



Transport for NSW

Design and Construction of Sydney Gateway Stage 1

Design and Construct Deed Schedules
Contract Number: 19.0000301737.0919



Design and Construct Deed Schedules Sydney Gateway - Stage 1

Contract Number: 19.0000301737.0919

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- Exhibit A Scope of Works and Technical Criteria
- Exhibit B Site Access Schedule
- Exhibit C Contract Program
- Exhibit D Confidentiality Deed Poll
- Exhibit E SSI Approval
- Exhibit F Major Development Plan
- Exhibit G Third Party Interests
- Exhibit H Third Party Agreements
- Exhibit I Aboriginal Participation Plan
- Exhibit J Chain of Responsibility Guideline
- Exhibit K WestConnex Works Design Documentation
- Exhibit L Codes and Standards
- Exhibit M Certified AIP Plan
- Exhibit N Insurance Policy Wording
- Exhibit O Electronic Files
- Exhibit P Information Documents
- Exhibit Q SPI Wall
- Exhibit R Sydney Airport Service Works Land

- Exhibit S** Joint Venture Agreement
- Exhibit T** Deed of Appointment of Independent Verifier
- Exhibit U** Letters of Commitment
- Exhibit V** Register of Electronic Files

Schedule 1- Contract Information

Contract Information

Table	Clause	Insert information
1.	Contractor (Clause 23.2: Definition)	Name: John Holland Pty Ltd ABN: 11 004 282 268 Address: Level 3, 65 Pirrama Road, Pyrmont, NSW 2009 Registered and head office address: Level 5, 380 St Kilda Road, Melbourne VIC 3004 Name: Seymour Whyte Constructions Pty Ltd ABN: 48 105 493 187 Address: Level 8, 182-186 Blues Point Road, McMahons Point NSW 2060 Registered and head office address: 12 Electronics Street, Eight Mile Plains QLD 4113
2.	Construction Contract Sum (Clause 23.2: Definition)	██████████ (excluding GST)
3.	Date for Construction Completion (Clause 23.2: Definition)	██████████
4.	Design Contract Sum (Clause 23.2: Definition)	██████████ (excluding GST)
5.	Environmental Representative (Clause 23.2: Definition)	Name: Hutchinson Weller Pty Ltd ABN: 34 603 174 518 Address: 13/357 Military Rd, Mosman NSW 2088 (Subject to approval in accordance with the Planning Approval)
6.	Unfixed plant and materials for which progress claims may be made (Clause 18.6)	██████████ ████████████████████████████████████████ ██████████
7.	Parent Company Guarantor (Clause 23.2: Definition)	In respect of John Holland Pty Ltd: ████████████████████████████████████████ ██████████ ████████████████████████████████████████ In respect of Seymour Whyte Constructions Pty Ltd: ████████████████████████████████████████ ████████████████████████████████████████ ████████████████████████████████████████
7A.	PC Contractor Entity (Clause 23.2: Definition)	John Holland Pty Ltd
8.	Planning Approval (Clause 23.2: Definition)	(a) The approval under s5.19 of the Environmental Planning and Assessment Act 1979 (NSW) issued by the Minister for Planning and Public Spaces dated 27 August 2020 in respect of the Gateway.

Table	Clause	Insert information	
		(b) The approval under s94 of the Airports Act 1996 (Cth) issued by the Minister for Infrastructure, Transport, Cities and Regional Development dated 23 September 2020 in respect of the Gateway.	
9.	Proof Engineer (Clause 23.2: Definition)	Name: Rendel Ingerop Pty Ltd ABN: Rendel Ingerop Pty Ltd Address: The Ark Coca Cola Place, Level 17, 40 Mount Street, North Sydney NSW 2060	
10.	Independent Verifier (Clause 23.2: Definition)	Name: ABN: Address:	
11.	Principal Insurer (Clause 23.2: Definition)	Self Insurance Corporation of NSW through Insurance and Care NSW (icare) ABN 16 759 382 489 Level 15, 321 Kent Street Sydney NSW 2000 Telephone: [REDACTED] Email: [REDACTED]	
12.	Separable Portions (Clause 2.10 and Clause 23.2: Definition)	None	
13.	Sunset Date (Clause 23.2: Definition)	[REDACTED]	
14.	Elements of the Project Works and the Temporary Works to be assessed and verified by Proof Engineer (Clauses 2.5(d)(ii) and clause 12.2.(e)(iv))	A Proof Engineer must assess and verify: (a) network arch bridges; and (b) all Complex Structures. For the purposes of this item Complex Structures are structures which have any of the following features: <ul style="list-style-type: none"> any span exceeding 35 m; retaining walls with an effective retained height greater than 6 m; cable stayed or suspension bridges; steel orthotropic decks; bascule span bridges; post-tensioned concrete structures; skew exceeding 35 degrees; and bridges with a superstructure consisting of precast prestressed concrete girders and cast -insitu deck slab, where the girders are made continuous for live load or the superstructure is made fully integral with the substructure. 	
15.	Subcontractors (Clauses 2.9(c) and 2.9(e))	Part of the Contractor's Activities [REDACTED]	Subcontractor [REDACTED]

Table	Clause	Insert information	
		[Redacted]	[Redacted]
		[Redacted]	[Redacted]
		[Redacted]	[Redacted]
		[Redacted]	[Redacted]

Table	Clause	Insert information
		<div style="background-color: black; width: 100%; height: 100%; min-height: 300px;"></div>
16.	Aboriginal participation (Clause 3.7 and Clause 23.2 Definition of Minimum Aboriginal Participation Spend)	<p>1) The Aboriginal Participation Project Category is: Category 2.</p> <p>2) The Minimum Aboriginal Participation Spend amount at the date of this deed is: <div style="background-color: black; width: 100px; height: 1em; display: inline-block;"></div> (excl GST)</p> <p>3) Is the Contractor required to submit an Aboriginal Participation Plan and Aboriginal Participation Reports? Yes</p> <p>4) The frequency of submission of the Aboriginal Participation Report is: Monthly</p>
17.	Notice details for the Principal (Clause 3.10 (a)(i))	Address for notices: 20-44 Ennis Road Milsons Point NSW 2061 Attention: Executive Director, Commercial Services
18.	Notice details for the Principal's Representative (Clauses 3.10(a)(ii))	Address for notices: Level 21, 101 Miller Street, North Sydney NSW 2060 Attention: <div style="background-color: black; width: 100px; height: 1em; display: inline-block;"></div>
19.	Notice details for Contractor (Clauses 3.10(a)(i))	Address for notices: Level 3, 65 Pirrama Rd Pyrmont NSW 2009 Attention: <div style="background-color: black; width: 80px; height: 1em; display: inline-block;"></div>
20.	Notice - electronic platform (Clause 3.10 and Clause 23.2 Definition of PDCS)	InEight or any other electronic platform notified by the Principal's Representative from time to time.

Table	Clause	Insert information	
21.	Australian Industry Participation Plan (Clause 5.18)	Is the Contractor required to implement and comply with the Certified AIP Plan? Yes	
21A.	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]
21B.	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]

Table	Clause	Insert information			
22.	Workers compensation insurance (Clause 7.5(a)(i))	Minimum cover:	As required by Law		
		Period of cover:	Until the end of all Defects Correction Periods		
23.	Motor vehicle / third party property insurance (Clause 7.5(a)(ii))	Minimum cover:	██████████ for any one occurrence, and unlimited in the aggregate with regard to the number of occurrences.		
		Period of cover:	Until the end of all Defects Correction Periods		
24.	Not used				
25.	Categories of Subcontractors, levels of cover of Subcontractors' professional indemnity insurance (Clause 7.5(b)(ii))	Subcontractor	Discipline	Level of cover	Period of cover
		N/A	N/A	N/A	Until the expiration of 7 years following the end of all Defects Correction Periods.
26.	Asbestos liability insurance (Clause 7.1(a))	Minimum cover:	Principal Arranged Insurance.		
		Insurer:	As per Item 11		
		Policy number:	To be issued upon contract award		
		Period of cover:	Until the end of all Defects Correction Periods		
27.	Plant and equipment insurance (Clause 7.5(a)(iii))	Minimum cover:	The full replacement or reinstatement market value of the plant and equipment		
		Period of cover:	Until the end of all Defects Correction Periods		
28.	Not used				
29.	Marine liability and marine protection and indemnity insurance (Clause 7.5(c))	<i>Marine liability</i>			
		Minimum cover:	For any work to which clause 7.5(c) applies, ██████████ for any one occurrence, and unlimited in the aggregate with regard to the number of occurrences.		
		Insurer:	To be advised to Principal by the Contractor prior to undertaking any work that requires marine liability insurance under clause 7.5(b).		
		Policy number:	To be advised to Principal by the Contractor prior to undertaking any work that requires marine liability insurance under clause 7.5(b).		
		Period of cover:	The whole of the period of use of waterborne craft of 12 or more metres in length on work for or in connection with this deed		
		<i>Marine protection and indemnity</i>			
		Minimum cover:	For any work to which clause 7.5(c) applies, ██████████ for any one occurrence, and unlimited in the aggregate with regard to the number of occurrences.		
		Insurer:	To be advised to Principal by the Contractor prior to		

Table	Clause	Insert information									
		6.									
32.	Link Road Early Works (Clause 23.2 Definition of Excusable Cause of Delay)	Dates for completion of Link Road Early Works <ul style="list-style-type: none"> • Telstra Link Road Early Works: [REDACTED] • Ausgrid Link Road Early Works: [REDACTED] 									
33.											
34.	Cap on delay costs (Clause 17.6(c)(i))	<table border="1"> <thead> <tr> <th data-bbox="609 1435 1018 1536">Period during the Contractor's Activities when the relevant delay occurs</th> <th data-bbox="1018 1435 1490 1536">Delay costs rate (\$/day) (excl GST)</th> </tr> </thead> <tbody> <tr> <td data-bbox="609 1536 1018 1697">Delay occurring in connection with the Contractor's Activities prior to commencement of construction activities on the Construction Site.</td> <td data-bbox="1018 1536 1490 1697">[REDACTED] per day</td> </tr> <tr> <td data-bbox="609 1697 1018 1859">Delay occurring in connection with the Contractor's Activities after commencement of construction activities on the Construction Site.</td> <td data-bbox="1018 1697 1490 1859">[REDACTED] per day</td> </tr> <tr> <td data-bbox="609 1859 1018 2033">Delay caused by a breach or failure to give access by the Principal, occurring in connection with the Contractor's Activities after commencement of construction</td> <td data-bbox="1018 1859 1490 2033"></td> </tr> </tbody> </table>		Period during the Contractor's Activities when the relevant delay occurs	Delay costs rate (\$/day) (excl GST)	Delay occurring in connection with the Contractor's Activities prior to commencement of construction activities on the Construction Site.	[REDACTED] per day	Delay occurring in connection with the Contractor's Activities after commencement of construction activities on the Construction Site.	[REDACTED] per day	Delay caused by a breach or failure to give access by the Principal, occurring in connection with the Contractor's Activities after commencement of construction	
Period during the Contractor's Activities when the relevant delay occurs	Delay costs rate (\$/day) (excl GST)										
Delay occurring in connection with the Contractor's Activities prior to commencement of construction activities on the Construction Site.	[REDACTED] per day										
Delay occurring in connection with the Contractor's Activities after commencement of construction activities on the Construction Site.	[REDACTED] per day										
Delay caused by a breach or failure to give access by the Principal, occurring in connection with the Contractor's Activities after commencement of construction											

Table	Clause	Insert information	
		activities on the Construction Site:	
		a. during the first quarter of the construction activities associated with the Contractor's Activities	██████ per day
		b. during the second quarter of the construction activities associated with the Contractor's Activities	██████ per day
		c. during the third quarter of the construction activities associated with the Contractor's Activities	██████ per day
		d. during the final quarter of the construction activities associated with the Contractor's Activities	██████ per day
35.	Liquidated Damages (Clause 17.9(d)(i))	██████ per day (excluding GST)	
36.	Liquidated Damages where Opening Completion has been achieved (Clause 17.9(d)(ii))	██████ per day (excluding GST)	
37.	References to Scope of Works and Technical Criteria		
	(a) (Clause 2.8(d)(ii)B)	Appendix C.2	
	(b) (Clause 3.3 (a))	Appendix C.1	
	(c) (Clause 3.3(b)(i))	Appendix C.1	
	(d) (Clause 3.3(b)(ii))	Appendix C.1	
	(e) (Clause 3.3(c))	Appendix C.1	
	(f) (Clause 3.3(h)(ii)D)	Appendix C.1	
	(g) (Clause 3.3(g)(ii)G)	Appendix C.1	
	(h) (Clause 3.3(l))	Appendix C.1	
	(i) (Clause 3.4(b))	Appendix C.1	
	(j) (Clause 5.5(a))	Appendix C.1	
	(k) (Clause 11.1(a))	Appendix C.7	
	(l) (Clause 11.1(b))	Appendix C.1	
	(m) (Clause 13.2(j))	Appendix E.2	
	(n) (Clause 16.7(e))	Appendix C.6	
	(o) (Clause 17.1(c)(i))	Appendix C.2	

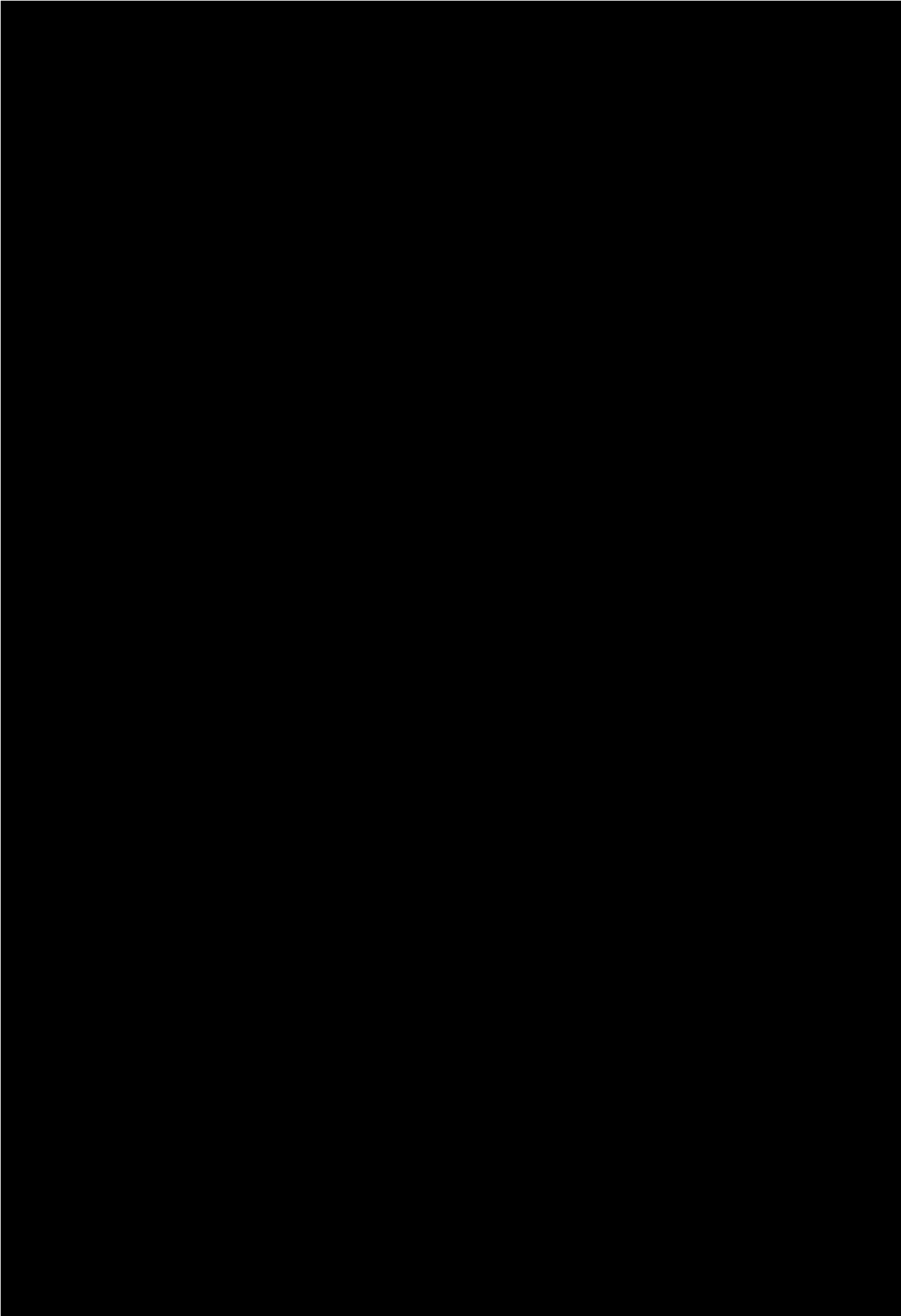
Table	Clause	Insert information
	(p) (Definition of 'Communication Management Plan')	Appendix C.1
	(q) (Definition of 'Construction Environmental Management Plans')	Appendix C.1
	(r) (Definition of 'Construction Management Plan')	Appendix C.1
	(s) (Definition of 'Contractor's Concept Design')	Appendices E.3 and E.4
	(t) (Definition of 'Contractor Documentation Schedule')	Appendix C.2
	(u) (Definition of 'Design Plan')	Appendix C.1
	(v) (Definition of 'Environmental Documents')	Appendix D.1
	(w) (Definition of 'Local Area Works')	Section 2.3.3
	(x) (Definition of 'Operations and Maintenance Plan')	Appendix C.1
	(y) (Definition of 'Project WHS Management Plan')	Appendix C.1
	(z) (Definition of 'Property Works')	Appendix E.2
	(aa) (Definition of 'Provisional Sum Work')	Appendix B.41
	(bb) (Definition of 'Quality Plan')	Appendix C.1
	(cc) (Definition of 'Traffic Management and Safety Plan')	Appendix C.1
	(dd) (Definition of 'Workplace Relations Management Plan (State)')	Appendix C.1
	(ee) (Definition of [REDACTED])	Appendix C.1
38.	References to Exhibits	
	(a) (Clause 23.1(a)(x)A)	Exhibits A to V
	(b) (Definition of 'Confidentiality Deed Poll')	Exhibit D

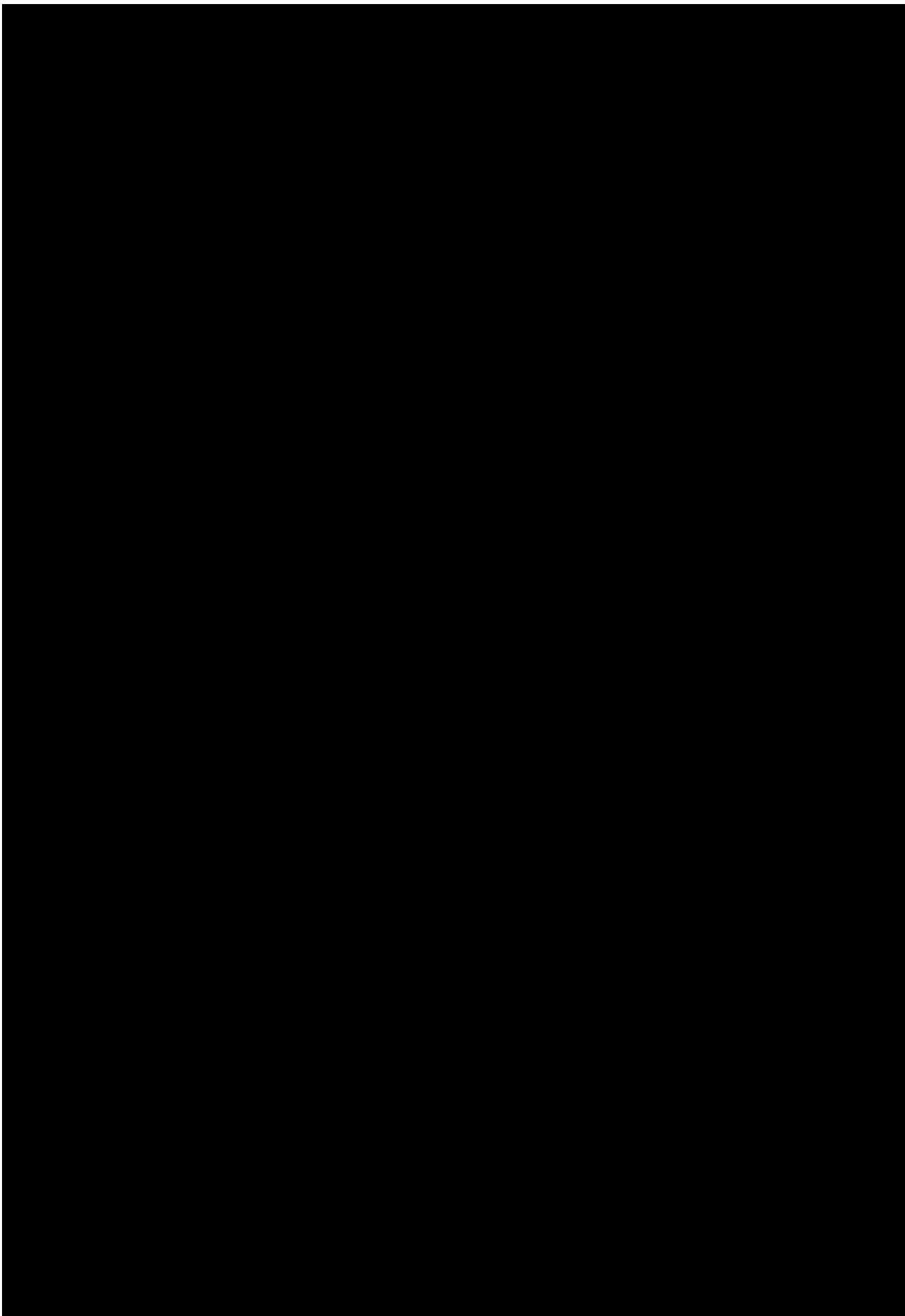
Table	Clause	Insert information
	(c) (Definition of 'Contract Program')	Exhibit C
	(d) (Definition of 'Major Development Plan')	Exhibit F
	(e) (Definition of 'Planning Approval')	Exhibit E and Exhibit F
	(f) (Definition of 'Scope of Works and Technical Criteria')	Exhibit A
	(g) (Definition of 'Site Access Schedule')	Exhibit B
	(h) (Definition of 'Third Party Agreements')	Exhibit H
	(i) (Definition of 'Third Party Interests')	Exhibit G

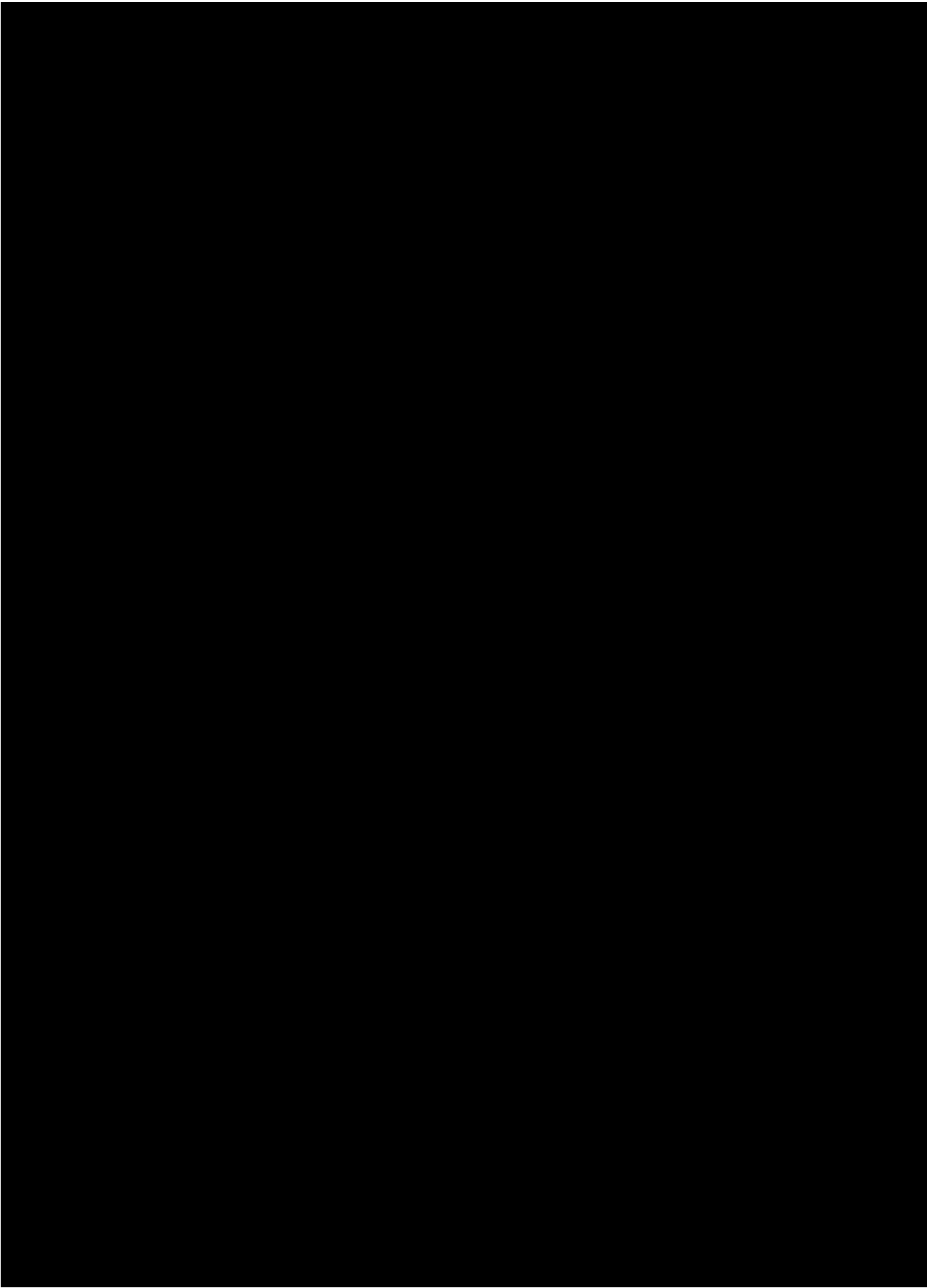
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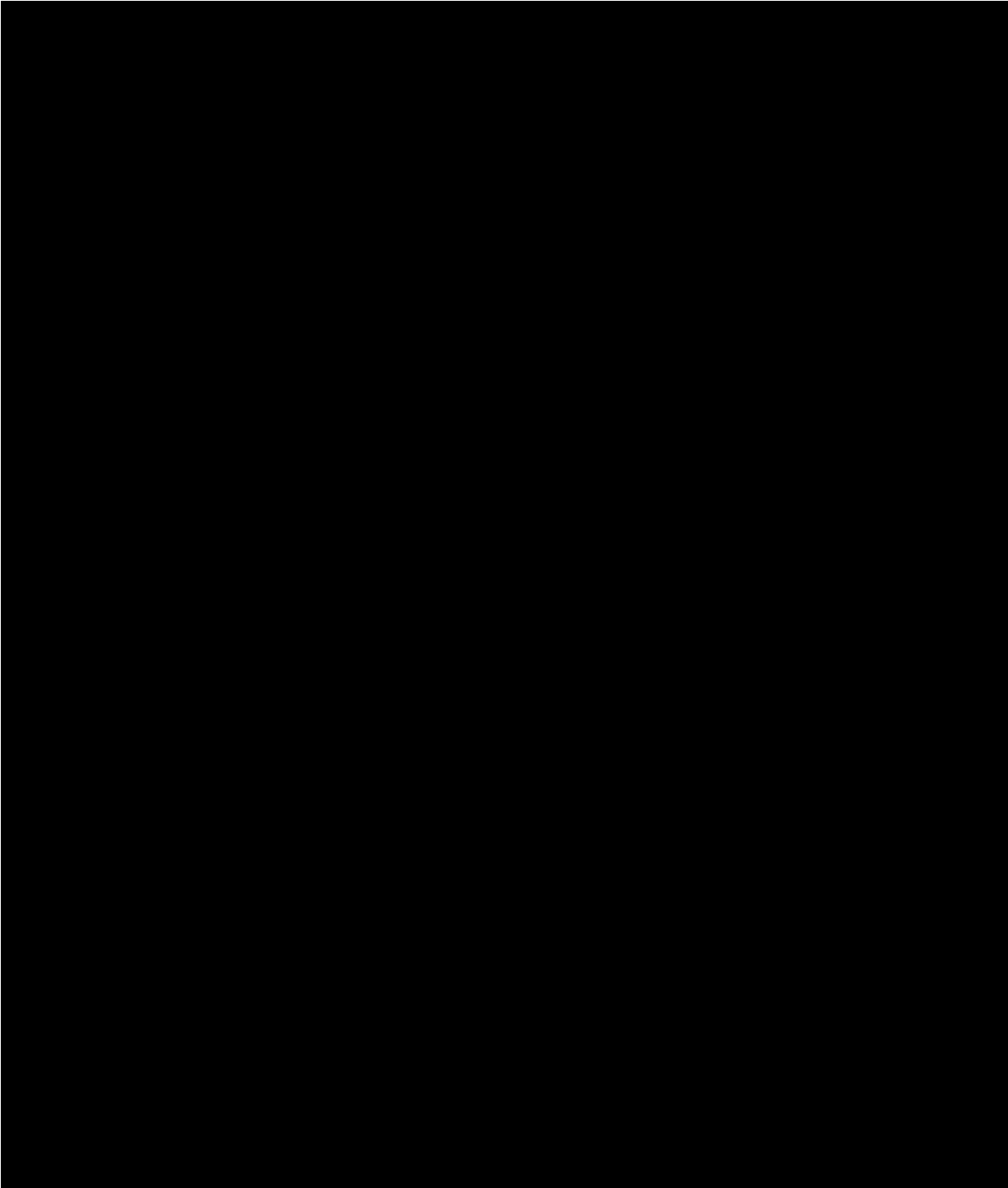
D&C Payment Schedule

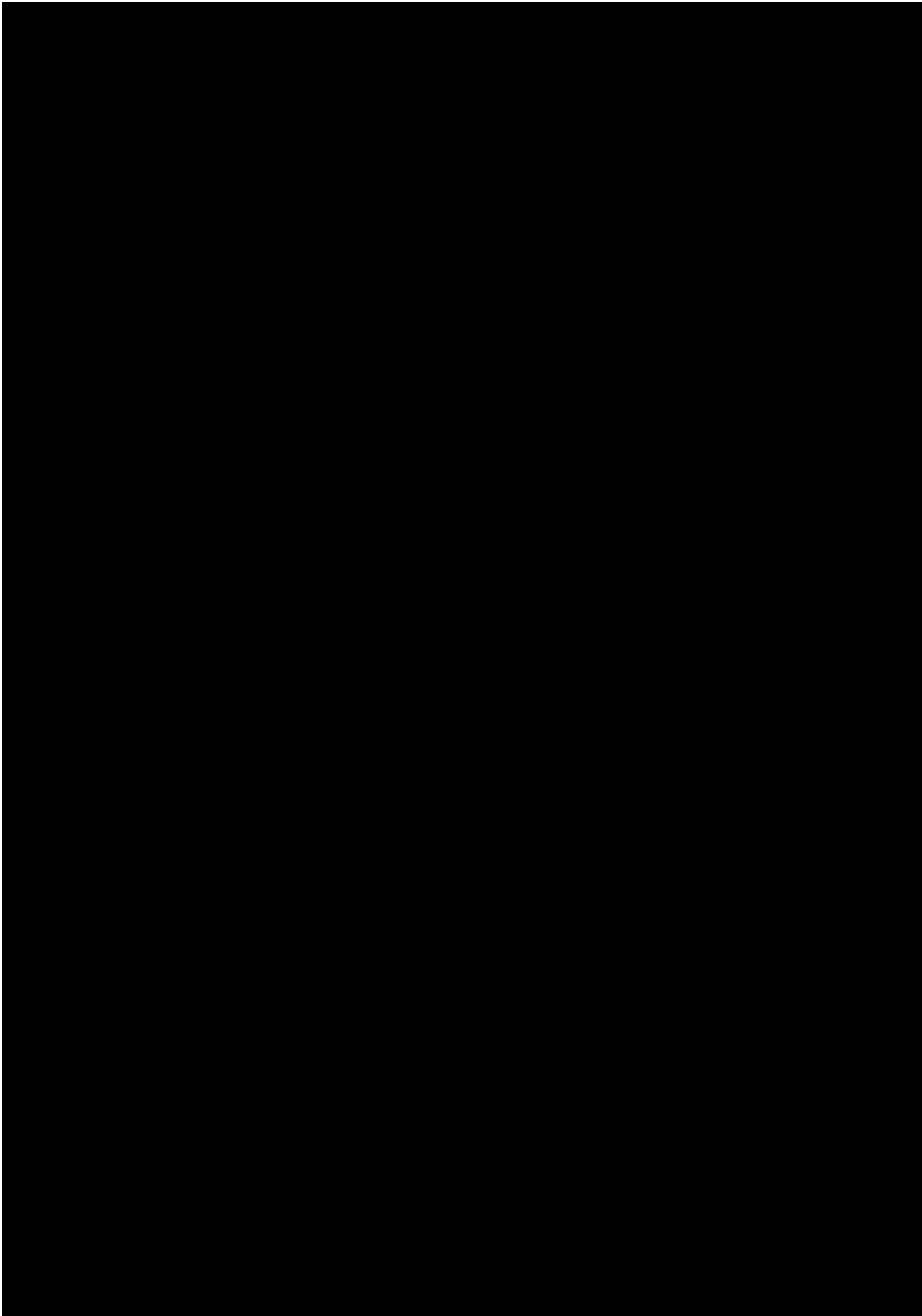
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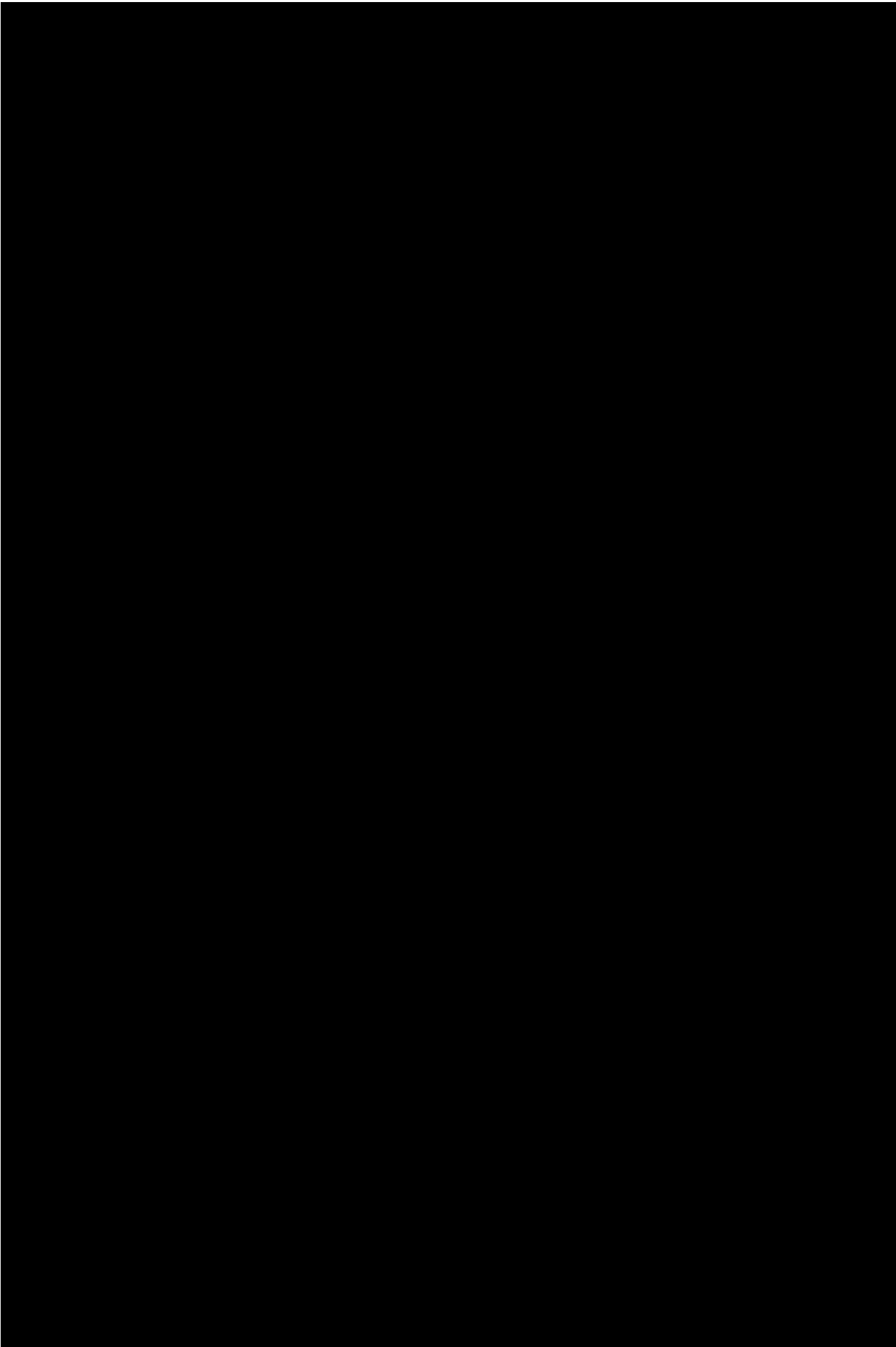


