

# **Government Information (Public Access) Act 2009**

## **Explanatory Table**

### **Victoria Cross Integrated Station Development Station Delivery Deed**

#### **Contract Number: 504**

Capitalised terms in this table have the meanings given to them in the Victoria Cross Integrated Station Development Station Delivery Deed (**SDD**), unless the context indicates otherwise.

In preparing this explanatory table, the Principal has:

- (a) identified the reason(s) under the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**) for each redaction; and
- (b) weighed each redaction against the following key public interest considerations for disclosure:
  - (i) promoting open discussion of public affairs, enhancing government accountability or contributing to positive and informed debate on issues of public importance;
  - (ii) creating public awareness and understanding on issues of public importance;
  - (iii) enhancing government transparency and accountability;
  - (iv) informing the public about the operations of the agency;
  - (v) ensuring effective oversight of the expenditure of public funds and the best use of public resources; and
  - (vi) ensuring fair commercial competition within the economy.

Sydney Metro notes that the SWTC and Schedule F1 contain a large number of files. Due to the number of files and technical size limitations, these documents to the SDD have not been made available on Sydney Metro's contracts register. Sydney Metro has determined to make such information available by inspection subject to any overriding public interest against disclosure. Please contact Sam Field at [Sam.Field@transport.nsw.gov.au](mailto:Sam.Field@transport.nsw.gov.au) to arrange a time to inspect.

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
<b>GENERAL CONDITIONS</b>				
1.	Contents page	The information redacted is defined terms and clauses which have been redacted entirely in the general conditions.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor in relation to certain provisions under the SDD, and therefore the level of risk that the VC Contractor was willing to price and accept to perform the Project Works; and</li> <li>b) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information would reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
2.	Clause 2.5	The information redacted is the entire clause.	<p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out sensitive information regarding the project risks;</li> <li>b) exposing the redacted information would reveal the apportionment of risk between the parties in relation to key risks, and therefore the level of risk that the VC Contractor was willing to accept. Exposing this information may also provide insight into the parties' views on their respective potential capabilities and the likelihood of key events arising; and</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
3.	Clauses 3.1(a), (d) and (e) ( <i>Unconditional undertakings</i> )	The information redacted is a number, a dollar amount and entire clauses.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the: <ul style="list-style-type: none"> <li>(i) sum that the VC Contractor must provide</li> </ul> </li> </ul>

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			<p>structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>to the Principal as an unconditional undertaking;</p> <p>(ii) number of unconditional undertakings that the VC Contractor must provide to the Principal; and</p> <p>(iii) Principal's rights and obligations regarding recourse.</p> <p>b) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor of default events, and therefore the level of risk that the VC Contractor was willing to price and accept in relation to those events. Exposing this information may also provide insight into the VC Contractor's views on its potential capabilities and likelihood of default events arising;</p> <p>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests; and</p> <p>d) the public interest has been served by revealing the fact that an unconditional undertaking is required from the VC Contractor. In light of the disclosure of this information there is an overriding public interest against the disclosure of the abovementioned information.</p>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
				<b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.
4.	Clause 3.2 (a) <i>(Release of Security)</i>	The information redacted is a date, time periods and percentage numbers.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure for the following reasons:</p> <ul style="list-style-type: none"> <li>a) the redacted information outlines the percentage of the Contract Sum that is to be held in Security, and the time period in which the Principal must release the Security to the VC Contractor;</li> <li>b) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests; and</li> <li>c) the public interest has been served by revealing the fact that Security is required from the VC Contractor. In light of the disclosure of this information there is an overriding public interest against the disclosure of the precise amount of the undertaking, the date and the time periods for release.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
5.	Clauses 3.5	The information redacted is the	<i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-</i>	The Principal weighed the competing public interest considerations and determined that there was an

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
		entire clause	<p><i>confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>overriding public interest against disclosure for the following reasons:</p> <ul style="list-style-type: none"> <li>a) the redacted information is commercially sensitive and, if disclosed, may provide a unique insight into the VC Contractor's cost structures;</li> <li>b) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor, and therefore the level of risk that the VC Contractor was willing to price and accept in relation to those events. Exposing this information may also provide insight into the VC Contractor's views on its potential capabilities and likelihood of default events arising; and</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
6.	Clauses 4.2 (b)(i)(A), (b)(iii), (ba) and (d)(ii) ( <i>Principal's Design Stage 1 Documents</i> )	The information redacted is entire clauses, references to redacted schedules and a time period.	<p><i>Section 32(1)(d), item 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could diminish the competitive commercial value of information to a person and prejudice a person's legitimate</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out details of the VC Contractor's approach to design development; and</li> <li>b) revealing the information could place the parties at</li> </ul>

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			<p>business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore, disclosure of the information could reduce the competitive commercial value of the information and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
7.	Clauses 4.6 (a)(ii) and (b)(i)(B) ( <i>Certification of Design Documentation</i> )	The information redacted is entire clauses.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out provisions concerning the certification of Design Documentation;</li> <li>b) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor in relation to reliance on design certifications, and therefore the level of risk that the VC Contractor was willing to price and accept. Exposing this information may provide insight into the VC Contractor's views on the likelihood of certain risks arising; and</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could prejudice the parties' legitimate business, commercial or</li> </ul>

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				<p>financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
8.	Clause 5.3(c)(ii) ( <i>Fit for purpose</i> )	The information redacted is the entire clause.	<p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure for the following reasons:</p> <ul style="list-style-type: none"> <li>a) the redacted information is commercially sensitive information regarding the VC Contractor's fitness for purpose obligations regarding the Property Works;</li> <li>b) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor, and therefore the level of risk that the VC Contractor was willing to price and accept in relation to those events. Exposing this information may also provide insight into the VC Contractor's views on its potential capabilities and likelihood of default events arising; and</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>

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9.	Clause 5.7(f)	The information redacted is part of a clause.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure for the following reasons:</p> <ul style="list-style-type: none"> <li>a) the redacted information: <ul style="list-style-type: none"> <li>(i) is commercially sensitive information regarding the allocation of risk between the Principal and the VC Contractor;</li> <li>(ii) relates a definition that has been redacted in its entirety;</li> </ul> </li> <li>b) the efficacy of the redaction to the relevant definition is dependent on references to that definition also being redacted. The explanation for the redaction of this definition is set out in row 52 of this table;</li> <li>c) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor, and therefore the level of risk that the VC Contractor was willing to price and accept in relation to those events. Exposing this information may also provide insight into the VC Contractor's views on its potential capabilities and likelihood of default events arising; and</li> <li>d) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business,</li> </ul>

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				<p>commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
10.	Clause 5.9(c) <i>(Responding to notifications and complaints regarding property damage)</i>	The information redacted is a dollar amount.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the value of property damage which triggers an obligation for the VC Contractor to rectify;</li> <li>b) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor and therefore the level of risk that the VC Contractor was willing to accept. Exposing this information may provide insight into the VC Contractor's views on its potential capabilities and the likelihood of certain risks arising; and</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>

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11.	Clause 6.5(c)	The information redacted is part of a clause.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure for the following reasons:</p> <ul style="list-style-type: none"> <li>a) the redacted information is commercially sensitive information regarding the allocation of risk between the Principal and the VC Contractor;</li> <li>b) the redacted information relates to a definition that has been redacted;</li> <li>c) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor, and therefore the level of risk that the VC Contractor was willing to price and accept in relation to those events. Exposing this information may also provide insight into the VC Contractor's views on its potential capabilities and likelihood of default events arising; and</li> <li>d) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
12.	Clause 7.2(a)	The information redacted is part of a	<i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-</i>	The Principal weighed the competing public interest considerations and determined that there was an

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		clause.	<p><i>confidence provisions</i>" at section 1 of Schedule 4</p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>overriding public interest against disclosure for the following reasons:</p> <ul style="list-style-type: none"> <li>a) the redacted information: <ul style="list-style-type: none"> <li>(i) is commercially sensitive information regarding the allocation of risk between the Principal and the VC Contractor;</li> <li>(ii) relates to a definition that has been redacted;</li> </ul> </li> <li>b) the efficacy of the redaction to the relevant definition is dependent on references to that definition also being redacted. The explanation for the redaction of this definition is set out in row 52 of this table;</li> <li>c) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor, and therefore the level of risk that the VC Contractor was willing to price and accept in relation to those events. Exposing this information may also provide insight into the VC Contractor's views on its potential capabilities and likelihood of default events arising; and</li> <li>d) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul>

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				<b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.
13.	Clause 8.7(g) and (h) <i>(Independent Certifier)</i>	The information redacted is entire clauses.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information relates to costs payable in relation the Principal's liability to the Independent Certifier and certain decisions that may be made under the Independent Certifier Deed;</li> <li>b) disclosure of the redacted information may provide insight into the apportionment of risk between the parties under the SDD and the Independent Certifier Deed, and therefore the level of risk that the VC Contractor was willing to price and accept;</li> <li>c) exposing the redacted information may provide insight into the amount that the VC Contractor was willing to accept for the construction work (and all affiliated risks); and</li> <li>d) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for</p>

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				disclosure as events and circumstances change.
14.	Clause 8.13 <i>(Industrial relations)</i>	The information redacted is a reference to a redacted definition.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information relates to a definition that has been redacted;</li> <li>b) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests; and</li> <li>c) the efficacy of the redaction is dependent on the definition also being redacted. The explanation for the redaction of this definition is set out in the explanation in row 52 of this table.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
15.	Clause 9.2(e)	The information	<i>Section 32(1)(a), paragraphs (b) and</i>	The Principal weighed the competing public interest

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<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
				<p>commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
16.	Clause 9.3(b) ( <i>Delay</i> )	The information redacted is part of a clause.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure for the following reasons:</p> <ul style="list-style-type: none"> <li>a) the redacted information is commercially sensitive information regarding the allocation of risk between the Principal and the VC Contractor;</li> <li>b) the redacted information relates to a definition that has been redacted;</li> <li>c) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor, and therefore the level of risk that the VC Contractor was willing to price and accept in relation to those events. Exposing this information may also provide insight into the VC Contractor's views on its potential capabilities and likelihood of default events arising; and</li> <li>d) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for</p>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
				disclosure as events and circumstances change.
17.	Clause 9.8 ( <i>Adjoining Properties</i> )	The information redacted is the entire clause.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure for the following reasons:</p> <ul style="list-style-type: none"> <li>(a) the information redacted set out the rights and obligations of the parties in relation to Adjoining Properties;</li> <li>(b) the Principal is still in the process of negotiating the Adjoining Property Owner Agreements. If the redacted information were disclosed, third parties may be able to use that information to their advantage in negotiations with the Principal, thereby prejudicing the Principal's negotiating position; and</li> <li>(c) revealing the information could prejudice the parties' legitimate business, commercial or financial interests, and also prejudice the effective exercise by the Principal of its functions.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
18.	Clause 11 and clause 28.1	The information redacted is the entire clause and a reference to the redacted clause.	<p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out sensitive information concerning payment rights; and</li> <li>b) revealing the information would place the parties at a substantial commercial disadvantage in future</li> </ul>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
			<p>business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
19.	Clause 12.1(a)(i) <i>(Master Interface Protocols Deed Poll)</i>	The information redacted is a time period.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the timeframe in which the VC Contractor must provide an executed counterpart of the Master Interface Protocols Deed Poll; and</li> <li>b) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
20.	Clause 12.3(b)(i)(B) and 12.3(b)(iii)(A)	The information redacted is part of a	<i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i>	The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure for the

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
		clause.	<p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>following reasons:</p> <ul style="list-style-type: none"> <li>a) the redacted information is commercially sensitive information regarding the allocation of risk between the Principal and the VC Contractor;</li> <li>b) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor, and therefore the level of risk that the VC Contractor was willing to price and accept in relation to those events. Exposing this information may also provide insight into the VC Contractor's views on its potential capabilities and likelihood of default events arising; and</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
21.	Clause 12.5(a)(ii) (VC Contractor acknowledgement)	The information redacted is a reference to a redacted definition.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(a), paragraphs (b) and</i></p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information relates to a definition that has been redacted;</li> <li>b) the efficacy of the redaction to the relevant</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>(e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>definition is dependent on references to that definition also being redacted. The explanation for the redaction of this definition is set out in row 52 of this table;</p> <p>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests; and</p> <p>a) the efficacy of the redaction is dependent on the definition also being redacted. The explanation for the redaction of this definition is set out in the explanation in row 52 of this table.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
22.	Clause 12.7 ( <i>Collateral Warranty Deed Poll</i> )	The information redacted is part of the clause.	<p><i>Section 32(1)(d), items 4(b) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <p>a) the redacted information sets out commercially sensitive information in respect of the Collateral Warranty Deed Poll;</p> <p>b) revealing the information would place the parties at a substantial commercial disadvantage in future</p>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
				<p>projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
23.	Clause 13	The information redacted is the entire clause.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the rights and obligations of the parties in relation to the Third Party Agreements;</li> <li>b) if the redacted information were disclosed, third parties may be able to use that information to their advantage in negotiations with the Principal, thereby prejudicing the Principal's negotiating position; and</li> <li>c) revealing the information could prejudice the parties' legitimate business, commercial or financial interests and also prejudice the effective exercise by the Principal of its functions.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
24.	Clause 14.2	The information redacted is the entire clause.	<p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<ul style="list-style-type: none"> <li>a) the redacted information sets out sensitive information regarding the interface between the station, OSD and the Concourse Lease;</li> <li>b) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor, in relation to key project risks, and therefore the risk that the VC Contractor was willing to price and accept. Exposing this information may also provide insight into the parties' views on its potential capabilities and likelihood of certain risks arising; and</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
25.	Clauses 15.1, 15.6, 15.7, 15.8, 15.10 and 15.11 (d)	The information redacted is the entire clauses.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out sensitive information regarding the rights and obligations of the parties in connection with the works being undertaken by the TSE Contractor under the TSE Contract;</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>b) exposing the redacted information would reveal the apportionment of risk between the parties in relation to the interface between the Project Works and the TSE Works, and therefore the level of risk that the VC Contractor was willing to price and accept. Exposing this information may also provide insight into the VC Contractor's views on its potential capabilities and the likelihood of certain risks arising; and</p> <p>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
26.	Clause 17.4(c)	The information redacted is part of a clause.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure for the following reasons:</p> <p>a) the redacted information:</p> <ul style="list-style-type: none"> <li>(i) is commercially sensitive information regarding the allocation of risk between the Principal and the VC Contractor;</li> <li>(ii) relates to a definition that has been redacted;</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<ul style="list-style-type: none"> <li>b) the efficacy of the redaction to the relevant definition is dependent on references to that definition also being redacted. The explanation for the redaction of this definition is set out in row 52 of this table;</li> <li>c) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor, and therefore the level of risk that the VC Contractor was willing to price and accept in relation to those events. Exposing this information may also provide insight into the VC Contractor's views on its potential capabilities and likelihood of default events arising; and</li> <li>d) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
27.	Clause 19.1(c), 21.9(b), 22.4(b), 24.2(e), 24.2(g) and 30.1(d)(ii)(B).	The information redacted is part of a clause.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure for the following reasons:</p> <ul style="list-style-type: none"> <li>a) the redacted information: <ul style="list-style-type: none"> <li>(i) is commercially sensitive information regarding the allocation of risk between</li> </ul> </li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>the Principal and the VC Contractor;</p> <p>(ii) relates to a definition that has been redacted;</p> <p>b) the efficacy of the redaction to the relevant definition is dependent on references to that definition also being redacted. The explanation for the redaction of this definition is set out in row 52 of this table;</p> <p>c) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor, and therefore the level of risk that the VC Contractor was willing to price and accept in relation to those events. Exposing this information may also provide insight into the VC Contractor's views on its potential capabilities and likelihood of default events arising; and</p> <p>d) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
28.	Clause 21.11 (f) <i>(Delay Liquidated Damages)</i>	The information redacted is a dollar amount.	<i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of</i>	The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p><i>Schedule 4</i></p> <p>The disclosure of this information discloses the parties' cost structure or profit margins and would place the parties at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the amount of the daily cap on Delay Liquidated Damages;</li> <li>b) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor in relation to delay risks. Exposing this information may provide insight into the VC Contractor's views on its potential capabilities and the likelihood of Delay;</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests; and</li> <li>d) the public interest has been served by revealing the existence of the cap on Delay Liquidated Damages. In light of this disclosure, there is an overriding public interest against the disclosure of the precise amount.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
29.	Clause 25.1(c)(v) <i>(Assignment and ownership)</i>	The information redacted is the entire clause.	<p><i>Section 32(1)(d), items 4(b) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out commercially sensitive information in respect of the intellectual</li> </ul>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
			<p>and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>property licence granted by the VC Contractor to the Principal;</p> <p>b) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
30.	Clause 27.1(b) <i>(Defects Correction Periods)</i>	The information redacted is dates and time periods.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <p>a) the redacted information sets out the Defects Correction Period for the Project Works;</p> <p>b) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor in relation to the rectification of defects, and therefore the level of risk that the VC Contractor was willing to price and accept. Exposing this information may also provide insight into the VC Contractor's views on its potential capabilities and likelihood of ongoing defects arising;</p> <p>c) revealing the information would place the parties at a substantial commercial disadvantage in future</p>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
			<p>prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests; and</p> <p>d) the public interest has been served by revealing the fact that there is a Defects Correction Period. In light of the disclosure of this information there is an overriding public interest against the disclosure of the precise dates.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
31.	Clauses 27.2, 27.4(b)(ii), 27.4(c), 27.5 and 27.6(b)	The information redacted is a reference to a redacted provision and an entire provision.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <p>a) the redacted information sets out commercially sensitive information regarding defects, including the allocation of responsibility for rectifying of defects;</p> <p>b) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor in relation to certain defects. Exposing this information may provide insight into the VC Contractor's views on certain defects arising; and</p> <p>c) revealing the information would place the parties at a substantial commercial disadvantage in future</p>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
				<p>projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
32.	Clause 27.9 ( <i>Interface Contractors</i> )	The information redacted is the entire clause.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information concerns the allocation of responsibility for rectifying defects;</li> <li>b) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor in relation to certain defects. Exposing this information may provide insight into the VC Contractor's views on certain defects arising; and</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could prejudice the parties' legitimate business, commercial or financial interests, and also prejudice the Principal's ability to effectively exercise its</li> </ul>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
				<p>functions.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
33.	Clause 28.10A and 28.2(a)(ii)	The information redacted is the entire clause and a reference to the redacted provision.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out a commercially sensitive pricing mechanism for use in the design development process; and</li> <li>b) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor in relation to design development, and therefore the level of risk that the VC Contractor was willing to price and accept;</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
34.	Clause 28.4(a) ( <i>Effect of payment schedules and payments</i> )	The information redacted is a reference to a	<p><i>Section 32(1)(d), item 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this</p>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
		redacted definition.	<p>reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information relates to a definition that has been redacted in its entirety (Schedule A2); and</li> <li>b) the efficacy of the redaction to the relevant definition is dependent on the references to that definition also being redacted. The explanation for the redaction of this definition is set out in row 52 of this table.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
35.	Clause 28.5(a)(i) and (ii) ( <i>Provision of documentation and other requirements</i> )	The information redacted is percentage numbers.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>a) the redacted information identifies the percentage amount that the Principal is obliged to pay the VC Contractor if the VC Contractor has not complied with requirements in clause 28.5(a);</li> <li>b) the purpose of the clause is to incentivise the VC Contractor to comply with the requirements in clause 38.5(a). The redacted information reflects a negotiated amount which the VC Contractor has priced and accepted;</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>prejudice the parties' legitimate business, commercial or financial interests; and</p> <p>d) the public interest has been served by revealing the existence of a reduced obligation on the Principal to pay the VC Contractor certain amounts if the VC Contractor fails to comply with its obligations. In light of this disclosure there is an overriding public interest against the disclosure of the precise percentage.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
36.	Clause 28.10(d) and 28.10(i)	The information redacted is part of a clause.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure for the following reasons:</p> <p>a) the redacted information is commercially sensitive information regarding the allocation of risk between the Principal and the VC Contractor;</p> <p>b) the redacted information relates to a definition that has been redacted;</p> <p>c) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor, and therefore the level of risk that the VC Contractor was willing to price and accept in relation to those events. Exposing this information may also provide insight into the VC Contractor's views on its potential capabilities and likelihood of default events arising; and</p> <p>d) revealing the information would place the parties at a substantial commercial disadvantage in future</p>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
			business and commercial interests. There is an overriding public interest against disclosure.	projects of a similar nature, as the information would be readily accessible to potential future clients, competitors contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.  <b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.
37.	Clause 28.12(c)(i) and (d)(i) ( <i>Initial Payment</i> )	The information redacted is time periods.	<p><i>Section 31(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out: <ul style="list-style-type: none"> <li>(i) the timeframe which triggers a repayment obligation for the VC Contractor if the deed is terminated; and</li> <li>(ii) the date of release of the Initial Payment Security;</li> </ul> </li> <li>b) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for</p>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
				disclosure as events and circumstances change.
38.	Clause 28.13 <i>(Interest)</i>	The information redacted is a percentage number.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the amount of interest payable by a party in connection with a failure to pay amounts due;</li> <li>b) disclosure of the redacted information would provide insight into the level of risk that the parties were willing to accept; and</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
39.	Clause 30.2(b) and(c) <i>(Indemnity by the VC Contractor)</i>	The information redacted is entire clauses.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(a), paragraphs (b) and</i></p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out commercially sensitive information regarding the VC</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>(e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>Contractor's liability;</p> <p>b) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor in relation to liability under the SDD. Exposing this information may provide insight into the VC Contractor's views on its potential capabilities and the likelihood of the VC Contractor being held liable for the circumstances in clause 30.2;</p> <p>c) the redacted information sets out an arrangement to apportion and manage liability risk. Revealing this information may diminish the value of that information; and</p> <p>d) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
40.	Clauses 30.3 (b), 30.4, 30.5(b), 30.7, 30.8, 30.9 and 30.10	The information redacted is entire clauses.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <p>a) the redacted information sets out the limits of the insurance policies that the VC Contractor is required to effect and maintain;</p>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<ul style="list-style-type: none"> <li>b) exposing the redacted information would reveal the level of insurance risk that the VC Contractor was willing to price and accept; and</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
41.	Clause 30.14	The information redacted is the entire clause.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), item 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out sensitive information regarding the VC Contractor's liability in connection with the relevant insurance policies;</li> <li>b) exposing the redacted information would reveal the level of insurance risk that the VC Contractor was willing to price and accept; and</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the</li> </ul>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
				<p>information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
42.	Clauses 31.1, 31.2, 31.3 and 31.4	The information redacted is all the clauses listed.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out commercially sensitive information regarding the VC Contractor's total aggregate liability, including limits on the VC Contractor's liability;</li> <li>b) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor in relation to liability under the SDD. Exposing this information may provide insight into the VC Contractor's views on its potential capabilities and the likelihood of the VC Contractor being held liable for the events identified in clause 31;</li> <li>c) the redacted information sets out a unique arrangement to apportion and manage liability risk. Revealing this information may diminish the value of that information; and</li> <li>d) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could prejudice</li> </ul>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
			There is an overriding public interest against disclosure.	<p>the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
43.	Clause 32.4 ( <i>VC Contractor Termination Events</i> )	The information redacted is percentage numbers	<p><i>Section 32(1)(d), item 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the:           <ul style="list-style-type: none"> <li>(i) aggregate liability threshold (calculated by reference to a percentage of the Contract Sum); and</li> <li>(ii) percentage of the LD CAP,</li> </ul>           which, if reached, will trigger a VC Contractor Termination Event;</li> <li>b) exposing the redacted information would reveal the level of risk that the Principal was willing to accept in relation to its termination rights against the VC Contractor. Exposing this information may also provide insight into the VC Contractor's views on its potential capabilities and the likelihood of certain risks arising; and</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and</li> </ul>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
				<p>prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
44.	Clause 32.12(a)(viii) <i>(VC Contractor entitlements)</i>	The information redacted is a percentage.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information reveals the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information relates to the VC Contractor's entitlements if the Principal terminates the deed;</li> <li>b) disclosure of the redacted information may provide insight into the VC Contractor's cost structure and profit margins; and</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
45.	Clauses 34.1(c)	The information redacted is an entire clause.	<p><i>Section 32(1)(d), items 4(b) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this</p>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>reveal commercial-in-confidence provisions of a government contract and prejudice a person's legitimate business, commercial or financial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>information because:</p> <ul style="list-style-type: none"> <li>a) exposing the redacted information may provide insights into the VC Contractor's corporate structure; and</li> <li>b) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
46.	Clauses 34.3(c)(ii) and 34.4(c)(i)	The information redacted is time periods.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), item 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the timeframe in which the VC Contractor must provide notice to the Principal regarding a Change in Control of an entity (arising from a transfer of an interest to a Related Entity); and</li> <li>b) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the</li> </ul>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
			against disclosure.	<p>information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
47.	Clause 40.12(f) <i>(Indemnities)</i>	The information redacted is the entire clause.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure for the following reasons:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out limits on the parties' liabilities under the SDD;</li> <li>b) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor in relation to the long term risks associated with the works, and therefore the level of risk that the VC Contractor was willing to price and accept. It would also provide insight into the VC Contractor's cost structure;</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
48.	Execution page of the general conditions	The information redacted is the name and signatures of the signatories.	<p><i>Section 32(1)(d), item 3(a) of the table in section 14</i></p> <p>The disclosure of this information would reveal an individual's personal information.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because the redacted information would disclose personal information of individuals, including names and signatures.</p> <p>The Principal considers that any public interest in favour of the disclosure is not significantly advanced by the disclosure of this information, and is outweighed by the public interest against the disclosure as identified above.</p>

#### SCHEDULES

49.	Item 3  Schedule A1 <i>(Reference Schedule)</i>	The information redacted is redacted in its entirety	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>a) the redacted information is commercially sensitive and, if disclosed, may provide a unique insight into the VC Contractor's cost structures;</li> <li>b) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests; and</li> <li>c) the public interest has been served by revealing the fact that security is required from the VC</li> </ul>
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<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
			<p>prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>Contractor.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
50.	Items 6, 7, 11 and 12 Schedule A1 (Reference Schedule)	The information redacted is names and contact details of individual persons.	<p><i>Section 32(1)(d), item 3(a) of the table in section 14</i></p> <p>The disclosure of this information would reveal an individual's personal information.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because the redacted information contains personal information, including the names and email addresses of individual persons.</p> <p>The Principal considers that any public interest in favour of disclosure is not significantly advanced by the disclosure of this information, and is outweighed by the public interest against the disclosure as identified above.</p>
51.	Item 10 Schedule A1 (Reference Schedule)	The information redacted is timeframes and dollar amounts.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out commercially sensitive details regarding the Initial Payment regime (repayment amounts and timeframes);</li> <li>b) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor in relation to the Initial Payment regime, and therefore the level of risk that the VC Contractor was willing to price and accept. Exposing this information may also provide insight into the VC Contractor's views on its potential capabilities and the likelihood of the</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>SDD being termination;</p> <p>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests; and</p> <p>d) the public interest has been served by revealing the fact that security is required from the VC Contractor.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
52.	Schedule A2 (Definitions)	The information redacted is entire definitions, including the defined term.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <p>a) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor in relation to certain elements under the SDD; and</p> <p>b) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore, the disclosure of the information would reduce the information's competitive commercial value and</p>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>agency of the agency's functions.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
53.	<p>Definition "Codes and Standards"</p> <p>Schedule A2 (<i>Definitions</i>)</p>	<p>The information redacted is part of the definition.</p>	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure for the following reasons:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out sensitive information regarding compliance with Codes and Standards;</li> <li>b) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor and therefore the risk that the VC Contractor was willing to price and accept. Exposing this information may also provide insight into the VC Contractor's views on its potential capabilities and the likelihood of certain risks arising; and</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
				<p>would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
54.	<p>Definition "Compensation Event"</p> <p>Schedule A2 (<i>Definitions</i>)</p>	<p>The information redacted is the entire definition.</p>	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract,</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out a number of project-specific grounds under which the VC Contractor will be entitled to claim relief for the Project Works;</li> <li>b) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor and therefore the level of risk that the VC Contractor was willing to price and accept. Exposing this information may provide insight into the VC Contractor's view on the likelihood of certain risks arising; and</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business,</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
55.	<p>Definition "Completion", paragraph (b) (ii) (M) (bb)</p> <p>Schedule A2 (<i>Definitions</i>)</p>	<p>The information redacted is a time period.</p>	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), item 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the timeframe in which Landowners or occupiers have to execute a release; and</li> <li>b) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests. <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p> </li></ul>
56.	<p>Definition "Contract Sum Adjustment Event"</p> <p>Schedule A2 (<i>Definitions</i>)</p>	<p>The information redacted is the entire definition.</p>	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the parties' cost structure, which would place the</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out a project-specific grounds under which the VC Contractor will be</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>parties at a substantial commercial disadvantage in relation to potential competitors.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>entitled to claim relief for the Project Works;</p> <p>b) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor and therefore the level of risk that the VC Contractor was willing to price and accept. Exposing this information may provide insight into the VC Contractor's view on the likelihood of certain risks arising; and</p> <p>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
57.	<p>Definition "Development Lot 2"</p> <p>Schedule A2 (<i>Definitions</i>)</p>	<p>The information redacted is a defined term.</p>	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and</i></p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <p>a) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor in relation to certain elements under the SDD; and</p> <p>b) if this information were revealed, it could place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the</p>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p><i>4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the competitive commercial value of the information and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
58.	<p>Definition "Initial Payment"</p> <p>Schedule A2 (<i>Definitions</i>)</p>	<p>The information redacted refers to a redacted definition.</p>	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information relates to a definition that has been redacted in its entirety (Schedule A2); and</li> <li>b) the efficacy of the redaction to the relevant definition is dependent on the references to that definition also being redacted. The explanation for the redaction of this definition is set out in row 52 of this table.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			There is an overriding public interest against disclosure.	
59.	Definition "Key Plant and Equipment" Schedule A2 <i>(Definitions)</i>	The information redacted it the entire definition.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal details of specific equipment required for the Project Works and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>a) the redacted information refers to specific equipment required for the Project Works. Exposing this information may provide insight into the VC Contractor's views on the likelihood of certain Force Majeure Events and/or Excepted Risks arising;</li> <li>b) the efficacy of the redaction to the definition of 'Key Plant and Equipment Manufacturing Country' is dependent on the redaction of this information; and</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could prejudice the parties' legitimate business, commercial or financial interests, and also prejudice the effective exercise of the Principal's functions.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
60.	Definition "Key Plant and Equipment Manufacturing	The information redacted is the countries and equipment named in	<i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i>	The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
	Country" Schedule A2 (Definitions)	the definition.	<p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<ul style="list-style-type: none"> <li>a) the redacted information identifies the countries in which Key Plant and Equipment will be manufactured. The definition of Key Plant and Equipment Manufacturing Countries is relevant to determining the scope of events that may give rise to a Force Majeure Event and the VC Contractor's liability for care of the Project Works under the SDD;</li> <li>b) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor in relation to: <ul style="list-style-type: none"> <li>(i) a Force Majeure Event within and outside of a Key Plant and Equipment Manufacturing Country; and</li> <li>(ii) care of the Project Works and Excepted Risks,</li> </ul> and therefore the level of risk that the VC Contractor was willing to price and accept. Exposing this information may provide insight into the VC Contractor's views on the likelihood of certain risks arising;</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could prejudice the parties' legitimate business, commercial or financial interests, and also prejudice the effective exercise of the Principal's functions; and</li> <li>d) the public interest has been served by disclosing</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
				<p>the fact that the definition of a Force Majeure Event and Except Risks is limited to such events occurring within Australia or a Key Plant and Manufacturing Country.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
61.	Definition "LD Cap" Schedule A2 ( <i>Definitions</i> )	The information redacted is a percentage.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the amount of the LD Cap as a percentage of the Contract Sum;</li> <li>b) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor in relation to key delay risks. Exposing this information may provide insight into the VC Contractor's views on its potential capabilities and the likelihood of Milestone Achievement, Substantial Completion and Completion being achieved by the relevant Date for Milestone Achievement, Date for Substantial Completion and Date for Completion (as applicable);</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business,</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
				<p>commercial or financial interests; and</p> <p>d) the public interest has been served by revealing the existence of the LD Cap. In light of this disclosure, there is an overriding public interest against the disclosure of the precise percentage amount.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
62.	<p>Definition "Major TSE Defect"</p> <p>Schedule A2 (<i>Definitions</i>)</p>	<p>The information redacted is part of the definition.</p>	<p><i>Section 32(1)(d), item 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>a) the redacted information concerns the allocation of responsibility for rectifying defects;</li> <li>b) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor in relation to certain defects. Exposing this information may provide insight into the VC Contractor's views on certain defects arising; and</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for</p>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
				disclosure as events and circumstances change.
63.	Definition "Release Date"  Schedule A2 ( <i>Definitions</i> )	The information redacted is part of the definition which is reference to redacted schedules.	<p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business, commercial or financial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information relates to a clause that has been redacted in its entirety (clause 11); and</li> <li>b) the efficacy of the redaction to clause 11 is dependent on the definition also being redacted. The explanation for the redaction of this clause is set out in the explanation regarding clause 11.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
64.	Definition "Significant Subcontract"  Schedule A2 ( <i>Definitions</i> )	The information redacted is a dollar amount and an entire paragraph.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract,</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the value of a contract that qualifies as a Significant Subcontract;</li> <li>b) the information relates to a redacted definition; and</li> <li>c) exposing the redacted information may enable potential subcontractors to use that information to their advantage in negotiations with the VC Contractor, thereby prejudicing the VC Contractor's negotiating position. Therefore the disclosure of the information could reduce the information's competitive commercial value and</li> </ul>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
			<p>diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
65.	Definition "State Indemnified Party" Schedule A2 ( <i>Definitions</i> )	The information redacted is part of the definition.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out commercially sensitive information regarding the scope of the indemnity provided by the VC Contractor in clause 30.2 of the SDD;</li> <li>b) exposing the information would reveal the apportionment of risk between the Principal and the VC Contractor in relation to the occurrence of particular events. Exposing this information may also provide insight into the VC Contractor's views on the likelihood of certain risks arising; and</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for</p>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
				disclosure as events and circumstances change.
66.	Definition "Substantial Completion"  Schedule A2 ( <i>Definitions</i> )	The information redacted is a time period.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), item 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the timeframe in which Landowners or occupiers have to execute a release; and</li> <li>b) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
67.	Definition "TSE Defect"  Schedule A2 ( <i>Definitions</i> )	The information redacted is part of the definition.	<p><i>Section 32(1)(d), item 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>a) the redacted information concerns the allocation of responsibility for rectifying defects;</li> <li>b) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor in relation to certain defects. Exposing this information may provide insight into the VC Contractor's views on certain defects arising; and</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
				<p>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
68.	Schedule A3 ( <i>Portions and Milestones</i> )	The redacted information is dates, dollar amounts and Portion and Milestone descriptions.	<p><i>Section 32(1)(a) (paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of schedule 4)</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d) (items 4(b), 4(c), and 4(d) of the table in section 14)</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out: <ul style="list-style-type: none"> <li>(i) the description of certain Portions and Milestones;</li> <li>(ii) the Date for Substantial Completion and Completion of each Portion;</li> <li>(iii) the Date for Milestone Achievement of each Milestone; and</li> <li>(iv) the rate of Liquidated Damages if Substantial Completion, Completion or Milestone Achievement does not occur by the Date for Substantial Completion, the Date for Completion or the Date for Milestone Achievement;</li> </ul> </li> <li>b) exposing the redacted information would reveal</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p>There is an overriding public interest against disclosure.</p>	<p>the risk that the VC Contractor priced and accepted in relation to the Liquidated Damages regime and the relevant Dates for Substantial Completion, Completion and Milestone Achievement. Exposing this information may provide insight into the VC Contractor's views on its potential capabilities and the likelihood of delays to the project;</p> <p>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests; and</p> <p>d) the public interest has been served by revealing the obligation of the VC Contractor to achieve Substantial Completion and Completion of the relevant portions by the Date for Substantial Completion and Date for Completion and to reach Milestone Achievement of the relevant Milestones by the Date for Milestone Achievement, otherwise liquidated damages will become payable. In light of this disclosure there is an overriding public interest against the disclosure of the precise dates, dollar amounts and portion descriptions.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
69.	Schedule A4 (Pre-	The redacted	<i>Section 32(1)(d), item 1(f) of the table</i>	The Principal weighed the competing public interest

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
	<i>Agreed Modifications</i> )	information is the dates, dollar amounts, time periods and references to a redacted provision.	<p><i>in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>a) the redacted schedule concerns the Pre-Agreed Modifications. The information redacted includes:           <ul style="list-style-type: none"> <li>(i) the date by which the Principal has a right to exercise the Pre-Agreed Modification;</li> <li>(ii) the amendments to the SWTC if the Principal chooses to exercise the Pre-Agreed Modification;</li> <li>(iii) commercially sensitive information sensitive information regarding the OSD Enabling Works;</li> <li>(iv) adjustments to the Contract Sum if the Principal chooses to exercise the Pre-Agreed Modification; and</li> <li>(v) dates and amounts related to the relevant Pre-Agreed Modification.</li> </ul> </li> <li>b) the redacted information schedule provides visibility on the VC Contractor's profit margins. The information also reveals the apportionment of risk that the VC Contractor is willing to price and accept for each Pre-Agreed Modification; and</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business,</li> </ul>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
				<p>commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
70.	Schedule A5 <i>(Significant Subcontractors)</i>	The information redacted are the names, ABN and addresses of the Significant Subcontractors.	<p><i>Section 32(1)(d), items 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure for the following reasons:</p> <ul style="list-style-type: none"> <li>a) the redacted information is the names of the Significant Subcontractors under the SDD; and</li> <li>b) if the redacted information were to be disclosed, potential subcontractors may be able to use that information to their advantage in negotiations with the VC Contractor, thereby prejudicing the VC Contractor's negotiating position. Therefore, disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
71.	Schedule A7 <i>(Subcontractor Warranties)</i>	The information redacted is the beneficiaries and warranty periods.	<p><i>Section 32(1)(d), item 1(f)</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract,</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the warranty periods and the beneficiaries of the warranty periods that the VC Contractor must procure from the relevant subcontractors;</li> <li>b) exposing the redacted information would reveal</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>the apportionment of risk between the Principal and the VC Contractor in relation to the design lives of specific parts of the works, and therefore the level of risk that the VC Contractor was willing to price and accept;</p> <ul style="list-style-type: none"> <li>c) the warranty periods provide insight into the subcontractor's capabilities, and that information is expected to be used by the VC Contractor in the future. Additionally, this information may provide insight into the VC Contractor's ability to obtain certain warranty periods from the market; and</li> <li>d) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
72.	Schedule A8 ( <i>Modification Procedure</i> )	The information redacted is an entire definition, a name of an individual, references to a redacted provision, percentages, dollar amounts and time periods.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of</i></p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure for the following reasons:</p> <ul style="list-style-type: none"> <li>a) the redacted schedule contains the negotiated procedure for Modifications. The information redacted includes: <ul style="list-style-type: none"> <li>(i) a cap for reimbursements;</li> </ul> </li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p><i>Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p><i>Section 32(1)(d), item 3(a) of the table in section 14</i></p> <p>The disclosure of this information would reveal an individual's personal information.</p> <p>There is an overriding public interest against disclosure.</p>	<ul style="list-style-type: none"> <li>(ii) the specific circumstances where the Principal must issue a Modification Proposal Request to the VC Contractor and the procedure, timeframe and the entitlement applicable to those specific circumstances;</li> <li>(iii) a commercially sensitive mechanism negotiated by the Principal and the VC Contractor regarding the OSD Enabling Works; and</li> <li>(iv) a person's name, timeframes and dollar amounts;</li> </ul> <p>b) exposing the redacted information would reveal the apportionment of risk that the Principal and the VC Contractor were willing accept with respect to Modifications under the SDD. It may also provide insight into the VC Contractor's views on its potential capabilities and the likelihood of certain risks arising; and</p> <p>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
73.	Clauses 1.2, 1.3, 1.4, 1.5 and 1.6  Schedule A12 ( <i>VC Contractor Insurance Requirements</i> )	The information redacted is entire clauses.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), item 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the limits of the insurance policies that the VC Contractor is required to effect and maintain;</li> <li>b) exposing the redacted information would reveal the level of insurance risk that the VC Contractor was willing to price and accept; and</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
74.	Schedule A13 ( <i>Insurance Policies</i> )	The information redacted is a date and dollar amounts.	<p><i>Section 32(1)(d), item 4(d) of the table in section 14</i></p> <p>The disclosure of the information may prejudice a person's legitimate business or commercial interests.</p> <p><i>Section 32(1)(d), item 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the date a Memorandum of Insurance was issued to the Principal, the disclosure of which may prejudice the Principal's legitimate business or commercial</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>interests;</p> <ul style="list-style-type: none"> <li>b) the redacted information sets out the limits of the insurance policies that the VC Contractor is required to effect and maintain, and exposing the redacted information would reveal the level of insurance risk that the VC Contractor was willing to price and accept; and</li> <li>c) the public interest has been served by revealing the insurances procured by the Principal for the project. In light of this disclosure, there is an overriding public interest against the disclosure of the relevant dates.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
75.	Schedule A14 <i>(Independent Certifier Deed)</i>	The information redacted is entire clauses, part of the Payment Schedule, contact details and the name of an individual.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p><i>Section 32(1)(a), paragraphs (b), (c) and (e) of the definition of</i></p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out commercially sensitive information regarding: <ul style="list-style-type: none"> <li>(i) the Independent Certifier's total aggregate liability, including limits on the Independent Certifier's liability; and</li> <li>(ii) payment arrangements for the works and services delivered under the Independent Certifier Deed;</li> </ul> </li> <li>b) the redacted information also specifies an individual's name;</li> <li>c) exposing the redacted information would reveal</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>"commercial-in-confidence provisions" at section 1 of Schedule 4</p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 3(a) of the table in section 14</i></p> <p>The disclosure of this information would reveal an individual's personal information.</p> <p>There is an overriding public interest against disclosure.</p>	<p>the apportionment of risk between the Principal, the VC Contractor and the Independent Certifier in relation to liability under the Independent Certifier Deed. Exposing this information may provide insight into the parties views on the likelihood of certain risks arising;</p> <p>d) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests; and</p> <p>e) The Principal considers that any public interest in favour of disclosure is not significantly advanced by the disclosure of this information, and is outweighed by the public interest against the disclosure as identified above.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
76.	Schedule A16 ( <i>Form of Collateral Warranty Deed Poll</i> )	The information redacted is the entire schedule.	<p><i>Section 32(1)(a), paragraph (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), 4(c) and</i></p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <p>a) the redacted information sets out the form of the collateral warranty required to be provided in relation to works which the VC Contractor is required to design, construct and handover to the Principal; and</p>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p><i>4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>b) revealing the information would disclose an apportionment of the risk between the parties and the nature of risk the VC Contractor was willing to price and accept. This would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice a person's legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
77.	Schedule A17 ( <i>Master Interface Protocols Deed Poll</i> )	The information redacted is the entire schedule.	<p><i>Section 32(1)(a), paragraph (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>a) the redacted information is a deed poll to be entered into by the VC Contractor which sets out mechanisms to address interface risk on the Sydney Metro City &amp; Southwest project;</li> <li>b) exposing the redacted information would reveal the apportionment of risk between parties, and the risk that the VC Contractor was willing to price and accept; and</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the</li> </ul>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
			There is an overriding public interest against disclosure.	<p>information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
78.	Schedule A20 ( <i>IDAR Panel Agreement</i> )	The information redacted is information related to the rates payable.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the method for calculating fees in the case of a Dispute between the parties and fees payable to Members of the IDAR Panel under the IDAR Panel Agreement;</li> <li>b) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests;</li> <li>c) the public interest has been served by disclosing the mechanism in respect of personnel; and</li> <li>d) the Principal considers that any public interest in favour of the disclosure is not significantly advanced by the disclosure of this information, and it outweighed by the public interest against the disclosure as identified above.</li> </ul> <p><b>Review:</b> This information would be reviewed for</p>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
				disclosure as events and circumstances change.
79.	Schedule A24 <i>(Operator Cooperation and Integration Deed)</i>	The information redacted is the entire schedule.	<p><i>Section 32(1)(d), items 4(b), 4(c), and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the form of the interface agreements that the VC Contractor is to enter into with the Operator;</li> <li>b) the disclosure of the redacted information would reveal the level of interface risk that the VC Contractor was willing to price and accept in relation to interface of the Project Works with the works to be performed by the Operator;</li> <li>c) the redacted information is based on forms of the interface agreements to be used across a number of procurement packages on the Sydney Metro City &amp; Southwest and which remain subject to ongoing negotiation by the Principal and other contractors, and the redacted information reflects the Principal's negotiated position with the VC Contractor in relation to the interface agreements to which the VC Contractor will be a counterparty;</li> <li>d) therefore the disclosure of this information would: <ul style="list-style-type: none"> <li>(i) place the Principal at a commercial disadvantage in future negotiations with other contractors on the Sydney Metro City &amp; Southwest project; and</li> <li>(ii) make readily accessible to future clients, competitors and contractors information which may place the parties at a</li> </ul> </li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
				<p>substantial commercial disadvantage on future projects of a similar nature and accordingly diminish the competitive commercial value of information to a person and prejudice a person's legitimate business, commercial, professional or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
80.	Schedule A25 ( <i>LW Contractor Cooperation and Integration Deed</i> )	The information redacted is the entire schedule.	<p><i>Section 32(1)(d), items 4(b), 4(c), and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the form of the interface agreements that the VC Contractor is to enter into with the LW Contractor;</li> <li>b) the disclosure of the redacted information would reveal the level of interface risk that the VC Contractor was willing to price and accept in relation to interface of the Project Works with the works to be performed by the LW Contractor;</li> <li>c) the redacted information is based on forms of the interface agreements to be used across a number of procurement packages on the Sydney Metro City &amp; Southwest and which remain subject to ongoing negotiation by the Principal and other contractors, and the redacted information reflects the Principal's negotiated position with the VC Contractor in relation to the interface agreements to which the VC Contractor will be a counterparty;</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
				<p>d) therefore the disclosure of this information would:</p> <ul style="list-style-type: none"> <li>(i) place the Principal at a commercial disadvantage in future negotiations with other contractors on the Sydney Metro City &amp; Southwest project; and</li> <li>(ii) make readily accessible to future clients, competitors and contractors information which may place the parties at a substantial commercial disadvantage on future projects of a similar nature and accordingly diminish the competitive commercial value of information to a person and prejudice a person's legitimate business, commercial, professional or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
81.	Schedule A26 ( <i>TSE Cooperation and Integration Deed</i> )	The information redacted is the entire schedule.	<p><i>Section 32(1)(d), items 4(b), 4(c), and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the form of the interface agreements that the VC Contractor is to enter into with the TSE Contractor;</li> <li>b) the disclosure of the redacted information would reveal the level of interface risk that the VC Contractor was willing to price and accept in relation to interface of the Project Works with the works to be performed by the TSE Contractor;</li> <li>c) the redacted information is based on forms of the</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
				<p>interface agreements to be used across a number of procurement packages on the Sydney Metro City &amp; Southwest and which remain subject to ongoing negotiation by the Principal and other contractors, and the redacted information reflects the Principal's negotiated position with the VC Contractor in relation to the interface agreements to which the VC Contractor will be a counterparty;</p> <p>d) therefore the disclosure of this information would:</p> <ul style="list-style-type: none"> <li>(i) place the Principal at a commercial disadvantage in future negotiations with other contractors on the Sydney Metro City &amp; Southwest project; and</li> <li>(ii) make readily accessible to future clients, competitors and contractors information which may place the parties at a substantial commercial disadvantage on future projects of a similar nature and accordingly diminish the competitive commercial value of information to a person and prejudice a person's legitimate business, commercial, professional or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
82.	Schedule A27 ( <i>Nominated Subcontracts</i> )	The information redacted is the names of the Nominated Subcontractors, a dollar amount and	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <p>a) the redacted information sets out limitations on the VC Contractor's and the BMCS Contractor's</p>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
		the DSI Term Sheet.	<p>structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>liability in connection with a particular event;</p> <p>b) exposing the redacted information would reveal the apportionment of risk between the Principal, the BMCS Contractor and the VC Contractor in relation to the occurrence of that particular event. Exposing this information may provide insight into the VC Contractor's and the BMCS Contractor's views on the likelihood of that key risk arising; and</p> <p>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
83.	Schedule A28 <i>(Information Documents)</i>	The information redacted is the entire schedule.	<p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <p>a) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor in relation to certain elements under the SDD, and therefore the level of risk that the VC Contractor was willing to price and accept to perform the Project Works; and</p> <p>b) revealing the information would place the parties at a substantial commercial disadvantage in future</p>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
				<p>projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information would reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
84.	Schedule A29 (Personnel)	The information redacted is the names of individual people.	<p><i>Section 32(1)(d), item 3(a) of the table in section 14</i></p> <p>The disclosure of this information would reveal an individual's personal information.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because the redacted information specifies an individual's name.</p> <p>The Principal considers that any public interest in favour of disclosure is not significantly advanced by the disclosure of this information, and is outweighed by the public interest against the disclosure as identified above.</p>
85.	Schedule B16	The information redacted is the entire schedule.	<p><i>Section 32(1)(d), items 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could diminish the competitive commercial value of information to a person and prejudice a person's legitimate business, commercial or financial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out activities requiring collaboration between the VC Contractor and other contractors on the project, the dates by which those activities are required to be achieved, and the amounts of the collaboration payments which may be due upon achievement of the collaboration events;</li> </ul>

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				<ul style="list-style-type: none"> <li>b) revealing the information provides insight into key interfaces and risks between different procurement packages on the Sydney Metro City &amp; Southwest project and the dollar value the Principal was prepared to ascribe to those collaboration events being achieved; and</li> <li>c) the Principal is still in the process of engaging contractors on the Sydney Metro City &amp; Southwest project, and if the redacted information were to be disclosed, potential contractors may be able to use that information to their advantage in negotiations with the Principal, thereby prejudicing the Principal's negotiating position. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the Principal's legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
86.	Schedule C1 ( <i>Scope of Works and Technical Criteria</i> )	The information redacted is part of clauses, entire clauses, figures, drawings, tables and attachments.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), item 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) revealing the information would provide insight into the apportionment of risk and responsibility for elements of the Project Works between the Principal and the VC Contractor including in relation to a party's ability to rely on certain information; and</li> <li>b) revealing the information would place the parties at a substantial commercial disadvantage in future</li> </ul>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
			<p>prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
87.	Schedule C4 ( <i>VC Contractor's Tender Design Development</i> )	The information redacted is the entire schedule.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor in relation to certain elements under the SDD, and therefore the level of risk that the VC Contractor was willing to price and accept to perform the Project Works; and</li> <li>b) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information would reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
			against disclosure.	
88.	Schedule C5 ( <i>Design Documentation to be reviewed by the Independent Certifier at Design Stage 3</i> )	The information redacted is the entire schedule.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor in relation to certain elements under the SDD, and therefore the level of risk that the VC Contractor was willing to price and accept to perform the Project Works; and</li> <li>b) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information would reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
89.	Schedule D1 ( <i>Site Access Schedule</i> )	The information redacted is dates.	<p><i>Section 32(1)(d), paragraph (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of the information may place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information provides details regarding whether or not the Early Site Access Date, Site Access Date and Site Access Expiry</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>other contractors.</p> <p><i>Section 32(1)(d), items 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of the information may diminish the competitive commercial value of information to a person and prejudice a person's legitimate business or financial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>Date are applicable in respect of particular parts of the site, and the relevant dates as applicable;</p> <p>b) the VC Contractor has obligations under the SDD with respect to accessing the Construction Site, and other contractors are required to perform works by reference to the redacted dates. Revealing the information would provide insight into the VC Contractor's programme and the level of risk that the VC Contractor was willing to price and accept. If this information were revealed, it could place the VC Contractor at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to other contractors who the VC Contractor may have to negotiate or bid against. Therefore the disclosure of the information could reduce the competitive commercial value of the information to the VC Contractor and prejudice its legitimate business, commercial or financial interests; and</p> <p>c) the public interest has been served by revealing the balance of the Site Access Schedule.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
90.	Schedule D2 <i>(Requirements of Approvals)</i>	The information redacted is part of a clause.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), item 4(b), 4(c) and</i></p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <p>a) the redacted information sets out the obligation to pay the costs of the Independent Property Impact</p>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p><i>4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>Assessment Panel;</p> <ul style="list-style-type: none"> <li>b) the redacted information is commercial-in-confidence as its disclosure would provide visibility on the VC Contractor's profit margins in relation to the SDD; and</li> <li>c) disclosure of the redacted information may provide insight into how the VC Contractor priced and accepted its costs for the project. If this information were revealed, it could place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
91.	Schedule D4 (Requirements of Third Party Agreements)	The information redacted is the entire schedule.	<p><i>Section 32(1)(a), paragraph (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), 4(c) and 4(d) of the table in section 14</i></p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the extent of the Principal's responsibility and obligations for certain third party agreements;</li> <li>b) exposing the redacted information would reveal the allocation of risk under the SDD in respect of fulfilling the requirements of third party agreements; and</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors, and would place the Principal at a substantial commercial disadvantage in its negotiations with other contractors and third parties involving the same third party agreements. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
92.	Schedule D5 ( <i>Third Party Agreements</i> )	The information redacted is the entire schedule.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of the information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(a), paragraph (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the Third Party Agreements between the Principal and third parties;</li> <li>b) the Principal is still in the process of negotiating third party agreements for the Sydney Metro City and Southwest Project. The disclosure of the redacted information may affect the status of these negotiations; and</li> <li>c) the disclosure of the redacted information would provide insight on the apportionment of risk between the Principal and the VC Contractor in relation to the draft Third Party Agreements, and therefore the risk that the VC Contractor was</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p><i>Section 32(1)(d), item 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>willing to price and accept. If this information were revealed, it could place the parties at a substantial commercial disadvantage when tendering or negotiating in future projects of a similar nature. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
93.	Schedule D6 ( <i>Adjoining Properties</i> )	The information redacted is a table.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at clause 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>(a) the information redacted sets out the rights regarding Adjoining Properties that the Principal is to acquire under the SDD. It includes information on the nature of the licence, the period for which the licence will operate, and the relevant site area;</li> <li>(b) the Principal is still in the process of negotiating the Adjoining Property Easements. If the redacted information were disclosed, the relevant easement holders may be able to use that information to their advantage in negotiations with the Principal, thereby prejudicing the Principal's negotiating position; and</li> <li>(c) revealing the information could prejudice the Principal's legitimate business, commercial or financial interests, and also affect the Principal's procurement of third parties for future projects, thereby compromising the effective exercise by</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>the Principal of its functions.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
94.	Schedule D7 <i>(Requirements of Adjoining Property Owner Agreements)</i>	The information redacted is a table.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the extent of the parties responsibility under certain Adjoining Property Owner Agreements. The VC Contractor is responsible for all obligations under an Adjoining Property Owner Agreement not expressly assumed by the Principal in one of the tables;</li> <li>b) the Principal is still in the process of negotiating the Adjoining Property Owner Agreements. If the redacted information were disclosed, the relevant property owners may be able to use that information to their advantage in negotiations with the Principal, thereby prejudicing the Principal's negotiating position. Therefore the disclosure of the information may prejudice the effective exercise by the Principal of its functions; and</li> <li>c) disclosing the redacted information would provide insight into the apportionment of risk between the Principal and the VC Contractor in relation to the Adjoining Property Owner Agreements, and therefore the risk that the VC Contractor was</li> </ul>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
			<p>value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>willing to price and accept. If this information were revealed, it could place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
95.	Schedule D8 <i>(Requirements of Adjoining Property Easements)</i>	The information redacted is a table.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), 4(c) and 4(d) of the table in section 14</i></p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the extent of the parties responsibility under certain Adjoining Property Owner Easements. The VC Contractor is responsible for all obligations under an Adjoining Property Owner Easements not expressly assumed by the Principal in one of the tables;</li> <li>b) the Principal is still in the process of negotiating the Adjoining Property Owner Easements. If the redacted information were disclosed, the relevant easement holders may be able to use that information to their advantage in negotiations with the Principal, thereby prejudicing the Principal's negotiating position. Therefore the disclosure of the information may prejudice the effective exercise by the Principal of its functions; and</li> <li>c) disclosing the redacted information would provide</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>insight into the apportionment of risk between the Principal and the VC Contractor in relation to the Adjoining Property Easements, and therefore the risk that the VC Contractor was willing to price and accept. If this information were revealed, it could place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
96.	Schedule D9 ( <i>Pro-forma Adjoining Property Owner Agreement</i> )	The information redacted is the entire schedule.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>(a) the information redacted sets out the pro-forma Adjoining Property Owner Agreement that the Principal is entering into with adjoining landowners;</li> <li>(b) the Principal is still in the process of negotiating the Adjoining Property Owner Agreements. If the redacted information were disclosed, the relevant property owners may be able to use that information to their advantage in negotiations with the Principal, thereby prejudicing the Principal's negotiating position. Therefore the disclosure of the information may prejudice the effective</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>other contractors.</p> <p><i>Section 32(1)(d), item 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>exercise by the Principal of its functions; and</p> <p>(c) disclosing the redacted information would provide insight into the apportionment of risk between the Principal and the VC Contractor in relation to the Adjoining Property Owner Agreements, and therefore the risk that the VC Contractor was willing to price and accept. If this information were revealed, it could place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
97.	Schedule D9 ( <i>Pro-forma Adjoining Property Easement</i> )	The information redacted is the entire schedule.	<p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <p>(a) the information redacted sets out the pro-forma Adjoining Property Easement that the Principal is entering into with adjoining landowners;</p> <p>(b) the Principal is still in the process of negotiating the Adjoining Property Easements. If the redacted information were disclosed, the relevant easement holders may be able to use that information to their advantage in negotiations with the Principal, thereby prejudicing the Principal's negotiating position. Therefore the disclosure of the</p>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>information may prejudice the effective exercise by the Principal of its functions; and</p> <p>(c) disclosing the redacted information would provide insight into the apportionment of risk between the Principal and the VC Contractor in relation to the Adjoining Property Easements, and therefore the risk that the VC Contractor was willing to price and accept. If this information were revealed, it could place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
98.	Schedule D11 ( <i>Draft Subdivision Plan</i> )	The information redacted is the entire schedule.	<p><i>Section 32(1)(a), paragraph (d) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information may reveal intellectual property in which the VC Contractor has an interest.</p> <p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of the information could prejudice the effective exercise by an agency of the agency's functions.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <p>a) the redacted information is the Draft Subdivision Plan identifying the stratum lots to be created in connection with the Victoria Cross Integrated Station Development and which will be registered with the NSW Land Registry Services pursuant to the terms of the SDD;</p> <p>b) the draft Subdivision Plan remains subject to finalisation and registration with the NSW Land</p>

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			<p><i>Section 32(1)(d), items 4(b) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, and prejudice a person's legitimate business, commercial or financial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>Registry Services, and the premature disclosure of the Subdivision Plan may prejudice:</p> <ul style="list-style-type: none"> <li>(i) the effective exercise by an agency of its functions; and</li> <li>(ii) the parties' legitimate business, commercial or interests in the event that the plans are amended before being registered with the NSW Land Registry Services;</li> <li>c) the draft Subdivision Plan contains drawings which are intellectual property in which the VC Contractor has an interest;</li> <li>d) revealing the information could place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the competitive commercial value of the information and prejudice the parties' legitimate business, commercial or financial interests; and</li> <li>e) the public interest has been served by revealing the existence of the Subdivision Plan.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
99.	Schedule D12 (Subdivision Requirements)	The information redacted is entire clauses, parts of clauses and time	<p><i>Section 32(1)(d), item 4(d) of the table in section 14</i></p> <p>The disclosure of this information could prejudice a person's legitimate business, commercial or financial</p>	The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
		periods.	<p>interests.</p> <p>There is an overriding public interest against disclosure.</p>	<ul style="list-style-type: none"> <li>a) the redacted information describes requirements relating to Subdivision in connection with the Project Works, including:           <ul style="list-style-type: none"> <li>a. amendments to Draft Subdivision Documents;</li> <li>b. Subdivision Proposals;</li> <li>c. staged subdivision; and</li> <li>d. timeframes in relation to the above;</li> </ul> </li> <li>b) revealing this information would make readily accessible to third parties information about specific requirements for the purpose of the Subdivision of the Project Works, and disclosure would accordingly make this information prematurely available to parties with whom the Principal may need to negotiate for the procurement of future subdivisions on related projects;</li> <li>c) revealing the information could place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the competitive commercial value of the information and prejudice the parties' legitimate business, commercial or financial interests; and</li> <li>d) the disclosure would prejudice the Principal's negotiating position in respect of such subdivision and the parties' legitimate business, commercial or financial interests.</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
				<b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.
100.	Schedule D13 <i>(Subdivision Principles)</i>	The information is parts of clauses and entire clauses.	<p><i>Section 32(1)(a), paragraph (d) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information may reveal intellectual property in which the VC Contractor has an interest.</p> <p><i>Section 32(1)(d), items 4(b) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, and prejudice a person's legitimate business, commercial or financial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information describes specific features of the VC Contractor's proposed use of the land, potential additional easements required in connection with the project works and process for finalisation of those easements, and a process for allocation of costs under the BMS;</li> <li>b) revealing the information would make readily accessible to third parties information about specific easements which may be required to be procured for the purpose of the project works, acceptable uses for ISD components and disclosure would accordingly make this information prematurely available to parties with whom the Principal may need to negotiate for the procurement of future interest and rights on related projects;</li> <li>c) the disclosure would prejudice the Principal's negotiating position in respect of such issues and the parties' legitimate business, commercial or financial interests;</li> <li>d) this schedule contains commercial information which is intellectual property in which the VC Contractor has an interest; and</li> <li>e) revealing the information could place the parties at</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
				<p>a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the competitive commercial value of the information and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
101.	Schedule D14 ( <i>Draft Building Management Statement</i> )	The information redacted is the entire schedule.	<p><i>Section 32(1)(a), paragraph (d) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information may reveal intellectual property in which the VC Contractor has an interest.</p> <p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(a), paragraphs (b), (d) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of the information may reveal commercial-in-confidence provisions of a government contract, the VC Contractor's cost structure or profit margins, and would place the</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>a) the redacted information is the draft form of BMS;</li> <li>b) the entirety of the redacted information is information which is still in draft form and remains to be resolved by the parties. The disclosure of the information at this stage would provide a reference point which may prejudice the parties' legitimate business, commercial or financial interests in the event the final agreed Building Management Statement is made available as future clients, competitors, and contractors could make an assessment of the parties' relative strengths and weaknesses as evidenced by the final negotiated position;</li> <li>c) this schedule contains commercial information which is intellectual property in which the VC Contractor has an interest;</li> <li>d) revealing the information could place the parties at</li> </ul>

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			<p>contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of the information may reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person, or prejudice a person's legitimate business or commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the competitive commercial value of the information and prejudice the parties' legitimate business, commercial or financial interests; and</p> <p>e) the disclosure of the information may diminish the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
102.	Schedule D15 ( <i>ISD Operations Principles</i> )	The information redacted is the entire schedule.	<p><i>Section 32(1)(d), item 4(c) and 4(d)</i></p> <p>The disclosure of this information could diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <p>a) the redacted information sets out details of the ISD Operations Principles; and</p> <p>b) revealing the information could place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the competitive commercial value of the information and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for</p>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
				disclosure as events and circumstances change.
103.	Schedule D16 <i>(Section 88B Instruments)</i>	The information redacted is the entire schedule.	<p><i>Section 32(1)(a), paragraph (d) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information may reveal intellectual property in which the VC Contractor has an interest.</p> <p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of the information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of the information may reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person, or prejudice a person's legitimate business or commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information is a draft instrument setting out terms of easements and restrictions on the use of land intended to be created pursuant to section 88B of the <i>Conveyancing Act 1919 (NSW)</i> (<b>section 88B Instrument</b>) which will apply in connection with areas governed by the draft Building Management Statement once registered;</li> <li>b) the draft section 88B Instrument remains subject to finalisation and registration with the NSW Land Registry Services, and the premature disclosure of the Section 88B Instrument may prejudice: <ul style="list-style-type: none"> <li>(i) the effective exercise by an agency of its functions; and</li> <li>(ii) the parties' legitimate business, commercial or interests in the event that the plans are amended before being registered with the NSW Land Registry Services;</li> </ul> </li> <li>c) revealing the information could place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the competitive commercial value of the information</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
				<p>and prejudice the parties' legitimate business, commercial or financial interests;</p> <p>d) this schedule contains commercial information which is intellectual property in which the VC Contractor has an interest; and</p> <p>e) the public interest has been served by revealing the existence of the draft section 88B Instrument.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
104.	Schedule D18 ( <i>Form of Miller Street Property Lease</i> )	The information redacted is names, contact details of individual persons, time periods, dollar amounts, entire clauses and parts of clauses.	<p><i>Section 32(1)(a), paragraph (d) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information may reveal intellectual property in which the VC Contractor has an interest.</p> <p><i>Section 32(1)(d), item 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p><i>Section 32(1)(d), item 3(a) of the table in section 14</i></p> <p>The disclosure of this information would reveal an individual's personal information.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <p>a) the redacted information sets out sensitive information regarding the obligations of the parties in relation to the Miller Street Property Lease and specifies details of individual persons;</p> <p>b) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests;</p> <p>c) revealing the information could place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore</p>

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			There is an overriding public interest against disclosure.	<p>the disclosure of the information could reduce the competitive commercial value of the information and prejudice the parties' legitimate business, commercial or financial interests; and</p> <p>d) the Principal considers that any public interest in favour of disclosure is not significantly advanced by the disclosure of this information, and is outweighed by the public interest against the disclosure as identified above.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
105.	Schedule E1 ( <i>Contract Sum Schedule</i> )	The information redacted is the entire schedule.	<p><i>Section 32(1)(a), paragraphs (b), (c) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would provide visibility on the VC Contractor's cost structure, profit margins or full base case financial model and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors or other contractors.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <p>a) the redacted information sets out payment arrangements for the works and services delivered under the SDD;</p> <p>b) the information is commercial-in-confidence as its disclosure would provide visibility on the VC Contractor's profit margins in relation to the work;</p> <p>c) the itemisation of work may also reveal a program which the VC Contractor has invested a significant amount of time developing, and which the VC Contractor may want to use in future bids to gain a competitive advantage; and</p> <p>d) disclosure of the redacted information may provide insight on how the VC Contractor priced and accepted the work for the project. If this information were revealed, it could place the VC</p>

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			<p>business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>Contractor at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to other contractors who the VC Contractor may have to negotiate or bid against. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the VC Contractor's legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
106.	Schedule E2 ( <i>Performance Incentive Payment Schedule</i> )	The information redacted is the entire schedule.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would provide visibility on the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the mechanism and rates for calculating Performance Incentive Payments under the SDD which is commercially sensitive and, if disclosed, may provide a unique insight into the VC Contractor's cost structures;</li> <li>b) revealing the information would provide insight into the VC Contractor's assessment of the risk and commercial impact of delays arising in the course of performing its work, and would also reveal a bespoke mechanism negotiated by the parties;</li> <li>c) revealing the information could place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore</li> </ul>

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			There is an overriding public interest against disclosure.	<p>the disclosure of the information could reduce the competitive commercial value of the information and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
107.	Schedule E3	The information redacted is the entire schedule.	<p><i>Section 32(1)(d), items 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could diminish the competitive commercial value of information to a person and prejudice a person's legitimate business, commercial or financial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out activities requiring collaboration between the VC Contractor and other contractors on the project, the dates by which those activities are required to be achieved, and the amounts of the collaboration payments which may be due upon achievement of the collaboration events;</li> <li>b) revealing the information provides insight into key interfaces and risks between different procurement packages on the Sydney Metro City &amp; Southwest project and the dollar value the Principal was prepared to ascribe to those collaboration events being achieved; and</li> <li>c) the Principal is still in the process of engaging contractors on the Sydney Metro City &amp; Southwest project, and if the redacted information were to be disclosed, potential contractors may be able to use that information to their advantage in negotiations with the Principal, thereby prejudicing the Principal's negotiating position. Therefore the disclosure of the information could reduce the</li> </ul>

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				<p>information's competitive commercial value and prejudice the Principal's legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
108.	Schedule E4 <i>(Valuation Mechanism)</i>	The information redacted is the entire schedule.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the mechanism for calculating the VC Contractor's cost entitlements, including the applicable margins and rates;</li> <li>b) the information is commercial-in-confidence as its disclosure would provide visibility on the VC Contractor's profit margins in relation to the work; and</li> <li>c) disclosure of the redacted information may provide insight on how the VC Contractor priced and accepted the work for the project. If this information were revealed, it could place the VC Contractor at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to other contractors who the VC Contractor may have to negotiate or bid against. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the VC Contractor's legitimate business, commercial or financial interests.</li> </ul>

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				<b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.
109.	Schedule E6 ( <i>Parent Company Guarantee</i> )	The information redacted is the entire schedule.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the form of the Parent Company Guarantee required under the SDD;</li> <li>b) exposing the redacted information would reveal the apportionment of risk between the Principal, the VC Contractor and the VC Contractor Guarantor in relation to certain obligations under the SDD, and therefore the level of risk that the VC Contractor was willing to price and accept; and</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests. This information is subject to ongoing negotiation by the Principal with the parties required to be counterparties to these agreements and disclosure would therefore place the Principal at a commercial disadvantage in these negotiations.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>

<b>Item</b>	<b>Clause (and general description)</b>	<b>Information redacted</b>	<b>Reason(s) for redaction under GIPA Act</b>	<b>Public interest considerations</b>
110.	Schedule E7 ( <i>Delay Costs</i> )	The information redacted is the entire schedule.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the mechanism and rates for calculating delay costs under the SDD; and</li> <li>b) revealing the information would provide insight into the VC Contractor's assessment of the risk and commercial impact of delays arising in the course of performing its work, and would also reveal a bespoke mechanism negotiated by the parties;</li> <li>c) revealing the information could place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the competitive commercial value of the information and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
111.	Schedule E8 ( <i>Provisional Sum Work</i> )	The information redacted is the entire schedule.	<p><i>Section 32(1)(a) (paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4)</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out the mechanism and rates for calculating the amounts payable for</li> </ul>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d) (items 4(b), 4(c) and 4(d) of the table in section 14)</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>Provisional Sum Work which is commercially sensitive and, if disclosed, may provide a unique insight into the VC Contractor's cost structures; and</p> <p>b) revealing the information could place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the competitive commercial value of the information and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
112.	Schedule F1 (Electronic files)	The information redacted is the entire schedule.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at section 1 of Schedule 4</i></p> <p>The disclosure of this information would reveal the VC Contractor's cost structure or profit margins and would place the VC Contractor at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <p>a) exposing the redacted information would reveal the apportionment of risk between the Principal and the VC Contractor in relation to certain elements under the SDD, and therefore the level of risk that the VC Contractor was willing to price and accept to perform the Project Works; and</p> <p>b) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore</p>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>the disclosure of the information would reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>



*Execution Version*

# **Victoria Cross Integrated Station Development**

## **Station Delivery Deed**

**Contract No: 504**

**Sydney Metro**

ABN 12 354 063 515

and

**The unincorporated joint venture comprising Lendlease  
Building Pty Limited and Lendlease Engineering Pty  
Limited**

Lendlease Building Pty Limited  
ABN 97 000 098 162

Lendlease Engineering Pty Limited  
ABN 40 000 201 516

## CONTENTS

CLAUSE	PAGE
1. DEFINITIONS AND INTERPRETATION .....	1
1.1 Definitions .....	1
1.2 Interpretation.....	1
1.3 Order of precedence.....	3
1.4 No bias against drafter .....	4
1.5 Business Day .....	4
1.6 Authorities .....	4
1.7 Best or reasonable endeavours.....	4
1.8 Principal's rights do not affect risk allocation .....	5
1.9 Electronic files .....	7
2. GENERAL OBLIGATIONS .....	7
2.1 Objectives and Project Values.....	7
2.2 Design and construction of Project Works .....	7
2.3 Project Requirements .....	8
2.4 Quality of work.....	9
[REDACTED] .....	9
2.6 Principal's Statement of Business Ethics .....	9
2.7 Workforce development and industry participation .....	9
2.8 Value engineering .....	10
3. SECURITY .....	11
3.1 Unconditional undertakings .....	11
3.2 Release of Security .....	12
3.3 Replacement of unconditional undertakings – Required Rating.....	13
3.4 Parent Company Guarantee .....	13
3.5 [REDACTED] .....	14
4. DESIGN AND DESIGN DOCUMENTATION.....	15
4.1 Design obligations.....	15
4.2 Principal's Design Stage 1 Documents .....	16
4.3 VC Contractor's Tender Design .....	17
4.4 Warranties .....	17
4.5 Preparation and submission of Design Documentation .....	18
4.6 Certification of Design Documentation .....	19
4.7 Distribution of Design Documentation.....	19
4.8 Review of Design Documentation.....	20
4.8A Network Assurance Committee.....	20
4.9 Design Documentation for construction .....	21
4.10 Amendments to Final Design Documentation.....	21
5. CONSTRUCTION .....	22
5.1 Construction obligations .....	22
5.2 Commencement of construction.....	22
5.3 Property Works.....	23
5.4 Utility Services .....	24
5.5 Local Area Works.....	25
5.6 Artefacts.....	26
5.7 Contamination.....	26
5.8 Prevention of disturbance and interference .....	28
5.9 Responding to notifications and complaints regarding property damage.....	28
6. SAFETY AND ENVIRONMENT.....	29

6.1	Care of people, property and the Environment.....	29
6.2	Work health and safety.....	29
6.3	Principal contractor .....	30
6.4	Authorisations and licences .....	31
6.5	Sydney Metro Principal Contractor Health and Safety Standard.....	31
6.6	WHS Accreditation .....	32
6.7	Incident management .....	32
6.8	Rail Safety .....	33
6.9	Engineering Authorisation and ASA compliance.....	34
6.10	Cleaning up.....	34
6.11	National Greenhouse and Energy Reporting Act 2007 (Cth).....	34
6.12	Asset Management Information .....	34
7.	LAW AND APPROVALS .....	35
7.1	Compliance with Laws .....	35
7.2	Change in Law.....	36
7.3	Change in Codes and Standards .....	36
7.4	Approvals .....	37
7.5	Modifications to EP&A Act Approvals.....	37
7.6	Legal challenge to Planning Approvals .....	38
7.7	Crown Building Work.....	38
7.8	Long service leave levy.....	38
8.	GOVERNANCE AND ADMINISTRATION .....	39
8.1	Principal's Representative .....	39
8.2	Appointees of the Principal's Representative.....	39
8.3	VC Contractor's Representative .....	39
8.4	VC Contractor's acknowledgement .....	39
8.5	Release in favour of Principal's Representative .....	40
8.6	Personnel .....	40
8.7	Independent Certifier .....	41
8.8	Effect of Independent Certifier decisions .....	42
8.9	Not Used .....	42
8.10	Governance groups .....	42
8.11	Attendance at meetings.....	42
8.12	Exchange of information between government agencies .....	42
8.13	Industrial relations.....	43
8.14	Reports .....	43
9.	ACCESS AND CONSTRUCTION SITE .....	43
9.1	Rights to land.....	43
9.2	Early Access to the Construction Site.....	43
9.3	Access to the Construction Site on or after the Site Access Date .....	45
9.4	Period and terms of Construction Licence and Interim Access Licence.....	46
9.5	Conditions precedent to access to the Construction Site .....	47
9.6	Access to the Construction Site.....	47
9.7	Principal's right of entry to Construction Site .....	47
9.8	Adjoining Properties .....	48
9.9	Extra Land .....	50
9.10	Existing Operations .....	50
9.11	Encumbrances .....	51
9.12	Lease of 194 Miller Street and 196A Miller Street.....	53
10.	PHYSICAL CONDITIONS.....	54
10.1	Acceptance of site.....	54
10.2	Information Documents .....	55

12.	INTERFACE WITH INTERFACE CONTRACTORS .....	58
12.1	Master Interface Protocols Deed Poll .....	58
12.2	Cooperation and Integration Deeds .....	59
12.3	Cooperation and co-ordination with Interface Contractors .....	59
12.4	Disputes between the VC Contractor and Interface Contractors .....	62
12.5	No Claims arising out of Interface Work .....	63
12.6	Temporary Work and Construction Plant .....	63
12.7	Collateral Warranty Deed Poll .....	64
14.	INTERFACE WITH OSD AND CONCOURSE LESSEE.....	65
14.1	Acknowledgements regarding OSD and Concourse Lease interface.....	65
15.	TSE CONTRACT .....	66
15.2	TSE Works Design Documentation .....	67
15.3	TSE Works Information.....	67
15.4	Inspection of TSE Works .....	68
15.5	Care and maintenance of TSE Works .....	68
15.9	Access by TSE Contractor .....	70
15.10	Claims.....	70
15.11	TSE Handover Works.....	71
16.	RECORDS AND ACCESS TO RECORDS .....	71
16.1	Records .....	71
16.2	Access to third parties' information .....	73
16.3	ASIC and ASX notices.....	73
17.	SUBCONTRACTING.....	73
17.1	Subcontracting by the VC Contractor.....	73
17.2	Significant Subcontracts .....	73
17.3	Provisions to be included in Subcontracts .....	75
17.4	Nominated Subcontractors .....	75
17.5	Subcontractor direct warranties .....	75
18.	PROJECT PLANS.....	76
18.1	General .....	76
18.2	Warranties in relation to Project Plans .....	76
19.	PORTIONS .....	76
19.1	Principal's Representative may direct Portions .....	76
19.2	Interpretation of Portions.....	77
19.3	Portion handover requirements.....	77
20.	MODIFICATIONS.....	77
21.	TIME .....	78
21.1	Completion of the Works .....	78

21.2	Dates for Milestone Achievement, Substantial Completion and Completion .....	78
21.3	Importance of Milestone Achievement, Substantial Completion and Completion on time.....	78
21.4	Suspension .....	79
21.5	VC Contractor's Program.....	79
21.6	Extensions of time .....	79
21.7	Limiting factors .....	80
21.8	Determination of extension of time claim.....	81
21.9	Risk of delay and disruption and resultant increased Costs.....	82
21.10	Reduction in time.....	82
21.11	Delay Liquidated Damages.....	83
22.	DIRECTIONS TO CHANGE SEQUENCING AND ACCELERATE .....	84
22.1	Directions to change sequence of work or accelerate .....	84
22.2	Requirement to comply .....	85
22.3	Adjustment to Significant Dates.....	85
22.4	VC Contractor entitlements .....	85
23.	MILESTONE ACHIEVEMENT, SUBSTANTIAL COMPLETION AND COMPLETION .....	86
23.1	Milestone Achievement, Substantial Completion and Completion.....	86
23.2	Subdivision requirements.....	87
23.3	Access for Interface Contractors following Milestone Achievement.....	87
23.4	Final Completion.....	88
24.	TESTING AND COMMISSIONING .....	88
24.1	General .....	88
24.2	Testing .....	88
25.	INTELLECTUAL PROPERTY RIGHTS .....	89
25.1	Assignment and ownership .....	89
25.2	Delivery up of Contract Documentation and Materials.....	91
26.	POST-COMPLETION ARRANGEMENTS .....	91
26.1	Access following Substantial Completion and Completion .....	91
26.2	Post Completion Activities.....	91
27.	DEFECTS RECTIFICATION .....	92
27.1	Defects Correction Periods .....	92
27.2	Defects.....	93
27.3	Minor Defects and Agreed Defects.....	93
27.4	Notice of Defect.....	94
27.5	[REDACTED]	
27.6	Acceptance of a Defect .....	94
27.7	Access to remedy Defects .....	95
27.8	Failure to rectify Defect .....	95
27.9	Interface Contractors .....	95
27.10	Rights not affected.....	96
28.	PAYMENT .....	96
28.1	Contract Sum .....	96
28.2	Contract Sum Adjustment Events .....	96
28.3	Payment claims .....	96
28.4	Effect of payment schedules and payments .....	99
28.5	Provision of documentation and other requirements .....	99
28.6	Payment of Subcontractors, workers compensation and payroll tax.....	100
28.7	Payment for unfixed Construction Materials.....	101
28.8	SOP Act .....	102
28.9	Right of set-off .....	104

28.10	Provisional sums.....	105
28.11	Performance Incentive Payments .....	108
28.12	Initial Payment.....	108
28.13	Interest .....	109
28.14	Title .....	109
28.15	Payments .....	109
29.	GST .....	109
29.1	Payment of GST .....	109
29.2	Later adjustment to price or GST .....	110
29.3	Tax invoice/adjustment note .....	110
29.4	Recipient created tax invoice/recipient created adjustment note .....	110
29.5	Indemnities and reimbursement .....	111
30.	CARE OF THE PROJECT WORKS, RISKS AND INSURANCE.....	111
30.1	Responsibility for care of the VC Contractor's Activities.....	111
30.2	Indemnity from VC Contractor.....	112
30.3	Obligations not affected .....	114
30.5	Principal's Insurance .....	114
30.6	VC Contractor's Insurance obligations .....	115
30.7	Periods of Insurance .....	115
30.8	Evidence of policies.....	116
30.9	Premiums .....	116
30.10	Undertaking to inform .....	116
30.11	Reinstatement.....	117
30.12	Application of the Principal's Insurance proceeds .....	118
30.13	Damage to property .....	118
30.15	Liabilities of VC Contractor not affected .....	119
30.16	Survival of termination .....	119
31.	LIABILITY .....	119
31.3	Pure Economic Loss arising solely from the existence of the project .....	119
31.5	Proportionate liability .....	121
32.	DEFAULT AND TERMINATION .....	122
32.1	VC Contractor Event of Default.....	122
32.2	Default Notice .....	123
32.3	Rights of the Principal following Default Notice .....	124
32.5	Immediate termination or take out .....	125
32.6	Termination of OSD PDA.....	125
32.7	Principal's rights after take out or termination .....	126
32.8	Principal's entitlements after take-out .....	127
32.9	Principal's rights after termination.....	128
32.10	VC Contractor's rights after repudiation or wrongful termination .....	128
32.11	Termination for convenience .....	129
32.12	Payment for termination for convenience repudiation or wrongful termination ...	129
32.13	Termination by frustration .....	130
32.14	Preservation of rights .....	131
32.15	No other termination rights .....	131
33.	CONFIDENTIALITY AND PERMITTED DISCLOSURE.....	131

33.1	Confidentiality .....	131
33.2	Principal's Public Disclosure Obligations .....	132
33.3	Media requests .....	132
34.	<b>ASSIGNMENT AND CHANGE IN CONTROL .....</b>	<b>132</b>
34.1	Assignment by the VC Contractor .....	132
34.2	Assignment and novation by the Principal .....	133
34.3	Change in control of an entity that comprises the VC Contractor.....	134
34.4	Change in control of the VC Contractor Guarantor.....	135
35.	<b>DISPUTE RESOLUTION .....</b>	<b>136</b>
36.	<b>REPRESENTATIONS AND WARRANTIES.....</b>	<b>136</b>
36.1	Principal's representations and warranties.....	136
36.2	VC Contractor representations and warranties.....	136
36.3	Repetition of representation and warranties .....	138
36.4	Obligations not affected .....	138
36.5	Undertakings by VC Contractor.....	138
37.	<b>NOTIFICATION OF CLAIMS.....</b>	<b>138</b>
37.1	Purpose of notification .....	138
37.2	Notices of Claims .....	139
37.3	Prescribed notices.....	139
37.4	No Liability.....	140
37.5	Other provisions unaffected .....	140
38.	<b>COSTS.....</b>	<b>140</b>
39.	<b>NOTICES .....</b>	<b>140</b>
40.	<b>GENERAL .....</b>	<b>143</b>
40.1	Governing Law and jurisdiction .....	143
40.2	Amendments.....	143
40.3	Waiver .....	143
40.4	Survival of certain provisions; no merger.....	143
40.5	Further acts and documents.....	144
40.6	Liability for Taxes .....	144
40.7	Consents .....	144
40.8	No representation or reliance .....	144
40.9	Exercise of remedies .....	144
40.10	Entire agreement.....	145
40.11	Joint and several liability .....	145
40.12	Indemnities.....	145
40.13	Excluding liability.....	146
40.14	Severability.....	146
40.15	Relationship between the Principal and VC Contractor .....	146
40.16	Transfer of functions or Public Transport Agency assets.....	146
40.17	Principal not Liable.....	147
40.18	Supervening legislation .....	147
40.19	Set off.....	147
40.20	Continuing breaches.....	147
40.21	Principal may act .....	148
40.22	Personal Property Securities Act .....	148
40.23	Vienna Convention.....	149
40.24	Attorneys.....	149
40.25	Counterparts.....	149

THIS DEED is made on *20 December* 2018

**BETWEEN:**

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

**RECITALS:**

- (A) The Principal is procuring Sydney Metro City & Southwest on behalf of the NSW government and the people of New South Wales.
- (B) Following completion of a request for tenders process, the Principal selected:
  - (1) the VC Contractor as the successful tenderer for the delivery of the Project Works; and
  - (2) the VC Developer as the successful tenderer for the delivery of the Over Station Development.
- (C) The Principal and the VC Contractor now wish to enter into this deed to set out the terms on which the VC Contractor will:
  - (1) design, construct, test, commission and complete the Project Works and otherwise carry out the VC Contractor's Activities;
  - (2) interface and co-ordinate the VC Contractor's Activities with the activities of the Interface Contractors and the VC Developer's Activities; and
  - (3) hand over the Project Works to the Principal.
- (D) The Principal and the VC Developer will separately enter into the OSD PDA in respect of the Over Station Development.

**THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

Unless the context or express provisions of this deed otherwise require, capitalised words and phrases used in this deed have the meanings given to them in Schedule A2 (*Definitions*).

**1.2 Interpretation**

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

- (a) "person" includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (b) a reference to a "party" to this deed or a "person" or "entity" includes that party's, person's or entity's executors, administrators, successors and permitted substitutes and assigns, including persons taking part by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;

- (c) a reference to a "document", "contract" or "agreement" is to that document, contract or agreement as updated, varied, novated, ratified or replaced from time to time;
- (d) a reference to any "Authority", "institute", "association" or "body" is:
  - (i) if that Authority, institute, association or body is reconstituted, renamed, replaced or restructured or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
  - (ii) if that Authority, institute, association or body is dissolved or ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;
- (e) a reference to a "statute" includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:
  - (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
  - (ii) any consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to:
  - (i) a "part" or a "schedule" is a reference to a part or schedule to or of this deed;
  - (ii) this deed includes all schedules to it; and
  - (iii) the SWTC includes all appendices to the SWTC;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) "includes" in any form is not a word of limitation;
- (j) a reference to "\$" or "dollar" is to Australian currency;
- (k) any reference to "information" will be read as including information, representations, statements, data, samples, bore logs, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) anything (including an amount) is a reference to the whole and each part of it and the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (m) an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;

- (n) words and terms defined in the GST Law have the same meaning in clauses concerning GST;
- (o) if a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled;
- (p) references to GST extend to any notional liability of any person for GST and to any amount which is treated as GST under the GST Law, and references to an input tax credit extend to any notional input tax credit to which any person is entitled;
- (q) a time of day is a reference to Sydney time;
- (r) words in parentheses after a cross reference to a clause must not be used in the interpretation of this deed; and
- (s) any reference to the Principal's intention and objectives for the Project Works under this deed including under clause 2.3(e) and clause 2 must be read subject to, and is limited by, the requirements of the SWTC.

### 1.3 Order of precedence

- (a) The documents which comprise this deed (other than the VC Contractor's Tender Design) are to be regarded as mutually explanatory and anything contained in one but not the others will be equally binding as if contained in all of them.
- (b) If there is any Error in or between the various documents that comprise this deed then, except to the extent clause 4.2 (*Principal's Design Stage 1 Documents*) and clause 4.3 (*VC Contractor's Tender Design*) apply:
  - (i) if the Error is between the documents comprising this deed, the documents will be given precedence in accordance with the following:
    - (A) the General Conditions; and
    - (B) the schedules;
  - (ii) the requirements in the SWTC are minimum requirements, including technical, operational and performance requirements, for the Project Works, Temporary Works and VC Contractor's Activities which the VC Contractor must satisfy to fulfil its obligations under this deed;
  - (iii) if more than one requirement applies in respect of any part of the Project Works, the Temporary Works or the VC Contractor's Activities then all requirements must be satisfied;
  - (iv) to the extent clause 1.3(b)(i) to clause 1.3(b)(iii) (inclusive) do not apply or resolve the Error, the document, term or requirement which prescribes or requires the greatest level of service or the highest standard of compliance, consistent with (at a minimum) complying with all Approvals, will take precedence (unless the Principal's Representative directs otherwise); and
  - (v) to the extent clause 1.3(b)(i) to clause 1.3(b)(iv) (inclusive) do not apply or resolve the Error and the Error is between figured and scaled dimensions, figured dimensions will prevail over the scaled dimensions.
- (c) To the extent that the VC Contractor is required to comply with a Project Plan, the terms of this deed will have precedence over the Project Plan to the extent of any

Error. A Project Plan cannot impose an obligation on the Principal to do something different to, or earlier than, what is required by this deed.

- (d) Where the VC Contractor considers that there is an Error in or between the provisions of this deed, it must promptly advise the Principal's Representative in writing, who must give the VC Contractor a direction as to the interpretation to be followed.

#### 1.4 No bias against drafter

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

#### 1.5 Business Day

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

#### 1.6 Authorities

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

#### 1.7 Best or reasonable endeavours

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

- (a) the Principal will only be obliged to bring about the relevant outcome to the extent that it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) the Principal is not obliged to expend any money or make any payment to the VC Contractor or any other parties;
- (c) the Principal cannot ensure the relevant outcome; and
- (d) the Principal does not agree to:
  - (i) interfere with or influence the exercise by any person of a statutory power or discretion;
  - (ii) exercise a power or discretion or otherwise act in a manner that promotes the objectives and expected outcomes of the VC Station Contract Documents if the Principal regards that exercise as not in the public interest;
  - (iii) develop policy or legislate by reference only or predominantly to the objectives and expected outcomes of the VC Station Contract Documents;
  - (iv) procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of the VC Station Contract Documents; or
  - (v) act in any other way that the Principal regards as not in the public interest.

#### 1.8 Principal's rights do not affect risk allocation

- (a) **(Monitoring performance)** The Principal has various rights under this deed which are designed to give the Principal the ability to monitor the performance of the VC Contractor's obligations under the VC Station Contract Documents. Those rights include:
  - (i) the right to review Project Plans, Design Documentation, Asset Management Information, the VC Contractor's Program, Progress Reports and other documents which the VC Contractor must submit to the Principal or the Principal's Representative pursuant to this deed (**VC Contractor Submissions**); and
  - (ii) rights to inspect, monitor, audit and test the Project Works.
- (b) **(No relief)** Neither the exercise of, nor the failure to exercise, such rights will:
  - (i) relieve the VC Contractor from, or alter or affect, the VC Contractor's Liabilities, obligations or responsibilities;
  - (ii) prejudice or limit the Principal's rights against the VC Contractor; or
  - (iii) preclude the Principal from subsequently asserting that the VC Contractor has not fulfilled its obligations,whether under this deed or otherwise according to Law.
- (c) **(No assumption of risk)** Unless otherwise expressly provided for in this deed:
  - (i) acceptance of any certificate, statement, assessment or report provided by the VC Contractor to the Principal or the Principal's Representative is not approval by the Principal or the Principal's Representative of the VC Contractor's performance of its obligations under this deed;

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

- (d) **(No Liability)** The Principal will have no Liability to the VC Contractor and is released from any Loss incurred or suffered by the VC Contractor or its Associates because of any defect or omission in, or any issue arising out of any VC Contractor Submissions.

#### 1.9 Electronic files

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

### 2. GENERAL OBLIGATIONS

#### 2.1 Objectives and Project Values

- (a) **(Objectives)** Each party will, subject to and in accordance with this deed, perform its obligations under this deed having regard to the achievement of:
- (i) the Sydney Metro City & Southwest Strategic Objectives;
  - (ii) the Victoria Cross ISD Objectives; and
  - (iii) the Principal's Vision Statement.
- (b) **(Project Values)** Each party will adhere to and uphold the Project Values and work collaboratively in a spirit of mutual trust and cooperation in the performance of their obligations under this deed.
- (c) **(Principal's rights not affected)** The obligations under clause 2.1(b) will not affect clause 1.7 (*Best or reasonable endeavours*) or the exercise of a right or discretion under this deed by the Principal or the Principal's Representative.

#### 2.2 Design and construction of Project Works

The VC Contractor must perform the VC Contractor's Activities in accordance with the SWTC, Good Industry Practice and this deed and so that:

- (a) the Project Works, when constructed in accordance with the Final Design Documentation, will, in the case of:
- (i) the Trackway Portion, upon Substantial Completion; and
  - (ii) each Non-Trackway Portion, upon Completion of the relevant Portion,
- satisfy the Project Requirements and will at all relevant times thereafter be capable of satisfying the Project Requirements (subject to the Principal and the Operator operating and maintaining the Project Works in accordance with the operation and maintenance manuals forming part of the Asset Management Information);
- (b) the VC Contractor reaches each Significant Completion by the relevant Significant Date;
- (c) at Milestone Achievement, the relevant VC Contractor's Activities and the Project Works are sufficiently developed to allow all relevant Interface Contractors to perform their respective Interface Works without disruption and delay caused by the VC Contractor;
- (d) at Substantial Completion of the Trackway Portion and Completion of each Non-Trackway Portion, that Portion satisfies the Project Requirements; and

- (e) the Third Party Works are also carried out in accordance with the VC Contractor's obligations in Schedule D4 (*Requirements of Third Party Agreements*), Schedule D7 (*Requirements of Adjoining Property Owner Agreements*) and Schedule D8 (*Requirements of Adjoining Property Easements*).

## 2.3 Project Requirements

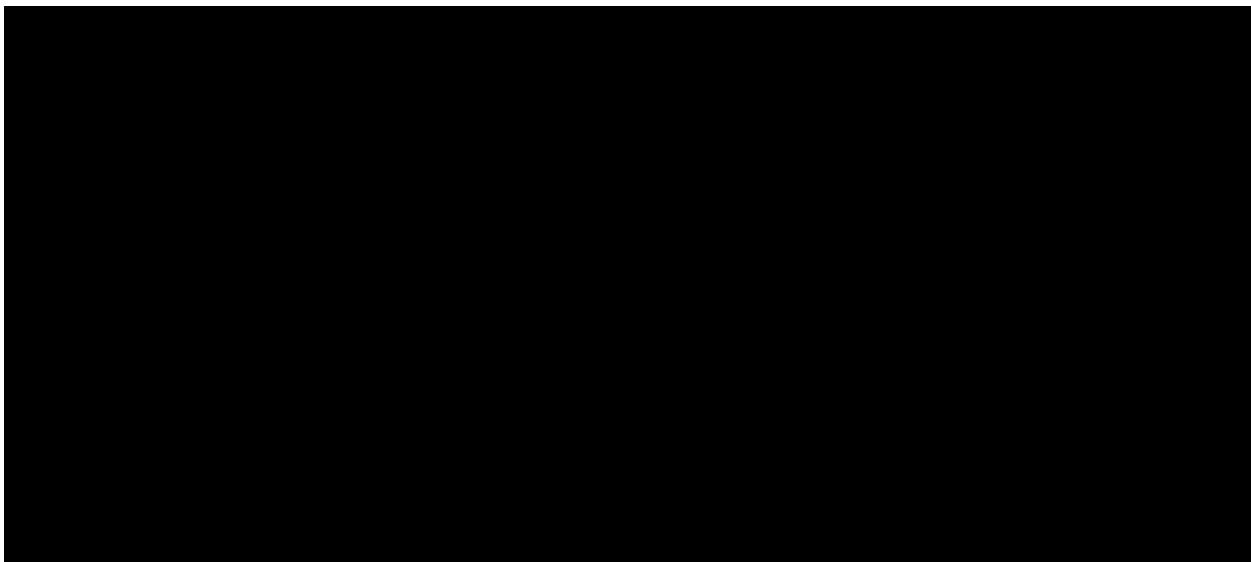
The Project Requirements are:

- (a) **(Part of an operating and integrated rail system)** Project Works which:
  - (i) are an integral part of an operating and integrated rail system which provides frequent high speed mass transit services between Chatswood and Bankstown; and
  - (ii) are capable of:
    - (A) accommodating various rolling stock, railway track, rail systems and related equipment;
    - (B) continuous operation;
    - (C) operation by either the State of New South Wales or private operator(s) on its behalf;
    - (D) expansion, further development, upgrade, augmentation and extension to the extent described in this deed;
    - (E) connection to and/or integration with other transport infrastructure to the extent referred to in this deed; and
    - (F) accommodating future construction and development of buildings, over station developments and/or other infrastructure (including the OSD) on, over, under or adjacent to the Project Works and Victoria Cross Station to the extent referred to in this deed;
- (b) **(Temporary Works which are fit for purpose)** Temporary Works which at all relevant times are fit for their intended purpose;
- (c) **(Project works which are fit for purpose)** Project Works which:
  - (i) in the case of:
    - (A) the Trackway Portion, upon Substantial Completion; and
    - (B) each Non-Trackway Portion, upon Completion of the relevant Portion, are fit for their intended purpose; and
  - (ii) at all relevant times thereafter are capable of remaining fit for their intended purpose (subject to the Principal and the Operator operating and maintaining the Project Works in accordance with the operation and maintenance manuals forming part of the Asset Management Information); and
- (d) **(Other requirements)** VC Contractor's Activities, Project Works and Temporary Works which, in whole and in part:
  - (i) comply with the SWTC;

- (ii) subject to clause 4.2(b), comply with the Principal's Design Stage 1 Documents;
  - (iii) comply with Law; and
  - (iv) are integrated with the OSD and, to the extent referred to in a VC Station Contract Document, the TSE Works, the LW Works, the TSOM Works and all other Interface Work.
- (e) **(Interpretation)** In this deed, subject to clause 1.2(s), any reference to the Project Works, the Temporary Works or the Design Documentation, or any part of any of them, being fit for their purpose, intended purpose or having an intended use, will be read as referring to the purpose, intended purpose or intended use stated in, contemplated by or which can reasonably be inferred from this deed.

#### **2.4 Quality of work**

- (a) The VC Contractor must in carrying out the VC Contractor's Activities use the materials and standard of workmanship required by this deed.
- (b) In the absence of any other requirement, the VC Contractor must use suitable new materials and ensure that all workmanship and materials are fit for their intended purpose and in accordance with Good Industry Practice.



#### **2.6 Principal's Statement of Business Ethics**

- (a) **(Compliance)** The VC Contractor must at all times comply with the Principal's "Statement of Business Ethics", a copy of which is available at [www.transport.nsw.gov.au](http://www.transport.nsw.gov.au).
- (b) **(Subcontractor acknowledgement)** Prior to the engagement of any Subcontractor by the VC Contractor, the VC Contractor must obtain a written acknowledgement from such Subcontractor that it has received, read, understood and will comply with the Principal's Statement of Business Ethics.

#### **2.7 Workforce development and industry participation**

The VC Contractor must:

- (a) ensure that workforce development is addressed throughout the performance of the VC Contractor's Activities;

- (b) comply with the workforce development requirements set out in Appendix F4 of the SWTC; and
- (c) cooperate with the Principal and provide any assistance or documentation that the Principal may reasonably require in relation to the implementation of its workforce development and industry participation initiatives for Sydney Metro City & Southwest.

## 2.8 Value engineering

- (a) During the first three months after the date of this deed, the VC Contractor must participate in a value engineering process with the Principal, including a series of value engineering workshops at times reasonably requested by the Principal's Representative, to identify measures which will, if adopted, achieve one or more of the following objectives:
  - (i) accelerate the achievement of:
    - (A) Substantial Completion of a Portion;
    - (B) Completion of a Portion; or
    - (C) Milestone Achievement of a Milestone;
  - (ii) reduce the cost to the Principal of the Project Works or the Temporary Works;
  - (iii) improve the efficiency or value to the Principal of the completed Project Works;
  - (iv) minimise the interface risks in relation to the Project Works, in particular as between the VC Contractor and any Interface Contractors;
  - (v) reduce the whole of life costs associated with the operation and maintenance of the Project Works or the further construction, operation and maintenance of Sydney Metro City & Southwest; or
  - (vi) otherwise be of benefit to the Principal or the Sydney Metro City & Southwest project,

(together the **Value Engineering Objectives**).

- (b) The VC Contractor must ensure that any relevant personnel from the VC Contractor or its Subcontractors reasonably requested by the Principal's Representative attend and participate in the value engineering workshops and any other meetings or forums connected with the process. As a minimum, such personnel will include the VC Contractor's Design Manager and Construction Director and key personnel from any Significant Subcontractor that is undertaking the design of any part of the Project Works or the Temporary Works.
- (c) If, through the value engineering process described in clause 2.8(a), the parties agree on a solution to achieve one or more of the Value Engineering Objectives, then:
  - (i) the agreed solution will be implemented as a Modification directed by the Principal under clause 2.2 of the Modification Procedure;
  - (ii) the VC Contractor will be entitled to be paid its reasonable costs of participating in the value engineering process and may claim such amounts:

- (A) in accordance with clause 28.3 of the General Conditions; and
- (B) only once a Modification Order has been issued by the Principal's Representative to implement the agreed solution;
- (iii) the Principal must state in the Modification Order the Increased Costs or Savings (as applicable) agreed between the parties;
- (iv) any agreed Savings resulting from the implementation of the agreed solution will be shared equally between the Principal and the VC Contractor; and
- (v) the Principal's share of any agreed Savings resulting from the implementation of the agreed solution will be a debt due from the VC Contractor to the Principal.
- (d) Except as specified in clause 2.8(c)(ii), each party must bear its own costs of participating in the value engineering process contemplated by this clause 2.8.
- (e) This clause 2.8 does not prejudice the Principal's rights under clause 20 or under the Modification Procedure.
- (f) The parties acknowledge and agree that:
  - (i) the process contemplated by this clause 2.8 will run concurrently with the VC Contractor's other VC Contractor's Activities;
  - (ii) the VC Contractor shall not be required, as a result of the process contemplated by this clause 2.8, to delay or otherwise alter its normal design development and procurement processes for the Project Works, unless a Modification Order is issued as contemplated by clause 2.8(c)(i) (in which case the design development or procurement activities (as applicable) shall be amended to reflect the Modification Order); and
  - (iii) in participating in the process contemplated by this clause 2.8, the VC Contractor may propose solutions and associated Savings, which are available for acceptance by the Principal for a validity period of at least three months. If the Principal directs a Modification after the validity period specified by the VC Contractor has expired, the VC Contractor shall be entitled to advise the Principal of adjusted Savings and (if applicable) additional costs relating to the Modification as a result of the Principal directing the Modification after expiry of the validity period.

### 3. SECURITY

#### 3.1 Unconditional undertakings

- (a) (**Provision**) The VC Contractor must as a pre-condition to commencement of work on the Construction Site, give to, or procure and provide to, the Principal [REDACTED] unconditional undertakings which in aggregate are equal to [REDACTED]
- (b) (**Purpose**) Without limiting clause 3.1(d), the Security to be provided under this clause 3.1 is for the purpose of ensuring the due and proper performance by the VC Contractor of its obligations under this deed and so that the risk of financial burden during the time of any unresolved Dispute or difference is borne by the VC Contractor.

- (c) (**Requirements**) The Security must be in favour of the Principal and in the form of Schedule E5 (*Form of unconditional undertaking*) (or such other form approved by the Principal) and must:
- (i) be provided by a bank or insurer that:
    - (A) is subject to prudential oversight by the Australian Prudential Regulation Authority; and
    - (B) at all times maintains the Required Rating;
  - (ii) be payable at an office of the issuer in Sydney (or such other place approved by the Principal);
  - (iii) not have an expiry date; and
  - (iv) where required by Law, be duly stamped at the Cost of the VC Contractor.

[REDACTED]

[REDACTED]

- (f) (**No injunction**) The VC Contractor must not take any steps to injunct or otherwise restrain:
  - (i) any issuer of any Security from paying the Principal pursuant to the Security;
  - (ii) the Principal from having recourse to any Security or receiving payment under any Security; or
  - (iii) the Principal using the money received under any Security.
- (g) (**No interest**) Subject to clause 3.1(e), the Principal is not obliged to pay the VC Contractor interest on Security or the proceeds of any Security.
- (h) (**No trust**) The Principal will not hold the proceeds of any Security on trust for the VC Contractor.

### 3.2 Release of Security

- (a) (**Release**) Subject to clause 3.1(d), clause 3.2(b) and clause 32.7(a)(iv)(F), the Principal must:
  - (i) within [REDACTED] after the Date of Completion of Portion 2, release so much of the Security so that the Principal then holds one or more unconditional undertakings equal to [REDACTED] of the Contract Sum;
  - (ii) within [REDACTED] of the date which is 18 months after the Date of Completion of Portion 2, release so much of the Security so that the Principal then holds one or more unconditional undertakings equal to [REDACTED] of the Contract Sum;
  - (iii) within [REDACTED]s after expiry of the final Defects Correction Period of the last Portion to achieve Completion, release so much of the Security so that the Principal then holds one or more unconditional undertakings for

[REDACTED] of the reasonable cost determined by the Principal's Representative (acting reasonably) of correcting any Defects in the Project Works which:

- (A) have not been rectified at that date; or
- (B) are the subject of an extended Defects Correction Period under clause 27.1(b)(ii)(B) or clause 27.1(b)(iii)(B); and
- (iv) release the remainder of the Security, on the earlier of:
  - (A) [REDACTED]; and
  - (B) the date of the Final Certificate if it provides that:
    - (aa) no moneys are due by the VC Contractor to the Principal, within [REDACTED] of the date of the Final Certificate; or
    - (bb) moneys are due from the VC Contractor to the Principal, within [REDACTED] of the date that the VC Contractor pays the Principal the moneys due under the Final Certificate.
- (b) (**Claim on termination**) Where this deed is terminated by the Principal by reason of the VC Contractor repudiating this deed or the VC Contractor's default, the Principal may continue to hold the Security to the extent of any Claim which the Principal may have against the VC Contractor arising out of, or in any way in connection with, this deed.

### 3.3 Replacement of unconditional undertakings – Required Rating

If the issuer of any Security provided under this deed ceases to:

- (a) be subject to prudential oversight by the Australian Prudential Regulation Authority; or
- (b) have the Required Rating,

the VC Contractor must:

- (c) promptly notify the Principal of that circumstance; and
- (d) within 15 Business Days of being requested to do so, procure the issue to the Principal of replacement Security which must:
  - (i) have a face value equal to that of the unconditional undertaking being replaced; and
  - (ii) comply in all respects with the requirements of clause 3.1(c),

and the Principal must surrender the original unconditional undertaking to the VC Contractor in exchange for the issue of the replacement unconditional undertaking.

### 3.4 Parent Company Guarantee

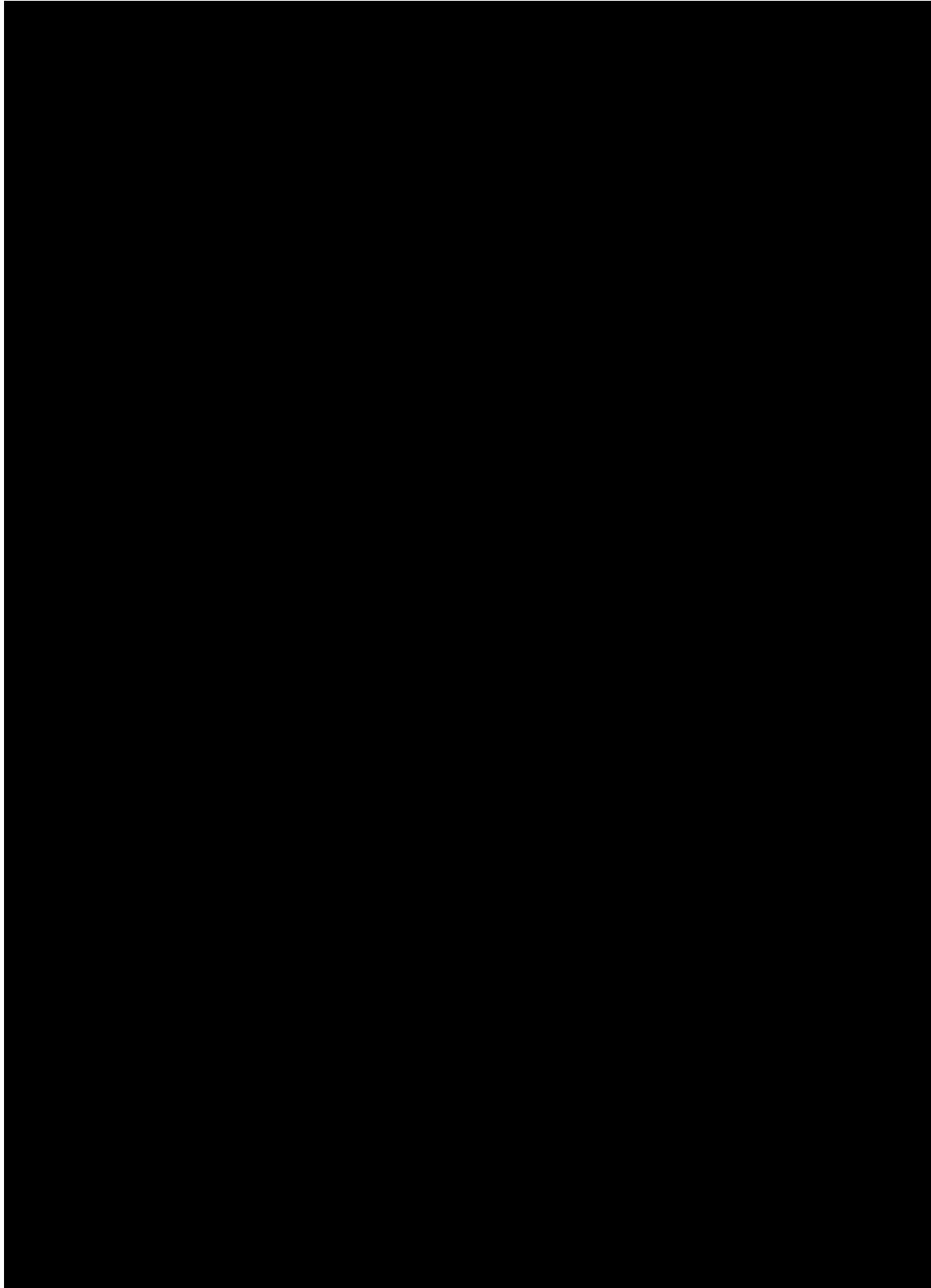
On the date of this deed, the VC Contractor must give the Principal a duly executed Parent Company Guarantee from the VC Contractor Guarantor and must ensure that, in relation to the Parent Company Guarantee, all stampings, registrations and filings required by:

- (a) Law (or by the law of any foreign jurisdiction); or

(b) the Principal to ensure that it is able to expatriate from any foreign jurisdiction any amounts that may be payable under the Parent Company Guarantee,

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

3.5



## **4. DESIGN AND DESIGN DOCUMENTATION**

### **4.1 Design obligations**

The VC Contractor must develop the design of the Project Works and the Temporary Works so that, if the Project Works are constructed in accordance with the Final Design Documentation, the Project Works will comply with:

- (a) the Project Requirements;
- (b) any Modification;
- (c) this deed; and

- (d) to the extent that they are Third Party Works, the VC Contractor's relevant obligations in Schedule D4 (*Requirements of Third Party Agreements*), Schedule D7 (*Requirements of Adjoining Property Owner Agreements*) and Schedule D8 (*Requirements of Adjoining Property Easements*).

#### 4.2 Principal's Design Stage 1 Documents

- (a) **(Principal's Design Stage 1 Documents)** The VC Contractor acknowledges that:

- (i) prior to the date of this deed, the Principal procured the Principal's Design Stage 1 Documents from a third party; and
- (ii) the Principal's Design Stage 1 Documents:
  - (A) only contain a preliminary design which must be further developed by the VC Contractor; and
  - (B) must be interpreted subject to Appendix H1 of the SWTC.

- (b) **(Design Development and Resolution)** The VC Contractor must develop the Principal's Design Stage 1 Documents and carry out the Design Development and Resolution, at its cost, so that:

- (i) the Project Works overcome:

[REDACTED]

- (B) each other Design Exception having regard to the Project Requirements and Appendix H1 of the SWTC;

- (ii) the capacity, quality, functionality, durability and operability of the Project Works comply with the highest capacity, quality, functionality, durability and operability specified in the Principal's Design Stage 1 Documents (other than the Design Exceptions), the Planning Approval and the SWTC; and

- [REDACTED]
- (c) **(Project Requirements)** Subject to clause 4.2(a)(ii) and clause 4.2(b), if the VC Contractor designs and constructs the Project Works in accordance with the Principal's Design Stage 1 Documents, the Principal cannot assert that the Project Works do not comply with the Project Requirements specified in clause 2.3(c) and 2.3(d)(i).
- (d) **(Issues with Principal's Design Stage 1 Documents)** If the VC Contractor considers that the Project Works or any part of the Project Works will not be fit for purpose if the Project Works are designed and constructed in accordance with the Principal's Design Stage 1 Documents then:

- (i) the VC Contractor must notify the Principal promptly after becoming aware of the issue; and
- (ii) the Principal will, within [REDACTED] of receiving the VC Contractor's notice under clause 4.2(d)(i) either:
  - (A) direct a Modification by issuing a Modification Order to address (to the extent deemed necessary in the Principal's sole discretion) the issues raised in the VC Contractor's notice under clause 4.2(d)(i); or
  - (B) notify the VC Contractor that it does not intend to issue a Modification Order under clause 4.2(d)(ii)(A), with reasons.
- (e) **(VC Contractor to continue performing obligations)** Subject to clause 4.2(c), if the Principal:
  - (i) issues a notice under clause 4.2(d)(ii)(B); or
  - (ii) does not issue a notice under clause 4.2(d)(ii)(A) or clause 4.2(d)(ii)(B) within the time period under clause 4.2(d)(ii),

the VC Contractor must continue to perform its obligations as contemplated under this deed.

#### 4.3 VC Contractor's Tender Design

- (a) **(Incorporation into design)** The VC Contractor must incorporate the VC Contractor's Tender Design into the design for the Project Works and the Temporary Works.
- (b) **(Warranty that Tender Design complies with deed)** The VC Contractor:
  - (i) warrants that the VC Contractor's Tender Design complies with the Project Requirements and the deed;
  - (ii) remains responsible for ensuring that the Project Works and the Temporary Works satisfy the Project Requirements and the other requirements of this deed despite the VC Contractor's Tender Design; and
  - (iii) bears all risks associated with the use of, or reliance upon, the VC Contractor's Tender Design in performing its obligations or exercising its rights under this deed and such use and reliance will not limit or otherwise reduce any of the VC Contractor's obligations under this deed.
- (c) **(No Liability)** The Principal will have no Liability to the VC Contractor arising out of or in connection with the VC Contractor's Tender Design.

#### 4.4 Warranties

- (a) **(No Liability)** The Principal will have no Liability to the VC Contractor in relation to:
  - (i) the appropriateness, suitability and adequacy of the SWTC for carrying out the VC Contractor's Activities and satisfying its obligations under this deed;
  - (ii) any Error in or between the SWTC and the Planning Approval; or
  - (iii) the Principal's Design Stage 1 Documents.

- (b) (**Warranties unaffected**) Subject to clauses 2.2(a)(v) and 2.2(e) of the Modification Procedure, the VC Contractor's obligations under, and the warranties given in, this deed will remain unaffected and the VC Contractor will bear and continue to bear full liability and responsibility for the construction, commissioning, testing and completion of the Project Works notwithstanding any Modification.

#### 4.5 Preparation and submission of Design Documentation

- (a) (**Submission of Design Documentation**) The VC Contractor must:
- (i) prepare the Design Documentation in accordance with the SWTC;
  - (ii) submit all Design Documentation (other than design for Temporary Works and Third Party Agreement Design Documentation) when it has reached Design Stage 2 and Design Stage 3 to the Principal's Representative:
    - (A) in accordance with the SWTC, the Technical Management Plan and the VC Contractor's Program; and
    - (B) in a manner and at a rate which, having regard to the quantum of Design Documentation submitted, will give the Principal's Representative and, if applicable (in respect of Design Stage 3 Documentation), the Independent Certifier a reasonable opportunity to review the submitted Design Documentation;
  - (iii) submit all Third Party Agreement Design Documentation to the required recipients under any relevant Third Party Agreement (with a copy to the Principal's Representative) at the times required under the relevant Third Party Agreement;
  - (iv) if requested by the Principal's Representative, provide the Principal's Representative with any Design Documentation for Temporary Works within 5 Business Days of being requested to do so;
  - (v) ensure the Design Stage 3 Design Documentation submitted is accurate, complete, co-ordinated with the other Design Documentation and at a level of detail which is sufficient to permit the Principal's Representative and, if applicable, the Independent Certifier to determine whether:
    - (A) the Design Documentation complies with this deed; and
    - (B) the Project Works and Temporary Works which will be constructed in accordance with the Design Documentation will comply with this deed;
  - (vi) provide any further information required by the Principal's Representative (acting reasonably) and (in respect of Design Stage 3 Documentation) the Independent Certifier; and
  - (vii) submit any amendment to the Design Stage 2 Design Documentation or Design Stage 3 Design Documentation to the Principal's Representative (in which case the procedure in this clause 4.5 to clause 4.9 (*Design Documentation for construction*) will re-apply).
- (b) (**Independent Certifier review at Design Stage 3**) Within 1 Business Day of receiving any Design Stage 3 Design Documentation from the VC Contractor, the Principal:

- (i) must provide to the Independent Certifier for review and certification any package of Design Stage 3 Design Documentation that is specified in Schedule C5 (*Design Documentation to be reviewed by the Independent Certifier at Design Stage 3*); and
- (ii) may provide to the Independent Certifier any additional Design Stage 3 Design Documentation (if any) that the Principal requires to be reviewed and certified by the Independent Certifier.

#### 4.6 Certification of Design Documentation

- (a) **(Design Stage 2 Certificates)** With all Design Documentation submitted pursuant to clause 4.5 (*Preparation and submission of Design Documentation*) for Design Stage 2, the VC Contractor must deliver a certificate in the form of Schedule B2 (*VC Contractor's Certificate – Design (Design Stage 2)*) from each of:
  - (i) the VC Contractor, certifying that the Design Documentation complies with all requirements of this deed including the SWTC; and
  - (ii) [REDACTED]
- (b) **(Design Stage 3 Certificates)** With all Design Documentation submitted pursuant to clause 4.5 (*Preparation and submission of Design Documentation*) for Design Stage 3, the VC Contractor must deliver:
  - (i) a certificate in the form of Schedule B3 (*VC Contractor's and Subcontractor's Certificate – Design (Design Stage 3)*) from each of:
    - (A) the VC Contractor certifying that the Design Documentation:
      - (aa) complies with all requirements of this deed; and
      - (bb) is suitable for construction; and
    - (B) [REDACTED]

#### 4.7 Distribution of Design Documentation

- (a) **(Principal may distribute)** The Principal may distribute, or require the VC Contractor to distribute, the whole or a part of the Design Documentation to third parties including Authorities, Interface Contractors and the Design Review Panel.
- (b) **(Comments by third parties)** The Principal may, but is not obliged to, take into account the comments of third parties in relation to the Design Documentation when responding to the VC Contractor.
- (c) **(No effect on obligations)** No comment or instruction from a third party in relation to the design is binding on the Principal, or will have any effect on the obligations of the VC Contractor under this deed (unless it is also a direction from the Principal's Representative).

#### 4.8 Review of Design Documentation

- (a) **(Review process)** All Design Documentation submitted by the VC Contractor under clause 4.5 (*Preparation and submission of Design Documentation*) (other than Design Documentation for Temporary Works which is requested by the Principal's Representative under clause 4.5(a)(iv) and Third Party Agreement Design Documentation) will be reviewed in accordance with the process set out in Schedule A10 (*Design review procedure and Network Assurance Committee*).
- (b) **(Cooperation)** The VC Contractor must cooperate with the Principal's Representative and, if applicable (in respect of Design Stage 3 Documentation), the Independent Certifier to procure the review of the Design Documentation.
- (c) **(Third Party Agreement)** The VC Contractor must:
  - (i) comply with the VC Contractor's obligations in Schedule D4 (*Requirements of Third Party Agreements*), Schedule D7 (*Requirements of Adjoining Property Owner Agreements*) and Schedule D8 (*Requirements of Adjoining Property Easements*); and
  - (ii) cooperate with the Third Parties to procure any certification and approvals required pursuant to the documents referenced in clause 4.8(c)(i).
- (d) **(Comments by Authorities)** When reviewing any Design Documentation the Principal's Representative and, if applicable (in respect of Design Stage 3 Documentation), the Independent Certifier may take into account any comments on the Design Documentation that have been provided by any relevant Authority.
- (e) **(Principal's Direction)** The Principal's Representative may, at any time (including after the Principal's Representative has not "rejected" or (in respect of Design Stage 3 Documentation) the Independent Certifier has certified the Design Documentation pursuant to Schedule A10 (*Design review procedure and Network Assurance Committee*)), direct the VC Contractor to make amendments to the Design Documentation which the Principal considers to be required to ensure the Design Documentation complies with this deed and, if it does so, clause 2.3(c) of Schedule A10 (*Design review procedure and Network Assurance Committee*) will apply.

#### 4.8A Network Assurance Committee

The VC Contractor must:

- (a) comply with the requirements of Appendix F1 of the SWTC in relation to the NAC assurance process; and
- (b) without limiting clause 4.8A(a):
  - (i) submit to the Principal's Representative each NAC CCR Package in accordance with the Technical Management Plan; and
  - (ii) cooperate with and provide all reasonable assistance to the Principal and its Associates to facilitate the review of each NAC CCR Package in accordance with the process set out in clause 3 of Schedule A10 (*Design review procedure and Network Assurance Committee*).

#### 4.9 Design Documentation for construction

- (a) The VC Contractor may use for construction purposes Design Stage 3 Design Documentation submitted to the Principal's Representative under clause 4.5(a)(ii) if the following conditions are met:
  - (i) the Principal's Representative has issued the VC Contractor with a notice under clause 2.1 of Schedule A10 (*Design Review Procedure and Network Assurance Committee*) or 20 Business Days have passed from submission of the Design Stage 3 Design Documentation in accordance with clause 4.5(a)(ii);
  - (ii) the Design Documentation complies with the requirements of any relevant Approval (if applicable); and
  - (iii) for Design Documentation that relates to construction work that requires NAC Gate 3 approval:
    - (A) the Principal's Representative has given a notice under clause 3.2(a) of Schedule A10 (*Design Review Procedure and Network Assurance Committee*); or
    - (B) the Principal's Representative has given a notice under clause 3.2(b) of Schedule A10 (*Design Review Procedure and Network Assurance Committee*) and:
      - (aa) the VC Contractor has completed all NAC Required Actions set out in the notice; or
      - (bb) the notice permits the VC Contractor to proceed with construction provided that the NAC Required Actions are completed in due course.
  - (b) The VC Contractor may use Third Party Agreement Design Documentation for construction purposes if the relevant requirements set out in the relevant Third Party Agreement have been satisfied.
  - (c) This clause 4.9 (*Design Documentation for construction*) does not restrict the use for construction purposes of Design Documentation for Temporary Works.

#### 4.10 Amendments to Final Design Documentation

- (a) Subject to clause 4.10(b) and clause 20 (*Modifications*), if the VC Contractor wishes to amend any Final Design Documentation relating to:
  - (i) the Trackway Portion, prior to the Date of Substantial Completion; or
  - (ii) a Non-Trackway Portion, prior to the Date of Completion,

then:

  - (iii) the VC Contractor must submit the amended Design Documentation to the Principal's Representative together with an explanation as to why it is seeking to amend the Final Design Documentation; and
  - (iv) clause 4.5 (*Preparation and submission of Design Documentation*) to clause 4.9 (*Design Documentation for construction*) and Schedule A10 (*Design Review Procedure and Network Assurance Committee*) will apply as if the Design Documentation is Design Stage 3 Design Documentation.

- (b) The VC Contractor may, at its own risk, use the amended Final Design Documentation submitted in accordance with clause 4.10(a) for construction purposes prior to the expiry of the 20 Business Day period in clause 4.9(a)(i) if:
- (i) the amendment to the Final Design Documentation:
    - (A) is minor;
    - (B) does not adversely impact the Project Works or the Temporary Works; and
    - (C) is necessary to overcome an issue which:
      - (aa) prevents or adversely affects the VC Contractor proceeding with construction; and
      - (bb) has arisen or become evident since the Final Design Documentation was submitted to the Principal's Representative; and
  - (ii) the Final Design Documentation does not relate to a NAC CCR Package that has been the subject of a notice under clause 3.2(a) or clause 3.2(b) of Schedule A10 (*Design Review Procedure and Network Assurance Committee*).

## 5. CONSTRUCTION

### 5.1 Construction obligations

- (a) The VC Contractor must construct the Project Works and the Temporary Works:
  - (i) in accordance with:
    - (A) all Approvals;
    - (B) the Final Design Documentation; and
    - (C) all other requirements of this deed; and
  - (ii) so that the Project Works and the Temporary Works:
    - (A) satisfy the Project Requirements; and
    - (B) at all relevant times comply with all applicable Laws.
- (b) The VC Contractor must ensure that the VC Works are constructed within the boundaries of the Project Site.

### 5.2 Commencement of construction

- (a) (**No commencement on Construction Site**) In addition to the requirements in clause 4.9 (*Design Documentation for construction*), the VC Contractor must not commence any work on the Construction Site until:
  - (i) the VC Contractor has complied with clauses 3.1(a) and 3.5(a)(ii);
  - (ii) each Project Plan that is required by Appendix F2 of the SWTC to be in place prior to the commencement of construction has been submitted to the Principal's Representative and has not been rejected by the Principal's

Representative under Section 2.2 of Appendix F2 of the SWTC within the review period specified in the Project Plans; and

- (iii) all Hold Points required to be released prior to commencement of work on the Construction Site have been released in accordance with the requirements of this deed, including the Quality Plan.

- (b) (**No commencement of Third Party Works**) The VC Contractor must not commence construction of any Third Party Works or the VC Contractor's Activities which interface with Third Parties until the relevant preconditions to commencement of that work in the relevant Third Party Agreement have been satisfied (or waived by the relevant Third Party).

### 5.3 Property Works

- (a) (**Property Works**) The VC Contractor must carry out the Property Works:
  - (i) in accordance with the requirements of this deed; and
  - (ii) in a manner which minimises inconvenience and disruption to the Landowners of the Unowned Property Works Lands.
- (b) (**VC Contractor to rehabilitate**) The VC Contractor must:
  - (i) rehabilitate any part of Unowned Property Works Lands to the state agreed between the VC Contractor and the Landowners of such Unowned Property Works Lands prior to commencing the work or, if no such agreement is reached, the state it was in immediately prior to the VC Contractor obtaining access; and
  - (ii) otherwise repair any damage or degradation to any part of the Unowned Property Works Lands which arises out of or in any way in connection with the performance of its obligations under this clause 5.3.
- (c) (**Fit for purpose**) For the purposes of clause 2.3(c) and clause 5.3(b), any element of the Property Works located on Unowned Property Works Lands will be treated as fit for their intended purpose if:
  - (i) the Property Works have been performed in the manner agreed with the Landowners of such Unowned Property Works Lands; or

- (d) (**Completion**) When each discrete part of the Property Works is completed, the VC Contractor must provide the Principal's Representative with:
  - (i) a certificate in the form of Schedule B13 (*Landowner's Certificate*), duly executed by the relevant Landowner; or
  - (ii) if the Landowner has failed or refused to sign a certificate in the form of Schedule B13 (*Landowner's Certificate*) within 15 Business Days after it was provided by the VC Contractor to the relevant Landowner:
    - (A) copies of all correspondence between the VC Contractor and the Landowner relating to the certificate referred to in clause 5.3(d)(i); and

- (B) evidence satisfactory to the Principal's Representative (acting reasonably) that the relevant part of the Property Works is complete and satisfies the requirements of this deed.
- (e) **(Indemnity)** The VC Contractor must indemnify the Principal from and against any Claims, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a Claim by the Landowners of any Unowned Property Works Lands where:
- (i) such Landowners have not duly signed a certificate in the form of Schedule B13 (*Landowner's Certificate*); and
  - (ii) the Claim or Loss arises out of or in any way in connection with a wrongful act or omission of the VC Contractor or its Associates in connection with the Property Works or a failure by the VC Contractor to comply with its obligations under this deed relating to Property Works.

#### 5.4 Utility Services

- (a) **(Utility Service Works)** The VC Contractor must carry out all Utility Service Works in accordance with the requirements of this deed and, where applicable, the VC Contractor's obligations in Schedule D4 (*Requirements of Third Party Agreements*), Schedule D7 (*Requirements of Adjoining Property Owner Agreements*) and Schedule D8 (*Requirements of Adjoining Property Easements*).
- (b) **(Risk)** The VC Contractor bears the risk of the existence, location, condition and availability of all Utility Services (in so far as they affect the VC Contractor's Activities) and must investigate, protect, relocate, remove, modify, disconnect, support, reinstate and provide for all Utility Services necessary for it to perform the VC Contractor's Activities and otherwise comply with its obligations under the VC Station Contract Documents.
- (c) **(Payment)** The VC Contractor must obtain, pay for and contract for the provision of all Utility Services that it requires to perform the VC Contractor's Activities.
- (d) **(Cooperation)** The VC Contractor must cooperate and co-ordinate (and ensure that its Associates cooperate and co-ordinate) with the owners of all Utility Services, and implement their requirements as part of the VC Contractor's Activities and must consult with and keep the Principal fully informed as to the VC Contractor's or its Associates' dealings with the Authorities providing the Utility Services.
- (e) **(Disruption)** The VC Contractor must ensure that, as a consequence of or in relation to the performance of the VC Contractor's Activities:
  - (i) there are no unplanned disruptions to the Utility Services;
  - (ii) any planned disruptions to the Utility Services are minimised; and
  - (iii) otherwise no Utility Services are damaged, destroyed, disconnected, disrupted, interfered with or interrupted.
- (f) **(Completion)** When each discrete part of the Utility Services Works are completed, the VC Contractor must provide the Principal's Representative with:
  - (i) written notice from the relevant Authority with jurisdiction over the affected Utility Service confirming that the relevant part of the Utility Service Works is complete; or

- (ii) if the relevant Authority has failed or refuses to provide such notice within 15 Business Days after it was requested by the VC Contractor:
  - (A) copies of all correspondence between the VC Contractor and the Authority relating to the notice referred to in clause 5.4(f)(i); and
  - (B) evidence satisfactory to the Principal's Representative (acting reasonably) that the relevant part of the Utility Service Works is complete and satisfies the requirements of this deed and, where applicable, the VC Contractor's obligations in Schedule D4 (*Requirements of Third Party Agreements*), Schedule D7 (*Requirements of Adjoining Property Owner Agreements*) and Schedule D8 (*Requirements of Adjoining Property Easements*).

## 5.5 Local Area Works

- (a) (**Local Area Works**) The VC Contractor must carry out all Local Area Works in accordance with the requirements of this deed and, where applicable, the VC Contractor's obligations in Schedule D4 (*Requirements of Third Party Agreements*), Schedule D7 (*Requirements of Adjoining Property Owner Agreements*) and Schedule D8 (*Requirements of Adjoining Property Easements*).
- (b) (**Joint inspection**) When the VC Contractor considers that a discrete part of the Local Area Works is complete, it must notify the Principal's Representative and the Independent Certifier in writing and the Principal's Representative, the Independent Certifier, the VC Contractor and a representative of the Authority with jurisdiction over the relevant part of the Local Area Works will jointly inspect the relevant part of the Local Area Works at a mutually convenient time.
- (c) (**Completion**) Following the joint inspection under clause 5.5(b), the Independent Certifier will determine whether the discrete part of the Local Area Works has been completed in accordance with this deed and the requirements of any relevant Third Party Agreement (if applicable) and, within 5 Business Days of the joint inspection (or such longer period permitted under any relevant Third Party Agreement), will either:
  - (i) if the relevant part of the Local Area Works is complete, issue a certificate in the form of Schedule B14 (*Independent Certifier's Certificate – Completion of Local Area Works*) in respect of the relevant part of the Local Area Works; or
  - (ii) if the relevant part of the Local Area Works is not complete, provide the Principal and the VC Contractor with written notice identifying the items of work which remain to be completed (after which the process in clause 5.5(b) and this clause 5.5(c) will reapply).
- (d) (**Notice from Authority**) It is a condition precedent to the completion of each discrete part of the Local Area Works, that the VC Contractor provides the Principal's Representative with:
  - (i) written notice from the relevant Authority with jurisdiction over the relevant part of the Local Area Works stating that the Authority is satisfied that the relevant part of the Local Area Works is complete; or
  - (ii) if the relevant Authority has failed or refuses to provide such notice within 15 Business Days after it was requested by the VC Contractor:
    - (A) a statement from the VC Contractor that the relevant Authority has failed to or refused to provide such notice; and

- (B) copies of all correspondence between the VC Contractor and the Authority relating to the notice referred to in clause 5.5(d)(i).

## 5.6 Artefacts

- (a) **(Property of the Principal)** As between the Principal and the VC Contractor, any Artefacts found on, in or under the surface of the Construction Site are and will remain the property of the Principal.
- (b) **(Discovery)** The VC Contractor must, upon the discovery of an Artefact:
  - (i) notify the Principal within 2 Business Days;
  - (ii) ensure that the Artefact is managed in accordance with the requirements of the Planning Approval and comply with all Laws and the Directions of Authorities and the Principal relating to the discovery and handling of the Artefact; and
  - (iii) continue to perform the VC Contractor's Activities, except to the extent otherwise directed by the Principal's Representative or an Authority, ordered by a court or tribunal or required by Law.

## 5.7 Contamination

- (a) **(Risk)** In addition to the requirements of the Planning Approval (but subject to clause 5.7(b) and clause 5.7(f)), the VC Contractor bears the risk of all Contamination:
  - (i) on, in, over, under or about the Construction Site to the extent it is disturbed by or interfered with in the carrying out of the VC Contractor's Activities;
  - (ii) which migrates:
    - (A) onto the Construction Site as a result of the VC Contractor's Activities and which could have been reasonably anticipated by a competent and experienced contractor that had examined the Construction Site and its surroundings and all Information Documents; or
    - (B) from the Construction Site as a result of the VC Contractor's Activities;
  - (iii) on, in, over, under or about any Extra Land or migrating onto or from any Extra Land; and
  - (iv) which otherwise arises out of or in connection with the VC Contractor's Activities.
- (b) **(No obligation to trace to source)** To the extent that Contamination:
  - (i) on, in, over, under or about the Construction Site is disturbed by or interfered with in the carrying out of the VC Contractor's Activities, the VC Contractor is:
    - (A) required to Remediate only those parts of such Contamination that are actually disturbed by or interfered with in the carrying out of the VC Contractor's Activities; and
    - (B) is not required to Remediate the entire mass of such Contamination or trace to the source of the Contamination where that wider mass or

- source has not been disturbed by or interfered with in the carrying out of the VC Contractor's Activities; or
- (ii) migrates onto the Construction Site as a result of the VC Contractor's Activities, the VC Contractor is not required to trace to the source of such Contamination where such source is outside the Construction Site.
- (c) **(No Liability)** Except to the extent set out in clause 5.7(f), the Principal will have no Liability to the VC Contractor in relation to Remediating or overcoming Contamination.
- (d) **(TSE Contamination)** To the extent that Contamination on the Construction Site is Contamination which the TSE Contractor is required to remediate under the TSE Contract, it will be treated as a TSE Defect under clause 15.7 (*TSE Defects*).
- (e) **(Remediation)** Except to the extent clause 5.7(d) applies, the VC Contractor must undertake Remediation of any Contamination on the Construction Site and the Extra Land in accordance with Law, the Planning Approval and all guidelines made or approved by the EPA so that in respect of Contamination on, in, over, under or about:
- (i) the Construction Site:
    - (A) the Construction Site is suitable for the performance of the VC Contractor's Activities and the further construction, operation and maintenance of Sydney Metro City & Southwest; and
    - (B) whole of life costs associated with the further construction, operation and maintenance of Sydney Metro City & Southwest at the relevant parts of the Construction Site where the Remediation is undertaken are minimised; and
  - (ii) any land outside the Construction Site, the relevant land is returned to the state that it would have been in if unaffected by the VC Contractor's Activities (unless otherwise agreed with the relevant third party).
- (f) [REDACTED] to the extent that the VC Contractor is required:
- (i) to Remediate any Contamination on, in, over, under or about the Construction Site which is both:
    - (A) caused by the Principal or its Associates; and
    - (B) disturbed, or interfered with, by the VC Contractor in the carrying out of the VC Contractor's Activities; or
  - (ii) by Law or the requirements of any Authority (which includes the requirements of the Planning Approval and all guidelines made or approved by the EPA) to undertake Remediation of any Contamination on, in, over, under or about the Construction Site, or migrating to or from the Construction Site, for which the VC Contractor does not bear the risk under clause 5.7(a).
- (g) **(Hazardous Chemicals)** The VC Contractor must ensure that:
- (i) Hazardous Chemicals are:
    - (A) handled in a manner that will not cause or create an Environmental Hazard; and

- (B) not abandoned or dumped on the Construction Site or Extra Land; and
  - (ii) no other substance is released from, deposited to, or emanates from, the Construction Site or Extra Land such that a state of Contamination occurs.
- (h) **(Indemnity and release)** The VC Contractor:
- (i) must indemnify the Principal from and against any Claim against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with any Contamination that arises out of or in connection with any:
    - (A) breach of this deed by the VC Contractor; or
    - (B) negligent act or omission of the VC Contractor or its Associates; and
  - (ii) releases the Principal from and against any Claim arising out of or in any way in connection with any Contamination for which the VC Contractor is responsible under this deed.

## 5.8 Prevention of disturbance and interference

The VC Contractor must, in performing the VC Contractor's Activities:

- (a) **(prevent nuisance)** prevent nuisance and unreasonable noise, dust, vibration and disturbances except to the extent such nuisance, noise, dust, vibration or disturbance is permitted by Law;
- (b) **(take precautions)** take all reasonable precautions to avoid obstruction of and damage to any property (including the property of the Principal) and Utility Services;
- (c) **(no interference)** not restrict, close, interfere with or obstruct the free flow of people and vehicles, access to any premises, car parks, roads, pedestrian ways, public spaces, parks, bicycle paths or facilities, or traffic on any lane or shoulder of the existing road network, or the operations or activities carried out on, adjacent to or in the vicinity of the Construction Site (including Local Areas):
  - (i) unless it is necessary for the performance of the VC Contractor's Activities; and
  - (ii) without first obtaining the consent of all relevant Authorities;
- (d) **(instructions of Authorities)** comply with the instructions of all relevant Authorities in relation to any restriction, closure, interference or obstruction contemplated by clause 5.8(c); and
- (e) **(co-ordinate)** program and co-ordinate the VC Contractor's Activities in accordance with Good Industry Practice and take all steps reasonably available to the VC Contractor (including re-sequencing and re-scheduling) to minimise the effect of the VC Contractor's Activities on the occupants and users of land adjoining, or in the vicinity of, the Construction Site and any Extra Land (including Existing Operators and Landowners of Adjoining Property).

## 5.9 Responding to notifications and complaints regarding property damage

Where the VC Contractor receives a notification or complaint relating to damage to any Adjoining Property or any other land or property adjoining the Construction Site or located

in the vicinity of the Construction Site which arises out of or in connection with the VC Contractor's Activities, the VC Contractor must:

- (a) respond to the notification or complaint within 24 hours;
- (b) visit the relevant property to inspect the damage within 5 Business Days of receipt of the notification or complaint; and
- (c) where the cost of repairing such damage is less than or equal to [REDACTED] repair such damage within 10 Business Days (or such longer period permitted by the Principal's Representative) of the inspection referred to in clause 5.9(b), and in any case as soon as reasonably possible.

## 6. SAFETY AND ENVIRONMENT

### 6.1 Care of people, property and the Environment

The VC Contractor must carry out the VC Contractor's Activities in a manner that:

- (a) does not put the health or safety of persons at risk and prevents injury or death;
- (b) protects and prevents damage to property and the Environment; and
- (c) protects and prevents damage to the Project Works, the Temporary Works and the VC Contractor's Activities.

### 6.2 Work health and safety

The VC Contractor must:

- (a) (**WHS Legislation**) in carrying out the VC Contractor's Activities, comply, and must ensure that its Subcontractors comply, with the WHS Legislation and other applicable Laws (including the Chain of Responsibility Provisions), Codes and Standards and Australian standards relating to work health and safety;
- (b) (**notify**) notify the Principal's Representative in accordance with the Sydney Metro Principal Contractor Health and Safety Standard of all work health and safety Incidents;
- (c) (**assurances to the Principal**) following commencement of construction on the Construction Site and at the end of March, June, September and December of each year, provide the Principal's Representative with written assurances from:
  - (i) the VC Contractor about the VC Contractor's ongoing compliance; and
  - (ii) all Significant Subcontractors about each Significant Subcontractor's ongoing compliance,

with Laws, Codes and Standards and Australian standards and other requirements of this deed for work health and safety and rehabilitation management;

- (d) (**report**) provide the Principal's Representative with written reports on any work health and safety and rehabilitation matters connected with the VC Contractor's Activities as the Principal's Representative may require from time to time;
- (e) (**cooperate**) consult, cooperate and co-ordinate its activities with the Interface Contractors and the Principal to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;

- (f) (**duties**) carry out the VC Contractor's duties under the WHS Legislation to enable the Principal to discharge its duties under the WHS Legislation and other applicable Laws; and
- (g) (**safety leadership**) provide strong safety leadership and continuously promote safety as a core value.

### 6.3 Principal contractor

- (a) (**Definitions**) In clause 6.2 (*Work health and safety*), this clause 6.3 and clause 6.5 (*Sydney Metro Principal Contractor Health and Safety Standard*), the terms "principal contractor", "workplace", "construction work" and "construction project" have the meaning given to those terms in the WHS Legislation. For the purposes of the WHS Legislation and this deed:
  - (i) the construction work involved in the VC Contractor's Activities; and
  - (ii) any construction work carried out on the Construction Site by the VC Developer under the OSD PDA, the Concourse Lessee and its Sub-Tenants, the Retail Lot Purchaser, any Interface Contractor, the Principal or any other person which is performed during any period in which the Appointed Principal Contractor has been engaged as principal contractor (**Construction Site Interface Work**),

are taken to be part of the same "construction project".
- (b) (**Engagement as principal contractor**) Subject to clause 9.2(g), the parties acknowledge and agree that from the date on which the VC Contractor is given access to a part of the Construction Site in accordance with this deed:
  - (i) to the extent that the VC Contractor's Activities or any Construction Site Interface Work includes construction work, the Principal:
    - (A) engages the Appointed Principal Contractor as the principal contractor in respect of the VC Contractor's Activities and the Construction Site Interface Work;
    - (B) authorises the Appointed Principal Contractor to have management and control of each workplace at which the VC Contractor's Activities and the Construction Site Interface Work are to be carried out and to discharge the duties of a principal contractor under the WHS Legislation;
    - (C) must give the Appointed Principal Contractor prior notice of any Interface Contractor undertaking Construction Site Interface Work before such Construction Site Interface Work commences (other than the VC Developer or the Concourse Lessee, a Sub-Tenant or the Retail Lot Purchaser); and
    - (D) must provide the Appointed Principal Contractor and the VC Contractor with executed deed polls in favour of the Appointed Principal Contractor in the form set out in Schedule A18 (*Site Interface Deed Poll*) from each Interface Contractor engaged by the Principal undertaking Construction Site Interface Work (other than the VC Developer or the Concourse Lessee, a Sub-Tenant or the Retail Lot Purchaser); and
  - (ii) the Appointed Principal Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor under the WHS Legislation and this deed.

- (c) **(Period of engagement)** The Appointed Principal Contractor's engagement and authorisation as a principal contractor will continue until:
  - (i) in respect of each discrete part of the Third Party Works, the point in time when the relevant discrete part of the Third Party Works has been completed;
  - (ii) in respect of the Trackway Portion, the earlier of:
    - (A) the termination of this deed; and
    - (B) the Date of Substantial Completion of the Trackway Portion;
  - (iii) in respect of each Non-Trackway Portion, the earlier of:
    - (A) the termination of this deed; and
    - (B) the Date of Completion of the relevant Portion; and
  - (iv) in respect of any area of the Construction Site which has a Site Access Expiry Date, the date on which the VC Contractor vacates that area of the Construction Site.
- (d) Not used.

#### 6.4 Authorisations and licences

If requested by the Principal or required by the WHS Legislation, the VC Contractor must produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience or any other information relevant to work health and safety (as the case may be) to the reasonable satisfaction of the Principal before the VC Contractor or a Subcontractor (as the case may be) commences work.

#### 6.5 Sydney Metro Principal Contractor Health and Safety Standard

- (a) **(Comply)** The VC Contractor must comply with those parts of the Sydney Metro Principal Contractor Health and Safety Standard, as amended from time to time, that the Principal notifies the VC Contractor in writing that it must comply with as if it was a principal contractor for the purposes of that standard.
- (b) **(Update to standard)** The Principal may update the Sydney Metro Principal Contractor Health and Safety Standard from time to time, including to address work health and safety issues relating to the VC Contractor's Activities and Sydney Metro City & Southwest.
- (c) **(No Liability)** [REDACTED]  
 [REDACTED] the Principal will have no Liability to the VC Contractor arising out of or in any way in connection with:
  - (i) any update or amendment to the Sydney Metro Principal Contractor Health and Safety Standard; or
  - (ii) any act or omission of the Principal in relation to the Sydney Metro Principal Contractor Health and Safety Standard (including any failure of the Principal to do anything specified in the Sydney Metro Principal Contractor Health and Safety Standard as being an obligation of the Principal or an Associate of the Principal).

## 6.6 WHS Accreditation

The VC Contractor:

- (a) **(VC Contractor accredited)** represents and warrants that it is accredited under the WHS Accreditation Scheme; and
- (b) **(compliance)** must comply with the requirements of, and maintain accreditation under, the WHS Accreditation Scheme while building work (as defined in section 6 of the BCIIP Act) is carried out.

## 6.7 Incident management

- (a) **(Establishment of procedures)** The VC Contractor must, within 20 Business Days of the date of this deed, identify clear guidelines for responding to any Incident and establish procedures to ensure that the Principal's Representative is promptly notified of any Incident.
- (b) **(Reporting of Incidents)** If an Incident occurs, the VC Contractor must immediately report the Incident to the Principal's Representative and to any Authority required by Law.
- (c) **(VC Contractor must take action)** Without limiting clause 5.7 (*Contamination*) and clause 7.1 (*Compliance with Laws*), in relation to any environmental or safety Incident involving Contamination or waste, the VC Contractor must, at its own Cost:
  - (i) promptly take all appropriate action to manage and dispose of all Contamination or waste arising from the Incident; and
  - (ii) manage the Incident in a manner which minimises damage to the reputation of the Principal including complying with any reasonable request of the Principal's Representative.
- (d) **(Principal's rights)** Without prejudice to the Principal's other rights under this deed, if an Incident occurs (or there is an imminent risk of an Incident occurring), the Principal may (but is not obliged to):
  - (i) **(Principal may take action)** take such actions as it deems necessary to overcome and alleviate the cause and consequences of the Incident if the Principal considers that the VC Contractor is not taking adequate measures to manage the Incident or control or eliminate the adverse impact or the risk of such an Incident arising in the future; or
  - (ii) **(stop work order)** issue an immediate stop work order if the Incident involves:
    - (A) a significant spill of Contamination;
    - (B) any accident or release of Contamination which it believes may pose a danger to health, life or property;
    - (C) any actual damage to the Environment or a significant risk of harm to the Environment; or
    - (D) a fatality or injury to any person including any Incident which must be reported to SafeWork NSW, ONRSR or other work health and safety regulator.

- (e) **(Recommencement)** If the Principal issues a stop work order under clause 6.7(d)(ii):
  - (i) the VC Contractor may not recommence the part of the VC Contractor's Activities to which the stop work order relates until the Principal issues a notice to the VC Contractor permitting the VC Contractor to recommence the VC Contractor's Activities affected by the stop work order; and
  - (ii) the Principal may direct the VC Contractor as to the steps which the VC Contractor must take before the Principal will issue a direction permitting the VC Contractor to recommence the VC Contractor's Activities affected by the stop work order.
- (f) **(No Liability)** The Principal will have no Liability to the VC Contractor for any Loss arising out of or in connection with any suspension of the VC Contractor's Activities due to:
  - (i) action taken under clause 6.7(d)(i);
  - (ii) a stop work order issued under clause 6.7(d)(ii); or
  - (iii) any failure by the Principal's Representative to take action or issue a stop work order.
- (g) **(Principal may recover costs)** The reasonable Costs and expenses incurred by the Principal in relation to action taken by it under clause 6.7(d) or which the Principal's Representative otherwise deems necessary to avoid issuing any stop work order will be a debt due and payable from the VC Contractor to the Principal.

## 6.8 Rail Safety

- (a) **(Compliance)** Without limiting any other clause in this deed, the VC Contractor must:
  - (i) comply, and ensure that its Associates comply, with the Principal's reasonable requirements in relation to rail safety; and
  - (ii) not do anything, and ensure that its Associates do not do anything, that would interfere with or compromise the safe operation of Sydney Metro City & Southwest.
- (b) **(For and on behalf of the Principal)** The VC Contractor acknowledges that:
  - (i) the VC Contractor's Activities and the Project Works are being undertaken for the purpose of constructing a railway;
  - (ii) the Principal holds Accreditation under the Rail Safety National Law as a Rail Infrastructure Manager; and
  - (iii) to the extent that the VC Contractor's Activities comprise Railway Operations, for the purposes of the Rail Safety National Law, it carries out such of the VC Contractor's Activities for and on behalf of the Principal under the Principal's Accreditation.
- (c) **(Principal's Accreditation)** In carrying out any part of the Project Works and Temporary Works which require Accreditation as a Rail Infrastructure Manager, the VC Contractor:
  - (i) must comply with all conditions of the Principal's Accreditation as a Rail Infrastructure Manager and the Principal's Safety Management System;

- (ii) must not do, or fail to do anything which jeopardises the Principal's Accreditation; and
- (iii) must ensure that its Subcontractors engaged in or in connection with the Project Works or Temporary Works, comply with the VC Contractor's obligations under this clause 6.8 as if those obligations had been imposed directly upon those Subcontractors.
- (d) **(Cooperation and assistance)** The VC Contractor must liaise and cooperate with the Principal, the Operator and any other Public Transport Agency and provide any reasonable assistance and documentation that the Principal, the Operator or any other Public Transport Agency may require in relation to safety matters, the Principal's Accreditation and its obligations under the Rail Safety National Law and Rail Safety Regulations, including in relation to the Operator obtaining or extending its accreditation under the Rail Safety National Law.
- (e) **(Activities not permitted under the Principal's Accreditation)** To the extent that, in carrying out the VC Contractor's Activities, the VC Contractor carries out any Railway Operations for which accreditation is required under the Rail Safety National Law and which are not permitted by the Principal's Accreditation, the VC Contractor must hold and comply with the necessary accreditation or other Approval required to enable it to comply with all applicable Laws.

#### 6.9 Engineering Authorisation and ASA compliance

The VC Contractor must at all times comply with the requirements of section 3.2 of the SWTC in relation to Engineering Authorisation and ASA compliance.

#### 6.10 Cleaning up

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

- (a) **(clean and tidy)** keep the Construction Site, Extra Land and the Project Works and Temporary Works clean and tidy and free of refuse;
- (b) **(removal of rubbish)** regularly remove rubbish, litter, graffiti and surplus material (including Construction Materials) from the Construction Site and Extra Land; and
- (c) **(final clean up)** as a condition precedent to Substantial Completion of the Trackway Portion and Completion of each Non-Trackway Portion, remove all rubbish, surplus materials (including Construction Materials), Construction Plant and Temporary Works from the relevant parts of the Construction Site and Extra Land relevant to that Portion except where the retention of any of these are required for the correction of Defects during the Defects Correction Period and this is approved in writing by the Principal's Representative.

#### 6.11 National Greenhouse and Energy Reporting Act 2007 (Cth)

The VC Contractor must at all times comply with the requirements of Appendix F8 of the SWTC in relation to the NGER Legislation.

#### 6.12 Asset Management Information

- (a) The VC Contractor must prepare and submit the Asset Management Information for the relevant Portion in accordance with the requirements of this deed.
- (b) The Asset Management Information must comply with the requirements of Appendix F6 of the SWTC.

- (c) The Principal's Representative must, within 15 Business Days of the submission of the Asset Management Information for a Portion, either:
  - (i) reject the Asset Management Information for a failure to comply with the requirements of this deed, which rejection must specify what development, updating and amendment of the Asset Management Information is required (together with reasons) and a time within which this must occur; or
  - (ii) advise in writing that the Asset Management Information is not rejected.
- (d) If the Asset Management Information for a Portion is rejected by the Principal's Representative, the VC Contractor must update and resubmit the Asset Management Information and clause 6.12(c) will re-apply except that the reference to "15 Business Days" will be deemed to be a reference to:
  - (i) 5 Business Days (if the VC Contractor has taken 5 Business Days or less to re-submit the Asset Management Information); or
  - (ii) 10 Business Days (otherwise).
- (e) The VC Contractor acknowledges and agrees that the Principal's Representative may make comments to the VC Contractor in respect of any Asset Management Information submitted under clause 6.12(a) or clause 6.12(d).
- (f) The Principal's Representative may:
  - (i) provide copies of any Asset Management Information to; and
  - (ii) seek comments in respect of any Asset Management Information from, the Independent Certifier and any Interface Contractor.

## 7. LAW AND APPROVALS

### 7.1 Compliance with Laws

The VC Contractor must, in carrying out the VC Contractor's Activities:

- (a) (**compliance**) comply (and ensure that its Associates comply) with, and ensure that the Project Works and the Temporary Works comply with, all applicable Laws (including any Change in Law and any Environmental Notices arising out of or in connection with the carrying out of the VC Contractor's Activities);
- (b) (**not put the Principal in breach**) not do, or fail to do (and ensure that its Associates do not do, or fail to do), anything that may cause the Principal to be in breach of any Law;
- (c) (**notices and fees**) give all notices and pay all fees, charges, bonds and other amounts which it is required to pay in respect of the performance of the VC Contractor's obligations under this deed;
- (d) (**notify**) notify the Principal in writing as soon as practicable after the VC Contractor:
  - (i) becomes aware of any non-compliance with the requirements of any Law in connection with the VC Contractor's Activities;
  - (ii) becomes aware of any information, fact or circumstance in any way connected with the VC Contractor's Activities where:

- (A) if the Principal were to be aware of such information, fact or circumstance, the Principal would be required to notify any Authority of that information, fact or circumstance pursuant to any Law (without limiting any other obligation of the VC Contractor in relation to the information, fact or circumstances); and
  - (B) the VC Contractor is aware of that notification obligation of the Principal; or
  - (iii) notifies any Authority of any matter pursuant to any Law which is in any way connected with the VC Contractor's Activities, in which case the VC Contractor must give the Principal a copy of such notification and of any subsequent correspondence with the Authority in relation to the subject of the notification;
- (e) **(copies to the Principal)** give the Principal's Representative copies of:
- (i) all notices that the VC Contractor (or its Associates) gives to Authorities at the time or before it submits such notices to Authorities;
  - (ii) all documents (including Approvals and other notices) that Authorities issue to the VC Contractor (or its Associates); and
  - (iii) any other material communications between the VC Contractor (or its Associates) and an Authority,
- in connection with the Project Works or the VC Contractor's Activities; and
- (f) at all times conform and comply with, and ensure that the Project Works and the Temporary Works conform and comply with:
- (i) **(Codes and Standards)** all Codes and Standards; and
  - (ii) **(Prescribed Legislative Requirements)** each of the Prescribed Legislative Requirements.

## 7.2 Change in Law

- (a) [REDACTED] To the extent a Change in Law results in a change to, an addition to or omission from the Project Works [REDACTED].
- (b) **(Details of Change)** If there is a Change in Law, each written notice the VC Contractor must give under clause 37.3(b) and clause 37.3(c) must include:
  - (i) details of the Change in Law;
  - (ii) the effect the Change in Law will have on the Project Works;
  - (iii) the costs and expenses likely to be incurred in the change to the Project Works as a consequence of the Change in Law which are in addition to those which would have been incurred had the Change in Law not occurred; and
  - (iv) other information reasonably required by the Principal's Representative.

## 7.3 Change in Codes and Standards

- (a) **(Details of Change)** Where there is a Change in Codes and Standards:
  - (i) the VC Contractor must give a written notice to the Principal's Representative within 20 Business Days after the date on which it first

becomes aware of (or ought reasonably to have first become aware of) the Change in Codes and Standards, containing:

- (A) details of the Change in Codes and Standards; and
- (B) an estimate of the VC Contractor's increased or decreased costs of complying with that Change in Codes and Standards, (including sufficient information to support the estimate); and
- (ii) if a notice is given by the VC Contractor which complies with clause 7.3(a)(i), then within 10 Business Days after the date of the notice, the Principal's Representative must either:
  - (A) direct the VC Contractor to disregard the Change in Codes and Standards; or
  - (B) direct the VC Contractor to comply with the Change in Codes and Standards.
- (b) (**No breach**) If the Principal's Representative gives a notice under clause 7.3(a)(ii)(A), the VC Contractor will not be regarded as being in breach of this deed to the extent that it disregards the relevant Change in Codes and Standards.

#### 7.4 Approvals

The VC Contractor must:

- (a) (**obtain and maintain**) obtain and maintain all Approvals required to perform the VC Contractor's Activities, except for the Principal Approvals;
- (b) (**comply with conditions**) except to the extent otherwise expressly specified in Schedule D3 (*Approvals and Planning Approval conditions*), comply with, carry out and fulfil the conditions and requirements of all Approvals, including those conditions and requirements which the Principal is, under the terms of the Approvals, required to comply with, carry out or fulfil;
- (c) (**comply with requirements**) comply (and ensure that its Associates comply) with the requirements of the Planning Approval set out in Schedule D2 (*Requirements of Approvals*);
- (d) (**prepare submissions**) for the purpose of obtaining any Approvals, prepare all associated studies and reports and other submissions; and
- (e) (**provide assistance**) provide the Principal with such assistance as may be reasonably required by the Principal to enable the Principal to:
  - (i) obtain any Principal Approvals; or
  - (ii) subject to clause 7.4(b), satisfy or fulfil the conditions and requirements of Approvals which Schedule D3 (*Approvals and Planning Approval conditions*) provides must be satisfied or fulfilled by the Principal.

#### 7.5 Modifications to EP&A Act Approvals

Notwithstanding clause 7.2 (*Change in Law*), if:

- (a) any further environmental impact assessment is required under Part 4 or Division 5.1 of the EP&A Act (or their equivalents) in connection with the VC Contractor's Activities;

- (b) the Principal determines that it is necessary to carry out any further environmental impact assessment under Part 5 of the EP&A Act (or its equivalent) in connection with the VC Contractor's Activities;
  - (c) an Approval is modified and/or amended under the EP&A Act; or
  - (d) a new Approval is issued under the EP&A Act in respect of the VC Contractor's Activities, either in substitution for or replacement of a Planning Approval or otherwise or any such new Approval is modified under the EP&A Act,
- arising out of or in connection with:
- (e) a Modification requested by the VC Contractor; or
  - (f) any failure by the VC Contractor to comply with its obligations under this deed or any other VC Station Contract Document,

then the Principal will have no Liability to the VC Contractor in relation to any such events and any actions or additional work arising out of or in connection with any such events, irrespective of who is required to, or does, carry out any such assessment.

#### 7.6 Legal challenge to Planning Approvals

If there is a legal challenge, proceedings or action in relation to the assessment or determination of an application for a Planning Approval or a modification of a Planning Approval, the VC Contractor must continue to perform the VC Contractor's Activities unless, as a result of that legal challenge, proceedings or action, it is otherwise:

- (a) ordered by a court or tribunal;
- (b) ordered or directed by an Authority; or
- (c) directed by the Principal or the Principal's Representative.

#### 7.7 Crown Building Work

- (a) The VC Contractor must, in relation to any part of the Project Works or Temporary Works that is Crown Building Work (as defined in section 6.1 of the EP&A Act), certify (on behalf of the Principal) those works as required by section 6.28 of the EP&A Act.
- (b) Any certification under clause 7.7(a) will not lessen or otherwise affect:
  - (i) the VC Contractor's other Liabilities, obligations or responsibilities under this deed or otherwise according to Law; or
  - (ii) the Principal's rights against the VC Contractor, whether under this deed or otherwise according to Law.

#### 7.8 Long service leave levy

Before commencing construction of the Project Works or the Temporary Works, the VC Contractor must:

- (a) pay (or ensure that Subcontractors pay) to the Building and Construction Industry Long Service Payments Corporation, or its agent, the amount of the long service levy payable in respect of the building and/or construction work under the *Building and Construction Industry Long Service Payments Act 1986* (NSW); and
- (b) produce to the Principal's Representative the document evidencing payment of the levy.

## 8. GOVERNANCE AND ADMINISTRATION

### 8.1 Principal's Representative

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

### 8.2 Appointees of the Principal's Representative

- (a) **(Principal appointees)** The Principal's Representative:
  - (i) may by written notice to the VC Contractor, appoint persons to exercise any of the functions of the Principal's Representative under this deed;
  - (ii) must not appoint more than one person to exercise a specific function at any one time;
  - (iii) may vary or revoke any appointment under clause 8.2(a)(i) by written notice to the VC Contractor; and
  - (iv) may continue to exercise a function under this deed despite appointing another person to exercise the function under clause 8.2(a)(i) (provided that any Directions of the Principal's Representative take precedence over those of any other representatives to the extent of any inconsistency).
- (b) **(References include appointees)** All references in this deed to the Principal's Representative include a reference to an appointee under clause 8.2(a)(i).

### 8.3 VC Contractor's Representative

- (a) **(Appointment)** The VC Contractor must ensure that at all times from the date of this deed to the issue of the Final Certificate there is a VC Contractor's Representative.
- (b) **(Communications in English)** All communications by the VC Contractor's Representative must be in the English language.
- (c) **(Authority)** The VC Contractor's Representative, and any replacement, at all times has or will have authority to act on behalf of the VC Contractor in respect of this deed.

### 8.4 VC Contractor's acknowledgement

- (a) **(VC Contractor is bound)** Any notice, consent, approval or other communication given by the VC Contractor's Representative or any VC Contractor's Representative's delegate will bind the VC Contractor.
- (b) **(Knowledge of the VC Contractor)** All matters within the knowledge of the VC Contractor's Representative or any VC Contractor's Representative's delegate will be deemed to be within the knowledge of the VC Contractor.
- (c) **(Directions deemed to be given to the VC Contractor)** Any directions given by the Principal's Representative, or by a delegate appointed under clause 8.2(a) on behalf of the Principal's Representative, to any VC Contractor's Representative or VC Contractor's Representative's delegate will be deemed to have been given to the VC Contractor.

#### 8.5 Release in favour of Principal's Representative

- (a) **(No Liability for representative)** Neither the Principal's Representative nor any delegates will have any Liability to the VC Contractor in relation to or in connection with this deed.
- (b) **(No reliance for the Principal/VC Contractor)** Nothing in clause 8.5(a) releases:
  - (i) the Principal from any Liability it would otherwise have to the VC Contractor arising out of the conduct of the Principal's Representative and any delegates; or
  - (ii) the VC Contractor from any Liability it would otherwise have to the Principal arising out of the conduct of the VC Contractor's Representative and any delegates.

#### 8.6 Personnel

- (a) **(Skilled and experienced personnel)** The VC Contractor must provide competent, qualified, experienced and skilled personnel to perform the VC Contractor's obligations under this deed.
- (b) **(Engagement of personnel)** The VC Contractor must:
  - (i) employ the personnel specified in Schedule A29 (*Personnel*) in the positions specified in Schedule A29 (*Personnel*);
  - (ii) ensure that the personnel specified in Schedule A29 (*Personnel*) (or their approved replacements) at all times have and maintain the qualifications, skills and experience required by Schedule A29 (*Personnel*);
  - (iii) if any of the personnel referred to in clause 8.6(b)(ii):
    - (A) die;
    - (B) become unable to continue in the position due to illness;
    - (C) resign from the employment of or are promoted to a new position within the VC Contractor; or
    - (D) become the subject of a direction under clause 8.6(d),

replace them with personnel of at least equivalent ability and expertise as well as the qualifications, skills and experience required by Schedule A29 (*Personnel*), who must be approved in writing by the Principal's Representative (acting reasonably) before they are appointed.

- (c) **(Availability)** The personnel specified in Schedule A29 (*Personnel*) (or their approved replacements) must be available for consultation with the Principal's Representative whenever the Principal's Representative reasonably requires.
- (d) **(Removal)** The Principal's Representative may, in its absolute discretion and without having to give reasons, direct the VC Contractor to remove any person from the performance of the VC Contractor's Activities and the VC Contractor must ensure that any person the subject of such a direction is not again involved in the performance of the VC Contractor's Activities. Where the person the subject of a direction under this clause 8.6(d) is a person specified in Schedule A29 (*Personnel*) (or their approved replacement), the VC Contractor must provide a

replacement that has the qualifications, skills and experience required by Schedule A29 (*Personnel*).

#### 8.7 Independent Certifier

- (a) **(Independent Certifier Deed)** The Independent Certifier will be engaged on the terms of the Independent Certifier Deed.
- (b) **(Not an AEO)** In certifying Design Stage 3 Design Documentation, the Independent Certifier is not required to act as an AEO.
- (c) **(Independent)** The Independent Certifier is obliged to act independently of the Principal, the VC Contractor and their respective Associates.
- (d) **(Provision of information)** The Principal and the VC Contractor must provide the Independent Certifier with all information and documents and allow the Independent Certifier to attend meetings (including any Project Control Group meetings) and access all premises as may be:
  - (i) necessary or reasonably required for the Independent Certifier to perform its obligations under the Independent Certifier Deed; or
  - (ii) requested by the Independent Certifier or directed by the Principal's Representative.
- (e) **(Copy all information to other party)** All notices and documents provided by a party to the Independent Certifier must be copied to the other party. If a party is required to provide a notice or document to the Independent Certifier within a specified time period, that notice or document must be provided to the other party within the same time period.
- (f) **(Principal may provide comments)** The Principal's Representative may provide comments to the Independent Certifier in respect of the VC Contractor's Activities.

#### 8.8 Effect of Independent Certifier decisions

- (a) **(Not approval or evidence)** No certification or determination by the Independent Certifier will:
  - (i) constitute an approval by the Principal of the VC Contractor's performance of its obligations under this deed;
  - (ii) be taken as an admission or evidence that the Project Works or Temporary Works or any other matters certified or determined by the Independent Certifier comply with this deed; or
  - (iii) prejudice any rights or powers of the Principal under this deed or otherwise according to Law, including any rights which the Principal may have in respect of Defects in the Project Works.
- (b) **(No liability for acts)** No act or omission of the Independent Certifier, including any certification or determination by the Independent Certifier:
  - (i) is an act or omission by the Principal (including a breach of contract) under or in connection with the VC Station Contract Documents; or
  - (ii) without limiting clause 8.8(a), will give rise to any Liability of the Principal to the VC Contractor.

#### 8.9 Not Used

#### 8.10 Governance groups

- (a) **(Establishment of governance groups)** The VC Contractor must establish, and comply with the requirements in respect of, the Project Control Group and Technical Working Groups contemplated in Schedule B1 (*Governance groups*).
- (b) **(Effect of governance groups)** The Project Control Group and each Technical Working Group are consultative and advisory only and nothing which occurs during a meeting of any such group will:
  - (i) affect the rights or obligations of any party under the VC Station Contract Documents;
  - (ii) give rise to any Liability from the Principal to the VC Contractor or from the VC Contractor to the Principal;
  - (iii) relieve a party from, or alter or affect, a party's Liabilities or responsibilities whether under this deed or otherwise according to Law;
  - (iv) prejudice a party's rights against the other whether under this deed or otherwise according to Law; or
  - (v) be construed as a Direction by a party to do or not do anything.

#### 8.11 Attendance at meetings

If required by the Principal's Representative, the VC Contractor must procure that representatives of the VC Contractor attend any meeting, forum or working group that is contemplated by or established in connection with this deed.

#### 8.12 Exchange of information between government agencies

- (a) **(Authorisation)** The VC Contractor authorises the Principal and its Associates to make information concerning the VC Contractor available to NSW government

departments or agencies. Such information may include any information provided by the VC Contractor to the Principal and any information relating to the VC Contractor's performance under this deed.

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

#### 8.13 Industrial relations

[REDACTED] the  
VC Contractor:

- (a) bears the risk of and is solely responsible for the management of all aspects of industrial relations connected with the VC Contractor's Activities; and
- (b) must keep the Principal fully and promptly informed of all industrial relations problems or issues which materially affect, or are likely to materially affect, the carrying out of the VC Contractor's Activities.

#### 8.14 Reports

The VC Contractor must provide reports to the Principal's Representative in accordance with and at the times required by Appendix F2 of the SWTC.

### 9. ACCESS AND CONSTRUCTION SITE

#### 9.1 Rights to land

- (a) **(Principal's obligation)** The Principal:
  - (i) grants to the VC Contractor, and the VC Contractor accepts the grant of, a licence to access the Construction Site in accordance with clause 9.2 (*Early Access to the Construction Site*) to clause 9.7 (*Principal's right of entry to Construction Site*) (inclusive); and
  - (ii) will give the VC Contractor rights to Adjoining Properties in accordance with clause 9.8 (*Adjoining Properties*).
- (b) **(Extra Land)** The VC Contractor must, at its own Cost and risk, procure for itself all rights over any land or buildings in addition to the rights described in clause 9.1(a) which are necessary or which the VC Contractor requires to exercise any right or perform any obligation under this deed (which may include land or buildings required for the Third Party Works including Unowned Property Works Lands).

#### 9.2 Early Access to the Construction Site

- (a) **(Option to grant early access)** The Principal may, but is not obliged to, grant the VC Contractor access prior to the Site Access Date to the whole or part of the TSE Site by granting either:
  - (i) if TSE Construction Completion has been reached, a Construction Licence; or
  - (ii) if TSE Construction Completion has not been reached, but the TSE Contractor has consented to the VC Contractor accessing the Construction Site, an Interim Access Licence.

- (b) (**Purpose of early access**) The purpose of granting early access to the TSE Site under this clause 9.2 is to allow the VC Contractor to commence the VC Contractor's Activities early so as to mitigate any delays the VC Contractor may incur in reaching a Significant Completion and, subject to clause 9.2(g), the VC Contractor must use that access to the TSE Site to commence the VC Contractor's Activities and optimise the additional time.
- (c) (**Effect of early access**) Grant of a Construction Licence or Interim Access Licence given under clause 9.2(a) or deemed to be given under clause 9.2(f):
- (i) will be taken into account when making an assessment under clause 21.7(b)(vi) of Claims by the VC Contractor for extensions of time to the extent that:
    - (A) the grant of such Construction Licence or Interim Access Licence to the TSE Site is relevant to the cause of delay the subject of the VC Contractor's claim; and
    - (B) the VC Contractor has failed to comply with clause 9.2(b);
  - (ii) except to the extent set out in clause 9.2(c)(i), will not affect any Significant Dates.
- (d) (**Notice**) The Principal may give the VC Contractor one or more written notices of the date or dates (**TSE Site Access Date**) on which a part of the TSE Site will be Accessible from a specified date that is prior to the Site Access Date. Any such notice must:
- (i) specify whether a Construction Licence or Interim Access Licence will be granted; and
  - (ii) be given at least 6 months prior to the date on which the relevant part of the TSE Site will be Accessible.
- (e) [REDACTED] If the Principal gives the VC Contractor a notice under clause 9.2(d) with respect to a part of the TSE Site, and the VC Contractor is not given access to that part of the TSE Site on the date specified in the notice [REDACTED]
- (f) (**Deemed TSE Site Access Date**) If a TSE Site Access Date is:
- (i) after the Early Site Access Date, the VC Contractor will be deemed to have taken a Construction Licence or Interim Access Licence to that part of the TSE Site on the TSE Site Access Date; or
  - (ii) prior to the Early Site Access Date, the VC Contractor will be deemed to have taken a Construction Licence or Interim Access Licence to that part of the TSE Site on the earlier to occur of:
    - (A) the date on which the VC Contractor (by notice in writing to the Principal) accepts early access to the TSE Site; and
    - (B) the Early Site Access Date.
- (g) (**No grant or deemed grant prior to the Early Site Access Date**) Where the Principal gives the VC Contractor a notice under clause 9.2(d) stating that a part of the TSE Site will be Accessible from a specified date, the VC Contractor will not be required to take, or be deemed to have taken, a Construction Licence or Interim Access Licence in respect of that part of the TSE Site where the date specified in the notice is prior to the Early Site Access Date.

- (h) **(Interface with TSE Contractor)** Without limiting the VC Contractor's obligations under the TSE Cooperation and Integration Deed, to the extent that the VC Contractor uses or accesses the Accessible part of the TSE Site pursuant to an Interim Access Licence, the VC Contractor:
- (i) acknowledges that during an Interim Access Period:
    - (A) the VC Contractor's Activities interface with the TSE Works;
    - (B) the TSE Contractor may be executing work on parts of the TSE Site at the same time as the VC Contractor is performing the VC Contractor's Activities; and
    - (C) the TSE Contractor will be engaged as principal contractor in respect of the TSE Site;
  - (ii) must at all times:
    - (A) fully cooperate with the TSE Contractor;
    - (B) carefully co-ordinate and interface the VC Contractor's Activities with the TSE Works;
    - (C) perform the VC Contractor's Activities so as to minimise any interference with or disruption or delay to the TSE Works; and
    - (D) attend co-ordination meetings as required in accordance with the TSE Cooperation and Integration Deed;
  - (iii) must promptly advise the Principal's Representative of all matters arising out of the VC Contractor's access to any part of the TSE Site that may have an adverse effect upon the VC Contractor's Activities; and
  - (iv) must, if requested by the Principal's Representative, execute a deed poll in favour of the TSE Contractor in the form of Schedule A12 to the TSE Contract.
- (i) **(No Liability)** The Principal will have no Liability to the VC Contractor as a consequence of access by the VC Contractor to any part of the TSE Site during an Interim Access Period.

### 9.3 Access to the Construction Site on or after the Site Access Date

- (a) **(Principal to give access)** Provided that the VC Contractor has complied with clause 9.4 (*Period and terms of Construction Licence and Interim Access Licence*) and clause 9.5 (*Conditions precedent to access to the Construction Site*), the Principal must:
- (i) give the VC Contractor access to each part of the Construction Site by no later than the relevant Site Access Date; and
  - (ii) subject to clause 9.3(d), thereafter continue to allow the VC Contractor to access the Construction Site on the terms of this deed.
- (b) **(Delay)** Delay in providing access to the Construction Site will not be a breach of this deed [REDACTED].
- (c) **(Notice)** The Principal's Representative must give the VC Contractor written notice of the estimated TSE Date of Construction Completion 6 months, 3 months, 1 month and 1 week prior to the estimated TSE Date of Construction Completion.

- (d) **(Site Access Expiry Date)** The Principal and the VC Contractor acknowledge that:
- (i) subject to subclause 9.3(d)(ii), the Site Access Expiry Dates in respect of the Temporary Areas identified in section 4 of the Site Access Schedule are fixed;
  - (ii) if the Principal does not provide access to a relevant Temporary Area in the Construction Site by the relevant Site Access Date, the Site Access Expiry Date in respect of that Temporary Area will be extended by a period equal to the period between the Site Access Date for the relevant Temporary Area and the date on which access is actually provided;
  - (iii) the Site Access Expiry Dates will not otherwise be extended for any reason; and
  - (iv) the VC Contractor must vacate those parts of the Construction Site on the relevant Site Access Expiry Dates.
- (e) **(Sequence of work)** The VC Contractor must arrange the sequence of work so that the VC Contractor's Activities which must be performed on the parts of the Construction Site referred to in clause 9.3(d)(i) are completed prior to the relevant Site Access Expiry Dates.

#### 9.4 Period and terms of Construction Licence and Interim Access Licence

- (a) **(Period of Interim Access Licence)** Each Interim Access Licence commences on the date access to the TSE Site is given, or deemed to be given under clause 9.2(f), and expires on the earlier of:
  - (i) the Site Access Date for the corresponding part of the Construction Site; and
  - (ii) termination of this deed.
- (b) **(Period of Construction Licence)** The Construction Licence commences, in respect of each part of the Construction Site, on the date access is given, or deemed to be given under clause 9.2(f) (**Construction Licence Commencement Date**), for that part of the Construction Site and terminates on the earlier of:
  - (i) if a Site Access Expiry Date is specified for the relevant part of the Construction Site, the Site Access Expiry Date;
  - (ii) if the relevant part of the Construction Site forms part of the Concourse Lot, the grant of the Concourse Lease;
  - (iii) if the relevant part of the Construction Site forms part of the Retail Lot, completion of the Retail Lot Sale Contract;
  - (iv) the relevant Portion Handover Date; and
  - (v) the date of termination of this deed.
- (c) **(Terms of access)** The Construction Licence and each Interim Access Licence:
  - (i) are non-exclusive to the VC Contractor;
  - (ii) are personal in nature;
  - (iii) do not create any entitlement or interest in the Construction Site or the TSE Site;

- (iv) are granted to the VC Contractor solely for the purpose of carrying out the VC Contractor's Activities and performing its other obligations under the VC Station Contract Documents and permitting the VC Developer to carry out the VC Developer's Activities; and
- (v) are subject to the VC Contractor complying with the terms of this deed and the other VC Station Contract Documents.

#### 9.5 Conditions precedent to access to the Construction Site

The Principal is not obliged to give the VC Contractor access to any area of the Construction Site until:

- (a) the VC Contractor has:
  - (i) provided the Principal with a Fire and Life Safety Report in a form acceptable to the Principal (acting reasonably);
  - (ii) complied with clause 3.1(a) and clause 3.4 (*Parent Company Guarantee*);
  - (iii) effected the insurance policies required by clause 30.6 (*VC Contractor's insurance obligations*); and
  - (iv) complied with any other restrictions on access in the SWTC; and
- (b) the Project Health and Safety Management Plan has been submitted to the Principal's Representative and has not been rejected by the Principal's Representative within the review period specified by Appendix F2 of the SWTC.

#### 9.6 Access to the Construction Site

The VC Contractor:

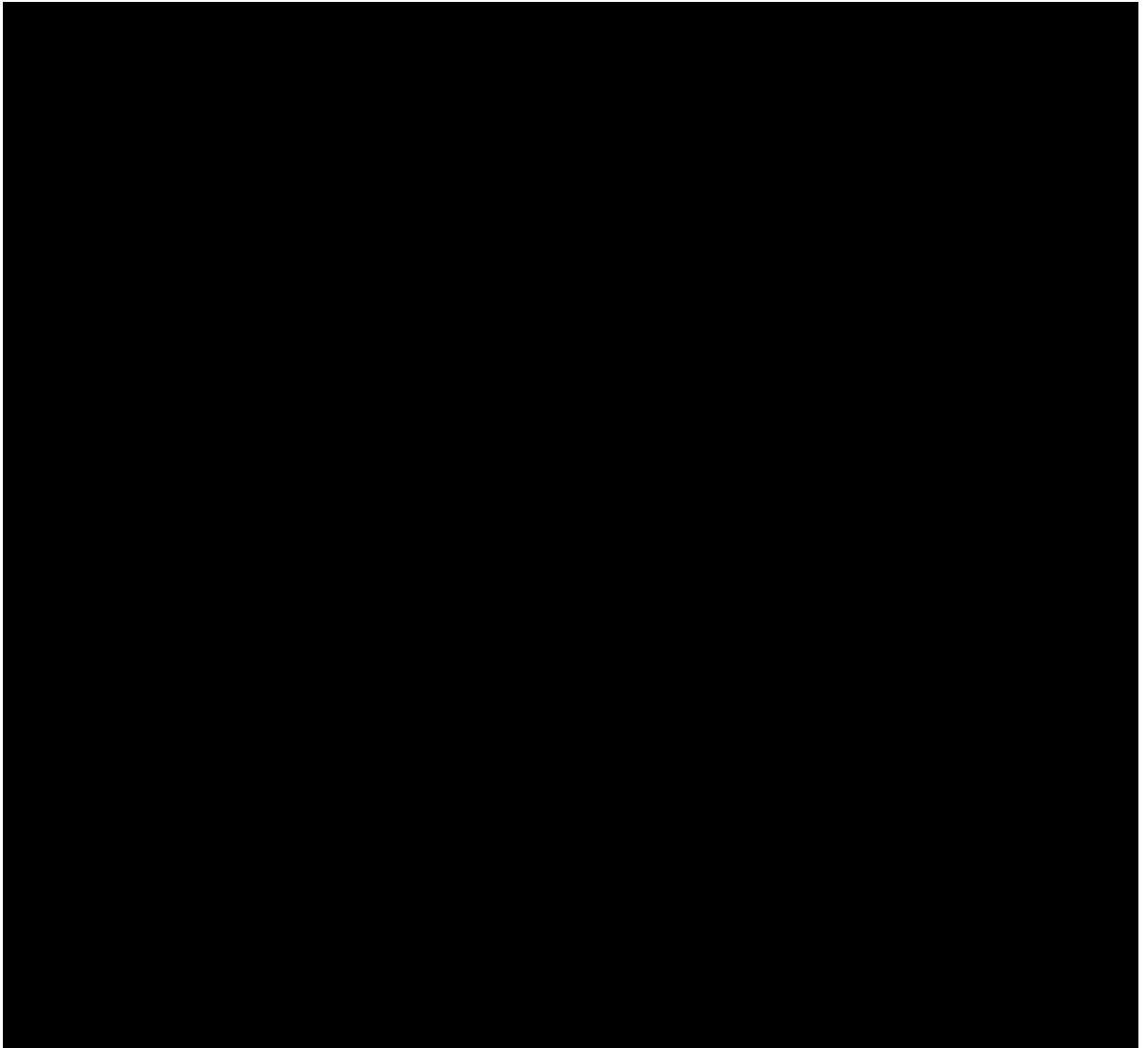
- (a) must access the Construction Site only at the points of entry and exit and using the routes for ingress and egress set out in the Planning Approval;
- (b) acknowledges that the Principal has not secured rights of access over the routes for ingress and egress set out in the Planning Approval; and
- (c) except as expressly provided for in this deed, is responsible, at its own Cost and risk, for obtaining access to and from, and securing rights of ingress to and egress from the Construction Site and the Extra Land to perform the VC Contractor's Activities.

#### 9.7 Principal's right of entry to Construction Site

- (a) (**Principal's rights**) The Principal (and any person authorised by the Principal including any Interface Contractor) may, at any time after the Construction Licence Commencement Date, enter the Construction Site and any other premises where the VC Contractor's Activities are being carried out, for:
  - (i) the purpose of:
    - (A) observing or inspecting the VC Contractor's Activities or the VC Developer's Activities;
    - (B) monitoring compliance by the VC Contractor or the VC Developer with their respective obligations under any of the VC Station Contract Documents or the VC OSD Contract Documents and any Project Plan;

- (C) exercising any right or performing any obligation which the Principal has under any Principal VC Station Contract Document or under any Principal VC OSD Contract Document; or
  - (D) in the case of an Interface Contractor, carrying out Interface Work; or
- (ii) any other purpose connected with Sydney Metro City & Southwest.
- (b) **(VC Contractor's assistance)** The VC Contractor must:
- (i) co-ordinate the VC Contractor's Activities so they do not interfere with the exercise by the Principal of its rights of entry; and
  - (ii) provide the Principal with every reasonable facility and other assistance necessary for any inspection by the Principal, including providing access to any relevant systems, registers, manuals, Records, plans, programs and information.

9.8 **Adjoining Properties**



A series of horizontal black bars of varying lengths, each preceded by a small black square marker. The bars are arranged vertically, with some gaps between groups. The lengths of the bars vary significantly, with some being very short and others extending almost to the top of the frame.



## 9.9 Extra Land

- (a) **(Release)** The VC Contractor must as a condition precedent to Completion:
  - (i) rehabilitate Extra Land in accordance with the requirements of all relevant Authorities and Landowners; and
  - (ii) give the Principal's Representative:
    - (A) a properly executed release on terms satisfactory to the Principal's Representative (acting reasonably) releasing the Principal from all Liability to the Landowners of Extra Land; or
    - (B) if the VC Contractor is unable to obtain such a release despite using its best endeavours to do so, a statement from the VC Contractor to the effect that the Landowners have failed or refused to execute such a release within 15 Business Days after it being provided by the VC Contractor to the Landowners together with copies of all correspondence with the Authorities and Landowner and evidence that the VC Contractor has complied with the requirements of the relevant Authorities and Landowners of the Extra Land.
- (b) **(No Liability)** The Principal will have no Liability to the VC Contractor in connection with the VC Contractor's obligations under clause 9.1(b) and clause 9.9(a), including any failure to procure Extra Land or any obstruction to or delay in obtaining access to Extra Land.
- (c) **(Indemnity)** The VC Contractor must indemnify the Principal from and against any Claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with any Claim by a Landowner of any part of the Extra Land where:
  - (i) such Landowner has not duly signed a release in favour of the Principal in accordance with clause 9.9(a)(ii)(A); and
  - (ii) the Claim or Loss arises out of or in any way in connection with the VC Contractor's Activities.

## 9.10 Existing Operations

- (a) **(Existing Operators)** The VC Contractor acknowledges that:

- (i) Existing Operators and other persons must continue their Existing Operations during the course of the carrying out of the VC Contractor's Activities; and
- (ii) the routes of ingress to and egress from the Construction Site are used by Existing Operators and other persons and will not be available exclusively to the VC Contractor.
- (b) **(Risk)** The VC Contractor bears the risk of co-ordinating its access to and from the Construction Site with any other relevant persons (including Existing Operators) that use the routes for ingress to and egress from the Construction Site and any delay and disruption to the VC Contractor's Activities which arises from any Existing Operations.
- (c) **(Compliance)** The VC Contractor must comply with the Principal's Representative's reasonable Directions in connection with the Existing Operations (including access to and use of the Construction Site) and comply with all policies, procedures and rules of the Principal applying from time to time (as notified in writing by the Principal) in respect of the Existing Operations (including in relation to work health and safety and/or the Environment).
- (d) **(Interface)** The VC Contractor must ensure that the Project Works properly interface and integrate with, and connect to, the physical infrastructure of the Existing Operations so as to enable the Project Works, when completed, to fully comply with the requirements of this deed.
- (e) **(Making good)** The VC Contractor must immediately:
  - (i) repair and make good any damage to the physical infrastructure of the Existing Operations to the extent arising out of or in any way in connection with the VC Contractor's Activities; and
  - (ii) when directed by the Principal's Representative, take such action as is required to ensure that its obligations in this clause 9.10 are complied with.
- (f) **(No Liability)** The Principal will have no Liability to the VC Contractor in relation to the VC Contractor's obligations under this clause 9.10 or any act, omission or requirement of an Existing Operator.
- (g) **(Associates)** The VC Contractor must ensure that its Associates at all times comply with this clause 9.10.

#### 9.11 Encumbrances

- (a) **(Compliance)** The VC Contractor must comply with the terms of any easement, restrictions on use, covenants, agreements or other similar arrangements burdening or benefiting the Construction Site as recorded in the register maintained by LRS under the *Real Property Act 1900* (NSW).
- (b) **(Principal may create)** The Principal may, at any time and from time to time, create or permit the creation on the title to the Construction Site:
  - (i) any Encumbrance necessary, in the reasonable opinion of the Principal, to enable the construction, operation and/or maintenance and repair of Sydney Metro City & Southwest (including the Victoria Cross Station); and
  - (ii) any Encumbrance required by an Authority (other than the Principal).

- (c) **(No further encumbrances)** Except as otherwise provided in this deed (including clause 9.11(b) and clause 12.3(a)(iv)), the Principal must not at any time create, or permit the creation of, any Encumbrance or Security Interest in respect of the Construction Site (excluding any part of the Construction Site which comprises or will comprise the Station Lot) after the date of this deed without the consent of the VC Contractor (such consent not to be unreasonably withheld or delayed).
- (d) **(Relief for new Encumbrances)** Subject to clause 9.9(i), if the Principal creates, or permits the creation of, any Encumbrance pursuant to clause 9.11(b) which:
  - (i) prevents the VC Contractor from complying with its obligations or exercising its rights under this deed; or
  - (ii) increases the VC Contractor's costs of performing the Project Works in accordance with this deed,

the VC Contractor will be entitled to be paid by the Principal the net incremental costs (excluding finance costs) reasonably incurred by the VC Contractor as a direct result of the existence of the Encumbrance, except where the relevant Encumbrance:

  - (iii) is required by an Authority (other than the Principal);
  - (iv) relates to the grant of a licence to an Interface Contractor as contemplated by clause 12.3(a)(iv);
  - (v) is expressly contemplated by the Draft Section 88B Instrument or the Draft BMS;
  - (vi) is required by reason of any change by the VC Contractor to the design of the Project Works or Temporary Works (except where the change is due to the VC Contractor's design obligations under this deed); or
  - (vii) notwithstanding clause 9.11(d)(iii), was known to the VC Contractor on the date of this deed or otherwise should reasonably have been anticipated or contemplated by the VC Contractor at the date of this deed having regard to the activities required to enable the construction and/or operation of Sydney Metro City & Southwest (including Victoria Cross Station).
- (e) **(Evidence of extra cost)** The VC Contractor must provide the Principal with such evidence of the extra costs claimed pursuant to clause 9.11(d) as may be reasonably required by the Principal to substantiate the costs claimed.
- (f) **(Sole remedy)** Subject to the VC Developer's right to claim compensation for a decrease in value of Development Lot 2, the Concourse Lot and/or the Retail Lot in accordance with Schedule A7 (*Modification Procedure*) of the OSD PDA, the costs payable to the VC Contractor under clause 9.11(d) will be the VC Contractor's sole remedy in relation to any Encumbrance created, or permitted to be created, by the Principal pursuant to clause 9.11(b).
- (g) **(Principal to provide notice)** The Principal must promptly provide the VC Contractor with written notice of any proposed Encumbrance to be created in accordance with clause 9.11(b), and its proposed terms.
- (h) **(Principal and VC Contractor must meet)** After the date of this deed, if the Principal proposes to create, or permit the creation of Encumbrances pursuant to clause 9.11(b):

- (i) to burden or affect that part of the Principal's Land that will be Subdivided to create Development Lot 2, the Concourse Lot and/or the Retail Lot;
- (ii) to burden or affect Development Lot 2, the Concourse Lot and/or the Retail Lot;
- (iii) to burden or affect any lots which are created by Subdivision of Development Lot 2, the Concourse Lot and/or the Retail Lot; or
- (iv) which will adversely impact the value of Development Lot 2, the Concourse Lot and/or the Retail Lot on the Valuation Date (as that term is defined in the OSD PDA),

the Principal must meet with the VC Contractor to discuss the proposed Encumbrance, the terms of the proposed Encumbrance and the estimated decrease in value likely to be caused by the proposed Encumbrance, within 10 Business Days of receipt of a notice served under clause 9.11(h), before creating or permitting the creation of Encumbrances in accordance with clause 9.11(b), unless it is a licence or right of occupation granted by the Principal to Interface Contractors in accordance with clause 12.3(a)(iv).

- (i) **(Removal of Encumbrances)** Without limiting any other provision in this clause 9.11, if the Principal has created an Encumbrance on the title to the Principal's Land (excluding the Station Lot) solely to enable the construction of Sydney Metro City and Southwest (including the Victoria Cross Station) then if, after the commencement of Sydney Metro City & Southwest operations, the VC Contractor requests the Principal to remove that Encumbrance from the title to the relevant land, the Principal must do so promptly and at no cost to the VC Contractor.
- (j) **(No obligation to pay licence fees or rents)** The parties agree that the VC Contractor will not be liable to pay licence fees or rents to the Principal or any third party for any access or occupation right of the Construction Site.

#### 9.12 Lease of 194 Miller Street and 196A Miller Street

- (a) **(Principal to grant lease)** The Principal must, within a reasonable period of time from the date of a written request by the VC Contractor, enter into the Miller Street Property Lease.
- (b) **(Negotiating terms of the lease)** The Principal and the VC Contractor must act reasonably in negotiating any amendments to the Miller Street Property Lease, provided that:
  - (i) there is no change to:
    - (A) the Land or the Premises;
    - (B) the name of the Tenant;
    - (C) the Term, including the Commencing Date and the Terminating Date;
    - (D) the Rent payable per annum;
    - (E) the Permitted Use; and
    - (F) the terms of the Licence in clause 19 of the Miller Street Property Lease,

(as those terms are defined in the Miller Street Property Lease); and

- (ii) there is not a material derogation of the Principal's rights or an increase in the profile of the Principal's risks under this deed or the Miller Street Property Lease.

## 10. PHYSICAL CONDITIONS

### 10.1 Acceptance of site

- (a) **(Acceptance of site)** Subject to clause 5.7 (*Contamination*), clause 15.7 (*TSE Defects*), clause 21.6 (*Extensions of time*) and clause 21.9 (*Risk of delay and disruption and resultant increased Costs*), the VC Contractor accepts:

- (i) the Construction Site, the Adjoining Properties and the Extra Land; and
- (ii) any structures or other things on, above or adjacent to, or under the surface of, the Adjoining Properties, the Construction Site and the Extra Land,

in their present condition, subject to all defects and Site Conditions, and agrees that it is responsible for, and assumes the risk of:

- (iii) all Loss, delay or disruption it suffers or incurs; and
- (iv) any adverse effect on the Project Works, the Temporary Works or the VC Contractor's Activities,

arising out of, or in any way in connection with, any defects or Site Conditions encountered in performing the VC Contractor's Activities and releases the Principal from all Claims and Liabilities in connection with such matters.

- (b) **(Examination and investigation)** Subject to clause 5.7 (*Contamination*), the VC Contractor warrants that, prior to the date of this deed, the VC Contractor:

- (i) examined this deed, the VC Station Contract Documents, the VC OSD Contract Documents, the TSE Contract, the Construction Site, any Extra Land and its surroundings and any other information that was made available in writing by the Principal or any other person on the Principal's behalf, to the VC Contractor or its Associates during the tender period;

- (ii) informed itself of all matters relevant to the employment of labour and all industrial matters on the Construction Site;

- (iii) was given the opportunity prior to entering into this deed to itself undertake, and to request others to undertake, tests, enquiries and investigations:

- (A) relating to the subject matter of the Information Documents;
- (B) in connection with the TSE Contract; and
- (C) for design purposes and otherwise;

- (iv) had sufficient opportunity to obtain and obtained all necessary legal, geotechnical and other technical advice in relation to the terms of this deed, the VC Station Contract Documents, the TSE Contract, the Information Documents, the Site Conditions, as well as the risks, contingencies and other circumstances having an effect on its Tender and the performance of its obligations and its potential Liabilities under the VC Station Contract Documents;

- (v) had sufficient access to the Construction Site and its surroundings, undertook sufficient tests, enquiries and investigations, had sufficient

information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision regarding the acceptance of risk in relation to Site Conditions, whether or not to enter into the VC Station Contract Documents and assume the obligations and potential risks and Liabilities which they impose on the VC Contractor; and

- (vi) satisfied itself as to the correctness and sufficiency of its Tender and that it has made adequate allowance for the costs of complying with all of its obligations under the VC Station Contract Documents and of all matters and things necessary for the due and proper performance and completion of the VC Contractor's Activities.
- (c) (**No representation or warranty**) The Principal makes no representation and gives no warranty to the VC Contractor or its Associates in respect of:
  - (i) the Site Conditions which may be encountered during the execution of the VC Contractor's Activities or otherwise in respect of the condition of:
    - (A) the Construction Site, the Extra Land or their surroundings; or
    - (B) any structure or other thing on, under, above or adjacent to the Construction Site or the Extra Land;
  - (ii) the adequacy or suitability of the Construction Site or the Extra Land for the VC Contractor's Activities;
  - (iii) the existence, location, condition or availability of Utility Services on, under, above, adjacent to or related to the Construction Site or the Extra Land; or
  - (iv) the condition or characteristics of any Adjoining Property.

#### 10.2 Information Documents

- (a) (**No warranty**) Subject to clause 4.2(c) and without limiting clause 10.2(b):
  - (i) the VC Contractor acknowledges that the Information Documents may be inaccurate, inadequate, incomplete or unsuitable;
  - (ii) the Principal does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, completeness or suitability of the Information Documents;
  - (iii) the VC Contractor acknowledges that where an Information Document or any part thereof is included in a schedule to this deed, it does so only for the purposes of identification of that document or part thereof (unless it is expressly stated in the document that it forms part of this deed); and
  - (iv) the Principal will have no Liability to the VC Contractor or its Associates arising out of or in any way in connection with:
    - (A) the provision of, or the purported reliance upon, or use of the Information Documents to or by the VC Contractor or its Associates or any other person to whom the Information Documents are disclosed; or
    - (B) a failure by the Principal to provide any information to the VC Contractor or its Associates, except where such failure is a breach of this deed (for which the VC Contractor's only remedy will be a claim for breach of contract).

(b) **(No reliance)** The VC Contractor:

- (i) warrants that it did not in any way rely upon:
  - (A) any Information Document or any other information, data, representation, statement or document made, or provided to the VC Contractor or its Associates, by the Principal or anyone on behalf of the Principal or any other information, data, representation, statement or document for which the Principal is responsible or may be responsible whether or not obtained from the Principal or anyone on behalf of the Principal; or
  - (B) the accuracy, adequacy, suitability or completeness of such Information Document or other information, data, representation, statement or document,

for the purposes of entering into this deed or carrying out the VC Contractor's Activities;

- (ii) warrants that it enters into the VC Station Contract Documents based on its own investigations, interpretations, deductions, information and determinations; and
- (iii) acknowledges that it is aware that the Principal has entered into this deed relying upon:
  - (A) the warranties, acknowledgements and agreements in clause 10.2(b)(i) and clause 10.2(b)(ii); and
  - (B) the agreements and acknowledgements in the VC Contractor's Tender.

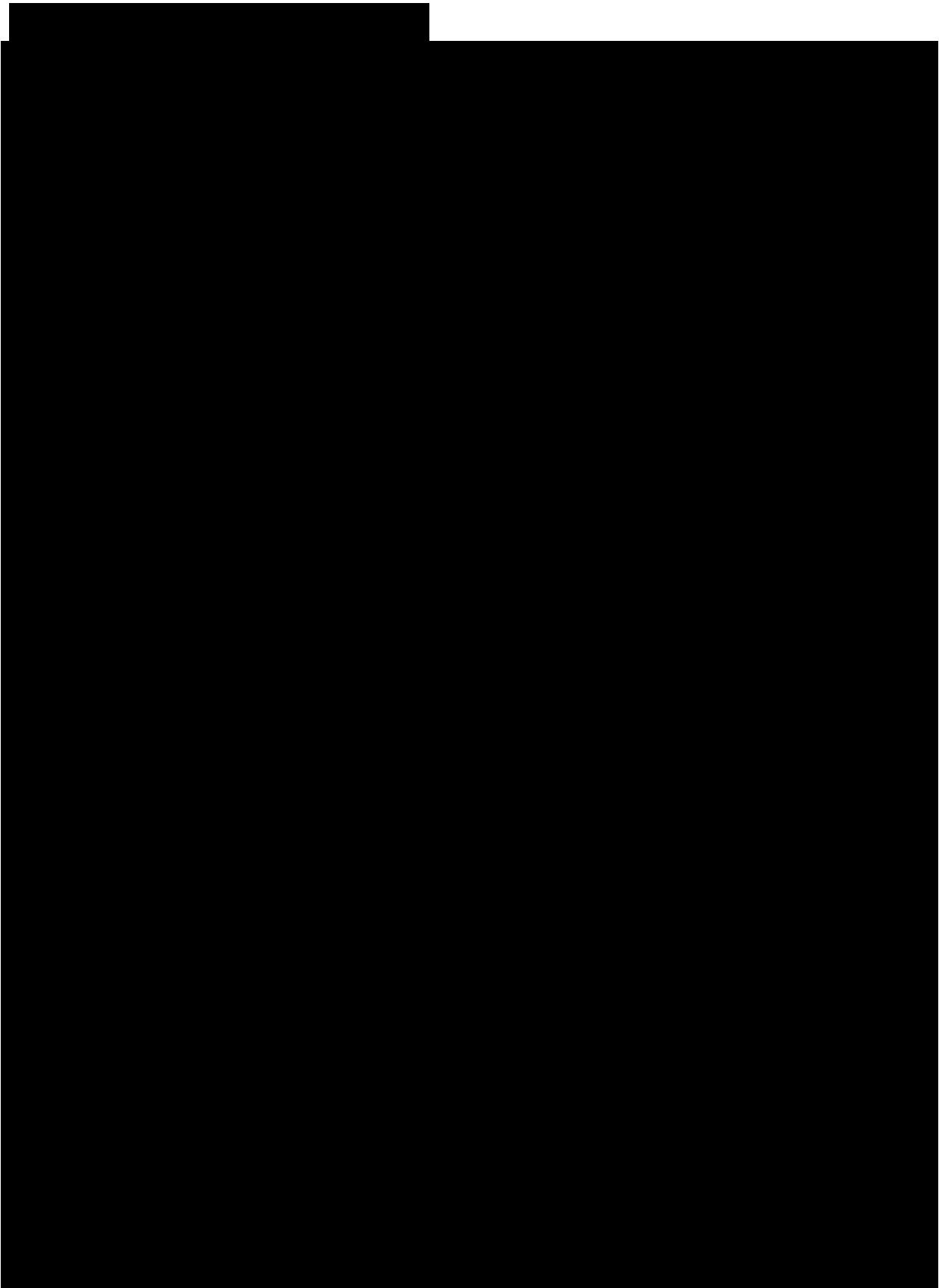
(c) **(Release and indemnity)** The VC Contractor releases and indemnifies the Principal from and against:

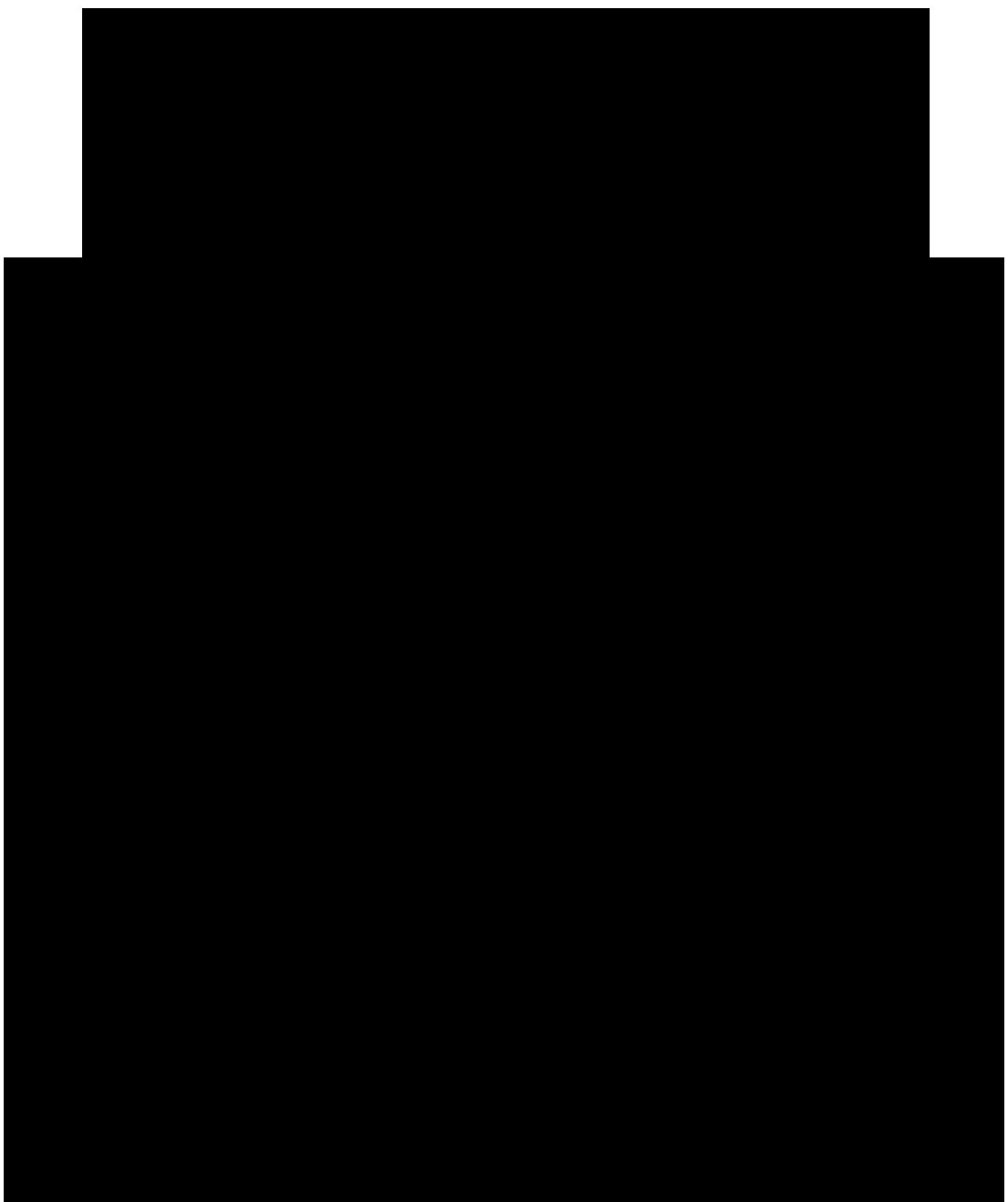
- (i) any Claim against the Principal by, or Liability of the Principal to, any person; or
- (ii) (without being limited by clause 10.2(c)(i)) any Loss incurred by the Principal,

arising out of or in any way in connection with:

- (iii) the provision of, or the purported reliance upon, or use of, the Information Documents to or by the VC Contractor or its Associates or any other person to whom the Information Documents are disclosed by the VC Contractor or a failure by the Principal to provide any information to the VC Contractor or its Associates;
- (iv) any breach by the VC Contractor of this clause 10.2 (*Information Documents*); or
- (v) the Information Documents being relied upon or otherwise used by the VC Contractor or its Associates, or by any other person to whom the Information Documents are disclosed by the VC Contractor, in the preparation of any information or document, including any Information Document which is "misleading or deceptive" or "false and misleading" (within the meaning of those terms in sections 18 and 29 (respectively) of the Australian Consumer Law in Schedule 2 to the *Competition and*

*Consumer Act 2010 (Cth) or any equivalent provision of State or Territory legislation).*





**12. INTERFACE WITH INTERFACE CONTRACTORS**

**12.1 Master Interface Protocols Deed Poll**

- (a) The VC Contractor must:

- (i) within [REDACTED] after receipt of a request from the Principal's Representative, provide to the Principal the Master Interface Protocols Deed Poll, duly executed by the VC Contractor; and
  - (ii) at all relevant times comply with the terms of the Master Interface Protocols Deed Poll.
- (b) The Principal will procure that the Operator and each Interface Contractor nominated by the Principal (not including the TSE Contractor) executes a Master Interface Protocols Deed Poll.

## 12.2 Cooperation and Integration Deeds

- (a) The VC Contractor must:
  - (i) within 5 Business Days after receipt of a request from the Principal's Representative, provide to the Principal:
    - (A) the TSE Cooperation and Integration Deed;
    - (B) the Operator Cooperation and Integration Deed; and
    - (C) each Interface Contractor Cooperation and Integration Deed with any Interface Contractor nominated by the Principal,
  - each duly executed by the VC Contractor in the number of counterparts required by the Principal; and
  - (ii) at all relevant times comply with the terms of the Project Cooperation and Integration Deeds.
- (b) If the Principal makes a request under clause 12.2(a)(i) for the VC Contractor to execute:
  - (i) a TSE Cooperation and Integration Deed;
  - (ii) an Operator Cooperation and Integration Deed; or
  - (iii) an Interface Contractor Cooperation and Integration Deed to which any Interface Contractor nominated by the Principal will be party,

the Principal must, within 20 Business Days of receiving the executed documents from the VC Contractor, itself execute, and procure that the TSE Contractor, the Operator or the relevant Interface Contractor nominated by the Principal (as applicable), executes the relevant document.

## 12.3 Cooperation and co-ordination with Interface Contractors

Without limiting the VC Contractor's obligations under the Project Cooperation and Integration Deeds, the VC Contractor:

- (a) **(VC Contractor acknowledgement)** acknowledges that:
  - (i) the Interface Work forms part of Sydney Metro City & Southwest;
  - (ii) the VC Contractor's Activities interface with the Interface Work;
  - (iii) Interface Contractors will be executing work on parts of the Construction Site or Extra Land, or adjacent to the Construction Site or Extra Land, at the same time as the VC Contractor is performing the VC Contractor's Activities;

- (iv) the Principal may grant the Interface Contractors a non-exclusive licence to use and occupy the Construction Site to carry out the Interface Works;
- (v) without limiting clause 4 (*Design obligations*), the VC Contractor will require certain design and work methodology from Interface Contractors to co-ordinate the design of the Project Works and Temporary Work with the Interface Work;
- (vi) Interface Contractors will require the VC Contractor to provide design and work methodology information to them to co-ordinate the design of the Interface Works with the Project Works and the Temporary Works, and this must be provided in a timely manner by the VC Contractor; and
- (vii) any delay in the performance of the VC Contractor's Activities or in the VC Contractor providing information to, or cooperating and co-ordinating with, any Interface Contractor may adversely impact upon, delay or disrupt any one or more Interface Contractors or the VC Contractor's Activities in a way which may lead to the Principal and Interface Contractors suffering or incurring Loss;

(b) **(cooperation with Interface Contractors)** must at all times:

- (i) permit the Interface Contractors (if the VC Contractor's consent or authority is required) to execute the Interface Work on the applicable parts of the Construction Site or Extra Land or on any property adjacent to or in the vicinity of the Construction Site or Extra Land:
  - (A) at the same time as the VC Contractor is performing the VC Contractor's Activities; and
  - (B) at the times agreed with the relevant Interface Contractor, or failing agreement, at the times determined by the Principal's Representative  
[REDACTED]  
[REDACTED],

and for this purpose ensure that those parts of the Construction Site or Extra Land, or property adjacent to or in the vicinity of the Construction Site or Extra Land, required by that Interface Contractor for the purpose of carrying out their work are Accessible;

- (ii) protect the Project Works, Temporary Works and other improvements on the Construction Site or Extra Land from damage by Interface Contractors and allow goods and equipment supplied by Interface Contractors to be received and stored on the Construction Site;
- (iii) fully cooperate with the Interface Contractors, and do everything reasonably necessary to:
  - (A) facilitate the execution of work by the Interface Contractors, including providing each Interface Contractor with such assistance as may be directed by the Principal's Representative  
[REDACTED]  
[REDACTED] or  
 required by the SWTC; and
  - (B) without limiting clause 6.3 (*Principal contractor*), ensure the effective co-ordination of the design and construction of the Project Works and the Temporary Works with the design and construction of the Interface Work;

- (iv) carefully co-ordinate and interface the VC Contractor's Activities with the Interface Work, and for this purpose:
  - (A) make proper allowance in all programs for the Interface Work;
  - (B) review all programs provided by Interface Contractors and confirm that they adequately allow for the VC Contractor's Activities and the interfaces between the Interface Work and the VC Contractor's Activities;
  - (C) monitor the progress of the Interface Work;
  - (D) notify the Principal's Representative of any interface or sequence of activities that may affect the commencement or progress of the VC Contractor's Activities or the achievement of any Significant Completion; and
  - (E) provide the Interface Contractors with sufficient information about the current and expected VC Contractor's Activities to assist them to co-ordinate the Interface Work with the VC Contractor's Activities;
- (v) cooperate, meet with, liaise and share information so that the VC Contractor and the relevant Interface Contractor each comply with the provisions of the relevant Environment Protection Licence (if applicable);
- (vi) perform the VC Contractor's Activities so as to minimise any interference with or disruption or delay to the Interface Work;
- (vii) be responsible for co-ordinating the VC Contractor's Activities, including work sequencing, construction methods, safety and industrial relations matters, with those affecting, and influenced by, the Interface Contractors' personnel and Interface Work, including providing to the Principal's Representative copies of work method statements for those parts of the Project Works or Temporary Works which are adjacent to or interface with any Interface Work, at least 15 Business Days prior to commencing the work described in the work method statement;
- (viii) work directly with Interface Contractors where required to complete the design of the Project Works and Temporary Works and provide all necessary information to Interface Contractors in respect of the Project Works and Temporary Works to permit the Interface Contractors to complete the design of the Interface Works so that they are acceptable to the Principal and otherwise comply with this deed, including the SWTC;
- (ix) attend interface co-ordination meetings chaired by the Principal's Representative with Interface Contractors and others every 10 Business Days, or at other times to be advised by the Principal's Representative (acting reasonably), to review current and future issues, including the exchange of information, status, problems, solutions, and newly identified interfaces;
- (x) when information is required from an Interface Contractor, provide reasonable written notice to that Interface Contractor requesting that information and specifying the date by which such information is required, which must be:
  - (A) as soon as reasonably practicable but in any event at least 10 days after the date of the notice; or

- (B) if a longer period for the provision of information is required by the SWTC, the date that period expires,
- with a copy to the Principal's Representative;
- (xi) ensure that any written notice given under clause 12.3(b)(x) provides the Interface Contractor with the longest possible time for the provision of the information requested having regard to the circumstances;
- (xii) when any information is requested by the Interface Contractors relating to the VC Contractor's Activities, the Project Works or the Temporary Works, including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the Interface Work with the Project Works, Temporary Works or the VC Contractor's Activities:
- (A) provide the information to the Interface Contractor, with a copy to the Principal's Representative, within a reasonable time requested by the Interface Contractor; and
  - (B) ensure and warrant (as at the date the information is provided) that the information provided is accurate;
- (xiii) use its best endeavours to resolve any problems, and work closely and iteratively with the Interface Contractors, including providing design options, iterations, and work methodologies, to achieve the best solution to such problems, related to:
- (A) the provision of information;
  - (B) the obtaining of information;
  - (C) the adequacy of information provided to, or received from, the Interface Contractors;
  - (D) the compatibility of the Project Works and Temporary Works with the Interface Work;
  - (E) co-ordination in accordance with this clause 12.3(b); and
  - (F) technical issues with the information provided to, or received from, Interface Contractors;
- (c) (**notice of changes**) must promptly advise the Principal's Representative of all matters arising out of the liaison with Interface Contractors that may involve a change to the design or construction of the Project Works or the Temporary Works or otherwise have an adverse effect upon the VC Contractor's Activities; and
- (d) (**similar clauses**) acknowledges that the Principal will ensure that conditions similar to those in this clause 12.3 applying to the VC Contractor will apply to all the Interface Contractors engaged by the Principal that are working on the Construction Site.

#### 12.4 Disputes between the VC Contractor and Interface Contractors

- (a) (**Notice of Dispute**) If, despite the VC Contractor having complied with all of its obligations in clause 12.3(b), the VC Contractor and any Interface Contractor fail to resolve any interface issue or dispute between them, the VC Contractor must promptly give the Principal's Representative written notice of any interface issue or dispute with any Interface Contractor (with a copy to the Interface Contractor).

- (b) **(Meeting)** Following receipt of the VC Contractor's notice under clause 12.4(a):
- (i) the Principal's Representative must promptly convene a meeting between the VC Contractor, the relevant Interface Contractor and any other relevant person (as reasonably determined by the Principal's Representative);
  - (ii) the Principal's Representative must work in good faith with the VC Contractor and the Interface Contractor to resolve the issues or dispute; and
  - (iii) the VC Contractor must work in good faith with the Principal's Representative and the Interface Contractor to resolve the issues or dispute.

## 12.5 No Claims arising out of Interface Work

The VC Contractor:

- (a) **(VC Contractor acknowledgement)** acknowledges and agrees that:
- (i) the Interface Contractors will require access to the Construction Site in order to perform their obligations under their respective contracts with the Principal;
  - (ii) [REDACTED] no act or omission by an Interface Contractor will, whether or not it causes any delay, disruption or interference to the VC Contractor's Activities, constitute an Excusable Cause of Delay or direction by the Principal to carry out a Modification;
  - (iii) subject to clause 21.6 (*Extensions of time*) and clause 21.9 (*Risk of delay and disruption and resultant increased Costs*) and except where the Principal's Representative gives a direction pursuant to clause 22.1(a) in circumstances where the VC Contractor has fully complied with its obligations under clause 12.3 (*Cooperation and co-ordination with Interface Contractors*), the Principal will have no Liability to the VC Contractor arising out of or in any way in connection with:
    - (A) any Interface Contractor carrying out Interface Work; or
    - (B) any act or omission of an Interface Contractor; and
  - (iv) the VC Contractor's Program will accommodate requirements for design iterations as part of the Interface Work and incorporate the requirements specified in clause 3.2(a) and clause 3.2(b) of the Interface Contractor Cooperation and Integration Deed; and
- (b) **(sufficient allowance)** warrants that the Contract Sum and the VC Contractor's Program contains sufficient allowances for the assumption by the VC Contractor of the obligations and risks under clause 12.3 (*Cooperation and co-ordination with Interface Contractors*) and this clause 12.5, including the cost of all the design iterations required to accommodate Interface Work.

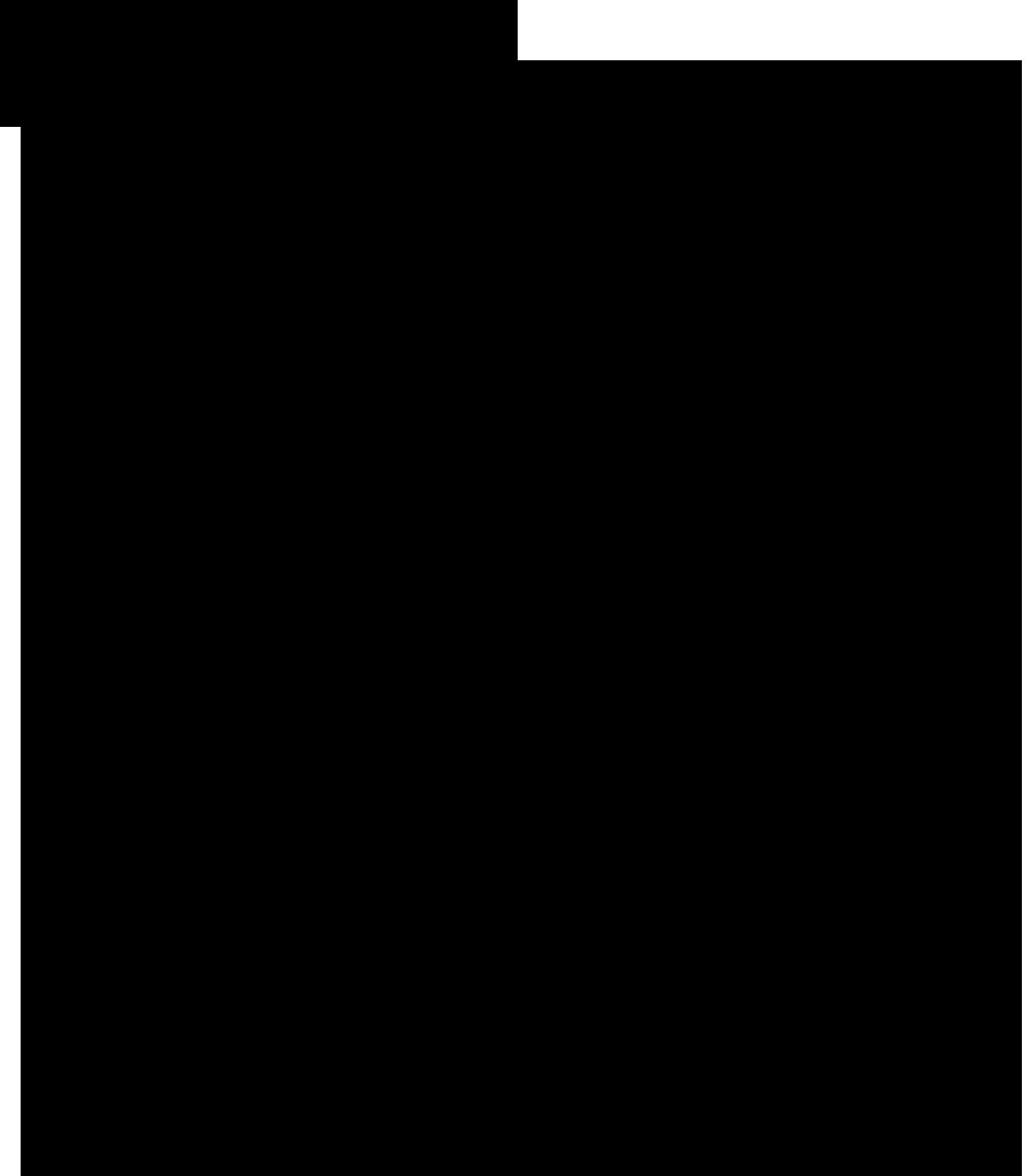
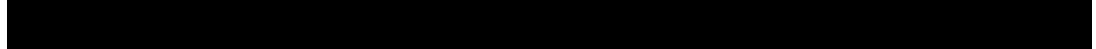
## 12.6 Temporary Work and Construction Plant

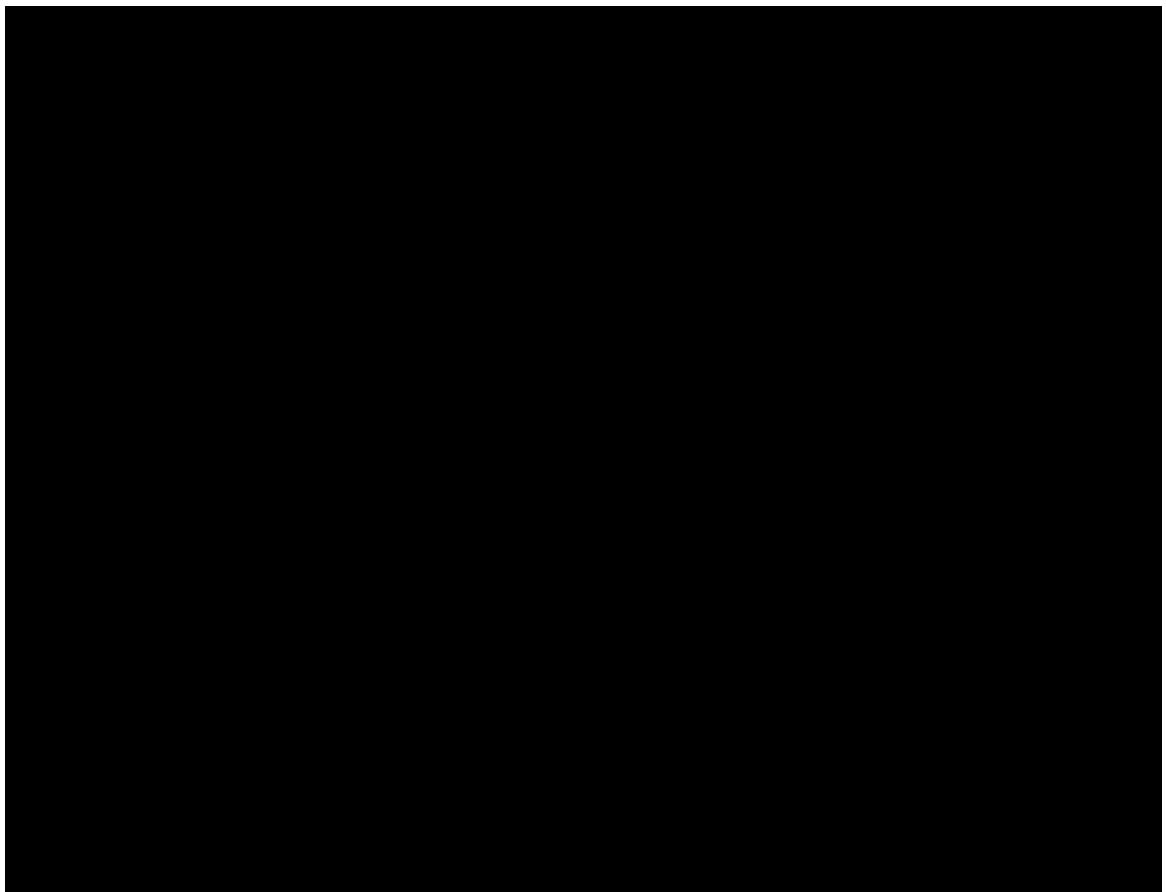
- (a) **(Own arrangements)** The VC Contractor must make its own arrangements with Interface Contractors in relation to Construction Plant and Temporary Work left on the Construction Site.

- (b) **(No Liability)** The Principal will have no Liability to the VC Contractor for Temporary Work or Construction Plant left on the Construction Site by an Interface Contractor or the VC Contractor for use by an Interface Contractor.

**12.7 Collateral Warranty Deed Poll**

The VC Contractor must, within 5 Business Days of receipt of a request from the Principal



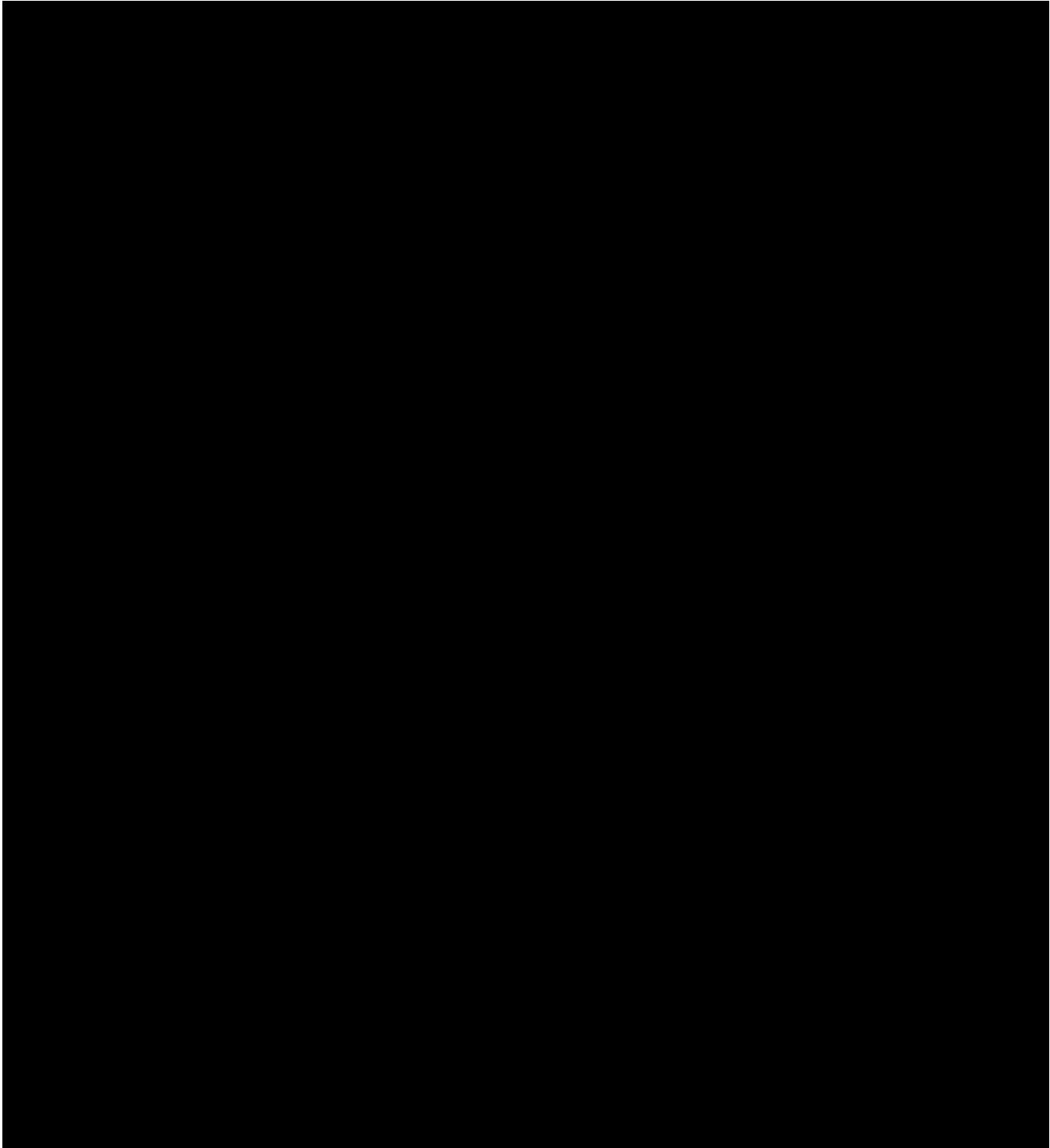


14. **INTERFACE WITH OSD AND CONCOURSE LESSEE**

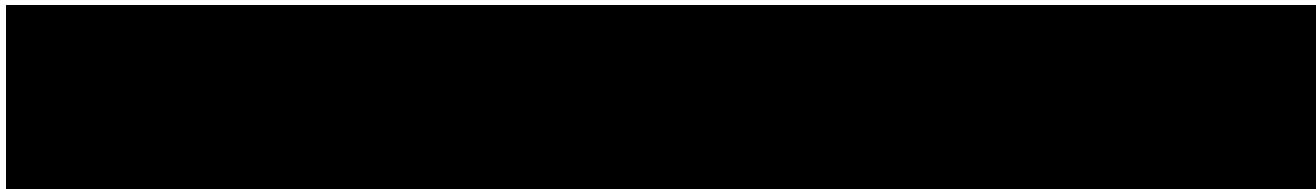
14.1 **Acknowledgements regarding OSD and Concourse Lease interface**

The parties acknowledge that:

- (a) the Principal and the VC Developer are parties to the OSD PDA;
- (b) the VC Developer may carry out the VC Developer's Activities on the Construction Site pursuant to the OSD PDA, including prior to the Date of Completion of the last Portion to achieve Completion;
- (c) the Principal will:
  - (i) grant the Concourse Lease to the Concourse Lessee in accordance with clause 25.1(c) of the OSD PDA; and
  - (ii) transfer the freehold interest in the Retail Lot to the Retail Lot Purchaser in accordance with clause 25.1(b) of the OSD PDA; and
- (d) to the extent that the VC Contractor requires access to or a right to occupy or use:
  - (i) the OSD Construction Site, the VC Contractor must procure that access or right for itself from the VC Developer;
  - (ii) the Concourse Lot after the commencement of the Concourse Lease, the VC Contractor must procure that access or right for itself from the Concourse Lessee or Sub-Tenant; or

- (iii) the Retail Lot after the transfer of the freehold interest in the Retail Lot to the Retail Lot Purchaser, the VC Contractor must procure that access or right for itself from the Retail Lot Purchaser.
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**15. TSE CONTRACT**



## 15.2 TSE Works Design Documentation

- (a) **(VC Contractor comments on TSE Design Documentation)** The Principal must provide the VC Contractor with a copy of all design documentation for the TSE Works (**TSE Works Design Documentation**) submitted by the TSE Contractor to the Principal, promptly following receipt by the Principal to the extent that it is not already included in the TSE Works Baseline Requirements.
- (b) **(VC Contractor review)** The VC Contractor must review the TSE Works Design Documentation provided to it pursuant to clause 15.2(a) and provide written comments to the Principal within 10 Business Days after the date on which the VC Contractor received the TSE Works Design Documentation, setting out details of any difference between the TSE Works Design Documentation and the TSE Works Baseline Requirements.
- (c) **(Principal provides comments)** The Principal must:
  - (i) promptly provide a copy of any written comments provided by the VC Contractor under clause 15.2(b) to the TSE Independent Certifier and the TSE Contractor; and
  - (ii) provide the VC Contractor with a copy of any comments the Principal receives from the TSE Contractor or TSE Independent Certifier (as applicable) in response to any comments made by the VC Contractor under clause 15.2(b) promptly and in any event no later than 10 Business Days after receipt.

## 15.3 TSE Works Information

- (a) **(Asset Management Information)** The Principal must provide the VC Contractor with a copy of any TSE Works Asset Management Information submitted by the TSE Contractor to the Principal promptly following receipt by the Principal. The VC Contractor may or, if requested by the Principal, must, review the TSE Works Asset Management Information and, (if applicable) provide written comments to the Principal within 5 Business Days after the date on which the VC Contractor received the TSE Works Asset Management Information. The Principal may provide a copy of any written comments provided by the VC Contractor to the TSE Independent Certifier and the TSE Contractor.
- (b) **(TSE Works documentation)** If requested by the VC Contractor, (and only to the extent that any documentation is not provided directly to the VC Contractor by the TSE Contractor or the TSE Independent Certifier) the Principal must provide the VC Contractor with copies of:
  - (i) all documents or other information in respect of the design, construction, occupation, use and maintenance of the TSE Works which the TSE Contractor must give the Principal as a condition precedent to TSE Construction Completion;
  - (ii) any correspondence with, or certificates issued by, the TSE Independent Certifier in relation to the TSE Works (excluding any confidential commercial information regarding the TSE Contractor);
  - (iii) any notices of TSE Defects notified to the Principal by the TSE Contractor, or by the Principal to the TSE Contractor, after TSE Construction Completion; and

- (iv) any documents the Principal is entitled to, and actually does, receive from the TSE Contractor in relation to the quality of the TSE Works.

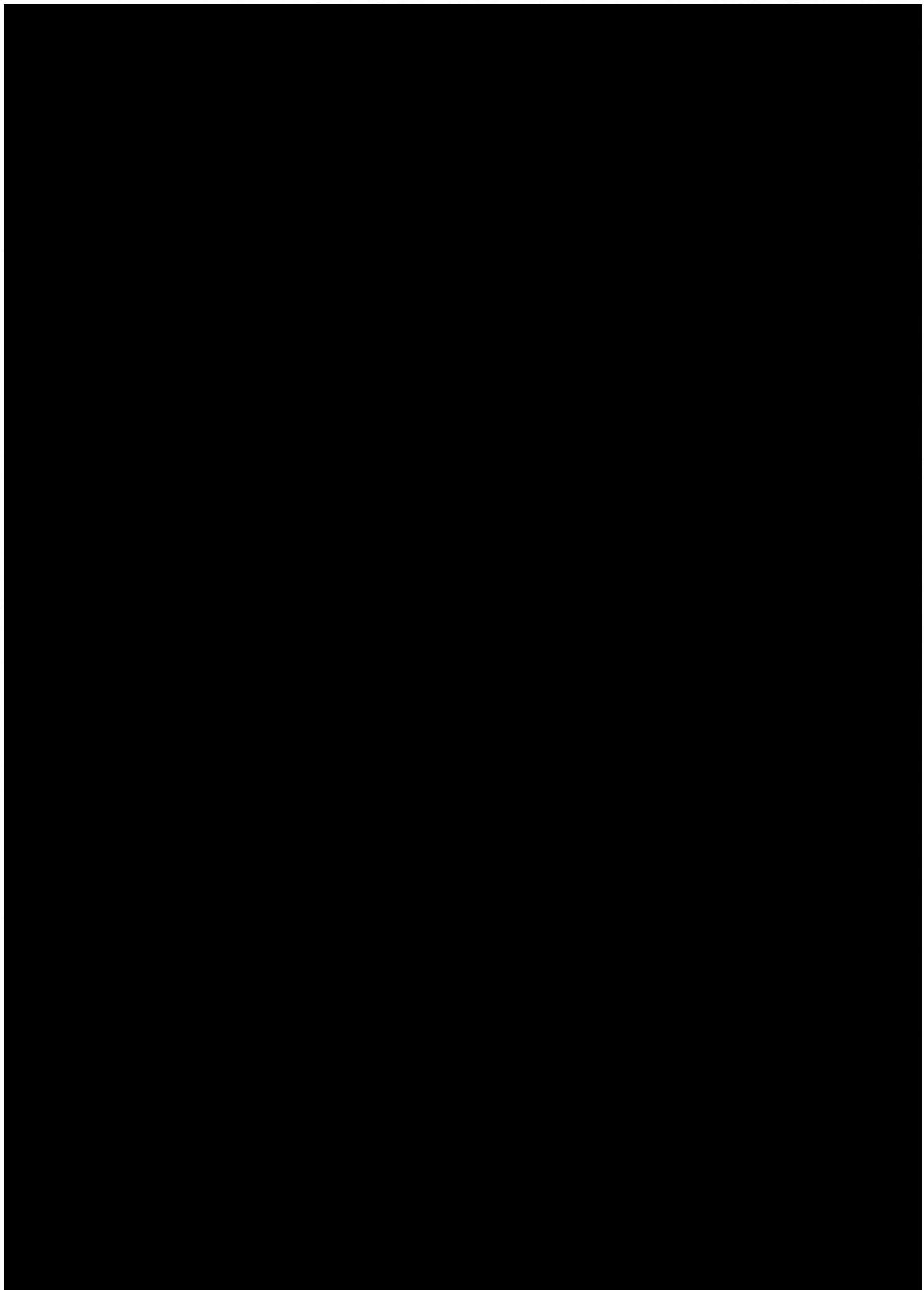
#### 15.4 Inspection of TSE Works

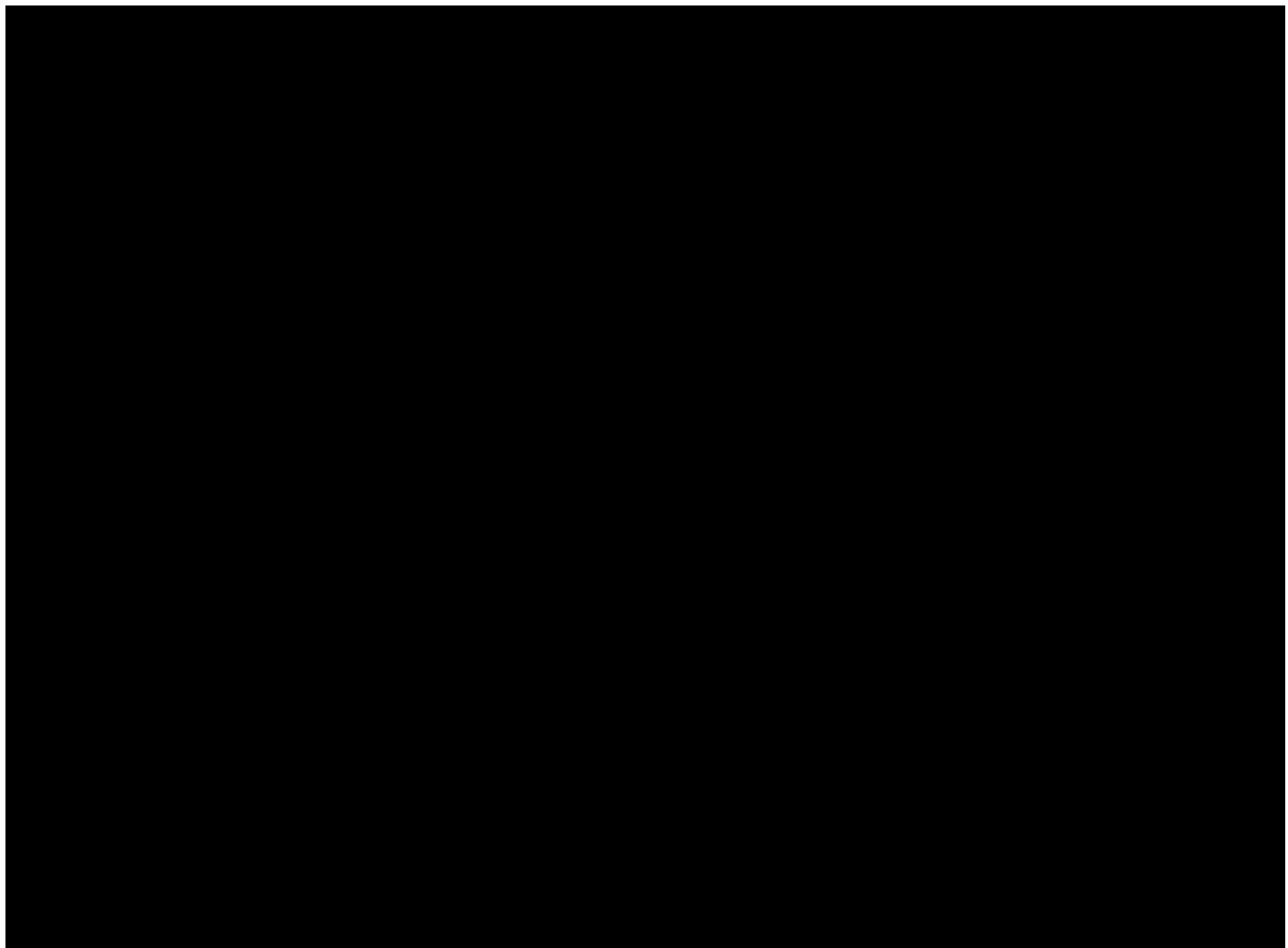
- (a) **(Inspection request)** If the VC Contractor wishes to inspect the TSE Works, the VC Contractor must submit a written request to the Principal's Representative a minimum of 10 Business Days in advance of the date it wishes to carry out the inspection (or such other period of time as the Principal's Representative may agree). The Principal's Representative may attend any inspection by the VC Contractor of the TSE Works.
- (b) **(The Principal to facilitate)** The Principal's Representative must:
  - (i) facilitate all reasonable requests by the VC Contractor to inspect the TSE Works; and
  - (ii) notify the VC Contractor of, and provide the VC Contractor with a reasonable opportunity to attend, all joint inspections of the TSE Works carried out in accordance with clause 17.11 of the TSE Contract.
- (c) **(VC Contractor comment)** If the VC Contractor believes that the TSE Works are not in accordance with the TSE Works Baseline Requirements, the VC Contractor must provide written comments to the Principal:
  - (i) in the case of an inspection carried out in accordance with clause 17.11 of the TSE Contract, within 1 Business Day after the date of the relevant inspection; and
  - (ii) in the case of any other inspection under this clause 15.4, within 5 Business Days after the date of the relevant inspection,

and the Principal must provide a copy of any such comments to the TSE Independent Certifier and the TSE Contractor and provide the VC Contractor with a copy of any comments the Principal receives from the TSE Independent Certifier in response to any comments made by the VC Contractor under clause 15.4(c) promptly and in any event no later than 10 Business Days after receipt.

#### 15.5 Care and maintenance of TSE Works

- (a) **(VC Contractor responsibility)** Subject to clause 15.6 (*TSE Known Defects*), clause 15.7 (*TSE Defects*), clause 21.6 (*Extensions of time*), clause 21.9 (*Risk of delay and disruption and resultant increased Costs*) and clause 30.1 (*Responsibility for care of VC Contractor's Activities*), the VC Contractor is responsible for the care and maintenance of any parts of the TSE Works located within the Construction Site for the period from the Construction Licence Commencement Date for that part of the Construction Site until the Date of Completion of the relevant Portion (or the Date of Substantial Completion in relation to the Trackway Portion) in accordance with the TSE Works O&M Manuals.
- (b) **(Indemnity)** The VC Contractor indemnifies the Principal from and against any Loss that the Principal suffers or incurs as a consequence of the VC Contractor failing to carry out its obligations under clause 15.5(a).



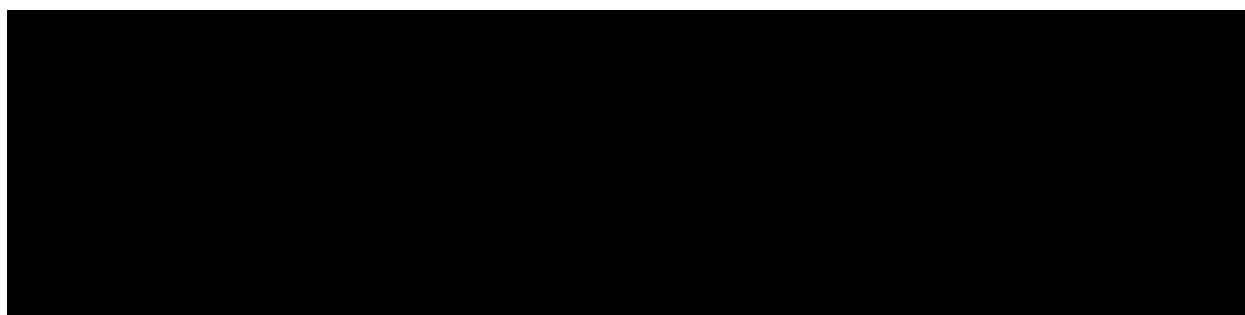


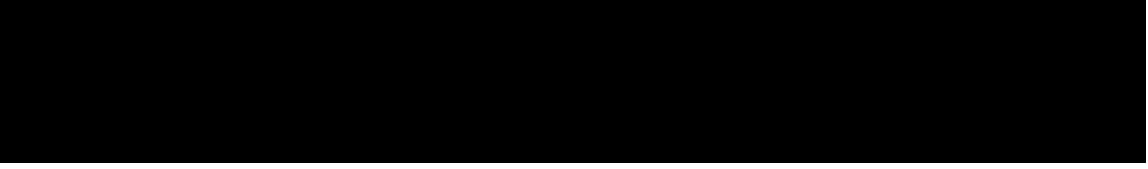
**15.9 Access by TSE Contractor**

The VC Contractor must provide the TSE Contractor (and any person authorised by the TSE Contractor) with such access to the Construction Site as is required by the TSE Contractor in order to meet its obligations under the TSE Contract and the TSE Cooperation and Integration Deed, including the rectification of:

- (a) any TSE Known Defects pursuant to clause 15.6(a)(ii); and
- (b) any TSE Defects pursuant to clause 15.7 (*TSE Defects*),

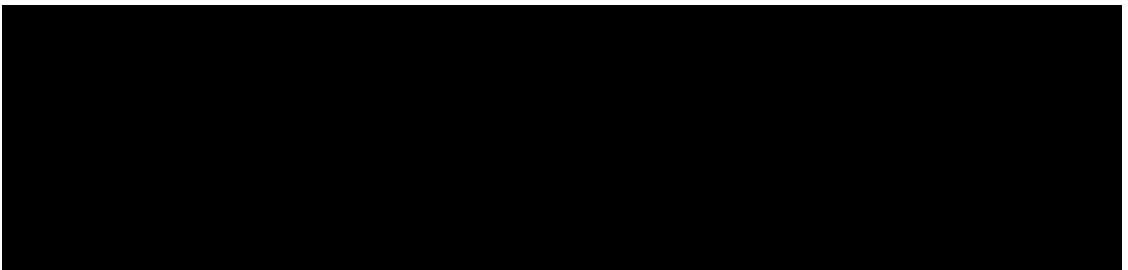
subject to the TSE Contractor complying with the VC Contractor's site access and work, health and safety procedures in accordance with the TSE Cooperation and Integration Deed.





### 15.11 TSE Handover Works

- (a) **(List of Handover Works)** The Principal must, no later than 90 days before the TSE Date for Construction Completion, provide the VC Contractor with a list of the Handover Works that the TSE Contractor has constructed on the Construction Site and provide the VC Contractor with a reasonable opportunity to inspect the Handover Works.
- (b) **(Removal of Handover Works)** The VC Contractor must, no later than 14 days after the date on which the Principal gives the VC Contractor the list referred to in clause 15.11(a), give the Principal a written notice of the Handover Works (if any) that the VC Contractor requires to be removed from the Construction Site after TSE Construction Completion and the Principal must procure the removal of the Handover Works referred to in the VC Contractor's notice from the Construction Site prior to the Construction Licence Commencement Date.
- (c) **(Operation and maintenance of Handover Works)** The VC Contractor must operate and maintain the Handover Works (other than Handover Works the subject of the VC Contractor's notice under clause 15.11(b)).



## 16. RECORDS AND ACCESS TO RECORDS



### 16.1 Records

- (a) **(Keeping Records)** The VC Contractor must make and keep, and must ensure all Subcontractors make and keep, accurate records of the work under this deed, whether in writing or stored on any other medium whatsoever (**Records**), including:
  - (i) the Contract Documentation and Materials and any other documents referred to in this deed;
  - (ii) design calculations of the Design Documentation (including designs certified but subsequently superseded or varied) or used in connection with VC Contractor's Activities, the Project Works or the Temporary Works;
  - (iii) records as to progress of the work including diary records of daily tasks, complete photographic records and manning and equipment records;
  - (iv) quality system documents and records;
  - (v) results of the examination and testing of any work;
  - (vi) records evidencing or related to compliance with Law;

- (vii) time records, all cost records relating in any way to delays, Contract Sum Adjustment Events and any work the remuneration for which is based on actual cost, loss or damage;
  - (viii) all consultant's reports and opinions obtained by the VC Contractor in relation to the matters referred to in this clause; and
  - (ix) all necessary supporting correspondence, internal memoranda, minutes, technical and other documents, invoices, records and related financial statements.
- (b) **(Right to inspect Records)** The Principal, the Principal's Representative, the Independent Certifier or any nominee of them may, at any time, inspect and make copies of the whole or part of any Record, may conduct an audit of the Records and the work under this deed (other than Records relating generally to the financial conduct of the VC Contractor's whole business and board minutes unless the VC Contractor is expressly required to make such Records available to the Principal under this deed) and may access the premises of the VC Contractor or its Subcontractors to have access to the Records.
- (c) **(Records not in writing)** If a Record is stored on a medium other than in writing, the VC Contractor must make available immediately upon request such facilities as may be necessary to enable a legible reproduction of the Record to be produced to the Principal or the Principal's Representative and where a Record is in electronic format, the VC Contractor must provide the Principal with a non-exclusive licence to use the software necessary to view and, where relevant, analyse, the information.
- (d) **(No right to refuse inspection)** The VC Contractor is not entitled to refuse inspection of any Record to which the Principal has the right to inspect pursuant to clause 16.1(b) on any basis except legal professional privilege. If a Record is confidential, the VC Contractor may refuse inspection of the Record until the person who is conducting the inspection has executed an undertaking to keep the information confidential.
- (e) **(Cooperation)** The VC Contractor must cooperate with the Principal, the Principal's Representative, the Independent Certifier or any of their respective nominees when they are conducting an inspection. Cooperation will include the explanation of all filing and costing systems and the extraction of requested categories of documentation from files upon request.
- (f) **(Maintenance and destruction of records)**
- (i) The VC Contractor must keep the Principal informed as to where the Records are being maintained, which must be in Australia.
  - (ii) Design Documentation actually used in construction, as-built drawings and commissioning information must be handed to the Principal at Final Completion.
  - (iii) The remaining Records may only be destroyed after the last to occur of:
    - (A) seven (7) years after Final Completion;
    - (B) the expiry of the Defects Correction Period; or
    - (C) seven (7) years after the termination of this deed.

## 16.2 Access to third parties' information

The VC Contractor must:

- (a) ensure that the Principal (and any person authorised by the Principal) has direct access to any information, documents or material:
  - (i) that is maintained by a third party (including the VC Contractor's Associates); and
  - (ii) which the Principal is entitled to have access to, or have copies of, from the VC Contractor under this deed;
- (b) ensure that any contractual arrangements between the VC Contractor or Subcontractors and any third parties acknowledge the Principal's right of access under clause 16.2(a); and
- (c) give the Principal on demand written evidence (including copies of any contractual arrangements referred to in clause 16.2(b)) showing compliance by the VC Contractor with its obligations under clause 16.2(b).

## 16.3 ASIC and ASX notices

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

# 17. SUBCONTRACTING

## 17.1 Subcontracting by the VC Contractor

- (a) Subject to this clause 17, the VC Contractor may enter into Subcontracts for the performance of the VC Contractor's Activities or any part of them.
- (b) The VC Contractor will be liable to the Principal for the acts and omissions of Subcontractors in connection with the VC Contractor's Activities as if such acts or omissions were acts or omissions of the VC Contractor.
- (c) The VC Contractor must, where a Subcontractor is to carry out design work or other professional services, procure that the Subcontractor execute a deed in the form of Schedule A23 (*Designer Deed of Covenant*) and provide this to the Principal's Representative within 5 Business Days of the engagement of that Subcontractor.
- (d) Subcontracting by the VC Contractor of any obligation under the VC Station Contract Documents will not relieve the VC Contractor of, or otherwise affect, any obligation or Liability it has to the Principal under the VC Station Contract Documents.

## 17.2 Significant Subcontracts

- (a) **(Principal consent required)** The VC Contractor must not:
  - (i) other than with a Subcontractor named in Schedule A5 (*Significant Subcontractors and Significant Subcontract Work*) (with respect to the corresponding "Significant Subcontract Work" listed in Schedule A5

- (*Significant Subcontractors and Significant Subcontract Work*) for that Subcontractor), enter into;
- (ii) where it may impact the rights or increase the Liabilities or obligations of the Principal:
    - (A) make or permit any amendment to, or replacement of or waiver of a provision of; or
    - (B) enter into any agreement or arrangement which affects the operation or interpretation of;
  - (iii) terminate, surrender, rescind or accept repudiation of (or give the relevant Significant Subcontractor an entitlement to terminate, surrender, rescind or accept repudiation of); or
  - (iv) permit the novation, assignment or substitution of any counterparty's right, obligation or interest in,
- a Significant Subcontract without obtaining the Principal's prior written consent (which consent must not be unreasonably withheld or delayed and which may be conditional).
- (b) **(Qualifications)** The VC Contractor must:
    - (i) use its best endeavours to ensure that each Significant Subcontractor:
      - (A) is solvent and reputable;
      - (B) does not have any interest or duty which conflicts in a material way with the interests of the Principal and is not involved in any business or activity which is incompatible with, or inappropriate in relation to, the VC Contractor's Activities; and
      - (C) has sufficient expertise and ability, and is of sufficiently high financial and commercial standing, to properly carry out the obligations of the VC Contractor which are being subcontracted to it; and
    - (ii) immediately upon becoming aware that a Significant Subcontractor does not satisfy the requirements of clause 17.2(b)(i), use its best endeavours to cause:
      - (A) the Significant Subcontractor to do whatever is necessary to promptly satisfy the requirements of clause 17.2(b)(i); or
      - (B) subject to clause 17.2(a), the relevant Significant Subcontract to be terminated.
  - (c) **(Monitoring of Significant Subcontracts)** The VC Contractor must:
    - (i) use its best endeavours to ensure that each Significant Subcontractor complies with the terms of its Significant Subcontract; and
    - (ii) immediately notify and thereafter keep the Principal informed of:
      - (A) any material breach of a Significant Subcontract; or
      - (A) any dispute which is notified as such under a Significant Subcontract.

- (d) (**Copy**) The VC Contractor must provide the Principal with a copy of each Significant Subcontract (subject to removal, exclusion or redaction of any "commercial-in-confidence provisions" as that term is defined in the GIPA Act).
- (e) Not used.
- (f) (**Significant Subcontractor direct deed**) If required by the Principal, the VC Contractor must procure that a Significant Subcontractor and (if applicable) its ultimate parent company enters into a side deed with the Principal in a form reasonably required by the Principal.

### 17.3 Provisions to be included in Subcontracts

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

- (a) (**Subcontract requirements**) each Subcontract that it enters into in connection with the VC Contractor's Activities, regardless of its value, includes the provisions required by section 1 of Schedule A6 (*Subcontract requirements*); and
- (b) (**Significant Subcontract requirements**) without limiting clause 17.3(a), each Significant Subcontract that it enters into in connection with the VC Contractor's Activities includes the provisions required by section 2 of Schedule A6 (*Subcontract requirements*).

### 17.4 Nominated Subcontractors

- (a) (**Nominated Subcontractor**) The VC Contractor must:
  - (i) enter into the Nominated Subcontracts with the Nominated Subcontractors; and
  - (ii) ensure that Nominated Subcontract Work is carried out by the Nominated Subcontractors pursuant to the relevant Nominated Subcontract,

provided that, to the extent such Nominated Subcontract or Nominated Subcontract Work relates to Provisional Sum Work, the VC Contractor is not obliged to enter into a Nominated Subcontract until the VC Contractor is obliged to perform the relevant Provisional Sum Work.
- (b) (**Liability**) The VC Contractor will be liable to the Principal for the acts and omissions of the Nominated Subcontractors in connection with the VC Contractor's Activities as if such acts or omissions were acts or omissions of the VC Contractor.
- (c) (**No Liability**) The Principal will have no Liability to the VC Contractor arising out of or in connection with any Nominated Subcontractor or Nominated Subcontract Work including the management and interface with Nominated Subcontractors other than any [REDACTED] for Provisional Sum Work or a [REDACTED] as contemplated by Schedule A27 (*Nominated Subcontracts*).
- (d) (**Significant Subcontract provisions**) The provisions of clause 17.2(a), clause 17.2(b)(ii), clause 17.2(c), clause 17.2(d) and clause 17.2(e) apply as if each Nominated Subcontract is a Significant Subcontract.

### 17.5 Subcontractor direct warranties

- (a) Prior to Completion of the last Portion to reach Completion, the VC Contractor must procure from each of the Subcontractors engaged by the VC Contractor in

relation to each item listed in Schedule A7 (*Subcontractor warranties*), in favour of the relevant beneficiaries in Schedule A7 (*Subcontractor warranties*), a duly executed deed in the form in Schedule A22 (*Form of Subcontractor warranties*).

- (b) Provision of a warranty pursuant to clause 17.5(a) does not impact or derogate from the rights of the Principal against the VC Contractor.

## 18. PROJECT PLANS

### 18.1 General

The VC Contractor must:

- (a) (**Preparation of Project Plans**) develop, update and submit all Project Plans to the Principal's Representative in accordance with the requirements of Appendix F2 of the SWTC; and
- (b) (**Compliance with Project Plans**) implement and comply with all Project Plans that have not been rejected by the Principal's Representative under section 2.2 of Appendix F2 of the SWTC.

### 18.2 Warranties in relation to Project Plans

The VC Contractor:

- (a) must, in each Project Plan, include a detailed description of how the VC Contractor intends to carry out the VC Contractor's Activities in accordance with the requirements of this deed with respect to the subject matter of each Project Plan; and
- (b) warrants that each Project Plan will at all relevant times be fit for its purpose and that compliance with each Project Plan will enable the VC Contractor to comply with its obligations under this deed.

## 19. PORTIONS

### 19.1 Principal's Representative may direct Portions

- (a) (**Additional portions**) In addition to the Portions identified in section 3 of Schedule A3 (*Portions and Milestones*), the Principal's Representative may (in its absolute discretion), at any time and from time to time, by written notice to the VC Contractor direct additional Portions under this clause 19.1.
- (b) (**Notice details**) The notice by the Principal's Representative pursuant to clause 19.1(a) must set out that part of the Project Works which will become an additional Portion and include details of:
  - (i) the Project Works and Temporary Works;
  - (ii) the Date for Substantial Completion;
  - (iii) the Date for Completion; and
  - (iv) respective amounts of liquidated damages,
 as determined by the Principal's Representative (acting reasonably).
- (c) [REDACTED] An additional Portion directed under clause 19.1(a) before the Date for Substantial Completion of the relevant existing Portion [REDACTED].

- (d) **(No Liability after Substantial Completion)** The Principal will have no Liability to the VC Contractor in relation to an additional Portion directed under clause 19.1(a) after the Date for Substantial Completion of the relevant existing Portion.
- (e) **(Principal Contractor)** If the Principal elects to direct any additional Portions pursuant to clause 19.1(a), the Principal must have regard to the obligations of the Appointed Principal Contractor in relation to the WHS Legislation.

## 19.2 Interpretation of Portions

The interpretations of:

- (a) **(definitions)** the VC Contractor's Activities, Project Works, Temporary Works, VC Works, Third Party Works, Local Area Works, Utility Service Works, Property Works, Project Site, Construction Site, Temporary Areas, Substantial Completion, Date for Substantial Completion, Date of Substantial Completion, Completion, Date for Completion, Date of Completion, Significant Date, Significant Completion and Defects Correction Period;
- (b) **(specific clauses)** clause 9.1 (*Rights to land*) to clause 9.5 (*Conditions precedent to access to the Construction Site*) (inclusive), clause 9.9 (*Extra Land*), clause 6.7 (*Incident Management*), clause 6.10 (*Cleaning up*), clause 6.12 (*Asset Management Information*), clause 21 (*Time*), clause 23 (*Milestone Achievement, Substantial Completion and Completion*), clause 26 (*Post-completion arrangements*), clause 27 (*Defects rectification*), clause 28.3 (*Payment claims*), clause 30.1 (*Responsibility for care of the VC Contractor's Activities*), clause 30.6 (*VC Contractor's Insurance obligations*) and clause 30.11 (*Reinstatement*); and
- (c) **(SWTC)** the SWTC (including its appendices),

will apply separately to each Portion (including any Portion determined under clause 19.1 (*Principal's Representative may direct Portions*)) and references therein to any of the terms in clause 19.2(a) will mean so much of the VC Contractor's Activities, Project Works, Temporary Works, VC Works, Third Party Works, Local Area Works, Property Works, Utility Service Works, Project Site, Construction Site or Temporary Areas as is comprised in, or associated with, the relevant Portion.

## 19.3 Portion handover requirements

On the Portion Handover Date, the VC Contractor must:

- (a) hand control of the relevant Project Works to the Principal; and
- (b) provide the Principal with all spare parts, consumables and special tools as required by the SWTC.

## 20. MODIFICATIONS

- (a) The Principal:
  - (i) may at any time propose a Modification or require the VC Contractor to carry out a Modification in accordance with clause 2 of the Modification Procedure;
  - (ii) may exercise a Pre-Agreed Modification (other than Pre-Agreed Modification 4) in accordance with clause 3(a)(i) of the Modification Procedure; and
  - (iii) must, if it receives notification in accordance with clause 4.8A(f) of the OSD PDA, exercise Pre-Agreed Modification 4 in accordance with clause 3(a)(ii) of the Modification Procedure.

- (b) The VC Contractor may propose a Modification in accordance with clause 4 of the Modification Procedure.
- (c) Subject to clause 37.3(a), the VC Contractor must comply with Directions of the Principal's Representative even if the VC Contractor considers the Direction to be a Direction to perform a Modification.

## 21. TIME

### 21.1 Completion of the Works

- (a) The VC Contractor must:
  - (i) commence performance of the VC Contractor's Activities on the date of this deed;
  - (ii) not depart from the VC Contractor's Program without reasonable cause;
  - (iii) diligently perform and progress the VC Contractor's Activities with due expedition and without delay; and
  - (iv) not suspend the performance of all or any part of the VC Contractor's Activities except where the suspension is pursuant to clause 21.4 (*Suspension*) or allowed by Law.
- (b) While the VC Contractor may achieve a Significant Completion before the Significant Date, the Principal has no responsibility or duty of care to do, or refrain from doing, anything to enable the VC Contractor to achieve that result.

### 21.2 Dates for Milestone Achievement, Substantial Completion and Completion

The VC Contractor must:

- (a) achieve Milestone Achievement of each Milestone by the Date for Milestone Achievement of that Milestone;
- (b) achieve Substantial Completion of each Portion by the Date for Substantial Completion of that Portion; and
- (c) achieve Completion of each Portion by the Date for Completion of that Portion.

### 21.3 Importance of Milestone Achievement, Substantial Completion and Completion on time

The VC Contractor acknowledges:

- (a) the importance of complying with its obligations under clause 21.2 (*Dates for Milestone Achievement, Substantial Completion and Completion*) to enable Interface Contractors to carry out and complete the activities of the Interface Contractors within the time required by their respective Interface Contracts, including so as to enable the Principal to pursue improved public transport in Sydney; and
- (b) that the Date for Substantial Completion or Date for Completion of any Portion or Date for Milestone Achievement of any Milestone will only be extended in accordance with clause 21.8 (*Determination of extension of time claim*).

#### 21.4 Suspension

- (a) **(Direction by the Principal)** The Principal's Representative may direct the VC Contractor to suspend the progress of the VC Contractor's Activities or any part of them for such time or times as the Principal may think fit.
- (b) **(No Liability)** The Principal will have no Liability to the VC Contractor to the extent that the reason for the suspension directed under clause 21.4(a) was caused or contributed to by an act, default, or omission of the VC Contractor or its Associates other than an act or omission of the VC Contractor or its Associates which is permitted by, and is in accordance with, this deed.

#### 21.5 VC Contractor's Program

- (a) **(VC Contractor's Initial Program)** The VC Contractor's Initial Program is contained in Schedule D17 (*VC Contractor's Initial Program*).
- (b) **(VC Contractor submission)** The VC Contractor must, within 30 Business Days of the date of this deed, submit to the Principal's Representative an update to the VC Contractor's Initial Program in the native file format of Oracle Primavera P6 Professional Release 8.3 (or any subsequent upgraded version if permitted by the Principal's Representative) which includes the items and detail specified in Appendix F2 of the SWTC.
- (c) **(Updated monthly program)** The VC Contractor must submit to the Principal's Representative an updated VC Contractor's Program in the native file format of Oracle Primavera P6 Professional Release 8.3 (or any subsequent upgraded version if permitted by the Principal's Representative), which shows the items and detail specified in Appendix F-02 of the SWTC and any other details which the Principal's Representative may reasonably direct, as at the date of program generation:
  - (i) on the first Business Day of each calendar month; and
  - (ii) within 10 Business Days of:
    - (A) an extension of time being granted pursuant to clause 21.6 (*Extensions of time*);
    - (B) a direction given under clause 22.1 (*Directions to change sequence of work or accelerate*);
    - (C) the logic to complete the Project Works significantly changing; or
    - (D) any event that impacts Milestone Achievement of a Milestone or Substantial Completion or Completion of a Portion.
- (d) **(Principal comments)** The Principal's Representative may at any time comment on the VC Contractor's Program or identify the respects in which it is not satisfactory and the VC Contractor must respond to those comments within 10 Business Days.

#### 21.6 Extensions of time

The VC Contractor is entitled to an extension of time to a Significant Date only if:

- (a) the VC Contractor has complied with clause 21.5(b), clause 21.5(c)(i) (in respect of the calendar month immediately preceding the occurrence of the event of delay) and this clause 21.6;

- (b) the VC Contractor is delayed in achieving a Significant Completion by one or more Excusable Causes of Delay;
- (c) in relation to each event of delay caused by an Excusable Cause of Delay, the VC Contractor has given written notice to the Principal's Representative:
  - (i) promptly upon becoming aware of any Excusable Cause of Delay (and in any event within 10 Business Days after the VC Contractor became aware or ought reasonably to have become aware of the cause of delay) containing:
    - (A) details of the Excusable Cause of Delay;
    - (B) details of the likely delay; and
    - (C) a description of all measures which the VC Contractor has taken and will be taking to preclude the occurrence of the delay and minimise the consequences of the delay; and
  - (ii) in the case of an ongoing delay, every 10 Business Days after the date on which the notice is given pursuant to clause 21.6(c)(i) the VC Contractor has given to the Principal's Representative written notice which provides details of the status of the delay and an update on the details required by clause 21.6(c)(i); and
- (d) the VC Contractor has given the Principal's Representative, within 15 Business Days after the cessation of each delay caused by an Excusable Cause of Delay a written claim for an extension of time specifying:
  - (i) the number of days claimed;
  - (ii) details of the Excusable Cause of Delay and why the Excusable Cause of Delay actually caused a delay in achieving a Significant Completion, including a statement of the facts and the provisions of this deed on which the claim is based;
  - (iii) detailed evidence in satisfaction of the requirements of this clause 21.6;
  - (iv) critical path analysis in the same format as the VC Contractor's Program for the period of the delay;
  - (v) if early access to the Construction Site was given, or deemed to be given under clause 9.2(f), to the extent that:
    - (A) such early access is relevant to the cause of delay the subject of the VC Contractor's claim; and
    - (B) the VC Contractor has failed to comply with clause 9.2(b),
 detailed particulars of how the VC Contractor has used Accessible parts of the TSE Site to mitigate the delay; and
  - (vi) all other information reasonably required by the Principal's Representative.

## 21.7 Limiting factors

- (a) (**No entitlement**) The VC Contractor is not entitled to any extension of time (and the Principal has no Liability to the VC Contractor) if the VC Contractor fails to deliver notices in the form and within the time required by clause 21.6(c)(i), clause 21.6(c)(ii) and clause 21.6(d).

- (b) **(Reduction of entitlement)** The VC Contractor's entitlement to an extension of time will be reduced to the extent that:
- (i) this deed provides that the Principal will have no Liability to the VC Contractor;
  - (ii) a delay caused by an Excusable Cause of Delay and a delay caused other than by an Excusable Cause of Delay occur at the same time and the VC Contractor would have been delayed even if the Excusable Cause of Delay had not occurred;
  - (iii) the VC Contractor or any of its Associates caused or contributed to the delay;
  - (iv) the VC Contractor failed to comply with:
    - (A) a Project Cooperation and Integration Deed; or
    - (B) its obligations under this deed in connection with the Interface Contractors,
 and such failure caused or contributed to the delay the subject of the VC Contractor's claim;
  - (v) the VC Contractor has been given a direction to Accelerate under clause 22.1(a)(ii) to overcome the whole or part of any delay;
  - (vi) the delay was or would have been reduced had the VC Contractor or any of its Associates taken all reasonable steps to preclude the occurrence of the Excusable Cause of Delay and minimise the consequences of the delay:
    - (A) other than applying additional resources to make up the time lost; but
    - (B) including by performing the VC Contractor's Activities on the TSE Site after early access was given under clause 9.2(a) or deemed to be given under clause 9.2(f), where relevant to the cause of delay the subject of the VC Contractor's claim; or
  - (vii) the delay is caused or contributed to by a failure of the VC Contractor to comply with its obligations under a VC Station Contract Document or a failure of the VC Developer to comply with its obligations under a VC OSD Contract Document.

#### 21.8 Determination of extension of time claim

- (a) **(Principal's determination)** The Principal's Representative must, acting reasonably, within 20 Business Days after receiving a claim which complies with clause 21.6(d), make a determination of the extension of time to which the VC Contractor is entitled and give the VC Contractor:
- (i) written notice of the determination which includes the extension of time granted and the adjusted Significant Date; or
  - (ii) if no extension is granted, written notice of that decision.
- (b) **(Principal's discretion to extend)** The Principal may, in the Principal's absolute discretion, extend a Significant Date at any time, and for any reason, by giving written notice to the VC Contractor regardless of whether:

- (i) the VC Contractor has claimed or is entitled to an extension of time under this deed; or
- (ii) the Principal's Representative has previously either rejected any claim or failed to make a determination under clause 21.8(a).
- (c) (**Not for the benefit of VC Contractor**) The Principal is not required to exercise the discretion under clause 21.8(b) for the benefit of the VC Contractor.
- (d) (**No impact on Contract Sum Adjustment Event**) The Principal's exercise of its discretion under clause 21.8(b) does not limit the VC Contractor's right to claim a Contract Sum Adjustment Event where, but for the exercise of the discretion, the VC Contractor would have been entitled to an extension of time for a Compensation Event.
- (e) (**Principal may take into account**) In determining a claim for an extension of time, the Principal is not obliged to, but may in its sole discretion, take into account:
  - (i) the latest accepted version of the VC Contractor's Program at the time of the relevant extension of time claim; and
  - (ii) any other information available to the Principal's Representative at the time the determination is required to be made, including information regarding the progress of the VC Contractor's Activities up to the time the determination is required to be made.
- (f) (**Time not at large**) A failure by the Principal's Representative to grant an extension of time in accordance with this clause 21.8 will not cause time to be set at large, but does not affect the right of the VC Contractor to claim damages.
- (g) (**Extension of Delay Costs Phase**) If there is an extension of time to the Date for Completion under this clause 21.8, there will be a corresponding extension to the dates in each Phase of the Delay Costs Table (as those terms are defined in Schedule E7 (*Delay Costs*)).

#### 21.9 Risk of delay and disruption and resultant increased Costs

- (a) (**Risk of delay**) Subject to clause 21.9(b) and clause 21.9(c), the VC Contractor accepts the risk of all increased Costs resulting from delay or disruption in the performance of the VC Contractor's Activities and the performance of its other obligations under this deed, and the Principal will have no Liability to the VC Contractor for additional Costs arising out of or in any way in connection with such delay or disruption (including for damages for breach of contract).
- (b) (██████████) If the VC Contractor has been granted an extension of time to a Significant Date for a Compensation Event ██████████.
- (c) (**Maximum amount**) The amount valued for the Contract Sum Adjustment Event in clause 21.9(b) will not exceed the applicable amount per day specified in Schedule E7 (*Delay Costs*) for the period of the delay.

#### 21.10 Reduction in time

- (a) Where:
  - (i) a Modification is directed; and

- (ii) the Principal's Representative, acting reasonably and in consultation with the VC Contractor, considers that the Modification is likely to result in a reduction of the time required to achieve a Significant Completion,

the Principal's Representative may direct the VC Contractor that the Significant Date be brought forward to a date reasonably directed by the Principal's Representative.

- (b) If the VC Contractor does not agree with a direction of the Principal's Representative under clause 21.10(a), the VC Contractor may refer the matter as a Dispute under clause 35.

## 21.11 Delay Liquidated Damages

- (a) **(Delay Liquidated Damages)** If the VC Contractor fails to achieve a Significant Completion by the relevant Significant Date, the VC Contractor is liable to the Principal for Delay Liquidated Damages for every day after the Significant Date, up to and including the Date of Significant Completion or the date of earlier termination of this deed.
- (b) **(Debt due)** The Delay Liquidated Damages payable pursuant to clause 21.11(a) accrue as a debt due from the VC Contractor to the Principal from each Significant Date.
- (c) **(Provisional assessment)** The Principal's Representative, when issuing a payment schedule pursuant to clause 28.3(d)(i) or clause 28.3(d)(ii), may include as an amount due from the VC Contractor to the Principal, an assessment of the amount which has then accrued under clause 21.11(a) and clause 21.11(b) to the date of the payment schedule.
- (d) **(Damages where unenforceable)** If the Principal's entitlement to, and the VC Contractor's liability for, Delay Liquidated Damages under this clause 21.11 is or becomes void, voidable or unenforceable for any reason or there is no amount specified for Delay Liquidated Damages, the Principal will be entitled to recover from the VC Contractor the Loss incurred or suffered by the Principal arising out of or in connection with the VC Contractor's failure to achieve each Significant Completion by the relevant Date for Significant Completion but the VC Contractor's liability for such damages (whether per day or in aggregate) will not be any greater than the liability which the VC Contractor would have had if the clause had not been void, voidable or otherwise unenforceable.
- (e) **(VC Contractor acknowledgement)** The VC Contractor acknowledges that:
  - (i) the VC Contractor's Activities represent an important element of the building of Sydney Metro City & Southwest as a major new public transport link which will service the needs of Sydney;
  - (ii) Sydney Metro City & Southwest is complex and involves interaction with third parties, Interface Contractors and stakeholders to whom the Principal has contractual and policy commitments;
  - (iii) delay in achieving Significant Dates will result in the Principal being exposed to liability to third parties, Interface Contractors and stakeholders;
  - (iv) Losses suffered by the Principal as a consequence of delay are not capable of easy or precise calculation; and
  - (v) the amount of Delay Liquidated Damages is reasonable.

- (f) **(Daily cap on liability)** Where, on any day, the VC Contractor is liable for Delay Liquidated Damages in respect of more than one Significant Completion, the VC Contractor's liability to the Principal on that day will not exceed [REDACTED] per day.
- (g) **(Sole and exclusive monetary remedy)** The Principal and the VC Contractor agree that the aggregate of the amount payable under this clause 21.11 is:
  - (i) limited as set out in clause 31.1(b); and
  - (ii) a limitation on the VC Contractor's liability to the Principal for a failure to achieve a Significant Completion by the relevant Significant Date,

and the Principal will not be entitled to make, nor will the VC Contractor be liable upon, any Claim in these circumstances other than for the amount for which the VC Contractor is liable under this clause 21.11 (including where applicable common law damages under clause 21.11(d)). Nothing in this clause 21.11 in any way limits the VC Contractor's liability where this deed is terminated by the Principal under clause 32.3 (*Rights of the Principal following Default Notice*) or clause 32.5 (*Immediate termination or take out*) or otherwise at Law.

## 22. DIRECTIONS TO CHANGE SEQUENCING AND ACCELERATE

### 22.1 Directions to change sequence of work or accelerate

- (a) **(Direction)** The Principal's Representative may, by notice in writing expressly referring to this clause 22.1(a), direct the VC Contractor:
  - (i) in what order and at what time stages or parts of the VC Contractor's Activities must be performed (**Resequencing**);
  - (ii) to complete the VC Contractor's Activities in advance of the dates for completion of those activities shown on the VC Contractor's Program, including to achieve a Significant Completion prior to a relevant Significant Date or to overcome or minimise the extent and effects of any delay (**Acceleration**);
  - (iii) to defer performance of any part of the VC Contractor's Activities until after Milestone Achievement or Substantial Completion and specify a reasonable time period within which such part of the VC Contractor's Activities must subsequently be performed (**Deferred Activities**); or
  - (iv) to promptly make a work space ready for an Interface Contractor to perform work even if Milestone Achievement or Substantial Completion for that work space has not been reached (**Making Accessible**).
- (b) **(Principal may request details of impact)** The Principal's Representative may request that, prior to implementing any direction given under clause 22.1(a), the VC Contractor provide details of the estimated:
  - (i) Increased Costs (if any) or Savings (if any);
  - (ii) impact on the VC Contractor's Program; and
  - (iii) impact on any Significant Date (if any),

arising from the direction and the VC Contractor must provide such details within 10 Business Days of the Principal's Representative's request.

- (c) (**May include an earlier date**) A direction under clause 22.1(a) may specify revised Significant Dates as a consequence of the Resequencing, Acceleration, Deferred Activities or Making Accessible. Those revised Significant Dates may be earlier than the then current Significant Dates.
- (d) (**Notice of Modification**) Where the VC Contractor considers that a direction given under clause 22.1(a) constitutes a Modification, the VC Contractor must give the Principal's Representative notice under and in accordance with clause 37.3(a).
- (e) (**Principal may withdraw**) The Principal's Representative may, at any time, by notice in writing to the VC Contractor withdraw a direction given under clause 22.1(a) provided that, if the VC Contractor has taken steps to comply with such direction, the withdrawal will be treated as a new direction given under clause 22.1(a) to which clause 22.1(d) also applies.

## 22.2 Requirement to comply

- (a) (**Deferred Activities or Making Accessible**) The VC Contractor must comply with a direction given under clause 22.1(a)(iii) and clause 22.1(a)(iv).
- (b) (**Acceleration or Resequencing**) The VC Contractor must comply with a direction given under clause 22.1(a)(i) and clause 22.1(a)(ii) except to the extent:
  - (i) it is not reasonably possible for the VC Contractor to perform the proposed Acceleration or Resequencing; and
  - (ii) the VC Contractor, in a notice required under clause 37.3(a), gives a detailed explanation of the reasons why it is not reasonably possible for the VC Contractor to perform the proposed Acceleration or Resequencing.

## 22.3 Adjustment to Significant Dates

- (a) (**Adjustment to Significant Dates**) If a direction has been given under clause 22.1(a), the Principal's Representative will adjust the affected Significant Dates to:
  - (i) if a Modification Order has been issued by the Principal's Representative, the earlier dates identified in the Modification Order; or
  - (ii) if clause 22.3(a)(i) does not apply, and:
    - (A) the VC Contractor has delivered a notice under clause 22.2(b)(ii), earlier dates determined by the Principal's Representative provided achievement of such dates is reasonably possible; or
    - (B) the VC Contractor has not delivered a notice under clause 22.2(b)(ii), the earlier dates identified in the direction given by the Principal's Representative under clause 22.1(a).
- (b) (**Rights to EOT**) Except to the extent set out in clauses 22.4 (*VC Contractor entitlements*) and 21.7 (*Limiting factors*), this clause 22 does not impact the VC Contractor's entitlement under this deed to an extension of time.

## 22.4 VC Contractor entitlements

- (a) (**No Liability**) The Principal will have no Liability to the VC Contractor as a consequence of any Acceleration, Resequencing, Deferred Activities or Making Accessible except in the circumstances described in clause 22.4(b).
- (b) [REDACTED] A Direction under clause 22.1(a) [REDACTED] to the extent that:

- (i) either:
  - (A) the Principal's Representative has delivered a Modification Order in relation to Acceleration, Resequencing, Deferred Activities or Making Accessible; or
  - (B) the VC Contractor has given notice under and in accordance with clause 37 (*Notification of claims*) in relation to a Direction for Acceleration, Resequencing, Deferred Activities or Making Accessible;
- (ii) the need for Acceleration, Resequencing, Deferred Activities or Making Accessible is not related to, or a consequence of, any breach of the deed by the VC Contractor (for example, a failure to reach Milestone Achievement by the Date for Milestone Achievement); and
  - (i) the direction for Acceleration, Resequencing, Deferred Activities or Making Accessible was not, in effect:
    - (A) a direction to the VC Contractor to perform the VC Contractor's Activities in accordance with this deed (other than this clause), or consistently with this deed;
    - (B) a direction to the VC Contractor to take corrective action to rectify any non-compliance with the requirements of this deed; or
    - (C) related to rectification of a Defect.

## 23. MILESTONE ACHIEVEMENT, SUBSTANTIAL COMPLETION AND COMPLETION

### 23.1 Milestone Achievement, Substantial Completion and Completion

- (a) **(Notice of Significant Date)** The VC Contractor must give the Principal's Representative written notice of the estimated date on which each Significant Completion will be achieved 6 months, 3 months, 1 month and 1 week prior to each such estimated date.
- (b) **(Joint inspection)** Subject to clause 23.1(g), within 5 Business Days after receipt of the notice referred to in clause 23.1(a) which is 3 months prior to each relevant Significant Date, the Principal's Representative, the VC Contractor's Representative and the Independent Certifier must jointly inspect the VC Contractor's Activities comprised in the relevant Milestone or Portion at a mutually convenient time.
- (c) **(Independent Certifier notice)** Within 2 Business Days after any joint inspection referred to in clause 23.1(b), the Independent Certifier must give the Principal and the VC Contractor a notice either:
  - (i) containing a list of items which it believes must be completed before a Significant Completion can be achieved; or
  - (ii) stating that it believes the VC Contractor is so far from achieving a Significant Completion that it is not practicable to issue a list as contemplated in clause 23.1(c)(i).
- (d) **(VC Contractor certificate)** When the VC Contractor considers it has achieved a Significant Completion, the VC Contractor must notify the Principal's Representative and the Independent Certifier in writing and provide them with an executed certificate in the appropriate form in Schedule B6 (*VC Contractor's Certificate – Milestone Achievement*), Schedule B7 (*VC Contractor's Certificate –*

*Substantial Completion) or Schedule B8 (VC Contractor's Certificate – Completion).*

- (e) **(Completion joint inspection)** The Principal's Representative, the VC Contractor's Representative and the Independent Certifier must, within 5 Business Days after receipt of the VC Contractor's written notice referred to in clause 23.1(d), jointly inspect the VC Contractor's Activities comprised in the relevant Portion at a mutually convenient time.
- (f) **(Independent Certifier decision)** Within 5 Business Days after the joint inspection under clause 23.1(e), the Independent Certifier must:
  - (i) if a Significant Completion has been achieved, provide to the Principal's Representative and the VC Contractor, a certificate signed by the Independent Certifier in the appropriate form in Schedule B9 (*Notice of Milestone Achievement*), Schedule B10 (*Notice of Substantial Completion*) or Schedule B11 (*Notice of Completion*); or
  - (ii) if a Significant Completion has not been achieved, issue a notice to the Principal and the VC Contractor which states:
    - (A) the items which remain to be completed before the Significant Completion can be achieved; or
    - (B) that the VC Contractor is so far from achieving the Significant Completion that it is not practicable to notify the VC Contractor of the items which remain to be completed (in which case clause 23.1(d), clause 23.1(e) and clause 23.1(f) will re-apply).
- (g) **(Attendance at inspection)**
  - (i) The Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 23.1, including representatives of any Interface Contractor.
  - (ii) The Principal's Representative and any Interface Contractor may provide comments to the Independent Certifier (with a copy to the VC Contractor) in relation to any non-compliance of the VC Contractor's Activities with this deed.
- (h) **(Effect of Notices of Significant Completion)** In the absence of manifest error on the face of the certification, the Independent Certifier's certification set out in a Notice of Significant Completion is final and binding on the parties only for the purpose of establishing that the relevant Significant Completion has occurred.

### 23.2 Subdivision requirements

The VC Contractor must, on or before the Date of Substantial Completion of Portion 2, procure the Subdivision of the Subdivision Land in accordance with Schedule D12 (*Subdivision requirements*).

### 23.3 Access for Interface Contractors following Milestone Achievement

Without limiting clause 12.3 (*Cooperation and co-ordination with Interface Contractors*), the VC Contractor must give Interface Contractors access to the Project Works comprised in a Milestone from the Date of Milestone Achievement of that Milestone.

#### 23.4 Final Completion

- (a) When the VC Contractor considers that Final Completion has been reached, it must give the Principal's Representative notice in writing and deliver a final payment claim which complies with the requirements of clause 28.3(i).
- (b) If the Principal's Representative considers that Final Completion has been reached, it will issue a Final Certificate with the payment schedule issued pursuant to clause 28.3(d) which evidences the moneys finally due and payable between the VC Contractor and the Principal on any account whatsoever in connection with the subject matter of this deed.
- (c) The Final Certificate is without prejudice to any of the Principal's rights under this deed and is not evidence of accord and satisfaction of the VC Contractor's Activities or the Project Works.

### 24. TESTING AND COMMISSIONING

#### 24.1 General

The VC Contractor must test and commission the VC Contractor's Activities, the Project Works and the Temporary Works in accordance with:

- (a) Appendix F7 of the SWTC;
- (b) the Testing and Commissioning Plan; and
- (c) the other requirements of this deed.

#### 24.2 Testing

- (a) (**Direction**) At any time prior to the issue of the Final Certificate, the Principal's Representative may direct that any materials and work forming any part of the VC Contractor's Activities, Project Works or Temporary Works must be Tested. On receipt of such direction, the VC Contractor must promptly prepare and make available for Testing the material or work specified in such direction and give the Principal prompt notice that it is available.
- (b) (**Works may not be covered up**) Where this deed provides or where the Principal directs that a part of the materials or works may not be covered up or made inaccessible without the prior approval of the Principal, the VC Contractor must comply. If the VC Contractor breaches this clause, the cost incurred by the Principal in uncovering that part of the material or work shall be a debt due from the VC Contractor to the Principal.
- (c) (**Person conducting Test**) Tests will be conducted by the person nominated in this deed or pursuant to a direction given clause 24.2(a) or, if no nomination is made, by the Principal's Representative or a third party nominated by the Principal. The Principal's Representative may direct the VC Contractor to perform the Tests.
- (d) (**Notice of Test**) Before conducting a Test, the party conducting the Test must give reasonable written notice to the other and (as applicable) the Independent Certifier of the time, date and place of the Test. If the notice has been given:
  - (i) by the Principal, the Test may nevertheless proceed even if the VC Contractor does not attend; or
  - (ii) by the VC Contractor, the Test may proceed only if the Principal:

- (A) attends (by its authorised representatives); or
- (B) has given its consent in writing that the Test should proceed in its absence.
- (e) [REDACTED] If a Test to be conducted by the VC Contractor is delayed by the Principal, then, provided the notice given by the VC Contractor under clause 24.2(d) was reasonable, [REDACTED].
- (f) **(Results of Tests)** Results of Tests must be made available promptly by the person who conducted the Test to the other party. If results of the Tests show that the material or work does not comply with this deed:
  - (i) the costs incurred by the Principal in conducting the Tests and any further Tests required subsequently to establish compliance with this deed shall be a debt due from the VC Contractor to the Principal; and
  - (ii) the Principal will have no Liability to the VC Contractor in relation to or arising out of the Test.
- (g) [REDACTED] If the Principal directs the VC Contractor to carry out Testing in addition to the Testing required by this deed and if the material or work Tested is found to comply with this deed [REDACTED]  
[REDACTED].

## 25. INTELLECTUAL PROPERTY RIGHTS

### 25.1 Assignment and ownership

- (a) **(Ownership of Documentation)** All Documentation will be the Principal's property.
- (b) **(Assignment to the Principal)** By this deed, the VC Contractor assigns to the Principal all of its right, title and interest, including all IPRs in or to:
  - (i) the Documentation; and
  - (ii) the Materials, images, photographs and software (other than processes and methods of working),

(collectively called the **Contract Documentation and Materials**) created by or on behalf of the VC Contractor for or in connection with the VC Contractor's Activities or the Project Works (other than the Temporary Works), so that such right, title and interest throughout the world vests in the Principal immediately and automatically on creation.
- (c) **(Licence for the Principal)** The VC Contractor grants, and will procure from any applicable third party the grant of, an irrevocable, perpetual, non-exclusive, royalty free, fully assignable licence (including the right to sub-license) to use all IPRs:
  - (i) to the extent not assigned under clause 25.1(b), the Contract Documentation and Materials;
  - (ii) to the Temporary Works, the Construction Material and Construction Plant and the processes and methods of working relevant to the VC Contractor's Activities (collectively called the **Contract Processes**);
  - (iii) for the purposes of completing the construction, commissioning and testing of, using, operating, duplicating, extending, maintaining, upgrading, altering

or otherwise dealing with the whole or any part of the VC Contractor's Activities or the Project Works and the Temporary Works;

- (iv) for any purpose associated with further development of the Construction Site; and

(v) [REDACTED]

which licence is effective immediately and will survive termination of this deed on any basis.

- (d) **(Principal's rights)** For the purposes of clause 25.1(c), the Principal's use of the Contract Documentation and Materials and the Contract Processes includes the Principal's right to reproduce, publish, copy, adapt, communicate to the public, materially distort, destroy, mutilate or in any way change the Contract Documentation and Materials or the Contract Processes or part of the Project Works or Temporary Works to which the Contract Documentation and Materials or the Contract Processes or any other work provided by the VC Contractor under this deed relates:
  - (i) with or without attribution of authorship;
  - (ii) in any medium; and
  - (iii) in any context and in any way it sees fit.
- (e) **(VC Contractor obligations)** Without limiting clause 40.5 (*Further acts and documents*), the VC Contractor agrees to, and will procure any applicable third party to, do such things as reasonably requested by the Principal to assist the Principal and its licensees, assignees and successors and their licensees, and any other person authorised by it (each an **Authorised User**) to obtain, perfect, enforce or defend its (or their) interest in the IPRs assigned or licensed (as applicable) to the Principal under this deed.
- (f) **(Principal's licence to VC Contractor)** The Principal grants to the VC Contractor a royalty free licence (including the right to sublicense) to use:
  - (i) the Principal's IPRs and the Principal's Design Stage 1 Documents; and
  - (ii) the IPRs assigned to the Principal under clause 25.1(b),
 solely to the extent necessary to enable the VC Contractor to perform the VC Contractor's Activities.
- (g) **(No infringement of third party rights)** The VC Contractor represents and warrants that:
  - (i) neither the grant of the rights granted to the Principal under this deed, nor their use by the Principal or any Authorised User infringes or will infringe the rights, including the IPRs or Moral Rights, of or duties owed to any third party; and
  - (ii) the IPRs assigned or licensed to the Principal under this deed are complete and they are the only IPRs necessary or desirable to enable the Project Requirements to be satisfied and to enable the Principal, and any Authorised User, to fully enjoy and exercise all rights granted to it under this deed.

- (h) (**Impairment of rights**) Without limiting clause 25.1(g), where an IPR Claim is made against the Principal or an Authorised User, the VC Contractor must at its own expense and at the Principal's option:
  - (i) procure for the benefit of the Principal and its Authorised Users the right to continue to use and exercise the rights granted to the Principal under this deed in accordance with this deed; or
  - (ii) modify or replace any relevant Contract Documentation and Materials so that the IPR Claim can no longer be made.

## 25.2 **Delivery up of Contract Documentation and Materials**

If this deed is terminated for any reason:

- (a) the VC Contractor must:
  - (i) immediately deliver the original and all copies of all Contract Documentation and Materials (whether complete or not) to the Principal; and
  - (ii) provide such details, memoranda, explanations, documentation and other assistance as the Principal reasonably requires in relation to the Contract Documentation and Materials; and
- (b) the VC Contractor may retain a copy of the Contract Documentation and Materials.

## 26. **POST-COMPLETION ARRANGEMENTS**

### 26.1 **Access following Substantial Completion and Completion**

The Principal must procure that each Interface Contractor provides the VC Contractor with such access to the Construction Site following:

- (a) Substantial Completion of the Trackway Portion; and
- (b) Completion of each Non-Trackway Portion,

as may be reasonably necessary (having regard to clause 27.2 (*Defects*)) to rectify any Defects subject to the VC Contractor complying with:

- (c) the requirements of the applicable Project Cooperation and Integration Deeds; or
- (d) where the VC Contractor has not entered into a Project Cooperation and Integration Deed with the relevant Interface Contractor, the reasonable site access and work, health and safety procedures of that Interface Contractor.

### 26.2 **Post Completion Activities**

- (a) (**Notice of activities**) The Principal's Representative may give written notice to the VC Contractor at least 5 Business Days before the VC Contractor's estimated Date of Completion of Portion 2 (which has been notified in accordance with clause 23.1(a)) that Post Completion Activities must be carried out after Completion of that Portion.
- (b) (**VC Contractor carries out activities**) If the Principal's Representative gives the VC Contractor a notice under clause 26.2(a):
  - (i) the VC Contractor must continue to carry out the Post Completion Activities until the date specified in a notice given by the Principal pursuant to clause 26.2(c); and

- (ii) the VC Contractor is entitled to be paid for the Post Completion Activities carried out by the VC Contractor in accordance with the rates set out in section 2 of Schedule E4 (*Valuation Mechanism*),

provided that where the date specified in the notice referred to in clause 26.2(b)(i) is after the last Business Day of 2024, the VC Contractor's obligation under this clause 26.2(b) will be subject to the parties agreeing rates which are:

- (iii) consistent with:

- (A) relevant industry benchmarks, wherever available and applicable to the circumstances of the Post Completion Activities; and
- (B) where industry benchmarks are not available or applicable, prevailing market prices, rates or unit costs available from a reputable independent source that are generally recognised in the industry,

and such rates will apply for the Post Completion Activities for the period specified in the notice.

- (c) **(Cease performance)** At any time after issuing a notice under clause 26.2(a), the Principal's Representative may give further written notice to the VC Contractor that the VC Contractor is to cease performance of the Post Completion Activities on the date specified in the further notice, which date must be at least 3 Business Days after the date on which the VC Contractor receives the notice under this clause 26.2(c).

## 27. DEFECTS RECTIFICATION

### 27.1 Defects Correction Periods

There is a separate Defects Correction Period for the VC Works and each discrete part of the Third Party Works which:

- (a) **(commencement)** commences:

- (i) in the case of the physical works forming part of the Lifts and Escalators Works, in accordance with the L&E DSI Contract;
- (ii) in the case of the VC Works, excluding the works referred to in clause 27.1(a)(i) forming part of:
  - (A) the Trackway Portion, on the Date of Substantial Completion; and
  - (B) each other Portion, on the Date of Completion of that Portion; and
- (iii) in the case of each discrete part of the Third Party Works, when the relevant part of the Third Party Works is complete, as determined under clause 5.3(d), clause 5.4(f) or clause 5.5(c) (as applicable); and

- (b) **(expiry)** expires on:

- (i) in the case of the physical works forming part of the Lifts and Escalators Works, in accordance with the L&E DSI Contract;
- (ii) in the case of the VC Works, excluding the works referred to in clause 27.1(b)(i), on the later to occur of:
  - (A) [REDACTED] and

- (B) in respect of rectification work, [REDACTED] after the date of completion of the rectification work for each Defect notified under clause 27.4(a); and
- (iii) in the case of each discrete part of the Third Party Works, the later to occur of:
  - (A) [REDACTED] after the relevant part of the Third Party Works is complete, as determined under clause 5.3(d), clause 5.4(f) or clause 5.5(c) (as applicable); and
  - (B) in respect of rectification work, [REDACTED] after the date of completion of the rectification work for each Defect notified under clause 27.4(a),

provided that no Defects Correction Period for the Project Works (or any part of them) will extend beyond [REDACTED].

## 27.2 Defects

[REDACTED] if during the Defects Correction Period, any Defect is found in the Project Works (whether or not it is the subject of a notice under clause 27.4(a)), the VC Contractor must promptly repair, replace or otherwise make good such Defect and any damage to the Project Works to the extent caused by the Defect:

- (a) at such times as the Principal's Representative reasonably requires;
- (b) so as to minimise the impact on the use of the relevant part of the Project Works;
- (c) in a manner which causes as little inconvenience as possible to:
  - (i) the activities of any Interface Contractor; or
  - (ii) users of the Project Works, Local Areas, Utility Services (or any access to them) and the adjacent community;
- (d) subject to clause 26.1 (*Access following Substantial Completion and Completion*) and clause 27.7 (*Access to remedy Defects*), at the VC Contractor's risk in respect of any restrictions on access;
- (e) if an Interface Contractor has taken possession of the relevant part of the Construction Site, in accordance with the reasonable requirements of the relevant Interface Contractor in relation to access and site safety;
- (f) in accordance with its obligations under the Project Cooperation and Integration Deeds; and
- (g) regardless of the existence of a Dispute as to whether the Principal's Representative's notice is valid or whether the subject matter of the notice is a Defect.

## 27.3 Minor Defects and Agreed Defects

The VC Contractor must:

- (a) (**best endeavours to correct within 30 days**) following each Significant Completion, use its best endeavours to correct all Minor Defects and Agreed Defects identified in a Notice of Significant Completion within 30 days after the achievement of each relevant Significant Completion; and
- (b) (**within 90 days**) ensure that all Minor Defects and Agreed Defects identified in:

- (i) a Notice of Substantial Completion for the Trackway Portion are corrected within 90 days after the Date of Substantial Completion of the Trackway Portion; or
- (ii) a Notice of Completion for any Non-Trackway Portion are corrected within 90 days after the Date of Completion of the relevant Portion.

#### 27.4 Notice of Defect

- (a) **(Notice)** At any time prior to the expiry of the Defects Correction Period, the Principal's Representative may give the VC Contractor notice identifying a Defect and requiring the VC Contractor to rectify the Defect (or part of it) and specifying the time within which this must occur (which time must be reasonable given the nature and extent of the Defect, the work required to rectify it and the impact of the Defect on any Interface Work to be performed by an Interface Contractor or the operation of Sydney Metro City Southwest).
- (b) **(Disagreement regarding existence or cause of Defect)** If the VC Contractor:
  - (i) does not agree that the fault identified in a notice under clause 27.4(a) is a Defect; or

[REDACTED]

then the VC Contractor must, before commencing rectification work, deliver a notice to the Principal's Representative which complies with clause 37.3(a).

- (c) **(Rectification)** [REDACTED] the VC Contractor must promptly, at its cost, rectify the Defect, and the damage caused by the Defect.

[REDACTED]

#### 27.6 Acceptance of a Defect

- (a) **(Principal's Notice)** At any time prior to the rectification of a Defect, the Principal may, in its absolute discretion, by notice in writing from the Principal's Representative to the VC Contractor, accept a Defect if:
  - (i) the Principal's Representative has given notice under clause 27.4(a) and the VC Contractor has failed to rectify the Defect within the time specified in such notice; or

- (ii) the Defect is of such a nature that the time required to rectify the Defect would materially delay or disrupt the further construction, testing, commission or operation of Sydney Metro City & Southwest.
- (b) **(Loss is a debt due)** If a notice is delivered under clause 27.6(a), [REDACTED], the Loss reasonably suffered or to be suffered by the Principal as a consequence of the Defect, assessed by the Principal's Representative (acting reasonably), will be a debt due and payable from the VC Contractor to the Principal including:
  - (i) the additional maintenance and operating costs which will be incurred by the Principal as a result of the Defect;
  - (ii) costs which the Principal will incur to overcome the impact of the Defect; and
  - (iii) if relevant and not double counting, the cost to rectify the Defect at some time in the future (including by an Interface Contractor).

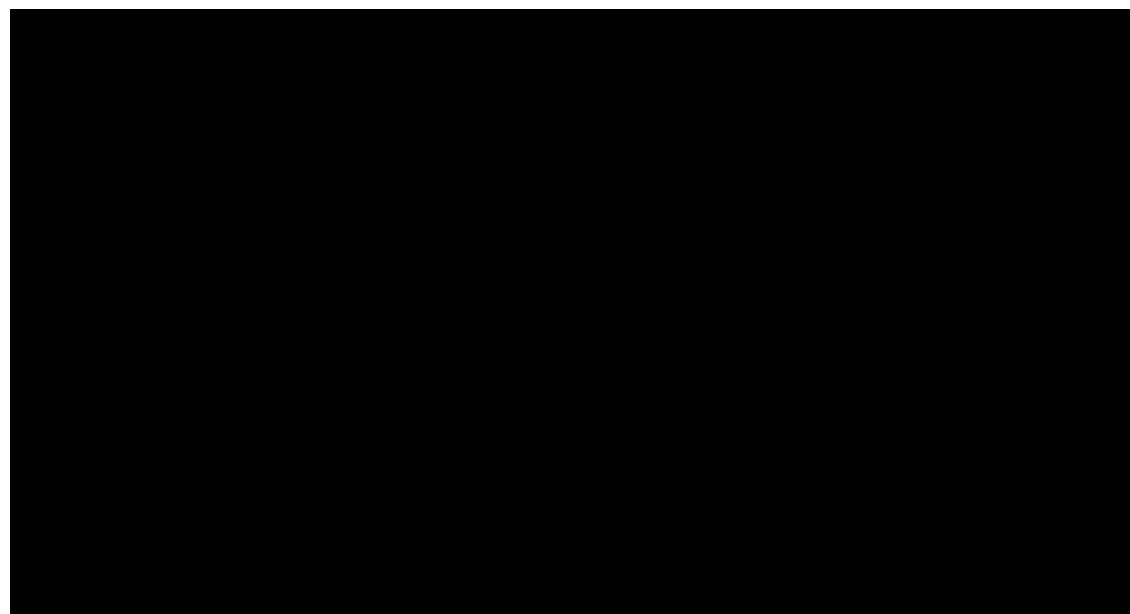
#### 27.7 Access to remedy Defects

After the Construction Licence in respect of that part of the Construction Site has expired or terminated pursuant to clause 9.4 (*Period and terms of Construction Licence and Interim Access Licence*), the Principal will procure such access to the relevant part of the Construction Site as is reasonably necessary for the VC Contractor to correct the Defect having regard to clause 27.2 (*Defects*).

#### 27.8 Failure to rectify Defect

- (a) **(VC Contractor failure)** If the VC Contractor fails to rectify a Defect within the time specified in a notice given under clause 27.4(a), the Principal's Representative may have the Defect and the damage caused by it rectified by itself or others (which may include an Interface Contractor).
- (b) **(Principal's costs)** The costs of rectification which are suffered or incurred by the Principal as a consequence of exercising its rights under clause 27.8(a) or 27.9(a) will be a debt due and payable from the VC Contractor to the Principal.

#### 27.9 Interface Contractors



#### 27.10 Rights not affected

The rights of the Principal under this clause 27 are not exhaustive and are in addition to any other rights the Principal may have at Law.

### 28. PAYMENT

#### 28.1 Contract Sum

The Principal must pay the Contract Sum and any other amount payable by the Principal to the VC Contractor under this deed in accordance with this clause 28, the Contract Sum Schedule, the Performance Incentive Payment Schedule, [REDACTED]  
[REDACTED].

#### 28.2 Contract Sum Adjustment Events

- (a) The Principal's Representative will value Contract Sum Adjustment Events in accordance with Schedule E4 (*Valuation mechanism*) and, in the case of a Contract Sum Adjustment Event in respect of:
  - (i) [REDACTED]
  - (ii) [REDACTED]
- (b) A valuation under clause 28.2(a) by the Principal's Representative for a Contract Sum Adjustment Event will be added to or deducted from the Contract Sum as the case may be.

#### 28.3 Payment claims

- (a) **(VC Contractor payment claims)** The VC Contractor may give the Principal's Representative a payment claim with respect to the Contract Sum and other amounts payable by the Principal to the VC Contractor under this deed:
  - (i) on the 25<sup>th</sup> day of each month;
  - (ii) 30 Business Days after the issue of the Notice of Completion for the last Portion to achieve Completion; and
  - (iii) together with a notice of Final Completion under clause 23.4(a).
- (b) **(Format of payment claims)** For each payment claim made under clause 28.3(a), the VC Contractor must:
  - (i) give the Principal's Representative a claim in a format required by the Principal's Representative (including electronic format) showing the amount claimed by the VC Contractor and identifying the works, services Construction Materials and Construction Plant to which the payment claim relates; and
  - (ii) in the case of the payment claims issued after the issue of the Notice of Completion for the last Portion to achieve Completion and with a notice of Final Completion under clause 23.4(a), comply with clause 28.3(i).

- (c) **(Supporting information)** Each payment claim made under clause 28.3(a) must set out or be accompanied by:
  - (i) all details, calculations, supporting documentation and other information required to substantiate the amounts claimed; and
  - (ii) such other documentation or information as the Principal's Representative may require from time to time.
- (d) **(Principal's payment schedule)**
  - (i) The Principal's Representative must within 10 Business Days after receipt of the VC Contractor's claim under clause 28.3(a), issue to the VC Contractor and the Principal a payment schedule stating the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the VC Contractor under this deed or the amount which the Principal's Representative believes to be then payable by the VC Contractor to the Principal, including details of the calculation of the progress amount. In issuing a payment schedule the Principal's Representative:
    - (A) may deduct from the amount which would otherwise be payable to the VC Contractor any amount which the Principal is entitled to retain, deduct, withhold or set-off under this deed, including under clause 28.5 (*Provision of documentation and other requirements*), clause 28.6 (*Payment of Subcontractors, workers compensation and payroll tax*), clause 28.7 (*Payment for unfixed Construction Materials*) and clause 28.9 (*Right of set-off*); and
    - (B) must, if the payment schedule shows an amount less than the amount claimed by the VC Contractor in the payment claim, set out in the payment schedule why the amount is less and if the reason for the difference is that the Principal has retained, deducted withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off of payment.
  - (ii) If the VC Contractor does not give the Principal's Representative a payment claim at a time required by clause 28.3(a), the Principal's Representative may nevertheless (but is not obliged to) issue a payment schedule as if a payment claim was made at the time required.
  - (iii) A payment schedule issued under clause 28.3(d)(i) or clause 28.3(d)(ii) will separately identify the sum of the amounts due on account of the Contract Sum, and any other amounts payable under the deed by the Principal to the VC Contractor.
  - (iv) If the amount set out in a payment schedule issued under clause 28.3(d)(i) is different to the amount in the VC Contractor's payment claim or if the Principal's Representative issues a payment schedule under clause 28.3(d)(ii), the Principal will issue a recipient created tax invoice or adjustment note (as the case may be) to the VC Contractor to reflect the amount in the payment schedule.
- (e) **(Principal's payment)** Within the earlier of 15 Business Days after the date of the VC Contractor's payment claim in accordance with clause 28.3(a) or within 5 Business Days after the issue of a payment schedule in accordance with clause 28.2(d)(i) or clause 28.3(d)(ii):
  - (i) where the payment schedule provides that an amount is payable by the Principal to the VC Contractor, the Principal must pay the VC Contractor the

- progress payment due to the VC Contractor as certified in the payment schedule; and
- (ii) where the payment schedule provides that an amount is payable by the VC Contractor to the Principal, the VC Contractor must pay the Principal the amount due to the Principal as certified in the payment schedule.
- (f) **(Early payment claim)** If the VC Contractor lodges a payment claim earlier than at the times specified under clause 28.3(a), the Principal's Representative will not be obliged to issue the payment schedule in respect of that payment claim earlier than it would have been obliged had the VC Contractor submitted the payment claim in accordance with this deed.
- (g) **(Amounts)** Despite any other provisions of this deed to the contrary, the amount of any payment claim to which the VC Contractor is entitled in relation to this deed and the amount to be allowed by the Principal's Representative in any payment schedule issued under clause 28.3(d)(i) or clause 28.3(d)(ii) as the amount payable to the VC Contractor arising out of or in any way in connection with this deed will:
- (i) not include the following amounts:
- (A) any Milestone Performance Payment unless the relevant part of the VC Contractor's Activities to which the Milestone Performance Payment relates has been completed to the satisfaction of the Principal's Representative (acting reasonably);
  - (B) any amount which this deed provides cannot be claimed or is not payable because of the failure by the VC Contractor to take any action (including to give any notice to the Principal or the Principal's Representative);
  - (C) any amount which represents damages claimed against the Principal (whether for breach of contract, in tort or otherwise);
  - (D) any amount which this deed provides is not payable until certain events have occurred or conditions have been satisfied, to the extent those events have not occurred or those conditions have not been satisfied (including those conditions set out in clause 28.5(a));
  - (E) any amount in respect of which the obligation of the Principal to make payment has been suspended under this deed;
  - (F) any amount in respect of which the VC Contractor has failed to provide supporting information as required by this deed;
  - (G) subject to the terms of this deed, any amount for work which has not yet been performed or for goods or services which have not yet been supplied; or
  - (H) any amount for work which is not in accordance with this deed;
- (ii) deduct the following amounts:
- (A) any amounts which have become due from the VC Contractor to the Principal under this deed; and
  - (B) any amounts which the Principal is entitled under this deed to retain, deduct, withhold or set-off;

- (iii) in determining amounts to be excluded or deducted under clause 28.3(g)(i) and clause 28.3(g)(ii), have regard to matters or circumstances occurring at any time before the date that the determination is being made; and
  - (iv) be determined having regard to the Contract Sum.
- (h) (**No prejudice to the Principal**) Failure by the Principal's Representative to set out in a payment schedule an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the VC Contractor by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this deed.
- (i) (**Post Completion and final payment claims**) The VC Contractor must include in each of the payment claims lodged by it in accordance with clause 28.3(a)(ii) and clause 28.3(a)(iii) all Claims for amounts which the VC Contractor considers it is entitled to be paid in any way arising out of, or in any way in connection with, this deed, the VC Contractor's Activities, the Project Works or the Temporary Works.
- (j) (**Release**) Except to the extent that it is claimed in the relevant payment claim, the VC Contractor releases the Principal from any Liability in respect of any fact, matter or thing arising out of, or connected in any way with, this deed, the VC Contractor's Activities, the Project Works or the Temporary Works that:
- (i) in the case of the payment claim issued in accordance with clause 28.3(a)(ii), occurred prior to Completion of the last Portion to reach Completion; and
  - (ii) in the case of the payment claim issued with the notice of Final Completion under clause 28.3(a)(iii) occurred at all.

#### 28.4 Effect of payment schedules and payments

- (a) (**On account**) Any payments made by the Principal pursuant to a payment schedule are payments on account only, [REDACTED] pursuant to clause 28.12.
- (b) (**No approval**) Neither the issue of a payment schedule under clause 28.3(d)(i) or clause 28.3(d)(ii), nor the making of any payment pursuant to any such payment schedule, will:
  - (i) constitute the approval of any work or other matter or prejudice any Claim by the Principal or the Principal's Representative;
  - (ii) constitute evidence of the value of any work or an admission of Liability or evidence that work has been executed or completed in accordance with this deed; or
  - (iii) prejudice the right of either party to dispute under the Dispute Procedure whether any amount certified as payable in a payment schedule is the amount properly due and payable under this deed.
- (c) (**Correction of error**) The Principal's Representative may at any time correct any error in a payment schedule.

#### 28.5 Provision of documentation and other requirements

- (a) The value of the construction work carried out by the VC Contractor, and the amount of the progress payment to which the VC Contractor is entitled, will be:

- (i) (**No more than** [REDACTED] no more than [REDACTED] of the amount that the Principal's Representative would otherwise have set out in any payment schedule unless and until the VC Contractor has:
    - (A) effected and is maintaining all Insurances that the VC Contractor is required to effect and maintain under clause 30.6 (*VC Contractor's Insurance obligations*);
    - (B) complied with clause 3.1 (*Unconditional undertakings*) and clause 3.4 (*Parent Company Guarantee*);
    - (C) where clause 28.8(o) applies, provided the Principal's Representative with the statement and evidence (if any) required to be provided by the VC Contractor pursuant to that clause;
    - (D) provided the Principal's Representative with a statutory declaration in the form of Schedule B15 (*Statutory declaration*) which has been duly executed:
      - (aa) by a representative of the VC Contractor who is in a position to know the facts declared; and
      - (bb) on the date the relevant payment claim was issued;
    - (E) in relation to any unfixed plant and materials which the VC Contractor proposes to claim in a payment claim, provided the evidence and documents required by, and otherwise satisfied the requirements of, clause 28.7 (*Payment for unfixed Construction Materials*); and
    - (F) done everything else that it is required to do under this deed before being entitled to make a payment claim or receive payment; and
  - (ii) (**No more than** [REDACTED] no more than [REDACTED] of the amount that the Principal's Representative would otherwise have set out in any payment schedule unless and until the VC Contractor has complied with its obligations under clause 21.5 (*VC Contractor's Program*) and provided all information required by section 4.2.3 of Appendix F2 of the SWTC.
- (b) (**Payment of withheld amount**) Any amount withheld by the Principal under clause 28.5(a) must be paid within 10 Business Days after the VC Contractor has complied with the relevant obligation.

#### 28.6 Payment of Subcontractors, workers compensation and payroll tax

- (a) (**Court order**) If a worker or a Subcontractor obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, materials (including Construction Materials) supplied for, or work performed with respect to, the VC Contractor's Activities, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the GST exclusive amount of the order and costs included in the order to the worker or Subcontractor, and the amount paid will be a debt due and payable from the VC Contractor to the Principal.
- (b) (**Notices**) If the Principal receives notices of:
  - (i) the VC Contractor being placed under administration; or
  - (ii) the making of a winding up order in respect of the VC Contractor,

the Principal will not make any payment to a worker or Subcontractor without the concurrence of the administrator, provisional liquidator or liquidator, as the case may be.

- (c) **(Non-payment of amount)** If any moneys are shown as unpaid in the VC Contractor's statutory declaration under clause 28.5(a)(i)(D), the Principal may withhold the moneys so shown until the VC Contractor provides evidence to the satisfaction of the Principal's Representative that the moneys have been paid to the relevant persons.
- (d) Not used.
- (e) **(Preservation of rights)** Nothing in this clause 28.6 limits or otherwise affects the Principal's rights under section 175B(7) of the *Workers Compensation Act 1987 (NSW)*, section 18(6) of schedule 2 of the *Payroll Tax Act 2007 (NSW)* and section 127(5) of the *Industrial Relations Act 1996 (NSW)*.

#### 28.7 Payment for unfixed Construction Materials

- (a) **(Not included in payment schedule)** The value of unfixed Construction Materials intended for incorporation in the Project Works but not yet incorporated must not be included in a payment claim under clause 28.3(a) and the Principal is under no obligation to pay for such Construction Materials unless:
  - (i) the VC Contractor:
    - (A) has provided to the Principal at the same time as its payment claim under clause 28.3(a) an unconditional undertaking that complies with the requirements of clause 3.1(c) for an amount equal to the payment claimed for the Construction Materials; and
    - (B) gives the Principal's Representative such evidence as may be required by the Principal's Representative that title to the unfixed Construction Materials will vest in the Principal upon payment;
  - (ii) the Construction Materials are clearly marked as the property of the Principal;
  - (iii) the Construction Materials are properly stored in a place approved by the Principal's Representative (not to be unreasonably withheld); and
  - (iv) there is evidence (in a form satisfactory to the Principal) that the VC Contractor has registered a Security Interest in favour of the Principal in the unfixed Construction Materials.
- (b) **(Title vests on payment)** Upon payment against a payment schedule which includes an amount in respect of unfixed Construction Materials, title in the unfixed Construction Materials will vest in the Principal.
- (c) **(Release of unconditional undertaking)** If the VC Contractor provides an unconditional undertaking for payment for unfixed Construction Materials, the Principal must release the unconditional undertaking to the VC Contractor within 5 Business Days after those Construction Materials:
  - (i) are incorporated into the Project Works; and
  - (ii) comply with the requirements of this deed.

## 28.8 SOP Act

- (a) **(Definitions)** Expressions defined or used in the SOP Act have the same meaning for the purposes of this clause (unless the context otherwise requires).
- (b) **(Communication)** The VC Contractor must ensure that a copy of any written communication it delivers or arranges to deliver to the Principal of whatever nature in relation to the SOP Act, including a payment claim under the SOP Act, is provided to the Principal's Representative at the same time.
- (c) **(Principal's agent)** In responding to the VC Contractor under the SOP Act, the Principal's Representative acts as the agent of the Principal and the Principal authorises the Principal's Representative to issue payment schedules on its behalf (without affecting the Principal's right to issue a payment schedule itself).
- (d) **(Payment schedule)** If, within the time allowed by the SOP Act for the service of a payment schedule by the Principal, the Principal does not:
  - (i) serve the payment schedule itself; or
  - (ii) notify the VC Contractor that the Principal's Representative does not have authority from the Principal to issue the payment schedule on its behalf,
 then a payment schedule issued by the Principal's Representative under this deed which relates to the period relevant to the payment schedule will be taken to be the payment schedule for the purpose of the SOP Act (whether or not it is expressly stated to be a payment schedule).
- (e) **(Amount of progress payment)** For the purposes of this deed, the amount of the progress payment to which the VC Contractor is entitled under this deed will be the amount certified by the Principal's Representative in a payment schedule under clause 28.3 (*Payment claims*) less any amount the Principal may elect to retain, deduct, withhold or set off in accordance with this deed.
- (f) **(No Liability to pay payment claim)** The VC Contractor agrees that:
  - (i) the date prescribed by clause 28.3(a) as the date on which the VC Contractor is entitled to make a payment claim is, for the purposes of the SOP Act (including section 8 of the SOP Act), the reference date; and
  - (ii) a payment claim is not a document notifying an obligation on the Principal to make any payment and the Principal will have no Liability to make a payment of any amount in respect of a payment claim unless the amount has been included in a payment schedule issued by the Principal's Representative in accordance with clause 28.3(d)(i) or clause 28.3(d)(ii).
- (g) **(No breach of this deed)** Nothing in this deed will be construed to:
  - (i) make any act or omission of the Principal in contravention of the SOP Act (including failure to pay an amount becoming due under the SOP Act), a breach of this deed (unless the Principal would have been in breach of this deed if the SOP Act had no application); or
  - (ii) subject to clause 28.8(g)(i), give to the VC Contractor rights under this deed which extend or are in addition to rights given to the VC Contractor by the SOP Act in respect of any act or omission of the Principal in contravention of the SOP Act.
- (h) **(No right to claim for suspension)** If the VC Contractor suspends the whole or part of the VC Contractor's Activities pursuant to the SOP Act then, except to the

extent (if any) expressly provided under the SOP Act, the Principal will not be liable for and the Principal has no Liability to the VC Contractor for any Loss suffered or incurred by the VC Contractor as a result of the suspension.

- (i) **(VC Contractor indemnity)** The VC Contractor indemnifies and must keep indemnified the Principal against all Loss suffered or incurred by the Principal arising out of a suspension by a Subcontractor of work which forms part of the VC Contractor's Activities pursuant to the SOP Act unless and except to the extent that the suspension is due to non-payment by the Principal of an amount that is due and payable under this deed.
- (j) **(Authorised nominating authority)** The VC Contractor agrees that for the purposes of section 17(3) of the SOP Act:
  - (i) it has irrevocably chosen the Resolution Institute as the authorised nominating authority to which any adjudication application under the SOP Act in respect of the VC Contractor's Activities is to be made; and
  - (ii) the VC Contractor must make any adjudication application under the SOP Act to that authorised nominating authority (unless the Principal in its absolute discretion consents to any alternative nominating authority).
- (k) **(Adjudication)** When an adjudication occurs under the SOP Act, and the Principal has paid an adjudicated amount to the VC Contractor:
  - (i) the amount will be taken into account by the Principal's Representative in issuing a payment schedule under clause 28.3(d)(i) or clause 28.3(d)(ii);
  - (ii) if it is subsequently determined pursuant to this deed that the VC Contractor was not entitled under this deed to payment of some or all of the adjudicated amount that was paid by the Principal (**overpayment**), the overpayment will be a debt due and payable by the VC Contractor to the Principal which the VC Contractor must pay to the Principal upon demand and in respect of which the VC Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence;
  - (iii) if the adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount then becomes a debt due and payable by the VC Contractor to the Principal upon demand and in respect of which the VC Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence; and
  - (iv) the Principal's Representative:
    - (A) is not bound by the adjudication determination;
    - (B) may reassess the value of the work that was valued by the adjudicator; and
    - (C) may, if it disagrees with the adjudication determination, express its own valuation in any payment schedule.
- (l) **(Withholding)** Without limiting clause 28.9 (*Right of set-off*), the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act. If the Principal withholds from money otherwise due to the VC Contractor any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act, then:

- (i) the Principal may plead and rely upon Division 2A of the SOP Act as a defence to any claim for the money by the VC Contractor from the Principal; and
- (ii) the period during which the Principal retains money due to the VC Contractor pursuant to an obligation under Division 2A of the SOP Act will not be taken into account for the purpose of determining:
  - (A) any period for which money owed by the Principal to the VC Contractor has been unpaid; and
  - (B) the date by which payment of money owed by the Principal to the VC Contractor must be made.
- (m) (**No proceedings**) The VC Contractor agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
- (n) (**Debt due**) Any amount paid by the Principal pursuant to section 26C of the SOP Act will be a debt due from the VC Contractor to the Principal.
- (o) (**VC Contractor payment**) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act and the VC Contractor:
  - (i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or
  - (ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,

then the VC Contractor must so notify the Principal within 5 Business Days after the occurrence of the event in clause 28.8(l)(i) or clause 28.8(l)(ii) above (as applicable) by providing to the Principal a statement in writing in the form of a statutory declaration together with such other evidence as the Principal may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

#### 28.9 Right of set-off

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

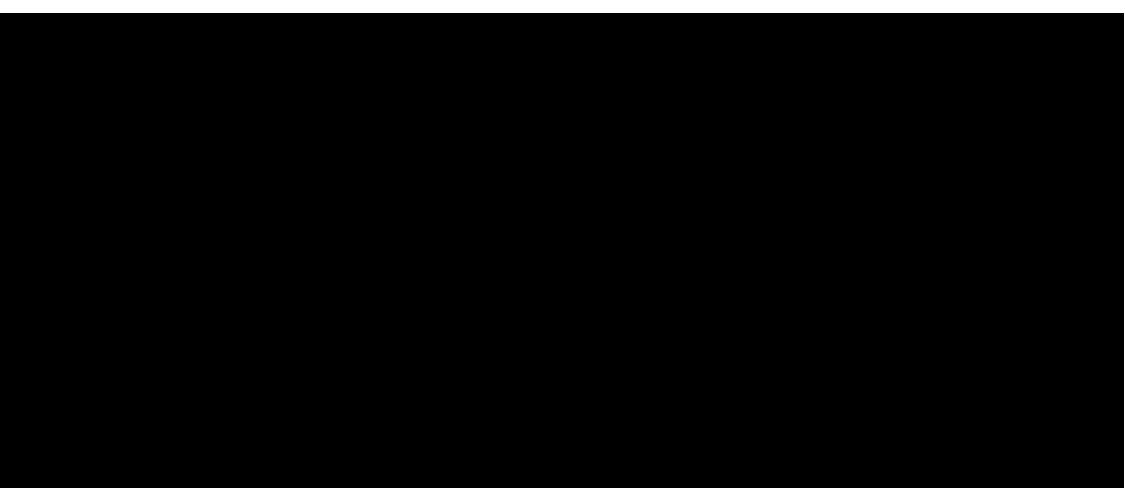
under or arising out of or in connection with this deed or the VC Contractor's Activities and the Principal may make such withholding, set-off or deduction whether or not such amounts were included in a payment schedule issued by the Principal's Representative.

- (b) (**Survival**) This clause 28.9 will survive the termination of this deed.

## 28.10 Provisional sums

- (a) **(Performance of Provisional Sum Work)** Subject to clause 28.10(h), the VC Contractor may not proceed with any item of Provisional Sum Work unless the VC Contractor has provided the Principal's Representative with a fixed lump sum price proposal for the relevant item of Provisional Sum Work (**Lump Sum Price Proposal**).
- (b) **(Lump Sum Price Proposal)** Each Lump Sum Price Proposal submitted by the VC Contractor under clause 28.10(a) must be prepared:
  - (i) on an Open Book Basis (as defined in Schedule A8 (*Modification Procedure*)); and
  - (ii) in accordance with the requirements of clauses 28.10(f) and clause 28.10(g).
- (c) **(Valuation by the Principal's Representative)** Within 20 Business Days of receiving the VC Contractor's Lump Sum Price Proposal (or within such longer period agreed by the parties) the Principal's Representative will adjust the Contract Sum by the difference between:
  - (i) the amount allowed for the relevant item of Provisional Sum Work in the Contract Sum Schedule; and
  - (ii) either:
    - (A) a fixed amount agreed between the Principal's Representative and the VC Contractor (which may or may not be the amount specified in the Lump Sum Price Proposal); or
    - (B) if the parties fail to agree upon such amount within 20 Business Days from the date on which the VC Contractor submitted its Lump Sum Price Proposal (or within such longer period agreed by the parties), a fixed amount determined by the Principal's Representative (acting reasonably) in accordance with Schedule E4 (*Valuation Mechanism*),

as the amount that will be payable in respect of the relevant item of Provisional Sum Work.



- (e) **(Referral to dispute resolution)** If the VC Contractor disagrees with any determination of the Principal's Representative under clause 28.10(c)(ii)(B), the

VC Contractor may refer the matter for resolution in accordance with the Dispute Procedure.

