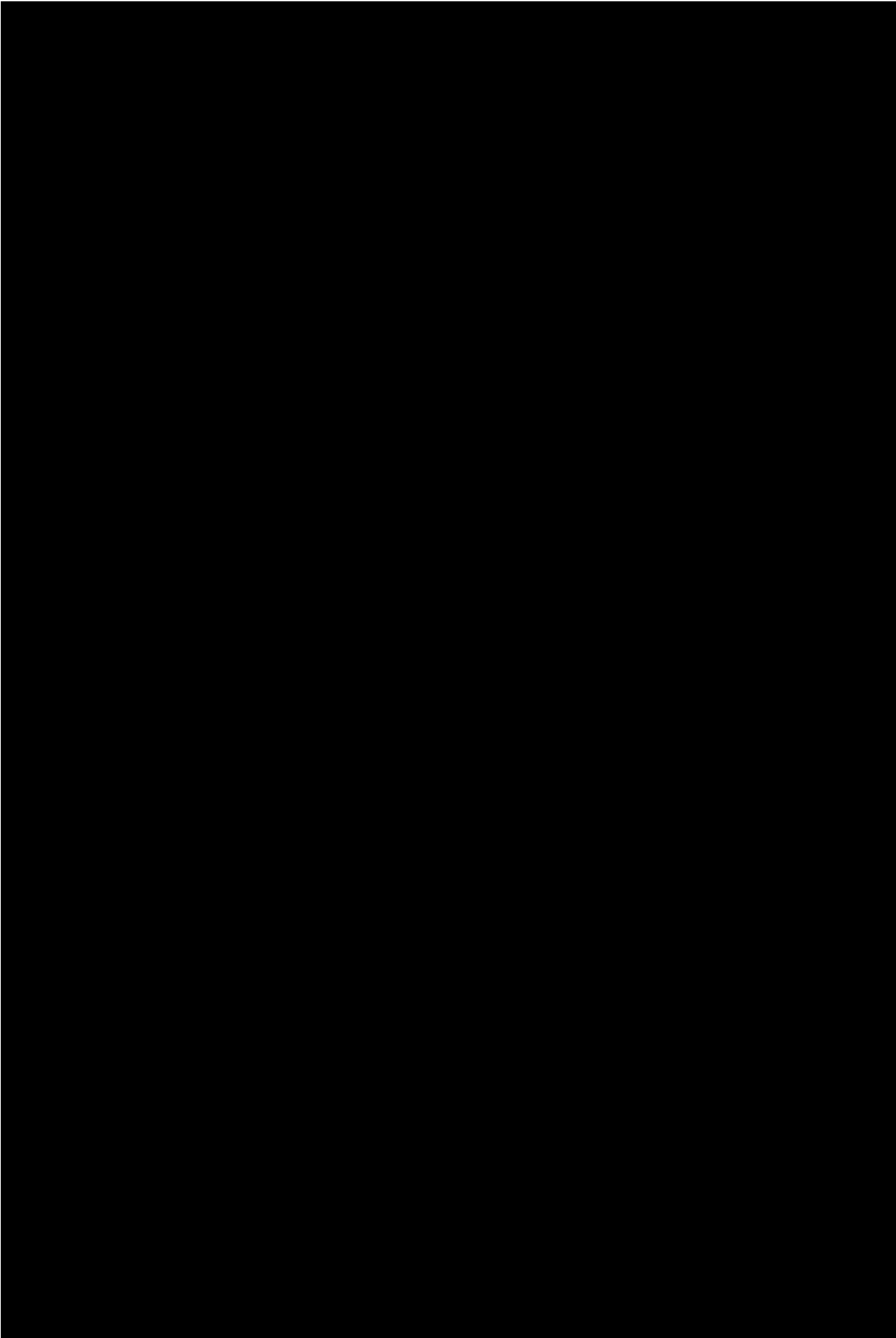


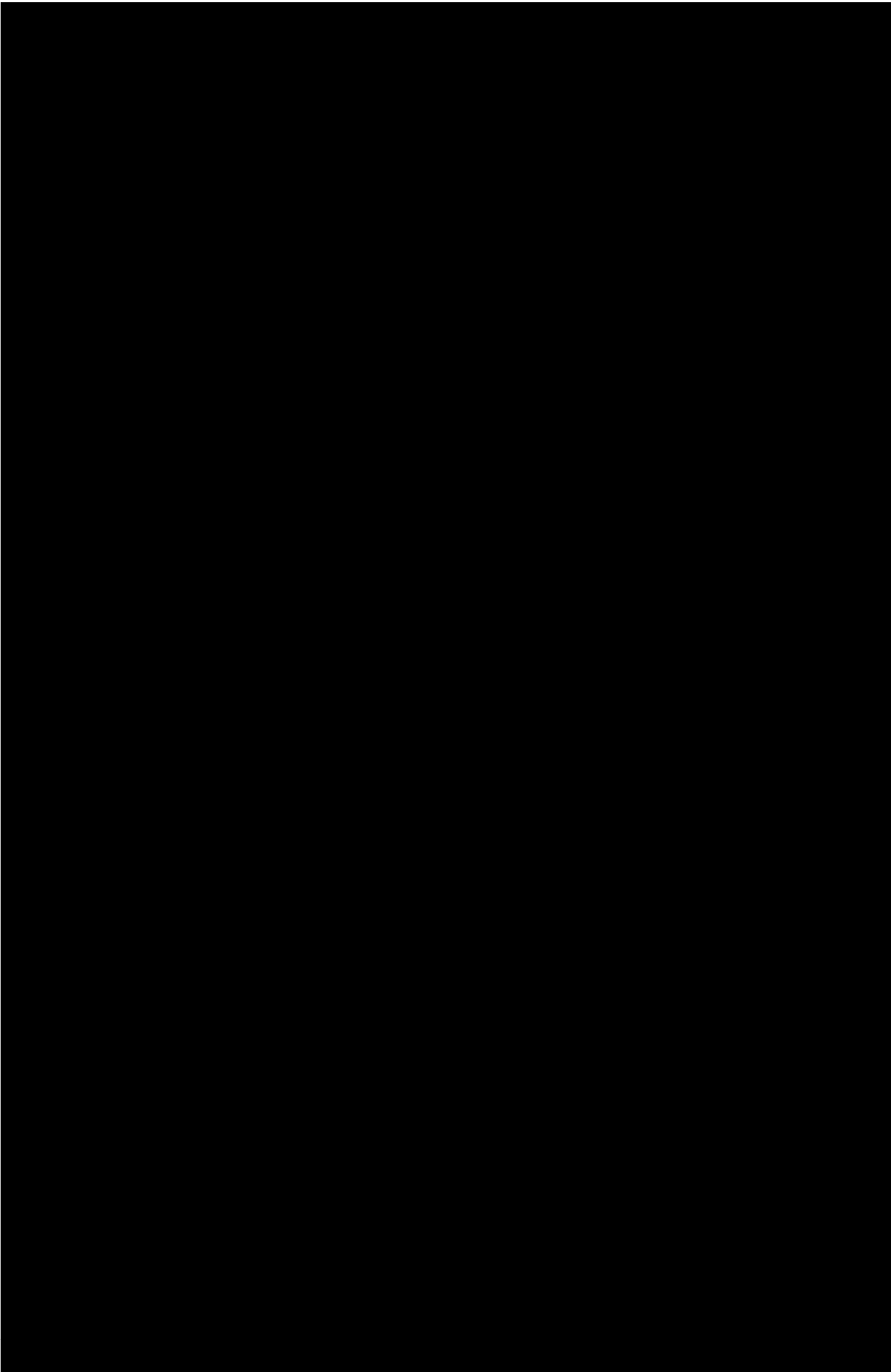


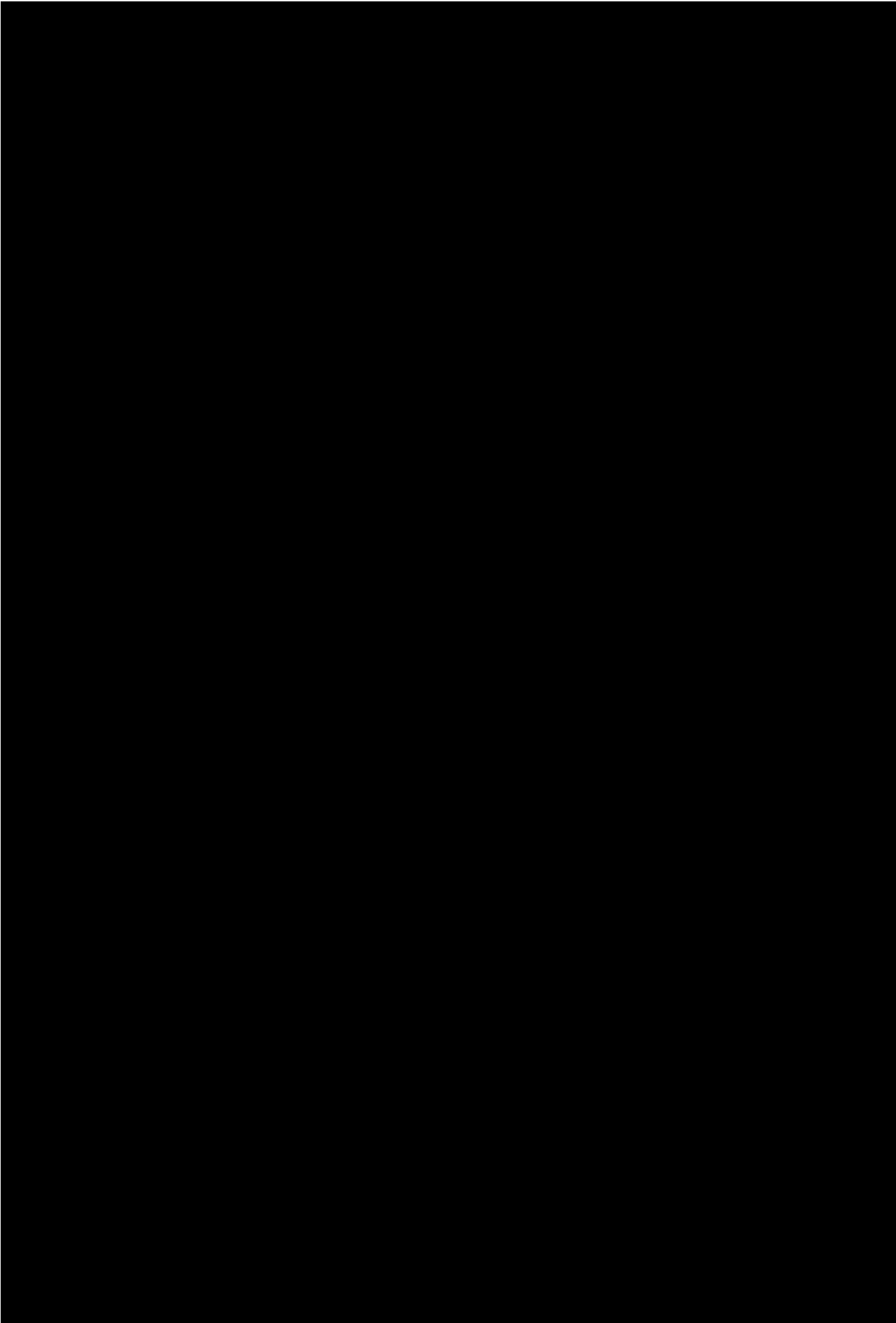


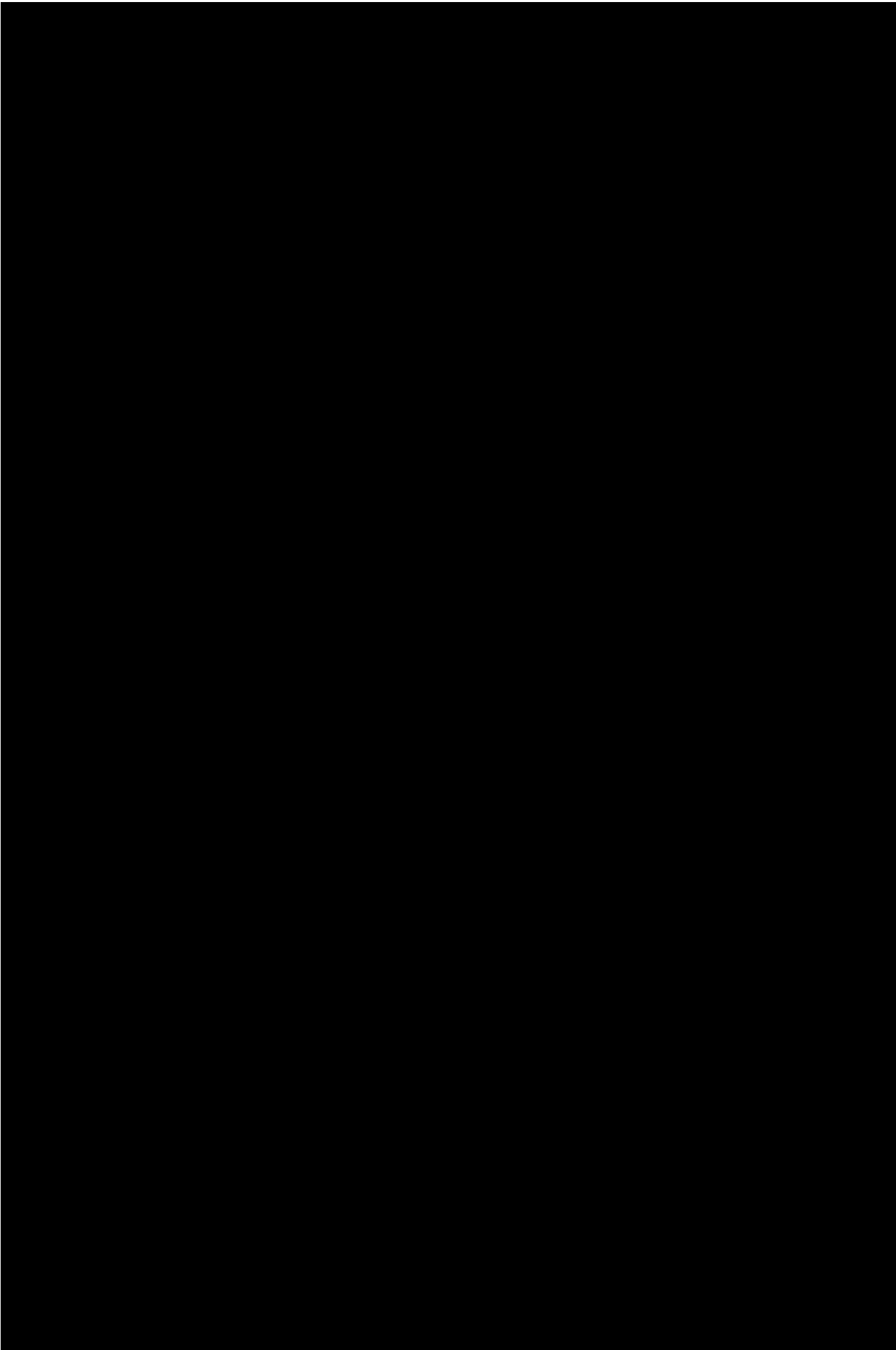




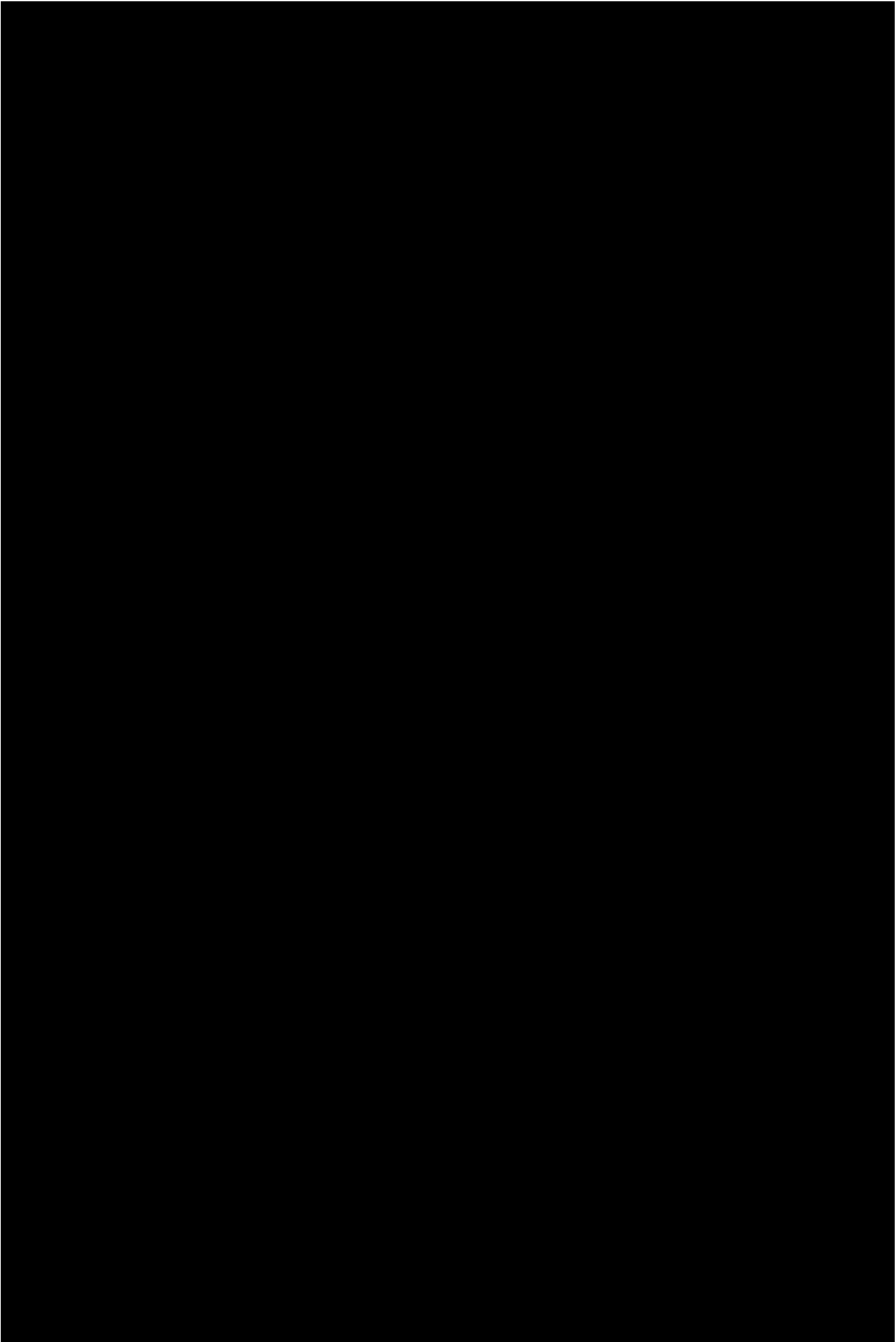


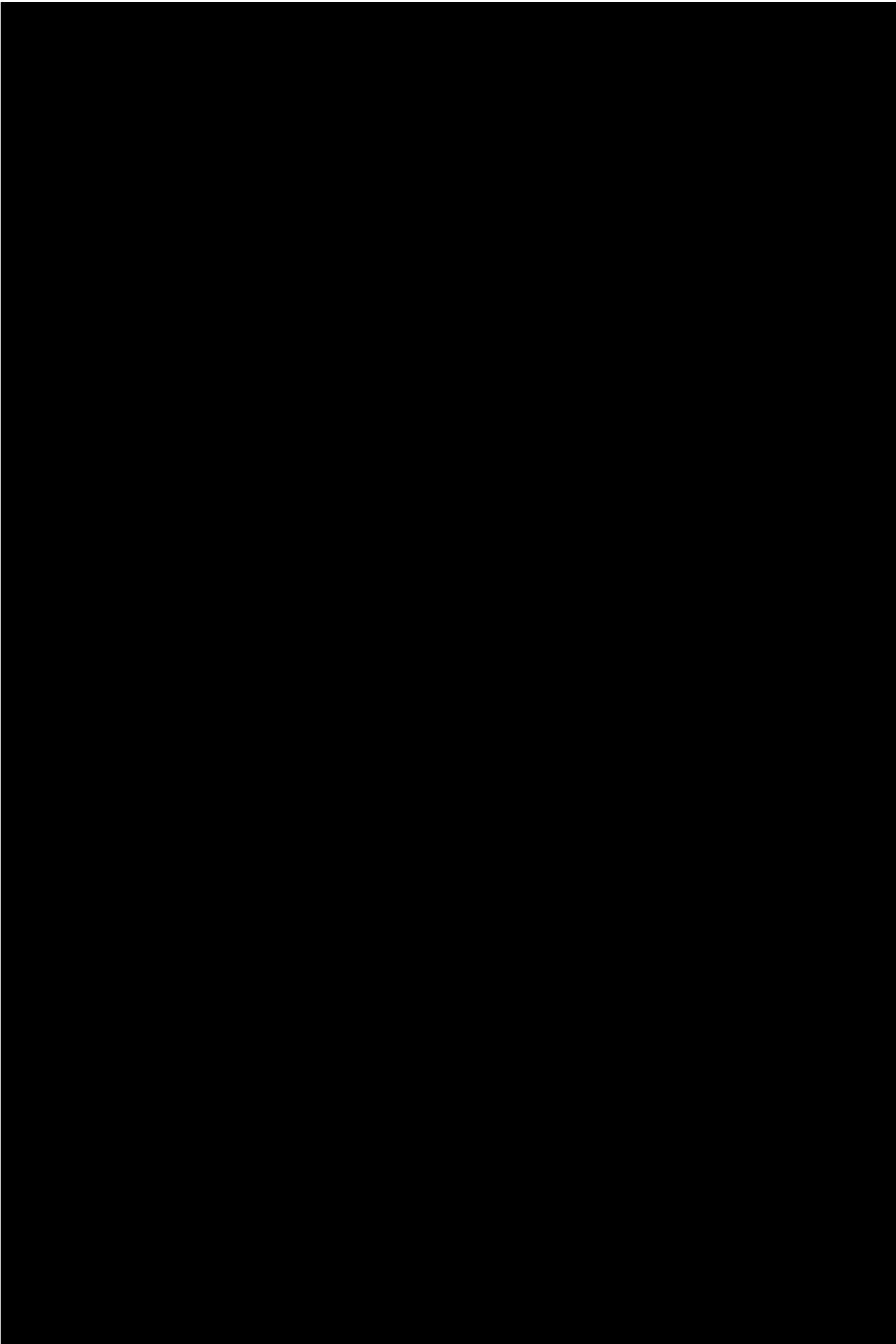


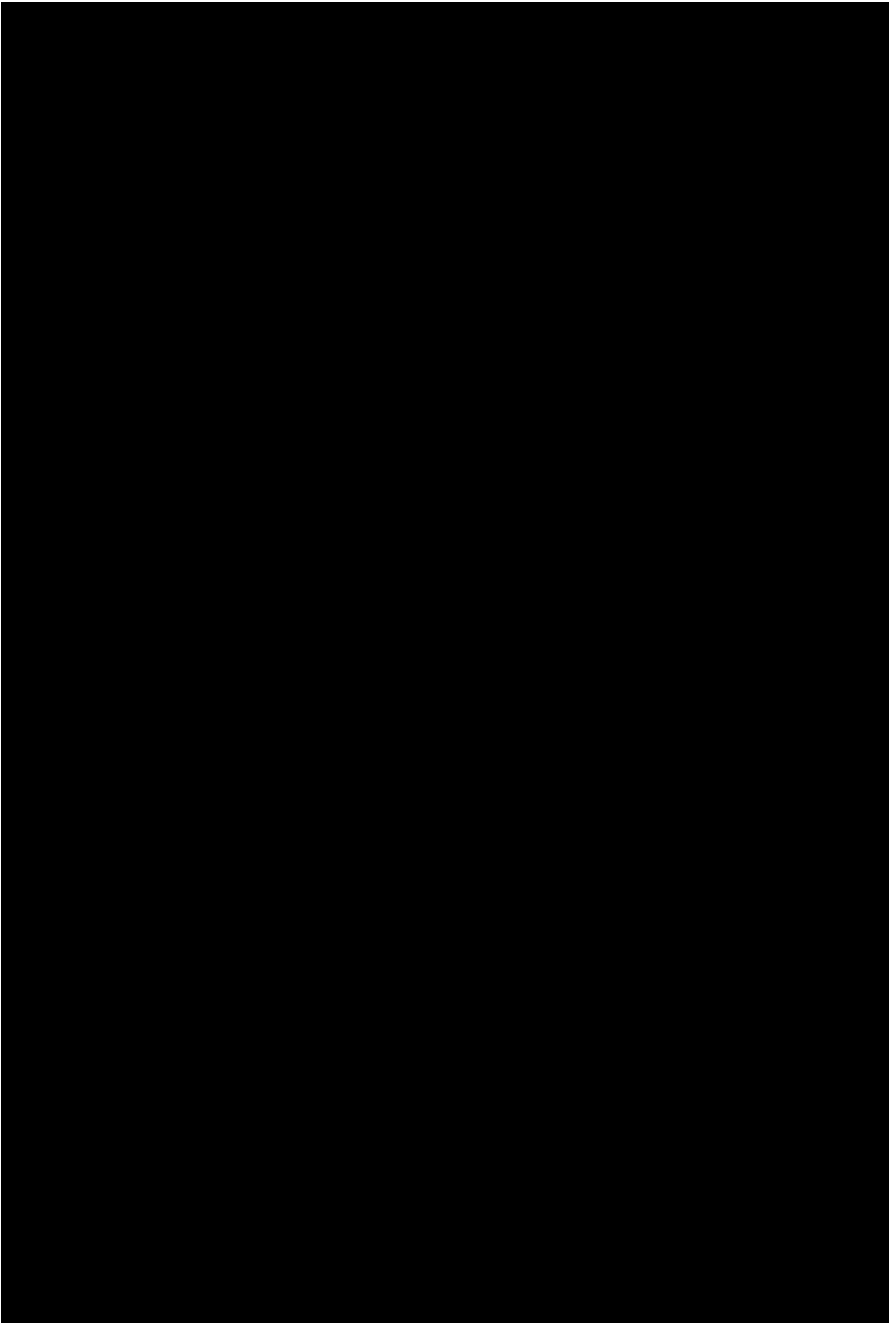


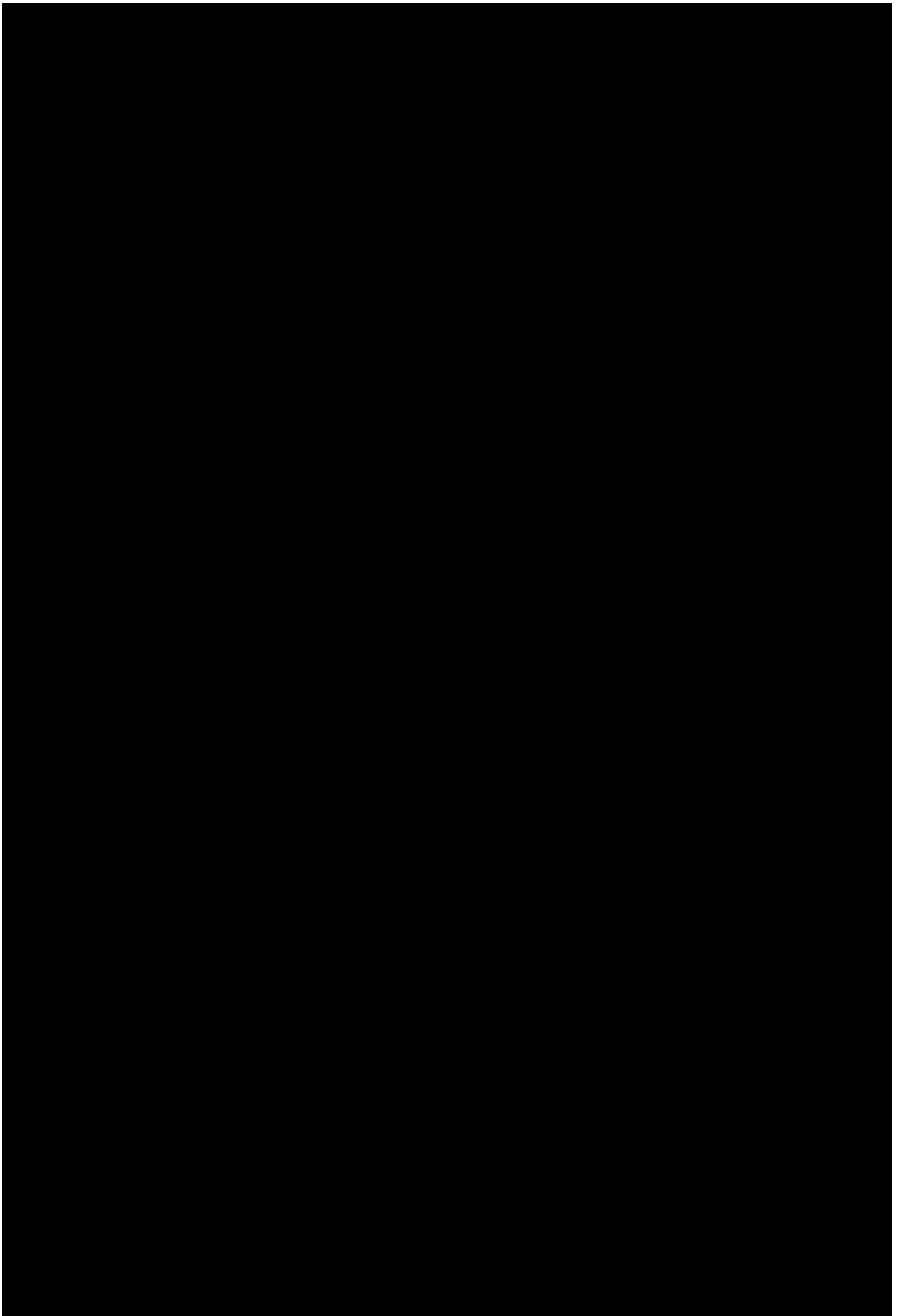


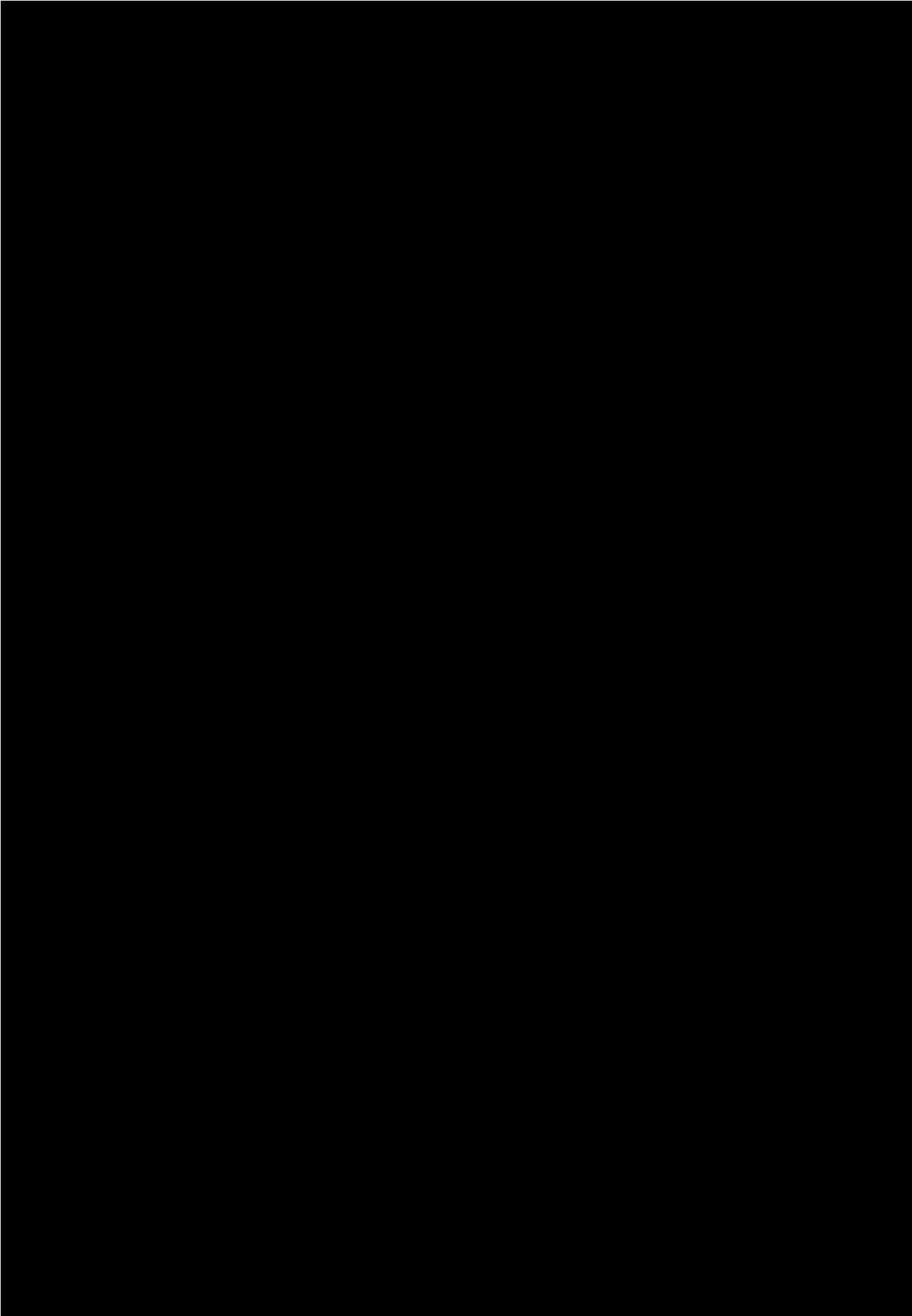


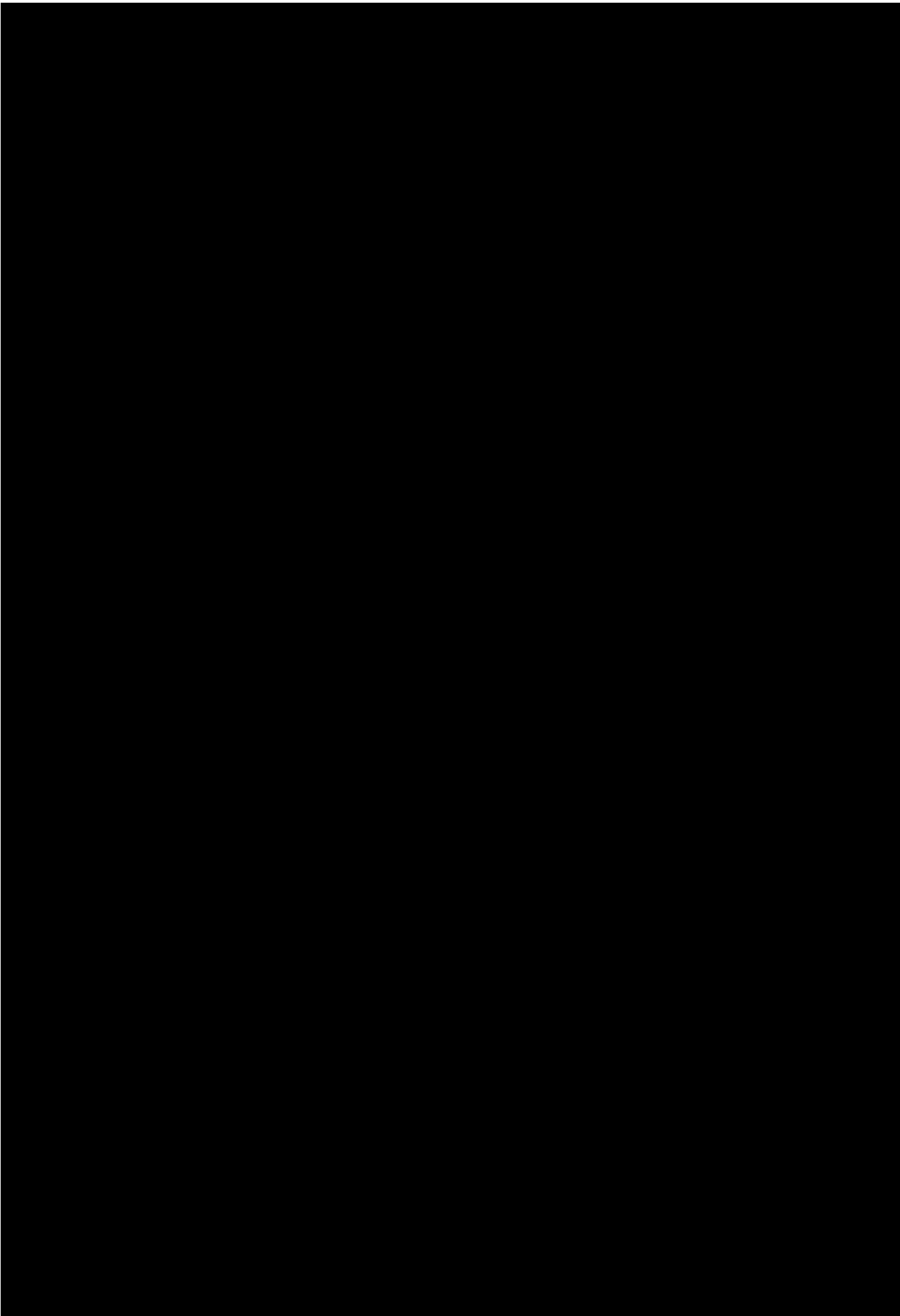


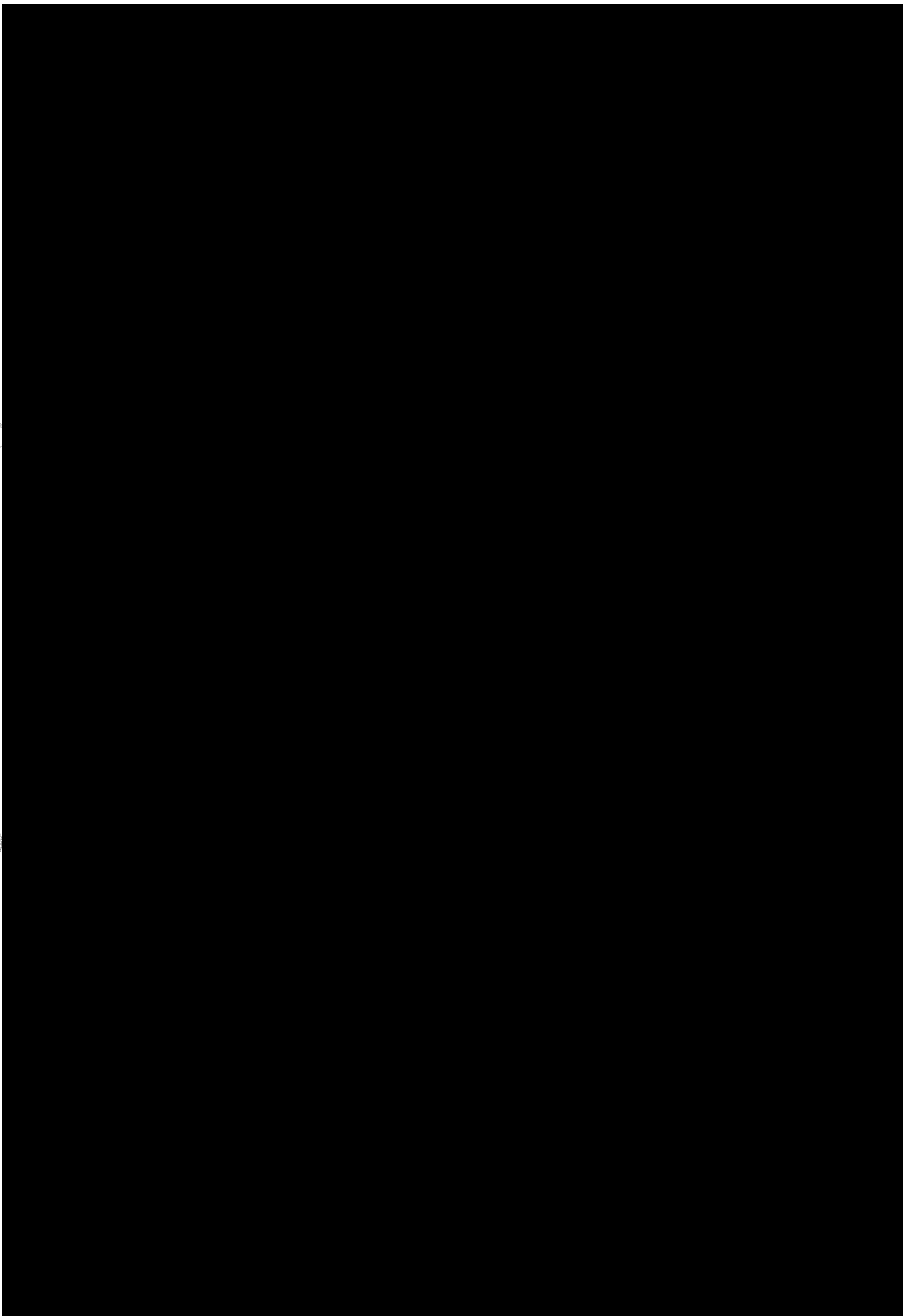




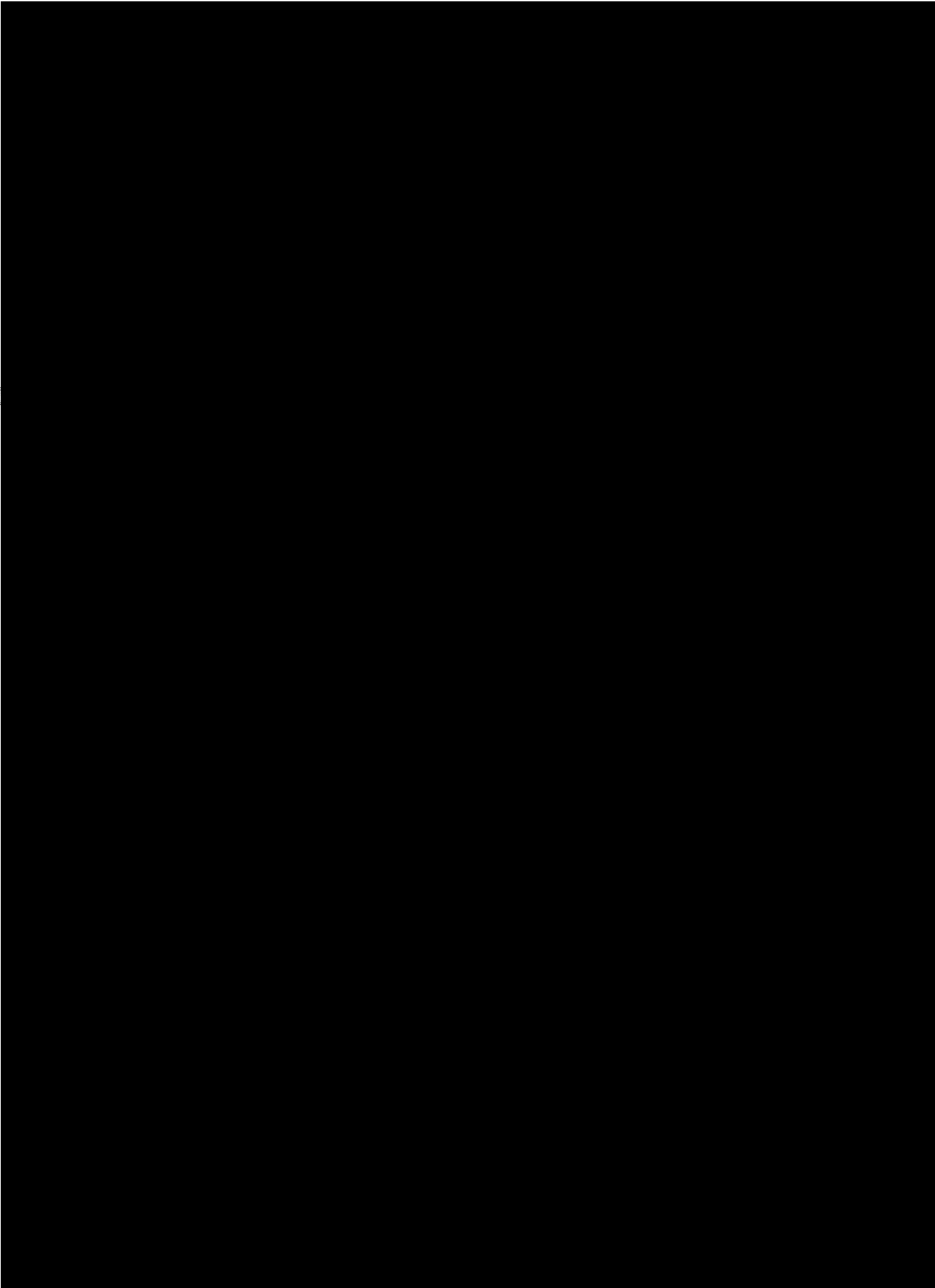




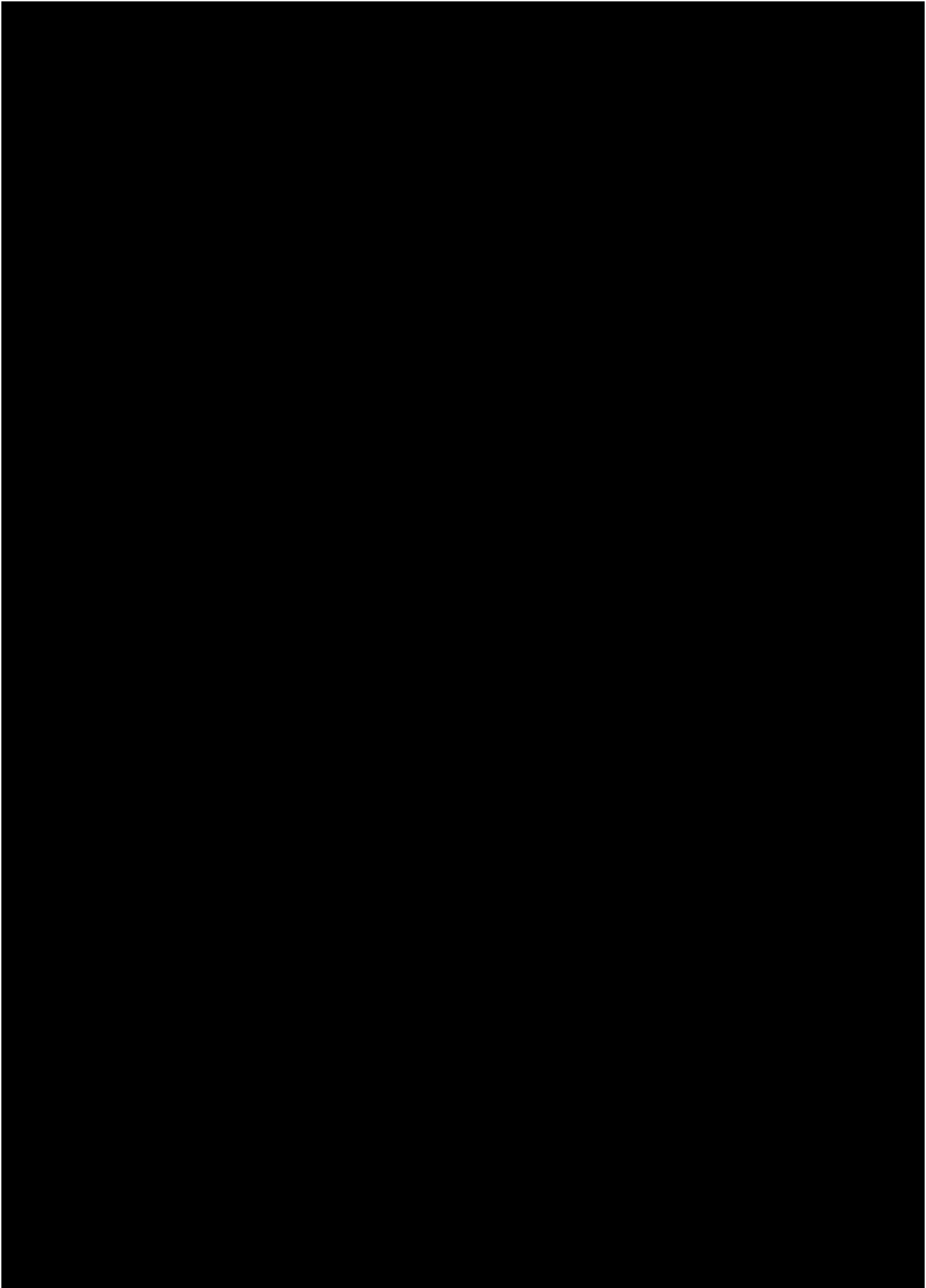




Schedule 36. TSE Cooperation and Integration Deed



Schedule 37. Master Interface Protocols Deed Poll



Schedule 38. IC Letter of Intent

(Clause 9.5A)



To: Advisian Pty Ltd (**Independent Certifier**)
Level 17, 141 Walker Street, North Sydney NSW 2060

Email: [REDACTED]

Attention: [REDACTED] the Independent Certifier's Representative

To: *[Name, address of CN Contractor to be inserted]* (CN Contractor)

Email: *[Email address of CN Contractor to be inserted]*

Attention: *[Name of CN Contractor's Representative to be inserted]*

Date: [#] 2020

Dear [REDACTED] and *[CN Contractor's Representative to be inserted]*,

Greenfield Independent Certifier appointment under the Draft CN CODD Independent Certifier Deed: Letter of Intent to commence Services under the Draft CN CODD Independent Certifier Deed (Letter of Intent)

1. We refer to the draft contract titled "Sydney Metro City & Southwest Independent Certification of the Crows Nest Station Works Independent Certifier Deed" intended to be entered into by the Sydney Metro (**Principal**), the CN Contractor, the Independent Certifier and NRT CSW Pty Ltd (**Operator**), as attached at Attachment 1 to this Letter of Intent (the **Draft CN CODD Independent Certifier Deed**).
2. In this Letter of Intent, "**CN CODD Independent Certifier Deed**" means the contract titled "Sydney Metro City & Southwest Independent Certification of the Crows Nest Station Works Independent Certifier Deed" to be entered between the Principal, the CN Contractor, the Independent Certifier and the Operator.
3. Capitalised terms used but not otherwise defined in this Letter of Intent have the meaning given to them in the Draft CN CODD Independent Certifier Deed.
4. Notwithstanding that the Draft CN CODD Independent Certifier Deed has not been executed, on and from the Effective Date:

- (a) the Independent Certifier will carry out the Services in accordance with the terms of the Draft CN CODD Independent Certifier Deed; and
 - (b) the parties to this Letter of Intent will comply with, and be bound by, the terms of the Draft CN CODD Independent Certifier Deed as if it was duly executed by all parties to the Draft CN CODD Independent Certifier Deed.
- 5. Upon request by the Principal, the Independent Certifier and the CN Contractor must execute the final version of the Draft CN CODD Independent Certifier Deed within 10 Business Days provided that it is substantially in the form of the Draft CN CODD Independent Certifier Deed as attached at Attachment 1.
- 6. If the CN CODD Independent Certifier Deed is executed by the Principal, the CN Contractor, the Independent Certifier and the Operator, on and from the date of execution:
 - (a) the Services performed pursuant to this Letter of Intent will form part of the Services provided under the CN CODD Independent Certifier Deed and be deemed to have been performed by the Independent Certifier under the executed CN CODD Independent Certifier Deed;
 - (b) all amounts paid in accordance with this Letter of Intent will be allocated to and form part of the Fee under the CN CODD Independent Certifier Deed; and
 - (c) subject to clauses 6(a) and 6(b), this Letter of Intent will be of no further effect.
- 7. If the parties to this Letter of Intent do not execute the CN CODD Independent Certifier Deed within 3 months from the Effective Date (**Sunset Date**), then the Independent Certifier will continue to provide the Services in accordance with the Letter of Intent, and the parties to this Letter of Intent will continue their good faith negotiations to enter into the CN CODD Independent Certifier Deed until the earlier of the Principal or the Independent Certifier exercising their rights to terminate this Letter of Intent under clause 8 and clause 9 respectively.
- 8. At any time prior to the execution of the CN CODD Independent Certifier Deed the Principal may terminate the appointment of the Independent Certifier under the terms of this Letter of Intent, in which case:
 - (a) clause 10 of the Draft CN CODD Independent Certifier Deed will apply to such termination; and
 - (b) subject to clause 10 of this Letter of Intent, on and from the date the appointment of the Independent Certifier is terminated in accordance with clause 10.2 of the Draft CN CODD Independent Certifier Deed, this Letter of Intent will be of no further effect.
- 9. At any time after the Sunset Date referred to in clause 7, the Independent Certifier may terminate this Letter of Intent by providing 90 calendar days' prior written notice to the Principal and the CN Contractor, in which case:
 - (a) the Independent Certifier will be entitled to be paid the proportion of the Fee for the Services performed up to the date of the termination; and

- (b) subject to clause 10 to this Letter of Intent, on and from the date that is indicated in the written notice provided by the Independent Certifier under clause 9 (which date must be at least 90 calendar day from the Sunset Date) this Letter of Intent will be of no further effect.
10. Notwithstanding anything to the contrary in this Letter of Intent, clauses 8, 9 and 14 of this Letter of Intent and clauses 5.2, 8.1, 8.2, 8.3, 8.9, 10.7 and 12.17 of the Draft CN CODD Independent Certifier Deed will apply mutatis mutandis and survive the termination of this Letter of Intent.
 11. By countersigning this Letter of Intent in the space provided below, each of the Principal, the Independent Certifier and the CN Contractor confirms the appointment of the Independent Certifier in accordance with, and otherwise agrees to the terms of, this Letter of Intent.
 12. This Letter of Intent is effective on and from the date of this Letter of Intent, being the date of the last countersignature by the Principal, the CN Contractor and the Independent Certifier (the **Effective Date**).
 13. Notwithstanding anything to the contrary in this Letter of Intent, it is understood that the Operator's obligations and the obligations owed to the Operator by the Principal, the CN Contractor and the Independent Certifier under the CN CODD Independent Certifier Deed will only become effective with respect to the Operator upon the execution of the Independent Certifier Deed by the Operator in accordance with clause 6.
 14. This Letter of Intent is governed by the laws of New South Wales and may be executed in counterparts.
 15. Please acknowledge your agreement to these terms by signing and returning to us a copy of this Letter of Intent.

Kind regards,

Principal's Representative

Executed as a deed on

2020

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

Executed by Sydney Metro (ABN 12 354 063 515) by its authorised delegate, in the presence of:

Signature of witness

Signature of authorised delegate

Name of witness in full

Name of authorised delegate

Executed as a deed on

2020

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

Executed by [Note: Insert name and ABN of CN Contractor.] in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of Director

Signature of other Director/Secretary

Name of Director in full

Name of Secretary/other Director in full

Executed as a deed on

2020

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

Executed by Advisian Pty Ltd (ABN 50 098 008 818) in accordance with section 127 of the *Corporations Act 2001* (Cth)

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Address of witness

ATTACHMENT 1

Form of the Draft CN CODD Independent Certifier Deed

(Clause 1)

Form of the document titled "Sydney Metro City & Southwest Independent Certification of the Crows Nest Station Works Independent Certifier Deed" (draft dated [redacted] 2020)

See attached.

Sydney Metro City & Southwest Independent Certification of the Crows Nest Station Works Independent Certifier Deed

Contract No: [insert]

[Name of CN Contractor]

ACN [insert]
CN Contractor

Sydney Metro

ABN 12 354 063 515
Principal

Advisian Pty Ltd

ABN 50 098 008 818
Independent Certifier

and

NRT CSW Pty Ltd

ACN 635 509 036
the Operator

THIS INDEPENDENT CERTIFIER DEED is made on 2020

BETWEEN:

- (1) **[Name, address and ABN of CN Contractor to be inserted]** (CN Contractor); and
- (2) **Sydney Metro** ABN 12 354 063 515 a New South Wales Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (**Principal**);
- (3) **Advisian Pty Ltd** ABN 50 098 008 818 of Level 17, 141 Walker Street, North Sydney NSW 2060 (**Independent Certifier**); and
- (4) **NRT CSW Pty Ltd** ACN 635 509 036 of 'Rialto South Tower' Level 43, 525 Collins Street, Melbourne VIC 3000, in its personal capacity and in its capacity as trustee of the NRT CSW Unit Trust (the **Operator**).

RECITALS:

- (A) The CN Contractor has entered into the Construct Only Delivery Deed with the Principal for the delivery of the Works.
- (B) The Independent Certifier represents that it is experienced generally in construction and, in particular, in the construction of works similar to the Works and offers its expertise in those fields.
- (C) The Construct Only Delivery Deed contemplates that the Independent Certifier will discharge those functions set out in Schedule 1.
- (D) The Independent Certifier will perform its obligations on the terms of this deed.
- (E) In accordance with the Construct Only Delivery Deed, the CN Contractor will progressively hand control of the Works to the Principal, so that the Principal may hand control of the Works to the Operator in order to allow it to undertake the OTS2 Project Works and to commence operation of Sydney Metro City & Southwest.
- (F) The Independent Certifier will issue a Notice of Substantial Completion and a Notice of Completion in respect of each Portion of the Works and the Operator will be bound by the Independent Certifier's certification as set out in the Notice of Completion for Portion 2 of the Works for the purposes of taking possession of the relevant part of the Site.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

In this deed:

Additional Services means any additional services requested by the Principal from the Independent Certifier from time to time by the issue of an Additional Services Order, as those services are described in each Additional Services Order.

Additional Services Fee means the fee specified in any Additional Services Order for the Additional Services set out in that Additional Services Order, calculated in accordance with clause 7.1(a)(ii).

Additional Services Order means a written request from the Principal to the Independent Certifier to carry out Additional Services issued under clause 7.1(a).

Certification Methodology means the certification methodology set out in Schedule 7.

Certification Plan means the plan that the Independent Certifier is required to prepare in accordance with clause 4.8, and in respect of which the Principal has not issued a notice under clause 4.8(c), as that plan is updated from time to time in accordance with clause 4.9 of this deed.

Completion Phase Services means all Core Services related to:

- (a) construction of the Works;
- (b) Milestone Achievement of each Milestone;
- (c) the performance by the CN Contractor of its obligations in respect of Milestone Achievement of each Milestone;
- (d) Substantial Completion and Completion of each Portion; and
- (e) the performance by the CN Contractor of its obligations in respect of Substantial Completion and Completion of the each Portion.

Consequential Loss means any:

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

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

Consequential Loss does not include any Liquidated Damages Loss.

Construct Only Delivery Deed means the deed titled "Sydney Metro City & Southwest – Crows Nest Station Development – Construct Only Delivery Deed" between the Principal and the CN Contractor dated on or about the date of this deed.

Core Services means the services set out in Schedule 1 to this deed, and includes the Completion Phase Services.

Core Services Fee means the amount payable to the Independent Certifier for the performance of the Core Services, as calculated in accordance with paragraph 1(b) of the Payment Schedule.

Criminal Conduct means where an employee or officer of the Independent Certifier, or any person for whom the Independent Certifier is vicariously liable, has been convicted of a crime.

Dispute Representatives has the meaning given to that term in clause 9.2.

Fee means the amount payable to the Independent Certifier for the performance of the Services in accordance with the Payment Schedule.

Fraud means an intentional deceptive and dishonest act (but not omission) by an employee or officer of the Independent Certifier, or any person for whom the Independent Certifier is vicariously liable, committed with the intention of deceptively and dishonestly obtaining financial gain.

Gross Negligence means a gross, high and reprehensible failure to take reasonable care in circumstances whereby the Independent Certifier knew that it was failing to take reasonable care and that such failure to take reasonable care had an obvious high risk of causing the Loss claimed, and nevertheless proceeded with conscious and intentional indifference and disregard thereto but does not include errors of judgement, mistakes, errors or acts or omissions made in good faith.

GST, GST law and other terms used in clause 11 have the meanings used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time) or any replacement or other relevant legislation and regulations, except that **GST law** also includes any applicable rulings. Any reference to GST payable by the Supplier (as defined in clause 11) includes any GST payable by the representative member of any GST group of which the Supplier is a member.

Independent Certifier's Project Director means the relevant person referred to in Schedule 3 or any other person holding that position in accordance with clause 4.4(b)(ii).

Independent Certifier's Representative means the relevant person referred to in Schedule 3 or any other person holding that position in accordance with clause 4.4(b)(ii).

Liquidated Damages Loss means any liability for liquidated damages under the Construct Only Delivery Deed caused by any conduct, act or omission of the Independent Certifier (other than any conduct or act performed in accordance with this deed) causing delay to the CN Contractor:

- (a) achieving Substantial Completion of Portion 1 of the Works by the Date for Substantial Completion of that Portion;
- (b) achieving Completion of Portion 1 of the Works by the Date for Completion of that Portion;
- (c) achieving Substantial Completion of Portion 2 of the Works by the Date for Substantial Completion of that Portion;
- (d) achieving Completion of Portion 2 of the Works by the Date for Completion of that Portion; or
- (e) reaching Milestone Achievement of a Milestone by the Date for Milestone Achievement of the Milestone.

Loss means any cost, expense, loss, damage, liability or other amount whether present, future, fixed, unascertained, actual or contingent.

NSW Trains means the body corporate constituted by section 37(1) of the *Transport Administration Act 1988* (NSW).

Other Parties means the Principal, the CN Contractor and the Operator.

OTS2 Project Works means all things, works and materials (including all systems and software incorporated in, or necessary to enable their operation) that the Operator must, in accordance with the OTS2 Project Deed, design, construct, manufacture, install, test and commission for the purposes of completing the Sydney Metro City & Southwest, including equipment, systems (including all information systems, central control systems and communications systems), hardware and software, rolling stock, trackwork and support structures, platform screen doors and control centre.

OTS2 Project Deed means a deed between the Principal and the Operator for the provision of the OTS2 Project Works and the performance of various services, including in particular the operation and maintenance of Sydney Metro City & Southwest and Sydney Metro Northwest.

Payment Schedule means Schedule 2 to this deed.

PDCS means the Principal's web based TeamBinder project data and collaboration system, or such other electronic project data and collaboration system notified by the Principal's Representative under clause 12.1.

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

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

Reputable Insurer means an insurance company having the Required Rating.

Required Rating means a credit rating (or in the case of an insurer, a financial security rating) of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, Inc (or such other credit rating as the Principal may approve in writing from time to time) or, if no rating is provided by Standard and Poor's (Australia) Pty Limited or by Moody's Investors Service, Inc, an equivalent rating with another reputable rating agency.

Services means:

- (a) the Core Services; and
- (b) any Additional Services,