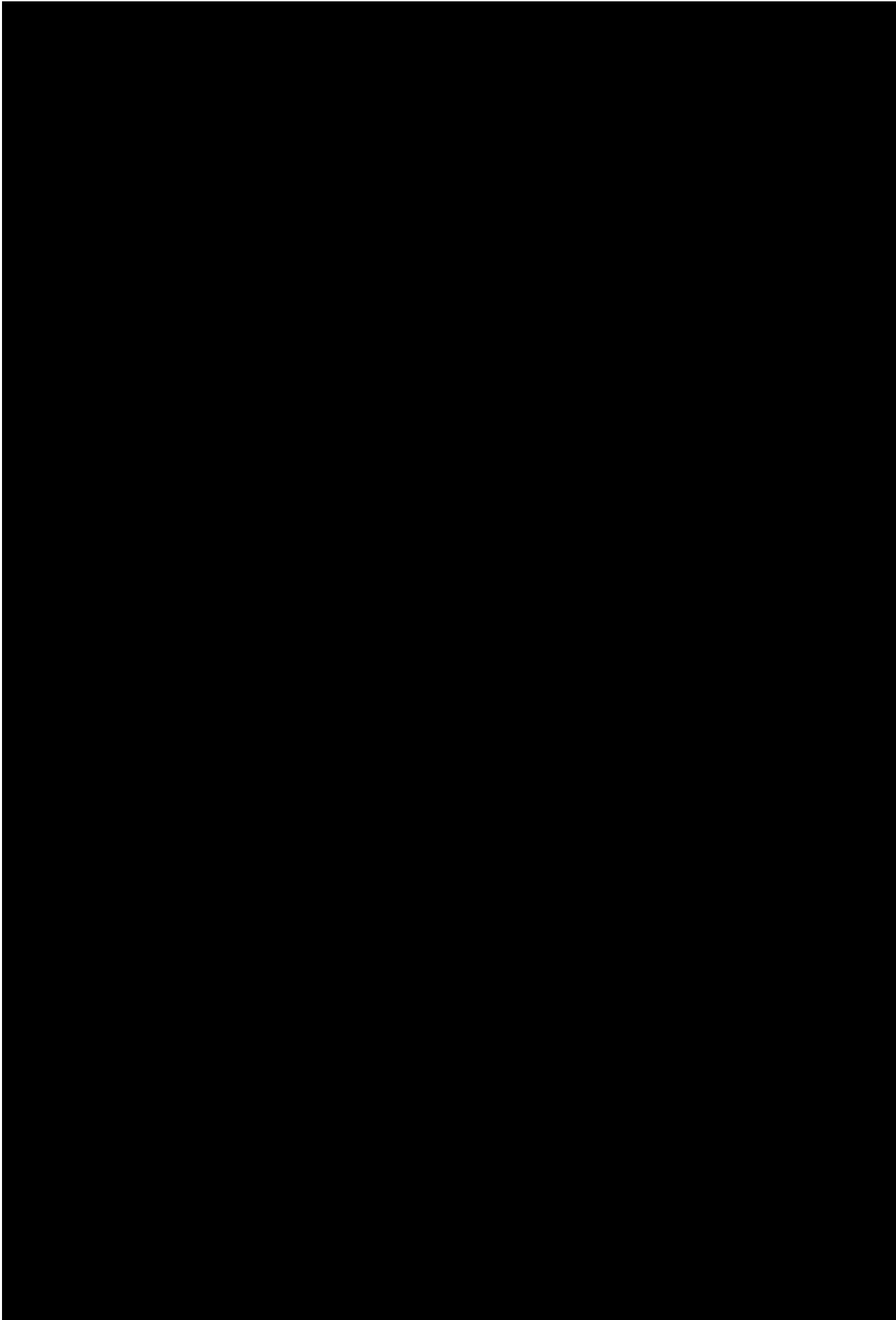




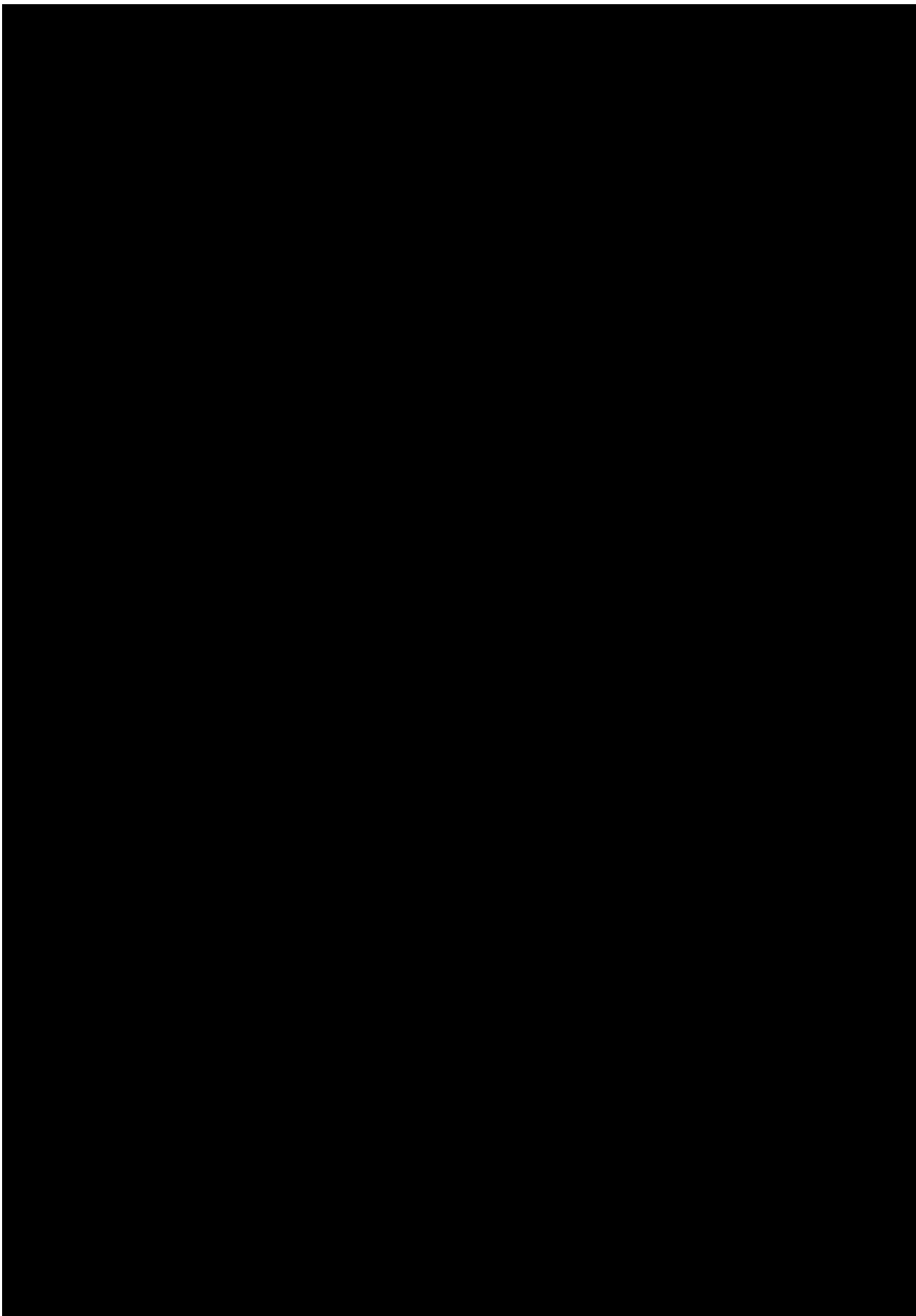




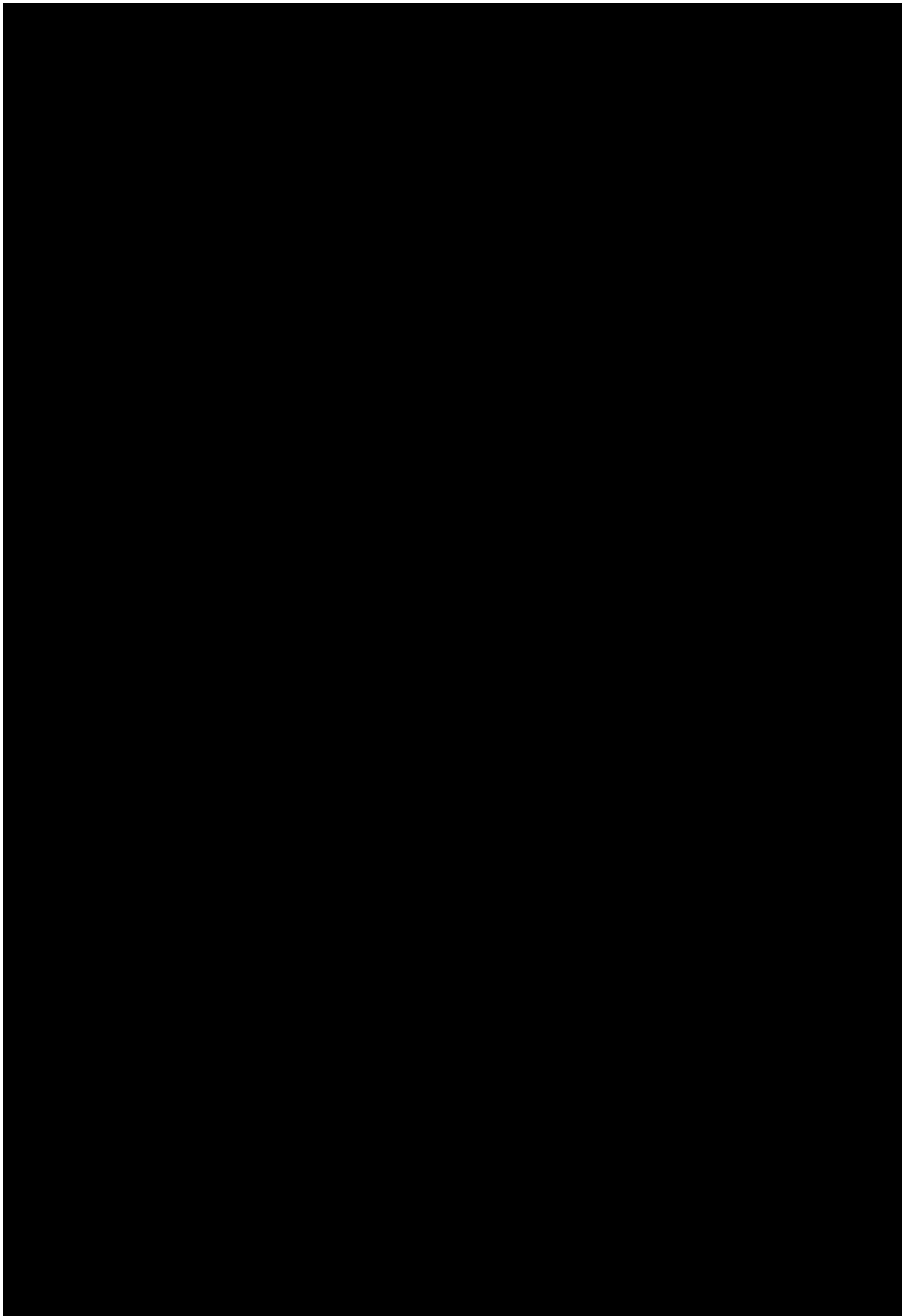


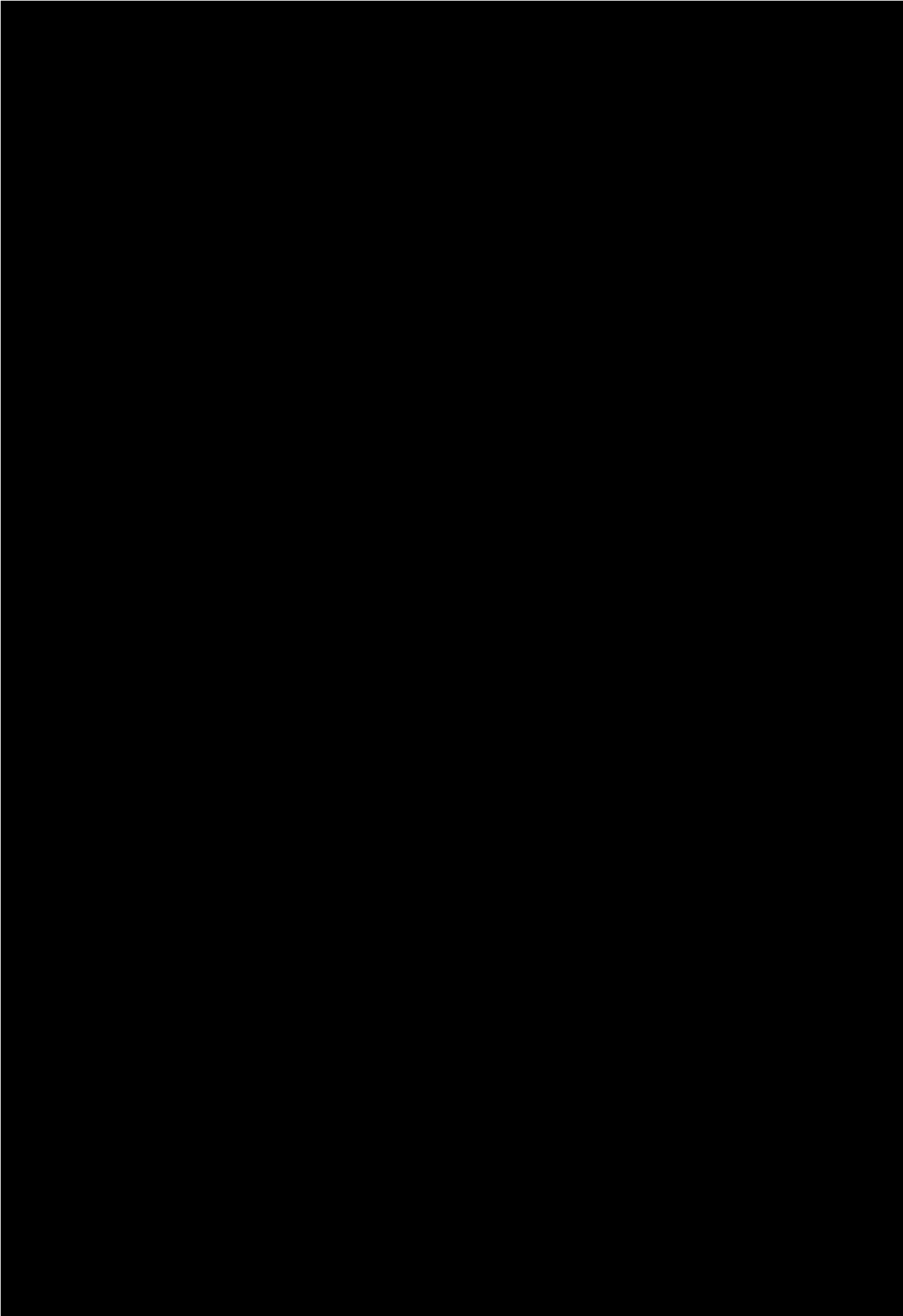




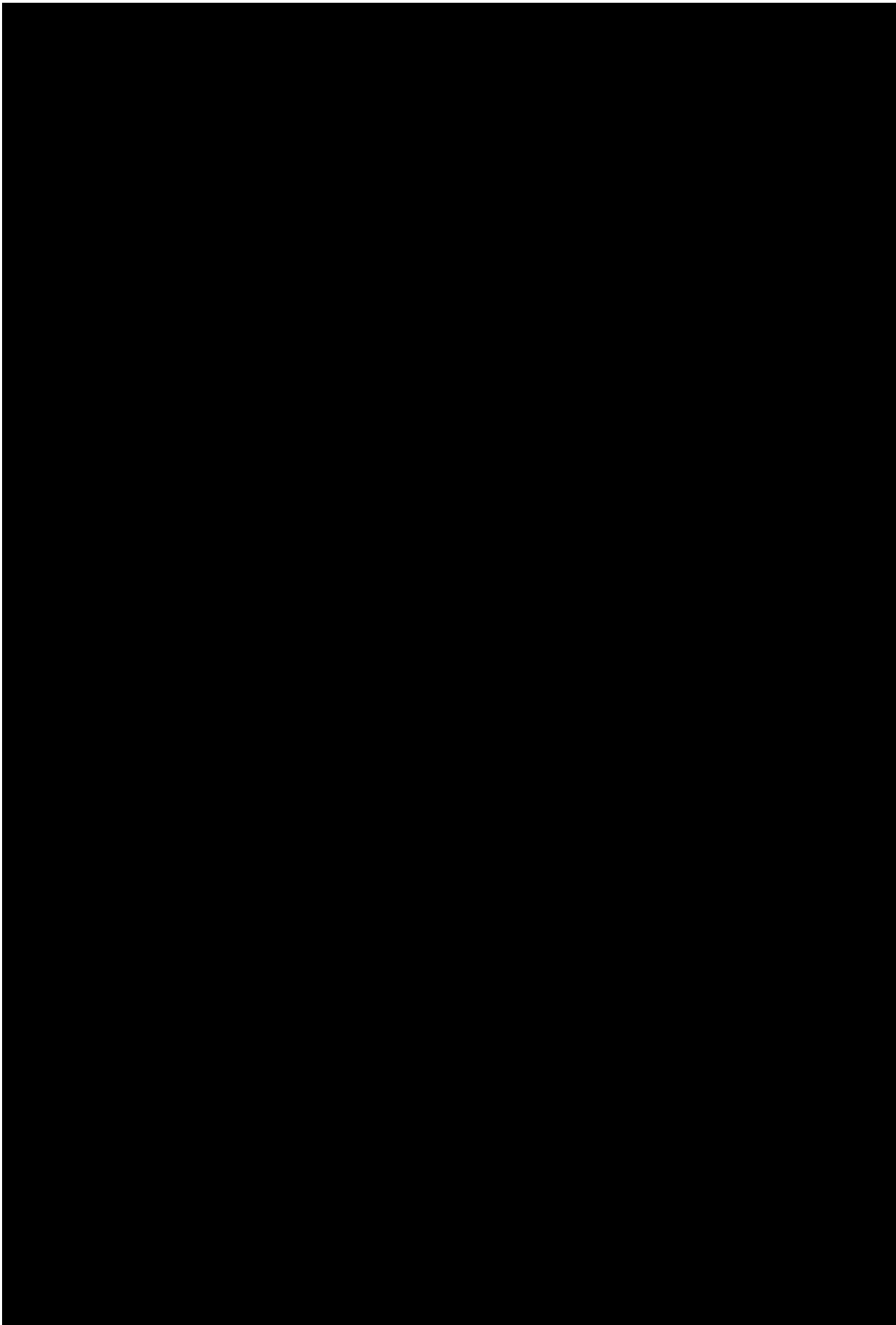


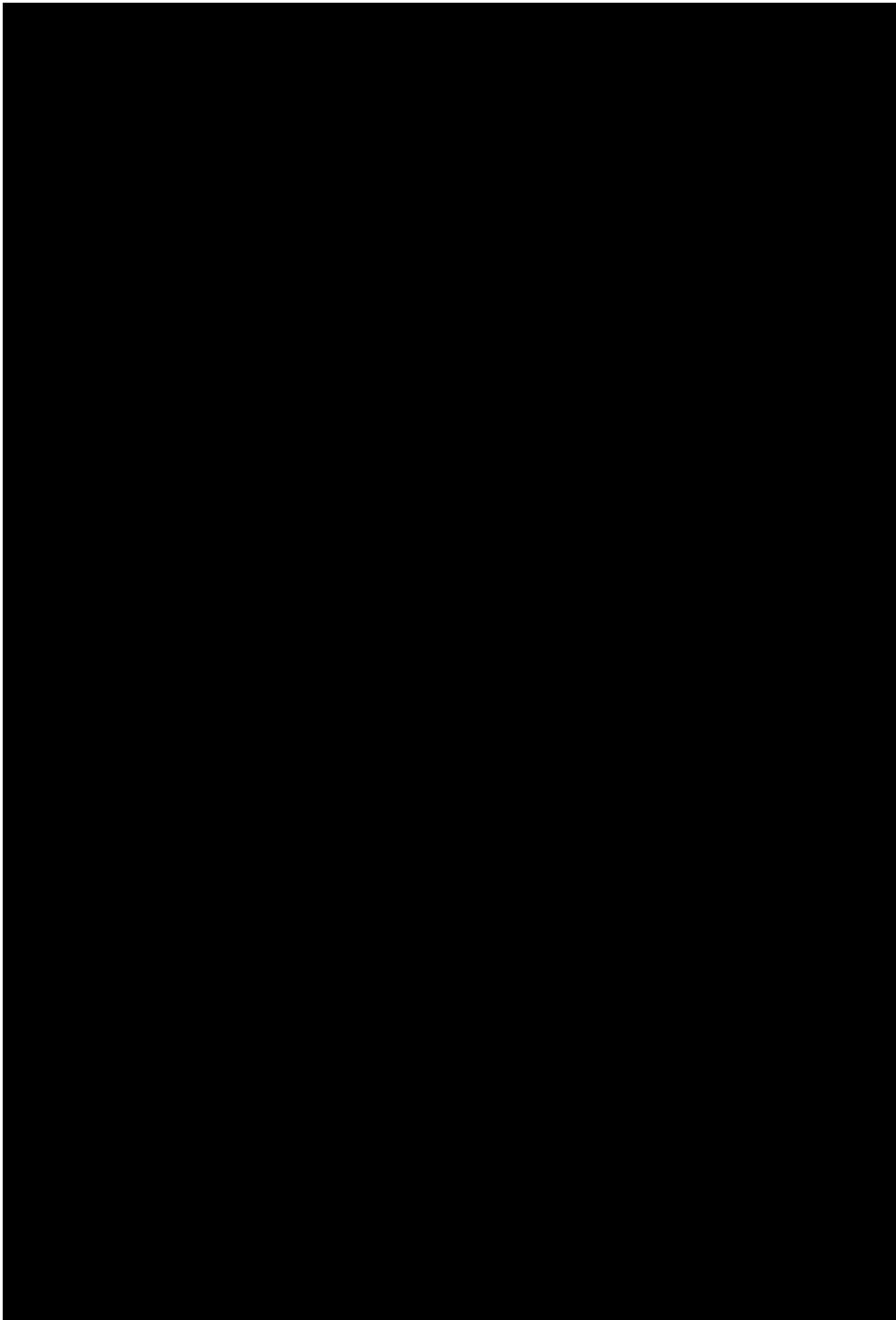


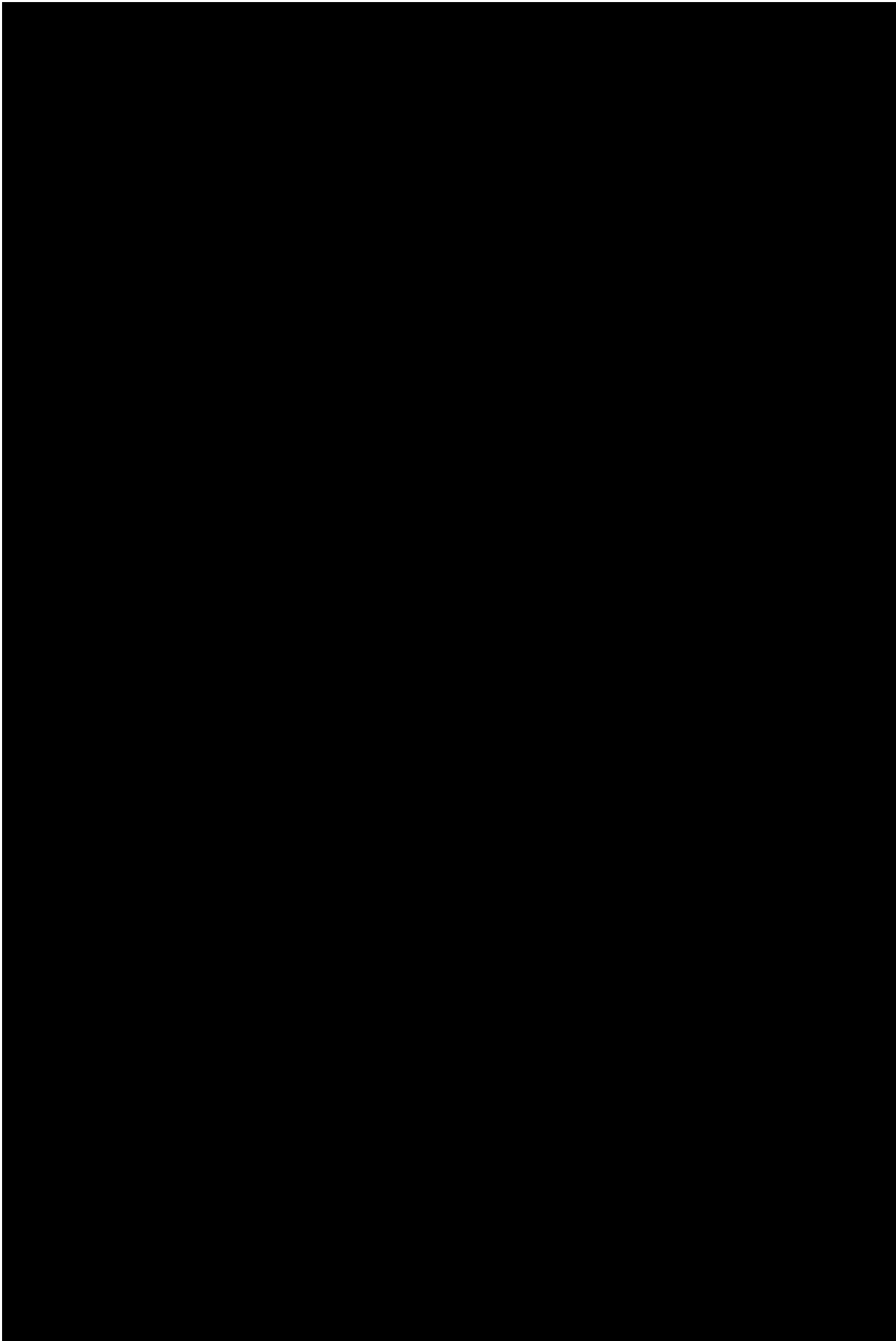


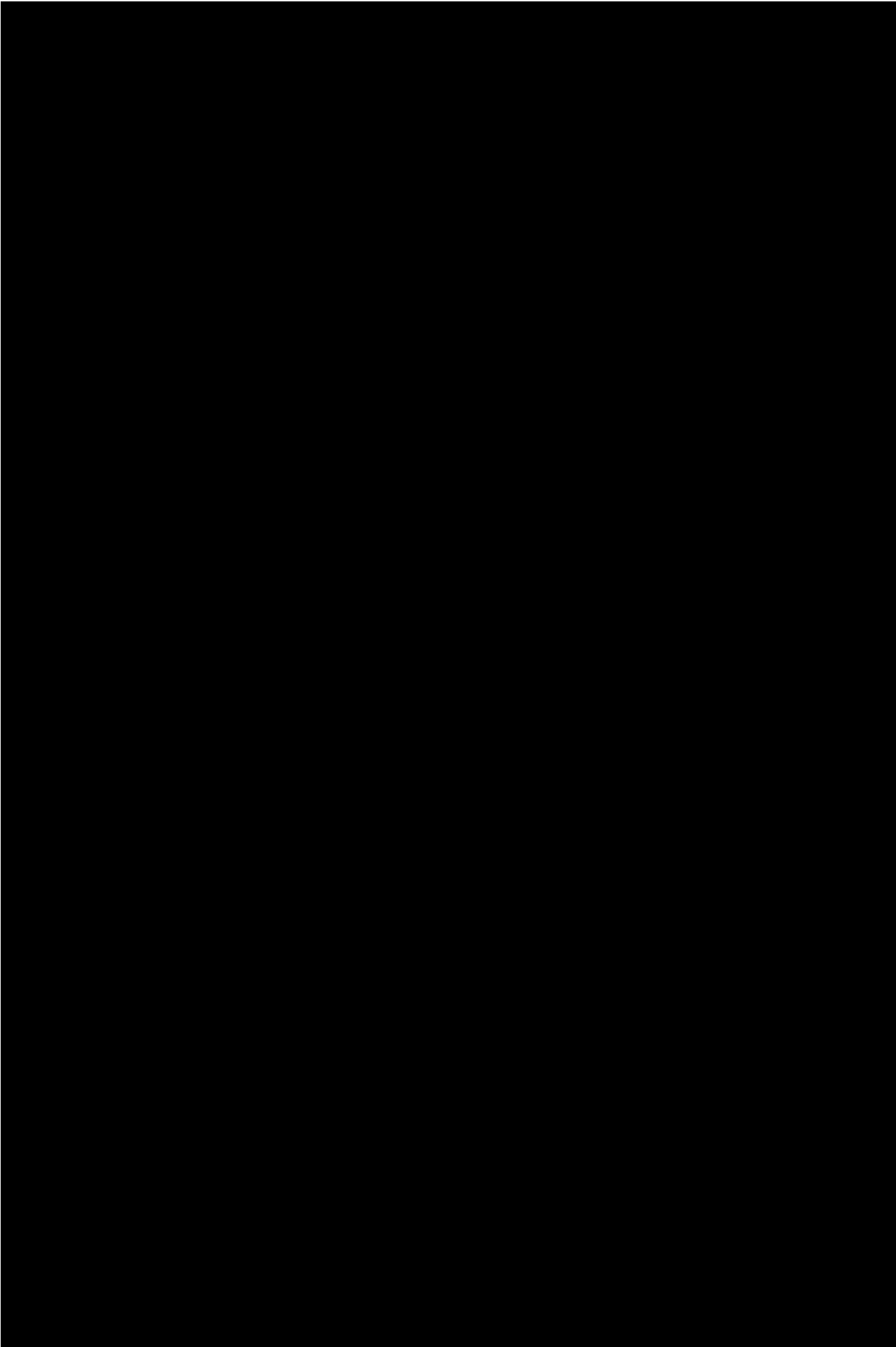


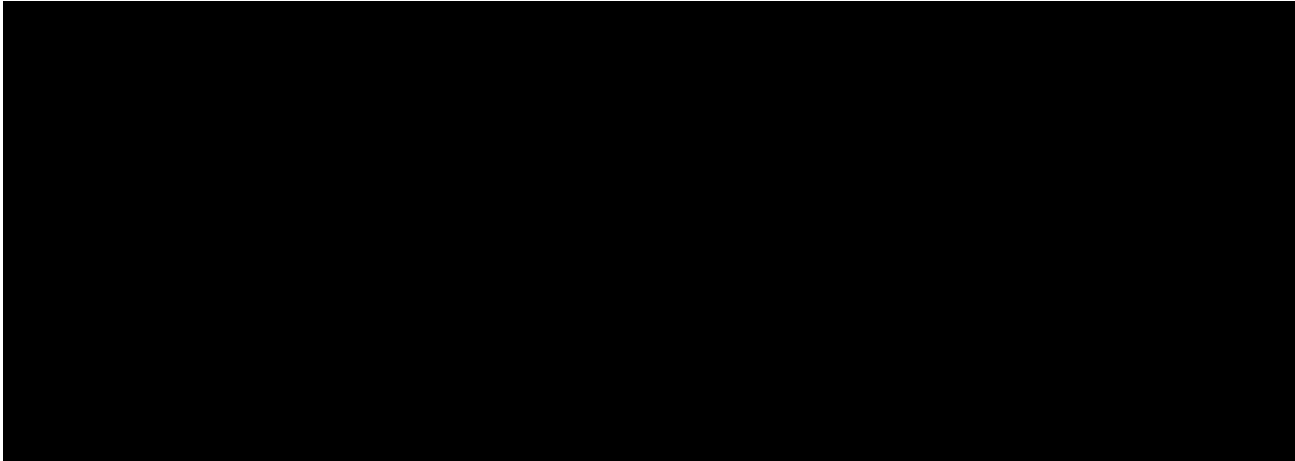


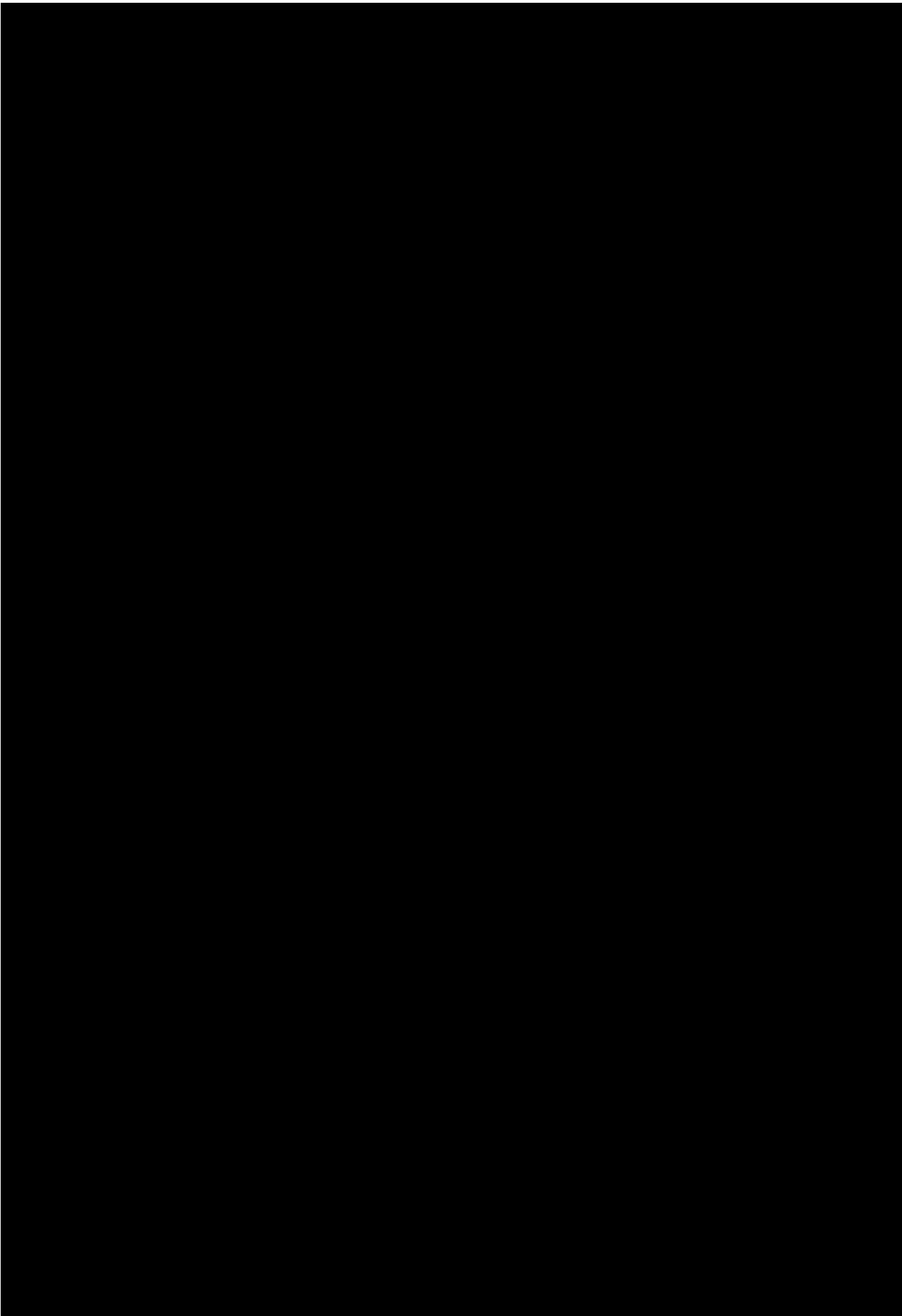


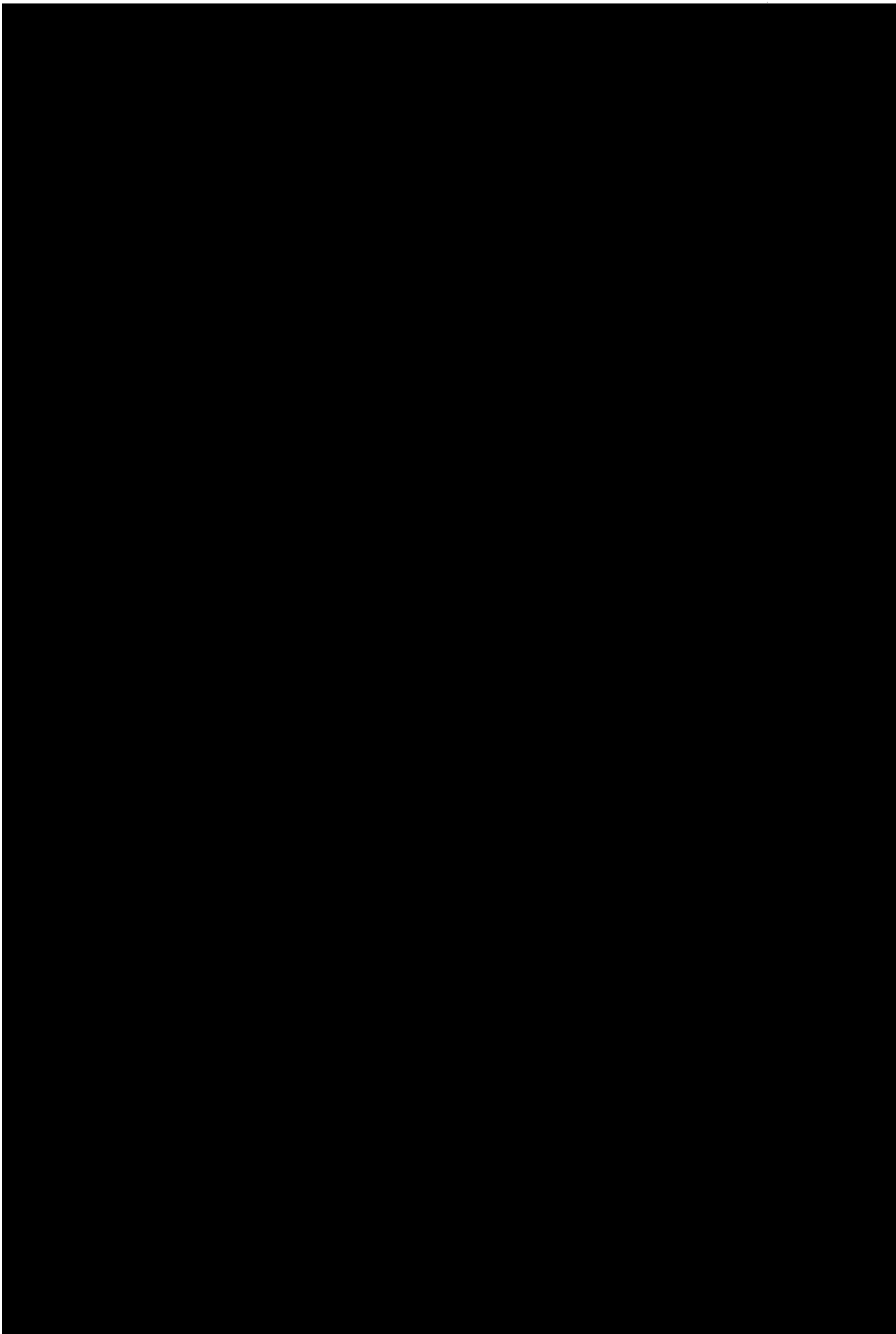


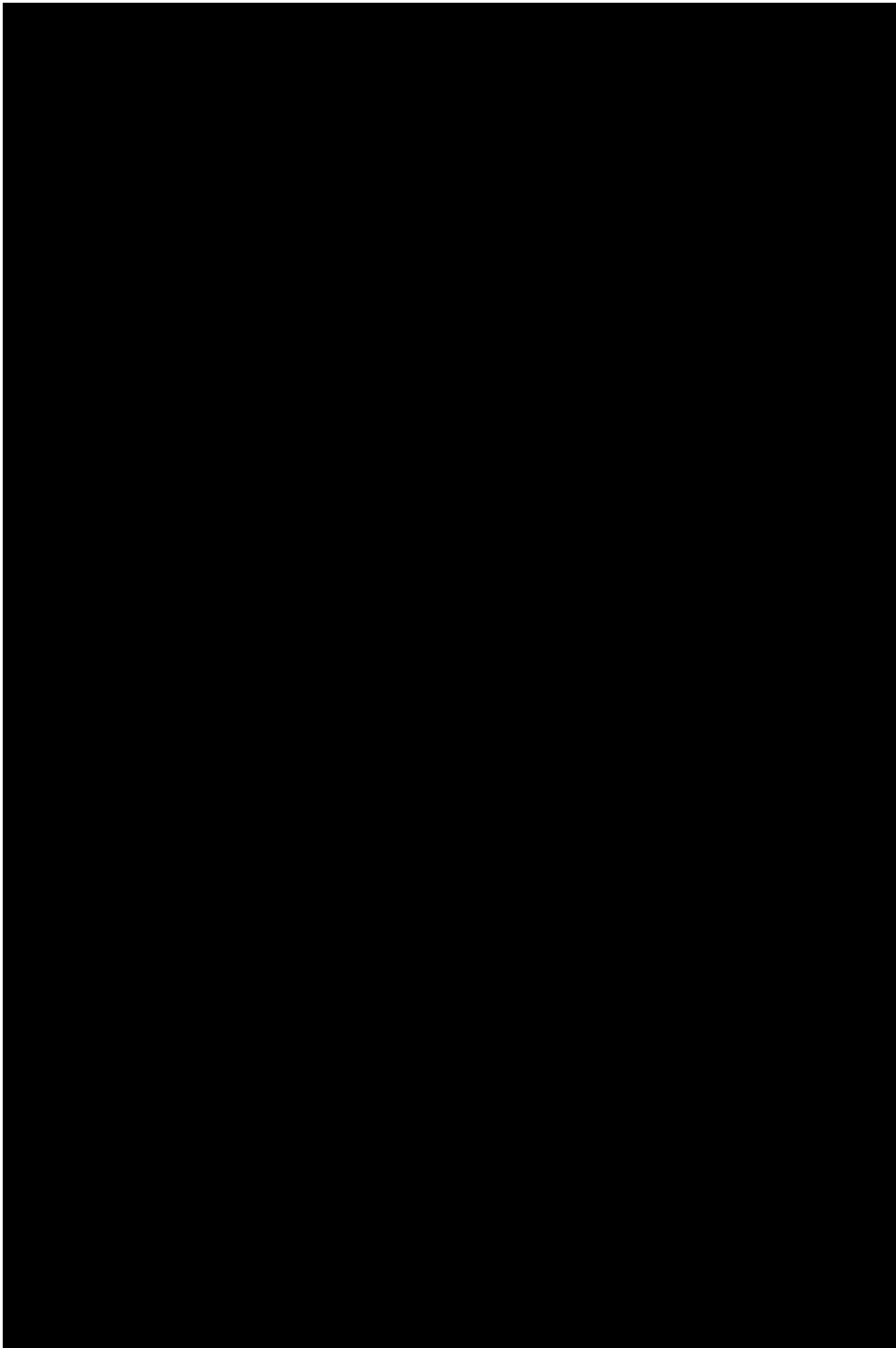


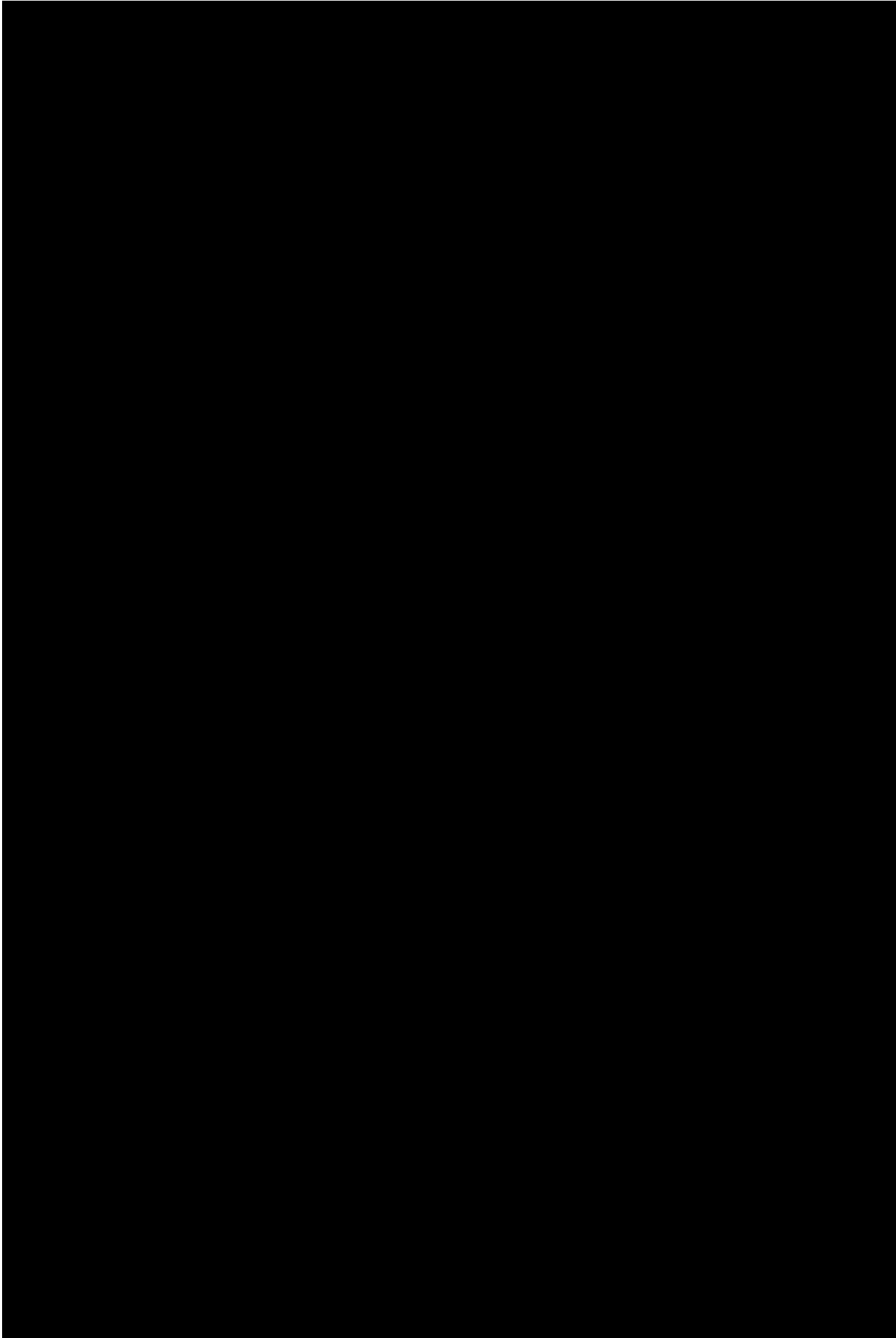




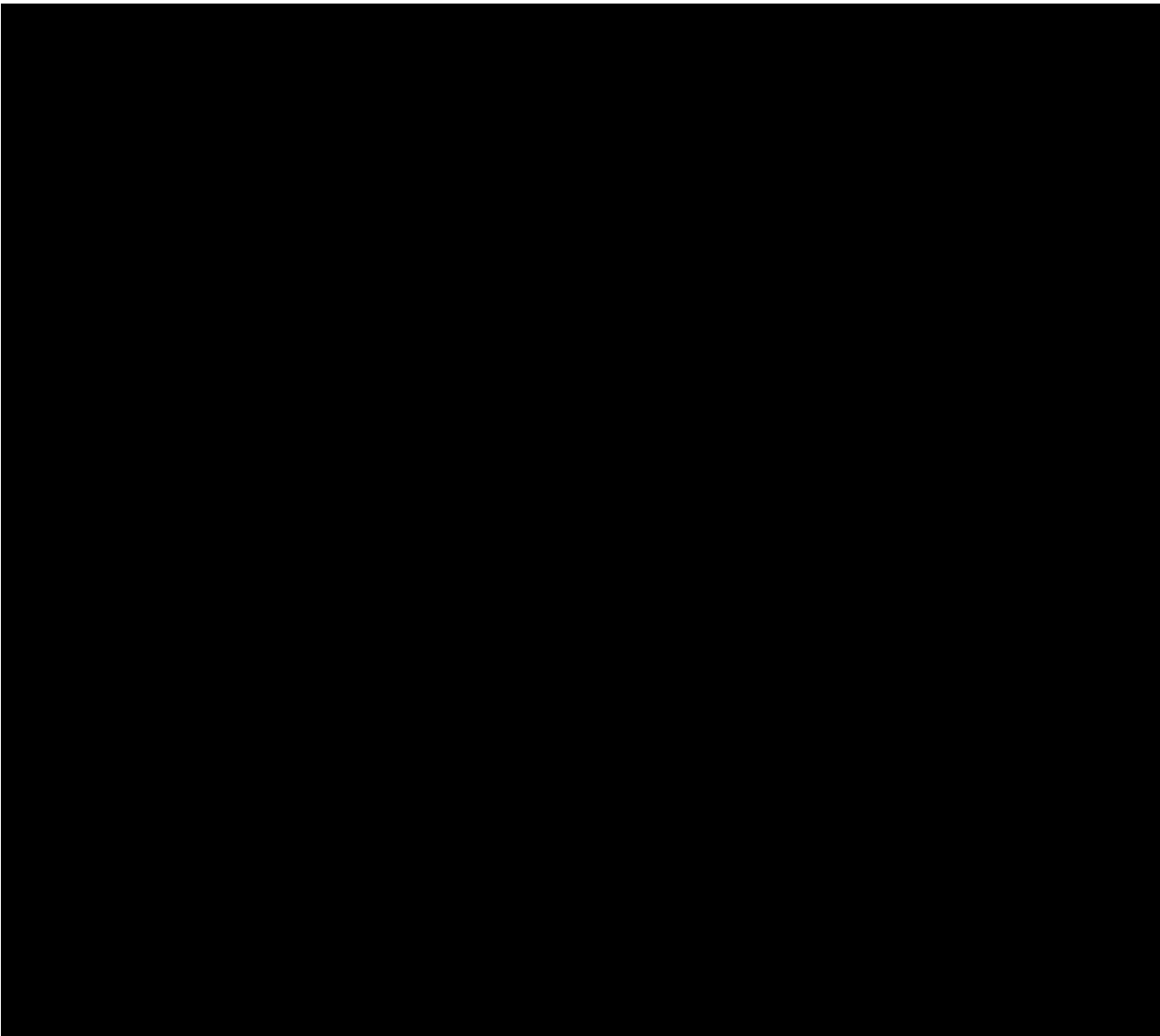




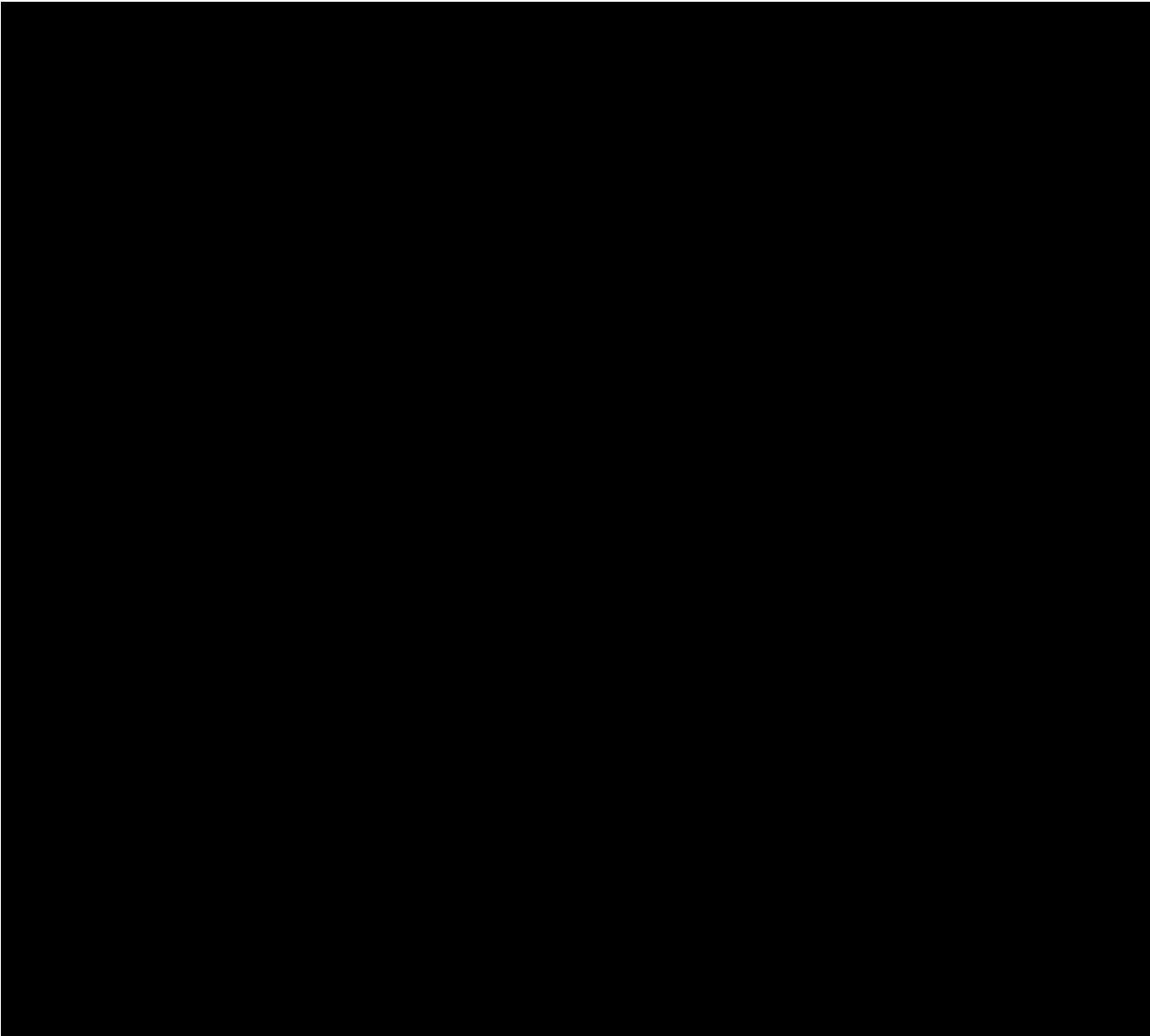


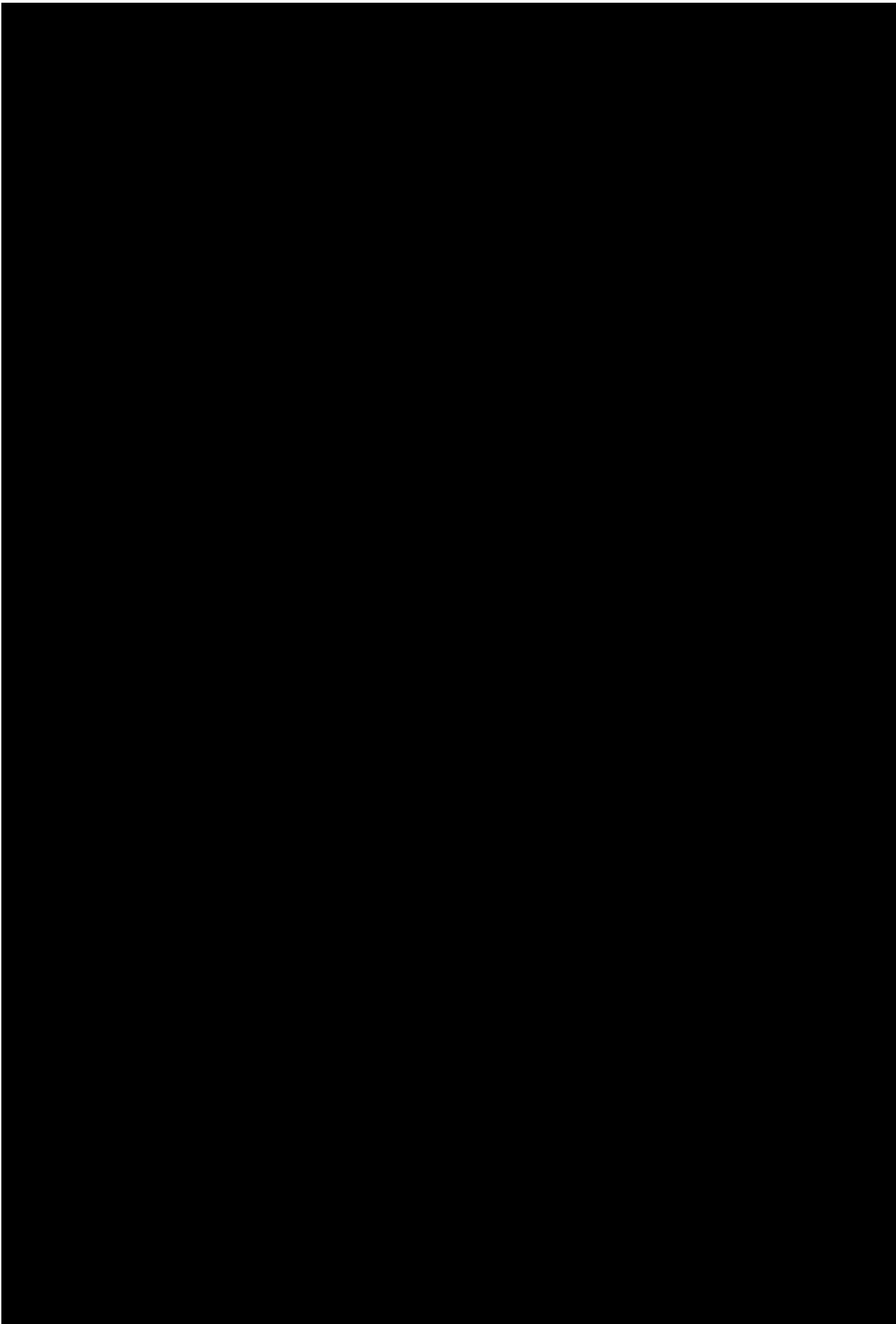


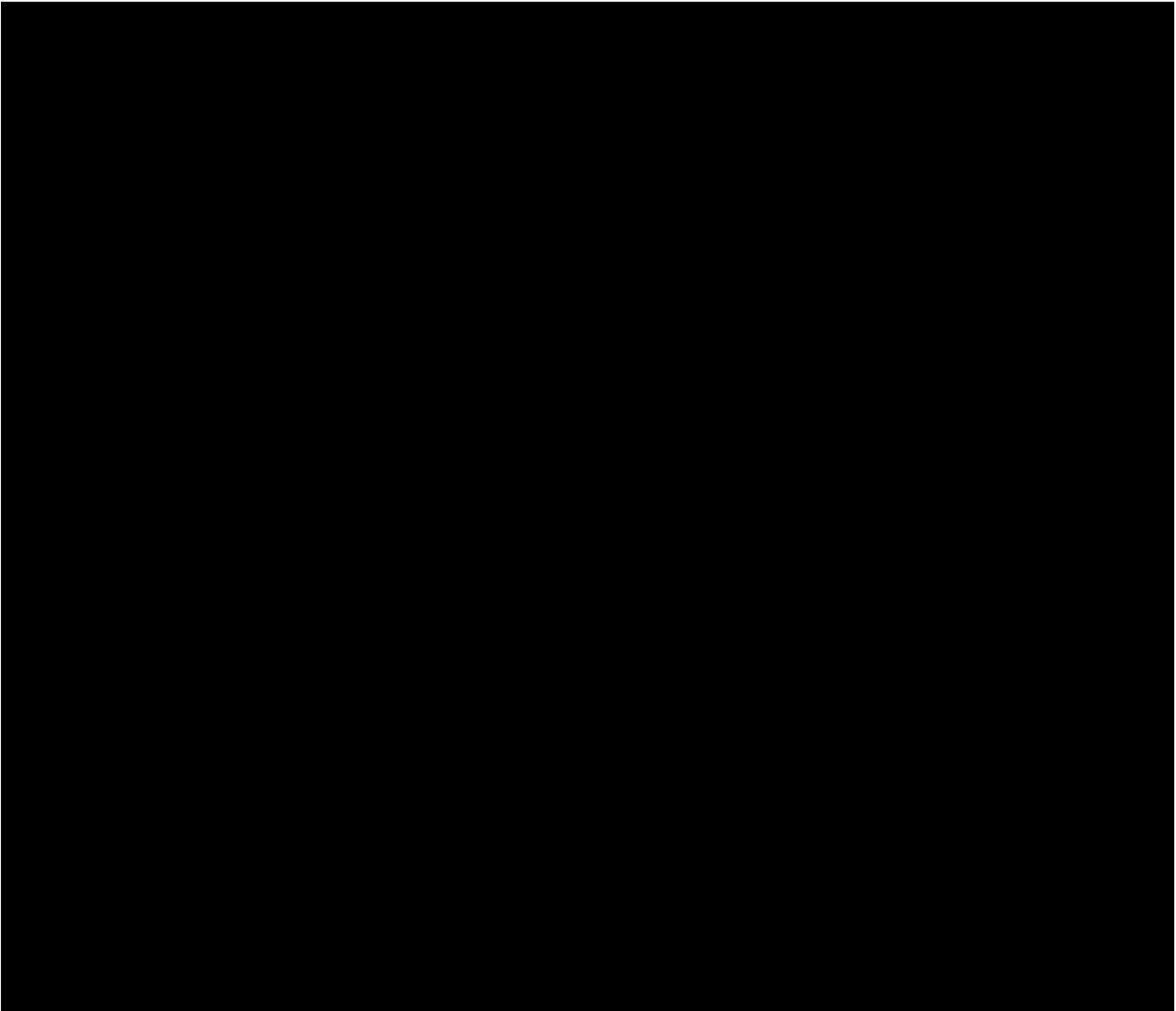


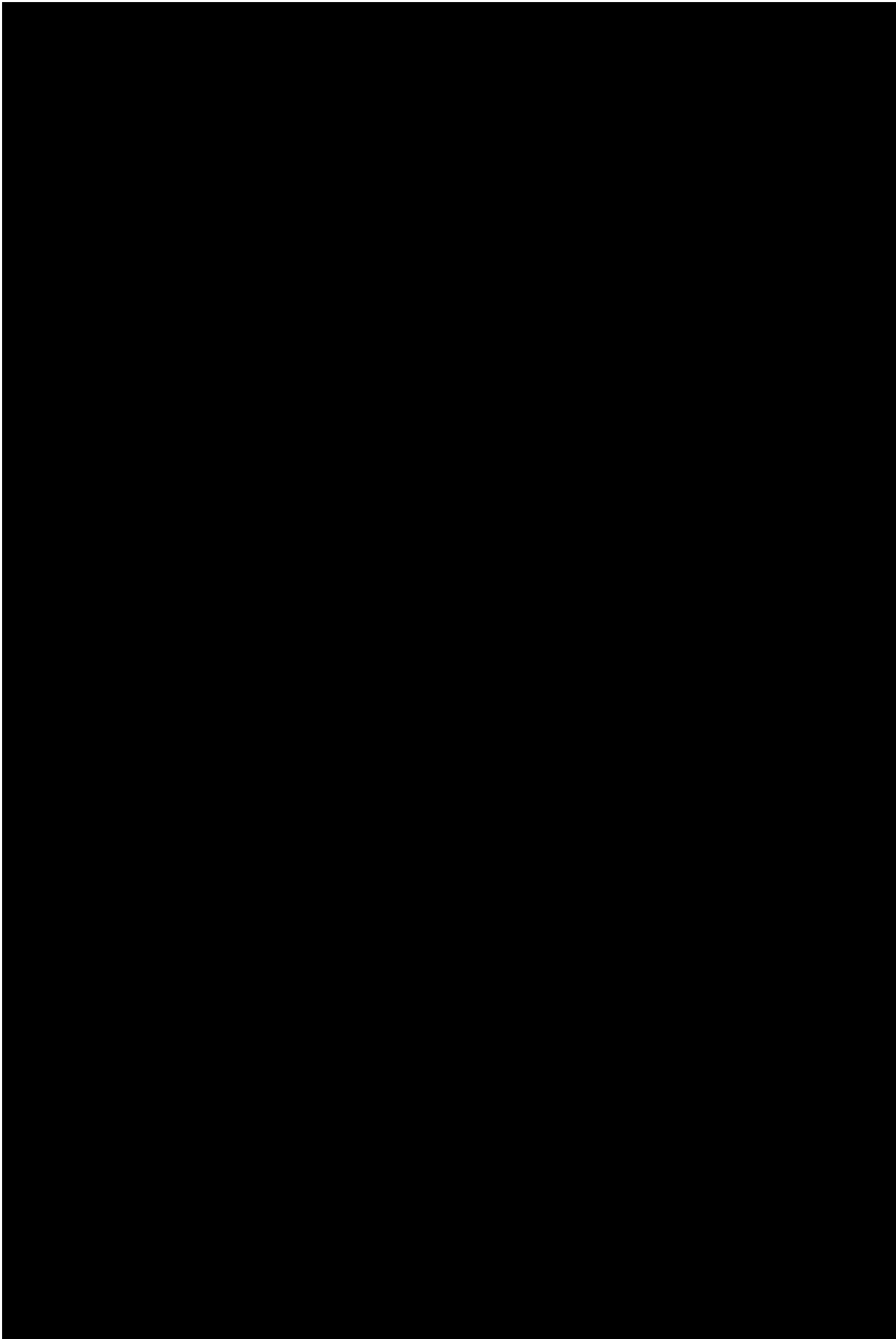


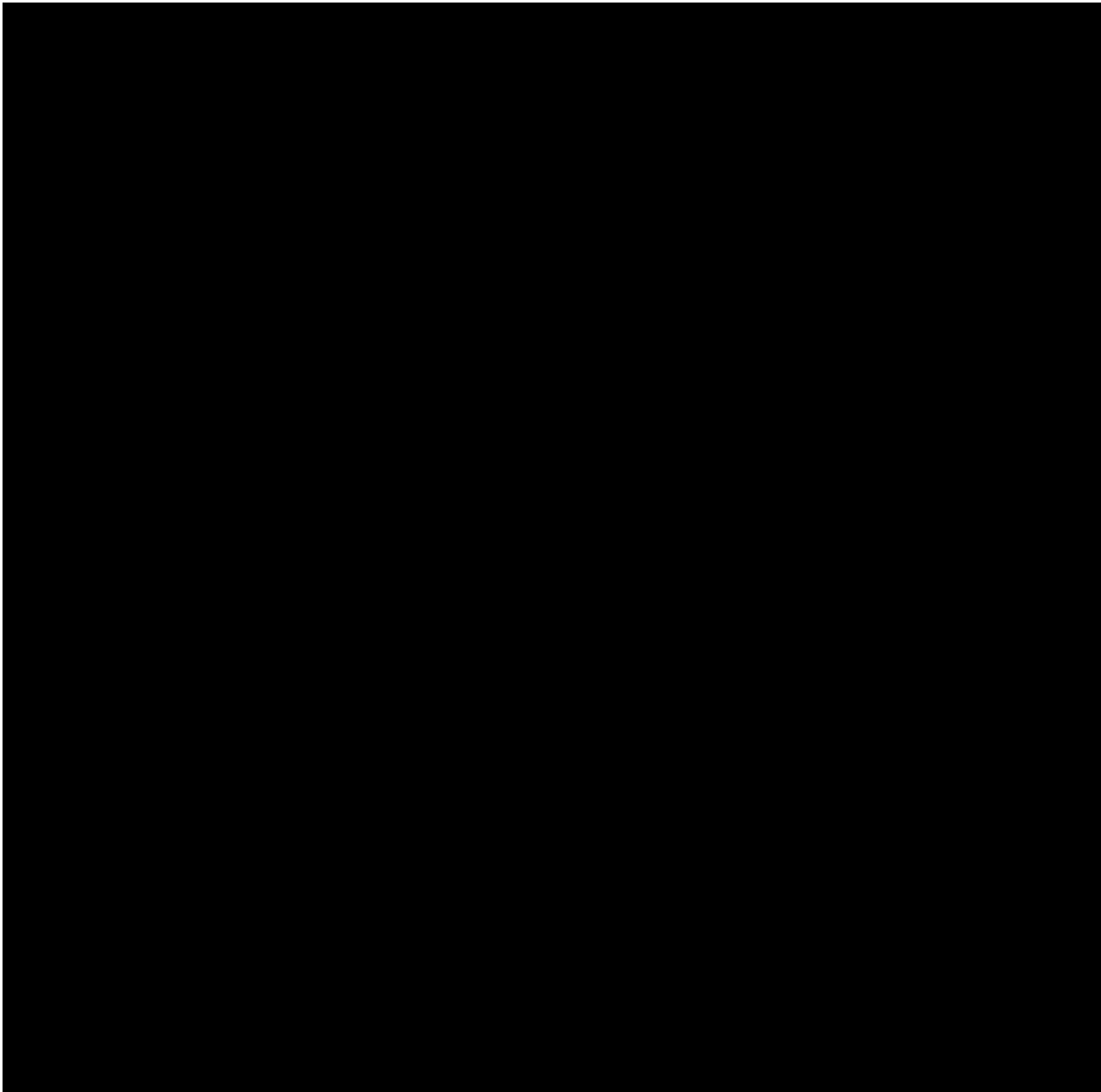
JOHN HOLLAND | **BEYMOUR WHYTE**
AN AUSTRALIAN COMPANY

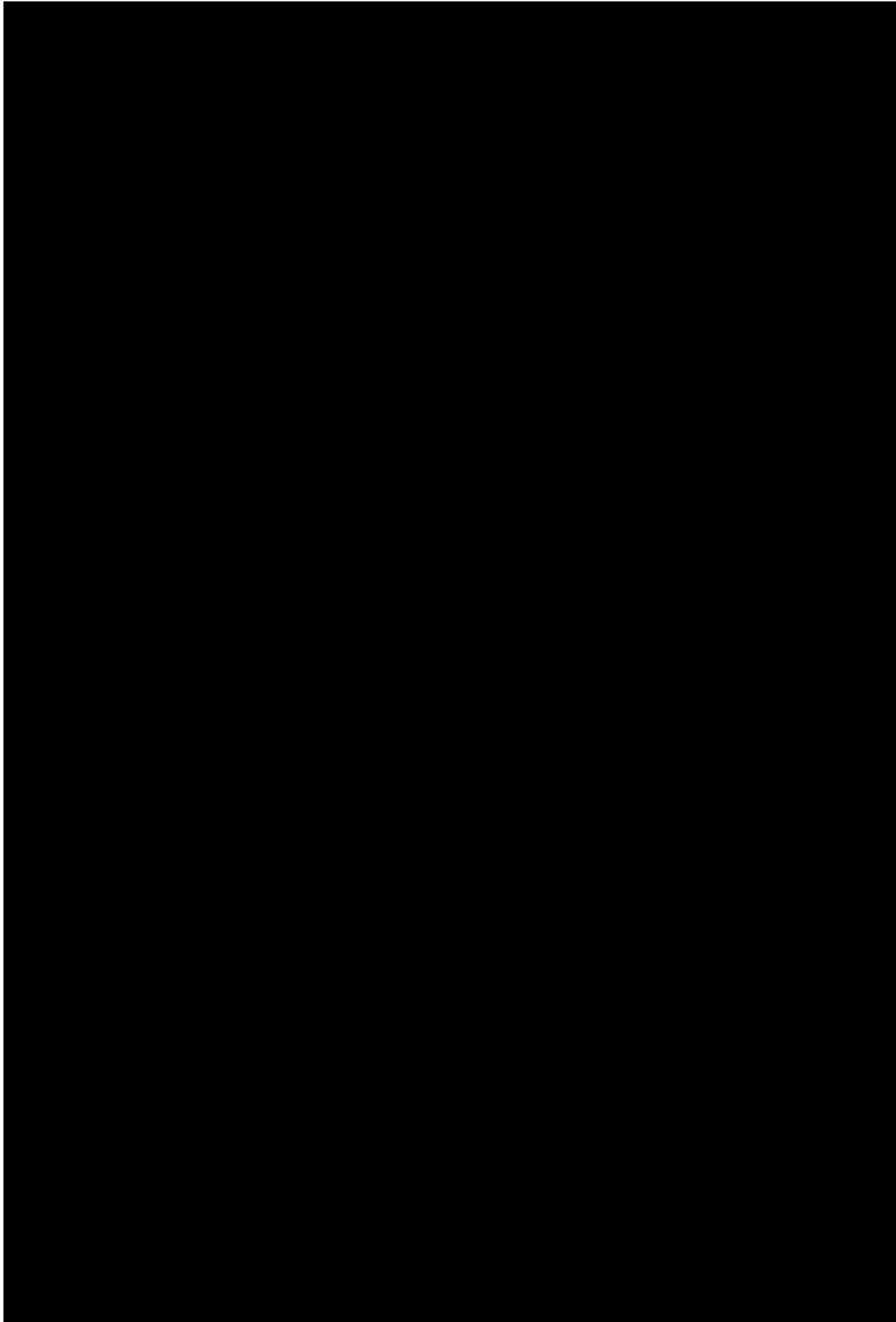


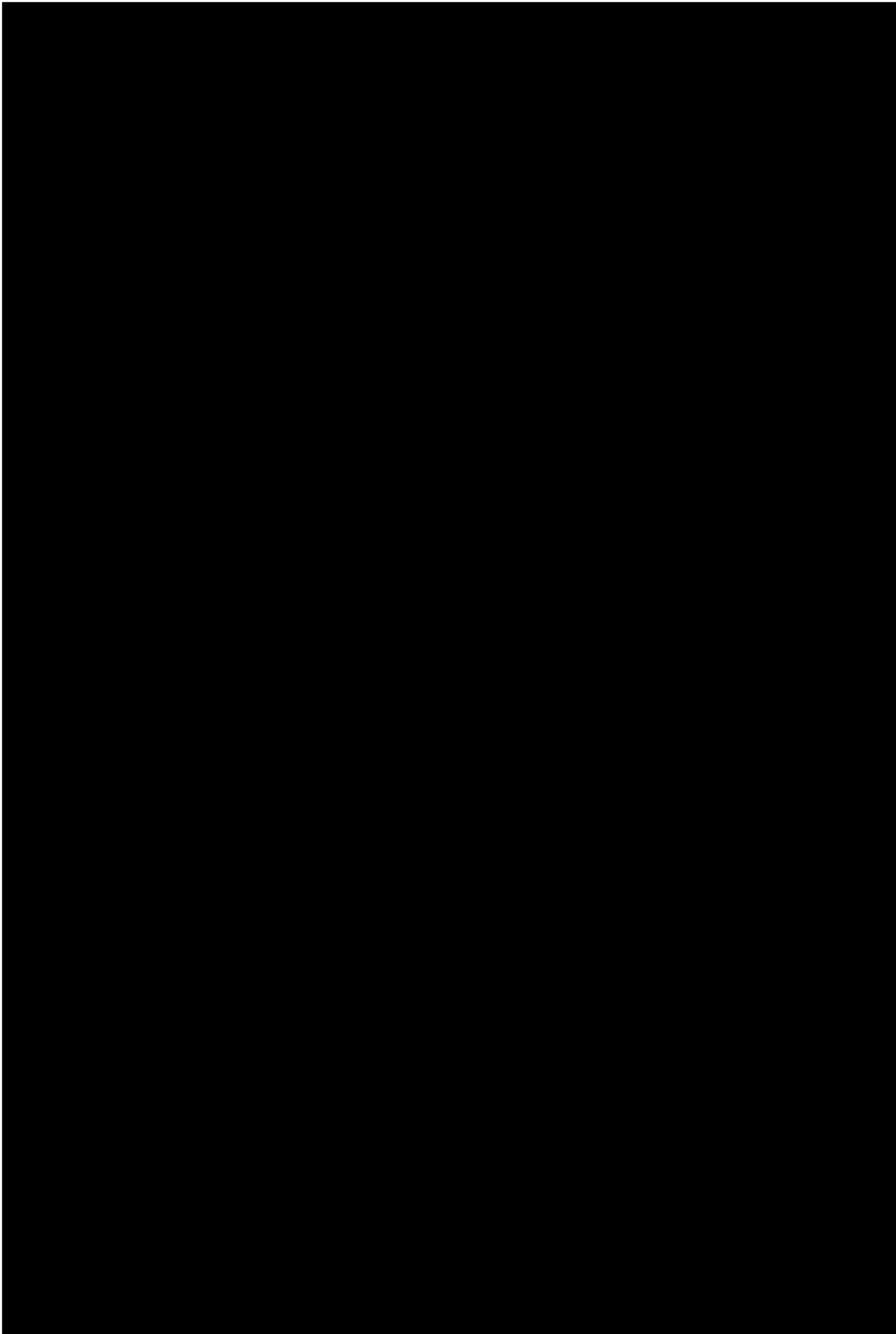


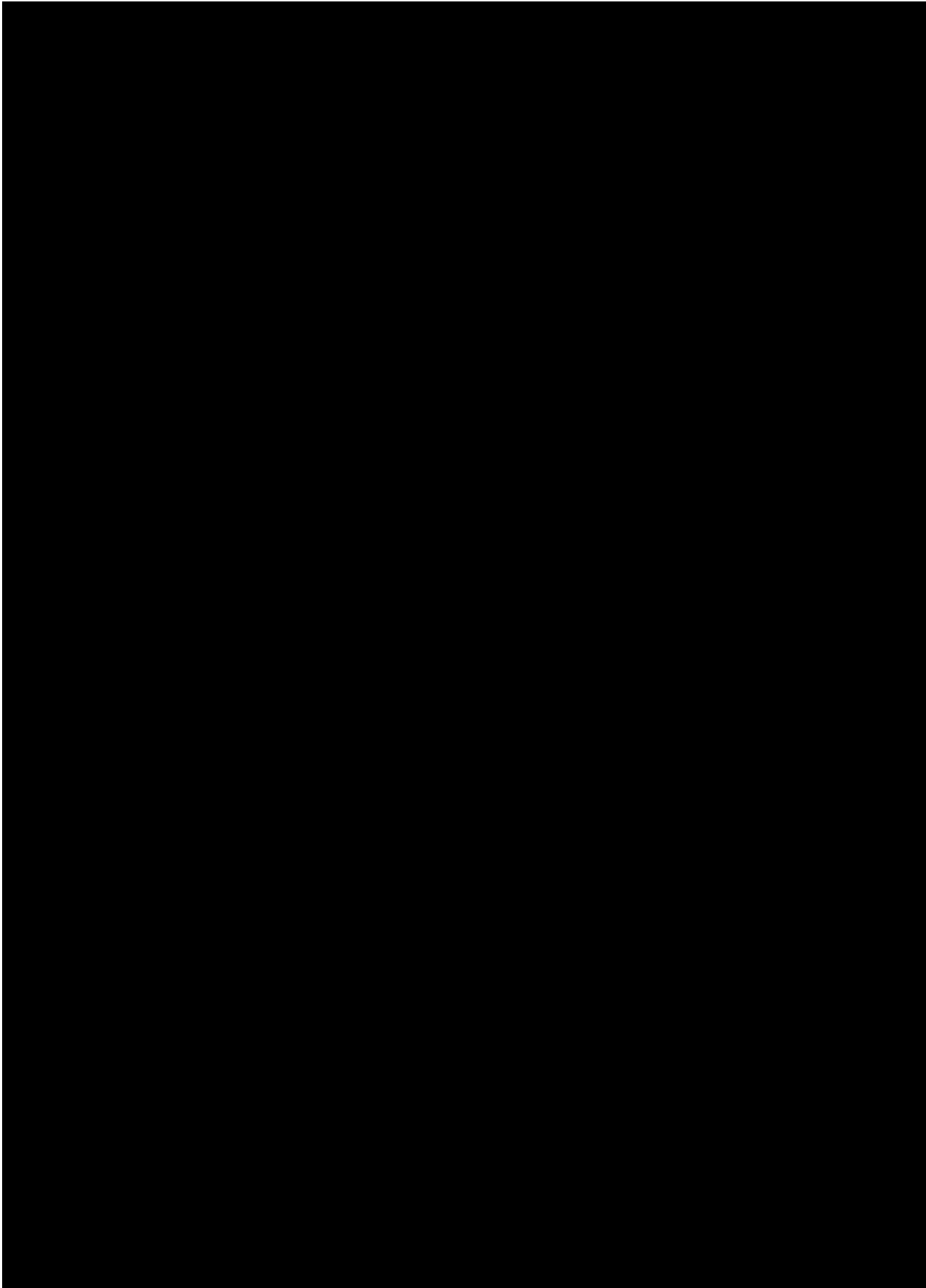


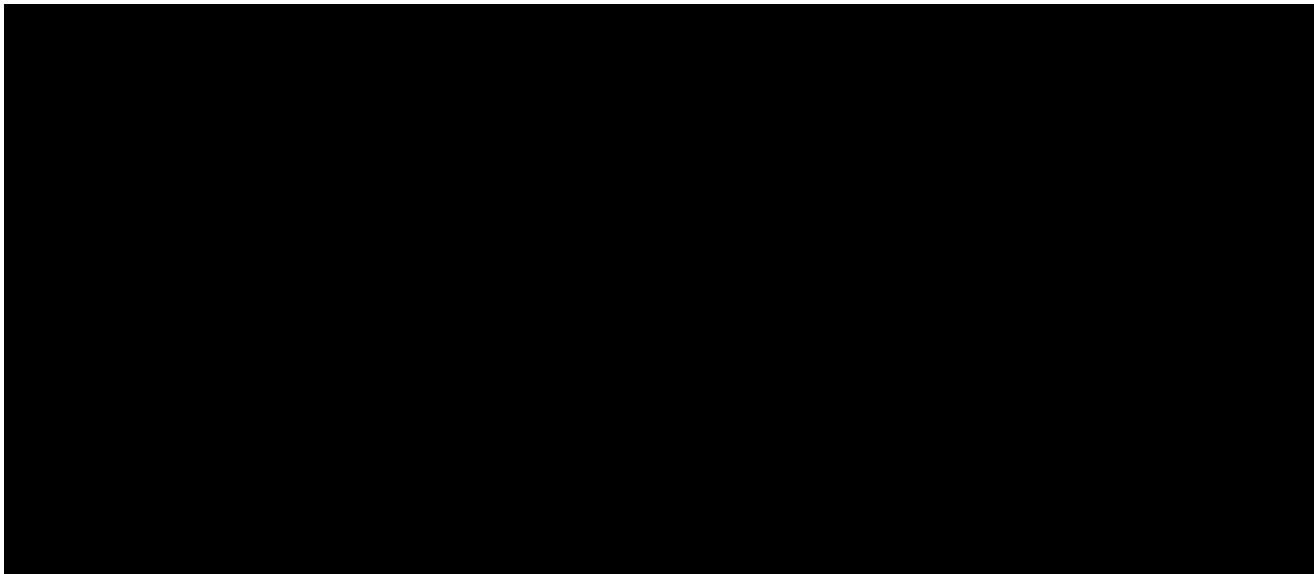












EXECUTION CLAUSE

[GUIDANCE NOTE: UPDATE THIS EXECUTION CLAUSE TO REFLECT THE CONTRACTOR'S AUTHORISED SIGNATORIES.]

Signed, sealed and delivered as a deed poll for and on behalf of John Holland Pty Ltd (ABN 11 004 282 268) by its attorney under a power of attorney dated [insert] in the presence of:

Signature of witness

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Name of witness in full

Name of attorney in full

Signed, sealed and delivered as a deed poll for and on behalf of Seymour Whyte Constructions Pty Ltd (ABN 48 105 493 187) by its attorney under a power of attorney dated [insert] in the presence of:

Signature of witness

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Name of witness in full

Name of attorney in full

COVENANTS BY RECIPIENT IN FAVOUR OF THE PRINCIPAL

1. Dictionary and interpretation

1.1 Definitions

The following words have these meanings in this deed poll unless the contrary intention appears:

Approved Purpose means the approved purpose as set out in the Details.

Authorised Officer means a person appointed by the Contractor to act as an Authorised Officer for the purposes of this deed poll.

Confidential Information means all Information obtained by the Contractor from the Principal or disclosed to the Contractor by the Principal, any Representative of the Principal, or any person acting on the Principal's behalf, for or in connection with the Approved Purpose and all Information created by the Contractor in the course of carrying out the Approved Purpose, including:

- (a) information which, either orally or in writing, is designated or indicated as being the proprietary or confidential information of the Principal, or a third party to whom the Principal owes an obligation of confidentiality;
- (b) information derived or produced partly or wholly from the Information including any calculation, conclusion, summary or computer modelling; and
- (c) trade secrets or information which is capable of protection at law or equity as confidential information,

whether the information:

- (d) was disclosed orally, in writing or in electronic or machine readable form;
- (e) was disclosed or created before, on or after the date of this deed poll;
- (f) was disclosed as a result of discussions between the parties concerning or arising out of the Approved Purpose; or
- (g) was disclosed by the Principal, any of its Representatives or by a person acting on the Principal's behalf.

Details means the section of this deed poll headed Details.

Corporations Act means the Corporations Act 2001 (Cth).

Excluded Information means Confidential Information:

- (a) which is in or becomes part of the public domain otherwise than through breach of this deed poll or an obligation of confidence owed to the Principal;
- (b) which the Contractor can prove by contemporaneous written documentation was already known to it at the time of disclosure by the Principal, its Representative or a person acting on the Principal's behalf, unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality; or
- (c) which the Contractor acquires from a source other than the Principal, a Representative of the Principal or a person acting on the Principal's behalf where such source is entitled to disclose it.

Government Agency means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

Information means all information regardless of its Material Form, relating to or developed in connection with:

- (a) the business, technology or other affairs of the Principal or any other Government Agency;
- (b) the Approved Purpose; or
- (c) any systems, technology, ideas, concepts, know-how, techniques, designs, specifications, blueprints, tracings, diagrams, models, functions, capabilities and designs, (including computer software, manufacturing processes or other information embodied in drawings or specifications), intellectual property or any other information, owned or used by, or licensed to the Principal or any other Government Agency.

Material Form in relation to Information, includes any form (whether visible or not) of storage from which the Information can be reproduced and any form in which the Information is embodied or encoded.

Personal Information has the meaning it has in the Privacy and Personal Information Protection Act 1998 (NSW).

Principal means Transport for NSW (ABN 18 804 239 602) of 20-44 Ennis Road, Milsons Point, NSW 2061, a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW).

Representative of the Principal or the Contractor includes their employee, agent, officer, director, auditor, adviser, partner, consultant, joint venturer, contractor or sub-contractor.

1.2 References to certain general terms

Unless the contrary intention appears, a reference in this deed poll to:

- (a) **(variations or replacement)** a document (including this deed poll) includes any variation or replacement of it;
- (b) **(clauses, attachments and schedules)** a clause, attachment or schedule is a reference to a clause in or attachment or schedule to this deed poll;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any Government Agency;
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) **(two or more persons)** an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (i) **(jointly and severally)** an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (j) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually; and
- (k) **(meaning not limited)** the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and, 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.

1.3 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience and do not affect the interpretation of this deed poll.

1.4 Confidential Information not in public domain

Confidential Information will not be regarded as being in the public domain by reason only of the fact that some portion of it is public or that information is publicly available which, together with other information, could be used to produce any Confidential Information.

2. Term

This deed poll commences on the Commencement Date. The obligations of the Contractor survive termination or expiry of this deed poll.

3. Disclosure

3.1 No obligation to disclose information

The Contractor acknowledges that nothing in this deed poll obliges the Principal, its Representatives or any person acting on the Principal's behalf to disclose any particular information to the Contractor or its Representatives. The Contractor acknowledges that the Principal has an absolute discretion as to the information, which it chooses to disclose.

3.2 No representations or warranties given

The Contractor acknowledges that neither the Principal, nor any of its Representatives, nor any person acting on the Principal's behalf:

- (a) has made nor makes any representation or warranty, express or implied, as to the accuracy, content, legality or completeness of the Confidential Information;

- (b) is under any obligation to notify the Contractor or provide any further information to the Contractor if it becomes aware of any inaccuracy, incompleteness or change in the Confidential Information; or
- (c) has made nor makes any representation or warranty, express or implied that the Confidential Information does not infringe the intellectual property rights or any other right of any person.

3.3 Contractor to make its own assessment

The Contractor agrees and acknowledges that:

- (a) it will rely solely on its own investigations and analysis in evaluating the Information disclosed by the Principal or its Representatives or any person acting on the Principal's behalf; and
- (b) any forecasts or estimates in the Information disclosed by the Principal or its Representatives or any person acting on the Principal's behalf may not prove correct or be achieved.

4. Obligation of confidence

4.1 Confidential discussions

The Contractor undertakes not to disclose to any person without the prior written consent of the Principal or except as it may be required to disclose by any law or order of any Government Agency or the rules of any stock exchange:

- (a) the existence of and contents of this deed poll and any other instruments entered into or to be entered into in connection with this deed poll;
- (b) the contents of any discussions between the parties relating to the Approved Purpose; or
- (c) the fact that any discussions between the parties relating to the Approved Purpose have taken place or will or may take place.

4.2 Contractor to maintain confidence

The Contractor must:

- (a) maintain the confidential nature of the Confidential Information;
- (b) not, without the prior written consent of the Principal, disclose any of the Confidential Information to any person other than those of its Representatives who need it for the Approved Purpose;
- (c) not use or disclose or reproduce any of the Confidential Information for any purpose other than the Approved Purpose;
- (d) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure and use the same degree of care a prudent person would use to protect that person's confidential information; and
- (e) immediately notify the Principal of any potential, suspected or actual unauthorised use, copying or disclosure of the Confidential Information.

4.3 Contractor to inform the Principal before disclosure

Before disclosing any of the Confidential Information to any of its Representatives for the Approved Purpose, the Contractor must:

- (a) inform the Principal of the name and title of the Representatives to whom it is to be disclosed;
- (b) ensure that each Representative is made fully aware of the confidential nature of all Confidential Information prior to obtaining access to it;
- (c) cause each Representative to sign an undertaking in the form set out in Attachment A; and
- (d) deliver the signed undertaking to the Principal.

4.4 Contractor's Representatives leaving its employ

The Contractor agrees to notify the Principal promptly if any of its Representatives who have had access to the Confidential Information leave the employ or engagement of the Contractor.

4.5 Contractor's control of Confidential Information

The Contractor's obligation of non-disclosure under this deed poll includes keeping the Confidential Information out of any computer, database, or other electronic means of data or information storage except for a computer, database, or other electronic means of data or electronic storage exclusively controlled by the Contractor.

5. Contractor's Representatives

5.1 Contractor's responsibility for Representatives' conduct

The Contractor must procure that its Representatives (whether or not still employed or engaged by the Contractor) do not do or omit to do anything, which if done or omitted to be done by the Contractor, would be a breach of the Contractor's obligations under this deed poll.

5.2 Contractor to assist in the Principal's action

The Contractor must give the Principal all assistance it requires to take any action or bring any proceedings for breach of the undertaking delivered under clause 4.3.

6. Acknowledgements

6.1 Confidential Information belongs to the Principal

The Contractor acknowledges that:

- (a) the Confidential Information constitutes valuable and proprietary information of the Principal or its Representatives; and
- (b) this deed poll does not grant to the Contractor any licence or other right in relation to the Confidential Information except as expressly provided in this deed poll.

6.2 Injunctive relief

The Contractor acknowledges that damages are not a sufficient remedy for the Principal and its Representatives for any breach of this deed poll and the Principal is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Contractor, in addition to any other remedies available to it at law or in equity.

7. Indemnity

7.1 Contractor indemnifies the Principal

The Contractor undertakes to indemnify the Principal and its Representatives and all persons acting on the Principal's behalf, against all liability or loss arising directly or indirectly from, and any costs, charges and expenses incurred in connection with:

- (a) any breach by the Contractor of this deed poll; or
- (b) any act or omission by any of its Representatives which, if done or omitted to be done by the Contractor, would be a breach of the Contractor's obligations under this deed poll.

7.2 No set-off

The Contractor undertakes to pay to the Principal and its Representatives and all persons acting on the Principal's behalf any sum due under clause 7.1 without any deduction or set-off (and irrespective of any counterclaim) whatsoever.

8. Exclusions

8.1 Excluded Information

Clauses 4.2, 4.3, 4.4 and 4.5 do not apply to the Excluded Information.

8.2 Disclosure required by law

Subject to compliance with clause 8.3, this deed poll does not apply to the disclosure of any Confidential Information to the extent that it is required to be disclosed by the Contractor under any law.

8.3 Limitation of disclosure

Before the Contractor discloses any Confidential Information under any law, order or rule of the kind referred to in clause 8.2, the Contractor must provide the Principal with:

- (a) sufficient notice to enable it to seek a protective order or other remedy; and
- (b) all assistance and co-operation which the Principal considers necessary to prevent or minimise that disclosure of the Confidential Information.

9. Return of Confidential Information

9.1 Return of Confidential Information

The Contractor must (at its own expense):

- (a) return to the Principal or at the option and direction of the Principal destroy all documents and other materials in any medium in the possession, power or control of the Contractor or any of

its Representatives which contain or refer to any Confidential Information (whether or not those documents and other materials were created by the Principal or its Representatives or any person acting on the Principal's behalf); and

- (b) delete any Confidential Information that has been entered into a computer, database or other electronic means of data or information storage,

on the earlier of:

- (c) demand by the Principal; or
- (d) the time the documents and other materials are no longer required for the Approved Purpose.

9.2 No release from obligations

The return, destruction or deletion of the documents and other materials referred to in clause 9.1 does not release the Contractor or its Representatives from their obligations under this deed poll.

10. Privacy

The Confidential Information may include Personal Information. In addition to any other obligations it may have under any law or under this deed poll, the Contractor agrees to:

- (a) take all necessary measures to ensure that Personal Information in its possession or control in connection with this deed poll is protected against loss and unauthorised access, use, modification or disclosure; and
- (b) comply with the Privacy and Personal Information Protection Act 1998 (NSW) as though the Contractor were a public sector agency as defined in that Act.

11. Notices

11.1 Form

Unless expressly stated otherwise in this deed poll, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed poll (“**notices**”) must be in writing, signed by the sender (if an individual) or an Authorised Officer of the sender and marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified

11.2 Delivery

Notices must be:

- (a) left at the address set out or referred to in the Details;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details; or
- (c) given in any other way permitted by law.

However, if the intended recipient has notified a changed postal address then the communication must be to that address.

11.3 When effective

Notices take effect from the time they are received unless a later time is specified in the notice.

11.4 Receipt - post

If sent by post, notices are taken to be received three days after posting (or seven days after posting if sent to or from a place outside Australia).

12. General

12.1 No liability for loss

The Contractor acknowledges that the Principal is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this deed poll.

12.2 Approvals and consents

The Contractor acknowledges that by giving its approval or consent the Principal does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

12.3 Remedies cumulative

The rights and remedies provided in this deed poll are in addition to other rights and remedies given by law independently of this deed poll.

12.4 Variation and waiver

A provision of this deed poll or a right created under it, may not be waived or varied except in writing.

12.5 Indemnities

The indemnities in this deed poll are continuing obligations, independent from the other obligations of the Contractor under this deed poll and continue after this deed poll ends. It is not necessary for the Principal to incur expense or make payment before enforcing a right of indemnity under this deed poll

12.6 Governing law

This deed poll is governed by the law in force in New South Wales. The Contractor submits to the exclusive jurisdiction of the courts of New South Wales.

Attachment A

CONFIDENTIALITY UNDERTAKING - INDIVIDUAL

Individual's name: #insert full name of the employee of the Contractor#

Approved Purpose: #insert#

Confidentiality Deed Poll: Confidentiality Deed Poll in favour of Transport for NSW (**PRINCIPAL**) by the Contractor

Contractor's Name: #insert name of the Contractor#

I, agree for the benefit of the Principal:

- (a) that the Confidentiality Information made available to me is confidential to the Principal;
- (b) to keep the Confidential Information confidential;
- (c) only to use it for the Approved Purpose;
- (d) not to disclose any of the Confidential Information to any person other than:
 - (i) to those who have signed an undertaking in this form; and
 - (ii) who require it for the Approved Purpose,

unless I have the prior written consent of the Principal; and

- (e) that I am aware that damages are not a sufficient remedy for the Principal for any breach of this undertaking and the Principal is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by me of this undertaking, in addition to any other remedies available to the Principal at law or in equity.

The Contractor has informed me of the confidentiality obligations under the Confidentiality Deed Poll and of my obligations to maintain confidence. I understand that the Confidential Information is the Principal's information, know-how, processes and methods and any other information not in the public domain.

EXECUTED

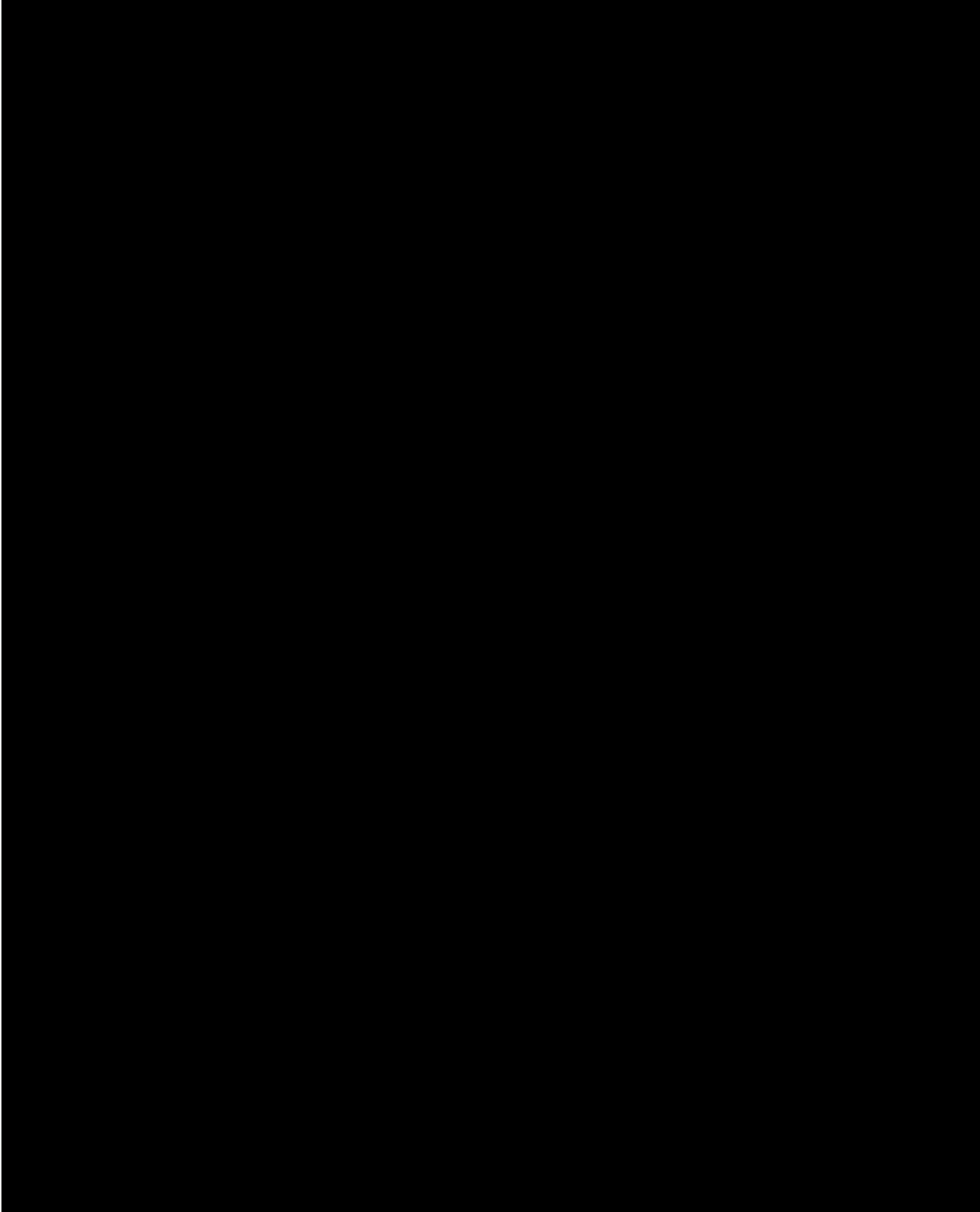
.....
Signed Date

.....
Print name

[GUIDANCE NOTE: THIS UNDERTAKING IS A TEMPLATE ONLY. IT SHOULD BE COPIED AND FILLED IN AND SIGNED BY EACH EMPLOYEE OF THE CONTRACTOR WHO WILL HAVE ACCESS TO THE CONFIDENTIAL INFORMATION.]