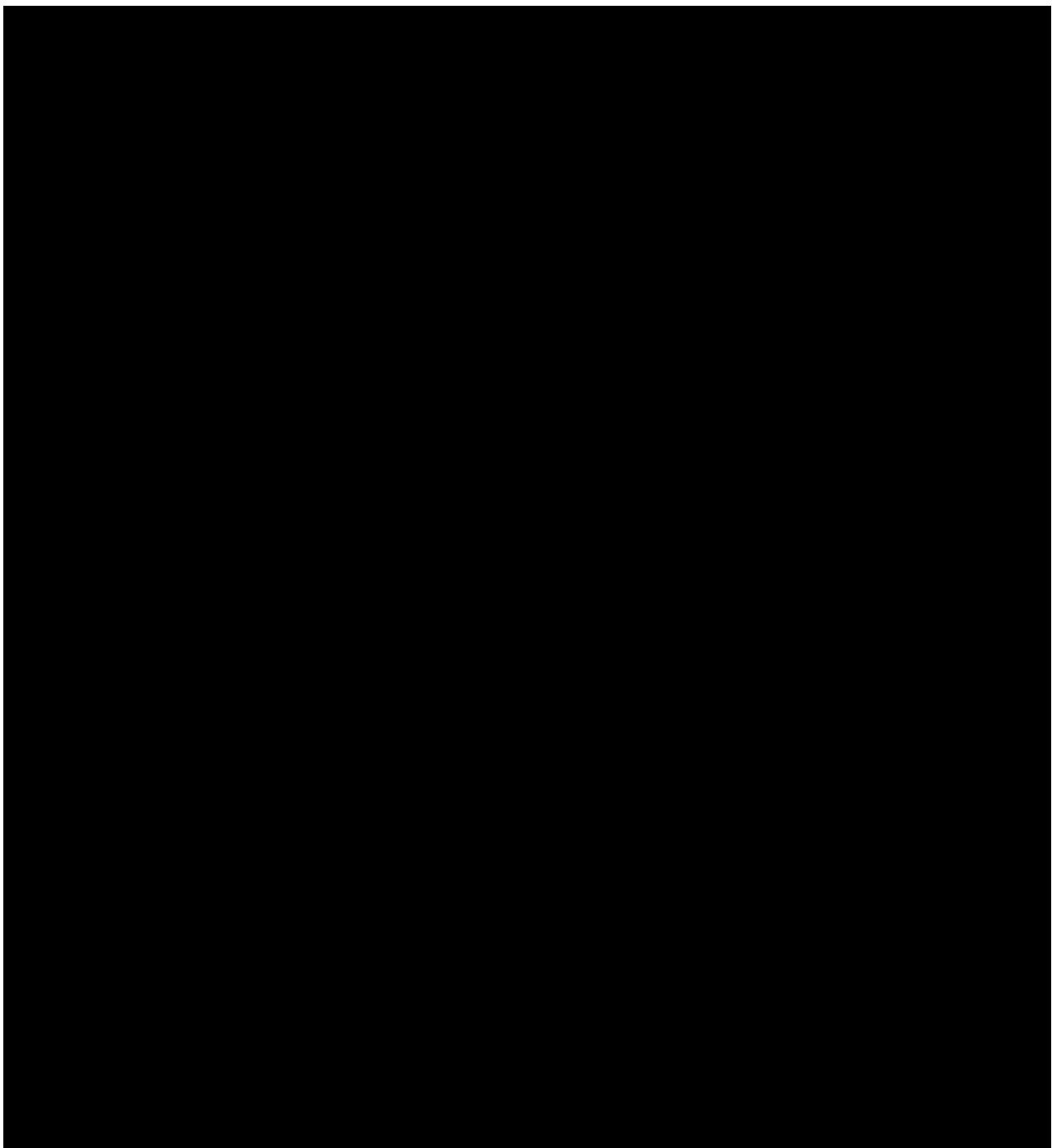
- (f) **(Minimise cost)** The VC Contractor must minimise the cost of undertaking Provisional Sum Work.
- (g) **(No Liability)** The Principal will have no Liability to the VC Contractor for the following work even if it is related to Provisional Sum Work:
  - (i) any amounts incurred by VC Contractor in relation to the Provisional Sum Work in addition to the amounts payable pursuant to a subcontract for Provisional Sum Work (including for supervision, management and attendance, and provision of Construction Plant which is used by or accessed by the subcontractor performing Provisional Sum Work);
  - (ii) not used;
  - (iii) design costs incurred incorporating Provisional Sum Work into the design;
  - (iv) costs incurred by the VC Contractor and subcontractors interfacing with the subcontractor performing Provisional Sum Work;
  - (v) the extra costs incurred by a subcontractor performing Provisional Sum Work as a result of:
    - (A) a delay for which an extension of time was granted under the Nominated Subcontract; or
    - (B) a direction by the VC Contractor to compress the performance of the relevant subcontractor's activities as the result of a cause of delay for which the relevant Subcontractor would otherwise have been entitled to an extension of time,

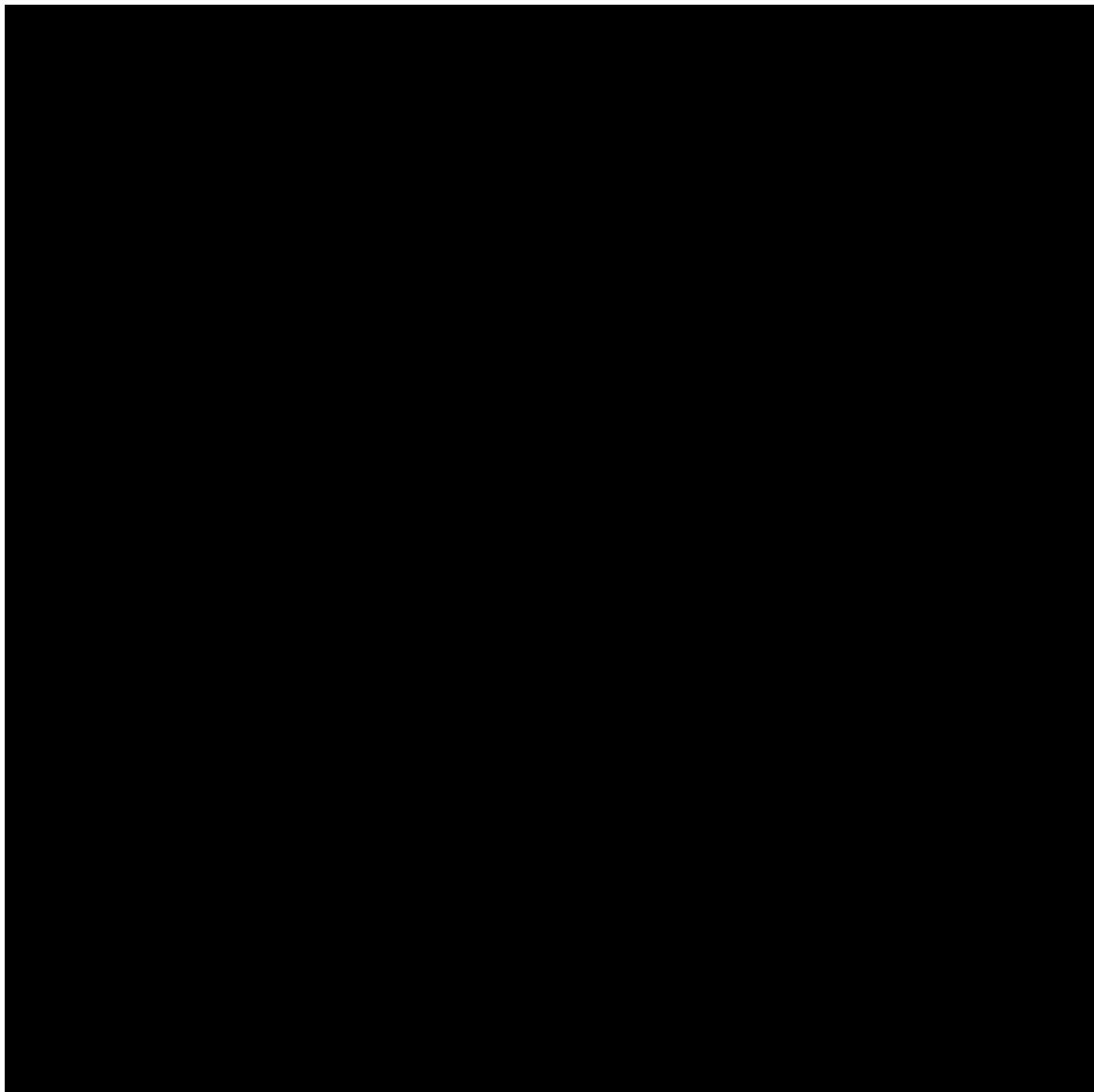
except to the extent that such costs arise as the result of a delay for which the VC Contractor is granted an extension of time under this deed;

  - (vi) the acceleration costs incurred by the subcontractor performing Provisional Sum Work in order to perform any work earlier than required under the subcontract for Provisional Sum Work, except to the extent that such acceleration is required as the result of a Modification in relation to which the Principal has a Liability to the VC Contractor under this deed;
  - (vii) not used; and
  - (viii) those things which Schedule E8 (*Provisional Sum Work*) provides the Principal shall have no Liability for.
- (h) **(Call-off Services)** In the case of any item of Provisional Sum Work that is also a Call-off Service, the VC Contractor:
  - (i) must carry out such services when directed by the Principal's Representative under this deed;
  - (ii) will, subject to clauses 28.10(h)(iii) and clause 28.10(i), be paid for the performance of such services in accordance with the relevant rates specified in Schedule E8 (*Provisional Sum Work*); and
  - (iii) will be entitled to claim payment under clause 28.3 (*Payment claims*) in respect of such services only once the aggregate amount payable in respect

of the relevant category of Call-off Service has exceeded the provisional sum allowed for that Call-off Service in the Contract Sum Schedule.

- (i) ( [REDACTED] ) Where the aggregate amount payable by the Principal under this deed in respect of any Call-off Service:
- (i) has exceeded in total the provisional sum allowed for that Call-off Service in the Contract Sum Schedule [REDACTED]; or
  - (ii) is in total less than the relevant provisional sum allowed in the Contract Sum Schedule, the difference will be deducted from the Contract Sum and will be a debt due and payable from the VC Contractor to the Principal.





#### **28.11 Performance Incentive Payments**

The VC Contractor will be entitled to claim Performance Incentive Payments in accordance with the Performance Incentive Payment Schedule.

#### **28.12 Initial Payment**

##### **(a) (Principal's obligation to pay Initial Payment)**

- (i) The Principal will pay to the VC Contractor the Initial Payment on the latest of:
  - (A) 15 Business Days of the date of this deed;
  - (B) receipt by the Principal of the Initial Payment Security;
  - (C) [REDACTED]
- (D) receipt by the Principal of the Parent Company Guarantee in accordance with clause 3.4.

- (ii) The VC Contractor must submit to the Principal a payment claim in accordance with clause 28.3 (*Payment claims*) for the Initial Payment after the date of this deed.
- (b) **(Initial Payment Security)** The VC Contractor must ensure that the Initial Payment Security remains valid and enforceable until the date of its release in accordance with clause 28.12(d).
- (c) **(Recourse to the Initial Payment Security)**
  - (i) If this deed is terminated, for any reason, prior to the date falling [REDACTED] after the date of this deed, the VC Contractor must repay to the Principal the applicable repayment amount set out in item 10 of the Reference Schedule.
  - (ii) If the VC Contractor does not pay the amount contemplated in clause 28.12(c)(i) within 5 Business Days of the date of termination of this deed, the Principal may have recourse to the Initial Payment Security.
- (d) **(Release of Initial Payment Security)** Within 15 Business Days of the earlier of:
  - (i) the date falling [REDACTED]; and
  - (ii) the VC Contractor complying with clause 28.12(c),
 the Principal will release so much of the Initial Payment Security then held by the Principal.

#### 28.13 Interest

If any moneys due to either party remain unpaid after the date upon which they should have been paid, interest will be payable at the rate of [REDACTED] above the Bank Bill Rate from the date upon which the moneys should have been paid to and including the date upon which the moneys are paid.

#### 28.14 Title

Title in all items forming part of the Project Works will pass progressively to the Principal on the earlier of payment for, or incorporation of, such items to the Construction Site. Risk in all such items remains with the VC Contractor in accordance with clause 30 (*Care of the Project Works, risks and insurance*).

#### 28.15 Payments

The Principal may withhold payment of any part of the Contract Sum which is the subject of a payment claim under clause 28.3(a) but not included in a payment schedule issued pursuant to clause 28.3(d)(i) or clause 28.3(d)(ii).

### 29. GST

#### 29.1 Payment of GST

- (a) **(Amounts exclusive of GST)** Unless otherwise expressly stated, all amounts payable under or in connection with this deed are stated exclusive of GST.
- (b) **(If payable)** If GST is or will be payable on a supply made under or in connection with this deed:
  - (i) the consideration otherwise provided for that supply under this deed is increased by the amount of that GST; and

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

## 29.2 Later adjustment to price or GST

If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST already recovered by the supplier, as appropriate, the supplier, within 10 Business Days after becoming aware of the adjustment event:

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

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

## 29.3 Tax invoice/adjustment note

Subject to clause 29.4 (*Recipient created tax invoice/recipient created adjustment note*), the right of the supplier to recover from the recipient any amount in respect of GST under this deed on a supply is subject to the issuing of a tax invoice or adjustment note to the recipient.

## 29.4 Recipient created tax invoice/recipient created adjustment note

- (a) **(Issue of tax invoice)** The parties agree that the Principal will issue a tax invoice or adjustment note (as appropriate) for all taxable supplies made by the VC Contractor to the Principal under or in connection with a VC Station Contract Document within 28 days of the making, or determining the value, of the relevant supply.
- (b) **(VC Contractor's obligations)** The VC Contractor:
  - (i) warrants to the Principal that at the time of:
    - (A) entering into each VC Station Contract Document to which it is a party;
    - (B) each supply occurring or being deemed to have occurred under a VC Station Contract Document; and
    - (C) each tax invoice or adjustment note being issued by the Principal to the VC Contractor under a VC Station Contract Document,
  - the VC Contractor will be registered for GST;
  - (ii) indemnifies the Principal against any loss resulting from the VC Contractor not being so registered;
  - (iii) must produce written evidence satisfactory to the Principal of that registration if the Principal requests it;
  - (iv) must notify the Principal within 5 Business Days if the VC Contractor ceases to be registered for GST; and

(v) agrees that the VC Contractor will not issue a tax invoice or adjustment note for supplies it makes under or in connection with a VC Station Contract Document in respect of which the Principal must issue a tax invoice or adjustment note.

(c) **(Principal's obligations)** The Principal:

(i) warrants to the VC Contractor that at the time of entering into each VC Station Contract Document of which it is a party the Principal is registered for GST; and

(ii) must notify the VC Contractor within 5 Business Days if the Principal ceases to be registered for GST.

#### 29.5 **Indemnities and reimbursement**

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

### 30. **CARE OF THE PROJECT WORKS, RISKS AND INSURANCE**

#### 30.1 **Responsibility for care of the VC Contractor's Activities**

(a) **(Care of the work)** Subject to clause 30.1(d), the VC Contractor is, in respect of each Portion, responsible for the care of, and bears the risk of destruction, loss or damage to:

(i) the VC Contractor's Activities, the Project Works, the Temporary Works, the Construction Plant, the Construction Materials and any Extra Land, from the date of this deed; and

(ii) each part of the Construction Site (including any improvements on the Construction Site), from the relevant Construction Licence Commencement Date,

up to and including:

(iii) to the extent the relevant VC Contractor's Activities, the Project Works, the Temporary Works, the Construction Site, any Extra Land, Construction Plant or Construction Materials relate to the Trackway Portion and not to any Non-Trackway Portion, the Date of Substantial Completion of the Trackway Portion; and

(iv) except to the extent set out in clause 30.1(a)(iii), the Date of Completion of the relevant Portion.

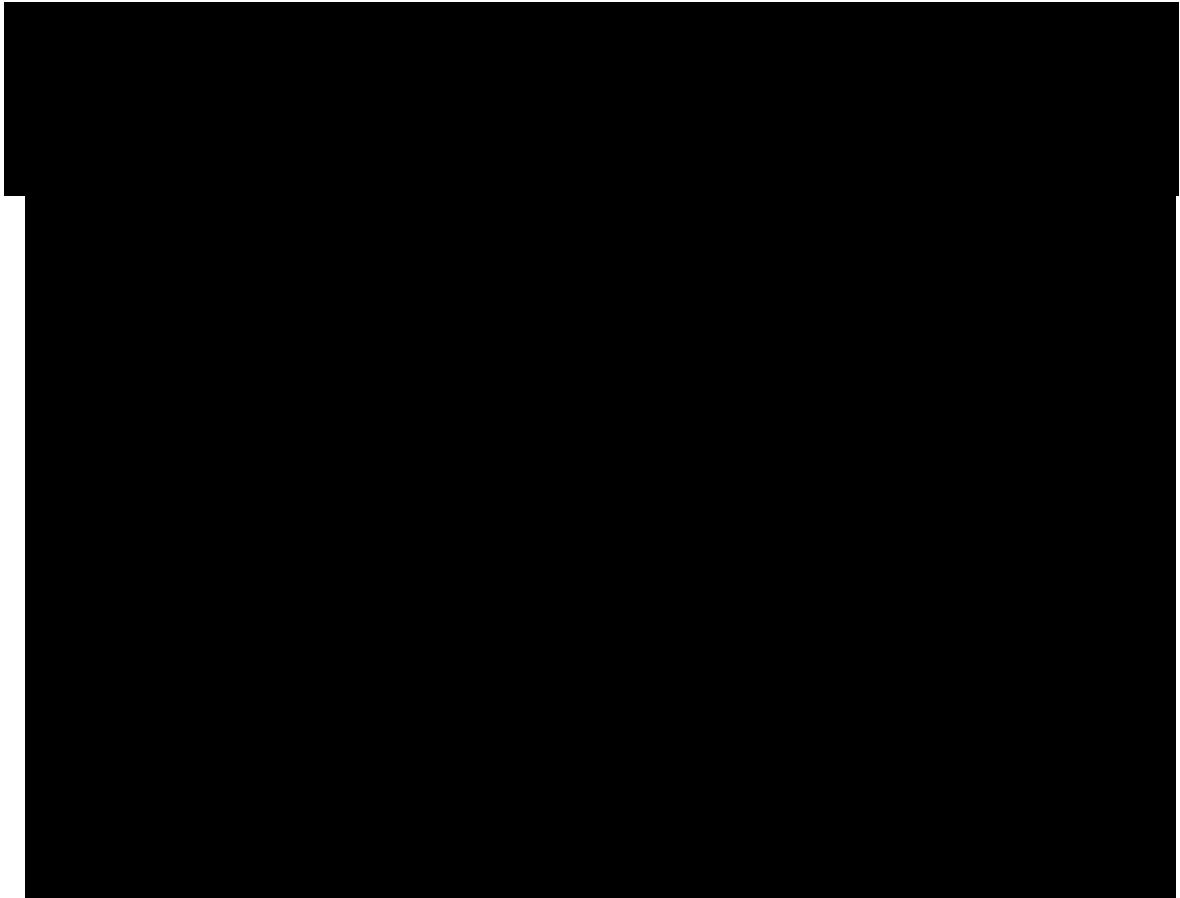
(b) **(Risk after Completion)** After the time referred to in clause 30.1(a), subject to clause 30.1(d), the VC Contractor will bear the risk of any destruction, loss or damage to the VC Contractor's Activities, the Project Works, the Temporary Works, the Construction Site, any Extra Land, Construction Plant, Construction Materials and Victoria Cross Station arising from:

(i) any act or omission of the VC Contractor or its Associates during the Defects Correction Period (including any extension to a Defects Correction Period under clause 27 (Defects)) or any other VC Contractor's Activities; or

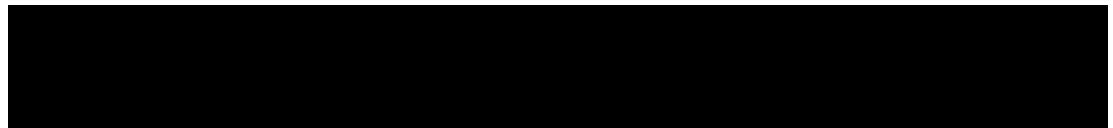
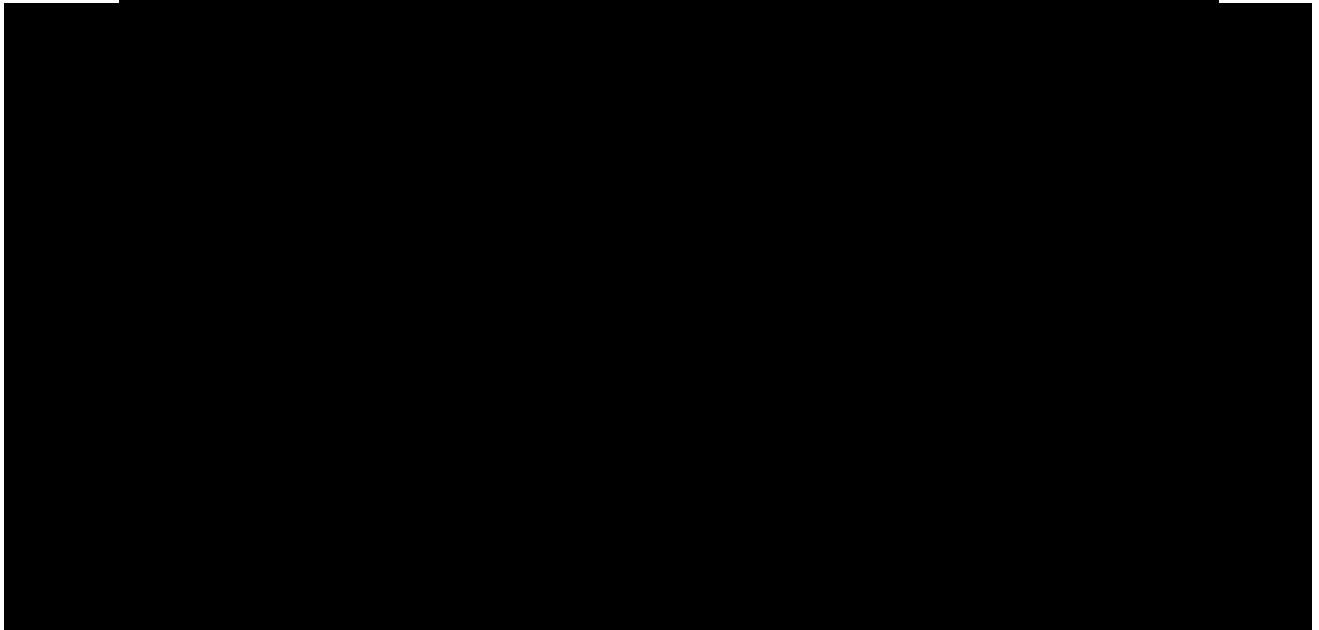
- (ii) any event which is notifiable by the VC Contractor and which occurred while the VC Contractor was responsible for the care of the relevant part of the VC Contractor's Activities, the Project Works, the Temporary Works, the Construction Site, any Extra Land, Construction Plant, Construction Materials and Victoria Cross Station in connection with the VC Contractor's Activities.
- (c) **(Reinstatement)** Subject to clause 30.1(d), the VC Contractor must:
  - (i) in accordance with clause 30.11 (*Reinstatement*), (at its own Cost) promptly make good any destruction, loss or damage for which the VC Contractor bears the risk under this clause 30; and
  - (ii) indemnify the Principal against Loss resulting from such destruction, loss or damage.
- (d) **(Excepted Risk)**
  - (i) This clause 30.1 does not apply to the extent that any destruction, loss or damage:
    - (A) for which the VC Contractor would otherwise have been responsible or bears the risk; or
    - (B) in respect of which the VC Contractor is obliged to indemnify the Principal against under clause 30.1(c)(ii),
  - results from an Excepted Risk.
  - (ii) Where any destruction, loss or damage arises to any extent from an Excepted Risk:
    - (A) the VC Contractor must, where directed by the Principal's Representative to do so, make good or repair the destruction, loss or damage; and
    - (B) the destruction, loss or damage (where a direction to repair or make good is not given) or that making good or repair (where a direction to repair or make good is given) will, to the extent the destruction, loss or damage arises from an Excepted Risk, be treated as if it were a Modification directed by the Principal and clause 2 of the Modification Procedure will apply [REDACTED].

### 30.2 Indemnity from VC Contractor

- (a) **(VC Contractor indemnifies)** The VC Contractor indemnifies each State Indemnified Party from and against:
  - (i) any Loss incurred or suffered by a State Indemnified Party in respect of:
    - (A) damage to, loss or destruction of, or loss of use of or access to (whether total or partial), any State Indemnified Party's real or personal property; or
    - (B) any Claim against a State Indemnified Party (including by another State Indemnified Party) or Liability a State Indemnified Party may have to third parties in respect of or arising out of or in connection with:
      - (aa) any illness, personal injury to, or death of, any person; or

- (bb) damage to, loss or destruction of, or loss of use of or access to (whether total or partial), any real or personal property, caused by, arising out of, or in any way in connection with the VC Contractor's Activities;
- (ii) any Loss incurred or suffered by a State Indemnified Party, or any Claim made by or Liability to any other person, arising out of or in any way in connection with:
- (A) any breach of, or failure to comply with, the terms of any VC Station Contract Document by the VC Contractor or any other non-compliance by the VC Contractor or its Associates with any VC Station Contract Document;
  - (B) any fraudulent act or omission by the VC Contractor or any of its Associates;
  - (C) any failure by the Appointed Principal Contractor to exercise or fulfil the functions and responsibilities of the principal contractor under the WHS Legislation; or
  - (D) any IPR Claim; and
- (iii) any Environmental Liabilities arising out of or in connection with any:
- (A) a breach of this deed by the VC Contractor; or
  - (B) wrongful or reckless act or omission of the VC Contractor or its Associates.
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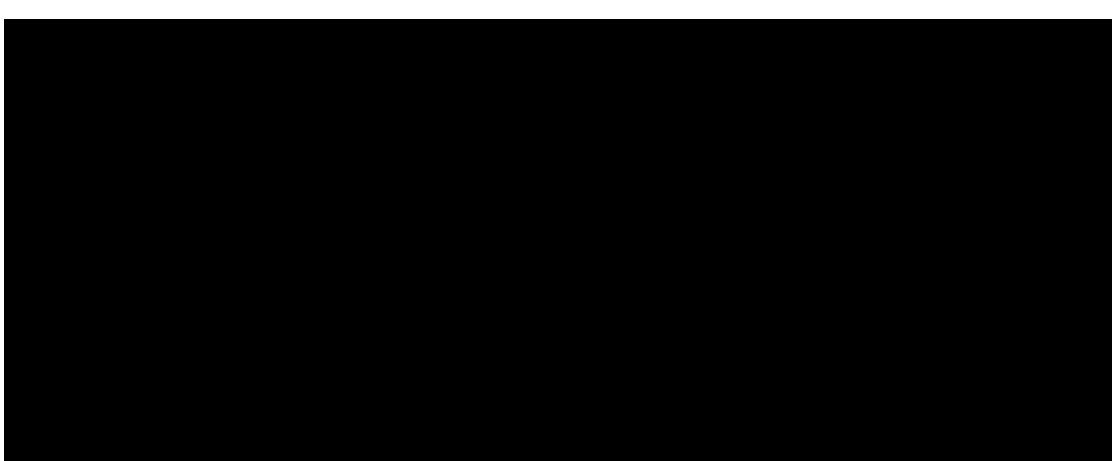
30.3 **Obligations not affected**

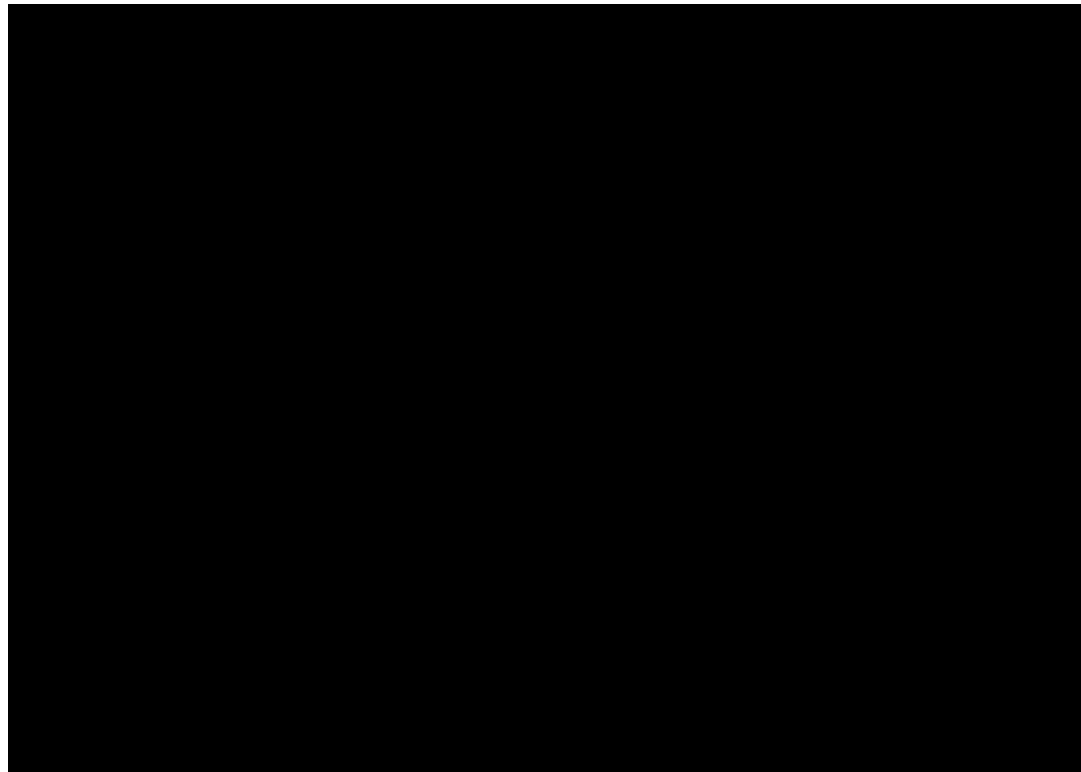
- (a) **(No affect)** Clause 30.2 (*Indemnity from VC Contractor*) does not limit or otherwise affect the VC Contractor's other obligations under this deed or otherwise according to Law.
- 
- 

30.5 **Principal's Insurance**

- (a) **(Contract works and public liability Insurance)** The Principal must, within 20 Business Days after the date of this deed, effect and thereafter maintain:
- (i) contract works (material damage) insurance; and
  - (ii) public and products liability insurance,

on the terms of the policies (where relevant) set out in Schedule A13 (*Insurance policies*).



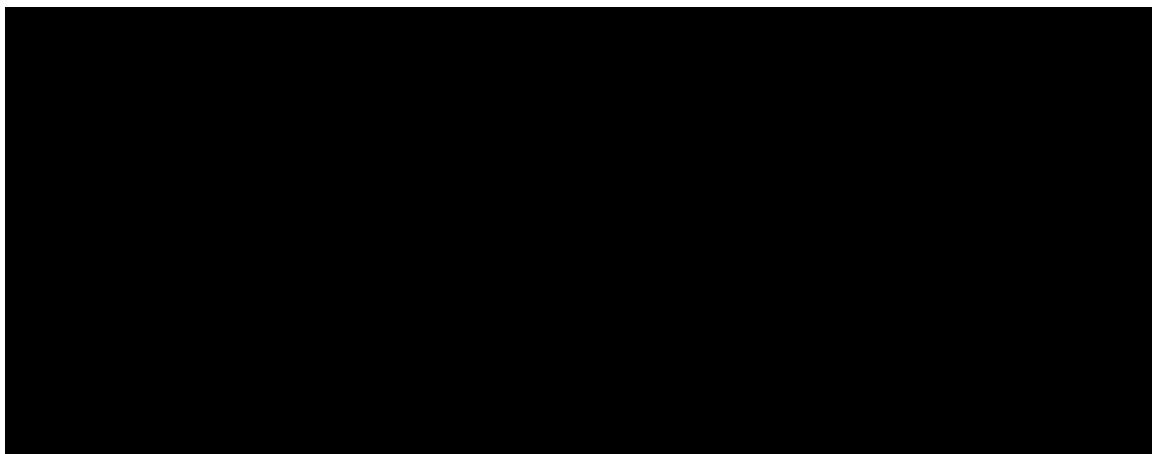


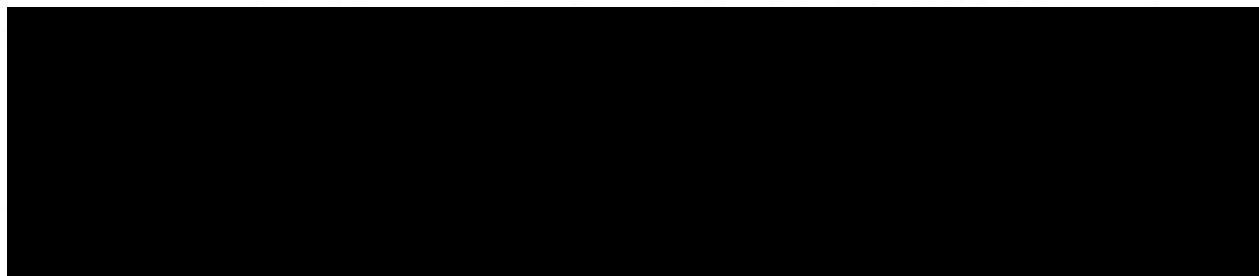
- (c) **(VC Contractor acknowledgement)** The Principal's Insurances are subject to the exclusions, conditions, deductibles and excesses noted on the Principal's Insurance policies and the VC Contractor acknowledges and agrees that:
- (i) it has satisfied itself of the nature and extent of the cover provided by the Principal's Insurances; and
  - (ii) the Principal's Insurances do not cover every risk to which the VC Contractor or its Associates may be exposed and are subject to deductibles and limits and the VC Contractor may, at its cost, elect to effect insurance for any risk or liability which is not covered by the Principal's Insurances.

30.6 **VC Contractor's Insurance obligations**

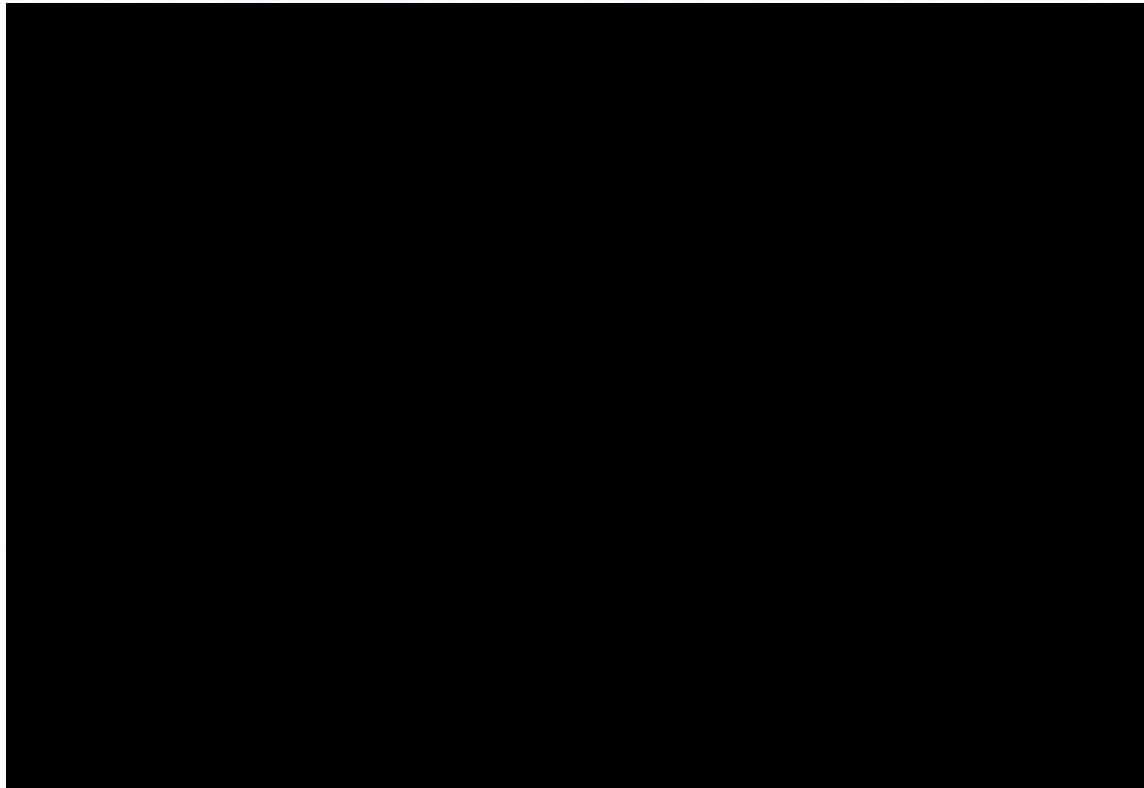
The VC Contractor must effect and maintain, or cause to be effected and maintained, the Insurances required by Schedule A12 (*VC Contractor Insurance requirements*).

30.7 **Periods of Insurance**

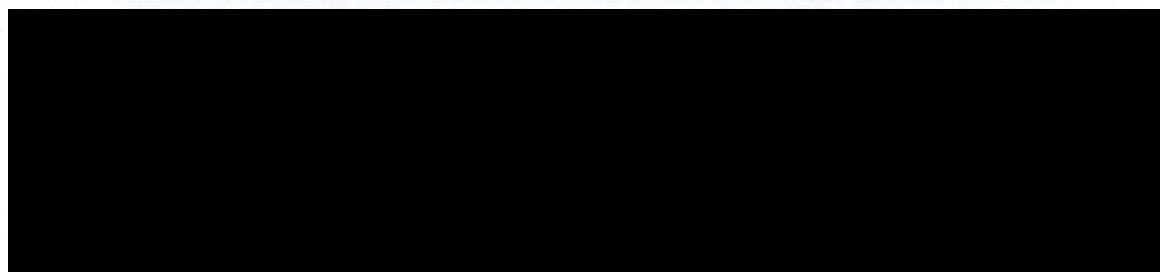




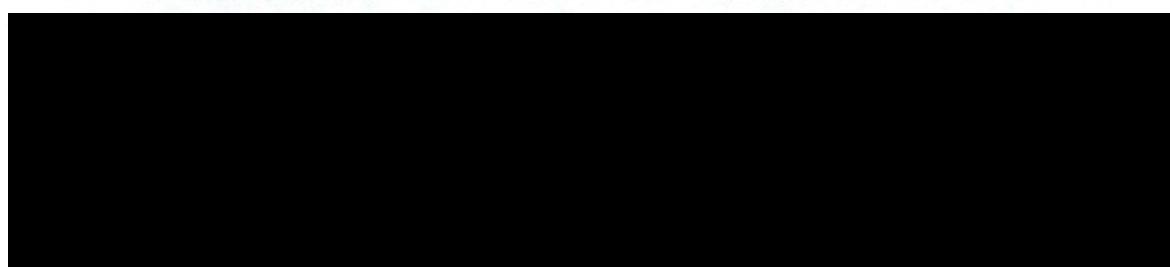
**30.8 Evidence of policies**

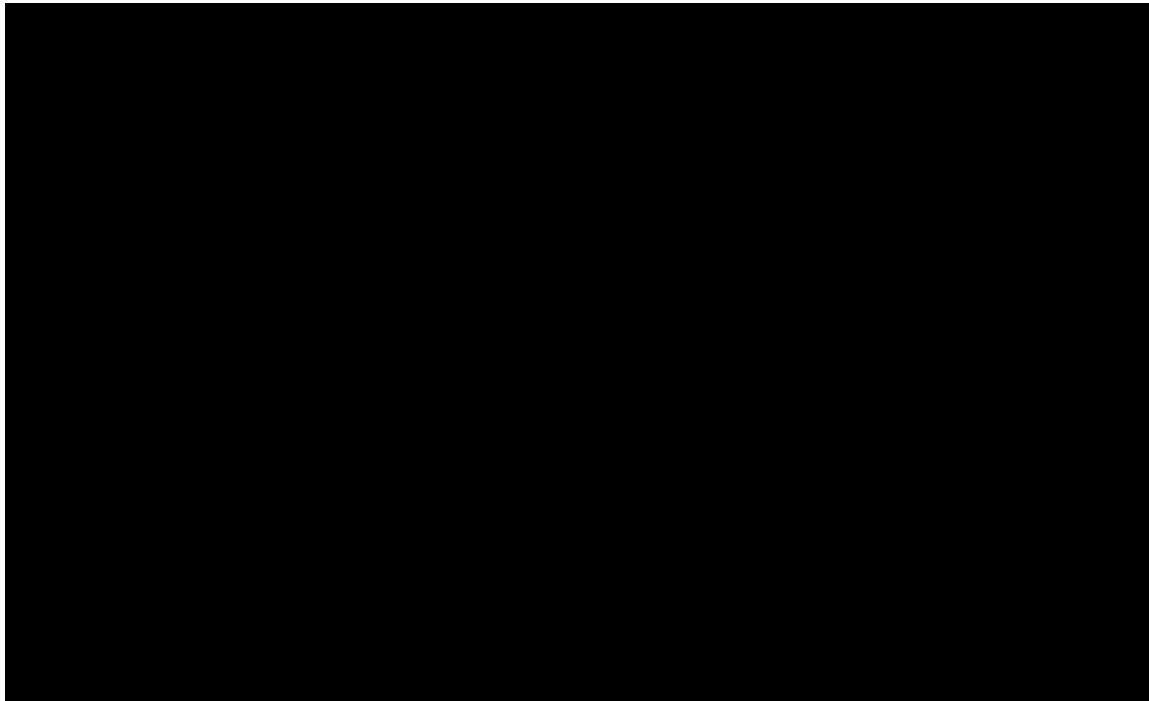


**30.9 Premiums**



**30.10 Undertaking to inform**





### 30.11 **Reinstatement**

If, prior to the time the VC Contractor ceases to be responsible under clause 30.1 (*Responsibility for care of the VC Contractor's Activities*) for the care of a part of the VC Contractor's Activities, the Project Works, the Temporary Works or any other thing referred to in clause 30.1(a), any destruction, damage or loss occurs to the VC Contractor's Activities, the Project Works or the Temporary Works, the VC Contractor must:

- (a) **(make secure)** make secure the VC Contractor's Activities, the Project Works and the Temporary Works and the parts of the Construction Site which are still under the control of the VC Contractor;
- (b) **(notify)** notify:
  - (i) appropriate Authorities and emergency services; and
  - (ii) the insurers for assessment,  
and comply with their instructions;
- (c) **(consult)** promptly consult with the Principal to agree on steps to be taken to ensure:
  - (i) the prompt make good, repair or replacement of the destruction, loss or damage so that:
    - (A) it complies with the SWTC and this deed; and
    - (B) there is minimal disruption to the Project Works, the Temporary Works or the VC Contractor's Activities;
  - (ii) that, to the greatest extent possible, the VC Contractor continues to comply with its obligations under this deed; and

- (iii) promptly make good, repair or replace any of the destruction, loss or damage to the Project Works, the Construction Site or improvements on the Construction Site (if any);
- (d) (**make good**) subject to clause 30.1(d)(ii), manage all make good, repair and replacement activities so as to minimise the impact on the Project Works, the Temporary Works or the VC Contractor's Activities; and
- (e) (**keep informed**) keep the Principal's Representative fully informed of the progress of the make good, repair and replacement activities.

#### 30.12 Application of the Principal's Insurance proceeds

- (a) (**Damage**) Subject to, and without limiting, clause 30.1 (*Responsibility for care of the VC Contractor's Activities*), where, prior to the Date of Completion of the last Portion to reach Completion, the VC Contractor's Activities, the Project Works or the Temporary Works are damaged or destroyed, all insurance proceeds in respect of those damaged or destroyed VC Contractor's Activities, Project Works or Temporary Works that are payable under any of the Principal's Insurance will be:
  - (i) paid to the Principal;
  - (ii) paid by the Principal to the VC Contractor as progress payments under clause 28.3 (*Payment claims*) as and when the VC Contractor reinstates the VC Contractor's Activities, the Project Works and the Temporary Works; and
  - (iii) subject to clause 30.1(d)(ii), the VC Contractor's sole entitlement to payment in respect of the reinstatement of that destruction or damage to the VC Contractor's Activities, the Project Works or the Temporary Works.
- (b) (**Excepted Risk**) This clause does not apply to any Insurance proceeds that are payable under any of the Principal's Insurance in respect of an Excepted Risk, which will be retained by the Principal.

#### 30.13 Damage to property

- (a) (**Responsibility of VC Contractor**) Subject to clause 30.13(c), where any loss of, or destruction or damage to, real or personal property or the Environment (including any Utility Services) occurs arising out of, or in any way in connection with, the carrying out by the VC Contractor of the VC Contractor's Activities or a failure by the VC Contractor to comply with its obligations under this deed, the VC Contractor must, at its cost, promptly repair and make good any such loss, destruction or damage.
- (b) (**Failure to repair**) If the VC Contractor fails to carry out any repair work under clause 30.13(a), the Principal may carry out such work or engage others to carry out such work and any Loss suffered or incurred by the Principal in doing so will be a debt due and payable from the VC Contractor to the Principal.
- (c) (**Clause does not apply**) This clause 30.13 does not apply where the owner of the real or personal property does not agree to the VC Contractor carrying out the work under clause 30.13(a).
- (d) (**Indemnity not affected**) Nothing in this clause 30.13 limits the operation of the indemnity in clause 31 (*Liability*).



**30.15 Liabilities of VC Contractor not affected**

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

**30.16 Survival of termination**

This clause 30 survives termination or expiry of this deed.

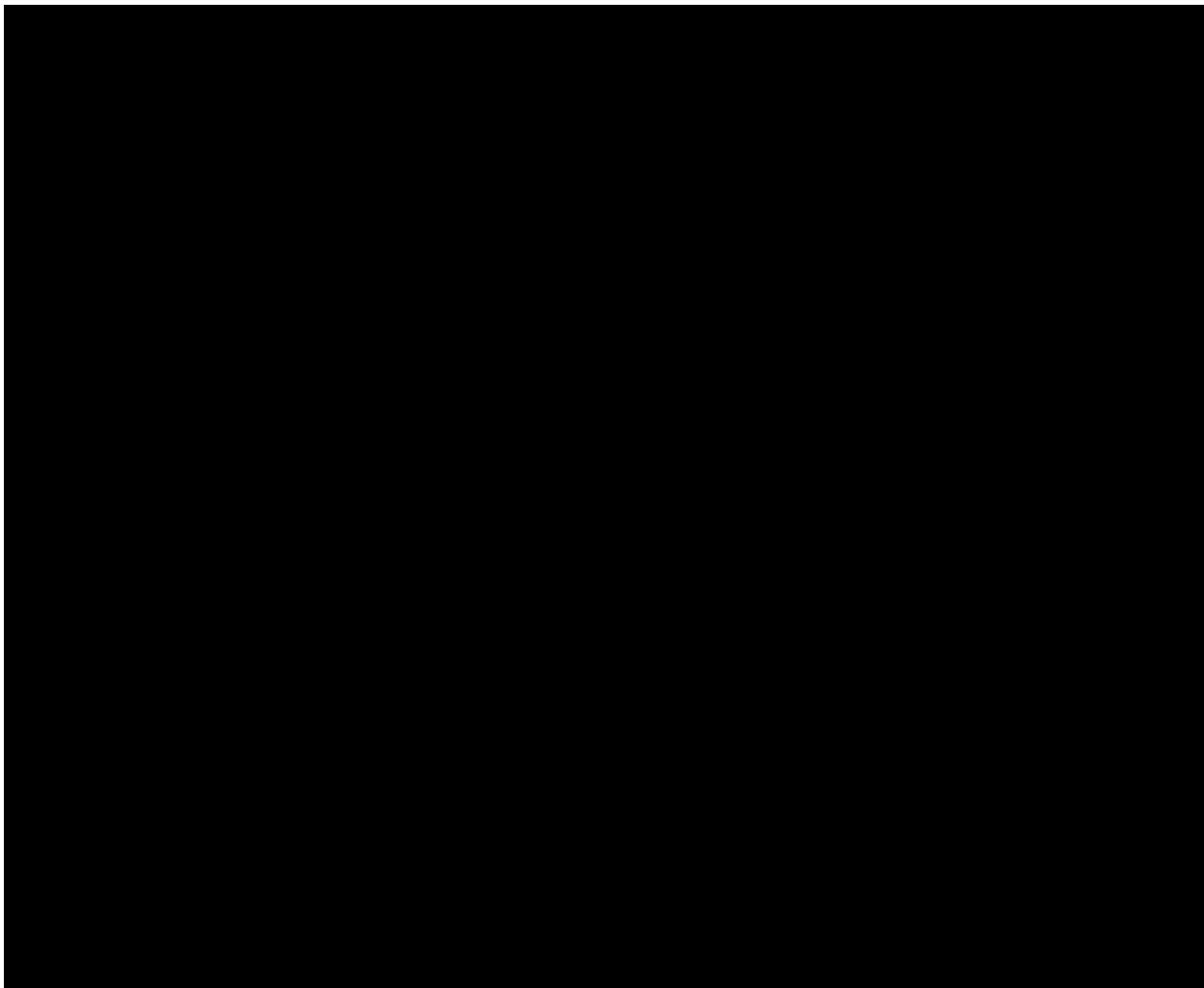
**31. LIABILITY**





(b)(5)

(b)(5)



31.5 **Proportionate liability**

- (a) **(Exclusion of Part 4)** To the extent permitted by Law:
- (i) Part 4 of the *Civil Liability Act 2002 (NSW)* (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or Liabilities of either party under this deed (whether these rights, obligations or Liabilities are sought to be enforced in contract, tort or otherwise);
  - (ii) the VC Contractor must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002 (NSW)* in relation to any Claim by the Principal against the VC Contractor (whether in contract, tort or otherwise); and
  - (iii) if any of the provisions of Part 4 of the *Civil Liability Act 2002 (NSW)* are applied to any Claim by the Principal against the VC Contractor (whether in contract, tort or otherwise), the VC Contractor must indemnify the Principal against any Loss, damage or expense that forms part of a Claim by the Principal against the VC Contractor which the Principal cannot recover from the VC Contractor because of the operation of Part 4 of the *Civil Liability Act 2002 (NSW)*.
- (b) **(Proportionate liability)** Without limiting clause 31.5(a), the rights, obligations and Liabilities of the Principal and the VC Contractor under this deed with respect to proportionate liability are as specified in this deed and not otherwise, whether

these rights, obligations or Liabilities are sought to be enforced by a Claim in contract, in tort or otherwise.

## 32. DEFAULT AND TERMINATION

### 32.1 VC Contractor Event of Default

Each of the following events is a VC Contractor Event of Default:

- (a) (**failure to progress**) the VC Contractor fails to expeditiously and diligently progress the VC Contractor's Activities as required under clause 21.1(a);
- (b) (**wrongful suspension**) the VC Contractor suspends performance of the VC Contractor's Activities (except to the extent permitted under this deed or by Law);
- (c) (**failure to insure**) the VC Contractor does not effect or maintain (or cause to be effected or maintained) an Insurance as required by this deed and fails to do so within 10 Business Days after receipt of a notice from the Principal directing it to do so;
- (d) (**subcontracting**) the VC Contractor breaches its obligations under clause 17 (*Subcontracting*);
- (e) (**fraud**) the Principal is the victim of any fraud or dishonest conduct by the VC Contractor in connection with the VC Contractor's Activities or Sydney Metro City & Southwest, or the Independent Commission Against Corruption or similar public body determines that the VC Contractor has engaged in corrupt conduct, collusive pricing or other similar activity;
- (f) (**incorrect representation or warranty**) a representation or warranty made or given by the VC Contractor in this deed or any other of the VC Station Contract Documents proves to be untrue which has a material adverse effect on the VC Contractor's ability to comply with its obligations under the VC Station Contract Documents;
- (g) (**delay**) the VC Contractor has not achieved:
  - (i) Milestone Achievement of a Milestone by the Date for Milestone Achievement for that Milestone;
  - (ii) Substantial Completion of a Portion by the Date for Substantial Completion for that Portion; or
  - (iii) Completion of a Portion by the Date for Completion for that Portion,
 provided that where an event under this clause 32.1(g) occurs, the parties acknowledge and agree that (for the purposes of clause 32.2(a)(iii)(A)) it shall be a VC Contractor Event of Default which is capable of remedy by the payment of Delay Liquidated Damages and compliance with clauses 32.2(b)(ii)(A), 32.2(b)(ii)(B) and 32.2(b)(ii)(C);
- (h) (**unconditional undertakings**) the VC Contractor fails to provide the unconditional undertakings in breach of clause 3.1 (*Unconditional undertakings*);
- (i) (**Parent Company Guarantee**) the VC Contractor fails to provide a Parent Company Guarantee in breach of clause 3.4 (*Parent Company Guarantee*);
- (j) (**Parent Company Guarantee is void or voidable**) the Parent Company Guarantee becomes void or voidable;
- (k) Not used;

- (l) (**WHS**) the VC Contractor fails to comply with its obligations under this deed regarding work health and safety;
- (m) (**accreditation status**) lack or breach of rail Accreditation by the VC Contractor (where the VC Contractor is obliged to hold rail Accreditation), AEO status, ASA Authorisation, or threatened or actual suspension or revocation of the VC Contractor's rail Accreditation, AEO status or ASA Authorisation;
- (n) (**untrue statutory declaration**) the VC Contractor knowingly provides a statutory declaration or documentary evidence which contains a statement that is untrue; and
- (o) (**other breach**) any other material breach by the VC Contractor of this deed or any other VC Station Contract Document.

### 32.2 Default Notice

- (a) (**Content of Default Notice**) If a VC Contractor Event of Default occurs, the Principal may give the VC Contractor a notice (**Default Notice**):
  - (i) stating that it is a notice under this clause 32.2;
  - (ii) providing details of the VC Contractor Event of Default; and
  - (iii) requiring the VC Contractor to:
    - (A) remedy the VC Contractor Event of Default; or
    - (B) where the VC Contractor Event of Default cannot be remedied, overcome the VC Contractor Event of Default or make other arrangements to the satisfaction of the Principal,

within a reasonable period of time specified in the Default Notice (which period must not be less than 15 Business Days from the date of the Default Notice).
- (b) (**Compliance and Remedy Plan**) If the Principal gives the VC Contractor a Default Notice:
  - (i) the VC Contractor must comply with the Default Notice; and
  - (ii) unless urgent action is necessary or the relevant VC Contractor Event of Default is a failure to pay money or a VC Contractor Event of Default referred to in clause 32.1(h), clause 32.1(i) or clause 32.1(j):
    - (A) the VC Contractor must give the Principal a program and plan (a **Remedy Plan**) outlining the manner in which the VC Contractor will:
      - (aa) remedy the VC Contractor Event of Default; or
      - (bb) overcome the VC Contractor Event of Default or make other arrangements to the satisfaction of the Principal,
    - in accordance with the terms of the Default Notice;
    - (B) the Principal must consult with the VC Contractor to develop and agree that Remedy Plan; and
    - (C) the VC Contractor must thereafter comply with that Remedy Plan.

### 32.3 Rights of the Principal following Default Notice

**(Principal's rights)** If, by the time specified in the Default Notice or such longer period included in a Remedy Plan and agreed by the Principal, the VC Contractor fails to remedy the breach or make arrangements satisfactory to the Principal or fails to comply with a Remedy Plan, the Principal may, by notice in writing to the VC Contractor:

- (a) take out of the hands of the VC Contractor the whole or part of the work remaining to be completed; or
- (b) terminate this deed.

### 32.4 VC Contractor Termination Events

Each of the following is a VC Contractor Termination Event:

- (a) **(failure to pay)** the VC Contractor fails to pay any amount which it is obliged to pay to the Principal under this deed and the failure is not remedied within 20 Business Days after a written demand from the Principal;
- (b) **(abandonment)** the VC Contractor abandons the VC Contractor's Activities;
- (c) **(insolvency of VC Contractor or VC Contractor Guarantor)** an Insolvency Event occurs in relation to:
  - (i) the VC Contractor (or where the VC Contractor comprises more than one person, any one of those persons); or
  - (ii) a VC Contractor Guarantor,
 and the VC Contractor is not able to satisfy the Principal (in its absolute discretion) within 10 Business Days of the Insolvency Event occurring (or such longer period agreed by the Principal) that this deed should not be terminated;
  - (iii) Not used;
- (d) **(assignment)** the VC Contractor breaches its obligations under clause 34.1 (*Assignment*);
- (e) **(Liability caps exceeded)** the aggregate liability of the VC Contractor to the Principal:
  - (i) under or in connection with this deed, the VC Station Contract Documents and the Third Party Agreements is equal to or exceeds [REDACTED] of the Contract Sum; or
  - (ii) under clause 21.11(a) or clause 21.11(d) is equal to or exceeds:
    - (A) the LD Cap and the Principal and the VC Contractor have not agreed in writing to increase the LD Cap to [REDACTED] of the Contract Sum; or
    - (B) [REDACTED] of the Contract Sum, if the Principal and the VC Contractor have agreed to increase the LD Cap under clause 32.4(e);
- (f) **(Change in Control of VC Contractor)** a Change in Control occurs in respect of an entity that comprises the VC Contractor without the prior written consent of the Principal (other than a Change in Control that is permitted under clause 34.3(c)); or

- (g) **(Change in Control of VC Contractor Guarantor)** a Change in Control occurs in respect of the VC Contractor Guarantor without the prior written consent of the Principal (other than a Change in Control that is permitted under clause 34.4(c)).

### 32.5 Immediate termination or take out

If a VC Contractor Termination Event occurs, the Principal may, whether or not the VC Contractor is then in breach of this deed and without giving a notice under clause 32.2 (*Default Notice*), exercise a right under clause 32.3(a) or clause 32.3(b).

### 32.6 Termination of OSD PDA

- (a) **(Election to terminate where OSD PDA is terminated)** If the OSD PDA is terminated for any reason prior to the Date of Substantial Completion of the last Portion to achieve Substantial Completion, the Principal may, by notice in writing to the VC Contractor, terminate this deed.
- (b) **(Termination of the OSD PDA)** If:
  - (i) the OSD PDA is terminated prior to the Date of Completion of the last Portion to achieve Completion; and
  - (ii) this deed is not terminated,

the parties must use best endeavours to agree:

  - (iii) the amendments required to the VC Station Contract Documents to reflect the fact that:
    - (A) the OSD PDA has been terminated;
    - (B) the VC Station Contract Documents must operate independently of the VC OSD Contract Documents; and
    - (C) the Principal may engage a third party to carry out the VC Developer's Activities; and
  - (iv) any Modification required to the Project Works, the Temporary Works or the VC Contractor's Activities as a consequence of the termination of the OSD PDA, which may include a Modification to:
    - (A) ensure that Victoria Cross Station:
      - (aa) will satisfy the requirements of the SWTC; and
      - (bb) can be operated safely and in a manner which does not put the health and safety of persons at risk,

if the OSD is not constructed or "Completion" (as defined in the OSD PDA) is not achieved by the OSD Date for Completion; or

    - (B) enable the OSD to be completed after Sydney Metro City & Southwest commences operations.
- (c) **(Dispute)** If there is a dispute between the parties as to the amendments required to the VC Station Contract Documents under clause 32.6(b)(iii) or any Modification required under clause 32.6(b)(iv), that dispute will be resolved in accordance with the Dispute Procedure.
- (d) **(Modification required)** If the parties agree, or it is determined under the Dispute Procedure, that a Modification is required to the Project Works, the

Temporary Works or the VC Contractor's Activities pursuant to clause 32.6(b)(iv), that Modification will be deemed to have been proposed by the VC Contractor and approved by the Principal pursuant to clause 2 of the Modification Procedure, and clause 4 of the Modification Procedure will apply to that Modification.

### 32.7 Principal's rights after take out or termination

- (a) **(Following take out or termination)** If:
  - (i) the Principal:
    - (A) exercises its rights under clause 32.3(a); or
    - (B) terminates this deed under clause 32.3(b), clause 32.5 (*Immediate termination or take out*), clause 32.6(a) or clause 32.11 (*Termination for convenience*); or
  - (ii) the VC Contractor repudiates this deed and the Principal otherwise terminates this deed,

then:

  - (iii) **(VC Contractor obligations)** the VC Contractor:
    - (A) must novate to the Principal or the Principal's nominee those Subcontracts between the VC Contractor and the VC Contractor's Subcontractors that the Principal directs by executing a deed of novation substantially in the form of Schedule A21 (*Form of deed of novation*); and
    - (B) after 5 Business Days' written notice from the Principal, irrevocably appoints (for valuable consideration) the Principal and any authorised representative of the Principal to be the VC Contractor's attorney to:
      - (aa) execute, sign, seal and deliver all notices, deeds and documents; and
      - (bb) undertake actions in the name of the VC Contractor, for the purposes referred to in clause 32.7(a)(iii)(A); and
  - (iv) **(Principal's rights)** the Principal may:
    - (A) require the VC Contractor to:
      - (aa) make safe; and
      - (bb) remove any Construction Plant, Construction Materials and Temporary Works and all other things intended for the Project Works or the VC Contractor's Activities from, the Construction Site or any area affected by the Project Works;
    - (B) take possession of and use (and permit others to use) such of the:
      - (aa) Construction Plant, Construction Materials, Temporary Works and other things on or in the vicinity of the Construction Site or Extra Land as are reasonably required by the Principal to facilitate completion of the Project Works, except that where the Principal has terminated this deed under clause 32.11

(Termination for convenience), the Principal shall not be entitled to take possession of or use (or permit others to use):

- (a) Mobile Plant belonging to the VC Contractor itself;
  - (b) Construction Plant (not comprising Mobile Plant referred to in clause 32.7(a)(iv)(B)(aa)(a)), Construction Materials or Temporary Works belonging to the VC Contractor itself unless such Construction Plant, Construction Materials or Temporary Works have been paid for by the Principal;
  - (c) Construction Plant (not comprising Mobile Plant referred to in clause 32.7(a)(iv)(B)(aa)(a)), Construction Materials or Temporary Works which are subject to a lease or other hire arrangement, unless:
    - (i) the lease or hire arrangement has been novated from the VC Contractor to the Principal; and
    - (ii) the Principal has paid any costs arising out of or in connection with the novation; or
  - (d) Construction Plant (not comprising Mobile Plant referred to in clause 32.7(a)(iv)(B)(aa)(a)), Construction Materials or Temporary Works belonging to or leased by the VC Contractor itself unless such Construction Plant, Construction Materials or Temporary Works are required of the safety or maintenance of the Construction Site and the requirements of either clause 32.7(a)(iv)(B)(aa)(b) or clause 32.7(a)(iv)(B)(aa)(c) have been satisfied; and
  - (bb) Design Documentation, Material and other information in the possession of the VC Contractor or any of the VC Contractor's Associates and the VC Contractor must ensure that all necessary rights for this purpose are assigned to the Principal;
  - (C) complete any part of the Project Works remaining to be completed;
  - (D) contract with any of the Subcontractors;
  - (E) exclude the VC Contractor and any of its Associates from the Construction Site and the Extra Land; and
  - (F) have recourse to any unconditional undertakings held under clause 3.1 (*Unconditional undertakings*).
- (b) (**Survival**) This clause 32.7 survives the termination of this deed.

### 32.8 Principal's entitlements after take-out

- (a) (**No further payment**) If the Principal exercises the right under clause 32.3(a), the VC Contractor will not be entitled to any further payment in respect of the work taken out of the hands of the VC Contractor unless a payment becomes due to the VC Contractor under this clause 32.8.
- (b) (**Cost to complete**) When all of the work taken out of the hands of the VC Contractor under clause 32.3(a) is completed, the Principal's Representative will

ascertain the cost incurred by the Principal in completing the work and will issue a certificate to the VC Contractor certifying the amount. If the cost incurred by the Principal is:

- (i) greater than the amount that would have been paid to the VC Contractor if the VC Contractor had completed the work, the difference will be a debt due from the VC Contractor to the Principal; or
- (ii) less than the amount that would have been paid to the VC Contractor if the VC Contractor had completed the work, the difference will be a debt due to the VC Contractor from the Principal.
- (c) (**Recovery of costs**) Without limiting clause 32.8(b), if the Principal exercises the right under clause 32.3(a), the Principal will be entitled to recover from the VC Contractor any Loss incurred or suffered by it as a result of, or arising out of, or in any way in connection with, the exercise of such right.
- (d) (**Grant of lien**) If the VC Contractor is indebted to the Principal, the VC Contractor grants to the Principal a lien over the Construction Plant, Construction Materials, Temporary Works or other things taken under clause 32.7 (*Principal's rights after take out or termination*) such that the Principal may retain that property until the debt is met. If after reasonable notice, the VC Contractor fails to pay the debt, the Principal may sell the Construction Plant, Construction Materials, Temporary Works or other things and apply the proceeds to satisfaction of the debt and the costs of sale. Any excess will be paid to the VC Contractor.

### 32.9 Principal's rights after termination

- (a) (**Principal's rights**) Subject to clause 32.13 (*Preservation of rights*), if:
  - (i) the Principal terminates this deed under:
    - (A) clause 32.3 (*Rights of the Principal following Default Notice*) or clause 32.5 (*Immediate termination or take out*); or
    - (B) clause 32.6(a) due to the termination of the OSD PDA for a "VC Developer Termination Event" (as defined in the OSD PDA); or
  - (ii) if the VC Contractor repudiates this deed and the Principal otherwise terminates this deed,

the Principal will:

  - (iii) not be obliged to make any further payments to the VC Contractor, including any money that is the subject of a payment claim under clause 28.3 (*Payment claims*) or a payment schedule issued under clause 28.3(d)(i) or clause 28.3(d)(ii); and
  - (iv) be entitled to recover from the VC Contractor any Loss incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination.
- (b) (**Survival**) This clause 32.9 survives the termination of this deed.

### 32.10 VC Contractor's rights after repudiation or wrongful termination

- (a) (**Termination deemed lawful**) If the Principal:
  - (i) repudiates this deed and the VC Contractor terminates this deed; or

- (ii) wrongfully:
  - (A) exercises or attempts to exercise any right or power conferred on it by clause 32.3 (*Rights of the Principal following Default Notice*), clause 32.5 (*Immediate termination or take out*) or clause 32.6(a); or
  - (B) determines or purports to determine this deed at common law,

then the:

- (iii) Principal's actions will be deemed to have been a lawful termination in accordance with clause 32.11 (*Termination for convenience*) and the VC Contractor's sole rights in such circumstances will be those set out in clause 32.12 (*Payment for termination for convenience, repudiation or wrongful termination*); and
- (iv) the VC Contractor:
  - (A) will not be entitled to the payment of damages;
  - (B) will not be entitled to any payment on a quantum meruit basis; and
  - (C) waives all other rights it has to make a Claim in such circumstances.

- (b) (**Survival**) This clause 32.10 will survive the termination of this deed.

### 32.11 Termination for convenience

Without prejudice to any of the Principal's other rights, entitlements or powers under this deed, the Principal may:

- (a) at any time for its sole convenience, and for any reason, by written notice to the VC Contractor terminate this deed effective from the time stated in the notice or if no such time is stated, at the time the notice is given to the VC Contractor; and
- (b) thereafter, at the Principal's absolute discretion, complete the uncompleted part of the VC Contractor's Activities or the Project Works either itself or by engaging other contractors.

### 32.12 Payment for termination for convenience repudiation or wrongful termination

- (a) (**VC Contractor entitlements**) If the Principal terminates this deed under:
  - (i) clause 32.11 (*Termination for convenience*) or is deemed by clause 32.10 (*VC Contractor's rights after repudiation or wrongful termination*) to have terminated this deed under clause 32.11 (*Termination for convenience*); or
  - (ii) clause 32.6(a) due to the termination of the OSD PDA for a "Principal Termination Event" (as defined in the OSD PDA),

without prejudice to any of the Principal's other rights, entitlements or powers under this deed, the VC Contractor will be entitled to payment of the following amounts as determined by the Principal's Representative:

- (iii) for work carried out prior to the date of termination, the amount which would have been payable if this deed had not been terminated and the VC Contractor submitted a payment claim under clause 28.3 (*Payment claims*) for work carried out to the date of termination;

- (iv) the cost of Construction Materials or other items reasonably ordered by the VC Contractor for the VC Contractor's Activities and for which it is legally bound to pay provided that:
    - (A) the value of the Construction Materials and other items have not been previously paid or included in the amount payable under clause 32.12(a)(iii); and
    - (B) title in the Construction Materials will vest in the Principal upon payment;
  - (v) the reasonable cost of making the Construction Site safe and removing from the Construction Site all Construction Plant, Construction Materials and Temporary Works and other things used in the performance of the VC Contractor's Activities;
  - (vi) the reasonable costs incurred by the VC Contractor as a result of terminating Subcontracts;
  - (vii) the costs reasonably incurred by the VC Contractor in the expectation of completing the whole of the VC Contractor's Activities and not included in any other payment by the Principal; and
  - (viii) where termination occurs prior to Substantial Completion of the last Portion to achieve Substantial Completion, [ ] of the unpaid balance (if any) of the Contract Sum (after taking into account the amount payable under clause 32.12(a)(iii)) as that balance stands at the date of termination.
- (b) (**Obligation to mitigate**) The VC Contractor must take all steps possible to mitigate the costs referred to in clause 32.12(a)(iv) to clause 32.12(a)(vii).
- (c) (**Return of unconditional undertakings**) To the extent it has not had recourse to them, the Principal will return all unconditional undertakings then held by the Principal when the VC Contractor has complied with all of its obligations under this clause 32.
- (d) (**No further Liability**) The amounts to which the VC Contractor is entitled under this clause 32.12 are a limitation on the Principal's Liability to the VC Contractor arising out of, or in any way in connection with, the termination of this deed and the Principal will otherwise have no Liability to the VC Contractor upon any Claim arising out of, or in any way in connection with, the termination of this deed.
- (e) (**Survival**) This clause 32.12 will survive the termination of this deed.

### 32.13 Termination by frustration

- (a) (**VC Contractor entitlements**) If this deed is frustrated in accordance with Law, the Principal will:
- (i) pay the VC Contractor the amounts referred to clause 32.12(a)(iii) to clause 32.12(a)(vii), as determined by the Principal's Representative; and
  - (ii) to the extent it has not had recourse to them, return all unconditional undertakings then held by the Principal when the VC Contractor has complied with all of its obligations under this clause 32.
- (b) (**No further Liability**) The amounts to which the VC Contractor is entitled under this clause 32.13 are a limitation on the Principal's Liability to the VC Contractor arising out of, or in any way in connection with, the frustration of this deed and

the Principal will otherwise have no Liability to the VC Contractor upon any Claim arising out of, or in any way in connection with, the frustration of this deed.

- (c) **(Survival)** This clause 32.13 will survive the termination of this deed.

#### 32.14 Preservation of rights

- (a) **(No prejudice)** Nothing in this clause 32 or that the Principal does or fails to do pursuant to this clause 32 will prejudice the right of the Principal to exercise any right or remedy which it may have, including where the VC Contractor breaches or repudiates this deed.
- (b) **(Direct deeds)** The Principal's rights and entitlements set out in this clause 32 are in addition to the Principal's rights and entitlements under any Significant Subcontractor Direct Deed.

#### 32.15 No other termination rights

This clause 32 is an exhaustive code with respect to the VC Contractor's rights arising out of or in any way in connection with any termination and the VC Contractor:

- (a) **(no other termination rights)** cannot otherwise terminate, rescind or treat this deed as repudiated; and
- (b) **(waiver of rights)** waives all rights at Law to terminate, rescind or treat this deed as repudiated,

otherwise than in accordance with this clause 32.

### 33. CONFIDENTIALITY AND PERMITTED DISCLOSURE

#### 33.1 Confidentiality

- (a) **(Keep confidential)** Subject to clause 33.1(b) and clause 33.1(c), the VC Contractor must:
  - (i) keep the VC Station Contract Documents, all Information Documents and any information relating to the Project Works, the Temporary Works, the VC Contractor's Activities and any discussions concerning the VC Station Contract Documents or any Information Documents (together, the **Information**) confidential;
  - (ii) not use the Information except as necessary for the performance of the VC Contractor's Activities; and
  - (iii) ensure that each of its Associates comply with clause 33.1(a)(i) and clause 30.1(a)(ii).
- (b) **(No obligation to keep confidential)** The VC Contractor is not obliged to keep any Information confidential to the extent:
  - (i) that Information is in the public domain through no default of the VC Contractor;
  - (ii) that Information is:
    - (A) required to be disclosed by Law or the listing rules of any recognised stock exchange (to the extent applicable to it); or
    - (B) given to a court in the course of proceedings to which the VC Contractor is a party; or

- (iii) the Principal consents in writing to the disclosure of that Information.
- (c) (**Provision to other parties**) Subject to clause 33.1(a)(iii), the VC Contractor may provide the Information to its Subcontractors, employees, agents, advisors, equity investors and each of these parties' advisors as is necessary to enable the VC Contractor to perform its obligations under this deed or any other VC Station Contract Document, provided that the VC Contractor ensures that the relevant recipient is subject to the same obligations of confidentiality as those contained in this deed.

### 33.2 Principal's Public Disclosure Obligations

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

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

### 33.3 Media requests

Without limiting clause 33.1 (*Confidentiality*) and clause 33.2 (*Principal's Public Disclosure Obligations*), if the VC Contractor receives a request from the media for comment with respect to any aspect of the VC Contractor's Activities, the VC Contractor must:

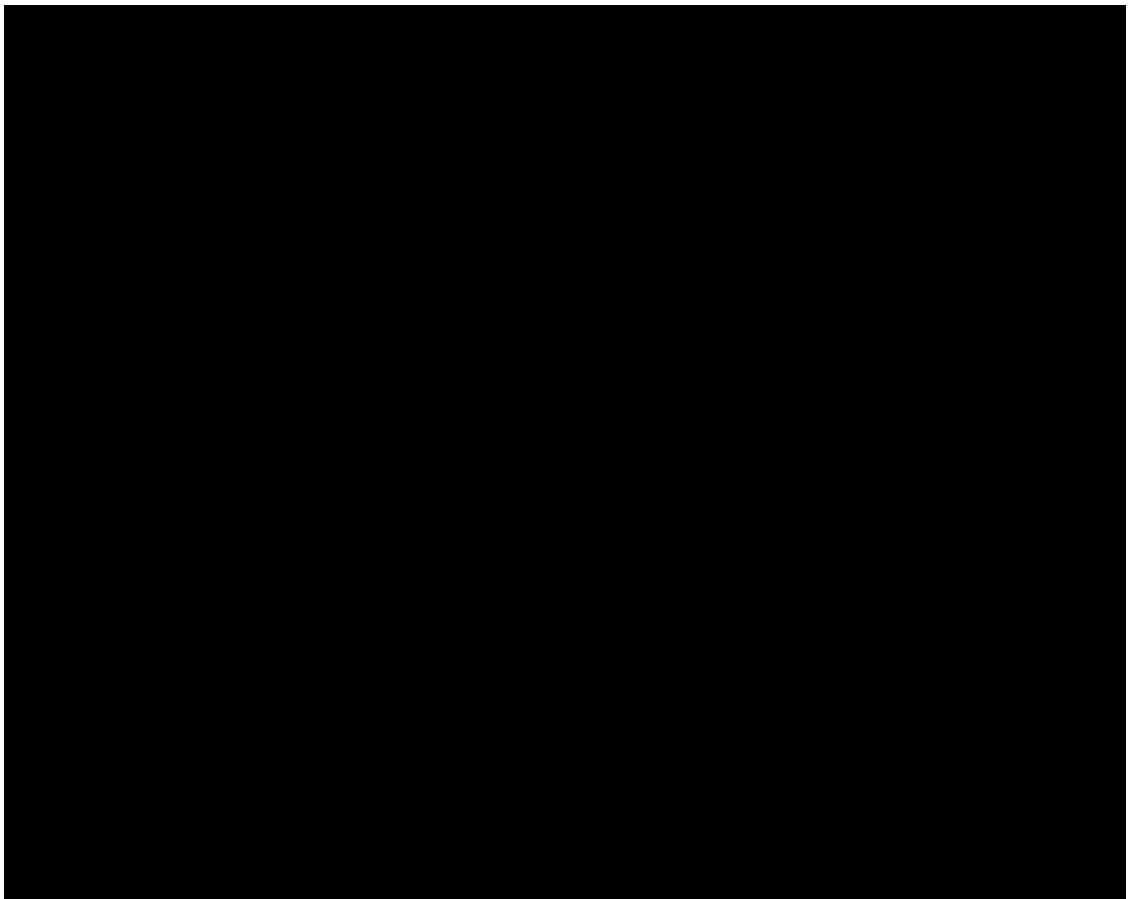
- (a) promptly provide details of the request to the Principal;
- (b) in relation to the matters contemplated by the Community Communications Strategy, respond only in accordance with the requirements of that Project Plan; and
- (c) in relation to matters not contemplated by the Community Communications Strategy, not respond without the prior written consent of the Principal (such consent not to be unreasonably withheld or delayed).

## 34. ASSIGNMENT AND CHANGE IN CONTROL

### 34.1 Assignment by the VC Contractor

- (a) (**No assignment without consent**) Subject to the remainder of this clause 34.1, the VC Contractor must not assign, novate, grant a Security Interest over, or otherwise dispose of all or any benefit, right or interest under or in:
  - (i) the VC Station Contract Documents; or
  - (ii) prior to the OSD Date of Completion:
    - (A) the Construction Site; or
    - (B) the Principal's Land,

without the Principal's prior written consent (which may be given or withheld in its absolute discretion).

- (b) **(Conditions of assignment)** It will be a condition of any assignment or novation of this deed in accordance with clause 34.1(a) that the proposed counterparty provides a parent company guarantee in a form satisfactory to the Principal from a parent company with a long term credit rating and financial standing acceptable to the Principal (in its absolute discretion).
- 

#### **34.2 Assignment and novation by the Principal**

- (a) **(Principal's right to assign and novate)** Without limiting clause 40.16 (*Transfer of functions or Public Transport Agency assets*), the Principal may:
- (i) assign, novate or otherwise transfer all or any part of its rights under this deed without the VC Contractor's prior approval, provided that the assignee, novatee or transferee (as applicable) is an authority of the State, a Minister or a government entity including a wholly owned State corporation or any other entity that is wholly owned or controlled by the State;
  - (ii) not otherwise assign, novate or otherwise transfer all or any part of its rights under this deed without the VC Contractor's prior written consent (which must not be unreasonably withheld or delayed); and
  - (iii) disclose to a proposed assignee, novatee or transferee any information in the possession of the Principal relating to the VC Contractor. The VC Contractor agrees to any such assignment, novation or transfer such that no further consent is required.

- (b) **(Consequences of novation)** In the case of a novation by the Principal under this clause:
  - (i) the Principal will be released from its obligations under this deed and the respective rights of the Principal and the VC Contractor against one another under this deed will cease;
  - (ii) the novated deed will be on the same terms as this deed, such that the incoming party and the VC Contractor will assume the same obligations to one another and acquire the identical rights against one another as the rights and obligations discharged under clause 34.2(b)(i), except that the incoming party replaces the Principal for all purposes under the deed; and
  - (iii) the VC Contractor consents to the disclosure by or on behalf of the Principal to the incoming party of their confidential information for the purposes of the novation.
- (c) **(Principal's right to deal with its functions)** The Principal may at any time enter into any subcontracting, delegation or agency agreements or arrangements in relation to any of its functions.

### 34.3 Change in control of an entity that comprises the VC Contractor

- (a) Subject to the terms of this clause 34.3, the VC Contractor must ensure that there is no Change in Control of any entity that comprises the VC Contractor without the prior written consent of the Principal (which must not be unreasonably withheld).
- (b) The VC Contractor must notify the Principal in writing of any proposed Change in Control of any entity that comprises the VC Contractor, and provide:
  - (i) full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and
  - (ii) all other information necessary for the Principal to determine whether to exercise its rights under clause 34.3(d), in relation to the Change in Control of the relevant entity that comprises the VC Contractor.
- (c) The Principal's approval is not required for a Change in Control arising from:
  - (i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or
  - (ii) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the VC Contractor gives the Principal written notice of the transfer [REDACTED]
- (d) The Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of an entity that comprises the VC Contractor where the Principal is of the reasonable opinion that:
  - (i) the person or entity which will exercise Control of the VC Contractor or the relevant entity that comprises the VC Contractor:
    - (A) is not solvent and reputable;
    - (B) has an interest or duty which conflicts in a material way with the interests of the Principal; or

- (C) is involved in a business or activity which is incompatible, or inappropriate, in relation to Sydney Metro City & Southwest; or
- (ii) as a result of the Change in Control, the VC Contractor will no longer:
  - (A) have sufficient expertise and ability; or
  - (B) be of sufficiently high financial and commercial standing,
 to properly carry out the obligations of the VC Contractor under this deed.
- (e) If a Change in Control of any entity that comprises the VC Contractor occurs without the permission of the Principal (other than a Change in Control permitted under clause 34.3(c)), the VC Contractor acknowledges that the Principal may terminate this deed by notice in writing to the VC Contractor.
- (f) The Principal's approval of a Change in Control of any entity that comprises the VC Contractor will not relieve the VC Contractor of any of its obligations under this deed.

#### 34.4 Change in control of the VC Contractor Guarantor

- (a) Subject to the terms of this clause 34.4, the VC Contractor must ensure that there is no Change in Control of the VC Contractor Guarantor without the prior written consent of the Principal (which must not be unreasonably withheld).
- (b) The VC Contractor must notify the Principal in writing of any proposed Change in Control of the VC Contractor Guarantor, and provide:
  - (i) full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and
  - (ii) all other information necessary for the Principal to determine whether to exercise its rights under clause 34.4(d), in relation to the Change in Control of the VC Contractor Guarantor.
- (c) The Principal's approval is not required for a Change in Control arising from:
  - (i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or
  - (ii) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Entity of that person, provided the VC Contractor gives the Principal written notice of the transfer [REDACTED]
- (d) The Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of the VC Contractor Guarantor where the Principal is of the reasonable opinion that:
  - (i) the person or entity which will exercise Control of the VC Contractor Guarantor:
    - (A) is not solvent and reputable;
    - (B) has an interest or duty which conflicts in a material way with the interests of the Principal; or

- (C) is involved in a business or activity which is incompatible, or inappropriate, in relation to Sydney Metro City & Southwest; or
- (ii) as a result of the Change in Control, the VC Contractor Guarantor will no longer:
  - (A) have sufficient expertise and ability; or
  - (B) be of sufficiently high financial and commercial standing,
 to properly carry out the obligations of the VC Contractor Guarantor under the Parent Company Guarantee.
- (e) If a Change in Control of the VC Contractor Guarantor occurs without the permission of the Principal (other than a Change in Control permitted under clause 34.4(c)), the VC Contractor acknowledges that the Principal may terminate this deed by notice in writing to the VC Contractor.
- (f) The Principal's approval of a Change in Control of the VC Contractor Guarantor will not relieve the VC Contractor of any of its obligations under this deed.

### 35. DISPUTE RESOLUTION

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

### 36. REPRESENTATIONS AND WARRANTIES

#### 36.1 Principal's representations and warranties

The Principal represents and warrants for the benefit of the VC Contractor that:

- (a) (**statutory body**) it is a statutory body validly constituted and existing under the Transport Administration Act;
- (b) (**all authorisations**) it has or will have in full force and effect all authorisations necessary under its constituent legislation to enter into and perform its obligations under each of the VC Station Contract Documents (or will have them in full force and effect at the time the obligation is to be performed);
- (c) (**binding obligations**) each of the Principal VC Station Contract Documents constitutes a valid and legally binding obligation of it in accordance with its terms; and
- (d) (**non-violation of Law**) the execution, delivery and performance of each of the Principal VC Station Contract Documents by the Principal does not violate any Law, or any document or agreement to which it is a party or which is binding on it or its assets.

#### 36.2 VC Contractor representations and warranties

The VC Contractor represents and warrants for the benefit of the Principal that:

- (a) (**incorporated**) it has been incorporated as a company limited by shares in accordance with the Law of its place of incorporation, is validly existing under that

Law and has power and authority to carry on its business as it is now being conducted;

- (b) (**properly constituted**) it is duly registered, properly constituted and remains in existence;
- (c) (**power**) it has, or will have (in respect of those VC Station Contract Documents still to be executed as at the date of this deed), power to enter into the VC Station Contract Documents to which it is or will be a party and comply with its obligations under them;
- (d) (**all authorisations**) it has, or will have (in respect of those VC Station Contract Documents still to be executed as at the date of this deed) in full force and effect the authorisations necessary for it to enter into the VC Station Contract Documents to which it is or will be a party, to comply with its obligations under them and to allow them to be enforced;
- (e) (**binding obligations**) its obligations under the VC Station Contract Documents (once executed) are valid and binding and are enforceable against it in accordance with their terms;
- (f) (**no contravention**) the VC Station Contract Documents and the transactions under them which involve it do not contravene its constituent documents or any Law or obligation by which it is bound or to which any of its assets are subject or cause a limitation on its powers or the powers of its directors to be exceeded;
- (g) (**benefits**) it benefits by entering into the VC Station Contract Documents to which it is or will be a party;
- (h) (**trustee**) it is not the trustee or responsible entity of any trust, nor does it hold any property subject to or impressed by any trust;
- (i) (**payment of debts**) there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable;
- (j) (**no breach**) it is not in breach of a Law or obligation affecting it or its assets in a way which is, or is likely to have, a material adverse effect on its ability to comply with its obligations under this deed and it is not in default of its material obligations under any of the VC Station Contract Documents;
- (k) (**consolidated group**) except as disclosed in writing to the Principal prior to the date of this deed, it is not a member of any consolidated group for purposes of the *Income Assessment Act 1997* (Cth);
- (l) (**no Event of Default**) no VC Contractor Event of Default has occurred or is subsisting;
- (m) (**no Liabilities**) it has not traded since its incorporation other than for the purposes of entering into the VC Station Contract Documents to which it is a party and has no Liabilities other than those that have arisen in connection with entering into those VC Station Contract Documents;
- (n) (**no immunity**) it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (o) (**no material change**) except to the extent otherwise disclosed by the VC Contractor prior to the date on which the warranty is given or deemed repeated, there has been no material change in the financial condition of the VC Contractor

(since its incorporation) which would prejudice the ability of the VC Contractor to perform its obligations under the VC Station Contract Documents;

- (p) (**full disclosure**) it is not aware of any material facts or circumstances that have not been disclosed to the Principal and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this deed with the VC Contractor;
- (q) (**no litigation**) except to the extent otherwise disclosed by the VC Contractor prior to the date on which the warranty is given or deemed repeated, no litigation, arbitration, mediation, conciliation, criminal or administrative procedures are current, pending or to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect on it or its ability to perform its financial or other obligations under any VC Station Contract Document to which it is a party; and
- (r) (**FIRB**) the Treasurer of the Commonwealth of Australia cannot prohibit and has not prohibited the grant of this deed under the FIRB Act.

### 36.3 Repetition of representation and warranties

The representations and warranties contained in clause 36.2(k), clause 36.2(l), clause 36.2(p) and clause 36.2(r) are made on the date of this deed. Each other representation and warranty contained in clause 36.2 (*VC Contractor representations and warranties*):

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

with reference to the facts and circumstances then subsisting.

### 36.4 Obligations not affected

The VC Contractor acknowledges that the representations and warranties in this clause 36 and the VC Contractor's obligations under the VC Station Contract Documents remain unaffected notwithstanding any receipt or review of, or comment or Direction on, documentation prepared by the VC Contractor.

### 36.5 Undertakings by VC Contractor

Each party undertakes to notify the other party promptly if any representation or warranty made or taken to be made by or on behalf of the party in connection with a VC Station Contract Document other than this deed is found, having regard to the other party's rights under, or by virtue of this deed, to be materially incorrect or materially misleading when made or taken to be made.

## 37. NOTIFICATION OF CLAIMS

### 37.1 Purpose of notification

- (a) (**Notice**) The parties acknowledge that notices are required to be given in the form and in the time required by this deed to give the Principal an opportunity to:
  - (i) assess the matters the subject of the Claim based on complete information at the time the circumstances giving rise to a Claim occur; and
  - (ii) consider what steps could be taken to mitigate or avoid the impact of the Claim or the circumstances giving rise to the Claim including those which

may have an impact on the relationship between the Principal and Interface Contractors, Third Parties and other stakeholders.

- (b) (**Prejudice**) The VC Contractor acknowledges that the Principal will be prejudiced and may lose its rights under arrangements with Interface Contractors, Third Parties and other stakeholders if the notices are not given by the VC Contractor in the time required under this deed.

### 37.2 Notices of Claims

Except for Claims for:

- (a) an extension of time under clause 21.6 (*Extensions of time*); or
- (b) payment under clause 28 (*Payment*),

the VC Contractor must give the Principal's Representative the notices required by clause 37.3 (*Prescribed notices*) in relation to any Claim against the Principal in respect of any Direction by the Principal's Representative or any other fact, matter or thing (including for a Contract Sum Adjustment Event or a breach of this deed by the Principal) under, arising out of, or in any way in connection with, the VC Contractor's Activities, the Project Works or this deed.

### 37.3 Prescribed notices

The notices referred to in clause 37.2 (*Notices of Claims*) are:

- (a) (**notice of Direction for a Modification**) if the VC Contractor considers that a Direction from the Principal is a Direction to perform a Modification but is not in the form of a Modification Order then, before implementing the Direction, and in any event within 10 Business Days of the Direction, a written notice specifying the Direction, and the facts, matters and circumstances which give rise to the assertion that it constitutes a Direction for a Modification sufficient for the Principal to be able to ascertain whether or not the Direction was for a Modification;
- (b) (**written notice**) a written notice within 20 Business Days after:
  - (i) the first occurrence of the Direction upon which the Claim is based; or
  - (ii) the date on which the VC Contractor became aware or ought reasonably to have become aware of the other fact, matter or thing upon which the Claim is based,
 (as applicable), expressly specifying:
  - (iii) that the VC Contractor proposes to make a Claim;
  - (iv) the relevant clause of the deed under which the Claim is made; and
  - (v) the Direction or other fact, matter or thing upon which the Claim will be based;
- (c) (**written Claim**) a written Claim within 15 Business Days after giving the written notice under clause 37.3(b), which must contain sufficient detail for a party to determine whether or not the VC Contractor has an entitlement to make a Claim and the valuation of the Claim including:
  - (i) detailed particulars of the Direction or other fact, matter or thing upon which the Claim is based;

- (ii) the legal basis for the Claim including, if it is based on a term of this deed, the specific term;
  - (iii) the facts and evidence relied upon in support of the entitlement to make a Claim and the valuation of the Claim; and
  - (iv) details of the valuation claimed and how it has been calculated (including, to the extent costs have not yet been incurred, an estimate of the amount to which the VC Contractor is entitled under the deed); and
- (d) (**continuing events**) if the Direction or fact, matter or thing upon which a Claim is based or the consequences of the Direction or fact, matter or thing continue for more than 10 Business Days, the information required by clause 37.3(c) must be provided every 20 Business Days after the written claim under clause 37.3(c), until after the Direction or fact, matter or thing upon which the Claim is based, has, or the consequences thereof have, ceased.

#### 37.4 No Liability

If, in relation to a Claim, the VC Contractor fails to deliver notices in the form and within the time required by clause 37.3 (*Prescribed notices*) the Principal will have no Liability to the VC Contractor in relation to the Claim arising out of or in any way in connection with, the relevant Direction or fact, matter or thing.

#### 37.5 Other provisions unaffected

Nothing in this clause 37 will limit the operation or effect of any other provision of this deed which:

- (a) requires the VC Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal; or
- (b) excludes the Liability of the Principal.

#### 38. COSTS

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

#### 39. NOTICES

- (a) (**Meaning of Notice**) Wherever referred to in this clause 39, **Notice** means each communication (including each notice, consent, approval, request and demand) under or in connection with this deed.
- (b) (**PDCS**) At any time and from time to time, the Principal's Representative may notify the VC Contractor 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 parties to use the PDCS;
  - (iv) any requirement for specific notices (eg notice of Claims);
  - (v) the name and contact details of any additional person which the Principal nominates for receipt of Notices under this deed; and

- (vi) any other information reasonably necessary for the use and service of Notices via the PDCS.
- (c) (**No PDCS**) At any time and from time to time, the Principal's Representative may notify the VC Contractor that a PDCS will not be used for giving certain Notices under or in connection with this deed. The Principal's Representative's notice will state that such Notices will be given in accordance with clause 39(d)(i) and must be given 10 Business Days prior to the implementation of any such change to the notice arrangements.
- (d) (**Content of Notice**) Each Notice must:
- (i) before the date referred to in clause 39(b)(ii) or where clause 39(c) applies:
- (A) be in writing;
- (B) be addressed:
- (aa) in the case of a Notice from the VC Contractor, to the Principal's Representative; or
- (bb) in the case of a Notice from the Principal, to the VC Contractor's Representative;
- (C) comply with any requirements for specific notices (eg notices of Claims) specified by the Principal in writing;
- (D) be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
- (E) be delivered or posted to the address or sent to the email address shown in item 11 or item 12 (as relevant) of the Reference Schedule (or to any new address or email address notified by the intended recipient); and
- (ii) on and from the commencement date for use of the PDCS referred to in clause 39(b)(ii) (other than where clause 39(c) or clause 39(d)(ii)(B) applies):
- (A) be sent through the PDCS in accordance with the requirements set out in clause 39(f):
- (aa) in the case of a Notice to the Principal, be addressed to the Principal's Representative; and
- (bb) in the case of a Notice to the VC Contractor, be addressed to the VC Contractor's Representative; or
- (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 39(d)(i).
- (e) (**Communication received**) 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.

(f) **(PDCS Notices)** 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 39(f)(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.

(g) **(VC Contractor warranties)** The VC Contractor warrants that it will:

- (i) ensure that relevant trained personnel log on and use the PDCS and check whether Notices have been received on each Business Day;
- (ii) comply with any user guide and protocol with respect to the PDCS provided by the Principal to the VC Contractor from time to time and all necessary training required by the Principal's Representative;
- (iii) advise the Principal's Representatives of which personnel require access to the PDCS; and
- (iv) 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 39(d)(ii)(B) to the Principal's Representative through the PDCS.

(h) **(No Liability)** The Principal has no Liability for any Losses the VC Contractor may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS.

(i) **(Interface Contractor)** If this deed requires the VC Contractor to provide any documents, notices or other communications to an Interface Contractor, the VC Contractor must address those communications to the relevant Interface Contractor:

- (i) at the address notified by the Principal to the VC Contractor; or
- (ii) if required by the Principal, by way of the PDCS.

## 40. GENERAL

### 40.1 Governing Law and jurisdiction

- (a) This deed is governed by and must be construed according to the Law in force in New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed.

### 40.2 Amendments

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

### 40.3 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver by the Principal of:
  - (i) a breach of a term of this deed; or
  - (ii) any other failure by the VC Contractor to comply with a requirement of this deed, including any requirement to give any notice which it is required to give in order to preserve its entitlement to make any Claim against the Principal,

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

### 40.4 Survival of certain provisions; no merger

- (a) (**Surviving clauses**) Without limiting clause 40.12(a) or the schedules to this deed:
  - (i) clause 1 (*Definitions and interpretation*), clause 3 (*Security*), clause 10.2 (*Information Documents*), clause 25 (*Intellectual Property rights*), clause 28.9 (*Right of set-off*), clause 28.13 (*Interest*), clause 29 (*GST*), clause 31 (*Liability*), clause 32.7 (*Principal's rights after take out or termination*), clause 32.8 (*Principal's entitlements after take-out*), clause 32.9 (*Principal's rights after termination*), clause 32.10 (*VC Contractor's rights after repudiation or wrongful termination*), clause 32.11(b), clause 32.12 (*Payment for termination for convenience repudiation or wrongful termination*), clause 32.13 (*Termination by frustration*), clause 33 (*Confidentiality and permitted disclosure*), clause 35 (*Dispute resolution*), clause 37 (*Notification of Claims*), clause 39 (*Notices*), clause 40 (*General*),

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

- (ii) if this deed is rescinded or terminated, no party will be liable to any other party except:
  - (A) under the Surviving Clauses; or
  - (B) in respect of any breach of this deed occurring before such rescission or termination.
- (b) (**No merger**) No right or obligation of any party will merge on completion of any transaction under this deed. All rights and obligations under this deed survive the execution and delivery of any transfer or other document which implements any transaction under this deed.

#### 40.5 **Further acts and documents**

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

#### 40.6 **Liability for Taxes**

Except as otherwise specified in this deed, the VC Contractor must pay or reimburse the Principal on demand for the Costs of the Principal (including legal Costs on a solicitor and own client basis) in connection with any Taxes which may be payable or determined to be payable in connection with this deed.

#### 40.7 **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.

#### 40.8 **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.

#### 40.9 **Exercise of remedies**

- (a) If the VC Contractor breaches any of its obligations under this deed or any other VC Station Contract Document, the Principal may exercise any or all of the rights and powers and pursue any or all of the remedies available to the Principal under the VC Station Contract Documents and/or enforce any other legal or equitable remedy available under applicable Law.
- (b) Each and every right, power and remedy of the Principal will be cumulative and in addition to any other right, power and remedy, whether under a VC Station Contract Document or applicable Law, which may be exercised by the Principal and

the exercise of a right, power or remedy will not be construed to be a waiver of the right to exercise any other right, power or remedy.

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

**40.10 Entire agreement**

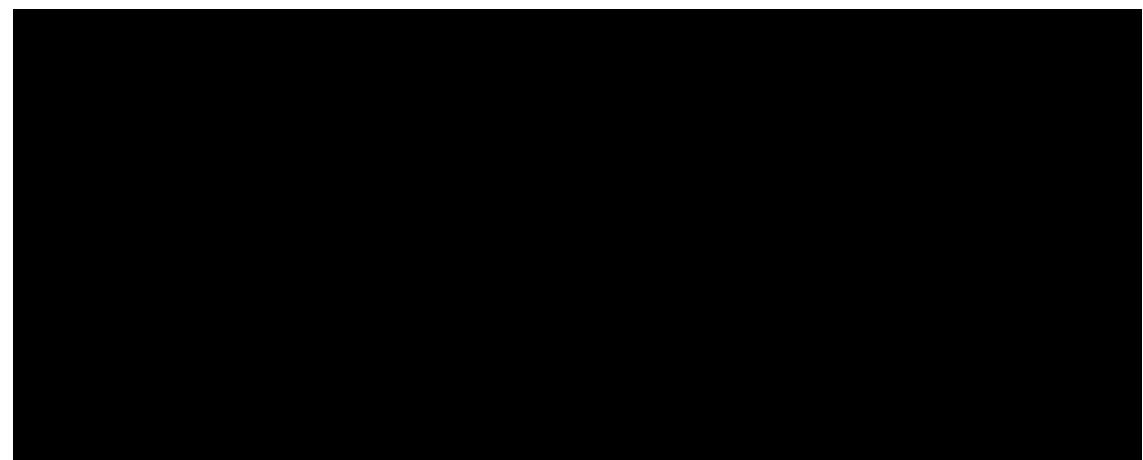
To the extent permitted by Law, in relation to its subject matter, this deed embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties and supersedes any prior written or other agreement of the parties.

**40.11 Joint and several liability**

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

**40.12 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.
- (d) Where the VC Contractor gives any indemnity or release under any of the VC Station Contract Documents, it gives an equivalent indemnity and release to the State. The Principal holds for itself and on trust for the State the benefit of each such indemnity and release in this deed.
- (e) Where the VC Contractor indemnifies the Principal under this deed from and against any Loss, its liability to indemnify the Principal will be reduced to the extent that an act or omission of the Principal or its Associates contributed to the Loss.



**40.13 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.

**40.14 Severability**

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

- (a) that will not affect or impair:
  - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
  - (ii) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this deed; and
- (b) the provision will be construed in a manner which:
  - (i) avoids the provision being void, illegal, invalid or unenforceable; and
  - (ii) subject to clause 40.14(b)(i), preserves to the maximum possible extent:
    - (A) the enforceability of the provision and the provisions of this deed; and
    - (B) the original effect and intent of this deed.

**40.15 Relationship between the Principal and VC Contractor**

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

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

**40.16 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 VC Contractor 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 any VC Station Contract Document, or any replacement agreement or agreements for any VC Station Contract Document to give effect to a Public Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.
- (c) The VC Contractor 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 40.16.
- (d) For the purposes of this clause 40.16 "another entity" means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation.

#### **40.17 Principal not Liable**

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

#### **40.18 Supervening legislation**

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

#### **40.19 Set off**

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

#### **40.20 Continuing breaches**

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

#### 40.21 Principal may act

- (a) **(Principal may act)** The Principal may, either itself or by a third party, perform an obligation under this deed that the VC Contractor was obliged to perform but which it failed to perform.
- (b) **(Costs)** Any Loss suffered or incurred by the Principal in so performing such an obligation will be a debt due from the VC Contractor to the Principal.
- (c) **(No obligation)** Where the Principal or the Principal's Representative is entitled under this deed to exercise any right or power to:
  - (i) direct or instruct the VC Contractor to; or
  - (ii) itself step-in to,
 take any action or omit to take any action, it is not obliged to exercise that right or power, and may do so in their absolute discretion.
- (d) **(VC Contractor remains responsible)** Where the Principal or the Principal's Representative does exercise any such right or power, the VC Contractor remains responsible for, controls and assumes the risk of all environmental, health and safety issues relating to the VC Contractor's Activities or the Project Works.

#### 40.22 Personal Property Securities Act

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

- (iii) undertakes it will not register a financing change statement without the prior written consent of the Principal; and
  - (iv) agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.
- (d) **(No disclosure)** The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the PPS Act and that this clause constitutes a confidentiality agreement within the meaning of the PPS Act.

**40.23 Vienna Convention**

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

**40.24 Attorneys**

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

**40.25 Counterparts**

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

**EXECUTED** as a deed.

Each attorney executing this deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

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

**SIGNED, SEALED AND DELIVERED** by

as attorney for **LENDLEASE BUILDING**  
**PTY LTD** ABN 97 000 098 162 under  
power of attorney dated

in the presence of:

**SIGNED, SEALED AND DELIVERED** by

as attorney for **LENDLEASE**  
**ENGINEERING PTY LTD** ABN 40 000 201  
516 under power of attorney dated

**SCHEDULE A1. – REFERENCE SCHEDULE**

(Clause 28.12(c), clause 39(d) and Schedule A2)

No	Item	Details
1.	<b>VC Contractor</b> <i>(Definition of VC Contractor)</i>	<b>Name:</b> The unincorporated joint venture comprising Lendlease Building Pty Limited and Lendlease Engineering Pty Limited <b>ABN:</b> Lendlease Building Pty Limited – ABN 97 000 098 162 Lendlease Engineering Pty Limited – ABN 40 000 201 516 <b>Address:</b> Level 14, Tower Three, International Towers, Sydney Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000
2.	<b>VC Developer</b> <i>(Definition of VC Developer)</i>	<b>Name:</b> Lendlease (Victoria Cross) Pty Limited as trustee for Lendlease Victoria Cross Trust <b>ACN:</b> 630 332 268 <b>Address:</b> Level 14, Tower Three, International Towers, Sydney Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000
3.	<b>VC Contractor Guarantor</b> <i>(Definition of VC Contractor Guarantor and clause 3.4)</i>	<b>Name:</b> [REDACTED] <b>ABN:</b> [REDACTED] <b>Address:</b> [REDACTED]
4.	<b>Not used</b>	Not used
5.	<b>Not used</b>	Not used
6.	<b>Principal's Representative</b> <i>(Definition of Principal's Representative and clause 8.1)</i>	<b>Name:</b> [REDACTED] – Project Director <b>Email:</b> [REDACTED] <b>Phone:</b> [REDACTED] Any Notice in relation to a Claim or a Dispute must also be sent to the General Counsel – Sydney Metro and sent to [REDACTED]
7.	<b>VC Contractor's Representative</b> <i>(Definition of VC Contractor's Representative and clause 8.3)</i>	<b>Name:</b> [REDACTED] – Project Director <b>Email:</b> [REDACTED] <b>Phone:</b> [REDACTED]

No	Item	Details								
8.	<b>Appointed Principal Contractor</b>  <i>(Definition of Appointed Principal Contractor and clause 6.3)</i>	<p><b>Name:</b> Lendlease Building Pty Limited</p> <p><b>ABN:</b> 97 000 098 162</p> <p><b>Address:</b> Level 14, Tower Three, International Towers, Sydney Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000</p>								
9.	<b>Principal's Land</b>  <i>(Definition of Principal's Land)</i>	<ul style="list-style-type: none"> <li>• All lots comprising Strata Plan 35644, known as "Tower Square", 155-167 Miller Street, North Sydney</li> <li>• Lot 1 in Deposited Plan 1230458, known as part of 65 Berry Street, North Sydney</li> <li>• Lot 1 in Deposited Plan 633088, known as 189 Miller Street, North Sydney</li> <li>• Lot A in Deposited Plan 160018, known as 187 Miller Street, North Sydney</li> <li>• Auto Consol 13209-142, known as 181 Miller Street, North Sydney</li> </ul>								
10.	<b>Initial Payment Security Amount and repayment amount</b>  <i>(Definition of Initial Payment Security and clause 28.12)</i>	<p>Initial Payment Security Amount: [REDACTED]</p> <p>Repayment amount:</p> <table border="1"> <thead> <tr> <th>Date of termination of SDD</th> <th>Repayment amount</th> </tr> </thead> <tbody> <tr> <td>The period up to and including the date which [REDACTED] [REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>The period commencing on the day after the date which is [REDACTED] [REDACTED] [REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>The period commencing on the day after the date which is [REDACTED] [REDACTED] [REDACTED]</td> <td>[REDACTED]</td> </tr> </tbody> </table>	Date of termination of SDD	Repayment amount	The period up to and including the date which [REDACTED] [REDACTED]	[REDACTED]	The period commencing on the day after the date which is [REDACTED] [REDACTED] [REDACTED]	[REDACTED]	The period commencing on the day after the date which is [REDACTED] [REDACTED] [REDACTED]	[REDACTED]
Date of termination of SDD	Repayment amount									
The period up to and including the date which [REDACTED] [REDACTED]	[REDACTED]									
The period commencing on the day after the date which is [REDACTED] [REDACTED] [REDACTED]	[REDACTED]									
The period commencing on the day after the date which is [REDACTED] [REDACTED] [REDACTED]	[REDACTED]									
11.	<b>Principal's Notice details</b>  <i>(Clause 39)</i>	<p><b>Address:</b> [REDACTED]</p> <p><b>Email:</b> [REDACTED]</p> <p><b>Attention:</b> [REDACTED] Project Director, and any additional person notified by the Principal in writing.</p> <p>Any Notice in relation to a Claim or a Dispute must</p>								

No	Item	Details
		also be addressed to the General Counsel – Sydney Metro and sent to [REDACTED]
12.	<b>VC Contractor's Notice details</b> <i>(Clause 39)</i>	<b>Address:</b> Level 14, Tower Three, International Towers, Sydney Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000 <b>Email:</b> [REDACTED] <b>Attention:</b> [REDACTED] – Project Director

## SCHEDULE A2. – DEFINITIONS

(Clause 1.1)

**ABC Commissioner** means the commissioner of the Australian Building and Construction Commission referred to in subsection 15(1) of the BCIIP Act.

**ABCC** means the body referred to in subsection 29(2) of the BCIIP Act.

**Acceleration** has the meaning given in clause 22.1(a)(ii).

**Accepted Defect** means a Defect accepted by the Principal under clause 27.5 (*Acceptance of a Defect*).

**Accessible** means, in relation to a part of the Construction Site, that such part is clean and clear and capable of safe use by the VC Contractor or an Interface Contractor for the purpose of carrying out the relevant works.

**Accreditation** means accreditation (including provisional accreditation, conditions or restrictions in respect of accreditation or any variation to the accreditation) under Part 3 of the Rail Safety National Law (or an exemption from the same).



**Additional Third Party Agreement** has the meaning given in clause 13(a)(iv).

**Adjoining Owner** means an entity identified in Schedule D6 (*Adjoining Properties*) as an "Adjoining Owner".

**Adjoining Property** means a property specified in Schedule D6 (*Adjoining Properties*).

**Adjoining Property Access Licence** means a licence on the terms set out at clause 2 of the Pro-forma Adjoining Property Owner Agreement.

**Adjoining Property Easement** means an Easement for Crane Access, Easement for Rock Anchors or Easement for Scaffolding.

**Adjoining Property Owner Agreement** means an agreement with an Adjoining Owner substantially in the form of the Pro-forma Adjoining Property Owner Agreement (or such other form as the Principal may agree with any Adjoining Owner) and includes the Adjoining Property Owner Agreements contained in Schedule D5 (*Third Party Agreements*).

**AEO or Authorised Engineering Organisation** means an organisation providing a defined engineering service or product that has been assessed and granted authorised engineering status for Sydney Metro City & Southwest by the ASA.

**Agreed Defect** means a Defect which the Principal and the VC Contractor agree in writing or the Principal's Representative otherwise directs does not need to be rectified in order to achieve a Significant Completion.

**Airspace Lot** means the stratum lot shown as Lot 4 in the Draft Subdivision Plan, which will be created by way of subdivision.

**Appointed Principal Contractor** means the entity referred to in item 8 of the Reference Schedule.

**Approval** means any licence, permit, consent, approval, determination, exemption, certificate or permission from any Authority or under any Law, or any requirement made under any Law, which must be obtained or satisfied (as the case may be) to perform the VC Contractor's Activities but does not include:

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

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

**ASA Authorisation** means an authorisation issued by the ASA to a legal entity which verifies that it has the relevant systems in place to carry out the class of Asset Lifecycle work specified in the authorisation.

**ASA Charter** means the document which identifies the ASA's objectives, functions, powers and governance and the duties of Public Transport Agencies and AEOs in relation to the ASA (as amended from time to time), a copy of which can be found on [www.asa.transport.nsw.gov.au](http://www.asa.transport.nsw.gov.au).

**ASA Requirements** has the meaning assigned to it in the ASA Charter.

**Asset Lifecycle** has the meaning assigned to it in the ASA Charter.

**Asset Lifecycle Services** means those parts of the VC Contractor's Activities which relate to the Asset Lifecycle of Transport Assets.

**Asset Management Information** means the information and documents relating to the operation and maintenance of the assets forming the Project Works as required by Appendix F6 of the SWTC.

**Asset Standards Authority** or **ASA** means the independent unit of that name established within Transport for NSW, the functions of which include setting, controlling, maintaining, owning and publishing the network and asset standards for Transport Assets for the Asset Lifecycle.

**Associate** means:

- (a) in respect of the Principal, the Principal's Representative and any of the employees, agents, contractors or officers of the Principal or the Principal's Representative to the extent they are engaged on Sydney Metro City & Southwest, but excludes:
  - (i) the Independent Certifier;
  - (ii) the TSE Independent Certifier;
  - (iii) the Environmental Representative;
  - (iv) the VC Contractor and each person listed in paragraph (b) of this definition;
  - (v) any Interface Contractor;
  - (vi) the Operator; and
  - (vii) the employees, agents, consultants and officers of the persons listed in paragraphs (a)(i) to (vi) (inclusive) of this definition; and

- (b) in respect of the VC Contractor:
- (i) any Subcontractor;
  - (ii) the VC Contractor Guarantor;
  - (iii) not used;
  - (iv) the VC Developer and VC Developer's Associates; and
  - (v) each of the employees, agents, contractors, consultants, officers, licensees and invitees of the VC Contractor and those persons listed in paragraphs (b)(i) to (b)(v) (inclusive) of this definition (excluding any Interface Contractor and the Independent Certifier and its employees, agents, consultants and officers).

**Authorised User** has the meaning given in clause 25.1(e).

**Authority** means:

- (a) any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality;
- (b) any other person having a right to impose a requirement, or whose consent is required, under Law with respect to any part of the VC Contractor's Activities; or
- (c) any other person having jurisdiction over, or ownership of, any Utility Services, the Utility Service Works, any Local Areas or the Local Area Works undertaken on Local Areas, excluding the Operator.

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

**Bank Bill Rate** is, for the relevant period:

- (a) the rate, expressed as a yield percent per annum (rounded downwards to 2 decimal places) quoted as the average bid rate on the Reuters monitor system page BBSY (or any page which replaces that page) at about 12:00 pm (Sydney time) on the first day of the relevant period, for Bank Bills having a tenor of approximately 90 days; or
- (b) if no average bid rate is published for Bank Bills of that tenor in accordance with paragraph (a) of this definition, the bid rate agreed in good faith by the parties having regard to the rates otherwise bid for Bank Bills having a tenor as described above at or around that time.

**BCIIP Act** means the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

**BMCS Contractor** means the contractor that:

- (a) will be engaged by the Principal under a framework agreement; and

- (b) is to be engaged by the VC Contractor in accordance with section 2 of Schedule A27 (*Nominated Subcontracts*) for the provision of the BMCS Works.

**BMCS DSI Contract** means the Nominated Subcontract to be entered into between the VC Contractor and the BMCS Contractor in respect of the BMCS Works, the form of which will be provided to the VC Contractor following execution of a framework contract by the Principal and the BMCS Contractor.

**BMCS Works** means the works to be performed by the BMCS Contractor in relation to the Project Works.

**Building Code** means the *Code for Tendering and Performance of Building Work 2016* (Cth), or any subsequent code of practice which takes effect and supersedes that Code.

**Building Management Statement** means a document substantially in the form of the Draft BMS which has been amended in accordance with Schedule D12 (*Subdivision Requirements*) and Schedule D13 (*Subdivision Principles*) so that it is in a form acceptable to the Principal and the VC Contractor (each acting reasonably).

**Building Work** has the meaning given in subsection 3(4) of the Building Code.

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

**Call-off Services** means:

- (a) the Post Completion Activities; and
- (b) the videography, filming and editing services described in section 20 of Appendix F5 of the SWTC.



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

**Change in Codes and Standards** means a change in the Codes and Standards or a change in a NSW Government Policy (including any new code, standard, specification or guideline which replaces a Code and Standard or any new NSW Government guidelines or requirements which replaces a NSW Government Policy) which takes effect after the date of this deed, excluding a change in the Codes and Standards or change in NSW Government Policy which, as at the date of this deed:

- (a) was published or of which public notice had been given (even as a possible change in the Codes and Standards or possible change in NSW Government Policy); or
- (b) a person experienced and competent in the delivery of works and services similar to the VC Contractor's Activities would have reasonably foreseen or anticipated.

**Change in Control** means, in respect of an entity, any event occurs such that a change occurs in the Control of that entity.

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

- (a) the amendment, repeal or change of an existing Law (other than an Approval or a decision of a court);
- (b) a new Law (other than an Approval or a decision of a court);
- (c) a Change in Codes and Standards which is the subject of a direction under clause 7.3(a)(ii)(B);
- (d) where:
  - (i) there is a legal challenge brought about by way of commencement of court proceedings in relation to the Planning Approval; or
  - (ii) the Planning Approval is modified, withdrawn, revoked, replaced, invalidated or suspended,

except to the extent that the legal challenge, modification, withdrawal, revocation, replacement, invalidation or suspension relates to or arises out of or in connection with (or, in the case of a legal challenge, is upheld due to) a Modification requested by the VC Contractor,

but excludes an amendment, repeal or change of an existing Law or a new Law or judgment:

- (e) in respect of Tax;
- (f) which was caused or contributed to by any act or omission of the VC Contractor; or
- (g) which, as at the date of this deed:
  - (i) was published or of which public notice had been given (even as a possible amendment, repeal or change of an existing Law or a possible new Law or judgment); or
  - (ii) a person experienced and competent in the delivery of works and services similar to the VC Contractor's Activities would have reasonably foreseen or anticipated,

in substantially the same form as the amendment, repeal or change of an existing Law or new Law or judgment occurring after the date of this deed.

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

**Codes and Standards** means:

- (a) the codes, standards, specifications and guidelines referred to in section 1.1 of Appendix A2.1 of the SWTC; and
- (b) [REDACTED]

current at the date of this deed.

[REDACTED]

**Collateral Warranty Deed Poll** means a deed poll in substantially the same form as Schedule A16 (*Form of Collateral Warranty Deed Poll*).

**Commonwealth** means the Commonwealth of Australia.

**Community Communications Strategy** means the Project Plan referred to as the Community Communications Strategy in Appendix F2 of the SWTC.

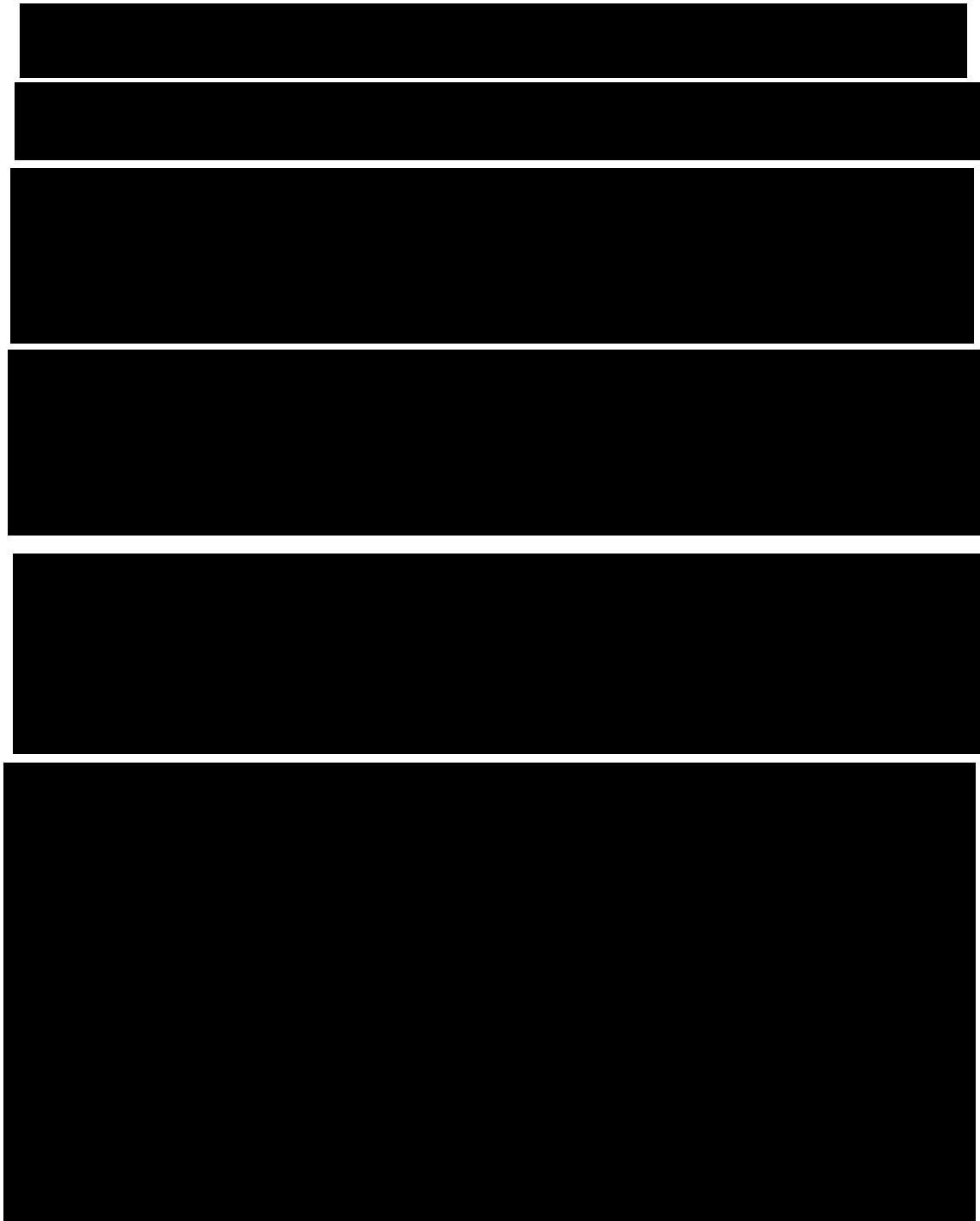
**Compensation Event** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



**Completion** means:

- (a) in respect of the Trackway Portion, the stage in the execution of VC Contractor's Activities when the VC Contractor has:
  - (i) corrected all Minor Defects and Agreed Defects that are listed in the Notice of Substantial Completion with respect to that Portion; and
  - (ii) given to the Principal's Representative (with a copy to any Interface Contractor as required by the Principal) all Asset Management Information (including as-built drawings) which has not been rejected by the Principal's

Representative in accordance with clause 6.12(c) with respect to the Trackway Portion;

- (b) in respect of a Non-Trackway Portion, the stage in the execution of VC Contractor's Activities when:
  - (i) that Portion is complete in accordance with this deed except for Minor Defects, Agreed Defects and Accepted Defects;
  - (ii) the VC Contractor has:
    - (A) corrected all Minor Defects and Agreed Defects that are listed in the Notice of Substantial Completion with respect to that Portion;
    - (B) executed a certificate in the form of Schedule B8 (*VC Contractor's Certificate – Completion*) for that Portion and provided it to the Principal's Representative and the Independent Certifier;
    - (C) carried out and passed all Tests which are required under this deed to be carried out and passed prior to Completion of that Portion being achieved;
    - (D) carried out and passed all Tests which must necessarily be carried out and passed before that Portion can be used for its intended purpose and to verify that Portion is in the condition this deed requires it to be in at Completion of that Portion;
    - (E) obtained all Approvals that it is required under this deed to obtain prior to Completion of that Portion being achieved and provided those Approvals to the Principal's Representative;
    - (F) given to the Principal's Representative (with a copy to any Interface Contractor as required by the Principal) all Asset Management Information (including as-built drawings) which has not been rejected by the Principal's Representative in accordance with clause 6.12(c) with respect of that Portion;
    - (G) given to the Principal's Representative (with a copy to any of the Interface Contractors as required by the Principal) all documents or other information in respect of the design, construction, testing, commissioning, completion, occupation, use and maintenance of that Portion which:
      - (aa) are required by this deed to be given to the Principal's Representative prior to Completion of that Portion being achieved; or
      - (bb) must necessarily be handed over before that Portion can be used for its intended purpose,

including copies of all documentation in accordance with the requirements of the SWTC;
  - (H) provided the training referred to in Appendix F4 of the SWTC to the reasonable satisfaction of the Principal's Representative;
  - (I) removed all Construction Plant from the parts of the Construction Site that relate to that Portion, other than:

- (aa) where the Principal's Representative has given a notice under clause 26.2(a) to carry out Post Completion Activities after Completion of that Portion, any Construction Plant required to carry out those Post Completion Activities; and
  - (bb) any Construction Plant necessary to facilitate the handover of that Portion to the Principal or which is required to be retained on the Construction Site in accordance with clause 6.10(c) (where approved by the Principal's Representative in accordance with clause 6.10(c));
- (J) in respect of each discrete part of Property Works that form part of that Portion:
- (aa) completed all such Property Works in accordance with clause 5.3 (*Property Works*), including all relevant work under clause 5.3(b);
  - (bb) provided the Principal's Representative with the documentation required by clause 5.3(d);
- (K) in respect of each discrete part of Utility Service Works that form part of that Portion:
- (aa) completed all such Utility Service Works in accordance with the requirements of this deed and any relevant Third Party Agreement; and
  - (bb) provided the Principal's Representative with the documentation required by clause 5.4(f);
- (L) in respect of each discrete part of Local Area Works that form part of that Portion:
- (aa) completed all such Local Area Works in accordance with the requirements of this deed and any relevant Third Party Agreement;
  - (bb) provided the Principal's Representative with the documentation required by clause 5.5(d); and
  - (cc) obtained a certificate from the Independent Certifier in the form of Schedule B14 (*Independent Certifier's Certificate – Completion of Local Area Works*);
- (M) in respect of any Extra Land occupied or used in connection with that Portion, provided the Principal's Representative with:
- (aa) properly executed releases on terms satisfactory to the Principal's Representative from all claims or demands from the owners or occupiers of the Extra Land and from other persons having interests in such land; or
  - (bb) if the relevant Landowner or occupier, or other person having an interest in that Extra Land, has failed or refused to execute such a release within [REDACTED] after it was provided by the VC Contractor to the owner, occupier or other person:

- (a) copies of all correspondence between the VC Contractor and the owner, occupier or other person; and
- (b) evidence that the condition of the Extra Land satisfies the requirements of the deed;
- (N) reinstated the Temporary Areas that relate to that Portion to a condition at least equivalent to the condition existing before that occupation or use;
- (O) completed the Crown Building Work and the Crown Building Work has been certified by the VC Contractor (on behalf of the Principal) as required by section 6.28 of the EP&A Act;
- (P) submitted to the Principal's Representative a survey certificate (within the meaning of that term in the *Surveying and Spatial Information Regulation 2012 (NSW)*) signed by a land surveyor registered under the *Surveying and Spatial Information Act 2002 (NSW)* who is approved by the Principal's Representative stating that:
  - (aa) the whole of the Portion is within the relevant boundaries of the Project Site stipulated in this deed, except only for parts of the Portion specifically required by this deed to be outside those boundaries (including any Utility Service Works which this deed specifically states may be carried out outside the boundary of the Construction Site and any Project Works which this deed specifically states may be left in a Temporary Area at Completion (with respect to any Non-Trackway Portion));
  - (bb) the elements of the Portion are in the positions and within the tolerances required by this deed;
  - (cc) the survey information included in the Asset Management Information provided by the VC Contractor pursuant to clause 6.12 (*Asset Management Information*) complies with the requirements of this deed; and
  - (dd) any other matter identified by the Principal's Representative in relation to surveying or the boundaries of the Portion complies with the requirements of this deed;
- (Q) removed all rubbish, surplus materials (including Construction Materials) and Temporary Works from the relevant parts of the Construction Site and Extra Land relevant to that Portion in accordance with clause 6.10 (*Cleaning up*);
- (R) achieved a Design Review rating of at least 5 stars pursuant to the "Green Star Design and As Built Sydney Metro – As Built v. 1.1" for the design of Victoria Cross Station from the Green Building Council of Australia; and
- (S) in respect of the last Portion to reach Completion, has procured the Subdivision of the Subdivision Land (and if the Subdivision is staged, Stage 1 is registered) in accordance with the Draft Subdivision Plan and the Subdivision Documents as required under clause 23.2 (*Subdivision requirements*);

- (iii) the VC Contractor has executed the Collateral Warranty Deed Poll; and
- (iv) the VC Contractor has done everything else which is stated to be a condition precedent to Completion of that Portion, or which VC Contractor is otherwise expressly required by this deed to do prior to Completion of that Portion being achieved.

**Concourse Lease** has the meaning given in the OSD PDA.

**Concourse Lessee** has the meaning given in the OSD PDA.

**Concourse Lot** means the stratum lot shown as Lot 6 in the Draft Subdivision Plan which will be created by way of subdivision pursuant to this deed.

**Configuration Management Framework** means the framework established by the ASA from time to time for configuration management.

**Consequential Loss** means any:

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

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

**Construction Licence** means, with respect to each part of the Construction Site, the licence granted by the Principal to the VC Contractor pursuant to clause 9.2(a)(i) or clause 9.3(a) as applicable.

**Construction Licence Commencement Date** means has the meaning given in clause 9.4(b).

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

**Construction Plant** means plant, equipment (including hand-held tools), machinery, apparatus, vehicles, appliances and things used in the carrying out of the VC Contractor's Activities but not forming part of the Project Works.

**Construction Site** means the lands and other places identified in section 2 of the Site Access Schedule and any other lands and places made available to the VC Contractor by the Principal for the purpose of performing the VC Contractor's Activities.

**Construction Site Interface Work** has the meaning given in clause 6.3(a)(ii).

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

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

**Contract Documentation and Materials** has the meaning given in clause 25.1(b).

**Contract Processes** has the meaning given in clause 25.1(c)(ii).

**Contract Sum** means the amount identified as the "Contract Sum" in the Contract Sum Schedule, as adjusted in accordance with this deed.

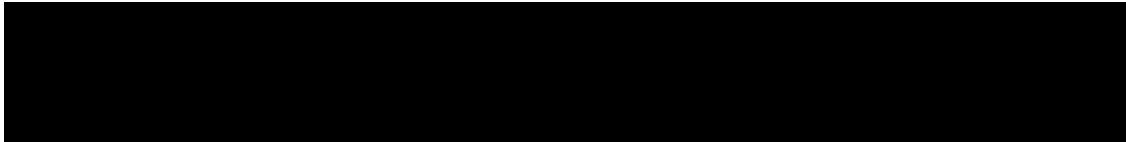
**Contract Sum Adjustment Event** [REDACTED]

**Contract Sum Schedule** means Schedule E1 (*Contract Sum Schedule*).

**Control** has the meaning given to that term in the Corporations Act.

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

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



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

**Date for Completion** means, in respect of a Portion:

- (a) at the date of this deed, the applicable date specified as the date for Completion for that Portion in section 3 of Schedule A3 (*Portions and Milestones*); or
- (b) where, in respect of that Portion, an extension of time for Completion is granted by the Principal's Representative or allowed in any dispute resolution proceedings, the date resulting from that extension of time.

**Date for Milestone Achievement** means, in respect of a Milestone:

- (a) at the date of this deed, the applicable date specified as the date for Milestone Achievement for that Milestone in section 4 of Schedule A3 (*Portions and Milestones*); or
- (b) where, in respect of that Milestone, an extension of time for Milestone Achievement is granted by the Principal's Representative or allowed in any dispute resolution proceedings, the date resulting from that extension of time.

**Date for Significant Completion** means each Date for Milestone Achievement, Date for Substantial Completion and Date for Completion.

**Date for Substantial Completion** means, in respect of a Portion:

- (a) at the date of this deed, the applicable date specified as the date for Substantial Completion for that Portion in section 3 of Schedule A3 (*Portions and Milestones*); or
- (b) where, in respect of that Portion, an extension of time for Substantial Completion is granted by the Principal's Representative or allowed in any dispute resolution proceedings, the date resulting from that extension of time.

**Date of Completion** means, in respect of a Portion, the date notified in the Notice of Completion for that Portion as the date Completion was achieved.

**Date of Milestone Achievement** means, in respect of a Milestone, the date notified in the Notice of Milestone Achievement as the date Milestone Achievement was achieved.

**Date of Significant Completion** means each Date of Milestone Achievement, Date of Substantial Completion and Date of Completion.

**Date of Substantial Completion** means, in respect of a Portion, the date notified in the Notice of Substantial Completion for that Portion as the date Substantial Completion was achieved.

**Default Notice** means a notice given by the Principal under clause 32.2 (*Default Notice*).

**Defect** means:

- (a) any defect, deficiency, fault, error or omission in the Project Works or Temporary Works; or

- (b) any:
- (i) cracking, shrinking, movement or subsidence in the Project Works or Temporary Works; or
  - (ii) other aspect of the Project Works, Temporary Works or the VC Contractor's Activities,

which is not in accordance with the requirements of this deed, but does not include any damage caused to the Trackway Portion after the Date of Substantial Completion of that Portion, or any Non-Trackway Portion after the Date of Completion of that Portion, other than damage to the extent that it is caused or contributed to by the VC Contractor or its Associates.

**Defects Correction Period** means each of the periods referred to in clause 27.1 (*Defects Correction Periods*).

**Deferred Activities** has the meaning given in clause 22.1(a)(iii).

**Delay Liquidated Damages** means, for each Portion or Milestone, the relevant amount of liquidated damages associated with that Portion or Milestone as specified in Schedule A3 (*Portions and Milestones*).

[REDACTED]

**Design Development and Resolution** means development of the Principal's Design Stage 1 Documents including:

- (a) development of Design Documentation in accordance with Good Industry Practice to achieve Design Stage 2 and Design Stage 3 including resolving any lack of co-ordination, ambiguity or discrepancy within or between documents;
- (b) development of solutions for the Design Exceptions;
- (c) the resolution of the comments on the Principal's Design Stage 1 Documents identified in Appendix H1 of the SWTC;
- (d) the resolution of any unresolved elements of the Principal's Design Stage 1 Documents identified in the Principal's Design Stage 1 Documents; and
- (e) development of the VC Contractor's Tender Design.

**Design Documentation** means all:

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

which are required for the performance of the VC Contractor's Activities, or which the VC Contractor or any other person creates in performing the VC Contractor's Activities (including the design of the Temporary Works).

**Design Exceptions** means those elements of the Principal's Design Stage 1 Documents that do not comply with the requirements of clauses 2.3(c) and 2.3(d) as identified in Appendix H1 of the SWTC.

**Design Review Panel or DRP** means the architectural and urban design review panel established as an advisory body to the Principal in relation to Sydney Metro City & Southwest in accordance with the conditions of the Project Planning Approval (Chatswood to Sydenham).

**Design Stage 2** means that stage in the development of the Design Documentation at which the Design Documentation for any discrete design component, part or element includes all the design standards, design reports, specifications, models, calculations and drawings and shop drawings for the discrete design element or component, and is the stage at which the design analysis, design details and drawings demonstrate that the Design Documentation, when fully developed, will comply with and satisfy all the requirements of this deed.

**Design Stage 3** means that stage in the development of the Design Documentation at which the Design Documentation for any discrete design component, part or element is fully developed, including all design standards, design reports, specifications, models, calculations and drawings and shop drawings, for the discrete design element or component.

**Development Lot 1** means the stratum lot limited in depth and limited in height shown as Lot 2 in the Draft Subdivision Plan which will be created by way of subdivision in which the completed OSD (and any ancillary retail areas, excluding the retail areas within the Retail Lot and Concourse Lot) will sit.

**Development Lot 2** means the stratum lot limited in depth and limited in height shown as Lot 5 in the Draft Subdivision Plan [REDACTED] which will be created pursuant to the OSD PDA or this deed (as applicable).

**Deviations within the TSE Tolerances** means an aspect of the TSE Works that is not in accordance with the requirements of the TSE Contract but that is within the TSE Tolerances.

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

**Dispute** has the meaning given in clause 35 (*Dispute resolution*).

**Dispute Procedure** means the procedure for resolution of Disputes set out in Schedule A9 (*Dispute Procedure*).

**Documentation** means all documentation submitted or required to be submitted by the VC Contractor pursuant to this deed and includes Design Documentation, Project Plans and Asset Management Information.

**Draft BMS** means the draft document set out in Schedule D14 (*Draft Building Management Statement*).

**Draft Section 88B Instrument** means the draft document set out in Schedule D16 (*Section 88B Instruments*).

**Draft Subdivision Plan** means the draft plans (including easement plans) set out in Schedule D11 (*Draft Subdivision Plan*).

**Draft Third Party Agreement** has the meaning given in clause 13(a)(ii) and includes the Pro-forma Adjoining Property Owner Agreement.

**Early Site Access Date** means, in respect of a part of the Construction Site, the date specified as the "Early Site Access Date" for that part of the Construction Site in the Site Access Schedule.

**Easement for Crane Access** means an easement for crane access in respect of an Adjoining Property that the Principal has acquired by compulsory process under the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

**Easement for Rock Anchors** means an easement for rock anchors in respect of an Adjoining Property that the Principal has acquired by compulsory process under the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

**Easement for Scaffolding** means an easement for scaffolding in respect of an Adjoining Property that the Principal has acquired by compulsory process under the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

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

**Environment** means components of the earth, including:

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

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

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

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

- (a) the carrying out of uses, works or development, the erection of a building or the subdivision of land (including the EP&A Act);
- (b) emissions of substances into the atmosphere and land;
- (c) Pollution and Contamination of the atmosphere and land; and
- (d) production, use, handling, storage, transportation and disposal of:
  - (i) waste;
  - (ii) hazardous substances;
  - (iii) dangerous goods;

- (iv) threatened, endangered and other flora and fauna species;
- (v) conservation, heritage and natural resources; and
- (vi) the health and safety of people,

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

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

- (a) all Costs associated with undertaking the remediation of any Contamination ordered or required by any Authority or court of any land or building;
- (b) any compensation or other monies that an Authority or court requires to be paid to any person under an Environmental Law for any reason;
- (c) any fines or penalties incurred under an Environmental Law;
- (d) all Costs incurred in complying with an Environmental Law; and
- (e) all other Claims or Loss payable under in respect of an Environmental Law.

**Environmental Management Plans** means the Construction Environmental Management Plan and the Sustainability Management Plan.

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

**Environmental Representative** means any person appointed by the Principal as the environmental representative for the purposes of the Project Planning Approval (Chatswood to Sydenham).

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

**EPA** means the New South Wales Environment Protection Authority.

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

**ETS** means the ticketing system for the Victoria Cross Station, including the software, smartcards, portable readers and all other aspects of the system, as modified or replaced from time to time.

**ETS Contractor** means:

- (a) Cubic Transportation Systems (Australia) Pty Limited ABN 82 003 617 561 and any other contractors engaged by the Principal in relation to the ETS as notified by the Principal's Representative from time to time; and
- (b) any subcontractors and suppliers at any level of the entities referred to in paragraph (a).

**Excepted Risk** means:

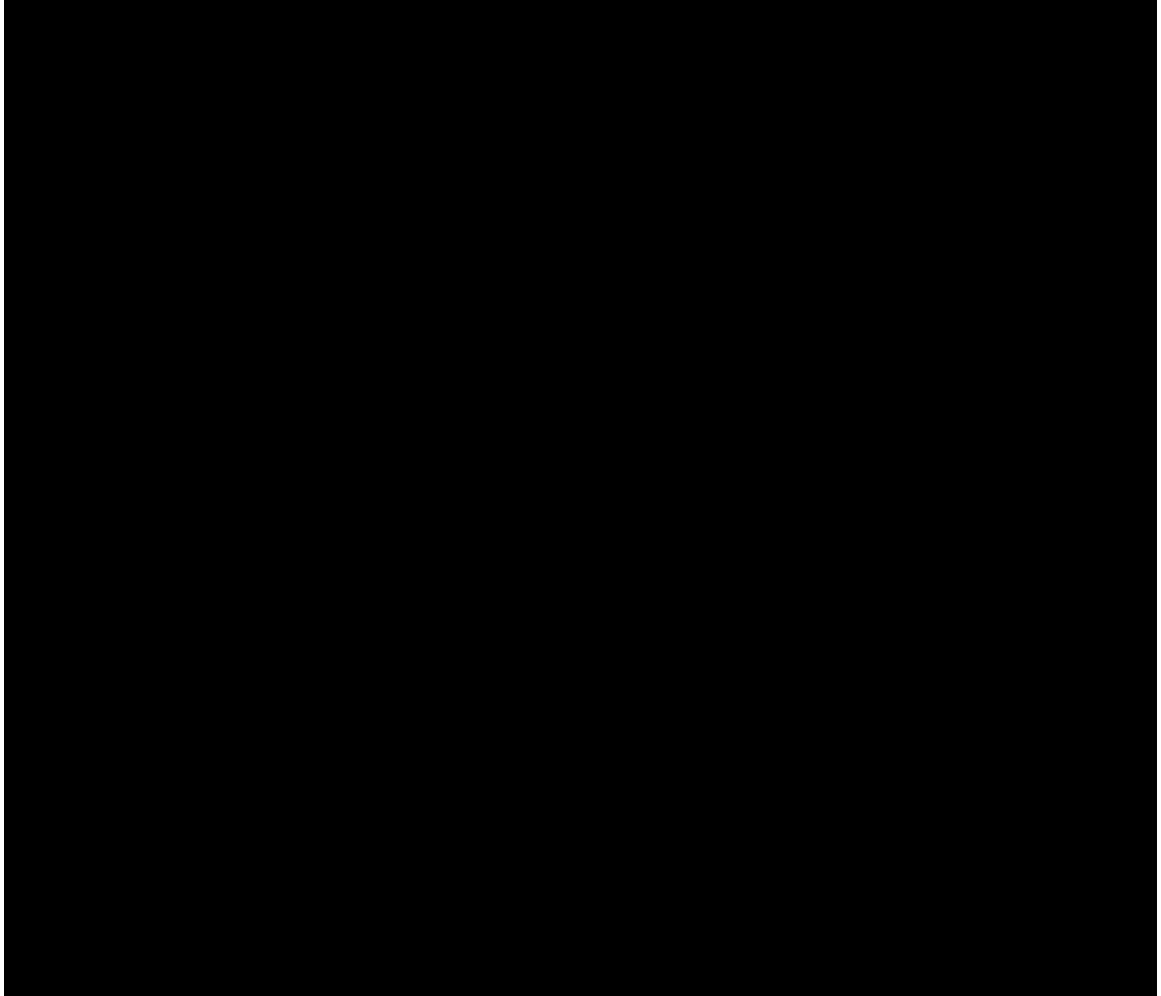
- (a) war (declared or undeclared), revolution, insurrection, civil commotion, military action, an act of public enemy or an act of sabotage, in each case occurring within Australia or a Key Plant and Equipment Manufacturing Country;

- (b) a terrorist act occurring within Australia or a Key Plant and Equipment Manufacturing Country (other than a declared terrorist incident as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth));
- (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel occurring within Australia or a Key Plant and Equipment Manufacturing Country,

and only to the extent not caused by the VC Contractor or their Associates.

**Exclusion Sanction** has the meaning given in subsection 3(1) of the Building Code.

**Excusable Cause of Delay** [REDACTED]



**Existing Operations** means:

- (a) all infrastructure (including existing infrastructure, but in respect of infrastructure that is under construction, is limited to infrastructure that is under construction as at the date of this deed) and Utility Services which:
  - (i) do not form part of any Interface Work or infrastructure that is the subject of a Project Cooperation and Integration Deed;
  - (ii) is the subject of the Third Party Agreement (other than an Additional Third Party Agreement); and

- (iii) is owned, operated or under the control of an Existing Operator; and
- (b) the businesses and operations undertaken by an Existing Operator,  
on or in the vicinity of the Construction Site.

**Existing Operator** means:

- (a) Ausgrid, being the statutory State owned corporation of that name established under the Energy Services Corporations Act 1995 (NSW);
- (b) Jemena Limited ABN 95 052 167 405;
- (c) Sydney Water Corporation ABN 49 776 225 038;
- (d) State Transit Authority, being the operating agency of Transport for NSW responsible for, amongst other things, buses in the Sydney CBD;
- (e) Roads and Maritime Services, being the NSW Government agency constituted by section 56 of the Transport Administration Act;
- (f) North Sydney Council;
- (g) Telstra Corporation Limited ABN 33 051 775 556 and other telecommunication operators;
- (h) Landowners of adjoining properties; or
- (i) any other person:
  - (i) who owns, operates or controls any infrastructure (including existing infrastructure, but in respect of infrastructure that is under construction, is limited to infrastructure that is under construction as at the date of this deed), and the Utility Services, which does not form part of any Interface Work or infrastructure that is the subject of a Project Cooperation and Integration Deed); or
  - (ii) undertakes any business or operation on or in the vicinity of the Construction Site,

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

**Expert** has the meaning given to that term in Schedule A9 (*Dispute Procedure*).

**Extra Land** means the land and buildings referred to in clause 9.1(b).

**Final Certificate** means the certificate issued by the Principal's Representative pursuant to clause 23.4(b).

**Final Completion** means that stage when the obligations of the VC Contractor pursuant to this deed have been discharged and:

- (a) all Defects Corrections Periods have expired; and
- (b) all Defects notified pursuant to clause 27.4(a) have either been accepted pursuant to clause 27.5(a) or rectified.

**Final Design Documentation** means Design Stage 3 Design Documentation that in accordance with Schedule A10 (*Design review procedure and Network Assurance Committee*):

- (a) has not been rejected by the Principal;
- (b) has been certified by the AEO (if applicable);
- (c) in respect of Design Stage 3 Design Documentation which is provided to the Independent Certifier under clause 4.5(b), has been certified by the Independent Certifier; and
- (d) in respect of Design Documentation that relates to construction work that requires NAC Gate 3 approval:
  - (i) the NAC CCR Package submitted by the VC Contractor in respect of that Design Documentation has been accepted by the NAC as satisfying the NAC Requirements; or
  - (ii) the VC Contractor has completed all NAC Required Actions in respect of that Design Documentation.

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

**Fire and Life Safety Report** means a fire and life safety report which satisfies the requirements of Appendix B6 of the SWTC.

**Force Majeure Event** means any of the following:

- (a) an Excepted Risk;
- (b) a declared terrorist incident as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth) occurring within Australia;
- (c) an earthquake occurring within Australia or a Key Plant and Equipment Manufacturing Country;
- (d) a flood which might at the date of this deed be expected to occur less frequently than once in every 100 years (based on the 1:100 year average recurrence interval flood event) occurring within Australia or a Key Plant and Equipment Manufacturing Country; or
- (e) a fire or explosion resulting from an event referred to in paragraphs (a), (b), (c) or (d) of this definition,

which:

- (f) is beyond the reasonable control of the VC Contractor and its Associates; and
- (g) prevents or delays the VC Contractor from performing the VC Contractor's Activities, where that event or the consequence of that event does not arise from any act or omission of the VC Contractor or its Associates.

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

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

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

engaged in the same or a similar type of undertaking as that of the VC Contractor or its Associates, as the case may be, under the same or similar circumstances as the performance of the VC Contractor's Activities or the delivery of the Project Works and the Temporary Works.

**GST** has the meaning it has in the GST Law.

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

**Handover Works** has the meaning given in the TSE Contract.

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

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

**Hold Point** means a point beyond which a work process must not proceed without the authorisation or release of an authority designated by the Principal's Representative pursuant to the SWTC.

**IDAR Panel Agreement** means the agreement which appears in Schedule A20 (*IDAR Panel Agreement*).

**IDAR Panel Agreement Accession Deed Poll** means an accession deed poll substantially in the form of Schedule 1 of the IDAR Panel Agreement.

**Incident** means any work health and safety, environmental or security incident arising out of or in connection with the VC Contractor's Activities including:

- (a) a non-compliance with an Approval;
- (b) any public complaint; or
- (c) any incident defined in the Sydney Metro Principal Contractor Health and Safety Standard.

**Independent Certification** means certification by the Independent Certifier in accordance with Schedule A10 (*Design review procedure*).

**Independent Certifier** means the person or persons appointed by the Principal to be the Independent Certifier under the Independent Certifier Deed.

**Independent Certifier Deed** means the deed entered into between the Principal, the VC Contractor and the Independent Certifier substantially in the form of Schedule A14 (*Independent Certifier Deed*).

**Independent Property Impact Assessment Panel** means the "Independent Property Impact Assessment Panel" established by the Principal for the purpose of Sydney Metro City & Southwest.

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

- (a) is referred to in Schedule A28 (*Information Documents*);

- (b) is issued or made available by, or on behalf of, the Principal or the State to the VC Contractor or the VC Developer in connection with the Tender, the VC Contractor's Activities or the Sydney Metro City & Southwest regardless of whether at the time of issue (or being made available) was expressly classified or stated to be an "Information Document"; or
- (c) is referred to, or incorporated by reference, in an Information Document unless such information, data, document or material is otherwise expressly stated to form part of this deed,

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

**Initial Payment** means the initial payment to be made to the VC Contractor as set out in Schedule E1 (*Contract Sum Schedule*) [REDACTED]

**Initial Payment Security** means one or more unconditional undertakings for the amount described as the "initial Payment Security" in item 10 of the Reference Schedule which satisfy the requirements of clause 3.1(c).

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

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

- (ii) ceases or threatens to cease to carry on all or a material part of its business;
  - (iii) is or states that it is unable to pay its debts; or
  - (iv) is deemed insolvent by virtue of its failure to comply with a statutory demand, which is not withdrawn or set aside within 10 Business Days;
- (h) a person enters into a readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or a composition with its creditors, without the prior consent of the Principal, except for the purposes of a solvent reconstruction or amalgamation permitted by this deed; or
- (i) any act is done or event occurs which has an analogous or similar effect to any of the events in paragraphs (a) to (h) (inclusive) of this definition.

**Insurances** means the insurances required to be effected and maintained under any VC Station Contract Document.

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

**Interface Contract** means any contract entered into between the Principal and an Interface Contractor.

**Interface Contractor** means an Other Contractor that is carrying out, or that will carry out, Interface Work, including the TSE Contractor, the LW Contractor, the TSOM Contractor, the Operator, the ETS Contractor or any Other Contractor otherwise identified by the Principal's Representative as an Interface Contractor.

**Interface Contractor Cooperation and Integration Deed** means:

- (a) in relation to the LW Contractor, a deed to be entered into between the Principal, the VC Contractor and the LW Contractor substantially in the form of Schedule A25 (*LW Contractor Cooperation and Integration Deed*); and
- (b) in relation to any other Interface Contractor, a deed to be entered into between the Principal, the VC Contractor and the relevant Interface Contractor substantially in the form of either Schedule A24 (*Operator Cooperation and Integration Deed*) or Schedule A25 (*LW Contractor Cooperation and Integration Deed*) as directed by the Principal.

**Interface Work** means any activities undertaken by an Interface Contractor which interface with or affect, or are affected by, the VC Contractor's Activities, the Project Works or the Temporary Works.

**Interim Access Licence** means, with respect to each part of the TSE Site identified in a notice given by the Principal to the VC Contractor pursuant to clause 9.2(d), the licence granted by the Principal to the VC Contractor pursuant to clause 9.2(a)(ii).

**Interim Access Period** means, in respect of any part of the TSE Site, the period commencing on the date access to the TSE Site is given or deemed to be given under

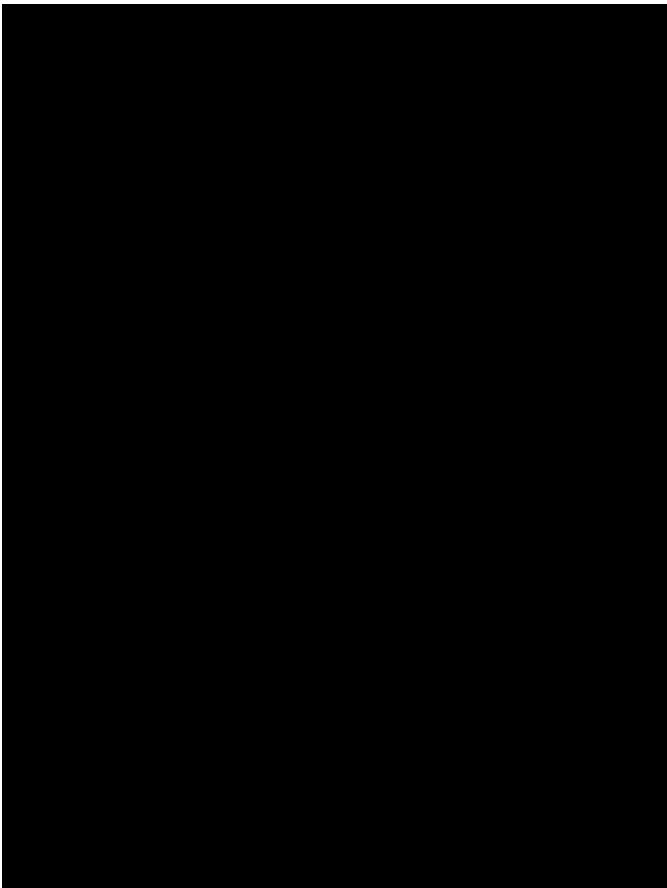
clause 9.2(f) and ending on the date the Construction Licence with respect to the relevant part of the TSE Site commences.

**IPR Claim** means a Claim that the rights, including IPRs or Moral Rights, of or duties owed to any person are infringed or alleged to be infringed by:

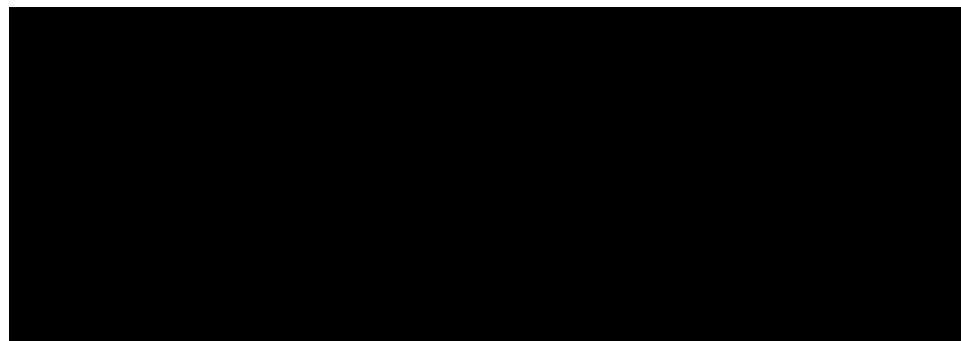
- (a) the VC Contractor or any person engaged by or through the VC Contractor in connection with this deed; or
- (b) the Principal or an Authorised User's use or other exercise of rights granted under or in connection with this deed.

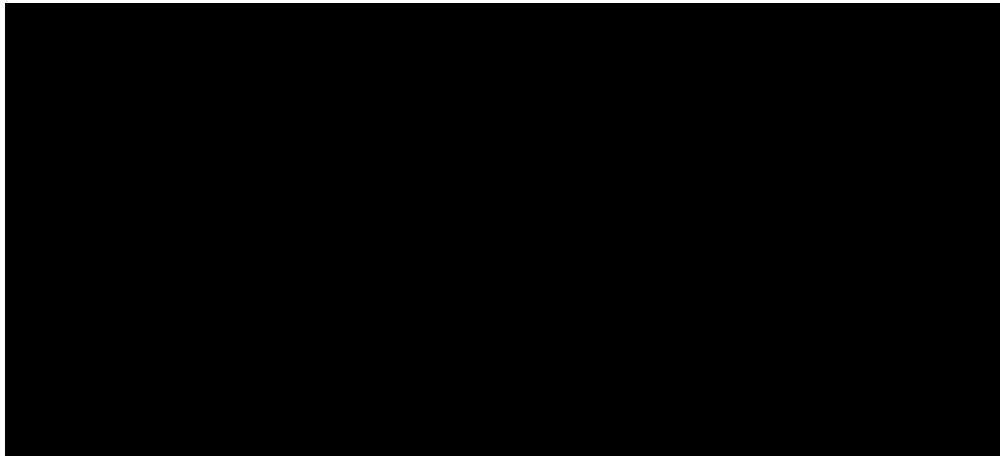
**ISD Operations Principles** means the principles set out in Schedule D15 (*ISD Operations Principles*).

**Key Plant and Equipment** means in relation to:



**Key Plant and Equipment Manufacturing Country** means in relation to:





to the extent that the VC Contractor or its Associates manufacture the Key Plant and Equipment in such countries.

**Known Defects Rectification Period** means the period commencing on the date of the TSE Notice of Construction Completion for the TSE Portion to which the TSE Known Defect relates and ending 90 days later.

**L&E Contractor** means the contractor identified in Schedule A27 (*Nominated Subcontracts*) that:

- (a) has been engaged by the Principal under a framework agreement; and
- (b) is to be engaged by the VC Contractor under the L&E DSI Contract in accordance with section 1 of Schedule 27 (*Nominated Subcontracts*) to perform the Lifts and Escalators Works.

**L&E DSI Contract** means the Nominated Subcontract to be entered into between the VC Contractor and the L&E Contractor in respect of the Lifts and Escalators Work, the form of which is included in Schedule F1 (*Electronic files*).

**Landowner** means a person with a right or interest in land, including an owner, occupier or grantee of a registered interest.

**Law** means:

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

**LD Cap** means [REDACTED] of the Contract Sum.

**Liability** includes any liability of any kind whether for debt, Cost (including legal costs, deductibles or increased premiums), expense, loss, damage, compensation or charge and includes any claim relating to a Contract Sum Adjustment Event, for payment of money, for an extension of time, or for a reduction of the VC Contractor's obligations or the Principal's rights and whether:

- (a) liquidated or not;
- (b) arising from or in connection with any obligation (whether as a principal obligation, a surety or an indemnity);

- (c) legal or equitable, and whether arising under or for breach of contract, in tort (including negligence), restitution or at Law;
- (d) present, prospective or contingent;
- (e) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others;
- (f) under, arising out of, or in any way in connection with, this deed, including any Direction of the Principal's Representative;
- (g) arising out of, or in any way in connection with the Project Works or VC Contractor's Activities or either party's conduct before or after the date of this deed; and
- (h) otherwise at Law including:
  - (i) by statute;
  - (ii) in tort for negligence or otherwise, including negligent misrepresentation; and
  - (iii) for restitution (as a result of unjust enrichment or otherwise).

**Lifts and Escalators Works** means the works to be performed by the L&E Contractor in relation to the Project Works.

**Loading Dock** means the area identified as such in the Shared Facilities Plan attached to the Draft BMS.

**Local Area Works** means the modification, reinstatement and improvement of Local Areas which the VC Contractor must design and construct and hand over to the Principal or the relevant Authority in accordance with this deed as further described in section 2.1.5 of the SWTC.

**Local Areas** means all public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main roads, including their associated road reserves, which are adjacent to, connect to, intersect, cross or are in any way affected by the Project Works or Temporary Works, including those sections of public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main roads, including any associated road reserves, that are made redundant or become service roads as part of the road network.

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

**Lot Owner** has the meaning given to the term "Owner" in the Draft BMS.

**LRS** means Land Registry Services.

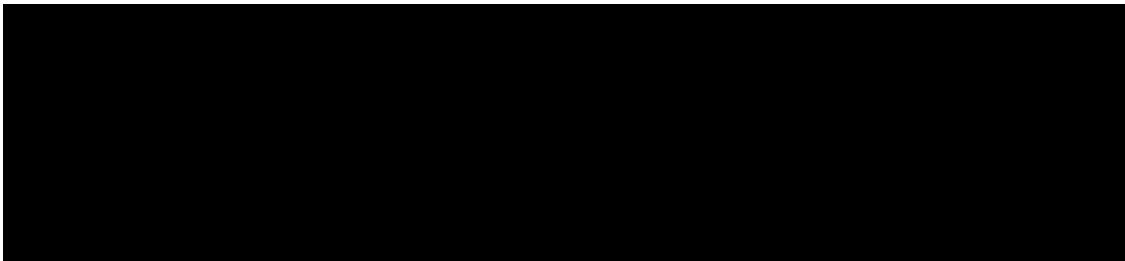
**Lump Sum Price Proposal** has the meaning given in clause 28.10(f).

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

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

**LW Works** means all things, works and materials (including all systems and software incorporated in, or necessary to enable their operation) that the LW Contractor must, in accordance with the LW Contract, design, construct, manufacture, install, test and commission for the purposes of completing Sydney Metro City & Southwest, including tunnel ventilation, track, tunnel services (including drainage, lighting, fire systems and low voltage power supplies), combined services cable brackets, high voltage power supply, overhead line and traction supply and stabling facilities.

**Major TSE Defect** means a TSE Defect in the following features of the TSE Works:



**Making Accessible** has the meaning given in clause 22.1(a)(iv).

**Master Interface Protocols Deed Poll** means a deed poll in substantially the same form as Schedule A17 (*Master Interface Protocols Deed Poll*).

**Material** means material in any form (whether visible or not) including documents, recordings on disc or any other form of storage, reports, information, data and includes all releases, updates and amendments to the original material.

**Milestone** means a milestone specified in section 4 of Schedule A3 (*Portions and Milestones*).

**Milestone Achievement** means, in respect of a Milestone, the stage in the execution of the VC Contractor's Activities when the Project Works comprising that Milestone have achieved the level of completion required for that Milestone in section 4 of Schedule A3 (*Portions and Milestones*) except for any:

- (a) Minor Defects referred to in paragraph (a) of the definition of "Minor Defect";
- (b) Accepted Defects; and
- (c) Agreed Defects.

**Milestone Performance Payment** means an amount identified as a Milestone Performance Payment in section 4, Table 3A of Schedule A3 (*Portions and Milestones*).

**Miller Street Property** means:

- (a) the land comprised in Folio Identifiers 1/781576 and 1/734946 and known as 194 and 196A Miller Street, North Sydney NSW 2060; and
- (b) all improvements to the land specified in (a) including and of the landlord's plant, equipment, fixtures, fittings and furnishings, but excluding the tenant's property.

**Miller Street Property Lease** means a lease to be entered into between the Principal and the VC Contractor substantially in the form of Schedule D18, as amended in accordance with clause 9.12(b).

**Minor Defect** means a Defect:

- (a) in each Milestone which, at Milestone Achievement, and in each Non-Trackway Portion which, at Substantial Completion:
  - (i) is capable of being corrected without causing unreasonable delay or disruption to the activities that are to be performed by any Interface Contractor within the Construction Site; and
  - (ii) the Independent Certifier determines (acting reasonably) that the VC Contractor has reasonable grounds for not promptly correcting prior to Milestone Achievement for the relevant Milestone; or
- (b) in the Trackway Portion which, at Substantial Completion, and in each Non-Trackway Portion which, at Completion:
  - (i) is capable of being corrected:
    - (A) after the relevant part of the Construction Site has been handed over to the Principal; and
    - (B) without causing unreasonable delay or disruption to the activities that are to be performed by any Interface Contractor within the Construction Site; and
  - (ii) the Independent Certifier determines (acting reasonably) that the VC Contractor has reasonable grounds for not promptly correcting prior to handover of the Project Works to the Principal,

but does not include an Agreed Defect or an Accepted Defect.

**Minor Non-Compliances** means a minor error, minor omission or minor non-compliance in the Project Works or Temporary Works which:

- (a) does not:
  - (i) prevent the achievement of the Project Requirements; or
  - (ii) affect the safety of the Project Works or Temporary Works;
- (b) the Independent Certifier determines (acting reasonably) that the VC Contractor has reasonable grounds for not promptly correcting prior to the certification required to be obtained under this deed; or
- (c) which the parties agree is a Minor Non-Compliance.

**Mobile Plant** means mobile plant and equipment, including earthmoving machinery, excavators, cranes, hoists, elevating work platforms, forklifts and the like.

**Modification** has the meaning given in clause 1.1 of Schedule A8 (*Modification Procedure*).

**Modification Order** has the meaning given in clause 1.1 of Schedule A8 (*Modification Procedure*).

**Modification Procedure** means the procedure for Modifications set out in Schedule A8 (*Modification Procedure*).

**Moral Rights** means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship conferred by the

Copyright Act 1968 (Cth) or any Law outside Australia and rights of a similar nature anywhere in the world, that exists now or in the future.

**NAC CCR Package** means a package of documentation meeting the requirements set out in section 3.1(d)(ii) of Appendix F1 of the SWTC.

**NAC Required Actions** has the meaning given in clause 3.2(b) of Schedule A10 (*Design review procedure and Network Assurance Committee*).

**NAC Requirements** means the requirements set out in section 2.5.1 of Appendix F1 of the SWTC.

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

**Network Assurance Committee** or **NAC** means the network assurance committee established by the Principal to manage configuration changes for the Sydney Metro delivery office in accordance with the Configuration Management Framework.

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

**Nominated Subcontract** means the form of subcontract referred to in Schedule A27 (*Nominated Subcontracts*).

**Nominated Subcontract Work** means the VC Contractor's Activities to be performed by a Nominated Subcontractor which are described in Schedule A27 (*Nominated Subcontracts*).

**Nominated Subcontractor** means the nominated subcontractors and suppliers specified in Schedule A27 (*Nominated Subcontracts*) or referred to in the SWTC.



**Non-Trackway Portion** means each of Portion 2, Portion 3 and Portion 4.

**Notice of Completion** means a notice in the form of Schedule B11 (*Notice of Completion*) issued by the Independent Certifier pursuant to clause 23.1(f)(i).

**Notice of Milestone Achievement** means a notice in the form of Schedule B9 (*Notice of Milestone Achievement*) issued by the Independent Certifier pursuant to clause 23.1(f)(i).

**Notice of Significant Completion** means a Notice of Milestone Achievement, a Notice of Substantial Completion or a Notice of Completion (as applicable).

**Notice of Substantial Completion** means a notice in the form of Schedule B10 (*Notice of Substantial Completion*) issued by the Independent Certifier pursuant to clause 23.1(f)(i).

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

**NSW Government Policy** means the NSW Code, NSW Guidelines, New South Wales Government Work Health & Safety Management Systems and Auditing Guidelines (5th edition) (September 2013, updated May 2014), NSW Government Policy on Aboriginal Participation in Construction (May 2015, updated 1 August 2016), Environmental Management Systems Guidelines (3rd edition) (August 2013), Quality Management System Guidelines for Construction (August 2013), NSW Government Resource Efficiency Policy (GREP) and any other NSW Government guidelines and requirements specified or required by this deed.

**NSW Guidelines** means the NSW Government's Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction (as issued on 1 July 2013).

**NSW Trains** means the body corporate constituted by Part 2B of the *Transport Administration (General) Regulation 2005* (NSW).

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

**Operator** means:

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

**Operator Cooperation and Integration Deed** means a deed to be entered into between the Principal, the VC Contractor and the Operator substantially in the form of Schedule A24 (*Operator Cooperation and Integration Deed*).

**OSD or Over Station Development** means the development to be carried out and completed in accordance with the OSD PDA.

**OSD Construction Site** has the meaning given to the term "Construction Site" in the OSD PDA.

**OSD Date for Completion** has the meaning given to the term "Date for Completion" in the OSD PDA.

**OSD Date of Completion** has the meaning given to the term "Date of Completion" in the OSD PDA.

**OSD Enabling Works** means the part of the VC Works described in section 2.1.3 of the SWTC.

**OSD PDA** means the deed titled "Victoria Cross Integrated Station Development – Over Station Development Project Delivery Agreement" entered into between the Principal and the VC Developer on or about the date of this deed.

**OSD Retail Lots** means the Retail Lot and the Concourse Lot.

**Other Contractor** means any contractor, consultant, artist, tradesperson or other person engaged by the Principal or others to do work on or about the Construction Site, other than the VC Contractor and its subcontractors of any tier involved in the VC Contractor's Activities.

**Parent Company Guarantee** means a deed of guarantee and indemnity between the Principal and the VC Contractor Guarantor in the form of Schedule E6 (*Parent Company Guarantee*).

**PDCS** means the Principal's web based TeamBinder project data and collaboration system including any of its functionalities as required by the Principal, or such other electronic project data and collaboration system notified by the Principal's Representative under clause 39(b).

**Performance Incentive Payment** has the meaning given in Schedule E2 (*Performance Incentive Payment Schedule*).

**Performance Incentive Payment Schedule** means Schedule E2 (*Performance Incentive Payment Schedule*).

**PHSMP** means the document referred to as the "Sydney Metro Project Health and Safety Management Plan (SM PS-ST-221)", which is included in electronic form in Schedule F1 (*Electronic files*).

**Planning Approval** means:

- (a) the Project Planning Approval (Chatswood to Sydenham); and
- (b) any other consent, concurrence or approval, or determination of satisfaction with any matter, which is made, given or issued under the Project Planning Approval (Chatswood to Sydenham) from time to time and all conditions to any of them, and includes all documents incorporated by reference, as that consent, concurrence, approval or determination may be modified from time to time.

**Portion** means a part of the Project Works described in the columns titled "Portion" and "Description" in section 3 of Schedule A3 (*Portions and Milestones*) or as directed by the Principal's Representative under clause 19.1 (*Principal's Representative may direct Portions*).

**Portion 1** means the part of the Project Works described in the column titled "Description" in the row titled "Portion 1" in section 3 of Schedule A3 (*Portions and Milestones*) or as directed by the Principal's Representative under clause 19.1 (*Principal's Representative may direct Portions*).

**Portion 2** means the part of the Project Works described in the column titled "Description" in the row titled "Portion 2" in section 3 of Schedule A3 (*Portions and Milestones*) or as directed by the Principal's Representative under clause 19.1 (*Principal's Representative may direct Portions*).

**Portion 3** means the part of the Project Works described in the column titled "Description" in the row titled "Portion 3" in section 3 of Schedule A3 (*Portions and Milestones*) or as directed by the Principal's Representative under clause 19.1 (*Principal's Representative may direct Portions*).

**Portion 4** means the part of the Project Works described in the column titled "Description" in the row titled "Portion 4" in section 3 of Schedule A3 (*Portions and Milestones*) or as directed by the Principal's Representative under clause 19.1 (*Principal's Representative may direct Portions*).

**Portion Handover Date** means:

- (a) in respect of the Trackway Portion, the Date of Substantial Completion of the Trackway Portion; and

- (b) in respect of any other Portion, the later of:
  - (i) the day after the Date of Completion of that Portion; or
  - (ii) where the Principal's Representative gives a written notice under clause 26.2(a) in respect of the Portion, the date notified in the notice given under clause 26.2(c) in respect of the Portion.

**Post Completion Activities** means the activities referred to in Appendix E1 of the SWTC.

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

**Pre-Agreed Modification** means any of the Modifications listed in Schedule A4 (*Pre-Agreed Modifications*).

**Prescribed Legislative Requirements** means the requirements set out in Schedule A11 (*Prescribed Legislative Requirements*).

**Principal Approvals** means those Approvals which have or will be obtained by the Principal as specified in Schedule D3 (*Approvals and Planning Approval conditions*).

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

**Principal VC Station Contract Document** means any VC Station Contract Document to which the Principal is a party.

**Principal's Design Review Period** means 20 Business Days commencing on the date on which the Principal's Representative is provided with any Design Documentation under clause 4.5(a).

**Principal's Design Re-Review Period** means, where the VC Contractor is required to re-submit any Design Documentation in accordance with Schedule A10 (*Design review procedure and Network Assurance Committee*):

- (a) 5 Business Days (if the VC Contractor has taken 5 Business Days or less to re-submit the Design Documentation); or
- (b) 10 Business Days (otherwise).

**Principal's Design Stage 1 Documents** means the documents in Schedule C2 (*Principal's Design Stage 1 Documents*).

**Principal's Insurances** means a policy or the policies of insurance which the Principal has obtained under clause 30.5(a).

**Principal's Land** means each of the parcels of land referred to in item 9 of the Reference Schedule.

**Principal's Representative** means the person referred to in item 6 of the Reference Schedule or any person appointed by the Principal as a replacement from time to time, as notified by the Principal to the VC Contractor.

**Principal's Vision Statement** has the meaning given in section 1.4(a) of the SWTC.

**Pro-forma Adjoining Property Owner Agreement** means the pro-forma adjoining property owner agreement set out in Schedule D9 (*Pro-forma Adjoining Property Owner Agreements*).

**Pro-forma Easement** means the pro-forma easement for crane access, rock anchors or scaffolding (as appropriate) set out in Schedule D10 (*Pro-forma Adjoining Property Easement*).

**Progress Report** means each progress report to be submitted by the VC Contractor under Appendix F2 of the SWTC.

**Project Control Group** means the group established in accordance with clause 1 of Schedule B1 (*Governance Groups*).

**Project Cooperation and Integration Deed** means each of:

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

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

**Project Planning Approval (Chatswood to Sydenham)** means the approval granted by the Minister for Planning and Infrastructure under section 115ZB of the EP&A Act dated 9 January 2017, including all conditions to such approval and all documents incorporated by reference, as modified from time to time.

**Project Plans** means the plans listed in Appendix F2 of the SWTC, including all subsidiary plans and supporting documents and information, as updated from time to time in accordance with this deed.

**Project Requirements** has the meaning given in clause 2.3 (*Project Requirements*).

**Project Site** means the areas of the Construction Site identified in section 2 of the Site Access Schedule and the areas of the Construction Site described as "Project Site" in section 3 of the Site Access Schedule.

**Project Works** means the physical works which the VC Contractor must design, construct, complete and hand over under this deed (including, to the extent relevant to such works, Modifications directed in accordance with this deed) including the VC Works and the Third Party Works, but excluding Temporary Works.

**Project Values** means the values that will guide the delivery of Sydney Metro City & Southwest, being safety and wellbeing, collaboration, integrity, innovation, excellence and achievement.

**Property Works** means all works required to existing buildings and infrastructure or to and within properties arising out of the VC Contractor's Activities as described or specified in section 2.1.5 of the SWTC.

**Provisional Sum Work** means those parts of the VC Contractor's Activities described in Schedule E8 (*Provisional Sum Work*).

**Public Art Supply Contract** means the Nominated Subcontract to be entered into between the VC Contractor and the Public Art Supply Contractor in respect of the Public Art Supply Works.

**Public Art Supply Contractor** means the contractor to be engaged by the VC Contractor for the provision of the Public Art Supply Works, as identified in Schedule A27 (*Nominated Subcontracts*).

**Public Art Supply Works** means that part of the VC Contractor's Activities which relates to the procurement and installation of items of public art which are contemplated by section 2.2 of SWTC Appendix B1.6 - Public Art.

**Public Disclosure Obligations** has the meaning given in clause 33.2(a).

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

**Pure Economic Loss** means Consequential Loss, other than Consequential Loss arising out of or in connection with:

- (a) any illness or personal injury to, or death of, any person;
- (b) the loss or destruction of (whether total or partial) or damage to any real or personal property; or
- (c) loss of use of or access to any real or personal property where such loss of use or access is caused by the VC Contractor's wrongful act or omission or breach of this deed.

**Quality Plan** means the Project Plan of that name.

**Rail Infrastructure Manager** has the meaning given in the Rail Safety National Law.

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

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

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

**Railway Operations** has the meaning given in the Rail Safety National Law.

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

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

**Related Body Corporate** has the meaning given in section 9 of the Corporations Act.

**Related Entity** of a corporation means:

- (a) a Related Body Corporate; and
- (b) a unit trust in relation to which that corporation directly or indirectly:
  - (i) controls the right to appoint the trustee;

- (ii) is in a position to control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of holders of units in the trust; or
- (iii) holds or is in a position to control the disposal of more than one half of the issued units of the trust (excluding any of the issued units that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

**Release Date** means the date on which the Principal makes payment of the [REDACTED] to the VC Contractor.

**Remediation** has the meaning given in the *Contaminated Land Management Act 1997* (NSW).

**Remedy Plan** has the meaning given in clause 32.2(b)(ii)(A).

**Required Rating** means a credit rating or financial strength rating of at least A by Standard and Poor's (Australia) Pty Limited or A2 by Moody's Investor 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 Investor Services, Inc, an equivalent rating with another reputable rating agency.

**Resequencing** has the meaning given in clause 22.1(a)(i).

**Residual Lot** has the meaning given in paragraph 2.2(j) of the Subdivision Principles.

**Resolution Institute** means the Resolution Institute Australia.

**Retail Lot** means the stratum lot shown as Lot 3 in the Draft Subdivision Plan which will be created by way of subdivision pursuant to this deed.

**Retail Lot Purchaser** has the meaning given in the OSD PDA.

**Retail Works** means the part of the VC Works described in section 2.1.4 of the SWTC.

**S1 Construction Site** has the meaning given in the OSD PDA.

**Safety Management System** has the meaning given in the Rail Safety National Law.

**Savings** has the meaning given in Schedule E4 (*Valuation mechanism*).

**Section 88B Instrument** means the document substantially in the form of the Draft Section 88B Instrument which has been amended in accordance with Schedule D12 (*Subdivision Requirements*) and Schedule D13 (*Subdivision Principles*) and otherwise in a form acceptable to the Principal and the VC Contractor (each acting reasonably).

**Security** means each unconditional undertaking required to be provided or which the Principal is entitled to hold pursuant to clause 3.1 (*Unconditional Undertakings*).

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

**Shared Facilities** means a service, area, facility or other infrastructure which services or is used by more than one stratum lot in the Draft Subdivision Plan.

**Significant Completion** means each of Milestone Achievement, Substantial Completion and Completion.

**Significant Date** means each Date for Milestone Achievement, Date for Substantial Completion and Date for Completion.

**Significant Subcontract** means:

- (a) not used;
- (b) each contract entered into by the VC Contractor with the L&E Contractor;
- (c) each contract entered into by the VC Contractor with the BMCS Contractor;
- (d) each contract entered into by the VC Contractor with the Public Art Supply Contractor;
- (e) each contract for the provision of any "Significant Subcontract Work" listed in Schedule A5 (*Significant Subcontractors and Significant Subcontract Work*);
- (f) [REDACTED]
- (g) each contract entered into by the VC Contractor in connection with the VC Contractor's Activities with a contract value of greater than [REDACTED] (excluding any contract with a Sub-Tenant and any contract for retail fit out purposes); and
- (h) any other contract that the parties agree in writing from time to time is a Significant Subcontract.

**Significant Subcontractor** means a party (other than the VC Contractor) to a Significant Subcontract.

**Significant Subcontractor Direct Deed** means a deed between the Principal, the VC Contractor and any Significant Subcontractor.

**Site Access Date** means, in respect of a part of the Construction Site, the date specified as the "Site Access Date" for that part of the Construction Site in the Site Access Schedule.

**Site Access Expiry Date** means, in respect of part of the Construction Site, the date specified as the "Site Access Expiry Date" for that part of the Construction Site in the Site Access Schedule, as extended (where applicable) pursuant to clause 9.3(d)(ii).

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

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

- (a) Artefacts and any other natural and artificial conditions;
- (b) physical and structural conditions, including old footings, underground structures, buildings, improvements, partially completed structures and in-ground works;
- (c) all improvements, including any artificial things, foundations, retaining walls and other structures installed by or on behalf of the Principal or others;

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

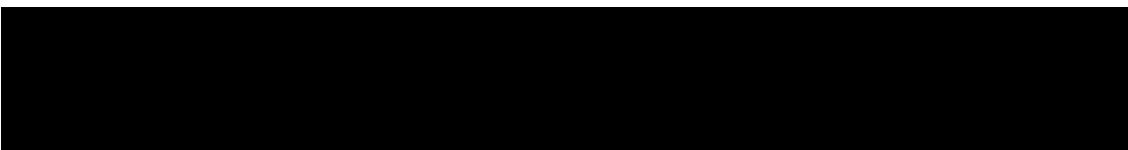
**SOP Act** means the *Building and Construction Industry Security of Payment Act 1999* (NSW).

**Stage 1 Residual Lot** comprises all residual Subdivision Land not required for the Station Lot, the Retail Lot, the Concourse Lot, Development Lot 2 and (if created by way of registration of the Stage 1 Subdivision Documents) Development Lot 1 and the Airspace Lot.

**Stage 1 Subdivision Documents** has the meaning given in clause 8(a) of Schedule D12 (*Subdivision Requirements*).

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

**State Indemnified Party** means:

- (a) the Principal;
- 

**Station Lot** means the stratum lot shown as Lot 1 in the Draft Subdivision Plan, which will be created by way of subdivision.

**Station Works** means the part of the VC Works described in Section 2.1.2 of the SWTC.

**Sub-Tenant** has the meaning given in the Concourse Lease.

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

**Subcontractor** means:

- (a) for the purposes of clause 33.1(c), any person who enters into a contract in connection with the VC Contractor's Activities with the VC Contractor; and
- (b) otherwise, any person who enters into a contract in connection with the VC Contractor's Activities with the VC Contractor or whose subcontract is in connection with the VC Contractor's Activities and is in a chain of contracts where the ultimate contract is with the VC Contractor.

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

**Subdivision Document** means any of the management statement, development contract, by-laws, or an instrument creating easements, covenants or restrictions under the Subdivision Legislation, including:

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

as updated in accordance with Schedule D12 (*Subdivision Requirements*) and Schedule D13 (*Subdivision Principles*).

**Subdivision Land** means those parts of the Principal's Land which will be Subdivided to create each of the following:

- (a) Development Lot 1;
- (b) Development Lot 2;
- (c) Retail Lot;
- (d) Concourse Lot;
- (e) Station Lot;
- (f) Airspace Lot; and
- (g) Residual Lot.

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

**Subdivision Principles** means the principles set out in Schedule D13 (*Subdivision Principles*).

**Subdivision Proposal** means a proposal by the VC Contractor in respect of the Subdivision of the Subdivision Land which must:

- (a) outline and provide reasonable details of the proposed number and configuration of the stratum lots which will comprise the Station Lot, the Retail Lot, the Concourse Lot, the Development Lot 1, the Development Lot 2, the Airspace Lot and the Residual Lot (if any);
- (b) attach full copies of all proposed Subdivision Documents that the VC Contractor intends to be registered together with the Draft Subdivision Plan; and

- (c) attach a certificate from the Surveyor addressed to the Principal confirming that the proposed Subdivision Documents accord with the Project Planning Approval (Chatswood to Sydenham), the Detailed SSD Consent and the Subdivision Principles.

**Substantial Completion** means:

- (a) in respect of the Trackway Portion, the stage in the execution of VC Contractor's Activities in respect of the Trackway Portion when:
  - (i) the Portion is complete in accordance with this deed except for any:
    - (A) Minor Defects;
    - (B) Agreed Defects; and
    - (C) Accepted Defects;
  - (ii) the VC Contractor has:
    - (A) carried out and passed all Tests which are required under this deed to be carried out and passed prior to Substantial Completion of the Trackway Portion being achieved;
    - (B) carried out all Tests which must necessarily be carried out and passed to verify that the Trackway Portion is in the condition this deed requires it to be in at Substantial Completion;
    - (C) obtained all Approvals that it is required under this deed to obtain prior to Substantial Completion of the Trackway Portion being achieved and provided those Approvals to the Principal's Representative;
    - (D) given to the Principal's Representative (with a copy to any of the Interface Contractors as required by the Principal) all documents or other information in respect of the design, construction, testing, commissioning, completion, occupation, use and maintenance of the Trackway Portion which are required by this deed to be given to the Principal's Representative prior to Substantial Completion of the Trackway Portion being achieved, including copies of all documentation in accordance with the requirements of the SWTC;
    - (E) executed a certificate in the form of Schedule B7 (*VC Contractor's Certificate – Substantial Completion*) for the Trackway Portion and provided it to the Principal's Representative and the Independent Certifier;
    - (F) removed all Construction Plant from the parts of the Construction Site that relate to the Trackway Portion, other than:
      - (aa) any Construction Plant required to carry out the Post Completion Activities; and
      - (bb) any Construction Plant necessary to facilitate the handover of the Trackway Portion to the Principal or which is required to be retained on the Construction Site in accordance with clause 6.10(c) (where approved by the Principal's Representative in accordance with clause 6.10(c));

- (G) in respect of any Extra Land occupied or used in connection with the Trackway Portion, provided the Principal's Representative with:
- (aa) properly executed releases on terms satisfactory to the Principal's Representative from all claims or demands from the owners or occupiers of the Extra Land and from other persons having interests in such land; or
  - (bb) if the relevant Landowner or occupier, or other person having an interest in that Extra Land, has failed or refused to execute such a release within [REDACTED] after it was provided by the VC Contractor to the owner, occupier or other person:
    - (a) copies of all correspondence between the VC Contractor and the owner, occupier or other person; and
    - (b) evidence that the condition of the Extra Land satisfies the requirements of the deed;
- (H) reinstated the Temporary Areas that relate to the Trackway Portion to a condition at least equivalent to the condition existing before that occupation or use;
- (I) given the Principal's Representative (with a copy to any Interface Contractor as required by the Principal) all Asset Management Information (including as-built drawings) which has not been rejected by the Principal's Representative in accordance with clause 6.12(c) with respect to the Trackway Portion;
- (J) submitted to the Principal's Representative a survey certificate (within the meaning of that term in the Surveying and Spatial Information Regulation 2012 (NSW)) signed by a land surveyor registered under the Surveying and Spatial Information Act 2002 (NSW) who is approved by the Principal's Representative stating that:
- (aa) the whole of the Trackway Portion is within the relevant boundaries of the Project Site stipulated in this deed, except only for parts of the Portion specifically required by this deed to be outside those boundaries (including any Utility Service Works which this deed specifically states may be carried out outside the boundary of the Construction Site and any Project Works which this deed specifically states may be left in a Temporary Area at Substantial Completion (with respect to the Trackway Portion));
  - (bb) the elements of the Portion are in the positions and within the tolerances required by this deed;
  - (cc) the survey information included in the Asset Management Information provided by the VC Contractor pursuant to clause 6.12 (*Asset Management Information*) complies with the requirements of this deed; and
  - (dd) any other matter identified by the Principal's Representative in relation to surveying or the boundaries of the Portion complies with the requirements of this deed; and

- (K) removed all rubbish, surplus materials (including Construction Materials) and Temporary Works from the relevant parts of the Construction Site and Extra Land relevant to that Portion in accordance with clause 6.10 (*Cleaning up*); and
- (iii) the VC Contractor has done everything else which is stated to be a condition precedent to Substantial Completion of the Trackway Portion, or which VC Contractor is otherwise expressly required by this deed to do prior to Substantial Completion of the Trackway Portion being achieved; and
- (b) in respect of a Non-Trackway Portion, the stage in the execution of VC Contractor's Activities in respect of that Portion when:
- (i) the Portion is complete in accordance with this deed except for:
- (A) Local Area Works;
- (B) final architectural finishes to the Station Works impacted by Interface Work, plant, temporary amenities or other temporary access provisions;
- (C) Loading dock;
- (D) shopfronts to retail areas;
- (E) any:
- (aa) Minor Defects;
- (bb) Agreed Defects; and
- (cc) Accepted Defects; and
- (ii) the VC Contractor has:
- (A) carried out and passed all Systems Acceptance Tests relating to the Project Works as specified in section F7 of the SWTC (which can be undertaken on temporary power if permanent power connection is not available) which:
- (aa) are required under this deed (including the SWTC) to be carried out and passed prior to Substantial Completion of that Portion being achieved; or
- (bb) must necessarily be carried out and passed to verify that Portion is in the condition this deed requires it to be in at Substantial Completion of that Portion; and
- (B) executed a certificate in the form of Schedule B7 (*VC Contractor's Certificate – Substantial Completion*) for the Portion and provided it to the Principal's Representative and the Independent Certifier; and
- (iii) the VC Contractor has done everything else which is stated to be a condition precedent to Substantial Completion of the Portion, or which VC Contractor is otherwise expressly required by this deed to do prior to Substantial Completion of the Portion being achieved.

**Surveyor** means a surveyor who is a member of the Association of Consulting Surveyors NSW Inc having at least 5 years' experience in surveying premises of the same type as the Victoria Cross Station and OSD.

**Sustainability Management Plan** means the Project Plan of that name, as updated from time to time in accordance with this deed.

**SWTC** means the Scope of Work and Technical Criteria contained in Schedule C1 (*Scope of Works and Technical Criteria*).

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

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

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

**Sydney Metro City & Southwest Strategic Objectives** has the meaning given in section 1.3(b) of the SWTC.

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

**Sydney Metro Principal Contractor Health and Safety Standard** means the document referred to as the "Sydney Metro Principal Contractor Health and Safety Standard (SM-PS-ST-221)", which is included in electronic form in Schedule F1 (*Electronic files*).

**Sydney Metro Programming Protocol** means the document titled "Sydney Metro Programming Protocol".

**Sydney Trains** means Sydney Trains, the body corporate constituted by Part 2A of the *Transport Administration (General) Regulations 2005* (NSW).

**Systems Integration Testing** has the meaning given in Appendix A1 of the SWTC.

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

**Technical Management Plan** means the Project Plan of that name.

**Technical Working Group** means each working group established pursuant to clause 2 of Schedule B1 (*Governance Groups*).

**Temporary Areas** means the areas of the Construction Site identified in section 3 of the Site Access Schedule and the areas of the Construction Site described as "Temporary Areas" in the Site Access Schedule.

**Temporary Repairs** has the meaning given in clause 15.8(a).

**Temporary Works** means any temporary physical works required for the purpose of performing the VC Contractor's Activities but not forming part of the Project Works.

**Tender** means the VC Contractor's response to the request for tenders titled "Lendlease's response to request for tender for the delivery of the Victoria Cross Integrated Station Development Contract Number 504" dated 13 August 2018.

**Test** means examine, measure and trial and includes:

- (a) the tests required by Appendix F7 of the SWTC or the Testing and Commissioning Plan; and
- (b) any additional tests which the VC Contractor is directed to carry out under clause 24.2(a).

**Testing and Commissioning Plan** means the Project Plan of that name.

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

**Third Party Agreement** means an agreement contained in Schedule D5 (*Third Party Agreements*) and any Adjoining Property Owner Agreement which has been, or will be, entered into by the Principal.

**Third Party Agreement Design Documentation** means any Design Documentation that is required to be submitted under or in connection with any Third Party Agreement.

**Third Party Works** means Local Area Works, Property Works and Utility Service Works.

**Trackway Portion** means Portion 1.

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

**Transport Assets** has the meaning assigned to it in the ASA Charter.

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

**TSE Construction Completion** has the meaning given to the term "Construction Completion" in the TSE Contract with respect to the TSE Works.

**TSE Contract** means the contract titled "Sydney Metro City & Southwest Tunnel and Station Excavation Works Design and Construction Deed" dated 22 June 2017 between the Principal and the TSE Contractor to carry out the TSE Works, a redacted copy of which is included in electronic form in Schedule F1 (*Electronic files*).

**TSE Contractor** means John Holland Pty Ltd ABN 11 004 282 268, CPB Contractors Pty Ltd ABN 98 000 893 667 and Ghella Pty Ltd ABN 85 142 392 461.

**TSE Cooperation and Integration Deed** means a deed to be entered into between the Principal, the VC Contractor and the TSE Contractor substantially in the form of Schedule A26 (*TSE Cooperation and Integration Deed*).

**TSE Date for Construction Completion** has the meaning given to the term "Date for Construction Completion" under the TSE Contract with respect to the TSE Works.

**TSE Date of Construction Completion** means, in respect of the TSE Works:

- (a) the date notified by the TSE Independent Certifier as the date TSE Construction Completion was achieved; or

- (b) where another date is determined in accordance with the dispute resolution procedures under the TSE Contract as the date upon which TSE Construction Completion was achieved, that date.

**TSE Defect** means:

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

which is not in accordance with the TSE Works Baseline Requirements, which will:

- (c) cause the VC Contractor to incur additional costs;
- (d) delay the performance of the VC Contractor's Activities;
- (e) affect any warranty provided by the VC Contractor under this deed; or
- (f) prevent the VC Contractor from complying with its obligations under this deed,

but does not include [REDACTED].

**TSE Independent Certifier** means APP Corporation Pty Limited ABN 29 003 764 770 or such other person(s) as may be engaged by the Principal and the TSE Contractor in accordance with the TSE Independent Certifier Deed.

**TSE Independent Certifier Deed** means the deed so titled entered into between the TSE Contractor, the Principal and the TSE Independent Certifier.

**TSE Known Defect** means a TSE Defect which is listed in a TSE Notice of Construction Completion.

**TSE Minor Defect** means a "Minor Defect" as that term is defined under the TSE Contract.

**TSE Notice of Construction Completion** has the meaning given to the term "Notice of Construction Completion" in the TSE Contract.

**TSE Site** means the "Construction Site" (as defined in the TSE Contract), to the extent that that "Construction Site" forms part of the Construction Site.

**TSE Site Access Date** has the meaning in clause 9.2(d).

[REDACTED]

**TSE Works** means the works comprised within "Portion 9" and, in relation to the platform caverns for Victoria Cross Station, "Portion 9" in the TSE Contract.

**TSE Works Asset Management Information** means any "Asset Management Information" (as defined in the TSE Contract), including any draft "Asset Management Information" submitted to the Principal by the TSE Contractor under the TSE Contract, to the extent that "Asset Management Information" or draft "Asset Management Information" relates to the TSE Works.

**TSE Works Baseline Requirements** means:

- (a) the following specific clauses and schedules of the redacted TSE Contract included in Schedule F1 (Electronic files):
- (i) TSE Contract, general conditions: Clauses 3.1 (*General*), 3.3 (*Environmental requirements*), 3.10 (*Cooperation and coordination with Interface Contractors*), 3.16 (*Sustainability*), 3.18 (*Cooperation and integration deeds*), clause 5 (*Law and Approvals*), 6 (*Work health and safety*), 7 (*Engineering authorisation and ASA compliance*), 10.1 (*Access*), 10.10A (*Archaeological Clearance Works*), 10.11 (*Artefacts*), 10.13 (*Contamination*), 10.14 (*Disposal of Contamination and Waste*), 10.14A (*Remediation Action Plans*), 10.14B (*Site audit and validation requirements*), 10.15 (*Remediation of Contaminated Future Development Sites*), 11 (*Quality*), 12 (*Design*), 13 (*Changes*), 14 (*Construction*), 15 (*Defects*), 17.11 (*Construction Completion*), 17.11A (*Completion*), 17.12 (*Effect of Notice of Construction Completion or Notice of Completion*), 17.13 (*Access following Construction Completion of a Portion*), 17.14 (*Transitional Handover Services and handover*) and any other clause or schedule that is referred to in, or which is relevant to the interpretation of, the aforementioned clauses (including without limitation clauses 1.1 (*Definitions*) and 1.2 (*Interpretation*); and
  - (ii) TSE Contract, schedules: Schedule A1 (*Portions*), Schedule A3 (*Transitional Handover Services*), Schedule A9 (*Form of Independent Certifier Deed*), Schedule A10 (*Form of Follow-on Contractor Cooperation and Integration Deed*), Schedule A12 (*Form of Interface Contractor Deed Poll*), Schedule A21 (*Proof Engineer Requirements*), Schedule C1 (*SWTC* – only the following sections and appendices – SWTC Main Body, Appendix A.3, Appendix A.5, Appendix A.6, Appendix B.1, Appendix B.2, Appendix B.3, Appendix B.5, Appendix E.1 and Appendix E.5), Schedule D1 (*Site Access Schedule* – only those parts which relate to Areas "J1", "J2", "J3", "J4", "J5", "J6", "K1" and "K2" in Figure 2.1 and Sub-sites "J" and "K" in the Site Access Area Drawing), Schedule D12 (*Key Contaminated Areas* – only those parts that relate to "Victoria Cross North"), Schedule D13 (*Contaminated Future Development Sites* – only those parts that relate to Area "K2"), Schedule D15 (*Artefact Risk Areas* – only those parts that relate to Sub-sites "J" and "K" in the Site Access Area Drawing) and Schedule F1 (*Electronic Files* – only the specific documents titled "Schedule A01 NWRLSRT-RPS-SRT-SR-DWG-000064-G-TSE Site Access" and "Schedule D01 NWRLSRT-RPS-SRT-SR-DWG-000063-G-TSE Figure 2.1"). For the purposes of this paragraph (a)(ii), references to "Area" and "Sub-site" are to those parts of the TSE Construction Site (as that term is defined in the TSE Contract) that relate to the VC Contractor's obligations under this deed.
- (b) TSE Works Design Documentation included in Schedule F1 (Electronic files).

**TSE Works Design Documentation** has the meaning given in clause 15.2(a).

**TSE Works O&M Manuals** means the operation and maintenance manuals forming part of the TSE Works Asset Management Information certified by the TSE Independent Certifier under the TSE Contract.

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

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

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

**Unowned Property Works Lands** means a parcel of land and any improvements of which the State is not the registered proprietor, lessee or licensee and in relation to which, or upon which, Property Works are to be undertaken.

**Urgent Defect** means a Defect which poses or creates an actual or potential risk to the health or safety of any person or of loss of or damage to property.

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

**Utility Service Works** means the construction, modification, or relocation of Utility Services to be designed and constructed by the VC Contractor and handed over to the Principal, an Authority or any other person in accordance with this deed including any such works specified in the SWTC (and including, to the extent relevant to such works, Modifications directed or approved in accordance with this deed).

**Value Engineering Objectives** has the meaning given in clause 2.8(a) (*Value engineering*).

**VC OSD Contract Documents** means the OSD PDA and each "VC OSD Contract Document" (as defined in the OSD PDA).

**VC Contractor Event of Default** has the meaning given in clause 32.1 (*VC Contractor Event of Default*).

**VC Contractor Guarantor** means the entity referred to in item 3 of the Reference Schedule.

**VC Contractor Margin** has the meaning given to that term in Schedule E4 (*Valuation Mechanism*).

**VC Contractor Submissions** has the meaning given in clause 1.8(a)(i).

**VC Contractor Termination Event** means any event specified in clause 32.4 (*VC Contractor Termination Events*).

**VC Contractor's Activities** means all things or tasks which the VC Contractor is, or may be, required to provide, carry out or do to comply with its obligations under this deed (whether or not the performance of such things or tasks is subcontracted by the VC Contractor to another person) including provision of Construction Plant and Construction Materials, designing, constructing, testing and commissioning the Project Works and Temporary Works and including the Post Completion Activities.

**VC Contractor's Initial Program** is the initial program for the Project Works prepared by the VC Contractor as part of its Tender.

**VC Contractor's Program** is the program/schedule submitted by the VC Contractor to the Principal's Representative in accordance with the requirements of clause 21.5(b) and as updated pursuant to clause 21.5(c) and Appendix F2 of the SWTC.

**VC Contractor's Representative** means the person referred to in item 7 of the Reference Schedule or any person appointed by the VC Contractor as its replacement representative from time to time, as notified by the VC Contractor to the Principal in writing.

**VC Contractor's Tender Design** means the design prepared by the VC Contractor as part of its Tender and set out in Schedule C3 (*VC Contractor's Tender Design*).

**VC Developer** means the entity referred to in item 2 of the Reference Schedule .

**VC Developer's Activities** means all activities that the VC Developer performs, or is required to perform, to comply with its obligations under the OSD PDA, whether or not the performance of such things or tasks is subcontracted by the VC Developer to another person.

**VC Developer's Associates** means the people and entities referred to in paragraph (b) of the definition of "Associate" in the OSD PDA.

**VC Station Contract Documents** means:

- (a) this deed;
- (b) each Parent Company Guarantee;
- (c) the Independent Certifier Deed;
- (d) not used;
- (e) not used;
- (f) any Significant Subcontractor Direct Deed;
- (g) each Project Cooperation and Integration Deed;
- (h) the Master Interface Protocols Deed Poll;
- (i) the Collateral Warranty Deed Poll;
- (j) the IDAR Panel Agreement; and
- (k) any document which the Principal and the VC Contractor acknowledge in writing to be a VC Station Contract Document,

but does not include the VC OSD Contract Documents.

**VC Works** means the physical works which the VC Contractor must design, construct, complete and hand over to the Principal in accordance with this deed (including, to the extent relevant to such works, Modifications directed in accordance with this deed) but excluding the Third Party Works.

**Victoria Cross Station** means the new underground metro station for Sydney Metro City & Southwest known as "Victoria Cross Station".

**Victoria Cross ISD Objectives** has the meaning given in section 1.3(c) of the SWTC.

**WHS Accreditation Scheme** means the Australian Government Building and Construction WHS Accreditation Scheme established by the *Fair Work (Building Industry) Act 2012* (Cth), or any scheme replacing it.

**WHS Legislation** means:

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

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

**Witness Point** means a point in a work process for which the VC Contractor must give prior notice to the Principal's Representative to allow the Principal's Representative to attend and witness the point in the work process should it choose to do so.

**SCHEDULE A3. – PORTIONS AND MILESTONES**

(Schedule A2, clause 19 and clause 28.11)

**1. General**

- (a) Subject to section 1(c), unless the context requires otherwise, terms which are defined in the SWTC have the same meaning where used in this Schedule A3.
- (b) A reference to an area of the Construction Site by an individual area number is a reference to the area of the Construction Site so numbered and described in the drawings described in section 2 of this Schedule A3.
- (c) In this Schedule A3:
  - (i) **Degree 1 Activities Completion** means the stage in execution of VC Contractor's Activities in respect of a specified part of the Project Works when all of the activities identified as "Degree 1 Activities" in Table 4 in Appendix 1 to this Schedule A3 have been completed, as applicable, in accordance with this deed;
  - (ii) **Degree 2 Activities Completion** means the stage in execution of VC Contractor's Activities in respect of a specified part of the Project Works when all of the activities identified as "Degree 2 Activities" in Table 4 in Appendix 1 to this Schedule A3 have been completed, as applicable, in accordance with this deed; and
  - (iii) **Degree 3 Activities Completion** means the stage in execution of VC Contractor's Activities in respect of a specified part of the Project Works when all of the activities identified as "Degree 3 Activities" in Table 4 in Appendix 1 to this Schedule A3 have been completed, as applicable, in accordance with this deed.

## 2. Portion and Milestone Drawings

The drawings of the areas of the Construction Site referred to in this Schedule A3 are set out in Table 1 below, and are included in Schedule F1 as electronic files.

**Table 1: Drawings**

Drawing Number	Revision	Drawing Title and number of sheets	Electronic File Reference
NWRL-SRT-LL-SVS-AR-8200	1.1	Victoria Cross Station Portions and Milestones – Sheet 01 of 06	Victoria Cross Station Portions and Milestones V1.2.pdf
NWRL-SRT-LL-SVS-AR-8201	1.1	Victoria Cross Station Portions and Milestones – Sheet 02 of 06	Victoria Cross Station Portions and Milestones V1.2.pdf
NWRL-SRT-LL-SVS-AR-8202	1.1	Victoria Cross Station Portions and Milestones – Sheet 03 of 06	Victoria Cross Station Portions and Milestones V1.2.pdf
NWRL-SRT-LL-SVS-AR-8203	1.1	Victoria Cross Station Portions and Milestones – Sheet 04 of 06	Victoria Cross Station Portions and Milestones V1.2.pdf
NWRL-SRT-LL-SVS-AR-8204	1.1	Victoria Cross Station Portions and Milestones – Sheet 05 of 06	Victoria Cross Station Portions and Milestones V1.2.pdf
NWRL-SRT-LL-SVS-AR-8205	1.1	Victoria Cross ISD Portions and Milestones – Sheet 06 of 06	Victoria Cross Station Portions and Milestones V1.2.pdf

### 3. Portions

**Table 2: Portions**

Portion	Description	Date for Substantial Completion	Delay for Damages post Date for Substantial Completion (clause 21.12)	Liquidated Damages post Date for Completion (\$/day)	Delay for Damages post Date for Completion (clause 21.12)	Liquidated Damages post Date for Completion (\$/day)
<b>Portion 1</b>			(a) From the Date for Substantial Completion of Portion 1 up to (but not including) [REDACTED] [REDACTED] per day.  (b) From [REDACTED] [REDACTED] per day.	[REDACTED]	(a) From the Date for Completion of Portion 1 up to (but not including) the Date for Substantial Completion of Portion 2, [REDACTED] per day.  (b) From the Date for Substantial Completion of Portion 2, [REDACTED] per day.	[REDACTED]

Portion	Description	Date for Substantial Completion	Delay Liquidated Damages post Date for Substantial Completion (clause 21.12) \$/day	Date for Completion	Delay Liquidated Damages post Date for Completion (clause 21.12) \$/day
<b>Portion 2</b>					<p>(a) From the Date for Completion of Portion 2 up to (but not including) [REDACTED] per day.</p> <p>(b) From [REDACTED] [REDACTED] per day.</p> <p>\$ [REDACTED]</p>
<b>Portion 3</b>					

Portion	Description	Date for Substantial Completion	Delay Damages post Date for Substantial Completion (clause 21.12)	Liquidated Damages \$/day	Date for Completion	Delay Damages post Date for Completion (clause 21.12)	Liquidated Damages \$/day
Portion 4	[REDACTED]						

#### 4. Milestones

**Table 3: Milestones**

Milestone	Description	Date for Milestone Achievement	Delay Liquidated Damages
Milestone 1			[REDACTED] for every day after the Date for Milestone Achievement
Milestone 2			[REDACTED] for every day after the Date for Milestone Achievement
Milestone 3			[REDACTED] for every day after the Date for Milestone Achievement
Milestone 4			[REDACTED] for every day after the Date for Milestone Achievement

Milestone	Description	Date for Milestone Achievement	Delay Liquidated Damages
<b>Milestone 5</b>			<p>(a) From the Date for Milestone Achievement of Milestone 5 up to (but not including) the Date for Substantial Completion of Portion 2, [REDACTED] per day.</p> <p>(b) From the Date for Substantial Completion of Portion 2, [REDACTED] per day.</p>
<b>Milestone 6</b>			<p>(a) From the Date for Milestone Achievement of Milestone 6 up to (but not including) [REDACTED] [REDACTED] per day.</p> <p>(b) From [REDACTED] [REDACTED] per day.</p>
<b>Milestone 7</b>			[REDACTED]

**Table 3A: Milestone Performance Payments**

Milestone Performance Payment	Description	Milestone Performance Payment
Milestone Performance Payment 1		
Milestone Performance Payment 2		
Milestone Performance Payment 3		
Milestone Performance Payment 4		
Milestone Performance Payment 5		
Milestone Performance Payment 6		

Milestone Performance Payment	Description	Milestone Performance Payment
Milestone Performance Payment 7		
Milestone Performance Payment 8		

**APPENDIX 1 – DEGREES OF COMPLETION****Table 4: Activities for Degrees of Activities Completion**

<b>Degree 1 Activities</b>	<b>Degree 2 Activities</b>	<b>Degree 3 Activities</b>
1.1 Structure or building complete, clean, dry and watertight.	2.1 All activities identified for Degree 1 Activities Completion complete.	3.1 All activities identified for Degree 2 Activities Completion complete.
1.2 All tunnels, cross passages and adits structurally complete, clean, dry and watertight including backfilling, joints and stitches complete.	2.2 Permanent door frames installed with temporary doors and locks.	3.2 Electrical and mechanical critical equipment room installation and main cabling complete.
1.3 Blockwalls, partition walls, all plinths and upstands complete.	2.3 Metal staircases, cat-ladders and catwalks complete.	3.3 HV and LV power related equipment installation and cabling complete.
1.4 Sealing of blockwork, plastering, painting, floor screeding and epoxy floor paint complete, i.e. all wet trades complete.	2.4 Structural steelwork and associated interface brackets complete including provisions for lift shafts, platform screen doors and surveys accepted.	3.4 All works in HV and LV power supply electrical equipment rooms including installation of permanent doors complete.
1.5 Structure or building as-built survey complete.	2.5 Louvres and grilles installed.	3.5 Headwall, tailwall and auxiliary communication cupboards installation including all associated electrical and mechanical services complete.
1.6 Structural and blockwork electrical and mechanical openings formed and survey complete.	2.6 Wall and ceiling finishes complete for back of house.	3.6 Ceiling framework and grids complete and all service panels that accommodate Interfacing Contractors' equipment installed.
1.7 Movement and expansion joints complete.	2.7 Framework for wall panels and cladding complete.	3.7 Ceiling, wall and floor final finishes at lift lobbies / balustrades, barriers and landings and adjacent to escalators complete.
1.8 Track and platform slab and overtrack and undertrack air duct complete including survey.	2.8 Complete mounting brackets, hangers supports, primary ceiling support frames, power and data points for Interface Contractors.	3.8 Installation for lift and escalator zones complete.
1.9 Staircases, lift shafts, lift pits, escalator/moving walkway pits and escalator areas complete.	2.9 Air tight and acoustic doors for all air plenums installed.	3.9 Smoke curtain, roller shutters, fire shutters and smoke barriers installation complete.
1.10 Construction equipment and scaffolding and falsework removed from all track	2.10 Joinery / framing / counter for supporting Interface Contractor equipment available.	3.10 Wiring and termination to roller shutters,
	2.11 Complete pedestal fixing brackets and installation of floor panels for raised floors.	

Degree 1 Activities	Degree 2 Activities	Degree 3 Activities
areas.	2.12 Temporary air conditioning available and operational. 2.13 Installation of cable containment and support systems complete, including ladder racks, cable trays, cable trunking and conduits, brackets anchors and guides. 2.14 Completion of the activities described in <b>Table 5</b> as being Degree 2 Provision Activities. 2.15 Completion of the activities described in <b>Table 6</b> as being Building Services First Fix Activities.	fire shutters and smoke barriers complete. 3.11 Platform isolation and platform floor finishes up the platform screen doors threshold complete. 3.12 All internal and external finishes to all floors, walls and ceilings complete. 3.13 All openings, accesses and service penetrations sealed. 3.14 All signage wiring and termination complete. 3.15 All door contact wiring complete. 3.16 All permanent portable fire extinguisher complete and all related fire services requirements complete. 3.17 Completion of the activities described in <b>Table 5</b> as being Degree 3 Provision Activities. 3.18 Completion of the activities described in <b>Table 6</b> as being Building Services Second Fix Activities.
1.11 Underground earth mat, earth rods, lightning pits and earth pits complete and test results accepted.		
1.12 Underground pipework complete, cleaned and tested including manholes ductwork, valve pits and drawpits.		
1.13 Sumps complete with temporary pumps operational.		
1.14 Drainage system including oil interceptors, terminal manholes and discharge connections complete with temporary pumps operational.		
1.15 Trackbed / base slab / trackside upstands, track turnout slabs and cross track ducts complete.		
1.16 Louvres and acoustic panel frames to trackside areas complete, including station overrun structure.		
1.17 All works areas backfilled or formed to required formation level.		
1.18 Water-tightness testing to all tanks complete.		
1.19 Waterproofing complete.		
1.20 Confirmation of final positions of openings, holes, recesses, chases, and fixings after concreting.		
1.21 Installation of concealed conduits (with fixings and sleeves to be cast in concrete)		

Degree 1 Activities	Degree 2 Activities	Degree 3 Activities
<p>complete, including accessories and draw wires.</p> <p>1.22 Temporary safety barriers at landings and at all lift shafts and floor openings.</p> <p>1.23 Lift shaft alignment, location of penetrations and openings surveyed and accepted.</p> <p>1.24 All access requirements for Interface Contractors as specified in or required by the Appendix E1 of the SWTC are provided.</p> <p>1.25 Completion of the activities described in <b>Table 5</b> as being Degree 1 Provision Activities.</p>		

**Table 5: Provision Activities for Interface Contractors**

<b>Degree 1 Provision Activities</b>	<b>Degree 2 Provision Activities</b>	<b>Degree 3 Provision Activities</b>
<p>1.1 Cast-in sockets, cable supports and pipe brackets complete.</p> <p>1.2 Supports / subframe for trackside advertising panel complete.</p> <p>1.3 Temporary power and lighting complete.</p> <p>1.4 Temporary ventilation complete.</p> <p>1.5 Plant access and material delivery routes clear with permanent frames for delivery or access hatches installed.</p> <p>1.6 Lifting facilities (beams, lugs and eyes) complete and certified.</p> <p>1.7 Niches, recesses and box outs complete.</p> <p>1.8 Cable troughs and trenches complete.</p> <p>1.9 Cable duct runs / risers complete.</p> <p>1.10 Concealed trunking and conduit complete.</p> <p>1.11 Sleeves for penetrations complete.</p> <p>1.12 Works and storage areas available.</p> <p>1.13 Flood protection provision(s) installed.</p> <p>1.14 Survey reference lines and benchmark.</p> <p>1.15 Top plate and hanger beams at concourse level complete.</p>	<p>2.1 Clean, safe and dust free access for Interface Contractors.</p> <p>2.2 Site facilities are in place for use by the Interface Contractors, in accordance with the SWTC.</p>	Nil

**Table 6: Activities for Building Services Fix Stages**

<b>Part of the Metro Station Works</b>	<b>Building Services First Fix Activities</b>	<b>Building Services Second Fix Activities</b>
Environmental control system	<p>The installation of all environmental control system equipment complete, including chillers, pumps, control panels for chillers, cooling tower, motor control centres, fans, split units, air handling units, primary air units and fan coil units.</p> <p>The installation of all duct work and pipe work systems complete, including valves, silencers, dampers, access panels, supports, anchors and guides.</p> <p>All sectional testing complete, where necessary due to concealment or other construction constraints.</p>	<p>Insulation of all ductwork and pipework systems complete.</p> <p>Leakage test for all ductwork and pipework complete.</p> <p>Power and control cabling / wiring with termination complete.</p>
LV power supply and distribution system and electrical system	<p>The installation of isolating transformers, switchboards, main earthing system, bonding, termination complete and test results accepted.</p> <p>Installation of cable containment and support systems complete, including ladder racks, cable trays, cable trunking and conduits, brackets anchors and guides.</p>	<p>Installation of all isolators, fused spur units, sockets, lighting and exit signs, distribution boards and UPS / batteries complete.</p> <p>Installation and testing of all circuitry including cabling / wiring and termination at isolators, fused spur units, sockets, lighting and exit signs, isolating transformers, switchboards, distribution boards, UPS / batteries, power and control points, advertising panels, directional signs complete.</p> <p>All electrical testing and commissioning works for the power supply electrical rooms completed ready for operation.</p>
Hydraulic services	<p>The installation of all pumps for flushing water system, sump pumps, potable water system and drainage system complete.</p> <p>The installation of all pipe runs, with associated valves, supports, anchors and guides complete.</p> <p>All sectional testing complete, where necessary due to</p>	<p>Installation of the controls for the flushing water system, sump pumps, potable water and drainage system complete.</p> <p>The power and control cabling / wiring with termination complete.</p> <p>The hydraulic testing of all piping systems for the pumps and associated pipework complete.</p>

<b>Part of the Metro Station Works</b>	<b>Building Services First Fix Activities</b>	<b>Building Services Second Fix Activities</b>
Fire services system	<p>concealment or other construction constraints.</p> <p>The installation of all pump-motor sets for sprinkler system, gaseous suppression system, fire hydrant/hose reel system and trackside firefighting systems complete.</p> <p>The installation of all pipe runs, with associated valves, supports, anchors and guides complete.</p> <p>The cable containment and support systems for fire services system complete.</p> <p>All sectional testing complete, where necessary due to concealment or other construction constraints.</p>	<p>The installation of all control and monitoring for sprinkler system, gaseous suppression system, fire hydrant / hose reel system and trackside firefighting systems at both the local fire control panels and integrated back-up panels complete.</p> <p>The installation and termination of all power and control cabling / wiring complete.</p> <p>The hydraulic testing of all pipework complete.</p> <p>All cabling / wiring with termination at automatic fire alarm (AFA) system panels and AFA loops complete.</p> <p>The installation of detector base plates and remote indicators.</p>
Building management control system	<p>The installation of building management control system equipment complete, including building services controllers, PLC panel and station environmental control system controllers.</p>	<p>Cabling and wiring for the building management control system complete, with termination at the station building services controllers, station environmental control system controllers, fire services control panels, LV switchboards, motor control centres, integrated back-up panels, power and control system and other station based control system equipment.</p>

**SCHEDULE A4. – PRE-AGREED MODIFICATIONS**

(Schedule A2 and clause 20)

<b>Pre-Agreed Modification 1</b>														
Description	Earlier dates for site access to the southern shaft													
SDD amendments	<p>In Schedule D1 of the SDD, amend the Early Site Access Date and Site Access Date for:</p> <ul style="list-style-type: none"> <li>• Lot 1 DP 633088, Lot A DP 160018, Lot 1 DP 123056, Lot 2 DP 123056, Lot 15 DP 69345, Lot 10 DP 70667, Lot 1 DP 1230458, and all Lots comprising Strata Plan 35644, that are at and below RL 81.6 in the table in section 3 of Schedule D1 of the SDD; and</li> <li>• Area 'J6' in Figure 2.1 in the table in section 4 of Schedule D1 of the SDD, as per the various scenarios described below:</li> </ul> <table border="1"> <thead> <tr> <th>Pre-Agreed Modification Scenario</th><th>Early Site Access Date</th><th>Site Access Date</th></tr> </thead> <tbody> <tr> <td>Scenario A</td><td></td><td></td></tr> <tr> <td>Scenario B</td><td></td><td></td></tr> <tr> <td>Scenario C</td><td></td><td></td></tr> </tbody> </table>		Pre-Agreed Modification Scenario	Early Site Access Date	Site Access Date	Scenario A			Scenario B			Scenario C		
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Scenario A														
Scenario B														
Scenario C														
Drawing amendments	Nil													
Adjustment to Contract Sum	<table border="1"> <thead> <tr> <th>Pre-Agreed Modification Scenario</th><th>Early Site Access Date Adjustment to Contract Sum (\$)</th></tr> </thead> <tbody> <tr> <td>Scenario A</td><td></td></tr> <tr> <td>Scenario B</td><td></td></tr> <tr> <td>Scenario C</td><td></td></tr> </tbody> </table>		Pre-Agreed Modification Scenario	Early Site Access Date Adjustment to Contract Sum (\$)	Scenario A		Scenario B		Scenario C					
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Pre-Agreed Modification Scenario	Election Date													
Scenario A														
Scenario B														
Scenario C														

### Pre-Agreed Modification 2

Description	Earlier dates for site access to the northern shaft and cavern														
SDD amendments	<p>In Schedule D1 of the SDD, amend the Early Site Access Date and Site Access Date for:</p> <ul style="list-style-type: none"> <li>• Lot 1 DP 536008 in the table in section 3 of Schedule D1 of the SDD;</li> <li>• Lot 80 DP 1231920 in the table in section 3 of Schedule D1 of the SDD;</li> <li>• Lot 81 denoted as Draft DP as shown in PR124856-153-DP1-002-B.1 Sections in the table in section 3 of Schedule D1 of the SDD;</li> <li>• Lot 83 denoted as Draft DP as shown in PR124856-153-DP1-002-B.1 Sections in the table in section 3 of Schedule D1 of the SDD;</li> <li>• The area identified as "Proposed Land Take" as shown on Sheet 5 of PR124856-153-DP1-002-B.1 Sections in the table in section 3 of Schedule D1 of the SDD; and</li> <li>• Lot 2 DP 218407, Lot 1 DP 1150156 and Lot 2 DP 1150156 in the table in section 4 of Schedule D1 of the SDD,</li> </ul> <p>as per the various scenarios described below:</p>														
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;"><b>Pre-Agreed Modification Scenario</b></th><th style="text-align: center;"><b>Early Site Access Date</b></th><th style="text-align: center;"><b>Site Access Date</b></th></tr> </thead> <tbody> <tr> <td>Scenario 2A</td><td style="background-color: black;"></td><td style="background-color: black;"></td></tr> <tr> <td>Scenario 2B</td><td style="background-color: black;"></td><td style="background-color: black;"></td></tr> <tr> <td>Scenario 2C</td><td style="background-color: black;"></td><td style="background-color: black;"></td></tr> </tbody> </table>			<b>Pre-Agreed Modification Scenario</b>	<b>Early Site Access Date</b>	<b>Site Access Date</b>	Scenario 2A			Scenario 2B			Scenario 2C		
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Scenario 2A															
Scenario 2B															
Scenario 2C															

Period for exercising the Pre-Agreed Modification	<b>Pre-Agreed Modification Scenario</b>		
	Scenario 2A		
	Scenario 2B		
	Scenario 2C		

<b>Pre-Agreed Modification 3</b>	
Description	Modification of all items carrying Sydney Metro branding and logos
SDD amendments	[REDACTED]
Scope Clarification	<p>The scope of this modification is a once only event that covers the following elements:</p> <ul style="list-style-type: none"> <li>• Any hoardings to the Construction Site containing the Sydney Metro branding – inclusive of logo and/or colour changes;</li> <li>• Any material required by Appendix F5 to Schedule C1 (SWTC) (excluding section 10.3) where the Sydney Metro branding is contained in collateral; and</li> <li>• Any banners to the crane/lift core that has the Sydney Metro branding.</li> </ul>
Drawing amendments	Nil
Adjustment to Contract Sum	[REDACTED]
Period for exercising the Pre-Agreed Modification	Election Date: [REDACTED] [REDACTED].

**Pre-Agreed Modification 4**

Description															
SDD amendments	In Schedule C1, SWTC Appendix D1 – Drawings, section 13 replace the following two drawings under Table 2 – Project Works Drawings:														
	<table border="1"> <thead> <tr> <th>Drawing Number</th><th>Drawing Title</th><th>Revision</th><th>Electronic File Reference</th></tr> </thead> <tbody> <tr> <td>NWRLSRT-LL-SVS-AR-8234</td><td>04-S LOW RISE &amp; CO-WORKING</td><td>A</td><td>VC ISD SDD Schedule C1 - D1 - SWTC Drawings - Project Works Delineation Drawings</td></tr> <tr> <td>NWRLSRT-LL-SVS-AR-8235</td><td>05-S LOW RISE &amp; OSD PLANT</td><td>A</td><td>VC ISD SDD Schedule C1 - D1 - SWTC Drawings - Project Works Delineation Drawings</td></tr> </tbody> </table>			Drawing Number	Drawing Title	Revision	Electronic File Reference	NWRLSRT-LL-SVS-AR-8234	04-S LOW RISE & CO-WORKING	A	VC ISD SDD Schedule C1 - D1 - SWTC Drawings - Project Works Delineation Drawings	NWRLSRT-LL-SVS-AR-8235	05-S LOW RISE & OSD PLANT	A	VC ISD SDD Schedule C1 - D1 - SWTC Drawings - Project Works Delineation Drawings
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Drawing amendments	Nil														
Adjustment to Contract Sum															
Extension of time to a Significant Date															
Period for exercising the Pre-Agreed Modification															

**SCHEDULE A5. – SIGNIFICANT SUBCONTRACTORS AND SIGNIFICANT SUBCONTRACT WORK**

(Schedule A2 and clause 17.2)

<b>Significant Subcontractor</b>	<b>ABN</b>	<b>Address</b>	<b>Significant Subcontract Work</b>
			Design Consultant - Architecture
			Design Consultant – Engineering
			Design Consultant – Engineering
			Design Consultant – Urban Design & Landscape

**SCHEDULE A6. – SUBCONTRACT REQUIREMENTS**

(Clause 17.3)

<b>Item</b>	<b>Requirement</b>
<b>1. Subcontracts and Significant Subcontracts</b>	
(a)	Each Subcontract that the VC Contractor enters into must contain a term that (to the extent permitted by Law) excludes the application of Part 4 of the <i>Civil Liability Act 2002 (NSW)</i> in relation to all and any rights, obligations or Liabilities of either party under each Subcontract whether these rights, obligations or Liabilities are sought to be enforced by a Claim in contract, tort or otherwise.
(b)	Each Subcontract that the VC Contractor enters into must contain a requirement that in any further contract that a Subcontractor enters into with a third party for the performance of the VC Contractor's Activities, a term that (to the extent permitted by Law) excludes the application of Part 4 of the <i>Civil Liability Act 2002 (NSW)</i> in relation to all and any rights, obligations or Liabilities of either party under each further agreement whether such rights, obligations or Liabilities are sought to be enforced by a Claim in contract, tort or otherwise.
(c)	Each Subcontract that the VC Contractor enters into must include provisions expressly requiring the Subcontractor to comply with the Chain of Responsibility Provisions and each further Subcontract that a Subcontractor enters into must also contain a clause to the same effect which is binding on the Subcontractor.
(d)	Each Subcontract that the VC Contractor enters into must contain a warranty given by the Subcontractor that the work or services performed under that Subcontract are, or must be, fit for purpose on terms substantially similar to clause 2.3(c).
<b>2. Significant Subcontracts</b>	
(a)	Each Significant Subcontract must contain provisions equivalent to clause 6.2 ( <i>Work health and safety</i> ), clause 6.4 ( <i>Authorisation and licences</i> ) and Schedule A11 ( <i>Prescribed legislative requirements</i> ) and requiring Significant Subcontractors to prepare a safety management plan in accordance with the requirements in Appendix F2 of the SWTC.
(b)	Each Significant Subcontract must contain provisions recognising the Principal's rights under clause 9.7 ( <i>Principal's right of entry to Construction Site</i> ) and clause 32.3 ( <i>Rights of the Principal following Default Notice</i> ).
(c)	Each Significant Subcontract must contain provisions which are consistent with the Principal's rights under clause 25.1 ( <i>Assignment and ownership</i> ).
(d)	Each Significant Subcontract must contain provisions expressly requiring the Subcontractor to comply with the requirements of clause 2.7 ( <i>Workforce development and industry participation</i> ).
(e)	Each Significant Subcontract must include a clause providing that if this deed is terminated for any reason or the Principal takes over the VC Contractor's work, the VC Contractor and the Subcontractor must, after the Principal has given a Direction to do so, promptly (and within 5 Business Days) execute a deed of novation in the form of Schedule A21 ( <i>Form of Deed of Novation</i> ).

**SCHEDULE A7. – SUBCONTRACTOR WARRANTIES**

(Clause 17.5)

<b>Equipment</b>	<b>Beneficiary (other than the Principal)</b>	<b>Warranty Period</b>
<b>Structural Works</b>		
Structural concrete		
Structural steel		
Waterproofing membranes		
<b>Architectural Works</b>		
Architectural grade steelwork including screens, framing systems, custom balustrades, handrails, and fabricated metalwork such as access walkways		
<b>Electrical</b>		
Uninterrupted power supply including batteries		
All other electrical equipment and fittings not including light fittings and distribution boards		
Distribution boards		
Light fittings		
Electrical and data cables		
<b>Services and systems</b>		
Building systems and services		
<b>Fire protection</b>		
Fire extinguishers		
Smoke and thermal detectors		
Gas suppression		
<b>Surface Finishes</b>		
Exterior paint finishes including painting to structural steel and clear sealer/anti-graffiti coating		
Steel coatings other than paintwork including powder coating		

<b>Equipment</b>	<b>Beneficiary (other than the Principal)</b>	<b>Warranty Period</b>
Hot dip galvanising		

## SCHEDULE A8. – MODIFICATION PROCEDURE

(Schedule A2 and clause 20)

### 1. GENERAL

#### 1.1 Definitions

In this Schedule A8:

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

**Election Date** means, in respect of a Pre-Agreed Modification, the relevant date specified as the "Election Date" in Schedule A4 (*Pre-Agreed Modifications*).

**Interface Works Change** means any change or variation to any Interface Works following the date of this deed including any addition, reduction, increase, decrease, omission, deletion, demolition or removal to or from them.

**Modification** means any change to the Project Works, Temporary Works or the VC Contractor's Activities or the requirements of this deed for any of them, including:

- (a) any addition, reduction, increase to, decrease, omission or deletion from the Project Works, Temporary Works or the VC Contractor's Activities;
- (b) any change to the character or quality, or demolition or removal, of any material or work;
- (c) any change to the levels, lines, positions or dimensions of any part of the Project Works or the Temporary Works;
- (d) changes to the Construction Site;
- (e) subject to clause 22 (*Directions to change sequencing and accelerate*), Resequencing, Acceleration, Deferred Activities or Making Accessible;
- (f) subject to clause 7.2 (*Change in Law*), a Change in Law; and
- (g) any design works, surveys or site investigations in respect of a potential or proposed change referred to in paragraphs (a), (b) or (c) of this definition,

but excluding any changes to the Project Works or the Temporary Works that are required as a result of the Principal's Representative instructing a Pre-Agreed Modification by the Principal's Representative under clause 3 of this Schedule A8.

**Modification Approval** means a notice titled "Modification Approval" issued by the Principal under clause 4(c)(i)(A) of this Schedule A8.

**Modification Order** means a notice titled "Modification Order" issued by the Principal under clause 2.2(a) of this Schedule A8.

**Modification Proposal** means a proposal submitted by the VC Contractor under clause 2.1(b) of this Schedule A8.

**Modification Proposal Request** means a notice titled "Modification Proposal Request" issued by the Principal under clause 2.1(a) of this Schedule A8.

**Modifications Working Group** means the group referred to in clause 1.4 of this Schedule A8.

**Open Book Basis** means the provision of any pricing, costing and other information on an open book basis to enable an assessment of actual costs and profit margins, including a breakdown of all relevant preliminaries, insurances, labour, equipment, materials, subcontract costs, indexation adjustments for inflation, currency components and subcontract margins, in a clear and transparent manner.

**OSD Modification** has the meaning given to "Modification" in the OSD PDA.

**Pre-Agreed Modifications** means any of the pre-agreed modifications listed in Schedule A4 (*Pre-Agreed Modifications*).

**Principal's Modifications Manager** means [REDACTED] or any other person appointed from time to time by the Principal to replace that person and notified to the VC Contractor.

**Senior Executive** means:

- (a) in the case of the Principal, the Sydney Metro Project Director (or equivalent) of the Principal; and
- (b) in the case of the VC Contractor:
  - (i) the Managing Director (Urban Regeneration) (or equivalent) of the VC Contractor; or
  - (ii) the Executive Director of Building and Engineering Services (or equivalent) of the VC Contractor.

**VC Developer's Program** has the meaning given to it in the OSD PDA.

## 1.2 Purpose

**(Purpose)** Each party acknowledges and agrees that:

- (a) throughout the term of this deed, a number of changes to the requirements of this deed are likely to be required;
- (b) the purpose of this Schedule A8 is to facilitate and efficiently give effect to such changes by incorporating a number of processes for the implementation of change and structuring each process to minimise transaction time and cost; and
- (c) it must seek to give effect to the purpose stated in clause 1.2(b) of this Schedule A8 in complying with its obligations under this Schedule A8.

### 1.3 Modifications Manager

- (a) **(Principal's Modifications Manager)** The Principal has appointed the Principal's Modifications Manager to exercise the powers, duties, discretions and authorities vested in the Principal under this Schedule A8, except that only the Principal's Representative is empowered to issue a Modification Order, a Modification Approval or a notice under clause 3(a) of this Schedule A8 instructing a Pre-Agreed Modification.
- (b) **(Cooperation)** The parties must:
  - (i) cooperate and collaborate to facilitate the meeting of all time periods and obligations under this Schedule A8 and, to the extent possible, to ensure that each party has early notification of the prospect of a Modification; and
  - (ii) ensure that the VC Contractor is available for consultation with the Principal's Modifications Manager, as the Principal's Modifications Manager reasonably requires.
- (c) **(Provision of information)** The VC Contractor must:
  - (i) be available to consult with the Principal's Modifications Manager as the Principal's Modifications Manager reasonably requires;
  - (ii) prepare and regularly update (at intervals no less than monthly) a running schedule of all Modifications that have been proposed or implemented; and
  - (iii) make available to the Principal, on request, any records relating to any Modification that has been proposed or implemented (including the running schedule referred to in clause 1.3(c)(ii) of this Schedule A8).

### 1.4 Modifications Working Group

- (a) **(Modifications Working Group)** The Modifications Working Group comprises the Principal's Modifications Manager, a representative from the VC Contractor and any other persons agreed by the parties from time to time.
- (b) **(Purpose)** The purpose of the Modifications Working Group is to provide a collaborative forum to discuss the status of all Modifications that have been agreed, proposed or that either party is planning to propose and any issues in connection with any Modification or proposed Modification.
- (c) **(Frequency of meetings)** The Modifications Working Group must meet weekly during design development and fortnightly during construction, unless the parties otherwise agree.
- (d) **(Administration)** The VC Contractor must prepare and provide to each member of the Modifications Working Group:
  - (i) an agenda for each meeting of the Modifications Working Group, prepared in consultation with the Principal's Modifications Manager, no less than 48 hours prior to each meeting; and
  - (ii) minutes of each meeting within 48 hours after the meeting.
- (e) **(Attendees)** The VC Contractor:

- (i) must procure the attendance at Modifications Working Group meetings of representatives of the VC Contractor or any Subcontractor that the Principal's Modifications Manager reasonably requires; and
- (ii) may, with the Principal's consent, have one or more representatives of the VC Contractor or any Subcontractor attend a Modifications Working Group meeting if the VC Contractor considers it appropriate given the nature of the Modification(s) to be discussed at the relevant meeting.
- (f) (**Principal's invitees**) The Principal may, in its absolute discretion, invite any persons to attend a Modifications Working Group meeting that the Principal considers appropriate given the nature of the Modification(s) to be discussed at the relevant meeting.

#### 1.5 **Open Book**

All documentation and information provided by the VC Contractor under this Schedule A8 (including any documentation or information prepared by a Subcontractor) must be provided on an Open Book Basis.

#### 1.6 **Consultation with Interface Contractors**

(**Cooperation with Interface Contractors**) Without limiting clause 12.4 (*Disputes between the VC Contractor and Interface Contractors*), if the VC Contractor becomes aware that a Modification will, or is likely to, impact on any Interface Works or necessitate an Interface Works Change, then prior to:

- (a) submitting a Modification Proposal in accordance with clause 2.1(b) of this Schedule A8; or
  - (b) proposing a Modification in accordance with clause 4(a) of this Schedule A8,
- the VC Contractor must:
- (c) notify the relevant Interface Contractor(s) of the proposed Modification; and
  - (d) work closely and iteratively with the relevant Interface Contractor(s) in good faith regarding the scope and design of the proposed Modification (and, where applicable, the corresponding Interface Works Change) in order to reduce the overall cost to the Principal of implementing the Modification.

#### 1.7 **No liability unless Modification Order**

The Principal will have no Liability to the VC Contractor arising out of, or in any way in connection with, any Modification, except where:

- (a) the VC Contractor is directed to implement a Modification pursuant to a Modification Order;
- (b) the Principal issues a notice under clause 3(a) of this Schedule A8 instructing a Pre-Agreed Modification; or
- (c) clause 37.3(a) applies,

and the VC Contractor has delivered the notices in the form and in the time required under clause 21 (*Time*) and clause 37 (*Notification of claims*).

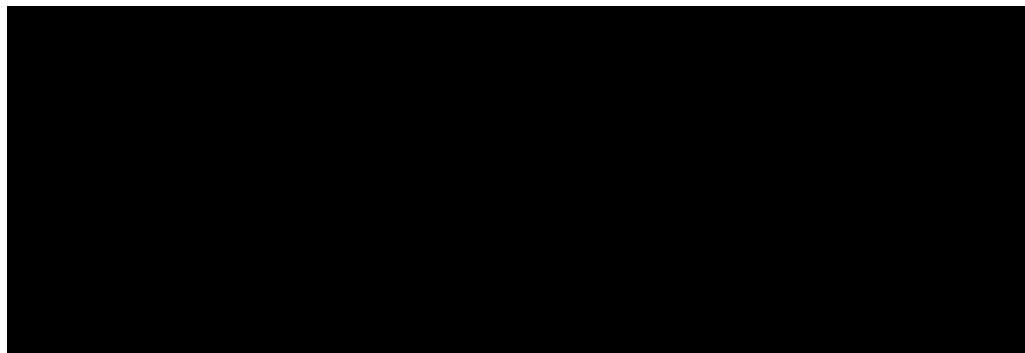
## 1.8 Modifications review

- (a) (**Review of Modifications regime**) Three months prior to each anniversary of the date of execution of this deed, the Principal and the VC Contractor must meet to review the Modifications regime (**Modifications Review**).
- (b) (**Purpose**) Factors that may be addressed in a Modifications Review include:
  - (i) measures to improve the Modifications process set out in this Schedule A8;
  - (ii) not used; and
  - (iii) any other factors that the Principal or the VC Contractor consider relevant.
- (c) Not used.

## 2. PRINCIPAL INITIATED MODIFICATIONS

### 2.1 Proposed Modifications

- (a) (**Modification Proposal Request**) The Principal may at any time:

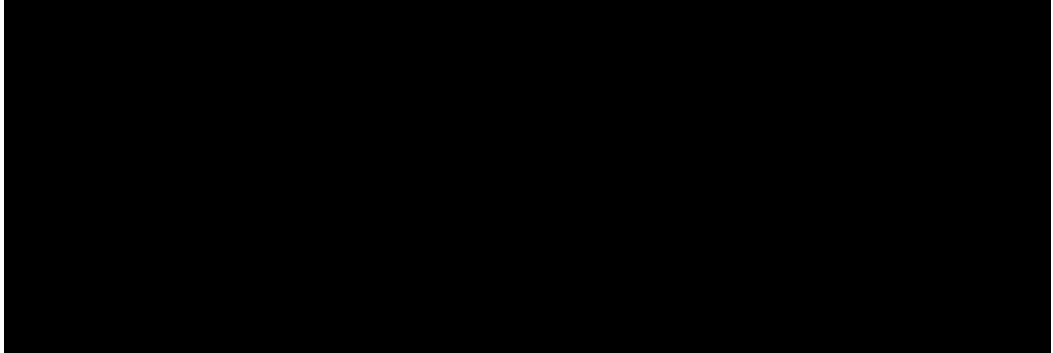


issue a Modification Proposal Request to the VC Contractor setting out details of a proposed Modification that the Principal is considering.

- (b) (**Modification Proposal**) As soon as practicable, and in any event within [REDACTED] (or such longer period as is agreed by the Principal's Modifications Manager (acting reasonably), having regard to the size and complexity of the proposed Modification), after receiving a Modification Proposal Request, the VC Contractor must provide the Principal's Modifications Manager with a Modification Proposal setting out:
  - (i) the Increased Costs or Savings (if any) of the proposed Modification;
  - (ii) the effect (if any) that the proposed Modification will have on the VC Contractor's Program (including any extension of time required to a Significant Date and the measures the VC Contractor proposes to take to avoid, mitigate or minimise the effect of the proposed Modification on the VC Contractor's Program);
  - (iii) if the Modification Proposal relates to a direction under clause 22.1(a) or if the Principal's Representative requests it for a Modification, a proposed revised VC Contractor's Program;

- (iv) if the Modification Proposal relates to a direction to Resequence under clause 22.1(a)(i) or Accelerate under clause 22.1(a)(ii), setting reasons and evidence why it is not reasonably possible to comply with the direction to Accelerate or Resequence (as applicable), or that the direction to Accelerate or Resequence (as applicable) cannot be carried out safely regardless of the resources applied by the VC Contractor;
  - (v) any Approvals required to implement the proposed Modification, and the effect of the proposed Modification on any existing Approvals or the VC Contractor's ability to comply with those Approvals;
  - (vi) the effect (if any) which the proposed Modification will have on:
    - (A) the VC Contractor's ability to satisfy its obligations under this deed (including any warranties given by the VC Contractor under this deed) or exercise its rights under this deed; and
    - (B) the satisfaction of any Project Requirements;
  - (vii) the VC Contractor's view on the likely impact of the proposed Modification on any Interface Works, including whether the VC Contractor considers that an Interface Works Change will, or is likely to, be required to enable the proposed Modification to be implemented or as a consequence of the proposed Modification and if so, any change that could be made to the proposed Modification (including any change to the timing of the proposed Modification or to the manner in which the Modification is proposed to be implemented) to reduce or avoid the impact of the proposed Modification on the relevant Interface Works;
  - (viii) whether an OSD Modification will be required to enable the proposed Modification to be implemented or as a consequence of the proposed Modification;
  - (ix) the VC Contractor's view on the effect (if any) which the proposed Modification will have on:
    - (A) the VC Developer's Activities; and
    - (B) the OSD Retail Lots,
 irrespective of whether an OSD Modification will be required to enable the proposed Modification to be implemented or as a consequence of the proposed Modification;
  - (x) [REDACTED]; and
  - (xi) any other information requested by the Principal's Representative in the Modification Proposal Request.
- (c) **(No obligation to proceed)** The Principal will not be obliged to proceed with any proposed Modification that is the subject of a Modification Proposal Request.

## 2.2 Modification Orders

- (a) (**Modification Order**) Whether or not the Principal has issued a Modification Proposal Request, the Principal's Representative may, subject to clause 2.5 of this Schedule A8, at any time:
- 

direct the VC Contractor to carry out a Modification by issuing a written document titled "Modification Order" (**Modification Order**):

- (iii) detailing the Modification that is required to be carried out by the VC Contractor;
- (iv) stating what the Increased Costs or Savings (if any) of the proposed Modification will be:
  - (A) as set out in the VC Contractor's Modification Proposal (if any);
  - (B) as otherwise determined by the Principal's Representative (acting reasonably) and set out in the Modification Order; or
  - (C) determined pursuant to Schedule E4 (*Valuation mechanism*); and
- (v) stating the extent to which the VC Contractor will be relieved of any of its obligations under this deed.
- (b) (**No limitation on Principal's power**) Subject to clause 2.5 of this Schedule A8, there is no limitation on the power of the Principal's Representative to direct a Modification, and no Modification or direction to carry out a Modification will invalidate this deed.
- (c) (**Implementation of Modification Order**) Subject to clause 2.5 of this Schedule A8, if the Principal directs the VC Contractor to implement the Modification by issuing a Modification Order:
  - (i) the VC Contractor must promptly implement the Modification on the basis of the Modification Order irrespective of:
    - (A) the nature, extent or value of the work the subject of the Modification;
    - (B) the location or timing (including the impact on any Significant Date) of the work involved in the Modification; or
    - (C) any Dispute related to the Modification;

- (ii) the VC Contractor will be relieved of its obligations under this deed to the extent specified in the Modification Order or, if clause 2.2(e) of this Schedule A8 applies, to the extent resolved in accordance with the Dispute Procedure; and
- (iii) the Principal must pay the VC Contractor the Increased Costs or the VC Contractor must pay the Principal the Savings (as applicable) of the Modification in accordance with clause 28 (*Payment*).
- (d) (**Entitlement**) The VC Contractor's entitlement (if any) to an extension of time arising out of or in connection with a Modification will be dealt with under clause 21.6 (*Extensions of time*).
- (e) (**Disputes**) If the VC Contractor disagrees with the extent to which a Modification Order states that the VC Contractor will be relieved of its obligations under this deed, the VC Contractor may refer the matter for resolution in accordance with the Dispute Procedure.

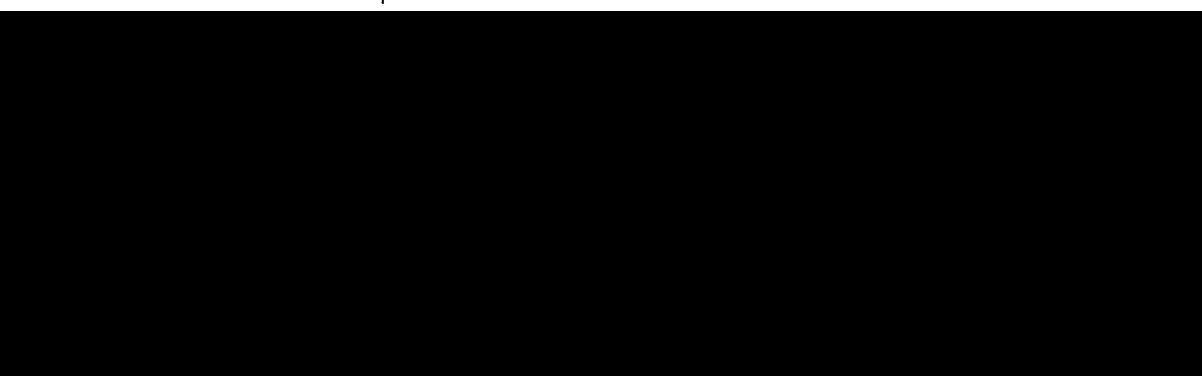
### 2.3 Omissions

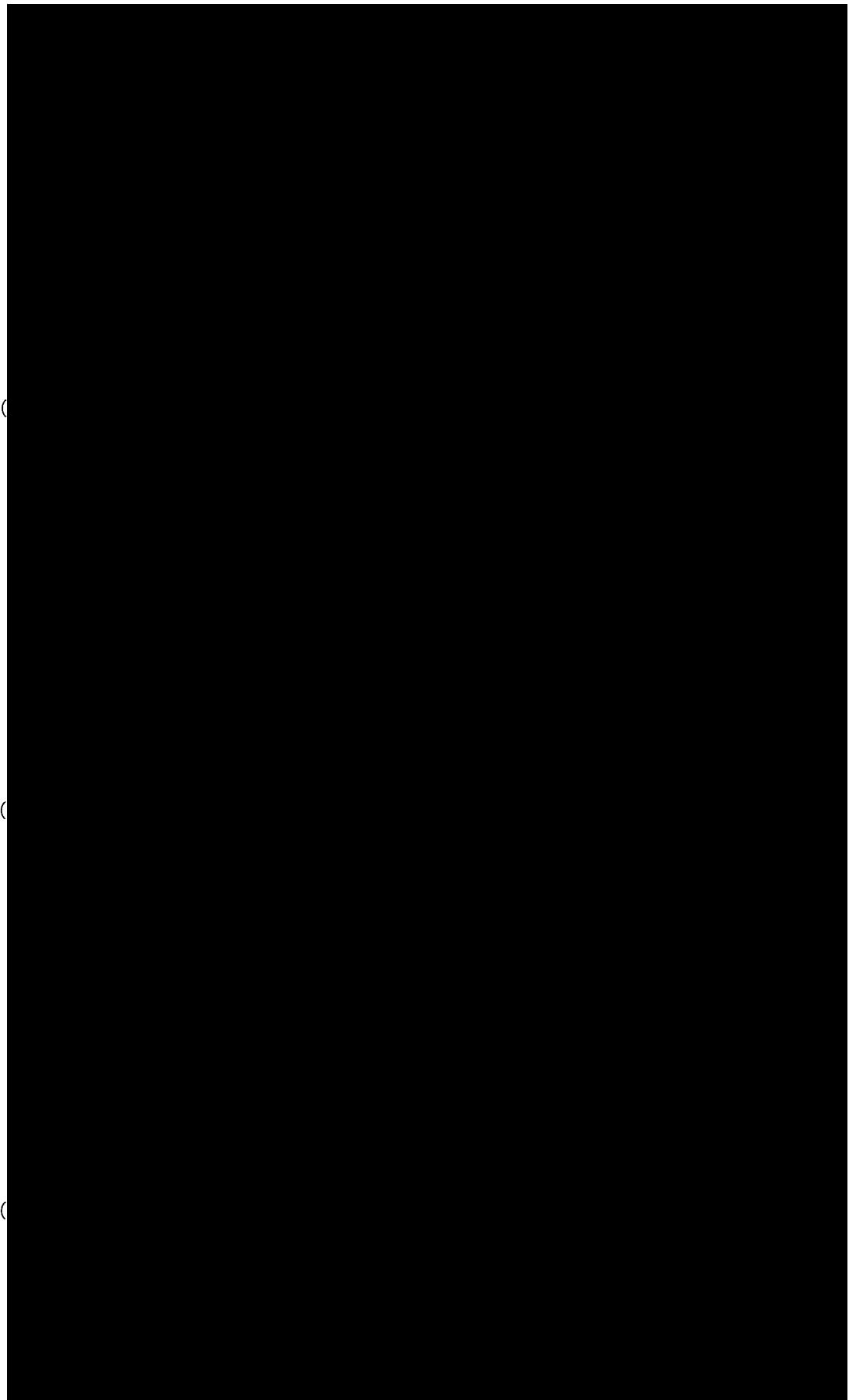
If a Modification the subject of a Modification Order requires the omission or deletion of any part of the Project Works:

- (a) (**Principal may perform**) the Principal may either perform this work itself or employ or engage any other person or persons to carry out and complete the omitted or deleted work; and
- (b) (**no Liability**) the Principal will have no Liability to the VC Contractor arising out of or in any way in connection with any work being omitted or deleted from the VC Contractor's Activities.

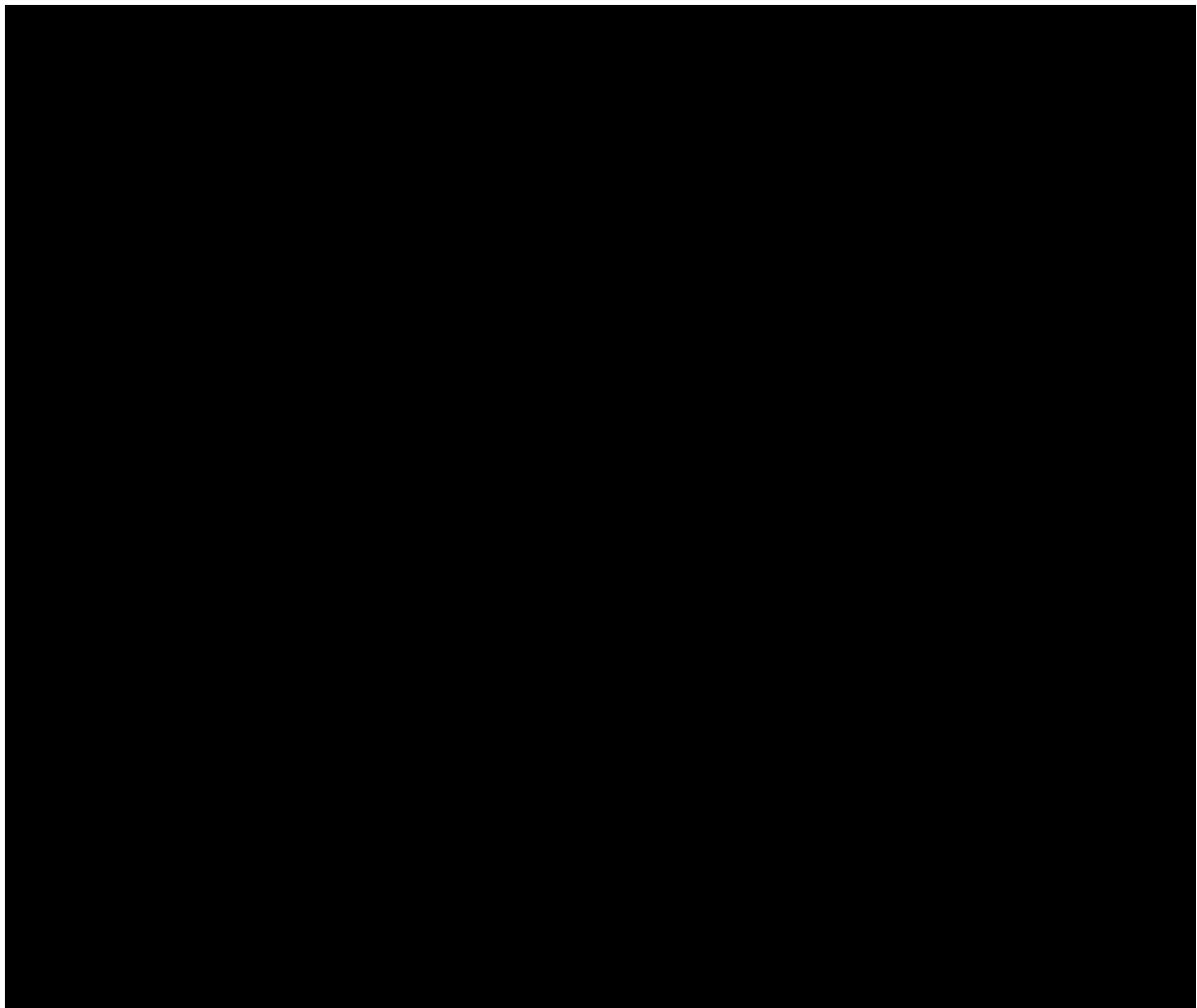
### 2.4 Cost of preparing Modification Proposals

- (a) (**Minimise Costs**) The VC Contractor must use reasonable endeavours to minimise the third party Costs incurred by the VC Contractor in the preparation of Modification Proposals.
- (b) (**Reimbursement to a cap**) If the VC Contractor submits a Modification Proposal in accordance with clause 2.1(b) of this Schedule A8 but the Principal does not issue a Modification Order in respect of the proposed Modification, then the Principal must reimburse the VC Contractor the additional and reasonable, arm's length third party Costs incurred by the VC Contractor in preparing the Modification Proposal, capped at [REDACTED] or such higher amount as is approved beforehand by the Principal), and subject to the VC Contractor providing evidence of the amounts claimed on an Open Book Basis,









3. **PRE-AGREED MODIFICATIONS**

- (a) **(Principal's instruction)** The Principal's Representative:
- (i) may, in its absolute discretion and without being under any obligation to do so, instruct any Pre-Agreed Modification (other than Pre-Agreed Modification 4); and
  - (ii) must, if it receives notification in accordance with clause 4.8A(f) of the OSD PDA, instruct Pre-Agreed Modification 4,
- by giving written notice to the VC Contractor at any time prior to the relevant Election Date. Upon the issue of such a notice by the Principal's Representative this deed will be deemed to be amended as set out in Schedule A4 (*Pre-Agreed Modifications*) for the relevant Pre-Agreed Modification.
- (b) **(No effect)** If the Principal's Representative instructs a Pre-Agreed Modification under this clause 3 of this Schedule A8 such exercise will not (other than as set out in Schedule A4 (*Pre-Agreed Modifications*)):
- (i) relieve the VC Contractor from its liabilities or obligations (including those arising out of any warranties given under this deed);

- (ii) limit or otherwise affect the Principal's rights against the VC Contractor or the VC Contractor's rights against the Principal (including those arising out of any warranties given under this deed); or
  - (iii) entitle the VC Contractor to an extension of time,  
whether under this deed or otherwise according to any Law.
- (c) (**No Liability**) The Principal will have no Liability to the VC Contractor in relation to or arising out of the Principal's Representative instructing a Pre-Agreed Modification other than any adjustment to the Contract Sum set out in Schedule A3 for the relevant Pre-Agreed Modification.
- (d) (**Principal may issue Modification Proposal Request or Modification Order**) Nothing in this clause 3 of this Schedule A8 prevents the Principal from issuing a Modification Proposal Request or directing a Modification by issuing a Modification Order that involves the same (or similar) changes to the Project Works, Temporary Works or the VC Contractor's Activities (as applicable) as a Pre-Agreed Modification after the relevant Election Date.

#### 4. VC CONTRACTOR INITIATED MODIFICATION

- (a) (**VC Contractor may propose**) The VC Contractor may propose a Modification by giving written notice to the Principal's Modifications Manager setting out:
  - (i) details of:
    - (A) the proposed Modification;
    - (B) the reason for the proposed Modification;
    - (C) the time within, and the manner in which, the VC Contractor proposes to implement the proposed Modification;
    - (D) the effect (if any) of the proposed Modification on the VC Contractor's Activities, including the VC Contractor's Program and any Dates for Milestone Achievement, Dates for Substantial Completion and/or Dates for Completion;
    - (E) any Approvals required to implement the proposed Modification, and the effect of the proposed Modification on any existing Approvals or the VC Contractor's ability to comply with those Approvals;
    - (F) the effect (if any) that the proposed Modification will have on any Interface Works, including whether an Interface Works Change will, or is likely to, be required to enable the proposed Modification to be implemented, or as a consequence of the proposed Modification; and
    - (G) the value for money for the Principal arising from the Modification, including the Savings that the VC Contractor expects to arise from the Modification; and
  - (ii) a written statement stating that the proposed Modification:
    - (A) will not adversely affect:

- (aa) the VC Contractor's ability to satisfy its obligations under this deed (including any warranties given by the VC Contractor under this deed) or exercise its rights under this deed; and
  - (bb) the functional integrity of any of the elements of the VC Contractor's Activities or the satisfaction of any Project Requirements; and
- (B) is consistent with and complies with the conditions and requirements of the Planning Approval.
- (b) (**Further information**) On receiving a notice under clause 4(a) of this Schedule A8, the Principal may give written notice to the VC Contractor requesting any other information and supporting documentation the Principal reasonably requires. The VC Contractor must provide the requested information or documentation to the Principal's Modifications Manager within [REDACTED] of receiving the request.
- (c) (**Principal may accept or reject**) The Principal's Representative:
- (i) (in its absolute discretion) may either:
    - (A) approve (with or without conditions) the proposed Modification by issuing a Modification Approval to the VC Contractor; or
    - (B) reject the proposed Modification; and
  - (ii) will be under no obligation to approve any such Modification for the convenience of, or to assist, the VC Contractor.
- (d) (**Negotiation of Modification Approval**) Prior to issuing a Modification Approval, the Principal may seek to negotiate with the VC Contractor in relation to the Savings that will arise from the proposed Modification or any conditions that may be attached to the Modification Approval.
- (e) (**Modification Approval**) If the Principal issues a Modification Approval:
- (i) without conditions, the VC Contractor must perform its obligations under this deed in accordance with the approved Modification; and
  - (ii) with conditions, the VC Contractor may either:
    - (A) proceed to implement the Modification on the basis set out in the Principal's notice; or
    - (B) withdraw the proposed Modification if the VC Contractor, acting reasonably, does not accept any of the conditions attached to the approval of the proposed Modification.
- (f) (**Entitlement to Savings**) If any Modification approved by the Principal's Representative pursuant to a Modification Approval is expected to result in Savings:
- (i) the Principal will notify the VC Contractor that the Savings will be:
    - (A) as set out in the VC Contractor's notice under clause 4(a) of this Schedule A8;

- (B) as agreed by the parties under clause 4(d) of this Schedule A8; or
  - (C) as otherwise determined by the Principal's Representative (acting reasonably) in accordance with Schedule E4 (*Valuation mechanism*); and
- (ii) the Principal will be entitled to receive [REDACTED] of the Savings.
- (g) The VC Contractor will unless otherwise agreed in writing by the Principal:
- (i) **(Costs)** bear all Costs:
    - (A) associated with proposing a Modification under clause 4(a) of this Schedule A8 and providing any information and supporting documentation requested under clause 4(b) of this Schedule A8; and
    - (B) reasonably incurred by the Principal, any Interface Contractor or the Operator in assessing a proposed Modification (such costs to be a debt due from the VC Contractor to the Principal);
  - (ii) **(risks)** bear all risks and Costs associated with carrying out a Modification proposed by the VC Contractor, including any amounts that are payable by the VC Contractor or the Principal to any Interface Contractor(s) under any Project Cooperation and Integration Deeds or any other contracts entered into between the Principal and an Interface Contractor;
  - (iii) **(management of Modifications)** be responsible for managing a Modification proposed by the VC Contractor, including with the Interface Contractors where the Modification impacts upon the Interface Contractors; and
  - (iv) **(no Claims)** not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, a Modification proposed by the VC Contractor and the Principal will have no Liability to the VC Contractor in relation to or arising out of a Modification proposed by the VC Contractor,
- including where the Principal issues a Modification Approval in relation to such Modification.

## SCHEDULE A9. – DISPUTE PROCEDURE

(Schedule A2 and clause 35)

### 1. DEFINITIONS

**Chair** means the chairperson of the IDAR Panel as appointed under the IDAR Panel Agreement from time to time.

**Consultation** has the meaning given in clause 2.2(e) of this Schedule A9.

**Expert** means the person appointed to determine a Dispute pursuant to clause 2.4 of Schedule A9.

**IDAR Panel** means the Independent Dispute Avoidance and Resolution Panel constituted under the IDAR Panel Agreement, referred to in this Schedule A9.

**Nominated Member** has the meaning given in clause 2.2(b) of this Schedule A9.

**Notice of Dispute** means a notice given under clause 2.3(b) of this Schedule A9.

**Notice of Issue** means a notice given under clause 2.2(a) of this Schedule A9.

**Recommendation** has the meaning given in clause 2.3(a) of this Schedule A9.

### 2. DISPUTE PROCEDURE

#### 2.1 Independent Dispute Avoidance and Resolution Panel

- (a) **(Establishment)** The IDAR Panel will be constituted under the IDAR Panel Agreement.
- (b) **(Accession by VC Contractor)** The VC Contractor must, within 5 Business Days of receipt of a request from the Principal, execute the IDAR Panel Agreement Accession Deed Poll.
- (c) **(Attendance and assistance)** Each party must:
  - (i) following execution of the IDAR Panel Agreement Accession Deed Poll (if applicable), at all times comply with the terms of the IDAR Panel Agreement;
  - (ii) attend meetings with the IDAR Panel as required pursuant to the IDAR Panel Agreement or this deed; and
  - (iii) provide all reasonable assistance to the IDAR Panel in fulfilling its function(s) in respect of the VC Contractor's Activities including providing all information it reasonably requests.

#### 2.2 Consultation

- (a) **(Notice of Issue)** Where a dissatisfied party (**Party A**) considers that a Dispute has arisen:
  - (i) Party A must notify the other party (**Party B**) in writing within 20 Business Days of forming the view that a Dispute has arisen; and

- (ii) the Dispute must be notified to the IDAR Panel by written notice of the issues in Dispute (**Notice of Issue**) from Party A to the IDAR Panel and Party B. The Notice of Issue must:
  - (A) provide brief particulars of the issues in Dispute; and
  - (B) be issued within 10 Business Days after the date that Party A notifies Party B that the Dispute has arisen pursuant to clause 2.2(a)(i).
- (b) (**Selection of Nominated Member**) Within 2 Business Days of the Notice of Issue, the parties must agree upon a member of the IDAR Panel (**Nominated Member**) to review the Dispute. If:
  - (i) the parties fail to reach such agreement within 2 Business Days; or
  - (ii) the Nominated 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 replacement Nominated Member within a further 2 Business Days.
- (c) (**Replacement of Nominated Member**) If a replacement Nominated 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 further replacement Nominated Member within a further 2 Business Days. The Chair cannot nominate itself as the Nominated Member.
- (d) (**Appointment by Resolution Institute**) If a further replacement Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the process in clause 2.2(c) of this Schedule A9 will be reapplied until there are no IDAR Panel 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.
- (e) (**Parties to consult**) Within 3 Business Days of the appointment of the Nominated Member, the Nominated Member must convene at least one meeting (**Consultation**) to facilitate genuine and good faith negotiations with a view to:
  - (i) resolving the Dispute; and
  - (ii) clarifying and narrowing the issues in Dispute, in the event that the Dispute is not resolved.
- (f) (**Attendees**) Each Consultation will be attended by:
  - (i) the Nominated Member;
  - (ii) the Principal's Representative;
  - (iii) the VC Contractor's Representative; and
  - (iv) other persons as agreed between the Principal's Representative and the VC Contractor's Representative.
- (g) (**Conclusion of Consultation**) The Consultation process must conclude within 15 Business Days of the first Consultation, or such other period as the parties may agree in writing.

- (h) (**Failure to notify in time is breach**) A failure to comply with clause 2.2(a)(ii) of this Schedule A9 will be treated as a breach of this deed by the relevant party.

## 2.3 Recommendation

- (a) (**Notification of Recommendation**) Within 5 Business Days of the conclusion of Consultation, the Nominated Member must notify the parties in writing of its non-binding recommendation as to:

- (i) the formulation of the issues in Dispute;
- (ii) the most appropriate Expert(s) to be appointed to determine the Dispute pursuant to clause 2.4 of this Schedule A9; and
- (iii) whether the Dispute is not suitable for expert determination and should be determined in accordance with clause 2.7 of this Schedule A9,

**(Recommendation).**

- (b) (**Referral to expert determination**) Subject to clause 2.3(d) of this Schedule A9, if the Dispute is not resolved within the later of:

- (i) 5 Business Days of the Recommendation; and
- (ii) 15 Business Days of the Notice of Issue,

Party A must refer those parts of the Dispute that remain unresolved to expert determination by notice to Party B (with a copy to the IDAR Panel) within 20 Business Days after the later of (i) and (ii) above or such other period of time as agreed between the parties in writing (**Notice of Dispute**).

- (c) (**Requirements of Notice**) The Notice of Dispute must:

- (i) be in writing;
- (ii) state that it is a Notice of Dispute under clause 2.3(b) of this Schedule A9;
- (iii) include or be accompanied by reasonable particulars of those parts of the Dispute including:
  - (A) references to any:
    - (aa) provisions of this deed; and
    - (bb) acts or omissions of any person, relevant to the Dispute;
  - (B) the relief sought and the basis for claiming the relief sought; and
  - (C) copies of, or relevant extracts from, any documents in support of the claim.

- (d) (**Parties may accept Recommendations**) If the Nominated Member makes a Recommendation:

- (i) under clause 2.3(a)(ii) of this Schedule A9, the parties may accept the recommendation or clause 2.4(a) of this Schedule A9 will apply; or
- (ii) under clause 2.3(a)(iii) of this Schedule A9, that the Dispute is not suitable for expert determination, the parties may agree to have the Dispute determined in accordance with clause 2.7 of this Schedule A9, however if the parties have not so agreed within 5 Business Days of the Recommendation, clause 2.4 of this Schedule A9 will apply.

#### 2.4 Expert determination

- (a) (**Expert determination in accordance with Rules**) Any Dispute which is referred to expert determination by a Notice of Dispute will be conducted in accordance with the Resolution Institute's Expert Determination Rules, as modified by Annexure 1 of this Schedule A9.
- (b) (**Provision of information**) Both parties must promptly make available to the Expert all such additional information, access to the Construction Site and other relevant places and all appropriate facilities, as the Expert may require for the purposes of making a determination on the Dispute.
- (c) (**Exclusion of Proportionate liability regime**) The parties agree that, to the extent permitted by law:
  - (i) the powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002 (NSW)* are not conferred on the Expert; and
  - (ii) the Expert has no power to make a binding or non-binding determination or any award in respect of a Dispute by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002 NSW* (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to expert determination.
- (d) (**Expert to give determination**) Within 50 Business Days after the Expert has been appointed, or within such other period as may be proposed by the Expert and approved by both parties, the Expert must give its determination in writing, which must be reasoned and must state that it is given under this clause 2.4 of this Schedule A9. The determination will be immediately binding on both parties, who must give effect to it unless and until it is revised, overturned or otherwise changed by written agreement between the parties or a court judgment or an arbitral award made in court proceedings or an arbitration pursuant to this Schedule A9.

#### 2.5 Notice of dissatisfaction

- (a) (**Notice of Dissatisfaction**) If:
  - (i) either party is dissatisfied with a determination made by an Expert under clause 2.4 of this Schedule A9, then either party may, within 10 Business Days after receiving the determination, give notice to the other party of its dissatisfaction; or
  - (ii) an Expert fails to give its determination within a period of 50 Business Days after the Expert has been appointed by the parties (or within such other period as may be proposed by the Expert and approved by both parties), then either party may, within 10 Business Days after this period has expired, give a notice to the other party of its dissatisfaction,

**(Notice of Dissatisfaction).**

- (b) **(Requirements of Notice)** A Notice of Dissatisfaction issued under clause 2.5(a) of this Schedule A9 must:
  - (i) state that it is given under clause 2.5(a) of this Schedule A9; and
  - (ii) set out the matter in Dispute and the reason(s) for dissatisfaction.
- (c) **(Restriction on commencement of proceedings)** Except as stated in clause 2.3(d)(ii) of this Schedule A9, neither party will be entitled to commence court proceedings or arbitration in respect of the Dispute unless a Notice of Dissatisfaction has been given in accordance with this clause 2.5 of this Schedule A9.

**2.6 Final and binding decision**

- (a) **(Determination to become binding)** If an Expert has made a determination as to a Dispute and no Notice of Dissatisfaction has been given by either party under clause 2.5 of this Schedule A9, within 10 Business Days after it received the Expert's determination, then the determination will become final and binding upon both parties.
- (b) **(No challenge of binding determination)** Once a determination of an Expert has become final and binding under clause 2.6(a) of this Schedule A9, neither party will be entitled to challenge the determination on any basis.

**2.7 Litigation or arbitration**

**(Principal's discretion)** Where this clause applies, the Principal' (in its absolute discretion) may within 5 Business Days:

- (a) after issuing or receiving a Notice of Dissatisfaction; or
  - (b) of reaching an agreement under clause 2.3(d)(ii) of this Schedule A9,
- (as applicable) issue a notice to the VC Contractor stating that the Dispute is to be determined by litigation pursuant to court proceedings. If the Principal does not issue such a notice within the 5 Business Day period, the Dispute will be referred to arbitration.

**2.8 Arbitration rules**

- (a) **(ACICA Arbitration Rules)** Any arbitration conducted in relation to a Dispute will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration known as the ACICA Arbitration Rules.
- (b) **(Seat in Sydney)** The seat of the arbitration will be Sydney, Australia.
- (c) **(Arbitration in English)** The language of the arbitration will be English.
- (d) **(Purpose and conduct)** The parties agree that:
  - (i) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;

- (ii) any arbitration conducted pursuant to this clause will not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal; and
  - (iii) in conducting the arbitration, the arbitral tribunal must take into account the matters set out above, particularly in deciding issues such as:
    - (A) the number of written submissions that will be permitted;
    - (B) where appropriate, the length of written submissions;
    - (C) the extent of document discovery permitted, if any;
    - (D) the consolidation of proceedings, when requested;
    - (E) the joinder of parties, when requested;
    - (F) the length of any hearing, if any; and
    - (G) the number of experts, if any, each party is permitted to appoint.
  - (e) **(Arbitrator's powers)** The parties agree that:
    - (i) subject to clause 2.9 of this Schedule A9, the arbitral tribunal will have the power to grant all legal, equitable and statutory remedies, except punitive damages; and
    - (ii) section 24 of the *International Arbitration Act 1974* (Cth) will apply in an international arbitration context.
  - (f) **(Joinder)** The arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitral tribunal considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitral tribunal has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.
  - (g) **(Award is final and binding)** Any award of the arbitral tribunal will be final and binding upon the parties.
  - (h) **(Governing law)** This arbitration agreement will be governed by and must be construed according to the laws applying in New South Wales.
- 2.9 Exclusion from determination or award**
- (a) **(Exclusion of Proportionate liability regime)** The powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on an arbitral tribunal appointed in accordance with this Schedule A9.
  - (b) **(Arbitral tribunal may not apply Part 4)** The arbitral tribunal has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to the arbitral tribunal.

**2.10 Payments**

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

**2.11 VC Contractor to continue performing obligations**

Despite the existence of any Dispute the VC Contractor must:

- (a) continue to perform the VC Contractor's Activities; and
- (b) perform its other obligations under this deed.

**2.12 Urgent relief**

Nothing in this Schedule A9 will prejudice:

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

**2.13 Dispute under related contracts**

The parties acknowledge and agree that:

- (a) the provisions of this Schedule A9 will not apply to any dispute, difference, controversy or claim between one or both of the parties and the Independent Certifier which is to be resolved under the provisions of the Independent Certifier Deed;
- (b) the parties will be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to the Independent Certifier Deed;
- (c) the provisions of this Schedule A9 will not apply to any dispute, difference, controversy or claim between the parties which is to be resolved under a Project Cooperation and Integration Deed;
- (d) the parties will be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to a Project Cooperation and Integration Deed; and
- (e) where the Dispute is a Common Dispute, as that term is defined in clause 5 of Schedule D4 (*Requirements of Third Party Agreements*), then this Schedule A9 will apply subject to the provisions of clause 5 of Schedule D4 (*Requirements of Third Party Agreements*).

**2.14 Survive termination**

This Schedule A9 will survive termination of this deed.

## **ANNEXURE 1: Modification to the Expert Determination Rules**

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

Modifications are underlined or ~~struck-out~~.

### **RULE 1 Definitions**

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

"IDAR Panel Agreement" means the agreement titled "Independent Dispute Avoidance and Resolution Panel Agreement" between the Principal, the Members, the VC 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 (Old);
- (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 (Old);
- (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.

"Victoria Cross SDD" mean the deed titled "Victoria Cross Integrated Station Development – Station Delivery Deed" (Contract No: 504) between the Principal and the VC Contractor to which this procedure forms a schedule.

## 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 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 Victoria Cross SDD, 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 Victoria Cross SDD.~~
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 A10. – DESIGN REVIEW PROCEDURE AND NETWORK ASSURANCE COMMITTEE**

(Clauses 4.8 to 4.10)

**1. DESIGN STAGE 2 REVIEW****1.1 Principal's Representative review – Design Stage 2**

The Principal's Representative must, within the Principal's Design Review Period, review any Design Stage 2 Design Documentation submitted to it by the VC Contractor and notify the VC Contractor in writing of any non-compliance or potential non-compliance with the requirements of this deed with detailed reasons.

**1.2 Non-compliance of Design Stage 2 Design Documentation**

If the Principal's Representative notifies the VC Contractor under clause 1.1 of this Schedule A10 that any Design Stage 2 Design Documentation contains a non-compliance with the requirements of the deed:

(a) **(VC Contractor to respond)** the VC Contractor:

- (i) must within 20 Business Days after receiving such notice, give the Principal's Representative a written response:
  - (A) which explains how the VC Contractor will address the non-compliance in sufficient detail to satisfy the Principal's Representative that compliance will be achieved prior to submitting the Design Stage 3 Design Documentation; or
  - (B) provide the Principal's Representative with a notice setting out any matters in relation to which it disagrees with the Principal's Representative's opinion, together with its reasons for doing so;
- (ii) must, prior to or when it submits Design Stage 3 Design Documentation that relates to a Design Stage 2 Design Documentation non-compliance, give the Principal's Representative a written statement which explains how the non-compliance has been addressed; and
- (iii) is not obliged to respond to any comments received from the Principal's Representative which do not concern a non-compliance; and

(b) **(parties must meet)** following receipt of a notice under clause 1.2(a)(i)(B) of this Schedule A10, the parties must meet and in good faith seek to resolve the disagreement.

**2. DESIGN STAGE 3 REVIEW****2.1 Review of Design Stage 3 Design Documentation**

- (a) **(Principal's Representative review)** The Principal's Representative must, within the Principal's Design Review Period, review the Design Stage 3 Design Documentation submitted to it by the VC Contractor and either:
  - (i) **(Rejection)** reject a part or all of the Design Documentation (in writing, with detailed reasons, to the VC Contractor) if the Principal's Representative

or, if applicable, the Independent Certifier considers that the Design Documentation:

- (A) does not comply with the requirements of this deed; or
  - (B) is not sufficiently complete to enable the Principal's Representative or, if applicable, the Independent Certifier to form a view on whether it is compliant; or
- (ii) (**Non-rejection**) notify the VC Contractor in writing that the Design Documentation is not rejected, together with:
- (A) a list of:
    - (aa) any non-compliances which the Principal's Representative and, if applicable, the Independent Certifier considers to be Minor Non-Compliances; and
    - (bb) suggested actions that the VC Contractor may take to address those Minor Non-Compliances; and
  - (B) in respect of any Design Stage 3 Design Documentation that was provided to the Independent Certifier under clause 4.5(b) of the General Conditions, and subject to clause 2.1(b) of this Schedule A10, a copy of the certificate issued by the Independent Certifier in the form of Schedule B5 (*Independent Certifier's Certificate – Design*) in accordance with the Independent Certifier Deed.
- (b) (**Delay in IC providing comments**) If, in respect of any Design Stage 3 Design Documentation that was provided to the Independent Certifier under clause 4.5(b) of the General Conditions, the Independent Certifier has not issued to the Principal's Representative, prior to the Principal's Representative giving notice to the VC Contractor under clause 2.1(a) of this Schedule A10, either:

- (i) a notice rejecting a part or all of the Design Documentation; or
- (ii) a certificate in the form of Schedule B5 (*Independent Certifier's Certificate – Design*) in respect of the Design Documentation,

in accordance with the Independent Certifier Deed, then the Principal's Representative must provide the VC Contractor with a copy of the Independent Certifier's notice or certificate (as applicable) promptly after receiving such notice or certificate (as applicable) from the Independent Certifier.

## 2.2 Options following rejection of Design Documentation

Without limiting the VC Contractor's ability to proceed with construction in accordance with clause 4.9 (*Design Documentation for construction*) of the General Conditions, if any Design Stage 3 Design Documentation is rejected by the Principal's Representative under clause 2.1(a)(i) of this Schedule A10, the VC Contractor must either:

- (a) (**Rectification of non-compliance**) promptly amend the relevant non-compliant element of the Design Documentation and re-submit it to the Principal's Representative in accordance with clause 4.5 (*Preparation and submission of Design Documentation*) of the General Conditions and the process in clause 2.1 of this Schedule A10 will be reapplied to the amended element of the Design Stage 3

Design Documentation, except that the reference to the Principal's Design Review Period will be deemed to be a reference to the Principal's Design Re-Review Period; or

- (b) (**Notice of disagreement**) provide the Principal's Representative with a notice setting out any matters in relation to which it disagrees with the Principal's Representative's opinion or, if applicable, the Independent Certifier's opinion that the Design Documentation does not comply with the requirements of this deed together with its reasons for doing so.

### 2.3 Process following notice of disagreement

- (a) (**Principal to respond**) If the VC Contractor gives a notice under clause 2.2(b) of this Schedule A10, the Principal's Representative may, promptly after receipt of the notice:
  - (i) consult with the Independent Certifier, where appropriate; and
  - (ii) determine and notify the parties as to whether or not the VC Contractor's notice satisfactorily addresses Principal's Representative's or, if applicable, the Independent Certifier's concerns, together with its reasons for forming that opinion and:
    - (A) if the Principal's Representative or, if applicable, the Independent Certifier considers that the VC Contractor's notice satisfactorily addresses its concerns, provide as part of its notice:
      - (aa) the notice under clause 2.1(a)(ii) of this Schedule A10; and
      - (bb) if applicable, a copy of the certificate issued by the Independent Certifier in the form of Schedule B5 (*Independent Certifier's Certificate - Design*) in accordance with the Independent Certifier Deed; or
    - (B) if the Principal's Representative does not consider that the VC Contractor's notice satisfactorily addresses its concerns, the parties will promptly meet and in good faith to seek to resolve the disagreement (whether by a Modification or otherwise) within 10 Business Days of the notice under clause 2.2(b) of this Schedule A10. If the disagreement is in relation to a non-compliance identified by the Independent Certifier, the Independent Certifier will also attend the relevant meeting.
  - (b) (**Referral to dispute resolution**) If the parties are unable to resolve a disagreement contemplated by clause 2.3(a)(ii)(B) of this Schedule A10 within 10 Business Days of first meeting in relation to the disagreement, either the Principal or the VC Contractor may refer the disagreement for resolution in accordance with:
    - (i) the Dispute Procedure; or
    - (ii) if the dispute is in relation to any non-compliance identified by the Independent Certifier, the Independent Certifier Deed.

(c) **(Resubmission of Design Documentation)** If:

- (i) the relevant parties reach resolution under clause 2.3(b) of this Schedule A10 and the VC Contractor is required to resubmit any Design Documentation;
- (ii) it is determined in accordance with the Dispute Procedure or, if applicable, the Independent Certifier Deed that the VC Contractor is required to resubmit any Design Documentation; or
- (iii) any Design Documentation is the subject of a direction by the Principal's Representative under clause 4.8(e) of the General Conditions,

then:

- (iv) the VC Contractor must promptly amend and re-submit the relevant non-compliant element of the Design Documentation to the Principal's Representative in accordance with clause 4.5 (*Preparation and submission of Design Documentation*) of the General Conditions;
- (v) if applicable, the Principal's Representative will provide the re-submitted Design Documentation to the Independent Certifier; and
- (vi) the process in clause 2.1 of this Schedule A10 will reapply to the amended element of the Design Documentation except that reference to the Principal's Design Review Period under clause 2.1 of this Schedule A10 will be deemed to be a reference to the Principal's Design Re-Review Period.

(d) **(Rectification of defective work)** If clause 2.3(c) of this Schedule A10 applies, the VC Contractor must:

- (i) immediately cease construction of any work that is being carried out in accordance with the relevant non-compliant element(s) of the Design Documentation; and
- (ii) promptly rectify any such work at its cost so that it complies with the requirements of this deed.

## 2.4 Resolution of Minor Non-Compliances

If a notice provided by the Principal's Representative under clause 2.1(a)(ii) of this Schedule A10 lists any Minor Non-Compliances:

- (a) **(Principal or IC may suggest action)** the notice may suggest the action that could be taken by the VC Contractor to address the Minor Non-Compliance; and
- (b) **(VC Contractor must take action)** the VC Contractor must complete the suggested action, or take any other action the VC Contractor deems reasonable in the circumstances, to correct the Minor Non-Compliance to the extent required for the Design Documentation to comply with this deed, within the timeframe (if any) specified in the Principal's Representative's notice and, in any event, as a precondition to Substantial Completion of the Trackway Portion and Completion of the Non-Trackway Portion.

### 3. NETWORK ASSURANCE COMMITTEE

#### 3.1 Submission of NAC CCR Packages to the NAC

- (a) (**Satisfaction of NAC threshold requirements**) Within 2 Business Days commencing on the date on which the Principal's Representative is provided with a NAC CCR Package by the VC Contractor under clause 4.8A(b)(i) of the General Conditions, the Principal's Representative must review the NAC CCR Package and either:
  - (i) (**Rejection by the Principal's Representative**) reject the NAC CCR Package (in writing, with reasons, to the VC Contractor) if the Principal's Representative reasonably considers that the NAC CCR Package is not sufficiently complete to enable the NAC to form a view on whether the NAC CCR Package satisfies the NAC Requirements; or
  - (ii) (**Submission to NAC**) submit that NAC CCR Package to the NAC in accordance with Appendix F1 of the SWTC.
- (b) (**Rejected NAC CCR Package**) If the Principal's Representative rejects a NAC CCR Package under clause 3.1(a)(i) of this Schedule A10, the VC Contractor must promptly amend the NAC CCR Package and re-submit it to the Principal's Representative in accordance with clause 4.8A(b)(i) of the General Conditions and this clause 3.1 of Schedule A10 will reapply.

#### 3.2 NAC Assurance Review

In respect of each NAC CCR Package submitted by the Principal's Representative to the NAC under clause 3.1(a)(ii) of this Schedule A10, within 10 Business Days of submitting the NAC CCR Package to the NAC, the Principal's Representative must give notice to the VC Contractor:

- (a) (**Acceptance**) that the NAC CCR Package has been accepted;
- (b) (**Acceptance with conditions**) setting out a list of actions which the VC Contractor must take in order for the NAC CCR Package to satisfy the NAC Requirements (**NAC Required Actions**); or
- (c) (**Rejection**) that the NAC CCR Package has been rejected.

#### 3.3 NAC Required Actions and Rejection

- (a) If the Principal's Representative provides a notice under clause 3.2(b) or clause 3.2(c) of this Schedule A10, the VC Contractor:
  - (i) (**VC Contractor must take action**) must complete the NAC Required Actions (if applicable);
  - (ii) (**Resubmission of NAC CCR Package**) if the notice is under clause 3.2(c) of this Schedule A10, must promptly amend and re-submit the NAC CCR Package to the Principal's Representative and the process in clause 3.1 and clause 3.2 of this Schedule A10 will reapply; and
  - (iii) (**Notice of disagreement**) may provide the Principal's Representative with a notice stating that the NAC CCR Package satisfies the NAC Requirements and disputes the need to carry out any of the NAC Required Actions (if applicable), together with its reasons.

- (b) **(Parties must meet)** If the VC Contractor gives a notice under clause 3.3(a)(iii) of this Schedule A10, the parties will promptly meet and in good faith seek to resolve the disagreement (whether by a Modification or otherwise) within 10 Business Days of the notice under clause 3.3(a)(iii) of this Schedule A10.
- (c) **(Referral to dispute resolution)** If the parties are unable to resolve a disagreement contemplated by clause 3.3(a)(iii) of this Schedule A10 within 10 Business Days of first meeting in relation to the disagreement, either the Principal or the VC Contractor may refer the disagreement for resolution in accordance with the Dispute Procedure.

## SCHEDULE A11. – PRESCRIBED LEGISLATIVE REQUIREMENTS

(Schedule A2 and clause 7.1(f)(ii))

### 1. NSW CODE AND NSW GUIDELINES

#### (a) NSW Code and NSW Guidelines

In addition to terms defined in this deed, terms used in this clause 1 of Schedule A11 have the same meaning as is attributed to them in the NSW Guidelines. The NSW Code and NSW Guidelines are available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au).

#### (b) Primary obligation

- (i) In carrying out the VC Contractor's Activities, the VC Contractor must at all times:
  - (A) comply with, and meet any obligations imposed by; and
  - (B) not used,the NSW Code and the NSW Guidelines.
- (ii) The VC Contractor must notify the Construction Compliance Unit and the Principal of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (iii) Where the VC Contractor engages a Subcontractor or consultant, the VC Contractor must ensure that the contract with the Subcontractor or consultant imposes on the Subcontractor or consultant equivalent obligations to those in this clause 1 of Schedule A11, including that the Subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (iv) The VC Contractor must not appoint or engage another party in relation to the VC Contractor's Activities where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

#### (c) Access and information

- (i) The VC Contractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it and its Subcontractors and consultants.
- (ii) The VC Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
  - (A) enter and have access to sites and premises controlled by the VC Contractor, including the Construction Site;
  - (B) inspect any work, material, machinery, appliance, article or facility;
  - (C) access information and documents;

- (D) inspect and copy any record relevant to the Project;
- (E) have access to personnel; and
- (F) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines by the VC Contractor and its Subcontractors and consultants.

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

**(d) Sanctions**

- (i) The VC Contractor warrants that, at the time of entering into this deed, neither it, nor any of its Related Entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (ii) If the VC Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- (iii) Where a sanction is imposed:
  - (A) it is without prejudice to any rights that would otherwise accrue to the parties; and
  - (B) the State (through its agencies, Ministers and the CCU) is entitled to:
    - (aa) record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
    - (bb) take them into account in the evaluation of future procurement processes and responses that may be submitted by the VC Contractor, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

**(e) Compliance**

- (i) The VC Contractor bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. the VC Contractor is not entitled to make, and the Principal and the State will not be liable upon, any Claim against the Principal or the State arising out of or in any way in connection with the VC Contractor's compliance with the NSW Code and the NSW Guidelines.
- (ii) Compliance with the NSW Code and NSW Guidelines does not relieve the VC Contractor from responsibility to perform the VC Contractor's Activities or any other obligation under this deed, or from liability for any Defect in the Project Works or the Temporary Works or from any other legal liability,

whether or not arising from its compliance with the NSW Code and NSW Guidelines.

- (iii) Where a Modification is proposed that may be likely to affect compliance with the NSW Code and NSW Guidelines, the VC Contractor must immediately notify the Principal of:
- (A) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the Modification; and
  - (B) the steps (if any) the VC Contractor proposes to take to mitigate any adverse impact of the Modification (including any amendments it proposes to the Workplace Relations Management Plan).

## 2. BUILDING CODE

- (a) The VC Contractor:
- (i) declares as at the date of this deed; and
  - (ii) must ensure during the term of this deed, that, in relation to the Project Works and Temporary Works, 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 BCIIP 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 BCIIP 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 VC Contractor acknowledges and agrees that compliance with the Building Code does not relieve the VC Contractor from any responsibility or obligation under this deed, or from liability for any Defect arising from compliance with the Building Code.

- (c) The VC Contractor 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 VC Contractor to rectify the breach; and
    - (B) the steps taken to rectify any breach of the Building Code within 14 days of providing a notification under clause 2(c)(i)(A) of this Schedule A11; and
  - (ii) give the Principal a copy of any notification given by the VC Contractor to the ABCC under clause 2(a)(i) of this Schedule A11 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 VC Contractor acknowledges the powers and functions of the ABC Commissioner and the ABCC under the BCIIP 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 BCIIP Act;
  - (ii) to interview any person under section 74 of the BCIIP Act;
  - (iii) to produce records or documents under sections 74 and 77 of the BCIIP Act; and
  - (iv) for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
- (e) The VC Contractor must not enter into a Subcontract for any aspect of the Project Works, the Temporary Works or the VC Contractor's Activities 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 VC Contractor 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 2 of this Schedule A11.
- (f) The VC Contractor must provide the Commonwealth with any Subcontractor's Declaration of Compliance referred to in clause 2(e) of this Schedule A11 promptly upon request.
- (g) The VC Contractor must maintain adequate records of the compliance with the Building Code by:
- (i) the VC Contractor;

- (ii) the Subcontractors;
  - (iii) the VC Contractor's consultants; and
  - (iv) any related entity of the VC Contractor.
- (h) For the purposes of this clause 2 of this Schedule A11, "related entity" has the meaning given in subsection 3(2) of the Building Code.



**SCHEDULE A12. – VC CONTRACTOR INSURANCE REQUIREMENTS**

(Clause 30.6)

**1. VC CONTRACTOR'S INSURANCE OBLIGATIONS**

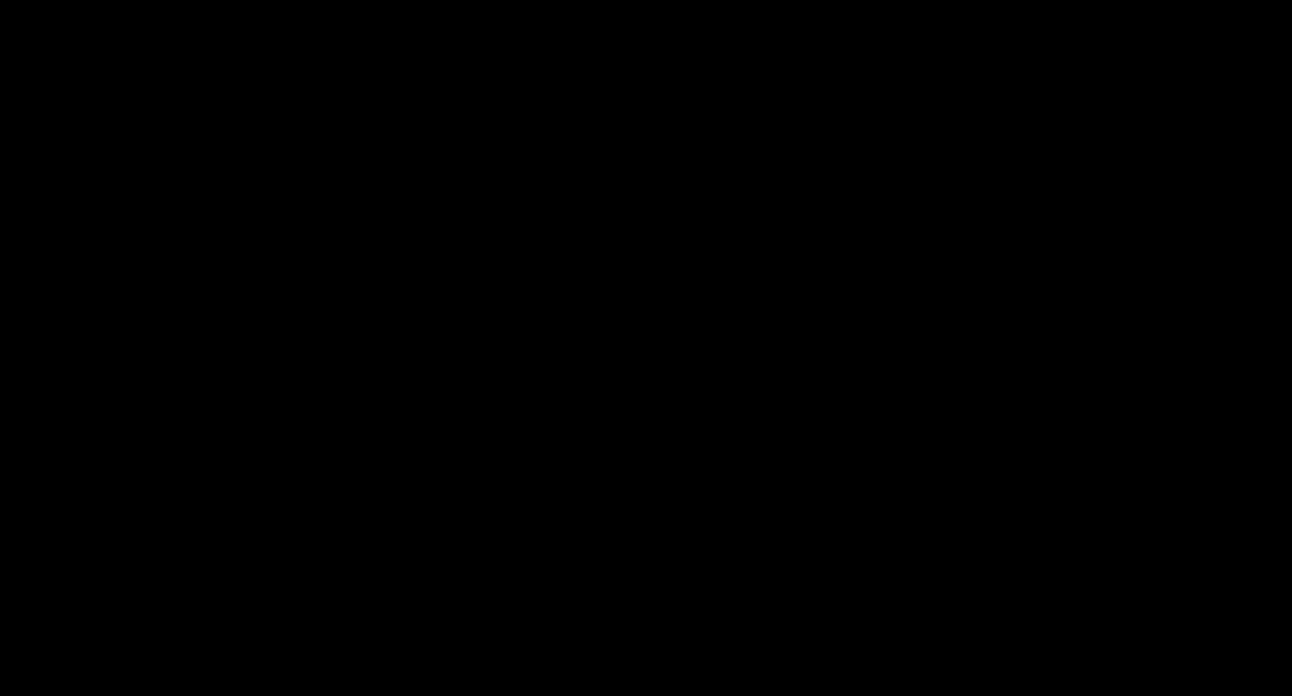
**1.1 General**

The VC Contractor must effect and maintain, or cause to be effected and maintained, the following insurances:

- (a) workers compensation insurance as referred to in clause 1.2 of this Schedule A12;
- (b) asbestos liability insurance as referred to in clause 1.3 of this Schedule A12;
- (c) professional indemnity insurance as referred to in clause 1.4 of this Schedule A12;
- (d) Construction Plant insurance as referred to in clause 1.5 of this Schedule A12;
- (e) motor vehicle insurance as referred to in clause 1.6 of this Schedule A12; and
- (f) any other insurances it is required to maintain by Law,

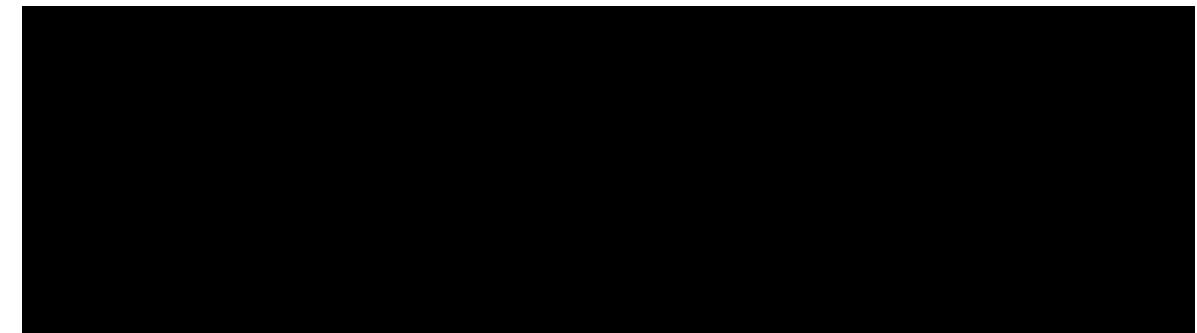
on terms as required by Law, or where the terms are not required by Law, on terms that a prudent insured would effect given the terms offered by the Australian insurance market at the time the policy is incepted.

**1.2 Workers compensation insurance**

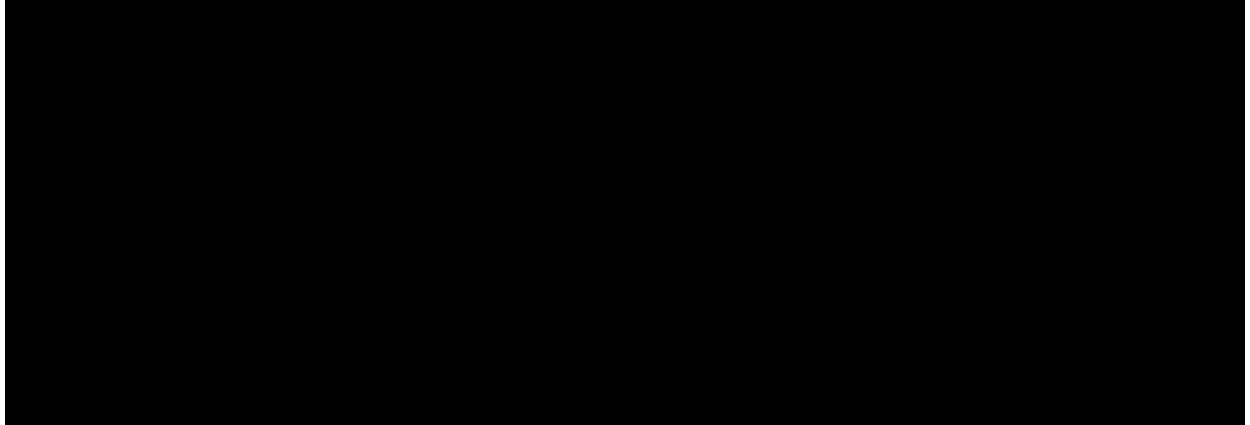


**1.3 Asbestos liability insurance**

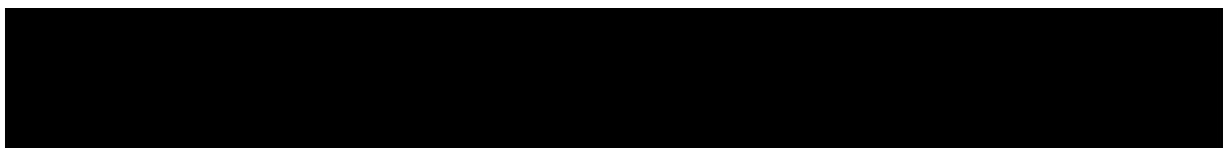




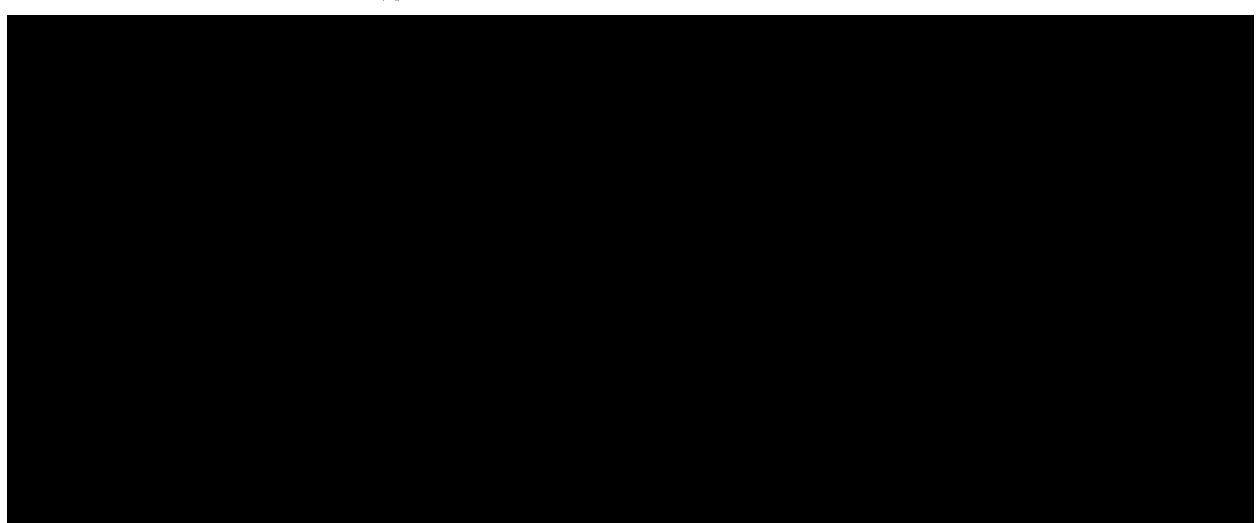
1.4     **Professional indemnity insurance**



1.5     **Construction Plant insurance**



1.6     **Motor vehicle insurance**



**2. VC CONTRACTOR'S OBLIGATIONS**

**2.1 Provisions in policies**

- (a) The VC Contractor must ensure that:

- (i) not used;
- (ii) the Insurances referred to in clause 1.3, clause 1.5 and clause 1.6 of this Schedule A12 include the insurable interests of the Principal and the VC Contractor and provide that:
  - (A) all Insurance agreements and endorsements (with the exception of limits of liability) operate as if there was a separate policy of Insurance covering each of the insureds such that any act, error or omission or state of knowledge or intent will not be imputed to any other insured for the purposes of determining rights to indemnity;
  - (B) failure by any insured to observe and fulfil the terms of the policy does not prejudice the Insurance of any other insured;
  - (C) any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy;
  - (D) a notice to the insurer by one insured will be deemed to be notice by all insured parties; and
  - (E) the insurer:
    - (aa) waives all rights, remedies or relief to which it might become entitled by way of subrogation against the insureds; and
    - (bb) not used;
- (iii) the insurance required to be effected by the VC Contractor under clause 1.4 of this Schedule A12 must include a principal's indemnity clause in favour of the Principal; and
- (iv) each Insurance required to be effected by the VC Contractor under this Schedule A12:
  - (A) is effected with insurers with a financial strength rating of not less than Standard & Poors A- or equivalent rating from another recognised rating agency;
  - (B) is on terms which a prudent and experienced contractor carrying out works similar to the VC Contractor Activities would effect and maintain;
  - (C) does not contain any non-market standard exclusions, endorsements or alterations which would limit the scope of coverage relevant to the Project Works; and
  - (D) covers any liability for GST such that the proceeds of any claim under each policy (after payment of GST) are sufficient to fully indemnify the insured who suffers the loss that is claimed (including in respect of any liability for GST).
- (b) If an Insurance required to be effected by the VC Contractor under the deed including this Schedule A12 is required to cover the liability of any Subcontractor, the VC Contractor must ensure that that Insurance also covers the liability of any person who supplies goods or materials to the VC Contractor.

**SCHEDULE A13. – INSURANCE POLICIES**

(Clause 30.5(a))

For the purposes of clause 30.5 of the General Conditions, refer to the following insurance policy documents which are included as electronic files in Schedule F1:

No.	Principal's Insurance	Relevant documents	Electronic file name
1.	Contract works (material damage) insurance	Contract Works Insurance Policy	Contract Works_Final PAI Policy_Executed.pdf Contract Works Endorsement_Sydney Metro City & Southwest.pdf
2.	Public and products liability insurance	Public and Products Liability Insurance Policy  Memorandum of Insurance (Excess Liability Insurance – Project Specific [REDACTED] [REDACTED] and naming Sydney Metro a NSW Government agency constituted by section 3D of the <i>Transport Administration Act 1988</i> (NSW) as the named insured)	Public & Products Liability_Primary_Final PAI Policy_Executed.pdf  Excess Liability_MOI Sydney Metro_Final_Executed.pdf Sydney Metro City & Southwest - First Excess Liability_[REDACTED].pdf Sydney Metro City & Southwest - Second Excess Liability_[REDACTED] PAI Policy_Executed.pdf Sydney Metro City & Southwest - Third Excess Liability_[REDACTED] PAI Policy_Executed.pdf Sydney Metro City & Southwest - Fourth Excess Liability_[REDACTED] PAI Policy_Executed.pdf
		Endorsement to Public & Products Liability	PL Primary Endorsement 001_Sydney Metro City and South West (QBE signed).pdf First Excess Liability [REDACTED] Endorsement 001_Sydney Metro City and South West (XL signed).pdf Second Excess Liability [REDACTED] Endorsement 001_Sydney Metro City and South West (AIG&LIU signed).pdf Third Excess Liability [REDACTED] Endorsement 001_Sydney Metro City and South West (London signed).pdf

No.	Principal's Insurance	Relevant documents	Electronic file name
			Fourth Excess Liability \$ [REDACTED] [REDACTED] Endorsement 001_Sydney Metro City and South West (London signed).pdf  Fourth Excess Liability [REDACTED] [REDACTED] Endorsement 001_Sydney Metro City and South West (VAZ).pdf

**SCHEDULE A14. – INDEPENDENT CERTIFIER DEED**

(Schedule A2 and clause 8.7)



# Sydney Metro City & Southwest Independent Certification of the Victoria Cross Works Independent Certifier Deed

Contract No: [insert]

[Name of VC Contractor]

ACN [insert]  
VC Contractor

Sydney Metro

ABN12 354 063 515  
Principal

[Name of Independent Certifier]

ACN [insert]  
Independent Certifier

and

(From the Accession Date) the person who accedes to  
this deed under clause 2  
the Operator

## CONTENTS

CLAUSE	PAGE
1. INTERPRETATION.....	1
1.1 Definitions .....	1
1.2 Definitions in Station Delivery Deed.....	5
1.3 Interpretation.....	5
1.4 Business Day.....	6
1.5 Ambiguous terms .....	6
1.6 No bias against drafter.....	7
1.7 Excluding liability .....	7
2. ACCESSION BY THE OPERATOR.....	7
3. APPOINTMENT OF THE INDEPENDENT CERTIFIER .....	7
3.1 Appointment .....	7
3.2 Term.....	7
3.3 Payment.....	8
3.4 Nature of Services.....	8
3.5 Rights under the Project Agreements.....	8
4. INDEPENDENT CERTIFIER'S OBLIGATIONS.....	8
4.1 Acknowledgement .....	8
4.2 General representations and warranties .....	8
4.3 Further acknowledgements and warranties .....	9
4.4 Personnel.....	10
4.5 Subcontracting .....	11
4.6 Quality Assurance .....	12
4.7 Information provided to Independent Certifier.....	12
4.8 Certification Plan.....	12
4.9 Revisions to Certification Plan.....	13
4.10 Progress Reports by the Independent Certifier.....	14
4.11 Audit and surveillance.....	14
4.12 Access to records .....	15
4.13 Copies of notices and documents .....	15
4.14 Co-operation with Other Independent Certifiers.....	15
4.15 Document management and transmission .....	15
5. INDEPENDENCE, CONFIDENTIALITY AND EXCLUSIVITY .....	16
5.1 Independent Certifier to be independent .....	16
5.2 Confidentiality .....	17
5.3 Exclusivity .....	17
6. OBLIGATIONS OF THE OTHER PARTIES .....	18
6.1 No interference or influence .....	18
6.2 Co-operation .....	18
6.3 Principal to have no liability.....	19
7. ADDITIONAL SERVICES, CHANGES TO CORE SERVICES, SUSPENSION OF SERVICES AND APPOINTMENT OF SUBSTITUTE CERTIFIER.....	19
7.1 Additional Services .....	19
7.2 Change to Core Services.....	20
7.3 Suspension of Services.....	20
7.4 Appointment of Substitute Certifier .....	20
8. LIABILITY, INSURANCE AND INDEMNITY.....	21

8.1	Limitation of liability .....	21
8.2	Exclusions.....	21
8.3	Consequential Loss .....	21
8.4	Insurances.....	22
8.5	Notice of matter affecting insurance .....	22
8.6	Provision of information.....	22
8.7	Periods for insurance .....	23
8.8	Obligations unaffected by insurance .....	23
8.9	Indemnity.....	23
9.	DISPUTE RESOLUTION.....	23
9.1	Procedure for resolving disputes .....	23
9.2	Negotiation .....	23
9.3	Continue to perform .....	24
10.	TERMINATION OF APPOINTMENT .....	24
10.1	Notice of termination .....	24
10.2	Termination.....	24
10.3	Delivery of documents .....	25
10.4	Reasonable assistance .....	25
10.5	Payment until date of termination .....	25
10.6	Termination without prejudice .....	25
10.7	Survive termination .....	25
10.8	Rights upon termination .....	25
11.	GST.....	26
12.	GENERAL.....	26
12.1	Notices.....	26
12.2	Governing Law.....	29
12.3	Jurisdiction.....	29
12.4	Principal as a public authority.....	29
12.5	Amendments.....	30
12.6	Waiver .....	30
12.7	Cost of performing obligations.....	30
12.8	Further acts and documents.....	30
12.9	Consents .....	30
12.10	Assignment.....	30
12.11	Transfer of functions or Public Transport Agency assets .....	31
12.12	Replacement body.....	32
12.13	Counterparts .....	32
12.14	No representation or reliance .....	32
12.15	Expenses.....	33
12.16	Entire agreement .....	33
12.17	Indemnities.....	33
12.18	No agency, partnership, joint venture or other fiduciary relationship .....	33
12.19	Severance.....	33
12.20	Moratorium legislation.....	33
13.	AUSTRALIAN GOVERNMENT REQUIREMENTS .....	34

## Schedule

1	CORE SERVICES .....	36
2	PAYMENT SCHEDULE .....	43
3	MINIMUM RESOURCES COMMITMENT .....	55

4	REQUIREMENTS FOR CERTIFICATION PLAN.....	56
5	SUBCONTRACTORS .....	58
6	FORM OF ACCESSION DEED .....	59
7	CERTIFICATION METHODOLOGY.....	68

**Exhibit**

- 1 INDICATIVE LIST OF VC CONTRACTOR SUBMISSIONS

THIS INDEPENDENT CERTIFIER DEED is made on

2018

BETWEEN:

- (1) [Name, address and ABN of VC Contractor to be inserted] (VC Contractor); and
- (2) **Sydney Metro** ABN 12 654 063 515 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) [Name, address and ABN of Independent Certifier to be inserted] (Independent Certifier); and
- (4) (From the Accession Date) the person who accedes to this deed under clause 2, being the person defined as the "Acceding Party" in the Accession Deed that the Principal requires the Independent Certifier and the VC Contractor to execute under clause 2(a) (the **Operator**).

RECITALS:

- (A) The VC Contractor has entered into the Station Delivery Deed with the Principal for the delivery of the Project Works.
- (B) The Independent Certifier represents that it is experienced generally in design and construction and, in particular, in the design and construction of works similar to the Project Works and offers its expertise in those fields.
- (C) The Project Agreements contemplate 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 Station Delivery Deed, the VC Contractor will progressively hand control of the Project Works to the Principal, so that the Principal may hand control of the Project 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 Project 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 Project Works for the purposes of taking possession of the relevant part of the Construction Site.
- (G) The Operator has not been engaged by the Principal. Once the Operator has been engaged, the Operator will execute the Accession Deed substantially in the form included in Schedule 6 and will thereby accede to the terms of this deed.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

In this deed:

**Accession Date** has the same meaning as given to the term "Effective Date" in the Accession Deed, being the date from which the Operator accedes to this deed.

**Accession Deed** means the deed in substantially the same form as Schedule 6 (with relevant details duly completed) which is to be executed by the Independent Certifier, the VC Contractor, the Principal and the Operator in accordance with clause 2.

**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 Project Works;
- (b) Milestone Achievement of each Milestone;
- (c) the performance by the VC Contractor of its obligations in respect of Milestone Achievement of each Milestone;
- (d) Substantial Completion and Completion of each Portion;
- (e) the performance by the VC Contractor of its obligations in respect of Substantial Completion and Completion of the each Portion;
- (f) completion of Local Area Works; and
- (g) the performance by the VC Contractor of its obligations in respect of Local Area Works.

**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.

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

**Design Phase Services** means all Core Services related to:

- (a) the design of the Project Works; and
- (b) the performance by the VC Contractor of its design obligations in respect of the Project Works.

**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 Station 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 VC Contractor:

- (a) achieving Substantial Completion of Portion 1 of the Project Works by the Date for Substantial Completion of that Portion;
- (b) achieving Completion of Portion 2 of the Project Works by the Date for Completion of that Portion; or

(c) 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 Part 2B of the *Transport Administration (General) Regulation 2005* (NSW).

**Other Parties** means the Principal, the VC Contractor and, from the Accession Date, the Operator.

**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.

**Project Agreements** means:

- (a) the Station Delivery Deed; and
- (b) each Cooperation and Integration Deed.

**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).

**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.

**Station Delivery Deed** means the deed titled "Victoria Cross Integrated Station Development Station Delivery Deed" between the Principal and the VC Contractor dated on or about the date of this deed.

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

**Sydney Trains** means Sydney Trains, the body corporate constituted by Part 2A of the *Transport Administration (General) Regulations 2005* (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 Station Delivery Deed

Except as otherwise defined in clause 1.1, terms used in this deed that are defined in the Station Delivery Deed will have the same meaning in this deed as in the Station 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) an obligation or a liability assumed by, or a right conferred on, 2 or more persons 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 party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
  - (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, VC 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 VC 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 VC 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 VC 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. ACCESSION BY THE OPERATOR**

- (a) The VC Contractor and the Independent Certifier must, upon being requested by the Principal, execute four counterparts of the Accession Deed in accordance with the Principal's instructions and provide such copies to the Principal, notwithstanding that the counterparts of the Accession Deed may not have been signed by the Principal or the Operator.
- (b) The VC Contractor and the Independent Certifier may not object to the identity of the person selected by the Principal to be the Operator.
- (c) The Operator and the obligations owed to the Operator under this deed will only become effective upon the accession of the Operator to this deed in accordance with this clause 2 and the executed Accession Deed.
- (d) Upon accession of the Operator to this deed as referred to in clause 2(c), the rights and liabilities of the parties to this deed will be as set out in this deed as amended in accordance with the requirements of the Accession Deed.
- (e) The Principal will provide each of the Independent Certifier and the VC Contractor with a copy of the Accession Deed duly executed by the Principal and the Operator.

**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 Project Agreements and, to the extent the Certification Plan is not inconsistent with the Project Agreements 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 VC 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 VC Contractor and the Operator.

**3.5 Rights under the Project Agreements**

The Independent Certifier may exercise any of the rights granted to it under the Project Agreements 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 each Project Agreement and that it has read, and is familiar with, the terms of these documents to the extent they relate 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 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 Project Agreements (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 any Project Agreement;
- (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 Project Agreements;
    - (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 Construction Site, any Extra Land, the Project Works and the VC 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 VC Contractor);
  - (ii) when otherwise reasonably requested by the Principal; and
  - (iii) in a manner which satisfies the requirements of the Certification Plan,
- (h) and will invite and permit the Principal and the Operator to accompany it on all such inspections;
- (i) 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 VC Contractor and the Operator) except where it is the unavoidable consequence of performing the Services; and
- (j) in undertaking the Services, will comply with all the safe working requirements of the VC Contractor and the Operator, including the reasonable instructions of the VC Contractor in relation to safety and site security while on the Construction 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 Project Agreements 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 Station Delivery Deed by either of the Principal or the VC 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 VC Contractor (as the case may be) subsequently informs the Independent Certifier of any change to the information provided to it.
- (b) The VC Contractor must provide to the Independent Certifier (with a copy to the Principal):
  - (i) the proposed design package structure, including the number of packages and associated description/naming, and a milestone program for staged submission of each design package in accordance with clause 4.5 of the Station Delivery Deed (**Design Submission Program**) within 25 Business Days of the date of this deed; and
  - (ii) an updated Design Submission Program each week during the period that the VC Contractor is carrying out design activities under the Station Delivery Deed.

#### 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 VC 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 **Rewvisions 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 Project Works, any Changes 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 VC 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 VC 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 VC 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 Project Works by the VC 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 Design Phase Services and the Completion Phase Services (as applicable) 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 Project 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. For the avoidance of doubt, the Operator is entitled to have access to such records and documents, including such records and documents as may have been created prior to the Operator acceding to this deed in accordance with clause 2 and the Accession Deed.

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 VC 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 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 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 SWTC 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 VC 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 VC 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 Project Agreements or as anticipated by the VC 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 has been engaged by the Principal and the VC Contractor prior to the Operator having been engaged by the Principal;
  - (ii) when the Operator has been engaged by the Principal, the Operator will accede to this deed;
  - (iii) the Independent Certifier is obliged to act independently of the Operator;
  - (iv) the Independent Certifier may (after consultation with the Other Parties) be engaged by the Operator in relation to the OTS2 Project Works but must demonstrate to the satisfaction of the parties that it has sufficient

- separation procedures in place to permit it to act independently of the Operator;
- (v) the VC 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 being engaged by the Operator in relation to the OTS2 Project Works; and
  - (vi) neither the Principal, the VC Contractor nor (from the Accession Date) 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 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 Project Works, this deed, the Project Agreements 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 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 2001* (Cth)) 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 VC Contractor or any of its contractors, consultants or providers, or the Operator or any of its contractors, consultants or providers in relation to the Project Agreements; or
    - (B) in the Project Agreements; or

- (iv) provide services to or advise any other person in relation to the Project Agreements,

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 Project Agreements 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 Project Agreements and to ensure the best value for money of the Project Agreements; 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 Project Agreements to the Independent Certifier in respect of the Design Documentation or any other aspect of the VC 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 VC 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 VC Contractor's obligations under this deed or the Project Agreements, the VC 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 Construction Site and any Extra Land and all areas where the Project Works are being performed, from the date on which the VC Contractor is provided with access under the Station Delivery Deed; and

- (iii) ensure that hold points and witness points are included in the VC Contractor's Program as reasonably required by the Independent Certifier to enable the Independent Certifier to perform the Services.
- (b) The VC Contractor must ensure that the Principal is provided with a copy of any written communication given by the VC 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 VC 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 VC Contractor, the Operator or the Independent Certifier under this deed or under any Project Agreement.

## 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 VC 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 VC Contractor and, as relevant, the Operator) may, by written notice to the Independent Certifier (copied to the VC 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

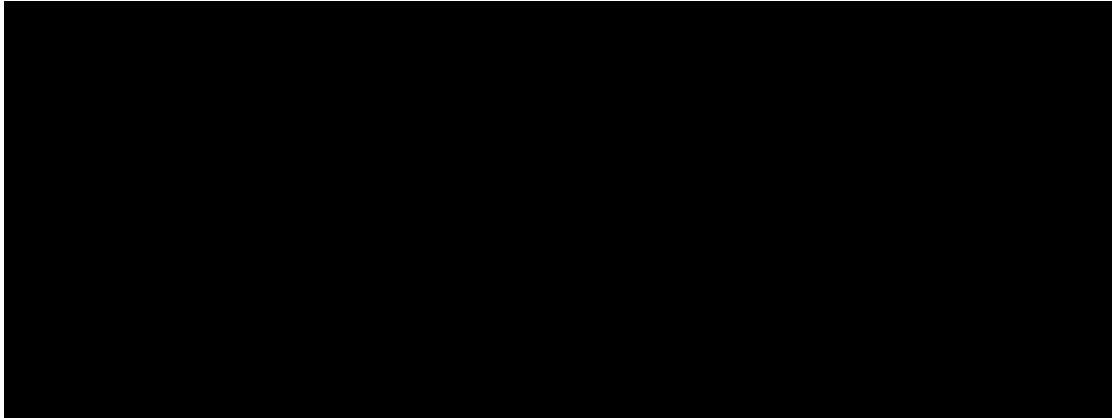
- (a) The Independent Certifier acknowledges and agrees that the Principal may, after consultation with the Other Parties, appoint another certifier (**Substitute Certifier**) to carry out those Services which are omitted as a result of a change to

the Core Services directed under clause 7.2, and any decision of a Substitute Certifier appointed will be treated (between the Principal, the VC 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 Project Agreements in connection with those Services.

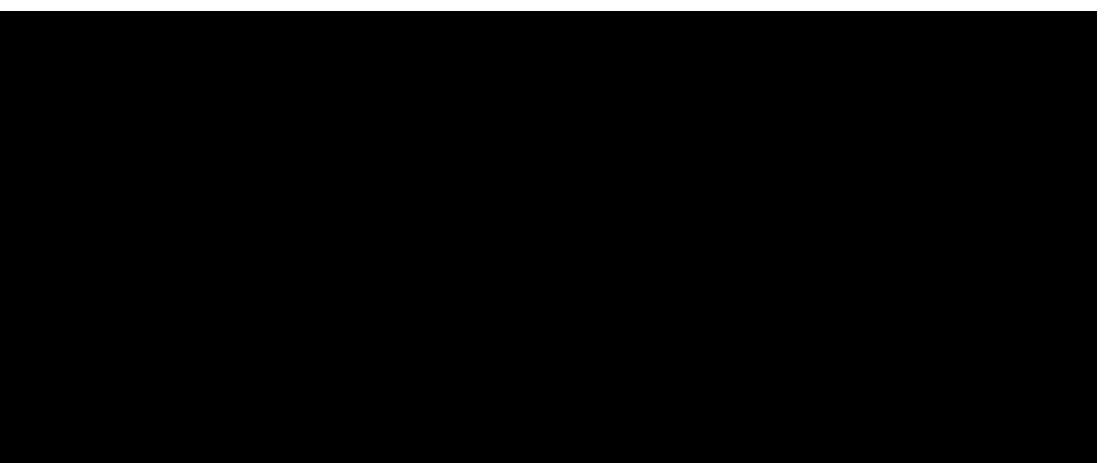
- (b) Notwithstanding a change to the Core Services or the appointment of a Substitute Certifier, the Independent Certifier must continue to perform the Services, as varied in accordance with this clause 7, in accordance with this deed. Without prejudice to any claim in respect of the performance of the Independent Certifier, the Independent Certifier is not responsible for the performance of the Substitute Certifier.

**8. LIABILITY, INSURANCE AND INDEMNITY**

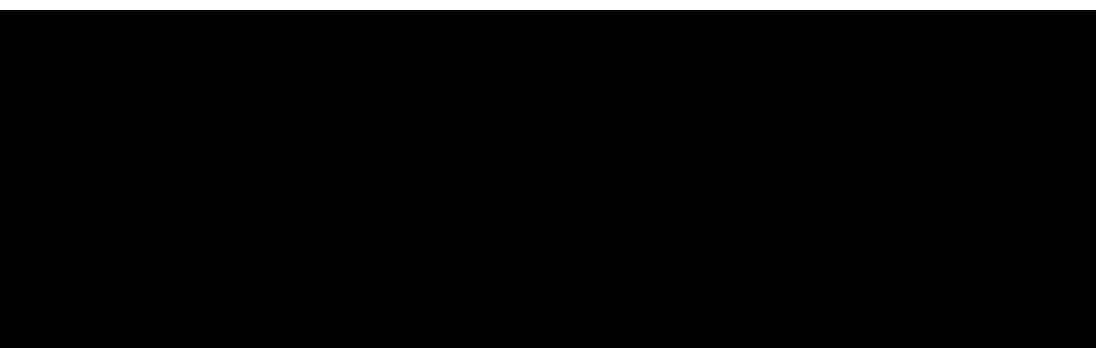
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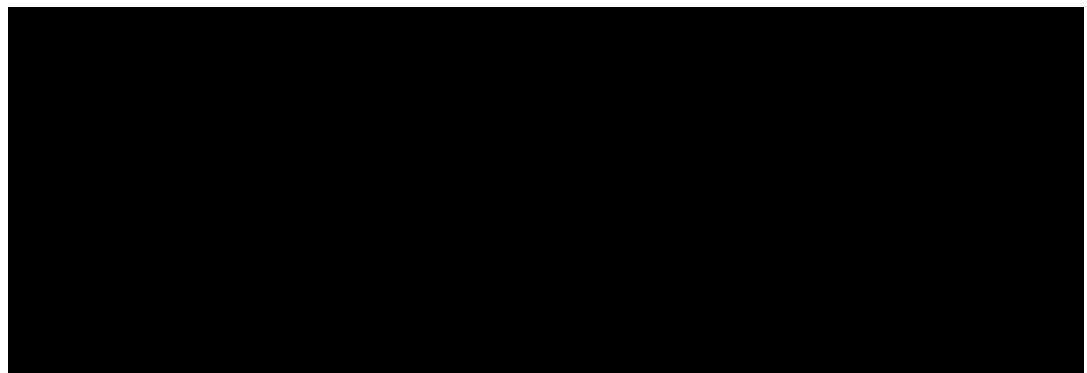


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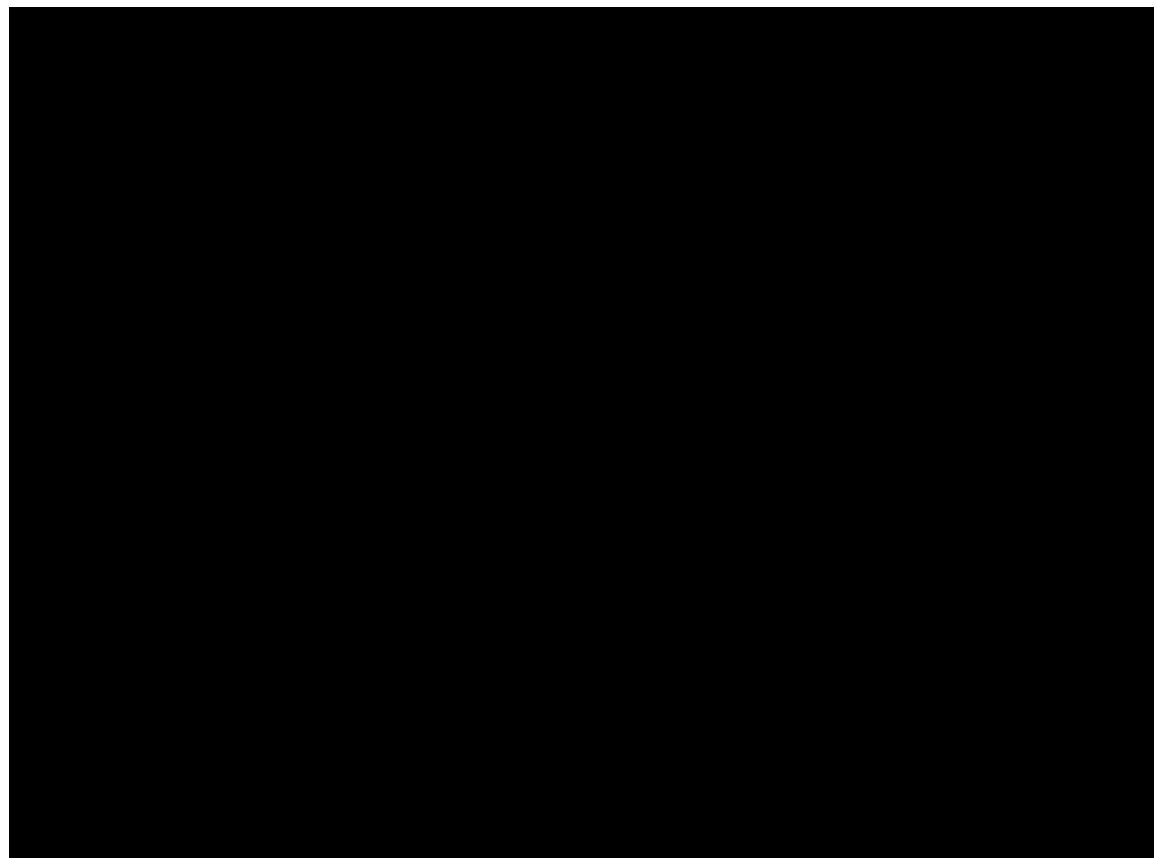


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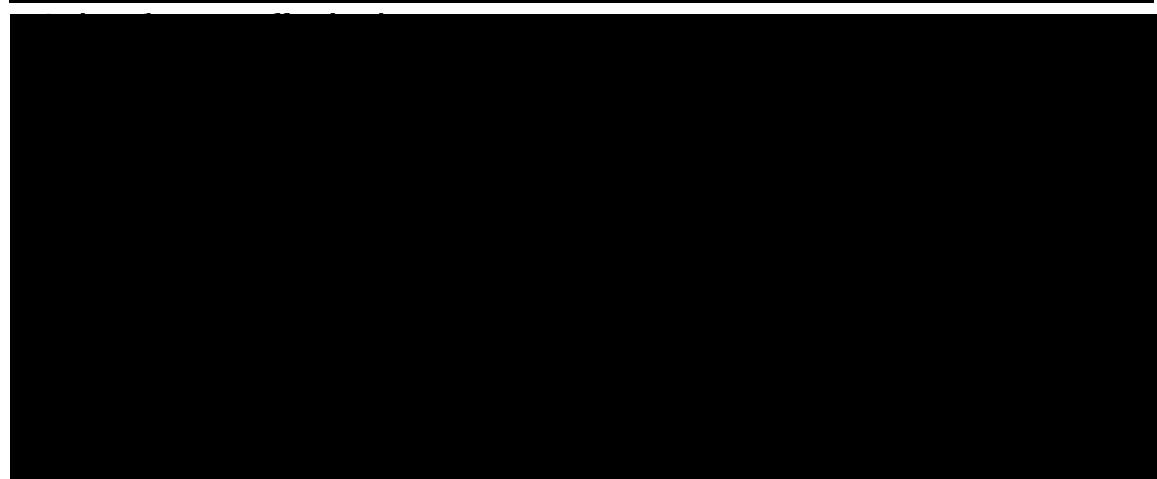
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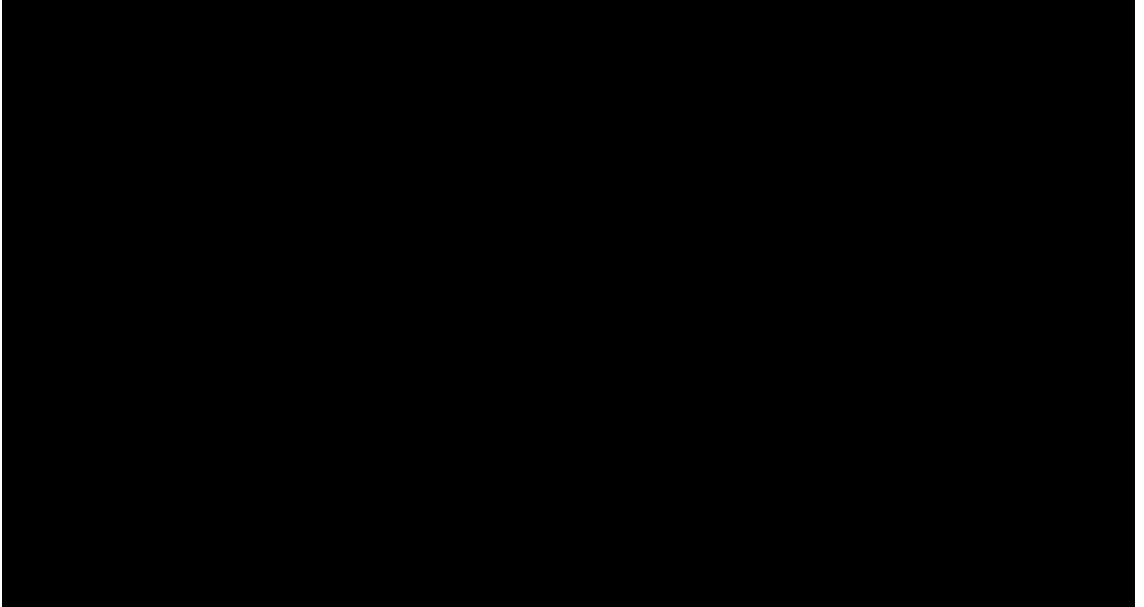
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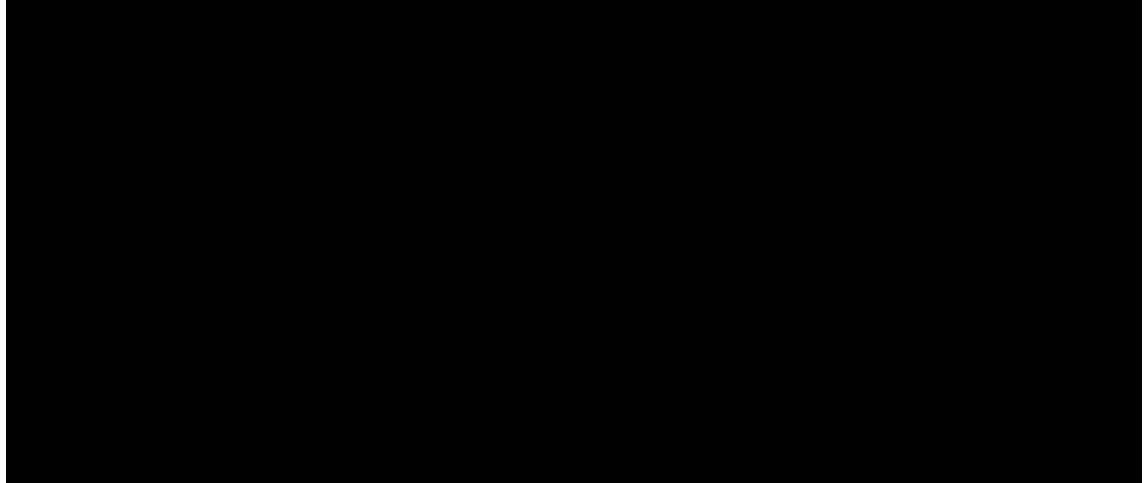
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8.8



8.9



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 VC 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 Project Works, the VC Contractor's Activities or the Project Agreements, 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 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 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]

Email: [to be inserted]

Attention: [to be inserted]

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: [to be inserted]

Email: [to be inserted]

Attention: [to be inserted]

(cc) to the VC Contractor:

Address: [to be inserted]

Email: [to be inserted]

Attention: [to be inserted]

(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; and
  - (iv) (in the case of delivery by hand) on delivery.
- (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 VC 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 VC 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 VC 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 VC Contractor**

The VC 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, VC 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 Station Delivery Deed in accordance with the terms of the Station 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, VC Contractor or the Operator.
- (ii) The Independent Certifier, the VC Contractor and, from the Accession Date, 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 VC Contractor and, from the Accession Date, 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 VC Contractor and, from the Accession Date, 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 VC Contractor and, from the Accession Date, 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.

**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 VC Contractor and, from the Accession Date, 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 VC Contractor and, from the Accession Date, 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 (together with the Accession Deed from the time of accession by the Operator):

- (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 BCIIP 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 BCIIP 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 BCIIP 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 BCIIP Act;
  - (ii) to interview any person under section 74 of the BCIIP Act;
  - (iii) to produce records or documents under sections 74 and 77 of the BCIIP 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 VC Contractor has designed and constructed the Project Works in accordance with the requirements of the relevant sections of the Station Delivery Deed.
- (b) The Independent Certifier must:
  - (i) at all times:
    - (A) act independently of the Principal and the VC 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 VC 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 VC Contractor;
  - (iii) reports submitted by the VC 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 Station 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.
- (e) In performing the Design Phase Services set out in paragraph 2.2:

- (i) the Independent Certifier is not required to carry out "first principles" calculations or "proof engineering" in connection with the Design Documentation; and
- (ii) the scope of Design Documentation that the Independent Certifier will be required to review and certify under this deed will be limited to the Design Documentation provided to the Independent Certifier by the Principal.

## 2. CORE SERVICES UNDER THE STATION DELIVERY DEED

### 2.1 General Services

The Independent Certifier must, throughout the Term:

- (a) ensure that a representative attends:
  - (i) 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; and
  - (ii) in respect of the submission of Design Documentation for each key design pack (an indicative list of which is set out in Exhibit 1 (Indicative list of key VC Contractor submissions)):
    - (A) one meeting prior to submission of the Design Documentation for each design stage; and
    - (B) a design presentation workshop delivered by the VC Contractor within 5 Business Days of submitting the Design Documentation for each design stage;
- (b) inspect the VC 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 Station Delivery Deed which have been reported; and
- (c) promptly notify the Other Parties of:
  - (i) elements of the Design Documentation that do not (or may not) comply with the relevant sections of the Station Delivery Deed;
  - (ii) actual or potential Defects; or
  - (iii) other non-compliances with the Station Delivery Deed,that it identifies when attending meetings and performing its surveillance and other functions.

### 2.2 Design Phase Services

- (a) **Schedule A10, Clause 2.1(a):** The Independent Certifier must:
  - (i) review any Design Stage 3 Design Documentation which is provided to the Independent Certifier in accordance with clause 4.5(b) of the Station Delivery Deed; and

- (ii) within the Principal's Design Review Period determine whether or not the Design Stage 3 Design Documentation complies with the requirements of the Station Delivery Deed and notify the Principal's Representative that the Independent Certifier considers that the Design Stage 3 Design Documentation:
  - (A) does not comply with the requirements of the Station Delivery Deed; or
  - (B) is not sufficiently complete to enable the Independent Certifier to form a view on whether it is compliant; or
  - (C) complies with the requirements of the Station Delivery Deed, which notification must include a certificate in the form of Schedule B5 to the Station Delivery Deed.
- (b) **Schedule A10, Clause 2.3(a):** If the VC Contractor gives a notice under clause 2.2(b) of Schedule A10 of the Station Delivery Deed, the Independent Certifier must, promptly after receipt of the notice from the Principal's Representative:
  - (i) consult with the Principal's Representative; and
  - (ii) determine and notify the Principal Representative whether the Independent Certifier considers that the VC Contractor's notice under clause 2.2(b) of Schedule A10 of the Station Delivery Deed satisfactorily addresses the Independent Certifier's concerns, which notification must, if the Independent Certifier is satisfied, include a certificate in the form of Schedule B5 to the Station Delivery Deed,

and if:

- (iii) the Principal's Representative does not consider that the VC Contractor's notice under clause 2.2(b) of Schedule A10 of the Station Delivery Deed satisfactorily addresses its concerns; and
- (iv) the disagreement between the Principal's Representative and the VC Contractor is in relation to a non-compliance identified by the Independent Certifier,

the Independent Certifier must attend the relevant meeting under clause 2.3(a)(ii)(B) of Schedule A10 of the Station Delivery Deed.