and includes all things necessary for, or incidental to, the proper and professional performance of those services.

Substitute Certifier has the same meaning as in clause 7.4(a).

Sydney Trains means the corporation by that name constituted by section 36(1) of the *Transport Administration Act 1988* (NSW).

Term means the term of this deed as set out in clause 3.2.

TfNSW means Transport for NSW, a NSW government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW).

Upper Limiting Fee means each upper limiting fee specified in paragraph 1(b) of the Payment Schedule, as adjusted in accordance with this deed.

Wilful Misconduct means any malicious conduct or any breach of this deed which results from a conscious and intentional indifference and disregard to the relevant provisions of this deed and the risk of causing the Loss claimed by the relevant Other Party in respect of the breach but does not include errors of judgement, mistakes, errors or acts or omissions made in good faith.

1.2 Definitions in Construct Only Delivery Deed

Except as otherwise defined in clause 1.1, capitalised terms used in this deed that are defined in the Construct Only Delivery Deed will have the same meaning in this deed as in the Construct Only Delivery Deed.

1.3 Interpretation

In this deed:

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

and the following rules apply in interpreting this deed unless the context makes clear that a rule is not intended to apply:

(b) where the Independent Certifier or an Other Party comprises more than one entity, an obligation or a liability assumed by, or a right conferred on, the relevant Other Party or the Independent Certifier (as applicable) binds or benefits them jointly and severally;

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

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

(e) a reference to a document (including this deed and any other deed, agreement, instrument, guideline or code of practice) is to that document as amended, varied, novated, ratified, supplemented or replaced from time to time;

(f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:

(i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and

(ii) any consolidations, amendments, re-enactments and replacements;

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

- (h) a reference to a part, clause, schedule, exhibit, attachment or annexure is a reference to a part, clause, schedule, exhibit, attachment or annexure to or of this deed and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a 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;
- (j) **includes** in any form is not a word of limitation;
- (k) a reference to **\$** or **dollar** is to Australian currency;
- (l) where under this deed:
 - (i) a notice, certificate or direction is required to be given; or
 - (ii) a default must be remedied,

within a stated number of days, only Business Days will be counted in computing the number of days;
- (m) for all purposes other than as set out in clause 1.3(l), day means calendar day;
- (n) a reference to a **month** is a reference to a calendar month;
- (o) a reference to a court or tribunal is to an Australian court or tribunal;
- (p) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually; and
- (q) 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.

1.4 **Business Day**

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

1.5 **Ambiguous terms**

- (a) If the Principal considers, or if any of the Independent Certifier, CN Contractor or the Operator notifies the Principal's Representative in writing that it considers, that there is an ambiguity, discrepancy, or inconsistency in, or between, the documents comprising this deed (including in any schedules), the Principal's Representative must direct the interpretation of this deed which the parties must follow.
- (b) The Principal's Representative, in giving a direction in accordance with clause 1.5(a), is not required to determine whether or not there is an ambiguity, discrepancy, or inconsistency in, or between, the documents comprising this deed.
- (c) Any direction which the Principal's Representative gives in accordance with clause 1.5(a):

- (i) will not relieve the Independent Certifier, the CN Contractor or the Operator from or alter its liabilities or obligations under this deed or otherwise according to Law;
- (ii) will not limit or otherwise affect the Principal's rights against any of the Independent Certifier, the CN Contractor or the Operator, whether under this deed or otherwise according to Law; and
- (iii) must, in respect of a notice given under clause 1.5(a) by the Independent Certifier, the CN Contractor or the Operator, be given within 20 Business Days of receipt of that notice.

1.6 **No bias against drafter**

In the interpretation of this deed, no rule of construction applies to the disadvantage of one party on the basis that the party or its representative put forward or drafted this deed or any provision in it.

1.7 **Excluding liability**

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

2. **NOT USED**

3. **APPOINTMENT OF THE INDEPENDENT CERTIFIER**

3.1 **Appointment**

- (a) Each of the Other Parties appoint the Independent Certifier under this deed to perform the Services.
- (b) The Independent Certifier confirms its acceptance of the appointment referred to in clause 3.1(a).
- (c) The Independent Certifier must carry out the Services in accordance with the requirements of this deed and the Construct Only Delivery Deed and, to the extent the Certification Plan is not inconsistent with the Construct Only Delivery Deed or the nature of the Services, it will carry out and perform the Services in accordance with the Certification Plan.

3.2 **Term**

The Term of this deed commences on the date of this deed and continues until the earlier of:

- (a) completion of the Services; or
- (b) termination in accordance with clause 10.

3.3 **Payment**

The Principal will pay the Independent Certifier the Fee subject to and in accordance with the Payment Schedule.

3.4 Nature of Services

- (a) The Independent Certifier and the Other Parties acknowledge and agree that the Certification Plan is incidental to, and does not limit or otherwise affect the Services or the Independent Certifier's obligations under the deed.
- (b) Where this deed contemplates an action, agreement, decision, direction or the like by the Other Parties, and the Other Parties cannot reach agreement in respect of such action, decision, direction or the like, then the Principal must, acting reasonably and after prior consultation with the CN Contractor and, as relevant, the Operator, determine the appropriate action, agreement, decision, direction or the like.
- (c) In reaching decisions in relation to this deed which may affect the Other Parties, the Principal will take into account representations made by the CN Contractor and the Operator.

3.5 Rights under the Construct Only Delivery Deed

The Independent Certifier may exercise any of the rights granted to it under the Construct Only Delivery Deed for the purpose of performing the Services.

4. INDEPENDENT CERTIFIER'S OBLIGATIONS

4.1 Acknowledgement

The Independent Certifier acknowledges that:

- (a) it has received a copy of the execution version of the Construct Only Delivery Deed and that it has read, and is familiar with, the terms of the Construct Only Delivery Deed to the extent it relates to the Services;
- (b) it must continue performing the Core Services notwithstanding that the relevant Upper Limiting Fee may have been reached; and
- (c) it will not be entitled to payment of any amount in addition to the relevant Upper Limiting Fee (as adjusted in accordance with paragraph 4 of Schedule 2) for the performance of the Core Services.

4.2 General representations and warranties

The Independent Certifier represents and warrants that:

- (a) it is a company duly incorporated and existing under Law and has the power to execute, deliver and perform its obligations under this deed and that all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
- (b) the information provided by it in connection with this deed is true, accurate and complete in all material respects and not misleading in any material respect (including by omission);
- (c) its obligations under this deed are valid, legal and binding obligations enforceable against it in accordance with its terms, subject to equitable remedies and Laws in respect of the enforcement of creditor's rights;

- (d) the execution, delivery and performance of this deed by it will not contravene any Law to which it is subject or any deed or arrangement binding on it;
- (e) it does not (in any capacity) have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and
- (f) no litigation, arbitration, tax claim, dispute or administrative or other proceeding has been commenced or threatened against it which is likely to have a material adverse effect upon its ability to perform its obligations under this deed.

4.3 Further acknowledgements and warranties

The Independent Certifier:

- (a) acknowledges that each of the Other Parties:
 - (i) is relying upon the skill, expertise and experience of the Independent Certifier in the performance of its obligations under this deed; and
 - (ii) may suffer loss if the Independent Certifier does not perform its obligations in accordance with the requirements of this deed;
- (b) warrants to the Other Parties that, in performing the Services, it will comply with all Law, act honestly, diligently, reasonably, impartially and with the degree of professional care, knowledge, skill, expertise, experience and care which would be reasonably expected of a professional providing services similar to the Services within the design and construction industries generally and the design and construction of major engineering works in particular;
- (c) must, at all times, act within the time requirements for the performance of its obligations under this deed and within the times prescribed under the Construct Only Delivery Deed (and, where no time is prescribed, within a reasonable time) and will comply with the requirements of the Payment Schedule;
- (d) without limiting clauses 4.3(a) and 4.3(b), acknowledges that the Other Parties are entitled to and will rely on any certificate or other document signed or given by the Independent Certifier under or pursuant to this deed or the Construct Only Delivery Deed;
- (e) without limiting its obligations under any provision of this deed, warrants to the Other Parties that:
 - (i) it will carry out and perform the Services;
 - (ii) it will make available for the performance of the Services, as a minimum, the levels of resources specified in Schedule 3; and
 - (iii) without limiting subparagraphs (i) and (ii), to the extent the Certification Plan is not inconsistent with:
 - (A) the Construct Only Delivery Deed;
 - (B) the nature of the Services; or

(C) without limiting subparagraphs (A) or (B), the requirements of clause 4.14,

it will carry out and perform the Services in accordance with the Certification Plan;

- (f) will provide transport on site for the use of its site personnel;
- (g) will, in carrying out the Services, carry out physical inspections of the Site, any Extra Land, the Works and the CN Contractor's Activities:
 - (i) when appropriate or necessary to do so in order to perform the Core Services (including for the purpose of determining whether Milestone Achievement of any Milestone or Substantial Completion or Completion of any Portion has been achieved by the CN Contractor);
 - (ii) when otherwise reasonably requested by the Principal; and
 - (iii) in a manner which satisfies the requirements of the Certification Plan,and will invite and permit the Principal and the Operator to accompany it on all such inspections;
- (h) will carry out the Services in a manner which does not prevent, hinder, disrupt, delay or otherwise interfere with any work or services performed by any person (including the CN Contractor and the Operator) except where it is the unavoidable consequence of performing the Services; and
- (i) in undertaking the Services, will comply with all the safe working requirements of the CN Contractor and the Operator, including the reasonable instructions of the CN Contractor in relation to safety and site security while on the Site.

4.4 Personnel

- (a) The Independent Certifier must provide experienced and skilled personnel to perform its obligations under this deed.
- (b) The Independent Certifier must ensure that the nominated people referred to in Schedule 3:
 - (i) perform the services required of their respective positions;
 - (ii) are not removed without the prior written consent of the Principal (which consent must not be unreasonably withheld or delayed, and will be deemed to have been given in relation to a party if no response has been received from that party within 7 days of the request for removal), and if any of the people are removed:
 - (A) they must be replaced by people of at least equivalent skill, expertise and experience, having regard to the indicative requirements set out in paragraph 2 of Schedule 3 to this deed;

- (B) they must be approved in writing by the Principal, having regard to the indicative requirements set out in paragraph 2 of Schedule 3 to this deed; and
 - (C) there must be, prior to their removal and replacement, a proper handover to ensure that the new personnel have a reasonable understanding of the Construct Only Delivery Deed and the Services; and
- (iii) are located in Sydney for the performance of the Services and are available for consultation as any party may reasonably require from time to time.
- (c) The Principal may direct the Independent Certifier to remove from the performance of the Services any of the people referred to in Schedule 3 and the Independent Certifier must comply promptly with any such direction and nominate a replacement.
- (d) The Independent Certifier must notify the Other Parties in writing of the names of the person or persons that are authorised to sign the certificates and documents referred to in Schedule 1 which the Independent Certifier is required to execute as part of the Services, and must ensure that these certificates and documents are signed by the person or persons so notified.
- (e) The Independent Certifier must make available additional personnel to the extent required by the Principal.
- (f) The Independent Certifier must ensure that the persons appointed to the positions of:
 - (i) the Independent Certifier's Project Director; and
 - (ii) the Independent Certifier's Representative,including any replacements, at all times:
 - (iii) have the authority to act on behalf of and to bind the Independent Certifier in respect of the Services;
 - (iv) have full authority to promptly execute documents (including any certifications) and to promptly make decisions in relation to the Services; and
 - (v) have authority to bind the Independent Certifier in relation to any matter arising out of or in connection with the Services.

4.5 **Subcontracting**

- (a) Subject to clause 4.5(c), the Independent Certifier may not subcontract the performance of any of the Services without the prior written consent of the Other Parties (which consent must not be unreasonably withheld or delayed, and will be deemed to have been given in relation to a party if no response has been received from that party within 7 days of the request to subcontract).
- (b) The Independent Certifier remains responsible for the performance of the Services in accordance with this deed, notwithstanding any such subcontracting and will be liable for the acts and omissions of any subcontractor as if they were acts or omissions of the Independent Certifier.

- (c) Unless the Principal otherwise approves in writing, the Independent Certifier must contract with the subcontractors set out in Schedule 5 for the performance of the relevant parts of the Services.

4.6 **Quality Assurance**

- (a) The Independent Certifier must implement a quality system in accordance with AS/NZS ISO9000 and AS/NZS ISO9001, and otherwise in a form reasonably acceptable to the Other Parties to ensure compliance of the Services with the requirements of this deed.
- (b) The Independent Certifier will not be relieved of any requirement to perform any obligation under this deed as a result of:
 - (i) compliance with the quality assurance requirements of this deed; or
 - (ii) any acts or omissions of the Other Parties with respect to the quality assurance requirements of this deed, including any review of, comments upon, or notice in respect of, the Certification Plan or any audit under clause 4.11.

4.7 **Information provided to Independent Certifier**

- (a) The Independent Certifier is entitled to rely on information provided to it in accordance with the Construct Only Delivery Deed by either of the Principal or the CN Contractor as being true and correct in all material respects unless:
 - (i) such information is:
 - (A) manifestly incorrect;
 - (B) provided on a qualified basis; or
 - (C) actually known or ought to reasonably have been known by the Independent Certifier to be untrue or incorrect as a result of it carrying out the Services in accordance with, and to the standards acknowledged, required by, or warranted in this deed; or
 - (ii) the Principal or the CN Contractor (as the case may be) subsequently informs the Independent Certifier of any change to the information provided to it.
- (b) Not used.