[Redacted]



Progress Claim



Schedule 5 - Contractor's Statement and Supporting Statement

Contractor's Statement and Supporting Statement

(clause 18.2(a)(ii)C and 23.2 (definition of "Contractor Statement and Supporting Statement"))

<h2 style="margin: 0;">Contractor Statement</h2> <p style="margin: 0;">Payment of Workers, Worker's Compensation Premiums & Payroll Tax</p>																	
<p style="font-size: small;">This Statement must be provided whenever payment is sought for any work carried out for Roads and Maritime Services (RMS) by a Contractor (see Notes 1 & 5 overleaf). RMS is entitled to withhold payment until this Statement is provided (see Note 2).</p>																	
<div style="text-align: right; font-size: x-small;"> Workers Compensation Insurance Certificate of Currency for the work period in question Unless the contractor is exempt  </div>																	
<p>Details</p>																	
Contractor's Legal Name	<input style="width: 100%;" type="text"/>																
Contractor's Trading / Business Name	<input style="width: 100%;" type="text"/>																
Contractor's ABN	<input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/>																
Contractor's ACN	<input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/> <input style="width: 25px; height: 20px;" type="text"/>																
Contractor's Address	<input style="width: 100%;" type="text"/>																
Name or description of Contract or Works	<input style="width: 100%;" type="text"/>																
Period of Work this Statement applies to (see Note 3)	From <input style="width: 150px;" type="text"/> To <input style="width: 150px;" type="text"/>																
Invoice or Payment Claim Numbers this applies to	<input style="width: 100%;" type="text"/>																
Invoice or Payment Claim Dates this Statement applies to	<input style="width: 100%;" type="text"/>																
<p>Statement Validity Period</p> <p>This Statement applies to all work performed by the Contractor for RMS in respect of the above Contract/ Works for the period stated above (see Notes 3 & 4).</p>																	
<p>Declaration Tick one in each row</p> <p>I declare that the following is true to the best of my knowledge and belief in respect of the Period of Work above:</p>																	
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">• All workers engaged by the Contractor in respect of the works have been paid (see Note 6);</td> <td style="width: 50px;"></td> </tr> <tr> <td style="padding: 2px;">• All workers compensation insurance premiums have been paid and attached is a true copy of a Certificate of Currency for workers compensation insurance valid for the period covered by this Statement, or</td> <td style="text-align: center; vertical-align: middle;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">• the Contractor is an exempt employer for workers compensation purposes (see Note 7);</td> <td style="text-align: center; vertical-align: middle;">or <input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">• The Contractor is registered as an employer under the Payroll Tax Act 2007 and has paid all payroll tax due in respect of employees, or</td> <td style="text-align: center; vertical-align: middle;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">• the Contractor is not required to be registered;</td> <td style="text-align: center; vertical-align: middle;">or <input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">• The Contractor has not engaged any subcontractors for the works, or</td> <td style="text-align: center; vertical-align: middle;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">• The Contractor has engaged subcontractors and has obtained a similar statement to this Statement from each of those subcontractors (and believes it to be true)</td> <td style="text-align: center; vertical-align: middle;">or <input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">• I am authorised to make this declaration and I am in a position to know the truth of its contents</td> <td></td> </tr> </table>		• All workers engaged by the Contractor in respect of the works have been paid (see Note 6);		• All workers compensation insurance premiums have been paid and attached is a true copy of a Certificate of Currency for workers compensation insurance valid for the period covered by this Statement, or	<input type="checkbox"/>	• the Contractor is an exempt employer for workers compensation purposes (see Note 7);	or <input type="checkbox"/>	• The Contractor is registered as an employer under the Payroll Tax Act 2007 and has paid all payroll tax due in respect of employees, or	<input type="checkbox"/>	• the Contractor is not required to be registered;	or <input type="checkbox"/>	• The Contractor has not engaged any subcontractors for the works, or	<input type="checkbox"/>	• The Contractor has engaged subcontractors and has obtained a similar statement to this Statement from each of those subcontractors (and believes it to be true)	or <input type="checkbox"/>	• I am authorised to make this declaration and I am in a position to know the truth of its contents	
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• the Contractor is not required to be registered;	or <input type="checkbox"/>																
• The Contractor has not engaged any subcontractors for the works, or	<input type="checkbox"/>																
• The Contractor has engaged subcontractors and has obtained a similar statement to this Statement from each of those subcontractors (and believes it to be true)	or <input type="checkbox"/>																
• I am authorised to make this declaration and I am in a position to know the truth of its contents																	
Signature of Authorised Person	Name of Signatory (print)																
<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>																
Date	Position / Job Title of Signatory (print - see Note 4)																
<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>																
<p style="font-size: x-small;">(see Notes on page 2)</p> <p style="font-size: x-small;">Catalogue No 45062893, Form No. 921 (11/2011) Page 1 of 2</p>																	

1. **Contractor's Statement**
WCA and Sch 2 Part 5 clause 18(8) of the PTA.
- Notes for Contractor's Statement**

1. A Contractor is any person or company who carries out work under a contract of any kind for

any business of the Principal. References to “Subcontractor” and “Principal Contractor” in the legislation mentioned below have been changed in this Statement to “Contractor” and “Principal” respectively to avoid confusion.

2. This form is prepared for the purposes of section 127 of the *Industrial Relations Act 1996* (“IRA”), section 175B of the *Workers Compensation Act 1987* (“WCA”) and Schedule 2 Part 5 of the *Payroll Tax Act 2007* (“PTA”). These provisions allow the Principal to withhold payment from a Contractor without any penalty unless and until the Contractor provides to the Principal a Statement declaring that:
 - a. all 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; and
 - b. all remuneration payable to relevant employees for work under the contract has been paid; and
 - c. all payroll tax payable relating to the work undertaken has been paid.
3. Section 127 of the IRA says that the Statement must state the period to which it relates. For sequential statements ensure that the dates provide continuous coverage.
4. The person signing this declaration must be a person who is authorised by the Contractor either to sign this Statement (or to sign statements of this kind) and must be a person who is in a position to know the truth of the statements. The Contractor's principal accounting/financial officer may be appropriate. An individual project manager will normally not be appropriate. If the Contractor is a company then the person signing should be a director unless the company has delegated the power to sign such statements to another person (e.g. the principal accounting officer).
5. A Statement is not required where the Principal is making payment to a receiver, liquidator or trustee in bankruptcy (see section 127(10) of the IRA, section 175B(12) of the WCA and Sch 2 Part 5 (20) of the PTA).
6. Section 127(6) of the IRA says that references to payments to workers means all types of remuneration to which they are entitled.
7. As of 30 June 2011, an employer is exempt from taking out workers compensation insurance if the employer pays less than \$7500 annually on wages, does not employ an apprentice or trainee and is not a member of a group for workers compensation purposes.

Generic Version of Statement

This form has been specially adapted for use specifically for Contractors working for the Principal.

Generic versions of this Statement for non-the Principal use can be obtained at:

http://www.industrialrelations.nsw.gov.au/pdfs/subcontractor_statement_form.pdf; or

<http://www.osr.nsw.gov.au/lib/doc/forms/opt011.pdf>.

Record Retention

The Principal will keep a copy of this Statement for 7 years. If the Contractor obtains a similar statement from its subcontractor then the Contractor must keep that statement for 7 years.

Offences for False Statement

Knowingly giving a false statement may be an offence under section 127(8) of the IRA, section 175B of the WCA and Sch 2 Part 5 clause 18(8) of the PTA.

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. For more information, refer to OSR Revenue Ruling PT 59 at <http://www.osr.nsw.gov.au/lib/doc/rulings/rprt59.pdf>, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or the Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

Supporting Statement

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.

The Contractor is a “head contractor” in terms of the Building and Construction Industry Security of Payment Act 1999, and makes relevant statements below accordingly.

This Statement must be signed by the Contractor (or by a person who is authorised, or held out as being authorised, to sign the statement by the Contractor).

Relevant legislation includes *Building and Construction Industry Security of Payment Regulation 2008* cl 4A

Main Contract

Head contractor: _____

ABN _____

ACN _____

Of _____

has entered into a contract with **Transport for NSW**

Contract description _____

Contract number/identifier _____

Subcontracts

The head contractor has entered into a contract with the subcontractors listed in the attachment to this Statement

Period

This Statement applies for work between: _____ and _____ inclusive,

subject of the payment claim dated: _____

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

Signature: _____

Date: _____

Full Name: _____

Position/Title: _____

Attachment to the Supporting Statement

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



Schedule 5A - Subcontractors Proof of Payment Process

Subcontractors Proof of Payment Process

(clause 2.9)

Day each Month	Action	Documents Required
25th day of the month	Contractor issues a payment claim	<ul style="list-style-type: none"> Contractor’s Statement and Supporting Statement (Refer Schedule 5)
Within 10 Business Days of receipt of the payment claim	Principal issues payment schedule	
15 Business Days after payment claim is made	Principal pays Contractor the Progress Payment	
18 Business Days after payment claim is made	Contractor must issue Subcontractors Payments List, Accounts Payable Retention Summary and Accounts Payable Statement reconciled to the instalment Progress Payment	<ul style="list-style-type: none"> Subcontractors Payments List (Refer Attachment 1) Accounts Payable Retention Summary (Refer Attachment 2) Accounts Payable Statement for total value of completed work due for payment (Refer Schedule 5 and Attachment 3)
20 Business Days after payment claim is made	Contractor must issue Payment Details and Banker’s Statement no later than 5 Business Days after payment of instalment Payment Amount reconciled to Subcontractors Payments List	<ul style="list-style-type: none"> Payment Details (Refer Attachment 4) Banker’s Statement evidencing payment of each item on the Accounts Payable Statement (Refer Attachment 3)

***Note:**

The Subcontractors Proof of Payment Process is indicative of a work flow predicated on payment claims being issued on the 25th day of each month. the Principal and the Contractor must align the Subcontractors Proof of Payment Process with the agreed date for making payment claims as set out in clause 18.2(a).

Documents are to be provided as an electronic media document in a form acceptable to the Principal.

**Attachment 1
Subcontractors Payments List**

Project: »

Contractor: 1. » Contractor's Bank: »
 ABN » A/C Name: »

Date: »

Payment Claim: » Period: »

The Contractor will pay monies to Subcontractors in accordance with this Payment List.

Subcontract Retentions (Refer Accounts Payable Retention Summary)

	Amount (incl GST)
Total Retentions for current period	\$ »
Less Total Retentions for previous period	\$ »
Payment to Contractor for held retentions	\$ »

Payments by Contractor to Subcontractors

	Scheduled Amount (incl GST)
Payments to Subcontractors (Refer Accounts Payable Statement)	\$ »
Payment to Contractor for held retentions	\$ »
Payment to Contractor	\$ »
PAYMENT OF CERTIFIED CLAIM AMOUNT	\$ »

Signed by:

Contractor

Name: »

Signature: »

Date: »

**Attachment 2
AP Retentions Summary
(GST inclusive)**

Contractor Name:

ABN:

Payment Claim:

Date:

Month	Trans	Invoice Date	AP Ref	Description	Total Retention	Held Retention	Released Retention	Retention Paid
Subcontractor								
»	»	»	»	»	»	»	»	»
»	»	»	»	»	»	»	»	»
Total for Subcontractor					»	»	»	»
Subcontractor								
»	»	»	»	»	»	»	»	»
»	»	»	»	»	»	»	»	»
Total for Subcontractor					»	»	»	»
Subcontractor								
»	»	»	»	»	»	»	»	»
»	»	»	»	»	»	»	»	»
Total for Subcontractor					»	»	»	»
Subcontractor								
»	»	»	»	»	»	»	»	»
»	»	»	»	»	»	»	»	»
Total for Subcontractor					»	»	»	»
Total for Project					»	»	»	»
Total for Contractor					»	»	»	»
Grand Totals					»	»	»	»

**Attachment 3
Accounts Payable Statement**

<u>AP Ref</u>	Subcontractor Name	Total Amount Owing
»	»	»
»	»	»
»	»	»
»	»	»
»	»	»
»	»	»
»	»	»
»	»	»
»	»	»
»	»	»

Grand Total:

Schedule 6 - Unconditional Undertaking

Unconditional Undertaking

(clause 8.1(a) and 18.6(a)(i)A.)

This deed poll ("Undertaking")

made the _____ **day of** _____ **20**

in favour of: **TRANSPORT FOR NSW**, (ABN 18 804 239 602) of 20-44 Ennis Road, Milsons Point, NSW 2061, a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW) ("**the Principal**")

given by: *[Insert name of Financial Institution]*("Financial Institution")

The Contractor: » *[Insert Contractor's name]*

ABN: » *[Insert Contractor's ABN]*

Security Amount: » \$.....

The Contracts: The D&C Deed between the Principal and the Contractor and the Stage 3 D&C Deed between the Principal and the Contractor

Contract Title(s): » *[Insert project description]*

Contract Number(s): » *[Insert contract number]*

Other words and phrases in this Undertaking have the meanings given in the D&C Deed.

Undertaking

1. At the request of the Contractor and the Financial Institution, and in consideration of the Principal accepting this Undertaking from the Financial Institution in connection with the Contracts, 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 Contractor or each Contract and despite any notice from the 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 (or a lesser sum specified by the Principal), and the liability of the Financial Institution will then immediately end.

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 date]*, and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

Signature of Witness

Signature of Attorney

Name of Witness in full

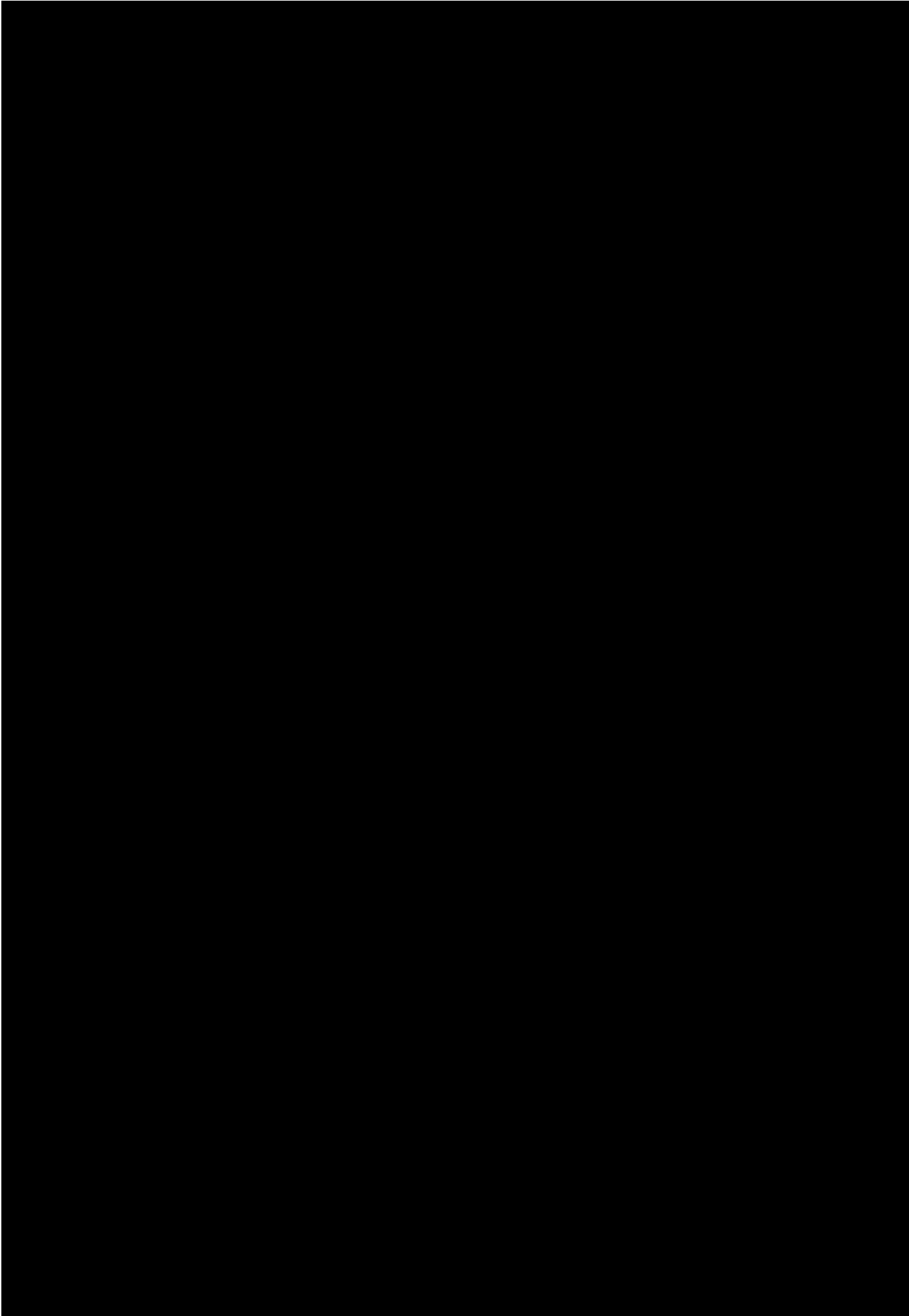
Name of Attorney in full

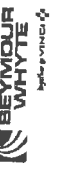
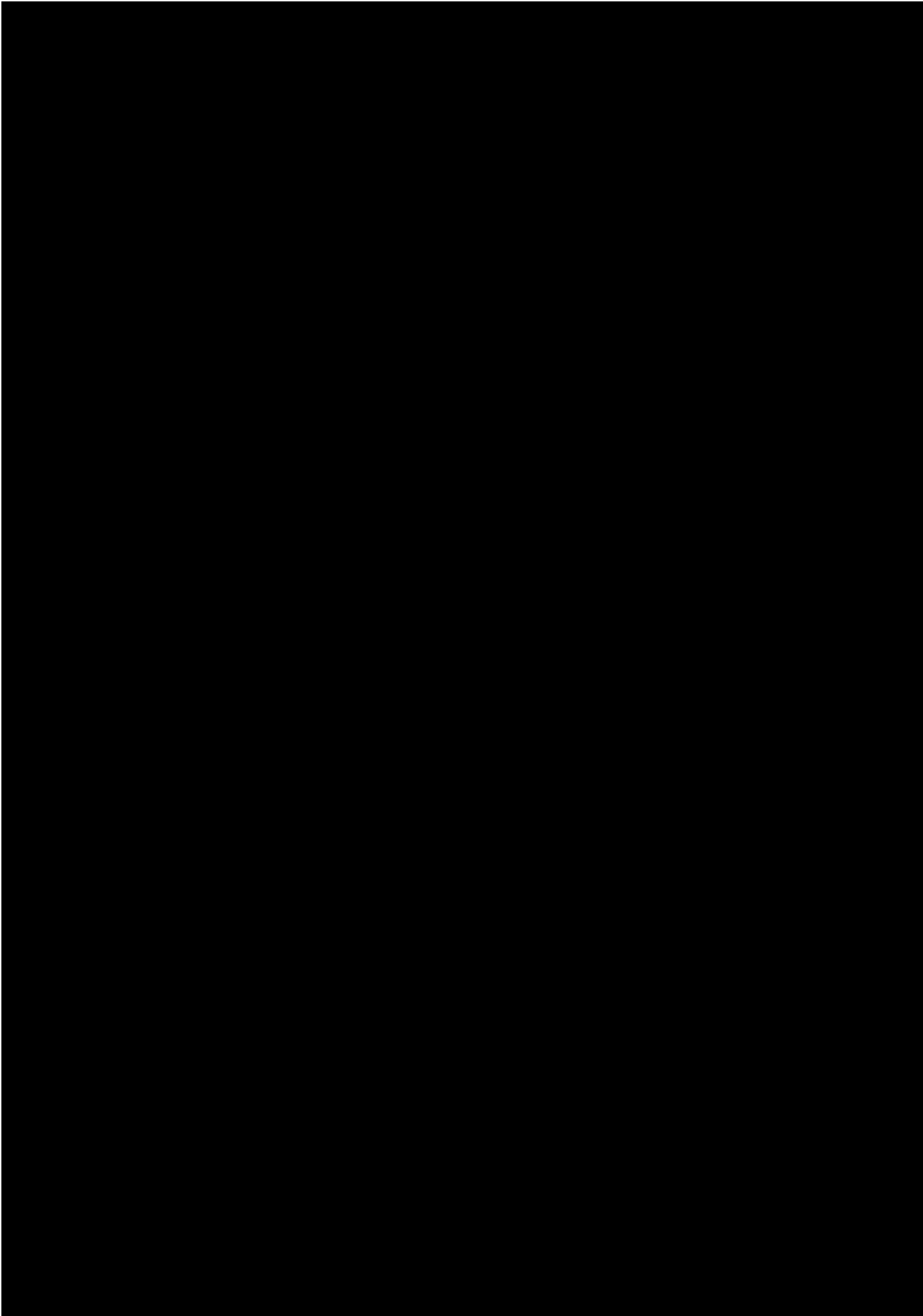
Schedule 7 - Parent Company Guarantee

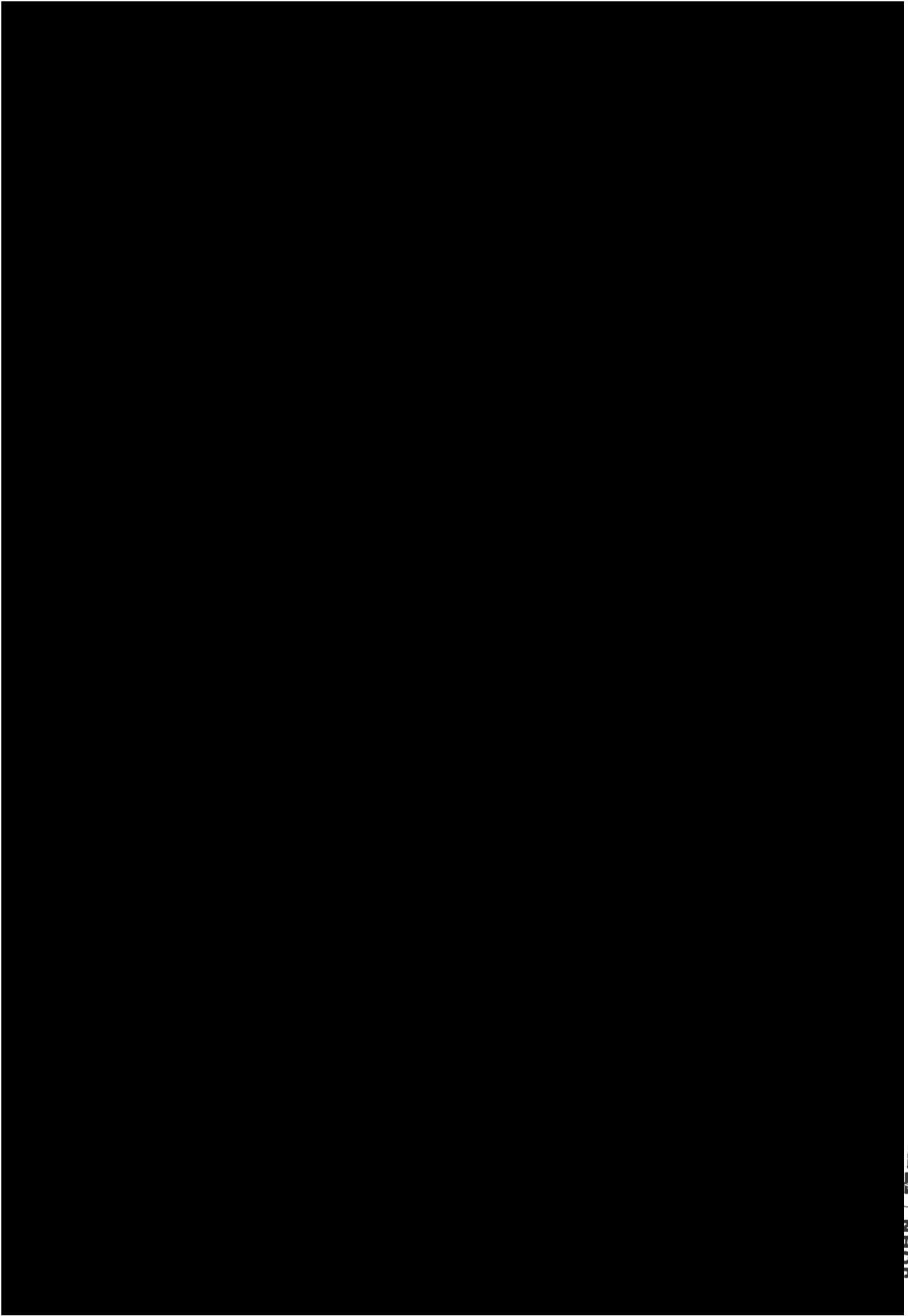
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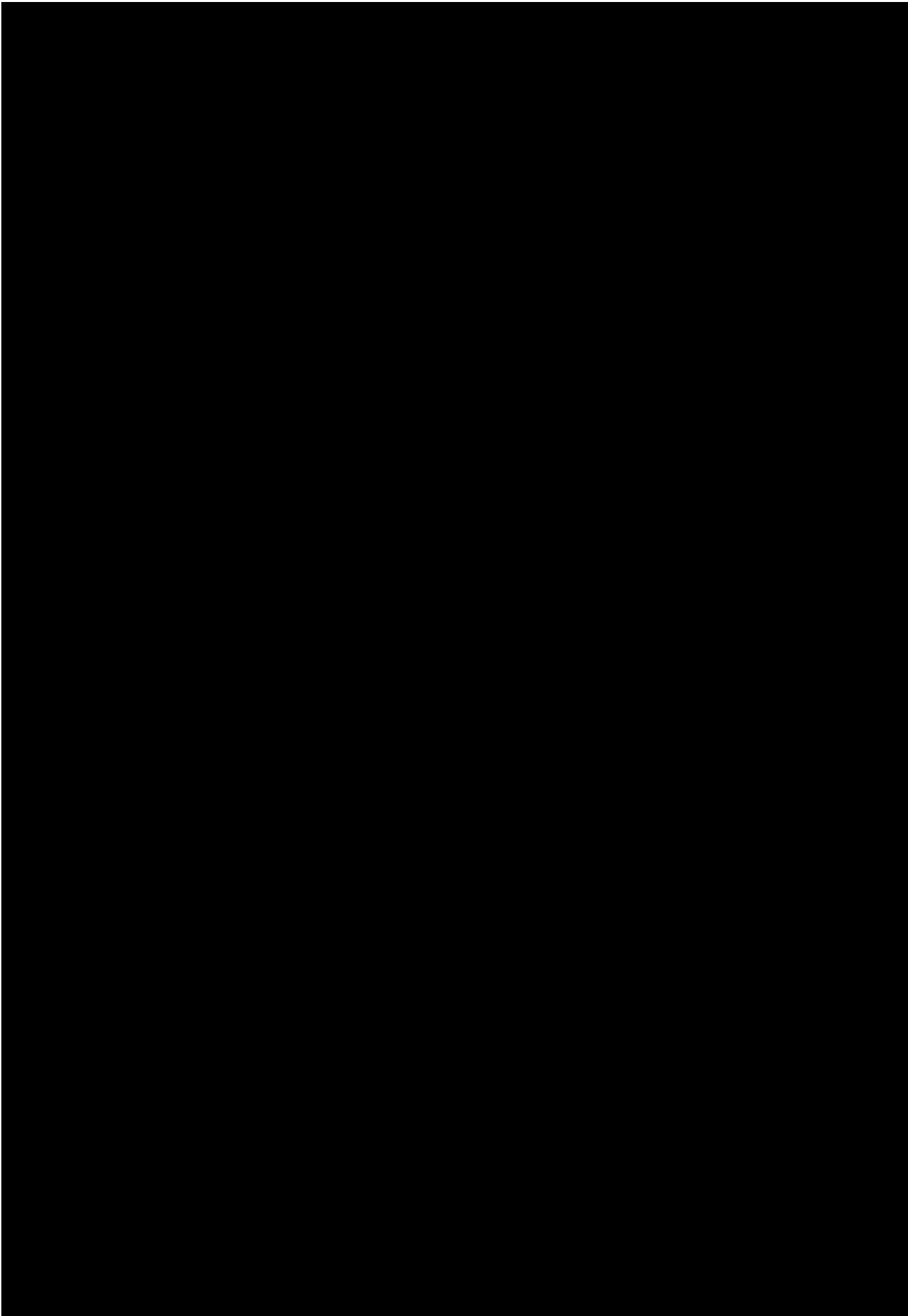
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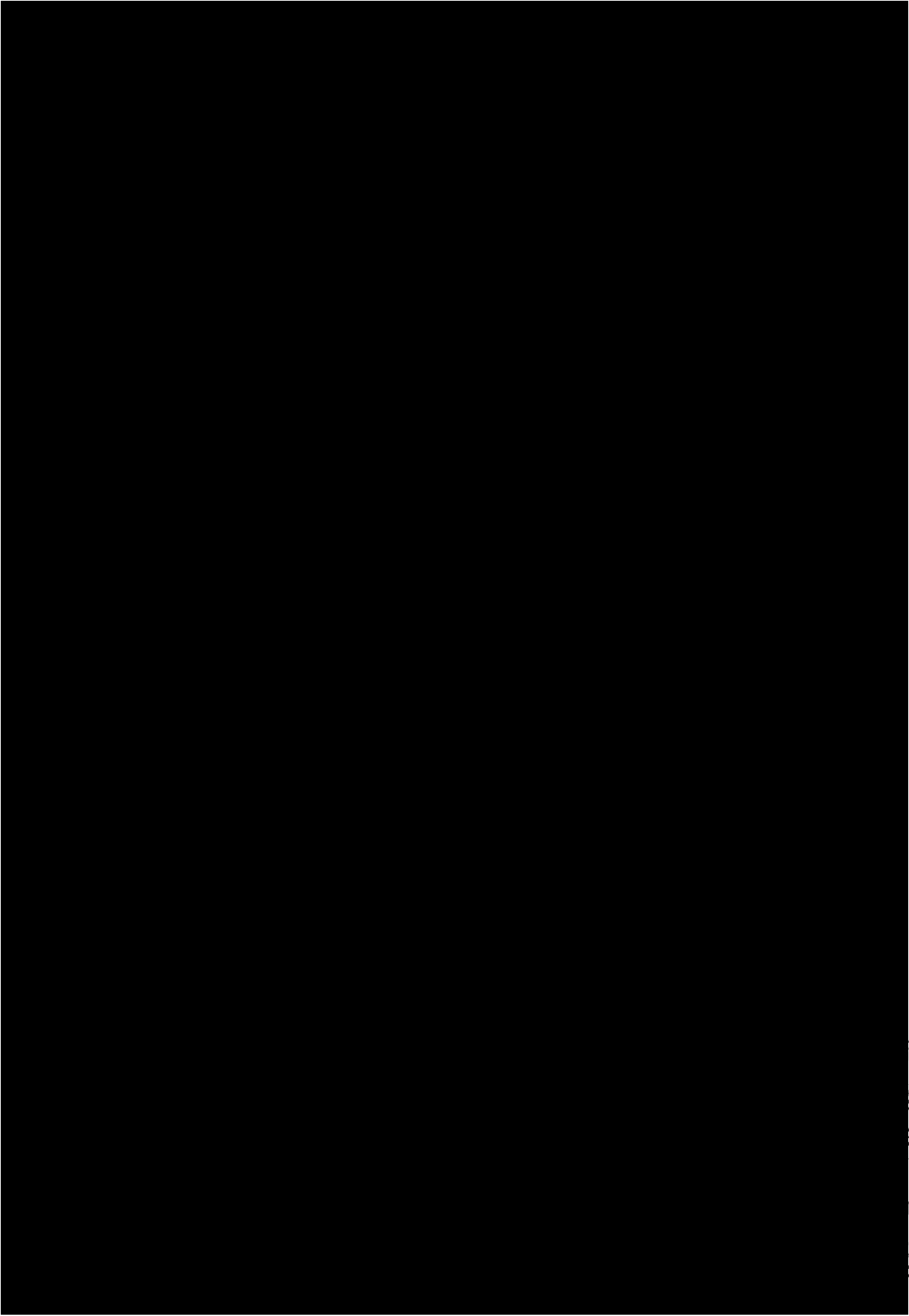
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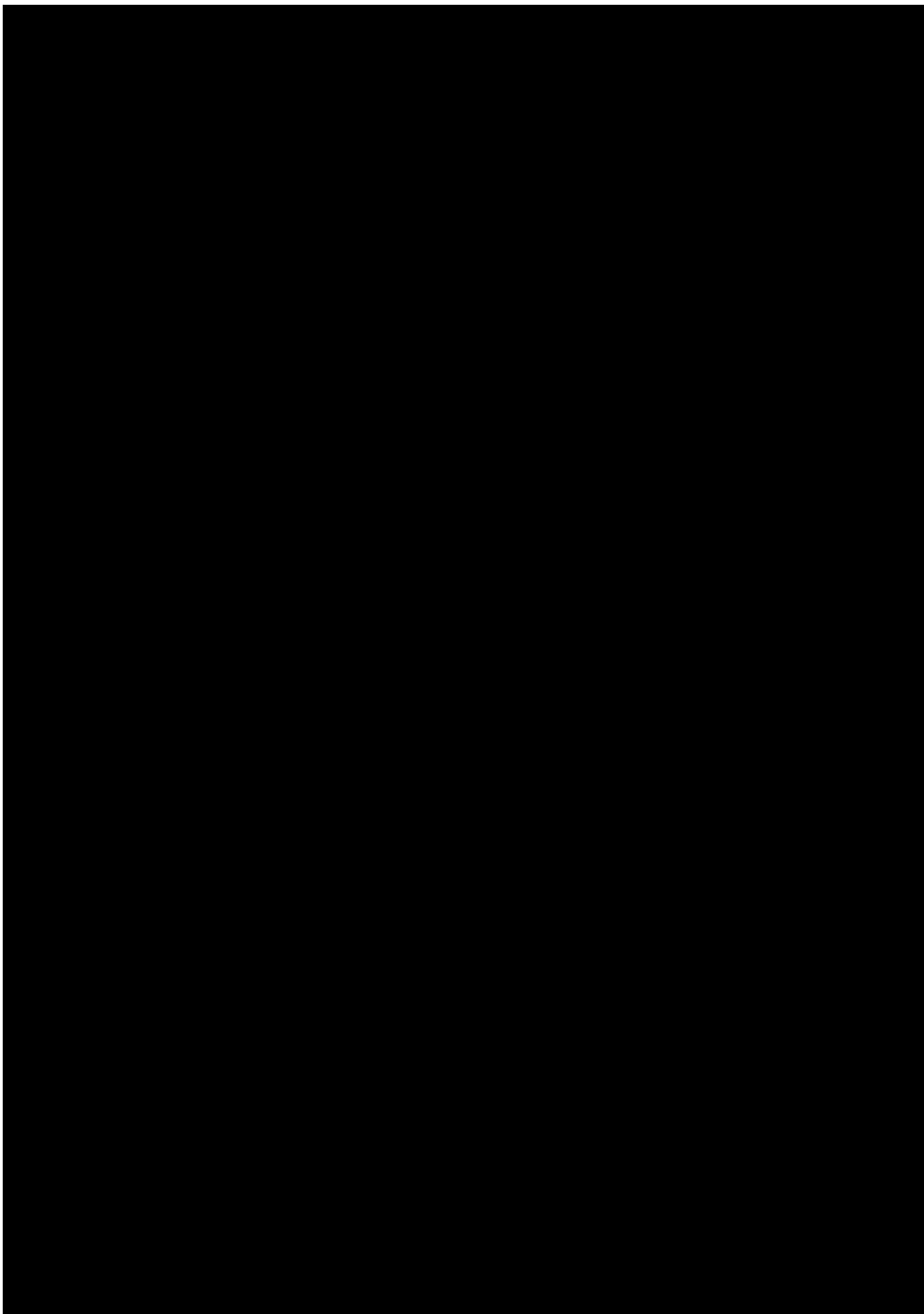






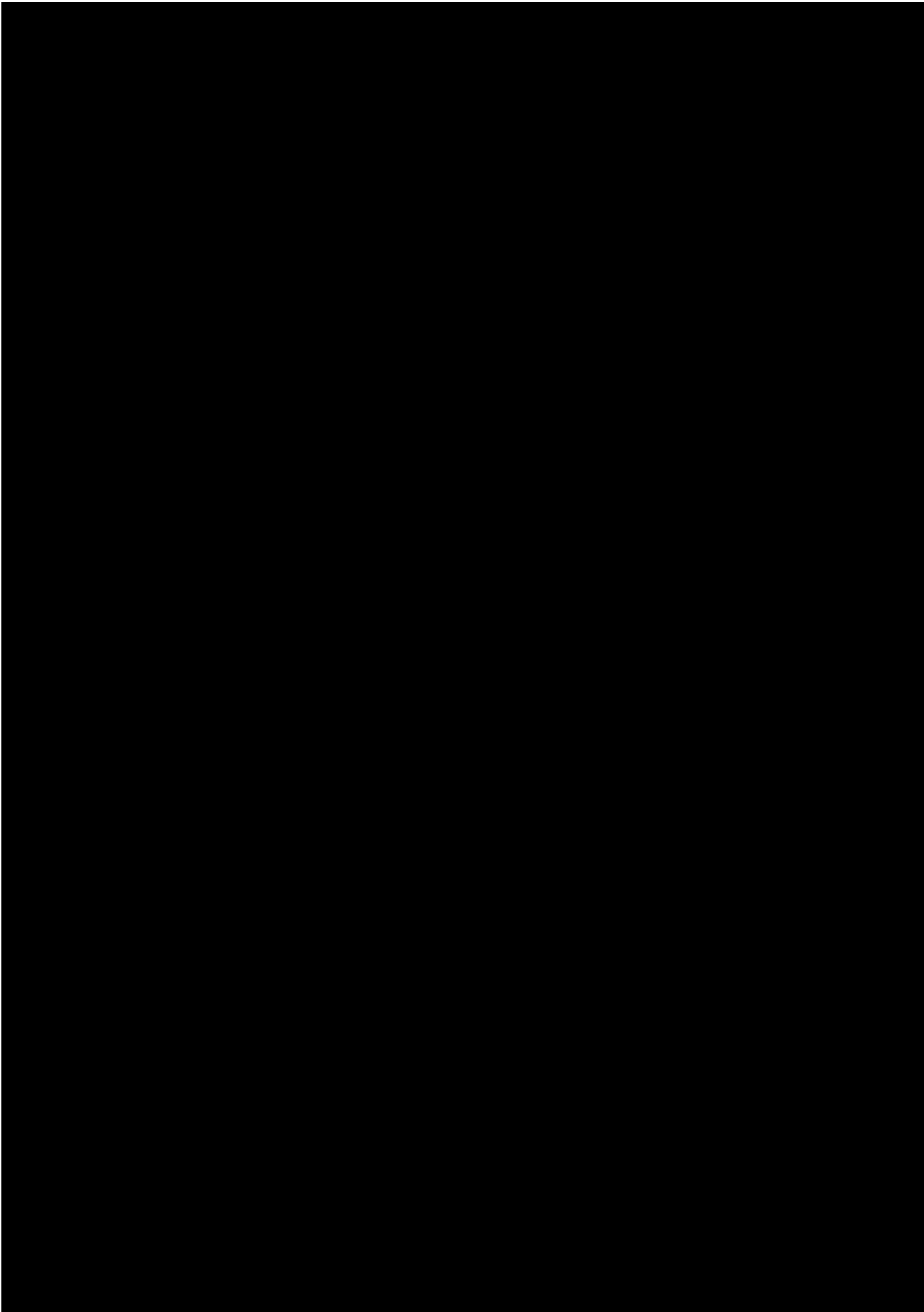


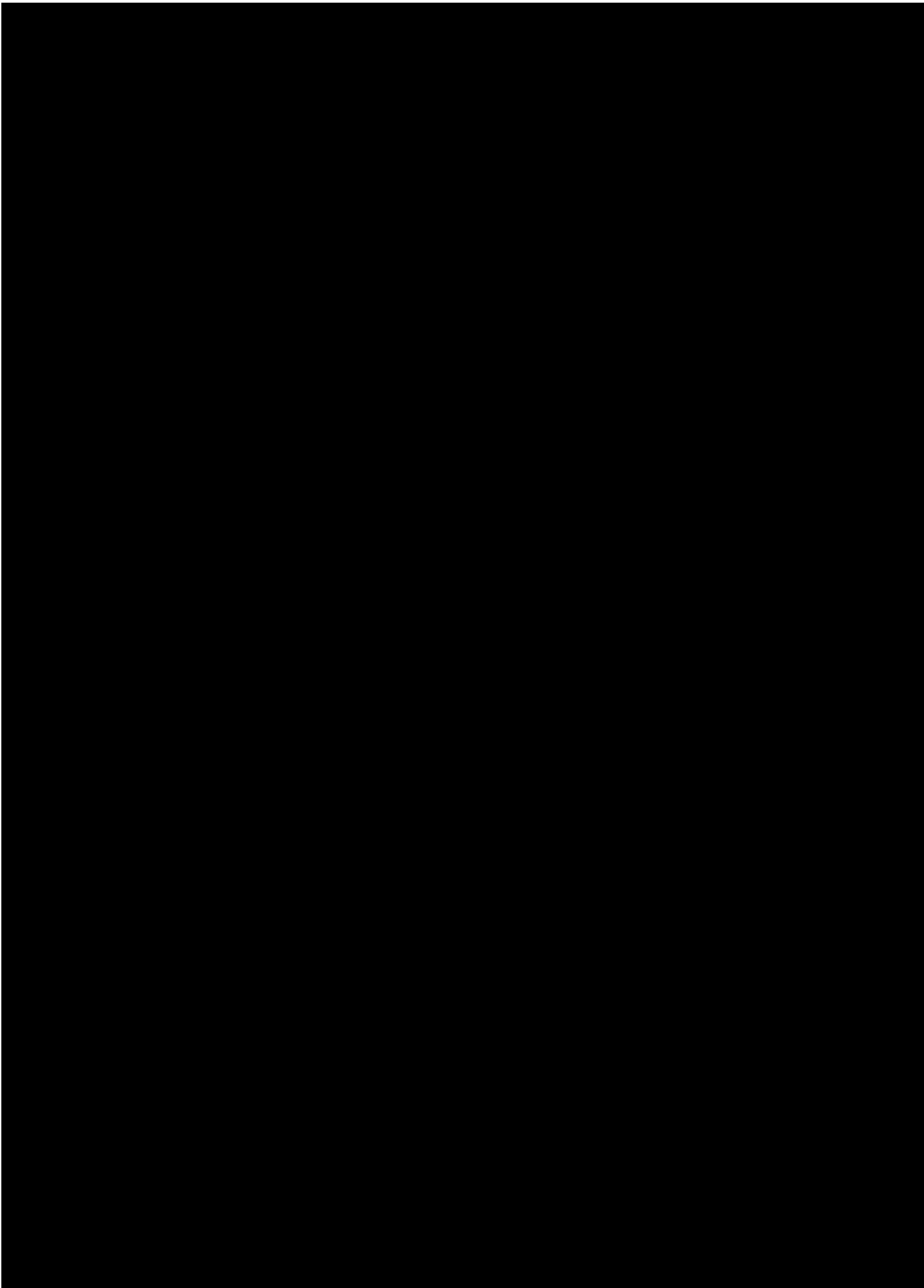


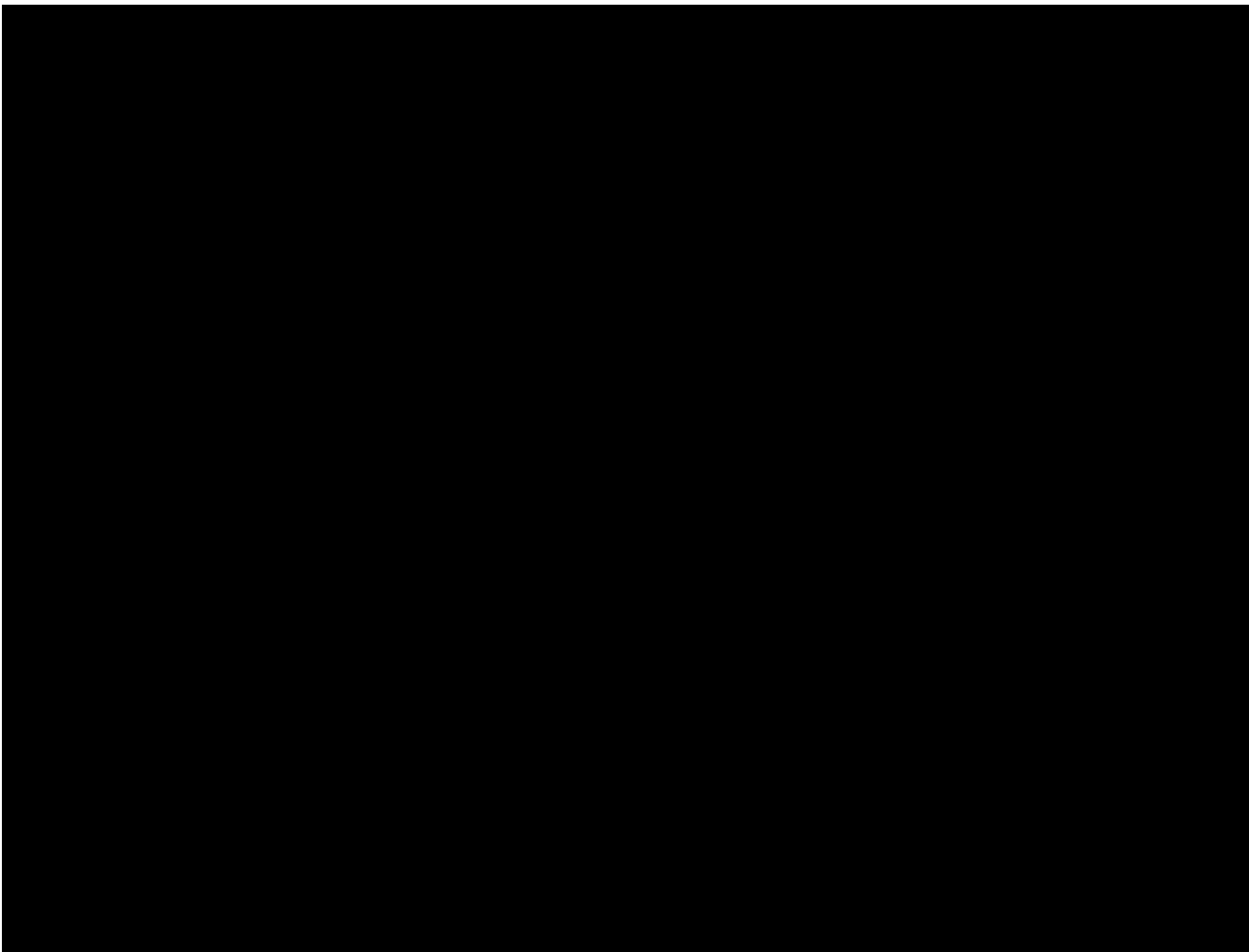


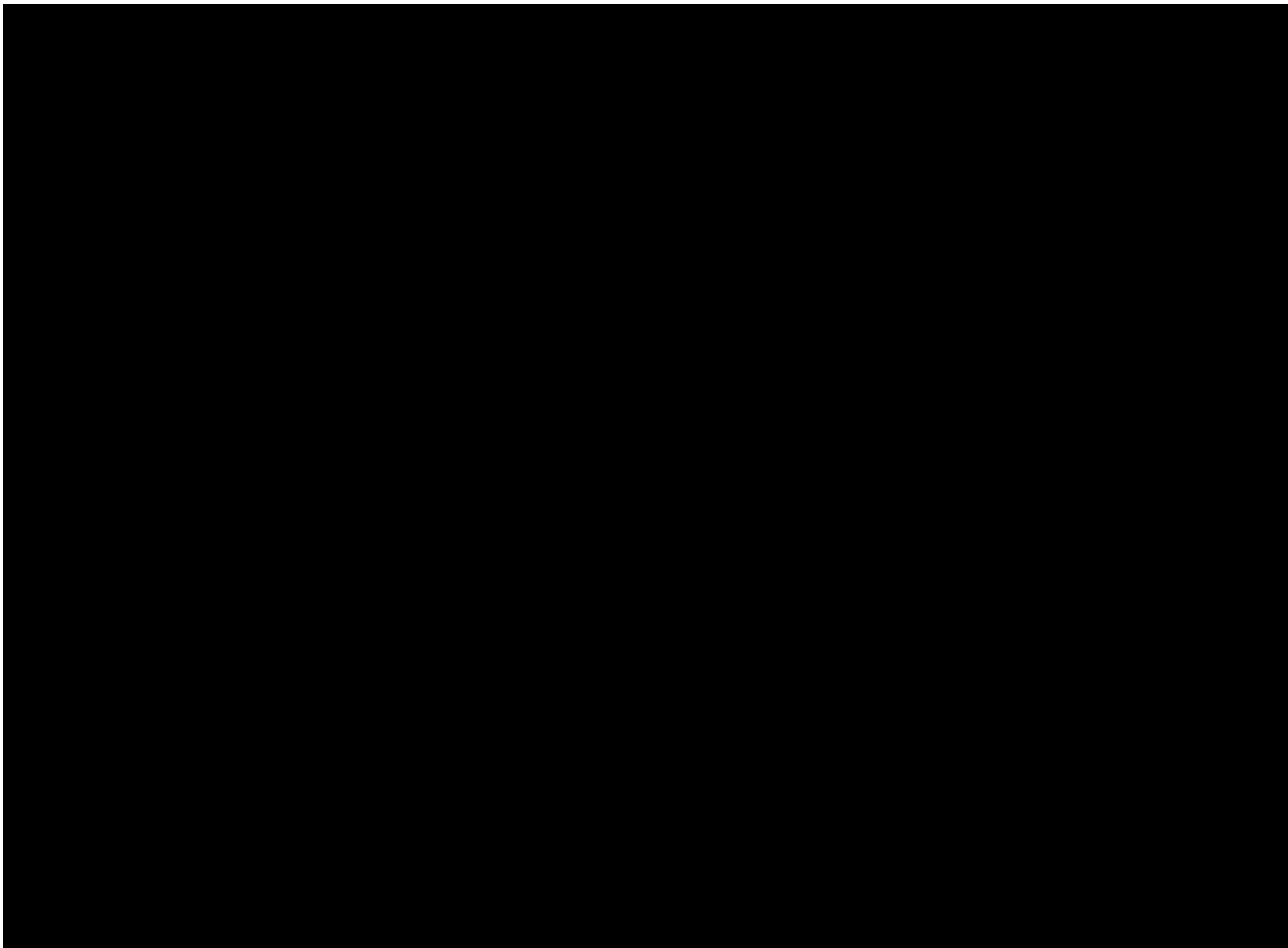
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Dispute provisions for certain foreign Guarantors

(clause 9 of Schedule 7)

Explanatory Note: Where the Guarantor is a foreign entity and resident in a jurisdiction with reciprocity of treatment in relation to the enforcement of judgments for the purposes of the *Foreign Judgments Act 1991* (Cth), clause 9.2 of the Deed will apply. If, however, the Guarantor is a foreign entity and resident in a jurisdiction where there is no reciprocity, clause 9.1 of the Deed and clauses 9.3 to 9.8 of this Schedule will apply.

9.3 Reference to arbitration

- (a) Any controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this Deed (including but not limited to any question relating to the existence, validity or termination of this Deed) shall be referred to and finally resolved by arbitration in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Arbitration Rules).
- (b) The seat of the arbitration will be Sydney.
- (c) The number of arbitrators will be three.
- (d) The language of the arbitration will be English.

9.4 General principles

The parties further agree to the following general principles relating to the procedure of the arbitration:

- (a) that they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any dispute;
- (b) that any arbitration conducted pursuant to this clause 9 shall not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal;
- (c) that in conducting the arbitration, the arbitral tribunal must take into account the matters set out above, particularly in deciding issues such as:
 - (i) how many written submissions will be allowed;
 - (ii) where appropriate, the length of written submissions;
 - (iii) the extent of document discovery permitted, if any;
 - (iv) the consolidation of arbitration proceedings, when requested;
 - (v) the joinder of parties or the consolidation of proceedings, when requested;
 - (vi) the length of any hearing; and
 - (vii) the number of experts, if any, each party is allowed to appoint; and
- (d) that the arbitral tribunal has the power to grant all legal, equitable and statutory remedies, except punitive damages.

9.5 Expedited proceedings

- (a) The parties agree that the arbitral tribunal will conduct the arbitration as expeditiously as possible and no party will unnecessarily delay the arbitration proceedings.
- (b) All evidence in chief will be in writing, unless otherwise ordered by the arbitral tribunal.
- (c) Each party may only rely upon one expert witness in respect of any recognised area of specialisation, unless otherwise ordered by the arbitral tribunal.
- (d) After consultation with the parties the arbitral tribunal will determine whether to conduct the proceedings on the basis of documents and other materials only or whether an oral hearing will be held. In doing so the arbitral tribunal shall have particular regard to the parties' request for an expedited procedure and the rules of natural justice.
- (e) If the arbitral tribunal determines that an oral hearing will be conducted, the following principles will apply in respect of the oral hearing:
 - (i) the duration of the oral hearings shall be fixed by the arbitral tribunal;
 - (ii) unless otherwise ordered by the arbitral tribunal, the oral hearing shall be conducted on a stop-clock basis with the effect that the time available to the parties will be split equally between the parties so that each party shall have the same time to conduct its case unless, in the opinion of the arbitral tribunal, such a split would breach the rules of natural justice or is unfair to one of the parties;

- (iii) oral evidence in chief at the hearing shall be permitted only with the permission of the arbitral tribunal for good cause;
- (iv) not less than 10 Business Days prior to the date fixed for the oral hearing, or any other period of time specified by the arbitral tribunal, each party shall give written notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross-examination; and
- (v) in exceptional circumstances the arbitral tribunal may extend the time for the oral hearing set pursuant to clause 9.5(e)(i) above.

9.6 Consolidation

The parties agree that section 24 of the *International Arbitration Act 1974* (Cth) will apply in respect of consolidations.

9.7 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 to this Deed 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.

9.8 Award final and binding

Any award will be final and binding upon the parties.

Schedule 8- Quality Manager's Certificate – Payment Claim

Quality Manager's Certificate – Payment Claim

(clause 18.2(c)(ii))

[Insert project description] ("Project")

To: Principal's Representative

From: [Insert Quality Manager's name] ("Quality Manager")

In accordance with the terms of clause 18.2(c)(ii) of the deed between Transport for NSW and [Insert Contractor's name] (ABN [Insert Contractor's ABN]) ("Contractor") dated [insert date] with respect to the Project, I hereby certify that all work the subject of the attached progress claim by the Contractor for [insert month] [insert year] has been executed and is in accordance with the requirements of the deed, subject to the following:

[If applicable, insert details of any exceptions]

.....
Signed by

[Insert Quality Manager's name]

Schedule 9 - Quality Manager's Certificate - Quality

Quality Manager's Certificate - Quality

(clause 11.2(c)(i), and clause 23.2 (definition of "Final Completion"))

[Insert project description] ("Project")

To: Principal's Representative

From: [Insert Quality Manager's name] ("Quality Manager")

In accordance with the terms of clause 11.2(c)(i) of the deed between Transport for NSW and [Insert contractor's name] (ABN [Insert Contractor's ABN]) ("Contractor") dated [insert date] with respect to the Project, I hereby certify that between the following dates [Insert dates of preceding 3 month period]:

- (a) the Contractor's quality system under clause 11.1 of the deed was in accordance with RMS Specification D&C Q6 and AS/NZS ISO 9001:2008 Quality Systems - Model for Quality Assurance in Design, Development, Production, Installation and Servicing;
- (b) the Contractor complied with and satisfied the requirements of TfNSW D&C Specification Q6;
- (c) Subcontractors' quality systems which form a part of the Contractor's quality system were in accordance with AS/NZS ISO 9001:2008;
- (d) the release of Hold Points was undertaken in accordance with the deed;
- (e) the design, construction, inspection, repairs and monitoring by the Contractor was undertaken in accordance with the deed; and
- (f) that documentation was recorded and submitted to the Principal's Representative and the Independent Verifier in accordance with the deed.

.....
Signed by

[Insert Quality Manager's name]

Schedule 10 - Quality Manager's Certificate – Construction Completion / Final Completion

Quality Manager's Certificate – Construction Completion / Final Completion

(clause 11.2(c)(ii) and 23.2 (definition of "Construction Completion" and "Final Completion"))

[Insert project description] ("Project")

To: Principal's Representative

From: *[Insert Quality Manager's name]* ("Quality Manager")

In accordance with the terms of clauses 11.2(c)(ii) and 23.2 (definitions of "Construction Completion" and "Final Completion") of the deed between Transport for NSW and *[Insert Contractor's name]* (ABN *[Insert Contractor's ABN]*) ("Contractor") dated *[insert date]* with respect to the Project, I hereby certify that:

- (a) the Contractor has complied with and satisfied the requirements of TfNSW D&C Specification Q6;
- (b) the Contractor has completed construction in accordance with the Design Documentation it was entitled to use for construction purposes under clauses 12.2 to 12.7 of the deed, [REDACTED]
[REDACTED]
[REDACTED]
- (c) the release of all Hold Points has been undertaken in accordance with the deed; and
- (d) all documentation has been recorded and submitted to the Independent Verifier and the Principal's Representative in accordance with the deed.

.....
Signed by
[Insert Quality Manager's name]

Schedule 11 - Quality Manager's Certificate -Final Completion / Last Defects Correction Period

Quality Manager's Certificate – Final Completion / Last Defects Correction Period

(clause 11.2(c)(iii) and 23.2 (definition of "Final Completion"))

[Insert project description] ("Project")

To: Principal's Representative

From: *[Insert Quality Manager's name]* ("Quality Manager")

In accordance with the terms of clauses 11.2(c)(iii) and 23.2 (definitions of "Construction Completion" and "Final Completion") of the deed between Transport for NSW and *[Insert Contractor's name]* (ABN *[Insert Contractor's ABN]*) ("**Contractor**") dated *[insert date]* with respect to the Project, I hereby certify that:

- (a) the Contractor has complied with and satisfied the requirements of TfNSW D&C Specification Q6;
- (b) the Contractor has completed construction in accordance with the Design Documentation it was entitled to use for construction purposes under clauses 12.2 to 12.7 of the deed;
- (c) the release of all Hold Points has been undertaken in accordance with the deed; and
- (d) all documentation has been recorded and submitted to the Independent Verifier and the Principal's Representative in accordance with the deed.

.....
Signed by

[Insert Quality Manager's name]

Schedule 13 - Independent Verifier's Certificate – Payment Claim

Independent Verifier's Certificate – Payment Claim

(clause 18.2(d))

[Insert project description] ("Project")

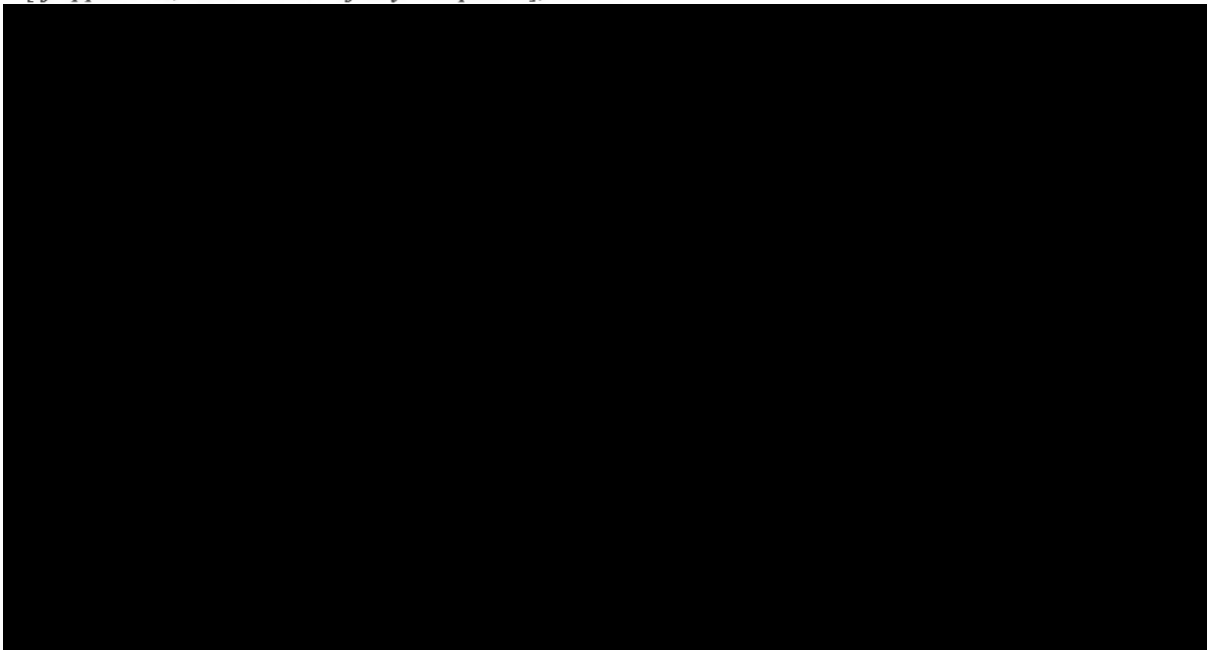
To: Principal's Representative

From: *[Insert Independent Verifier's name]* (ABN *[Insert Independent Verifier's ABN]*)
("Independent Verifier")

In accordance with the terms of clause 18.2(d) of the deed between Transport for NSW and *[Insert Contractor's name]* (ABN *[Insert Contractor's ABN]*) ("Contractor") dated *[insert date]* with respect to the Project (**D&C Deed**), we hereby certify that:

- (a) all work the subject of the attached progress claim by the Contractor for *[insert month]**[insert year]* has been executed and is in accordance with the requirements of the deed, including the SWTC, subject to the following:

[If applicable, insert details of any exceptions]; and



Any terms that are capitalised in this certificate have the meaning given to them in clause 23.2 of the D&C Deed or, if not defined in clause 23.2 of the D&C Deed, then in Schedule 48 of the D&C Deed.

.....
Signed for and on behalf of
[Insert Independent Verifier's name]



Independent Verifier's Certificate – Quality

(clause 2.4(f)(i))

Independent Verifier's Certificate – Progressive

[Insert Project description] ("Project")

To: Principal's Representative

From: [Insert Independent Verifier's name]

(ABN [Insert Independent Verifier's ABN] ("Independent Verifier"))

In accordance with the terms of clause 2.4(f)(i) of the deed between Transport for NSW and [Insert Contractor's name] (ABN [Insert Contractor's ABN]) ("Contractor") dated [insert date] with respect to the Project, we hereby certify that to the extent any of the activities referred to below occurred, or should have occurred, between the following dates [insert date]:

- (a) the Contractor's quality system under clause 11.1 of the deed was in accordance with the TfNSW D&C Specification Q6 and AS/NZS ISO 9001:2008 Quality Systems - Model for Quality Assurance in Design, Development, Production, Installation and Servicing;
- (b) the Contractor has complied with and satisfied the requirements of the TfNSW D&C Specification Q6;
- (c) Subcontractors' quality systems which form a part of the Contractor's quality system have been in accordance with AS/NZS ISO 9001:2008;
- (d) the release of Hold Points has been undertaken in accordance with the deed;
- (e) the design, construction, inspection, repairs and monitoring by the Contractor has been undertaken in accordance with the deed, including the SWTC;
- (f) that documentation has been recorded and submitted to the Principal's Representative in accordance with the deed; and
- (g) [REDACTED]

.....
Signed for and on behalf of
[Insert Independent Verifier's name]



[Redacted]

[Redacted]

Independent Verifier's Certificate - Design Documentation

(clause 12.2(d) and 12.2(e)(i))

[Insert project description] ("Project")

To: Principal's Representative

From: [Insert Independent Verifier's name]

(ABN [Insert Independent Verifier's ABN] ("Independent Verifier"))

In accordance with the terms of clause [12.2(d)][12.2(e)(i)] of the deed between Transport for NSW and [Insert Contractor's name] (ABN [Insert Contractor's ABN]) ("Contractor") dated [insert date] with respect to the Project, we hereby certify that the attached Design Documentation:

- (a) complies with all the requirements of the deed, including the SWTC, and in particular, the durability requirements of section 5.9 of the SWTC, the design life requirements in section 5.8 of the SWTC, the requirements in Appendix C.8 of the SWTC and associated requirements under the Airports Act;
- (b) is documented to enable construction in compliance with the deed (including, to the extent applicable, in respect of correction of Defects); and

(c) [Redacted]

(d) *[subject to the satisfaction of following comments or conditions:*

- *insert comments or conditions]*

[Note: this qualification wording can only be included in this certificate in relation to the Substantial Detailed Design Stage and must not be included in relation to Final Design Documentation Stage].

.....
Signed for and on behalf of
[Insert Independent Verifier's name]

Independent Verifier's Certificate – Construction Completion

(clause 2.4(f)(ii) and clause 23.2 (definition of "Construction Completion"))

[Insert Project description] ("Project")

To: Principal's Representative
From: [Insert Independent Verifier's name]
(ABN [Insert Independent Verifier's ABN] ("Independent Verifier"))

In accordance with the terms of clauses 2.4(f)(ii) and 23.2 (definition of "Construction Completion") of the deed between Transport for NSW and [Insert Contractor's name] (ABN [Insert Contractor's ABN]) ("Contractor") dated [insert date] with respect to the Project, we hereby certify that:

- (a) the Contractor has complied with and satisfied the requirements of the TfNSW D&C Specification Q6;
- (b) the Contractor has completed construction in accordance with the Design Documentation it was entitled to use for construction purposes under clause 12.2 of the deed and the Contractor Documentation Schedule;
- (c) the release of all Hold Points has been undertaken in accordance with the deed;
- (d) all documentation has been recorded and submitted to the Principal's Representative in accordance with the deed;
- (e) the design used by the Contractor for construction purposes is in accordance with the requirements of the deed, including the SWTC;
- (f) the construction complies with the requirements of the deed, including the SWTC, [REDACTED]

and

- (g) each of the following designs:
 - (i) structural design;
 - (ii) pavement design;
 - (iii) geometric road design;
 - (iv) environmental works design;
 - (v) urban and landscape design;
 - (vi) geotechnical design;
 - (vii) Services design;
 - (viii) stormwater and drainage design (both permanent and temporary);
 - (ix) safety design;
 - (x) durability design;
 - (xi) operation and maintenance design;
 - (xii) signage, furniture and roadside furniture design; and
 - (xiii) all other elements of the Project Works and Temporary Works carried out by the Contractor,

is in accordance with the requirements of the deed, including the SWTC.

- (h) This certificate of Construction Completion does not relieve the Contractor of its obligation to rectify defects under clause 16 of the deed and to complete other outstanding obligations under the deed.

.....
Signed for and on behalf of
[Insert Independent Verifier's name]

Independent Verifier's Certificate – Nominated Defects

(clause 2.4(f)(iii))

[Insert Project description] ("Project")

To: Principal's Representative
From: *[Insert Independent Verifier's name]*
(ABN *[Insert Independent Verifier's ABN]*) ("Independent Verifier")

In accordance with the terms of clause 2.4(f)(iii) of the deed between Transport for NSW and *[Insert Contractor's name]* (ABN *[Insert Contractor's ABN]*) ("Contractor") dated *[insert date]* with respect to the Project, we hereby certify that between the following dates *[insert dates]*, the rectification of all Defects nominated by the Principal's Representative under clause 16.2 of the deed, including all design, construction, inspection, repairs and monitoring by the Contractor, has been undertaken in accordance with the deed, including the SWTC.

.....
Signed for and on behalf of
[Insert Independent Verifier's name]

Independent Verifier's Certificate – As-Built documentation

(clause 2.4(f)(iv))

[Insert Project description] ("Project")

To: Principal's Representative
From: [Insert Independent Verifier's name]
(ABN [Insert Independent Verifier's ABN] ("Independent Verifier"))

In accordance with the terms of clause 2.4(f)(iv) of the deed between Transport for NSW and [Insert Contractor's name] (ABN [Insert Contractor's ABN]) ("Contractor") dated [insert date] with respect to the Project, we hereby certify that the attached As-Built documentation complies with all requirements of the deed, including the SWTC, and in particular the requirements of section 3.8 of Contractor Documentation Schedule.

.....
Signed for and on behalf of
[Insert Independent Verifier's name]

Schedule 18 - Independent Verifier's Certificate – Final Completion

Independent Verifier's Certificate – Final Completion

(clause 2.4(f)(v) and 23.2 (definition of "Final Completion"))

[Insert Project description] ("Project")

To: Principal's Representative

From: Insert Independent Verifier's name]
(ABN [Insert Independent Verifier's ABN] ("Independent Verifier"))

In accordance with the terms of clauses 2.4(f)(v) and 23.2 (definition of "Final Completion") of the deed between Transport for NSW and **[Insert Contractor's name]** (ABN **[Insert Contractor's ABN]**) ("**Contractor**") dated **[insert date]** with respect to the Project, we hereby certify that as at the date of the expiration of the last "Defects Correction Period" as defined in the deed:

- (a) the release of all Hold Points has been undertaken in accordance with the deed;
- (b) the Contractor has complied with and satisfied the requirements of TfNSW D&C Specification Q6;
- (c) all design, construction, inspection, repairs and monitoring by the Contractor has been undertaken in accordance with the deed, including the SWTC;
- (d) all documentation, reports, submissions, notices, approvals and the like have been submitted to the Principal's Representative in accordance with the deed; and
- (e) each of the following designs:
 - (i) structural design;
 - (ii) pavement design;
 - (iii) geometric road design;
 - (iv) environmental works design;
 - (v) urban and landscape design;
 - (vi) geotechnical design;
 - (vii) Services design;
 - (viii) stormwater and drainage design (both permanent and temporary);
 - (ix) safety design;
 - (x) durability design;
 - (xi) operation and maintenance design;
 - (xii) signage, furniture and roadside furniture design; and
 - (xiii) all other elements of the Project Works and Temporary Works carried out by the Contractor, is in accordance with the requirements of the deed, including the SWTC.

.....
Signed for and on behalf of
[Insert Independent Verifier's name]

Schedule 19 - Contractor's Personnel

Contractor's Personnel

(clauses 2.2(b), 2.7(a) and 11.2(b)(iii))

General

To the extent this schedule refers to a minimum number of years' experience, the Contractor must ensure the Contractor's personnel comply with this requirement, unless capability and suitability for the role is otherwise demonstrated by the Contractor, and agreed to by the Principal (in its absolute discretion).

Project Director

- (a) The Project Director must possess a recognised qualification relevant to the position and the Contractor's Activities and be experienced in the design, construction and project management of large projects similar to the Project Works and Temporary Works.
- (b) The Project Director must at all times have authority to act on behalf of the Contractor in respect of the Contractor's Activities.
- (c) The Project Director must have minimum 20 years' experience delivering major civil infrastructure projects.
- (d) The Project Director must be available:
 - (i) full time during the design phase; and
 - (ii) full time in attendance on or around the Construction Site during the construction phase.
- (e) At the date of this deed, the Project Director is [REDACTED].

Commercial Manager

- (a) The Commercial Manager must possess a recognised qualification relevant to the position and the Contractor's Activities and have recent relevant experience in a senior commercial role responsible for procuring and managing multi-disciplined contracts in NSW.
- (b) The Commercial Manager must:
 - (i) have a minimum 15 years project delivery experience, with extensive experience in the commercial management of major road projects delivered in NSW; and
 - (ii) have demonstrated experience working with NSW Government representatives in a collaborative manner to resolve commercial matters.
- (c) At the date of this deed, the Commercial Manager is [REDACTED].