## 2.3 Completion Phase Services

- (a) Local Area Works
  - (i) **Clause 5.5(b):** The Independent Certifier must, after receipt of a notice from the VC Contractor in writing stating that it considers that a discrete part of the Local Area Works is complete, jointly inspect the relevant Local Area Works with the Principal's Representative, the VC Contractor and a representative of the relevant Authority with jurisdiction over the relevant part of the Local Area Works at a mutually convenient time.
  - (ii) **Clause 5.5(c):** Within 5 Business Days after the date of the joint inspection of the relevant Local Area Works under clause 5.5(b) of the Station Delivery Deed, the Independent Certifier must:

- (A) determine whether the discrete part of the Local Area Works has been completed in accordance with the Station Delivery Deed; and
  - (B) either:
    - (aa) if the relevant part of the Local Area Works is complete, issue a certificate in the form in Schedule B14 (*Independent Certifier's Certificate – Completion of Local Area Works*) to the Station Delivery Deed in respect of the relevant part of the Local Area Works; or
    - (bb) if the relevant part of the Local Area Works is not complete, provide the Principal and the VC Contractor with written notice identifying the items of work which remain to be completed.
- (b) Milestone Achievement
- (i) **Clause 23.1(b):** The Independent Certifier must, within 5 Business Days of receipt by the Principal's Representative of a three month written notice from the VC Contractor of the estimated Date of Milestone Achievement of a Milestone under clause 23.1(a) of the Station Delivery Deed, jointly inspect the VC Contractor's Activities with the Principal's Representative and the VC Contractor's Representative at a mutually convenient time.
  - (ii) **Clause 23.1(c):** Within 2 Business Days of the joint inspection referred to in clause 23.1(b) of the Station Delivery Deed, the Independent Certifier must give the VC 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 VC Contractor is so far from achieving Milestone Achievement of the Milestone that it is not practicable to issue a list as contemplated in clause 23.1(c)(i) of the Station Delivery Deed.
  - (iii) **Clause 23.1(e):** The Independent Certifier must, within 5 Business Days after receipt of the VC Contractor's written notice that it considers that it has achieved Milestone Achievement of a Milestone under clause 23.1(d) of the Station Delivery Deed, jointly inspect the VC Contractor's Activities with the Principal's Representative and the VC Contractor's Representative at a mutually convenient time.
  - (iv) **Clause 23.1(f):** The Independent Certifier must, within 5 Business Days after the joint inspection under clause 23.1(e) of the Station Delivery Deed:
    - (A) if Milestone Achievement of the Milestone has been achieved, provide to the Principal's Representative and the VC Contractor, a certificate signed by the Independent Certifier in the form in Schedule B9 (*Notice of Milestone Achievement*) to the Station Delivery Deed; or
    - (B) if Milestone Achievement of the Milestone has not been achieved, issue a notice to the Principal and the VC Contractor which states:
      - (aa) the items which remain to be completed before Milestone Achievement of the Milestone can be achieved; or

- (bb) that the VC Contractor is so far from achieving Milestone Achievement of the Milestone that it is not practicable to notify the VC Contractor of the items which remain to be completed as contemplated by clause 23.1(f)(ii)(A) of the Station Delivery Deed.
  - (v) **Clause 23.1(g)(ii):** In making its determination under clause 23.1(f) of the Station Delivery Deed in respect of Milestone Achievement of a Milestone, the Independent Certifier must consider comments from the Principal's Representative or any Interface Contractor in relation to any non-compliance of the VC Contractor's Activities with the Station Delivery Deed.
- (c) Substantial Completion
- (i) **Clause 23.1(b):** The Independent Certifier must, within 5 Business Days of receipt by the Principal's Representative of a three month written notice from the VC Contractor of the estimated Date of Substantial Completion of a Portion under clause 23.1(a) of the Station Delivery Deed, jointly inspect the VC Contractor's Activities with the Principal's Representative and the VC Contractor's Representative at a mutually convenient time.
  - (ii) **Clause 23.1(c):** Within 2 Business Days of the joint inspection referred to in clause 23.1(b) of the Station Delivery Deed, the Independent Certifier must give the VC 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 VC Contractor is so far from achieving Substantial Completion of the Portion that it is not practicable to issue a list as contemplated in clause 23.1(c)(i) of the Station Delivery Deed.
  - (iii) **Clause 23.1(e):** The Independent Certifier must, within 5 Business Days after receipt of the VC Contractor's written notice that it considers that it has achieved Substantial Completion of a Portion under clause 23.1(d) of the Station Delivery Deed, jointly inspect the VC Contractor's Activities with the Principal's Representative and the VC Contractor's Representative at a mutually convenient time.
  - (iv) **Clause 23.1(f):** The Independent Certifier must, within 5 Business Days after the joint inspection under clause 23.1(e) of the Station Delivery Deed:
    - (A) if Substantial Completion of the Portion has been achieved, provide to the Principal's Representative and the VC Contractor, a certificate signed by the Independent Certifier in the form in Schedule B10 (*Notice of Substantial Completion*) to the Station Delivery Deed; or
    - (B) if Substantial Completion of the Portion has not been achieved, issue a notice to the Principal and the VC Contractor which states:
      - (aa) the items which remain to be completed before Substantial Completion of the Portion can be achieved; or
      - (bb) that the VC Contractor is so far from achieving Substantial Completion of the Portion that it is not practicable to notify the VC Contractor of the items which remain to be completed as

contemplated by clause 23.1(f)(ii)(A) of the Station Delivery Deed.

- (v) **Clause 23.1(g)(ii):** In making its determination under clause 23.1(f) of the Station Delivery Deed in respect of Substantial Completion of a Portion, the Independent Certifier must consider comments from the Principal's Representative or any Interface Contractor in relation to any non-compliance of the VC Contractor's Activities with the Station Delivery Deed.

(d) Completion

- (i) **Clause 23.1(b):** The Independent Certifier must, within 5 Business Days of receipt by the Principal's Representative of a three month written notice from the VC Contractor of the estimated Date of Completion of a Portion under clause 23.1(a) of the Station Delivery Deed, jointly inspect the VC Contractor's Activities with the Principal's Representative and the VC Contractor's Representative at a mutually convenient time.
- (ii) **Clause 23.1(c):** Within 2 Business Days of the joint inspection referred to in clause 23.1(b) of the Station Delivery Deed, the Independent Certifier must give the VC 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 VC Contractor is so far from achieving Completion of the Portion that it is not practicable to issue a list as contemplated in clause 23.1(c)(i) of the Station Delivery Deed.
- (iii) **Clause 23.1(e):** The Independent Certifier must, within 5 Business Days after receipt of the VC Contractor's written notice that it considers that it has achieved Completion of a Portion under clause 23.1(d) of the Station Delivery Deed, jointly inspect the VC Contractor's Activities with the Principal's Representative and the VC Contractor's Representative at a mutually convenient time.
- (iv) **Clause 23.1(f):** The Independent Certifier must, within 5 Business Days after the joint inspection under clause 23.1(e) of the Station Delivery Deed:
  - (A) if Completion of the Portion has been achieved, provide to the Principal's Representative and the VC Contractor, a certificate signed by the Independent Certifier in the form in Schedule B11 (*Notice of Completion*) to the Station Delivery Deed; or
  - (B) if Completion of the Portion has not been achieved, issue a notice to the Principal and the VC Contractor which states:
    - (aa) the items which remain to be completed before Completion of the Portion can be achieved; or
    - (bb) that the VC Contractor is so far from achieving Completion of the Portion that it is not practicable to notify the VC Contractor of the items which remain to be completed as contemplated by clause 23.1(f)(ii)(A) of the Station Delivery Deed.
- (v) **Clause 23.1(g)(ii):** In making its determination under clause 23.1(f) of the Station Delivery Deed in respect of Completion of a Portion, the Independent

Certifier must consider comments from the Principal's Representative or any Interface Contractor in relation to any non-compliance of the VC Contractor's Activities with the Station 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)

(ii)

(c)

(d)

#### 2. PAYMENT CLAIM

- (a) At the end of each month after the later of the date of the Station Delivery Deed and the date of this deed, the Independent Certifier must submit to the Principal (copying the VC 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:

(a) the Design Phase Services; and

(b) the Completion Phase Services; and

- (B) in such form and with such details and supporting documentation as the Principal and the VC 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 Construction Site and elsewhere in connection with the Project; 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 VC 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]
- (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 VC 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 VC 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 VC 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 VC 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**

- (a) [REDACTED]

5. SCHEDULE OF RATES

[Note to Tenderers: The table below will be updated once the roles required within the Independent Certifier and daily rates have been determined.]

Role	Daily Rate (\$) (excluding GST)

**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.'
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](http://www.workcover.nsw.gov.au), Office of State Revenue website [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au), or Office of Industrial Relations, Department of Commerce website [www.commerce.nsw.gov.au](http://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](http://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

e of subcontractors paid all amounts due and payable				
ra	ctor	works	claim	or

e of subcontractors for which an amount is in dispute and has not been paid				
ra	ctor	works	claim	or

## **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](http://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:

*[Note to Tenderers: This section will be updated to reflect the tenderer's proposed organisational structure, key personnel and resourcing plan of the successful tenderer for the Independent Certifier role.]*

Note: In this Schedule 3:

- (a) full time means a minimum of [## hours] per day Monday to Friday and a minimum of [## hours] on Saturday; and
- (b) a reference to "days" excludes public holidays and includes only those days which are stated in the VC 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.

*[Note to Tenderers: This section will specify the requirements for each member of the Independent Certifier's core team (as specified in section 1 above and reflecting the organisational structure of the successful tenderer for the Independent Certifier role) as well as specialists who may be required to provide parts of the Services.]*

## 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 Construction 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 VC 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 VC Contractor's Activities;
  - (ii) without limiting sub-paragraph (i), monitoring, auditing, reviewing, assessment and testing of the quality and durability of the Project Works to determine and ensure the VC Contractor's compliance with the requirements of the Station 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 VC Contractor's design and 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 VC Contractor in respect of its carrying out of the VC Contractor's Activities, whether by participation in design workshops, design surveillance or otherwise;
  - (v) ensuring that the VC Contractor has addressed all issues of review, comment and consultation with the Principal in respect of the Design Documentation and the VC 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 Project Agreements contemplate will be discharged by the Independent Certifier as set out in Schedule 1;
  - (ii) certification of the Design Documentation (Schedule B5, Station Delivery Deed);
  - (iii) certification of Milestone Achievement of each Milestone (Schedule B9, Station Delivery Deed);
  - (iv) certification of Substantial Completion of each Portion (Schedule B10, Station Delivery Deed);
  - (v) certification of Completion of each Portion (Schedule B11, Station Delivery Deed);
  - (vi) certification of completion of the Local Area Works (Schedule B14, Station Delivery Deed); and
  - (vii) determination of any matters required by the Project Agreements;
- (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 VC Contractor's Activities including:
- (i) number of design lots developed; and
  - (ii) program durations; and
  - (iii) 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 VC Contractor to design and construct the Project Works in accordance with the requirements of the Station Delivery Deed.

**SCHEDULE 5**

**Subcontractors**

**[Note to Tenderers: Approved subcontractors and Services to be subcontracted will be listed in this Schedule 5.]**

<b>Name of subcontractor</b>	<b>Part of the Services</b>

**SCHEDULE 6**

### **Form of Accession Deed**

**This Accession Deed made at** \_\_\_\_\_ on \_\_\_\_\_

## BETWEEN:

- (1) **Sydney Metro (ABN 12 354 063 515)** a New South Wales Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney, NSW 2000 (**Principal**);

**[Note: Insert details of VC Contractor and Independent Certifier.]** (together the Continuing Parties)

- (2) [insert name of the Operator] (ABN [insert]) of [insert address] (Acceding Party)

## **RECITALS**

- (A) The Continuing Parties are each party to the Independent Certifier Deed.
  - (B) Each of the Continuing Parties and the Acceding Party has agreed that the Acceding Party will accede to the Independent Certifier Deed on or about the date of execution of the OTS2 Project Deed, on the terms of this deed.
  - (C) The Continuing Parties and the Acceding Party have agreed to amend the Independent Certifier Deed on the terms set out in this deed.

**THE PARTIES AGREE AS FOLLOWS:**

## **1. INTERPRETATION**

## 1.1 Definitions

In this deed:

**Accession Deed** means this deed.

**Effective Date** means the date of this deed.

**Independent Certifier Deed** means the deed titled "Sydney Metro City & Southwest Independent Certification of the Victoria Cross Works: Independent Certifier Deed" which was originally entered into between the Continuing Parties on [insert date].

**Operator** means the entity or person that enters into the OTS2 Project Deed with the Principal.

**OTS2 Project Deed** means the deed entitled *[insert full title of the OTS2 Project Deed]* entered into between the Principal and the Operator on or about the date of this deed.

## **1.2 Definitions in Station Delivery Deed**

Except as otherwise defined in clause 1.1, terms used in this deed that are defined in the Station Delivery Deed will have the same meaning in this deed as are provided for in the Station 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) an obligation or a liability assumed by, or a right conferred on, 2 or more persons 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 party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
    - (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 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.

### **2. CONSIDERATION**

In consideration of the Acceding Party executing this deed, each Continuing Party agrees to pay the Acceding Party [REDACTED] upon the Acceding Party's request.

### **3. COVENANT**

#### **3.1 Covenant by Acceding Party**

The Acceding Party confirms that it has been supplied with a copy of the Independent Certifier Deed as originally executed by the Continuing Parties and covenants with each of the Continuing Parties, with effect from the Effective Date, to be bound by the provisions of, and to perform all of the Operator's obligations under, the Independent Certifier Deed (as amended by Schedule 1 to this deed) in so far as they may remain to be observed and performed as at the date of this Accession Deed.

#### **3.2 Covenant by Continuing Parties**

Each Continuing Party covenants with the Acceding Party, with effect from the Effective Date, to be bound by the provisions of, and to perform all its obligations under the Independent Certifier Deed (as amended by Schedule 1 to this deed) in so far as they may remain to be observed and performed as at the date of this Accession Deed.

#### **3.3 Amendment to Independent Certifier Deed**

Each Continuing Party and the Acceding Party agree that the Independent Certifier Deed is amended as set out in Schedule 1 to this deed.

### **4. REPRESENTATIONS AND WARRANTIES**

The Acceding Party represents and warrants to each of the Continuing Parties that the obligations in this deed are valid and binding obligations of the Acceding Party.

### **5. GENERAL**

#### **5.1 Notices**

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

Name: [insert]

Address: [insert]

Email: [insert]

For the attention of: [Insert name of the Principal's Representative]

Name: [insert]

Address: [insert]

Email: [insert]

For the attention of: [Note: Insert name of VC Contractor's Representative]

Name: [insert]

Address: [insert]

Email: [insert]

For the attention of: [Note: Insert name of Independent Certifier's Representative]

(c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary, or authorised agent of, that party;

(d) must be delivered by hand or posted by prepaid post to the address, or sent by email to the email address, of the addressee, in accordance with clause 5.1(b); and

(e) is taken to be received by the addressee:

(i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;

(ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;

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

(iv) (in the case of email):

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

(B) 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.

## 5.2 Governing Law

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

### **5.3 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 5.3(a).

### **5.4 the 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 VC Contractor and the Operator acknowledges and agrees that, without limiting clause 5.4(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 VC Contractor or the Operator to make any claim against the Principal.
- (c) The parties agree that clauses 5.4(a) and 5.4(b) are taken not to limit any liability which the Principal would have had to the Independent Certifier, the VC 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 5.4(a) and 5.4(b) of this deed.

### **5.5 Amendments**

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

### **5.6 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.

### **5.7 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.

## **5.8 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.

## **5.9 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.

## **5.10 Assignment**

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

## **5.11 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.

## **5.12 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.

## **5.13 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.

## **5.14 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.

## **5.15 Stamp duties**

The Principal:

- (a) must pay all stamp duties and any related fines and penalties in respect of this deed, the performance of this deed and each transaction effected by or made under this deed;

- (b) indemnifies each other party against any liability arising from failure to comply with clause 5.15(a); and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause.

**5.16 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 constitute the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

**5.17 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.

**5.18 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.

**5.19 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.

**5.20 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.

**SCHEDULE 1**

The Independent Certifier Deed is deemed to be amended by:

1. immediately after the definition of "NSW Trains" in clause 1.1, insert the following definition:

"Operator" means **[insert full name of the Operator]** (ABN **[insert]**) of **[insert]**.

2. inserting the following details at the end of clause 12.1(c)(i)(B):

Name: **[insert name of the Operator]**

Address: **[insert]**

Email: **[insert]**

For the attention of: **[insert]**

**Executed** as a deed.

**Executed** by **Sydney Metro (ABN 12 354 063 515)** by its authorised representative 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 of Independent Certifier.]** in accordance with section 127 of the *Corporations Act 2001* (Cth)

---

Signature of Director

---

Signature of Secretary/other Director

---

Name of Director in full

---

Name of Secretary/other Director in full

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

---

Signature of Director

---

Signature of Secretary/other Director

---

Name of Director in full

---

Name of Secretary/other Director in full

**Executed by [Note: Insert name and ABN of Operator]** 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

**SCHEDULE 7**

**Certification Methodology**

**[Note to Tenderers: The successful tenderer's submitted Certification Methodology will be incorporated in this Exhibit 1.]**

**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

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

---

of Director

---

of other Director/Secretary

---

Director in full

---

Secretary/other Director in full

Executed by **[Note: Insert name and ABN of Independent Certifier.]** 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

**EXHIBIT 1**

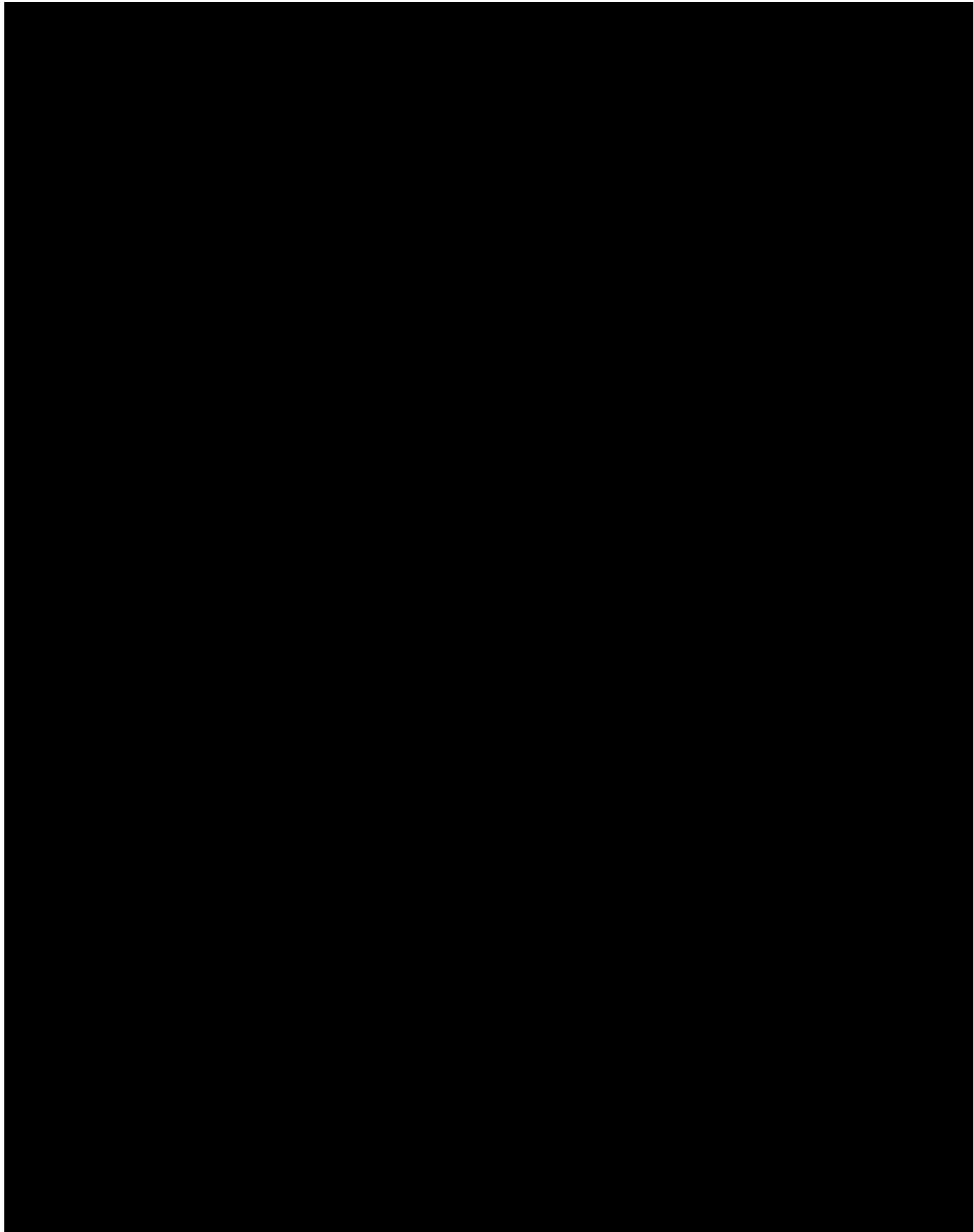
**Indicative list of VC Contractor submissions**

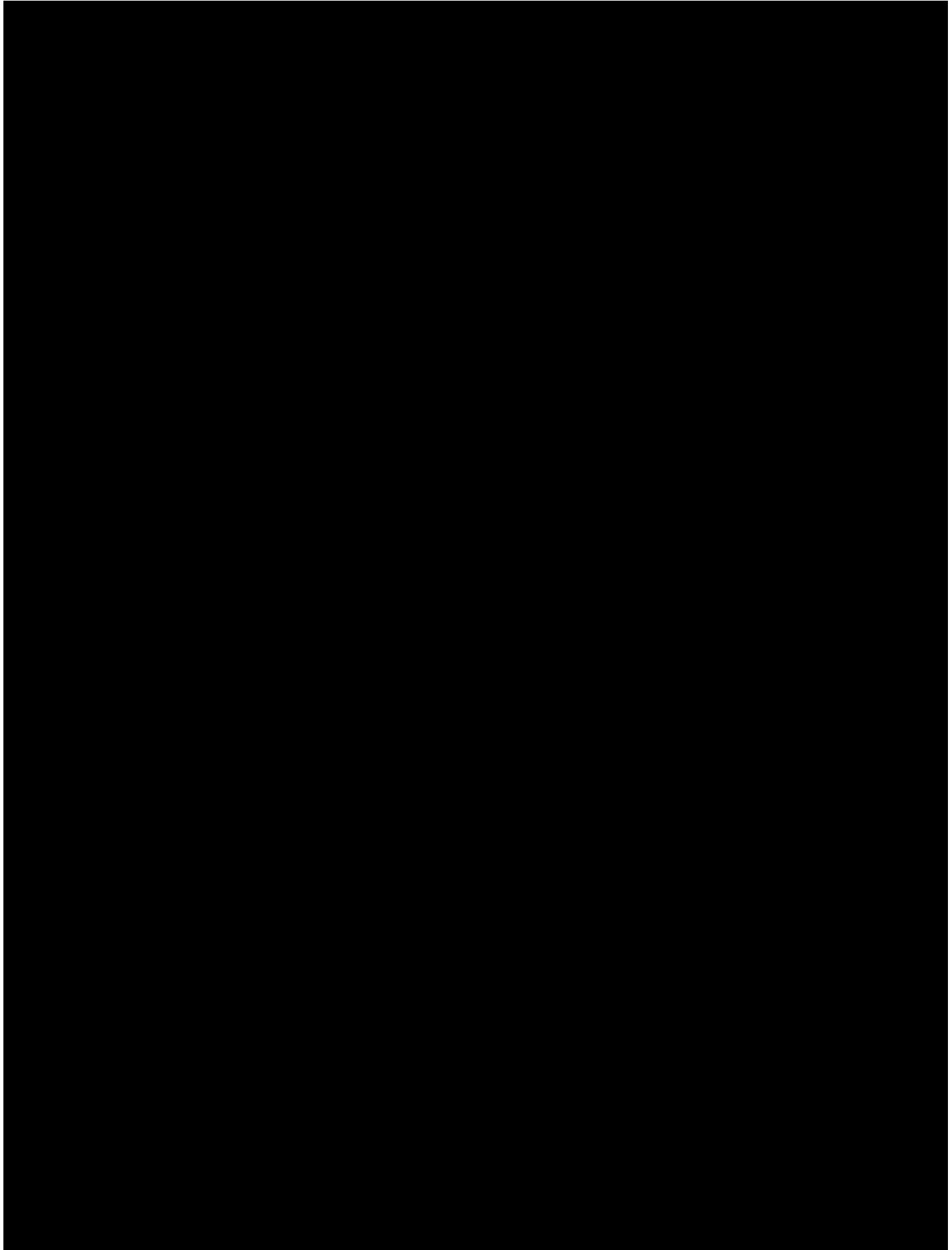
**[Note to Tenderers: An indicative list of the key design packs (in relation to which the Independent Certifier will be required to attend a pre-submission meeting and a post-submission workshop) will be incorporated in this Exhibit 1.]**

**SCHEDULE A15. – NOT USED**

**SCHEDULE A16. – FORM OF COLLATERAL WARRANTY DEED POLL**

(Schedule A2 and clause 12.7)



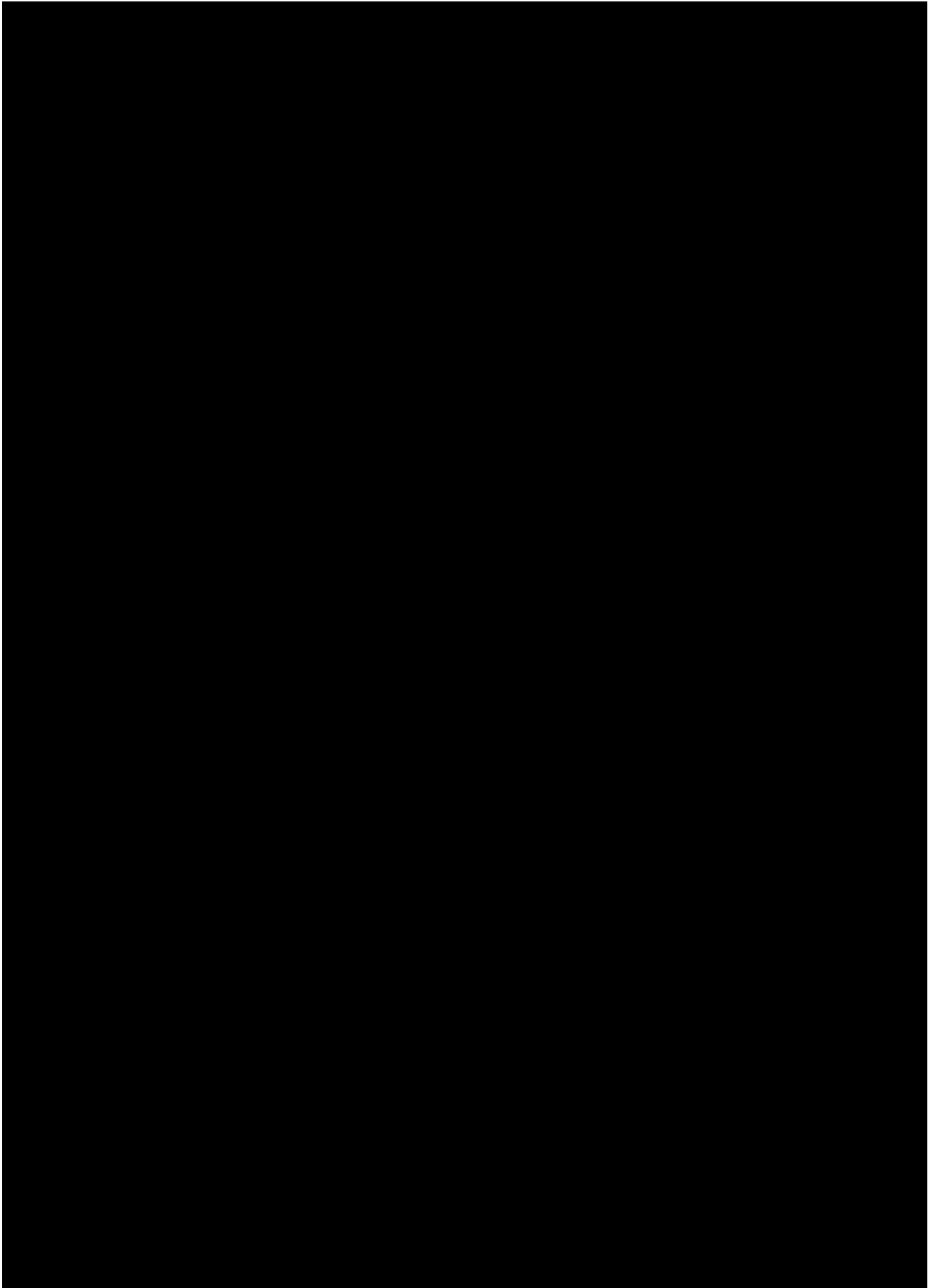




**SCHEDULE A17. – MASTER INTERFACE PROTOCOLS DEED POLL**

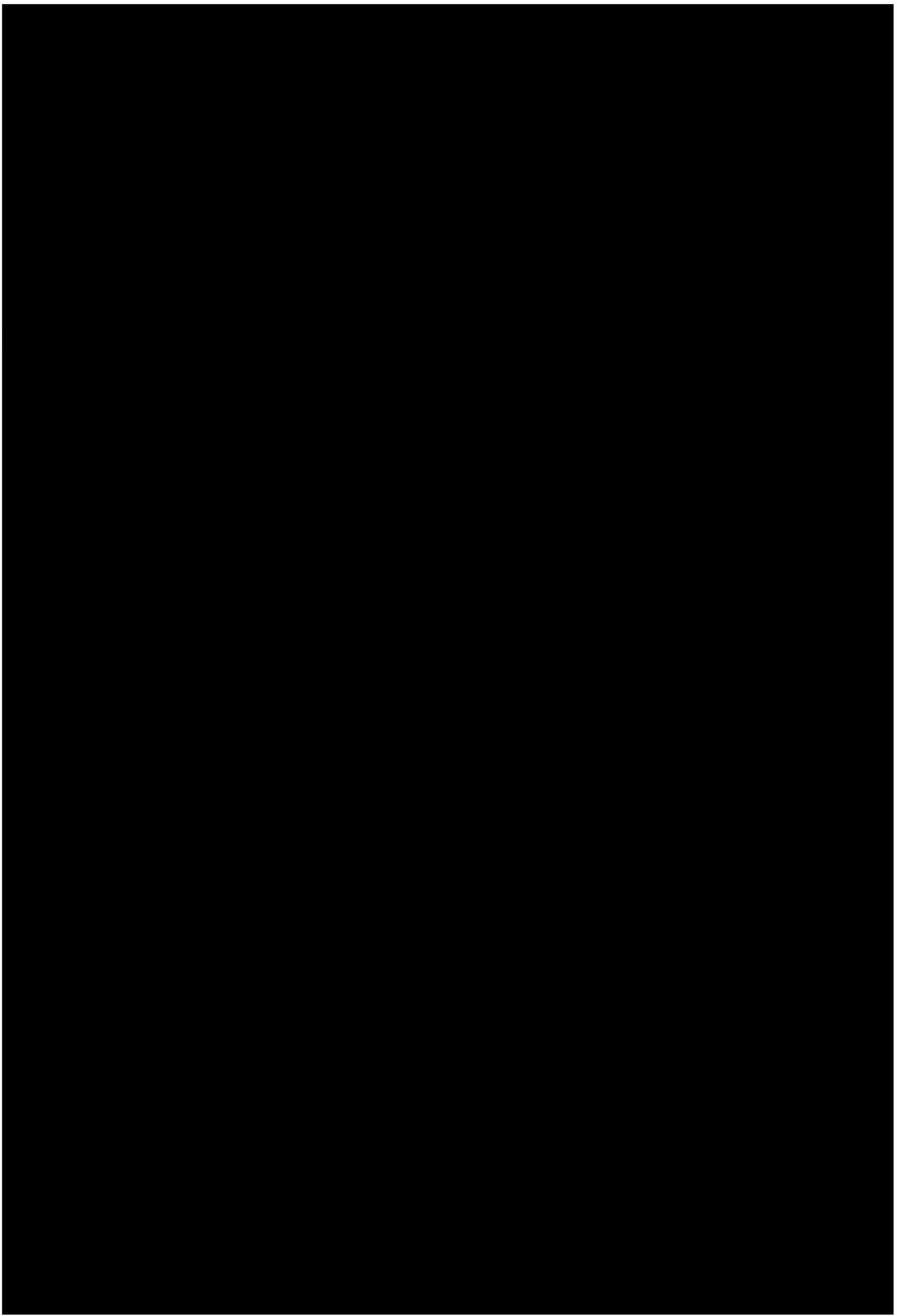
(Schedule A2 and clause 12.1)

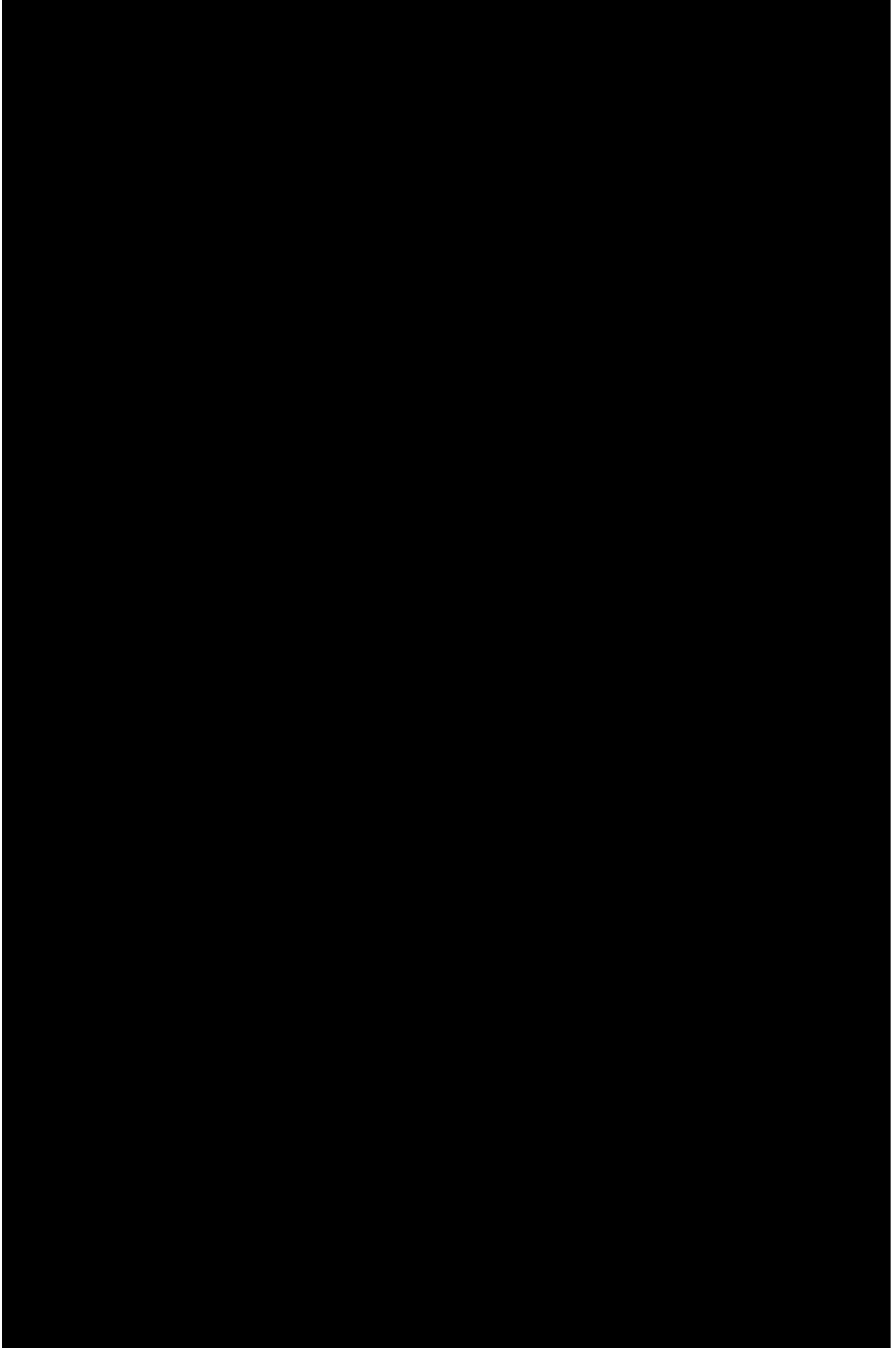


















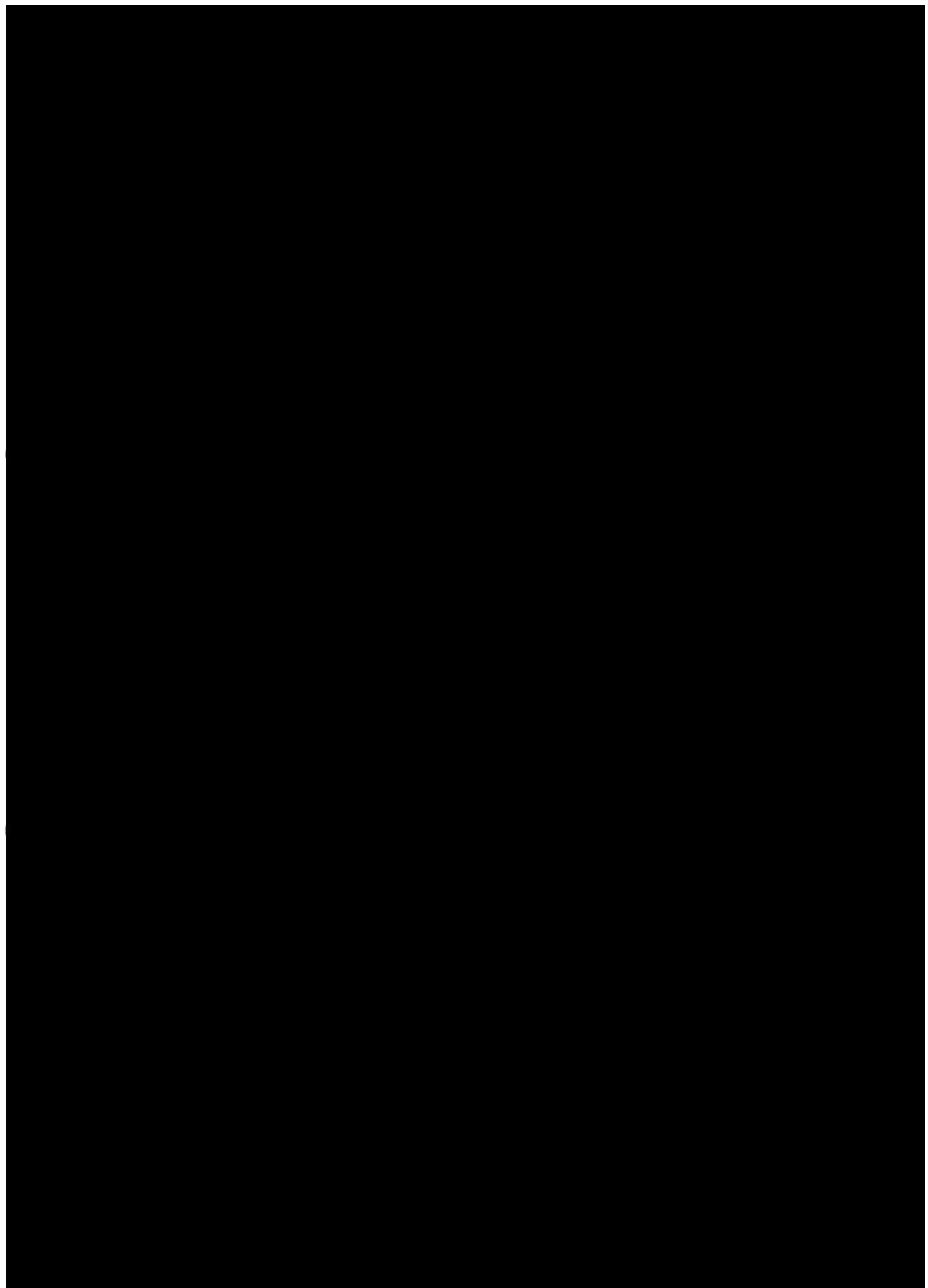
















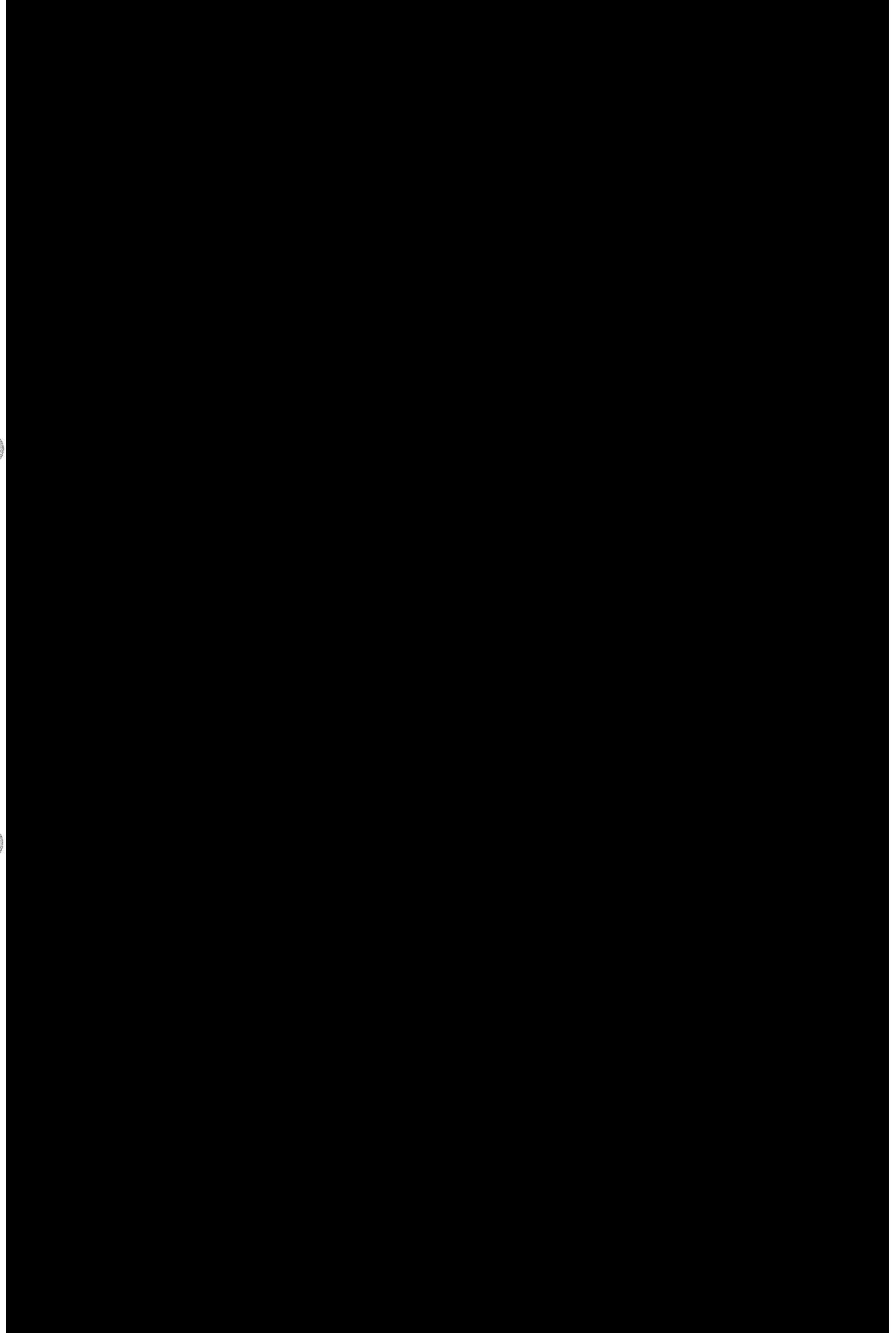


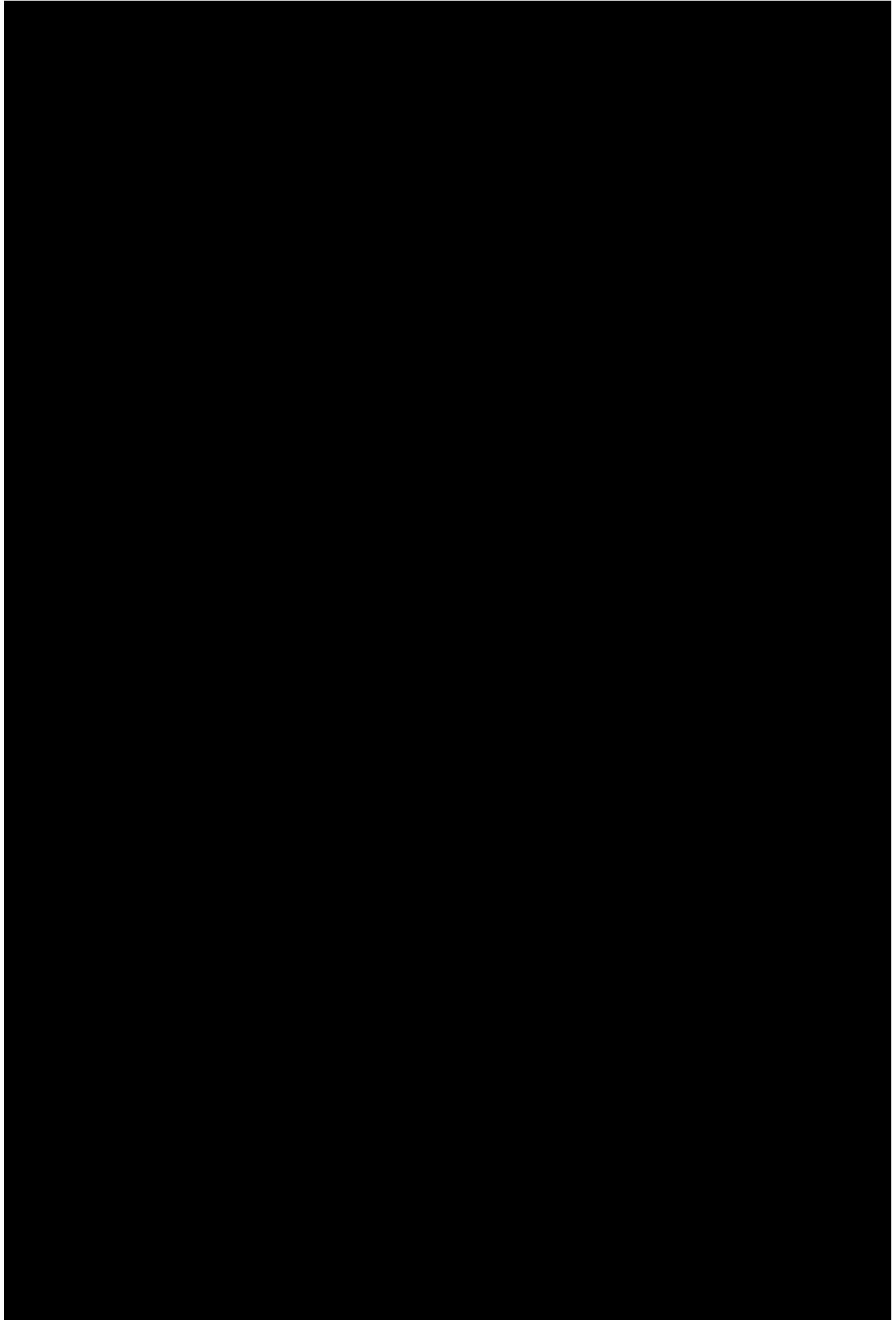




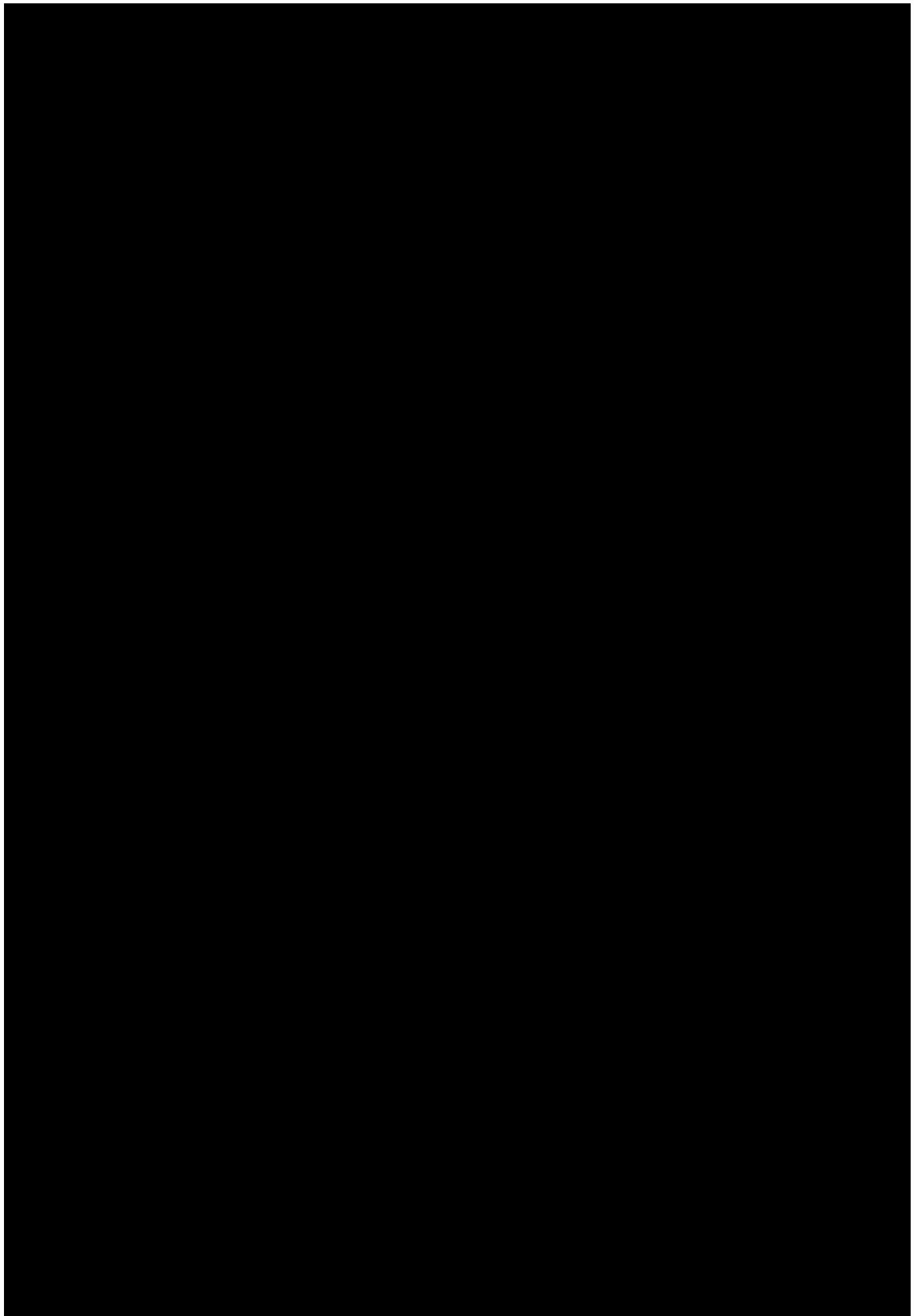


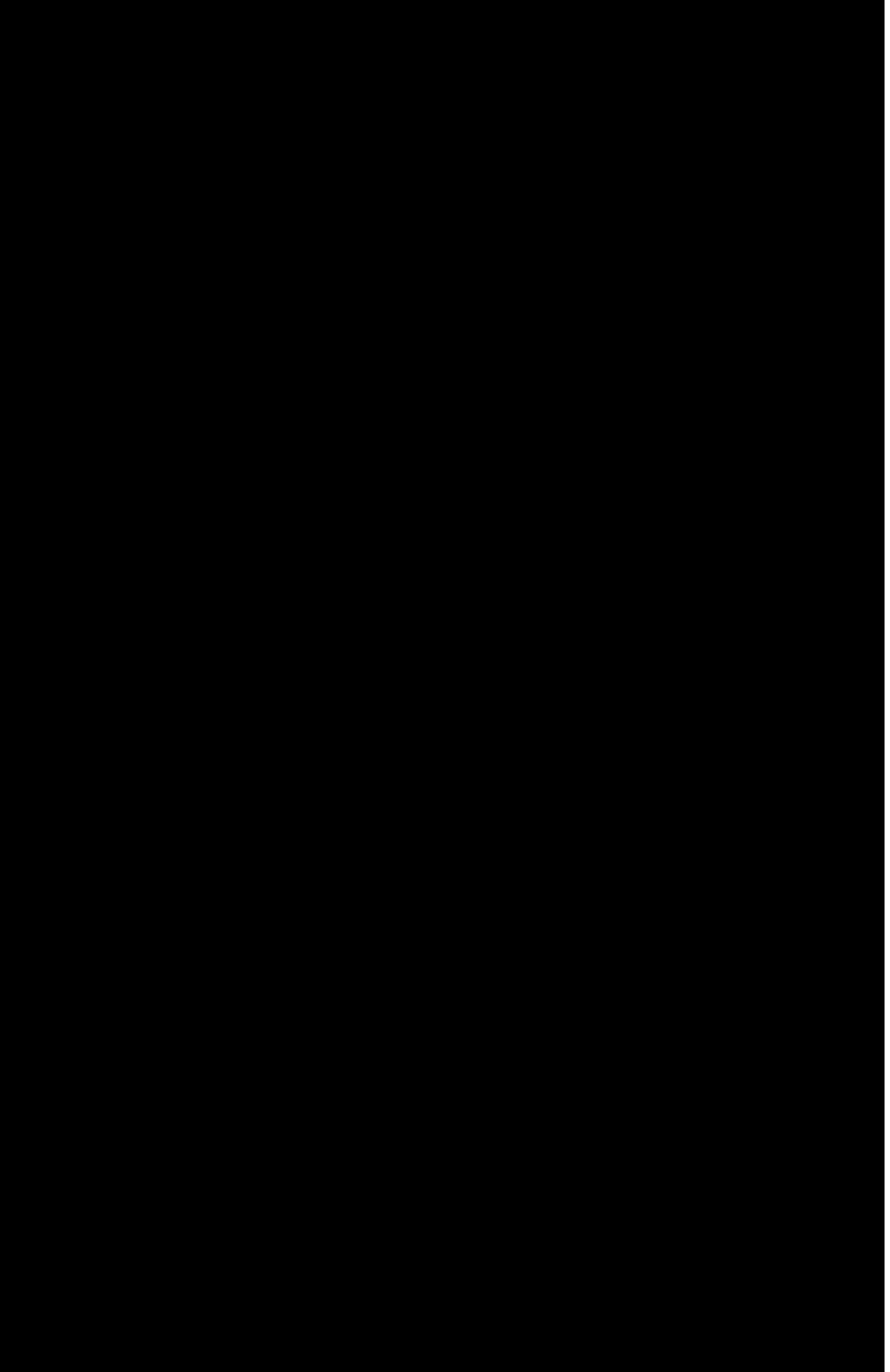


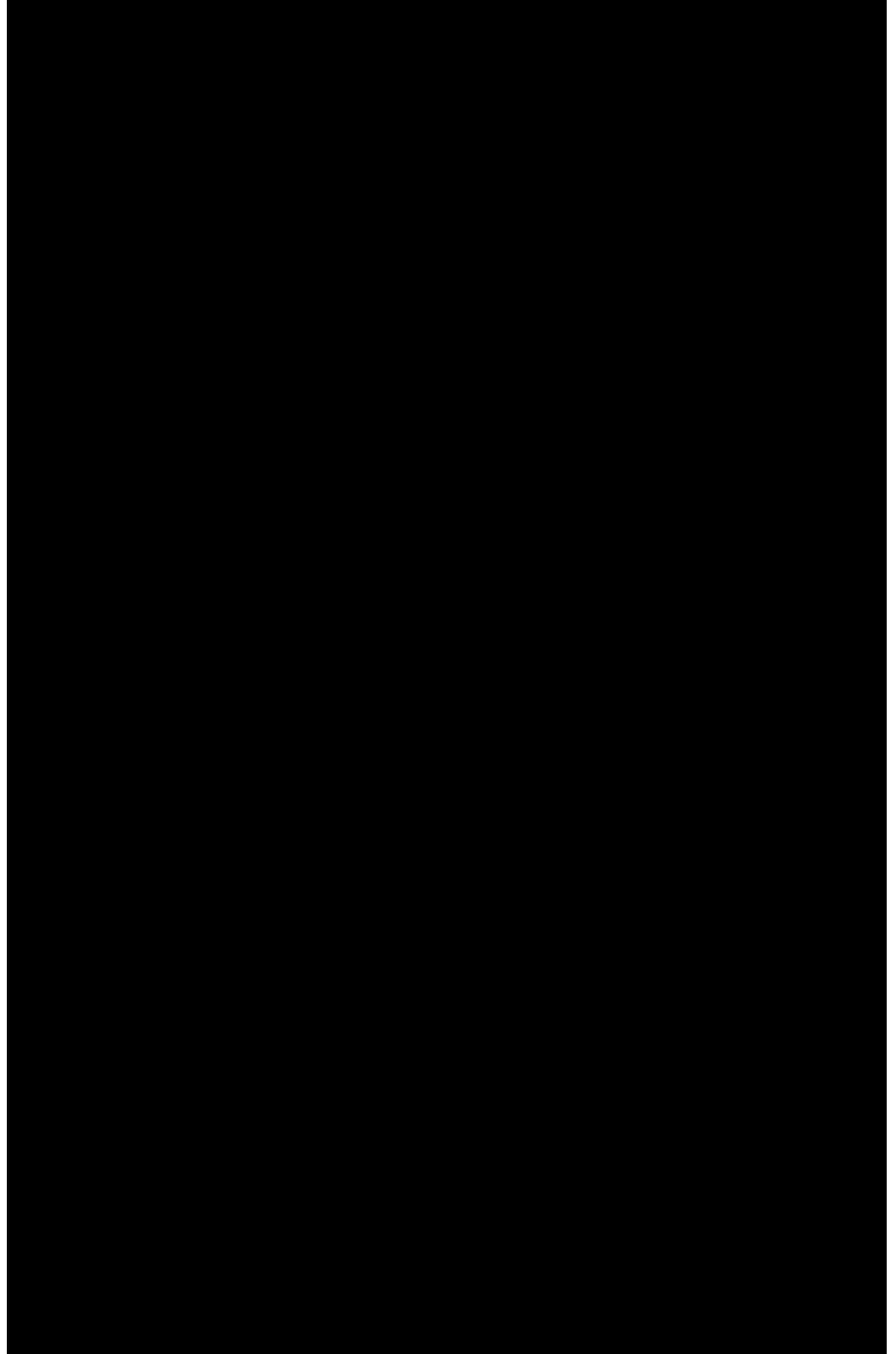




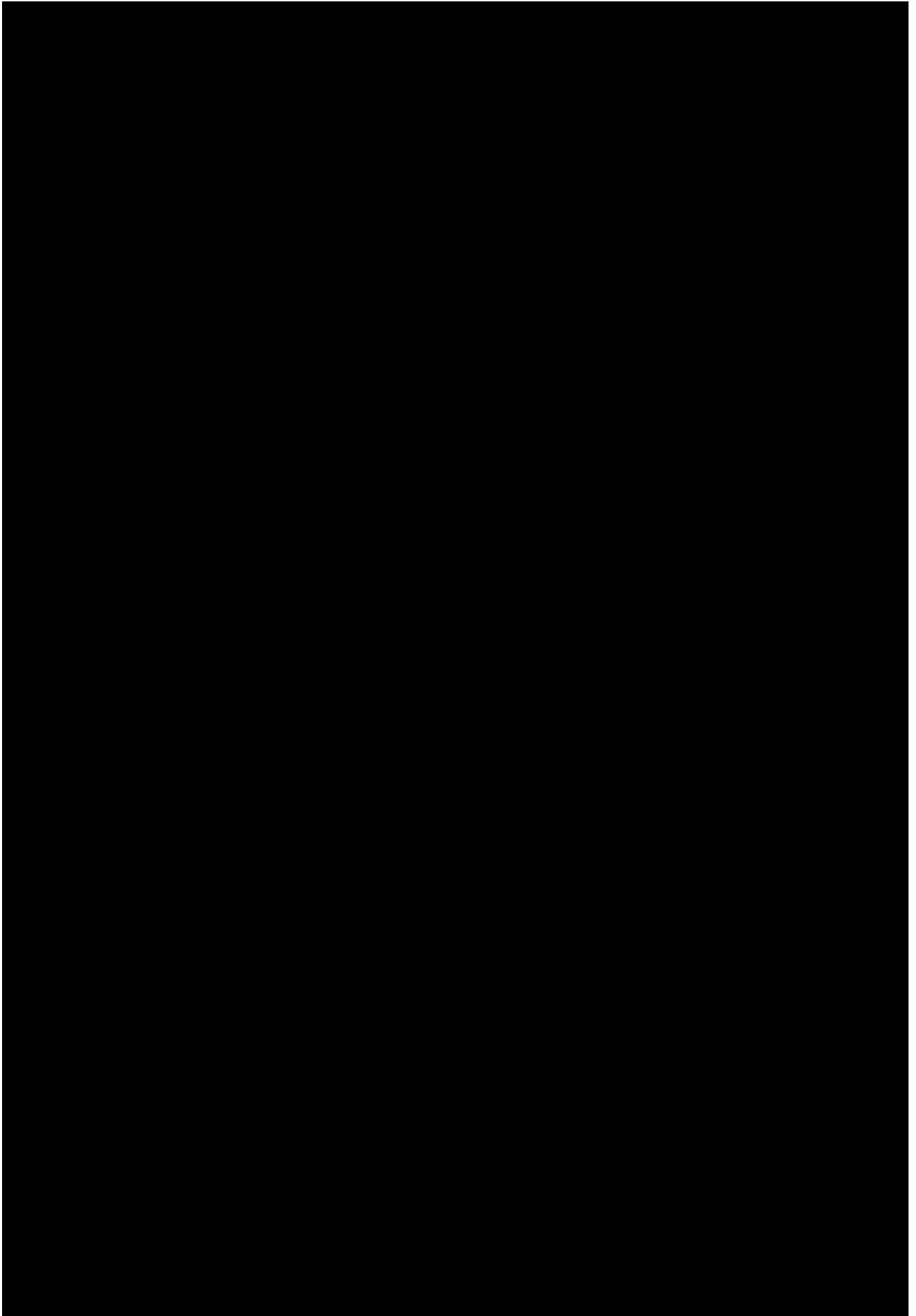






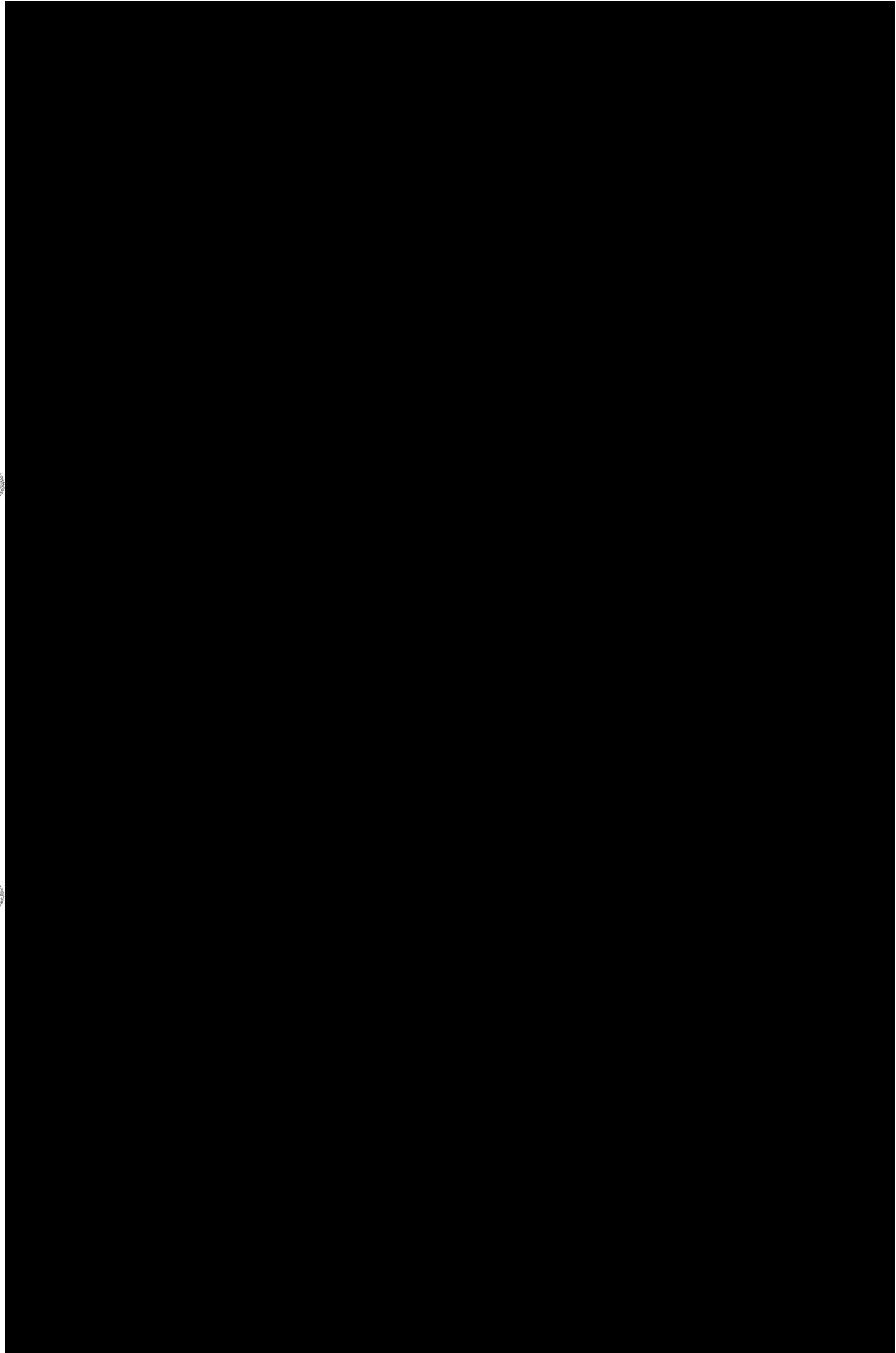






























**SCHEDULE A18. – SITE INTERFACE DEED POLL**

(Clause 6.3(b)(i)(D))

**THIS DEED POLL** is made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_  
**BY:** [Insert name and ABN] of [Insert address] (**Interface Contractor**)  
**IN FAVOUR OF:** [Insert name and ABN] of [Insert address] (**Appointed Principal Contractor**);  
[Insert name and ABN] of [Insert address] (**VC Contractor**); and  
**Sydney Metro** (ABN 12 354 063 515) a NSW Government agency  
constituted by section 38 of the *Transport Administration Act 1988* (NSW)  
and located at Level 43, 680 George Street, Sydney NSW 2000 (**Principal**)  
(together, the **Beneficiaries**).

## Recitals

- (A) Pursuant to the deed titled "Victoria Cross Integrated Station Development – Station Delivery Deed" (Contract No: 504) between the Principal and the VC Contractor dated [insert] (**Victoria Cross SDD**), the VC Contractor agreed to design and construct certain works (**Project Works**), on the land more particularly described in the Victoria Cross SDD (the **Construction Site**).
  - (B) The Interface Contractor has been appointed under a contract (**Interface Contract**) to undertake certain works on the 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 Interface Work are a "construction project".
  - (D) Under a separate agreement, the Principal has engaged the Appointed Principal Contractor as principal contractor and authorised the Appointed Principal Contractor 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 Victoria Cross SDD, the Principal is required to procure the provision of this Deed Poll from each Interface Contractor that undertakes work pursuant to an Interface Contract.

**This Deed Poll witnesses that the Interface Contractor hereby covenants, warrants and agrees with and for the benefit of the Beneficiaries as follows:**

1. In consideration of the Appointed Principal Contractor and the VC Contractor accepting this Deed Poll, the Interface Contractor agrees that:
    - (a) the Interface 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 Appointed Principal Contractor and the VC Contractor with respect to work health and safety;

- (b) the Interface Contractor, its subcontractors and their respective personnel will comply in a timely manner with directions of the VC Contractor and the Appointed Principal Contractor so that the Appointed Principal Contractor discharges its obligations as principal contractor;
  - (c) the Interface Contractor, its subcontractors and their respective personnel will consult, cooperate and co-ordinate activities with the VC 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 Interface Contractor, its subcontractors and their respective personnel will comply with the work health and safety plan(s) prepared by the VC Contractor while on the Construction Site;
  - (e) the VC Contractor and the Appointed Principal Contractor may exclude the Interface Contractor, any of its subcontractors and their respective personnel from the Construction Site for work health and safety reasons;
  - (f) the VC Contractor and the Appointed Principal Contractor may direct the Interface 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 is to be carried out in the performance of the Construction Site Interface Work, the Interface 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 VC 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 VC Contractor and the Appointed Principal Contractor, suspend the performance of any high risk construction work;
  - (h) the Interface Contractor will in carrying out the work under the Interface Contract, comply with, and ensure that all subcontractors and personnel comply with the WHS Legislation; and
    - (i) in its contracts with subcontractors, the Interface Contractor will ensure that the subcontractor is obliged to give the same obligations and rights as required of the Interface Contractor under this Deed Poll.
2. The Interface Contractor indemnifies the VC Contractor and the Appointed Principal Contractor against any delay, damage, expense, loss, penalty or liability suffered or incurred by the VC Contractor and the Appointed Principal Contractor as a result of:
- (a) any failure by the Interface Contractor to comply with any direction given by the VC Contractor or the Appointed Principal Contractor in accordance with this Deed Poll; or
  - (b) any breach by the Interface 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 [*Interface Contractor*] in  
accordance with section 127 of the Corporations  
Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/other director

Full name of company secretary/other director

**SCHEDULE A19. – NOT USED**

## **SCHEDULE A20. – IDAR PANEL AGREEMENT**

(Schedule A2 and Schedule A9)

## IDAR Panel Agreement

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:

[insert name] of [insert address] (**Chair**)

[insert name] of [insert address]

[insert name] of [insert address]

[insert name] of [insert address]

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 [Member] 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 [Member] 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 [Member] 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 [Member] 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:

- (e) 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;
- (f) the words "including", "includes" and "include" will be read as if followed by the words without limitation;
- (g) 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;
- (h) 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;
- (i) 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;
- (j) 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;
- (k) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (l) headings are for convenience only and do not affect the interpretation of this Agreement;
- (m) 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;
- (n) 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;
- (o) for all purposes (other than where designated as a Business Day), day means calendar day;
- (p) a reference to "\$" is to Australian currency;

- (q) 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
- (r) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

**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]
  - (A) [REDACTED]  
[REDACTED]
  - (B) [REDACTED]  
[REDACTED]
- (ii) [REDACTED]  
[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: **[to be completed]**
- (ii) to the Members: **[to be completed]**
- (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:

\_\_\_\_\_  
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

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

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Witness in full

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

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature

Name of Witness in full

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

Signature of Witness

Signature

Name of Witness in full

**Executed** by [insert name of Project Contractor] ABN [ ] in accordance with section 127 of the *Corporations Act 2001* (Cth) 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 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:  
[insert name] of [insert address]  
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**

- (a) 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.
- (b) 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**]
- (c) 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:
- (d) 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**

<b>Item</b>	<b>Name</b>	<b>Subject-matter area</b>
1.		
2.		

## 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 [REDACTED] 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:

<b>Item</b>	<b>Work scope/description</b>	<b>Fee arrangement</b>	<b>Fee (excl. GST)</b>
1.	Preparation for, and attendance at, one Project Briefing per month		
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:

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

**[Execution blocks for each Project Contractor to be inserted as required.]**

**SCHEDULE A21. – FORM OF DEED OF NOVATION**

(Clause 32.7(a)(iii)(A))

**DEED OF NOVATION** made at

on

20

**BETWEEN:**

- (1) [Insert name and ABN] of [Insert] (**Substitute VC Contractor**);
- (2) [Insert name and ABN] of [Insert] (**Original VC Contractor**); and
- (3) [Insert name and ABN] of [Insert] (**Subcontractor**).

**RECITALS:**

- (A) By a contract dated [Insert] between:
- (1) 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 (**Principal**); and
  - (2) Original VC Contractor,
- (Contract) the Principal engaged the Original VC Contractor to undertake the Project Works (as defined in the Contract).
- (B) The Original VC Contractor has entered into an agreement (**Subcontract**) with the Subcontractor for the execution and completion of the [Insert] (**Subcontract Works**) as part of the Project Works.
- (C) The Principal has terminated the Contract and has engaged the Substitute VC Contractor to complete the Project Works.
- (D) The Principal and the Substitute VC 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) The Substitute VC Contractor must perform all of the obligations of the Original VC Contractor under the Subcontract which are not performed at the date of this deed. The Substitute VC Contractor is bound by the Subcontract as if it had originally been named in the Subcontract in place of the Original VC Contractor.
- (2) The Subcontractor must perform its obligations under, and be bound by, the Subcontract as if the Substitute VC Contractor was originally named in the Subcontract in place of the Original VC Contractor.
- (3) With effect on and from the date of this deed, the Subcontractor:
  - (a) releases and forever discharges the Original VC Contractor from:
    - (i) the further performance of its obligations under the Subcontract; and
    - (ii) all further claims and demands in respect of the Subcontract arising in connection with the performance of the Subcontract on and from the date of this deed; and

- (b) accepts the liability of the Substitute VC Contractor in place of the liability of the Original VC Contractor in respect of the Subcontract.
- (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:

[**Note:** Appropriate execution block to be inserted prior to execution.]

## **SCHEDULE A22. - FORM OF SUBCONTRACTOR WARRANTIES**

(Clause 17.5(a))

**THIS DEED POLL** is made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

**TO:** **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 (**Principal**); and

**[Insert name of relevant beneficiary]** (ABN [ ]) of [ ], [ ],

(together, the **Beneficiaries**)

**BY:** That person described in Item 1 of the Schedule (**Warrantor** which expression will include that person's 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 (the **VC Contractor**) or the person described in Item 4 of the Schedule (**VC Contractor's Subcontractor**) for the Victoria Cross Station component of Sydney Metro City & Southwest being carried out by VC Contractor under the deed described in Item 5 of the Schedule (**Deed**).
  - (B) The Warrantor has been engaged by the VC Contractor or the VC Contractor's Subcontractor by agreement dated [Insert] (**Warrantor Contract**) to supply the Equipment under the Warrantor Contract.
  - (C) It is a requirement imposed by the Principal under the Deed that the VC Contractor procures the Warrantor to give the following warranties in favour of the Beneficiaries with respect to the Equipment.

## **OPERATIVE PROVISIONS**

1. The Warrantor:
    - (a) warrants to the Beneficiaries that the Equipment will be to the quality and standard stipulated by the Warrantor Contract and will be of merchantable quality and fit for the purpose for which it is required in accordance with the terms of the Warrantor Contract; and
    - (b) gives the warranty more particularly set out in Item 6 of the Schedule with respect to the Equipment.
  2. The warranties in clause 1 are in addition to and do not derogate from any warranty implied by law in respect of the Equipment.
  3. The Warrantor warrants to each Beneficiary that it will replace, or otherwise repair and make good so much of the Equipment as:
    - (a) is found to be of a lower quality or standard than that; or
    - (b) shows deterioration of such extent that in the opinion of either Beneficiary (acting reasonably) the Equipment ought to be made good or replaced in order to achieve fitness for the purpose,

referred to in clause 1, within the period described in Item 6 of the Schedule.

4. The Warrantor covenants to each Beneficiaries that it will bear the cost of any work necessary to any part of Sydney Metro City & Southwest to enable the requirements of clause 3 to be carried out or to make good Sydney Metro City & Southwest afterwards.
5. The Warrantor acknowledges to the Beneficiaries that nothing contained in this Deed Poll is intended to nor will render the Beneficiaries in any way liable to the Warrantor in relation to any matters arising out of the Deed or otherwise.
6. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Beneficiaries.
7. This Deed Poll shall be governed by and construed in accordance with the laws of the State of New South Wales.
8. The Warrantor irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.
9. For the avoidance of doubt, this Deed Poll is enforceable by any of the Beneficiaries.
10. The aggregate of the Warrantor's liability to the Beneficiaries under this Deed Poll and the Warrantor's liability to VC 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 Beneficiaries; and
  - (b) the VC Contractor.
11. The liability of the Warrantor under this Deed Poll is reduced to the extent that any failure to meet the quality and standard referred to in clause 1 or any defect(s) is caused or contributed to by:
  - (a) damage caused by third parties; and
  - (b) normal wear and tear.

## SCHEDULE

**Item 1:** [Name and address of Warrantor]

(Parties)

**Item 2:** [Details of the Equipment]

(Recital A)

**Item 3:** [Name of the VC Contractor]

(Recital A)

**Item 4:** [VC Contractor's Subcontractor]

(Recital A)

**Item 5:** The deed titled "Victoria Cross Integrated Station Development – Station Delivery Deed" entered into between the Principal and the VC Contractor on or about [insert].

(Recital A)

**Item 6:** [Detailed warranty of Warrantor]

(Clause 3)

**Executed** as a deed poll.

**Executed** by [name of Warrantor] in the presence of:

---

Signature of witness

---

Signature of authorised signatory

---

Name of witness in full

---

Name of authorised signatory in full

**SCHEDULE A23. – DESIGNER DEED OF COVENANT**

(Clause 17.1(c))

**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: [Insert] (ABN [Insert]) of [Insert] (**Designer**)

RECITALS

- (A) The Principal has engaged [Insert] (**VC Contractor**) to carry out certain works for the Principal by a contract dated [Insert] (**Contract**).
  - (B) The VC Contractor has engaged the Designer by agreement dated [Insert] (**Subcontract**) to carry out the professional services to be performed under the Subcontract (**Professional Services**) for the purposes of the performance of the VC Contractor's obligations under the Contract as they relate those design services.
  - (C) Under the Contract, the VC Contractor is required to procure the Designer to execute this Deed Poll in favour of the Principal.

## **OPERATIVE**

## 1. Duty of Care

- (a) The Designer:

(i) warrants to the Principal that:

(A) in performing the Professional Services, it will exercise the standard of skill, care and diligence that would be expected of a designer experienced in the provision of the type of professional services required by the Principal;

(B) the Professional Services will be fit for its intended purposes disclosed in or reasonably able to be inferred from the relevant sections of the SWTC, which are included as a schedule to the Subcontract; and

(C) the Professional Services do not and will not infringe any patent, registered design, trademark or name, copyright or other protected right;

(ii) acknowledges that:

(A) in performing the Professional Services it will owe a duty of care to the Principal; and

(B) it is aware that the Principal will be relying upon the skill and judgment of the Designer in performing the Professional Services and the warranties given by the Designer in this deed poll; and

(iii) must promptly advise the Principal about any matter in which the Designer has been instructed by the VC Contractor to provide the Professional

Services in a manner which is, or may result in an outcome which is, not in accordance with the requirements of the Subcontract, including without limitation:

- (A) where the VC Contractor's instructions in relation to design are not consistent with the Subcontract or may result in the works under the Subcontract not being fit for their intended purpose; or
  - (B) where the VC Contractor's instructions require the Designer to issue a certificate where the conditions for the issue of that certificate under the Subcontract have not been satisfied.
- (b) The Designer must carry out the Professional Services so as to minimise any interference with, disruption or delay to the services and work carried out by the other contractors engaged by the Principal.

## 2. Notices

- (a) Any notices contemplated by, or arising out of or in any way in connection with, this deed poll must be in writing and delivered to the relevant address or sent to the facsimile number shown below (or to a party's new address or email address which that party notifies to the others):
  - (i) to the Principal: Level 43, 680 George Street, Sydney NSW 2000  
Email: **[to be completed]**
  - (ii) to the Designer: **[to be completed]**  
Email: **[to be completed]**
- (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 before 5.00pm (Sydney time) on a Business Day, on that Business Day; or
  - (ii) if it transmitted after 5:00pm (Sydney time) on a Business Day, or a day that is not a Business Day, on the next Business Day.
- (d) If the Designer is a foreign company (as defined in the *Corporations Act 2001* (Cth)), the Designer must within 10 Business Days of the date of this deed poll:
  - (i) appoint a local process agent acceptable to the Principal as its agent to accept service of process under or in any way in connection with this deed poll; and
  - (ii) obtain the process agent's consent to the appointment.
- (e) The appointment must be in a form acceptable to the Principal and may not be revoked without the Principal's consent.

## 3. Miscellaneous

- (a) This deed poll will be construed in accordance with the law of the State of New South Wales and the Designer irrevocably submits to the jurisdiction of the Courts of that State.

- (b) This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal.

4. **Limit of Liability**

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

- (a) the Principal; and  
(b) the VC Contractor.

**SCHEDULE**

[*Insert description of Professional Services*] as more particularly described in the Subcontract.

**Executed** as a deed poll.

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

---

Signature of Director

---

Name of Director in full

---

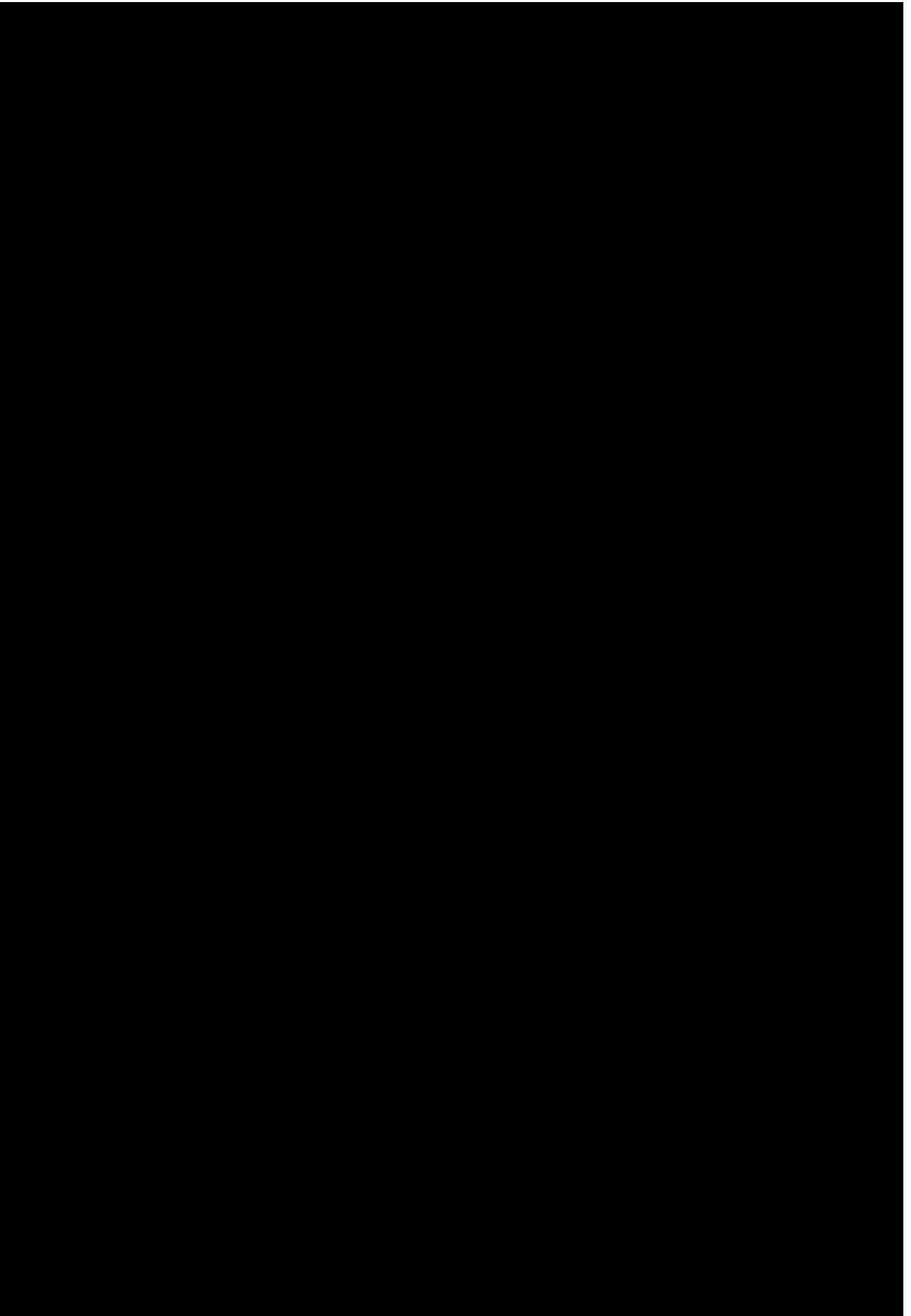
Signature of Secretary/other Director

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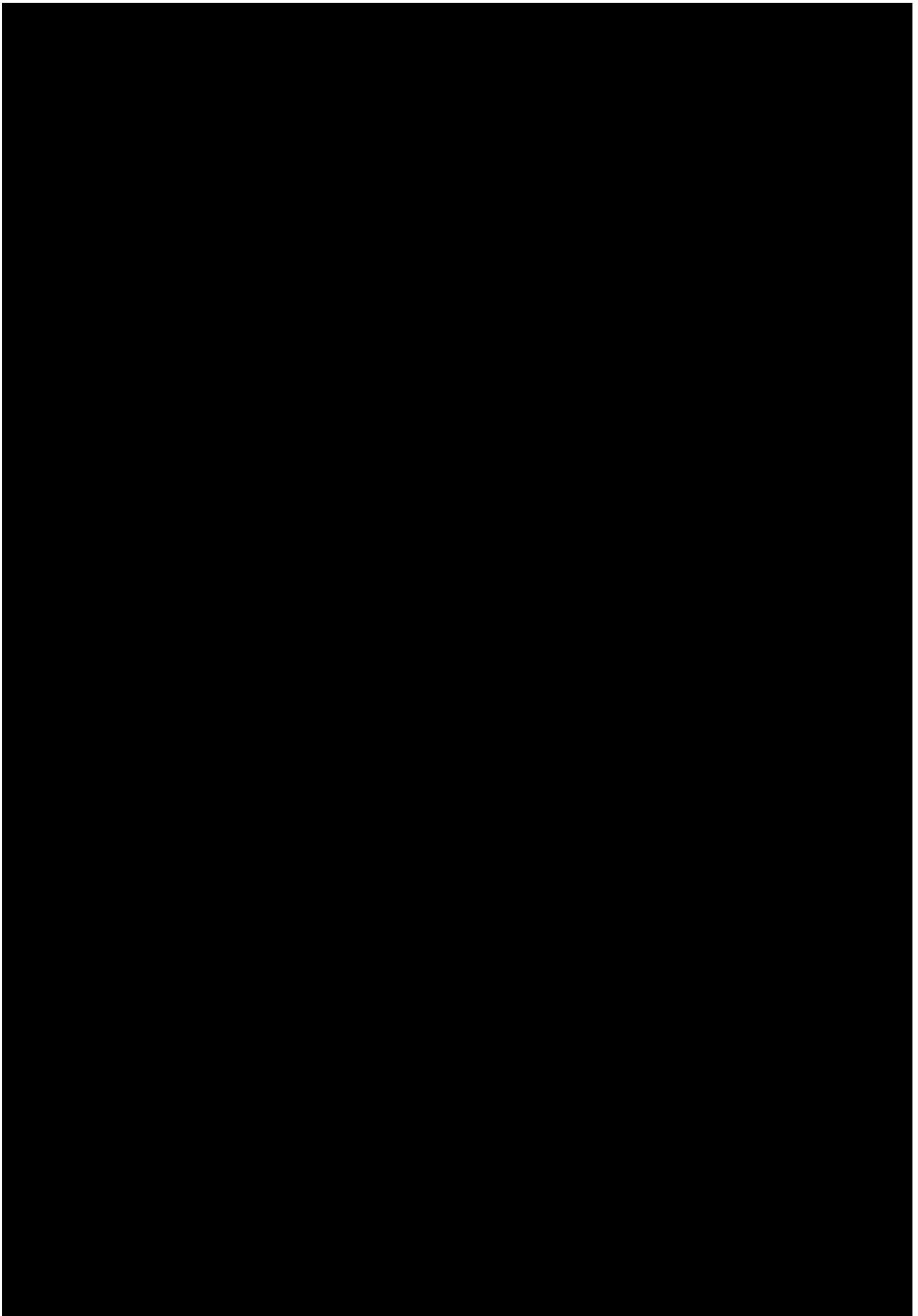
Name of Secretary/other Director in full

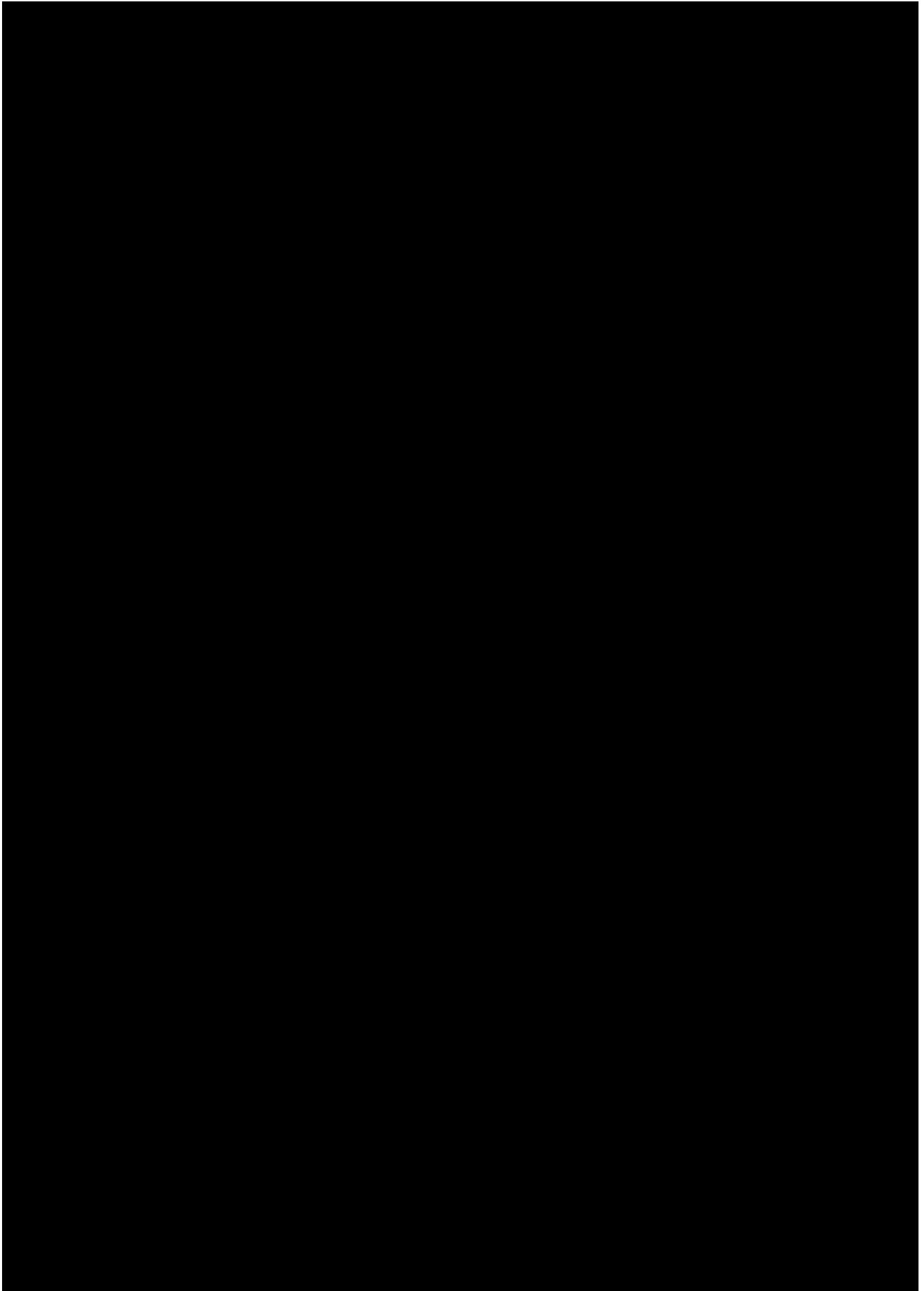
**SCHEDULE A24. – OPERATOR COOPERATION AND INTEGRATION DEED**





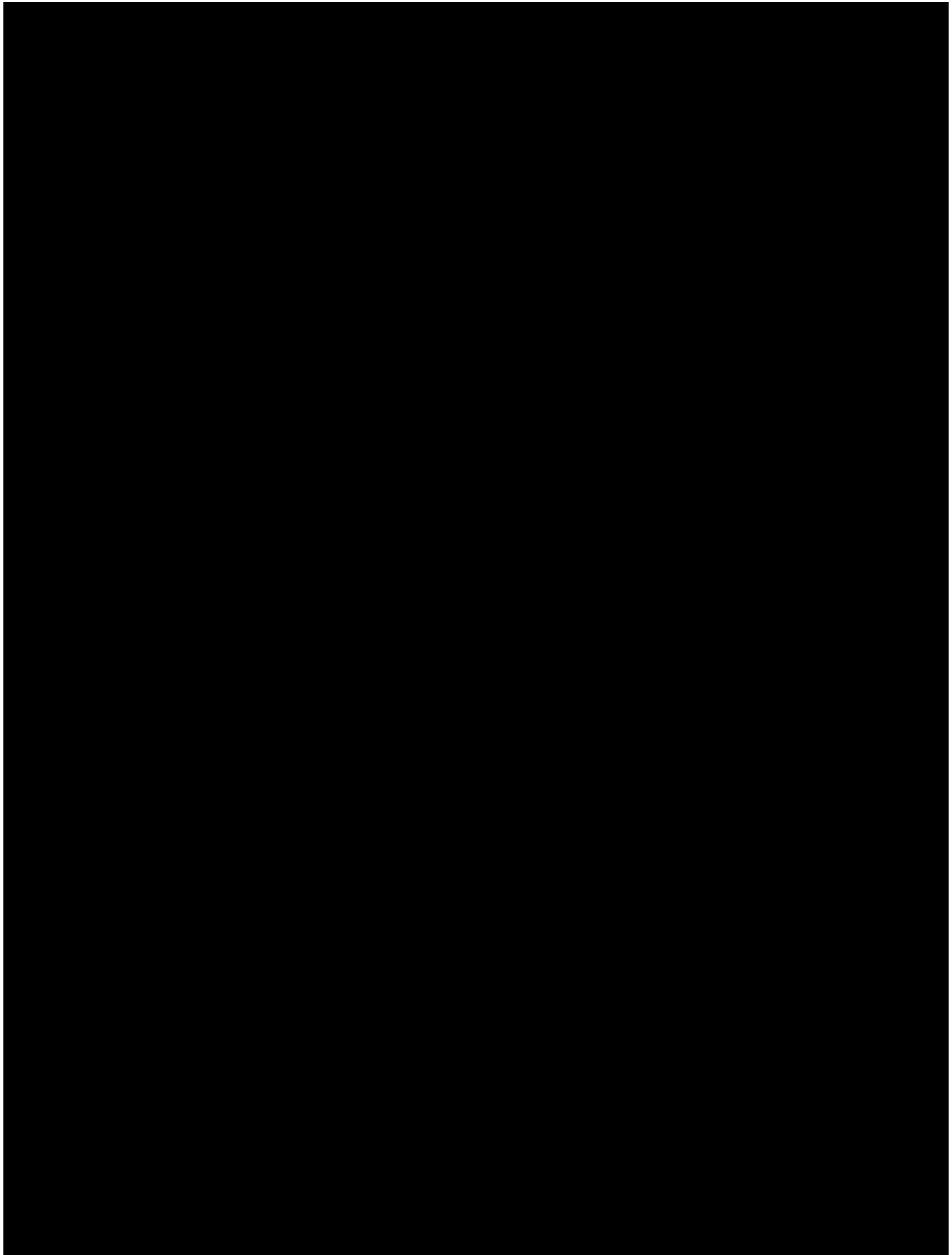


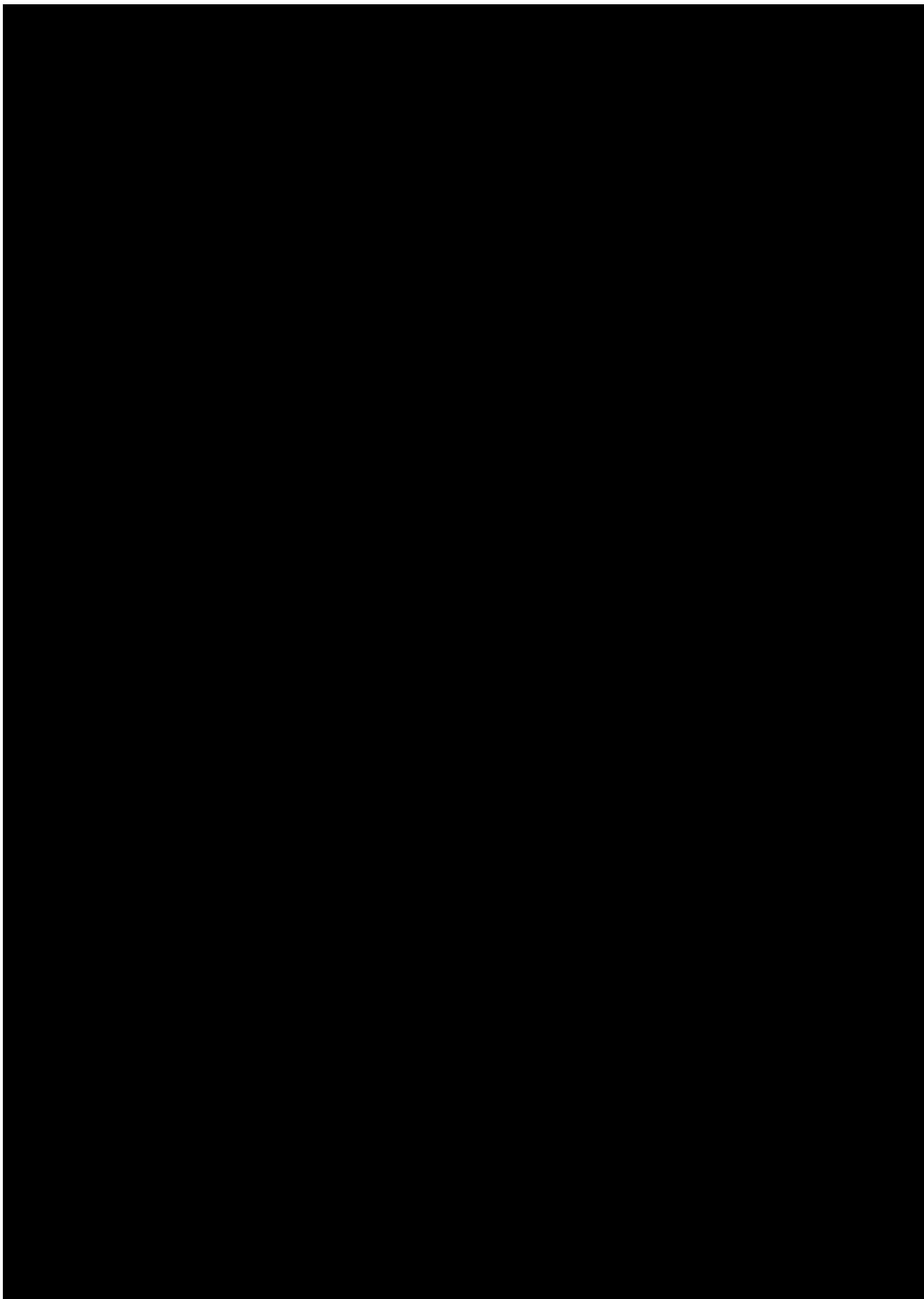


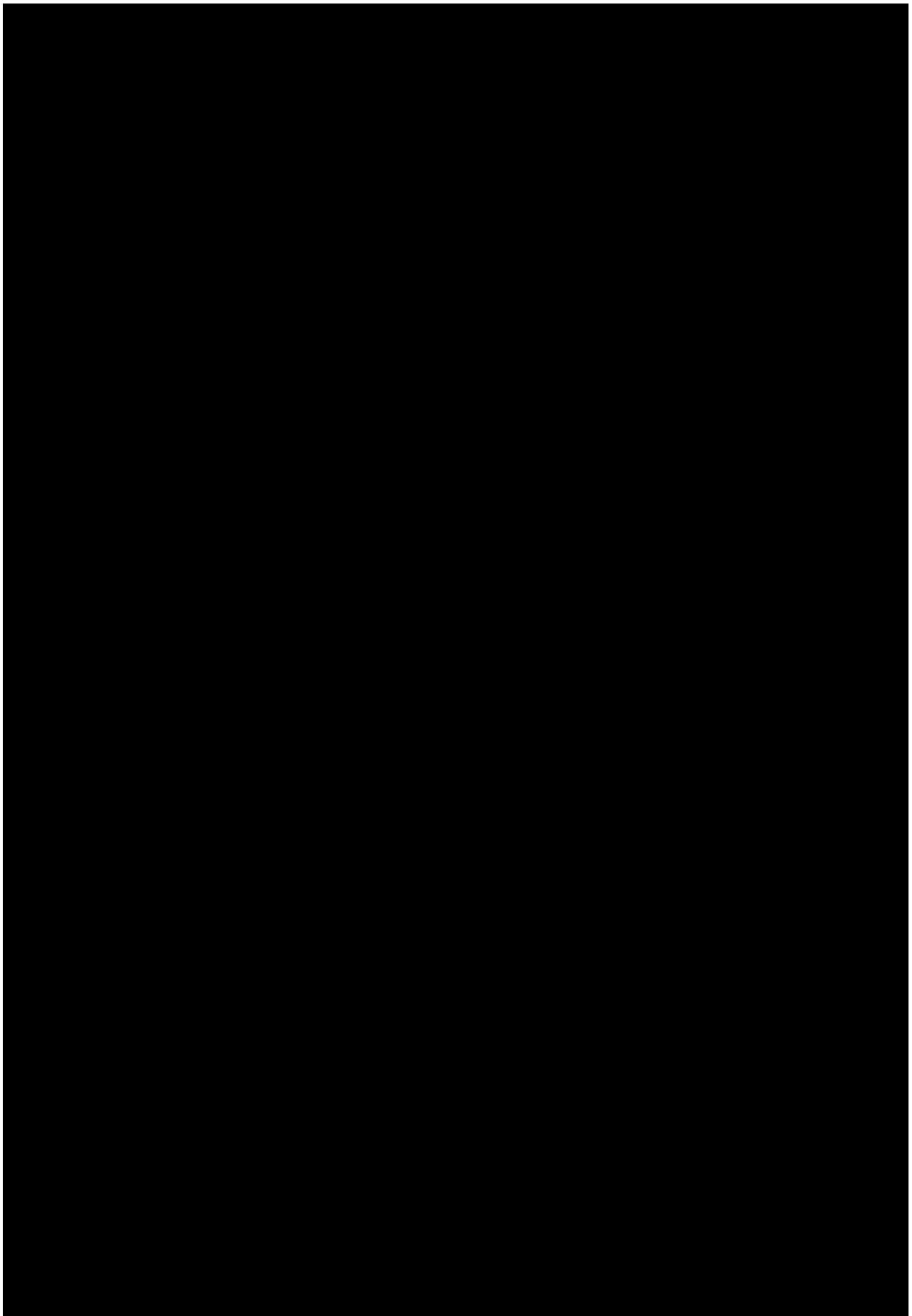




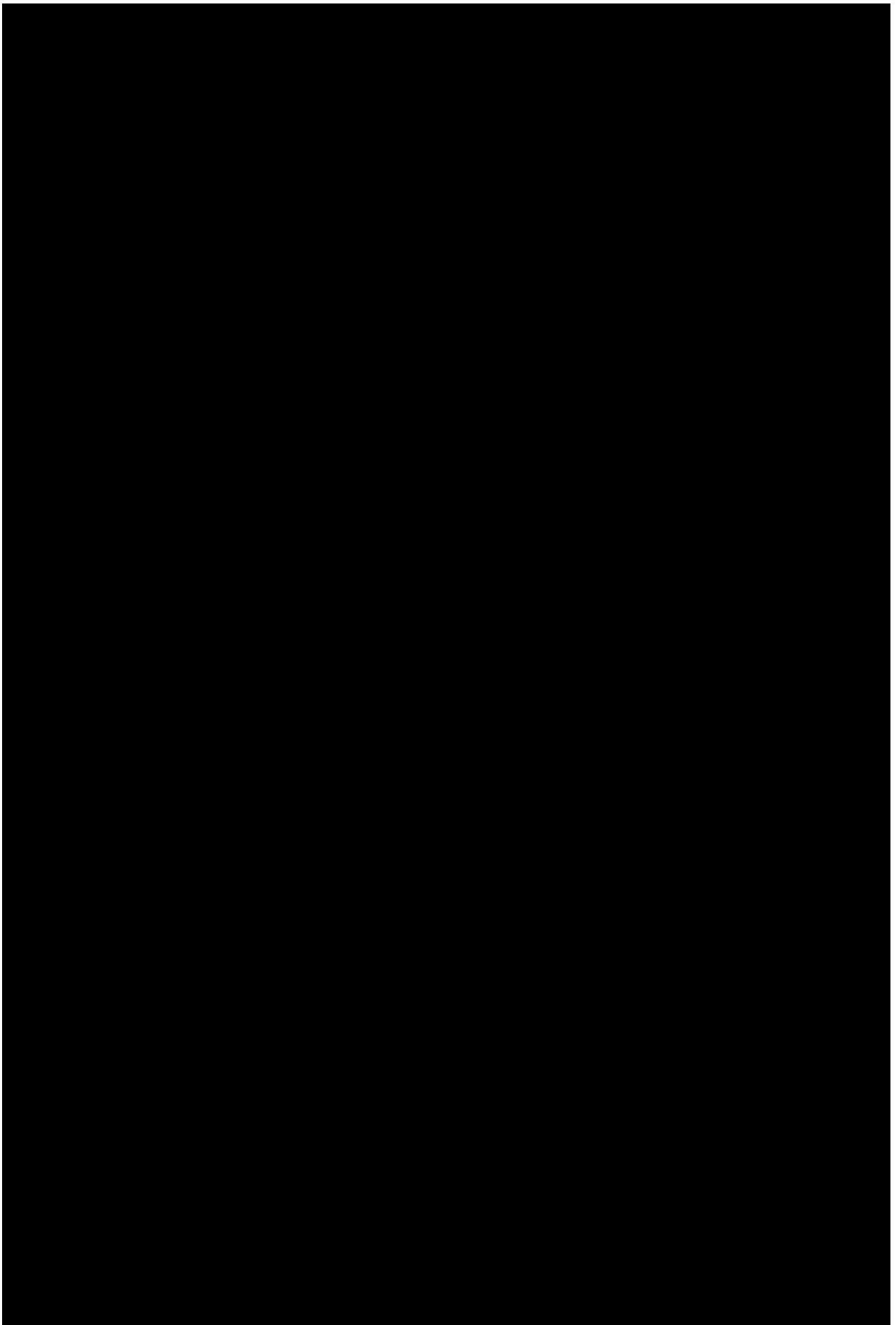




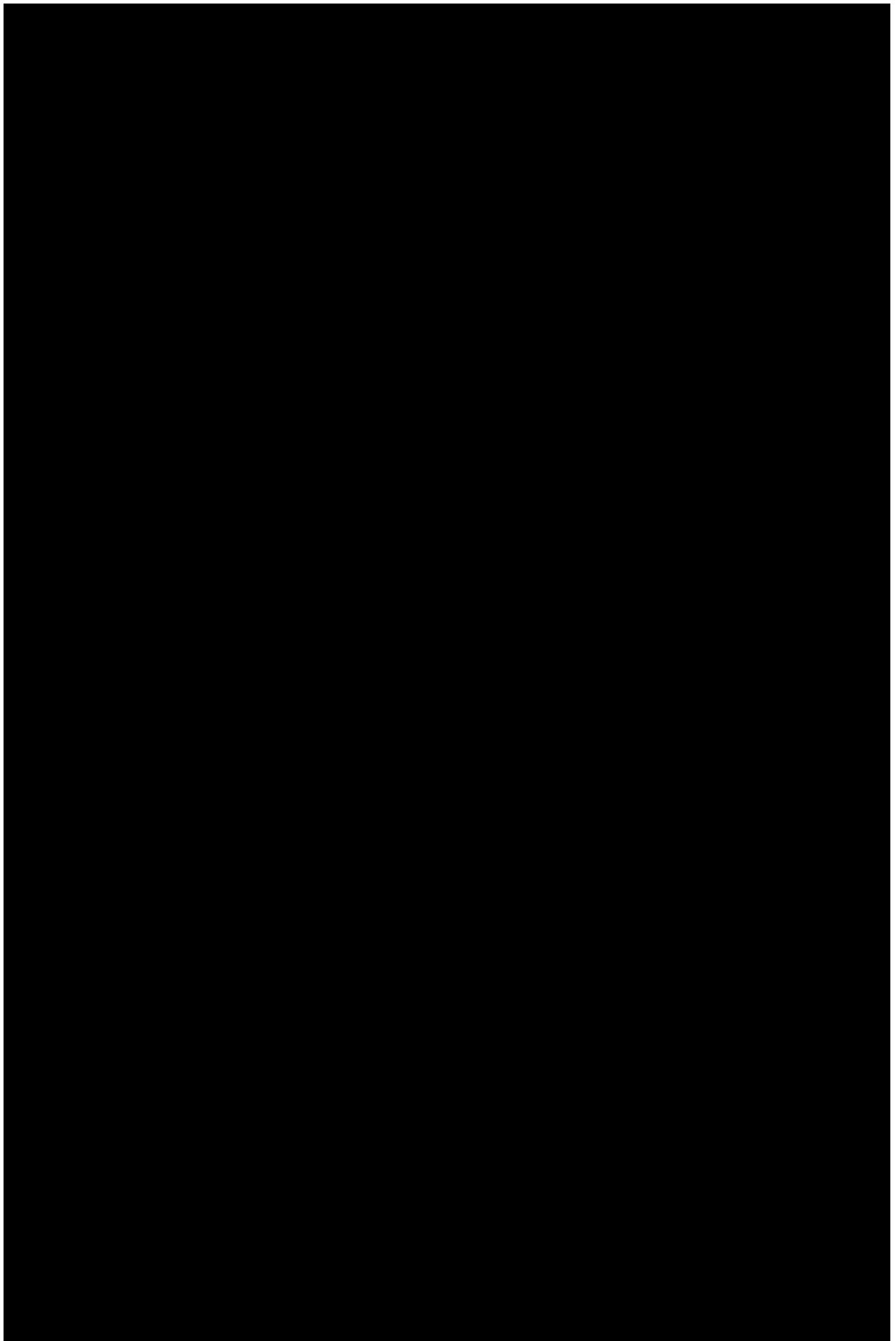




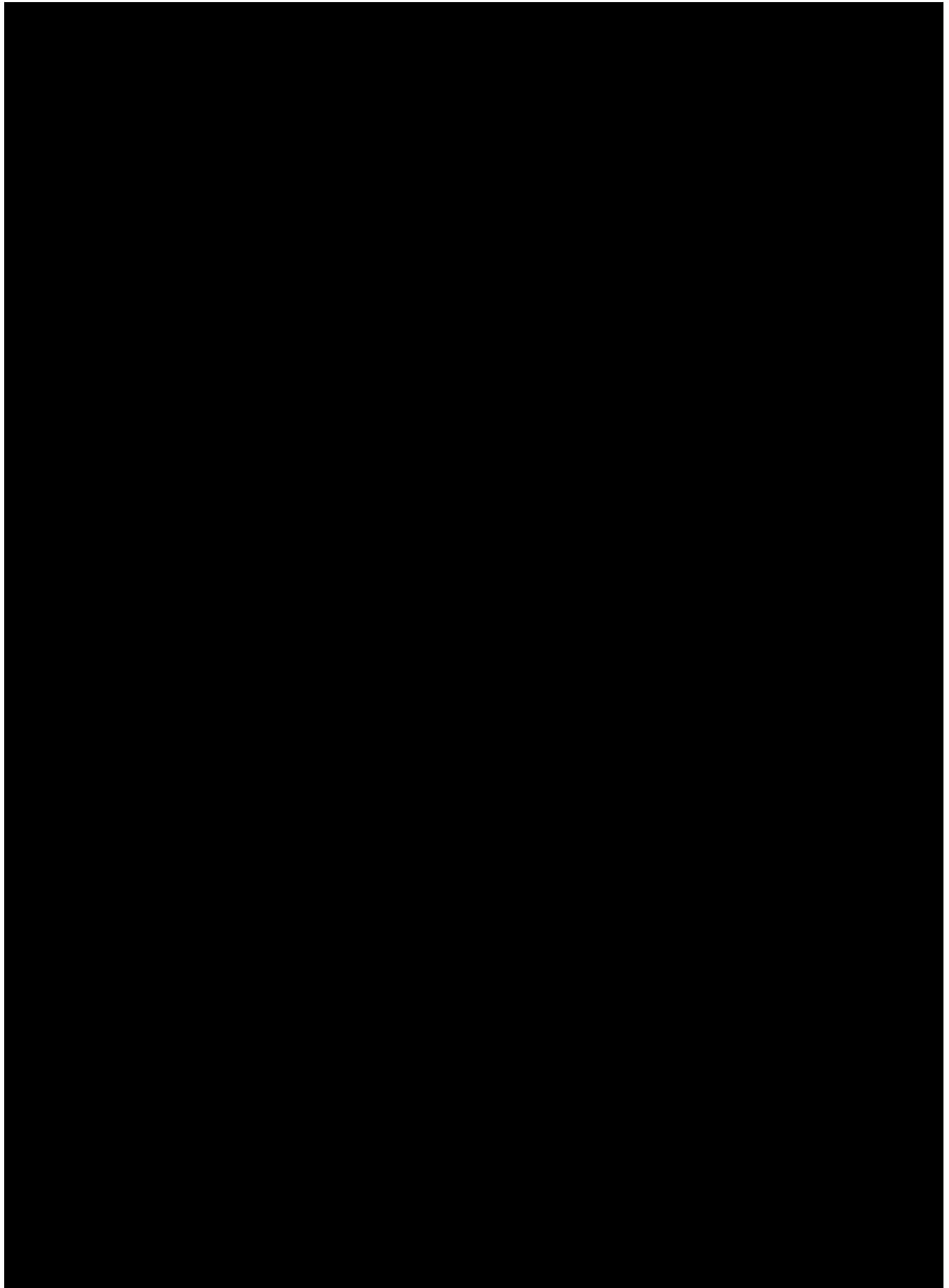




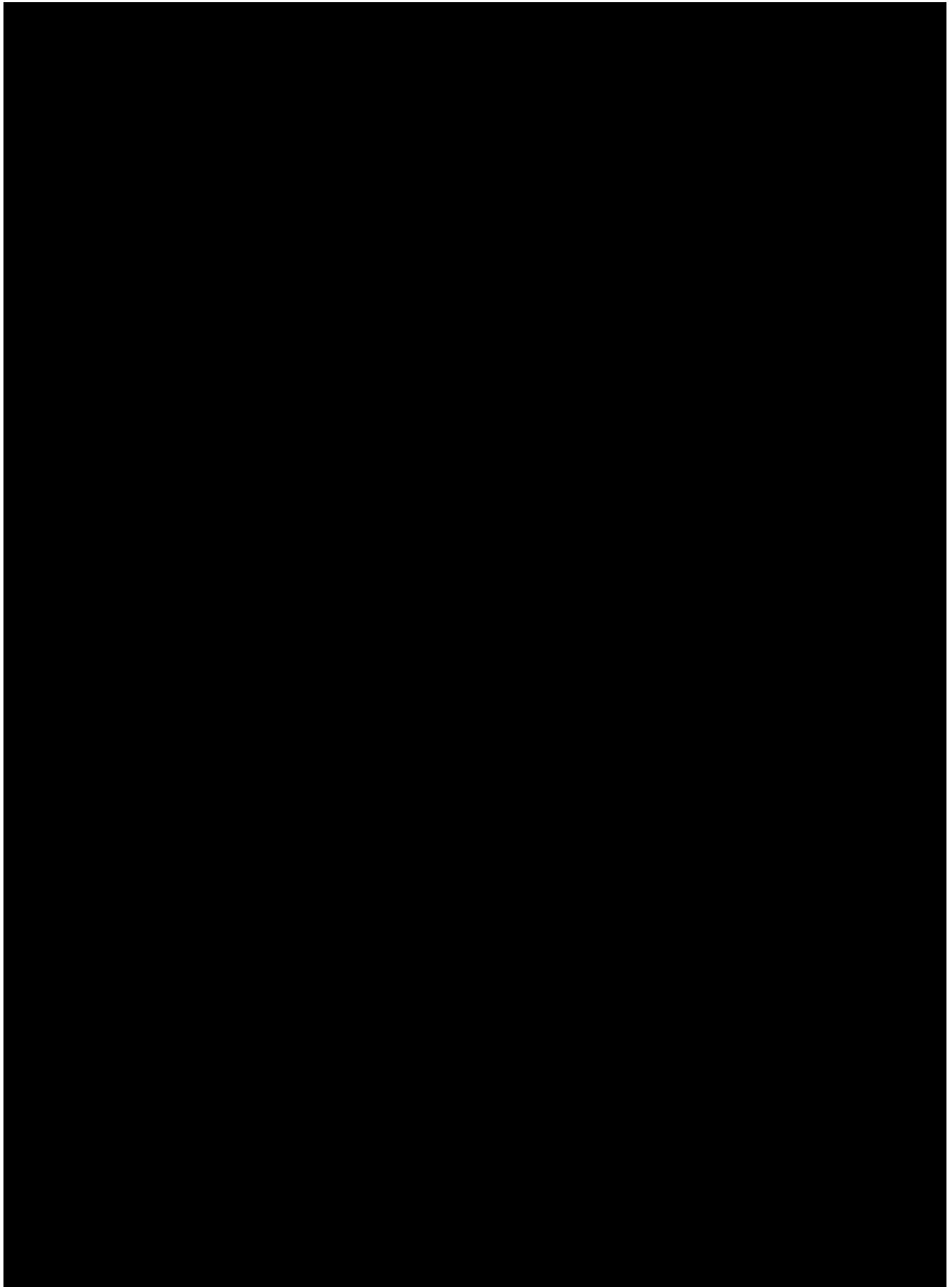


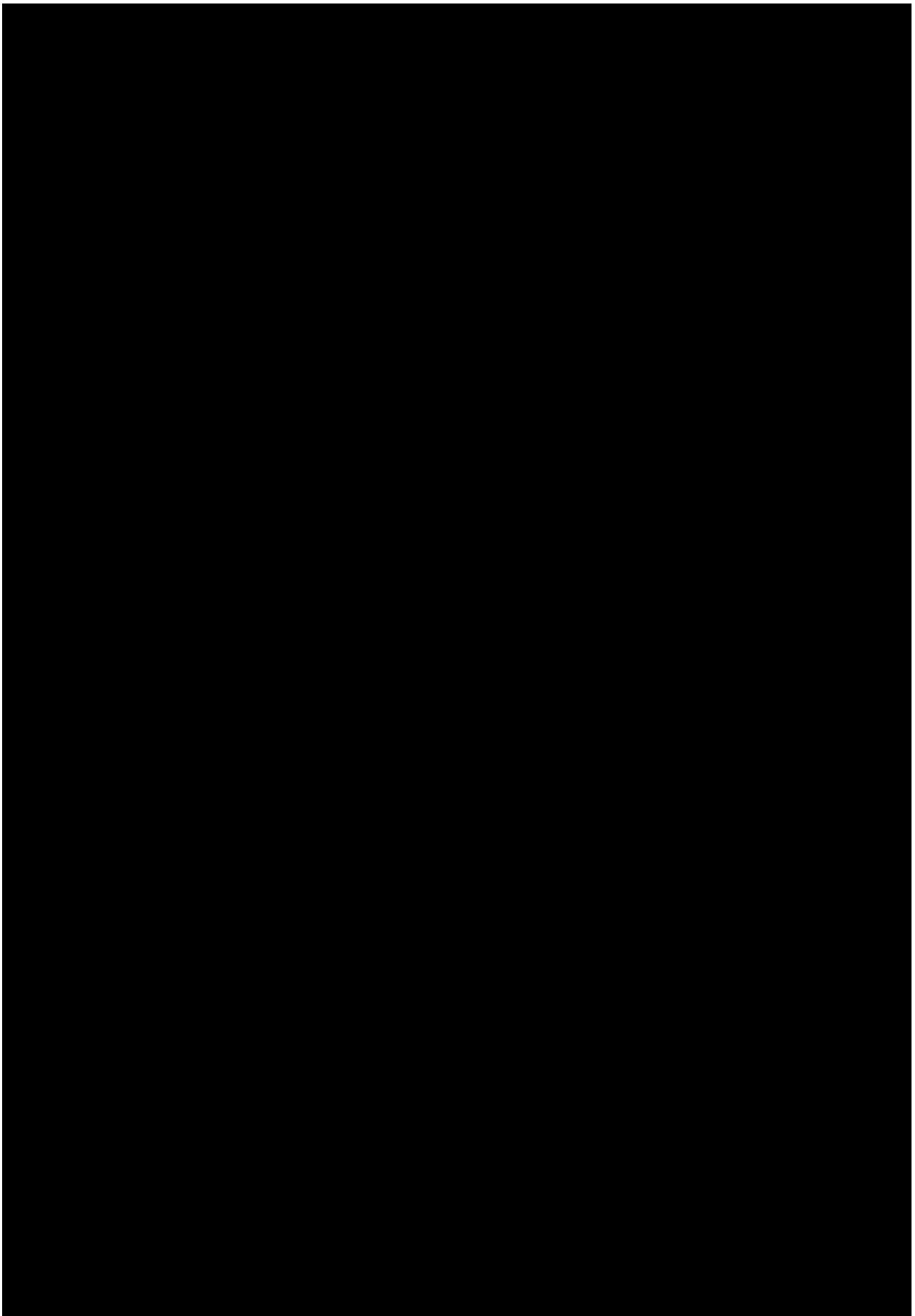


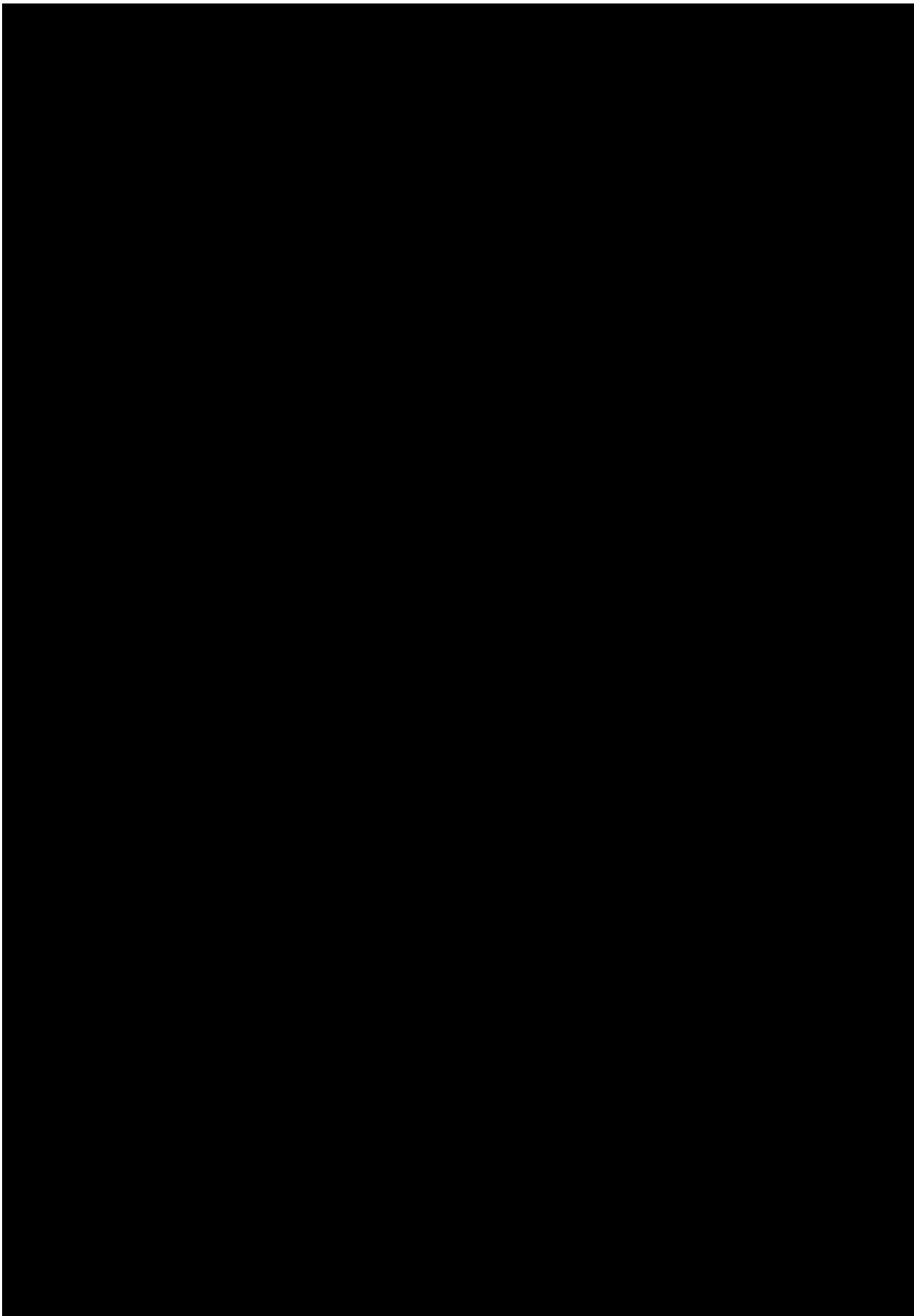




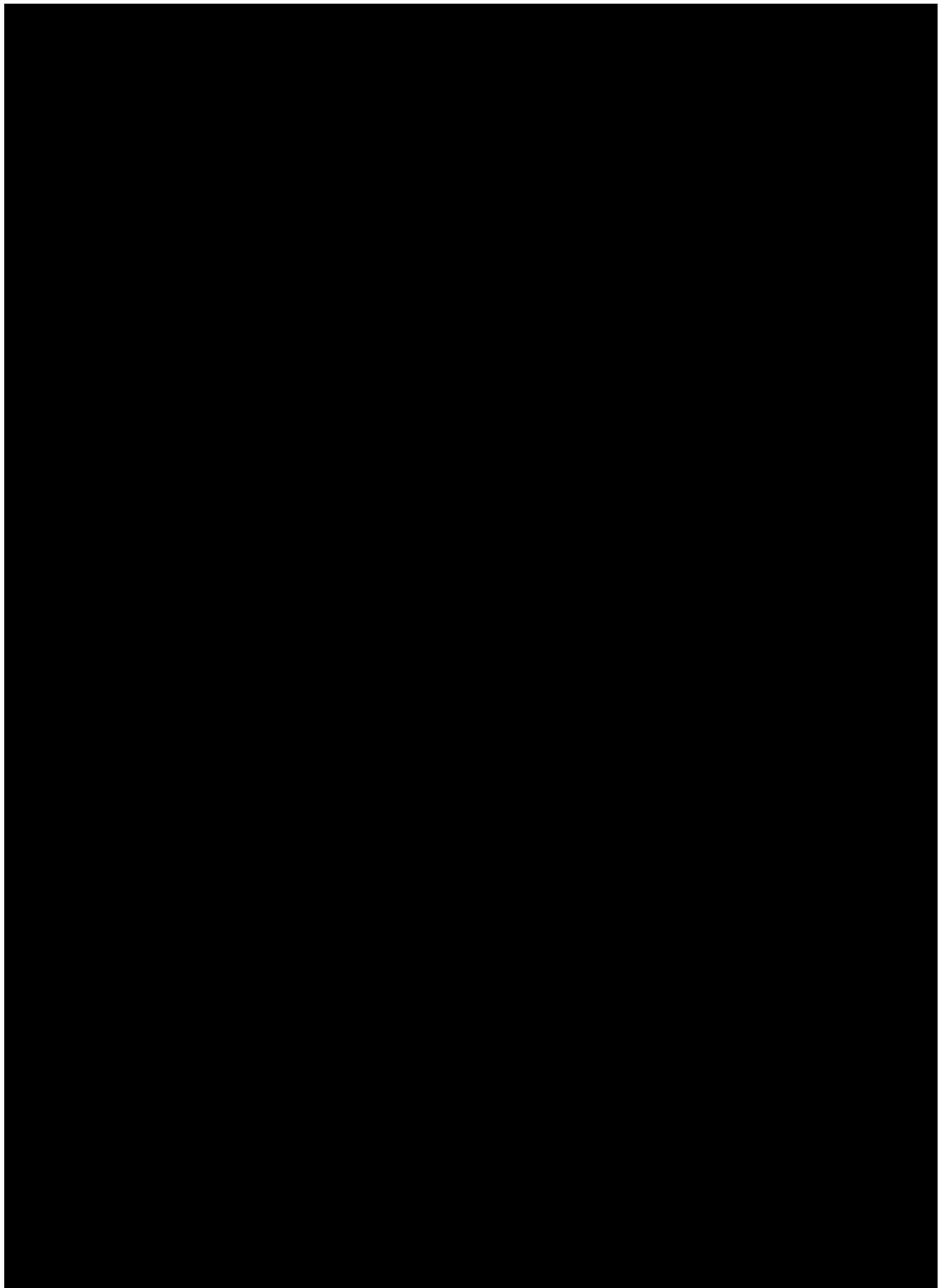


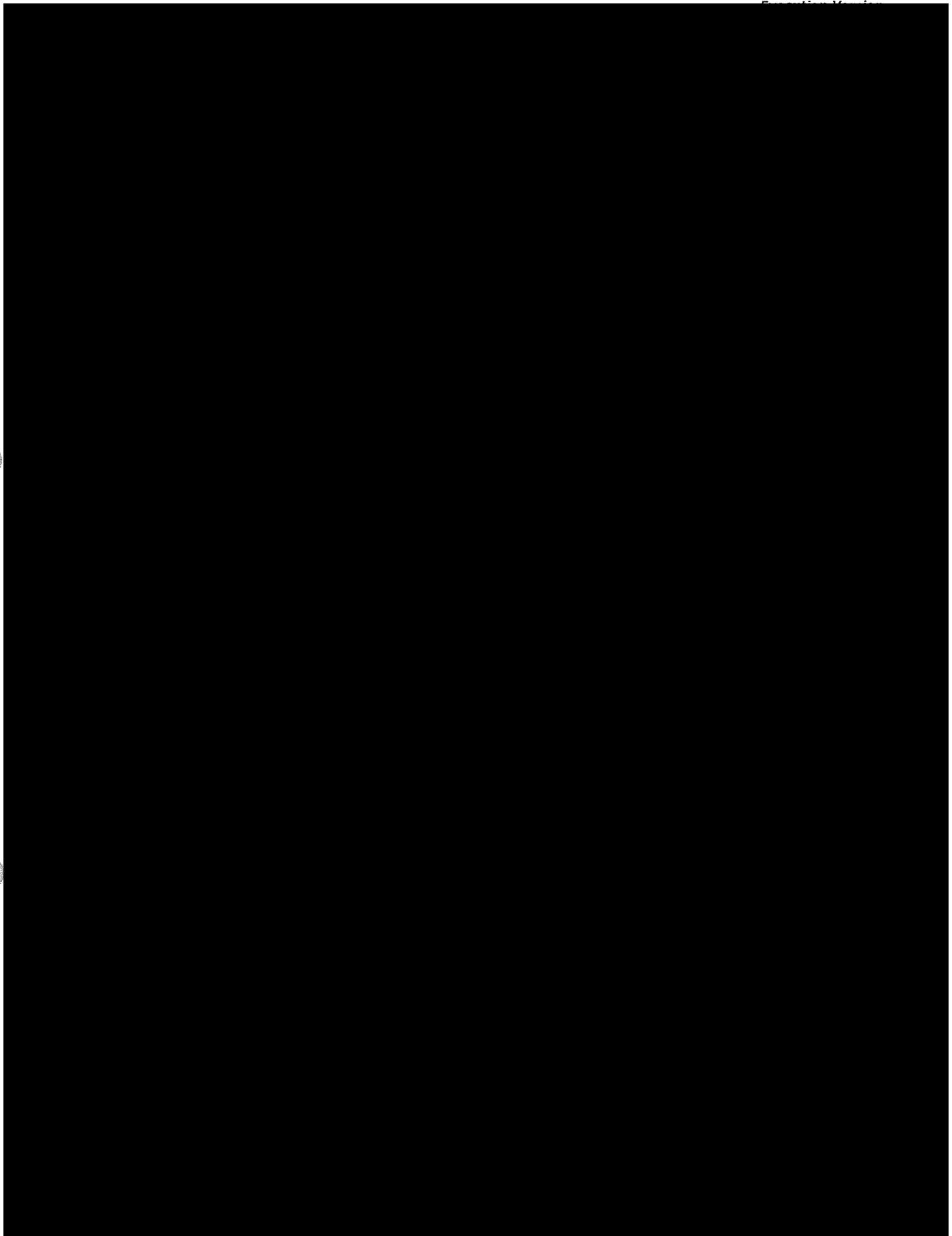


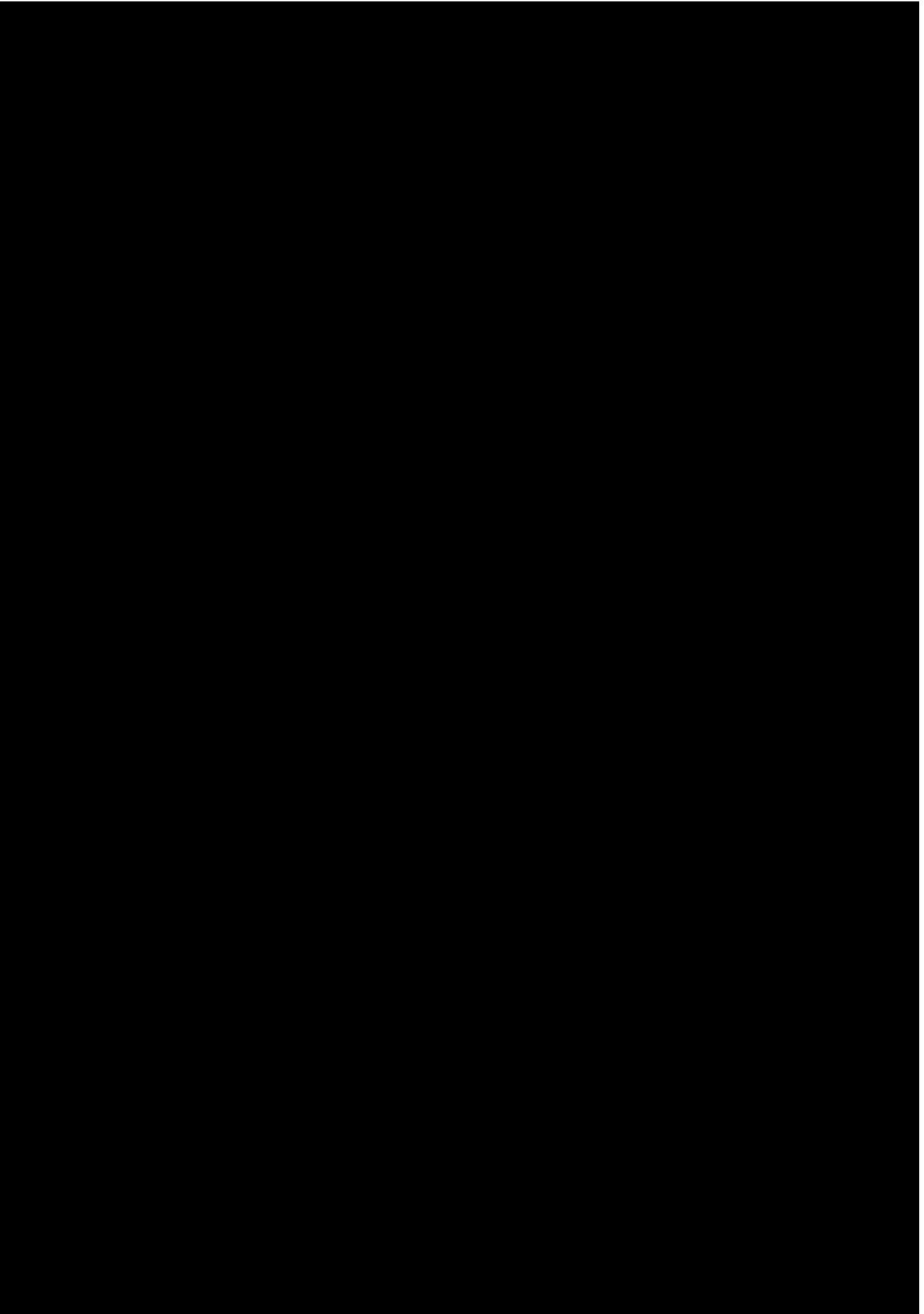




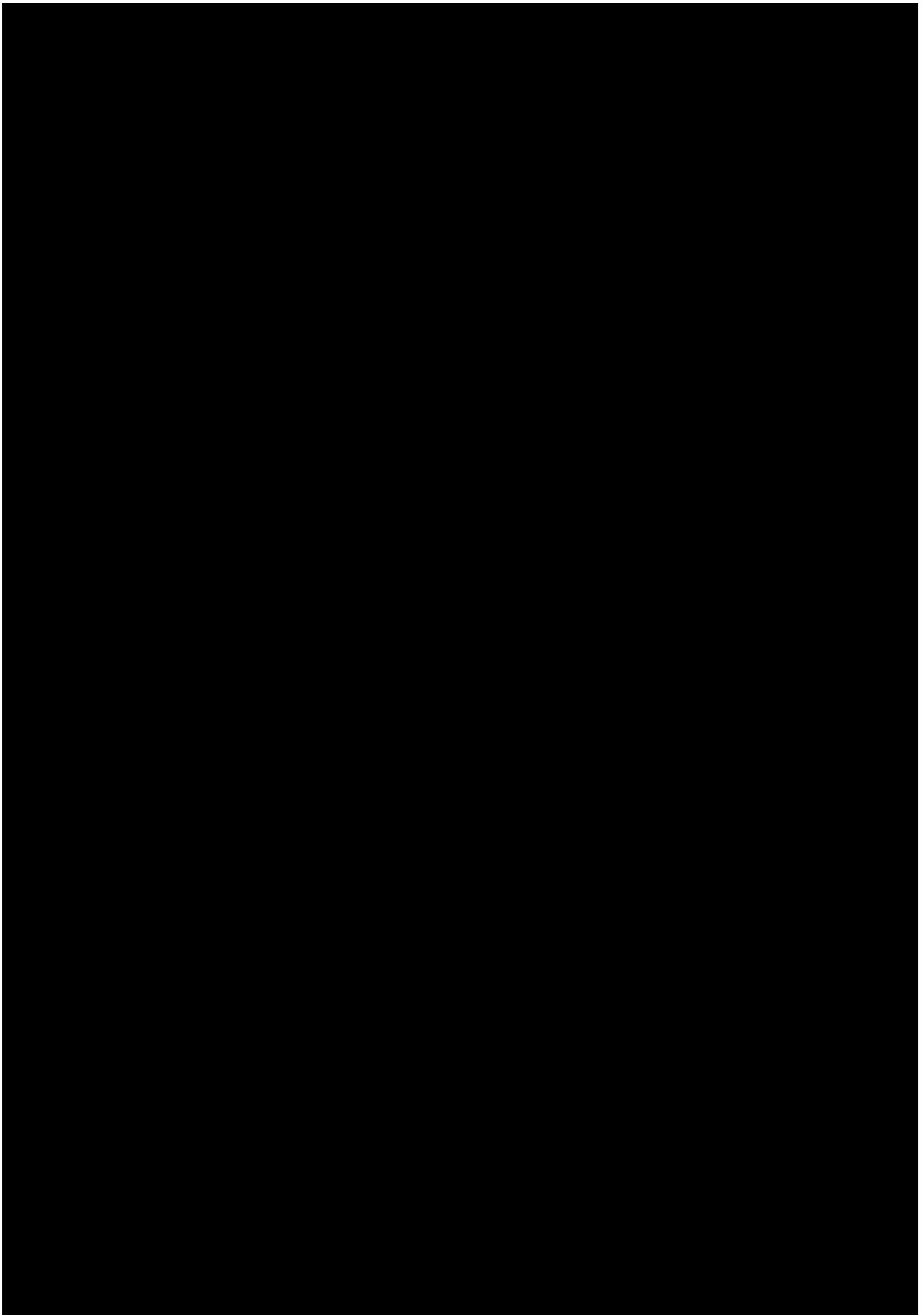


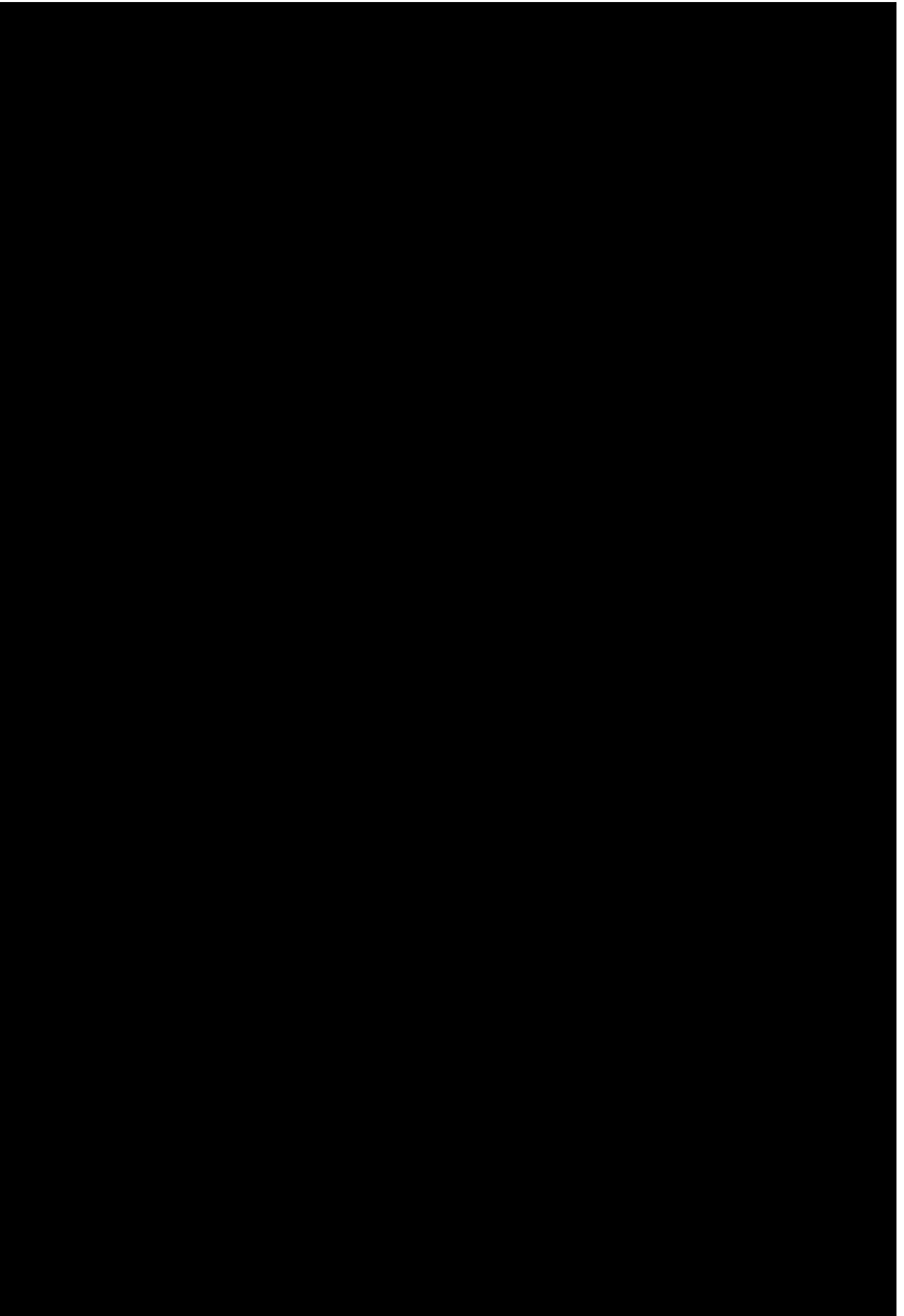




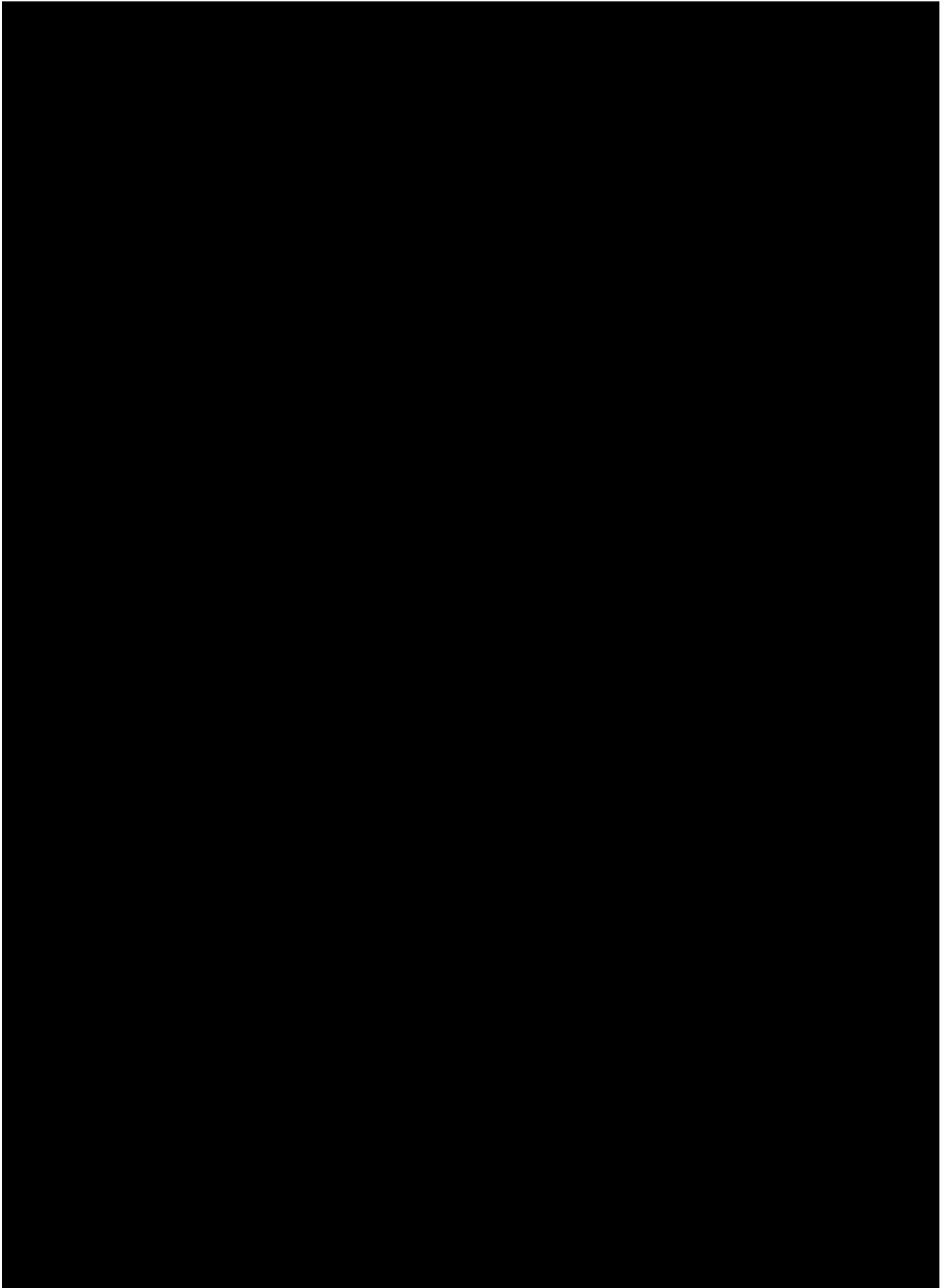


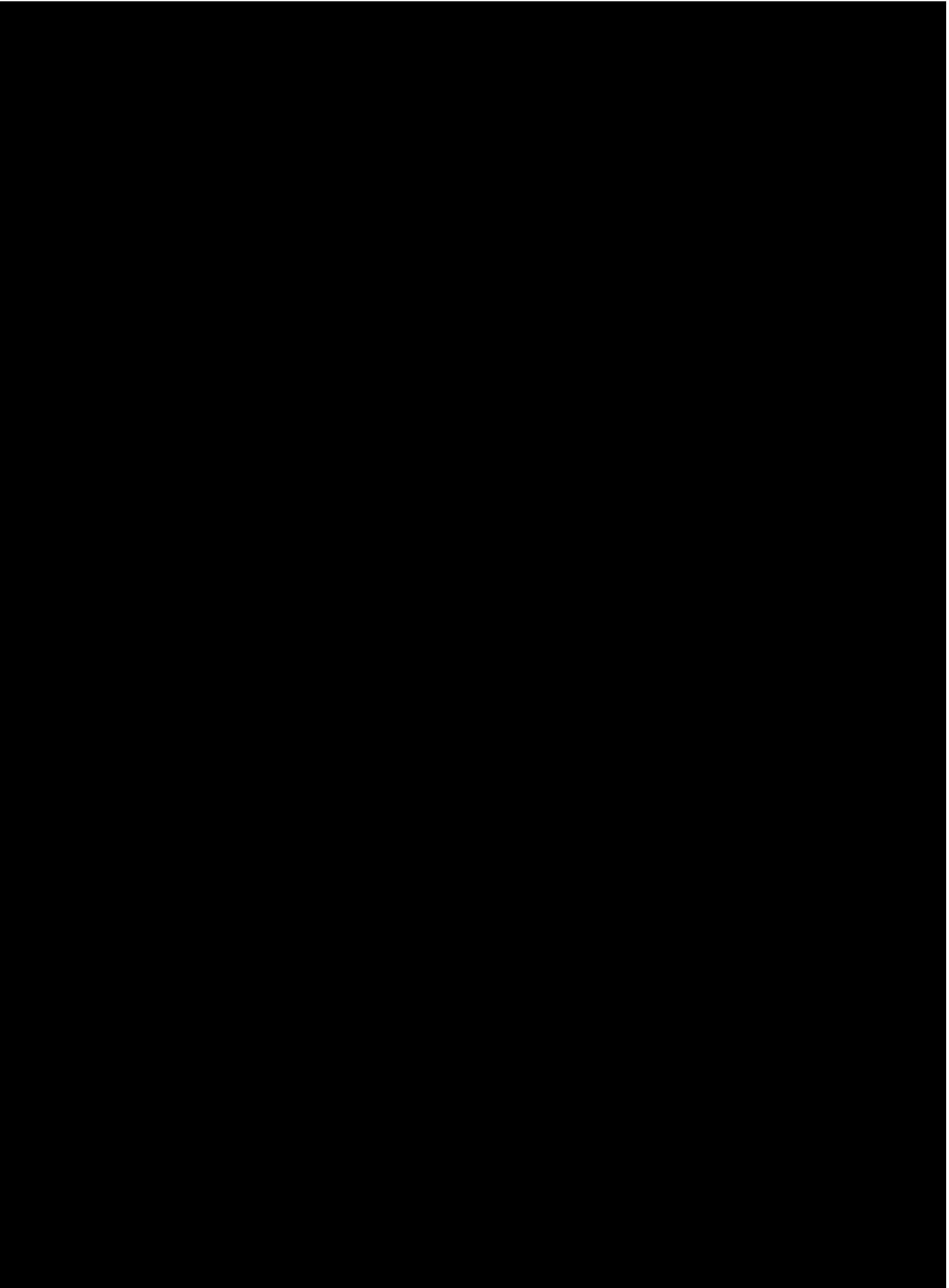


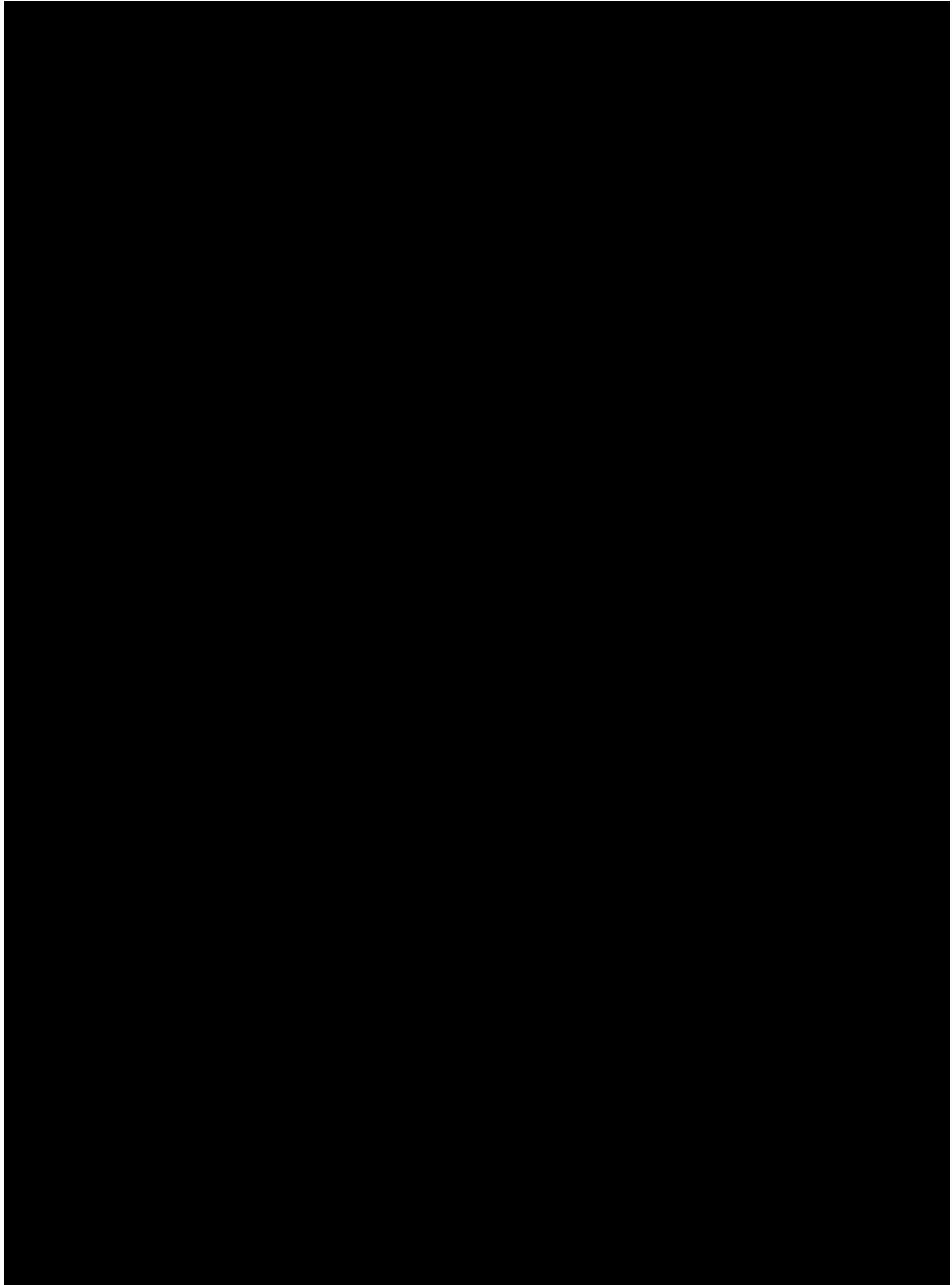


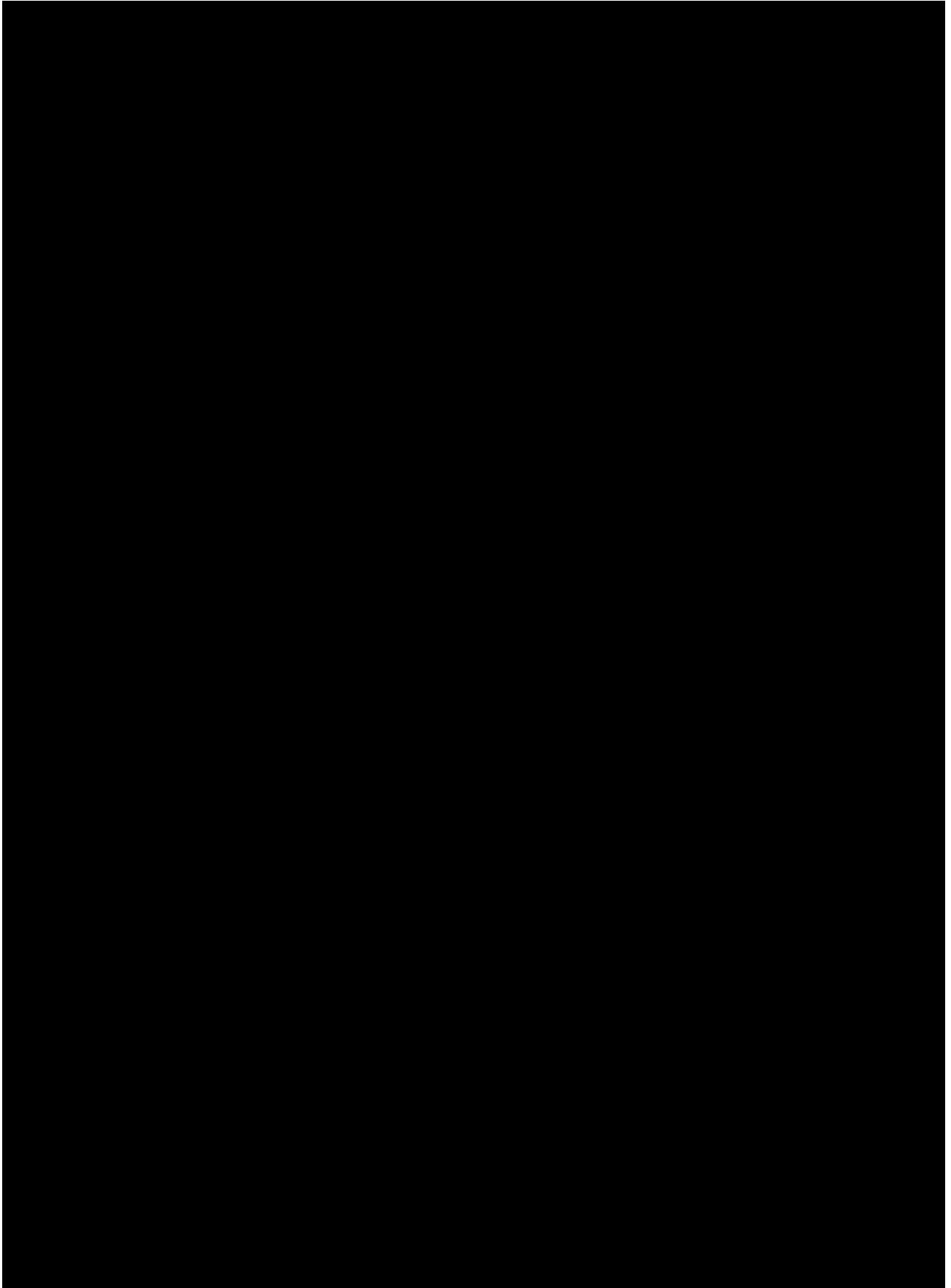


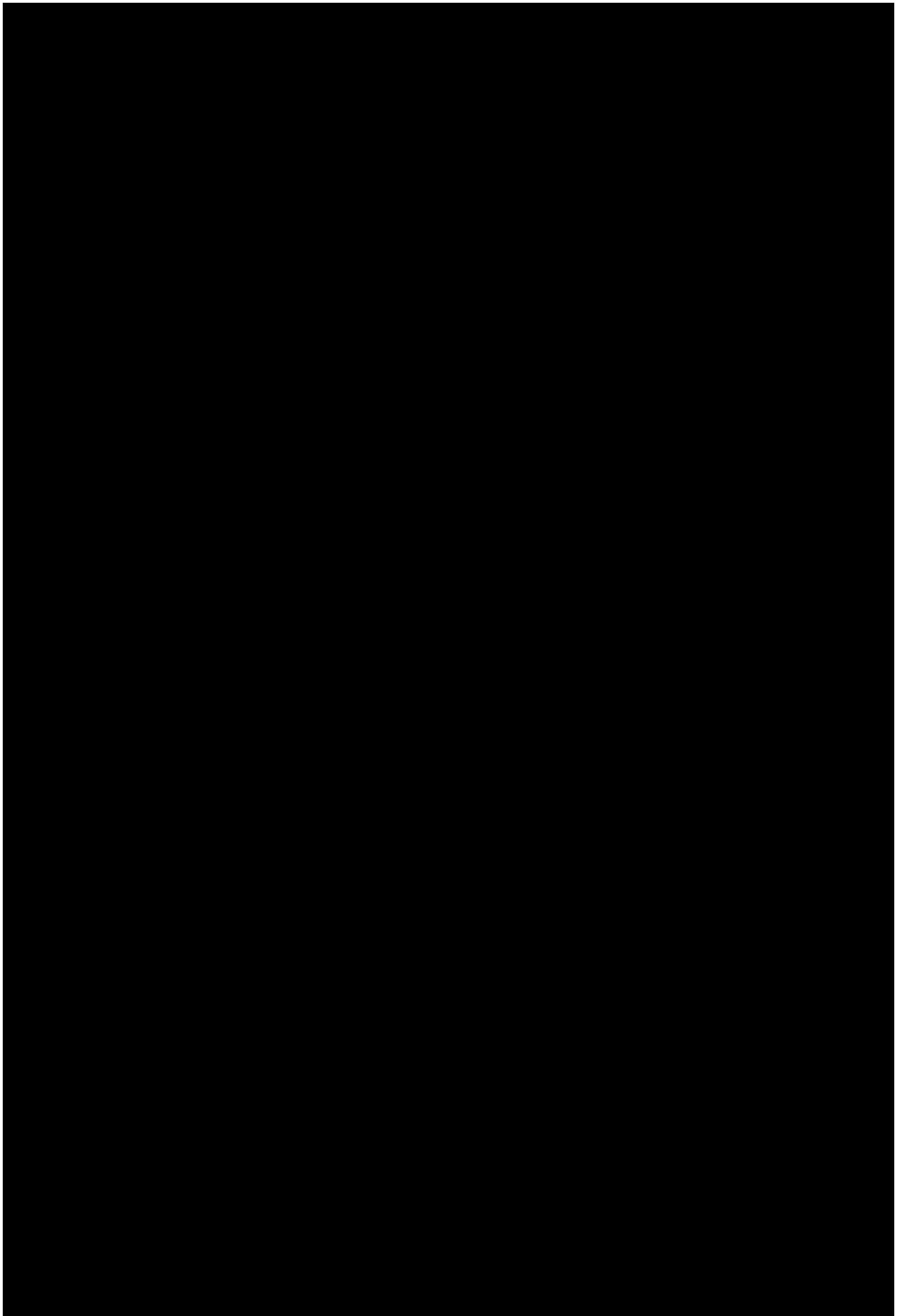


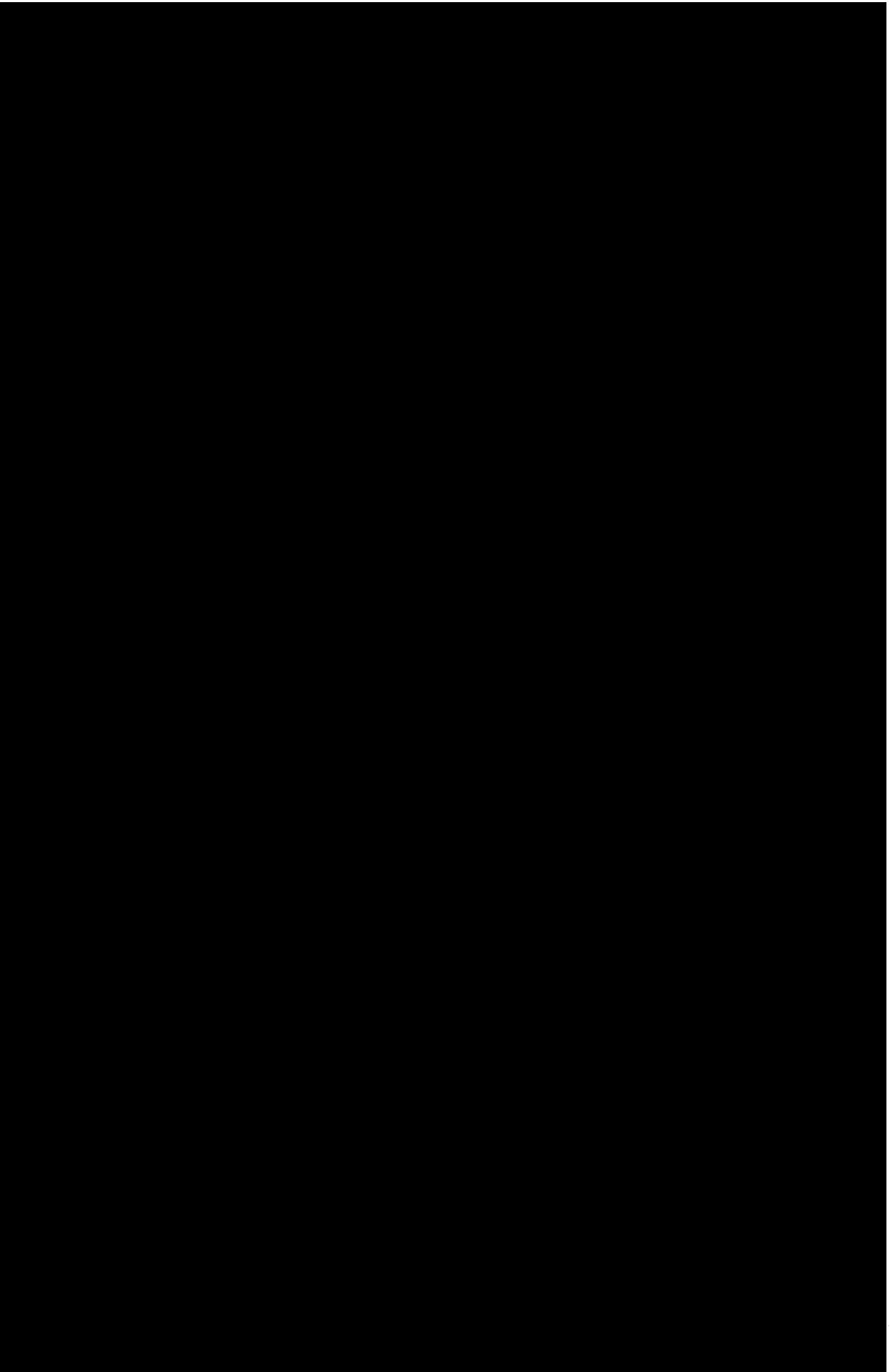








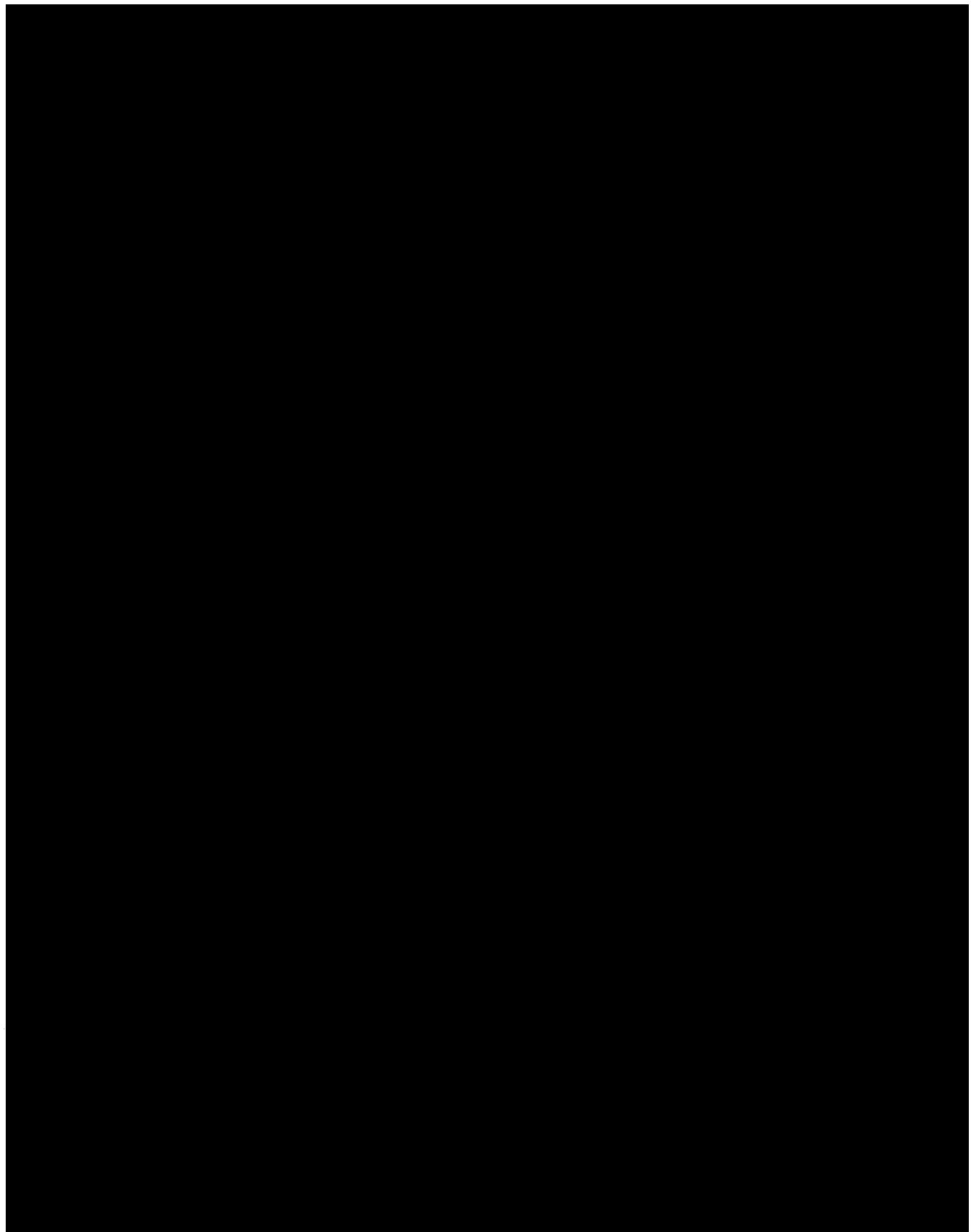




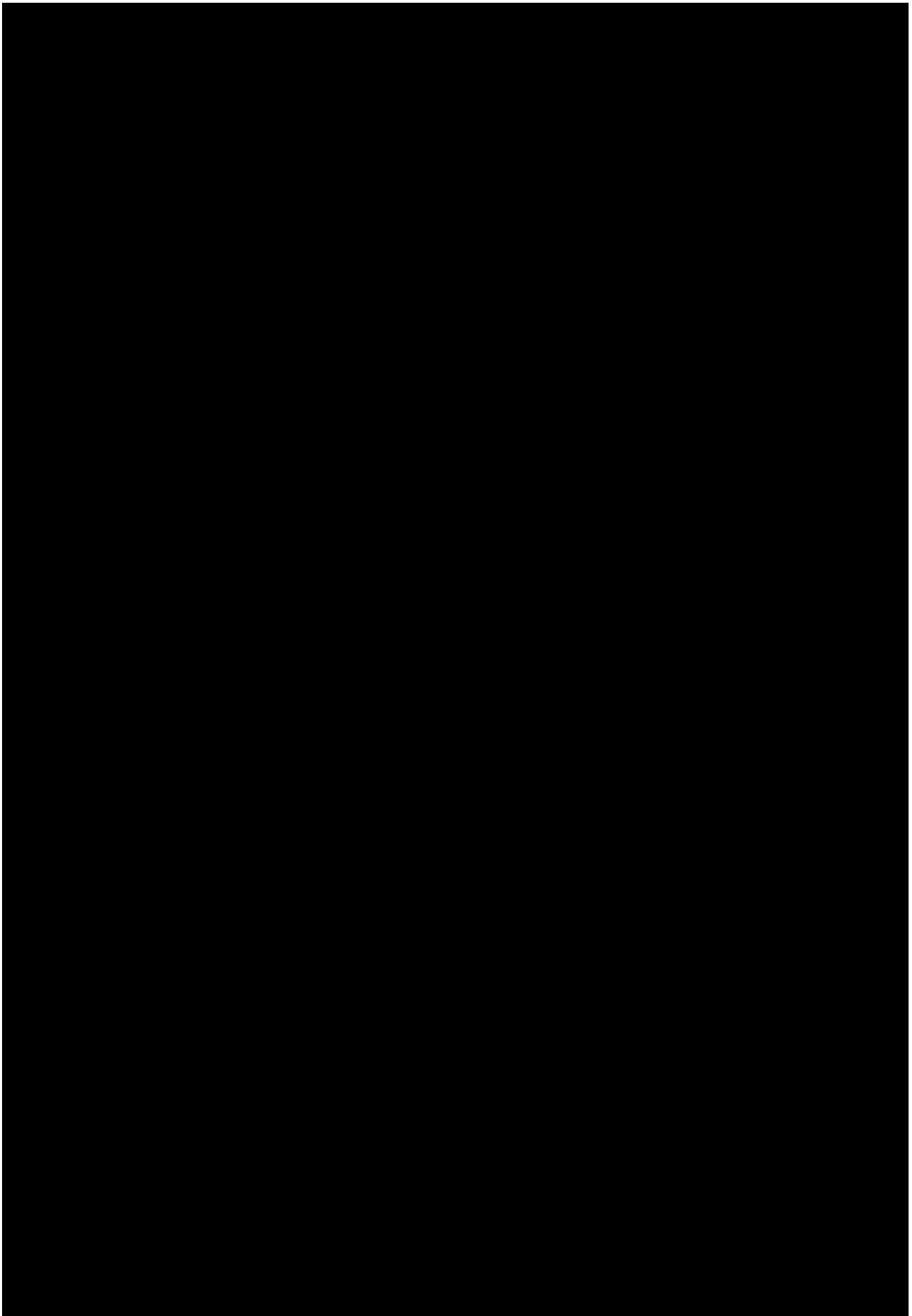


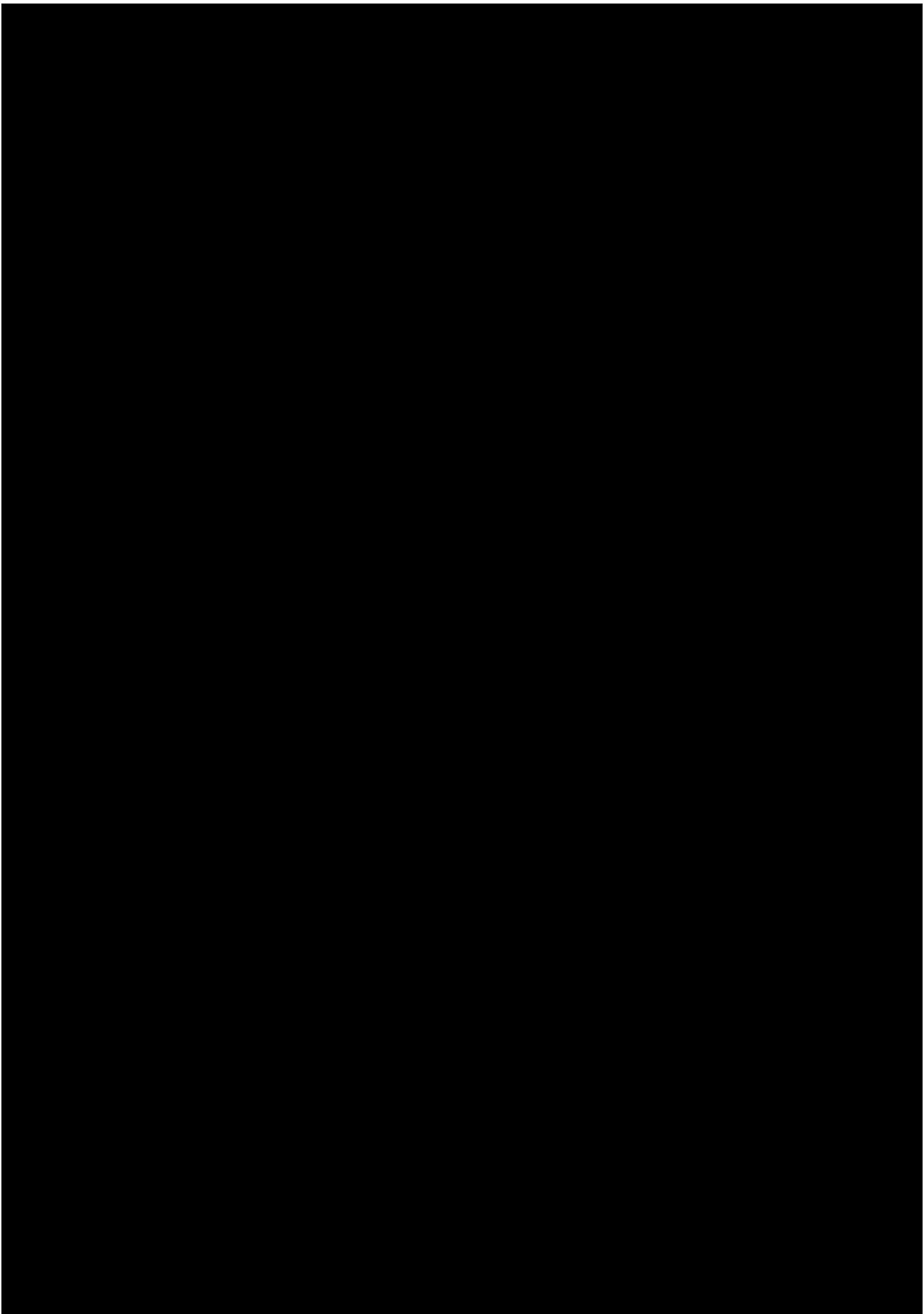


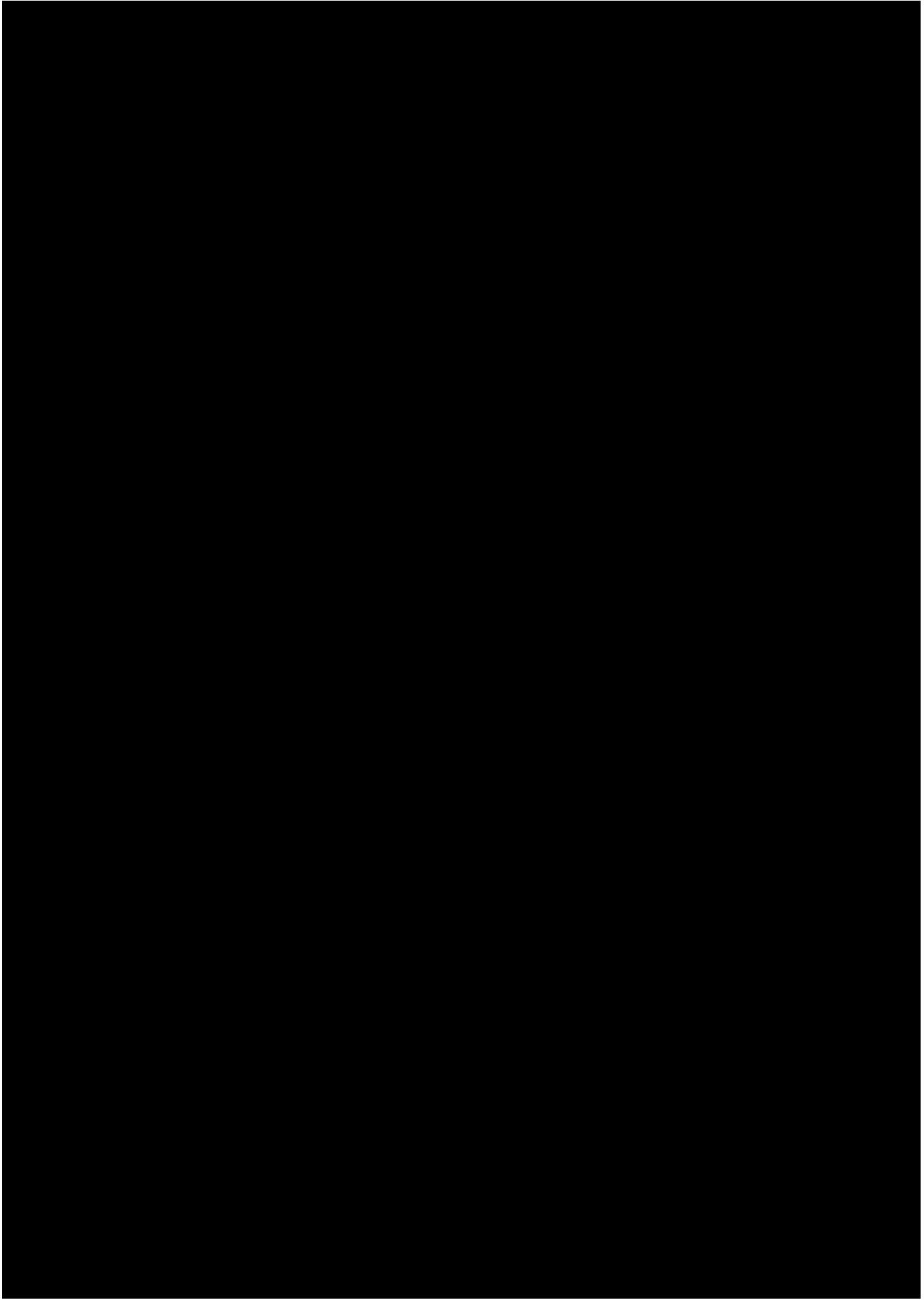
**SCHEDULE A25. – LW CONTRACTOR COOPERATION AND INTEGRATION DEED**

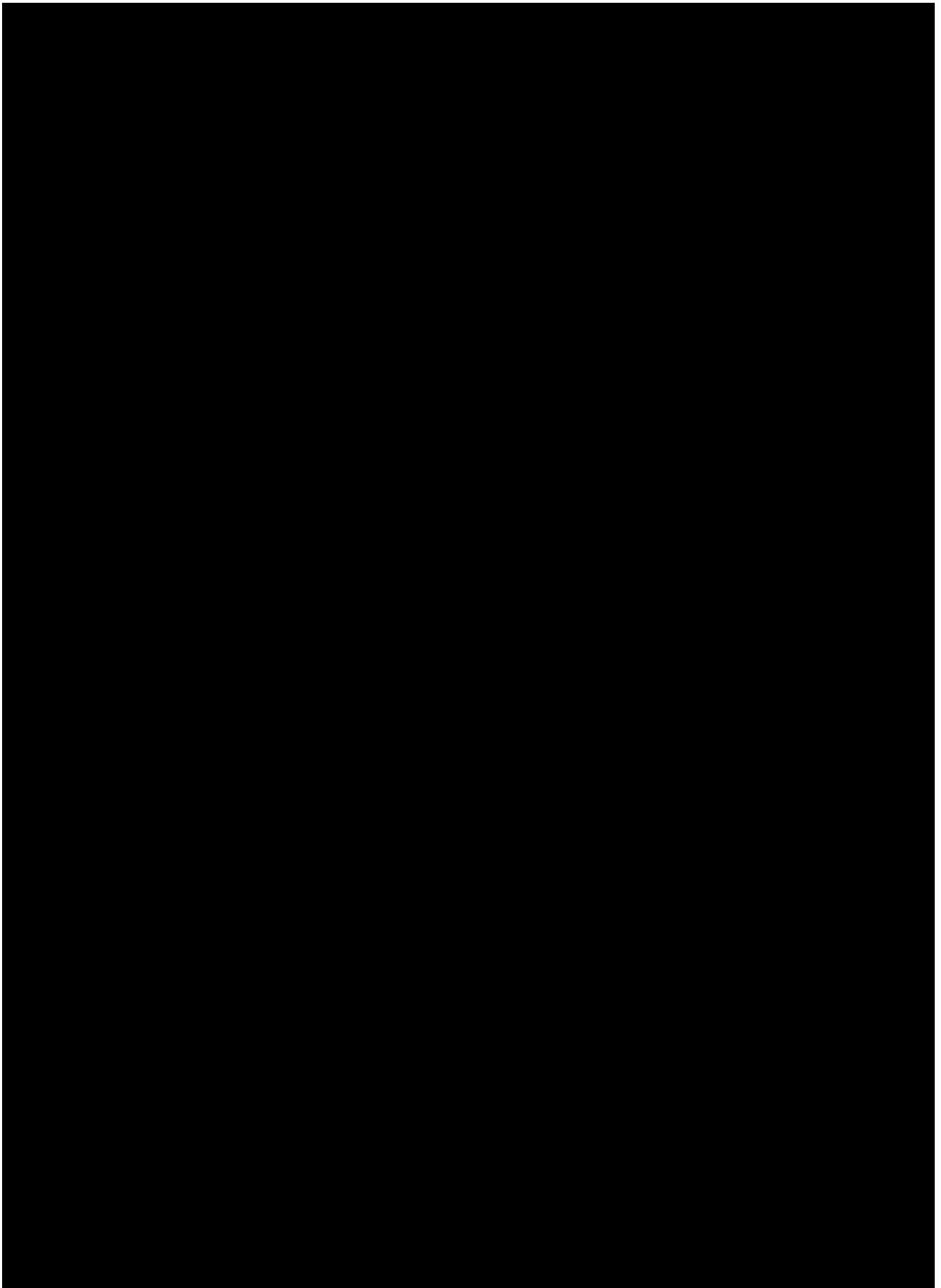




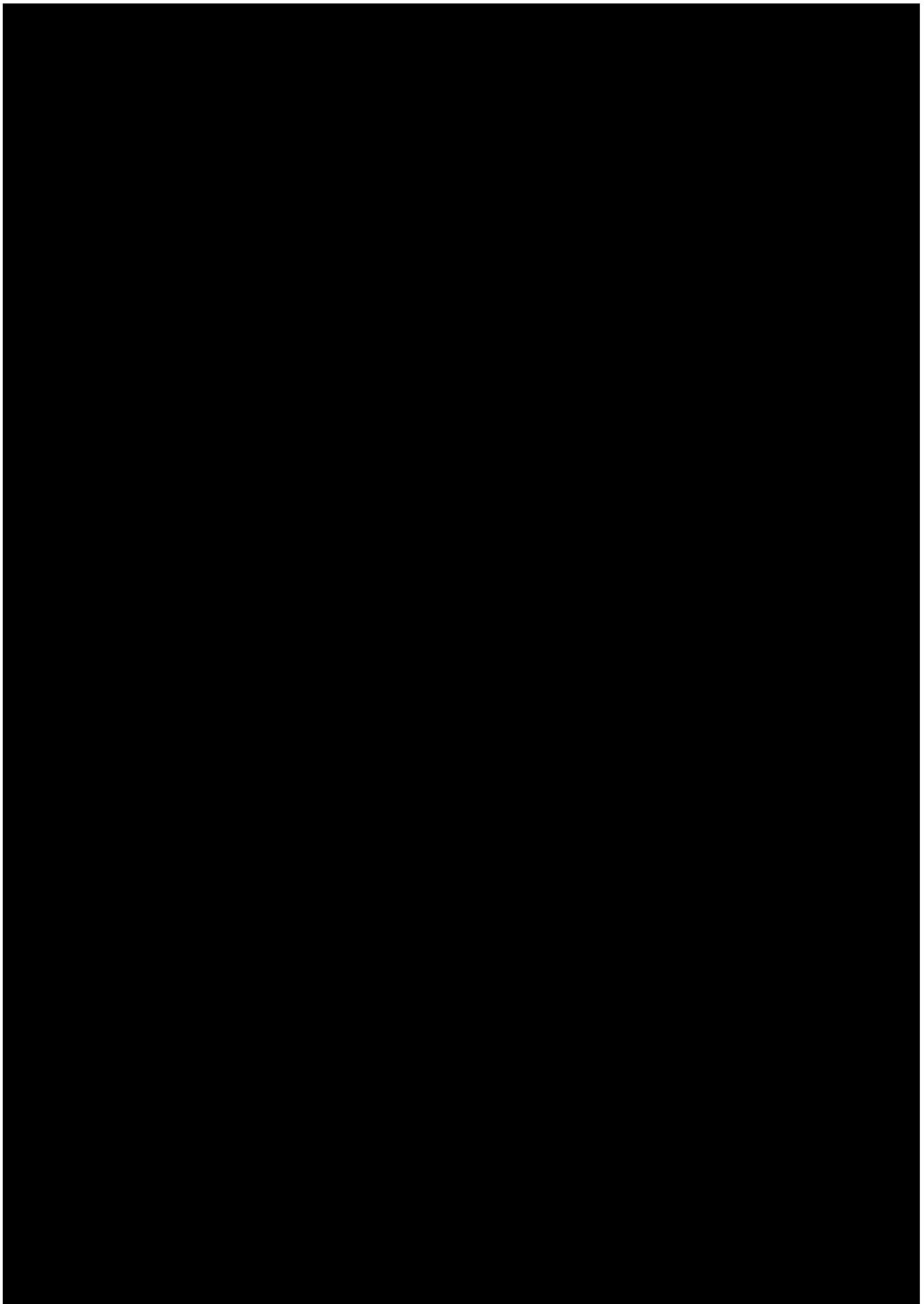




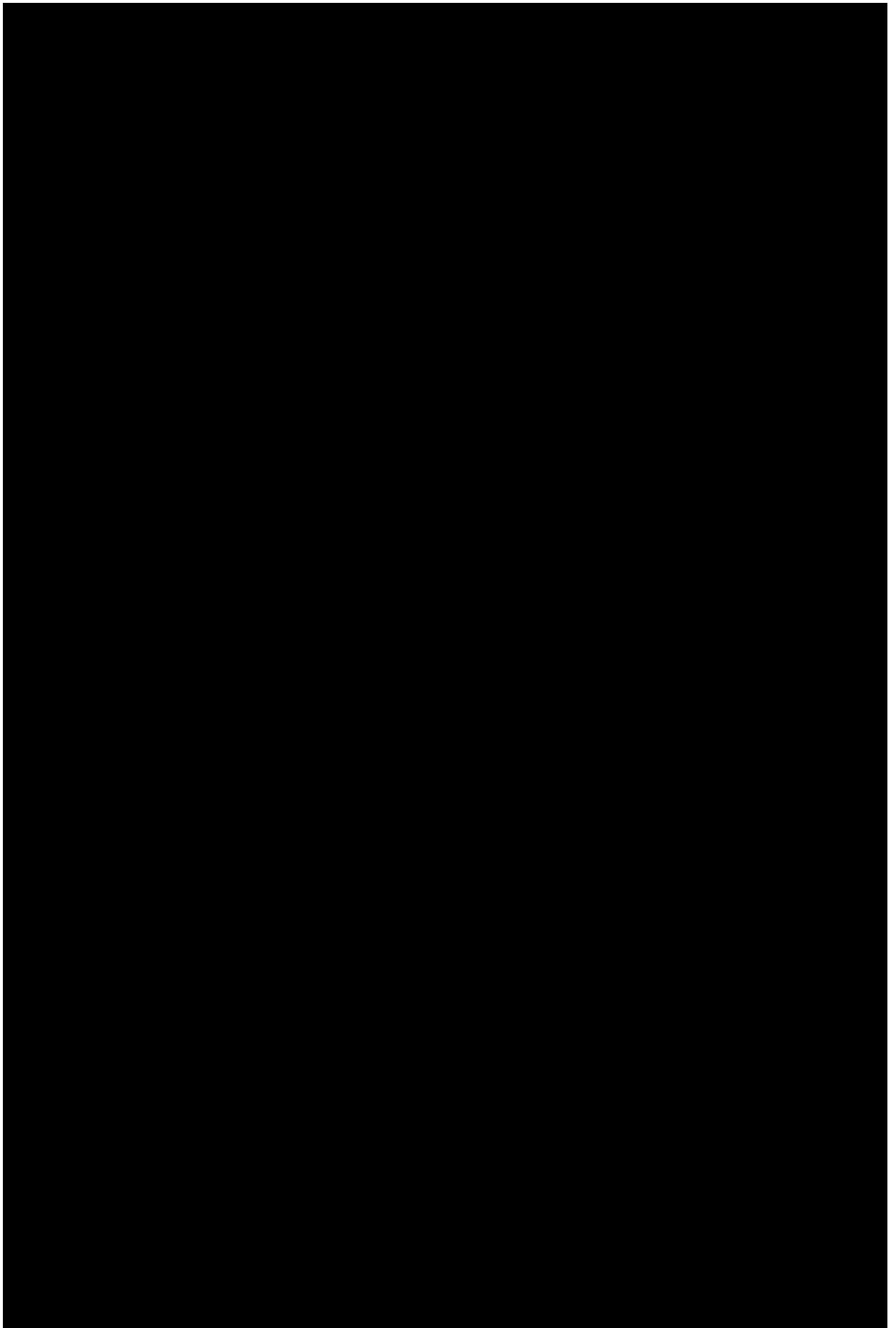


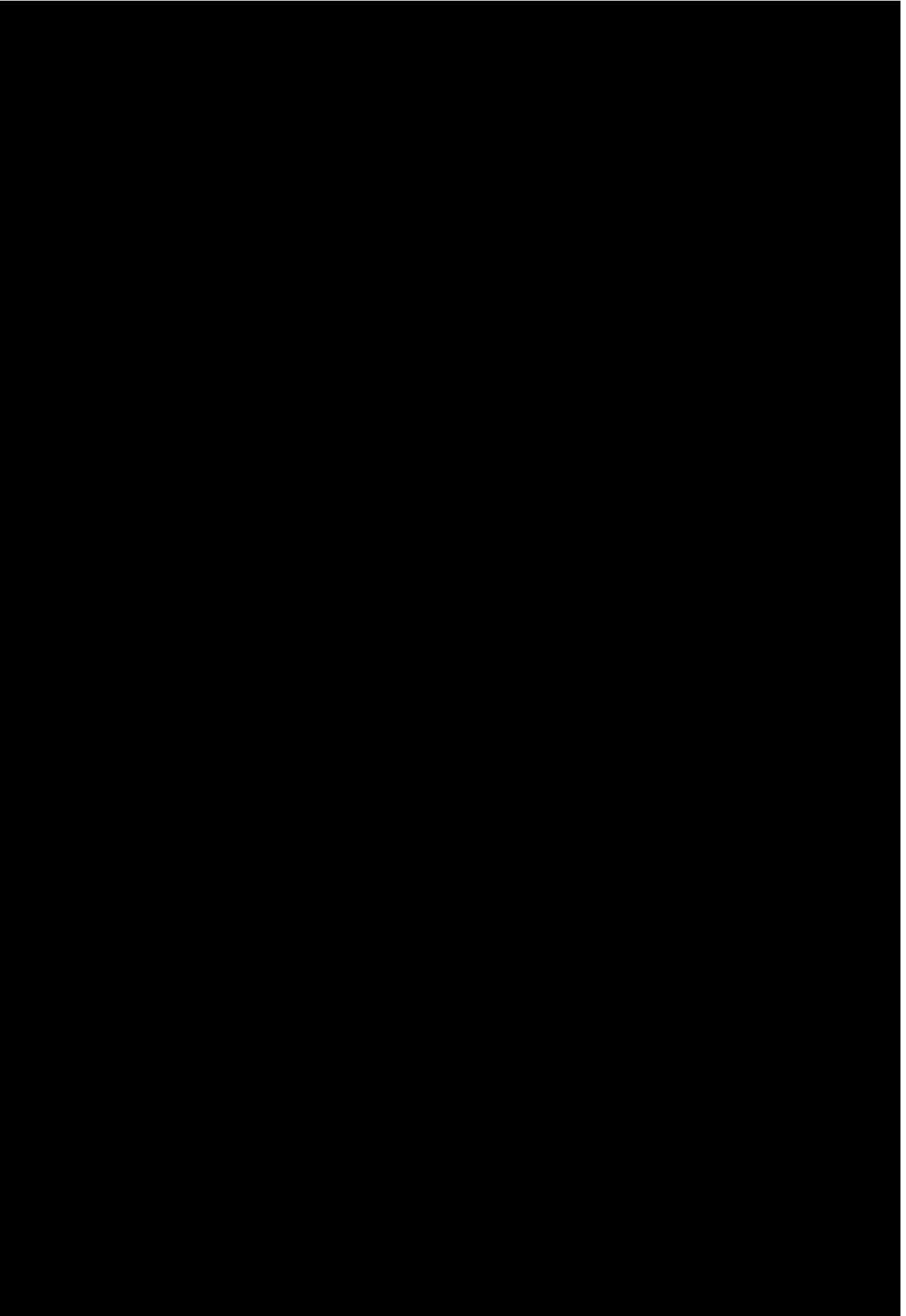


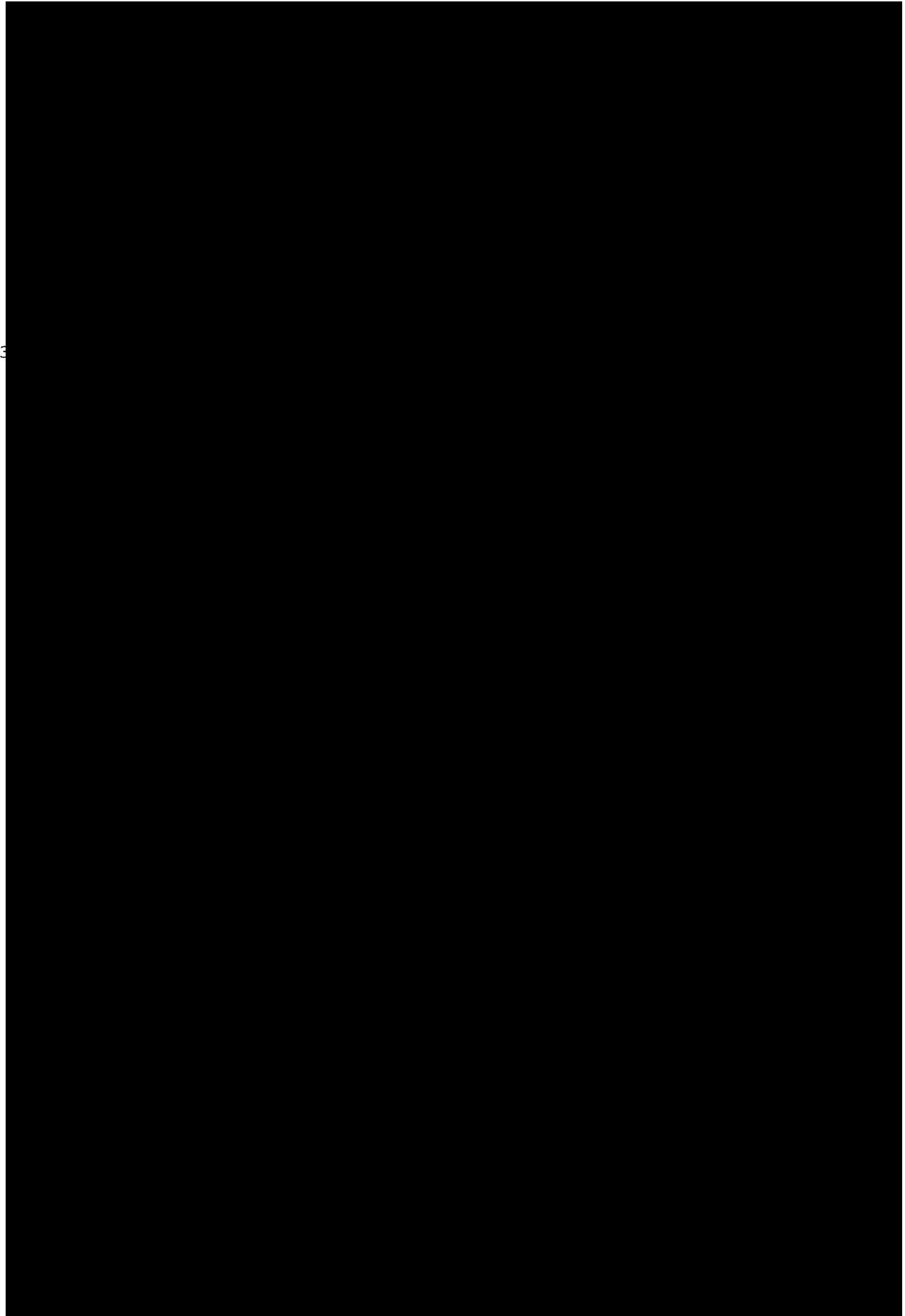


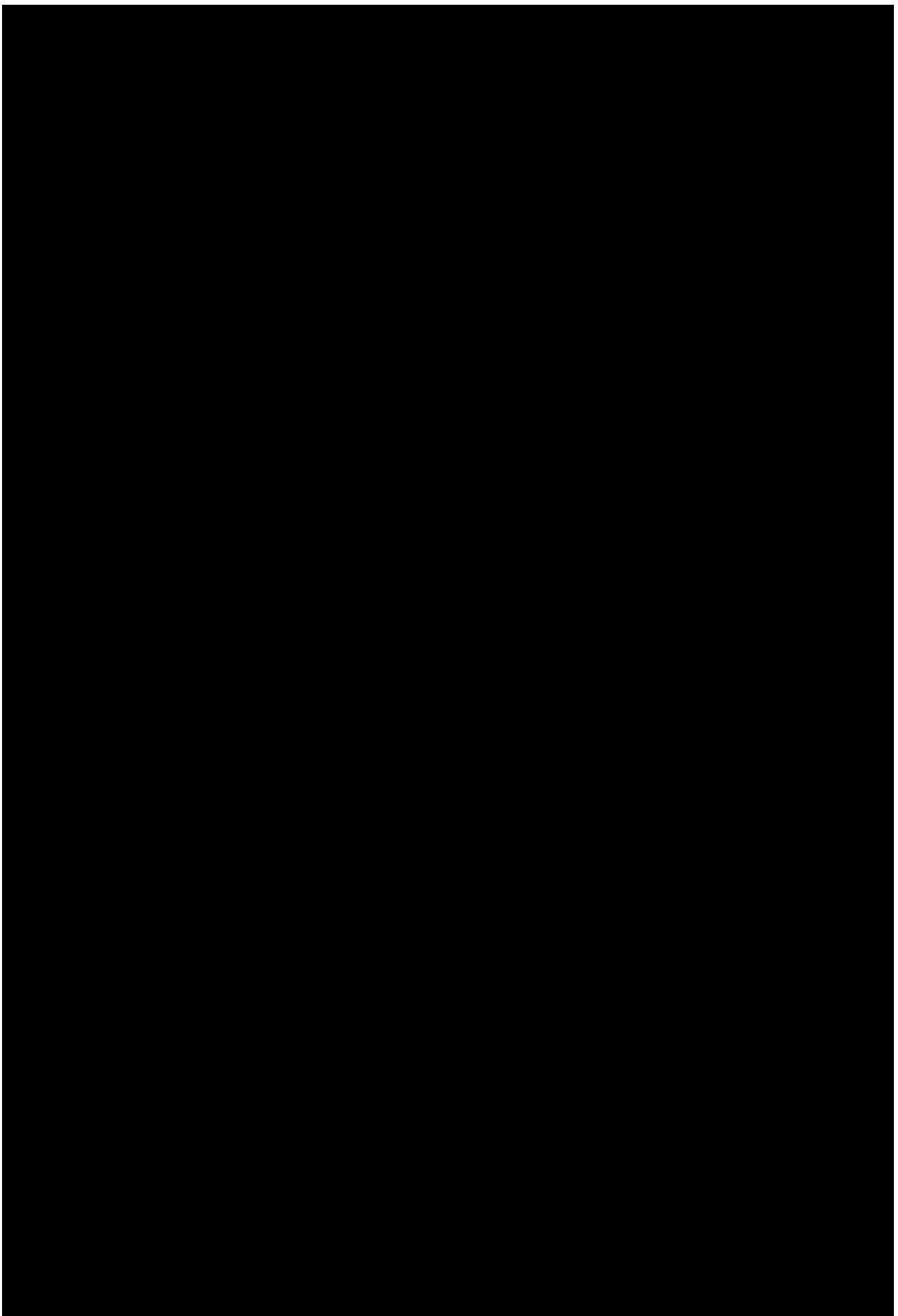


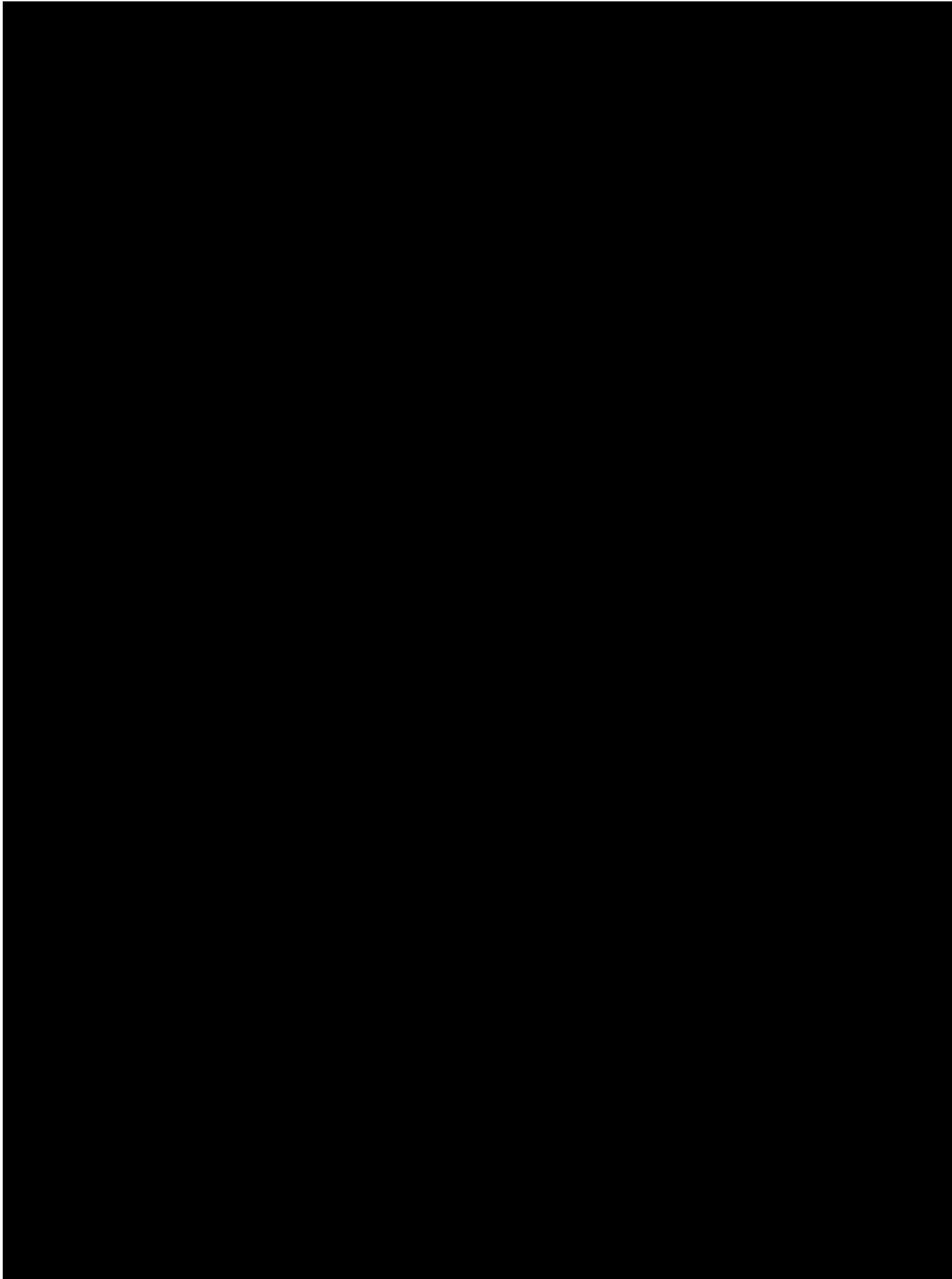


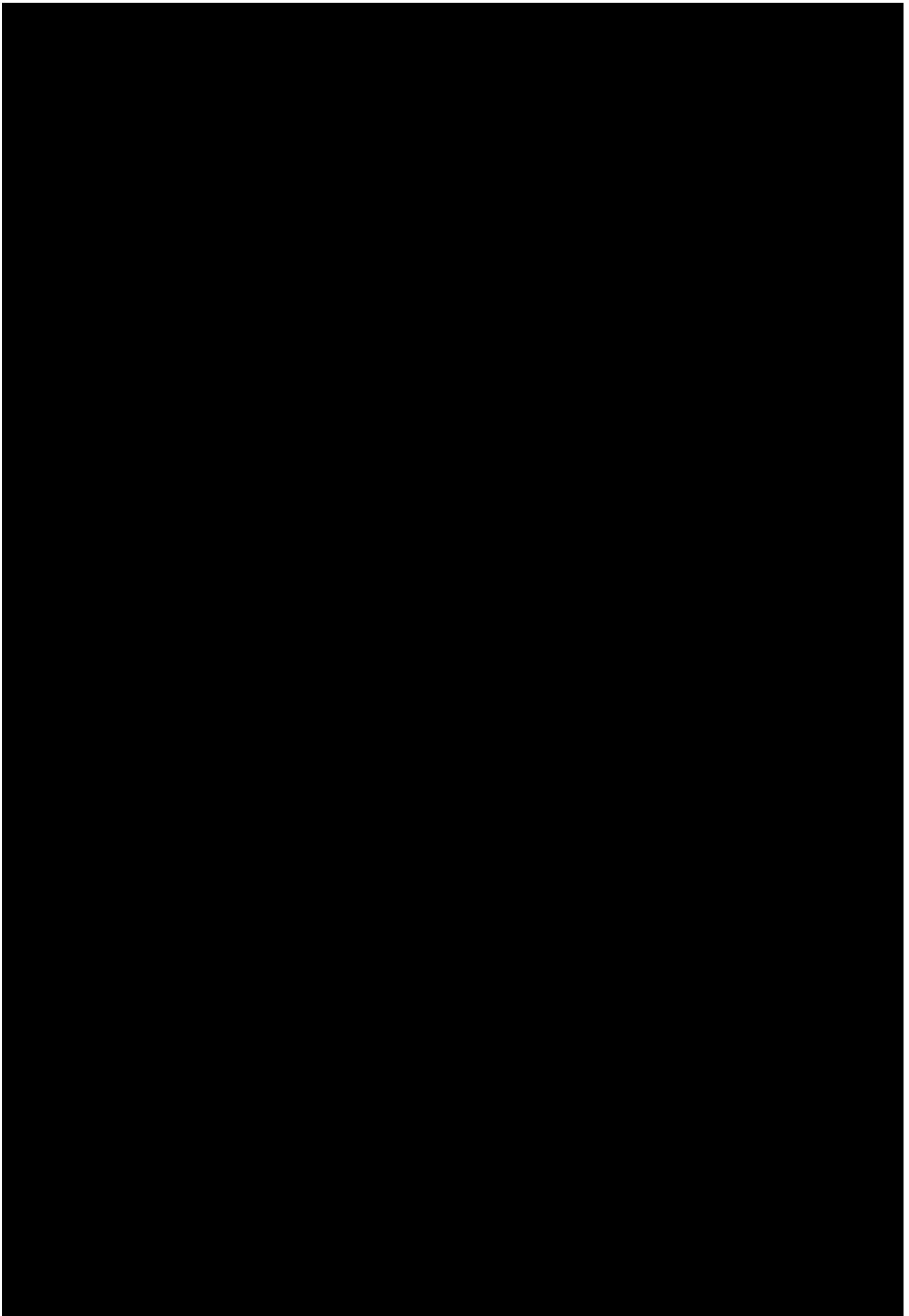


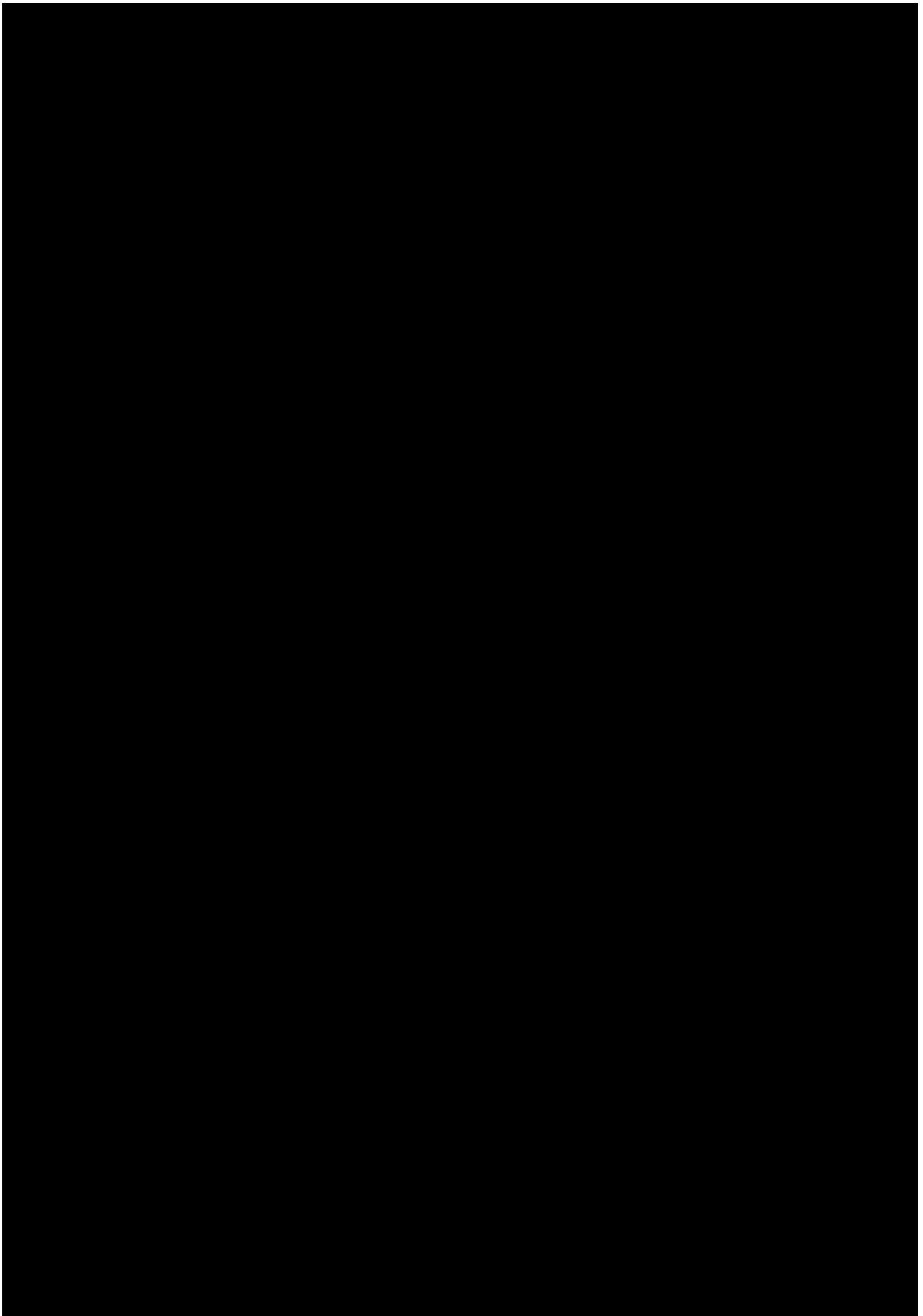






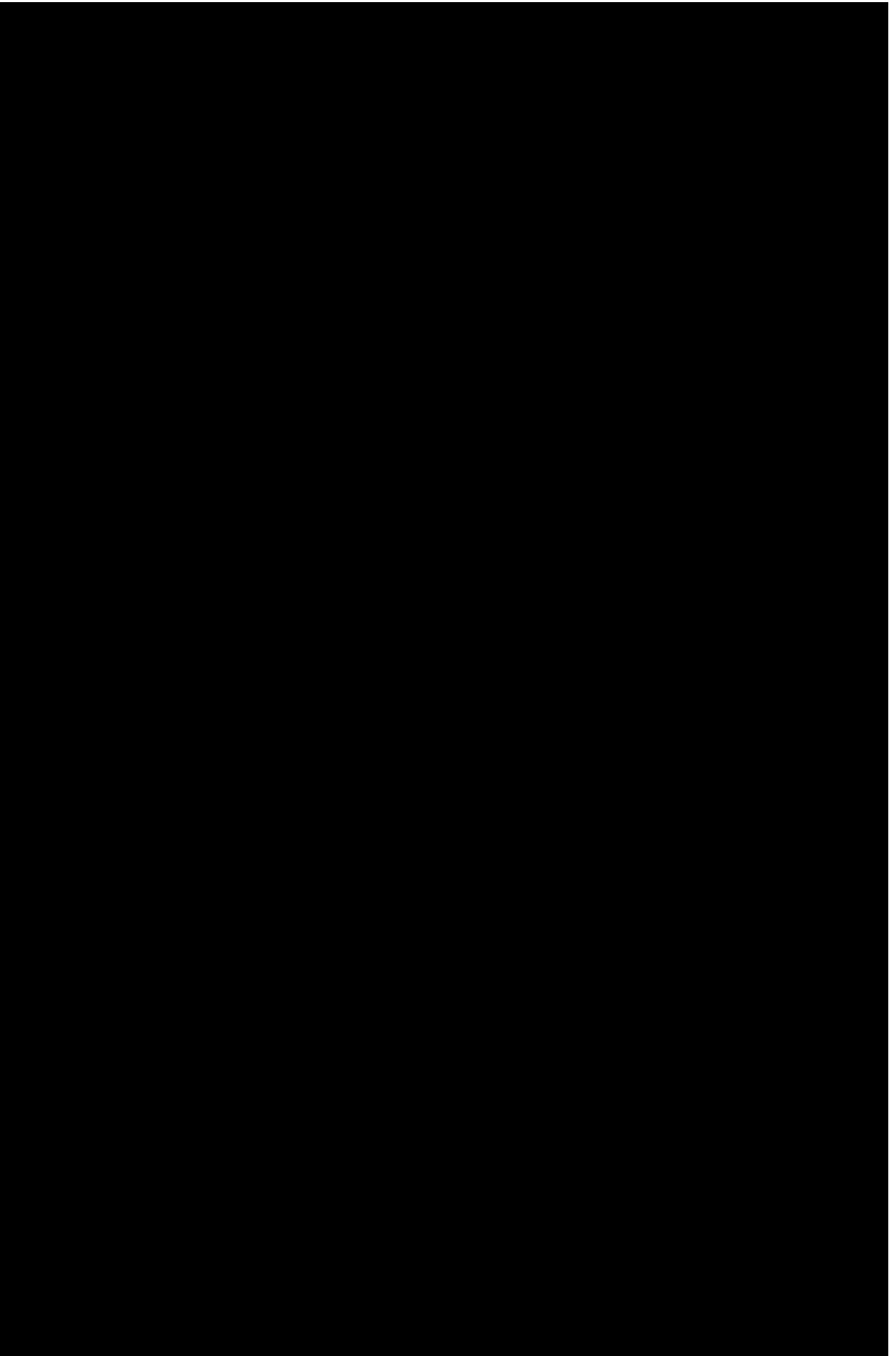


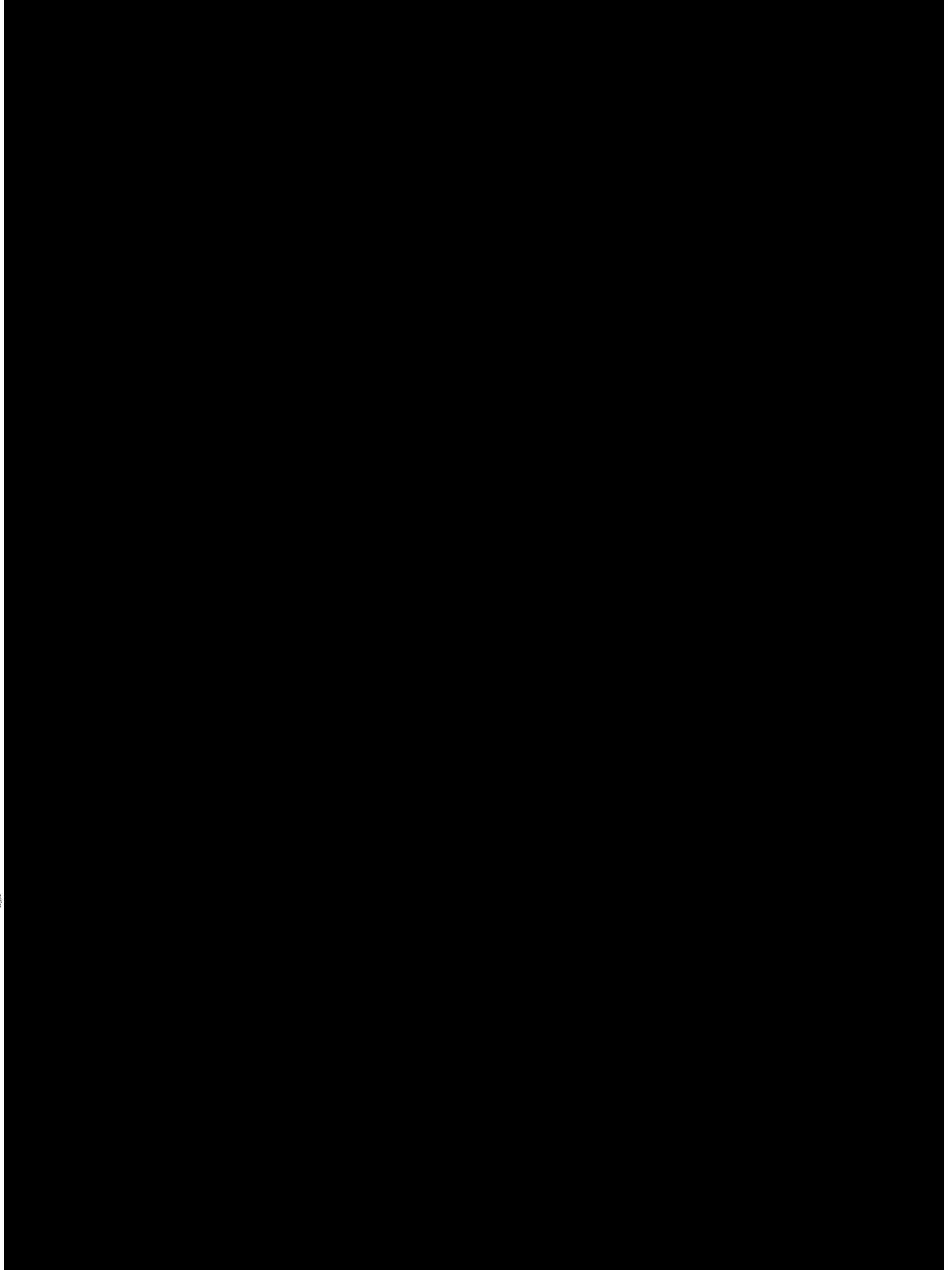




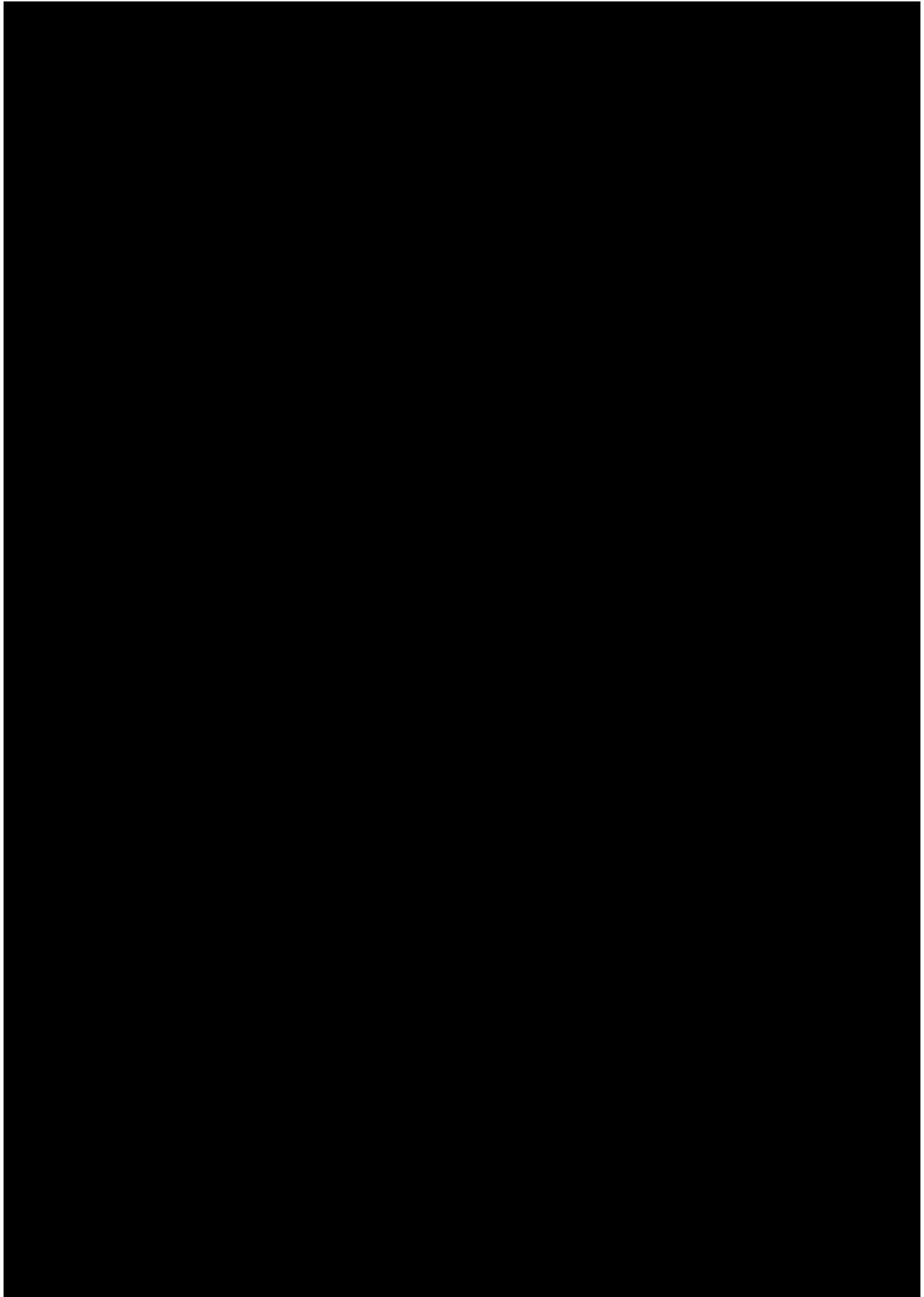


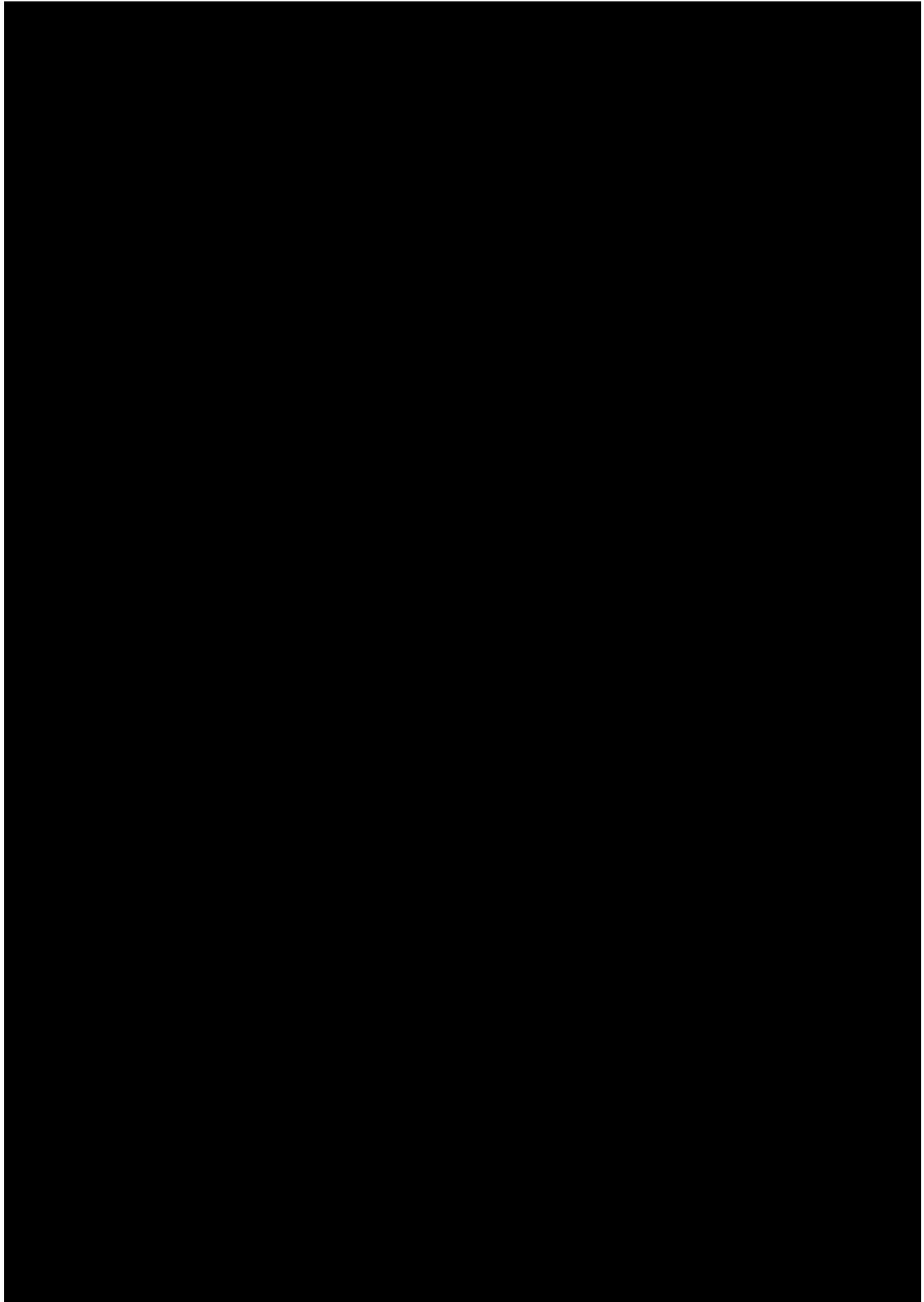


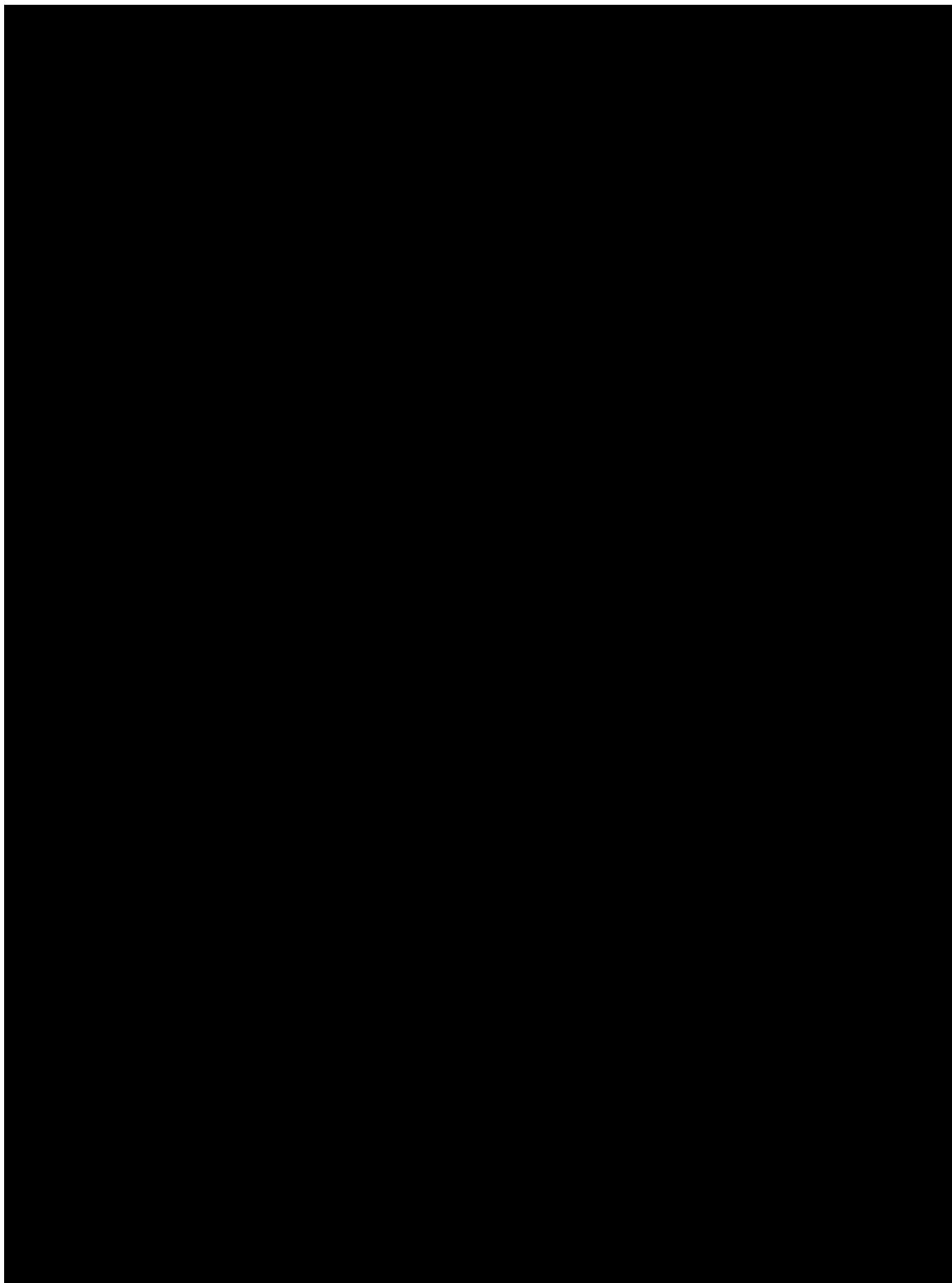








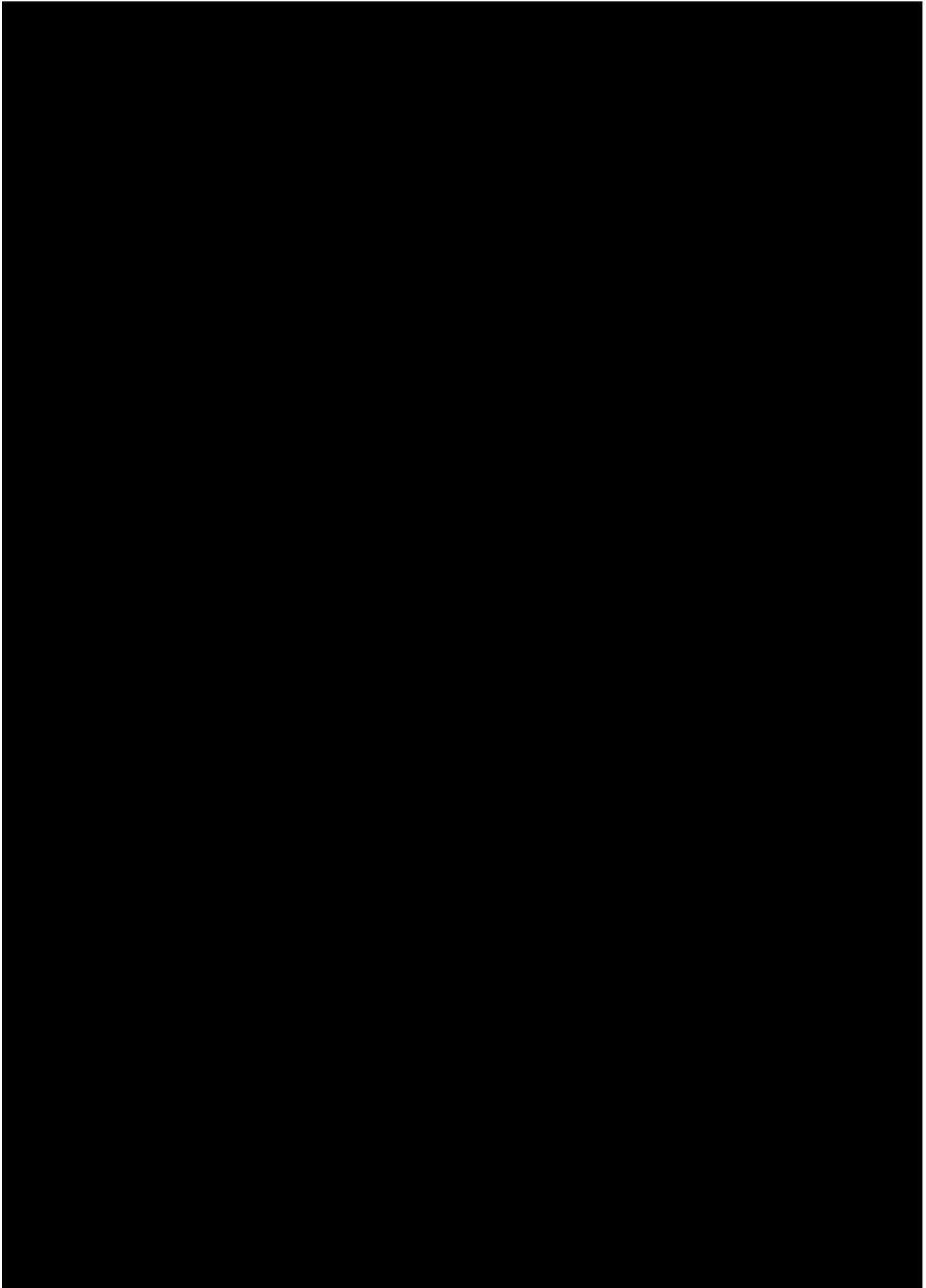






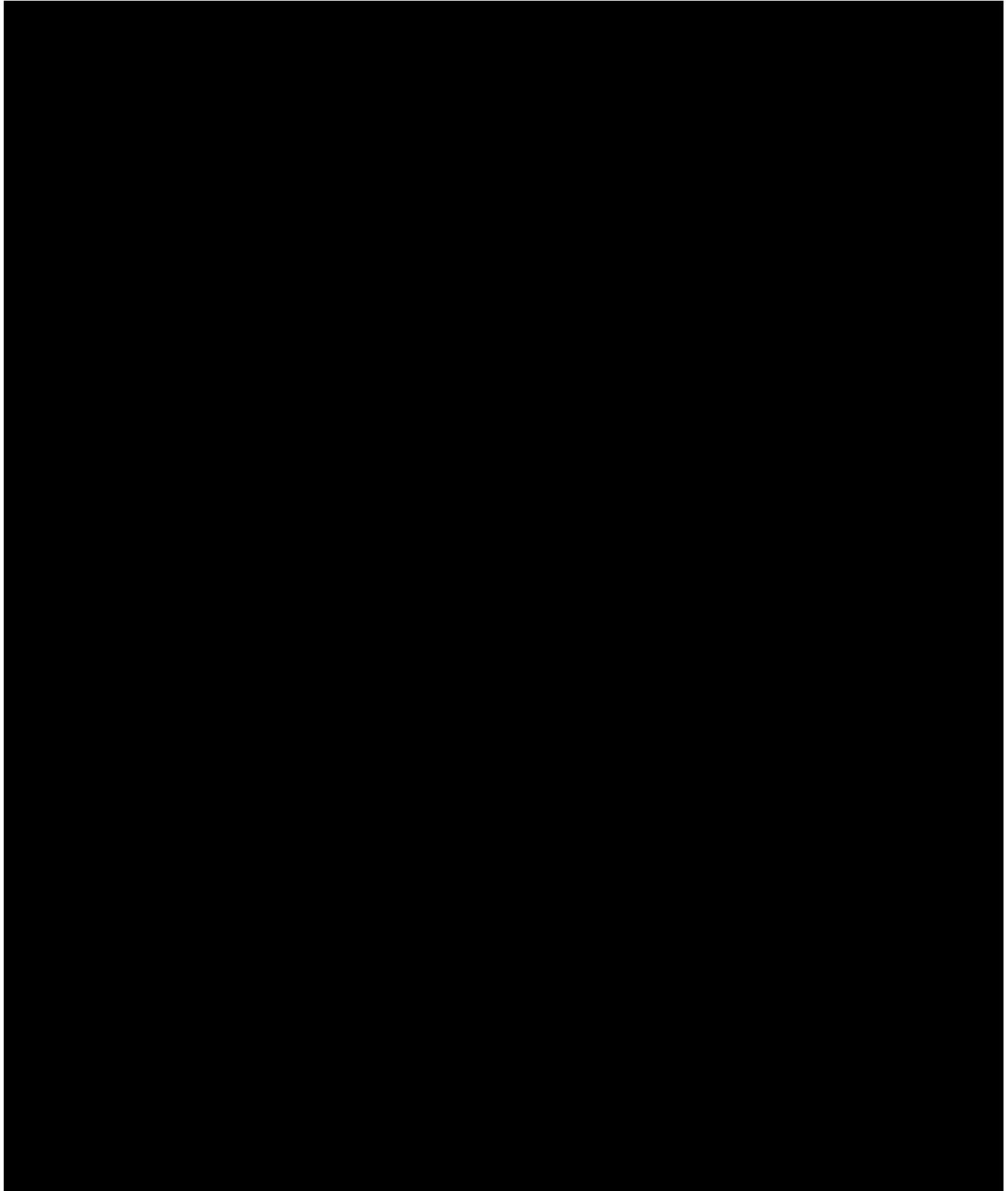








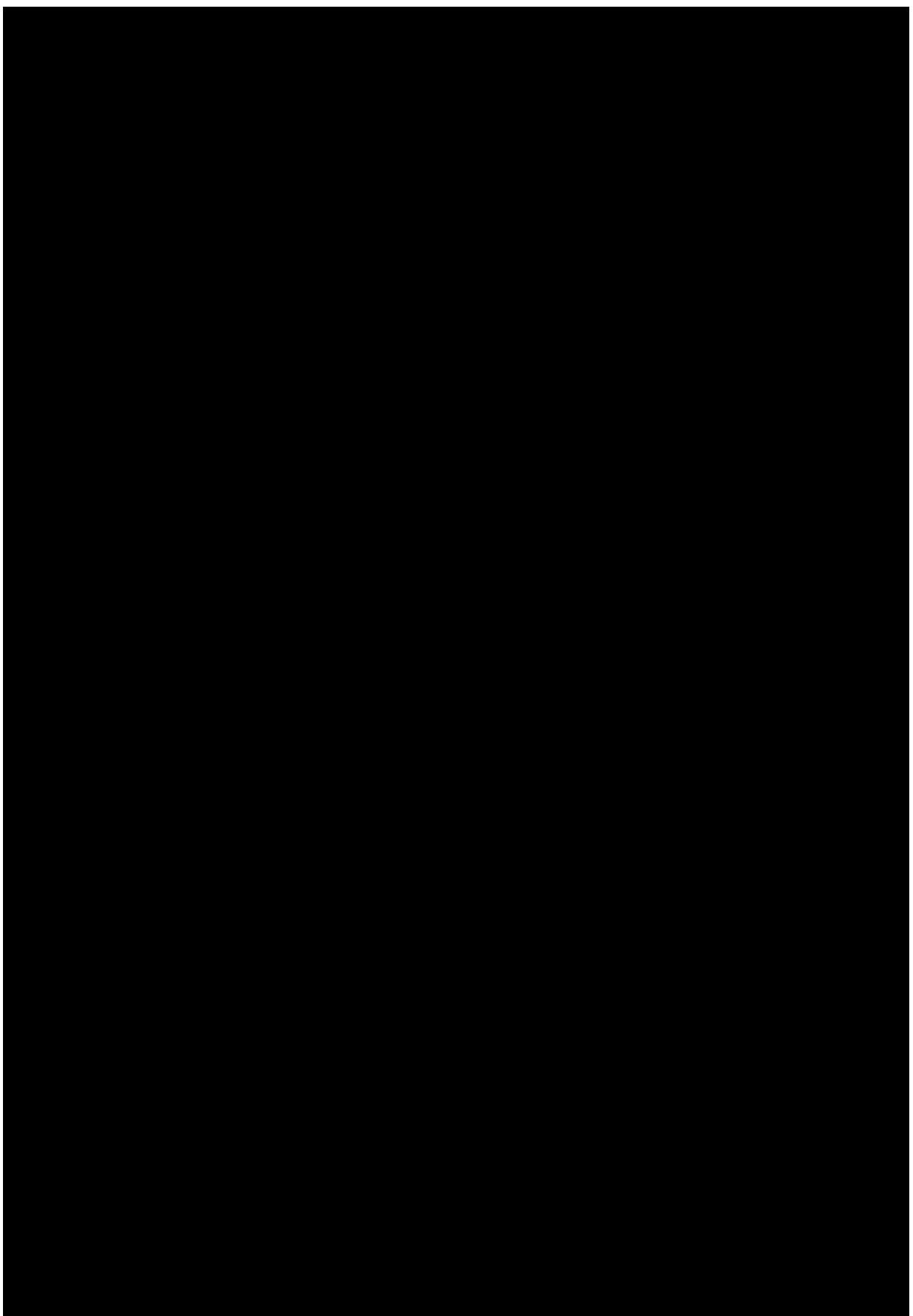




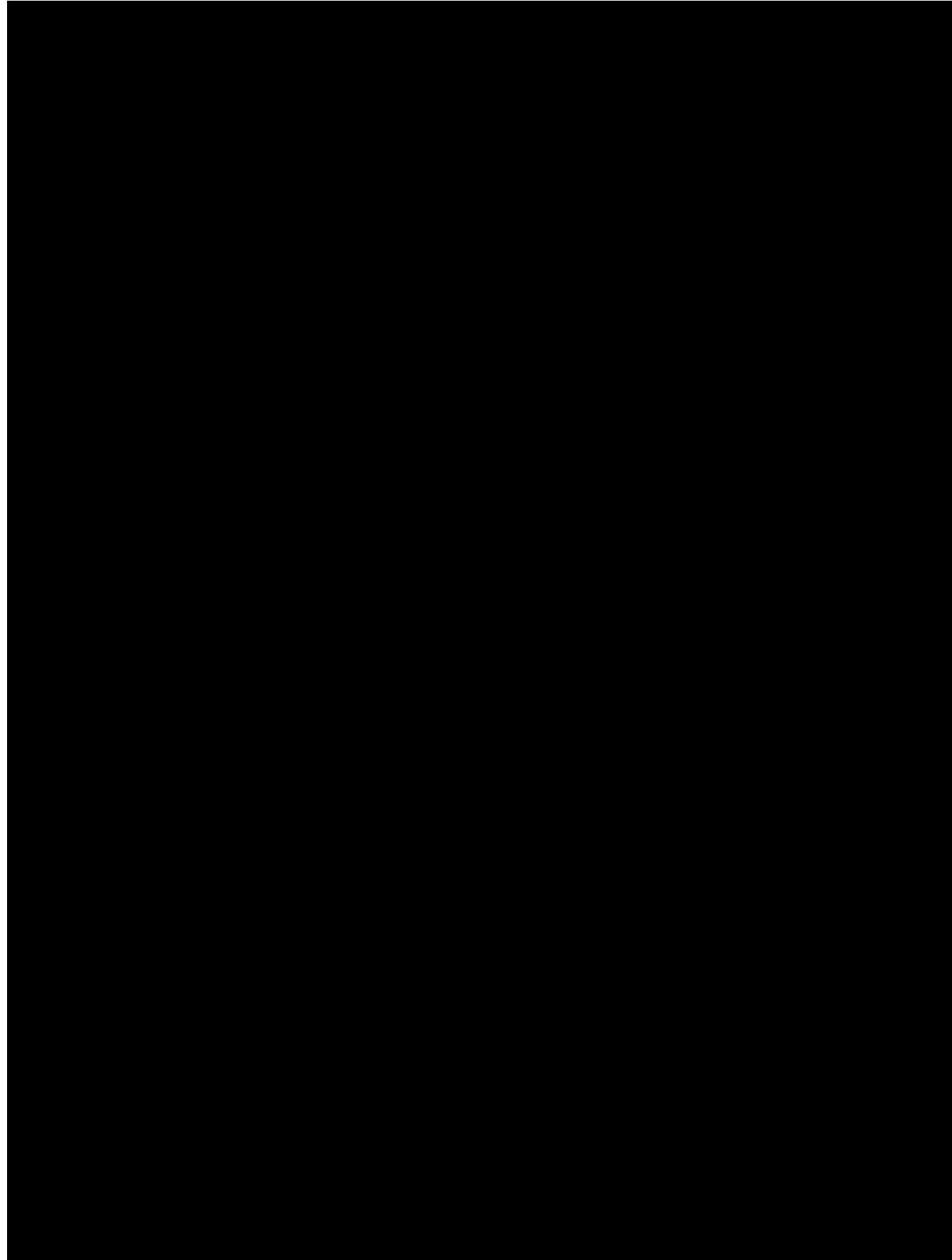


**SCHEDULE A26. – TSE COOPERATION AND INTEGRATION DEED**

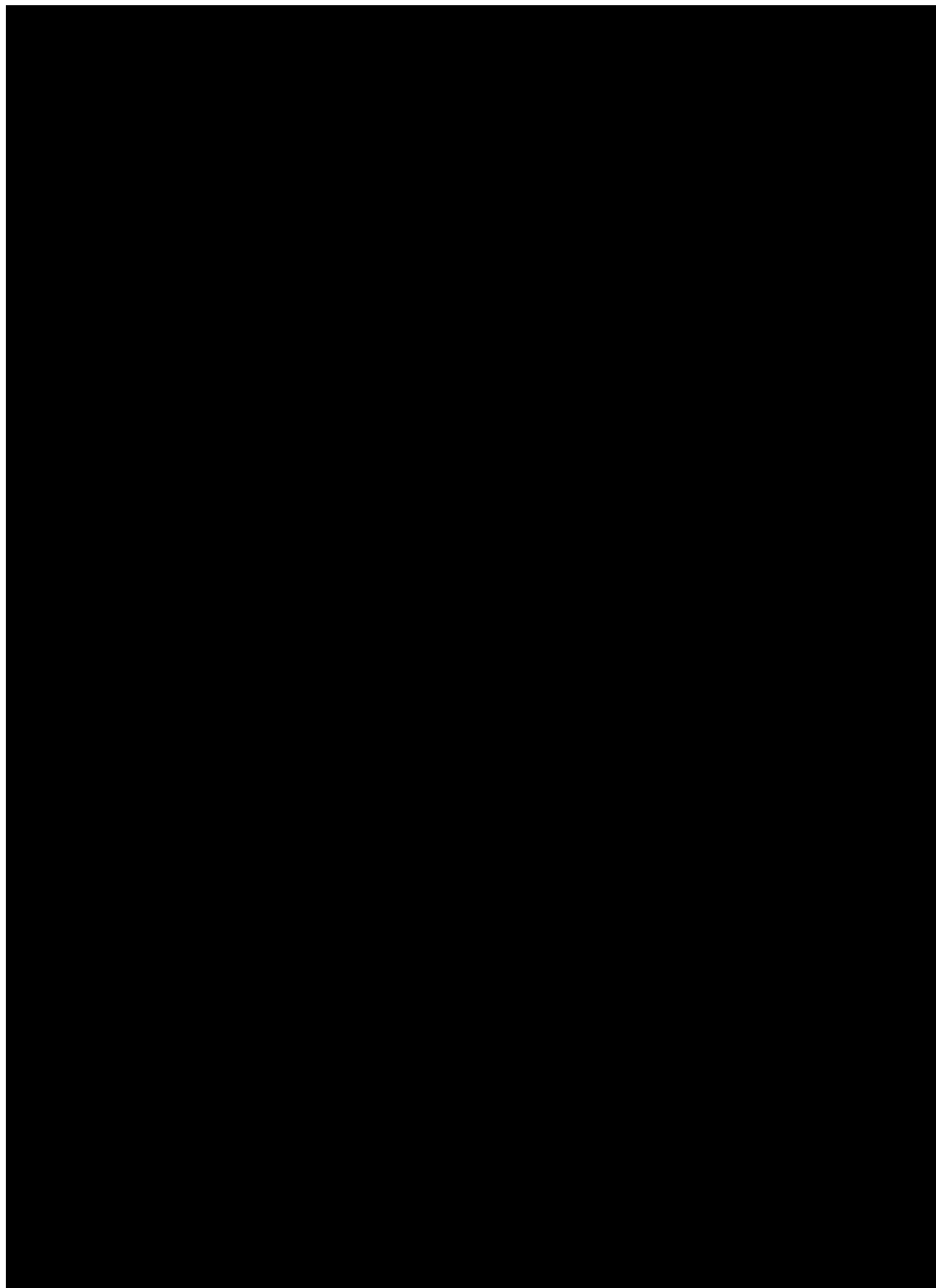
(Schedule A2 and clause 12.2)

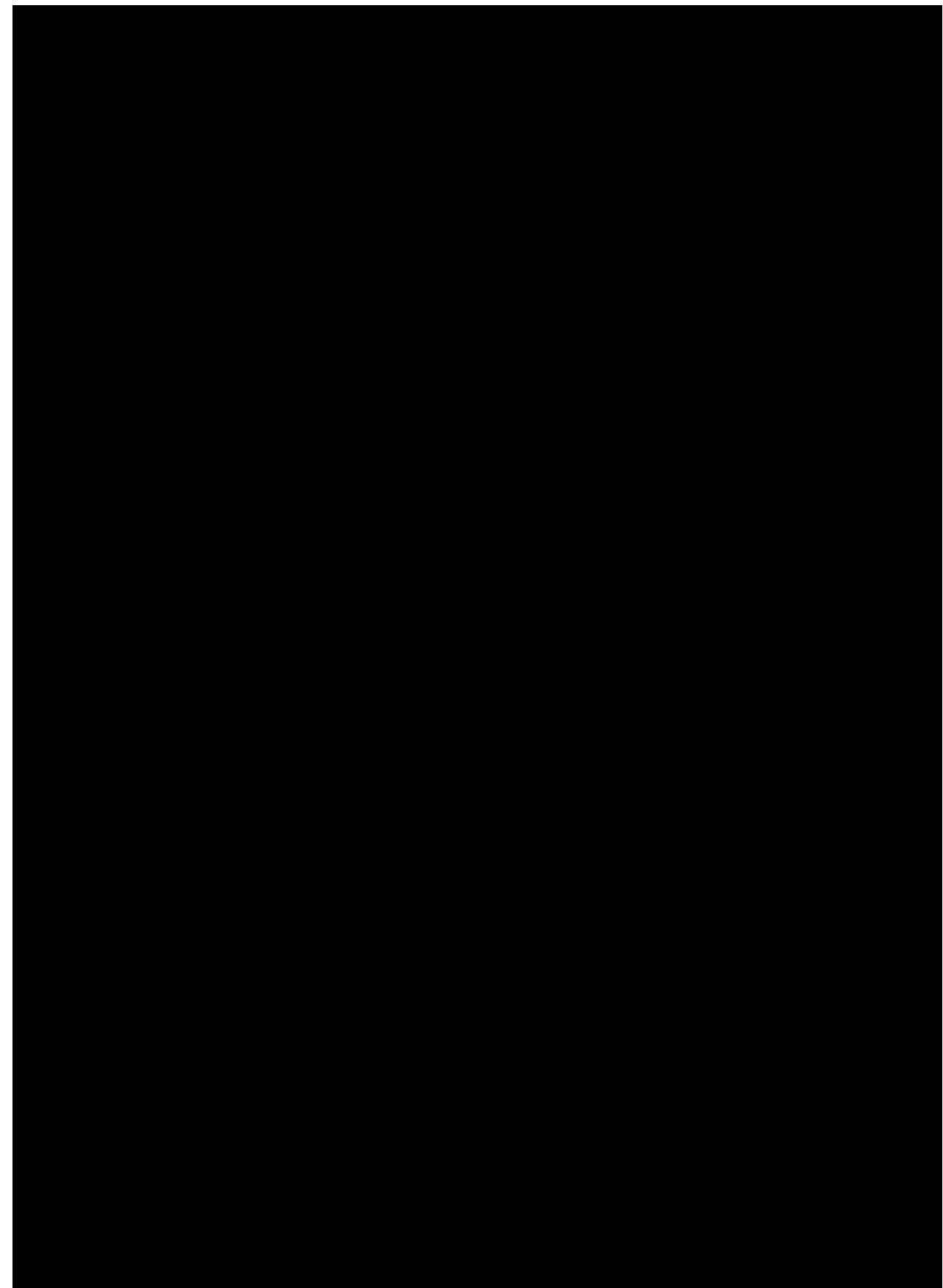


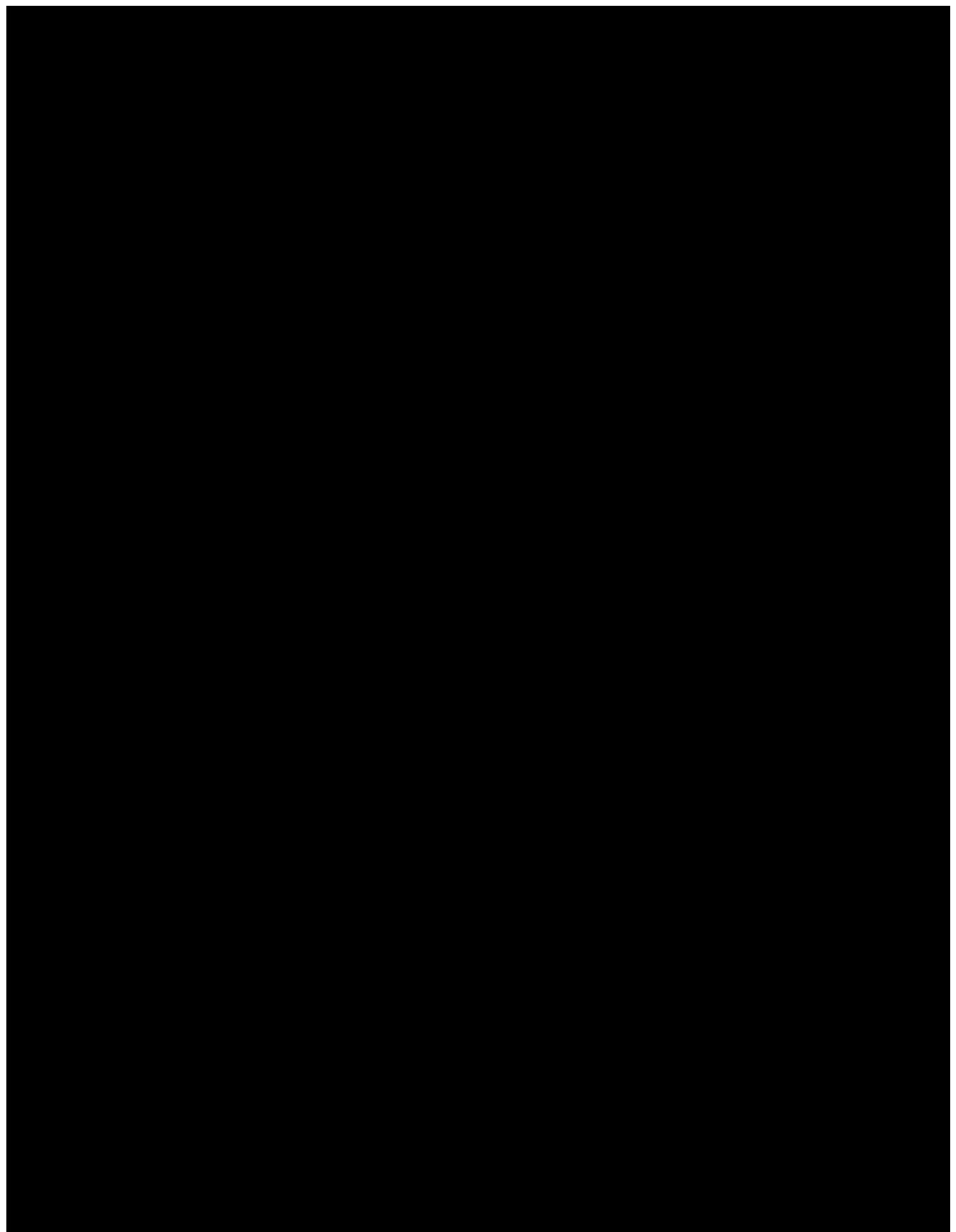


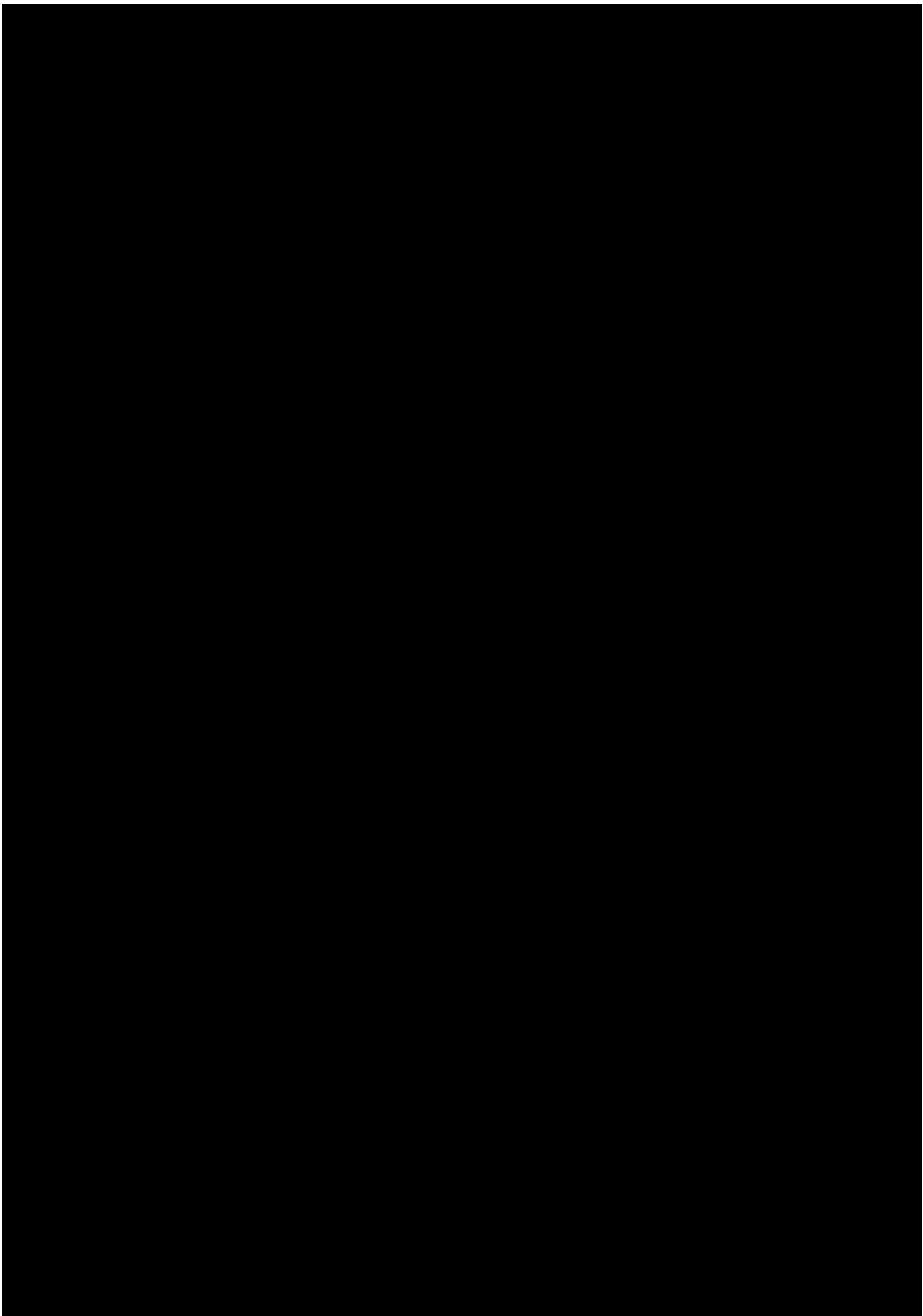


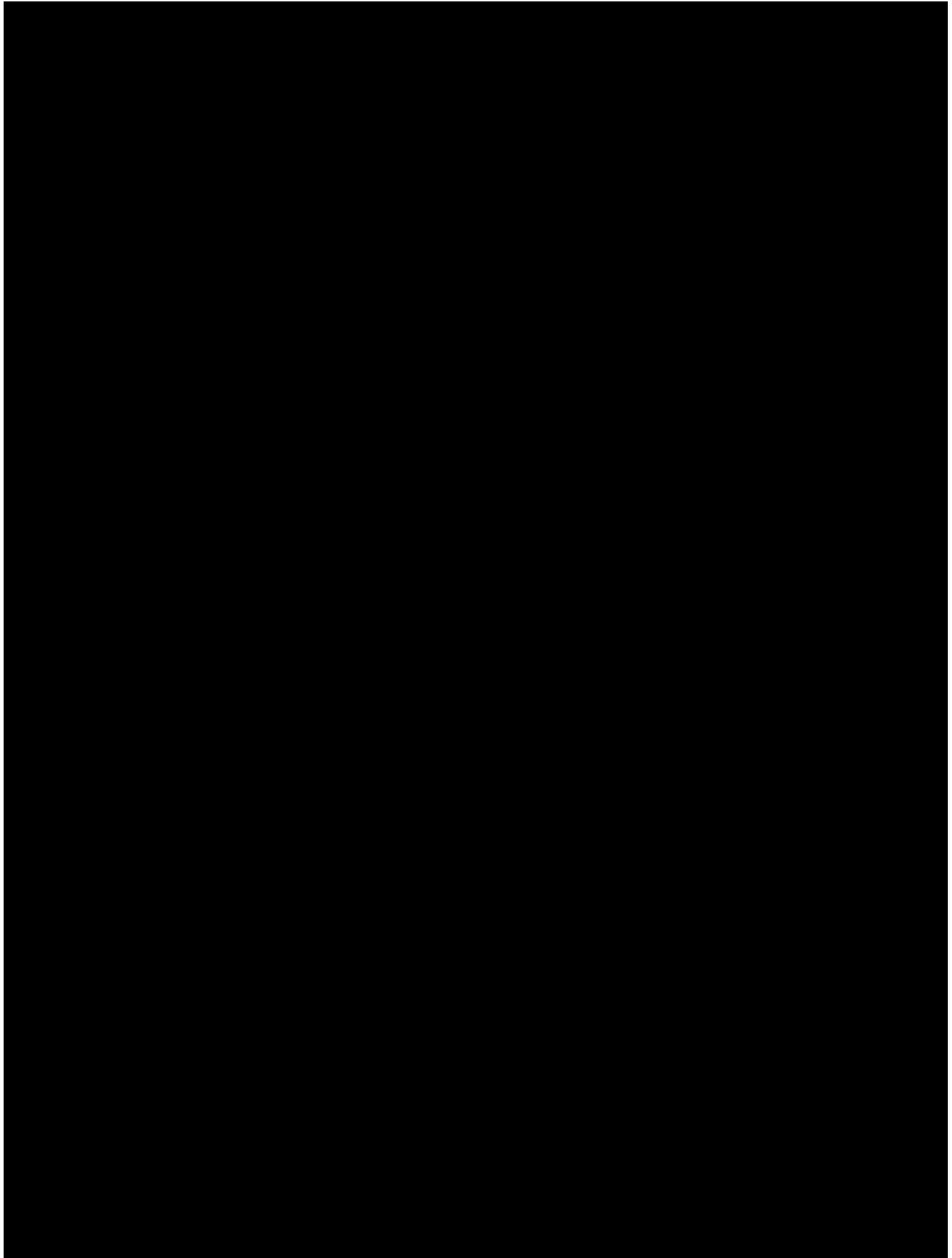


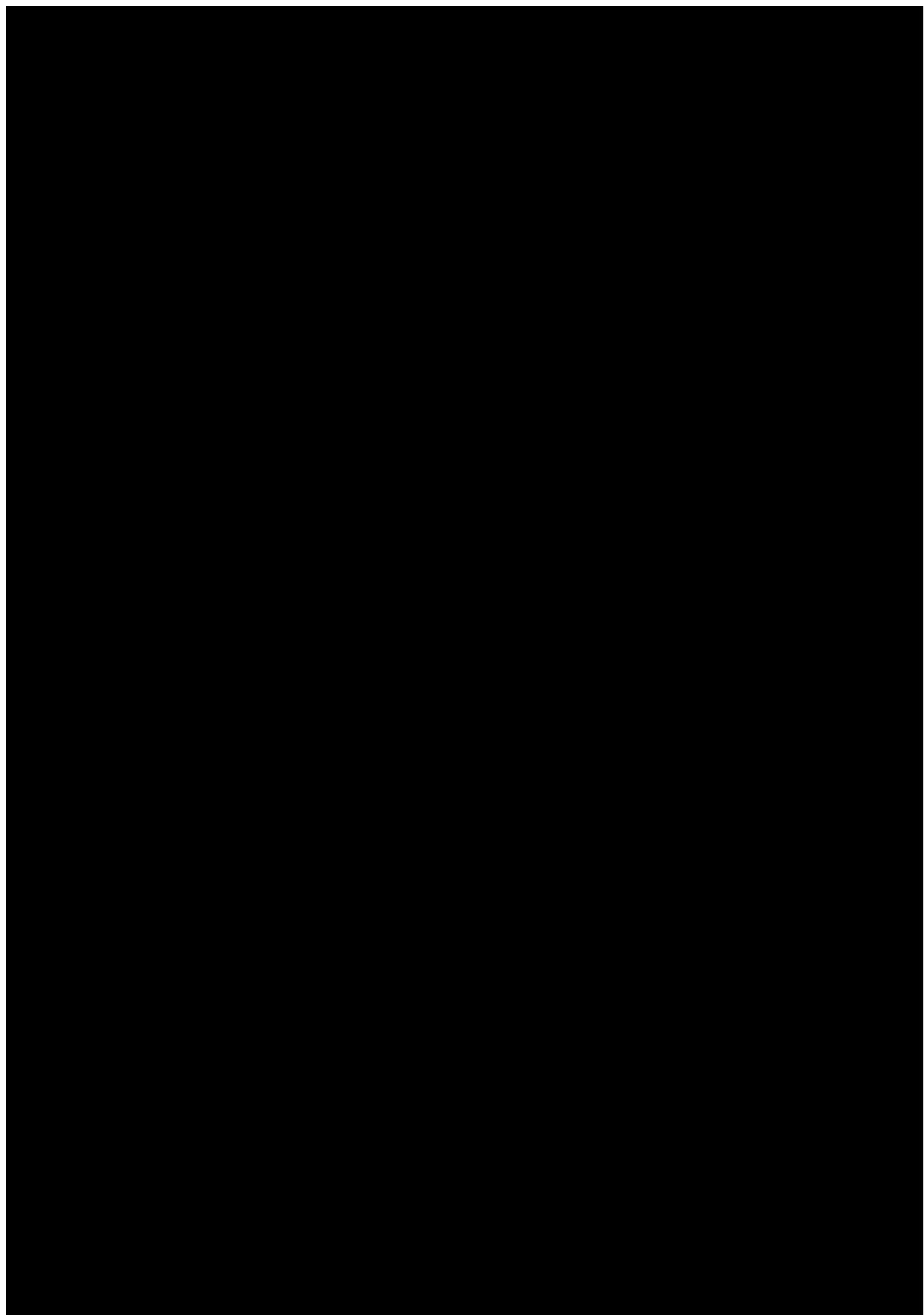




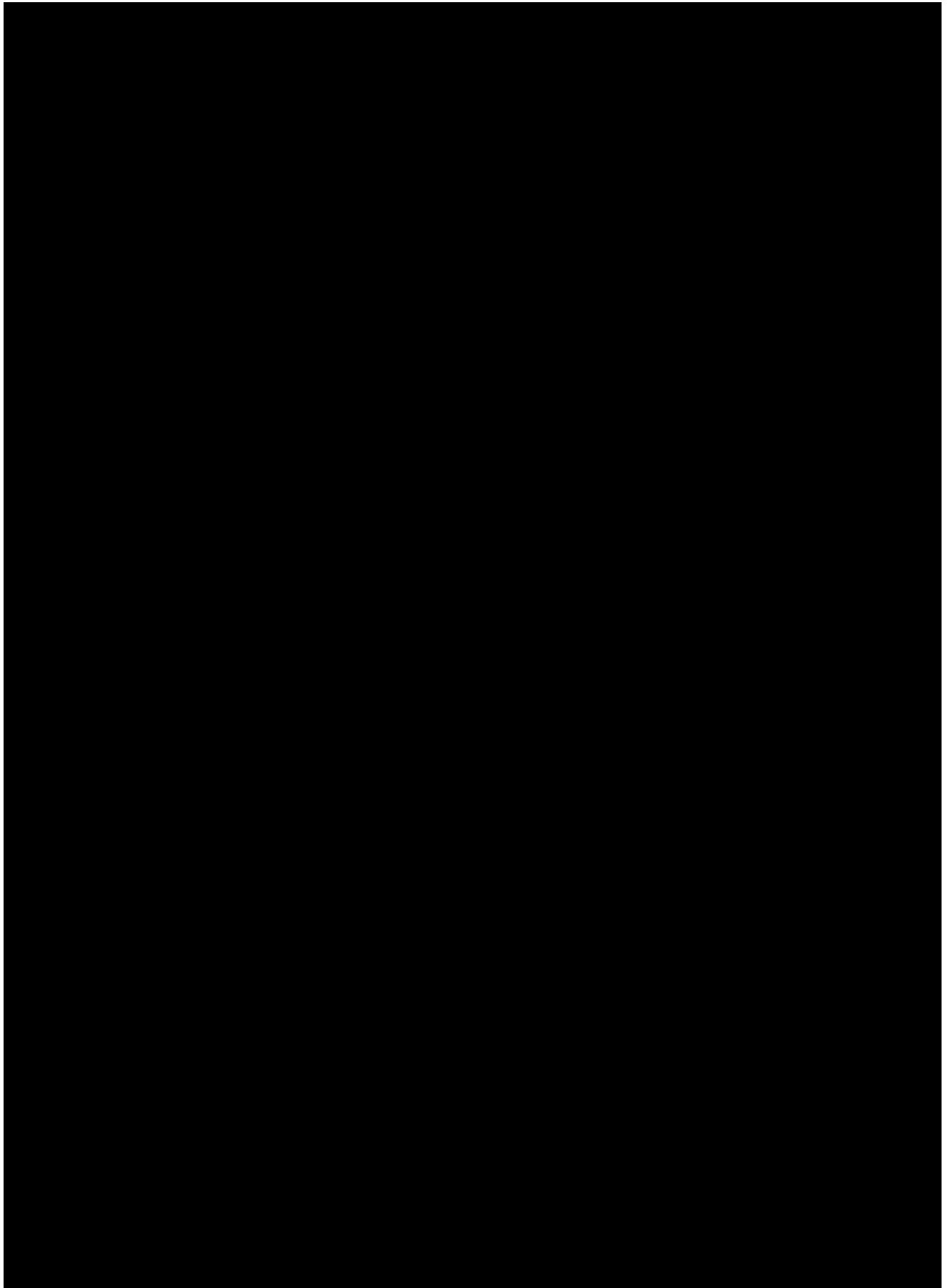






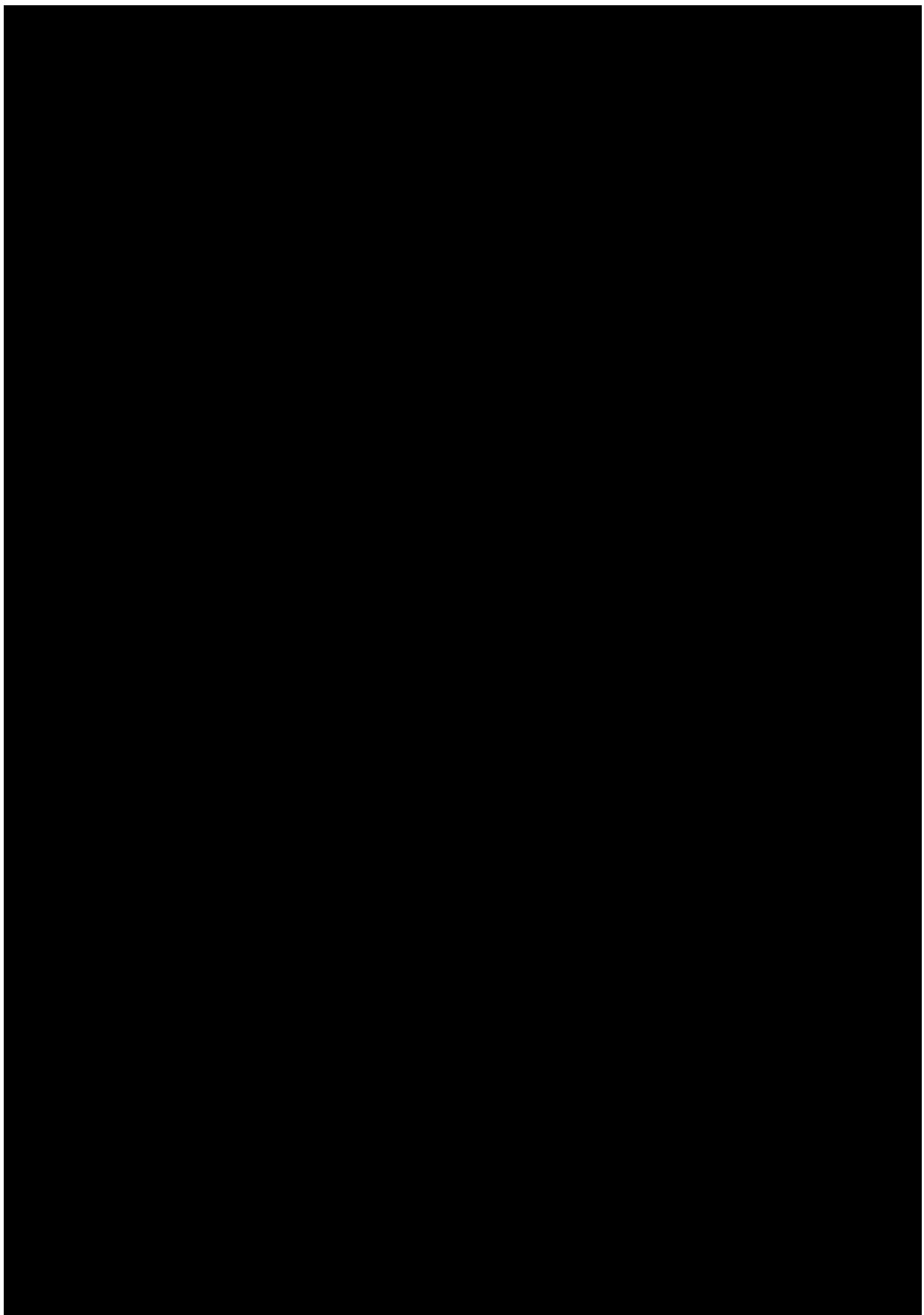


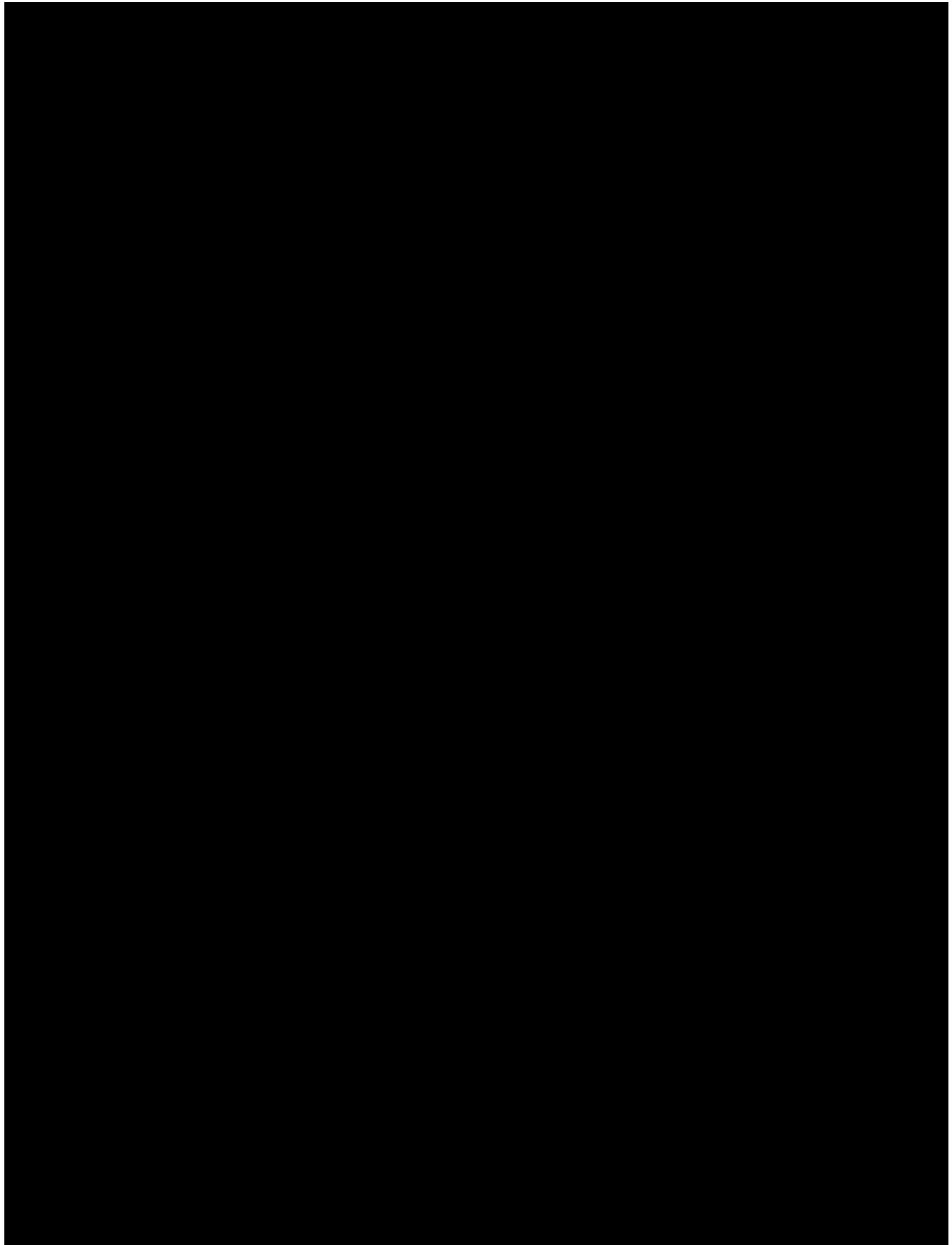




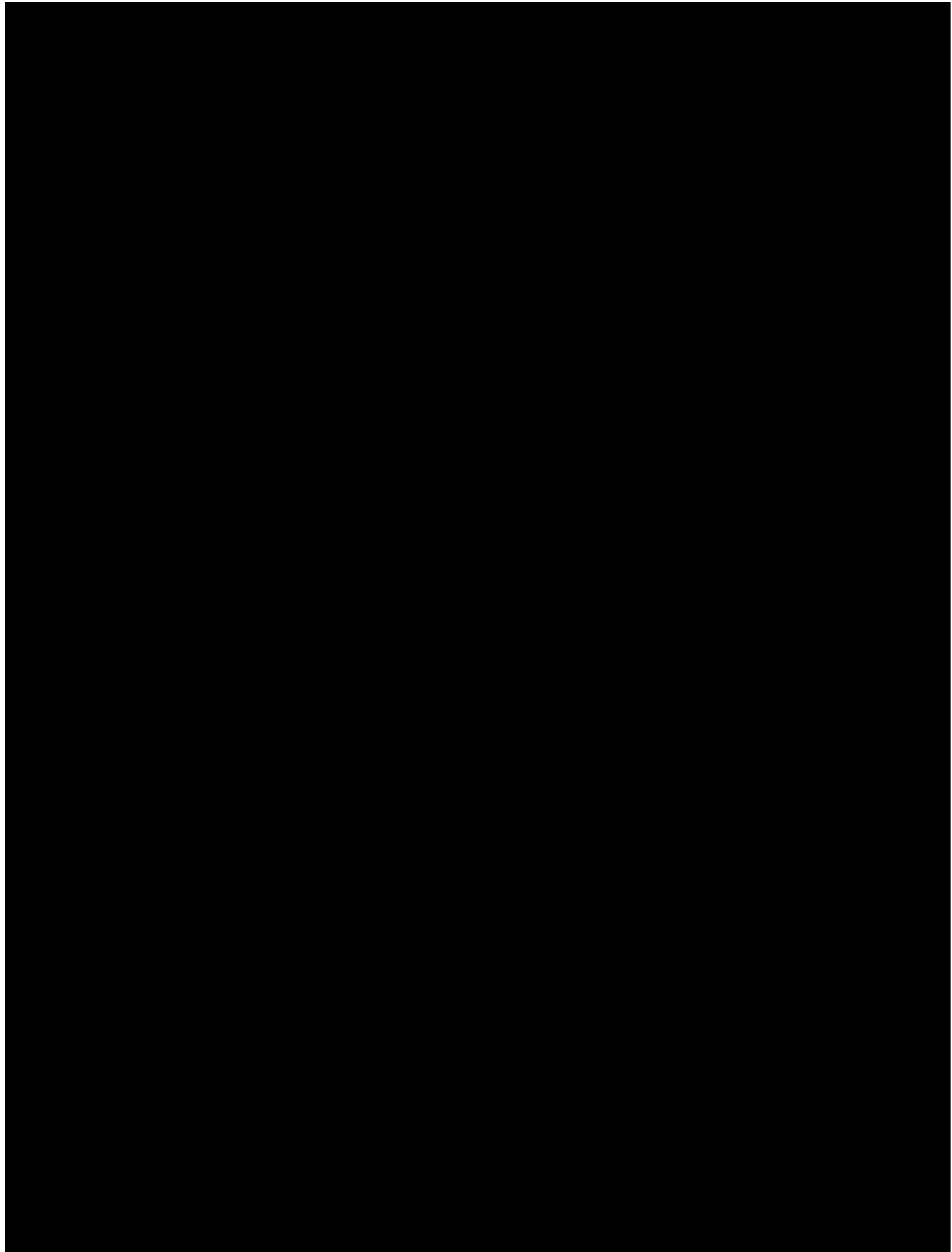
















**SCHEDULE A27. – NOMINATED SUBCONTRACTS**

(Schedule A2 and clause 17.4)

<b>Nominated Subcontractor Work</b>	<b>Nominated Subcontractor</b>	<b>Form of Nominated Subcontract</b>
Lifts and Escalators Work	ThyssenKrupp Elevator Australia Pty Limited (ABN 12 073 056 149)	The template form of L&E DSI Contract included in Schedule F1 ( <i>Electronic files</i> ), to be entered into by the VC Contractor in accordance with section 1 below.
BMCS Work	The contractor engaged by the Principal under a framework contract and notified to the VC Contractor by the Principal.	<p>The template form of BMCS DSI Contract, which must be consistent with:</p> <ul style="list-style-type: none"> <li>(a) the drafting approach in clause 1(h) of Attachment A to this Schedule A27; and</li> <li>(b) the DSI term sheet set out in clause 2 of Attachment A to this Schedule A27, which sets out the key terms proposed for the BMCS DSI Contract.</li> </ul>  <p>A copy of the BMCS DSI Contract will be provided to the VC Contractor following execution of the framework contract by the Principal and the BMCS Contractor, to be entered into by the VC Contractor in accordance with section 2 below.</p>

<b>Nominated Subcontractor Work</b>	<b>Nominated Subcontractor</b>	<b>Form of Nominated Subcontract</b>
Public Art Supply Works	The artist engaged in accordance with the process described in Appendix B1.6 of the SWTC.	The form of contract approved in accordance with the process described in Appendix B1.6 of the SWTC.
Videography, Filming and Editing Services	Rogue Creative Media Pty Ltd (ABN 66 612 700 624)  Project Hero Pty Ltd trading as Arterra Interactive (ABN 56 150 601 611)  Newcreative Pty Ltd trading as the Time Lapse Company (ABN 14 113 887 086)  Cath Bowen Photography Pty Ltd (ABN 76 616 334 340)	The Professional Services Contracts reference PSC No.00013/11009;PSC 0013/10221; PSC No.00013/10454s; PSC No.00013/10882

## 1. Formation of L&E DSI Contract

The VC Contractor acknowledges and agrees that:

- (a) the Principal has entered into a framework contract with the L&E Contractor under which the L&E Contractor is required to make a standing offer to enter into design, supply and install contracts with other contractors of the Principal for the Project, including the VC Contractor, on the terms and conditions set out in the template form of L&E DSI Contract included in Schedule F1 (*Electronic files*);
- (b) in order to accept the offer made by the L&E Contractor under the framework contract, the VC Contractor must issue a notice to the L&E Contractor (**L&E Design Notice**) (with a copy to the Principal's Representative) that is:
  - (i) signed by a representative of the VC Contractor who has full authority to enter into the L&E DSI Contract on behalf of and to bind the VC Contractor; and
  - (ii) in the form of, and contains all information required by, Schedule 1 (*Form of Design Notice*) of the template form of L&E DSI Contract included in Schedule F1 (*Electronic files*), and includes:
    - (A) in item 11 (*Dates for submission of Design Documentation*) of the L&E Design Notice, submission dates that are not less than the minimum time periods after the date of the L&E Design Notice specified in item 11;
    - (B) in item 12 (*Delay Liquidated Damages*) of the L&E Design Notice, delay liquidated damages of [REDACTED]; and
    - (C) in items 13 (*Contract Sum*), 14 (*Support Services Fee*), 15 (*Additional off-site storage costs*) and 16 (*DCP Extension Fee*), the relevant amounts for each item of equipment forming part of the Lifts and Escalators Works which are consistent with the corresponding amounts set out in Schedule 2 (*DSI Contracts – Indicative scope and pricing schedule*) of the framework contract between the Principal and the L&E Contractor, as provided by the Principal to the VC Contractor;
- (c) upon issue of a valid L&E Design Notice to the L&E Contractor in accordance with paragraph 1(b) of this Schedule A27, the VC Contractor and the L&E Contractor will be deemed to have entered into the L&E DSI Contract, incorporating:
  - (i) the terms and conditions set out in the template form of L&E DSI Contract included in Schedule F1 (*Electronic files*); and
  - (ii) the L&E Design Notice issued by the VC Contractor;
- (d) if the L&E Contractor notifies the VC Contractor that it considers a notice purported to be given by the VC Contractor under paragraph 1(b) of this Schedule A27 does not comply with the requirements of paragraph 1(b) of this Schedule A27, the VC Contractor must work directly and fully cooperate with the L&E Contractor in good faith and do everything reasonably necessary to facilitate the issue of a valid L&E Design Notice; and

- (e) the VC Contractor is not entitled to make any Claim against the Principal arising out of or in connection with any delay or failure by the VC Contractor to issue a valid L&E Design Notice to the L&E Contractor.

## 2. Formation of BMCS DSI Contract

The VC Contractor acknowledges and agrees that:

- (a) the Principal will enter into a framework contract with the BMCS Contractor under which the BMCS Contractor will be required to make a standing offer to enter into design, supply and install contracts with other contractors of the Principal for the Project, including the VC Contractor, on the terms and conditions of a template form of BMCS DSI Contract (a copy of which will be provided to the VC Contractor following execution of the framework contract);
- (b) in order to accept the offer made by the BMCS Contractor under the framework contract, the VC Contractor will be required to issue a notice to the BMCS Contractor (**BMCS Design Order**) (with a copy to the Principal's Representative) that is:
  - (i) signed by a representative of the VC Contractor who has full authority to enter into the BMCS DSI Contract on behalf of and to bind the VC Contractor; and
  - (ii) in the form of, and contains all information required by, Schedule 2 (*Form of Design Order*) of the template form of BMCS DSI Contract;
- (c) upon issue of a valid BMCS Design Order to the BMCS Contractor in accordance with paragraph 2(b) of this Schedule A27, the VC Contractor and the BMCS Contractor will be deemed to have entered into the BMCS DSI Contract, incorporating:
  - (i) the terms and conditions set out in the template form of BMCS DSI Contract; and
  - (ii) the BMCS Design Order issued by the VC Contractor;
- (d) if the BMCS Contractor notifies the VC Contractor that it considers a notice purported to be given by the VC Contractor under paragraph 2(b) of this Schedule A27 does not comply with the requirements of paragraph 2(b) of this Schedule A27, the VC Contractor must work directly and fully cooperate with the BMCS Contractor in good faith and do everything reasonably necessary to facilitate the issue of a valid BMCS Design Order; and
- (e) the VC Contractor is not entitled to make any Claim against the Principal arising out of or in connection with any delay or failure by the VC Contractor to issue a valid BMCS Design Order to the BMCS Contractor.

## Attachment A

### DSI Term Sheet

#### 1. GENERAL OVERVIEW AND CONTEXT

- (a) (**Framework Contract**) Various Sydney Metro City & Southwest works packages will include a building management and control system (**BMCS**). In order to ensure a consistent, integrated BMCS across the Sydney Metro City & Southwest project and to achieve a value-for-money outcome, Sydney Metro intends to enter into a "Framework Contract" with a single BMCS contractor (the **BMCS Contractor**).
- (b) (**Approved Purchasers**) Each Sydney Metro City & Southwest contractor engaged by Sydney Metro that requires a BMCS as part of its works (including the VC Contractor) will be nominated as an "**Approved Purchaser**" in the Framework Contract (and Sydney Metro will have the ability to add additional contractors as Approved Purchasers as/when required).
- (c) (**Construction Contracts**) Sydney Metro has entered into, or will enter into, a contract with each of the Approved Purchasers (each a **Construction Contract**), and the BMCS Contractor will be a nominated contractor under each Construction Contract. That is, each Approved Purchaser will be required to procure all BMCS equipment and associated services forming part of its works from the nominated BMCS Contractor. In accordance with each Construction Contract, subcontracting of the BMCS works to the BMCS Contractor will not relieve the relevant Approved Purchaser of, or otherwise affect, any obligation or liability it has to Sydney Metro under the relevant Construction Contract.
- (d) (**Standing offer**) Under the Framework Contract, the BMCS Contractor will be required to provide a standing offer to each Approved Purchaser to design, supply, install, test and commission the BMCS forming part of the Approved Purchaser's works on the terms of the template design, supply and install contract (**DSI Contract**) set out in a schedule to the Framework Contract. The Framework Contract will also set out, among other things:
  - (i) the baseline scope of BMCS equipment and associated services forming part of each Approved Purchaser's works (with each package to be the subject of a separate DSI Contract); and
  - (ii) the agreed pricing in respect of each BMCS package (see row 11 of the table in section 2 below).
- (e) (**Acceptance of offer**) In accordance with the Framework Contract, an Approved Purchaser may, at any time during the term of the Framework Contract, accept the BMCS Contractor's offer and elect to be bound by the terms and conditions of the template DSI Contract by issuing a "**Design Order**" to the BMCS Contractor (with a copy to Sydney Metro's Representative). In order to constitute a valid acceptance of the BMCS Contractor's offer, the Design Order must:
  - (i) be signed by the relevant Approved Purchaser's authorised representative; and
  - (ii) be in the form of the template Design Order set out in the Framework Contract, including:
    - (A) confirmation of:

- (aa) the scope of the BMCS forming part of the relevant BMCS package (including any changes to the baseline scope for that package as set out in the Framework Contract); and
  - (bb) the parts of the SWTC applicable to the BMCS package;
  - (B) the "**Design Price**" for the performance of the BMCS Contractor's design activities under the relevant DSI Contract (as set out in the Framework Contract, subject to adjustment to reflect any changes to the baseline scope on the basis of a pre-agreed schedule of rates);
  - (C) the "**Original Supply and Installation Price**" for the performance of the BMCS Contractor's supply, installation, testing and commissioning activities under the relevant DSI Contract (as set out in the Framework Contract, and which will be subject to adjustment following completion of the design stage to reflect any changes to the baseline scope on the basis of a pre-agreed schedule of rates);
  - (D) the program for completion of each design stage (which must not be less than pre-agreed minimum time frames); and
  - (E) all other variable information required by the template form of Design Order.
- (f) (**Incomplete Design Order**) If the BMCS Contractor considers that a Design Order issued by an Approved Purchaser does not satisfy one or more of the requirements set out in paragraph 1(e) of this Attachment A to Schedule A27, the BMCS Contractor must promptly give notice to the Approved Purchaser (with a copy to Sydney Metro's Representative) providing sufficient details. If the BMCS Contractor gives such notice, the Approved Purchaser will revise and re-issue the Design Order.
- (g) (**Formation of DSI Contracts**) If an Approved Purchaser issues a valid Design Order to the BMCS Contractor, the Approved Purchaser and the BMCS Contractor will be deemed to have entered into a separate, binding DSI contract:
- (i) on the date of the relevant Design Order; and
  - (ii) on the terms of:
    - (A) the template DSI Contract set out in the Framework Contract; and
    - (B) the Design Order issued by the Approved Purchaser.
- A valid Design Order issued by an Approved Purchaser constitutes acceptance of the BMCS Contractor's offer to that Approved Purchaser (as set out in the Framework Contract) and the BMCS Contractor is not required to sign a Design Order in order to create a valid, binding and enforceable contract between the relevant Approved Purchaser and the BMCS Contractor.
- (h) (**Drafting approach**) The general approach taken when developing the template DSI Contract is to pass down the Approved Purchaser's obligations and liabilities under the Construction Contract to which that Approved Purchaser is a party to the extent that they are applicable to the performance of the BMCS Contractor's activities. However, given the comparative size of the works to be carried out by the BMCS Contractor in relation to each Approved Purchaser's works, a full pass down of each Approved Purchaser's obligations and liabilities under the

Construction Contract to which it is a party is not appropriate. In addition, given that the Construction Contracts take various forms and the fact that the template DSI Contract needs to be compatible with each Construction Contract, it is not possible to have a straight pass through of the VC Contractor's obligations and liabilities under this deed.

In addition, thresholds under the DSI Contract which correspond to thresholds under the Construction Contracts will be passed through on a reasonable basis to allow each Approved Purchaser sufficient opportunity to rectify any issues in order to avoid a default arising under the relevant Construction Contract.

## 2. DSI CONTRACT – KEY TERMS

The table below sets out the key terms proposed to be included in the template DSI Contract, which will be set out in a schedule to the Framework Contract and will form the basis upon which the BMCS Contractor offers to supply BMCS equipment and associated services to each Approved Purchaser.

Capitalised terms in the table below which are not otherwise defined in this Attachment A to Schedule A27 have the meaning given to them in the DSI Contract.

Scope	
1. Design	<p>Following the issue of a valid Design Order and the formation of a DSI Contract, the BMCS Contractor will be required to:</p> <ul style="list-style-type: none"> <li>(a) prepare design documentation for the BMCS to be installed in the Approved Purchaser's works and submit such design documentation to the Approved Purchaser's representative for review and comment within the time periods specified in the DSI Contract; and</li> <li>(b) carry out its other design obligations as set out in the DSI Contract, including providing all other technical input and support that the Approved Purchaser requires in order to develop and obtain certification of the design documentation for the Approved Purchaser's works.</li> </ul> <p>If the BMCS Contractor elects to commence carrying out any design activities prior to the issue of a Design Order and formation of a DSI Contract, the BMCS Contractor will do so at its own risk.</p>
2. Supply and Installation Order	<p>Completion of the BMCS Contractor's design activities under a DSI Contract will be a hold point (ie a point beyond which the BMCS Contractor must not proceed without the authorisation or release of the Approved Purchaser). The Approved Purchaser will release this hold point by issuing a notice instructing the BMCS Contractor to commence performance of the supply and installation activities (a <b>Supply and Installation Order</b>). A Supply and Installation Order will be required to set out, among other things:</p> <ul style="list-style-type: none"> <li>(a) confirmation of: <ul style="list-style-type: none"> <li>(i) the scope of the BMCS that the BMCS Contractor will be required to supply, install, test and commission under the relevant DSI Contract; and</li> <li>(ii) the applicable "<b>Supply and Installation Price</b>" (being the Original Supply and Installation Price as set out in the Design Order, as adjusted to reflect any changes to the baseline scope during the design stage on the basis of a pre-agreed schedule of rates);</li> </ul> </li> </ul>

	<p>(b) the Date for Practical Completion (ie successful completion of all BMCS testing and commissioning under the relevant DSI Contract), which must not be less than the a pre-agreed minimum time period following the date that all preconditions for the commencement of BMCS testing and commissioning have been satisfied (eg power on, all other equipment connected to the BMCS has been installed, etc).</p> <p>If the BMCS Contractor elects to commence any supply and installation activities (including manufacture of any BMCS equipment) prior to the Approved Purchaser issuing a Supply and Installation Order, the BMCS Contractor will do so at its own risk.</p>
3. Supply and installation	<p>The Approved Purchaser will be engaged by Sydney Metro as principal contractor in respect of the site where the BMCS is to be installed and will be required to provide the BMCS Contractor with access to those parts of the site reasonably necessary for the BMCS Contractor to carry out its installation, testing and commissioning activities.</p> <p>The BMCS Contractor will be required to:</p> <ul style="list-style-type: none"> <li>(a) supply and install the BMCS at the relevant location in accordance with, and to meet the requirements of, the DSI Contract;</li> <li>(b) liaise with the Approved Purchaser in order to coordinate access to the site (including access routes, unloading of equipment and provision of adequate materials handling and temporary storage areas) as required to carry out its installation, testing and commissioning activities; and</li> <li>(c) comply with the Approved Purchaser's site access and work, health and safety procedures.</li> </ul>
4. Testing and commissioning	<p>Under each DSI Contract, the BMCS Contractor will be required to undertake comprehensive testing and commissioning of the BMCS installed in accordance with that DSI Contract (including System Acceptance Tests (<b>SAT</b>)) in order to demonstrate compliance with the requirements of the DSI Contract.</p>
5. Post Practical Completion Activities	<p>Following Practical Completion of the BMCS works under each DSI Contract, the BMCS Contractor will be required to carry out certain activities, at its cost, including:</p> <ul style="list-style-type: none"> <li>(a) providing support to the Approved Purchaser and the Operator with respect to system-wide Systems Integration and Acceptance Testing (including attendance at tests, drills, Authority inspections etc); and</li> <li>(b) carrying out routine maintenance and inspection of the BMCS works in accordance with the operations and maintenance manuals prepared by the BMCS Contractor until the end of the defects correction period or such earlier time as notified by the Approved Purchaser.</li> </ul>
6. Fitness for purpose	<p>The BMCS Contractor will be required to perform the BMCS Contractor's Activities in accordance with the SWTC, Good Industry Practice (which will be defined in the same manner as in the Construction Contracts) and the relevant DSI Contract and so that BMCS works will:</p> <ul style="list-style-type: none"> <li>(a) upon Practical Completion (ie successful completion of SAT), be fit for their intended purpose; and</li> <li>(b) at all relevant times thereafter be capable of remaining fit for their intended purpose (subject to the relevant Approved Purchaser, Sydney</li> </ul>

	Metro and the Operator (as applicable) operating and maintaining the BMCS works in accordance with the operation and maintenance manuals forming part of the Asset Management Information to be developed by the BMCS Contractor under the DSI Contract).
<b>Time</b>	
7. Time	<p>The BMCS Contractor must:</p> <ul style="list-style-type: none"> <li>(a) commence performance of the supply and installation activities on the date it receives a Supply and Installation Order from the relevant Approved Purchaser;</li> <li>(b) diligently perform and progress its activities with due expedition and without delay;</li> <li>(c) carefully coordinate and interface its activities with the Approved Purchaser's works and other interface works; and</li> <li>(d) not depart from the program prepared by the BMCS Contractor without reasonable cause.</li> </ul> <p>Without limiting the above, the BMCS Contractor will be required to:</p> <ul style="list-style-type: none"> <li>(e) achieve Practical Completion of the BMCS works by the Date for Practical Completion (as set out in the Supply and Installation Order, and which must not be less than the a pre-agreed minimum time period following satisfaction of specified testing and commissioning preconditions); and</li> <li>(f) achieve Completion by the Date for Completion (which will be the relevant date for completion of System Integration and Acceptance Testing at the relevant location).</li> </ul> <p>The BMCS works to be delivered under each DSI Contract may be broken up into separable portions to align with the separable portions of the Approved Purchaser's works under the relevant Construction Contract, or as otherwise determined by the Approved Purchaser.</p>
8. Extensions of time	<p>The Date for Practical Completion will be subject to extensions of time in specified circumstances generally consistent with those contained in a contract of this nature. This will include:</p> <ul style="list-style-type: none"> <li>(a) a breach of the DSI Contract by the relevant Approved Purchaser;</li> <li>(b) an act or omission of the Approved Purchaser not permitted or allowed by the DSI Contract (which, for the avoidance of doubt, does not include an act or omission of an Interface Contractor (as defined in the Construction Contracts));</li> <li>(c) a variation directed by the Approved Purchaser;</li> <li>(d) a direction to suspend the performance of any of the BMCS Contractor's Activities (unless the direction to suspend is as a result of the BMCS Contractor's failure to perform its obligations in accordance with the DSI Contract);</li> <li>(e) a Force Majeure Event (which will be defined in a manner that is no broader in scope than the equivalent definition in the Construction Contracts);</li> <li>(f) a Change in Law (which will be defined in the same manner as in the Construction Contracts) to which the relevant clause of the DSI</li> </ul>

	<p>Contract applies;</p> <p>(g) where the Approved Purchaser delays a test to be conducted by the BMCS Contractor (provided the BMCS Contractor has given reasonable written notice to the Approved Purchaser of the time, date and place of the test);</p> <p>(h) testing directed by the Approved Purchaser (in addition to the Testing required by the DSI Contract) where the material or work tested is found to comply with the DSI Contract; and</p> <p>(i) a failure by the Approved Purchaser to provide access to the site in accordance with the DSI Contract.</p> <p>Any additional entitlement to claim an extension of time that may be agreed by Sydney Metro and the BMCS Contractor as part of the BMCS procurement process will be not inconsistent with the VC Contractor's entitlement to claim an extension of time under this deed.</p> <p>The Approved Purchaser will not have any liability to the BMCS Contractor for additional costs arising out of or in any way in connection with any delay or disruption for which the BMCS Contractor is entitled to claim an extension of time.</p>
9. Delay Liquidated Damages	<p>Subject to the cap set out below and without prejudice to the Approved Purchaser's rights in relation to default and termination, if the BMCS Contractor fails to achieve Practical Completion by the Date for Practical Completion, the BMCS Contractor will be indebted to the Approved Purchaser for delay liquidated damages. The daily rate of delay liquidated damages applicable under each DSI Contract will be pre-agreed by Sydney Metro and the BMCS Contractor as part of the BMCS procurement process and set out in the DSI Contract.</p> <p>The BMCS Contractor's liability for delay liquidated damages under each DSI Contract will be capped at [REDACTED] of the relevant Contract Sum (as defined in row 11 below), as adjusted from time to time (with this cap being included in the general liability cap, as set out in section 16 below).</p>
10. Suspension	<p>The BMCS Contractor must not suspend the progress of the whole or any part of its activities under the DSI Contract except where so directed by the Approved Purchaser (in its discretion) or allowed by law. The Approved Purchaser will have no liability to the BMCS Contractor to the extent that the reason for a suspension directed by the Approved Purchaser was caused or contributed to by an act, default, or omission of the BMCS Contractor.</p>

<b>Financial</b>	
11. Pricing Structure	<p>The Approved Purchasers (not Sydney Metro) will be responsible for making all payments to the BMCS Contractor in respect of the design, supply and installation of BMCS under each respective DSI Contract.</p> <p>The "<b>Contract Sum</b>" payable to the BMCS Contractor under each DSI Contract will be the aggregate of:</p> <ul style="list-style-type: none"> <li>(a) a fixed lump sum "<b>Design Price</b>" for the performance of all design activities required under the DSI Contract (based on the baseline scope for that BMCS package set out in the Framework Contract); and</li> <li>(b) a fixed lump sum "<b>Supply and Installation Price</b>" for the supply, installation, testing and commissioning of the BMCS forming part of the relevant package (based on the baseline scope for that BMCS package set out in the Framework Contract),</li> </ul> <p>each of which will be subject to adjustment from time to time (including on account of any variations).</p> <p>Other than as a result of a variation (including any change to the baseline scope set out in the Framework Contract), the Design Price and Supply and Installation Price bid for each BMCS package will not be subject to escalation or indexation following execution of the Framework Contract.</p>
12. Unconditional undertakings	<p>The BMCS Contractor will be required to provide the Approved Purchaser with two unconditional undertakings which in aggregate are equal to [REDACTED] of the original Contract Sum (see definition in row 11 above) within a specified period after receiving the Design Order.</p> <p>Subject to the Approved Purchaser's right to have recourse to the unconditional undertakings, the Approved Purchaser will be required to:</p> <ul style="list-style-type: none"> <li>(a) within a specified time period after the Date of Practical Completion (of the last Portion, where Portions are specified), release so much of the security so that it holds an unconditional undertaking for [REDACTED] of the Contract Sum; and</li> <li>(b) release the balance of the security within a specified time period after expiry of the defects correction period.</li> </ul>
<b>Liability</b>	
13. Responsibility for care of the BMCS	<p>The BMCS Contractor will be responsible for the care of, and will bear the risk of and indemnify the Approved Purchaser against any loss of or damage to, the BMCS:</p> <ul style="list-style-type: none"> <li>(a) until Practical Completion is achieved; and</li> <li>(b) after Practical Completion is achieved, to the extent that the loss or damage arises from an act or omission of the BMCS Contractor during the defects correction period or from an event which occurred prior to Practical Completion,</li> </ul> <p>except to the extent that such loss or damage arises from specified "Excepted Risks" (which will be defined in the same manner as in the Construction Contracts).</p> <p>The Approved Purchaser will bear the risk of loss or damage to the BMCS arising from an Excepted Risk.</p>

14. Reinstatement	Unless otherwise directed by the Approved Purchaser's representative, the BMCS Contractor will be required to promptly replace or otherwise make good any loss or damage for which it is responsible, at its own cost.
15. BMCS Contractor's indemnity	<p>The BMCS Contractor will be required to indemnify the Approved Purchaser against:</p> <p>(a) any loss incurred or suffered by the Approved Purchaser in respect of:</p> <ul style="list-style-type: none"> <li>(i) damage to the Approved Purchaser's property; and</li> <li>(ii) any claims by or liability to a third party in respect of illness, injury or death of any person or loss of or damage to property, caused by, arising out of, or in any way in connection with, the BMCS Contractor's Activities under the relevant DSI Contract; and</li> </ul> <p>(b) any claims by or liability to a third party or loss suffered or incurred by the Approved Purchaser arising out of, or in any way in connection with:</p> <ul style="list-style-type: none"> <li>(i) any fraudulent act or omission by the BMCS Contractor or any of its associates; and</li> <li>(ii) any claim in respect of a breach of intellectual property rights.</li> </ul> <p>The BMCS Contractor's liability to indemnify the Approved Purchaser will be reduced to the extent that a breach or negligent act or omission of the Approved Purchaser contributed to the relevant liability, claim or loss.</p>
16. Limitation/exclusion of liability	[REDACTED]
<b>Other</b>	
17. Defects	<p>The BMCS will have a defects correction period, during which the BMCS Contractor must promptly rectify any defects in the BMCS at its cost.</p> <p>The defects correction period in respect of the BMCS installed under each DSI Contract will commence on the relevant Date of Practical Completion and expire on the later of:</p> <ul style="list-style-type: none"> <li>(a) [REDACTED]; and</li> <li>(b) in respect of any rectification work, 12 months after the date of completion of the rectification work for each defect.</li> </ul>

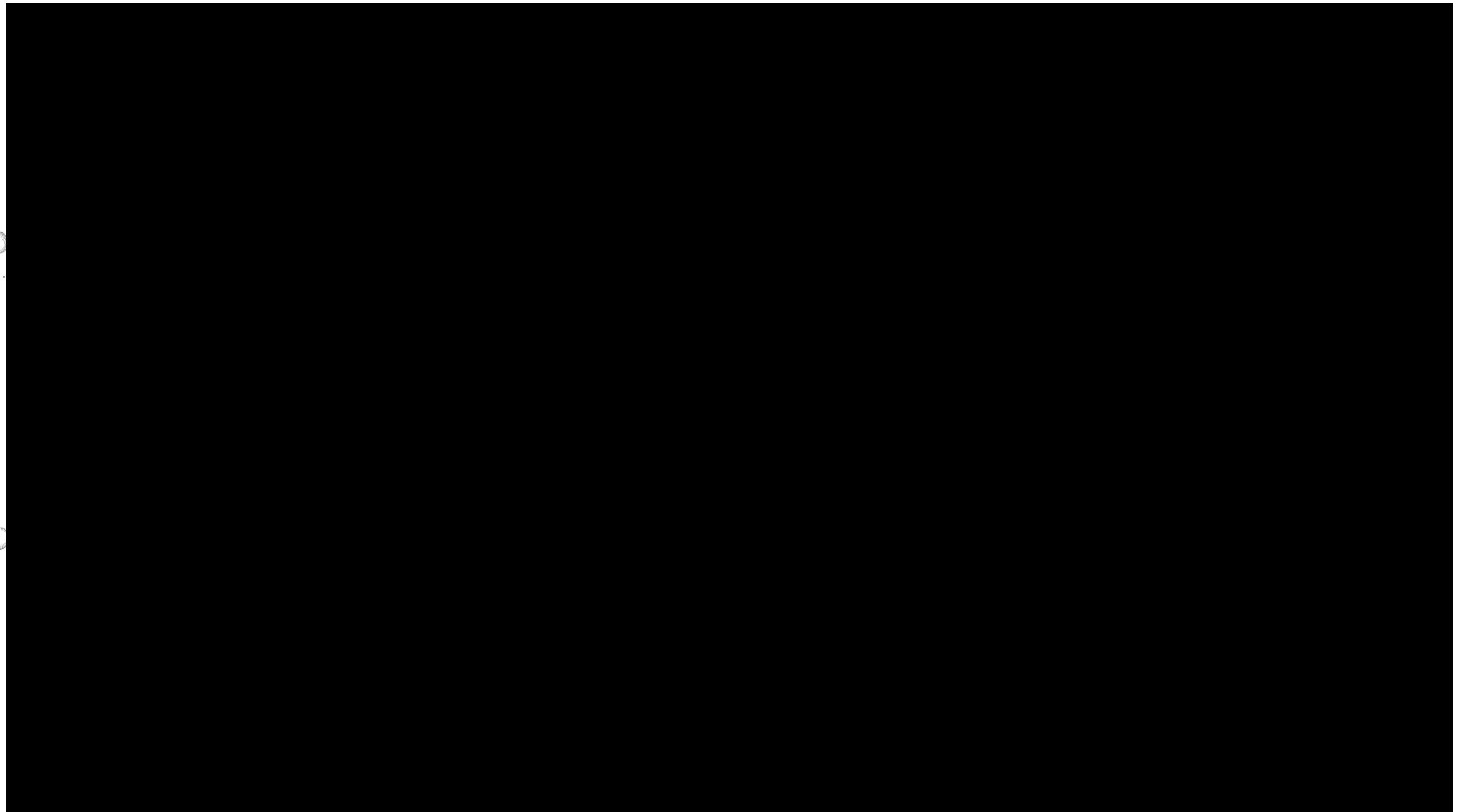
18. Default and Termination	<p>The default and termination events included in the DSI Contract will be typical for a project and works of this nature, and will include:</p> <ul style="list-style-type: none"> <li>(a) insolvency events;</li> <li>(b) termination for breach after a show cause process (with the events of default under the DSI Contract to generally mirror the events of default under the Construction Contracts, to the extent applicable/appropriate); and</li> <li>(c) termination for termination of the corresponding Construction Contract.</li> </ul>
19. Insurance	<p>Sydney Metro will effect and maintain contract works insurance and public and products liability insurance on a Project-wide basis.</p> <p>The BMCS Contractor will be required to effect and maintain:</p> <ul style="list-style-type: none"> <li>(i) professional indemnity insurance;</li> <li>(ii) workers compensation insurance; and</li> <li>(iii) motor vehicle insurance.</li> </ul> <p>The BMCS Contractor will be required to bear the cost of any excess or deductible payable in respect of any insurance regardless of whether it has been effected by Sydney Metro, an Approved Purchaser or the BMCS Contractor.</p>
20. Intellectual Property	<p>The BMCS Contractor will be required to assign to the Approved Purchaser all right, title and interest in, including all Intellectual Property Rights in or to, documentation prepared or created by or on behalf of the BMCS Contractor for or in connection with the relevant DSI Contract (including all design documentation).</p> <p>To the extent that any Intellectual Property Rights are not assigned to the Approved Purchaser in accordance with previous paragraph, the BMCS Contractor will be required to grant, and procure from any applicable third party the grant of, an irrevocable, perpetual, non-exclusive, royalty free, fully assignable licence (including the right to sub-lisence) to use such Intellectual Property Rights:</p> <ul style="list-style-type: none"> <li>(a) for the purposes of completing the construction, commissioning and testing of, using, operating, duplicating, extending, maintaining, upgrading, altering or otherwise dealing with the whole or any part of the BMCS;</li> <li>(b) for any purpose associated with further development of the relevant site; and</li> <li>(c) for any other purpose connected with transport projects in New South Wales.</li> </ul>
21. Interfaces	<p>In carrying out the BMCS Contractor's Activities, the BMCS Contractor will be required to interface with the relevant Approved Purchaser and Other Contractors. The BMCS Contractor will be required to:</p> <ul style="list-style-type: none"> <li>(a) fully cooperate with the Approved Purchaser and Other Contractors, and do everything reasonably necessary to: <ul style="list-style-type: none"> <li>(i) facilitate the execution of work by the Approved Purchaser and Other Contractors, including providing such assistance as may be reasonably required by those parties; and</li> </ul> </li> </ul>

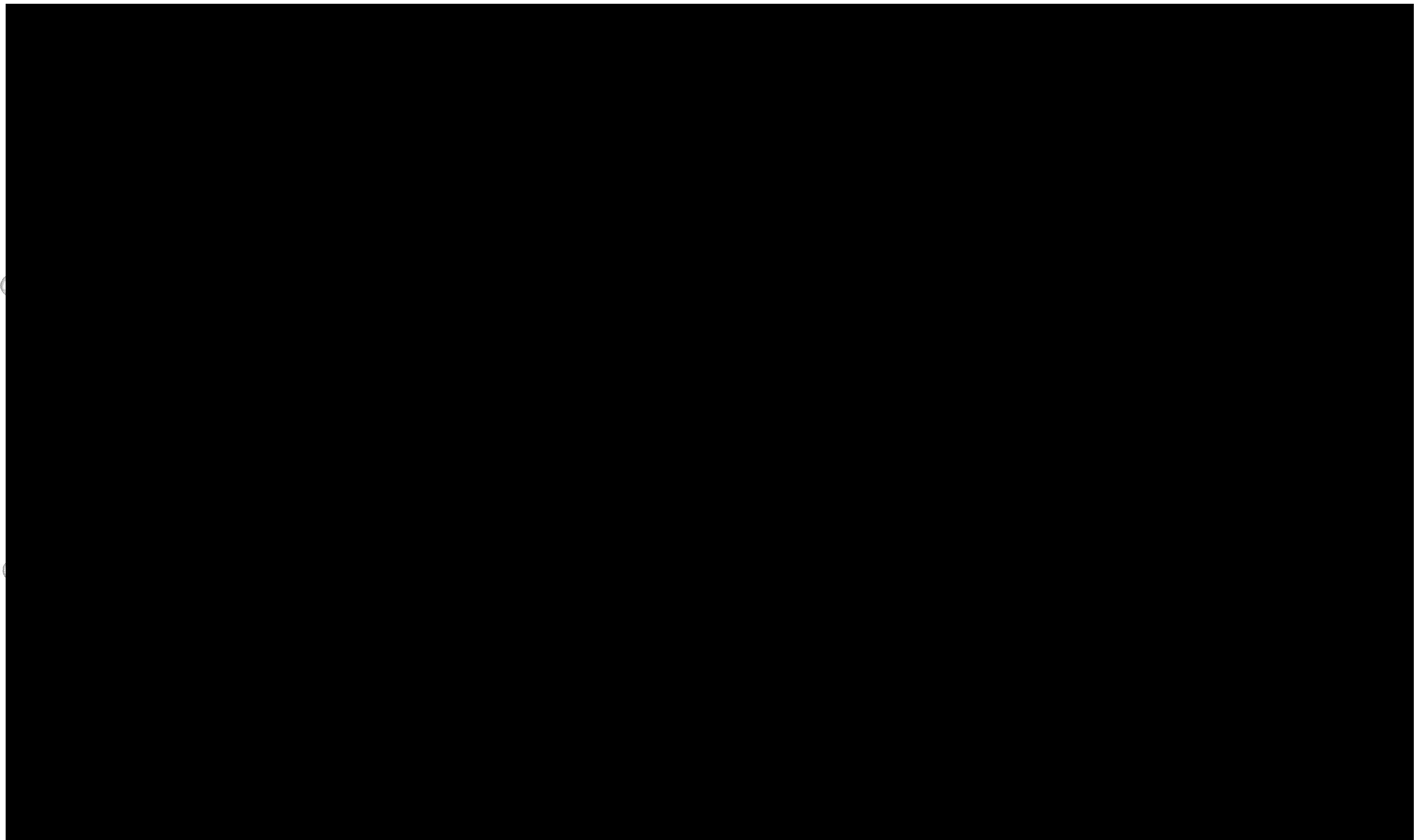
	<p>(ii) ensure the effective coordination of the construction of their respective works; and</p> <p>(b) perform the supply and installation activities so as to minimise any interference with or disruption or delay to the Approved Purchaser's and Other Contractors' works.</p>
22. Governing Law	The DSI Contract will be governed by the law in force in New South Wales.
23. Other general provisions	The DSI Contract will contain the usual standard clauses found in a contract of this nature, including regarding compliance with laws and approvals, variations, dispute resolution, restrictions on assignment and confidentiality.