4.8 **Certification Plan**

- (a) The Independent Certifier must prepare and submit to the Other Parties within 25 Business Days of the date of this deed a Certification Plan which must:
 - (i) be based on the Certification Methodology contained in Schedule 7;
 - (ii) meet or exceed the requirements of Schedule 4;
 - (iii) not reduce the effectiveness, methodology, scope, effect, resources or expertise contained in the Certification Methodology contained in Schedule 7; and

- (iv) comply with the requirements for the Certification Plan in Schedule 4 of this deed.
- (b) The Other Parties may review the Certification Plan submitted under clause 4.8(a).
- (c) The Principal may, if the Certification Plan does not comply with this deed or if the Principal believes (after prior consultation with the CN Contractor and, as relevant, the Operator) that the Certification Plan does not provide the information required by Schedule 4, notify the Independent Certifier of the non-compliance.
- (d) If the Independent Certifier receives a notice under clause 4.8(c), the Independent Certifier must promptly submit an amended Certification Plan to the Other Parties, after which clause 4.8(b) will reapply.
- (e) If the Independent Certifier does not receive a notice under clause 4.8(c) within 15 Business Days after the submission of the relevant Certification Plan, the relevant Certification Plan submitted by the Independent Certifier will be the Certification Plan with which the Independent Certifier must comply (as it is updated under clause 4.9).

4.9 Revisions to Certification Plan

- (a) The Independent Certifier must:
 - (i) progressively amend, update and develop the Certification Plan throughout the performance of the Services as necessary to reflect the commencement of new stages of the Works, any Variations and any changes in the manner of performing the Services;
 - (ii) ensure that any amendments, updates or developments of the Certification Plan under clause 4.9(a)(i) are consistent with, and provide, the information set out in Schedule 4; and
 - (iii) submit each revision of the Certification Plan to the Other Parties for their review and comment.
- (b) The Other Parties may review the Certification Plan submitted under clause 4.9(a)(iii).
- (c) The Principal may, if the Certification Plan does not comply with this deed or the Principal believes (after prior consultation with the CN Contractor and, as relevant, the Operator) that the revised Certification Plan will lead to a reduction in the effectiveness, methodology, scope, effort, resources or expertise contained in the Certification Plan, notify the Independent Certifier of that non-compliance or reduction.
- (d) If the Independent Certifier receives a notice under clause 4.9(c), the Independent Certifier must promptly submit an amended Certification Plan to the Other Parties after which clause 4.9(b) will reapply.
- (e) The Other Parties owe no duty to the Independent Certifier to review the Certification Plan for errors, omissions or compliance with this deed.
- (f) Without limiting clauses 3.1(c) or 4.3(e), the Independent Certifier must not, either in the preparation of the Certification Plan required by clause 4.8 or the amending, updating and development of the Certification Plan required by clauses 4.9(a) and 4.9(d), decrease or otherwise reduce the effectiveness, methodology, performance

and timing requirements, scope, effort, resources or expertise from that set out in the Certification Methodology contained in Schedule 7 or the then existing Certification Plan without the written approval of the Principal's Representative (after prior consultation with the CN Contractor and, as relevant, the Operator).

- (g) The Independent Certifier may not amend the Certification Plan other than in accordance with this clause 4.9.

4.10 **Progress Reports by the Independent Certifier**

The Independent Certifier must provide a monthly progress report to the Principal's Representative, the CN Contractor and the Operator no later than 5 Business Days after the end of the month and in such format as is required by the Principal's Representative, containing, identifying or setting out:

- (a) an executive summary of the Services undertaken by the Independent Certifier during the reporting period, which must include a summary and status of the key issues identified by the Independent Certifier in connection with the performance of the Works by the CN Contractor, including actions taken to address the issues in the reporting period and proposed future actions;
- (b) a high level summary of the Services proposed to be undertaken by the Independent Certifier in the forthcoming reporting period;
- (c) the Independent Certifier's current and predicted resourcing structure for the performance of the Services;
- (d) a summary of the Core Services Fee paid to date;
- (e) the forecast effort to complete the Completion Phase Services and the estimated Core Services Fee that would be payable in respect of that effort based on the assumption that there is no applicable Upper Limiting Fee;
- (f) details of any actual or potential Defects or other non-compliances in the Works that it has identified during the reporting period; and
- (g) any additional information requested by the Other Parties from time to time.

4.11 **Audit and surveillance**

- (a) The Independent Certifier must:
 - (i) allow any audit of its quality assurance system under this deed by the Principal or a third party at, in the case of a third party, the request of the Other Parties or any one of the Other Parties; and
 - (ii) fully co-operate with the Principal or the relevant third party in respect of the carrying out of the quality assurance audit.
- (b) Without limiting the foregoing, the Independent Certifier must, at all times:
 - (i) give to the Principal or the third party access to premises occupied by the Independent Certifier where the Services are being undertaken; and

- (ii) permit the Principal or the third party to inspect applicable information relevant to the quality assurance audit.

4.12 Access to records

The Independent Certifier must, within a reasonable time of any request, give the Other Parties access to any records or other documents received, prepared or generated by the Independent Certifier in the course of carrying out the Services.

4.13 Copies of notices and documents

All notices and documents:

- (a) provided by the Independent Certifier to an Other Party must be copied to the other parties; and
- (b) provided by an Other Party to the Independent Certifier must be provided by the Independent Certifier to the other parties.

4.14 Co-operation with Other Independent Certifiers

- (a) The parties acknowledge and agree that:
 - (i) the CN Contractor's Activities interface with the Interface Work; and
 - (ii) another independent certifier may be engaged by the Principal (**Other Independent Certifier**) to certify that any Interface Work has been designed and/or constructed in accordance with the requirements of the relevant Interface Contract.
- (b) Without limiting or otherwise affecting any of the Independent Certifier's obligations under this deed, the Independent Certifier must co-operate with Other Independent Certifiers, and do everything reasonably necessary to facilitate Other Independent Certifiers to certify the design and/or construction of Interface Work, including providing Other Independent Certifiers with such assistance or information as may be directed by the Principal's Representative.
- (c) The Independent Certifier must ensure that the Principal is provided with a copy of any written communication given by the Independent Certifier to an Other Independent Certifier within 2 Business Days of providing the same to that Other Independent Certifier.

4.15 Document management and transmission

- (a) Without limiting clause 12.1, the Independent Certifier must manage and transmit documents, including using an electronic medium (such as the PDCS) where required by the Principal's Representative, in accordance with the processes, procedures and systems in the Station Specification or as otherwise required by the Principal's Representative.
- (b) Documents supplied to the Independent Certifier will remain the property of the Principal and must be returned by the Independent Certifier to the Principal on demand in writing. The documents must not, without the prior written approval of the

Principal, be used, copied or reproduced for any purpose other than the execution of the Services.

- (c) The Independent Certifier must keep all the Independent Certifier's records relating to the Services in a secure and fire proof storage.
- (d) The Independent Certifier will not be entitled to make, and the Principal or the CN Contractor will not be liable upon, any claim arising out of or in any way in connection with complying with its obligations under this clause 4.15.
- (e) The Independent Certifier must ensure that any documentation that it provides to the Principal or the CN Contractor in computer readable form contains no virus or computer software code which is intended or designed to:
 - (i) permit access to or use of a computer system by a third person not authorised by the Principal; or
 - (ii) disable, damage or erase, or disrupt or impair the normal operation of any other software or data on a computer system.

5. INDEPENDENCE, CONFIDENTIALITY AND EXCLUSIVITY

5.1 Independent Certifier to be independent

- (a) The Independent Certifier warrants to the Other Parties that in performing the Services, it will act:
 - (i) independently of the Other Parties;
 - (ii) honestly and reasonably;
 - (iii) with the degree of professional care, knowledge, skill, expertise, experience and diligence which would be reasonably expected of a professional providing services similar to the Services within the design and construction industry generally and the design and construction of major engineering works in particular; and
 - (iv) within the times prescribed under the Construct Only Delivery Deed or as anticipated by the CN Contractor's Program, or such other programs that become relevant to the performance of the Services during the Term.
- (b) Without limiting clause 5.3(a), the parties acknowledge that:
 - (i) the Independent Certifier is obliged to act independently of the Operator;
 - (ii) the Independent Certifier has:
 - (A) been engaged by the Principal and the Operator in relation to the OTS2 Project Works; and
 - (B) demonstrated to the satisfaction of the Principal that it has sufficient separation procedures in place to permit it to act independently of the Operator;

- (iii) the CN Contractor may not make any claim against the Principal or (to the extent that the Independent Certifier complies with this deed) the Independent Certifier arising out of or in any way in connection with the Independent Certifier's engagement by the Principal and the Operator in relation to the OTS2 Project Works; and
- (iv) neither the Principal, the CN Contractor nor the Operator may challenge a decision of the Independent Certifier on the basis that the Independent Certifier lacks independence solely because it is engaged by the Principal and the Operator in relation to the OTS2 Project Works.

5.2 Confidentiality

The Independent Certifier must:

- (a) keep confidential details of this deed and all information and documents provided to, or by, the Independent Certifier relating to the Services, the Works, this deed, the Construct Only Delivery Deed or the Sydney Metro City & Southwest and not provide, disclose or use the information or documents except:
 - (i) to disclose them to the Other Parties;
 - (ii) for the purposes of performing the Services;
 - (iii) where required by Law or to obtain legal advice on this deed; or
 - (iv) with the prior written consent of the Other Parties; and
- (b) ensure that its subcontractors comply, and that any other person to whom it discloses any information or documents referred to in clause 5.2(a) for the purposes of performing the Services complies, with the terms of clause 5.2(a).

This obligation will survive completion of the Services or the termination of this deed.

5.3 Exclusivity

- (a) The Independent Certifier must not, and must procure that:
 - (i) any related body corporate (as defined by sections 9 and 50 of the Corporations Act) of the Independent Certifier; and
 - (ii) any employees, agents, subcontractors and consultants who are involved in the provision of the Services,do not, from the date of execution of this deed until the date of expiry of the Term in accordance with clause 3.2:
 - (iii) have any direct or indirect involvement (whether under contract or any other arrangement):
 - (A) with the CN Contractor or any of its contractors, consultants or providers, or the Operator or any of its contractors, consultants or providers in relation to the Construct Only Delivery Deed; or

(B) in the Construct Only Delivery Deed; or

- (iv) provide services to or advise any other person in relation to the Construct Only Delivery Deed,

other than the provision of the Services under this deed, except with the prior written consent of the Principal which may be withheld or granted (after consultation with the Other Parties) in its absolute discretion.

(b) The Independent Certifier agrees that:

- (i) having regard to the Construct Only Delivery Deed and the Services, clause 5.3 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 Construct Only Delivery Deed and to ensure the best value for money of the Construct Only Delivery Deed; and
- (ii) damages may not be a sufficient remedy for a breach of clause 5.3 and the Other Parties may be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Independent Certifier, in addition to any other remedies available at Law or in equity.

6. OBLIGATIONS OF THE OTHER PARTIES

6.1 No interference or influence

- (a) The Other Parties will not interfere with or attempt to improperly influence the Independent Certifier in the performance of any of the Services. The parties acknowledge that any communication allowed by this deed will not of itself constitute a breach of this clause.
- (b) Clause 6.1(a) will not prevent the Other Parties from providing written comments in accordance with the Construct Only Delivery Deed to the Independent Certifier in respect of any aspect of the CN Contractor's Activities (including in connection with the Independent Certifier's determination of whether Milestone Achievement of any Milestone or Substantial Completion or Completion of any Portion has been achieved by the CN Contractor) and the Independent Certifier must consider any such comments received from the Other Parties.

6.2 Co-operation

- (a) Without limiting or otherwise affecting any of the CN Contractor's obligations under this deed or the Construct Only Delivery Deed, the CN Contractor must:
 - (i) co-operate with and provide the Independent Certifier with all information and documents necessary or reasonably required by the Independent Certifier, or otherwise reasonably requested by the Independent Certifier or directed by the Principal;
 - (ii) allow the Independent Certifier to attend all meetings and procure for the Independent Certifier access to all premises as may be reasonably necessary to enable the Independent Certifier to perform the Services or as reasonably

requested by the Independent Certifier or directed by the Principal, including allowing the Independent Certifier to have safe, convenient and unimpeded access to the Site and any Extra Land and all areas where the Works are being performed, from the date on which the CN Contractor is provided with access under the Construct Only Delivery Deed; and

- (iii) ensure that hold points and witness points are included in the CN Contractor's Program as reasonably required by the Independent Certifier to enable the Independent Certifier to perform the Services.
- (b) The CN Contractor must ensure that the Principal is provided with a copy of any written communication given by the CN Contractor to the Independent Certifier within 2 Business Days of providing the same to the Independent Certifier.
- (c) The Operator must ensure that the Principal is provided with a copy of any written communication given by the Operator to the Independent Certifier within 2 Business Days of providing the same to the Independent Certifier.
- (d) The Principal must ensure that the CN Contractor is provided with a copy of any formal written notification issued under this deed within 2 Business Days of providing the same to the Independent Certifier.

6.3 **Principal to have no liability**

Each party acknowledges that the Principal is not liable, nor will be taken to have a liability, or to have assumed a liability or become (on enforcement of any of their powers or otherwise) liable:

- (a) to any party to this deed by reason of the Principal being a party to this deed; or
- (b) for the performance of any obligation of the CN Contractor, the Operator or the Independent Certifier under this deed or the Construct Only Delivery Deed.

7. **ADDITIONAL SERVICES, CHANGES TO CORE SERVICES, SUSPENSION OF SERVICES AND APPOINTMENT OF SUBSTITUTE CERTIFIER**

7.1 **Additional Services**

- (a) At any time during the Term, the Principal may issue an Additional Services Order to the Independent Certifier including the following details:
 - (i) a description of the Additional Services to be performed by the Independent Certifier under the Additional Services Order, including:
 - (A) the program for carrying out the Additional Services;
 - (B) the personnel required to perform the Additional Services; and
 - (C) the estimated number of hours or days (as applicable) required to be performed by each personnel; and
 - (ii) the Additional Services Fee payable by the Principal for the performance of the Additional Services the subject of the Additional Services Order, which must be:

- (A) calculated by reference to the schedule of rates set out in the Payment Schedule; or
 - (B) if the nature of the services are such that the schedule of rates set out in the Payment Schedule is not applicable, based on reasonable rates and prices.
- (b) The Independent Certifier must, within five Business Days of receipt of the Additional Services Order, provide the Principal with a notice either:
 - (i) accepting the Additional Services Order; or
 - (ii) containing detailed written reasons why it cannot accept the Additional Services Order.
- (c) An Additional Services Order is deemed accepted for all purposes under this deed if no notice is received by the Principal from the Independent Certifier in accordance with clause 7.1(b).
- (d) If an Additional Services Order is accepted or deemed to be accepted by the Independent Certifier under this clause 7.1:
 - (i) the Additional Services set out in that Additional Services Order become part of the Services and must be performed in accordance with this deed; and
 - (ii) the Additional Services Fee (if any) set out in that Additional Services Order becomes part of the Fee and must be paid in accordance with this deed.
- (e) The Principal is not obliged to issue any Additional Services Order to the Independent Certifier under clause 7.1(a).
- (f) The Independent Certifier acknowledges that:
 - (i) the Principal has made no representations as to the amount of work (if any) which the Principal may request the Independent Certifier to perform under Additional Services Orders;
 - (ii) the Independent Certifier may not make any claim against the Principal on the basis that the Principal has not requested or engaged the Independent Certifier to perform any or sufficient work under Additional Services Orders; and
 - (iii) the Principal is entitled to engage other contractors to perform services similar to the Services.

7.2 Change to Core Services

Without limiting clause 7.1, the Principal (after prior consultation with the CN Contractor and, as relevant, the Operator) may, by written notice to the Independent Certifier, direct the Independent Certifier to carry out a change to the Core Services (including an addition or omission) and the Independent Certifier must comply with that direction.

7.3 **Suspension of Services**

The Principal (after prior consultation with the CN Contractor and, as relevant, the Operator) may, by written notice to the Independent Certifier (copied to the CN Contractor and the Operator), direct the Independent Certifier to suspend any or all of the Services for the period of time specified in the notice.

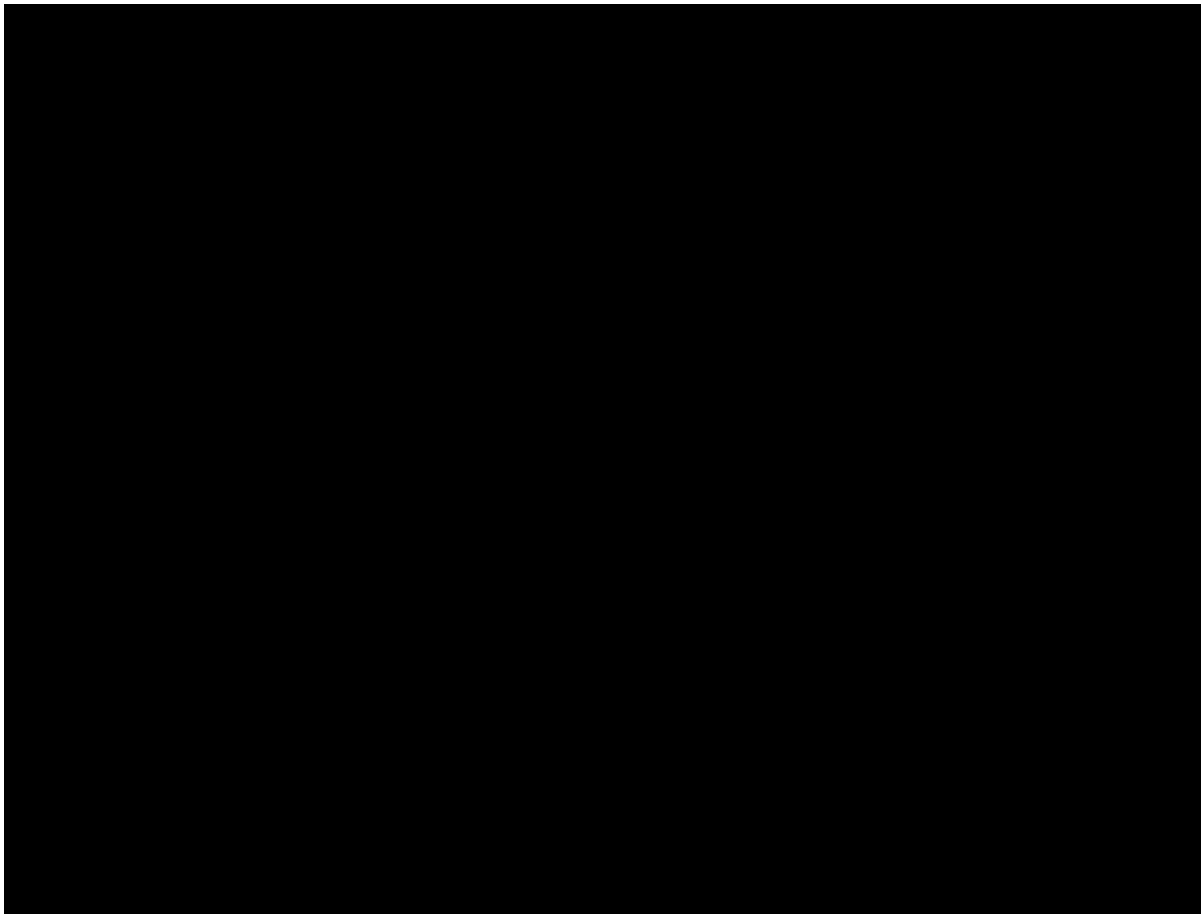
7.4 **Appointment of Substitute Certifier**

- (a) The Independent Certifier acknowledges and agrees that the Principal may, after consultation with the Other Parties, appoint another certifier (**Substitute Certifier**) to carry out those Services which are omitted as a result of a change to the Core Services directed under clause 7.2, and any decision of a Substitute Certifier appointed will be treated (between the Principal, the CN Contractor, the Operator and the Independent Certifier) as if it is a decision of the Independent Certifier, and the Substitute Certifier will have all of the rights, powers and obligations of the Independent Certifier under the Construct Only Delivery Deed in connection with those Services.
- (b) Notwithstanding a change to the Core Services or the appointment of a Substitute Certifier, the Independent Certifier must continue to perform the Services, as varied in accordance with this clause 7, in accordance with this deed. Without prejudice to any claim in respect of the performance of the Independent Certifier, the Independent Certifier is not responsible for the performance of the Substitute Certifier.

8. **LIABILITY, INSURANCE AND INDEMNITY**

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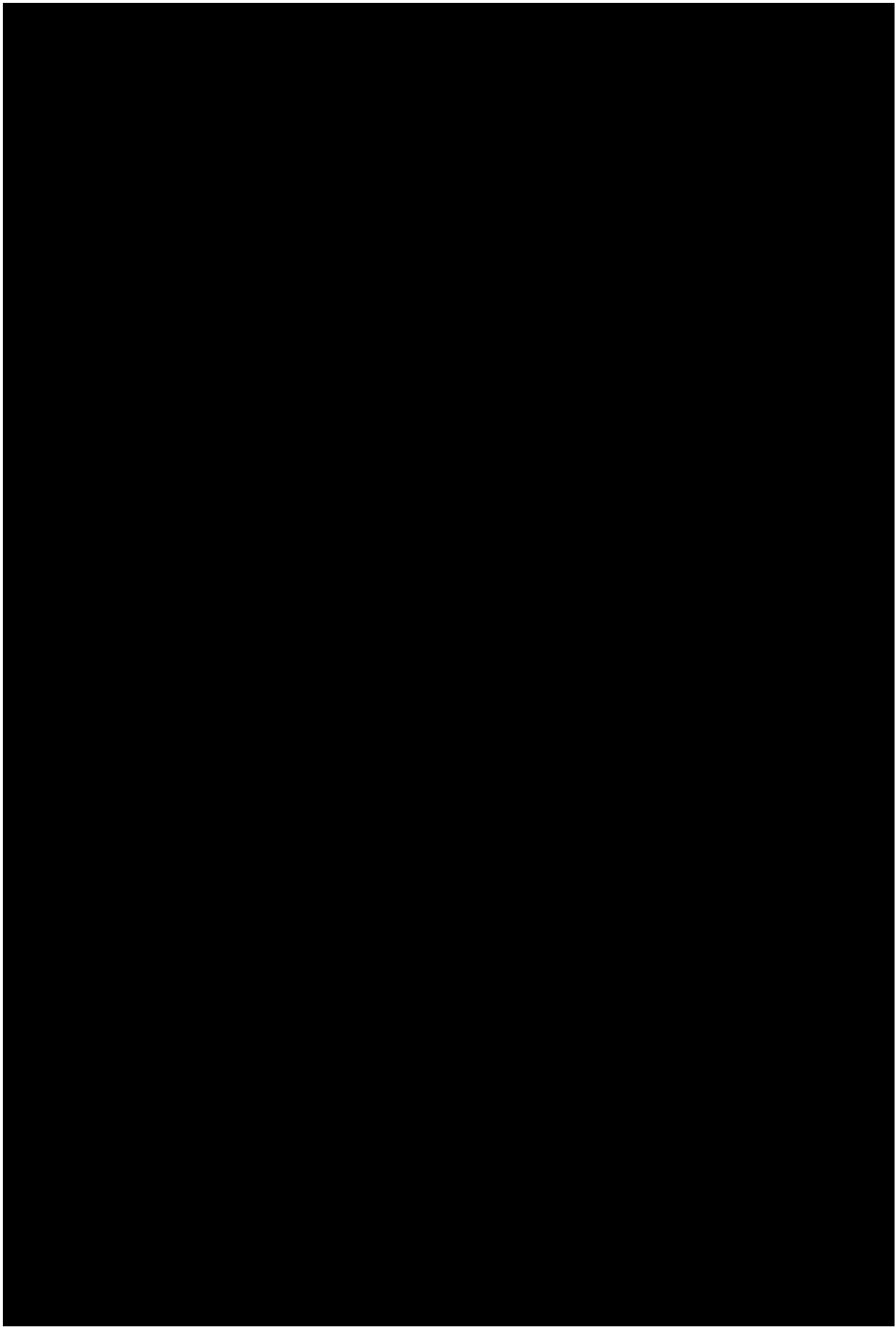


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9. DISPUTE RESOLUTION

9.1 Procedure for resolving disputes

- (a) The parties agree that they will attempt to resolve all disputes in accordance with the procedures set out in this clause 9.
- (b) It is a condition precedent to the referral of a dispute to litigation that a party first exhausts the procedures referred to in clause 9.2.

9.2 Negotiation

- (a) If a dispute arises, then a party to the dispute may give notice to the other parties to the dispute, requesting that the dispute be referred for resolution to the respective chief executive officers of those parties to the dispute.
- (b) A notice under clause 9.2(a) must:
 - (i) be in writing;
 - (ii) state that it is a notice under this clause 9.2; and
 - (iii) include, or be accompanied by, reasonable particulars of the matters in dispute.
- (c) If a dispute is referred to the persons referred to in clause 9.2(a) (**Dispute Representatives**), then the Dispute Representatives (or the persons for the time being acting in those positions) must meet and use reasonable endeavours acting in good faith to resolve the dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 9.2(a) is received. The joint decisions (if any) of the Dispute Representatives must be reduced to writing within the 10 Business Days referred to in this clause 9.2(c) and will be contractually binding on the parties to the dispute.
- (d) The 10 Business Days referred to in clause 9.2(c) may be extended by agreement of the parties to the dispute in writing.

9.3 Continue to perform

Notwithstanding the existence of a dispute, each of the Other Parties and the Independent Certifier must continue to perform their obligations under this deed.

10. TERMINATION OF APPOINTMENT

10.1 Notice of termination

Following consultation with the Other Parties, the Principal may terminate the appointment of the Independent Certifier under this deed by notice in writing served on the Independent Certifier (copied to the CN Contractor and the Operator) if:

- (a) the Independent Certifier is in breach of this deed and the breach is not remediable in the reasonable opinion of the Principal;
- (b) the Independent Certifier is in breach of this deed and the breach, being remediable in the reasonable opinion of the Other Parties, has not been remedied within 7 days of the service by the Principal of a notice specifying the breach and requiring the breach to be remedied;
- (c) an Insolvency Event occurs in relation to the Independent Certifier; or
- (d) the Principal in its absolute discretion for any reason whatsoever serves on the Independent Certifier a notice of termination of the appointment of the Independent Certifier in respect of the Services, on a date specified in the notice, being not less than 15 Business Days after the date of issue of the notice.

10.2 Termination

Where a notice is served on the Independent Certifier under clause 10.1, the appointment of the Independent Certifier will terminate upon the earlier of:

- (a) the date specified in the notice issued under clause 10.1; or
- (b) the appointment of a replacement for the Independent Certifier.

10.3 Delivery of documents

Upon the earlier of the date of termination of the appointment of the Independent Certifier and the date of completion of the Services, the Independent Certifier:

- (a) must deliver up to the Other Parties or to such other person as the Other Parties may direct, all books, records, drawings, specifications and other documents in the possession, custody or control of the Independent Certifier relating to the Services;
- (b) may retain a copy of those books, records, drawings, specifications and other documents referred to in clause 10.3(a) for the sole purpose of business record keeping, insurance and quality assurance, subject to the Independent Certifier complying with its confidentiality obligations under clause 5.2; and
- (c) acknowledges that the Other Parties have the right to use all such documents for any purposes in connection with the Sydney Metro City & Southwest, the Works, the CN Contractor's Activities or the Construct Only Delivery Deed, provided that the Independent Certifier will have no liability to the Other Parties in relation to any documents handed over pursuant to clause 10.3(a) unless such documents have been formally issued and marked as final by the Independent Certifier.

10.4 Reasonable assistance

Where the Other Parties give a notice under clause 10.1 of termination of the appointment of the Independent Certifier, the Independent Certifier must provide full assistance to the Other Parties and any appointed replacement for the Independent Certifier in order to enable such replacement to be in a position to perform the Services with effect from the appointment of such replacement.

10.5 Payment until date of termination

Where the appointment of the Independent Certifier is terminated under clause 10.1(d), the Independent Certifier is only entitled to be paid by the Principal the proportion of the Fee for Services performed up to the date of the termination.

10.6 Termination without prejudice

Termination of the appointment of the Independent Certifier will be without prejudice to any claim which any of the Other Parties may have in respect of any breach of the terms of this deed which occurred prior to the date of termination.

10.7 Survive termination

This clause 10 will survive the termination of this deed by the Other Parties under clause 10.1.

10.8 Rights upon termination

If the appointment of the Independent Certifier is terminated pursuant to clauses 10.1(a) to 10.1(c), the parties' remedies, rights and liabilities will be the same as they would have been under the Law governing the deed had the Independent Certifier repudiated the deed and the Other Parties elected to treat the deed as at an end and recover damages.

11. GST

- (a) Except where the context suggests otherwise, terms used in this clause 11 have the meaning given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 11.
- (c) Unless otherwise expressly stated, all consideration to be provided under this deed (other than under this clause 11) is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 11.
- (d) Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense or other amount paid or incurred will be limited to the total costs, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (e) If GST is payable in relation to a supply made under or in connection with this deed, then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as any other consideration is to be first provided for that supply.
- (f) The Supplier must provide a tax invoice to the Recipient at the same time as any consideration is to be first provided for that supply.

- (g) If the GST payable in relation to a supply made under or in connection with this deed varies from the additional amount paid by the Recipient under clause 11(e), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 11(g) is deemed to be a payment, credit or refund of the additional amount payable under clause 11(e). If any adjustment event occurs in relation to a supply, the Supplier must give the Recipient an adjustment note event within 7 days after the date of the adjustment event.

12. GENERAL

12.1 Notices

- (a) Wherever referred to in this clause, "**Notice**" means each communication (including each notice, consent, approval, request and demand) under or in connection with this deed.

- (b) At any time and from time to time the Principal's Representative may notify the Independent Certifier and each Other Party that a PDCS will be used for giving Notices under or in connection with this deed. The Principal's Representative's notice will set out:

- (i) the name of the relevant PDCS;
- (ii) the commencement date for use of the PDCS;
- (iii) any password, login details or similar information required for the Independent Certifier and each Other Party to use the PDCS; and
- (iv) any other information reasonably necessary for the use and service of Notices via the PDCS.

- (c) Each Notice must:

- (i) before the date referred to in clause 12.1(b):

(A) be in writing;

(B) be addressed as follows (or as otherwise notified by that party to each other party from time to time):

(aa) to the Principal's Representative:

Address:

[REDACTED]
[REDACTED]

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]

(bb) to the Independent Certifier:

Address: [REDACTED]
[REDACTED]

Email: [REDACTED]

Attention: [REDACTED]

(cc) to the CN Contractor:

Address: [REDACTED]
[REDACTED]

Email: [REDACTED]

Attention: [REDACTED]

(dd) to the Operator:

Email: [REDACTED]

Attention: [REDACTED]

(ii) on and from the commencement date for use of the PDCS referred to in clause 12.1(b):

(A) be sent through the PDCS in accordance with the requirements set out in clause 12.1(e); and

(B) in circumstances where the PDCS is temporarily disabled or not operating for a period in excess of 2 hours, be issued in accordance with clause 12.1(c)(i).

(d) A communication is taken to be received by the addressee:

(i) (in the case of a Notice sent through the PDCS) at the time recorded on the PDCS as being the time at which the Notice was sent;

(ii) (in the case of prepaid post sent to an address in the same country) 2 Business Days after the date of posting;

(iii) (in the case of international post) 7 Business Days after the date of posting;

(iv) (in the case of delivery by hand) on delivery; and

(v) (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.

(e) With respect to Notices sent through the PDCS:

- (i) all Notices must be submitted by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
 - (ii) only the text in any Notice, or subject to clause 12.1(e)(iii), any attachments to such Notice which are referred to in the Notice, will form part of the Notice. Any text in the subject line will not form part of the Notice; and
 - (iii) an attachment to a Notice will only form part of a Notice if it is uploaded to the PDCS in:
 - (A) pdf format;
 - (B) a format compatible with Microsoft Office; or
 - (C) such other format as may be agreed between the parties in writing from time to time.
- (f) The Independent Certifier warrants that it will:
- (i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;
 - (ii) ensure that relevant personnel log on and use the PDCS and check whether Notices have been received on each Business Day;
 - (iii) comply with any user guide and protocol with respect to the PDCS provided by the Principal to the Independent Certifier from time to time;
 - (iv) ensure all relevant personnel attend all necessary training required by the Principal's Representative;
 - (v) advise the Principal's Representative of which personnel require access to the PDCS;
 - (vi) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including Notices) using the PDCS; and
 - (vii) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 12.1(c)(ii)(B) to the Principal's Representative through the PDCS.
- (g) If the Independent Certifier is an unincorporated joint venture and one of the joint venturers is a foreign company (as defined in the Corporations Act), the Independent Certifier must:
- (i) appoint a local process agent acceptable to the Principal as its agent to accept service of process under or in any way in connection with this deed. The appointment must be in a form acceptable to the Principal and may not be revoked without the Principal's consent; and
 - (ii) obtain the process agent's consent to the appointment.

- (h) The Principal has no liability for any losses the Independent Certifier may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS, and the Independent Certifier will not be entitled to make, and the Principal will not be liable upon, any claim against the Principal arising out of or in connection with the Independent Certifier's access to or use of the PDCS or any failure of the PDCS.
- (i) Wherever this deed requires the Independent Certifier to provide any documents, notices or other communications to the Operator, the Independent Certifier must address such communications to the Operator:
 - (i) at the address notified to the Independent Certifier by the Principal; or
 - (ii) if required by the Principal, by way of the PDCS.

12.2 **Governing Law**

This deed is governed by and must be construed according to the law applying in New South Wales.

12.3 **Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any action or proceedings which may be brought at any time relating in any way to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that any action or proceedings have been brought in an inconvenient forum, if that venue falls within clause 12.3(a).

12.4 **Principal as a public authority**

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal to exercise any of its functions and powers pursuant to any Law.
- (b) Each of the Independent Certifier, the CN Contractor and the Operator acknowledges and agrees that, without limiting clause 12.4(a), anything which the Principal does, fails to do or purports to do pursuant to its functions and powers under any Law will be deemed not to be an act or omission by the Principal under this deed and will not entitle any of the Independent Certifier, the CN Contractor or the Operator to make any claim against the Principal.
- (c) The parties agree that clauses 12.4(a) and 12.4(b) are taken not to limit any liability which the Principal would have had to the Independent Certifier, the CN Contractor or the Operator under this deed as a result of a breach by the Principal of a term of this deed but for clauses 12.4(a) and 12.4(b) of this deed.

12.5 **Amendments**

This deed may only be varied by a deed executed by or on behalf of each of the parties.

12.6 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

12.7 Cost of performing obligations

Each party must, unless this deed expressly provides otherwise, pay its own costs and expenses in connection with performing its obligations under this deed.

12.8 Further acts and documents

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

12.9 Consents

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

12.10 Assignment

- (a) Assignment by the Independent Certifier

The Independent Certifier cannot assign, novate or otherwise transfer any of its rights, interests or obligations under this deed without the prior written consent of the Principal and except on such terms as are determined in writing by the Principal.

- (b) Assignment by the CN Contractor

The CN Contractor cannot assign, novate or otherwise transfer any of its rights, interests or obligations under this deed without the prior written consent of the Principal and except on such terms as are determined in writing by the Principal.

- (c) Assignment and novation by the Principal

- (i) Without limiting clause 12.11, the Principal may:

- (A) assign, novate or otherwise transfer all or any part of its rights under this deed without the Independent Certifier, CN Contractor or the Operator's prior approval, provided that the assignee, novatee or transferee (as applicable) is also a party to whom the Principal is assigning, novating or

transferring its rights under the Construct Only Delivery Deed in accordance with the terms of the Construct Only Delivery Deed; and

- (B) not otherwise assign, novate or otherwise transfer all or any part of its rights under this deed without each of the Other Parties' prior written consent (which must not be unreasonably withheld or delayed),

and may disclose to a proposed assignee, novatee or transferee any information in the possession of the Principal relating to the Independent Certifier, CN Contractor or the Operator.

- (ii) The Independent Certifier, the CN Contractor and the Operator agree to such assignment, novation or transfer such that no further consent is required.

- (iii) In the case of a novation by the Principal under this clause:

- (A) the Principal will be released from its obligations under this deed and the respective rights of the Principal, the Independent Certifier, the CN Contractor and the Operator against one another under this deed will cease;

- (B) the novated agreement will be on the same terms as this deed, such that the incoming party, the Independent Certifier, the CN Contractor and the Operator will assume the same obligations to one another and acquire the identical rights against one another as the rights and obligations discharged under clause 12.10(c)(iii)(A), except that the incoming party replaces the Principal for all purposes under the agreement; and

- (C) the Independent Certifier, the CN Contractor and the Operator consent to the disclosure by or on behalf of the Principal to the incoming party of their confidential information for the purposes of the novation.

- (iv) The Principal may at any time enter into any subcontracting, delegation or agency agreements or arrangements in relation to any of its functions.

(d) Assignment by the Operator

- (i) Subject to clause 12.10(d)(ii), the Operator cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party unless this deed expressly provides otherwise.

- (ii) The Operator may grant security over its rights under and interests in this deed in favour of its financiers.

12.11 Transfer of functions or Public Transport Agency assets

(a) The parties acknowledge that:

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

- (ii) if a Public Transport Agency is reconstituted, renamed, dissolved, replaced or restructured and/or some or all of that Public Transport Agency's powers, functions, rights or responsibilities are transferred to or vested in another entity, then unless otherwise notified by the Public Transport Agency, references in this deed to that Public Transport Agency must, subject to any facilitative legislation, be deemed to refer, as applicable, to the reconstituted, renamed, restructured or new entity or entity replacing that Public Transport Agency to the extent that such entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and
 - (iii) a Public Transport Agency may be required to or may, at its absolute discretion, elect to (including as a result of changes to New South Wales government policy or directions) acquire, or dispose of, any property or assets.
- (b) The Independent Certifier, the CN Contractor and the Operator acknowledge and agree that they must, to the extent required by a Public Transport Agency and without limiting any facilitative legislation, negotiate in good faith any variations required to this deed, or any replacement agreement or agreements for this deed to give effect to a Public Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.
- (c) The Independent Certifier, the CN Contractor and the Operator will be taken for all purposes to have consented to, and will not have, and no Public Transport Agency will be liable for, any claim as a result of any action, matter or circumstance referred to in, or contemplated by this clause 12.11.
- (d) For the purposes of this clause 12.11, "another entity" means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation.