Design Manager

- (a) The Design Manager must possess a recognised qualification relevant to the position and the Contractor's Activities and be experienced in the management and co-ordination of multi-disciplinary design teams on large projects similar to the Project Works and Temporary Works. The Design Manager must manage and co-ordinate Design Documentation and construction documentation in accordance with the requirements of this deed (including the Contract Program and the Subsidiary Contract Programs).
- (b) The Design Manager must have minimum 15 years' experience managing multi-disciplinary designs on complex road (and rail) infrastructure projects.
- (c) At the date of this deed, the Design Manager is [REDACTED].

Construction Managers

- (a) The Construction Managers must possess recognised qualifications relevant to the position and the Contractor's Activities and have at least 15 years' experience in the overall management of construction on major road (and rail) infrastructure projects similar to the Project Works and Temporary Works.
- (b) The Construction Managers must be full-time on or around the Construction Site during the construction phase of the Contractor's Activities and must at all times have appropriate delegated authorities to act on behalf of the Contractor in respect of the Contractor's Activities.
- (c) At the date of this deed, the Construction Managers are [REDACTED].

Interface Manager

- (a) The Interface Manager must:
 - (i) possess recognised tertiary qualifications which include engineering and experience relevant to the position and the Contractor's Activities;
 - (ii) have at least 15 years' experience in infrastructure delivery, particularly roads and rail;
 - (iii) be full-time on or around the Construction Site during the construction phase of the Contractor's Activities;
 - (iv) at all times have appropriate delegated authorities to act on behalf of the Contractor in respect of the Contractor's Activities in relation to Third Party Agreements; and
 - (v) have responsibility for ensuring that all Third Party Agreements are appropriately managed to ensure compliance with this deed and provide relationship management with the relevant Third Party.
- (b) At the date of this deed, the Interface Manager is [REDACTED]

Sydney Airport Interface Manager

- (a) The Sydney Airport Interface Manager must:
 - (i) possess recognised tertiary qualifications which include engineering and experience relevant to the position and the Contractor's Activities;
 - (ii) have at least 15 years' experience in infrastructure delivery, particularly roads and rail;
 - (iii) be full-time on or around the Construction Site during the construction phase of the Contractor's Activities;
 - (iv) at all times have appropriate delegated authorities to act on behalf of the Contractor in respect of the Contractor's Activities in relation to the interface with Sydney Airport;
 - (v) provide relationship management with Sydney Airport; and
 - (vi) manage and coordinate the interface with Sydney Airport and Commonwealth bodies (Airport Building Controller and AEO) including monitoring each party's compliance with any Approvals.
- (b) At the date of this deed, the Sydney Airport Interface Manager is [REDACTED]

Services Manager

- (a) The Services Manager must:
 - (i) possess a recognised qualification relevant to the position and the Contractor's Activities;
 - (ii) have at least 15 years' experience managing utility protection and relocation (particularly roads, rail and intelligent transportation systems);
 - (iii) be full-time on or around the Construction Site during the construction phase of the Contractor's Activities;
 - (iv) have a strong understanding of utility issues relevant to the Contractor's Activities;
 - (v) facilitate and take a proactive role in communicating with relevant Authorities and managing Authorities and their subcontractors;
 - (vi) have the ability to work as part of a multi-disciplinary team and develop innovative solutions; and
 - (vii) have skills in planning and implementing utility investigation, decommissioning, protection, relocating and modification.
- (b) At the date of this deed, the Services Manager is [REDACTED]

Quality Manager

- (a) The Quality Manager must:
 - (i) possess a recognised qualification relevant to the position and the Contractor's Activities and verified relevant experience in quality management systems within the construction industry;

- (ii) be full time on or around the Construction Site during the construction phase of the Contractor's Activities with responsibilities limited to quality management of the Contractor's Activities;
- (iii) have experience on projects similar to the Project Works and Temporary Works;
- (iv) be available as the Principal's primary contact with the Contractor on matters of quality;
- (v) give the Principal's Representative access to information and personnel on quality matters and encourage a culture of disclosure and open discussion in respect of quality at all levels; and
- (vi) be given authority by the Contractor to act freely and independently and to stop the progress of the relevant part of the Contractor's Activities when any non- conformity with the quality requirements of this deed is identified and at specified Hold Points.

(b) At the date of this deed, the Quality Manager is [REDACTED]

Community and Stakeholder Engagement Manager

(a) The Community and Stakeholder Engagement Manager must:

- (i) possess a recognised qualification relevant to the position and the Contractor's Activities and have experience in community involvement on projects similar to the Project Works and Temporary Works and an understanding of the community and business attitudes and needs in relation to the Project Works and Temporary Works;
- (ii) have a minimum of 10 years communications/community relations experience with extensive experience in the management of community liaison, consultation and communications on major infrastructure projects;
- (iii) experience in the preparation and implementation of community and business involvement plans and strategies;
- (iv) experience and understanding of government public affairs processes; and
- (v) must be full-time on or around the Construction Site during the construction phase of the Contractor's Activities and be available at all times:
 - A. to take a proactive role in the community relations processes relating to the Contractor's Activities as set out in this deed; and
 - B. for contact by local residents, businesses and other community representatives to answer questions and deal with complaints relating to the Contractor's Activities.

(b) At the date of this deed, the Community and Stakeholder Engagement Manager is [REDACTED].

Environmental Manager

(a) The Environmental Manager must:

- (i) possess a recognised tertiary qualification which includes Environmental Science, Environmental Engineering, Planning or Natural Resources and have recent relevant experience in an environmental management position on similar projects;
- (ii) have a minimum 15 years environmental management experience, with extensive experience in the preparation and implementation of environmental management plans and environmental systems and overseeing contamination experts in the preparation of remedial action plans;
- (iii) have extensive experience working under both the State and Commonwealth approvals processes and have an in depth understanding of the Airports (Environment Protection) Regulations processes;
- (iv) experience in regulatory liaison and consultation;
- (v) facilitate an induction and training programme for all persons involved in construction activities;
- (vi) be given authority by the Contractor to act freely and independently, to require all reasonable steps to be taken to avoid or minimise environmental impacts and to stop the progress of the relevant part of the Project Works and Temporary Works when any non-conformity with the environmental requirements of this deed is identified; and

- (vii) be engaged full time on or around the Construction Site during the execution of the Contractor's Activities until the Date of Construction Completion with responsibility to develop and implement the Construction Environmental Management Plans.
- (b) At the date of this deed, the Environmental Manager is [REDACTED]

Site WHS Representative

- (a) The Site WHS Representative must:
 - (i) possess a recognised qualification relevant to the position and the Contractor's Activities and have recent relevant experience in work health and safety management of similar projects;
 - (ii) facilitate a work health and safety induction and training programme for all persons involved in construction activities;
 - (iii) have a minimum 15 years' experience as a site safety manager on major civil projects of similar size and complexity within operating transport environments;
 - (iv) be given authority by the Contractor to act freely and independently, to require all reasonable steps to be taken where safety compliance is at risk and to stop the progress of the relevant part of the Project Works and Temporary Works when any non-conformity with the work health and safety requirements of this deed is identified; and
 - (v) be engaged full time on or around the Construction Site during the execution of the Contractor's Activities until the Date of Construction Completion with responsibility to develop and implement the Work Health and Safety Management Plan.
- (b) At the date of this deed, the Site WHS Representative is [REDACTED].

Traffic Manager

- (a) The Traffic Manager must:
 - (i) possess a recognised qualification relevant to the position and the Contractor's Activities and have recent relevant experience in a traffic management position on similar projects;
 - (ii) have a minimum 15 years traffic management experience, with extensive experience in the preparation and implementation of traffic management plans and traffic control plans for road projects in highly congested urban road / motorway environments in NSW;
 - (iii) have experience in regulatory liaison and consultation, particularly with Sydney Coordination Office and the Transport Management Centre;
 - (iv) facilitate a traffic management and safety induction and training programme for all persons involved in construction activities;
 - (v) be given authority by the Contractor to act freely and independently, to require all reasonable steps to be taken to avoid or minimise adverse traffic impacts and to stop the progress of the relevant part of the Project Works and Temporary Works when any non-conformity with the traffic management requirements of this deed is identified; and
 - (vi) be engaged full-time on or around the Construction Site during the construction phase of the Contractor's Activities with responsibility for the management of traffic and must at all times have appropriate delegated authority to act on behalf of the Contractor in respect of the Contractor's Activities and be available at all times for matters regarding Road Occupancy Licences.
- (b) At the date of this deed, the Traffic Manager is [REDACTED].

Geotechnical Design Manager

- (a) The Geotechnical Design Manager must:
 - (i) possess a recognised qualification relevant to the position and the Contractor's Activities and have recent relevant experience in a geotechnical design management position on similar projects;
 - (ii) have a minimum 15 years geotechnical design management experience, with extensive experience in the geotechnical design of road, bridge and tunnel projects;
 - (iii) have strong project management and leadership skills;

- (iv) have a strong understanding of environmental, urban design and landscaping issues associated with the geotechnical design of road, bridge and tunnel projects; and
- (v) have the ability to work as part of a multi-disciplinary team and develop innovative solutions.

(b) At the date of this deed, the Geotechnical Design Manager is [REDACTED]

Bridge Design Lead

(a) The Bridge Design Lead must:

- (i) possess a recognised qualification relevant to the position and the Contractor's Activities and have recent relevant experience in a structures design management position on similar projects;
- (ii) have a minimum 15 years structures design engineering experience, with extensive experience in the design of road and bridge projects;
- (iii) have strong project management and leadership skills;
- (iv) have a strong understanding of environmental, geotechnical, urban design and landscaping issues associated with the design of road and bridge projects; and
- (v) have the ability to work as part of a multi-disciplinary team and develop innovative solutions.

(b) At the date of this deed, the Bridge Design Lead is [REDACTED]

General Superintendent

(a) The General Superintendent must:

- (i) have a minimum of 20 years of supervision experience on large-scale road and bridge construction projects, in similar role;
- (ii) have experience on projects similar to the Project Works and Temporary Works;
- (iii) have extensive knowledge of road and bridge construction;
- (iv) have skills in planning and implementing project delivery (including resourcing of plant, equipment and labour) and managing the subcontractors and suppliers;
- (v) have experience in consultation with stakeholders and local communities;
- (vi) have the ability to work as part of a multi-disciplinary team;
- (vii) have knowledge and understanding of safety, quality and environmental management systems and an understanding of the community attitudes and needs in relation to the Project Works and Temporary Works;
- (viii) manage and co-ordinate the site operations so as to comply with all safety, environmental, community, quality and industrial relations objectives; and
- (ix) be engaged full-time on or around the Construction Site during the construction phase of the Contractor's Activities and must at all times have appropriate delegated authorities to act on behalf of the Contractor in respect of the Contractor's Activities on the construction site.

(b) At the date of this deed, the General Superintendent is [REDACTED]

Contractor's Certificate - Design Documentation

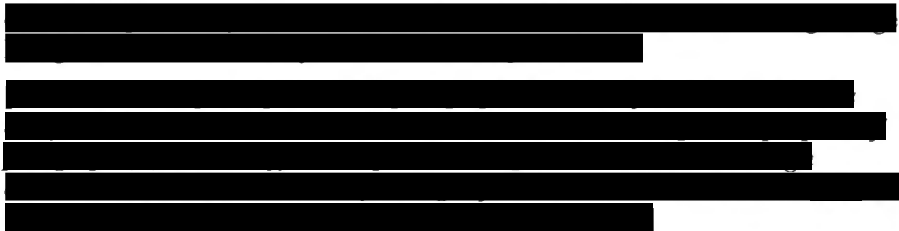
(clause 12.2(e)(iii))

[Insert project description] ("Project")

To: Principal's Representative

From: *[Insert Contractor's name]*
(ABN *[Insert Contractor's ABN]*)
("Contractor")

In accordance with the terms of clause 12.2(e)(iii) of the deed between Transport for NSW and the Contractor dated *[insert date]* with respect to the Project, we hereby certify that:

- (a) the attached Design Documentation:
 - (i) complies with all the requirements of the deed, including the SWTC, and in particular, the durability requirements of section 5.9 of the SWTC, the design life requirements of section 5.8 of the SWTC, the requirements in Appendix C.8 of the SWTC and associated requirements under the Airports Act;
 - (ii) is documented to enable construction in compliance with the deed (including, to the extent applicable, in respect of correction of Defects);
 - (iii) does not involve or constitute a Variation which has not been the subject of a Variation Order under clause 15.2, or a notice under clauses 15.6(d) or 15.7(c) approving the Variation; and
 - (iv) 
- (b) the Contractor has addressed all issues of review, comment and consultation with the Principal in respect of the Design Documentation as required by the deed.

.....
Signed for and on behalf of
[Insert Contractor's name]

Schedule 21 - Contractor's Certificate - Construction Completion

Contractor's Certificate - Construction Completion

(clause 23.2 (definition of "Construction Completion"))

[Insert project description] ("Project")

To: Principal's Representative

From: [Insert Contractor's name]

(ABN [Insert Contractor's ABN])

("Contractor")

In accordance with the terms of clause 23.2 (definition of "Construction Completion") of the deed between Transport for NSW and the Contractor dated [*insert date*], we hereby certify that Construction Completion has been achieved by the Contractor on [*insert date*] in accordance with the terms and conditions of the deed between Transport for NSW and the Contractor dated [*insert date*] with respect to the Project.

.....
Signed for and on behalf of
[*Insert Contractor's name*]

Schedule 22 - Contractor's Certificate - Final Completion

Contractor's Certificate - Final Completion

(clause 23.2 (definition of "Final Completion"))

[Insert project description ("Project")]

To: Principal's Representative

From: *[Insert Contractor's name]*
(ABN *[Insert Contractor's ABN]*
("Contractor"))

In accordance with the terms of clause 23.2 (definition of "Final Completion") of the deed between Transport for NSW and the Contractor dated *[insert date]* with respect to the Project, we hereby certify that Final Completion has been achieved by the Contractor on *[insert date]* in accordance with the terms and conditions of the deed between Transport for NSW and the Contractor dated *[insert date]*.

.....
Signed for and on behalf of
[Insert Contractor's name]

Schedule 23 - Principal Subcontractor Pre-Qualification

Principal Subcontractor Pre-Qualification

(clause 2.9(b))

Subcontractors for the following categories of work must be pre-qualified or registered in accordance with the Principal's procedures including to the appropriate level for the contract sum of the Subcontract:

1. **Pre-qualified categories of work:**

- (a) roadworks;
- (b) asphalt paving;
- (c) protective treatment;
- (d) bridgeworks;
- (e) pretensioned concrete;
- (f) concrete paving; and
- (g) steel fabrication.

2. **Registered categories of work:**

- (a) drainage;
- (b) earthworks
- (c) bridge formwork erection;
- (d) traffic control;
- (e) construction industry laboratories
- (f) erosion, sedimentation and soil conservation consultancy services;
- (g) fabrication of minor steel items;
- (h) urban design services;
- (i) demolition of properties; and
- (j) stabilisation.

Schedule 24 - Terms to be included in Subcontracts

Terms to be included in Subcontracts

(clause 2.9(f) and 2.9(g)(ii))

The following terms must be included in each Subcontract referred to in clause 2.9(f) of this deed.

- A. Options as to form of security
- A clause which allows the Subcontractor to lodge an unconditional undertaking from a bank or financial institution instead of a cash security or retention moneys as its security for performance of the Subcontract.
 - A clause which provides that if the Subcontractor does lodge an unconditional undertaking for the required amount, any retention moneys or other cash security then held will be promptly released to the Subcontractor.
- B. Trust for Cash Security and Retention Moneys
- A clause which has the effect that:
 - (a) cash securities and retentions under the Subcontract and the cash proceeds of any security converted to cash (other than in exercise of a contractual right of enforcement) is trust money and must be deposited into a trust account with a bank within 24 hours of receipt or conversion;
 - (b) the trust money is beneficially owned by the party which provided the security at all times unless the other party becomes entitled to receive them under the Subcontract; and
 - (c) the security holder must account to the security provider for the trust moneys.
- C. Payment Provisions
- A clause which has the effect:
 - (a) of requiring the Contractor to pay the Subcontractor for work for which payment is claimed by the Subcontractor no later than 20 Business Days after a payment claim was made by the Subcontractor for such work;
 - (d) that states nothing in the clause referred to in paragraph (a) is to be read so as to prevent the Contractor from paying the Subcontractor an amount in excess of that claimed from the Principal, or before the time stipulated in that clause; and
 - (e) that if anything in the clause referred to in paragraph (a) is inconsistent with any other provision in the Subcontract, the provisions of that clause will prevail to the extent of the inconsistency.
 - A clause which prescribes an interest rate for overdue payments which is not less than the interest rate specified in clause 22.5 of this deed.
 - A clause on the same terms as clauses 2.9(f)(ii), 2.9(h), 2.9(i) and 2.9(j) of this deed requiring the Subcontractor to implement the Subcontractors Proof of Payment Procedure and comply with requirements relating to the Subcontractors Proof of Payment Procedure.
- D. Documents to be provided to Subcontractors
- A clause which requires the Contractor to provide the Subcontractor with extracts from this deed before the Subcontractor starts work under the Subcontract. The extracts which are required to be provided are:
 - (a) clause 18 (Payment);
 - (b) clause 20 (Dispute avoidance and dispute resolution);
 - (c) clause 22.5 (Interest); and
 - (d) clause 6 of the Project Interface Deed.
- E. Civil Liability Act
- A clause that complies with the requirements set out in clause 22.7(c).
- F. Personal Property Securities Act
- A clause substantially the same as clause 8.4, except that references to 'the Contractor' must be replaced with references to 'the Subcontractor' and references to 'the Principal or 'the Principal's Representative' must be replaced with references to 'the Contractor'.

G. Work Health and Safety Obligations

- A clause requiring the Subcontractor to comply with all reasonable directions of the Principal Contractor.

H. The Principal's Australian Industry Participation Plan Obligations

- A clause requiring the Subcontractor to comply with and implement the Certified AIP Plan.

Subcontractor's Certificate - Design Documentation

(clause 12.2(e)(ii))

[Insert project description] ("Project")

To: Principal's Representative

From: *[Insert Subcontractor's name]*
(ABN *[Insert Subcontractor's ABN]*)
("Subcontractor")

In accordance with the terms of clause 12.2(e)(ii) of the deed between Transport for NSW and *[Insert Contractor's name]* (ABN *[Insert Contractor's ABN]*) ("Contractor") dated *[insert date]* with respect to the Project, we hereby certify that the attached Design Documentation:

(a)

[Redacted text]

(b)

[Redacted text]

.....
Signed for and on behalf of
[Insert Subcontractor's name]

Independent Checking Engineer's Certificate - Design Documentation

(clause 12.2(e)(v))

[Insert project description] ("Project")

To: Principal's Representative

From: *[Insert Independent Checking Engineer's name]*
(ABN *[Insert Independent Checking Engineer's ABN]*
("Independent Checking Engineer"))

In accordance with the terms of clause 12.2(e)(v) of the deed between Transport for NSW and *[insert Contractor's name]* (ABN *[insert Contractor's ABN]*) ("Contractor") dated *[insert date]* with respect to the Project (D&C Deed), we hereby:

- (a) confirm that we have undertaken the check required under, and in accordance with, clause 2.8(d)(ii) of the D&C Deed; and
- (b) confirm that those elements of the Category 2 Temporary Works identified in the attached Category 2 Temporary Works Design Documentation:
 - (i) are adequate and suitable for their intended purpose as stated in, implied from or contemplated by the D&C Deed; and
 - (ii) comply with the SWTC.

.....
Signed for and on behalf of
[Insert Independent Checking Engineer's name]

Proof Engineer's Certificate - Design Documentation

(clause 12.2(e)(iv))

[Insert project description] ("Project")

To: Principal's Representative

From: *[Insert Proof Engineer's name]*
(ABN *[Insert Proof Engineer's ABN]*)
("Proof Engineer")

In accordance with the terms of clause 12.2(e)(iv) of the deed between Transport for NSW and *[insert Contractor's name]* (ABN *[insert Contractor's ABN]*) ("Contractor") dated *[insert date]* with respect to the Project (D&C Deed), we hereby:

- (a) confirm that we have undertaken the full and independent assessment as required under, and in accordance with, clause 2.5(e)(ii)A of the D&C Deed; and
- (b) certify that in respect of those elements of the Project Works and any associated Temporary Works identified in Item 14 of Schedule 1 (Contract Information) to the D&C Deed, that those elements of the Project Works and any associated Temporary Works identified in the attached Design Documentation:
 - (i) are adequate and suitable for their intended purpose as stated in, implied from or contemplated by the D&C Deed; and
 - (ii) comply with the SWTC.

.....
Signed for and on behalf of
[Insert Proof Engineer's name]

Schedule 28 - Environmental Documents

Environmental Documents

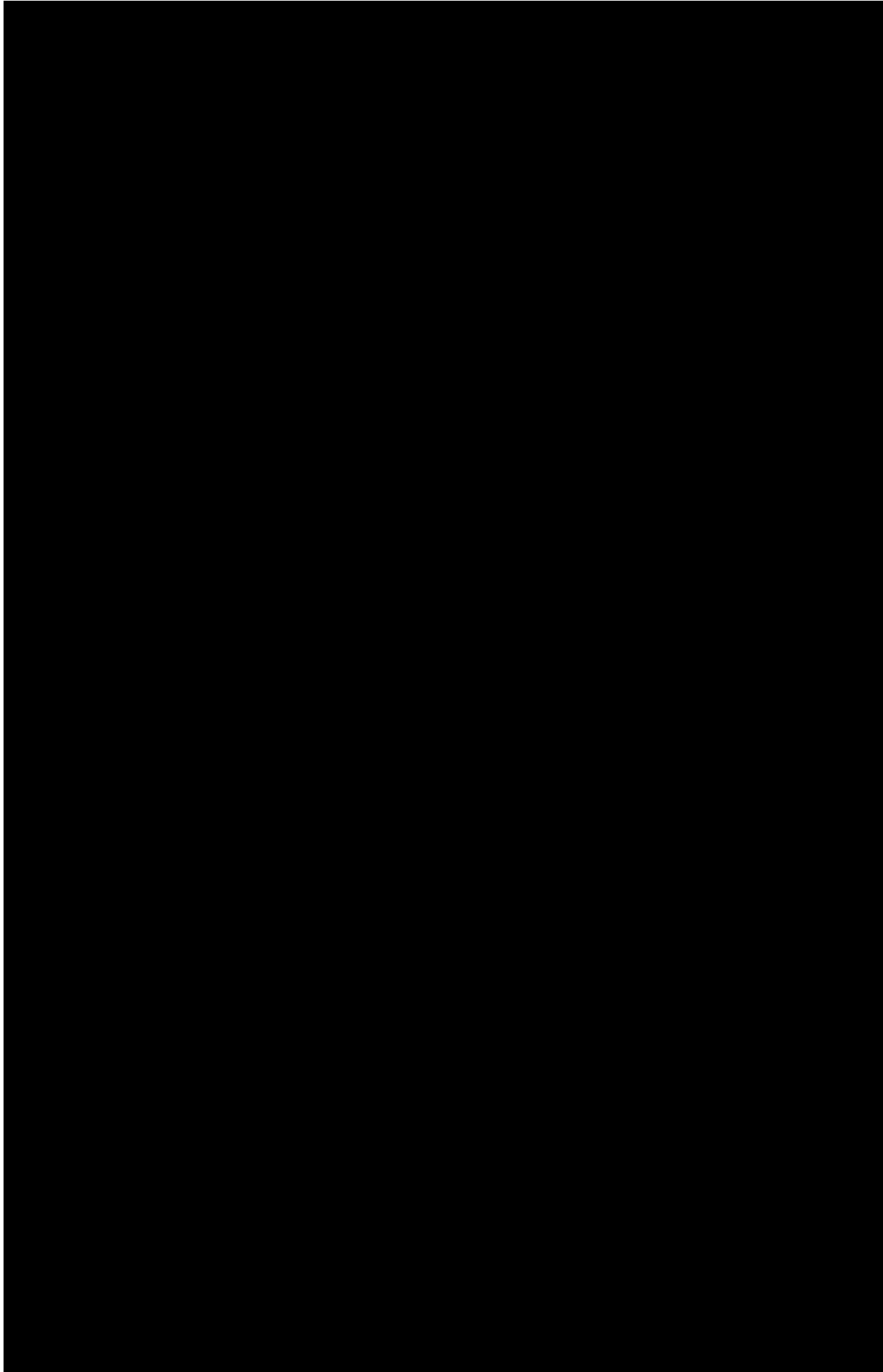
(clauses 5.1(b)(ii) and 5.2(b))

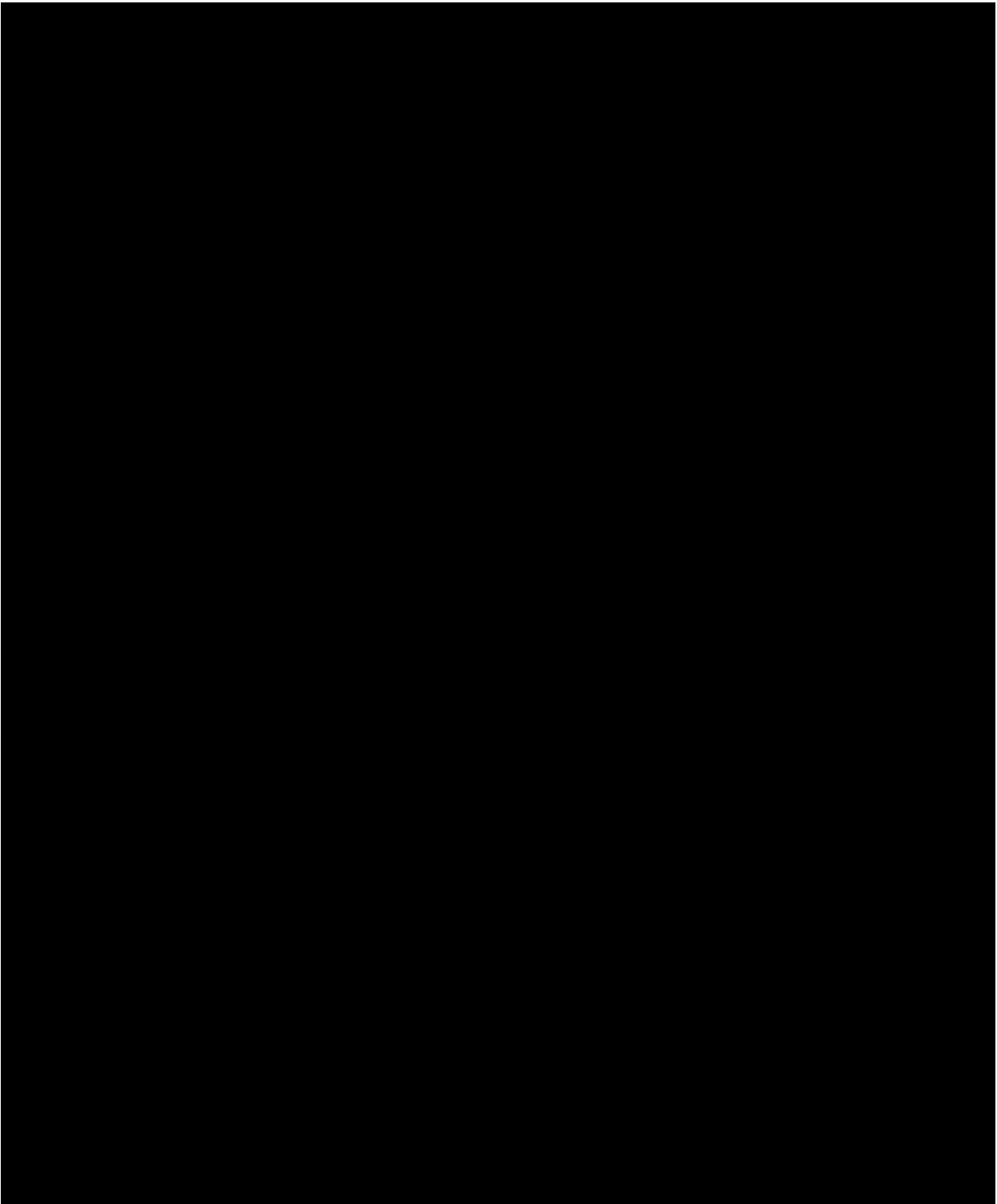
- (a) The Contractor must fulfil all the conditions and requirements of the Planning Approval to the extent related to the Contractor's Activities, the Project Works or the Temporary Works except to the extent the tables below expressly state otherwise or expressly allocate responsibility to the Principal.
- (b) The Principal is to be responsible for fulfilling any obligations to the extent that they arise or continue after the Date of Construction Completion, except to the extent the tables below expressly state otherwise, or expressly allocate the responsibility to the Contractor.
- (c) Any allocation of responsibility to the Principal (whether in full or in part) pursuant to this Schedule 28 (Environmental Documents) will not limit any of the Contractor's obligations under this deed.
- (d) The Contractor must provide information and assistance as reasonably required by the Principal to enable the Principal to comply with any conditions for which the Principal is responsible (in full or in part) under this Schedule 28 (Environmental Documents).
- (e) Without limiting clause 5.1(c) of the deed, in respect of any plans, submissions, surveys, investigations, reports, programs, responses, studies or other documents required to be submitted by a term of the Planning Approval the Contractor must:
 - (i) prior to their submission pursuant to the Planning Approval and in sufficient time to enable their submission in accordance with the Planning Approval, prepare, carry out and provide to the Principal any such plans, submissions, surveys, investigations, reports, programs, responses, studies or other documents:
 - (A) requested by the Principal's Representative;
 - (B) in accordance with the process set out in clause 5.1(c) (whether or not the Principal is required by this Schedule 28 (Environmental Documents) to submit the documentation to an Authority);
 - (C) to the standard directed by the Principal's Representative; and
 - (D) within the time directed by the Principal's Representative; and
 - (ii) provide whatever other assistance and information the Principal's Representative reasonably requests within the time reasonably requested by the Principal's Representative.
- (f) The Contractor acknowledges that the Principal, and not the Contractor, will submit any plans, submissions, surveys, investigations, reports, programs, responses, studies or other documents required to be submitted by a term of the Planning Approval to the relevant Authority.
- (g) Any document provided to the Principal under paragraph (e) must be of a standard and contain all relevant matters to enable it to be approved by an Authority if required by the terms of the Planning Approval.
- (h) The Principal:
 - (i) in submitting a document provided under paragraph (e) to an Authority does not represent or agree that the document is of a standard and contains all relevant matters to enable it to be approved by an Authority if required by the terms of the Planning Approval; and
 - (ii) will not be liable for any delays or other costs occasioned by an Authority electing not to approve any such document.

**JOHN
HOLLAND**

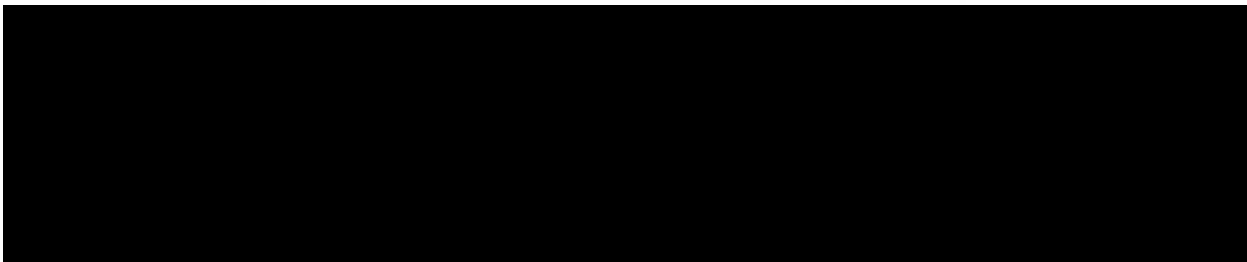


Allocation of conditions of approval under s5.19 of the *Environmental Planning and Assessment Act 1979* (NSW)





Allocation of conditions of approval under s94 of the *Airports Act 1996* (Cth) issued by the Minister for Infrastructure, Transport and Regional Development



The parties agree that there is a typographical error in the conditions of approval under s94 of the Airports Act 1996 (Cth) issued by the Minister for Infrastructure, Transport and Regional Development and that the reference in clause 12 to condition 12(b) should be read as a reference to condition 11(b).



Environmental Manager's Certificate

(clause 2.7(b))

[Insert Project description] ("Project")

To: Principal's Representative

From: *[Insert Environmental Manager's name]*
(ABN *[Insert Environmental Manager's ABN]*
("Environmental Manager"))

In accordance with the terms of clause 2.7(b) of the deed between Transport for NSW and *[Insert Contractor's name]* (ABN *[Insert Contractor's ABN]*) ("Contractor") dated *[insert date]* with respect to the Project, I hereby certify that between the following dates *[Insert dates of preceding 3 month period]*:

- (a) the Contractor's Environmental Management System under section 3.3.1 of the SWTC was in accordance with AS/NZS ISO 14001;
- (b) any Subcontractors' Environmental Management Systems which form a part of the Contractor's Environmental Management System were in accordance with AS/NZS ISO 14001;
- (c) the Contractor complied with and satisfied the requirements of TfNSW D&C Specification G36 in Appendix D.4 of the SWTC;
- (d) the release of Hold Points was undertaken in accordance with the deed;
- (e) the design, construction, inspection, repairs and monitoring by the Contractor was undertaken in accordance with the deed; and
- (f) that documentation was recorded and submitted to the Independent Verifier and the Principal's Representative in accordance with the deed.

.....
Signed by

[Insert Environmental Manager's name]

Schedule 30 - Deed of Appointment of ER

Deed of Appointment of ER

(clause 23.2 (definition of "Deed of Appointment of ER"))

This deed made at Sydney on

Parties *[Insert Contractor's name]*

(ABN *[Insert Contractor's ABN]*) of *[Insert Contractor's address]* ("Contractor")

Transport for NSW

(ABN 18 804 239 602) of 20-44 Ennis Road Milsons Point NSW 2061, a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW) ("Principal")

[Insert ER's name]

(ABN *[Insert ER's ABN]*) of *[Insert ER's address]* ("ER")

Recitals

- A. On or about the date of this Deed, the Contractor entered into the D&C Deed with the Principal in respect of the Project.
 - B. The ER represents that it is experienced generally in environment management and, in particular, in the environment management of works similar to the Project Works and offers its expertise in those fields.
 - C. The D&C Deed contemplates that the ER will discharge those functions set out in Attachment 2 to this Deed.
 - D. The ER will perform its obligations on the terms and conditions of this Deed.
-

This Deed provides:

1. Definitions and interpretation

1.1 Definitions

In this Deed words and expressions which have a defined meaning in the D&C Deed have the same meaning in this Deed, except where otherwise expressly defined in this Deed, and:

Construction Phase Services means all Services directly related to the construction of the Project Works.

D&C Deed means the deed between the Principal and the Contractor dated on or about the date of this Deed.

Design Phase Services means all Services directly related to the design of the Project Works.

DPI & E means the Department of Planning, Industry and Environment.

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

GST, GST law and other terms used in clause 8.3 have the meanings used in the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time) or any replacement or other relevant legislation and regulations, except "GST law" also includes any applicable rulings. Any reference to GST payable by the Supplier (as defined in clause 8.3) includes any GST payable by the representative member of any GST group of which the Supplier is a member.

Other Parties means the Principal and the Contractor.

Payment Schedule means Attachment 3 to this Deed.

Project means the design and construction of the Gateway as set out in the D&C Deed.

Project Documents means those agreements and other documents described in Attachment 1 to this Deed and includes the Planning Approval.

Services means those services listed in Attachment 2 to this Deed.

1.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention;
- (b) an obligation or liability assumed by, or a right conferred on, 2 or more parties binds or benefits all of them jointly and each of them severally;
- (c) the expression "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;
- (d) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (e) a reference to any document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (g) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (h) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Deed, and a reference to this Deed includes any schedule, exhibit or annexure to this Deed;
- (i) where 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;
- (j) the word "includes" in any form is not a word of limitation; and
- (k) a reference to "\$" or "dollar" is to Australian currency.

1.3 Governing Law

This Deed is governed by and will be construed according to the laws of New South Wales.

2. Appointment of the ER

2.1 Appointment

- (a) Each of the Other Parties appoints the ER under this Deed to perform the Services.
- (b) The ER confirms its acceptance of the appointment referred to in clause 2.1(a).

2.2 Payment

- (a) The Contractor will pay the ER, and warrants to the Principal that it will pay the ER, the Fee in accordance with the Payment Schedule.
- (b) The ER must notify the Principal in writing if any part of the Fee that is due and payable under and in accordance with this Deed remains unpaid 60 Business Days after the due date for payment under and in accordance with this Deed for the purposes of the Principal determining, in its absolute discretion, whether to refer the issue for consideration by the Management Review Group under clause 5 of Schedule 40 of the D&C Deed.

3. ER's obligations

3.1 Acknowledgement

The ER acknowledges that:

- (a) it has received a copy of the Project Documents and that it has read, and is familiar with, the terms of each of these documents to the extent they relate to the Services; and
- (b) its obligations extend to and include the obligations, functions, duties and services of the "ER", "Environment Representative" or the "Environmental Representative" under the Planning Approval.

3.2 Further acknowledgements and warranties

The ER:

- (a) acknowledges that each of the Other Parties:



- (i) is relying upon the skill and expertise of the ER in the performance of its obligations under this Deed; and
- (ii) may suffer loss if the ER 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, experience, skill and care which would be reasonably expected of an expert professional providing services similar to the Services within the construction industry generally and the construction of major engineering works in particular;
- (c) warrants to the Other Parties that, at all times, it will act within the time requirements for the performance of its obligations under this Deed and will comply with the requirements of the Payment Schedule;
- (d) without limiting clauses 3.2(a) and 3.2(b), acknowledges that the Other Parties are entitled to and will rely on any certificate, approval, report, direction or instruction signed or given by the ER under or pursuant to the Project Documents;
- (e) without limiting its obligations under any provision of this Deed, warrants to the Other Parties that it will carry out and perform the Services;
- (f) acknowledges that it must, when accessing the Construction Site and all places at which the Contractor's Activities are being undertaken, comply with the reasonable directions of the Principal Contractor;
- (g) will provide transport to perform the Services; and
- (h) warrants that it has qualifications in compliance with AS/NZS ISO 19011:2003 Guidelines for Quality and/or Environmental Management Systems Auditing.

3.3 Key Personnel

- (a) The ER must provide experienced and skilled personnel to perform its obligations under this Deed.
- (b) The ER must ensure that the person referred to in clause 3.3(c):
 - (i) performs all of the Services;
 - (ii) is not removed 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 5 Business Days of the request for removal), and if the person is removed, that person must be replaced by a person of at least equivalent skill and experience and whose appointment is approved by the Secretary of the DPI & E; and
 - (iii) is available for consultation as any party may reasonably require from time to time.
- (c) The person required to perform all of the Services is [*Note: Insert name when awarding the Deed of Appointment of ER*].

3.4 Subcontracting

- (a) Subject to clause 3.3, the ER may not subcontract the performance of any of its Services.
- (b) The ER remains responsible for the performance of the Services in accordance with this Deed, notwithstanding the performance of the Services by any person in accordance with clause 3.3.

3.5 Quality Assurance

- (a) The ER must implement a quality system in accordance with ISO 9001, 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 ER must prepare and submit to the Other Parties within 10 Business Days of the date of this Deed a "Services Implementation Plan" which gives a detailed description of how the ER intends to carry out and perform the Services. The ER must:
 - (i) progressively amend, update and develop the Services Implementation Plan throughout the performance of the Services as necessary to reflect the commencement of new stages of the Contractor's Activities and any changes in the manner of performing the Services;
 - (ii) submit each revision of the Services Implementation Plan to the Other Parties for their review and comment; and

- (iii) include in the Services Implementation Plan details of the proposed timing for the performance of discrete elements of the Services.
- (c) The Principal may:
 - (i) review the Services Implementation Plan submitted under clause 3.5(b); and
 - (ii) if the Services Implementation Plan does not comply with this Deed, notify the ER of the non-compliance.
- (d) If the ER receives a notice under clause 3.5(c), the ER must promptly submit an amended Services Implementation Plan to the Other Parties.
- (e) The Other Parties owe no duty to the ER to review the Services Implementation Plan for errors, omissions or compliance with this Deed.
- (f) The ER 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 Services Implementation Plan or any audit under clause 3.6.

3.6 Audit

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

4. Independence and Confidentiality

4.1 ER to be independent

The ER warrants to the Other Parties that in performing the Services, it will act:

- (a) independently of the Other Parties;
- (b) honestly and reasonably;
- (c) with the degree of professional care, knowledge, experience, skill and diligence which would be reasonably expected of an expert professional providing services similar to the Services within the construction industry generally and the construction of major engineering works in particular; and
- (d) within the time prescribed under the Project Documents or as anticipated by the Contract Program.

4.2 Confidentiality

The ER must keep confidential details of this Deed and all information and documents provided to, or by, the ER relating to the Services and not provide, disclose or use the information or documents except:

- (a) to the Other Parties;
- (b) for the purposes of performing the Services;
- (c) where required by law or to obtain legal advice on this Deed; or
- (d) with the prior written consent of the Other Parties.

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

5. Obligations of the Other Parties

5.1 No Interference or Influence

The Other Parties will not interfere with or attempt to improperly influence the ER in the performance of any of the Services.

5.2 Co-operation by Contractor

Without limiting or otherwise affecting any of the Contractor's obligations under this Deed or the Project Documents, the Contractor must:

- (a) co-operate with and provide the ER with all information and documents necessary or reasonably required by the ER, or otherwise requested by the ER or directed by the Principal;
- (b) allow the ER to attend all meetings and procure for the ER access to such premises as may be reasonably necessary to enable the ER to perform the Services or as requested by the ER or directed by the Principal, including allowing access to the Construction Site and all places at which the Contractor's Activities are being undertaken, provided that the ER must comply with the reasonable directions of the Principal Contractor; and
- (c) ensure that appropriate Hold Points and Witness Points are included in the Project Plans as required by the ER to enable the ER to perform the Services.

5.3 Co-operation by the Principal

The Principal must co-operate with and provide the ER with all information and documents necessary and not obtainable by the ER from the Contractor.

5.4 Principal to have no liability

Each party acknowledges that the Principal is not, nor will be taken to have a liability, or to have assumed 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;
- (b) for the performance of or failure to perform, any obligation of the Contractor or the ER under this Deed or the Project Documents; or
- (c) for any stop work direction being issued by the ER to either or both the Contractor and the Principal.

5.5 Audit

Without limiting or otherwise affecting any of the Contractor's or the ER's obligations under this Deed or the Project Documents, the Contractor and the ER must:

- (a) allow DPI &E at any time to conduct an audit of actions undertaken by the ER and any approvals issued by the ER; and
- (b) facilitate and assist DPI &E in the conduct of any such audit.

6. Liability, insurance and indemnity

6.1 Limitation of liability

Subject to clause 6.2, the ER's liability under this Deed, from all claims howsoever arising (including negligence and breach of statutory duty) will be limited in aggregate to [REDACTED].

6.2 Exclusions

The limitation of liability in clause 6.1 does not apply to any claims arising out of or in connection with any of the following on the part of the ER or anyone for whom it is responsible:

- (a) fraud or criminal conduct;
- (b) wilful misconduct being any conduct, act or omission done or to be done which results from conscious, reckless or intentional indifference to any provision of this Deed or the rights or welfare of, or the foreseeable harmful consequences to, those who are or may be affected by that conduct, act or omission; or
- (c) gross negligence being any negligent act or omission which the ER knew, or ought reasonably to have been aware, would result in substantial losses being incurred by, or substantial harmful consequences being suffered by, another party to the Deed.

6.3 Insurances

- (a) The Principal has effected an insurance policy as referred to in Item 1 of Attachment 4 and clause 7.1(a) of the D&C Deeds.
- (b) The ER must from the date of the D&C Deed effect and maintain the policies of insurance listed in Attachment 4 to this Deed:
 - (i) on the terms;
 - (ii) for the types;
 - (iii) for the periods; and

- (iv) for the sums, specified in Attachment 4 to this Deed.
- (c) The ER acknowledges and agrees that:
 - (i) it has reviewed and examined the proposed wording of the insurance policies which appear in Attachment 5 (Insurance Policy Wording) and the actual insurance policies effected by the Principal pursuant to clause 7.1(a) of the D&C Deed and has satisfied itself as to the extent of cover provided by those insurance policies for the purposes of insuring against certain of the risks referred to in this Deed and is aware that those insurance policies will not provide cover to the ER against all the risks assumed by the ER under this Deed;
 - (ii) the obtaining of insurance by the Principal in accordance with clause 7.1(a) of the D&C Deed does not limit or otherwise affect the ER's obligations under this Deed; and
 - (iii) the policies of insurance referred to in clause 7.1(a) of the D&C Deed have been obtained at the Principal's cost; and
- (d) The ER is responsible for the amount of any excess payable under the policies of insurance referred to in clause 7.1(a) D&C Deed and may effect insurance to cover the amount of that excess at its own cost.

6.4 Notice of matter affecting insurance

The ER must notify the Other Parties of any:

- (a) occurrence of an event that may give rise to a claim against any of the insurance policies obtained and maintained under, or as required by, this Deed; and
- (b) notice of any claim or subsequent proceeding or action and developments concerning the claim,

as soon as possible, and in any case no later than 2 Business Days after becoming aware of any such event or circumstance.

6.5 Provision of information

Before the ER starts any work for or in connection with this Deed and whenever requested in writing by any of the Other Parties, the ER must supply proof that all insurance policies which the ER is required to effect and maintain under this Deed (including insurance policies required to be taken out by subcontractors) are current.

If a notification is made pursuant to clause 6.4 of this Deed, the ER must provide all information reasonably requested by any of the Other Parties, and comply with all reasonable requests made by any of the Other Parties, in relation to the occurrence, claim, demand or circumstance the subject of the notice.

6.6 Subcontractors insurance

The ER must ensure that any subcontractor engaged by the ER, who is not covered by the professional indemnity policy of insurance effected and maintained by the ER, effects and maintains a professional indemnity policy of insurance on the terms, for the period and for the sum specified in Attachment 4 to this Deed.

6.7 Obligations unaffected by insurance

The requirement to effect and maintain insurance in this clause 6 does not limit the liability or other obligations of the ER under this Deed.

6.8 Indemnity

Subject to clause 6.1, the ER is liable for and indemnifies each Other Party against any liability, loss, claim, expense or damage which they may pay, suffer or incur in respect of:

- (a) any damage to or loss of property; or
- (b) death of or injury to any person,

insofar as the liability, loss, claim, expense or damage arises out of the negligent act, error or omission of the ER, its employees, agents, subcontractors or consultants.

7. Termination of appointment

7.1 Notice of termination

The Other Parties may jointly terminate this Deed by notice in writing served on the ER if:

- (a) the ER is in breach of this Deed and the breach is not remediable in the reasonable opinion of the Other Parties;
- (b) the ER 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 Other Parties of a notice specifying the breach and requiring the breach to be remedied;
- (c) an Insolvency Event occurs in relation to the ER; or
- (d) the Other Parties in their absolute discretion for any reason whatsoever serve on the ER a notice of termination of this Deed, on a date specified in the notice, being not less than 21 days after the date of issue of the notice.

7.2 Prior agreement on replacement

Prior to serving a notice under clause 7.1:

- (a) the Principal and the Contractor must have agreed upon another person to act as a replacement for the ER; and
- (b) the person so agreed upon must have been approved as a replacement of the ER by the Secretary of DPI & E.

7.3 Termination

Where a notice is served on the ER under clause 7.1, the appointment of the ER will terminate upon the earlier of:

- (a) the date specified in the notice issued under clause 7.1; or
- (b) the appointment of a replacement for the ER.

7.4 Delivery of documents

Upon the date of termination of the appointment of the ER, the ER:

- (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 ER relating to the Services provided that the ER may keep a copy of all such material for its own internal records; and
- (b) acknowledges that the Other Parties have the right to use all such documents for the purposes of the Project Documents and the Project.

7.5 Reasonable assistance

Where the Other Parties give a notice of termination under clause 7.1, the ER must provide full assistance to the Other Parties and any replacement for the ER appointed in order to enable such replacement to be in a position to perform the Services with effect from the appointment of such replacement.

7.6 Payment until date of termination

Where this Deed is terminated under clause 7.1(d), the ER is only entitled to be paid by the Contractor the proportion of the Fee for Services performed up to the date of the termination.

7.7 Termination without payment

Termination of this Deed will be without prejudice to any claim which one or both 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.

7.8 Survive termination

This clause 7 will survive the termination of this Deed by the Other Parties under clause 7.1.

7.9 Rights upon Termination

If this Deed is terminated pursuant to clauses 7.1(a) to 7.1(c), the parties' remedies, rights and liabilities will be the same as they would have been under the Law governing the Deed had the ER repudiated the Deed and the Other Parties elected to treat the Deed as at an end and recover damages.

8. Expenses, Stamp Duty and GST

8.1 Expenses

Except as otherwise provided in this Deed, each party will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this Deed.

8.2 Stamp Duties

- (a) The Contractor must:



- (i) pay all stamp duties (apart from financial institutions duties or bank account debit taxes which will lie between the parties as they fall) and any related fines and penalties in respect of this Deed, the performance of this Deed and each transaction effected by or made under or pursuant to this Deed; and
 - (ii) indemnify each other party against any liability arising from failure to comply with clause 8.2(a)(i).
- (b) The Contractor is authorised to make any application for and retain the proceeds of any refund due in respect of any stamp duty paid under this clause.

8.3 GST

- (a) Notwithstanding any other provision of this Deed, any amount payable for a supply made under this Deed which is calculated by reference to a cost, expense or other amount paid or incurred by a Party will be reduced by an amount equal to any input tax credits to which that party is entitled to in respect of that cost, expense or other amount.
- (b) If GST becomes payable on any supply made by a party (the "**Supplier**") under or in connection with this Deed:
 - (i) any amount payable or consideration to be provided under this Deed for that supply ("**Agreed Amount**") is exclusive of GST;
 - (ii) an additional amount will be payable by the party to whom that supply is made (the "**Recipient**"), equal to the amount of GST payable on that supply as calculated by the Supplier in accordance with the GST law and payable at the same time and in the same manner as for the Agreed Amount; and
 - (iii) the Supplier will provide a tax invoice (or equivalent documentation which complies with the GST law) to the Recipient in respect of that supply, no later than the time at which the Agreed Amount for that supply is to be provided under this Deed.
- (c) If, for any reason, the GST payable by the Supplier in respect of a supply it makes under this Deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it receives from the Recipient under sub-clause (b) in respect of that supply, the Supplier will provide a refund or credit to or will be entitled to receive the amount of this variation from the Recipient (as appropriate). The payment of the variation amount by the Supplier or the Recipient under this clause (as the case may be) must be paid within 10 Business Days of that party becoming aware of the variation in the amount of GST payable. Where an adjustment event occurs in relation to a supply, the Supplier will issue an adjustment note to the Recipient in respect of that supply within 10 Business Days after becoming aware of that adjustment event occurring.
- (d) If the Recipient is dissatisfied with any calculation to be made by the Supplier under this clause, the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties. The expert will act as an expert and not as an arbitrator and will take into account the terms of this Deed, the matters required to be taken into account by the Supplier under this clause and any other matter considered by the expert to be relevant to the determination.

9. Miscellaneous

9.1 Further acts

Each party will promptly do and perform 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 any other party to give effect to this Deed.

9.2 Notices

Any notices contemplated by this Deed:

- (a) must be in writing;
- (b) must be addressed as shown below:

Name: Transport for NSW

Address: [Insert]

For the attention of: [insert]



Name: Principal's Representative
Address: [Insert]
Email: [Insert Principal's Representative's Email address]
For the attention of: [Insert]

Name: [Insert Contractor's name]
Address: [Insert Contractor's address]
Email: [Insert Contractor's Email address]
For the attention of: [Insert contact name]

Name: [Insert ER's name]
Address: [Insert ER's address]
Email: [Insert ER's Email address]
For the attention of: [Insert contact name]

(or as otherwise notified by that party to the other party from time to time);

[Note: Insert details above when awarding the Deed of Appointment of ER]

- (c) must be signed by the party making the communication or (on its behalf) by the solicitor for, or by any attorney, director, secretary, or authorised agent of, that party;
- (d) must be delivered or posted to the relevant address of the addressee, in accordance with clause 9.2(b); and
- (e) will be deemed to be received by the addressee:
 - (i) (in the case of post) on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting to an address outside Australia; and
 - (ii) (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 9.2(b), unless that delivery is made on a non Business Day, or after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day.
- (f) Any notice contemplated by this deed to be given to the Principal must be delivered to the Principal address in accordance with clause 9.2(b).
- (g) Subject to clause 9.2(f), the party making the communication may give any notice contemplated by this deed to be given to other parties by email, to the relevant email address in accordance with clause 9.2(b) or to a new email address which one party notifies to the other parties in writing from time to time.
- (h) A notice given by email is taken to have been received at the local time (in the place of receipt of that email) that would be determined if section 13A of the *Electronic Transactions Act 2000* (NSW) were to apply.

9.3 Jurisdiction

- (a) Each party irrevocably 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 which may be brought at any time relating in any way to this Deed.
- (b) Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within clause 9.3(a).

9.4 Amendments

This Deed may only be varied by a document signed by or on behalf of each of the parties.

9.5 Assignment

No party to this Deed may assign, novate or otherwise transfer any of its rights or obligations under this Deed without the prior written consent of each other party to this Deed.

9.6 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Deed by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further

exercise or enforcement of that or any other right, power or remedy provided by law or under this Deed.

- (b) Any waiver or consent given by any party under this Deed will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this Deed will operate as a waiver of any breach of that term or of a breach of any other term of this Deed.

9.7 Consents

Any consent or approval referred to in, or required under, this Deed from any 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.

9.8 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.

9.9 Indemnities

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.

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.

9.10 Entire agreement

To the extent permitted by law, in relation to the subject matter of this Deed, this Deed:

- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed upon between the parties; and
- (b) supersedes any prior agreement (whether or not in writing) between the parties.

9.11 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its 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 any representation or inducement expressly set out in this Deed.

9.12 Relationship of the parties

- (a) The relationship between and among the parties to this Deed will not be that of partners or joint venturers and nothing herein contained will be deemed to constitute a partnership or joint venture among them and no party will have authority or power to act unilaterally as agent for the other.
- (b) It is understood that the ER is acting as an independent contractor for the Other Parties and therefore, the ER is not authorised to enter into any binding obligations on behalf of either or both of the Other Parties.

9.13 Replacement Body Interpretation

If an authority or body referred to in this Deed:

- (a) is reconstituted, renamed or replaced or if its powers or functions are transferred to another organisation; or
- (b) ceases to exist,

this Deed is deemed to refer to that organisation which serves substantially the same purpose or object as the former authority or body.

9.14 Severance

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

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

9.15 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.

9.16 Civil Liability Act

- (a) It is agreed that the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities under this Deed whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.
- (b) Without limiting the generality of clause 9.16(a) it is further agreed that the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Deed and not otherwise whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort or otherwise.

Attachment 1 - Project Documents

	Contract Name and Parties	Contract Date
1	D&C Deed and Schedules	
2	Exhibits to the D&C Deed and Appendices	

Attachment 2 - ER Services

The ER must:

- (a) discharge the role, functions, obligations, duties and services which the D&C Deed (including the SWTC) requires to, or contemplates will, be discharged by the ER, including those identified in the approval under s5.19 of the Environmental Planning and Assessment Act 1979 (NSW) issued by the Minister for Planning and Public Spaces dated 27 August 2020 in respect of the Gateway (**State Planning Approval**);
- (b) become familiar with the role, functions, obligations, duties and services (express or implied) under the D&C Deed of the "ER", "Environment Representative" and the "Environmental Representative" and review information made available to the ER by the Other Parties in order to become fully acquainted with the Project;
- (c) attend meetings and report as required from time to time by the Other Parties;
- (d) carry out any additional services in relation to the Project as jointly directed in writing by the Other Parties;
- (e) submit in sufficient time to the Other Parties for review and comment, a copy of any proposed submission, certificate, approval or report to be issued by the ER (and each proposed direction or instruction, to the extent there is sufficient time for this to be done) before such document is issued by the ER;
- (f) provide any written submissions, approvals and certification required by the State Planning Approval from the ER and ensure that copies of any such approvals and certification are provided at the same time to the Other Parties;
- (g) audit and monitor the Contractor's environmental activities at a minimum of quarterly intervals, to evaluate the implementation, effectiveness and level of compliance of on-site construction activities with the CEMP, including carrying out site inspections of the Project Works, Temporary Works and the Contractor's Activities. The ER must provide quarterly reports to the Other Parties on the outcomes of the audits and monitoring;
- (h) review corrective and preventive actions to ensure the effective implementation of mitigation measures to avoid or minimise the adverse impacts on the environment and/or to identify changes to the CEMP resulting from the audits and monitoring;
- (i) record and provide a written report, at least monthly, to the Other Parties identifying non-conformities with the CEMP that require the Contractor to undertake mitigation measures to avoid or minimise any adverse impacts on the environment and/or report on changes required to the CEMP;
- (j) provide monthly reports to the Other Parties on matters relevant to carrying out the ER's role, including details on any approvals or rejections by the ER of minor amendments to the CEMP made by the Contractor, any steps that the ER has required to be taken by the Contractor to avoid or minimise unintended or adverse environmental impacts and any directions given by the ER to the Contractor to cease actions in the event that an adverse impact to the environment was likely to occur;
- (k) immediately, and at the same time, provide advice to the Other Parties of any major issues resulting from the construction of the Project Works or the Temporary Works that were not dealt with expediently or adequately by the Contractor;
- (l) receive and, where relevant, review, consider, comment upon, and take any action otherwise required in relation to, submissions required by TfNSW D&C specifications;
- (m) pursuant to section 4 of Appendix D.1 of the SWTC, perform the role of chairperson of the Environmental Review Group (ERG) established by the Contractor in accordance with that section, including by ensuring that:
 - (i) meetings of the ERG are held at appropriate intervals that will enable the ERG to satisfy the purposes contemplated for it in the SWTC; and
 - (ii) administrative matters in relation to the ERG are attended to appropriately, including timely preparation and circulation of agendas, minutes, invitations to attend, reports to be considered by the ERG and reports from the ERG to the Contractor and the Principal;
- (n) receive, review, consider, comment upon, and where appropriate, make recommendations in relation to, or require amendment of, Project Plans (including updated Project Plans) prepared by the Contractor;

- (o) receive, review, consider, and where appropriate, comment upon, make recommendations or take any action otherwise appropriate in relation to, the reports, submissions, Approvals, Contract Program, Subsidiary Contract Programs, durability assessment reports, Design Documentation, as constructed documentation, construction completion report, pavement report and other information required to be issued or submitted to the ER under those sections;
- (p) pursuant to section 3.14 of the SWTC, use the 'extranet' for exchanging, searching and sharing the Contractor's information and data;
- (q) where relevant, access, review and consider the Contractor's quality system records required to perform the Services;
- (r) pursuant to section 1.3 of Appendix C.6 of the SWTC, witness any inspections and tests preceding the release of any Hold Points, and where required accept nomination as the Nominated Authority to release specified Hold Points;
- (s) advise the Contractor of apparent non-conformities that come to the attention of the ER and receive reports, NCRs and CARs in relation to non-conformities; and
- (t) pursuant to Appendix D.2 of the SWTC, attend information sessions and respond to questions.

Attachment 3 - Payment Schedule

1. Payment claim

At the end of each month after the date of the D&C Deed, the ER must submit to the Contractor a claim for payment on account of the Fee:

- (a) setting out the value of the Services performed in accordance with this Deed during the relevant month;
- (b) calculated in accordance with this Payment Schedule; and
- (c) in such form and with such details and supporting documentation as the Contractor may reasonably require.

(Payment Claim).

The ER must, at the time of submission of its Payment Claim to the Contractor, provide a copy of the Payment Claim to the Principal's Representative.

2. Payment

Subject to clause 8 of this Payment Schedule, the Contractor must within 20 Business Days after receipt of the Payment Claim for the month, pay the ER that portion of the Fee attributable to the Services performed during the month.

3. Notification of disputed amounts

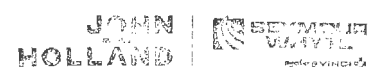
The Contractor must pay the ER any amount included in the Payment Claim which it does not dispute. If the Contractor disagrees with an amount included in the Payment Claim, the Contractor must within 10 Business Days after receipt of the relevant Payment Claim notify the ER and the Principal's Representative in writing of the reasons for any amount which is disputed. If the Contractor fails to give any such notice, the Contractor must pay the ER the amount claimed by the ER in the Payment Claim.

4. The Fee

- (a) The Fee consists of the following components:
 - (i) a lump sum of \$[Insert] exclusive of GST for the Design Phase Services; and
 - (ii) a lump sum of \$[Insert] exclusive of GST for the Construction Phase Services, subject to adjustments in accordance with clause 4(b) below:
- (b) Adjustments will be made to the lump sums referred to in clause 4(a) in accordance with:
 - (i) the appropriate rates set out in the Schedule of Rates in clause 6 of this Payment Schedule, and
 - (ii) the disbursements set out in clause 7 of this Payment Schedule, for reasonable increases or decreases in the cost to the ER of performing the Design Phase Services and/or the Construction Phase Services which arise as a result of (without double counting):
 - (iii) a Variation directed by the Principal's Representative under the D&C Deed,
 - (iv) any significant delay to the performance of the Design Phase Services and/or the Construction Phase Services having regard to the Contract Program; or
 - (v) additional Services jointly directed in writing by the Other Parties.
- (c) The ER acknowledges that (except as described in and payable under clause 7 of this Payment Schedule) it has allowed in the lump sums referred to in clause 4(a) above for the provision of all labour, materials, work, vehicles, telecommunications, travel, accommodation, disbursements and other costs necessary for and arising out of or in connection with the Services referred to above as covered by the lump sums, whether or not expressly mentioned in this Deed or the Project Documents.

5. Schedule of Rates

Design Phase Services – adjustments



Nominated Personnel	Daily Rate (\$) (excluding GST)
[Insert]	[Insert]

Construction Phase Services - adjustments

Nominated Personnel	Daily Rate (\$) (excluding GST)
[Insert]	[Insert]

These rates contain allowances for the provision of all labour, materials, work, telecommunications, disbursements and other costs necessary for and arising out of or in connection with the Services for which the ER is to be paid on a Schedule of Rates basis under this Deed, excluding disbursements described in and payable under clause 7 of this Payment Schedule and reasonable costs for transport outside the Greater Sydney area, which incorporates Newcastle and Wollongong and the areas within and in the vicinity of the Construction Site.

When claiming payment for any Services for which the ER is to be paid on a Schedule of Rates basis the ER must provide details of the time expended by the ER in performing the Services for which the ER is entitled to be paid on a Schedule of Rates basis.

6. Disbursements

- (a) The ER will only be entitled to reimbursement of disbursements incurred in the course of carrying out the Services for which the ER is to be paid on a Schedule of Rates basis under this Deed if those disbursements:
- (i) have been reasonably and properly incurred for the sole purpose of performing Services for which the ER is to be paid on a Schedule of Rates basis in accordance with this Deed and do not fall into the category of one of the disbursements described in clause 7(b);
 - (ii) were approved in writing by the Contractor and the Principal's Representative prior to being incurred where they exceed [REDACTED]; and
 - (iii) are supported by documentation provided to the Contractor which is satisfactory to the Contractor and the Principal's Representative.
- (b) The ER is not entitled to reimbursement of costs relating to vehicles, local transport (within the Greater Sydney area, which incorporates Newcastle and Wollongong and the areas within and in the vicinity of the Construction Site), car parking, computers, insurance, general office consumables and telecommunications.
- (c) The ER will only be entitled to reimbursement of disbursements incurred in the course of carrying out the Services for which the ER is to be paid on a lump sums basis under this Deed if those disbursements:
- (i) were not possible to be identified at the tender stage;
 - (ii) have been reasonably and properly incurred for the sole purpose of performing surveillance, inspection, monitoring and audits on the Contractor's Activities at locations outside the Greater Sydney area, which incorporates Newcastle and Wollongong and the areas within and in the vicinity of the Construction Site;
 - (iii) were approved in writing by the Contractor and the Principal's Representative prior to being incurred where they exceed [REDACTED]; and
 - (iv) are supported by documentation provided to the Contractor which is satisfactory to the Contractor and the Principal's Representative.
- (d) The ER will not be entitled to make any claim against the Contractor arising out of or in connection with disbursements incurred in connection with the performance of the Services other than in accordance with clauses 7(a) and 7(c) above.

7. Monthly payment schedule for lump sums

The ER is not entitled to payment or to make a claim for payment to the extent that the Services have not been carried out for the month in question. Subject to clauses 1 and 2 of this Payment Schedule, the indicative monthly payment to be made under the lump sums (excluding disbursements) is set out in the following table:

Month after date of the D&C Deed	Payment (\$ excluding GST)
1	[Insert]
2	[Insert]
3	[Insert]
4	[Insert]
5	[Insert]
6	[Insert]
7	[Insert]
8	[Insert]
9	[Insert]
10	[Insert]
11	[Insert]
12	[Insert]
13	[Insert]
14	[Insert]
15	[Insert]
Etc	[Insert]
Etc	[Insert]
<i>[Insert last payment month number]</i>	[Insert]
Audits	
12 Month Audit	[Insert]
2 Further Audits	[Insert]

8. GST

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

Attachment 4 - Insurance Schedule

(Clause 6.3)

TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING	QUALIFICATIONS
Principal Arranged Insurance (TfNSW)				
The details of the policy below is provided in the icare policy documents. A copy of these may be provided upon request. Capitalised terms which are not defined in the deed are defined in the sample policy documents.				
1. Broad form Public Liability and Product Liability	Public Liability: ■■■■ Each and every occurrence Product Liability: ■■■■ Each and every occurrence & in the aggregate for all occurrences	Annually, from the date of the D&C Deed until the Date of Final Completion (or the date of termination of the Deed of Appointment of ER, whichever is earlier).		If no products are being supplied then only Public Liability cover is required.
ER Arranged Insurances				
2. Motor Vehicle Comprehensive or Third Party Property Damage	■■■■ For any single occurrence	Annually from the date of the D&C Deed until the Date of Final Completion (or the date of termination of the Deed of Appointment of ER, whichever is earlier).	(a) Is with an Approved Insurer; (b) Covers motor vehicles owned or used by the ER or its subcontractors directly or indirectly engaged in performance of the Services; and (c) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in clause 2 of the Definitions and Notes below;	Only required if the ER will use a motor vehicle in the course of providing the Services or if the ER will use or park their motor vehicles on premises owned or occupied by the Principal, or on the Construction Site.

TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING	QUALIFICATIONS
3. Professional Indemnity	<p>██████████</p> <p>Each and every claim and in the aggregate for all occurrences</p>	<p>From the date of the D&C Deed until the Date of Final Completion (or the date of termination of the Deed of Appointment of ER, whichever is earlier) plus 7 years following the Date of Final Completion (or the date of termination of the Deed of Appointment of ER, whichever is earlier).</p> <p>The Insurance can be taken out as annual covers where the cover is to include a retroactive date being the date of the D&C Deed.</p>	<p>(a) Is with an Approved Insurer;</p> <p>(b) One automatic restatement per period of insurance; and</p> <p>(c) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in clause 2 of the Definitions and Notes below.</p>	
4. Workers Compensation	As per the relevant Workers Compensation legislation.	Annually from the date of the D&C Deed until the Date of Final Completion (or the date of termination of the Deed of Appointment of ER, whichever is earlier).	<p>(a) Is with an Approved Insurer; and</p> <p>(b) Is as per relevant Workers Compensation legislation.</p>	

Definitions and Notes:

1. For the purposes of this Attachment 4 (Insurance Schedule), "Approved Insurer" means:
 - (a) an Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia; or
 - (b) Lloyds Underwriters; or
 - (c) a Treasury Managed Fund insurance scheme with the NSW State Government; or
 - (d) Self Insurance Corporation of NSW through Insurance and Care NSW (icare); or
 - (e) the Comcover insurance scheme for the Australian Federal Government.

Note that where the insurance risk is insured by an insurer not listed in Note 1(a) or 1(b) then a 'fronting' placement is acceptable from an insurer list in Note 1(a) or 1(b).
2. Insurances policies must be subject to the laws of Australia (or an Australian State or Territory) and their courts.
3. A cross liability clause operates as if there was a separate policy of insurance covering each of the insured. This means that the insurer provides each party named on the insurance policy access to the limit of liability, subject to the overall limit under the policy.
4. A waiver of subrogation clause is where the Insurer agrees to waive all rights of subrogation that they may have or acquire against the Principal where required to do so under the contract.

Attachment 5 - Insurance Policy Wording

[Insert when awarding Deed of Appointment of ER]

Executed as a deed.