**SCHEDULE A28. – INFORMATION DOCUMENTS**

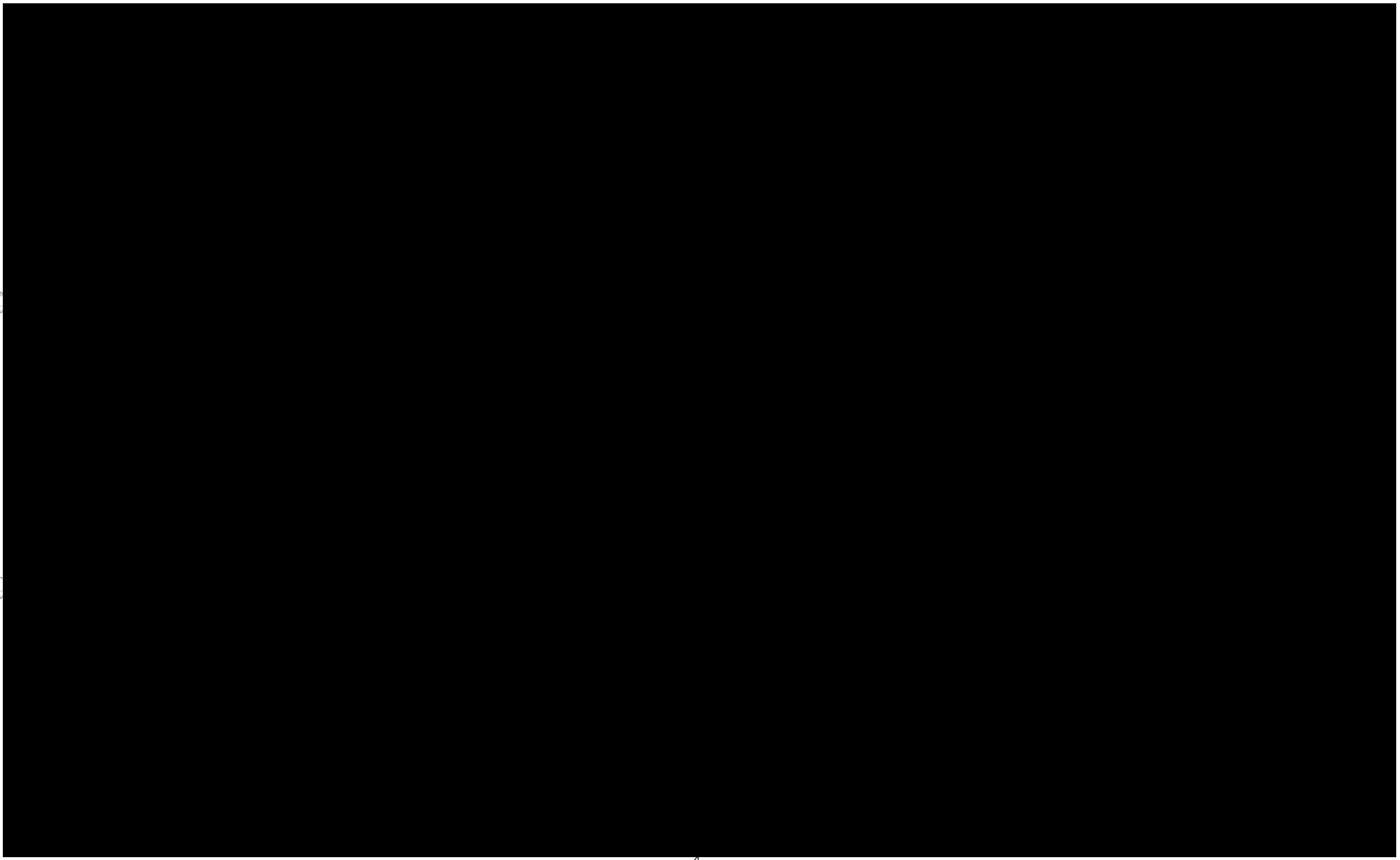
(Schedule A2 and clause 10.2)

Victoria Cross Integrated Station Development  
Information Document Register

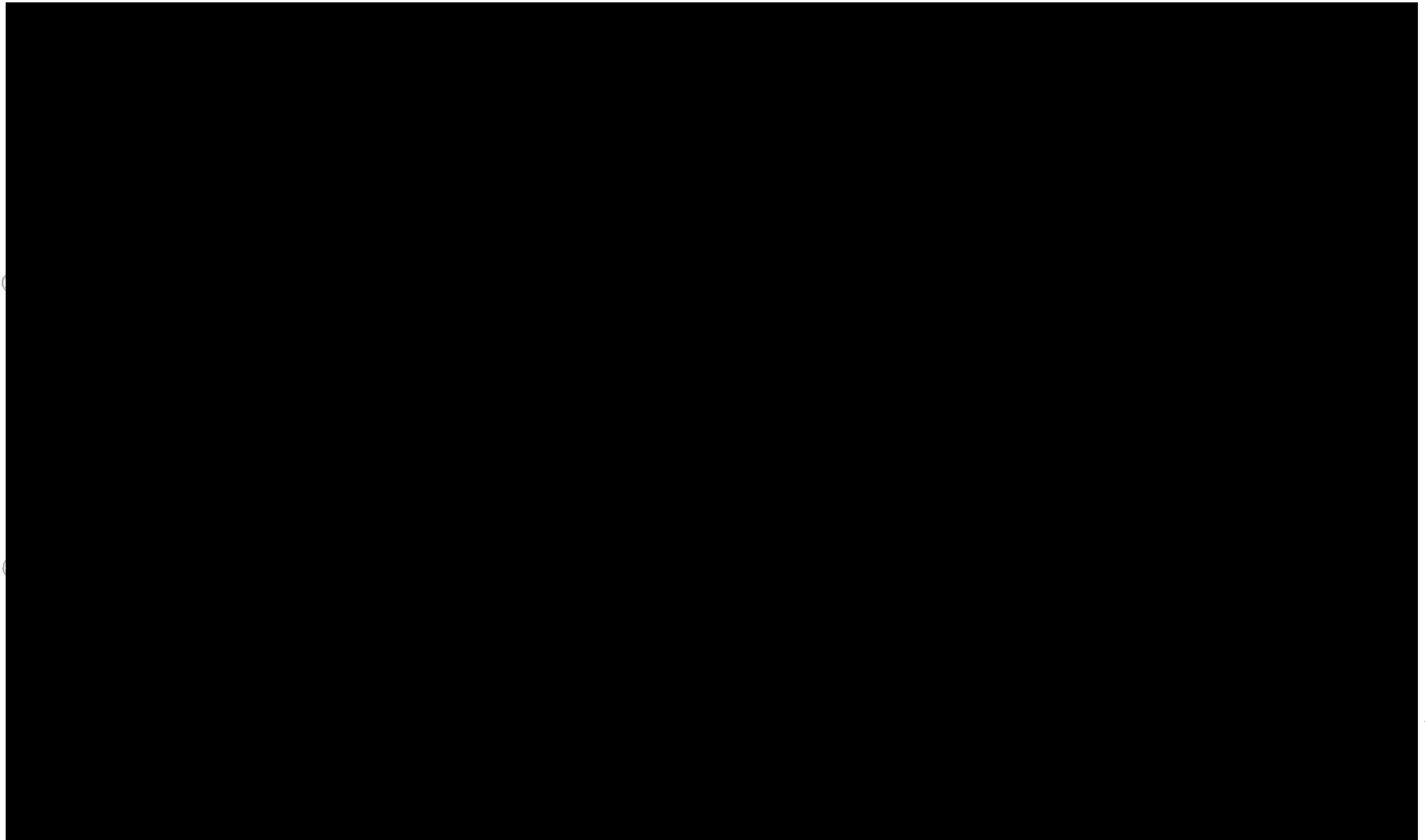






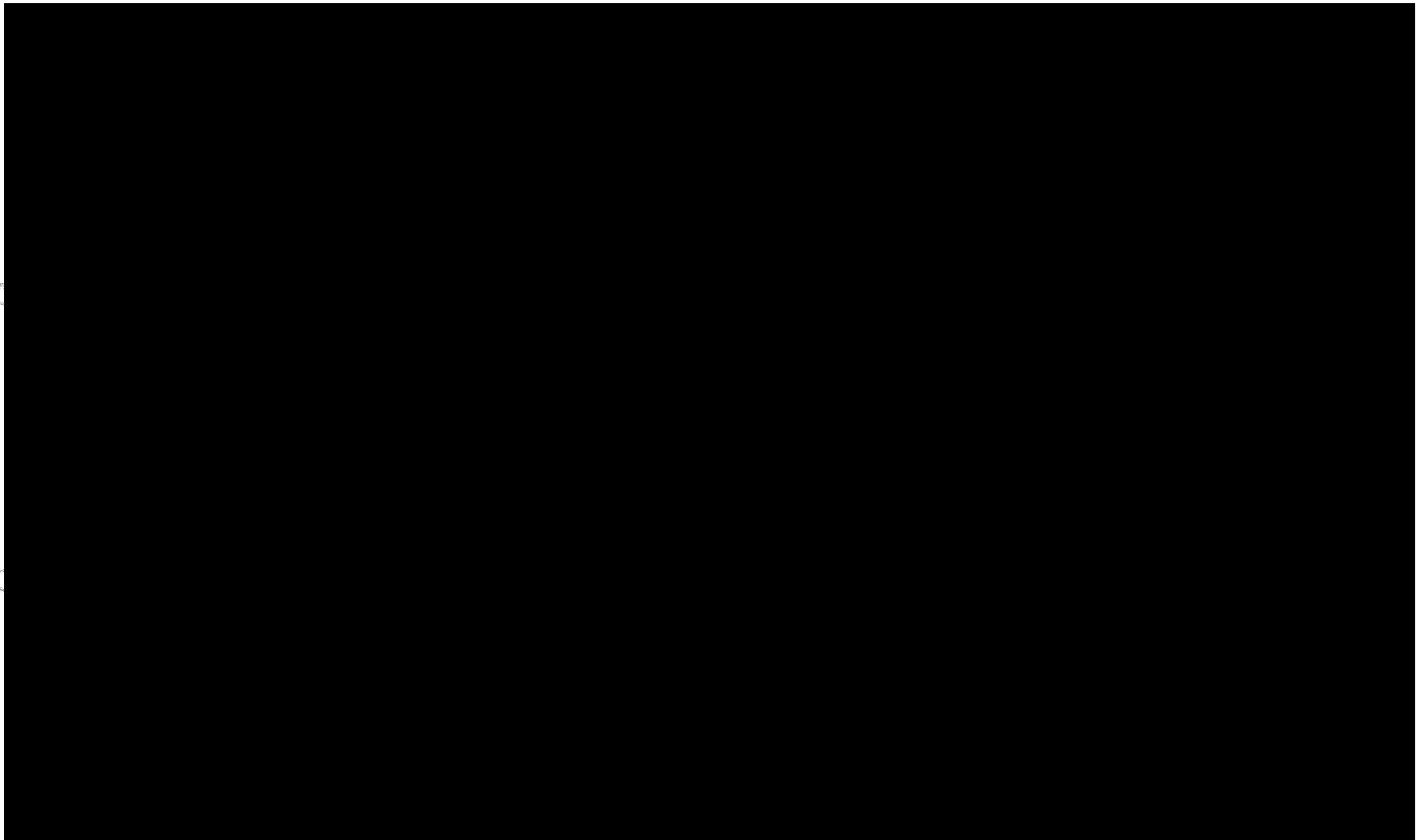


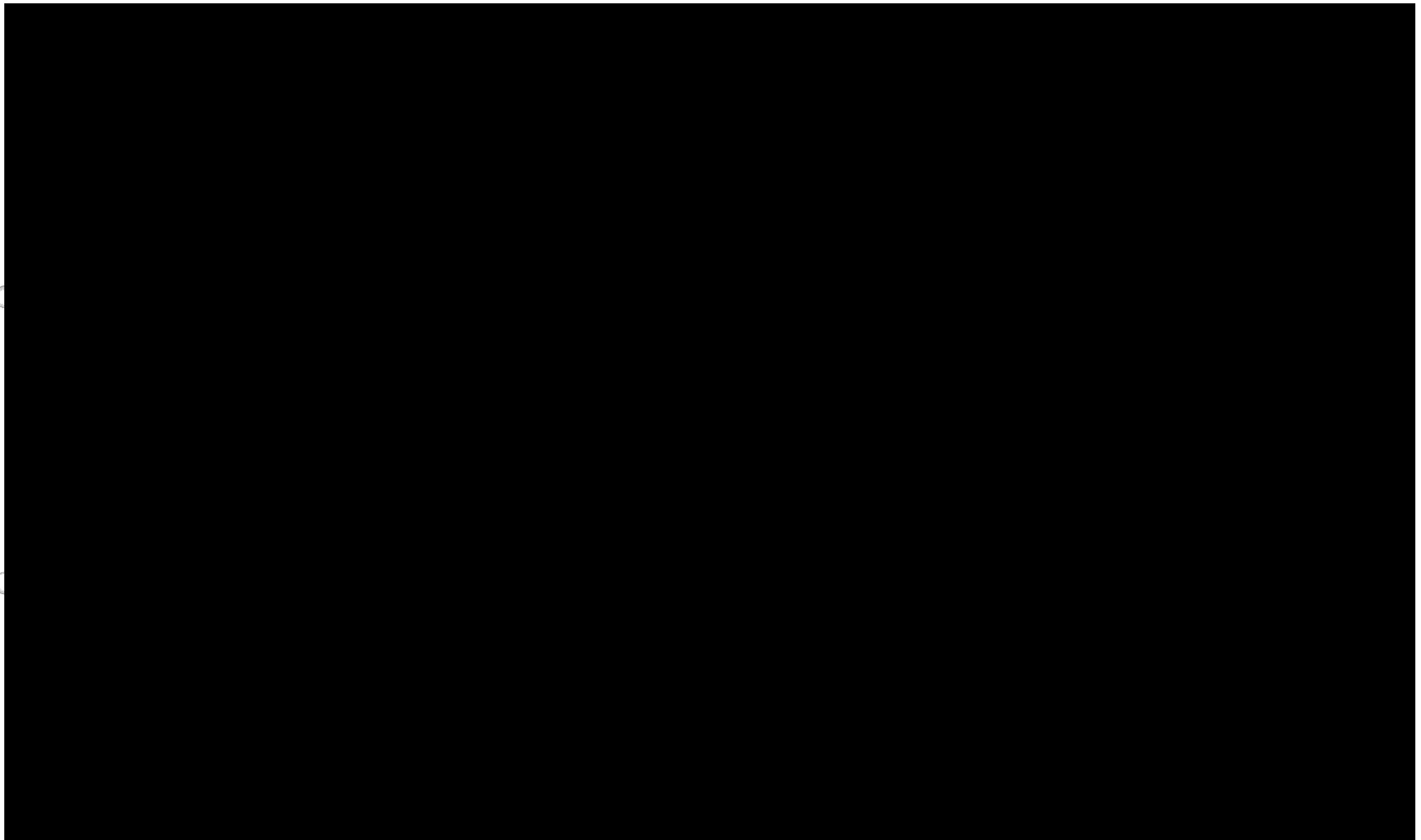






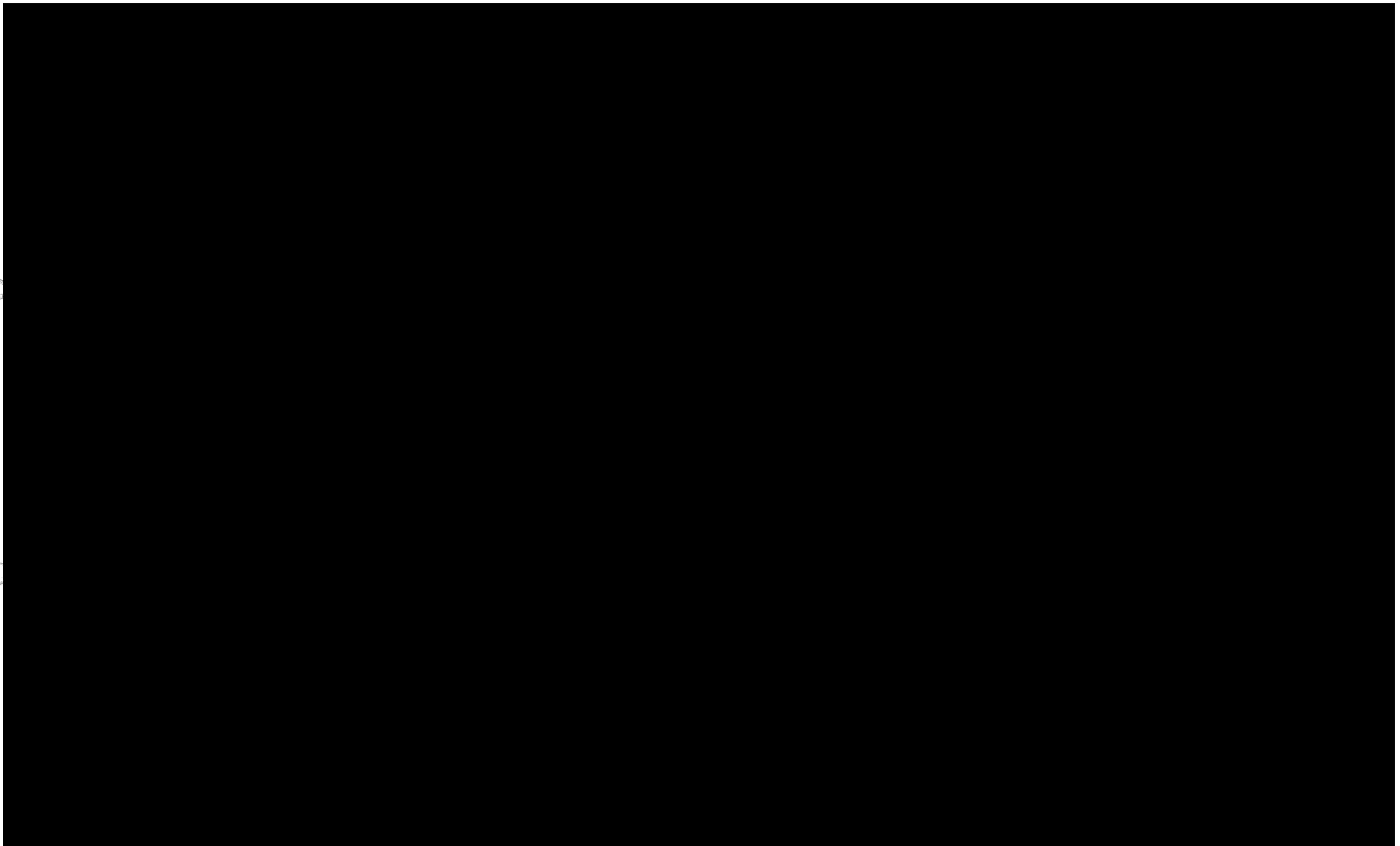


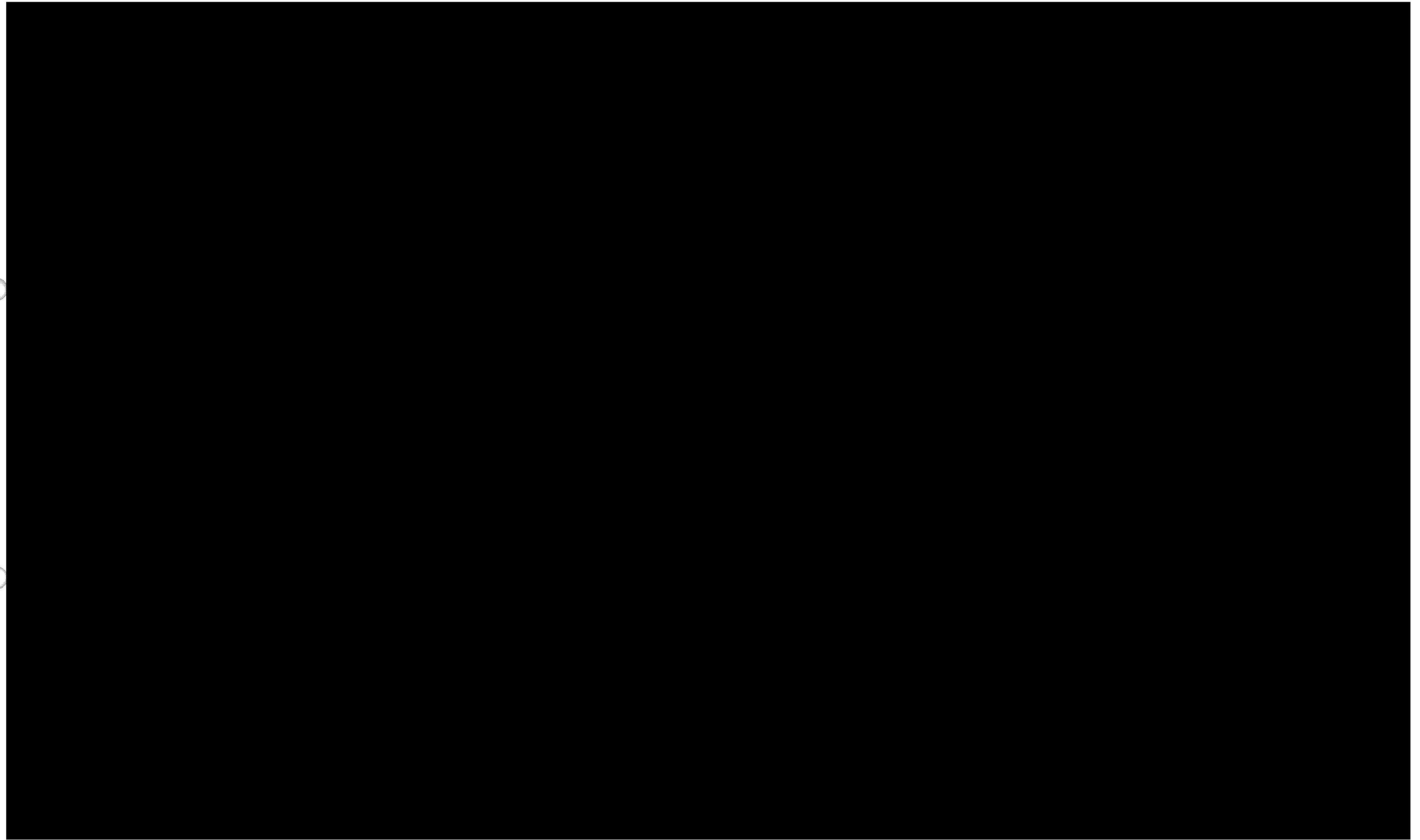


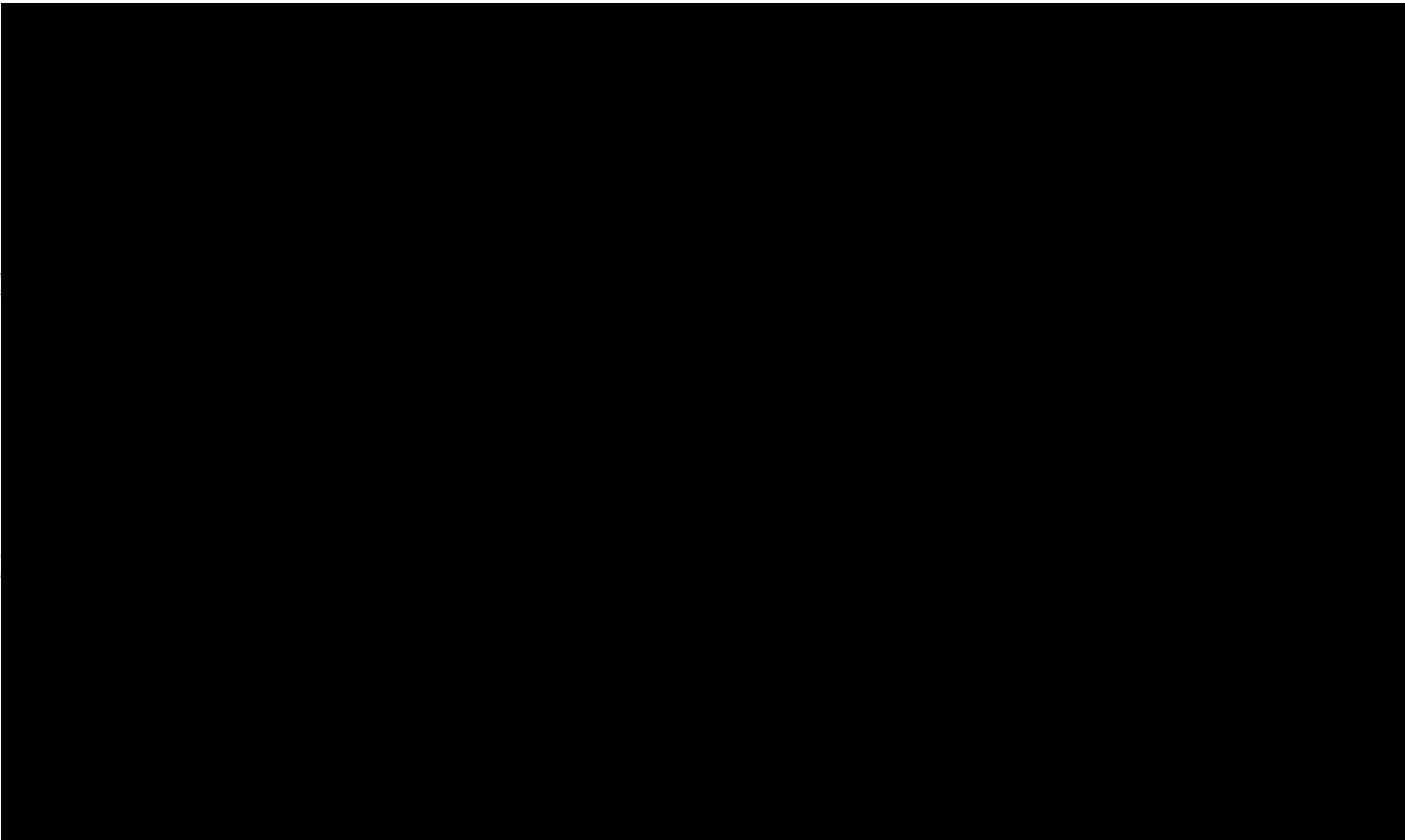


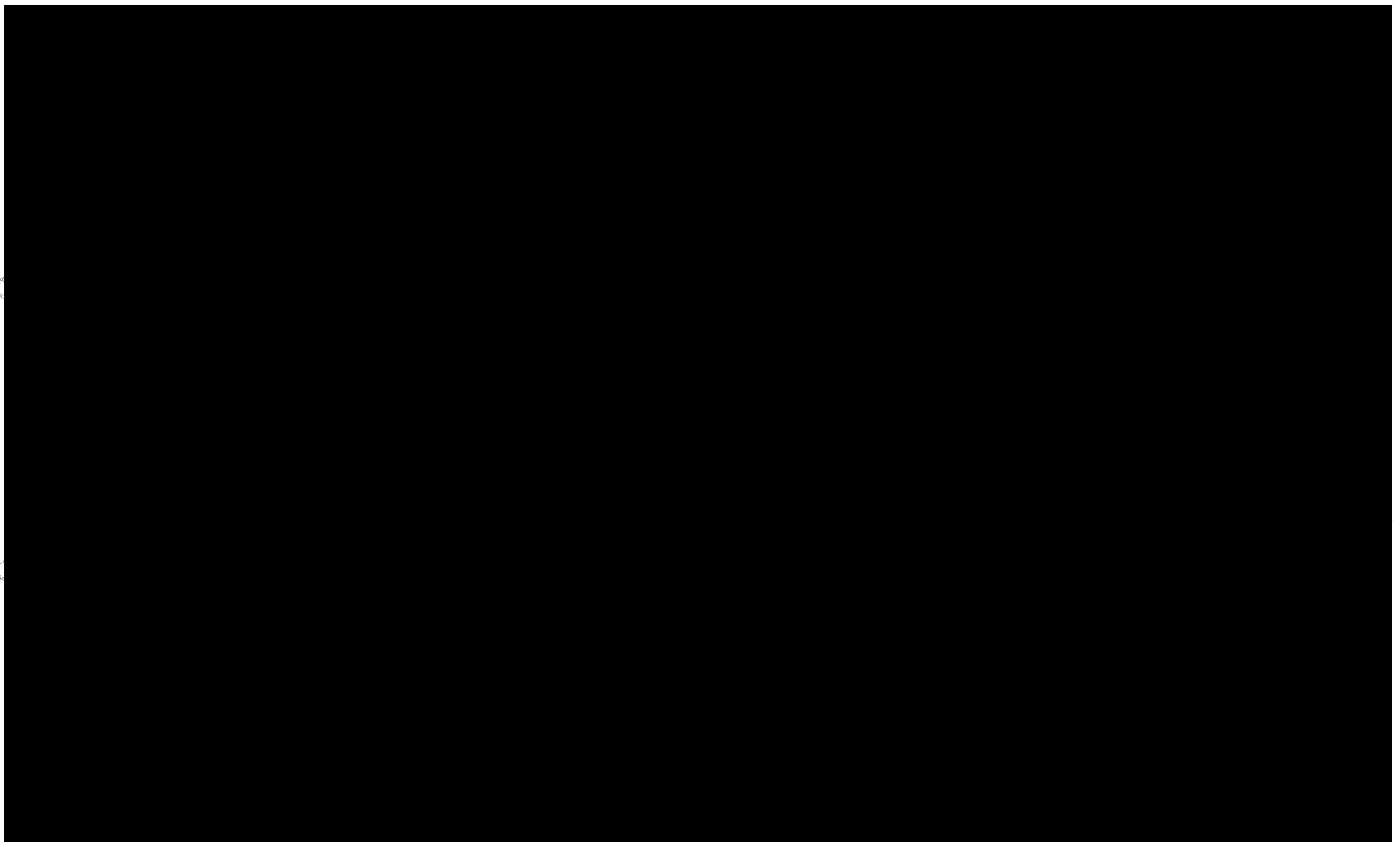




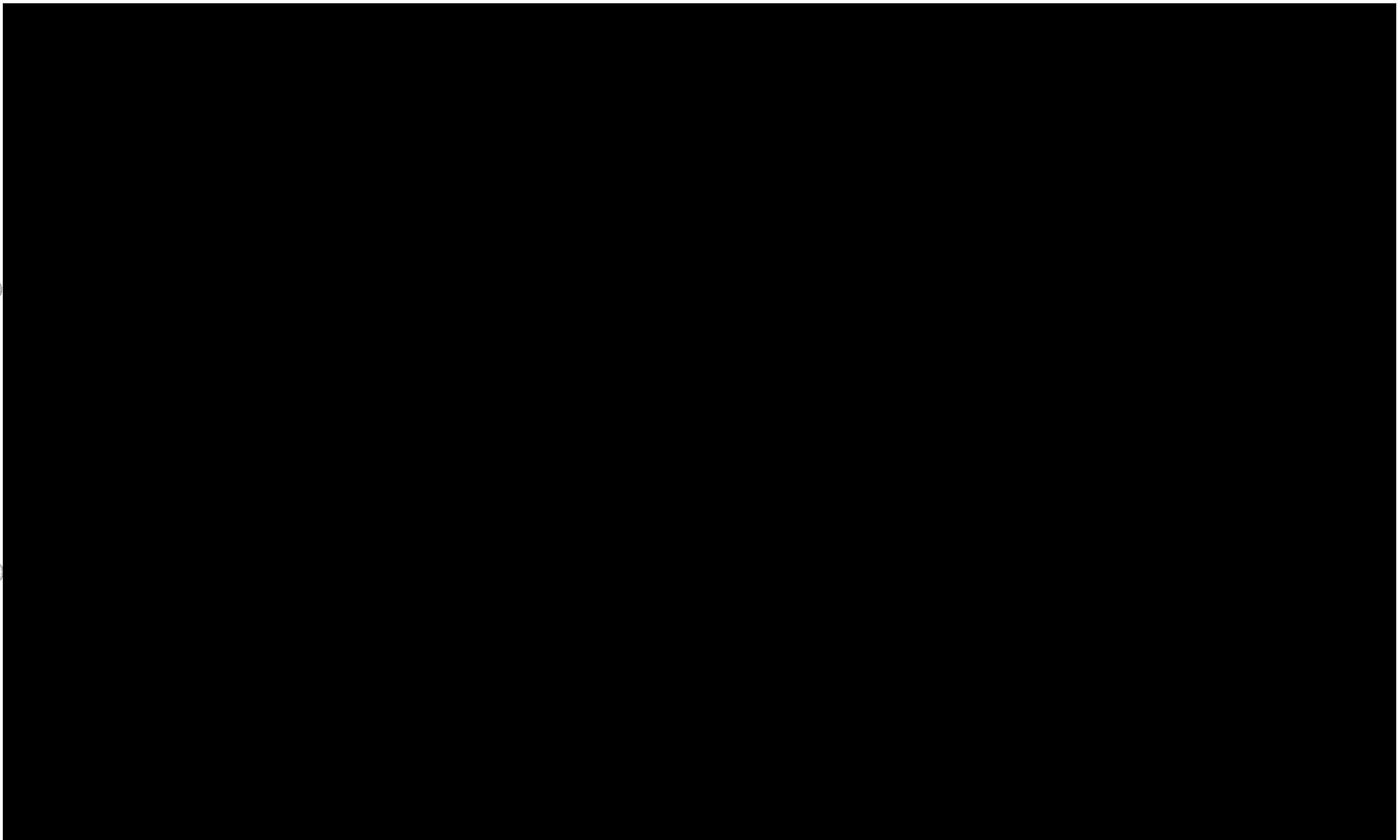


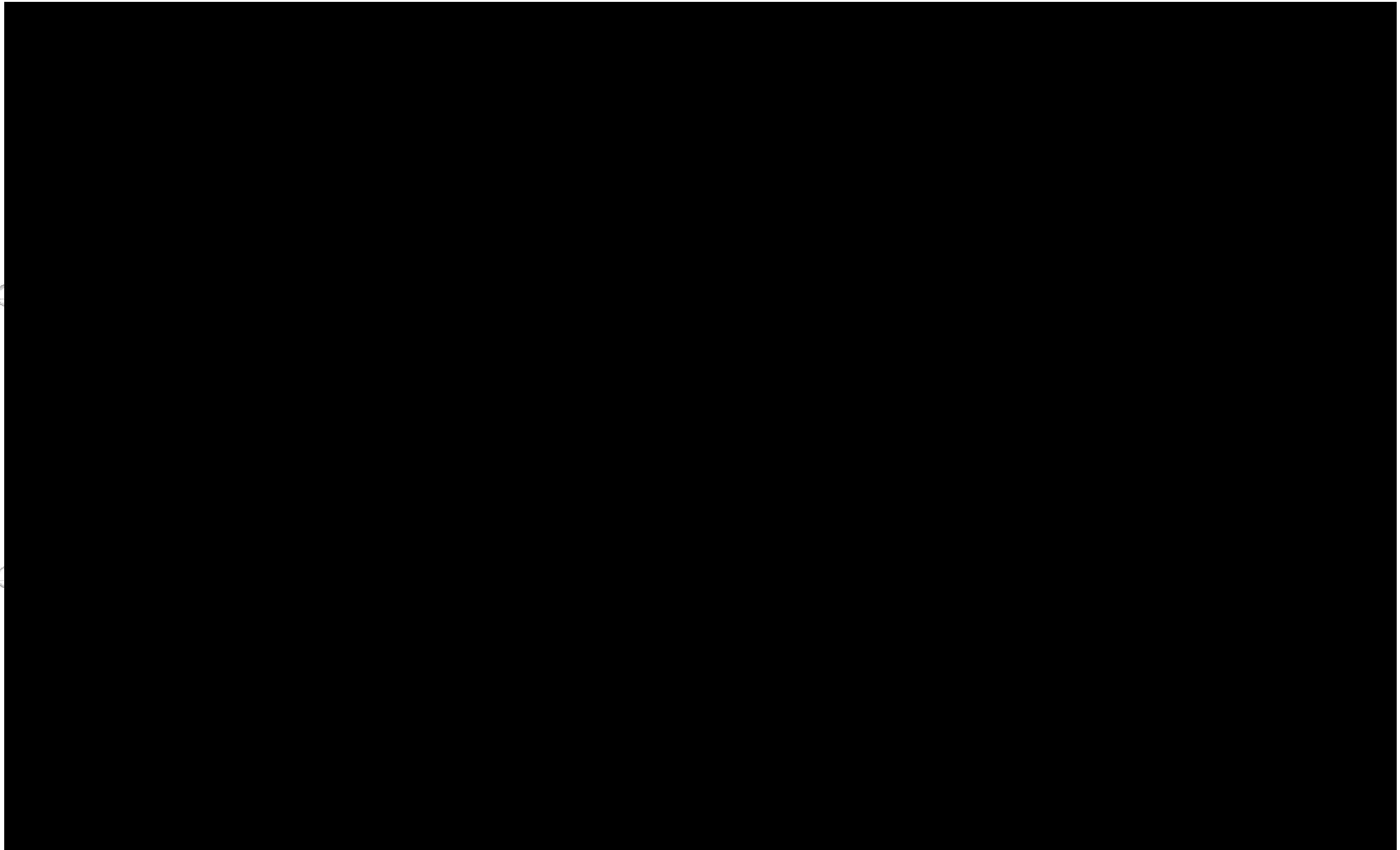








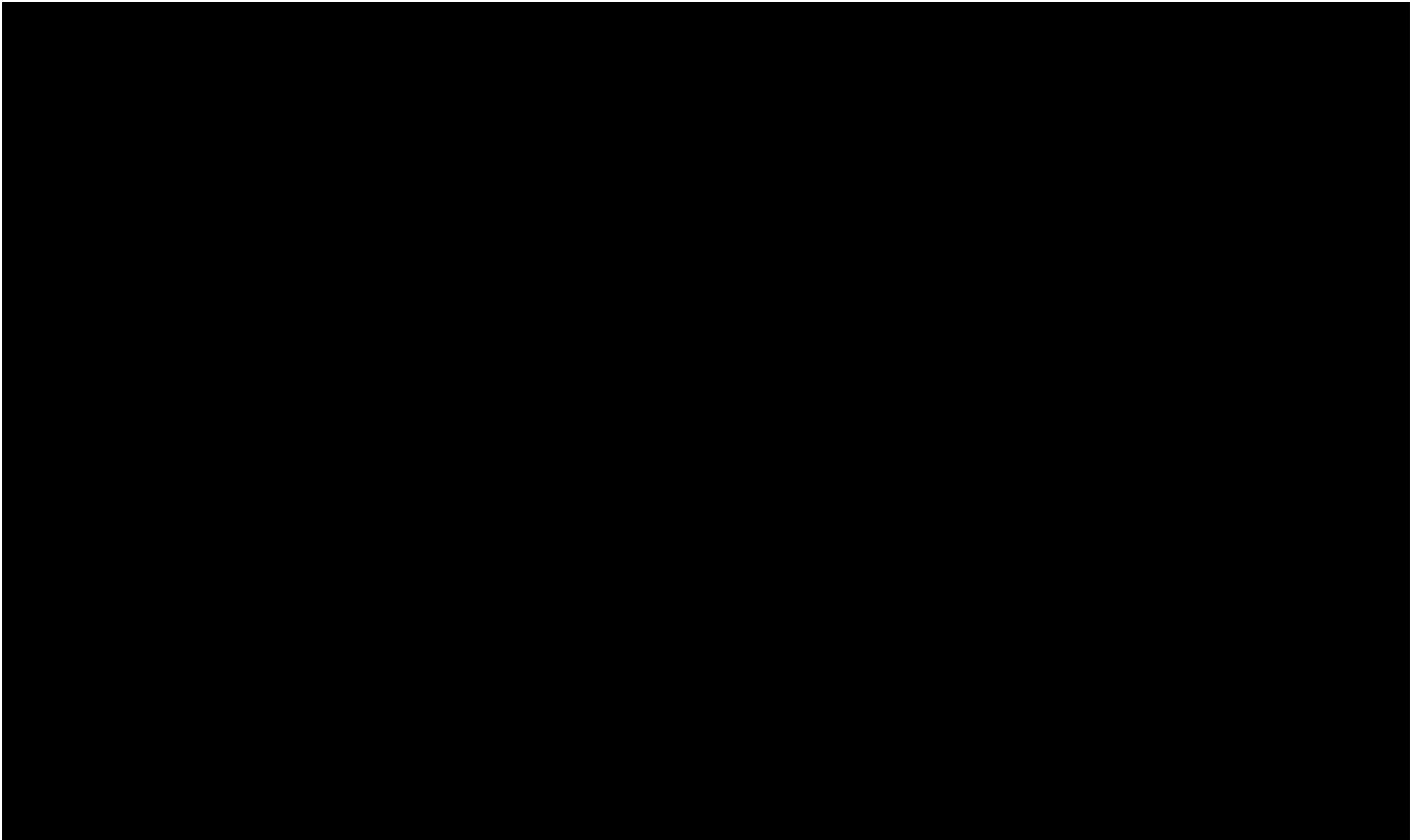




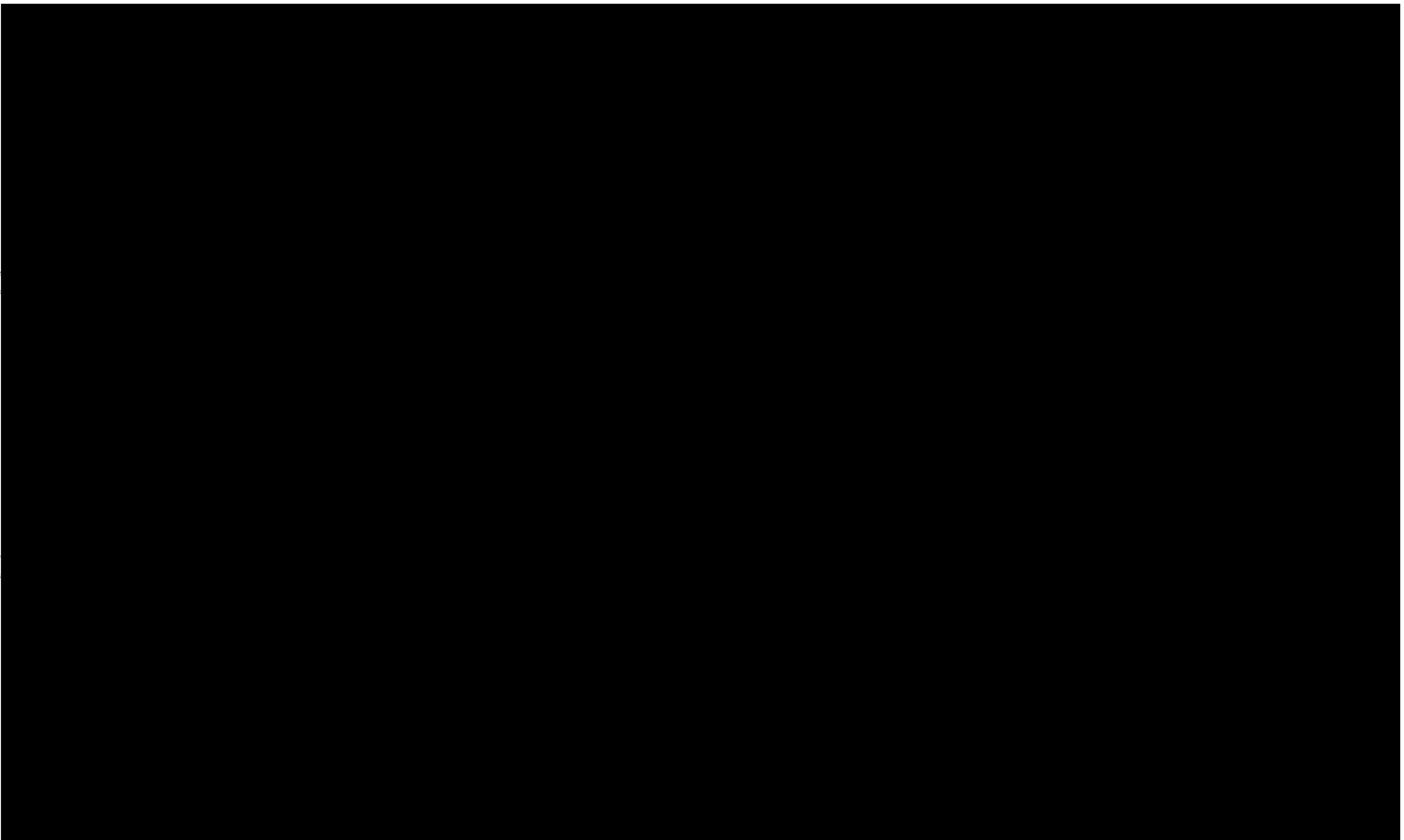








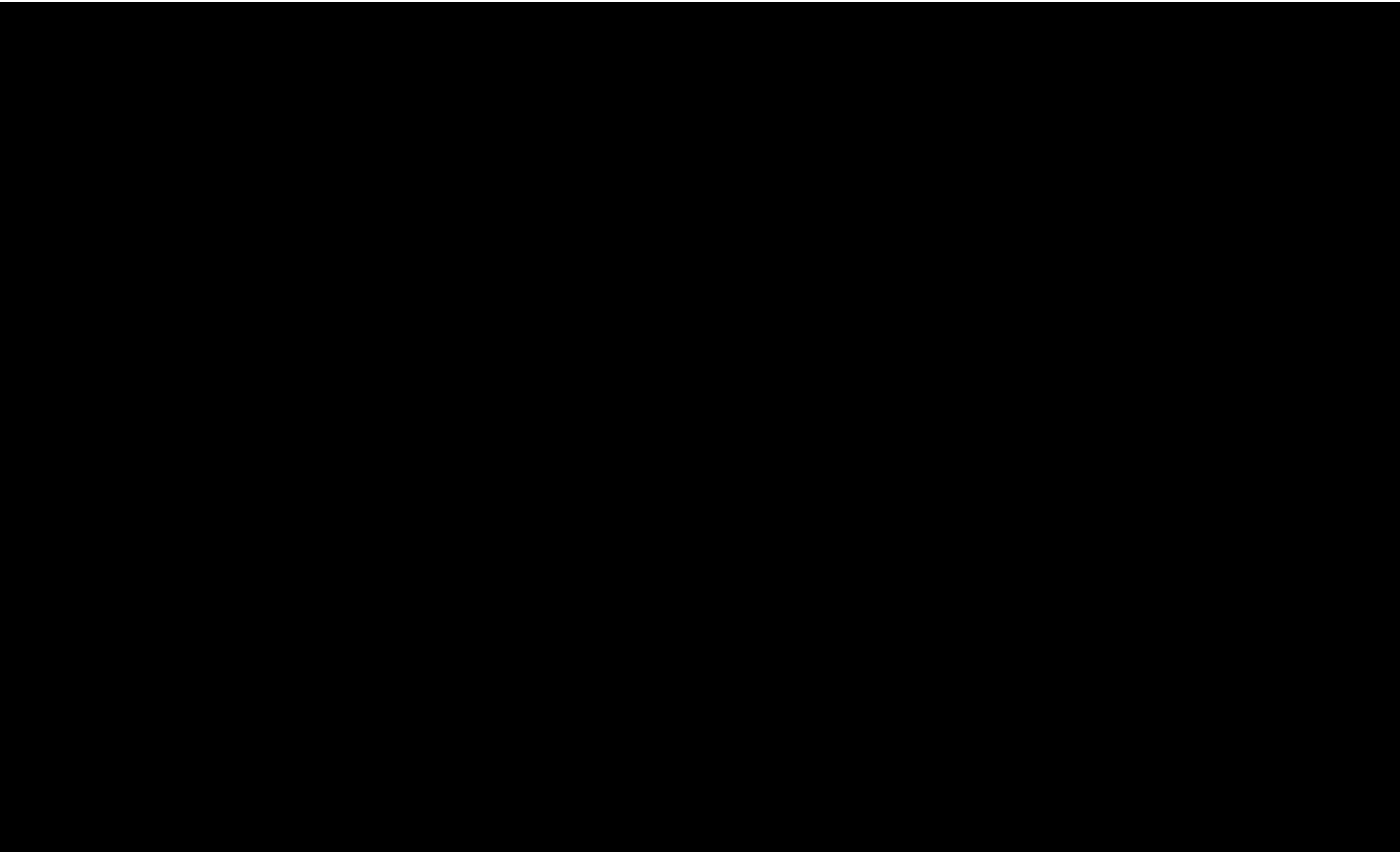




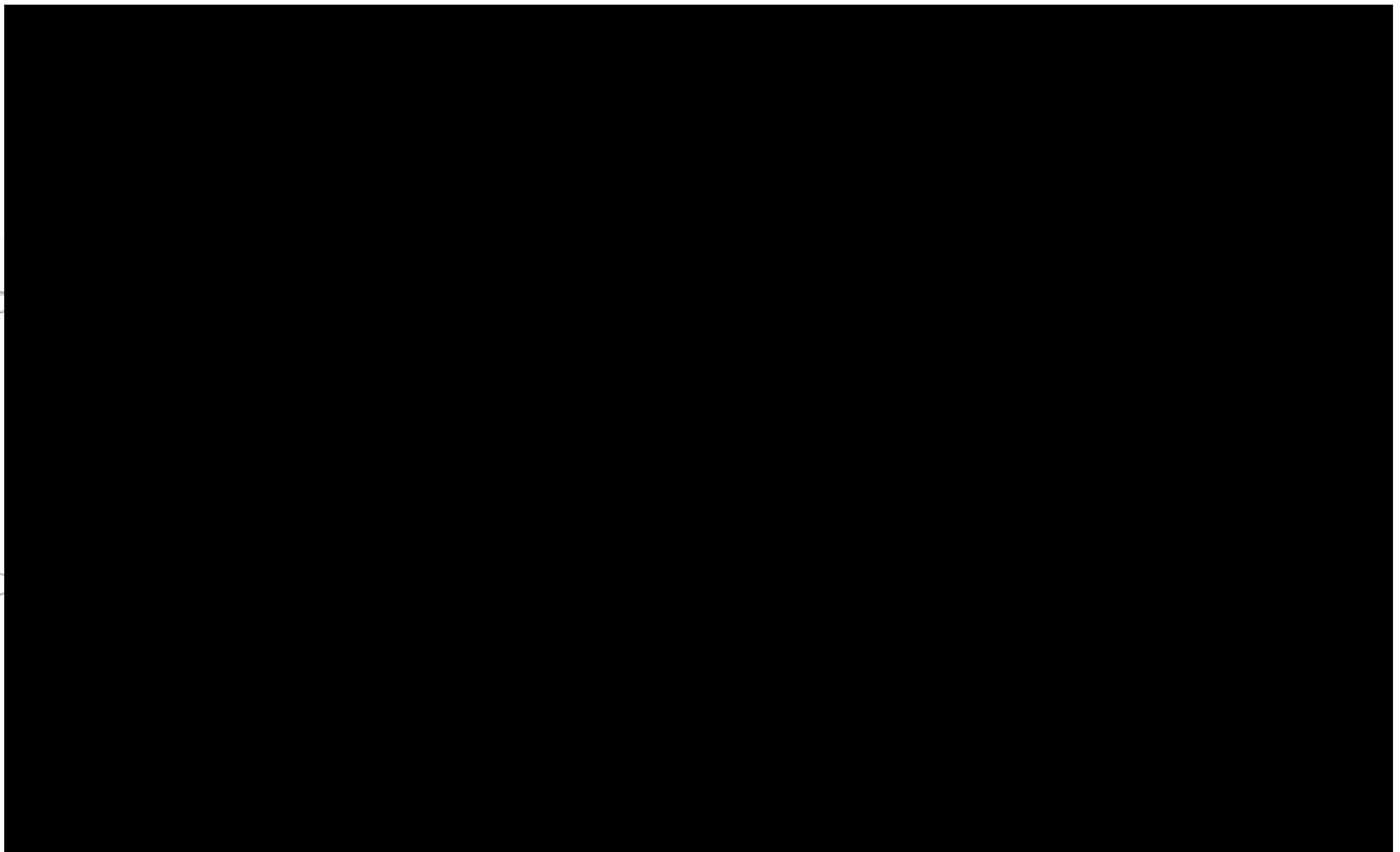




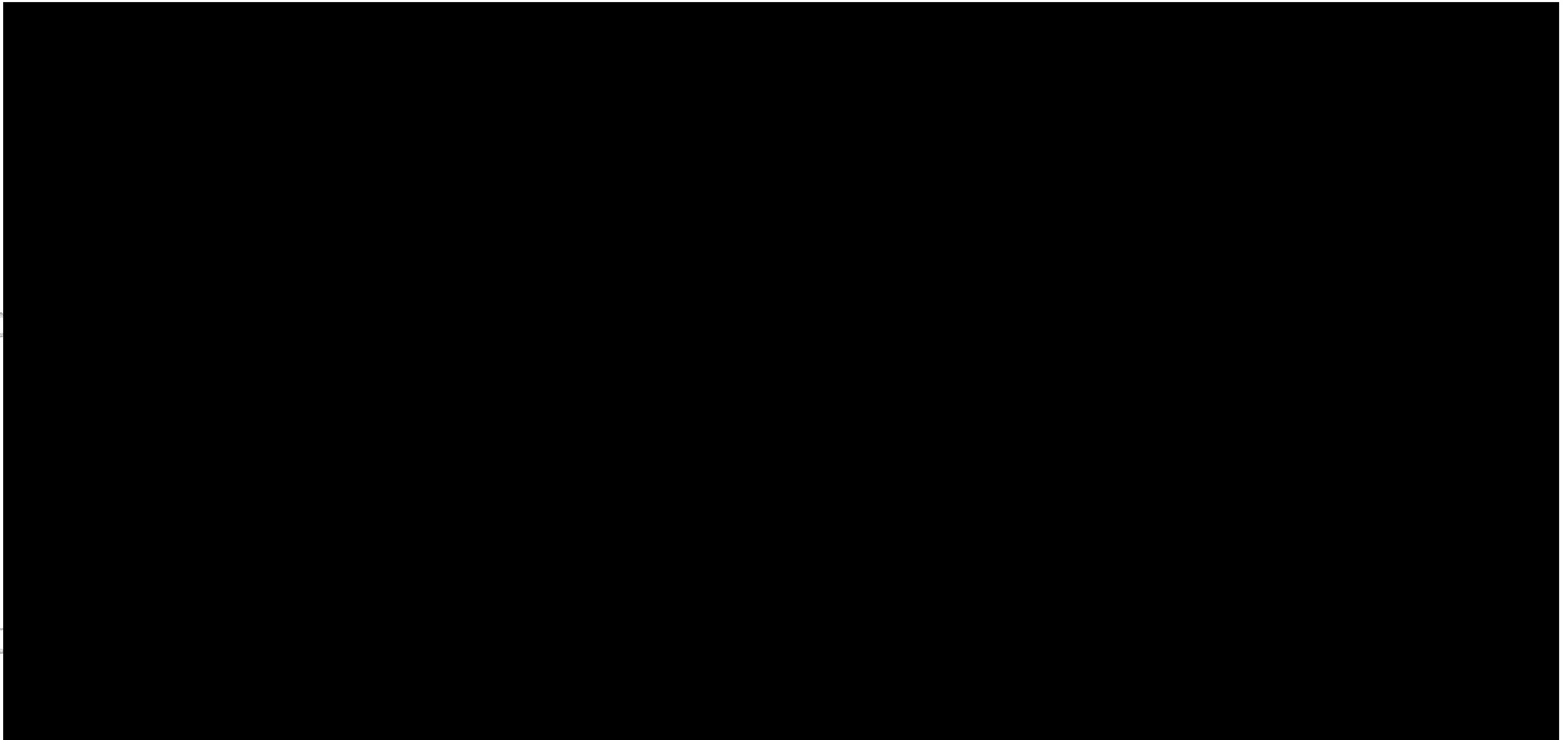












**SCHEDULE A29. – PERSONNEL**

(Clause 8.6)

ROLE REF	POSITION	NAME
1	Project Director	
2	Construction Director	
3	Senior Construction Manager	
4	Technical Director (Design Manager)	
5	Integration and Assurance Manager	
6	Interface Manager	
7	Systems Engineering	
8	Safety Manager	
9	Planning and Environment	
10	Stakeholder and Community Relations Manager	
11	Sustainability Manager	
12	Commercial Manager	

## SCHEDULE B1. – GOVERNANCE GROUPS

(Schedule A2 and clause 8.10)

### 1. PROJECT CONTROL GROUP

- (a) **(Establishment)** A Project Control Group must be established consisting of:
- (i) the Principal's Representative;
  - (ii) the VC Contractor's Representative;
  - (iii) 2 persons from each of the Principal and the VC Contractor holding positions more senior than the persons referred to in clause 1(a)(i) and clause 1(a)(ii) of this Schedule B1 (as applicable to the relevant party);
  - (iv) not used; and
  - (v) such other persons as the Principal and the VC Contractor agree.
- (b) **(Delegates)** The persons referred to in clause 1(a)(i) and clause 1(a)(ii) of this Schedule B1 may appoint delegates (of an equivalent level of seniority or experience) to attend Project Control Group meetings in their absence.
- (c) **(Objectives)** The objectives of the Project Control Group are to:
- (i) facilitate the development of a collaborative working relationship between the parties;
  - (ii) monitor the overall progress of the VC Contractor's Activities;
  - (iii) assist with the resolution of any matters or Disputes referred to the Project Control Group by a party, including issues arising out of the subject of the Third Party Agreements and the Project Cooperation and Integration Deeds;
  - (iv) review each Progress Report provided by the VC Contractor; and
  - (v) review and consider such other matters relating to the VC Contractor's Activities as are agreed between the parties from time to time.
- (d) **(Frequency of meetings)** The Project Control Group will meet monthly prior to the last Portion Handover Date, unless the parties agree otherwise.
- (e) **(Administration)** The Principal's Representative will convene the meetings of the Project Control Group. The meetings will be chaired by the most senior attendee from the Principal.
- (f) **(Principal may require certain representatives to attend)** At the Principal's request, the VC Contractor must procure the attendance of representatives of any Subcontractor at meetings of the Project Control Group.
- (g) **(Principal may bring certain representatives)** The Principal may invite representatives of the Operator, the TSOM Contractor, the LW Contractor, any other Interface Contractor, the State or any Authority to attend any meeting of the Project Control Group.

- (h) **(Members of IDAR Panel)** The members of the IDAR Panel may, by invitation of either party, attend a Project Control Group meeting but will not be members of the Project Control Group.

2. **TECHNICAL WORKING GROUPS**

- (a) **(Disciplines)** Technical Working Groups will be established in relation to particular aspects of the VC Contractor's Activities and, in particular, in accordance with the section 4 of Appendix F1 of the SWTC.
- (b) **(Composition)** The composition of each Technical Working Group will include a nominated representative of the Principal, the VC Contractor and the Independent Certifier, and representatives nominated in accordance with section 4 of Appendix F1 of the SWTC as relevant. Attendance by others will be agreed by the Project Control Group, or in the absence of agreement as directed by the Principal having regard to the particular solutions being discussed. If the Principal requests, the VC Contractor must procure the attendance of representatives of any Significant Subcontractor at a Technical Working Group meeting.
- (c) **(Purpose)** The purpose of each Technical Working Group meeting is to provide a non-binding forum for the VC Contractor to present its proposed solutions, for the Principal and the Independent Certifier to understand those solutions and for the parties to discuss the solutions.
- (d) **(Frequency of meetings)** Each Technical Working Group will meet monthly prior to the last Portion Handover Date, unless otherwise agreed by the Project Control Group.
- (e) **(Administration)** The VC Contractor must convene and chair meetings of each Technical Working Group unless otherwise agreed between the parties.
- (f) **(Agenda and program)** The VC Contractor must prepare and issue a three month rolling program of meetings.
- (g) **(Information only)** Documentation prepared for Technical Working Group meetings, documentation developed in Technical Working Group meetings and information discussed in Technical Working Group meetings are Information Documents and cannot be relied on by either party.

**SCHEDULE B2. – VC CONTRACTOR'S CERTIFICATE – DESIGN (DESIGN STAGE 2)**

(Clause 4.6(a))

To: The Principal's Representative

From: [Insert name of the VC Contractor] (ABN [ ])  
 [Insert name of Subcontractor] (ABN [ ])

This certificate is given in accordance with the "Victoria Cross Integrated Station Development – Station Delivery Deed" (Contract No: 504) dated [insert] (**Victoria Cross SDD**). Words defined in the Victoria Cross SDD have the same meaning in this certificate.

**This section to be completed by the VC Contractor:**

In accordance with the terms of clause 4.6(a) of the Victoria Cross SDD, the VC Contractor certifies that the attached Design Documentation complies with all requirements of the Victoria Cross SDD, including the SWTC.

Signed for and on behalf of the VC Contractor by:

Signature:	
Name:	
Position:	
Date:	

**This section to be completed by the relevant Subcontractor. When there is more than one relevant Subcontractor, this section must be replicated and signed by each relevant Subcontractor:**

The Subcontractor certifies that the attached Design Documentation complies with all requirements of its Subcontract and those parts of the SWTC that are relevant to the Subcontractor's scope of work.

Signed for and on behalf of the Subcontractor by:

Signature:	
Name:	
Position:	
Date:	

**SCHEDULE B3. – VC CONTRACTOR'S AND SUBCONTRACTOR'S CERTIFICATE –  
DESIGN (DESIGN STAGE 3)**

(Clause 4.6(b)(i))

To: The Principal's Representative

From: [Insert name of VC Contractor] (ABN [ ])  
 [Insert name of Subcontractor] (ABN [ ])

This certificate is given in accordance with the "Victoria Cross Integrated Station Development – Station Delivery Deed" (Contract No: 504) dated [insert] (**Victoria Cross SDD**). Words defined in the Victoria Cross SDD have the same meaning in this certificate.

**This section to be completed by the VC Contractor:**

In accordance with the terms of clause 4.6(b)(i) of the Victoria Cross SDD, the VC Contractor certifies that the attached Design Documentation:

- (a) complies with all requirements of the Victoria Cross SDD, including the SWTC; and
- (b) is suitable for construction.

Signed for and on behalf of the VC Contractor by:

Signature:	
Name:	
Position:	
Date:	

**This section to be completed by the relevant Subcontractor. When there is more than one relevant Subcontractor, this section must be replicated and signed by each relevant Subcontractor:**

The Subcontractor certifies that the attached Design Documentation complies with all requirements of its Subcontract and those parts of the SWTC that are relevant to the Subcontractor's scope of work.

Signed for and on behalf of the Subcontractor by:

Signature:	
Name:	
Position:	
Date:	

**SCHEDULE B4. – NOT USED**

**SCHEDULE B5. – INDEPENDENT CERTIFIER'S CERTIFICATE – DESIGN**

(Schedule A10)

To: The Principal's Representative / Operator (if it accedes to the Independent Certifier Deed)

Cc: The VC Contractor

From: [Insert name of Independent Certifier] (ABN [ ])

This certificate is given in accordance with the "Sydney Metro City & Southwest Independent Certification of the Victoria Cross Works: Independent Certifier Deed" (Contract No: [insert]) dated [insert] (**Independent Certifier Deed**).

Words defined in the "Victoria Cross Integrated Station Development – Station Delivery Deed" (Contract No: 504) dated [insert] (**Station Delivery Deed**) have the same meaning in this certificate.

In accordance with the Independent Certifier Deed, the Independent Certifier certifies that, having performed all relevant Services (as defined in the Independent Certifier Deed) in accordance with the requirements of the Independent Certifier Deed, the attached Design Documentation complies with all requirements of the Victoria Cross SDD (including the SWTC), except for the Minor Non-Compliances identified in the attached list.

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

**ATTACHMENT A**  
**List of Minor Non-Compliances**

No.	Minor Non-Compliance	Suggested action to be taken by the VC Contractor to address Minor Non-Compliance

**SCHEDULE B6. – VC CONTRACTOR'S CERTIFICATE – MILESTONE ACHIEVEMENT**

(Clause 23.1(d))

To: The Principal's Representative and the Independent Certifier  
From: [Insert name of VC Contractor] (ABN [ ])])

This certificate is given in accordance with the "Victoria Cross Integrated Station Development – Station Delivery Deed" (Contract No: 504) dated [insert] (**Victoria Cross SDD**). Words defined in the Victoria Cross SDD have the same meaning in this certificate.

In accordance with the terms of clause 23.1(d) of the Victoria Cross SDD, we hereby certify that Milestone Achievement [insert number] has been achieved by the VC Contractor on [insert date] in accordance with the terms of the Victoria Cross SDD.

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

**SCHEDULE B7. – VC CONTRACTOR'S CERTIFICATE – SUBSTANTIAL COMPLETION**

(Clause 23.1(d))

To: The Principal's Representative and the Independent Certifier  
From: [Insert name of VC Contractor] (ABN [ ])

This certificate is given in accordance with the "Victoria Cross Integrated Station Development – Station Delivery Deed" (Contract No: 504) dated [insert] (**Victoria Cross SDD**). Words defined in the Victoria Cross SDD have the same meaning in this certificate.

In accordance with the terms of clause 23.1(d) of the Victoria Cross SDD, we hereby certify that Substantial Completion of Portion [insert number] has been achieved by the VC Contractor on [insert date] in accordance with the terms of the Victoria Cross SDD.

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

**SCHEDULE B8. – VC CONTRACTOR'S CERTIFICATE – COMPLETION**

(Clause 23.1(d))

To: The Principal's Representative and the Independent Certifier

From: [Insert name of VC Contractor] (ABN [ ])

This certificate is given in accordance with the "Victoria Cross Integrated Station Development – Station Delivery Deed" (Contract No: 504) dated [insert] (**Victoria Cross SDD**). Words defined in the Victoria Cross SDD have the same meaning in this certificate.

In accordance with the terms of clause 23.1(d) of the Victoria Cross SDD, we hereby certify that Completion of Portion [insert number] has been achieved by the VC Contractor on [insert date] in accordance with the terms of the Victoria Cross SDD.

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

**SCHEDULE B9. – NOTICE OF MILESTONE ACHIEVEMENT**

(Clause 23.1(f))

[ON INDEPENDENT CERTIFIER LETTERHEAD]

[*Insert date*]

Sydney Metro  
[*Insert address*]

VC Contractor  
[*Insert address*]

Dear [*Insert name*]

**NOTICE OF MILESTONE ACHIEVEMENT**

**Sydney Metro City & Southwest**

**Victoria Cross Integrated Station Development – Station Delivery Deed**  
**Project Works – Milestone [*insert number*]**

This Notice of Milestone Achievement is given in accordance with the "Sydney Metro City & Southwest Victoria Cross Integrated Station Development – Station Delivery Deed" (Contract No: 504) dated [*insert*] (**Victoria Cross SDD**). Words defined in the Victoria Cross SDD have the same meaning in this certificate.

In accordance with clause 23.1(f) of the Victoria Cross SDD, 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 VC Contractor of its obligation to rectify Defects (including Minor Defects and Agreed Defects listed in this notice) under clause 27 of the Victoria Cross SDD and to complete any other outstanding obligations under the Victoria Cross SDD.

Yours sincerely

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

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

<b>No.</b>	<b>Minor Defects</b>
1.	
2.	

<b>No.</b>	<b>Agreed Defects</b>
3.	
4.	

<b>No.</b>	<b>Accepted Defects</b>
5.	
6.	

**SCHEDULE B10. – NOTICE OF SUBSTANTIAL COMPLETION**

(Clause 23.1(f))

[ON INDEPENDENT CERTIFIER LETTERHEAD]

[Insert date]

Sydney Metro  
[Insert address]

VC Contractor  
[Insert address]

Dear [Insert name]

**NOTICE OF SUBSTANTIAL COMPLETION**  
**Sydney Metro City & Southwest**  
**Victoria Cross Integrated Station Development – Station Delivery Deed**  
**Project Works – Portion [insert number]**

This Notice of Substantial Completion is given in accordance with the "Sydney Metro City & Southwest Victoria Cross Integrated Station Development – Station Delivery Deed" (Contract No: 504) dated [insert] (**Victoria Cross SDD**). Words defined in the Victoria Cross SDD have the same meaning in this certificate.

In accordance with clause 23.1(f) of the Victoria Cross SDD, 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 VC Contractor of its obligation to rectify Defects (including Minor Defects and Agreed Defects listed in this notice) under clause 27 of the Victoria Cross SDD and to complete any other outstanding obligations under the Victoria Cross SDD.

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
3.	
4.	
No.	Accepted Defects
5.	
6.	

**SCHEDULE B11. – NOTICE OF COMPLETION**

(Clause 23.1(f))

[ON INDEPENDENT CERTIFIER LETTERHEAD]

[insert date]

Sydney Metro  
[Insert address]

VC Contractor  
[Insert address]

Dear [Insert name]

**NOTICE OF COMPLETION**  
**Sydney Metro City & Southwest**  
**Victoria Cross Integrated Station Development – Station Delivery Deed**  
**Project Works – Portion [insert number]**

This Notice of Completion is given in accordance with the "Sydney Metro City & Southwest Victoria Cross Integrated Station Development – Station Delivery Deed" (Contract No: 504) dated [insert] (**Victoria Cross SDD**). Words defined in the Victoria Cross SDD have the same meaning in this certificate.

In accordance with clause 23.1(f) of the Victoria Cross SDD, 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 Non-Trackway 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 VC Contractor of its obligation to rectify Defects (including Minor Defects and Agreed Defects listed in this notice) under clause 27 of the Victoria Cross SDD and to complete any other outstanding obligations under the Victoria Cross SDD.

Yours sincerely

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

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

<b>No.</b>	<b>Minor Defects</b>
1.	
2.	
<b>No.</b> <b>Agreed Defects</b>	
3.	
4.	
<b>No.</b> <b>Accepted Defects</b>	
5.	
6.	

**SCHEDULE B12. – NOT USED**



**SCHEDULE B13. – LANDOWNER'S CERTIFICATE**

(Clause 5.3 and Schedule A2)

**THIS DEED POLL** is made the                           day of                           20

**BY:**    *[Insert details of relevant Landowner]*

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

**PROPERTY ADDRESS:**                                    *[Insert]*

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

*[Insert description of 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.

**[Note: Appropriate execution block to be inserted prior to execution.]**



**SCHEDULE B14. – INDEPENDENT CERTIFIER'S CERTIFICATE – COMPLETION OF LOCAL AREA WORKS**

(Clause 5.5(c)(i))

To: The Principal's Representative and the VC Contractor

From: [Insert name of Independent Certifier] (ABN [ ])

This certificate is given in accordance with the "Victoria Cross Integrated Station Development – Station Delivery Deed" (Contract No: 504) dated [insert] (**Victoria Cross SDD**). Words defined in the Victoria Cross SDD have the same meaning in this certificate.

In accordance with the terms of clause 5.5(c)(i) of the Victoria Cross SDD, we hereby certify in relation to the Local Area Works described in the Schedule that, having performed all relevant Services (as defined in the Independent Certifier Deed) in accordance with the requirements of the Independent Certifier Deed as at [insert date]:

- (a) the VC Contractor has completed construction in accordance with the Design Documentation it was entitled to use for construction purposes under clause 4.9 (*Design Documentation for construction*) of the Victoria Cross SDD, subject to Minor Defects;
- (b) the release of all Hold Points has been undertaken in accordance with the Victoria Cross SDD;
- (c) all documentation has been recorded and submitted to the Principal's Representative in accordance with the Victoria Cross SDD; and
- (d) the construction complies with the requirements of the Victoria Cross SDD, including the SWTC, subject to Minor Defects.

**Schedule**

[*Insert description of Local Area Works*]

.....  
Signed for and on behalf of  
[*insert name of Independent Certifier*]



**SCHEDULE B15. – STATUTORY DECLARATION**

(Clause 28.5(a)(iv))

<b>Statutory Declaration</b>	<i>Oaths Act (NSW) Ninth Schedule</i>											
<p>I,.....  .....  of.....  .....</p> <p><i>do solemnly and sincerely declare that:</i></p> <p>1. <i>I am the representative of:</i>  .....  .....  ("the Contractor")  <i>in the Office Bearer capacity of:</i>  .....  .....</p> <p>2. <i>The Contractor has a contract with the [ ]:</i>  .....  ..... ("the Contract")</p> <p>3. <i>I personally know the facts which I have set out in this declaration.</i></p> <p>4. <i>All employees who have at any time been engaged by the Contractor for work done under the Contract:</i></p> <p>a) <i>have been paid all remuneration and benefits to the date of this declaration payable to them by the Contractor in respect of their employment on work under the Contract, and</i>  b) <i>have otherwise had accrued to their account all benefits to which they are entitled from the Contractor as at the date of this declaration in respect of their employment on work under the Contract pursuant to any award, enterprise agreement, act or regulation,</i>  <i>with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below:</i></p> <table style="width: 100%;"> <thead> <tr> <th style="text-align: left;"><i>Employee:</i></th> <th style="text-align: right;"><i>Amount unpaid or not accrued:</i></th> </tr> </thead> <tbody> <tr> <td>.....</td> <td style="text-align: right;">.....</td> </tr> </tbody> </table> <p>5. <i>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</i></p>		<i>Employee:</i>	<i>Amount unpaid or not accrued:</i>	.....	.....	.....	.....	.....	.....	.....	.....	
<i>Employee:</i>	<i>Amount unpaid or not accrued:</i>											
.....	.....											
.....	.....											
.....	.....											
.....	.....											

	(NSW).	
5A	Where the Contractor holds any retention money from a Subcontractor, the Contractor has complied with all requirements under the Building and Construction Industry Security of Payment Amendment (Retention Money Trust Account) Regulation 2015 (NSW), with the exception of the items listed below:	
	.....	
	.....	
	.....	
	.....	
6.	In all cases where a subcontractor or supplier to the Contractor has provided services and/or materials in respect of the Contract and has submitted a claim to the Contractor for these services or materials which as at the date of this statutory declaration would have been due and payable but which the Contractor disputes, the reasons for such dispute have been notified in writing to the subcontractor or supplier by the Contractor prior to the date of this statutory declaration. Where such dispute relates to part only of the subcontractor or supplier's claim, that part of the claim not in dispute has been paid by the Contractor to the subcontractor or supplier as at the date of this statutory declaration except for the amounts listed in 5 above.	
7.	The provisions of the Contract relating to the payment of employees, subcontractors and suppliers of the Contractor have been complied with by the Contractor.	
8.	The Contractor has been informed by each subcontractor to the Contractor (except for subcontracts not exceeding \$25,000 at their commencement) by statutory declaration in equivalent terms to this declaration (made no earlier than the date 14 days before the date of this declaration):	
	(a) that their subcontracts with their subcontractors and suppliers comply with the requirements of the Contract relating to payment of employees and subcontractors, and	
	(b) that all their employees and subcontractors, as at the date of the making of such a declaration:	
	i) have been paid all remuneration and benefits due and payable to them by; or	
	ii) had accrued to their account all benefits to which they are entitled from;	
	the subcontractor of the Contractor or from any other subcontractor (except for subcontracts not exceeding \$25,000 at their commencement) in respect of any work under the Contract, and	insert names and addresses of the Contractor's subcontractors who have not submitted a declaration, and unpaid amounts due or otherwise due to each of them by the
	(c) of details of any amounts due and payable or benefits due to be received or accrued described in 8(b) above which have not been paid, received or accrued,	
	except for the following subcontractors to the Contractor who have failed to provide such a declaration:	
	Subcontractor:	Due

	<i>amount unpaid:</i> ..... ..... ..... ..... .....	<i>Contractor in respect of this claim</i>
9.	<i>Where a subcontractor to the Contractor has provided a declaration as in 8 above, and it includes unpaid amounts or benefits either not received or not accrued, details of the subcontractor, details of the affected employees, suppliers and subcontractors of the subcontractor, and the respective amounts or benefits either unpaid or not accrued are as follows:</i>	<i>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.</i>
	<i>Employee, subcontractor or supplier:</i> <i>unpaid or not accrued:</i> ..... ..... ..... ..... .....	<i>Amount</i>
10.	<i>In relation to the statutory declaration provided by each subcontractor to the Contractor, I am not aware of anything to the contrary of what is contained therein, and on the basis of the contents of those statutory declarations, I believe that information to be true.</i>	
11.	<i>Attached to and forming part of this declaration, as Annexure B, is a "Subcontractor's Statement" given by the Contractor in its capacity as 'subcontractor' (as that term is defined in the Workers Compensation Act 1987, Payroll Tax Act 2007 and Industrial Relations Act 1996) which is a written statement:</i>	
	(a) <i>under section 175B of the Workers Compensation Act 1987 in the form and providing the detail required by that legislation;</i>	
	(b) <i>under section 18(6) of Schedule 2 of part 5 of the Payroll Tax Act 2007 in the form and providing the detail required by that legislation; and</i>	
	(c) <i>under section 127 of the Industrial Relations Act 1996 in the form and providing the detail required by that legislation.</i>	
12.	<i>I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.</i>	
13.	<i>All statutory declarations and Subcontractor's Statements received by the Contractor from subcontractors were:</i>	
	(a) <i>given to the Contractor in its capacity as 'principal contractor' as defined in the Workers Compensation Act 1987, the Payroll Tax Act 2007 and the Industrial Relations Act 1996 ("Acts"); and</i>	
	(b) <i>given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.</i>	
14.	<i>I am not aware of anything which would contradict the statements</i>	

*made in the statutory declarations or written statements provided to the Contractor by its subcontractors, as referred to in this declaration.*

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

Declared at ..... on

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

.....  
(Signature of Declarant)

Before me:

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

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

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

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

[\*strike out the text that does not apply]

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

OR

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

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

OR

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

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

Signature of person before whom the declaration is made

Before me:

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

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

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

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

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

(i) a justice of the peace of the State of New South Wales;

(ii) a solicitor of the Supreme Court of New South Wales with a current practising certificate; or

(iii) a notary public.

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

(i) a notary public; or

(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* (NSW).

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**

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

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

**ANNEXURE B**

**Subcontractor's Statement**

**REGARDING WORKERS COMPENSATION, PAYROLL TAX AND REMUNERATION**

**(Note 1 - see back of form)**

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

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

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

Subcontractor: ..... ABN: .....  
(Business name)

of .....  
(Address of subcontractor)

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

Contract number/identifier ..... (Note 3)

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

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

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

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

performed work under the contract, as required at the date of this Subcontractor's Statement. (Note 9)

- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. (Note 10)

Signature .....

Full name.....

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

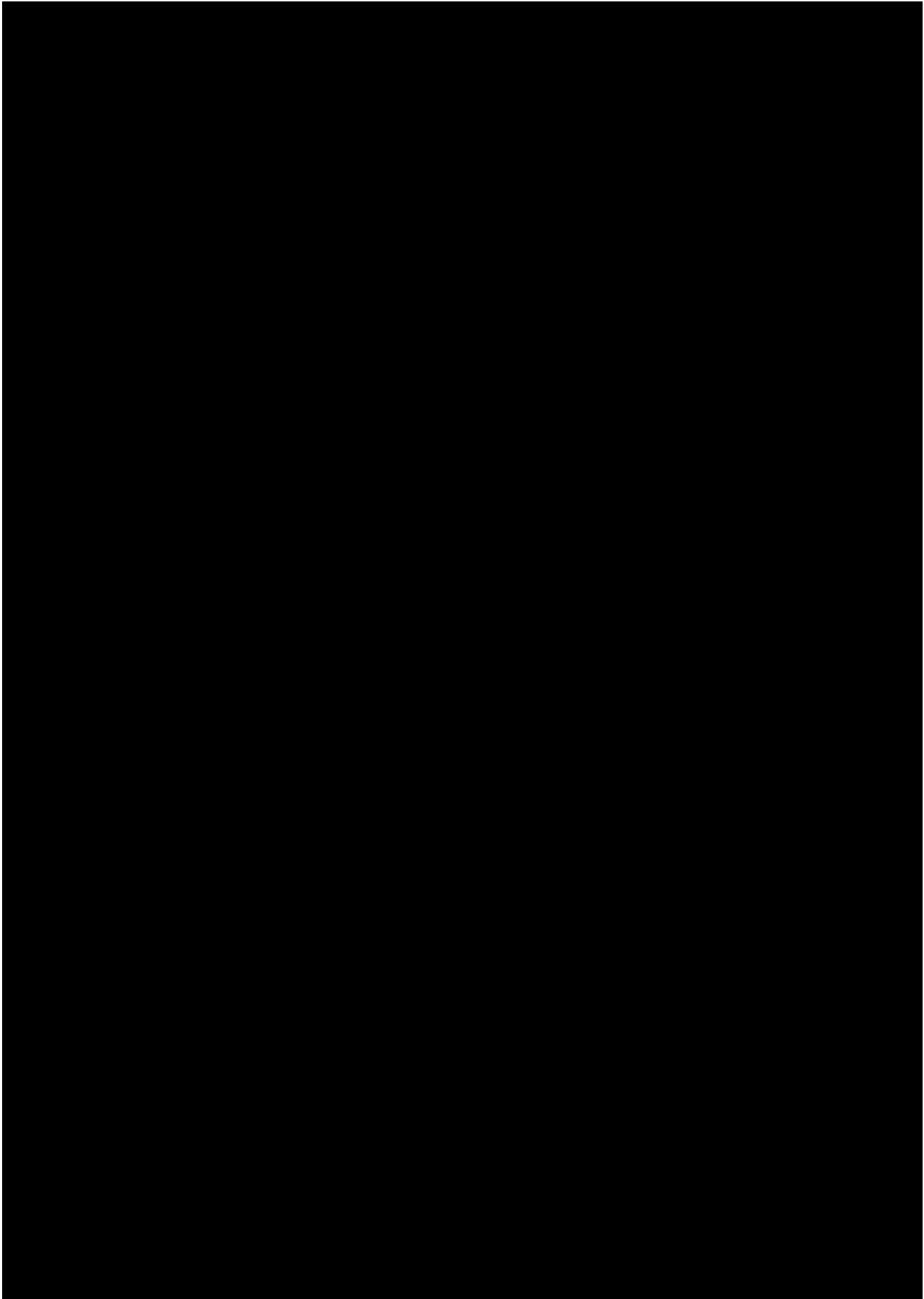
In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (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](http://www.workcover.nsw.gov.au), Office of State Revenue website [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au), or Office of Industrial Relations, Department of Commerce website [www.commerce.nsw.gov.au](http://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](http://www.legislation.nsw.gov.au).



**SCHEDULE B17. – NOT USED**

**SCHEDULE C2. – PRINCIPAL'S DESIGN STAGE 1 DOCUMENTS**

(Schedule A2 and clause 4.2)

This Schedule C2 contains the Principal's Design Stage 1 Documents which are included in Schedule F1 as electronic files.

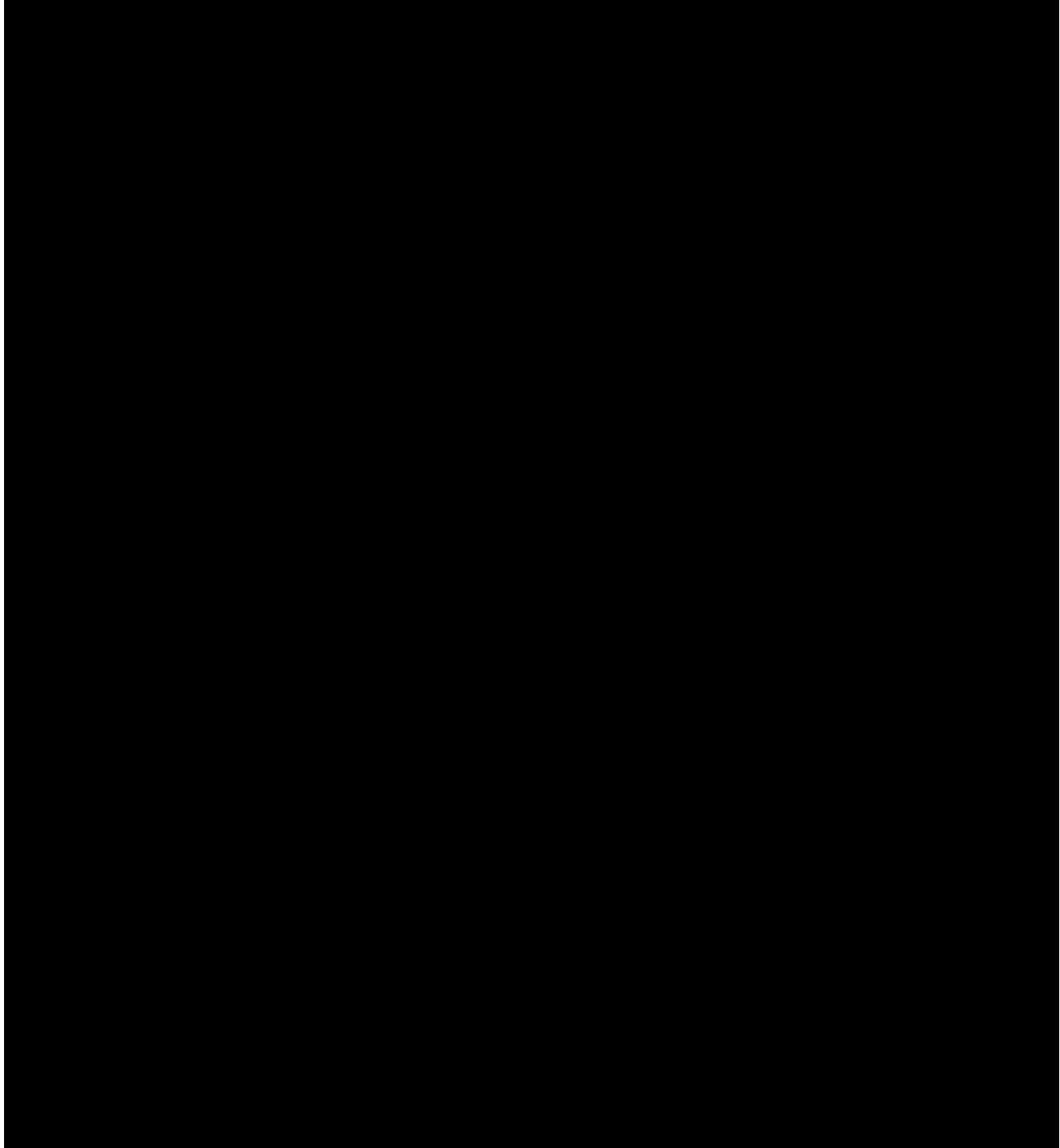
**SCHEDULE C3. – VC CONTRACTOR'S TENDER DESIGN**

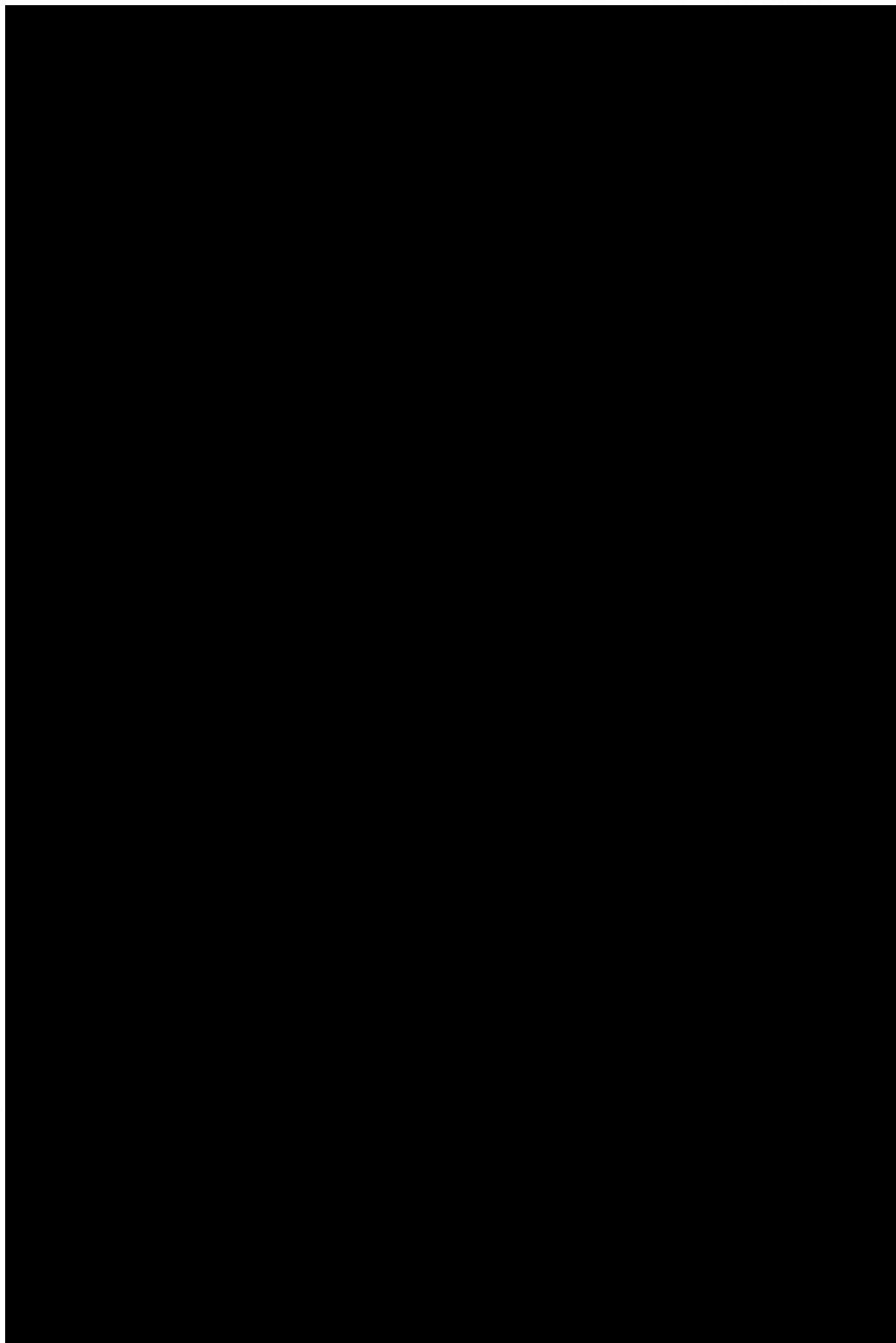
(Schedule A2 and clause 4.3)

This Schedule C3 contains the VC Contractor's Tender Design which is included in Schedule F1 as an electronic file.

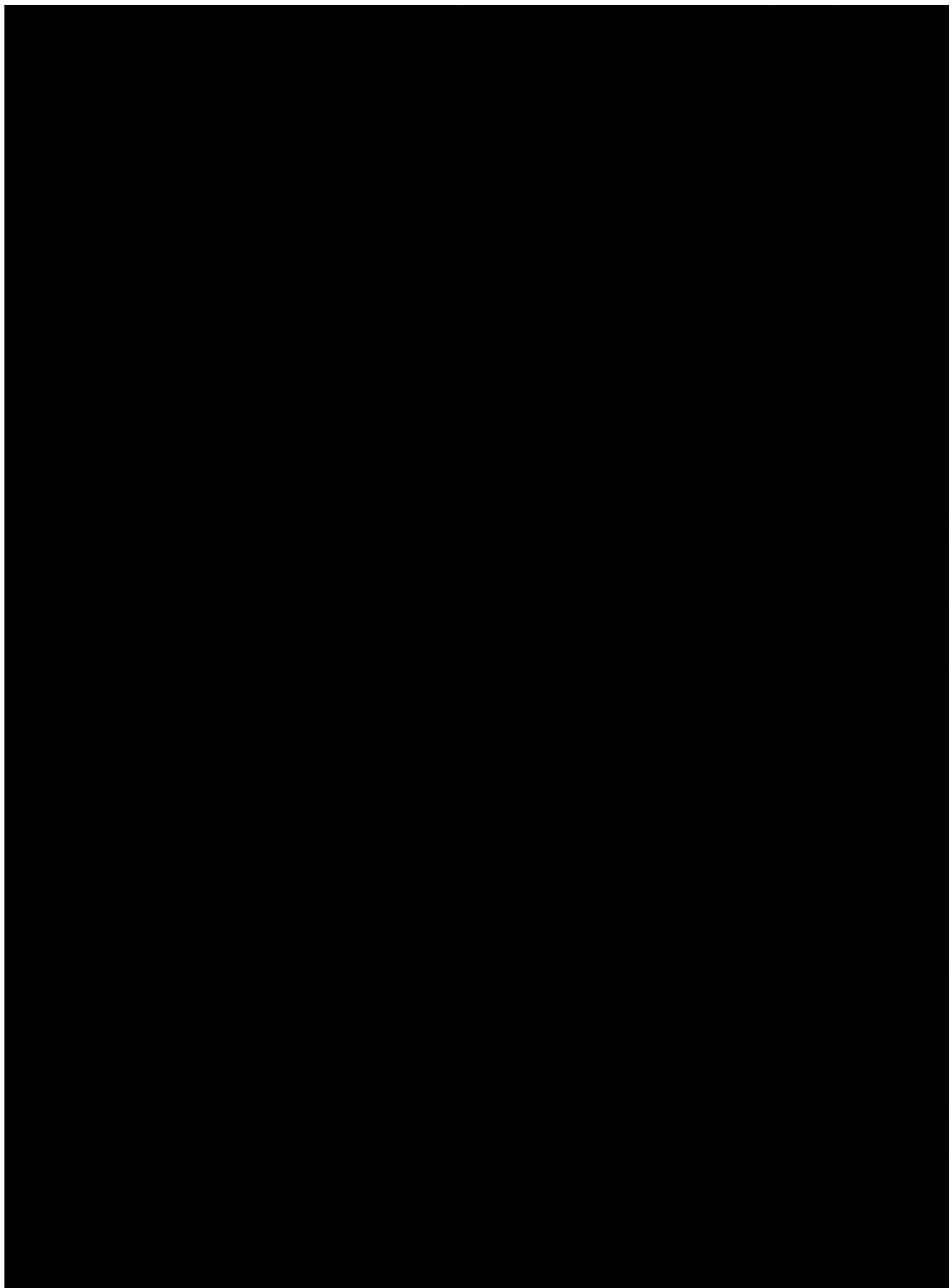
**SCHEDULE C4. – VC CONTRACTOR'S TENDER DESIGN DEVELOPMENT**

(Clause 4.2(b))





1



**SCHEDULE C5. – DESIGN DOCUMENTATION TO BE REVIEWED BY THE INDEPENDENT CERTIFIER AT DESIGN STAGE 3**

(Clause 4.5(b))

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

## SCHEDULE D1. – SITE ACCESS SCHEDULE

(Schedule A2 and clause 9)

### 1. OVERVIEW AND SCOPE

#### 1.1 General

- (a) This Schedule D1 identifies:
- (i) the Project Site and Temporary Areas forming the Construction Site;
  - (ii) the Early Site Access Date, Site Access Date, and Site Access Expiry Date for each part of the Construction Site;
  - (iii) the restrictions upon access, possession and use that will apply to the VC Contractor's access to or use of each part of the Construction Site; and
  - (iv) the restrictions on the type of Project Works or Temporary Works that may be constructed on each part of the Construction Site.
- (b) This Schedule D1 is subject to the requirements of:
- (i) this deed; and
  - (ii) any other document or condition referred to in this Schedule D1 (including in the "Restrictions upon access, possession and use" column of the tables contained in sections 3 and 4 of this Schedule D1).

#### 1.2 References

In this Schedule D1, a reference to:

- (a) an **Area** is a reference to an area of land depicted in the Construction Site Drawings with an individual Area reference (e.g. Area 'A4');
- (b) **Construction Site Drawings** is a reference to the drawings described in Table 1 of section 2.1 of this Schedule D1;
- (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 deed 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 D1.

### 2. CONSTRUCTION SITE – DRAWINGS

#### 2.1 Drawings and Unregistered Plans of Acquisition

- (a) This Schedule D1 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 F1 as electronic files.

**Table 1 Drawings**

<b>Drawing number</b>	<b>Revision</b>	<b>Drawing title (number of sheets)</b>	<b>Electronic file reference</b>
NWRLSRT-RPS-VCS-SR-DWG-000002-A.2-ISD-VCISD-Figure 2.1.dwg	A.2	Sydney Metro City and Southwest Victoria Cross Station Figure 2.1 Construction Site Drawing	NWRLSRT-RPS-VCS-SR-DWG-000002.A.02.pdf
PR124856-153-DP1-002-B.1 Sections	B1	Victoria Cross Draft Acquisition Sections (Sheets 1 to 7)	PR124856-153-DP1-002-B.1 Sections

**Table 2 Unregistered Plans of Acquisition**

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

## 2.2 Explanation of Tables 3 and 4

- (a) Tables 3 and 4 in this Schedule D1 comprise 6 columns as follows:
- (i) "Area of Construction Site" specifies the specific parcel of land within the Construction Site;
  - (ii) "Early Site Access Date" is the earliest date on which, if the Principal's Representative gives the VC Contractor a notice under clause 9.2(d), the Construction Licence in respect of the land referred to in the corresponding "Area of Construction 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 VC Contractor access to the land referred to in the corresponding "Area of Construction 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 VC Contractor access to the land referred to in the corresponding "Area of Construction 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 VC Contractor must comply in accessing or occupying the land referred to in the corresponding "Area of Construction Site" column; and

- (vi) "Restrictions on type of work" are the restrictions on the type of work that may be carried out by the VC Contractor on the land referred to in the corresponding "Area of Construction 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 D1 do not limit the VC Contractor's obligations to comply with this deed (including the SWTC) or the Project Plans.

### **2.4 Boundaries**

- (a) Subject to section 2.4(b) of this Schedule D1, each Area in the Construction Site Drawings contains the land enclosed by the plan area represented for that Area in the Construction Site Drawings.
- (b) Areas in the Construction Site Drawings are unrestricted in height and depth above and below the plan area represented in the Construction Site Drawings, unless a limit is specified in the Construction Site Drawings or this Schedule D1.
- (c) Where boundaries of the Construction Site are identified as curved in the Construction Site Drawings, the boundary is defined by the schedule of curved boundaries included in the Construction Site Drawings.

## 3. PROJECT SITE FORMING PART OF THE CONSTRUCTION SITE

**Table 3 Project Site**

No	Area of Construction Site	Early Site Access Date	Site Access Date	Site Access Expiry Date	Restrictions upon access, possession and use	Restrictions on type of work
1.	The part of each of Lot 1 DP 633088, Lot A DP 160018, Lot 1 DP 123056, Lot 2 DP 123056, Lot 15 DP 69345, Lot 10 DP 70667, Lot 1 DP 1230458, and all lots comprising Strata Plan 35644 (which incorporates lots 40 and 41 of Strata Plan 81092 and lots 37, 38 and 39 of Strata Plan 79612), that are at and below RL 81.6.				N/A	N/A
2.	Lot 1 DP 536008				N/A	N/A
3.	Lot 80 DP 1231920				N/A	N/A

No	Area of Construction Site	Early Site Access Date	Site Access Date	Site Access Expiry Date	Restrictions upon access, possession and use	Restrictions on type of work
4.	Lot 81 denoted as Draft DP as shown in PR124856-153-DP1-002-B.1 Sections				N/A	N/A
5.	Lot 83 denoted as Draft DP as shown in PR124856-153-DP1-002-B.1 Sections				N/A	N/A
6.	The area identified as "Proposed Land Take" as shown on Sheet 5 of PR124856-153-DP1-002-B.1 Sections				N/A	N/A

**4. TEMPORARY AREAS FORMING PART OF THE CONSTRUCTION SITE**

**Table 4      Temporary Areas**

No	Area of Construction Site	Early Site Access Date	Site Access Date	Site Access Expiry Date	Restrictions upon access, possession and use	Restrictions on type of work
1.	Area 'J6' in Figure 2.1				N/A	N/A
2.	Lot 2 DP 218407, Lot 1 DP 1150156, and Lot 2 DP 1150156				N/A	N/A

## SCHEDULE D2. – REQUIREMENTS OF APPROVALS

(Schedule A2 and clause 7.4(c))

### 1. REQUIREMENTS OF APPROVALS

#### 1.1 Environmental Representative

- (a) **(Engagement)** The Principal will engage the Environmental Representative as required by the Planning Approval.
- (b) **(Independence and functions)** The VC Contractor acknowledges that the Environmental Representative:
  - (i) is independent of the parties;
  - (ii) is required to discharge certain functions as identified in the Planning Approval;
  - (iii) is required to oversee the implementation of all Environmental Management Plans and monitoring programs required under the Planning Approval and shall advise the Principal upon achievement of the outcomes contemplated in the Planning Approval; and
  - (iv) is required to advise the Principal and the Principal's Representative on the VC Contractor's compliance with the Planning Approval.
- (c) **(Provisions of information)** The VC Contractor must co-operate with the Environmental Representative and provide the Environmental Representative with:
  - (i) all information and documents (including licences and approvals relating to environmental performance and environmental impacts); and
  - (ii) allow the Environmental Representative to attend meetings and access all premises (including all places at which the VC Contractor's Activities are being undertaken), all as may be:
    - (A) necessary or reasonably required for the Environmental Representative to perform its functions in connection with this deed; or
    - (B) lawfully requested by the Environmental Representative or directed by the Principal's Representative.
- (d) **(No interference)** The VC Contractor must:
  - (i) comply with the lawful requirements of the Environmental Representative; and
  - (ii) not interfere with or improperly influence the Environmental Representative in the performance of any of its functions in connection with this deed.
- (e) **(No Claim)** Nothing that the Environmental Representative does or fails to do pursuant to the purported exercise of its functions in connection with this deed will give rise to any Liability from the Principal to the VC Contractor.

## **1.2 Independent Property Impact Assessment Panel**

- (a) **(IPIAP)** The VC Contractor acknowledges that the Principal has established an Independent Property Impact Assessment Panel for Sydney Metro City & Southwest in accordance with the requirements of the Project Planning Approval (Chatswood to Sydenham).
- (b) **(Cooperate)** The VC Contractor must (at its cost):
  - (i) cooperate with the Independent Property Impact Assessment Panel and provide the Independent Property Impact Assessment Panel with any assistance, information or documentation that the Independent Property Impact Assessment Panel may reasonably require in order to carry out its functions;
  - (ii) permit the Independent Property Impact Assessment Panel to access the Construction Site and inspect the VC Contractor's Activities provided that the VC Contractor is given reasonable prior written notice and the members of the Independent Property Impact Assessment Panel comply with the VC Contractor's reasonable work health and safety procedures; and
  - (iii) attend any meeting of the Independent Property Impact Assessment Panel that it is requested to attend by the Principal's Representative or the chairperson of the Independent Property Impact Assessment Panel provided that the VC Contractor is given reasonable prior written notice of any such meeting.

## **1.3 Community relations**

The VC Contractor:

- (a) **(acknowledgement)** acknowledges that:
  - (i) the areas where the Project Works are being carried out are of great importance to many people, including local residents and businesses; and
  - (ii) the Principal will retain a key role in the management of community relations activities for the Project; and
- (b) **(participation)** must manage and participate in all community relations and involvement programs and activities as:
  - (i) required by this deed (including Appendix F5 of the SWTC);
  - (ii) as required by any relevant Approval or Authority;
  - (iii) contained in the Community Communications Strategy; or
  - (iv) reasonably required by the Principal from time to time.

## SCHEDULE D3. – APPROVALS AND PLANNING APPROVAL CONDITIONS

(Schedule A2 and clause 7.4)

### 1. APPROVALS TO BE OBTAINED BY THE PRINCIPAL

#### 1.1 Existing Approvals

The Project Planning Approval (Chatswood to Sydenham).

#### 1.2 Future Approvals to be obtained by the Principal

None.

### 2. OBLIGATIONS IN RESPECT OF THE PLANNING APPROVAL

- (a) The VC Contractor must, in performing the VC Contractor's Activities, comply with all of the obligations, conditions and requirements of the Planning Approval , as if it were the Principal, to the extent that they relate to the Project Works, the Temporary Works or the VC Contractor's Activities except to the extent that this Schedule D3 provides that the Principal will comply with the obligation, condition or requirement or this Schedule D3 limits the VC Contractor's obligation in respect of that obligation, condition or requirement.
- (b) Nothing specified in this Schedule D3 as being the responsibility of the Principal will relieve the Contractor from complying with any obligation set out elsewhere in the deed.
- (c) The Principal must satisfy and fulfil the conditions of the Project Planning Approval (Chatswood to Sydenham) to the extent specified in clauses 3(b)(lxviii) (in relation to condition E78) and 3(b)(lxxii) (in relation to conditions E92 and E93) below.
- (d) The Principal must satisfy and fulfil the Revised Environmental Mitigation Measures (Chatswood to Sydenham) to the extent specified in clause 3(c)(i) (in relation to measure T7) below.

### 3. THE PRINCIPAL'S OBLIGATIONS IN RESPECT OF PROJECT PLANNING APPROVAL (CHATSWOOD TO SYDENHAM)

- (a) Terms which have a defined meaning in the Project Planning Approval (Chatswood to Sydenham) have the same meaning where used in this section 3.
- (b) In relation to the conditions in schedule 2 of the Project Planning Approval (Chatswood to Sydenham) the Principal will:
  - (i) be responsible for A1.1;
  - (ii) be responsible for A4;
  - (iii) in relation to A7, submit the information provided by the VC Contractor, to the Secretary. The VC Contractor must undertake all activities necessary to comply with this condition (except submission to the Secretary) and provide the information to the Principal;
  - (iv) in relation to A9, submit the information provided by the VC Contractor, to the Secretary. The VC Contractor must undertake all activities necessary to

- comply with this condition (except submission to the Secretary) and provide the information to the Principal;
- (v) be responsible for A10;
  - (vi) be responsible for A12 to A15, except that:
    - (A) the VC Contractor must inform the Principal if staging of deliverables is required in addition to that identified in the Staging Report; and
    - (B) the VC Contractor must carry out the VC Contractor's Activities in accordance with the Staging Report;
  - (vii) be responsible for A21;
  - (viii) in relation to A22, engage, nominate, and seek approval from the Secretary of a suitably qualified and experienced Environmental Representative (ER). The Principal will be the single point of contact with the Secretary and will provide the VC Contractor with the date the submission for approval is made, or notify the VC Contractor of any other timeframe relevant to this condition;
  - (ix) in relation to A23, the Principal will notify the VC Contractor when the approval of the Secretary is given;
  - (x) be responsible for A24, except that the VC Contractor must:
    - (A) provide the Principal with all information, documents, details and data relating to the VC Contractor's Activities that could relate to the approved ER's functions and obligations under condition A24; and
    - (B) facilitate any actions necessary for the ER to carry out its functions and obligations under condition A24;
  - (xi) in relation to A25, engage, nominate, and seek approval from the Secretary of a suitably qualified and experienced Acoustics Adviser (AA) and additional suitably qualified and experienced persons to assist the lead AA. The Principal will be the single point of contact with the Secretary and will provide the VC Contractor with the date the submission for approval is made, or notify the VC Contractor of any other timeframe relevant to this condition;
  - (xii) in relation to A26, notify the VC Contractor when the approval of the Secretary is given;
  - (xiii) be responsible for A27, except that the VC Contractor must:
    - (A) provide the Principal with all information, documents, details and data relating to the VC Contractor's Activities that could relate to the approved AA's functions and obligations under condition A27; and
    - (B) facilitate any actions necessary for the AA to carry out its functions and obligations under condition A27;
  - (xiv) be responsible for A28;

- (xv) be responsible for A29. The Principal will notify the VC Contractor of the date of submission to the Secretary and if there is any other timeframe agreed with the Secretary relevant to the Project Works and the VC Contractor's Activities;
- (xvi) be responsible for A30, except that the VC Contractor must:
  - (A) provide the Principal with all the information, documents, details and data relating to the VC Contractor's Activities to enable the Principal to comply with this condition; and
  - (B) participate in any activities necessary under the Compliance Tracking Program;
- (xvii) be responsible for A31, except that the VC Contractor must provide the Principal with all the information, documents, details and data relating to the VC Contractor's Activities to enable the Principal to comply with A31. The Principal will be the single point of contact with the Secretary and notify the VC Contractor any other timeframe relevant to this condition agreed with the Secretary;
- (xviii) be responsible for A32, except that the VC Contractor must provide the Principal with all the available information, documents, details and data relating to the VC Contractor's Activities that support the required compliance reporting under the Pre-Construction Compliance Report;
- (xix) be responsible for A33, except that the VC Contractor must provide the Principal with all the available information, documents, details and data relating to the VC Contractor's Activities that support the required compliance reporting under the Pre-Construction Compliance Report;
- (xx) be responsible for A34, except that the VC Contractor must provide the Principal with all the information, documents, details and data relating to the VC Contractor's Activities to enable the Principal to comply with this condition;
- (xxi) be responsible for A35, except that the VC Contractor must provide the Principal with all the available information, documents, details and data relating to the VC Contractor's Activities necessary to support the Principal's preparation of the "Pre-Operation Compliance Reports";
- (xxii) be responsible for A36;
- (xxiii) be responsible for A37, A39 and A40, except that the VC Contractor must:
  - (A) provide the Principal with all the information, documents, details and data relating to the VC Contractor's Activities to enable the Principal to comply with conditions A37 to A40;
  - (B) participate in any activities necessary under the Environmental Audit Program; and
  - (C) provide reasonable assistance required to enable the independent environmental audits to be carried out.

The Principal will submit the Environmental Audit Program to the Secretary and advise the VC Contractor of the date of submission or any other timeframe relevant to conditions A37, A39 and A40;

- (xxiv) be responsible for A41 to A44, except that the VC Contractor must immediately advise the Principal of any incident requiring notification, promptly provide the Principal with all the information, documents, details and data relating to the VC Contractor's Activities to enable the Principal to comply with these conditions;
- (xxv) be responsible for B1 to B4 to the extent that the Principal will prepare and submit for approval only an overarching Community Communication Strategy. The VC Contractor must prepare its own Community Communication Strategy in accordance with conditions B1 to B4 in relation to the VC Contractor's Activities consistent with the Principal's overarching Community Communication Strategy. The VC Contractor's Community Communication Strategy must be prepared within a sufficient timeframe for the Principal to review and submit the VC Contractor's Community Communication Strategy to the Secretary for approval at least one month before the commencement of Construction (as defined in the Project Planning Approval (Chatswood to Sydenham)). The Principal will notify the VC Contractor when the Secretary approves the VC Contractor's Community Communication Strategy;
- (xxvi) be responsible for B6 and B7, except that the VC Contractor must:
  - (A) provide the Principal with all the information, documents, details and data relating to the VC Contractor's Activities that are required to prepare the "Complaints Management System" and maintain a complaints register; and
  - (B) implement the Complaints Management System;
- (xxvii) be responsible for B8 to B12; except that VC Contractor must ensure that the telephone number, postal address and email address required under condition B9(a), (b) and (c) is placed on site hoarding at each construction site before commencement of Construction (as defined in the Project Planning Approval (Chatswood to Sydenham)) in accordance with condition B10;
- (xxviii) be responsible for B13, except that except that the VC Contractor must:
  - (A) provide the Principal and the Community Complaints Commissioner with all information, documents, details and data relating to the VC Contractor's Activities in order for the Community Complaints Commissioner to perform its function; and
  - (B) co-operate with, and respond to the reasonable requirements of, the Community Complaints Commissioner;
- (xxix) be responsible for B14, except that the VC Contractor must provide the Principal with all information, documents, details and data relating to the VC Contractor's Activities that are required to enable the Principal to comply with this condition;
- (xxx) be responsible for B15, except that the VC Contractor must:

- (A) establish and maintain a new website, or dedicated pages within an existing website, and comply with condition B15 in relation to the VC existing website, and comply with B15 in relation to the VC Contractor's Activities;
  - (B) agree with the Principal on the extent of documentation to be posted on the Contractor's website considering privacy and confidentiality in relation to information, documents, details and data provided by the Contractor;
  - (C) comply with level AA accessibility requirements in the Web Content Accessibility Guidelines (WCAG 2.0); and
  - (D) provide the Principal with all information, documents, details and data relating to the VC Contractor's Activities that are required for the Principal to comply with condition B15;
- (xxxi) in relation to C5, where an agency(ies) request(s) is not included the VC Contractor must provide the Principal with all information, documents, details and data relating to the VC Contractor's Activities that are required to enable the Principal to provide the Secretary with justification as to why;
- (xxxii) be responsible for C6, except that the VC Contractor must provide the Principal with all information, documents, details and data relating to the VC Contractor's Activities that are required to enable the Principal to comply with this condition;
- (xxxiii) in relation to C7, submit the endorsed CEMP to Secretary. The Contractor must provide a copy of the CEMP, including the ER's endorsement, to the Principal in a timely manner to enable the Principal to comply with this condition;
- (xxxiv) in relation to C8, notify the VC Contractor when the approval of the Secretary is given;
- (xxxv) in relation to C13, notify the VC Contractor of the date the Construction Monitoring Programs have been submitted to the Secretary. The VC Contractor must provide a copy of the Construction Monitoring Programs, including the ER's endorsement, to the Principal in a timely manner to enable the Principal to comply with this condition;
- (xxxvi) in relation to C14, notify the VC Contractor when the approval of the Secretary is given for the Contractor's Construction Monitoring Programs;
- (xxxvii) in relation to C16, submit the Construction Monitoring Reports to the Secretary as required by this condition. The VC Contractor must provide copies of the Construction Monitoring Reports to the Principal in a timely manner to enable the Principal to comply with its retained obligation;
- (xxxviii) be responsible for D1 to D8;
- (xxxix) be responsible for D9, except that the VC Contractor must provide the Principal with all information, documents, details and data relating to the VC Contractor's Activities that could relate to the approved "Ground-borne Noise Specialist's" functions and obligations under condition D9;
- (xl) be responsible for D10 to D14;

- (xli) be responsible for E1;
- (xlii) be responsible for E6, except that the VC Contractor must produce a Tree Report for trees impacted or removed by the VC Contractor's Activities and make provision for their replacement in accordance with Condition E6. The VC Contractor must provide the Tree Report to the Principal in a timely manner to enable the Principal to submit it to the Secretary in compliance with this condition;
- (xlvi) be responsible for E7;
- (xliii) be responsible for E11 and E12;
- (xlv) be responsible for E13, except that the VC Contractor must provide the Principal with all information, documents, details and data relating to the VC Contractor's Activities that are required to enable the Principal to comply with this condition;
- (xlvi) be responsible for E14;
- (xlvii) in relation to E15, the Principal will be responsible for the salvage of items of heritage value from heritage listed buildings and structures before demolition and undertake consultation only with the Heritage Division (or delegate) of the OEH. The VC Contractor must assess and implement options for the sympathetic reuse, repository or display of the salvaged items, including in consultation with Relevant Council(s) and provide the Principal with all information, documents, details and data relating to the VC Contractor's Activities that are required to enable the Principal to comply with its retained obligation in relation to condition E15;
- (xlviii) be responsible for E16;
- (xlix) be responsible for E19. The VC Contractor must implement the procedure in relation to the Project Works and the VC Contractor's Activities;
  - (I) in relation to E20, make all notifications to the Secretary. The VC Contractor must provide the Principal with all information, documents, details and data relating to the VC Contractor's Activities that are required to enable the Principal to comply with its retained obligation;
  - (ii) be responsible for E21 to the extent that the Principal will prepare and submit for approval only one Heritage Interpretation Plan. The VC Contractor must prepare its own Heritage Interpretation Plan in accordance with condition E21 in relation to the VC Contractor's Activities consistent with the Principal's Heritage Interpretation Plan. The VC Contractor must submit its plan to the Principal for review no later than one month prior to the commencement of permanent aboveground work;
  - (iii) be responsible for E22;
  - (iv) be responsible for E22.1;
  - (iv) be responsible for E27, except that the VC Contractor must implement and comply with the Exhumation Management Plan;
  - (iv) be responsible for E28.1;

- (lvi) be responsible for E32 in relation to review of the Construction Noise & Vibration Strategy (CNVS). The VC Contractor must comply with the approved CNVS. The CNVS is contained in Schedule F1 (*Electronic files*) as an electronic file;
- (lvii) be responsible for E47 in relation to preparation and submission of the Out of Hours Work Protocol. The VC Contractor must comply with the approved Out of Hours Work Protocol. The Out of Hours Work Protocol is contained in Schedule F1 (*Electronic files*) as an electronic file;
- (lviii) in relation to E53, if the VC Contractor prepares a Blast Management Strategy, the VC Contractor must submit it to the Principal. The Principal will submit it to the Secretary and notify the VC Contractor when it has been submitted;
- (lix) be responsible for E57;
- (ix) be responsible for E62, except that the VC Contractor:
  - (A) must provide the Principal and the Independent Property Impact Assessment Panel with all information, documents, details and data relating to the VC Contractor's Activities in order for the Panel to perform its functions;
  - (B) must comply with the reasonable requests and requirements of the Independent Property Impact Assessment Panel; and
  - (C) may refer unresolved disputes in relation to property impacts caused by the VC Contractor's Activities to the Independent Property Impact Assessment Panel.

The terms of reference for the Independent Property Impact Assessment Panel are contained in Schedule F1 (*Electronic files*) as an electronic file;

- (xii) in relation to E63, submit the results of monitoring to the Secretary on request. The VC Contractor must submit the results of monitoring to the Principal;
- (xiii) be responsible for E64, except in relation to items referred to in E64(a), (b), (c) and (e). The VC Contractor must provide the Principal with all information, documents, details and data relating to Contractor's Activities for items referred to in E64(d) and (f);
- (xiv) be responsible for E66, except to the extent that the VC Contractor must undertake a Site Contamination Report in accordance with condition E66 in relation to any Contamination for which the VC Contractor bears the risk under clause 5.7(a) of the deed;
- (xv) in relation to E68, if the VC Contractor prepares a Site Audit Statement and Site Audit Report, the VC Contractor must submit them to the Principal. The Principal will submit them to the Secretary;
- (xvi) be responsible for E72, except that:
  - (A) VC Contractor must provide the Principal with all information, documents, details and data relating to the VC Contractor's Activities

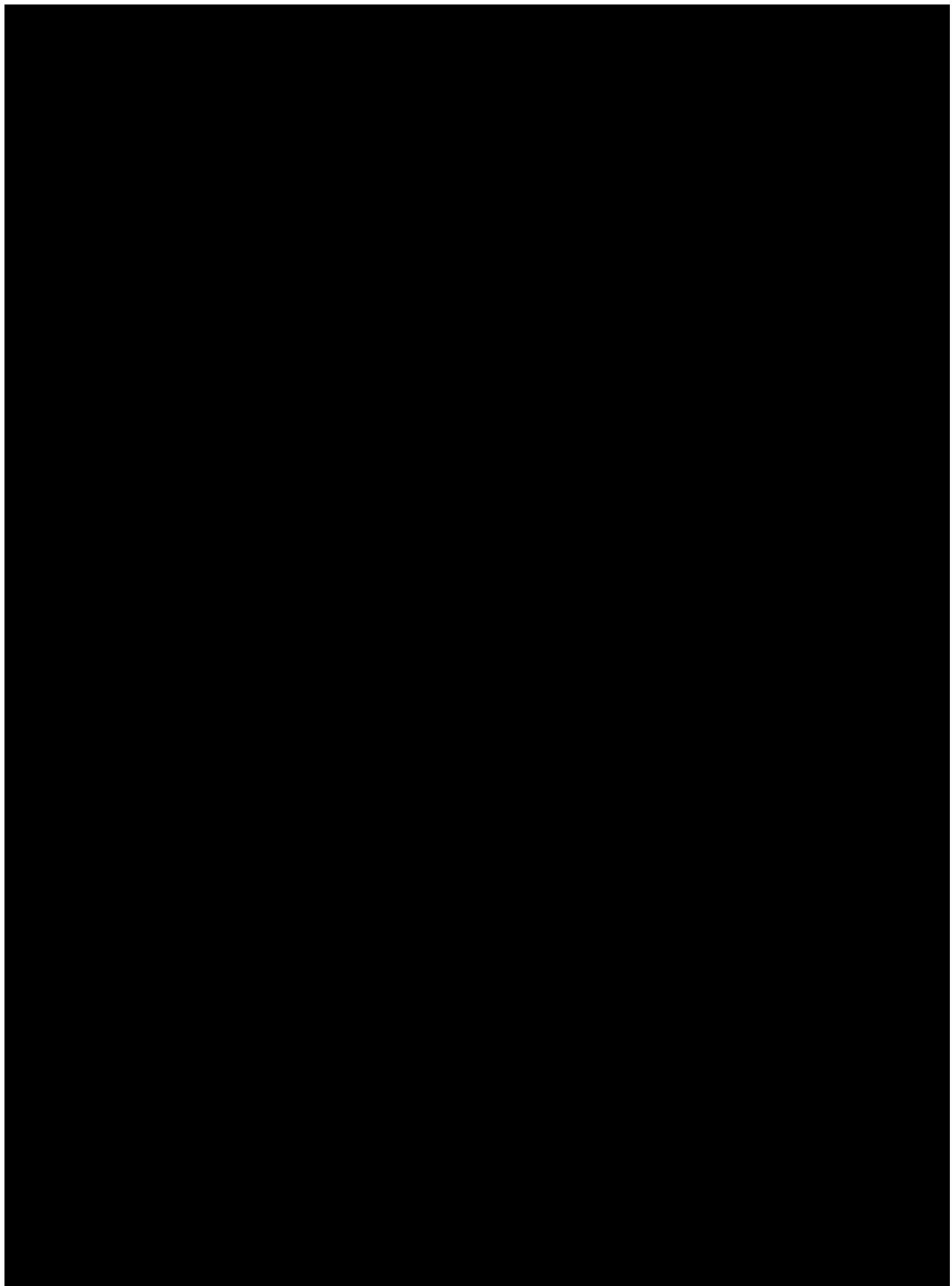
- in order for the Principal to prepare and implement the "Sustainability Strategy"; and
- (B) VC Contractor must implement the "Sustainability Strategy" referred to in condition E72 to the extent it relates to the VC Contractor's Activities. The Sustainability Strategy is contained in Schedule F1 (*Electronic Files*) as an electronic file;
- (lxvi) be responsible for E74;
- (lxvii) be responsible for E77, except that the VC Contractor must:
- (A) provide a representative to attend relevant meetings of the Traffic and Transport Liaison Group(s);
- (B) provide all relevant information, documents, details and data relating to the VC Contractor's Activities to the Traffic and Transport Liaison Group(s);
- (C) consult with the Traffic and Transport Liaison Group(s) in preparing the Construction Traffic Management Plans; and
- (D) implement and comply with any traffic and transport management measures;
- (lxviii) in relation to E78, the Principal must incorporate any revised traffic management measures into the Interchange Access Plan(s). The VC Contractor must provide the Principal with all relevant information, documents, details and data in order for the Principal to incorporate revised traffic management measures into the Interchange Access Plan(s);
- (lxix) be responsible for E81, except that the VC Contractor must implement the Construction Traffic Management Framework (CTMF). The CTMF is contained in Schedule F1 (*Electronic files*) as an electronic file;
- (lxx) be responsible for E84;
- (lxxi) be responsible for E89.1;
- (lxxii) be responsible for E92 and E93, except that the VC Contractor must provide the Principal with all information, documents, details and data that the VC Contractor produces as a result of the VC Contractor's Activities that are required to enable the Principal to comply with its retained obligation;
- (lxxiii) be responsible for E94 to E96;
- (lxxiv) be responsible for E98;
- (lxxv) be responsible for E100;
- (lxxvi) in relation to E101, develop a template SDPP. The VC Contractor is responsible for preparing SDPPs in accordance with condition E101 and the Principal's template SDPP;
- (lxxvii) be responsible for E103; and
- (lxxviii) be responsible for E109.

- (c) In relation to the Revised Environmental Mitigation Measures (Chatswood to Sydenham) the Principal will:
- (i) in relation to T7, be responsible for community education events that allow pedestrians, cyclists or motorists to sit in trucks and understand the visibility restrictions of truck drivers, and for truck drivers to understand the visibility from a bicycle; and a campaign to engage with local schools to educate children about road safety and to encourage visual contact with drivers to ensure they are aware of the presence of children;
  - (ii) be responsible for T10 except that the VC Contractor must provide the Principal with all information, documents, details and data relating to the VC Contractor's Activities that are required to enable the Principal to comply with this condition in a timely manner to suit the VC Contractor's Activities. The VC Contractor must provide appropriate wayfinding and Customer information to notify Customers of bus stops relocated as a result of the Project Works or Contractor's Activities;
  - (iii) be responsible for T11;
  - (iv) be responsible for T15 to T18;
  - (v) be responsible for T20;
  - (vi) be responsible for T23 to T27;
  - (vii) be responsible for OpT3;
  - (viii) be responsible for OpT5 to OpT7;
  - (ix) be responsible for NV5;
  - (x) in relation to NV6, engage, nominate, and seek approval from the Secretary of a suitably qualified and experienced AA. The Principal will be the single point of contact with the Secretary and notify the VC Contractor of any other timeframe relevant to this condition agreed with the Secretary;
  - (xi) be responsible for NV8 and NV9;
  - (xii) be responsible for NV12;
  - (xiii) be responsible for OpNV1 and OpNV2;
  - (xiv) be responsible for OpNV4 and OpNV5;
  - (xv) be responsible for NAH1;
  - (xvi) be responsible for LP1;
  - (xvii) be responsible for NAH3 except for implementing the Exhumation Policy and Guideline in relation to the Project Works and the VC Contractor's Activities;
  - (xviii) be responsible for NAH6;
  - (xix) be responsible for NAH9 to NAH16;
  - (xx) be responsible for NAH18 to NAH21;

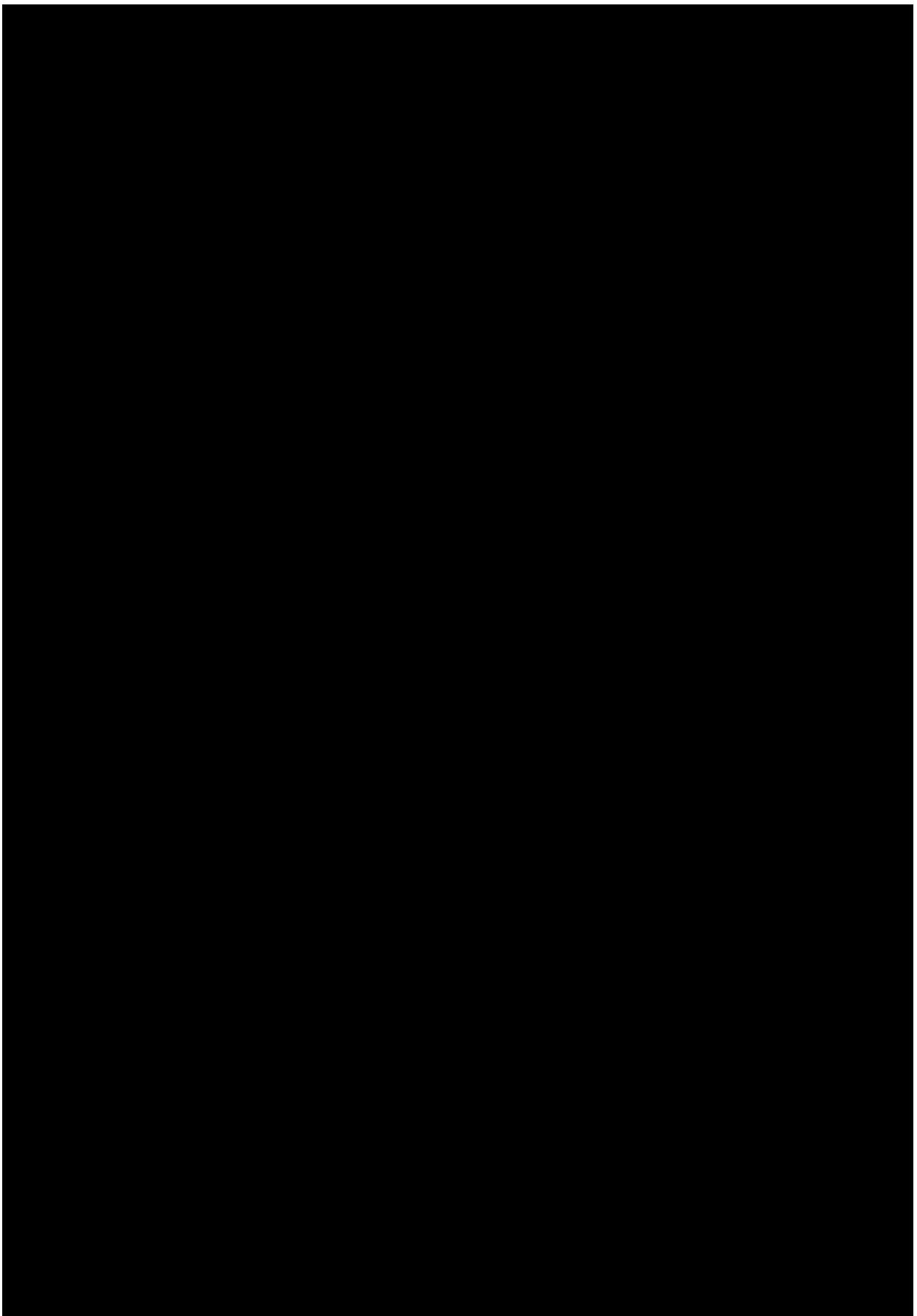
- (xxi) be responsible for AH3;
- (xxii) be responsible for AH5 to AH7;
- (xxiii) be responsible for LV8 and LV9;
- (xxiv) be responsible for LV11 to LV19;
- (xxv) be responsible for SCW2;
- (xxvi) be responsible for SCW5 to SCW7;
- (xxvii) be responsible for SO1;
- (xxviii) be responsible for B1 and B2;
- (xxix) be responsible for B4;
- (xxx) be responsible for FH1 to FH8;
- (xxxi) be responsible for HR5;
- (xxxii) be responsible for WM5;
- (xxxiii) be responsible for SUS7 to SUS10; and
- (xxxiv) be responsible for CU1 except that the VC Contractor must provide the Principal with all information, documents, details and data relating to the VC Contractor's Activities that are required to enable the Principal to comply with this condition.

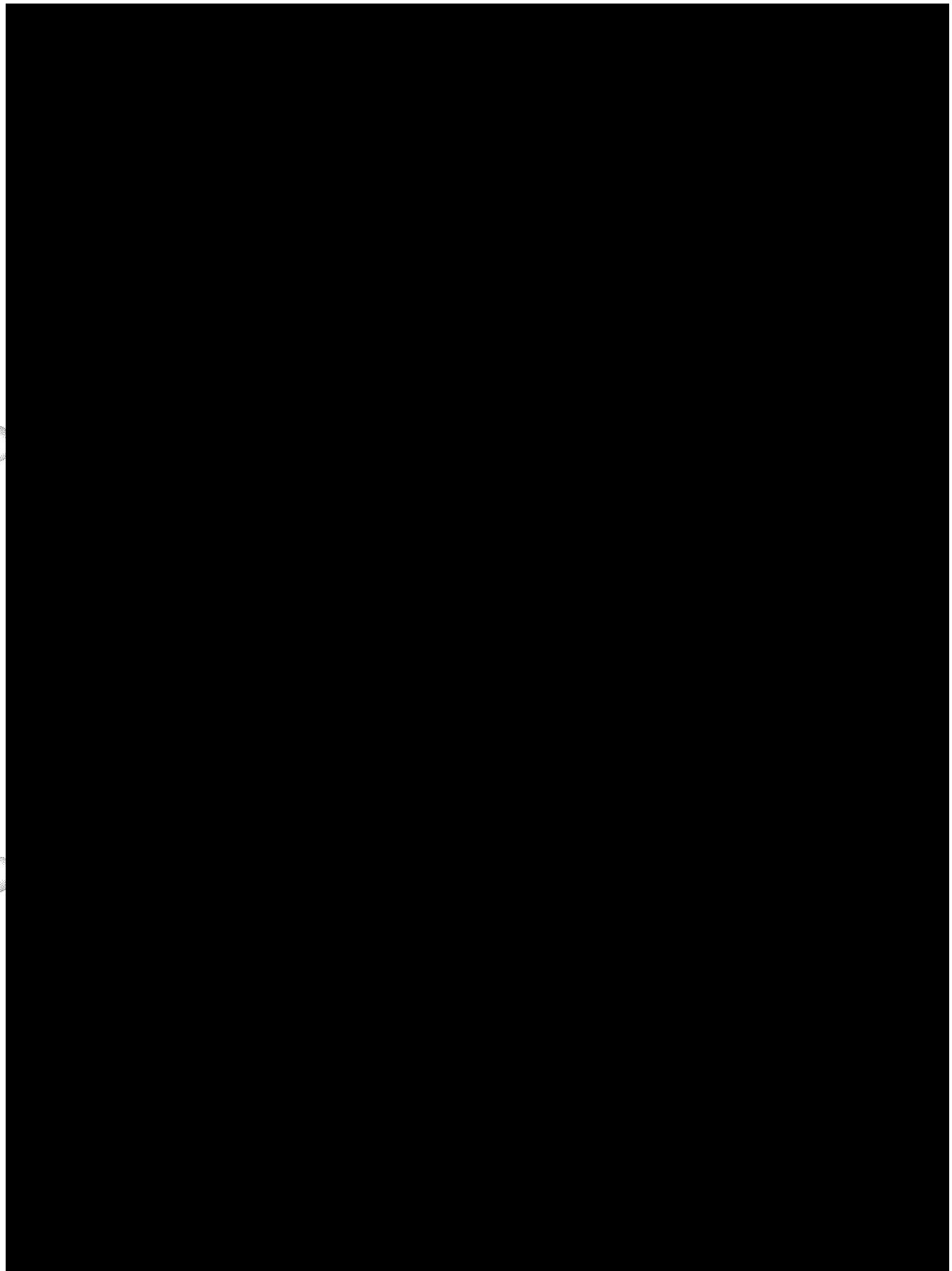
**SCHEDULE D4. – REQUIREMENTS OF THIRD PARTY AGREEMENTS**

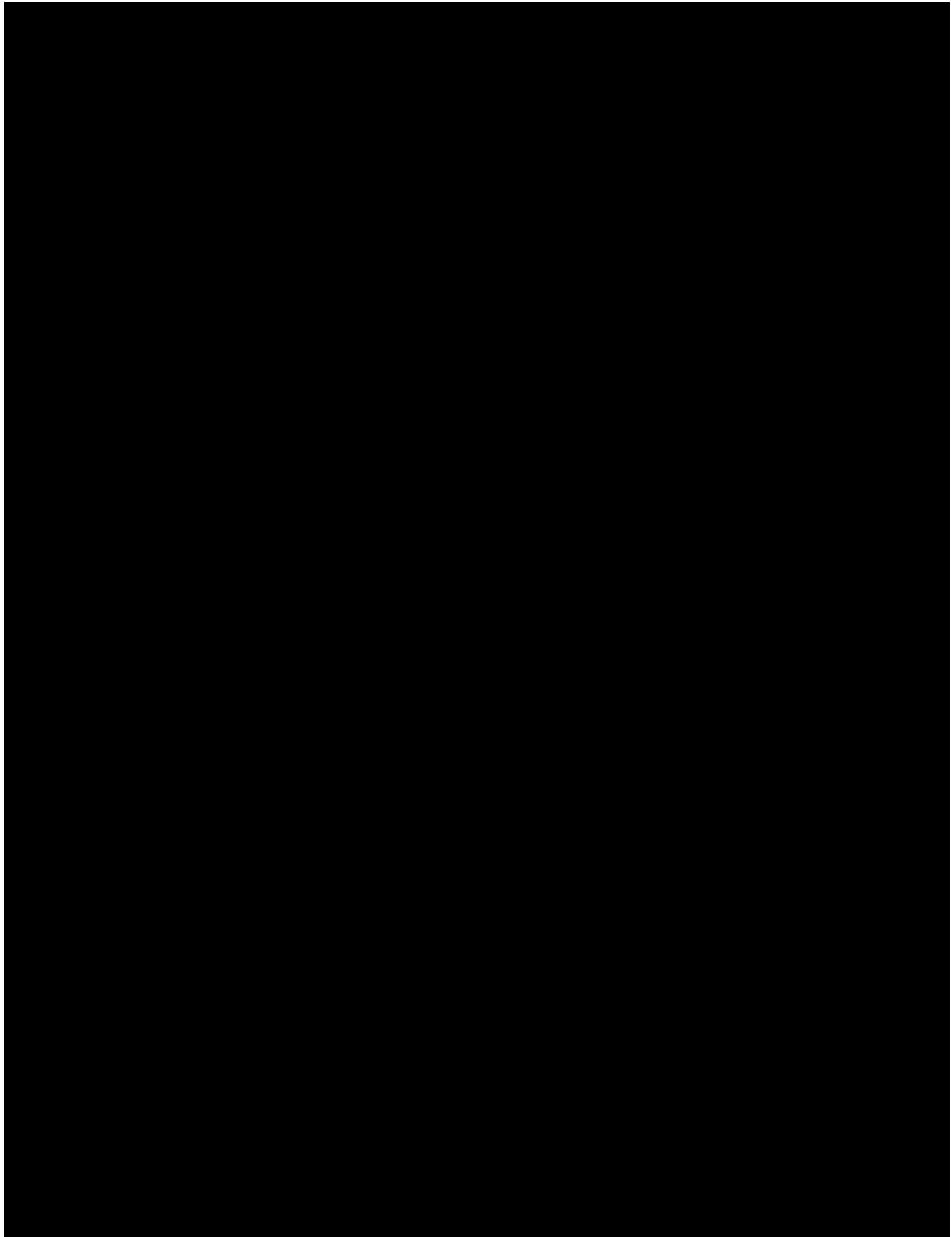


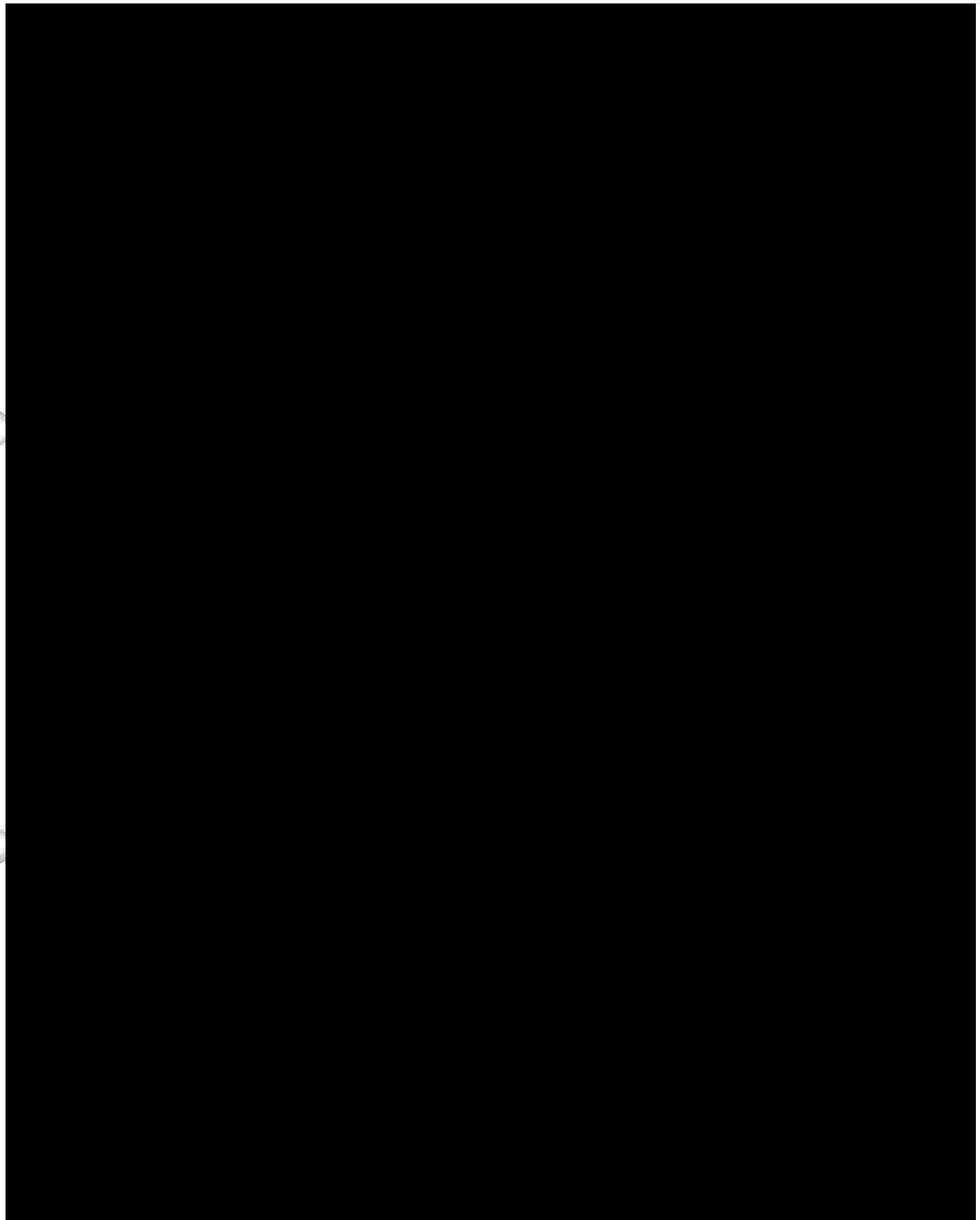


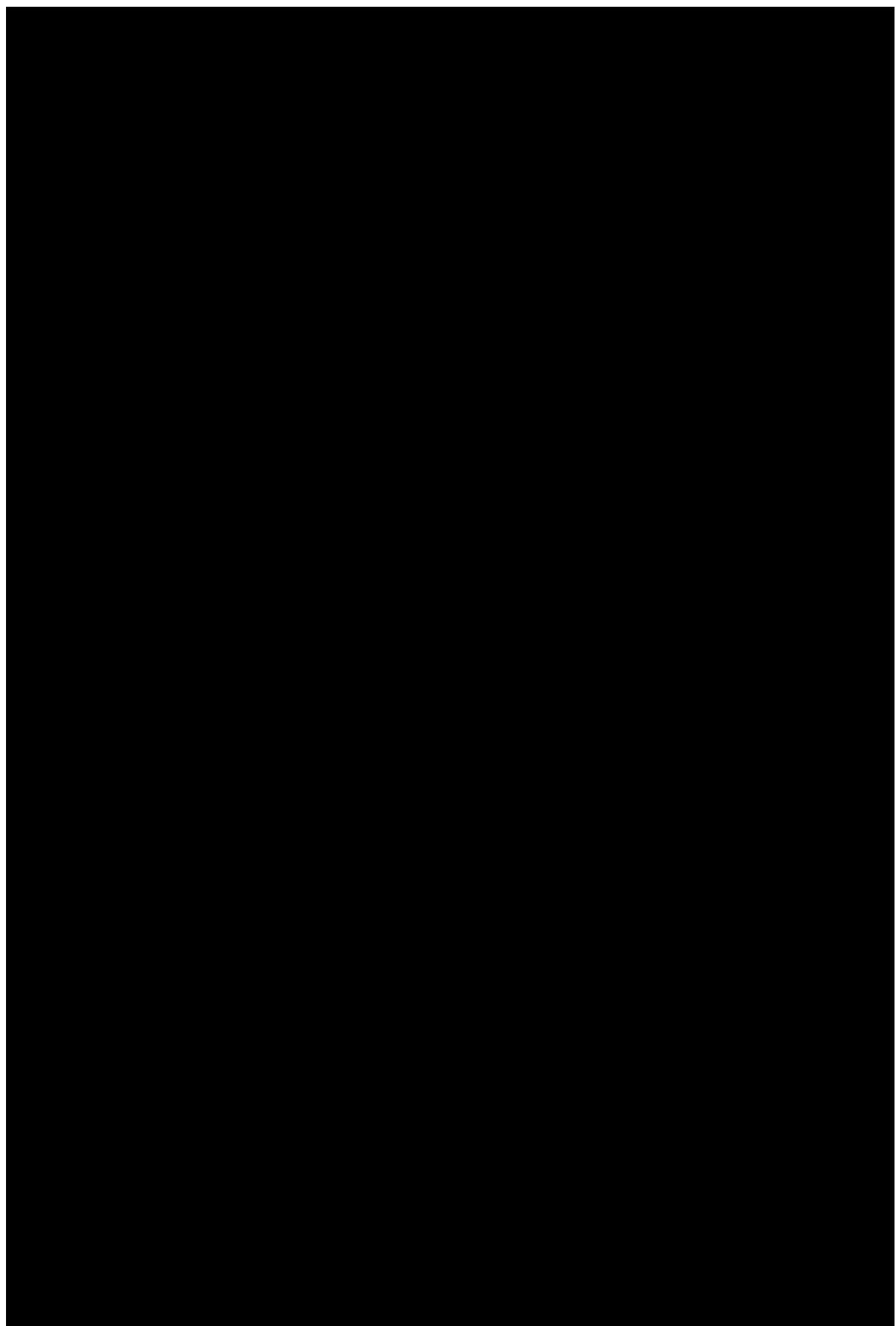


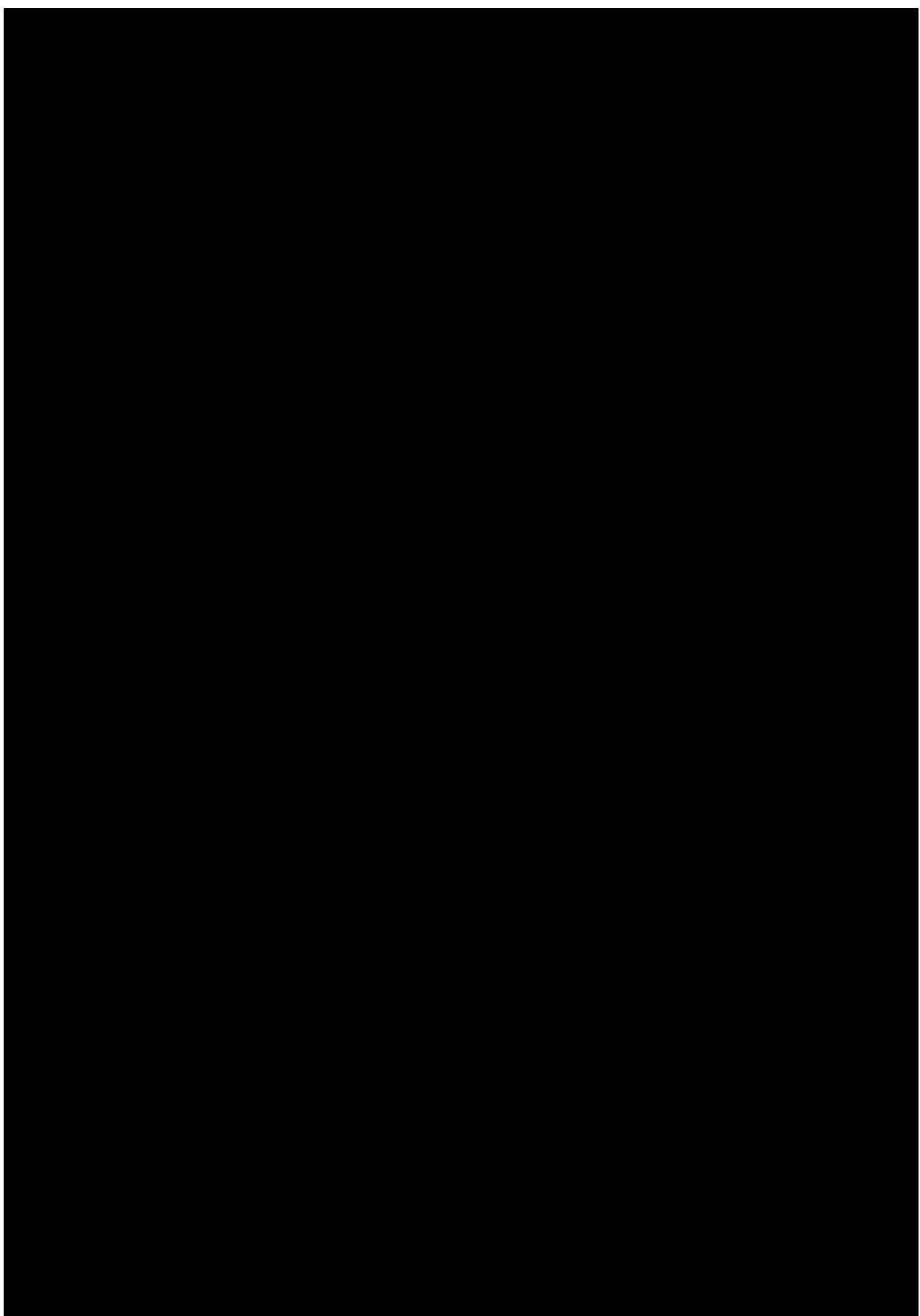




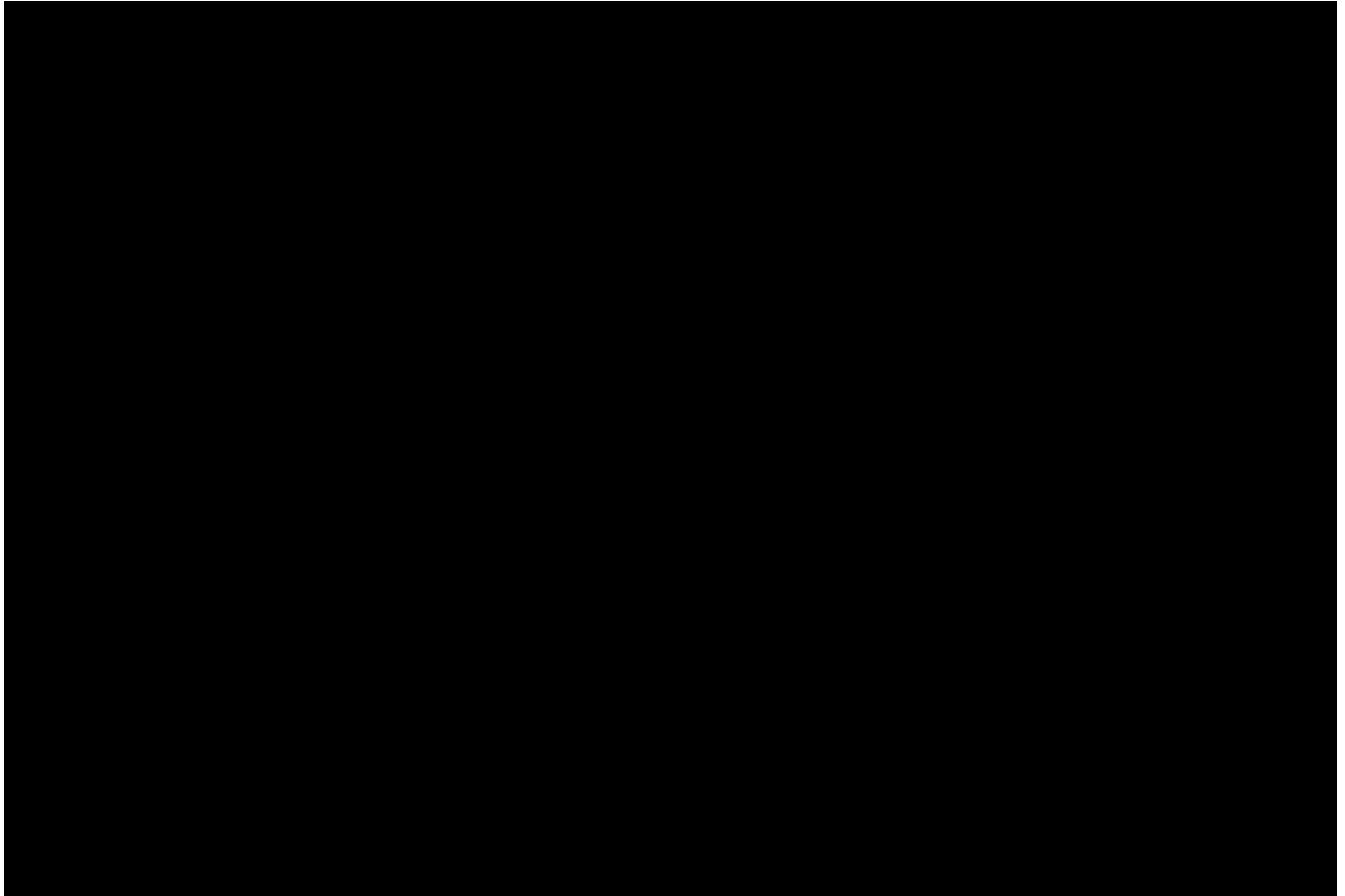






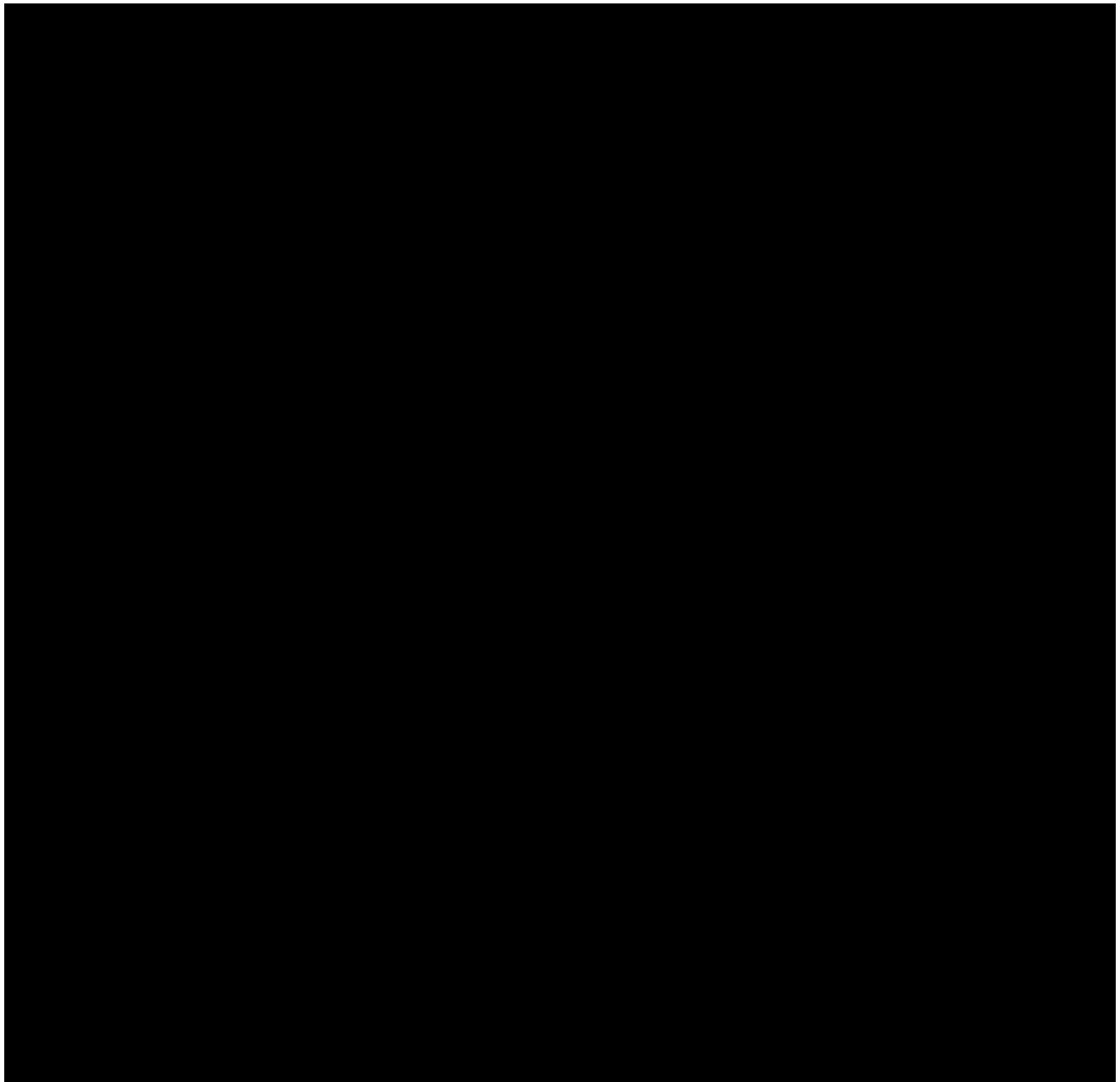


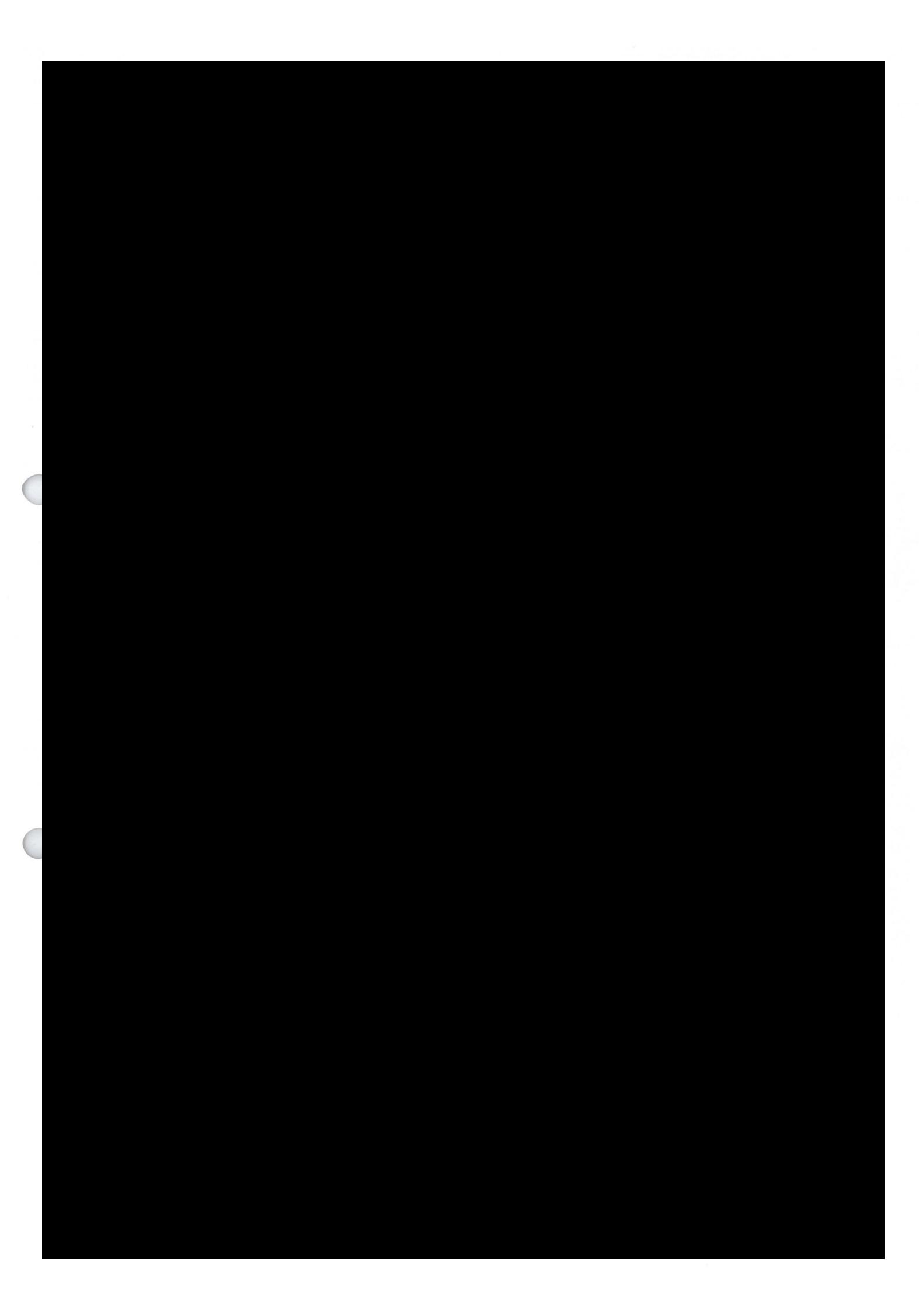
*Execution Version*



**SCHEDULE D5. – THIRD PARTY AGREEMENTS**

(Schedule A2 and clause 13)