12.12 Replacement body

Where a reference is made to any Authority, institute, association, body, person or organisation (**Former Body**) which is reconstituted, renamed, replaced, ceases to exist or has its powers or functions transferred to another Authority, institute, association, body, person or organisation, that reference will be deemed to refer to the Authority, institute, association, body, person or organisation (**Replacement Body**) which then serves substantially the same powers, functions or objects as the Former Body. Any reference to any senior officer of the Former Body will be to the equivalent senior officer of the Replacement Body.

12.13 Counterparts

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

12.14 No representation or reliance

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

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

12.15 Expenses

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

12.16 Entire agreement

To the extent permitted by Law, in relation to its subject matter, this deed:

- (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.

12.17 Indemnities

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.
- (c) A party must pay on demand any amount it must pay under an indemnity in this deed.

12.18 No agency, partnership, joint venture or other fiduciary relationship

Nothing in this deed will be construed or interpreted as:

- (a) conferring a right in favour of any party to enter into any commitment on behalf of another party or otherwise to act as agent of another party; or
- (b) constituting the relationship between any two or more of the parties (or all of the parties) as that of partners, joint venturers or any other fiduciary relationship.

12.19 Severance

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

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

12.20 Moratorium legislation

To the fullest extent permitted by Law, the provisions of all Laws which at any time operate directly or indirectly to lessen or affect in favour of a party any obligation under this deed, or

to delay or otherwise prevent or prejudicially affect the exercise by a party of any right, power or remedy under this deed or otherwise, are expressly waived.

13. **AUSTRALIAN GOVERNMENT REQUIREMENTS**

(a) The Independent Certifier:

- (i) declares as at the date of this deed; and
- (ii) must ensure during the term of this deed,

that, in relation to the Services, it and its subcontractors, consultants and each related entity:

- (iii) complies with, and acts consistently with, the Building Code;
- (iv) meets the requirements of section 11 of the Building Code;
- (v) is not subject to an Exclusion Sanction or a formal warning that any further failure to comply with the Building Code may result in the imposition of an Exclusion Sanction;
- (vi) has not been the subject of an adverse decision, direction or order, or failed to comply with a decision, direction or order, made by a court or tribunal for a breach of the BCIIIP Act, a designated building law, work health and safety law, competition and consumer law or the *Migration Act 1958* (Cth) (other than a decision, direction or order that is stayed or has been revoked);
- (vii) has not been required to pay any amount under an adjudication certificate or owed any unsatisfied judgement debts to a building contractor or building industry participant (as those terms are defined in the BCIIIP Act);
- (viii) only uses products that comply with the relevant Australian standards published by, or on behalf of, Standards Australia;
- (ix) unless approved by the ABC Commissioner, is not excluded from performing Building Work funded by a state or territory government; and
- (x) complies with the Workplace Relations Management Plan approved by the ABCC in accordance with Part 6 of the Building Code.

(b) The Independent Certifier acknowledges and agrees that compliance with the Building Code does not relieve the Independent Certifier from any responsibility or obligation under this deed.

(c) The Independent Certifier must promptly:

- (i) notify the ABCC of:
 - (A) any breach or suspected breach of the Building Code as soon as practicable, but no later than 2 Business Days after becoming aware of the breach or suspected breach, and advise the ABCC of the steps proposed to be taken by the Independent Certifier to rectify the breach; and

- (B) the steps taken to rectify any breach of the Building Code within 10 days of providing a notification under clause 13(c)(i)(A); and
 - (ii) give the Principal a copy of any notification given by the Independent Certifier to the ABCC under clause 13(c)(i) and respond to any requests for information by the Principal concerning matters related to the Building Code so as to enable the Principal to comply with its obligations under section 28 of the Building Code.
- (d) The Independent Certifier acknowledges the powers and functions of the ABC Commissioner and the ABCC under the BCIIIP Act and the Building Code and must ensure that it (and must procure that its subcontractors, consultants and each related entity) complies with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including requests:
 - (i) for entry under section 72 of the BCIIIP Act;
 - (ii) to interview any person under section 74 of the BCIIIP Act;
 - (iii) to produce records or documents under sections 74 and 77 of the BCIIIP Act; and
 - (iv) for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
- (e) The Independent Certifier must not enter into a subcontract for any aspect of the Services unless:
 - (i) the subcontractor has submitted a Declaration of Compliance, including the further information outlined in Attachment A to the Declaration of Compliance, which the Independent Certifier agrees is substantially in the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code; and
 - (ii) the subcontract with the subcontractor includes an equivalent clause to this clause 13.
- (f) The Independent Certifier must provide the Commonwealth with any subcontractor's Declaration of Compliance referred to in clause 13(e) promptly upon request.
- (g) The Independent Certifier must maintain adequate records of the compliance with the Building Code by:
 - (i) the Independent Certifier;
 - (ii) the subcontractors;
 - (iii) the Independent Certifier's consultants; and
 - (iv) any related entity of the Independent Certifier.
- (h) For the purposes of this clause 13, "related entity" has the meaning given to that term in subsection 3(2) of the Building Code.

SCHEDULE 1

Core Services

1. GENERAL

- (a) The Independent Certifier is engaged to certify that the CN Contractor has constructed the Works in accordance with the requirements of the relevant sections of the Construct Only Delivery Deed.
- (b) The Independent Certifier must:
 - (i) at all times:
 - (A) act independently of the Principal, the Operator and the CN Contractor; and
 - (B) be familiar with its role, functions, obligations, duties and services (express or implied) under this deed;
 - (ii) in carrying out its obligations under this deed, review and have regard to all:
 - (A) documents and information made available to the Independent Certifier by the Principal; and
 - (B) comments provided by the Principal's Representative in respect of the CN Contractor's Activities; and
 - (iii) provide no lesser levels of resourcing than that detailed in Schedule 3.
- (c) Without limiting paragraph 1(b)(ii)(A), the documents and information that the Principal may make available to the Independent Certifier include:
 - (i) minutes in respect of each meeting referred to in paragraph 2.1(a);
 - (ii) monthly reports submitted by the CN Contractor;
 - (iii) reports submitted by the CN Contractor in relation to any Defects that it detects (including all action proposed to correct that Defect);
 - (iv) reports or results of any on-site or off-site inspection, testing and audits regarding quality or compliance; and
 - (v) any other reports, notices, correspondence and other documents in relation to any actual or potential non-compliance with the Construct Only Delivery Deed.
- (d) The Core Services include:
 - (i) all the functions, obligations, duties and services set out in this Schedule 1; and
 - (ii) all things which would be reasonably expected of a professional performing those functions, obligations, duties and services.

2. CORE SERVICES UNDER THE CONSTRUCT ONLY DELIVERY DEED

2.1 General Services

The Independent Certifier must, throughout the Term:

- (a) ensure that a representative attends a monthly progress meeting with the Principal's Representative within 5 Business Days of the submission of each monthly progress report to the Principal's Representative in accordance with clause 4.10 of this deed;
- (b) inspect the CN Contractor's Activities from time to time as reasonably required to perform the Completion Phase Services in accordance with the requirements of this deed, including spot-checking and inspection of any significant non-compliances with the Construct Only Delivery Deed which have been reported; and
- (c) promptly notify the Other Parties of:
 - (i) actual or potential Defects; or
 - (ii) other non-compliances with the Construct Only Delivery Deed,that it identifies when attending meetings and performing its surveillance and other functions.

2.2 Not Used

2.3 Completion Phase Services

- (a) Not used
- (b) Milestone Achievement
 - (i) **Clause 12.1A(b):** The Independent Certifier must, within 5 Business Days of receipt by the Principal's Representative of a three month written notice from the CN Contractor of the estimated Date of Milestone Achievement of a Milestone under clause 12.1A(a)(ii) of the Construct Only Delivery Deed, jointly inspect the CN Contractor's Activities with the Principal's Representative and the CN Contractor's Representative at a mutually convenient time.
 - (ii) **Clause 12.1A(c):** Within 2 Business Days of the joint inspection referred to in clause 12.1A(b) of the Construct Only Delivery Deed, the Independent Certifier must give the CN Contractor and the Principal a notice either:
 - (A) containing a list of items which it believes must be completed before Milestone Achievement of the Milestone is achieved; or
 - (B) stating that it believes the CN Contractor is so far from achieving Milestone Achievement of the Milestone that it is not practicable to issue a list as contemplated in clause 12.1A(c)(i) of the Construct Only Delivery Deed.
 - (iii) **Clause 12.1A(d):** The Independent Certifier must, within 5 Business Days after receipt of the CN Contractor's written notice that it considers that it has achieved Milestone Achievement of a Milestone under clause 12.1A(d) of the

Construct Only Delivery Deed, jointly inspect the CN Contractor's Activities with the Principal's Representative and the CN Contractor's Representative at a mutually convenient time.

- (iv) **Clause 12.1A(e):** The Independent Certifier must, within 5 Business Days after the joint inspection under clause 12.1A(d) of the Construct Only Delivery Deed:
 - (A) if Milestone Achievement of the Milestone has been achieved, provide to the Principal's Representative and the CN Contractor, a document signed by the Independent Certifier in the form in Schedule 20B (*Notice of Milestone Achievement*) to the Construct Only Delivery Deed; or
 - (B) if Milestone Achievement of the Milestone has not been achieved, issue a notice to the Principal and the CN Contractor which states:
 - (aa) the items which remain to be completed before Milestone Achievement of the Milestone can be achieved; or
 - (bb) that the CN Contractor is so far from achieving Milestone Achievement of the Milestone that it is not practicable to notify the CN Contractor of the items which remain to be completed as contemplated by clause 12.1A(e)(ii)(A) of the Construct Only Delivery Deed.
 - (v) **Clause 12.1A(g)(ii):** In making its determination under clause 12.1A(e) of the Construct Only Delivery Deed, the Independent Certifier must consider comments from the Principal's Representative or the Operator in relation to any non-compliance of the CN Contractor's Activities with the Construct Only Delivery Deed.
- (c) Substantial Completion
- (i) **Clause 12.2(b):** The Independent Certifier must, within 5 Business Days of receipt by the Principal's Representative of a three month written notice from the CN Contractor of the estimated Date of Substantial Completion of a Portion under clause 12.2(a)(ii) of the Construct Only Delivery Deed, jointly inspect the CN Contractor's Activities with the Principal's Representative and the CN Contractor's Representative at a mutually convenient time.
 - (ii) **Clause 12.2(c):** Within 2 Business Days of the joint inspection referred to in clause 12.2(b) of the Construct Only Delivery Deed, the Independent Certifier must give the CN Contractor and the Principal a notice either:
 - (A) containing a list of items which it believes must be completed before Substantial Completion of the Portion is achieved; or
 - (B) stating that it believes the CN Contractor is so far from achieving Substantial Completion of the Portion that it is not practicable to issue a list as contemplated in clause 12.2(c)(i) of the Construct Only Delivery Deed.
 - (iii) **Clause 12.2(d):** The Independent Certifier must, within 5 Business Days after receipt of the CN Contractor's written notice that it considers that it has

achieved Substantial Completion of a Portion under clause 12.2(d) of the Construct Only Delivery Deed, jointly inspect the CN Contractor's Activities with the Principal's Representative and the CN Contractor's Representative at a mutually convenient time.

- (iv) **Clause 12.2(e):** The Independent Certifier must, within 5 Business Days after the joint inspection under clause 12.2(d) of the Construct Only Delivery Deed:
 - (A) if Substantial Completion of the Portion has been achieved, provide to the Principal's Representative and the CN Contractor, a document signed by the Independent Certifier in the form in Schedule 21A (*Notice of Substantial Completion*) to the Construct Only Delivery Deed; or
 - (B) if Substantial Completion of the Portion has not been achieved, issue a notice to the Principal and the CN Contractor which states:
 - (aa) the items which remain to be completed before Substantial Completion of the Portion can be achieved; or
 - (bb) that the CN Contractor is so far from achieving Substantial Completion of the Portion that it is not practicable to notify the CN Contractor of the items which remain to be completed as contemplated by clause 12.2(e)(ii)(A) of the Construct Only Delivery Deed.
- (v) **Clause 12.2(g)(ii):** In making its determination under clause 12.2(e) of the Construct Only Delivery Deed in respect of Substantial Completion of a Portion, the Independent Certifier must consider comments from the Principal's Representative or the Operator in relation to any non-compliance of the CN Contractor's Activities with the Construct Only Delivery Deed.

(d) Completion

- (i) **Clause 12.3(b):** The Independent Certifier must, within 5 Business Days of receipt by the Principal's Representative of a three month written notice from the CN Contractor of the estimated Date of Completion of a Portion under clause 12.3(a)(i) of the Construct Only Delivery Deed, jointly inspect the CN Contractor's Activities with the Principal's Representative and the CN Contractor's Representative at a mutually convenient time.
- (ii) **Clause 12.3(c):** Within 2 Business Days of the joint inspection referred to in clause 12.3(b) of the Construct Only Delivery Deed, the Independent Certifier must give the CN Contractor and the Principal a notice either:
 - (A) containing a list of items which it believes must be completed before Completion of the Portion is achieved; or
 - (B) stating that it believes the CN Contractor is so far from achieving Completion of the Portion that it is not practicable to issue a list as contemplated in clause 12.3(c)(i) of the Construct Only Delivery Deed.
- (iii) **Clause 12.3(d):** The Independent Certifier must, within 5 Business Days after receipt of the CN Contractor's written notice that it considers that it has

achieved Completion of a Portion under clause 12.3(d) of the Construct Only Delivery Deed, jointly inspect the CN Contractor's Activities with the Principal's Representative and the CN Contractor's Representative at a mutually convenient time.

- (iv) **Clause 12.3(e):** The Independent Certifier must, within 5 Business Days after the joint inspection under clause 12.3(d) of the Construct Only Delivery Deed:
 - (A) if Completion of the Portion has been achieved, provide to the Principal's Representative and the CN Contractor, a document signed by the Independent Certifier in the form in Schedule 22A (*Notice of Completion*) to the Construct Only Delivery Deed; or
 - (B) if Completion of the Portion has not been achieved, issue a notice to the Principal and the CN Contractor which states:
 - (aa) the items which remain to be completed before Completion of the Portion can be achieved; or
 - (bb) that the CN Contractor is so far from achieving Completion of the Portion that it is not practicable to notify the CN Contractor of the items which remain to be completed as contemplated by clause 12.3(e)(ii)(A) of the Construct Only Delivery Deed.
- (v) **Clause 12.3(g)(ii):** In making its determination under clause 12.3(e) of the Construct Only Delivery Deed in respect of Completion of a Portion, the Independent Certifier must consider comments from the Principal's Representative or the Operator in relation to any non-compliance of the CN Contractor's Activities with the Construct Only Delivery Deed.

SCHEDULE 2
Payment Schedule

1. THE FEE

(a) The Independent Certifier may claim payment for the performance of Services on a monthly basis.

(b) The Core Services Fee will consist of:

(i) [REDACTED]

(ii) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(c) [REDACTED]

(d) [REDACTED]

2. PAYMENT CLAIM

(a) At the end of each month after the later of the date of the Construct Only Delivery Deed and the date of this deed, the Independent Certifier must submit to the Principal (copying the CN Contractor) an account for payment on account of:

(i) any Core Services performed during the relevant month:

(A) setting out:

(aa) the value of the Core Services performed in accordance with this deed during the relevant month, calculated in accordance with paragraph 1(b) of this Payment Schedule; and

(bb) the aggregate of all amounts claimed for Core Services under this deed up to and including the relevant month in respect of the Completion Phase Services; and

(B) in such form and with such details and supporting documentation as the Principal and the CN Contractor may reasonably require, including:

(aa) details of the time expended by the Independent Certifier in performing the Core Services during the relevant month;

- (bb) a list or schedule of the surveillance activities undertaken by the Independent Certifier during the reporting period, including:
 - (a) the visits made by the Independent Certifier to the Site and elsewhere in connection with the Services; and
 - (b) any attendance at tests;
 - (cc) a comprehensive schedule of the status of all correspondence and documentation exchanged between the Independent Certifier and the Other Parties;
 - (dd) details of any Defects raised by the Independent Certifier; and
 - (ee) details of the current version of the Certification Plan and a summary of any amendments, updates and developments to the Certification Plan during the reporting period; and
- (ii) any Additional Services performed during the relevant month, setting out:
- (A) in respect of each Additional Service:
 - (aa) the date of the Additional Services Order to which the claimed Additional Services Fee relates;
 - (bb) a description of the Additional Services performed under that Additional Services Order to the date of the claim, including details of the time expended by the Independent Certifier in performing the Additional Services; and
 - (cc) the Additional Services Fee the Independent Certifier claims on account of that Additional Service, calculated in accordance with paragraph 1(c), but excluding:
 - (a) any amounts previously paid to the Independent Certifier in respect of the Additional Service; or
 - (b) any amounts in respect of Core Services included in the amount payable under paragraph 1(b);
 - (B) the aggregate of all amounts claimed for Additional Services for the relevant month; and
 - (C) in such form and with such details and supporting documentation and evidence as the Principal and the CN Contractor may reasonably require.
- (b) The Independent Certifier is not entitled to payment or to make a claim for payment to the extent that any Services have not been carried out during the month in question.
- (c) Each account for payment submitted by the Independent Certifier must be accompanied by an executed Subcontractor's Statement and Supporting Statement in the form set out at paragraph 7 of this Payment Schedule.

3. **PAYMENT AND NOTIFICATION OF DISPUTED AMOUNTS**

(a) The parties agree that:

(i) [REDACTED]

(ii) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

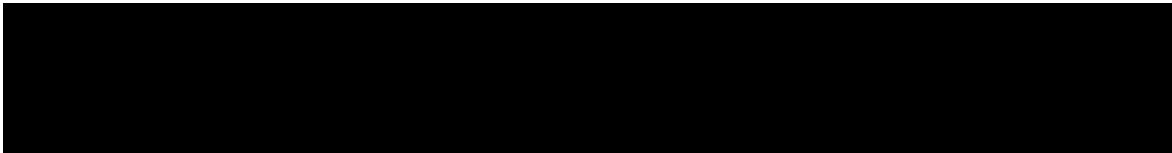
(b) Subject to paragraph 2(b) of this Payment Schedule, the Principal must, within 15 Business Days after receipt of the account for the month (submitted in accordance with paragraph 2), pay the Independent Certifier any portion of the Fee attributable to the Services performed during the month which is not disputed.

(c) If the Principal or the CN Contractor (as applicable) disagrees with an amount included in an account submitted by the Independent Certifier then, within 10 Business Days of receipt of the Independent Certifier's account, the Principal or the CN Contractor (as applicable) must notify the Independent Certifier in writing of the reasons for any amount which is disputed (which in the case of notification by the CN Contractor must be copied to the Principal).

(d) If the parties do not resolve the matter within 10 Business Days after the issue of the Principal's or the CN Contractor's written notice, the Principal's Representative (acting reasonably and independently) must determine the dispute. Any determination by the Principal's Representative in respect of the amount payable must be given effect to by the parties unless and until it is reversed or overturned in any subsequent court proceedings.

4. **ADJUSTMENTS TO THE CORE SERVICES FEE**

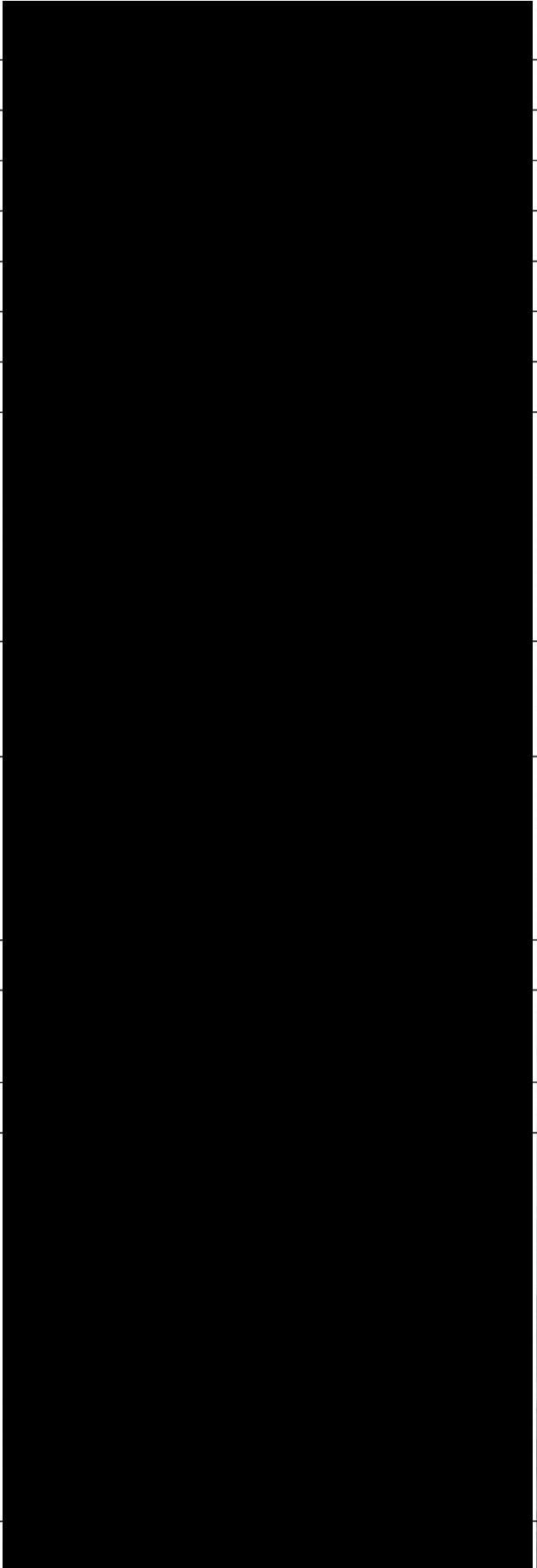
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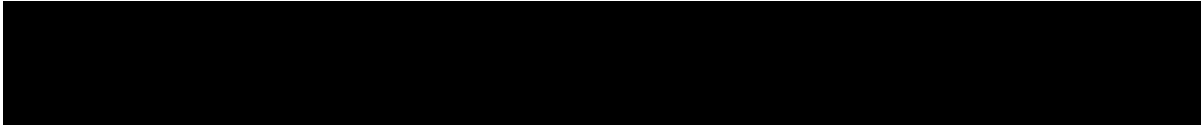
5. SCHEDULE OF RATES

		Role	Name	Daily Rate 2020 (\$) (excluding GST)
Core Services	Core Team	IC Project Director & Representative		
		Project & Deed Establishment Manager (Phase 1)		
		Project Manager & Document Controller		
		Line Wide (Rail Systems)		
		Station Lead (WL, PS & BR)		
		OTS2 IC		
		Project & Deed Establishment Assistance		
		Station Lead (VC, MP & CN)		
		Construction Surveillance Officer		
		Line Wide Director		
	Specialists	Program & Planning		
		Stakeholder & Liaison		
		Occupational Health & Safety Specialist		
		Technical Coordinator - Rail Systems		
		Technical Coordinator - Stations & Infrastructure		
		Technical Coordinator - Project Wide Services		
		Track		
		Tunnel Services		
		Permanent HV Supply System		
		OHW & Traction Supply		
		Integration, Testing & Commissioning		
		Integration, Testing & Commissioning		
		Civil Engineer		
		Fire & Life Safety & Ventilation		
		Platform Screen Doors		

Operations & Maintenance
Delivery Phase (Trains)
Delivery Phase (Trains)
Delivery Phase Signalling & Control Systems
Delivery Phase Signalling & Control Systems
Delivery Phase Signalling & Control Systems
Radio & Communication Systems
Central Control System
Mechanical
Electrical
Station Architecture
Public Domain & Urban Planning
Geotechnical
Ground Settlement & Groundwater
Structural Engineer
Survey Property & Land



Additional Services		Drainage	[REDACTED]
		Building Management System	
		Landscaping	
		Risk, Technical Interfaces & Systems Engineering	
		RAMS	
		Metro and Sydney Trains Performance	
		Environment & Sustainability	
		Operational Readiness	
		Rail Safety, Accreditation & Station Operations	
		EMC	
		Security	
		Durability	
	Additional Services	Specialists	
Sydney Trains Interface and Asset Performance			
Sydney Trains Track Infrastructure			
CBI Signalling Interlocking and Sydney Trains Interface			



6. **GST**

All Upper Limiting Fees, lump sums, rates and amounts in this Payment Schedule exclude GST.

7. **SUBCONTRACTOR'S STATEMENT AND SUPPORTING STATEMENT**

See next page.

**Subcontractor's Statement and Supporting Statement
(Paragraph 2(d) of Schedule 2 (Payment Schedule))**

SUBCONTRACTOR'S STATEMENT

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

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

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

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

Subcontractor:
ABN:.....

(Business name)

of:

.....
.....

(Address of subcontractor)

has entered into a contract with:

ABN:

(Business name of principal contractor)

(Note 2)

Contract number/identifier:

.....

(Note 3)

This Statement applies for work between:/...../..... and/...../..... inclusive,

(Note 4)

subject of the payment claim dated:/...../.....

(Note 5)

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

(a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. *You must tick one box.* **(Note 6)**

(b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that

- insurance is attached and is dated/...../..... **(Note 7)**
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. **(Note 9)**
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. **(Note 10)**
- (f) Signature: Full Name:
.....
- (g) Position/Title
Date/...../.....

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

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.

Supporting statement

- (a) This statement must accompany any payment claim served on a principal to a construction contract by a head contractor.
- (b) For the purposes of this statement, the terms “principal”, “head contractor”, “subcontractor”, and “construction contract” have the meanings given in section 4 of the *Building and Construction Industry Security of Payment Act 1999*.

*Head contractor: *[business name of head contractor]* ABN *[insert ABN]* has entered into a contract with:*[business name of subcontractor]* ABN *[insert ABN]*, contract number/identifier *[insert]*.

OR

*Head contractor: *[business name of head contractor]* ABN *[insert ABN]* has entered into a contract with the subcontractors listed in the attachment to this statement.

* *[Delete whichever of the above does not apply]*

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

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

Signature: Date:

Full name: Position/Title:

Attachment to the Supporting Statement

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

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

Notes for Supporting Statement

Offences for False Statement

In terms of s 13(8) of the Building and Construction Security of Payment Act 1999 a head contractor who serves a payment claim accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances is guilty of an offence.

Further Information

These notes are not intended as legal advice and contractors should obtain their own professional advice if they have any questions about this Statement or these Notes. Copies of relevant legislation can be found at www.legislation.nsw.gov.au.

SCHEDULE 3

Minimum resources commitment

1. MINIMUM RESOURCES COMMITMENT

The Independent Certifier acknowledges and agrees that the minimum levels of resources set out in this Schedule 3 are minimum requirements only and do not in any way limit or otherwise affect the obligations of the Independent Certifier to perform the Services in accordance with this deed.

The Independent Certifier must provide at least the following key personnel to perform the Core Services, with the minimum days to be committed at each phase as set out below:

		Role	Completion Phase (Days)
Core Services	Core Team	IC Project Director & Representative	
		Project & Deed Establishment Manager (Phase 1)	
		Project Manager & Document Controller	
		Line Wide (Rail Systems)	
		Station Lead (WL, PS & BR)	
		OTS2 IC	
		Project & Deed Establishment Assistance	
		Station Lead (VC, MP & CN)	
		Construction Surveillance Officer	
		Line Wide Director	
	Specialists	Program & Planning	
		Stakeholder & Liaison	
		Occupational Health & Safety Specialist	
		Technical Coordinator - Rail Systems	
		Technical Coordinator - Stations & Infrastructure	
		Technical Coordinator - Project Wide Services	
		Track	
		Tunnel Services	
		Permanent HV Supply System	
		OHW & Traction Supply	

	Integration, Testing & Commissioning	
	Integration, Testing & Commissioning	
	Civil Engineer	
	Fire & Life Safety & Ventilation	
	Platform Screen Doors	
	Operations & Maintenance	
	Delivery Phase (Trains)	
	Delivery Phase (Trains)	
	Delivery Phase Signalling & Control Systems	
	Delivery Phase Signalling & Control Systems	
	Delivery Phase Signalling & Control Systems	
	Radio & Communication Systems	
	Central Control System	
	Mechanical	
	Electrical	
	Station Architecture	
	Public Domain & Urban Planning	
	Geotechnical	
	Ground Settlement & Groundwater	
	Structural Engineer	
	Survey Property & Land	
	Drainage	
	Building Management System	
	Landscaping	
	Risk, Technical Interfaces & Systems Engineering	
	RAMS	
	Metro and Sydney Trains Performance	
	Environment & Sustainability	
	Operational Readiness	
	Rail Safety, Accreditation & Station Operations	

		EMC	
		Security	
		Durability	
Additional Services	Specialists	Sydney Trains Operations and Maintenance	
		Sydney Trains Interface and Asset Performance	
		Sydney Trains Track Infrastructure	
		CBI Signalling Interlocking and Sydney Trains Interface	

Note: In this Schedule 3:

- (a) full time means a minimum of 8 hours per day Monday to Friday; and
- (b) a reference to "days" excludes public holidays and includes only those days which are stated in the CN Contractor's Program as working days.

2. **INDICATIVE ABILITY, KNOWLEDGE, SKILL, EXPERTISE AND EXPERIENCE OF INDEPENDENT CERTIFIER'S PERSONNEL**

The following are indicative of the level of ability, knowledge, skill, expertise and experience required of the Independent Certifier's personnel for the specified roles. The Principal will have regard to the criteria set out in this paragraph 2 in determining whether to approve replacement personnel in accordance with clause 4.4 of this deed.

IC Project Director (Independent Certifier's Representative)

Appropriately qualified with 15 years' experience on major projects in senior roles with recent exposure on verification and certification projects in Australia.

Core Team Leads (Line-wide, OTS2 and Stations)

Appropriately qualified with 10 years' experience on major projects in senior roles with recent exposure on verification and certification projects in Australia.

Technical Coordinators

Appropriately qualified with 5 years' experience on major projects in senior roles with recent (within 5 years) experience on verification and certification projects in Australia or internationally.

Specialists

Minimum of 10 years' experience on the specific discipline to assess.

SCHEDULE 4

Requirements for Certification Plan

The Certification Plan must, as a minimum, address and detail:

- (a) the management team structures, positions, nominated personnel and subcontractors to be engaged on and off the Site and the roles and tasks of the nominated personnel and subcontractors;
- (b) the minimum skill, expertise and experience levels of each position and details of personnel resource levels;
- (c) the Independent Certifier's internal and external lines of authority, communication and reporting, including those with the Other Parties;
- (d) the identification of delegated authorities of the Independent Certifier's personnel, including identification of personnel with delegated authority to execute certificates on behalf of the Independent Certifier;
- (e) the Independent Certifier's internal processes for ensuring all documents and supporting evidence have been completed and approved (where required) by persons with appropriate delegated authority and competency and are available as supporting evidence;
- (f) all compliance records to be maintained;
- (g) the proposed timing of progressive performance of discrete elements of the Services including the timing for conducting reviews of aspects of the CN Contractor's Activities;
- (h) hold points and witness point requirements, in the form of a schedule, including the identification of all witness points and hold points required by the Independent Certifier;
- (i) the Independent Certifier's comprehensive plans for (as applicable):
 - (i) monitoring, auditing, reviewing, assessment and testing of the CN Contractor's Activities;
 - (ii) without limiting sub-paragraph (i), monitoring, auditing, reviewing, assessment and testing of the quality and durability of the Works to determine and ensure the CN Contractor's compliance with the requirements of the Construct Only Delivery Deed; and
 - (iii) audit and surveillance, including identification of resources, methodology, scope, levels of surveillance, inspection, testing and survey;
- (j) the Independent Certifier's strategies, processes, methodologies and procedures for:
 - (i) addressing environmental monitoring and protection;

- (ii) audit, surveillance and monitoring of the CN Contractor's construction activities, including the processes used for determining the levels and scope of surveillance of activities;
 - (iii) identifying and managing the Services to be subcontracted, including quality, reporting and communication aspects of the Services;
 - (iv) providing comments to the CN Contractor in respect of its carrying out of the CN Contractor's Activities;
 - (v) ensuring that the CN Contractor has addressed all issues of review, comment and consultation with the Principal in respect of the CN Contractor's Activities; and
 - (vi) risk management of the work covered by sub-paragraphs (i) and (ii) above;
- (k) the Independent Certifier's strategies, systems, procedures, processes, methodologies and reporting protocols to be applied whereby each of the following requirements will be achieved and satisfied:
- (i) the functions, obligations, duties and services which the Construct Only Delivery Deed contemplates will be discharged by the Independent Certifier as set out in Schedule 1;
 - (ii) certification of Milestone Achievement of each Milestone (Schedule 20B, Construct Only Delivery Deed);
 - (iii) certification of Substantial Completion of each Portion (Schedule 21A, Construct Only Delivery Deed);
 - (iv) certification of Completion of each Portion (Schedule 22A, Construct Only Delivery Deed); and
 - (v) determination of any matters required by the Construct Only Delivery Deed;
- (l) the Independent Certifier's proposed standards including:
- (i) committed surveillance activities; and
 - (ii) committed resources;
- (m) the basis of the Certification Methodology contained in Schedule 7 in terms of the assumptions relating to the CN Contractor's Activities including:
- (i) program durations; and
 - (ii) how the Independent Certifier will address the reporting requirements set out in clause 4.10 of this deed and otherwise advise the Principal of issues that it identifies in carrying out the Services, and considers may impact on or delay the ability of the CN Contractor to construct the Works in accordance with the requirements of the Construct Only Delivery Deed.