Executed by [*Insert Contractor's name*] (ABN [*Insert Contractor's ABN*]) in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Executed for and on behalf of **Transport for NSW** (ABN 18 804 239 605) by its authorised delegate in the presence of:

Signature of witness

Signature of authorised delegate

Full name of witness

Name of authorised delegate

Executed by [*Insert ER's name*] (ABN [*Insert ER's ABN*]) in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors:

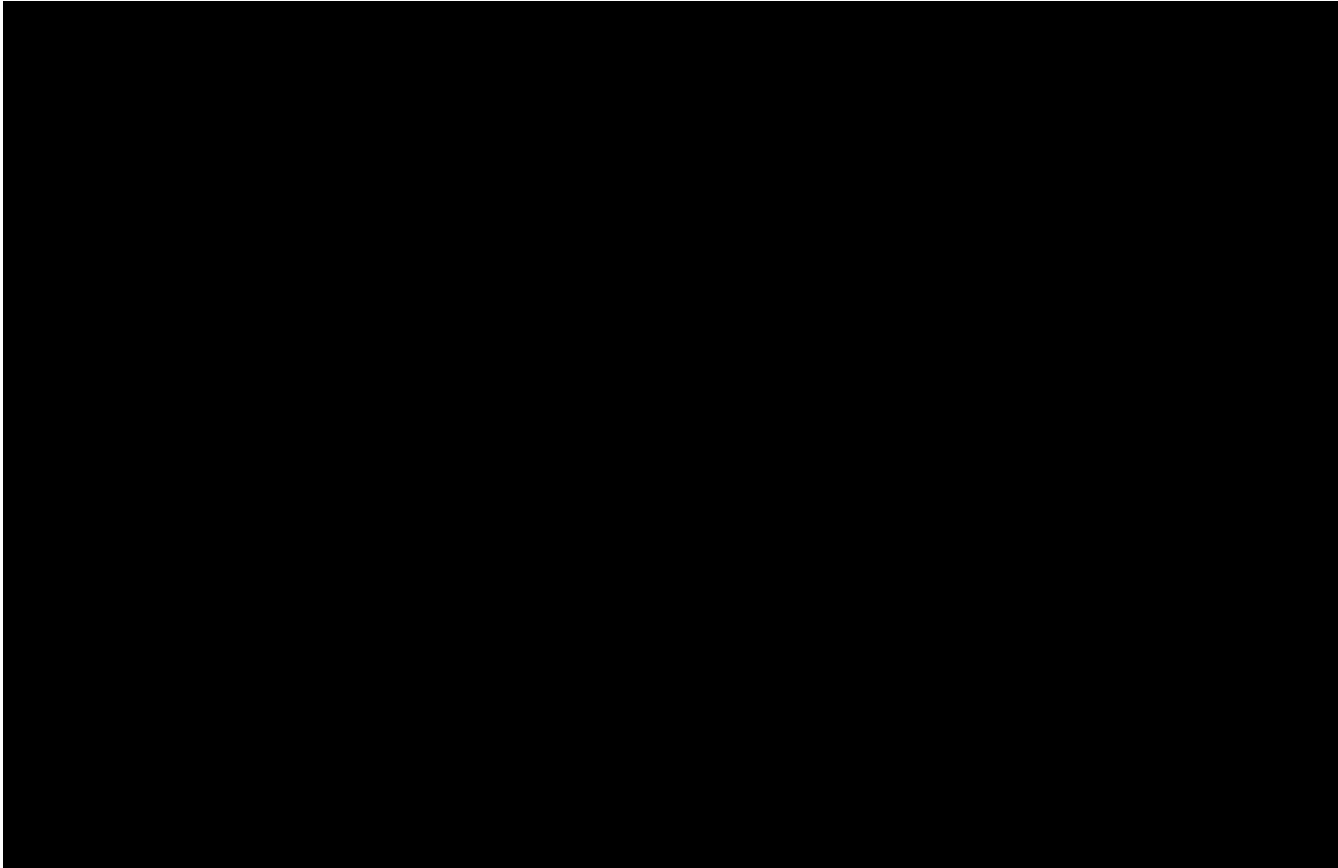
Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

[Redacted]



Schedule 32 - Performance Evaluation Record Forms

Performance Evaluation Record Forms

(clauses 23.2 (definition of "Performance Evaluation Record Forms"))

Form 1: Performance Evaluation

(This form is provided for guidance only)

Design and Construct D&C Deed title:

Date:

Rating system

- 1 excellent
- 2 above expectation
- 3 meeting expectation
- 4 below expectation
- 5 unsatisfactory

Topic	Objectives	Your rating (this period)	Group rating (this period)
Communication	<p>Open, honest, constructive, timely, efficient and effective communications.</p> <ul style="list-style-type: none"> Quality communications including co-operation between parties, compliance with request not to hinder performance, providing early warning, and evaluation and monitoring. <p><i>Refer to clauses 1.3 and 3.3.</i></p>		
Time	<p>Completion by Contractual Completion Dates</p> <ul style="list-style-type: none"> time management - milestone achievement on or before the due date. extensions of time <p><i>Refer to clauses 1.2, 17.1, 17.3, 17.5, 17.10 and 17.15.</i></p>		
Financial	<p>Meeting or bettering deed requirements</p> <ul style="list-style-type: none"> Financial management, including early warning and agreement to Variations, quantity measurement, payments, final payment. <p><i>Refer to clauses 15 and 18.</i></p>		
Quality	<p>Meets or exceeds specified/agreed requirements</p> <ul style="list-style-type: none"> Quality management. Including quality standards, design requirements, fitness for purpose, innovation, Defect rectification, defect-free Construction Completion, post Construction Completion. Encourage continuous improvement and personnel development through planning, flexibility and common sense. <p><i>Refer to clauses 11.1 – 11.5, 12.2 to 12.6, 13.1, 13.2, 16, 17.10 and 17.15.</i></p>		
Safety	<p>Safe working environment for project team and general public.</p> <ul style="list-style-type: none"> Occupational health, safety and rehabilitation management. Including co-operation between parties, minimising OH&S incidents, evaluation and monitoring <p><i>Refer to clause 5.6 and 5.7.</i></p>		
Claims and Issue Resolution	<ul style="list-style-type: none"> Resolve issues and claims early at an appropriate level. Open and frank discussions. Transparency <p><i>Refer to clauses 3.5, 19 and 20.</i></p>		
Environment	<p>Environmental management. Including planning energy & water conservation, waste management, resource conservation, pollution reduction, protection of environment, healthy work environment</p> <ul style="list-style-type: none"> Pro-active management of impacts and commitments. Minimise environmental incidents <p><i>Refer to clauses 5.2, 6.1, 6.3 and 10.5.</i></p>		
Contract Relations	<p>Co-operative contract relationships including compliance with NSW Government codes of practice and guidelines; industrial relations management; and Subcontractor performance,</p>		

Topic	Objectives	Your rating (this period)	Group rating (this period)
	<ul style="list-style-type: none"> Enjoy work and working together. Enhanced reputations of personnel and organisations involved. <i>Refer to clause 5.</i>		
Community Relations	<ul style="list-style-type: none"> Proactively enhance and maintain good community relations Minimise impacts on the community. Proactive management of commitments to individuals and groups. <i>Refer to clauses 3.6 and 3.8.</i>		
Traffic Management	<ul style="list-style-type: none"> Minimise disruption and inconvenience to traffic and provide safe traffic conditions. Safe access to the Site for the project team, subcontractors, suppliers and visitors. Safe access for adjacent residents. <i>Refer to clause 3.5.</i>		

The participants should decide on an action plan during the meeting, after discussing project and contract objectives, comments, observations and suggestions for improvement.

Form 2: Performance Evaluation Record

The participants ratings for each topic are recorded here so that the overall performance can be assessed.

Design and Construct D&C Deed title:

Date:

Rating system

- 1 excellent
- 2 above expectation
- 3 meeting expectation
- 4 below expectation
- 5 unsatisfactory

	Objectives	Score	Comment
Communication	Open, honest, constructive, timely, efficient, effective		
Time	Milestone achievement on or before due date		
Financial	Meeting or bettering deed requirements		
Quality	Meets or exceeds specified/agreed requirements		
Safety	Safe working environment for project team and general public.		
Claims and Issue Resolution	Resolve issues and claims early at an appropriate level. Open and frank discussions. Transparency.		
Environment	Planning, conservation of resources, protection of environment, healthy work environment. Pro-active management of impacts and commitments. Minimise environmental incidents		

Design and Construct D&C Deed title:

Date:

Rating system

- 1 excellent
- 2 above expectation
- 3 meeting expectation
- 4 below expectation
- 5 unsatisfactory

	Objectives	Score	Comment
Contract Relations	Co-operative relationships, compliance with NSW Government codes of practice and guidelines; I.R. management; and Subcontractor performance, Enjoy work and working together. Enhanced reputations.		
Community	Proactively enhance and maintain good community relations. Minimise impacts on the community. Proactive management of commitments to individuals and groups.		
Traffic Management	Minimise disruption and inconvenience to traffic and provide safe traffic conditions.		
AVERAGE			

Form 3: Performance Evaluation Record

The participants ratings for each topic are recorded here so that the overall performance can be assessed.

Group

Design and Construct D&C Deed title:

Date:

Rating system

- 1 excellent
- 2 above expectation
- 3 meeting expectation
- 4 below expectation
- 5 unsatisfactory

Group Members	Principal's Team							Contractors Team							Other														
							TFNSW							COMPANY							SUB-CONTRACTOR							OTHER	OVERALL
1 Communication							0							0							0							0	0
2 Time							0							0							0							0	0
3 Cost							0							0							0							0	0
4 Quality							0							0							0							0	0
5 Safety							0							0							0							0	0
6 Claim and Issue Resolution							0							0							0							0	0
7 Environment							0							0							0							0	0
8 Contract Relations							0							0							0							0	0
9 Community Relations							0							0							0							0	0
10 Traffic Management							0							0							0							0	0
AVERAGE	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
No Month																													
1 Jan-[insert year]																													
2 Feb-[insert year]																													
3 Mar-[insert year]																													
4 Apr-[insert year]																													
5 May-[insert year]																													
6 Jun-[insert year]																													
7 Jul-[insert year]																													
8 Aug-[insert year]																													
9 Sep-[insert year]																													
10 Oct-[insert year]																													
11 Nov-[insert year]																													
12 Dec-[insert year]																													

Designer's Deed of Covenant

(clause 2.9(g)(i))

This deed poll is made the day of 20

To: **TRANSPORT FOR NSW**, (ABN 18 804 239 602) of 20-44 Ennis Road Milsons Point NSW 2061, a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW) (**Principal**)

By: [insert Designer's name and details] (ABN [Insert Designer's ABN]) of [Insert Designer's address]

Recitals

- A. The Principal has engaged [Insert Contractor's name] (ABN [Insert Contractor's ABN]) of [Insert Contractor's address] ("**Contractor**") to carry out certain works for the Principal by deed dated [insert date] ("**Deed**").
 - B. The Contractor has engaged [Insert Designer's name] ("**Designer**") to carry out the design work specified in the Schedule for the purposes of its obligations under the Deed ("**Design Work**") pursuant to a contract between the Contractor and the Designer ("**Consultancy Deed**").
 - C. Under the Deed the Contractor is required to procure the Designer to execute this deed poll in favour of the Principal.
-

Operative

1. **Duty of care**

The Designer warrants to the Principal that in performing the Design Work and in providing any certificate under clause 2.9(g)(i) of the Deed:

- (a) it will owe a duty of care to the Principal;
- (b) it will exercise reasonable skill and care; and
- (c) it is aware that the Principal will be relying upon the skill and judgement of the Designer in performing the Design Work.

2. **Governing law and jurisdiction**

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.

Schedule

[Insert description of Design Work]

EXECUTED as a deed poll.

Executed by []
in accordance with section 127(1) of the Corporations
Act 2001 (Cth) by authority of its directors:

Signature of Director

Name of Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full



Form of Warranty

(clause 17.14(a))

This deed poll is made the day of 20

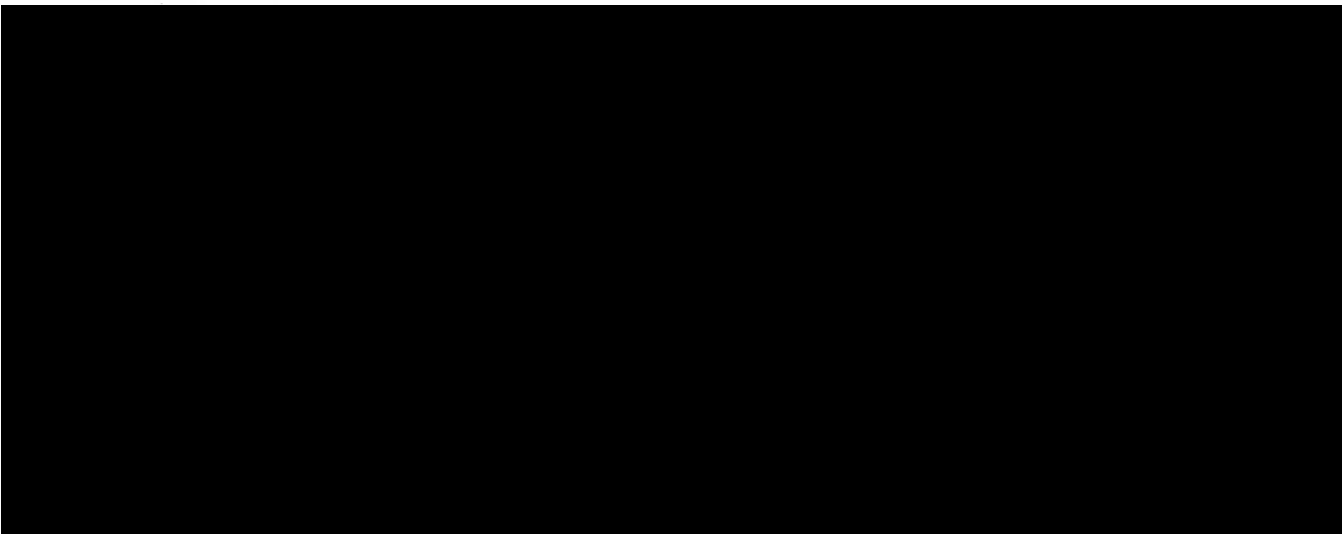
To: **TRANSPORT FOR NSW**, (ABN 18 804 239 602) of 20-44 Ennis Road Milsons Point NSW 2061, a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW) ("**Principal**")

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

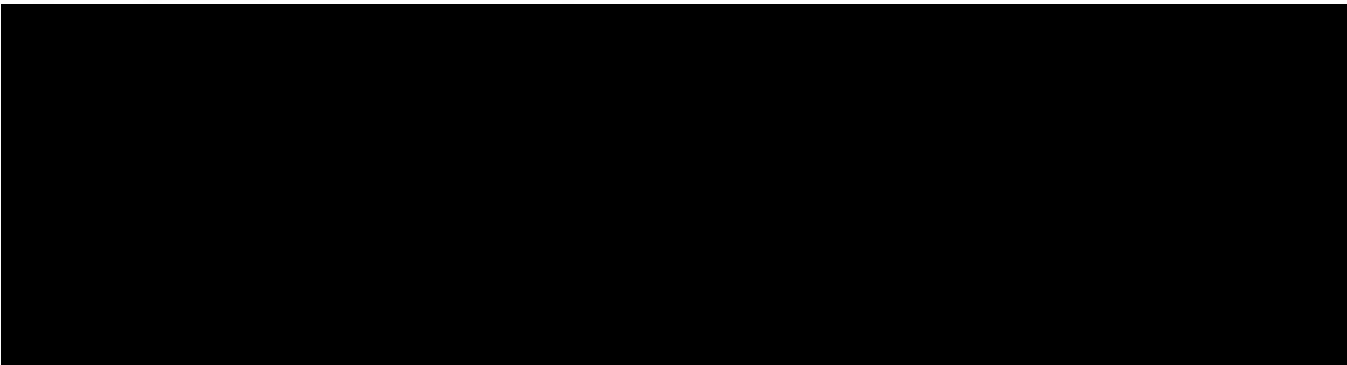
Recitals

- A. The Warrantor has supplied the items described in Item 2 of the Schedule ("**Equipment**") to the person described in Item 3 of the Schedule ("**Contractor**") for the [*Insert project description*] ("**Project**") being carried out by the Contractor under the deed described in Item 4 of the Schedule ("**Deed**") with the Principal.
 - B. It is a requirement imposed by the Principal that the Warrantor give the following warranties in favour of the Principal with respect to the Equipment.
-

Operative



- 3. The Warrantor covenants to the Principal that it will bear the cost of any work necessary to any part of the Project to enable the requirements of clause 2 to be carried out or to make good the Project afterwards.
- 4. The Warrantor acknowledges to the Principal that nothing contained in this Deed Poll is intended to nor will render the Principal in any way liable to the Warrantor in relation to any matters arising out of the Deed or otherwise.





Schedule

Item 1: Warrantor

[Insert Warrantor's name]

[Insert Warrantor's address]

Item 2: The Equipment

[Insert details of the equipment]

(Recital A)

Item 3: The Contractor

[Insert Contractor's name] (ABN [Insert Contractor's ABN]) [Insert Contractor's address]

(Recital A)

Item 4: Deed

The deed titled "*[Insert project deed title]* "

(Recital A)

Item 5: Detailed Warranty of Warrantor

[Insert warranty with respect of the equipment]

(Clause 1)

Item 6: Period of Years

[Insert number of years] years from the expiry of the last "Defects Correction Period" as defined in the Deed.

(Clause 2)

Executed as a deed poll.

Executed by []
in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors:

Signature of Director

Name of Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

Schedule 35 - Owner's Deed Poll

Owner's Deed Poll

(clauses 13.2(g) and 13.2(i))

This deed poll is in favour of Transport for NSW.

Property Address: *[Insert Property Address]*

1. I/We confirm that the following works have been carried out and completed on my/our property to my/our satisfaction:
 [Insert Description of Property Works]
2. I/We confirm that our land has been rehabilitated and all damage and degradation on it repaired.
3. I/We release Transport for NSW from all claims and actions which I/we may have arising out of or in connection with the works referred to in item 1.

SIGNED as a deed poll.

Signed sealed and delivered by
in the presence of:

Signature of Witness

Signature

Name of Witness in full

Schedule 36 - Insurance Schedule

Insurance Schedule

(clauses 7.1(a), 7.5(a)(i) and 7.5(a)(ii))

TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
Principal Arranged Insurance (TfNSW)			
The details of the policies below are provided in the icare policy documents. A copy of these is set out in Exhibit N (Insurance Policy Wording). Capitalised terms which are not defined in the deed are defined in the sample policy documents.			
1. Contract Works	Contract Works – as per policy in Exhibit N (Insurance Policy Wording)	Duration of the Works – covering the Principal, Contractor and subcontractors and other parties as specified in the contract	The Principal has arranged standard policies of insurance for contract works insurance. The insurance must be in the joint names of the Principal, Sydney Airport and the Commonwealth.
2. Public and Products Liability	Public and Products Liability [REDACTED] Each and every occurrence.	Maintained until the Date of Completion – covering the Principal, Contractor and subcontractors and other parties as specified in the contract	The Principal has arranged standard policies of third party liability insurance. The insurance must be in the joint names of the Principal and Sydney Airport.
3. Project Specific Professional Indemnity insurance.	Professional Indemnity Insurance: [REDACTED]	Maintained until the expiration of 7 years following the Date of Construction Completion - covering the Principal, Contractor and any designers specified in the policy documents provided to the Contractor by the Principal on or before the date of this deed.	The Principal has arranged a project specific professional indemnity insurance policy.

Contractor Arranged Insurances

4. Motor Vehicle Comprehensive or Third Party Property Damage effected with an Approved Insurer.	Refer to Schedule 1 (Contract Information) Item 23	Refer to Schedule 1 (Contract Information) Item 23	(a) Motor vehicles owned, leased or hired by the Contractor or Subcontractors directly or indirectly engaged, and used by anyone in connection with performance of the contract. (b) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in
--------------------------------------------------------------------------------------------------	----------------------------------------------------	----------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
			<p>Definitions and Notes clause 2 below.</p> <p>(c) If applicable to the contract – all plant and equipment owned or used by the Contractor or Subcontractors directly or indirectly in the performance of the contract.</p> <p>(d) covering legal liability:</p> <ul style="list-style-type: none"> • For personal injury to, illness or death of, any person; and • For damage to any real or personal property including the property of Sydney Airport, <p>arising out of the use by Principal or the Contractor of any registered motor vehicle in connection with the performance of the Project Works and Temporary Works, in accordance with all relevant Laws, and for not less than</p> <p>██████████ in respect of each and every occurrence.</p>
5. Workers Compensation effected with an Approved Insurer.	Refer to Schedule 1 (Contract Information) Item 22	Refer to Schedule 1 (Contract Information) Item 22	As per State Workers Compensation legislation.
6. Plant and equipment insurance	Refer to Schedule 1 (Contract Information) Item 27	Refer to Schedule 1 (Contract Information) Item 27	
7. Compulsory Third Party (CTP) insurance.	Refer to Schedule 1 (Contract Information) Item 30	Refer to Schedule 1 (Contract Information) Item 30	Compulsory Third Party (CTP) insurance.

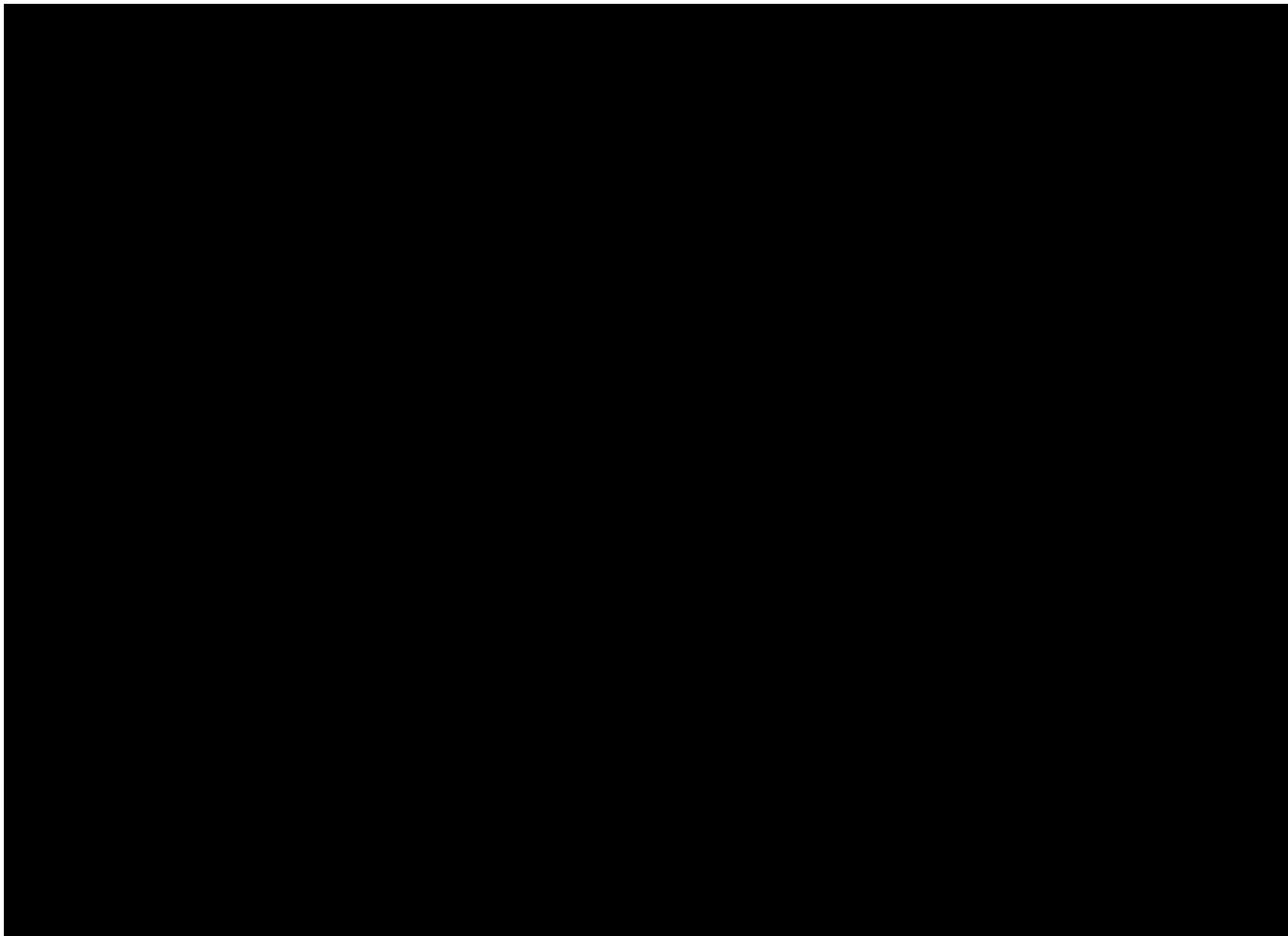
Definitions and Notes

1. Approved Insurer means:
 - (a) the NSW Self Insurance Corporation (ABN 97 369 689 650); or
 - (b) an Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia with a credit

rating of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, or an equivalent rating with another reputable rating agency.

Note that where the insurance risk is insured by an insurer not listed in Note 1(a) or 1(b) then a 'fronting' placement is acceptable from an insurer listed in Note 1(a) or 1(b).

2. Insurances policies must be subject to the laws of Australia (or an Australian State or Territory) and their courts.
3. A cross liability clause operates as if there was a separate policy of insurance covering each of the insured. This means that the insurer provides each party named on the insurance policy access to the limit of liability, subject to the overall limit of the policy.
4. All insurances required to be effected by the Contractor which name more than one insured, must include a waiver and cross liability clause in which the insurer agrees:
 - (a) to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured;
 - (b) that the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result); and
 - (c) that any non-disclosure, breach of any duty or act or omission by one insured does not prejudice the right of any other insured to claim under any insurance.



Not used

Dispute Avoidance Board Agreement

(clause 20 (Dispute avoidance and dispute resolution))

This Agreement made at Sydney on the _____ day of _____ 20____
between the following parties:

Parties *[Insert Contractor's name]* (ABN *[Insert Contractor's ABN]*) ("Contractor")

of: *[Insert Contractor's address and email address]*

and

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

of: 20-44 Ennis Road Milsons Point NSW 2061 (for delivery of notices by hand)

or: Locked Bag 928, North Sydney NSW 2059 (for delivery by post)

a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW)

Attention: *[insert]*

Email: *[Insert Principal's Representative's email address]*

and

Members of the Dispute Avoidance Board, namely:

██████████ of Engineering Management & Consultancy, ABN 50 767 603 084, [DAB address], [DAB Member 1 email address]

██████████ of [DAB Member 2 Company's Name, ABN and address], [DAB Member 2 email address]

[DAB Member 3 Name] of [DAB Member 3 Company's Name, ABN and address], [DAB Member 3 email address]

(collectively "Members" or "the Dispute Avoidance Board")

[Note: Principal to insert details]

Recitals

- A. On or about the date of this Agreement, the Contractor entered into the D&C Deed with the Principal in respect of the *[insert Project Name]*.
- B. The D&C Deed provides for a dispute avoidance process through the establishment and the operation of a dispute avoidance board to assist the parties in preventing disputes from arising under the D&C Deed.
- C. The Members represent that they are experienced generally in construction and project management and, in particular, in the construction and project management of, and the management of issues and avoidance of disputes in relation to, works similar to the Project Works and offer their expertise in those fields.
- D. The D&C Deed contemplates that the Members will discharge those functions set out in Appendix 1 to this Agreement.
- E. This Agreement sets out the rights, obligations and duties of the Members, the Principal and the Contractor in relation to the Dispute Avoidance Board.

This Agreement provides:

1. Definitions and interpretation

1.1 Definitions

In this Agreement:

Members means the three individuals appointed to the Dispute Avoidance Board in accordance with this Agreement, or the continuing Members and any replacement Member in the circumstances contemplated under clause 13(b) of this Agreement, as the case may be.

Other Parties means the Principal and the Contractor.

1.2 Terms defined in the D&C Deed

Terms used in this Agreement which are not otherwise defined will have the meaning given to them in the D&C Deed.

1.3 Interpretation

In this Agreement unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) a reference to any party to this Agreement includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
- (e) a reference to this Agreement or to any other deed, agreement, document or instrument is deemed to include a reference to this Agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:
 - (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) headings are for convenience only and do not affect the interpretation of this Agreement;
 - (i) a reference to:
 - (i) a party or clause is a reference to a party or clause of or to this Agreement; and
 - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or subparagraph in the clause in which the reference appears;
 - (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (k) for all purposes (other than where designated as a Business Day), "day" means calendar day;
- (l) a reference to "\$" is to Australian currency;
- (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Agreement or any part; and
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

2. D&C Deed to prevail

- (a) The parties agree that if there is any inconsistency between the terms of this Agreement and the D&C Deed, the terms of the D&C Deed will prevail to the extent of the inconsistency.
- (b) This Agreement is effective as of the date all parties sign this document and will continue, unless terminated earlier, until it terminates in accordance with clause 20.3 of the D&C Deed.

3. Formation of the Dispute Avoidance Board

3.1 Appointment of Members

- (a) Each of the Other Parties appoints each of the Members to perform the functions, activities and obligations contemplated for the Dispute Avoidance Board under the D&C Deed and this Agreement.
- (b) The Members each confirm their acceptance of the appointment referred to in clause 3.1(a).

3.2 Formation

The parties acknowledge that the Dispute Avoidance Board:

- (a) has been formed;
- (b) is constituted by the Members; and
- (c) must perform its obligations and functions under the D&C Deed and this Agreement.

3.3 Chairperson

The Members will determine which of them will act as chairperson from time to time.

4. Establishment of procedures

- (a) During the first meeting of the Dispute Avoidance Board, the Dispute Avoidance Board will establish procedures for the conduct of its regular meetings, site visits and other matters in accordance with the procedures included in Attachment 1 to this Agreement (unless otherwise agreed by the parties).
- (b) The parties agree to comply with the general operating procedures in Attachment 1 to this Agreement.

5. Dispute Avoidance Board Member's obligations

5.1 Dispute Prevention

Each Member agrees to do all things and to take such action as may be practicable in accordance with this Agreement to assist the Other Parties in preventing Disputes from arising under the D&C Deed.

5.2 Impartiality

Each Member agrees to consider fairly and impartially any matters referred to the Dispute Avoidance Board.

5.3 Independence

Each Member agrees to act honestly, impartially, without bias and independently of the Other Parties and any of their Subcontractors in the performance of his or her obligations under this Agreement (including the consideration of facts and conditions relating to any matter) and in accordance with clause 5 of this Agreement.

5.4 General duties

Each Member agrees to carry out his or her obligations as a Member of the Dispute Avoidance Board:

- (a) with due care and diligence;
- (b) in compliance with the D&C Deed and this Agreement; and
- (c) in compliance with all applicable Laws.

6. Costs and fees

- (a) The Other Parties are jointly and severally liable for the payment of the Members' fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Attachment 2.
- (b) The Other Parties agree as between themselves that:
 - (i) they will each pay one half of the Members' fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Attachment 2; and
 - (ii) they will each bear their own costs of and incidental to the preparation of this Agreement (and any replacement) and their participation in any process of the Dispute Avoidance Board.
- (c) Each Member agrees that they will submit separate tax invoices to each of the Principal and the Contractor at one monthly intervals (unless a different frequency is agreed by the Other



Parties), covering the preceding month's activities by the Member. The invoice is to separately identify the activities performed and the calculation of the relevant fees and disbursements (excluding GST) (**Payment Amount**) in sufficient detail to enable the Other Parties to review that the invoice is calculated in accordance with the Schedule of Fees and Disbursements set out in Attachment 2. If either of the Other Parties is not satisfied that the Payment Amount is calculated in accordance with the Schedule of Fees and Disbursements set out in Attachment 2, then either of the Other Parties may request clarification from the relevant Member.

- (d) Each Member agrees that they will issue separate tax invoices to each of the Principal and the Contractor, for one half of the agreed Payment Amount.
- (e) The Other Parties must pay the amounts payable in tax invoices issued in accordance with clause 6(d) within 20 Business Days of receipt.
- (f) The Members are not entitled to engage any third party consultants or advisers in the performance of their obligations under this Agreement unless the Other Parties agree in writing for them to do so, and on the terms on which they may do so.

7. Principal commitment and responsibilities

The Principal acknowledges and agrees that it must:

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

8. Contractor's commitments and responsibilities

The Contractor acknowledges and agrees that it must:

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

9. Confidentiality

In relation to all confidential information disclosed to the Dispute Avoidance Board 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 complying with its obligations under this Agreement; and
- (d) to be bound by this obligation of confidentiality whether or not such confidential information is or later becomes in the public domain.

10. 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 the Contractor and the other Members of the Dispute Avoidance Board.
- (b) The other Members of the Dispute Avoidance Board will within five Business Days of notification under clause 10(a) confer and inform the Other 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 must immediately resign from the Dispute Avoidance Board and a reappointment will occur pursuant to clause 14.3.

11. Liability

Except in the case of fraud:

- (a) the Members shall not be liable to the Other Parties or any of them upon any cause of action whatsoever for anything done or omitted to be done by the Dispute Avoidance Board or the Members; and
- (b) the Other Parties jointly and severally hereby release the Members against all actions, suits, proceedings, disputes, differences, accounts, claims, demands, costs, expenses and damages of any kind whatsoever (hereafter "**claims**") (including, but not limited to, defamation, bias or other misconduct) whether such claims arise:
 - (i) under or in any connection with this Agreement;
 - (ii) in tort for negligence, negligent advice or otherwise; or
 - (iii) otherwise at law (including by statute to the extent it is possible so to release, exclude, or indemnify) and in equity generally, including without limitation for unjust enrichment,

arising out of, or in connection with, the Project or the Dispute Avoidance Board's activities or any other process conducted pursuant to this Agreement.

12. Indemnity

The Principal and the Contractor hereby jointly and severally indemnify and keep indemnified the Members against all claims including without limitation claims by third parties upon any of the bases set out in clause 11 (or otherwise):

- (a) against the Other Parties, or any of them; and
- (b) against the Members, or any of them,

arising out of anything done or omitted to be done by the Dispute Avoidance Board or the Members in the proper performance of their duties under this Agreement and the D&C Deed.

13. Termination of Agreement

- (a) This Agreement may be terminated by written agreement of the Principal and the Contractor or may terminate otherwise in accordance with clause 20.3 of the D&C Deed.
- (b) Where:
 - (i) a Member resigns under clause 10(b) or 14.1; or
 - (ii) the appointment of a Member is terminated by the Principal and the Contractor under clause 14.2,

then despite the resignation or termination taking effect in accordance with its terms, this Agreement will remain in force until a replacement to this Agreement has been fully executed pursuant to clause 14.3(d), at which time this Agreement terminates.

14. Members' termination

14.1 Resignation

A Member may resign from the Dispute Avoidance Board by providing 30 Business Days' written notice to, the other Members, the Principal and the Contractor (unless the Principal and the Contractor agree to a shorter notice period).

14.2 Termination

A Member may be terminated at any time by written agreement of the Principal and the Contractor.

14.3 Replacement

The parties acknowledge and agree that if:

- (a) a Member resigns under clause 10(b) or 14.1; or is unable to act as a result of death or disability; or
- (b) the appointment of a Member is terminated by the Other Parties under clause 14.2,

then:

- (c) a replacement Member may be appointed in accordance with clause 20.2 of the D&C Deed; and
- (d) the Principal, the Contractor, the continuing Members and the replacement Member must enter into a replacement agreement substantially similar to this Agreement as a condition of a valid

re-appointment and re-constitution of the Dispute Avoidance Board under the terms of the Dispute Resolution Procedure.

15. Governing law

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

16. Relationship of the parties

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

17. Notices

- (a) Any formal notices contemplated by this Agreement must be in writing and delivered to the relevant address or email address (subject to clause 17(e) of this Agreement) as set out in the parties' details on page 1 of this Agreement (or to any new address or email address that a party notifies to the others).
- (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 given by email is taken to have been received at the local time (in the place of receipt of that email) that would be determined if section 13A of the *Electronic Transactions Act 2000* (NSW) were to apply.
- (d) Any notice contemplated by this Agreement to be given to the Principal must be delivered to the Principal address or sent by email in accordance with the Principal's details on page 1 of this Agreement.

18. 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 another party may reasonably require to give full effect to this Agreement.

19. Survival of terms

The parties agree that clauses 6, 9, 11, 12 and 15 and this clause 19 (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.

20. 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.

21. 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.

22. Goods and Services Tax

22.1 Interpretation

Words or expressions used in this clause 22 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

22.2 Consideration is GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with this Agreement, unless specifically described in this Agreement as 'GST inclusive', does not include an amount on account of GST.

22.3 Gross up of consideration

Despite any other provision in this Agreement, if a party (**Supplier**) makes a supply under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as 'GST inclusive'):

- (a) the consideration payable or to be provided for that supply under this Agreement but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier an amount equal to the GST payable on the supply (**GST Amount**); and
- (b) the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

22.4 Reimbursements (net down)

If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party, or the representative member of a GST group of which that party is a member, is entitled for that loss, cost or expense.

22.5 Tax invoices

The Recipient need not make a payment for a taxable supply made under or in connection with this Agreement until the Supplier has given the Recipient a Tax Invoice for the supply to which the payment relates.

22.6 Adjustment event

If an adjustment event occurs in relation to a taxable supply made under or in connection with this agreement then the consideration payable in respect of the supply shall also be adjusted as follows:

- (a) if the adjustment event gives rise to an increase in the GST payable by the Supplier in relation to the supply a payment equal to that increase will be made by the Recipient to the Supplier; and
- (b) if the adjustment event gives rise to a decrease in the GST payable by the Supplier in relation to the supply payment equal to that decrease will be made by the Supplier to the Recipient.

Any payment that is required under this clause 22.6 will be made within ten Business Days of the issuing of an adjustment note or an amended Tax Invoice, as the case may be, by the Supplier. If the adjustment event gives rise to an adjustment, the Supplier must issue an adjustment note to the Recipient as soon as it becomes aware of the adjustment event.

23. Amendment

This Agreement can only be amended, supplemented, replaced or novated by another document signed by the parties.

24. 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.

25. 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.

26. Not used

EXECUTED as an agreement

Signed for and on behalf of **Transport for NSW** (ABN 18 804 239 605) by its authorised delegate in the presence of:

Signature of witness

Full name of witness

Signature of authorised delegate

Name of authorised delegate

EXECUTED BY [*insert Contractor's name*] (ABN [*insert Contractor's ABN*]) in accordance with s.127 of the *Corporations Act 2001* (Cth)

Signature of Director

Name of Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

SIGNED BY THE MEMBER in the presence of:

Signature of Witness

Name of Witness (Please Print)

Signature of Member

Name of Member in full (Please Print)

SIGNED BY THE MEMBER in the presence of:

Signature of Witness

Name of Witness (Please Print)

Signature of Member

Name of Member in full (Please Print)

SIGNED BY THE MEMBER in the presence of:

Signature of Witness

Signature of Member

Name of Witness (Please Print)

Name of Member in full (Please Print)



Attachment 1

Dispute Avoidance Board General Operating Procedures

1. **General**
 - 1.1 The role of the Dispute Avoidance Board is to provide independent and specialised expertise in technical and administration aspects of the D&C Deed in order to assist the Other Parties in attempting to avoid or prevent Disputes under the D&C Deed and the Stage 3 D&C Deed in a timely manner.
 - 1.2 The Members may consider issues that arise on Stage 1 and Stage 3 in order to assist the Other Parties in attempting to avoid or prevent Disputes under the D&C Deed and the Stage 3 D&C Deed.
 - 1.3 The Other Parties will furnish to each of the Members all documents necessary for the Dispute Avoidance Board to perform its functions, including copies of all D&C Deed documents (and if requested copies of all Stage 3 D&C Deed 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 matters in relation to the Project.
 - 1.4 The individual Members are not the representative of the party which appointed that representative. The Dispute Avoidance Board must function as an objective, impartial and independent body at all times.
 - 1.5 The Members shall 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.
 - 1.6 Communications between the Other Parties and the Dispute Avoidance Board for the purpose of attempting to avoid or prevent Disputes are without prejudice communications and may not be adduced as evidence in any dispute resolution process under clause 6 of the Project Interface Deed.
2. **Frequency of Regular Meetings and Construction Site Visits**
 - 2.1 The frequency and scheduling of meetings and site visits necessary to keep the Dispute Avoidance Board properly informed of the project circumstances will generally be agreed between the Dispute Avoidance Board and the Other Parties.
 - 2.2 In the case of a failure to agree between the Dispute Avoidance Board and the Other Parties, the Dispute Avoidance Board will schedule the meetings and visits as it sees fit.
 - 2.3 The frequency of meetings of the Dispute Avoidance Board should generally be three monthly and coincide with the same day as meetings (which the Members will attend) of the Management Review Group under the D&C Deed, but the meeting schedule may be influenced by work progress, unusual events and the number and complexity of potential Disputes. In any event, meetings of the Dispute Avoidance Board may be convened separately to meetings of the Management Review Group.
 - 2.4 The first Dispute Avoidance Board meeting should be held within one month of the date of this Agreement.
3. **Agenda for Regular Meetings**
 - 3.1 The chairperson of the Dispute Avoidance Board will develop an agenda for each regular meeting in accordance with the requirements of the D&C Deed and this Agreement.
 - 3.2 Dispute Avoidance Board meetings held for the purposes of briefing and updating the Members on performance and progress of the work under the D&C Deed and issues or potential issues arising between the Other Parties shall be held on an in-confidence and “without prejudice” basis to encourage full and frank disclosure and discussions.
 - 3.3 Prior to or at the conclusion of regular Dispute Avoidance Board meetings contemplated by clause 3, the Dispute Avoidance Board will generally inspect the Project Works, the Temporary Works and the Construction Site in the company of representatives of both of the Other Parties. Any areas of the Project Works, the Temporary Works or the Construction Site that are or may be the subject of any potential issue or potential Dispute will be pointed out by the Other Parties.
4. **Minutes of Meetings**
 - 4.1 The Management Review Group, under clause 5(d) of Schedule 40 of the D&C Deed, will agree and document procedures relating to meetings of the Management Review Group, and any minutes of Management Review Group meetings will be circulated to the Members for information only.

- 4.2 In accordance with clause 3.2 above, the minutes of the Dispute Avoidance Board meetings shall be marked "in-confidence, without prejudice". The minutes of Dispute Avoidance Board meetings will be prepared by the chairperson of the Dispute Avoidance Board and will be circulated to the attendees at the Dispute Avoidance Board meeting for comments, additions and corrections.
- 4.3 Minutes as may be amended will be adopted by the Members at the next meeting.
5. **Communications**
- 5.1 Except when participating in the Dispute Avoidance Board's activities as contemplated by the D&C Deed and this Agreement, the Other Parties shall not communicate with the Dispute Avoidance Board or its Members on matters dealing with the conduct of the work or resolution of problems.
- 5.2 There must be no communication between the Members and employees of the Other Parties during the life of the Dispute Avoidance Board without the Members informing the Other Parties. The Other Parties must direct any matters needing attention between meetings of the Dispute Avoidance Board to the chairperson of the Dispute Avoidance Board.
- 5.3 All communications to the Dispute Avoidance Board by the Other Parties outside the Dispute Avoidance Board meetings should be directed in writing to the chairperson and copied to the other Members and to the other party. All communications by the Members to the Other Parties should be addressed to the Principal's Representative and the Contractor's Representative.
- 5.4 Except as required under this Agreement or under the D&C Deed, communication by email is an acceptable alternative to physical delivery.
6. **Representation**
- Where required by the Dispute Avoidance Board, the Other Parties shall each ensure they are represented at Dispute Avoidance Board meetings by at least one senior project executive and at least one senior off-site executive to whom the on-site executive reports. The Other Parties shall inform the chairperson of the names and project roles of each of their respective representatives and, if applicable, the names and roles of any alternates.
7. **Other Attendees**
- 7.1 Where requested by the Other Parties, and approved by the Members, or where requested by the Members, and approved by the Other Parties, other persons who may be involved in the Project (such as the design manager or independent verifier) may be invited to make special presentations to the Dispute Avoidance Board on matters or issues relevant to the Project.
- 7.2 At the Principal's request, Sydney Airport may also attend any meetings with the Dispute Avoidance Board.

Attachment 2

Schedule of Fees and Disbursements

[Note to Tenderers: The Schedule of Fees and Disbursements will be inserted following the tender process

The Fees are to be:

- (a) the fixed component of the fees as a monthly retainer (which must include activities allowed for in the fixed component as set out for Item 1 in the following table); and
- (b) a fixed daily fee for attendance at Dispute Avoidance Board meetings (as set out for Item 2 in the following table),

which will be:

- (c) based on an hourly rate for all other services as set out for Item 3 in the following table, or
- (d) on such other basis for payment as may be agreed.

The Fees in (a) and (b) and the rates in (c) are to include all disbursements and expenses, excluding travel and accommodation outside of Sydney, which are to be paid at cost, as set out for Item 5 in the following table.]

[Note to Principal: Principal is to insert details in the table below when awarding the DAB Agreement]

No.	Work Description/Scope	Fee Arrangement DAB Member #1 [REDACTED] (excl GST)	Fee Arrangement DAB Member #2 [REDACTED] (excl GST)	Fee Arrangement DAB Member #3 [insert Name] (excl GST)
1.	Monthly retainer (including initial review of contract documentation, routine review of Project minutes and reports, preparation for DAB meetings and internal communications between DAB members)	[REDACTED]	[REDACTED]	
2.	Daily fee for routine DAB meetings (nominal frequency of 3 monthly intervals, including travel time). This fee is in addition to the Monthly retainer	[REDACTED]	[REDACTED]	
3.	Hourly fee (For activities not covered by the Monthly retainer and Daily fee)	[REDACTED]	[REDACTED]	
4.	Escalation provision (Annual adjustment from the anniversary of date of DAB Agreement)	[REDACTED]	[REDACTED]	[]%
5.	Expenses (Reimbursed at cost, supported by receipts. Mode or standard of travel may be agreed separately.)	[REDACTED]	[REDACTED]	[REDACTED]

Attachment 3

Criteria for Members of Dispute Avoidance Board

1. Criteria

The Members must meet the following criteria:

- (a) Experience
 - (i) at least one Member (and preferably all) must be experienced in the type of construction required for the Contractor's Activities, interpretation of project documents and avoidance of construction issues or disputes; and
 - (ii) at least two of the Members must be experienced in Dispute Avoidance Boards or Dispute Resolution Boards.
- (b) Neutrality
 - (i) The Member must be neutral, act impartially and be free of any conflict of interest.
 - (ii) For the purposes of this clause 1, the term "Member" also refers to the Member's current primary or full time employer, and "involved" means having a contractual relationship with either party to the D&C Deed, or any other entity, such as a subcontractor, design professional or consultant having a role in the project.
- (c) Prohibitions and disqualifying relationships for prospective Members

The Members must not have:

 - (i) an ownership interest in any entity involved in the project, or a financial interest in the project except for payment for services on the Dispute Avoidance Board;
 - (ii) previous employment by, or financial ties to, any party involved in the project within a period of 2 years prior to award of the D&C Deed, except for fee-based consulting services on other projects;
 - (iii) a close professional or personal relationship with any key member of any entity involved in the project which, in the reasonable opinion of either party, could suggest partiality; or
 - (iv) prior involvement in the project of a nature which could compromise that member's ability to participate impartially in the Dispute Avoidance Board's activities.
- (d) Prohibitions and disqualifying relationships for Members

The following matters may be construed as a conflict of interest in respect of a Member:

 - (i) an ownership interest in any entity involved in the project, or a financial interest in the project except for payment for services on the Dispute Avoidance Board; or
 - (ii) the Member entering into discussions concerning, or making an agreement with, an entity involved in the project regarding employment after the project is completed.

2. Disclosure Statement

A disclosure statement for any prospective Member must be submitted to the Principal and the Contractor (including for a person nominated by the remaining two Members under clause 20.1(d) of the D&C Deed). Any such disclosure statement must include:

- (a) a resume of relevant experience;
- (b) a declaration describing all past, present, anticipated and planned future relationships, including indirect relationships through the prospective Member's primary or full time employer, to the project and with all entities involved in the project, including subcontractors, designers and consultants;
- (c) disclosure of a close professional or personal relationship with any key members of any entity involved in the project; and
- (d) disclosure of any other matter relevant to the criteria identified in clause 1(c) above.

Workshops and Meetings

(clause 3.1)

1. Workshops and meetings

- (a) Within 20 Business Days after the date of this deed, Principal may convene a preliminary start-up workshop.
- (b) Within 20 Business Days before the date indicated in the Contract Program as the date for commencement by the Contractor of the Project Works at the Construction Site), the Principal may convene a construction start-up workshop.
- (c) The workshops are intended to promote positive building of relationships and a culture of co-operation between the participants, through discussion and sharing of ideas but neither participation in the workshops nor anything concerning or arising out of or in connection with the workshops changes any rights, obligations or responsibilities of the parties under this deed, and cannot be relied upon or used by one party against the other in any dispute, difference or proceeding or to found any Claim.
- (d) The workshops will be attended by:
 - (i) the Contractor's most senior manager or director with direct responsibility for civil works in New South Wales;
 - (ii) a senior manager or director of the Principal with direct responsibility for the Works;
 - (iii) the Project Director (or his or her delegate);
 - (iv) the Principal's Representative (or his or her delegate);
 - (v) the Design Manager (or his or her delegate); and
 - (vi) the Independent Verifier (or his or her delegate),and may be attended by any other person (including personnel of the Contractor, the Principal, a Subcontractor and representatives of Authorities, end users, Sydney Airport and the local community) invited by the Principal's Representative.
- (e) Appendix A to this Schedule 40 (Workshops and Meetings) contains a guide for participants in the workshops, which may be used as the basis for an agenda.
- (f) The Principal and the Contractor and any others who attend the workshops must meet their own costs of attendance at the workshops. Third party facilitation, venue and catering costs, if any, will be shared equally by the Principal and the Contractor.

2. Site meetings

- (a) From establishment on the Construction Site to the Date of Construction Completion, the Contractor must convene meetings on the Construction Site at weekly intervals, or such longer period as may be required by the Principal's Representative.
- (b) The meetings referred to in clause 2(a) of this Schedule 40 (Workshops and Meetings) will be attended by:
 - (i) the Project Director (or his or her delegate);
 - (ii) the Principal's Representative (or his or her delegate); and
 - (iii) any other person (including any Subcontractor) required by the Principal's Representative.
- (c) Unless otherwise agreed by the Principal's Representative in writing, the Contractor must provide the Principal's Representative with an agenda (including any matter required by the Principal's Representative) prepared in consultation with the Principal's Representative for each meeting under clause 2(a) of this Schedule 40 (Workshops and Meetings) no less than 2 Business Days prior to each meeting.
- (d) The role of chairperson for meetings under clause 2(a) of this Schedule 40 (Workshops and Meetings) will be held by the Principal's Representative (or his or her delegate).
- (e) The chairperson of a meeting under clause 2(a) of this Schedule 40 (Workshops and Meetings) must give all persons who attended the meeting (and any other person nominated by the Principal's Representative) minutes of the meeting within 2 Business Days after the meeting.

- (f) The purpose of the meetings under clause 2(a) of this Schedule 40 (Workshops and Meetings) includes the review of (at least) the matters set out in the reports referred to in clause 3.2.
- (g) The meetings under clause 2(a) of this Schedule 40 (Workshops and Meetings) are in addition to such other meetings and discussions as may be necessary for the proper administration of this deed.

3. Evaluation and monitoring

- (a) The Principal's Representative and the Project Director must meet:
 - (i) monthly, immediately prior to each Project Control Group meeting; or
 - (ii) at such other times as agreed by the Principal's Representative and the Project Director,
 to evaluate and monitor performance of this deed (**Evaluation Meetings**), by jointly completing the Performance Evaluation Record Forms.
- (b) The Principal's Representative and the Project Director must decide jointly on participation in the Evaluation Meetings by others concerned with the Project Works and Temporary Works, including Subcontractors, representatives of Authorities, end users and the local community and the Independent Verifier.
- (c) The obligations in this clause 3 of this Schedule 40 (Workshops and Meetings) and anything arising from their performance do not change any rights, obligations or responsibilities of the parties under this deed, and cannot be relied upon or used by one party against the other in any dispute, difference or proceeding or to found any Claim.

4. Project Control Group

- (a) The Project Control Group comprises:
 - (i) the Principal's Representative;
 - (ii) any person the Principal's Representative reasonably requires from time to time;
 - (iii) the Project Director;
 - (iv) the Construction Manager(s);
 - (v) the Design Manager;
 - (vi) the Quality Manager;
 - (vii) the Environmental Manager;
 - (viii) the Community and Stakeholder Engagement Manager;
 - (ix) the Contractor's work health and safety management representative;
 - (x) representatives of any of the Contractor's Subcontractors which the Principal's Representative reasonably requires; and
 - (xi) the Independent Verifier.
- (b) Project Control Group functions include:
 - (i) reviewing:
 - (A) conformity with the Quality Plan;
 - (B) the progress of the Contractor's Activities in relation to the Contract Program and the Subsidiary Contract Programs and the performance of the Contractor prior to Construction Completion;
 - (C) issues arising out of community relations and community concerns;
 - (D) issues arising out of the quality of the Contractor's Activities;
 - (E) matters arising from the Design Documentation, including any proposed design changes;
 - (F) value engineering opportunities and potential cost savings consistent with maintaining quality and enhancing life cycle costing;
 - (G) environmental issues;
 - (H) safety issues; and
 - (I) issues in connection with the Chain of Responsibility Provisions; and
 - (ii) where there are unresolved matters, referring such matters to the Management Review Group for consideration and assistance in resolution.
- (c) The Project Control Group must meet:

- (i) monthly prior to Construction Completion or such other regular period as the Principal and the Contractor agree in writing;
 - (ii) in accordance with this clause 4 of this Schedule 40 (Workshops and Meetings); and
 - (iii) at other times which the Principal's Representative or the Contractor requires.
- (d) The Contractor must provide the Principal's Representative with an agenda prepared in consultation with the Principal's Representative for each meeting of the Project Control Group no less than 2 Business Days prior to each meeting.
 - (e) The role of chairperson for meetings of the Project Control Group will alternate between the Project Director and the Principal's Representative with the Principal's Representative to chair the first such meeting.
 - (f) The chairperson of a meeting of the Project Control Group must give all members of the Project Control Group (and any other person nominated by the Principal's Representative) minutes of the meeting within 2 Business Days after the meeting.

5. Management Review Group

- (a) The Management Review Group comprises:
 - (i) the Principal's Representative;
 - (ii) the Project Director;
 - (iii) a senior representative of the Principal as notified by the Principal to the Contractor from time to time; and
 - (iv) a senior representative of the Contractor as notified by the Contractor to the Principal from time to time.
- (b) The functions of the Management Review Group include:
 - (i) reviewing the progress of the Project Works;
 - (ii) reviewing conformity with the Quality Plan;
 - (iii) considering any issues arising out of the execution of the Contractor's Activities;
 - (iv) considering the Monthly Key Result Area Reports and Separate Monthly Key Result Area Reports;
 - (v) considering any matters which the Project Control Group refers to the Management Review Group including considering any unresolved matters to assist resolution; and
 - (vi) considering, and using its influence and guidance to assist in resolving, any issues identified by or referred to the Management Review Group.
- (c) The Management Review Group must meet:
 - (i) on a three-monthly basis, immediately after a Project Control Group meeting, or such other regular period as the Principal and the Contractor agree in writing; and
 - (ii) at other times which any member of the Management Review Group requires, where that member provides at least 2 Business Days' prior written notice to the other members of the Management Review Group. Any notice under this clause 5(c)(ii) of this Schedule 40 (Workshops and Meetings) must state the reasons why the member of the Management Review Group wishes to convene the required meeting.
- (d) At the first meeting of the Management Review Group, the Management Review Group must agree and document the procedures relating to meetings of the Management Review Group, including:
 - (i) the requirements for and timing of distribution of:
 - (A) agendas; and
 - (B) meeting minutes; and
 - (ii) chairing of the Management Review Group meetings.
- (e) Meetings of the Management Review Group will be attended by the Dispute Avoidance Board.

6. Project Design Group

- (a) The Project Design Group must meet weekly, or such other regular period as the Principal and the Contractor agree in writing.
- (b) The purpose of the meetings under clause 6(a) of this Schedule 40 (Workshops and Meetings) is:
 - (i) to consider:

- (A) the status of the Design Documentation;
 - (B) the quality of the Design Documentation and the physical works the subject of the Design Documentation; and
 - (C) any other matters required by the Principal; and
- (ii) to undertake the function under clause 6(b)(i) of this Schedule 40 (Workshops and Meetings):
- (A) in a co-operative manner which fosters open communication; and
 - (B) with the objective of facilitating the development of the Design Documentation and resolving issues arising out of or in connection with or identified in the Design Documentation.
- (c) The Project Design Group comprises:
- (i) at least one representative of the Contractor, including a senior construction representative of the Contractor, as notified by the Contractor to the Principal from time to time;
 - (ii) the Contractor's Design Manager;
 - (iii) at least one representative of the Principal, as notified by the Principal to the Contractor from time to time; and
 - (iv) the Independent Verifier,
- and the Contractor must ensure attendance at the relevant Project Design Group meeting of:
- (v) representatives of the Contractor's design consultants;
 - (vi) the Proof Engineer where relevant;
 - (vii) the Independent Checking Engineer where relevant; and
 - (viii) such other persons, as any member of the Project Design Group reasonably requires from time to time, having regard to the elements of the Design Documentation being considered at the Project Design Group meeting.
- (d) The Contractor must provide the Project Design Group with an agenda prepared in consultation with the Principal's Representative for each meeting under clause 6(a) of this Schedule 40 (Workshops and Meetings) no less than 2 Business Days prior to each meeting.
- (e) The role of chairperson for Project Design Group meetings will be held by the Project Director.
- (f) The chairperson of a meeting under clause 6(a) of this Schedule 40 (Workshops and Meetings) must give the Principal's Representative and all other persons who attended the meeting (and any other person nominated by the Principal's Representative) minutes of the Project Design Group meeting within 2 Business Days after the Project Design Group meeting.

Appendix A

Start-up workshops: Program

Opening

The first speaker's tasks should be to focus the participants on goals and on issues such as teamwork, co-operation, achieving a successful project, and the major foreseeable challenges.

Discussions on co-operation

The parties aim to promote a culture of co-operation which participants in the workshop should understand and be committed to.

The workshop participants may break into small groups to discuss sections of the contract dealing with co-operation, and how they apply to the Contractor's Activities.

Communication framework and directory

The workshop participants should reach consensus on a framework to allow participants to co-operate on all aspects of the project. Communication arrangements should be recorded and names and contact information exchanged.

Concerns and problems

The participants should identify concerns or possible future problems and jointly prepare an action plan for their resolution.

Opportunities for innovation

The parties aim to encourage innovation. Opportunities may be lost if they are recognised too late. Participants may identify, discuss opportunities and plan for pursuing innovation and present them to the workshop. These ideas may then be developed if feasible and appropriate.

Evaluation and monitoring process

This process is explained so that participants understand their roles at the regular monitoring meetings. The evaluation and monitoring forms are discussed, and altered if necessary to suit particular needs of the project and the contract. The participants decide when the regular monitoring meetings will occur, and who will attend.

Conclusion

Before the workshop concludes, all participants should have an opportunity to comment and provide feedback for possible improvements to future workshops and monitoring meetings.

Approvals

(clause 5.1(b)(i))

1. Existing Approvals

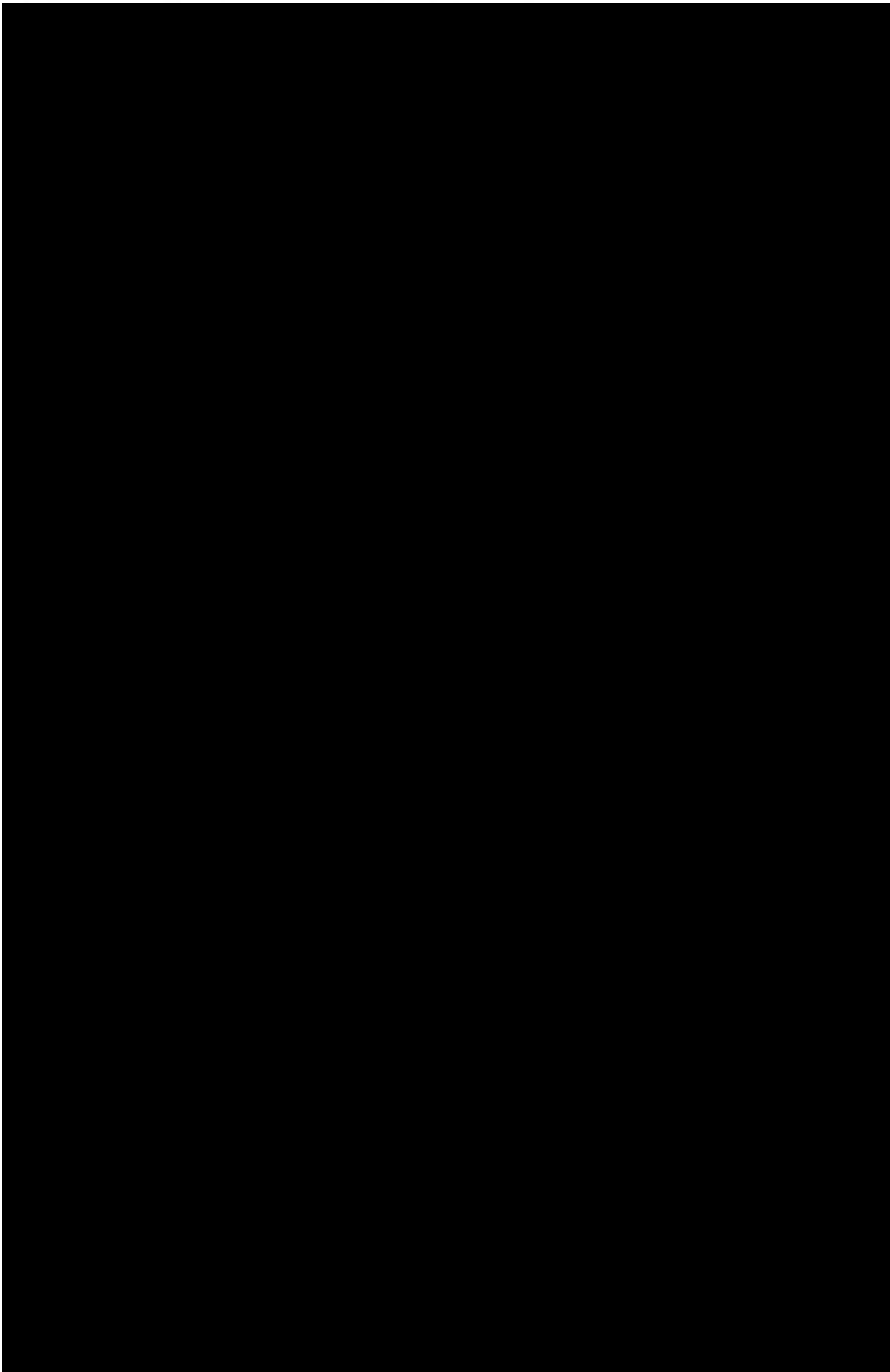
Planning Approval

2. Future Approvals to be obtained by the Principal

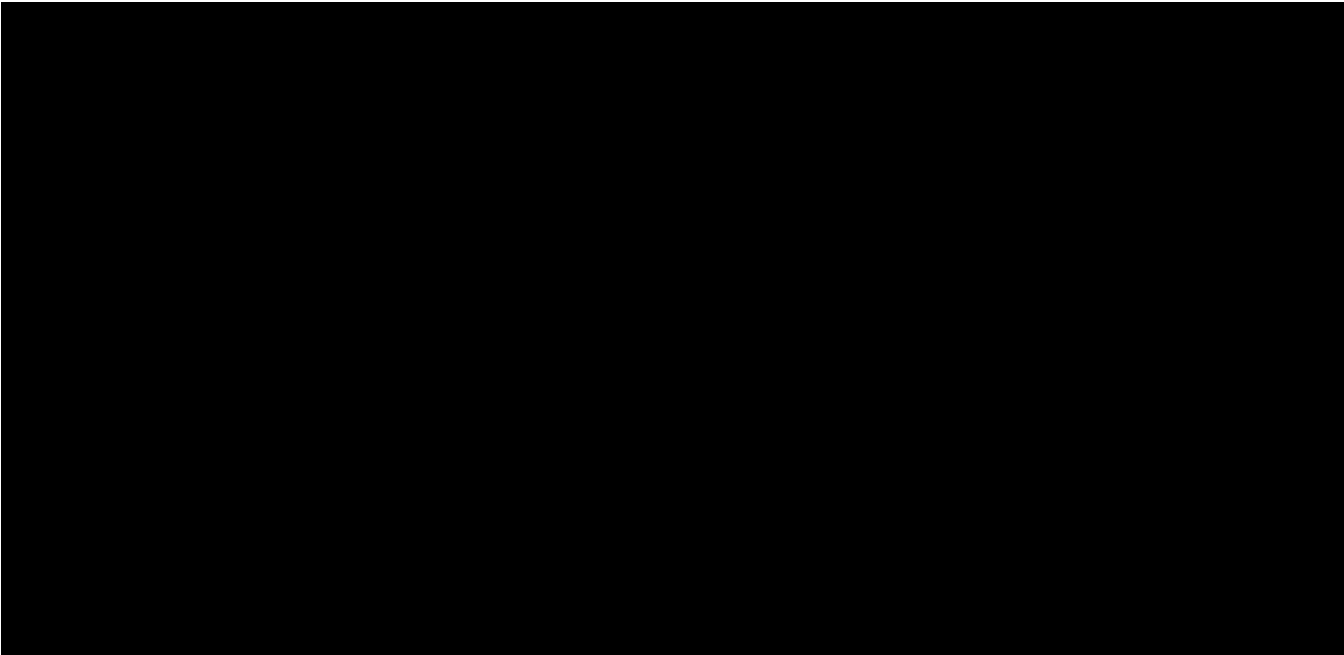
None.