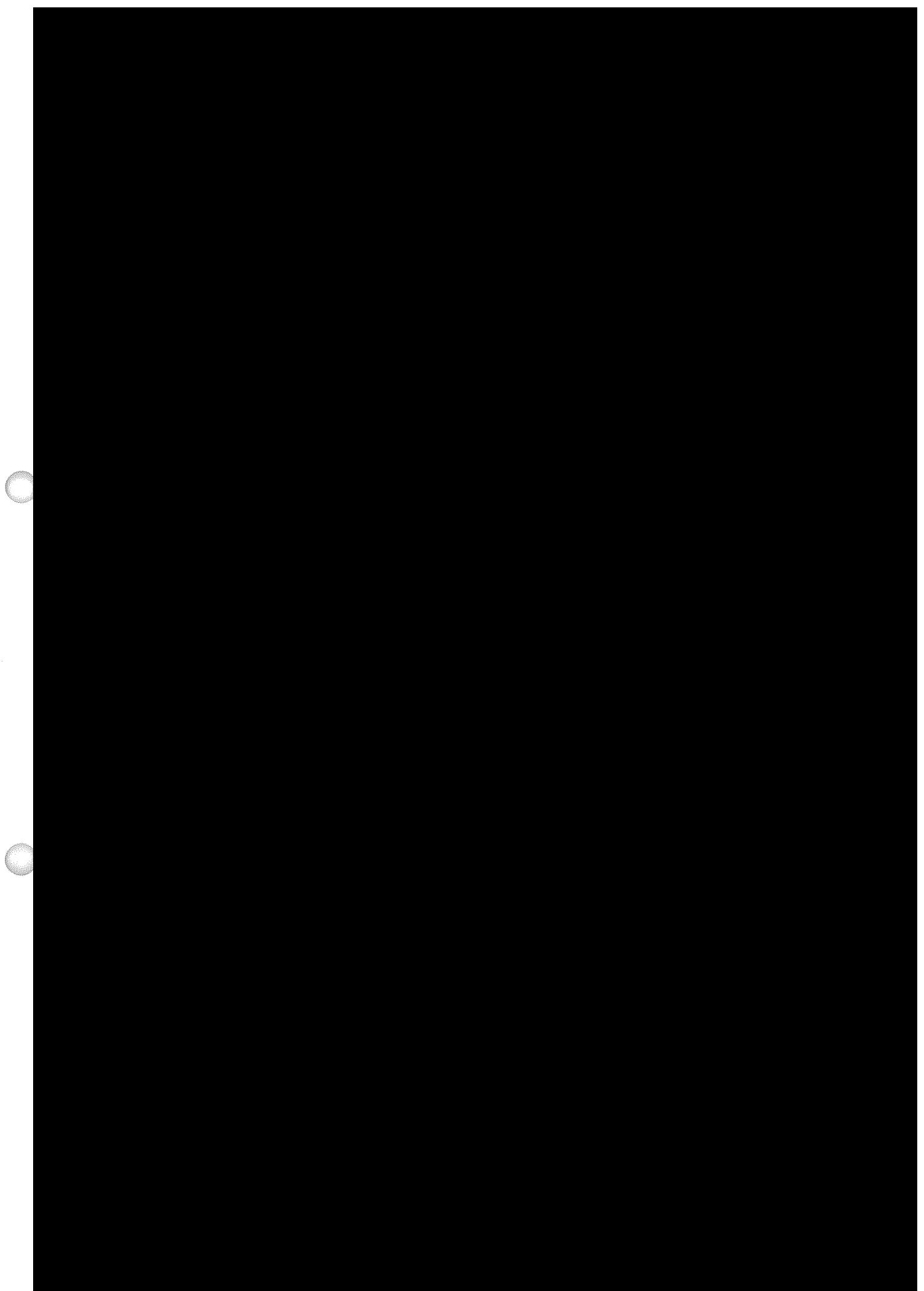












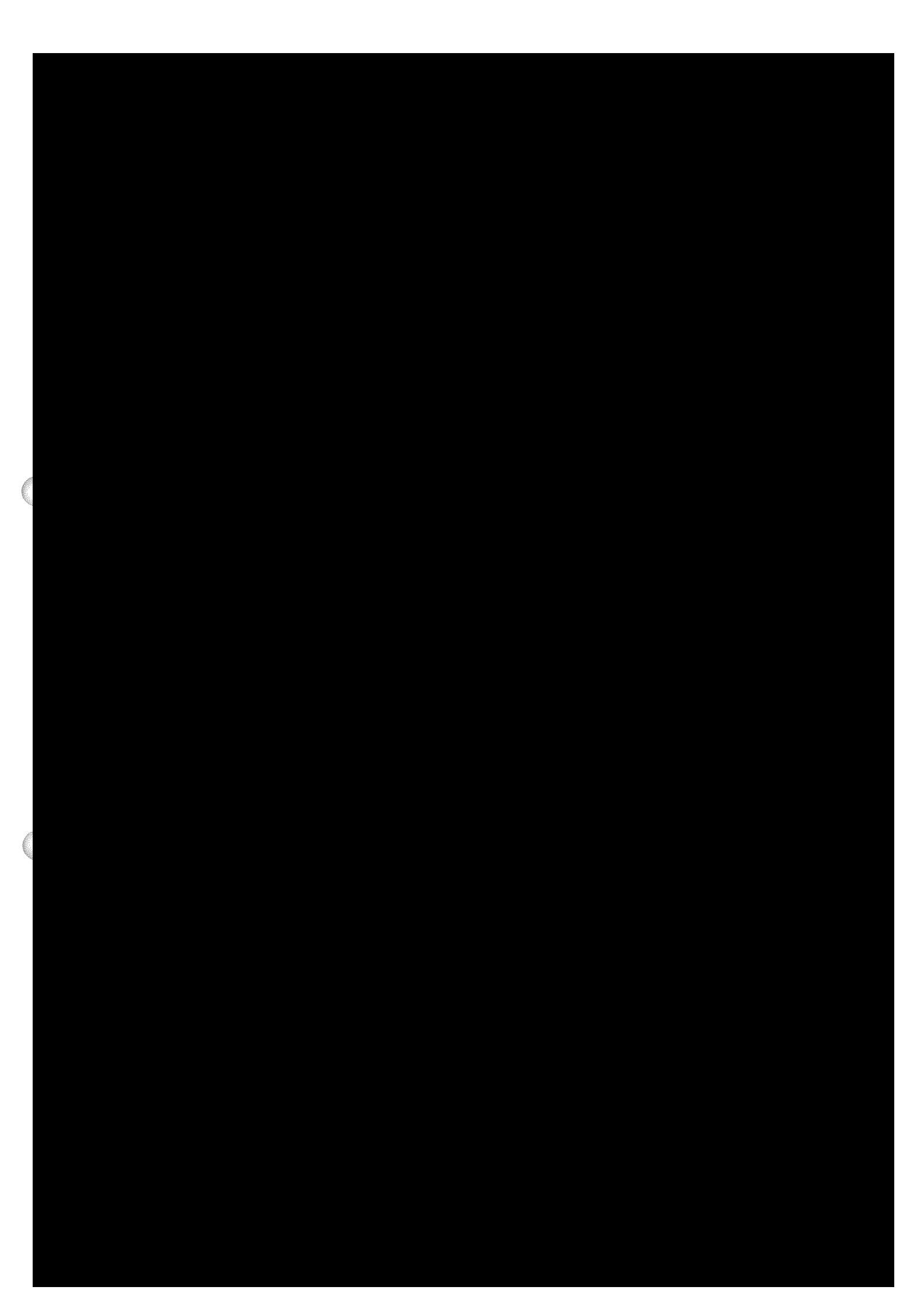




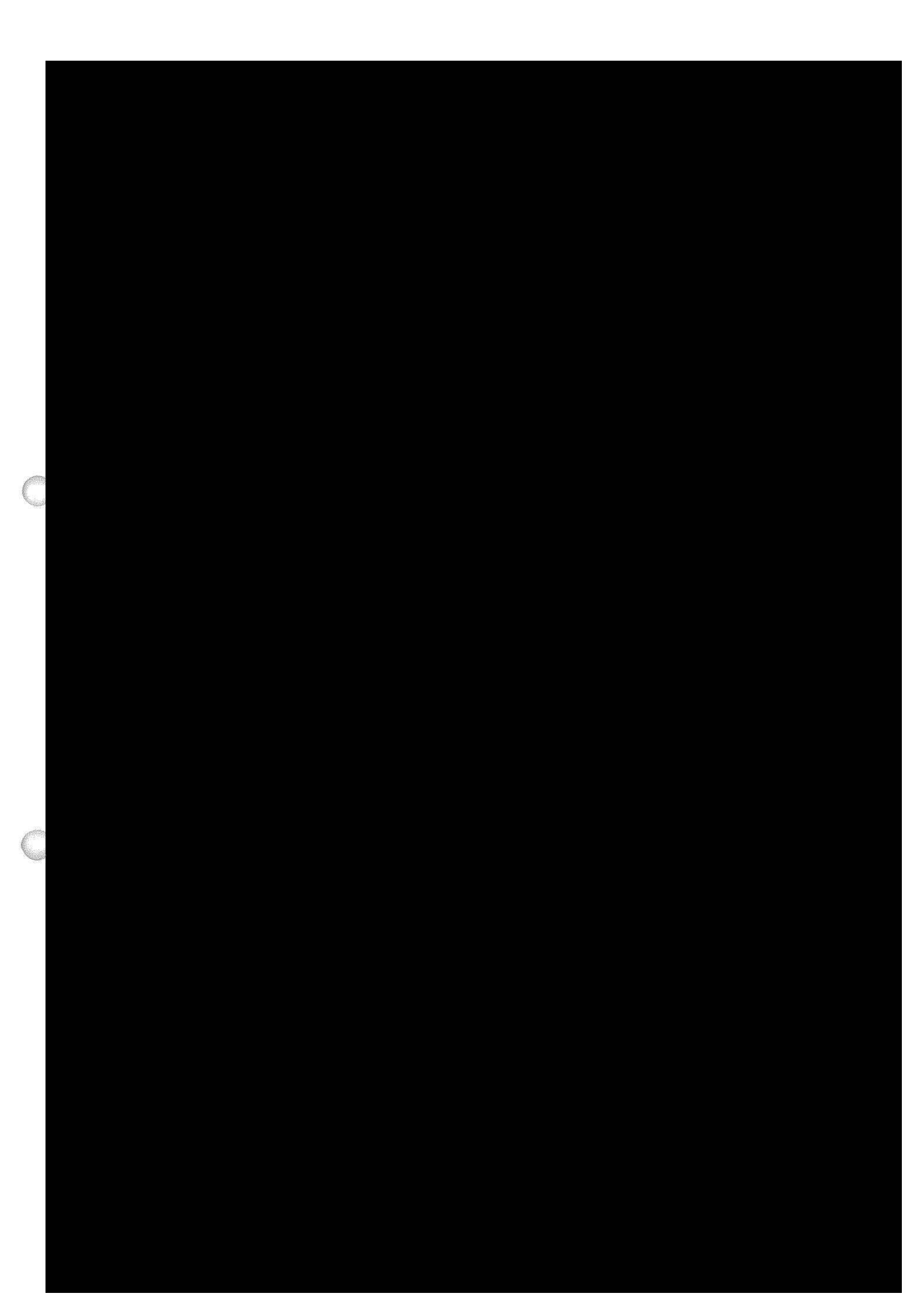


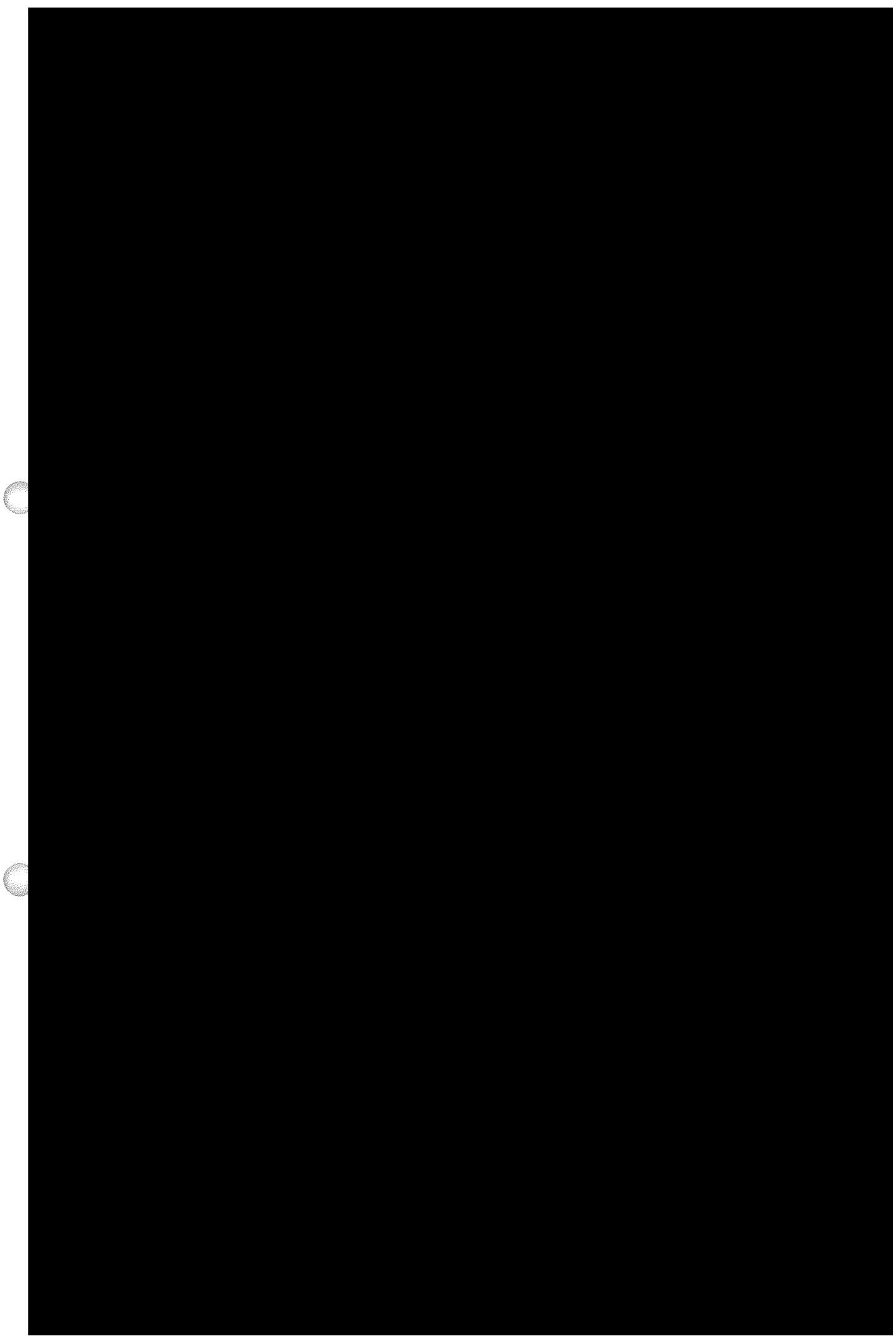






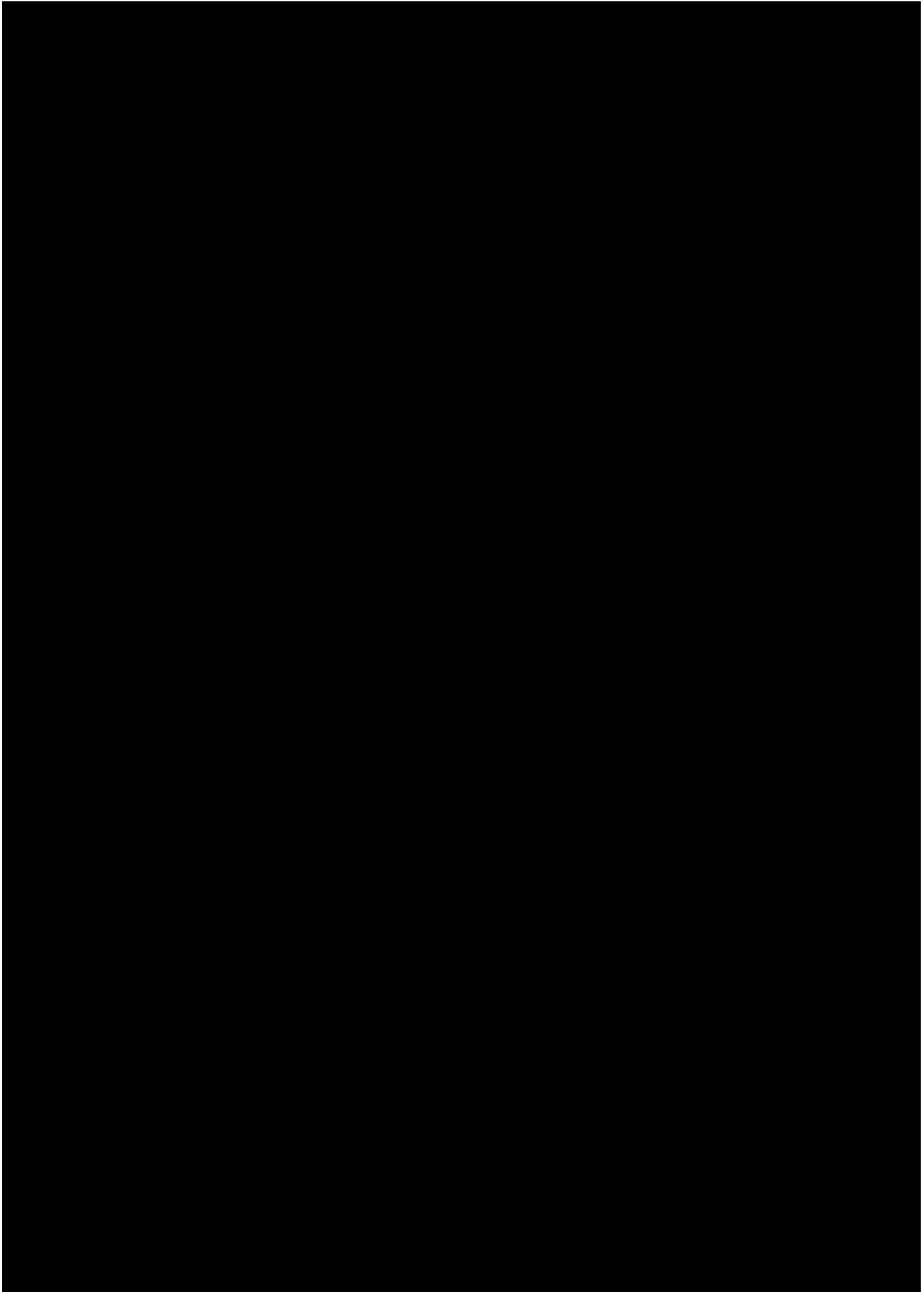


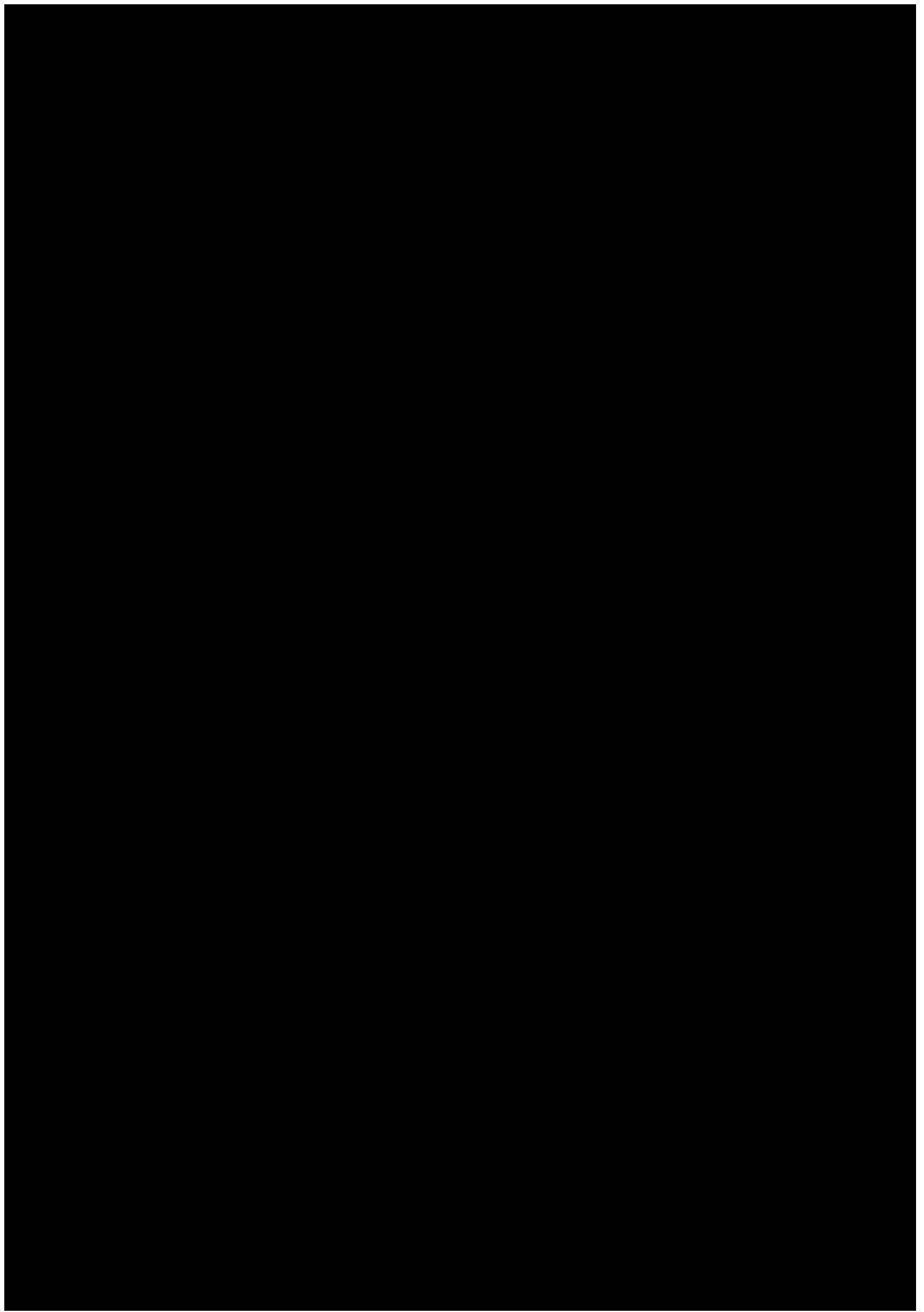


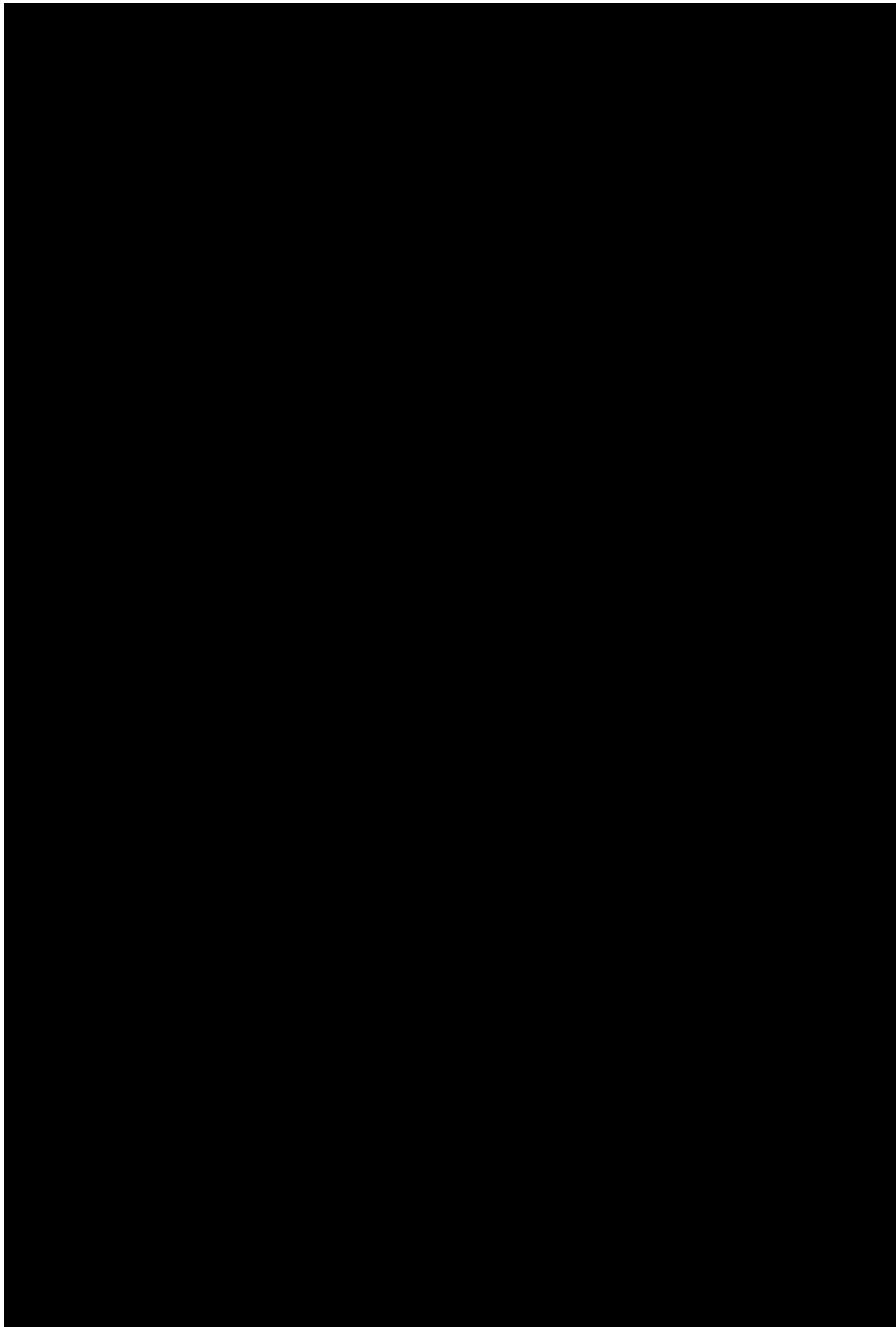


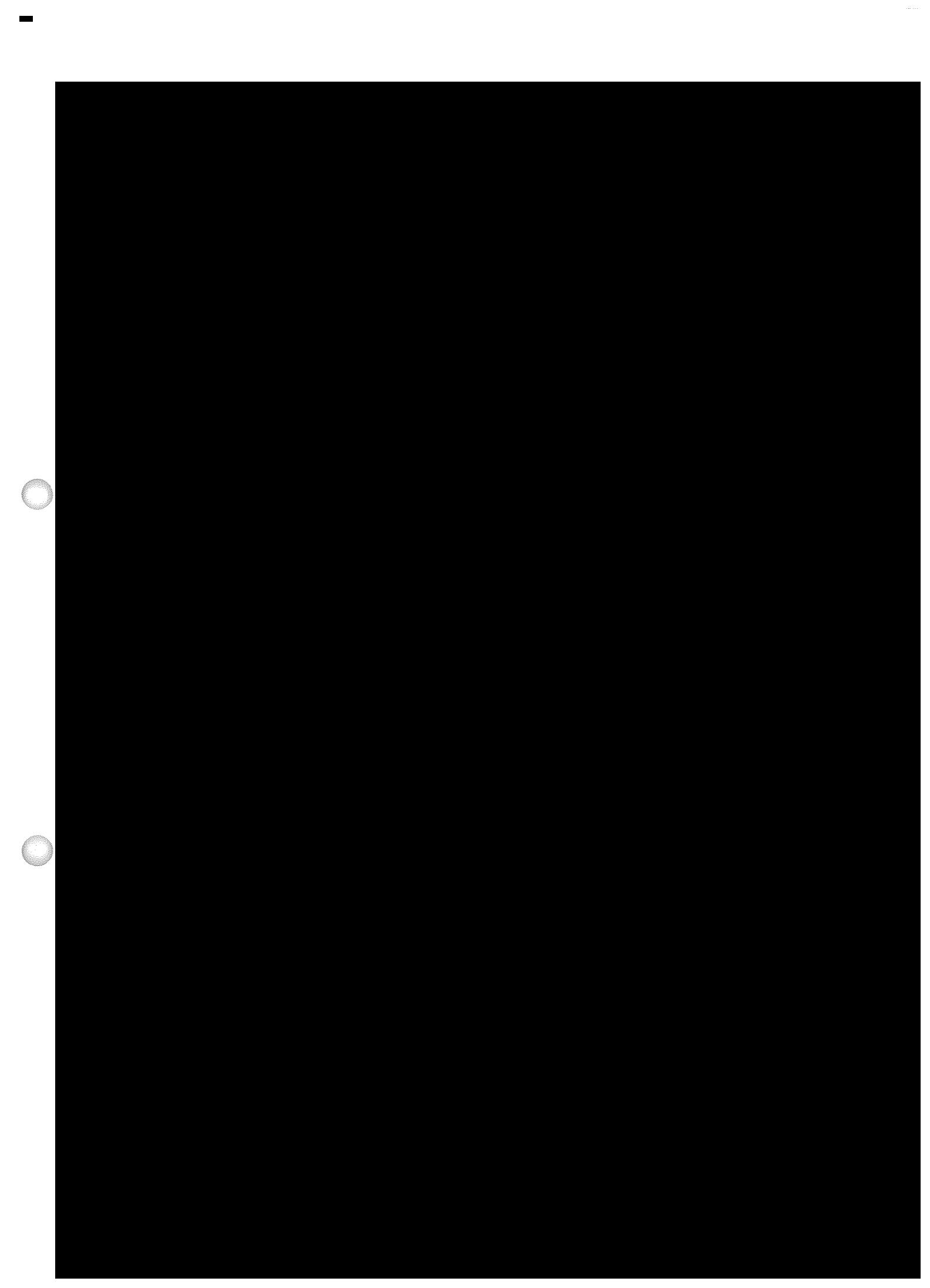


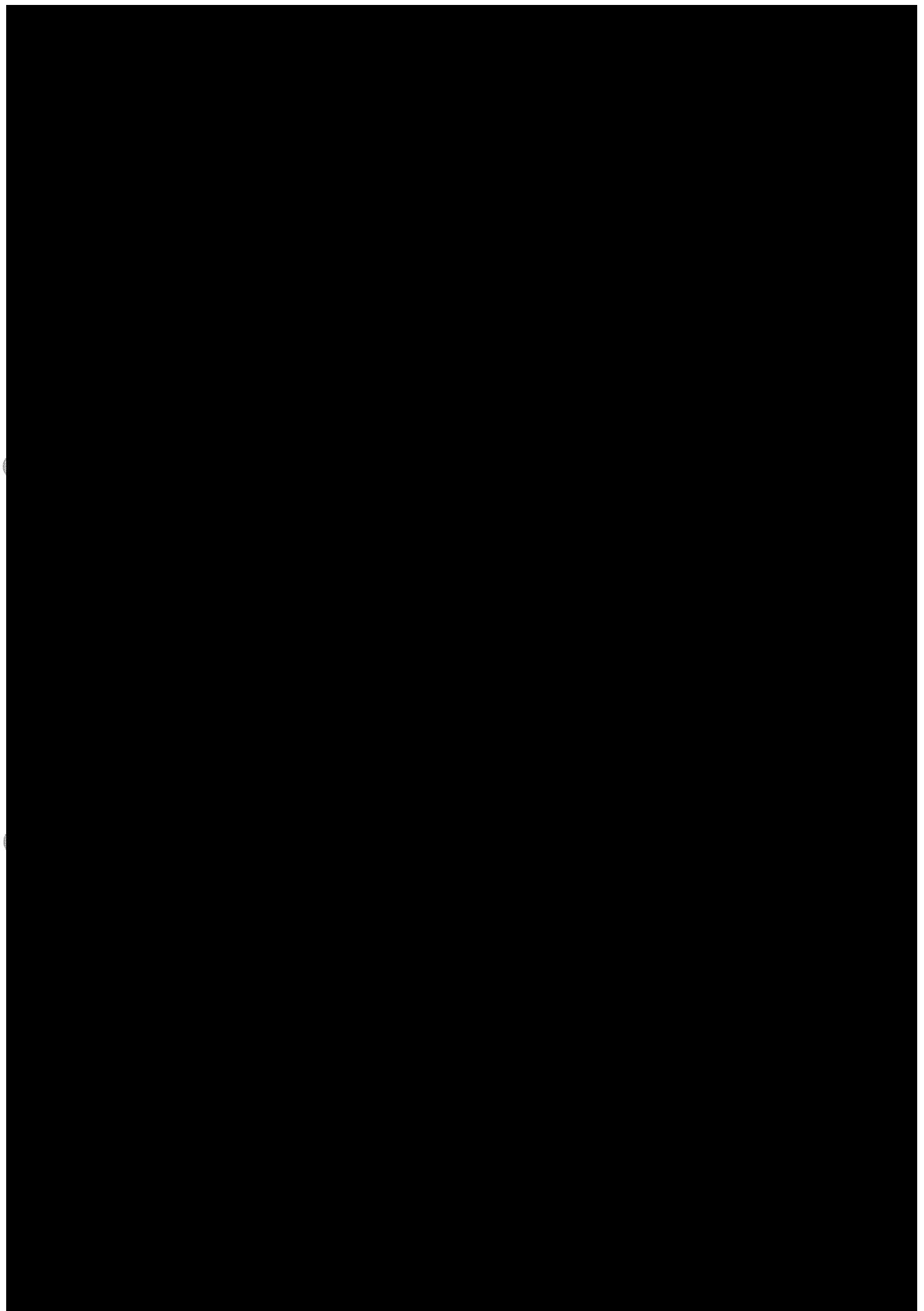




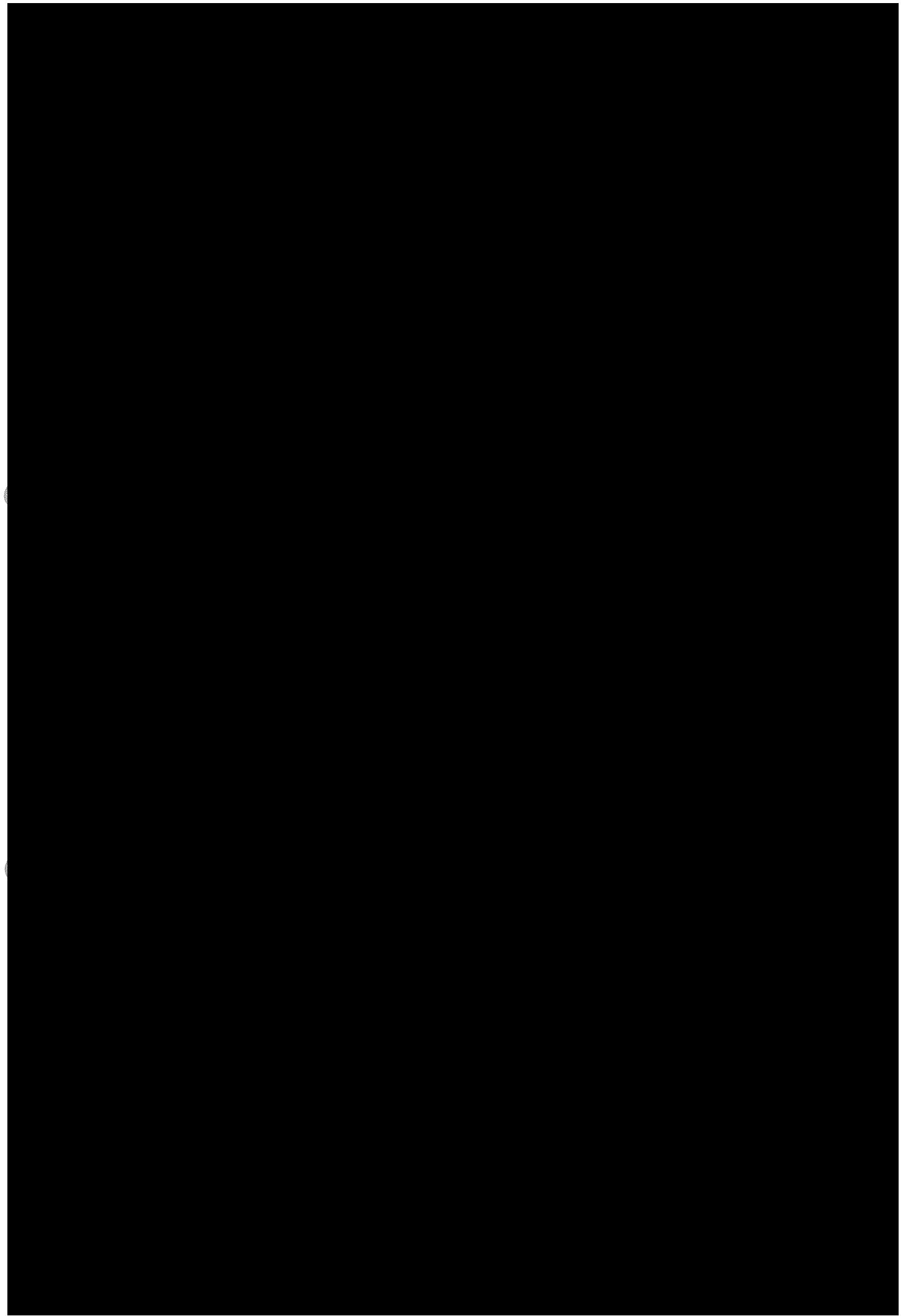




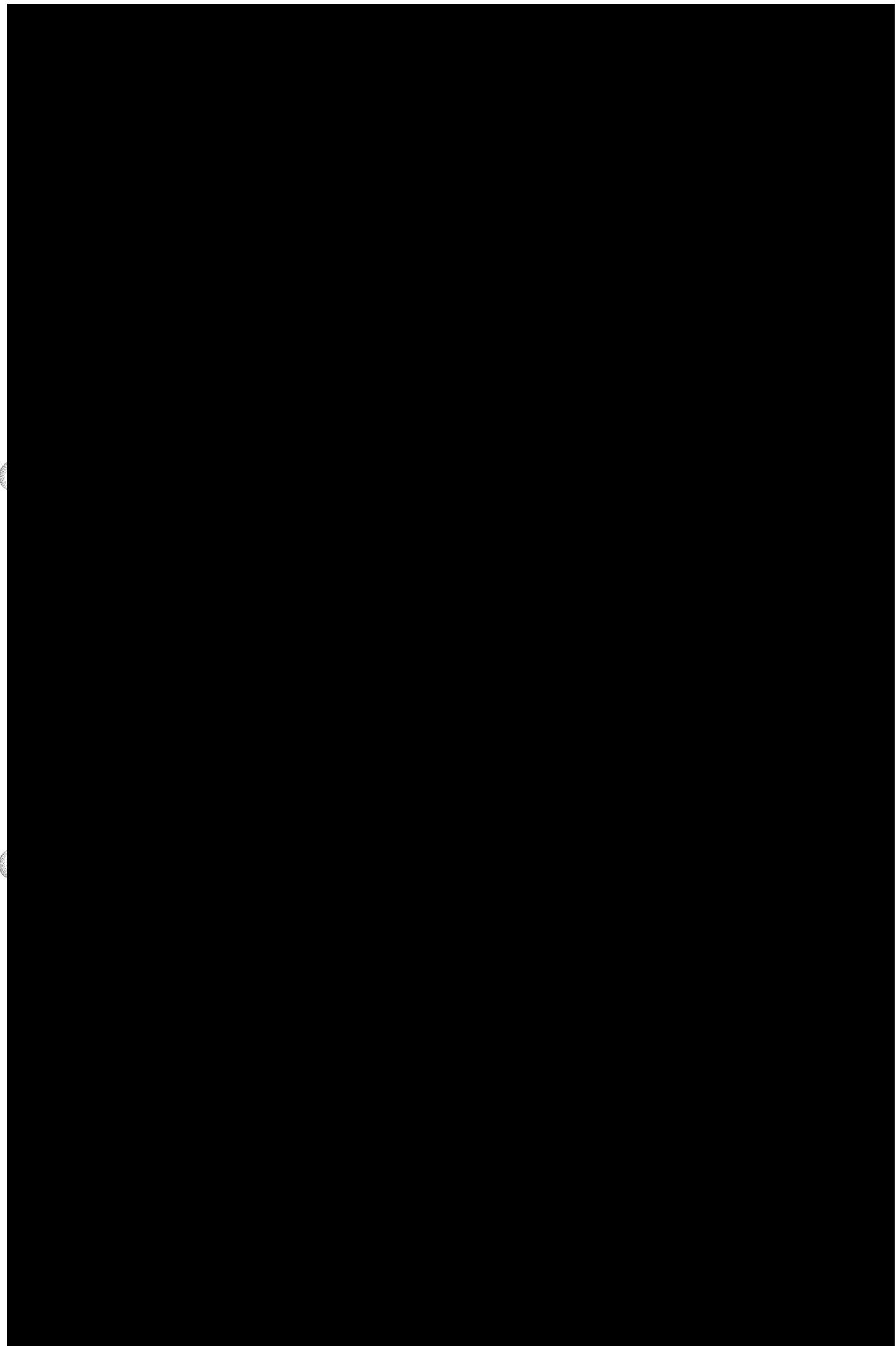


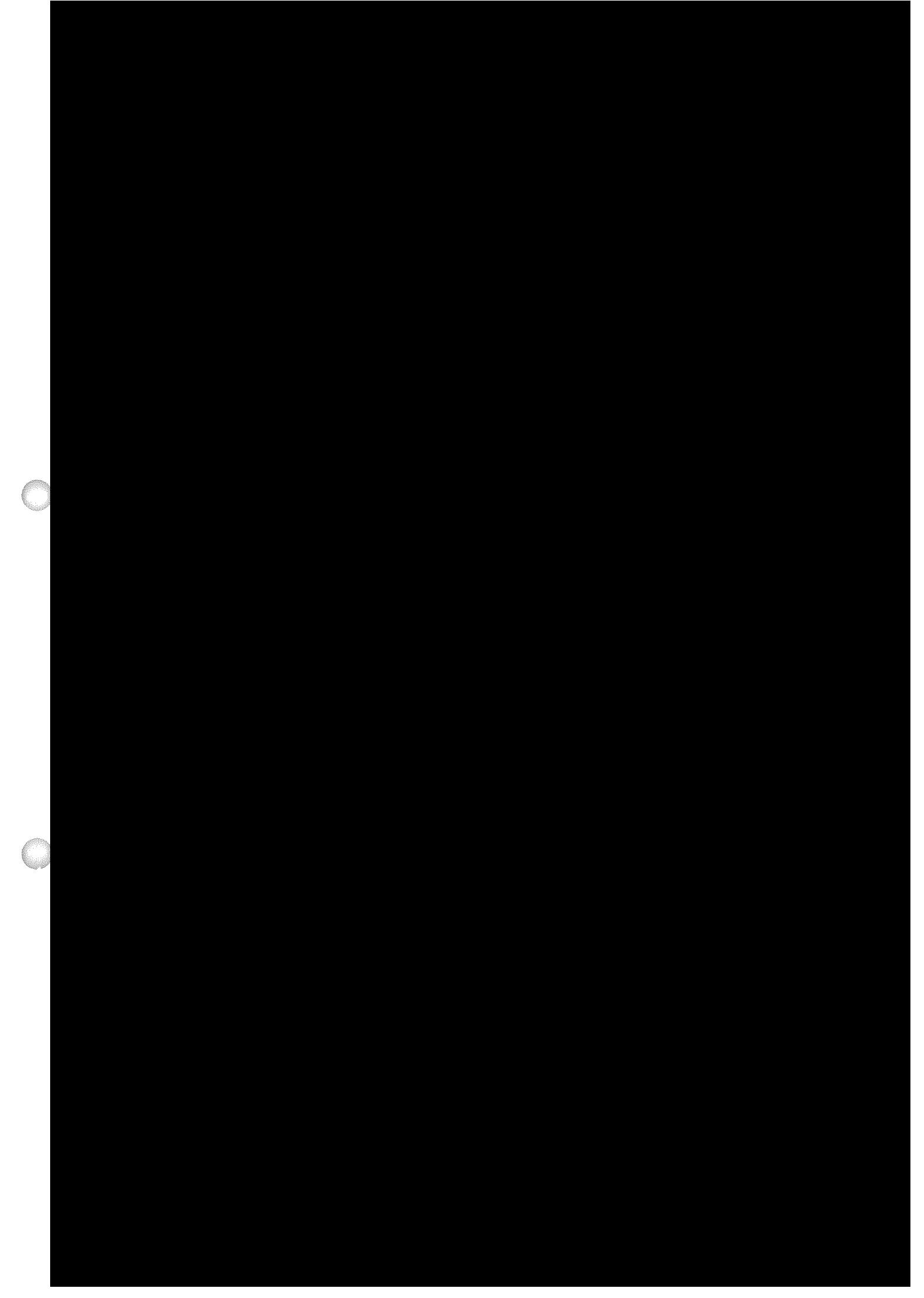










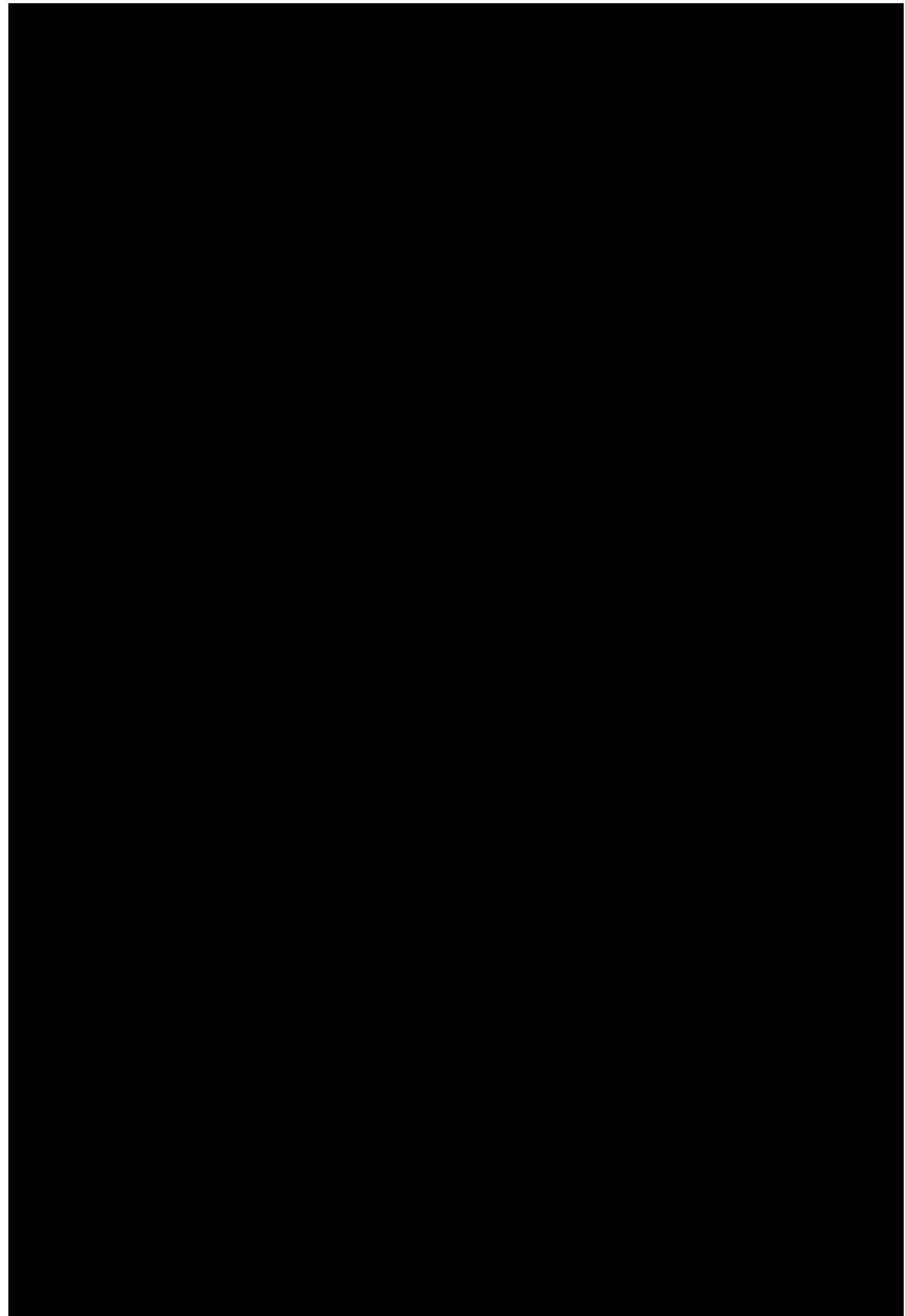


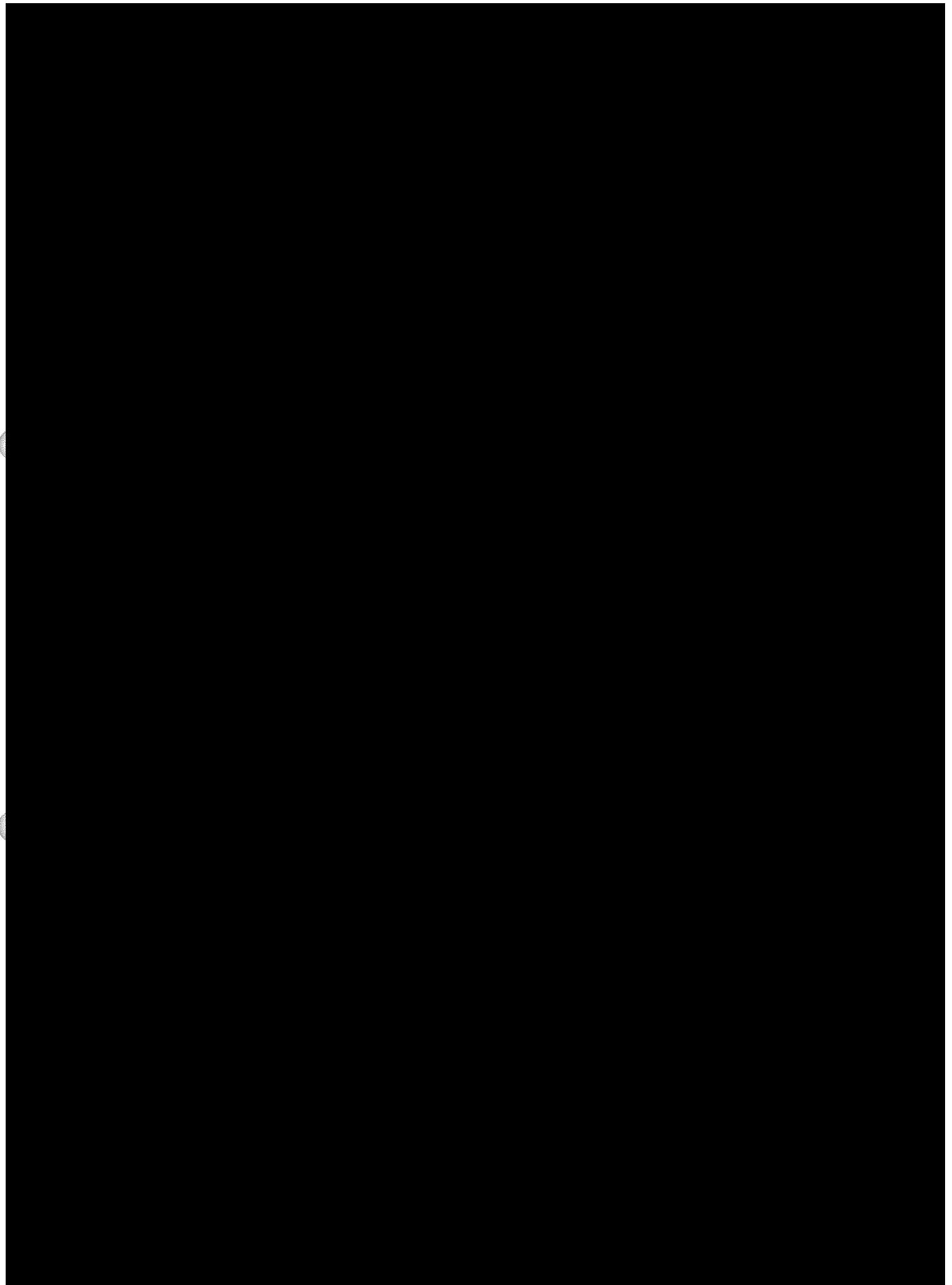




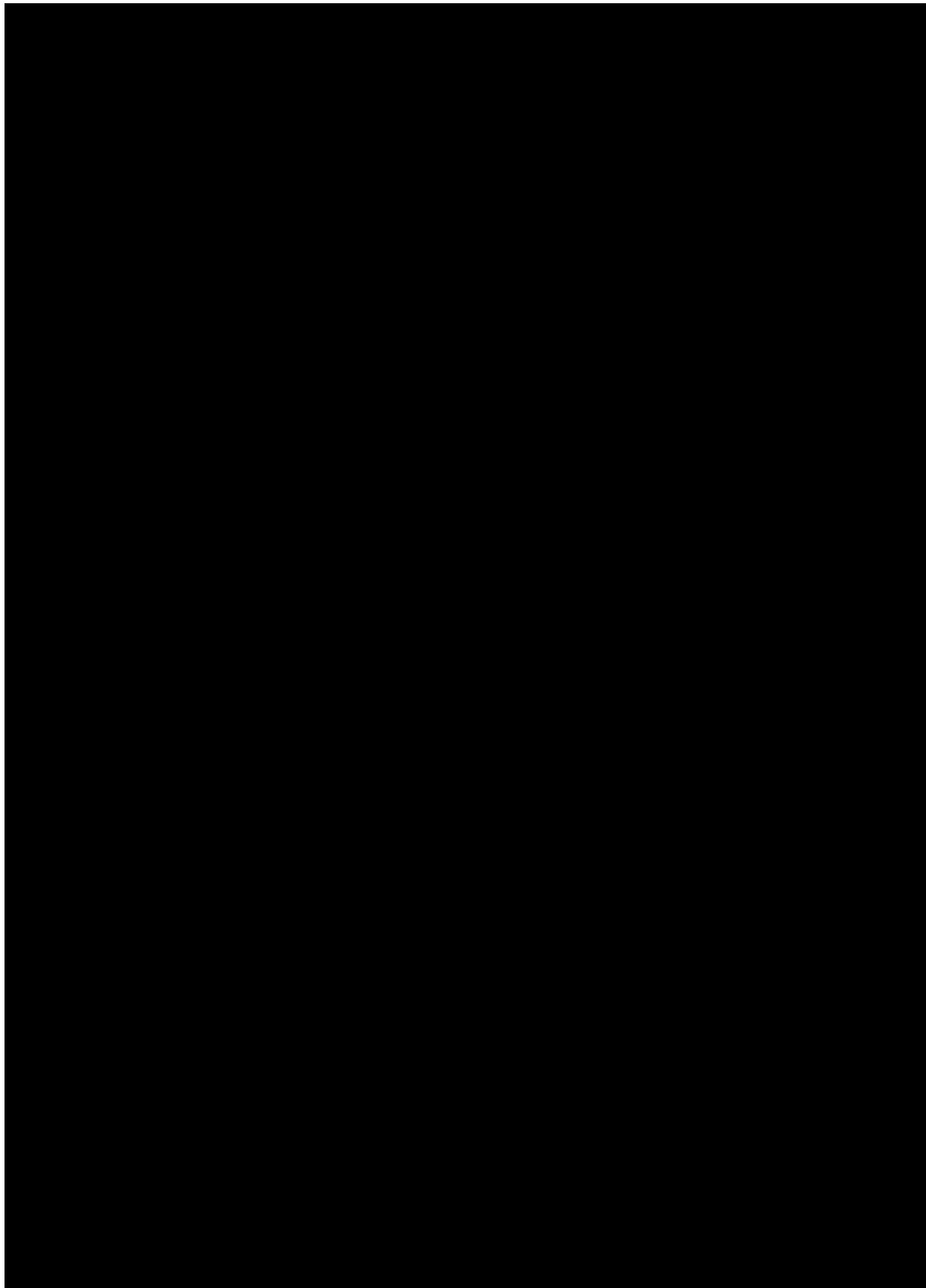


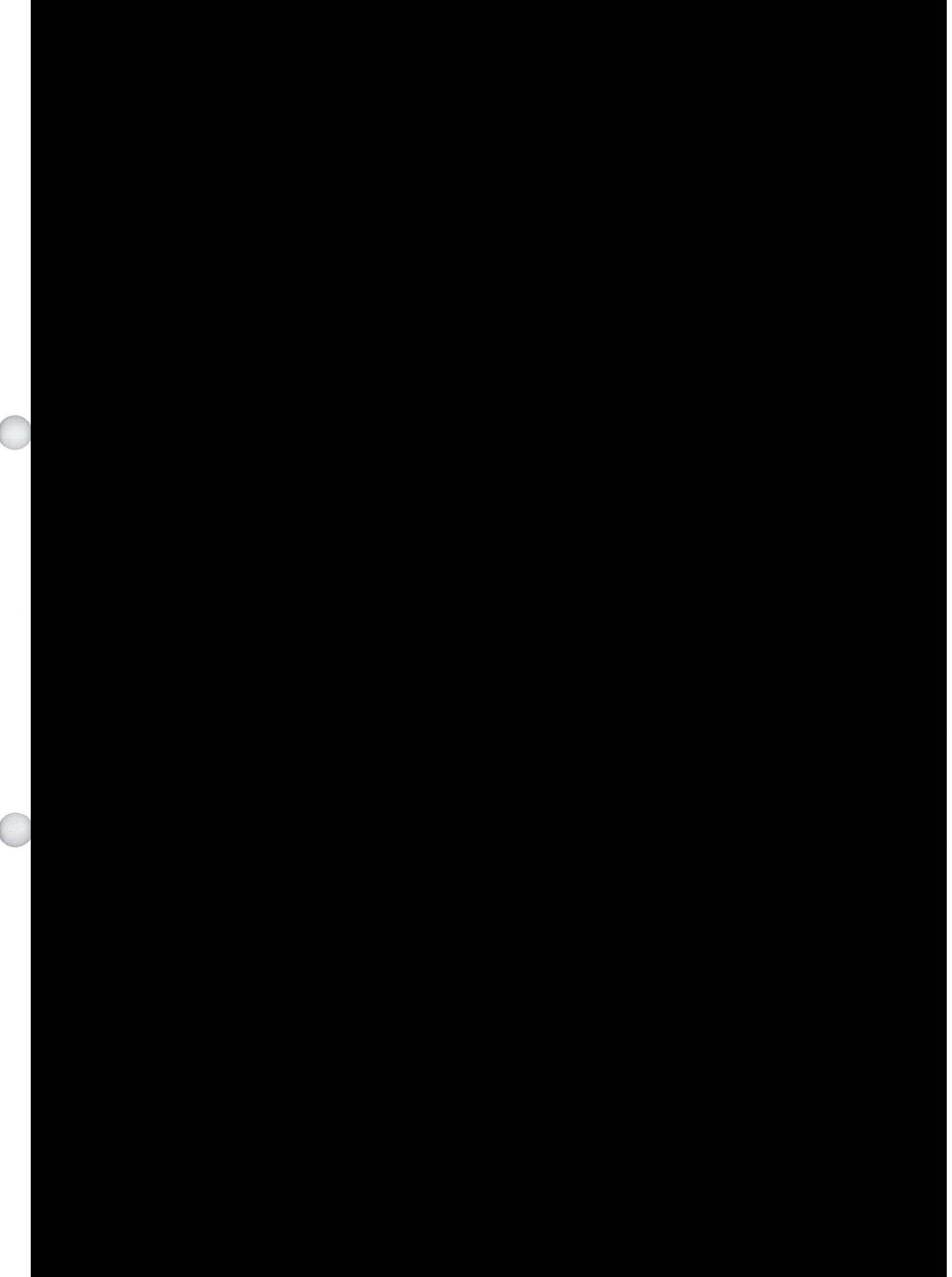


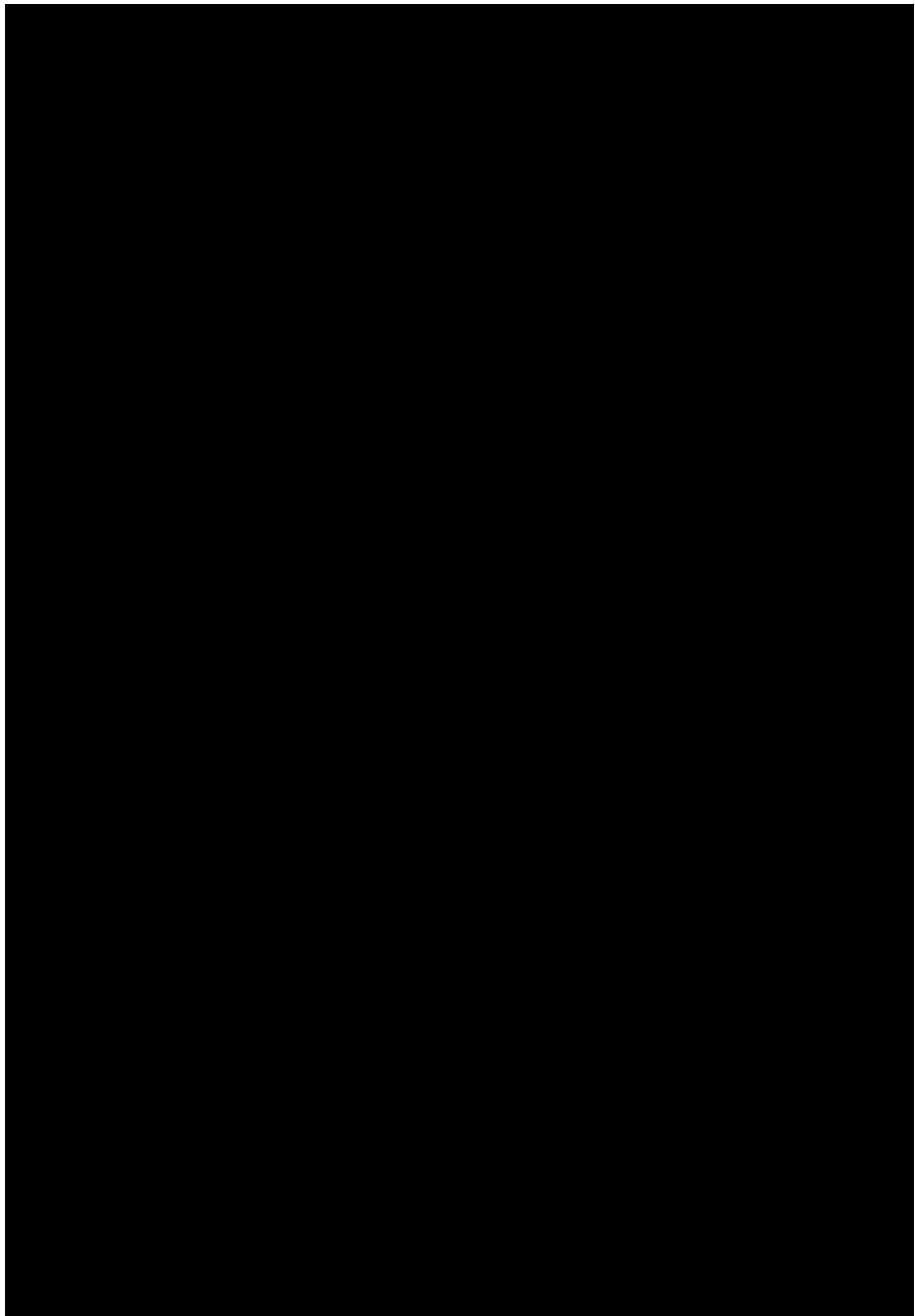




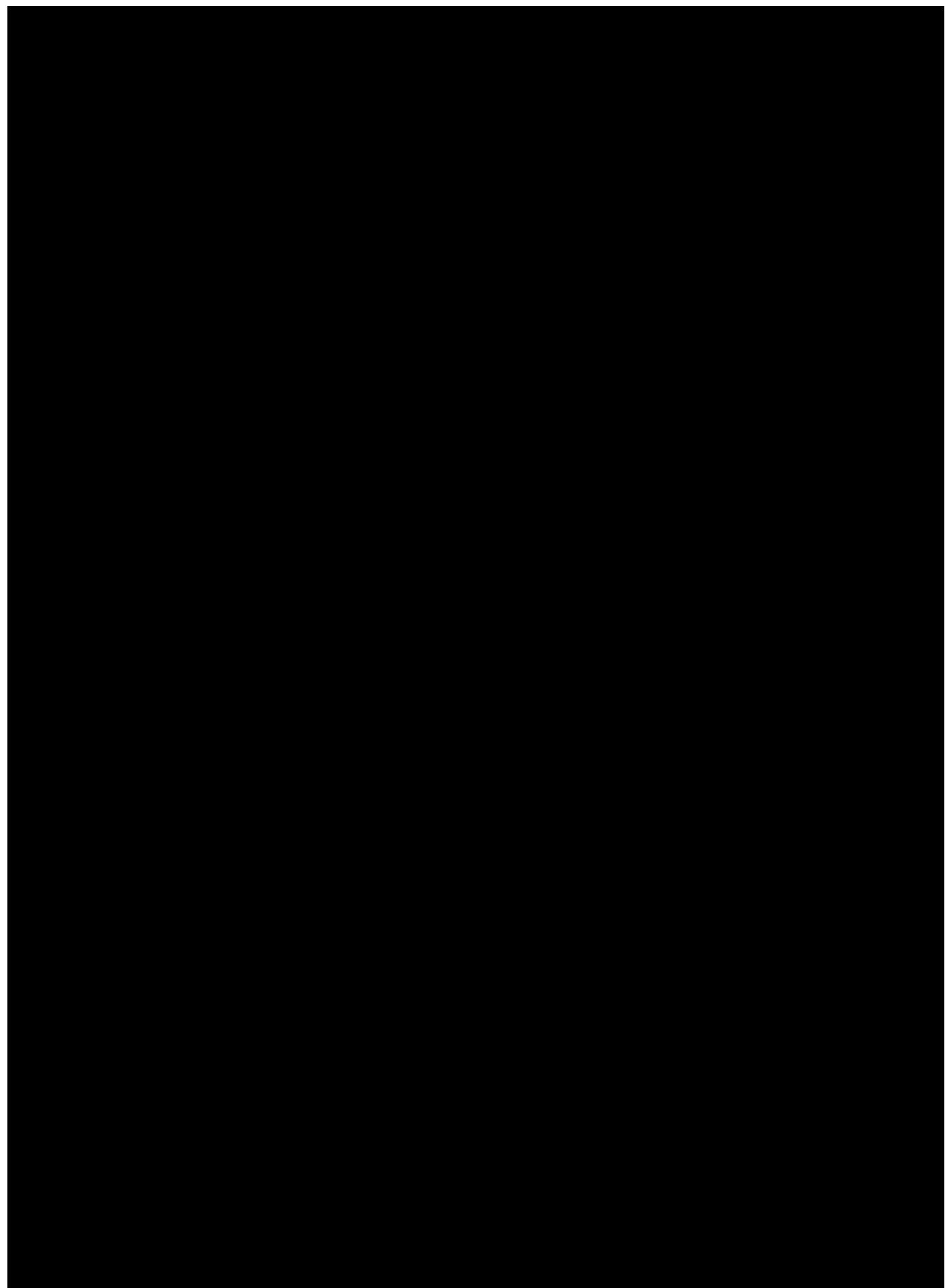


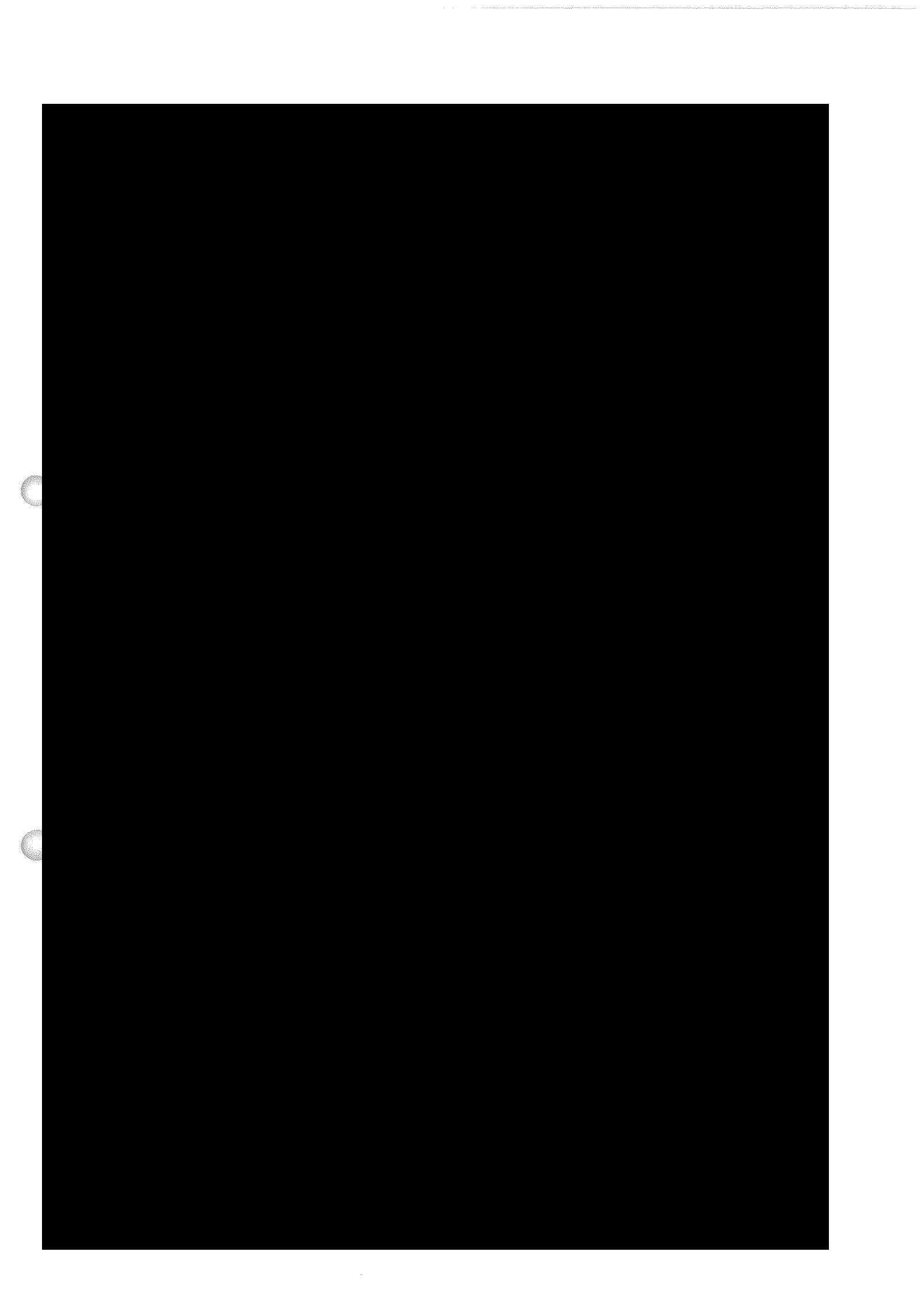


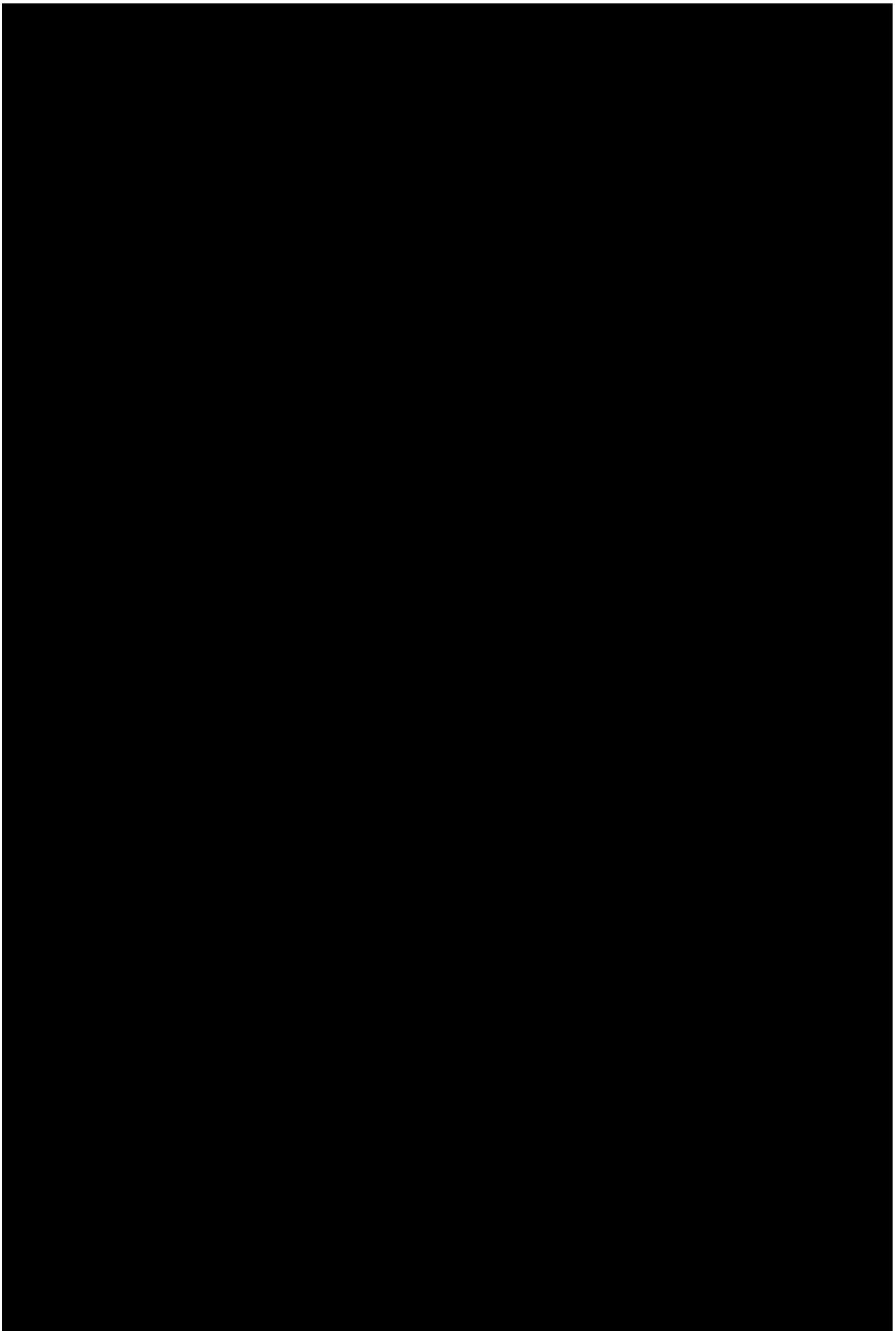


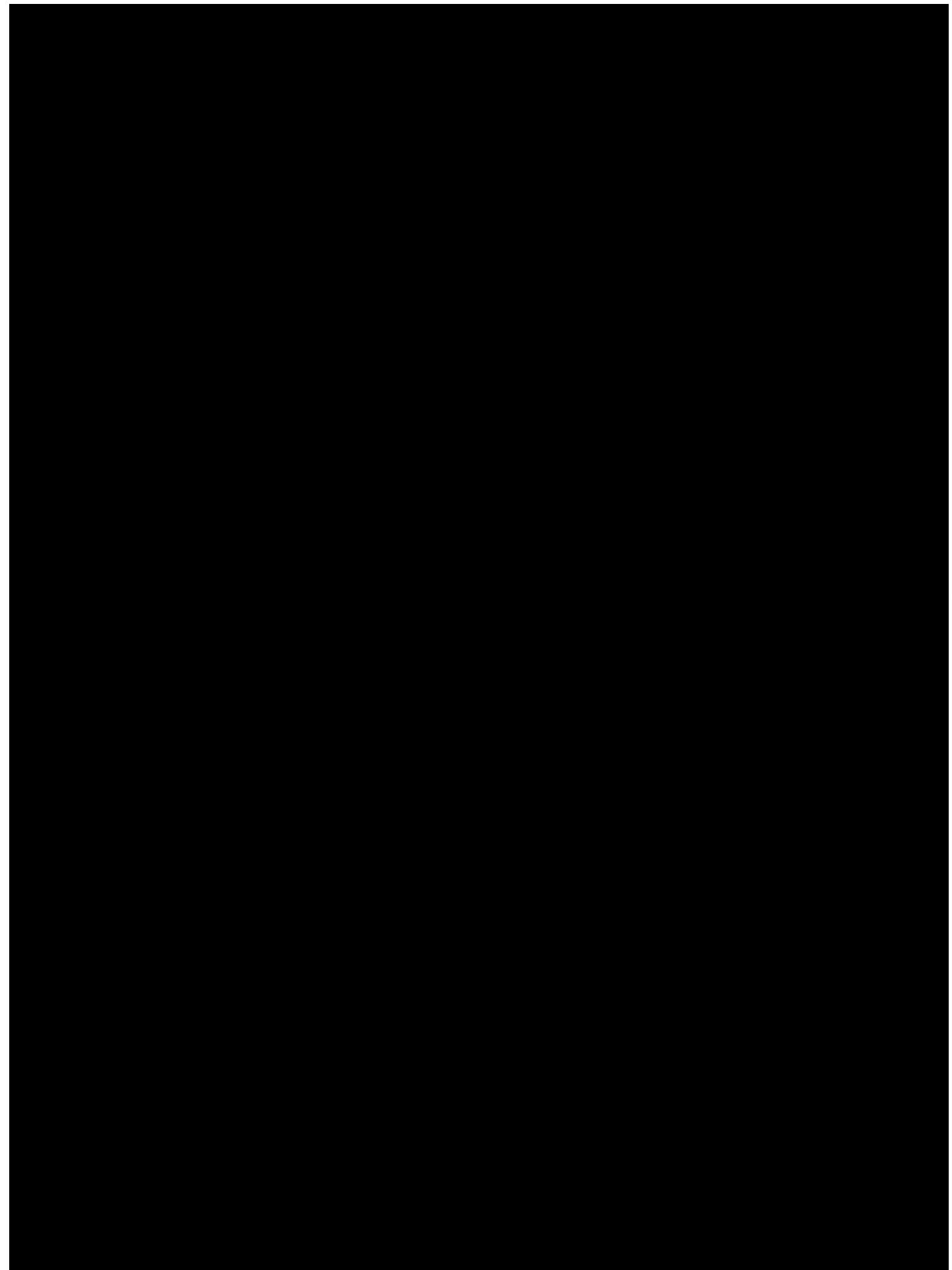


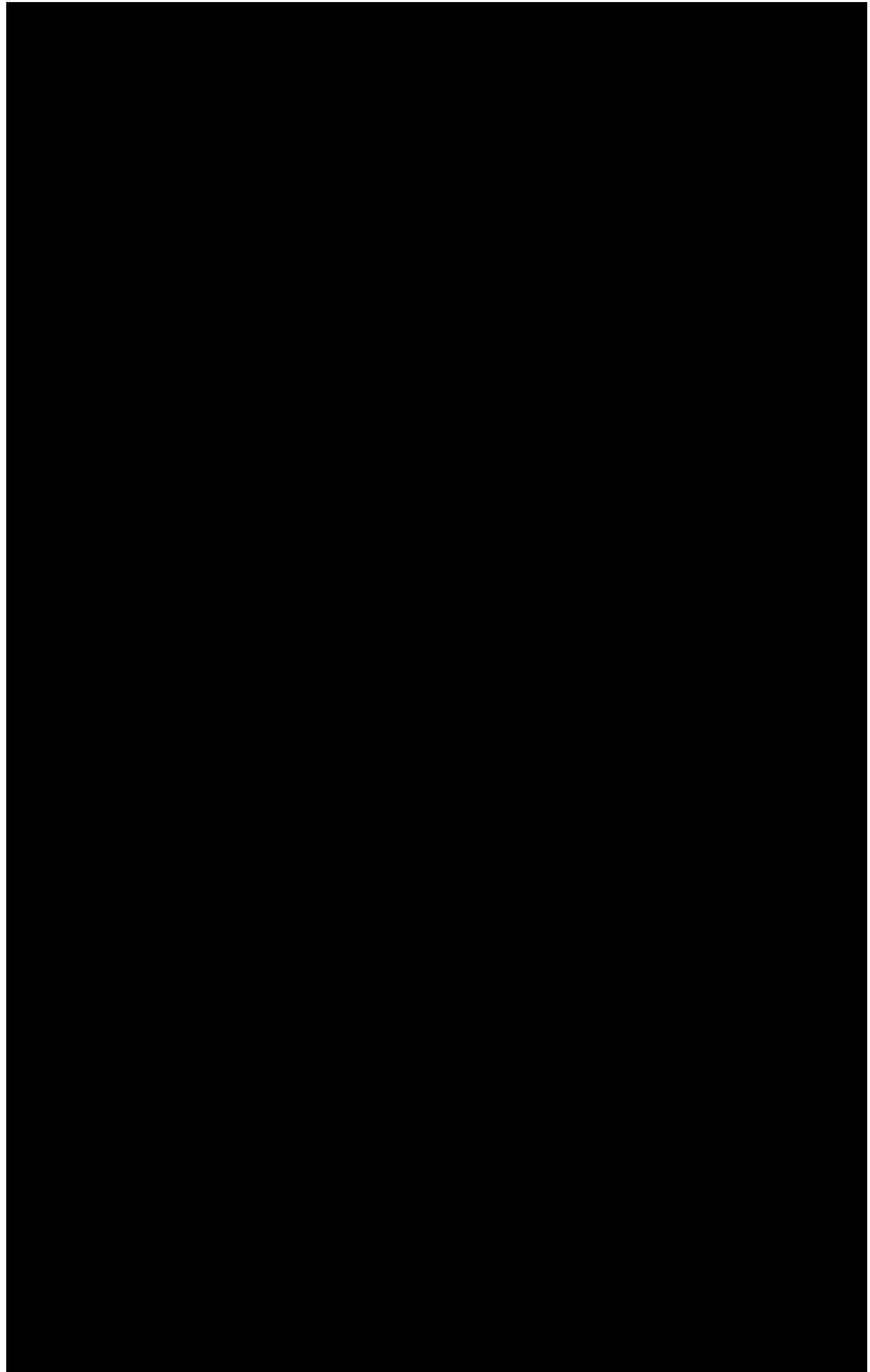


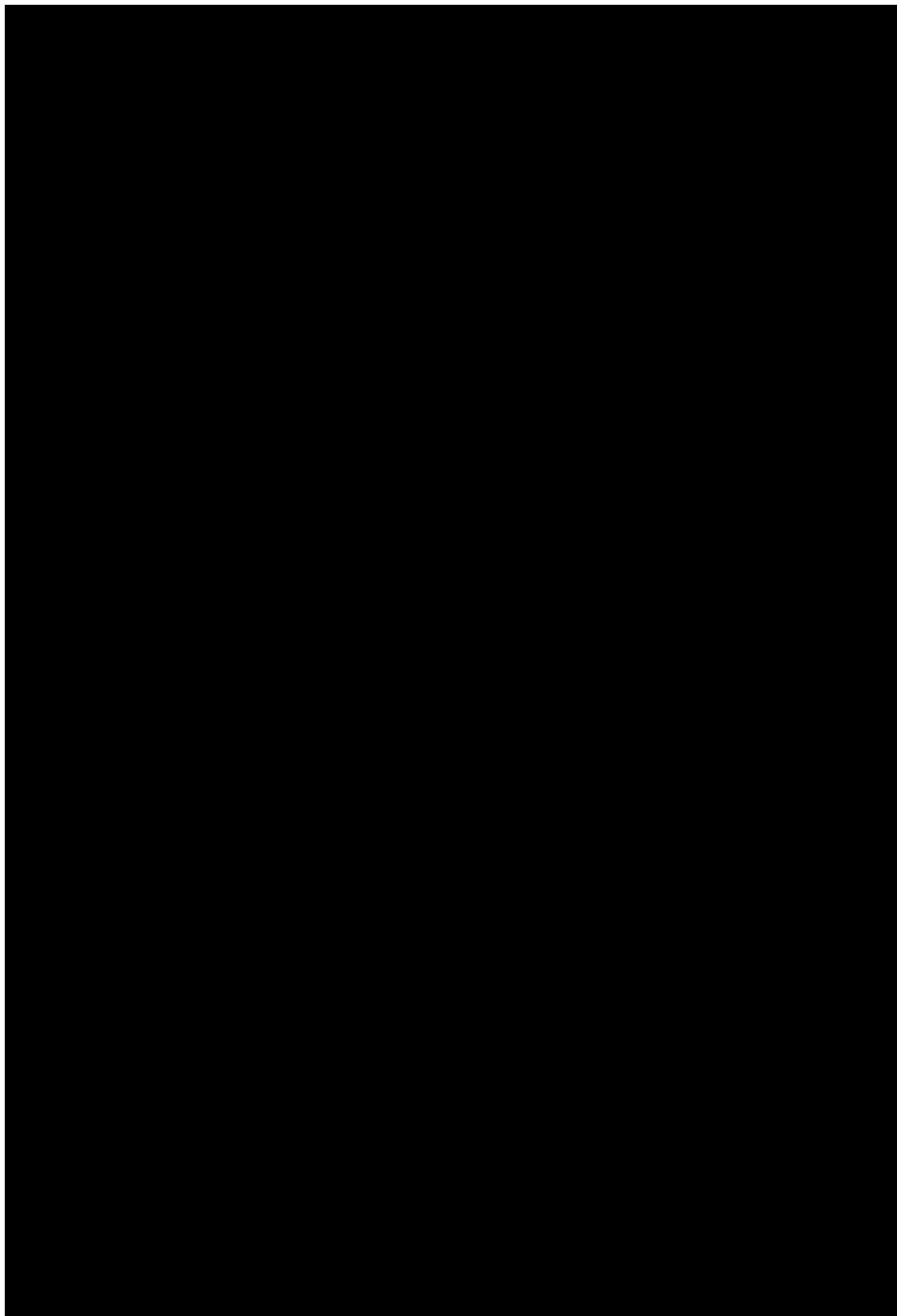


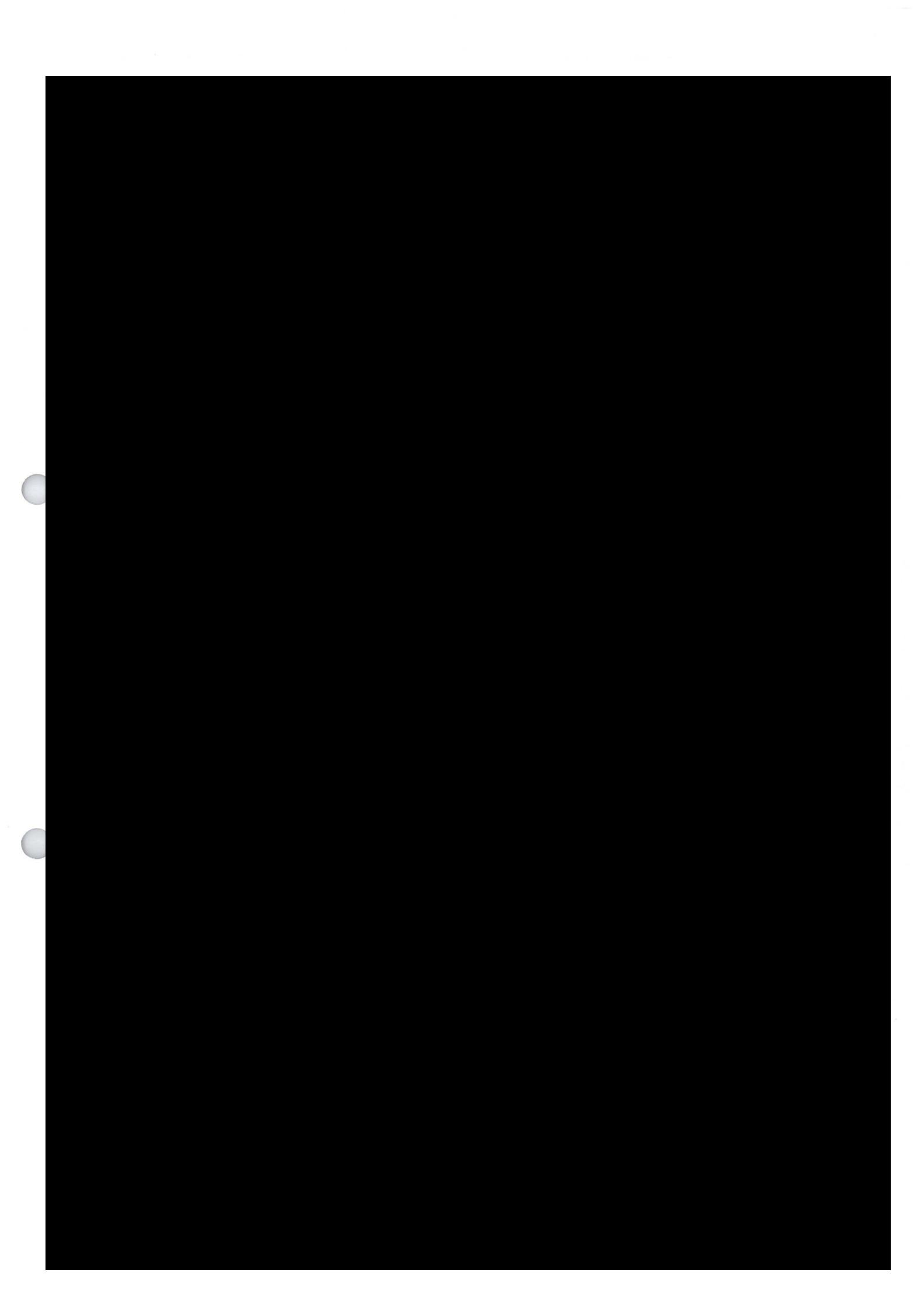


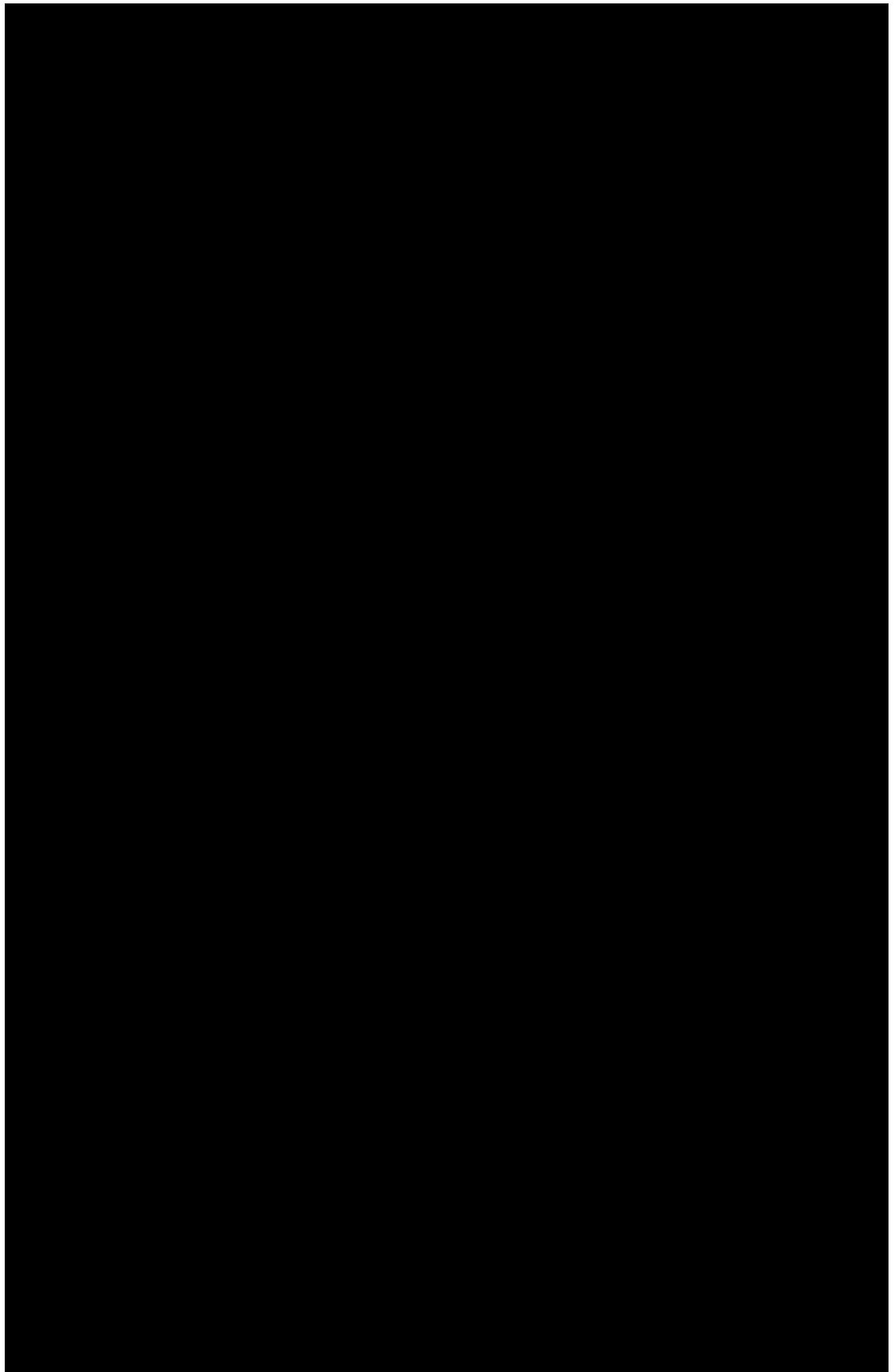


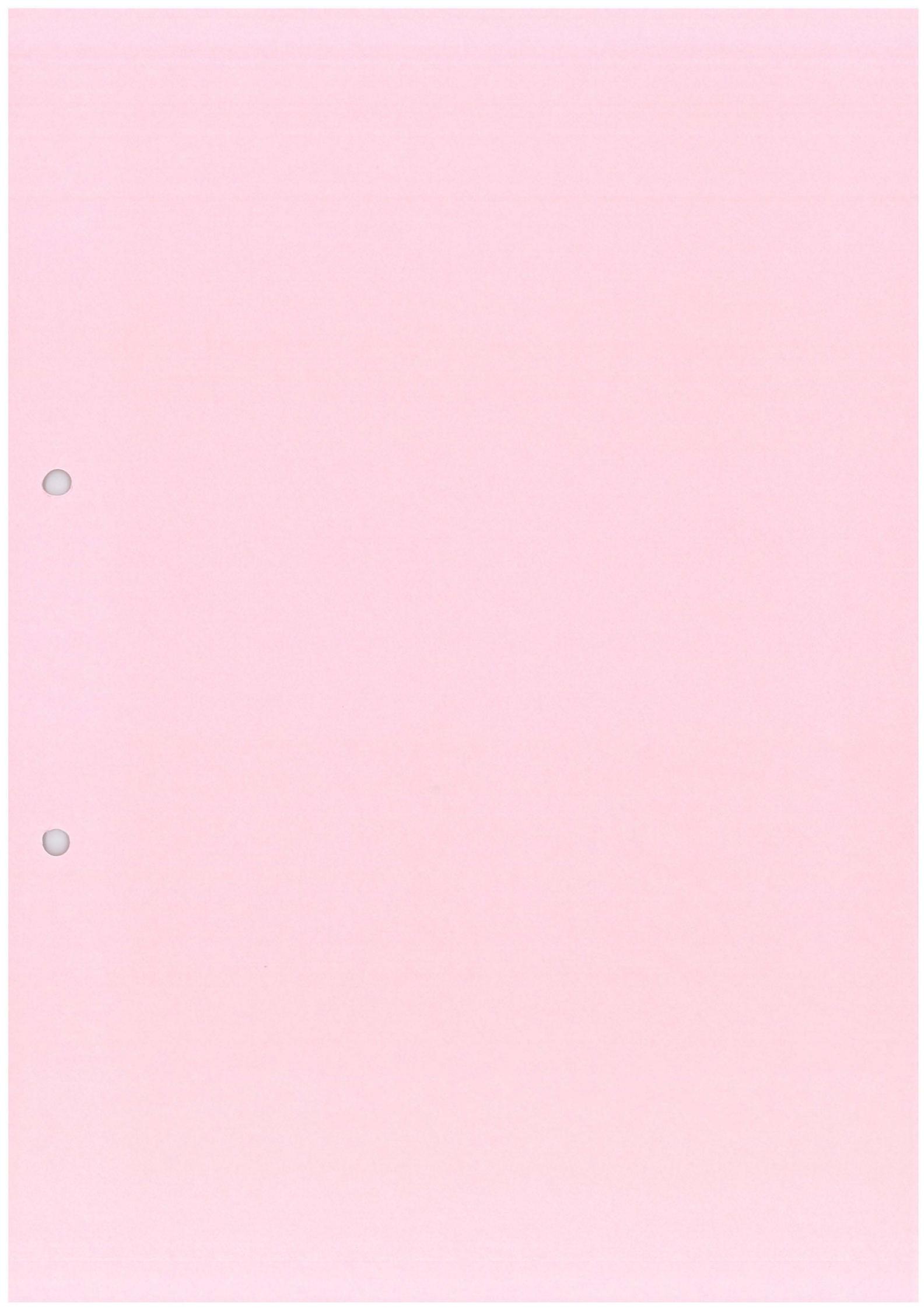


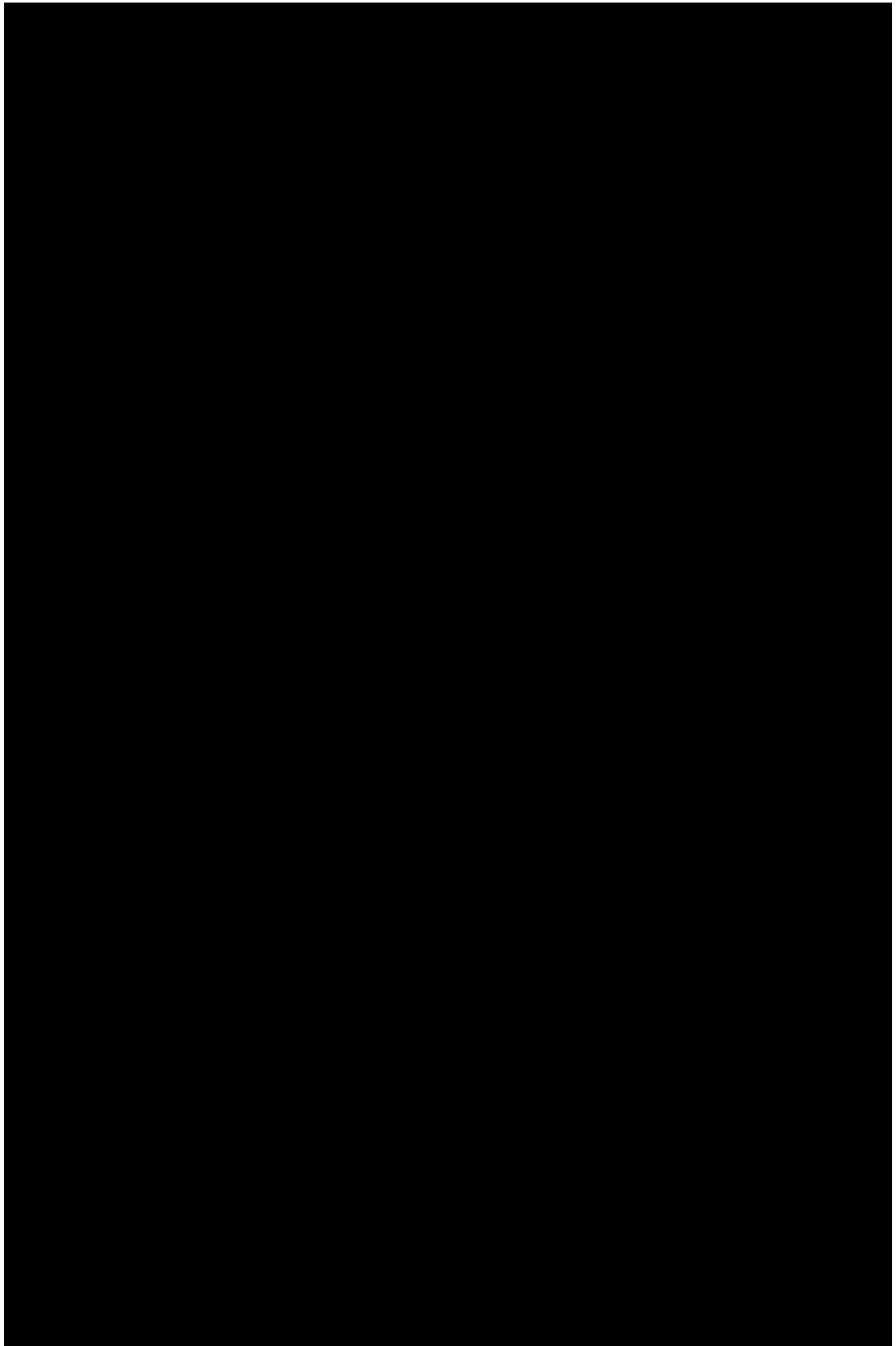


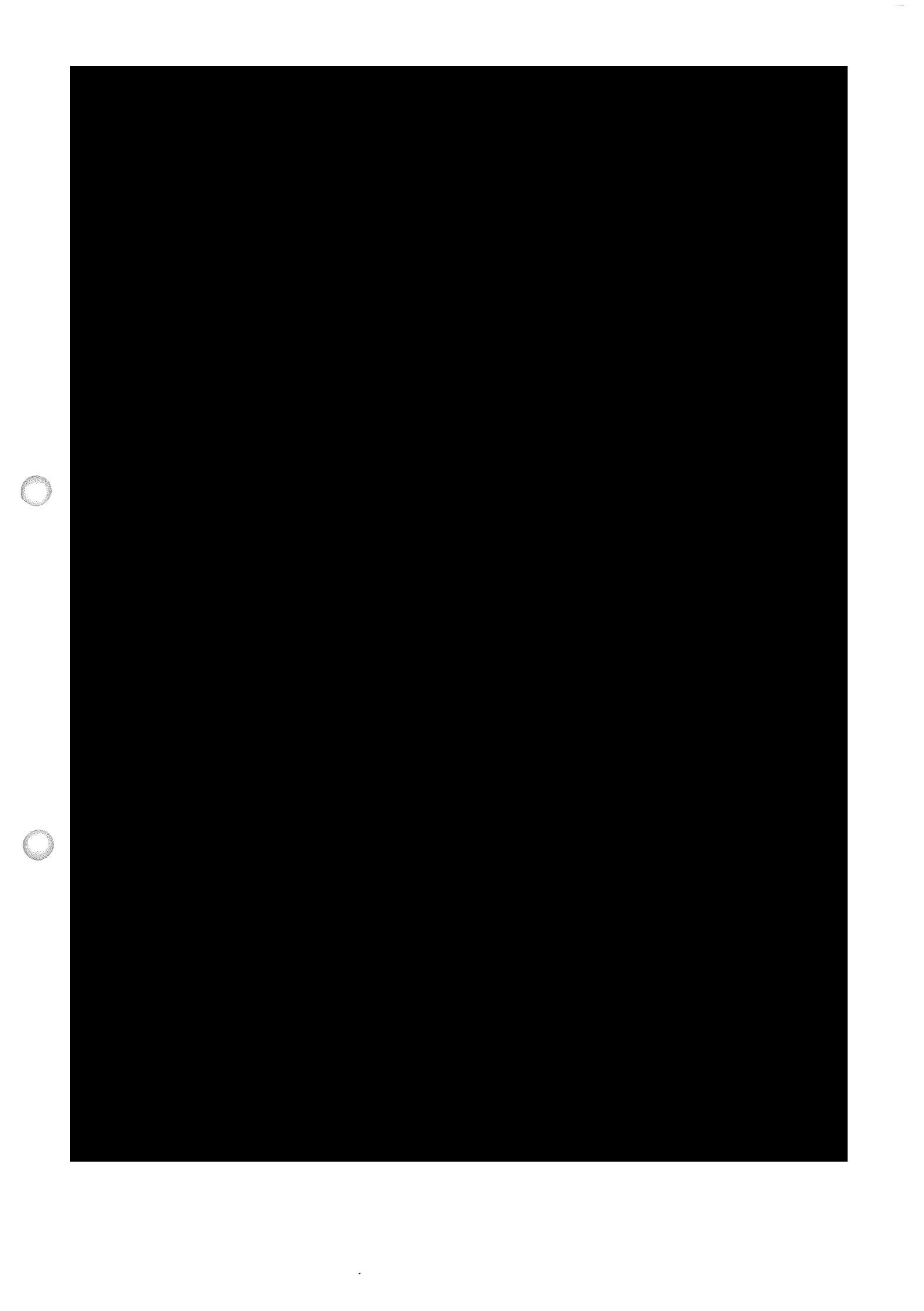




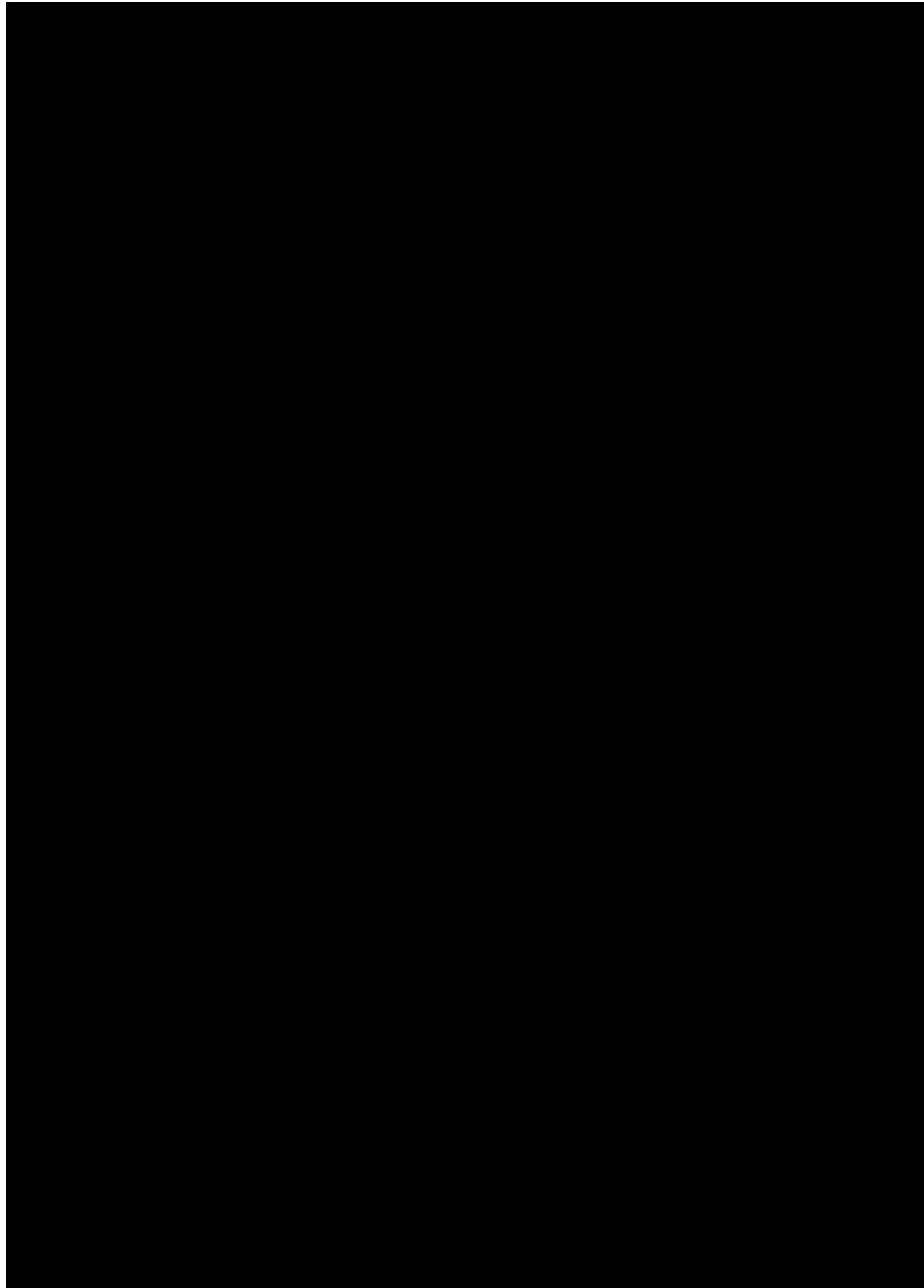




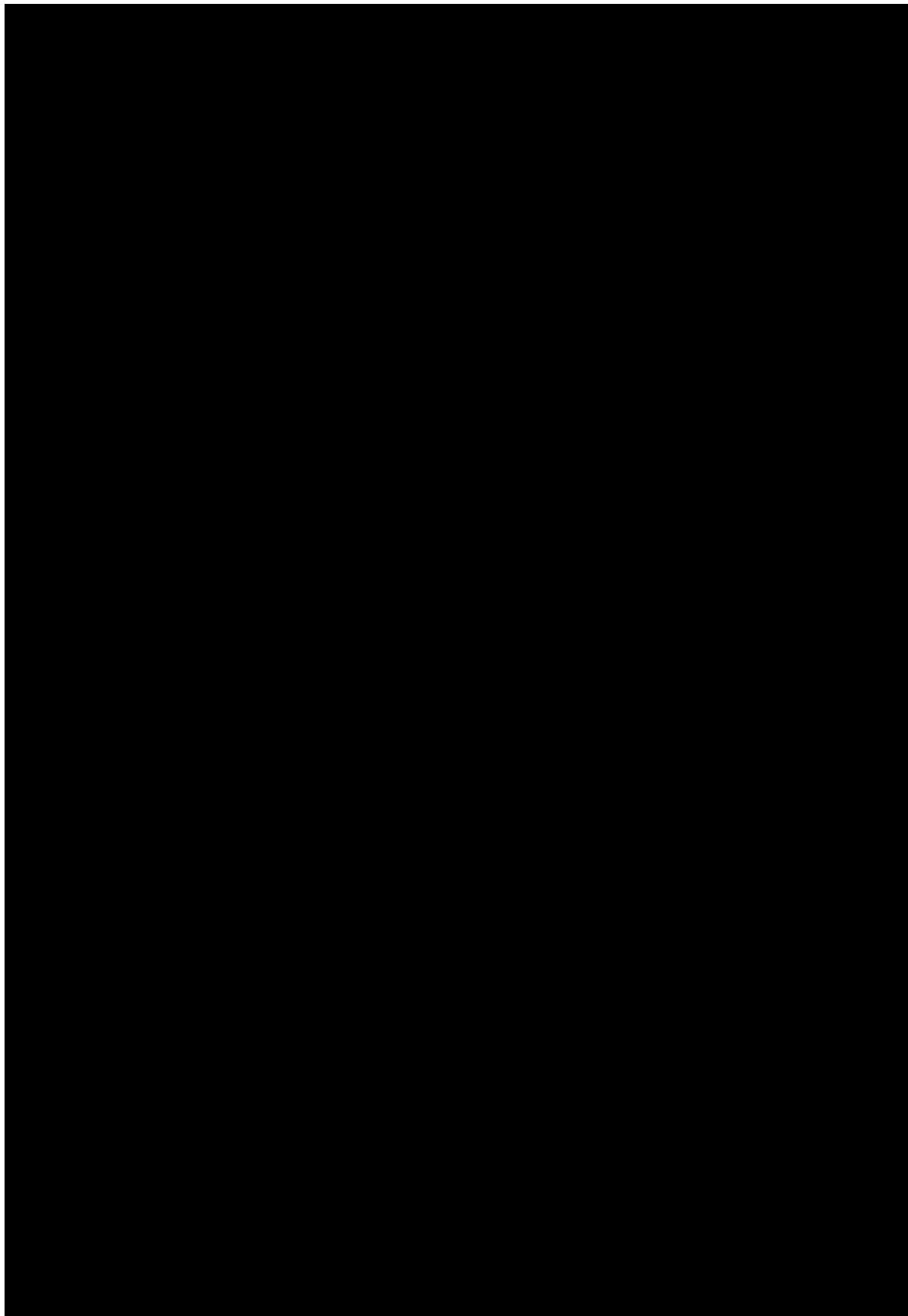


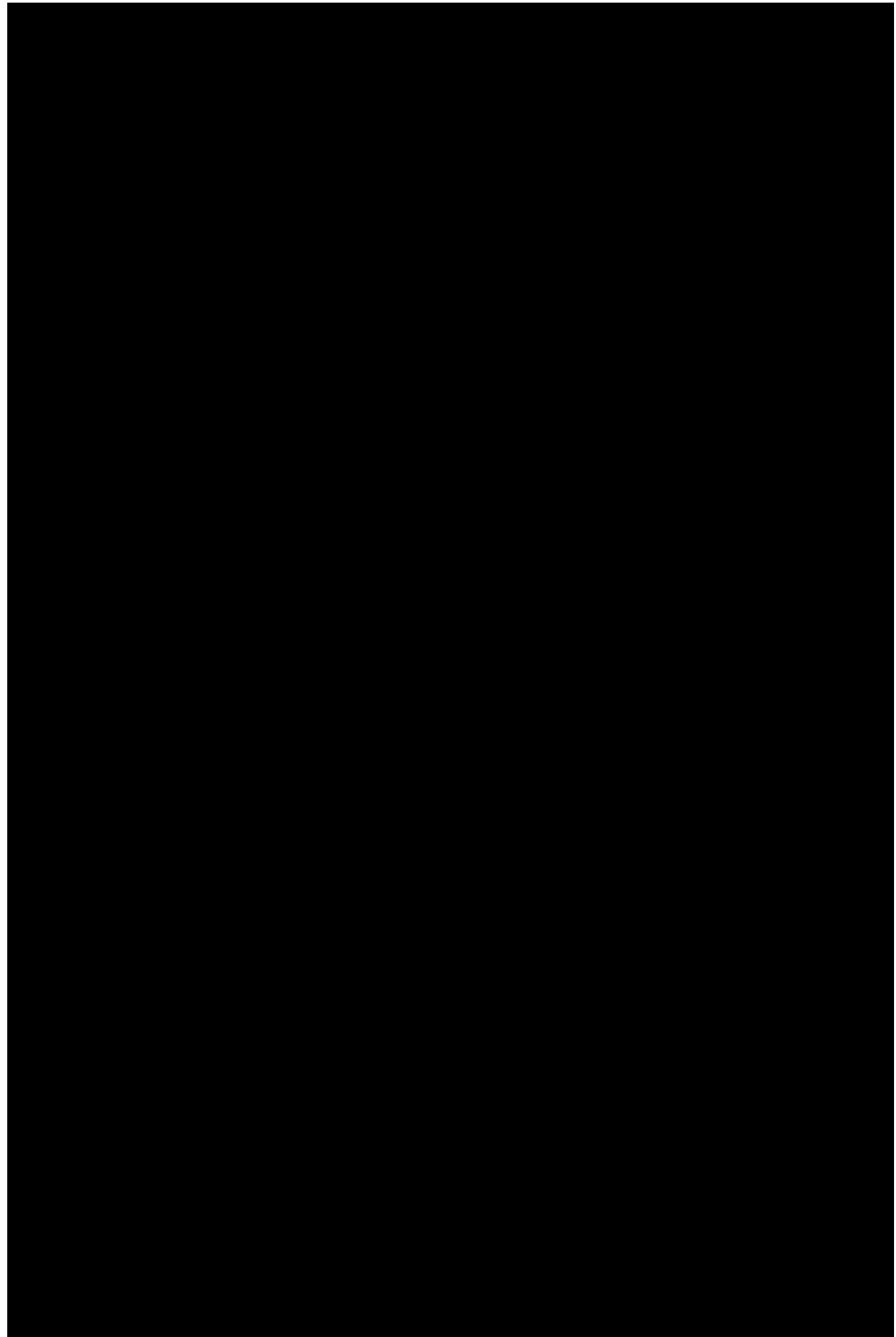




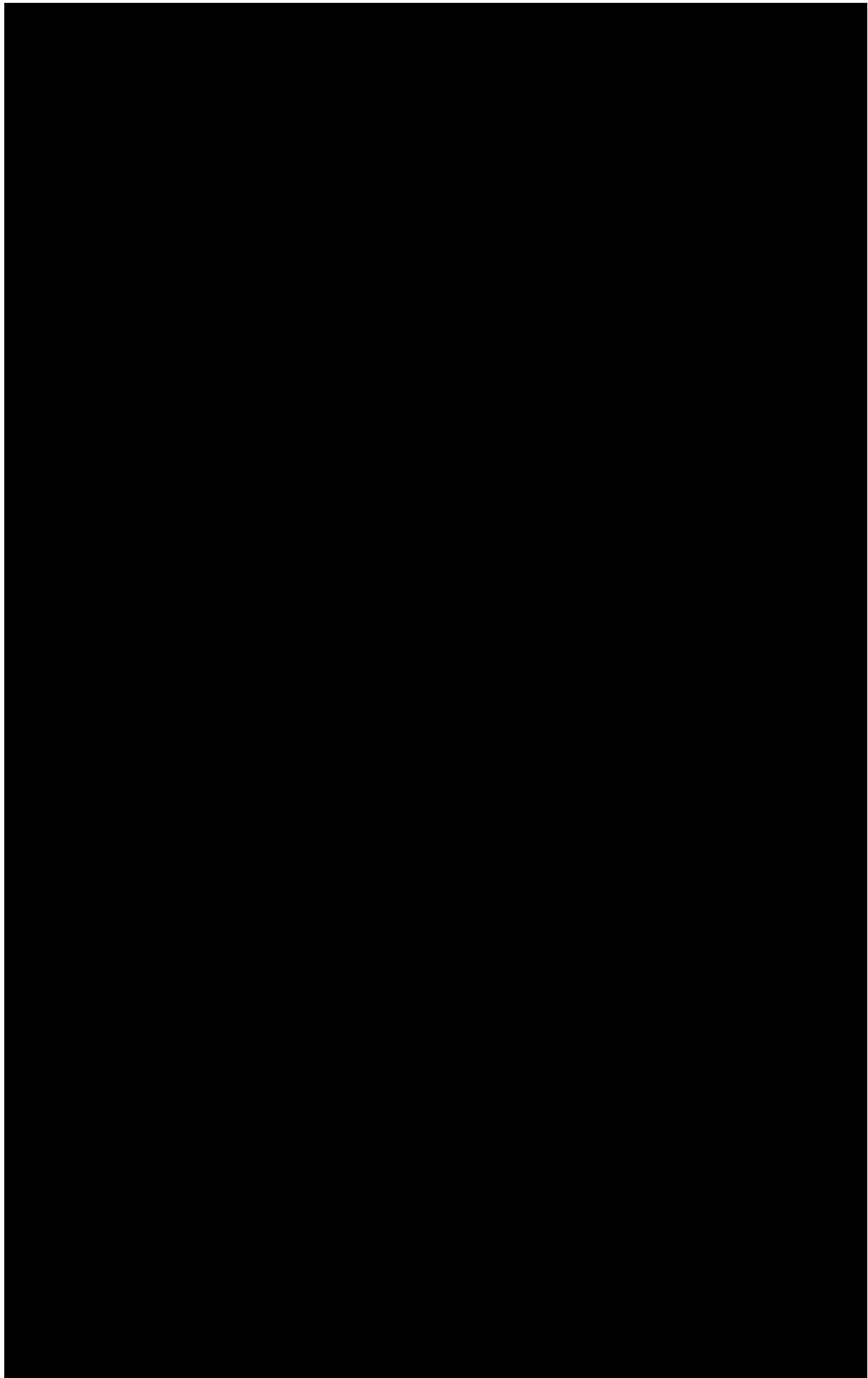


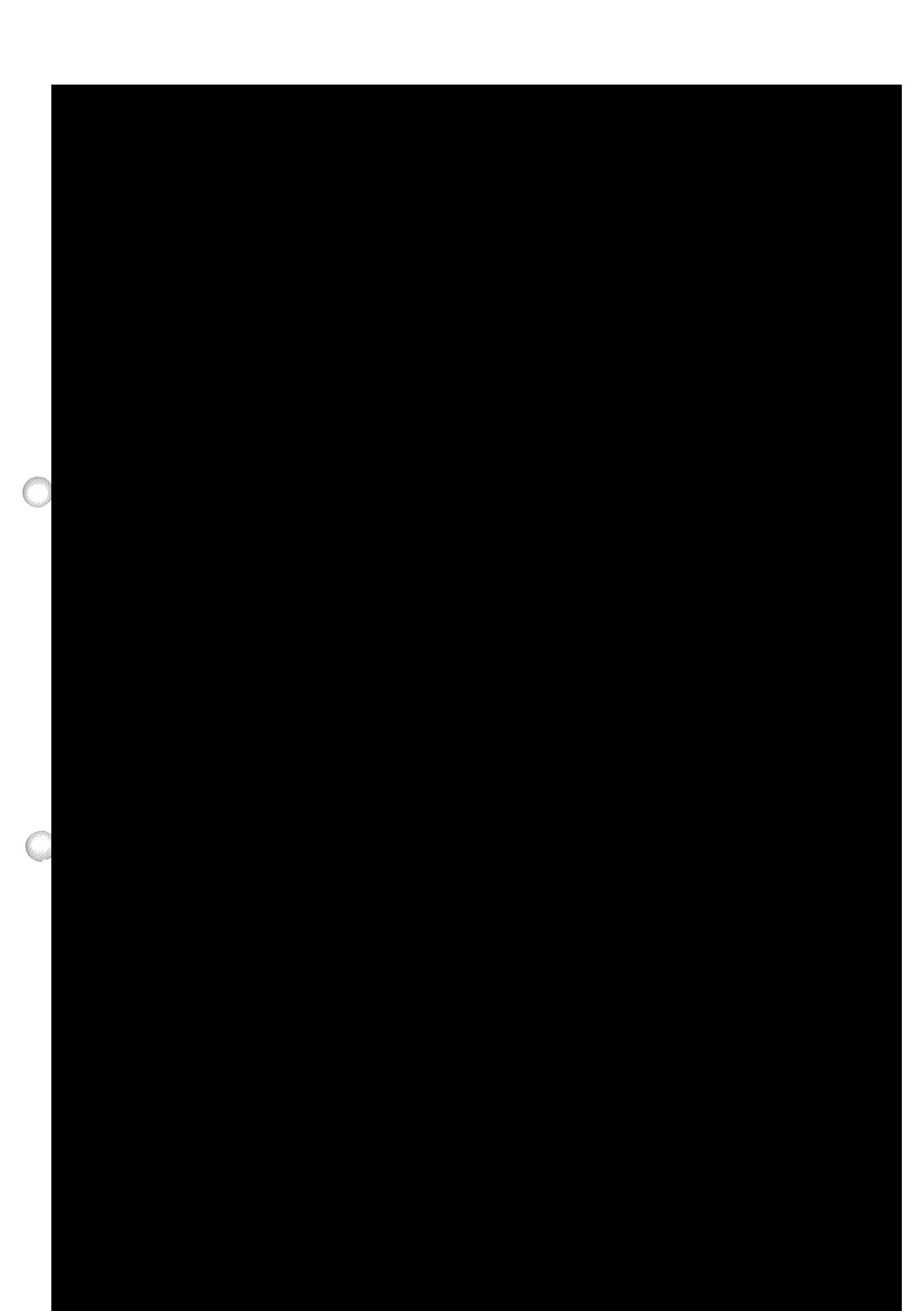


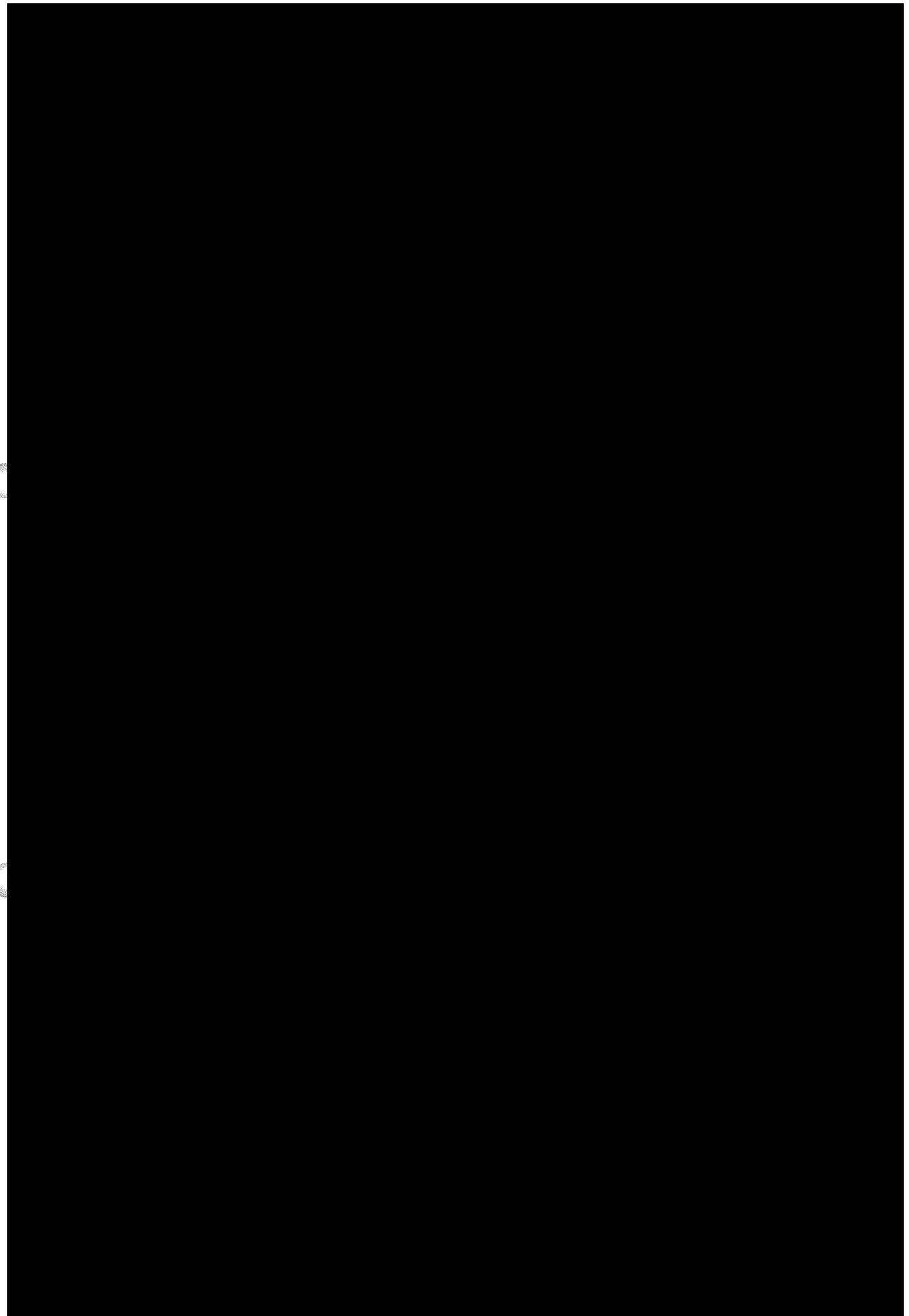


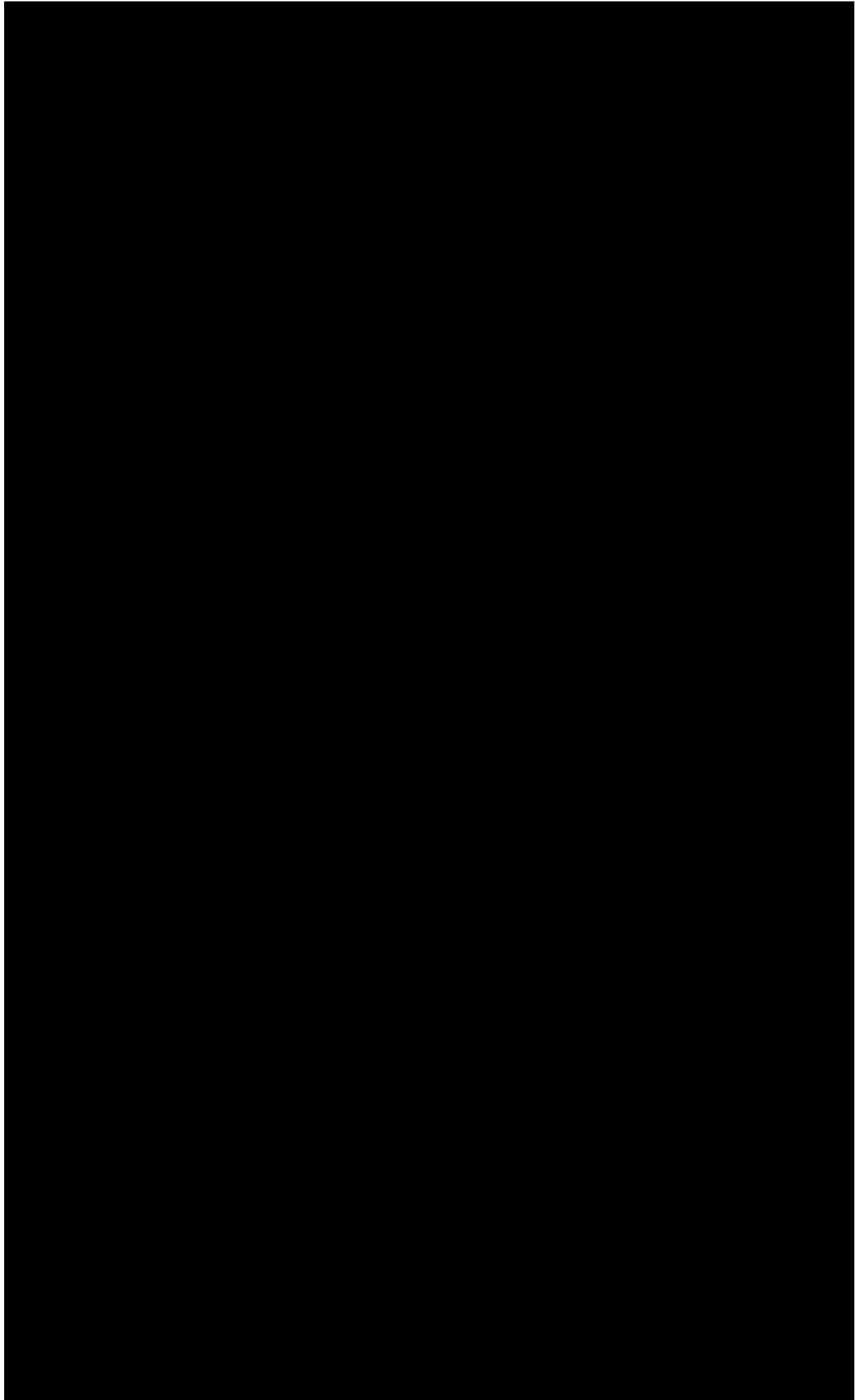


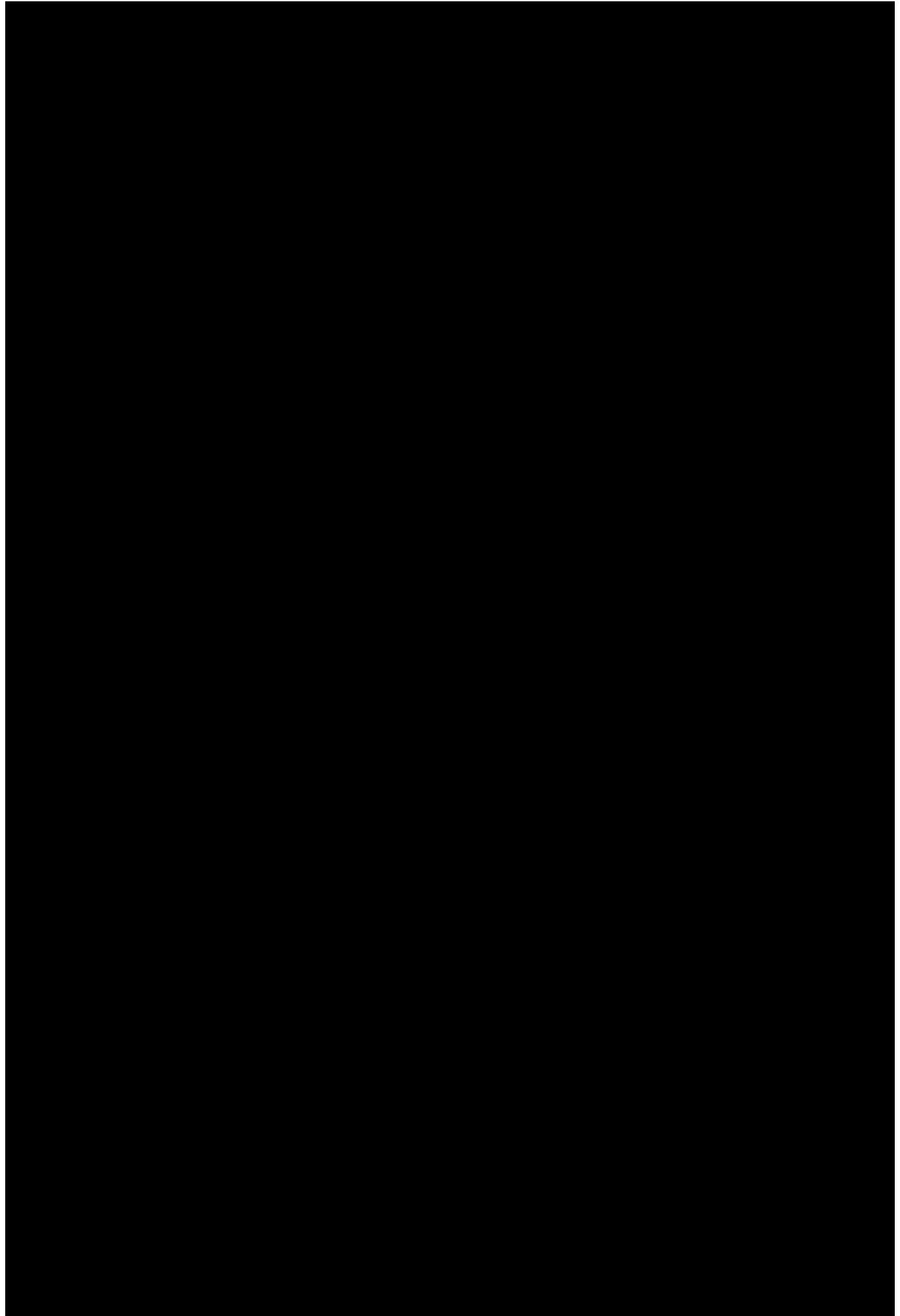


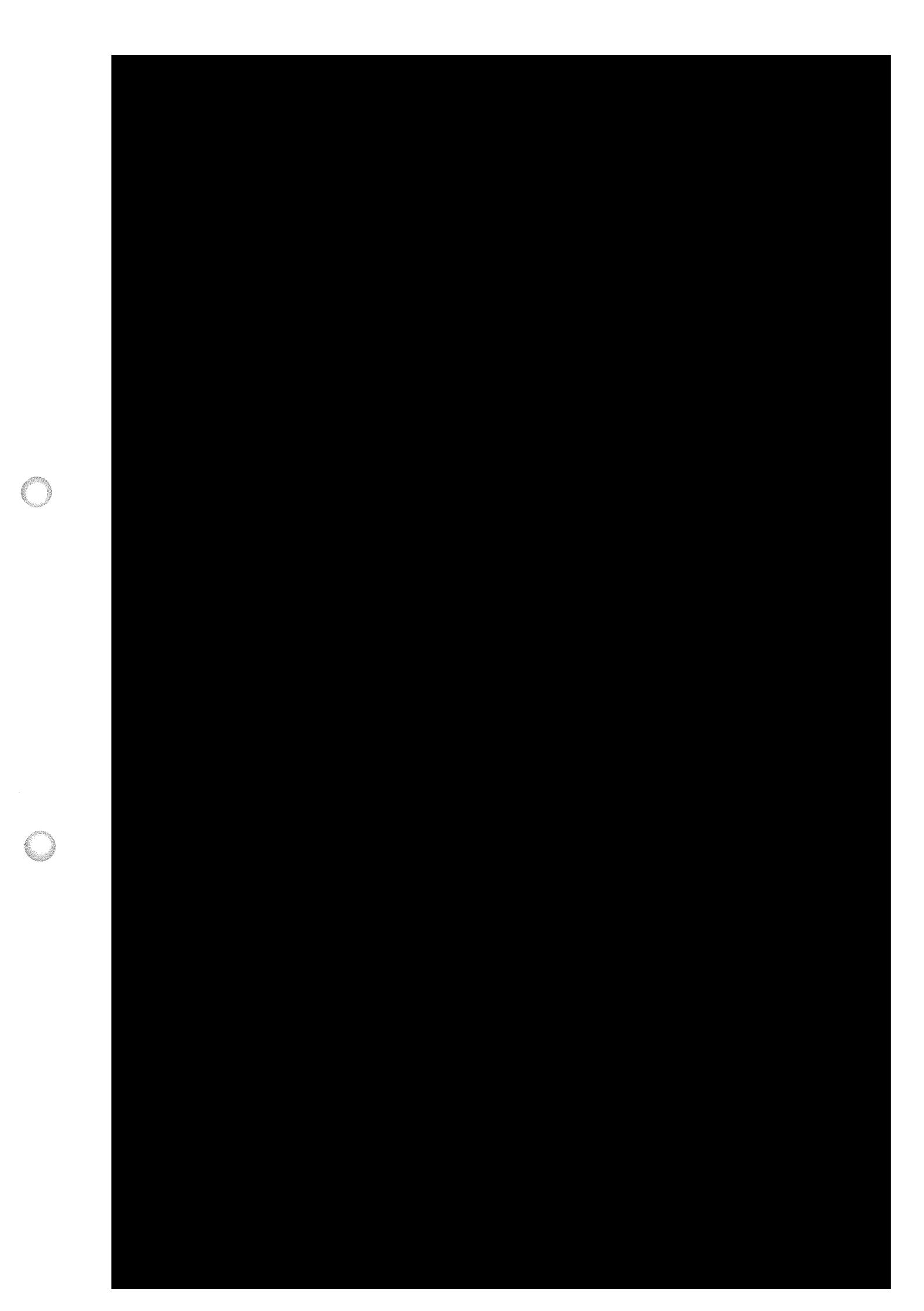


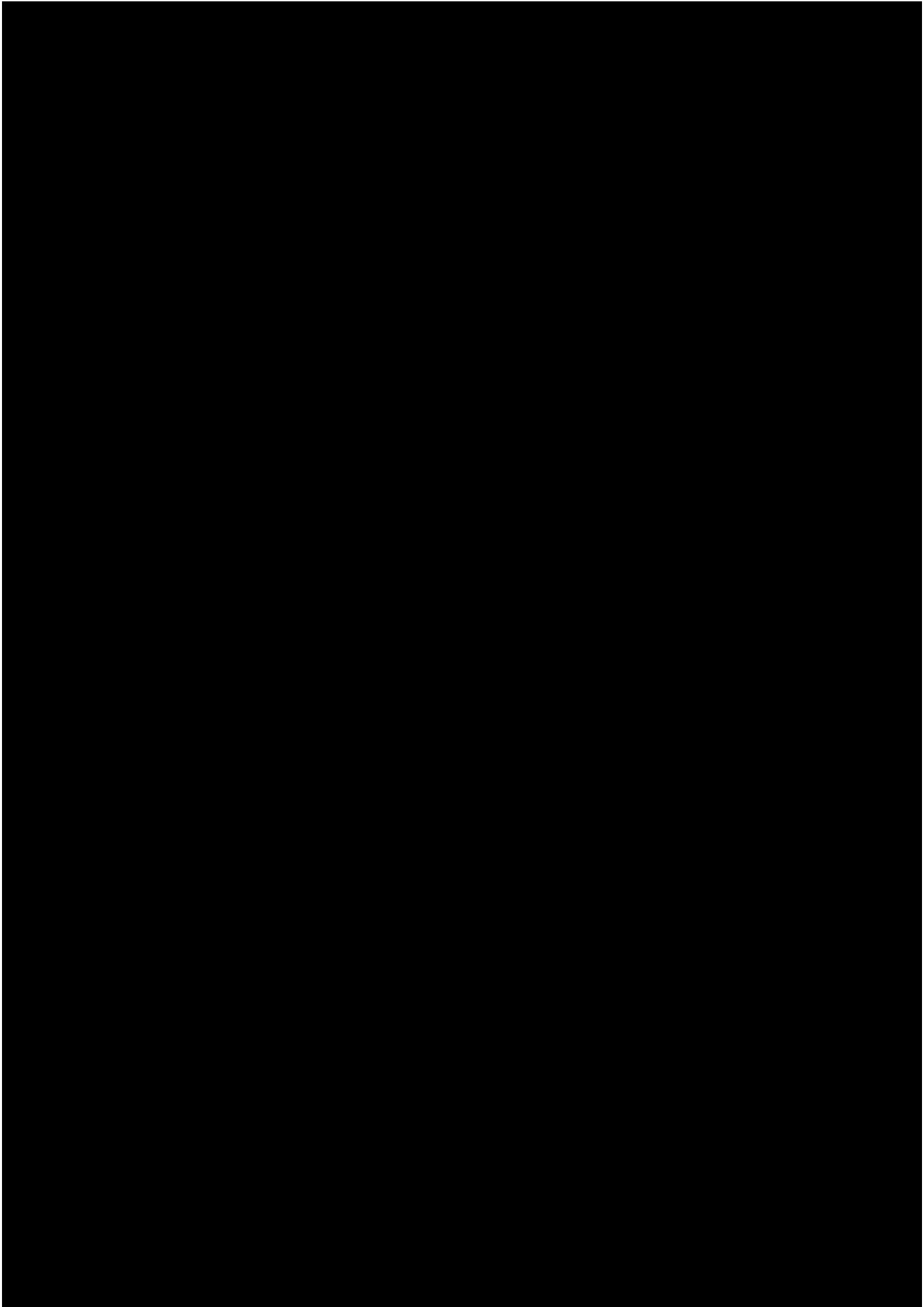


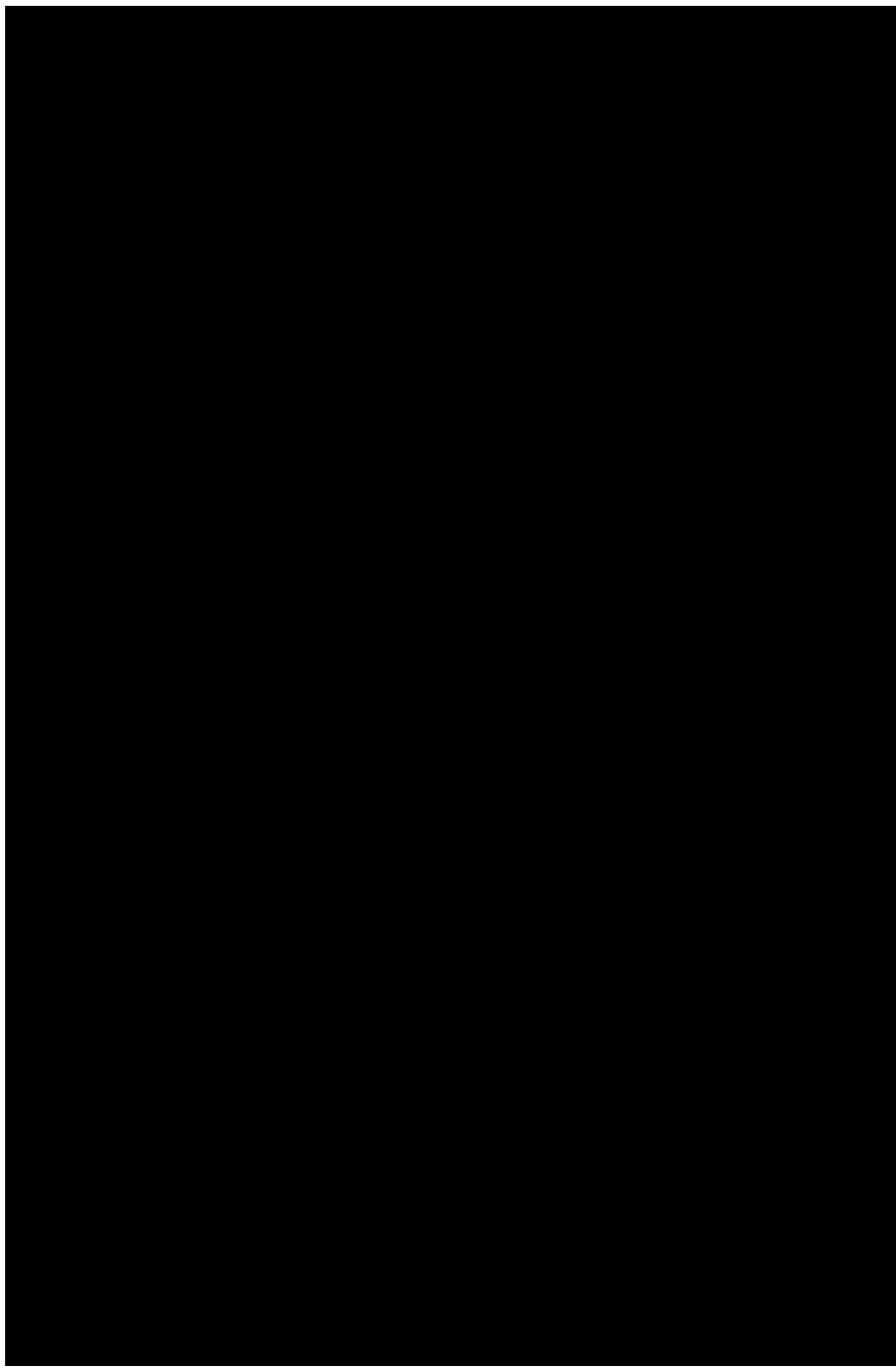


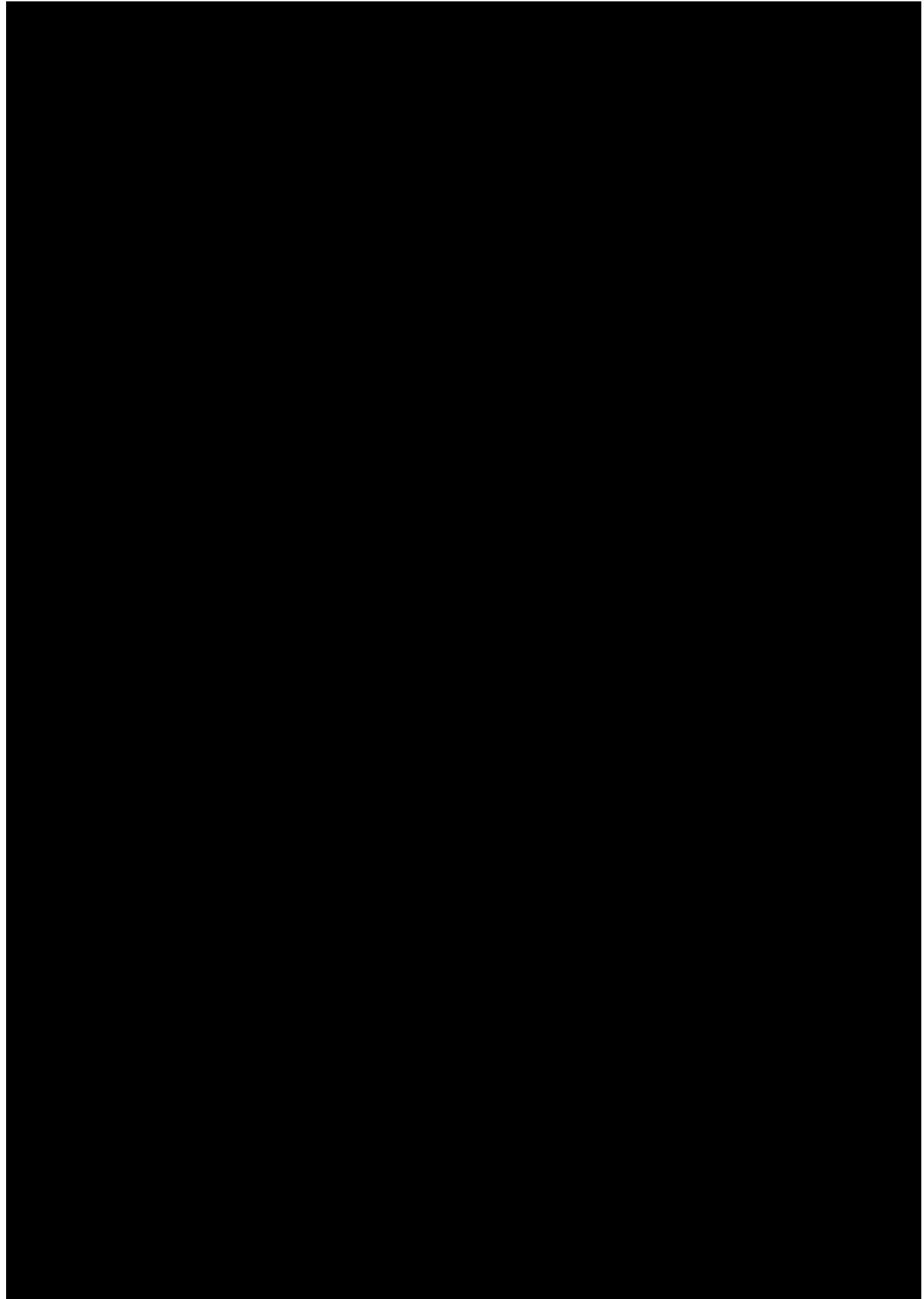


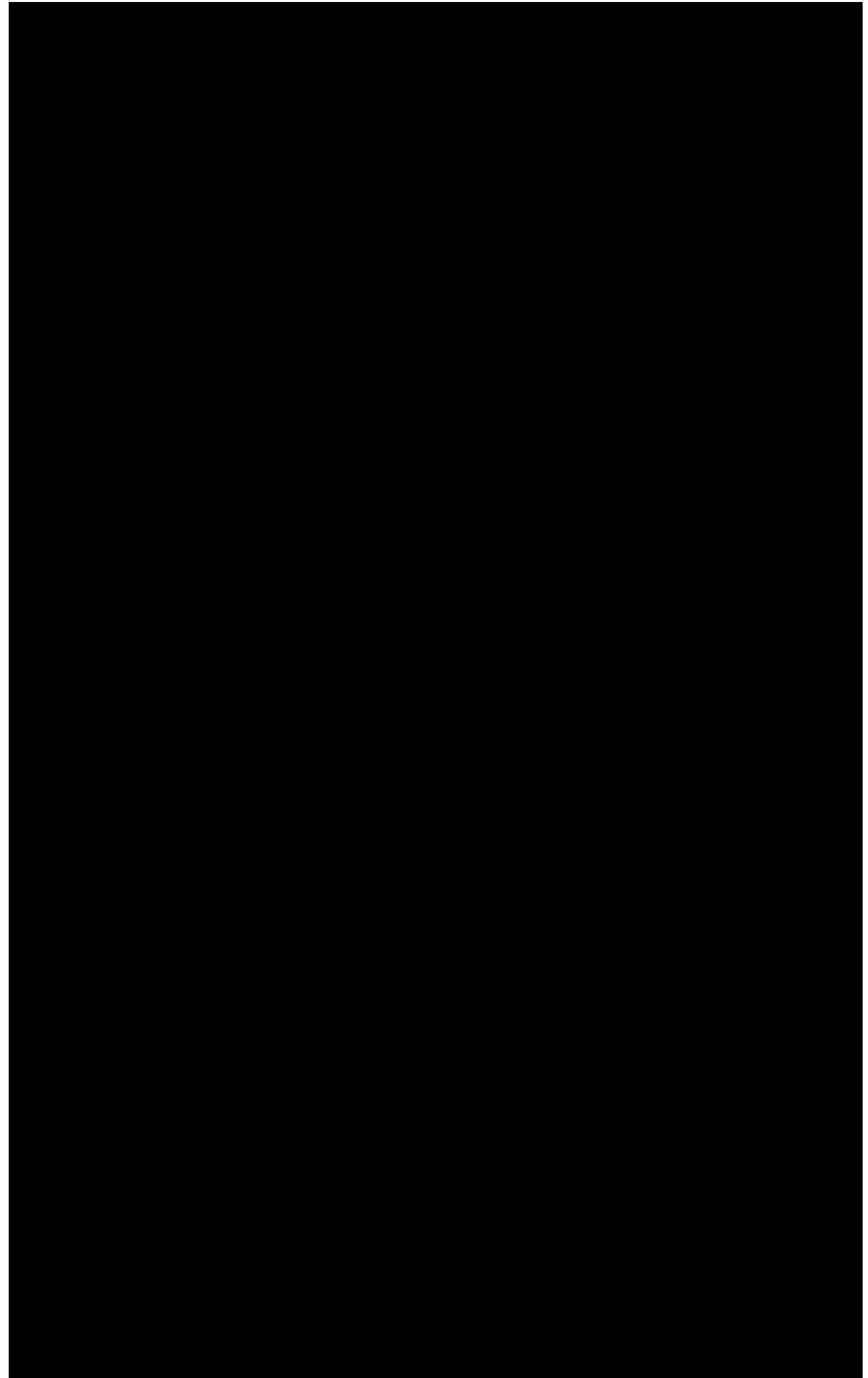


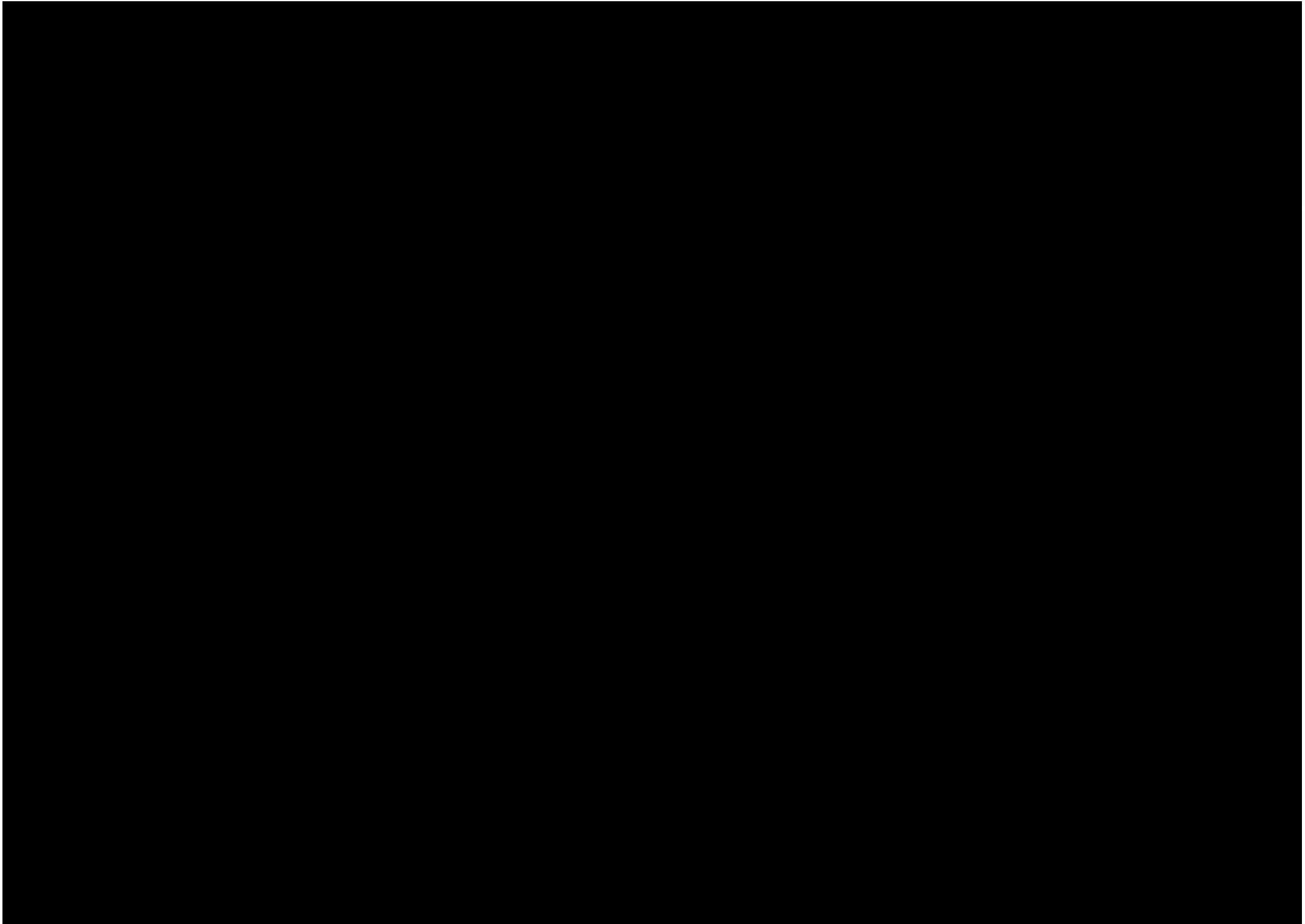


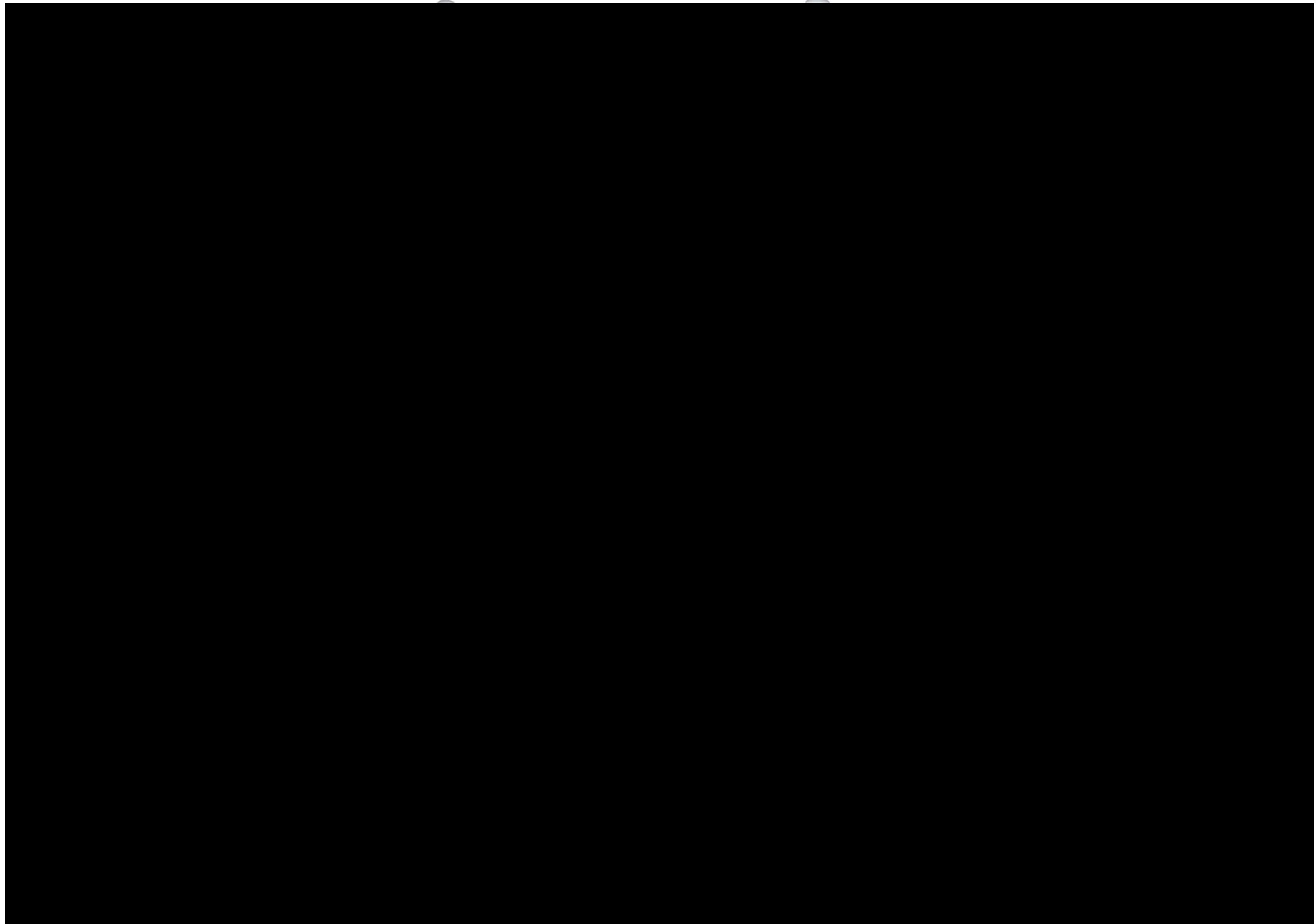


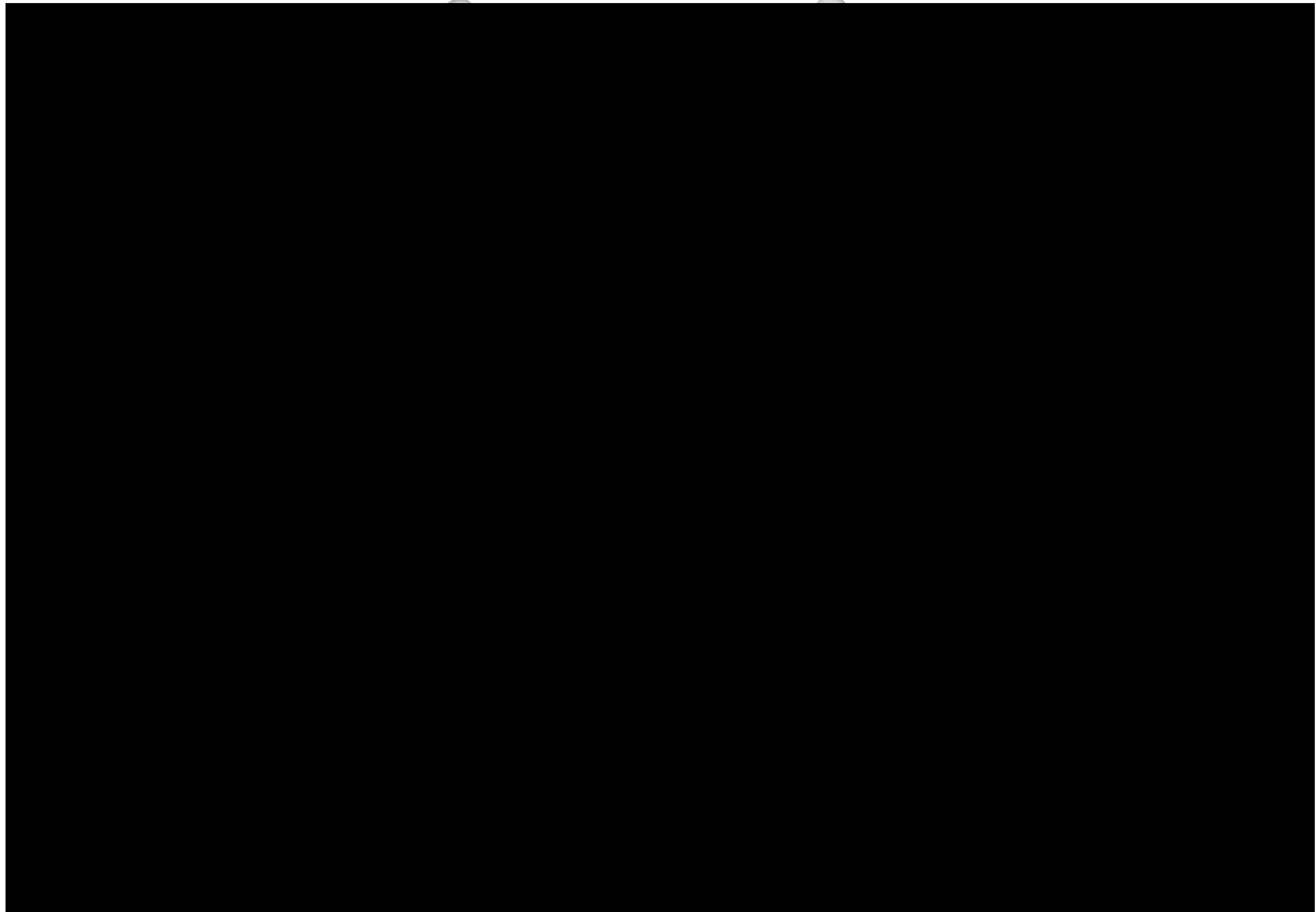


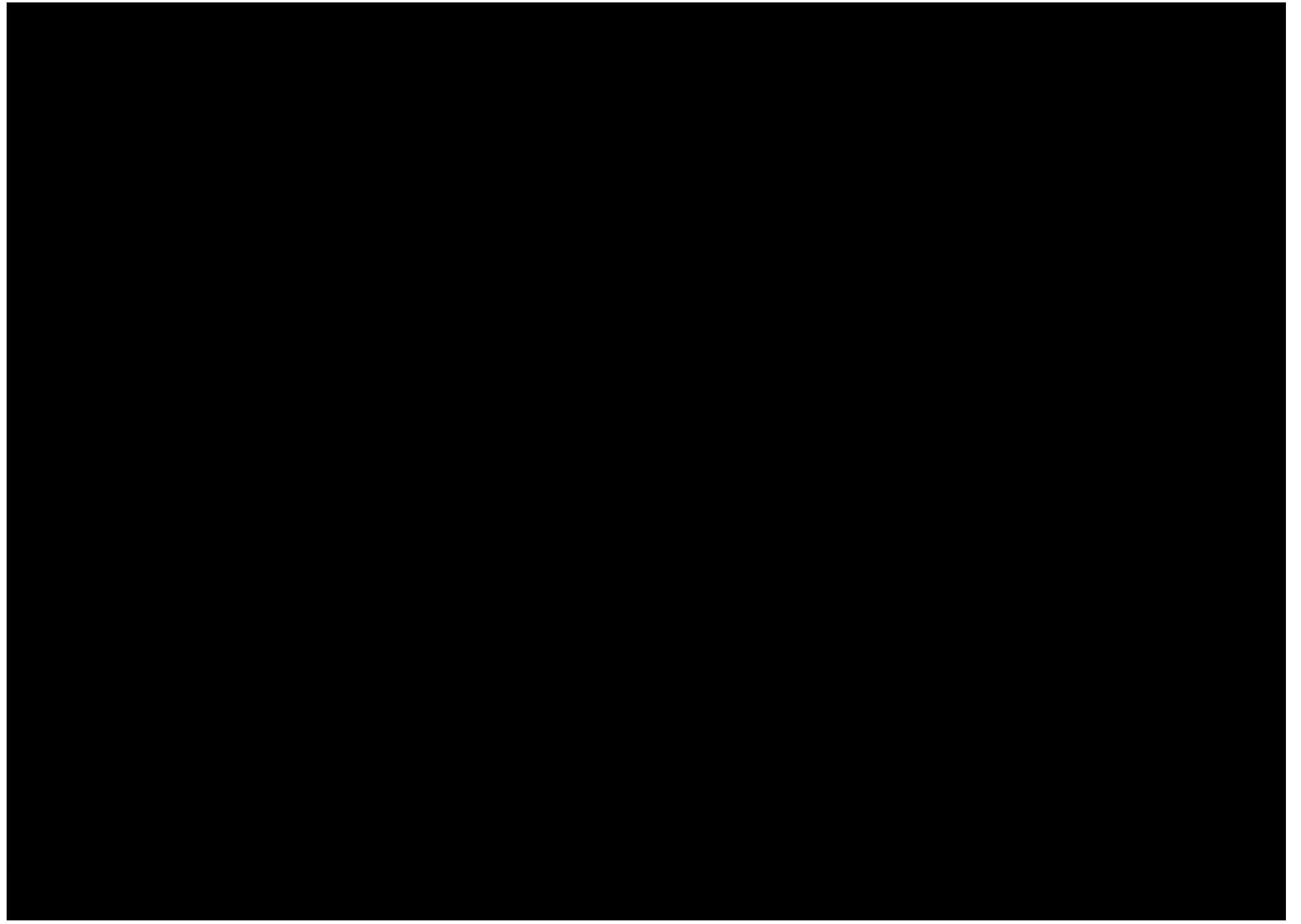


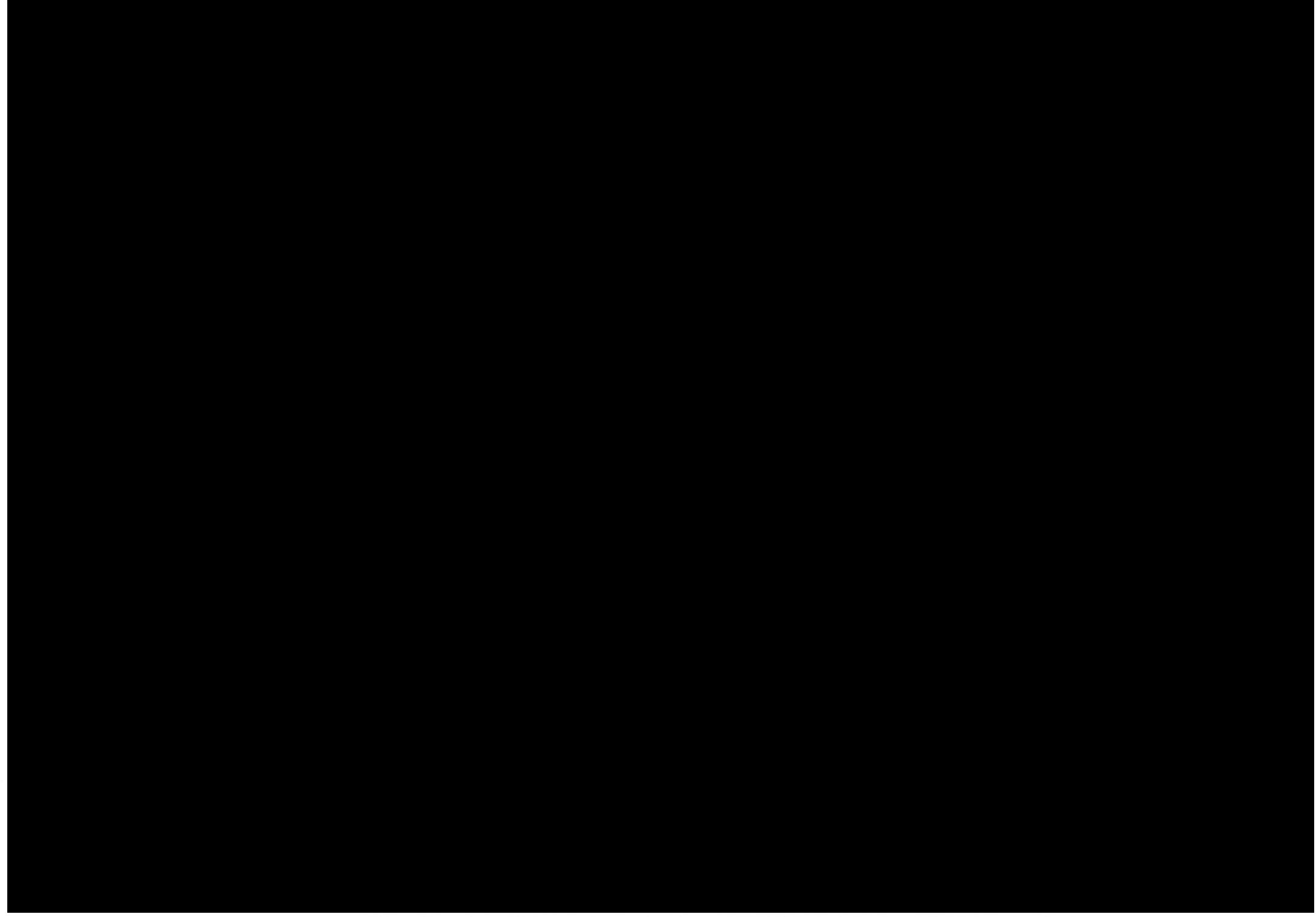








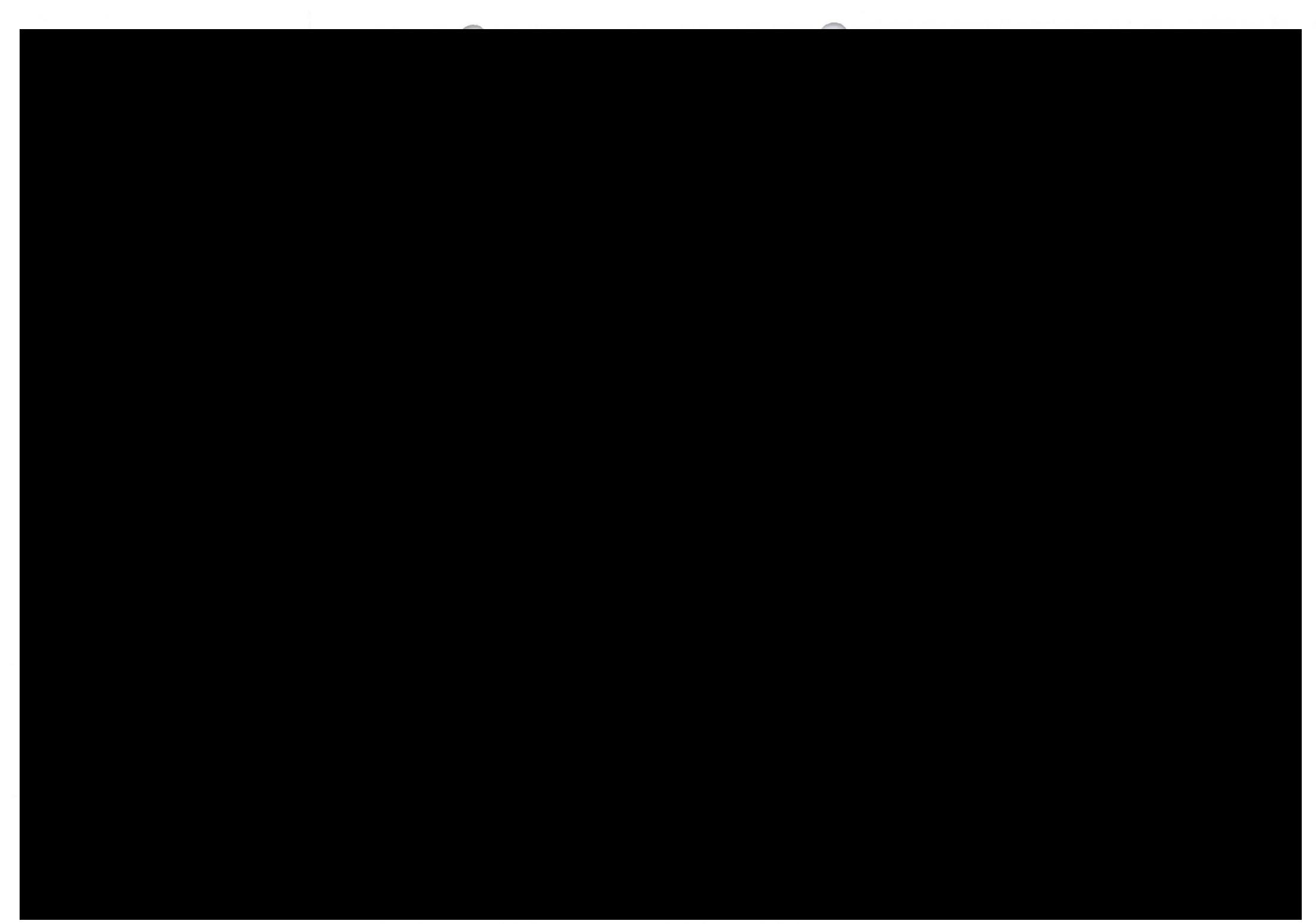


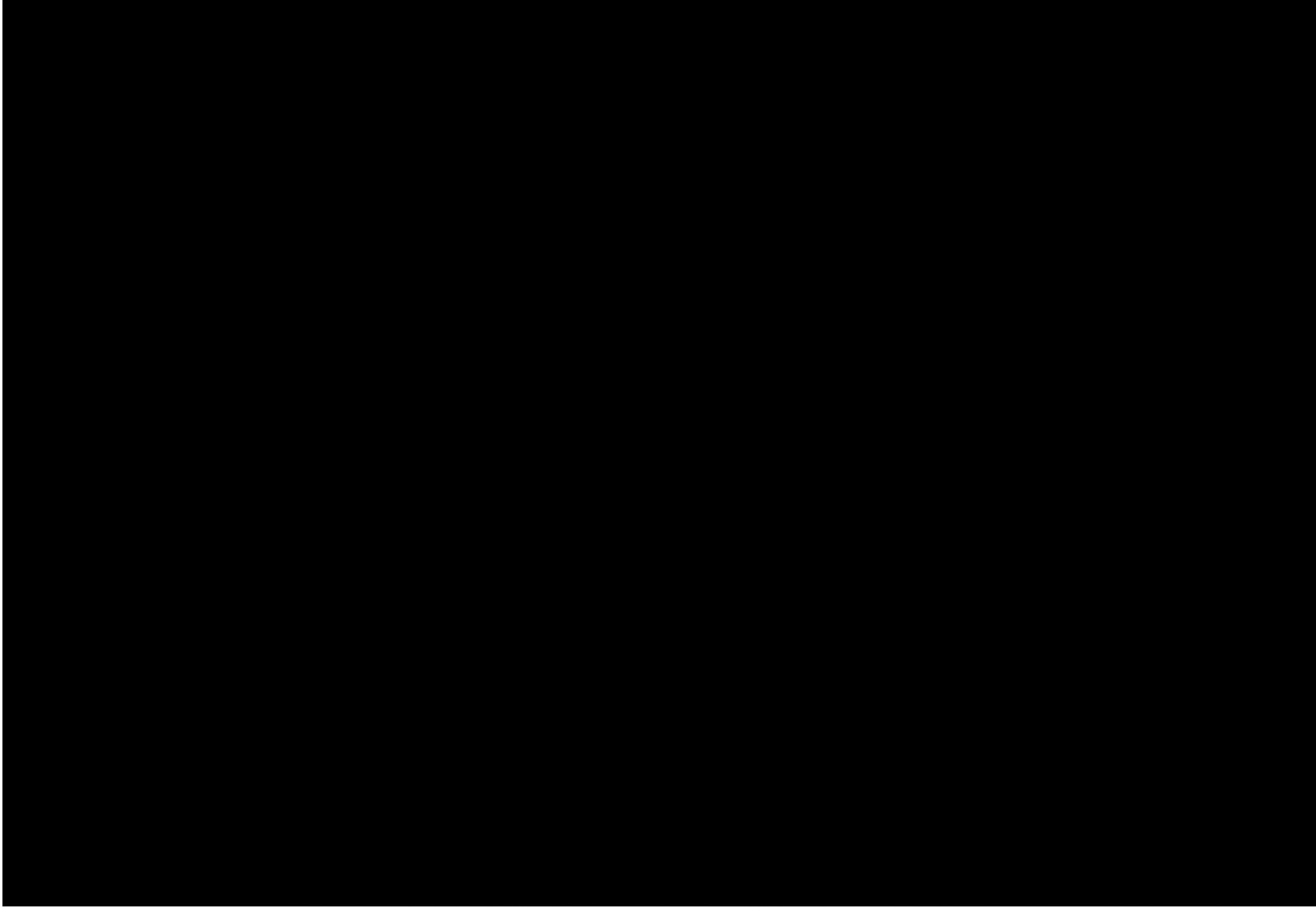


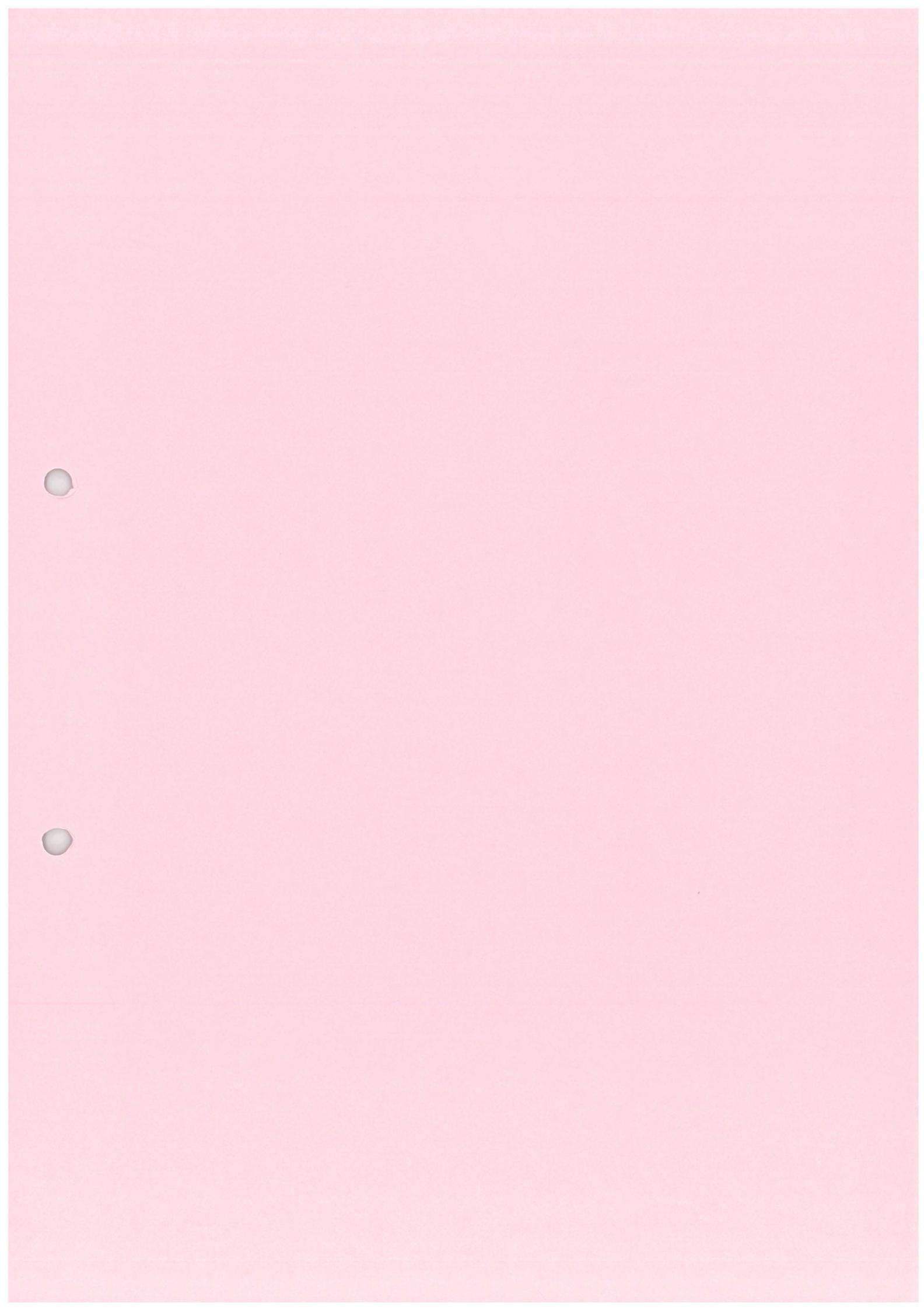


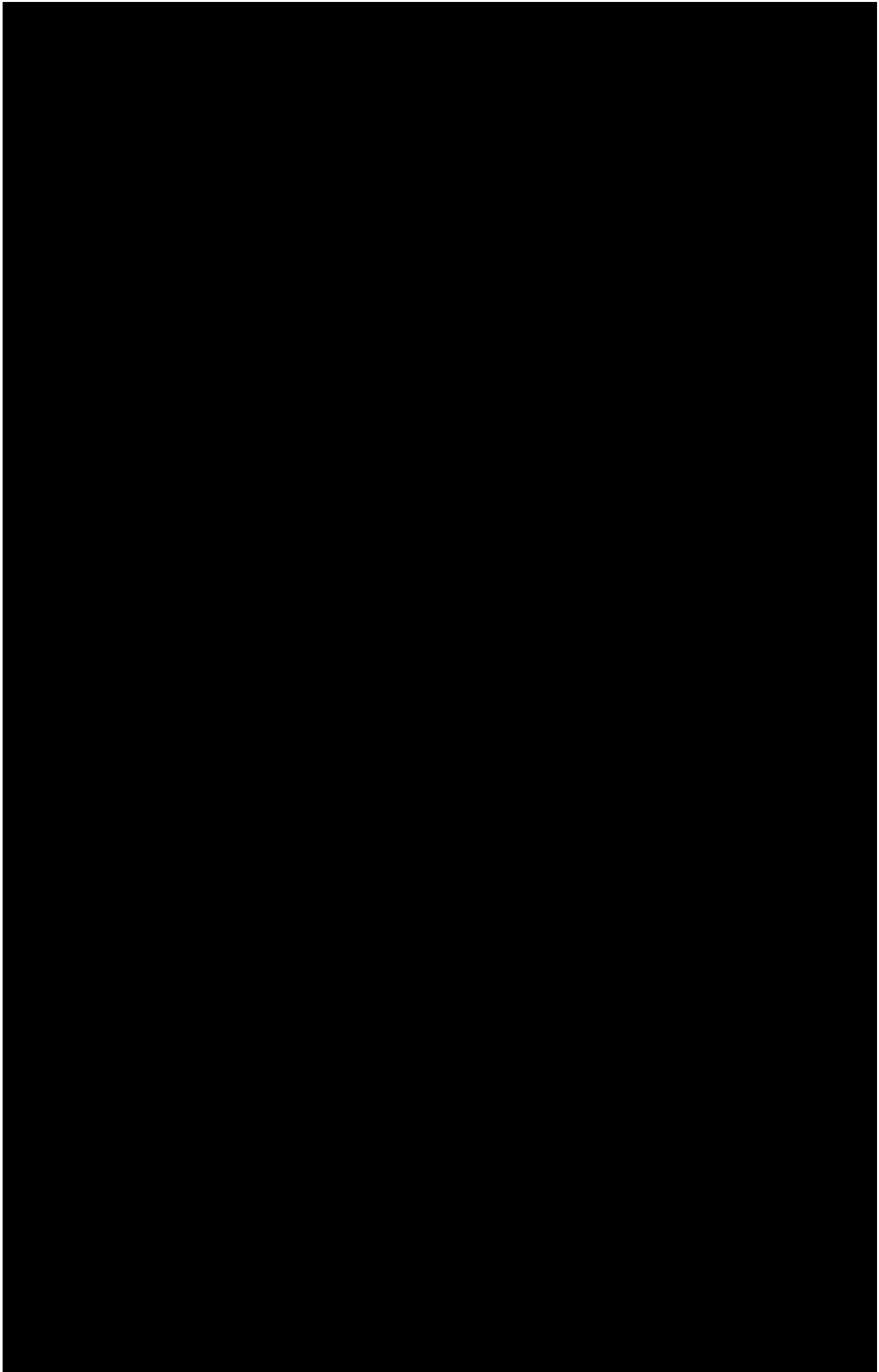




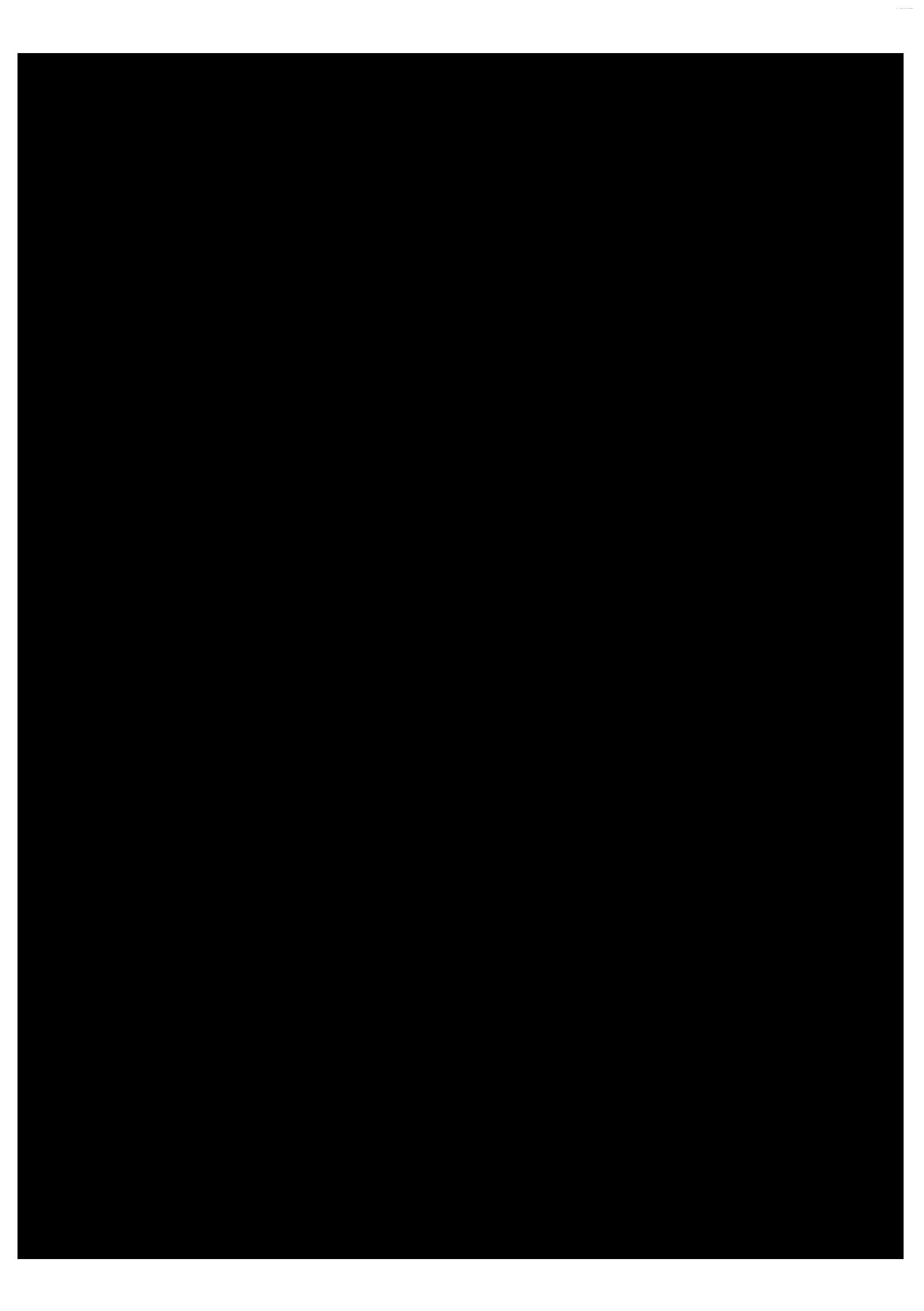








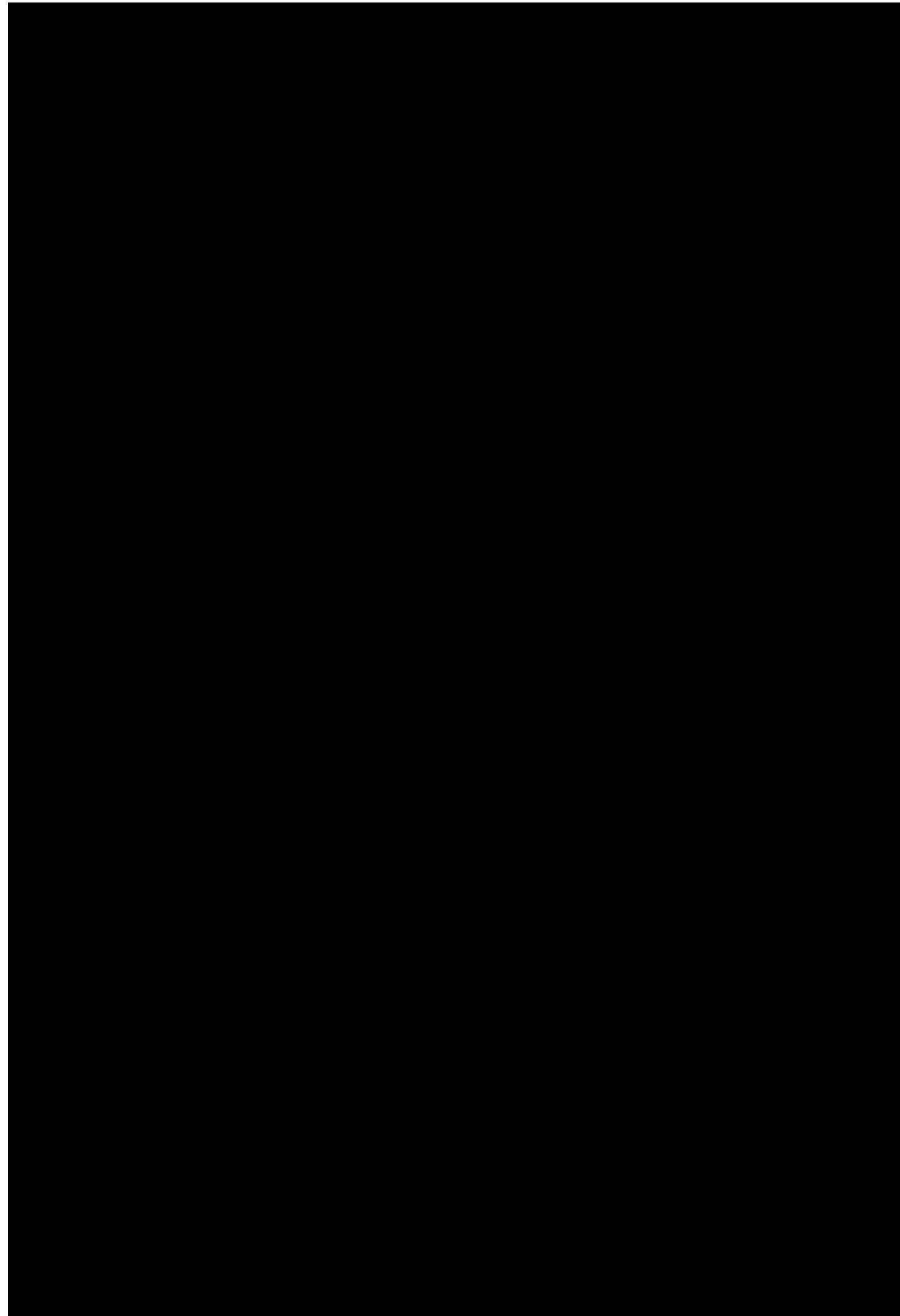




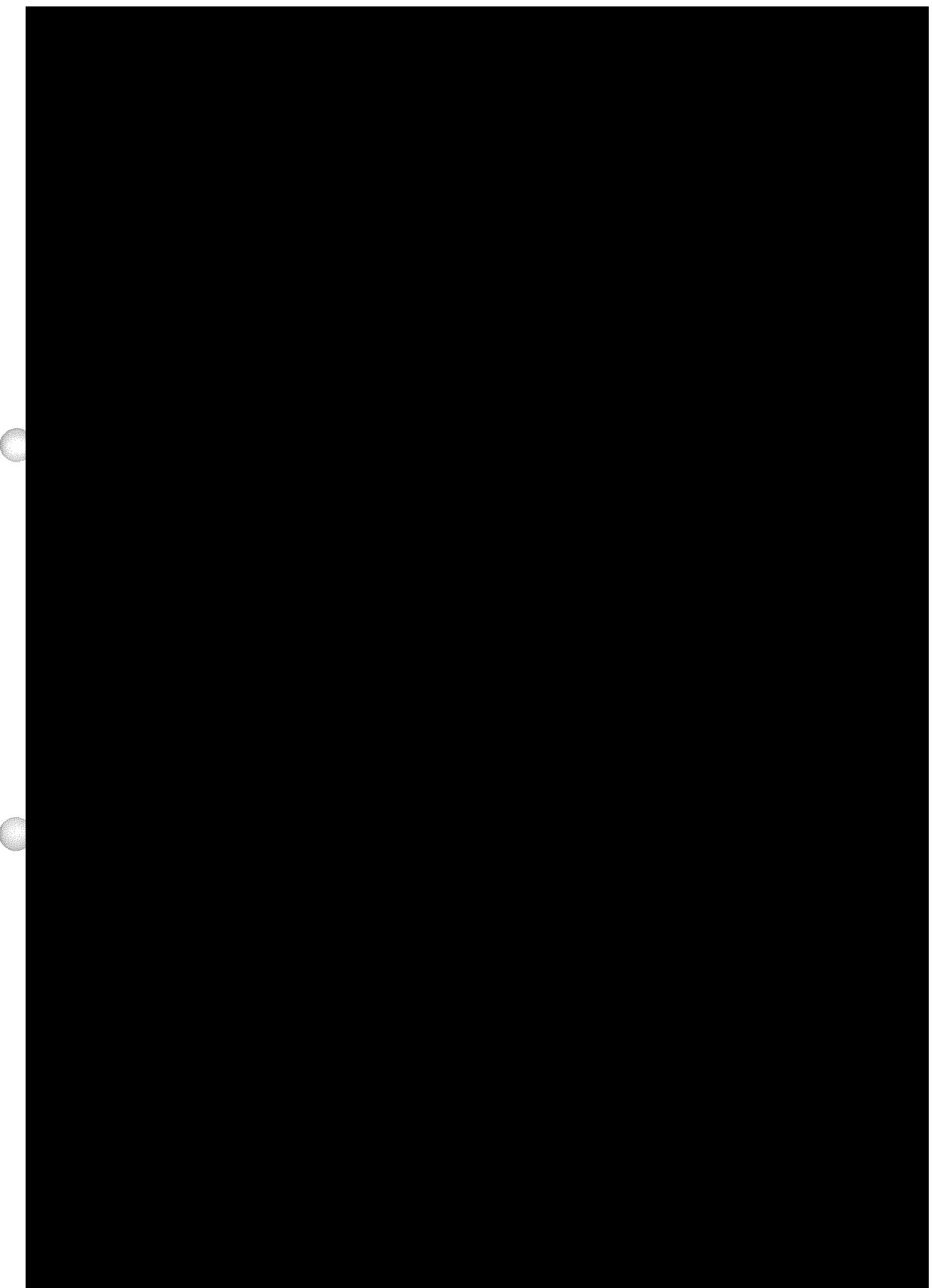


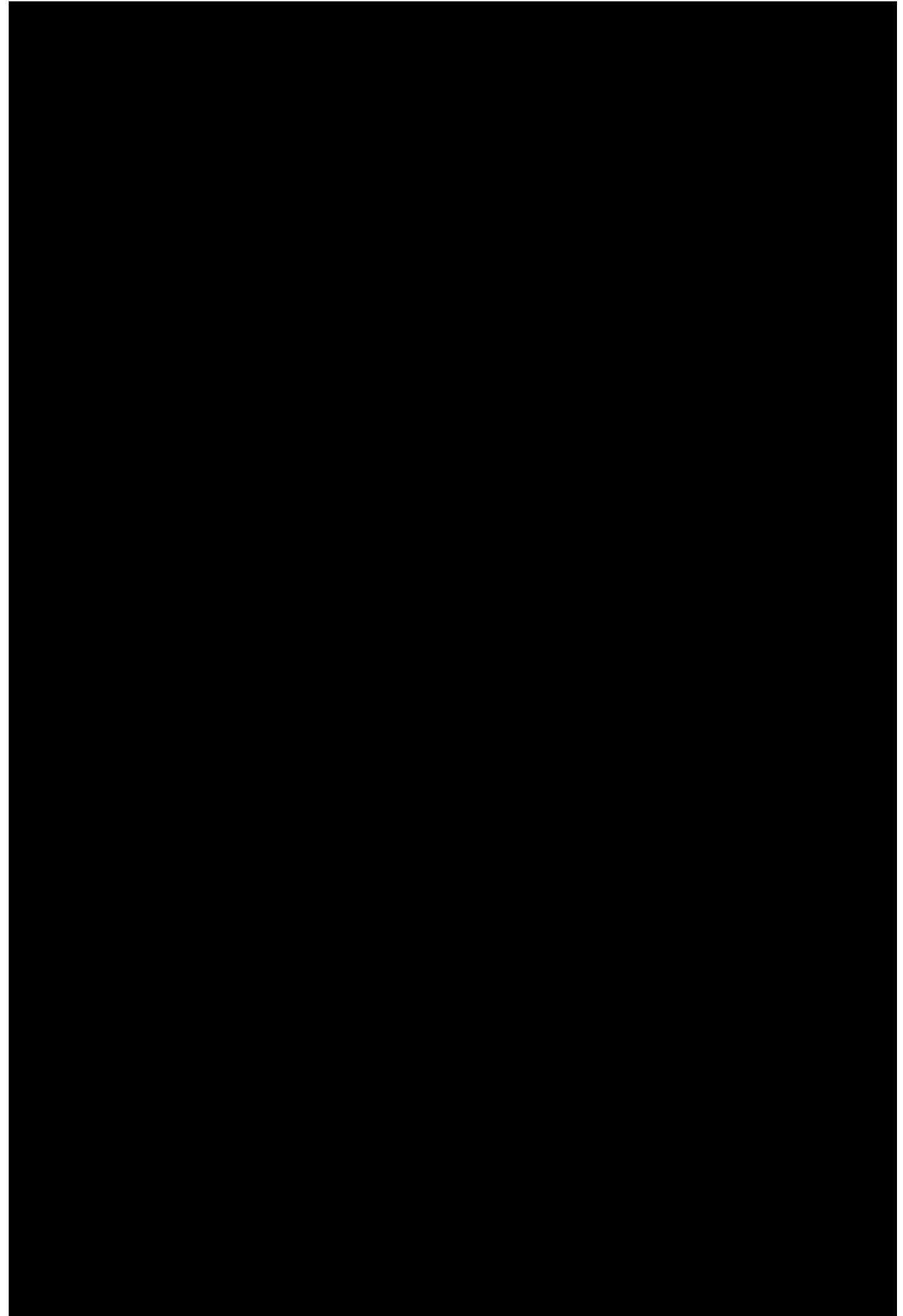




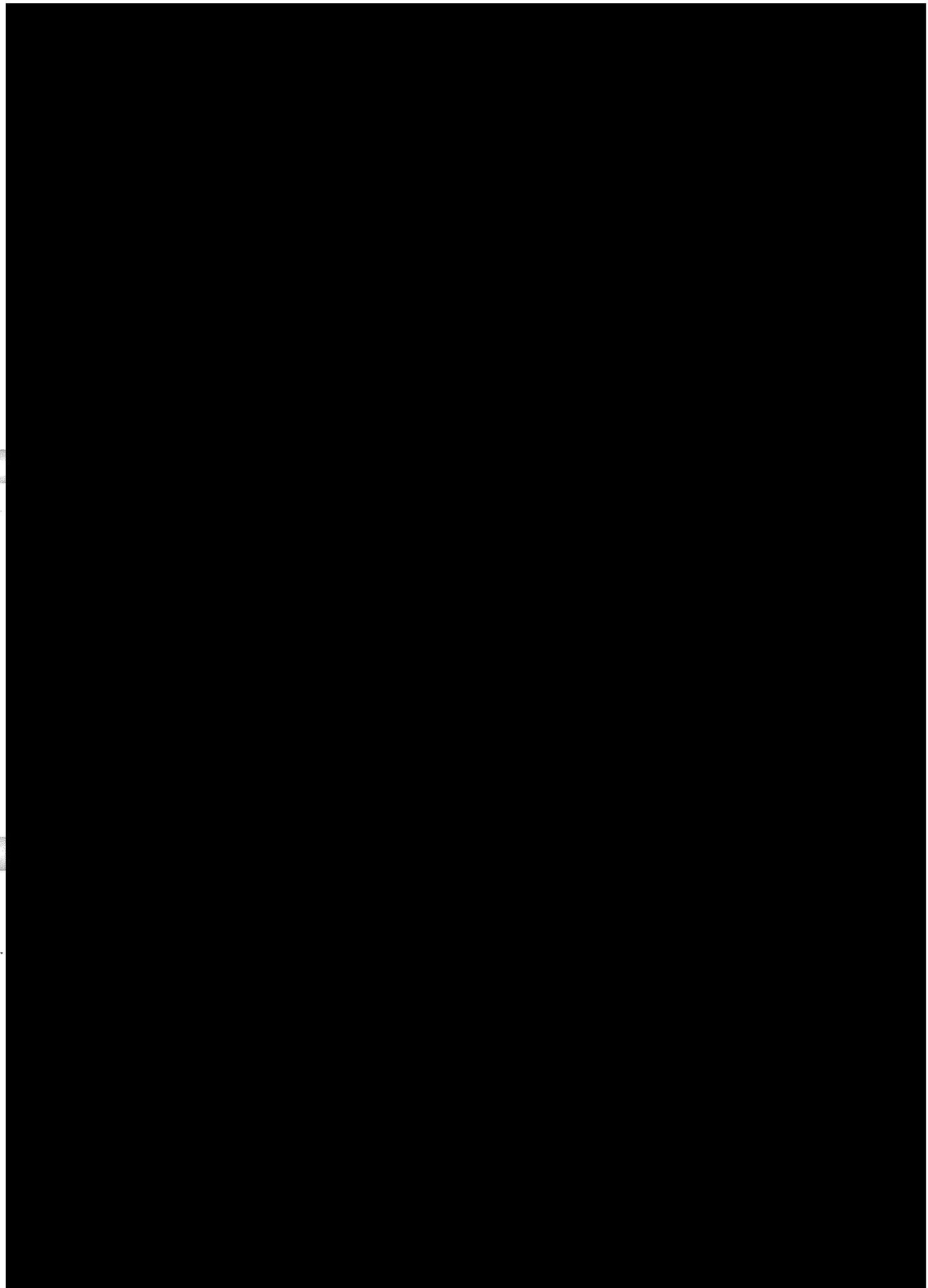


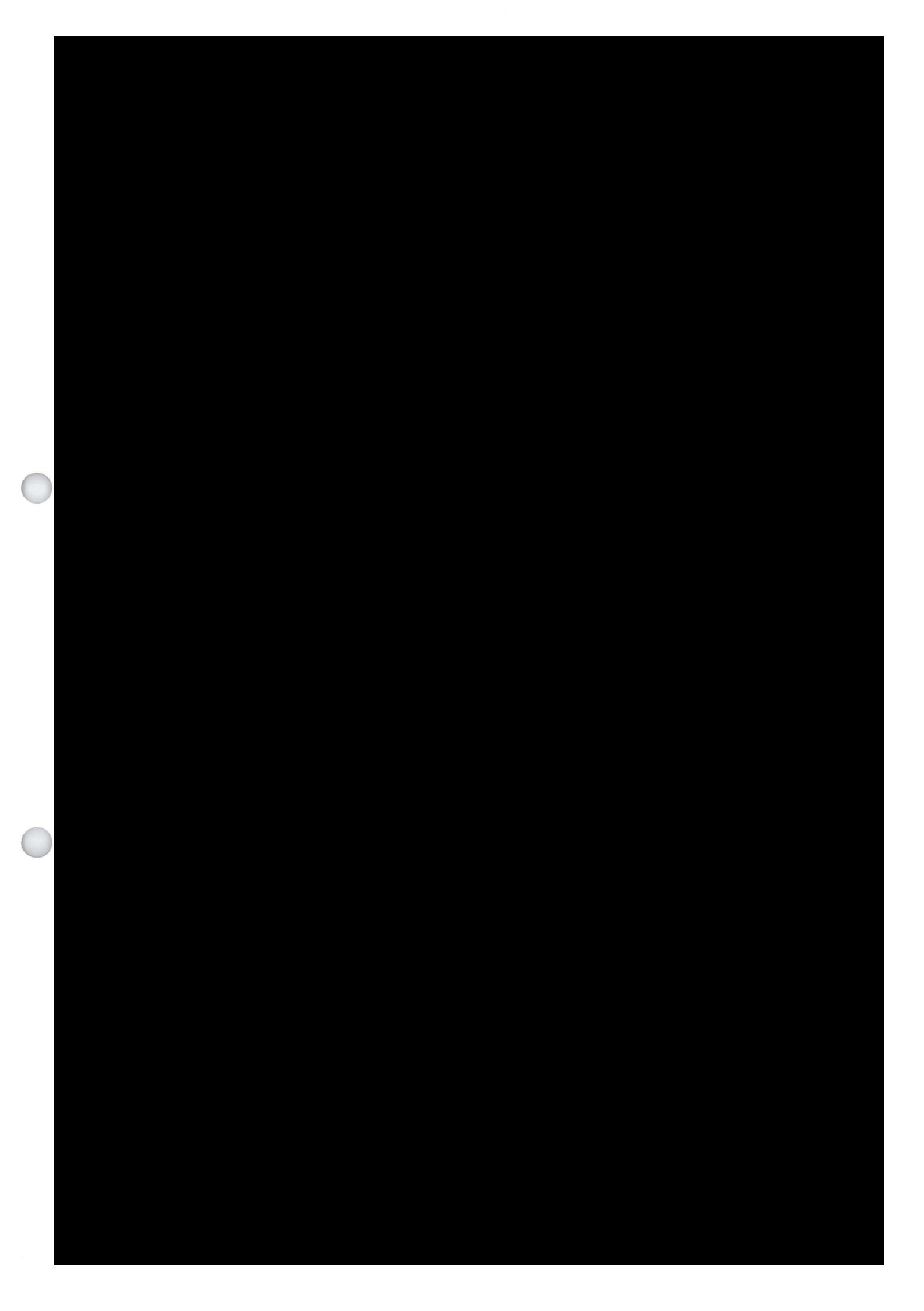








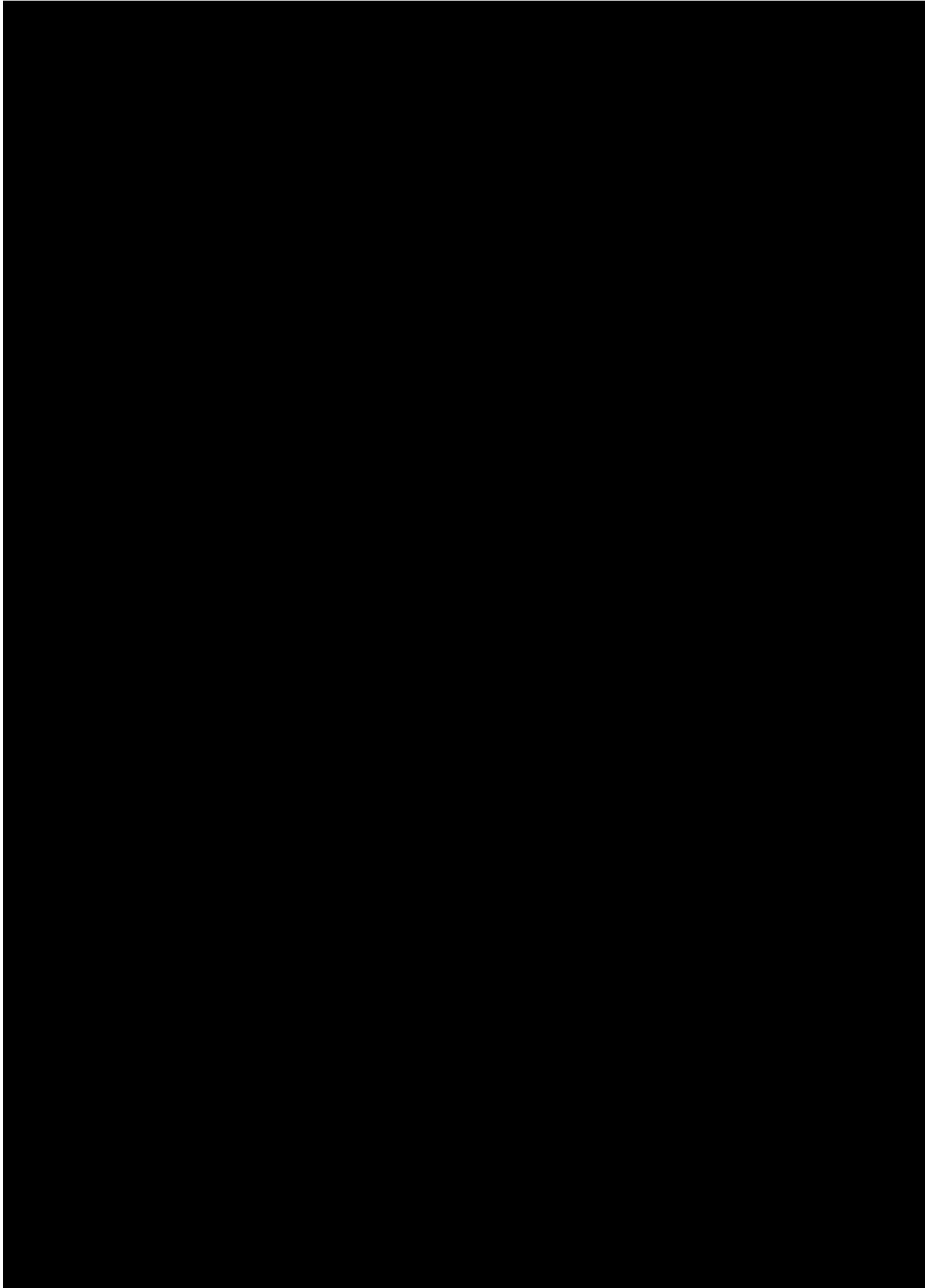


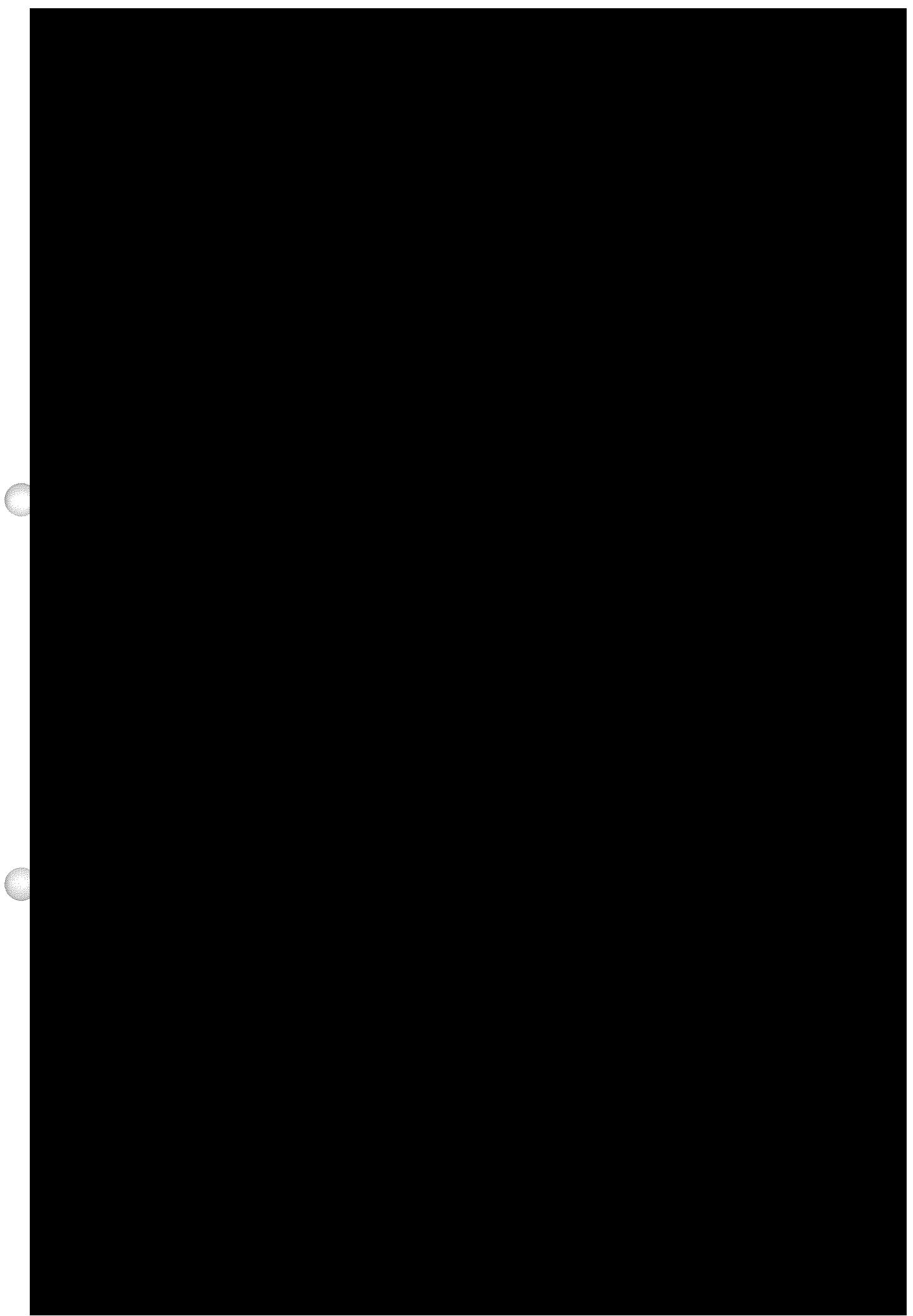


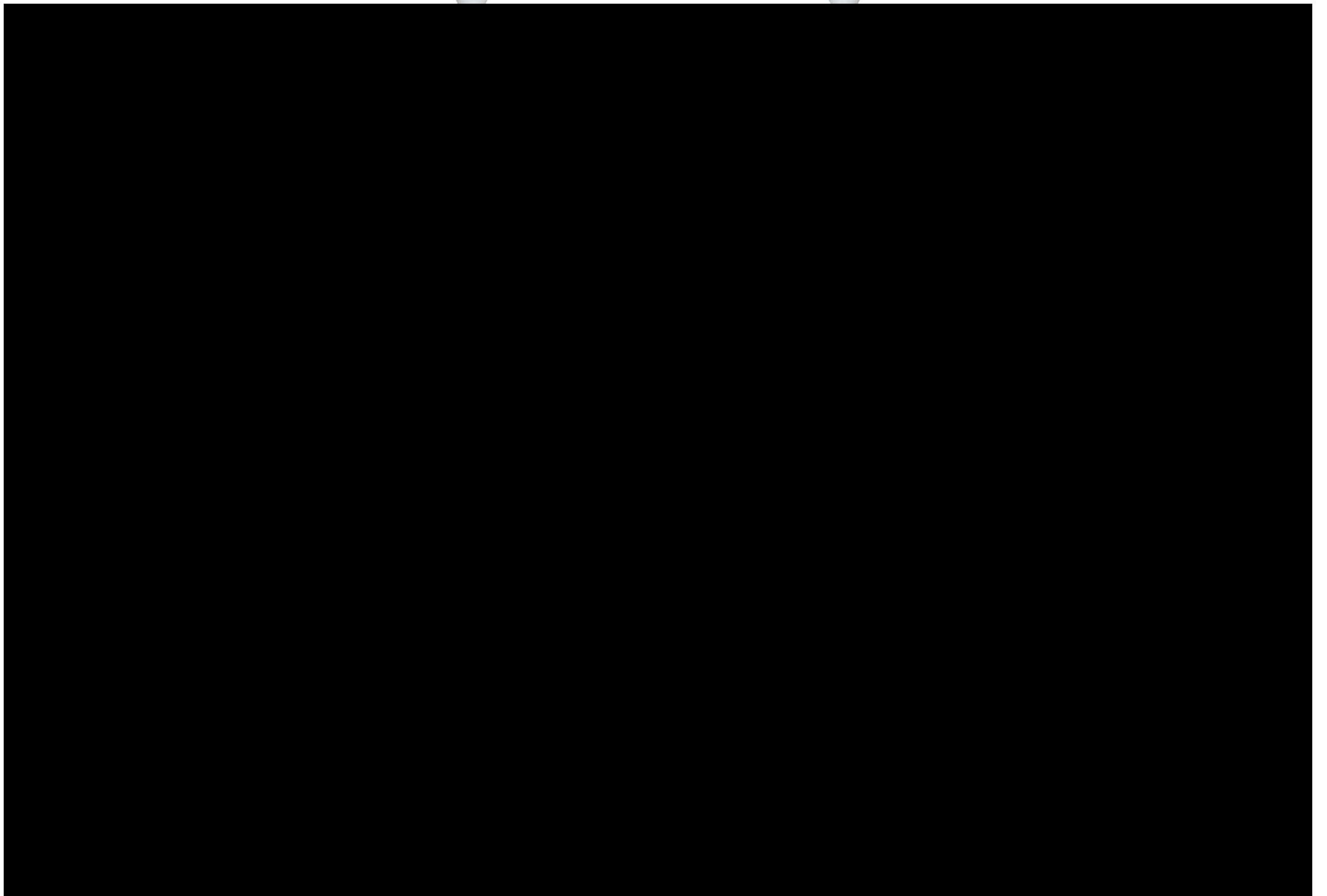




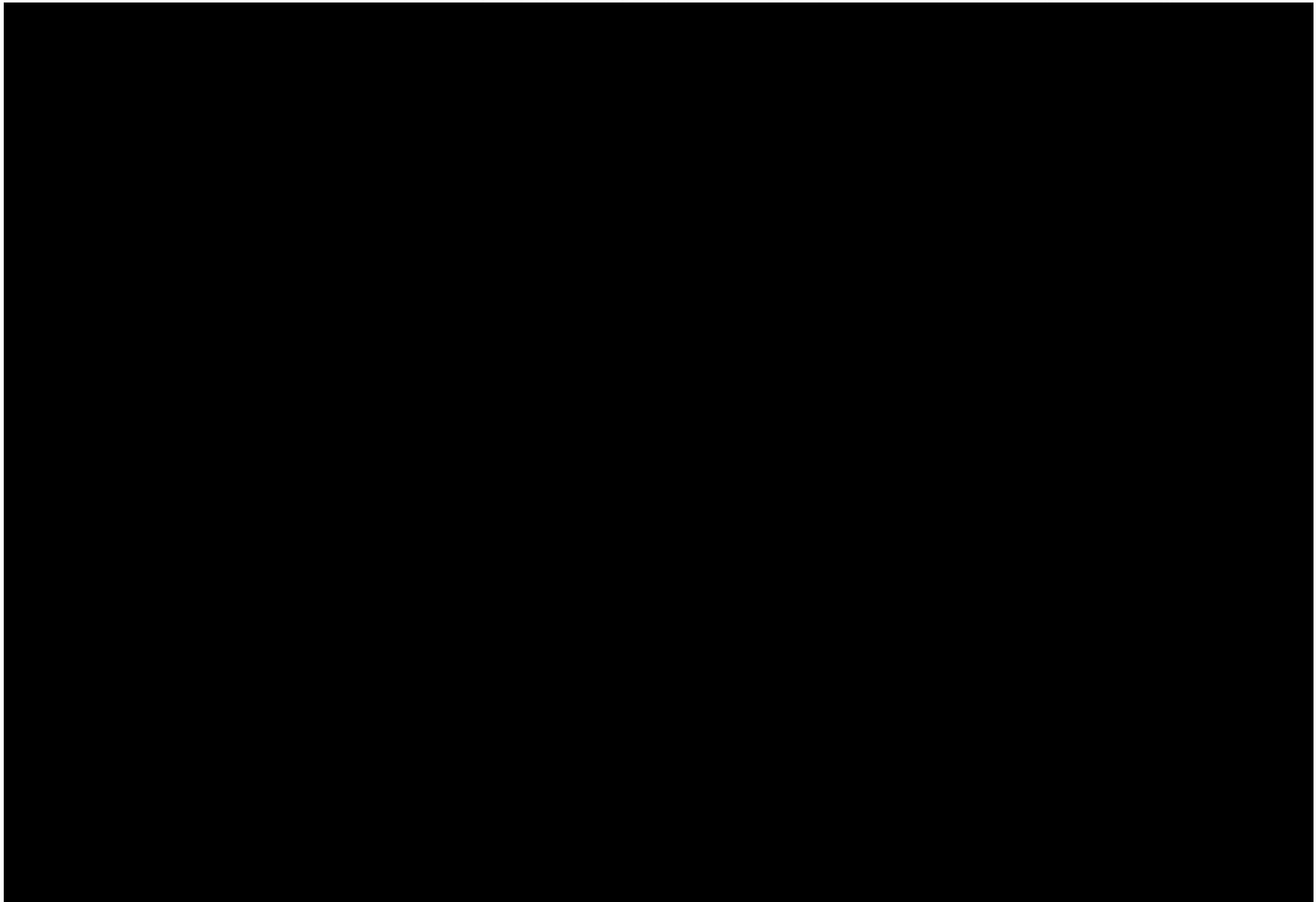


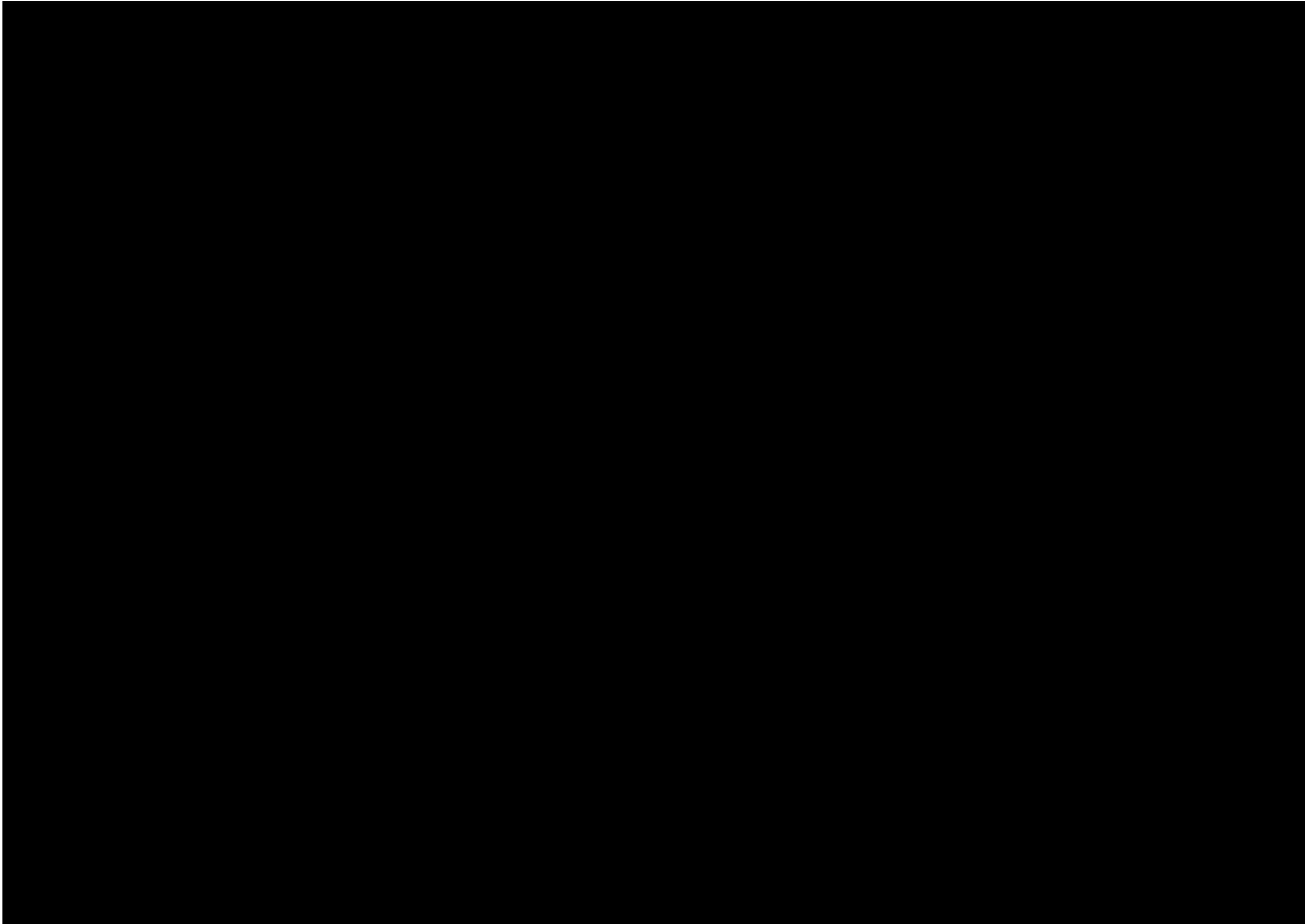




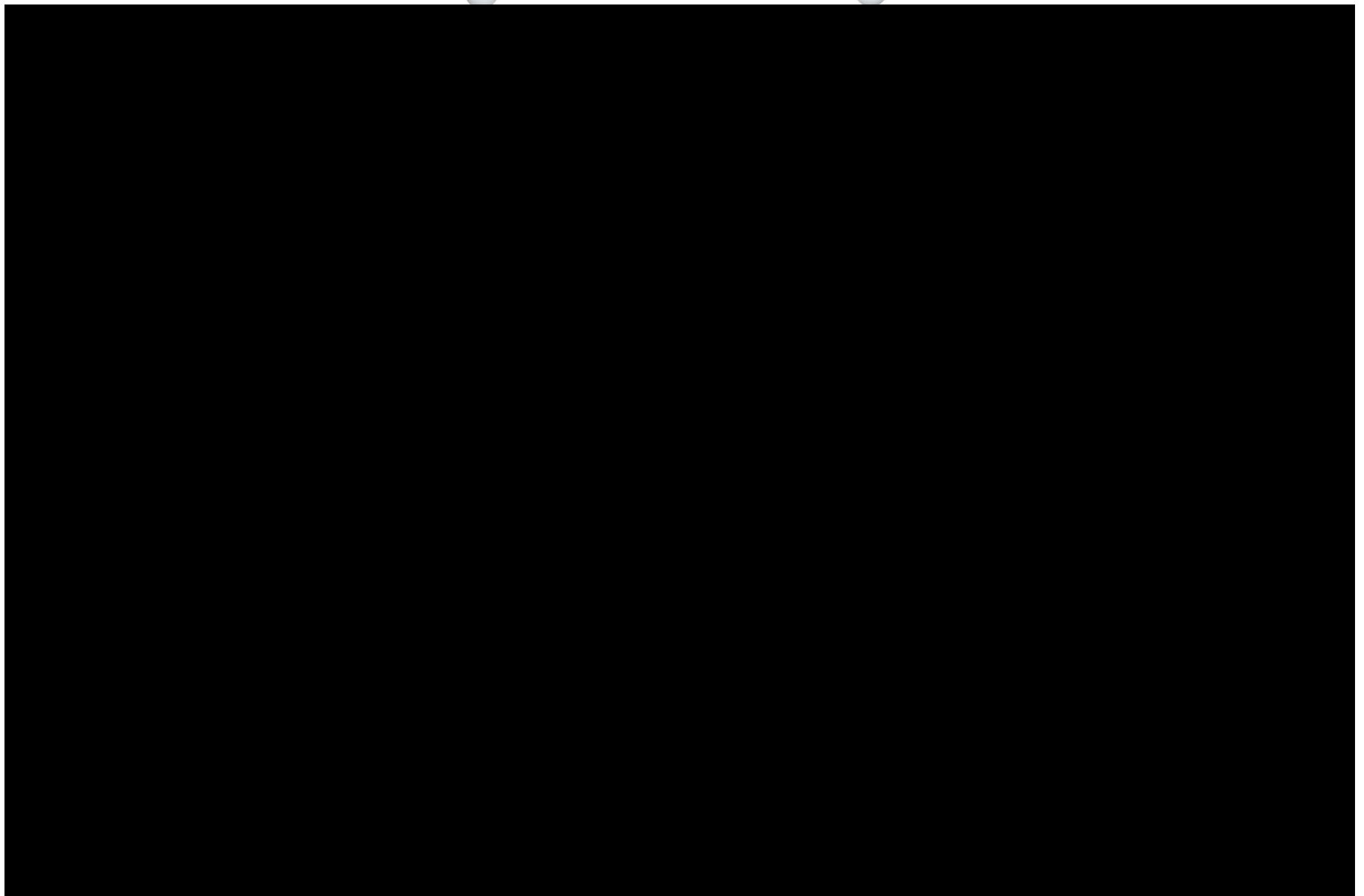








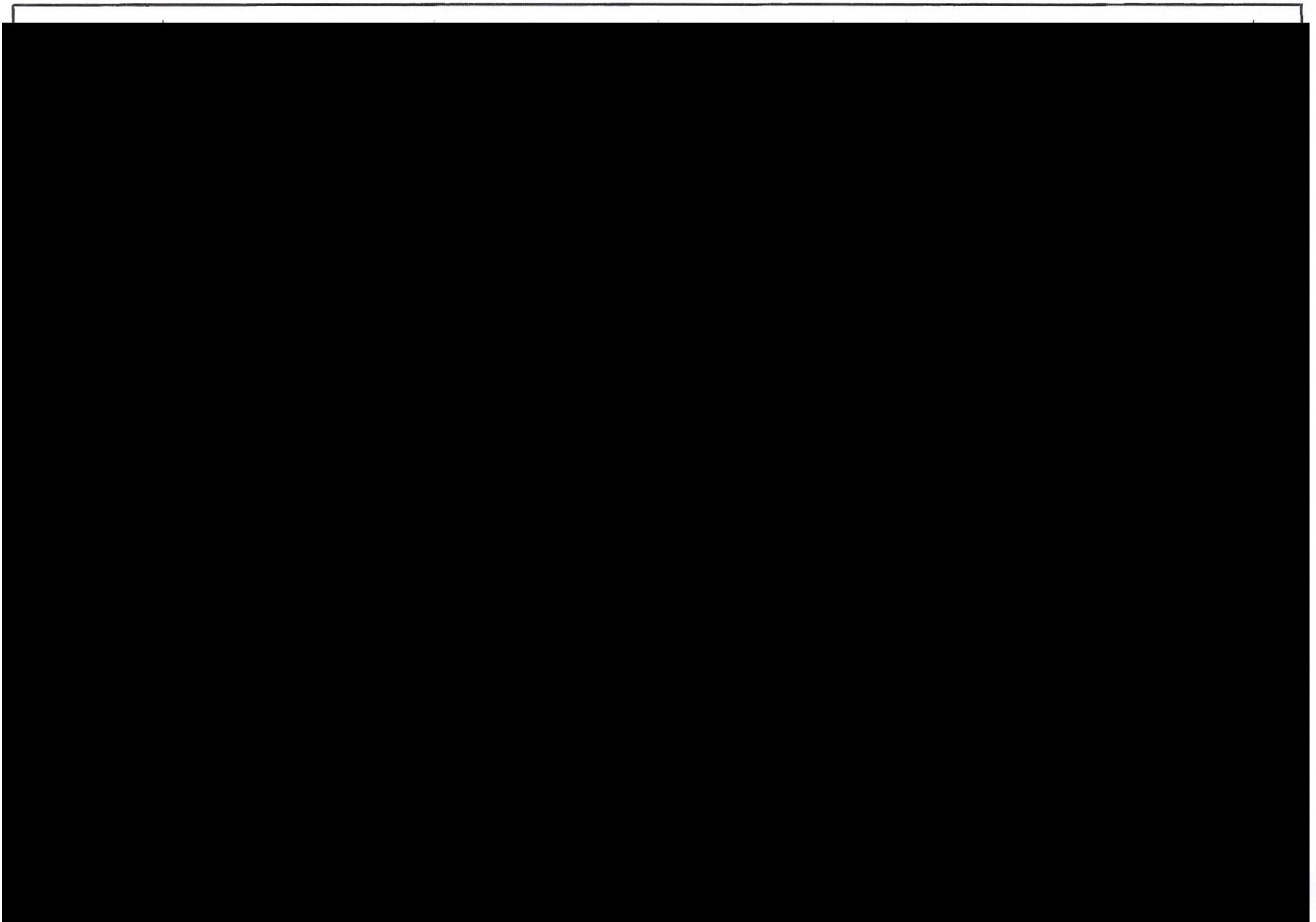


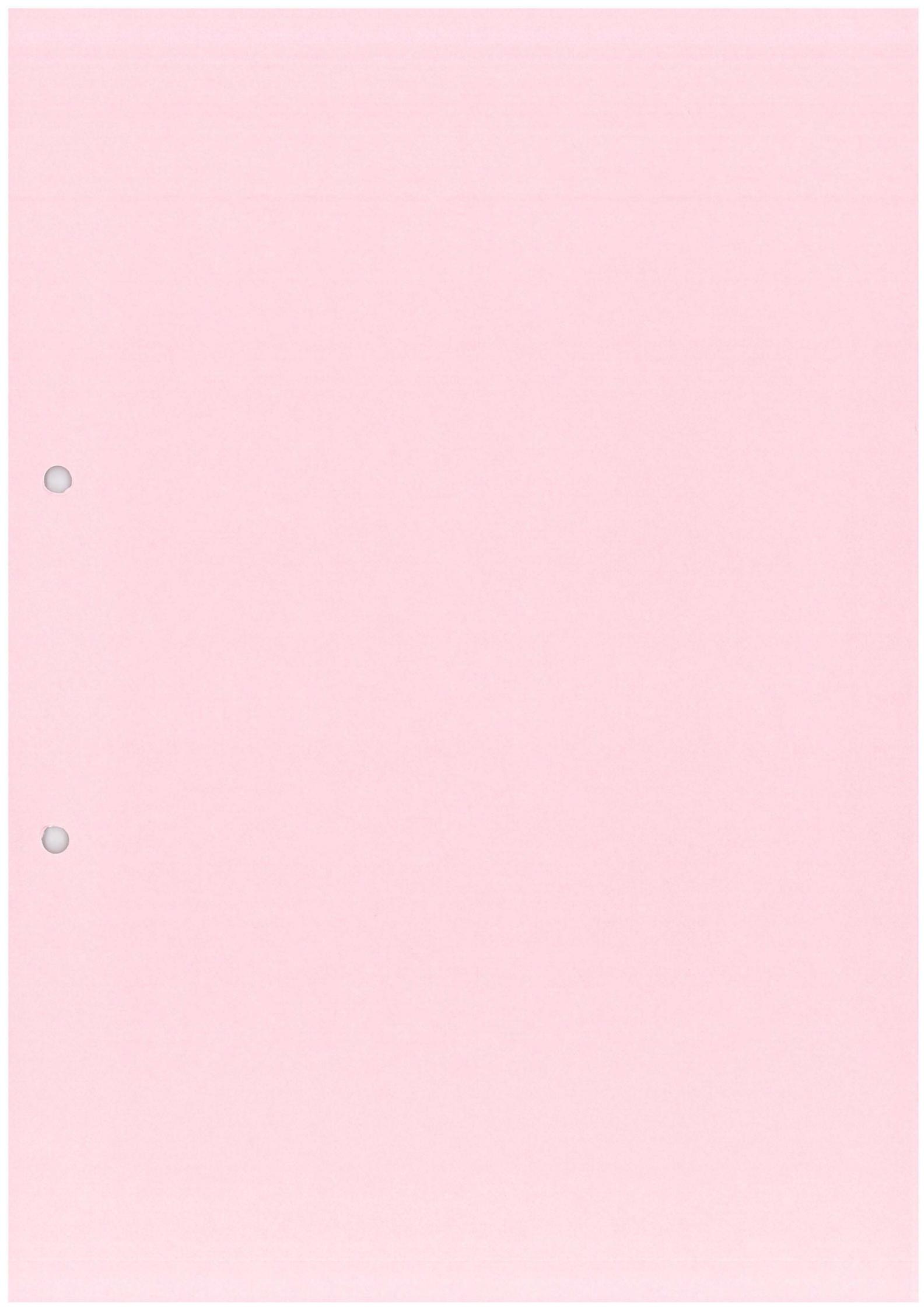


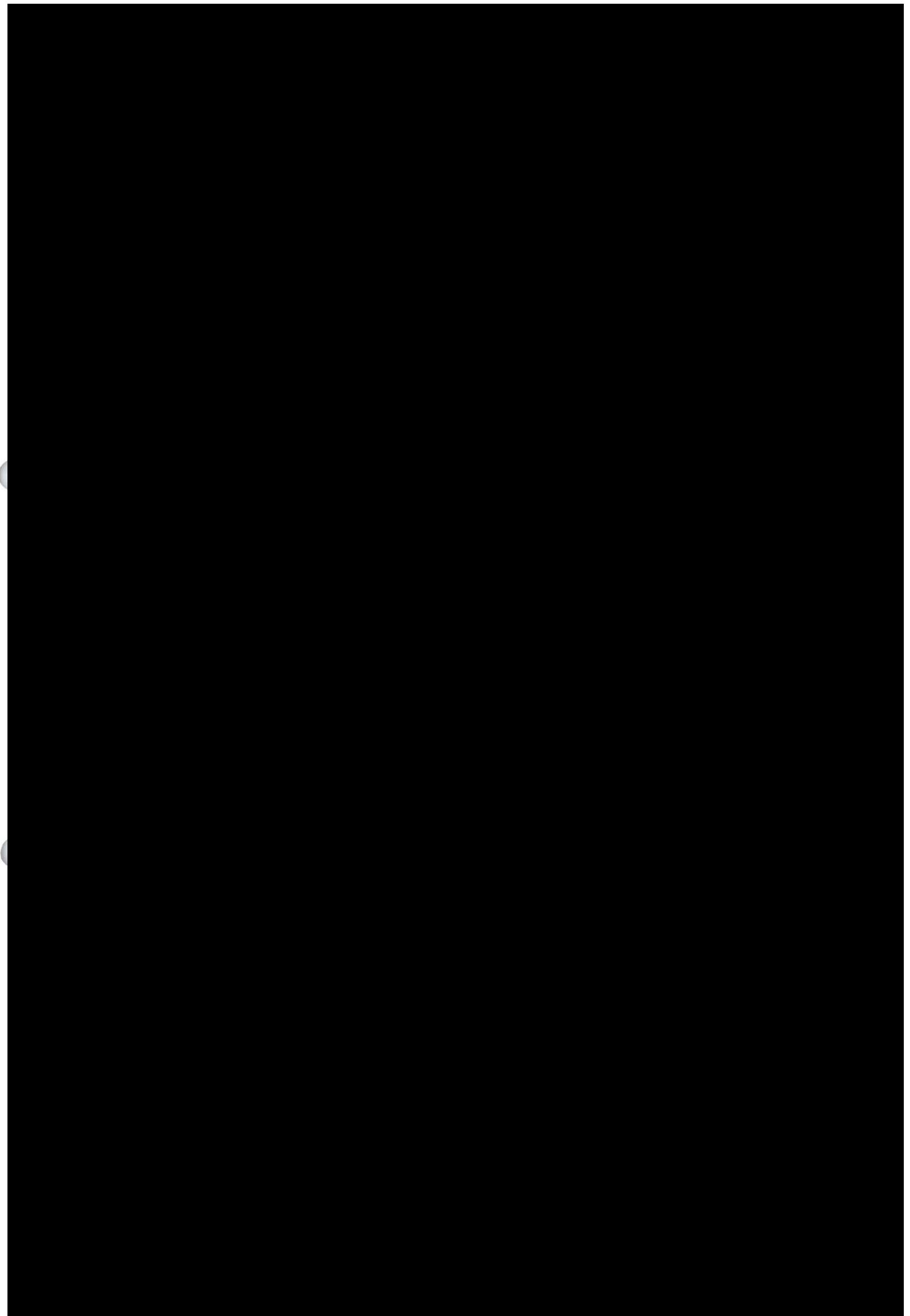


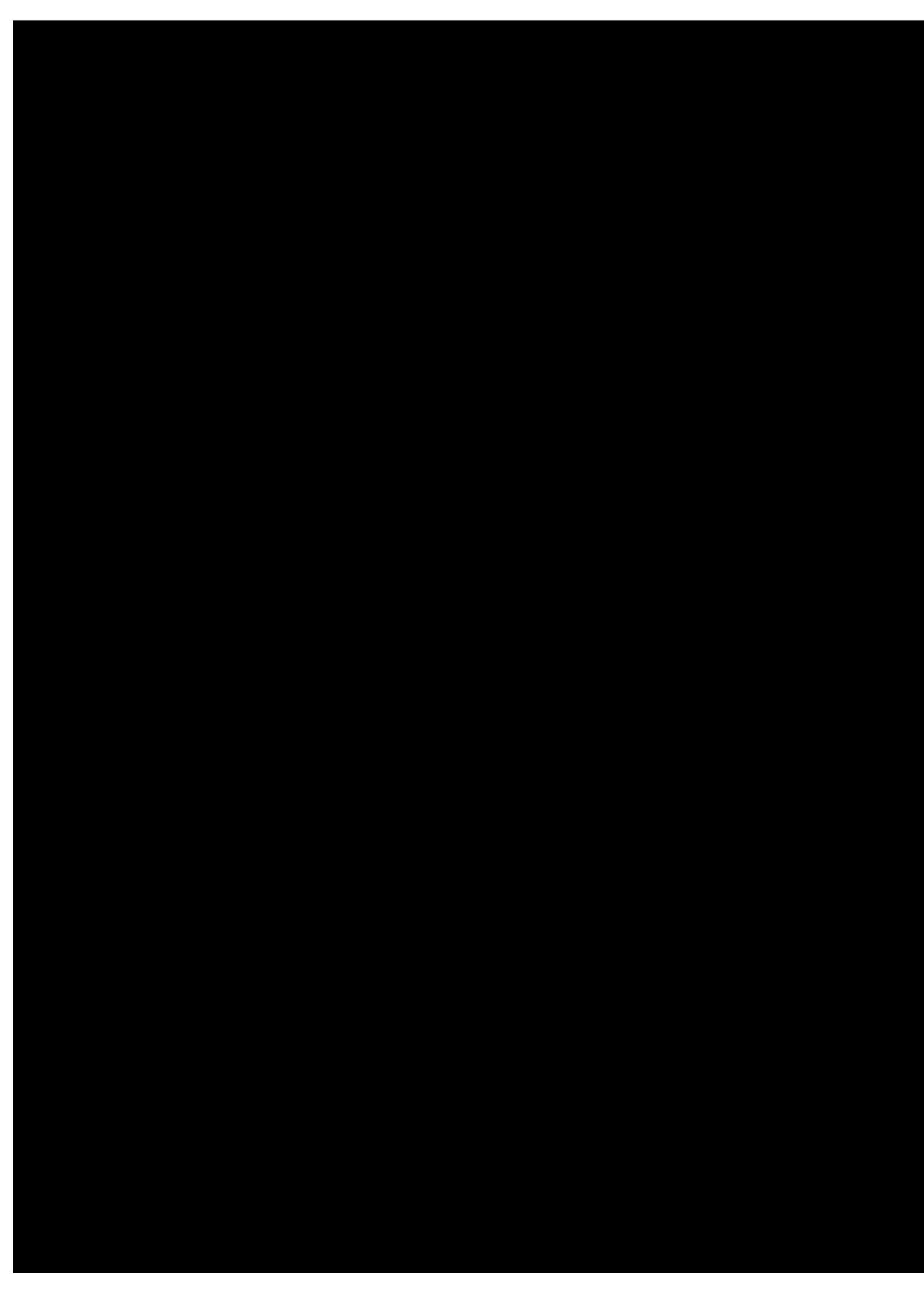


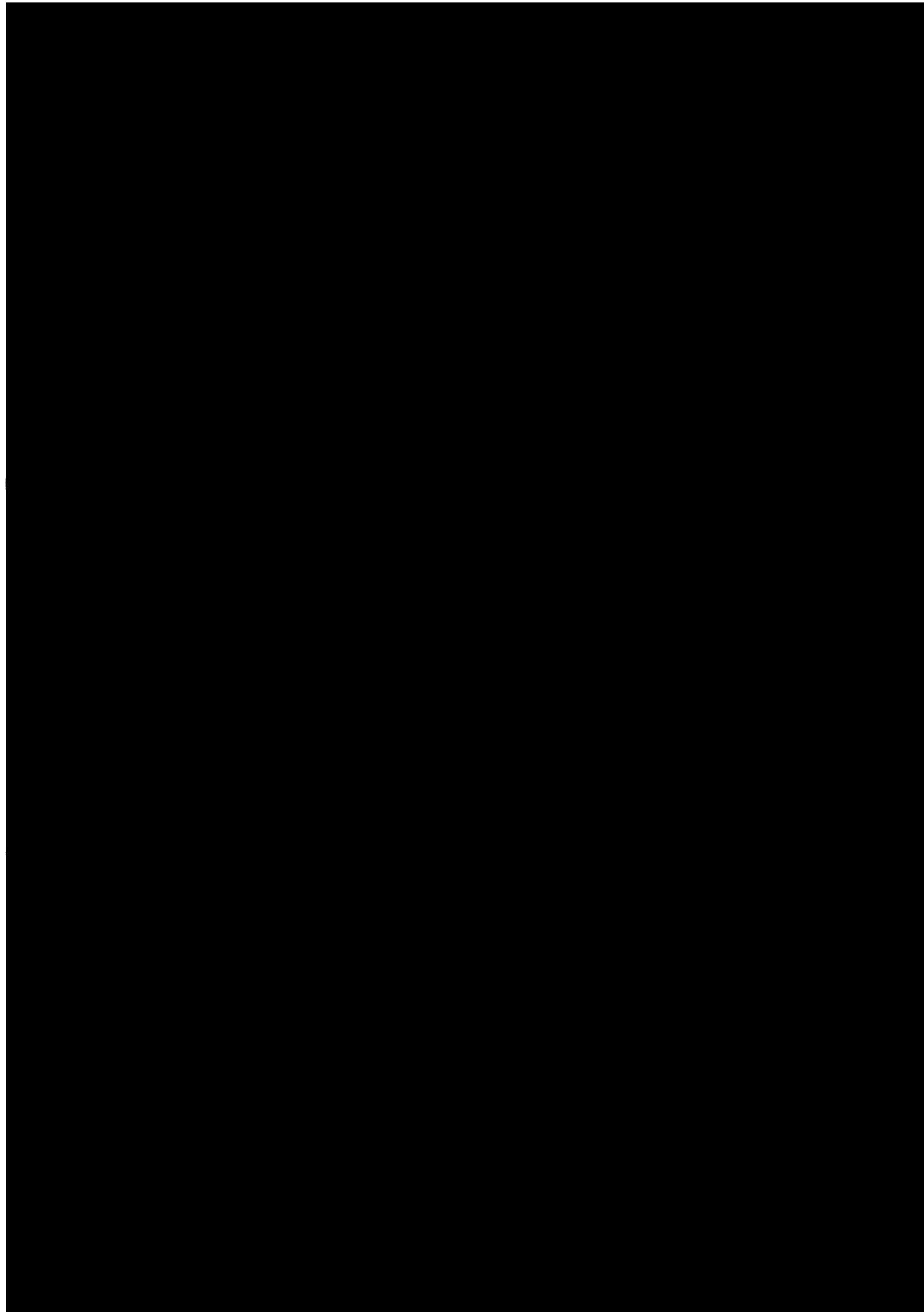




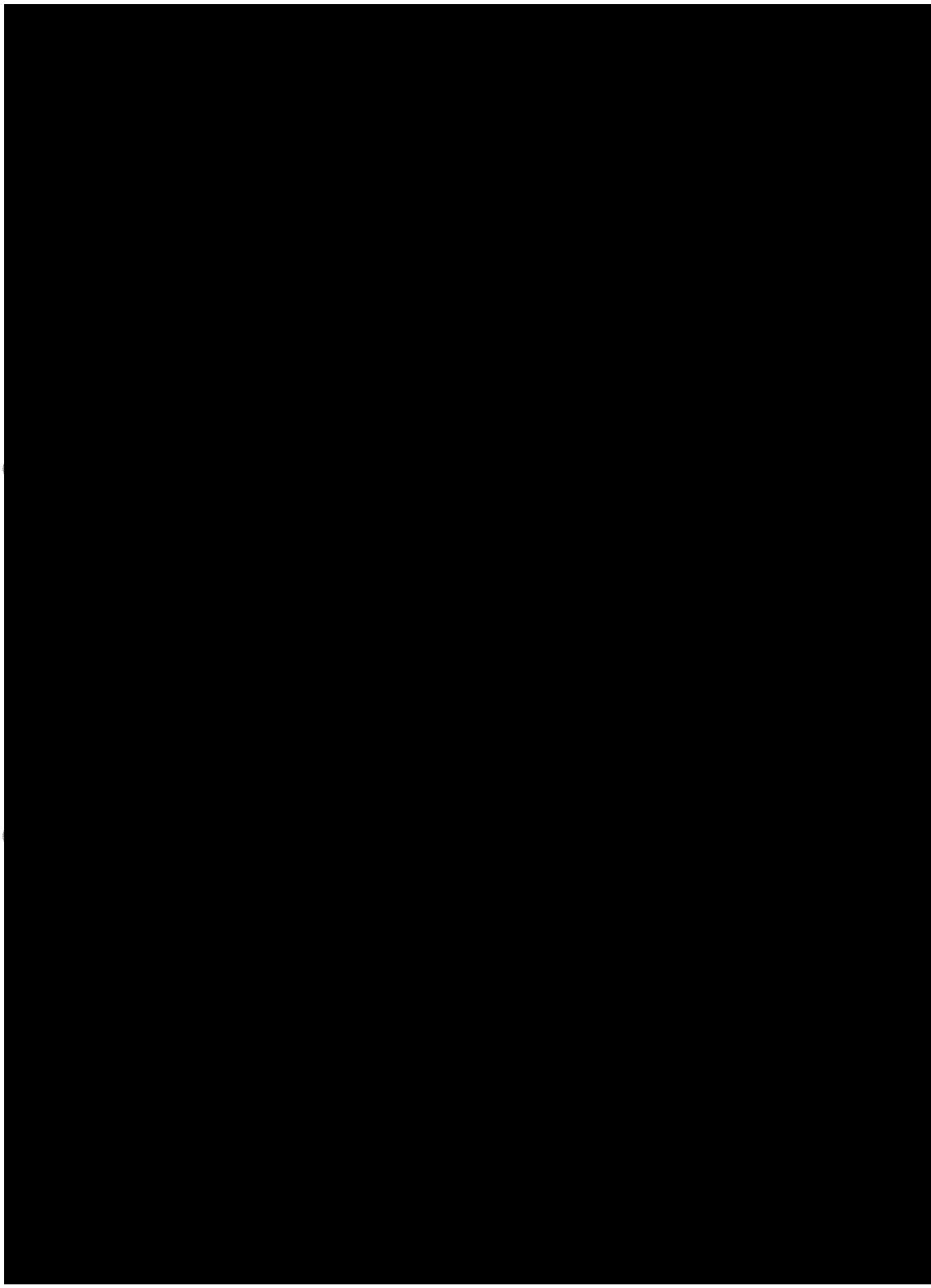


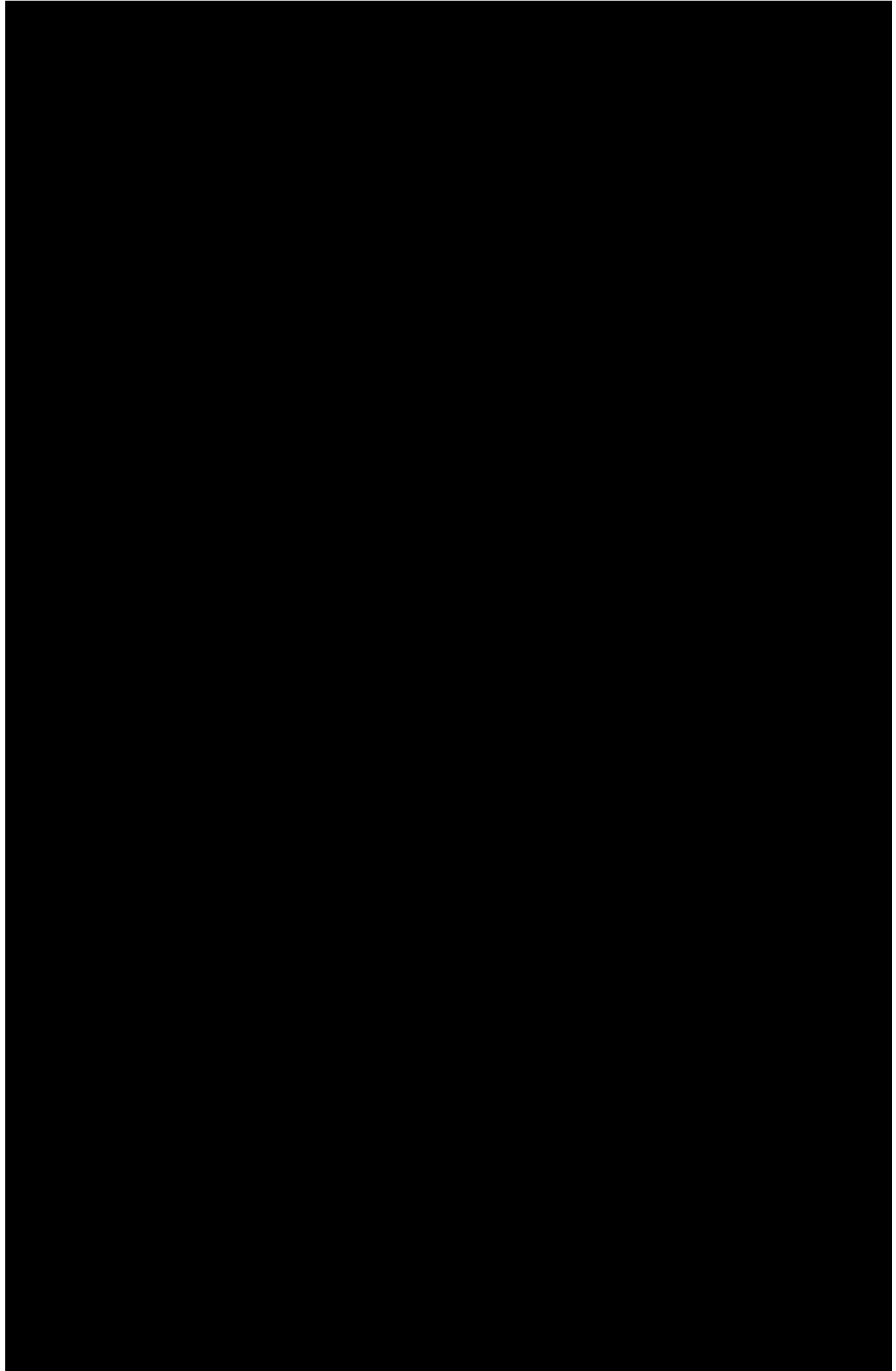


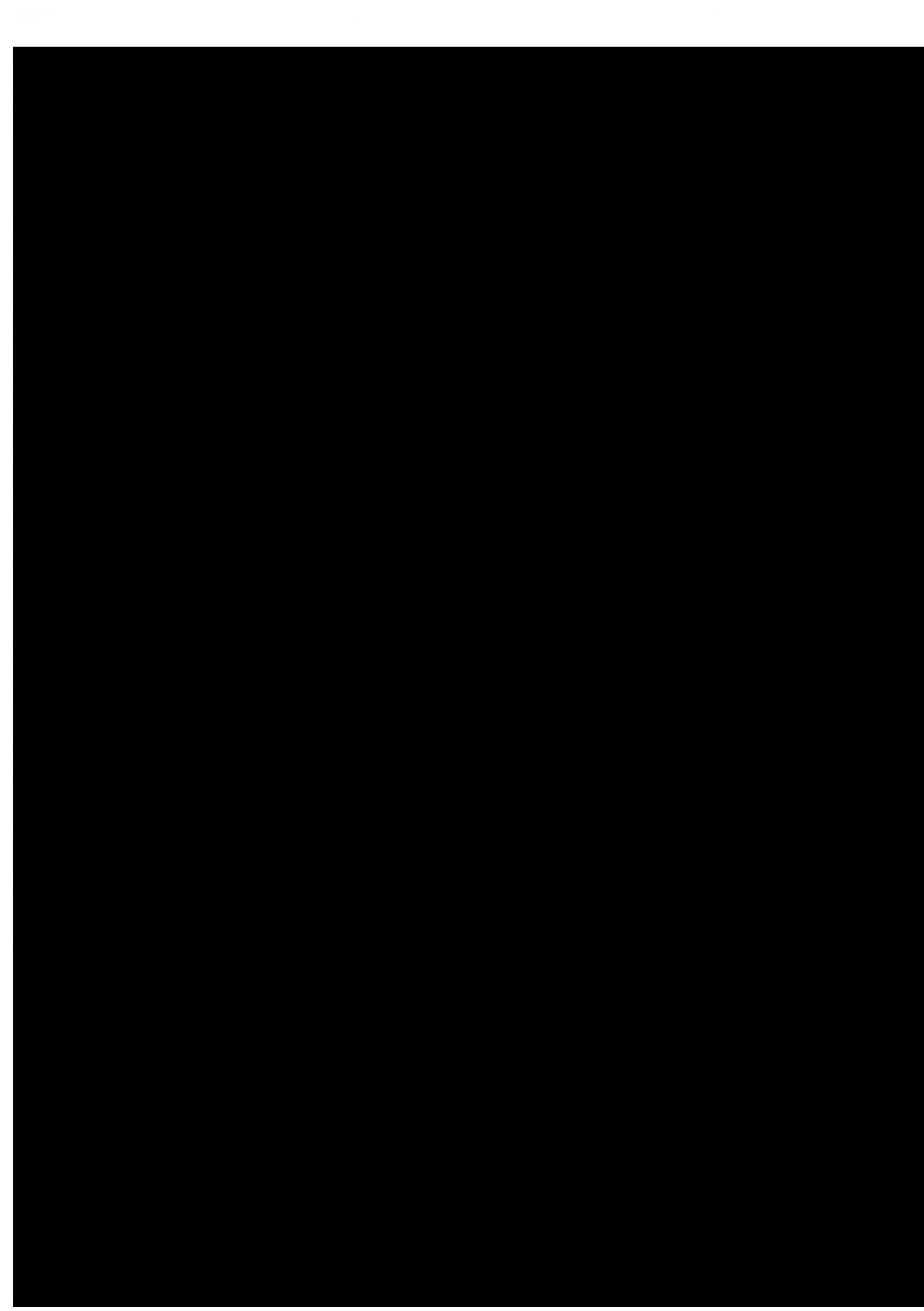




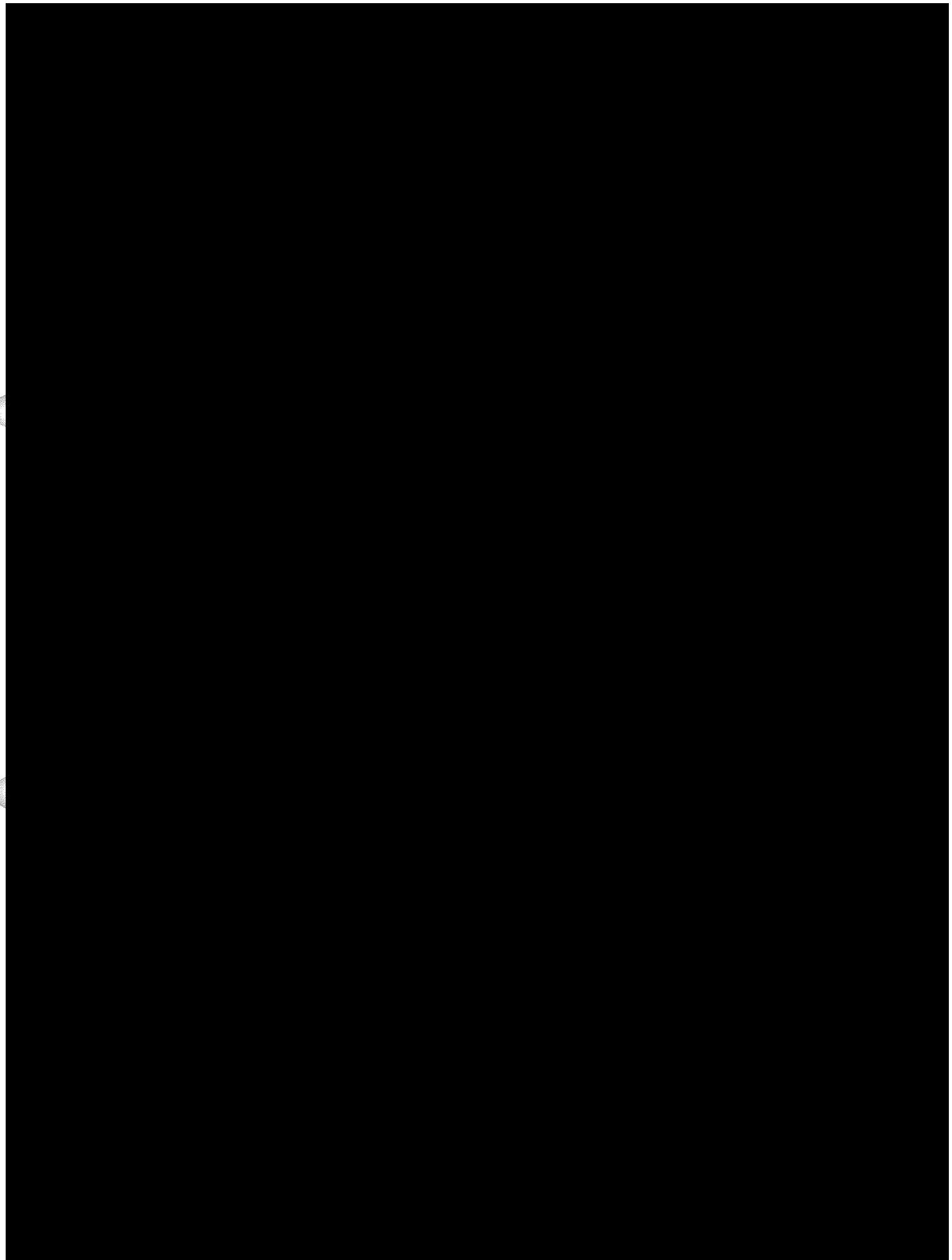
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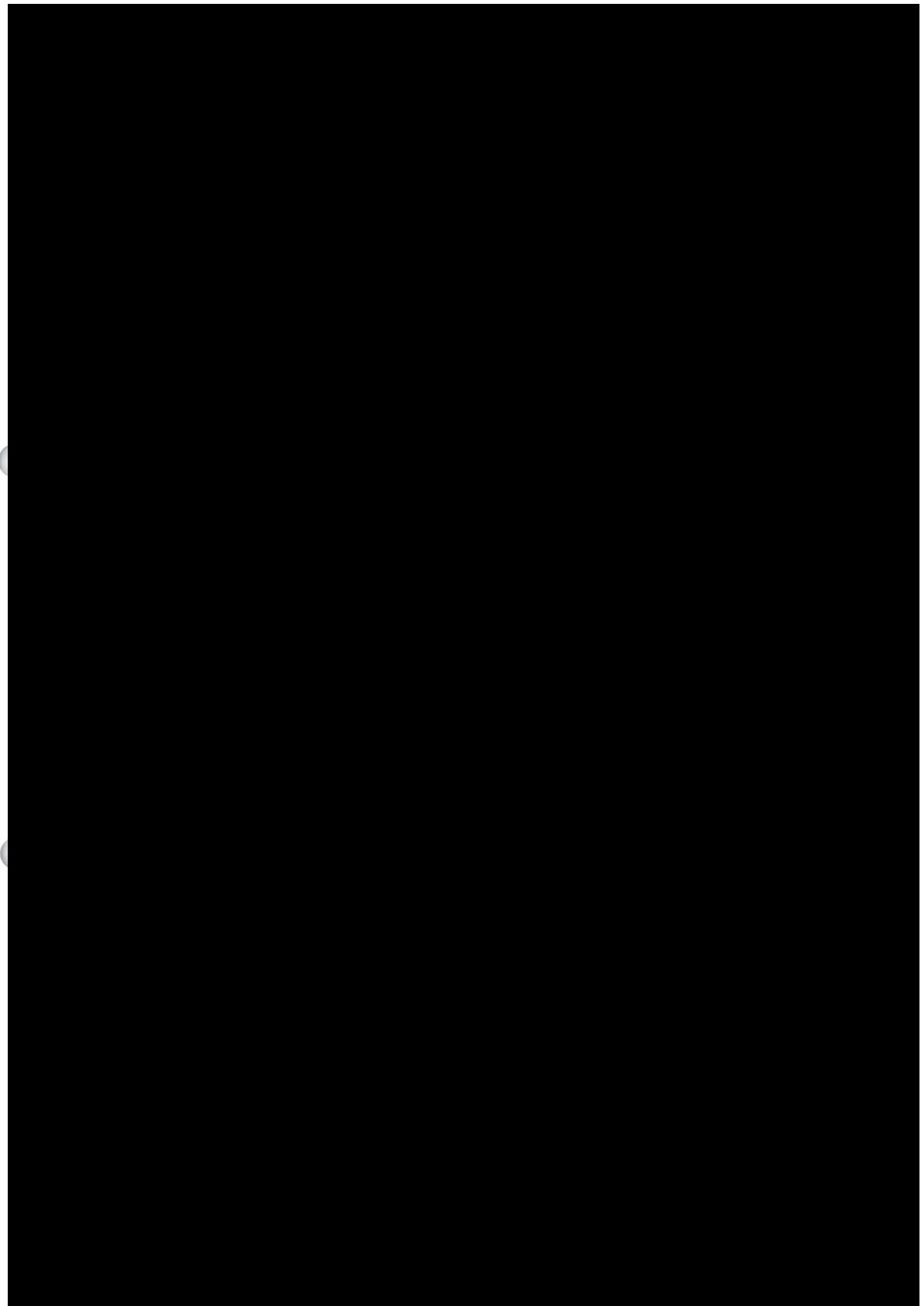