SCHEDULE 5
Subcontractors

Name of subcontractor	Part of the Services

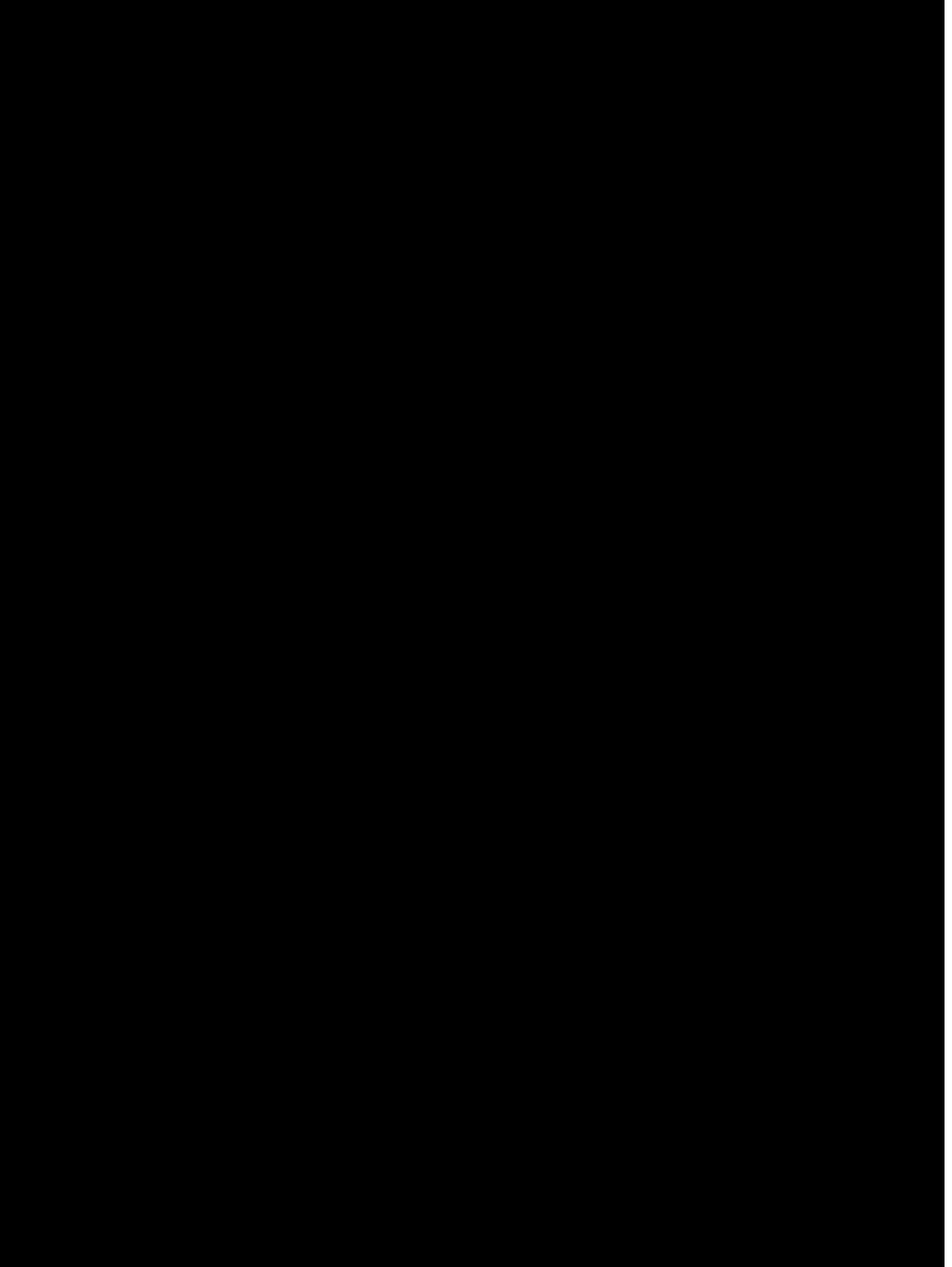
SCHEDULE 6

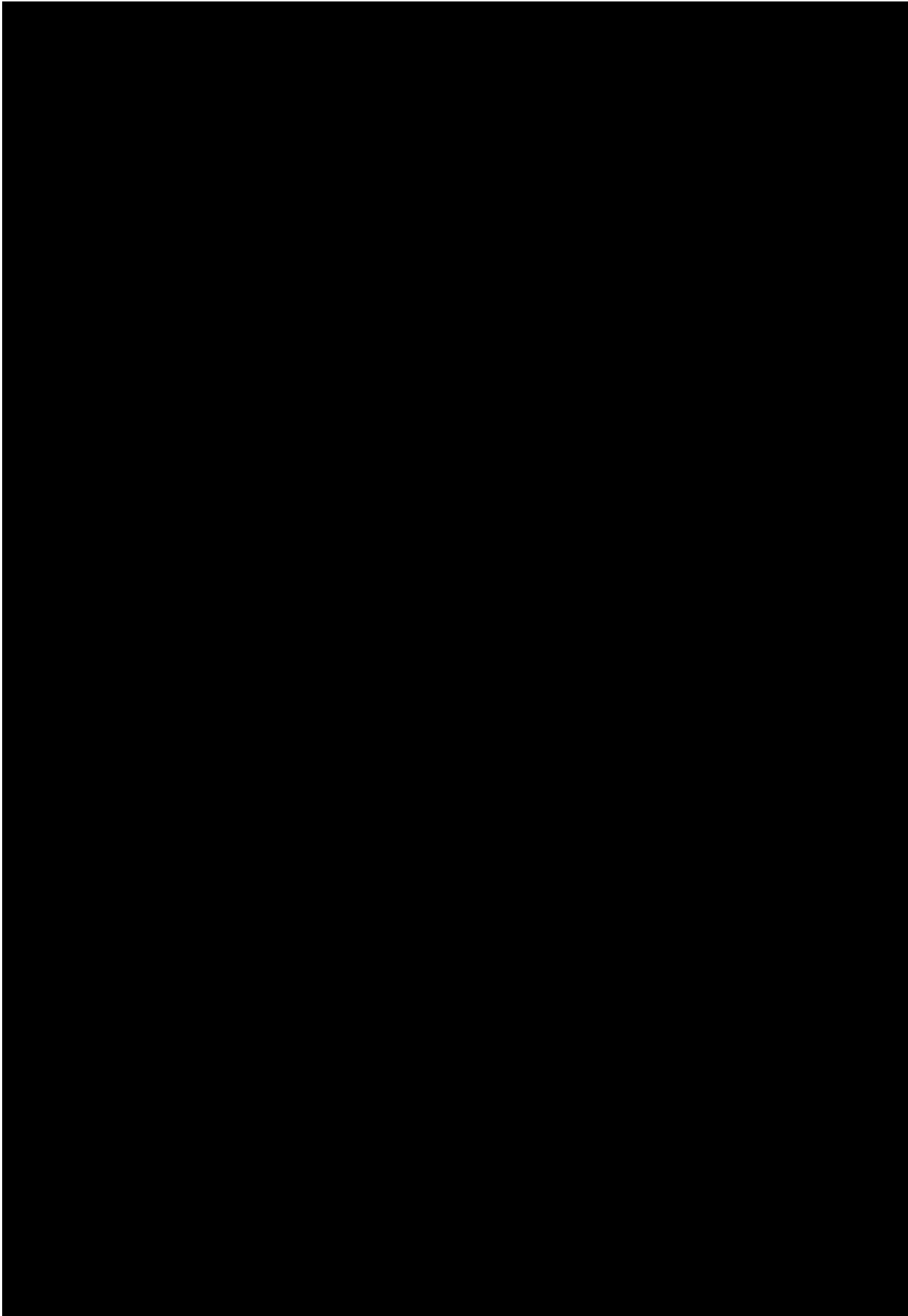
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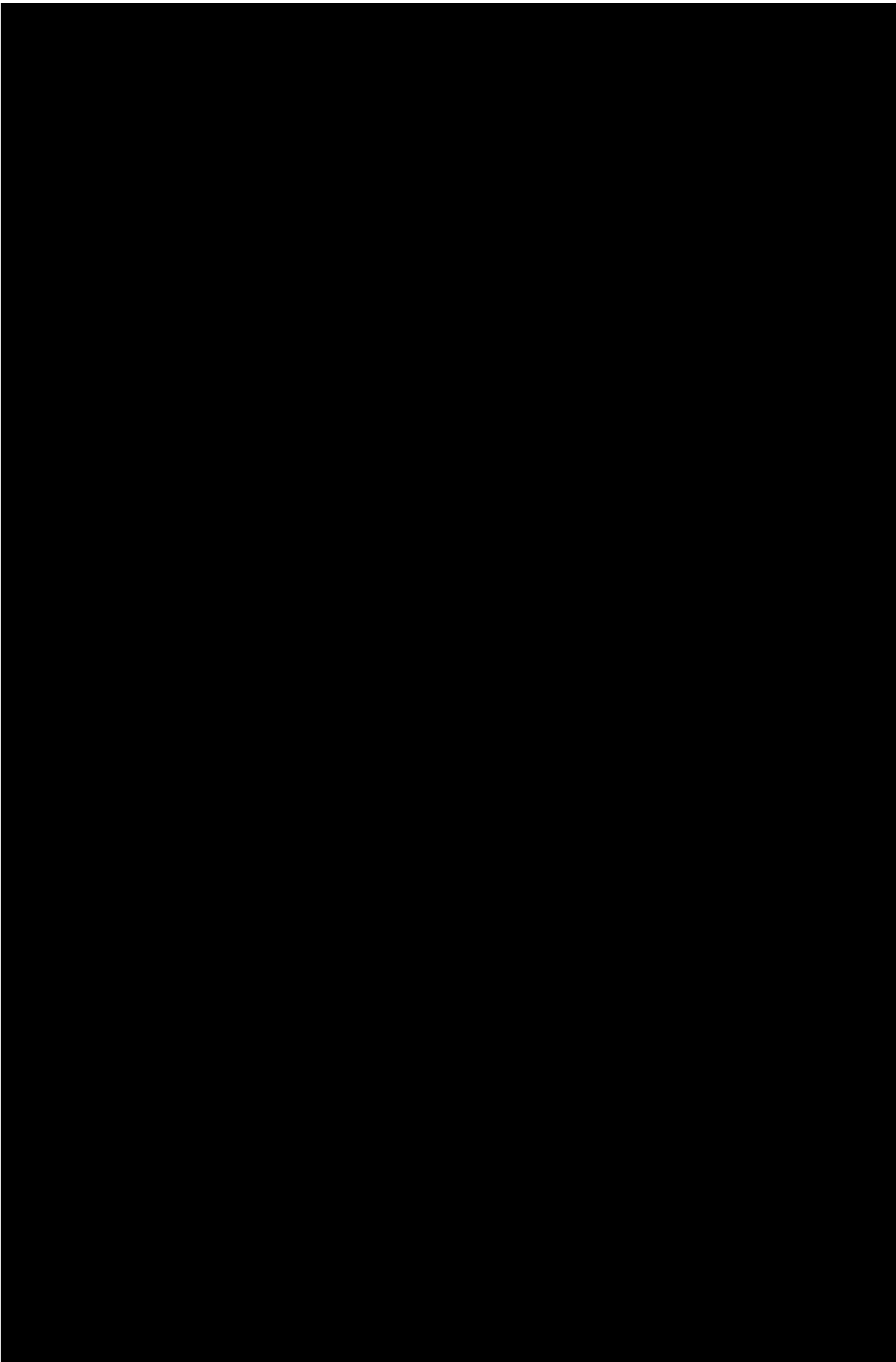


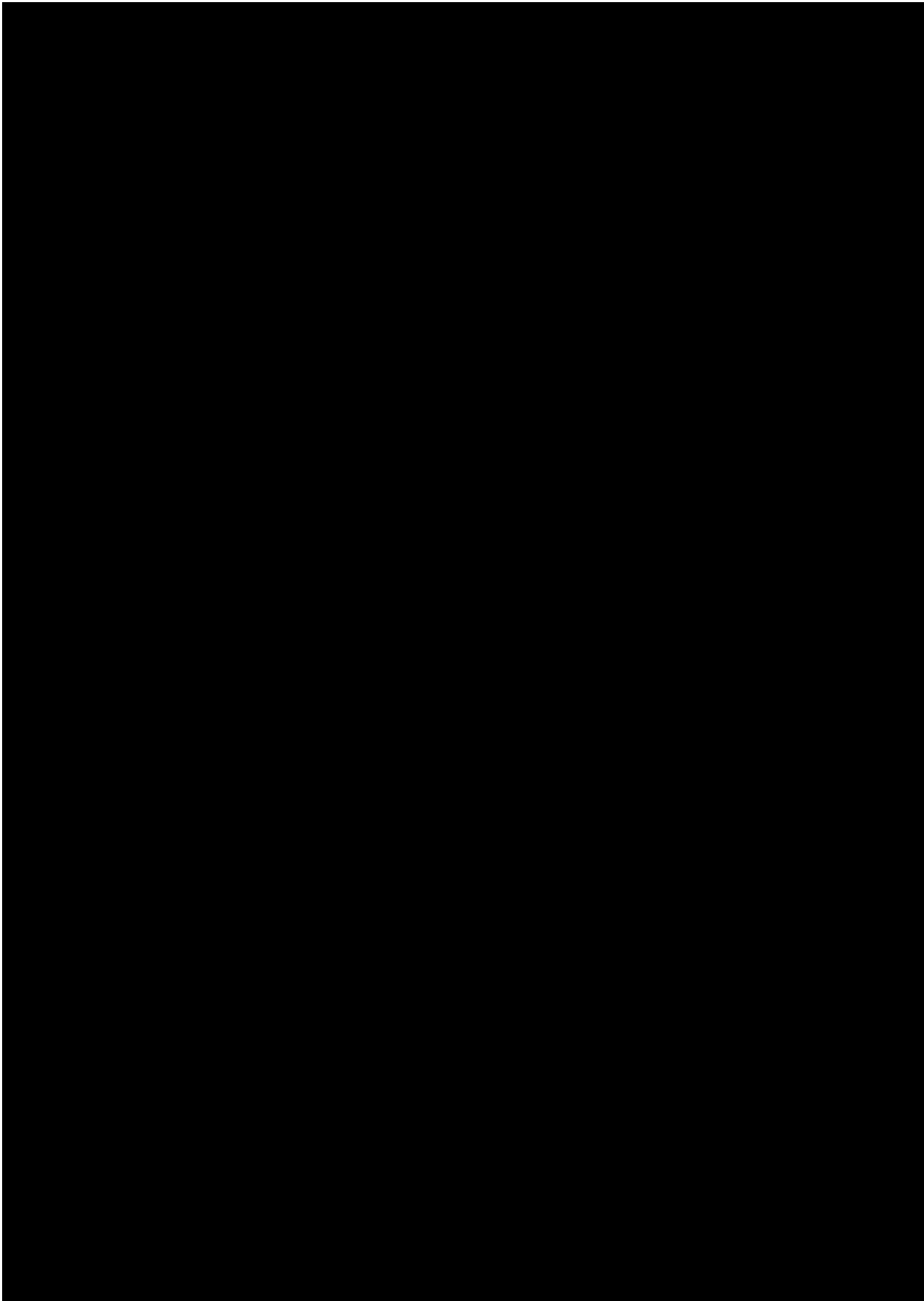
SCHEDULE 7

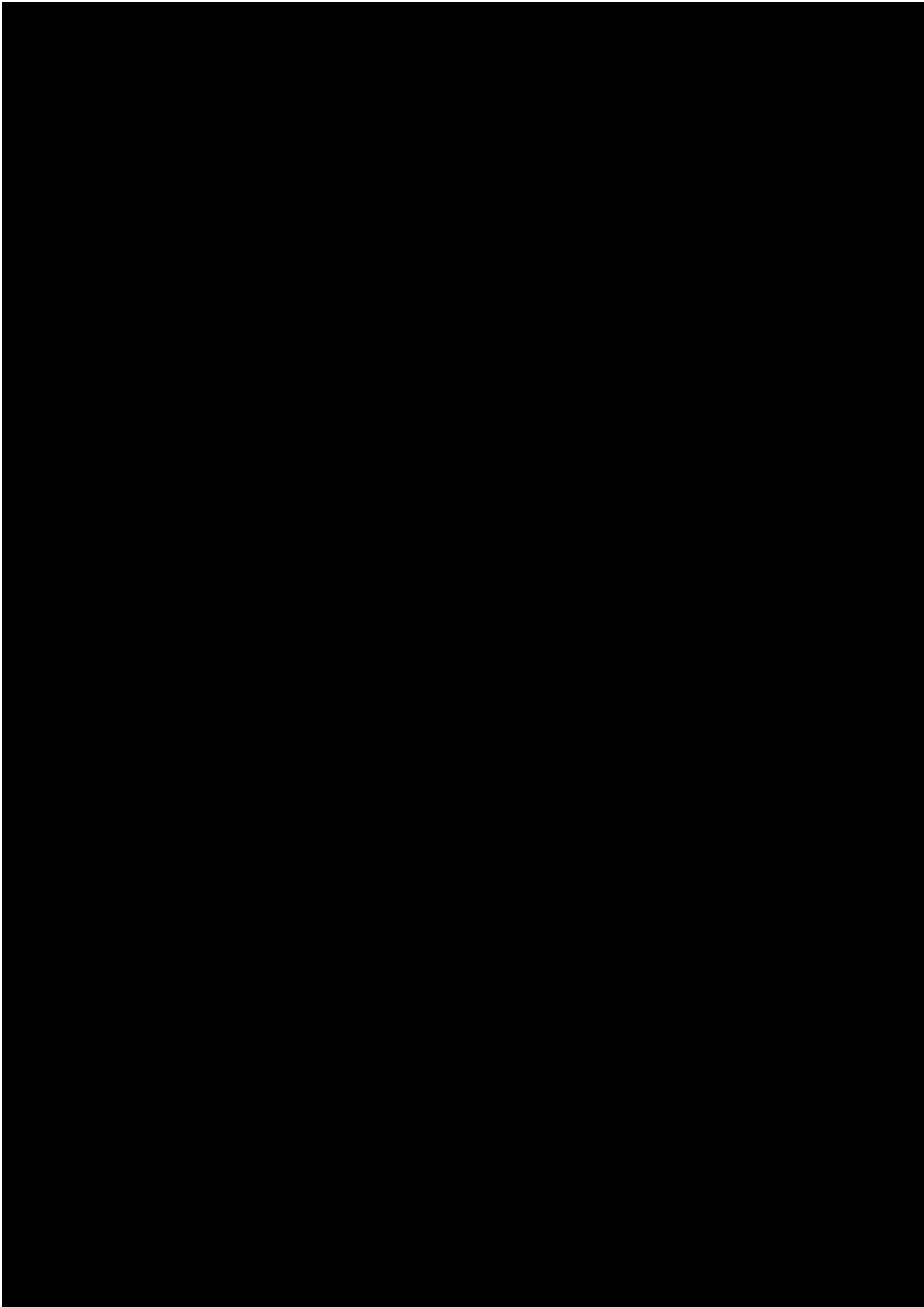
Certification Methodology

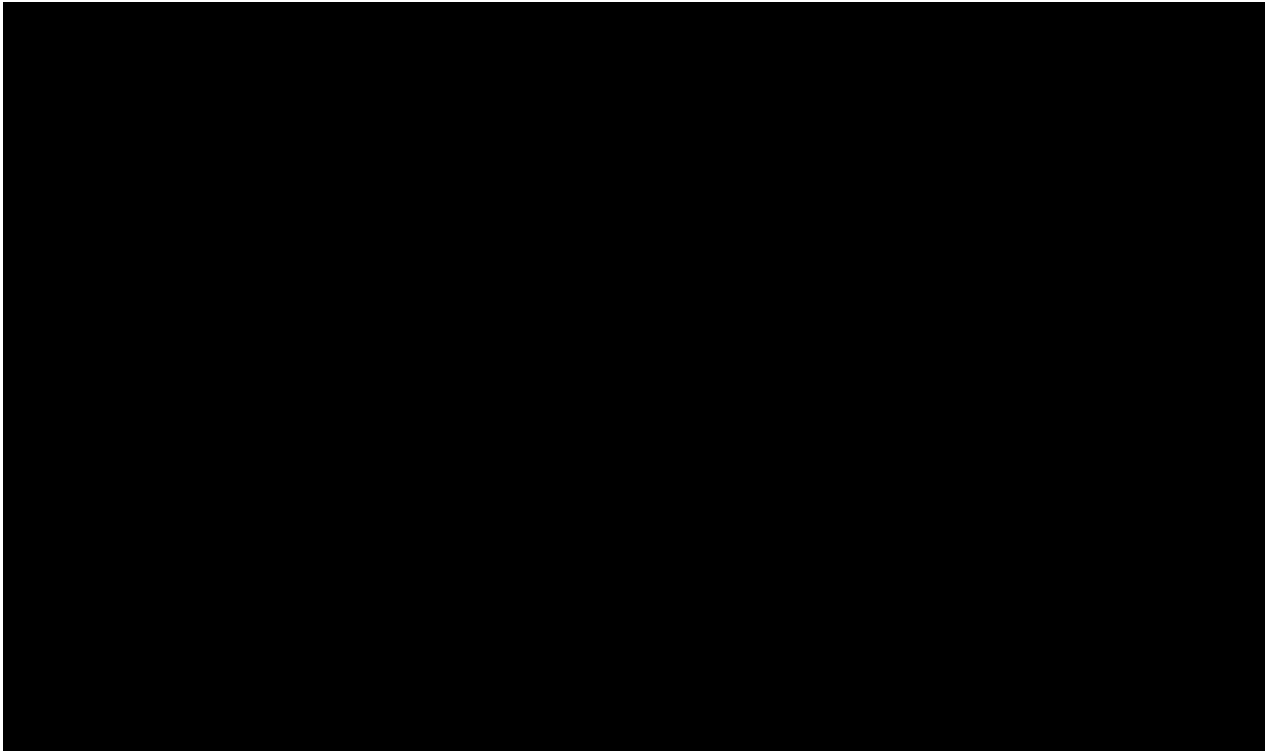


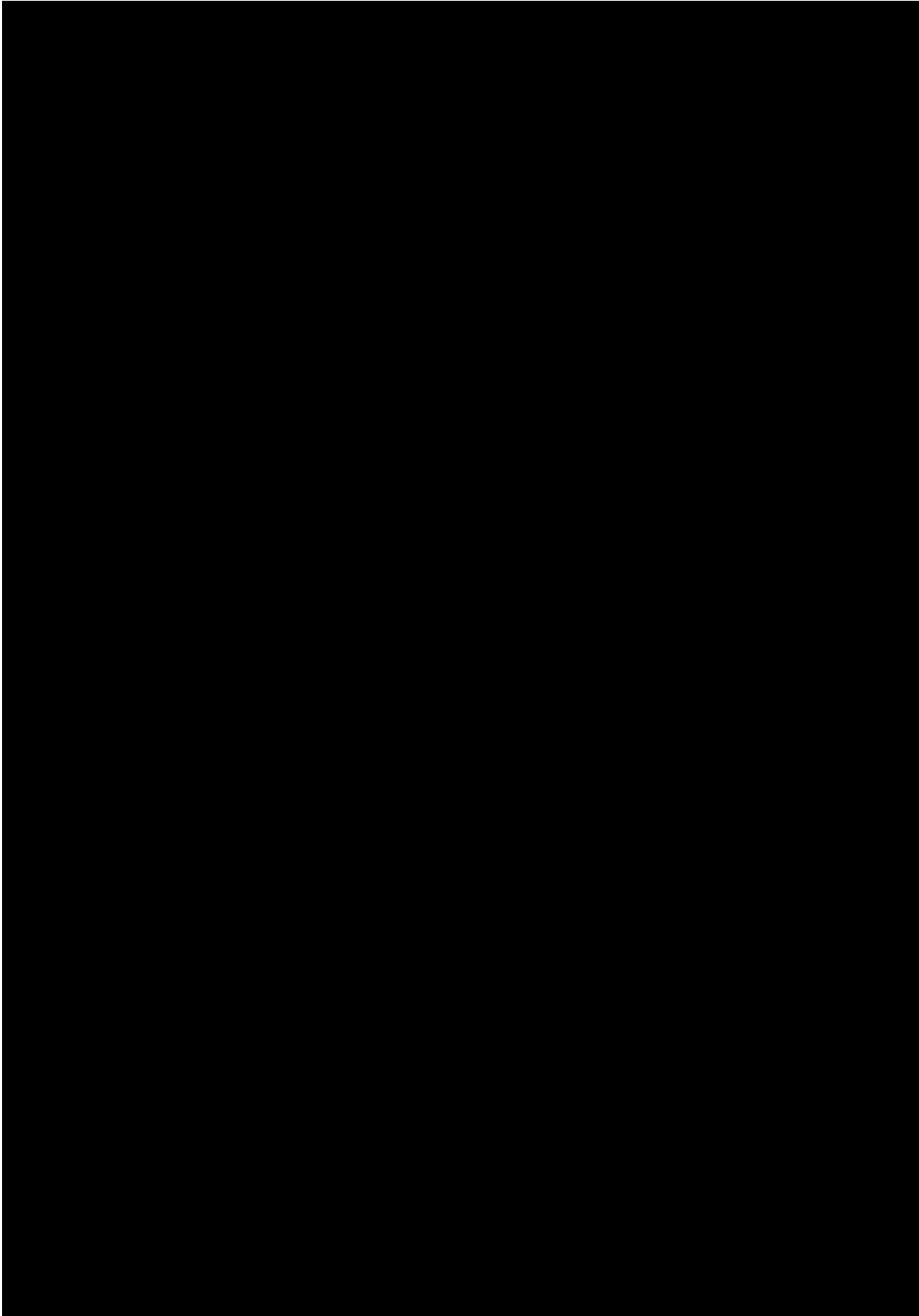


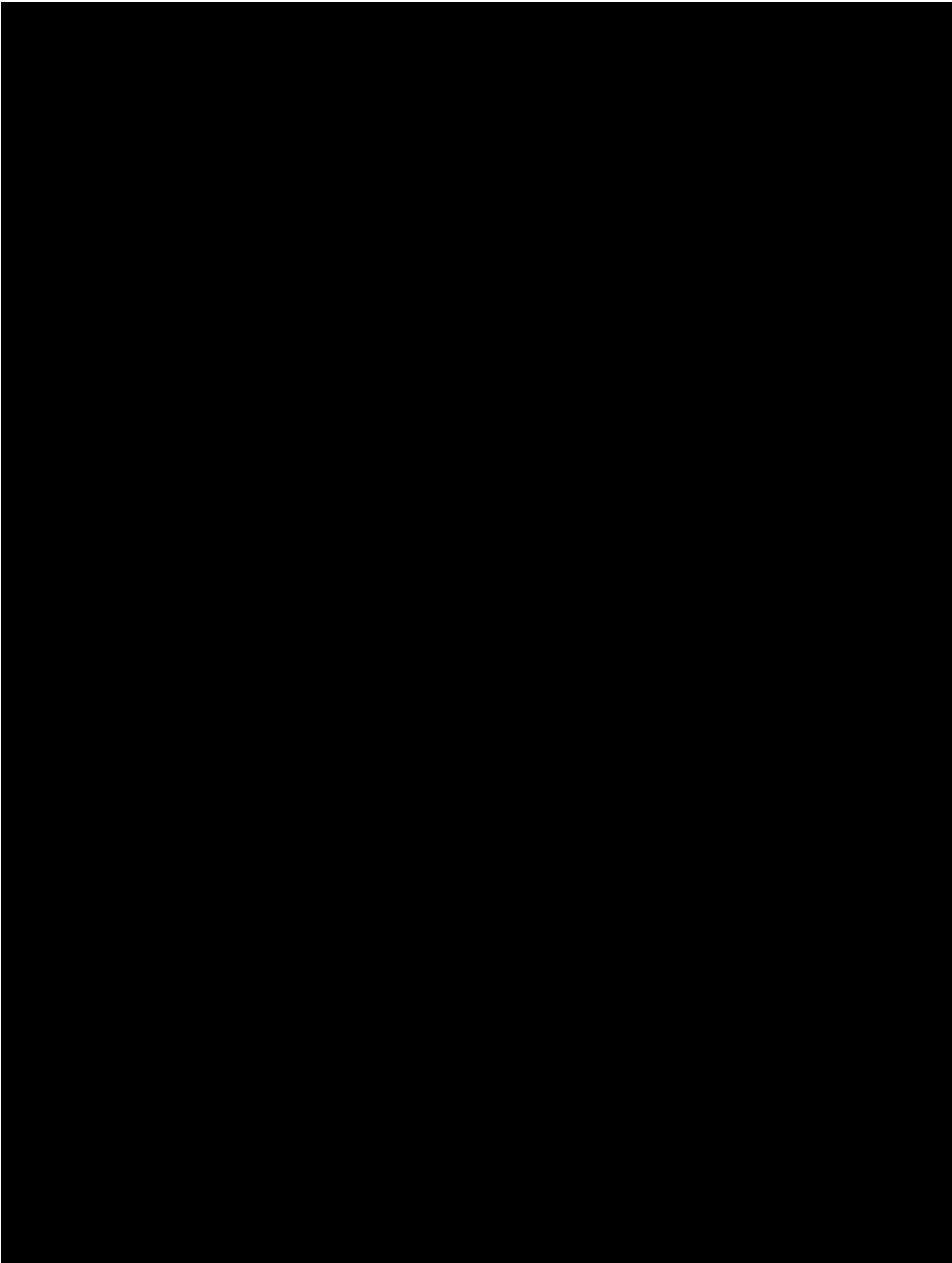


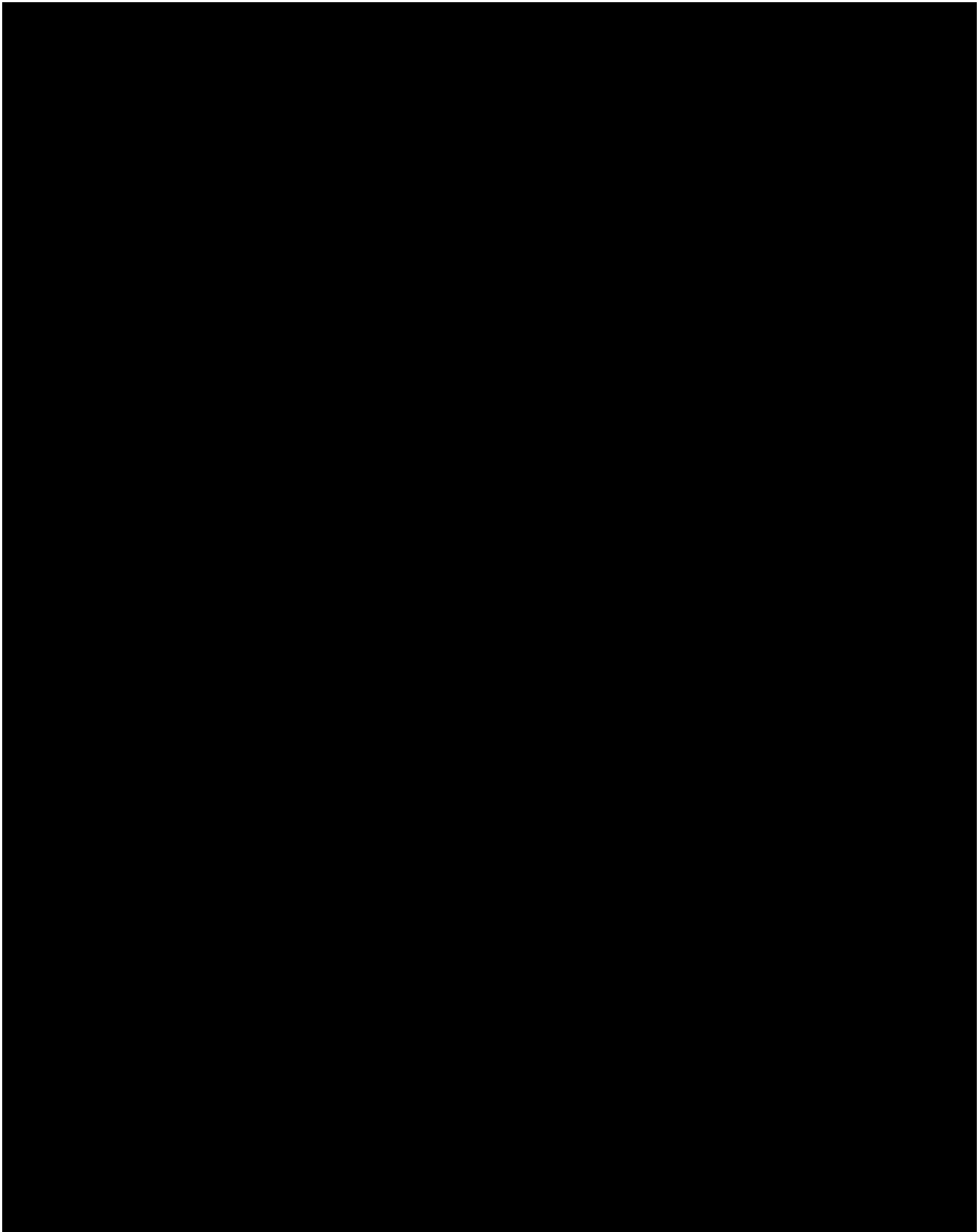


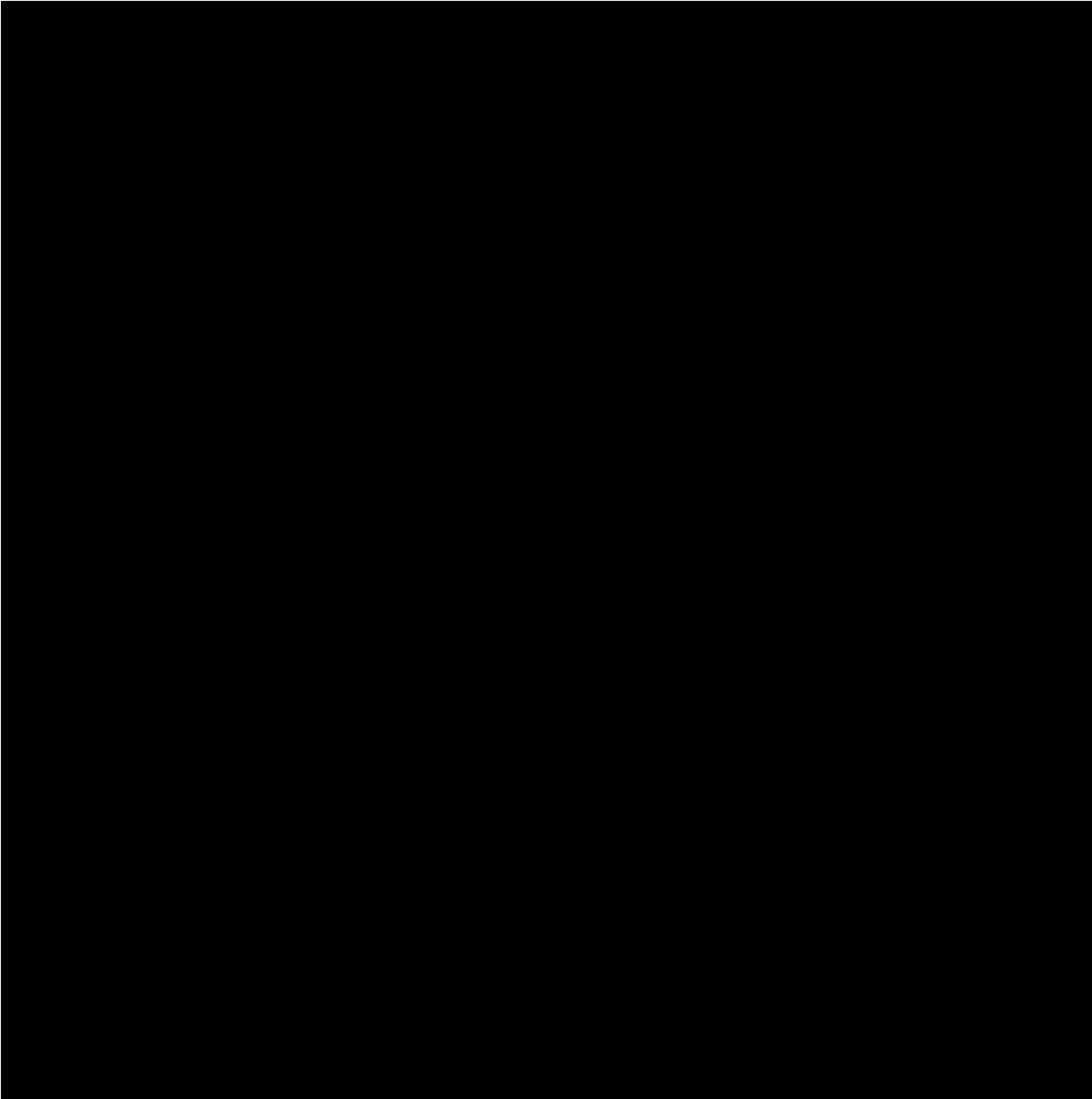












EXECUTED as a deed.

Executed by Sydney Metro (ABN 12 354 063 515) by its authorised delegate in the presence of:

Signature of authorised delegate

Signature of witness

Name of authorised delegate

Name of witness in full

Executed by [Note: Insert name and ABN of CN Contractor.] in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of Director

Signature of other Director/Secretary

Name of Director in full

Name of Secretary/other Director in full

Executed by Advisian Pty Ltd (ABN 50 098 008 818) in accordance with section 127 of the *Corporations Act 2001* (Cth)

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

SIGNED, SEALED and DELIVERED for
NRT CSW PTY LTD (ACN 635 509 036) in
its personal capacity and as trustee of the
NRT CSW Unit Trust under power of
attorney in the presence of:

Signature of witness

Name

Address of witness

Signature of attorney

Name

Date of power of attorney

Schedule 39. IDAR Panel Agreement

(Clause 15.2)



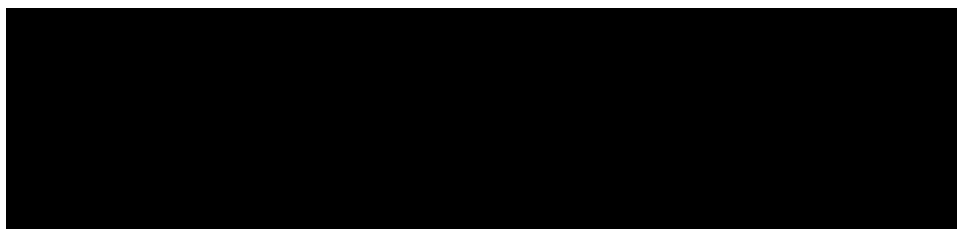
IDAR PANEL AGREEMENT

This Agreement is made at *Sydney* on the *11th* day of *February* 2019 between the following parties:

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

and

2. **Members of the IDAR Panel** (collectively **Members**), namely:



and

3. (From each Accession Date) each person who accedes to this agreement under clause 4, being the person identified as the "Acceding Party" in an Accession Deed Poll (**Project Contractor**).

RECITALS:

- A. The Principal is responsible for delivering Sydney Metro City & Southwest. Sydney Metro City & Southwest involves multiple packages of works to be undertaken by contractors engaged by the Principal and by developers above or adjacent to the new Metro stations under separate contracts (**Project Contracts**).
- B. The Principal will progressively engage or enter into contracts with Project Contractors. As each Project Contract is entered into, the Project Contractor will execute an Accession Deed Poll substantially in the form set out in Schedule 1 and will thereby accede to the terms of this agreement.
- C. The Project Contracts provide for a dispute resolution process through the establishment and the operation of an IDAR Panel to assist in avoiding and resolving Disputes under the Project Contracts.
- D. The role of the IDAR Panel is to, among other things, encourage the Principal and the relevant Project Contractor to proactively resolve Disputes by providing a non-binding forum for the parties to establish their positions and narrow the issues in Dispute.
- E. The parties acknowledge the benefits of a project-wide IDAR Panel include an improvement in the quality of assessments and determinations as a result of the IDAR Panel's familiarity with complex interfaces across multiple integrated works packages.
- F. This agreement sets out the rights, obligations and duties of the Members, the Principal and (from each Accession Date) the Project Contractors in relation to the IDAR Panel and the Disputes (the **Agreement**).

THIS AGREEMENT PROVIDES:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

Accession Date has the same meaning as given to the term "Effective Date" in the Accession Deed Poll, being the date from which each Project Contractor accedes to this Agreement.

Accession Deed Poll means the deed poll in substantially the same form as Schedule 1 (with relevant details duly completed) which is to be executed by each Project Contractor in accordance with clause 4.

Continuing Parties has the same meaning as given to the term "Continuing Parties " in the Accession Deed Poll, being those parties to the Agreement at the Accession Date, excluding the Principal.

Fees and Disbursements Letter means each of the following:

- (a) the letter titled "Fees and Disbursements for Independent Dispute Avoidance and Resolution Panel" between the Principal, each Project Contractor and [REDACTED] dated on or about the date of this agreement;
- (b) the letter titled "Fees and Disbursements for Independent Dispute Avoidance and Resolution Panel" between the Principal, each Project Contractor and [REDACTED] dated on or about the date of this agreement;
- (c) the letter titled "Fees and Disbursements for Independent Dispute Avoidance and Resolution Panel" between the Principal, each Project Contractor and [REDACTED] dated on or about the date of this agreement; and
- (d) the letter titled "Fees and Disbursements for Independent Dispute Avoidance and Resolution Panel" between the Principal, each Project Contractor and [REDACTED] dated on or about the date of this agreement.

Joint Project Committee means the committee established under the Master Interface Protocols Deed Poll.

Members means the four individuals appointed to the IDAR Panel in accordance with this Agreement.

Project Briefing has the meaning given in clause 6.

Project Contract has the meaning given in Recital A.

1.2 Terms defined in the Project Contracts

Terms used in this Agreement which are not otherwise defined will have the meaning given to them in the Project Contracts.

1.3 Interpretation

In this Agreement unless the context otherwise requires:

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

- (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Agreement or any part; and
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

2. AGREEMENT TO PREVAIL

- (a) The parties agree that if there is any inconsistency between the terms of this Agreement and a Project Contract the terms of this Agreement will prevail to the extent of the inconsistency.
- (b) This Agreement is effective as of the date the Principal and the Members sign this document and will continue, unless terminated earlier, until it terminates in accordance with clause 16.

3. FORMATION OF THE IDAR PANEL

The parties acknowledge that the IDAR Panel:

- (a) has been formed;
- (b) is constituted by the Members;
- (c) will be chaired by that Member designated as Chair or such other Member as the Principal nominates, by written notice to the Members and Project Contractors, from time to time; and
- (d) must perform its obligations and functions under the Project Contracts and this Agreement.

4. ACCESSION BY PROJECT CONTRACTORS

- (a) The Principal will ensure that each Project Contractor who enters into a Project Contract that contemplates the involvement of the IDAR Panel in the relevant dispute resolution process accedes to this Agreement.
- (b) The Project Contractors may accede to this Agreement by execution of an Accession Deed Poll without the Continuing Parties' prior approval.
- (c) Upon accession of any Project Contractor to this Agreement as referred to in clause 4(a), the rights and liabilities of the parties to this Agreement will be as set out in this Agreement as amended in accordance with the requirements of the Accession Deed Poll.
- (d) The Principal will provide the Members with a copy of the Accession Deed Poll duly executed by the Project Contractor.