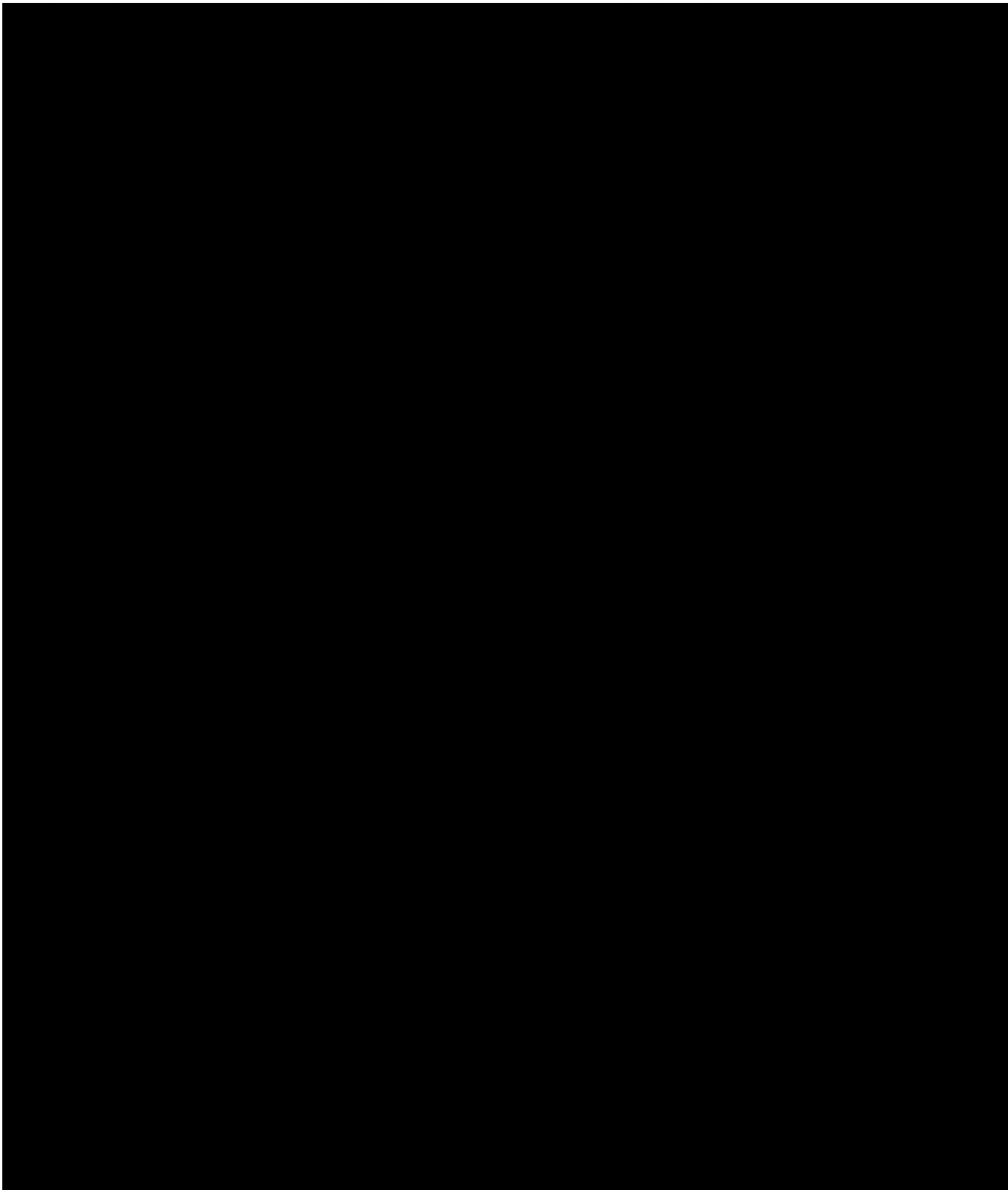


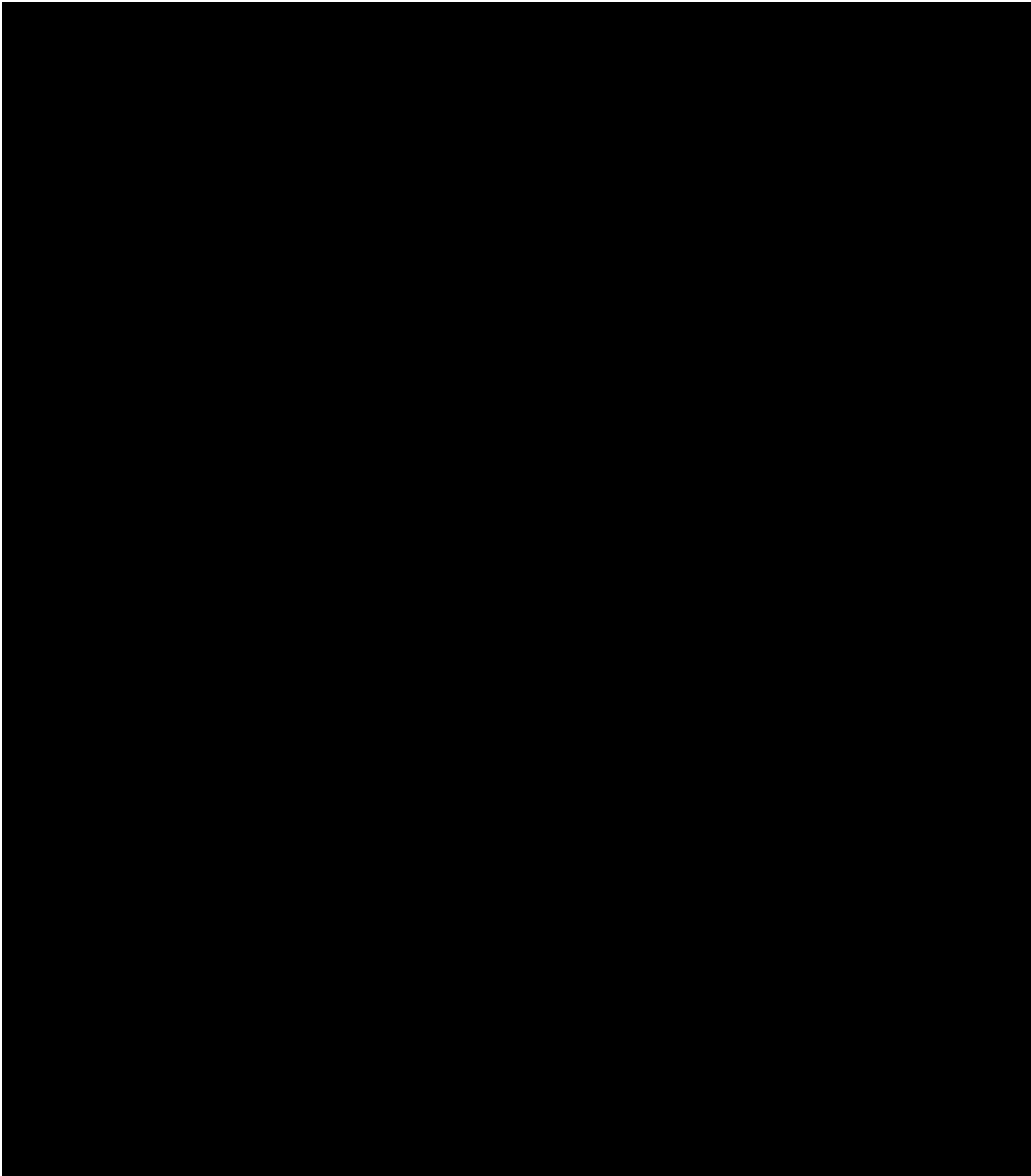
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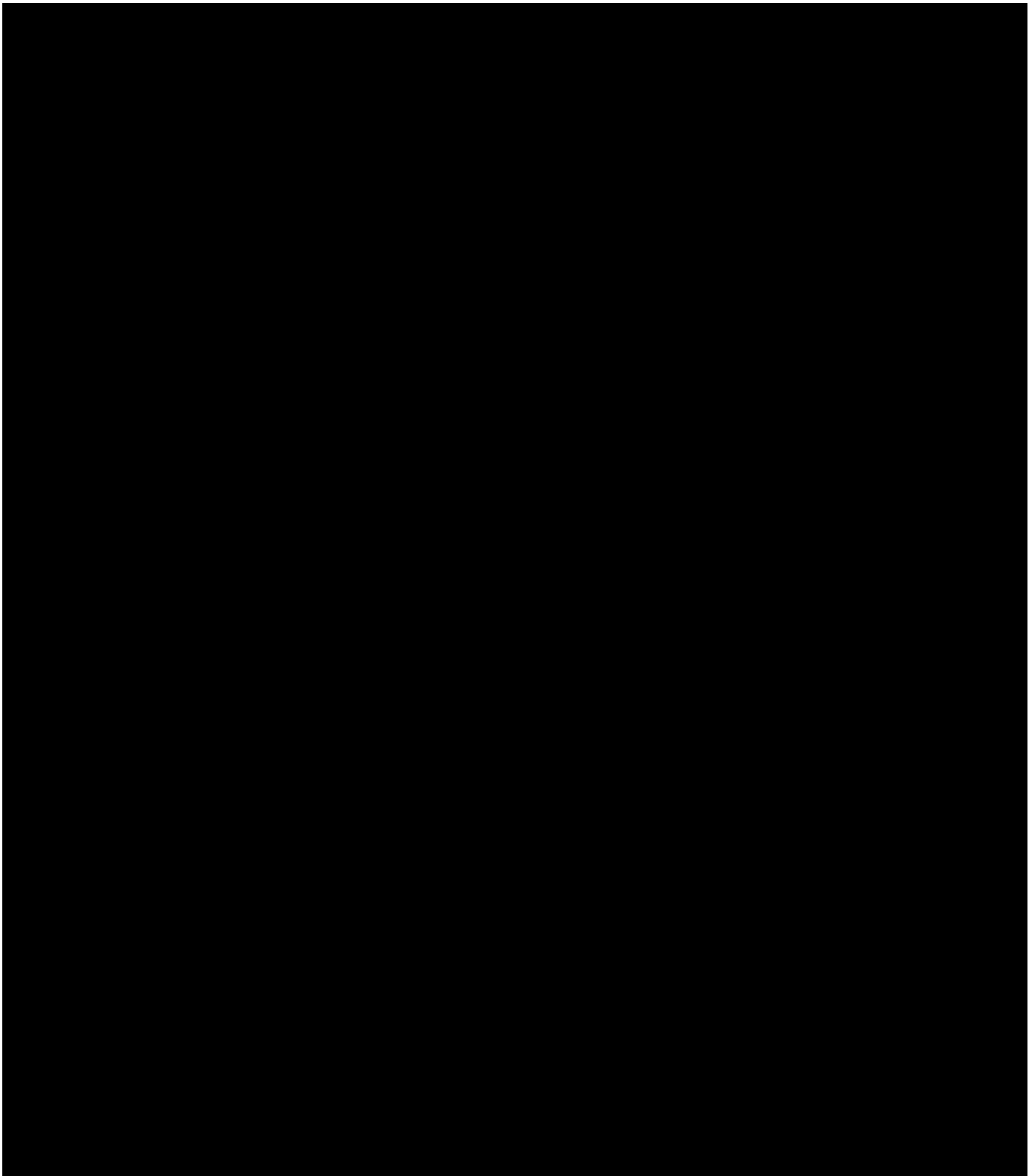


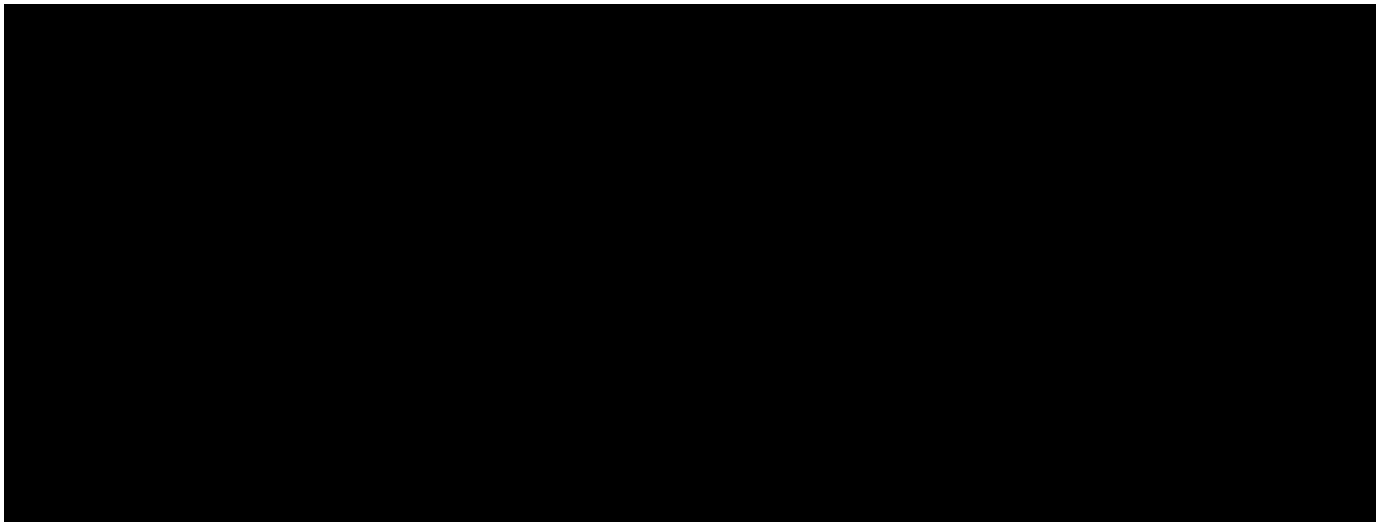
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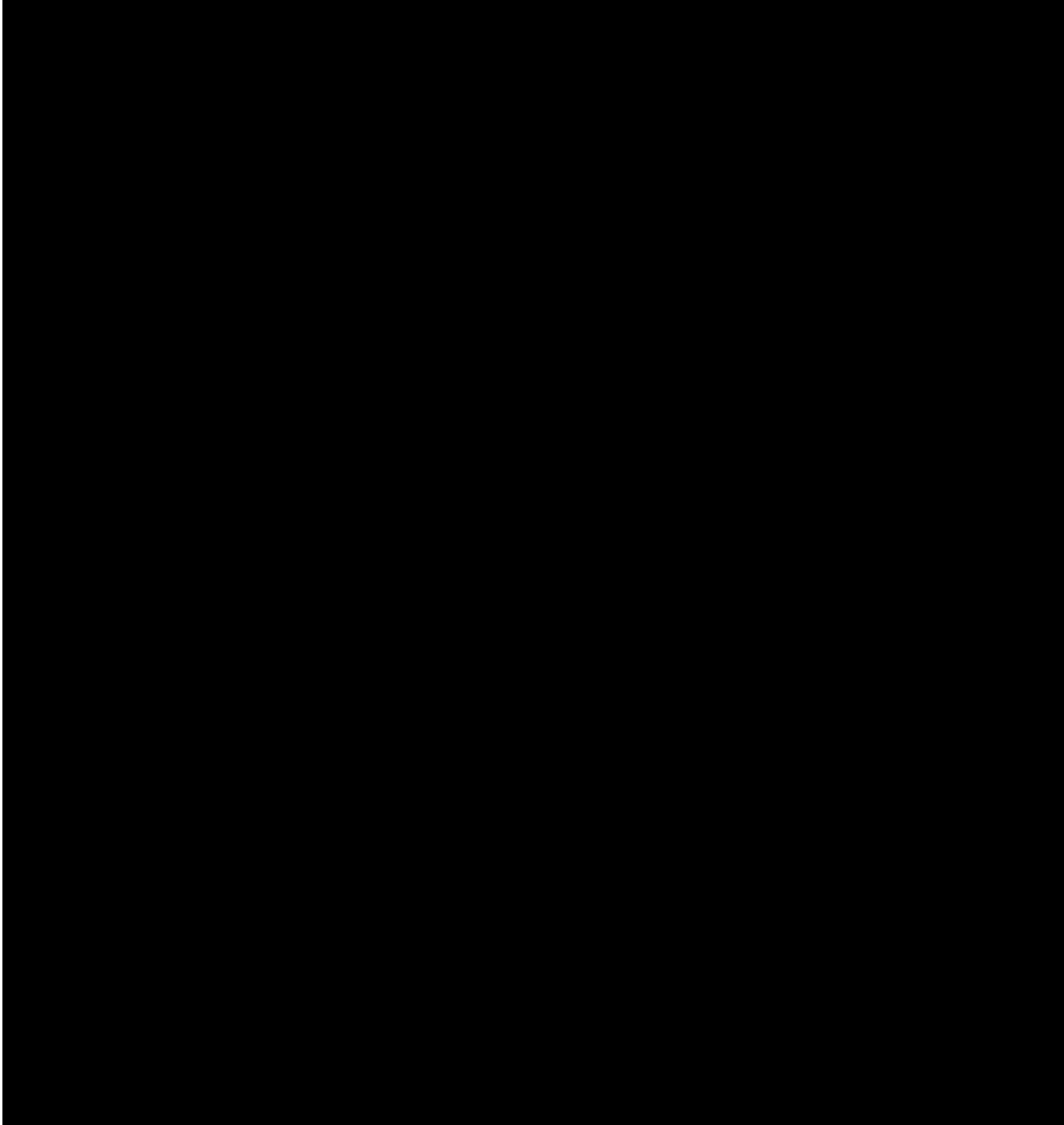


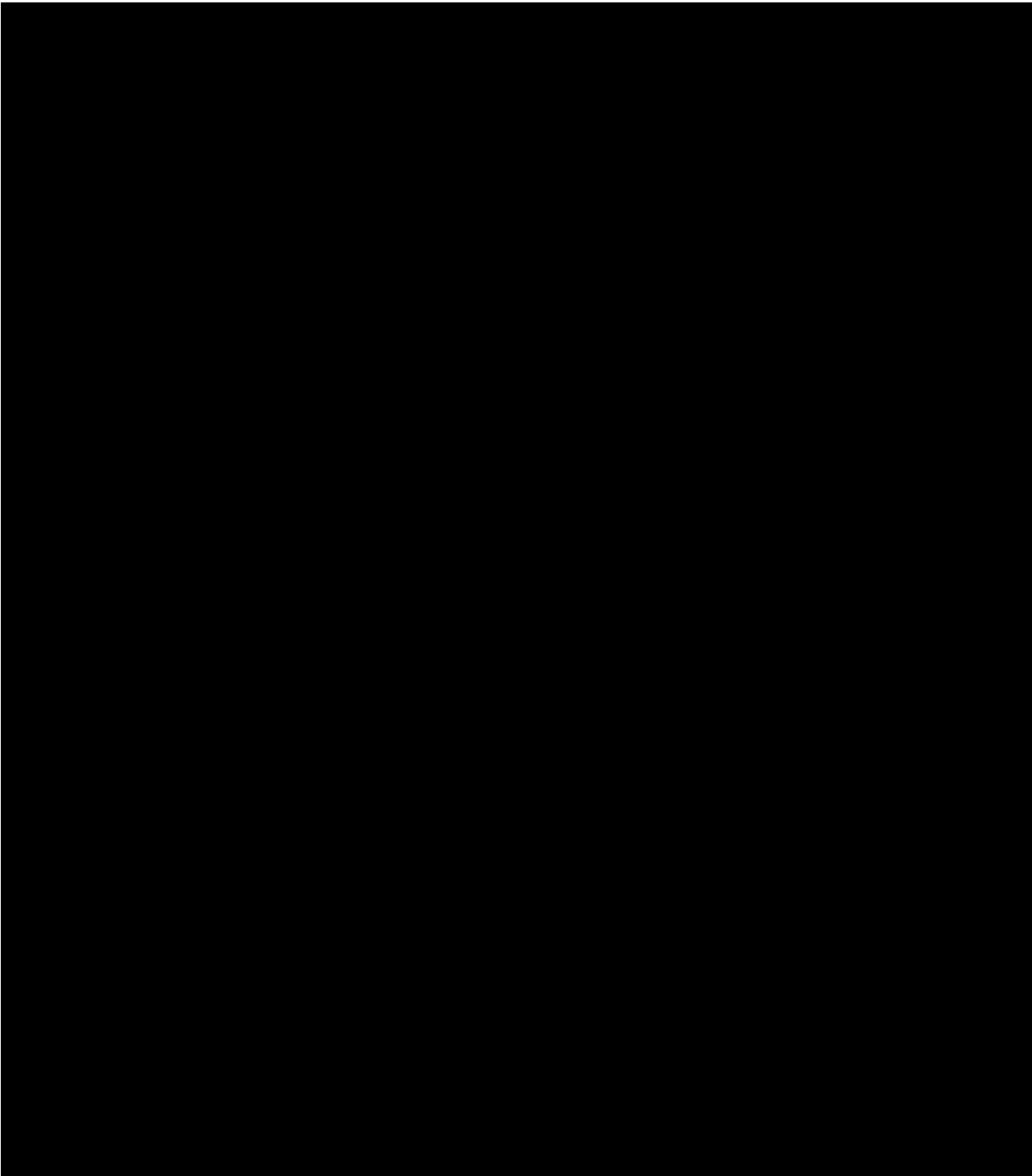


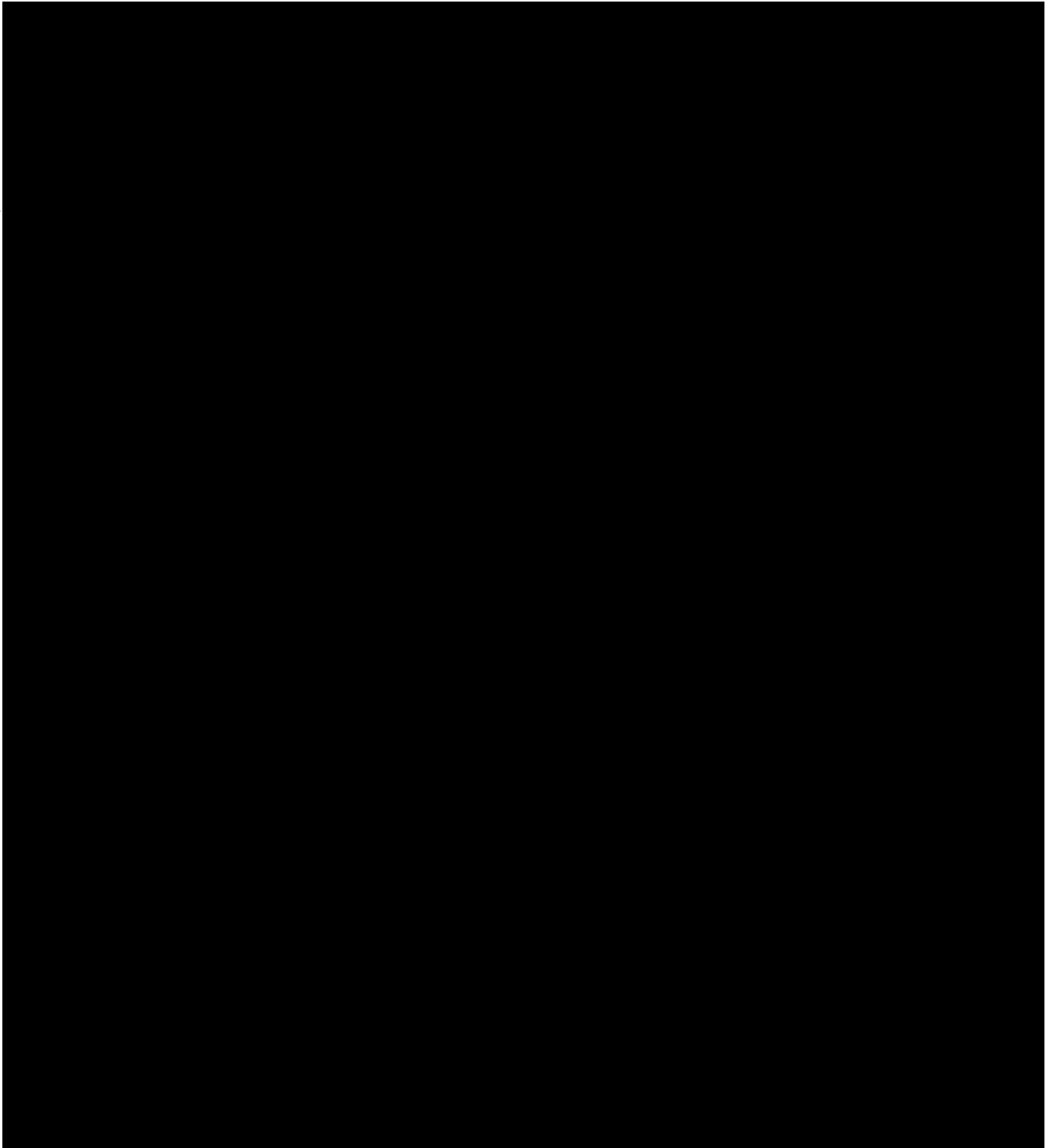


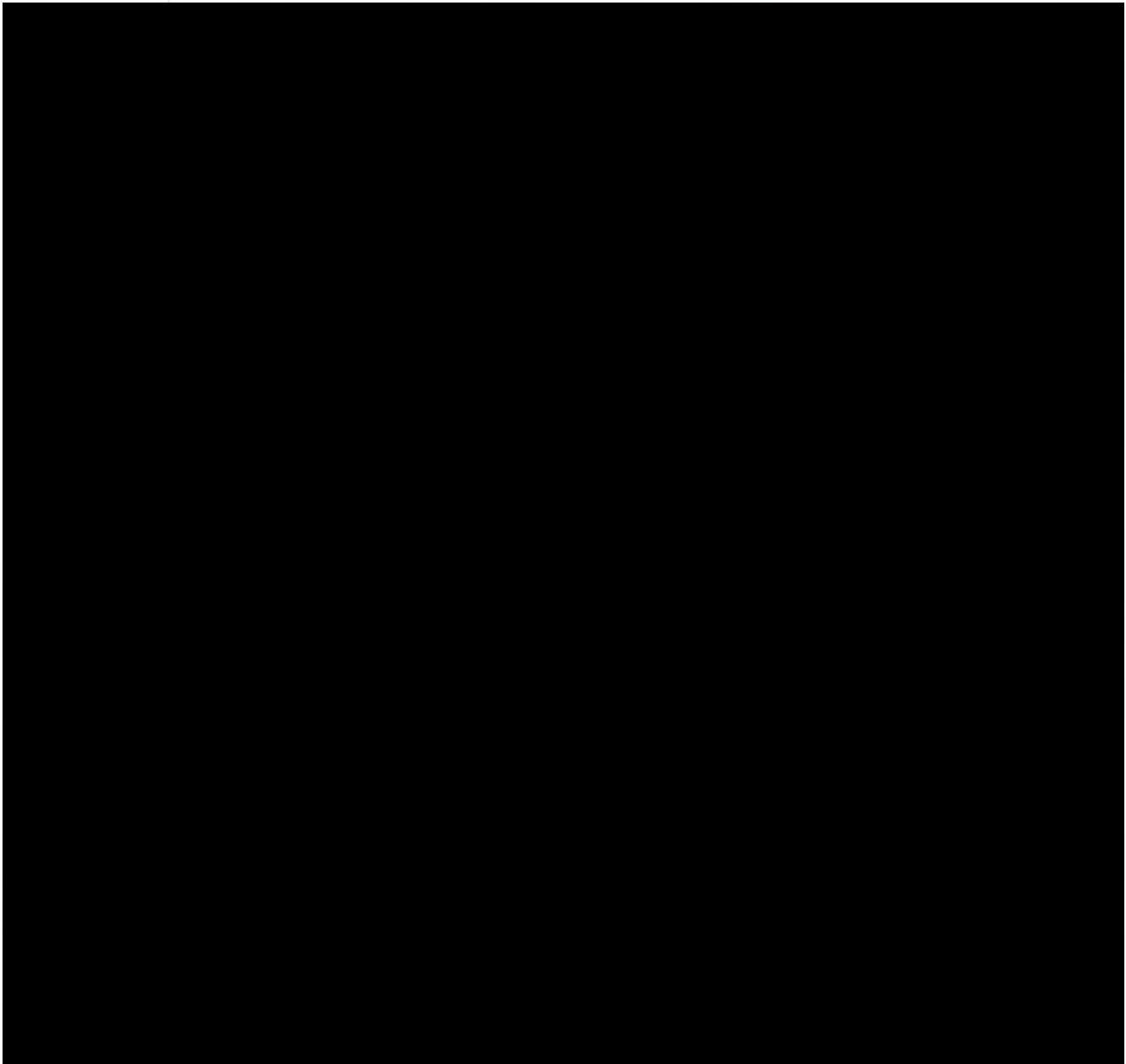












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Proof Engineer and Independent Undertaking Engineer Requirements

(clauses 2.5, 2.8 and 23.2 (definition of "Proof Engineer" and "Independent Checking Engineer"))

Part A - Minimum Requirements for Proof Engineer

The following are the minimum required qualifications, experience and expertise that must be possessed by the Proof Engineer:

- (a) Demonstrated experience in the design of complex bridges and structures, which shall mean for the purposes of this Schedule, bridges or structures with any of the following features:
 - (i) bridge spans exceeding 35m;
 - (ii) retaining walls with effective retained height greater than 6m;
 - (iii) cable stayed or suspension bridges;
 - (iv) steel orthotropic decks;
 - (v) bascule span bridges;
 - (vi) post tensioned concrete structures;
 - (vii) bridge decks with skew exceeding 35 degrees;
 - (viii) railway bridges over roads and road bridges over railways;
 - (ix) structures under railways;
 - (x) precast arch structures; and
 - (xi) bridges with a superstructure consisting of precast prestressed concrete girders and cast in-situ deck slab, where the girders are made continuous for live load or the superstructure is made fully integral with the substructure;
- (b) Proven ability in structural analysis and design of complex bridges and structures;
- (c) Quality Management System 3rd party certified to AS/NZS ISO 9001;
- (d) Range of suitable structural analysis, bridge design and CAD software;
- (e) Qualifications admitting to MIEAust and National Professional Engineers Register;
- (f) At least 5 years' experience in complex structural analysis and design of complex bridges and structures;
- (g) Knowledge of Australian Standard AS 5100, the Principal's Bridge Technical Directions, the Principal's Standard Drawings;
- (h) Knowledge of the Principal's specifications for bridgeworks;
- (i) Knowledge of scientific investigation and testing and specialist knowledge of materials and products used in bridge construction; and
- (j) At least 5 years' experience in undertaking the checking of structural design of complex bridges and structures as a proof engineer in the past 10 years.

Part B - Minimum Requirements for Independent Checking Engineer

The following are the minimum required qualifications, experience and expertise that must be possessed by each Independent Checking Engineer:

- (a) At least 5 years' experience in undertaking the design of Temporary Works (of the type described in this deed as 'Category 2 Temporary Works') as an engineer in the past 10 years.

Apprenticeship and Traineeship - Quarterly Report

(clause 5.5)

Apprenticeship and Traineeship Report

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Reporting Period (reports are due end of Mar, Jun, Sep, Dec)	<i>E.g. April-June 2019</i>
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Subcontractors used during reporting period (See Note 1)

Legal Name of Subcontractor	Project Site – Name and Address

Apprentices	Current quarterly hours	Current quarterly FTE*
<i>E.g. Certificate III in Civil Construction Plant Operations</i>		
Trainees	Current quarterly hours	Current quarterly FTE*
<i>E.g. Certificate IV in Civil Construction Supervision</i>		



*To calculate the current quarterly “**Full Time Equivalent**” (FTE):

1. Contractor reports hours worked by apprentices/trainees in the reporting period.
2. Divide these hours by the number of working days for the reporting period, and divide by 7. This gives the FTE number of apprentices/trainees delivered by the project in that Quarter.

$$\frac{\text{Reported Apprentice/Trainee Hours}}{\text{Working Days in reporting Quarter} \times 7 \text{ hours}} = \text{FTE number of apprentices}$$

Note 1:

Only list the Subcontractors if they employ apprentices and/or trainees and the number of the Sub-contractors' apprentices and/or trainees is included in your quarterly report.

Schedule 47 - Construction Licence Terms

(clauses 9.1(b)(vii) (definition of "Construction Licence Terms"))

Construction Licence Terms

Permitted Purpose	To develop and construct the Project Works and Temporary Works
Term Start Date	The same date as the Contractor is first granted access to the Licensed Area in accordance with the Site Access Schedule under clause 9.1(a)(i) of this deed
Licensee	The Contractor

1. Construction Licence Terms Costs and fees

Nothing in this Schedule limits any of the Principal's rights or the Contractor's obligations under this deed.

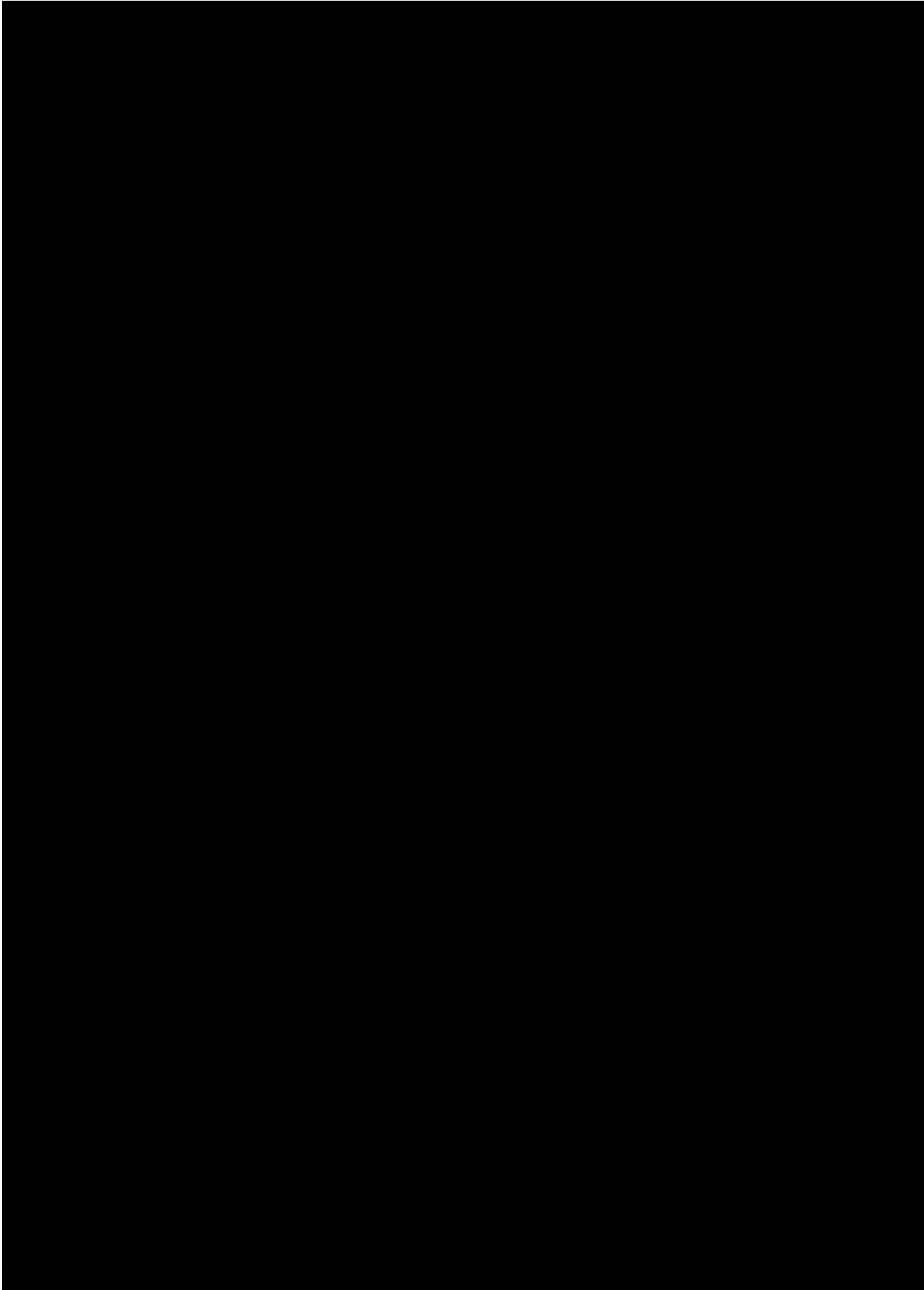
1.1 General conditions of access

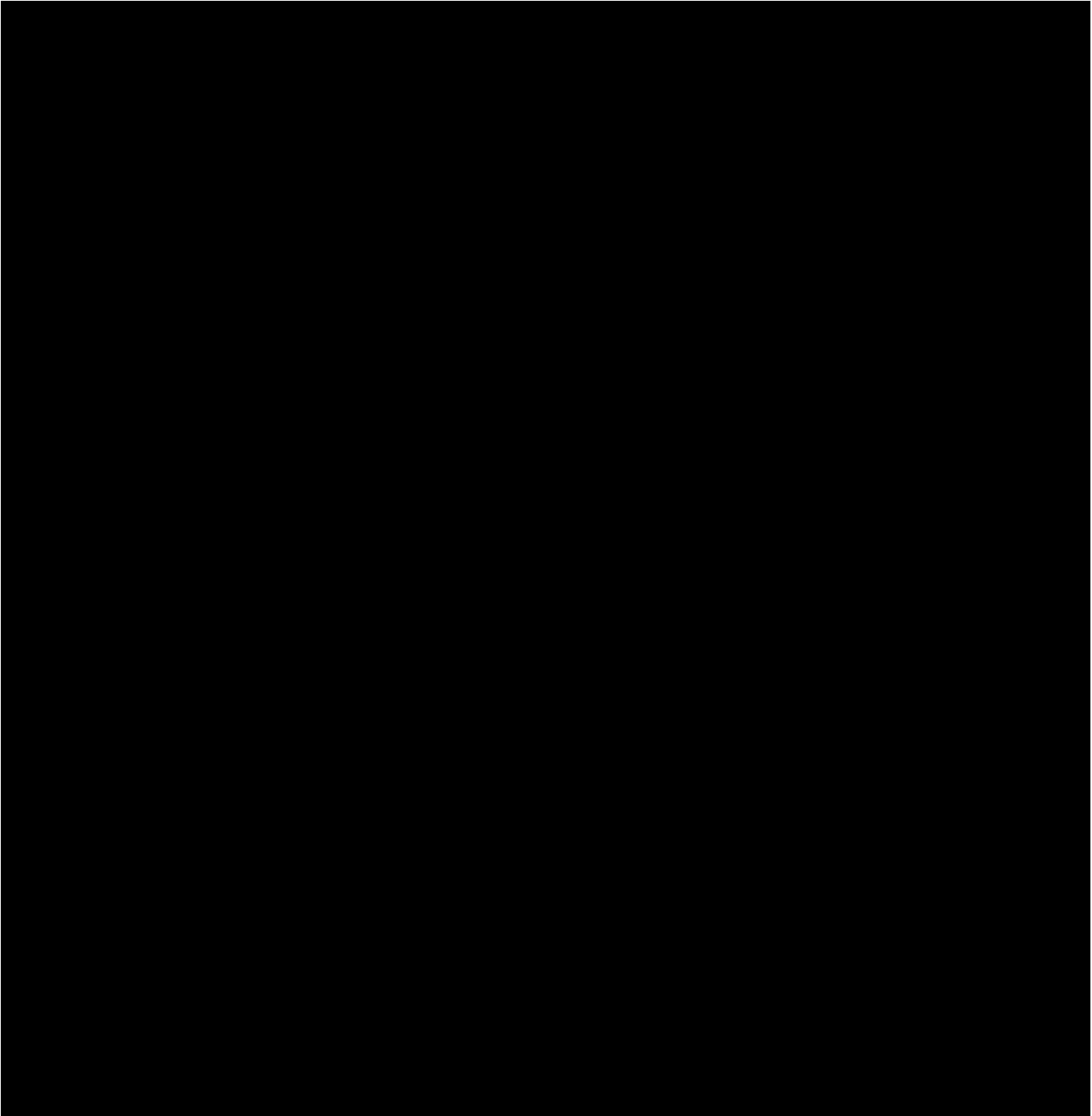
- (a) The Licensee, together with its authorised contractors, agents, consultants, invitees and employees (**Authorised Users**), is entitled to use the Licensed Area:
 - (i) solely for the Permitted Purpose; and
 - (ii) via the access points determined by the Principal and Sydney Airport (acting reasonably, having regard to the SWTC and the Site Access Schedule).
- (b) The Licensee must ensure that it and its Authorised Users comply with all requirements of this deed.
- (c) The Licensee and its Authorised Users must comply with all reasonable directions of Sydney Airport or its employees or authorised representatives in relation to the Licensed Area from time to time.
- (d) The Licensee must keep the Licensed Area in a safe condition and must dispose of rubbish, waste and debris from the Licensed Area and must ensure that such rubbish, waste and debris do not migrate off the Licensed Area.
- (e) The Licensee acknowledges and agrees that:
 - (i) Sydney Airport may appoint one of its employees to attend and inspect at times agreed with the Licensee, the Licensee's access to and use of the Licensed Area;
 - (ii) the Principal will notify the Licensee of the details of the relevant Sydney Airport employee (**Sydney Airport Project Manager**);
 - (iii) if Sydney Airport's Project Manager or the Principal's Representative considers, acting reasonably, that the actions of the Licensee or its employees, contractors, consultants, agents or invitees may:
 - (A) cause damage to an area which is adjacent to the Licensed Area (including but not limited to environmental damage);
 - (B) cause damage to Sydney Airport's property on the Licensed Area or in the vicinity of the Licensed Area;
 - (C) detrimentally affect the safety or security of the Licensed Area;
 - (D) cause harm or inconvenience to Sydney Airport's employees or authorised users; or
 - (E) cause any obstruction of, interference with or inconvenience to, Sydney Airport's operations, including the operations of the Airport,then the Principal may direct the Licensee in writing to modify its activities on the Licensed Area so as to reduce, change or eliminate the relevant impact or cause.
- (f) The Licensee must not cause or permit any air, water or soil pollution (including any "Pollutant" as defined in the *Airports (Environment Protection) Regulation 1997 (Cth)*); any substance, including asbestos, that causes or is likely to cause harm to the environment or the health or safety of any person; or anything that gives or may give rise to environmental hazard to be brought onto each Licensed Area or to migrate from each Licensed Area onto any land or environment adjoining the relevant Licensed Area.
- (g) The grant of access to the Licensee to the Licensed Area does not create:

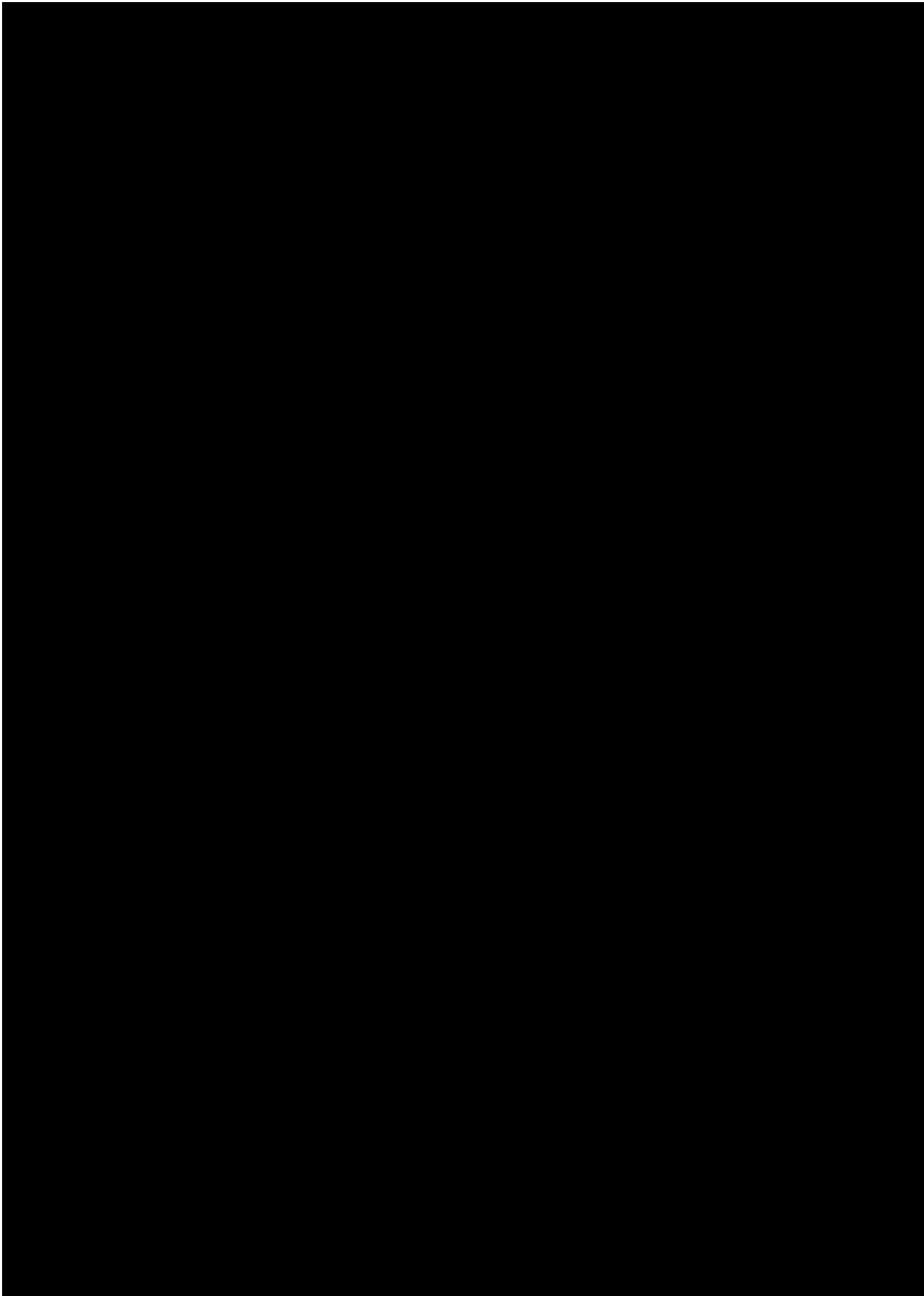
- (i) any estate or interest in land or any relationship of landlord and tenant between the Principal, Sydney Airport and the Licensee; or
 - (ii) a joint venture, a relationship of agency or any other relationship, except as set out in this deed.
- (h) The Licensee must inform each of its Authorised Users of the obligations contained in this Schedule 47 (Construction Licence Terms) prior to entry of the relevant Authorised User onto the Licensed Area.
- (i) If the Licensee is required to do anything or comply with any obligation under this document, it must also procure that its Authorised Users do that thing or comply with that obligation.

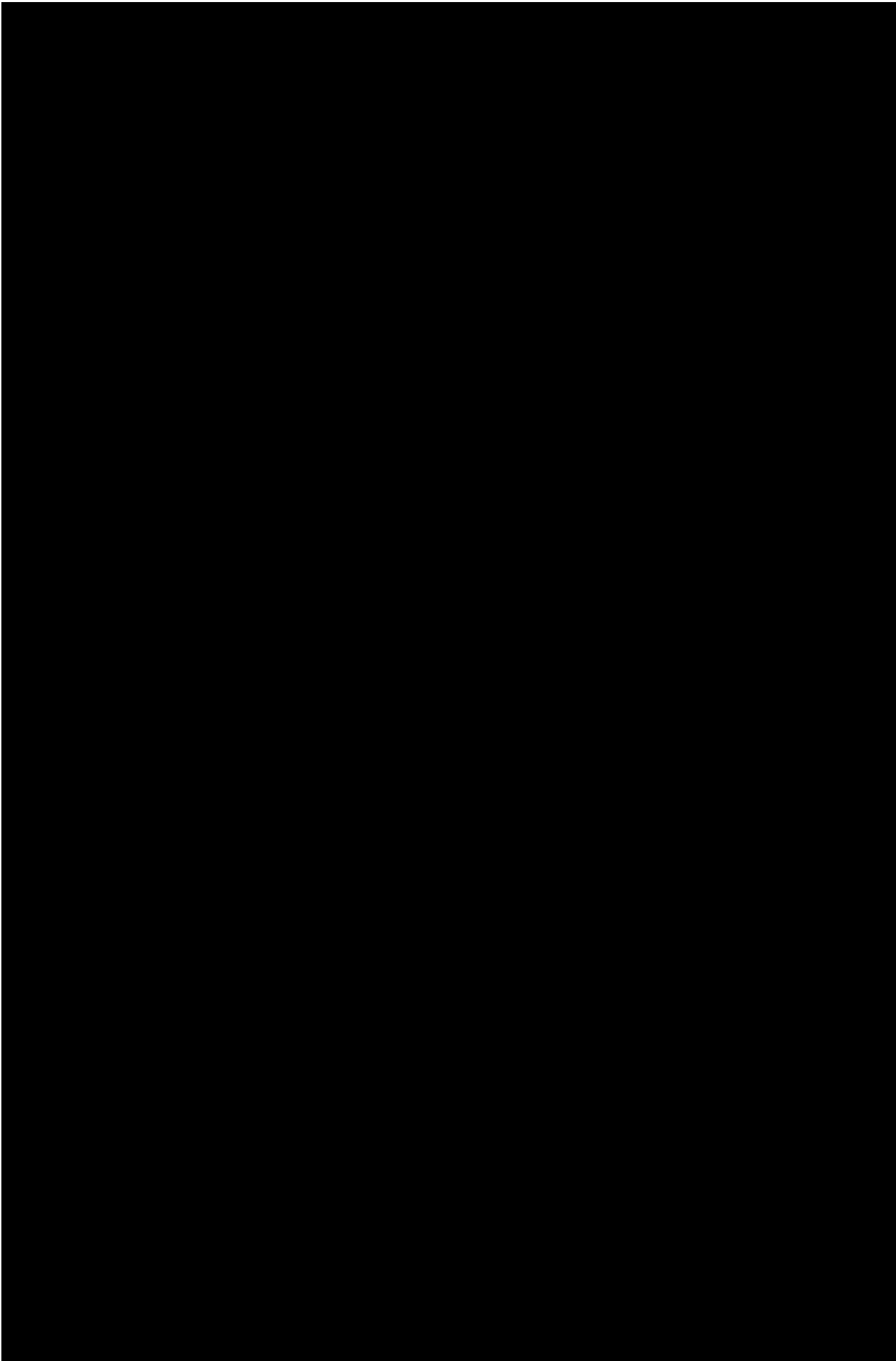
1.2 Mandatory Terms

- (a) The Licensee must include the mandatory terms under the Airports Act set out in paragraph 1.2(b) in any sublicense or assignment of this licence.
- (b) The Licensee acknowledges and agrees that the following mandatory terms under the Airports Act apply:
- (i) the Airport Building Controller and the Airport Environment Officer may have access to the Licensed Area in accordance with the Airports Act; and
 - (ii) this licence is automatically terminated upon the creation of an interest in the licence in favour of a person who is, either alone or with one or more associates, in a position to exercise control over either or both of:
 - (A) the operation of the whole, or a substantial part of, the Airport; or
 - (B) the direction to be taken in the development of the whole, or a substantial part of, the Airport.







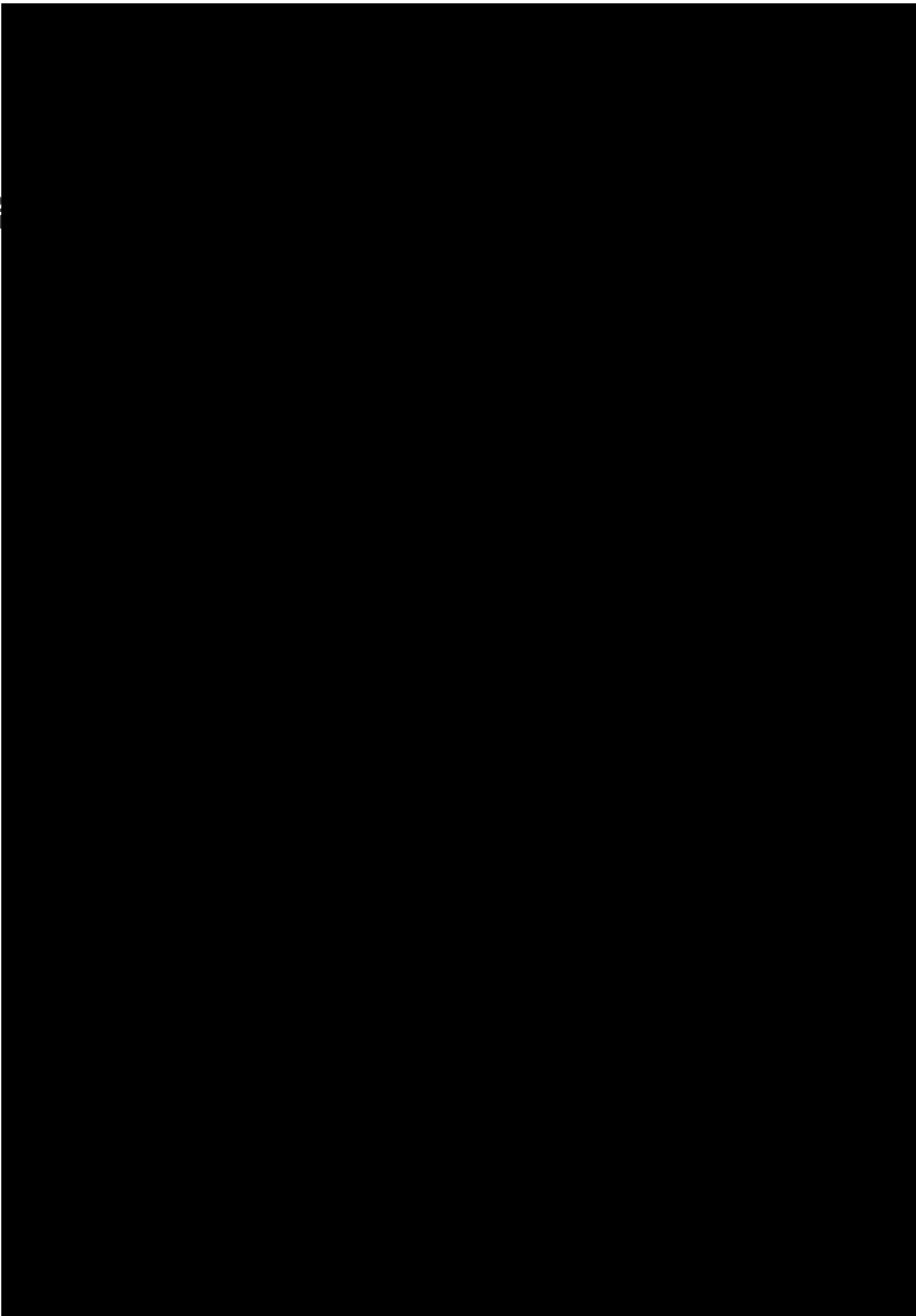


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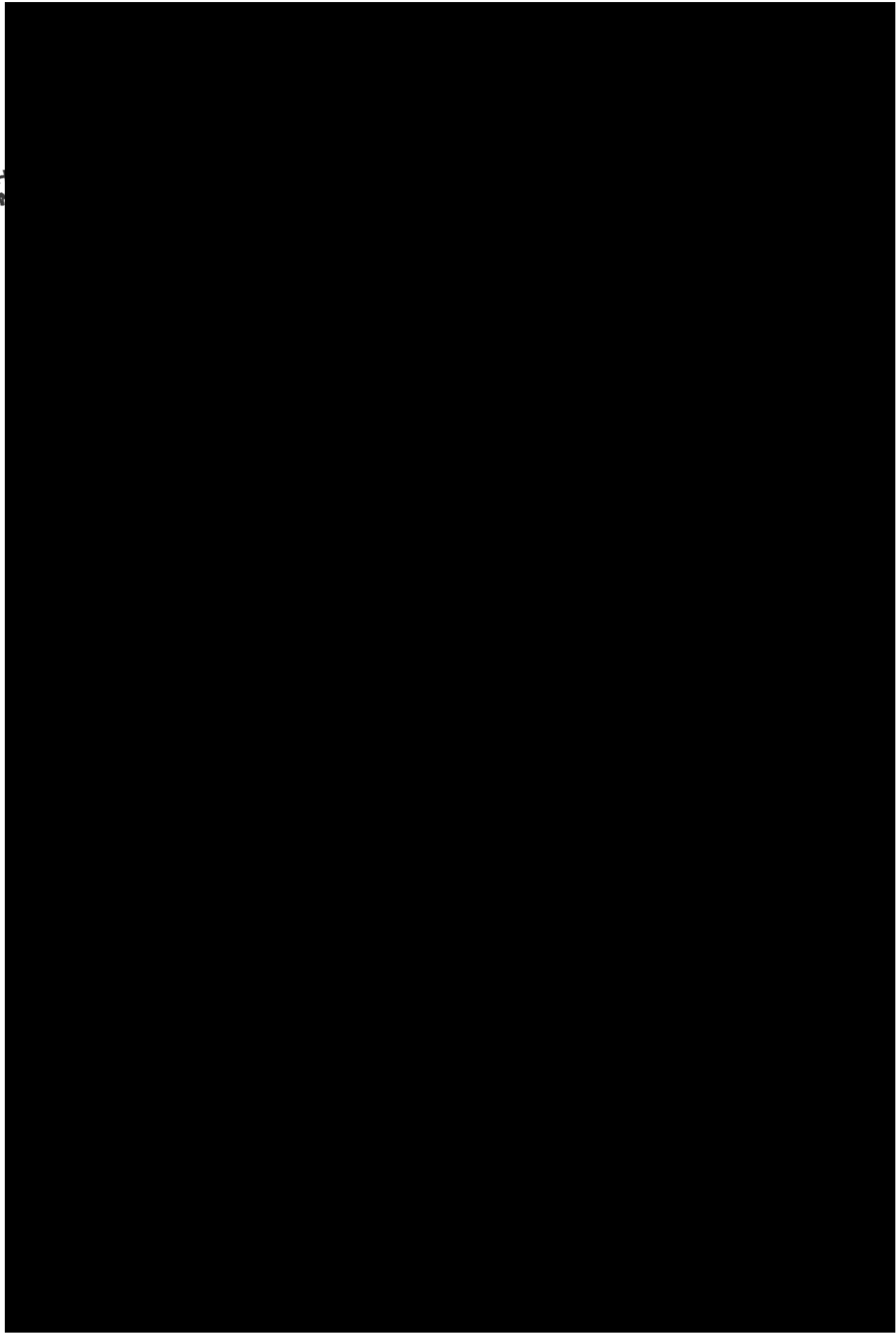
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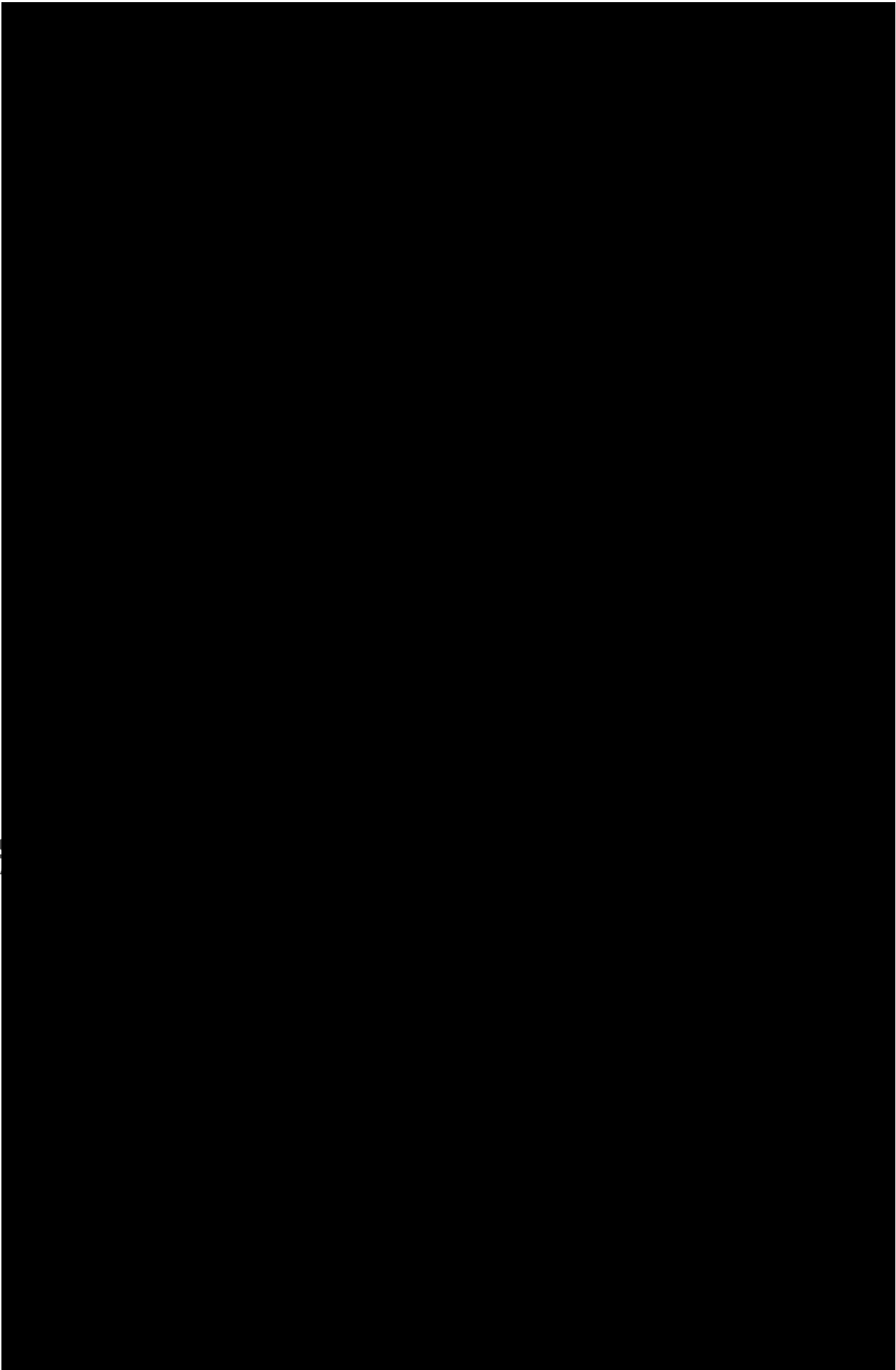
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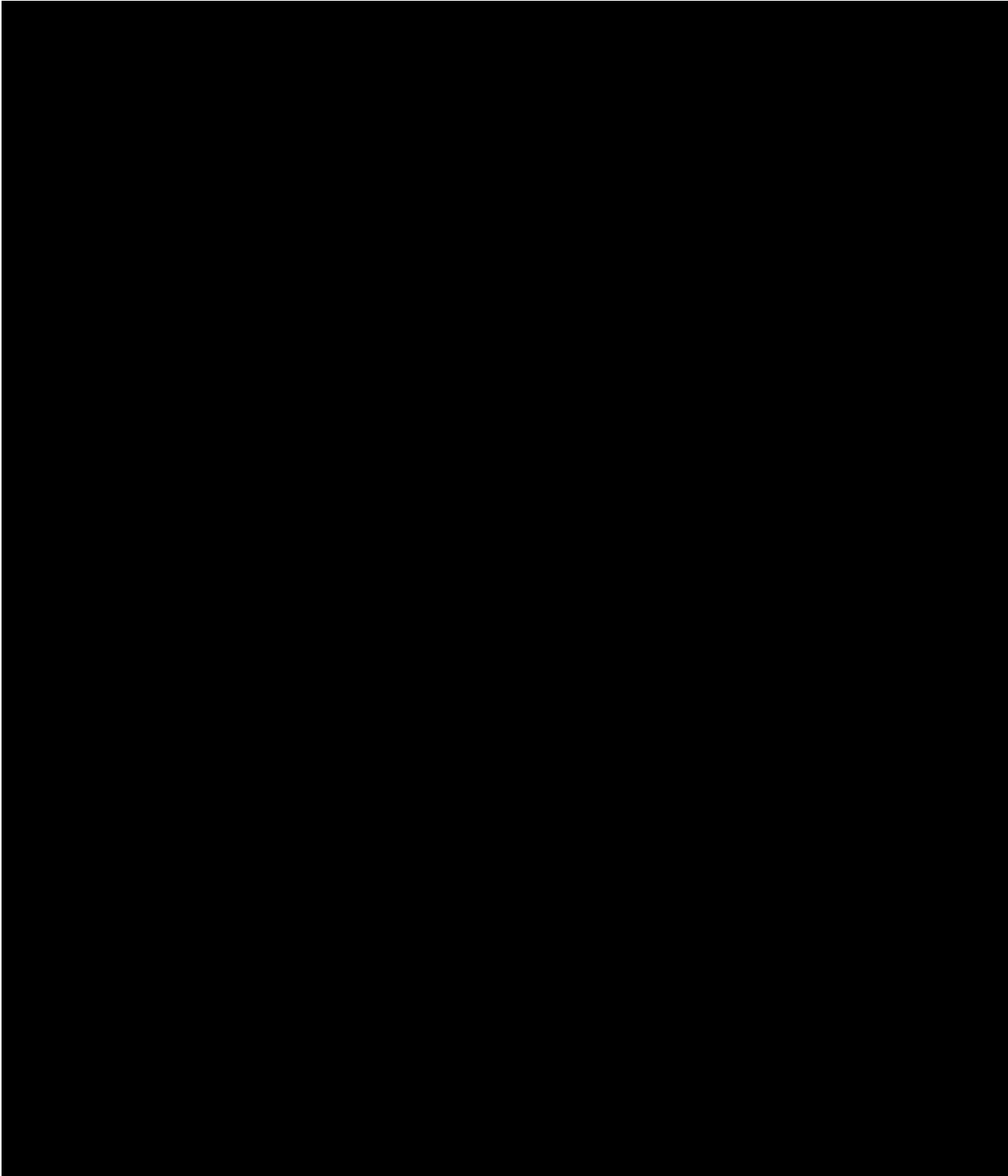


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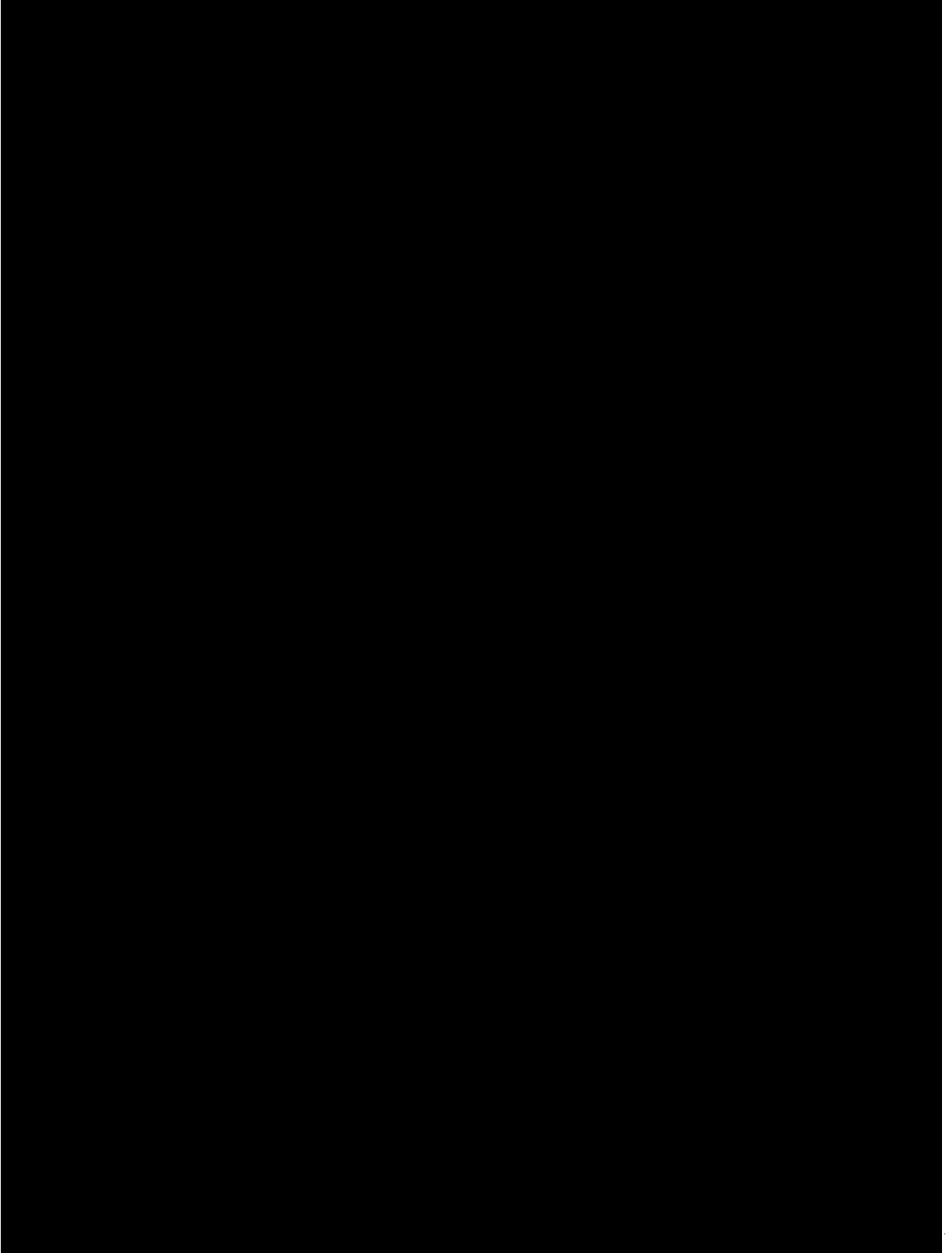
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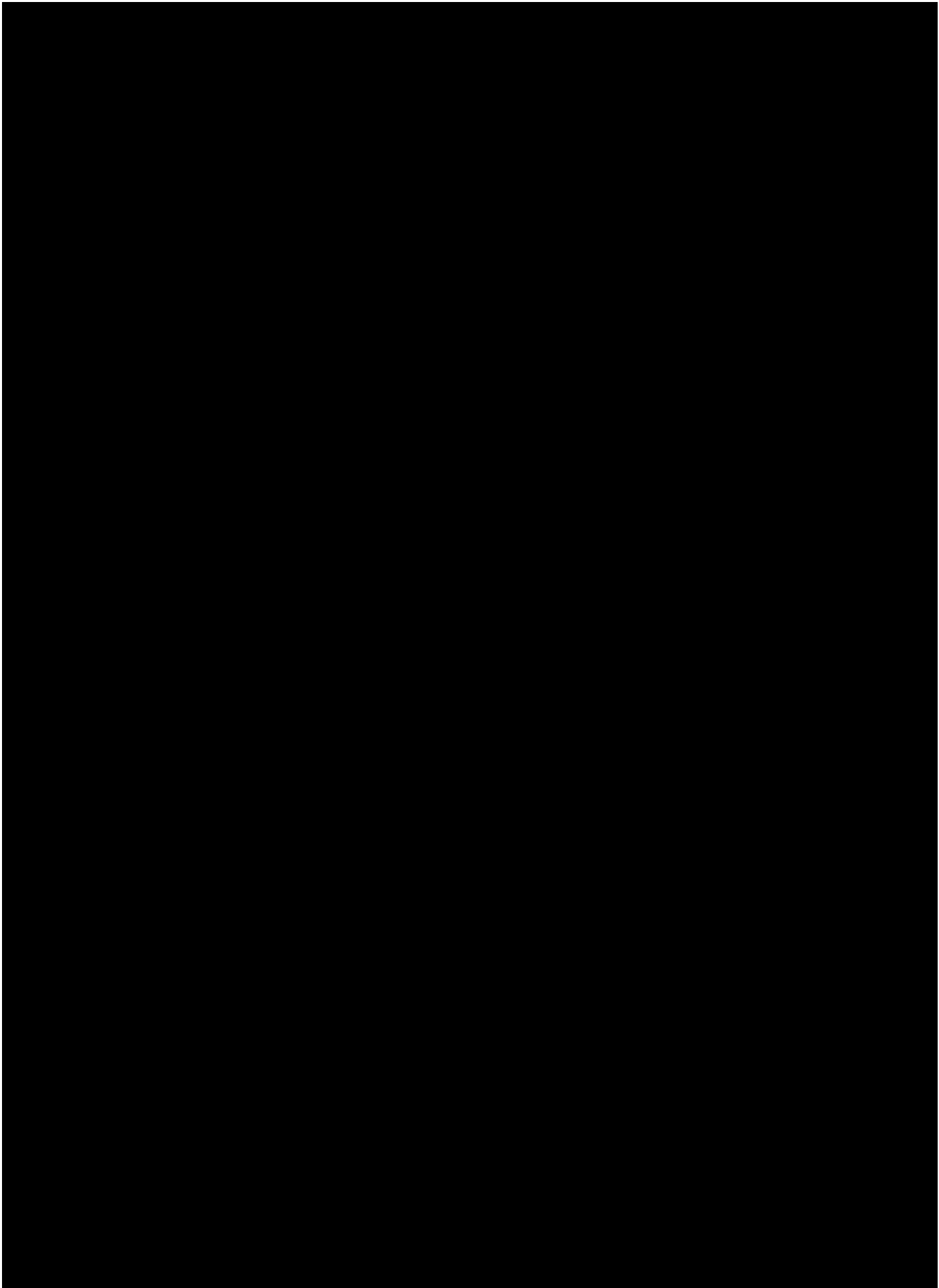