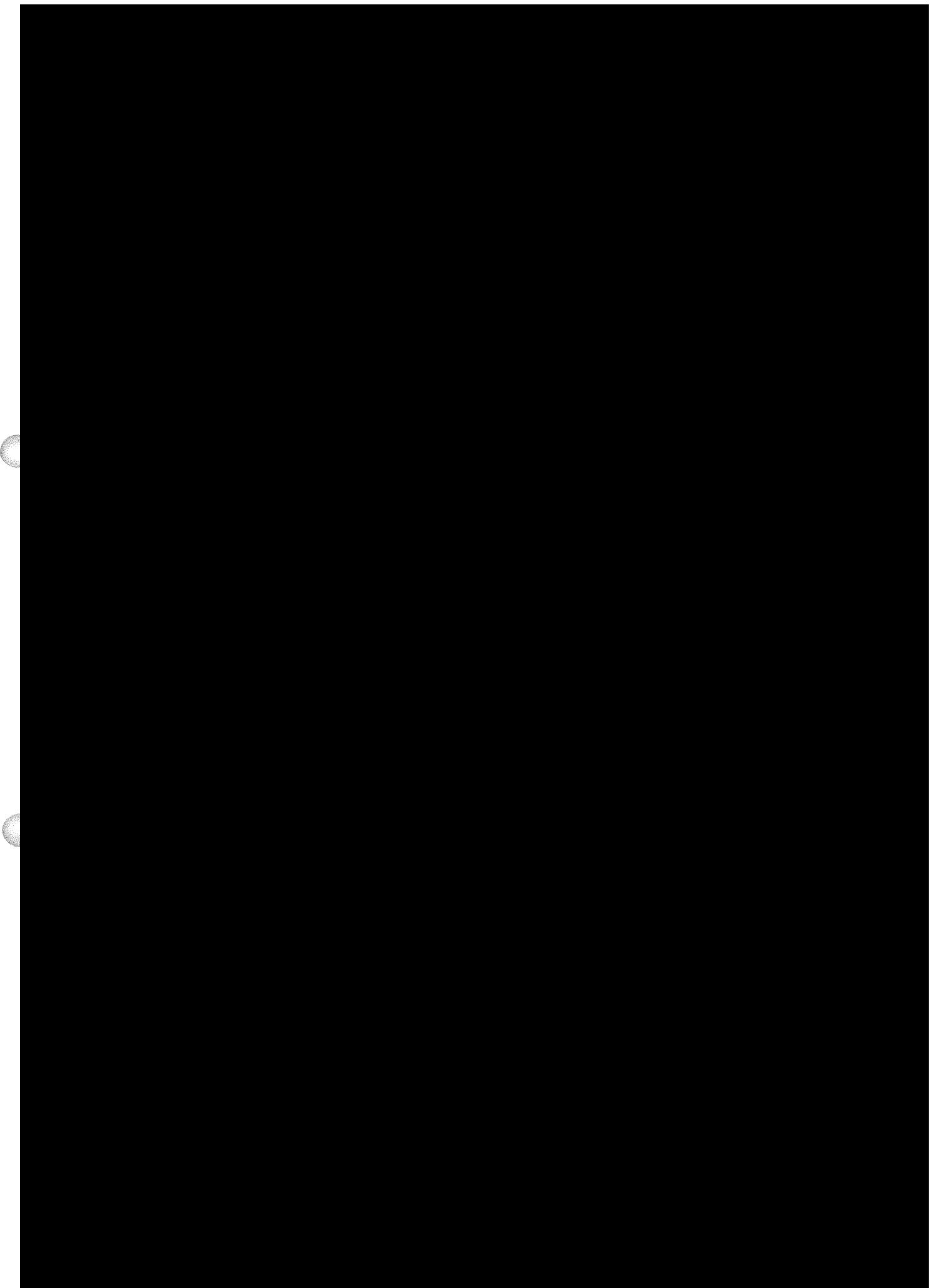




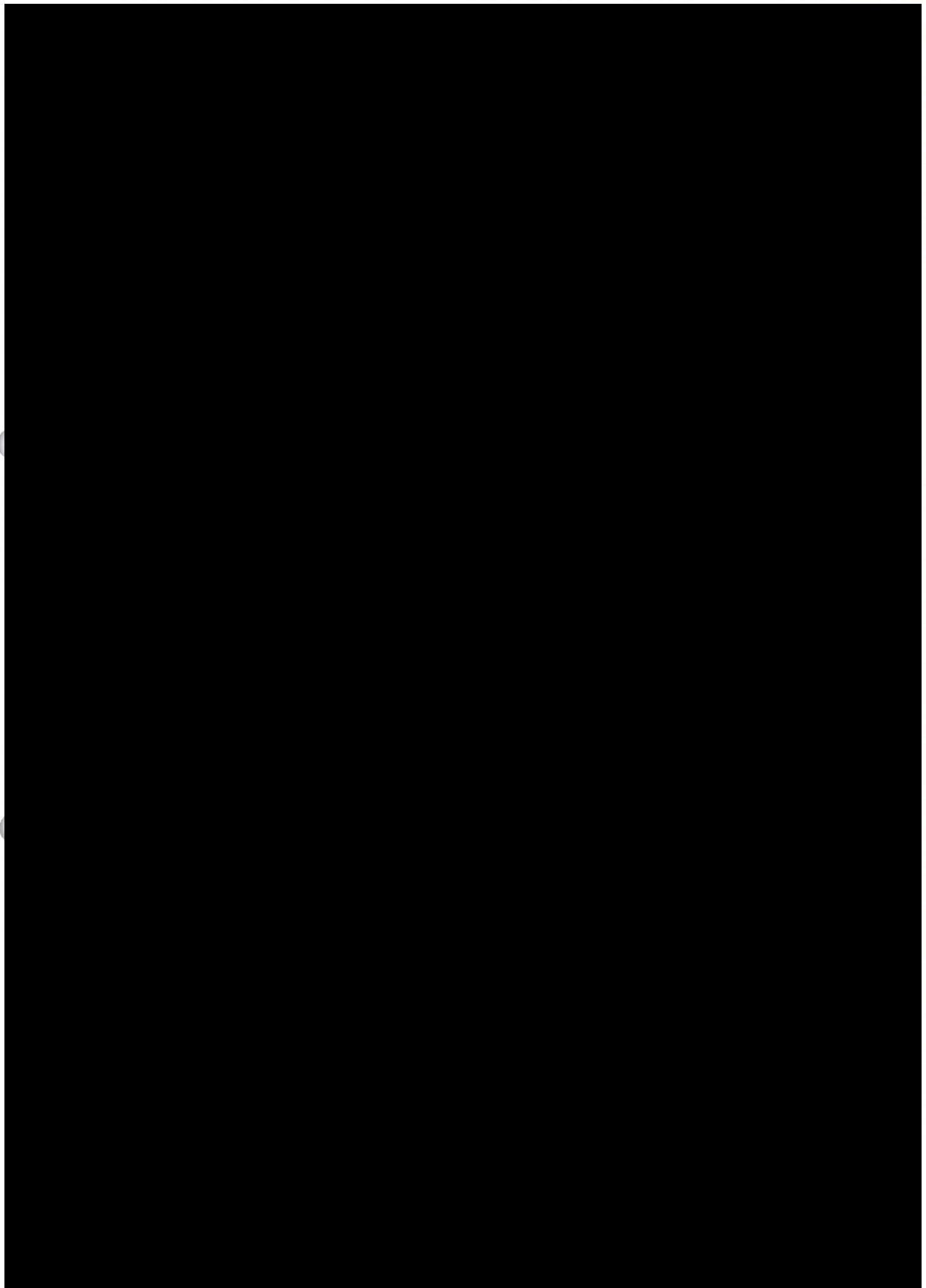










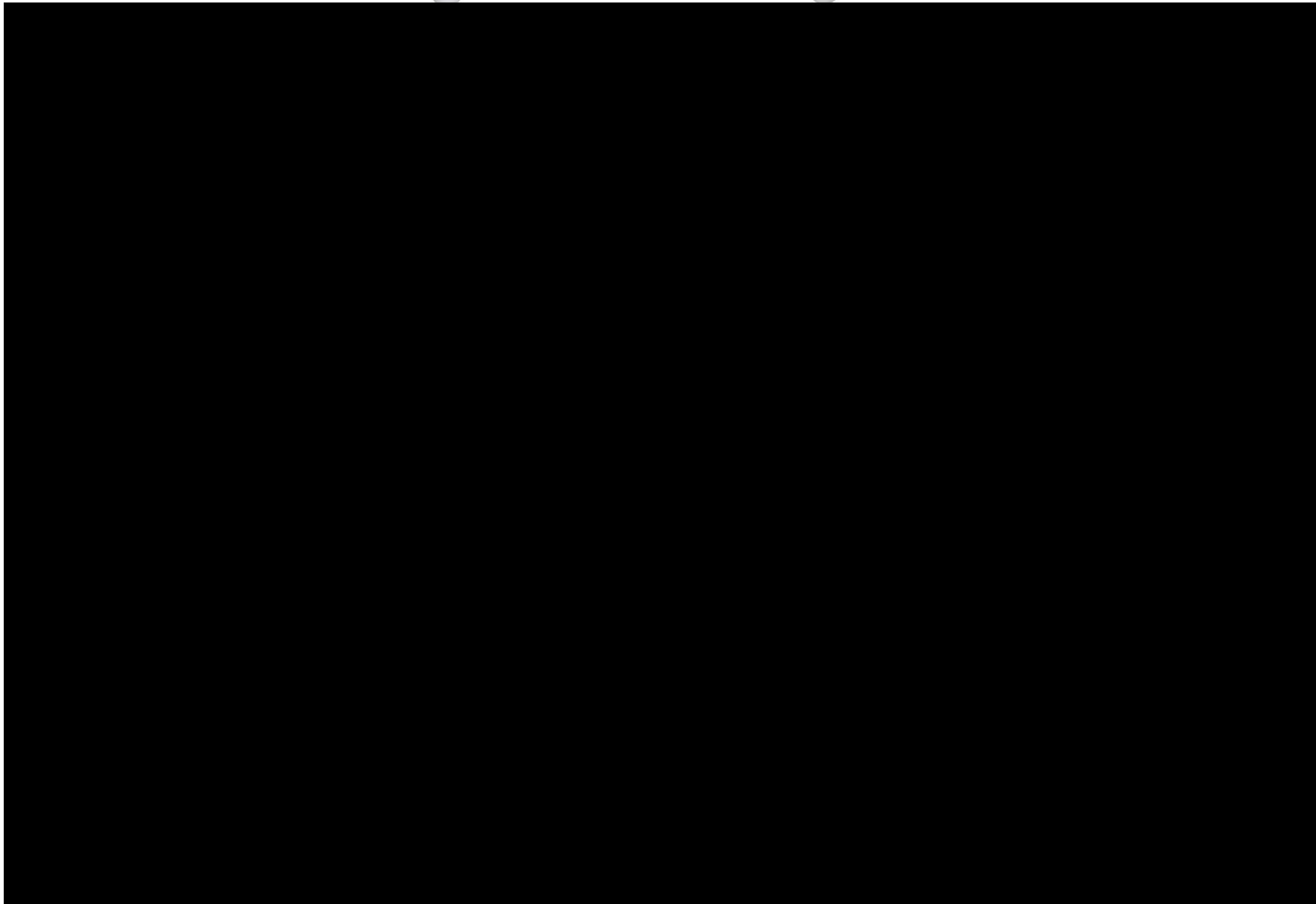




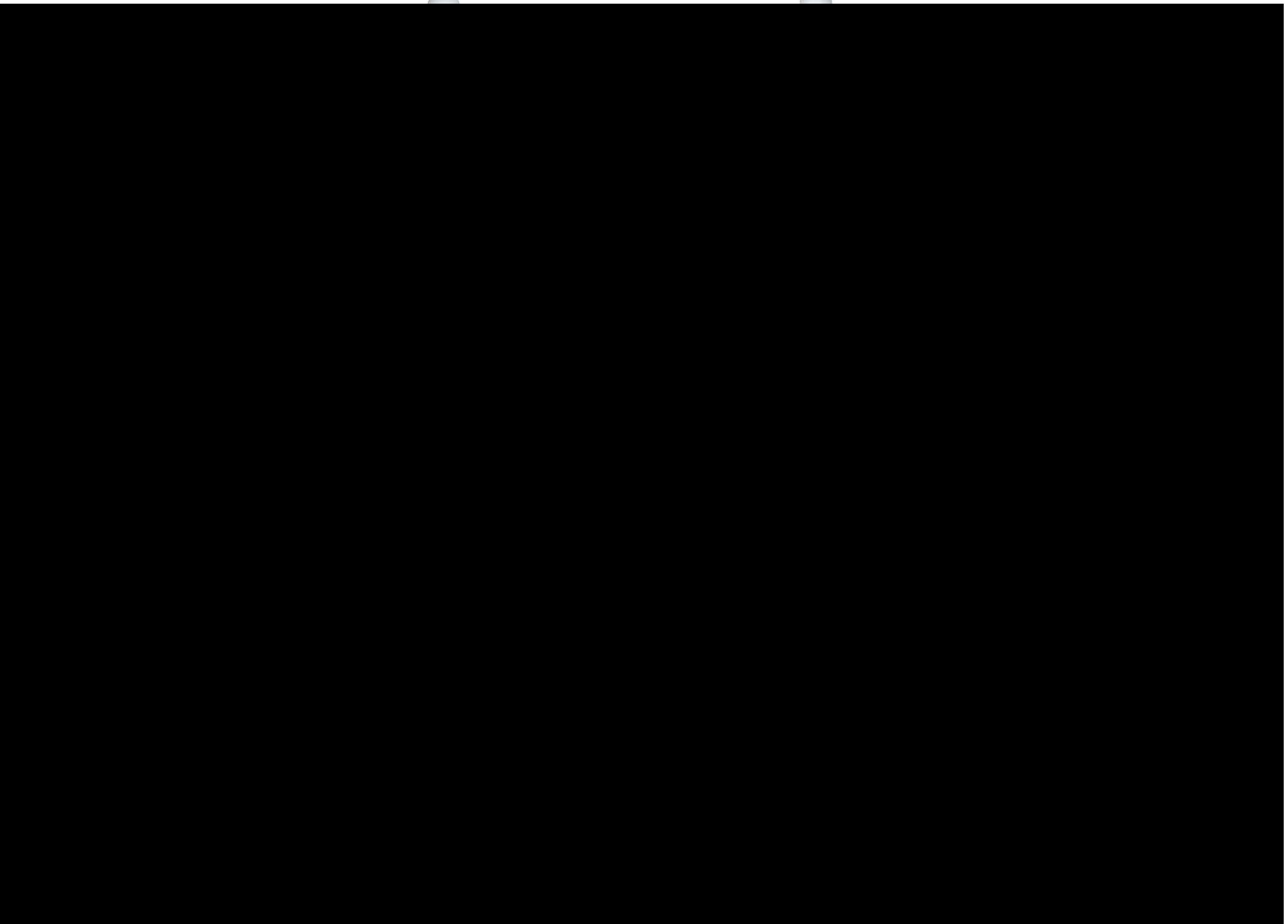


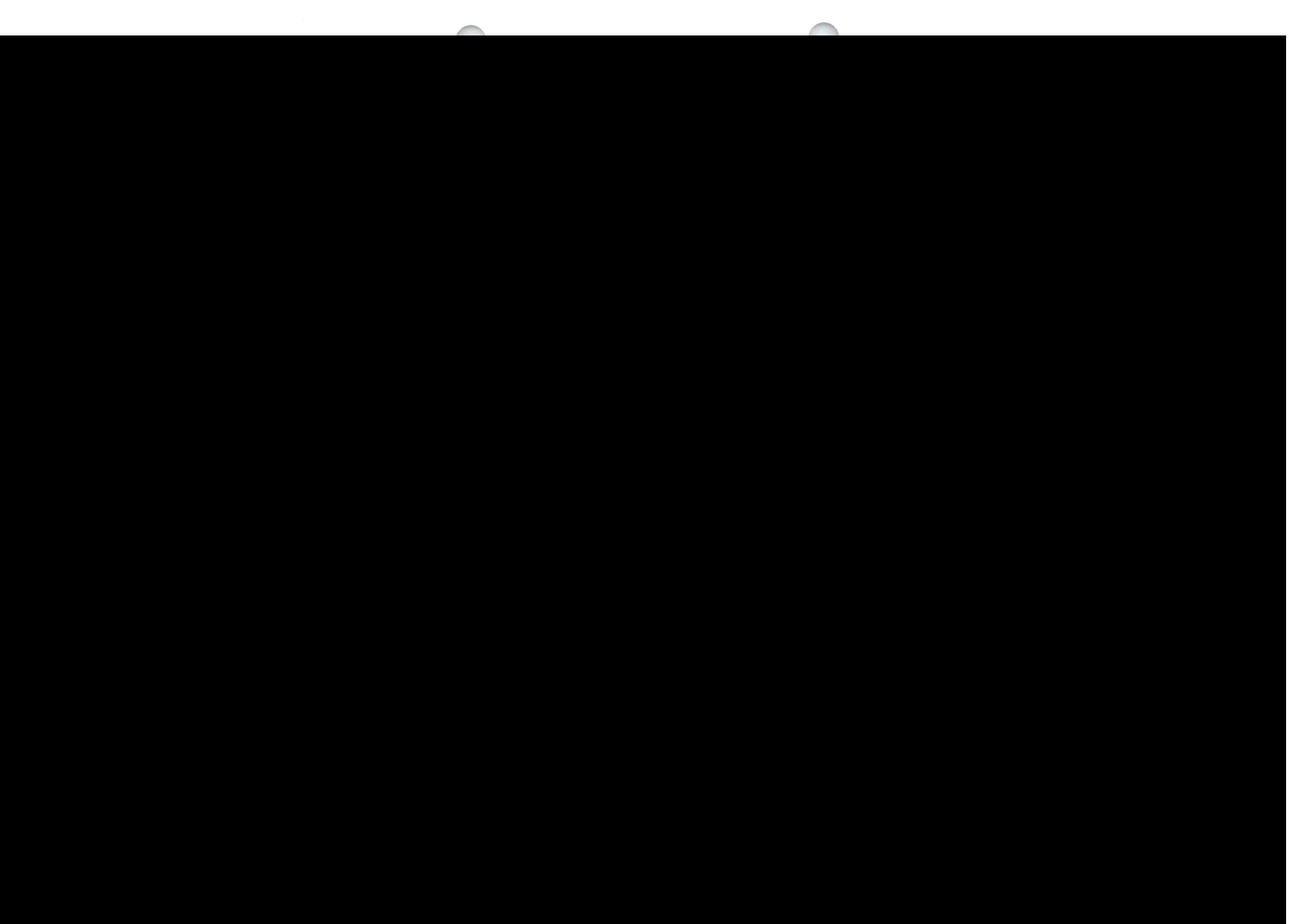


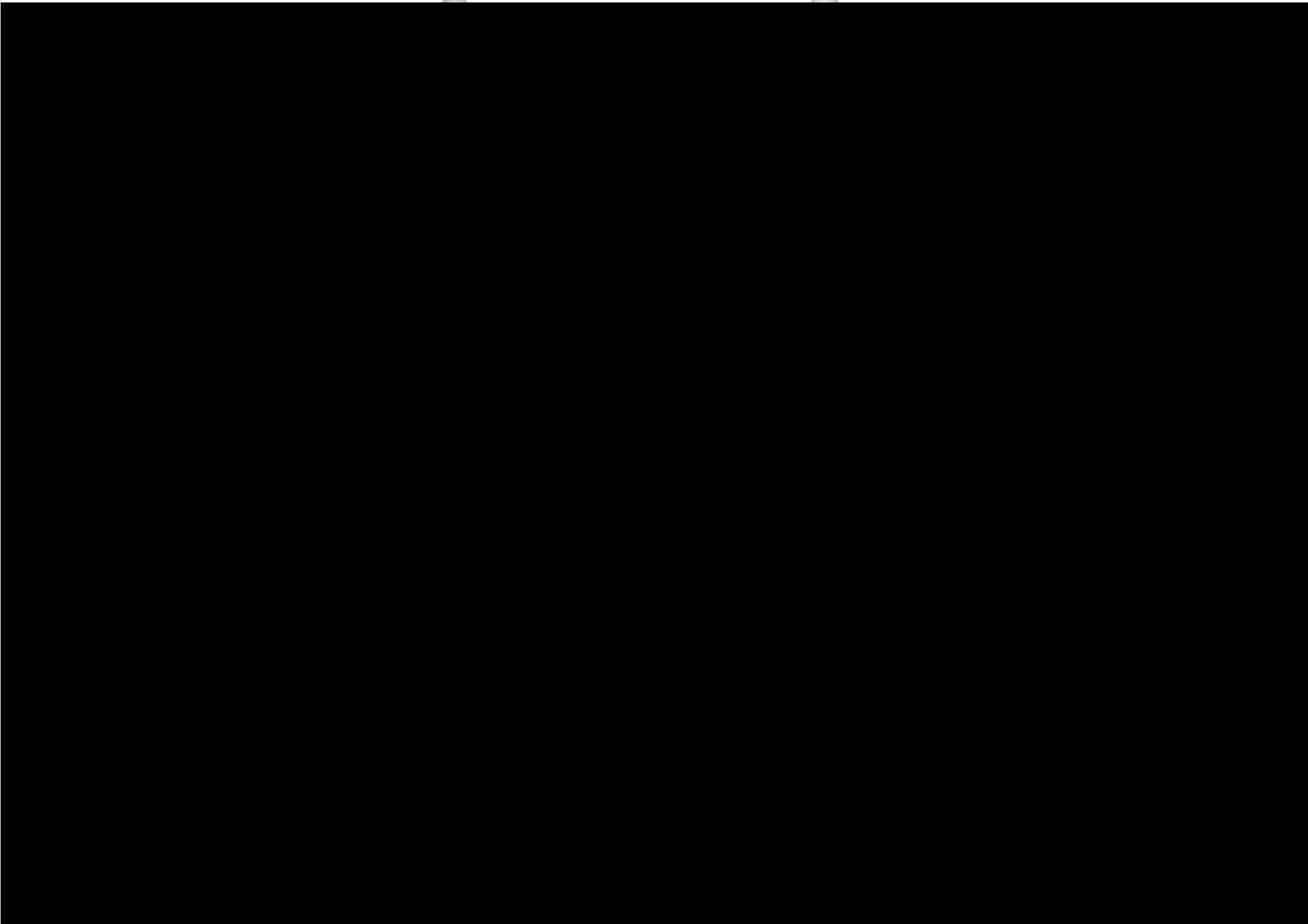




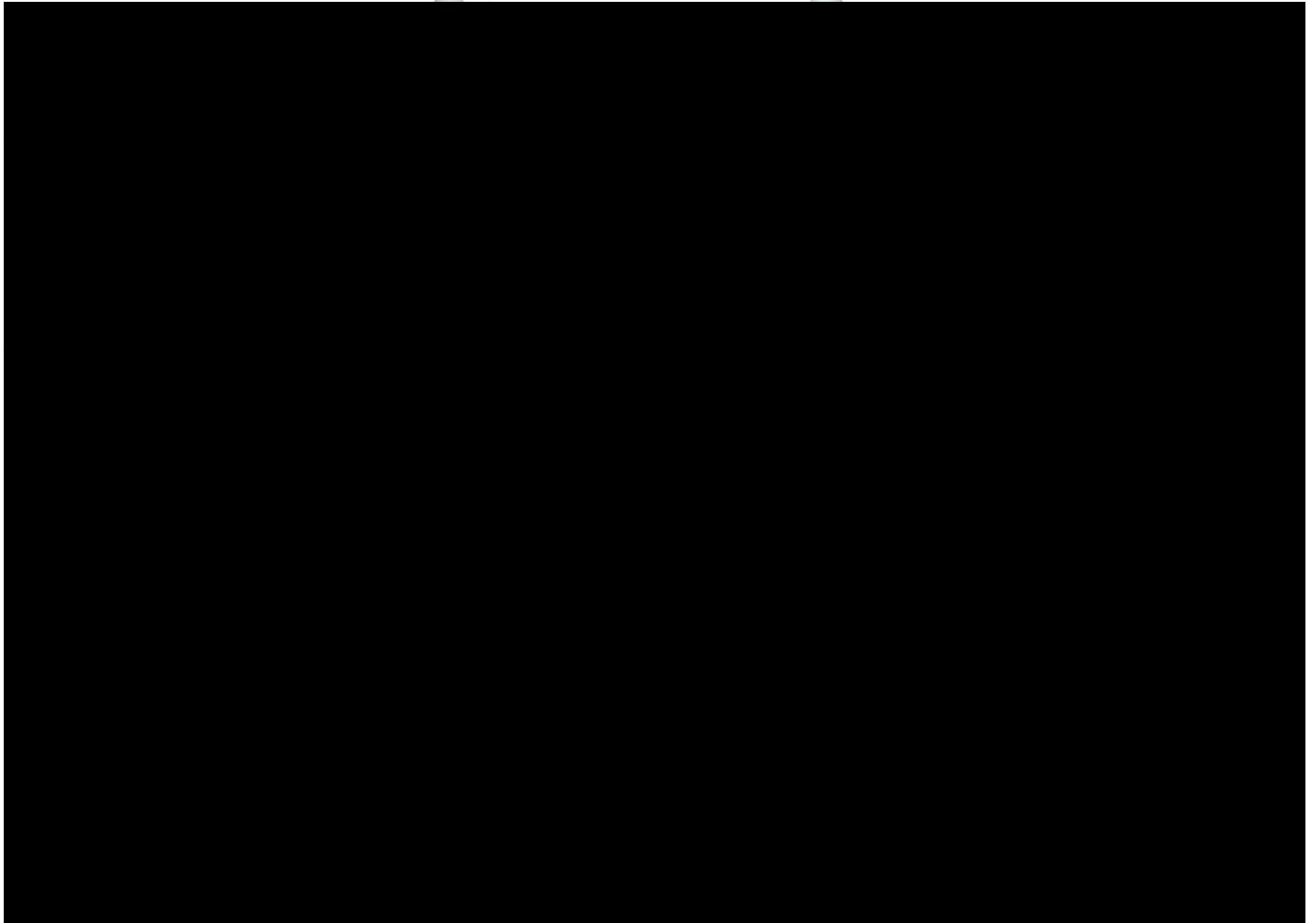


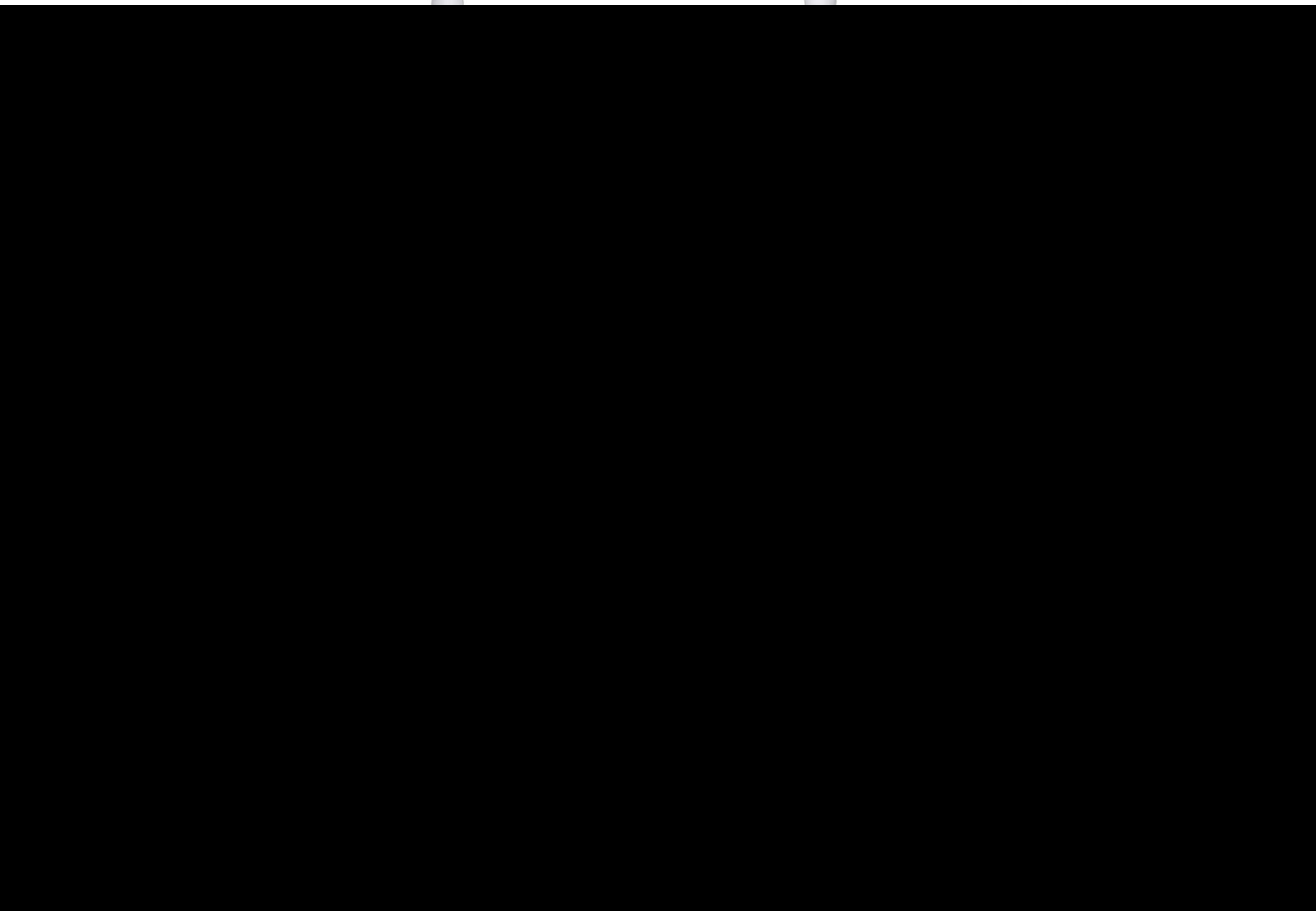




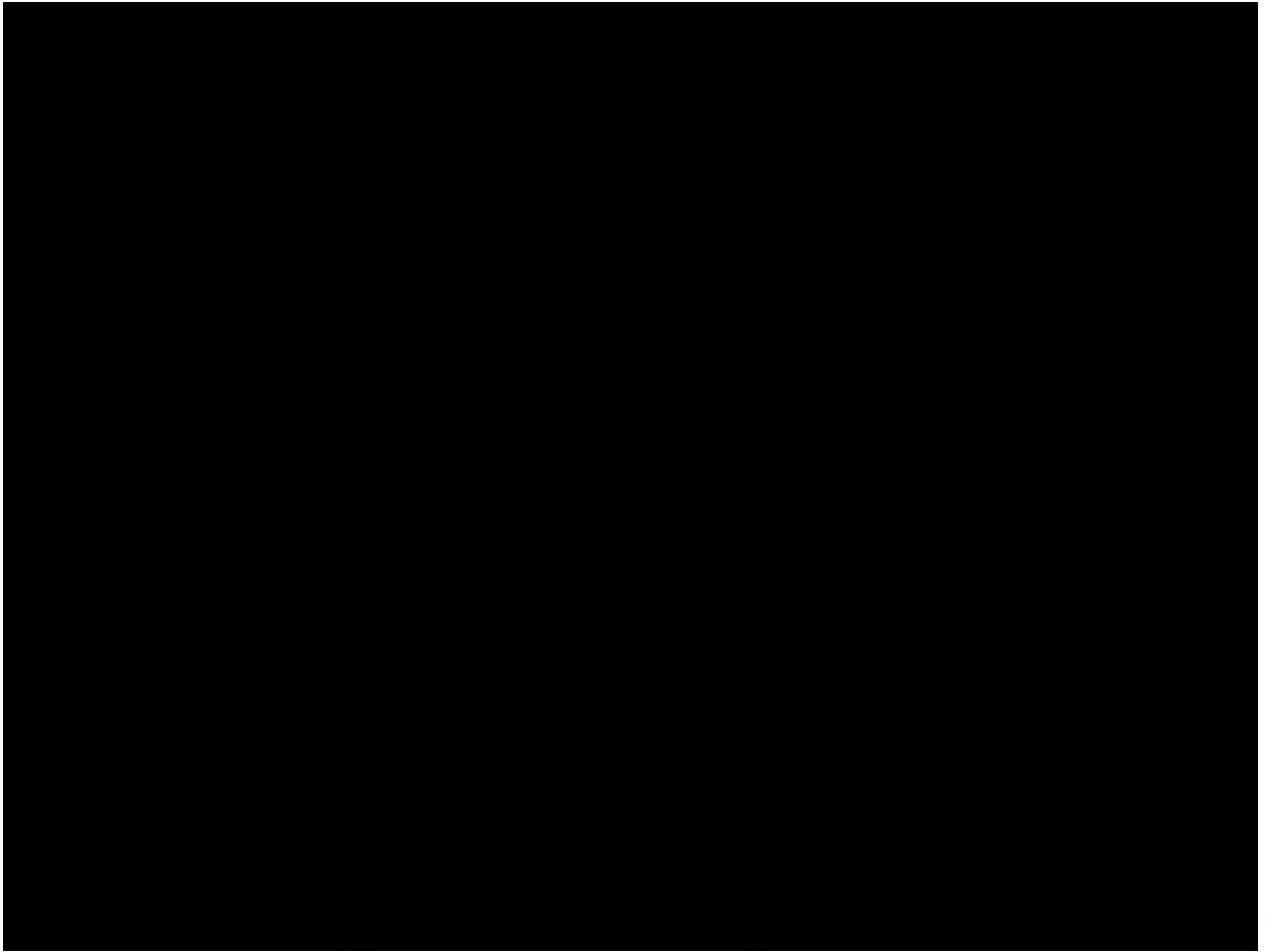


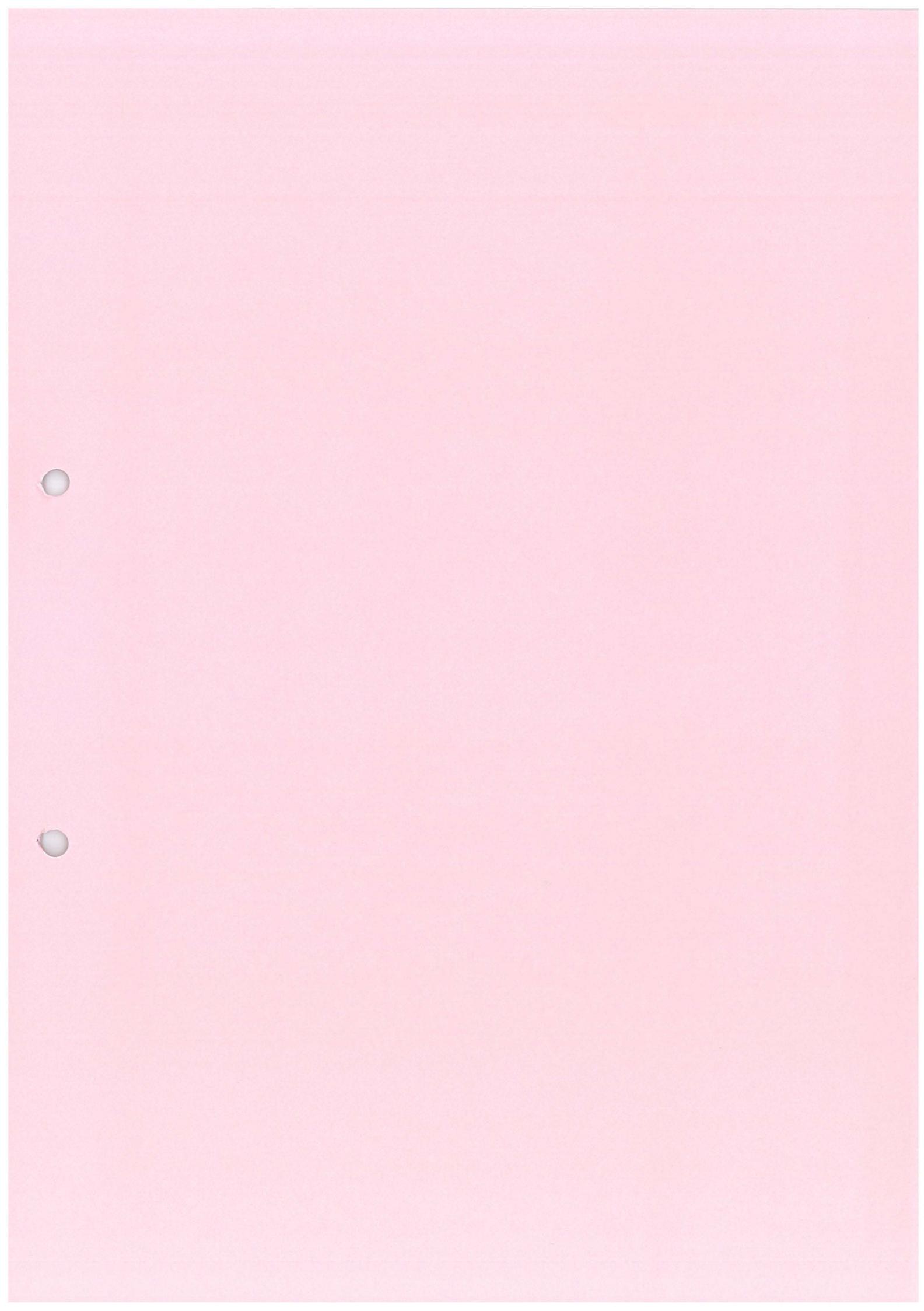




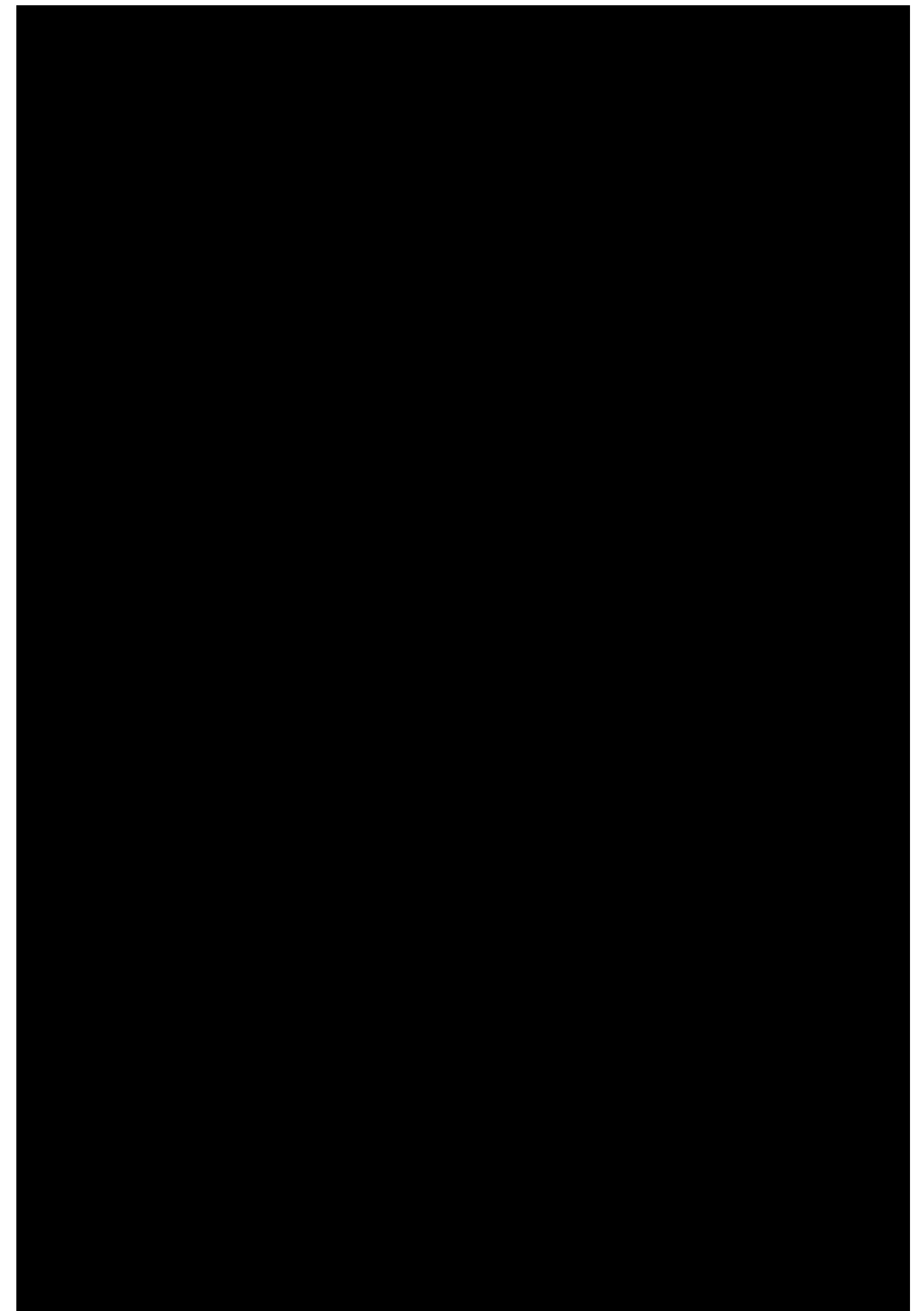


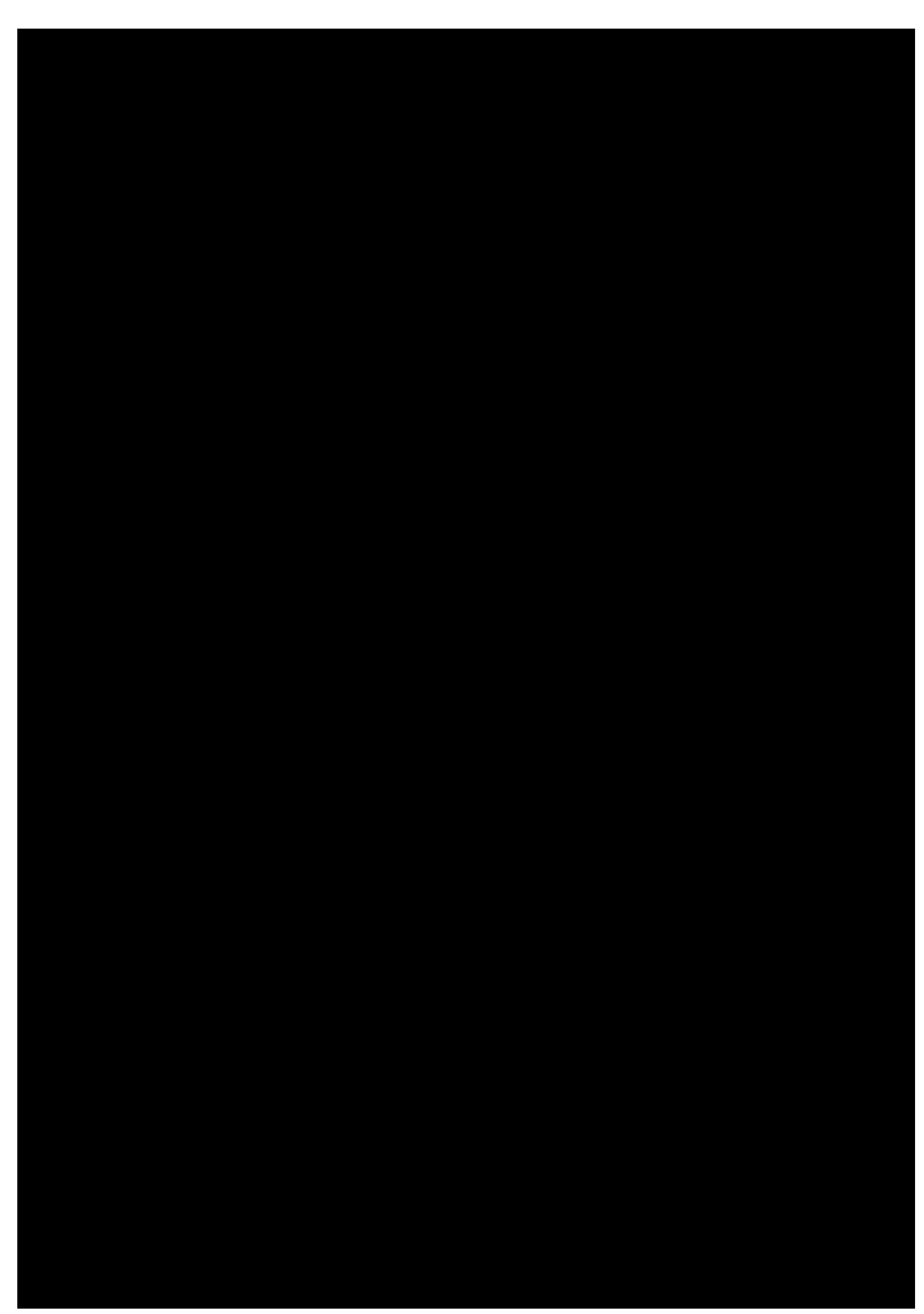


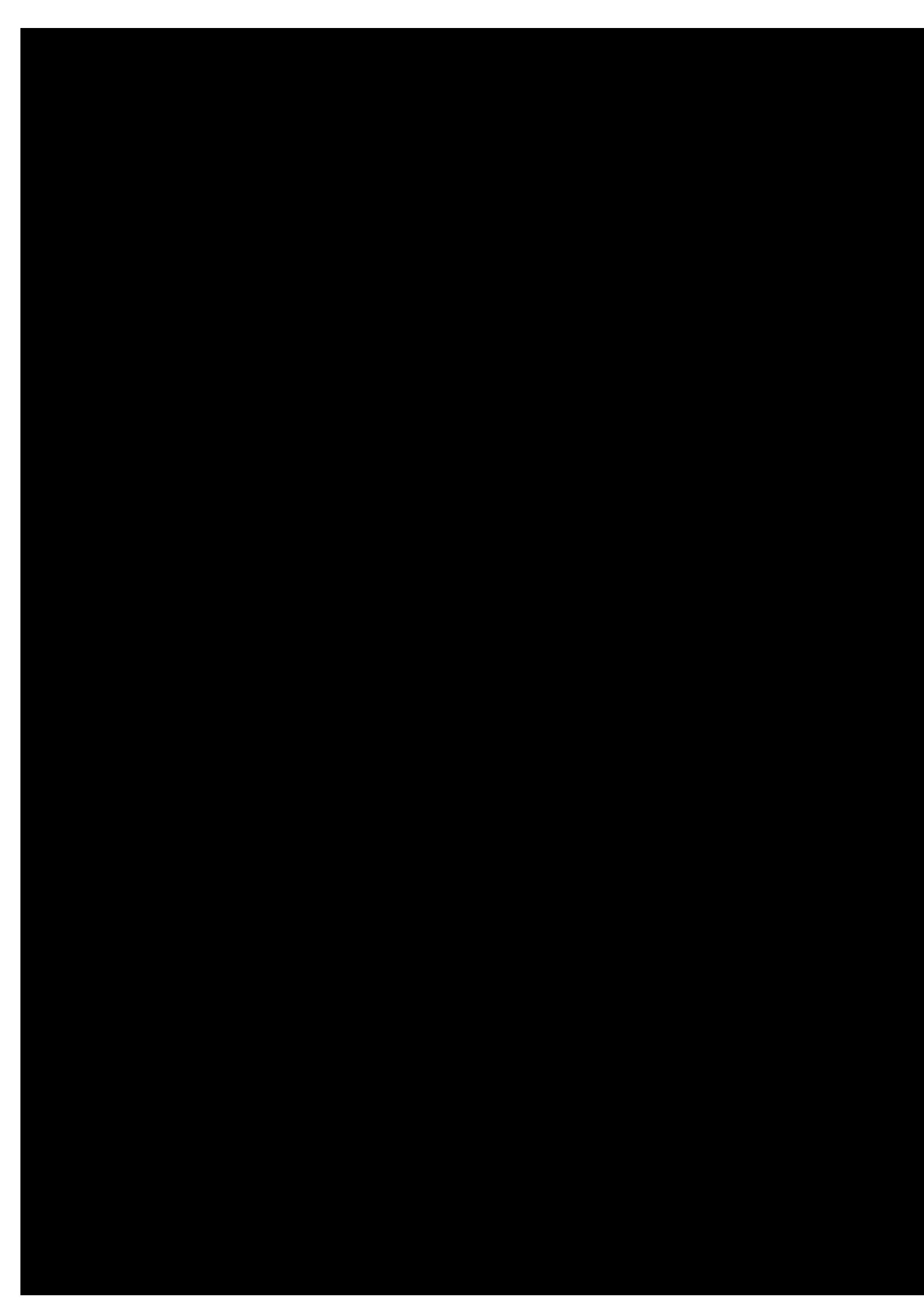




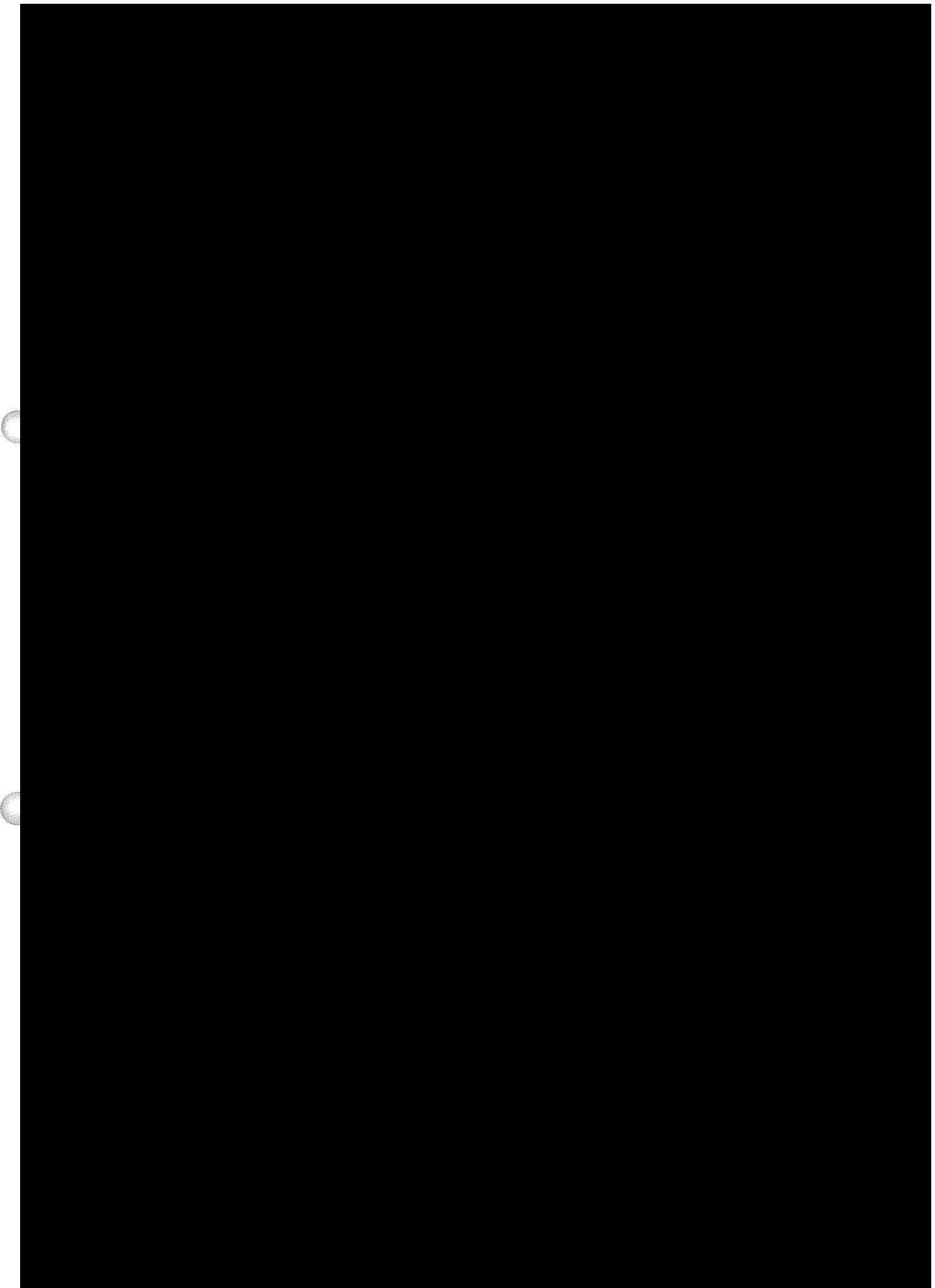








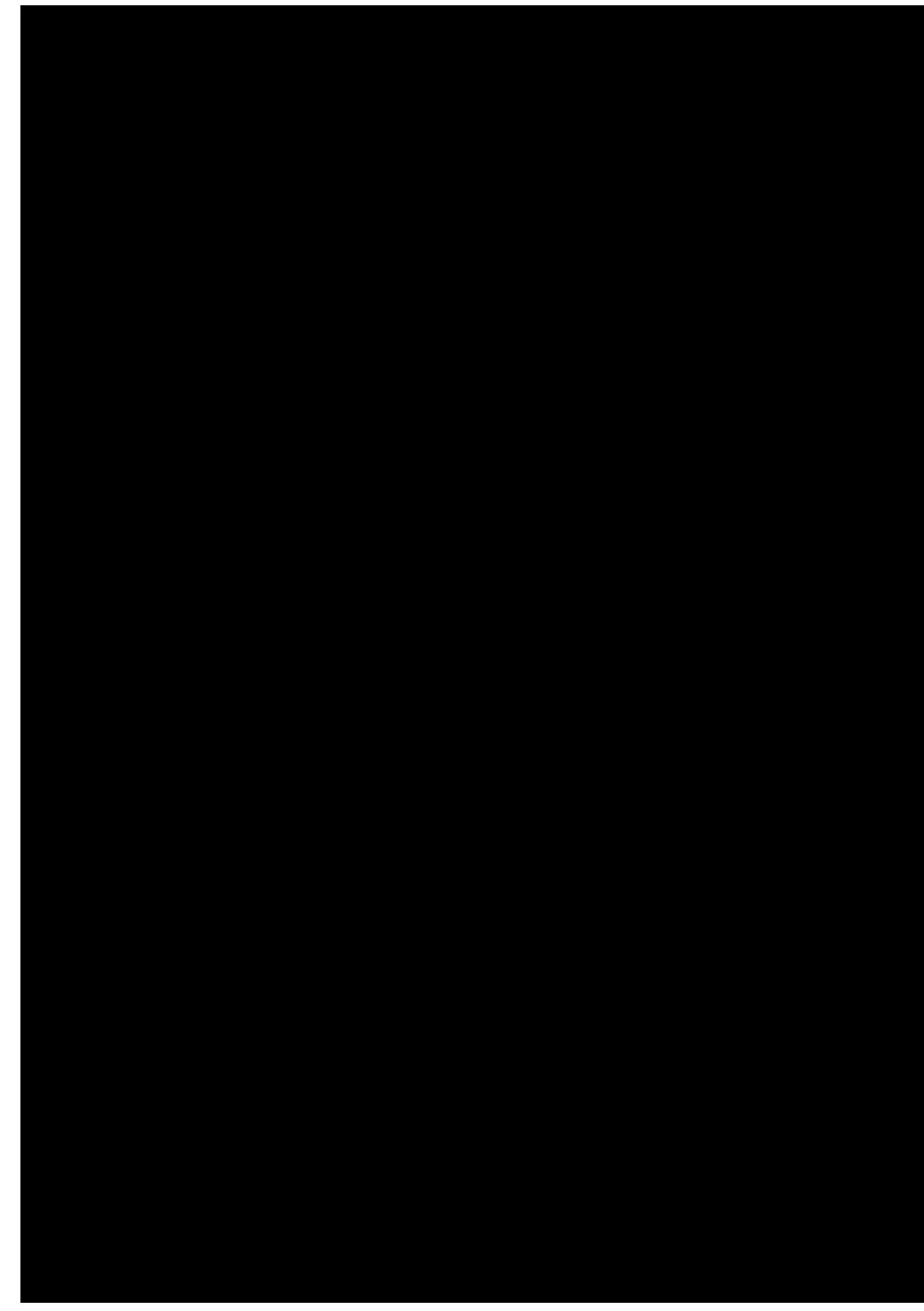




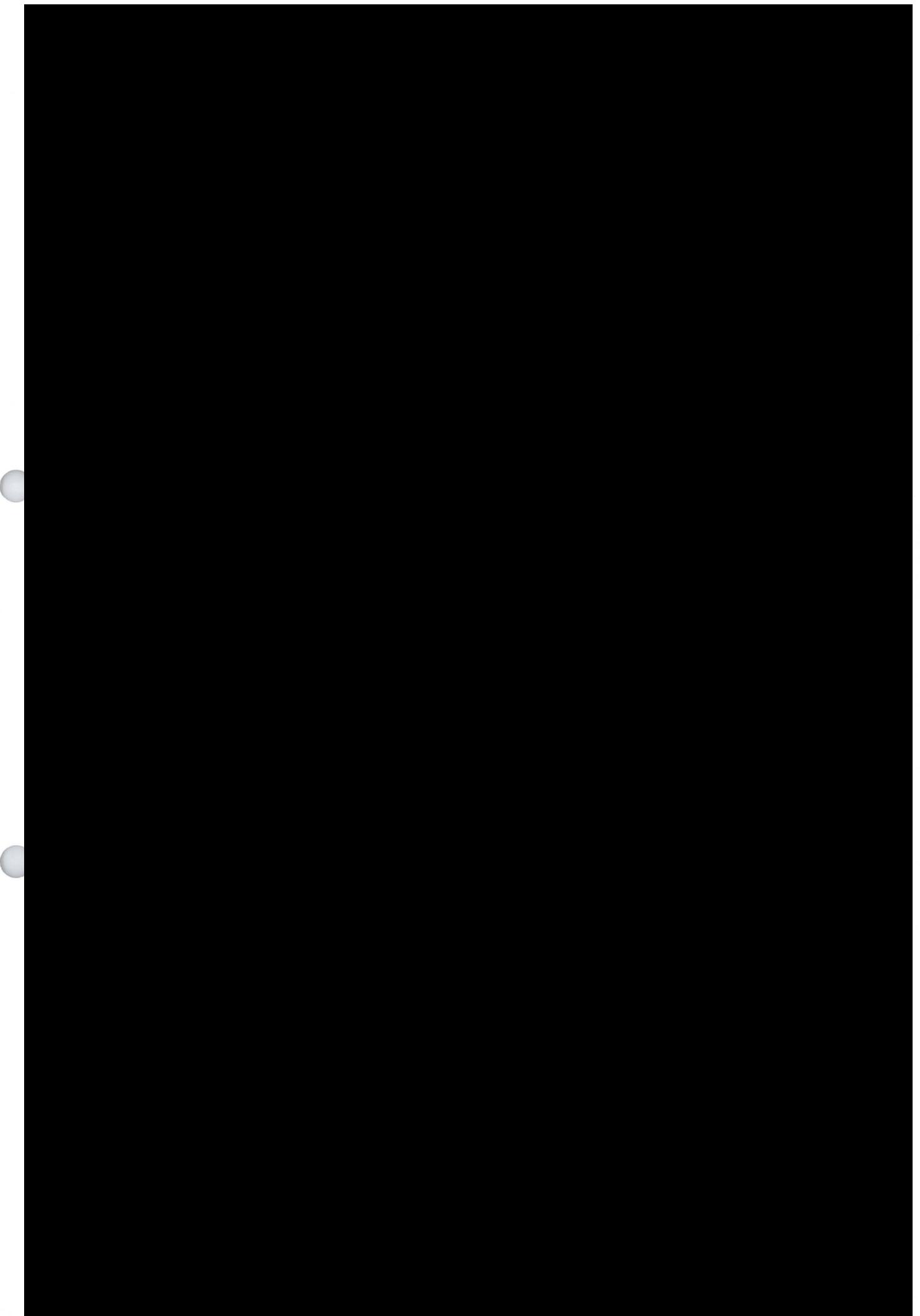


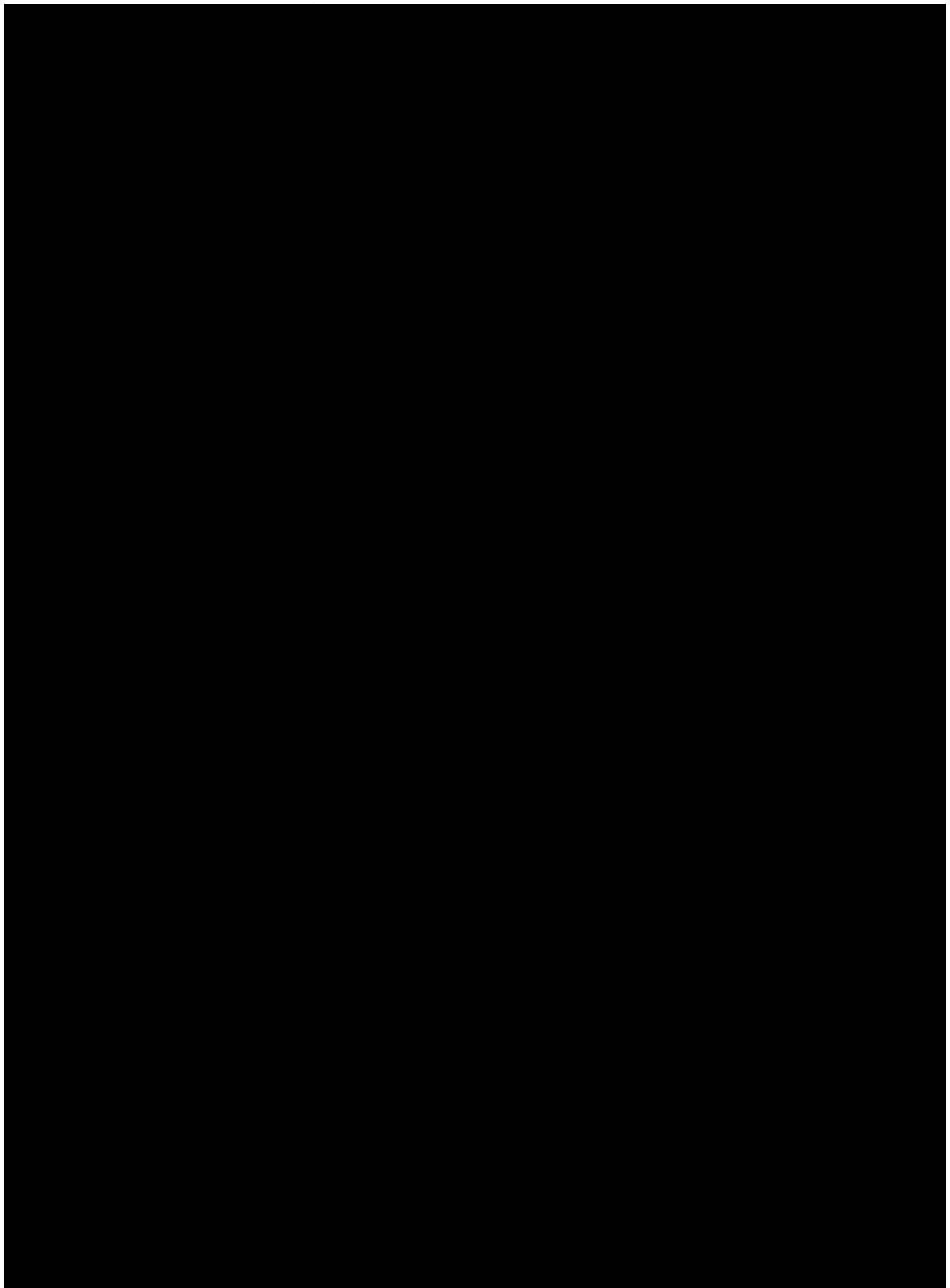


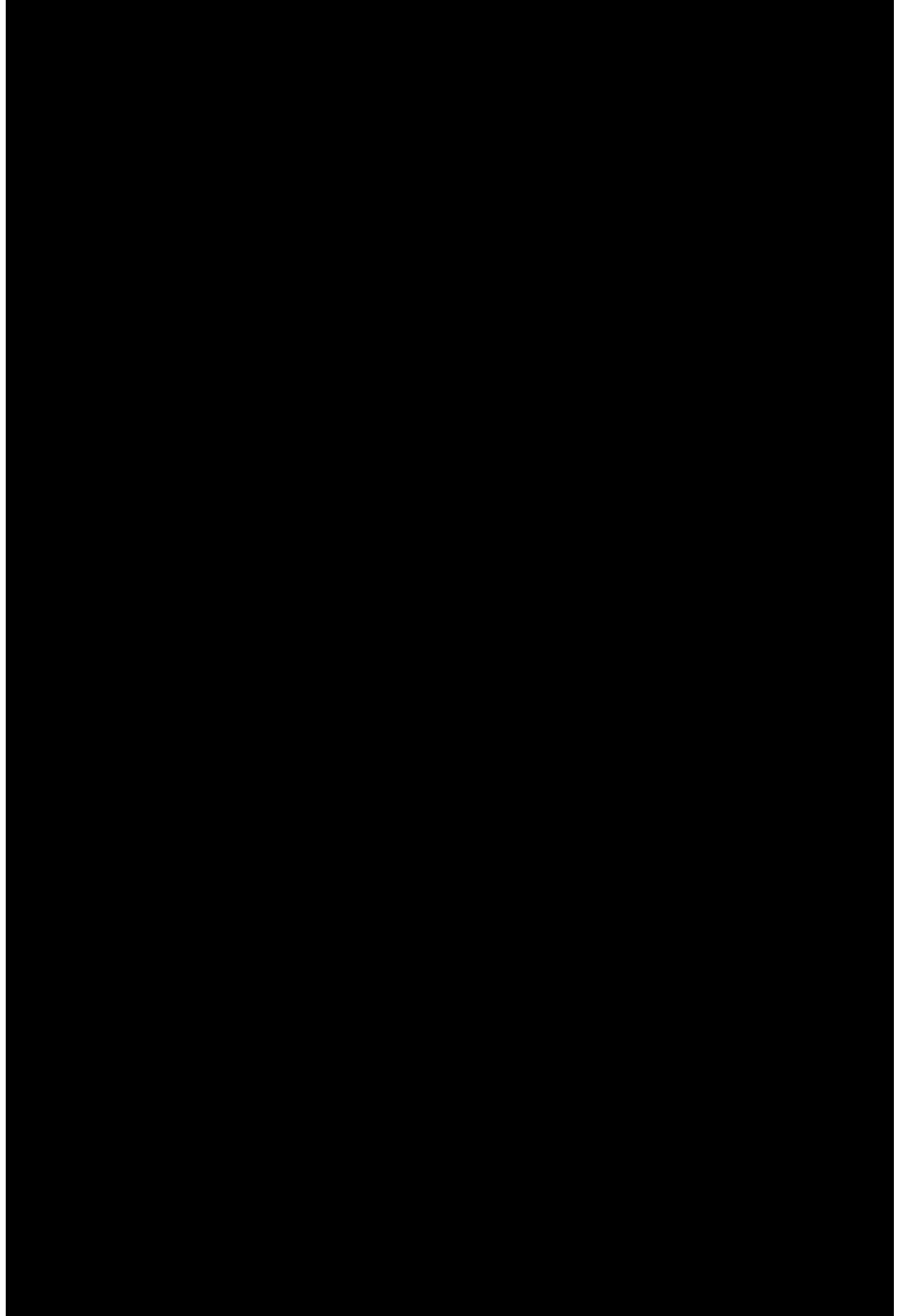








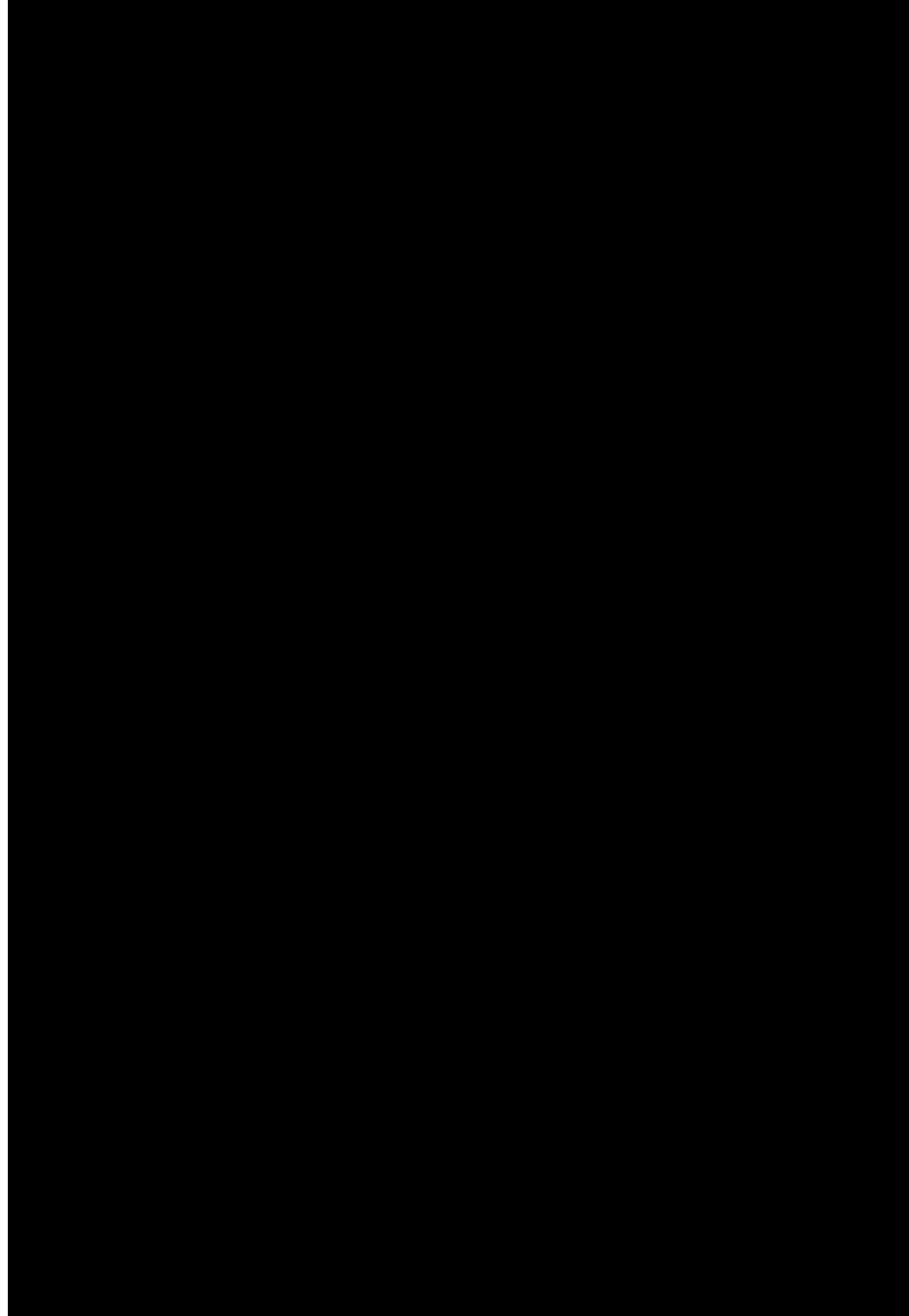








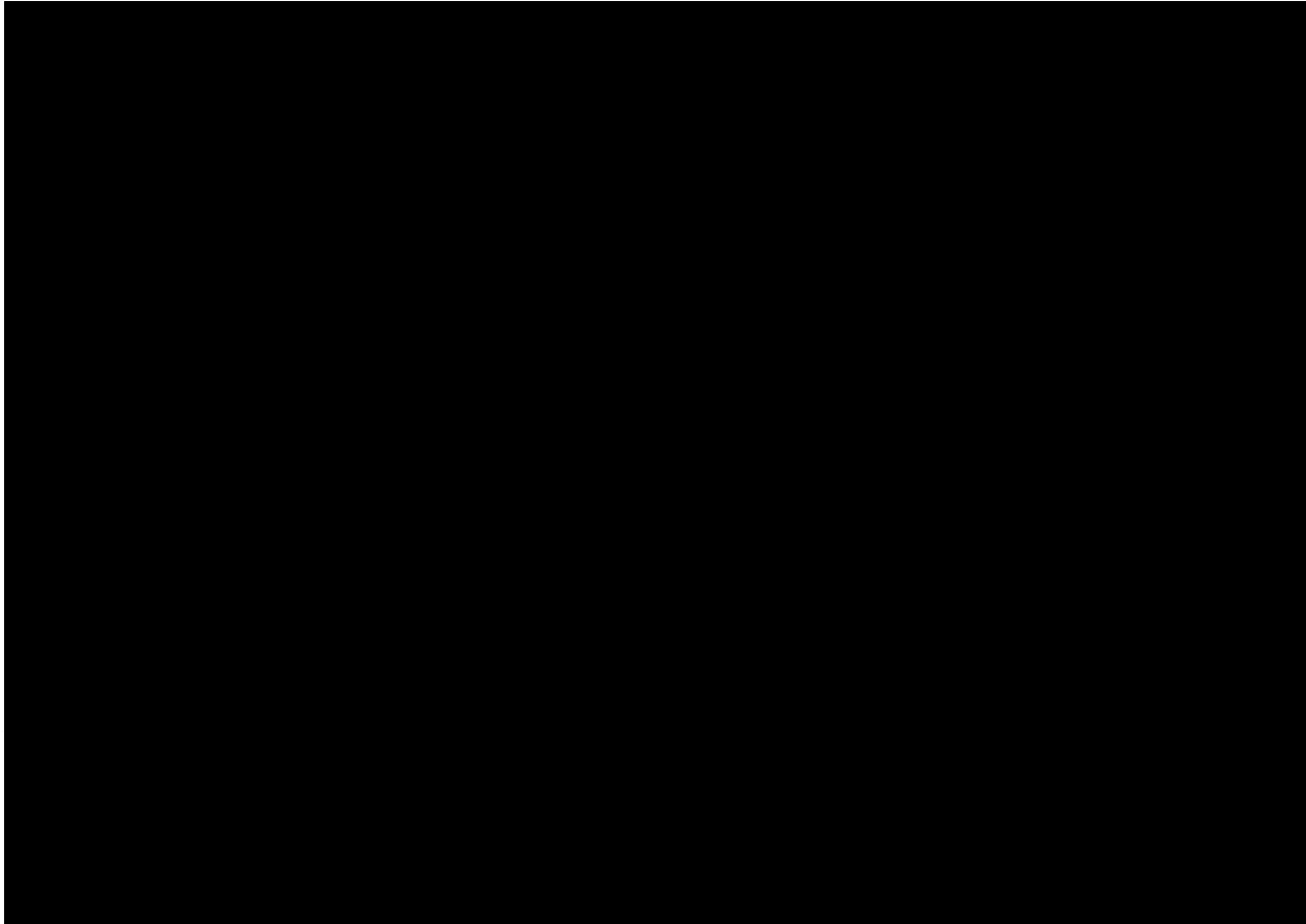


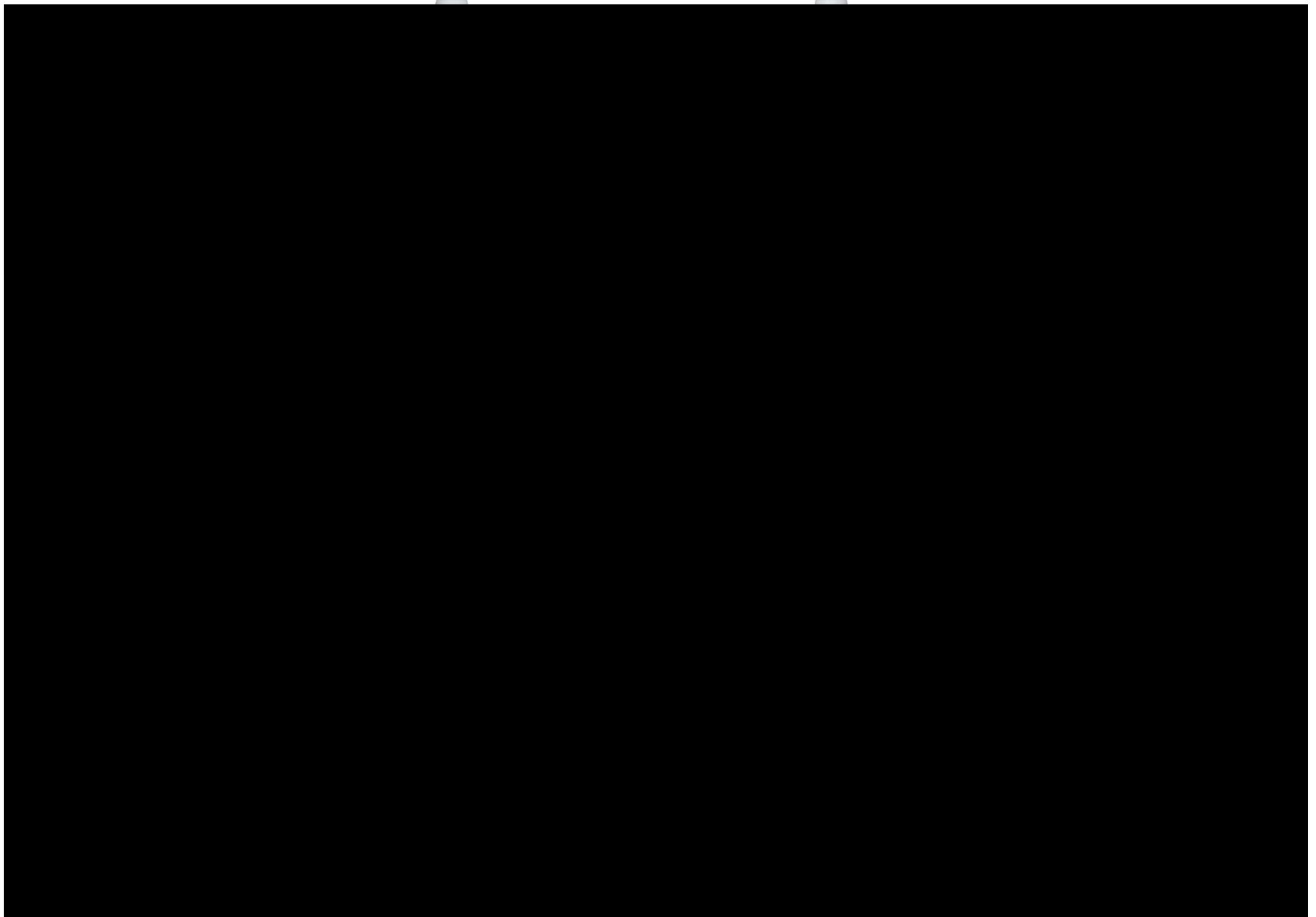




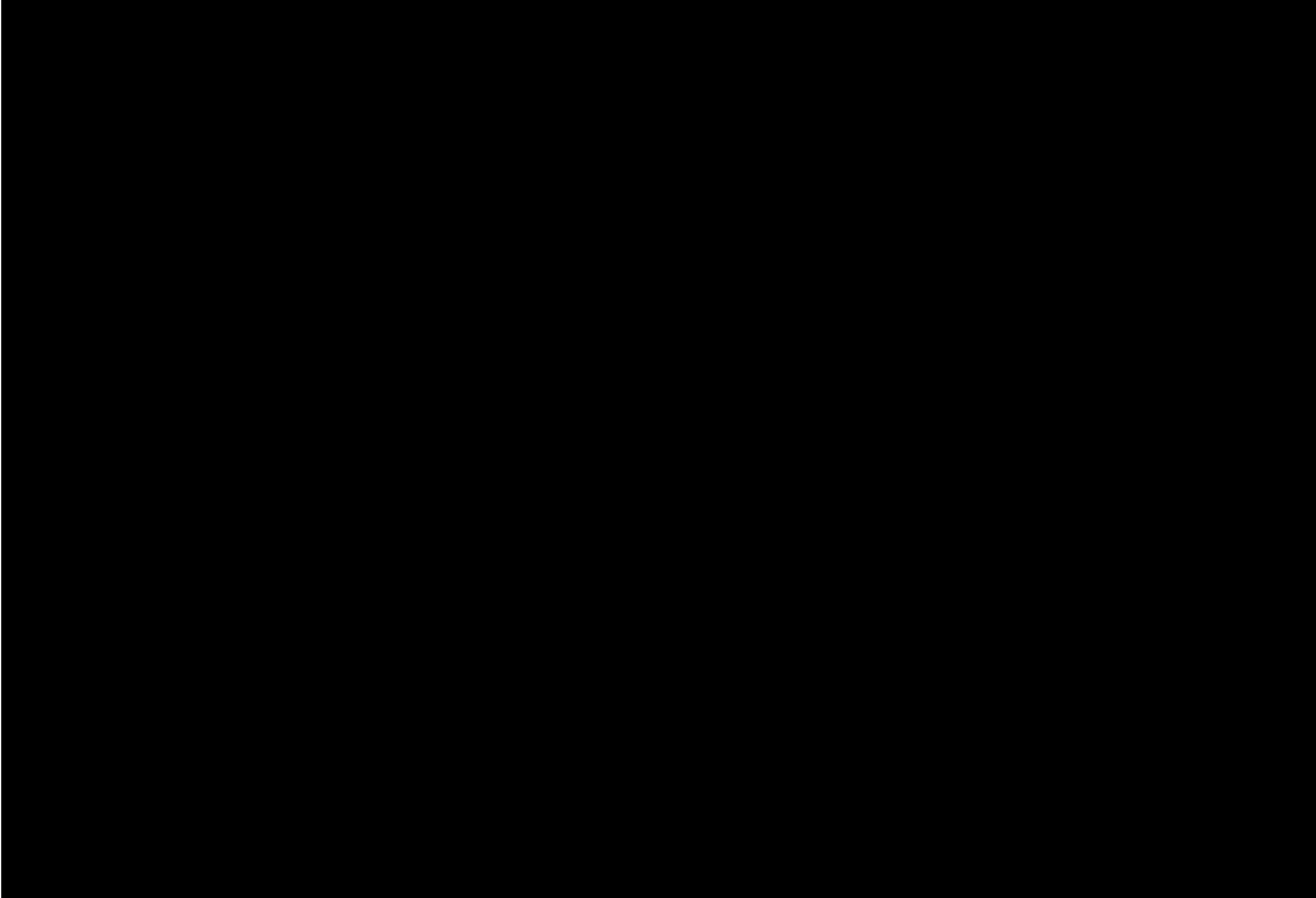


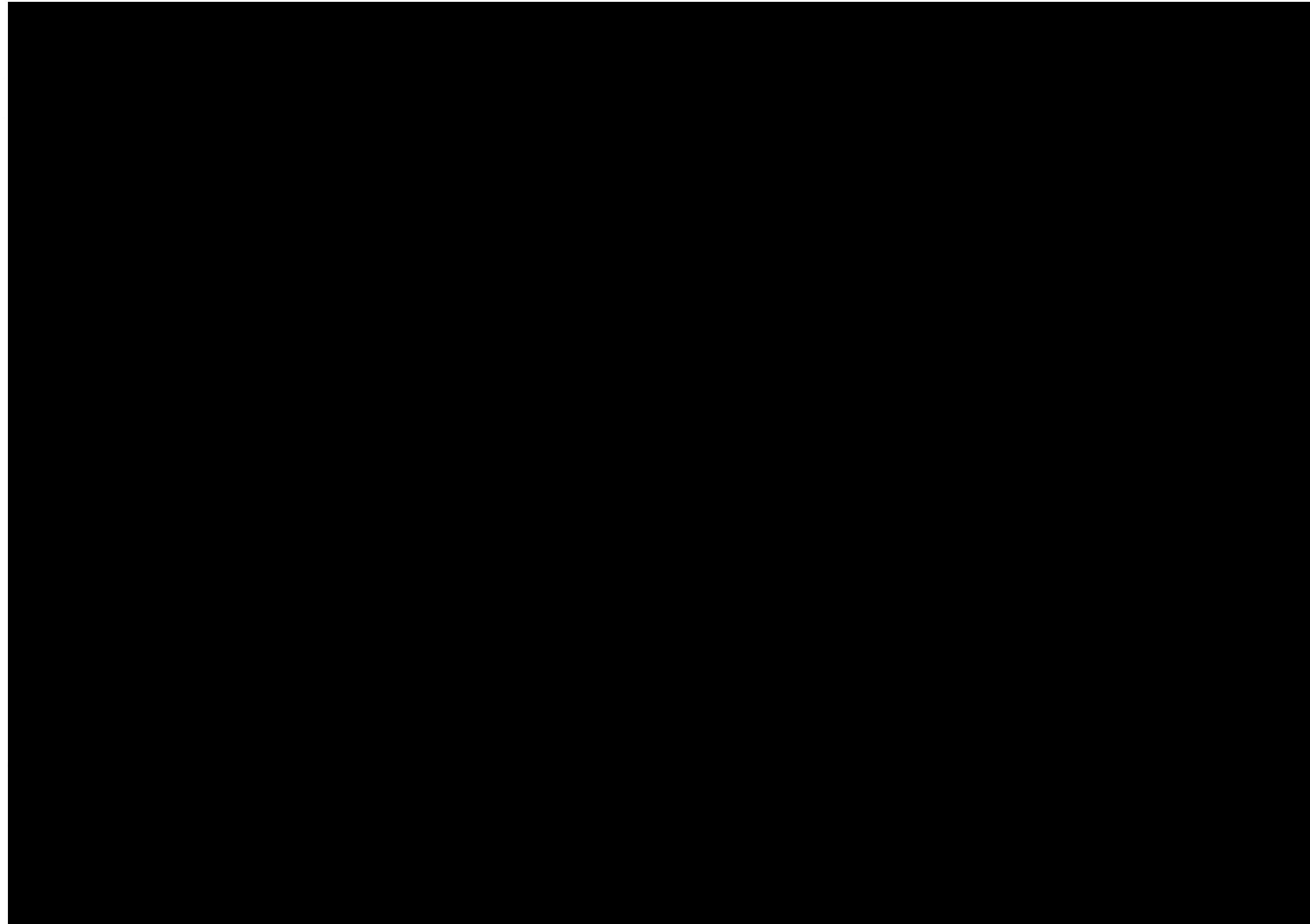


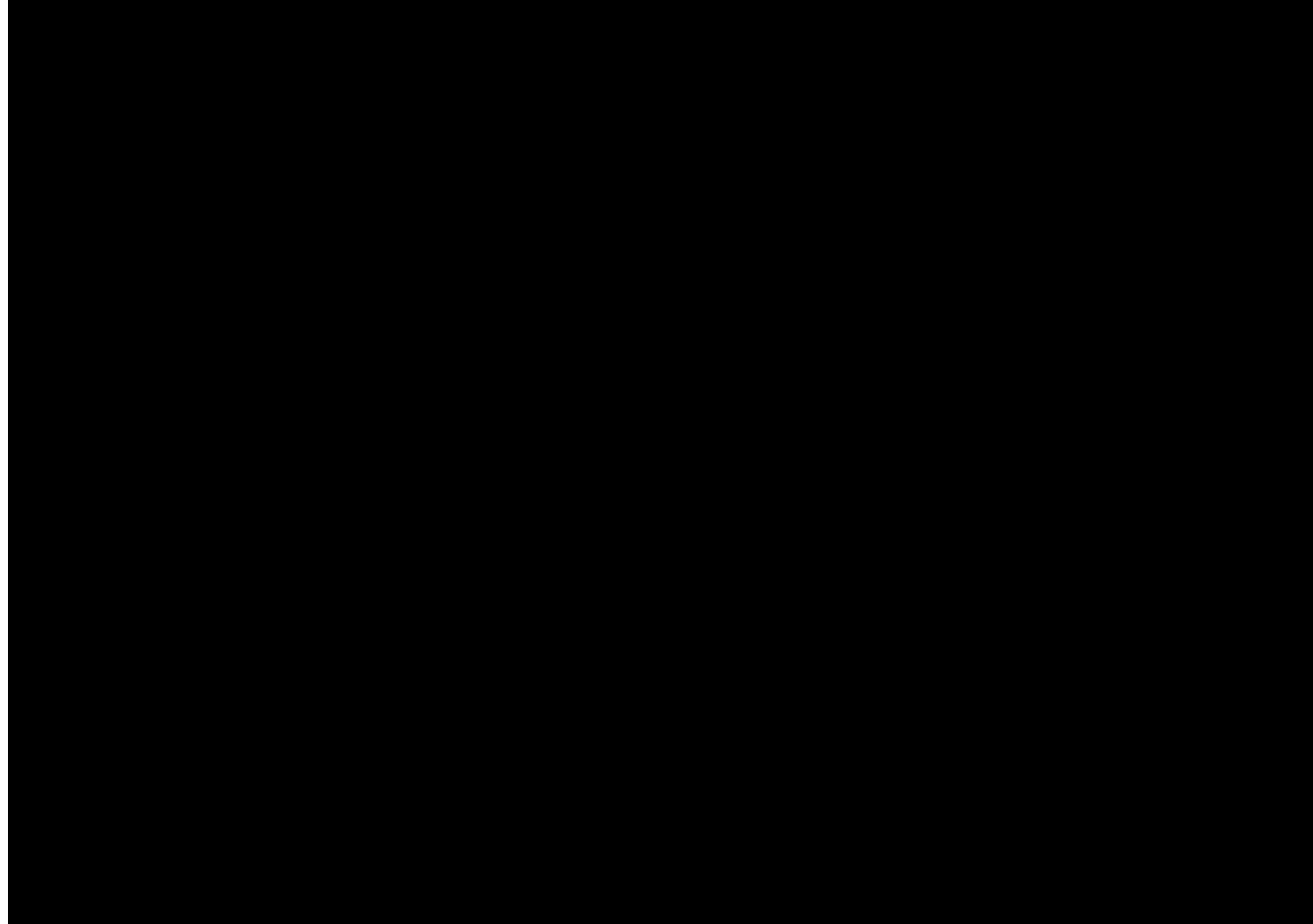


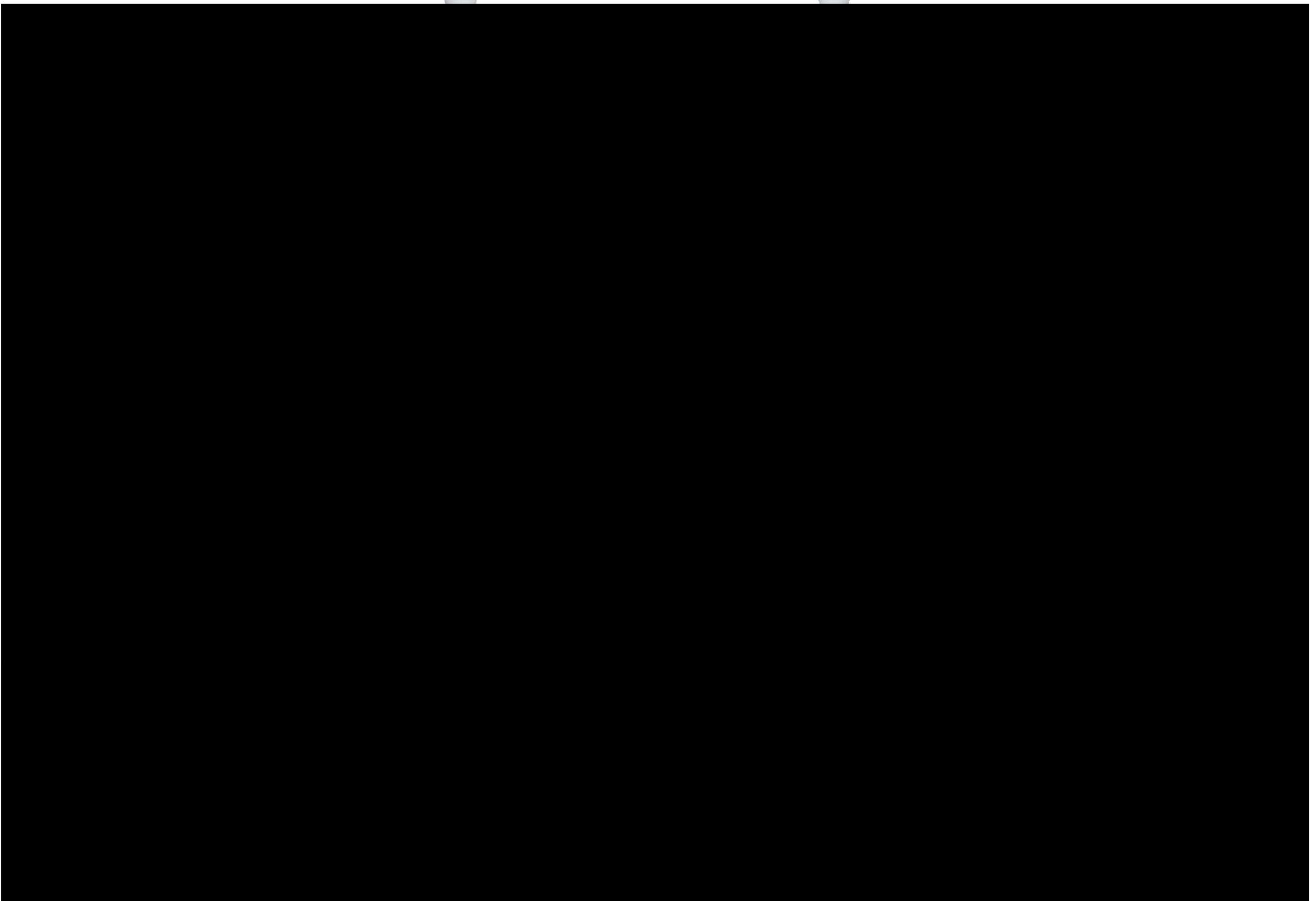


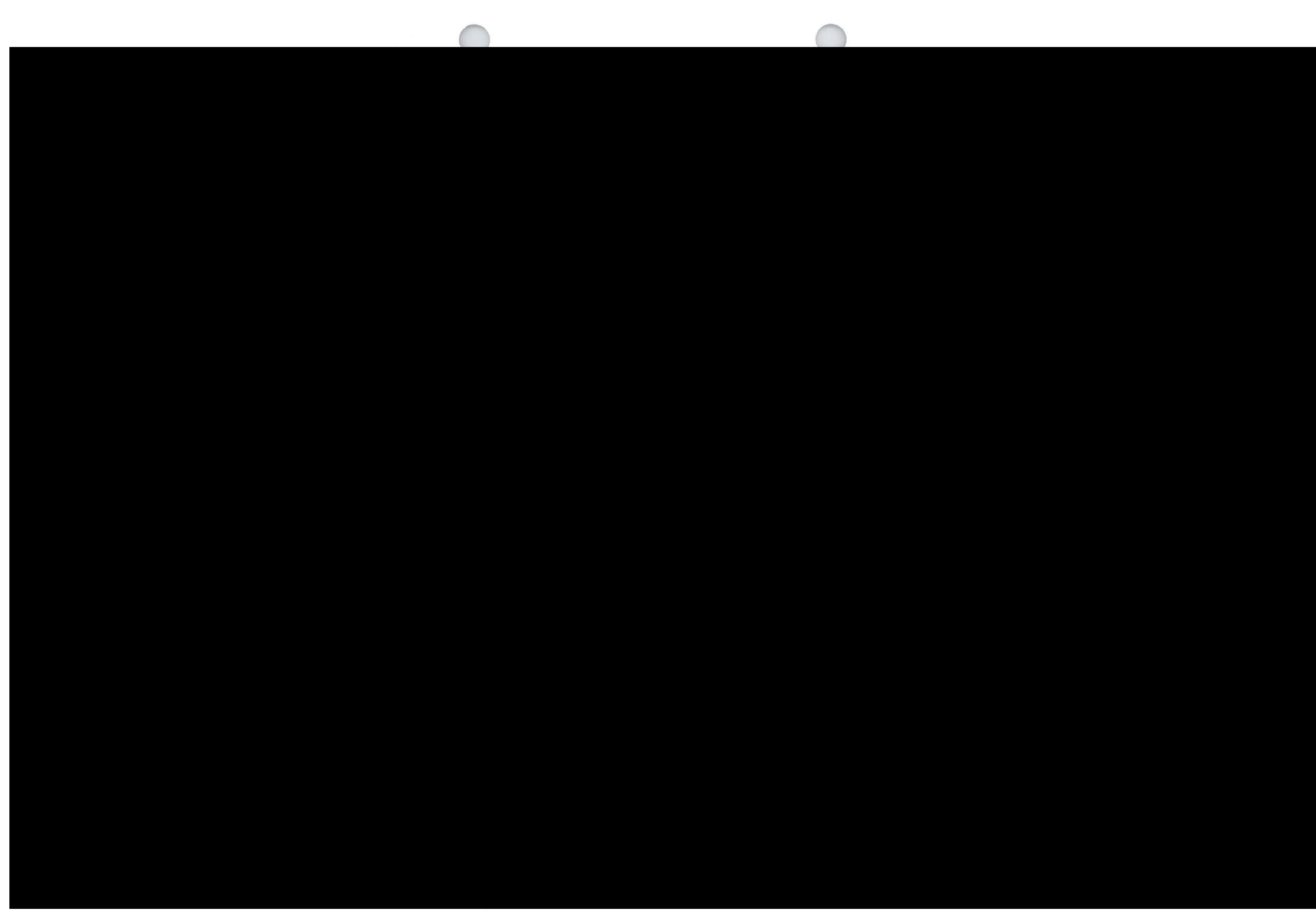


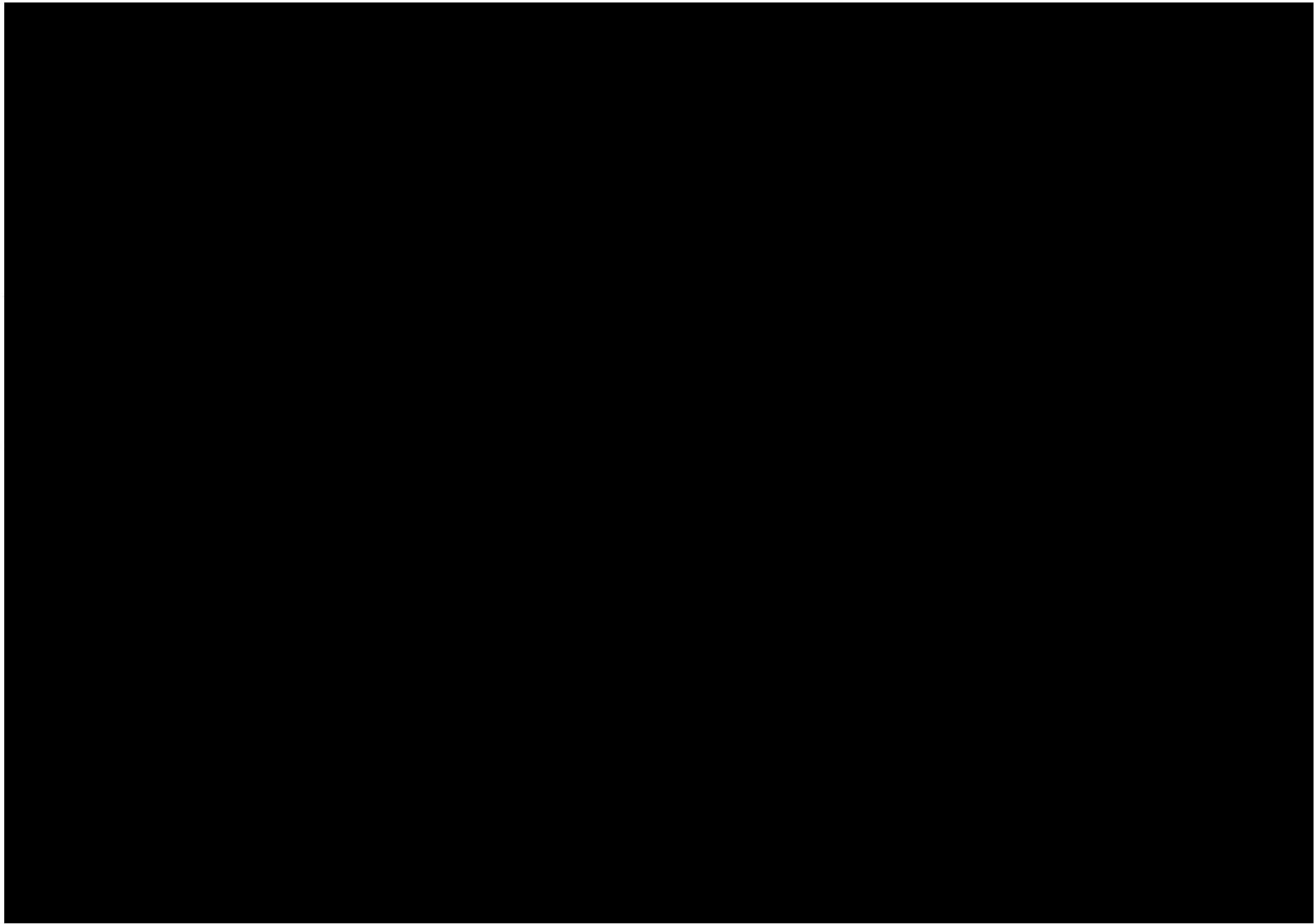


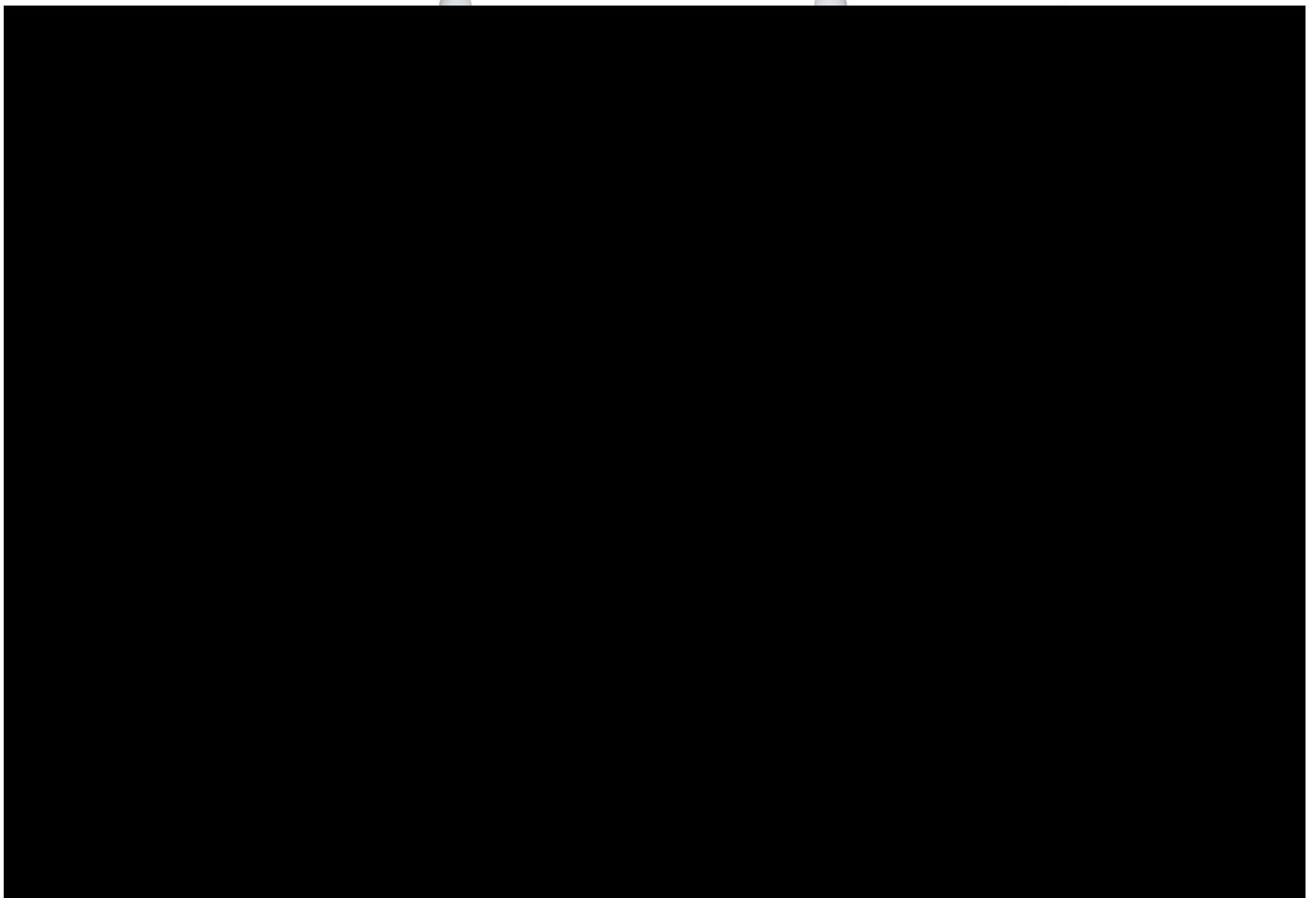


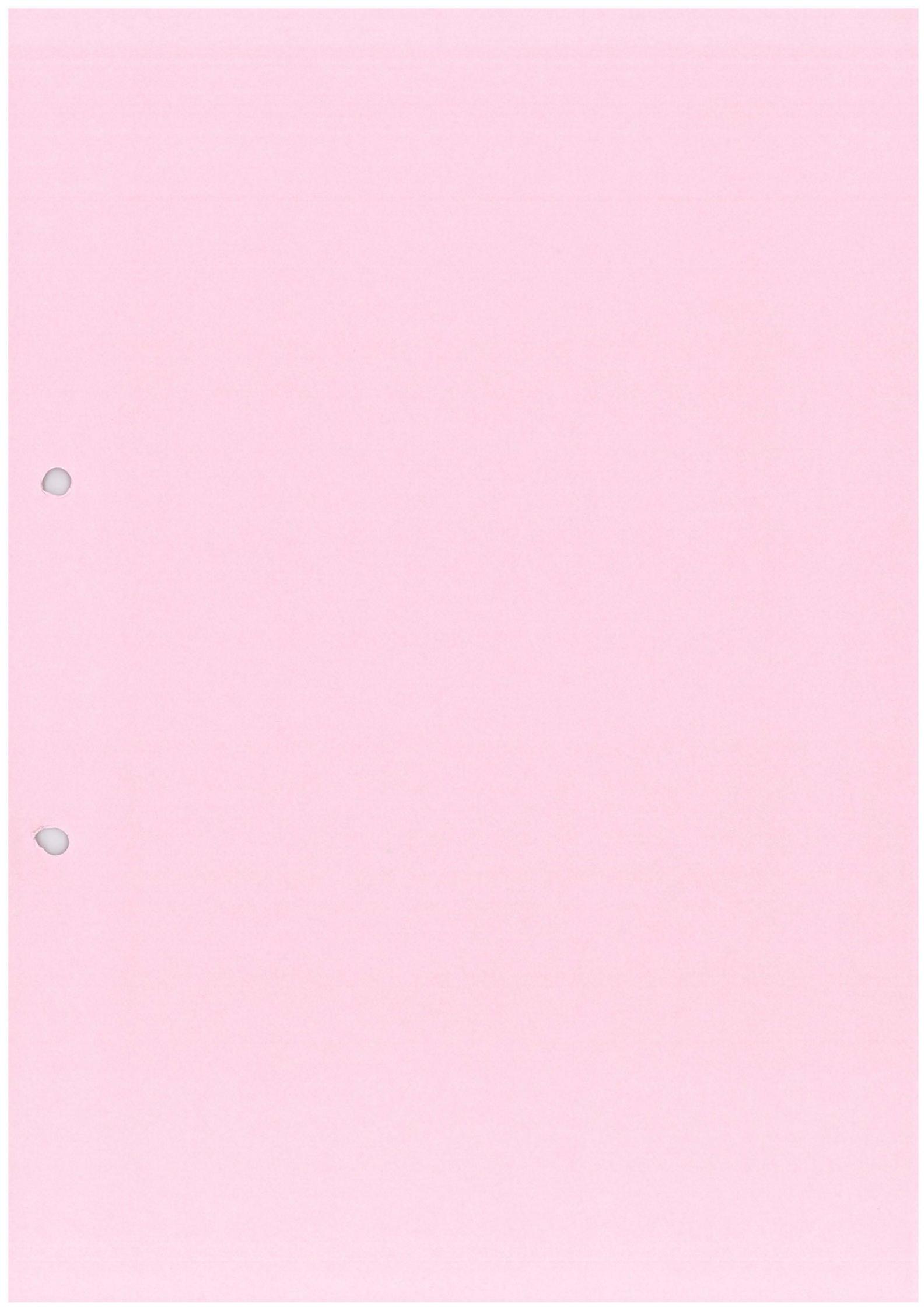


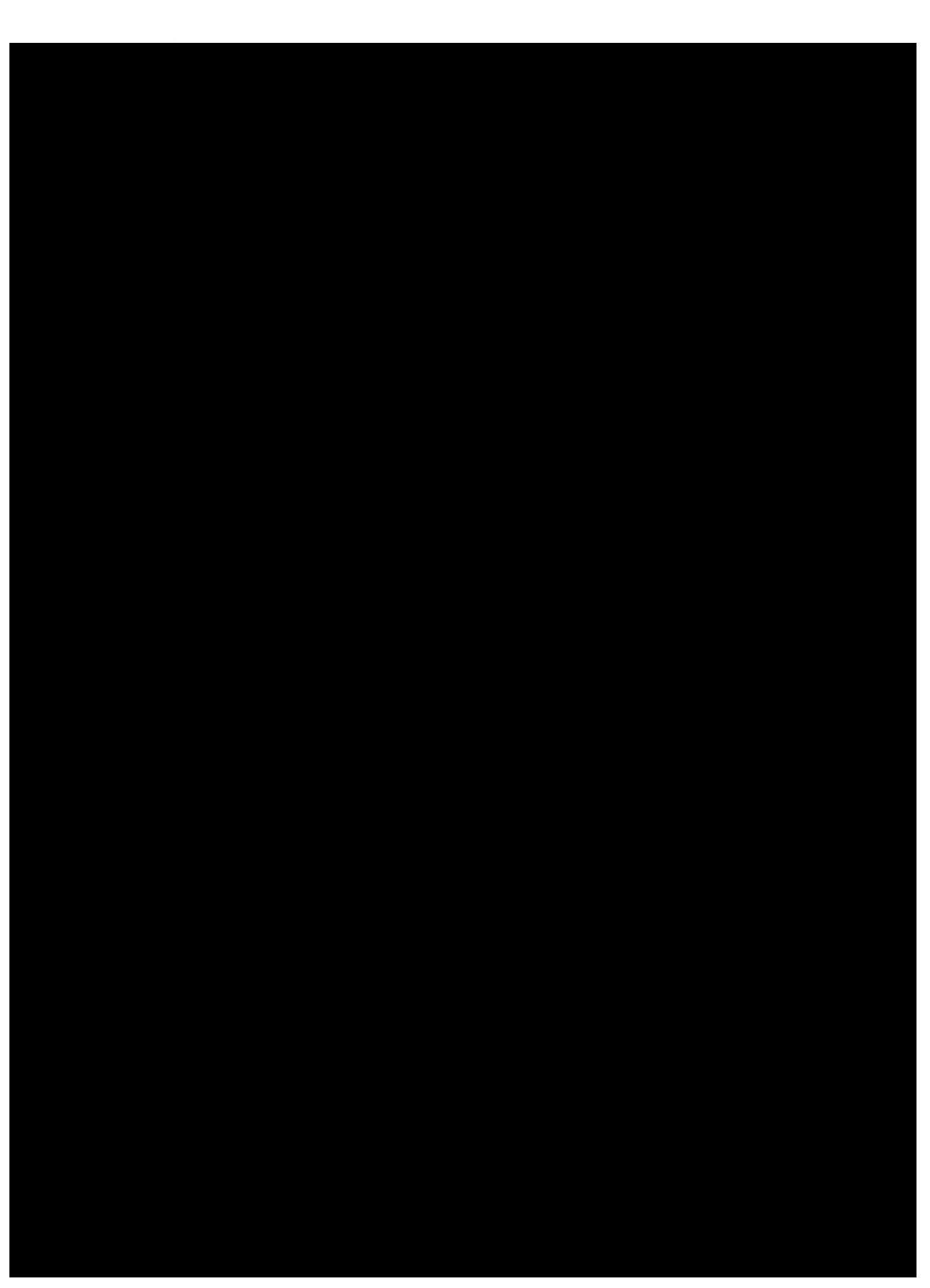


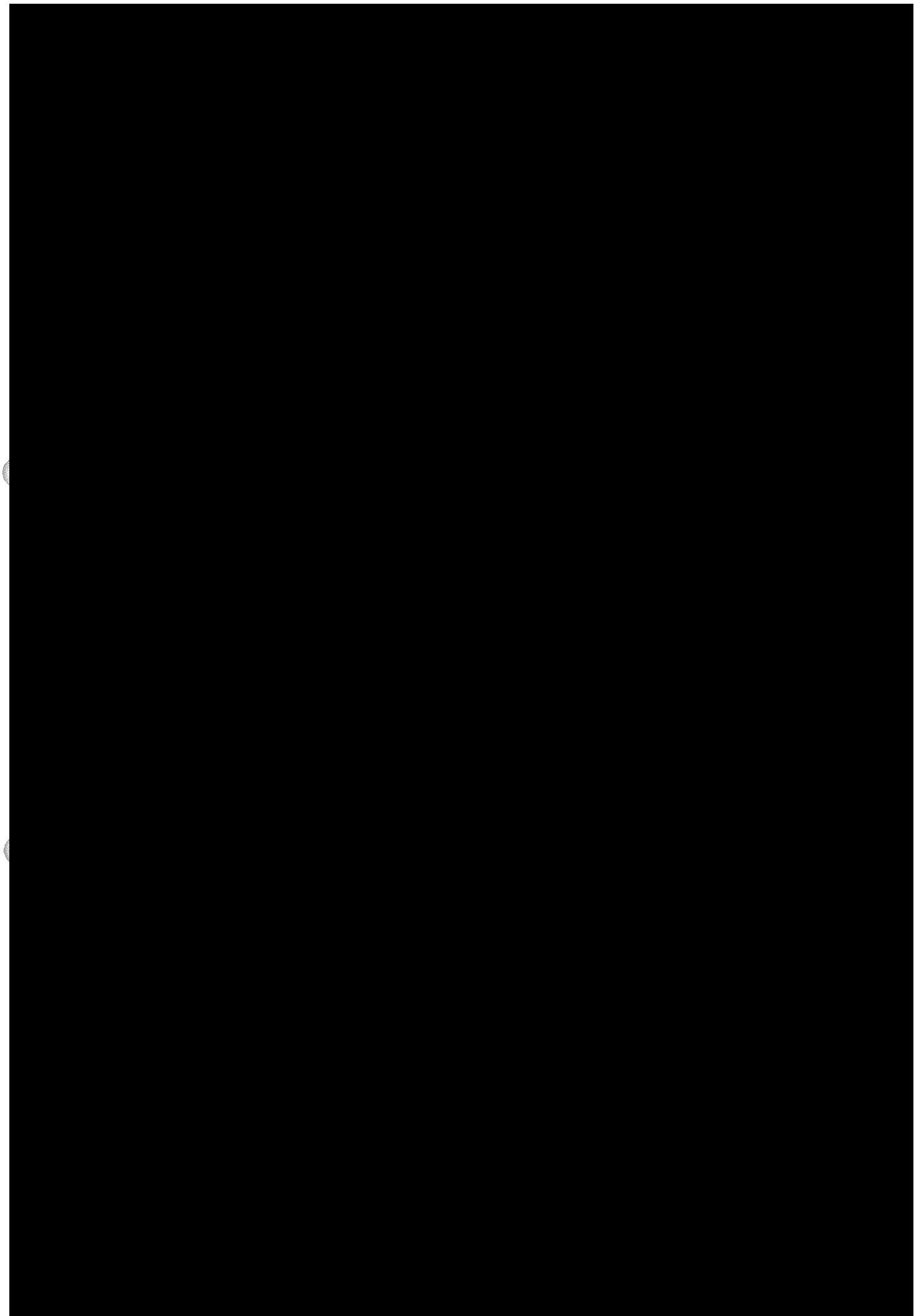


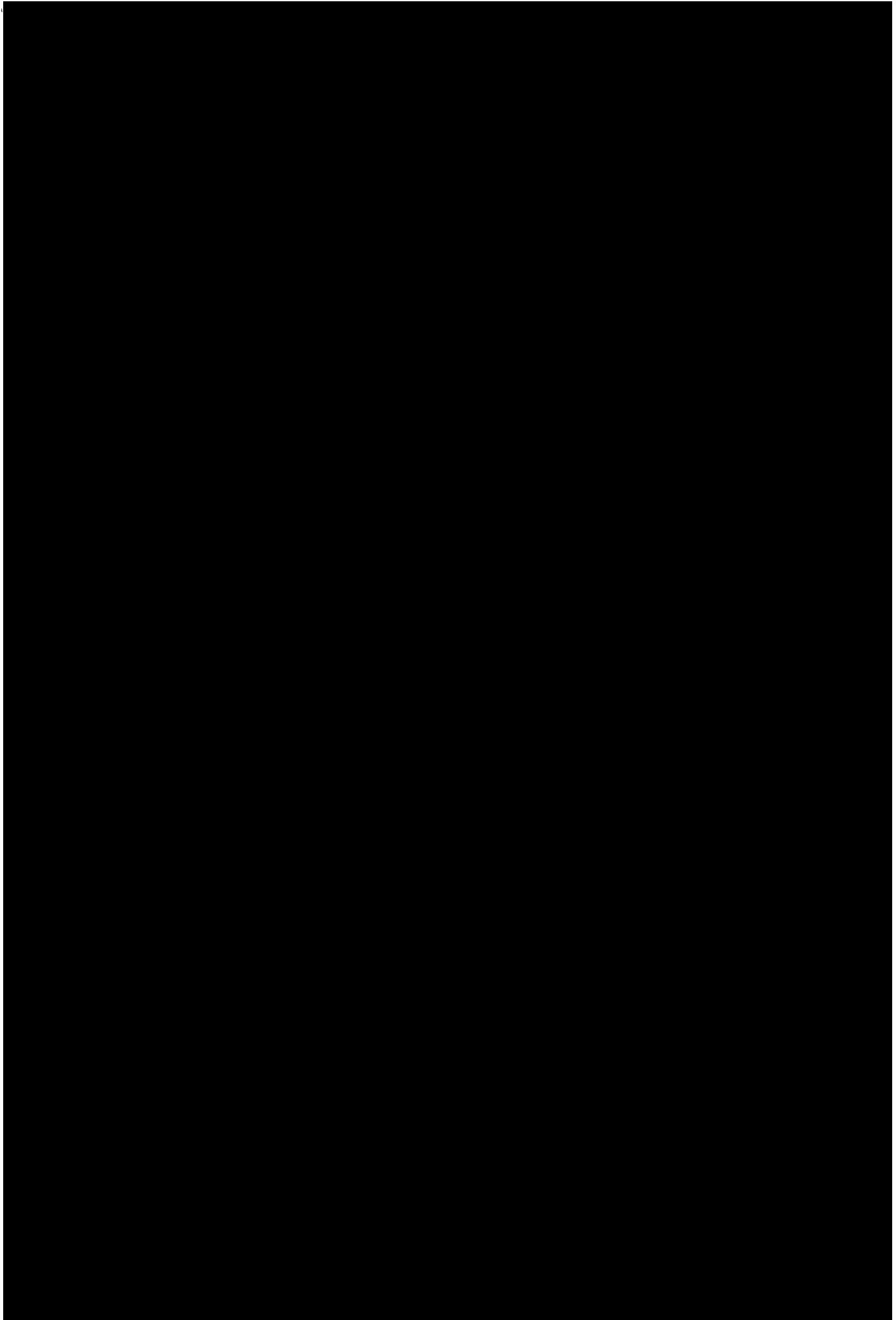






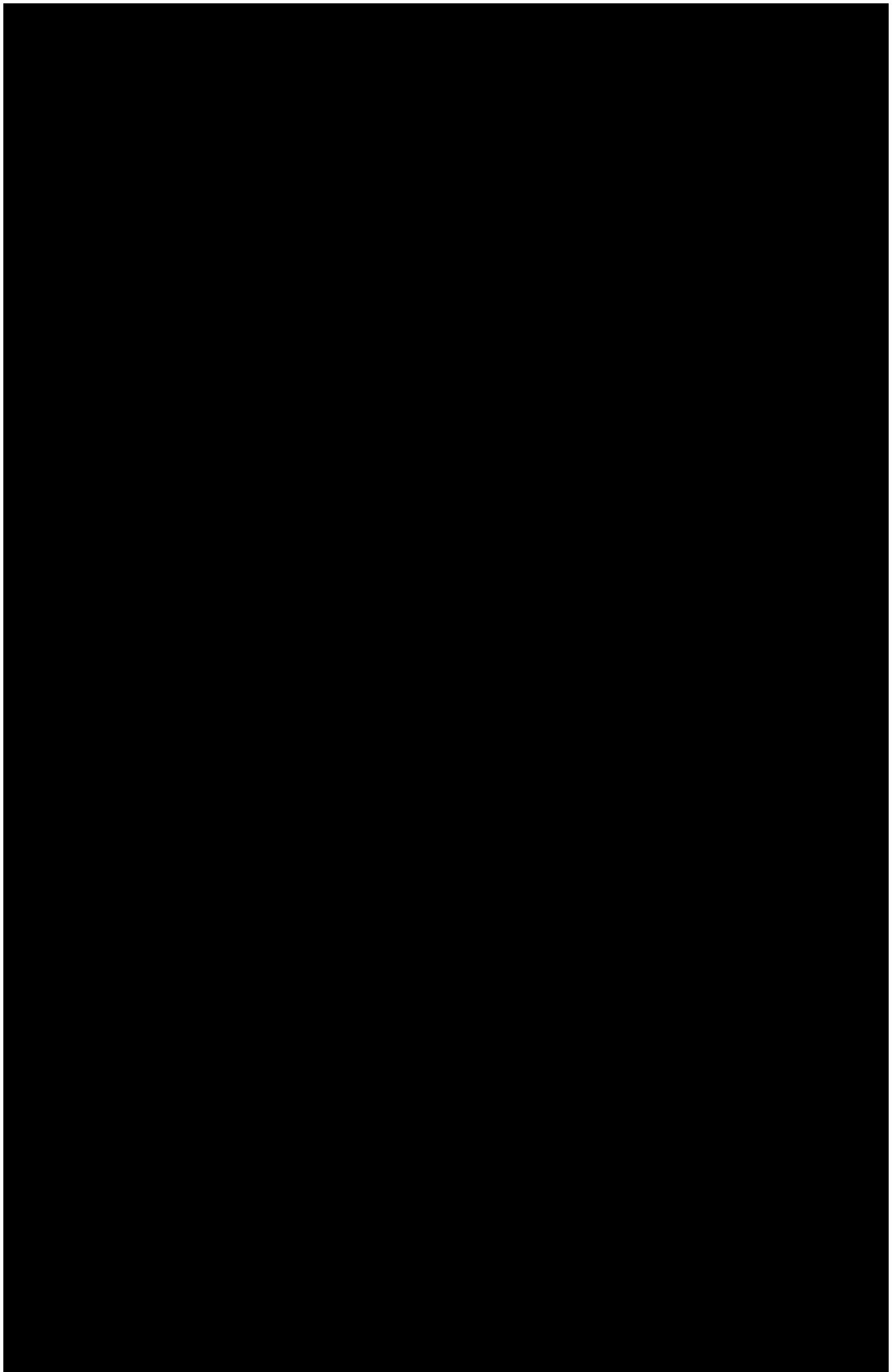


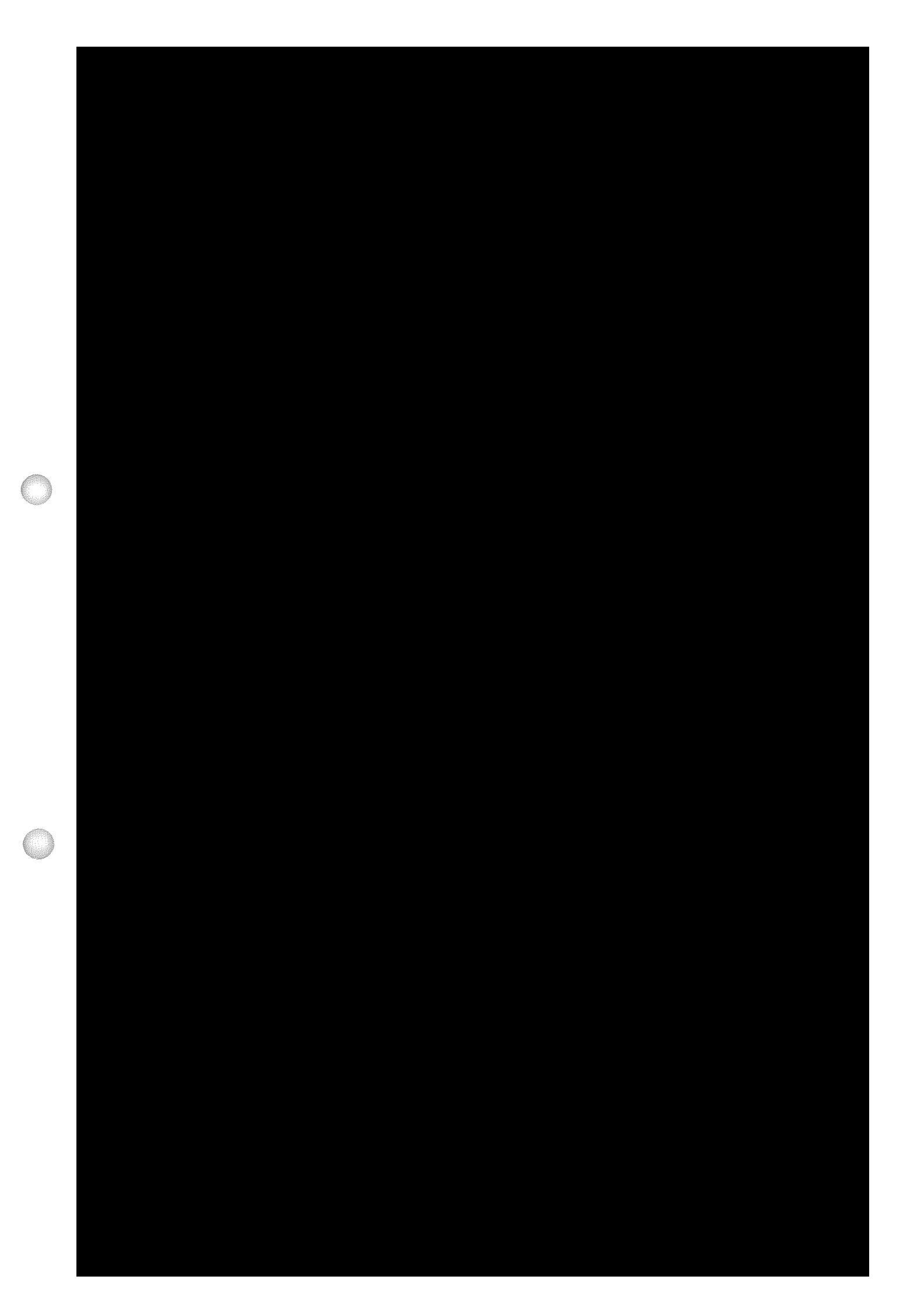




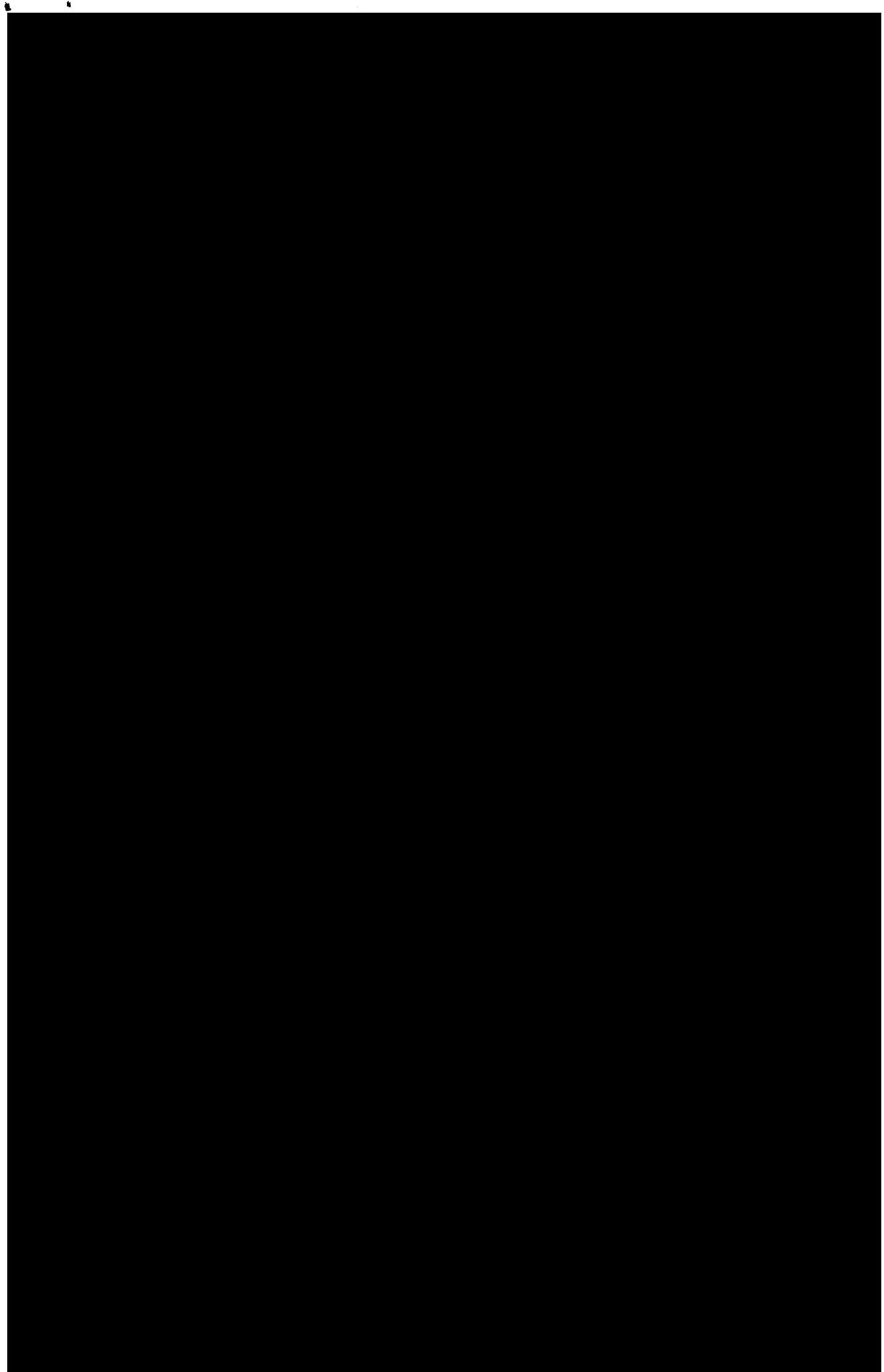




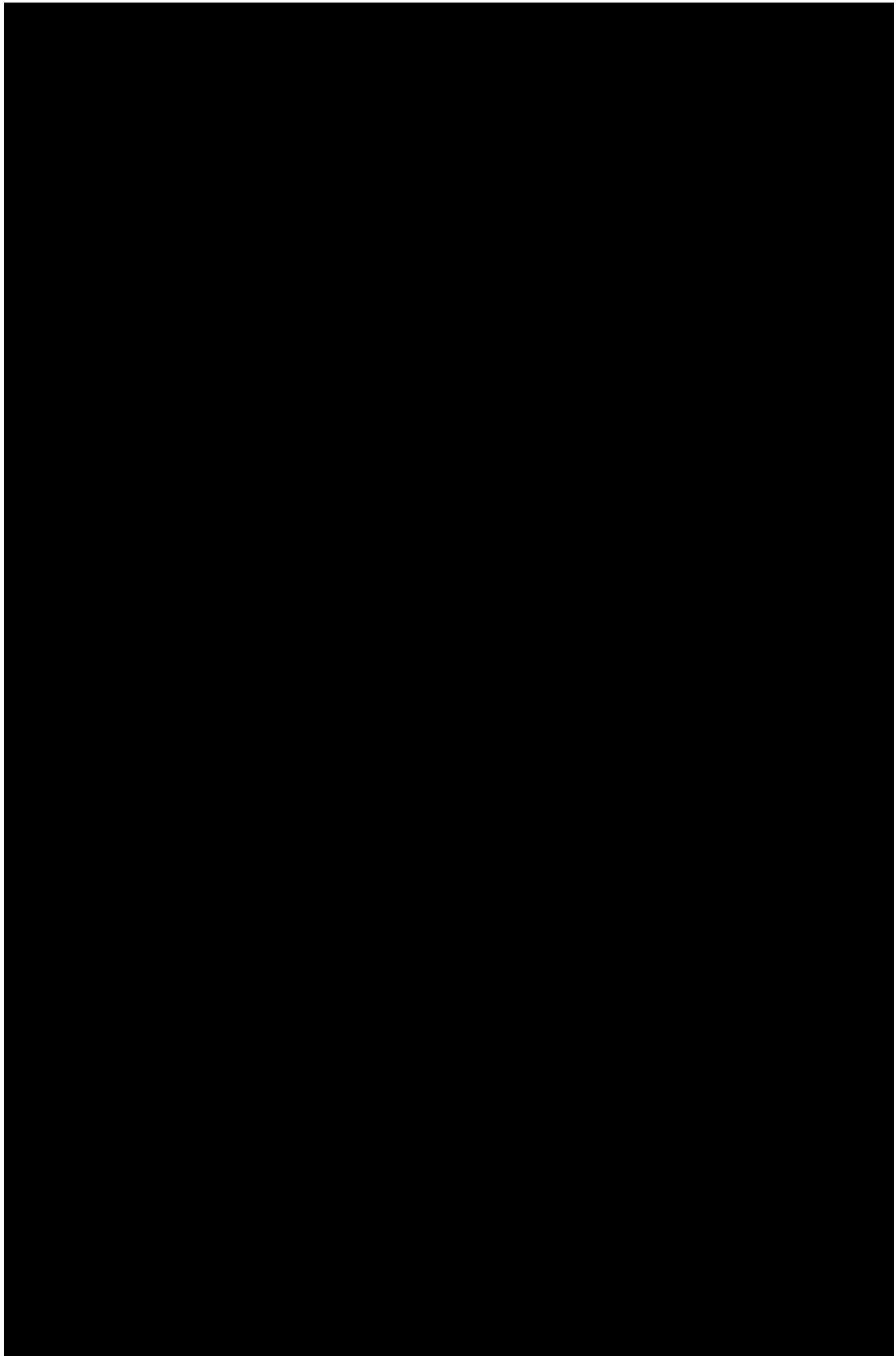






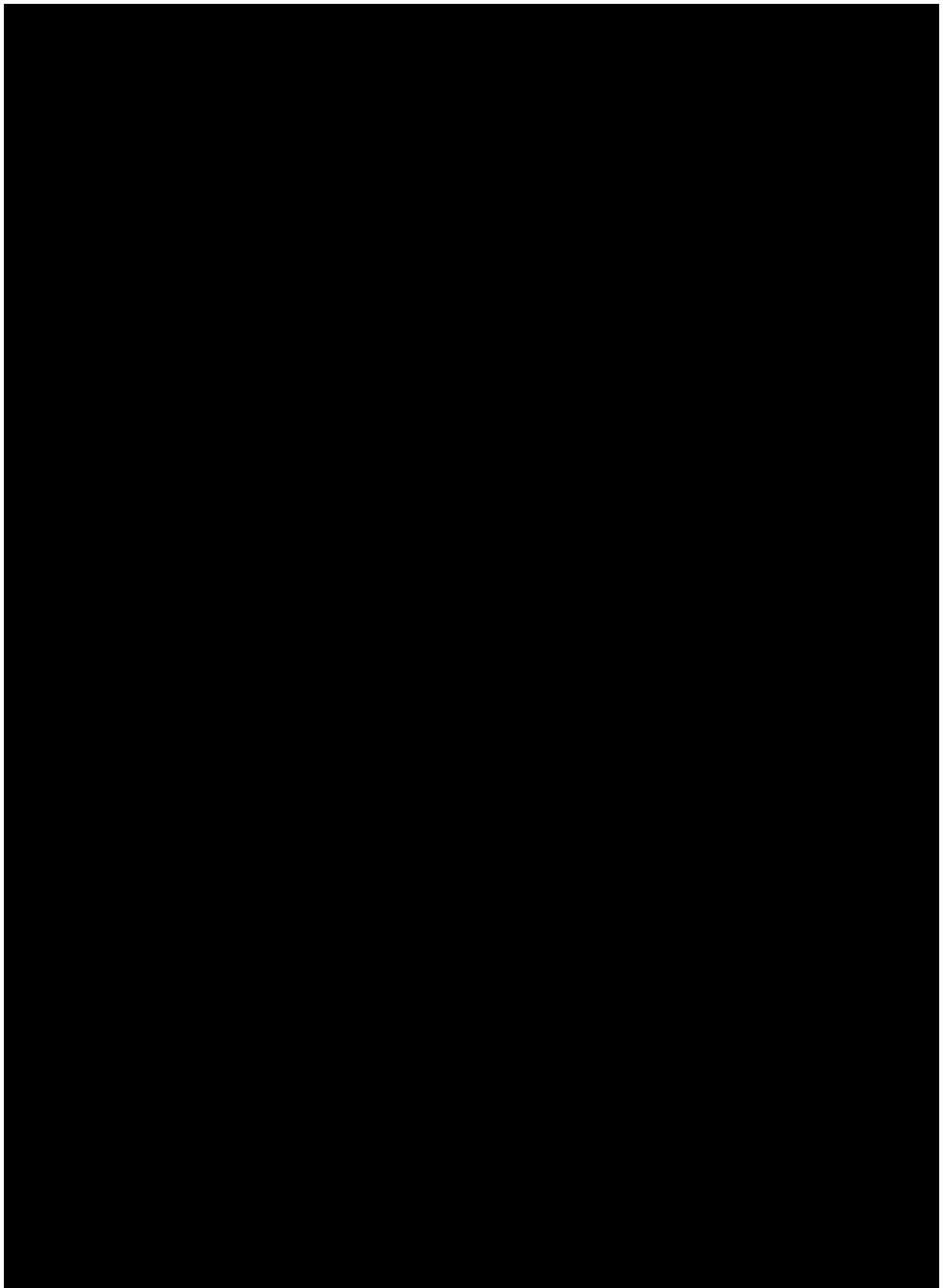




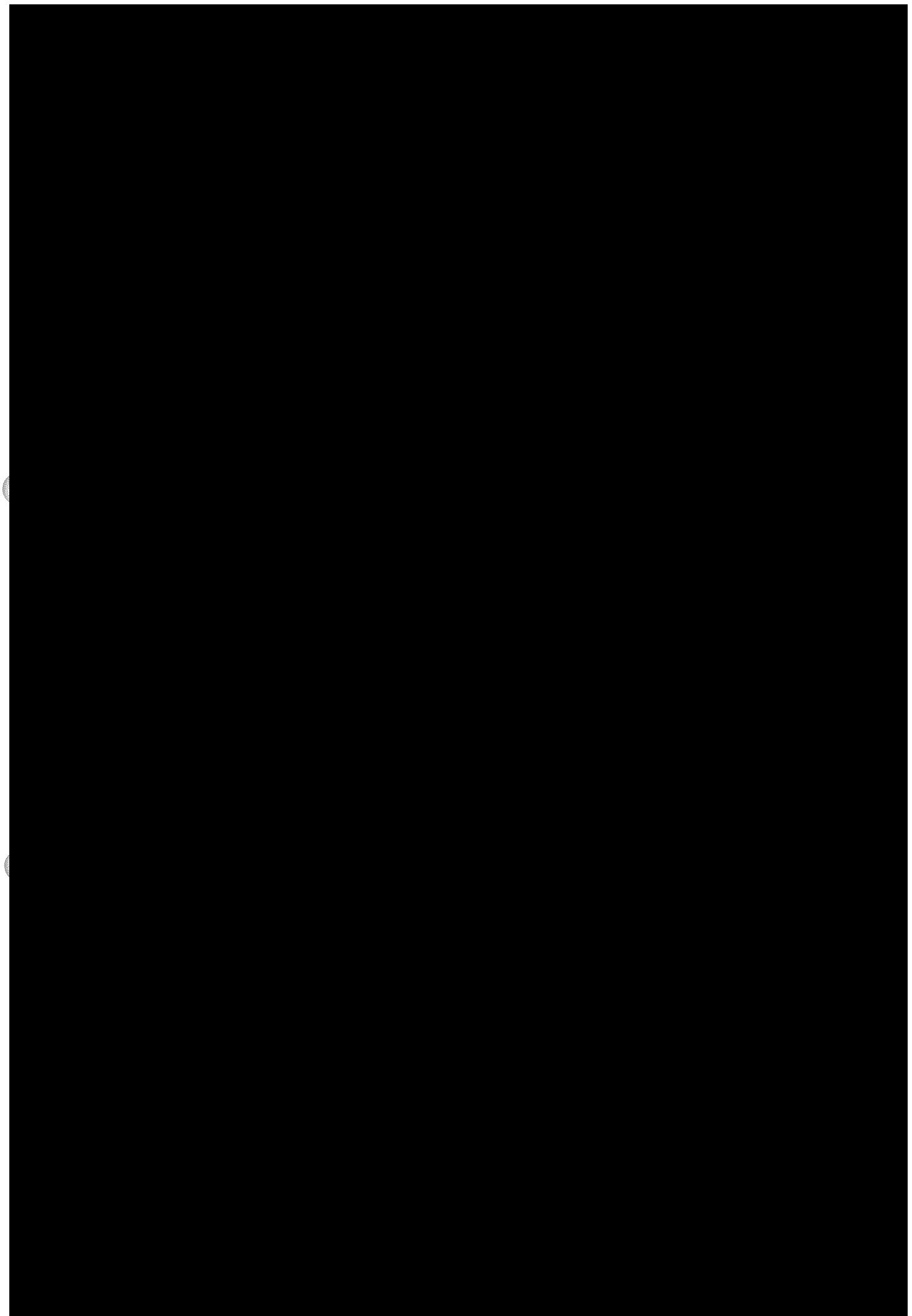


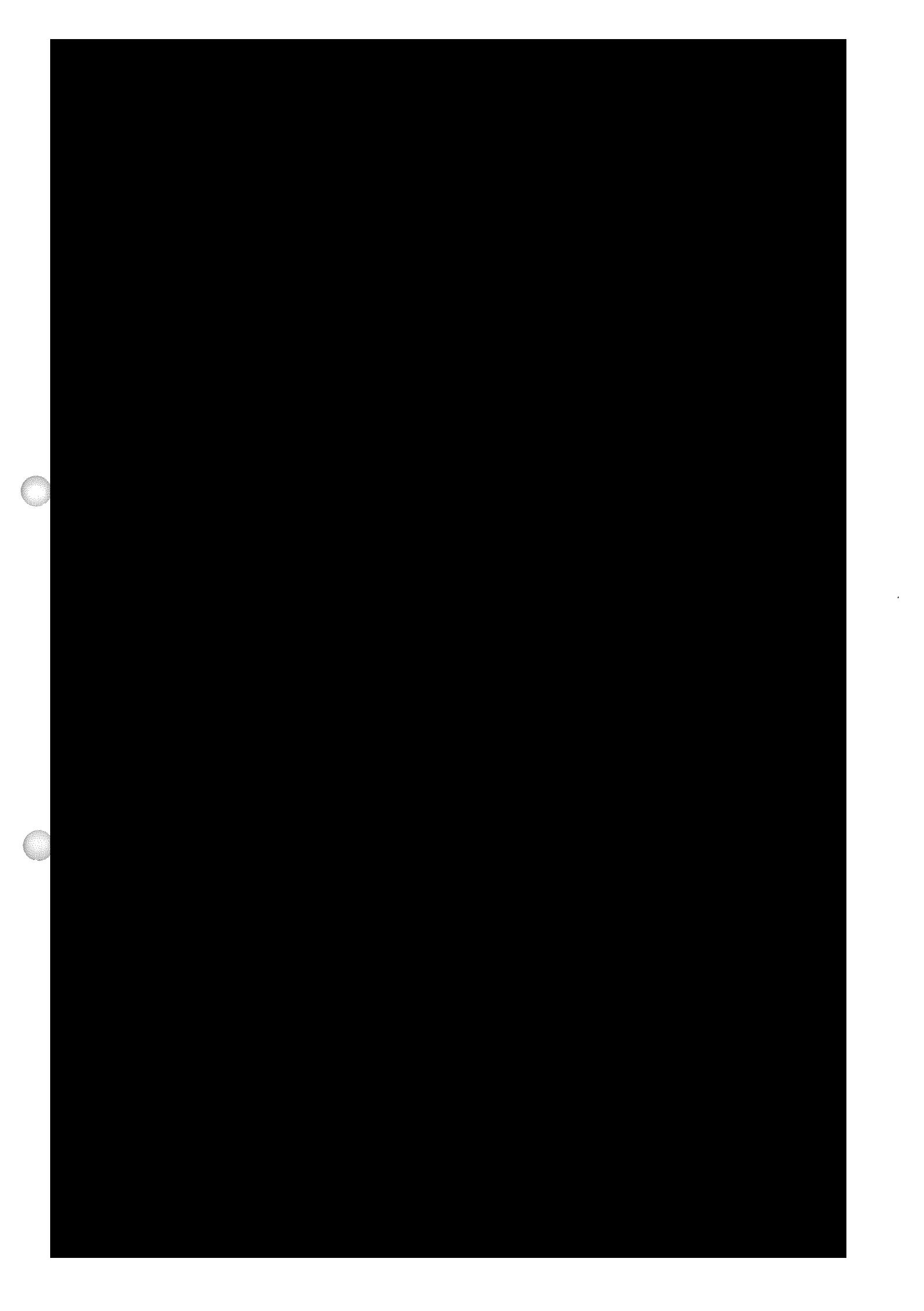


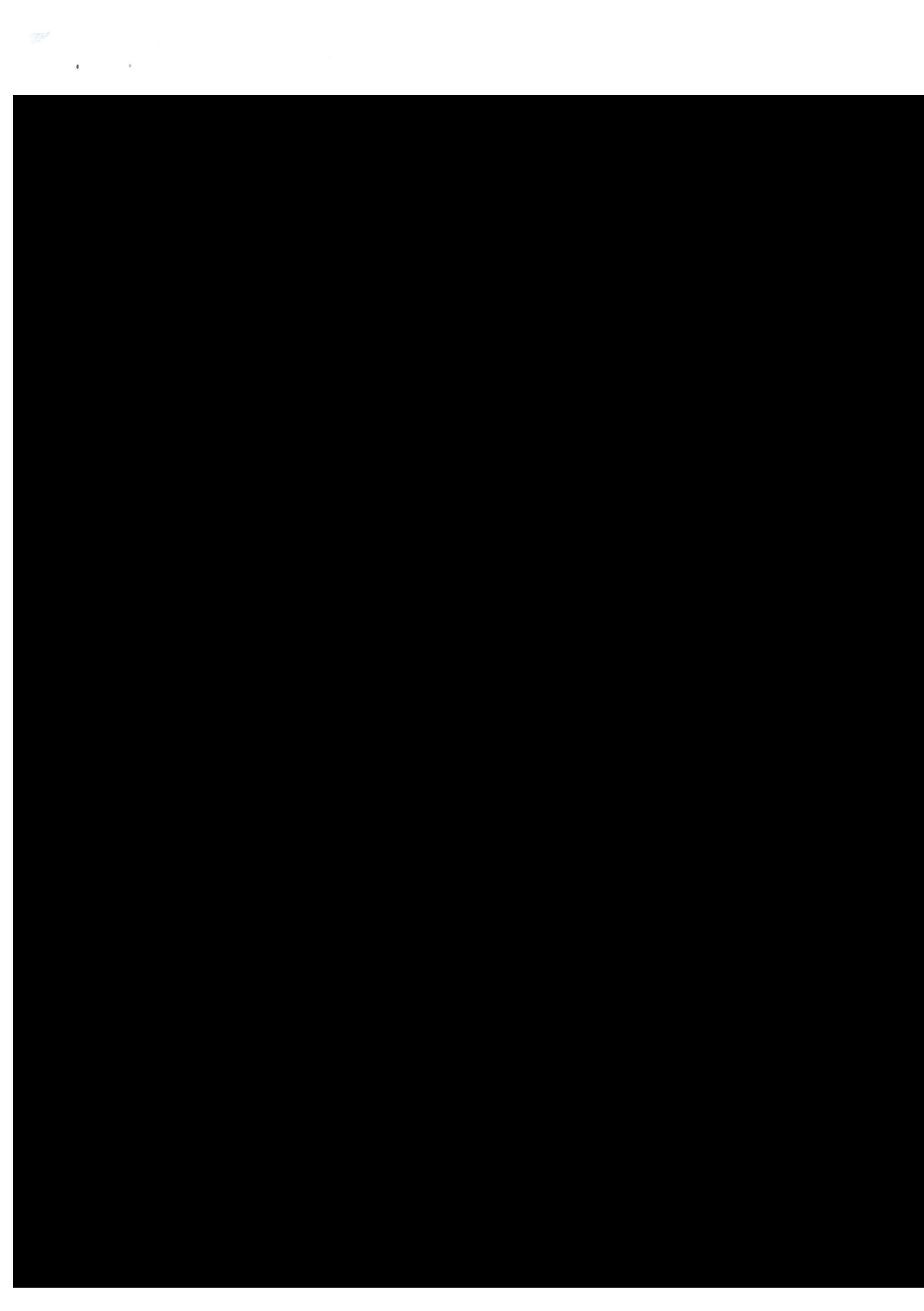


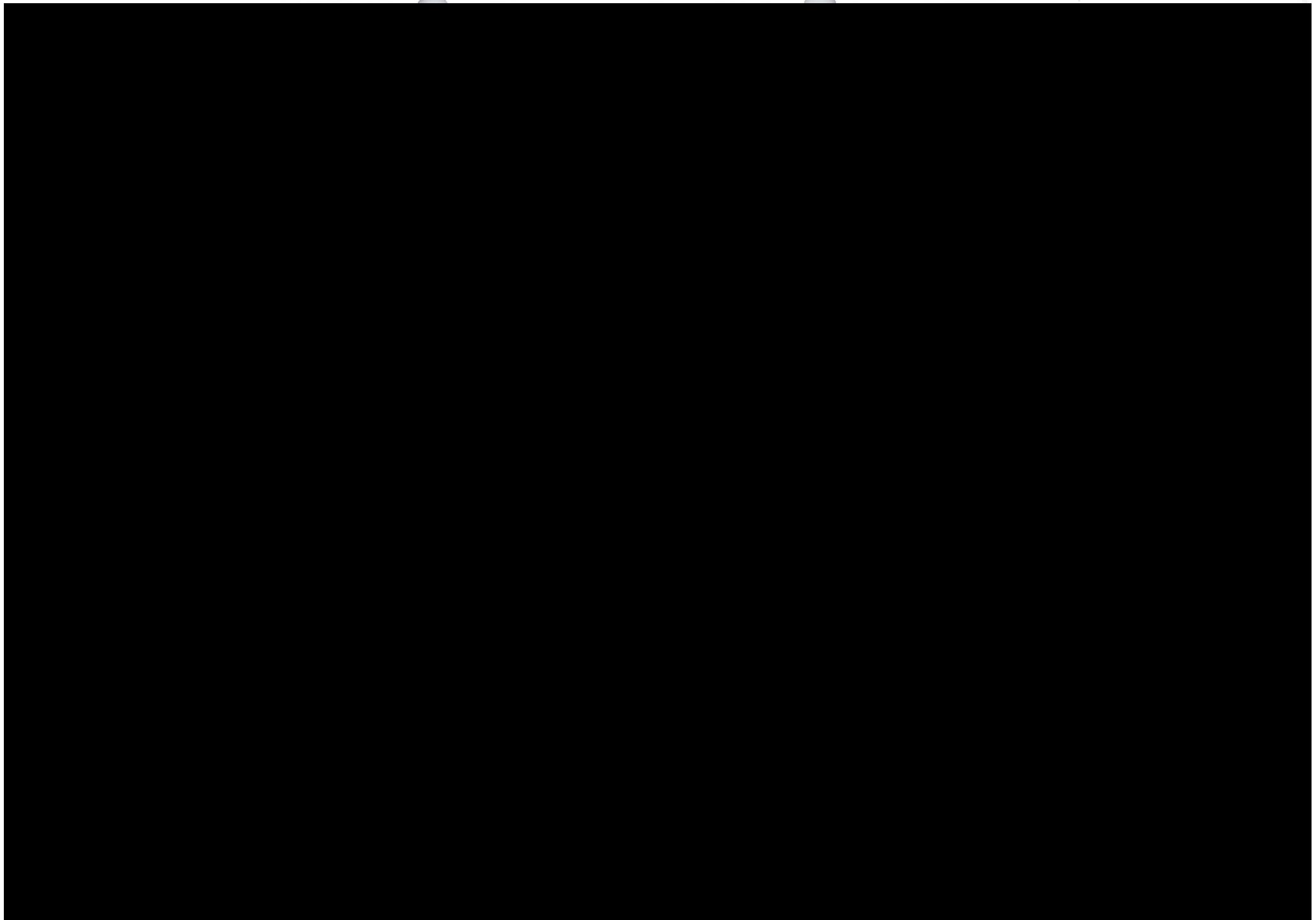


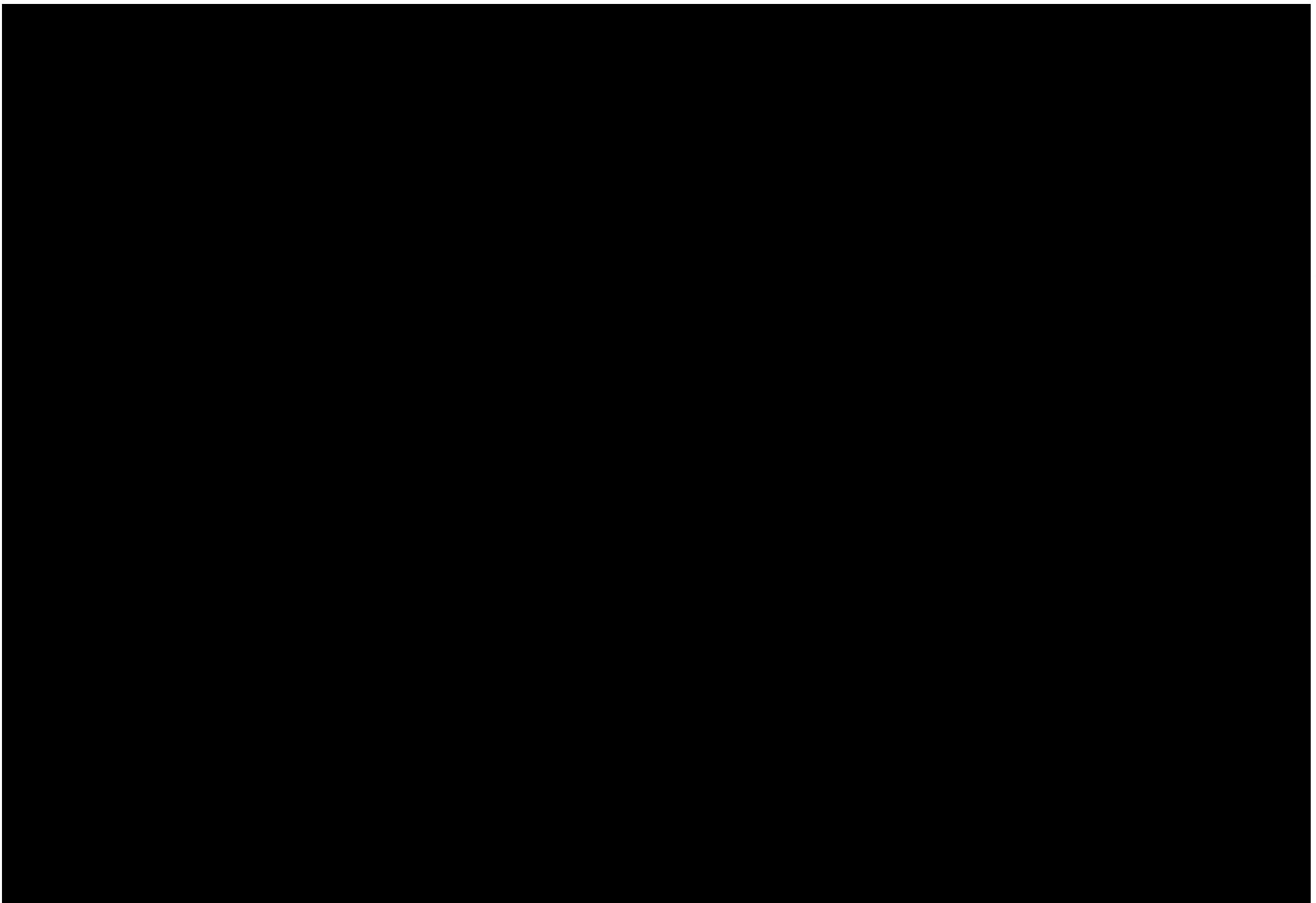








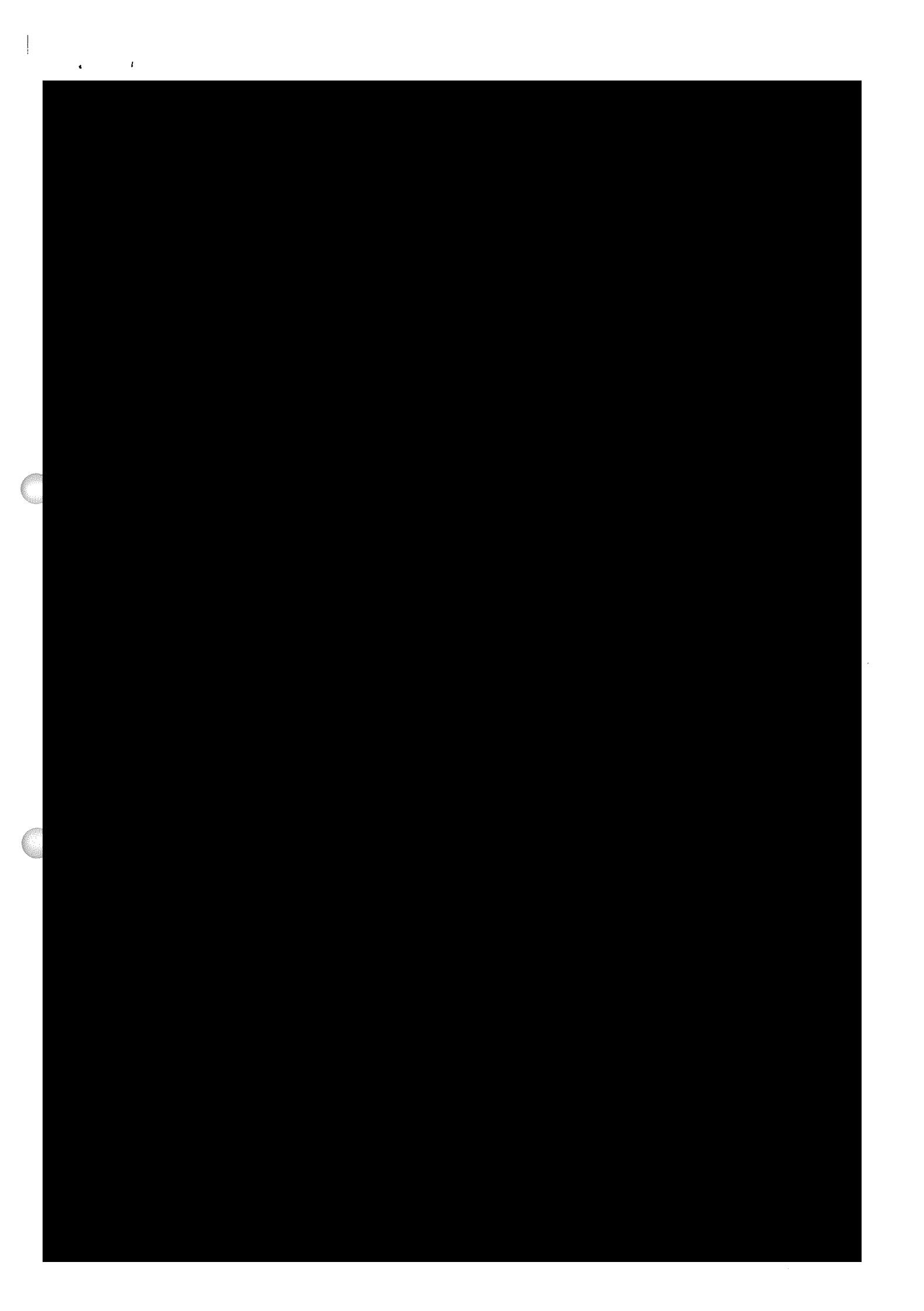




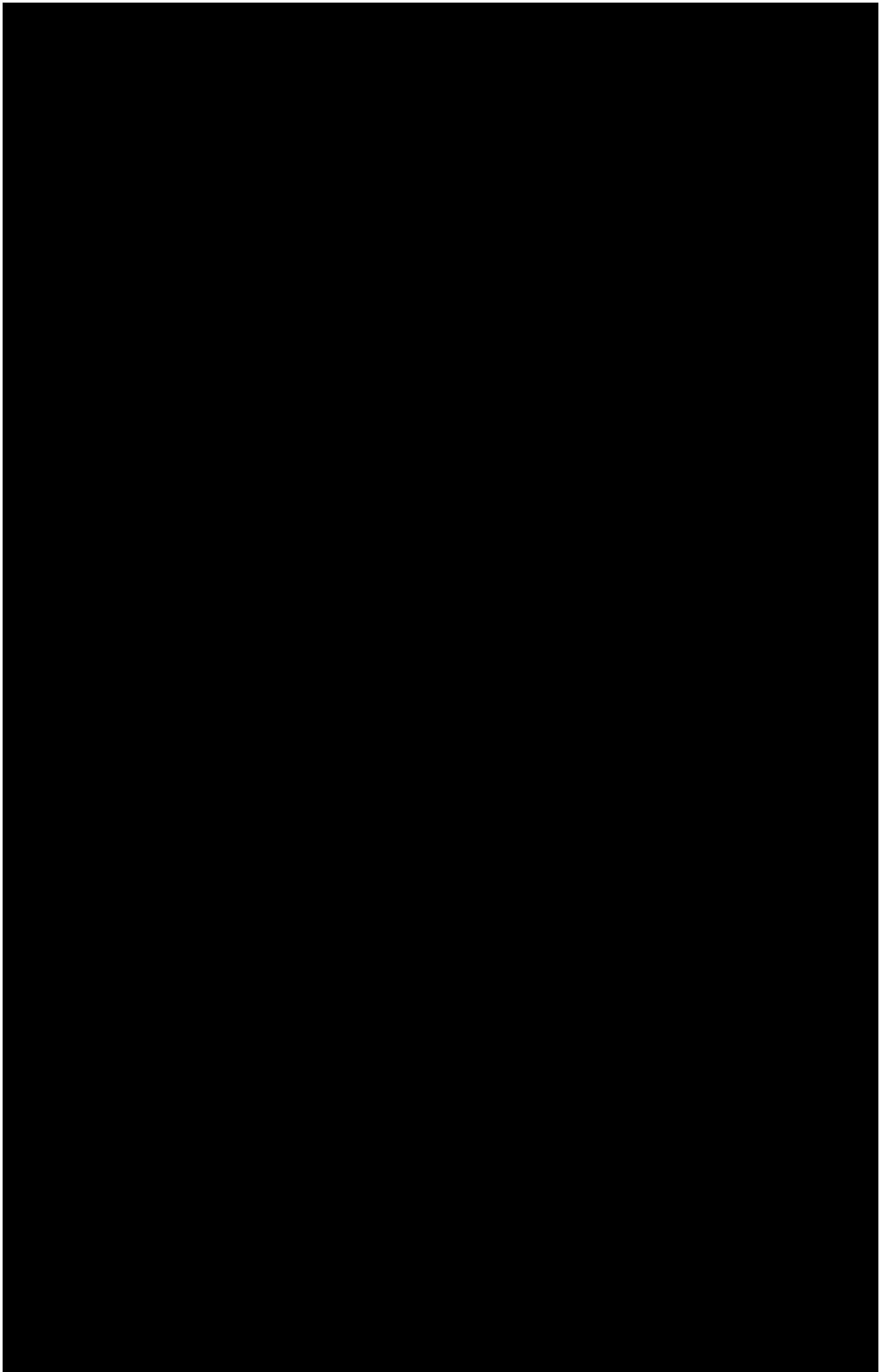


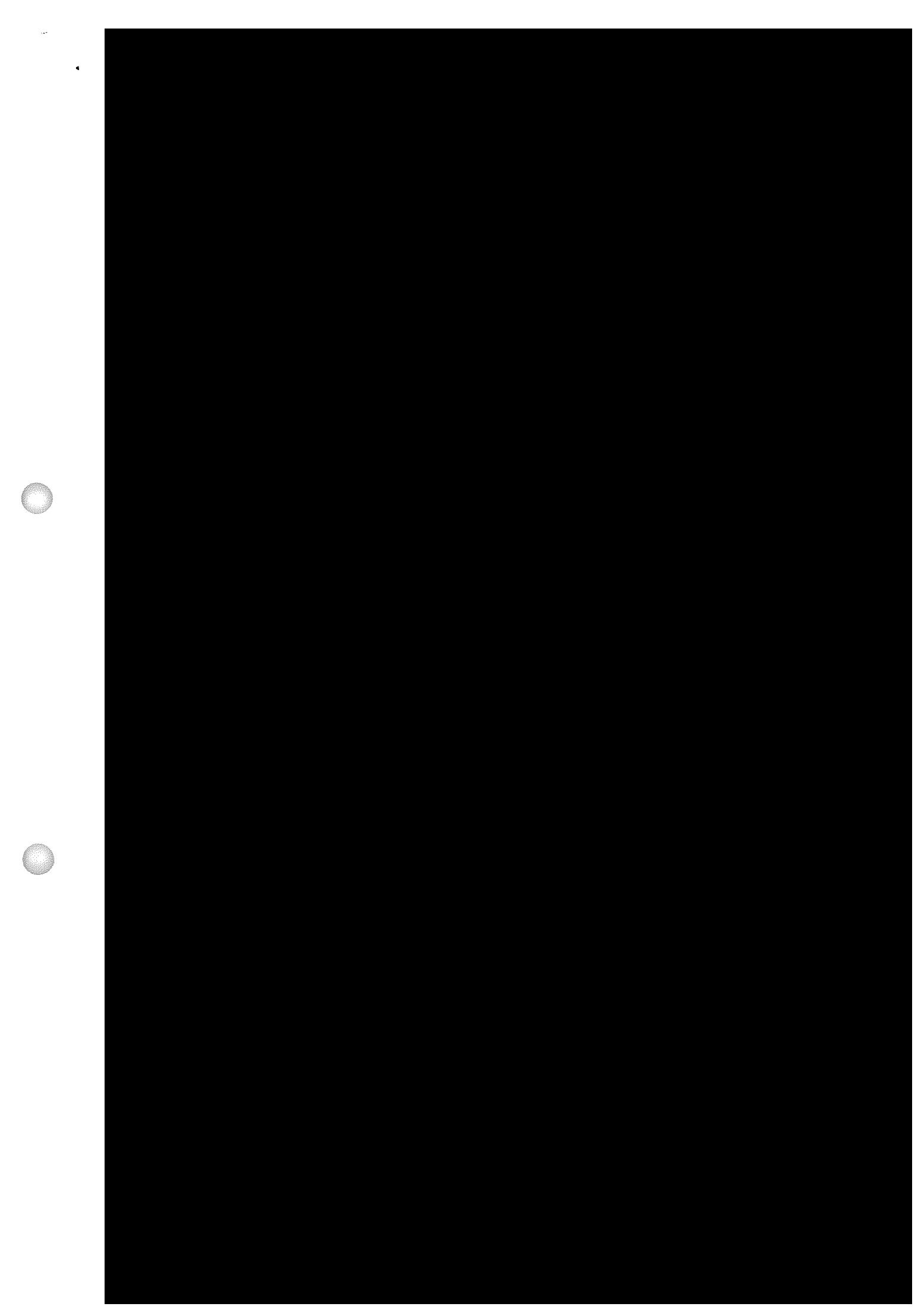


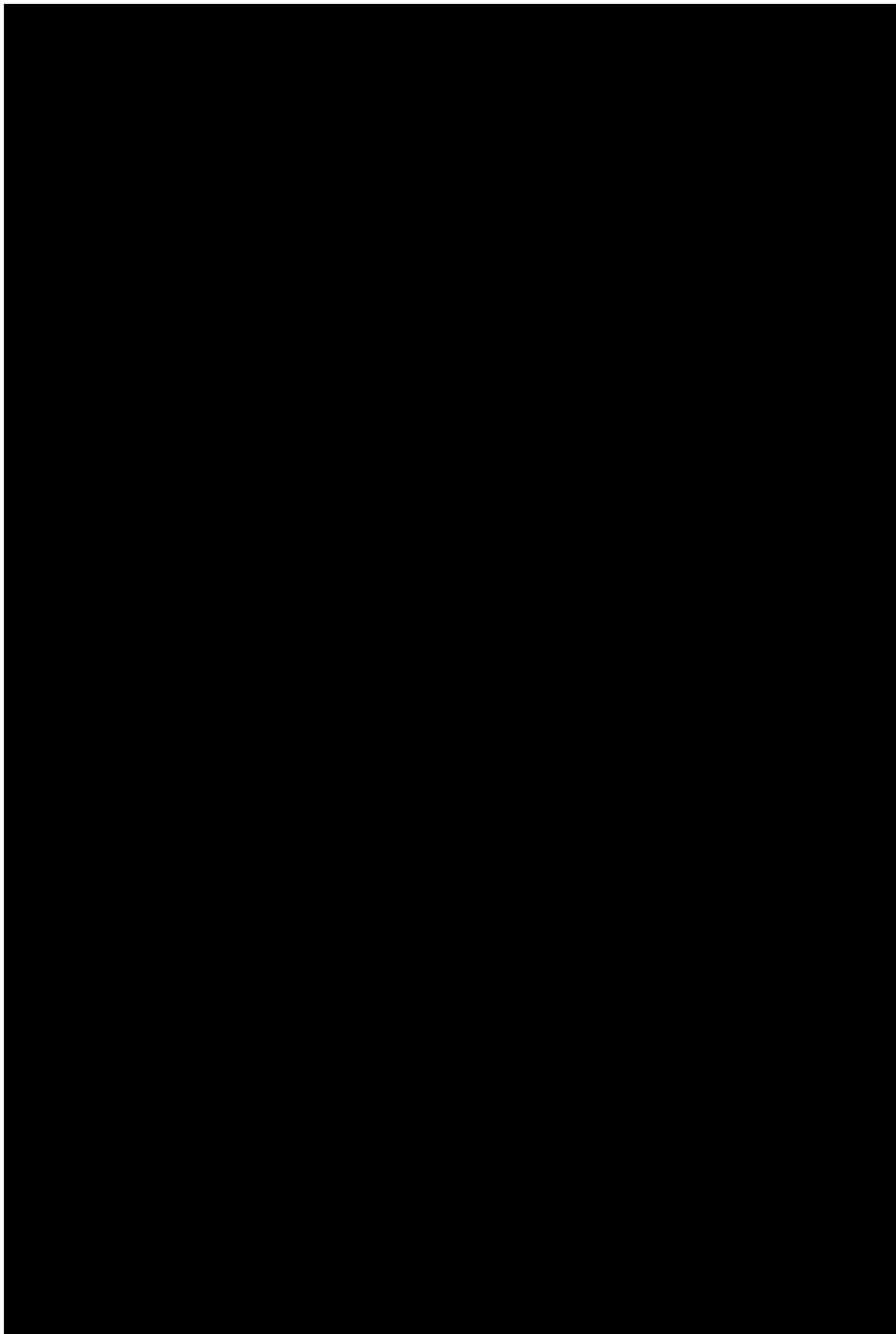


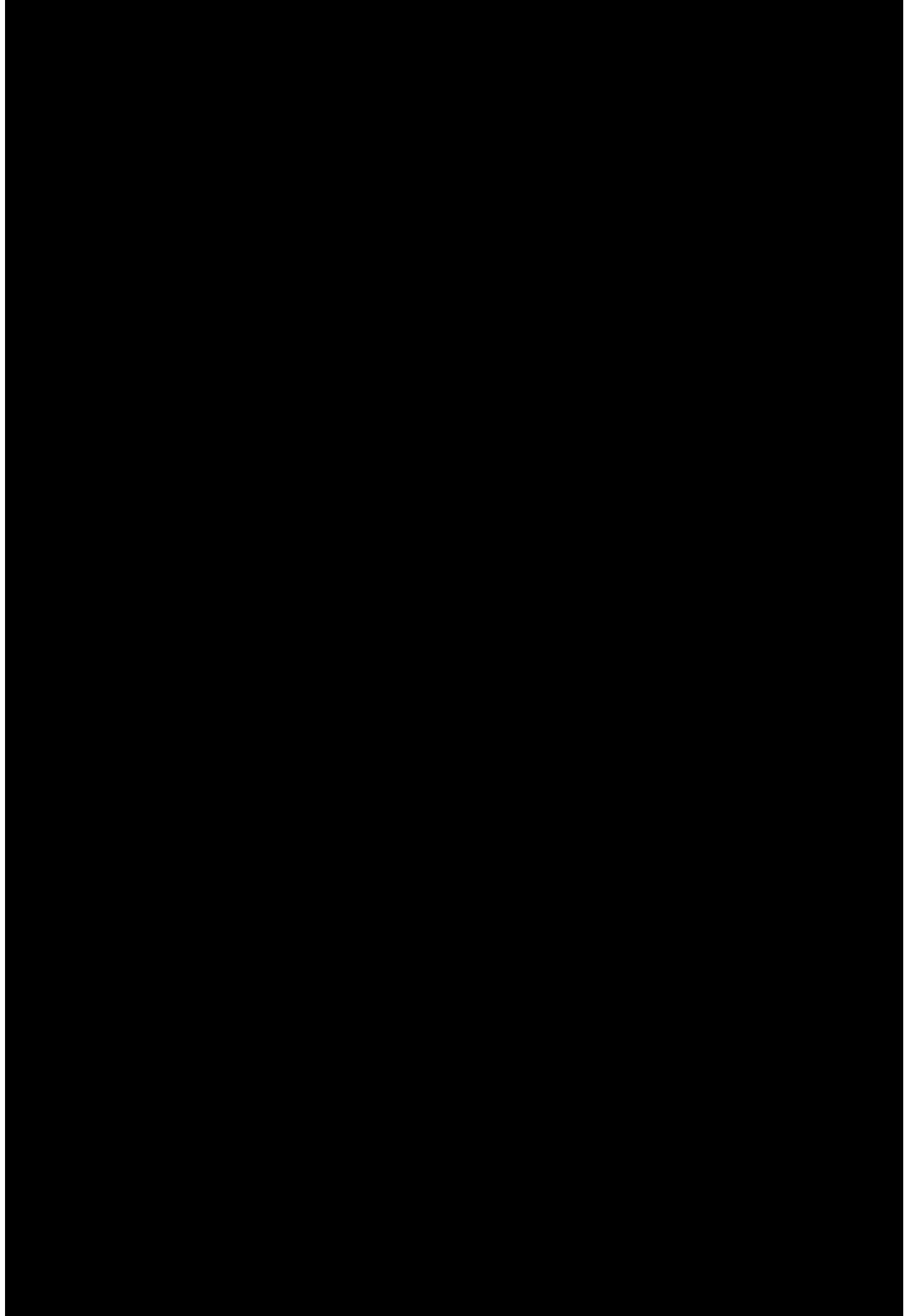


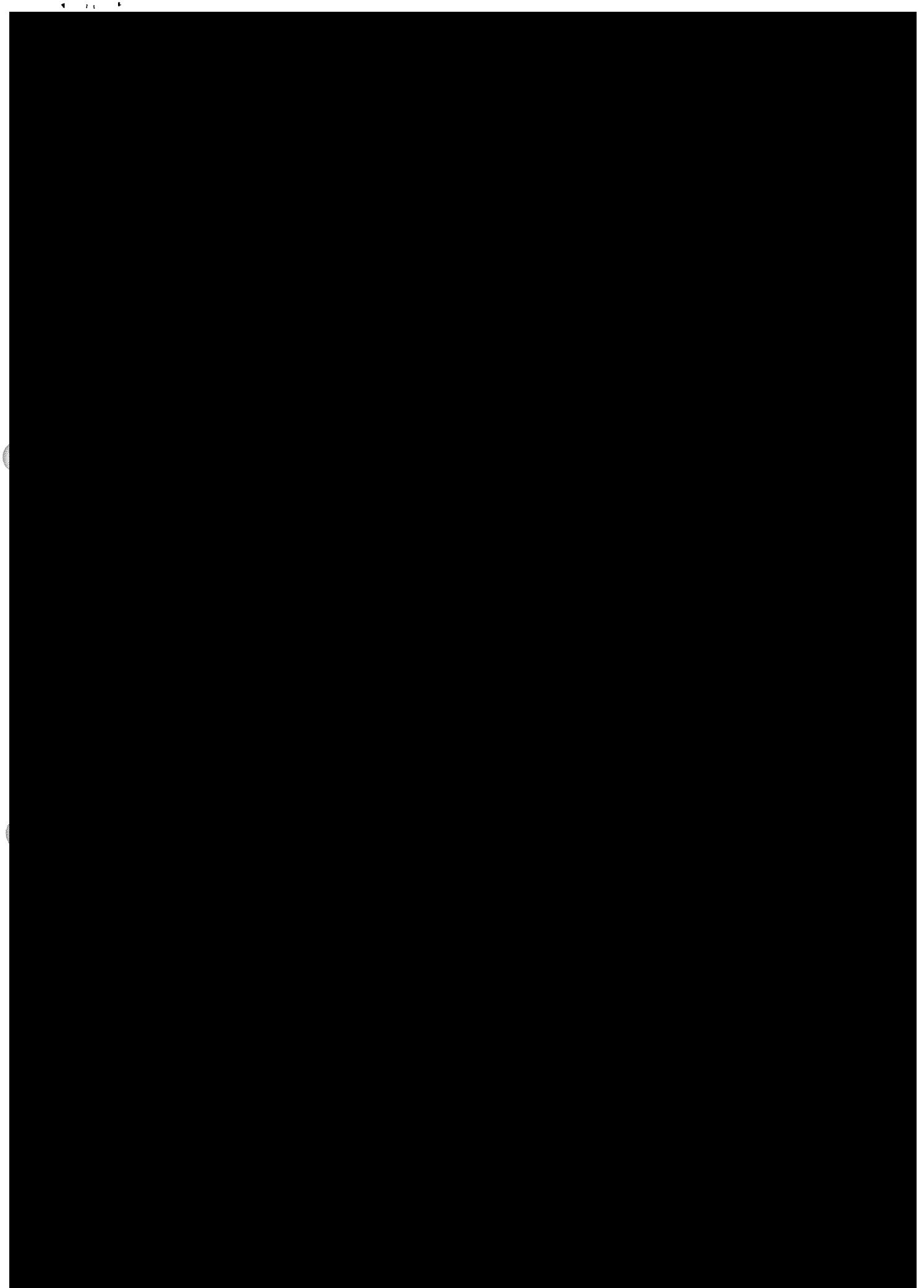


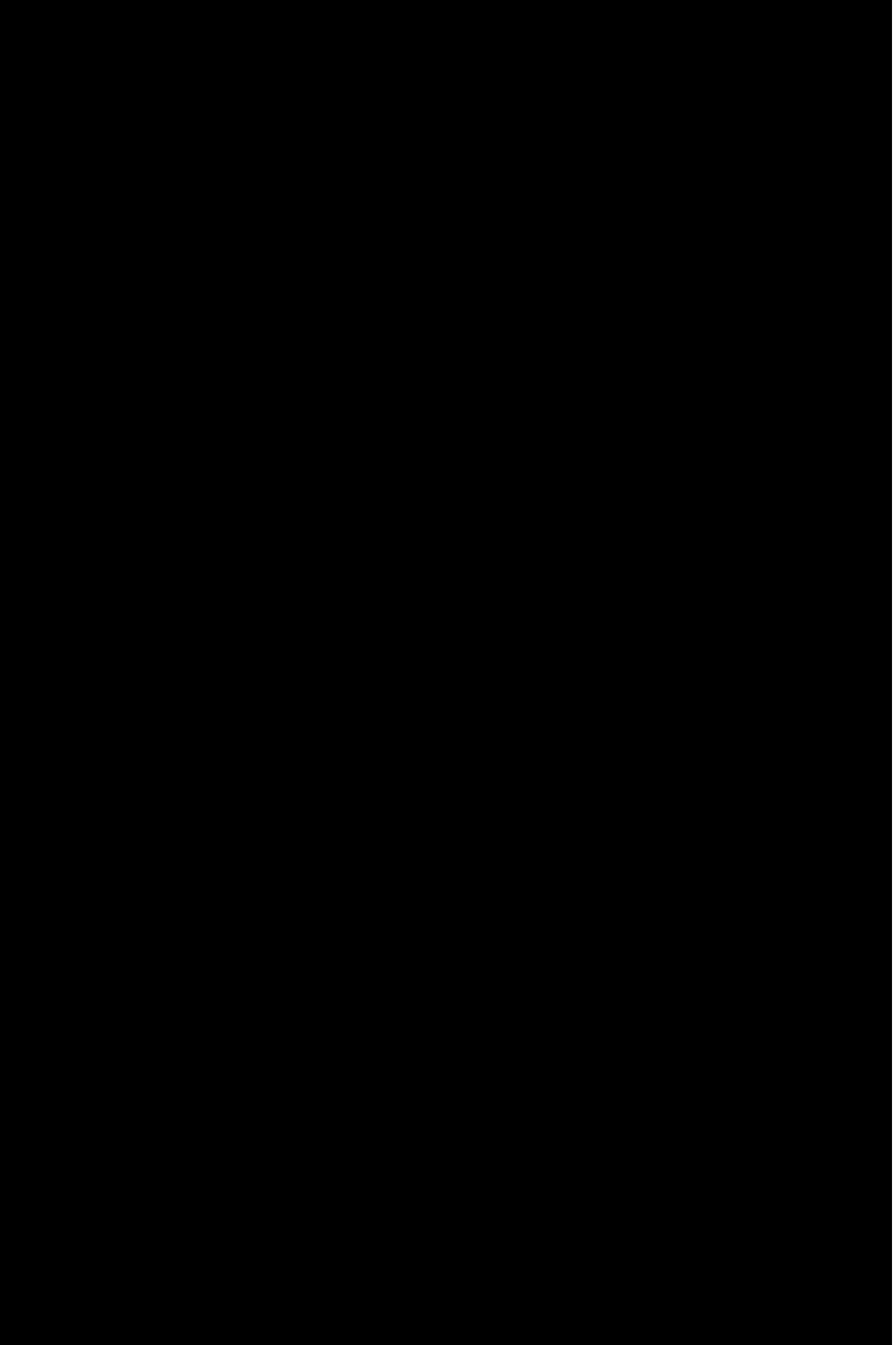


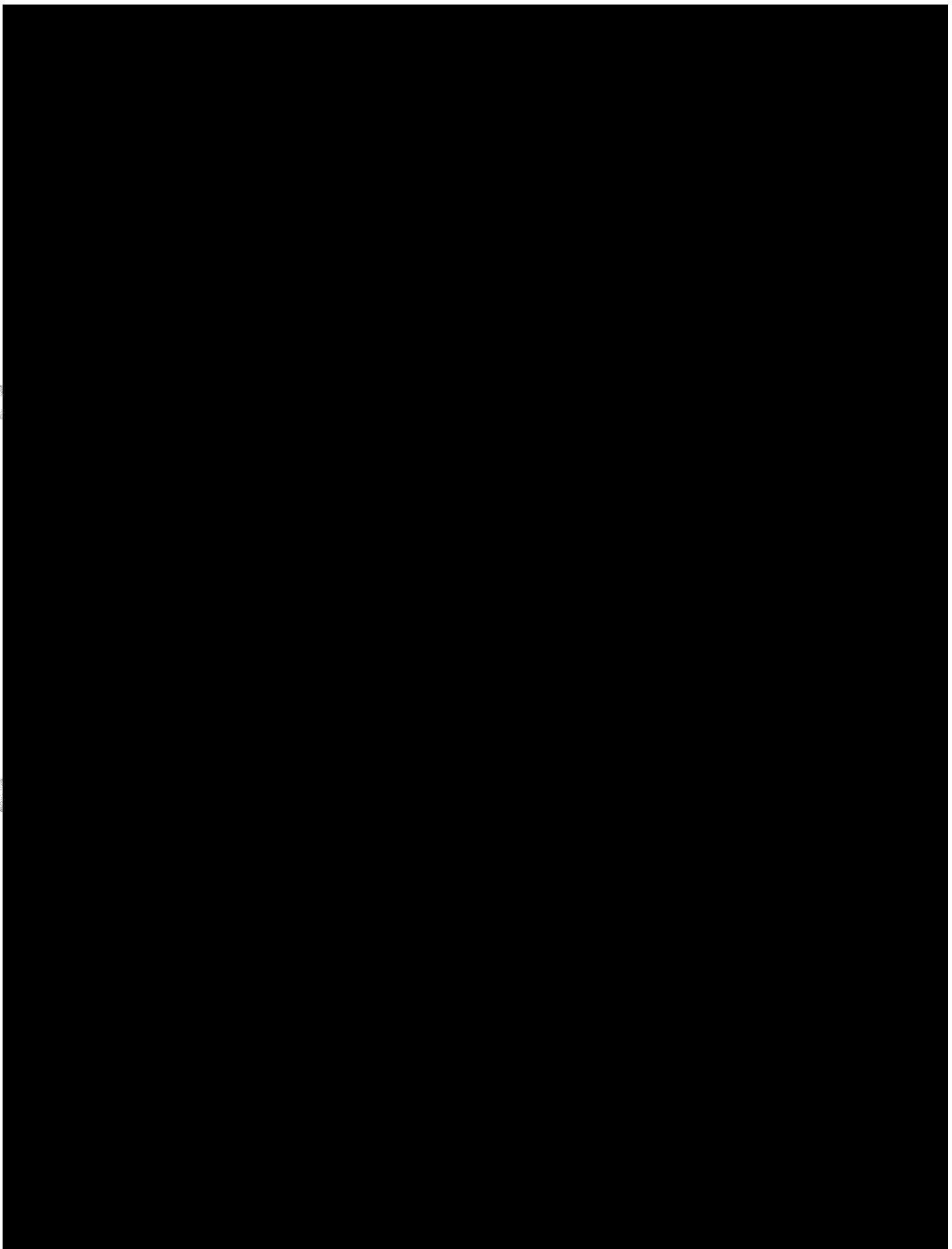


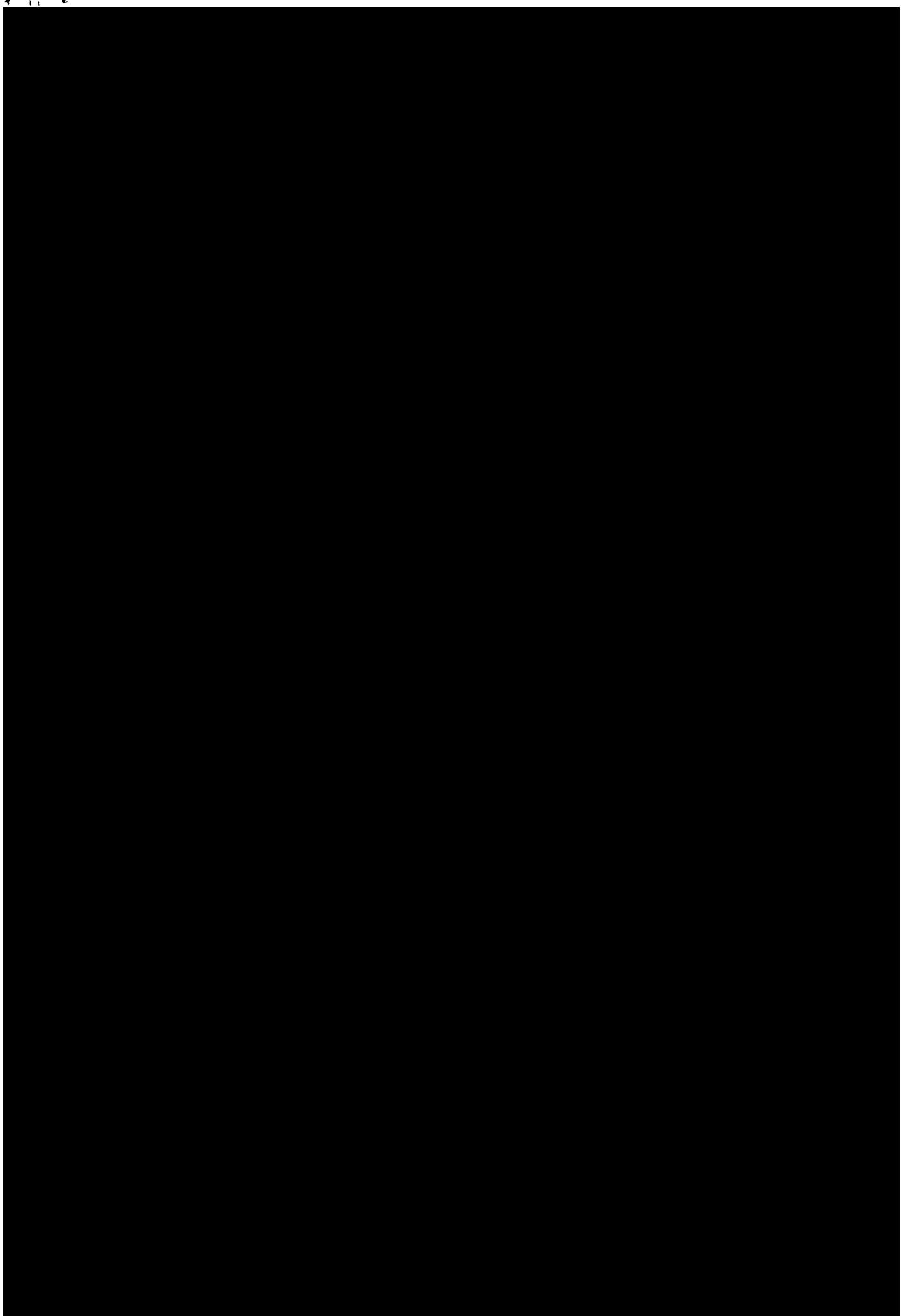










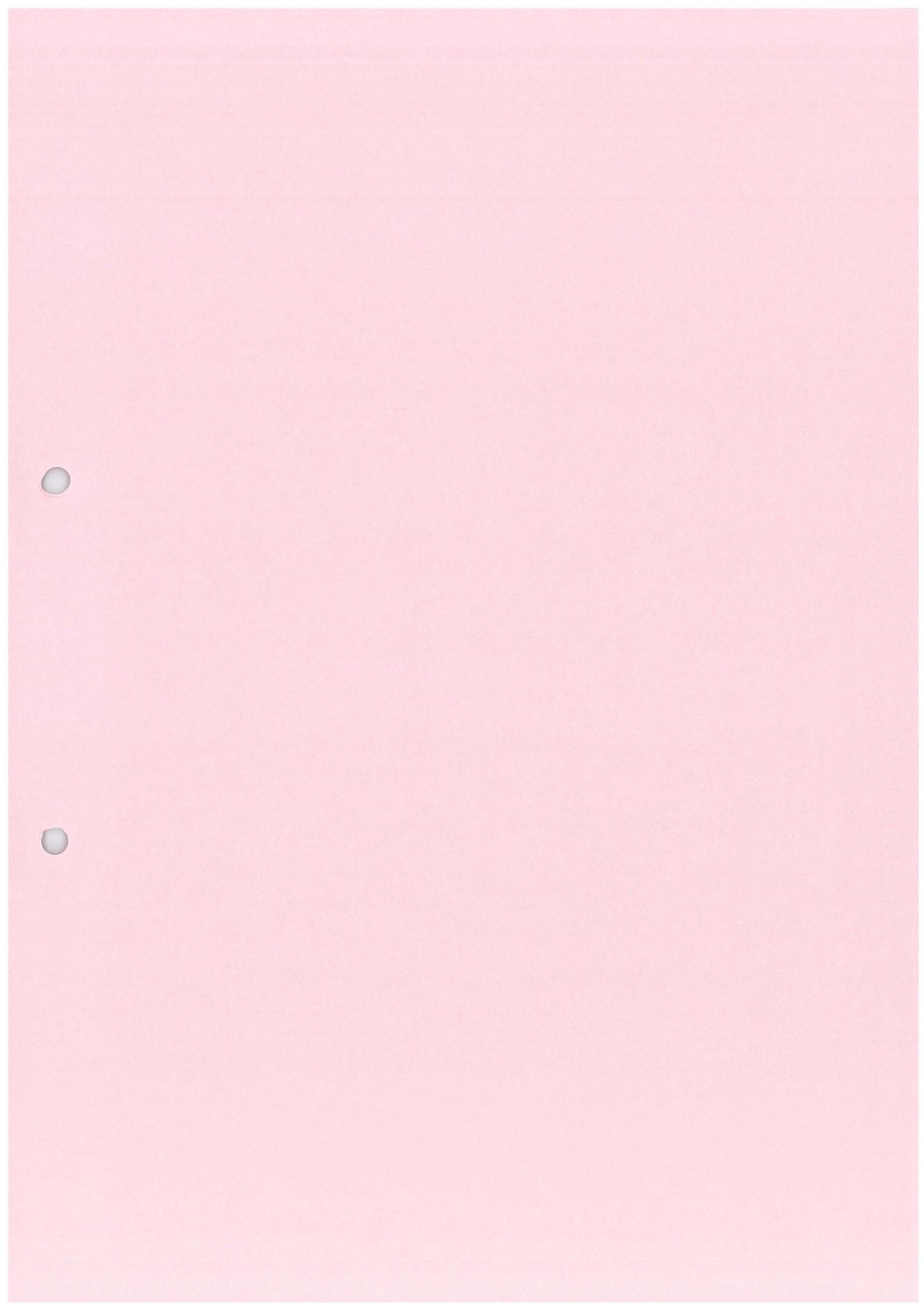


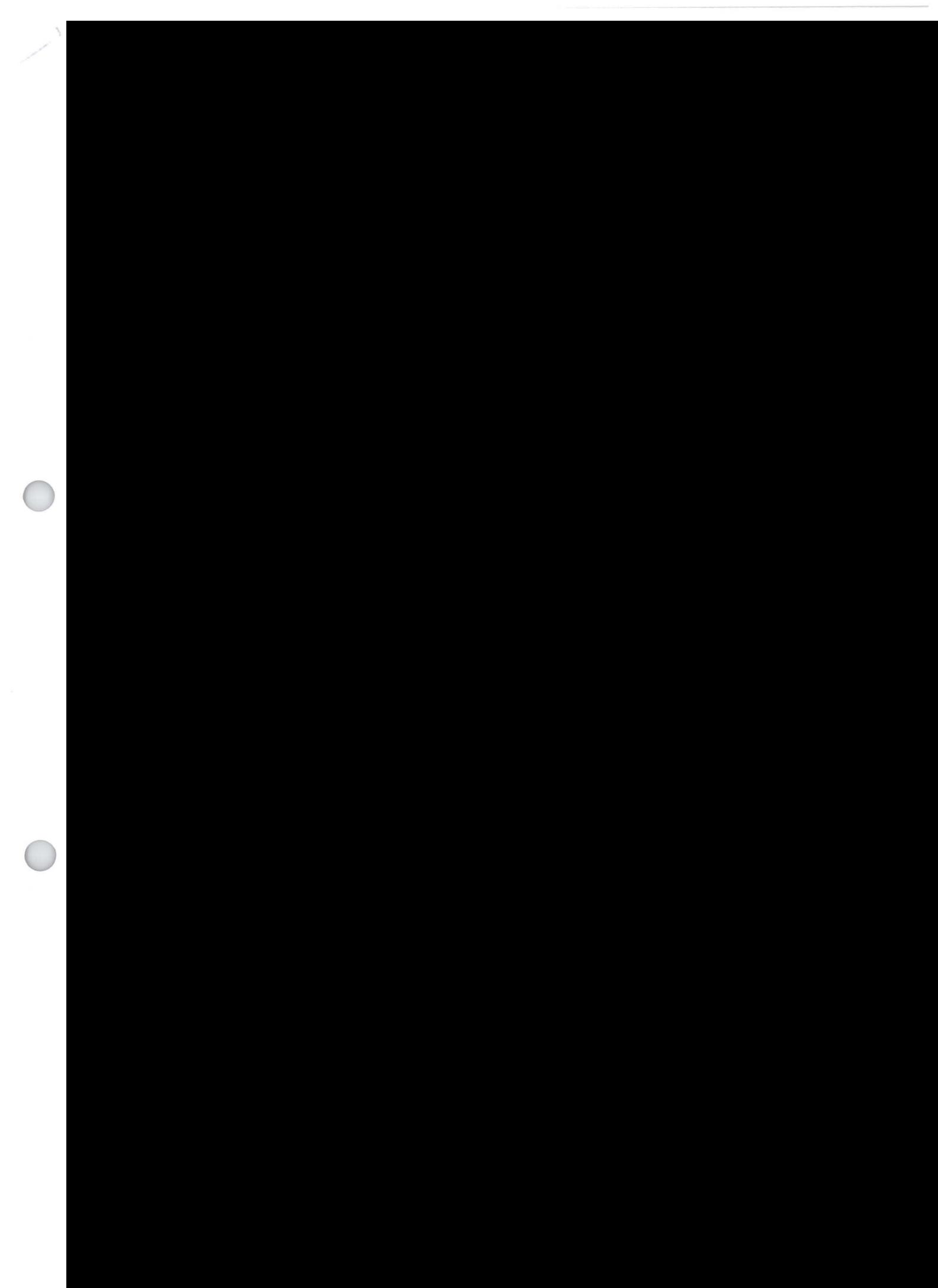


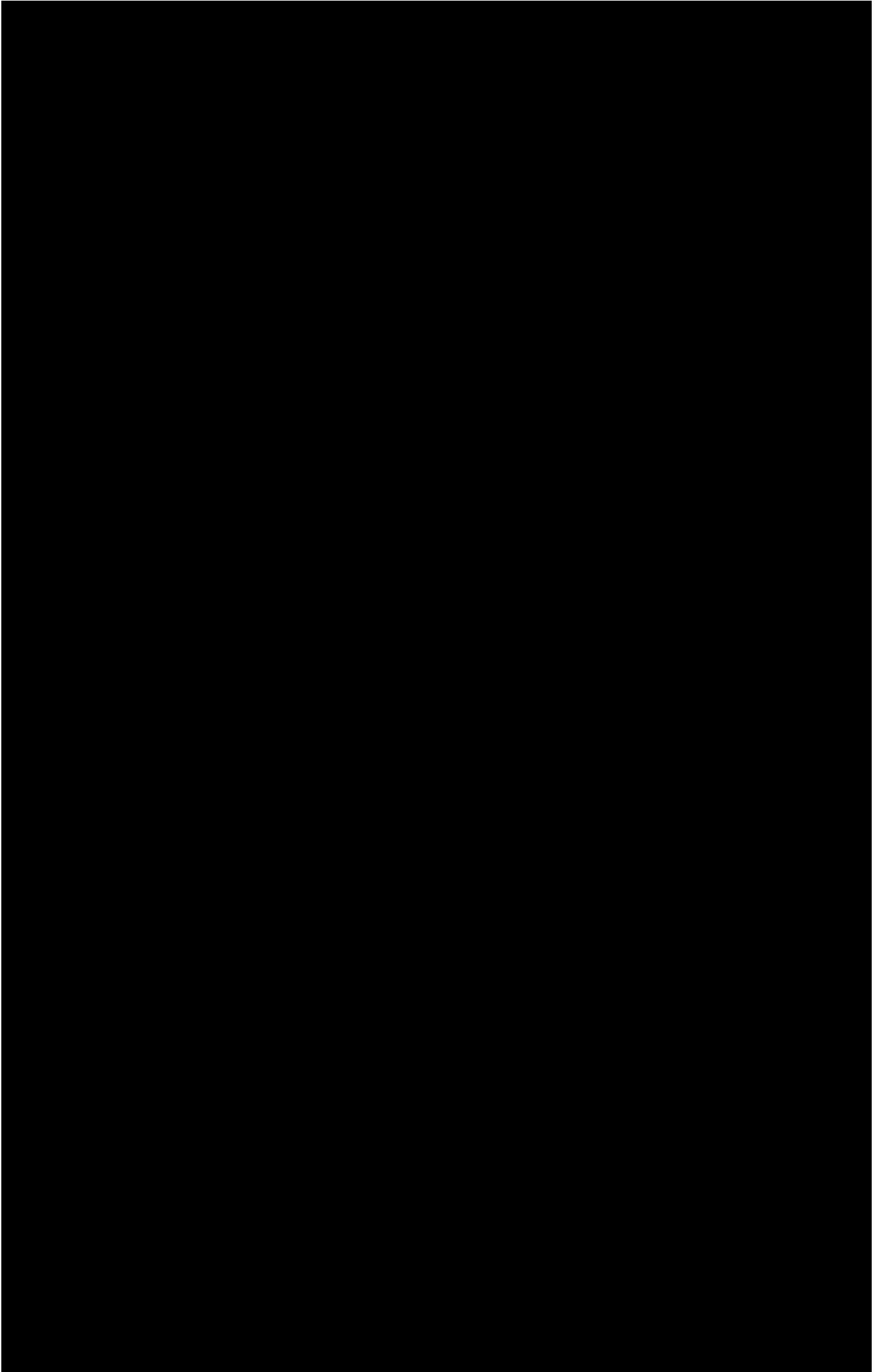


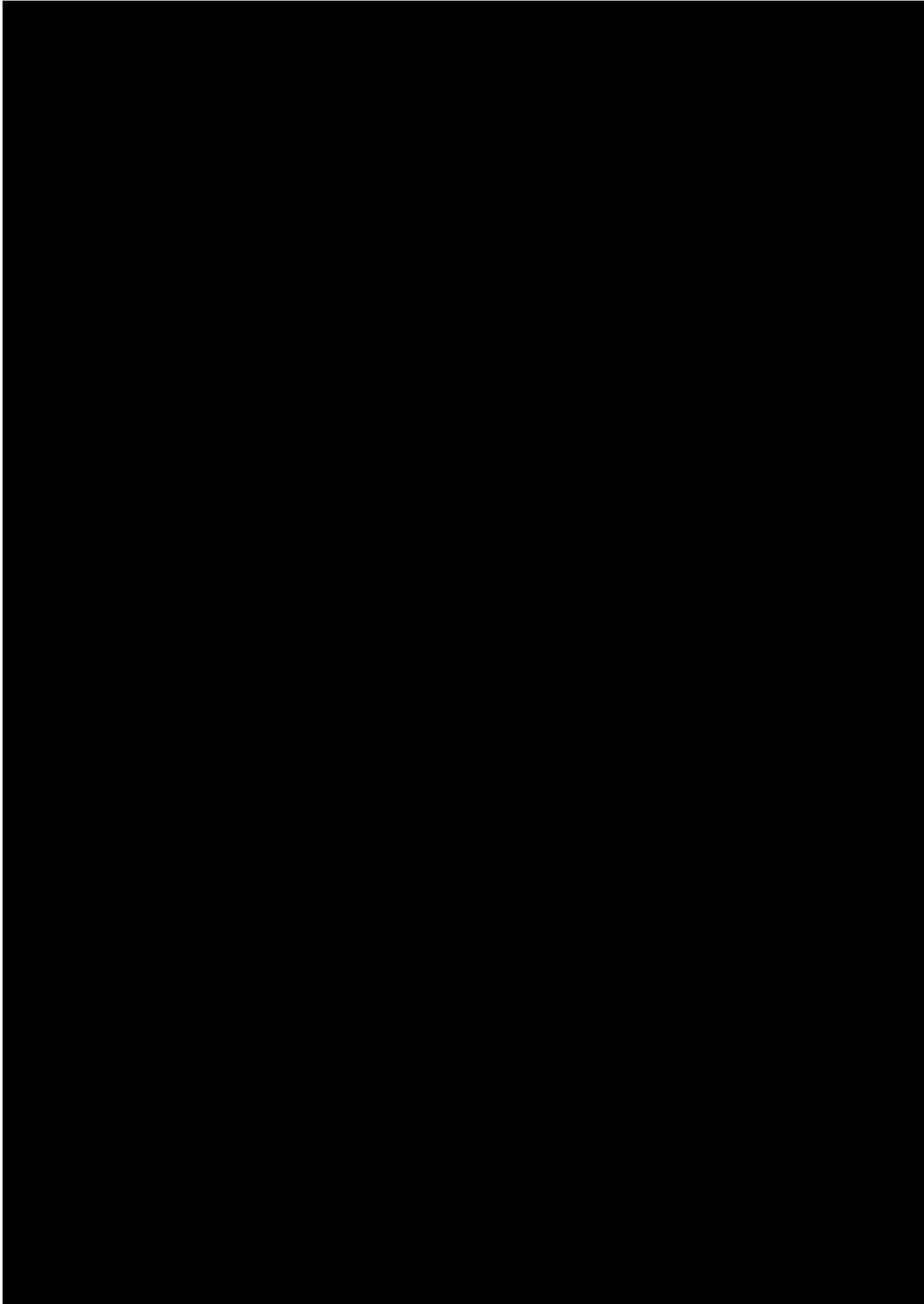


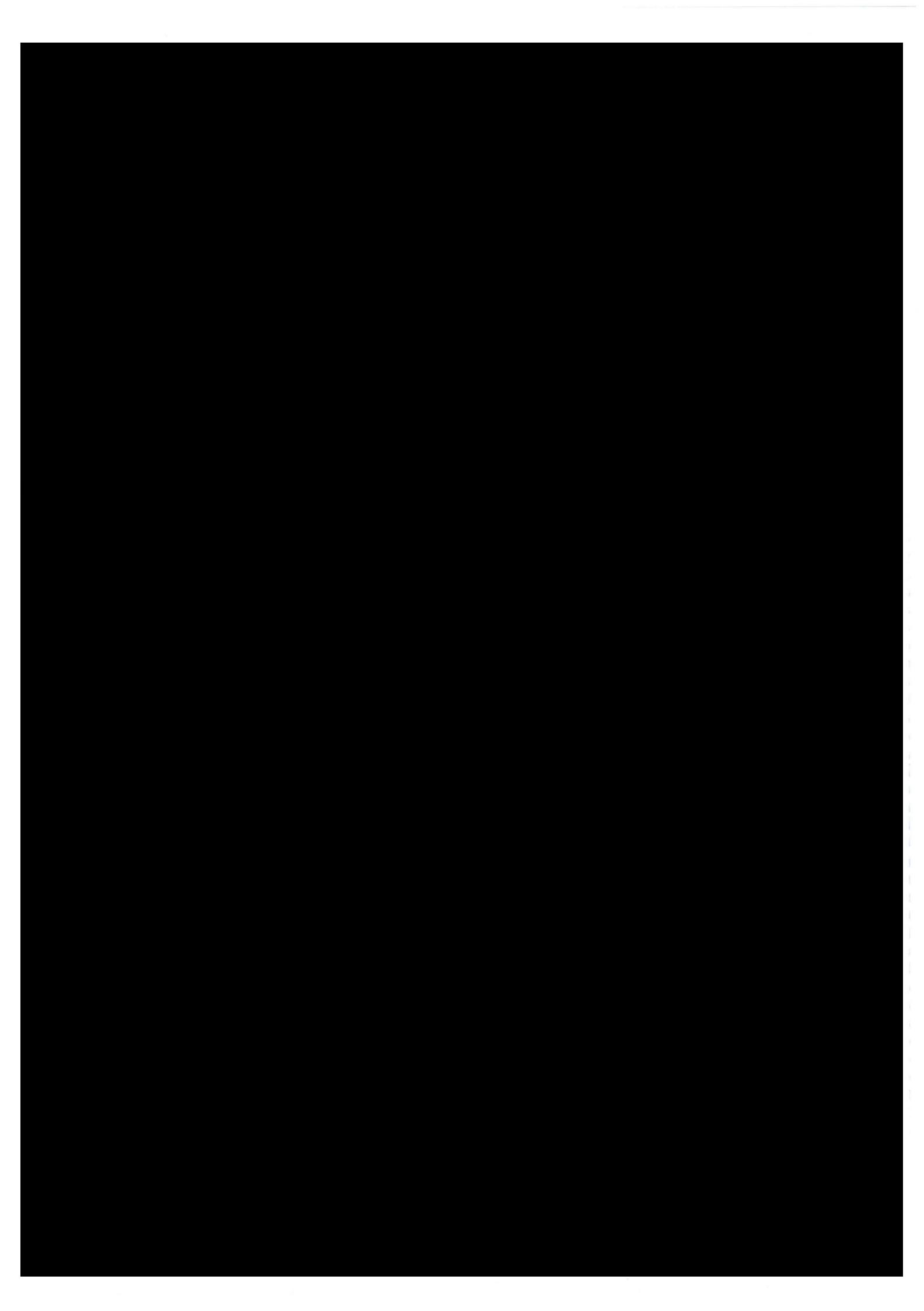


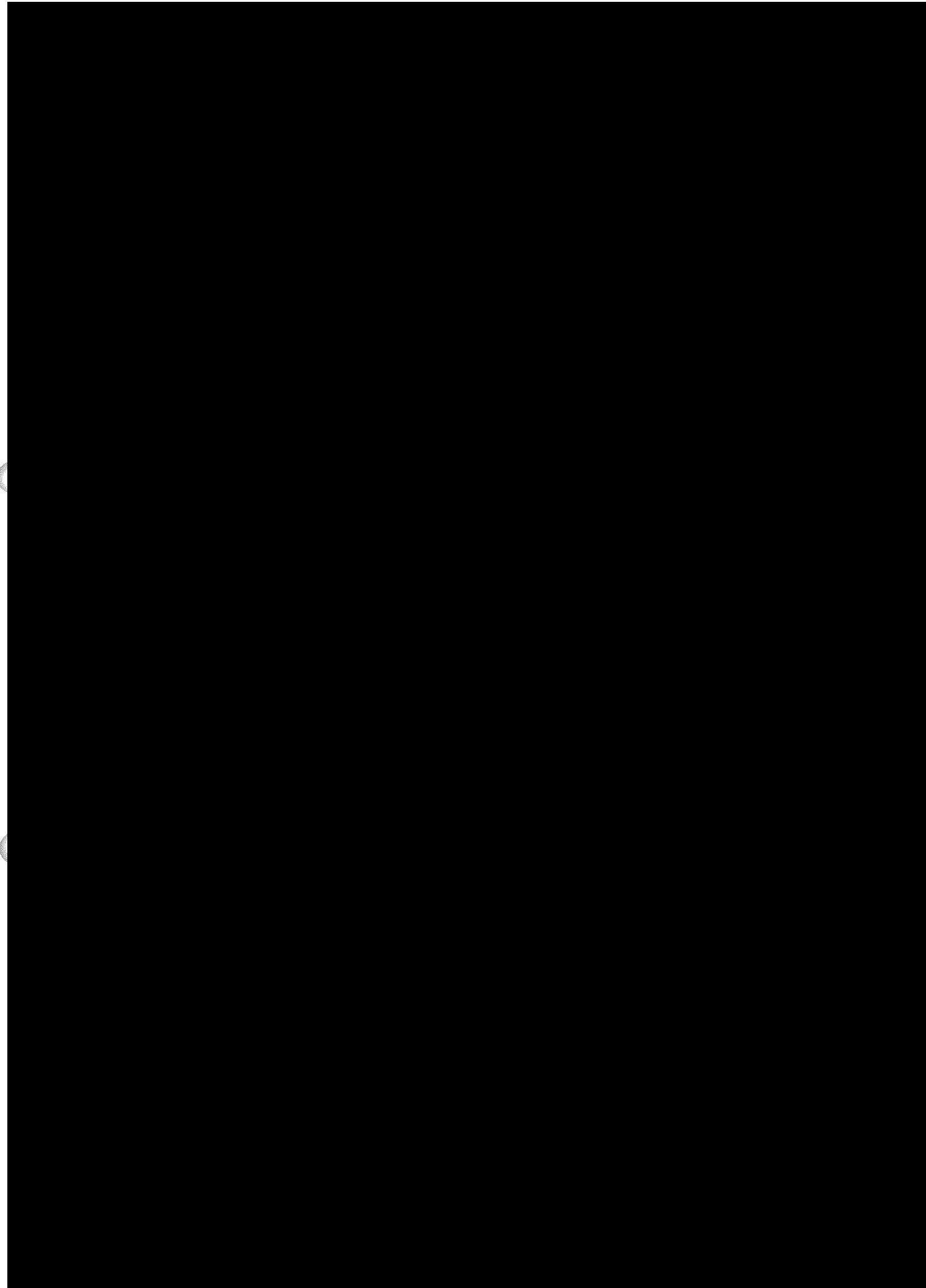




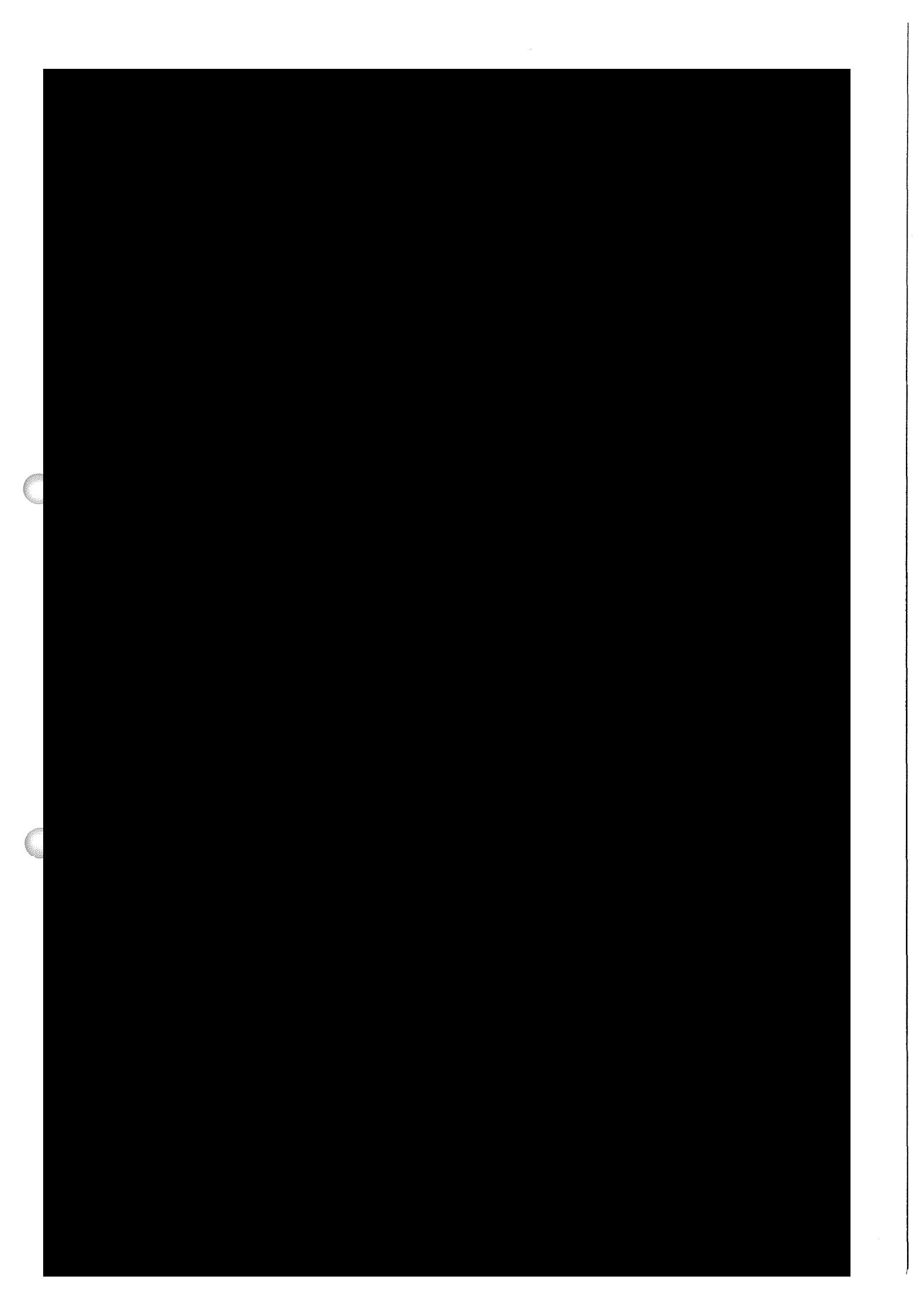


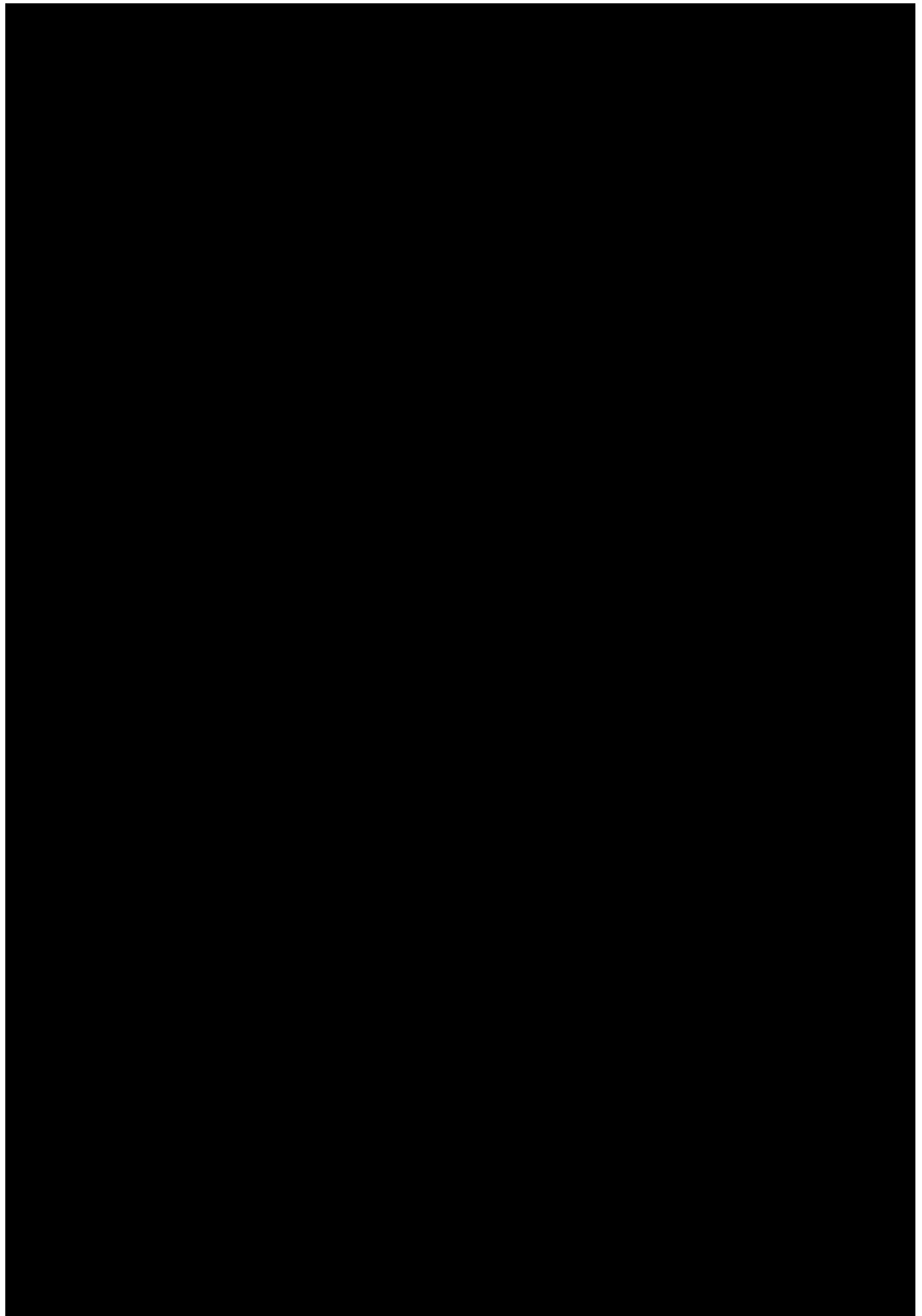


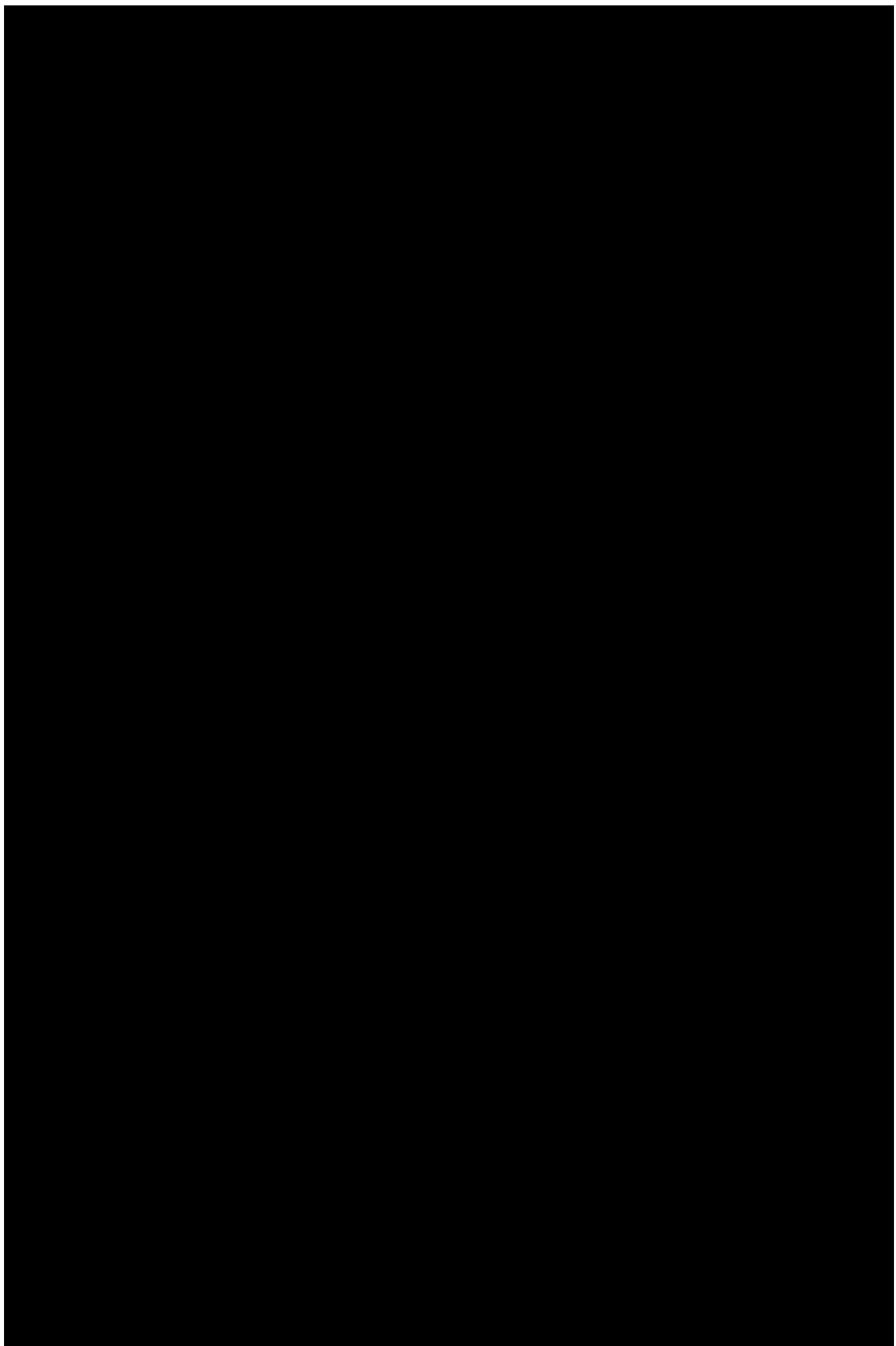






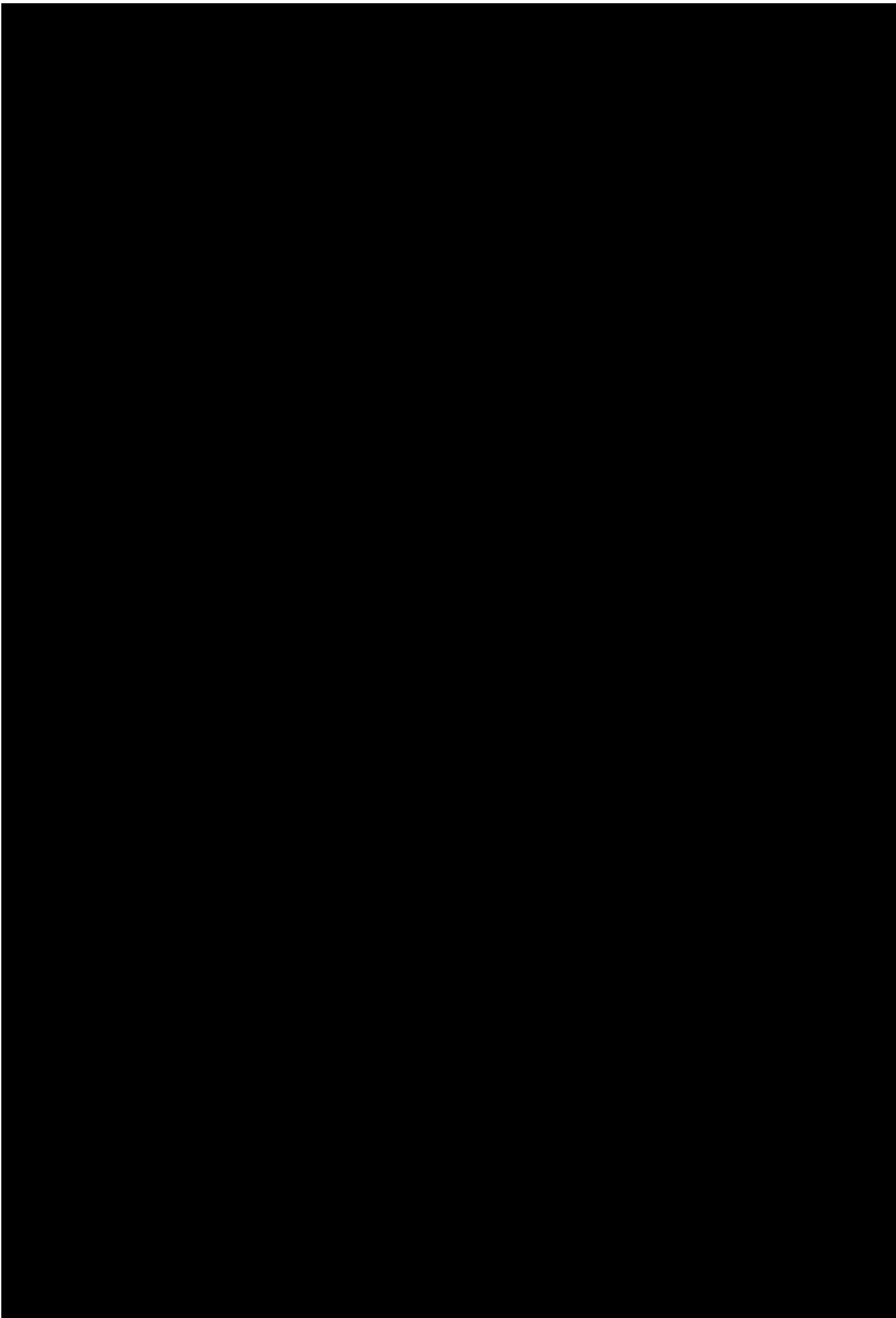


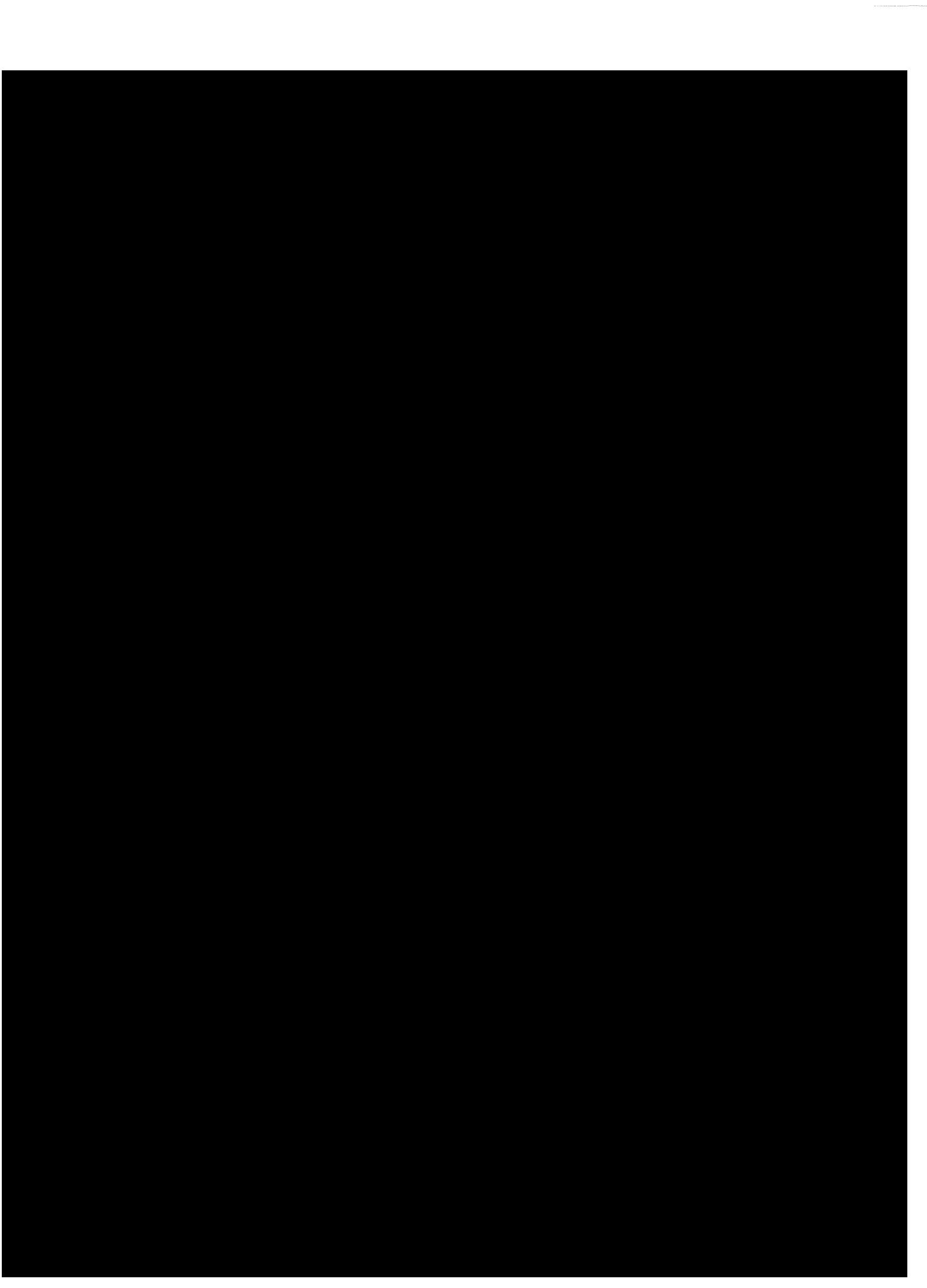


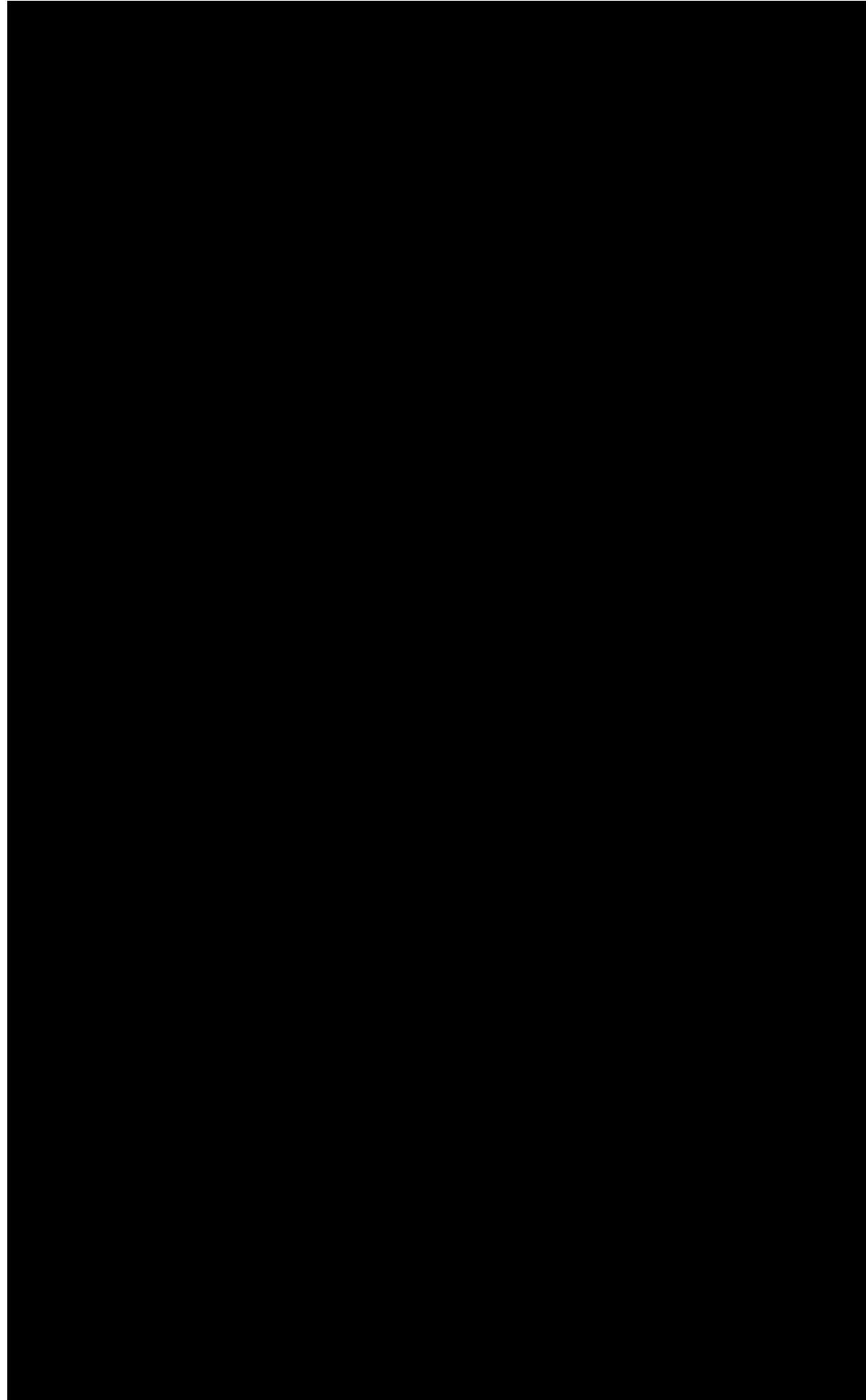




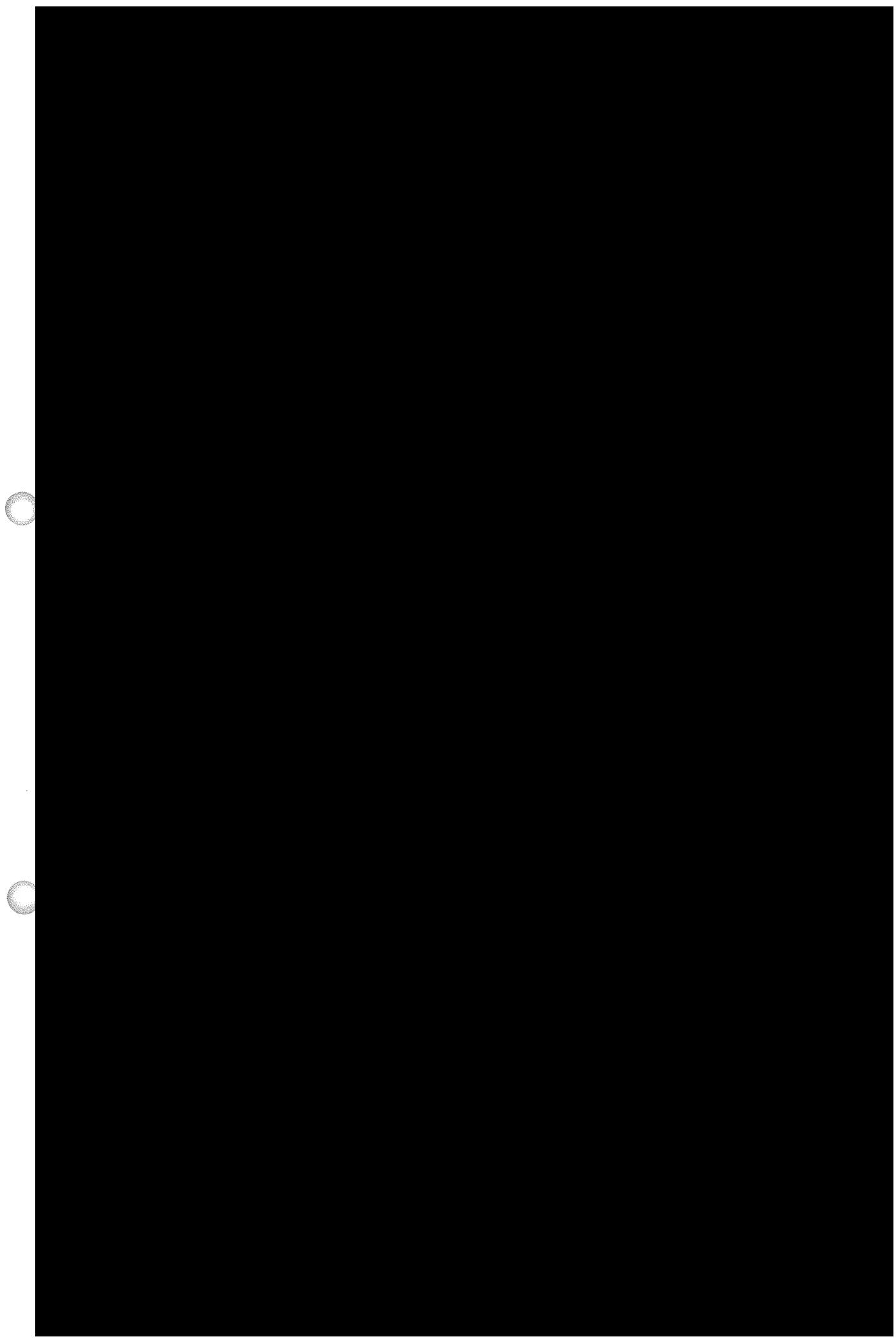


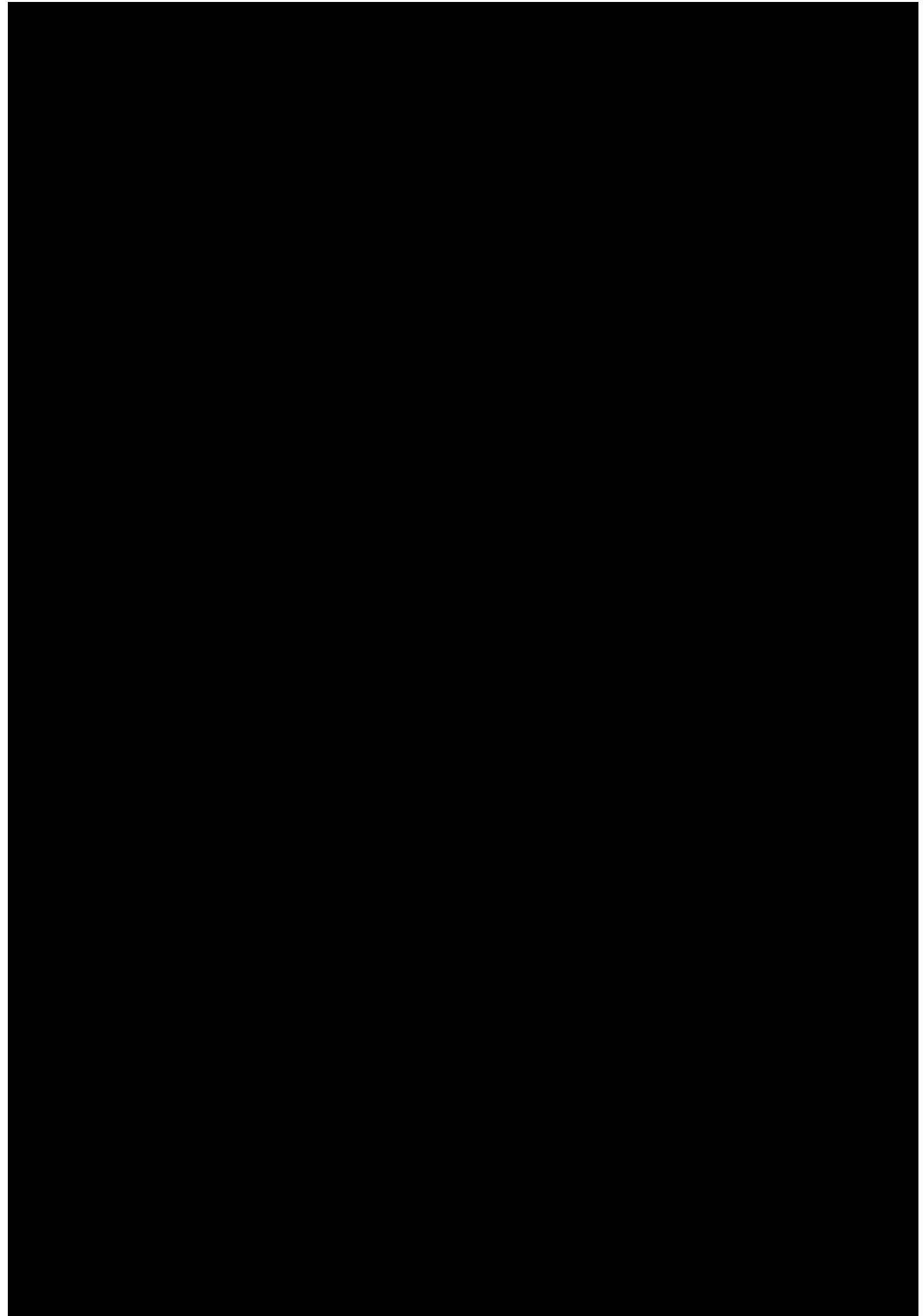


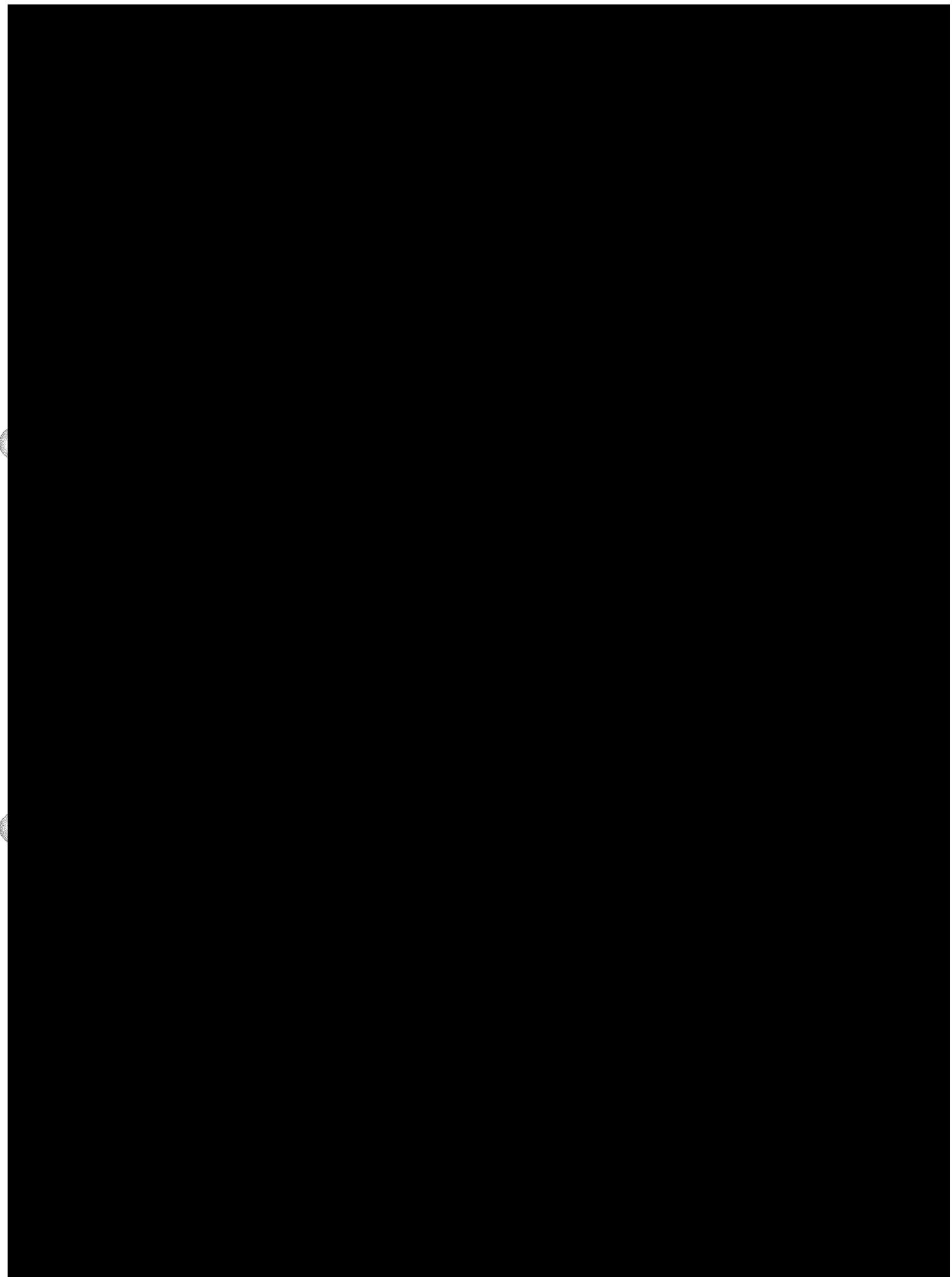




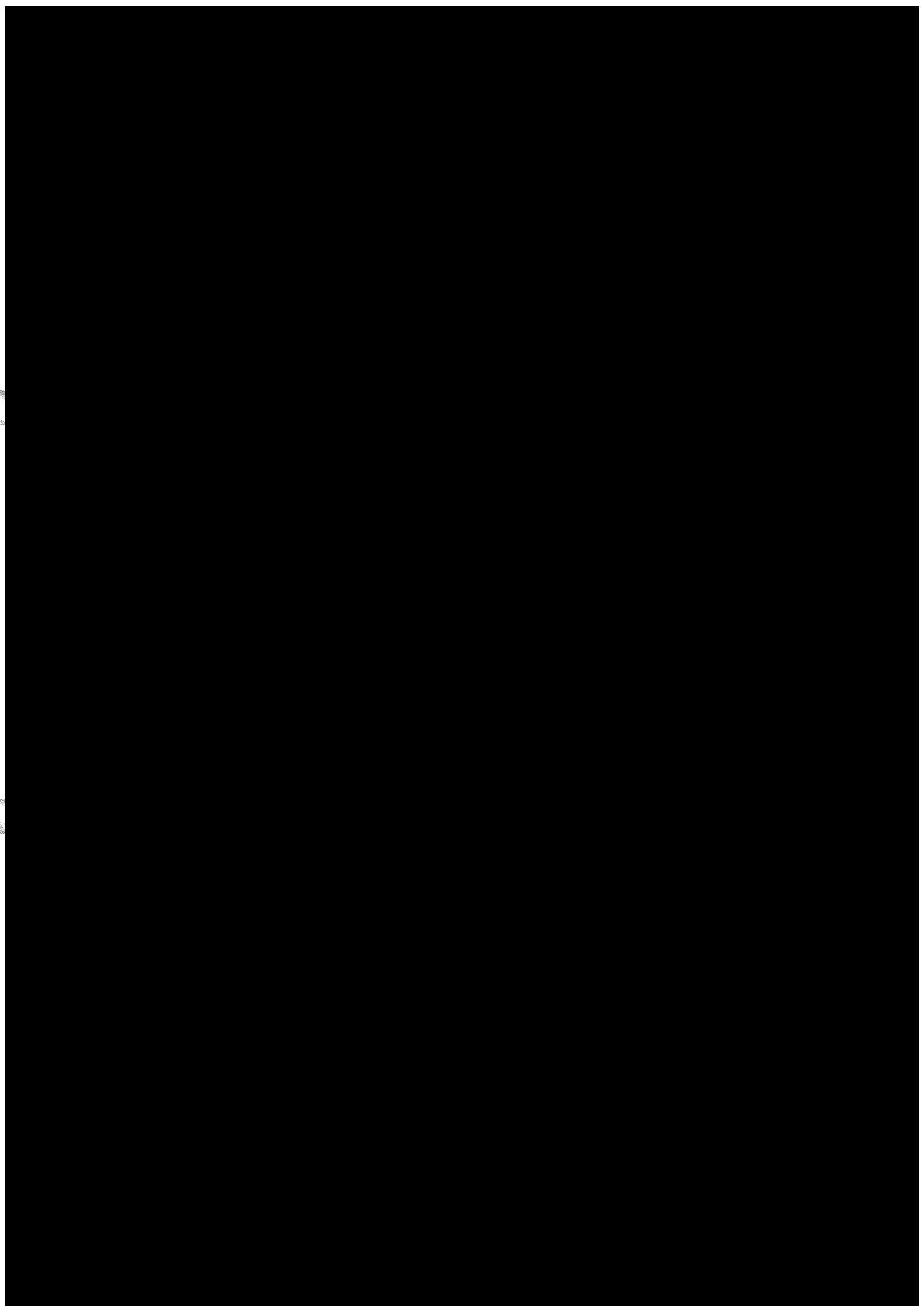




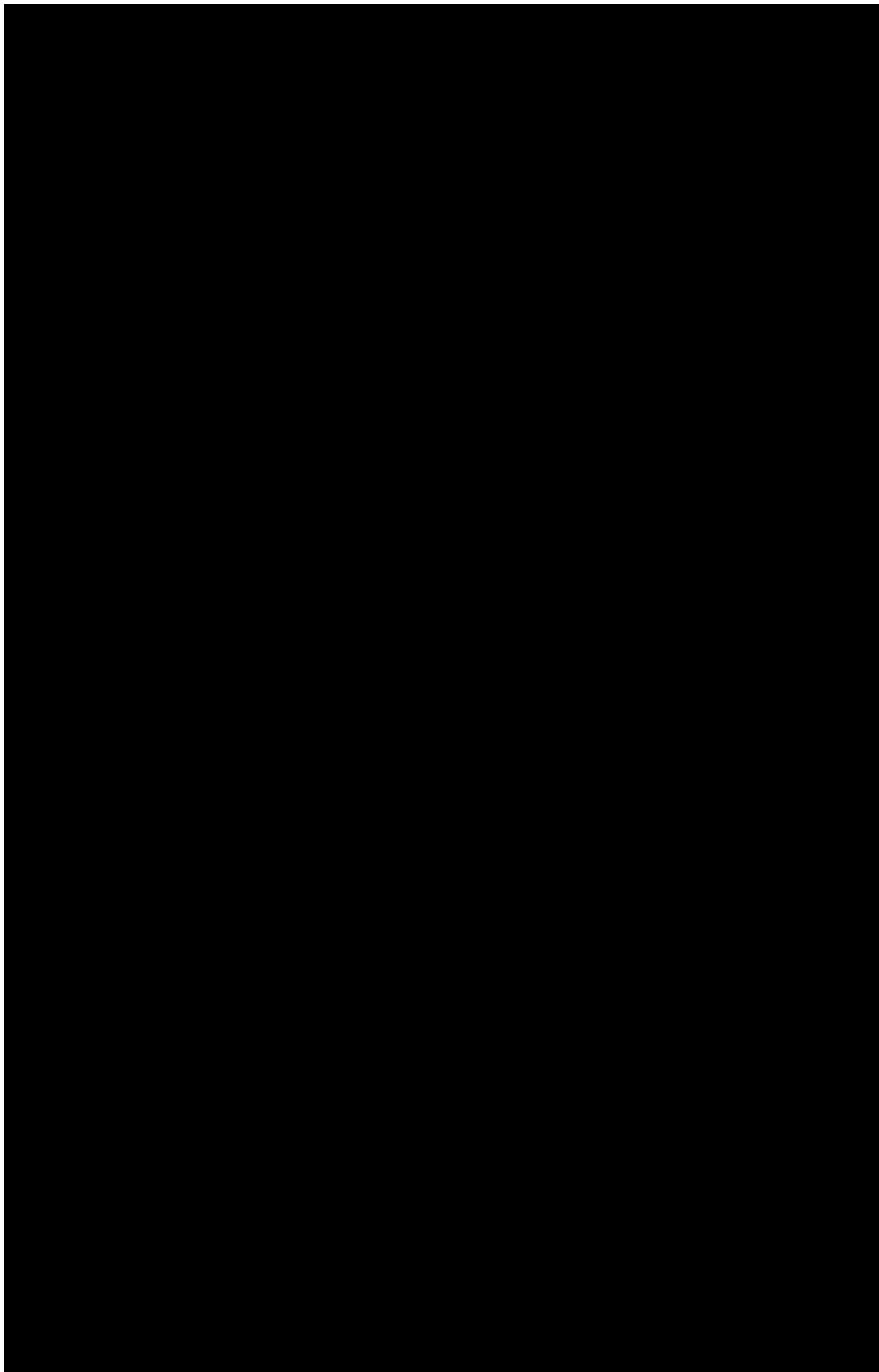




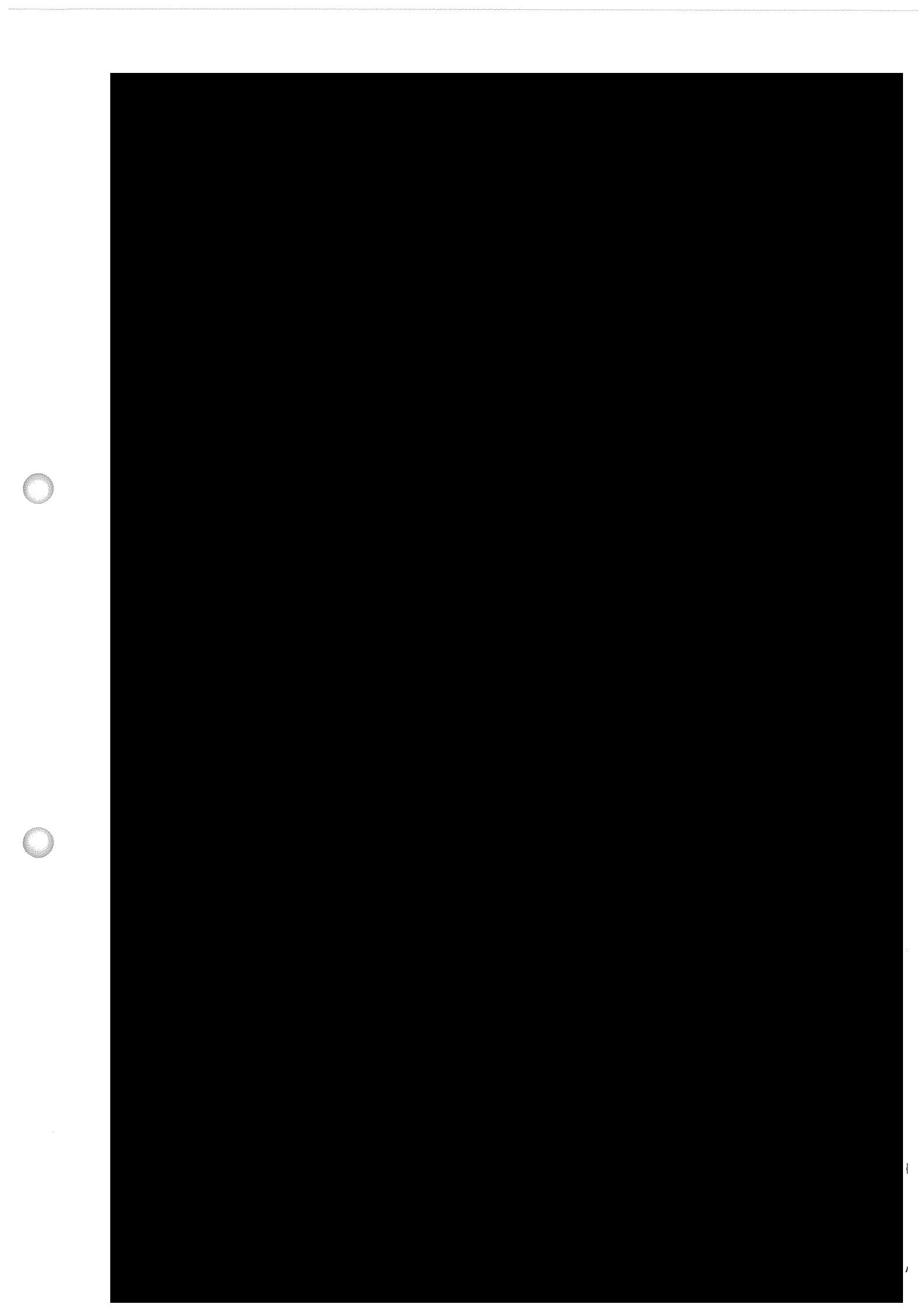






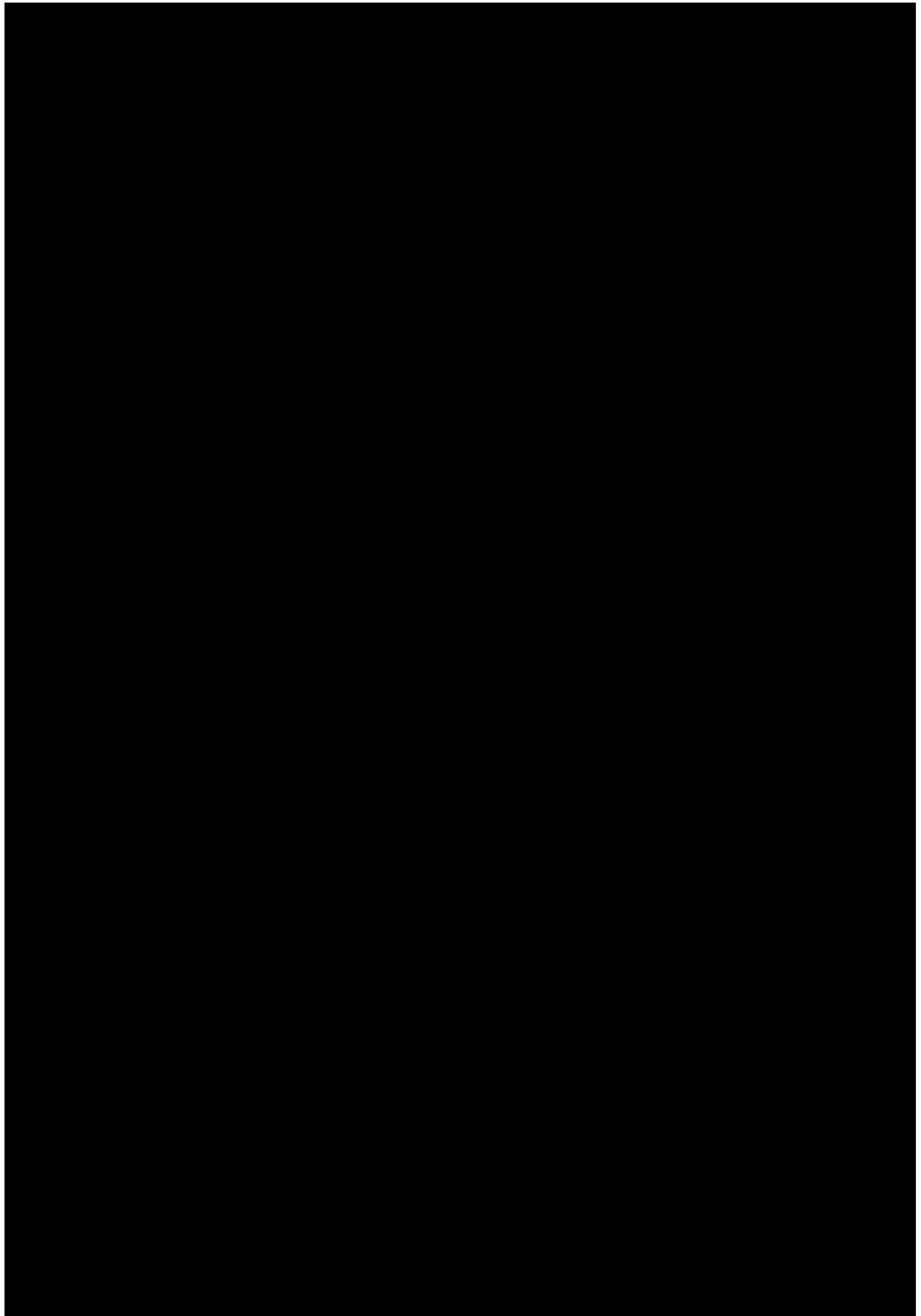


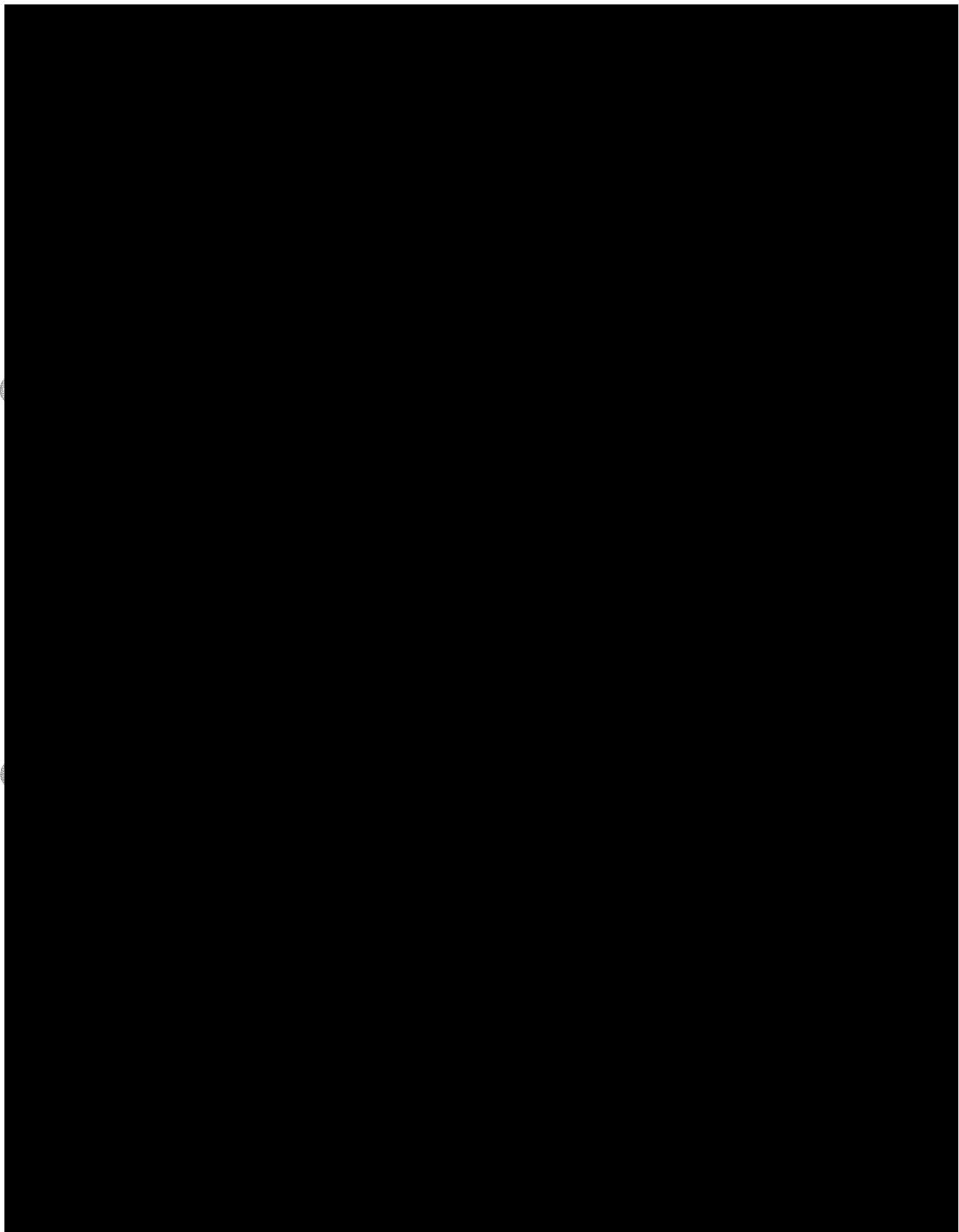


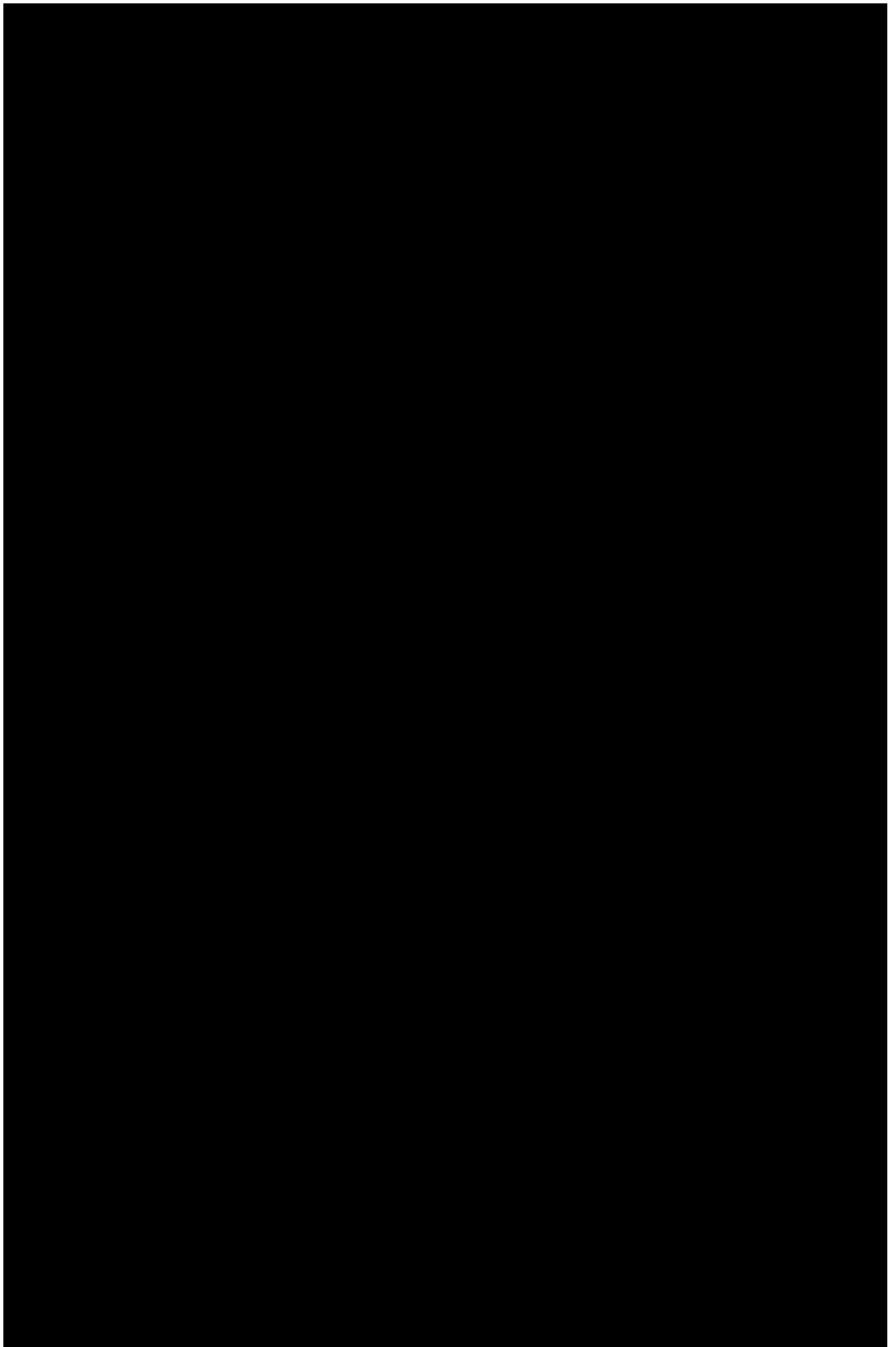


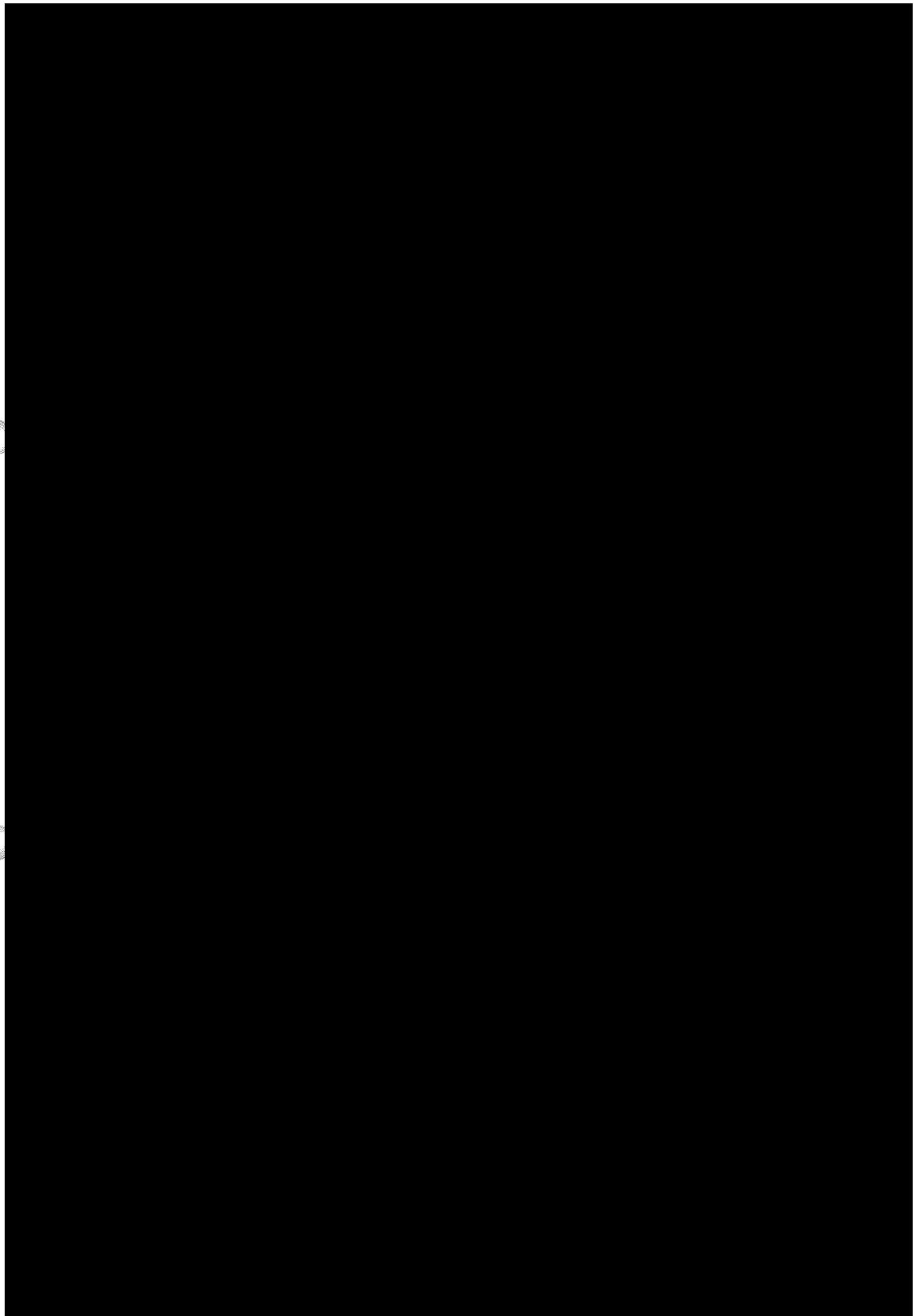




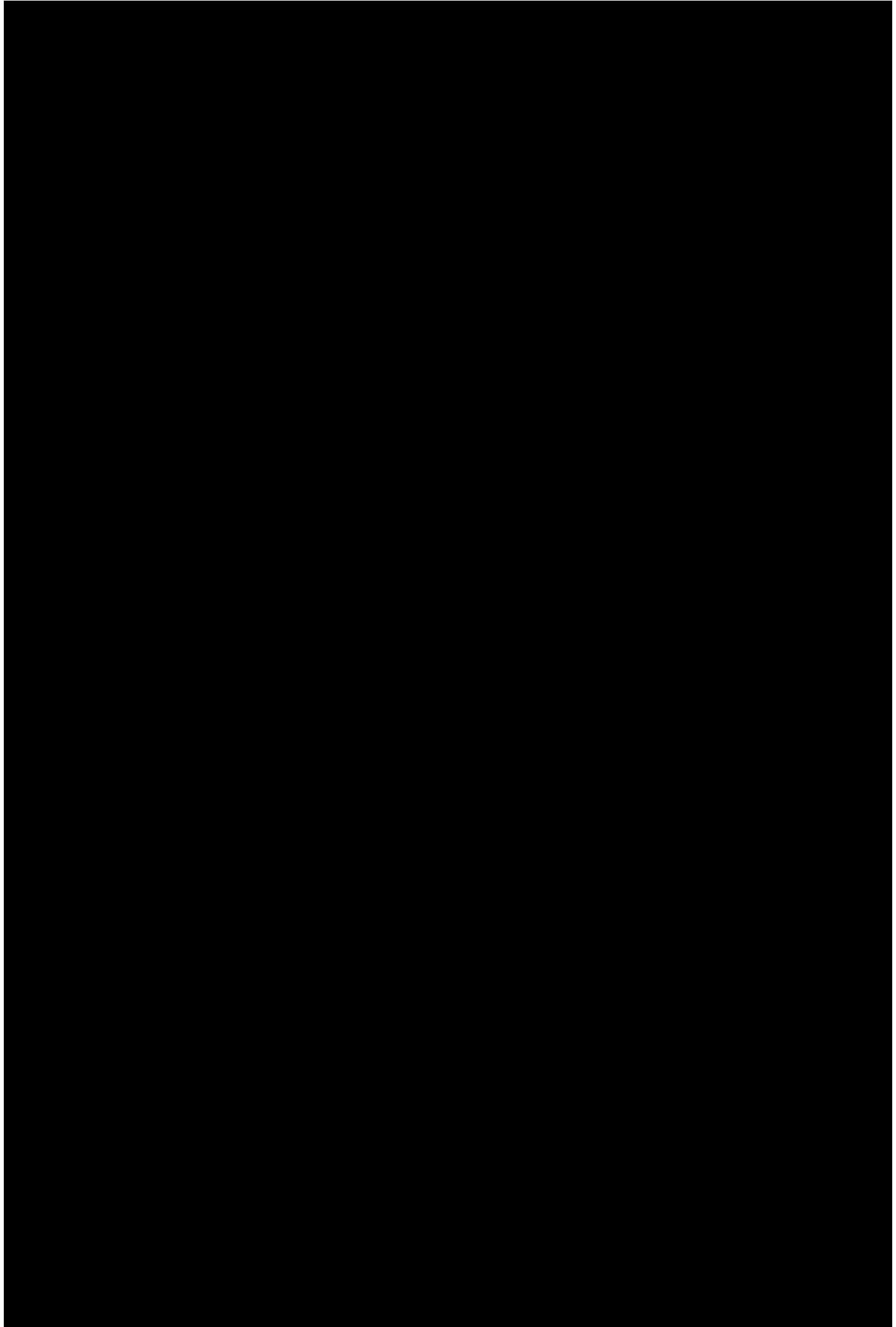




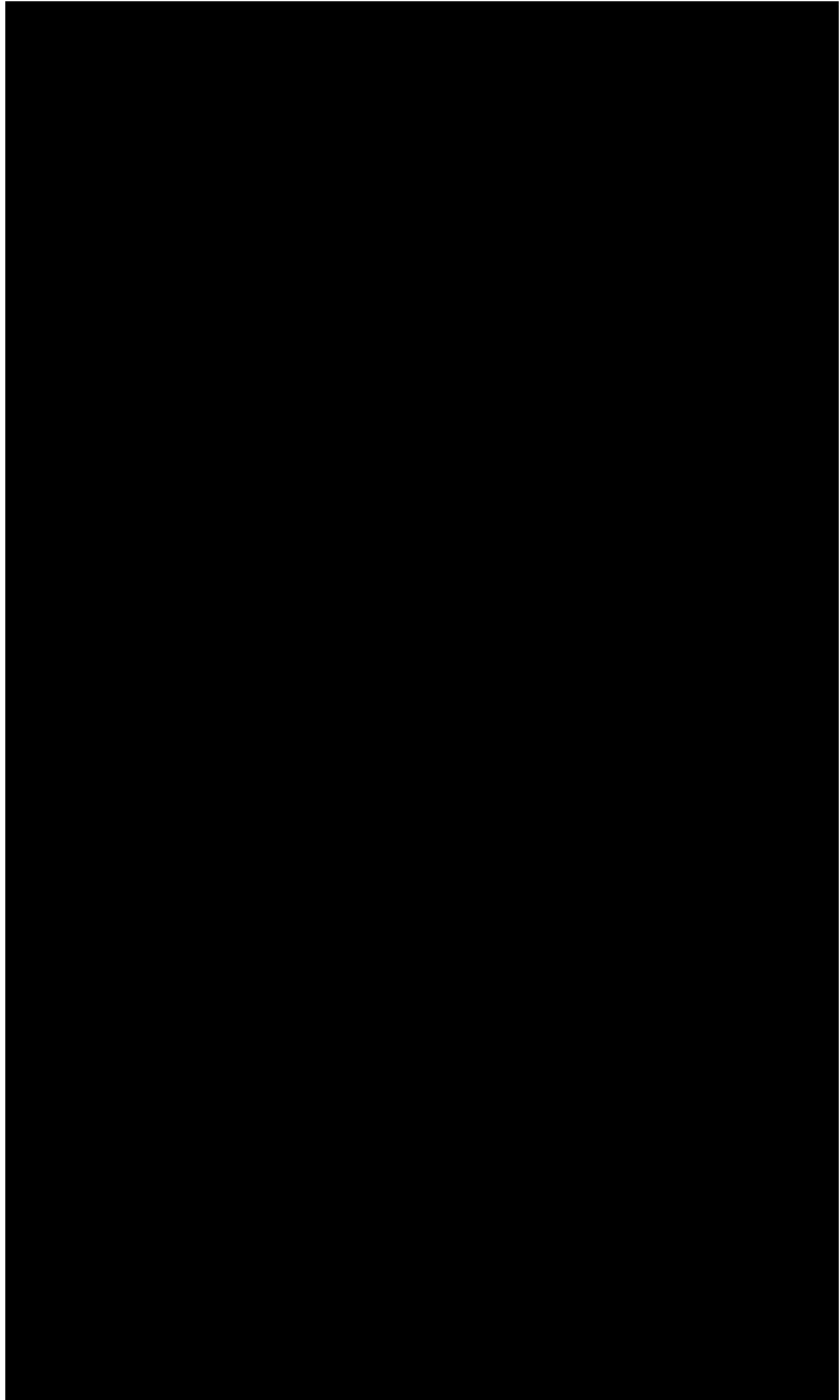


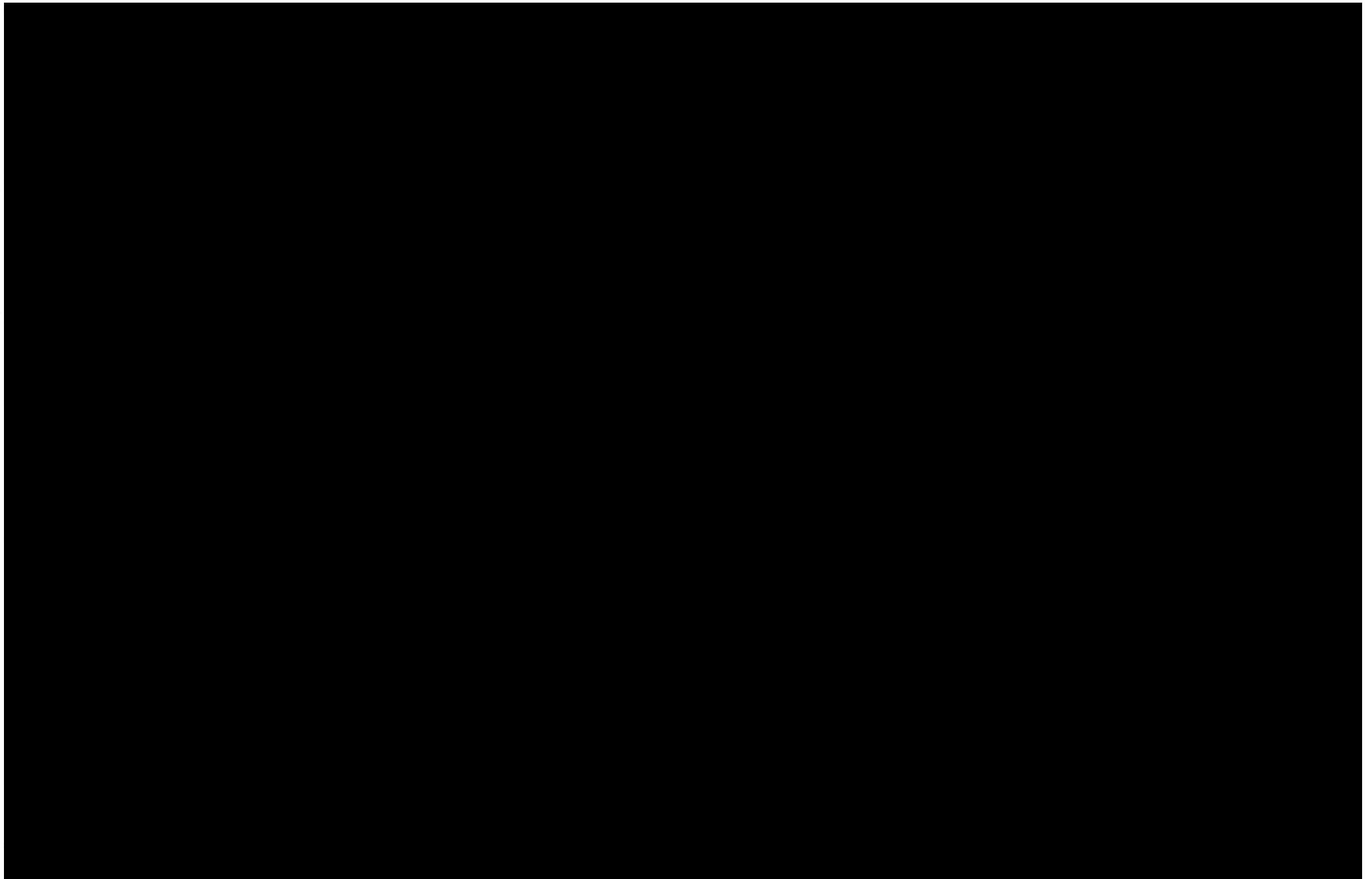


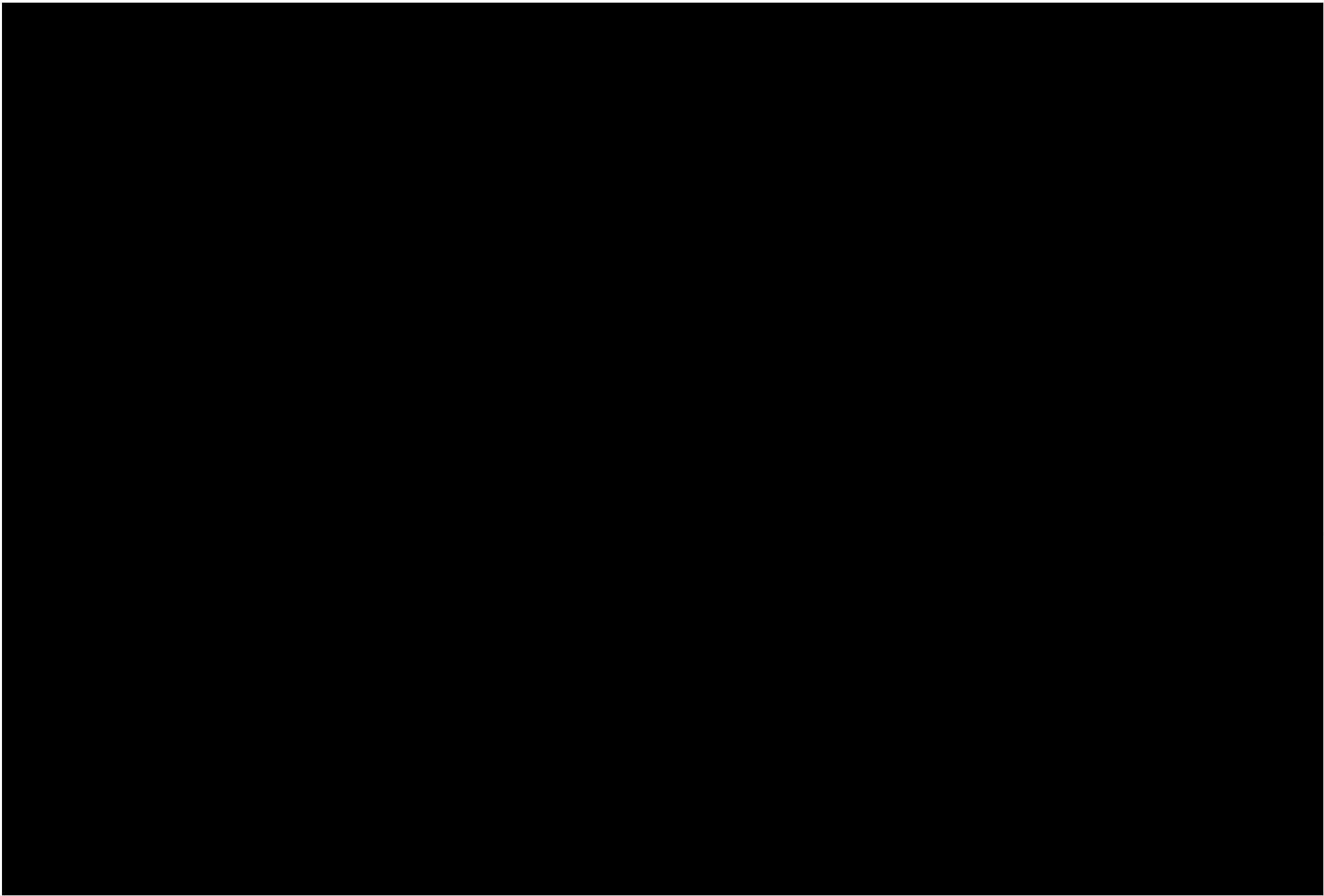






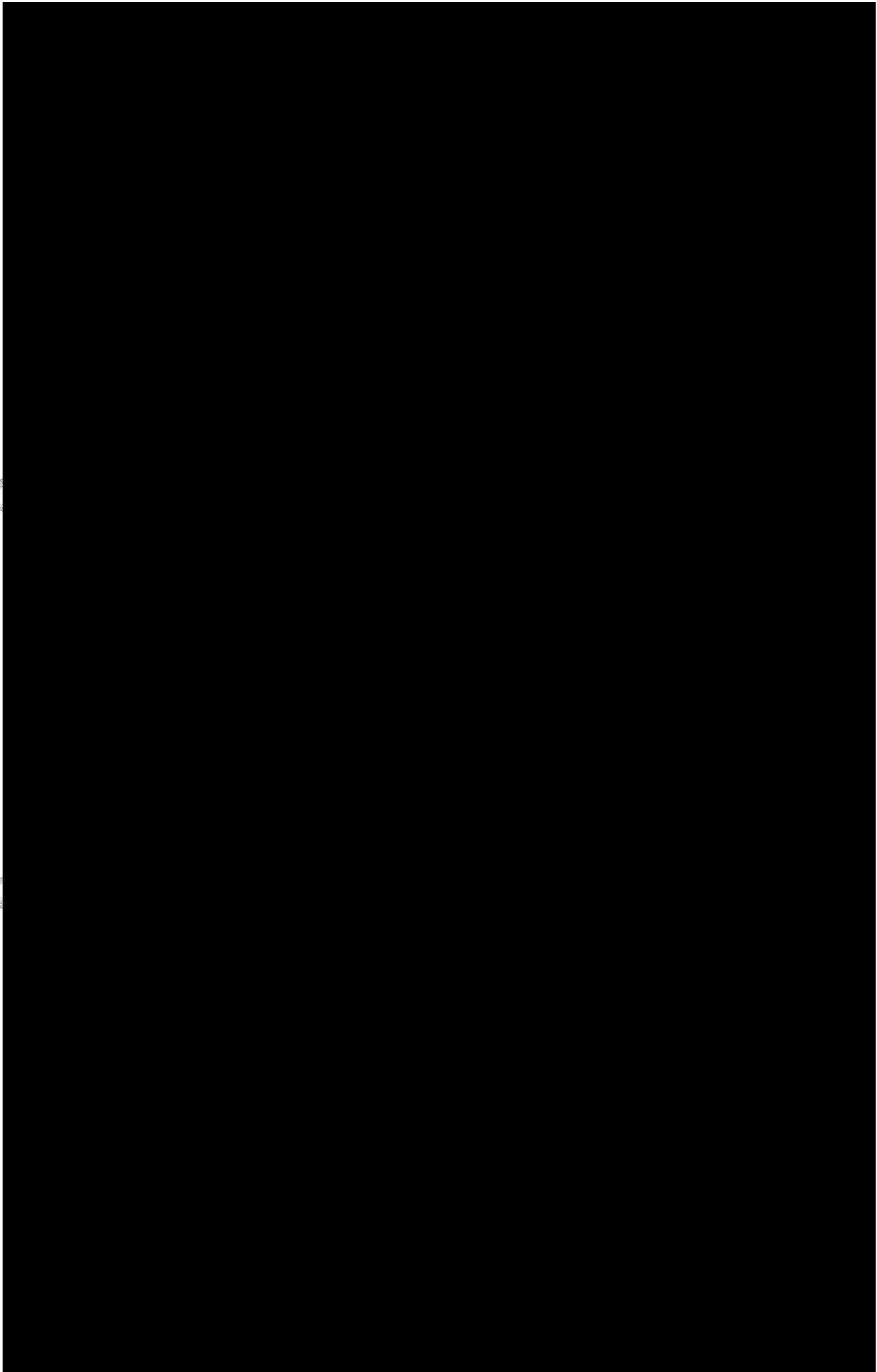


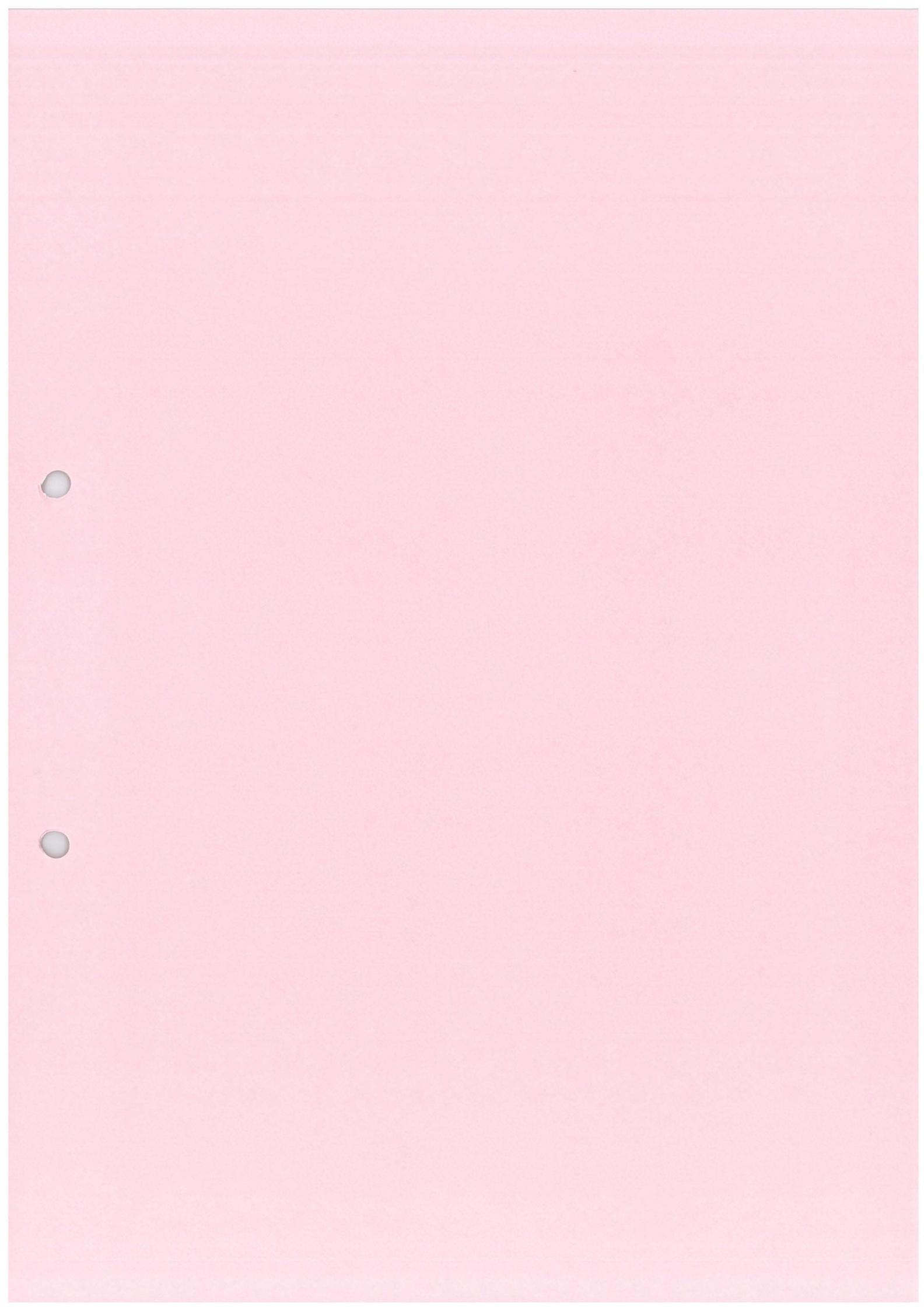


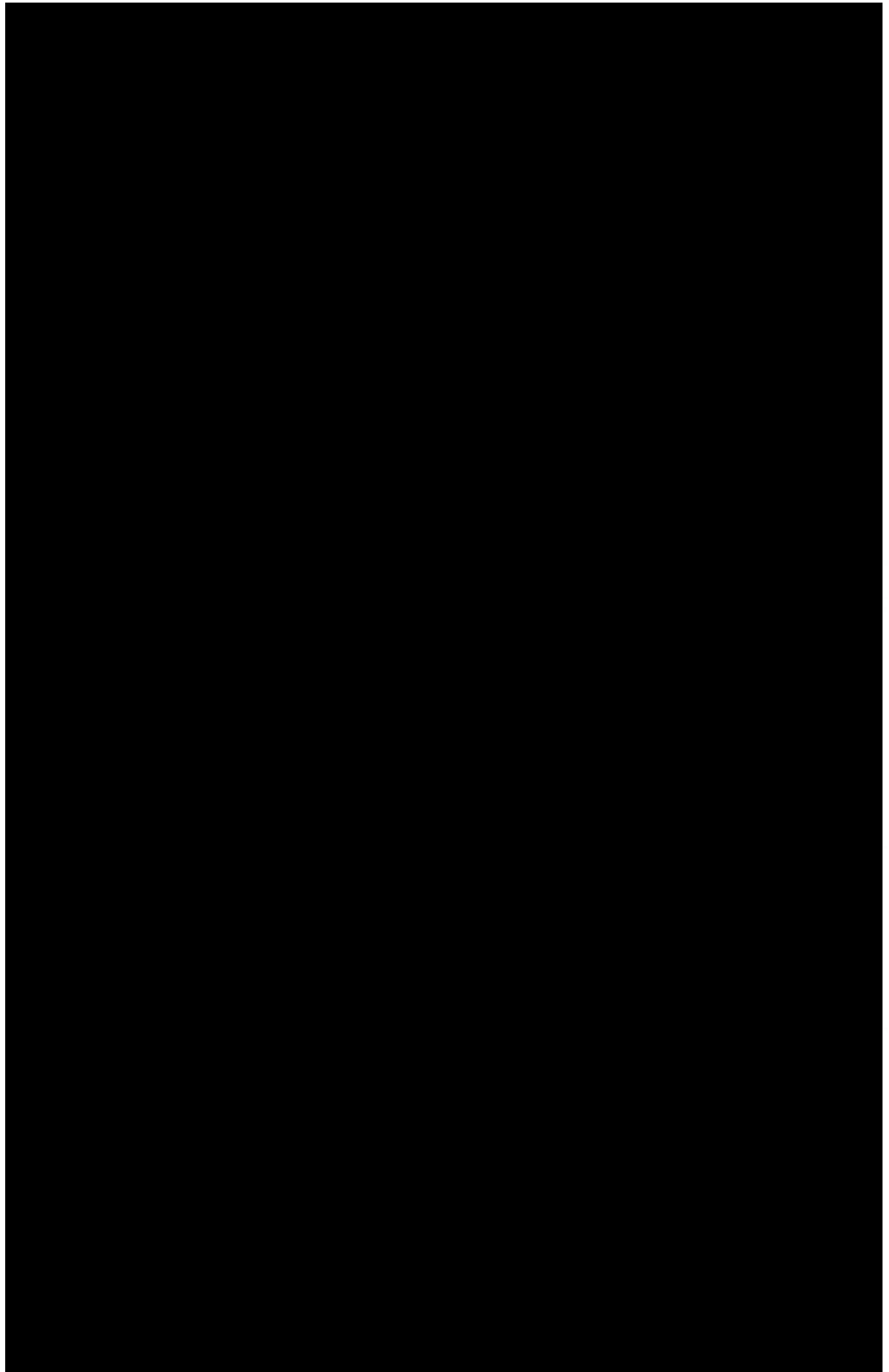


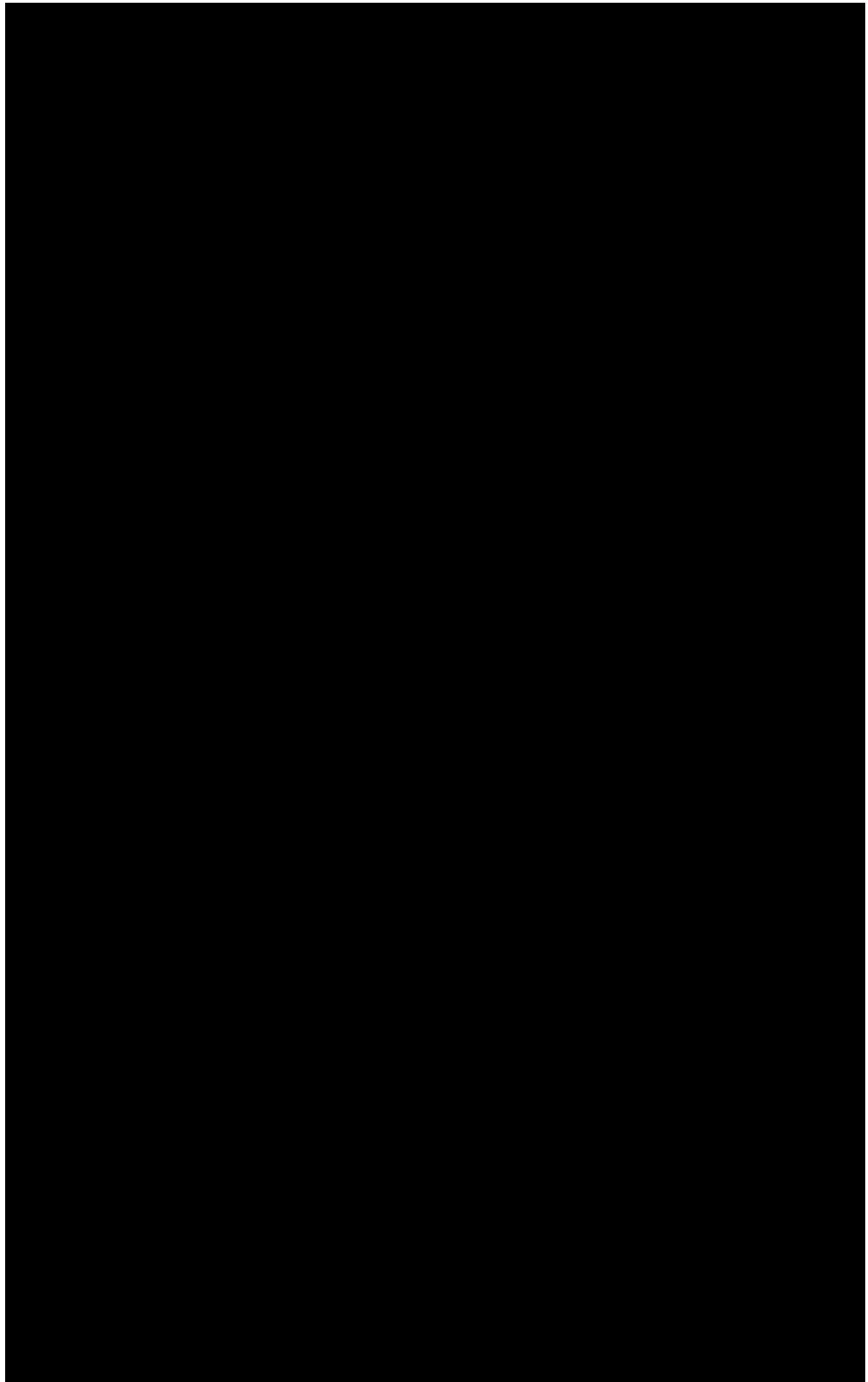
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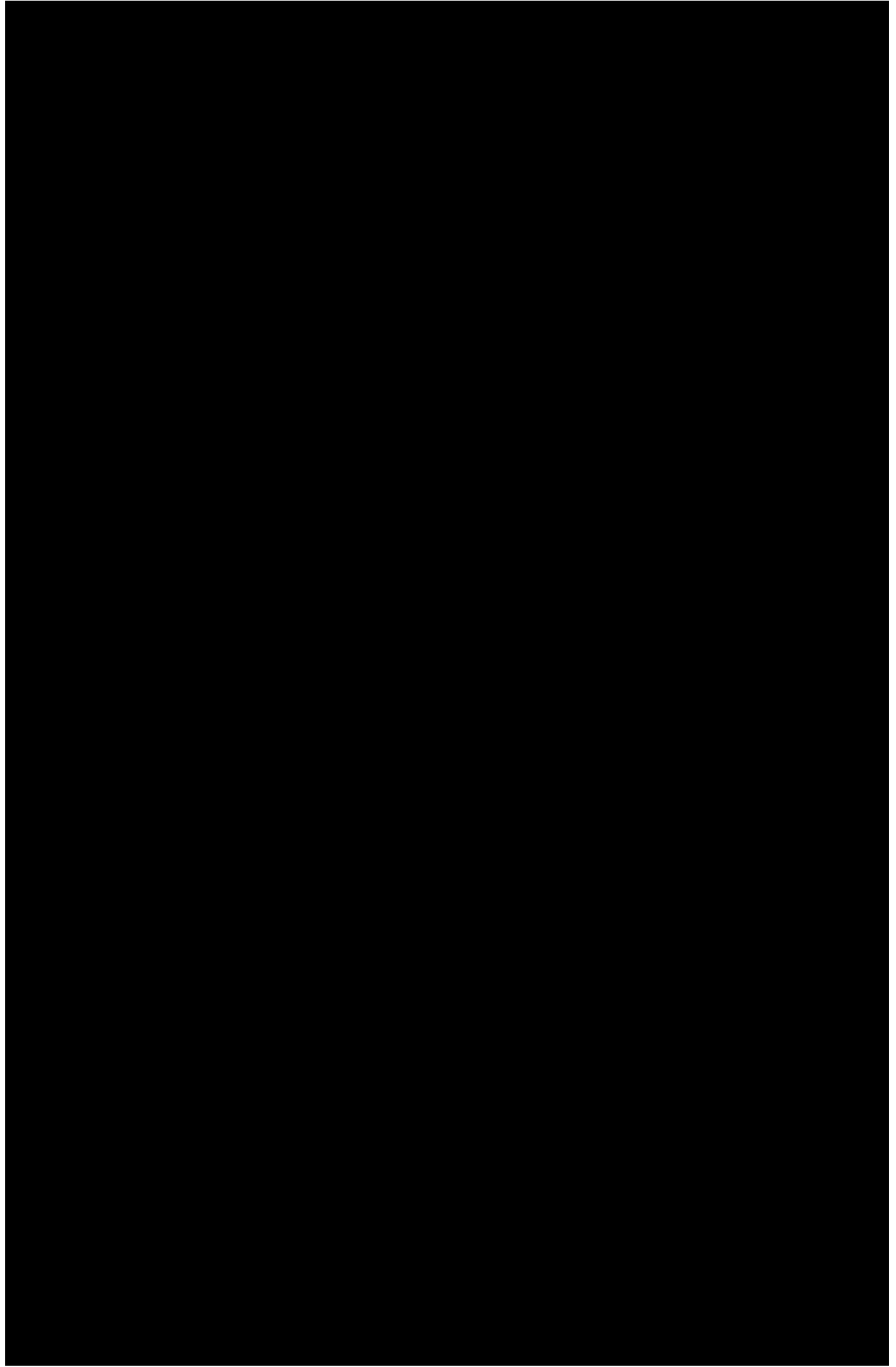
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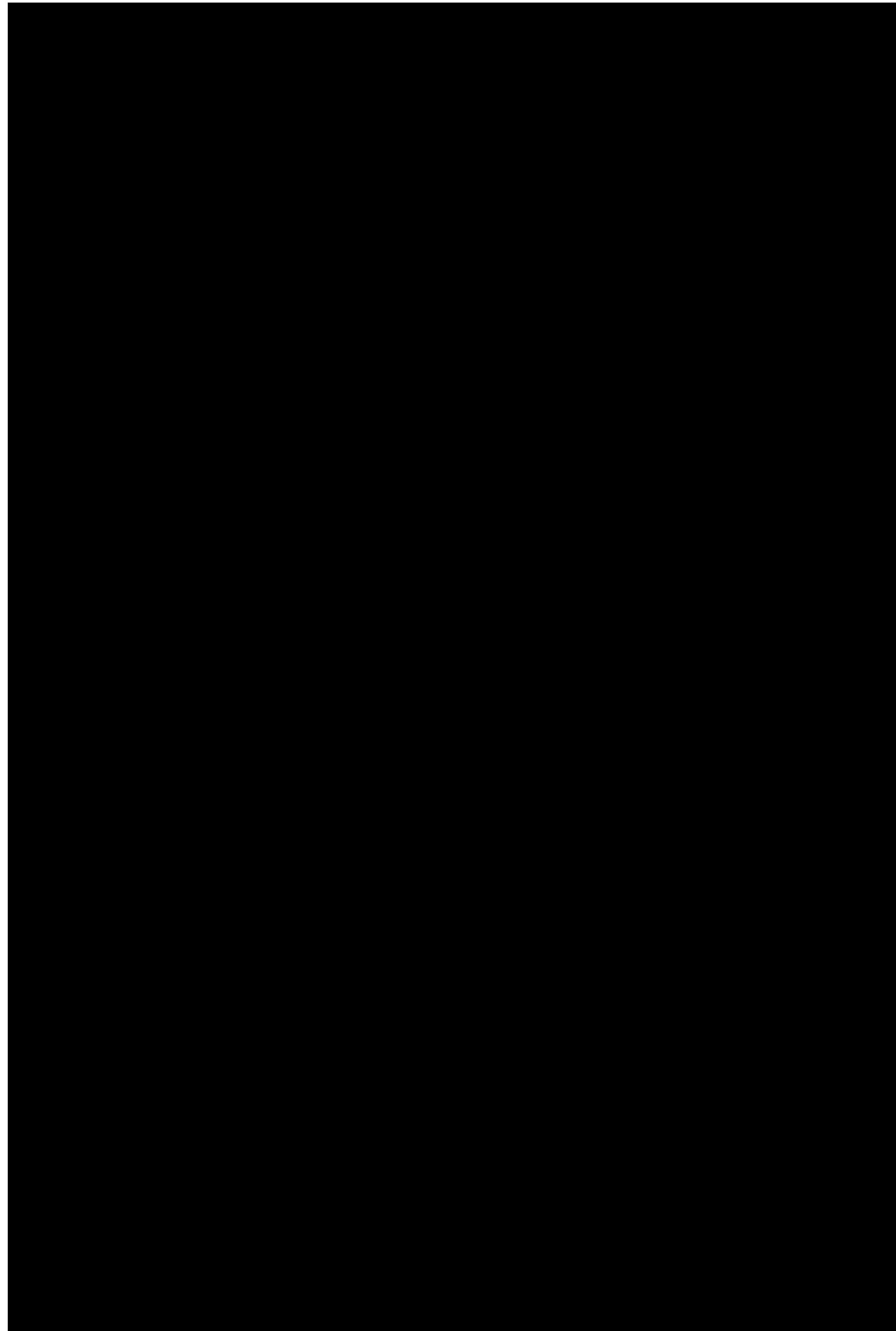


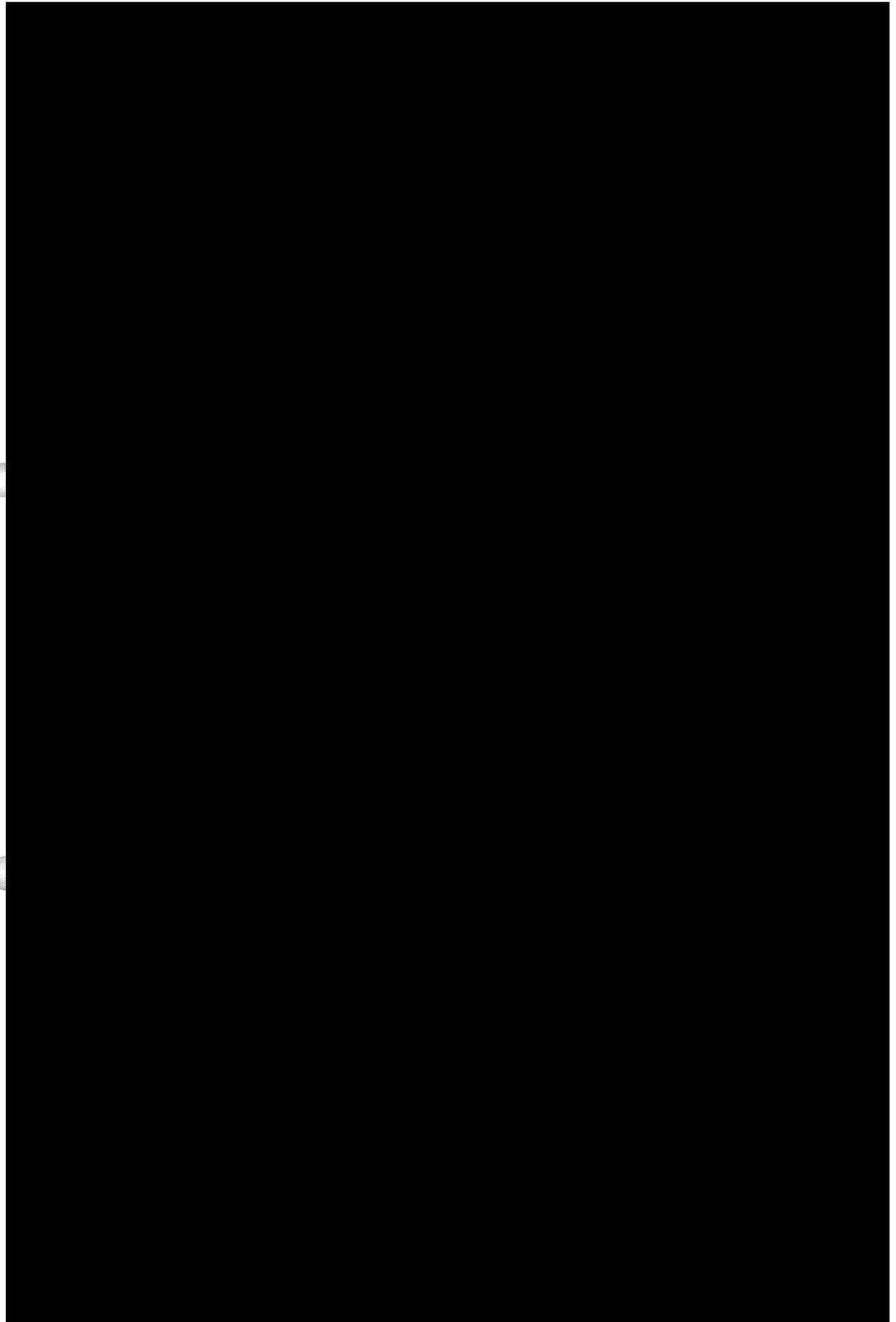


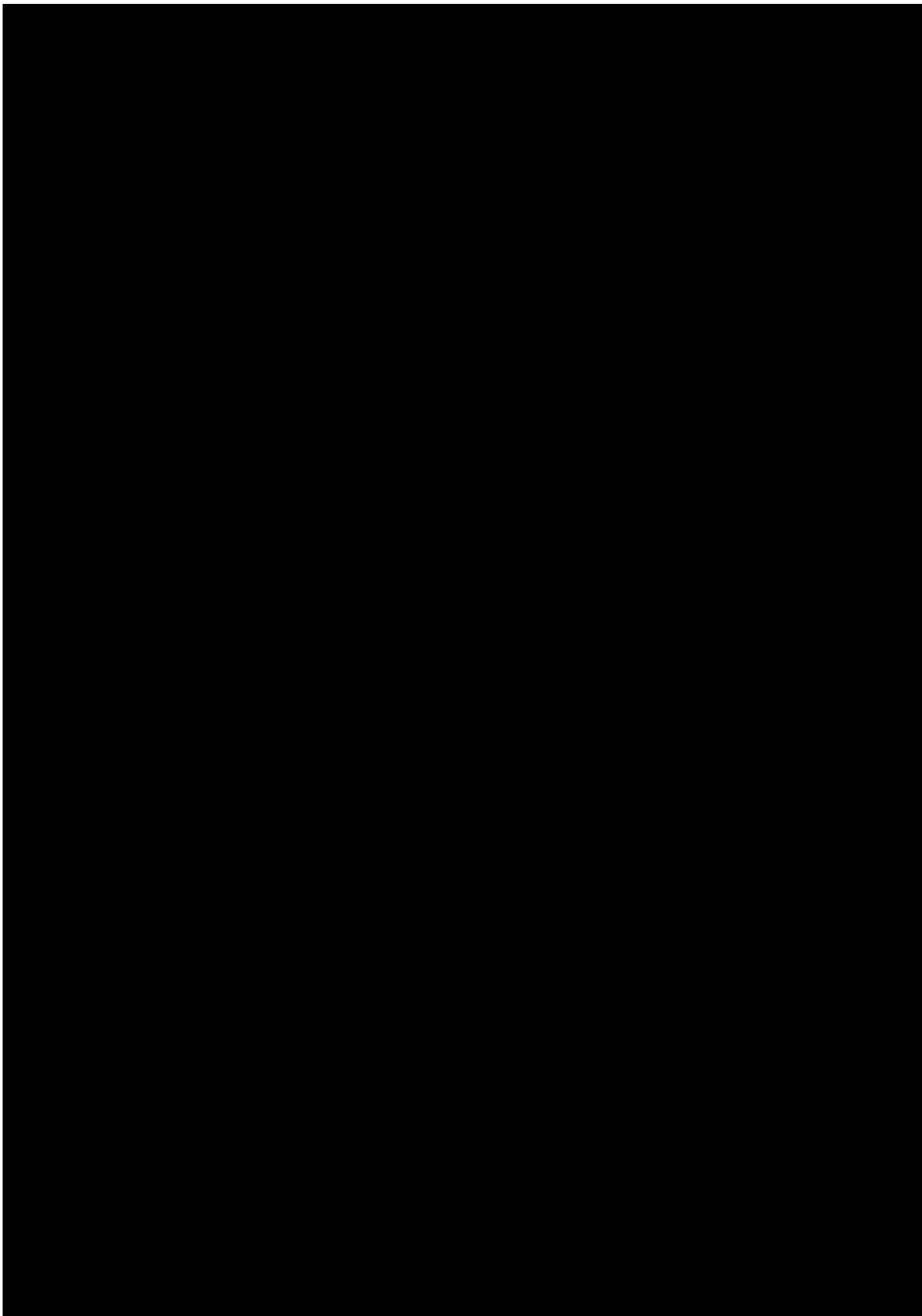


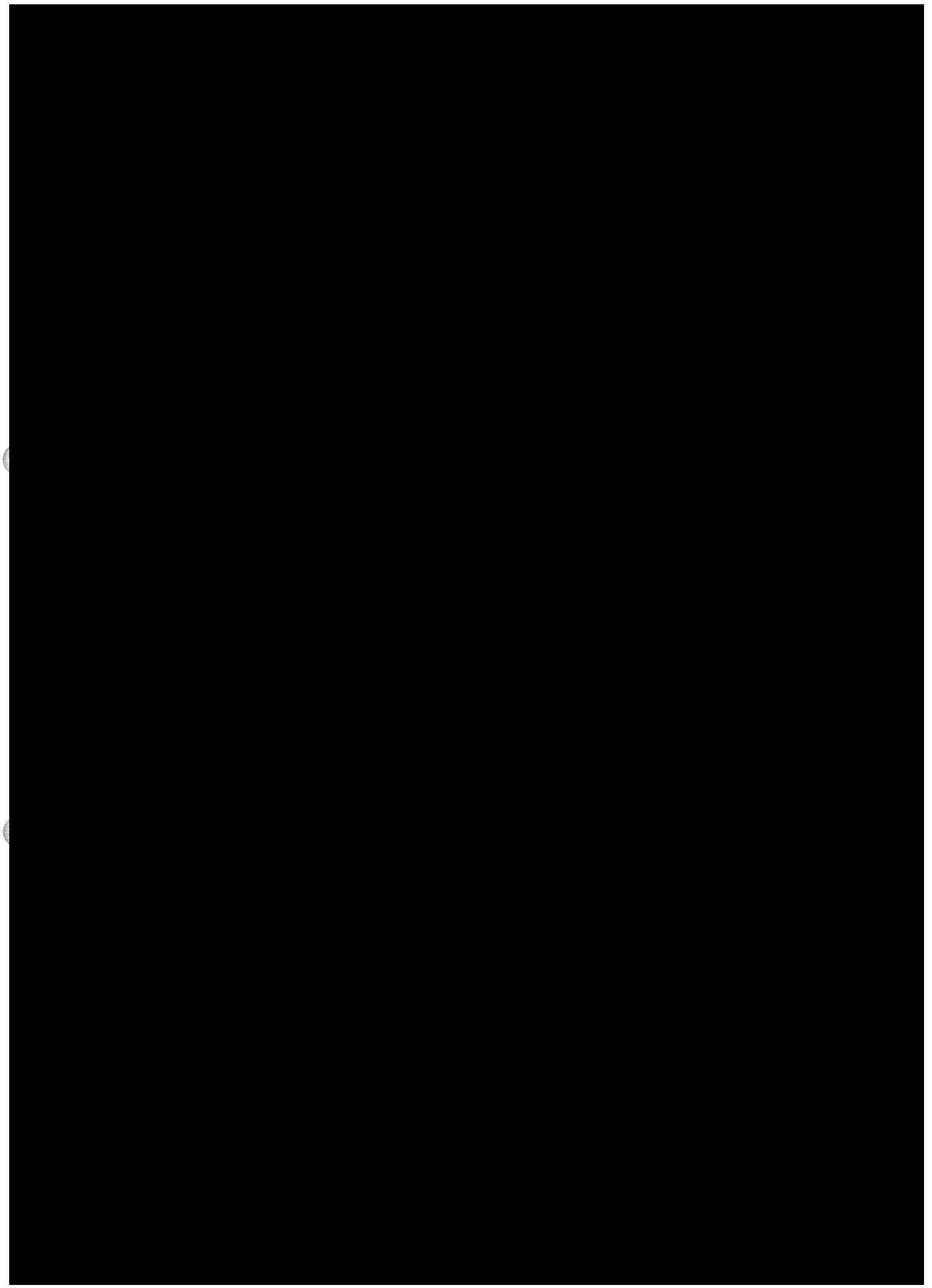


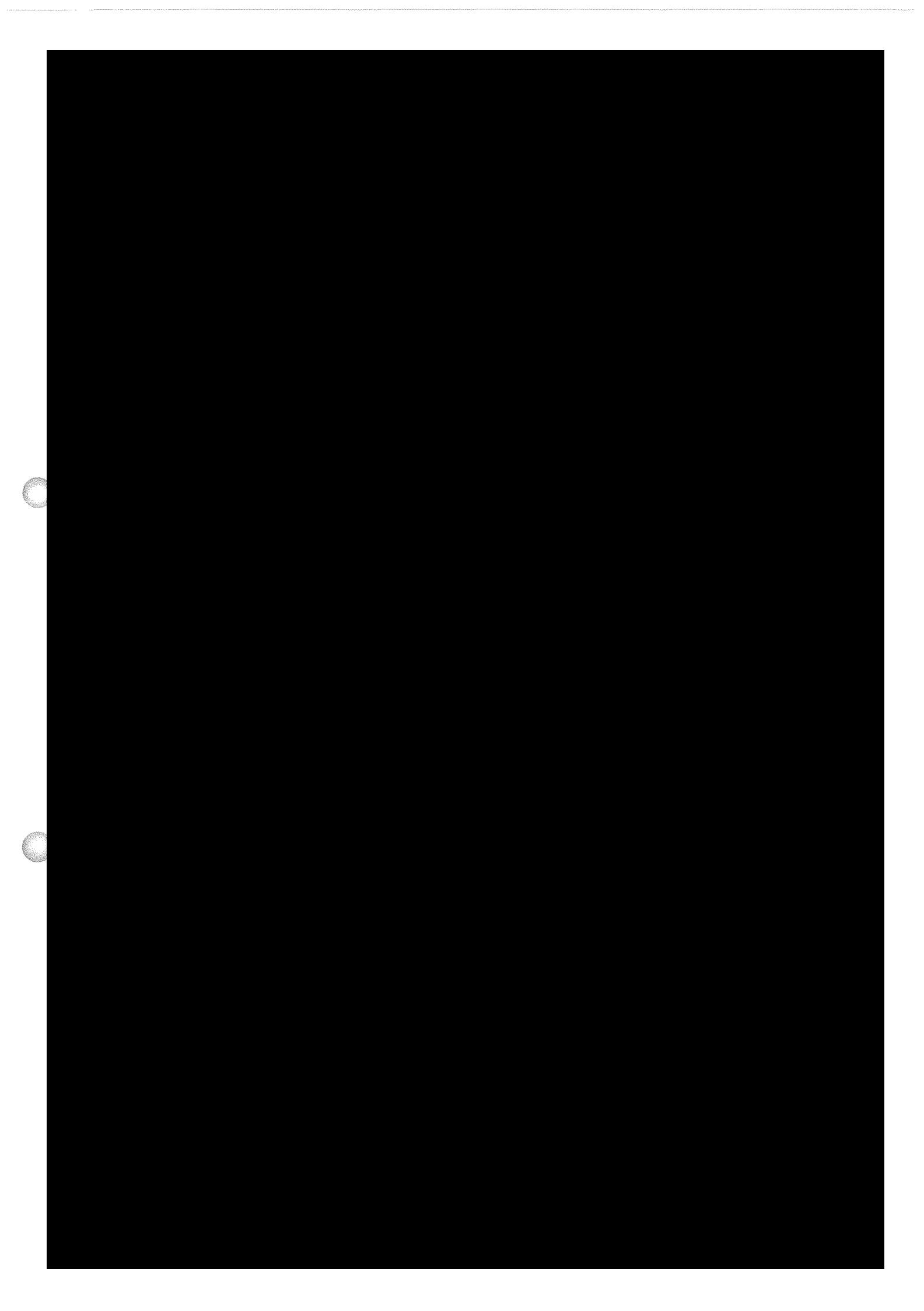


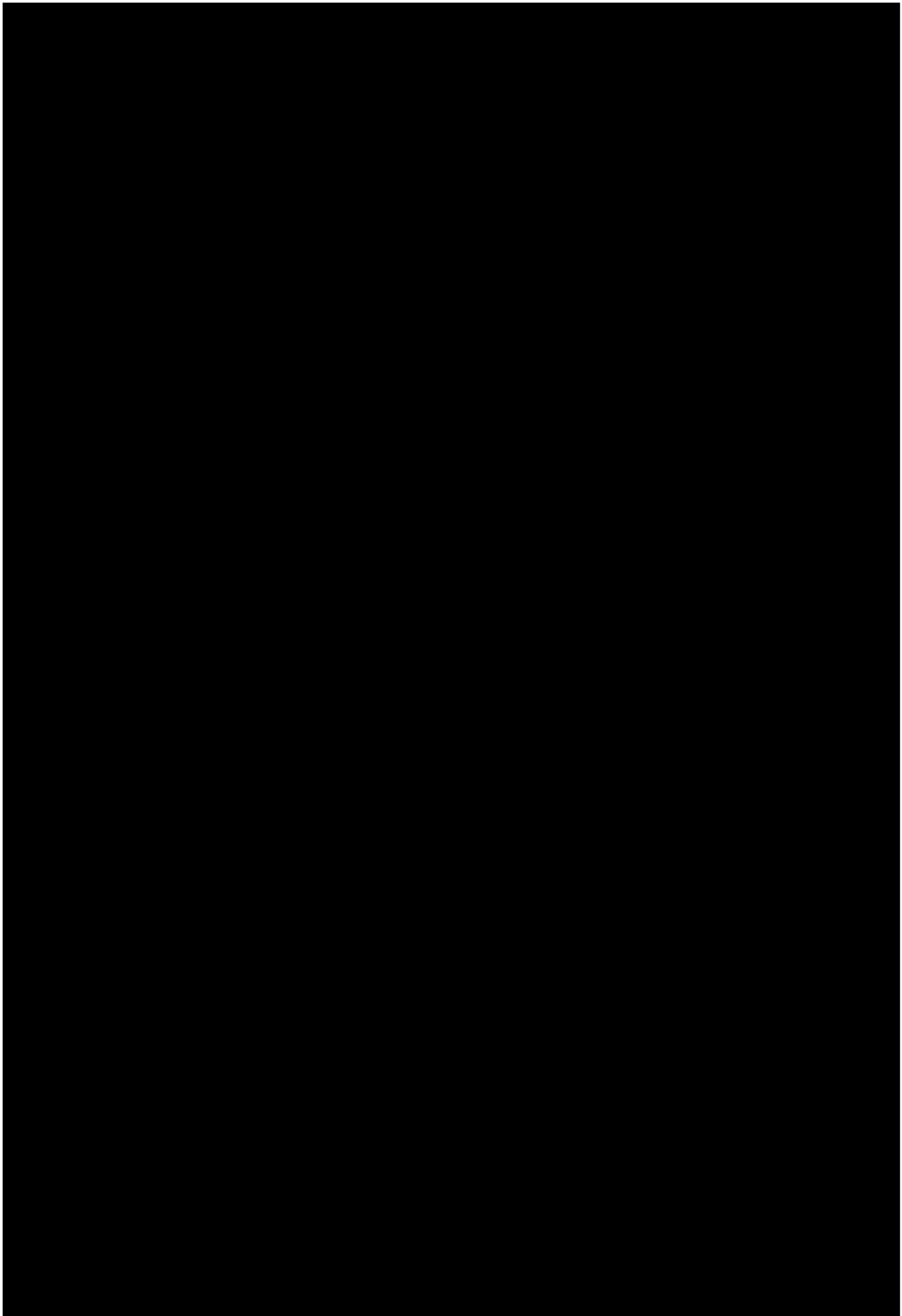






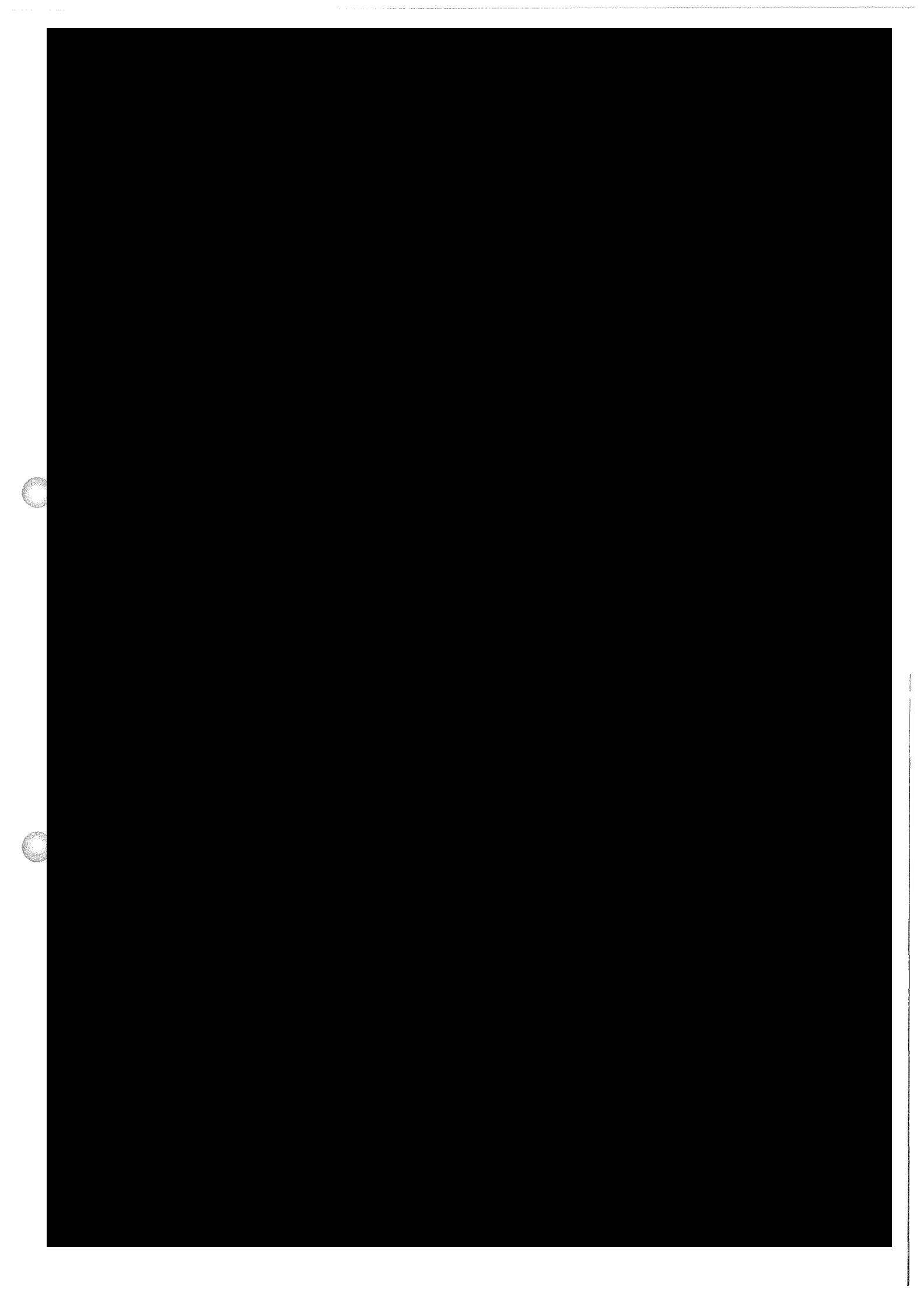


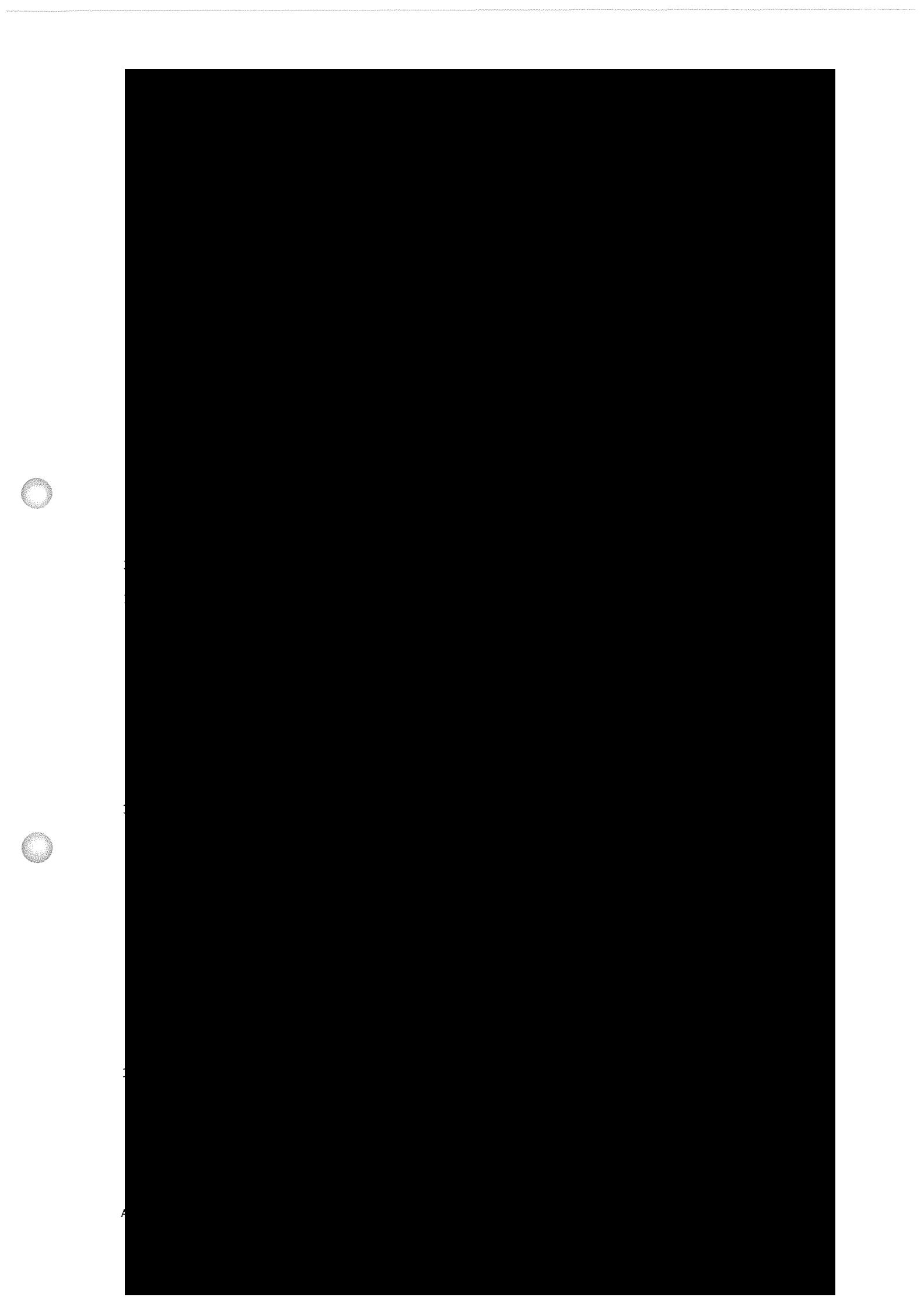


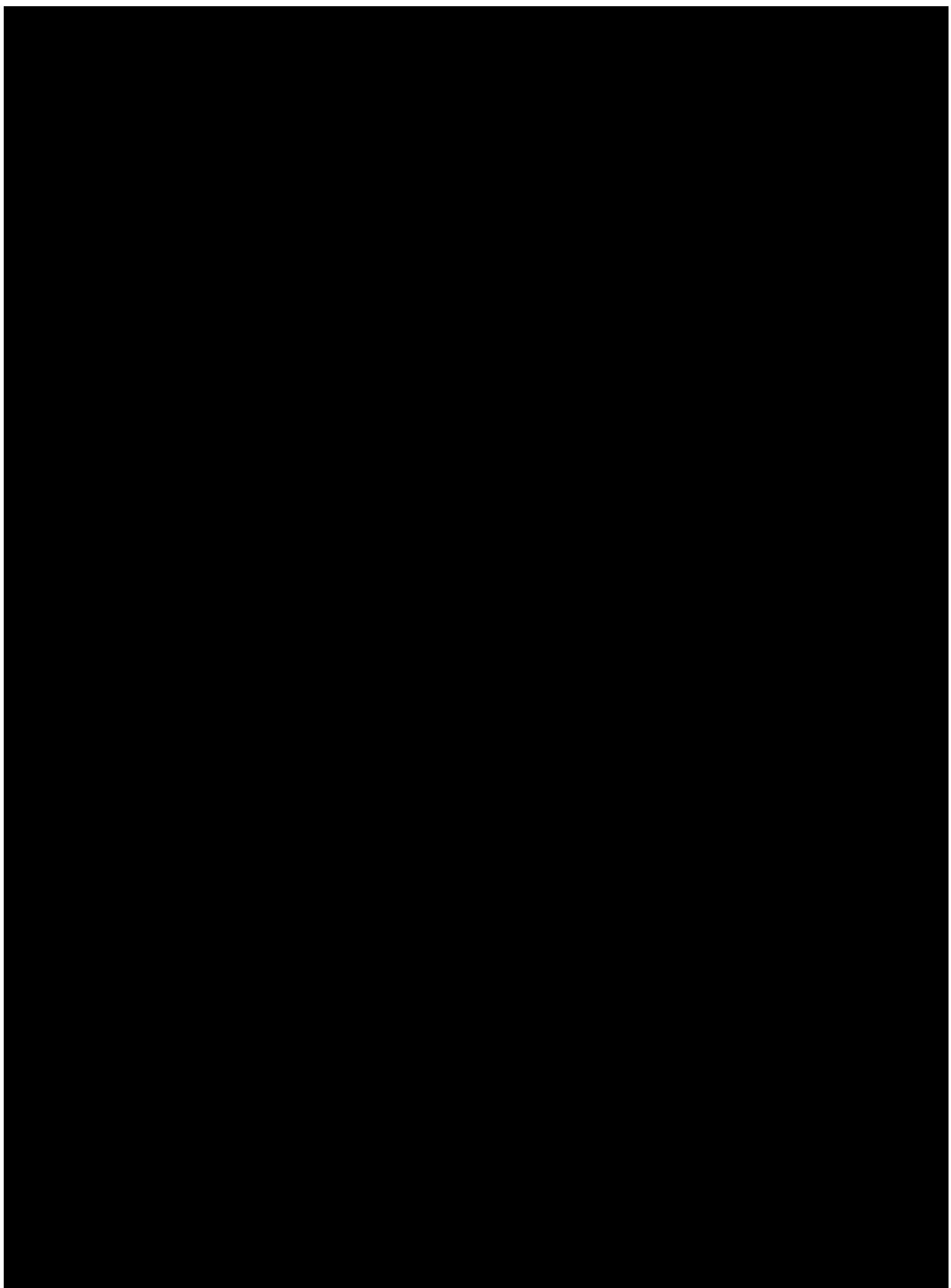


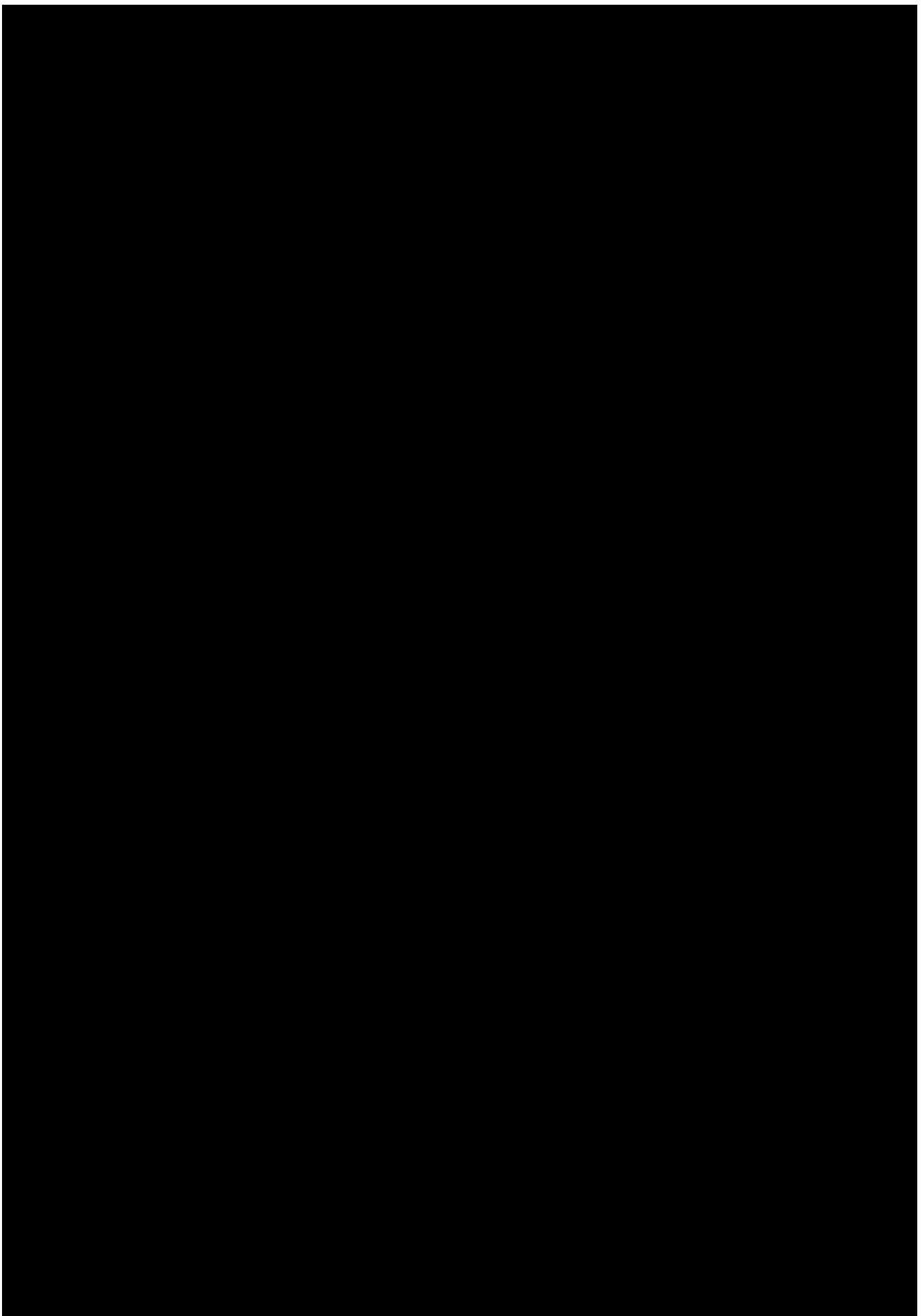




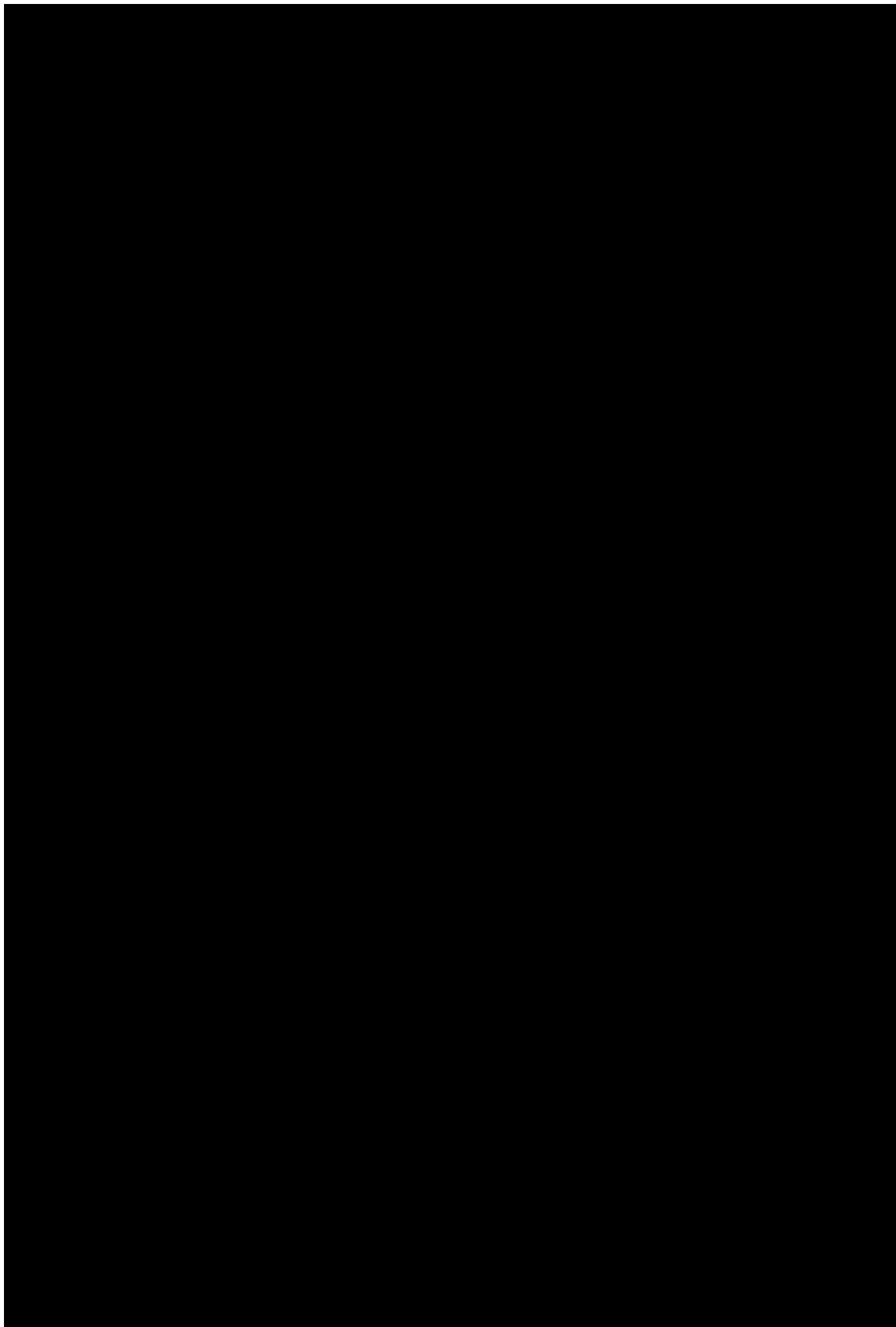


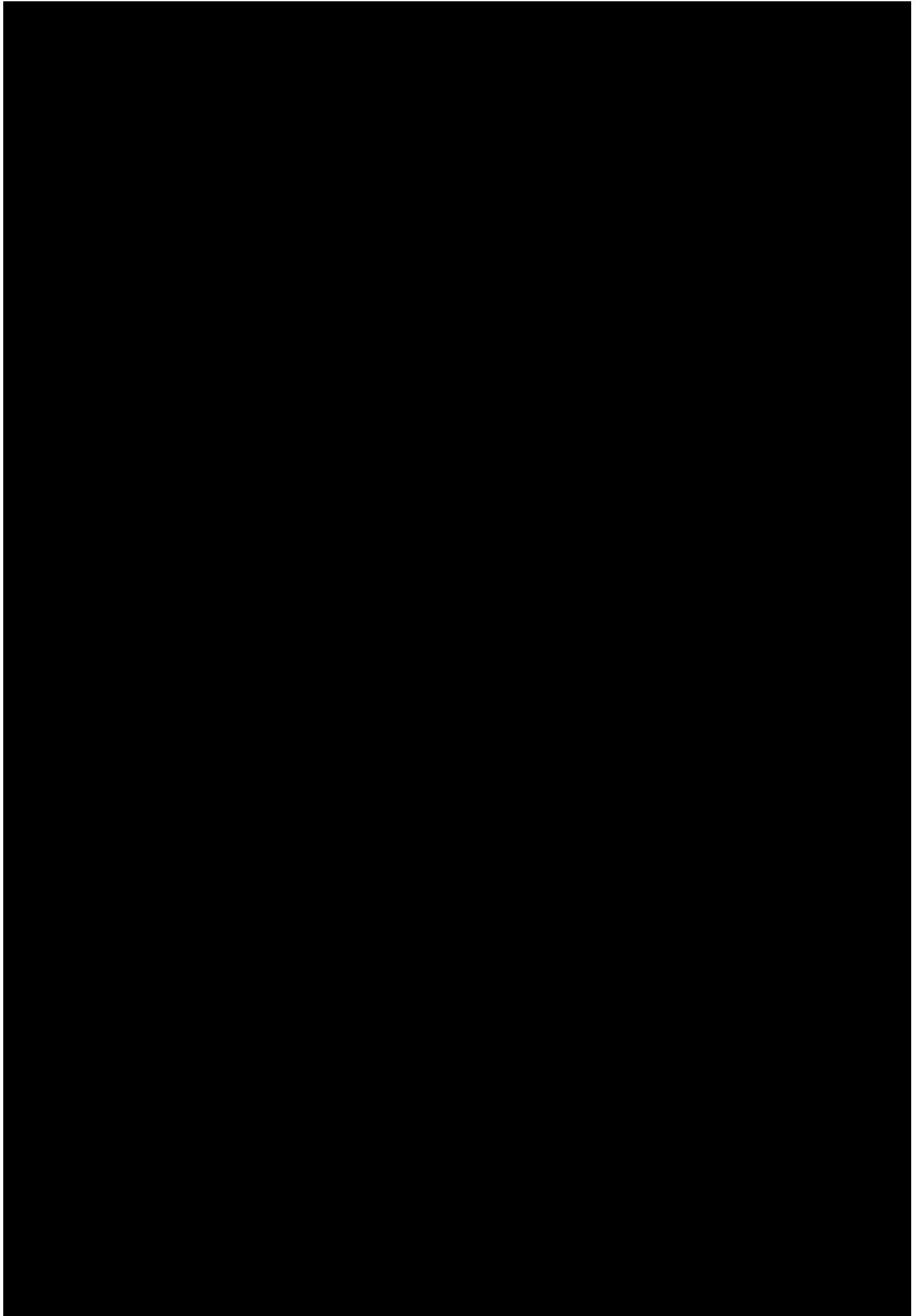




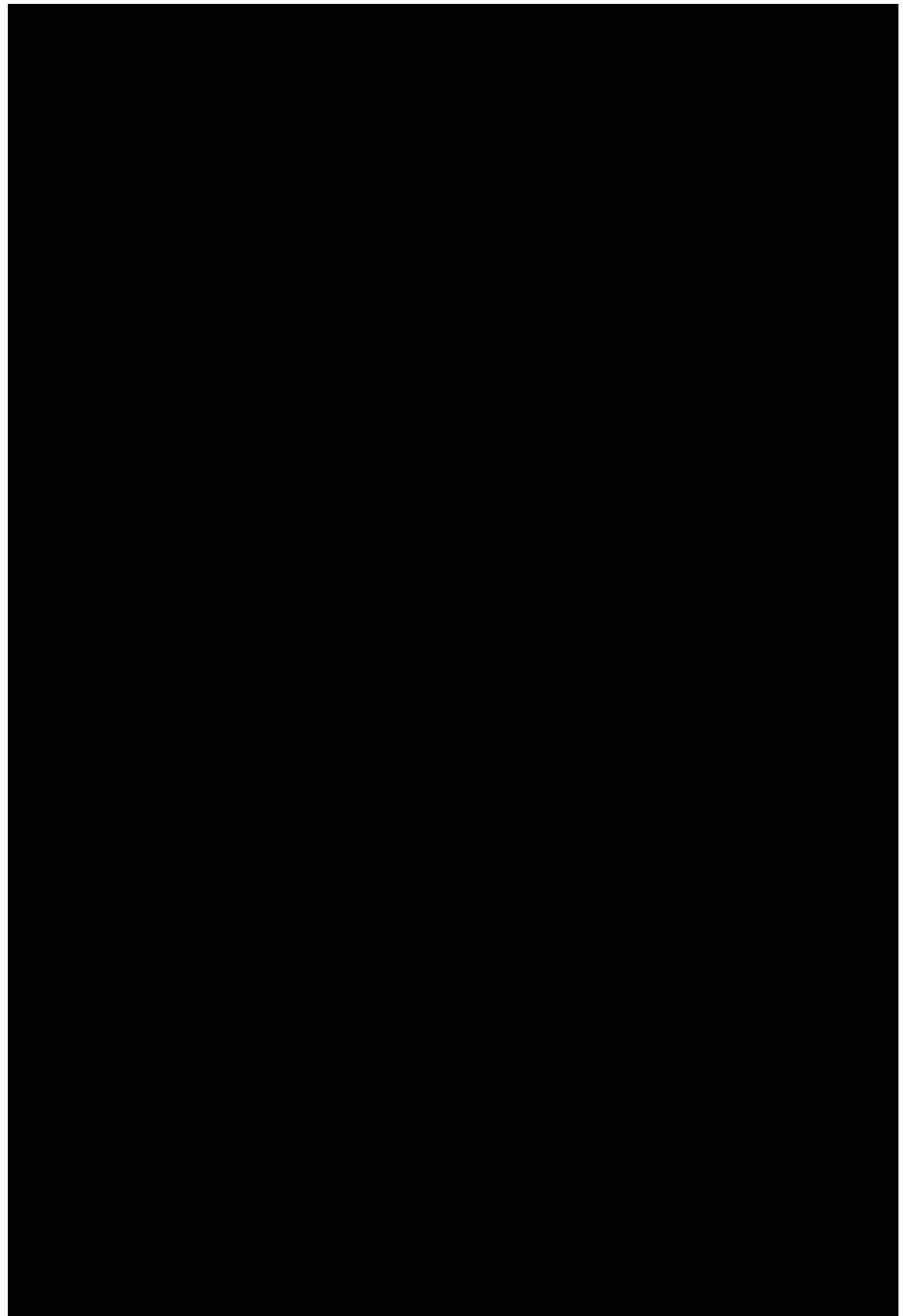


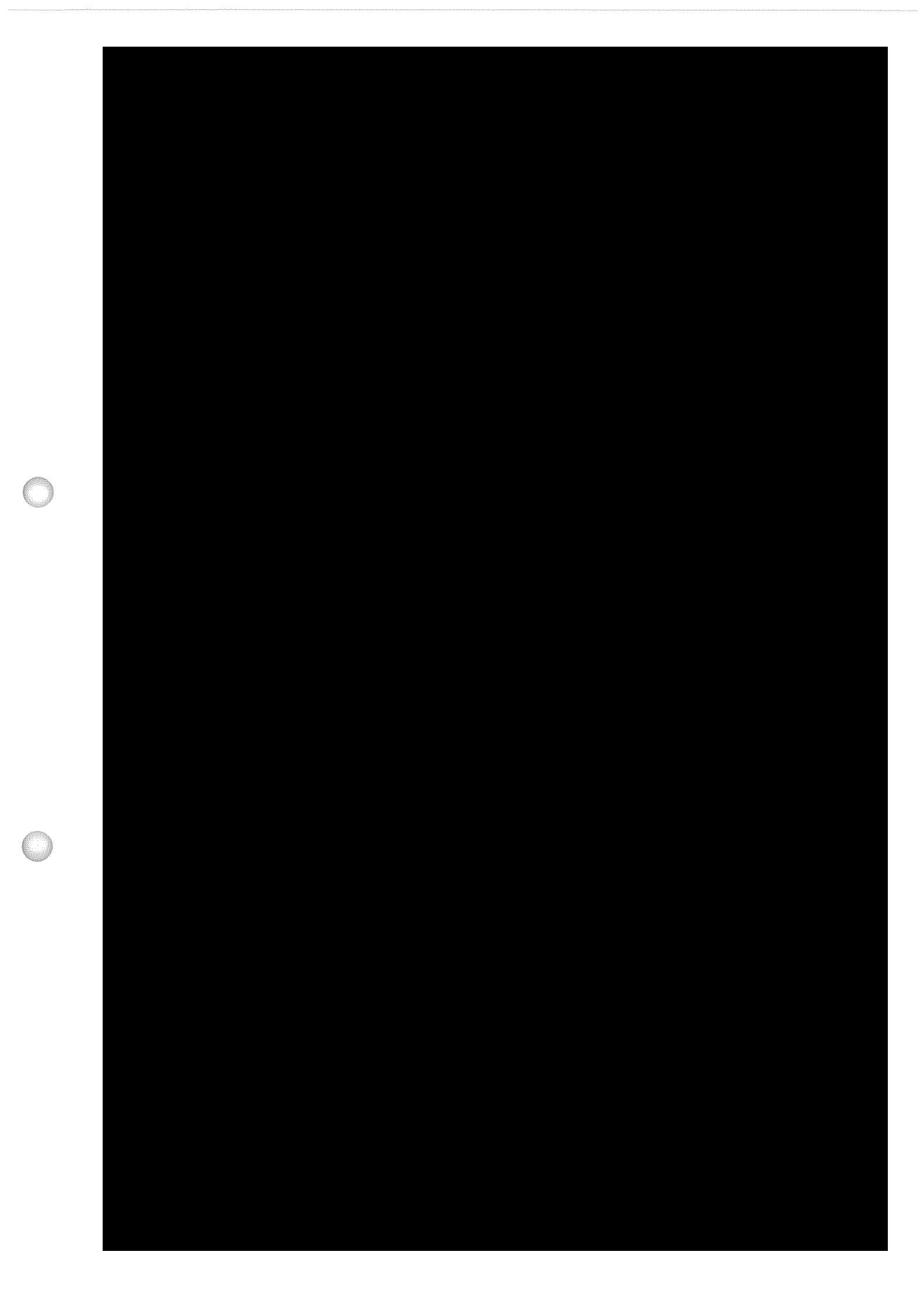


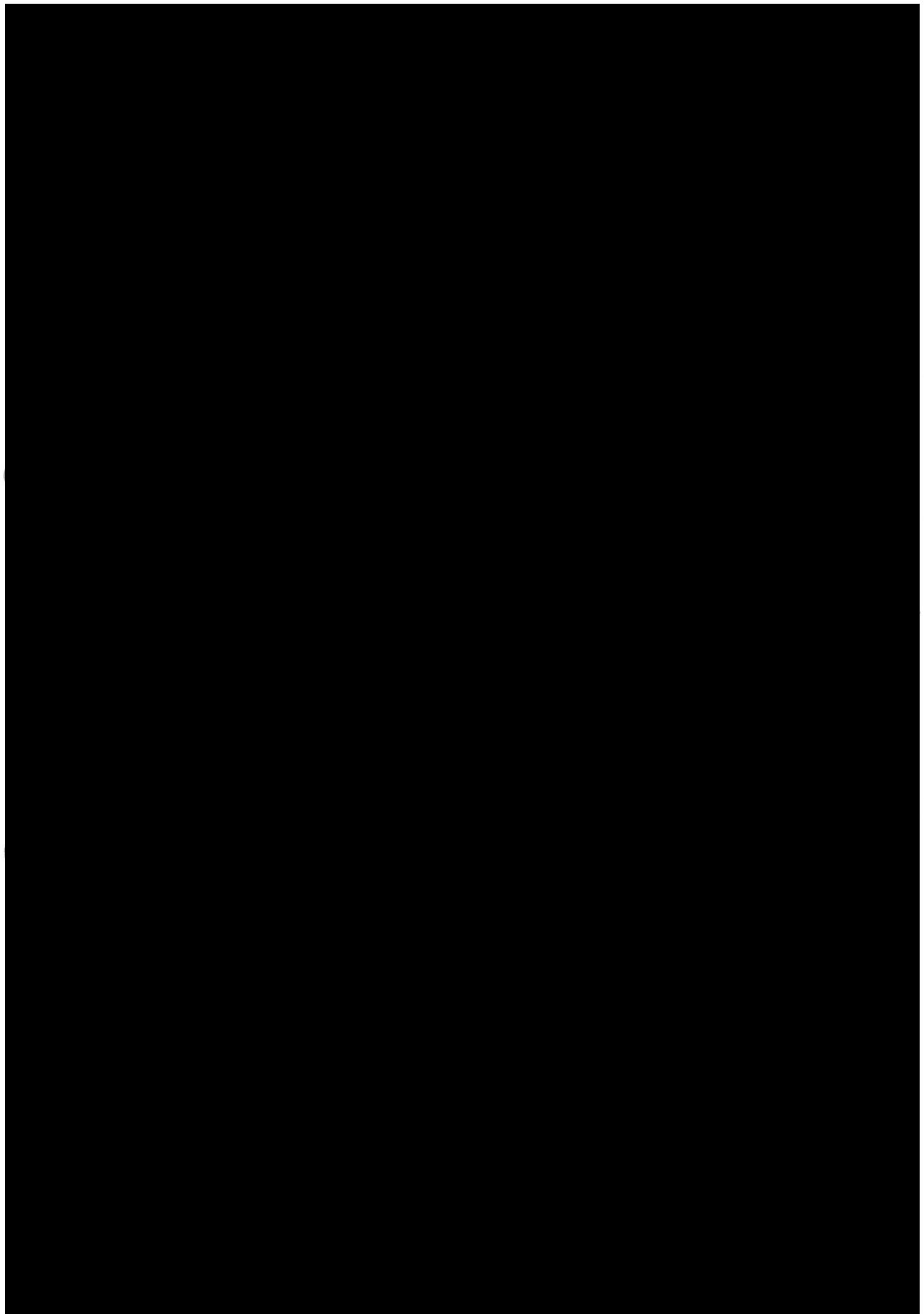


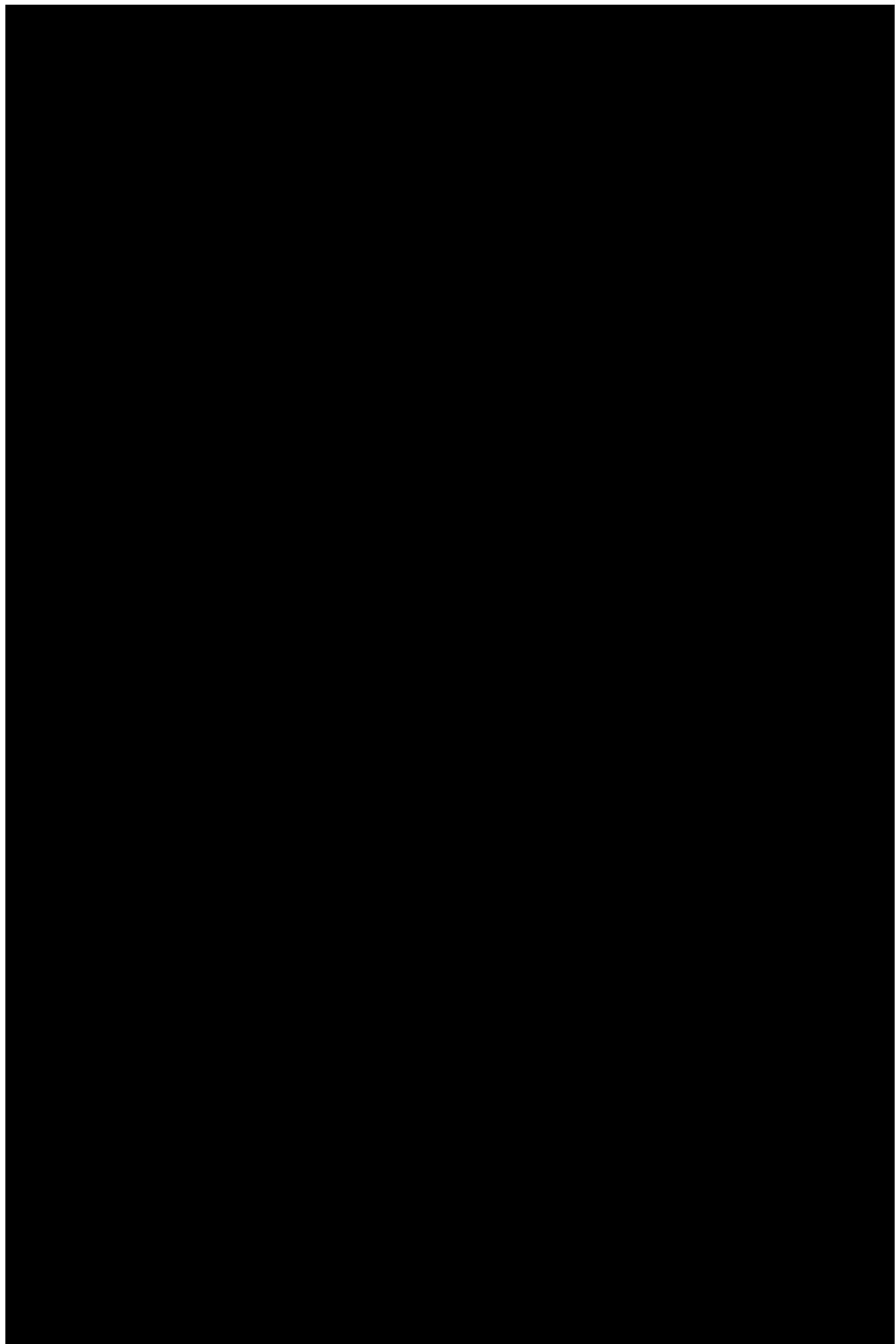


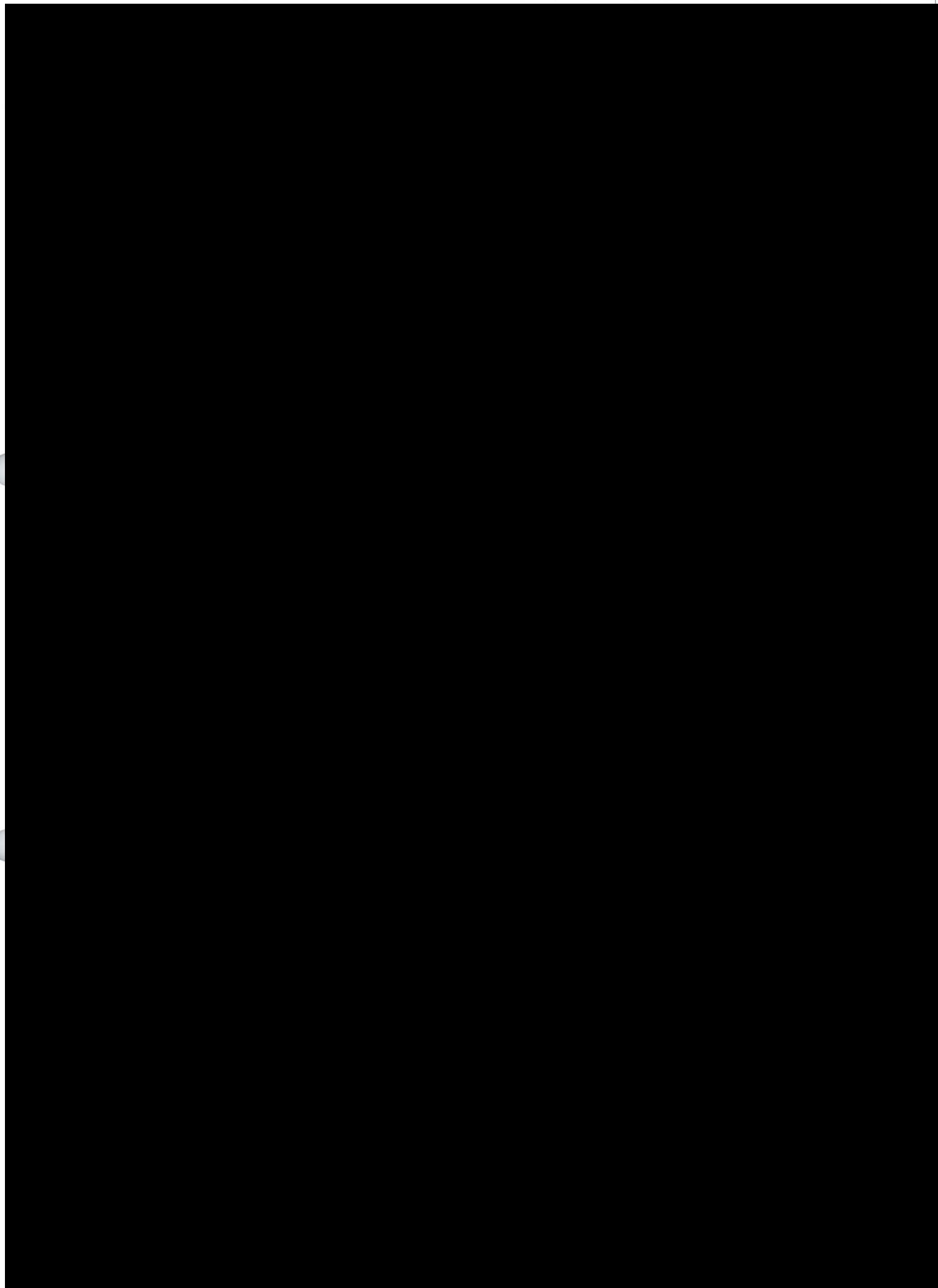


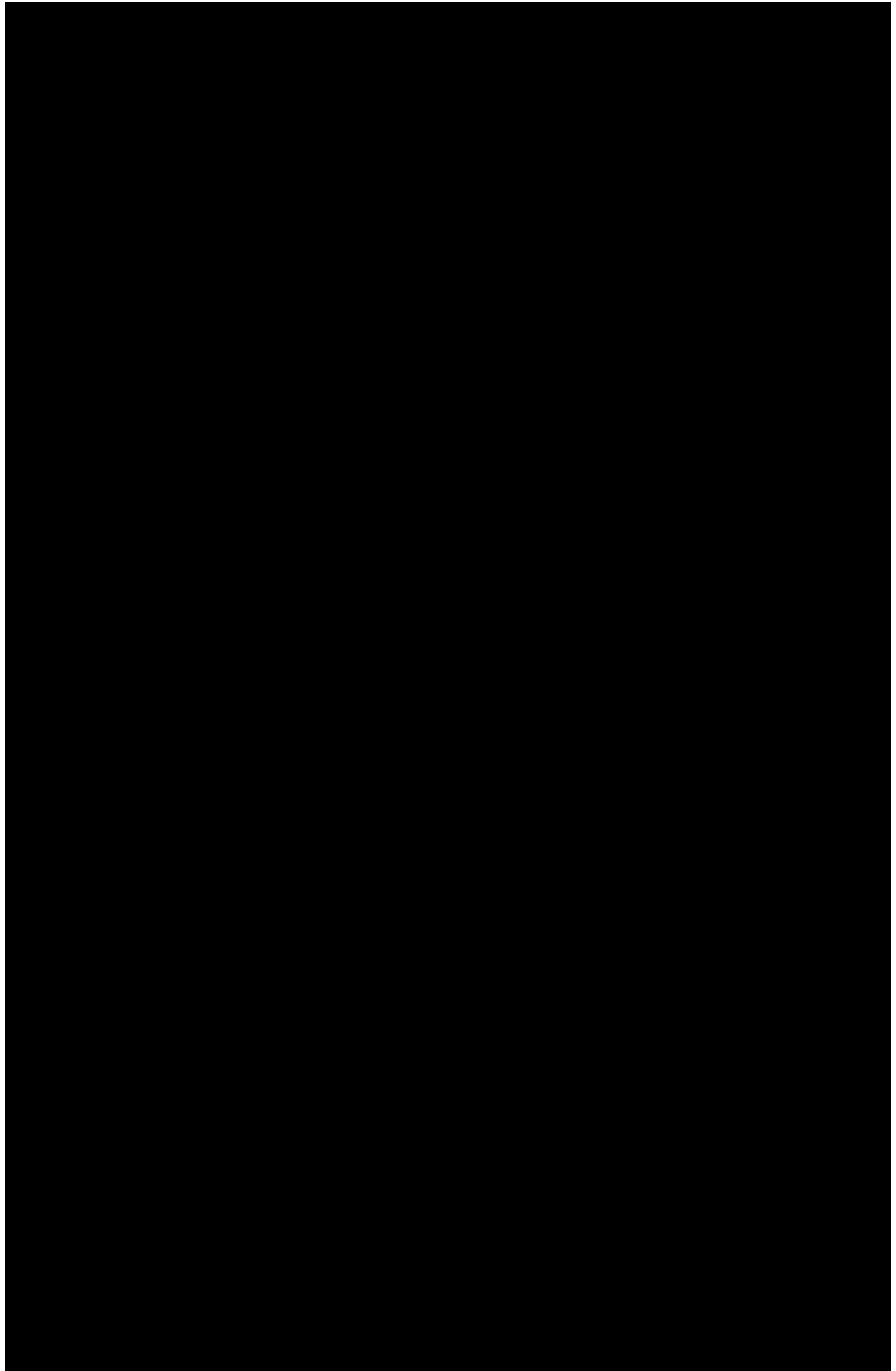






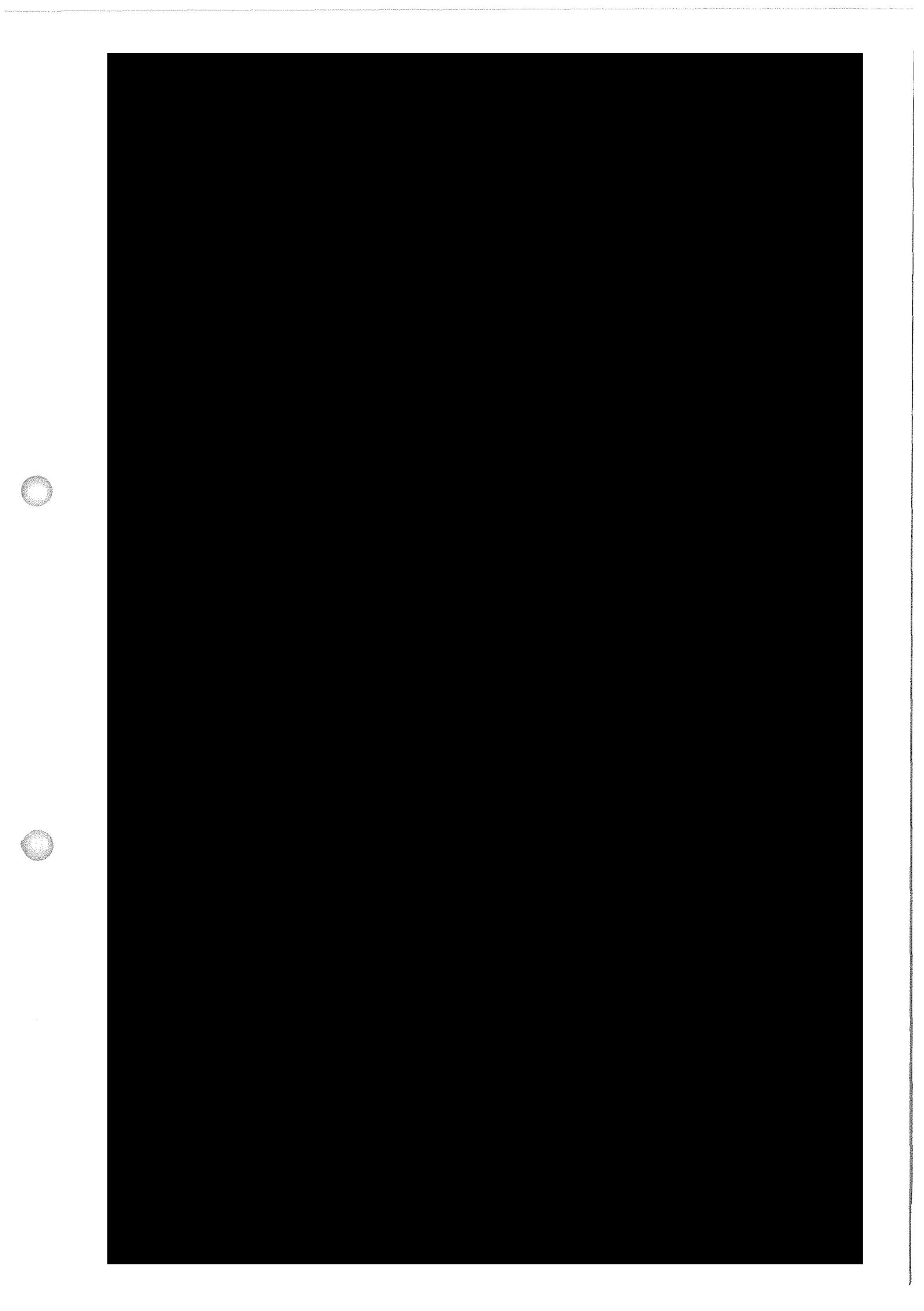






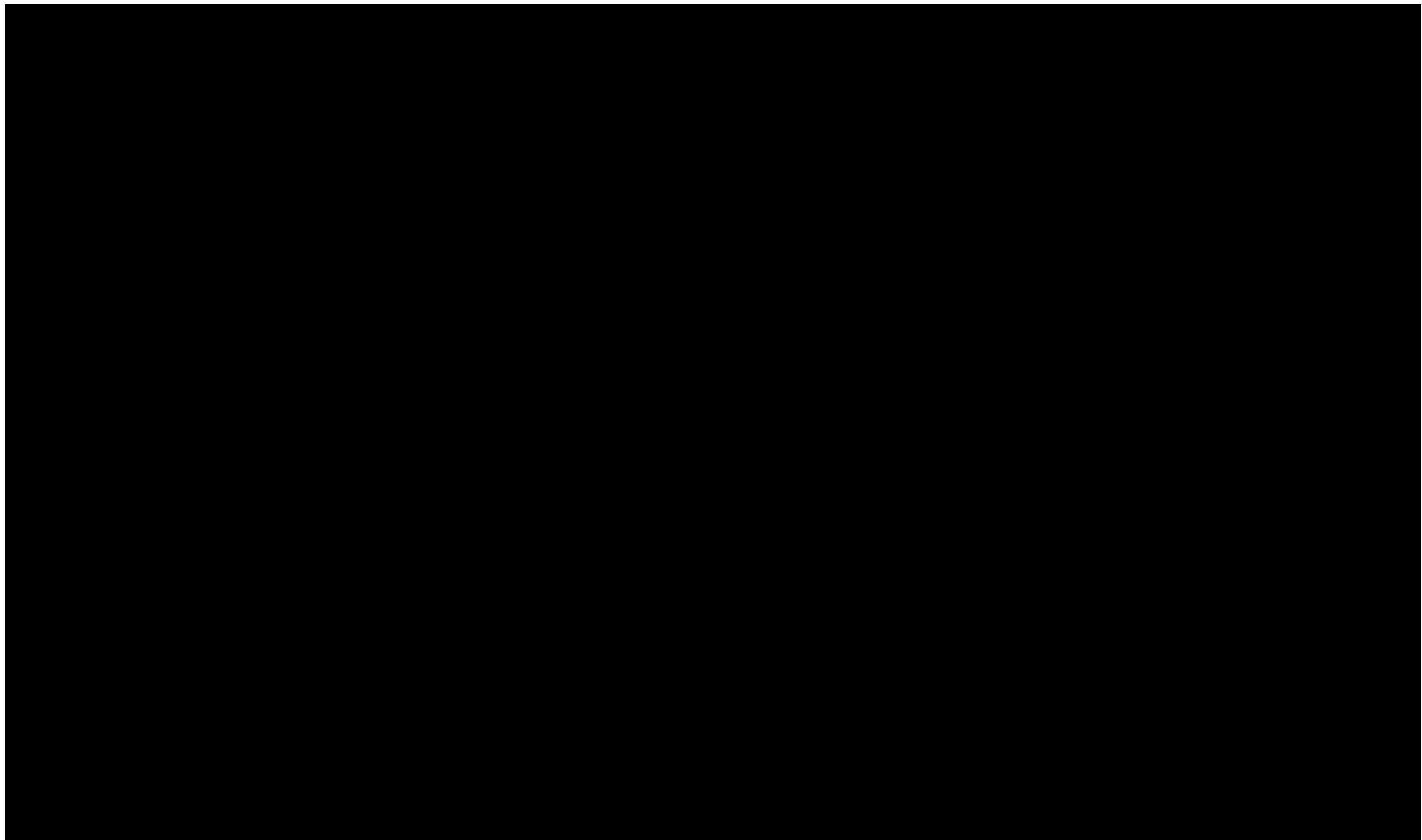








*Execution Version*



**SCHEDULE D7. – REQUIREMENTS OF ADJOINING PROPERTY OWNER AGREEMENTS**

(Clause 13)

**1. NO LIMITATION ON CONTRACT**

Nothing in this Schedule D7 limits the Principal's rights or affects the VC Contractor's obligations under any clause of this deed.

**2. ADJOINING PROPERTY OWNER AGREEMENT**

(a) The VC Contractor acknowledges that the Principal:

- (i) has entered into Adjoining Property Owner Agreements with:
  - (A) Perpetual Trustee Company Limited as custodian of the Charter Hall Office Trust in respect of 65 Berry Street, North Sydney, being an Adjoining Property Owner Agreement dated 27 April 2017;
  - (B) Perpetual Trustee Company Limited as custodian for Charter Hall Wholesale Management Limited as trustee of the Charter Hall Office Trust in respect of 65 Berry Street, North Sydney, being an Adjoining Property Owner Agreement dated 2 November 2017;
  - (C) Wilson Parking Australia 1992 Pty Ltd in respect of 65 Berry Street, North Sydney, being an Adjoining Property Owner Agreement dated 2 November 2017;
  - (D) IOF Custodian Pty Limited in respect of 105-153 Miller Street, North Sydney, being an Adjoining Property Owner Agreement dated 27 April 2017; and
  - (E) Garston Pty Ltd in respect of 243 Miller Street, North Sydney, being an Adjoining Property Owner Agreement dated 14 February 2018; and
- (ii) will, subject to clause 9.8 (*Adjoining Properties*), enter into Adjoining Property Owner Agreements with the Adjoining Owners identified in Schedule D6 (*Adjoining Properties*),

together referred to in this clause 2 of this Schedule D7 as the **Adjoining Owners** and each an **Adjoining Owner**.

(b) The VC Contractor:

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

- (A) unless otherwise directed by the Principal (acting reasonably and provided that the Principal cannot direct the VC Contractor to comply with an obligation which the Principal has assumed under this Schedule), 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 VC 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 VC Contractor in this Schedule D7 that are additional to or more stringent or onerous than the conditions and requirements described in clause 2(b)(i)(A) of this Schedule D7;
- (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 D7; 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 D7, 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 VC Contractor's Activities.
- (c) Where an Adjoining Property Owner Agreement provides that:
  - (i) the Principal must; or
  - (ii) the Principal must ensure that the VC Contractor will,  
do something or comply with an obligation, the VC Contractor must, in performing the VC Contractor's Activities, do that thing or comply with, satisfy, carry out and fulfil that obligation, except to the extent that the Principal has assumed that obligation under this Schedule D7.
- (d) Where an Adjoining Property Owner Agreement provides for the Principal to provide a document, notice or information to an Adjoining Owner, the VC Contractor must:
  - (i) subject to clause 2(d)(ii) of this Schedule D7, 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) clause 3.2(b), clause 3.2(d) and clause 3.2(g) of the Adjoining Property Owner Agreement dated 27 April 2017 in respect of 65 Berry Street, North Sydney;
    - (B) clause 6.1(a) and clause 1.2(b)(i) of Annexure A of the Adjoining Property Owner Agreement dated 2 November 2017 between the

Principal and Perpetual Trustee Company Limited as custodian for Charter Hall Wholesale Management Limited as trustee of the Charter Hall Office Trust in respect of 65 Berry Street, North Sydney; and

- (C) clause 2.4(b)(i) and clause 1.2(b)(i) of Annexure A of the Adjoining Property Owner Agreement dated 2 November 2017 between the Principal and Wilson Parking Australia 1992 Pty Ltd in respect of 65 Berry Street, North Sydney;
- (D) clause 1.2(b)(i) and clause 1.2(b)(ii) of Annexure B of the Adjoining Property Owner Agreement in respect of 105-153 Miller Street, North Sydney;
- (E) clause 3.2(a), clause 3.2(b) and clause 4.2(a) of the Adjoining Property Owner Agreement in respect of 243 Miller Street, North Sydney; and
- (F) 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 VC Contractor must, in carrying out the VC 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;
  - (ii) ensure that no act or omission of the VC 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 D7 and the other terms of this deed, the VC 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 deed.
- (g) The VC 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 VC Contractor agrees that the Principal similarly makes no representation to the VC 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 deed.

- (h) Nothing in any Adjoining Property Owner Agreement or this Schedule D7 limits the Principal's rights or the VC Contractor's obligations in relation to Substantial Completion, Completion or the rectification of Defects under this deed.
- (i) The parties agree that:
- (i) the VC Contractor must indemnify the Principal from and against any claim by any Adjoining Owner or third party or any Liability of the Principal to any Adjoining Owner or third party arising out of or in any way in connection with any Adjoining Property Owner Agreement to the extent that the Liability or claim is caused by, or arises out of, or in any way in connection with, the VC Contractor's Activities:
- (A) provided that the VC Contractor's responsibility to indemnify the Principal will be reduced to the extent that a negligent act or omission, or breach of contract, of the Principal or an agent of the Principal contributed to the Liability or claim; and
- (B) except to the extent it is limited in this Schedule D7; and
- (ii) to the extent that the VC Contractor is required to indemnify the Principal from and against any Consequential Loss arising from loss of use or access to real or personal property, the VC Contractor's liability for such Consequential Loss is limited to the extent the VC Contractor:
- (A) recovers its liability for such Consequential Loss under a Principal's Insurance policy; or
- (B) is indemnified or entitled to be indemnified for its liability for such Consequential Loss under a VC Contractor Insurance policy after the application of any excesses or deductibles,
- or would have recovered or been indemnified (as applicable) for its liability for such Consequential Loss but for:
- (C) the operation of any policy retention, deductible or excess that the VC Contractor is required to bear under the terms of this deed;
- (D) any act or omission of the VC Contractor or its Associates including any failure by the VC Contractor to:
- (aa) diligently pursue a claim under the relevant policy of insurance;
- (bb) comply with the terms of the relevant policy of insurance (including pre-contractual duties of disclosure); or
- (cc) comply with its insurance obligations under this deed.
- (j) The VC Contractor will only be liable to the Principal for any Liability arising out of:
- (i) clause 19 of the Adjoining Property Owner Agreement dated 27 April 2017 in respect of 65 Berry Street, North Sydney;
- (ii) clause 8 of the Adjoining Property Owner Agreement dated 2 November 2017 between the Principal and Perpetual Trustee Company Limited as

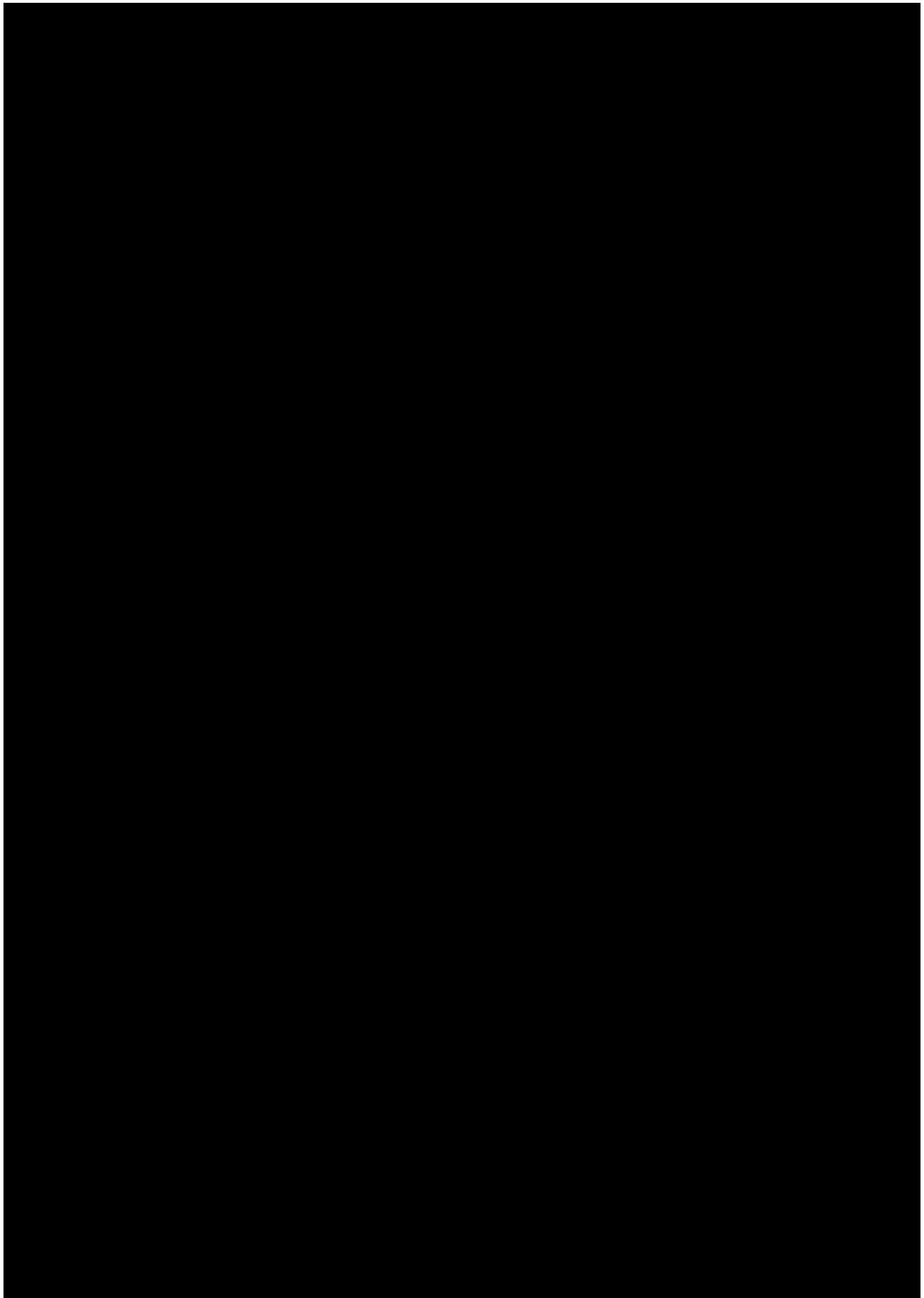
custodian for Charter Hall Wholesale Management Limited as trustee of the Charter Hall Office Trust in respect of 65 Berry Street, North Sydney; and

- (iii) clause 6 of the Adjoining Property Owner Agreement dated 2 November 2017 between the Principal and Wilson Parking Australia 1992 Pty Ltd in respect of 65 Berry Street, North Sydney;
- (iv) clause 9 of the Adjoining Property Owner Agreement in respect of 105-153 Miller Street, North Sydney;
- (v) clause 20 of the Adjoining Property Owner Agreement in respect of 243 Miller Street, North Sydney; or
- (vi) clause 18 of the Pro-forma Adjoining Property Owner Agreement,

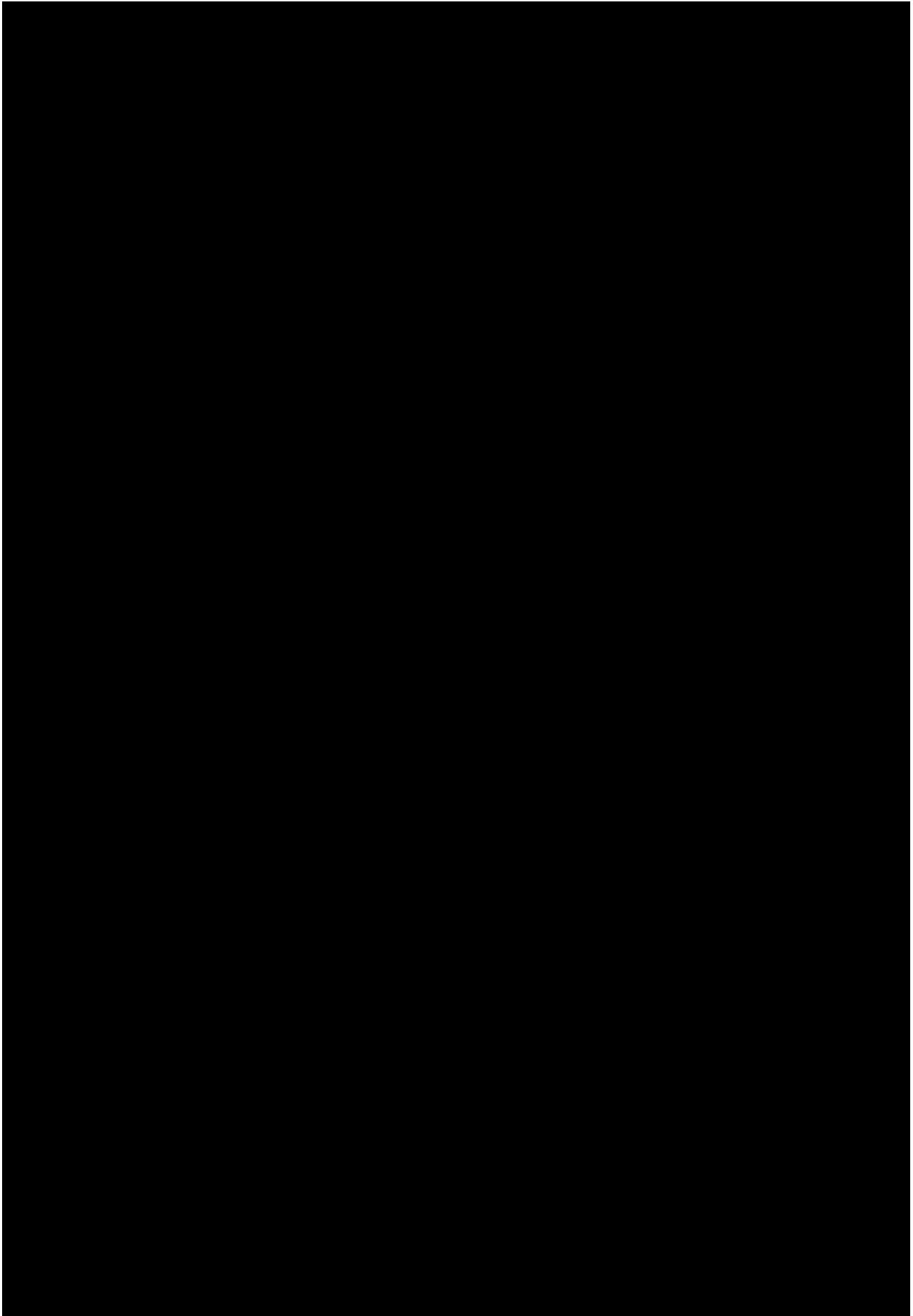
as follows:

- (vii) 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 VC Contractor or its Associates; or
- (viii) where the VC Contractor would otherwise be liable to the Principal pursuant to a provision of this deed in respect of the matter.

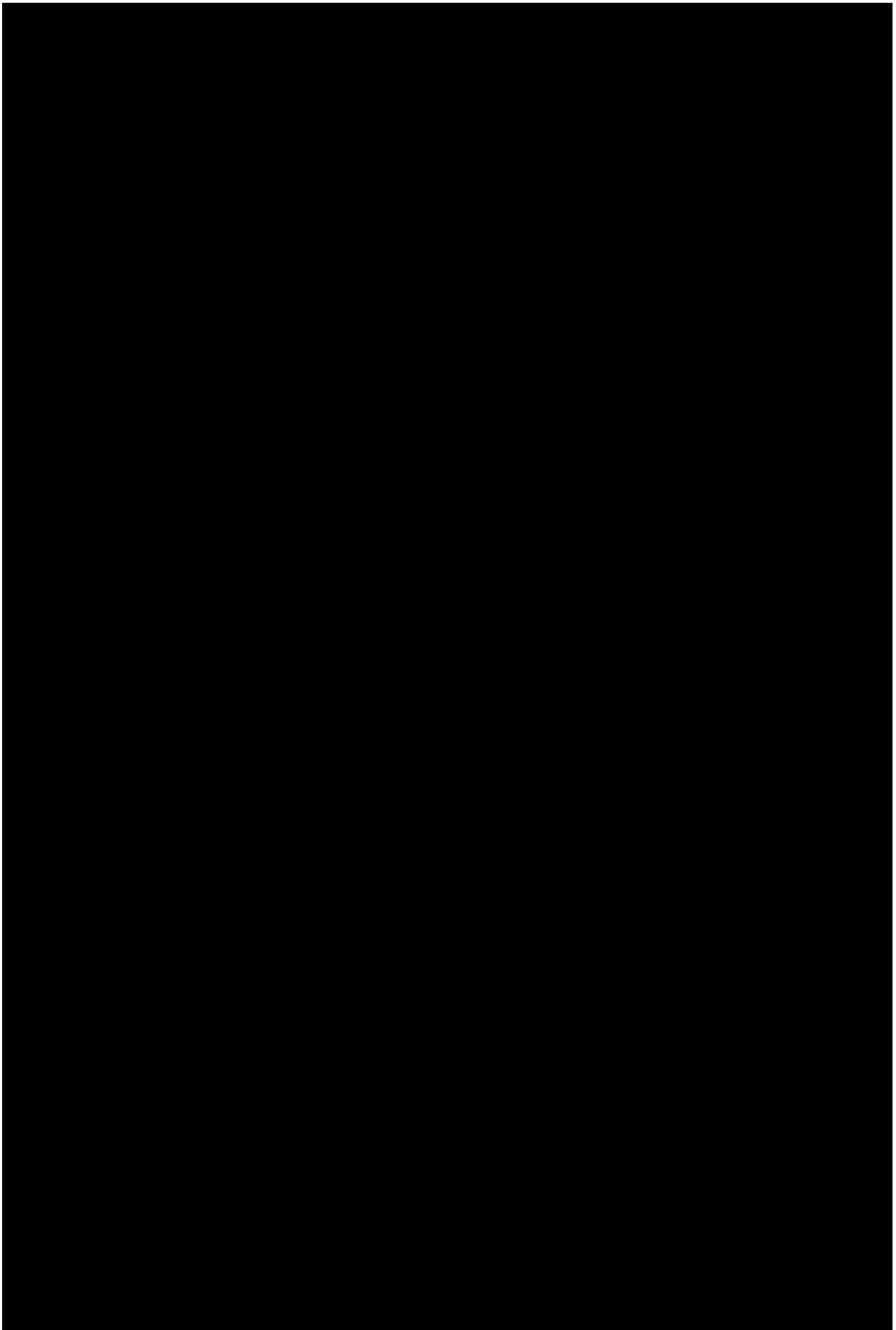
- (k) Except as otherwise set out under this deed, the VC Contractor:
  - (i) bears the full risk (as between the VC Contractor and the Principal) of:
    - (A) it complying with the obligations under this Schedule D7; and
    - (B) any acts or omissions of any Adjoining Owner or its employees, agents, 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 against the Principal arising out of or in any way in connection with:
    - (A) the risks referred to in clause 2(k)(i) of this Schedule D7; 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 deed have the same meaning as in the relevant Adjoining Property Owner Agreement.

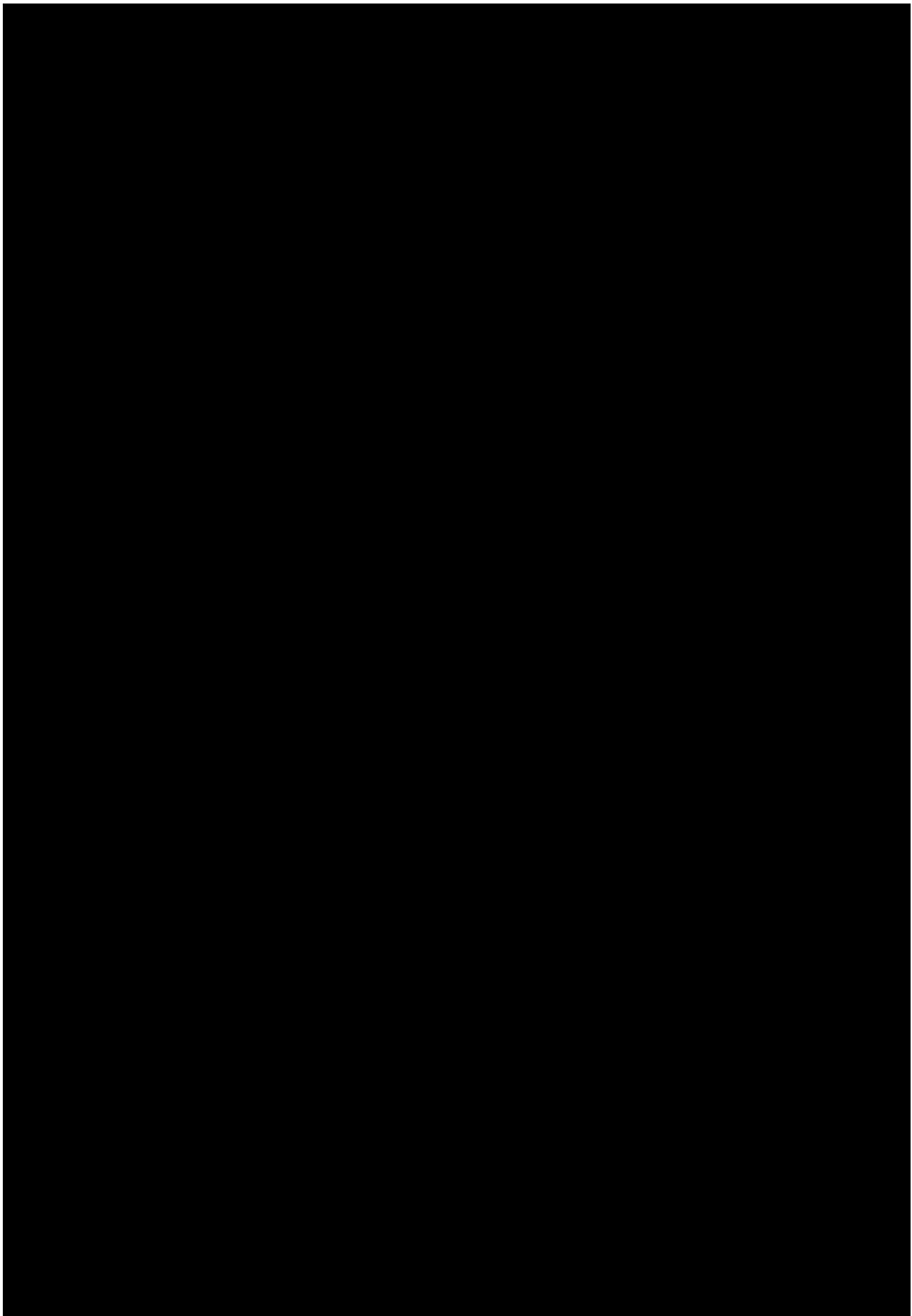


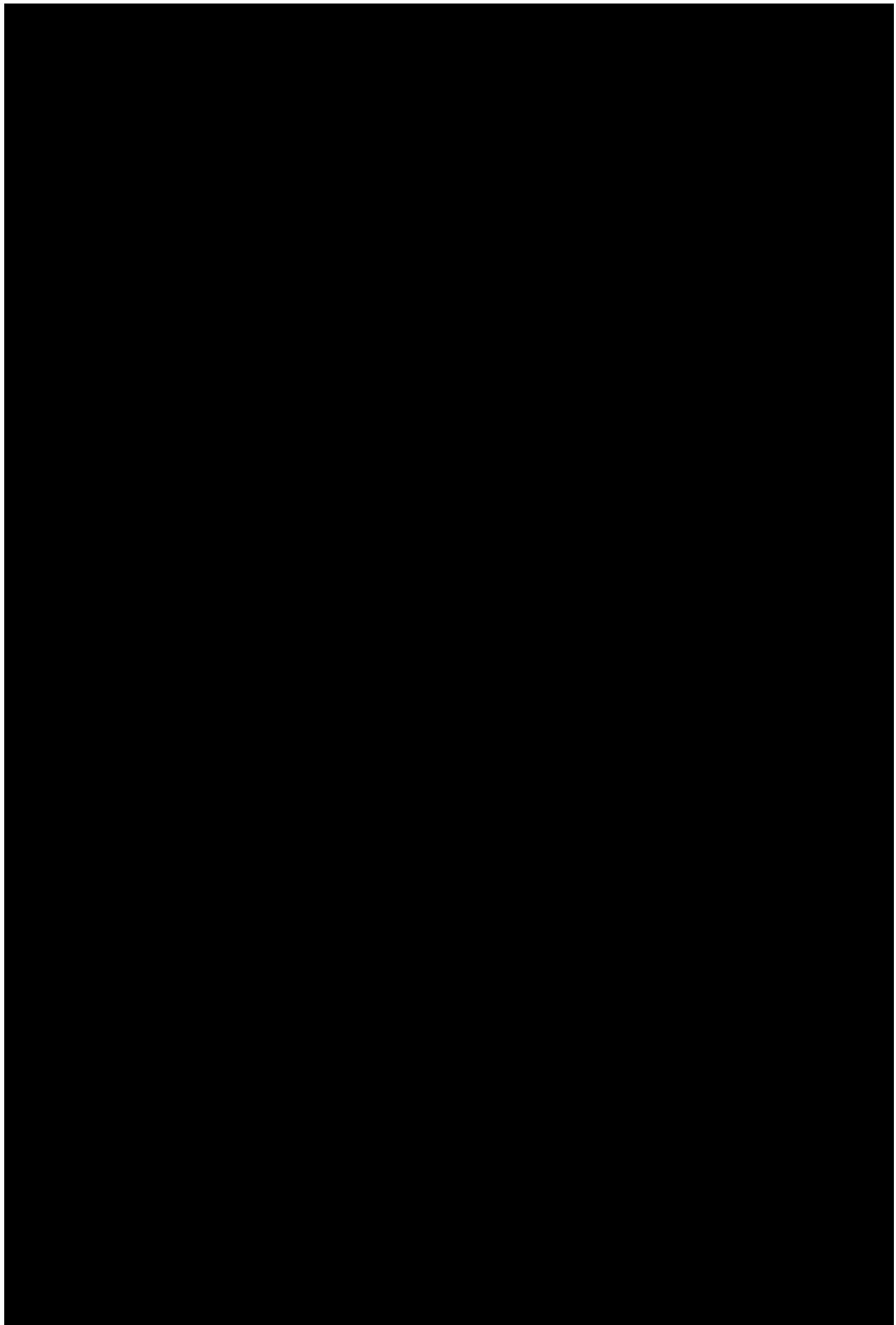


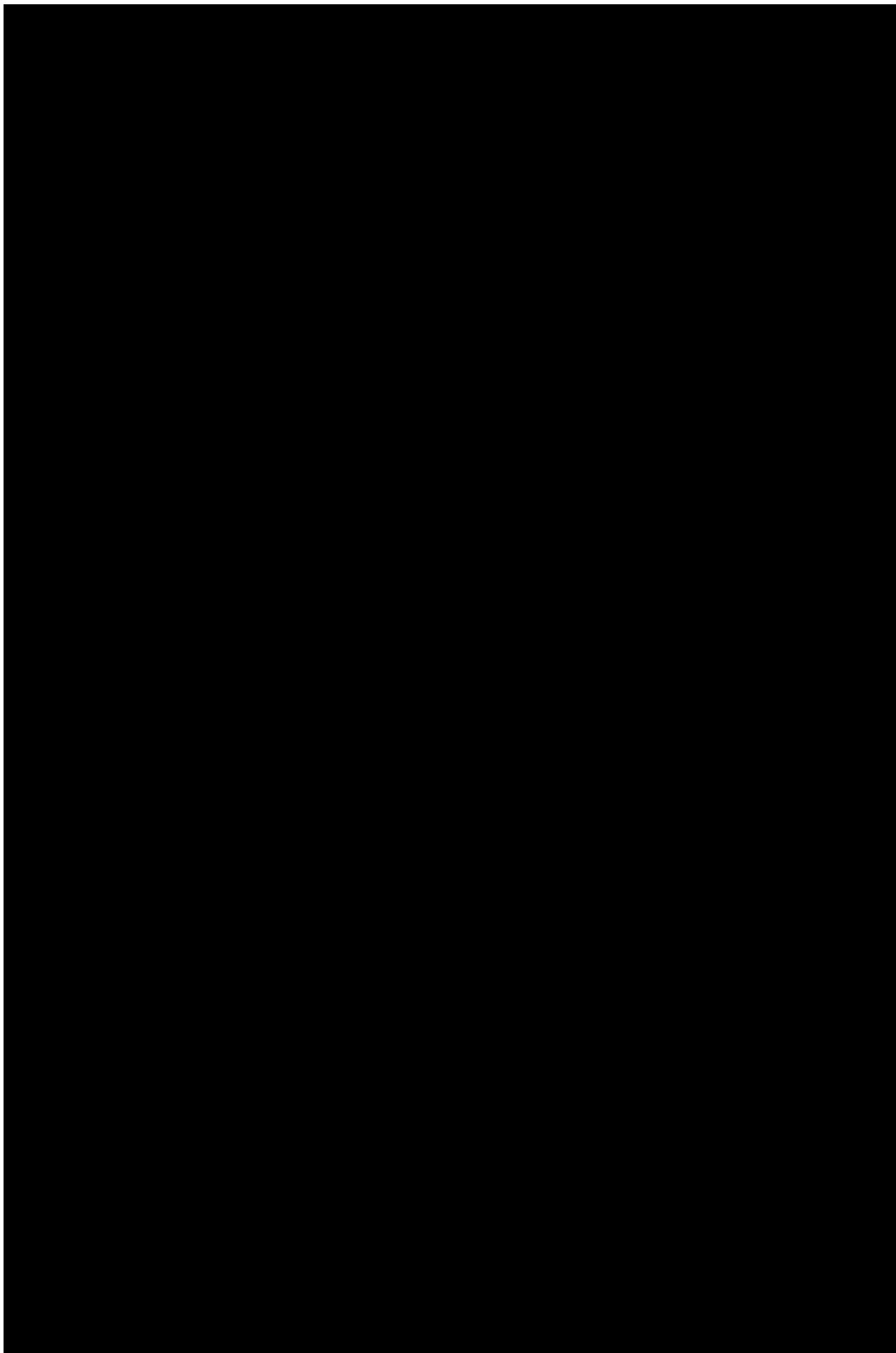


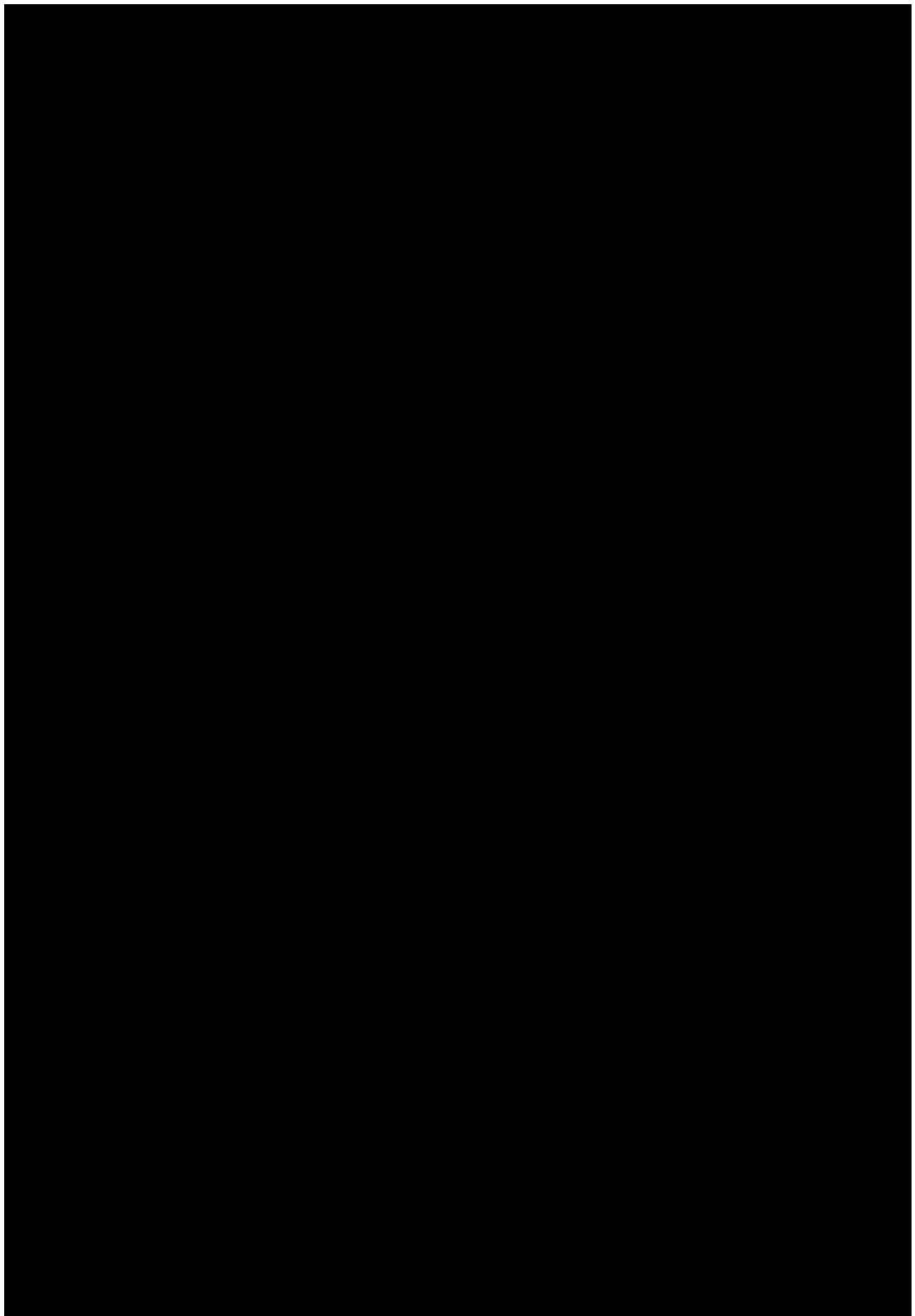


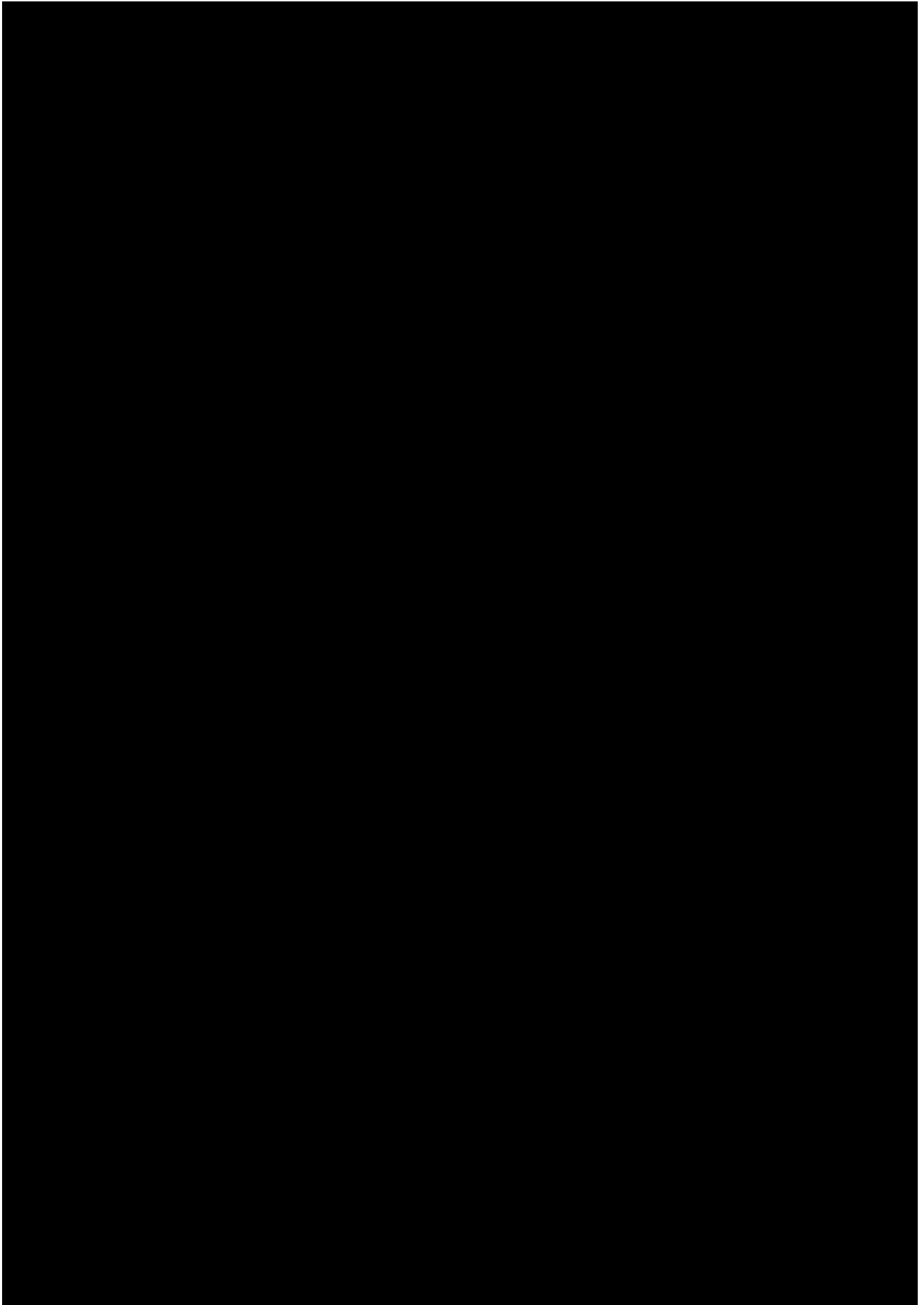


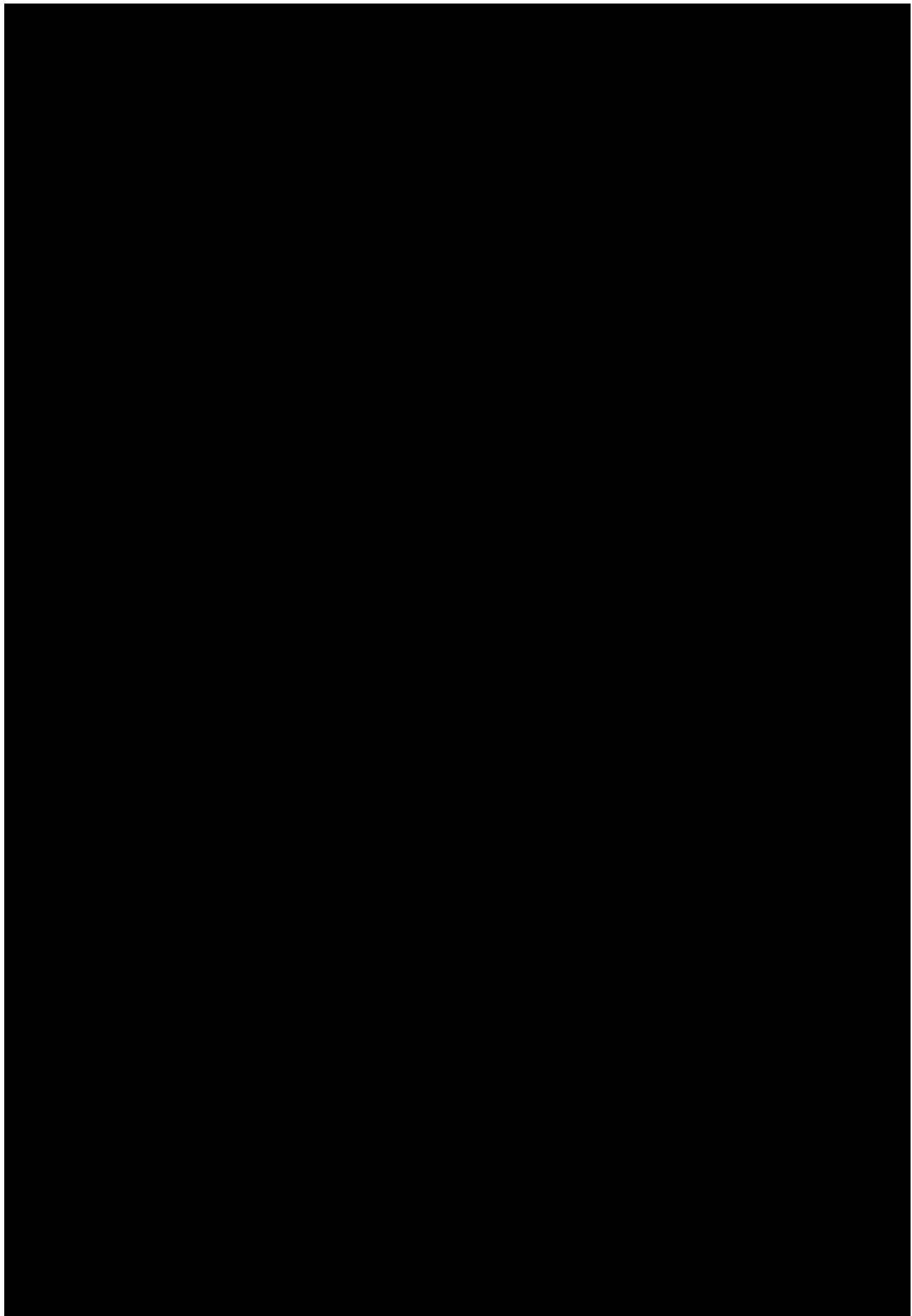


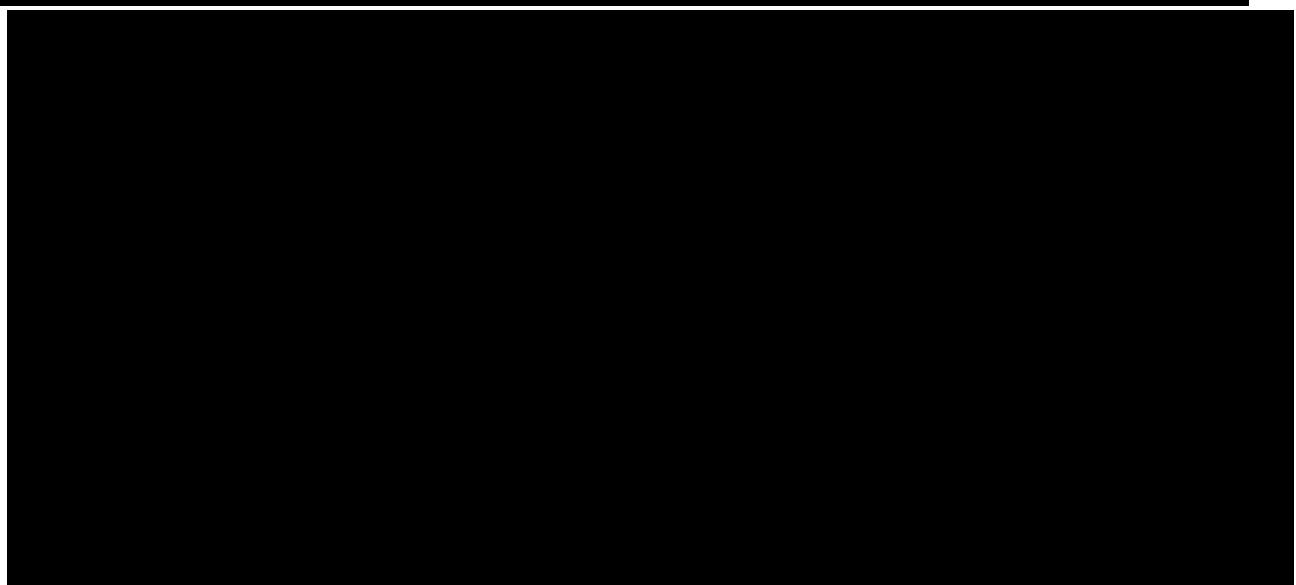
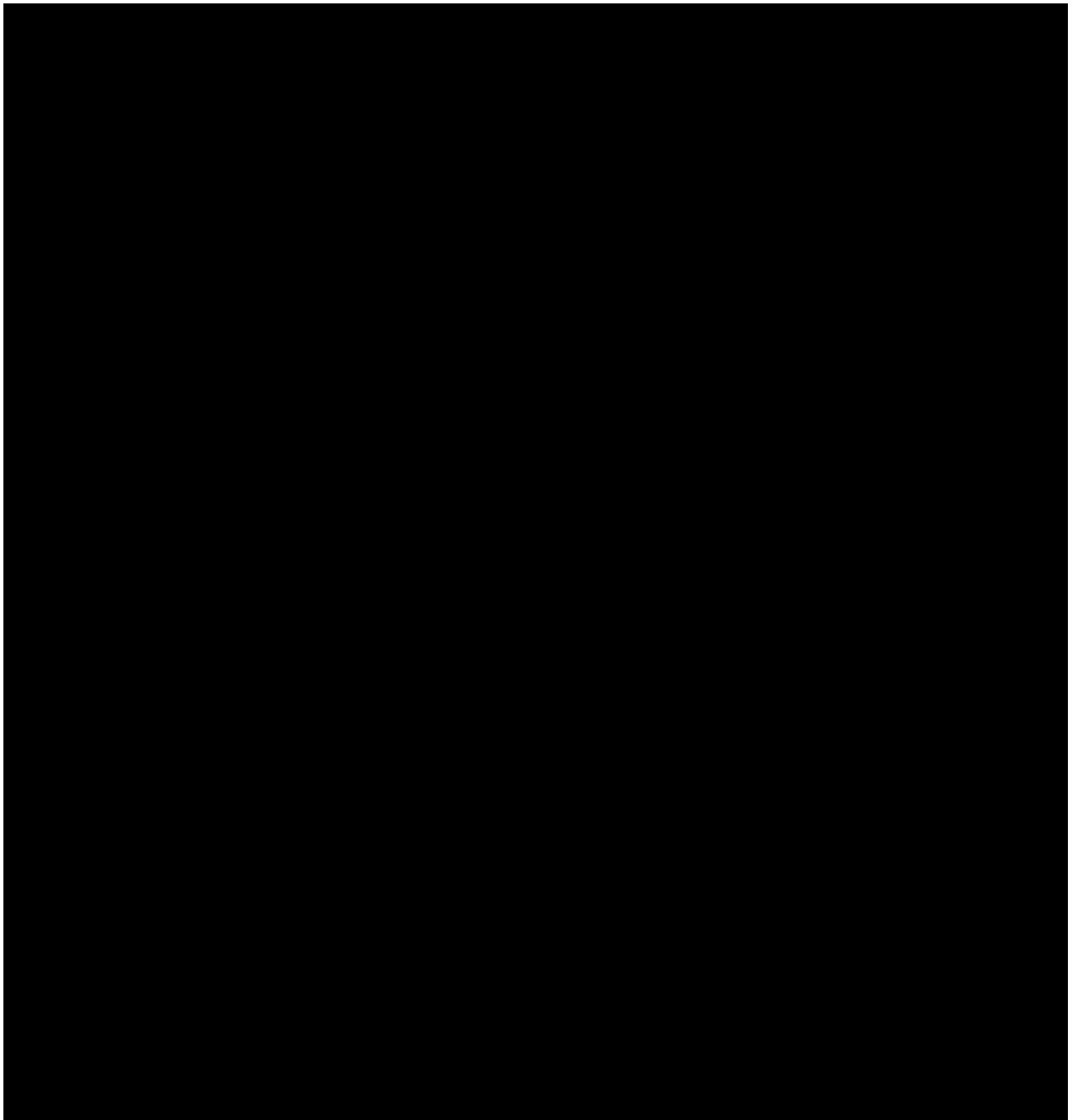


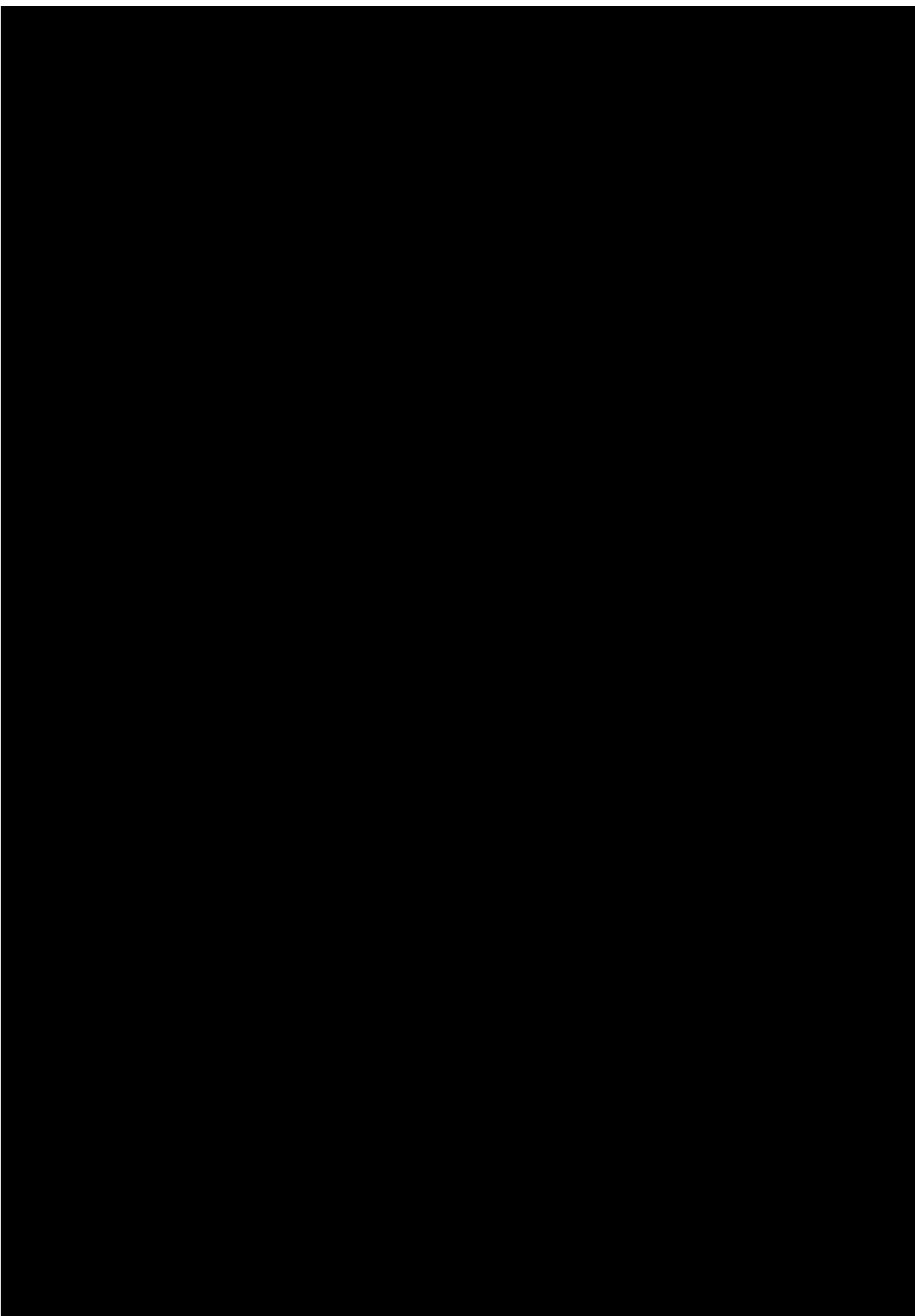


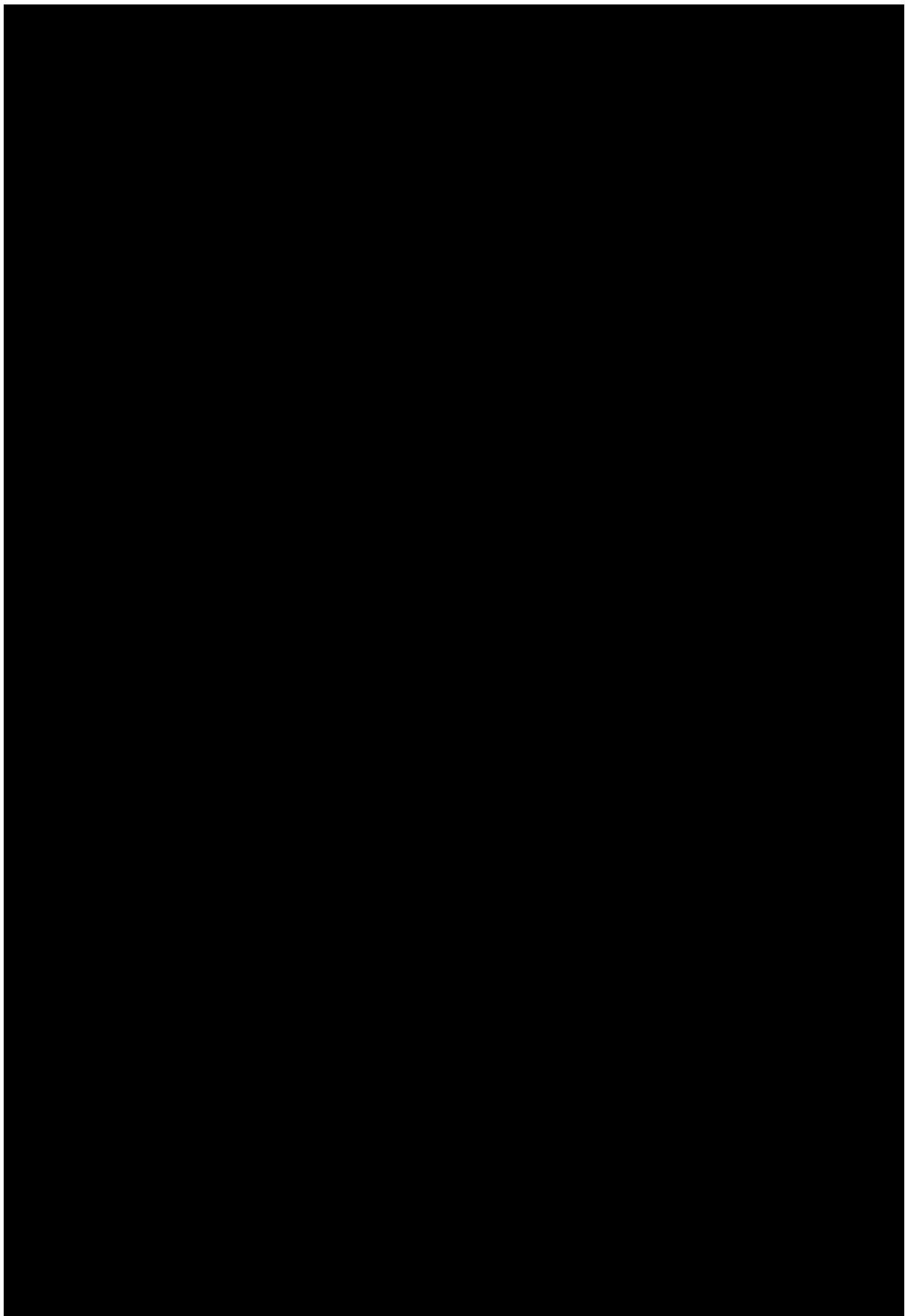


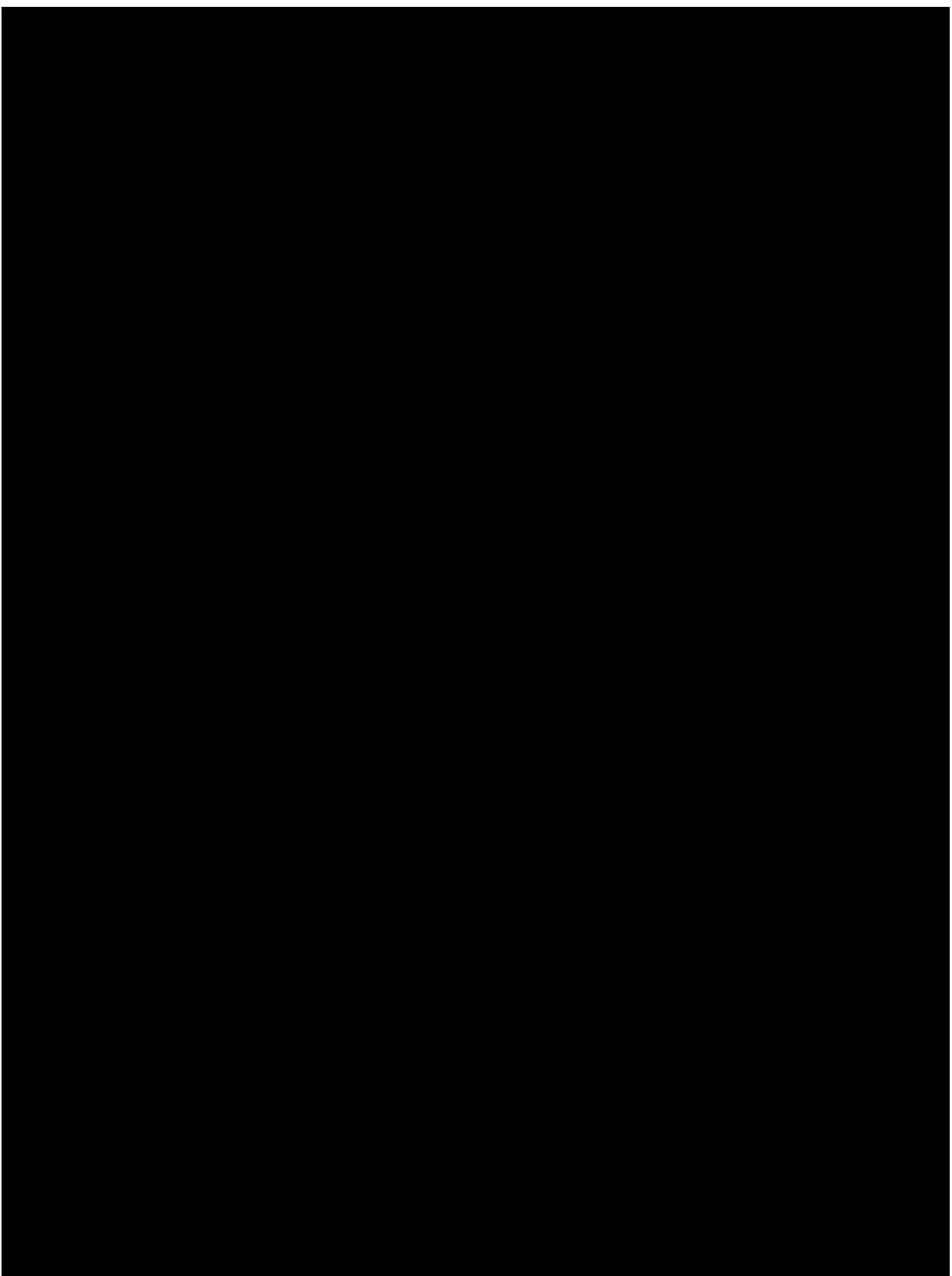












## SCHEDULE D8. – REQUIREMENTS OF ADJOINING PROPERTY EASEMENTS

(Clause 13)

### 1. NO LIMITATION ON CONTRACT

Nothing in this Schedule D8 limits the Principal's rights or affects the VC Contractor's obligations under any clause of this deed.

### 2. ADJOINING PROPERTY EASEMENTS

(a) The VC Contractor acknowledges that the Principal may acquire Adjoining Property Easements.

(b) The VC Contractor:

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

(A) unless otherwise directed by the Principal (acting reasonably and provided that the Principal cannot direct the VC Contractor to comply with an obligation which the Principal has assumed under this Schedule), 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 table below:

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

(bb) limits the VC 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 VC Contractor in this Schedule D8 that are additional to or more stringent or onerous than the conditions and requirements described in clause 2(b)(i)(A) of this Schedule D8;

(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 Easement:

(A) in accordance with this clause 2 of Schedule D8; or

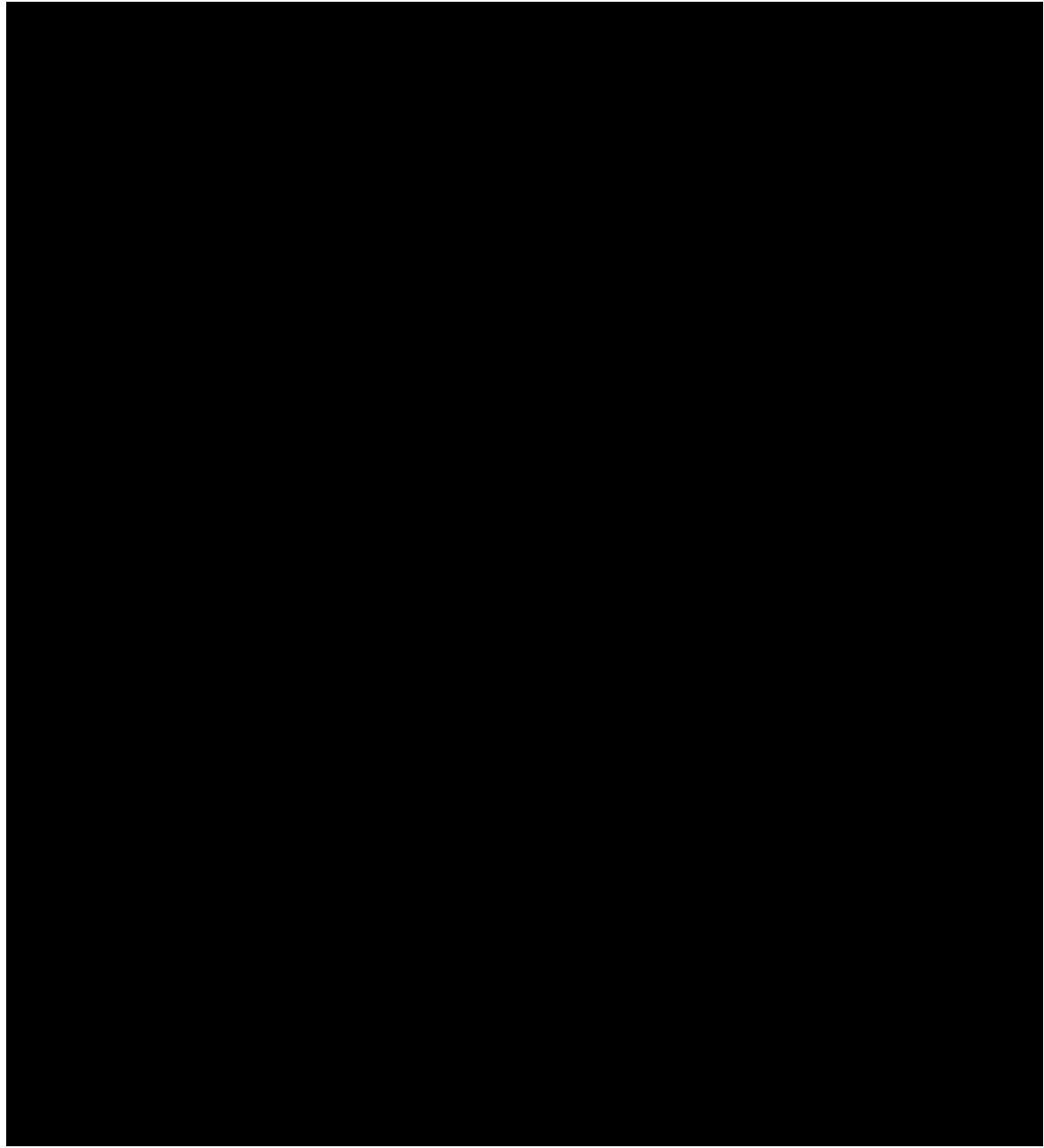
(B) otherwise with the Principal's prior written consent (which must not be unreasonably withheld or delayed); and

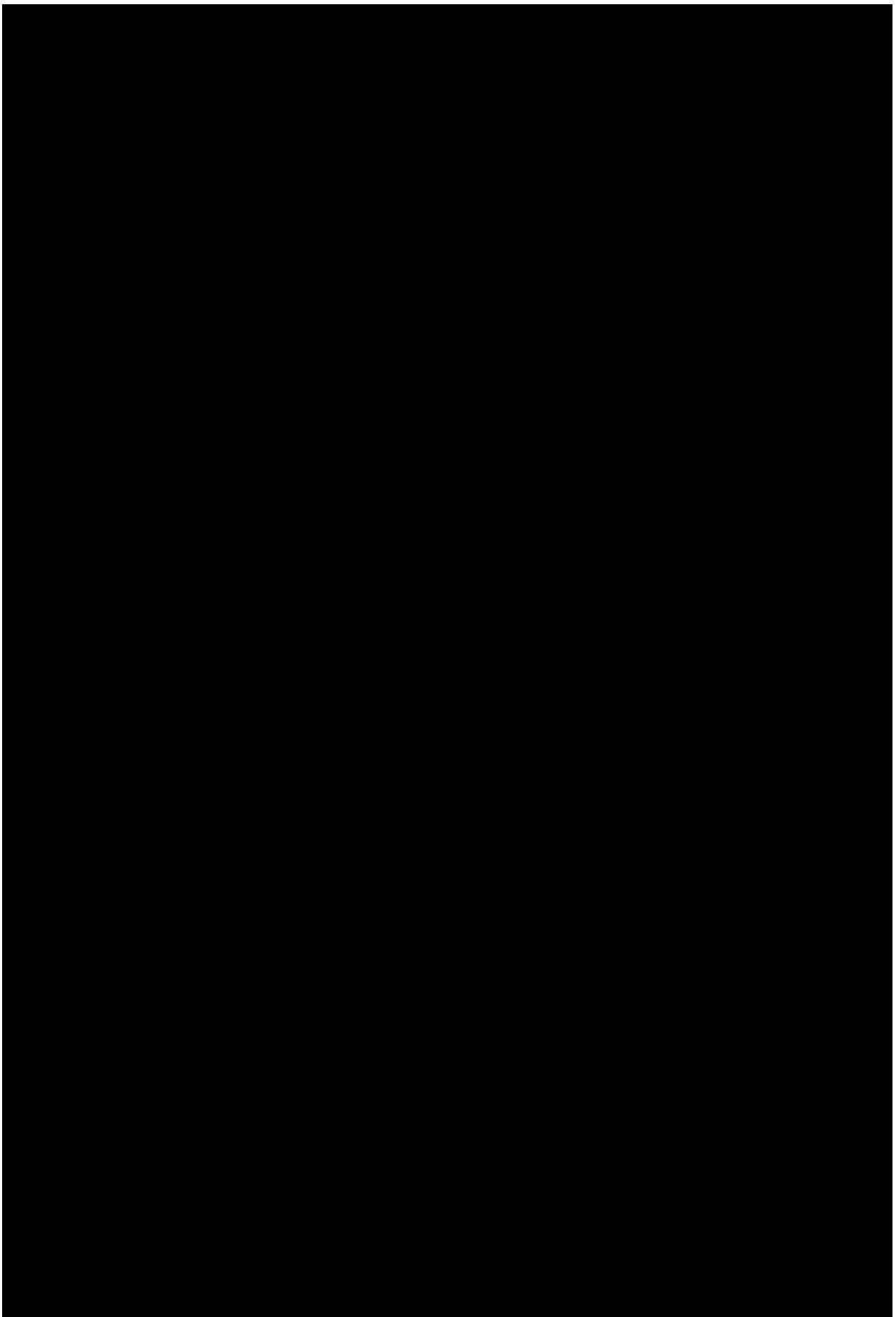
(iv) may, subject to clause 2(b)(i), exercise the Principal's right to obtain access to an Adjoining Property under an Adjoining Property Easement, and all other rights under an Adjoining Property Easement, for the purpose of carrying out the VC Contractor's Activities.

(c) Where an Adjoining Property Easement provides that:

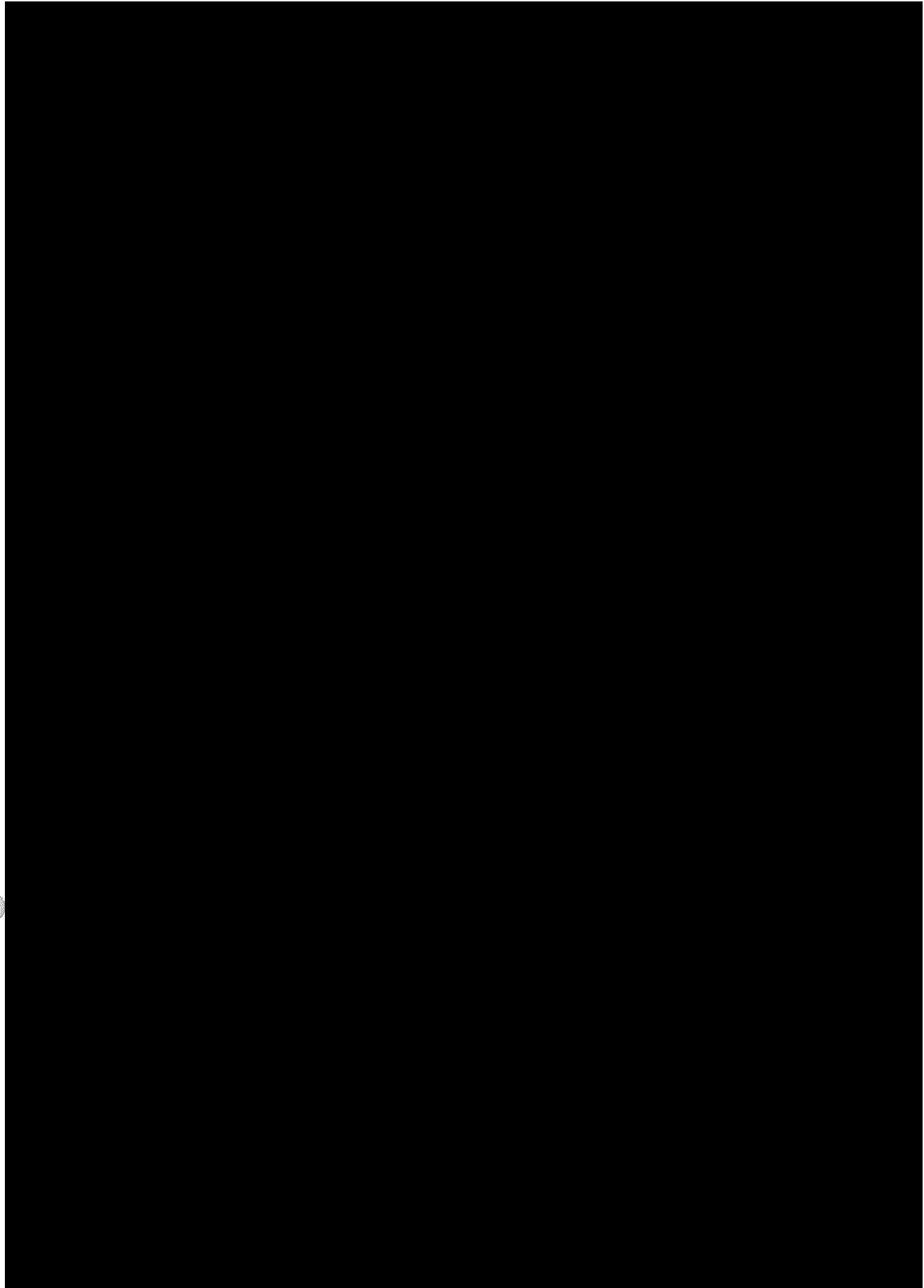
- (i) the Principal must; or
  - (ii) the Principal must ensure that the VC Contractor will,
    - do something or comply with an obligation, the VC Contractor must, in performing the VC Contractor's Activities, do that thing or comply with, satisfy, carry out and fulfil that obligation, except to the extent that the Principal has assumed that obligation under this Schedule D8.
- (d) Where an Adjoining Property Easement provides for the Principal to provide a document, notice or information to an Adjoining Owner, the VC Contractor must:
- (i) subject to clause 2(d)(ii) of this Schedule D8, 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 clause 2.2(b)(i) and clause 3.2(b)(i) of the Adjoining Property Easement, submit the documentation directly to the Adjoining Owner with a copy to the Principal.
- (e) The VC Contractor must, in carrying out the VC 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;
  - (ii) ensure that no act or omission of the VC 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 D8 limits the Principal's rights or the VC Contractor's obligations in relation to Substantial Completion, Completion or the rectification of Defects under this deed.
- (g) The parties agree that:
- (i) the VC Contractor must indemnify the Principal from and against any claim by any Adjoining Owner or third party or any Liability of the Principal to any Adjoining Owner or third party arising out of or in any way in connection with any Adjoining Property Easement to the extent that the Liability or claim is caused by, or arises out of, or in any way in connection with, the VC Contractor's Activities:
    - (A) provided that the VC Contractor's responsibility to indemnify the Principal will be reduced to the extent that a negligent act or omission, or a breach of contract, of the Principal or an agent of the Principal contributed to the Liability or claim; and
    - (B) except to the extent it is limited in this Schedule D8; and

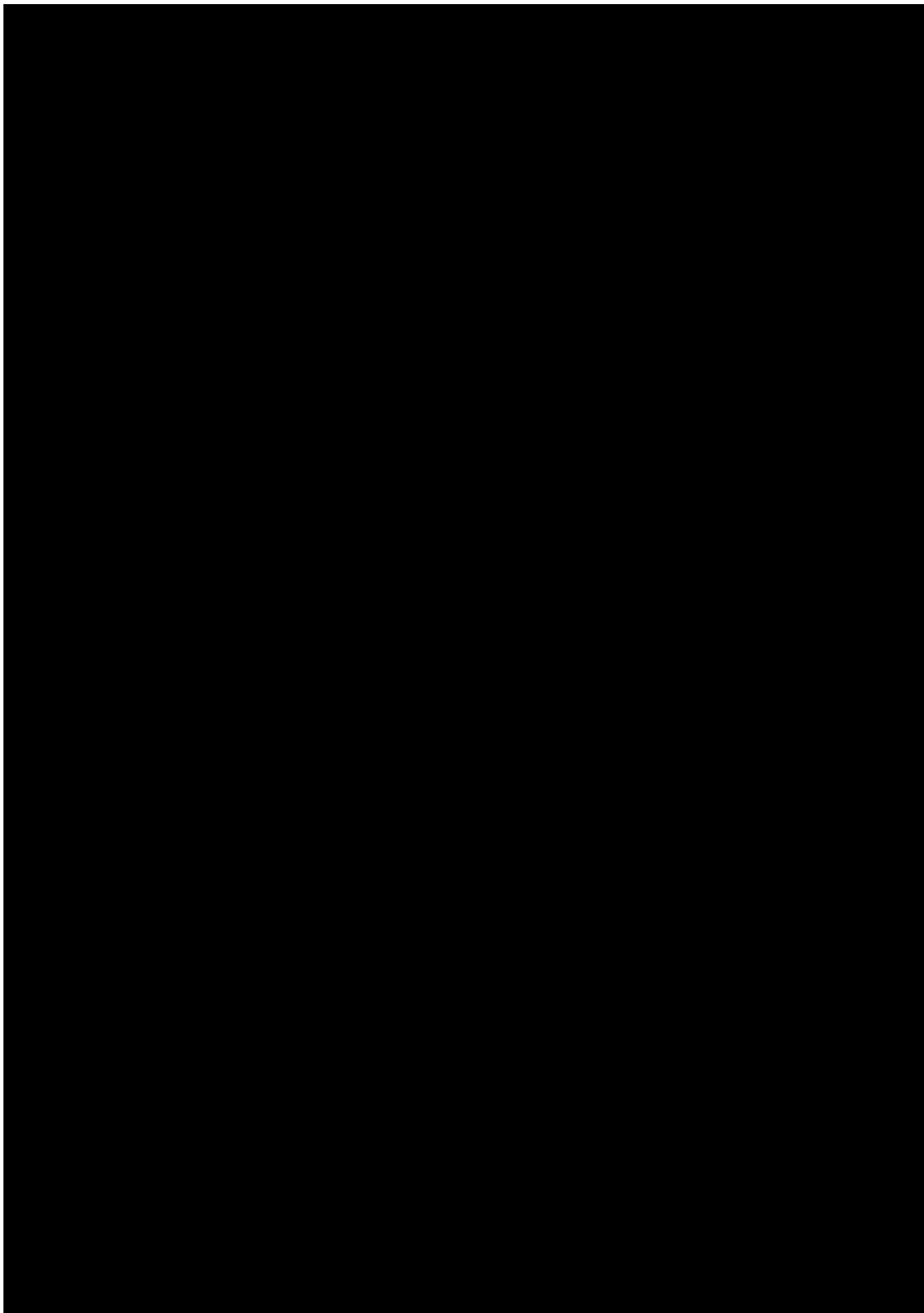
- (ii) to the extent that the VC Contractor is required to indemnify the Principal from and against any Consequential Loss arising from loss of use or access to real or personal property, the VC Contractor's liability for such Consequential Loss is limited to the extent the VC Contractor:
- (A) recovers its liability for such Consequential Loss under a Principal's Insurance policy; or
  - (B) is indemnified or entitled to be indemnified for its liability for such Consequential Loss under a VC Contractor Insurance policy after the application of any excesses and deductibles,
- or would have recovered or been indemnified (as applicable) for its liability for such Consequential Loss but for:
- (C) the operation of any policy retention, deductible or excess that the VC Contractor is required to bear under the terms of this deed;
  - (D) any act or omission of the VC Contractor or its Associates including any failure by the VC Contractor to:
    - (aa) diligently pursue a claim under the relevant policy of insurance;
    - (bb) comply with the terms of the relevant policy of insurance (including pre-contractual duties of disclosure); or
    - (cc) comply with its insurance obligations under this deed.
- (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 deed, the VC Contractor:
- (i) bears the full risk (as between the VC Contractor and the Principal) of:
    - (A) it complying with the obligations under this Schedule D8; 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 against the Principal arising out of or in any way in connection with:
    - (A) the risks referred to in clause 2(i) of this Schedule D8; 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 table below that are capitalised but are not defined in this deed have the same meaning as in the Adjoining Property Easement.

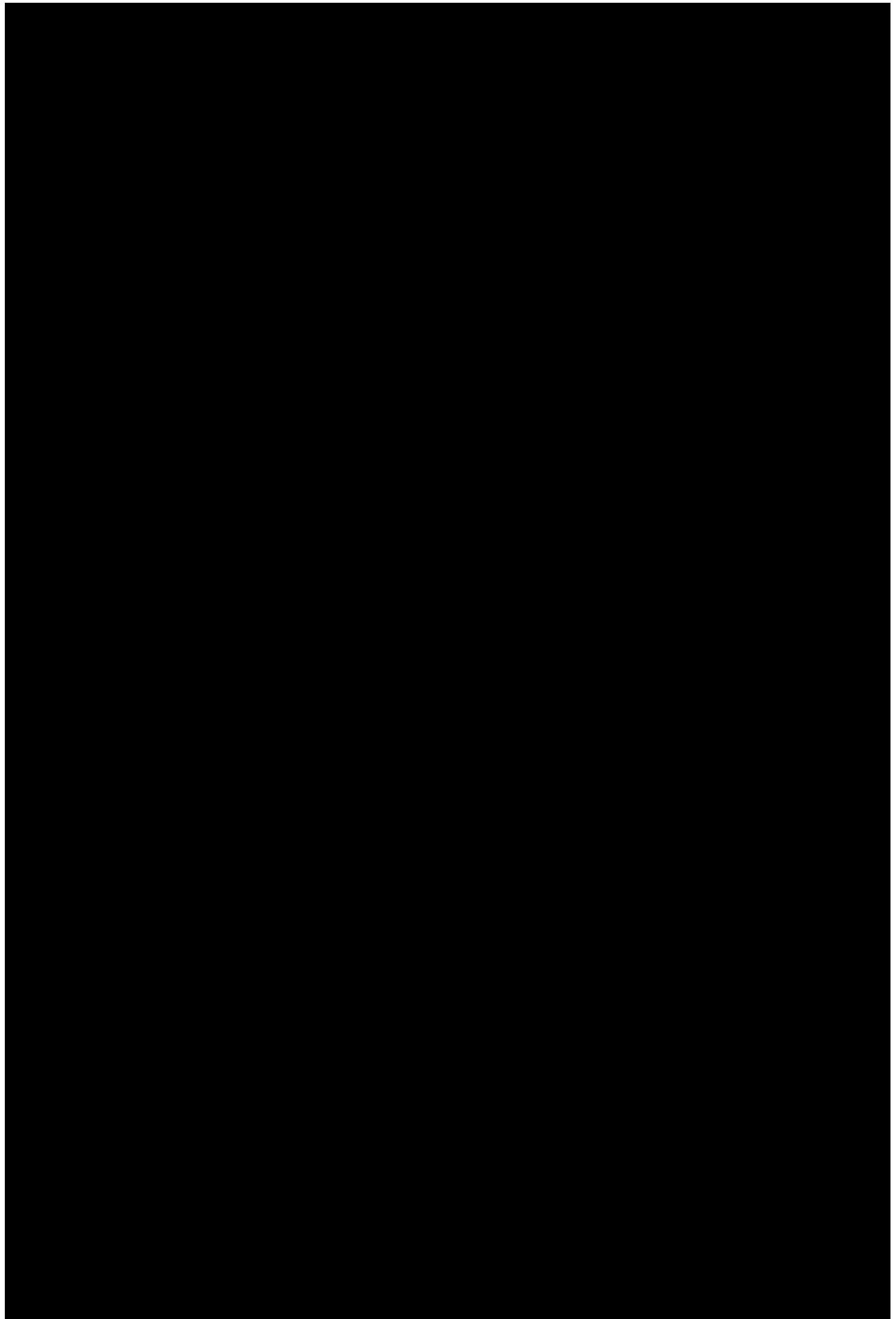


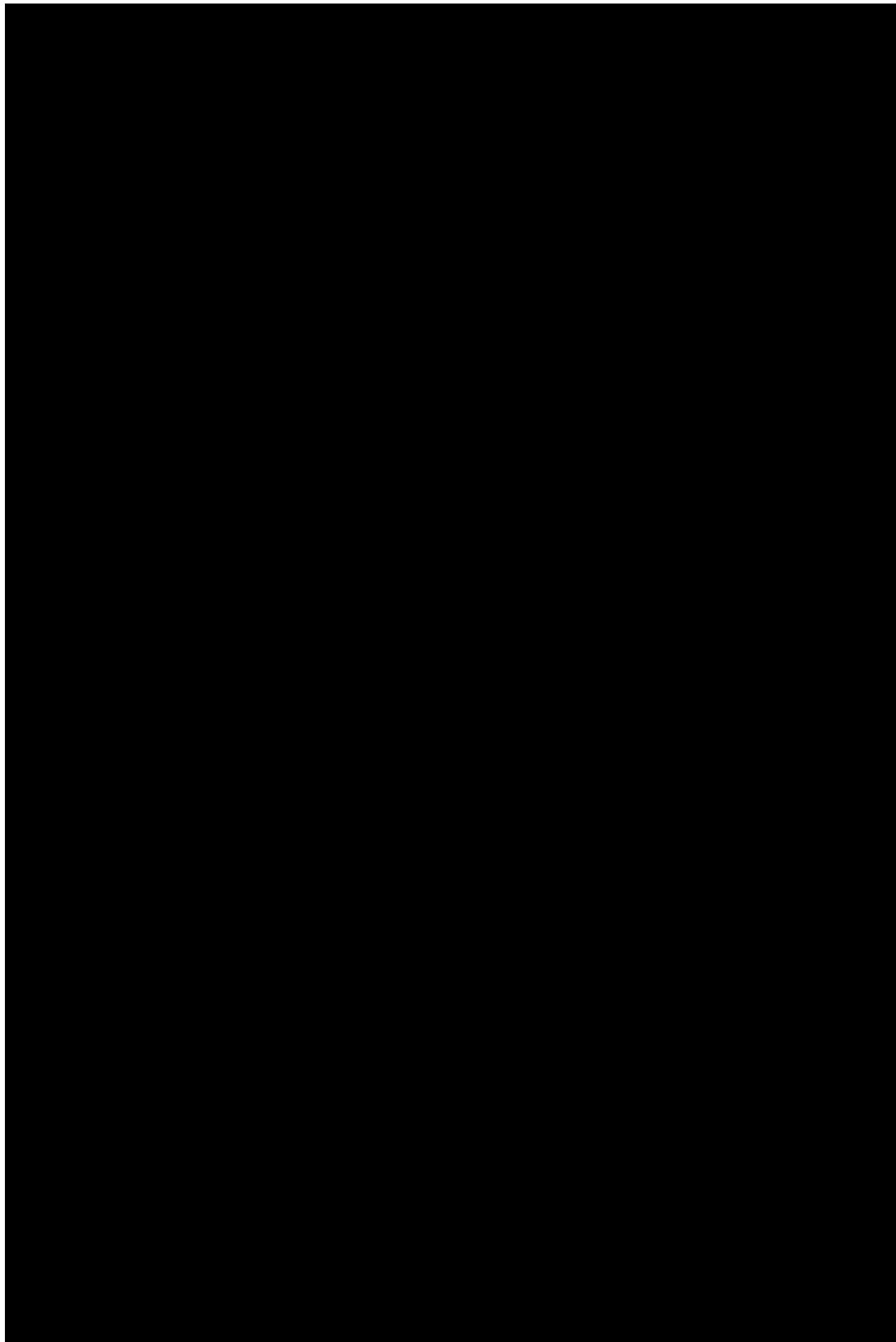


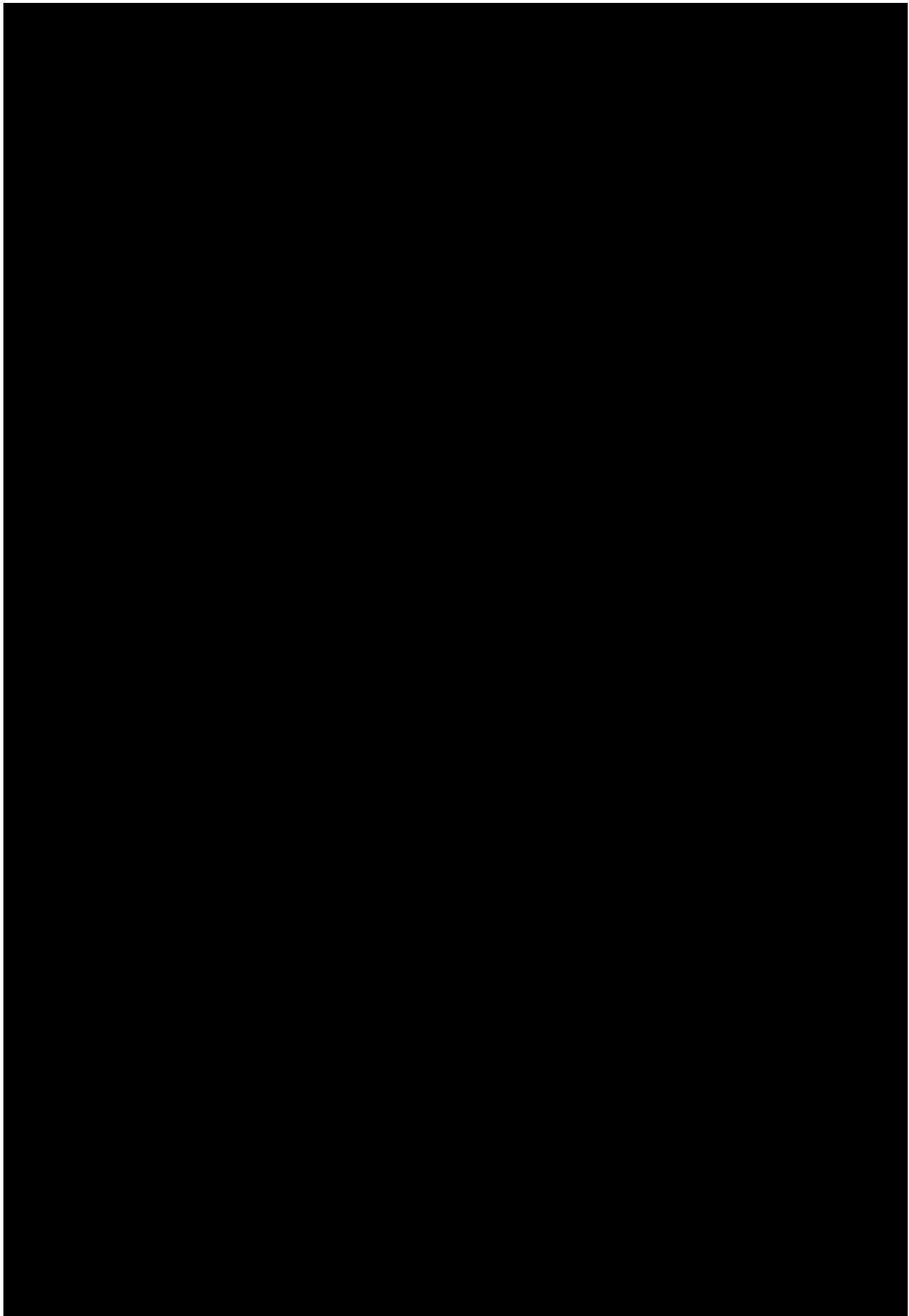


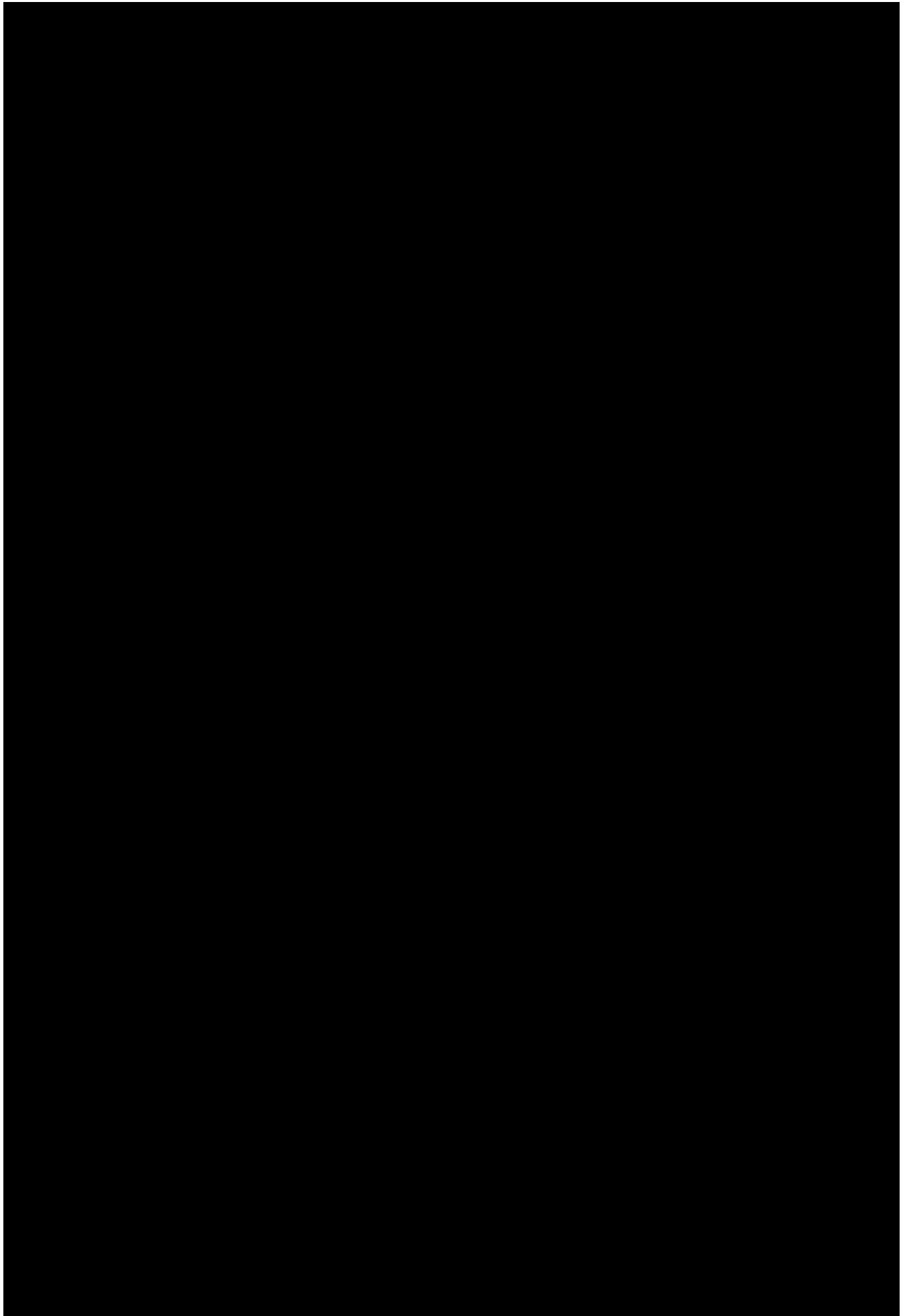


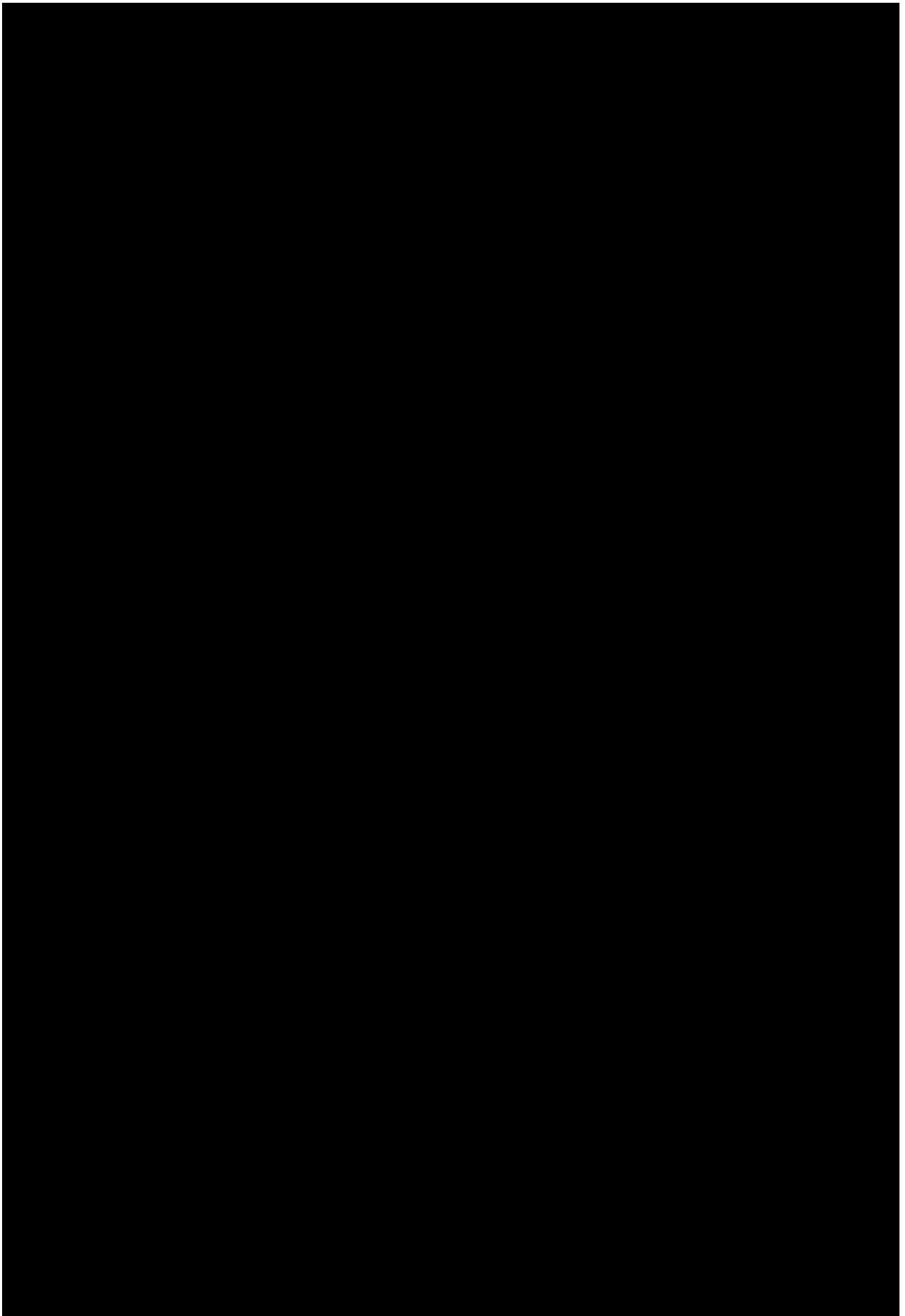


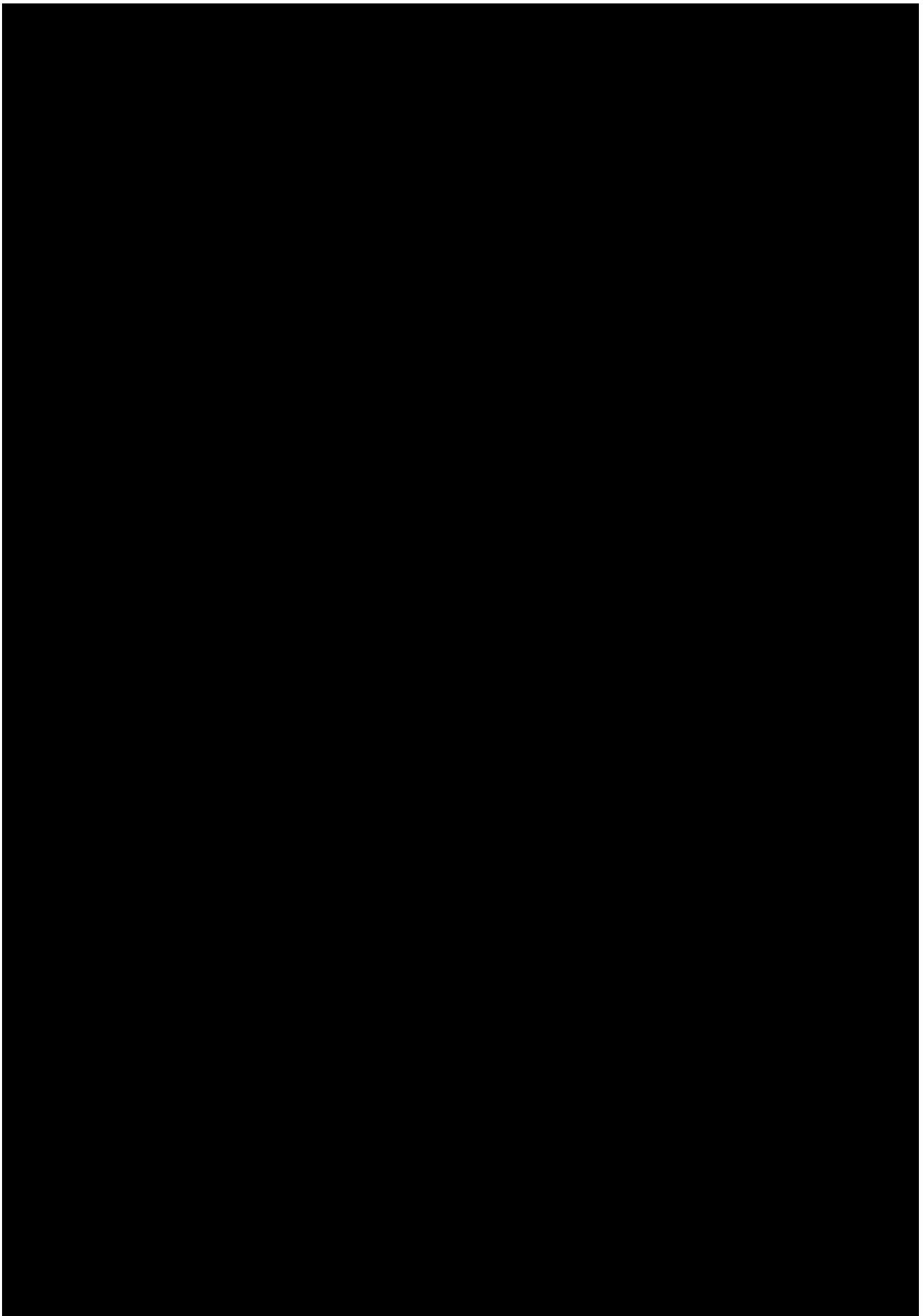








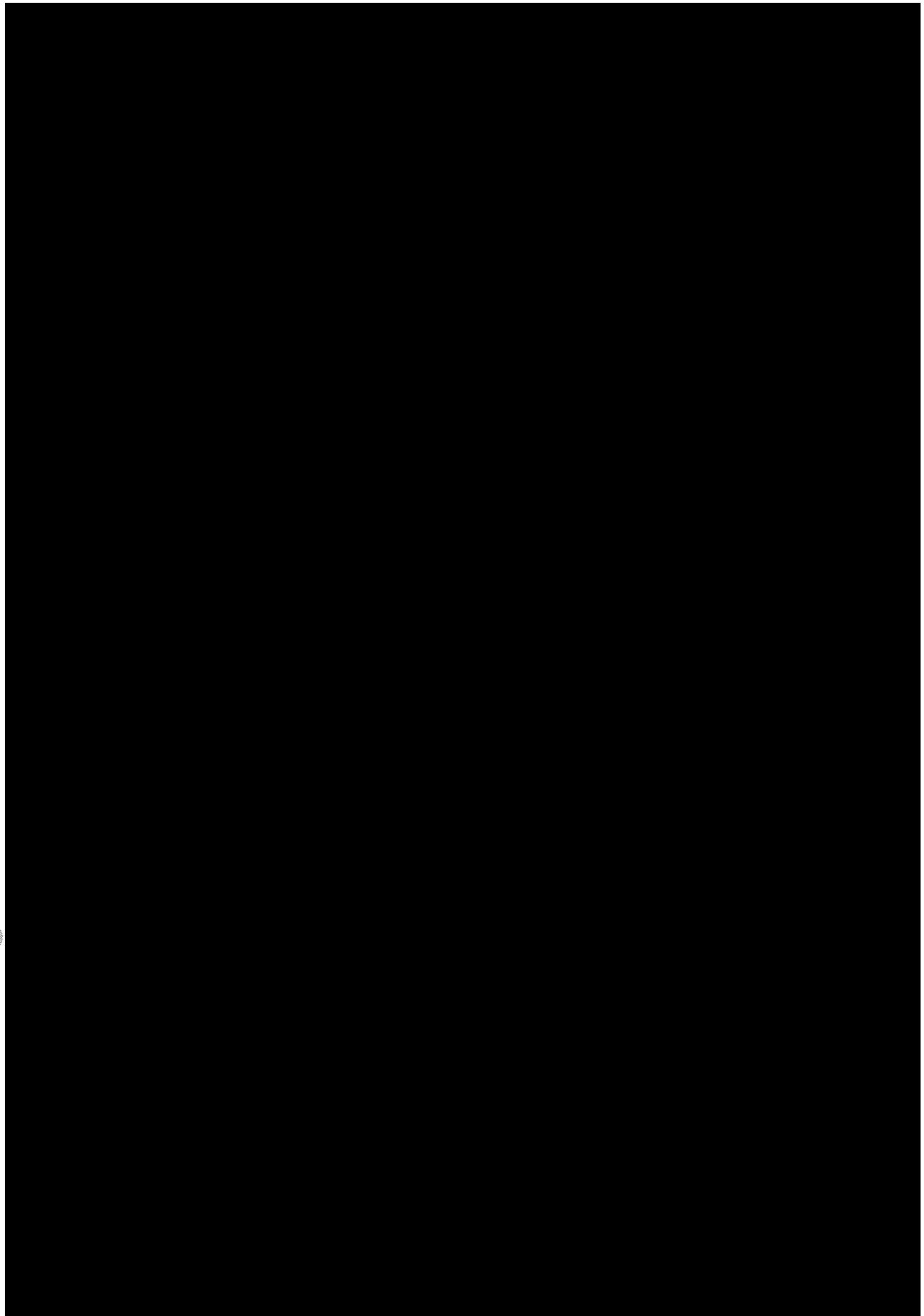


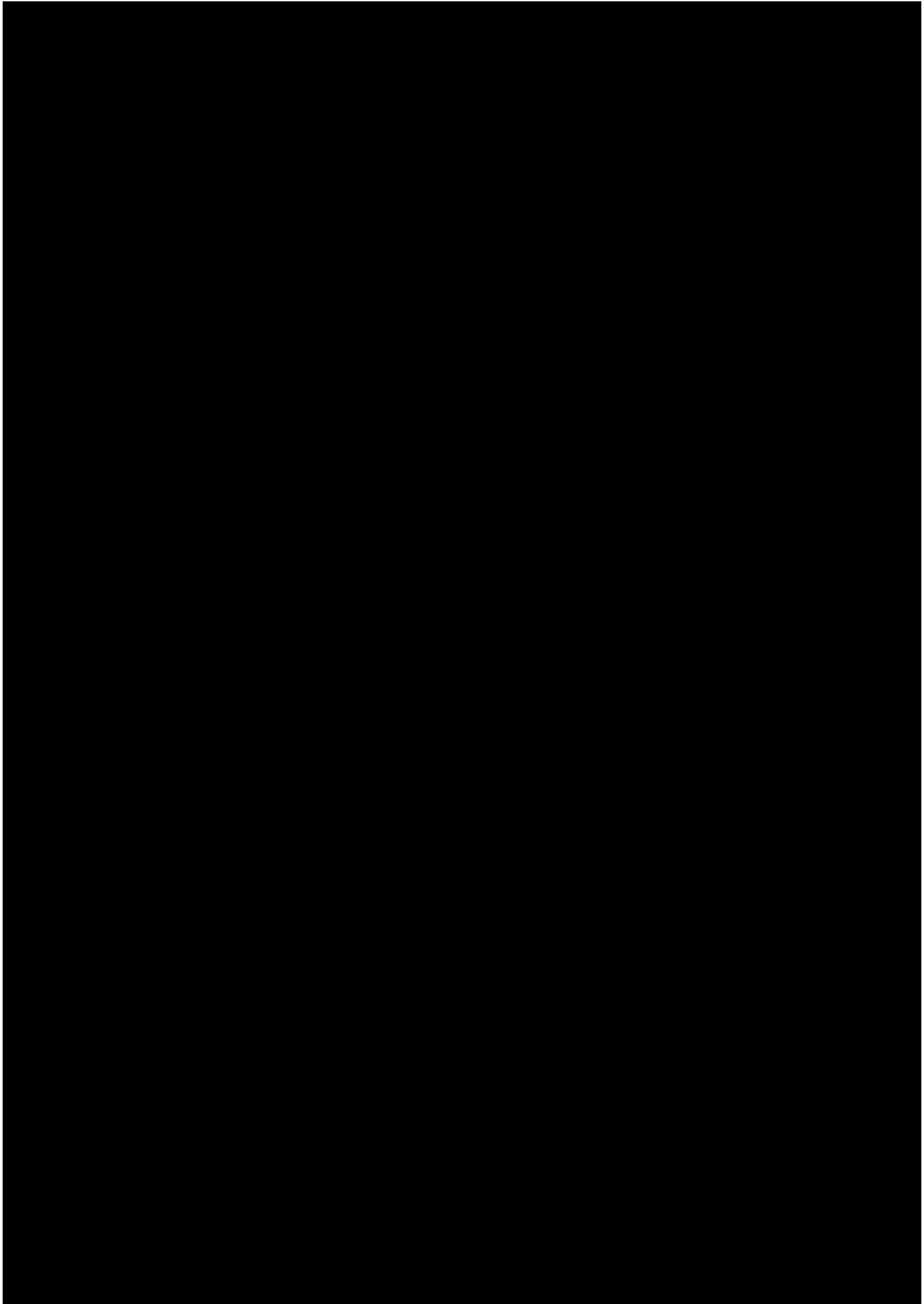


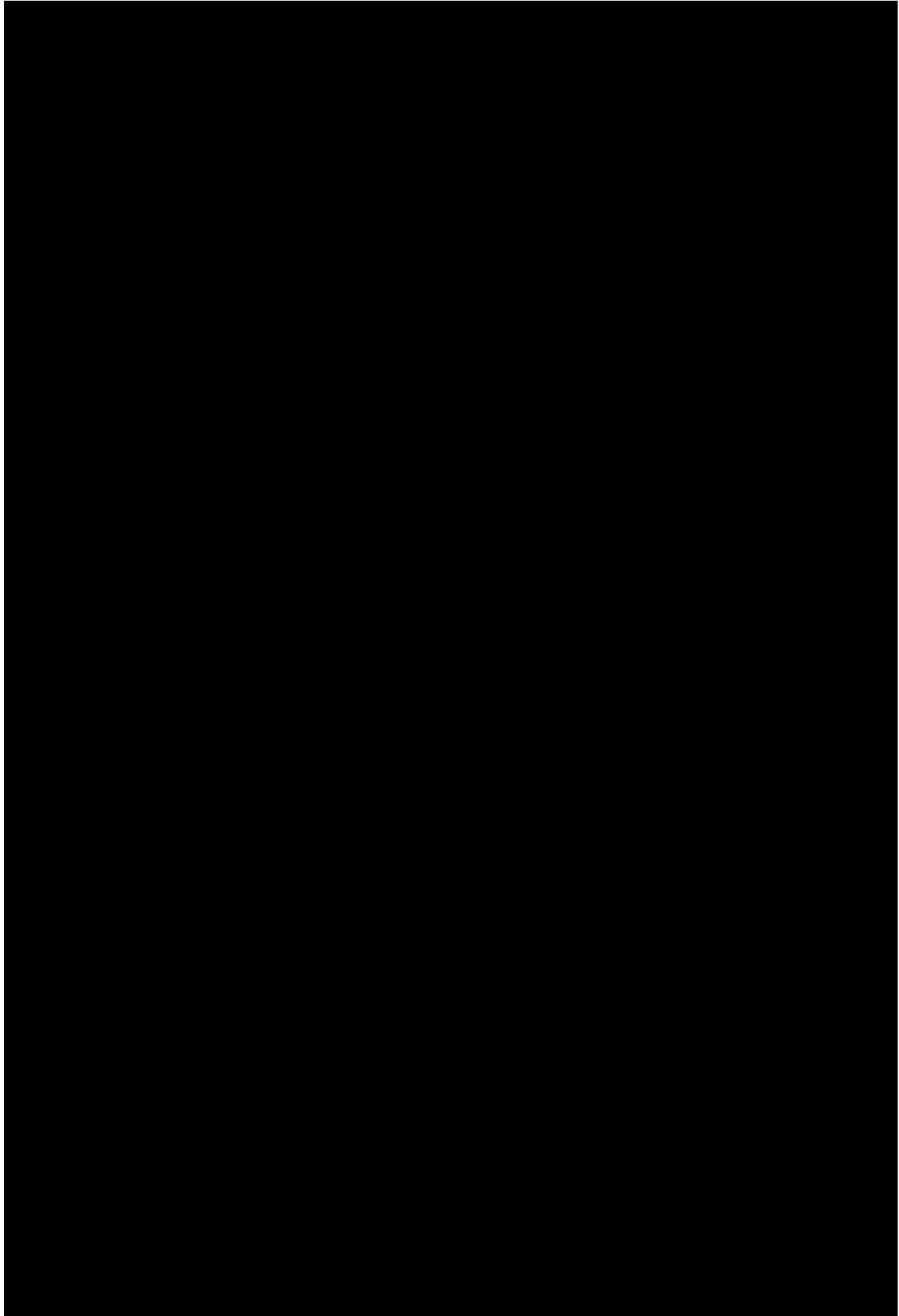


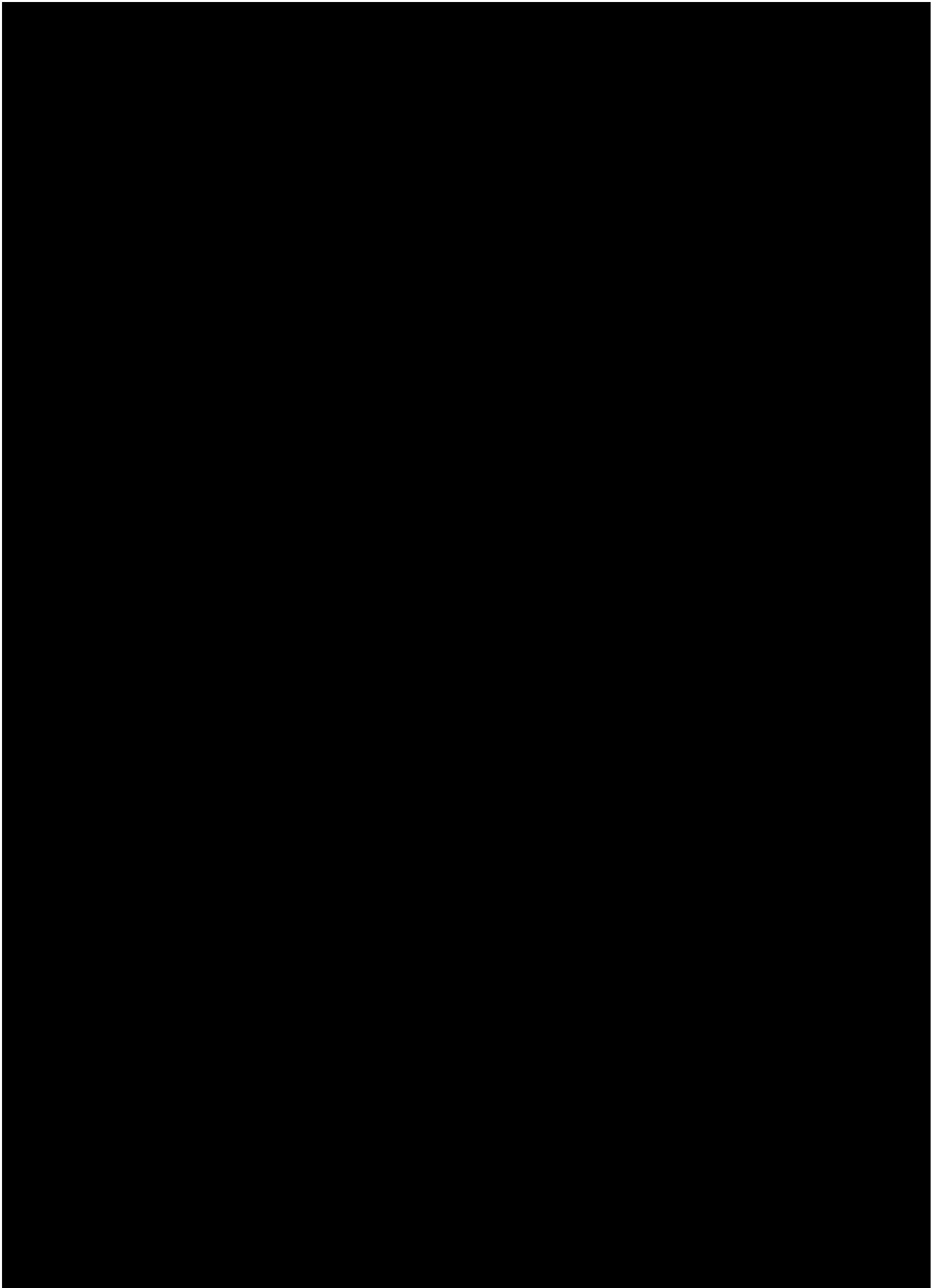


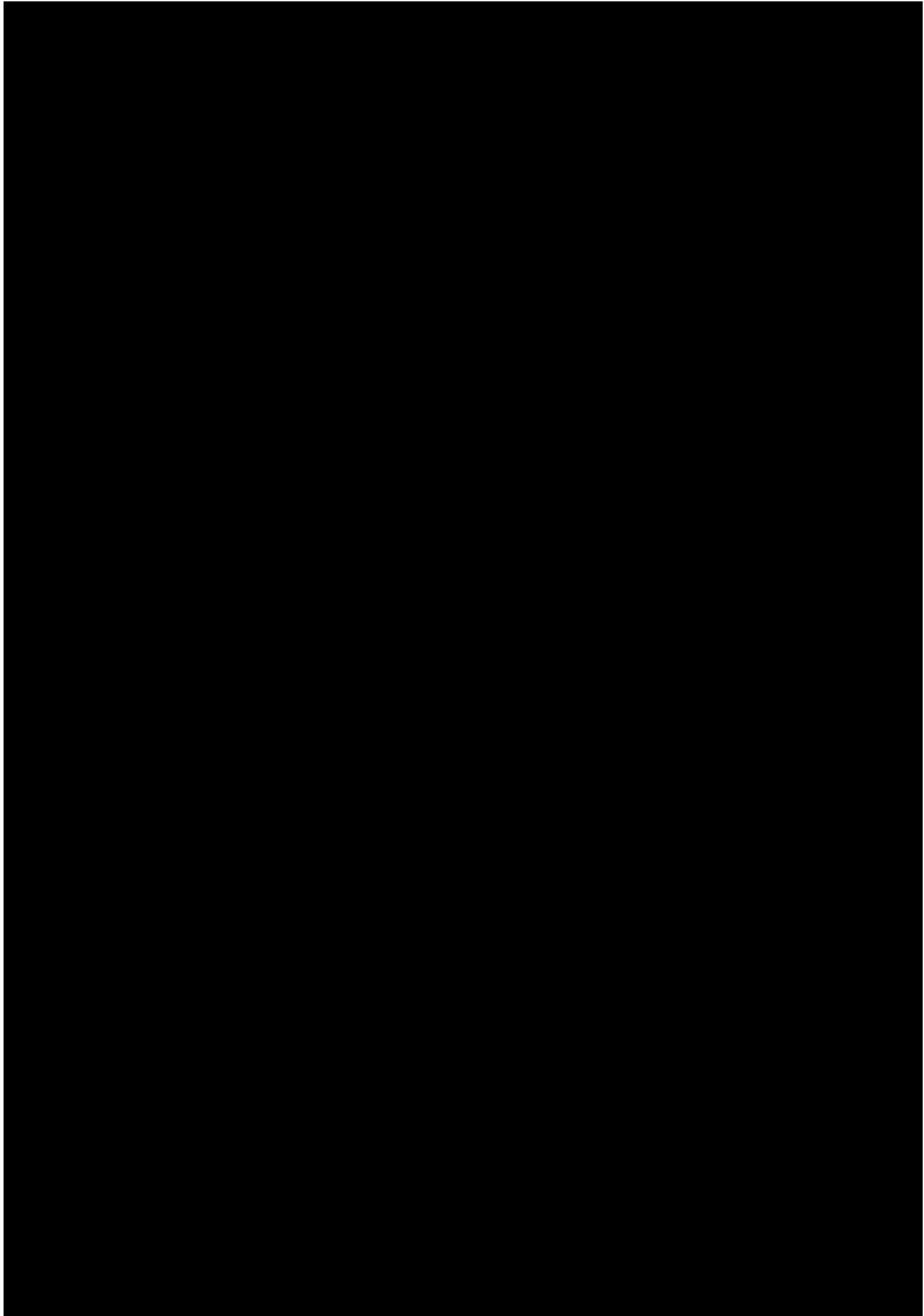


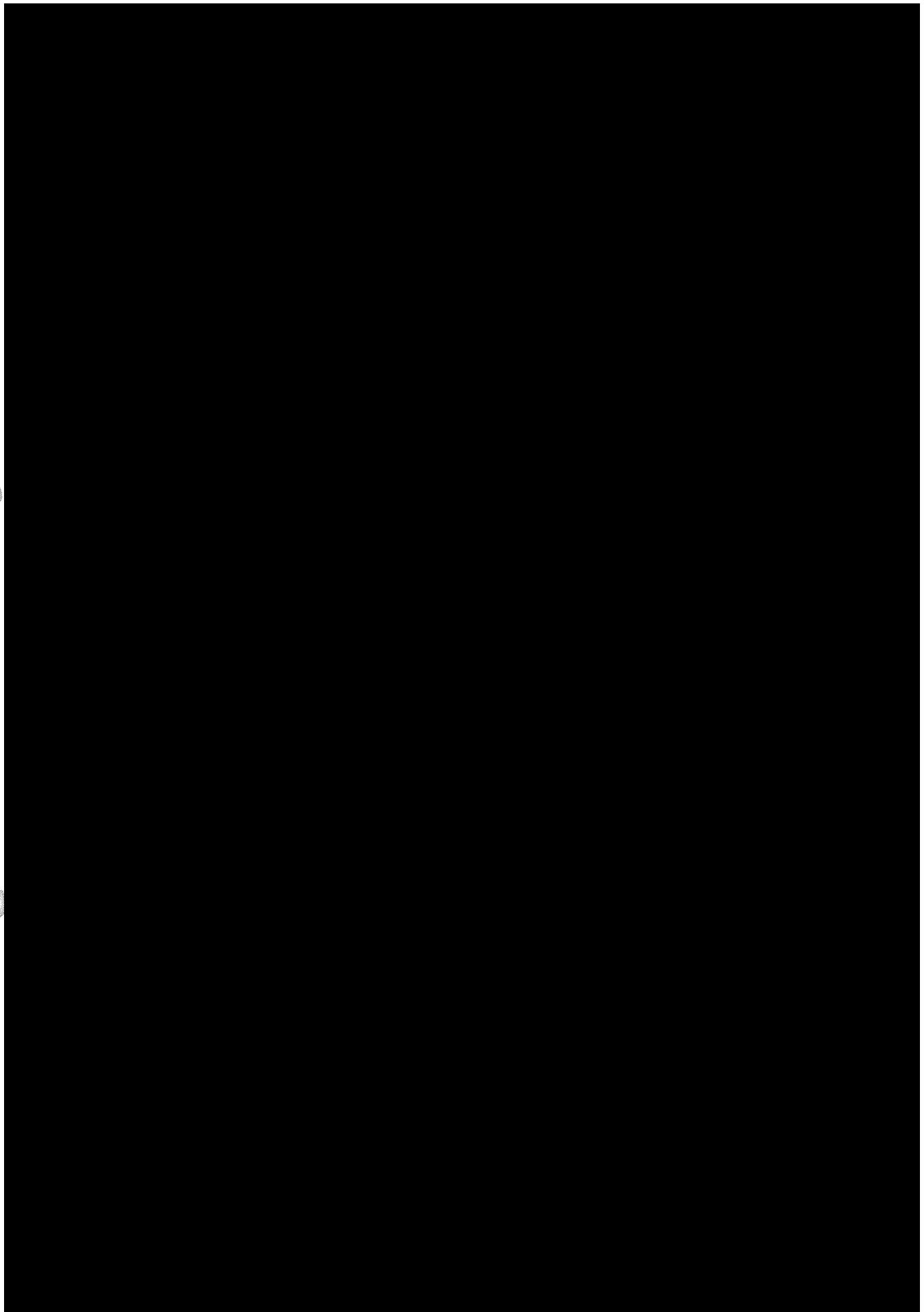


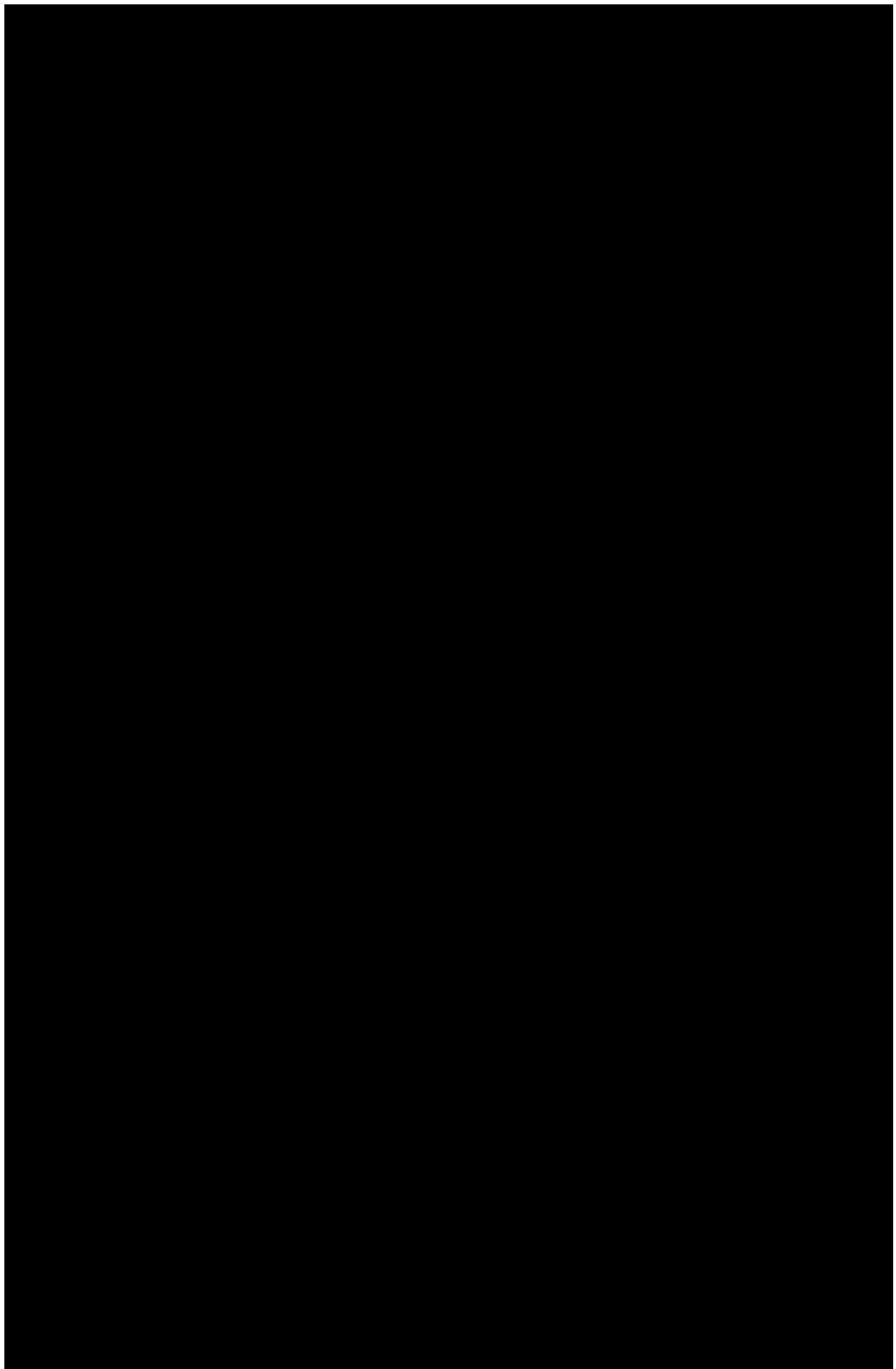




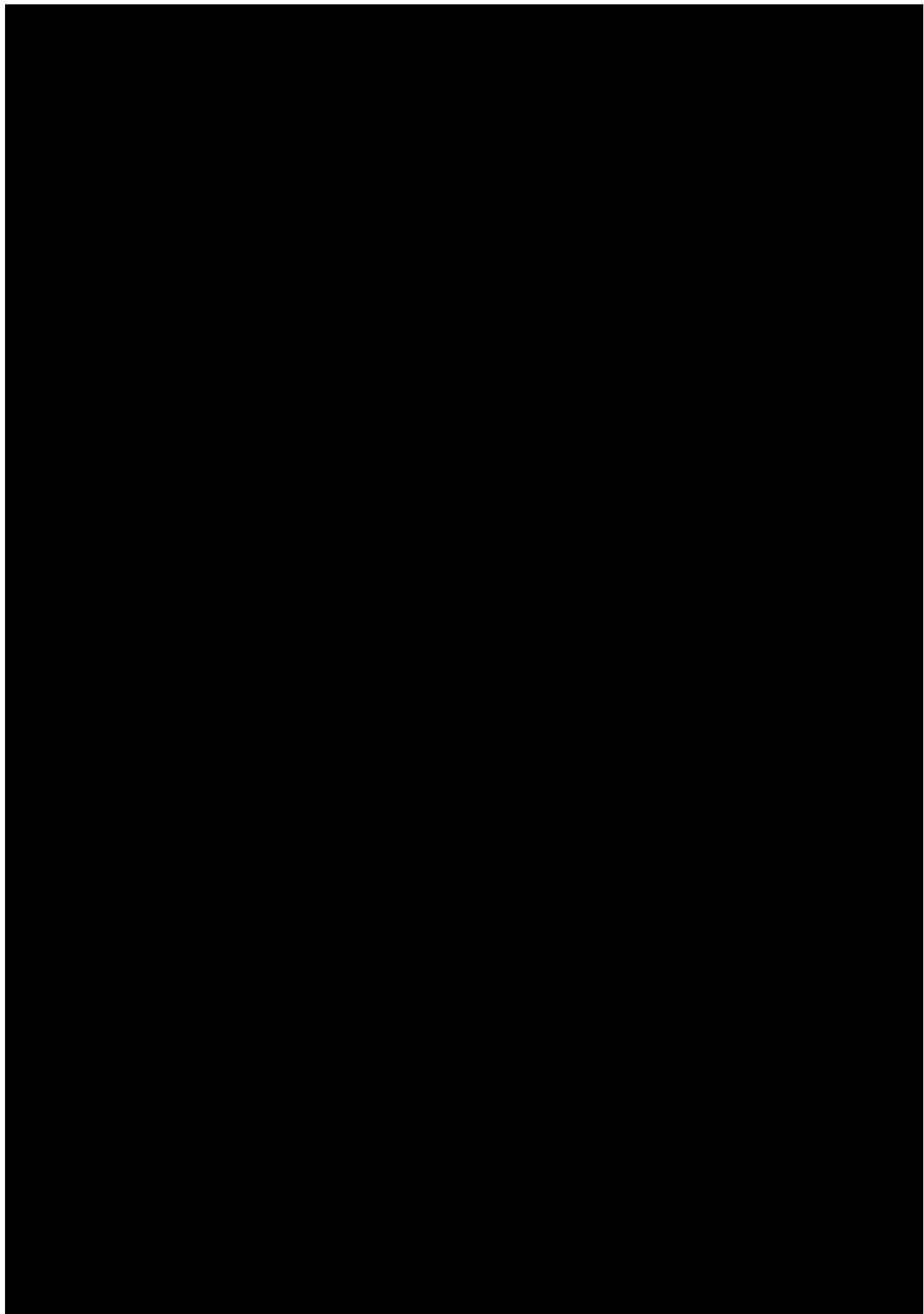


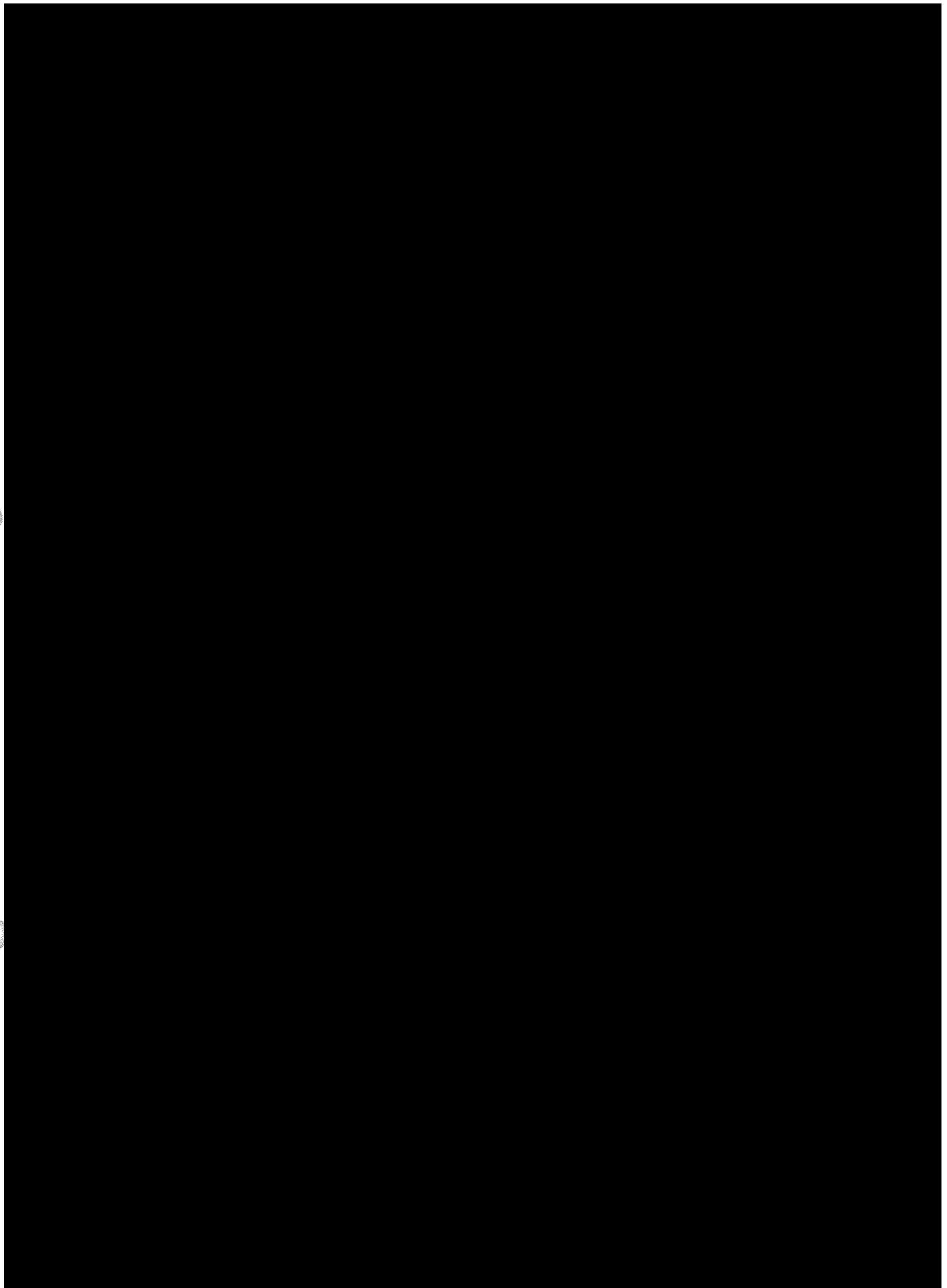






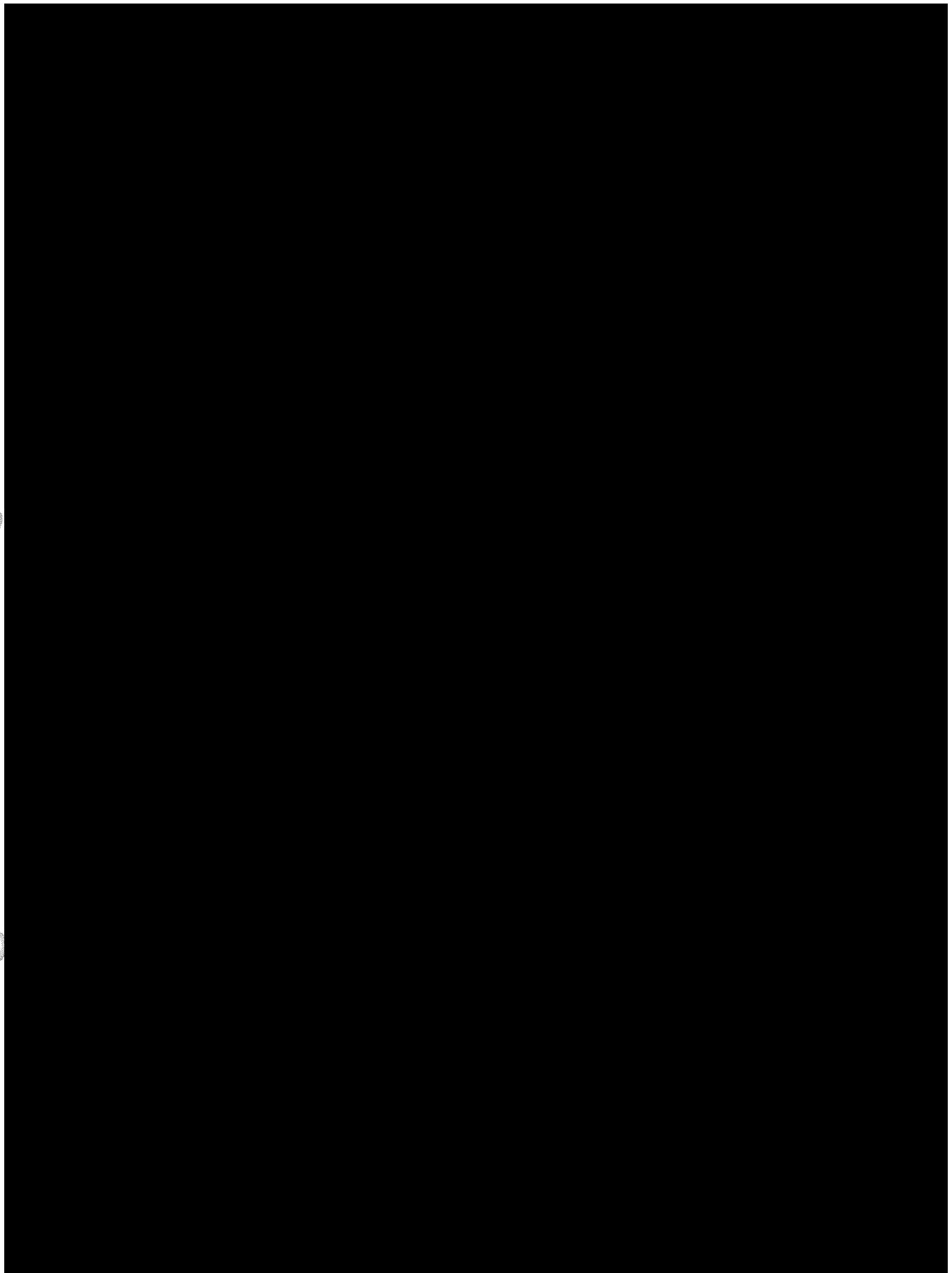






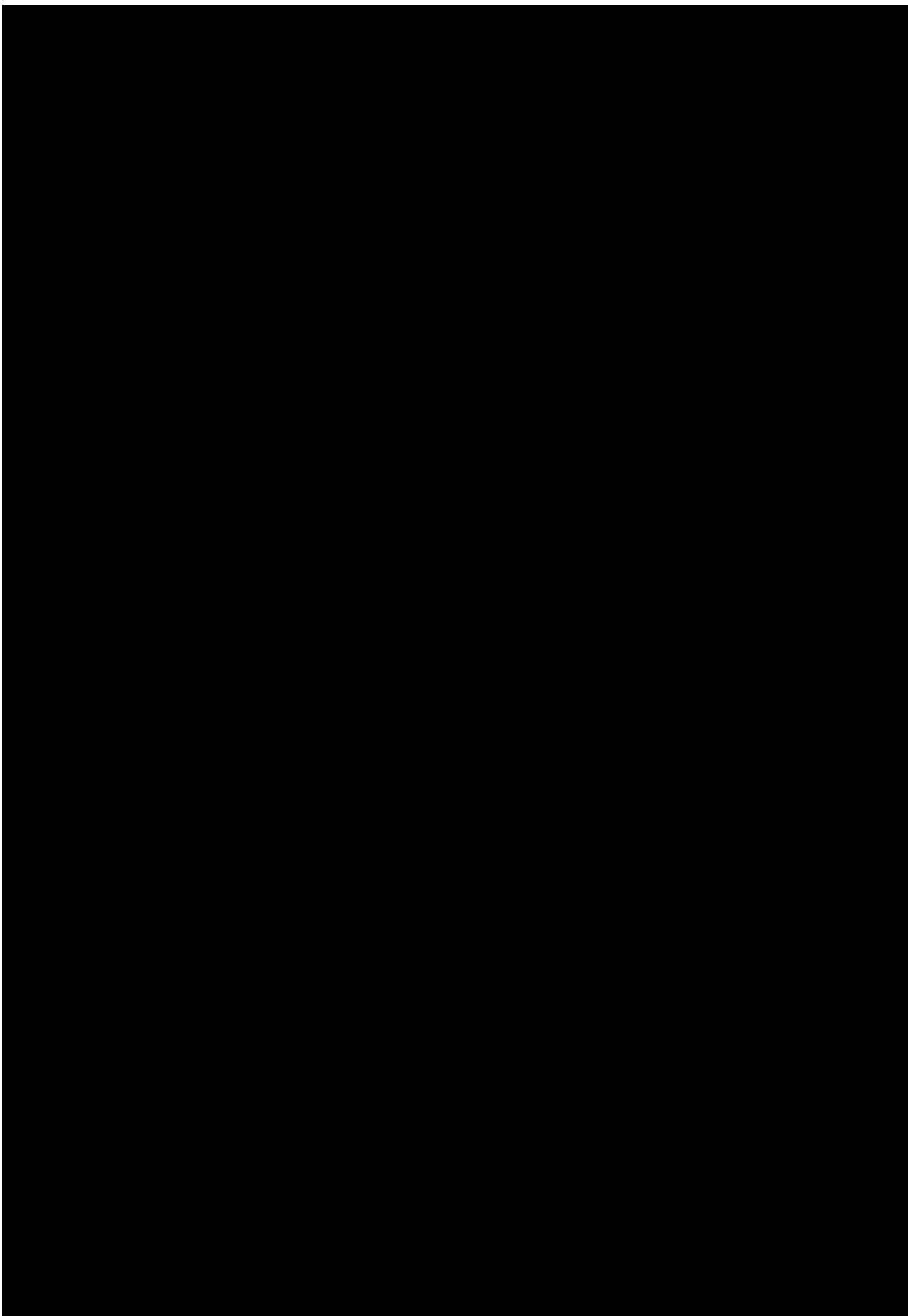


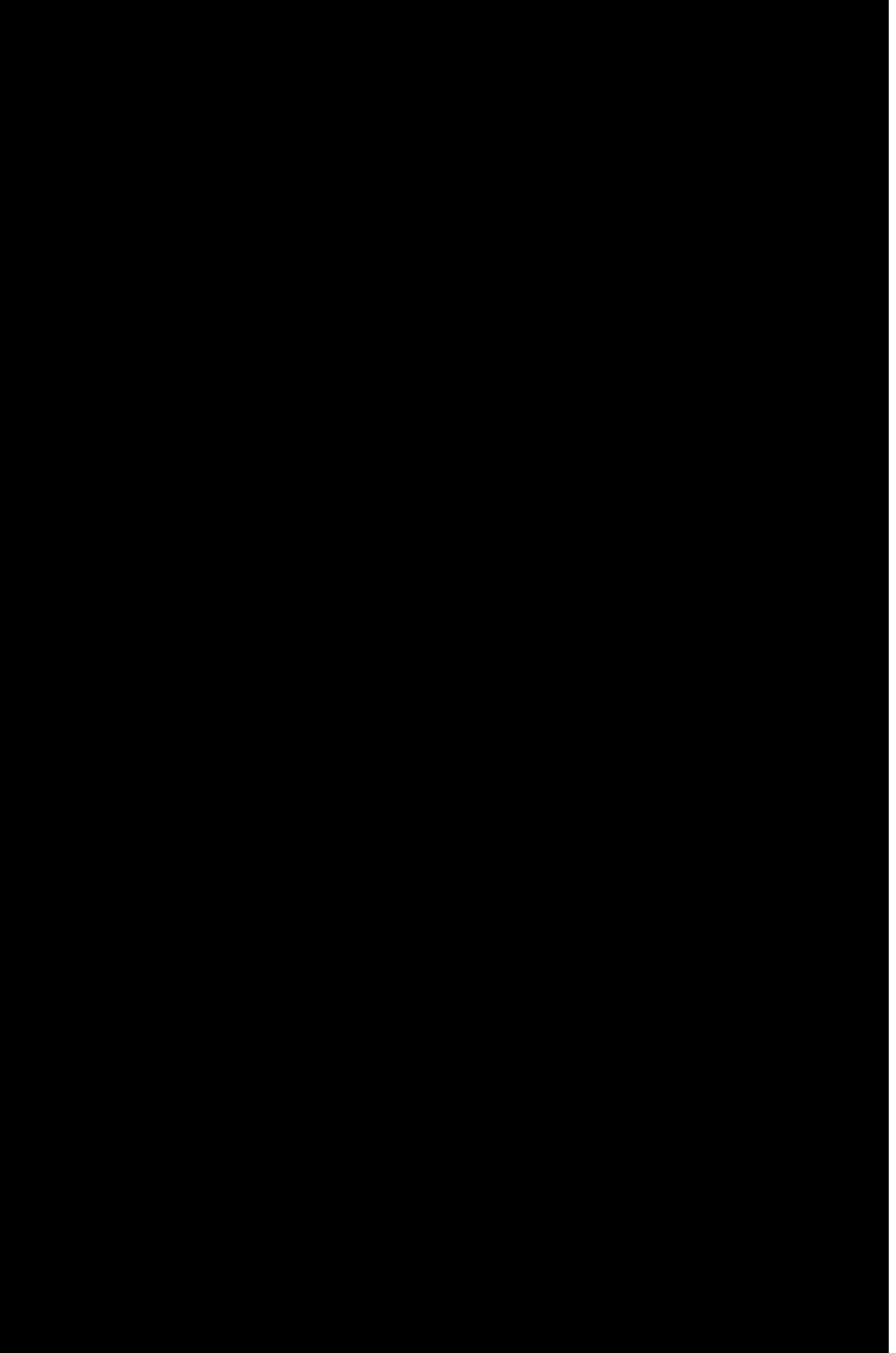


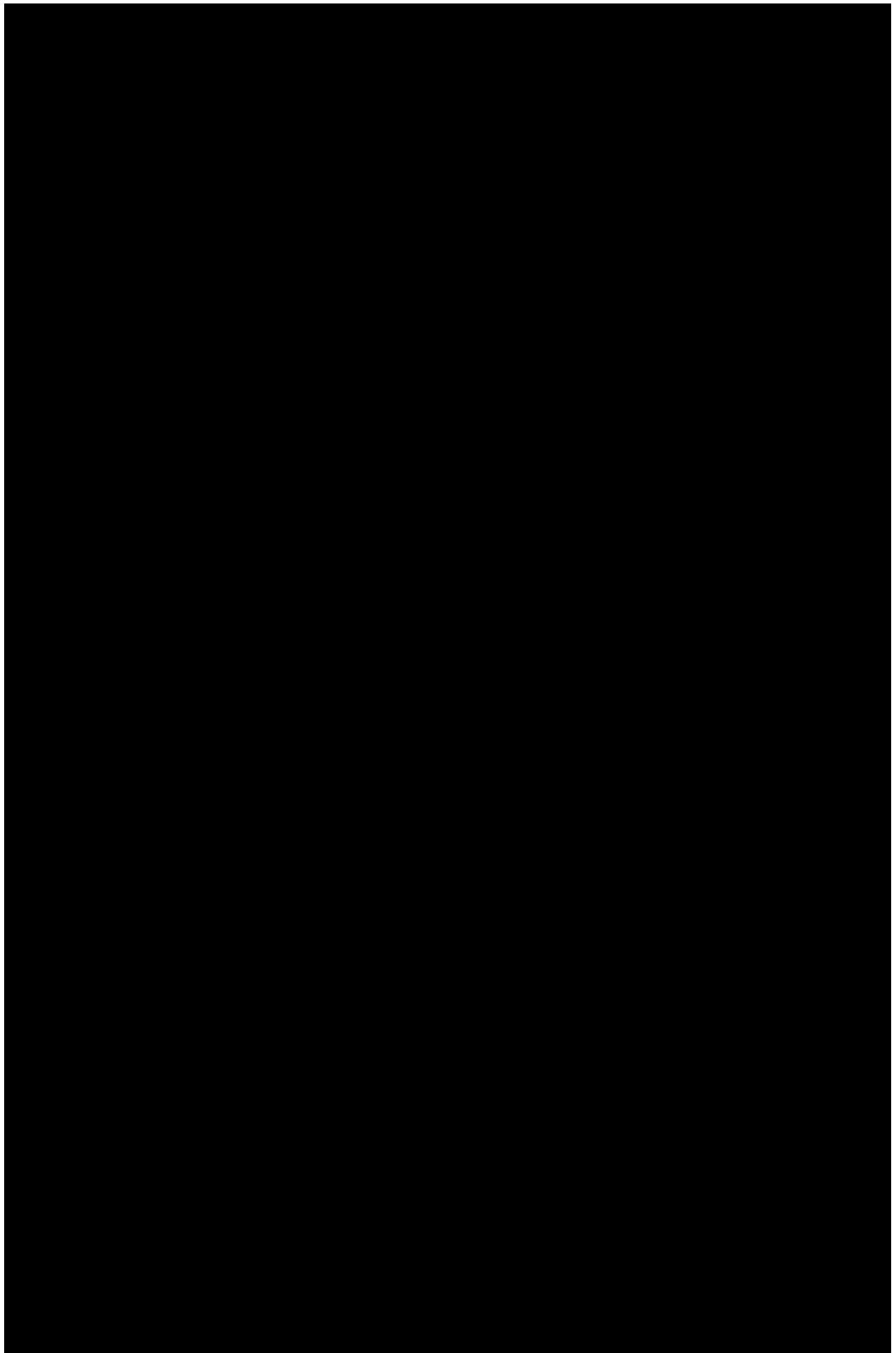


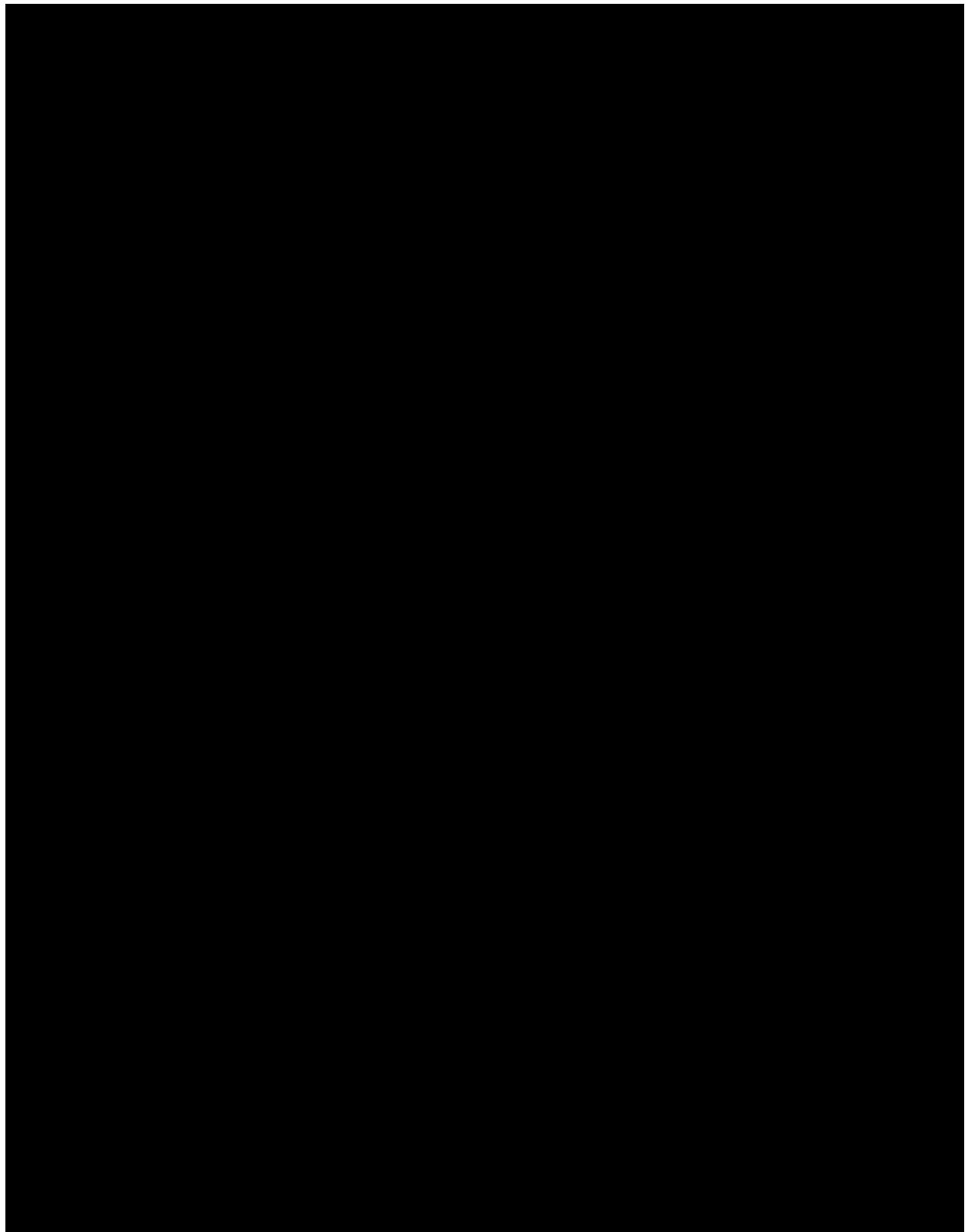


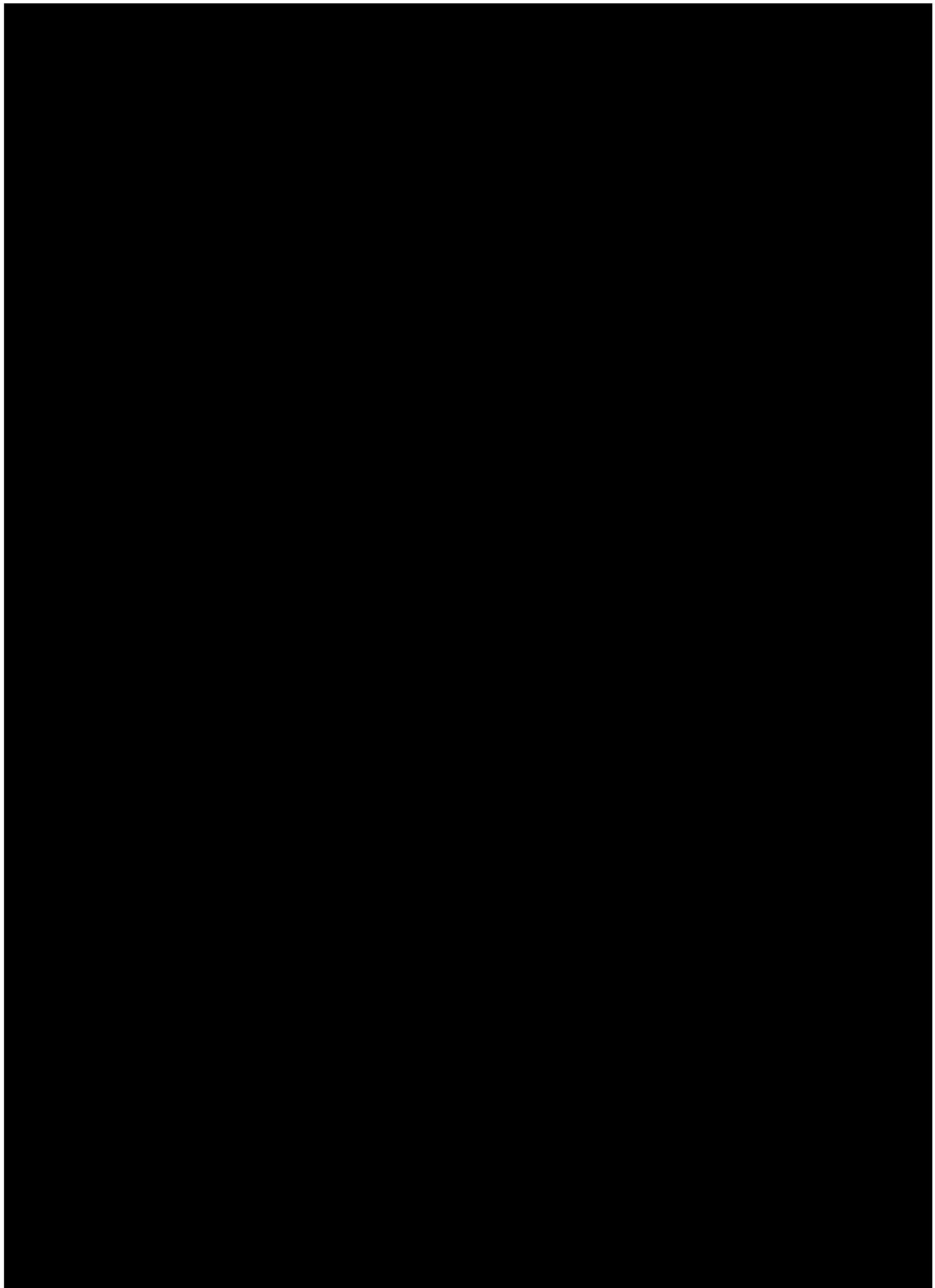


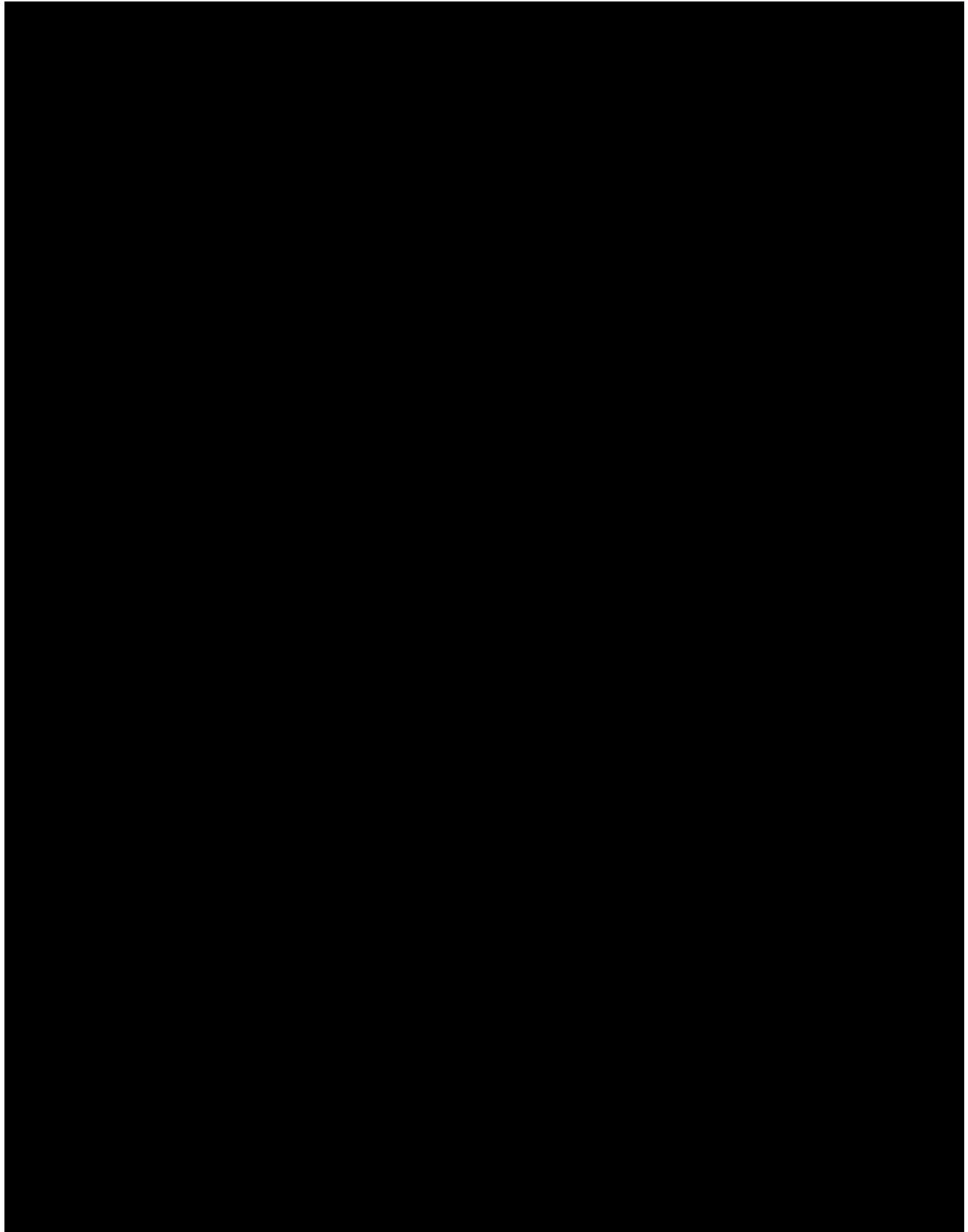




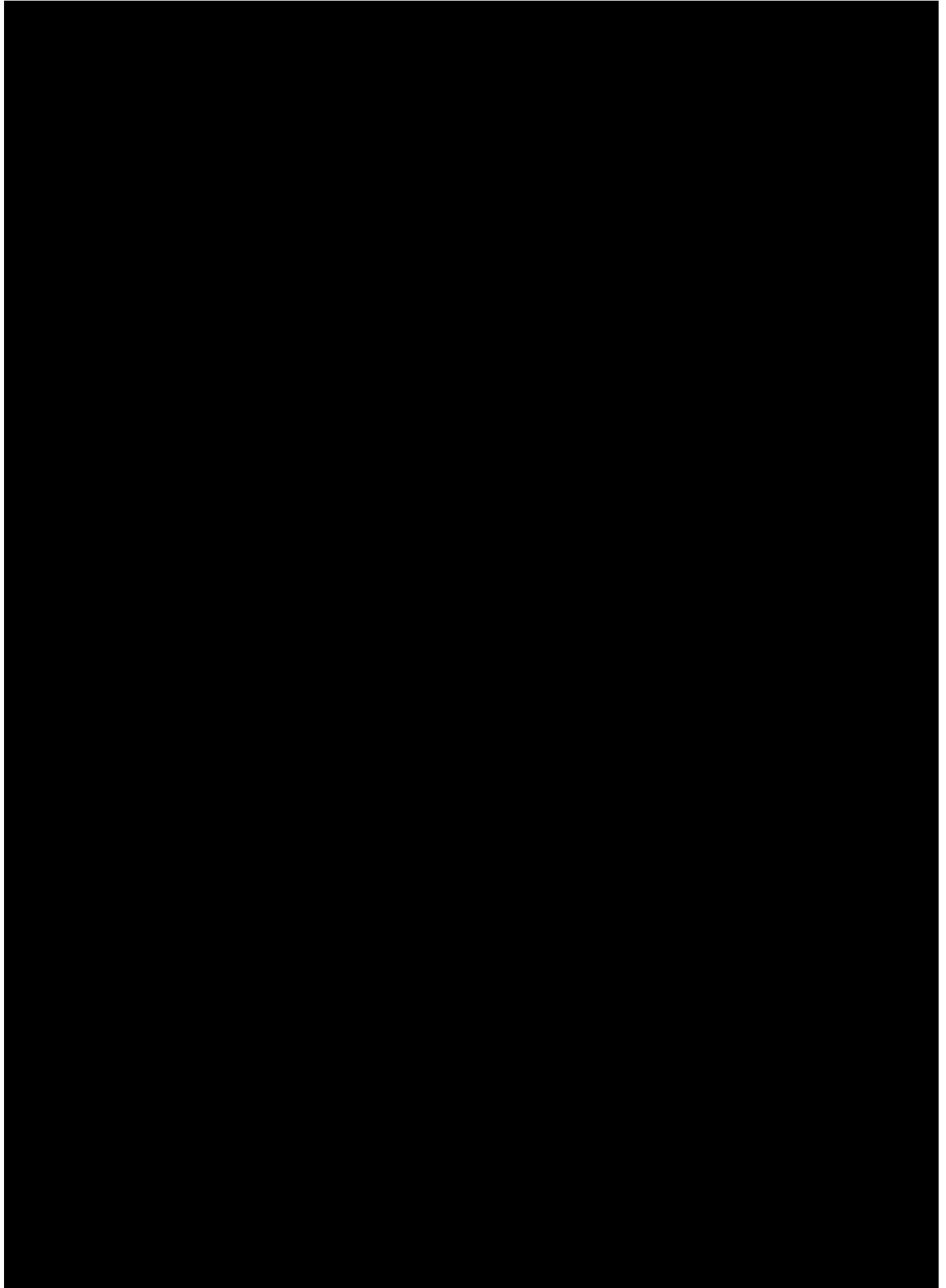


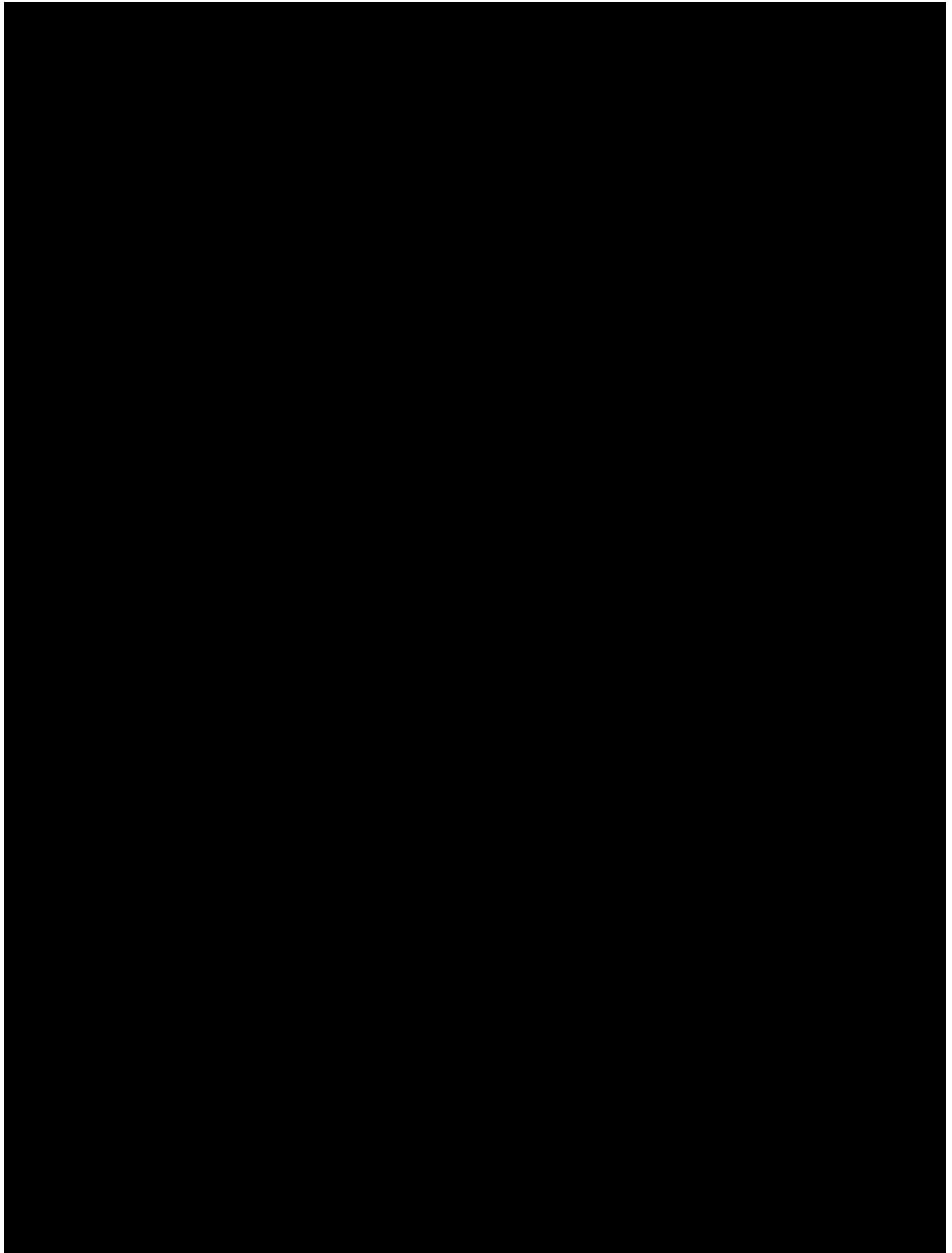












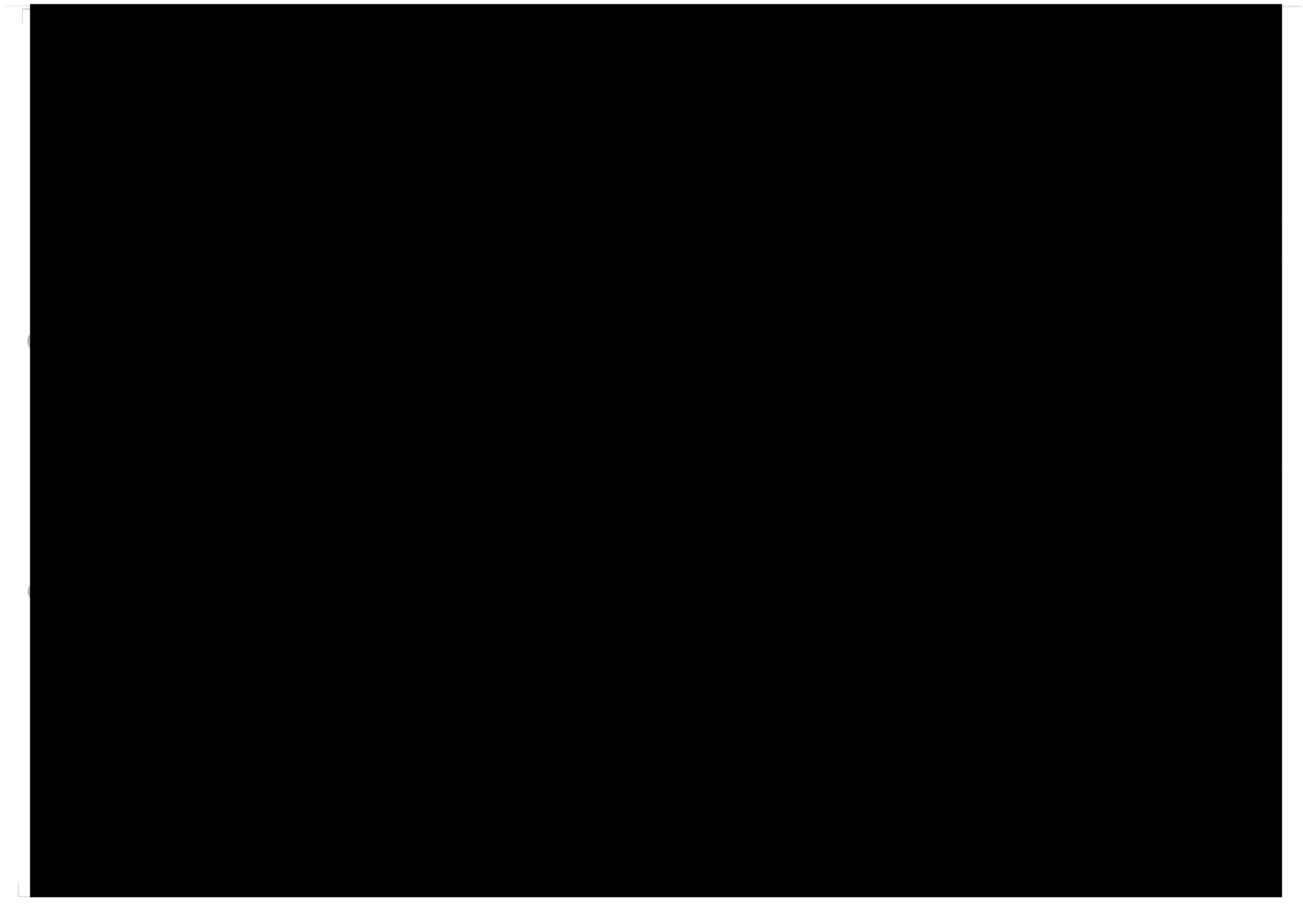


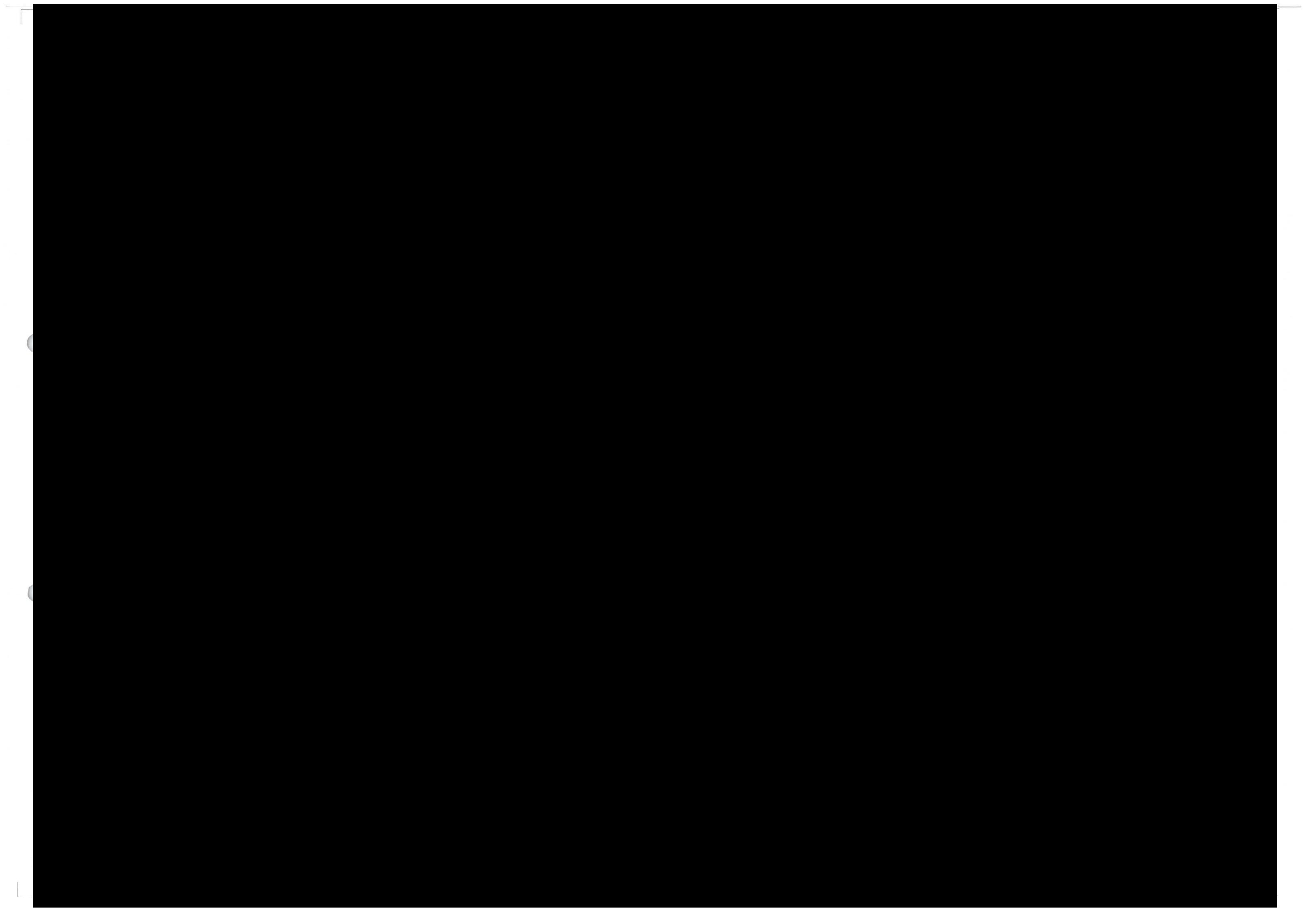
**SCHEDULE D11. – DRAFT SUBDIVISION PLAN**

(Schedule A2)











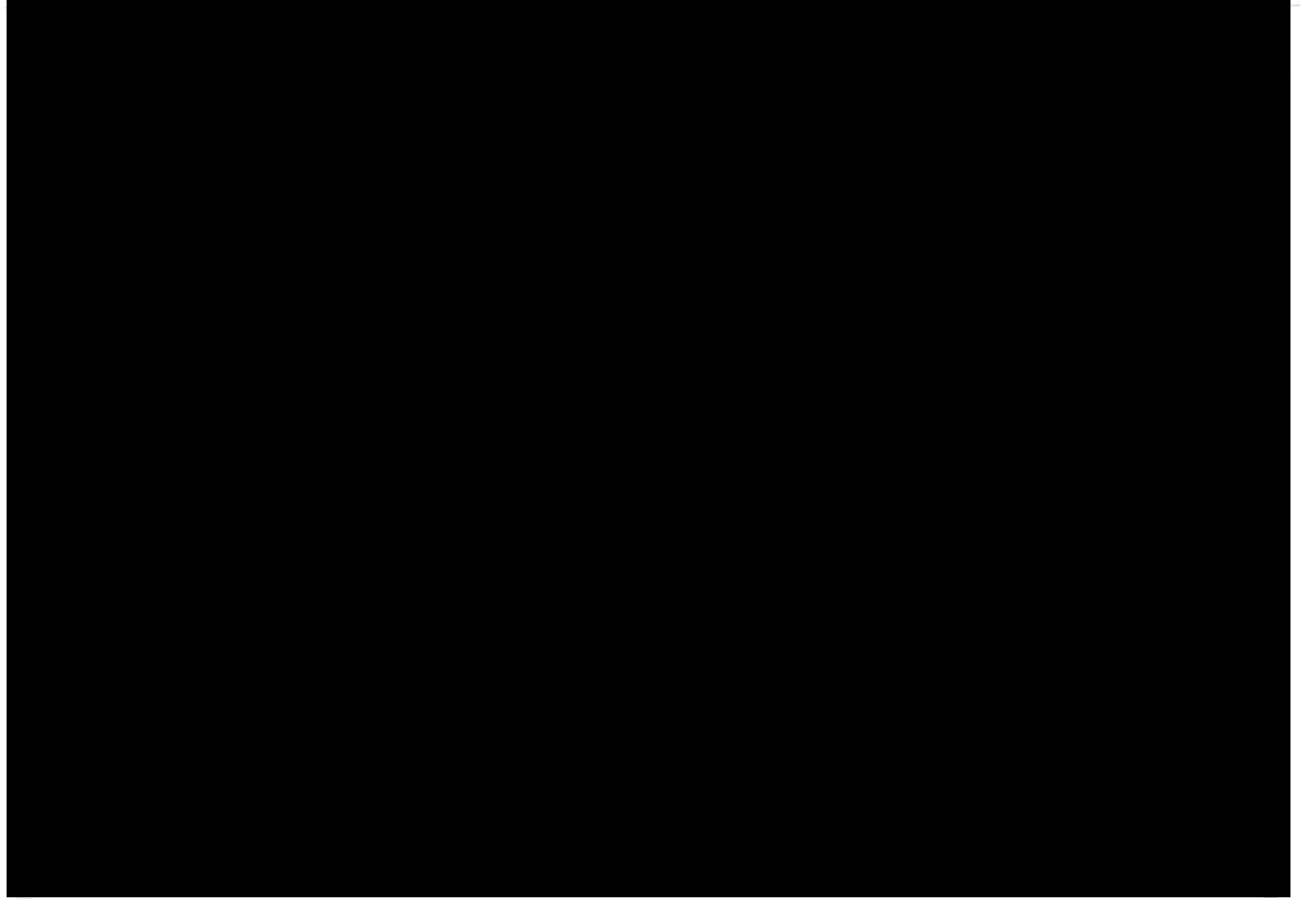












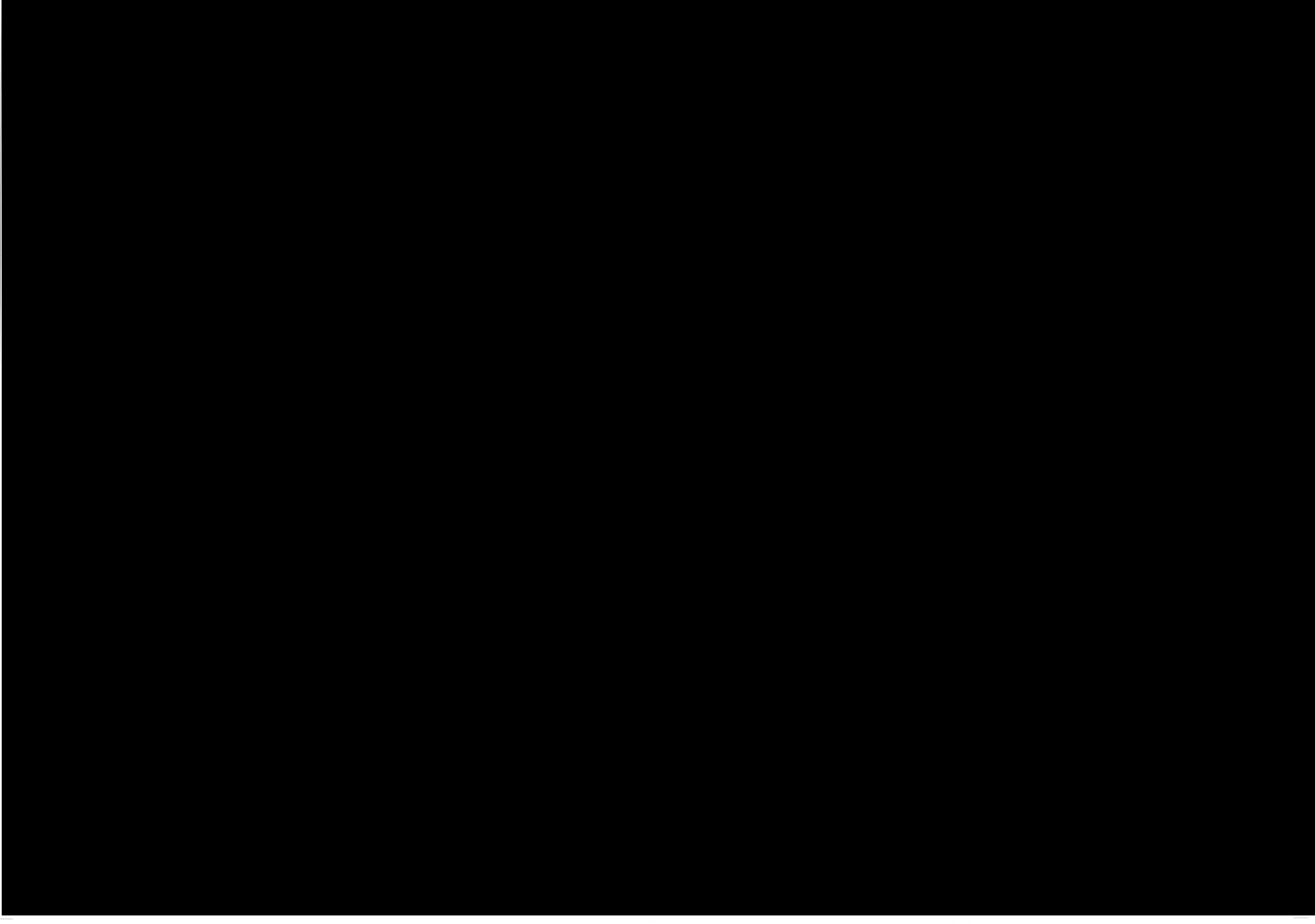
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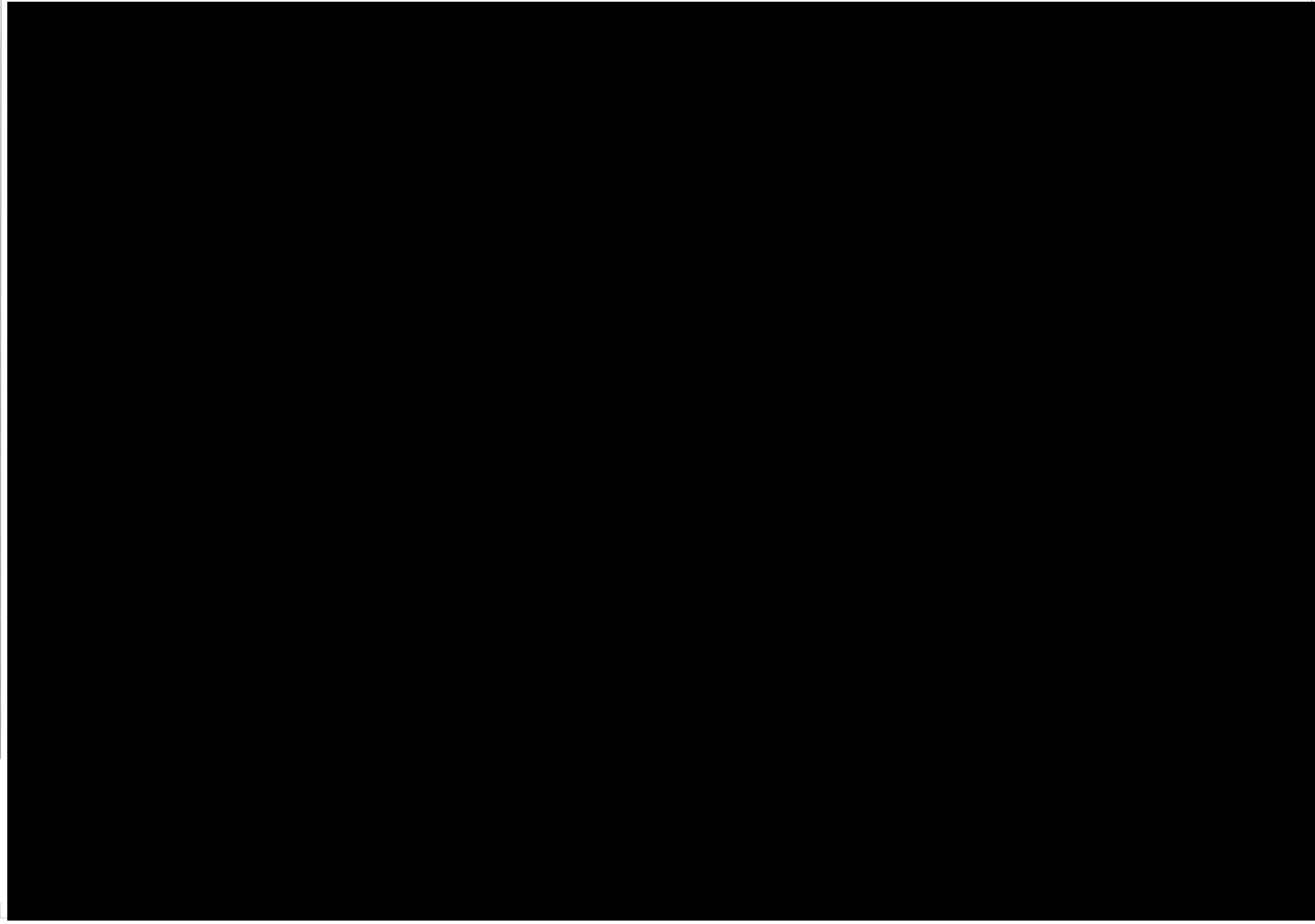
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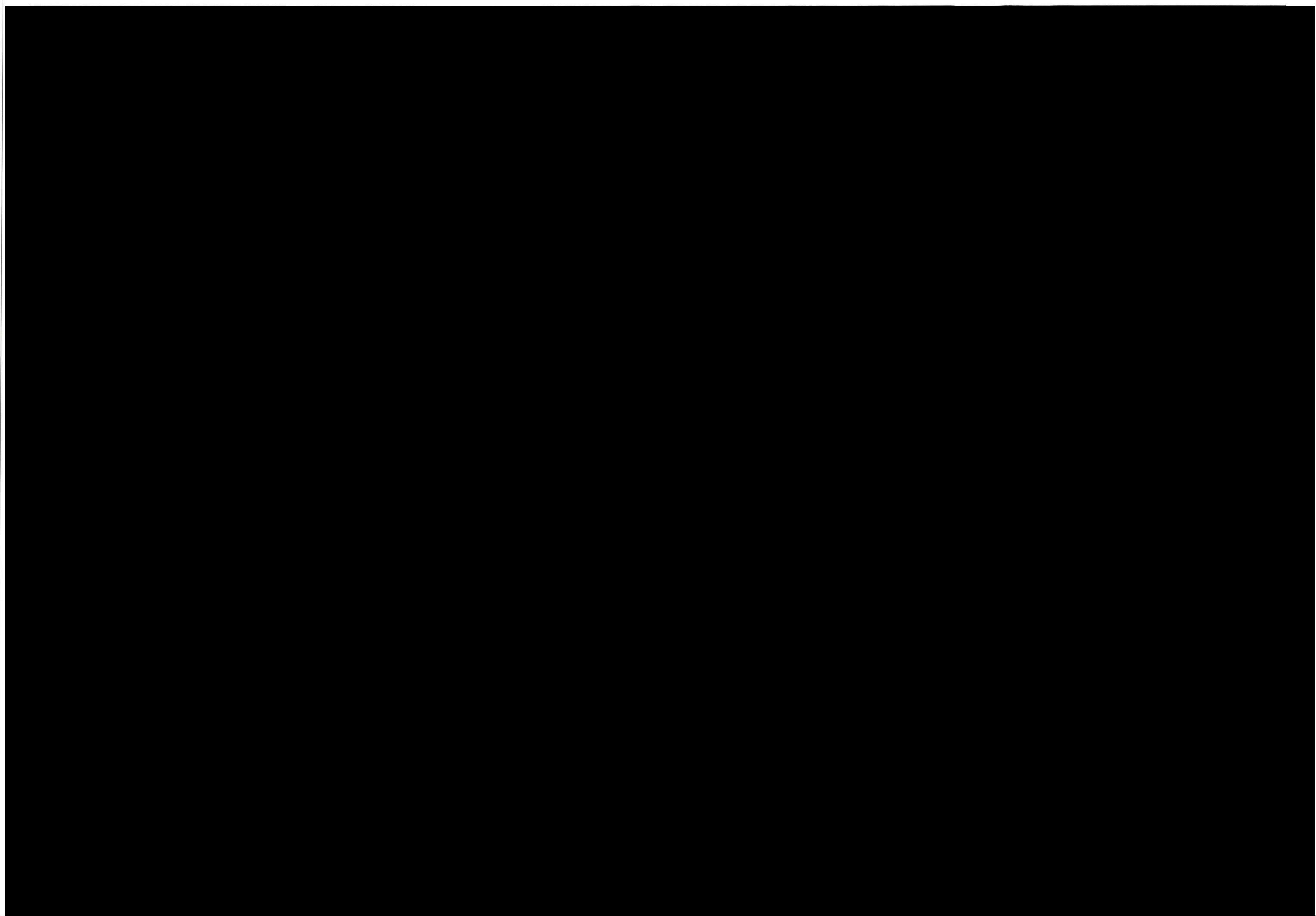






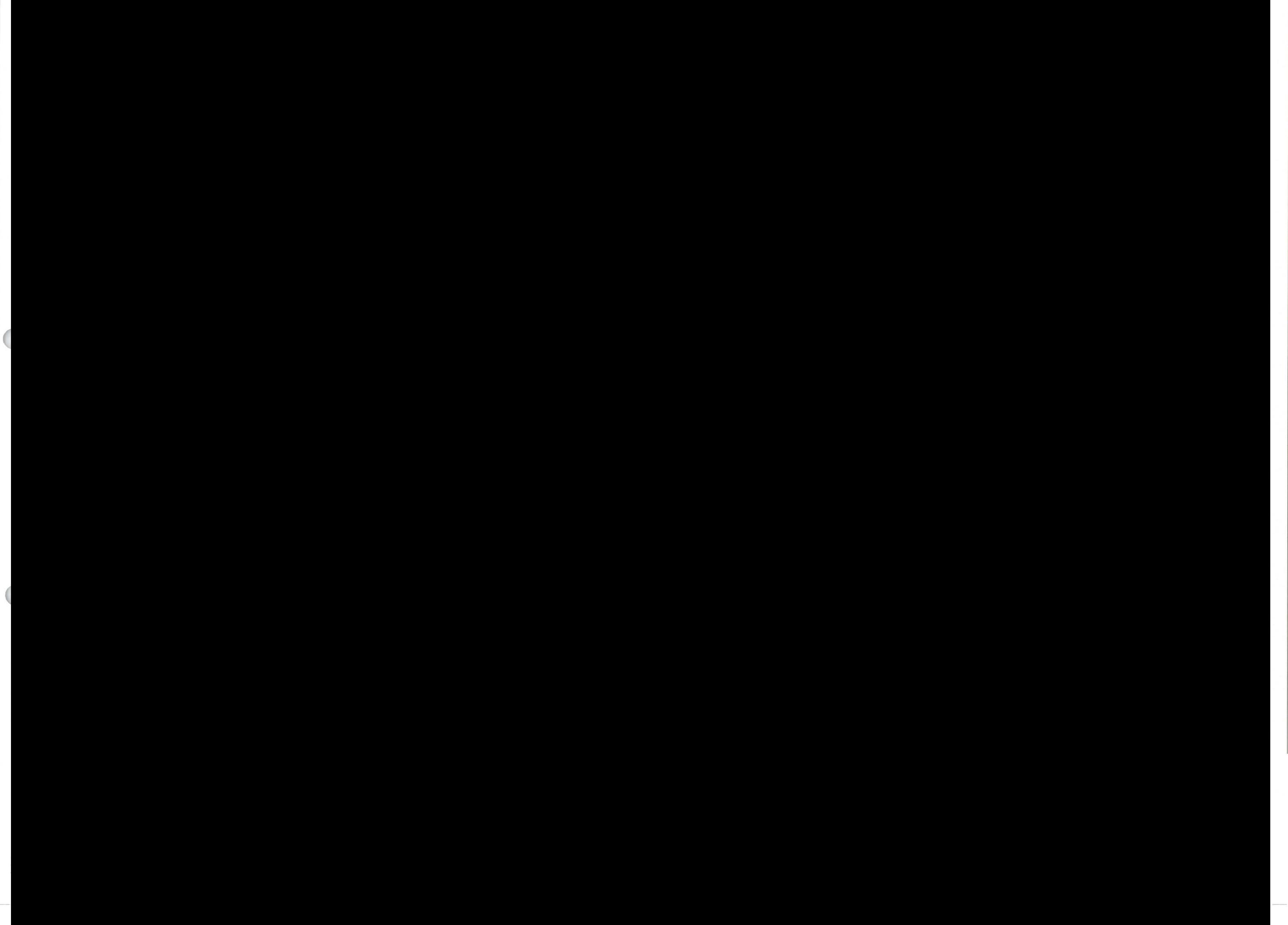




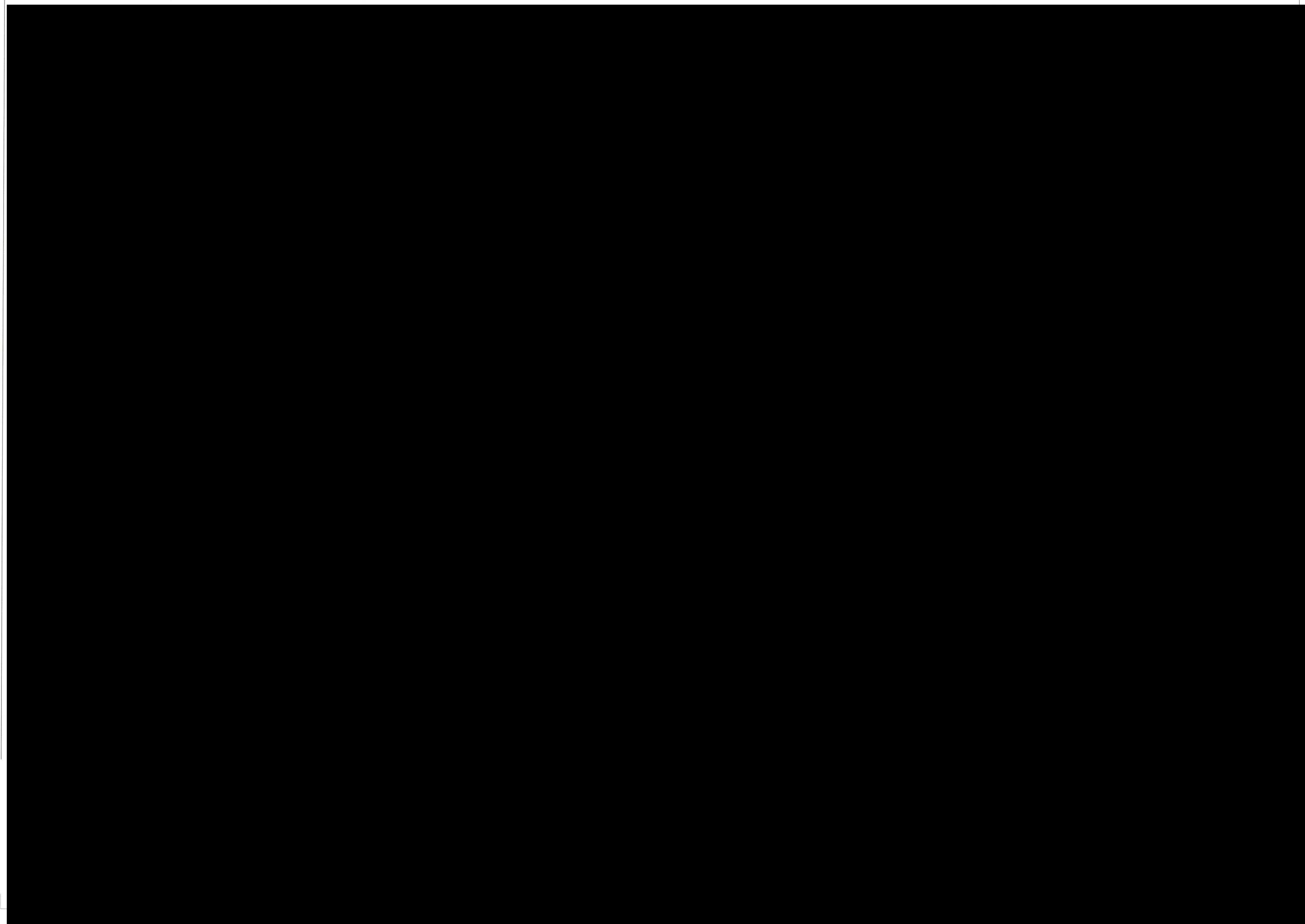




















## SCHEDULE D12. – SUBDIVISION REQUIREMENTS

(Clause 23.2)

### 1. DEFINITIONS

In this Schedule D12:

**Detailed SSD Consent** has the meaning given in the OSD PDA.

**Metro Operational Impact** has the meaning given in the Draft BMS.

**OSD Design Parameters** has the meaning given in the OSD PDA.

**OSD Works** has the meaning given in the OSD PDA.

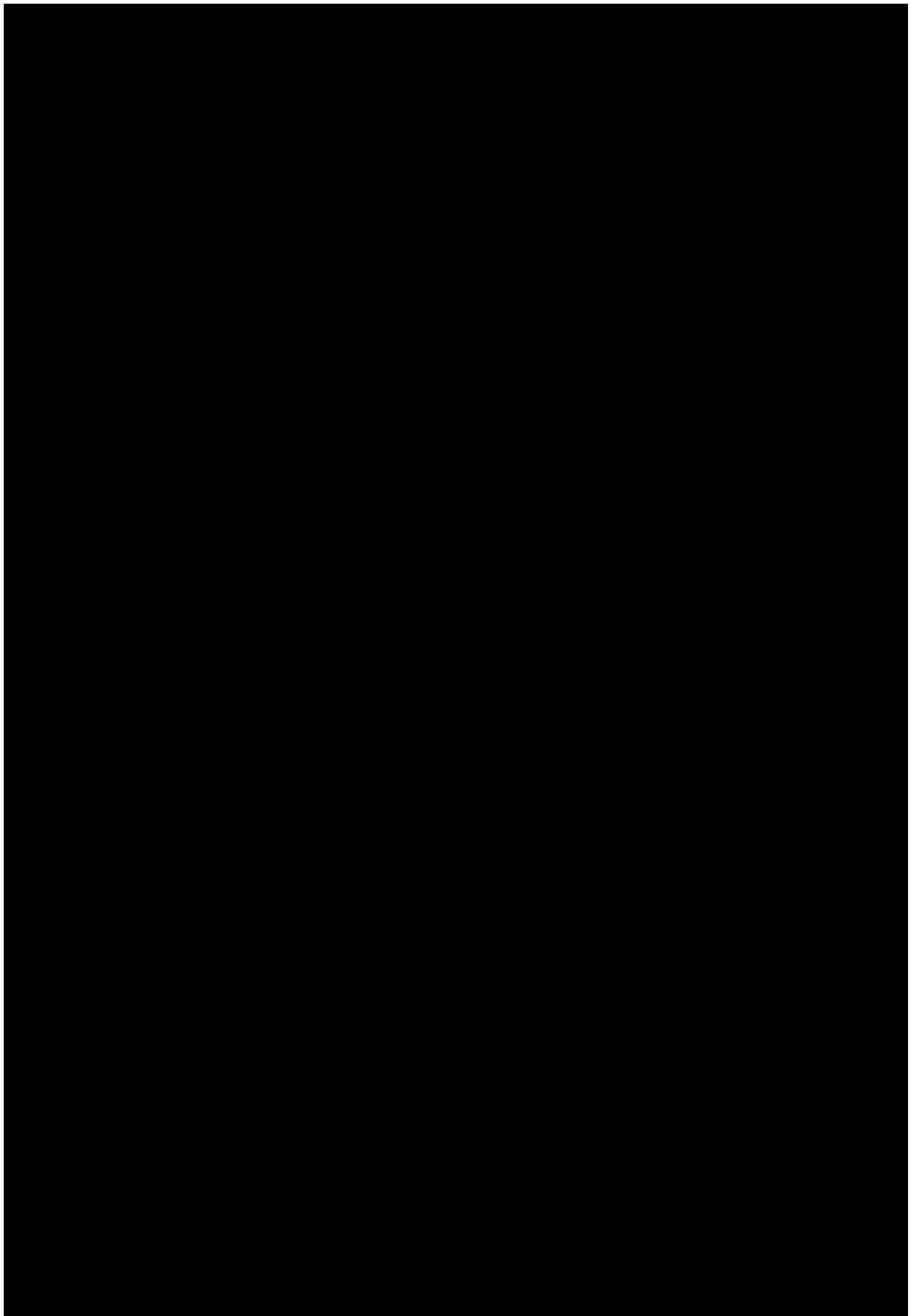
**Stage 1 Subdivision Proposal** has the meaning given in clause 8(a) of this Schedule D12.