5. ROLE OF THE IDAR PANEL

The parties acknowledge and agree that the role of the IDAR Panel is to:

- (a) provide specialised expertise in technical and administration aspects of each Project Contract in order to assist the relevant parties in firstly, attempting to prevent, and if unable to prevent, in determining Disputes under each Project Contract in a timely manner;

- (b) function as an objective, impartial and independent body at all times; and
- (c) utilise knowledge gained from Disputes across each Project Contract in its recommendations and determinations.

6. **PROJECT BRIEFINGS**

- (a) The Principal will:
 - (i) hold meetings with the Members for the purpose of the Principal providing a Sydney Metro City & Southwest project briefing and update (**Project Briefing**); and
 - (ii) provide the Members at least 10 Business Days' notice to convene a Project Briefing.
- (b) The Members must attend the Project Briefings.
- (c) During the first Project Briefing, the IDAR Panel will establish procedures for the conduct of its routine site visits and other matters (excluding the rules governing the dispute resolution process as it relates to the IDAR Panel in each Project Contract) in accordance with the procedures included in Schedule 2 to this Agreement (unless otherwise agreed by the parties).

7. **JOINT PROJECT COMMITTEE**

- (a) The Chair must attend Joint Project Committee meetings.
- (b) The Principal will provide the Chair at least 10 Business Days' notice of each meeting of the Joint Project Committee.

8. **MEMBER'S OBLIGATIONS**

8.1 **Impartiality**

Each Member agrees to consider fairly and impartially the Disputes and other matters referred to the IDAR Panel.

8.2 **Independence**

Each Member agrees to act honestly and independently in the performance of its obligations under this Agreement (including the consideration of facts and conditions relating to a Dispute) and in accordance with clause 8 of this Agreement.

8.3 **General Duties**

Each Member agrees to carry out his or her obligations as a Member of the IDAR Panel:

- (a) with due care and diligence;
- (b) in compliance with the Project Contracts and this Agreement; and
- (c) in compliance with all applicable Laws.

9. **SELECTION OF NOMINATED MEMBER**

- (a) Where a Dispute has been notified to the IDAR Panel by Notice of Issue under the relevant provisions of the Project Contract, and:
 - (i) the parties to the Dispute are unable to agree on a Nominated Member; or

- (ii) a Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

the Chair must nominate a Nominated Member within a further 2 Business Days.

- (b) If a Member nominated under clause 9(a) declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the Chair must nominate a further Nominated Member within a further 2 Business Days.
- (c) The Chair may not nominate itself as the Nominated Member.
- (d) If a replacement member appointed under clause 9(b) declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the process in clause 9(b) will be reapplied until there are no Members to accept the appointment, in which case the Chair must request the Resolution Institute to appoint a replacement member. This appointment will be final and conclusive.

10. **SELECTION OF EXPERT**

The parties acknowledge and agree that:

- (a) those persons listed in Schedule 3:
 - (i) have been appointed by the Principal to a panel of subject-matter experts; and
 - (ii) may be recommended to determine a Dispute referred to expert determination by a Notice of Dispute under the relevant provisions of the Project Contract; and
- (b) any Dispute which is referred to expert determination by a Notice of Dispute under the relevant provisions of the Project Contract will be conducted in accordance with the Resolution Institute's Expert Determination Rules, as modified by the relevant Project Contract.

11. **COSTS AND FEES**

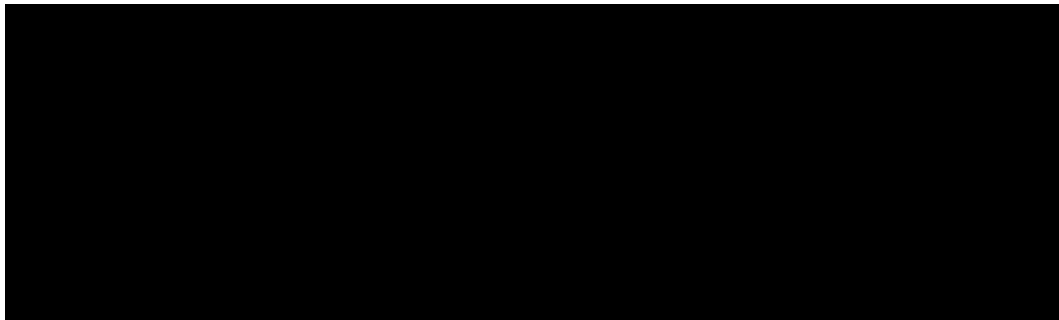
11.1 **Monthly retainer**

- (a) The Principal is liable for the payment of the Members' monthly retainer set out in the Fees and Disbursements Letter for each Member.
- (b) The Principal is liable for the payment of the Chair's attendance at the Joint Project Committee as set out in the Fees and Disbursements Letter for the Chair.

11.2 **Agreed rates for work and services**

With respect to each Dispute between the Principal and a Project Contractor:

- (a) the Principal and the relevant Project Contractor are jointly and severally liable for the payment of the Members' fees and disbursements (other than those in clause 11.1), calculated in accordance with the Fees and Disbursements Letter for each Member; and
- (b) the Principal and the relevant Project Contractor agree as between themselves that:
 - (i) [REDACTED]



11.3 **Payment claims**

All claims for payment by the Members must be submitted and processed in accordance with the payment procedure set out in Schedule 4.

12. **THE PARTIES' COMMITMENTS AND RESPONSIBILITIES**

The Principal and each Project Contractor acknowledges and agrees that it must:

- (a) act in good faith towards each Member and the IDAR Panel;
- (b) comply with the reasonable requests and directions of the IDAR Panel; and
- (c) except for its participation in the IDAR Panel's activities as provided in the Project Contracts and this Agreement, not solicit advice or consultation from the IDAR Panel or the Members on matters dealing with the resolution of Disputes which may compromise the IDAR Panel's integrity or compliance with this Agreement.

13. **CONFIDENTIALITY**

In relation to all confidential information disclosed to the IDAR Panel at any time each Member agrees:

- (a) to keep that information confidential;
- (b) not to disclose that information except if compelled by Law to do so;
- (c) not to use that information for a purpose other than the resolution of the Dispute in relation to which the confidential information was disclosed; and
- (d) to be bound by this obligation of confidentiality whether or not such confidential information is or later becomes in the public domain.

14. **CONFLICT OF INTEREST**

- (a) If a Member, during the term of appointment as a Member, becomes aware of any circumstance that might reasonably be considered to affect the Member's capacity to act independently, impartially and without bias, the Member must inform the Principal and each Project Contractor and the other Members.
- (b) The other Members will within [REDACTED] of notification under clause 14(a) confer and inform the parties and the Member, whether they believe the circumstances notified are such that the Member should be replaced. In the event that one or both of the other Members believe that the Member should be replaced, the Member will immediately resign from the IDAR Panel and a reappointment will occur pursuant to clause 17.3.

15. **LIABILITY AND INDEMNITY**

15.1 **Liability**

Each Member is not liable to either the Principal or a Project Contractor for any act or omission done in good faith and with due care and diligence.

15.2 **Indemnity**

The Principal and each Project Contractor each indemnify each Member against all claims from a person not a party to this Agreement for any act or omission done in connection with this Agreement in good faith and with due care and diligence.

15.3 **Due Care and Diligence**

For the purpose of clauses 15.1 and 15.2, the parties agree that the Member's act will have been done in good faith and with due care and diligence unless no reasonable person in the position of the Member would have so acted or made such an omission.

16. **TERMINATION OF AGREEMENT**

- (a) The Principal may terminate this Agreement by written notice to the Members and each Project Contractor.
- (b) Each Project Contractor's rights and obligations under this Agreement will terminate automatically upon termination of the Project Contractor's Project Contract, and the terms of this Agreement will be of no further force and effect.

17. **MEMBERS' TERMINATION**

17.1 **Resignation**

A Member may resign from the IDAR Panel by providing [REDACTED] written notice to the other Members, the Principal and each Project Contractor.

17.2 **Termination**

A Member's appointment may be terminated at any time by the Principal.

17.3 **Re-Appointment**

The parties acknowledge and agree that if:

- (a) a Member resigns under clause 14(b) or 17.1; or
- (b) the appointment of a Member is terminated by the Principal under clause 17.2;

then:

- (c) a replacement Member will be appointed by the Principal; and
- (d) the parties, the Members and any new Member must enter into a replacement agreement substantially similar to this Agreement.

18. **GOVERNING LAW**

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

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

19. **RELATIONSHIP OF THE PARTIES**

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

20. **NOTICES**

- (a) Any notices contemplated by this Agreement must be in writing and delivered to the relevant address, sent by email in the form of a .pdf file as set out below (or to any new address or email address that a party notifies to the others).

- (i) to the Principal: [REDACTED]

- (ii) to the Members: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- (iii) to a Project Contractor: To the address or email address set out in the relevant Accession Deed Poll.

- (b) A notice sent by post will be taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.

- (c) A notice sent by email will be taken to have been received:

- (i) if it is transmitted by 5.00 pm (Sydney time) on a Business Day - on that Business Day; or

- (ii) if it is transmitted after 5.00 pm (Sydney time) on a Business Day, or on a day that is not a Business Day - on the next Business Day.

21. **GIVING EFFECT TO THIS AGREEMENT**

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

22. **SURVIVAL OF TERMS**

The parties agree that clauses 11 and 15 and this clause 22 (and any other terms of this Agreement necessary for or incidental to the operation of the preceding terms) will survive the termination or expiry of this Agreement.

23. **WAIVER OF RIGHTS**

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

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

24. **OPERATION OF THIS AGREEMENT**

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

25. **AMENDMENT**

- (a) Subject to clause 25(b), this Agreement can only be amended, supplemented, replaced or novated by another document signed by the parties.
- (b) The Principal may amend Schedule 3 by written notice without the Continuing Parties' prior approval.

26. **COUNTERPARTS**

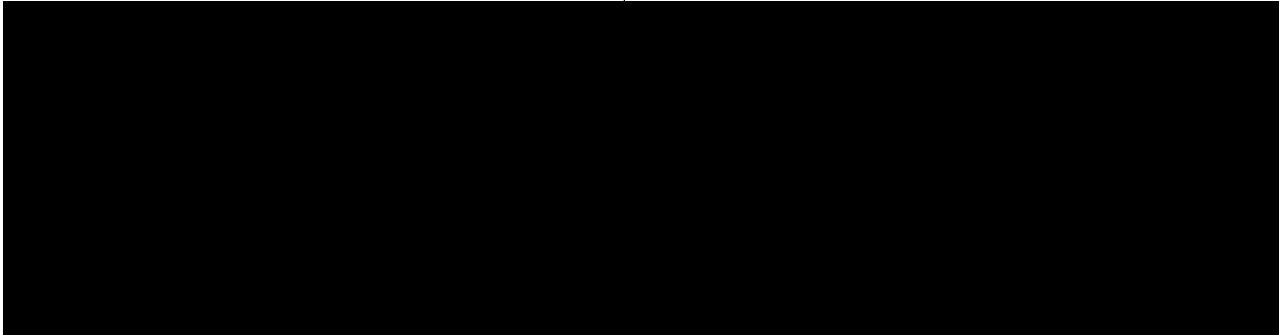
- (a) This Agreement may be executed in counterparts, which taken together constitute one instrument.
- (b) A party may execute this Agreement by executing any counterpart.

27. **ATTORNEYS**

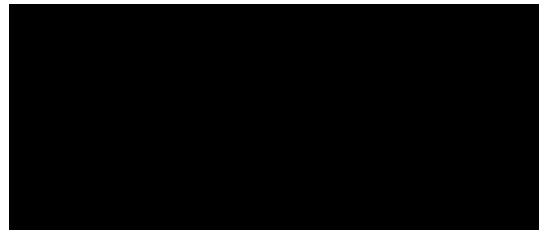
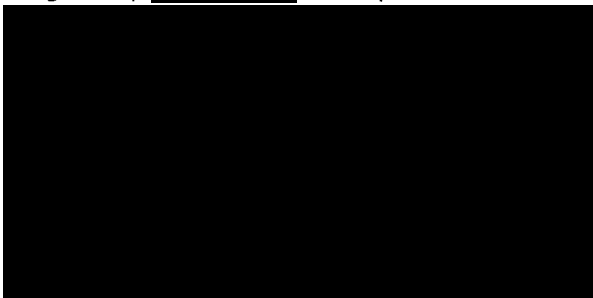
Each person who executes this Agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

EXECUTED as an agreement.

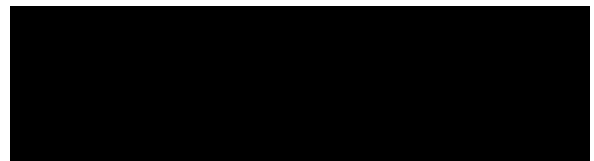
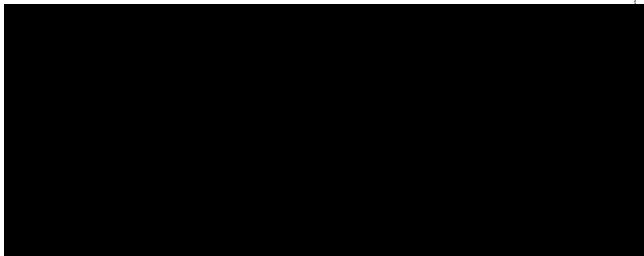
Executed by SYDNEY METRO ABN 12 354 063 515 by its authorised delegate in the presence of:



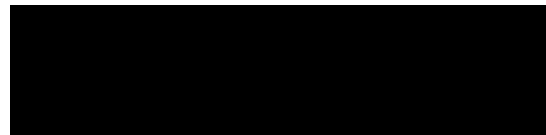
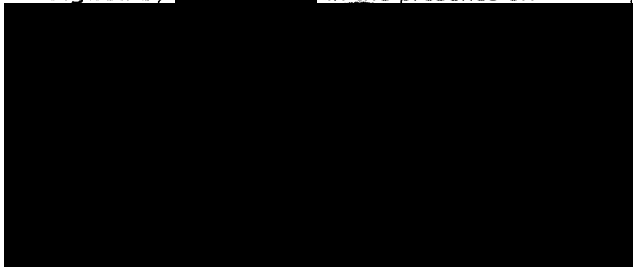
Signed by [redacted] **in the presence of:**



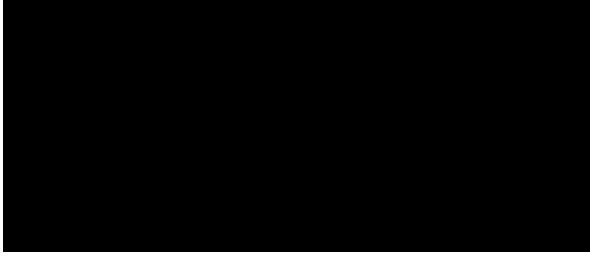
Signed by [redacted] **in the presence of:**



Signed by [redacted] **in the presence of:**



Signed by [REDACTED] in the presence of:



SCHEDULE 1

Form of Accession Deed Poll

THIS DEED POLL is made on [2018/2019]

BY: [Insert name] ABN [number] whose registered office is at [address] (**Acceding Party**)

IN FAVOUR OF: (1) **Sydney Metro** ABN 12 354 063 515 a New South Wales Government agency of Level 43, 680 George Street, Sydney NSW 2000 (**Principal**)

and

(2) **Members of the IDAR Panel** (collectively **Members**), namely:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]

and

(3) each person who has acceded to the IDAR Panel Agreement, (together (2) and (3) being the **Continuing Parties**).

RECITALS:

- (A) This deed poll is supplemental to the agreement titled "IDAR Panel Agreement" between the Principal and the Continuing Parties dated [insert] as amended or acceded to from time to time (**IDAR Panel Agreement**).
- (B) The Principal and the Continuing Parties are each party to the IDAR Panel Agreement.
- (C) The Principal has entered into the [insert name of relevant Project Contract] with the Acceding Party.
- (D) Each of the Continuing Parties has acknowledged and agreed that the Acceding Party will accede to the IDAR Panel Agreement.
- (E) By this deed poll, the Acceding Party accedes to the IDAR Panel Agreement and the IDAR Panel Agreement is amended on the terms set out in this deed poll.

THE ACCEDING PARTY COVENANTS AS FOLLOWS:

1. INTERPRETATION

Capitalised terms used in this deed poll and not otherwise defined have the same meanings as those given in the IDAR Panel Agreement. The following definitions apply in this deed poll:

Effective Date means the date of execution of this deed poll.

[Insert name of relevant Project Contract] means the contract entered into between the Principal and the Acceding Party titled [insert title] and dated [insert date].

2. PRIMARY COVENANTS

- (e) The Acceding Party:
 - (i) confirms that it has been supplied with a copy of the IDAR Panel Agreement;
and
 - (ii) covenants with each of the Principal and the Continuing Parties, with effect from the Effective Date, to be bound by the provisions of, and to perform all of its obligations under the IDAR Panel Agreement.
- (f) For the purposes of the IDAR Panel Agreement, the Acceding Party's representative is as set out below:

[Insert details of Acceding Party's representative]
- (g) For the purposes of clause 20 of the IDAR Panel Agreement, the Acceding Party's notice address details are as set out below:

Address:
Email:
For the attention of:
- (h) Clause 18 of the IDAR Panel Agreement applies to this deed poll.

EXECUTED as a deed poll.

[Note: Appropriate execution block to be inserted by the Acceding Party prior to execution.]

SCHEDULE 2

IDAR Panel General Operating Procedures

1. General

- 1.1 Each Project Contractor will furnish to each of the Members all documents necessary for the IDAR Panel to perform its functions, including copies of all Project Contract documents plus periodic reports, such as progress reports, minutes of weekly or other project control meetings, site meetings or similar meetings and any other documents that would be helpful in informing the Members of Disputes and other matters.
- 1.2 The Members must make prompt disclosure from time to time of any new or previously undisclosed circumstance, relationship or dealing, which comes to their attention and which might give rise to a conflict of interest or apprehension of bias.
- 1.3 Communications between the parties and the IDAR Panel for the purpose of attempting to prevent or resolve Disputes are without prejudice communications and may not be adduced as evidence in any dispute resolution process under the relevant Project Contract.

2. Frequency of regular meetings and site visits

- 2.1 The frequency and scheduling of meetings and site visits necessary to keep the IDAR Panel properly informed of the project circumstances will generally be agreed between the IDAR Panel and the parties to each Project Contract.
- 2.2 In the case of a failure to agree between the IDAR Panel and the parties to a Project Contract, the Principal will schedule the meetings and visits as it sees fit.

3. Agenda for regular meetings

- 3.1 IDAR Panel meetings held for the purposes of briefing and updating the Members on performance and progress of the work under each Project Contract and issues or potential issues between the relevant parties will be held on an in-confidence and without prejudice basis to encourage full and frank disclosure and discussions.
- 3.2 At the conclusion of the meeting, the IDAR Panel will generally inspect the Project Works and the Construction Site in the company of representatives of both parties to the relevant Project Contract. Any areas of the Project Works or Construction Site that are or may be the subject of any potential Dispute will be pointed out by the parties to the relevant Project Contract.

4. Minutes of meetings

- 4.1 The Chair will prepare minutes of the regular meetings of the IDAR Panel and these draft minutes will be circulated to the parties of the relevant Project Contract and the Members for comments, additions and corrections.
- 4.2 In accordance with clause 3.1 above, the minutes of IDAR Panel meetings held will be marked "in-confidence, without prejudice".
- 4.3 Minutes as amended will be adopted by the relevant parties and the Members at the next meeting.

5. Communications

- 5.1 All communications by the parties to the IDAR Panel outside the IDAR Panel meetings should be directed in writing to the Chair and copied to the other Members and to the

other party of the relevant Project Contract. All communications by the Members to the parties should be addressed to the Principal's Representative and the relevant Project Contractor's representative.

6. **Representation**

- 6.1 The parties must each ensure they are represented at IDAR Panel meetings by at least one senior project personnel and at least one senior off-site person to whom the on-site personnel reports. The parties must inform the Chair of the names and project roles of each of their respective representatives and, if applicable, the names and roles of any alternatives.

SCHEDULE 3

Appointed panel of Experts

As notified by the Principal in writing.



SCHEDULE 4**Payment procedure****1. Payment claims**

At the end of each month in which the Members perform services under this Agreement with respect to each Dispute between the Principal and a Project Contractor, each Member must submit to both the Principal and the relevant Project Contractor an account for payment on account of the Member's fees and disbursements:

- (a) setting out the value of the services performed in accordance with this Agreement during the relevant month;
- (b) calculated in accordance with the Fees and Disbursements Letter for that Member; and
- (c) in such form and with such details and supporting documentation as the Principal and the relevant Project Contractor may reasonably require (including details of the time expended by the Member in performing the services).

2. Payment and notification of disputed amounts

- (a) Within 20 Business Days after receipt of the account for the month (submitted in accordance with section 1 of this Schedule 4):
 - (i) the Principal must pay:
 - (A) the Member's monthly retainer set out in the Fees and Disbursements Letter for that Member; and
 - (B) the Chair's attendance at the Joint Project Committee as set out in the Fees and Disbursements Letter for the Chair; and
 - (ii) the Principal and the relevant Project Contractor must each pay each Member ■■■ of the amount claimed by each Member for services performed (other than those in (i) above) during the month which is not disputed.
- (b) If the Principal or the relevant Project Contractor disagrees with the amount included in an account submitted by a Member then, within 10 Business Days of receipt of the relevant Member's account, the Principal or the relevant Project Contractor (as applicable) must notify the relevant Member in writing of the reasons for any amount which is disputed (with a copy to the Principal and the relevant Project Contractor).
- (c) If the Principal, the relevant Project Contractor and the relevant Member do not resolve the matter within 10 Business Days after the issue of the Principal's or the relevant Project Contractor's written notice, the Principal and the relevant Project Contractor (acting reasonably) must jointly determine the dispute. Any determination by the Principal and the relevant Project Contractor in respect of the amount payable must be given effect to by the Principal, the relevant Project Contractor and the relevant Member unless and until it is reversed or overturned in any subsequent court proceedings.

3. Goods and services tax

- (a) A party must pay GST on a taxable supply made to it under this Agreement, in addition to any consideration (excluding GST) that is payable for that taxable supply. The party making the taxable supply must provide a valid tax invoice to

the other party at or before the time that the other party is required to pay the GST.

- (b) Terms used in this section 3 have the meaning given to them in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

FORM OF FEES AND DISBURSEMENTS LETTER

[Date]

[Member details]

Dear [Member]

Fees and Disbursements for IDAR Panel

This letter (**Fees and Disbursements Letter**) forms part of the IDAR Panel Agreement between Sydney Metro, each Project Contractor and Members of the IDAR Panel dated on or about the date of this Fees and Disbursements Letter.

All defined terms used in this Fees and Disbursements Letter have the meaning given to them in the IDAR Panel Agreement.

The fees and disbursements due to [Member] in respect of his/her responsibilities as a Member of the IDAR Panel are agreed as follows:

Item	Work scope/description	Fee arrangement	Fee (excl. GST)
1.	Preparation for, and attendance at, one Project Briefing per month		
2.	<i>(Chair only)</i> Preparation for, and attendance at, Joint Project Committee meetings		
3.	All other work carried out in connection with this Agreement, other work set out in items (1) and (2)		
4.	Disbursements		
5.	Rates escalation		

Payment terms

Payment terms will be in accordance with Schedule 4 of the IDAR Panel Agreement.

Counterparts

This Fees and Disbursements Letter may be executed in counterparts, which taken together constitute one instrument. A party may execute this Fees and Disbursements Letter by executing any counterpart.

Acceptance

Please acknowledge your acceptance of the fees and disbursements of this letter by signing, dating and returning the enclosed copies to Sydney Metro.

Executed by SYDNEY METRO ABN 12 354 063 515 by its authorised delegate in the presence of:

Signature of witness

Signature of [insert position]

Full name of witness

Name of [insert position]

Signed by [Member] in the presence of:

Signature of Witness

Signature

Name of Witness in full

FEES AND DISBURSEMENTS LETTER

11th February 2019

Dear [REDACTED]

Fees and Disbursements for IDAR Panel

This letter (**Fees and Disbursements Letter**) forms part of the IDAR Panel Agreement between Sydney Metro, each Project Contractor and Members of the IDAR Panel dated on or about the date of this Fees and Disbursements Letter.

All defined terms used in this Fees and Disbursements Letter have the meaning given to them in the IDAR Panel Agreement.

The fees and disbursements due to [REDACTED] in respect of his/her responsibilities as a Member of the IDAR Panel are agreed as follows:

Item	Work scope/description	Fee arrangement	Fee (excl. GST)
1.	Preparation for, and attendance at, one Project Briefing per month	[REDACTED]	[REDACTED]
2.	(Chair only) Preparation for, and attendance at, Joint Project Committee meetings		
3.	All other work carried out in connection with this Agreement, other work set out in items (1) and (2)		
4.	Disbursements		
5.	Rates escalation		

Payment terms

Payment terms will be in accordance with Schedule 4 of the IDAR Panel Agreement.

Counterparts

This Fees and Disbursements Letter may be executed in counterparts, which taken together constitute one instrument. A party may execute this Fees and Disbursements Letter by executing any counterpart.

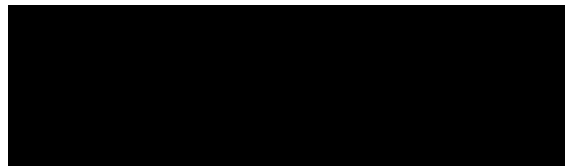
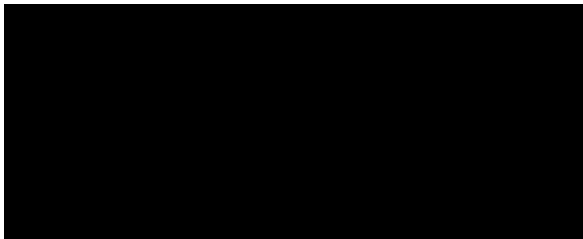
Acceptance

Please acknowledge your acceptance of the fees and disbursements of this letter by signing, dating and returning the enclosed copies to Sydney Metro.

Executed by **SYDNEY METRO ABN 12 354 063 515** by its authorised delegate in the presence of:



Signed by [redacted] in the presence of:



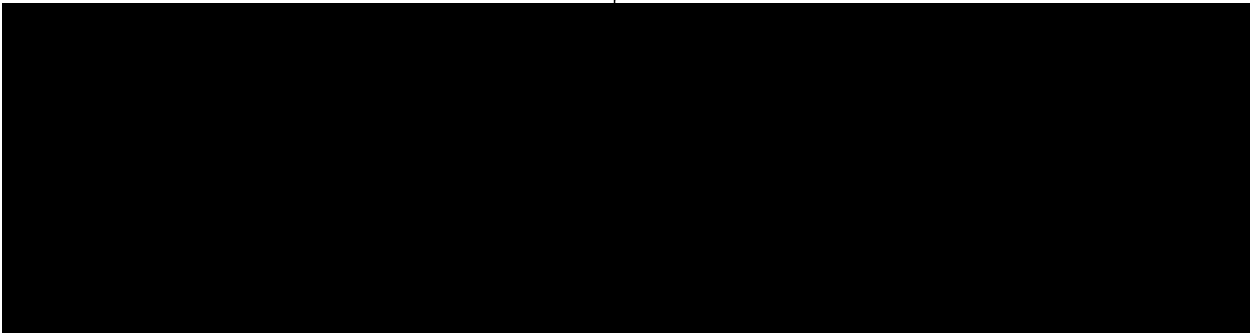
Counterparts

This Fees and Disbursements Letter may be executed in counterparts, which taken together constitute one instrument. A party may execute this Fees and Disbursements Letter by executing any counterpart.

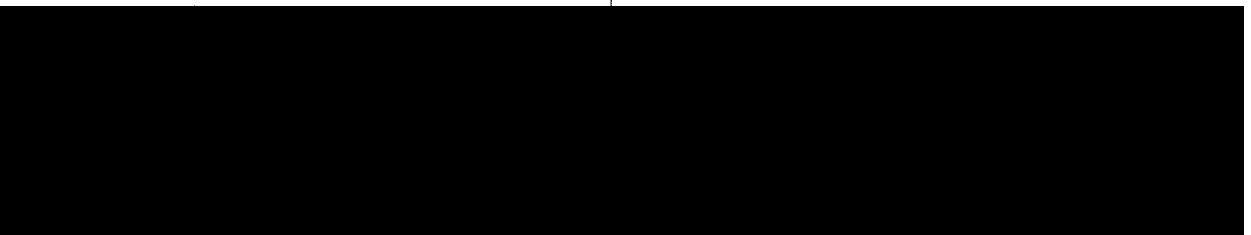
Acceptance

Please acknowledge your acceptance of the fees and disbursements of this letter by signing, dating and returning the enclosed copies to Sydney Metro.

Executed by SYDNEY METRO ABN 12 354 063 515 by its authorised delegate in the presence of:



Signed by [redacted] in the presence of:



FEES AND DISBURSEMENTS LETTER

11th February 2019

[Redacted]

Dear [Redacted]

Fees and Disbursements for IDAR Panel

This letter (**Fees and Disbursements Letter**) forms part of the IDAR Panel Agreement between Sydney Metro, each Project Contractor and Members of the IDAR Panel dated on or about the date of this Fees and Disbursements Letter.

All defined terms used in this Fees and Disbursements Letter have the meaning given to them in the IDAR Panel Agreement.

The fees and disbursements due to [Redacted] in respect of his/her responsibilities as a Member of the IDAR Panel are agreed as follows:

Item	Work scope/description	Fee arrangement	Fee (excl. GST)
1.	Preparation for, and attendance at, one Project Briefing per month	[Redacted]	[Redacted]
2.	(Chair only) Preparation for, and attendance at, Joint Project Committee meetings	[Redacted]	[Redacted]
3.	All other work carried out in connection with this Agreement, other work set out in items (1) and (2)	[Redacted]	[Redacted]
4.	Disbursements	[Redacted]	[Redacted]
5.	Rates escalation	[Redacted]	[Redacted]

Payment terms

Payment terms will be in accordance with Schedule 4 of the IDAR Panel Agreement.

Counterparts

This Fees and Disbursements Letter may be executed in counterparts, which taken together constitute one instrument. A party may execute this Fees and Disbursements Letter by executing any counterpart.

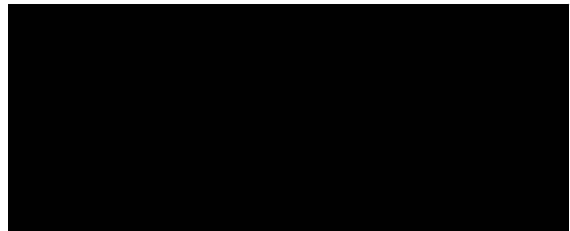
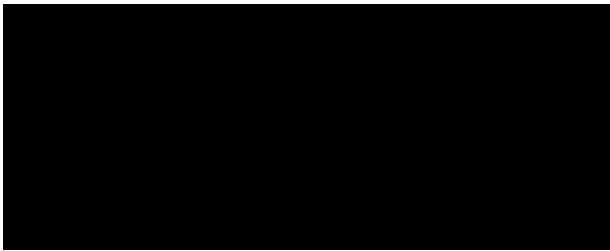
Acceptance

Please acknowledge your acceptance of the fees and disbursements of this letter by signing, dating and returning the enclosed copies to Sydney Metro.

Executed by **SYDNEY METRO ABN 12 354 063 515** by its authorised delegate in the presence of:



Signed by [redacted] in the presence of:



FEES AND DISBURSEMENTS LETTER11th February 2019

Dear [REDACTED]

Fees and Disbursements for IDAR Panel

This letter (**Fees and Disbursements Letter**) forms part of the IDAR Panel Agreement between Sydney Metro, each Project Contractor and Members of the IDAR Panel dated on or about the date of this Fees and Disbursements Letter.

All defined terms used in this Fees and Disbursements Letter have the meaning given to them in the IDAR Panel Agreement.

The fees and disbursements due to [REDACTED] in respect of his/her responsibilities as a Member of the IDAR Panel are agreed as follows:

Item	Work scope/description	Fee arrangement	Fee (excl. GST)
1.	Preparation for, and attendance at, one Project Briefing per month	[REDACTED]	[REDACTED]
2.	(Chair only) Preparation for, and attendance at, Joint Project Committee meetings	[REDACTED]	[REDACTED]
3.	All other work carried out in connection with this Agreement, other work set out in items (1) and (2)	[REDACTED]	[REDACTED]
4.	Disbursements	[REDACTED]	[REDACTED]
5.	Rates escalation	[REDACTED]	[REDACTED]

Payment terms

Payment terms will be in accordance with Schedule 4 of the IDAR Panel Agreement.

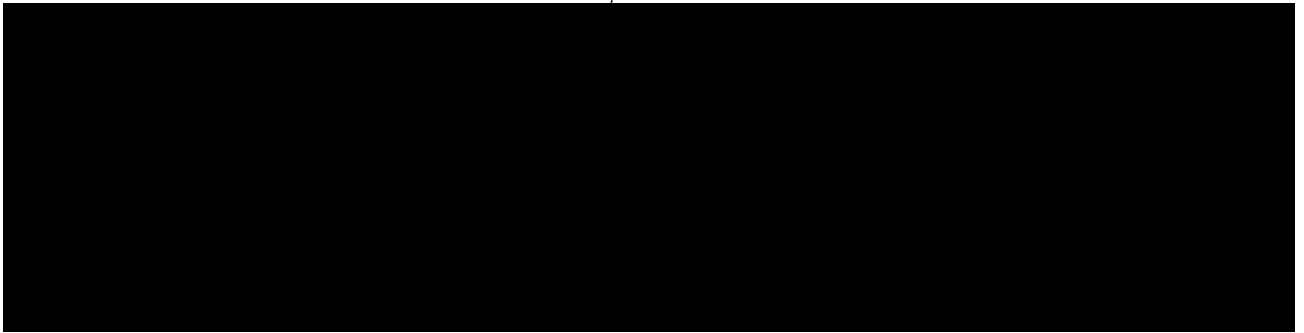
Counterparts

This Fees and Disbursements Letter may be executed in counterparts, which taken together constitute one instrument. A party may execute this Fees and Disbursements Letter by executing any counterpart.

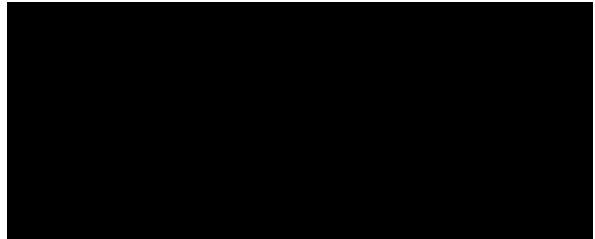
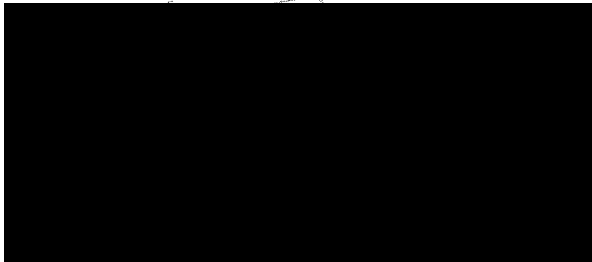
Acceptance

Please acknowledge your acceptance of the fees and disbursements of this letter by signing, dating and returning the enclosed copies to Sydney Metro.

Executed by SYDNEY METRO ABN 12 354 063 515 by its authorised delegate in the presence of:



Signed by [redacted] **in the presence of:**



Schedule 40. Pro Forma Property Documents

(Clause 1.1, clause 2.12 and clause 2.15)

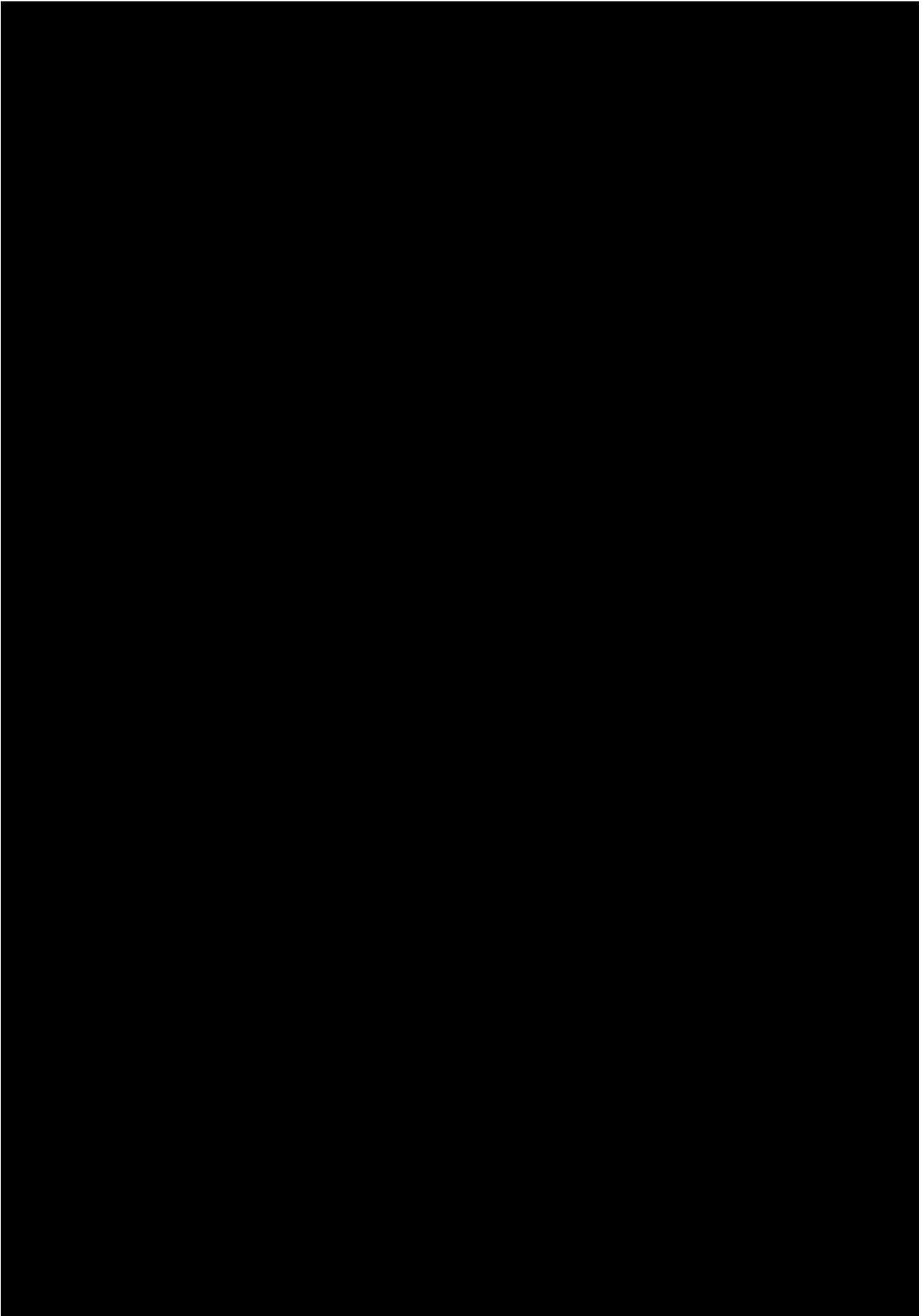
Part A: Pro-forma Adjoining Property Owner Agreement



Part B: Pro-forma Adjoining Property Easement



Schedule 41. Adjoining Properties



Schedule 42. Requirements of Adjoining Property Owner Agreements

(Clause 2.12)

1. NO LIMITATION ON CONTRACT

Nothing in this Schedule 42 limits the Principal's rights or affects the CN Contractor's obligations under any clause of this Contract.