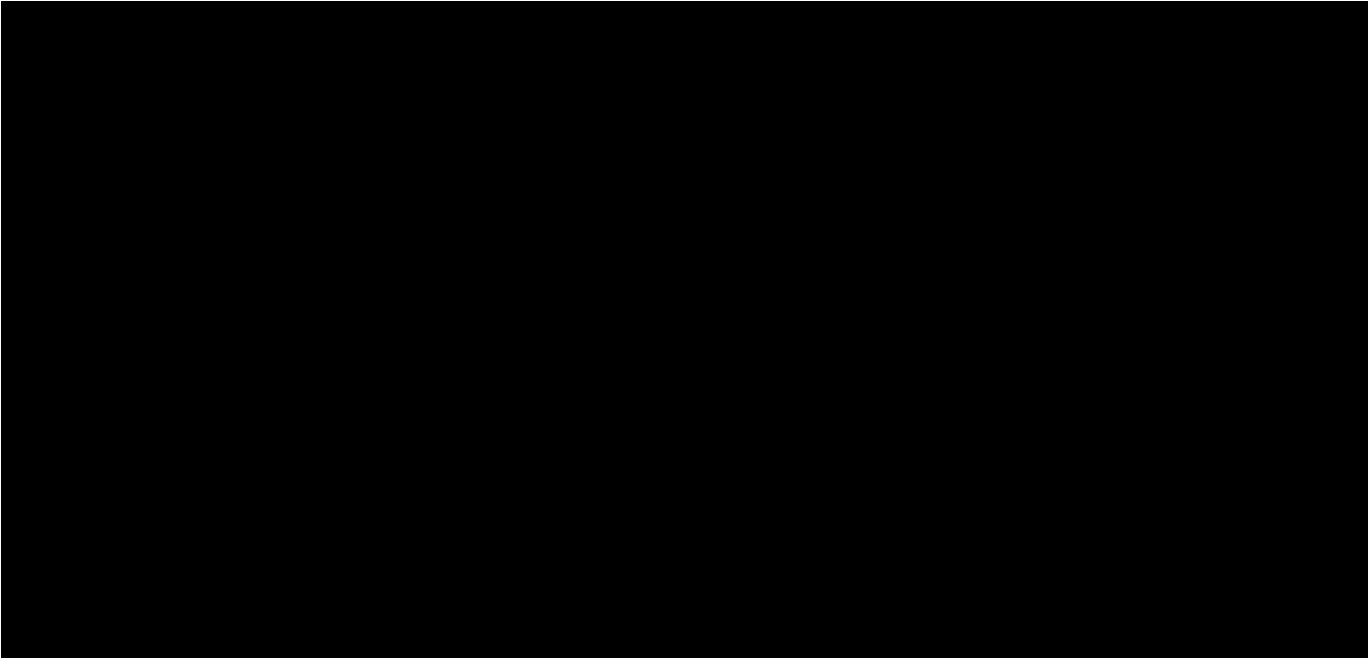


Schedule 49 - Builder's Side Deed

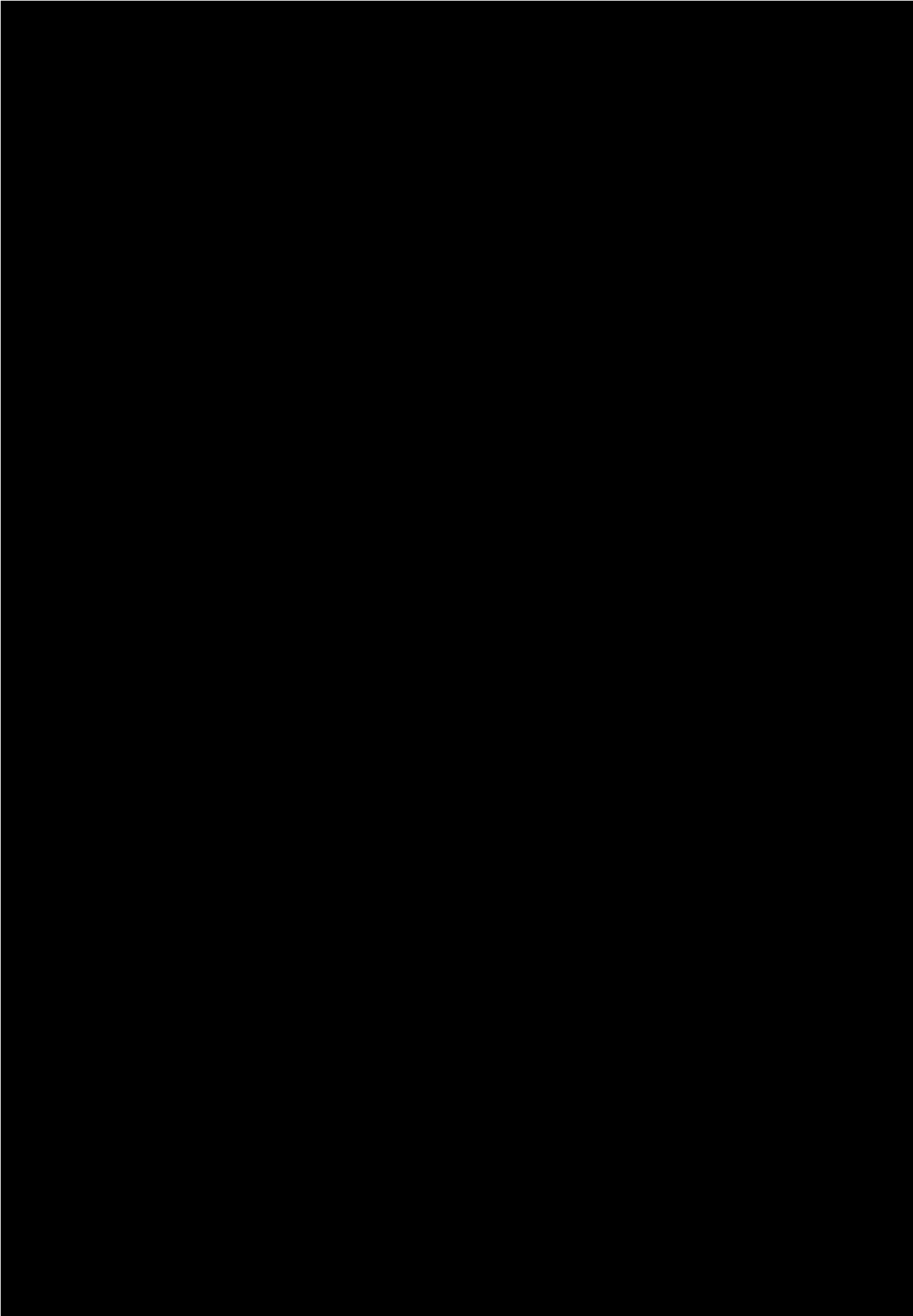
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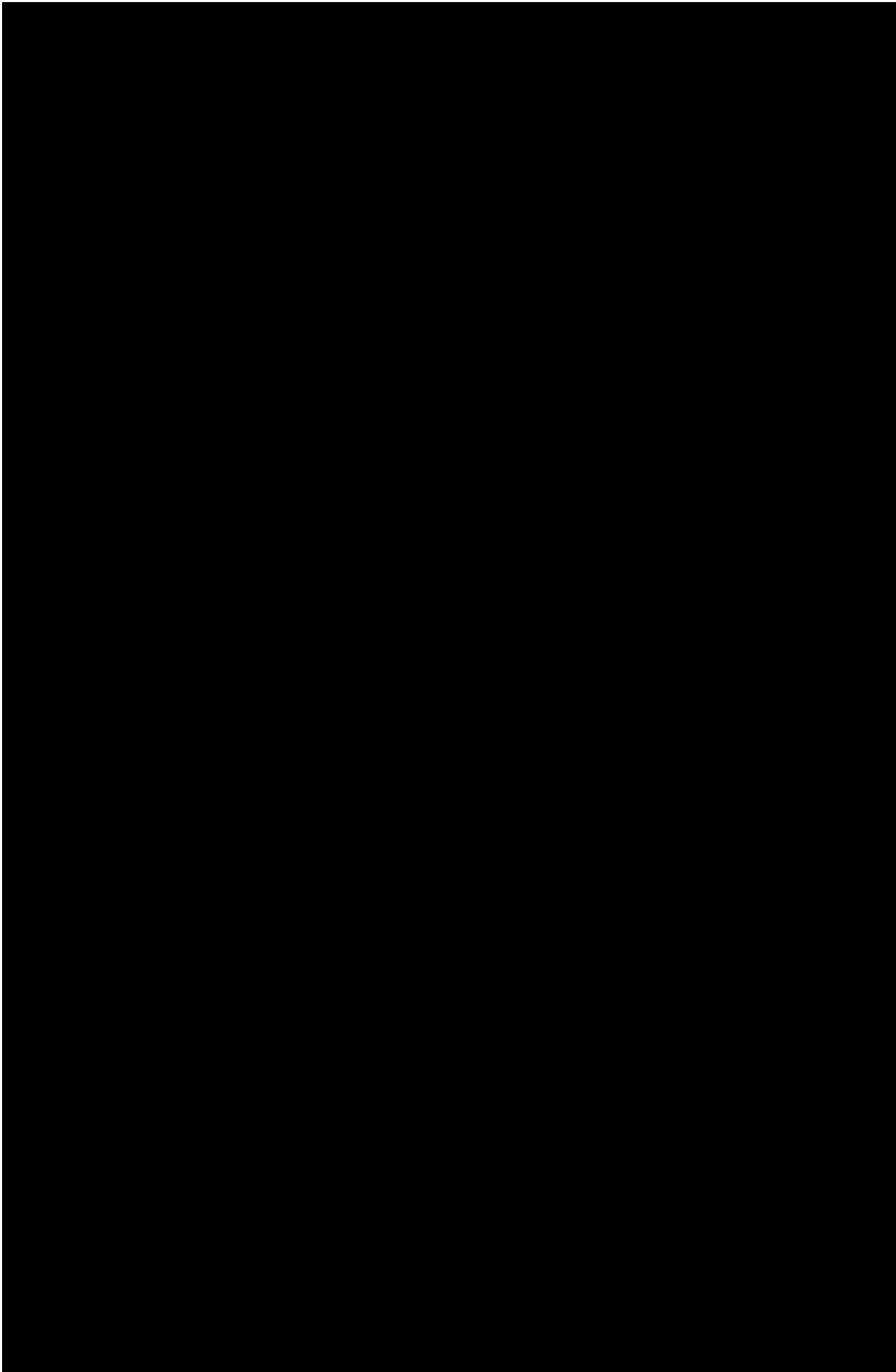


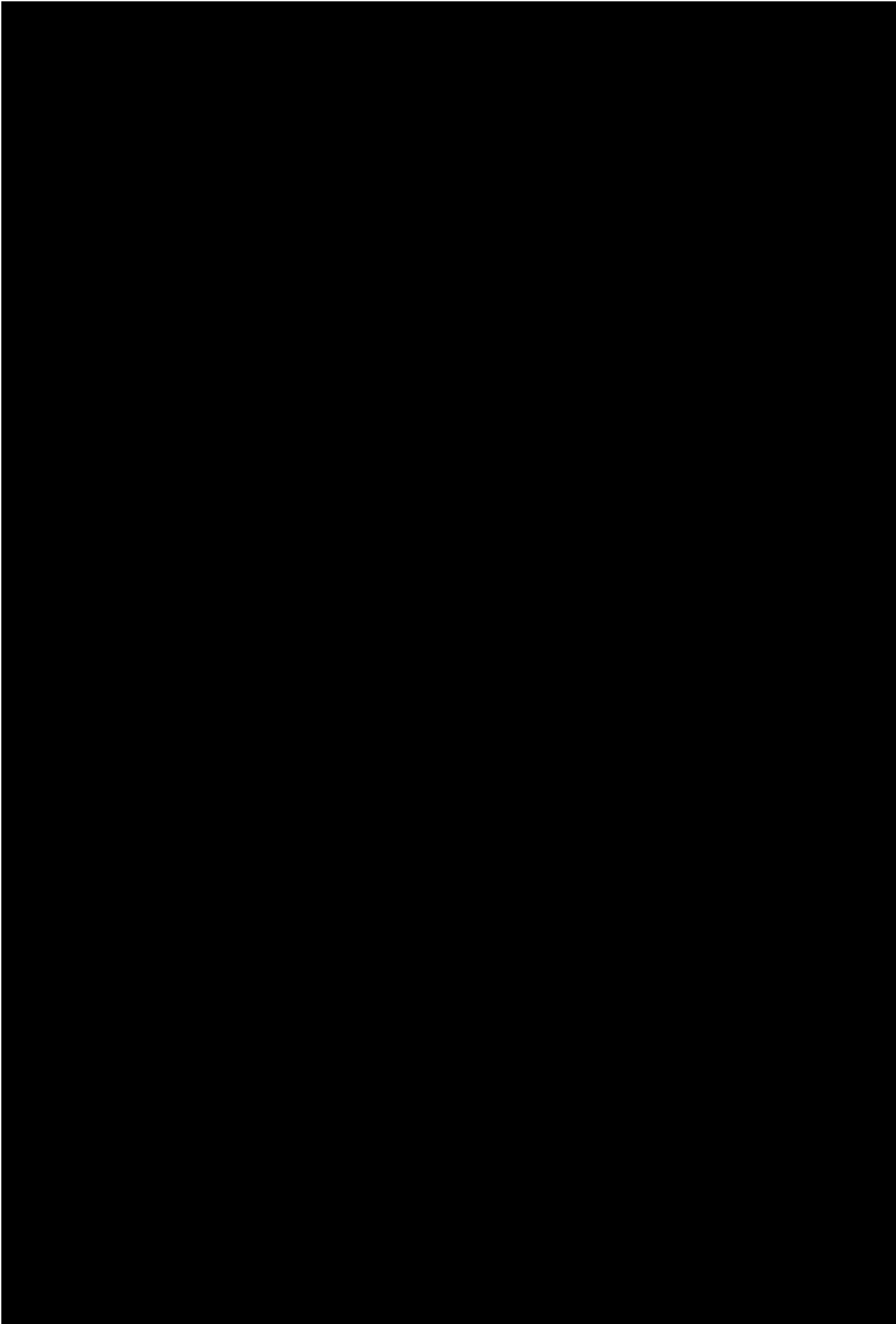


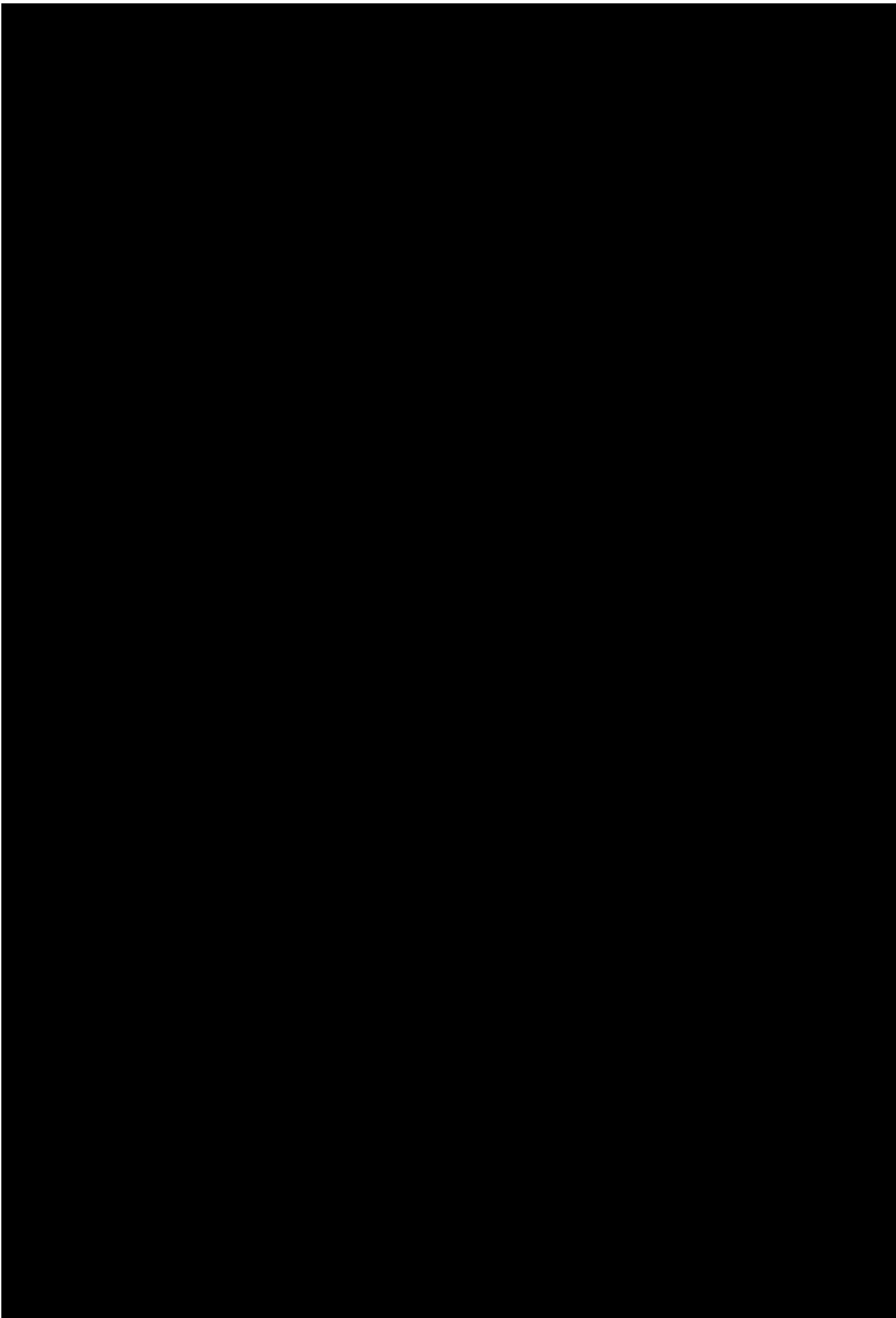


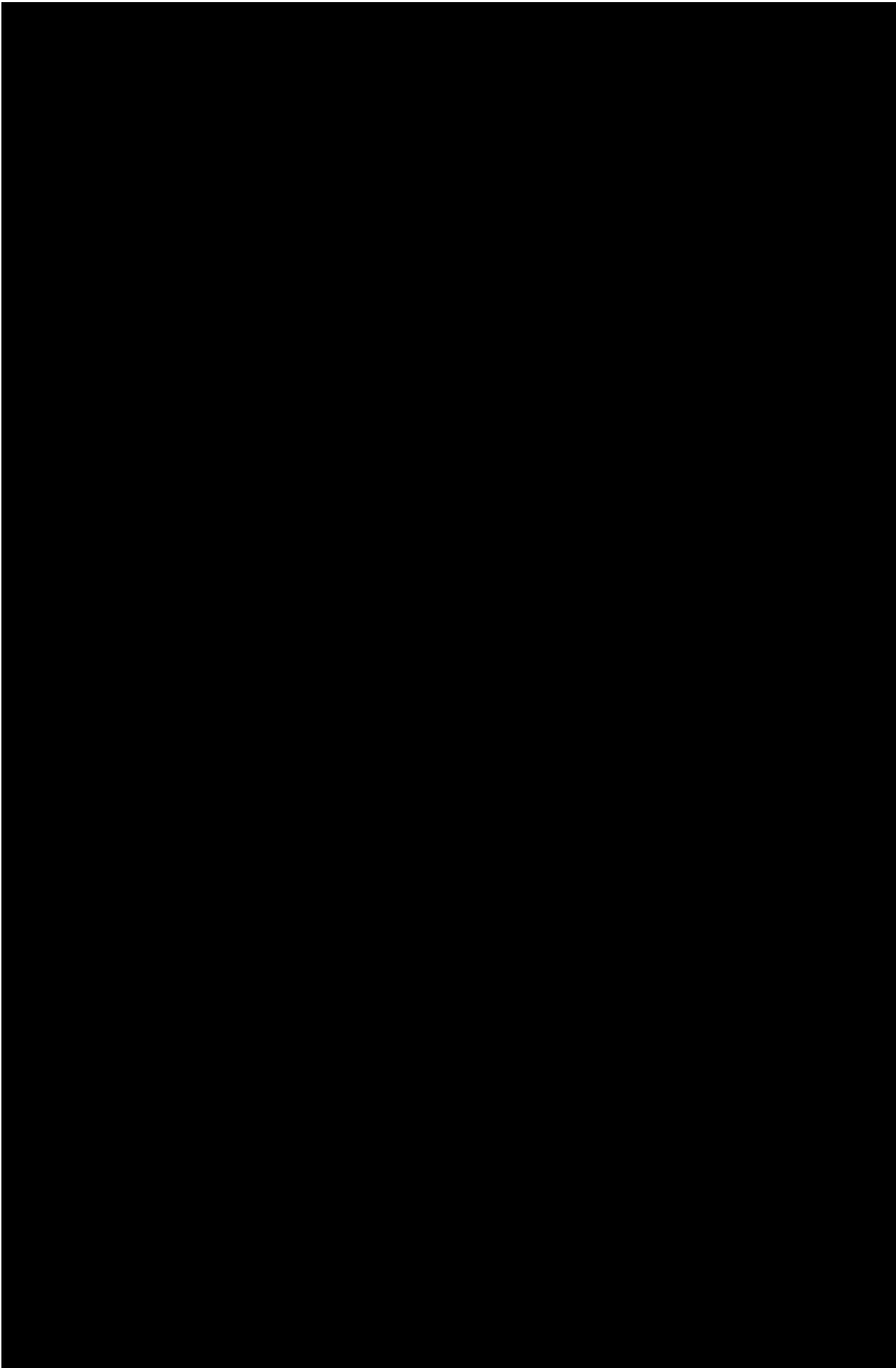
Schedule 50 - Requirements of Third Party Agreements

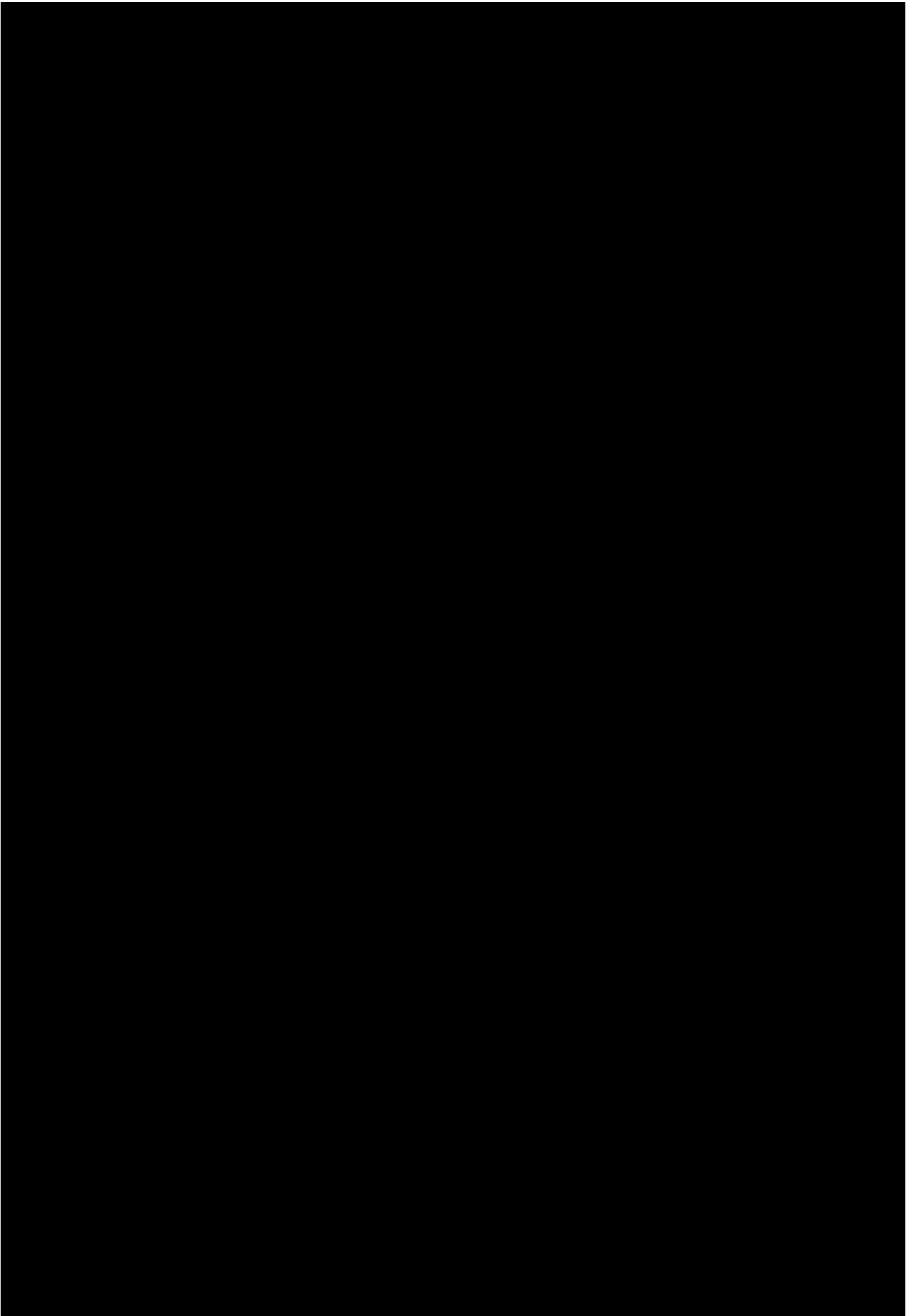


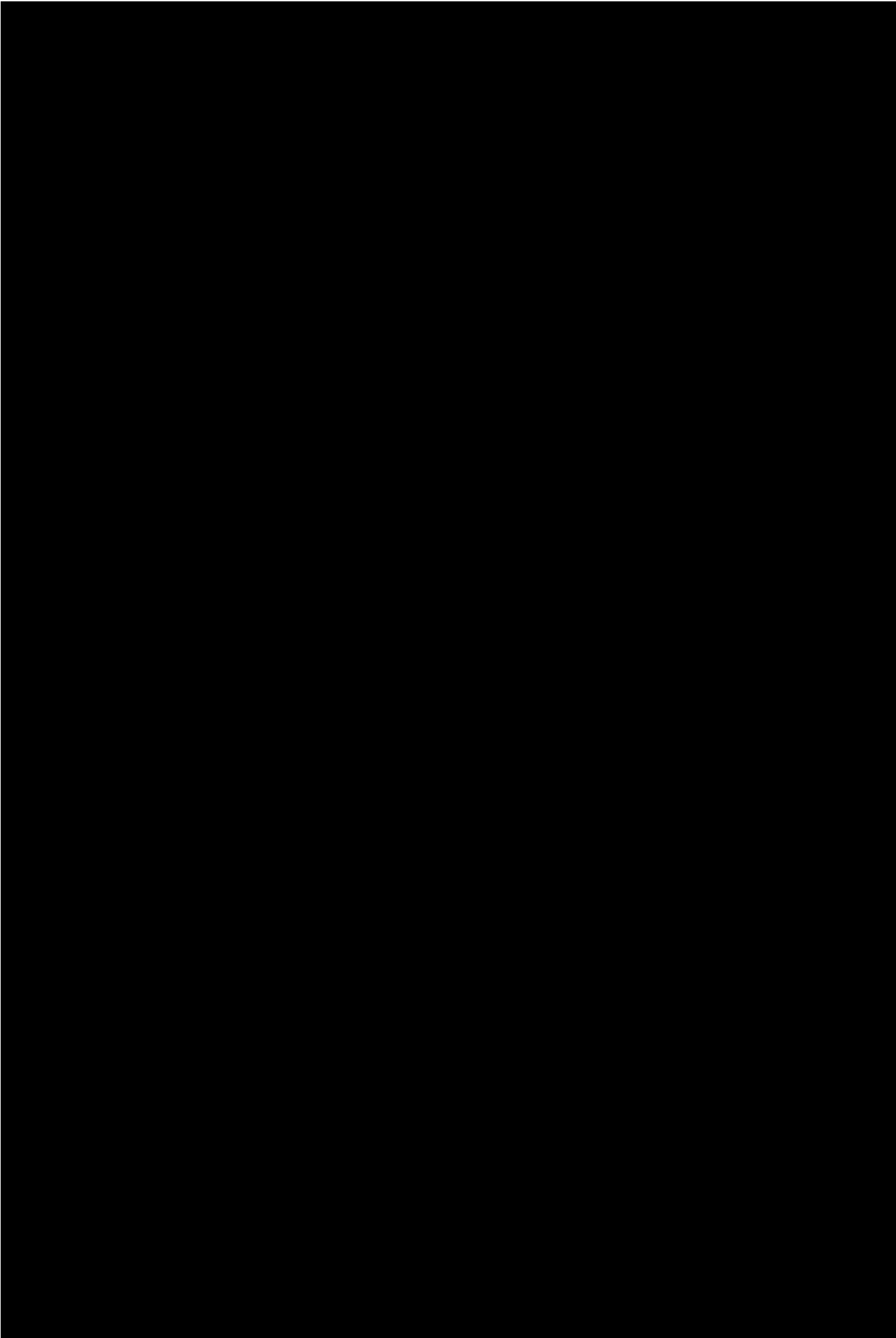


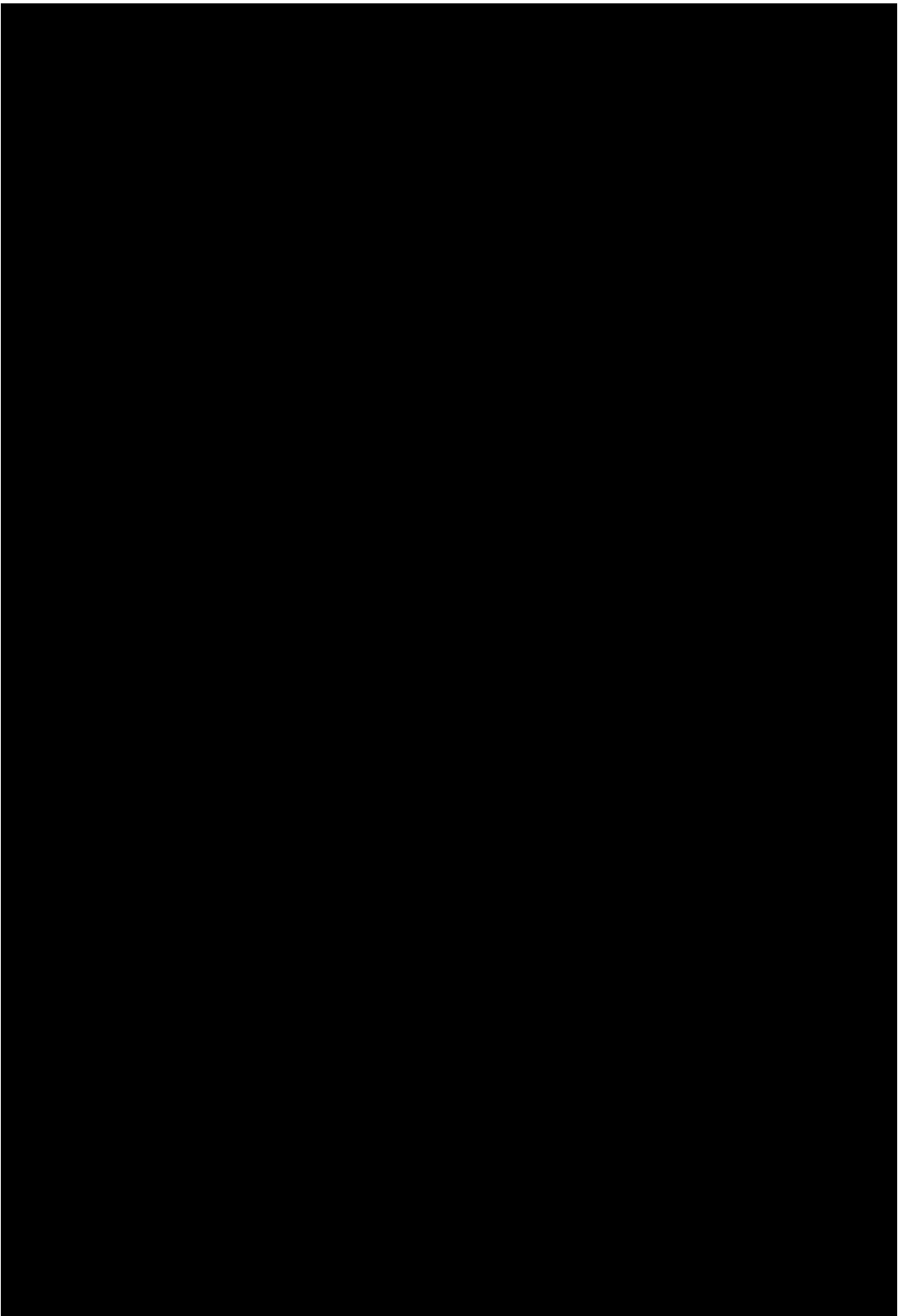


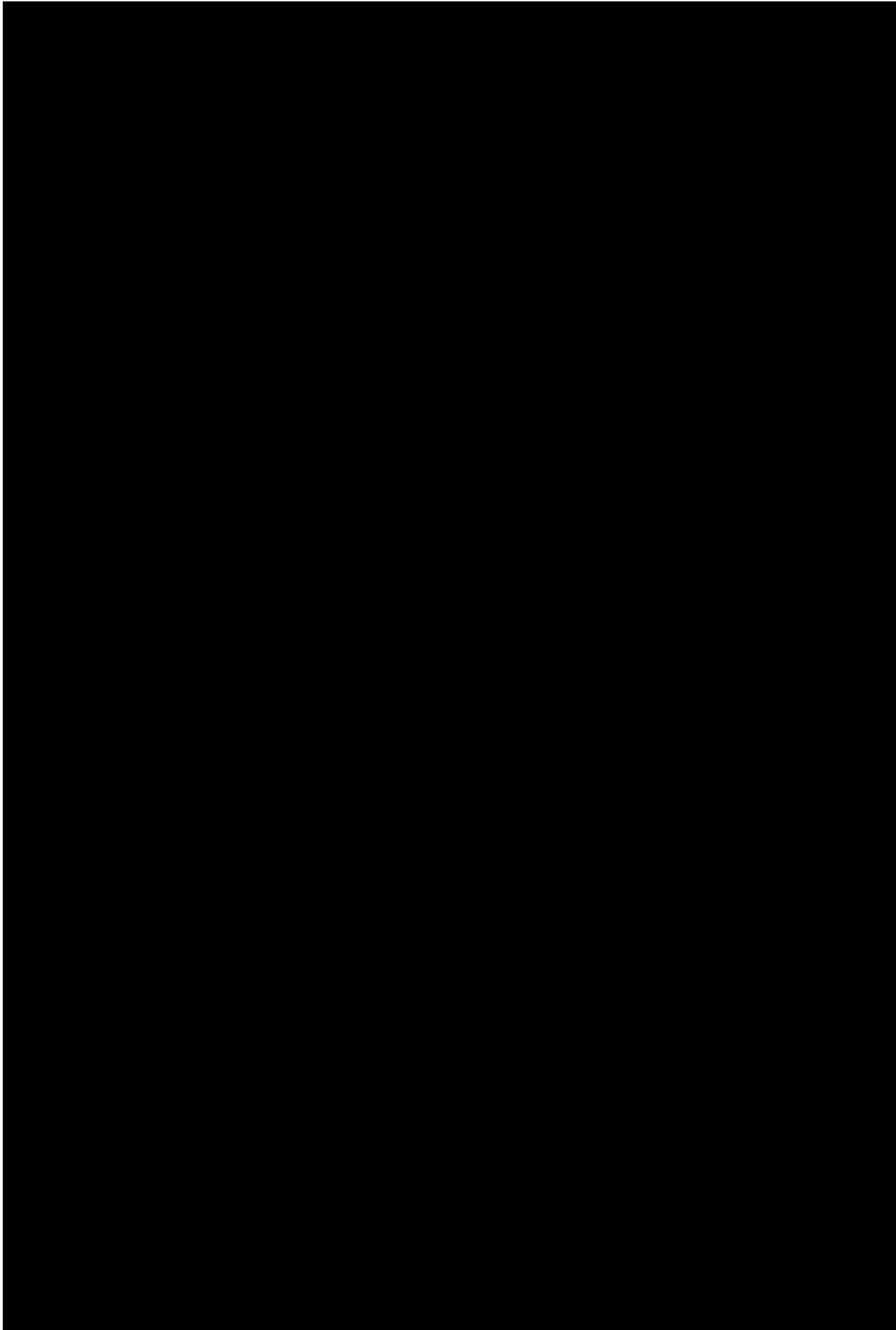




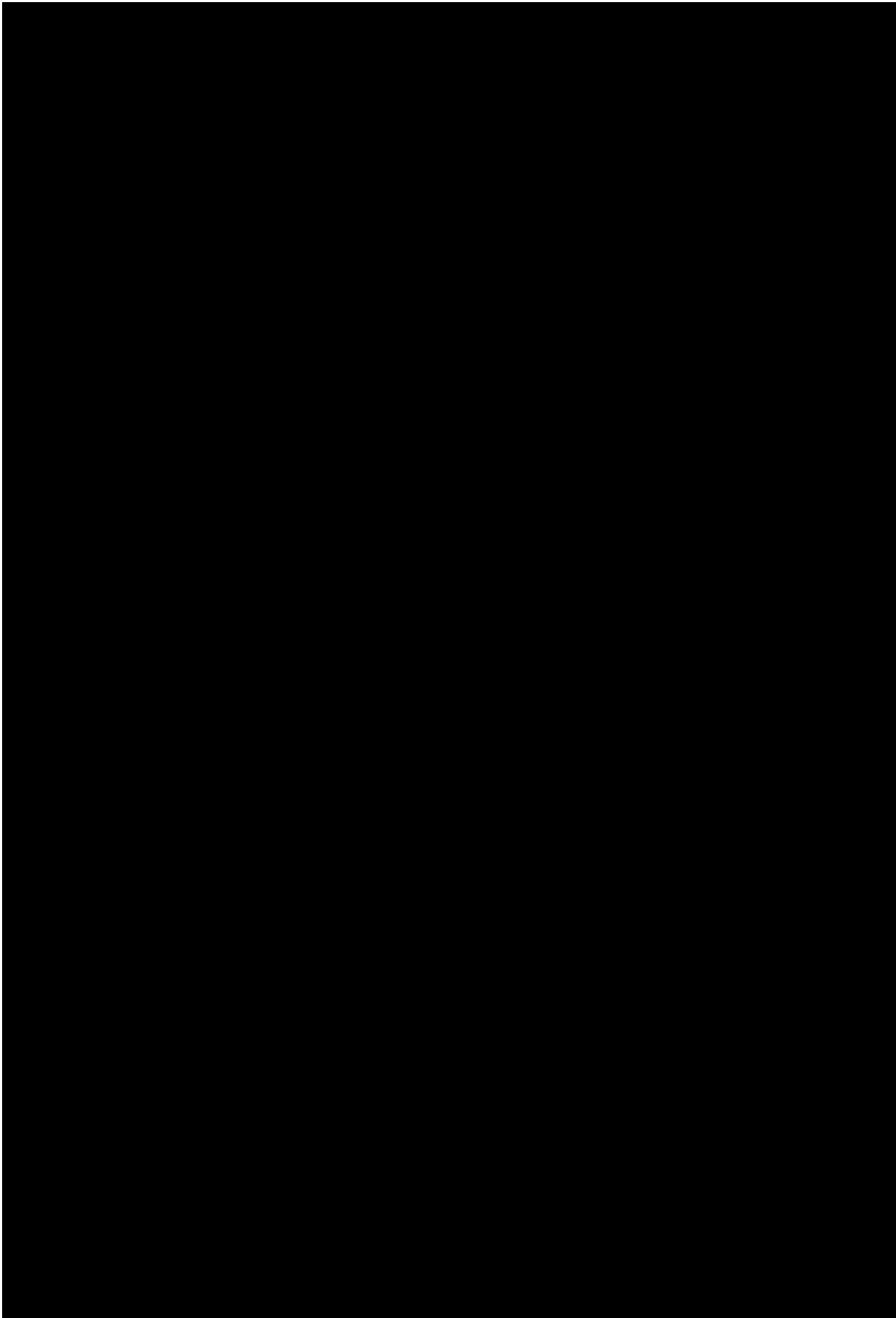


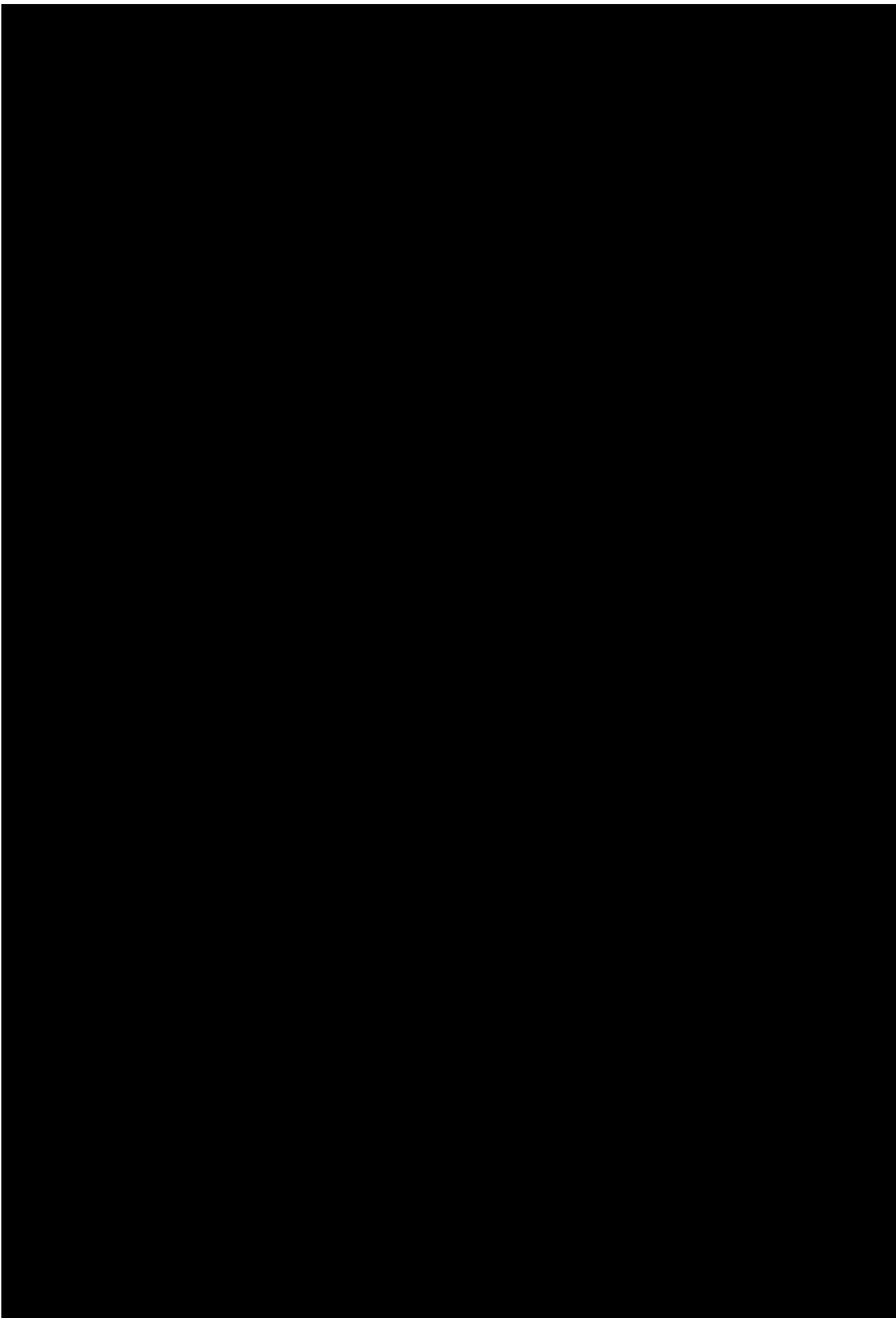


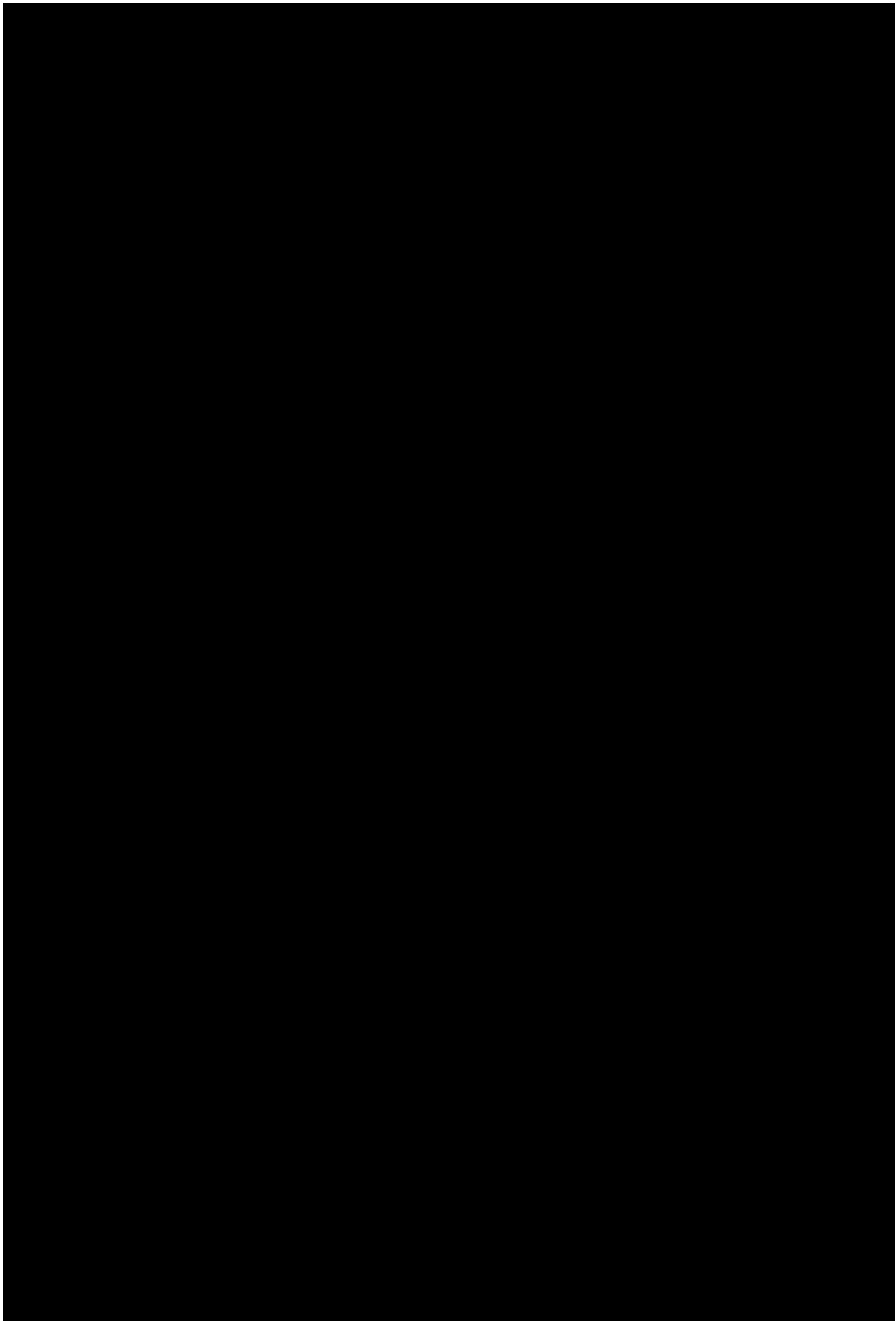


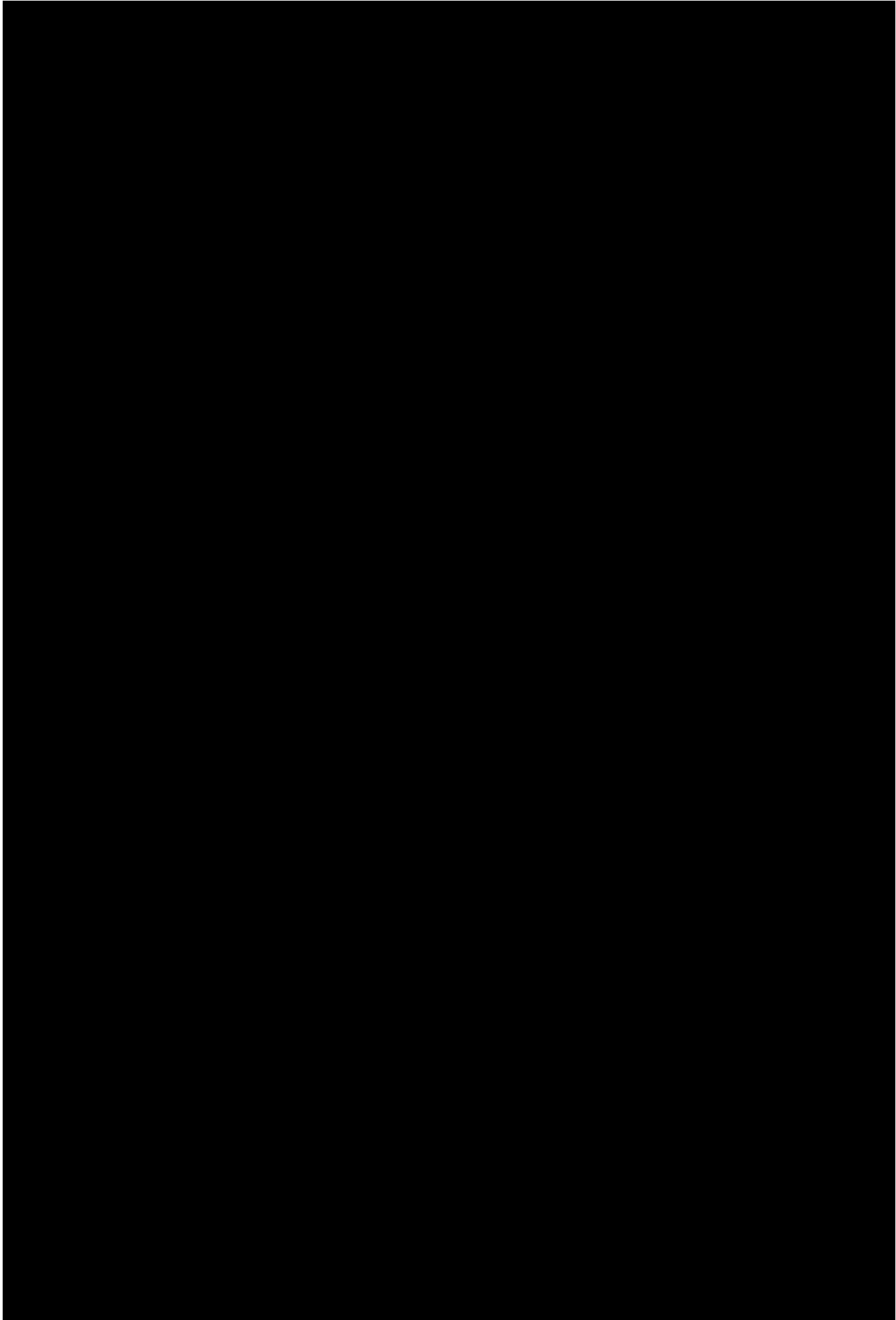


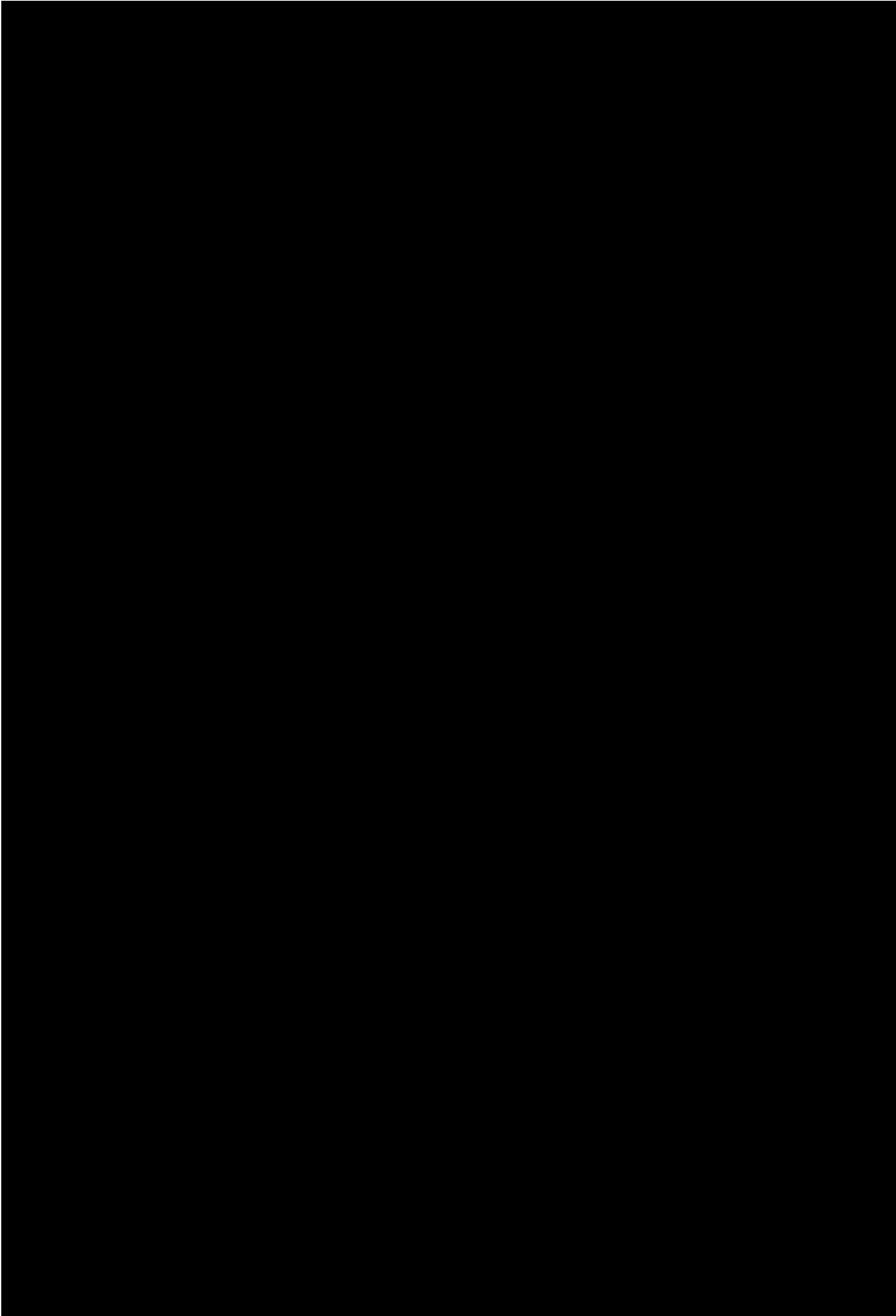
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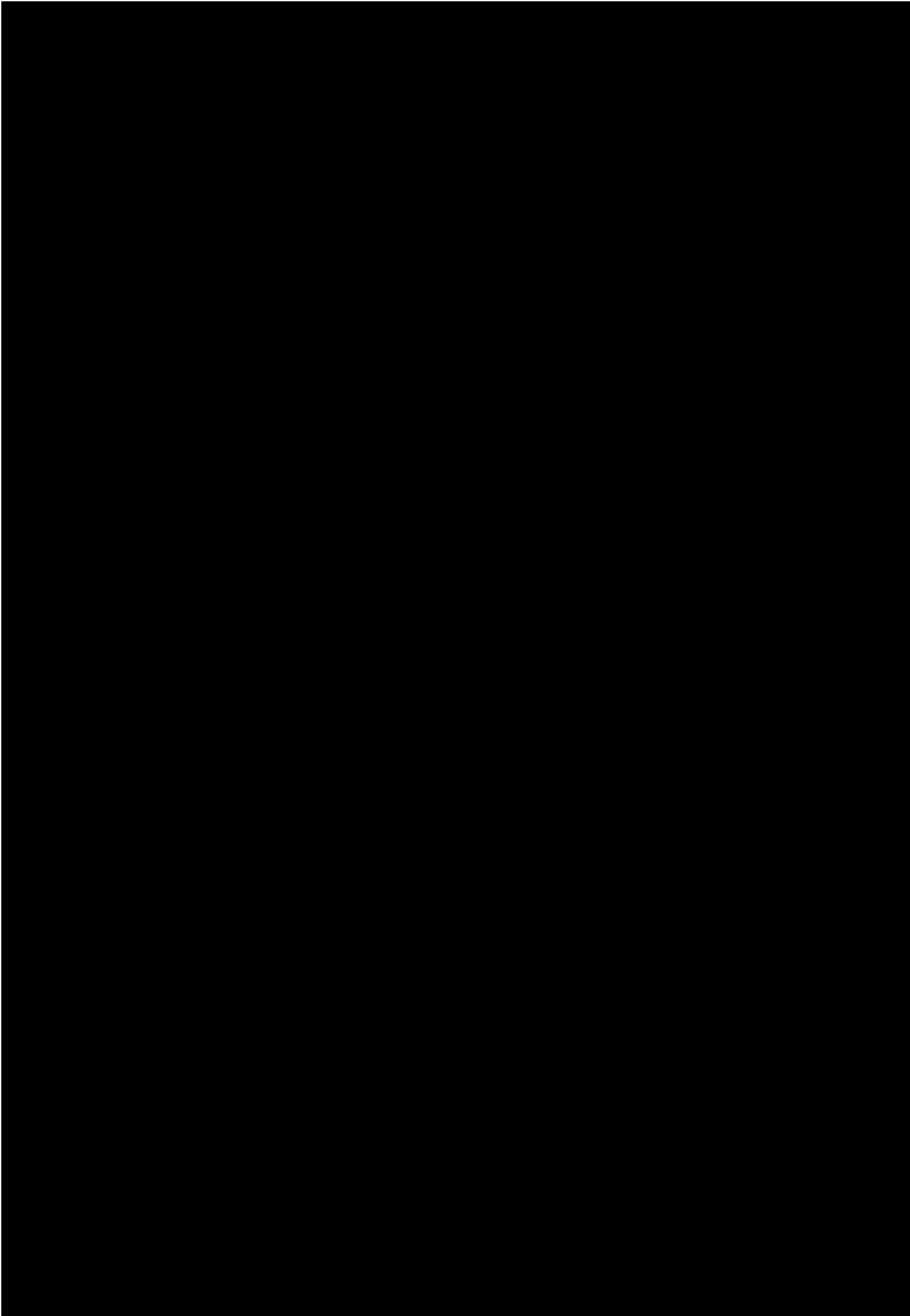