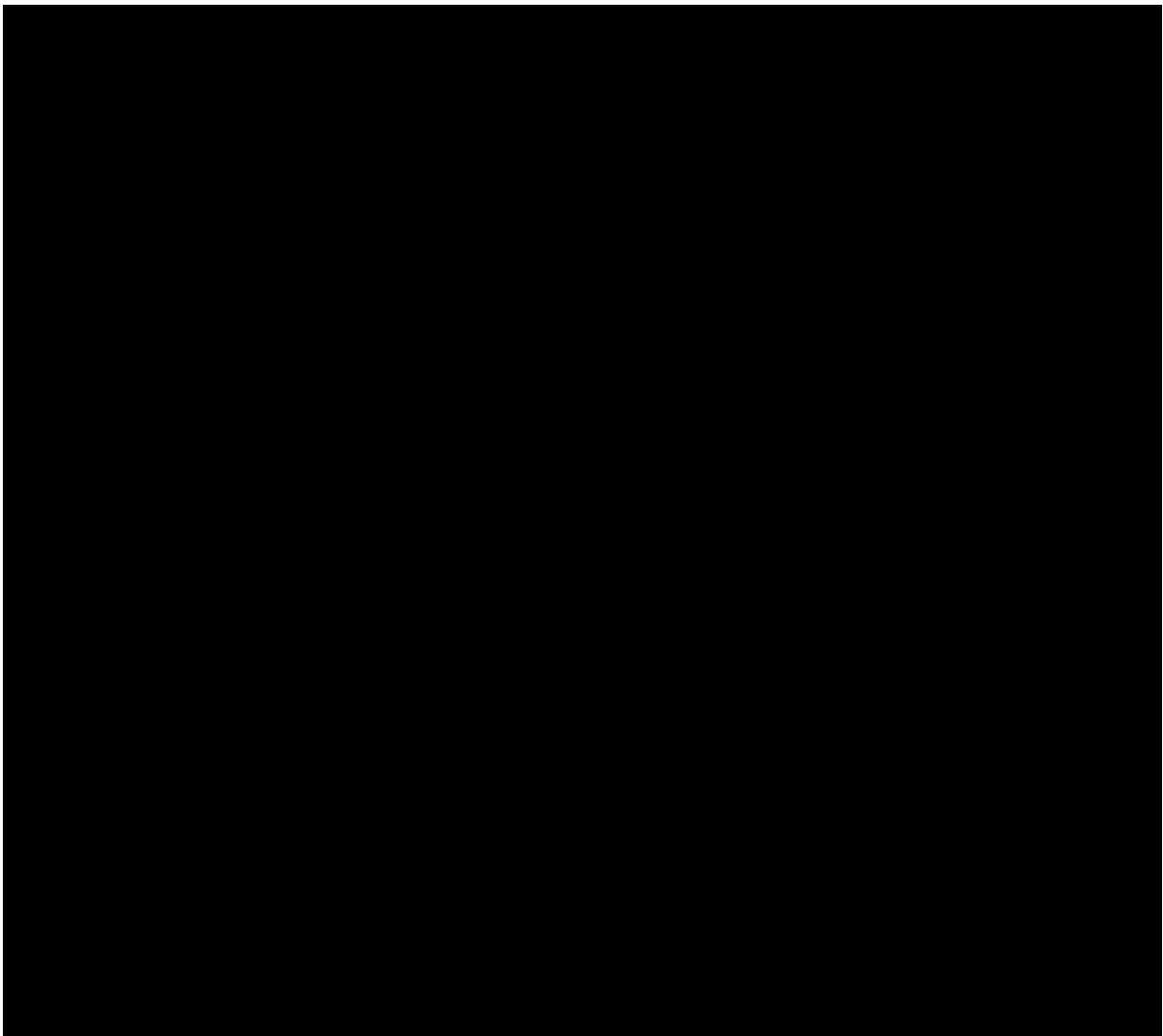
### 2. SUBDIVISION REQUIREMENTS

(a) **(VC Contractor must procure Subdivision)** Subject to clause 2(b) of this Schedule D12:

- (i) the VC Contractor must, on or before the Date of Completion in respect of Portion 2, procure the Subdivision of the Subdivision Land in accordance with this Schedule D12;
- (ii) the VC Contractor will cause the Subdivision Documents to be prepared in accordance with the Project Planning Approval (Chatswood to Sydenham), the Detailed SSD Consent and the Subdivision Principles;
- (iii) the Draft Subdivision Plan, Draft BMS and Draft Section 88B Instrument represent the parties' intentions at the date of this deed for the proposed Subdivision of the Subdivision Land (on the basis of a subdivision in one stage), to the extent that relevant information was available to the parties as at the date of this deed;
- (iv) the Draft Subdivision Plan shows the approximate intended boundaries of the various elements of the Subdivision Land referable to the Project Works (other than the Third Party Works) and the OSD Works, including the following:
  - (A) Development Lot 1;
  - (B) the Retail Lot;
  - (C) the Concourse Lot;
  - (D) the Station Lot;
  - (E) Development Lot 2; and
  - (F) the Airspace Lot;
- (v) the Draft Section 88B Instrument contains the easements and their draft terms that will need to be created in conjunction with the Draft Subdivision

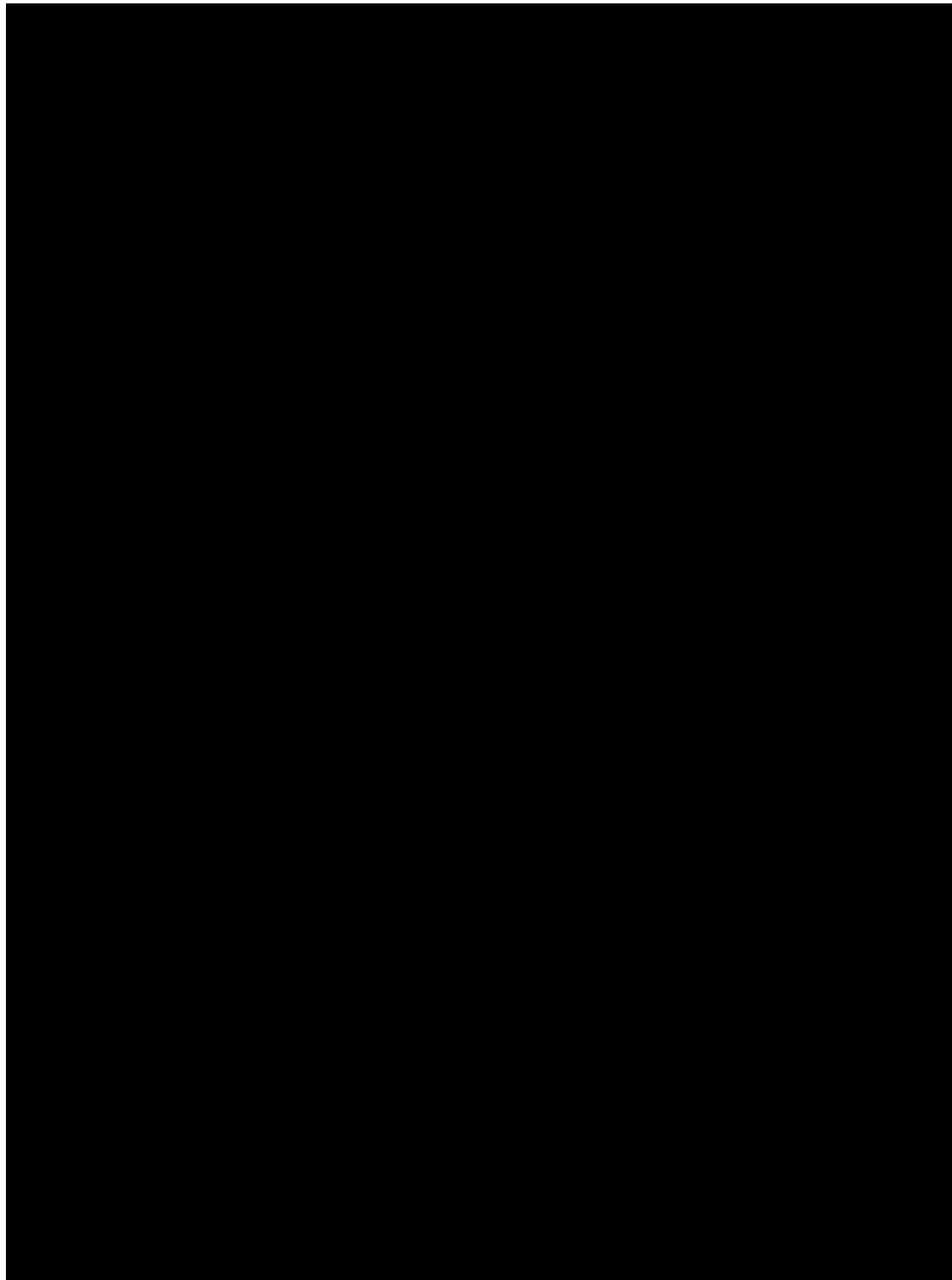
- Plan and represents the agreement of the Principal and the VC Contractor at the date of this deed to those easements and their draft terms, to the extent that relevant information was available to the parties as at the date of this deed;
- (vi) the Draft BMS represents the parties' negotiated and agreed terms and position at the date of this deed, to the extent that relevant information was available to the parties as at the date of this deed;
  - (vii) the Draft Subdivision Plan, the Draft Section 88B Instrument and the Draft BMS may require amendment up to the date of lodgement for registration at LRS, such amendment to be made in accordance with the Subdivision Principles and the provisions set out in this Schedule D12; and
  - (viii) if there is a Residual Lot created with the approval of the Principal, it will remain in the ownership of the Principal or such other person or entity nominated by the Principal.
- (b) **(VC Contractor must procure Subdivision)** If clause 8 of this Schedule D12 applies:
- (i) on or before the Date of Completion in respect of Portion 2, the VC Contractor must procure the Subdivision of the Subdivision Land in accordance with the Stage 1 Subdivision Documents, as more particularly set out in clause 8 of this Schedule D12;
  - (ii) the VC Contractor will cause the Stage 1 Subdivision Documents to be prepared in accordance with the Project Planning Approval (Chatswood to Sydenham) and the Subdivision Principles;
  - (iii) the Stage 1 Residual Lot (if any) will remain in the ownership of the Principal unless otherwise agreed between the parties; and
  - (iv) the VC Contractor must procure the Subdivision of the Stage 1 Residual Lot as soon as practicable and in accordance with clause 8(j) of this Schedule D12.





4. **SUBDIVISION PROPOSAL**

- (a) **(Provision of Subdivision Proposal)** The VC Contractor must, by the date which is 2 months after the Date of Substantial Completion (or such other date as agreed between the parties), provide to the Principal a Subdivision Proposal.
  - (b) **(Cooperation)** The VC Contractor must consult in good faith and cooperate with the Principal to develop the Subdivision Proposal.
-



5. **PREPARATION OF SUBDIVISION PROPOSAL**

- (a) **(Requirements)** In preparing the Subdivision Proposal, the VC Contractor must address the following matters:
- (i) the creation of all Encumbrances required by the Principal acting reasonably having regard to the operation of clause 9.11 (*Encumbrances*), and that

Encumbrances may be required between the various stratum lots created by the Subdivision and may not have been included in the Draft Section 88B Instrument;

- (ii) without limiting clause 5(a)(iii) of this Schedule D12, any matters set out in the Subdivision Principles;
  - (iii) the sharing of costs and responsibilities for Shared Facilities not included in the Draft BMS between the Lot Owners having regard to clauses 4.3(h) and 4.4 of the Subdivision Principles; and
  - (iv) any other matters required by the Principal (acting reasonably).
- (b) **(Appointment of Surveyor)** The VC Contractor must:
- (i) appoint a Surveyor to prepare the proposed Subdivision Plan and associated Subdivision Documents;
  - (ii) appoint the Surveyor within [REDACTED] after the date of this deed; and
  - (iii) obtain the prior written consent of the Principal (acting reasonably) to:
    - (A) the appointment of the Surveyor under clause 5(b)(ii) of this Schedule D12; and
    - (B) any replacement of the Surveyor from time to time.

## 6. DETERMINATION OF SHARED FACILITIES AND SHARED COSTS

**(Shared Facilities and Shared Costs)** If, within [REDACTED] after the Subdivision Proposal is submitted by the VC Contractor under clause 4(a) of this Schedule D12, the parties cannot reach agreement in relation to the matters referred to in clause 5(a)(iii) of this Schedule D12, the VC Contractor may, at its Cost, appoint an independent expert (being an expert approved by the Principal (acting reasonably)) to determine the matters, such determination to be made within [REDACTED] after the appointment of the independent expert. The determination of the independent expert will be binding on the VC Contractor and the Principal, except where such determination was made fraudulently or contains a manifest error.

## 7. VC CONTRACTOR BOUND BY ENCUMBRANCES

**(VC Contractor is bound)** The VC Contractor agrees that:

- (a) on registration of all Encumbrances to be created under clause 5(a)(i) of this Schedule D12, it is, or will be, bound by such Encumbrances; and
- (b) any lease, licence or other right of occupation granted by the VC Contractor in respect of the Retail Lot, Concourse Lot, Development Lot 1 and/or Development Lot 2 must contain an acknowledgment from any tenant, licensee or occupier that it is bound by the terms of those Encumbrances even if they are registered after the date the VC Contractor enters into its arrangements with the relevant tenant, licensee or occupier.

## 8. STAGE 1 SUBDIVISION

- (a) **(Requirements)** If:

(i) the Principal is of the view that the OSD Works are required to be, but is not, sufficiently advanced to achieve accurate boundary definitions of Development Lot 1 and the Airspace Lot; or

(ii) the VC Developer has not procured the relevant Approval to Subdivide the Subdivision Land to create Development Lot 1 and the Airspace Lot,

by the date referred to in clause 4(a) of this Schedule D12, then the VC Contractor must provide to the Principal a Subdivision proposal (**Stage 1 Subdivision Proposal**) which must:

(iii) outline and provide reasonable details of the stratum lots which will comprise the Station Lot, Concourse Lot, Development Lot 2, the Retail Lot and the Stage 1 Residual Lot; and

(iv) attach:

(A) a proposed subdivision plan which creates the Station Lot, the Retail Lot, Concourse Lot, Development Lot 2 and the Stage 1 Residual Lot (**Draft Stage 1 Subdivision Plan**);

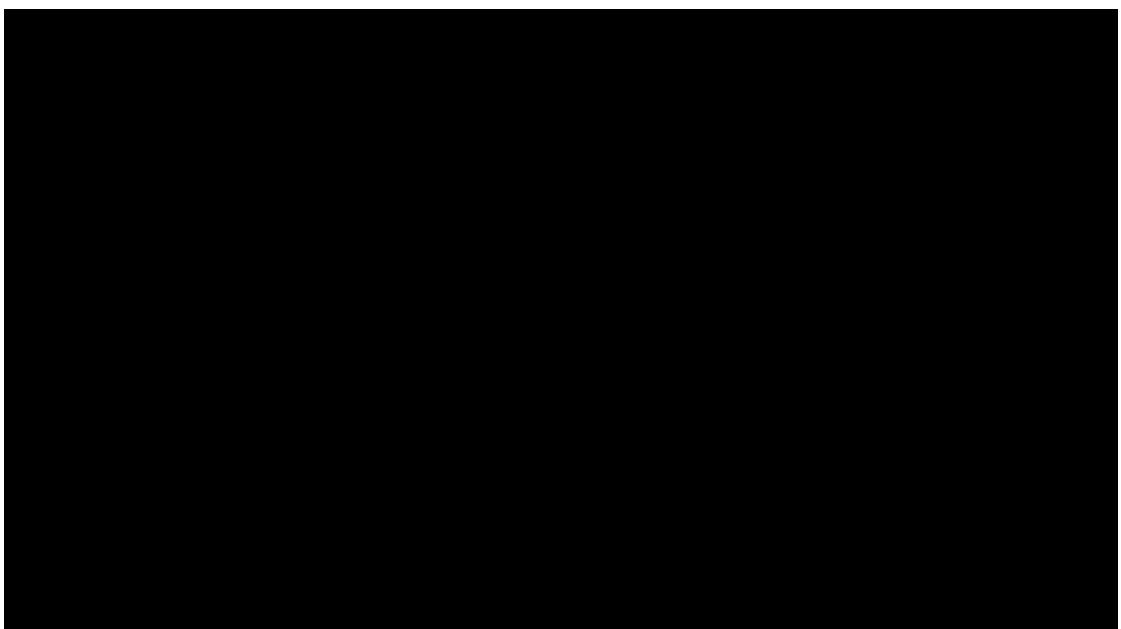
(B) a proposed Section 88B Instrument which includes all easements required to operate and maintain Sydney Metro City & Southwest or are required by an Authority;

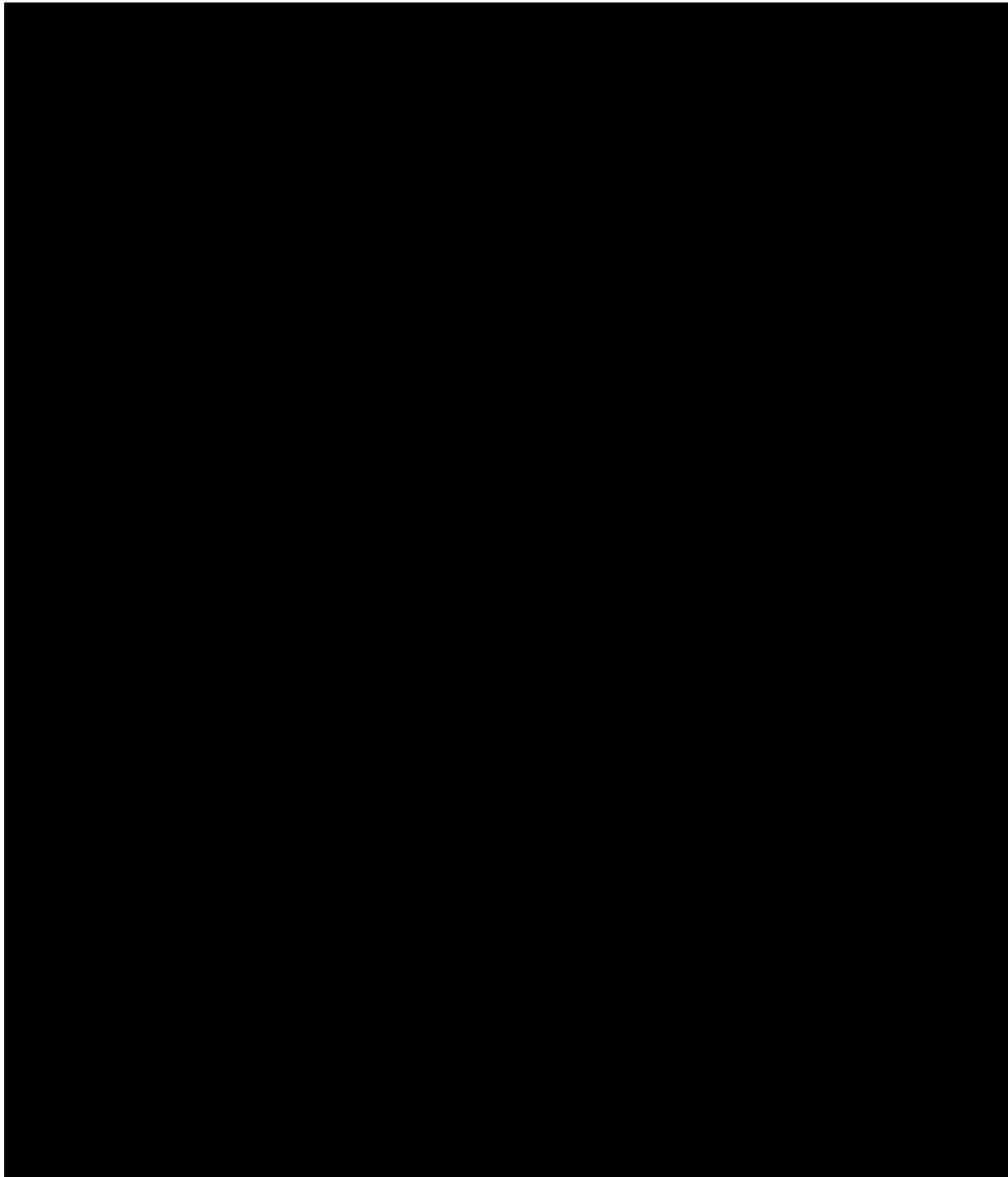
(C) a proposed Building Management Statement; and

(D) a certificate from the Surveyor addressed to the Principal confirming that the above documents accord with the Project Planning Approval (Chatswood to Sydenham), the Subdivision Principles and, as much as reasonably practicable, the draft Subdivision Documents,

(the **Stage 1 Subdivision Documents**).

(b) (**Cooperation**) The VC Contractor must consult in good faith and cooperate with the Principal to develop the Stage 1 Subdivision Proposal.





9. **LICENCE TO USE LOADING DOCK**

**(Loading Dock)** If the VC Contractor is unable to create Development Lot 1 by the Date of Completion, then, for the period commencing on the Date of Completion and expiring on the date of registration of an easement in respect of the Loading Dock substantially in the form of the easement for access and use of the Loading Dock as set out in the Draft Section 88B Instrument, the VC Contractor grants a licence or must procure the grant of a licence in favour of the Principal and its Associates to access and use the Loading Dock on the same terms and conditions as set out in the Draft Section 88B Instrument.

10. **NOTICE OF CREATION OF LOTS**

**(Notice)** The VC Contractor must, within [REDACTED] after it becomes aware that each of the Retail Lot, Concourse Lot, Development Lot 2 and Development Lot 1 has been created by way of registration of the Subdivision Documents, notify the Principal in writing of such registration.

11. **OPERATION OF THE BUILDING MANAGEMENT STATEMENT**

**(Building Management Statement)** If the Building Management Statement has been registered on title as contemplated under this Schedule D12, during the period commencing on the date of such registration and expiring on the Date of Completion, the VC Contractor agrees to be bound by and to comply with the terms and conditions of the registered Building Management Statement (to the extent that such terms and conditions apply) as if it were the registered proprietor of Development Lot 1, Concourse Lot, Development Lot 2 and Retail Lot, provided that to the extent there is any inconsistency between the terms and conditions of the registered Building Management Statement and this deed, this deed will prevail.

## SCHEDULE D13. – SUBDIVISION PRINCIPLES

(Clause 23.2)

### 1. DEFINITIONS

In this Schedule D13:

**Concept SSD Consent** has the meaning given in the OSD PDA.

**Draft Building Envelope Plan** means the plan in Exhibit 1 Schedule C4 of the OSD PDA.

**Restricted OSD Area** has the meaning given in the Building Management Statement.

**Shared Facilities Schedule** has the meaning given in the Building Management Statement.

**Station Lot Owner** has the meaning given in the Building Management Statement.

**Transfer Level** has the meaning given to it in the SWTC.

### 2. SUBDIVISION PLAN

#### 2.1 Surveying principles to be adopted by the Surveyor

- (a) Stratum boundaries are required to be defined relative to Australian Height Datum (**AHD**).
- (b) Horizontal boundaries – each Lot extends from within the lowest common floor slab (that is intended to be within the Lot) up to within the slab above (that is intended to be within the Lot). It is common practice to adopt the centre of the respective slabs.
- (c) Vertical (perimeter) boundaries – with the exception of item (e) below, each lot extends to the outside structural surface. The lot that is adjacent to the lot that extends outside the structural surface is to be projected to the external boundary to reduce any small slivers of land being created (other than in respect of the Airspace Lot).
- (d) For common walls of two internal lots – generally “ad medium filum” applies.
- (e) The external perimeter boundaries of the Development Lot 1 and Development Lot 2 above Transfer Level will align with the maximum building envelopes (which is intended to extend beyond the outside structural surface as indicated in the Draft Building Envelope Plan) approved in the Concept SSD Consent.

#### 2.2 Conceptual principles

- (a) The intended owner of the Station Lot (Lot 1 in the Subdivision Plan) will be the Principal.
- (b) Lot 2 in the Subdivision Plan will be Development Lot 1 and will comprise the OSD.
- (c) Lot 3 in the Subdivision Plan will be the Retail Lot. The Retail Lot will be limited in depth and limited in height.

- (d) The intended owner of Lot 4 in the Subdivision Plan will be the Principal. Lot 4 will be the Airspace Lot and will comprise the airspace (limited in depth) above and adjacent to Development Lot 1 and Development Lot 2. Lot 4 will not be part of the building referred to, or included, in the BMS.
- (e) The Station Lot will be unlimited in depth and limited in height. All infrastructure and services forming part of the Victoria Cross Station (excluding any retail components) must sit within the boundaries of the Station Lot, except as otherwise agreed by the Principal.
- (f) Development Lot 1 will be limited in depth and limited in height.
- (g) The Station Lot will contain all of the plant and equipment that exclusively or predominantly service the Victoria Cross Station, all platform areas (including the platforms up to the tunnel) and all paid concourse areas, including for example:
  - (i) the station goods lift;
  - (ii) the area comprising the bike parking for Victoria Cross Station; and
  - (iii) the Sydney Metro station manager's office.
- (h) Lot 5 in the Subdivision Plan will be Development Lot 2. Development Lot 2 will be limited in depth and limited in height.
- (i) Lot 6 in the Subdivision Plan will be the Concourse Lot. The Concourse Lot will be limited in depth and limited in height.
- (j) To the extent that there is any land from the Subdivision Land which is in excess of the land required for the purpose of the Victoria Cross Station and the other lots in the Subdivision Plan, this land will comprise the "**Residual Lot**". The Residual Lot will be created as a separate stratum lot in the Subdivision Plan and will be owned by the Principal.
- (k) The VC Contractor and the Surveyor must work collaboratively with the Principal to agree the boundary between the Station Lot and the station platforms with respect to requirements for structural separation and/or easements necessary to define the extent of the Building governed by the Building Management Statement to the satisfaction of LRS.

### 2.3 Easement sites

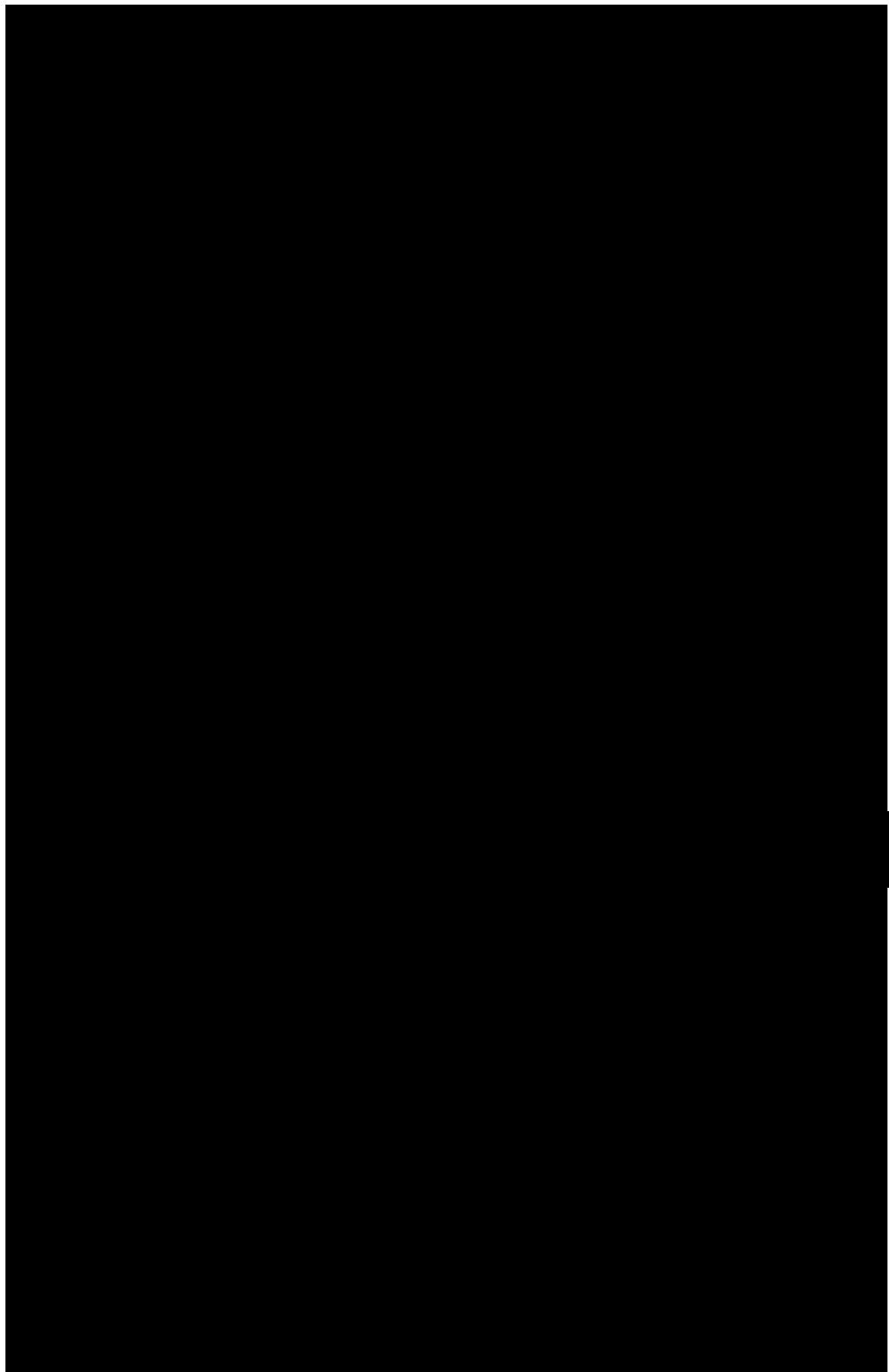
Where the location of an easement has not been included on the Draft Subdivision Plan, it is to be implied by its intended purpose or:

- (a) if the easement benefits or burdens the Station Lot, it must be agreed by the Principal; or
- (b) otherwise is subject to agreement between the Principal and the VC Contractor.

### 3. SECTION 88B INSTRUMENT

#### 3.1 Draft Section 88B Instrument

- (a) (**Parties to agree**) As at the date of this deed, the final form of the Section 88B Instrument is to be agreed between the Principal and the VC Contractor based on the Draft Section 88B Instrument and in accordance with Schedule D12 (*Subdivision requirements*).
- (b) (**Draft Section 88B Instrument**) The VC Contractor acknowledges and agrees that:
- (i) as a general principle, easements will be registered on the title to each Lot as relevant and will, in conjunction with the Building Management Statement, govern on-going operational rights and obligations and use of and responsibility in respect of Shared Facilities and other relevant areas affected by the easements;
  - (ii) to the extent that the Principal has agreed with the VC Contractor that certain infrastructure or services or Metro Assets (as defined in the Draft BMS) utilised by the Victoria Cross Station may sit outside of the Station Lot, contrary to the principles described in paragraphs 2.2(e) and 2.2(f) of this Schedule D13, the Principal may require that easements be granted over such infrastructure and services;
  - (iii) the parties will consider whether the easements need any additional provisions to deal with the interface between Services that are not Shared Facilities and those that are Shared Facilities;
  - (iv) the parties will consider whether all of the easements set out in the Draft Section 88B Instrument are required; and
- (c) the Draft Section 88B Instrument contemplates and includes the proposed wording for easements for access (H), (K) and (S). The Easement Site in respect of each of these easements:
- (i) (in respect of (H)) must have a minimum clear width for circulation of 8m wide, with the exception of one column adjacent to the through site link stairs which reduces this to 7.2m and minimum clear height of 2.95m;
  - (ii) (in respect of (K)) must have a minimum clear width for circulation of 6m and minimum stair width of 2.4m; and
  - (iii) (in respect of (S)) must have a minimum clear width for circulation of 3m.



**3.3 Other easements**

- (a) The Draft Section 88B Instrument may not yet include those easements, positive covenants and restrictions on use that:
  - (i) may be required pursuant to the conditions of any Approvals, including the Planning Approvals;
  - (ii) the Principal may require for the purpose of operation and maintenance of Sydney Metro City & Southwest (including Victoria Cross Station); or

- (b) Without limiting paragraph 3.3(a)(ii) of this Schedule D13, the parties have not yet considered whether there will be easements in respect of the following:
  - (i) the right for the Station Lot Owner to install ticketing machines on one or more of the other Lots;
  - (ii) the earthing and bonding infrastructure and lightning protection system; and
  - (iii) access to (and the requirement to maintain) landscaping and public art.

**4. BUILDING MANAGEMENT STATEMENT**

**4.1 BMS provisions**

- (a) The VC Contractor is required to prepare and finalise each of the schedules and annexures to the Draft BMS (including the Shared Facilities Schedule and the plan showing the Restricted OSD Area) in accordance with the principles outlined in this Schedule D13 and the ISD Operations Principles.
- (b) The proposed Building Management Statement to be included in the Subdivision Proposal or the Stage 1 Subdivision Proposal will reflect the principle that the

Restricted OSD Area will not include any areas that need to be accessed by the Station Lot, Concourse Lot, Development Lot 2 or Retail Lot or contain any Shared Facilities which are shared by the Station Lot or Retail Lot.

- (c) If the Stage 1 Proposal is adopted, the proposed Building Management Statement will contain appropriate provisions that allow for:
  - (i) the second stage Subdivision as contemplated by paragraph 8 of Schedule D12 (*Subdivision Requirements*);
  - (ii) final members on completion of the second stage Subdivision as contemplated by paragraph 8 of Schedule D12 (*Subdivision Requirements*); and
  - (iii) completion of the OSD Works in accordance with the OSD PDA.
- (d) The Principal and the VC Contractor will consider whether:
  - (i) the maintenance and works obligations set out in the Building Management Statement align with the easements in the Draft Section 88B Instrument; and
  - (ii) the Building Management Statement needs any additional provisions to deal with the interface between services that are not Shared Facilities and those that are Shared Facilities.
- (e) The Principal may allow its contractor to exercise the Principal's rights, as agent for the Principal, under the Building Management Statement.
- (f) The parties have not yet considered whether there will be any provisions in the Building Management Statement for access to and the requirement to maintain landscaping and public art.
- (g) The VC Contractor may require architectural and landscape standards to be prescribed on registration of the Building Management Statement. If this is the case, the VC Contractor and Principal must agree the form of those standards acting reasonably.
- (h) The VC Contractor may require additional provisions to be included in the Building Management Statement to regulate the relationship between Members and use of Shared Facilities, provided that such additional provisions do not adversely impact on the Station Lot Owner, the Station Lot, pedestrian access to and from the Station Lot or result in a Metro Operational Impact.
  - (i) The parties must ensure that the final Building Management Statement will be in a form that complies with the Subdivision Legislation and is in registrable form.

#### 4.2 ISD Operations Principles

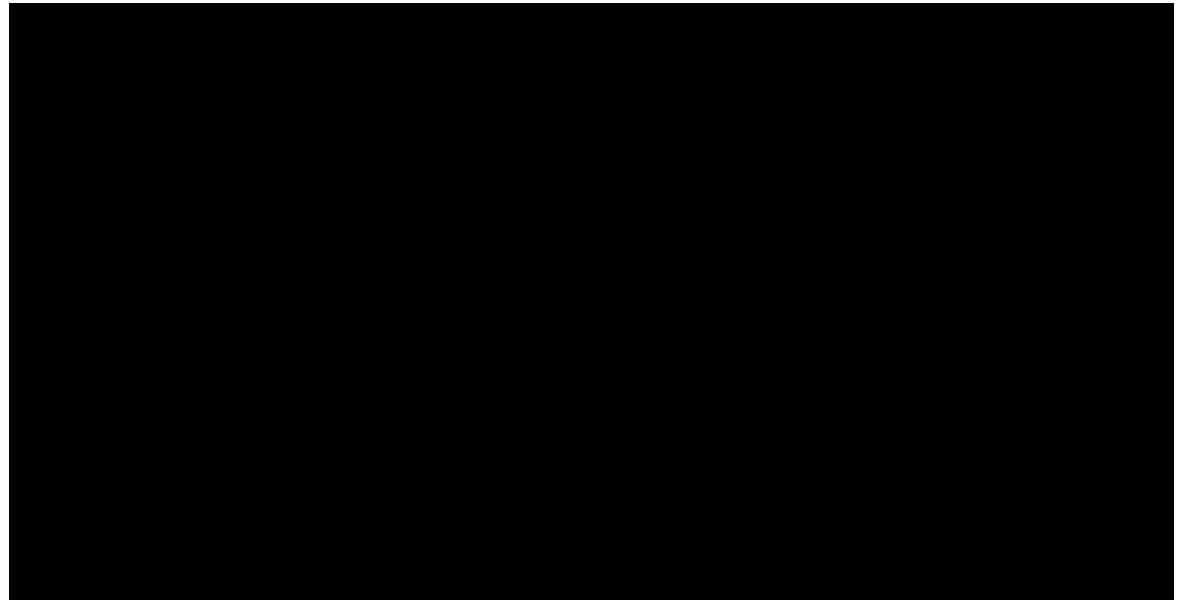
Elements of the BMS that relate to operational issues must be completed to align with the ISD Operations Principles.

#### 4.3 Shared Facilities Schedule

- (a) The Shared Facilities Schedule attached to the Draft BMS is in draft form, is incomplete and is to be agreed between the parties (acting reasonably). This includes the parties agreeing on what is included in (or excluded from) the draft

Shared Facilities Schedule, the description and scope of each Shared Facility, the Lots that are allocated the benefit of each Shared Facility and also the cost apportionment percentage allocated to each Lot with the benefit of the Shared Facility.

- (b) Notwithstanding paragraph 4.3(a) above, the method of allocation of costs listed in the Shared Facilities Schedule reflect the agreement between the parties at the time of this agreement.
- (c) There will be no Shared Facilities behind the operational boundary, unless otherwise agreed by the Principal.
- (d) All Shared Facilities will be maintained by the building management committee, except to the extent that clause 6.4 of the Building Management Statement applies.
- (e) The division of costs for the consumption of utilities in respect of Shared Facilities requires further consideration by the Principal and the VC Contractor. The basis for calculation of utility consumption is to be agreed between the parties.
- (f) Where the concept of "consumables" is included in a Shared Facility, the parties will consider and agree what this includes.

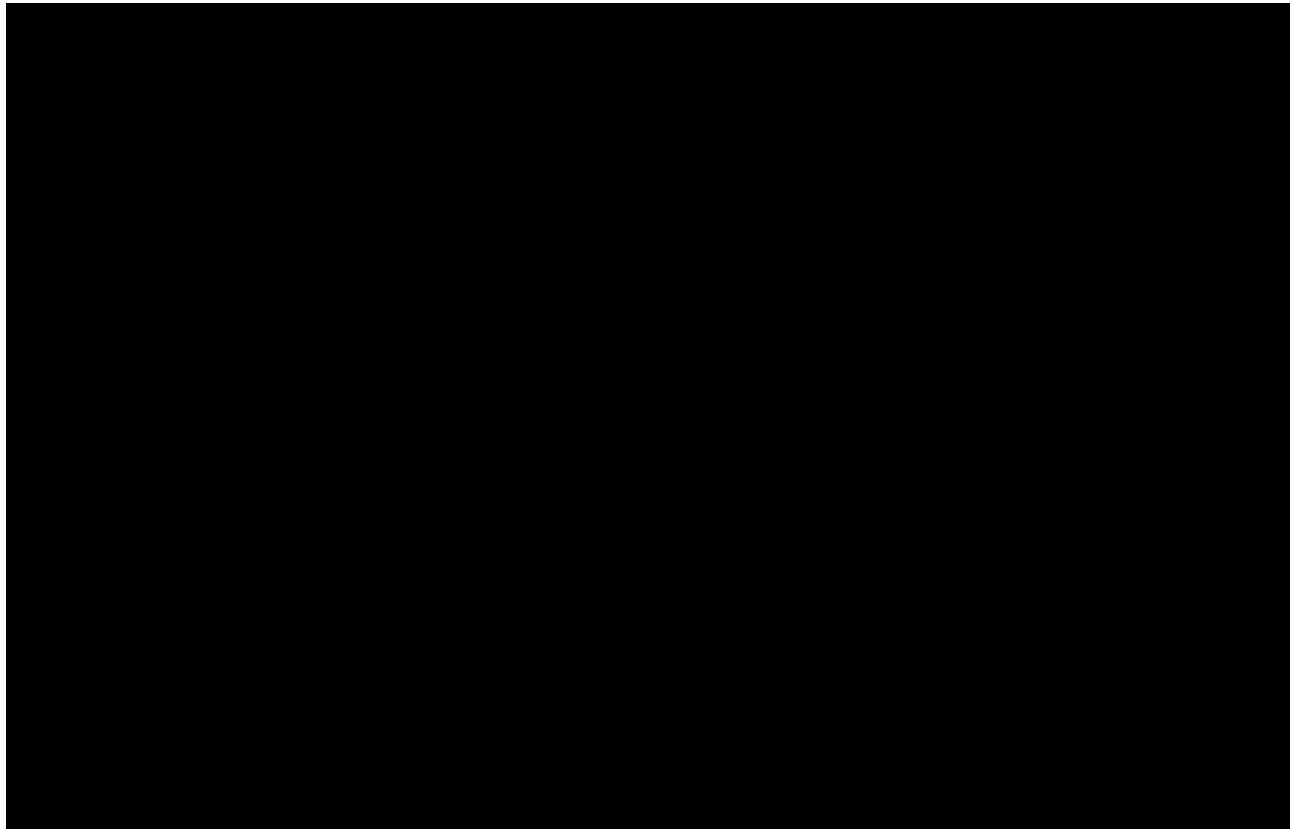


#### **4.4 Shared Facilities Plan**

The Shared Facilities Plan attached to the Draft BMS is in draft form, is incomplete and is to be agreed between the parties (acting reasonably). This includes the parties agreeing on each of the Shared Facilities Plans and the Access Easement Sites shown on those plans.

#### **4.5 Licences over Pedestrian Access Ways**

Clause 4.14 of the Draft BMS contemplates that a plan will be attached to the Building Management Statement or submitted to the Committee to set out that part of the Pedestrian Access Way the subject of the proposed licences referred to in that clause. The VC Contractor and the Principal will agree the proposed locations and the plan prior to the registration of the Building Management Statement.



(b)(5)

(b)(5)

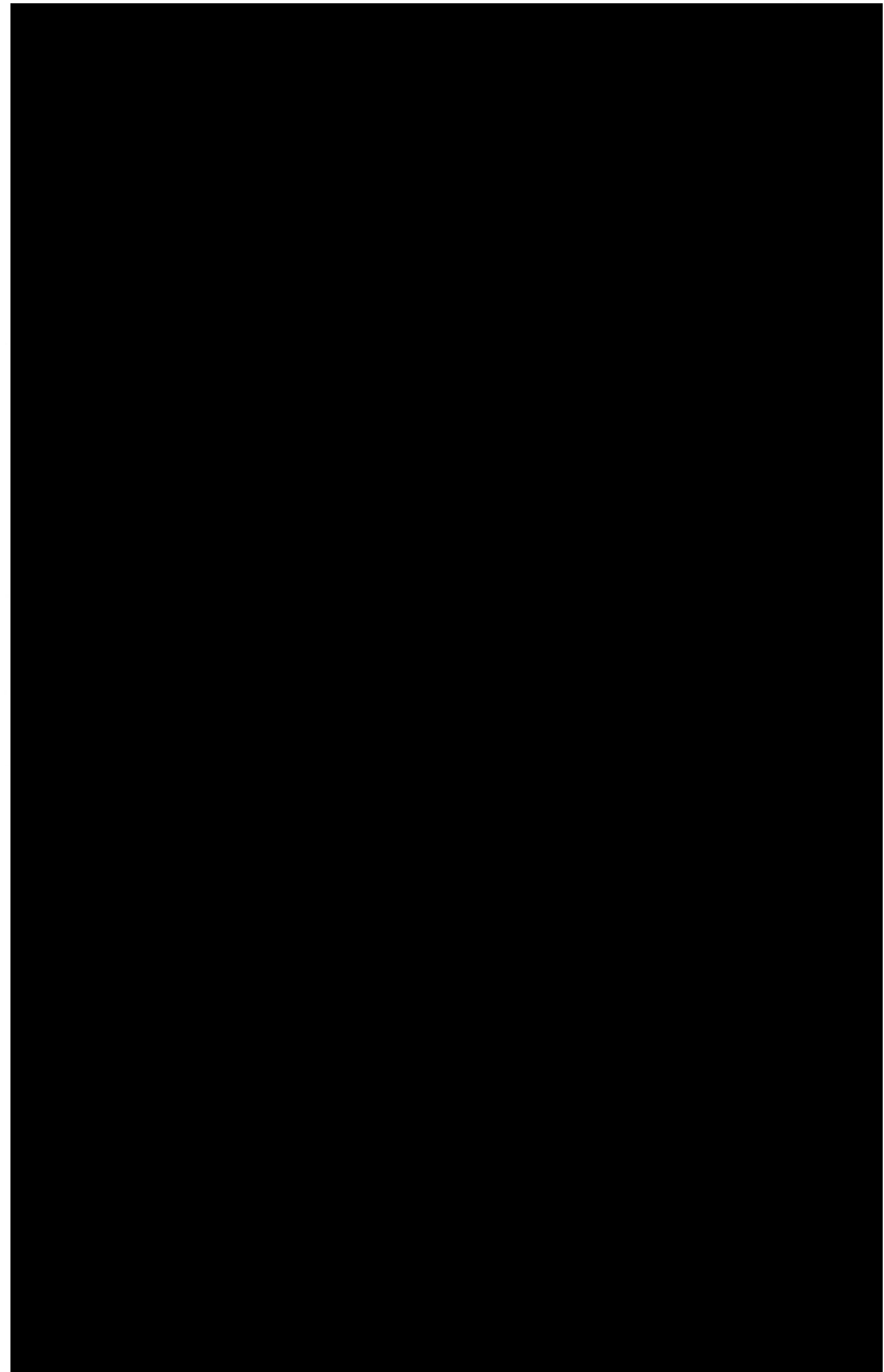
**SCHEDULE D14. – DRAFT BUILDING MANAGEMENT STATEMENT**

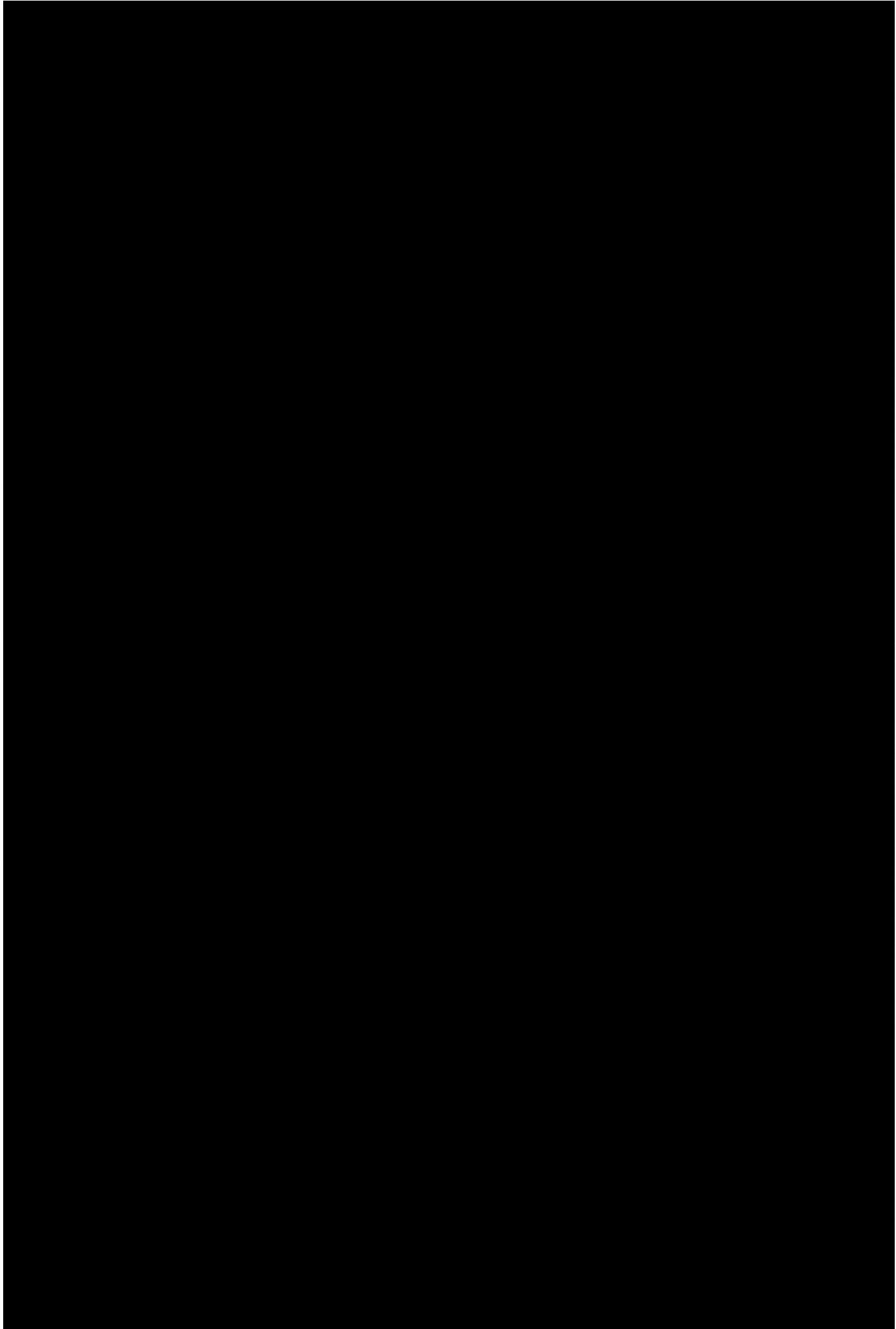
(Clause 9.11(d)(v) and Schedule A2)



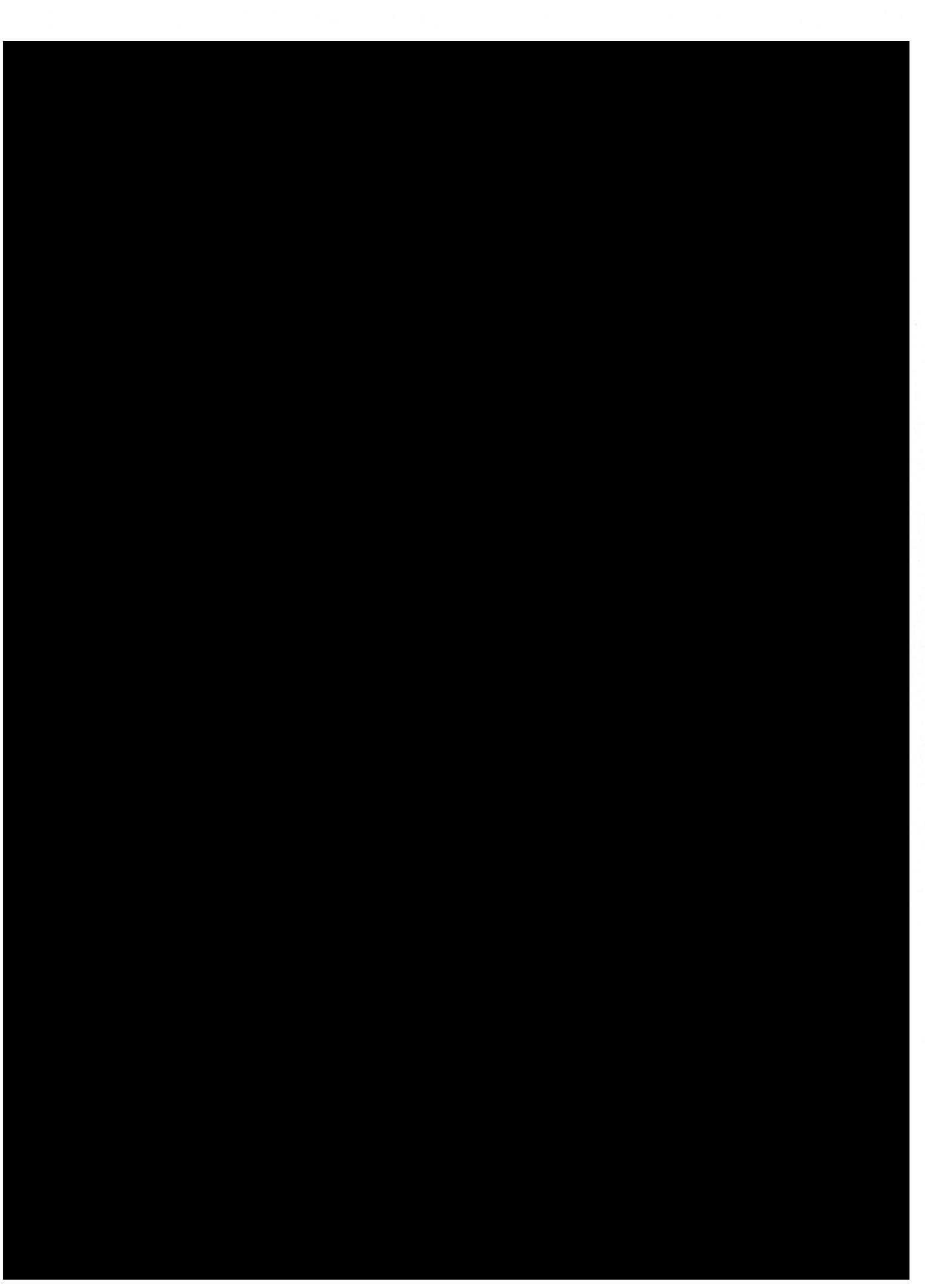






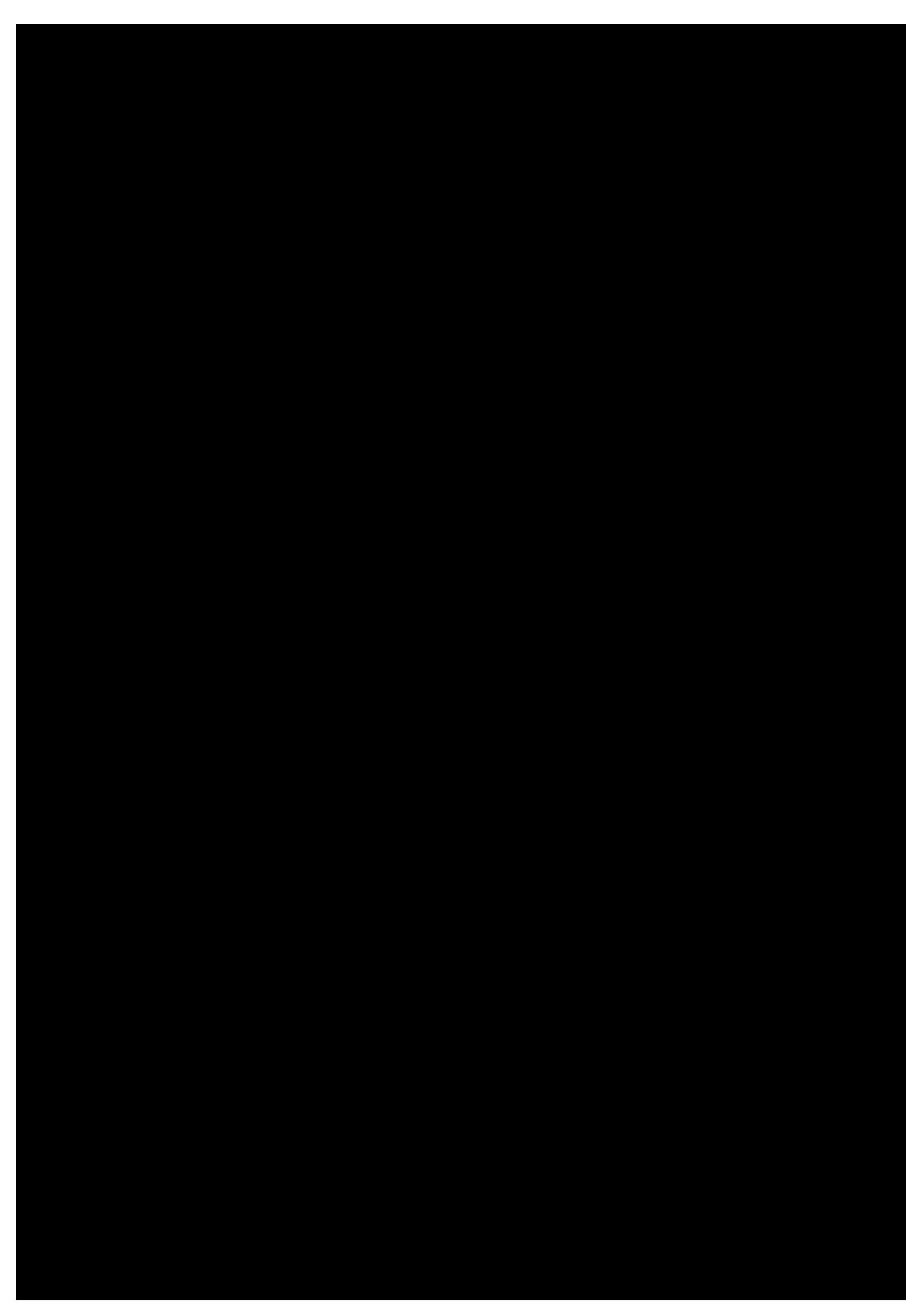




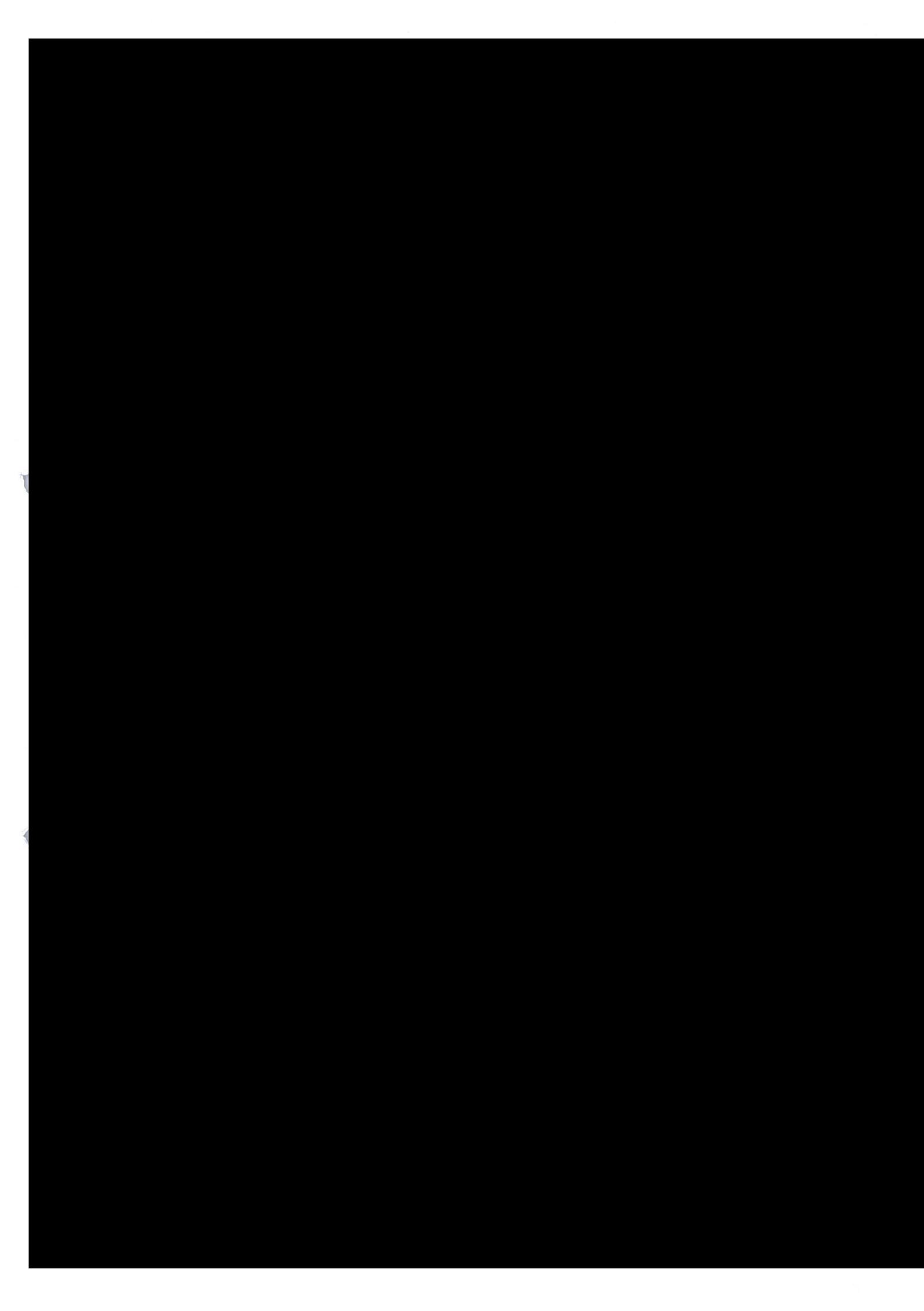


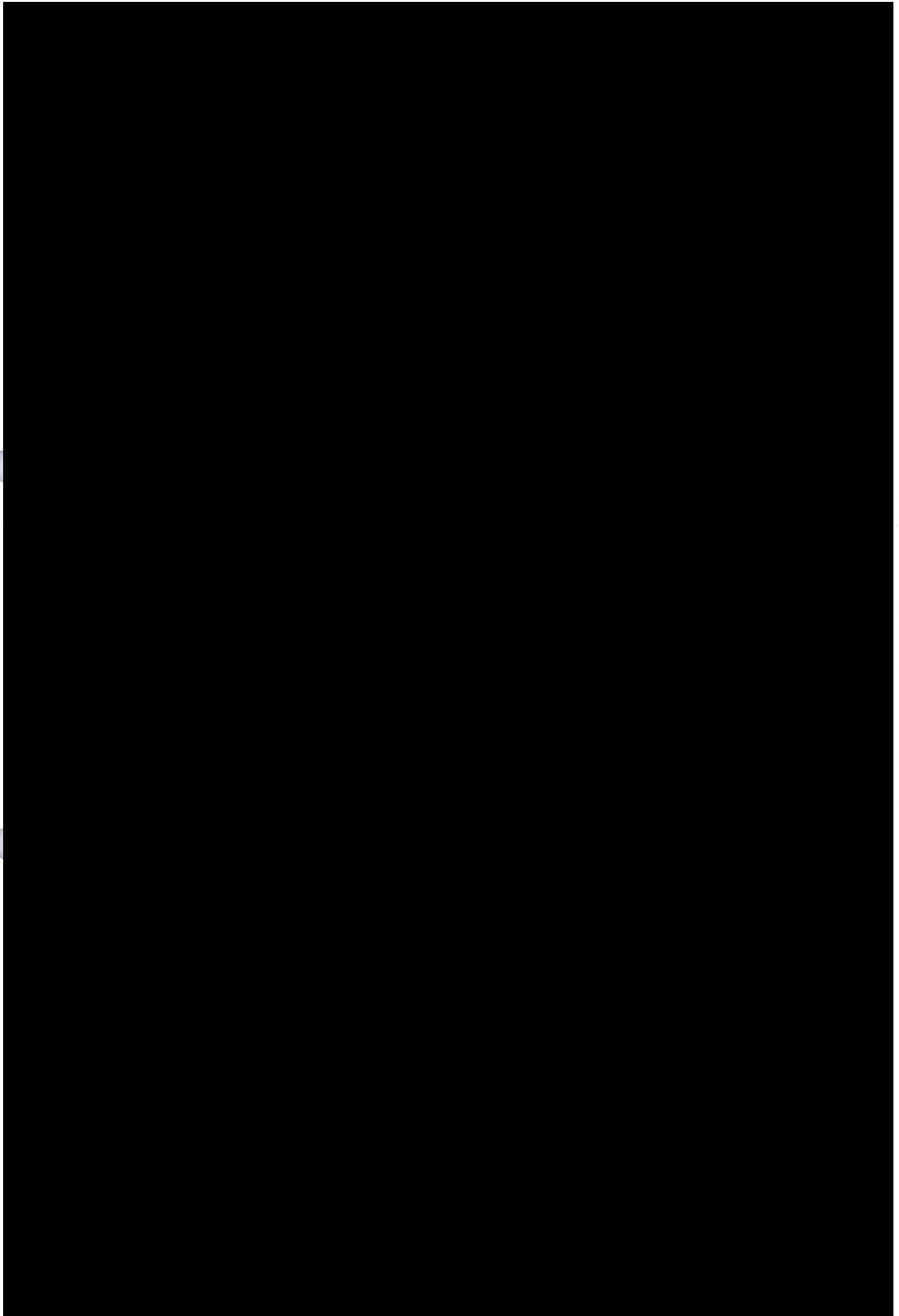














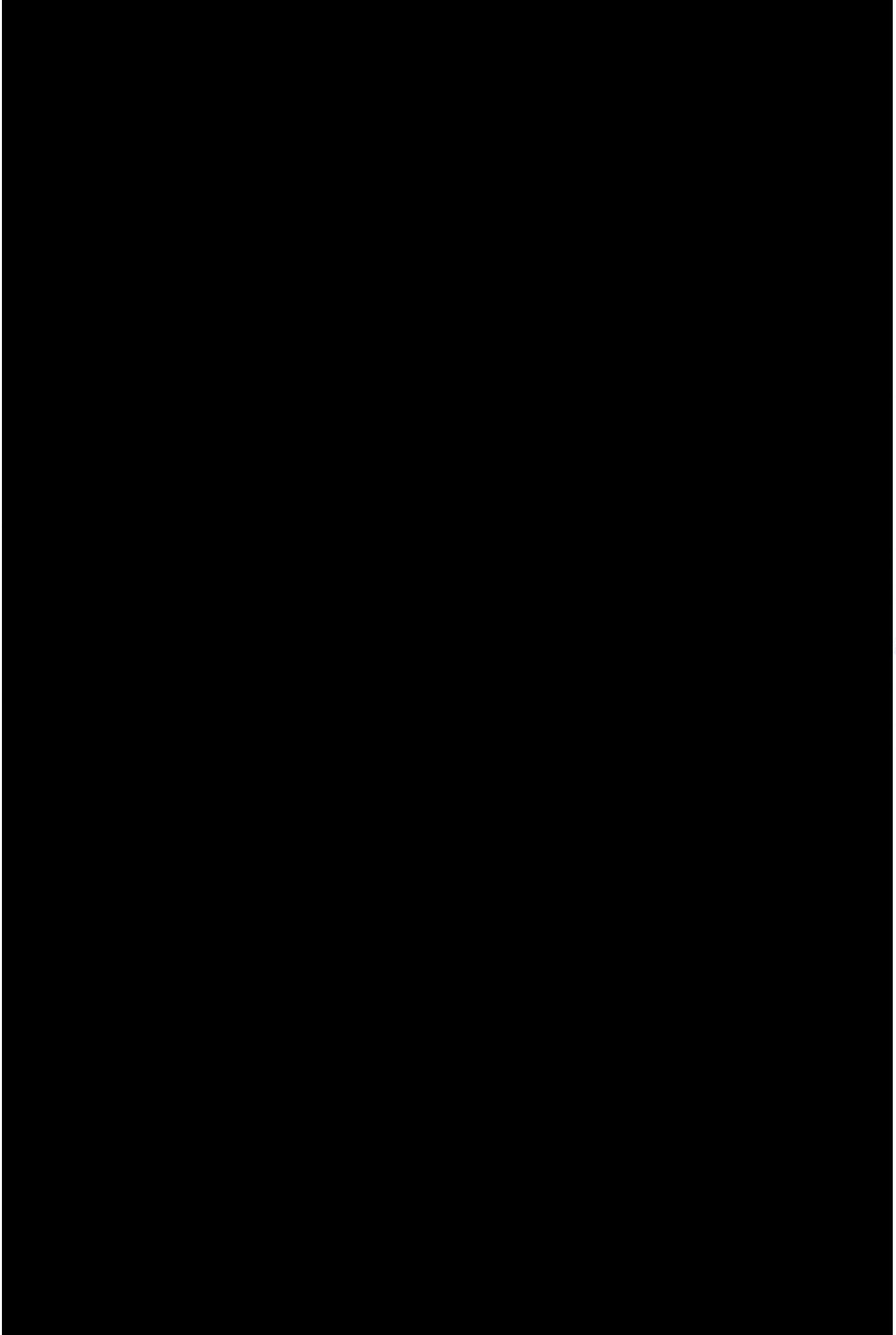


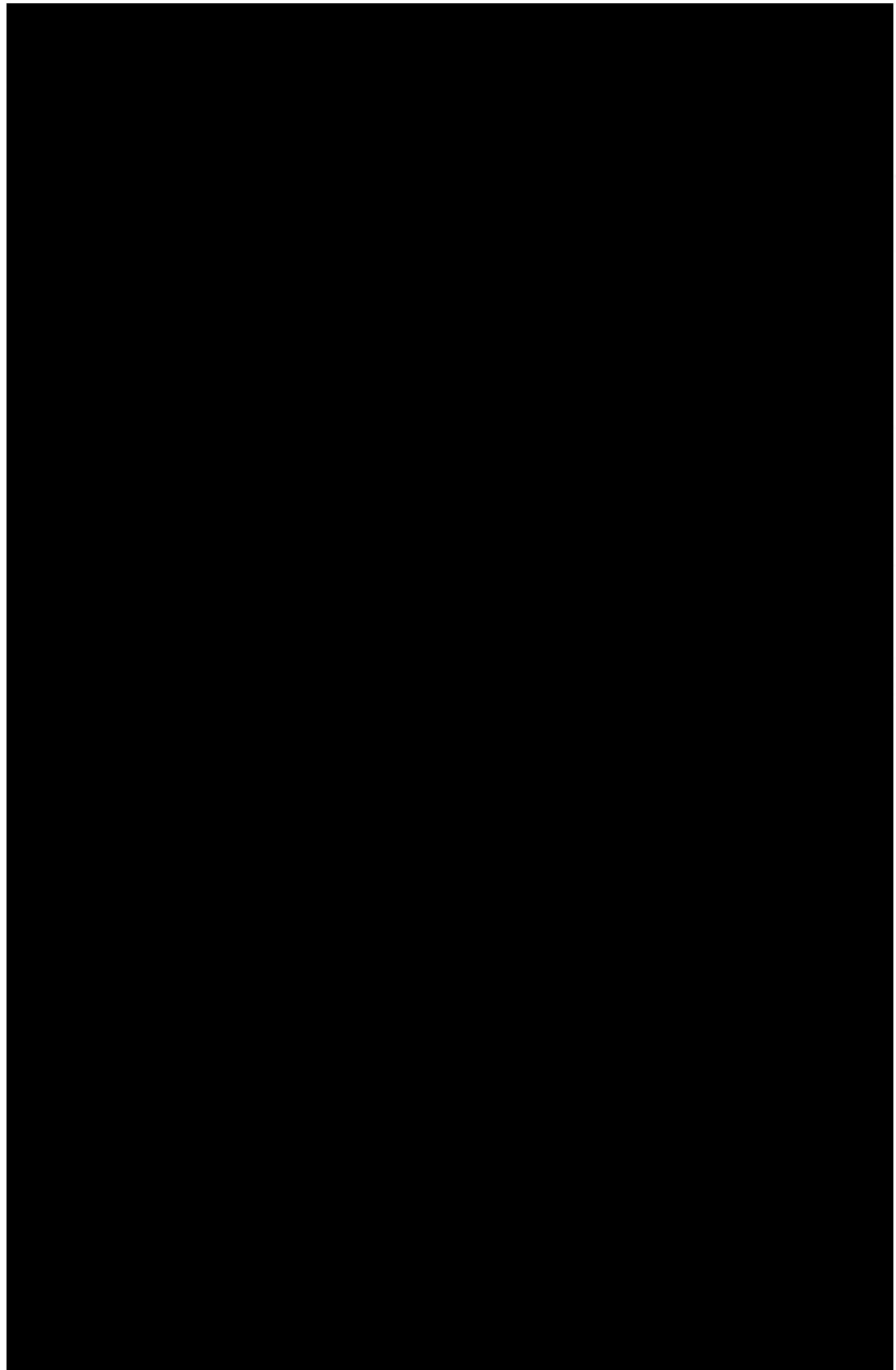


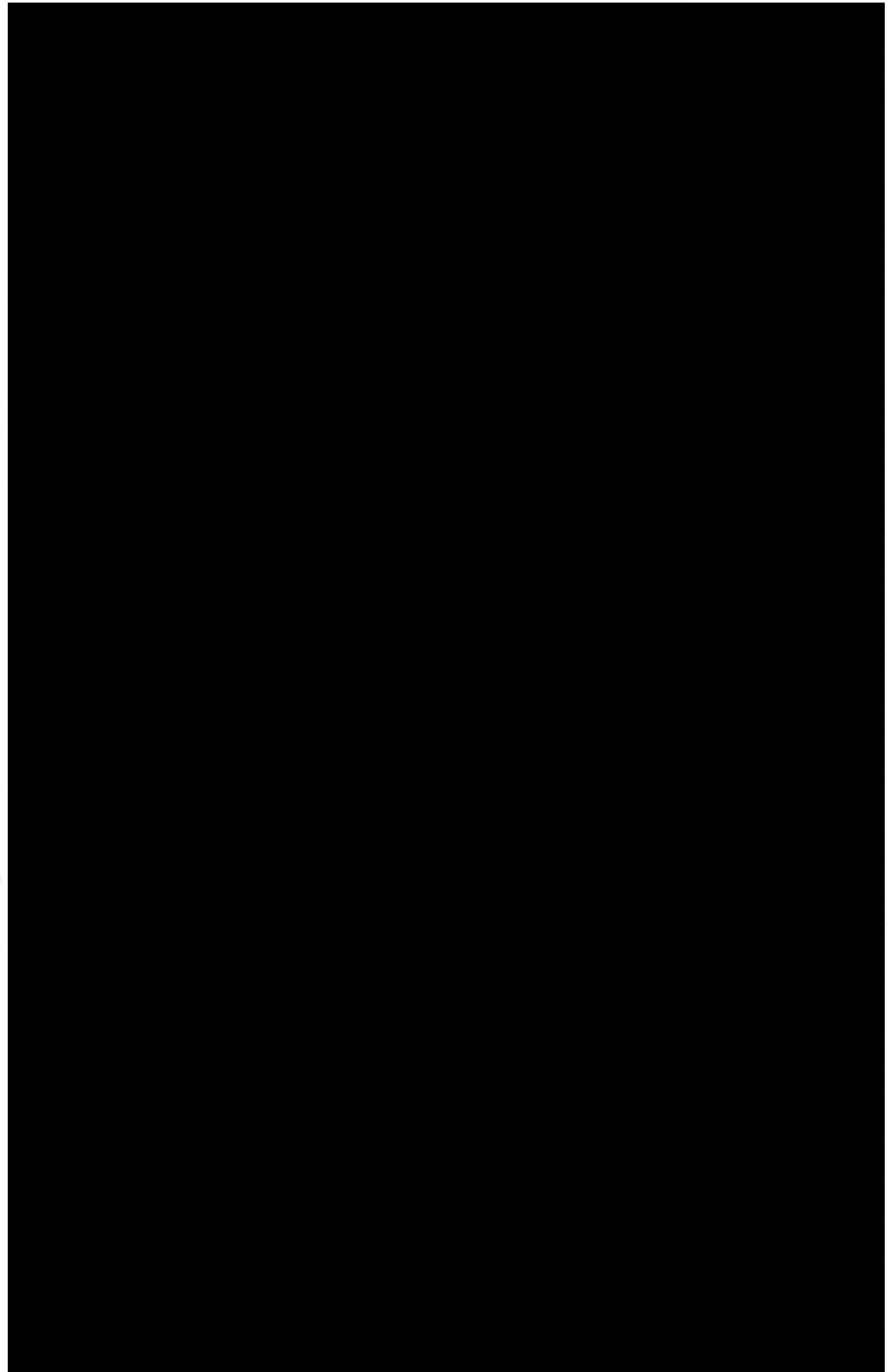


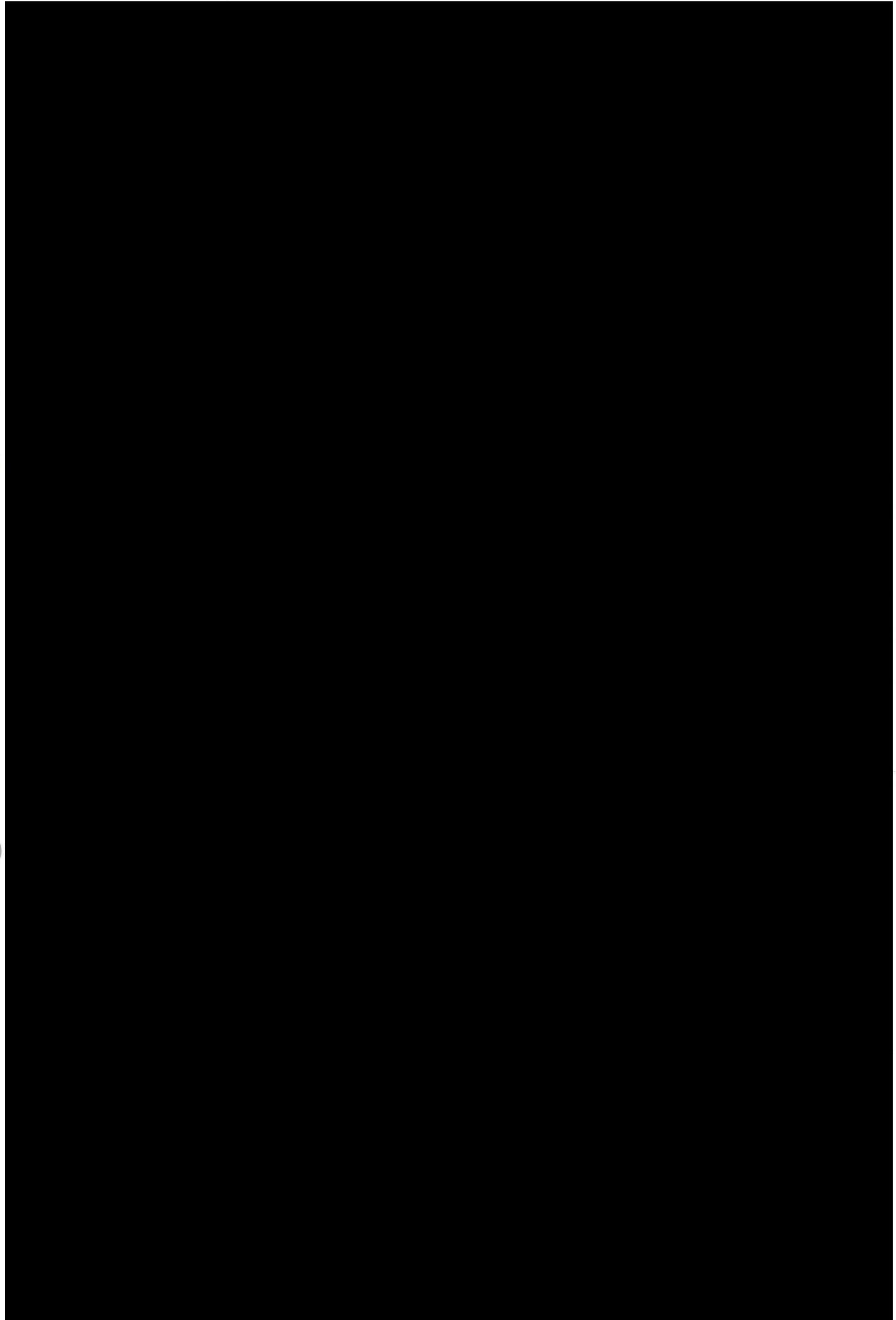


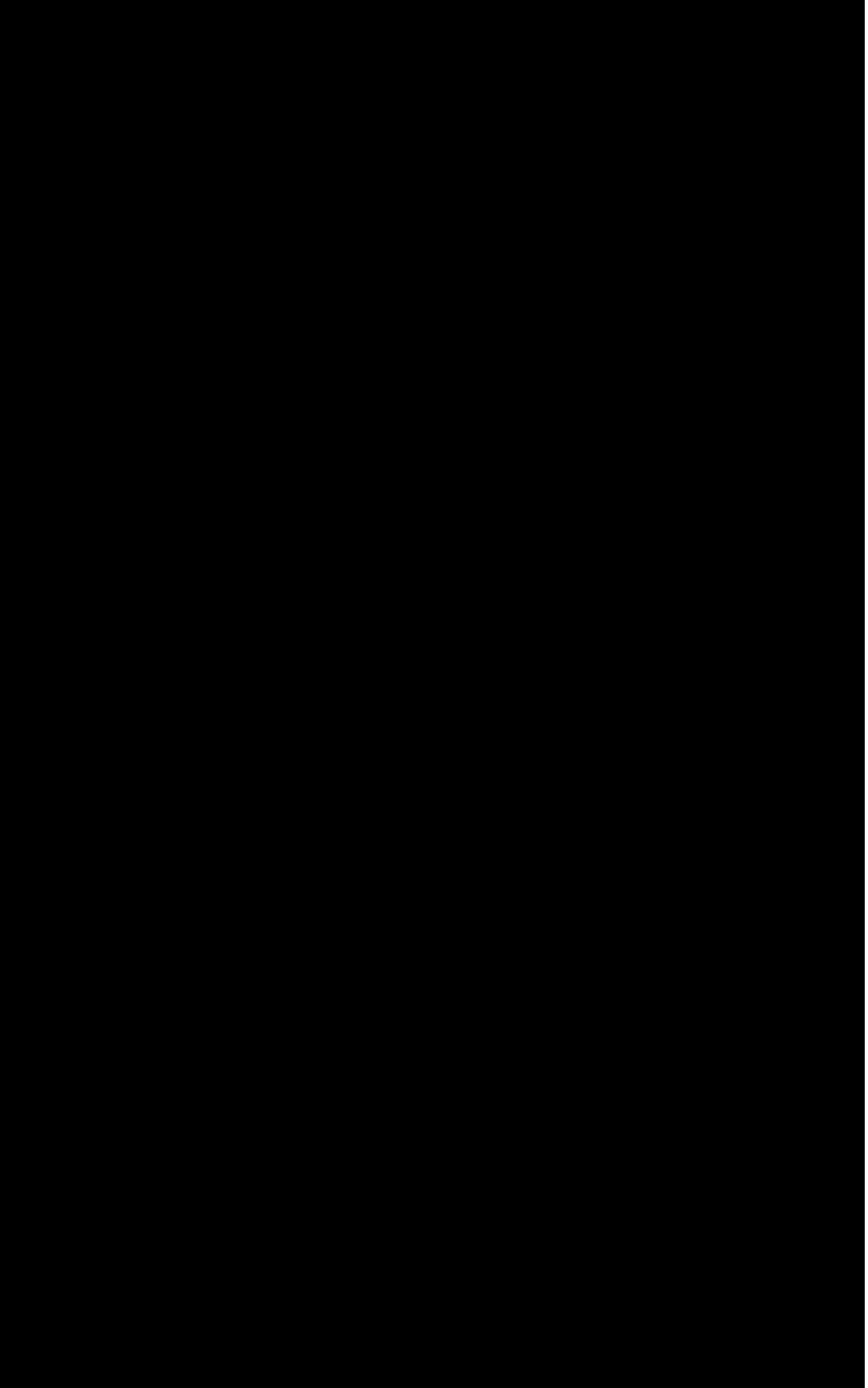


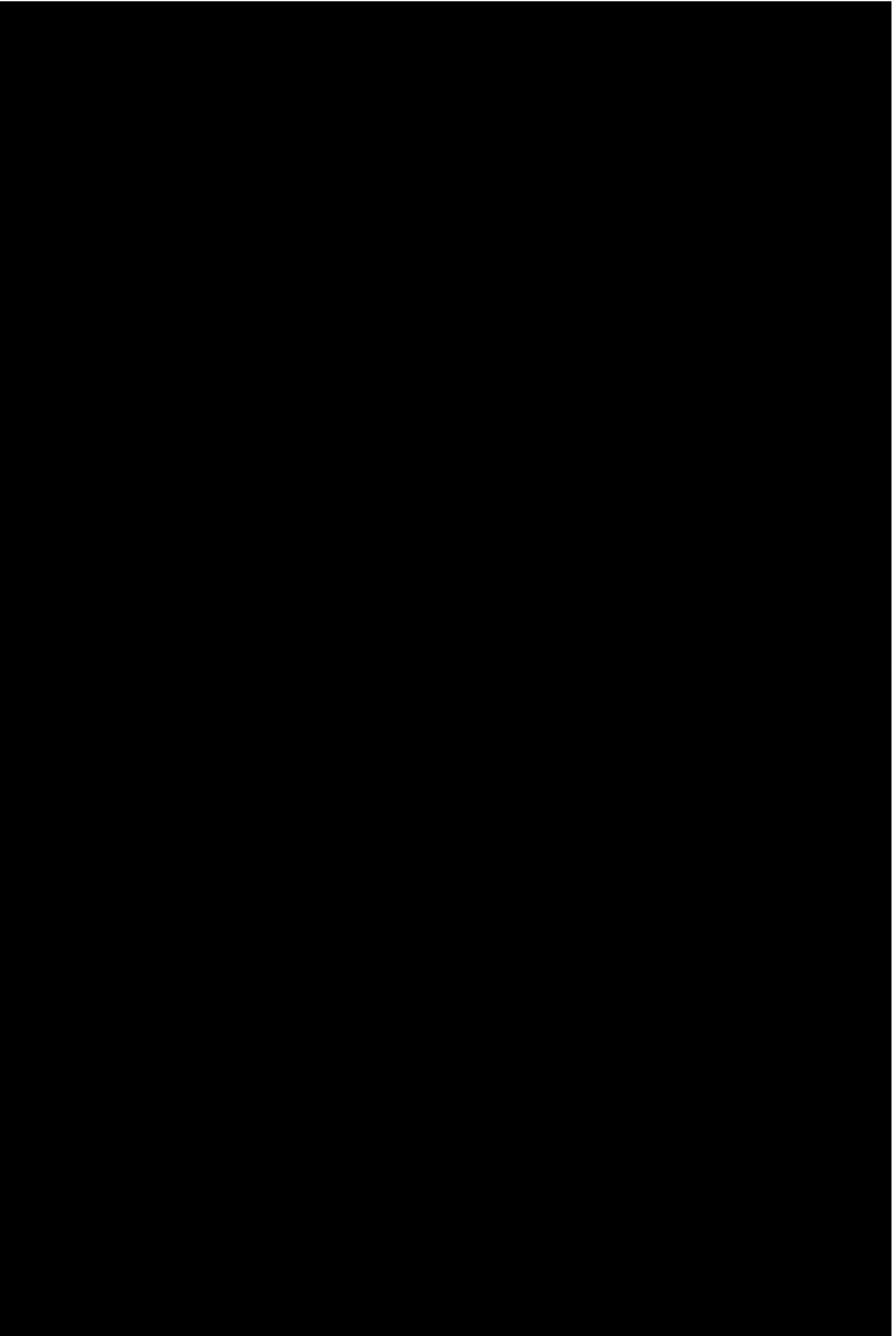




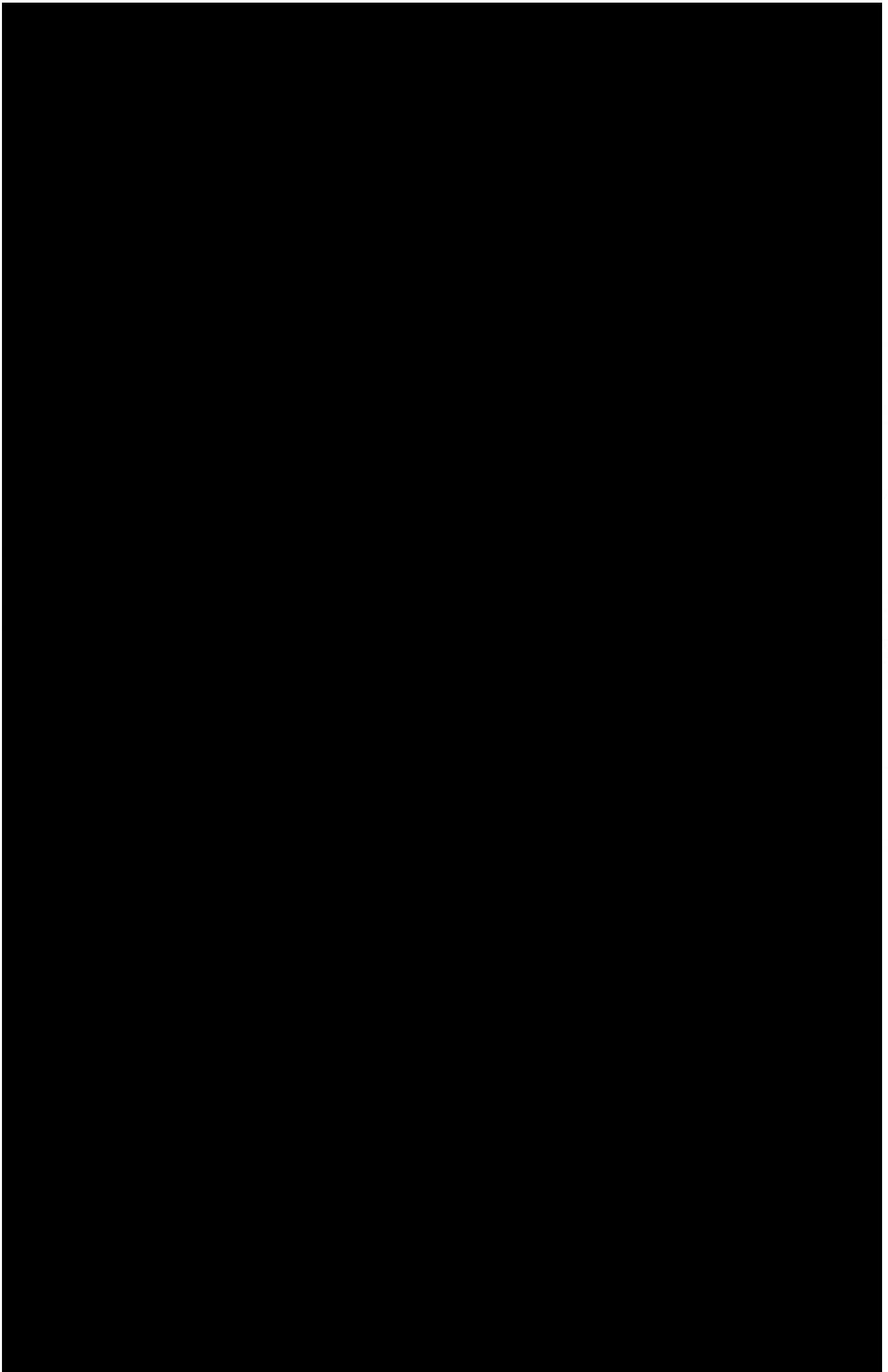






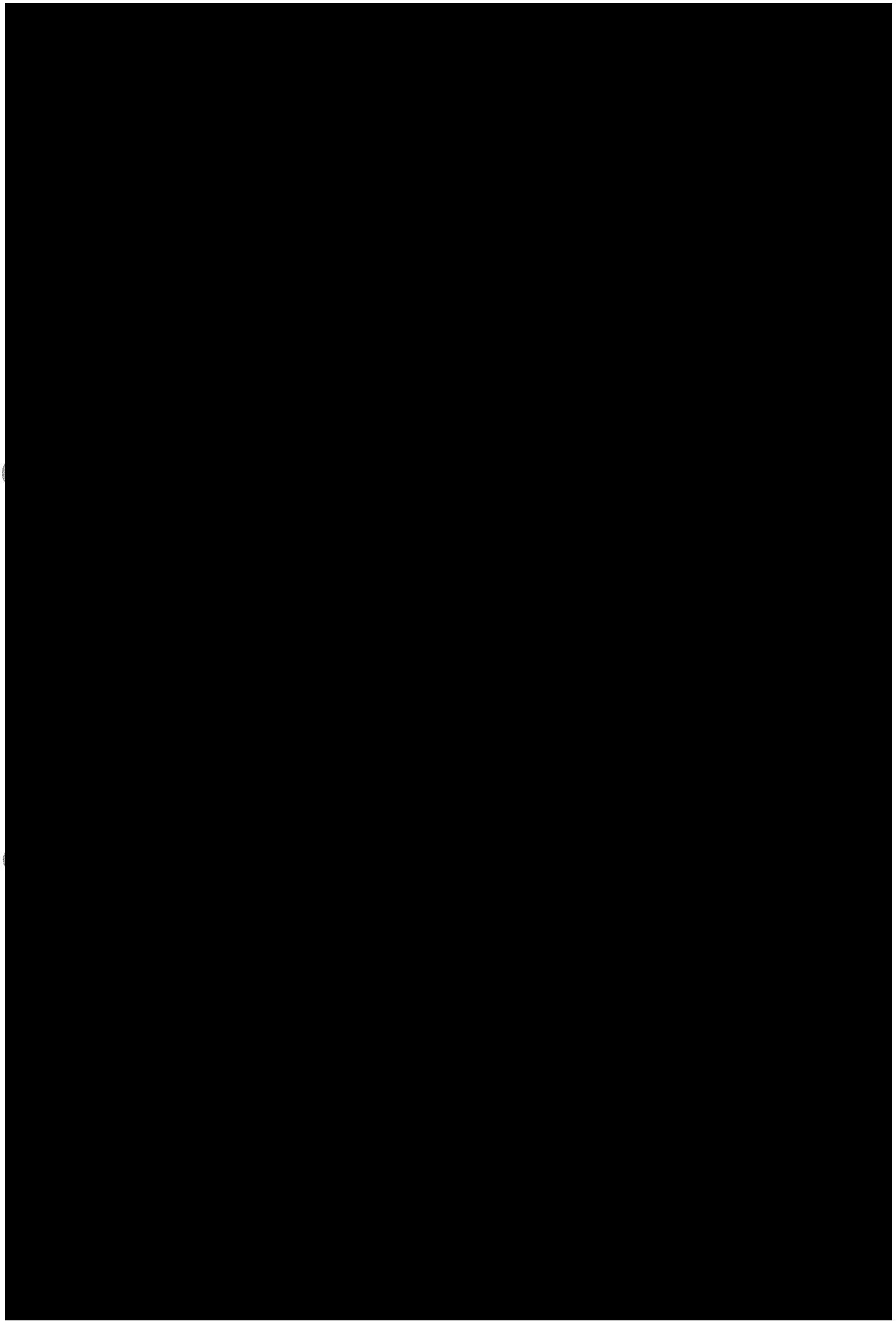


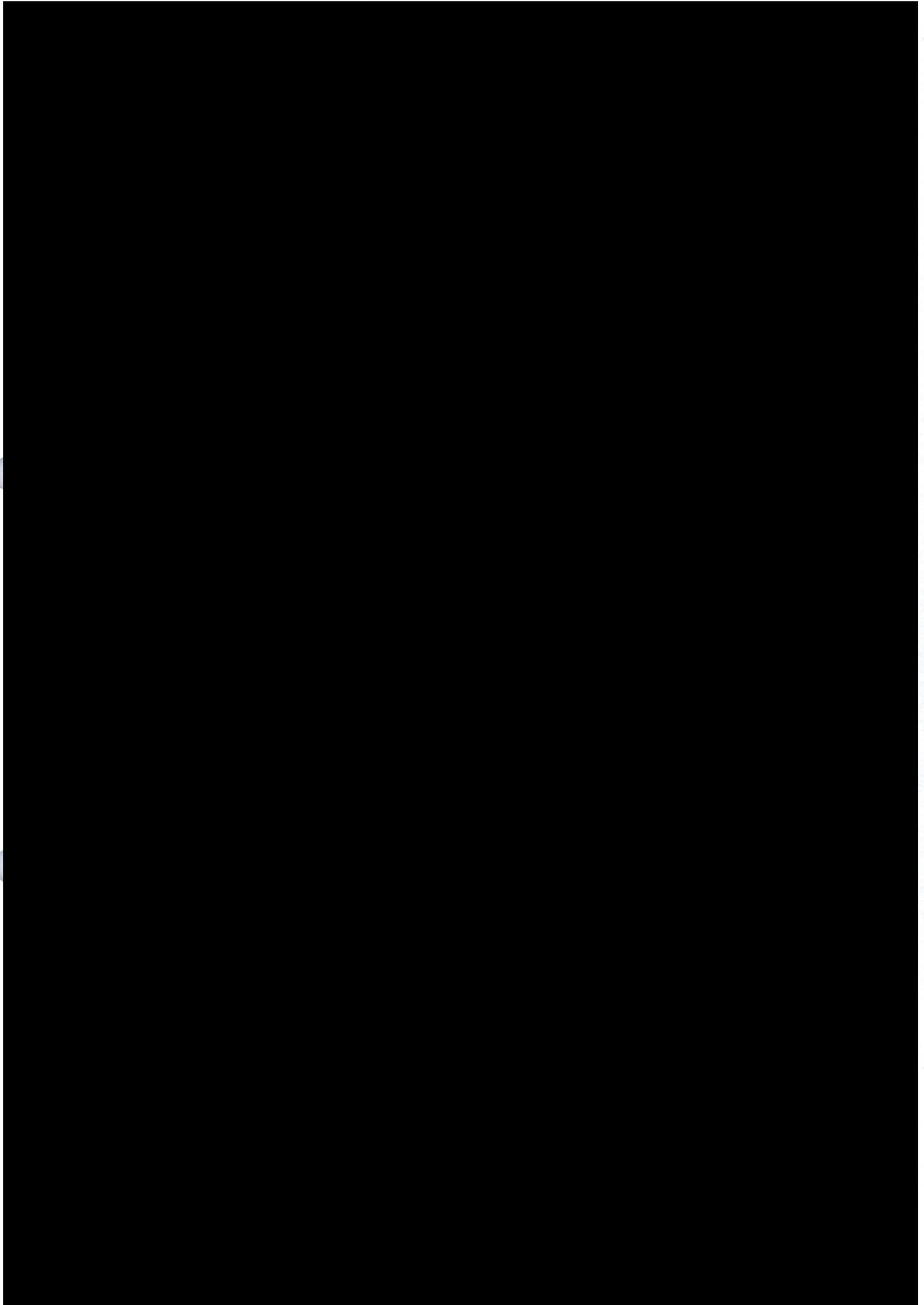


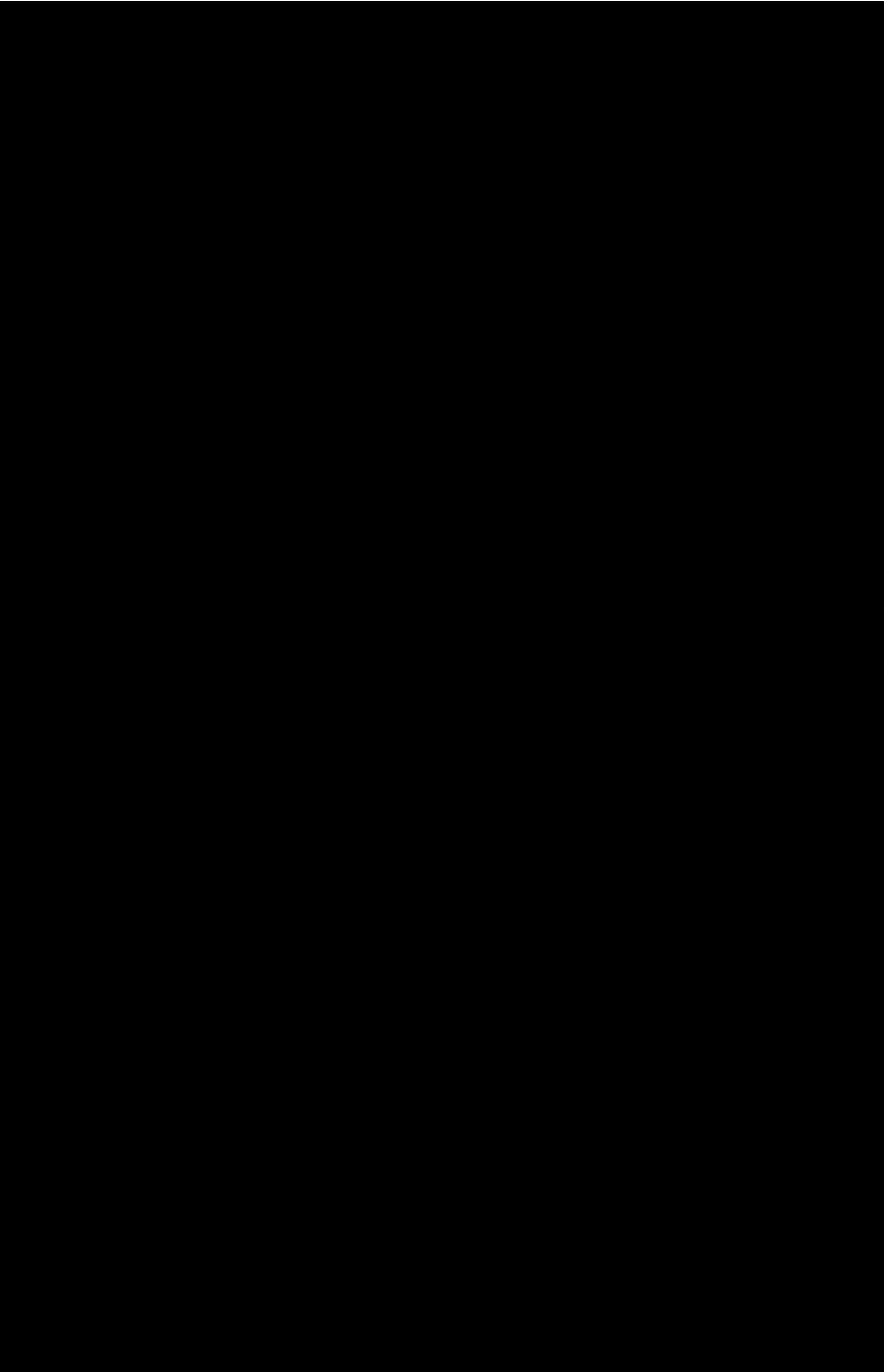






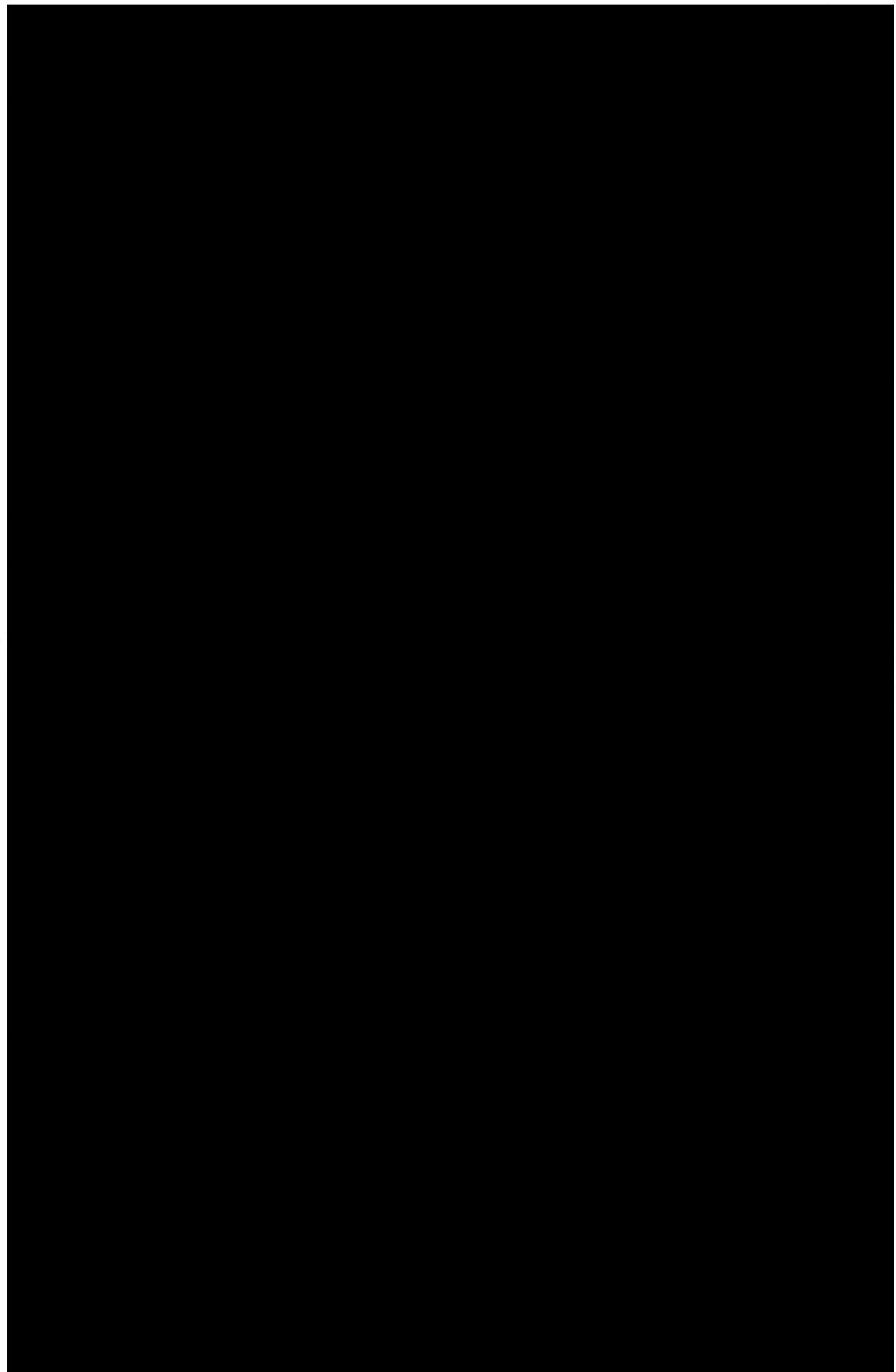


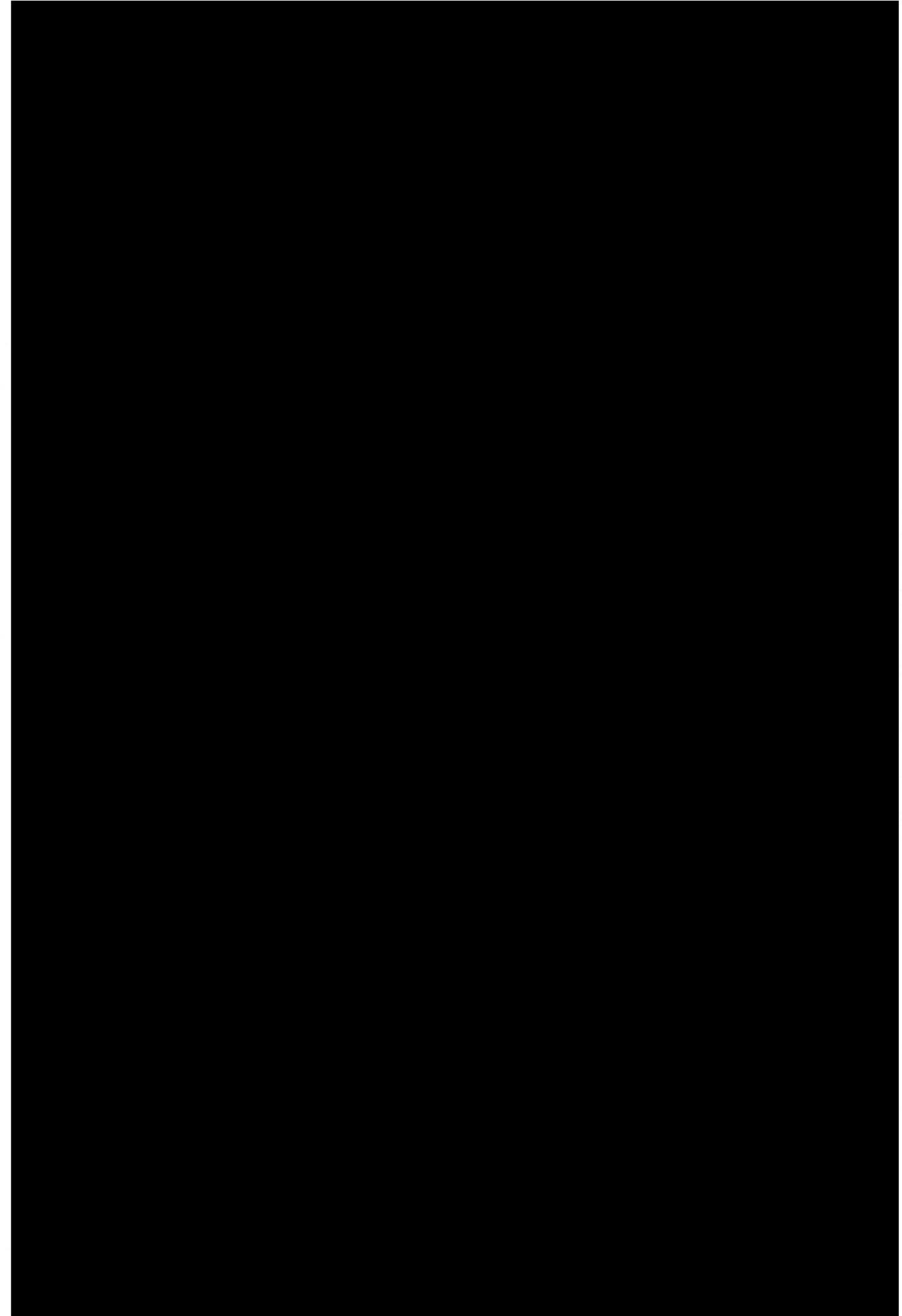


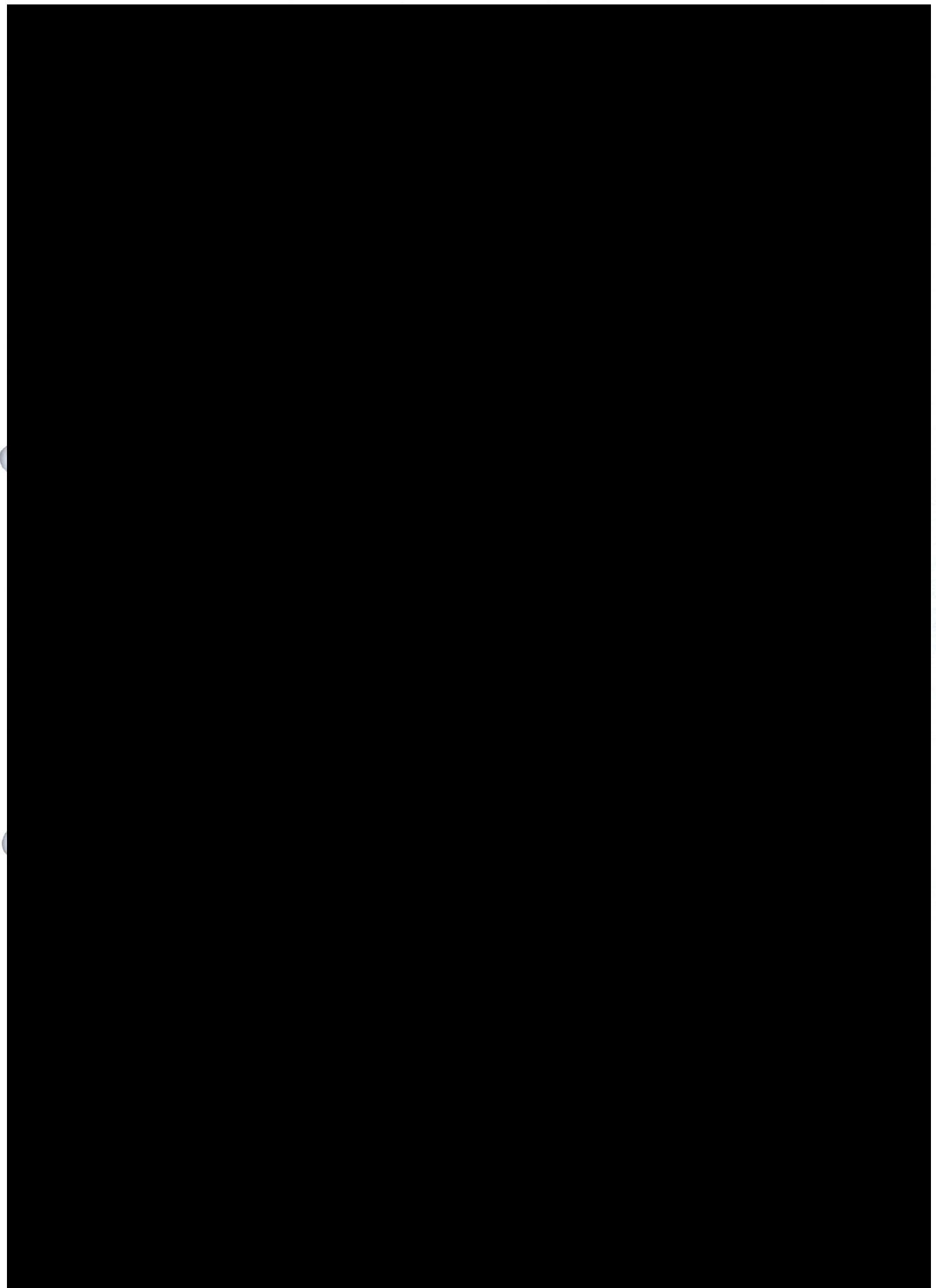




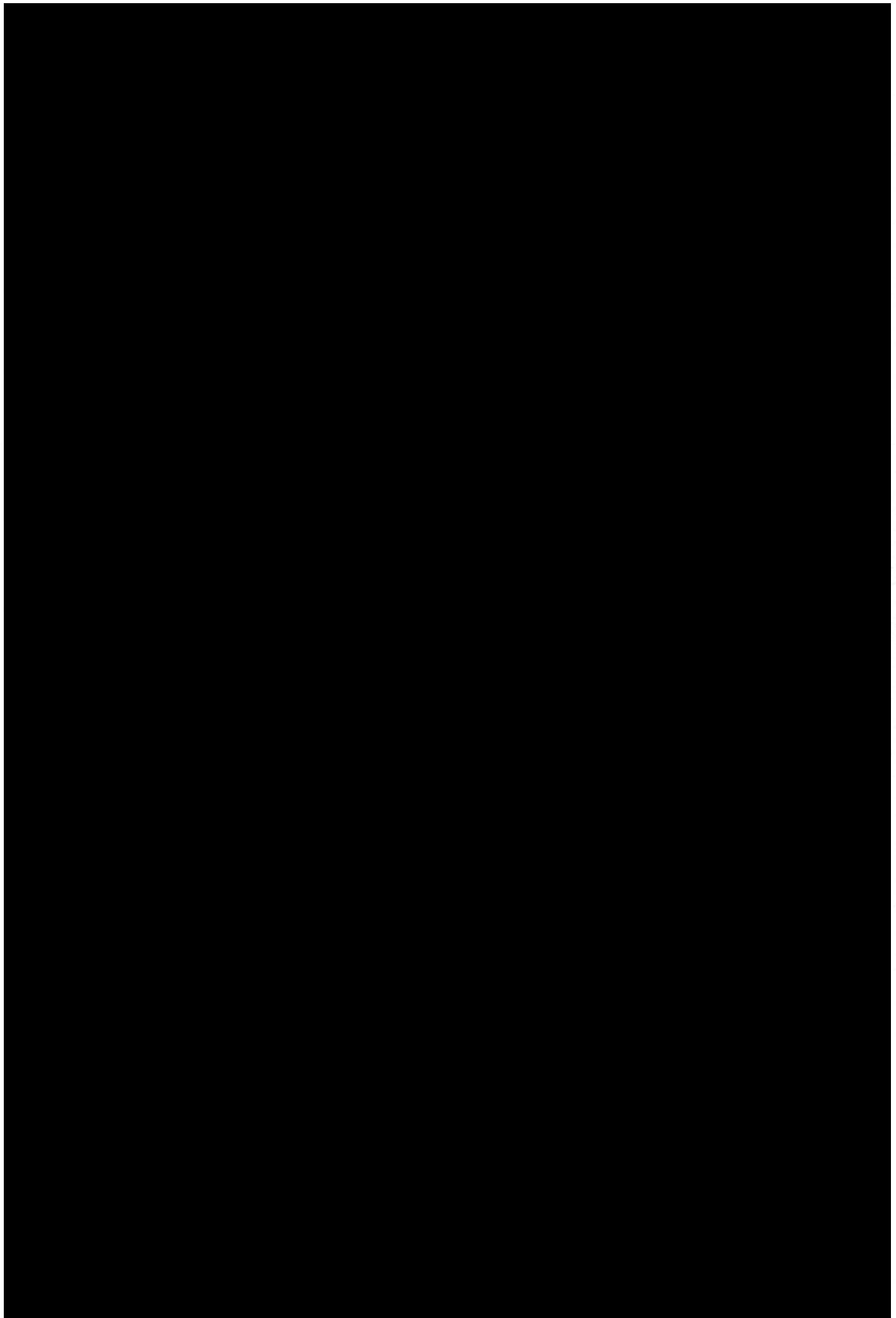


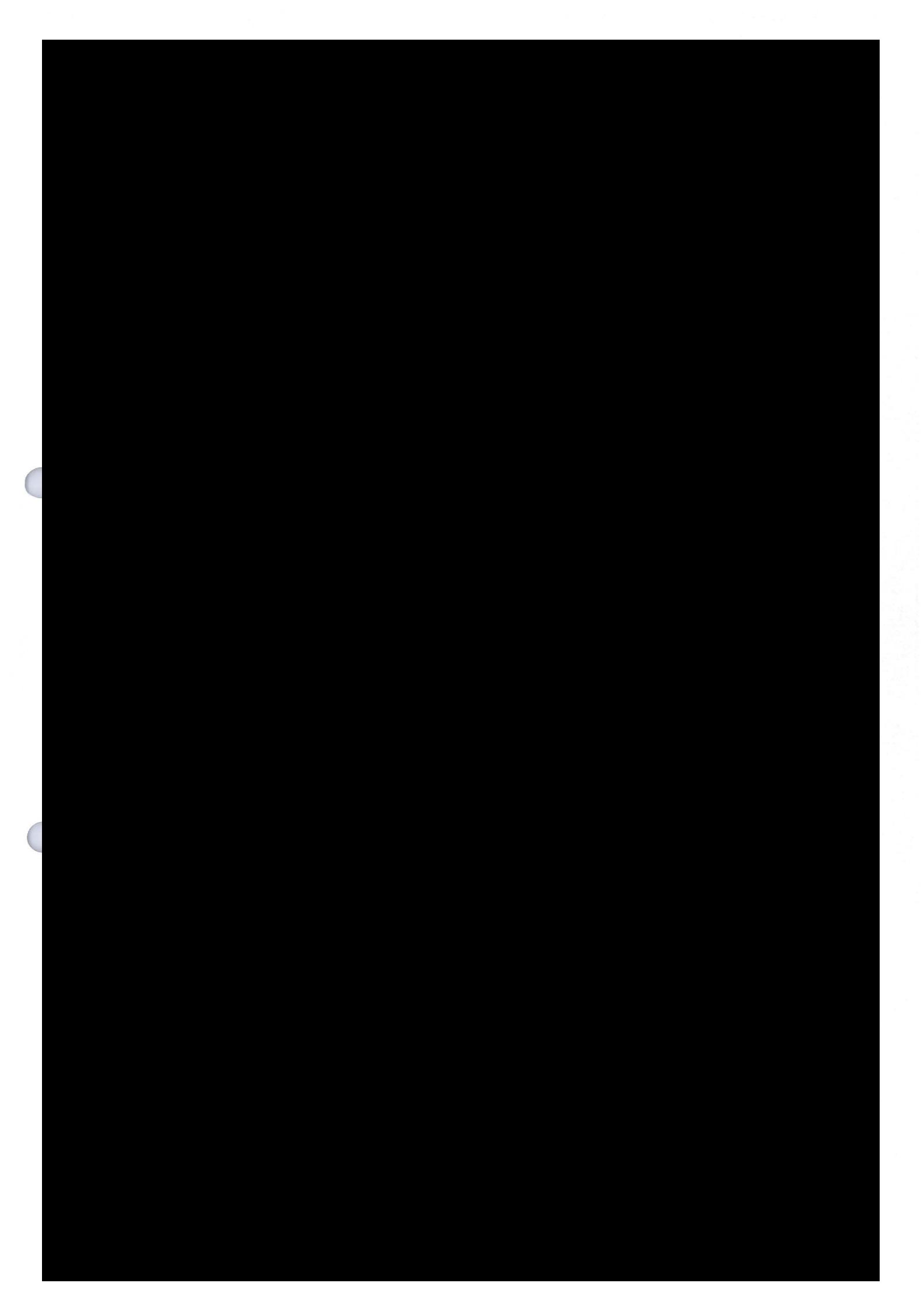


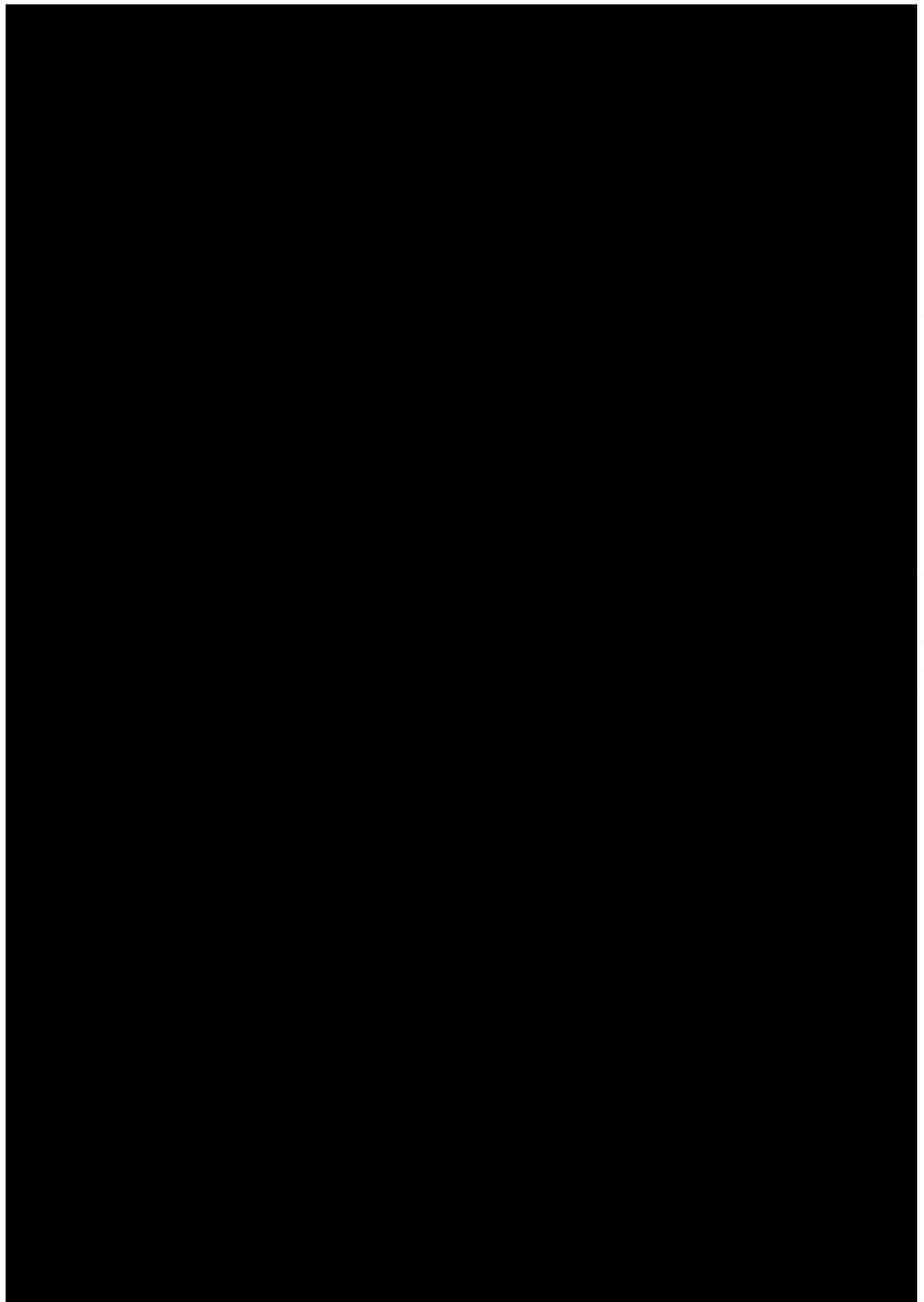




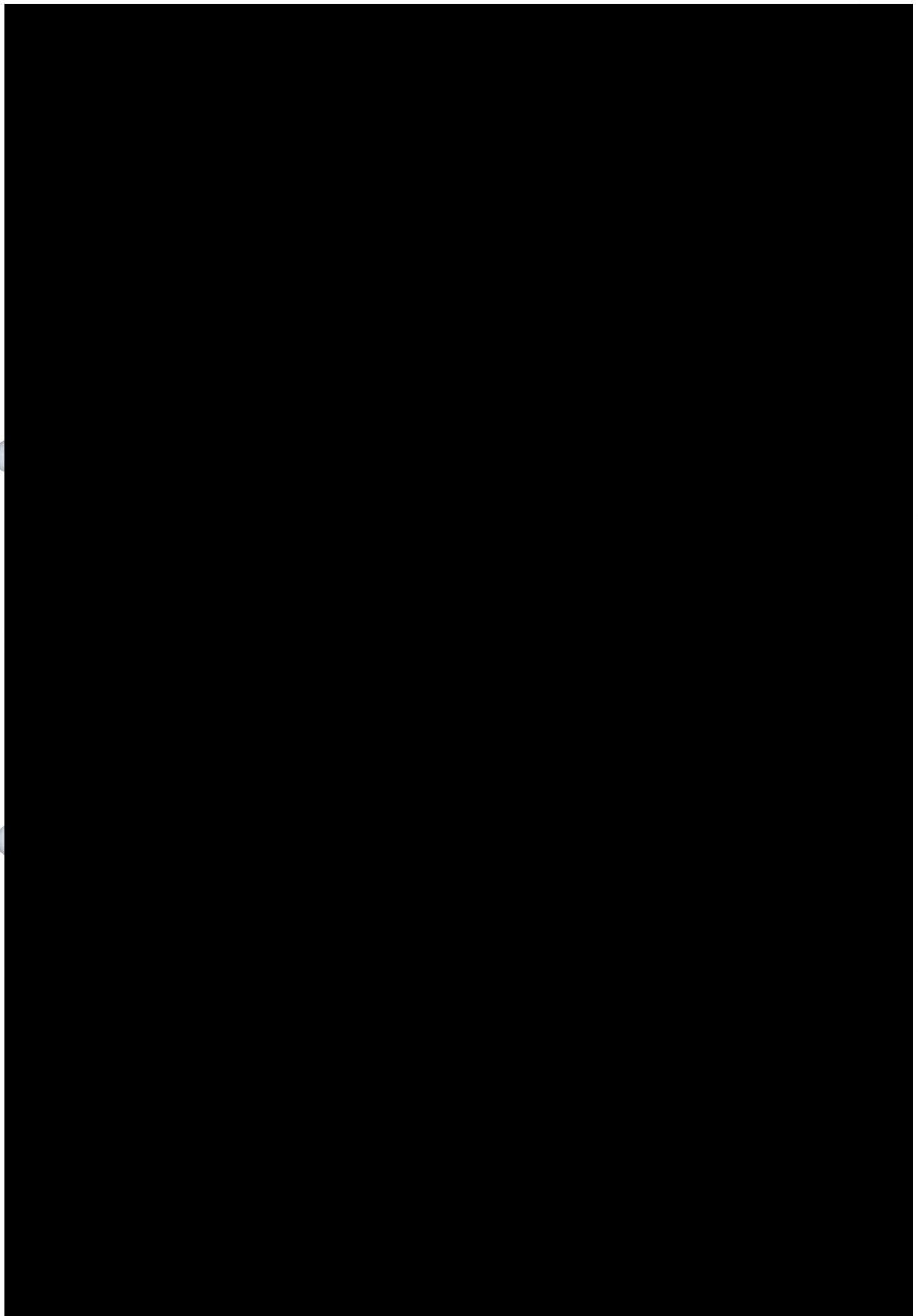


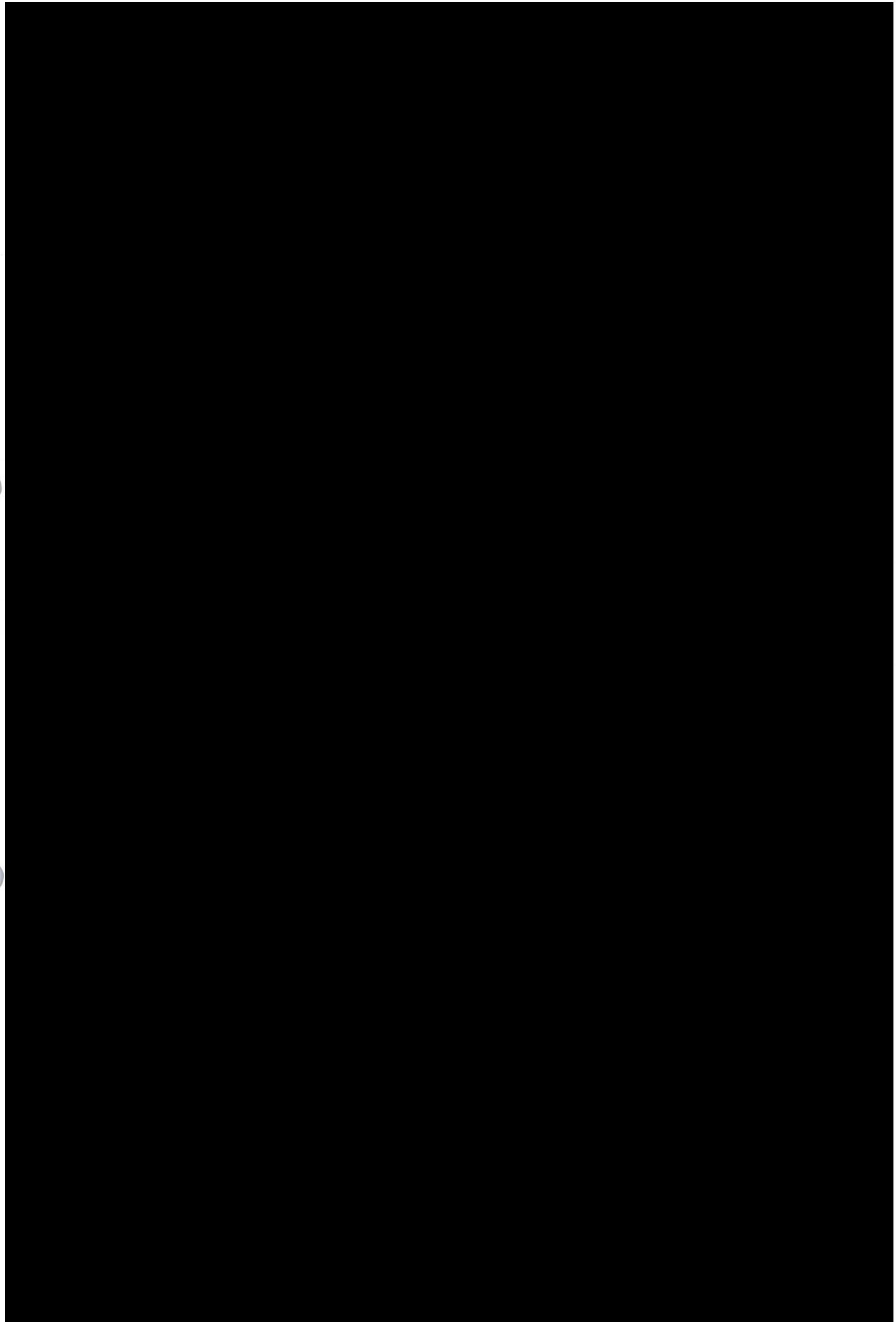


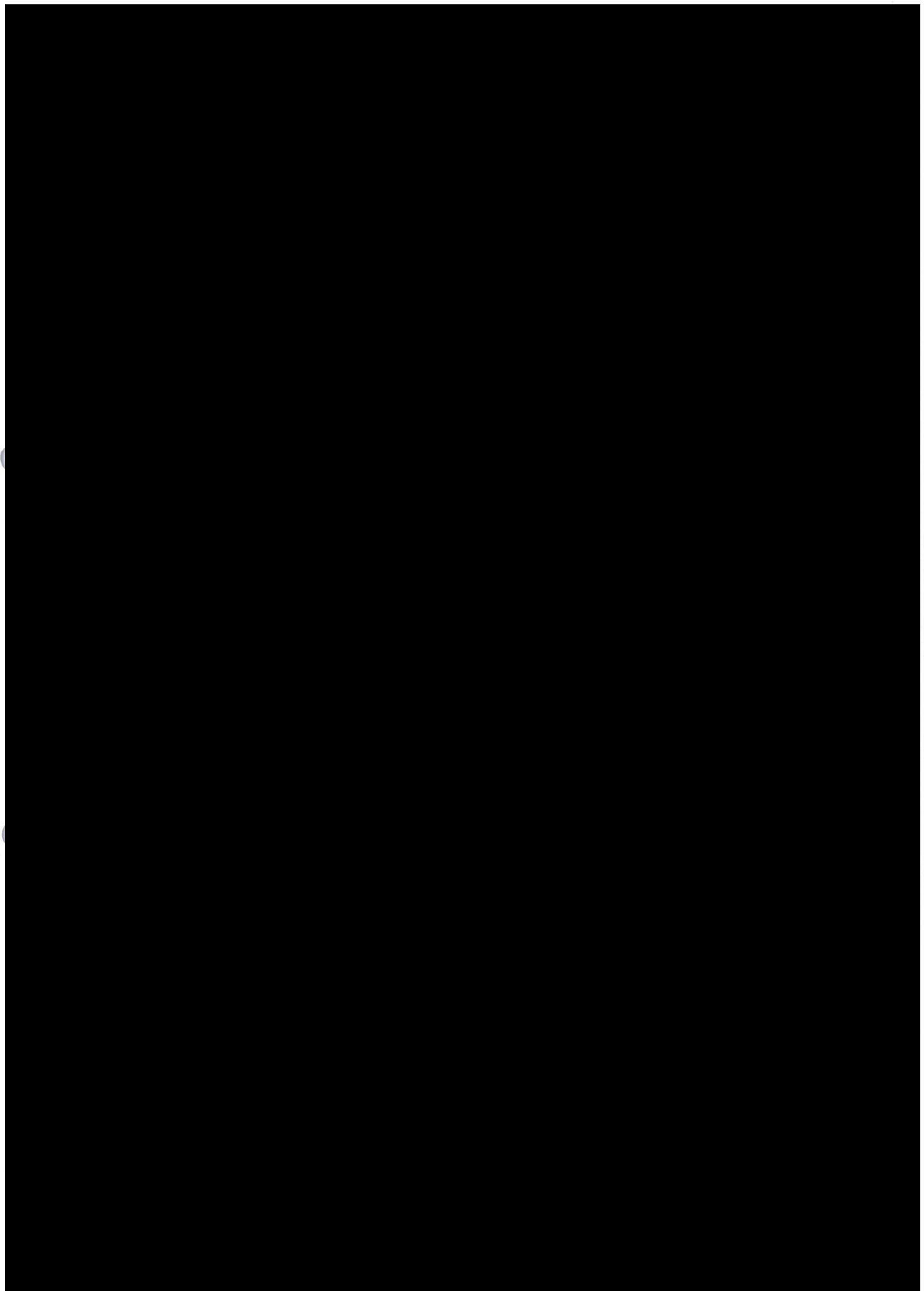


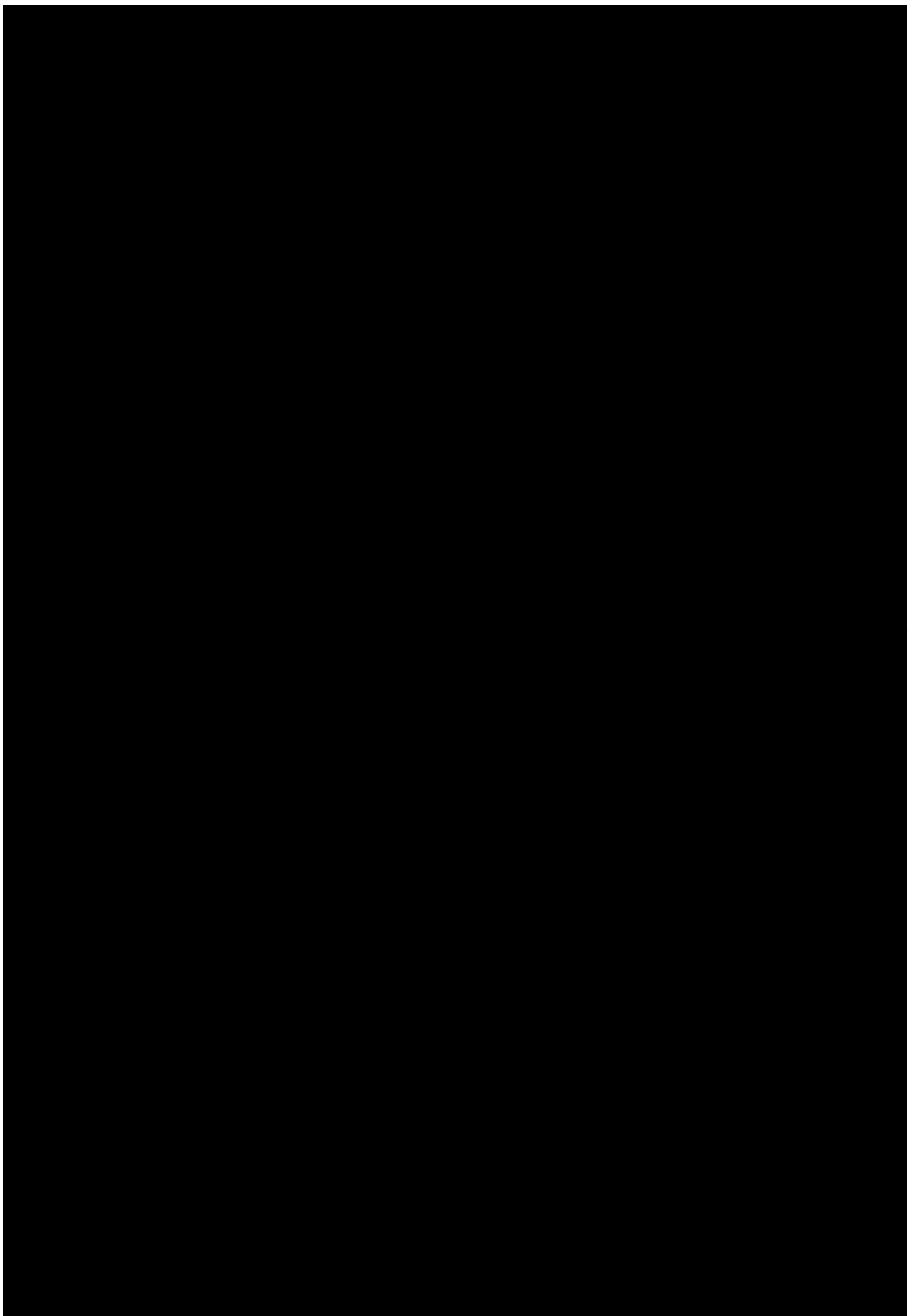


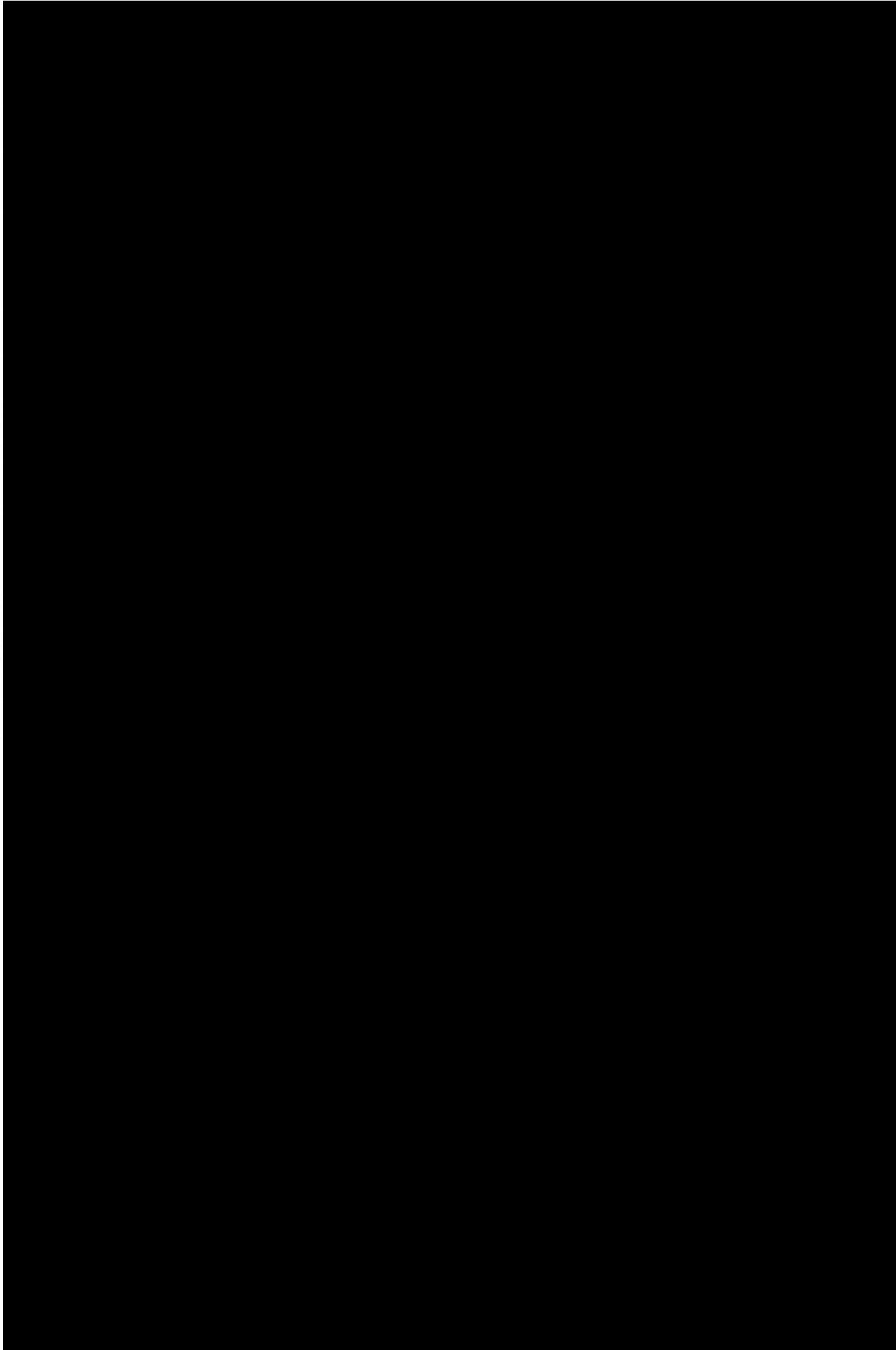


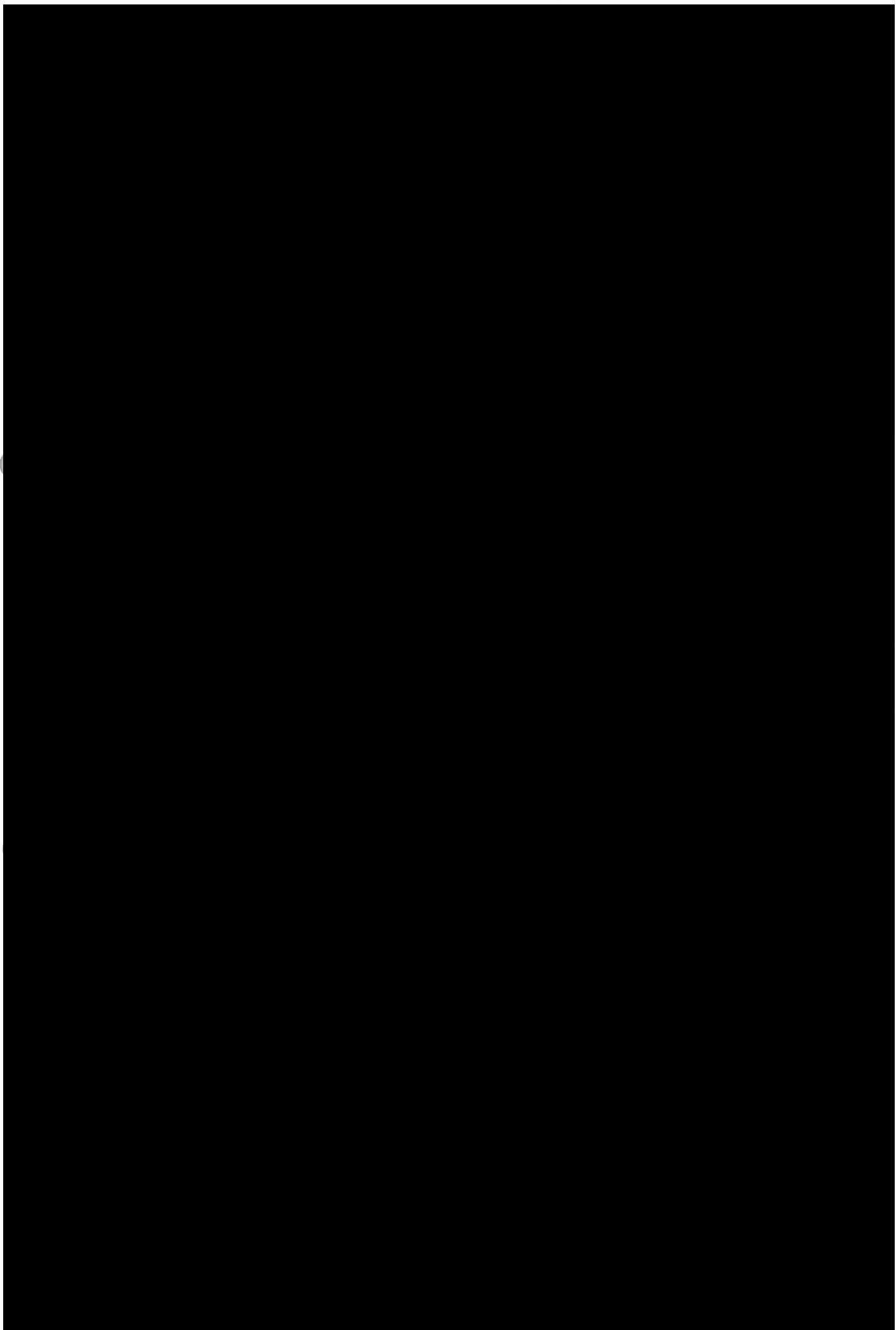






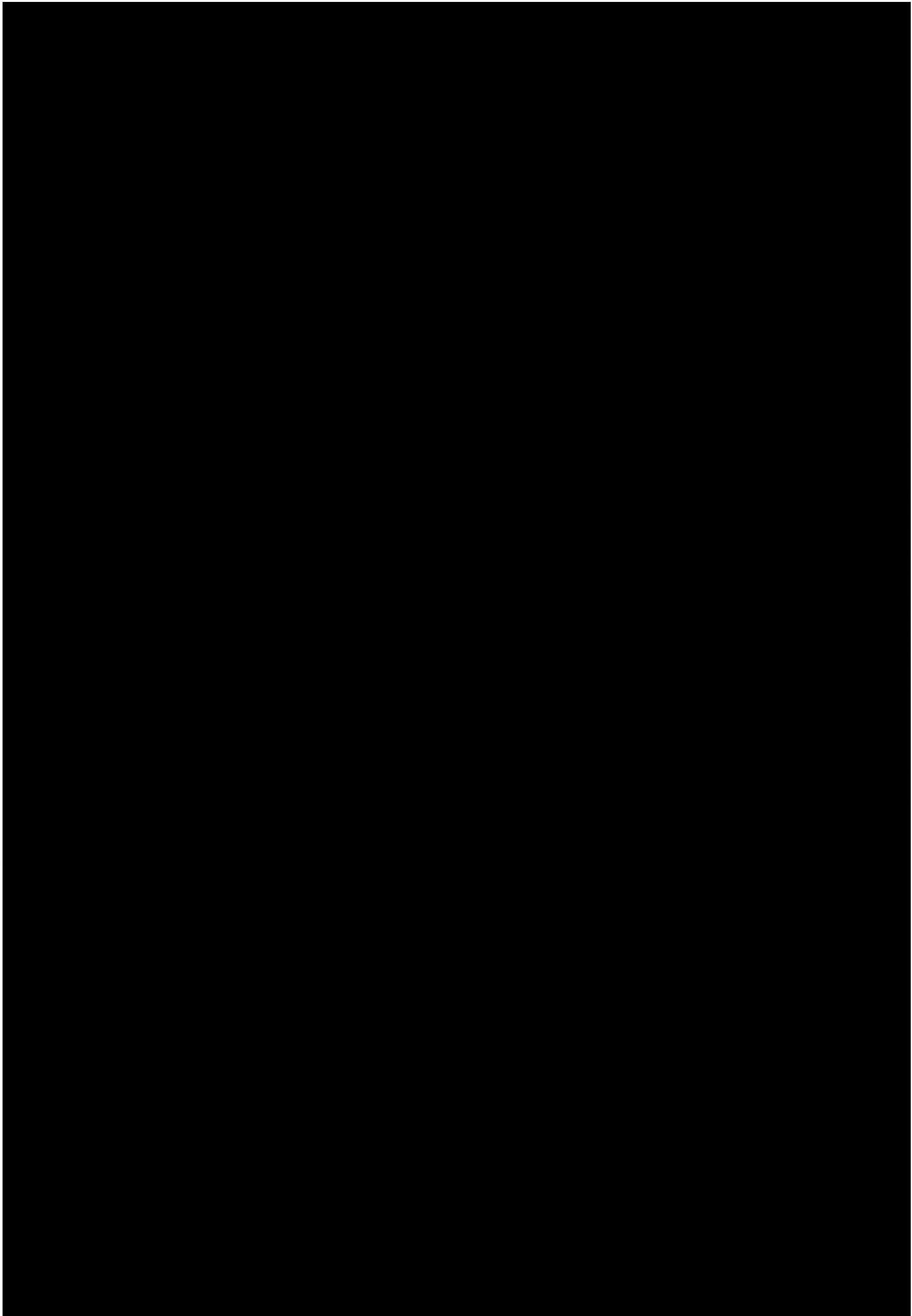








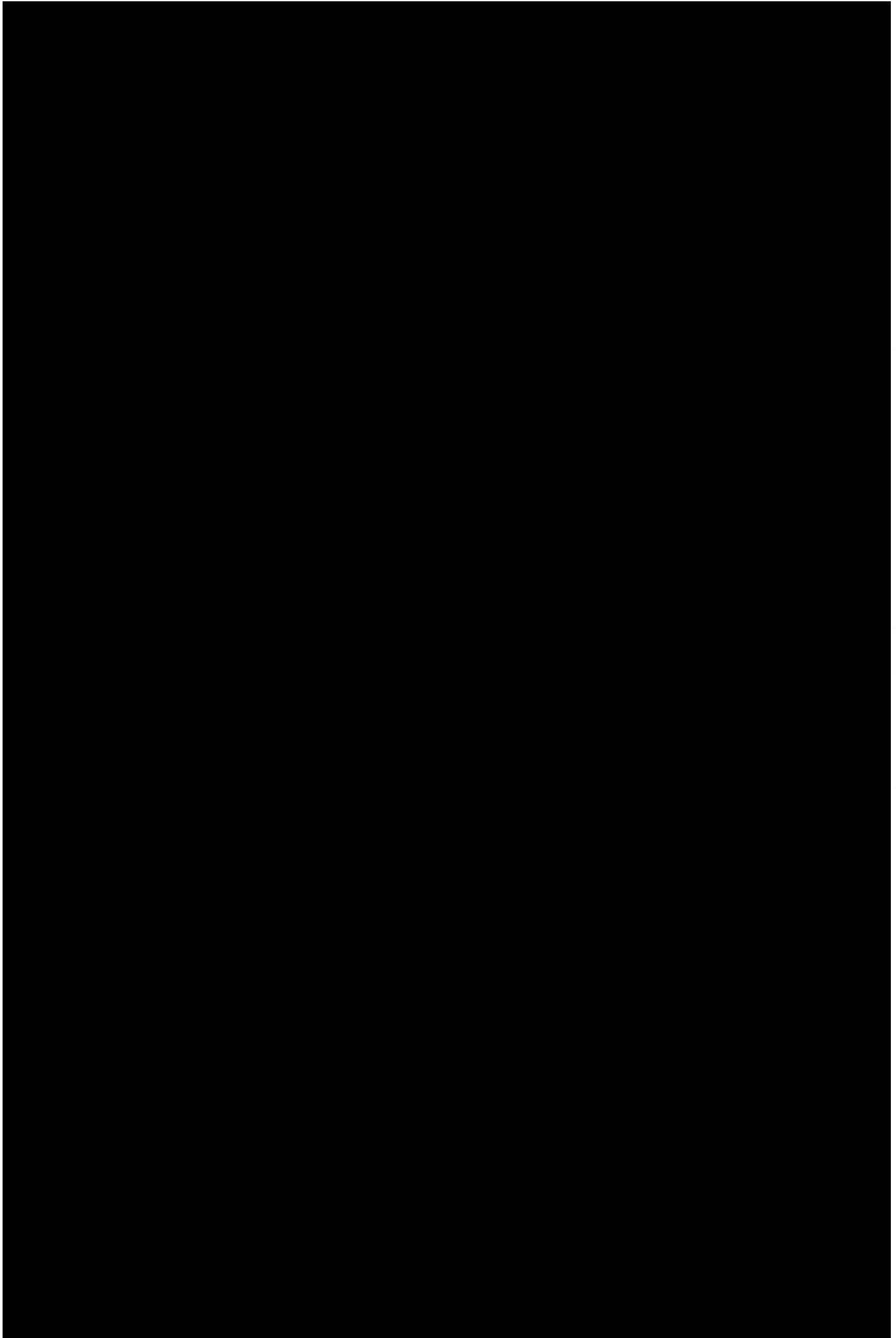


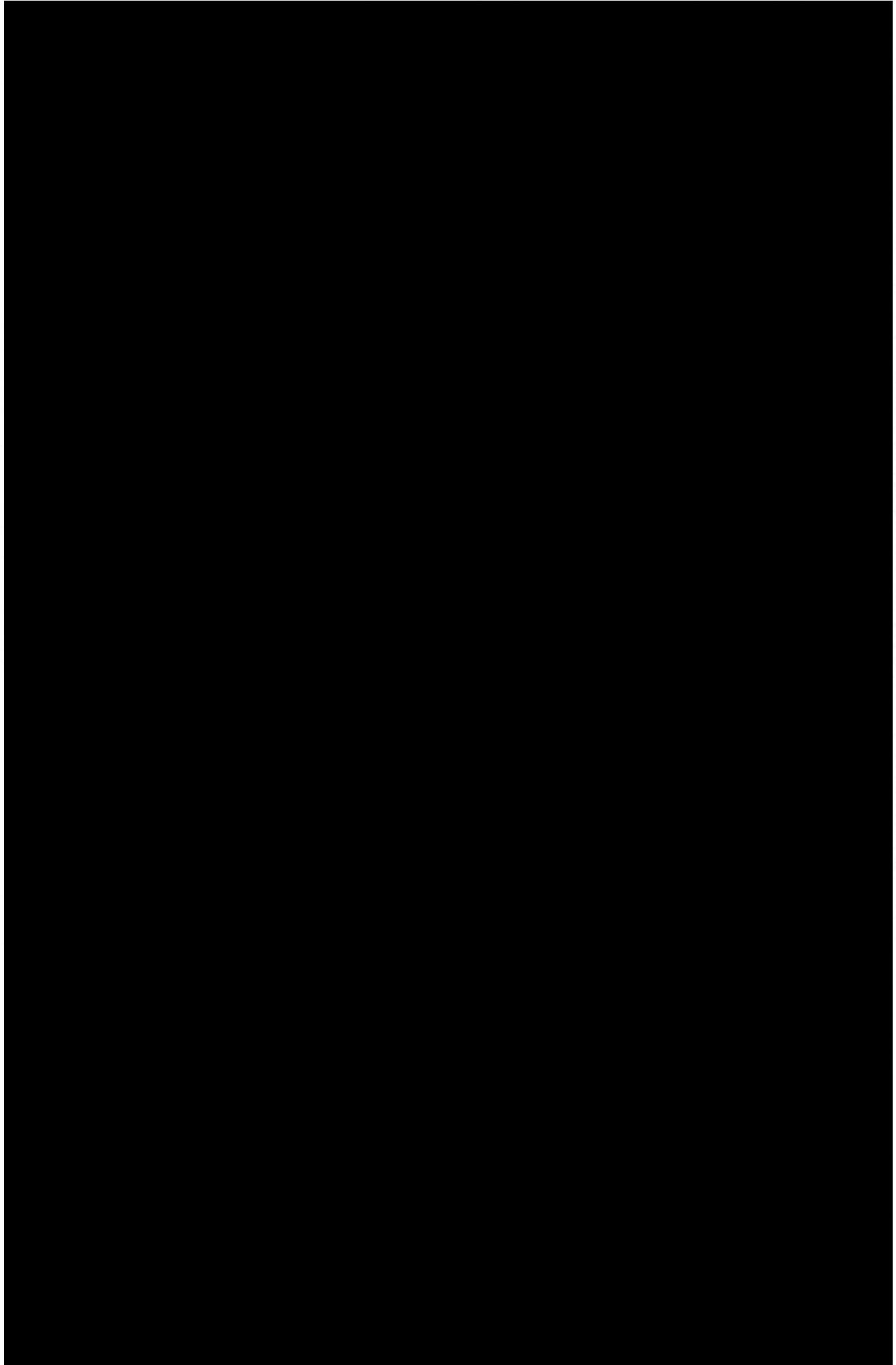


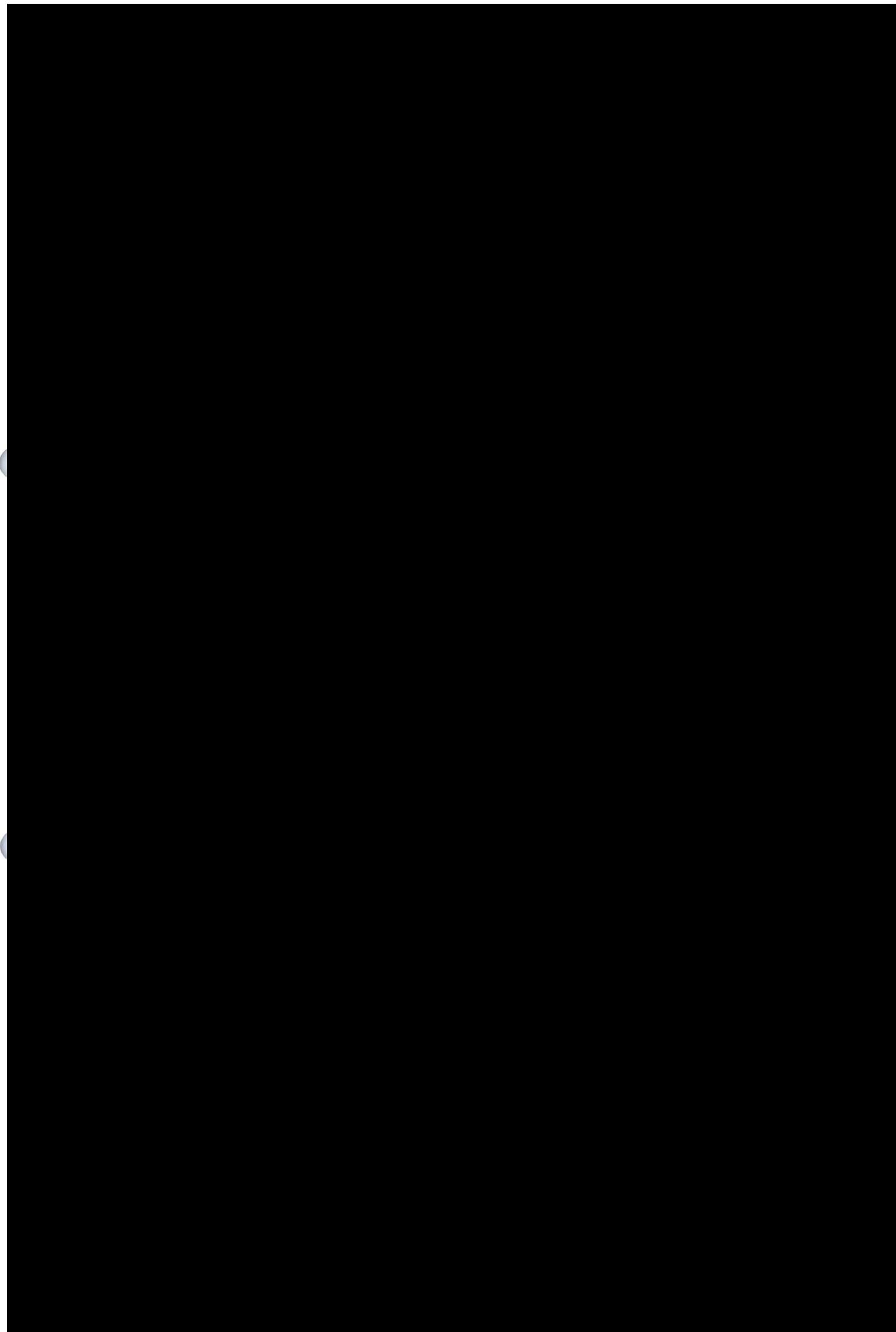


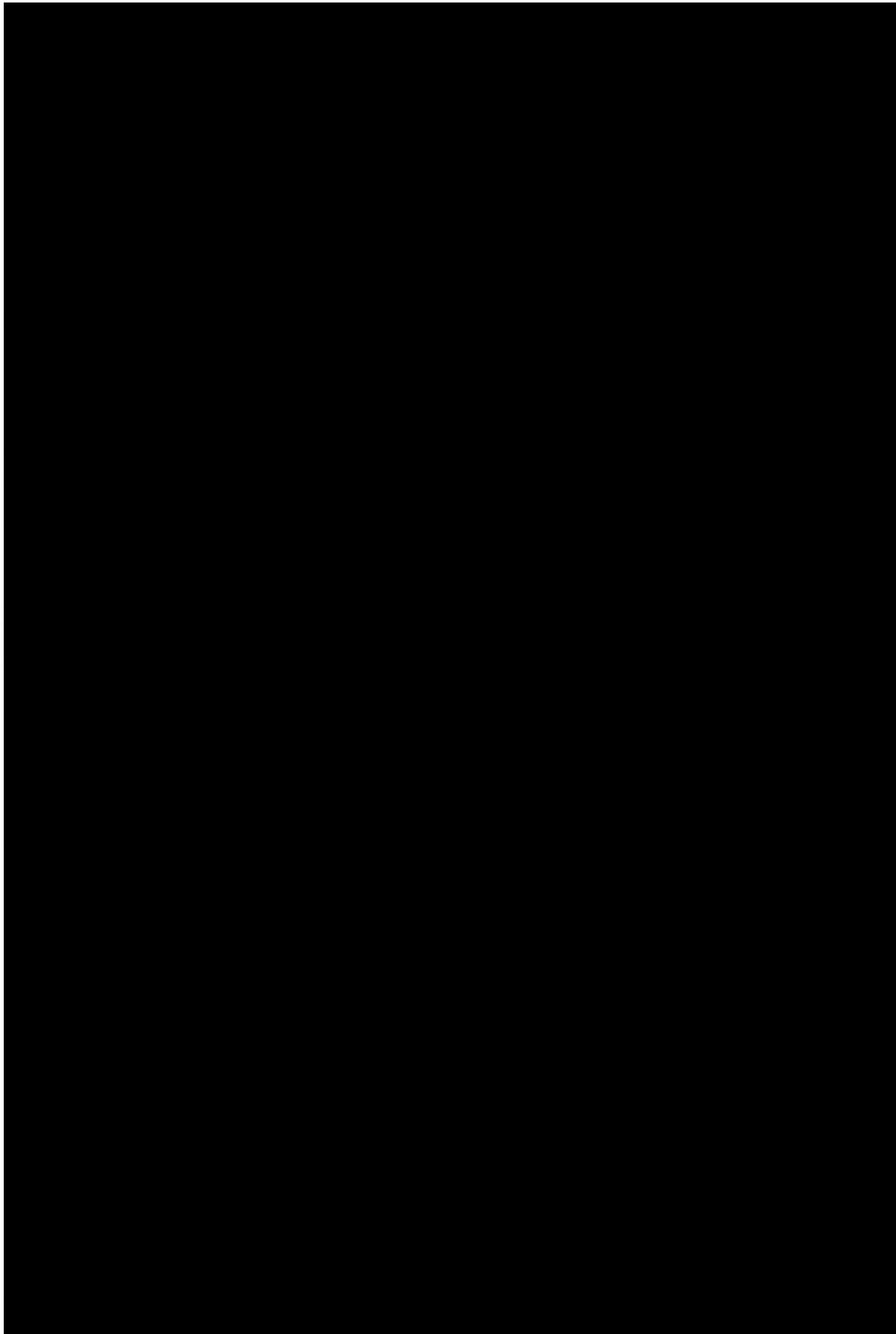


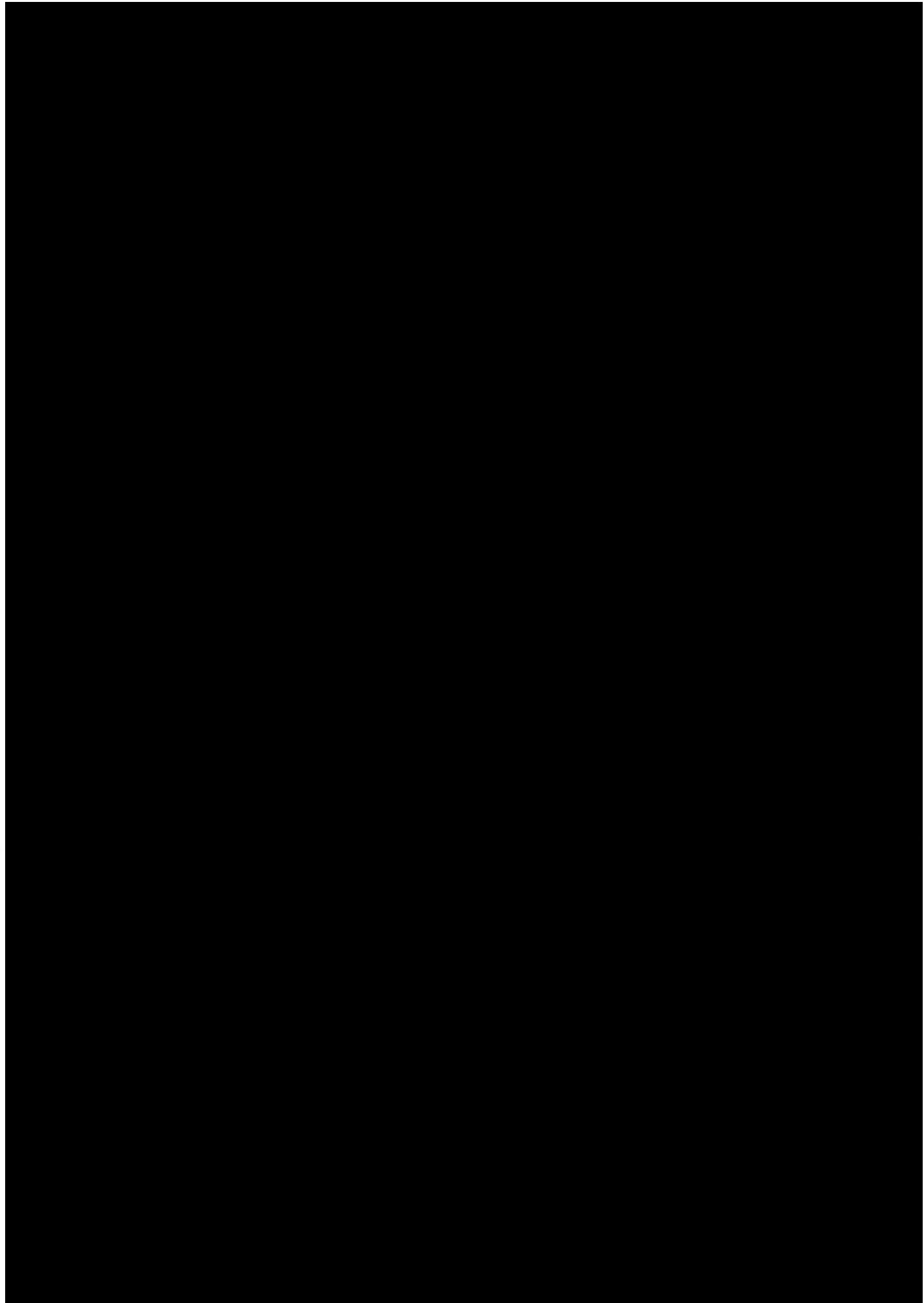




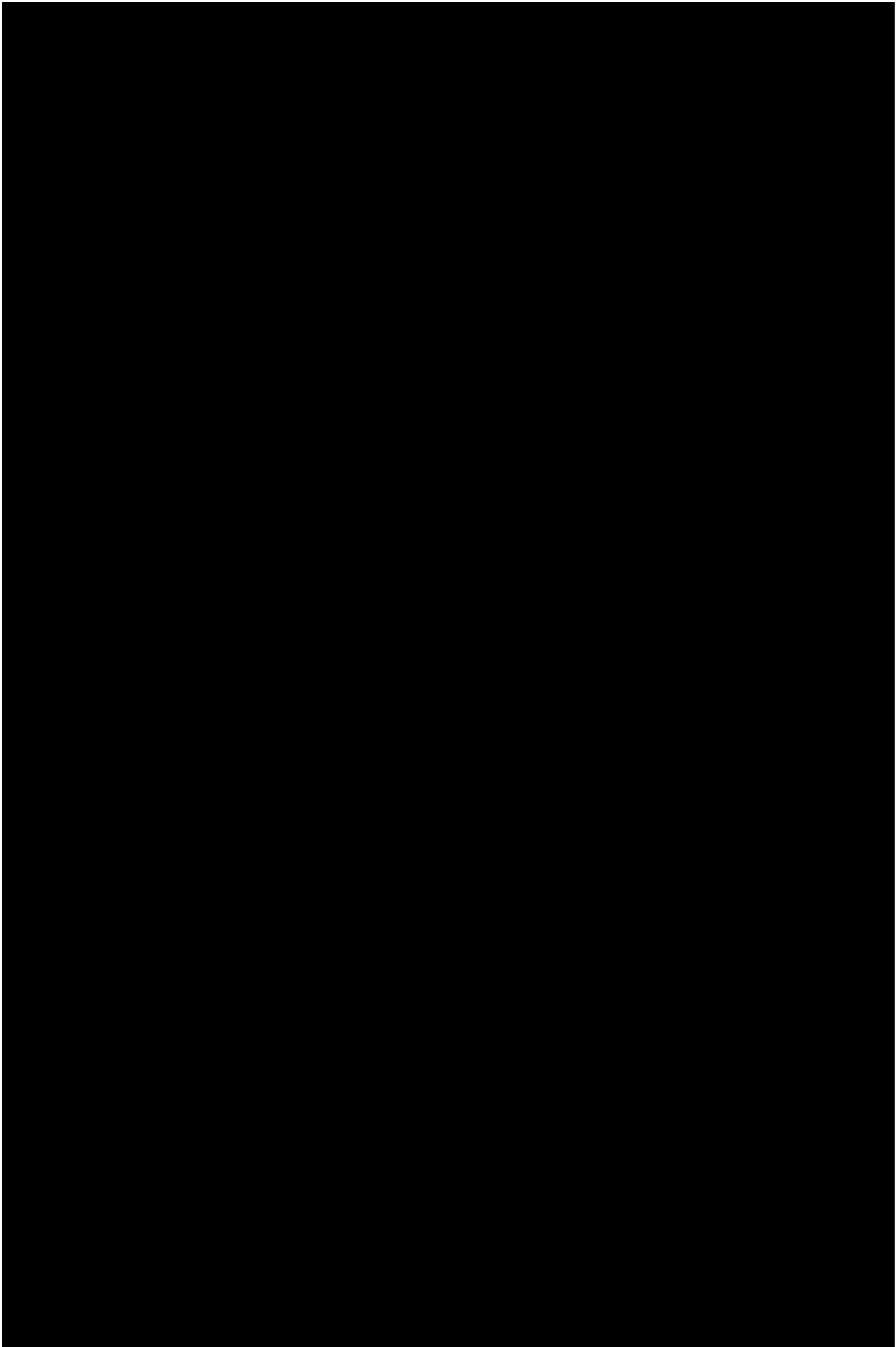


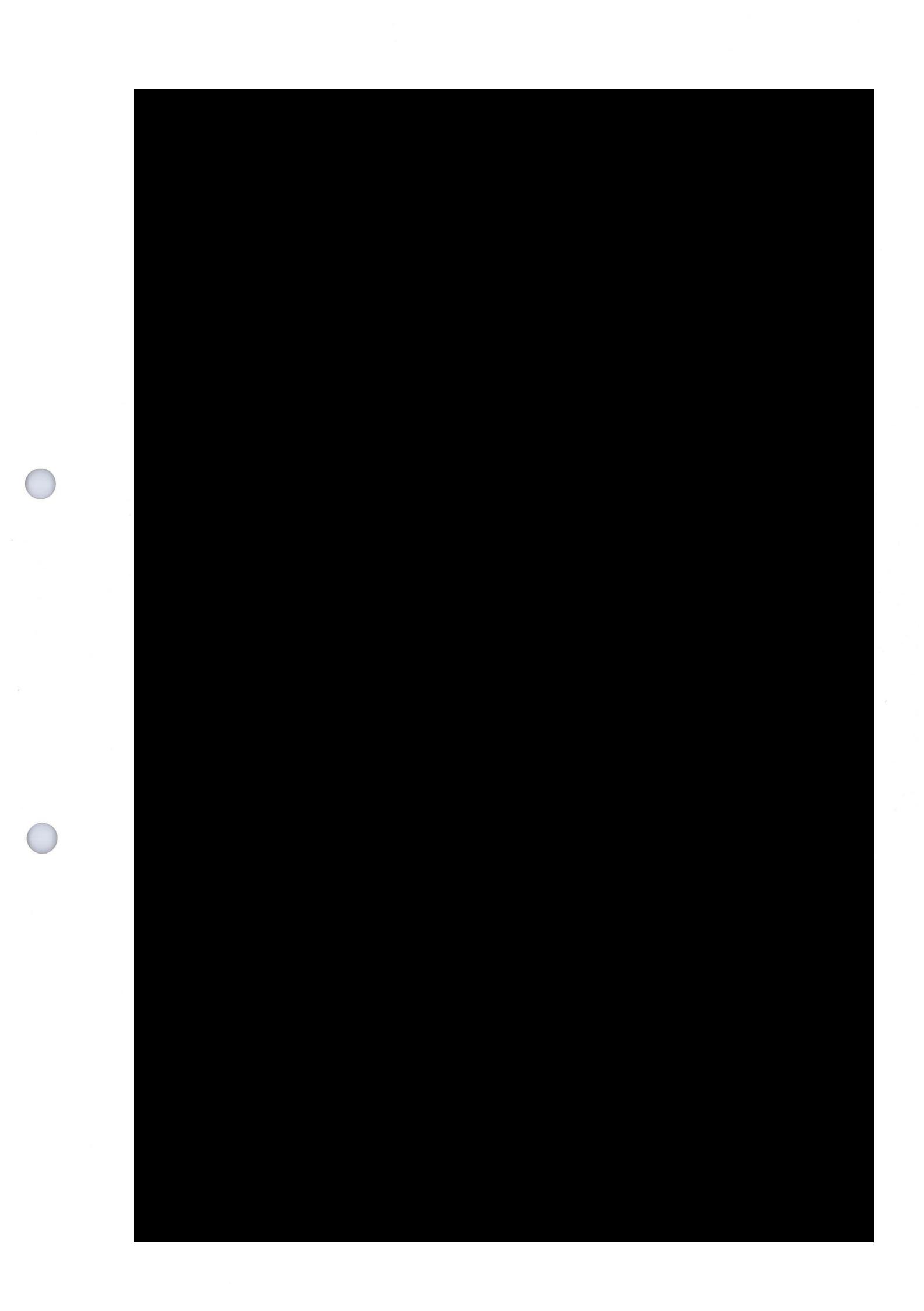




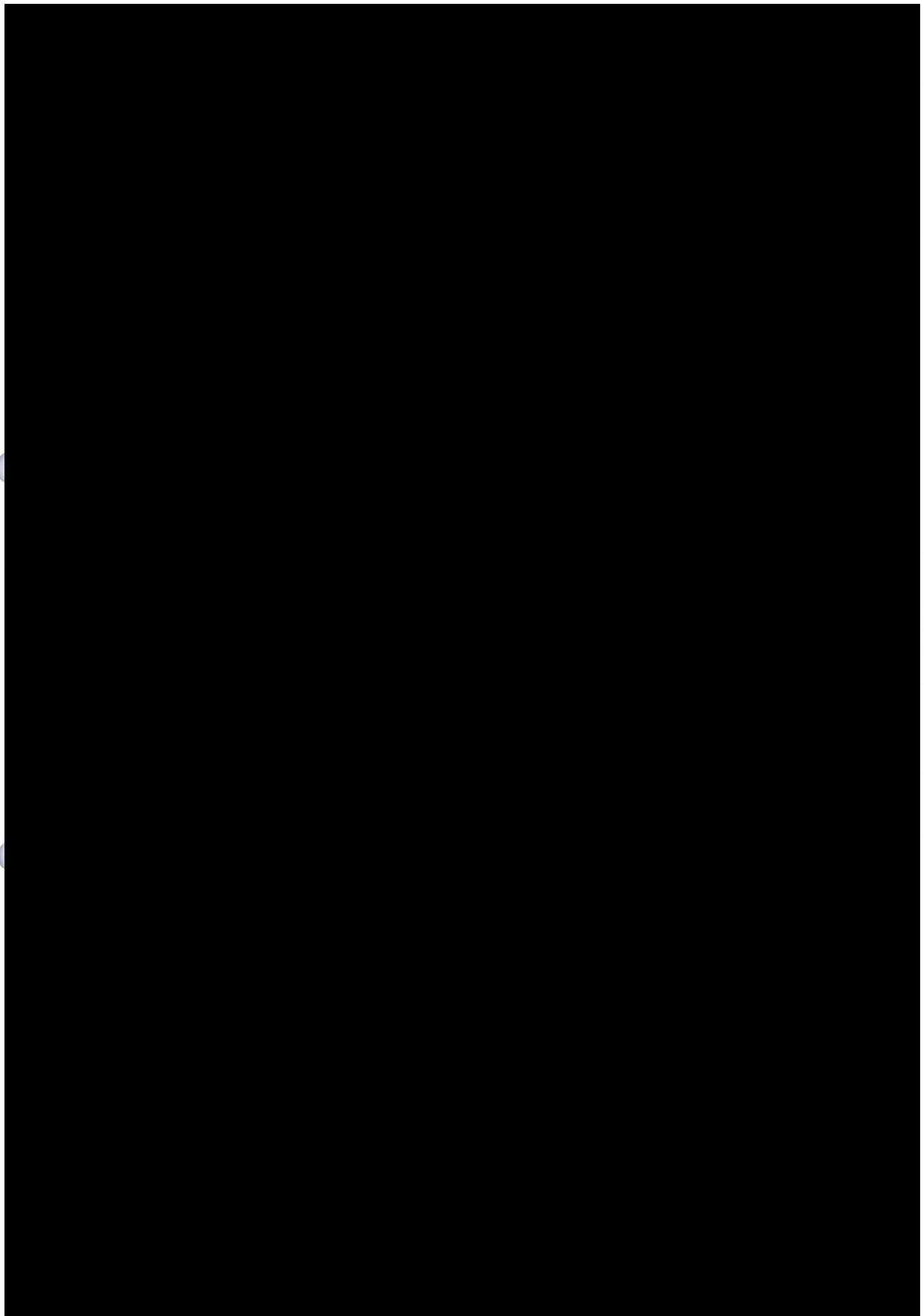


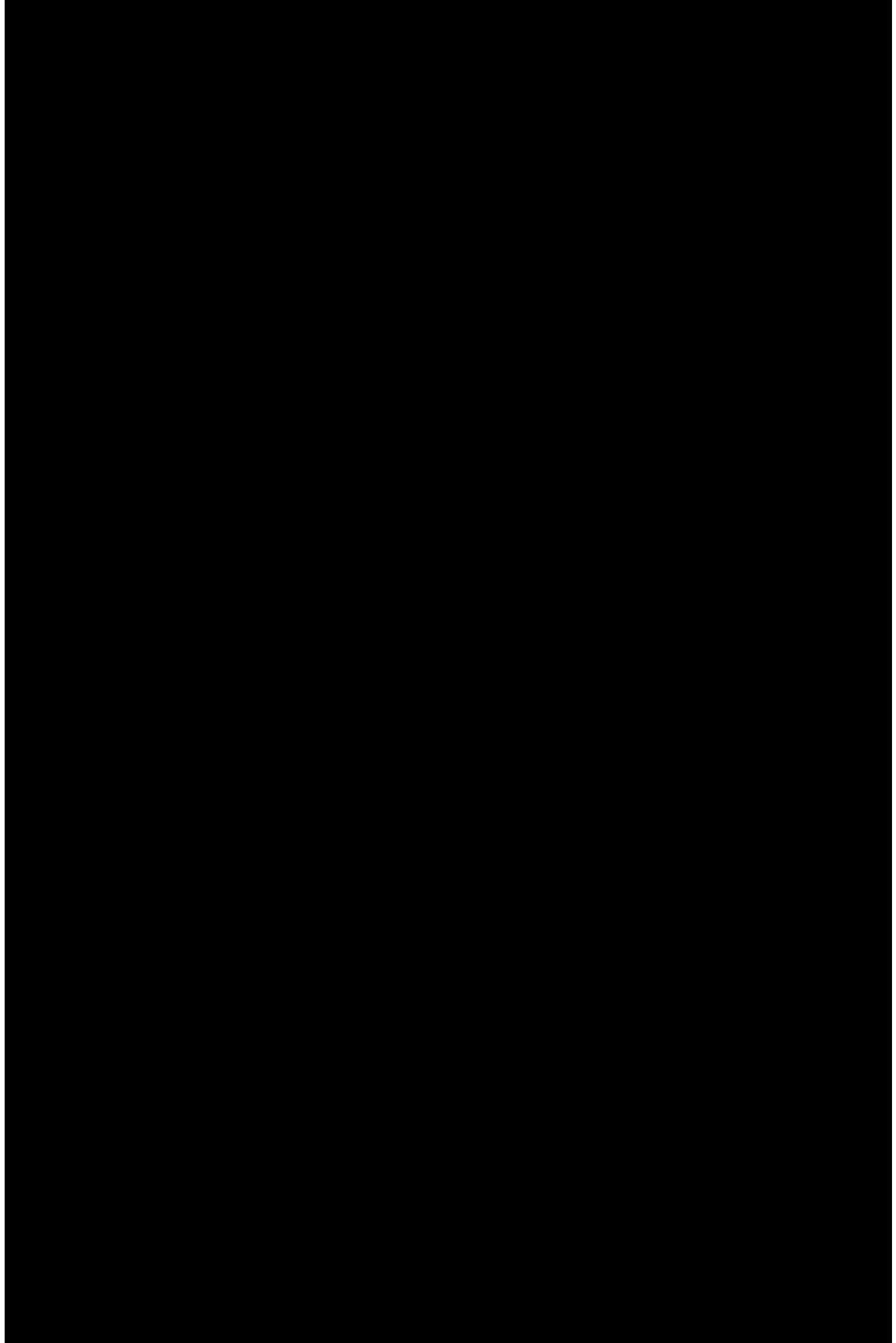


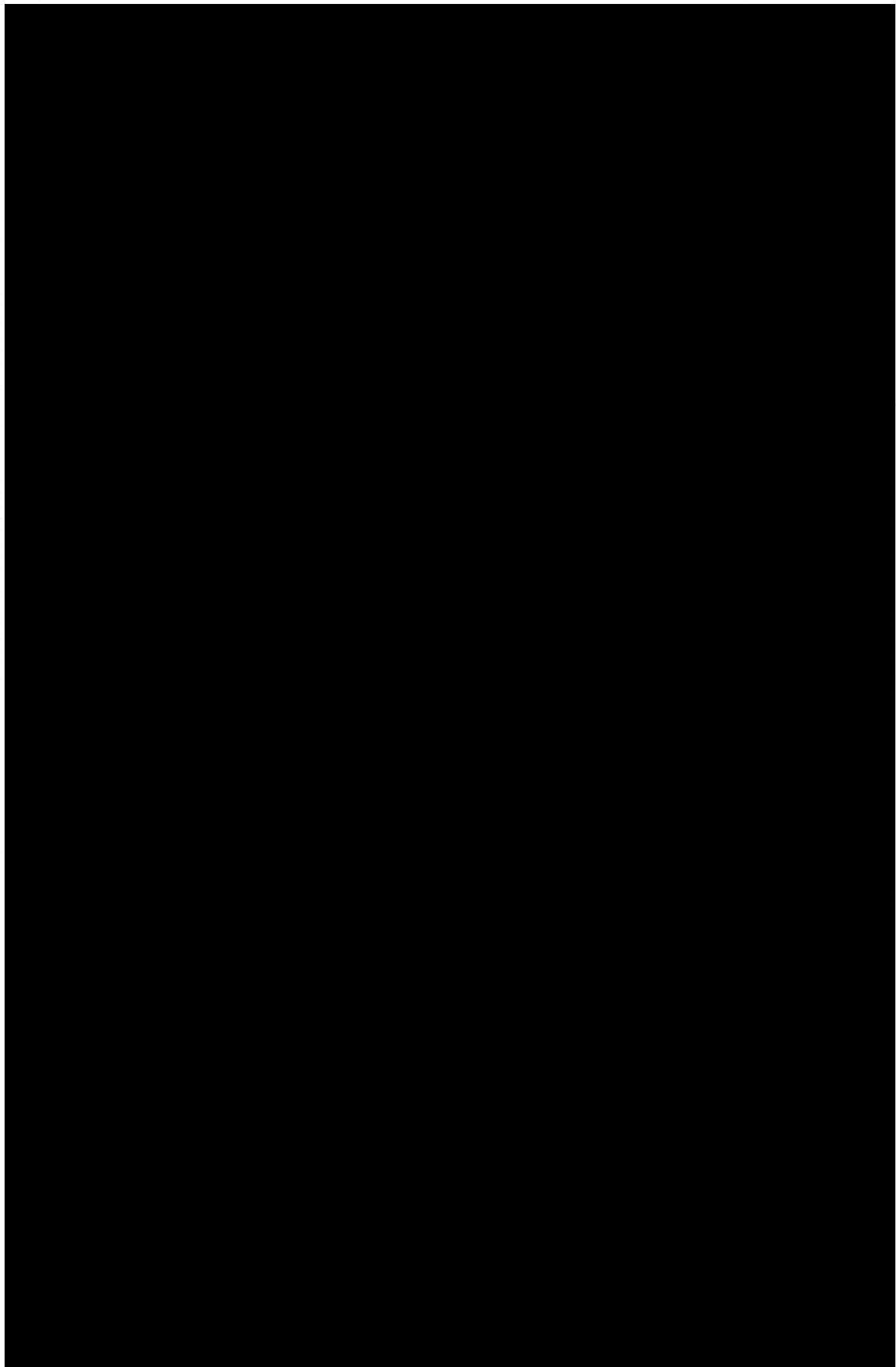


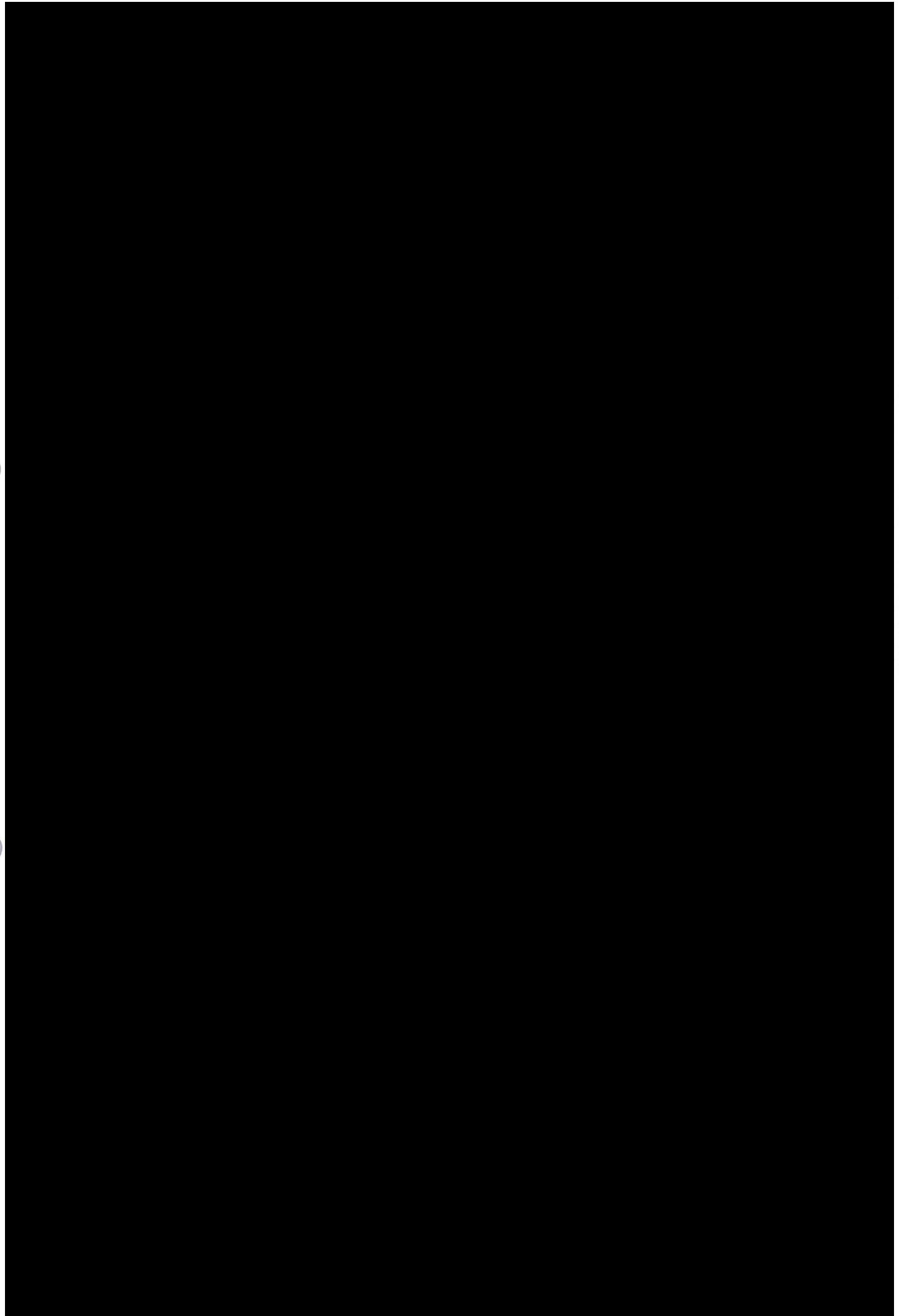


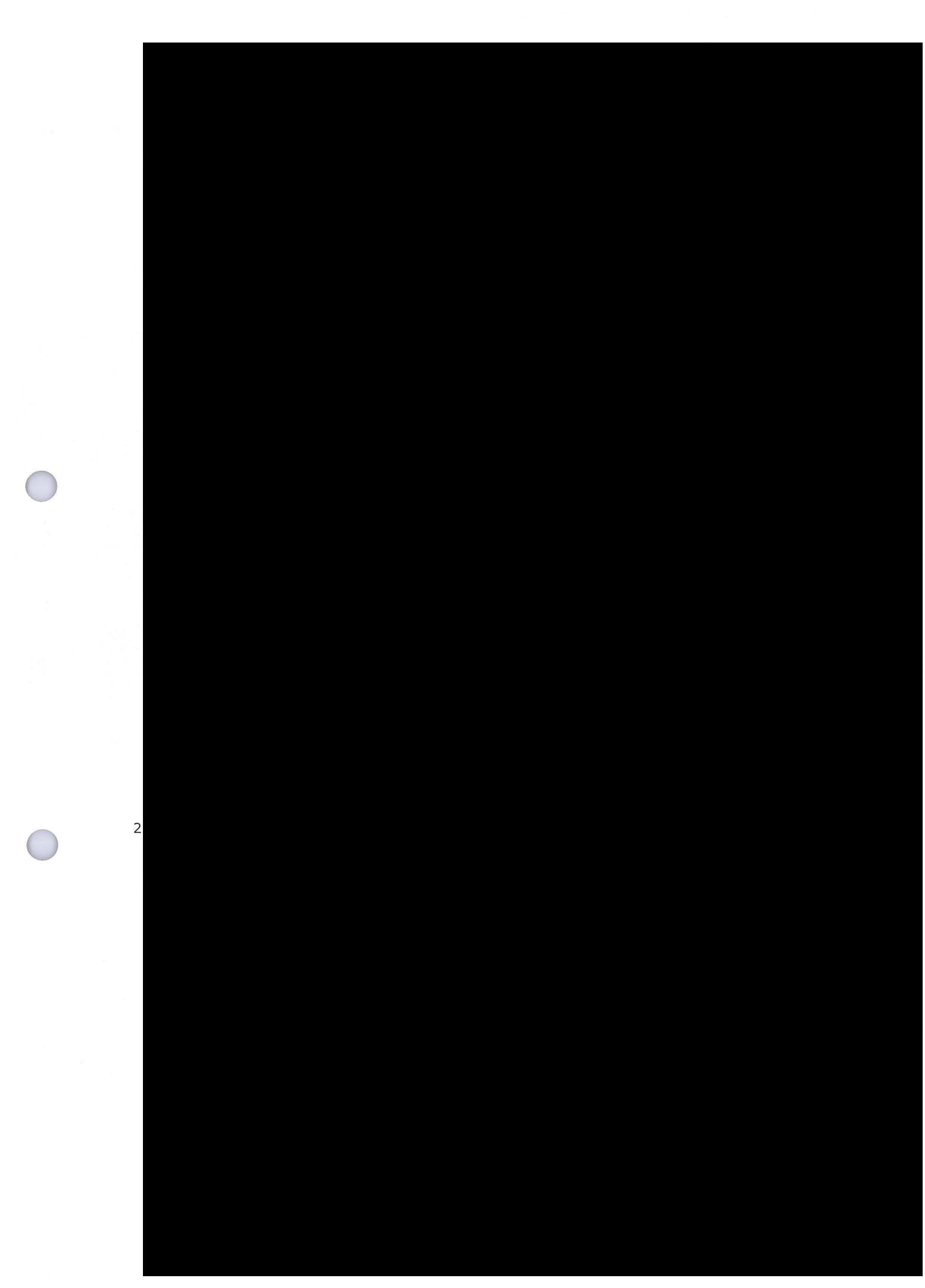




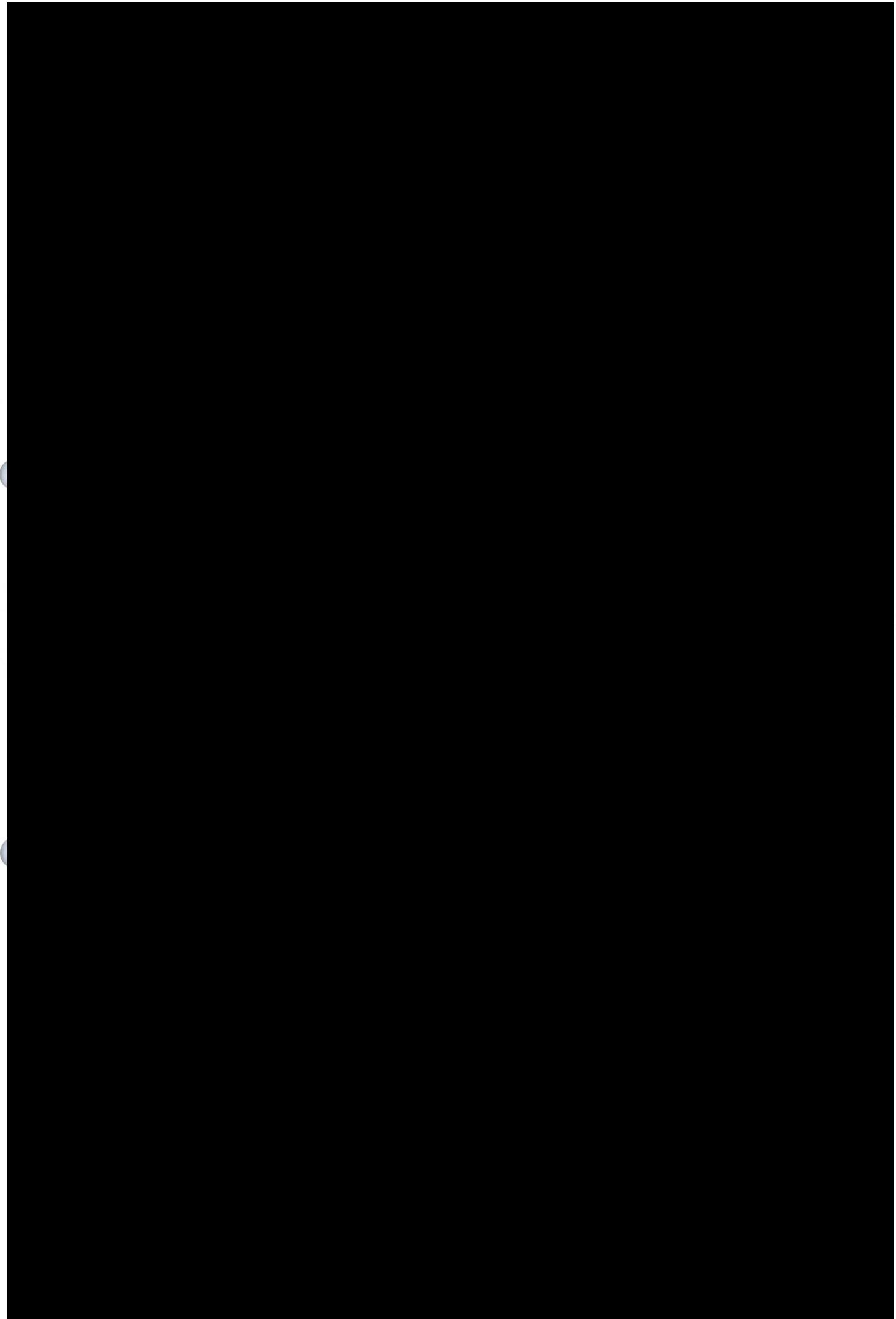




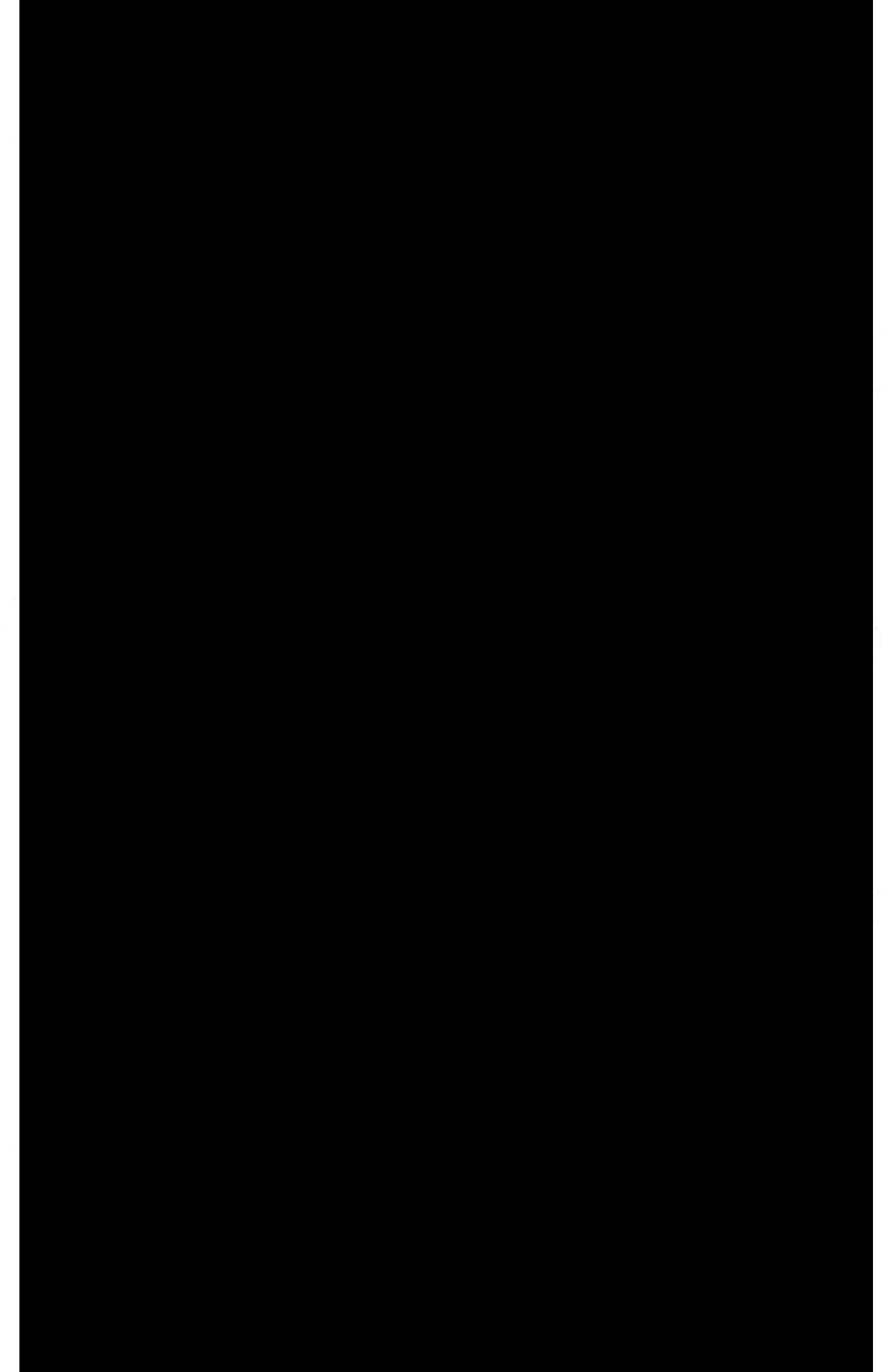


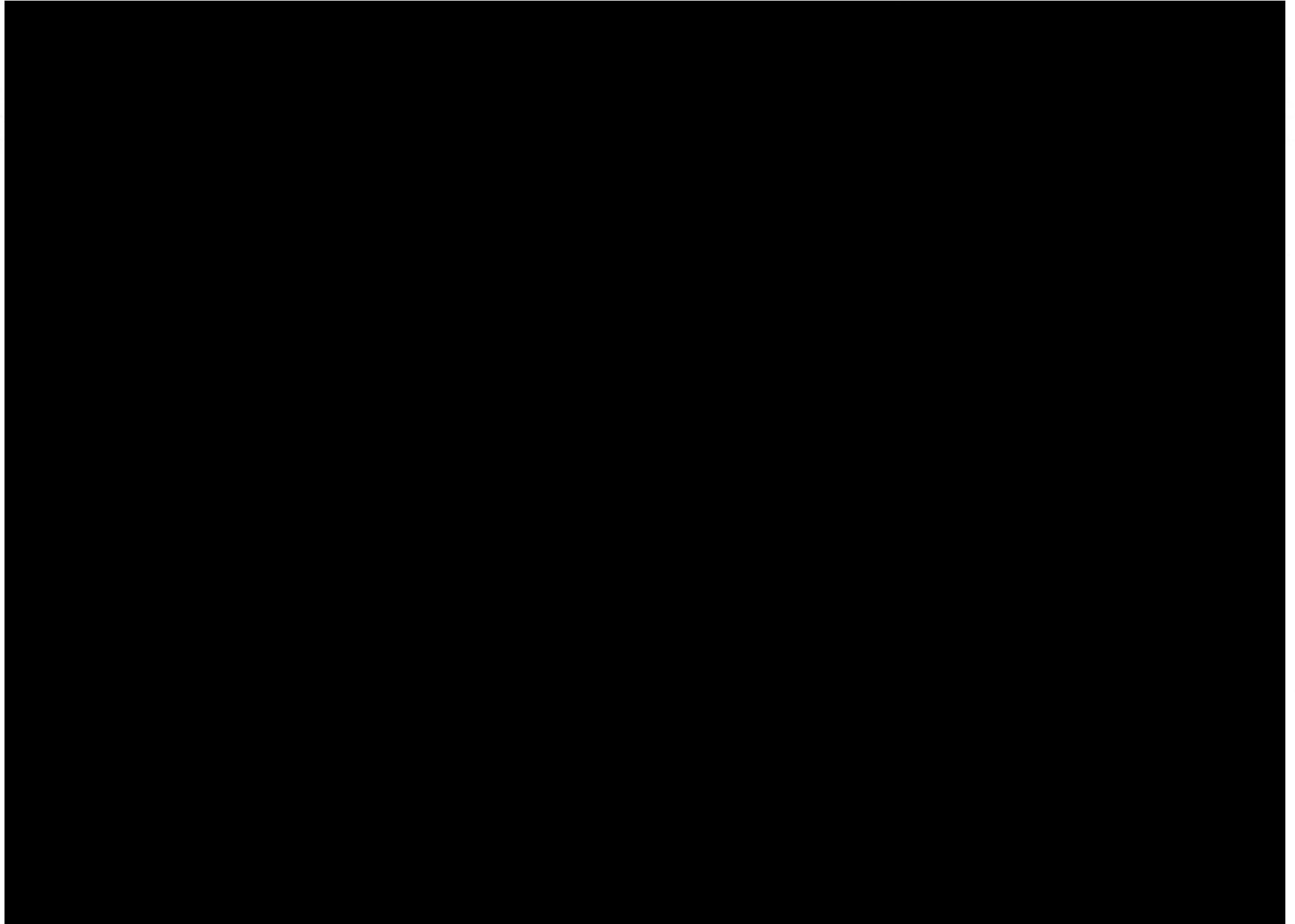


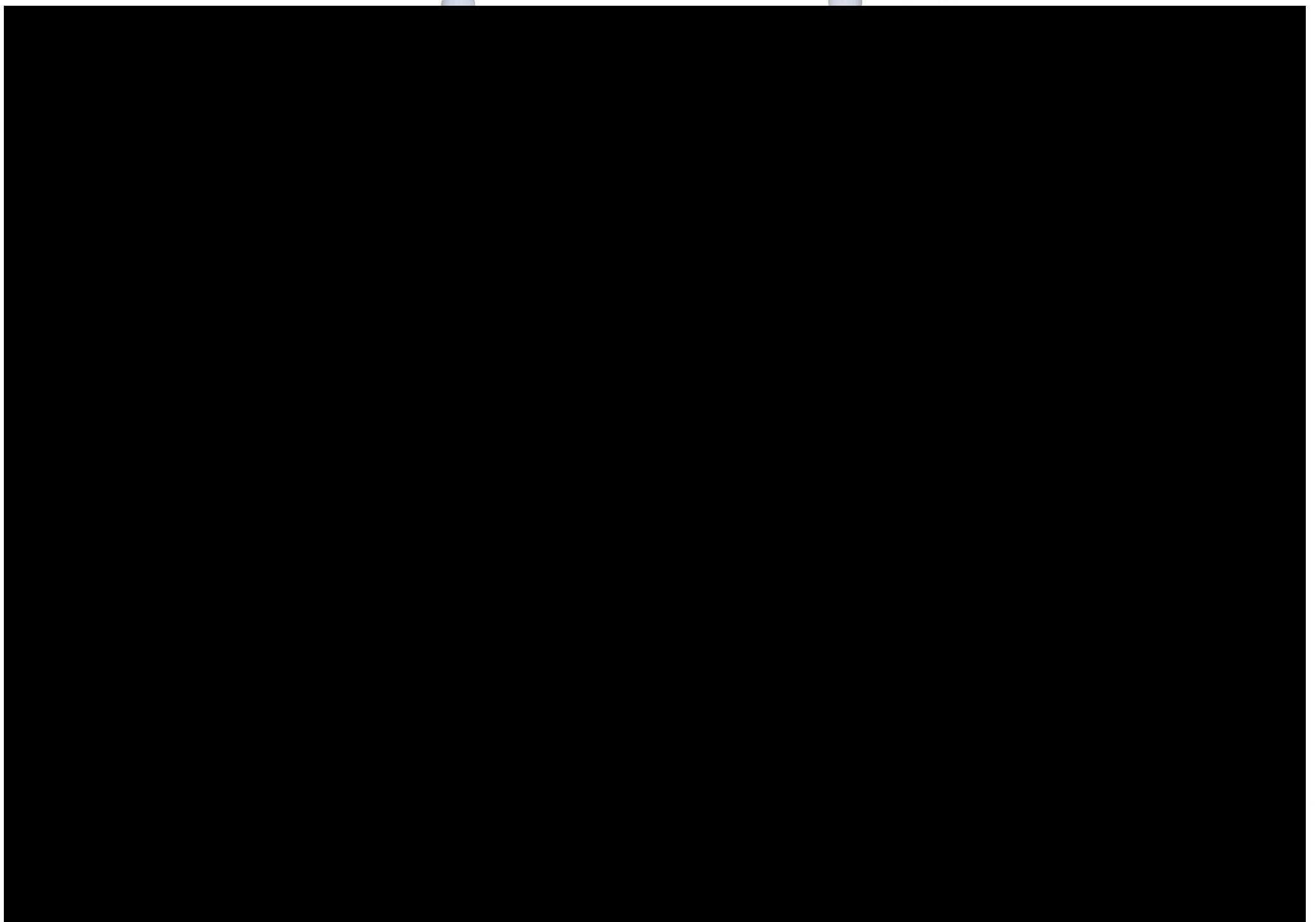


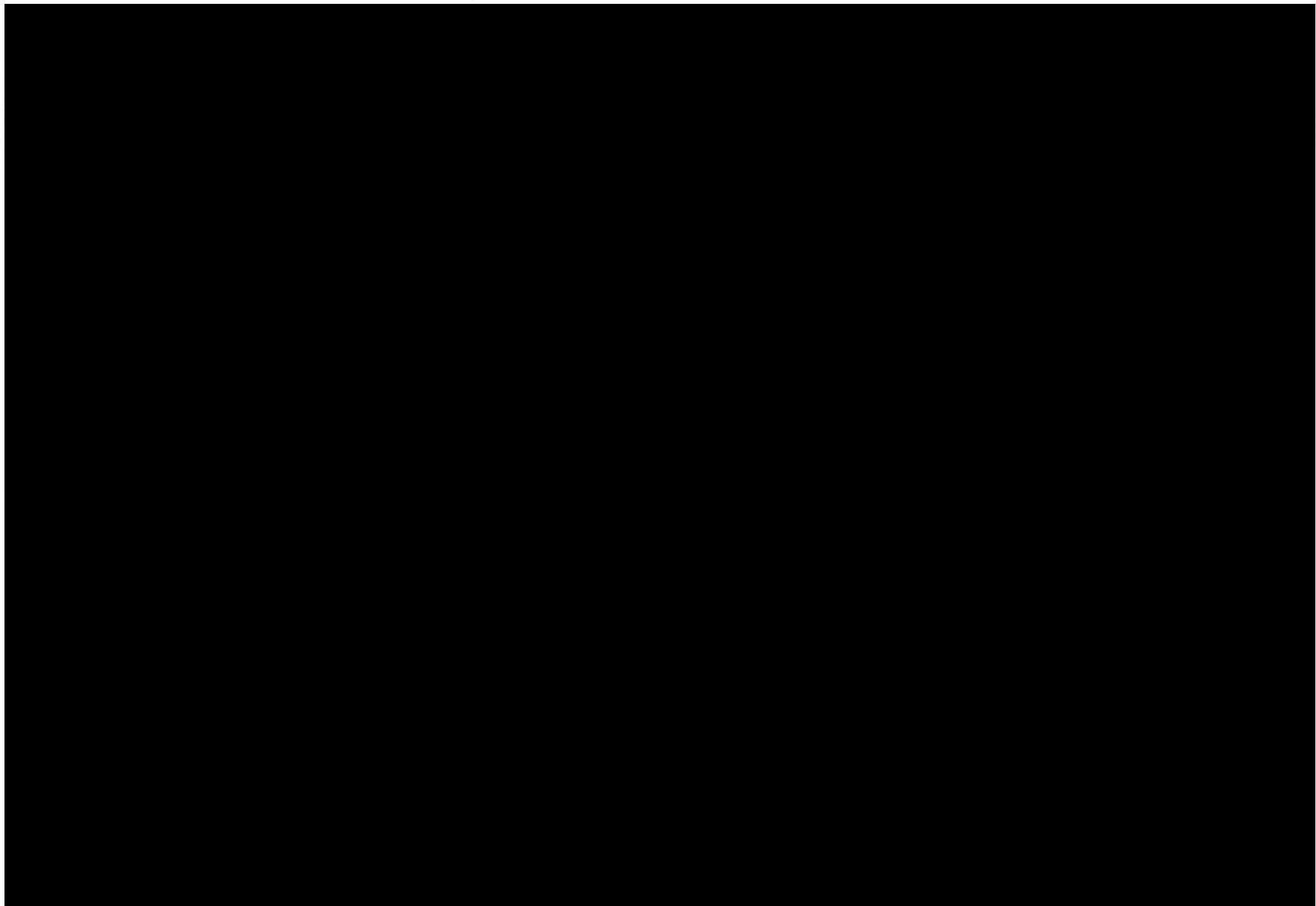


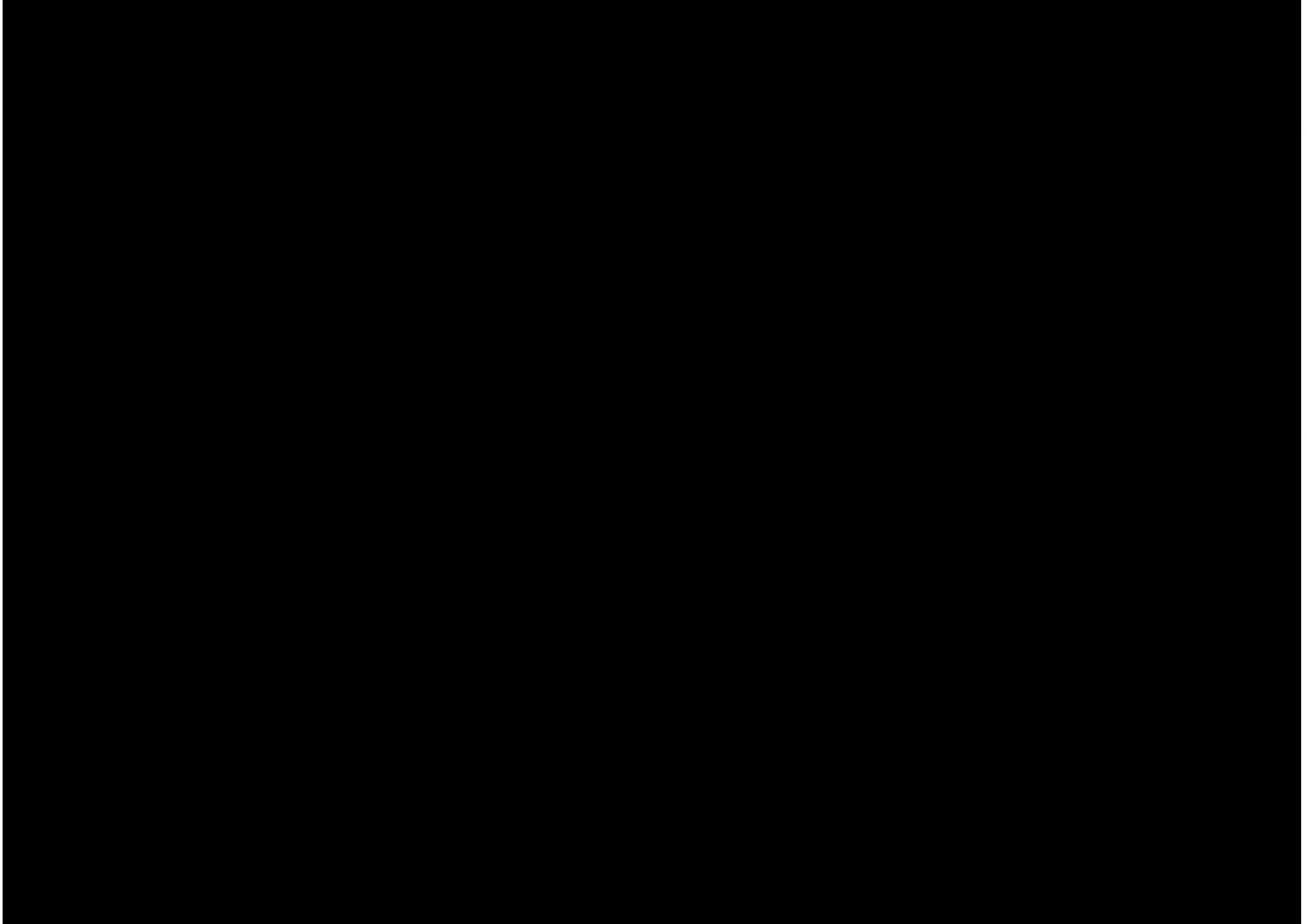


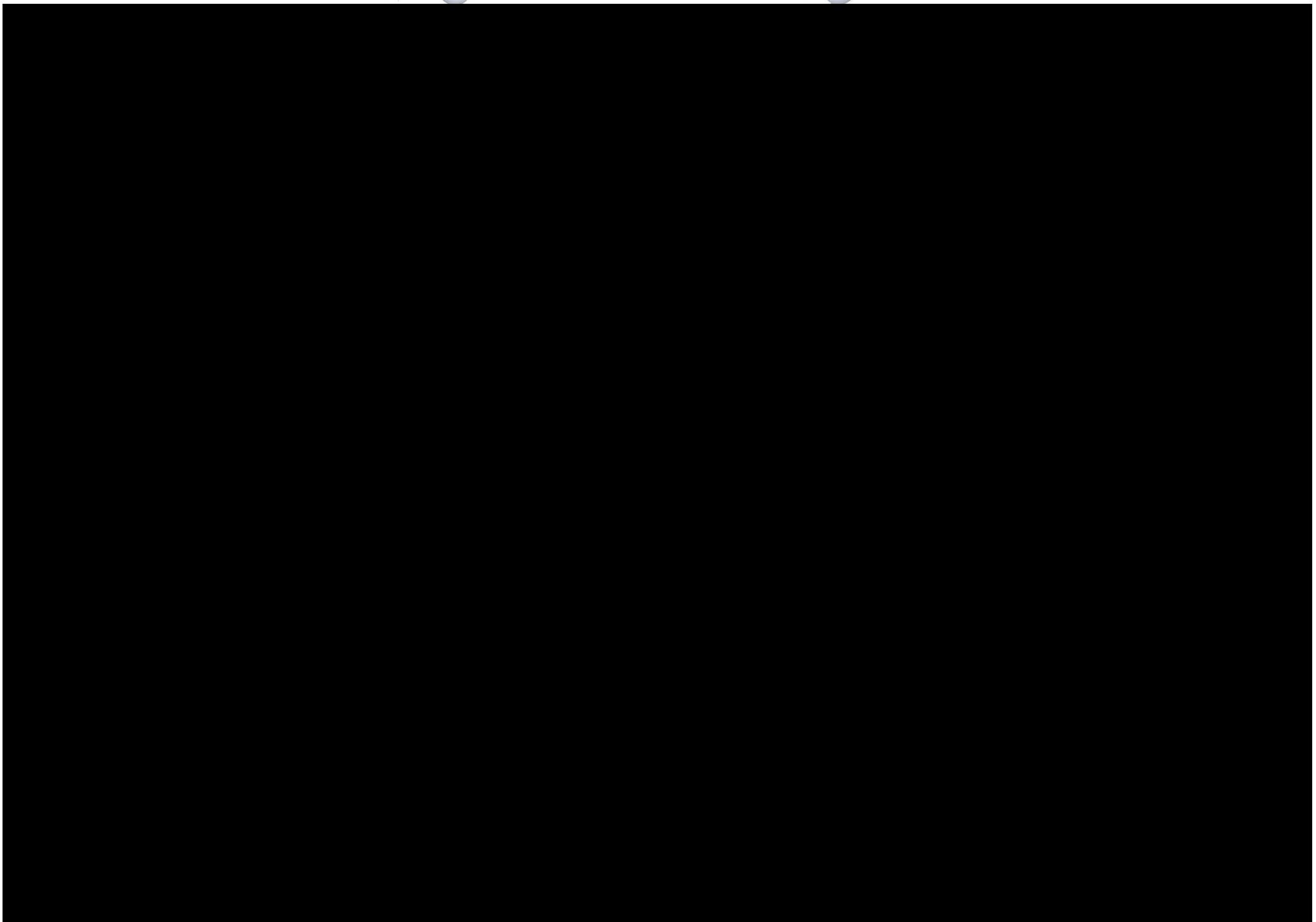


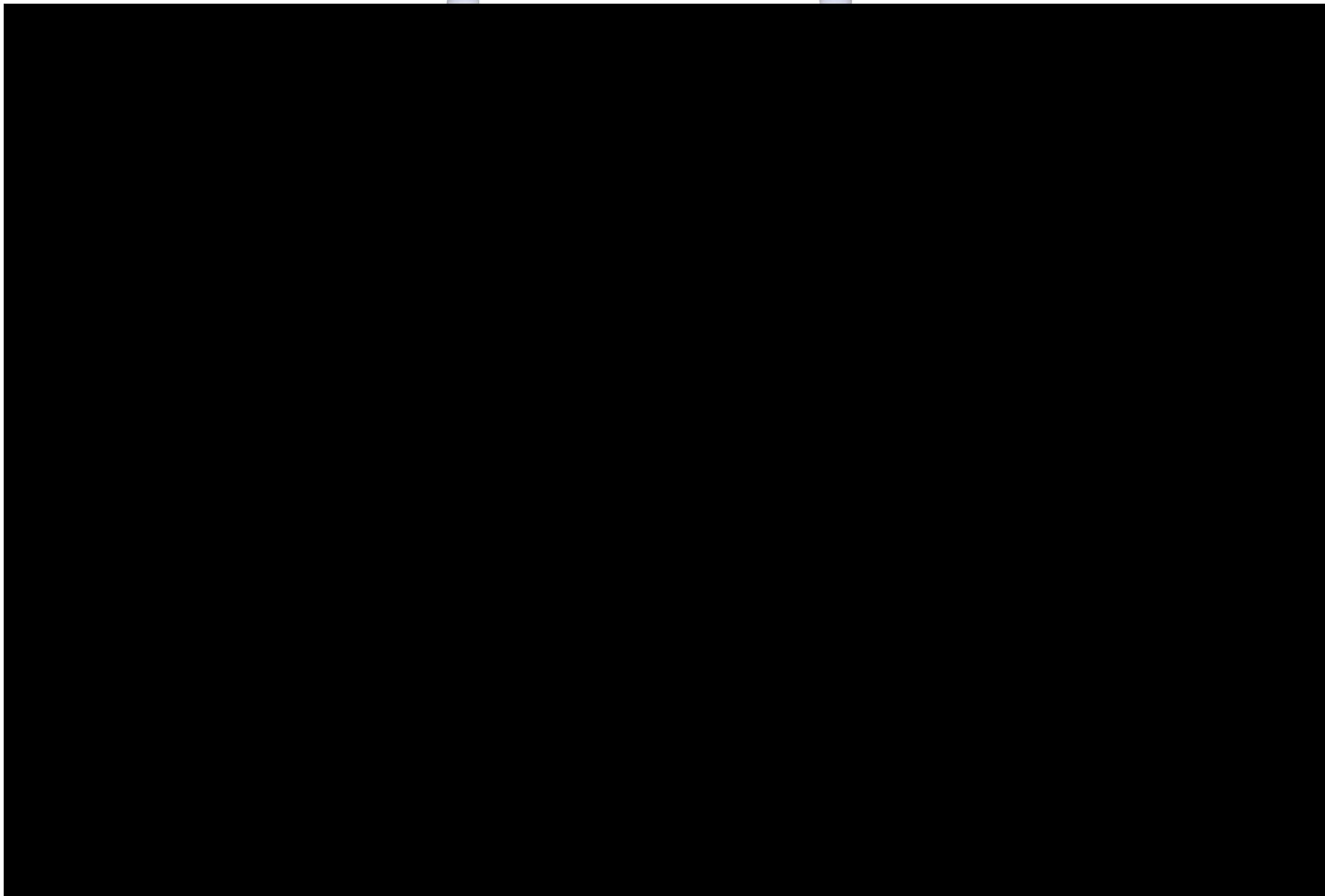


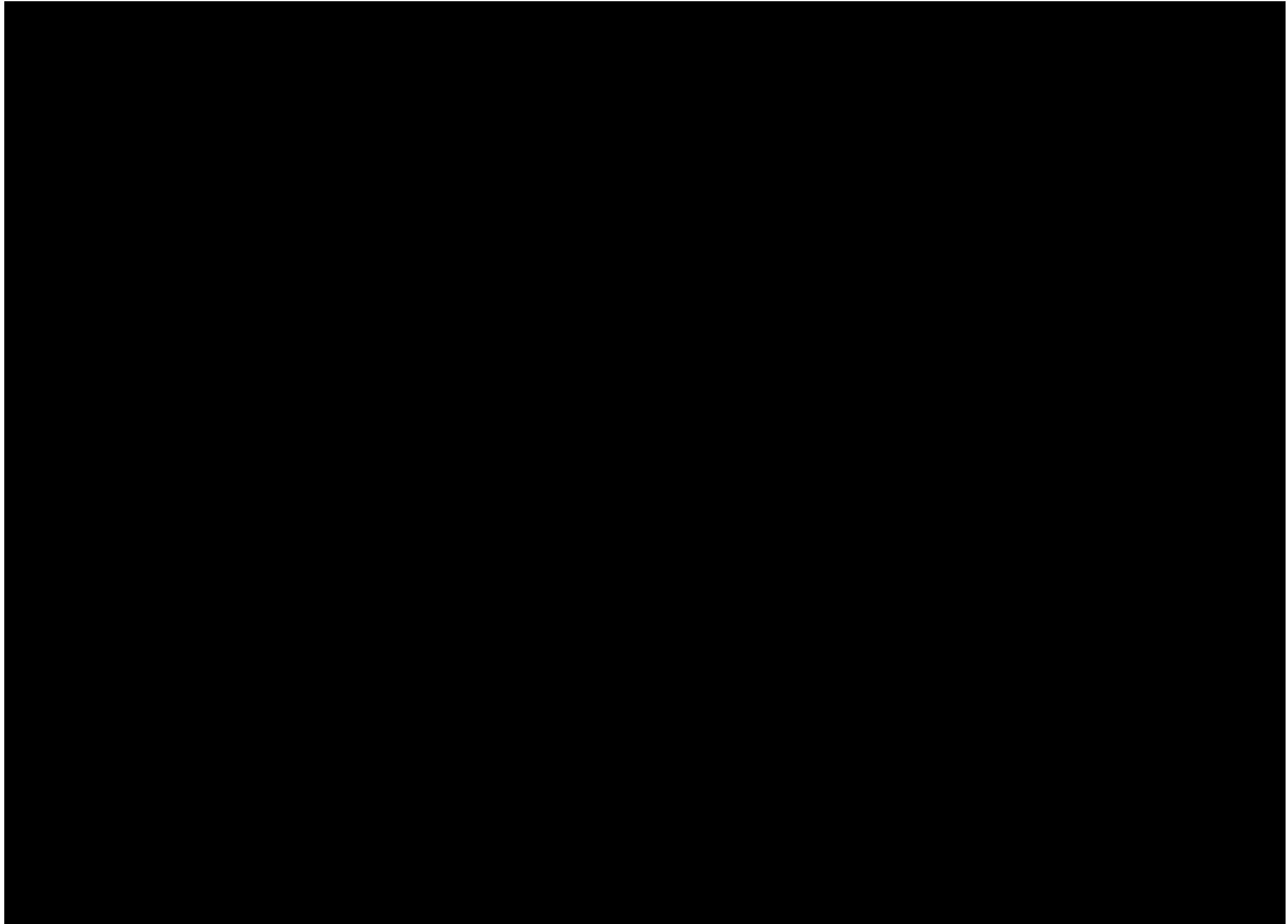


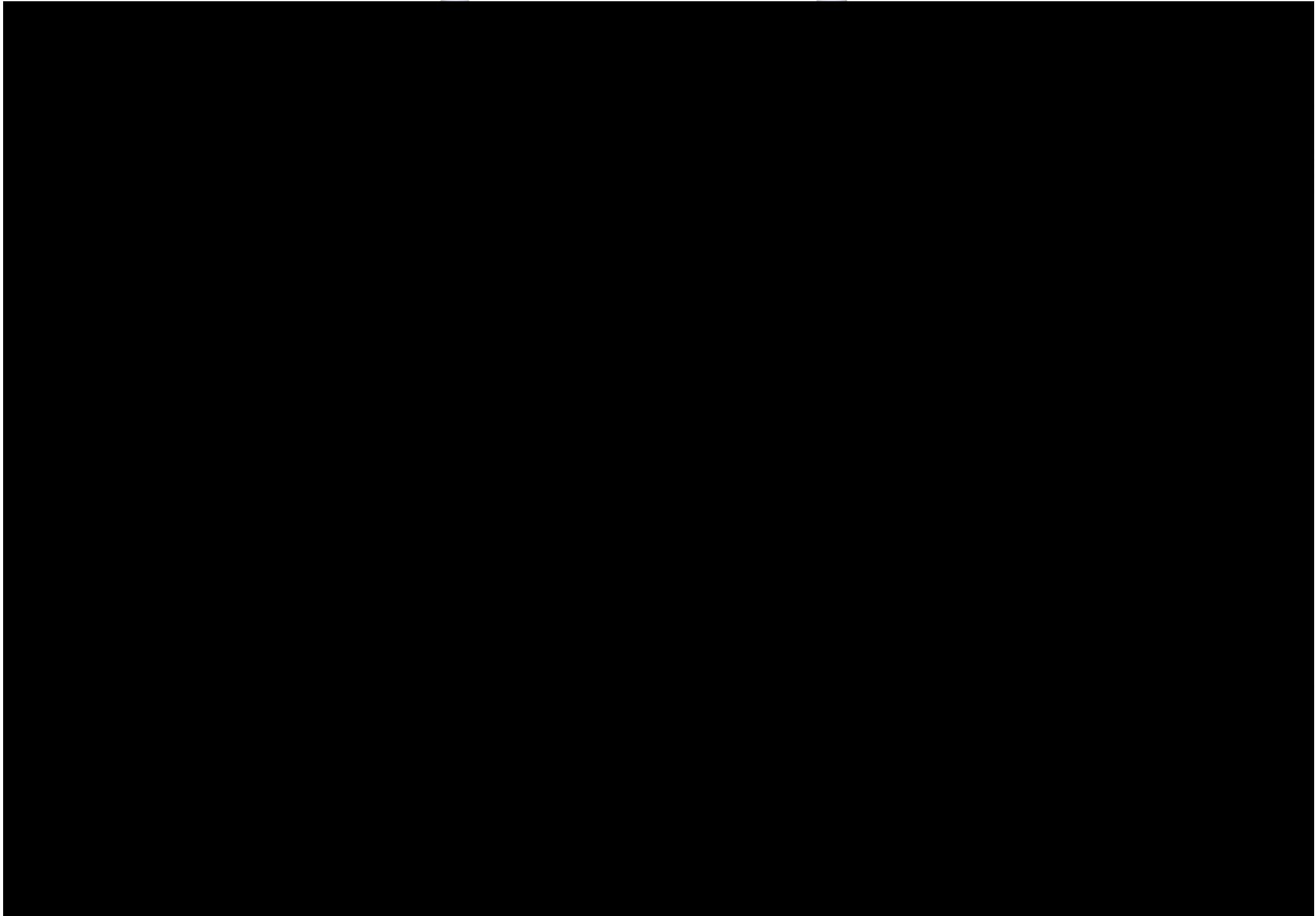


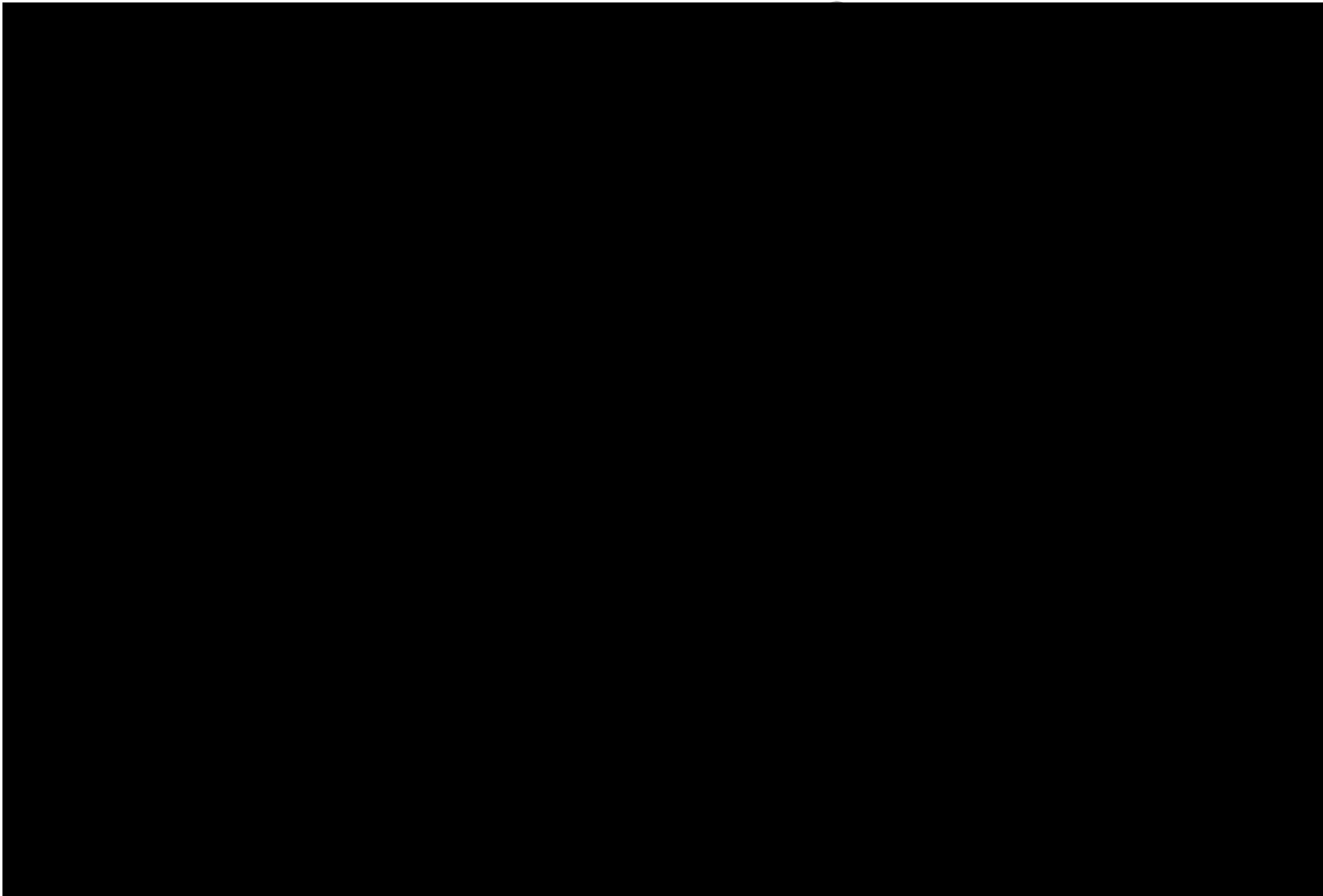




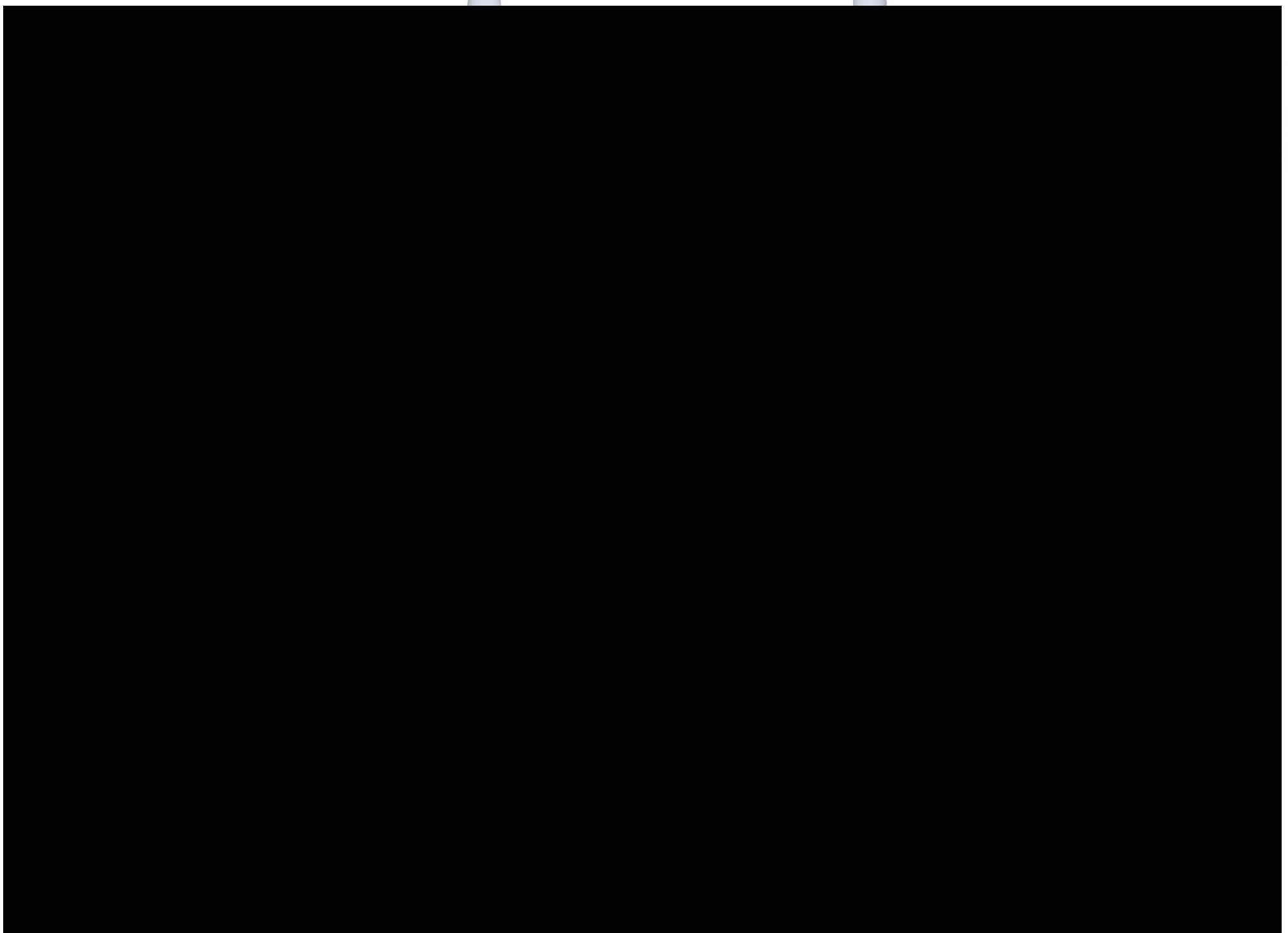


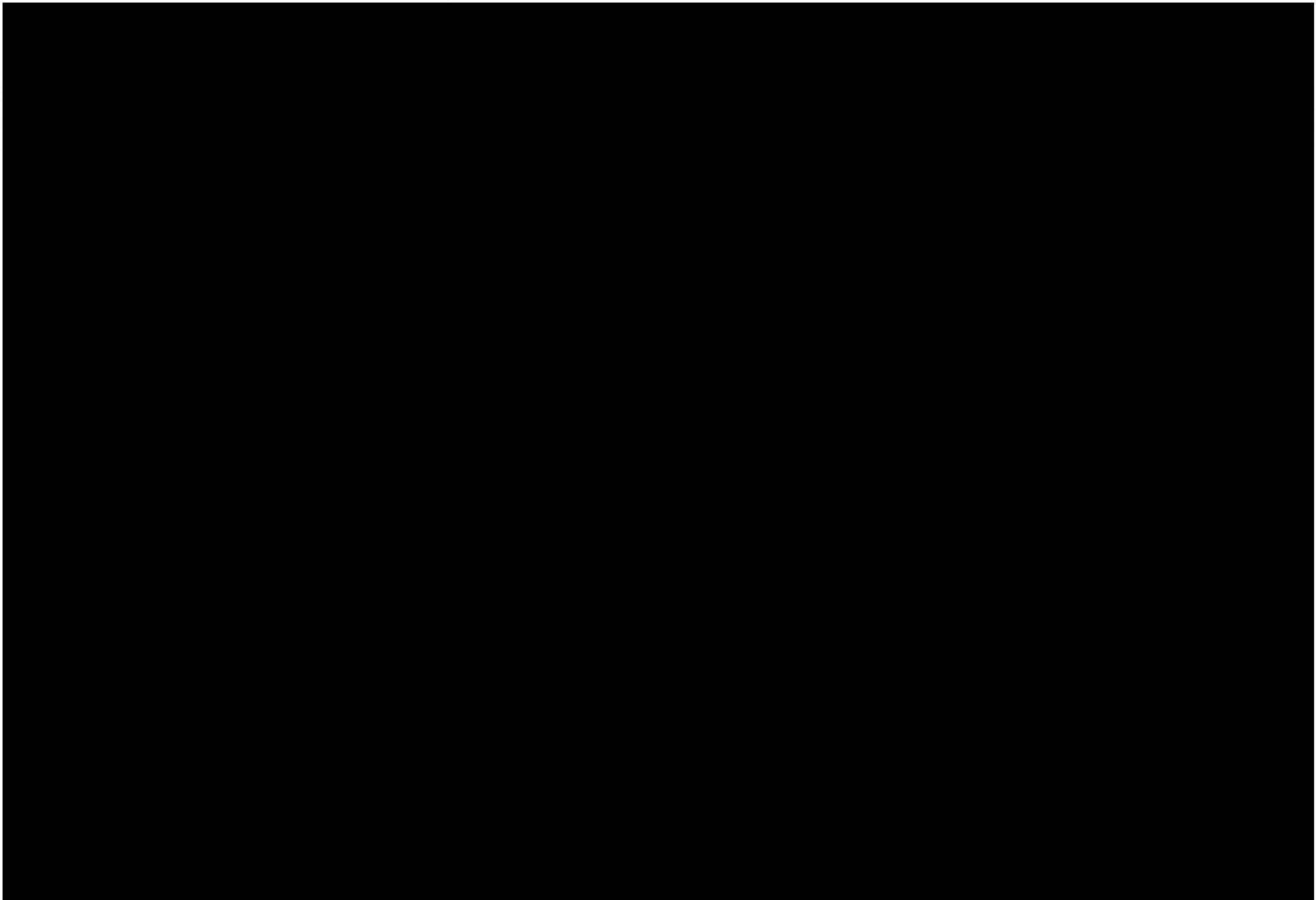






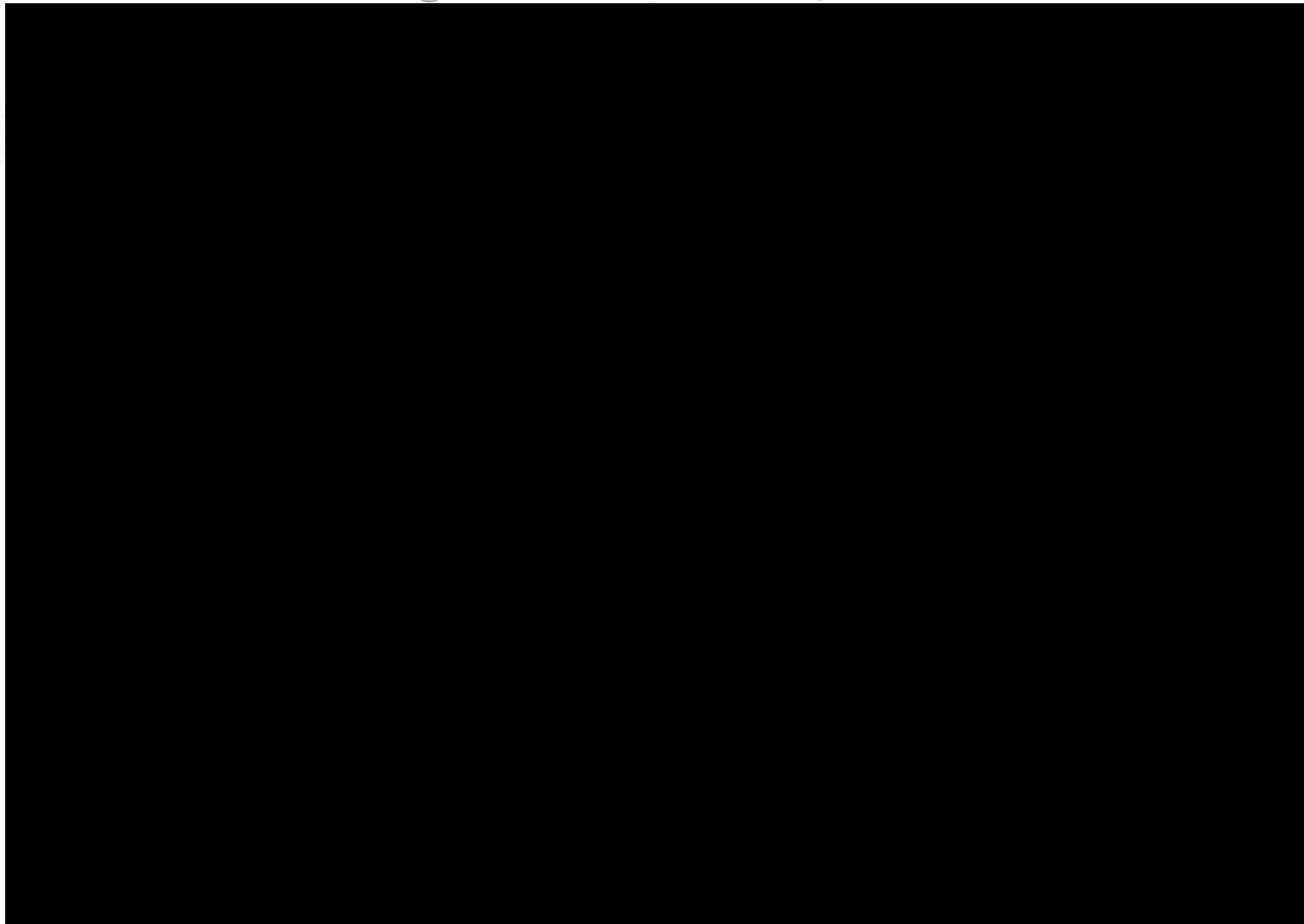


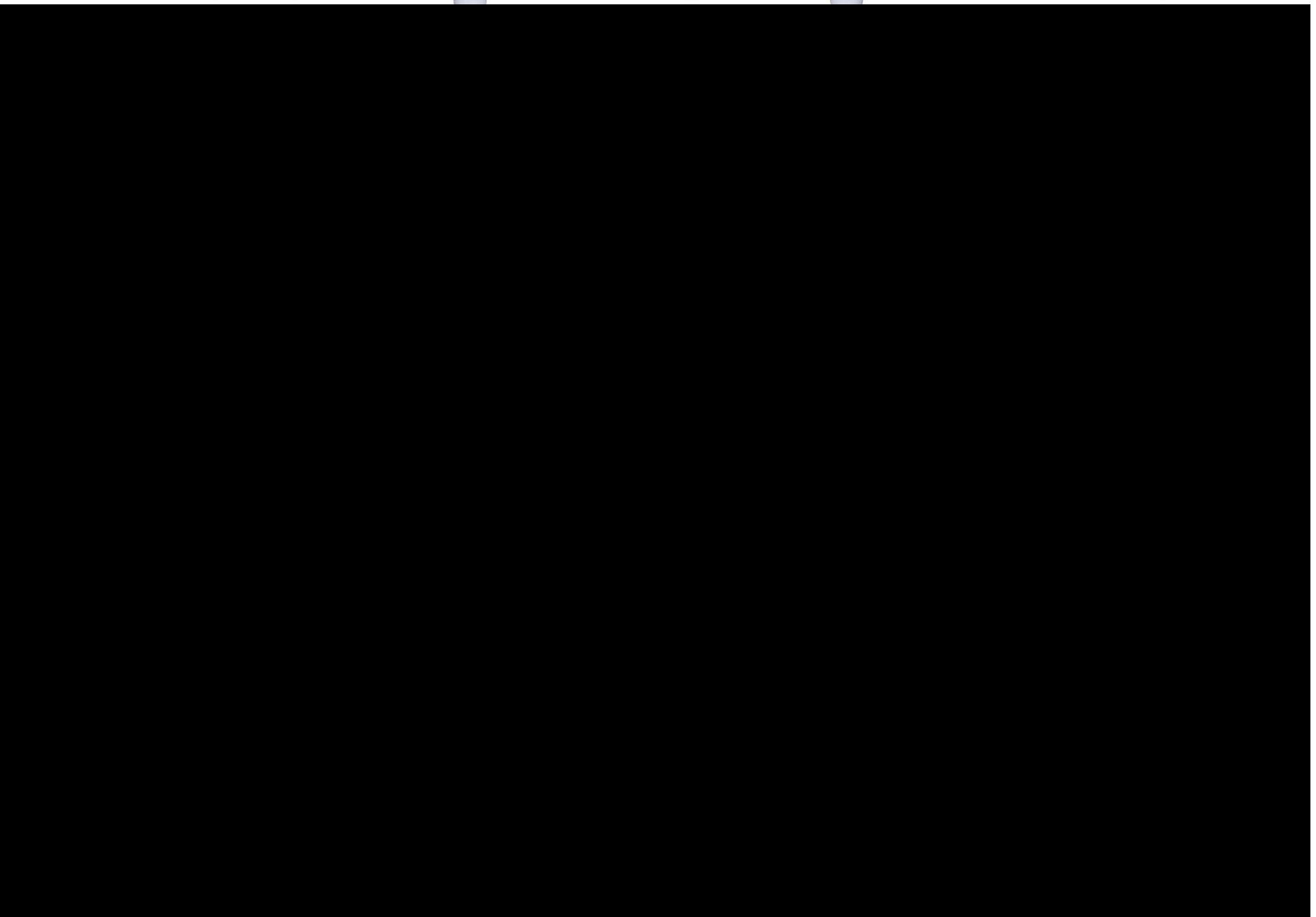


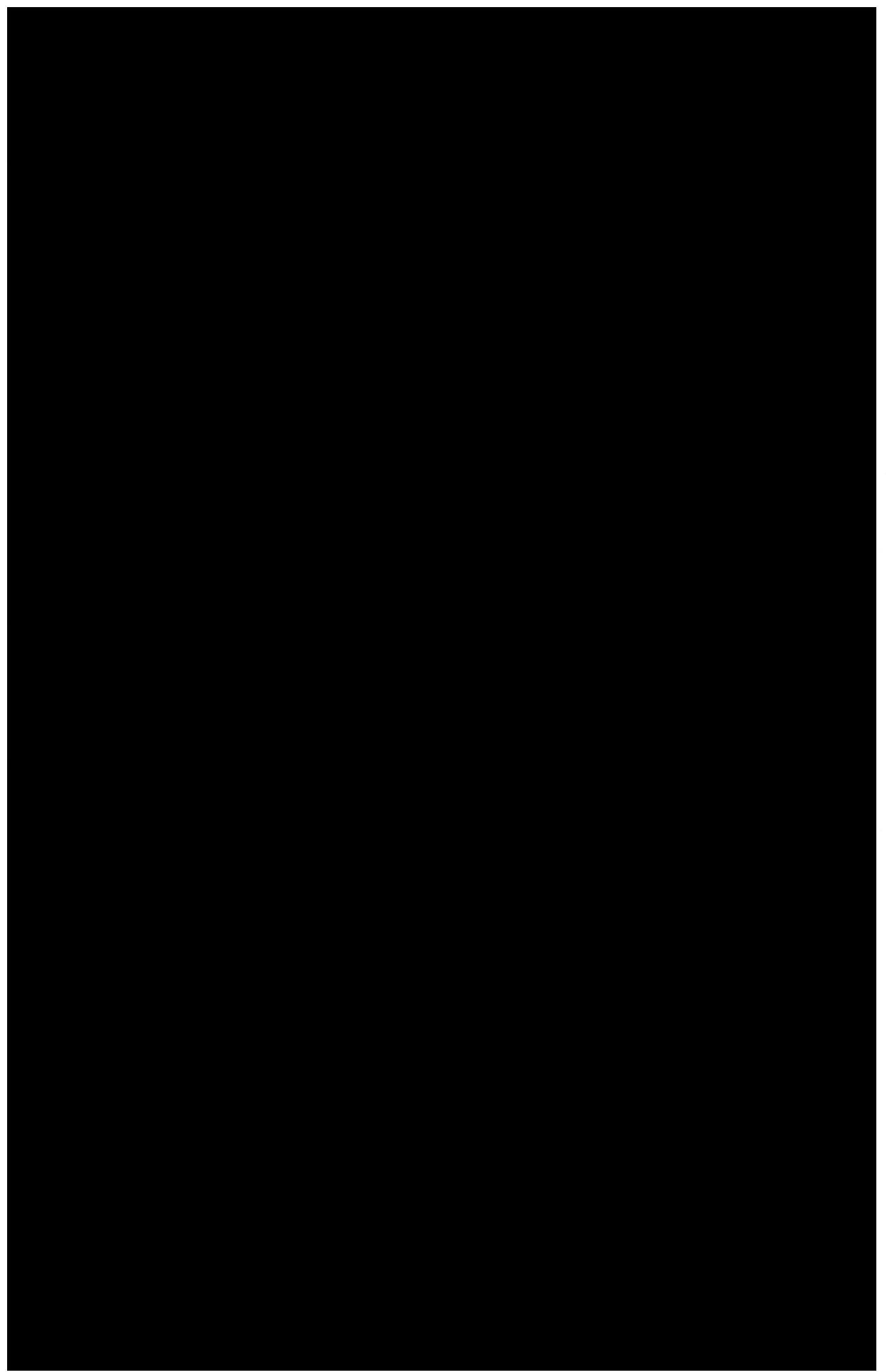






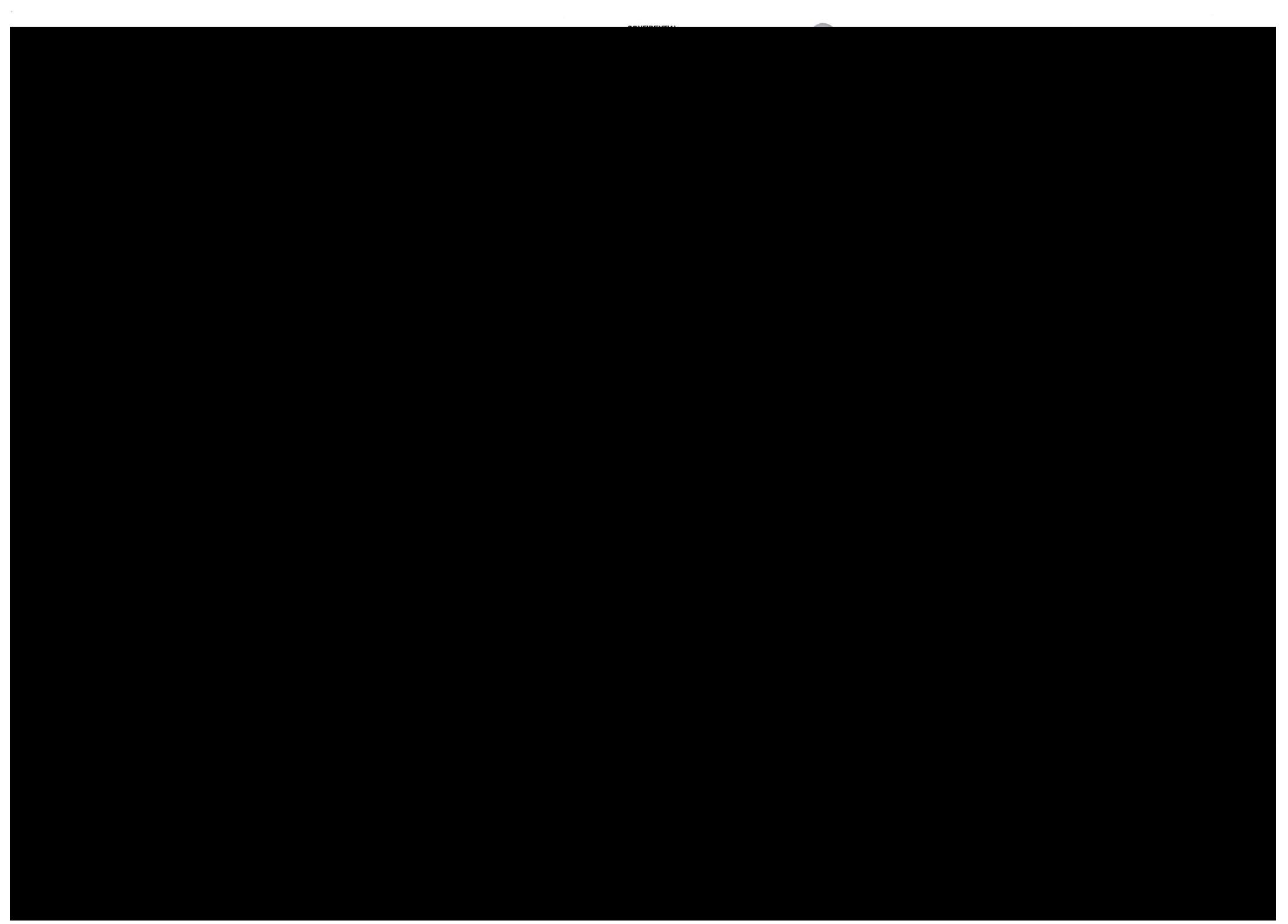


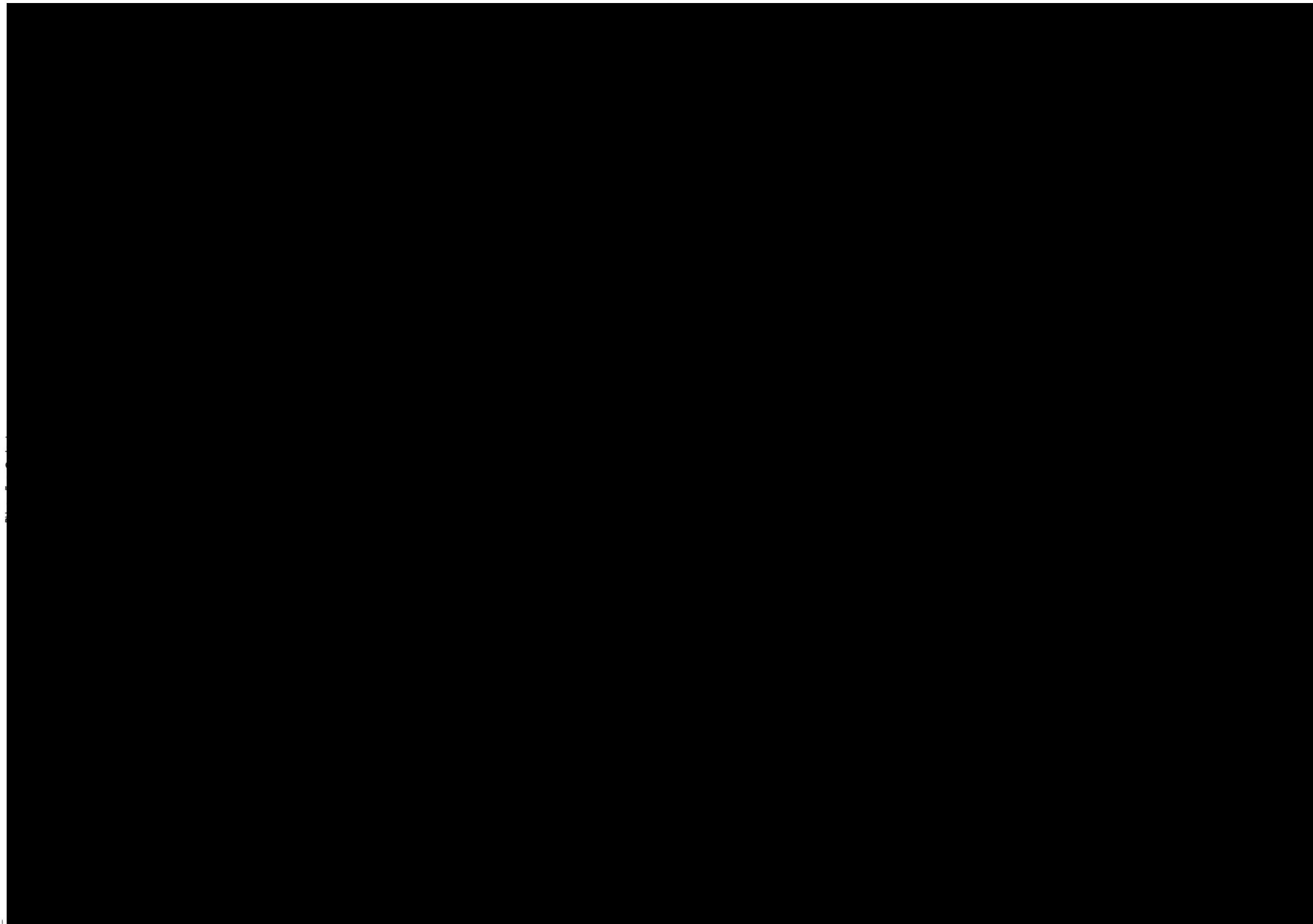




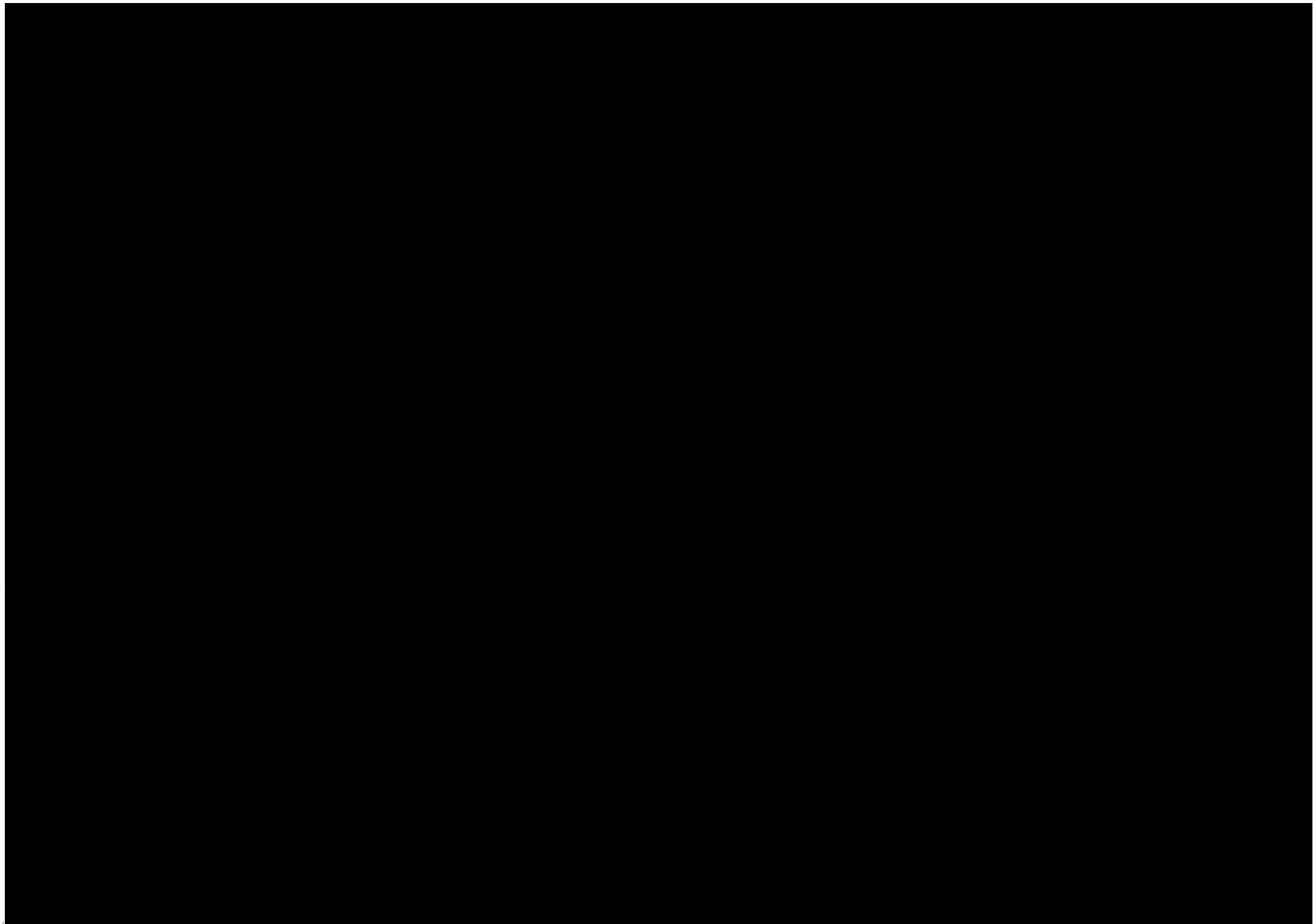








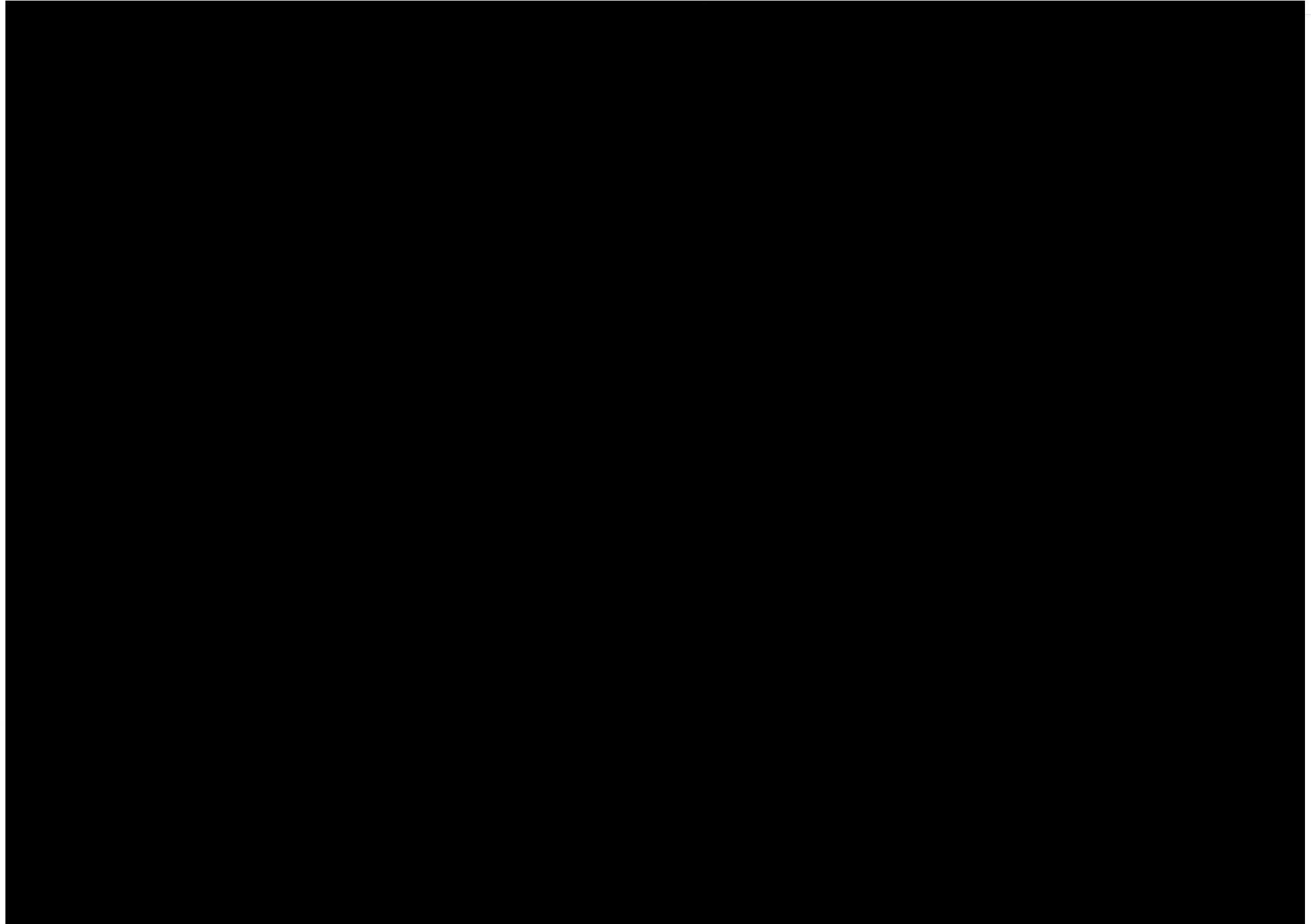






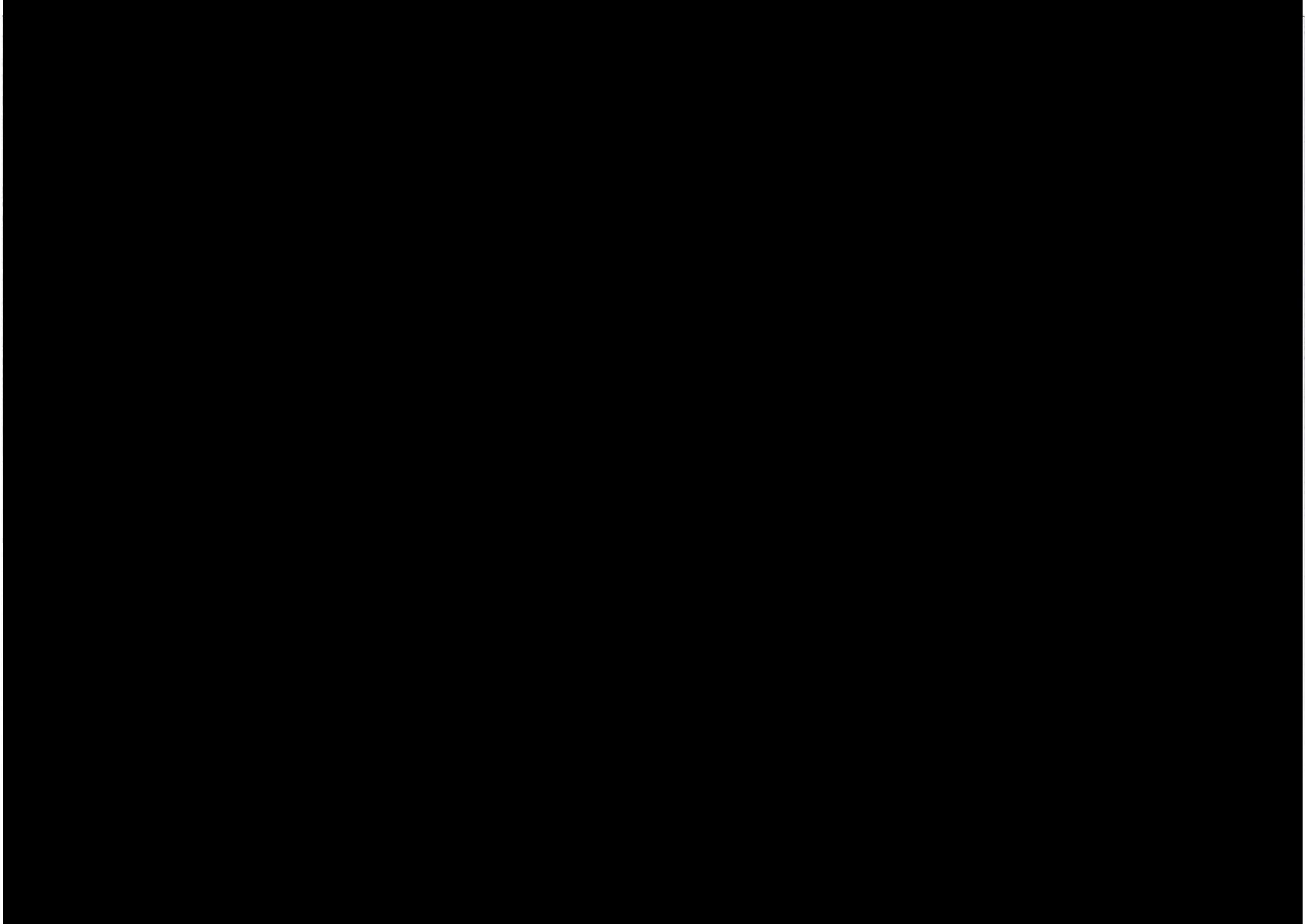




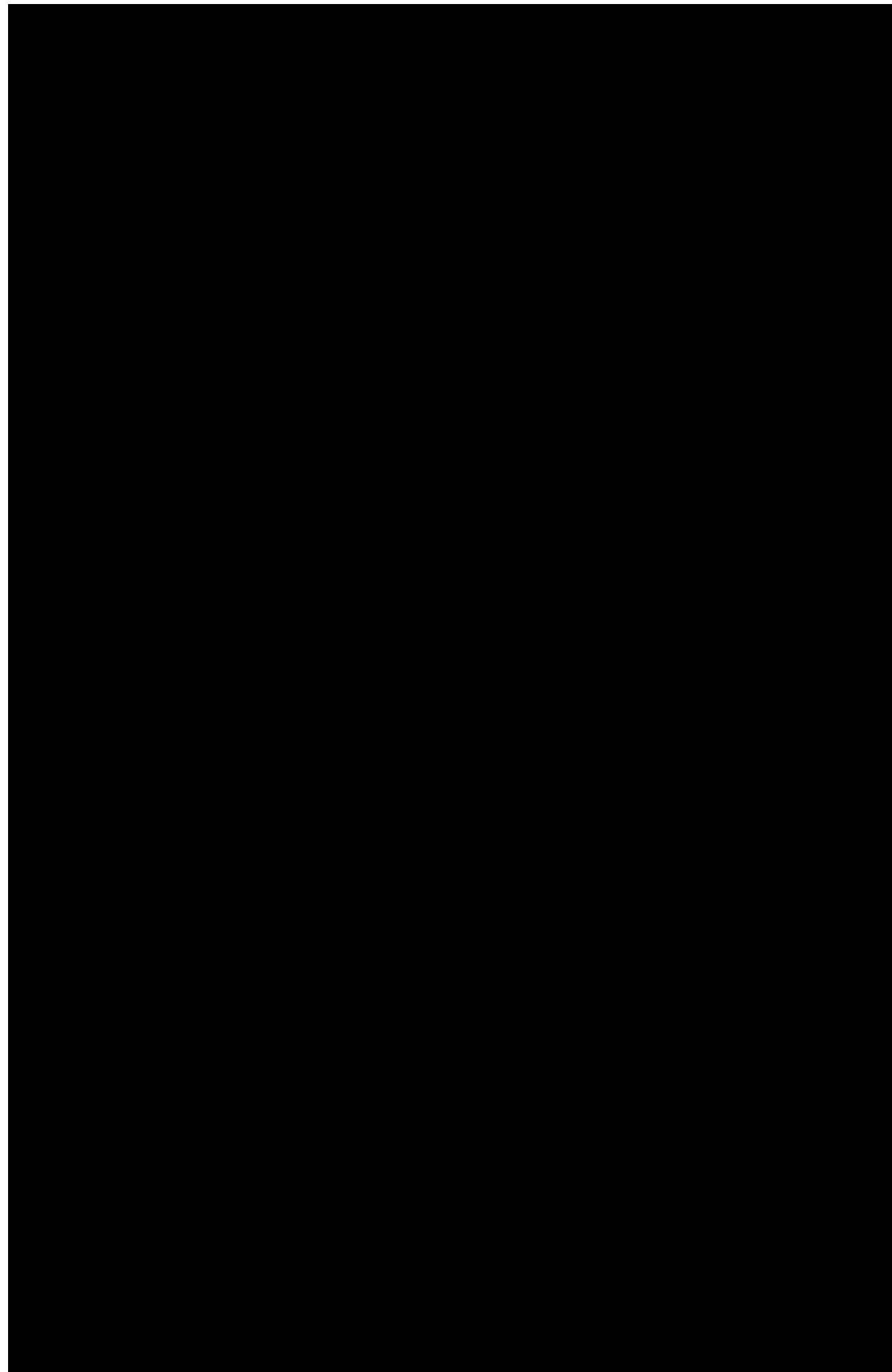


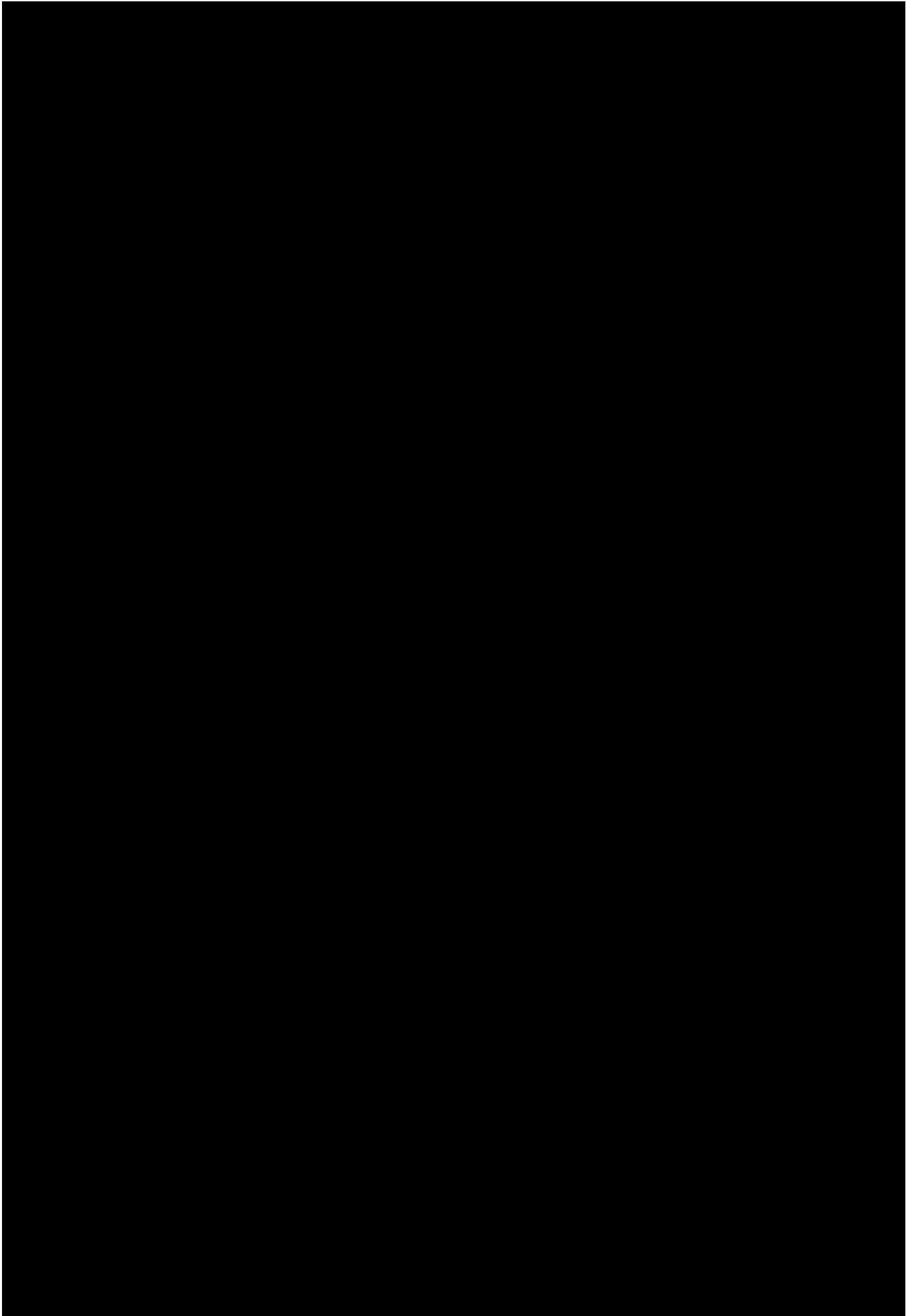


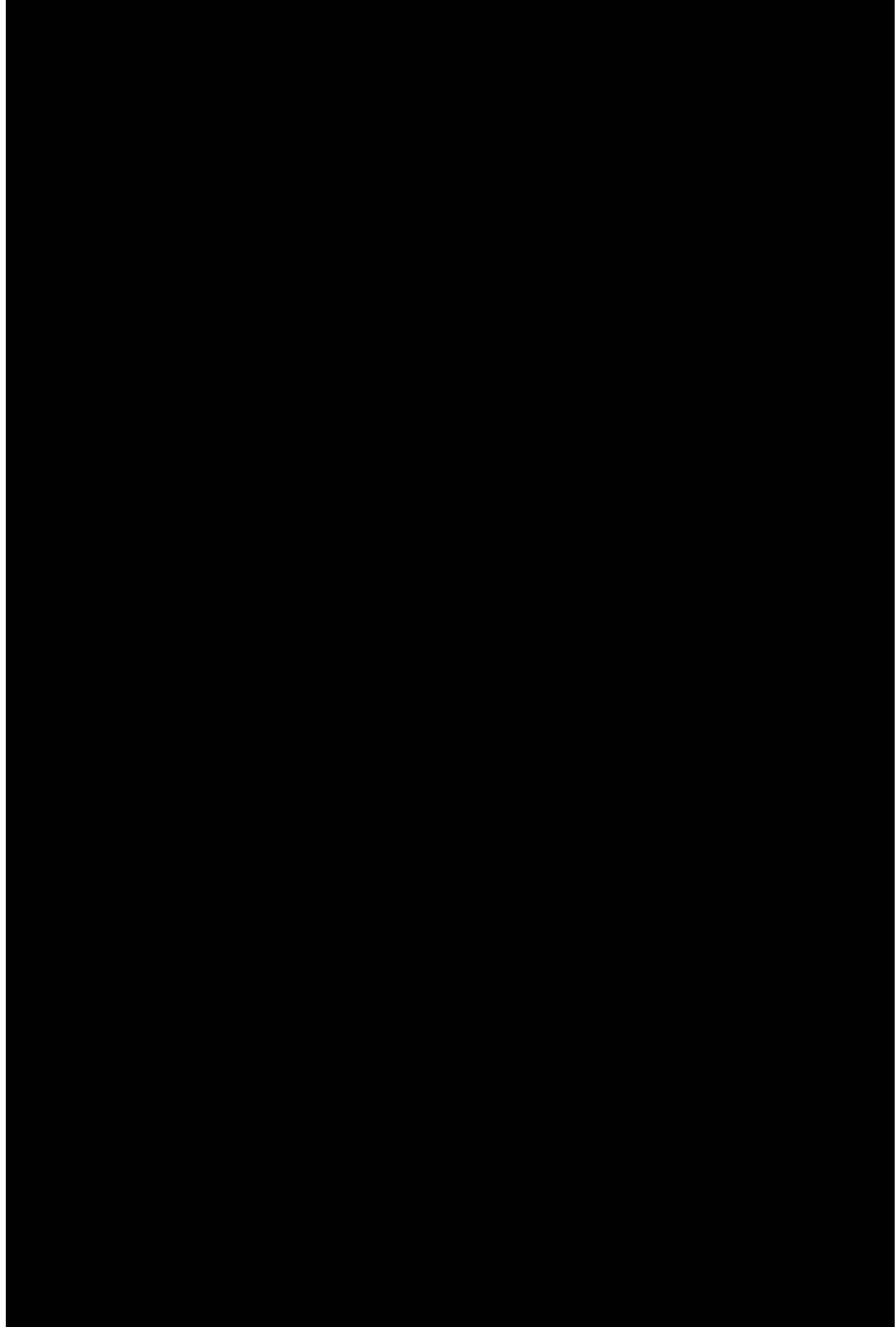






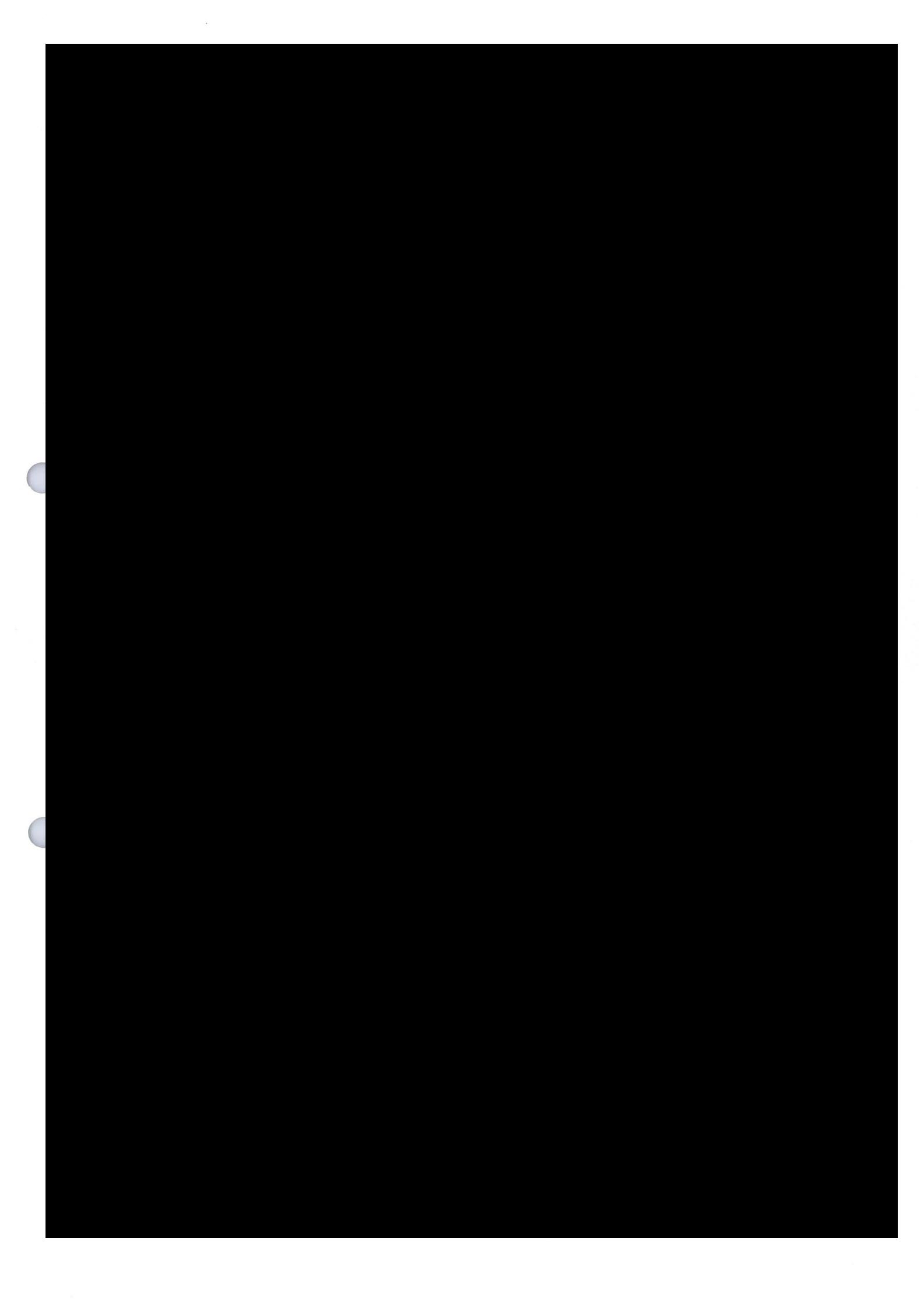




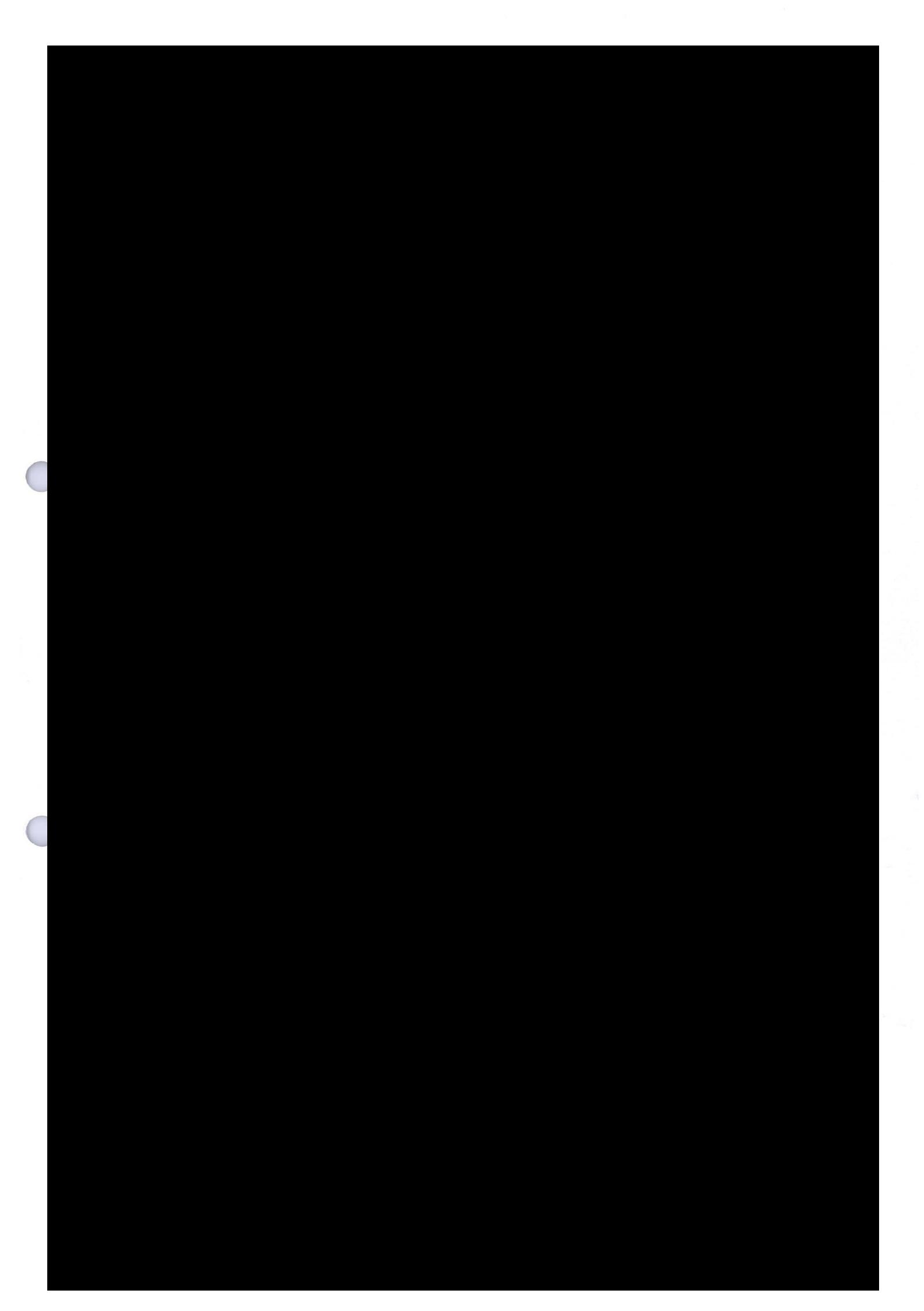


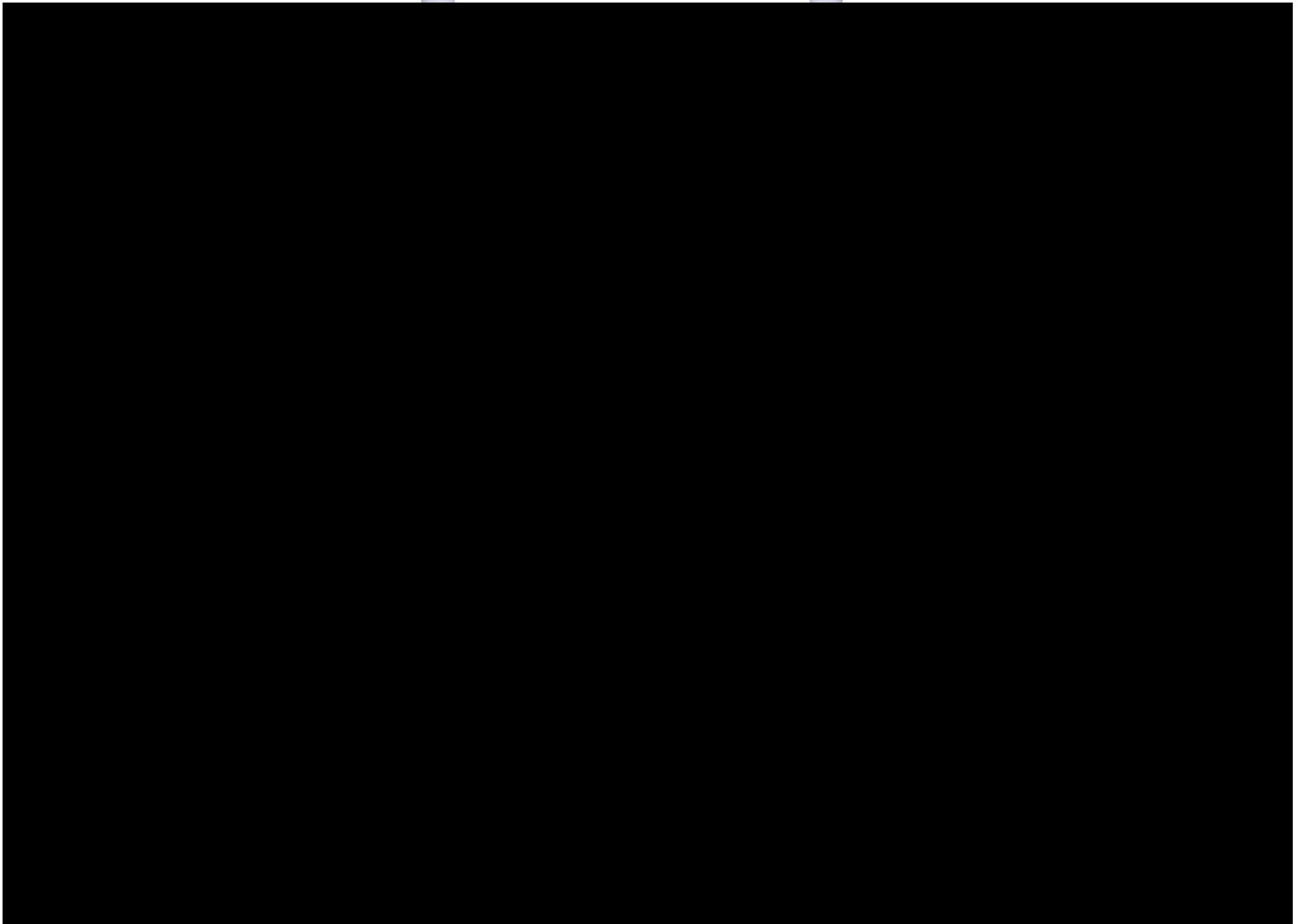






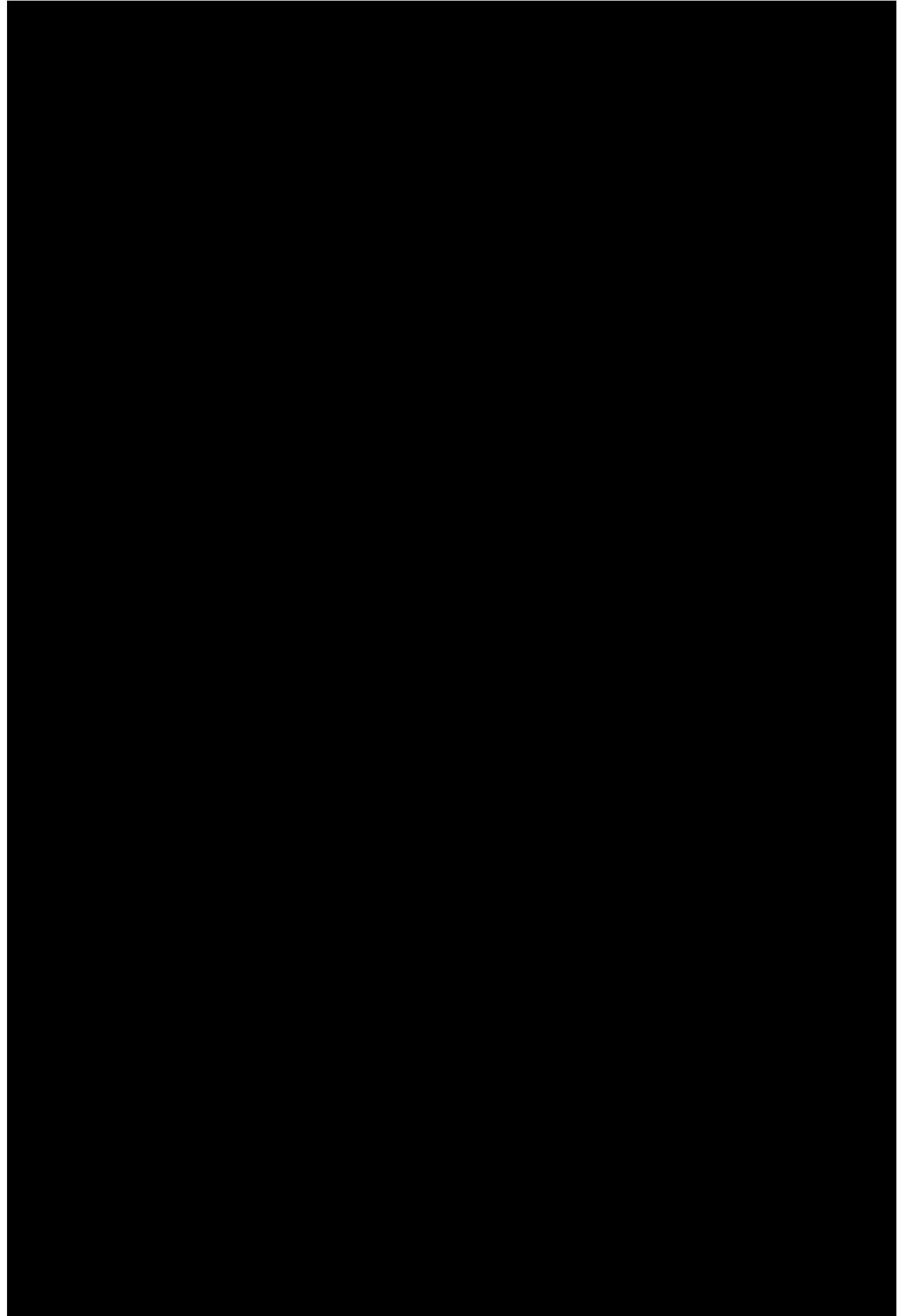


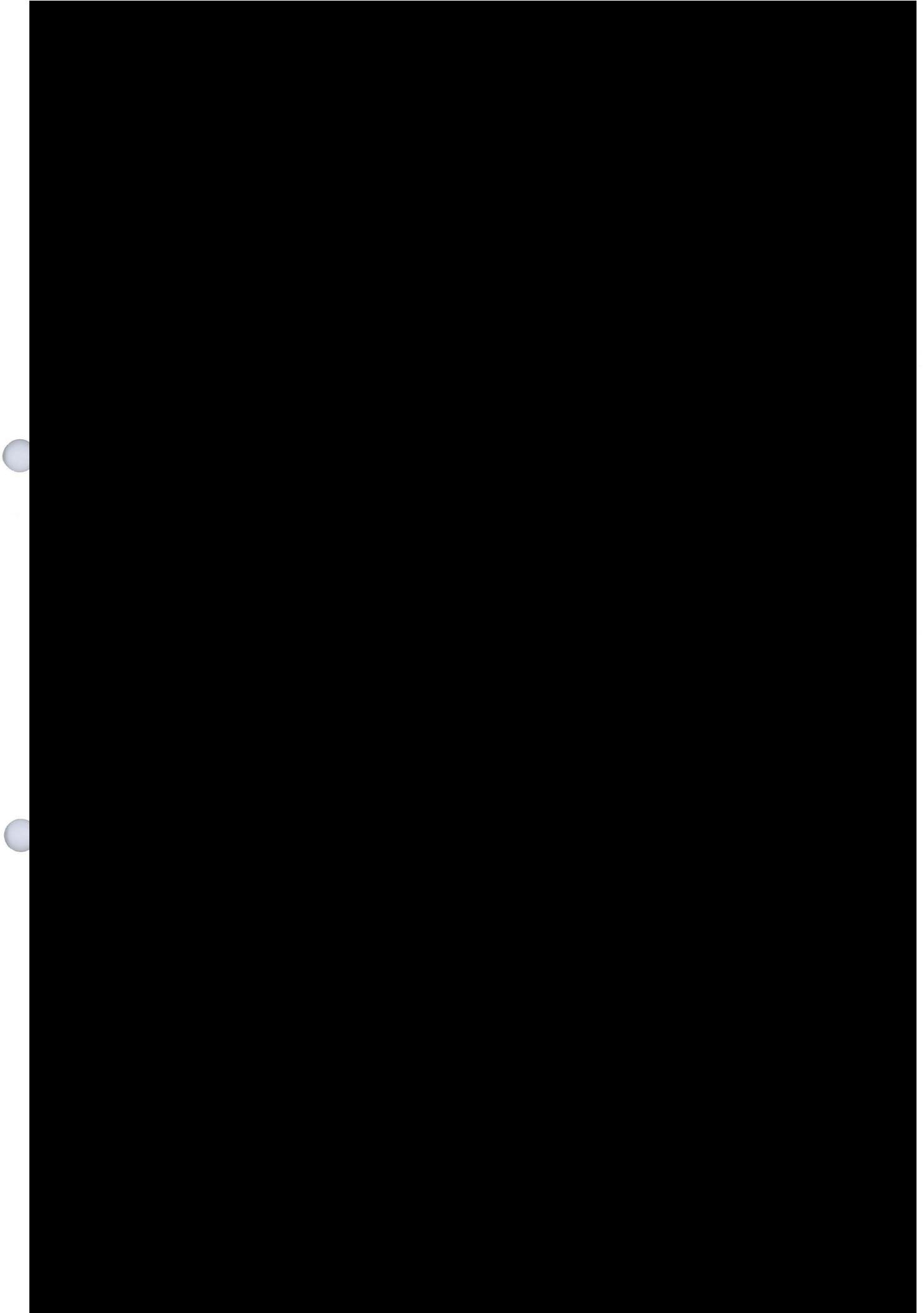


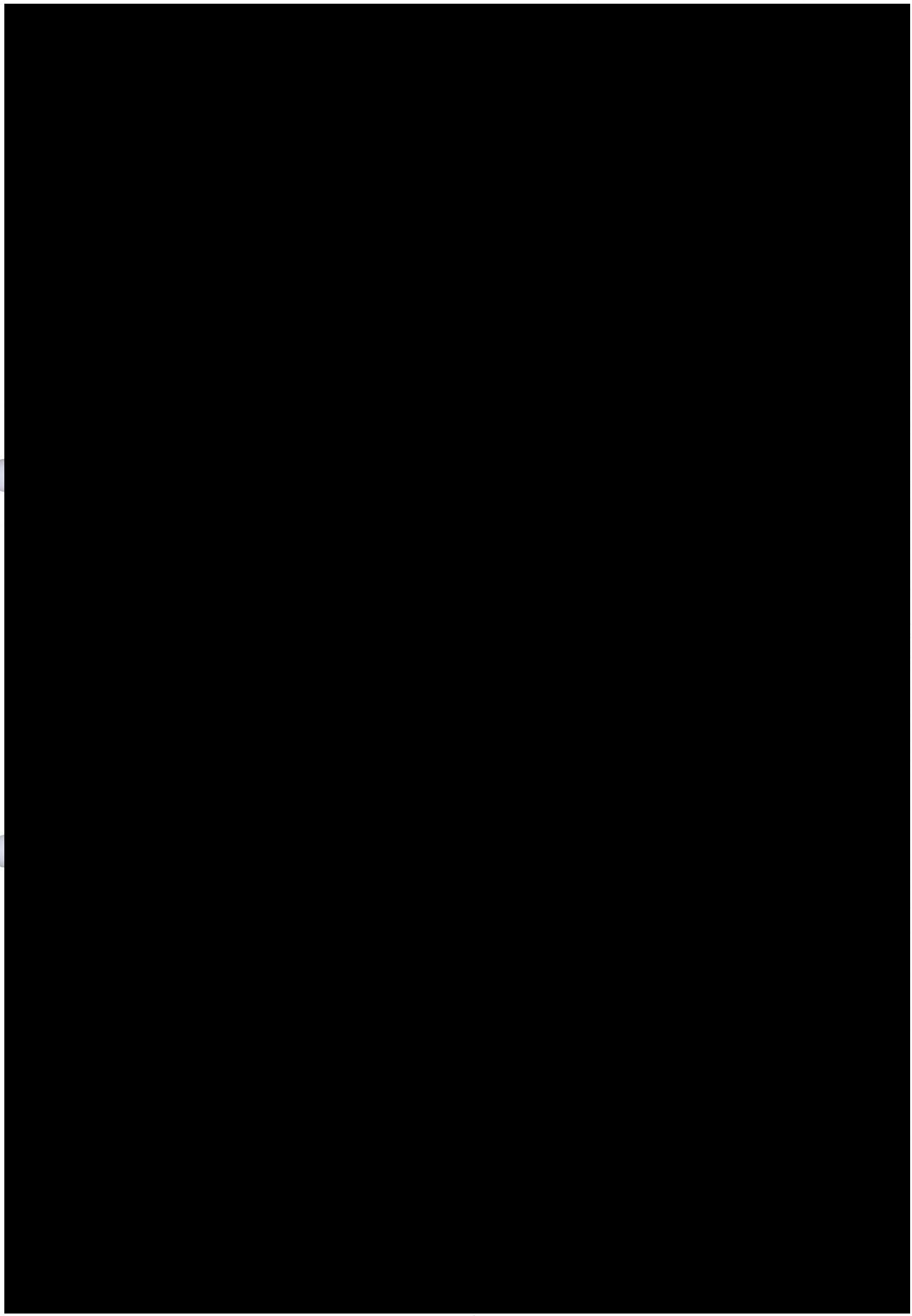


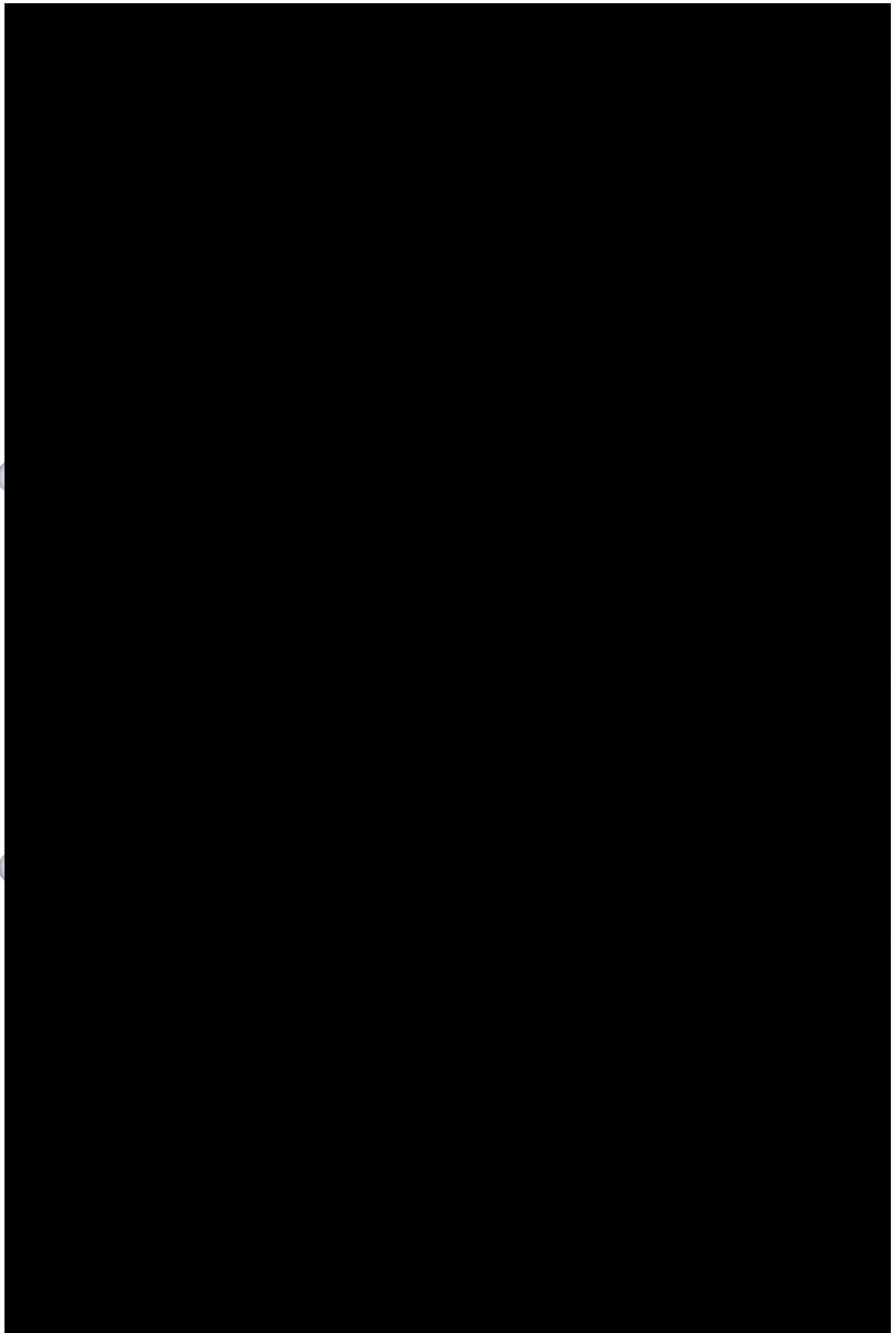


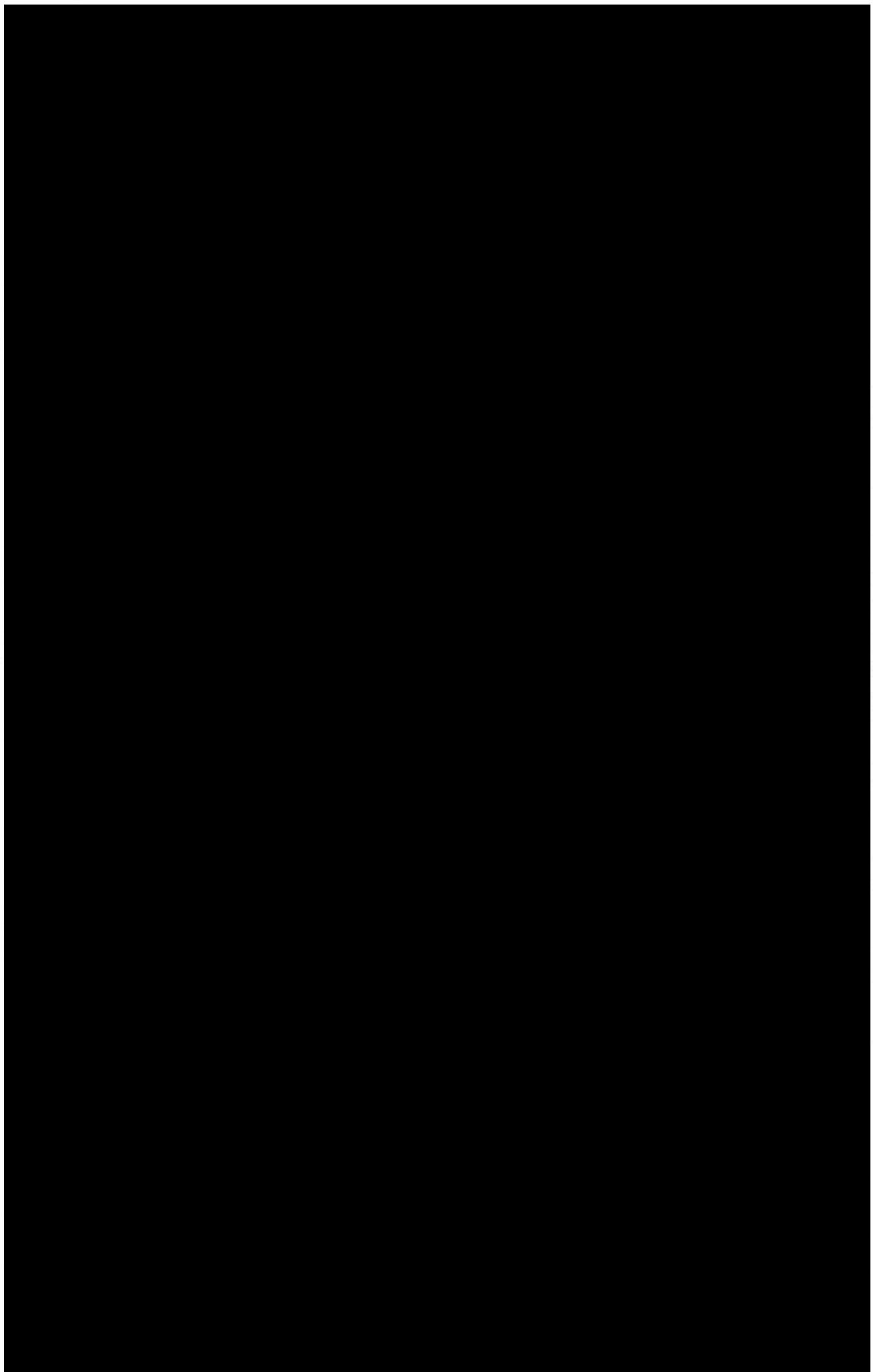






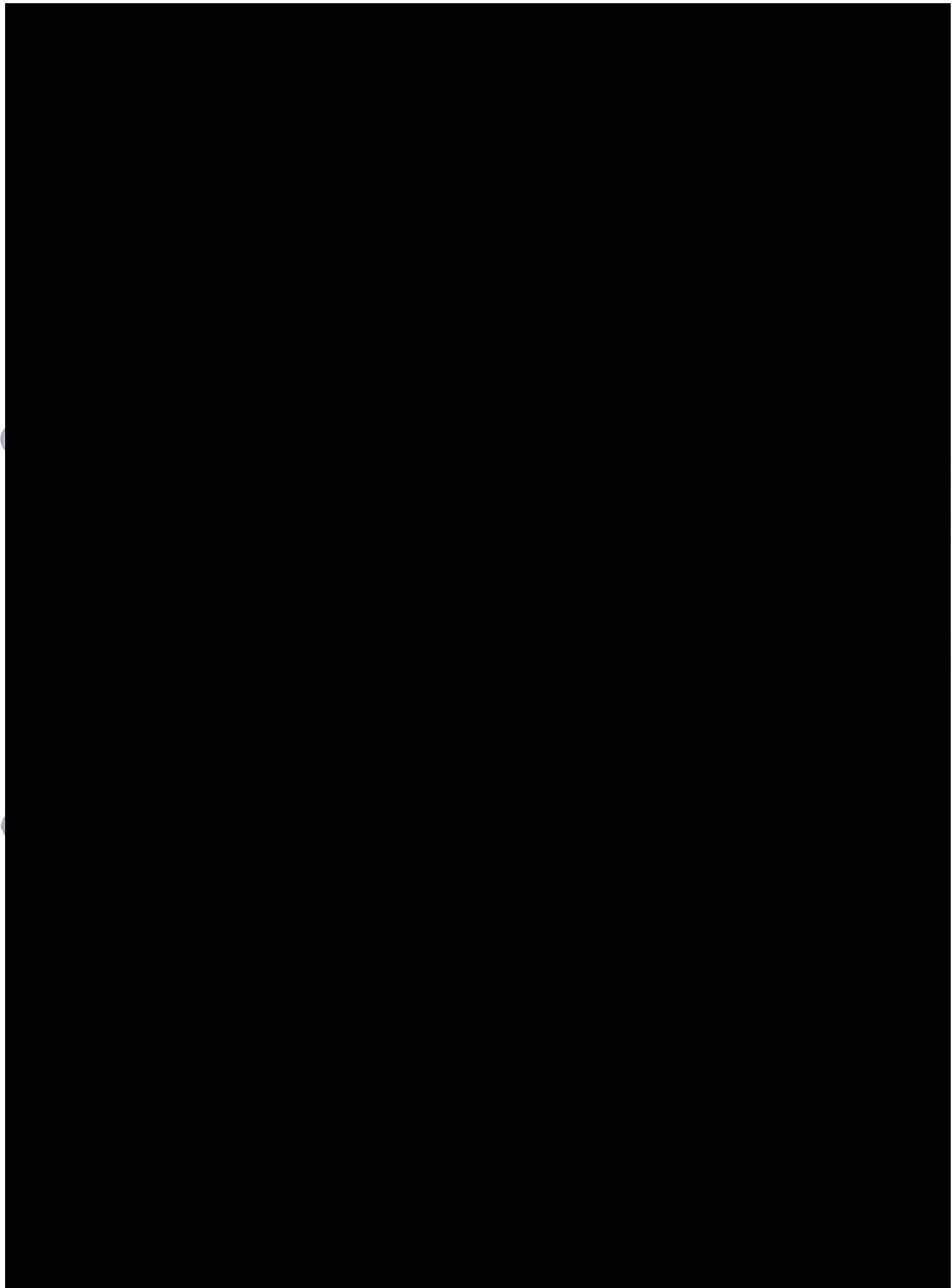




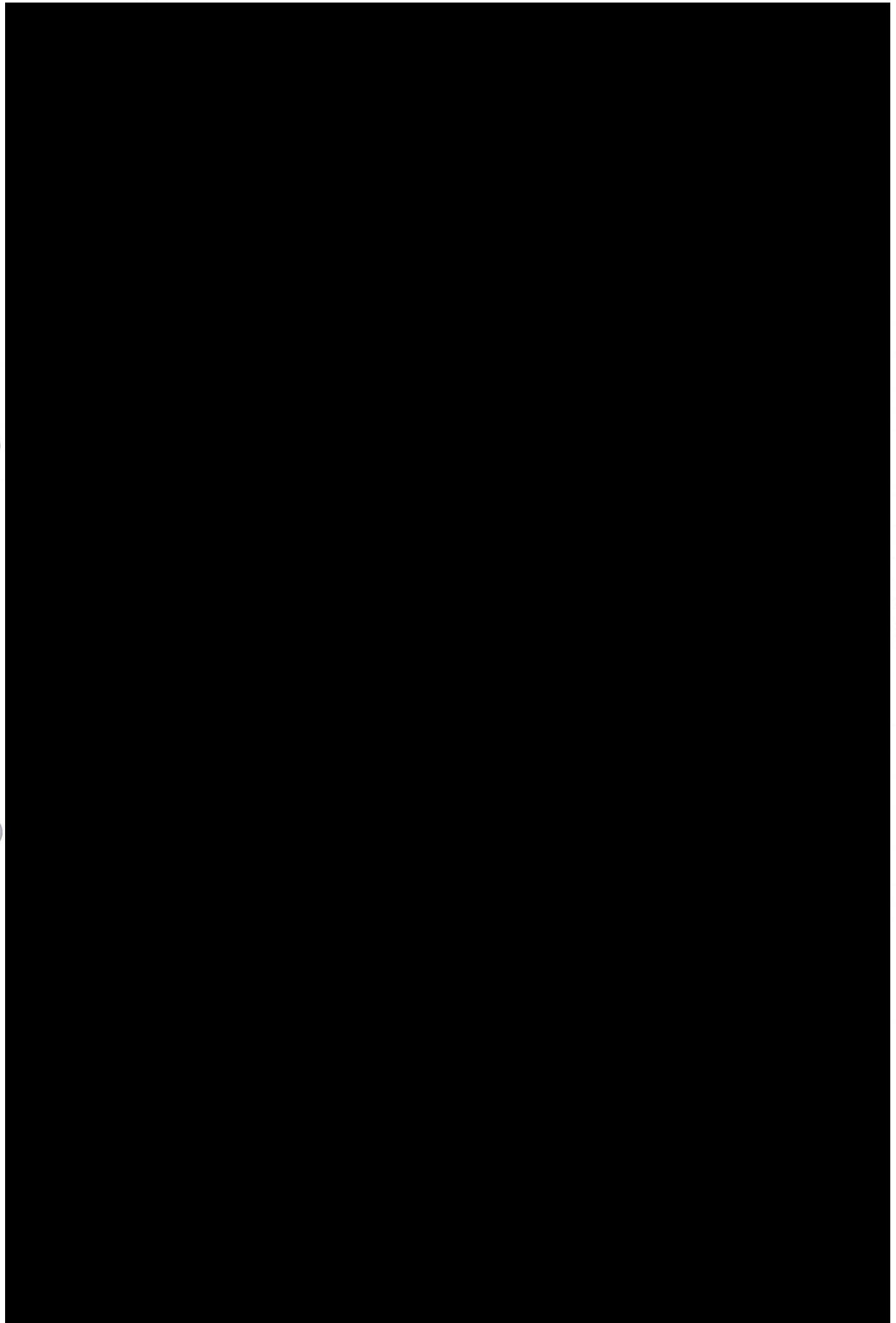


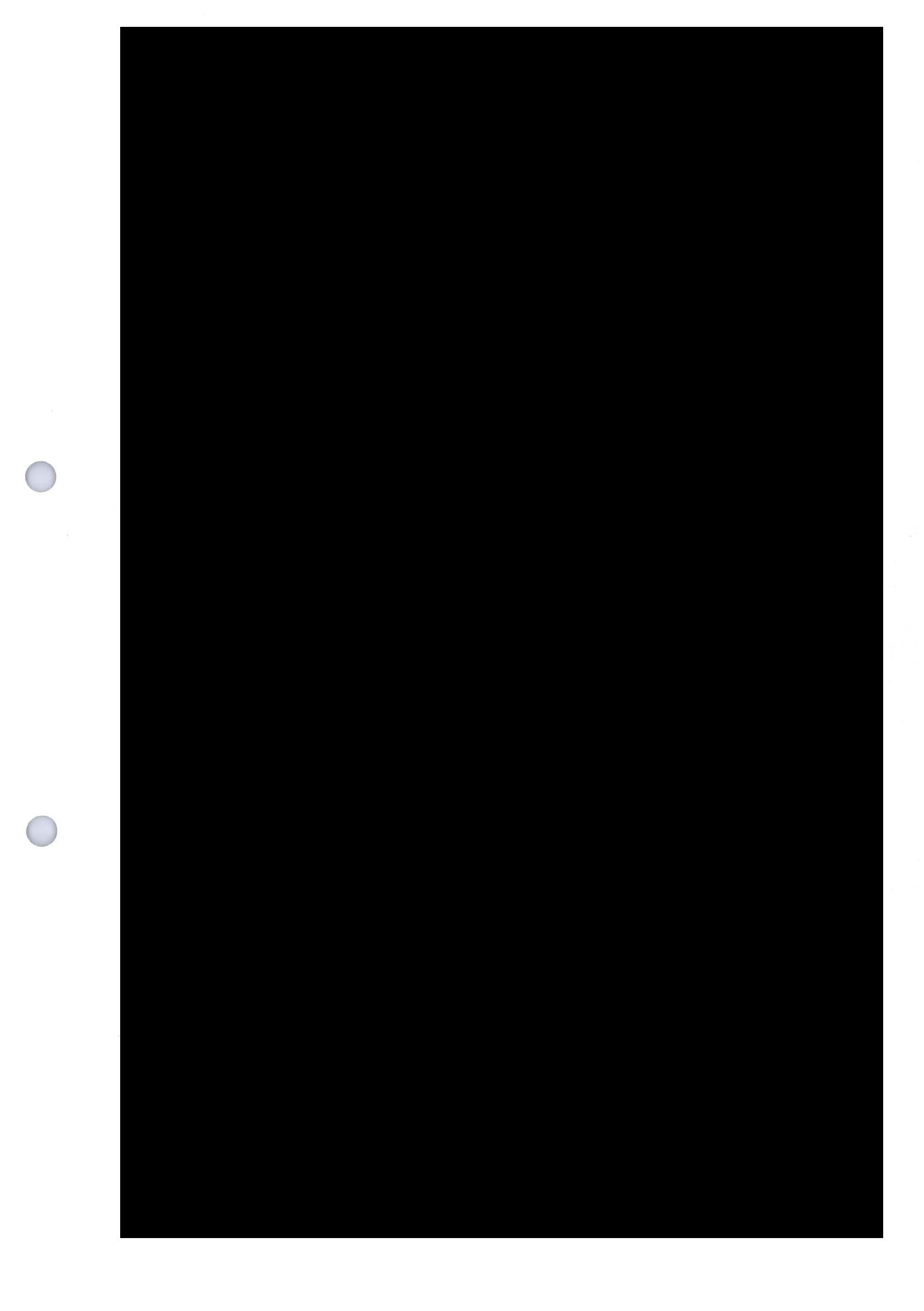


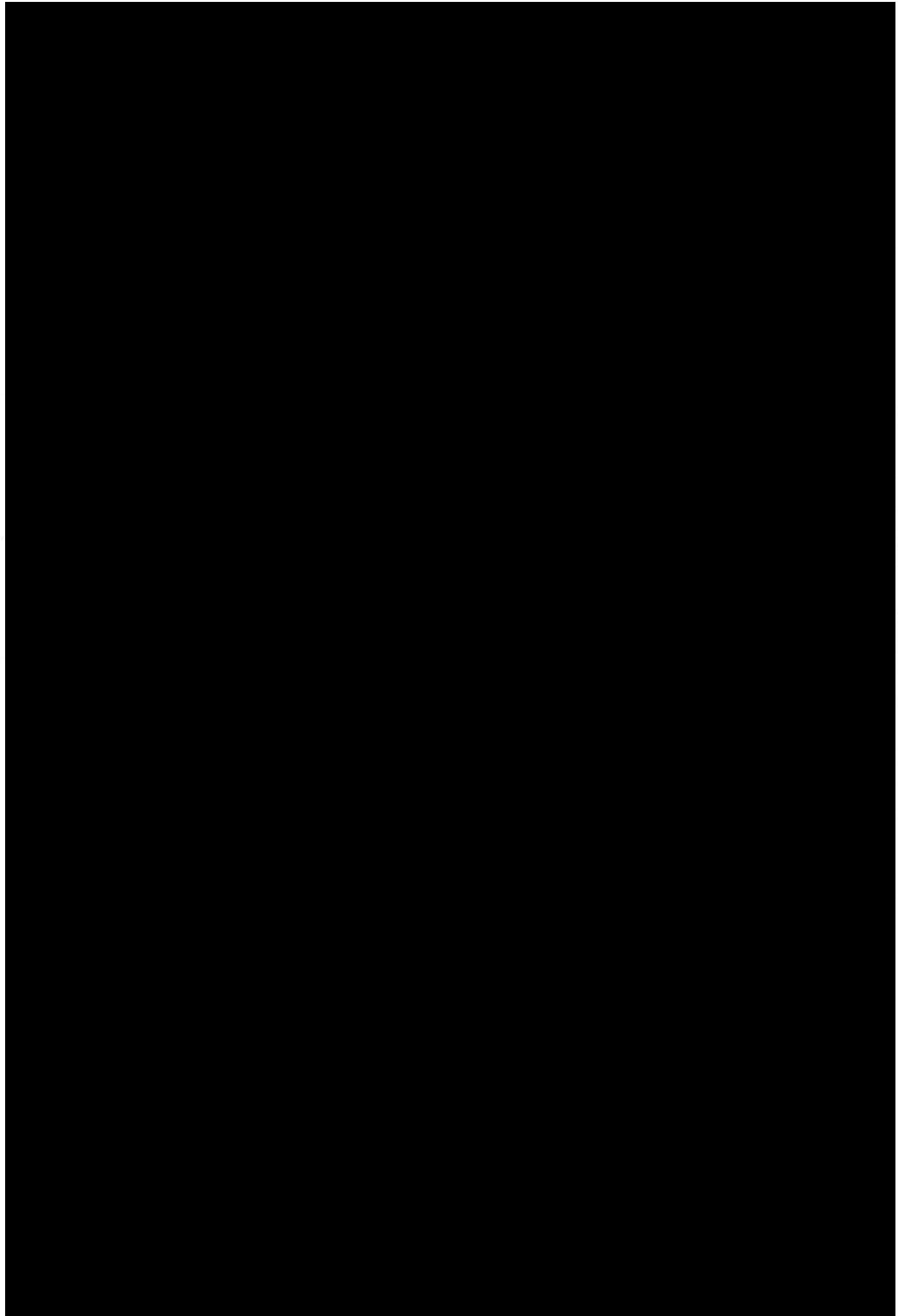


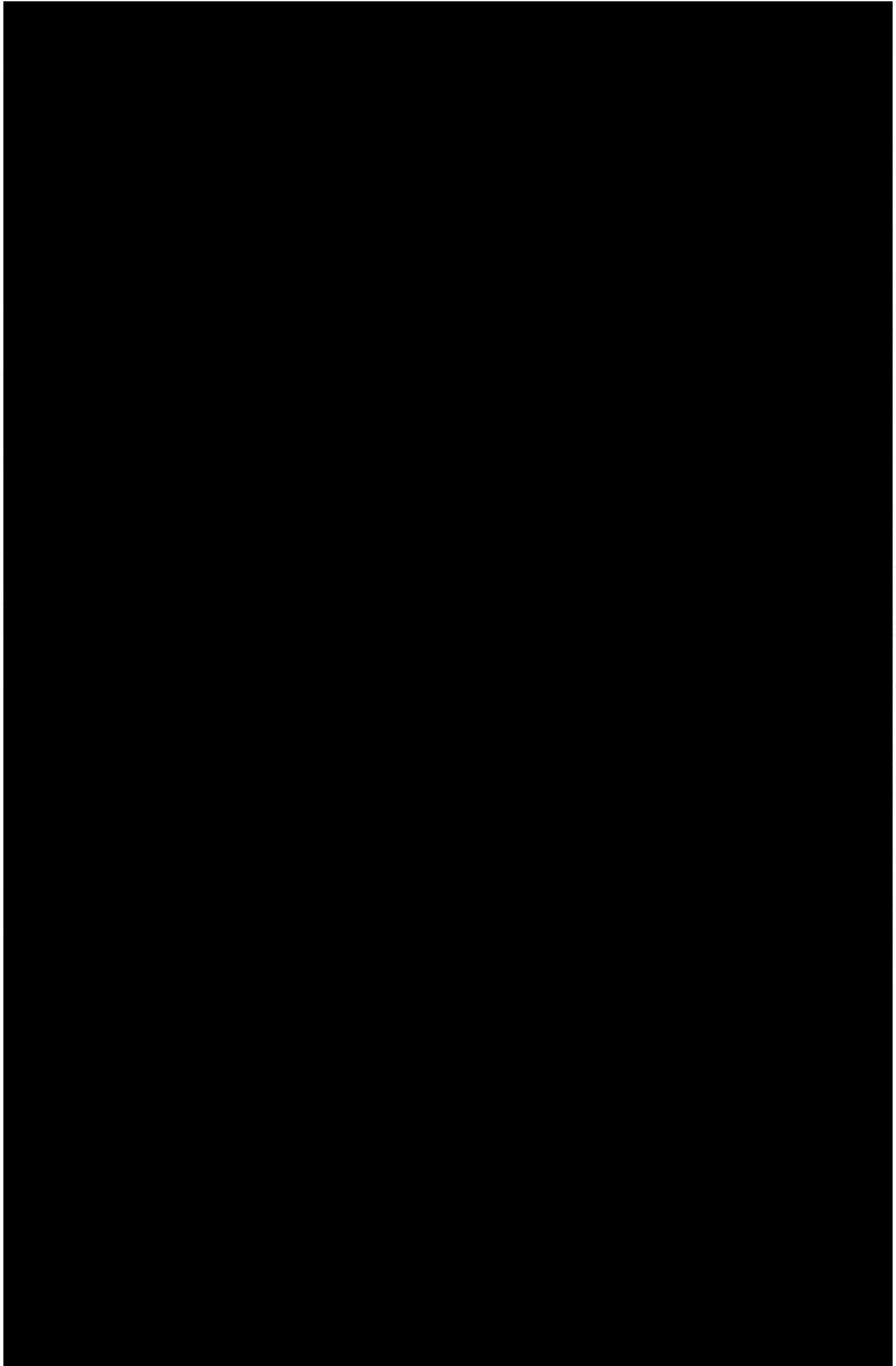


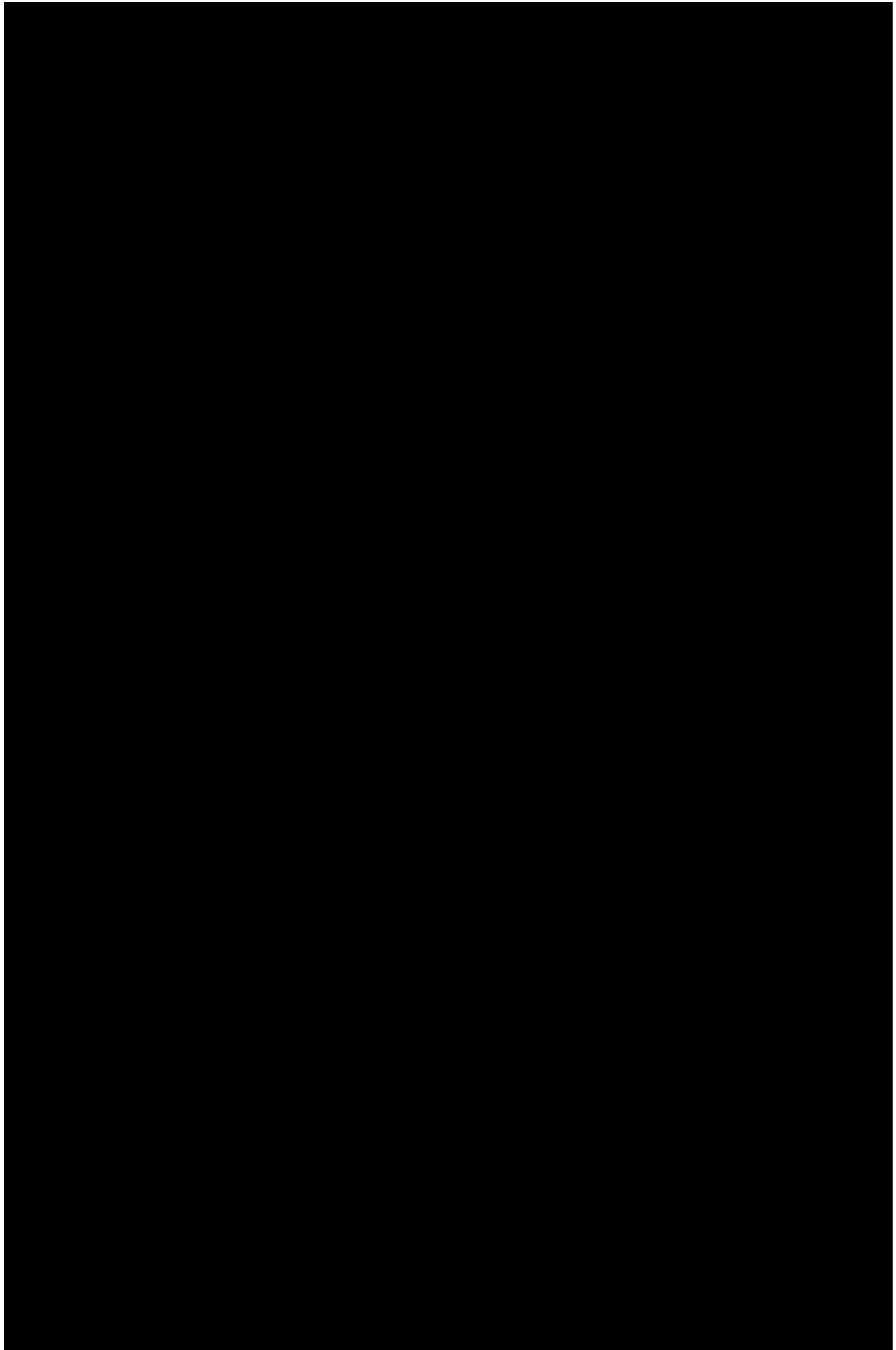




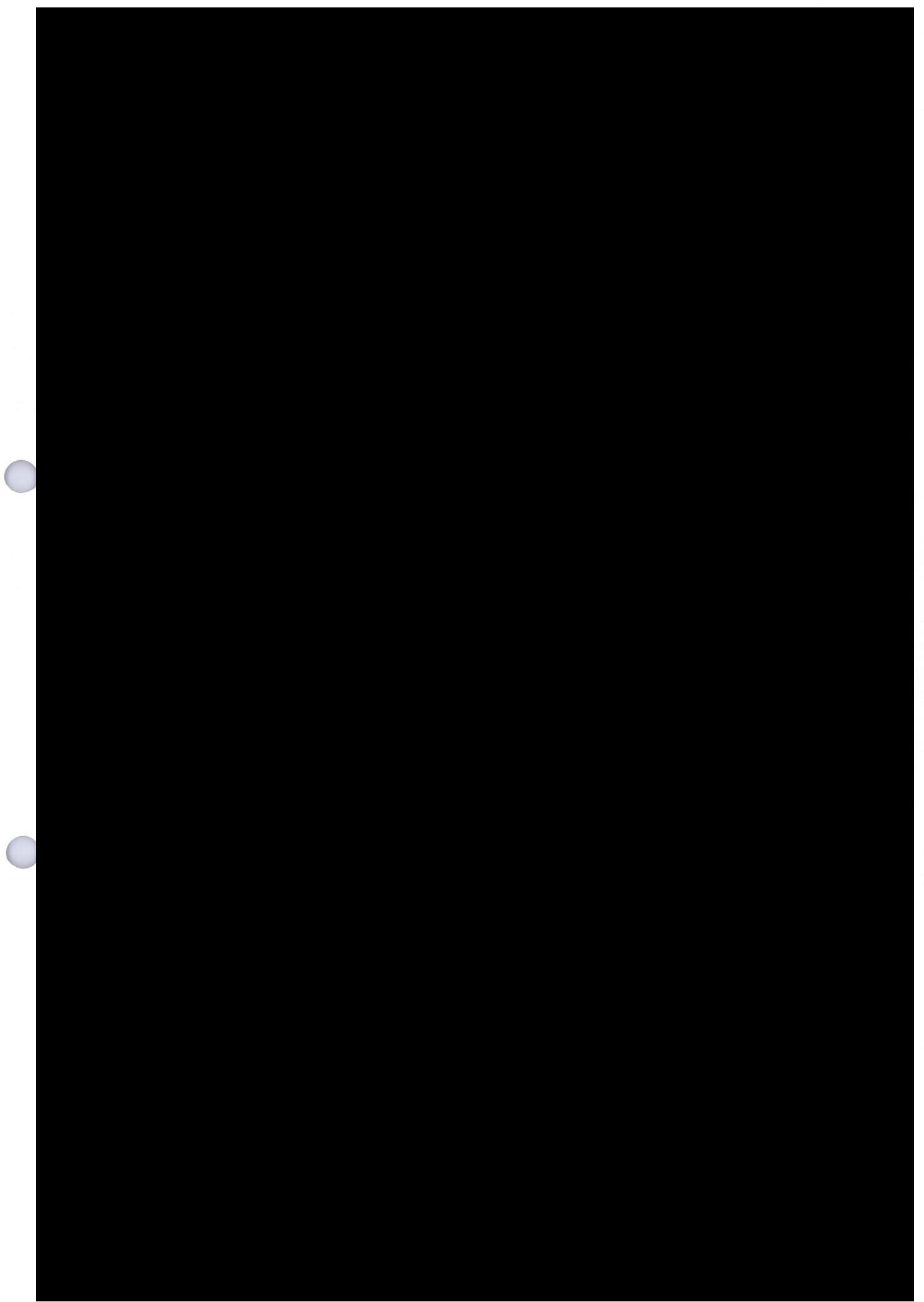




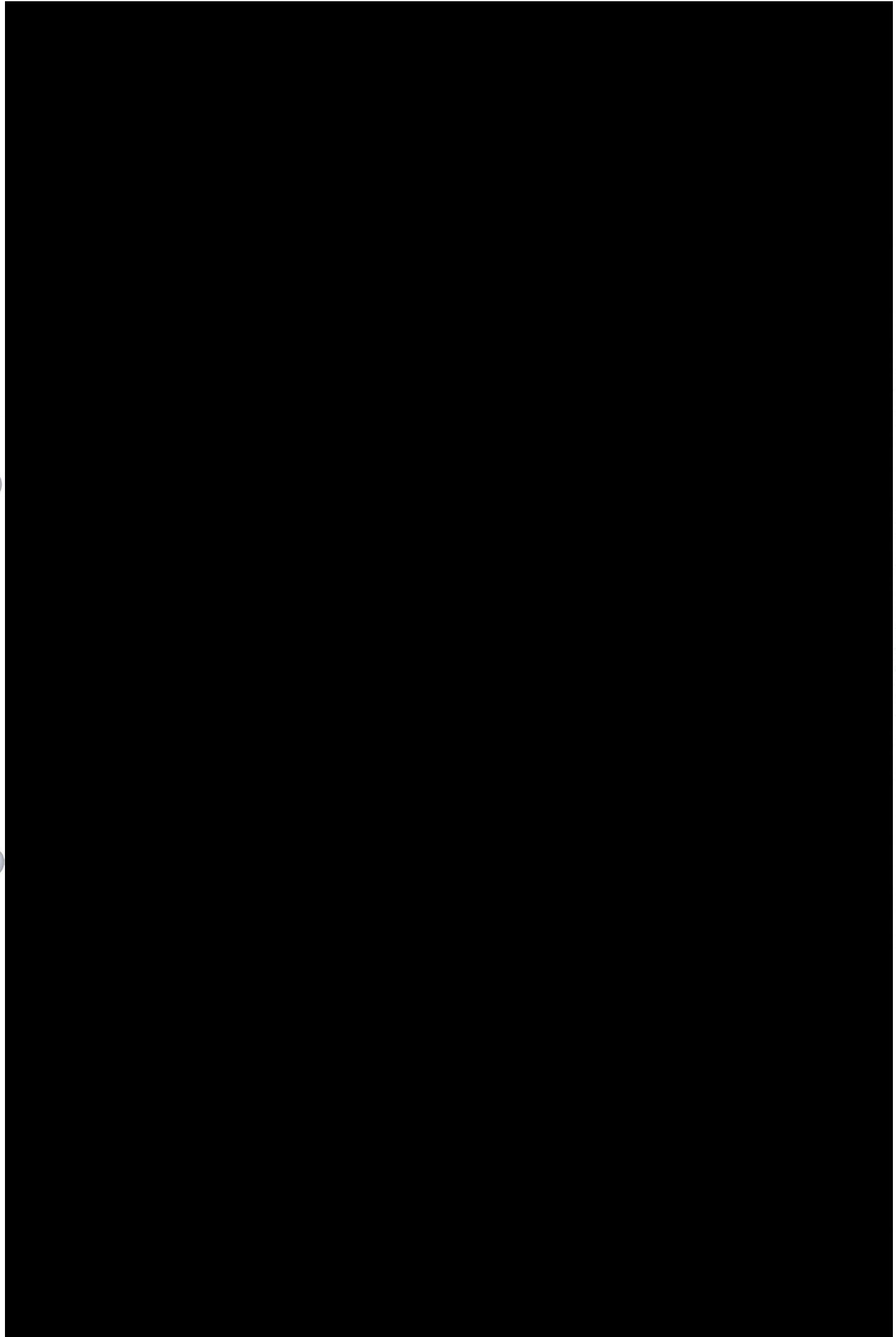












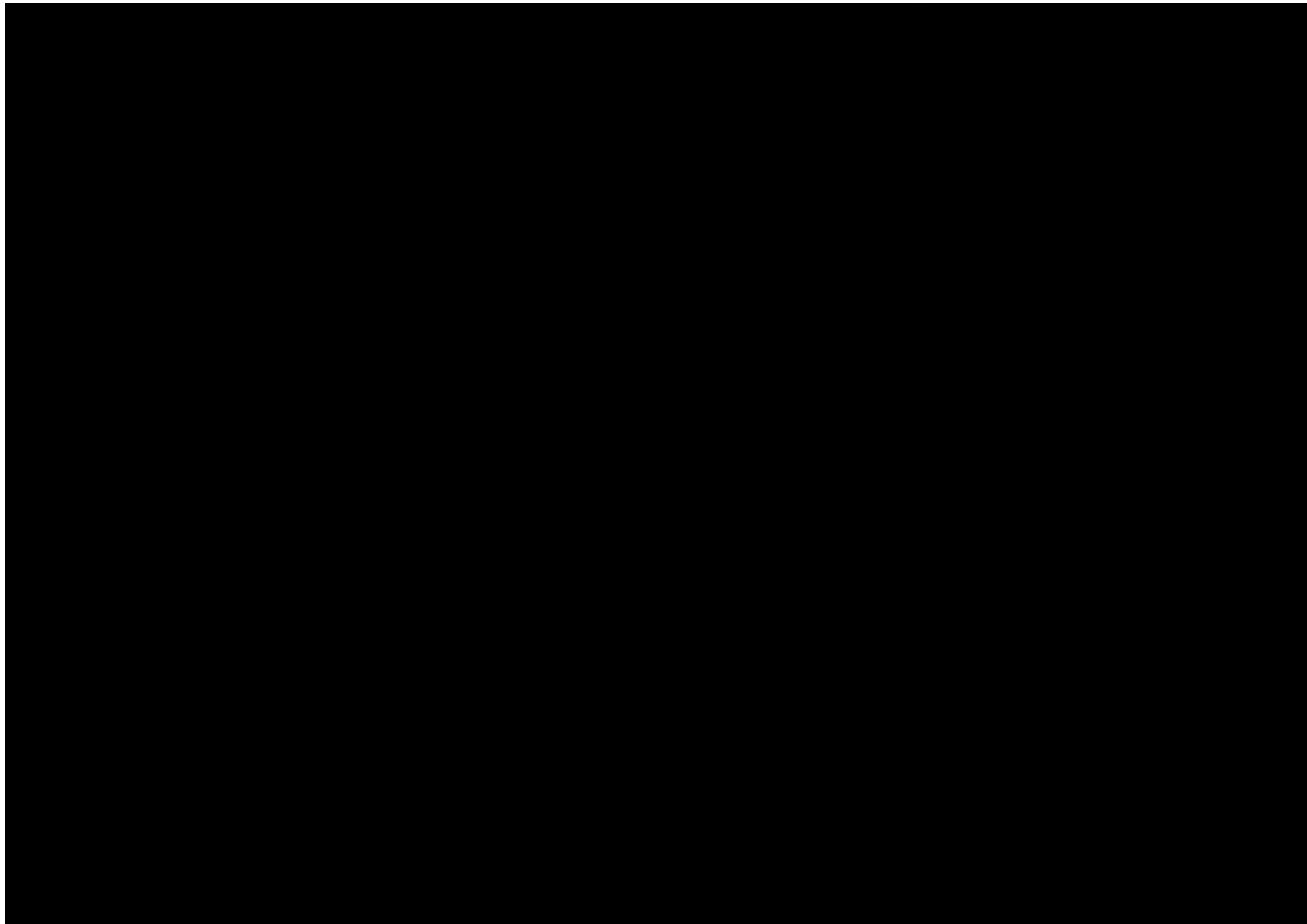








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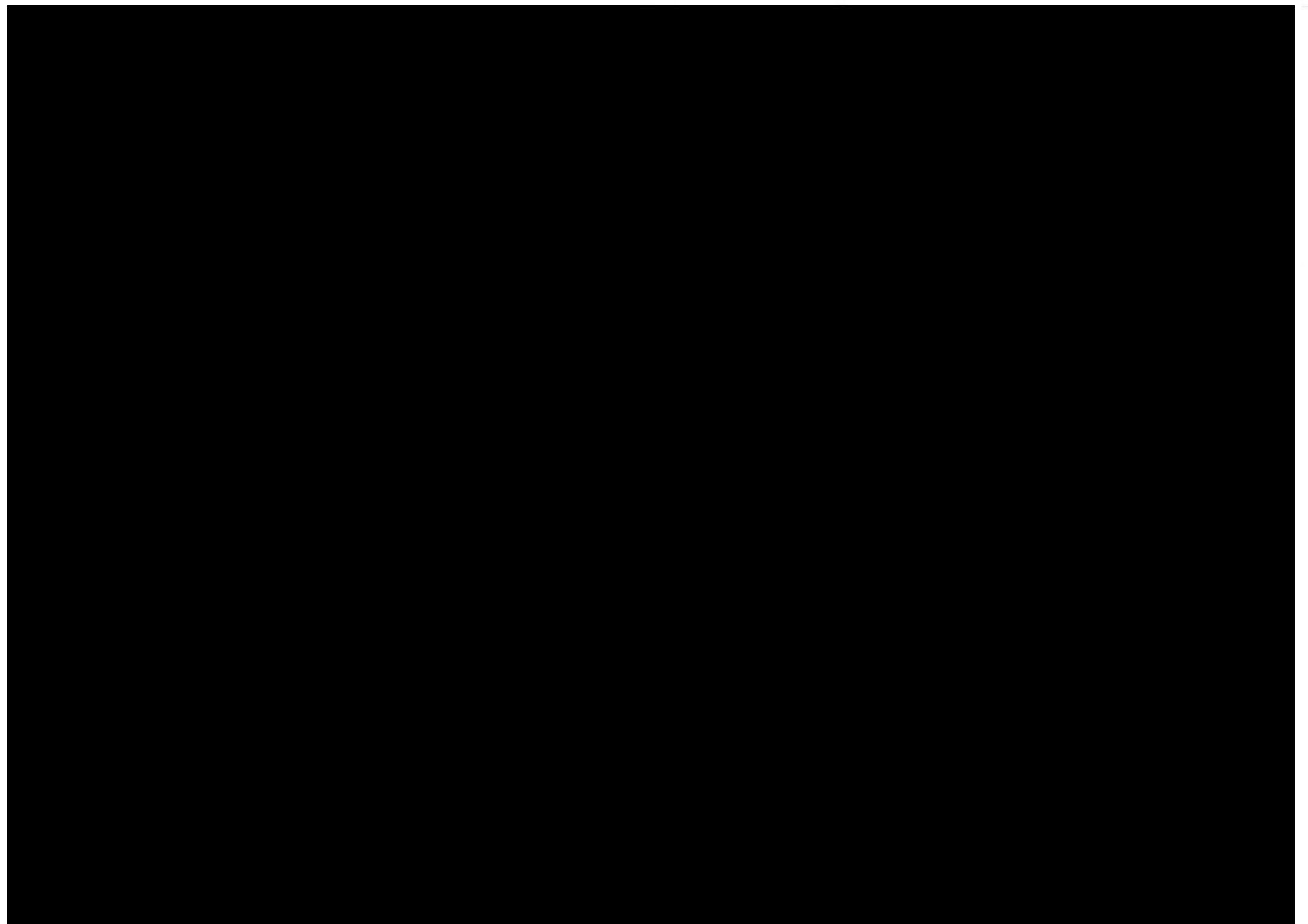