2. ADJOINING PROPERTY OWNER AGREEMENT

(a) The CN Contractor acknowledges that the Principal:

(i) has entered into an Adjoining Property Owner Agreement with:

- (A) Loduku Pty Ltd in respect of 473 Pacific Highway, Crows Nest;
- (B) Clarke Street Crows Nest Holdings Pty Ltd in respect of 4 Clarke Street, Crows Nest;
- (C) The Owners - Strata Plan No. 72806 in respect of 6-8 Clarke Street, Crows Nest; and
- (D) The Owners – Strata Plan No. 52547 in respect of 14-20 Clarke Street, Crows Nest; and

(ii) will, subject to clause 2.15, enter into Adjoining Property Owner Agreements with the Adjoining Owners identified in Schedule 41,

together referred to in this clause 2 of this Schedule 42 as the **Adjoining Owners** and each an **Adjoining Owner**.

(b) The CN Contractor:

(i) must, in performing, the CN Contractor's Activities:

(A) unless otherwise directed by the Principal, comply with, satisfy, carry out and fulfil all of the obligations, conditions and requirements of each Adjoining Property Owner Agreement as if it were named as the Principal in each Adjoining Property Owner Agreement so as to ensure that the Principal is able to fully meet those obligations under each Adjoining Property Owner Agreement or otherwise at law except to the extent that each table below:

(aa) provides that the Principal will comply with, satisfy, carry out and fulfil the obligation, condition or requirement; or

(bb) limits the CN Contractor's obligation in respect of that obligation, condition or requirement; and

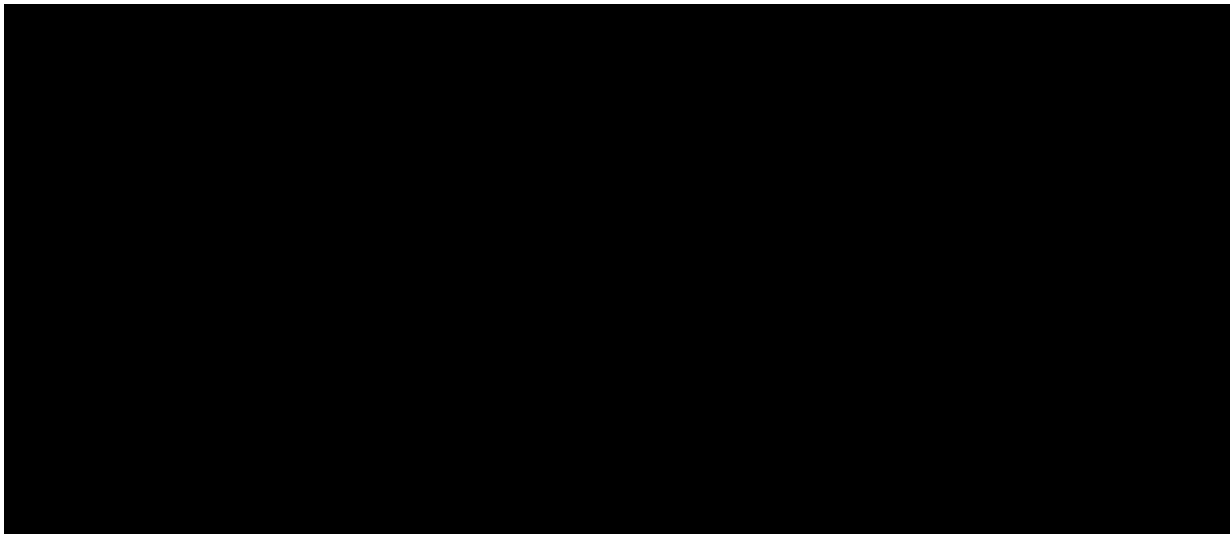
(B) comply with and fulfil any conditions, obligations or requirements allocated to the CN Contractor in this Schedule 42 that are additional to or more stringent or onerous than the conditions and requirements described in clause 2(b)(i)(A) of this Schedule 42;

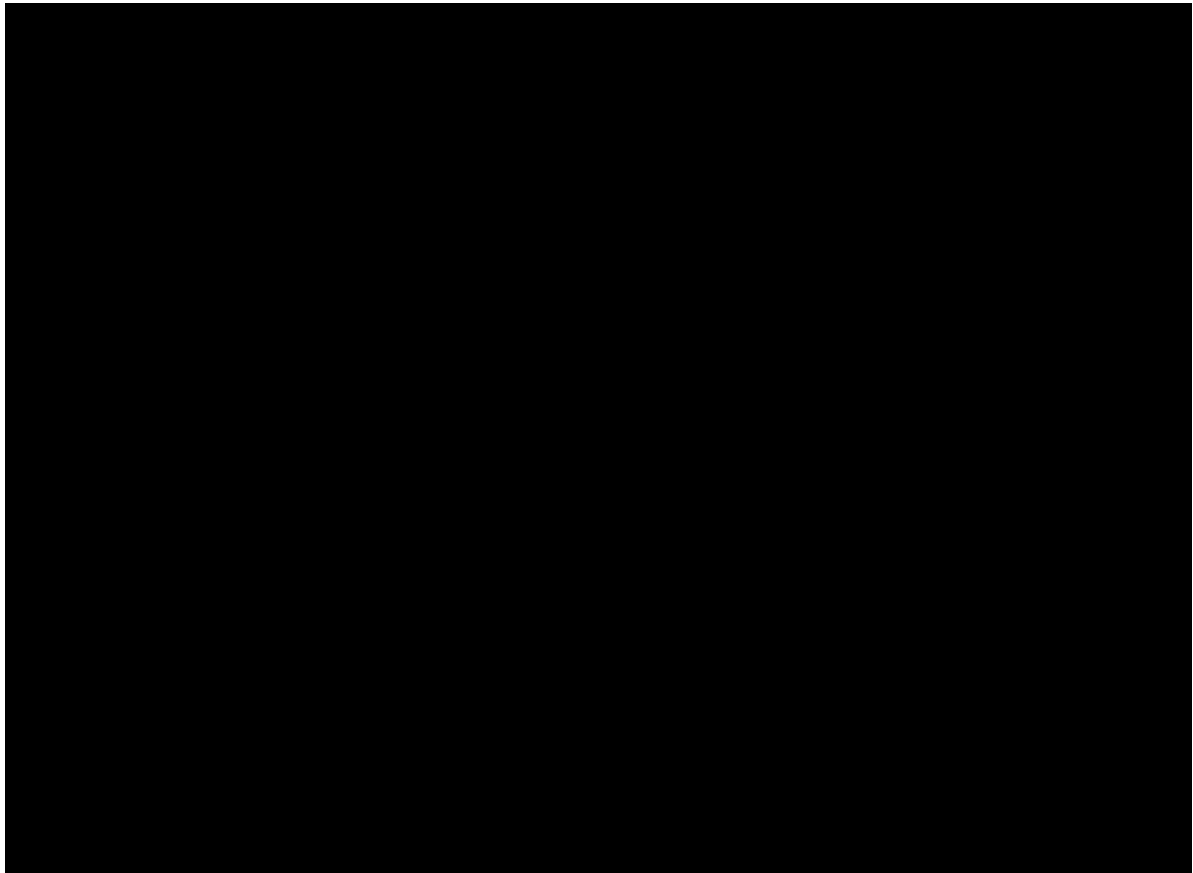
(ii) must assist the Principal, in any way that the Principal reasonably requires to enable the Principal to perform the obligations identified for the Principal to perform in the table below;

- (iii) may only exercise the Principal's discretions or rights under any Adjoining Property Owner Agreement:
 - (A) in accordance with this clause 2 of Schedule 42; or
 - (B) otherwise with the Principal's prior written consent (which must not be unreasonably withheld or delayed); and
 - (iv) may, subject to clause 2(b)(i) of this Schedule 42, exercise the Principal's right to obtain access to an Adjoining Property under an Adjoining Property Owner Agreement for the purpose of carrying out the CN Contractor's Activities.
- (c) Where an Adjoining Property Owner Agreement provides that:
- (i) the Principal must; or
 - (ii) the Principal must ensure that the CN Contractor will,
- do something or comply with an obligation, the CN Contractor must, in performing the CN Contractor's Activities, do that thing or comply with, satisfy, carry out and fulfil that obligation.
- (d) Where an Adjoining Property Owner Agreement provides for the Principal to provide a document, notice or information to an Adjoining Owner, the CN Contractor must:
- (i) subject to clause 2(d)(ii) of this Schedule 42, provide such document, notice or information to the Principal within a reasonable time sufficient for the Principal to review, comment on and approve the document, notice or information and provide the document, notice or information to an Adjoining Owner within the time period required by the Adjoining Property Owner Agreement; and
 - (ii) for the purposes of:
 - (A) clauses 3.2(a) and 3.2(b) of the Adjoining Owner Deed – Rock Anchor Licence dated 31 May 2017 between the Principal and Loduku Pty Ltd in respect of 473 Pacific Highway, Crows Nest;
 - (B) clause 3.2 of the Adjoining Owner Deed – Crane Access Easement and Rock Anchor Licence dated 22 February 2018 between the Principal and Clarke Street Crows Nest Holdings Pty Ltd in respect of 4 Clarke Street, Crows Nest;
 - (C) clause 3.2 of the Adjoining Owner Deed – Crane Access Easement and Rock Anchor Licence dated 13 February 2018 between the Principal and The Owners - Strata Plan No. 72806 in respect of 6-8 Clarke Street, Crows Nest;
 - (D) clause 3.2 of the Adjoining Owner Deed – Crane Access and Rock Anchor Licence dated 24 January 2018 between the Principal and The Owners – Strata Plan No. 52547 in respect of 14-20 Clarke Street, Crows Nest; and
 - (E) clause 2.2(a), clause 2.2(b), clause 3.2(a) and clause 4.2(a) of the Pro-forma Adjoining Property Owner Agreement,

submit the documentation directly to the Adjoining Owner with a copy to the Principal.

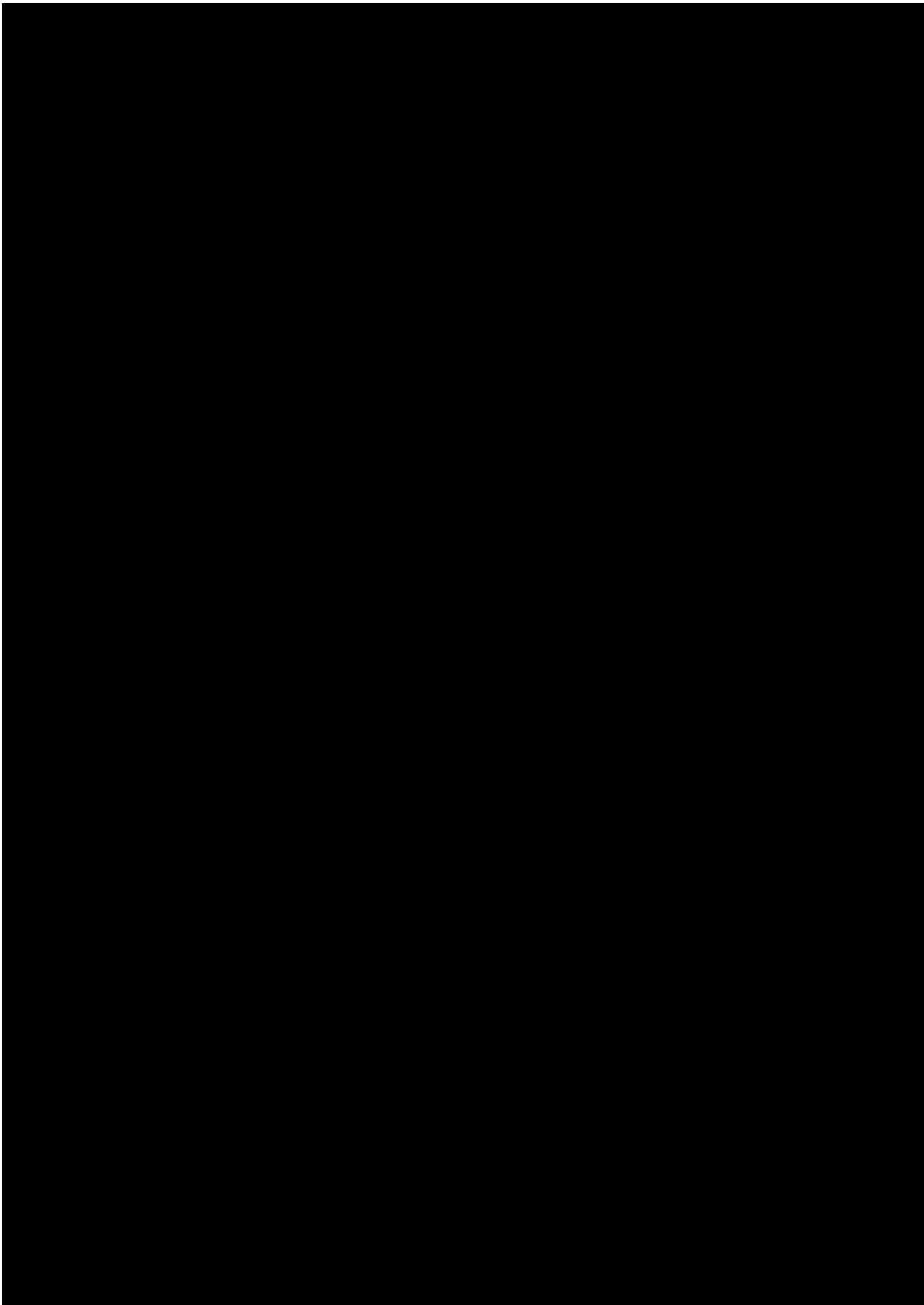
- (e) The CN Contractor must, in carrying out the CN Contractor's Activities:
 - (i) comply with any reasonable directions of the Principal's Representative in relation to compliance with the conditions and requirements of each Adjoining Property Owner Agreement or other requirements of each Adjoining Owner;
 - (ii) ensure that no act or omission of the CN Contractor constitutes, causes or contributes to any breach by the Principal of its obligations to any Adjoining Owner under any Adjoining Property Owner Agreement or otherwise at law; and
 - (iii) otherwise act consistently with the terms of each Adjoining Property Owner Agreement.
- (f) Whenever, pursuant to the terms of an Adjoining Property Owner Agreement, the Principal makes an acknowledgement or gives a release or warranty, indemnity, or covenant to an Adjoining Owner under any clause of an Adjoining Property Owner Agreement then, subject to what is provided in this Schedule 42 and the other terms of this Contract, the CN Contractor is deemed to make the same acknowledgement or give the same release or warranty, indemnity, or covenant to the Principal on the same terms and conditions as the acknowledgement, release or warranty, indemnity, or covenant made or given by the Principal under each Adjoining Property Owner Agreement in the same way as if the relevant terms of the acknowledgement, release or warranty, indemnity or covenant were set out in full in this Contract.
- (g) The CN Contractor acknowledges that to the extent that an Adjoining Property Owner Agreement contains a provision pursuant to which an Adjoining Owner is stated to make no representation as to a state of affairs, the CN Contractor agrees that the Principal similarly makes no representation to the CN Contractor in respect of that state of affairs in the same way as if the relevant terms of each Adjoining Property Owner Agreement were set out fully in this Contract.
- (h) Nothing in any Adjoining Property Owner Agreement or this Schedule 42 limits the Principal's rights or the CN Contractor's obligations in relation to Substantial Completion, Completion or the rectification of Defects under this Contract.





- (j) The CN Contractor will only be liable to the Principal for any liability arising out of:
 - (i) clause 20 of the Adjoining Owner Deed – Rock Anchor Licence dated 31 May 2017 between the Principal and Loduku Pty Ltd in respect of 473 Pacific Highway, Crows Nest;
 - (ii) clause 21 of the Adjoining Owner Deed – Crane Access Easement and Rock Anchor Licence dated 22 February 2018 between the Principal and Clarke Street Crows Nest Holdings Pty Ltd in respect of 4 Clarke Street, Crows Nest;
 - (iii) clause 21 of the Adjoining Owner Deed – Crane Access Easement and Rock Anchor Licence dated 13 February 2018 between the Principal and The Owners - Strata Plan No. 72806 in respect of 6-8 Clarke Street, Crows Nest;
 - (iv) clause 21 of the Adjoining Owner Deed – Crane Access and Rock Anchor Licence dated 24 January 2018 between the Principal and The Owners – Strata Plan No. 52547 in respect of 14-20 Clarke Street, Crows Nest; and
 - (v) clause 17 of the Pro-forma Adjoining Property Owner Agreement,as follows:
 - (vi) to the extent that the Principal incurs a liability to an Adjoining Owner arising out of or in connection with a breach of contract by, a negligent act or omission of, or injury, death or damage caused by, the CN Contractor or its Associates; or
 - (vii) where the CN Contractor would otherwise be liable to the Principal pursuant to a provision of this Contract in respect of the matter.

- (k) Except as otherwise set out under this Contract, the CN Contractor:
 - (i) bears the full risk of:
 - (A) it complying with the obligations under this Schedule 42; and
 - (B) any acts or omissions of any Adjoining Owner or its employees, agents, contractors, officers or persons legally entitled and authorised to occupy any part of any Adjoining Property; and
 - (ii) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with:
 - (A) the risks referred to in clause 2(k)(i) of this Schedule 42; or
 - (B) any acts or omissions of any Adjoining Owner or its employees, agents, contractors, officers or persons legally entitled and authorised to occupy any part of any Adjoining Property.
- (l) Terms used in the tables below that are capitalised but are not defined in this Contract have the same meaning as in the relevant Adjoining Property Owner Agreement.



Schedule 43. Adjoining Property Easements

(Clause 2.12)

This Schedule 43 includes the documents which are referred to below and are included in Schedule 50 as electronic files:

- Easement for Rock Anchors over part Common Property in Strata Plan 62905 – 10 Clarke Street, Crows Nest (Gazette Notice No. 22, 23 February 2018);
- Easement for Rock Anchors over part Common Property in Strata Plan 80874 – 26 Clarke Street, Crows Nest (Gazette Notice No. 22, 23 February 2018);
- Easement for Rock Anchors over part Lot 1 in Deposited Plan 25009 – 471 Pacific Highway, Crows Nest (Gazette Notice No. 22, 23 February 2018);
- Easement for Rock Anchors over part Lot 2 in Deposited Plan 25009 – 469A Pacific Highway, Crows Nest (Gazette Notice No. 22, 23 February 2018);
- Easement for Rock Anchors over part Common Property in Strata Plan 90263 – 545-553 Pacific Highway, Crows Nest (Gazette Notice No. 22, 23 February 2018); and
- Easement for Rock Anchors over part Lots 21-24 Section 8 Deposited Plan 2872 – 28-34 Clarke Street, Crows Nest (Gazette Notice No. 22, 23 February 2018).

Schedule 44. Requirements of Adjoining Property Easements

(Clause 2.12)

1. NO LIMITATION ON CONTRACT

Nothing in this Schedule 44 limits the Principal's rights or affects the CN Contractor's obligations under any clause of this Contract.

2. ADJOINING PROPERTY EASEMENTS

(a) The CN Contractor acknowledges that the Principal:

(i) has acquired the following Adjoining Property Easements:

- (A) Easement for Rock Anchors over part Common Property in Strata Plan 62905 – 10 Clarke Street, Crows Nest (Gazette Notice No. 22, 23 February 2018);
- (B) Easement for Rock Anchors over part Common Property in Strata Plan 80874 – 26 Clarke Street, Crows Nest (Gazette Notice No. 22, 23 February 2018);
- (C) Easement for Rock Anchors over part Lot 1 in Deposited Plan 25009 – 471 Pacific Highway, Crows Nest (Gazette Notice No. 22, 23 February 2018);
- (D) Easement for Rock Anchors over part Lot 2 in Deposited Plan 25009 – 469A Pacific Highway, Crows Nest (Gazette Notice No. 22, 23 February 2018);
- (E) Easement for Rock Anchors over part Common Property in Strata Plan 90263 – 545-553 Pacific Highway, Crows Nest (Gazette Notice No. 22, 23 February 2018); and
- (F) Easement for Rock Anchors over part Lots 21-24 Section 8 Deposited Plan 2872 – 28-34 Clarke Street, Crows Nest (Gazette Notice No. 22, 23 February 2018); and

(ii) may acquire further Adjoining Property Easements.

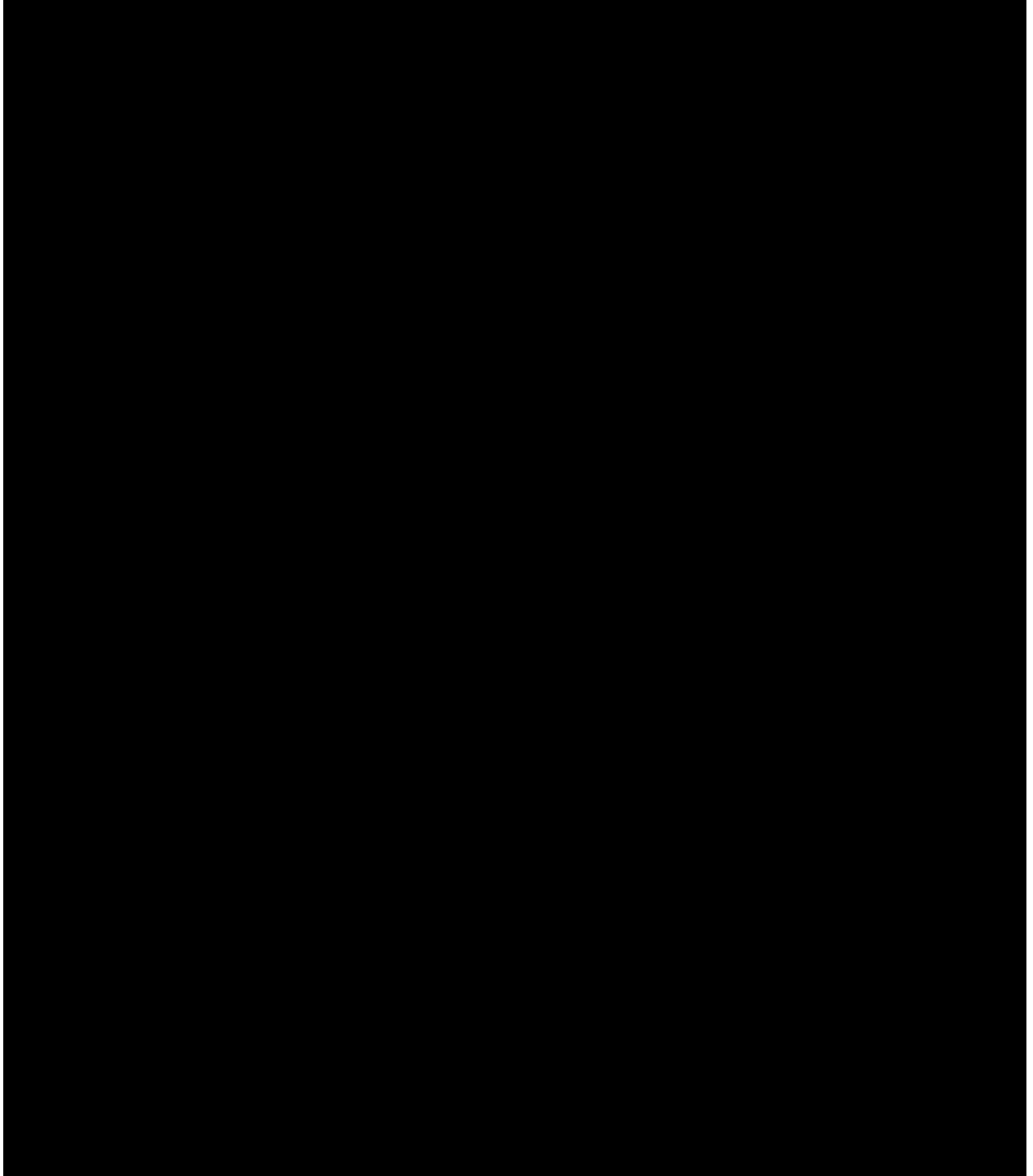
(b) The CN Contractor:

(i) must, in performing the CN Contractor's Activities:

- (A) unless otherwise directed by the Principal, comply with, satisfy, carry out and fulfil all of the obligations, conditions and requirements of each Adjoining Property Easement as if it were named as the Principal in each Adjoining Property Easement, so as to ensure that the Principal is able to fully meet those obligations under each Adjoining Property Easement or otherwise at law except to the extent that the relevant tables below:
 - (aa) provide that the Principal will comply with, satisfy, carry out and fulfil the obligation, condition or requirement; or
 - (bb) limit the CN Contractor's obligation in respect of that obligation, condition or requirement; and

- (B) comply with and fulfil any conditions, obligations or requirements allocated to the CN Contractor in this Schedule 44 that are additional to or more stringent or onerous than the conditions and requirements described in clause 2(b)(i)(A) of this Schedule 44;
 - (ii) must assist the Principal, in any way that the Principal reasonably requires to enable the Principal to perform the obligations identified for the Principal to perform in the relevant tables below;
 - (iii) may only exercise the Principal's discretions or rights under any Adjoining Property Easement:
 - (A) in accordance with this clause 2 of Schedule 44; or
 - (B) otherwise with the Principal's prior written consent (which must not be unreasonably withheld or delayed); and
 - (iv) may, subject to clause 2(b)(i) of this Schedule 44, exercise the Principal's right to obtain access to an Adjoining Property under an Adjoining Property Easement, and all other rights under an Adjoining Property Easement, for the purpose of carrying out the CN Contractor's Activities.
- (c) Where an Adjoining Property Easement provides that:
- (i) the Principal must; or
 - (ii) the Principal must ensure that the CN Contractor will,
- do something or comply with an obligation, the CN Contractor must, in performing the CN Contractor's Activities, do that thing or comply with, satisfy, carry out and fulfil that obligation.
- (d) Where an Adjoining Property Easement provides for the Principal to provide a document, notice or information to an Adjoining Owner, the CN Contractor must:
- (i) subject to clause 2(d)(ii) of this Schedule 44, provide such document, notice or information to the Principal within a reasonable time sufficient for the Principal to review, comment on and approve the document, notice or information and provide the document, notice or information to an Adjoining Owner within the time period required by the Adjoining Property Easement; and
 - (ii) for the purpose of clauses 2.2(b)(i) and 3.2(b)(i) of the Pro-forma Adjoining Property Easement, submit the documentation directly to the Adjoining Owner with a copy to the Principal.
- (e) The CN Contractor must, in carrying out the CN Contractor's Activities:
- (i) comply with any reasonable directions of the Principal's Representative in relation to compliance with the conditions and requirements of each Adjoining Property Easement or other requirements of each Adjoining Owner;
 - (ii) ensure that no act or omission of the CN Contractor constitutes, causes or contributes to any breach by the Principal of its obligations under any Adjoining Property Easement or otherwise at law; and

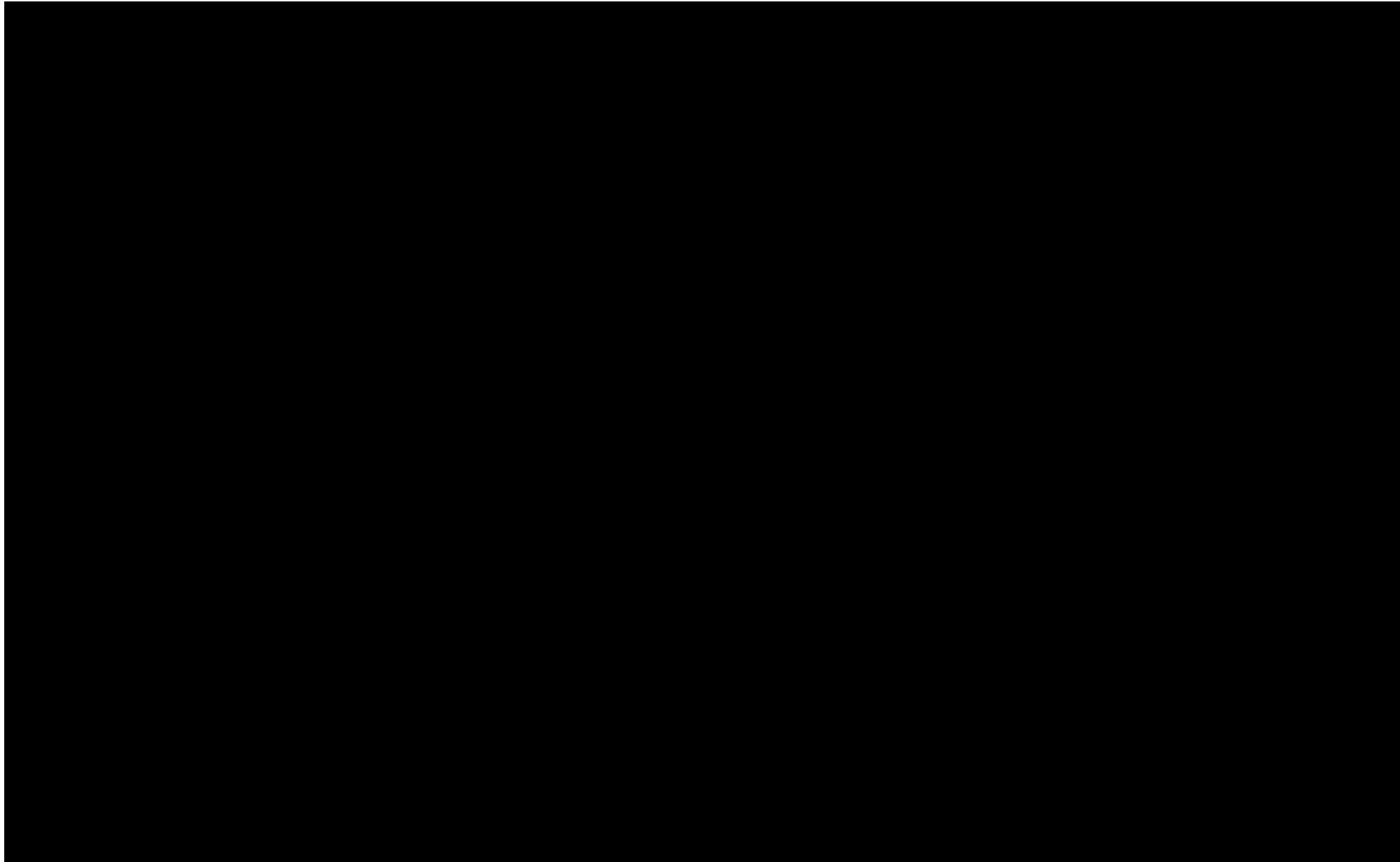
- (iii) otherwise act consistently with the terms of each Adjoining Property Easement.
- (f) Nothing in any Adjoining Property Easement or this Schedule 44 limits the Principal's rights or the CN Contractor's obligations in relation to Substantial Completion, Completion or the rectification of Defects under this Contract.



- (h) The Principal will be responsible for any compensation payable to an Adjoining Owner in respect of the acquisition of any Adjoining Property Easement.
- (i) Except as otherwise set out under this Contract, the CN Contractor:

- (i) bears the full risk of:
 - (A) it complying with the obligations under this Schedule 44; and
 - (B) any acts or omissions of any Adjoining Owner or its employees, agents, contractors, officers or persons legally entitled and authorised to occupy any part of any Adjoining Property; and
- (ii) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with:
 - (A) the risks referred to in clause 2(i)(i) of this Schedule 44; or
 - (B) any acts or omissions of any Adjoining Owner or its employees, agents, contractors, officers or persons legally entitled and authorised to occupy any part of any Adjoining Property.
- (j) Terms used in the relevant tables below that are capitalised but are not defined in this Contract have the same meaning as in the respective Adjoining Property Easements.