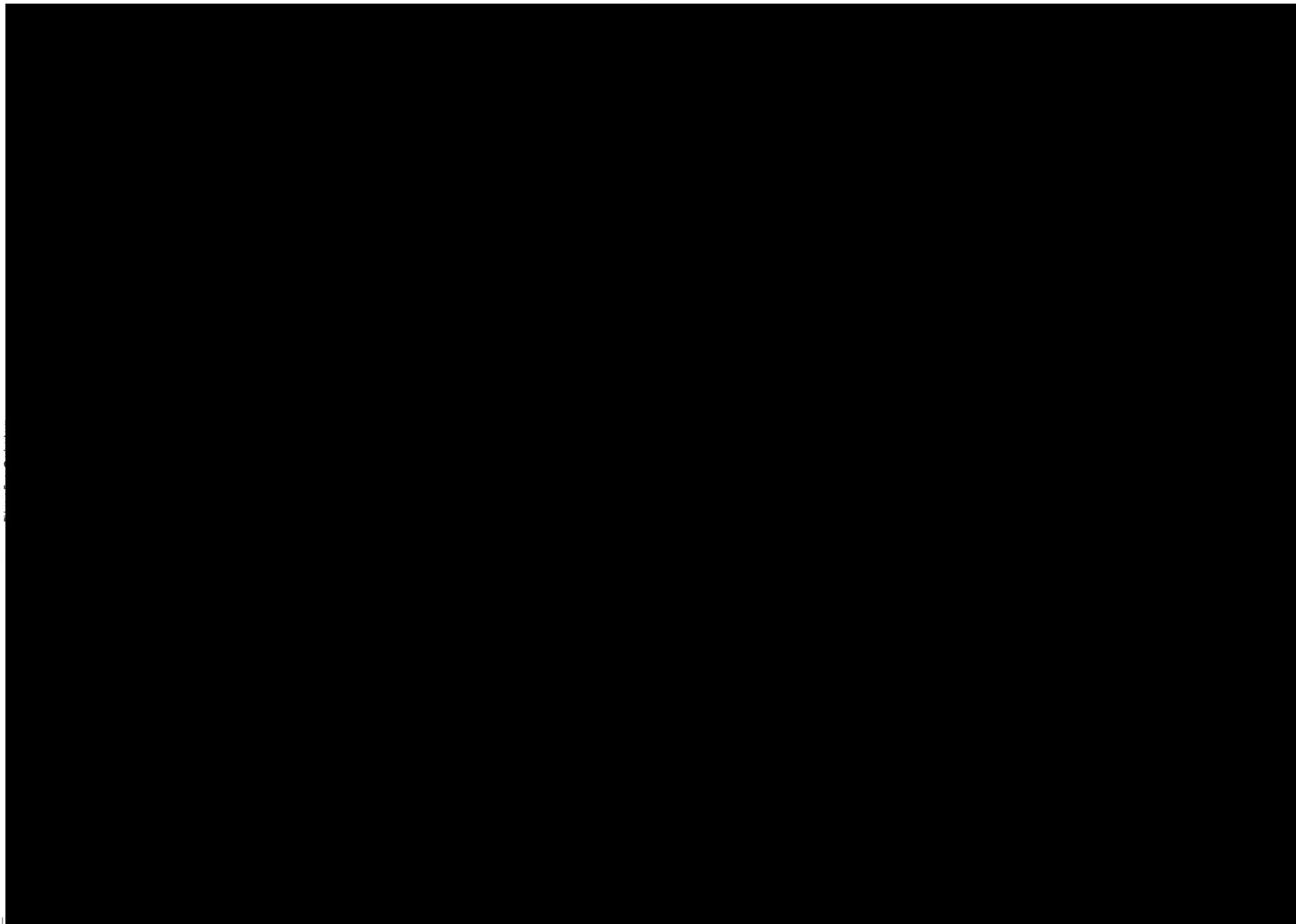


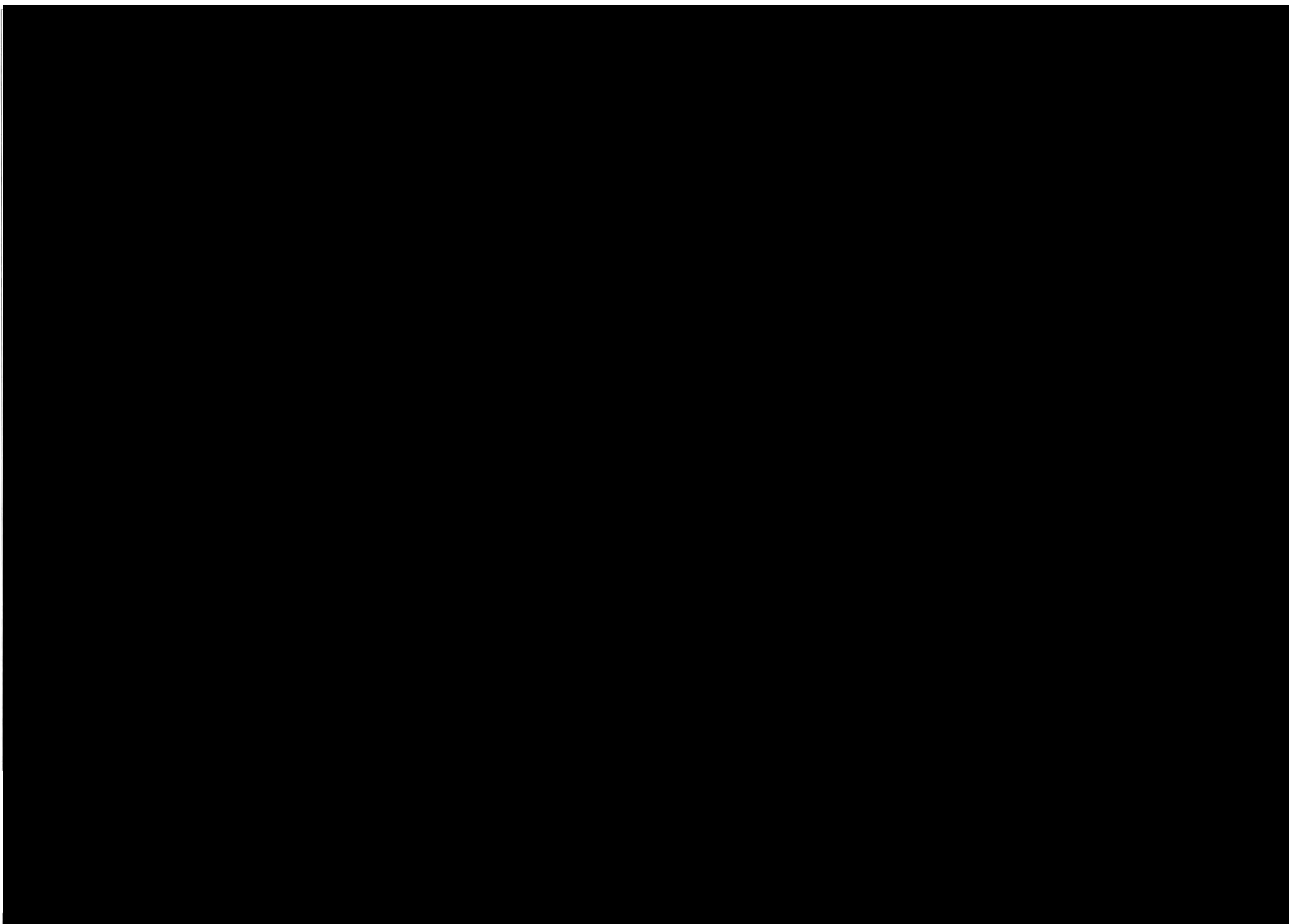




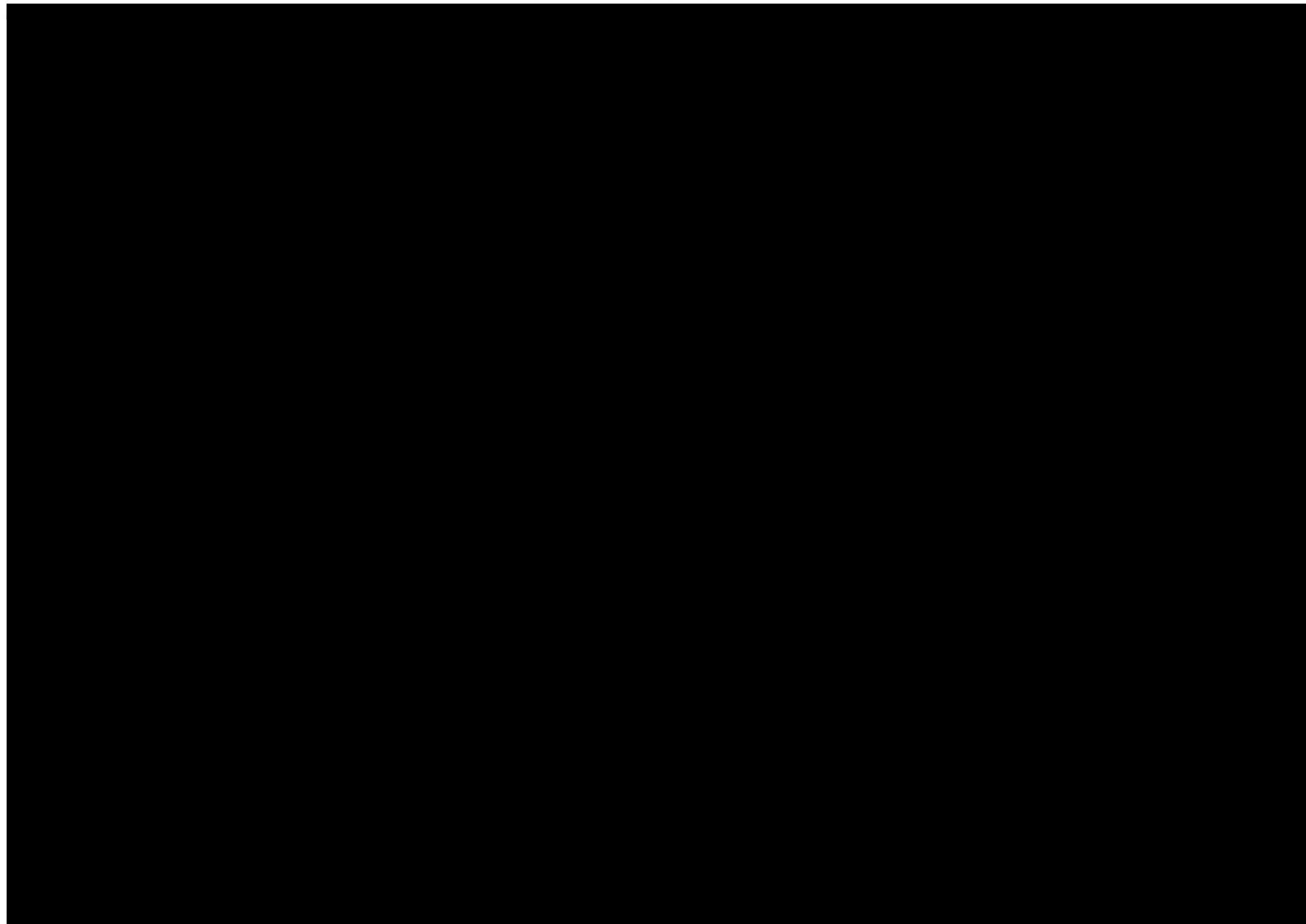


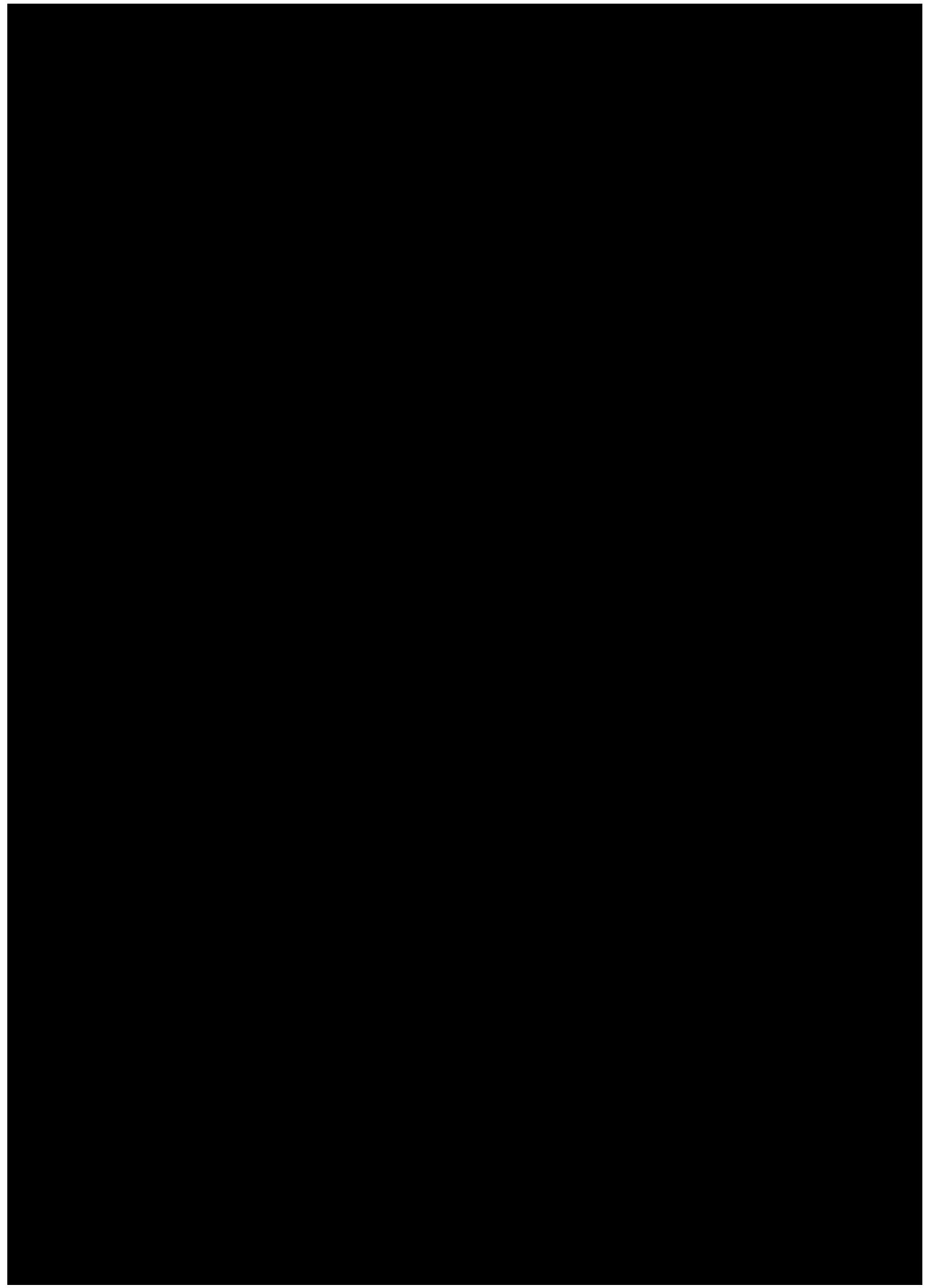


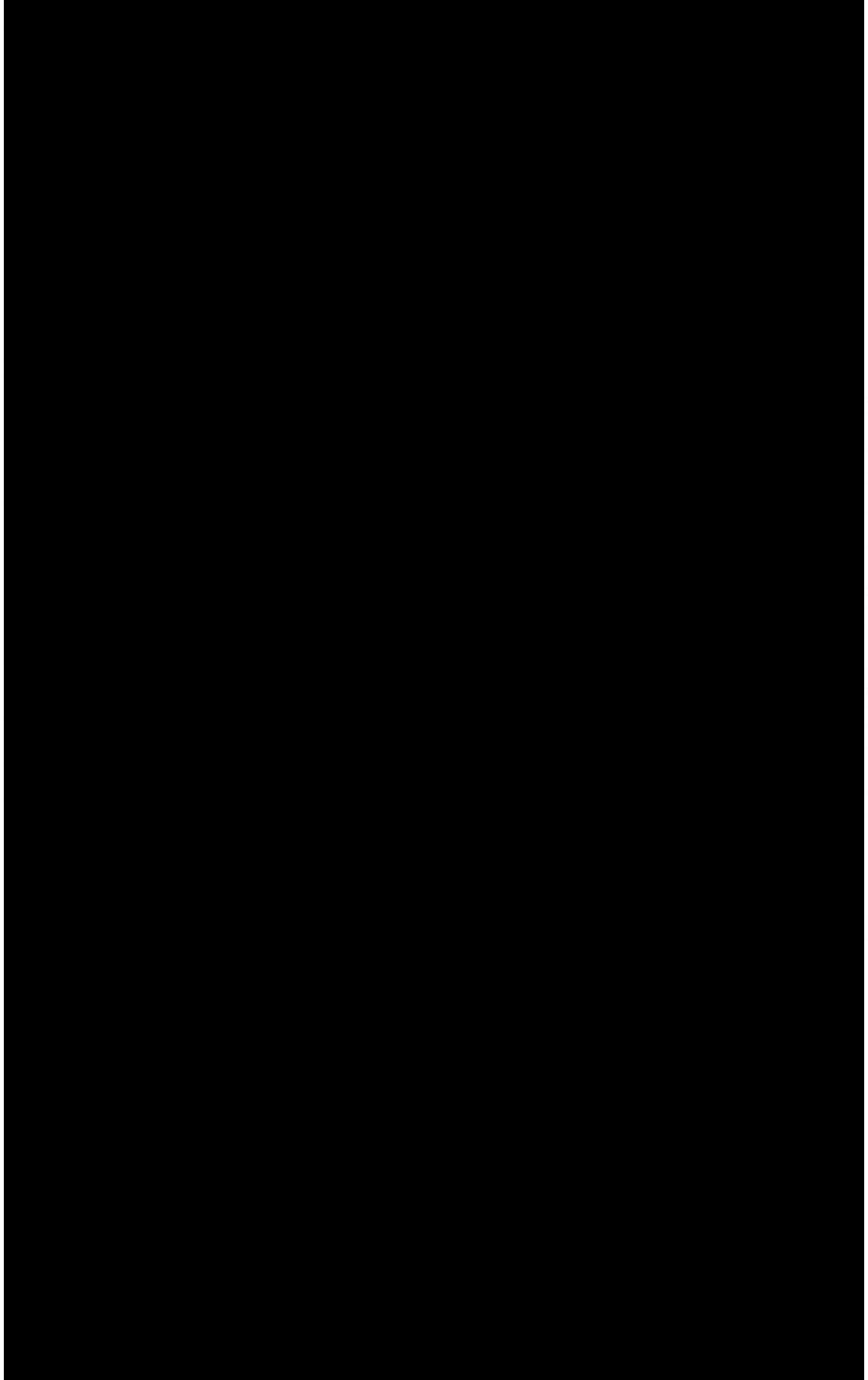


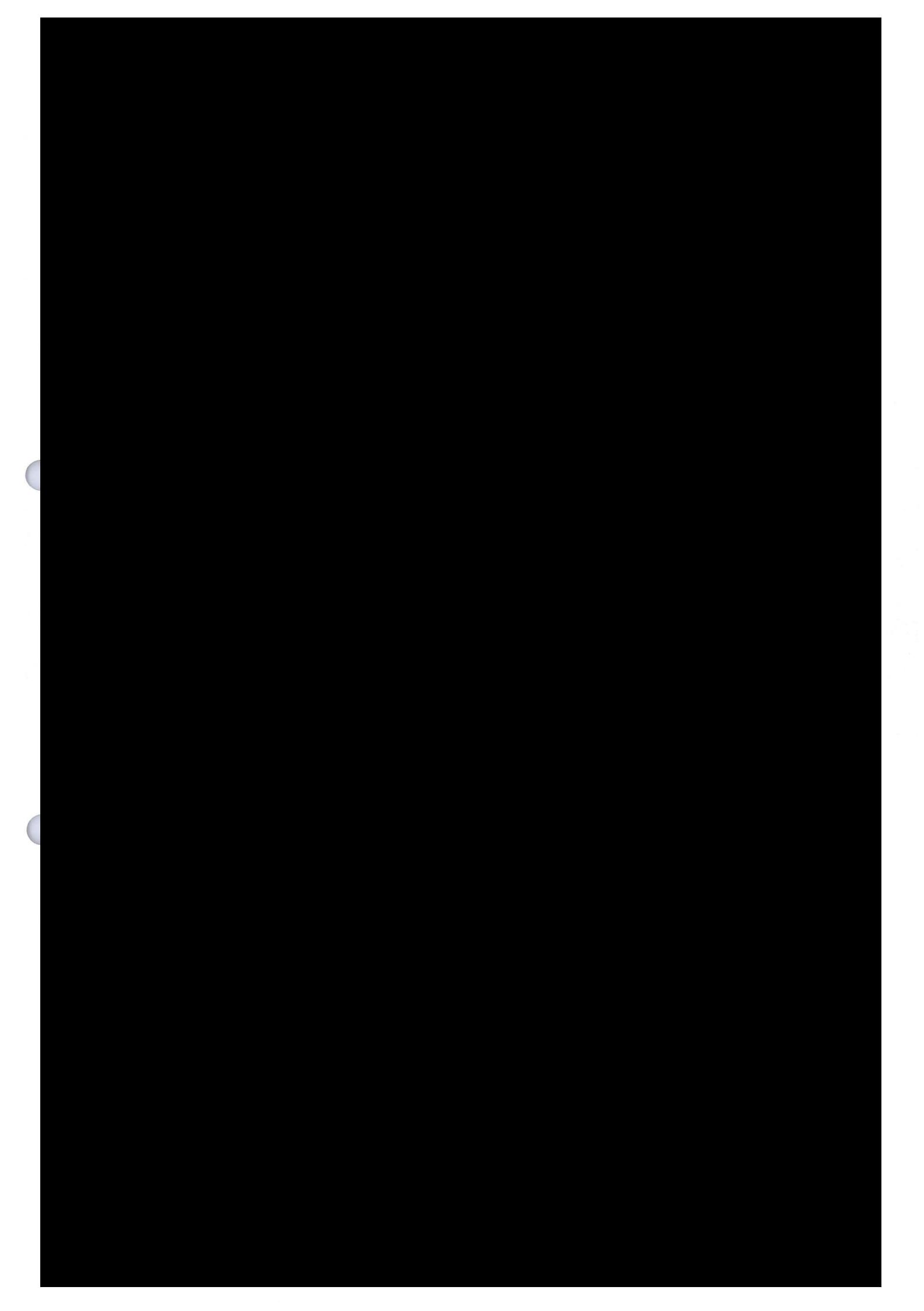




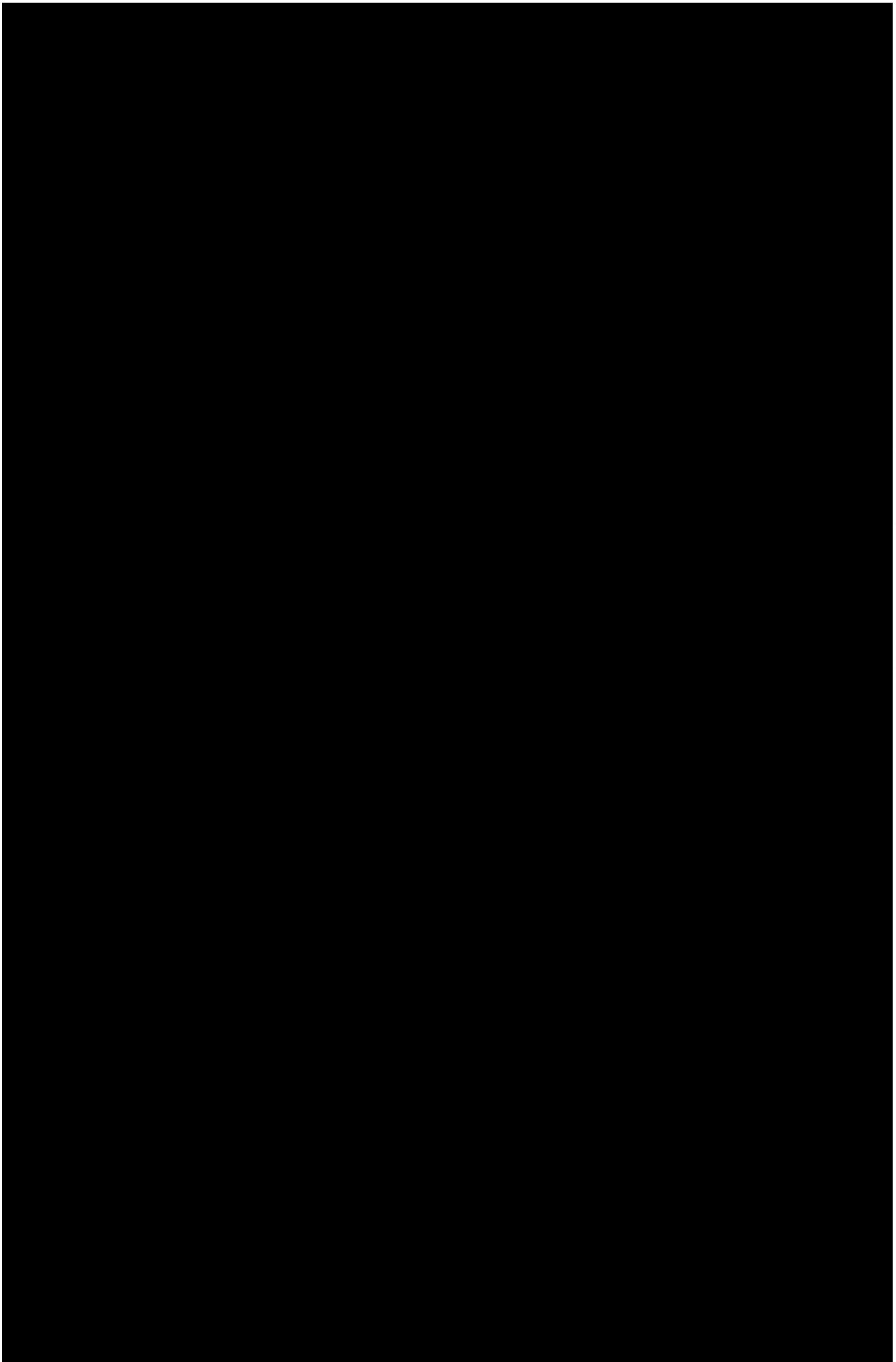








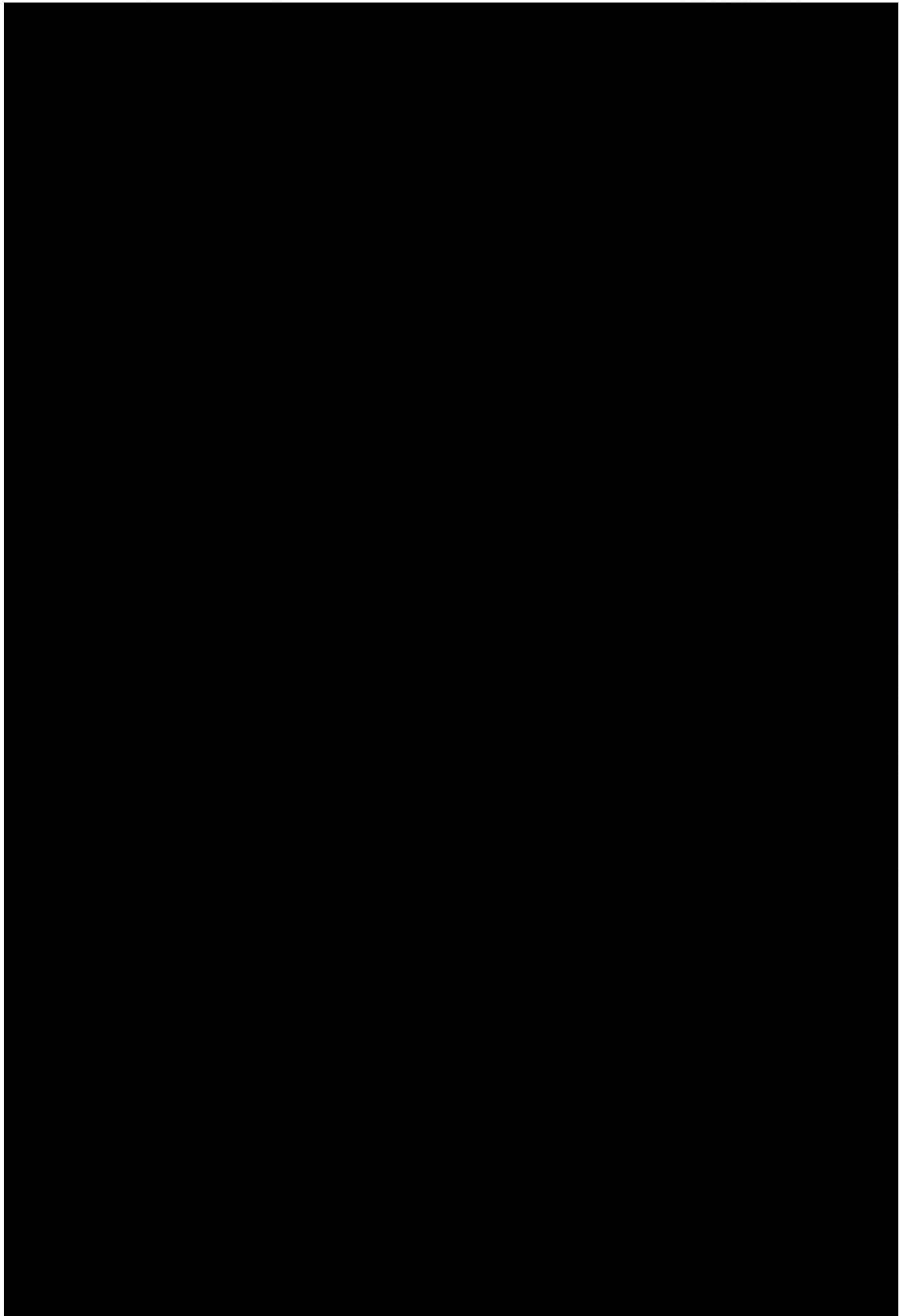


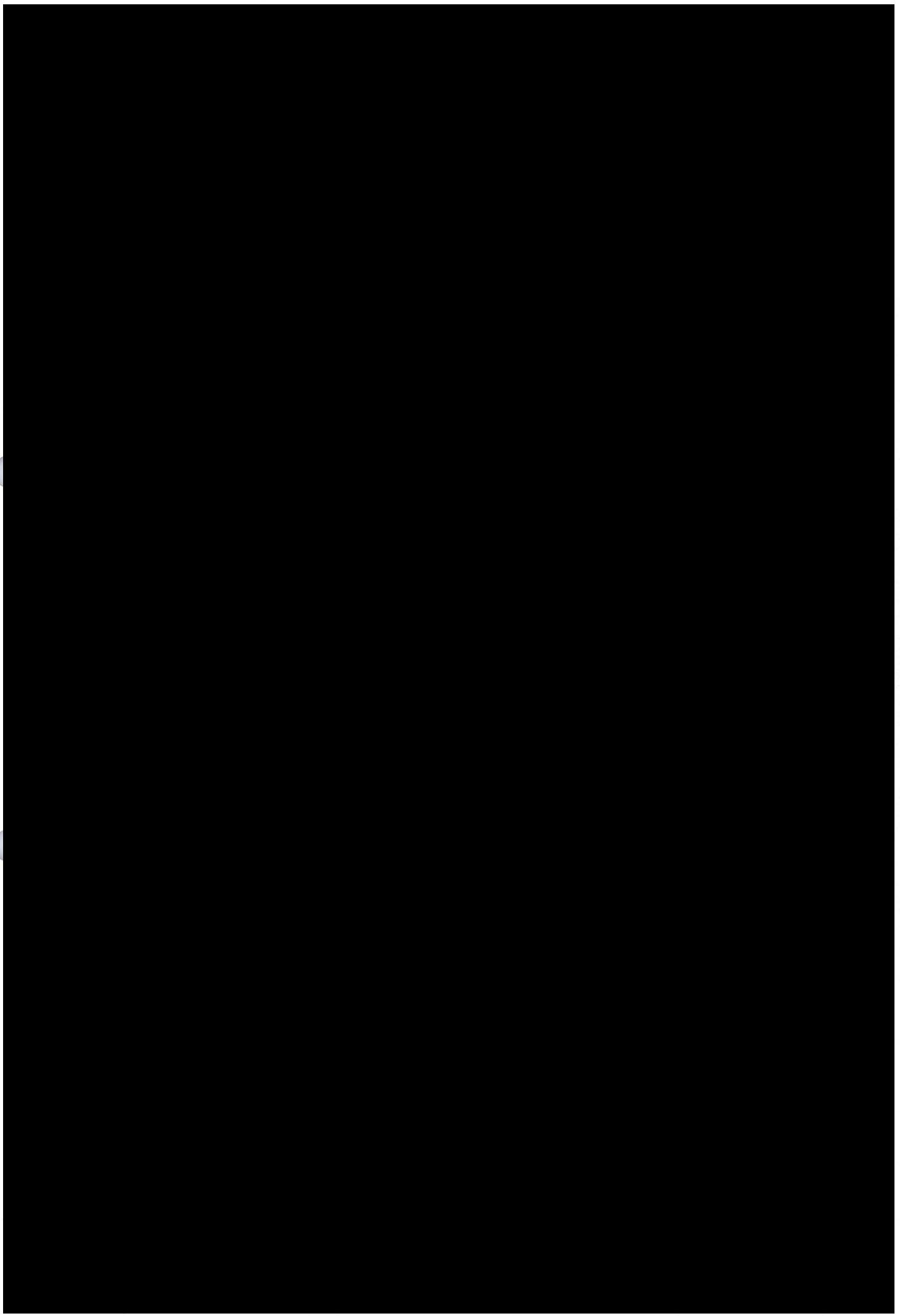




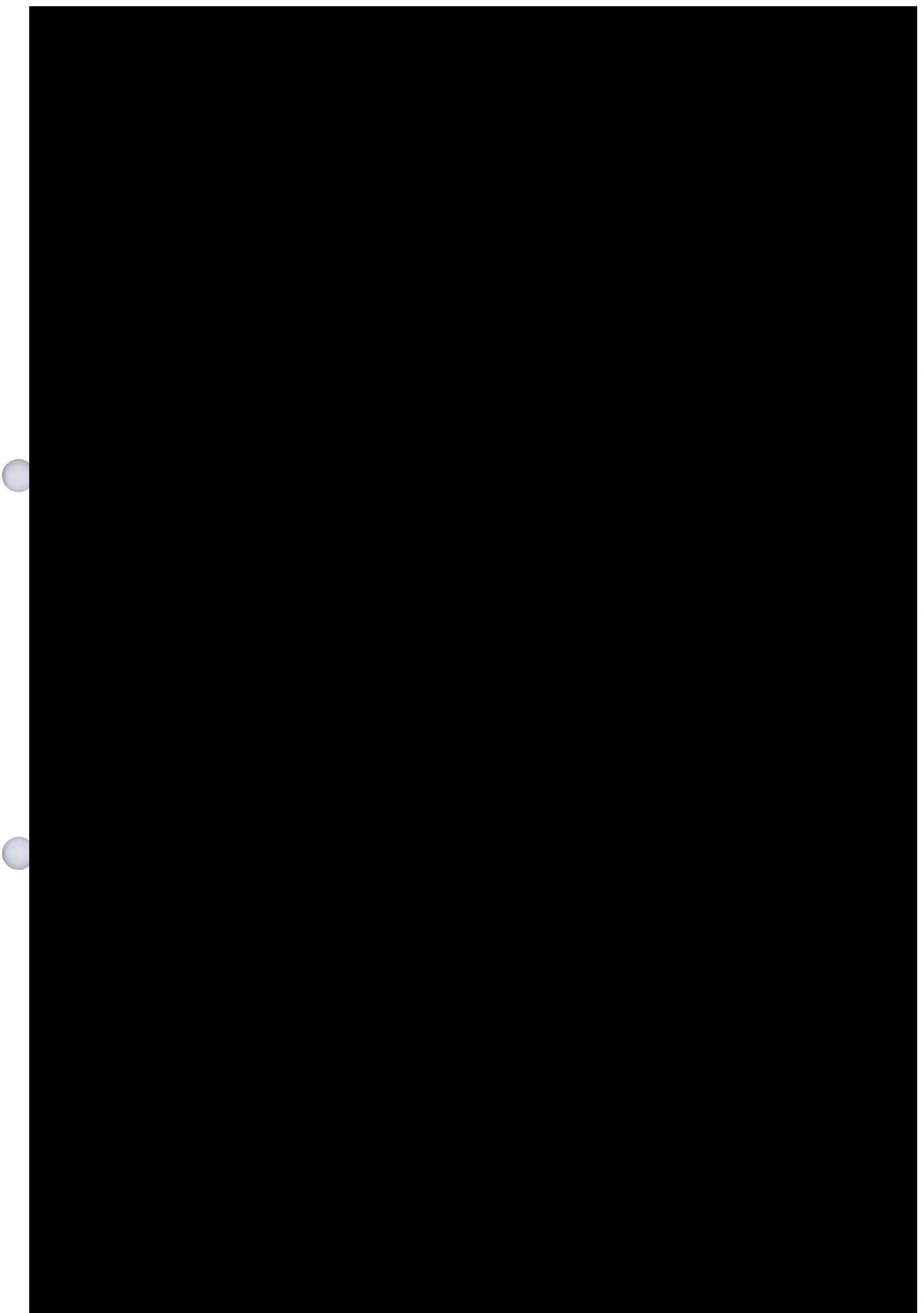
**SCHEDULE D15. – ISD OPERATIONS PRINCIPLES**

(Schedule A2)



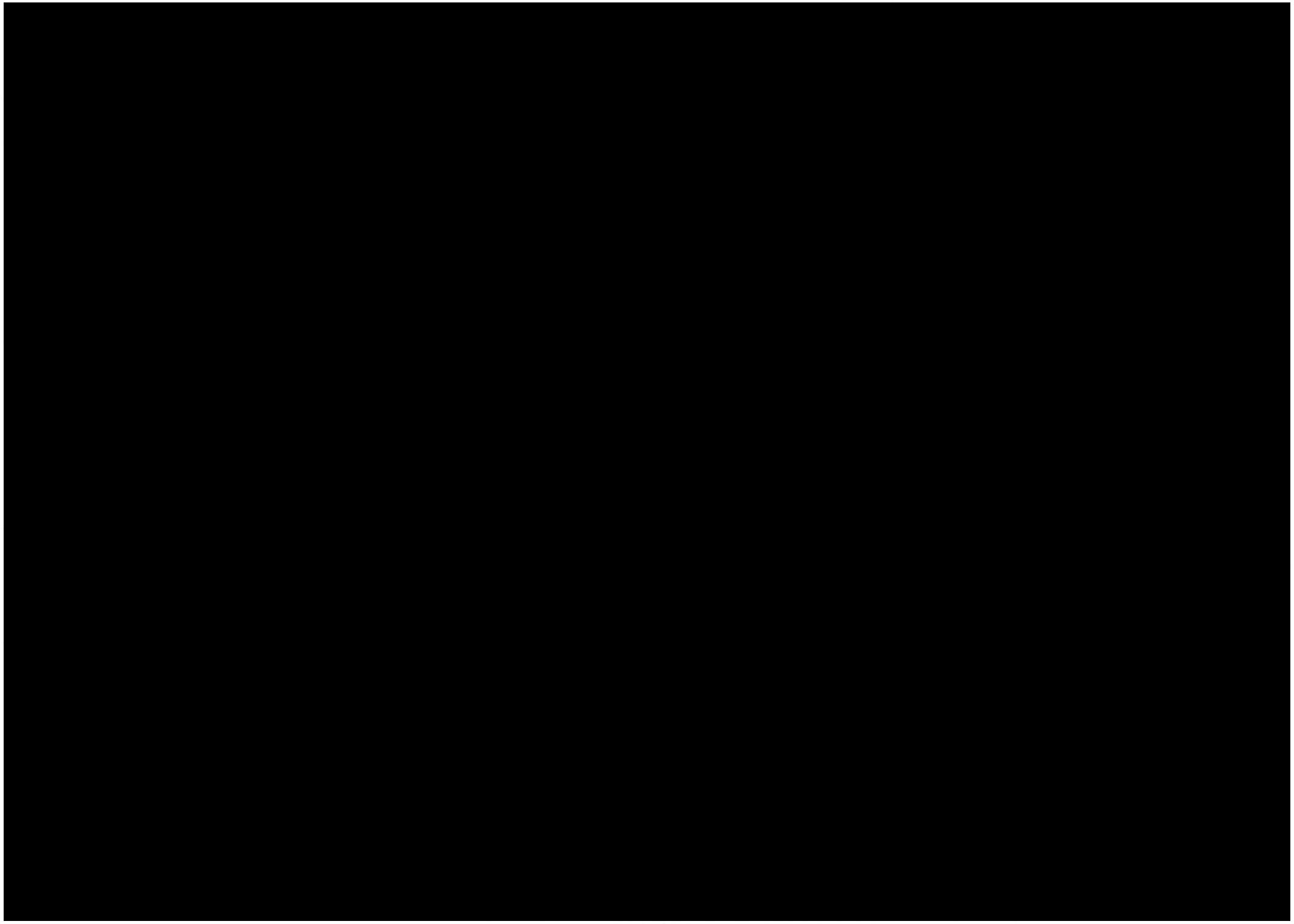


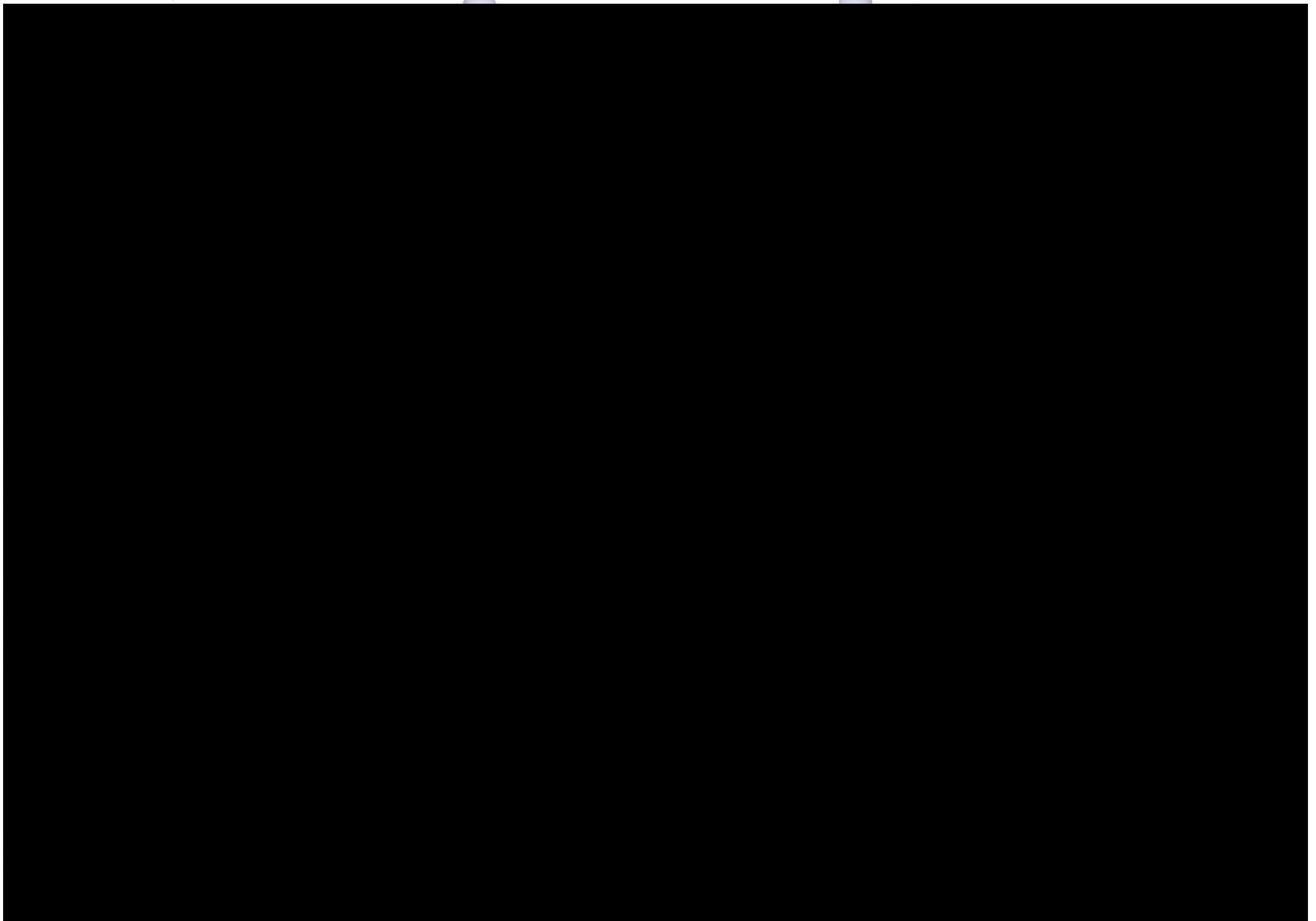


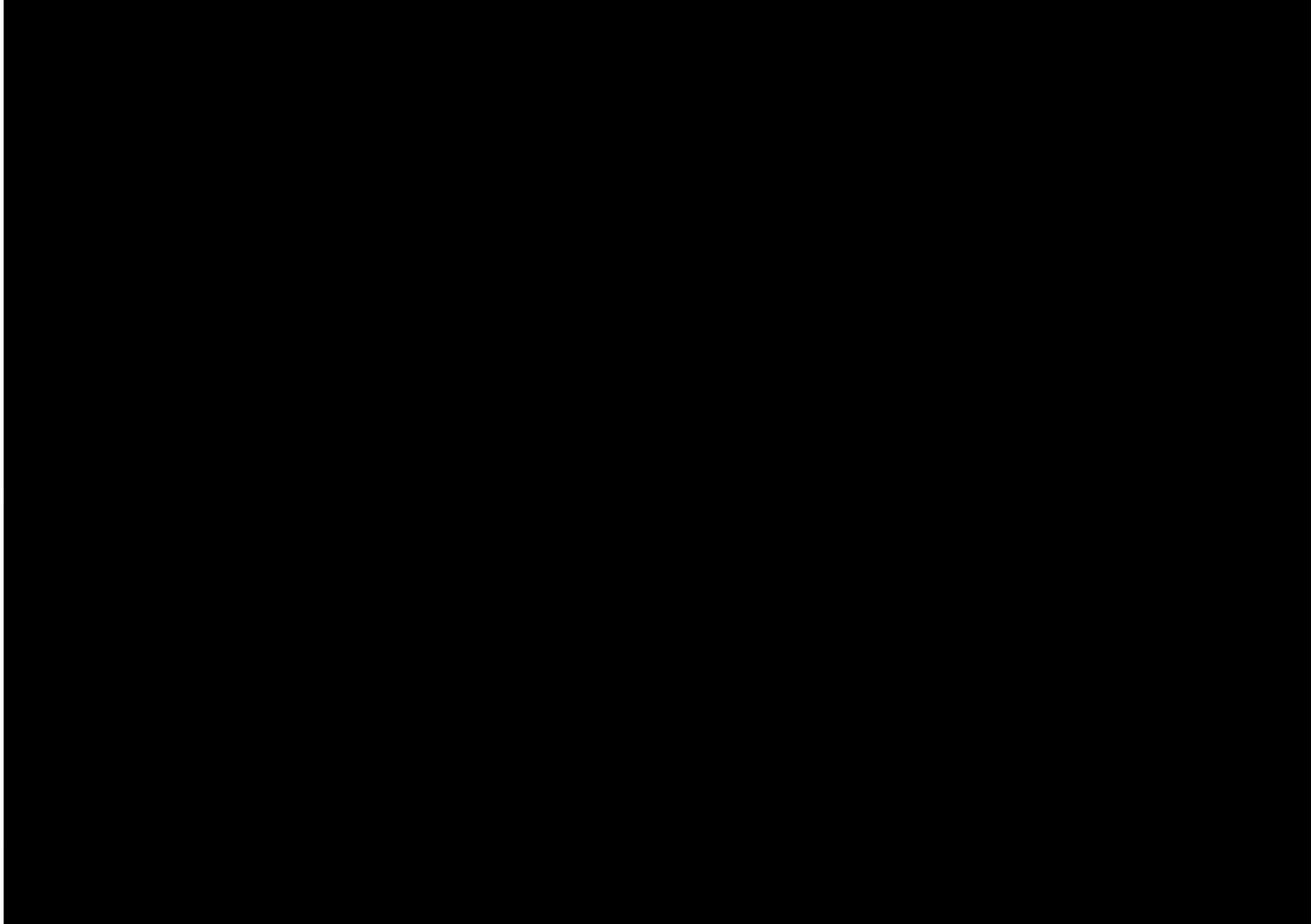








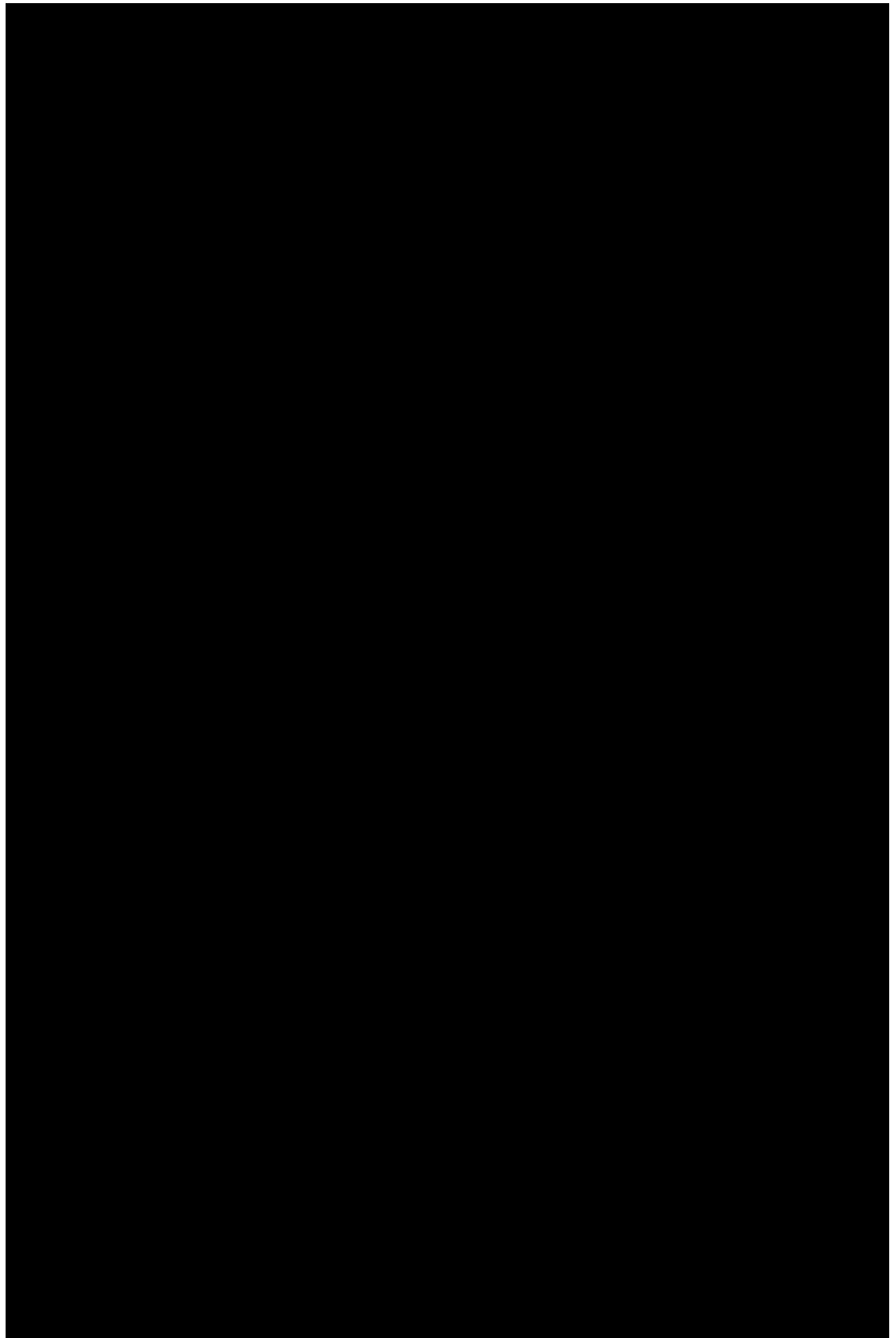




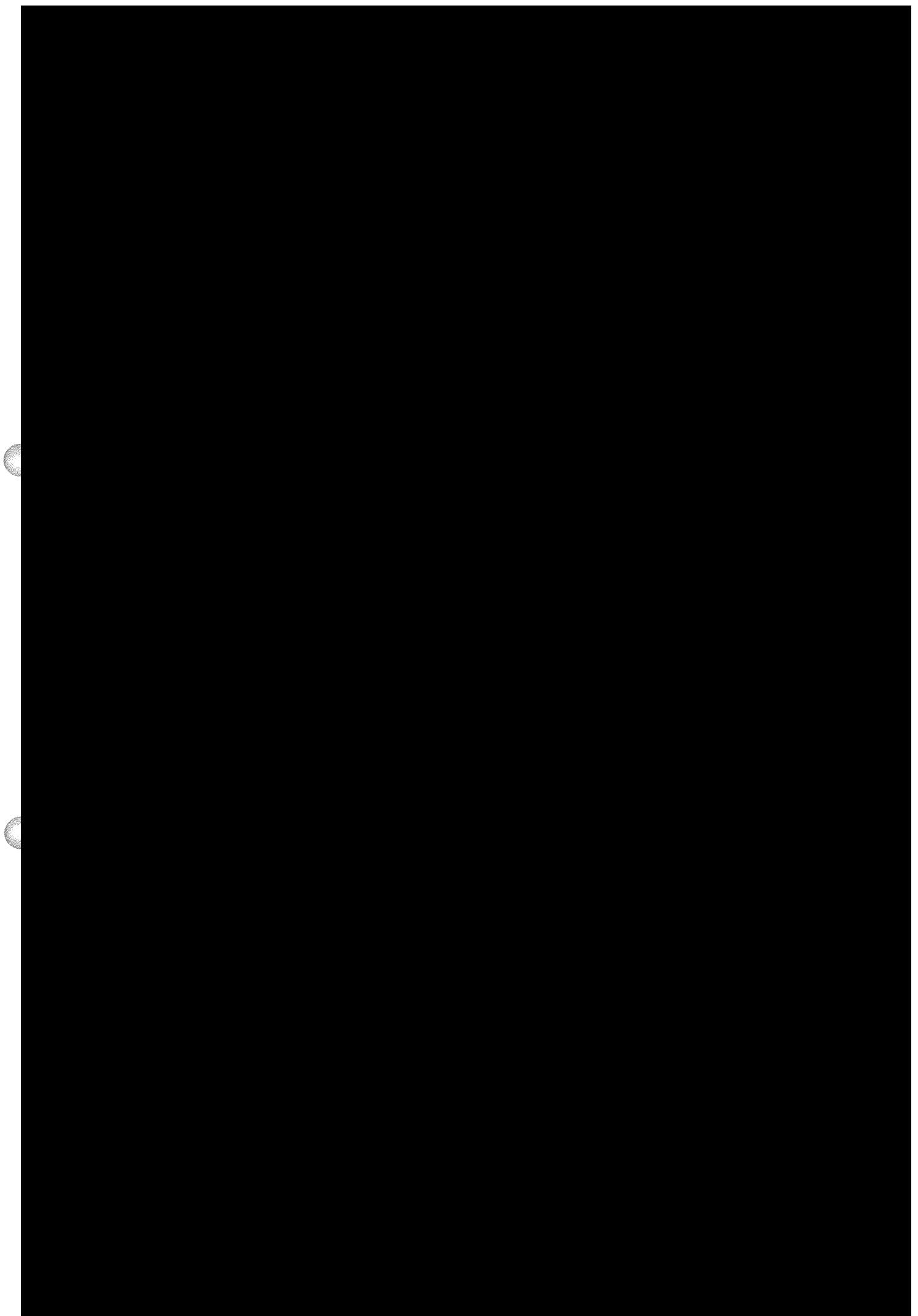
**SCHEDULE D16. – SECTION 88B INSTRUMENTS**

(Schedule A2 and clause 9.11(d))



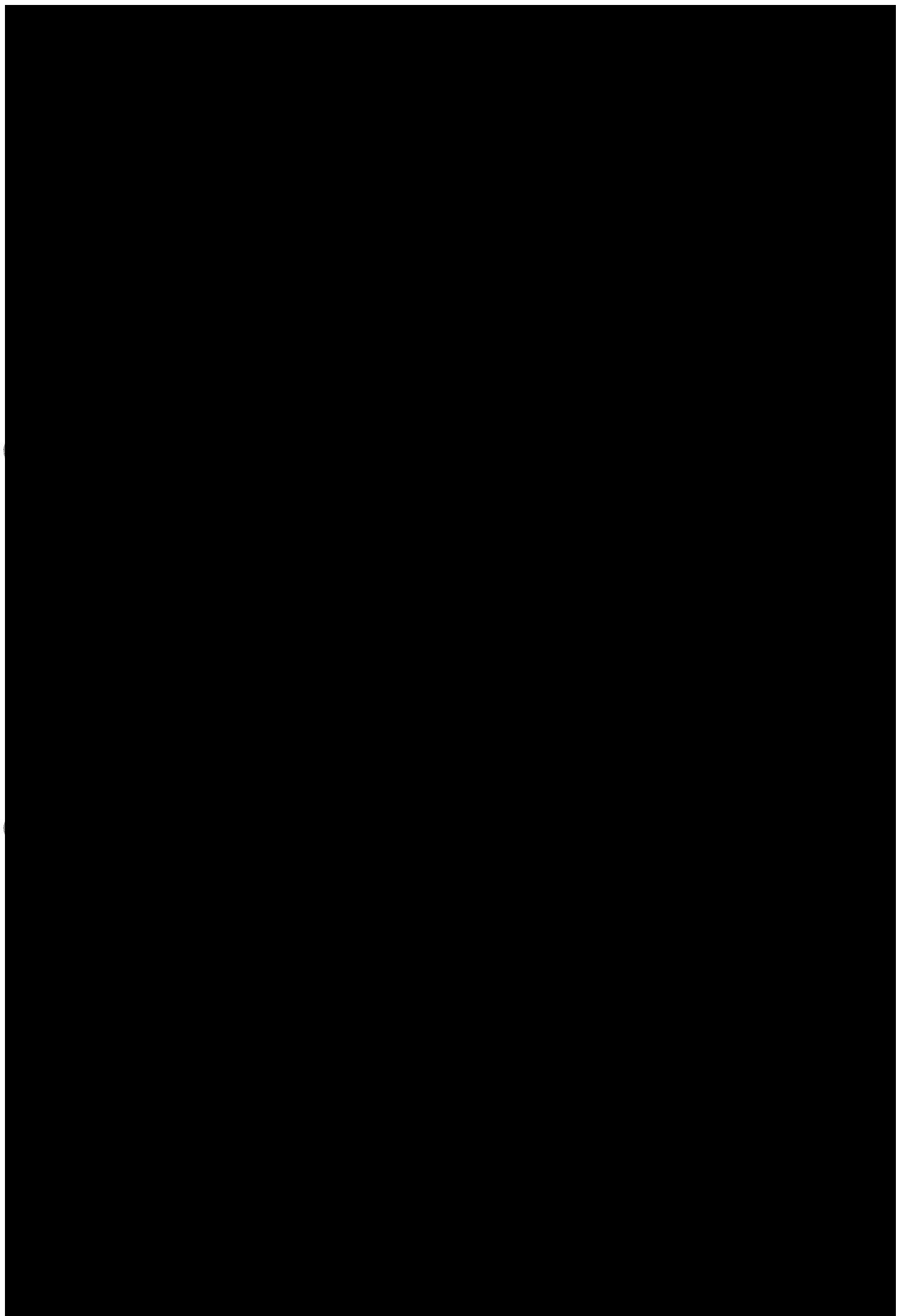










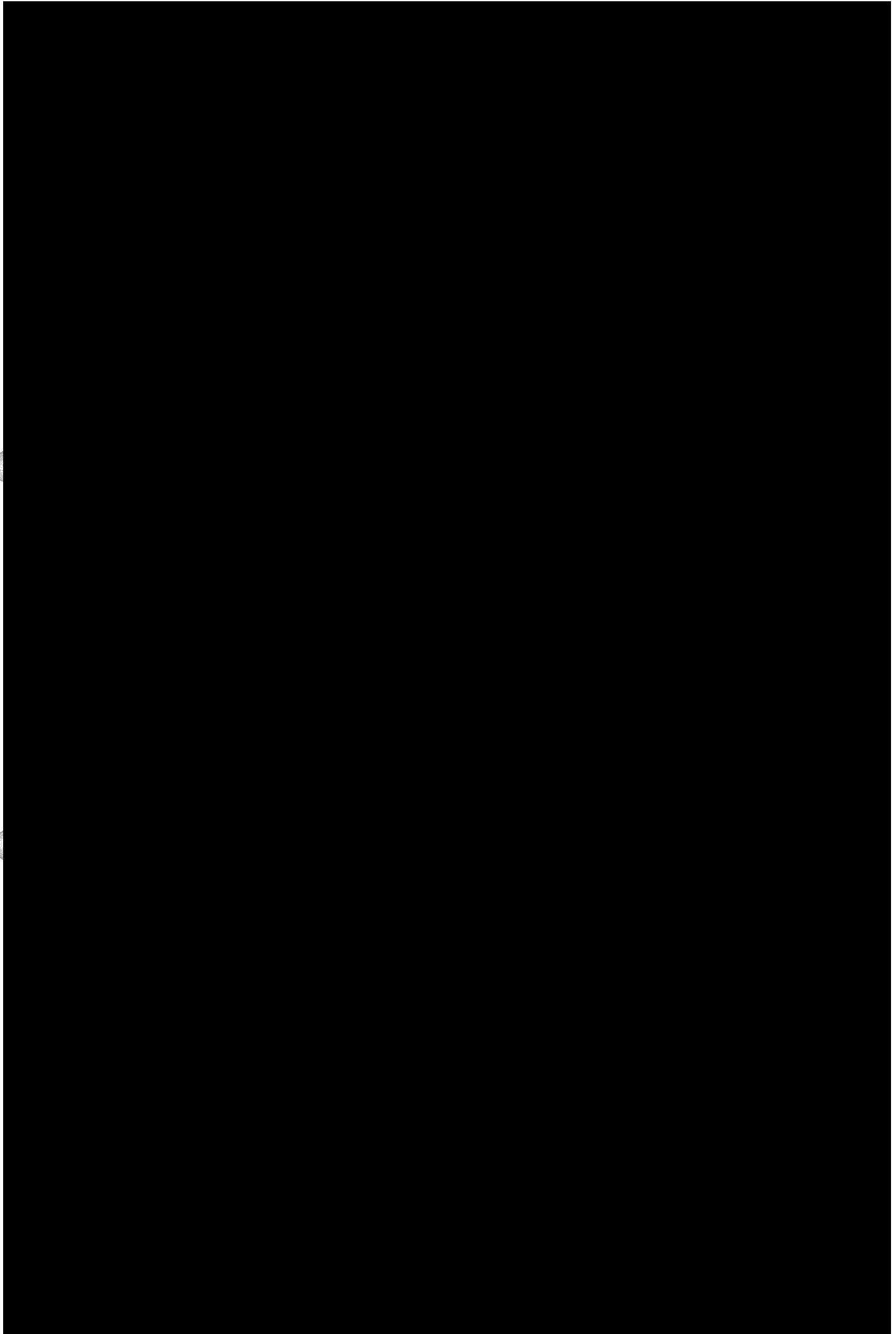




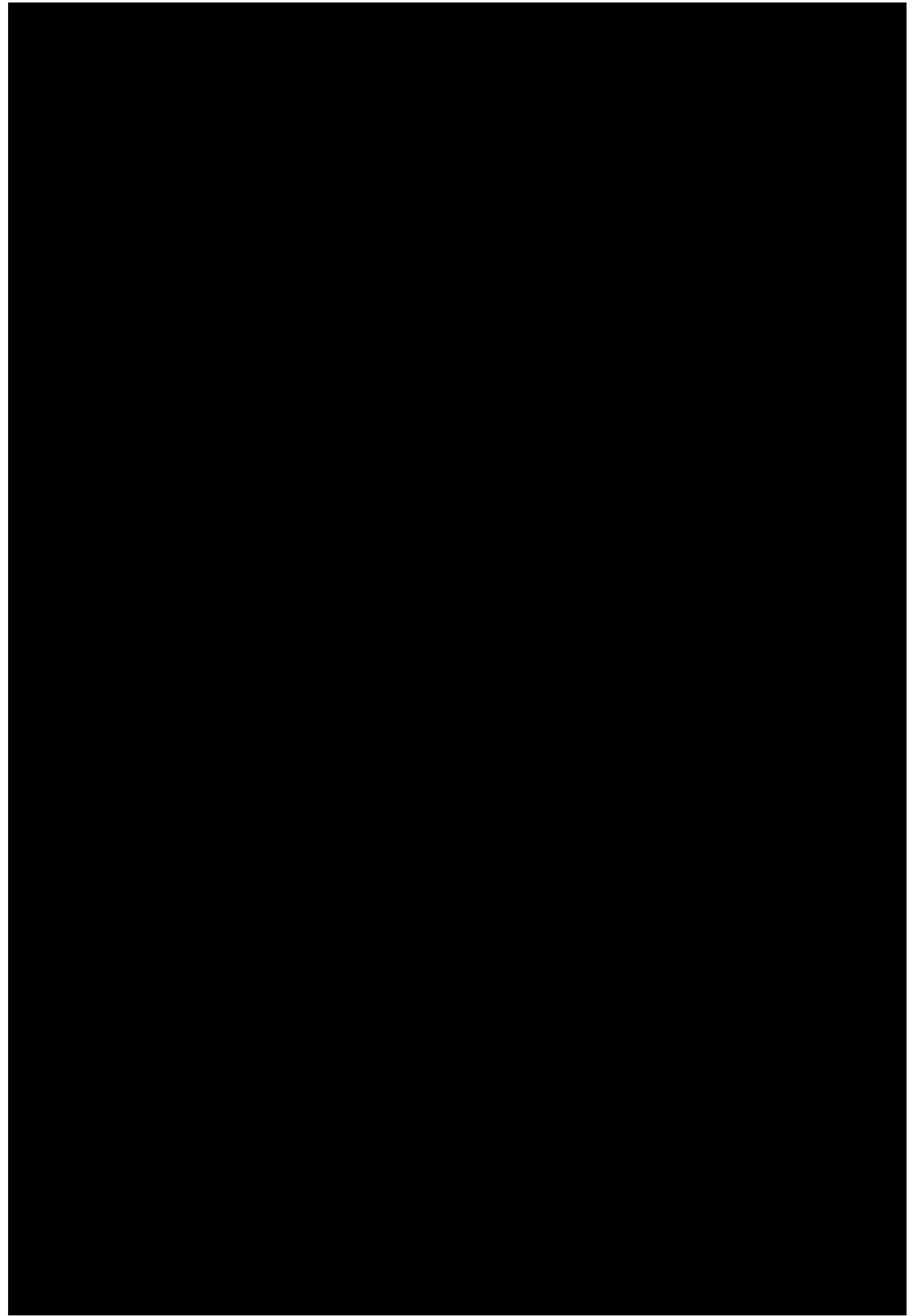








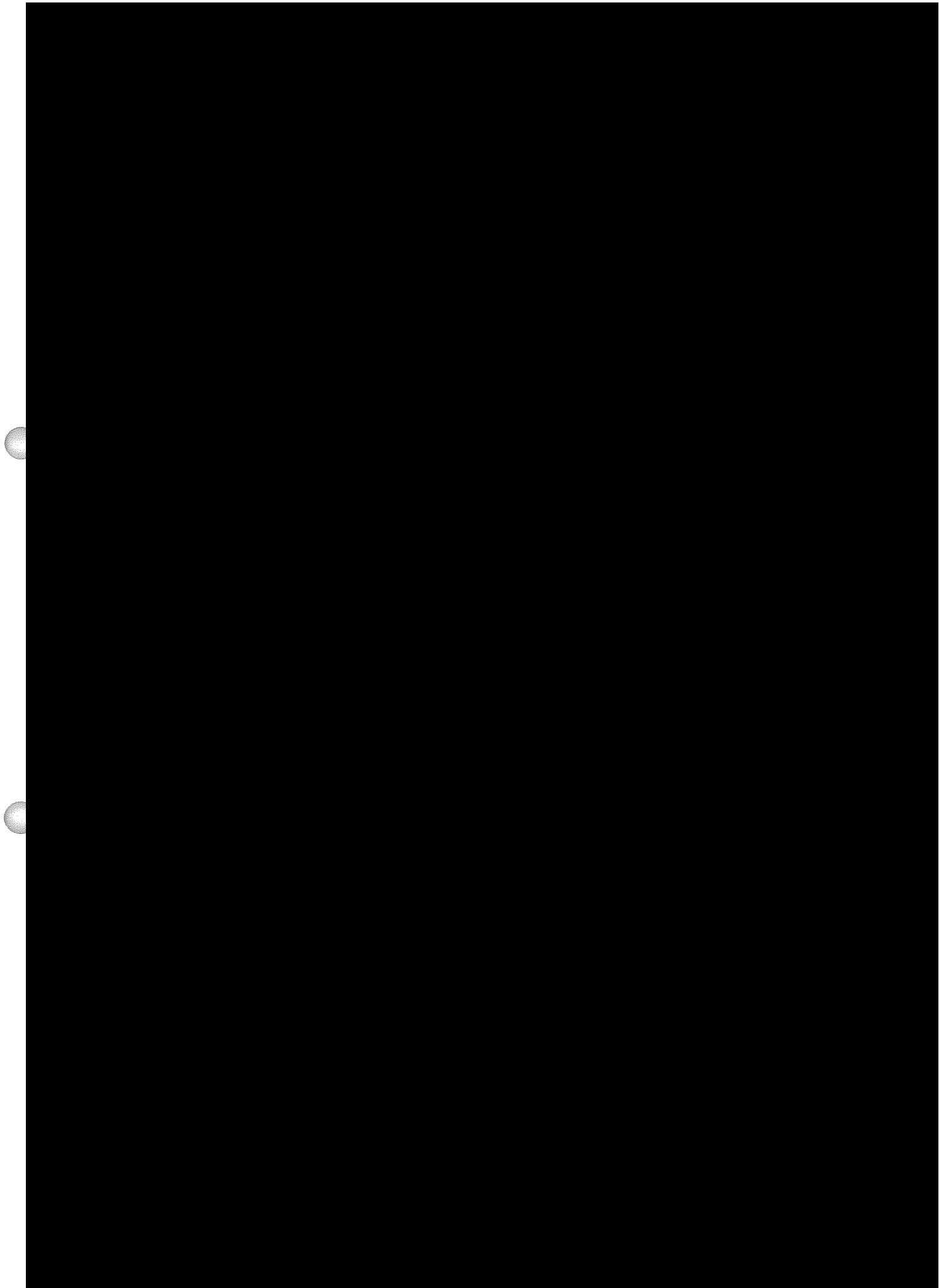


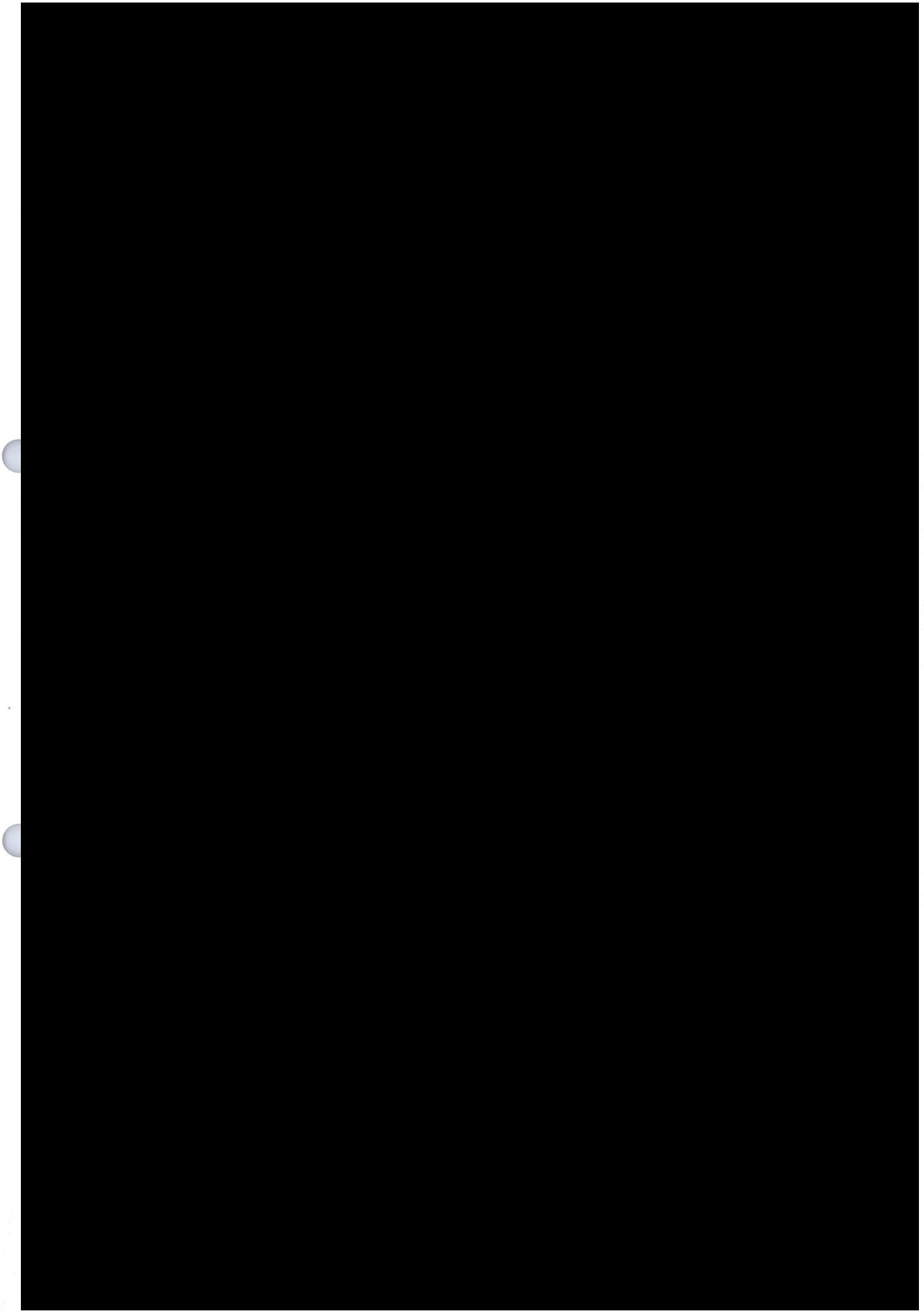












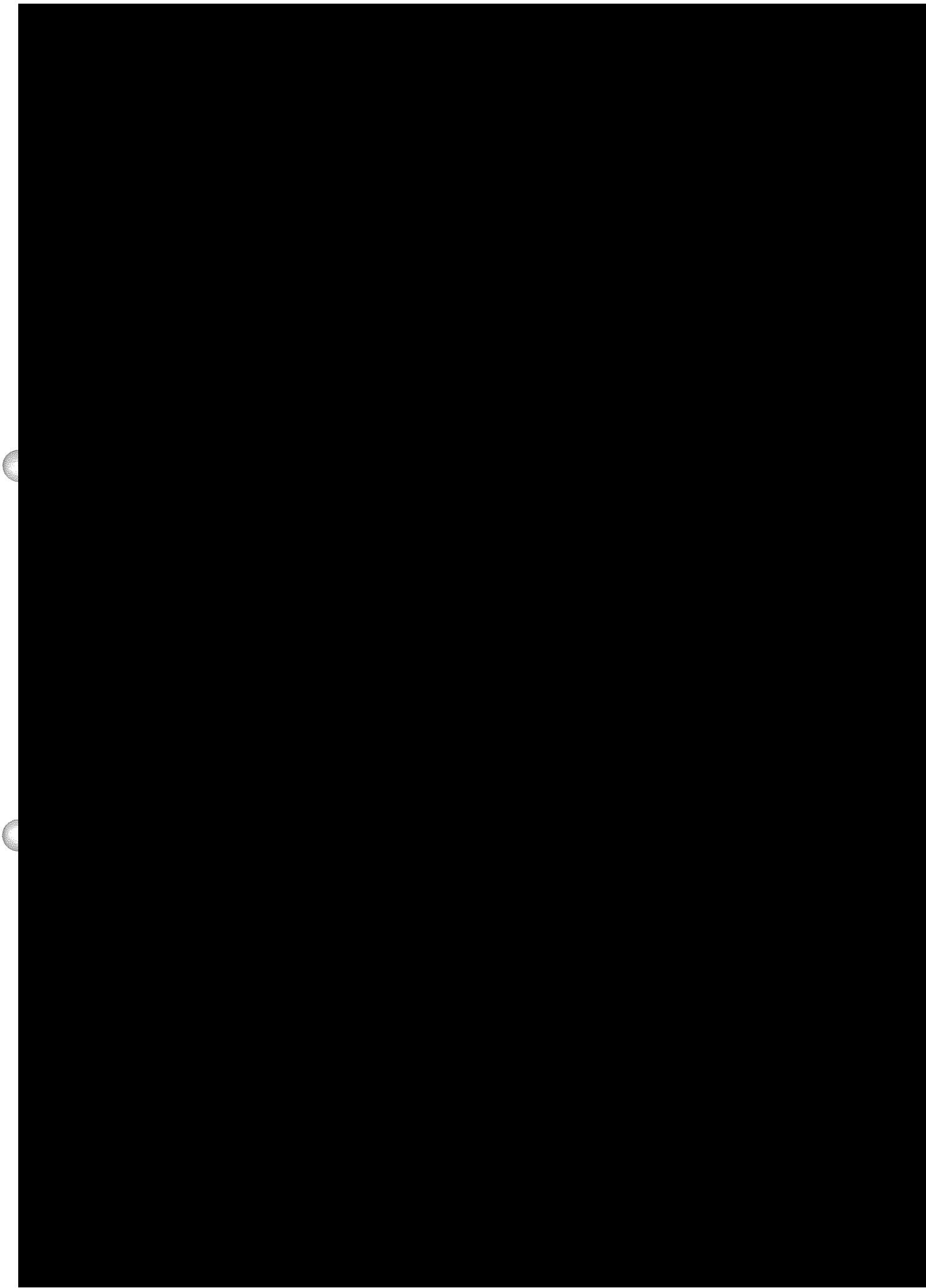














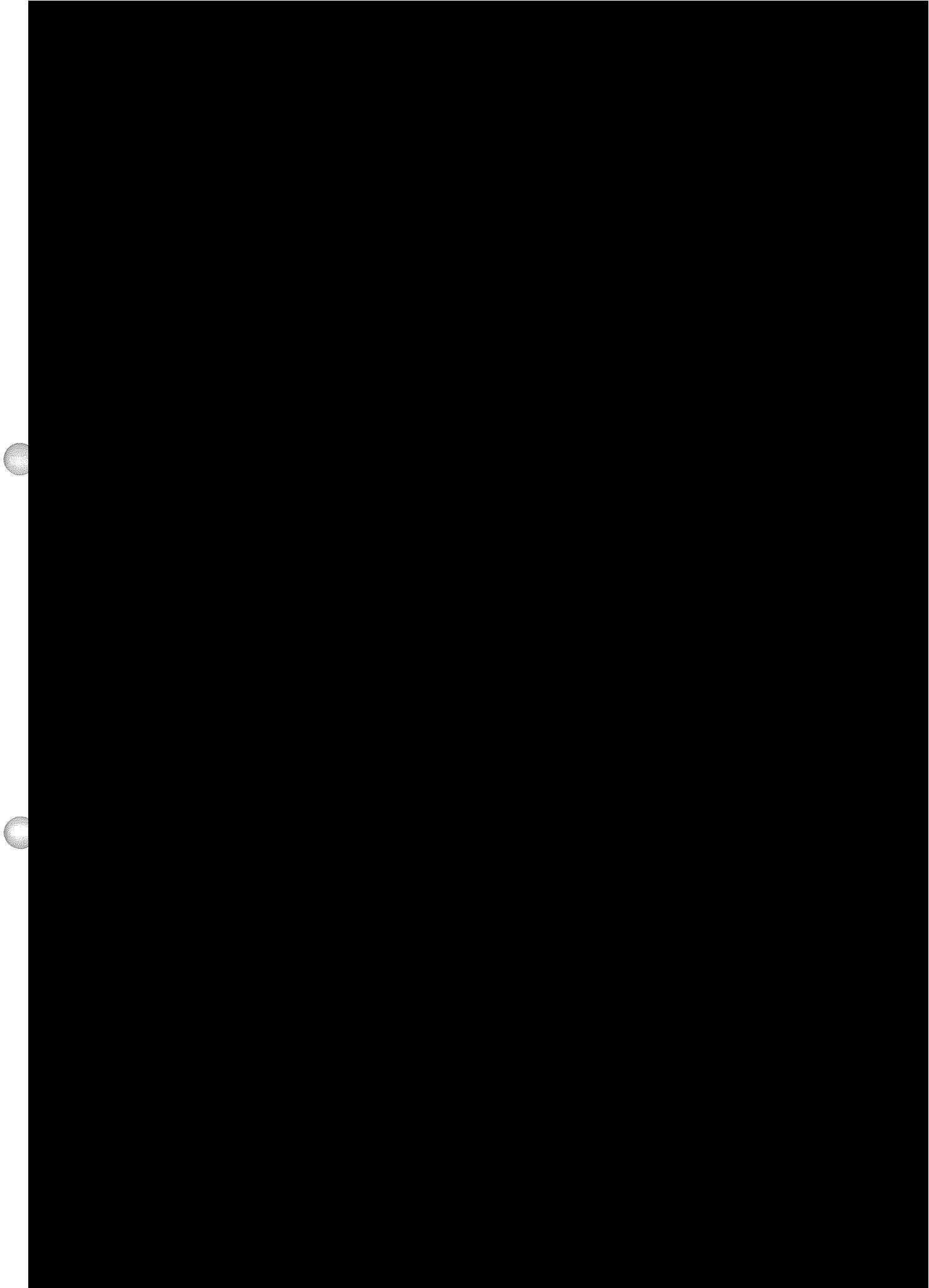




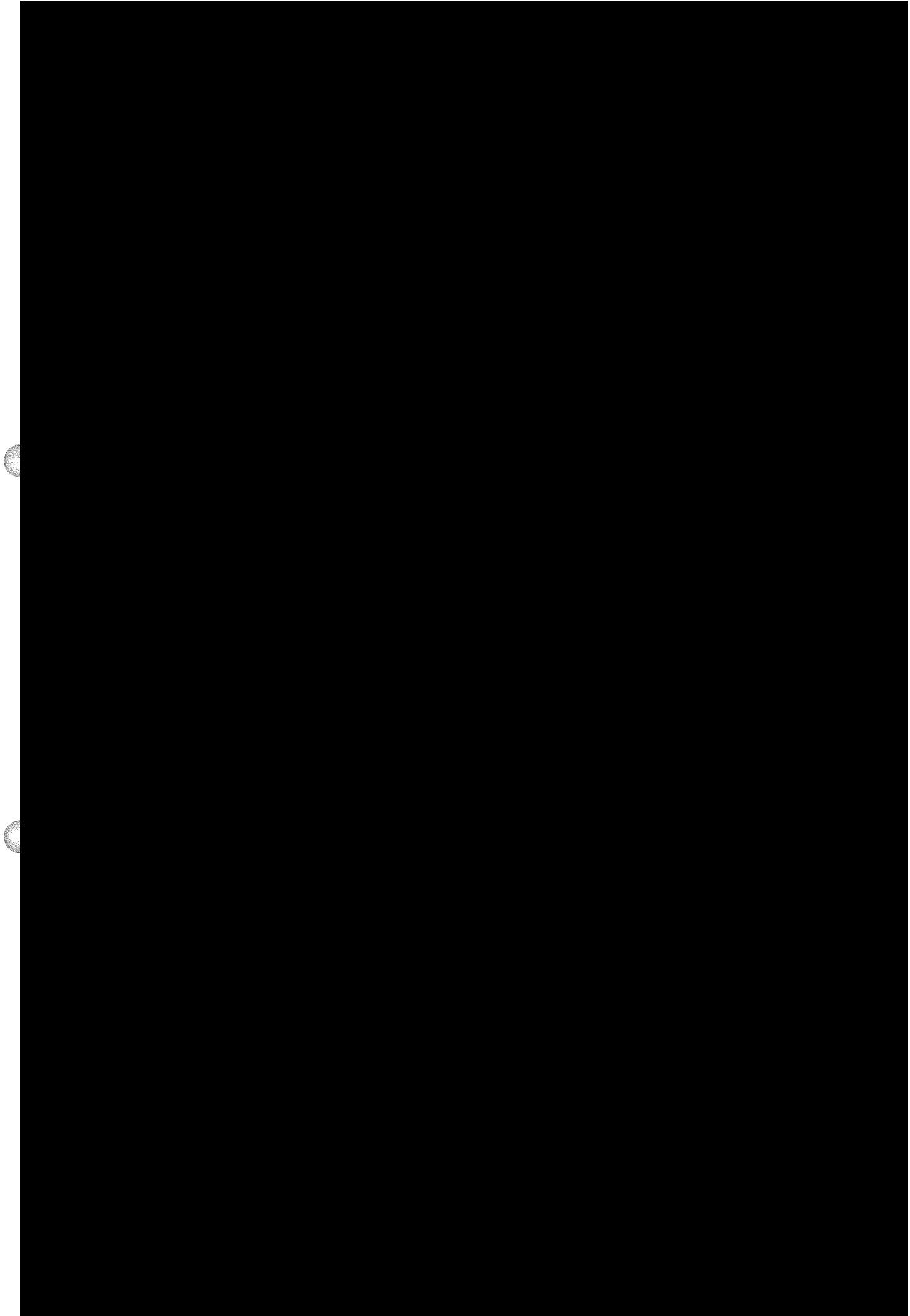


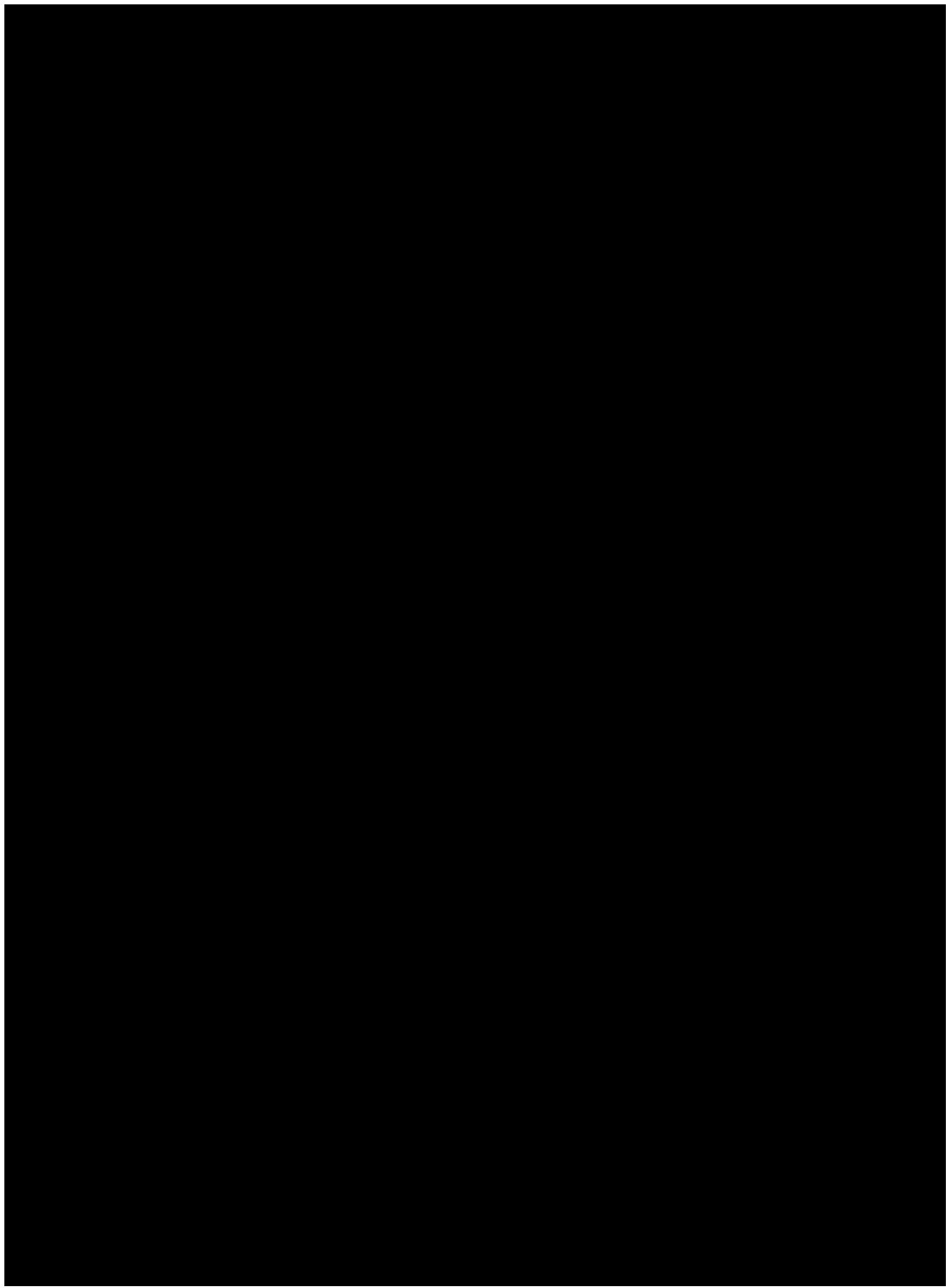




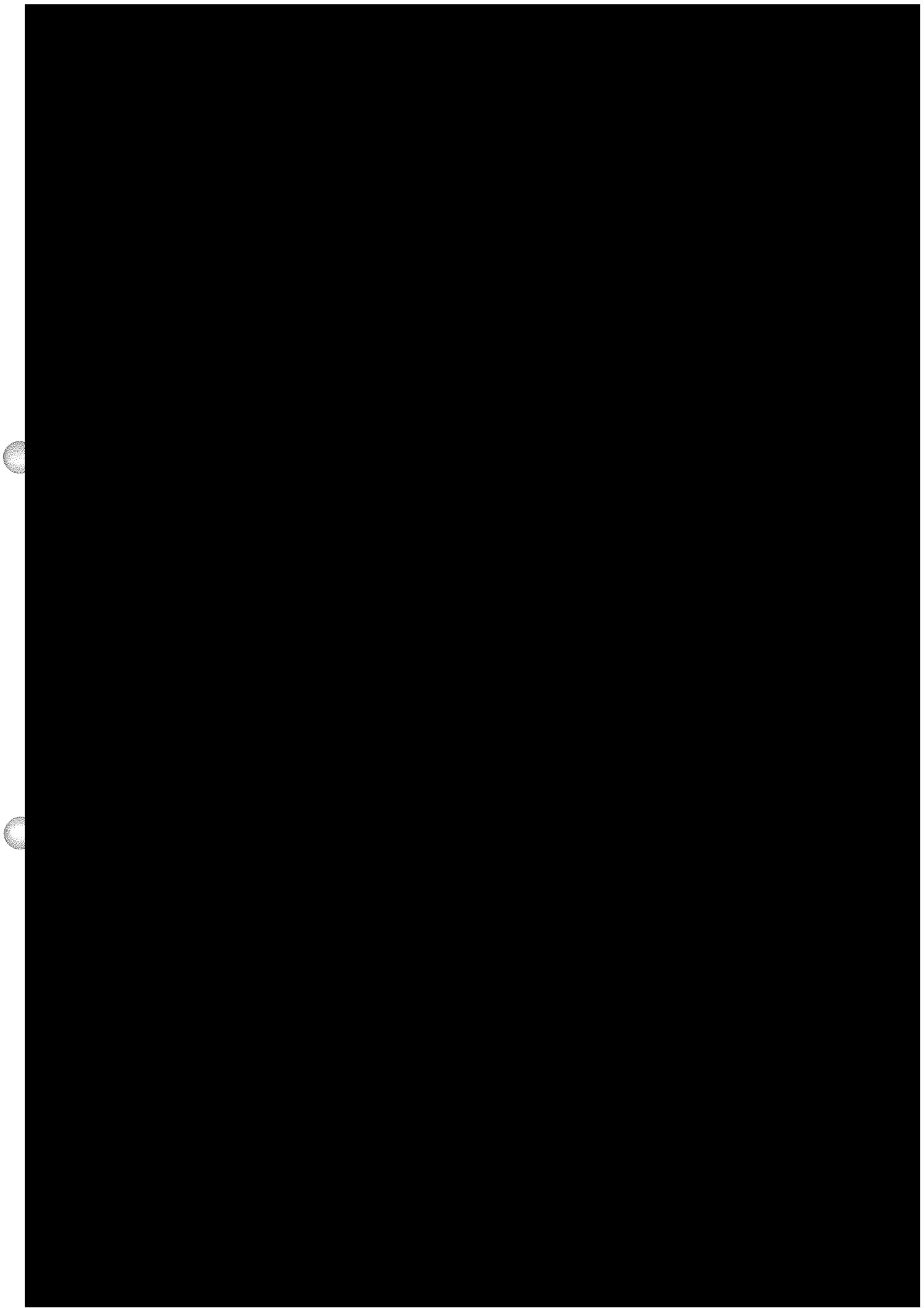






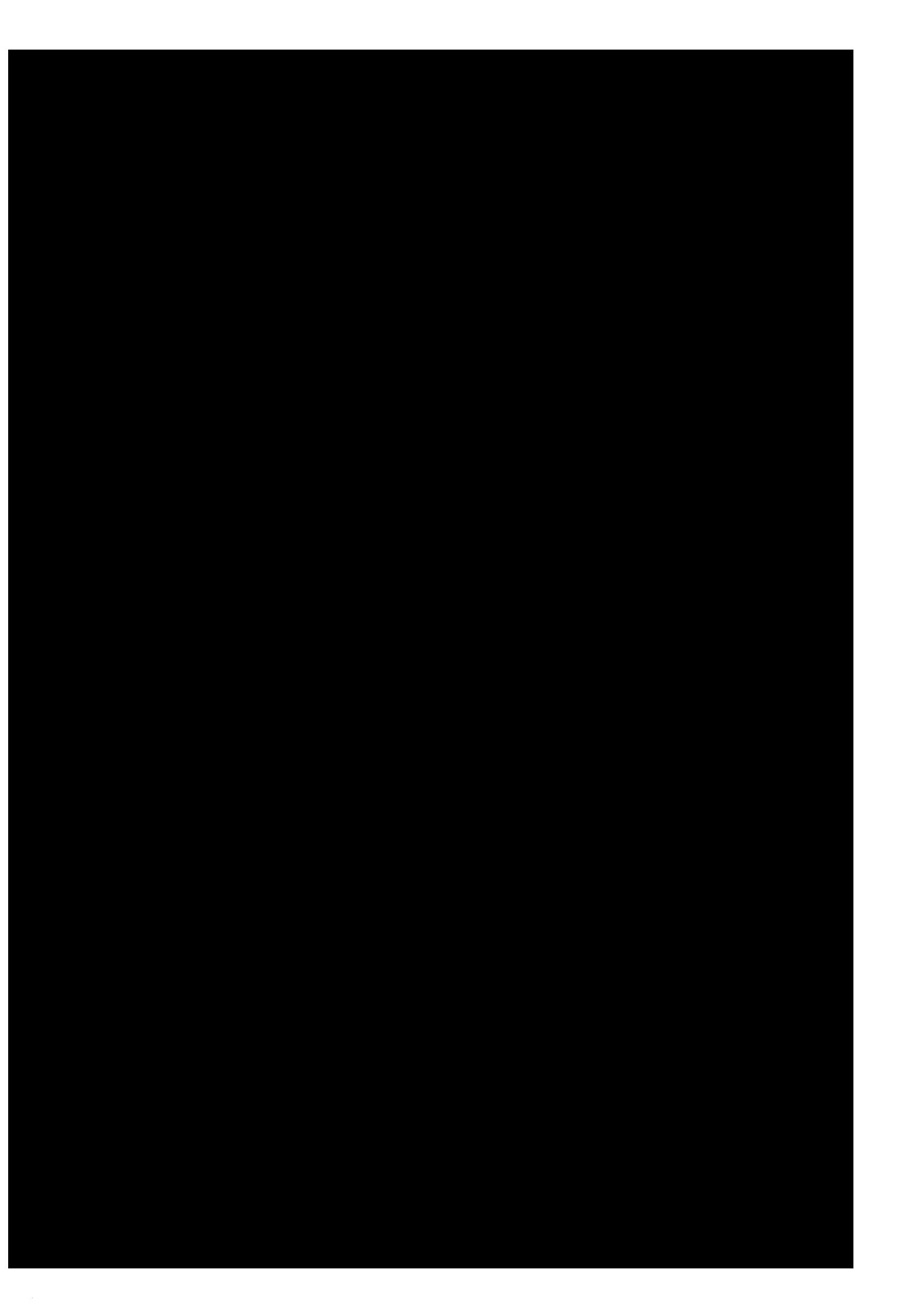


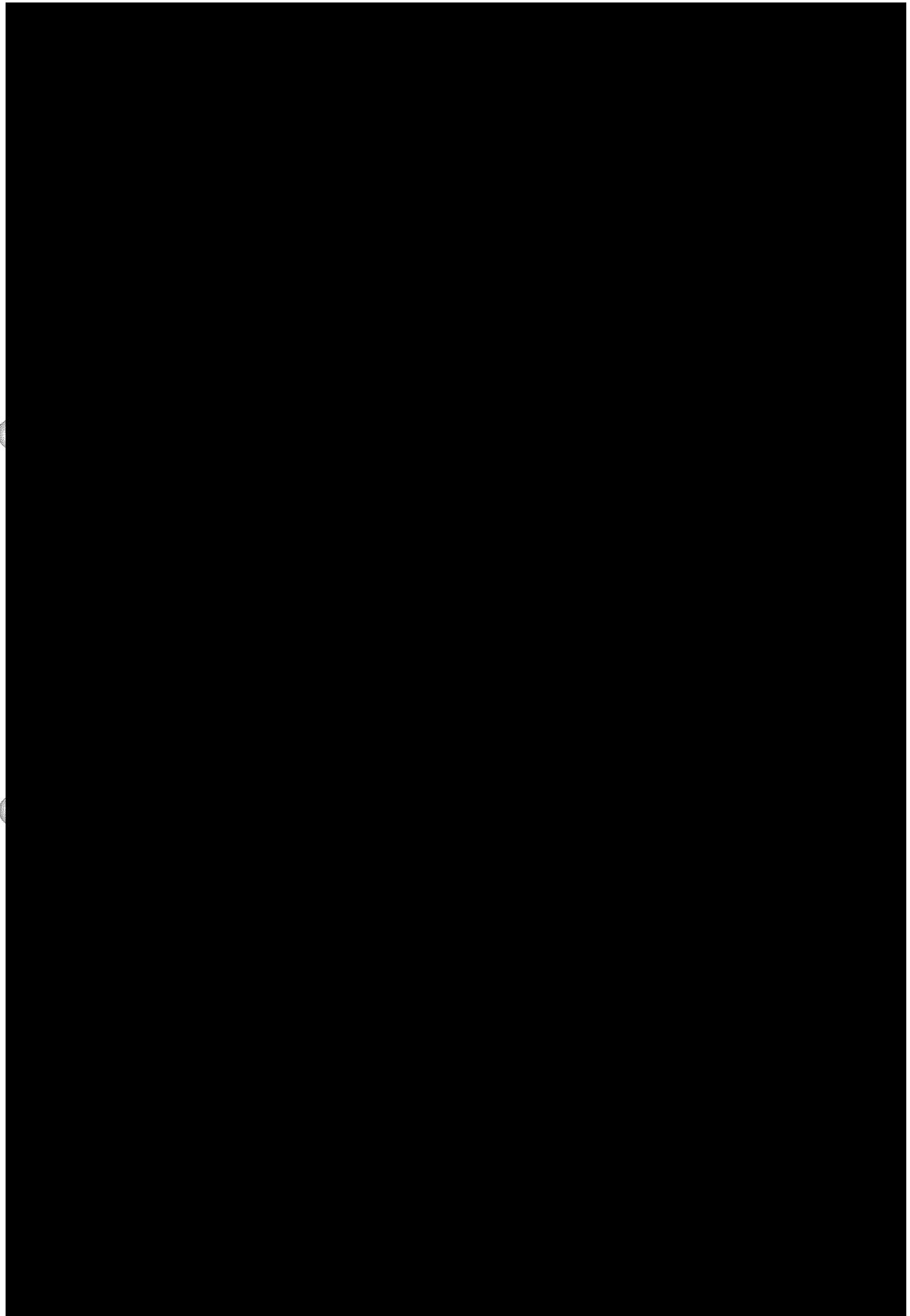














**SCHEDULE D17. – VC CONTRACTOR'S INITIAL PROGRAM**

(Clause 21.5)

This Schedule D17 contains the VC Contractor's Initial Program which is included in Schedule F1 as an electronic file.

**SCHEDULE D18. – FORM OF MILLER STREET PROPERTY LEASE**

(Schedule A2 and clause 9.12)

Form: 07L  
Release: 4-5

**LEASE**

New South Wales  
Real Property Act 1900

Leave this space clear. Affix additional  
pages to the top left-hand corner.

STAMP DUTY	Revenue NSW use only	
(A) TORRENS TITLE	Property leased 1/781576 and 1/734946	
(B) LODGED BY	Document Collection Box <b>238N</b>	Name, Address or DX, Telephone, and Customer Account Number if any Customer Account Number: 123155F Ashurst Australia DX 388 Tel: 02 9258 6000 Reference: <input type="text"/>
(C) LESSOR	Sydney Metro ABN 12 354 063 515	
(D)	The lessor leases to the lessee the property referred to above.	
(E) LESSEE	Encumbrances (if applicable): <input type="text"/>	
(F)	TENANCY: <input type="text"/>	
(G)	1. TERM 2. COMMENCING DATE 3. TERMINATING DATE 4. With an OPTION TO RENEW for a period of N.A. set out in clause N.A. of N.A. 5. With an OPTION TO PURCHASE set out in clause N.A. of N.A. 6. Together with and reserving the RIGHTS set out in clause N.A. of N.A. 7. Incorporates the provisions or additional material set out in ANNEXURE(S) A hereto. 8. Incorporates the provisions set out in N.A. No. N.A. 9. The RENT is set out in item No. 8 of INFORMATION TABLE IN ANNEXURE A HERETO	

ALL HANDWRITING MUST BE IN BLOCK CAPITALS.

1708

Page 1 of

**DATE**

- (H) I certify that I am an eligible witness and that an authorised officer of the lessor signed this dealing in my presence.  
[See note\* below].

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness:

Signature of authorised officer:

Name of witness:

Authorised officer's name: SEE PAGE OF ANNEXURE

Address of witness:

Authority of officer:

Signing on behalf of:

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Company: SEE PAGE OF ANNEXURE A  
Authority:

Signature of authorised person:

Signature of authorised person:

Name of authorised person:

Name of authorised person:

Office held:

Office held:

**(I) STATUTORY DECLARATION\***

I

solemnly and sincerely declare that—

1. The time for the exercise of option to \_\_\_\_\_ in expired lease No. \_\_\_\_\_ has ended; and
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900.

Made and subscribed at \_\_\_\_\_ in the State of New South Wales on \_\_\_\_\_  
in the presence of \_\_\_\_\_ of \_\_\_\_\_,

Justice of the Peace (J.P. Number: \_\_\_\_\_)  Practising Solicitor

Other qualified witness [specify]

# who certifies the following matters concerning the making of this statutory declaration by the person who made it:

1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
2. I have known the person for at least 12 months OR I have confirmed the person's identity using an identification document and the document I relied on was a \_\_\_\_\_  
*(Omit ID No.)*

Signature of witness:

Signature of applicant:

\* As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. # If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

\*\* s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.  
ALL HANDWRITING MUST BE IN BLOCK CAPITALS

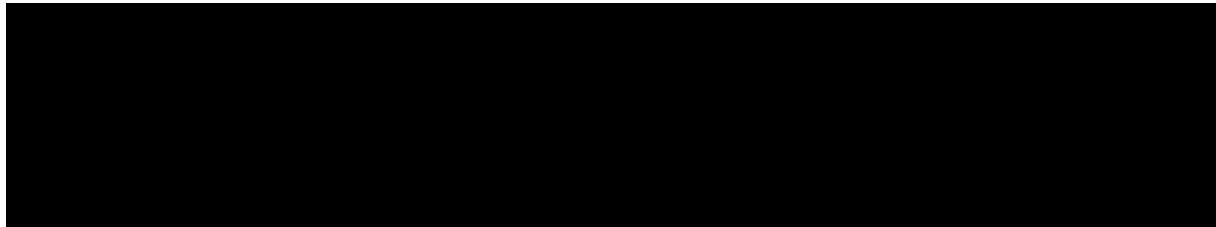
**This is the annexure "A" referred to in the lease between Sydney Metro ABN 12 354 063 515 as Landlord and [insert] as Tenant dated [date of lease]**

## CONTENTS

CLAUSE	PAGE
SCHEDULE D18. – FORM OF MILLER STREET PROPERTY LEASE .....	1
1. DEFINITIONS AND INTERPRETATION .....	9
1.1 Definitions .....	9
1.2 Rules for interpreting this Lease.....	11
1.3 Non Business Days .....	13
1.4 Multiple parties .....	13
2. GRANT OF LEASE.....	13
2.1 Grant .....	13
2.2 Holding over.....	13
3. RENT .....	13
3.1 Payment of Rent .....	13
4. OUTGOINGS .....	13
4.1 Definitions .....	13
4.2 Payment of Outgoings.....	14
4.3 Estimate Notice.....	14
4.4 Outgoings Notice.....	14
5. OTHER PAYMENTS, INTEREST AND GST.....	14
5.1 Liability for expenses .....	14
5.2 Interest on overdue money.....	15
5.3 GST .....	15
5.4 Payments under this Lease .....	16
6. LANDLORD'S RIGHTS AND OBLIGATIONS .....	17
6.1 Quiet enjoyment .....	17
6.2 Services .....	17
6.3 Landlord's works .....	17
6.4 Landlord's right to enter Premises .....	18
6.5 Restricted access to Premises.....	18
6.6 Subdivide and grant easements .....	18
6.7 Landlord may perform Tenant's obligations.....	18
6.8 Appoint agents and managers .....	19
7. TENANT'S OBLIGATIONS .....	19
7.1 General obligations.....	19
7.2 Maintenance of Premises .....	19
7.3 General prohibitions on Tenant .....	21
7.4 No alterations by Tenant .....	21
8. INSURANCE .....	22
8.1 Required Insurance .....	22
8.2 Period of insurance.....	23
8.3 Policy requirements .....	24
8.4 Tenant's obligations.....	24

8.5	Failure to comply with insurance requirements .....	24
8.6	Notices to Landlord.....	25
9.	RISK, RELEASE AND INDEMNITY .....	25
9.1	Tenant's risk .....	25
9.2	Release of Landlord .....	25
9.3	Indemnity .....	25
10.	PREMISES DAMAGED OR DESTROYED .....	26
10.1	Premises damaged or destroyed .....	26
10.2	Termination of this Lease.....	26
10.3	Reduction in Rent.....	26
10.4	Damage caused by Tenant.....	26
10.5	Landlord not obliged to repair or reinstate .....	26
10.6	Disputes .....	26
11.	ASSIGNMENT, SUBLEASE AND MORTGAGE.....	27
11.1	Restriction on assignment and other dealings.....	27
11.2	Requirements for assignment.....	27
12.	DEFAULT, TERMINATION AND EXPIRY .....	27
12.1	Events of default.....	27
12.2	Landlord's termination after default.....	28
12.3	Essential terms .....	28
12.4	Breach of essential term.....	28
12.5	Landlord's entitlement to damages .....	28
12.6	Instituting proceedings.....	29
12.7	Landlord's other rights .....	29
12.8	Landlord's rights after Tenant vacates during Term .....	29
12.9	Termination of the Station Delivery Deed .....	30
12.10	Tenant's obligations at end of Lease .....	30
12.11	Tenant's Property .....	30
12.12	Payment after termination .....	31
13.	INFORMATION REQUIRED FOR ENVIRONMENTAL REPORTING.....	31
13.1	Tenant to provide assistance .....	31
13.2	Tenant's warranty .....	31
14.	POWER OF ATTORNEY .....	32
14.1	Appointment of attorney.....	32
14.2	General .....	32
15.	PERSONAL PROPERTY SECURITIES ACT .....	32
15.2	Meaning of terms .....	33
16.	NOTICES .....	33
16.1	How to give a notice .....	33
16.2	When a notice is given.....	33
16.3	Address for notices .....	34
17.	GENERAL.....	34
17.1	Tenant's warranty .....	34
17.2	Governing law .....	34
17.3	Giving effect to this Lease.....	34
17.4	Variation and waiver.....	34
17.5	Operation of this Lease .....	35
17.6	Operation of indemnities .....	35

17.7	Landlord's consent.....	35
17.8	No merger .....	35
17.9	Expiry or termination .....	35
17.10	Exclusion of legislation .....	35
17.11	Mitigation of damages .....	36
18.	BUILDING ENERGY EFFICIENCY CERTIFICATE.....	36



## INFORMATION TABLE

**Item 1**  
(Clause 1.1)

**Land**

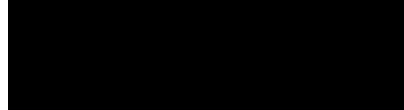
The land comprised in Folio Identifiers 1/781576 and 1/734946 and known as 194 and 196A Miller Street, North Sydney.

**Item 2**  
(Clause 1.1)

**Landlord**

Name: Sydney Metro  
 ABN: 12 354 063 515  
 Address: Level 43, 680 George Street  
 Sydney NSW 2000

Phone:  
 Attention:



**Item 3**  
(Clause 1.1)

**Tenant**

Name: The unincorporated joint venture comprising Lendlease Building Pty Limited and Lendlease Engineering Pty Limited  
 ABN: Lendlease Building Pty Limited – ABN 97 000 098 162  
 Lendlease Engineering Pty Limited – ABN 40 000 201 516

Address: Level 14, Tower Three, International Towers, Sydney Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000

Phone:  
 Attention:



**Item 4**  
(Clause 1.1)

**Premises**

The whole of the Land and the Buildings at 194 Miller Street, North Sydney NSW 2060 and 196A Miller Street, North Sydney NSW 2060.

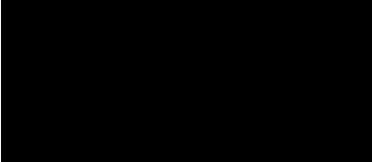
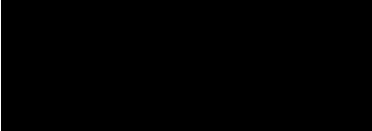
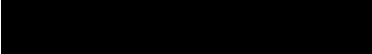
**Item 5**  
(Clauses 1.1, 7.1)

**Permitted Use**

Commercial office.

**Item 6**  
(Clauses 1.1, 2.1)

**Term**

- (a) 
- (b) 
- (c) 

**Item 7**

**Not used**

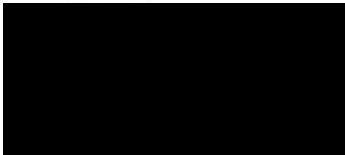
**Item 8**  
(Clauses 1.1, 3.1)

**Rent**



**Item 9**                   **Not used**

**Item 10**                   **Not used**

**Item 11**                   **Public liability insurance**  
(Clause 8.1)  


## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

The following definitions apply in this Lease.

**Attorney** means an attorney appointed under this Lease and any attorney's substitute or delegate.

**Bank** means an authorised deposit-taking institution as defined in Section 5 of the *Banking Act 1959* (Cth).

**Building** means all improvements on the Land and the Landlord's Property, but excluding the Tenant's Property.

**Building Energy Efficiency Certificate** means a certificate issued under clause 13A of the Building Energy Efficiency Disclosure Act.

**Building Energy Efficiency Disclosure Act** means the *Building Energy Efficiency Disclosure Act 2010* (Cth).

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which Banks are open for general banking business in Sydney.

**Claim** means, in relation to a person, any claim, allegation, cause of action, proceeding, liability, suit or demand made against the person concerned however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Commencing Date** means the date specified in Item 6(b).

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

**Encumbrance** means:

- (a) a PPS Security Interest;
- (b) any other mortgage, pledge, lien or charge;
- (c) an easement, restrictive covenant, caveat or similar restriction over property; or
- (d) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

**GHG** refers to greenhouse gas, which means one or more of the gases listed in the *National Greenhouse and Energy Reporting Act 2007* (Cth).

**Government Agency** means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person including a statutory corporation; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

**GST** includes:

- (a) any additional tax, penalty, fine, interest or other charge relating to GST; and
- (b) an amount an entity is notionally liable to pay as GST or an amount which is treated as GST under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

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

**Information Table** means the information table at the front of this Lease.

**Input Tax Credit** includes any notional input tax credit.

**Land** means the land described in Item 1.

**Landlord** means the party named in Item 2.

**Landlord's Property** means all the Landlord's plant, equipment, fixtures, fittings, furnishings and other property of the Landlord on the Land.

**Lease** means this lease and any equitable lease or common law tenancy evidenced by this lease.

**NGERS** means the *National Greenhouse and Energy Reporting Act 2007* (Cth) and its associated regulations and determinations.

**Outgoings** means all amounts paid or payable or otherwise incurred by the Landlord in connection with the Premises (plus GST on those amounts to the extent that the Landlord does not receive an Input Tax Credit for that GST) including, but not limited to, the following:



**Outgoings Year** means a calendar year or any other 12 month period used by the Landlord in relation to the Outgoings and any proportionate part of that calendar year or 12 month period occurring during the Term.

**Permitted Use** means the use specified in Item 5.

**Premises** means the premises specified in Item 4, including the Land, the Building and all of the Landlord's Property located on or in the Land.

**PPS Security Interest** means a security interest that is subject to the PPSA.

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

**Rent** means the annual rent specified in Item 8 (which applies on the Commencing Date).

**Rent Day** means the Commencing Date and the first day of every month.

**Services** means any services provided to the Premises (for example air conditioning, communication, drainage, power, escalators, fire and emergency services, garbage, gas, heating, lifts, information booths, sewerage, telephone, televisions, trade waste and water) and the pipes, wires, ducting and other means of providing those services to the Premises.

**Station Delivery Deed** means the Station Delivery Deed entered into between the Landlord and the Tenant in respect of the delivery of the Victoria Cross Station as part of the Sydney Metro City & Southwest and dated [insert].

**Tenant** means the party named in Item 3.

**Tenant's Agents** means every agent, employee, licensee, contractor, invitee and subtenant of the Tenant.

**Tenant's Property** means all the Tenant's fixtures, fittings, equipment, furnishings and other property of the Tenant in the Premises.

**Term** means the term of this Lease as specified in Item 6(a), which begins at midnight at the beginning of the Commencing Date and ends at midnight at the end of the Terminating Date.

**Terminating Date** means the date specified in Item 6(c).

**Valuer** means a member (for at least five years) of the NSW Division of the Australian Property Institute Inc who:

- (a) has at least five years' experience in valuing that type of property; and
- (b) is active in the market for valuation of that type of property.

## 1.2 Rules for interpreting this Lease

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Lease, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
  - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document (including this Lease) or agreement, or a provision of a document (including this Lease) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a party to this Lease or to any other document or agreement includes a successor in title, permitted substitute or permitted assign of that party;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) A reference to **information** is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
- (g) The words **controller**, **subsidiary**, **holding company** and **related body corporate** have the same meanings as in the Corporations Act.
- (h) A reference to a month is to a calendar month.
- (i) A reference to an **Item** is to the relevant Item in the Information Table in this Lease.
- (j) A reference to **dollars** or **\$** is to an amount in Australian currency.
- (k) A reference to a **professional body** includes a succeeding body or where there is no succeeding body, a body serving similar objects as nominated by the Landlord.
- (l) Terms defined in the GST Law have the same meaning in clauses about GST.
- (m) 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.

### 1.3 Non Business Days

If the day on or by which a person must do something under this Lease is not a Business Day:

- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

### 1.4 Multiple parties

If a party to this Lease is made up of more than one person, or a term is used in this Lease to refer to more than one party, then unless otherwise specified in this Lease:

- (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 that term is a reference to each of those persons separately, so that (for example):
  - (i) a representation, warranty or undertaking is given by each of them separately; and
  - (ii) a reference to that party or that term in clause 12.1 is a reference to each of those persons separately.

## 2. GRANT OF LEASE

### 2.1 Grant

In consideration of the Tenant's agreement to pay the Rent and to perform its other obligations under this Lease, the Landlord leases the Premises to the Tenant for the Term.

### 2.2 Holding over

- (a) If the Tenant continues to occupy the Premises with the Landlord's consent after the Terminating Date, the Tenant is a monthly tenant and occupies the Premises on the same terms as this Lease, but including any changes necessary to make the terms appropriate for a monthly tenancy.
- (b) The Landlord and the Tenant may each terminate the monthly tenancy by giving at least one month's notice to the other, ending on any day.

## 3. RENT

### 3.1 Payment of Rent

The Tenant must pay the Rent to the Landlord by equal monthly instalments in advance on or by each Rent Day (and proportionately for any part of a month). The Tenant must pay the first instalment on the Commencing Date and must deliver each instalment to the Landlord or as otherwise directed by the Landlord.

## 4. OUTGOINGS

### 4.1 Definitions

In this clause 4:

- (a) **Estimate Notice** has the meaning given in clause 4.3(a).
- (b) **Outgoings Notice** has the meaning given in clause 4.4(a).

#### 4.2 **Payment of Outgoings**

The Tenant must pay the Outgoings in accordance with clauses 4.3 and 4.4 to the Landlord or as the Landlord otherwise directs.

#### 4.3 **Estimate Notice**

- (a) The Landlord may, at any time prior to or during an Outgoings Year, give the Tenant a notice estimating the total amount of the Outgoings for that Outgoings Year (an **Estimate Notice**).
- (b) If the Landlord gives the Tenant an Estimate Notice:
  - (i) the Tenant must pay, on account of the Outgoings, the amount specified in the Estimate Notice in equal instalments, payable in advance on or by each Rent Day;
  - (ii) if the Landlord gives the Tenant a written adjustment of an Estimate Notice, the Tenant must pay an adjusted instalment accordingly; and
  - (iii) within 30 days after the Landlord serves an Outgoings Notice under clause 4.4, the Landlord and Tenant must make any adjustment necessary to take account of any difference between the estimated and the actual Outgoings for that Outgoings Year.
- (c) If, in respect of an Outgoings Year, the Landlord gives the Tenant an Estimate Notice, the Tenant must in any subsequent Outgoings Year continue to pay, on account of the Outgoings for that subsequent Outgoings Year, an instalment equal to that payable on the previous Rent Day, until the Landlord gives the Tenant a revised Estimate Notice for that subsequent Outgoings Year.

#### 4.4 **Outgoings Notice**

- (a) As soon as practicable after the end of each Outgoings Year, the Landlord must notify the Tenant in writing of the total of all Outgoings for that Outgoings Year, together with reasonable details of those Outgoings (an **Outgoings Notice**).
- (b) An Outgoings Notice is conclusive evidence of its contents unless the Landlord or the Tenant notify the other of any manifest error within 14 days of service of the Outgoings Notice.

### 5. **OTHER PAYMENTS, INTEREST AND GST**

**5.2 Interest on overdue money**

- (a) The Tenant must pay interest on each amount that is not paid when due, from (and including) the day on which it falls due to (but excluding) the day on which it is paid in full, at the rate calculated in accordance with clause 5.2(b) without the need for any demand and without prejudice to any other rights of the Landlord.

- (d) This clause does not affect the Tenant's obligation to pay each amount under this Lease when it is due.

**5.3 GST**

- (a) If GST is or will be payable on a supply made under or in connection with this document, to the extent that the consideration otherwise provided for that supply under this document is not stated to include an amount in respect of GST on the supply;
  - (i) the consideration otherwise provided for that supply under this document is increased by the amount of that GST; and
  - (ii) the recipient must make payment of the increase as and when the consideration otherwise provided for, or relevant part of it, must be paid or provided for, if the consideration has already been paid or provided, within 7 days of receiving a written demand from the supplier.
- (b) If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST already recovered by the supplier, as appropriate, the supplier within 14 days of becoming aware of the adjustment event:

- (i) may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount already recovered by giving seven days written notice; or
  - (ii) must refund to the recipient the amount by which the amount already recovered exceeds the amount of GST on the supply to the extent that the supplier is entitled to a refund or credit from the Commissioner of Taxation; and
  - (iii) must issue an adjustment note or tax invoice reflecting the adjustment event in relation to the supply to the recipient.
- (c) The right of the supplier to recover any amount in respect of GST under this document on a supply is subject to the issuing of the relevant tax invoice or adjustment note to the recipient except where the recipient is required to issue the tax invoice or adjustment note.
- (d) If the GST Law changes after the date of this document to change the amount of GST on a supply, any consideration that expressly includes GST must be adjusted to reflect the change in the GST Law.
- (e) Costs actually or estimated to be incurred or revenue actually or estimated to be earned or lost by a party that is required to be reimbursed or indemnified by another party or used as the basis for calculation of consideration for a supply under this document must exclude the amount of GST referable to the cost to the extent to which an entitlement arises or would arise to claim an Input Tax Credit and in relation to revenue must exclude any amount in respect of GST referable to the revenue.
- (f) The parties each indemnify the other against all GST, and losses, liabilities and expenses (including legal liabilities on a full indemnity basis) that the other incurs (directly or indirectly) as a result of a breach of a warranty or other provision in this document relating to GST.

#### **5.4 Payments under this Lease**

- (a) The Tenant must make payments under this Lease:
  - (i) to the Landlord (or to a person nominated by the Landlord in a notice to the Tenant) by the method the Landlord reasonably requires;
  - (ii) without withholding any part of any payment by way of deduction, set off or counterclaim; and
  - (iii) if no date for payment is specified, within seven days of being asked by the Landlord.
- (b) Where any money the Landlord charges the Tenant is calculated using a time period and this Lease starts or ends during that time period, the Landlord must make proportional adjustments.
- (c) If either the Landlord or the Tenant prove an error in any money charged the Landlord must correct it and make any necessary adjustment, in a notice to the Tenant. On the next Rent Day, the Tenant must pay the Landlord or the Landlord must credit the Tenant with the difference between what the Tenant has paid and what the Tenant should have paid.

## 6. LANDLORD'S RIGHTS AND OBLIGATIONS

### 6.1 Quiet enjoyment

Subject to the Landlord's rights under this Lease, and while the Tenant complies with all of its obligations under this Lease, the Tenant may occupy the Premises without disturbance by the Landlord.

### 6.2 Services

- (a) The Landlord must not deliberately interrupt any Service except where the Landlord:
  - (i) reasonably considers it necessary to do so;
  - (ii) gives reasonable notice to the Tenant (except in an emergency); and
  - (iii) uses reasonable endeavours to minimise inconvenience to the Tenant.
- (b) Without limiting the obligation of the Tenant under clause 7.2 to keep the Premises in good condition, the Landlord is entitled to use, maintain, alter or repair any Service and may enter the Premises for that purpose.
- (c) If any of the Services fail to function properly for any reason:
  - (i) the Tenant must not terminate this Lease;
  - (ii) the Tenant must not make any Claim against the Landlord; and
  - (iii) the Tenant does not have any right of abatement of Rent or of any other amount payable under this Lease due to the failure.
- (d) The Landlord is not liable for any damage, loss or injury suffered or incurred by the Tenant or any other person (for any reason) due to the failure of any Services.

### 6.3 Landlord's works

- (a) The Tenant acknowledges that the Landlord and persons authorised by the Landlord may:
  - (i) at any time without prior notice, enter the Premises in the case of an emergency or to secure the Premises;
  - (ii) after giving no less than [REDACTED] prior written notice to the Tenant, enter the Premises at any time to do any one or more of the following:
    - (A) determine the condition of the Premises or whether the Tenant is complying with this Lease;
    - (B) undertake any due diligence enquiries, inspections, testing and investigations of the Premises with or without plant and equipment, which may include but not limited to undertaking a survey and any structural or integrity testing of the Premises;
    - (C) rectify any default made by the Tenant;

- (D) carry out any repairs to the Premises which the Landlord considers necessary or desirable; or
- (E) do anything which the Landlord is obliged to do under this Lease or at law.

#### 6.4 **Landlord's right to enter Premises**

- (a) Subject to clause 6.4(b), the Landlord may enter the Premises together with all necessary workmen and equipment at all reasonable times, if it gives the Tenant reasonable notice, to:
  - (i) exercise its rights under clauses 6.2, 6.3, 6.5 or 6.7 or any other provision of this Lease;
  - (ii) carry out any work to any adjacent property of the Landlord;
  - (iii) enable it to comply with any law or any notice from any Government Agency affecting the Premises;
  - (iv) if the Landlord elects, rebuild or restore the Premises if they are damaged or destroyed;
  - (v) show the Premises to prospective purchasers or mortgagees at any time or to prospective tenants during the last six months of the Term; and
  - (vi) display its usual "for sale" notice or, during the last three months of the Term, a "to let" notice; or
  - (vii) ensure that the Premises are locked and secure.
- (b) When exercising its rights under 6.4(a), the Landlord:
  - (i) must take reasonable steps to minimise any disruption to the Tenant; and
  - (ii) is not required to give reasonable notice or enter at a reasonable time in the case of an emergency.

#### 6.5 **Restricted access to Premises**

The Landlord may exclude any person (including the Tenant) from the Premises if required by law or for safety or security reasons.

#### 6.6 **Subdivide and grant easements**

The Landlord may subdivide the Building or grant an easement or other right over it or the Premises unless this would have a substantial and permanent adverse effect on the Tenant's rights under this Lease. The Tenant must do anything the Landlord reasonably requires concerning the subdivision or grant of easement.

#### 6.7 **Landlord may perform Tenant's obligations**

- (a) The Landlord may do anything which the Tenant should have done under this Lease if the Tenant does not promptly do so or if, in the Landlord's opinion, the Tenant does not do so properly.
- (b) The Tenant must reimburse the Landlord on demand for any costs and expenses incurred by the Landlord under clause 6.7(a).

## 6.8 Appoint agents and managers

The Landlord may appoint or authorise an agent or others to do anything it may or must do under this Lease or otherwise in connection with the Premises.

## 7. TENANT'S OBLIGATIONS

### 7.1 General obligations

The Tenant must:

- (a) (**occupation and use of Premises**) occupy the Premises and use the Premises only for the Permitted Use;
- (b) (**carry on business**) carry on its business at the Premises in a professional and competent way throughout the Term;
- (c) (**compliance**) obtain, maintain and comply with all consents required from any Government Agency to carry on the Permitted Use in the Premises, and comply and ensure the Tenant's Agents comply with all applicable laws in connection with the Premises and the Tenant's Property;
- (d) (**Services**) pay all charges for all Services relating to the Tenant's use of the Premises, including those provided by the Landlord and pay for the cost of any meter installed at the Premises;
- (e) (**fire prevention**) comply and ensure that the Tenant's Agents comply with all requirements and recommendations of any Government Agency, the Landlord or any insurer in respect of fire safety in the Premises, including by installing further equipment and upgrading the fire safety facilities in the Premises;
- (f) (**security**) keep the Premises securely locked when unoccupied, and comply with the Landlord's directions regarding security of the Premises;
- (g) (**notification**) immediately give the Landlord notice of:
  - (i) any damage to or defect in the Premises or any Service provided by the Landlord, any infectious diseases or pests in the Premises, and any notice from a Government Agency (other than an account for Services provided to the Premises); and
  - (ii) any circumstances likely to cause any damage or defect described in clause 7.1(g)(i);
- (h) (**separate rates**) without limiting clause 4, pay on time any rates, taxes or other charges payable to a Government Agency exclusively in respect of the Premises (or the Tenant's occupancy or use of the Premises); and
- (i) (**no smoking signs**) if requested by the Landlord, erect signs in the Premises prohibiting smoking.

### 7.2 Maintenance of Premises

- (a) The Tenant must, subject to clause 7.2(b):
  - (i) (**good and substantial repair**) keep the Premises in good and substantial repair and working condition, excluding fair, wear and tear and any damage caused by fire, flood, lightning, storm, war or any act of God unless:

- (A) the damage occurred as a result of, or was substantially contributed to by, the Tenant's default under this Lease or the act, neglect or default of the Tenant or the Tenants' Agents; or
  - (B) the Landlord is legally unable to recover from its insurer insurance money for the damage because of some act, neglect, default or misconduct by the Tenant or the Tenants' Agents;
  - (ii) (**Tenant's Property**) keep the Tenant's Property in good and substantial repair and working condition;
  - (iii) (**remove waste**) remove all waste from the Premises regularly, and comply with the Landlord's directions regarding rubbish disposal;
  - (iv) (**damage**) without limiting clause 7.2(a)(i), immediately repair any damage to, or defect in the Premises or any building adjoining the Premises caused by the Tenant or the Tenant's Agents or by the Tenant's default under this Lease;
  - (v) (**plate glass**) immediately repair or replace all damaged plate glass within the Premises, including interior and exterior windows, with glass of the same or a similar quality;
  - (vi) (**heating, lighting, plumbing and electrical**) immediately repair or replace any faulty or damaged heating, lighting, plumbing or electrical equipment (including light globes and fluorescent tubes) in the Premises;
  - (vii) (**cleaning**) keep the Premises clean and in good condition;
  - (viii) (**repairs and maintenance**) carry out repairs and maintenance promptly and in keeping with the standard, quality and appearance of the Premises;
  - (ix) (**pests**) keep the Premises free of pests and, if required by the Landlord, engage a pest exterminator approved by the Landlord to prevent or eliminate pest infestation in the Premises; and
  - (x) (**landscaped areas**) keep in good condition any part of the Premises that is landscaped, keep the Premises free of weeds and, if required by the Landlord, engage a gardener approved by the Landlord to do so; and
  - (xi) (**Landlord's Property**) keep in good condition the Landlord's Property including any airconditioning plant and fire equipment, and enter into, maintain and comply with any comprehensive maintenance contracts in respect of the Landlord's Property or the Services that the Landlord requires.
- (b) The Tenant is not obliged to do any work of a structural nature under clause 7.2(a) unless the work is required because of:
- (i) the Tenant's default under this Lease;
  - (ii) the act, neglect or default of the Tenant or the Tenant's Agents; or
  - (iii) the Tenant's or the Tenant's Agents' use or occupation of the Premises.
- (c) Despite clause 7.2(b), the Tenant's obligation under clause 7.2(a) to keep the Premises in good condition includes an obligation to repair by way of replacement unless that repair has the effect of upgrading the Premises to a better condition than they were when new.

### 7.3 General prohibitions on Tenant

The Tenant must not and must ensure that the Tenant's Agents do not:

- (a) (**no damage**) put anything which is likely to cause obstruction or damage down any sink, toilet or drain;
- (b) (**no animals**) keep any animals or birds on the Premises;
- (c) (**dangerous substances**) store or use inflammable or dangerous substances on the Premises;
- (d) (**no overloading**) place in the Premises any Tenant's Property which does or could, in the Landlord's opinion, overload any part of the Building, damage the Premises or disturb the efficient operation of any Service;
- (e) (**heavy objects**) move heavy or bulky items through the Premises without the Landlord's consent;
- (f) (**use**) allow anyone to sleep on the Premises or hold any auction, fire or bankruptcy sale or public meeting on the Premises;
- (g) (**Landlord's Property**) alter the Landlord's Property or use the Landlord's Property for anything other than its intended use;
- (h) (**no nuisance**) cause any nuisance, disturbance or damage to the Landlord, or any user of any neighbouring land;
- (i) (**no obstruction**) obstruct any air or light from entering the Premises through any shaft or opening;
- (j) (**passage ways**) use entrance passages, halls, staircases and fire escapes other than for entering and exiting the Premises or the Building, and must not obstruct them;
- (k) (**Services**) overload the Services, or use them for other than their intended purpose;
- (l) (**lifts**) use any escalators or passenger lifts to carry goods or equipment;
- (m) (**no smoking**) smoke in the Building or, if requested by the Landlord elsewhere on the Land;
- (n) (**Landlord's interest**) do anything which could prejudice the Landlord's interest in the Premises; or
- (o) (**contaminate**) cause, permit or exacerbate any contamination on the Premises or any neighbouring land or premises.

### 7.4 No alterations by Tenant

- (a) The Tenant must not make any alterations or additions to the Premises which are of a structural nature, which relate to the appearance, or otherwise affect, the external parts of the Building or remove or alter any of the Landlord's Property without the Landlord's prior written consent, which consent may be given or withheld by the Landlord in its absolute discretion.

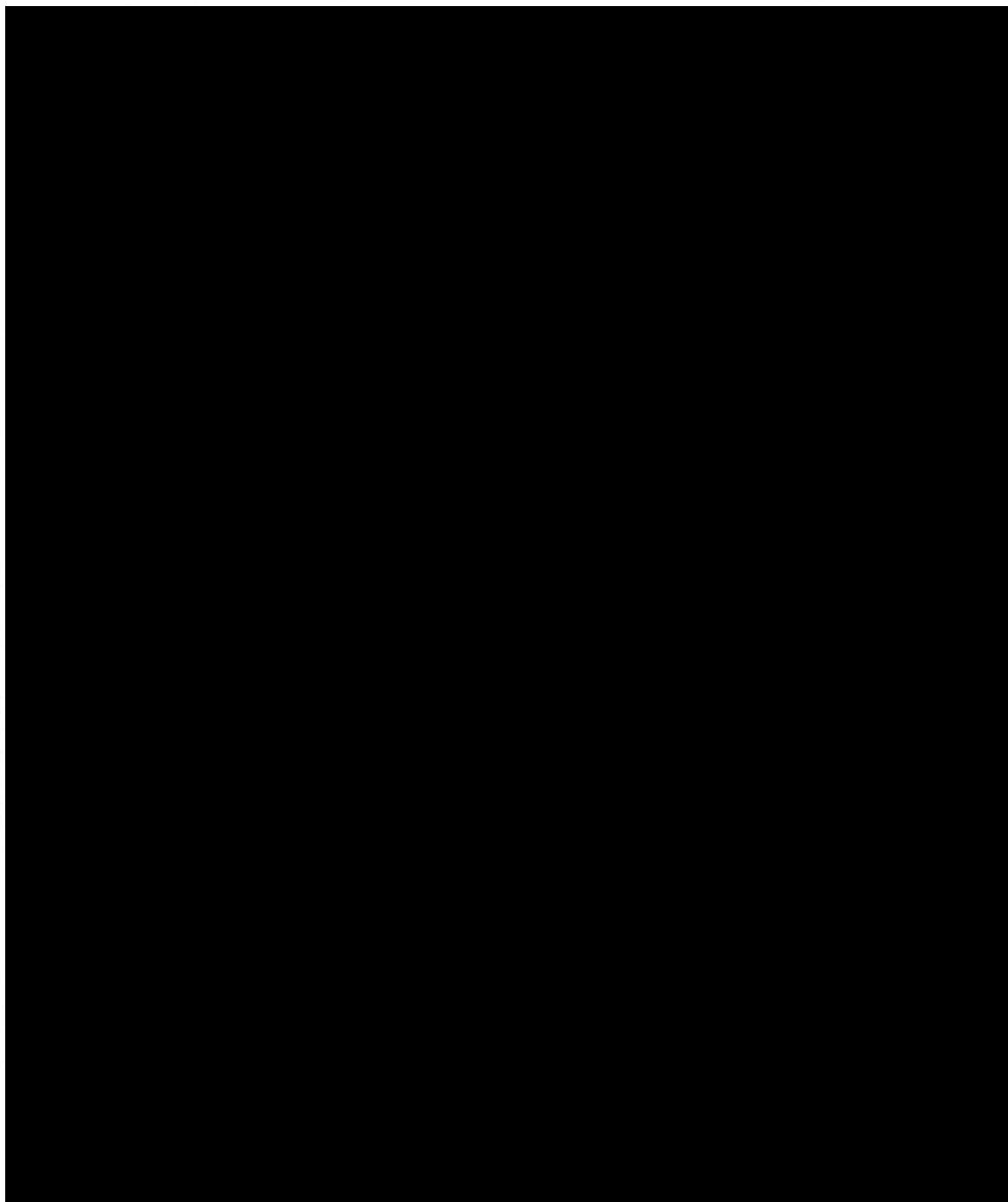
- (b) The Tenant must not erect any sign which is visible from the outside of the Premises or antenna in the Premises, without having received the Landlord's prior written consent, which consent must not be unreasonably withheld.
- (c) If requested by the Landlord, the Tenant must give the Landlord a copy of the plans and specifications for any proposed alterations or additions which require the Landlord's approval.
- (d) The Landlord may approve of any proposed alterations or additions requiring the Landlord's approval on condition that:
  - (i) the work is supervised by a nominee of the Landlord;
  - (ii) the work is carried out by a person approved by the Landlord, whose approval must not be unreasonably withheld;
  - (iii) the work is carried out in a proper and tradesperson-like manner using high quality materials and workmanship and in keeping with the standard, quality and appearance of the Premises;
  - (iv) the Tenant pays on demand all costs incurred by the Landlord in respect of the works including its consideration of the proposed works and their supervision (including any architect's or building consultant's fees) and any costs associated with alterations or additions to the provision of any Services;
  - (v) the Tenant obtains, maintains and complies with and gives the Landlord copies of all permits, approvals and certificates of compliance from all relevant Government Agencies required in connection with the works; and
  - (vi) specified alterations to the Premises should be reinstated, or should not be reinstated, and specified items of Tenant's Property should be removed, or should not be removed, when the Tenant vacates the Premises.
- (e) Except as set out in clauses 7.4(a) and 7.4(b), the Tenant can carry out alterations or additions to the Premises without the Landlord's consent provided that the Tenant:
  - (i) complies with all Laws;
  - (ii) obtains and complies with all necessary approvals required in connection with those works; and
  - (iii) the work is carried out in a proper and tradesperson-like manner using high quality materials and workmanship and in keeping with the standard, quality and appearance of the Premises.

## 8. INSURANCE

### 8.1 Required Insurance

The Tenant must effect and maintain or cause to be effected and maintained the following insurances, under one or more policies of insurance (and without requiring a risk to be double insured):





## 8.2 **Period of insurance**

The Tenant must have the insurances referred to in clause 8.1 (the **Required Insurance**) for the following periods:

- (a) to insure risks arising from or in connection with any works to the Premises, during the period of the works including any related defects correction periods; and
- (b) to insure risks other than those referred to in clause 8.2(a), for the Term and any period the Tenant remains in occupation of the Premises.

### 8.3 Policy requirements

The Tenant must ensure that each Required Insurance policy (other than workers compensation insurance):

- (a) is effected with insurers with a financial security rating of "A-" or better by Standard and Poor's or the equivalent rating with another recognised reputable rating agency; and
- (b) is on terms, including as to levels of deductibles, approved by the Landlord (acting reasonably).

### 8.4 Tenant's obligations

The Tenant must:

- (a) ensure that all Required Insurance premiums and other amounts payable are paid on or before the due date;
- (b) ensure that the party taking out the Required Insurance rectifies anything that might prejudice the insurance and does not do or omit to do anything that would entitle the insurer to cancel or avoid the contract of insurance, or reduce the amount payable on a claim;
- (c) not cancel or materially vary the Required Insurance without the Landlord's consent;
- (d) do everything reasonably required to enable the Landlord to collect or recover monies due to the Landlord;
- (e) apply any amount paid to it by an insurer for loss of or damage to the Tenant's Property or the Premises or any works on the Premises to the replacement or reinstatement of property that is lost or damaged unless otherwise agreed by the Landlord in writing;
- (f) ensure that any sub-tenants, licensees or other parties which occupy the Premises have the Required Insurance; and
- (g) give the Landlord a copy of the policy and certificate of currency for each Required Insurance:
  - (i) before the Commencement Date;
  - (ii) within [REDACTED] after the renewal of each policy; and
  - (iii) at any other time the Landlord asks.

### 8.5 Failure to comply with insurance requirements

If:

- (a) the Tenant fails to maintain the Required Insurance;
- (b) the Landlord becomes aware that an insurer may become entitled to cancel or avoid a Required Insurance policy; or
- (c) acting reasonably, the Landlord determines that an insurer may not be capable of meeting a claim,

the Landlord may, at the cost of the Tenant and after notifying the Tenant, take out or keep current a Required Insurance policy. The Tenant must do all things reasonably requested of it (including providing underwriting information to insurers) to enable the Landlord to exercise this right.

#### **8.6 Notices to Landlord**

- (a) The Tenant must, subject to its obligations to insurers, give the Landlord notice immediately if it becomes aware of any actual, threatened or likely claims under any of the Required Insurance that could materially reduce the available limits of indemnity or involve the Landlord.
- (b) The Tenant must give the Landlord notice immediately it receives a payment from an insurer under a Required Insurance policy. The Tenant must ensure that any contractor agrees to similarly provide notice to the Landlord.
- (c) The Tenant must promptly give the Landlord a copy of any notice it receives or gives in respect of a Required Insurance policy. The Tenant must ensure that any contractor agrees to similarly provide notice to the Landlord

### **9. RISK, RELEASE AND INDEMNITY**

#### **9.1 Tenant's risk**

- (a) The Tenant occupies the Premises and carries out any building work at its own risk.
- (b) If the Tenant is permitted or obliged to do anything under this Lease, then unless expressly stated to the contrary it does so at its own cost and risk.

10. **PREMISES DAMAGED OR DESTROYED**

10.1 **Premises damaged or destroyed**

- (a) If the Premises are damaged or destroyed, and as a result, the Tenant cannot use or access the Premises or the use or access to the Premises is diminished, the Tenant may ask the Landlord to repair or rebuild the Premises.
- (b) The Tenant must continue to use any part of the Premises that is reasonably useable, safe and accessible.

10.2 **Termination of this Lease**

If:

- (a) the Landlord does not begin repairing or rebuilding the Premises within a reasonable time after the Tenant asks; or
- (b) the Landlord decides not to repair or rebuild the Premises and gives notice of this to the Tenant,

the Landlord or the Tenant may terminate this Lease by at least seven days' notice to the other.

10.3 **Reduction in Rent**

The Landlord is not liable to pay the Tenant compensation but must reduce the Rent and other money payable by the Tenant under this Lease by a reasonable amount depending on the type and extent of the damage or destruction from the date of the damage or destruction until the Premises are again fit for use, or this Lease is terminated.

10.4 **Damage caused by Tenant**

Despite clauses 10.2 and 10.3, the Tenant cannot terminate this Lease and must continue to pay the whole of the Rent and other money due under the Lease up to the Terminating Date if the Tenant caused or contributed to the damage or destruction.

10.5 **Landlord not obliged to repair or reinstate**

Nothing in this clause 10 obliges the Landlord to restore or reinstate the Premises.

10.6 **Disputes**

- (a) If any dispute arises under this clause 10 the Landlord and the Tenant may appoint a Valuer to determine the dispute and the proportion of the Valuer's costs that each party must pay.
- (b) If the Landlord and Tenant are unable to agree on a Valuer, either of them may request the President of the Australian Property Institute Inc – NSW Division to nominate a Valuer to be appointed by the parties.
- (c) The Valuer acts as an expert and not as an arbitrator and the Valuer's decision is final and binding. The parties may make written submissions to the Valuer but the Valuer is not obliged to take account of the submissions.

## 11. ASSIGNMENT, SUBLEASE AND MORTGAGE

### 11.1 Restriction on assignment and other dealings

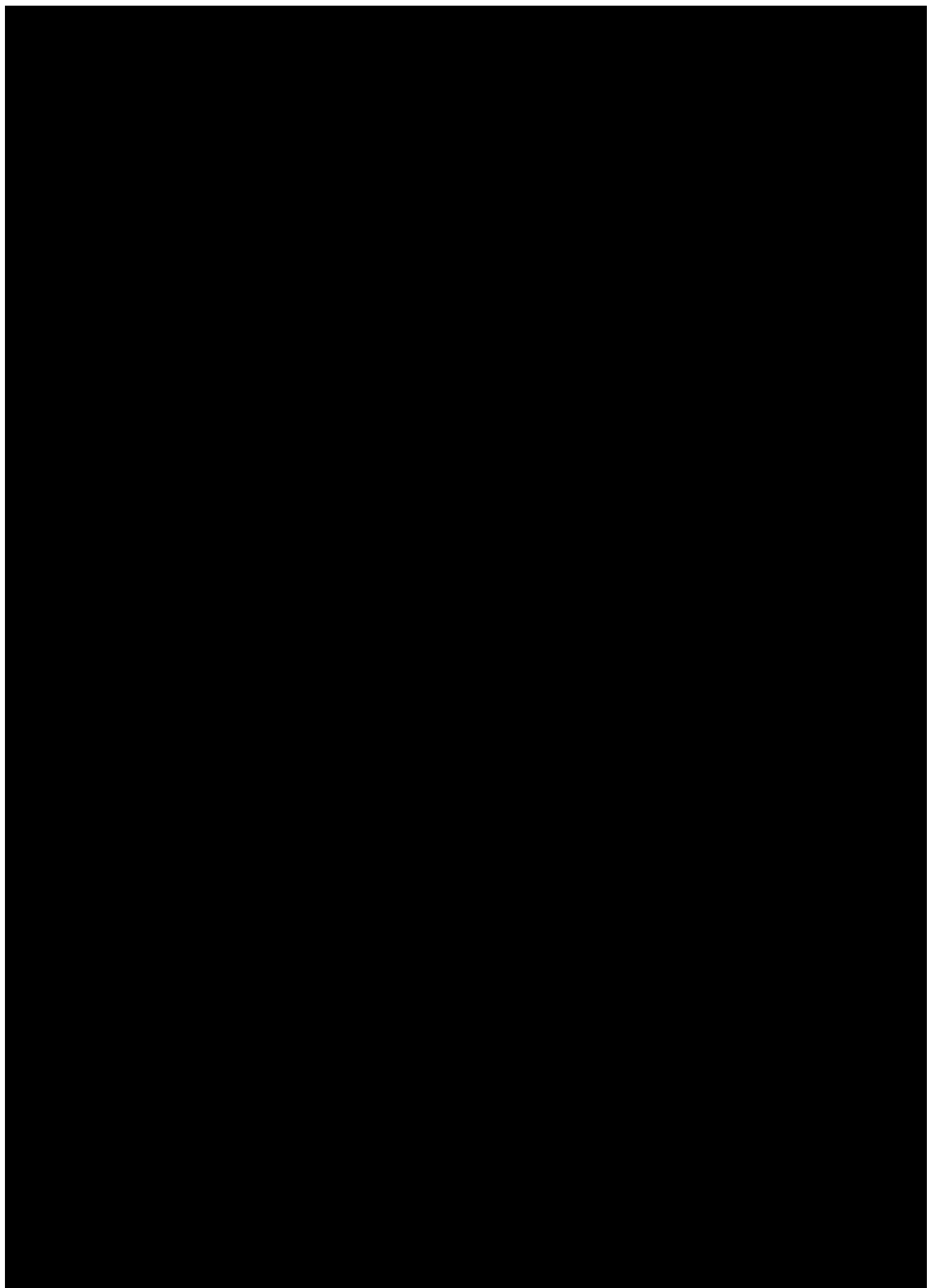
- (a) Subject to clauses 11.1(b), 11.1(c) and 19, the Tenant must not do any of the following:
- (i) assign this Lease or grant a sublease of the Premises;
  - (ii) part with or share possession of the Premises;
  - (iii) grant any licence, franchise or concession affecting the Premises;
  - (iv) grant an Encumbrance over or otherwise deal with this Lease or the Tenant's interests in the Premises or the Tenant's Property; or
  - (v) procure anything specified in clauses 11.1(a)(i) to 11.1(a)(iv) inclusive.
- (b) The Tenant must assign this Lease at the same time and to the same entity as it assigns the Station Delivery Deed. The Tenant must not otherwise assign this Lease.
- (c) The Tenant may grant a non-exclusive licence to or share possession of the Premises with any of the Tenant's Subcontractors, as that term is defined in the Station Delivery Deed.

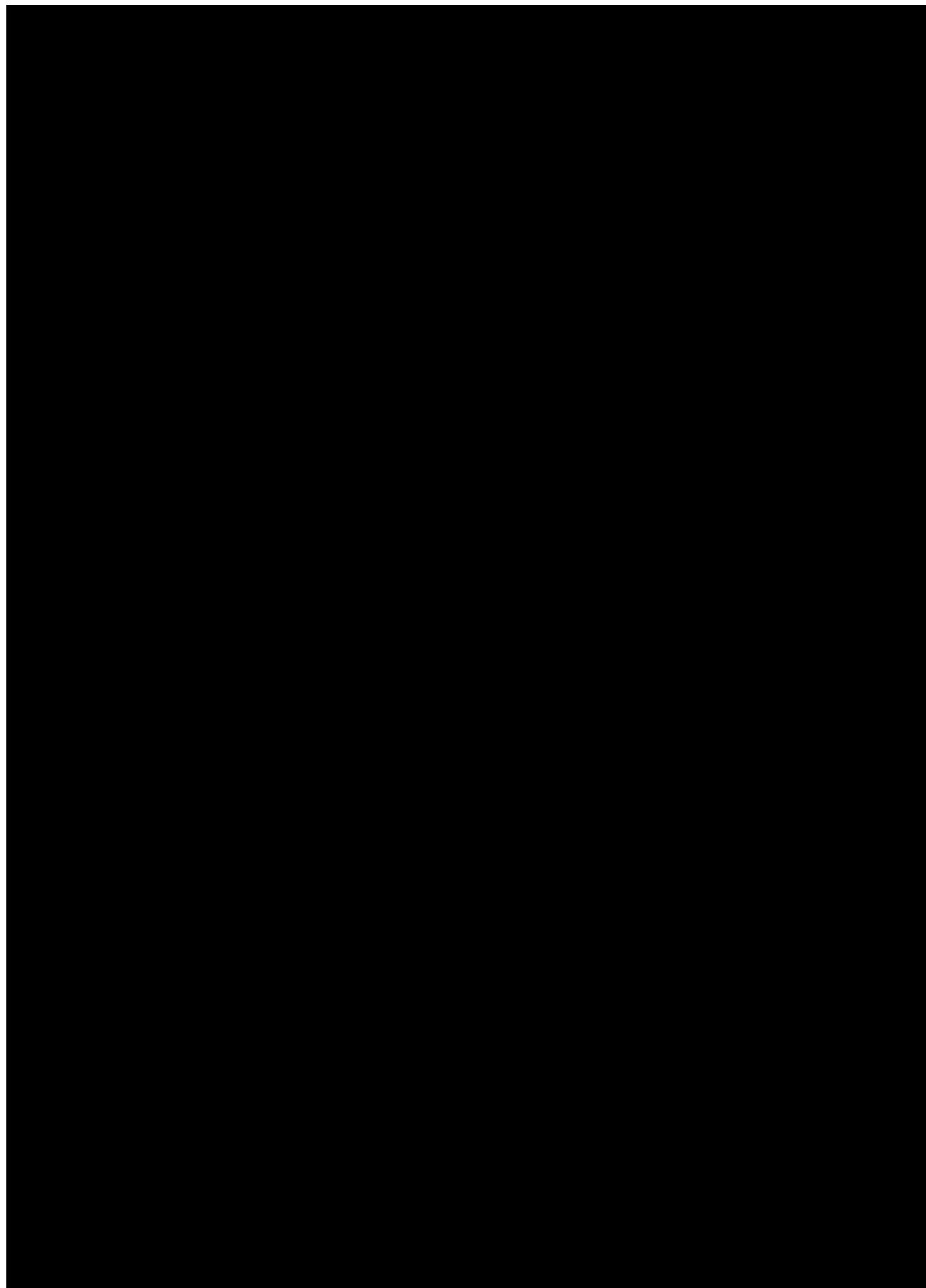
### 11.2 Requirements for assignment

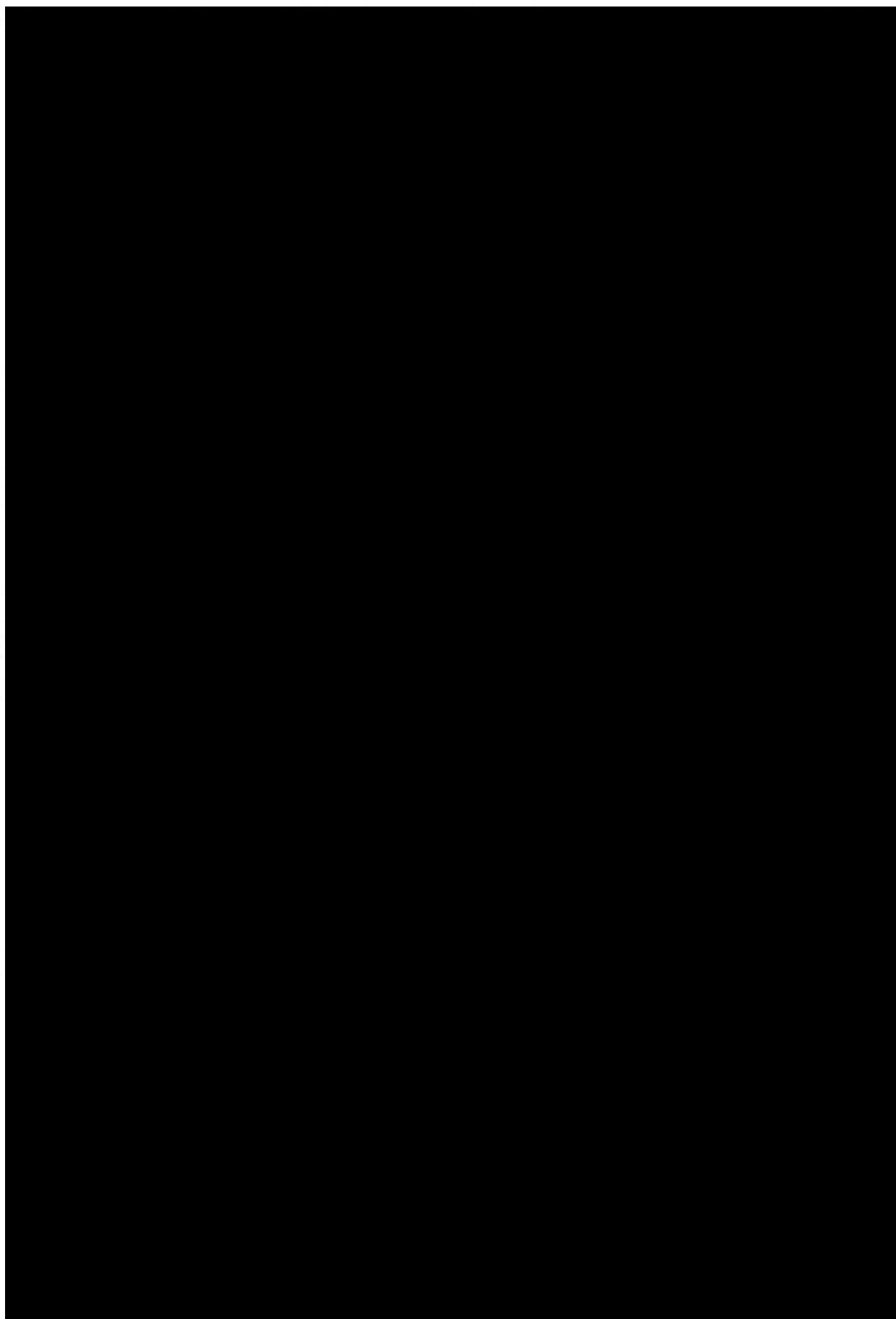
If the Tenant proposes to assign this Lease:

- (a) the Tenant and assignee must enter into a deed in the form reasonably required by the Landlord under which (among other things):
- (i) the assignee agrees to perform all of the Tenant's express and implied obligations under this Lease, including the obligation to indemnify the Landlord;
  - (ii) the Tenant releases the Landlord from all its obligations under this Lease;
  - (iii) the Tenant acknowledges its continuing obligations under this Lease; and
- (b) the Tenant must give the Landlord a signed and registrable transfer of this Lease.

## 12. DEFAULT, TERMINATION AND EXPIRY







### 13. INFORMATION REQUIRED FOR ENVIRONMENTAL REPORTING

#### 13.1 Tenant to provide assistance

- (a) The Tenant must provide all necessary assistance to the Landlord to enable the Landlord to:
  - (i) comply with its obligations under any law, or the lawful requirements of any Government Agency, relating to GHG emissions, energy consumption, energy production, energy efficiency or ecological sustainability (including, but not limited to, NGERS) insofar as it relates to the Premises or the activities conducted on the Premises; or
  - (ii) obtain an environmental rating for the Premises (including, without limitation, a National Australian Built Environment Rating System Energy rating).
- (b) The assistance that the Tenant must provide includes, but is not limited to:
  - (i) providing all data relating to GHG emissions, energy consumption and energy production arising from, or in connection with, the activities conducted on the Premises in a form reasonably requested by the Landlord;
  - (ii) providing all reasonable assistance to an auditor which may be appointed under NGERS;
  - (iii) allowing the Landlord access to the Premises in connection with assessing or obtaining an environmental rating for the Premises; and
  - (iv) providing all information that may be required by the Landlord to comply with any statutory disclosure requirements.

#### 13.2 Tenant's warranty

The Tenant warrants that all information and data provided (or to be provided) to the Landlord under this clause 13 is (or will be), to the knowledge of the Tenant, true and correct.

## 14. POWER OF ATTORNEY

### 14.1 Appointment of attorney

- (a) The Tenant irrevocably appoints the Landlord and each officer (as defined in the Corporations Act) of the Landlord severally as its attorney to:
  - (i) complete and register this Lease (if required for the exercise of any power);
  - (ii) do anything that the Tenant must or may do under this Lease if the Landlord considers that the Tenant has not done it or has not done it properly;
  - (iii) do anything that the Attorney considers is necessary or desirable to remedy any breach of this Lease by the Tenant;
  - (iv) exercise any right, power, authority, discretion or remedy of the Tenant under this Lease, after the Tenant has breached this Lease; and
  - (v) execute a transfer or surrender of this Lease or a withdrawal of any caveat, after the Tenant has breached this Lease.
- (b) Each Attorney may appoint and remove substitutes, and may delegate its powers (including this power of delegation) and revoke any delegation.

### 14.2 General

- (a) An Attorney may do anything contemplated by this clause even if the Attorney is affected by an actual or potential conflict of interest or duty, or might benefit from it.
- (b) An Attorney may do anything contemplated by this clause in its name, in the name of the Tenant or in the name of both of them.
- (c) The Tenant must ratify anything done by an Attorney under this clause.
- (d) The Tenant gives the power of attorney in this clause:
  - (i) to secure performance by the Tenant of its obligations to the Landlord under this Lease and any property interest of the Landlord under this Lease; and
  - (ii) for valuable consideration, receipt of which is acknowledged by the Tenant.

## 15. PERSONAL PROPERTY SECURITIES ACT

### 15.1 PPSA clauses

Each party agrees that:

- (a) if the Landlord determines that this document (or a transaction in connection with it) is or creates a security interest for the purposes of the PPSA, the Tenant agrees to do anything the Landlord reasonably asks (such as obtaining consents, producing, completing and signing documents) to ensure that the security interest is enforceable, perfected and otherwise effective with the intended priority;
- (b) to the extent the law permits:

- (i) the Landlord need not comply with, and the Tenant may not exercise rights under, any provisions of Chapter 4 of the PPSA that may be contracted out of; and
- (ii) the Tenant waives its rights to receive any notice that is required by the PPSA (but this does not prohibit the Landlord from giving such a notice); and
- (c) if the Landlord exercises a right, power or remedy in connection with this document (or a transaction in connection with it), that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Landlord states otherwise at the time of exercise (but this clause does not apply to a right, power or remedy which can only be exercised under the PPSA); and
- (d) for the purposes of any provision in this document restricting disclosure, disclosure under section 275 of the PPSA will only be regarded as required by law, to the extent that section 275 requires disclosure despite any agreement to the contrary.

## 15.2 Meaning of terms

Terms defined in the PPSA have the same meaning in this clause 15 unless the context otherwise requires.

## 16. NOTICES

### 16.1 How to give a notice

A notice, consent or other communication under this Lease is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
  - (i) sent by pre-paid mail (by airmail, if the addressee is overseas) or delivered to that person's address; or
  - (ii) sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full without error; or
  - (iii) if the person to whom it is being given is the Tenant, delivered to the Premises.

### 16.2 When a notice is given

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is sent by fax or delivered, if received:
  - (i) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
  - (ii) 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; and
- (b) if it is sent by mail:

- (i) within Australia - [REDACTED] after posting; or
- (ii) to or from a place outside Australia - [REDACTED] after posting.

#### 16.3 **Address for notices**

A person's address and fax number are those set out below that person's name in the relevant Item in the Information Table in this Lease, or as the person notifies the sender.

### 17. **GENERAL**

#### 17.1 **Tenant's warranty**

The Tenant warrants that it has not been induced to enter into this Lease by any express or implied statement, warranty or representation:

- (a) whether oral, written or otherwise;
- (b) made by or on behalf of the Landlord in respect of the Premises or anything relating to, or which could have an effect on, the Premises including but not limited to:
  - (i) the fitness or suitability of the Premises for any purpose; or
  - (ii) any fixtures, facilities or amenity in or on the Premises.

#### 17.2 **Governing law**

- (a) This Lease and any dispute arising out of or in connection with the subject matter of this Lease is governed by the laws of New South Wales.
- (b) Each party submits to the exclusive jurisdiction of the courts of New South Wales and courts of appeal from them, in respect of any proceedings arising out of or in connection with the subject matter of this Lease.

#### 17.3 **Giving effect to this Lease**

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

#### 17.4 **Variation and waiver**

- (a) A provision of or a right under this Lease may not be waived or varied except in writing signed by whoever is to be bound.
- (b) 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.
- (c) The Landlord's acceptance of any arrears or late payment of Rent, the Outgoings or other money under this Lease does not operate as a waiver of:
  - (i) the essentiality of the Tenant's obligation to pay Rent, the Outgoings or other money in respect of those arrears or the late payment; or

- (ii) the Tenant's continuing obligation to pay Rent, the Outgoings or other money during the Term.

**17.5 Operation of this Lease**

- (a) Subject to clause 17.5(b), this Lease contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Lease and has no further effect.
- (b) Any right that a person may have under this Lease is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this Lease which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Lease enforceable, unless this would materially change the intended effect of this Lease.

**17.6 Operation of indemnities**

- (a) Each indemnity in this Lease survives the expiry or termination of this Lease.
- (b) A party may recover a payment under an indemnity before it makes the payment in respect of which the indemnity is given.

**17.7 Landlord's consent**

Where this Lease contemplates that the Landlord may agree or consent to something (however it is described), the Landlord may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (b) agree or consent subject to conditions,

unless this Lease expressly contemplates otherwise. Any consent or conditional consent given by the Landlord must be in writing.

**17.8 No merger**

The provisions of this Lease do not merge on termination.

**17.9 Expiry or termination**

Expiry or termination of this Lease does not affect any rights arising from a breach of this Lease before then.

**17.10 Exclusion of legislation**

- (a) The covenants, powers and provisions implied in leases by sections 84, 84A, 85 and 86 of the *Conveyancing Act 1919* (NSW) do not apply to this Lease.
- (b) Without limiting clause 17.10(a), any legislation that adversely affects an obligation of the Tenant, or the exercise by the Landlord of a right or remedy, under or relating to this Lease is excluded to the full extent permitted by law.

**17.11 Mitigation of damages**

If the Landlord has a duty to mitigate its damages:

- (a) the Landlord's conduct in performing that duty does not constitute acceptance of the Tenant's breach or repudiation or a surrender by operation of law; and
- (b) that duty does not apply if the Tenant vacates or abandons the Premises during the last year of the Term and the Landlord intends to renovate or demolish the Premises.

**18. BUILDING ENERGY EFFICIENCY CERTIFICATE**

- (a) The parties acknowledge and agree that a Building Energy Efficiency Certificate is not required to be provided by the Landlord under this Lease, on the basis that the Landlord is not a "constitutional corporation" for the purposes of the Building Energy Efficiency Disclosure Act.
- (b) The Tenant must not make any Claim against the Landlord or seek to terminate this Lease because the Landlord has not provided the Tenant with a Building Energy Efficiency Certificate.

We certify this dealing to be correct for the purposes of the *Real Property Act 1900* (NSW).

**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

[*insert Tenant's execution panel*]

**SCHEDULE E1. – CONTRACT SUM SCHEDULE**

(Schedule A2)





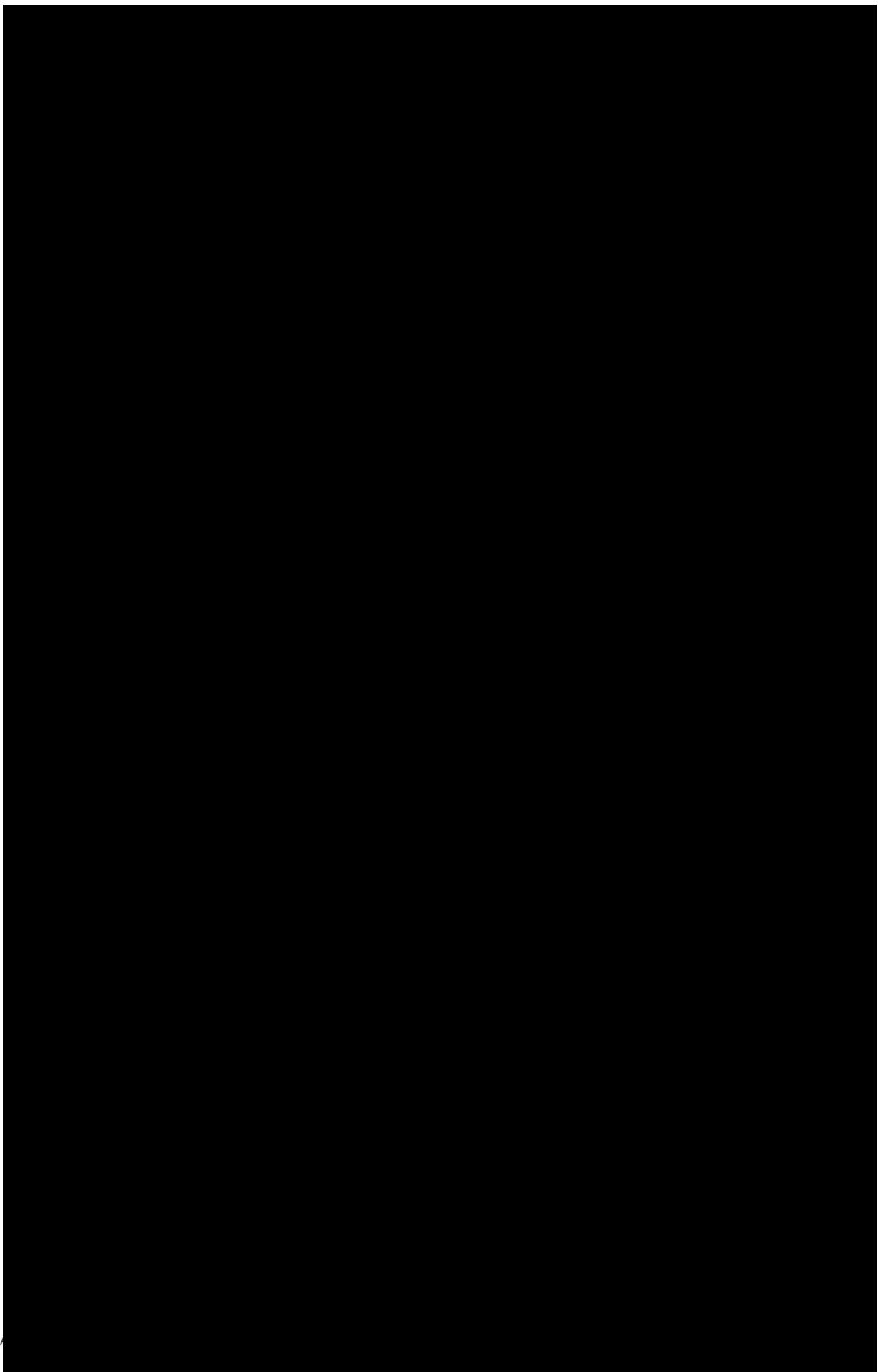


**SCHEDULE E2. – PERFORMANCE INCENTIVE PAYMENT SCHEDULE**









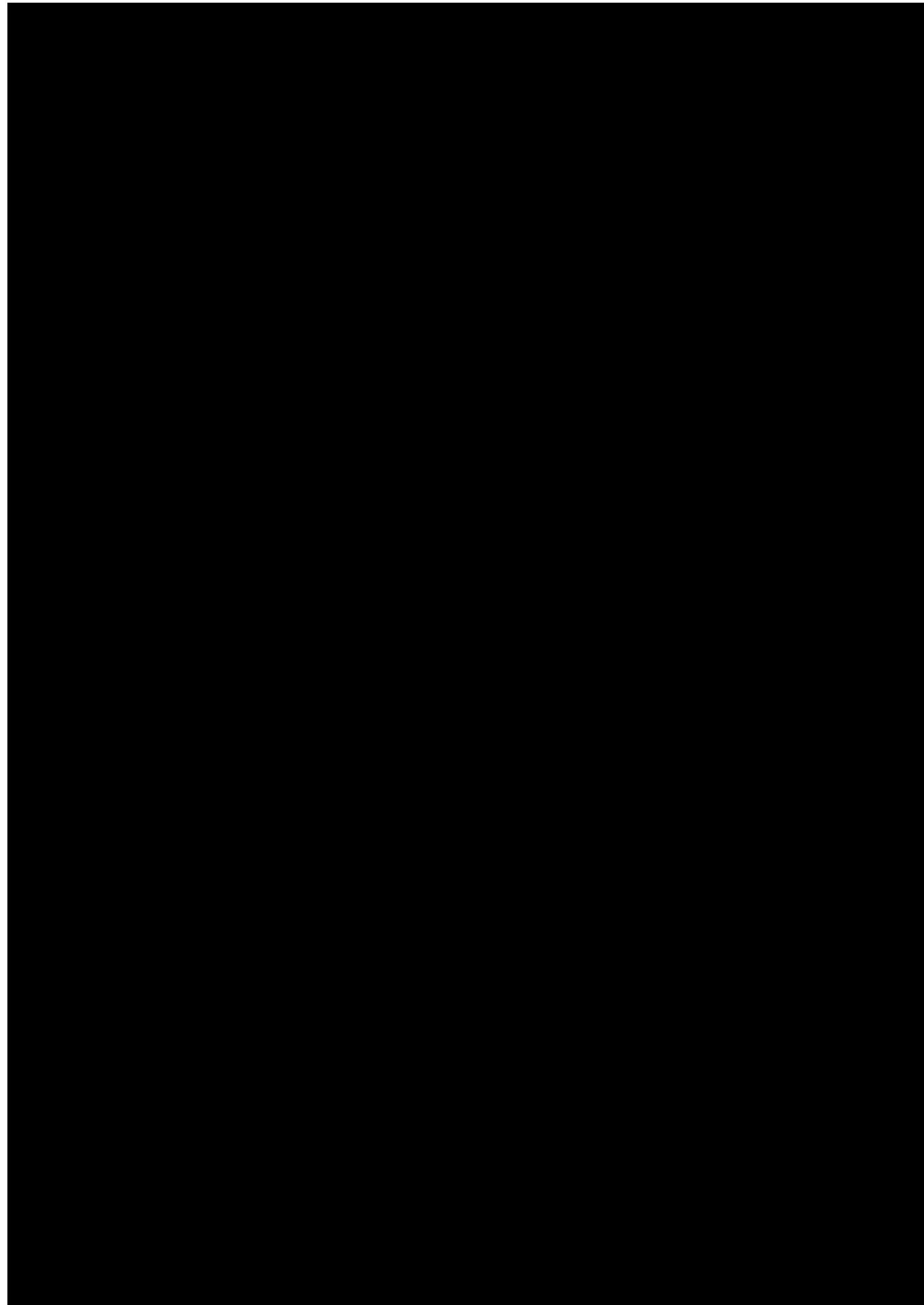




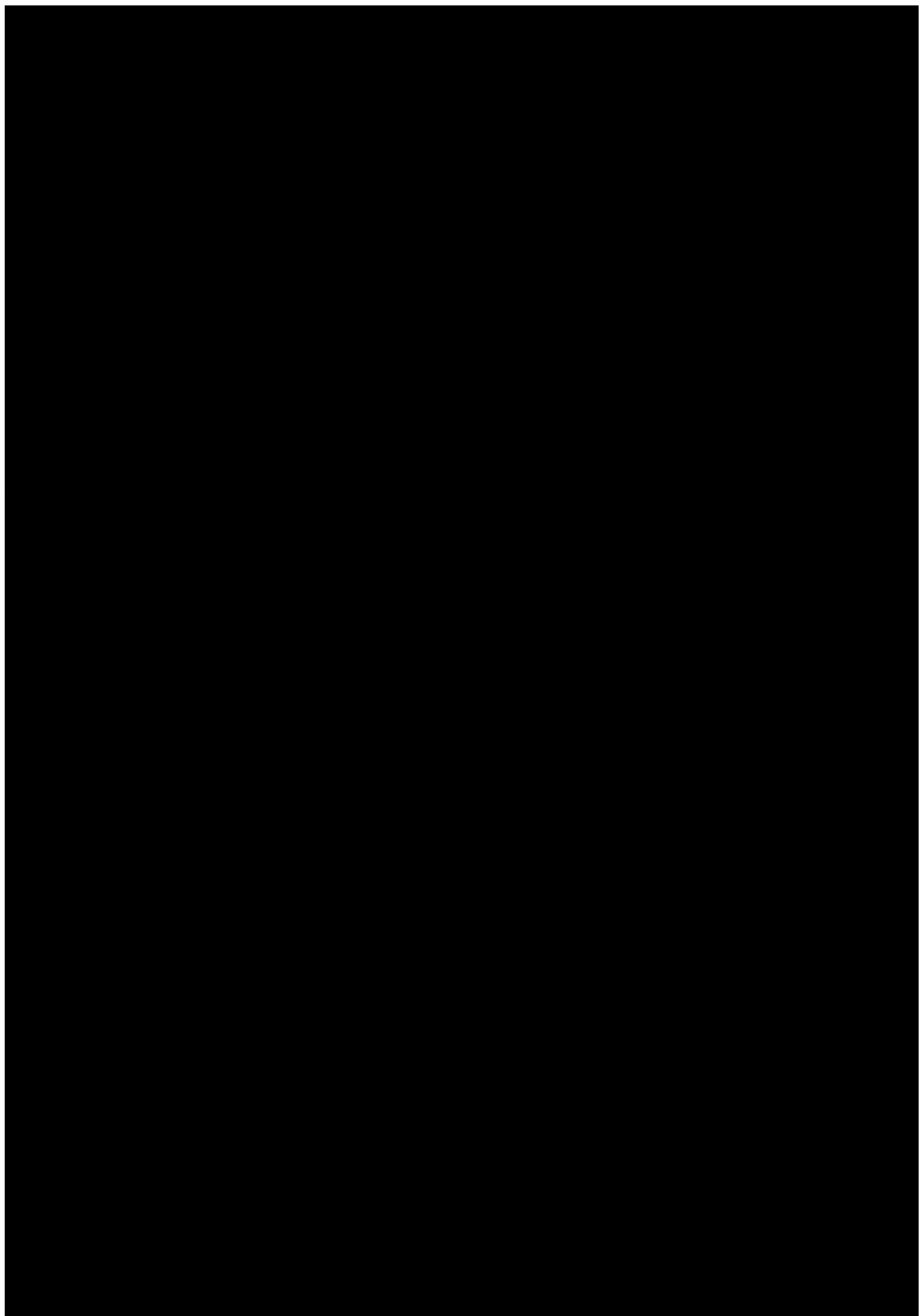


















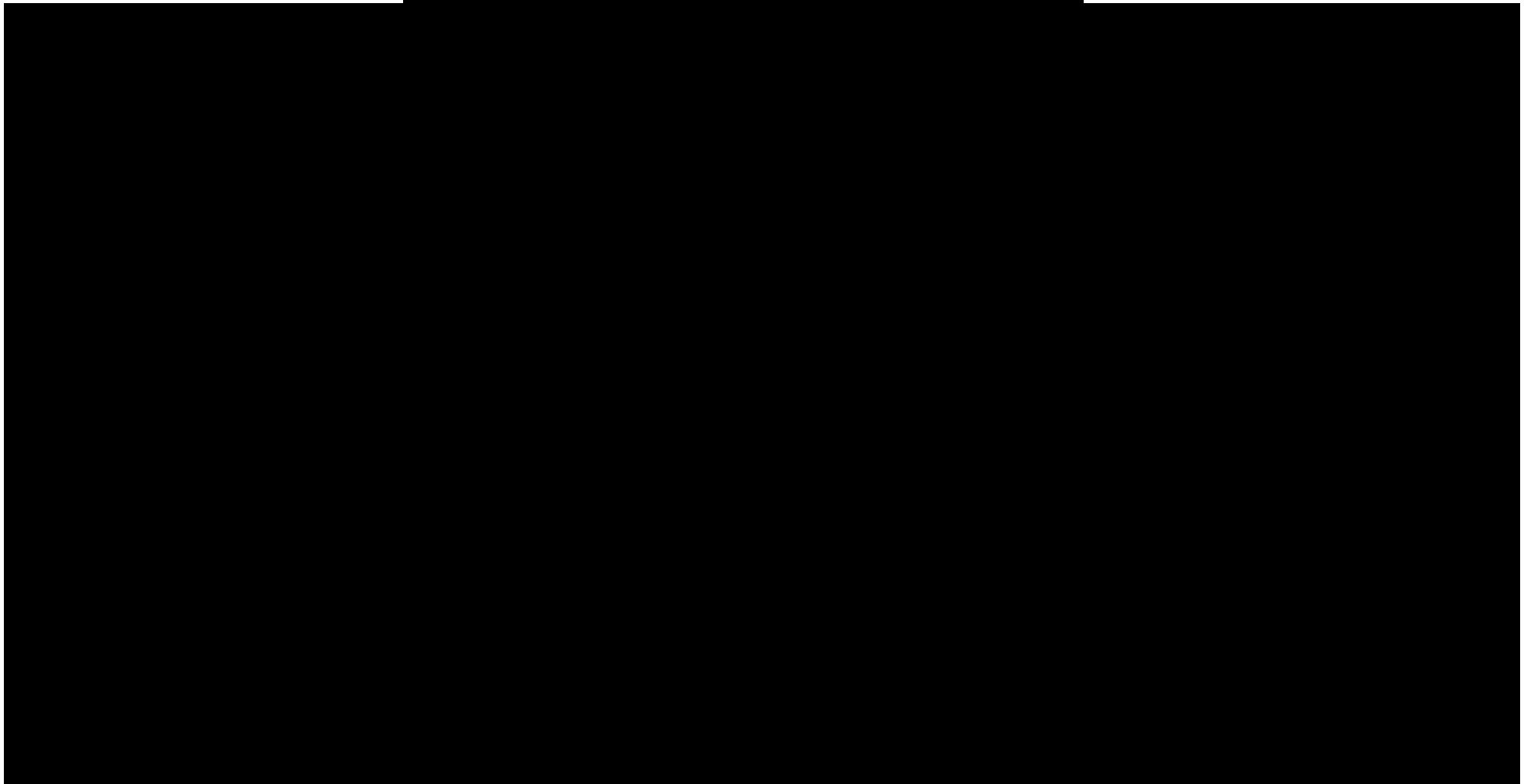






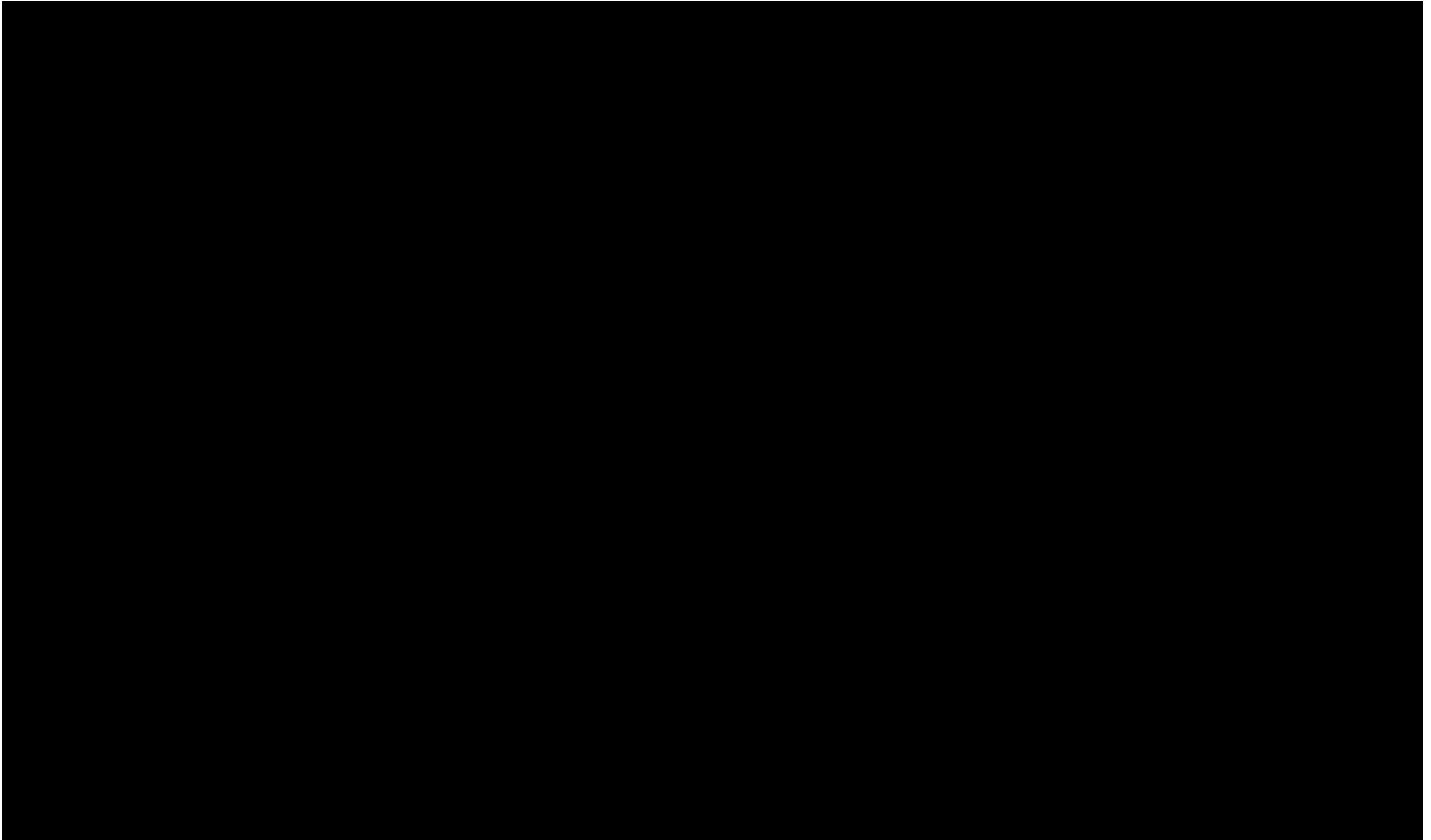


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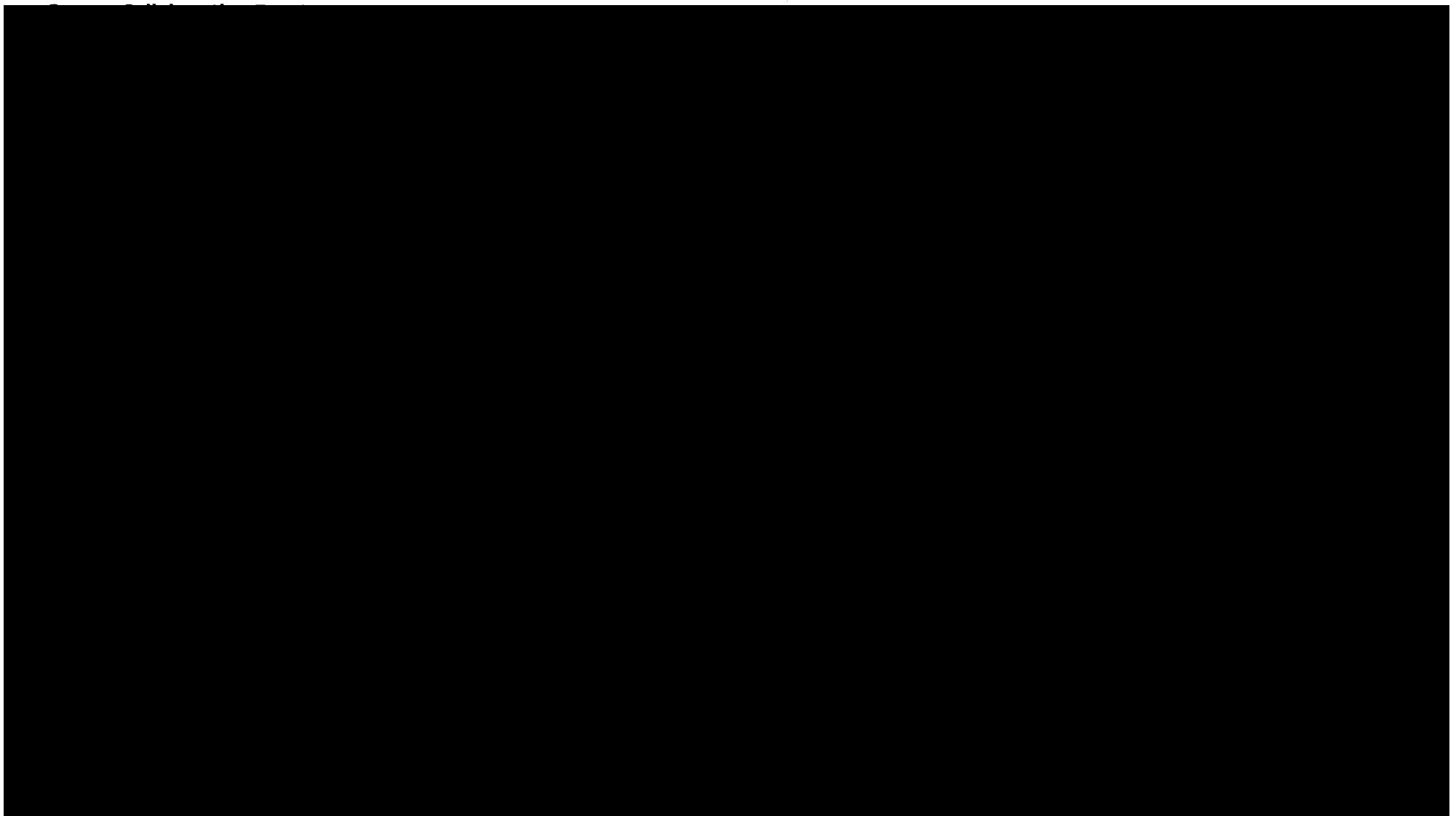


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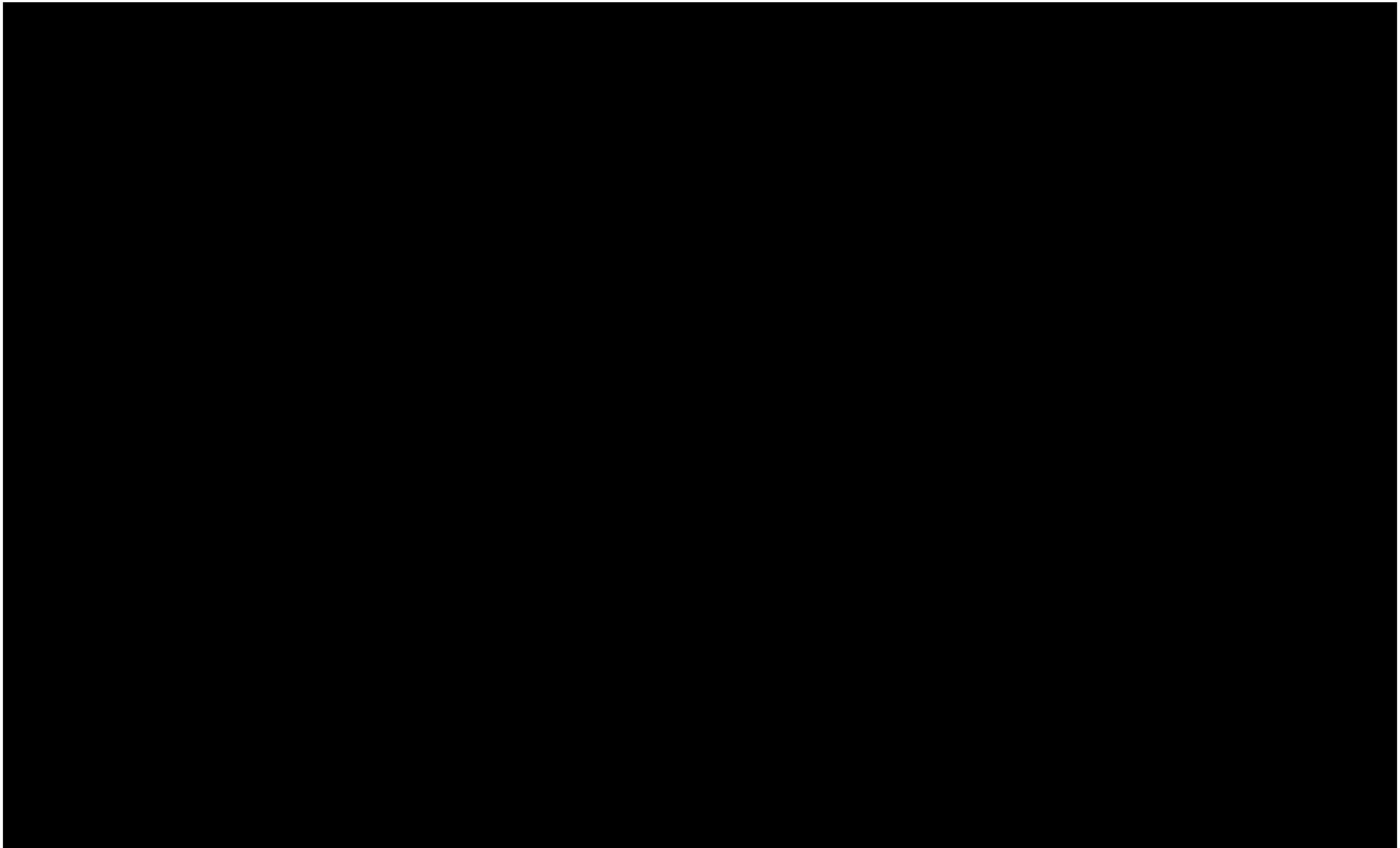


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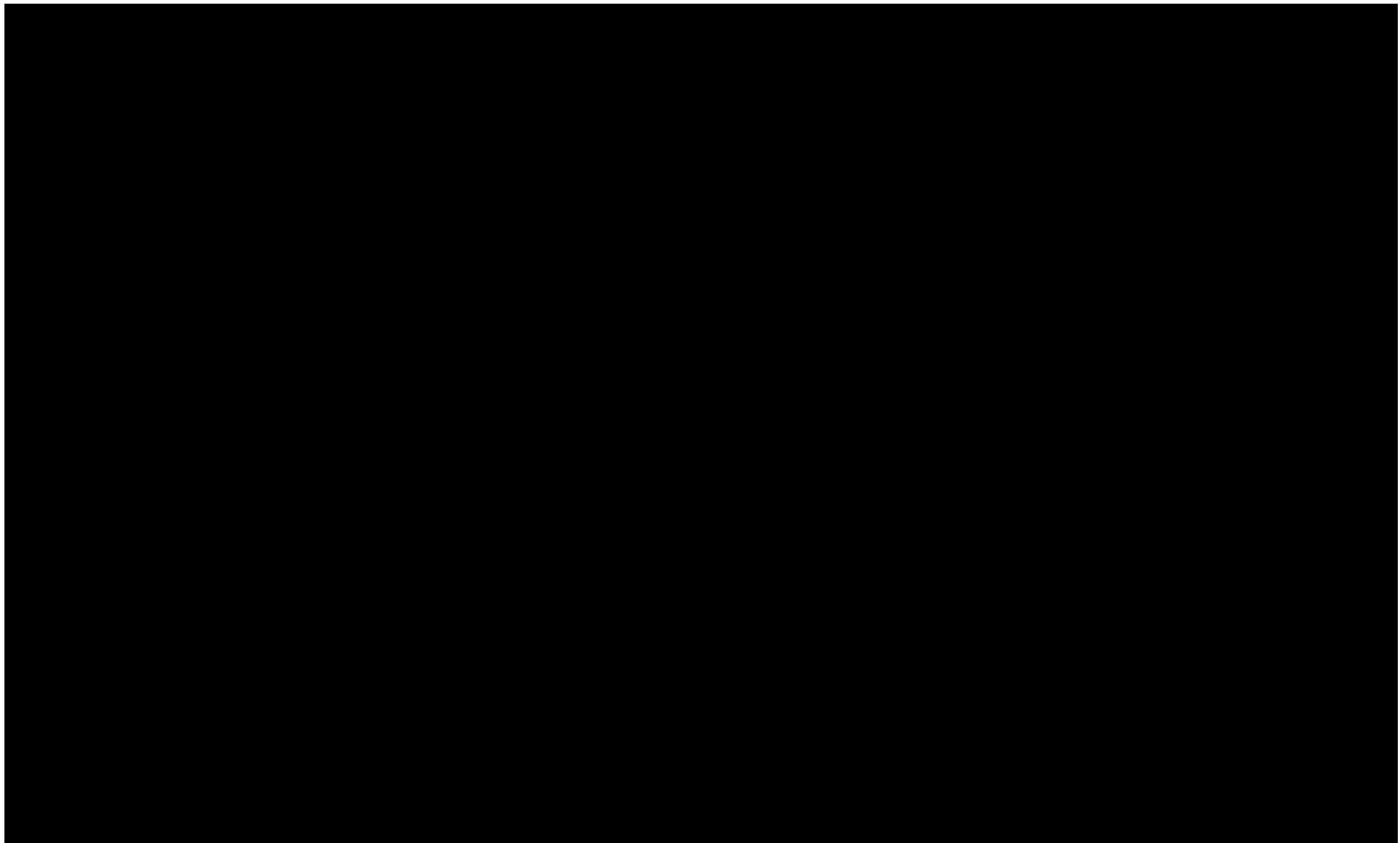


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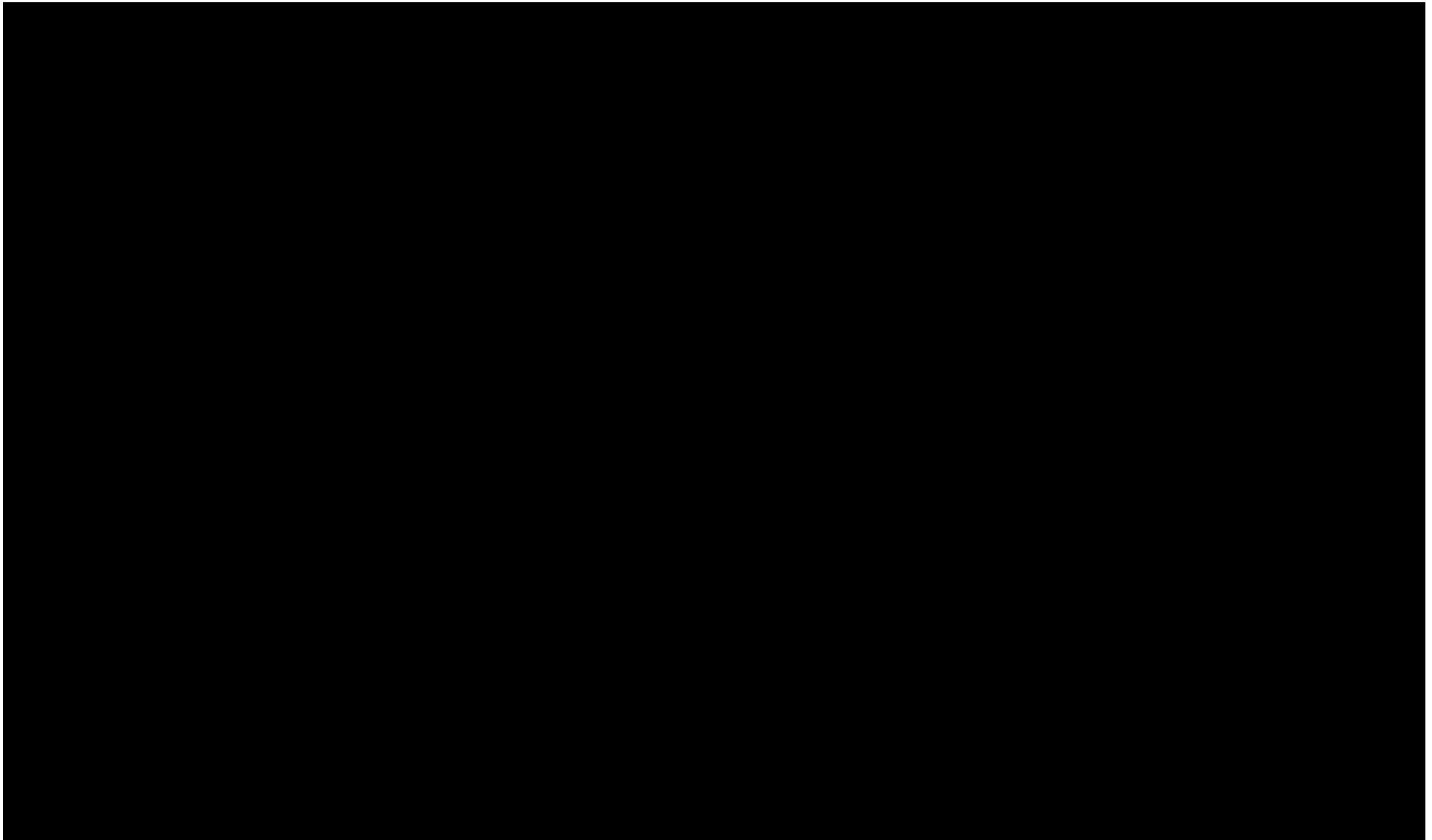


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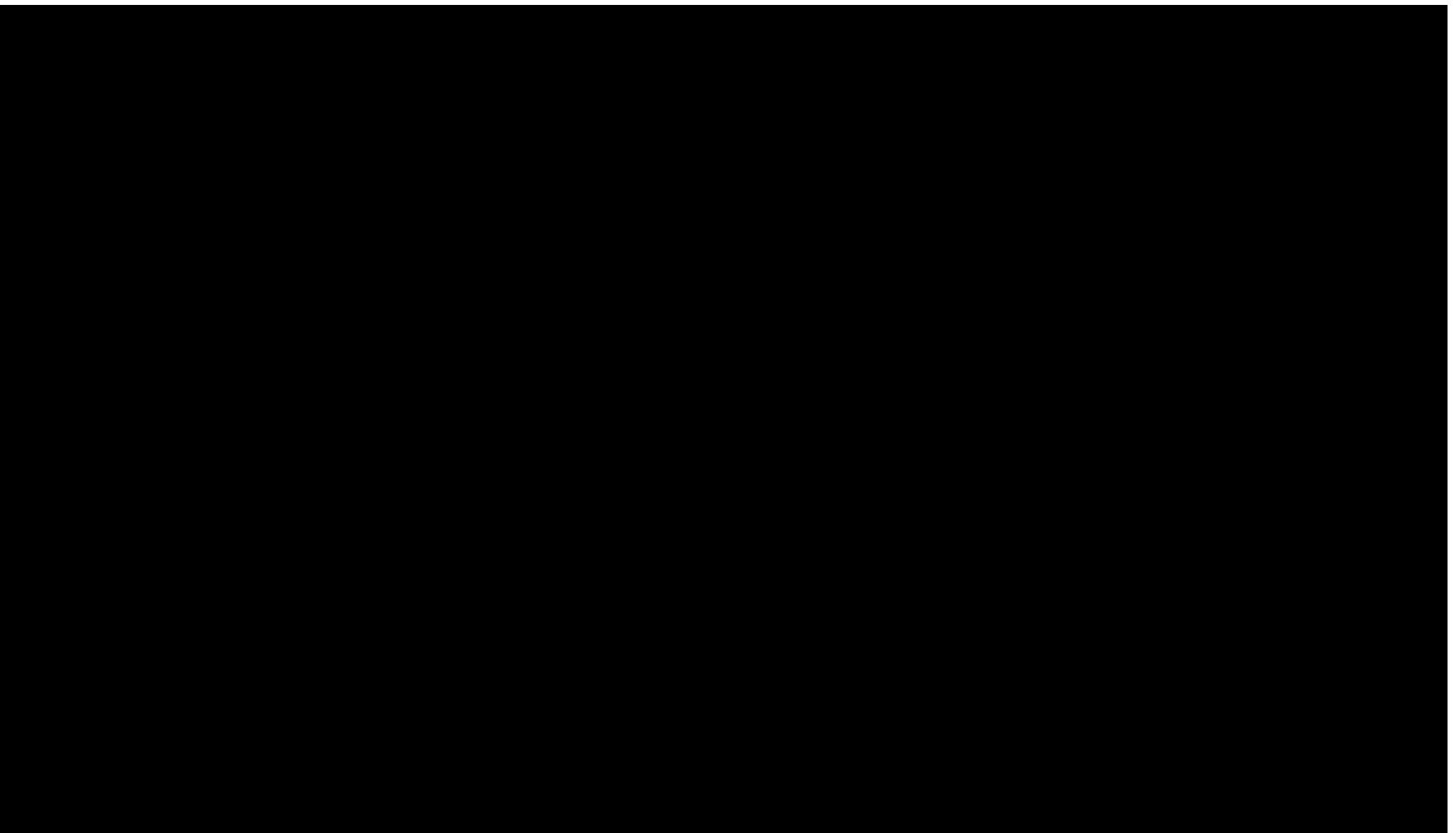


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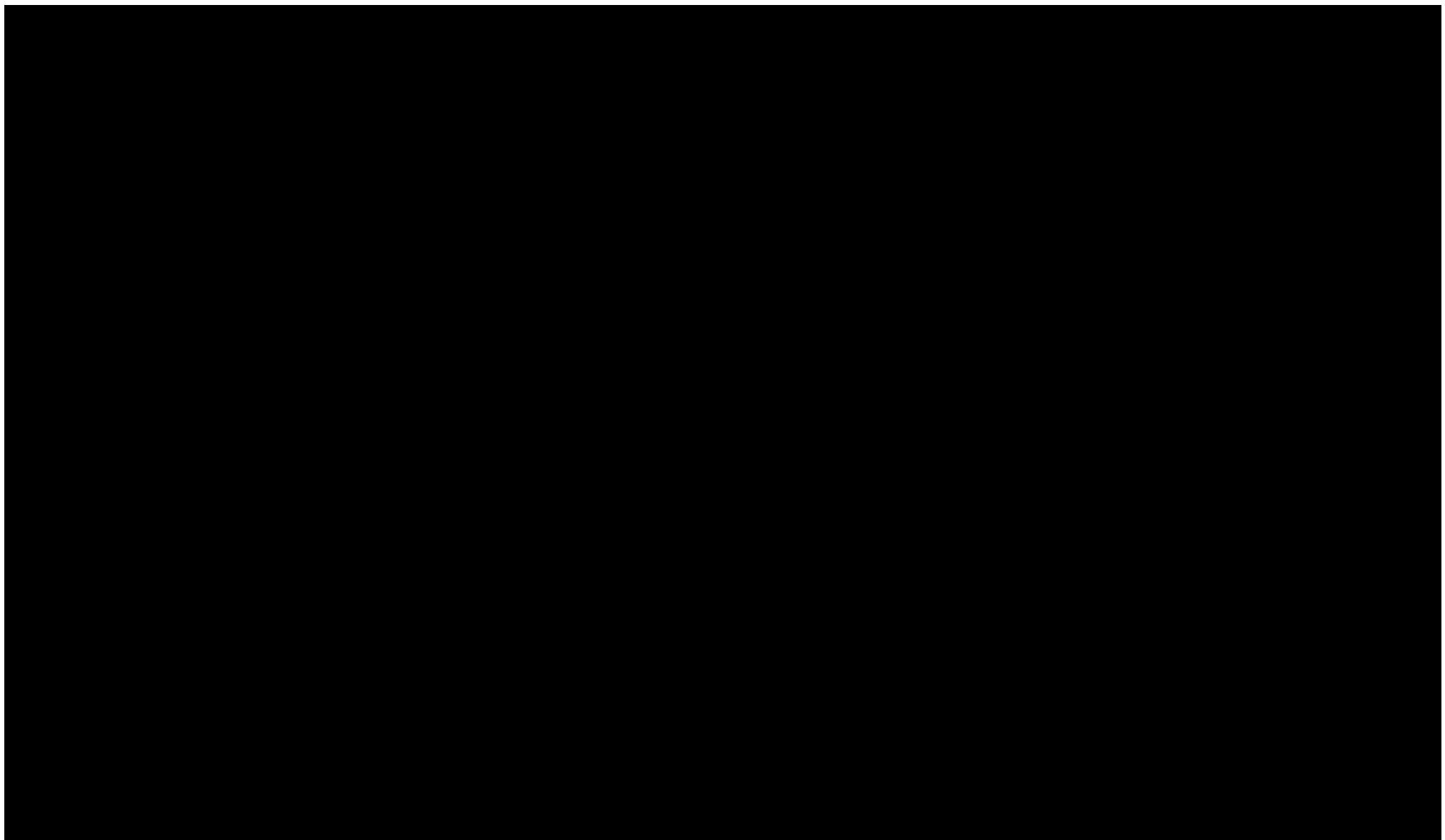


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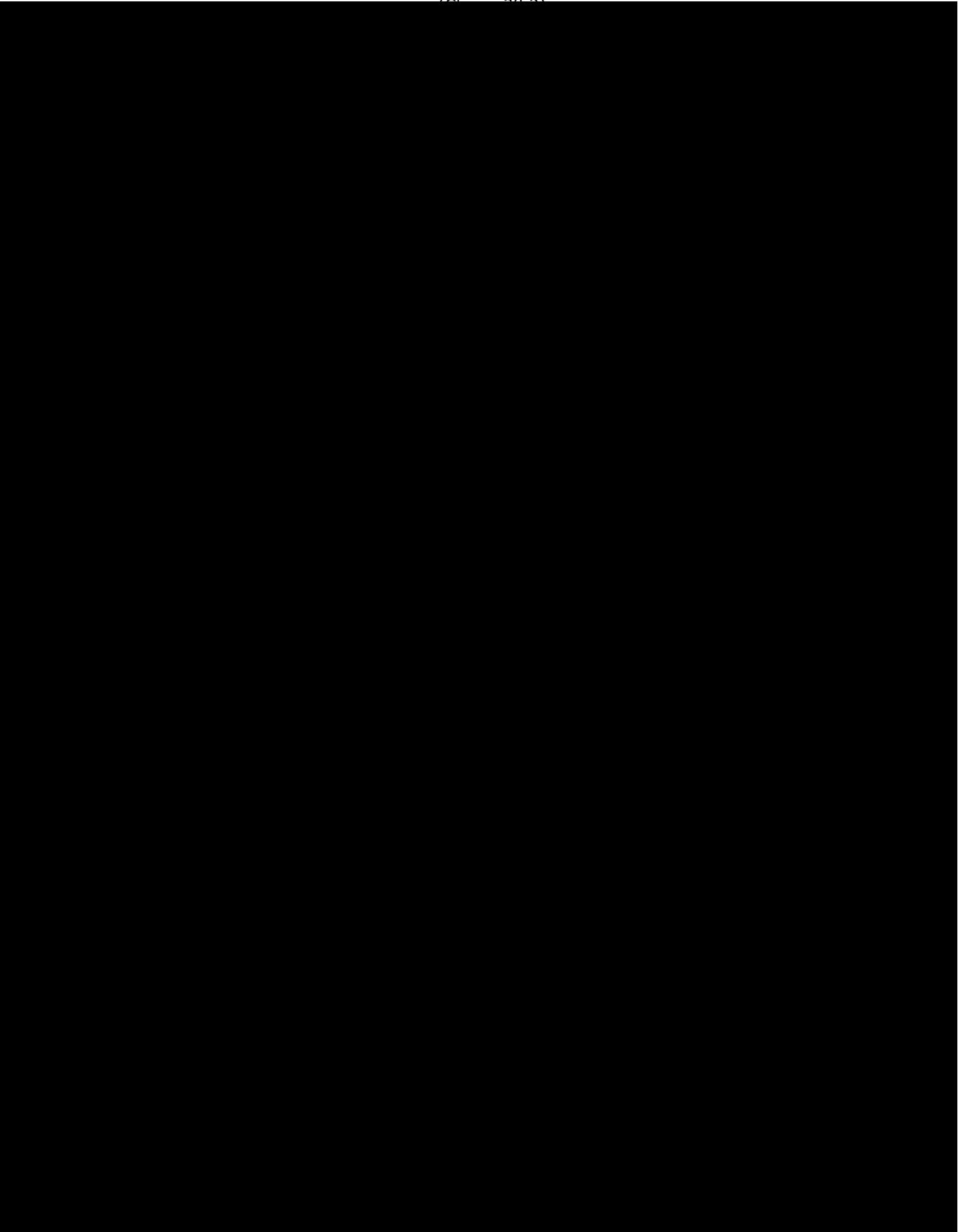
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**SCHEDULE E4. – VALUATION MECHANISM**

(S1 – 22.2)

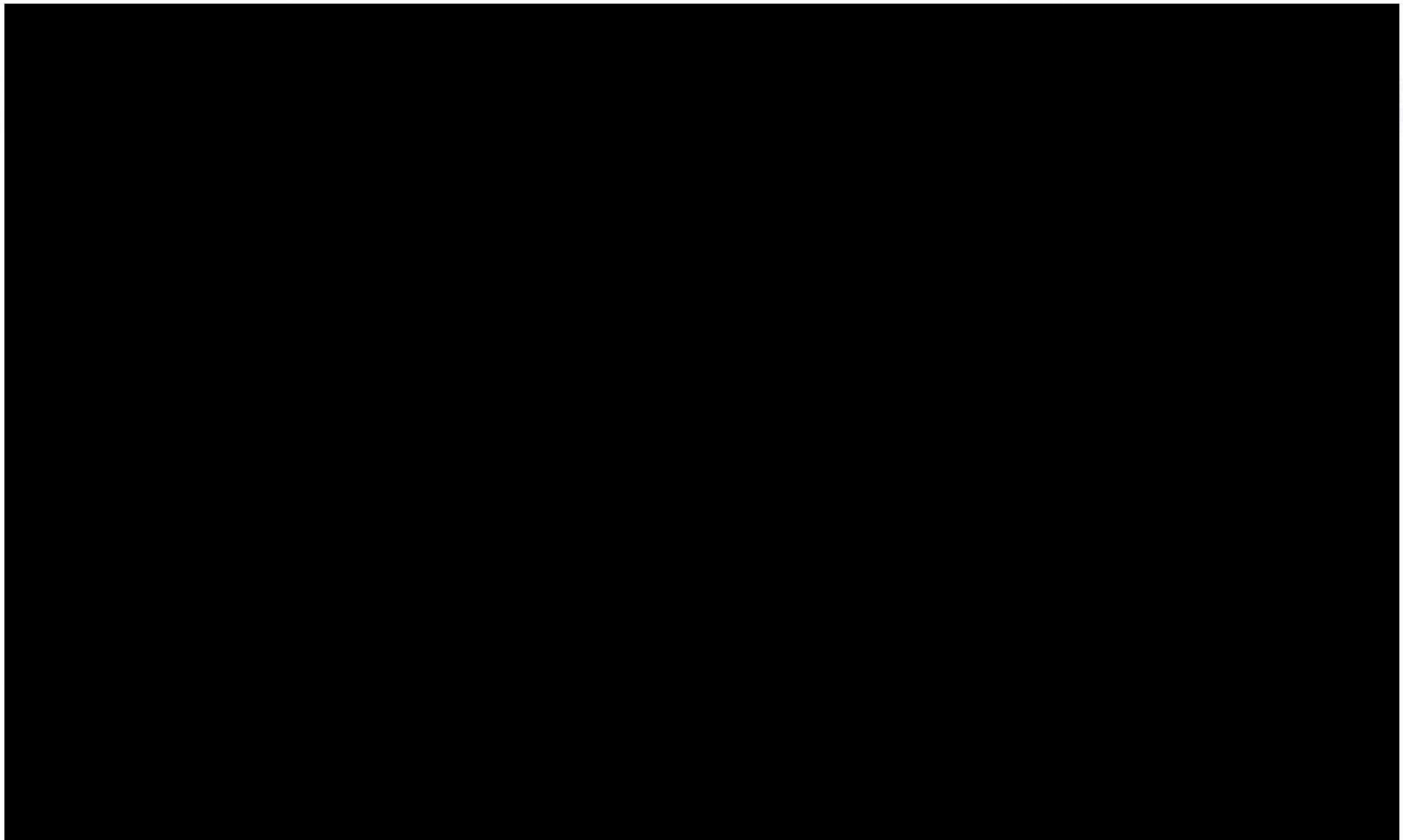




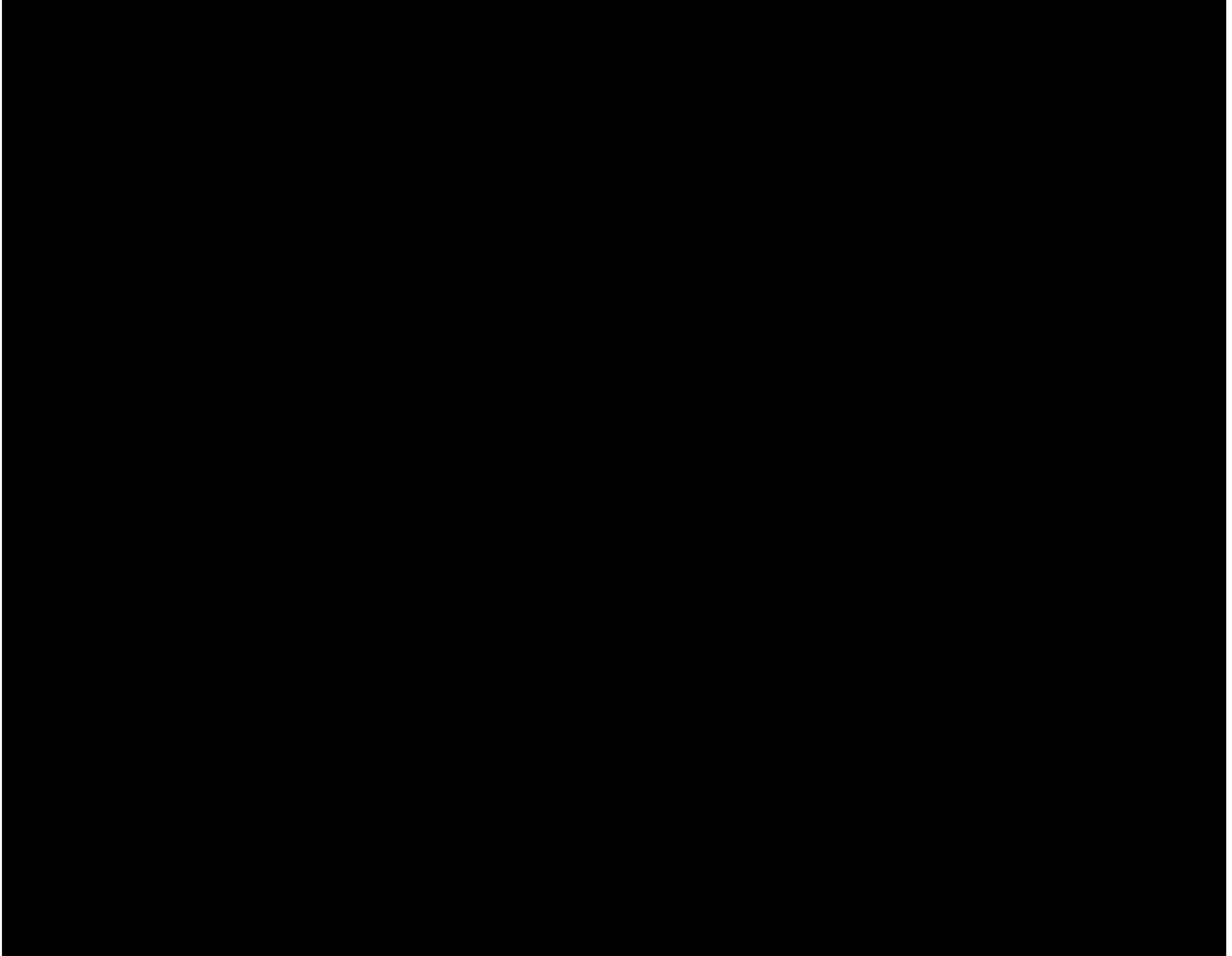






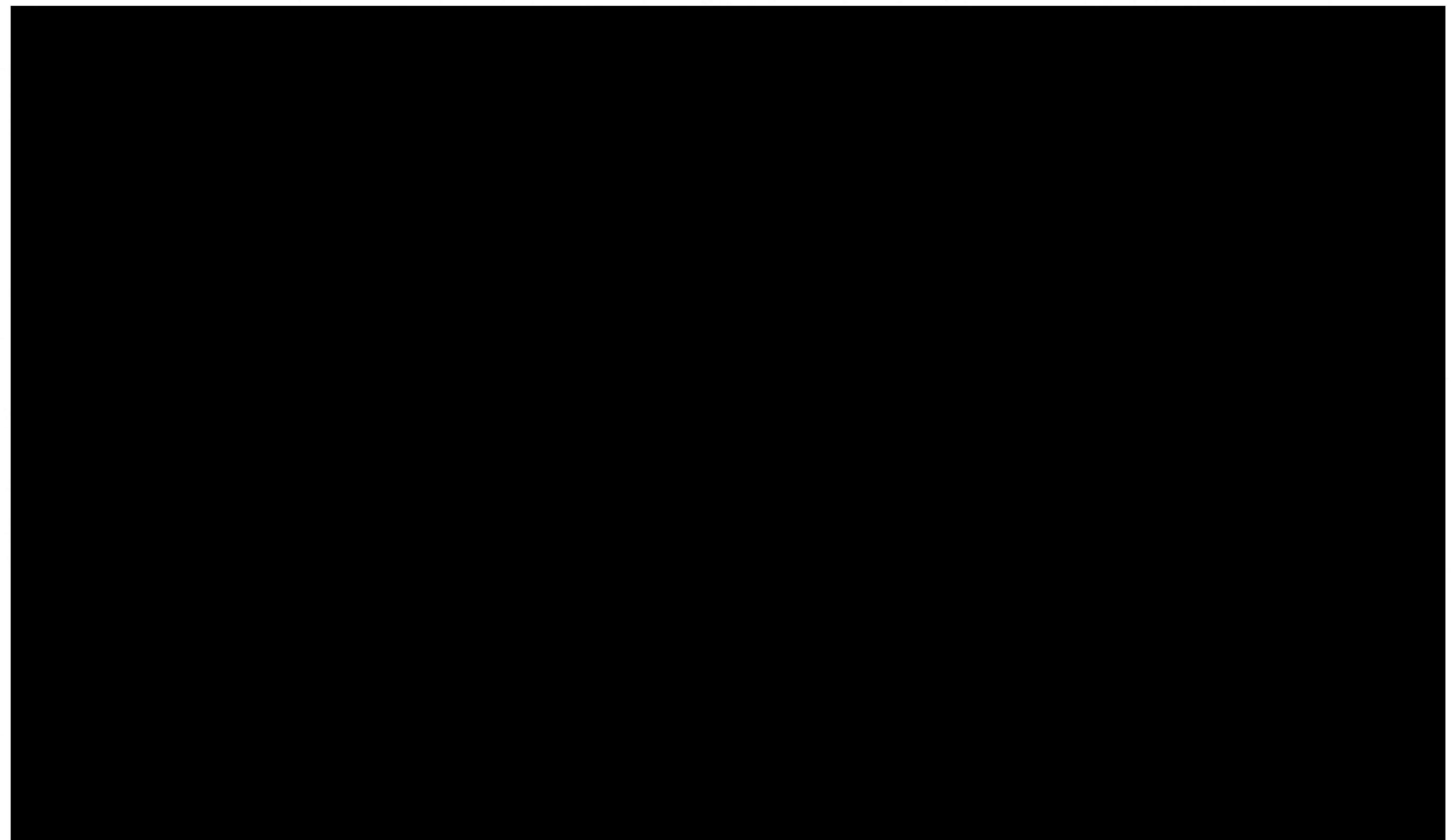






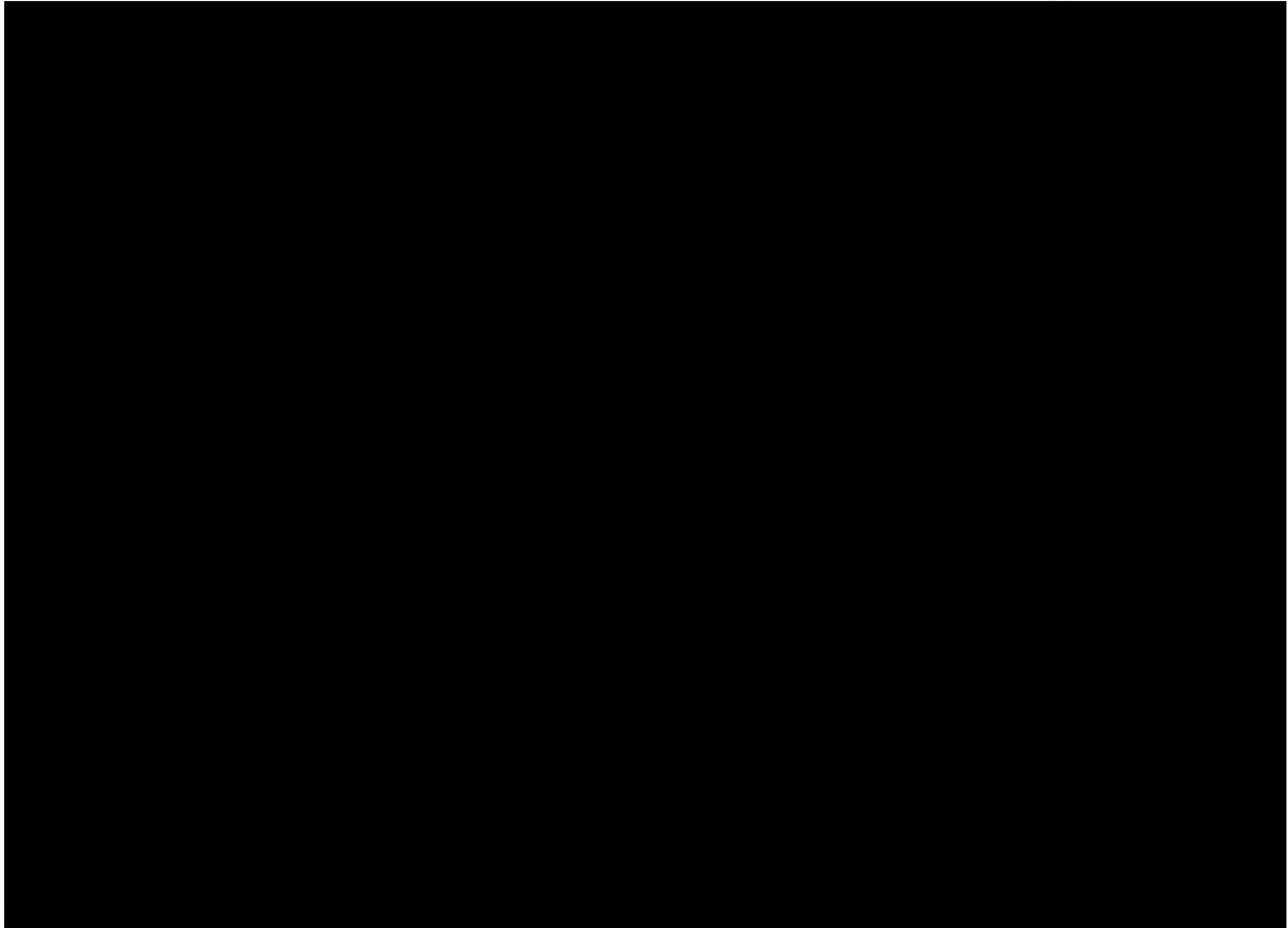


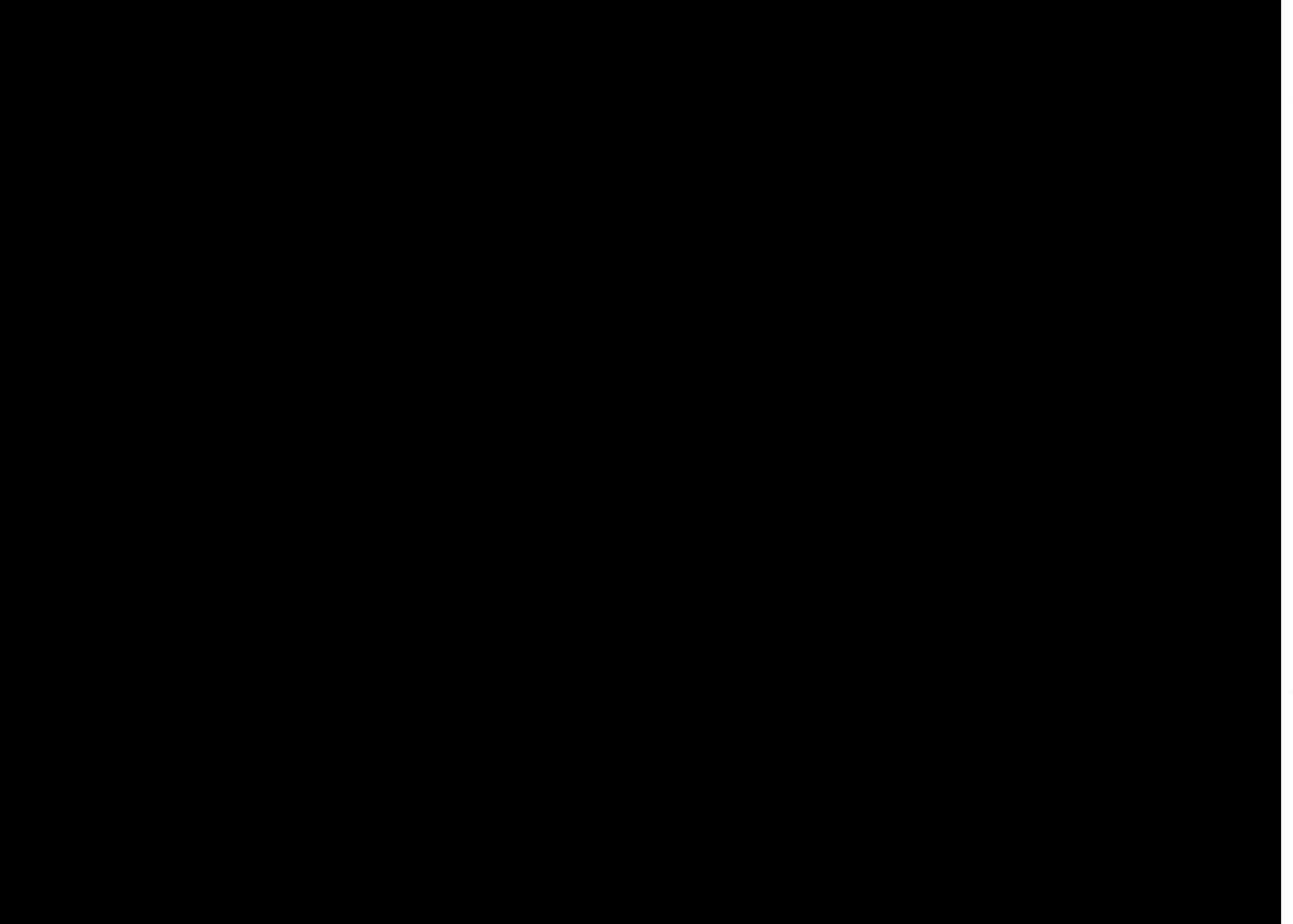


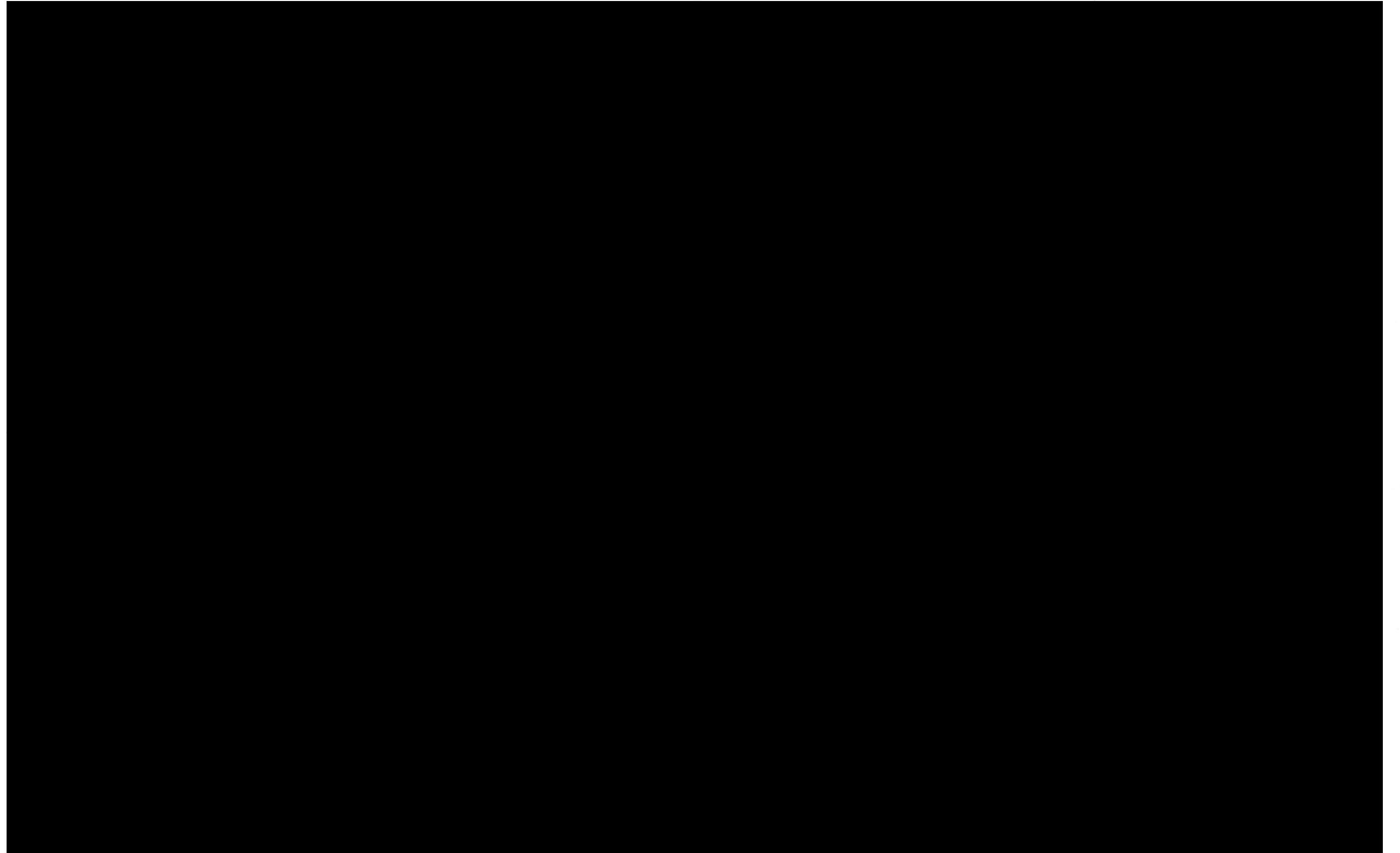






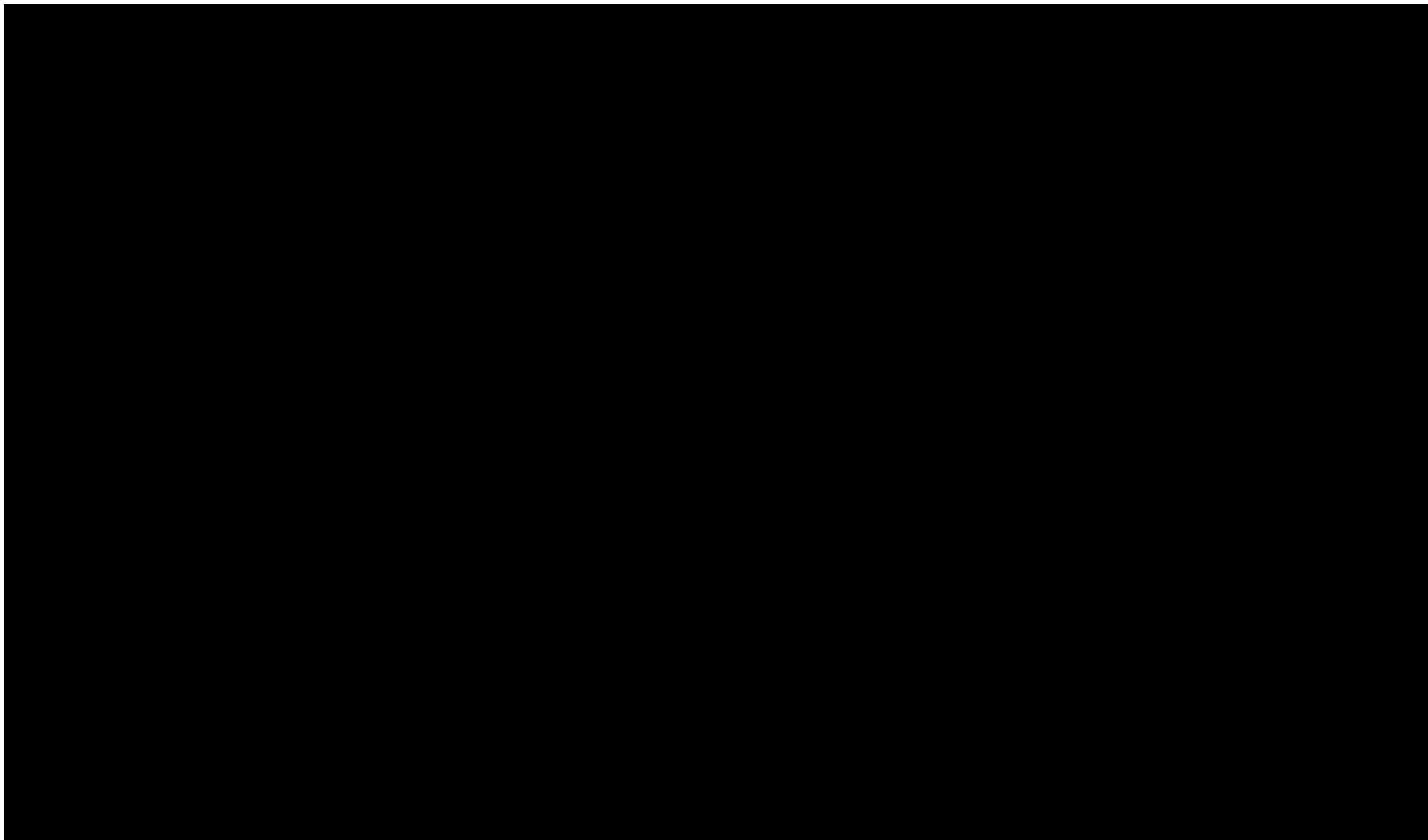








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## **SCHEDULE E5. – FORM OF UNCONDITIONAL UNDERTAKING**

(Clause 3.1(c))

**THIS DEED POLL (Undertaking)** made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

**IN FAVOUR OF:** Sydney Metro (ABN 12 354 063 515) (**Principal**)

**GIVEN BY:** \_\_\_\_\_ **(Financial Institution)**

VC Contractor: » .....

ABN » .....

Security Amount \$ » .....

The Contract: The deed between the Principal and the VC Contractor

Contract Number: » .....

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

## **Undertaking**

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

***to be included in the Undertaking where the Financial Institution is headquartered outside Australia]***

7. This Undertaking is governed by the laws of the State of New South Wales.

**SIGNED** as a deed poll.

**Signed sealed and delivered** for and on behalf of [insert name of **Financial Institution**] by its Attorney under a Power of Attorney dated [insert], and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

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Signature of Attorney

---

Signature of Witness

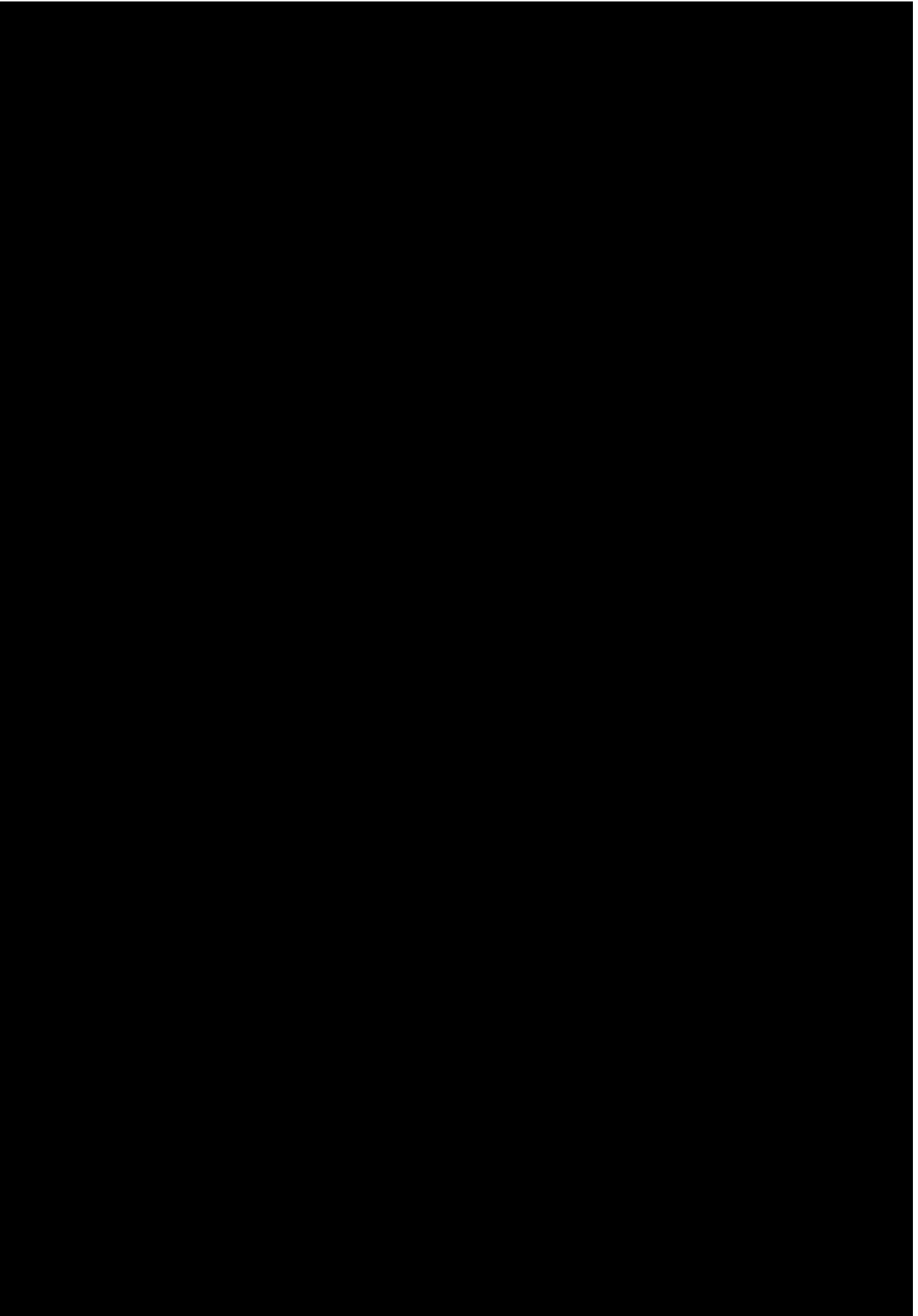
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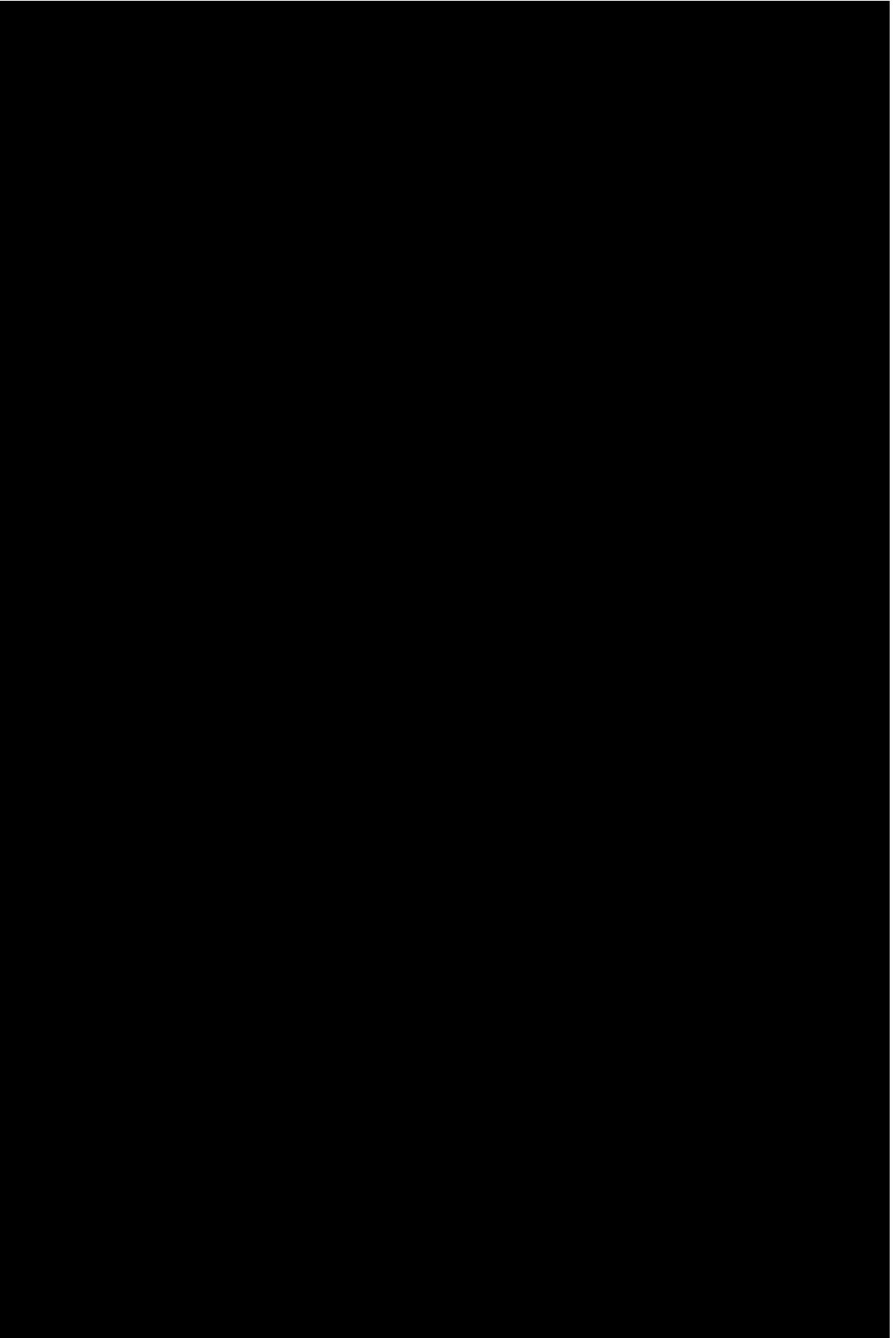
Name of Attorney in full

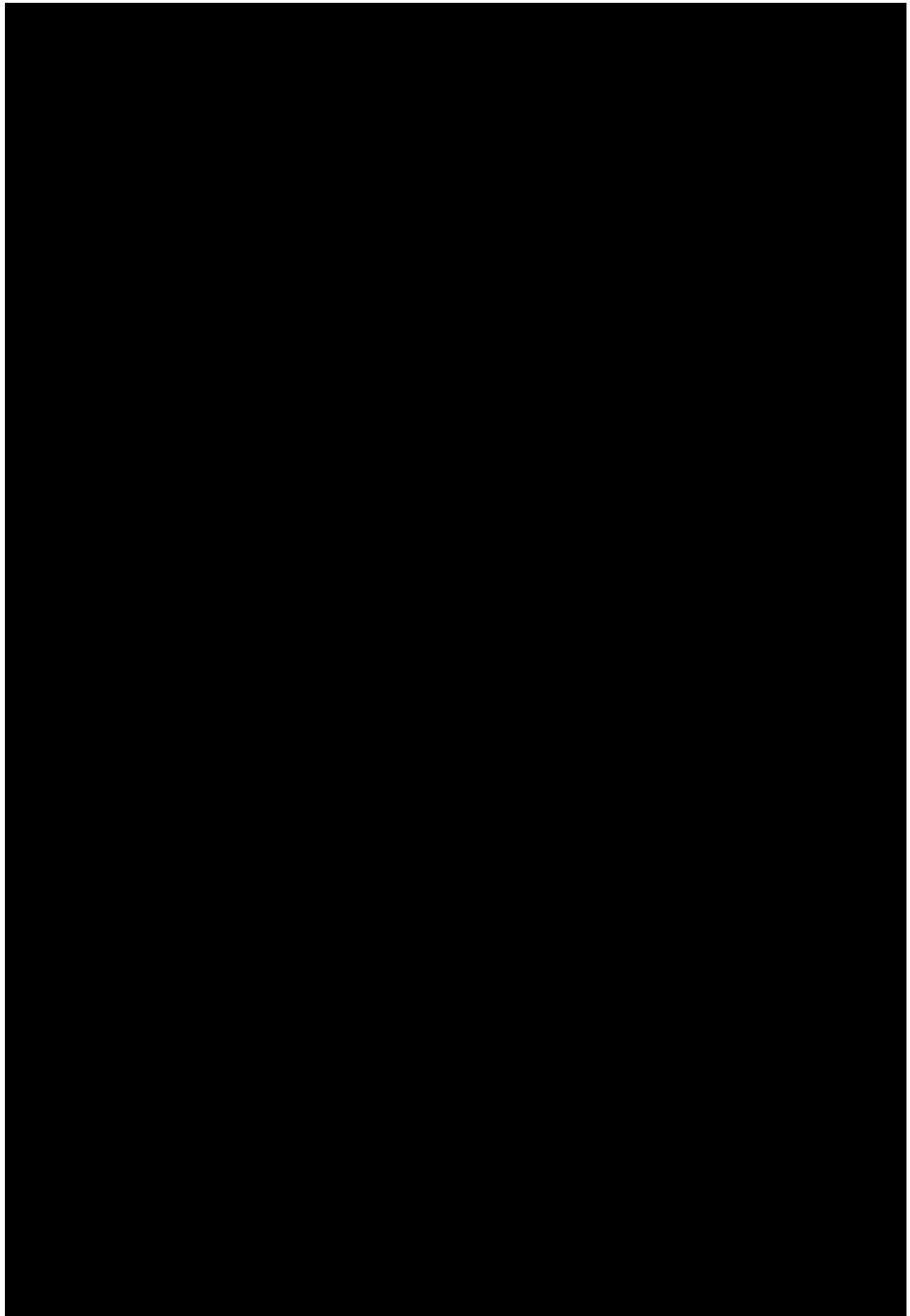
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Name of Witness in full

**SCHEDULE E6. – PARENT COMPANY GUARANTEE**

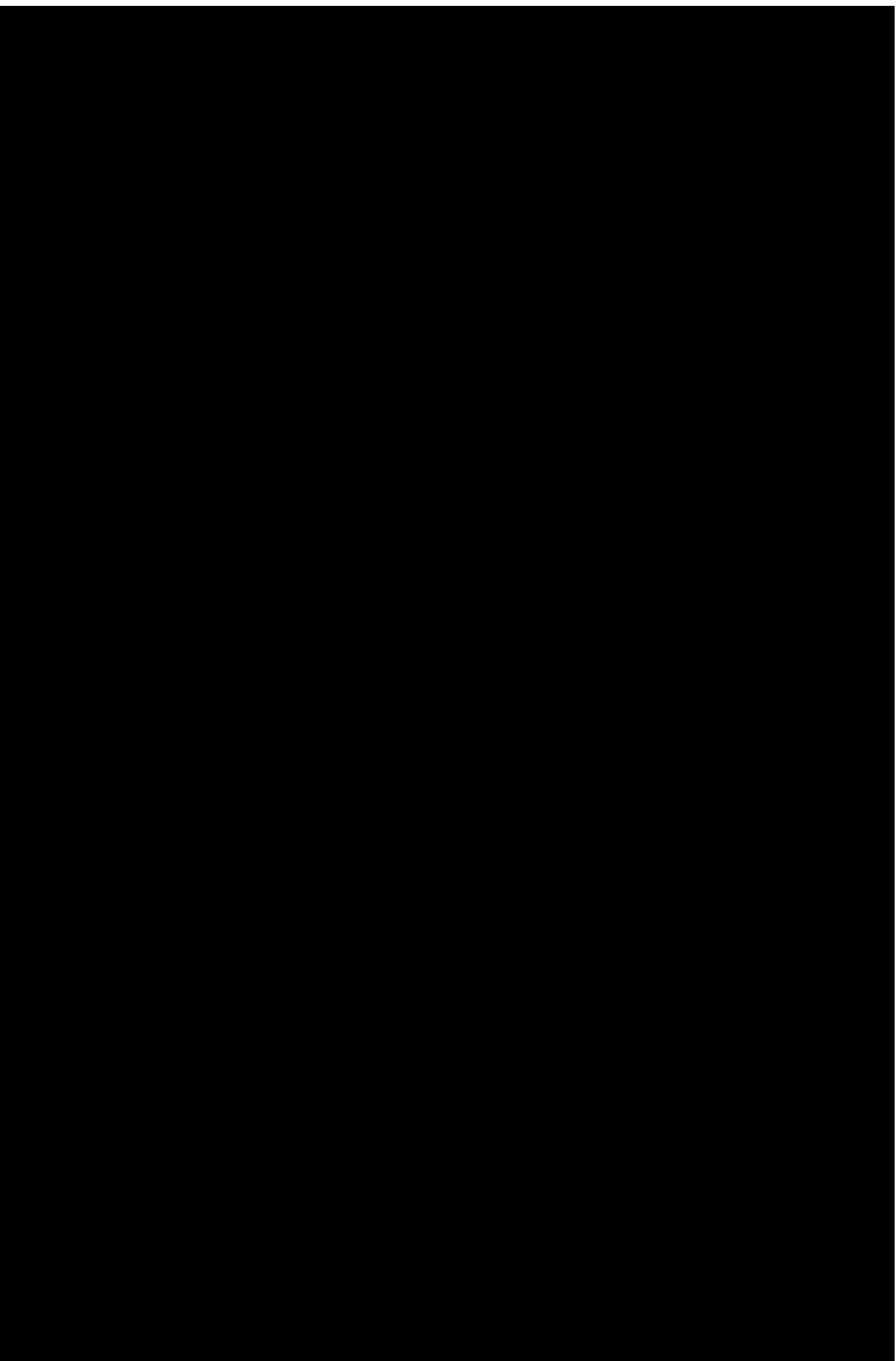


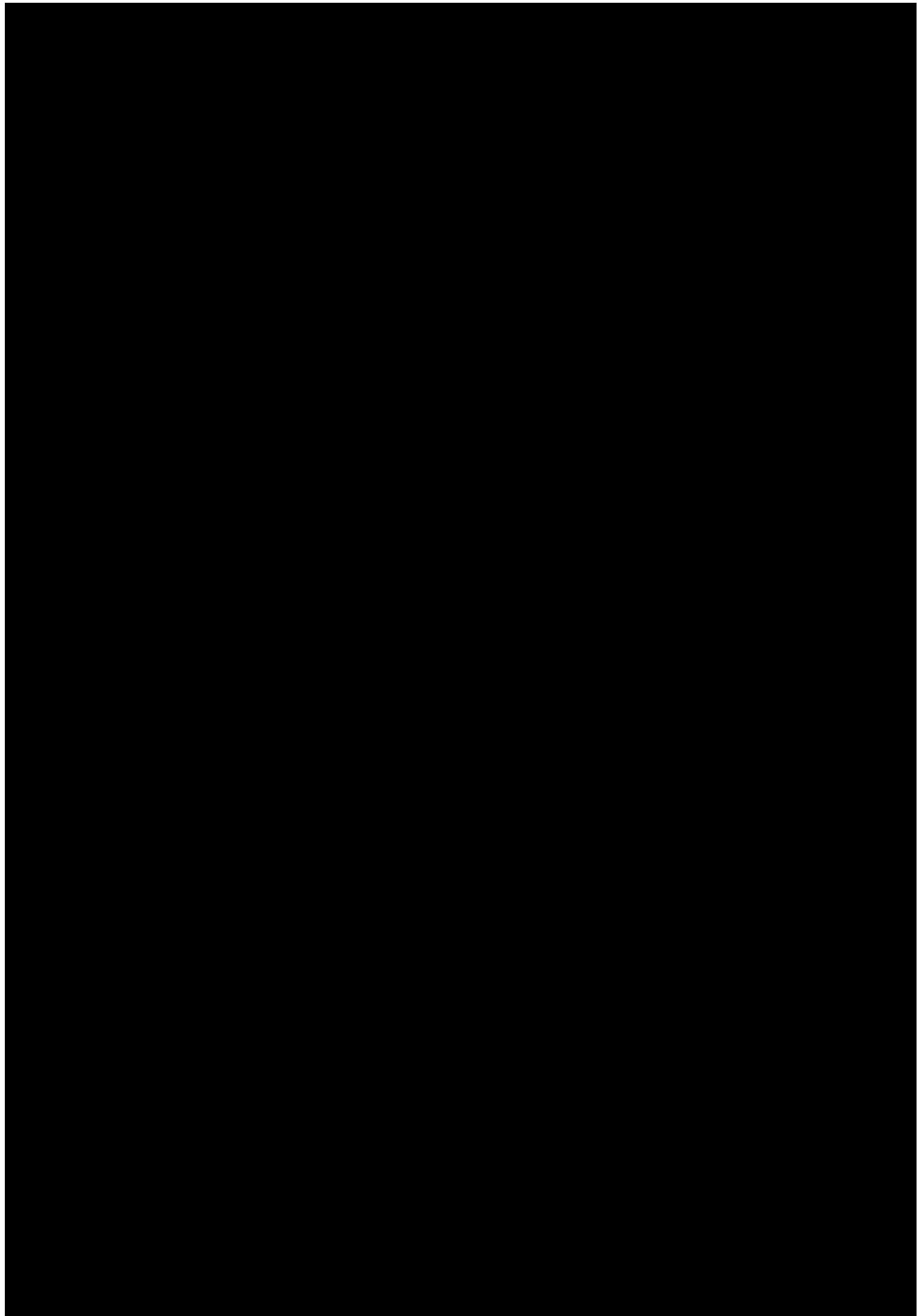


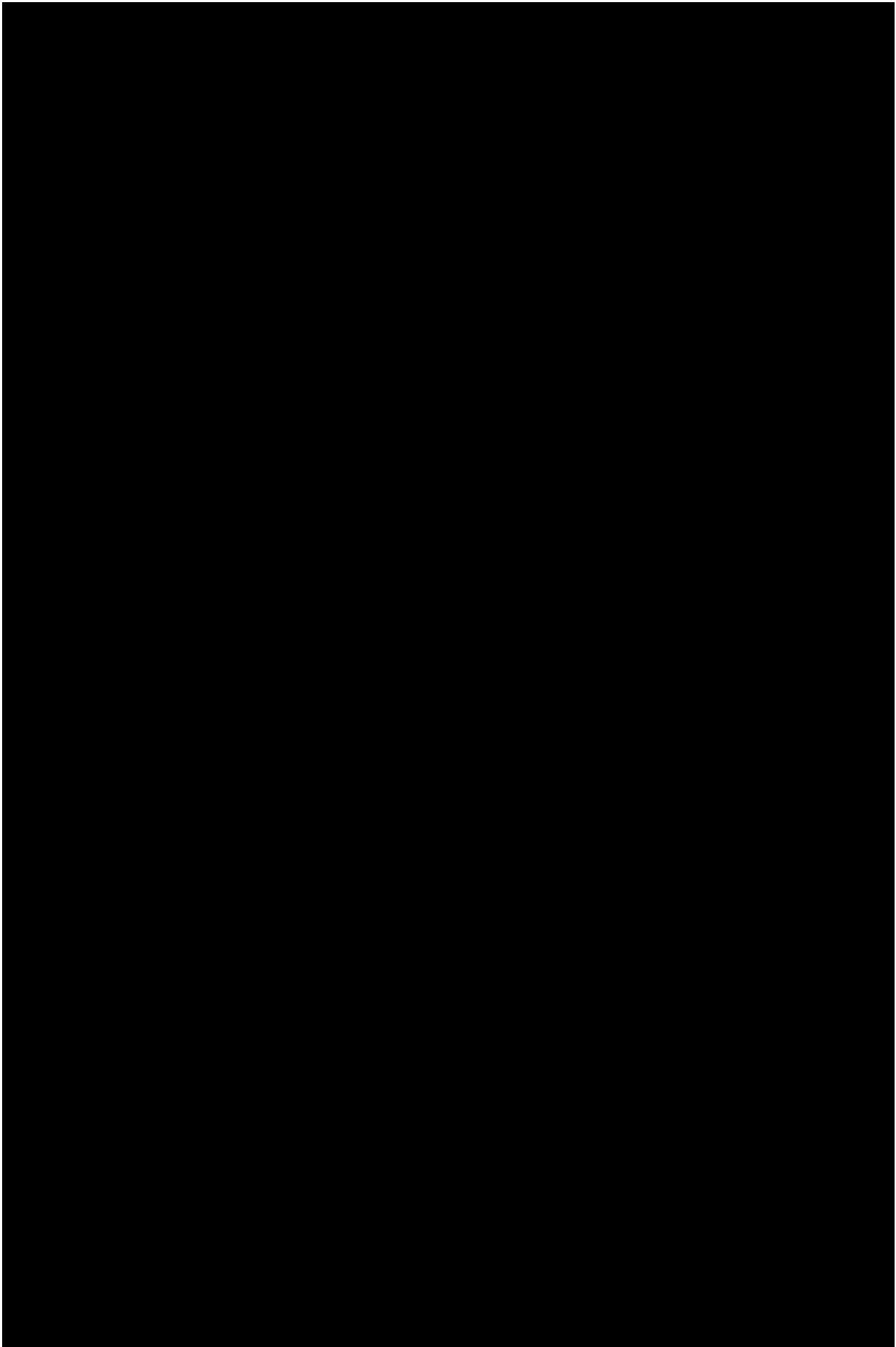


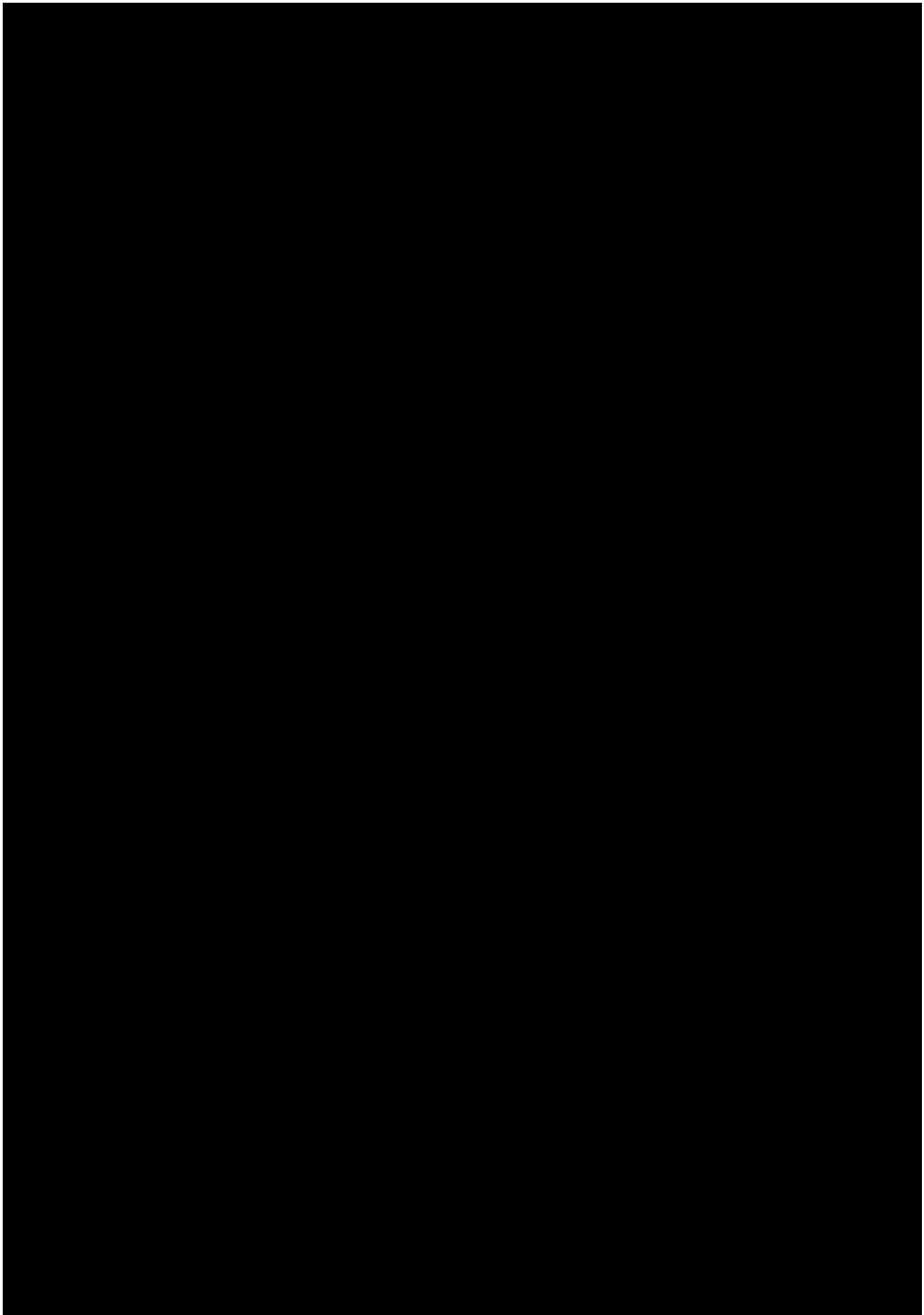


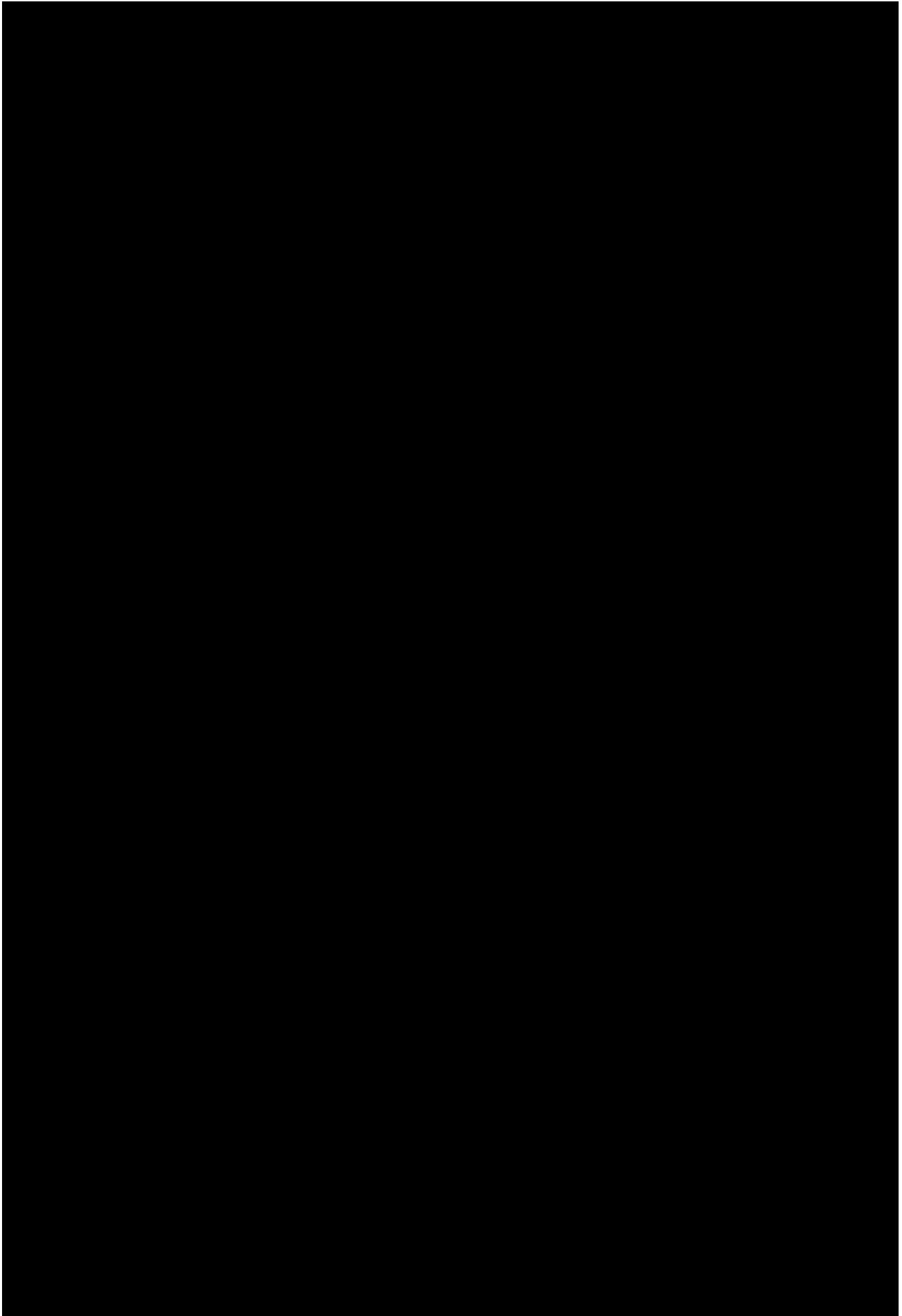


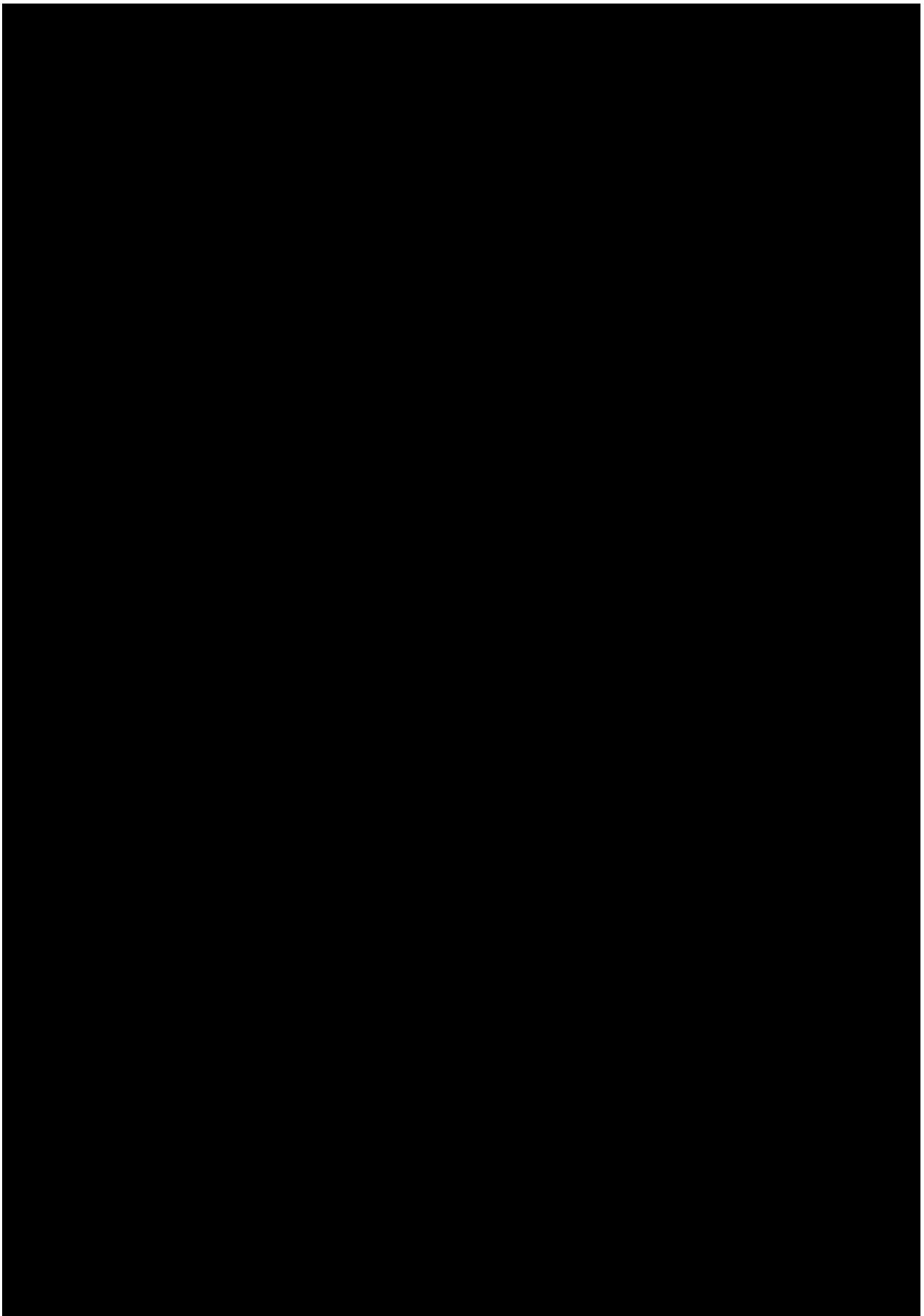




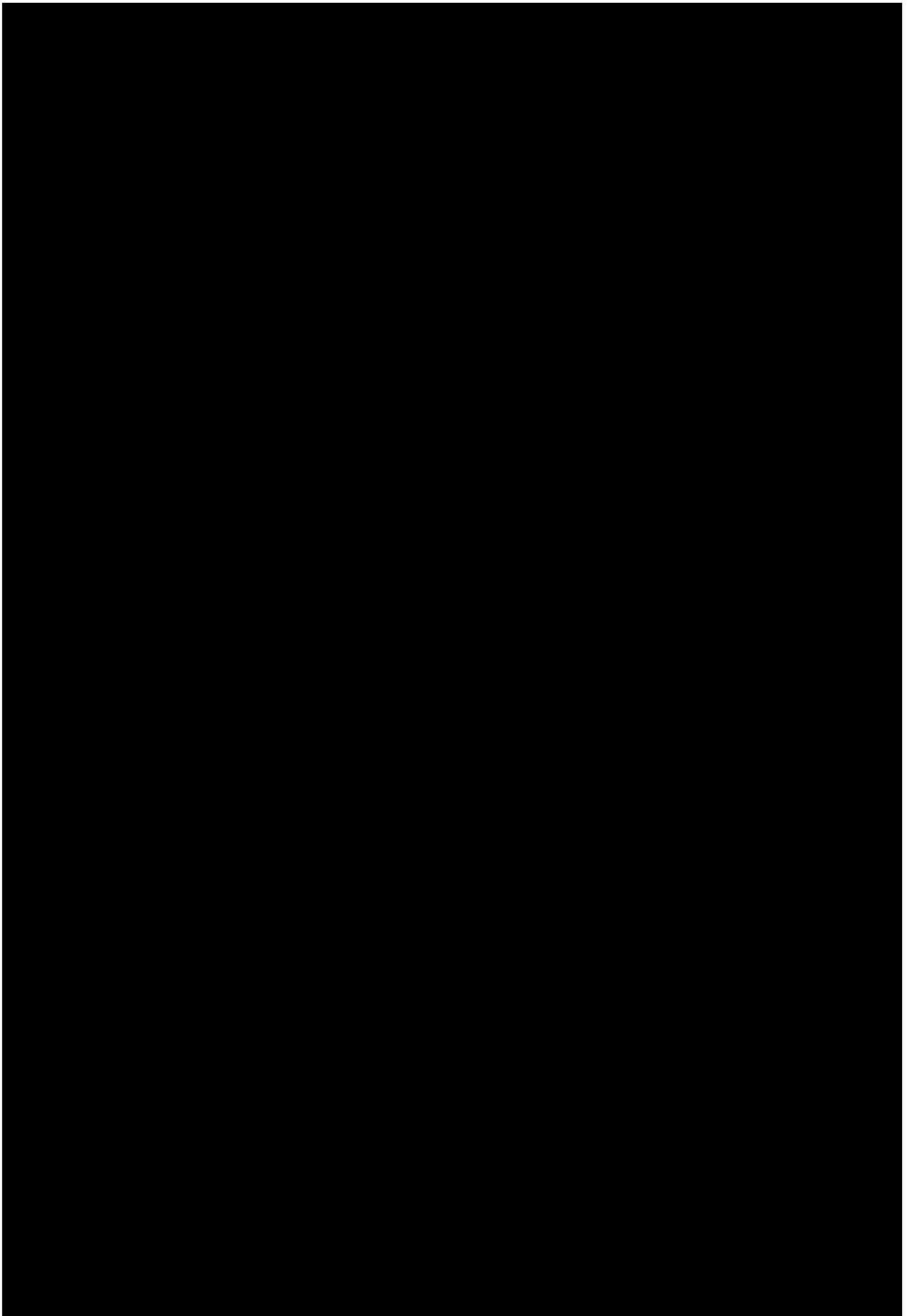


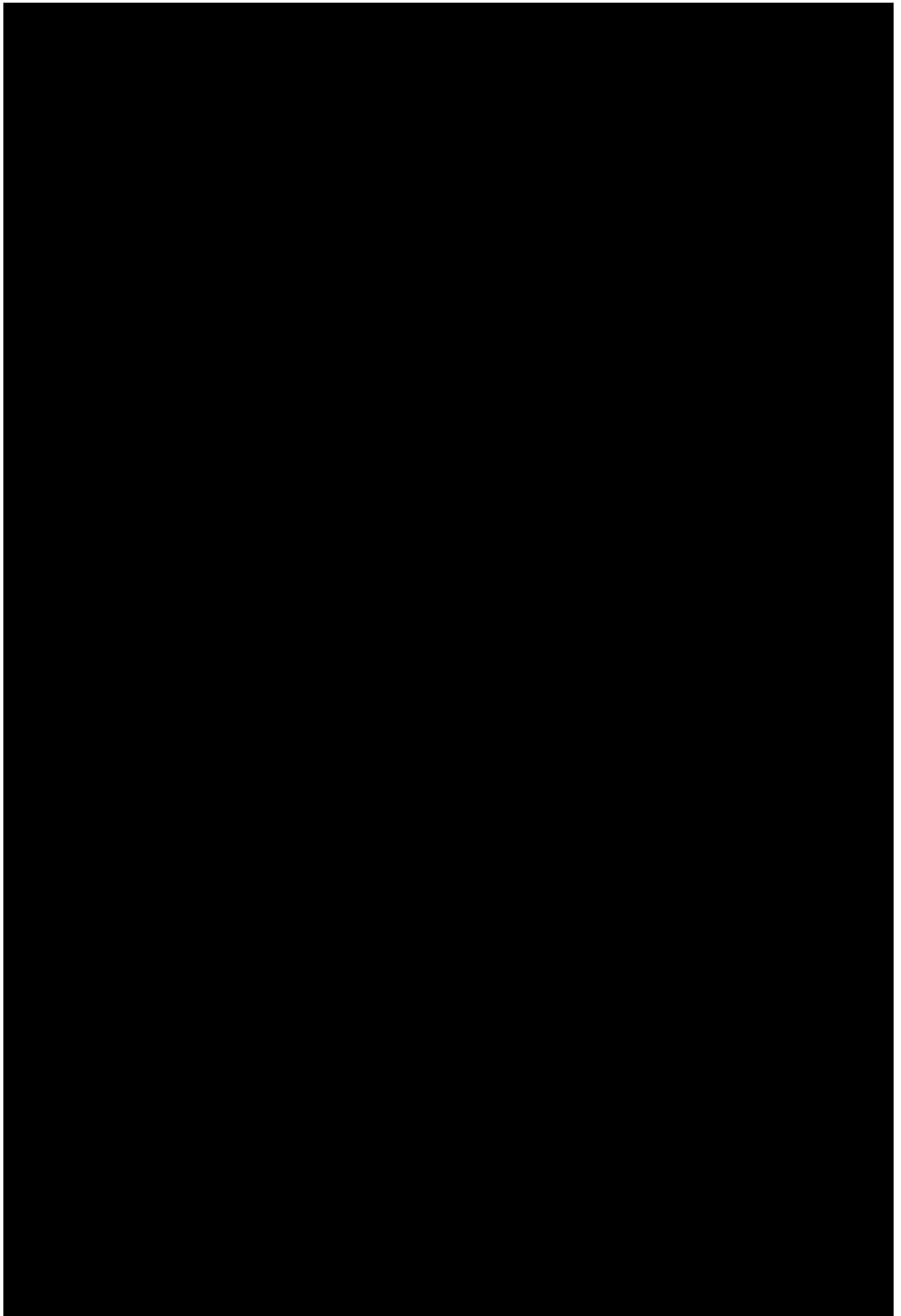




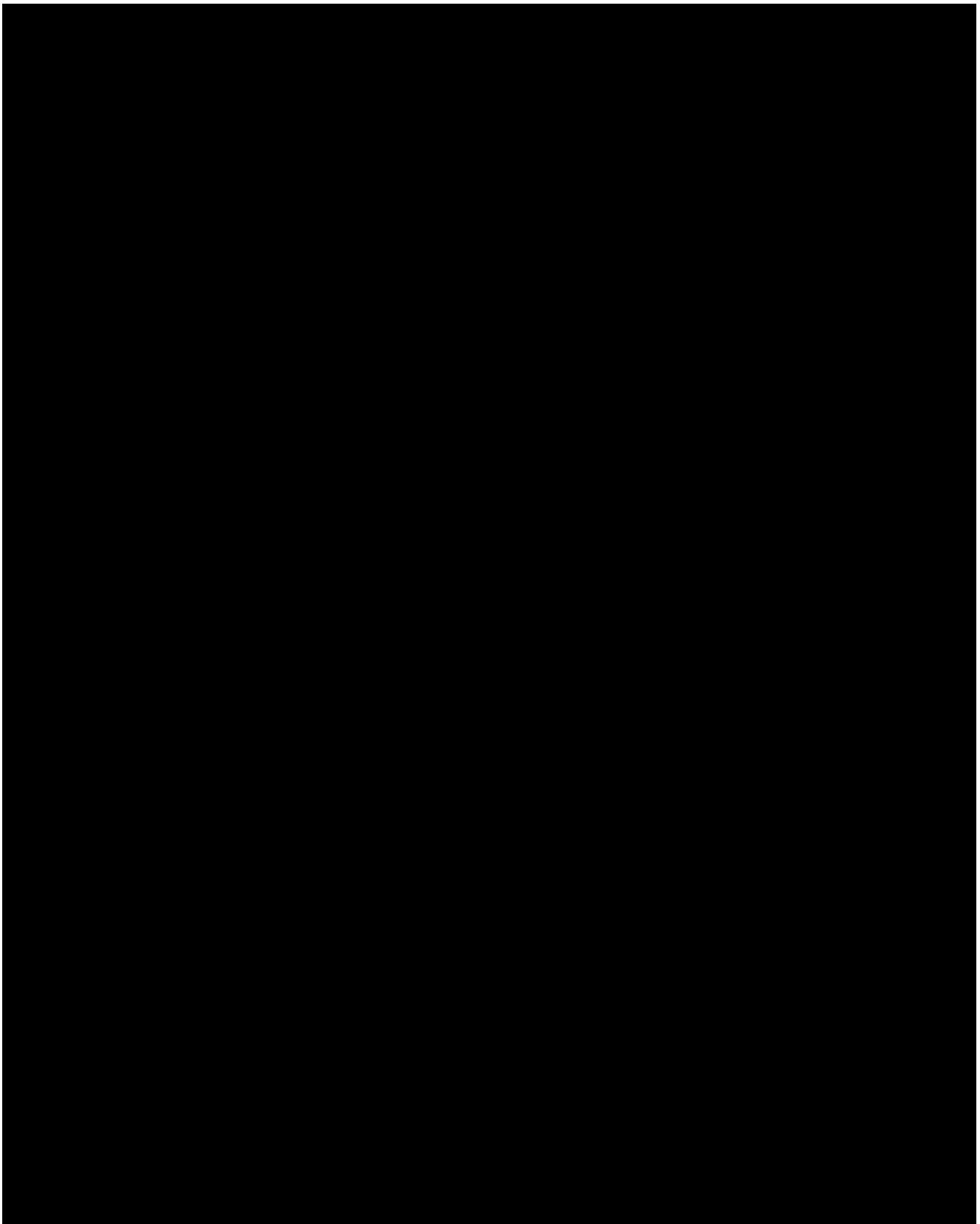


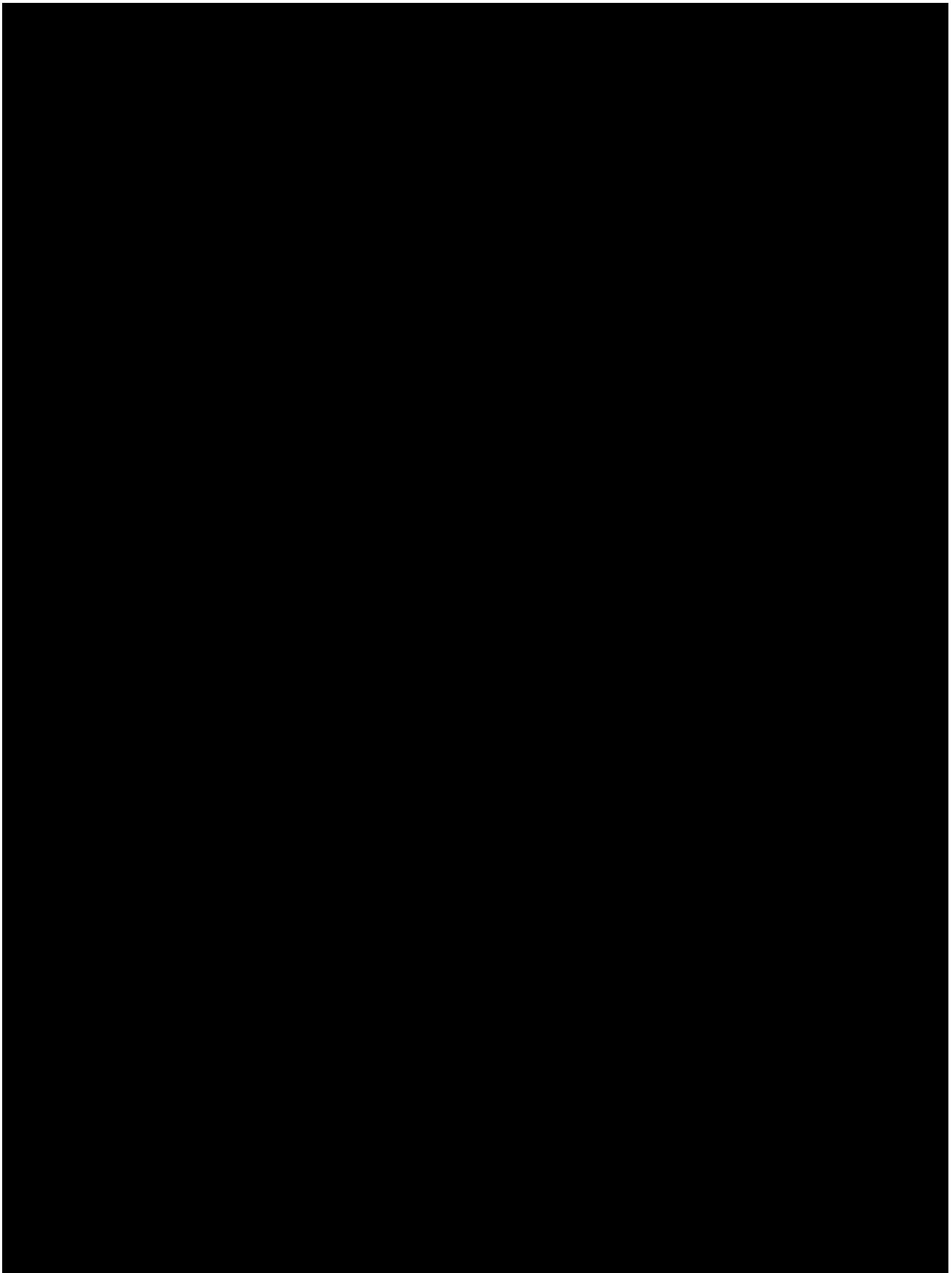






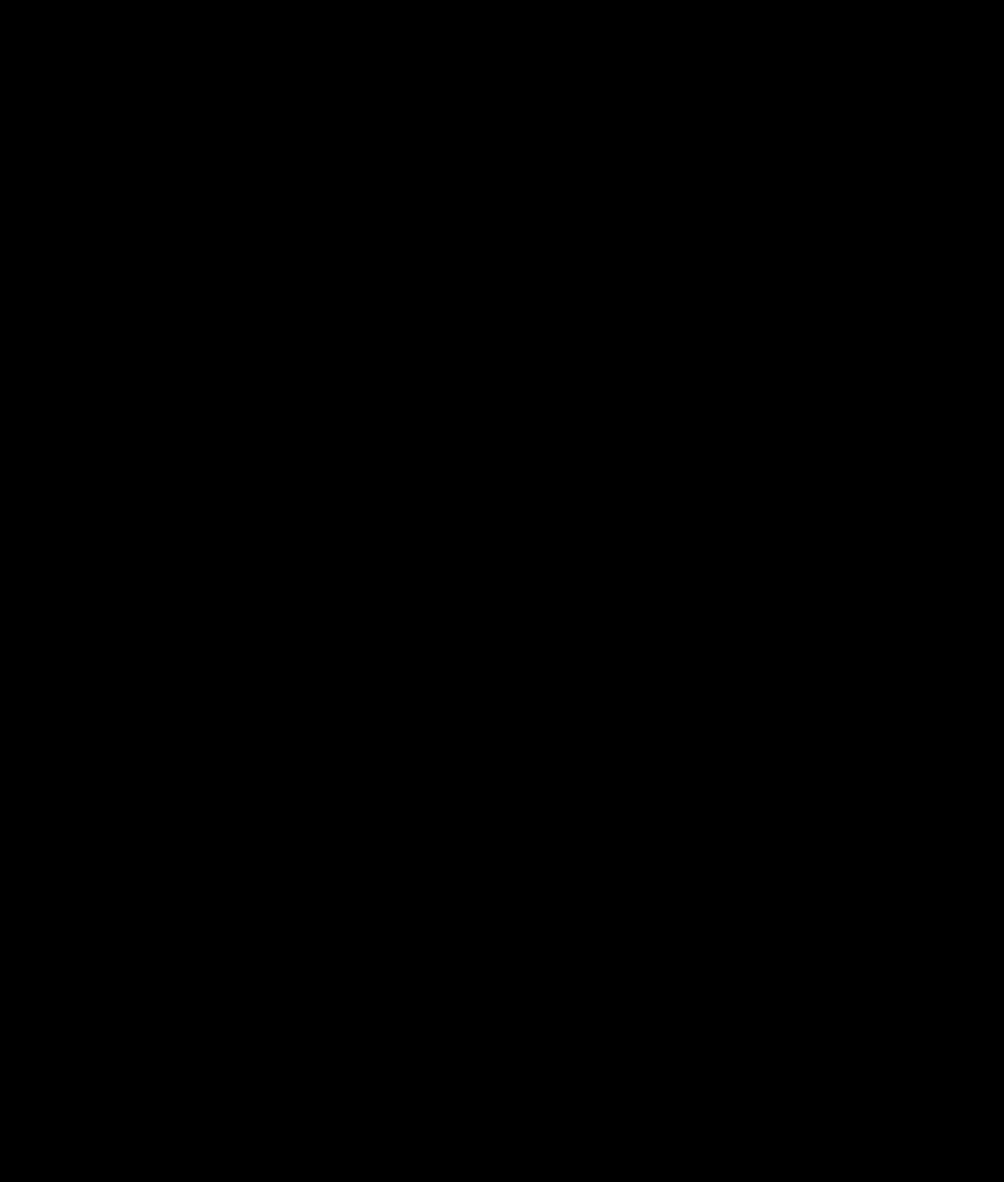


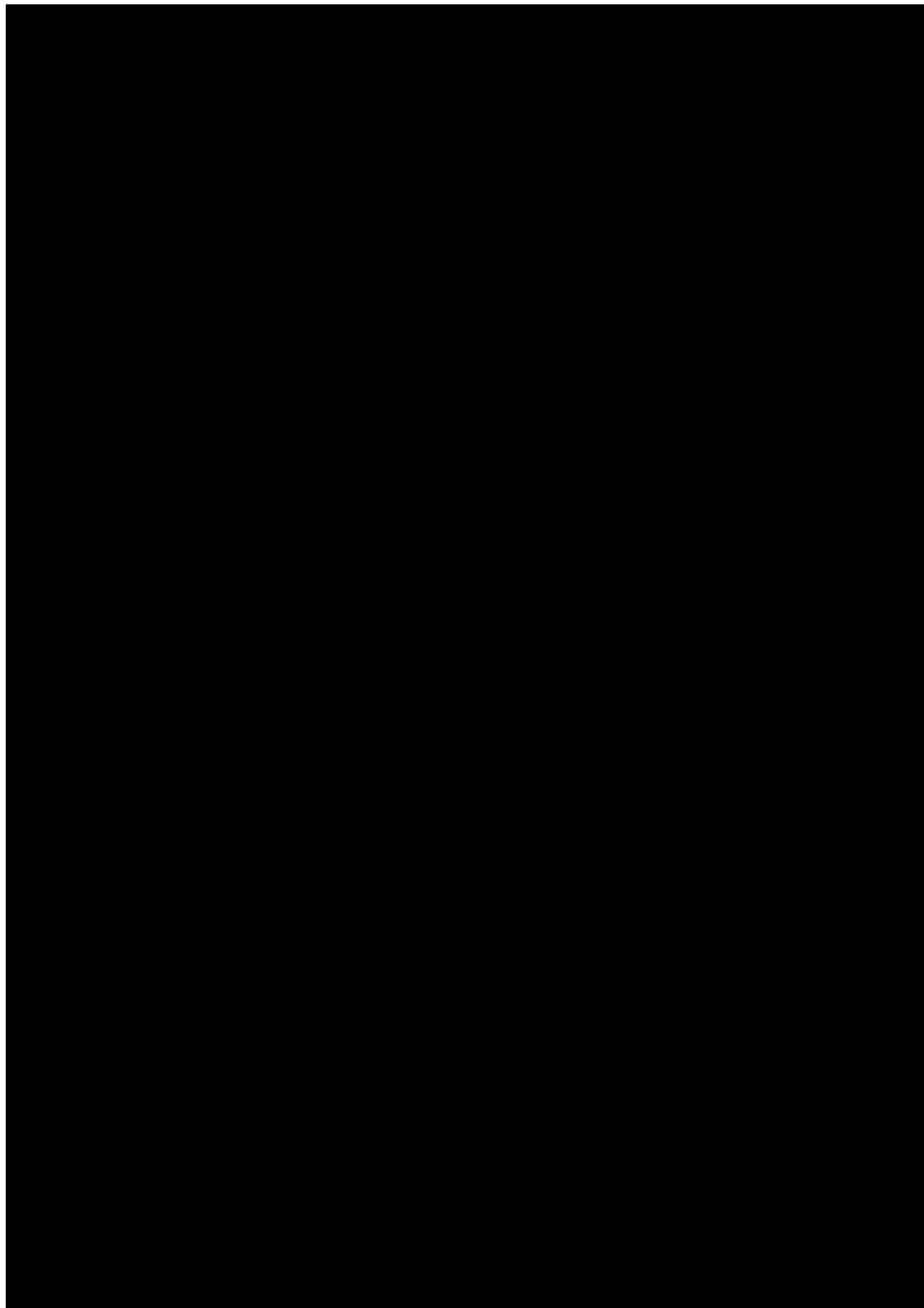




**SCHEDULE E7**  
**Delay Costs**

(clause 21.9(c))





**SCHEDULE E8. – PROVISIONAL SUM WORK**

(Clause 28.10)

<b>Description of Provisional Sum Work</b>	<b>Amount payable by the Principal to the VC Contractor for Provisional Sum Work</b>	<b>Amounts for which the Principal has no Liability to the VC Contractor (in addition to those specified in the deed)</b>	<b>Other applicable requirements</b>
Lifts and Escalators Works, excluding Interim Care and Maintenance Type 1 (as defined in the L&E DSI Contract) for lifts and escalators			
BMCS Works			

<b>Description of Provisional Sum Work</b>	<b>Amount payable by the Principal to the VC Contractor for Provisional Sum Work</b>	<b>Amounts for which the Principal has no Liability to the VC Contractor (in addition to those specified in the deed)</b>	<b>Other applicable requirements</b>
Public Art Supply Works			
Installation of the art supplied under the Public Art Supply Contract including storage and transportation.			

<b>Description of Provisional Sum Work</b>	<b>Amount payable by the Principal to the VC Contractor for Provisional Sum Work</b>	<b>Amounts for which the Principal has no Liability to the VC Contractor (in addition to those specified in the deed)</b>	<b>Other applicable requirements</b>
The design, construction, commissioning and handover of the Project Works for the bus facilities, taxi facilities and kiss-and-ride facilities in accordance with sections 2.6 to 2.8 of Appendix B1.4 of the SWTC			
Post Completion Activities			Refer to clause 26.2 of the General Conditions.

<b>Description of Provisional Sum Work</b>	<b>Amount payable by the Principal to the VC Contractor for Provisional Sum Work</b>	<b>Amounts for which the Principal has no Liability to the VC Contractor (in addition to those specified in the deed)</b>	<b>Other applicable requirements</b>
Videography, filming and editing services		The VC Contractor must carry out videography, filming and editing services as directed by the Principal's Representative from time to time.	

**SCHEDULE E9. – NOT USED**