Schedule 45. Handover Works

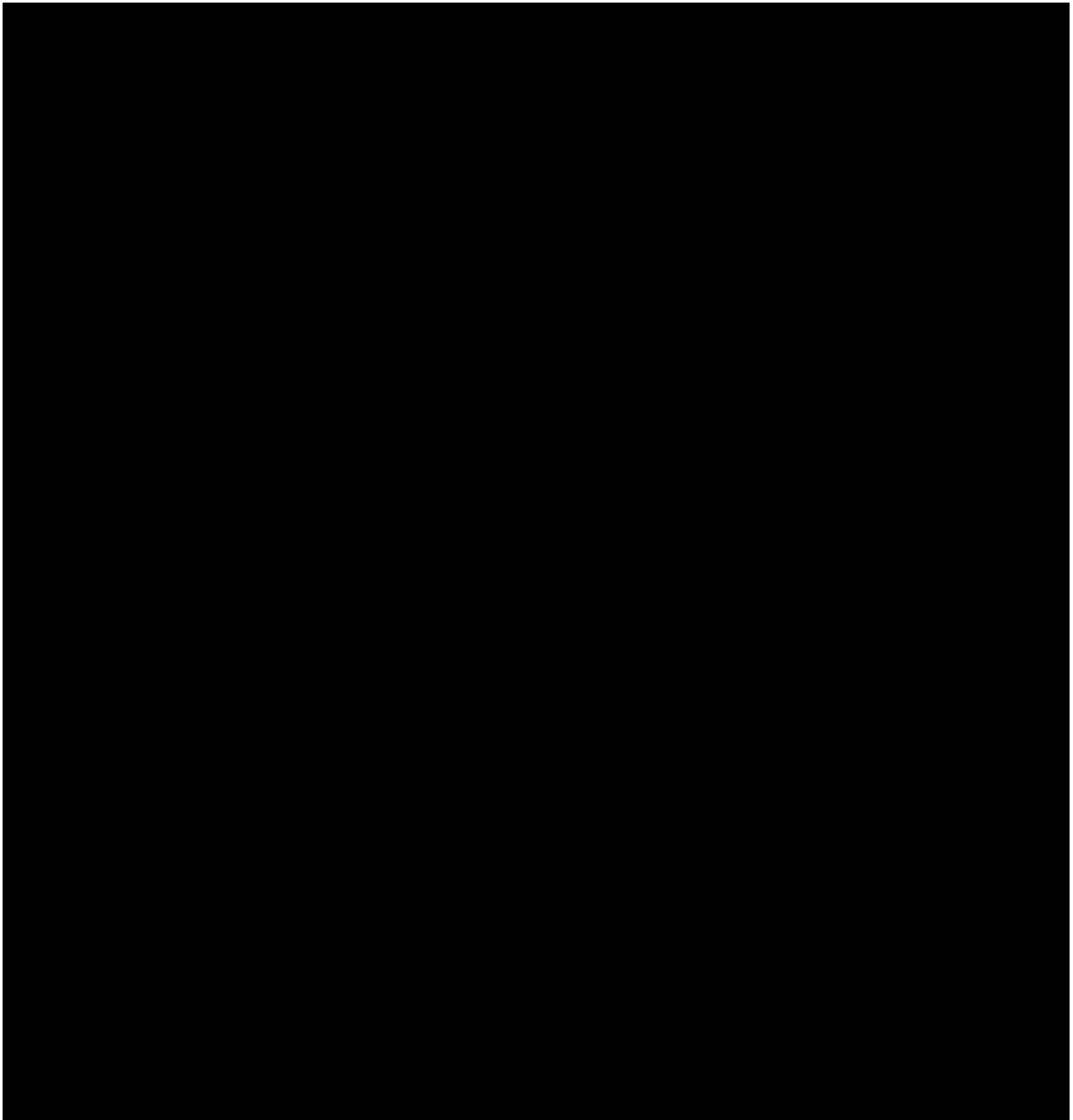


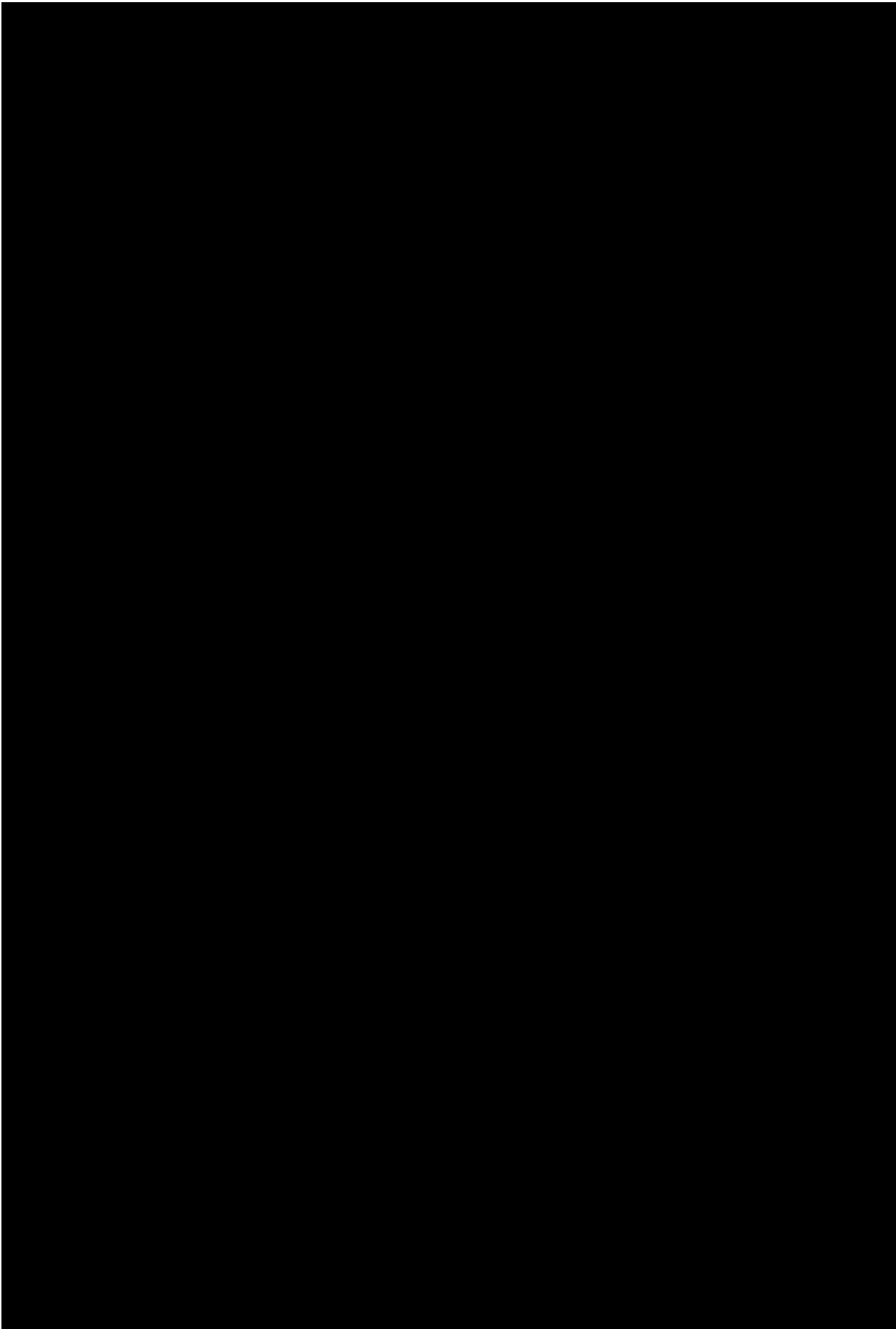
Schedule 46. Home Building Act Requirements

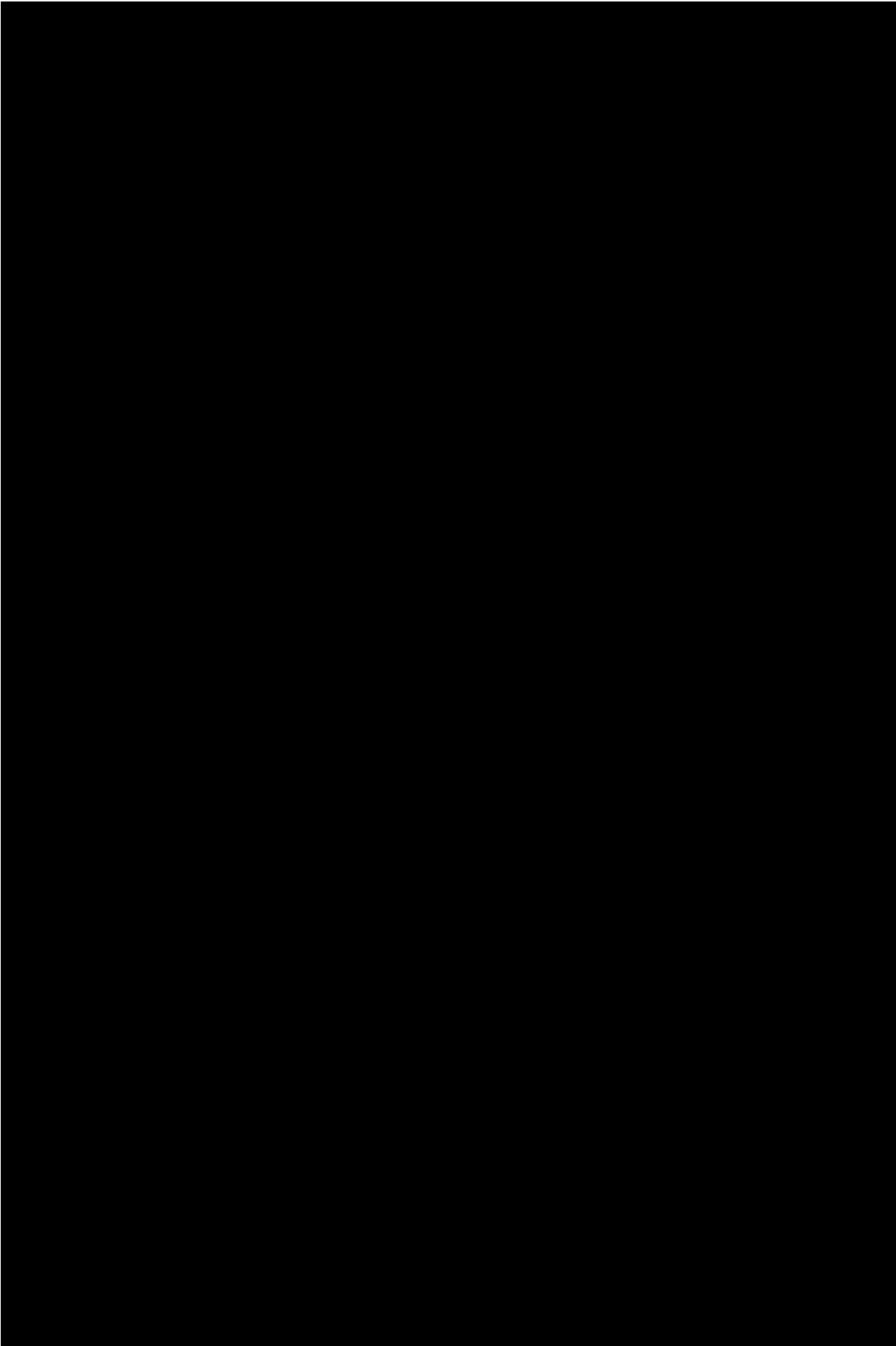
(Clause 2.6A)

1. CONTRACT PROVISIONS ALLOWING VARIATION TO THE CONTRACT PRICE

- (a) The parties acknowledge and agree that:
- (i) in accordance with section 7(5) of the Home Building Act, this Contract must contain a warning that the contract price (as that term is defined in the Home Building Act) may be varied under this Contract and an explanation of the effect of the provision allowing variation of the price; and
 - (ii) the description of each such provision set out in section 1(b) below is a general explanation for the purposes of section 7(5) of the Home Building Act only and does not affect the interpretation of this Contract.









2. **HOME BUILDING ACT REQUIREMENTS**

2.1 **Application of this section 2 of Schedule 46**

This section 2 of Schedule 46 applies if and to the extent that the Home Building Act and the Home Building Regulation operate in respect to this Contract.

2.2 **Warranties under section 18B of the Home Building Act**

- (a) The CN Contractor provides the following warranties in respect of the Residential CODD Works:
- (i) that the Residential CODD Works will be done with due care and skill and in accordance with the plans and specifications set out in this Contract;
 - (ii) that all materials supplied by the CN Contractor will be good and suitable for the purpose for which they are used and that, unless otherwise stated in this Contract, those materials will be new;
 - (iii) that the Residential CODD Works will be done in accordance with, and will comply with, the Home Building Act or any other law;
 - (iv) that the Residential CODD Works will be done with due diligence and within the time stipulated in this Contract;
 - (v) that, if the Residential CODD Work consists of the construction of a dwelling, the making of alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling, the Residential CODD Works will result, to the extent of the Residential CODD Works conducted, in a dwelling that is reasonably fit for occupation as a dwelling; and
 - (vi) that the Residential CODD Works and any materials used in doing the Residential CODD Works will be reasonably fit for the purpose or result specified in this Contract.
- (b) The CN Contractor acknowledges that:
- (i) the warranties set out in this section 2.2 form part of this Contract by virtue of the requirements of the Home Building Act and cannot be excluded; and
 - (ii) no provision of this Contract can reduce, restrict or remove the statutory warranties set out in this section 2.2.
- (c) The warranties in this section 2.2 supplement, and do not limit, reduce or derogate from, the other provisions of and warranties given under this Contract.

2.3 **Fees**



- (b) provide the Principal with a certificate evidencing that the relevant insurances under the Home Building Act have been obtained immediately following the issue of such certificates of insurance (if required under the Home Building Act).

2.4 Requirements under Schedule 2 of the Home Building Act

- (a) All Residential CODD Work done under this Contract will comply with:
 - (i) the *Building Code of Australia* (to the extent required under the EP&A Act, including any regulation or other instrument made under the EP&A Act);
 - (ii) all other relevant codes, standards and specifications that the work is required to comply with under any law; and
 - (iii) the conditions of any relevant development consent or complying development certificate.
- (b) Despite paragraph (a), the CN Contractor is not liable for a failure to comply with paragraph (a) if the failure relates solely to:
 - (i) a design or specification prepared by or on behalf of the Principal (but not by or on behalf of the CN Contractor); or
 - (ii) a design or specification required by the Principal, if the CN Contractor has advised the Principal in writing that the design or specification contravenes paragraph (a).

2.5 Termination

This Contract may be terminated in the circumstances provided by the general law and this does not prevent the parties agreeing to additional circumstances in which this Contract may be terminated.

Schedule 47. Home Building Regulation Checklist

(Clause 2.6A(c))

Checklist for owners entering into contracts for residential building work worth more than \$20,000 (on and from 1 March 2015).

No.	Item	Yes	No
1.	Have you checked that contractor holds a current contractor licence?	Yes	No
2.	Does the licence cover the type of work included in the contract?	Yes	No
3.	Is the name and number on the contractor's licence the same as on the contract?	Yes	No
4.	Is the work to be undertaken covered in the contract, drawings or specification?	Yes	No
5.	Does the contract clearly state a contract price or contain a warning that the contract price is not known?	Yes	No
6.	If the contract price may be varied, is there a warning and an explanation about how it may be varied?	Yes	No
7.	Are you aware of the cooling-off provisions relating to the contract?	Yes	No
8.	Is the deposit within the legal limit of 10%?	Yes	No
9.	Does the contract include details of the progress payments payable under the contract?	Yes	No
10.	Do you understand the procedure to make a variation to the contract?	Yes	No
11.	Are you aware of who is to obtain any council or other approval for the work?	Yes	No
12.	Do you understand that you are not required to pay the contractor a deposit or any progress payments until the contractor has given you a certificate of insurance under Part 6 or Part 6B of the Home Building Act (except where the work is of a kind that does not require insurance)?	Yes	No

No.	Item	Yes	No
13.	Does the contract include either of the following: (a) the cost of the insurance under Part 6 of the Home Building Act, (b) the cost of the alternative indemnity product under Part 6B of the Home Building Act?	Yes	No
14.	Has the contractor given you a copy of the Consumer Building Guide, which provides key information about your rights and responsibilities under NSW's home building laws and where to get more information?	Yes	No
15.	Does the contract include a statement about the circumstances in which the contract may be terminated?	Yes	No

Signatures

Do not sign the Contract unless you have read and understand the clauses as well as the notes and explanations contained in this Contract and this Schedule 47.

If you have answered "no" to any question in the checklist, you may not be ready to sign this Contract.

Both the CN Contractor and the Principal should retain an identical signed copy of this Contract including the drawings, specifications and other attached documents. Make sure that you initial all attached documents and any amendments or deletions to this Contract.

Signed copy of contract

Under the Home Building Act a signed copy of this Contract must be given to the Principal within 5 Business Days after this Contract is entered into.

Insurance under Part 6 or Part 6B of the Home Building Act

The CN Contractor must provide you with a certificate of insurance under Part 6 or Part 6B of the Home Building Act before the CN Contractor commences work and before the CN Contractor can request or receive any payment.

Acknowledgement of owners

I/We have been given a copy of the Consumer Building Guide and I/we have read and understand it.

I/We have completed the checklist and answered "Yes" to all items on it.

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

Signature of Delegate

Signature of witness

Name

Name

Schedule 48. Site Office Lease and Crane Hire Option Agreement

(Clause 3.16)

Part A: Site Office Lease – Deed of Assignment





Deed of Assignment of Lease

Sydney Metro

ABN 12 354 063 515

A.W. Edwards Pty Ltd

ABN 76 000 045 849

[REDACTED]

2020

THIS DEED OF ASSIGNMENT OF LEASE is made on the date specified in Item 1

BETWEEN:

- (1) The party named in Item 2 (the **Assignor**); and
- (2) The party named in Item 3 (the **Assignee**).

RECITALS:

- (A) The Assignor is entitled to possession of the Premises under the Lease.
- (B) The Assignor wishes to transfer its interest in the Lease to the Assignee, subject to this deed.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

Business Day means a day on which banks are open for general banking business in the state or territory in which the Premises are located.

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

Lease means the lease of the Premises dated [REDACTED] between the Lessor and Assignor.

Lessee's Covenants means all the obligations of the lessee under the Lease whether or not they touch and concern the land.

Lessor means [REDACTED]

NSW Trains means NSW Trains, the body corporate constituted by section 37(1) of the Transport Administration Act.

Premises means the premises described in Item 5.

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

Schedule means the schedule contained in this deed.

Sydney Trains means Sydney Trains, the body corporate constituted by section 36(1) of the Transport Administration Act.

TAHE means Transport Asset Holding Entity of New South Wales, a corporation constituted by section 4(1) of the Transport Administration Act.

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

Transfer Date means the date specified in Item 4.

Transport Administration Act means the *Transport Administration Act 1998* (NSW).

1.2 Interpretation

In this deed unless the context otherwise requires:

- (a) unless defined in clause 1.1, a word or phrase has the same meaning as in the Lease;
- (b) a heading is for reference only. It does not affect the meaning or interpretation of this deed;
- (c) a covenant or agreement on the part of two or more persons binds them jointly and severally;
- (d) the singular includes the plural and vice versa;
- (e) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (f) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (g) a reference to any party to this deed or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (h) a reference to any statute, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, a legislative provision substituted for it, and any regulation or other statutory instrument issued under it;
- (i) a reference to a gender includes a reference to each gender;
- (j) a reference to a body (including an institute, association or authority), whether statutory or not which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or substantially succeeds to its powers or functions;
- (k) a reference to includes means includes but without limitation;
- (l) where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning;
- (m) a reference to time is to the time in the place where a thing is to be done, unless specified otherwise;
- (n) a reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to this deed;
- (o) a reference to **dollars** or **\$** is to Australian currency;
- (p) a reference to an **Item** is to the relevant **Item** in the Schedule;
- (q) terms defined in the GST Law have the same meaning in clauses about GST;
- (r) if a party is a member of a GST group, references to GST which the party must pay and to input tax credits which the party is entitled to claim include GST which the

representative member of the GST group of which the party is a member must pay and input tax credits to which the representative member is entitled; and

- (s) if the day on or by which a person must do something under this deed is not a Business Day, the person must do it on or by the next Business Day.

1.3 **Multiple parties**

If either the Assignor or Assignee is made up of more than one person:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.

2. **ASSIGNMENT OF LEASE**

On and from the Transfer Date:

- (a) the Assignor assigns its interest in the Lease to the Assignee; and
- (b) the Assignee accepts the Assignor's interest in the Lease.

3. **ASSIGNEE BOUND BY LEASE**

3.1 **Assignee bound by Lease**

Subject to clause 3.2, on and from the Transfer Date the Assignee must perform the Lessee's Covenants as if it is a party to the Lease and named in the Lease as lessee.

3.2 **Payments under the Lease**

- (a) Subject to clause 3.2(b), the Assignee must pay to the Lessor all money payable under the Lease on and from the Transfer Date, including rent and any contribution to outgoings for the building in which the Premises are located, even if the payment is calculated with reference to a period of time beginning before the Transfer Date.
- (b) In respect of any money payable under the Lease (including any contribution to outgoings) which has been prepaid by the Assignor for a period including or after the Transfer Date, the Assignee must reimburse the Assignor in respect of that amount within 5 Business Days of the Transfer Date.
- (c) For the avoidance of doubt, the parties agree that to the extent amounts are invoiced prior to the Transfer Date which relate to periods on or after the Transfer Date (whether in respect of rent, outgoings, car parking licence fees or otherwise):
 - (i) the Assignor will provide to the Assignee any such invoices it receives; and
 - (ii) the Assignee will be required to pay any such invoices.

4. **NO RELIANCE**

The Assignee warrants that it has not relied on any express or implied warranty or representation made by or on behalf of the Lessor in entering into this deed.

5. **INDEMNITY FROM ASSIGNEE**

The Assignee indemnifies the Assignor against any loss or damage incurred by the Assignor on and after the Transfer Date in respect of the Lessee's Covenants.

6. **FORMS FOR REGISTRATION**

Within seven days of the date of this deed the Assignee must give to the Assignor in registrable form a transfer of the Lease (01TL) executed by the Assignee together with authority for the Assignor to insert the registered number of the Lease in part (A) of form 01TL.

7. **COSTS OF DEFAULT**

The Assignee must pay to the Lessor the Lessor's costs and expenses, including legal costs and expenses on a full indemnity basis, in relation to any default or potential default by the Assignee under this deed.

8. **NOTICES**

8.1 **Notices**

For the purpose of this clause notice means a notice, consent, approval or other communication under this deed.

8.2 **How to give a notice**

A notice must be signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (a) delivered to that person's address;
- (b) sent by pre paid mail to that person's address; or
- (c) sent in electronic form (such as email).

8.3 **When a notice is given**

A notice given to a person in accordance with this clause is treated as having been given and received:

- (a) if delivered, on the day of delivery if delivered before 5.00 pm on a Business Day, otherwise on the next Business Day;
- (b) if sent by pre-paid mail, on the third Business Day after posting; or
- (c) if it is sent in electronic form - when the addressee's email system logs the email message as having been received:

- (i) if it is transmitted by 5.00 pm (local time in the place of receipt) on a Business Day – on that Business Day; or
- (ii) if it is transmitted after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day – on the next Business Day.

8.4 Address for notices

For the purpose of this clause the address and email address of a person are those set out below that person's name in the relevant Item in the Schedule or another address of which that person may from time to time give notice to each other person.

9. GST

- (a) Subject to paragraph (b), if GST is payable in respect of any supply made by a supplier under this deed (**GST Amount**), the recipient must pay to the supplier an amount equal to the GST payable on the supply at the same time that the consideration for the supply is to be provided.
- (b) The supplier must provide a tax invoice to the recipient which complies with the requirements of the GST Law before the supplier is entitled to payment of the GST Amount under paragraph (a).
- (c) If an adjustment event occurs in relation to a taxable supply under this deed:
 - (i) the supplier must provide an adjustment note to the recipient within 7 days of becoming aware of the adjustment; and
 - (ii) any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.

10. TRANSFER OF FUNCTIONS OR PUBLIC TRANSPORT AGENCY ASSETS

- (a) The parties acknowledge that:
 - (i) a Public Transport Agency may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, rights, liabilities or responsibilities of a Public Transport Agency may be transferred to or vested in another entity;
 - (ii) if a Public Transport Agency is reconstituted, renamed, dissolved, replaced or restructured and/or some or all of that Public Transport Agency's powers, functions, rights or responsibilities are transferred to or vested in another entity, then unless otherwise notified by the Public Transport Agency, references in this deed to that Public Transport Agency must, subject to any facilitative legislation, be deemed to refer, as applicable, to the reconstituted, renamed, restructured or new entity or entity replacing that Public Transport Agency to the extent that such entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and
 - (iii) a Public Transport Agency may be required to or may, at its absolute discretion, elect to (including as a result of changes to New South Wales government policy or directions) acquire, or dispose of, any property or assets.

- (b) The Assignee acknowledges and agrees that it must, to the extent required by a Public Transport Agency and without limiting any facilitative legislation, negotiate in good faith any variations required to this deed, or any replacement agreement or agreements for this deed to give effect to a Public Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.
- (c) The Assignee will be taken for all purposes to have consented to, and will not have, and no Public Transport Agency will be liable for, any claim as a result of any action, matter or circumstance referred to in, or contemplated by this clause 10.
- (d) For the purposes of this clause 10 "another entity" means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation.

11. GENERAL

11.1 Variation of rights

The exercise of a right partially or on one occasion does not prevent any further exercise of that right in accordance with the terms of this document. Neither a forbearance to exercise a right nor a delay in the exercise of a right operates as an election between rights or a variation of the terms of this document.

11.2 Amendment

This deed may only be amended in writing, signed by the parties.

11.3 Attorneys

Each attorney who executes this deed on behalf of a party declares that the attorney has no notice of the revocation or suspension by the grantor or in any manner of the power of attorney under the authority of which the attorney executes this deed and has no notice of the death of the grantor.

11.4 No fetter

Nothing in this deed abrogates or fetters, or is intended to abrogate or fetter, the lawful and proper discharge by the Assignor of any of its statutory responsibilities under any relevant laws, whether in relation to the subject matter of this deed or otherwise.

11.5 Severability

Any provision in this deed which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this deed or affecting the validity or enforceability of that provision in any other jurisdiction.

11.6 Counterparts

This deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

11.7 Further assurance

Each party must do, sign, execute and deliver and must procure that each of its employees and agent does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required of it or them by notice from another party to carry out and give full effect to this deed and the rights and obligations of the parties under it.

11.8 Governing law and jurisdiction

- (a) This deed is governed by the law in force in New South Wales.
- (b) The parties irrevocably submit to the jurisdiction of the courts of New South Wales and any court that may hear appeals from any of those courts, for any proceedings in connection with this deed.

11.9 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this deed or any part of it.

11.10 No waiver

A failure to exercise or a delay in exercising any right, power or remedy under this deed does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

11.11 No merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this deed.

11.12 Stamp duty

The Assignee is responsible for paying and must pay any duty payable in respect of this deed.

11.13 Entire agreement

This deed is the entire agreement of the parties on the subject matter. The only enforceable obligations and liabilities of the parties in relation to the subject matter are those that arise out of the provisions contained in this deed. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this deed.

SCHEDULE

Item 1

Date of Deed

[REDACTED]

Item 2

Assignor

Assignor: Sydney Metro ABN 12 354 063 515
Address: PO Box K659, Haymarket NSW 1240
Email: [REDACTED]
Attention: [REDACTED]

Item 3

Assignee

Assignee: A.W. Edwards Pty Ltd ABN 76 000 045
849
Address: Level 1, 131 Sailors Bay Road,
Northbridge, NSW 2063
Email: [REDACTED]
Attention: [REDACTED]

Item 4

Transfer Date

[REDACTED]

Item 5

Premises

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

EXECUTED by the parties as a deed.

Assignor

EXECUTED on behalf of **SYDNEY METRO ABN 12 354 063 515** by its authorised delegate in the presence of:

Signature of witness

Signature of authorised delegate

Name of witness

Name and position of authorised delegate

Assignee

EXECUTED by **A.W. EDWARDS PTY LTD** (ABN 76 000 045 849) in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Signature of director/secretary

Name

Name

Part B: Crane Hire Option Agreement – Deed of Novation

DEED OF NOVATION made at _____ on _____ 2020

BETWEEN:

- (1) A.W. Edwards Pty Ltd ABN 76 000 045 849 of Level 2, 131 Sailors Bay Road, Northbridge, NSW 2063 (**CN Contractor**);
- (2) Sydney Metro (ABN 12 354 063 515) a New South Wales agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) of Level 43, 680 George Street, Sydney NSW 2000 (**Sydney Metro**); and
- (3) _____
(**Crane Supplier**).

RECITALS:

- (A) By a contract titled 'Sydney Metro City & Southwest - Crows Nest Station Development – Crane Hire Option Agreement' dated 6 April 2020 between Sydney Metro and the Crane Supplier (**Option Agreement**), the Crane Supplier agreed to grant an option to enter into a hire agreement for cranes on the terms set out in the Option Agreement.
- (B) By a contract titled 'Sydney Metro City & Southwest Crows Nest Station Development Construct Only Delivery Deed' dated on or about the date of this deed between Sydney Metro and the CN Contractor (**Contract**), Sydney Metro engaged the CN Contractor to construct the Crows Nest Station development.
- (C) Sydney Metro and the CN Contractor wish to effect a novation of the Option Agreement.

THIS DEED WITNESSES that in consideration, among other things, of the mutual promises contained in this deed, the parties agree:

- (1) the CN Contractor must perform all of the obligations of Sydney Metro under the Option Agreement which are not performed at the date of this deed;
- (2) the CN Contractor is bound by the Option Agreement as if it had originally been named in the Option Agreement in place of Sydney Metro;
- (3) the Crane Supplier must perform its obligations under, and be bound by, the Option Agreement as if the CN Contractor was originally named in the Option Agreement in place of Sydney Metro; and
- (4) this deed is governed by the laws of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of that state.

EXECUTED by the parties as a deed:

EXECUTED by **A.W. EDWARDS PTY LTD**
(ABN 76 000 045 849) in accordance with
section 127 of the *Corporations Act 2001*
(Cth):

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by **SYDNEY METRO** (ABN 12
354 063 515) by its authorised delegate, in
the presence of:

Signature of witness

Signature of authorised delegate

Name

Name

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

Signature of director

Signature of director/secretary

Name

Name

Schedule 49. CN Contractor's Personnel

(Clauses 2.1(d), 9.4(a) and 9.4(b)(i))

Role ref	Position	Minimum requirements for qualifications, skills and experience	Nominated Personnel	Organisation
A1.1	Project Director	<ul style="list-style-type: none"> • Relevant recognised qualifications • Recent relevant experience on similar projects • Recognised and demonstrated competence in senior project management • Experience in the design and construction of infrastructure or buildings • Primary contact for the Principal reporting to Greg D'Arcy, CEO, A W Edwards • Develop and implement all management plans 		
A1.2	Project Director, Start-up	<ul style="list-style-type: none"> • Relevant recognised qualifications • Recent relevant experience on similar projects • Recognised and demonstrated competence in senior project management • Experience in the design and construction of infrastructure or buildings • Reporting to the Project Director • Develop and implement all management plans 		
A2	Commercial Manager	<ul style="list-style-type: none"> • Relevant recognised qualifications • Recent relevant experience on similar projects • Recognised and demonstrated competence in commercial management • Experience in the design and construction of infrastructure or buildings 		

Role ref	Position	Minimum requirements for qualifications, skills and experience	Nominated Personnel	Organisation
		<ul style="list-style-type: none"> • Reporting to the Project Director • Develop and implement the commercial management plan 		
A3	Planning & Program (Schedule) Manager	<ul style="list-style-type: none"> • Relevant recognised qualifications • Recent relevant experience on similar projects • Recognised and demonstrated competence in program management • Experience in the design and construction of infrastructure or buildings • Reporting to the Construction Manager • Develop and implement the Program Management Plan and reports 		
A4.1	Construction Manager	<ul style="list-style-type: none"> • Relevant recognised qualifications • Recent relevant experience on similar projects • Recognised and demonstrated competence in construction management • Experience in the construction of infrastructure or buildings • Reporting to the Project Director • Develop and implement the Construction Management Plan and reports 		
A4.2	Senior Site Manager	<ul style="list-style-type: none"> • Relevant recognised qualifications • Recent relevant experience on similar projects • Recognised and demonstrated competence in construction management • Experience in the construction of infrastructure or buildings 		

Role ref	Position	Minimum requirements for qualifications, skills and experience	Nominated Personnel	Organisation
		<ul style="list-style-type: none"> • Reporting to the Construction Manager • Develop and implement the Construction Management Plan and reports 		
A5.1	Health & Safety Manager	<ul style="list-style-type: none"> • Relevant recognised qualifications • Recent relevant experience on similar projects • Recognised and demonstrated competence in Safety performance excellence • Experience in the design and construction of infrastructure or buildings • Reporting to the Project Director • Develop and implement the Health and Safety Management Plan and reports 		
A5.2	Safety Coordinator	<ul style="list-style-type: none"> • Relevant recognised qualifications • Recent relevant experience on similar projects • Recognised and demonstrated competence in Safety performance excellence • Experience in the design and construction of infrastructure or buildings • Reporting to the Health & Safety Manager • Develop and implement the Health and Safety Management Plan and reports 		
A6	Traffic & Logistics Manager	<ul style="list-style-type: none"> • Relevant recognised qualifications • Recent relevant experience on similar projects • Recognised and demonstrated competence in construction management 		

Role ref	Position	Minimum requirements for qualifications, skills and experience	Nominated Personnel	Organisation
		<ul style="list-style-type: none"> • Experience in the construction of infrastructure or buildings • Reporting to the Construction Manager • Develop and implement the Traffic & Logistics Plan and reports 		
A7	Engineering & Temporary Works Manager	<ul style="list-style-type: none"> • Relevant recognised qualifications • Recent relevant experience on similar projects • Recognised and demonstrated competence in engineering management • Experience in the construction of infrastructure or buildings • Reporting to the Construction Manager • Develop and implement temporary works design and AEO assure structural construction 		
A8.1	Interface Contracts Manager	<ul style="list-style-type: none"> • Relevant recognised qualifications • Recent relevant experience on similar projects • Recognised and demonstrated competence in senior project management • Experience in the design and construction of infrastructure or buildings • Reporting to the Project Director • Develop and implement the Interface Management Plan 		
A8.2	Room Data Coordinator	<ul style="list-style-type: none"> • Relevant recognised qualifications • Recent relevant experience on similar projects • Recognised and demonstrated competence in design management and documentation 		

Role ref	Position	Minimum requirements for qualifications, skills and experience	Nominated Personnel	Organisation
		<ul style="list-style-type: none"> • Experience in the design and construction of infrastructure or buildings • Reporting to the Interface Contracts Manager • Develop and implement the Room Data information 		
A9	Systems Engineering & Assurance Manager	<ul style="list-style-type: none"> • Relevant recognised qualifications • Recent relevant experience on similar projects • Recognised and demonstrated competence in Systems Engineering & • Safety Assurance • Experience in the design and construction of infrastructure or buildings • Reporting to the Interface Contracts Manager • Develop and implement the AEO engineering and assurance plans and procedures 		
A10	Planning & Environment Manager	<ul style="list-style-type: none"> • Relevant recognised qualifications • Recent relevant experience on similar projects • Recognised and demonstrated competence in planning and environmental management • Experience in the design and construction of infrastructure or buildings • Reporting to the Project Director • Develop and implement the Construction Environmental Management Plan 		
A11	Testing & Commissioning Manager	<ul style="list-style-type: none"> • Relevant recognised qualifications • Recent relevant experience on similar projects 		

Role ref	Position	Minimum requirements for qualifications, skills and experience	Nominated Personnel	Organisation
		<ul style="list-style-type: none"> • Recognised and demonstrated competence in testing and commissioning management • Experience in the design and construction of infrastructure or buildings • Reporting to the Interface Contracts Manager • Develop and implement the Testing & Commissioning Plan and interface management procedures 		
B1	Sustainability Manager	<ul style="list-style-type: none"> • Relevant recognised qualification • Recent relevant experience on similar projects • Recognised and demonstrated competence • Experience in the design and construction of sustainable infrastructure or buildings • Primary contact on sustainability matters • Develop and implement the Sustainability Management Plan • Green Start Accredited Professional • Employed until Substantial Completion or As Built Rating achieved 		
B2	Stakeholder, Community Relations, & Public Affairs Manager	<ul style="list-style-type: none"> • Qualifications and recent experience relating to planning and delivery of major infrastructure projects similar to Sydney Metro • Recognised and appropriate qualifications • Active industry experience and demonstrated competence • Must be appointed as a full-time role 30 calendar days from the date of contract award and continue until Substantial Completion of the last Portion 		

Role ref	Position	Minimum requirements for qualifications, skills and experience	Nominated Personnel	Organisation
		<ul style="list-style-type: none"> Responsible for managing the Place Manager and Graphic Designer Responsible for implementing the requirements including interfacing with Interface Contractors and stakeholders, and the implementation of the Community Communications Strategy and Business Management Plan 		
B3	Place Manager	<ul style="list-style-type: none"> Qualifications and recent experience relating to planning and delivery of major infrastructure projects similar to Sydney Metro Recognised and appropriate qualifications Active industry experience and demonstrated competence Must be appointed as a full-time role 8 weeks from the date of contract award and continue until Substantial Completion of the last Portion Engage with the local community 		
B4	Workforce Development and Industry Participation Manager	<ul style="list-style-type: none"> Degree, Diploma or Advanced Diploma in Adult Education, Vocational Education, Organisational Development, Education or Human Resources Certificate IV or equivalent in 'Training and Assessment Demonstrated and appropriate learning and development work experience in a similar role within the rail or construction industries Demonstrable and significant experience dealing at a strategic level with stakeholders including but not limited to education providers, Registered Training Organisations, skill services organisations and procurement 		

Role ref	Position	Minimum requirements for qualifications, skills and experience	Nominated Personnel	Organisation
		<ul style="list-style-type: none"> • Excellent communication and leadership skills • Experience in managing or delivering nationally Accredited programs within recognised industry Training Packages • Experience in delivering workforce development and industry participation within infrastructure or construction projects; and • Experience working with the implementation and delivery of Diversity and Inclusion programs 		

Schedule 50. Electronic Files

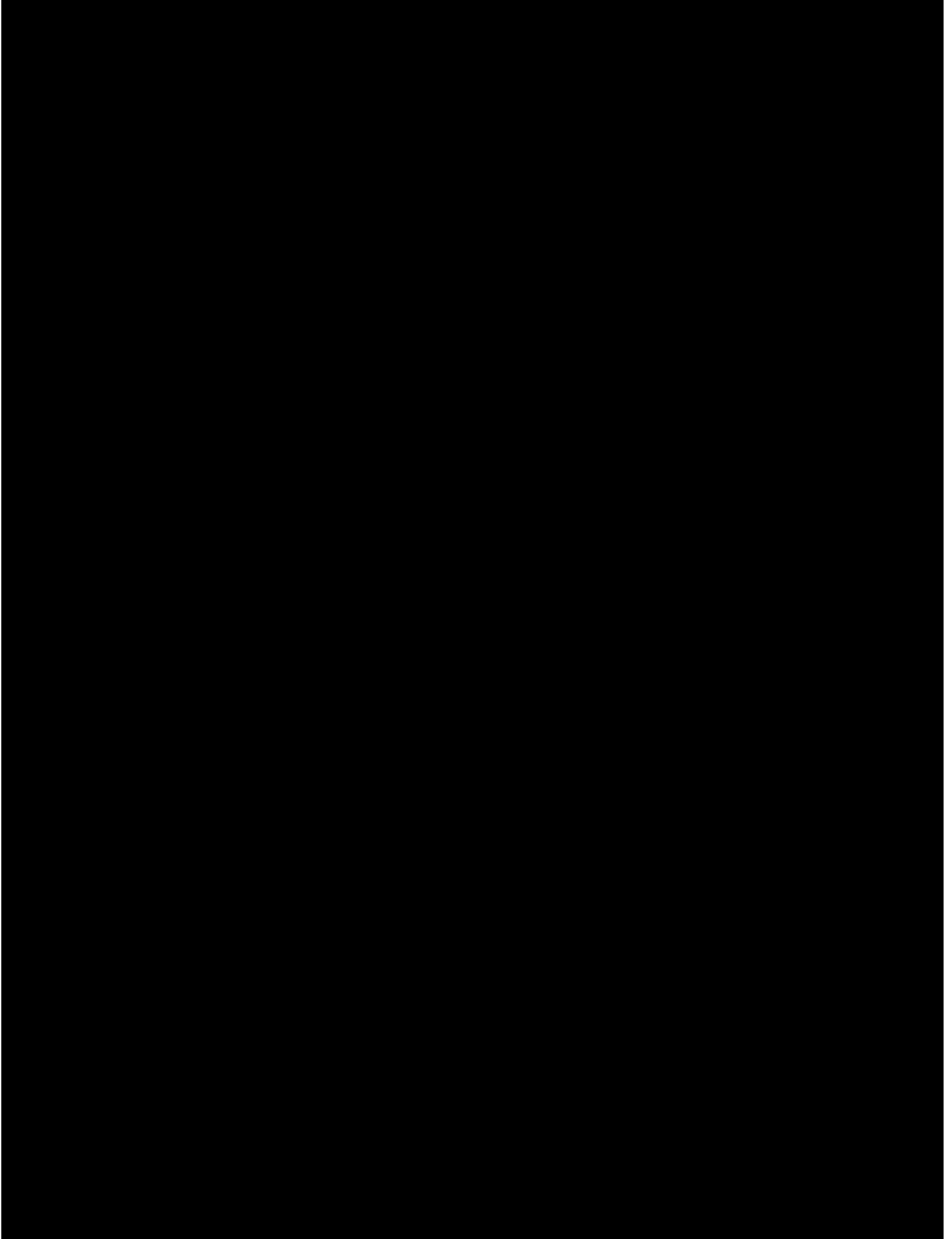


EXHIBIT A – STATION SPECIFICATION



EXHIBIT B – PRINCIPAL’S INSURANCE POLICIES



For the purposes of clause 13.4 and clause 13.5 of the General Conditions, refer to the following insurance policy documents which are included as electronic files in Schedule 50:

No.	Principal's Insurance	Relevant documents	Electronic file reference
1.	Contract works (material damage) insurance	Contract Works Insurance Policy	
2.	Public and products liability insurance	Public and Products Liability Insurance Policy	
		Excess Public & Products Liability Insurance Endorsements naming Sydney Metro a NSW Government agency constituted by section 3D of the <i>Transport Administration Act 1988</i> (NSW) as the named insured	

EXHIBIT C – NOT USED



EXHIBIT D – INITIAL PROJECT PLANS



EXHIBIT E – PROJECT PLANS – STRATEGIES