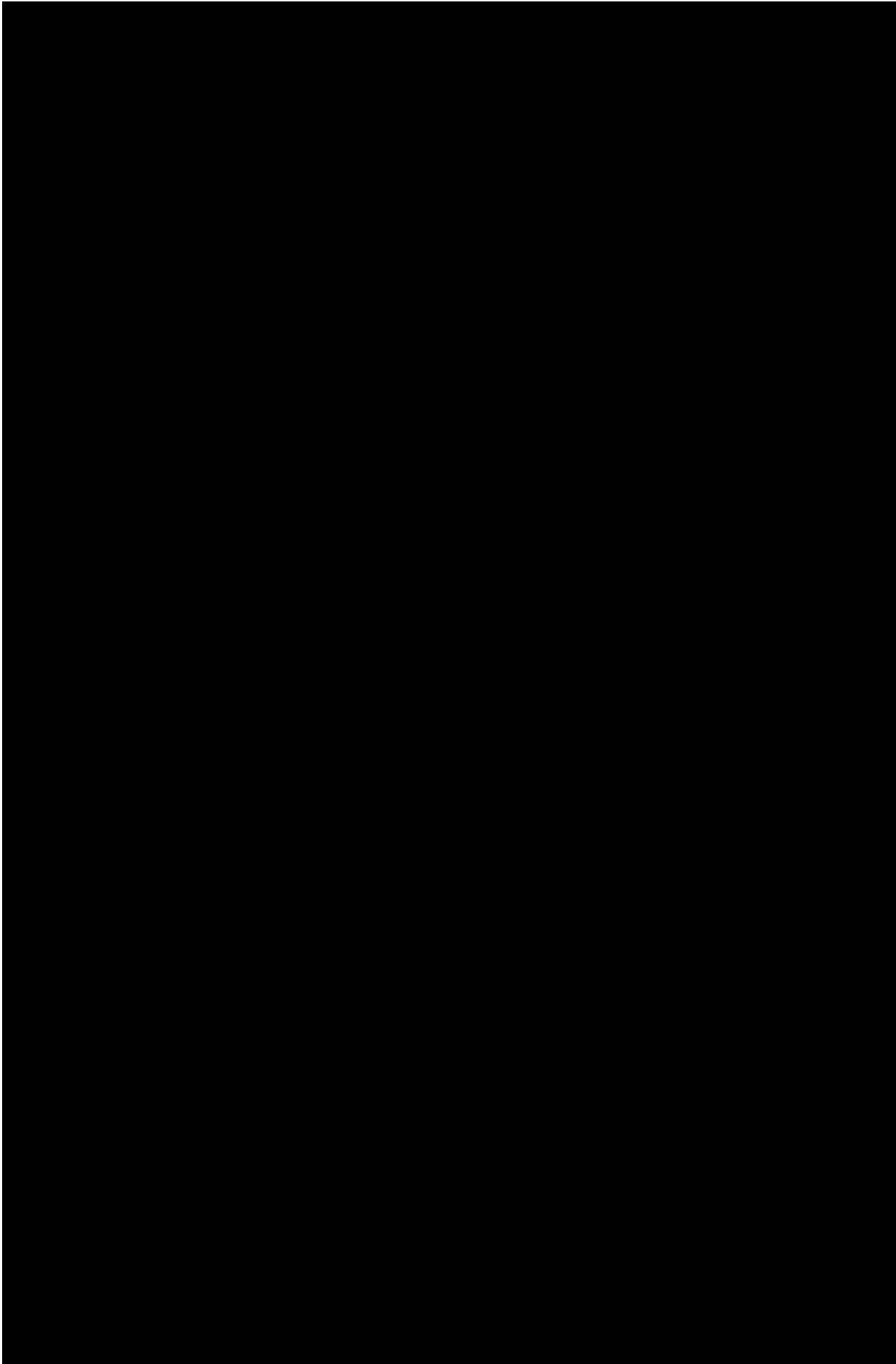


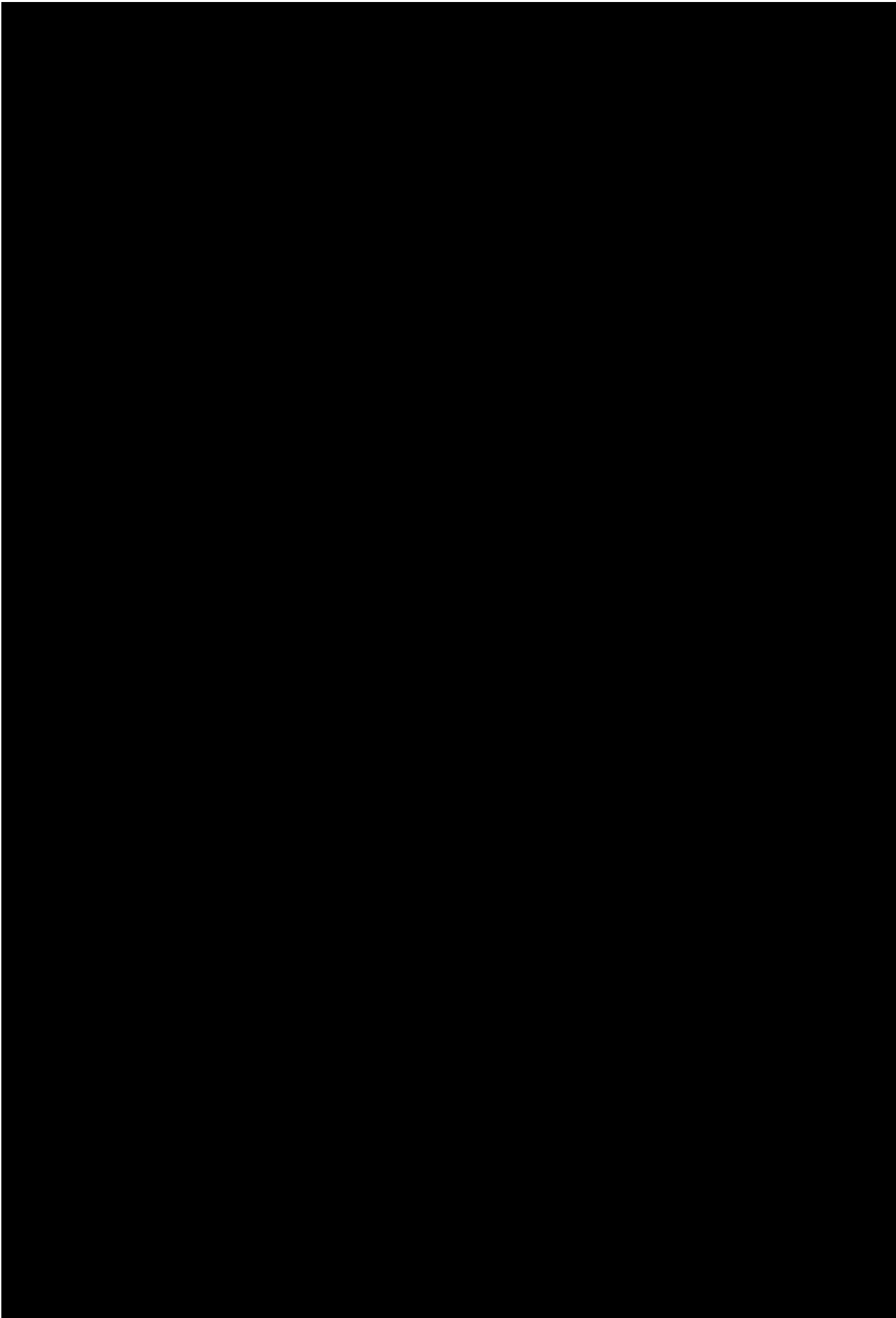


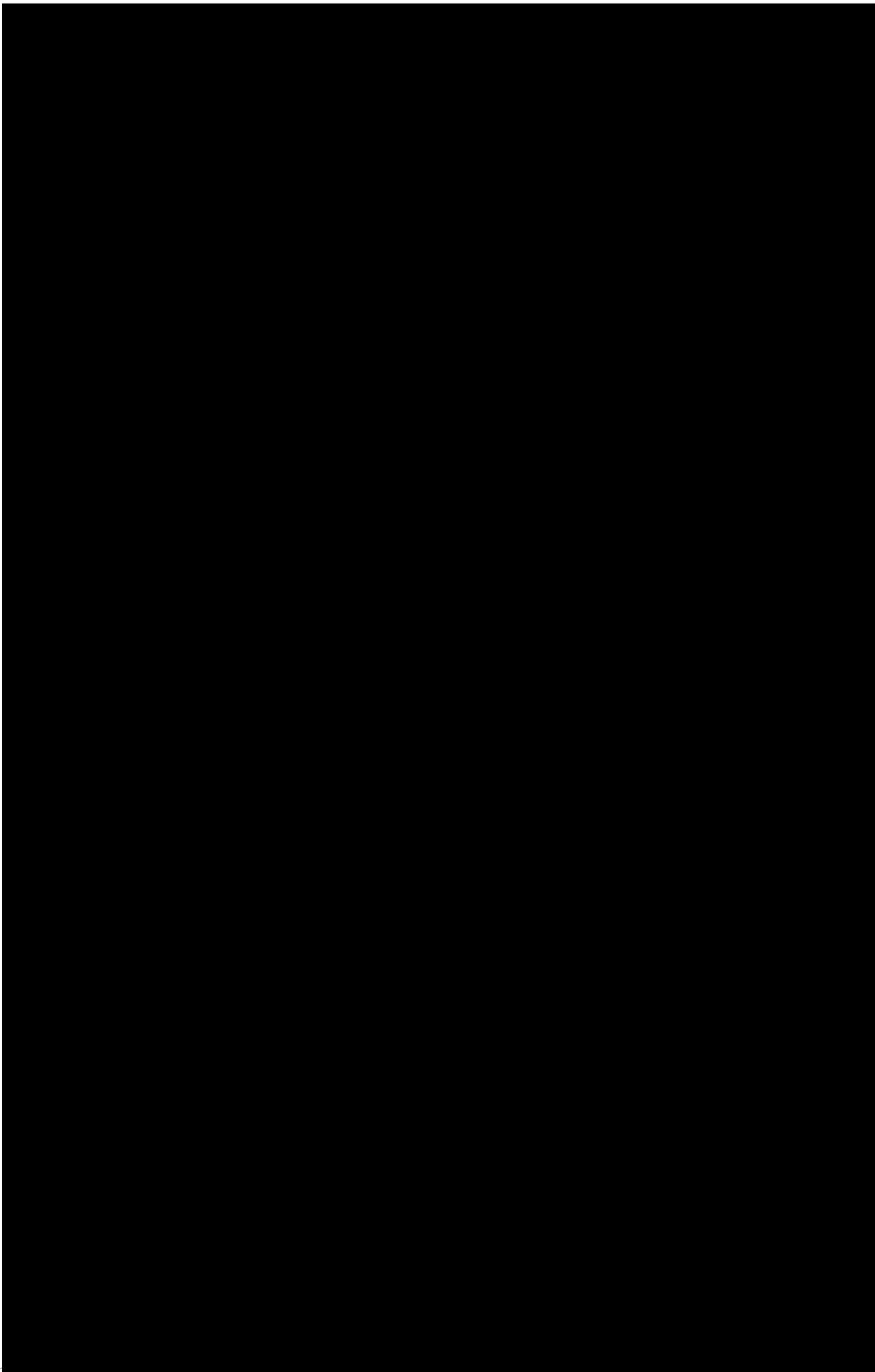


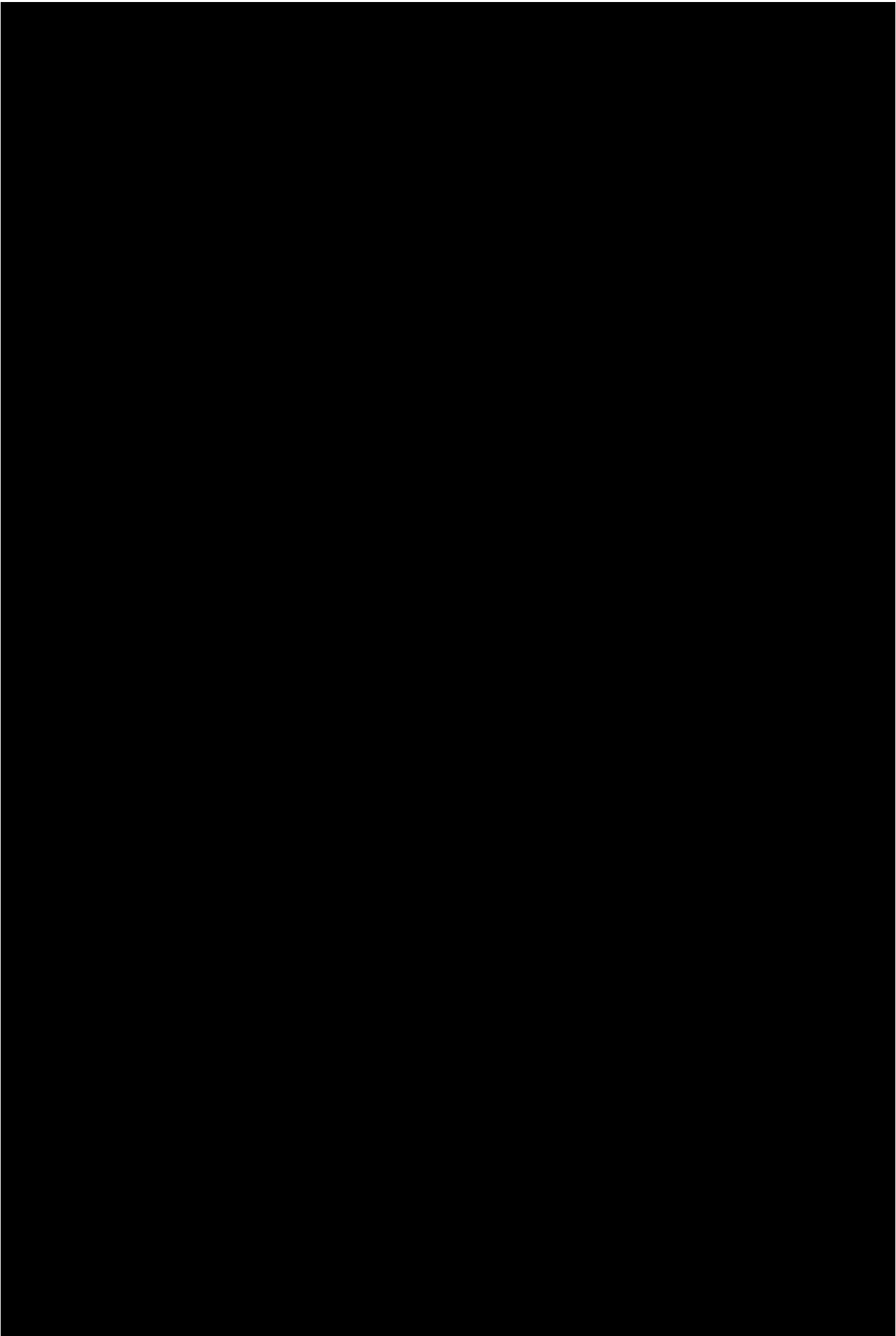


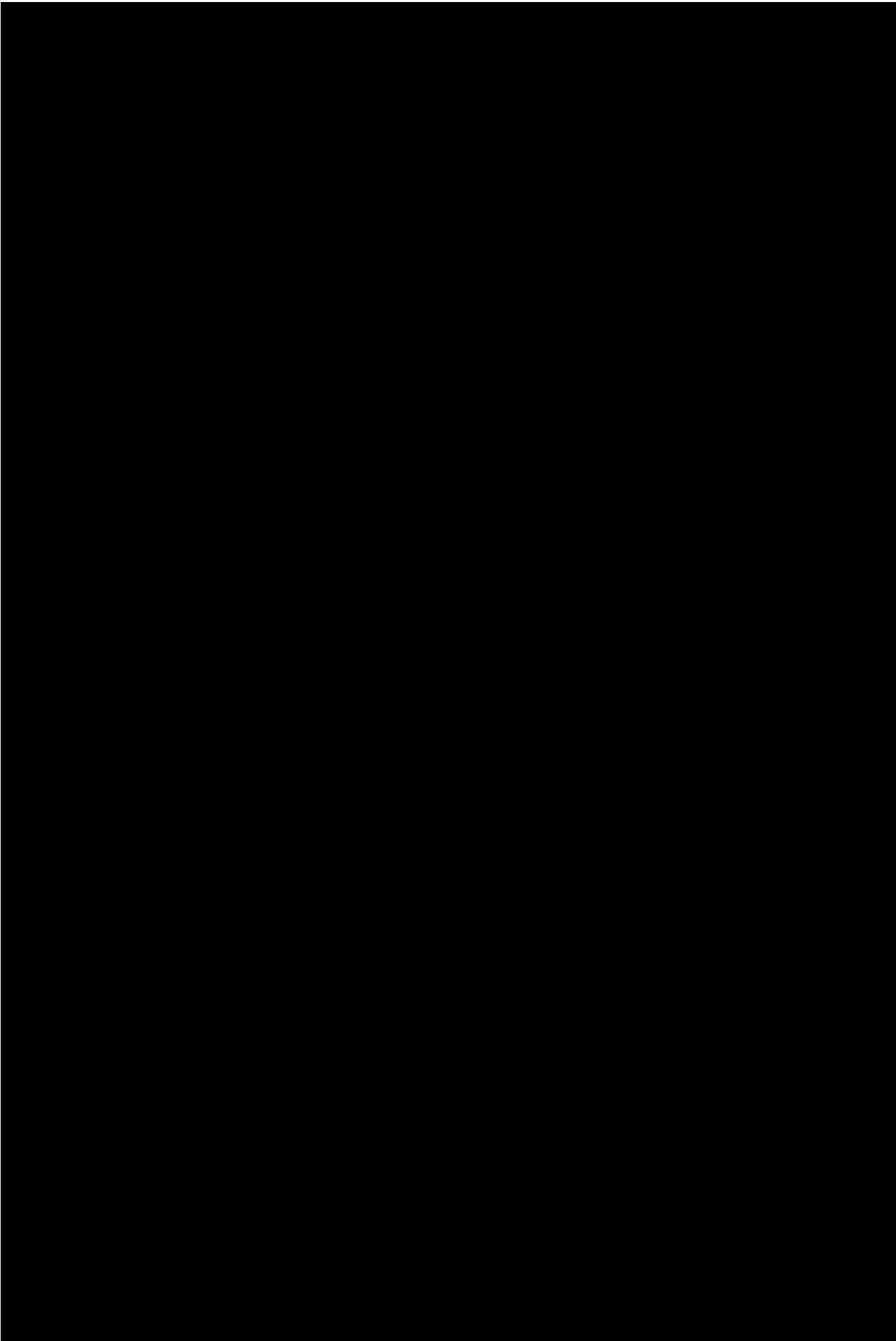


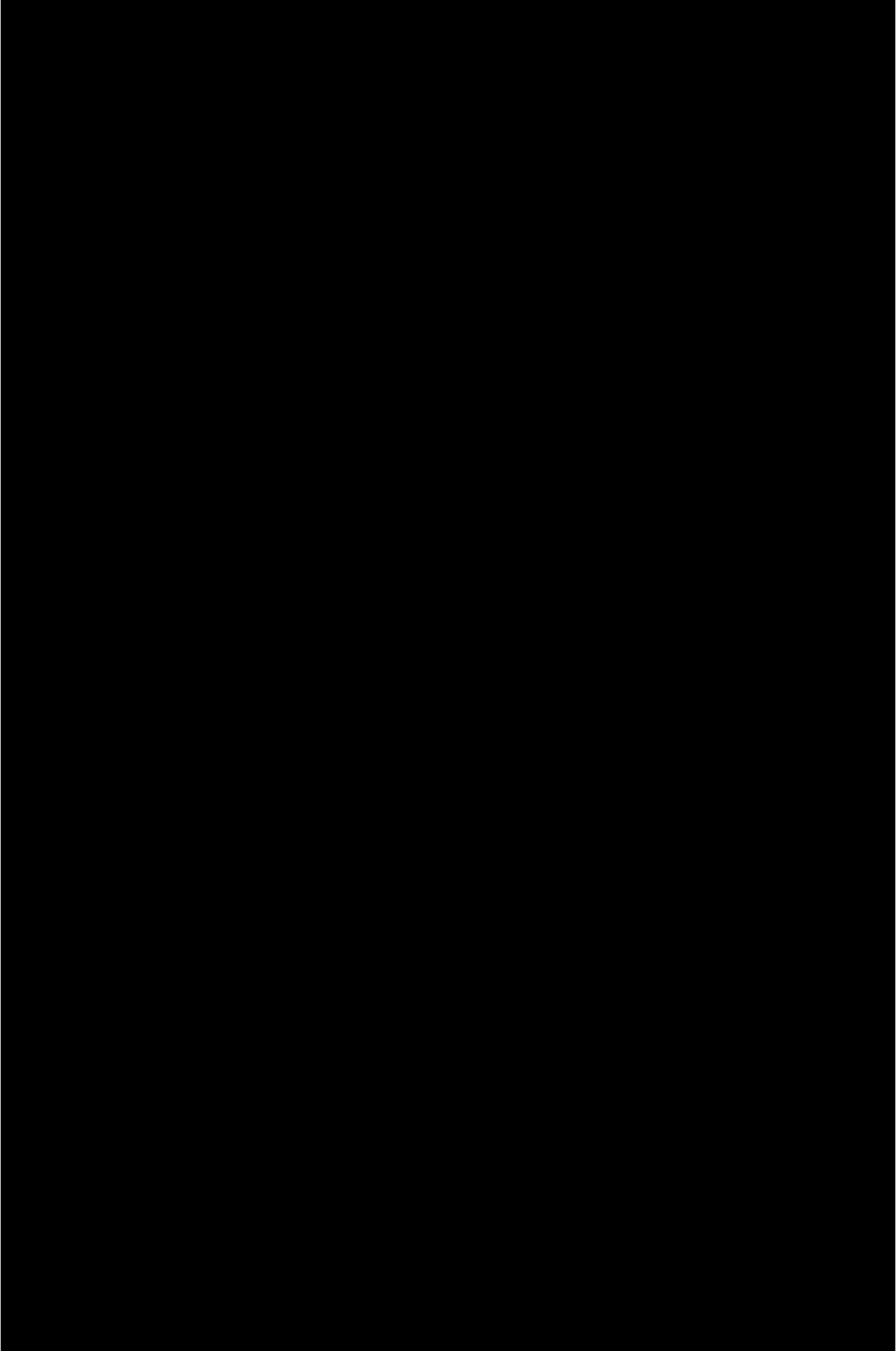


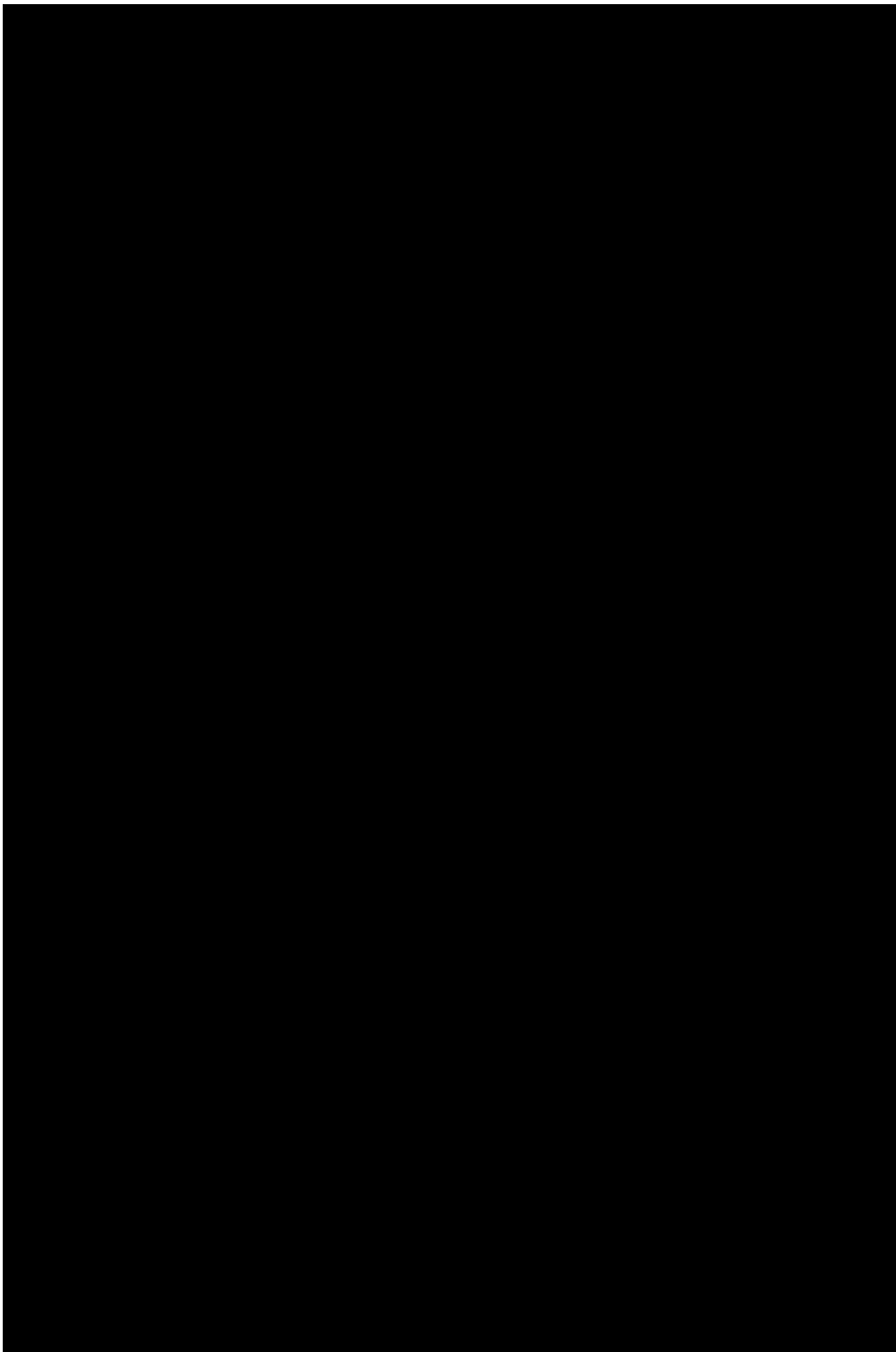


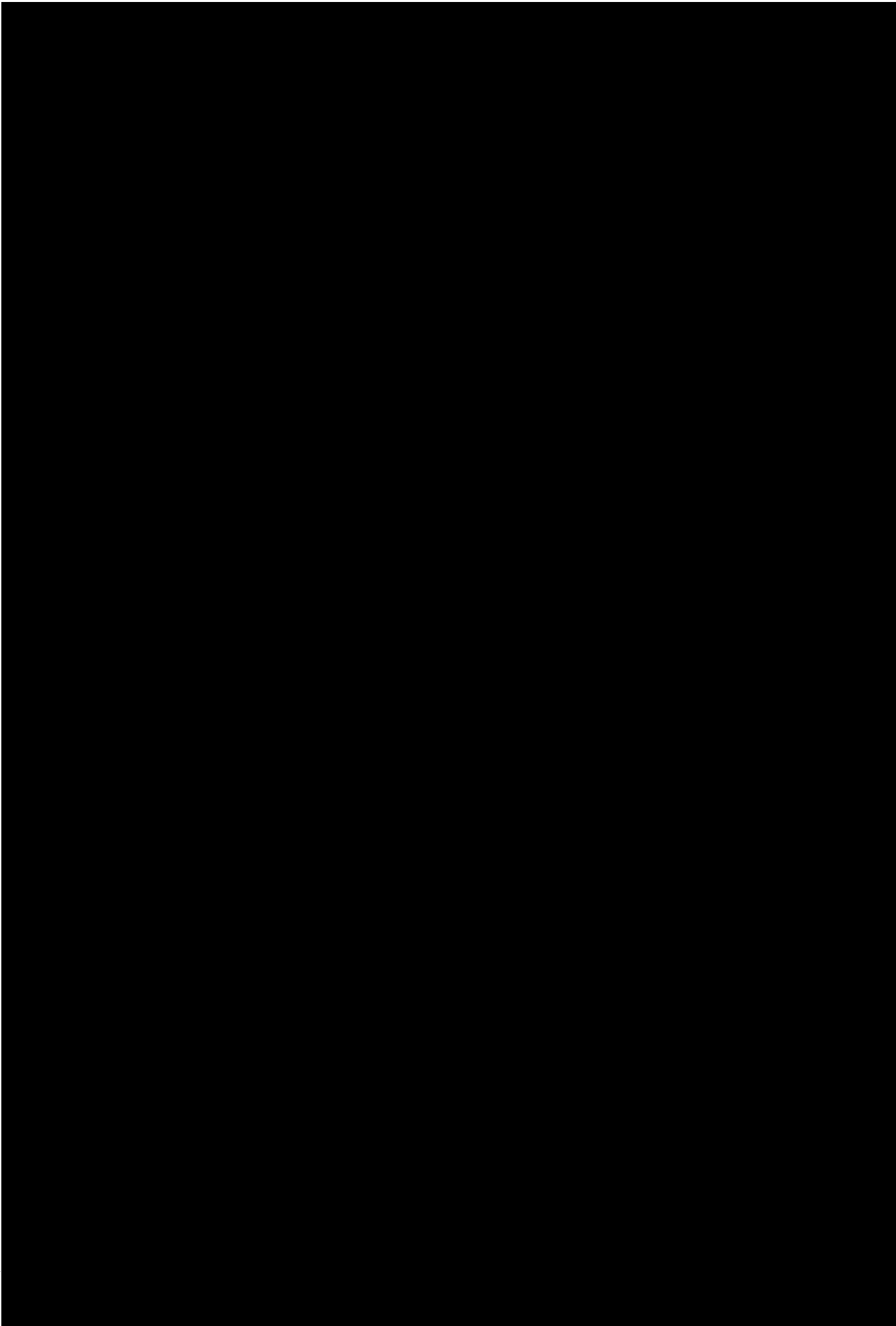


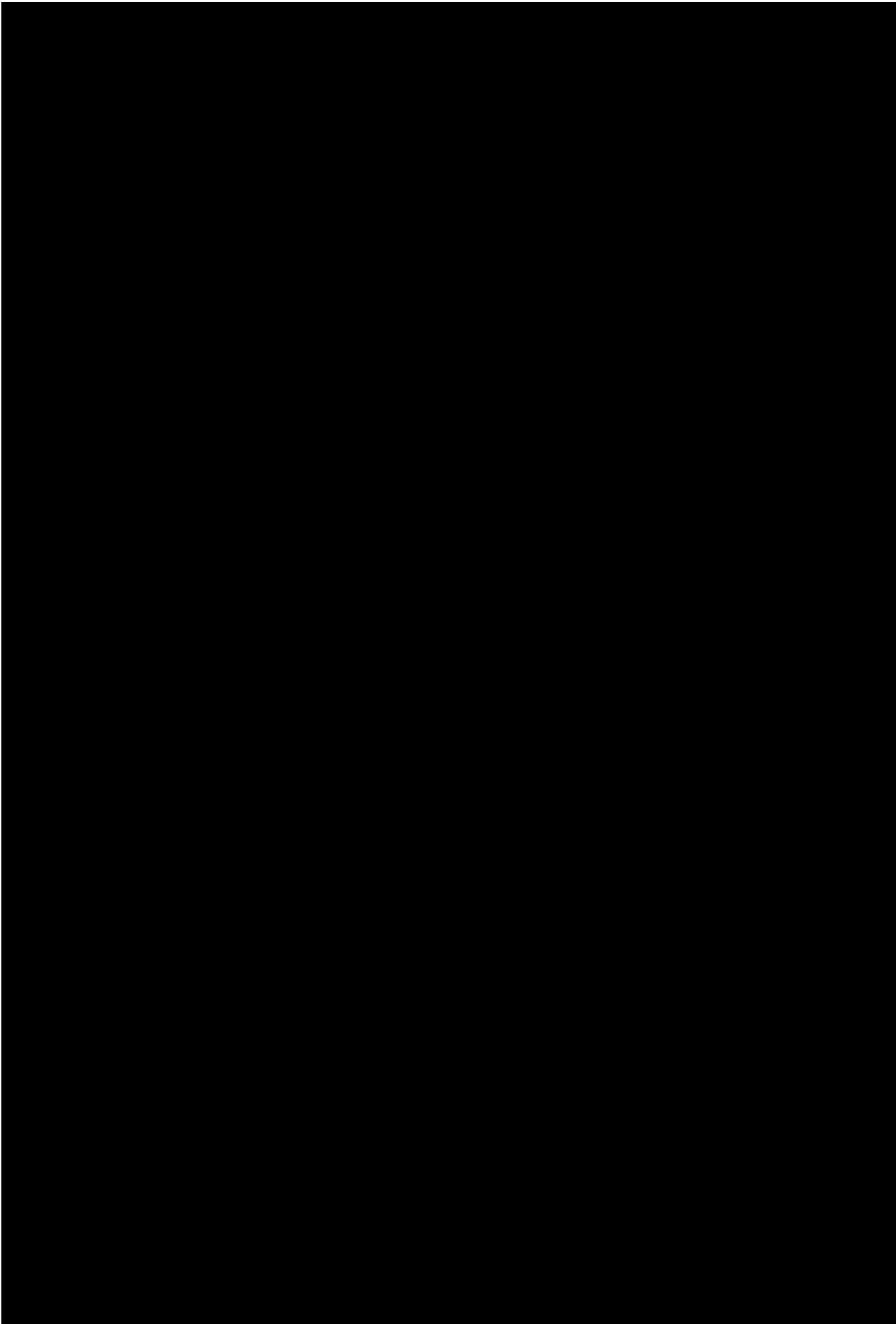


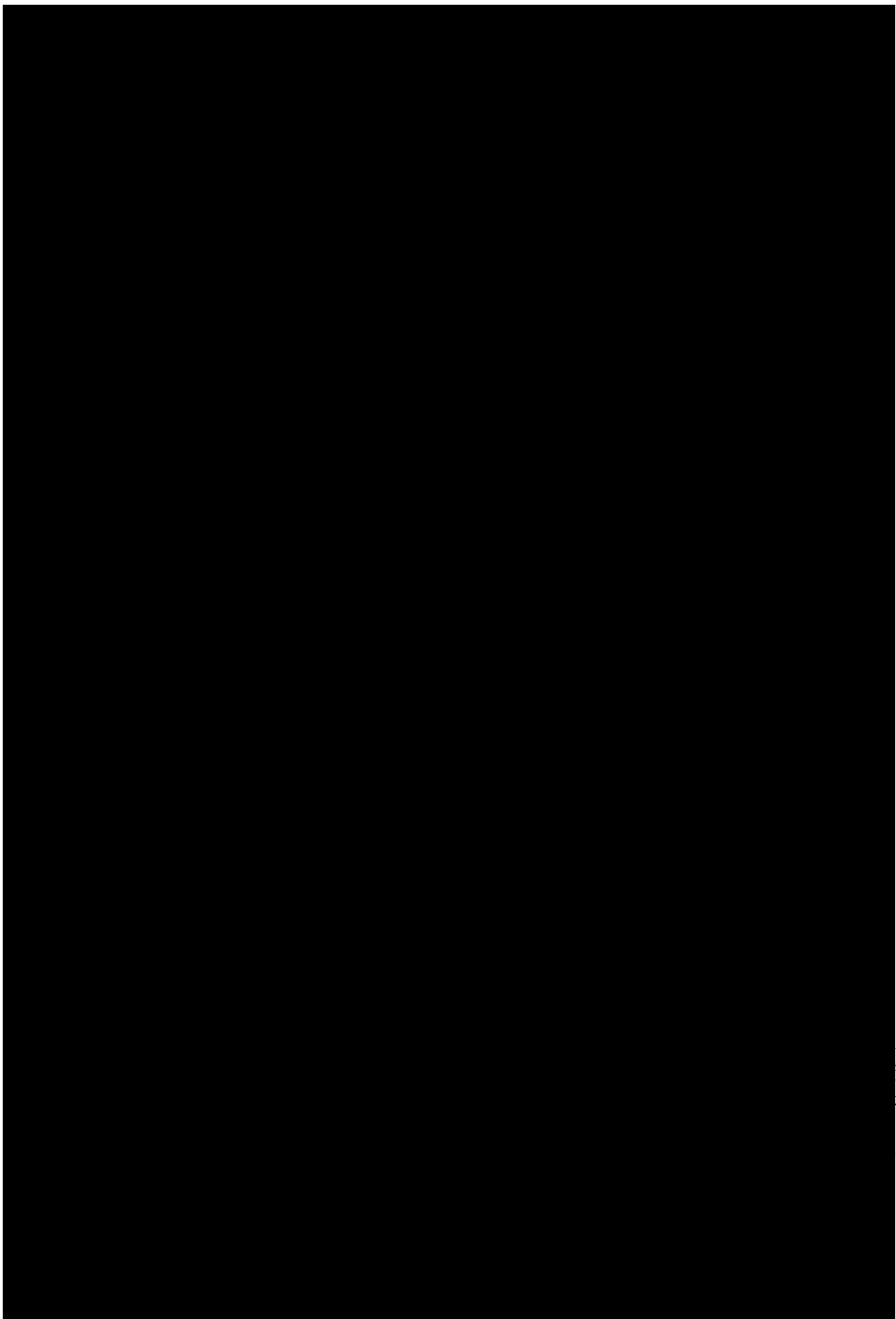


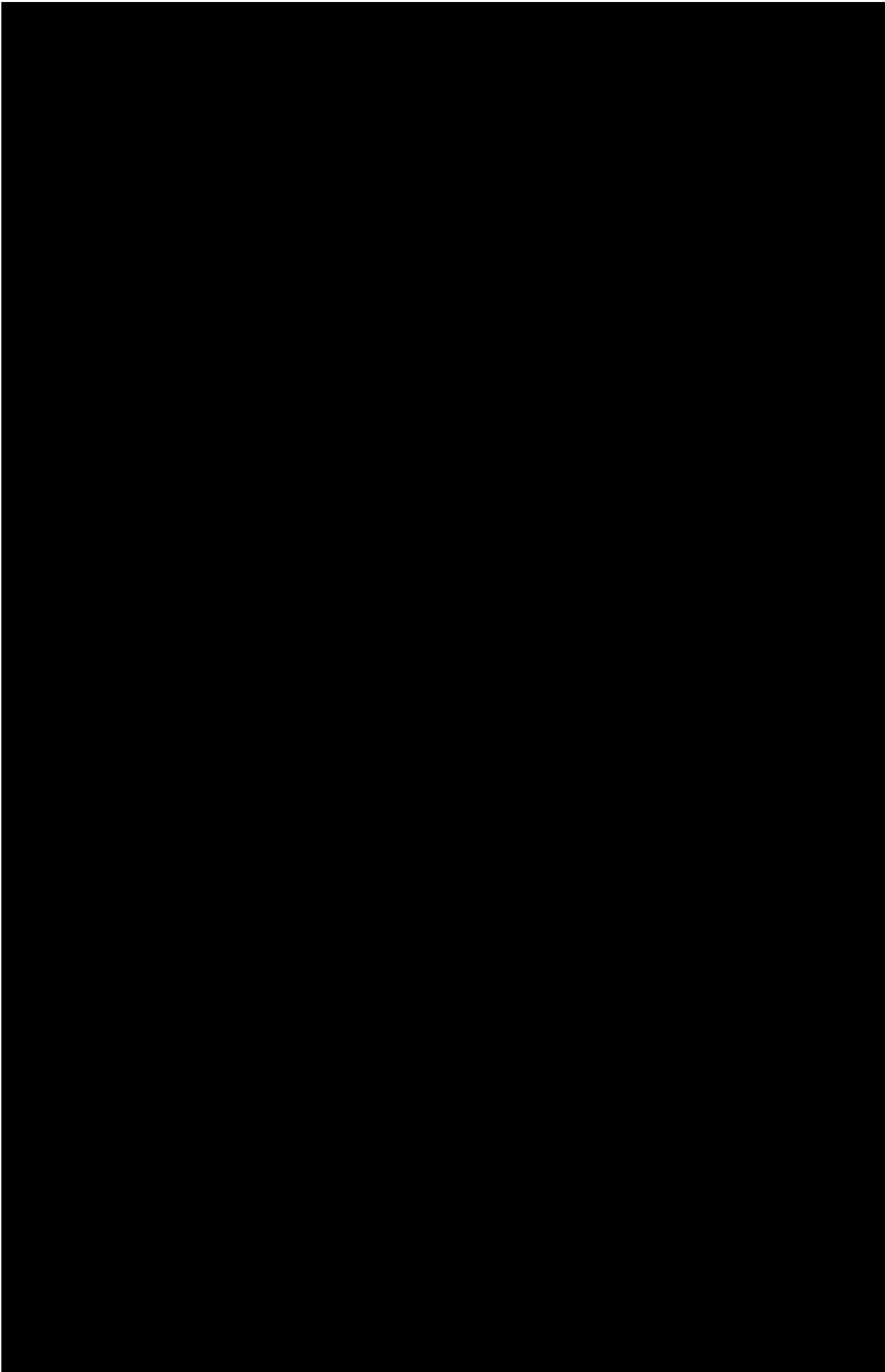


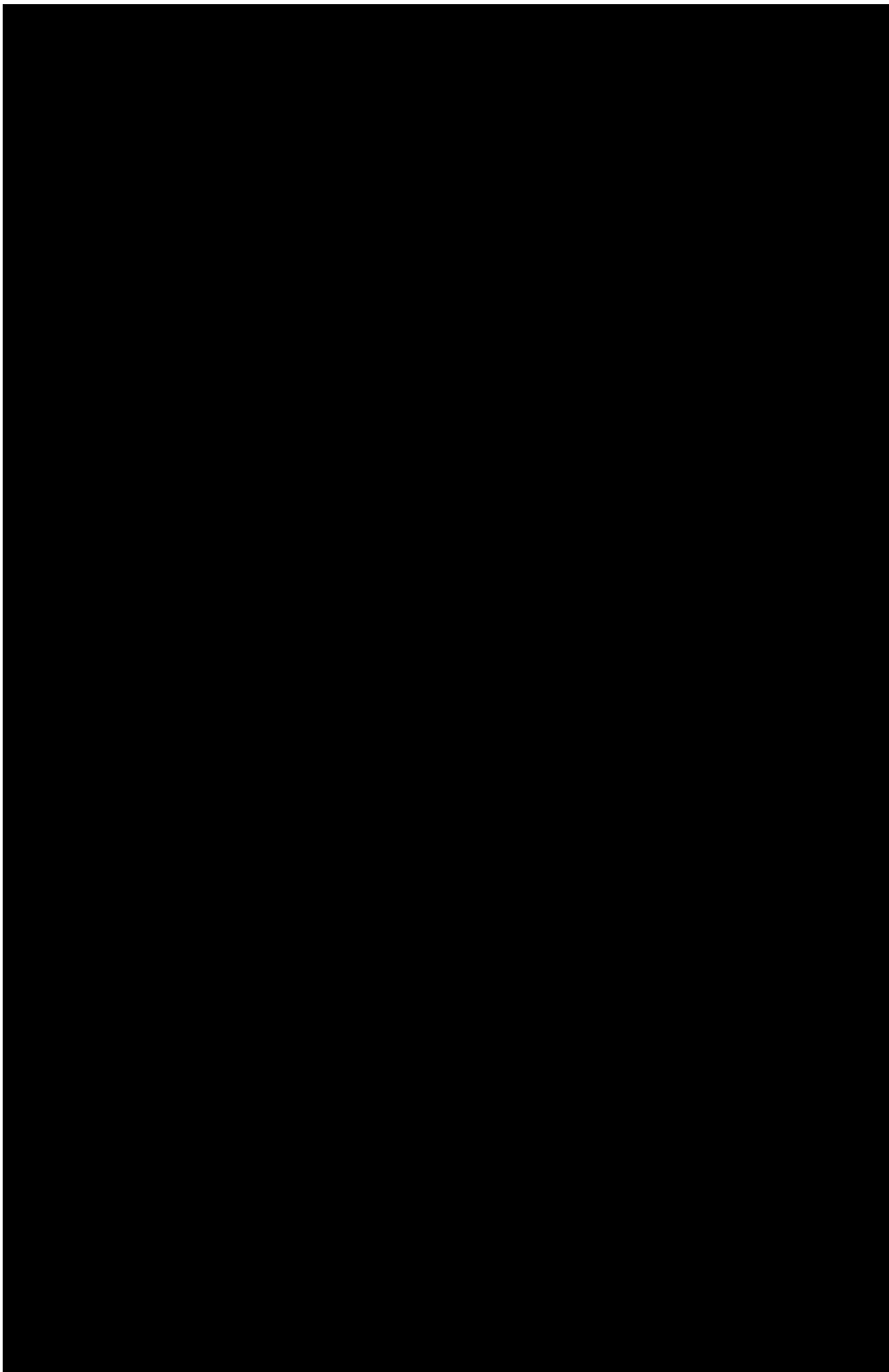


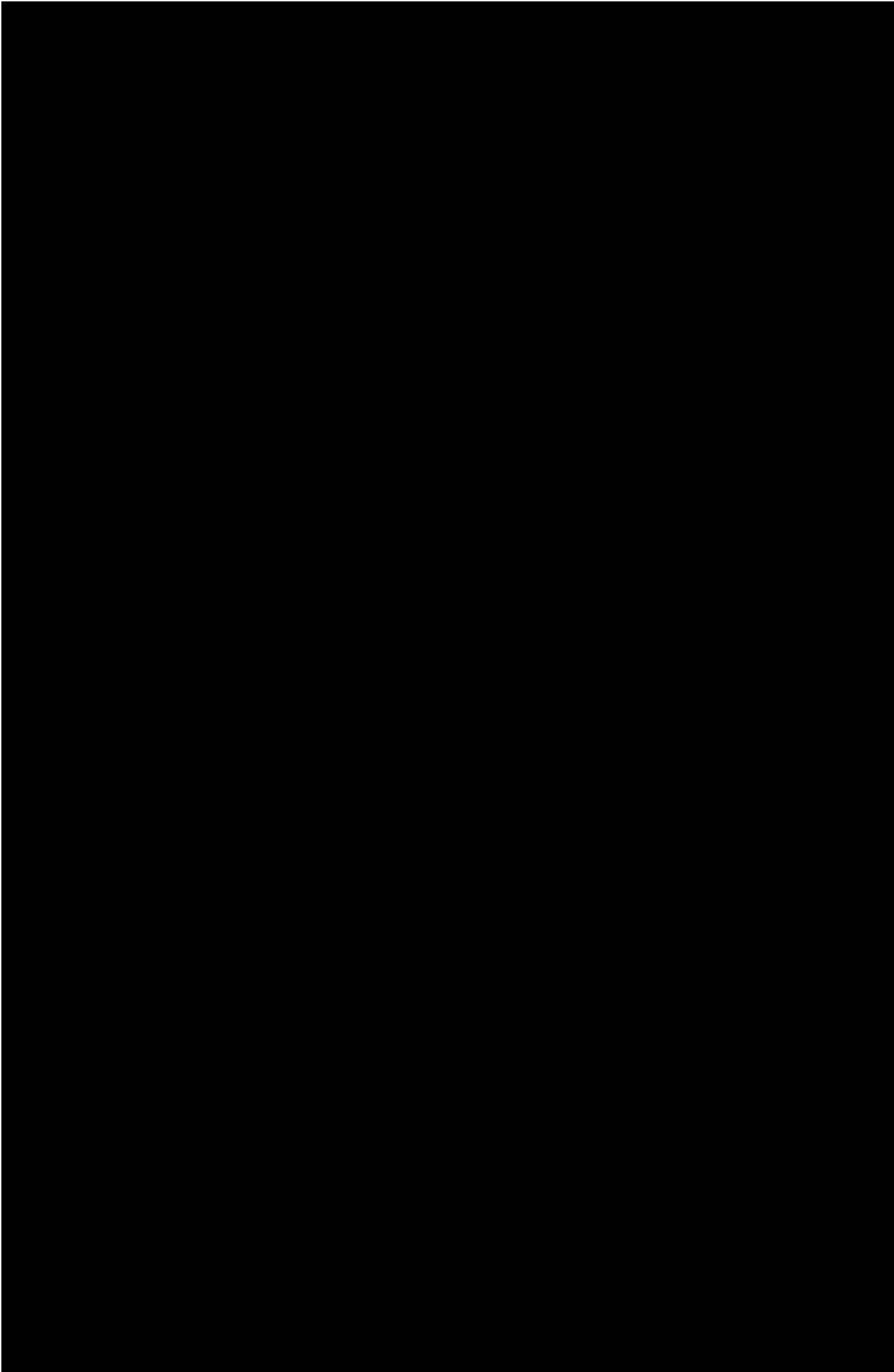


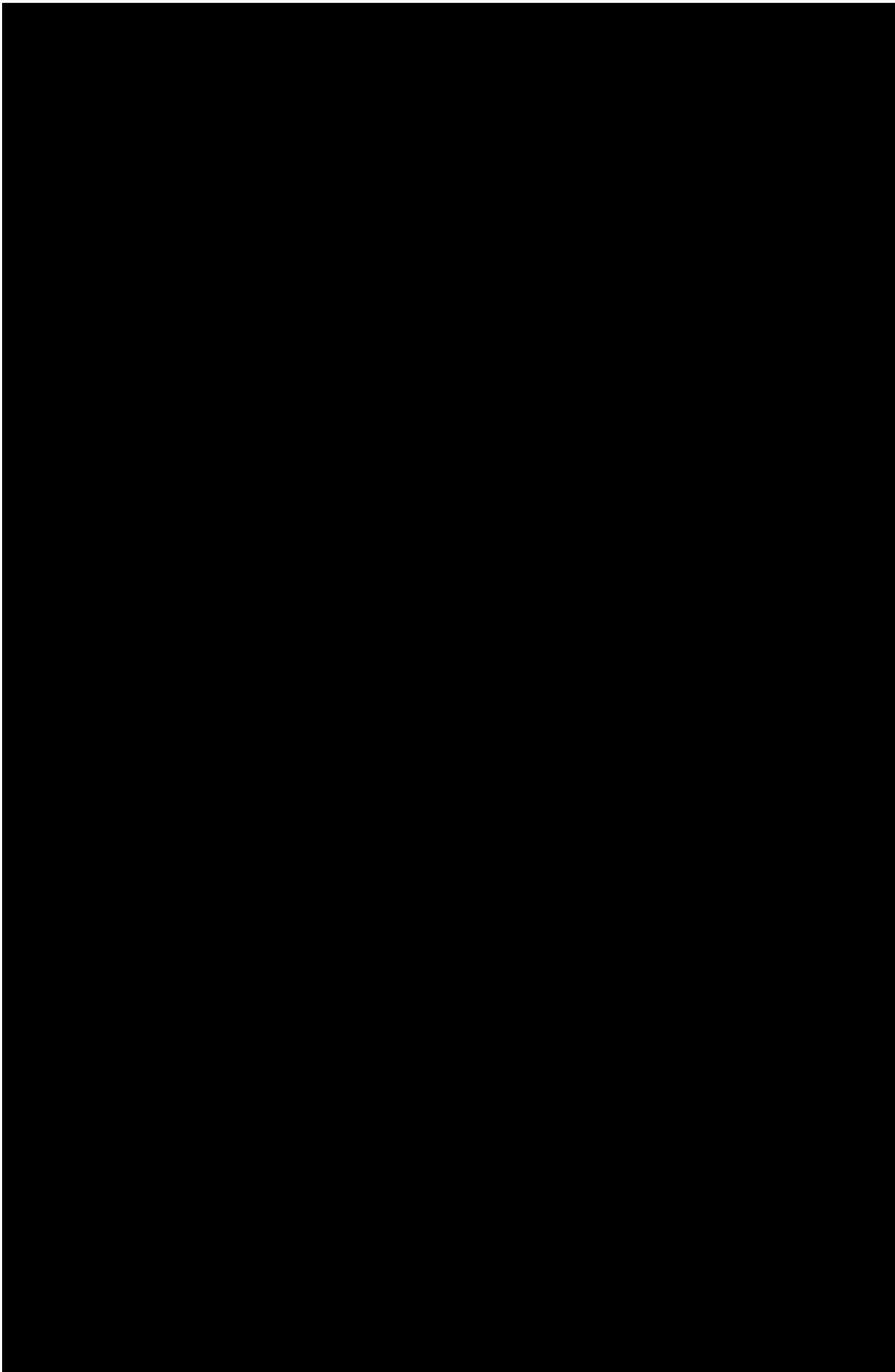




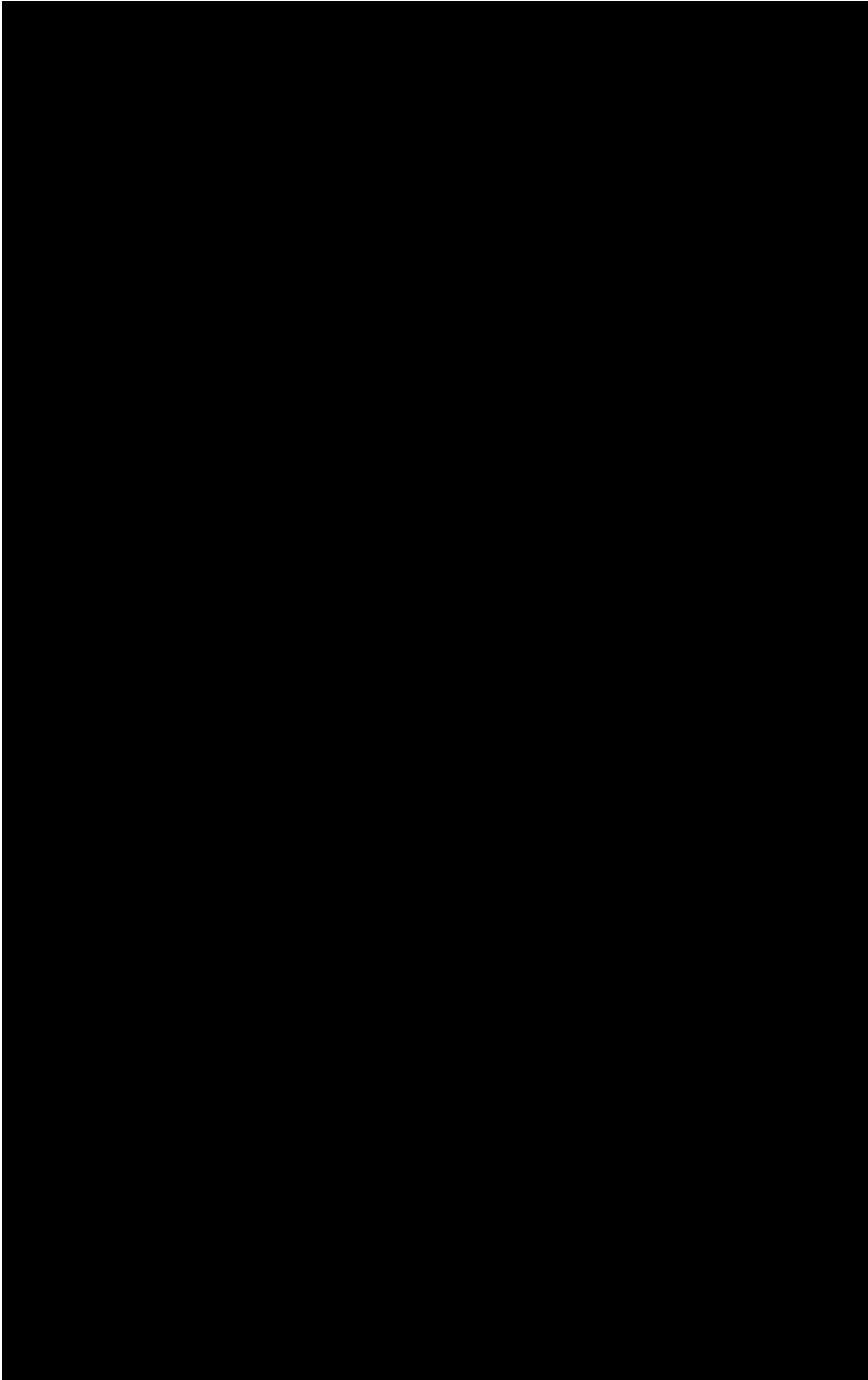


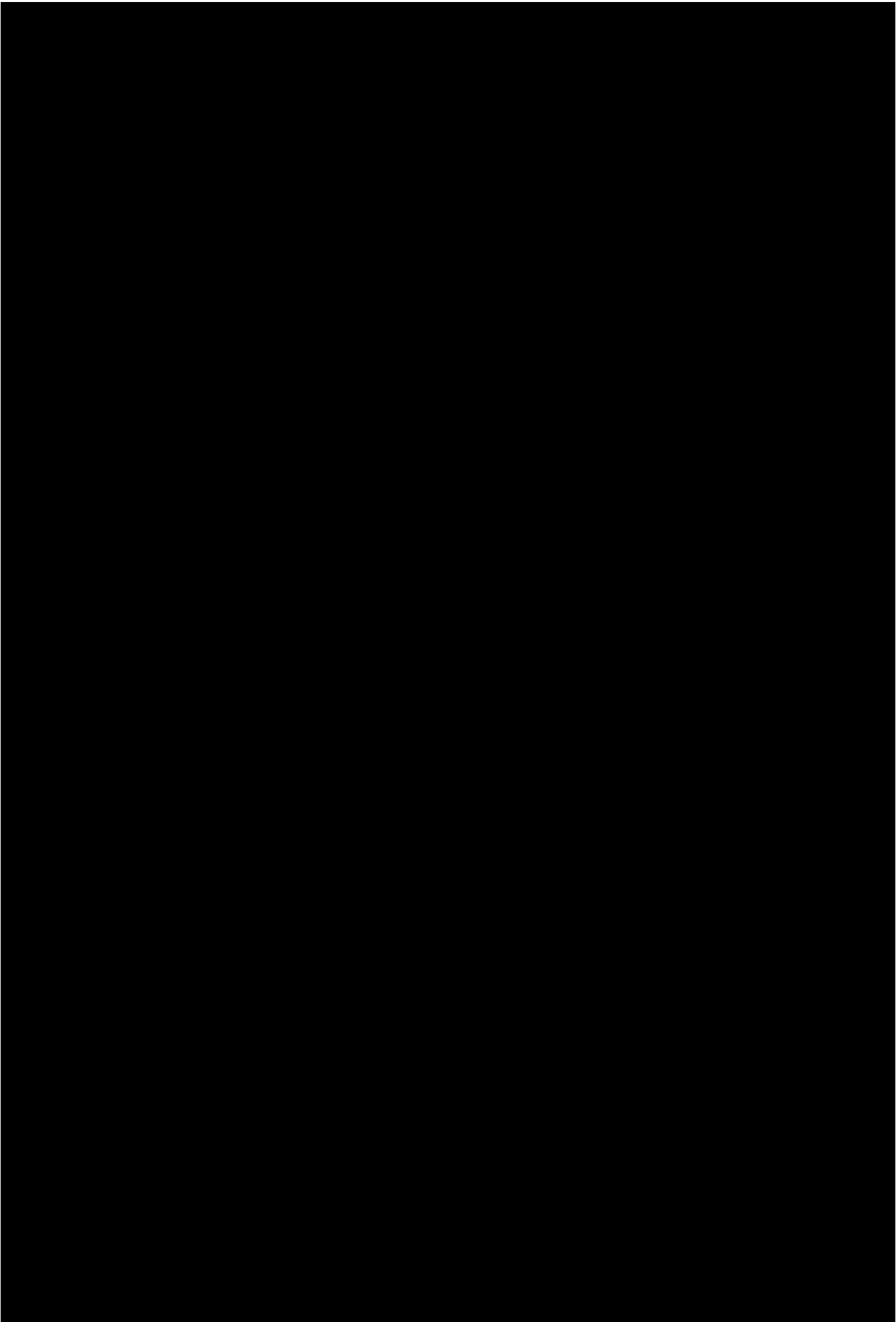


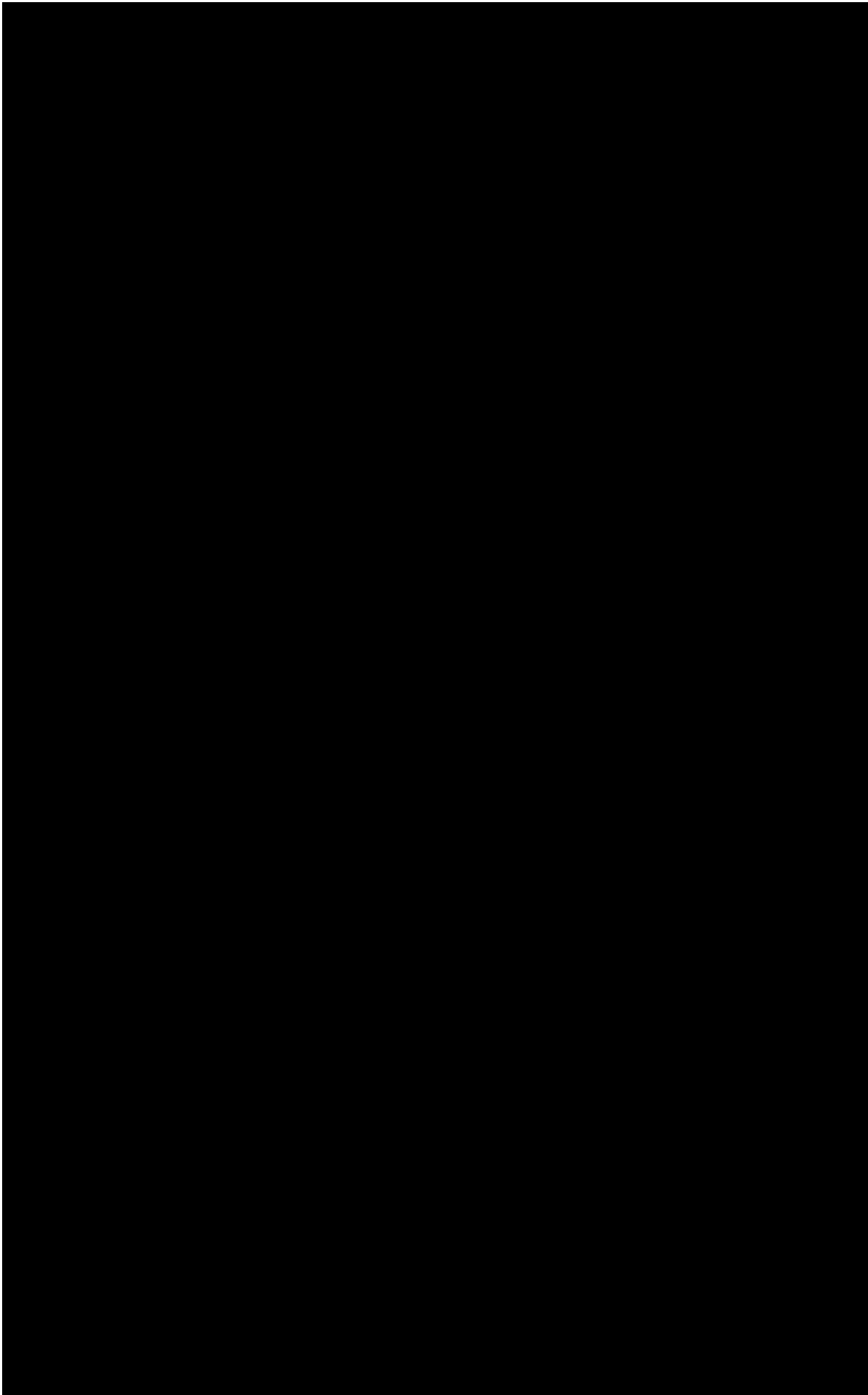




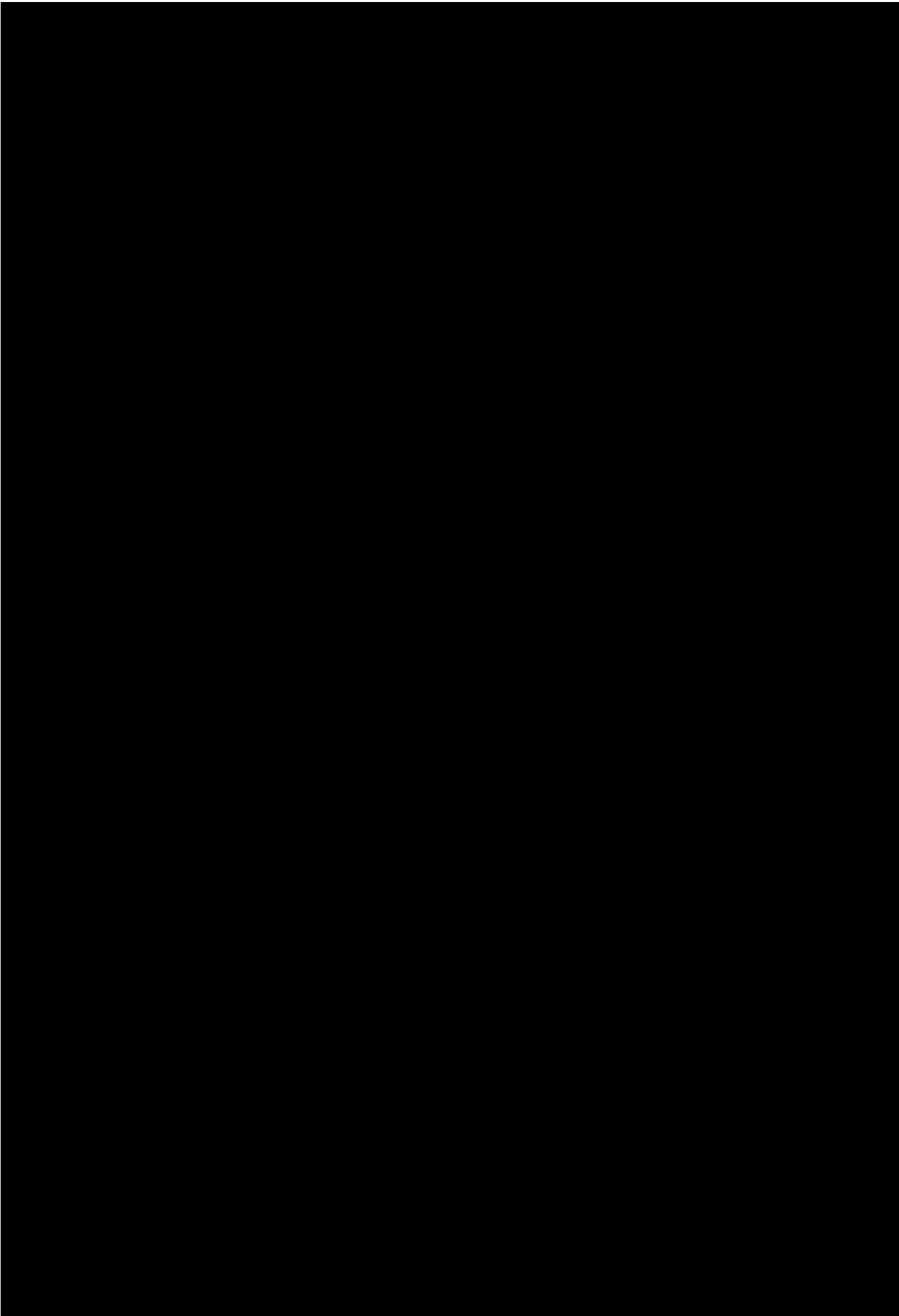
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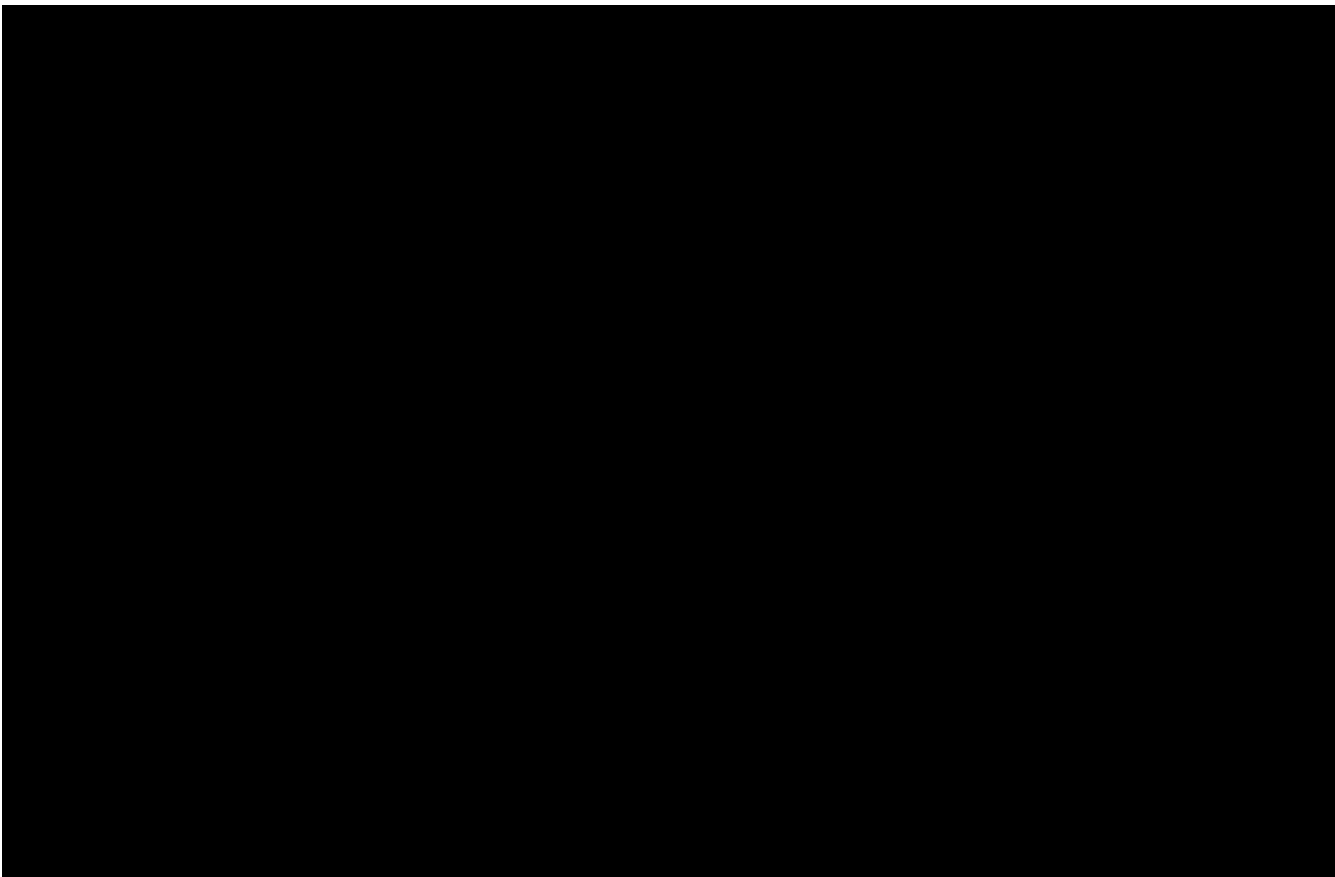






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Heavy Vehicle National Law Requirements

(clause 5.17)

1. CHAIN OF RESPONSIBILITY – HEAVY VEHICLES

1.1 Definitions

- (a) Capitalised terms in this Schedule 51 (Heavy Vehicle National Law Requirements) that are not defined in this deed have the meaning given to them under Heavy Vehicle National Law.
- (b) The term "Chain of Responsibility" is as described in Heavy Vehicle National Law.

1.2 Chain of Responsibility obligations

- (a) The Contractor must comply with:
 - (i) the Heavy Vehicle National Law generally and the requirements of the Chain of Responsibility Provisions specifically;
 - (ii) the Principal's requirements (as the road authority) relevant to planning and use of heavy vehicles; and
 - (iii) the Chain of Responsibility Guideline.
- (b) The Contractor must prepare the Chain of Responsibility Management Plan for the Contractor's Activities in accordance with this deed, including Section 20 of Appendix C.1 of the SWTC.
- (c) The Contractor must ensure that:
 - (i) all Heavy Vehicles used as part of carrying out the Contractor's Activities; and
 - (ii) the Chain of Responsibility Management Plan prepared by the Contractor in accordance with Section 20 of Appendix C.1 of the SWTC,comply with the Chain of Responsibility Guideline.

2. CHAIN OF RESPONSIBILITY MANAGEMENT PLAN REQUIREMENTS

2.1 Core obligations

- (a) The Contractor must not commence any work on or adjacent to the Construction Site or any place at which Contractor's Activities will be undertaken until the Contractor has submitted a revised Chain of Responsibility Management Plan to the Principal in accordance with Section 20 of Appendix C.1 of the SWTC.
- (b) No review of, comments on or any other act or omission of the Principal's Representative about a Chain of Responsibility Management Plan, will lessen or otherwise affect:
 - (i) the Contractor's liabilities or responsibilities under this deed or otherwise according to Law; or
 - (ii) the Principal's rights against the Contractor, whether under this deed or otherwise according to Law.
- (c) The Contractor:
 - (i) must comply with and ensure that any Subcontractors comply with the Chain of Responsibility Management Plan which has been submitted to the Principal's Representative in accordance with Section 20 of Appendix C.1 of the SWTC; and
 - (ii) agrees that compliance with the Chain of Responsibility Management Plan will not in any way lessen or affect:
 - (A) its liabilities or responsibilities of the Contractor under this deed or otherwise according to Law; or
 - (B) the Principal's rights against the Contractor, whether under this deed or otherwise according to Law.

3. CHAIN OF RESPONSIBILITY REQUIREMENTS

3.1 Incorporation of Chain of Responsibility requirements

The Contractor must:

- (a) take account of, and incorporate all applicable, relevant or necessary requirements in relation to the Chain of Responsibility Provisions (particularly provisions that govern the supply chain for the Project Works and Temporary Works and for the bringing onto and removal from the Construction Site items requiring transport services) in all aspects of the Contractor's Activities, including:
 - (i) the Project Plans;
 - (ii) the design of the Project Works and Temporary Works; and
 - (iii) the Design Documentation; and
- (b) at key stages of the Contractor's Activities, conduct Chain of Responsibility risk workshops which will include the designer, Principal, the Contractor, Subcontractors and the Independent Verifier. The Chain of Responsibility risk workshops can be combined with the work health and safety risk workshops.

3.2 Chain of Responsibility risk assessment workshop

- (a) Prior to the development of the Chain of Responsibility Management Plan, and any subsequent reviews or revisions of the Chain of Responsibility Management Plan, the Contractor must undertake and document the outcomes of a formal Chain of Responsibility risk assessment workshop.
- (b) The Contractor's Chain of Responsibility risk assessment workshop must identify and document a register of Chain of Responsibility risks and hazards and control measures associated with the Contractor's Activities.
- (c) The Contractor's Chain of Responsibility Management Plan must reflect the outcomes reached in the Chain of Responsibility risk assessment workshop.
- (d) The Contractor must hold further separate workshops at different stages of the Contractor's Activities to address different trades, phases, work areas or processes not covered during the earlier risk assessment workshops and must be held prior to the commencement of the relevant activity, phase or section of work.
- (e) The Contractor may combine the Chain of Responsibility risk assessment workshops with the work health and safety risk workshops conducted by the Contractor.

4. DRIVING AND VEHICLE SAFETY

4.1 Reduction of risks to workers and public

The Contractor must comply with the requirements of the:

- (a) WHS Laws;
- (b) Road Transport Legislation; and
- (c) Heavy Vehicle National Law,

and any subordinate legislation to ensure the risks to workers and the public are reduced so far as is reasonably practical when driving on the Construction Site and driving to and from the Construction Site on the public road network.

4.2 Minimum Vehicle Safety Equipment

- (a) The Contractor must ensure that all light and heavy vehicles used to transport equipment, plant, materials and people to and from the Construction Site and working areas are equipped with the equipment as specified in the Chain of Responsibility Guideline, including the following:
 - (i) three-point seat belts (for the driver and all passengers);
 - (ii) rear view mirrors;
 - (iii) reversing cameras, quacker type alarms and collision/proximity sensors;
 - (iv) lights (head and tail, stop, turn signal and emergency warning);
 - (v) light and high visibility colours for vehicles;
 - (vi) daytime running lights;
 - (vii) no additional window tinting;
 - (viii) flashing lights (unless determined otherwise by risk assessment); and
 - (ix) fire safety equipment capable of suppressing or extinguishing potential vehicular fires.
- (b) Without limiting clause 4.2(a) of this Schedule 51 (Heavy Vehicle National Law Requirements), the Contractor must ensure all vehicles in carrying out the Contractor's

Activities display signs approved by the Principal in a prominent position on the vehicle when driven on public roads which associate the vehicle with carrying out the Contractor's Activities.

4.3 Vehicle Registration, Maintenance and Inspection

The Contractor must:

- (a) ensure all work vehicles are registered, roadworthy and pre-start checked before being driven;
- (b) ensure that all vehicles are inspected, serviced and maintained in accordance with the manufacturer's recommendations;
- (c) maintain a register of company vehicles showing registration expiry dates and licence requirements; and
- (d) comply with the Chain of Responsibility Guideline requirements for ensuring the roadworthiness of all heavy vehicles used in connection with the Contractor's Activities.

4.4 Vehicle Drivers

- (a) The Contractor must ensure that all workers who drive a vehicle as part of their work in the Contractor's business or undertaking, including those persons employed by Subcontractors (including owner drivers), are licensed, fit and verified as competent to drive the vehicle they are driving.
- (b) The Contractor must develop a "Driver Code of Conduct" which outlines minimum driver behaviour requirements to ensure compliance with:
 - (i) WHS Laws;
 - (ii) Road Transport Legislation;
 - (iii) Heavy Vehicle National Law; and
 - (iv) the Chain of Responsibility Guideline.
- (c) The Contractor must ensure that all drivers, including those employed by Subcontractors (including owner drivers) are made aware of and sign the "Driver Code of Conduct" developed by the Contractor in accordance with clause 4.4(b) of this Schedule 51 (Heavy Vehicle National Law Requirements).

4.5 Heavy Vehicle Requirements

The Contractor must ensure that the on-road transport of dangerous goods is managed in accordance with Law, including the *Dangerous Goods (Road and Rail Transport) Act 2008* (NSW) and the *Dangerous Goods (Road and Rail Transport) Regulation 2014* (NSW).

5. CONSTRUCTION TRAFFIC AND VULNERABLE ROAD USERS

5.1 Introduction

The Contractor acknowledges that:

- (a) during the Contractor's Activities, the introduction of construction Heavy Vehicle traffic to densely populated and highly used pedestrian and cyclist areas in and around Sydney has the potential to generate road safety risks to the public, in particular vulnerable road users; and
- (b) where required under Heavy Vehicle National Law and the Chain of Responsibility Guideline, the Contractor must ensure that the specific measures in this clause 5 of Schedule 51 (Heavy Vehicle National Law Requirements) are implemented to minimise any impacts of construction Heavy Vehicles traffic on other road users.

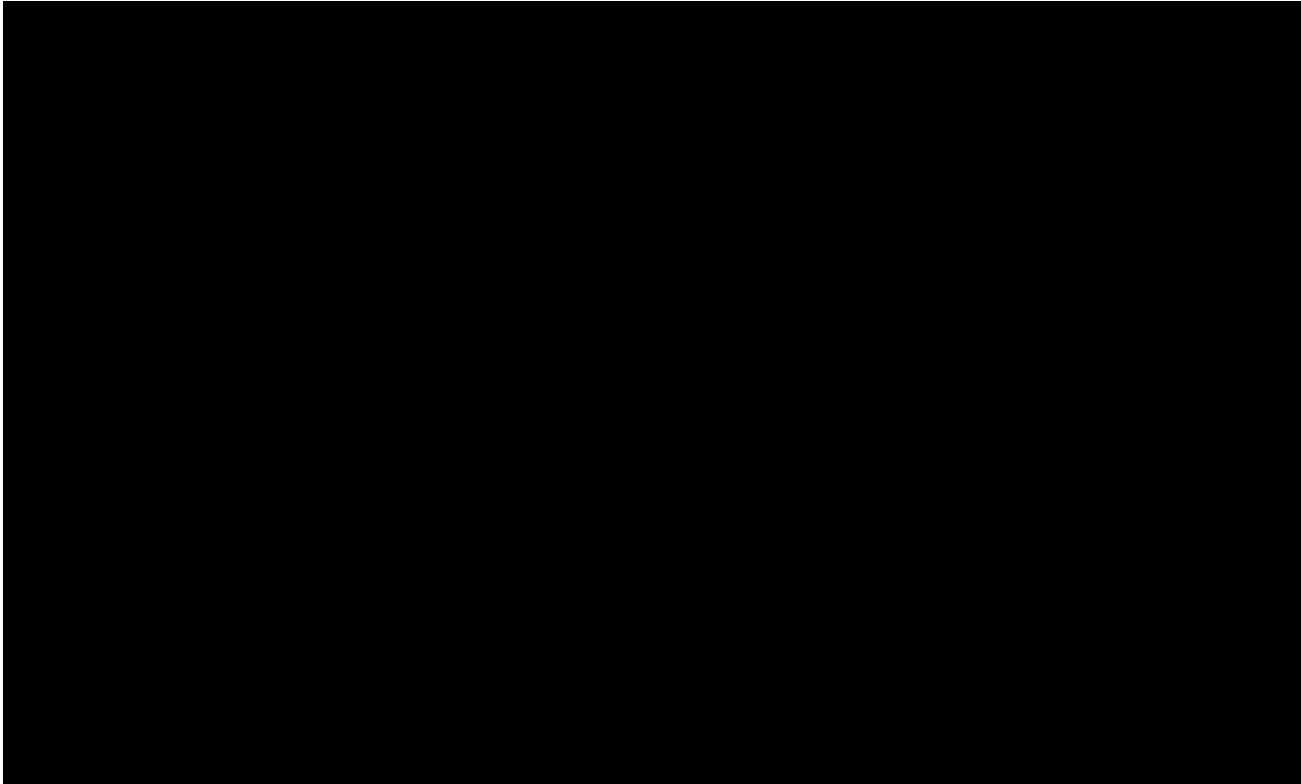
5.2 Heavy Vehicle Operators

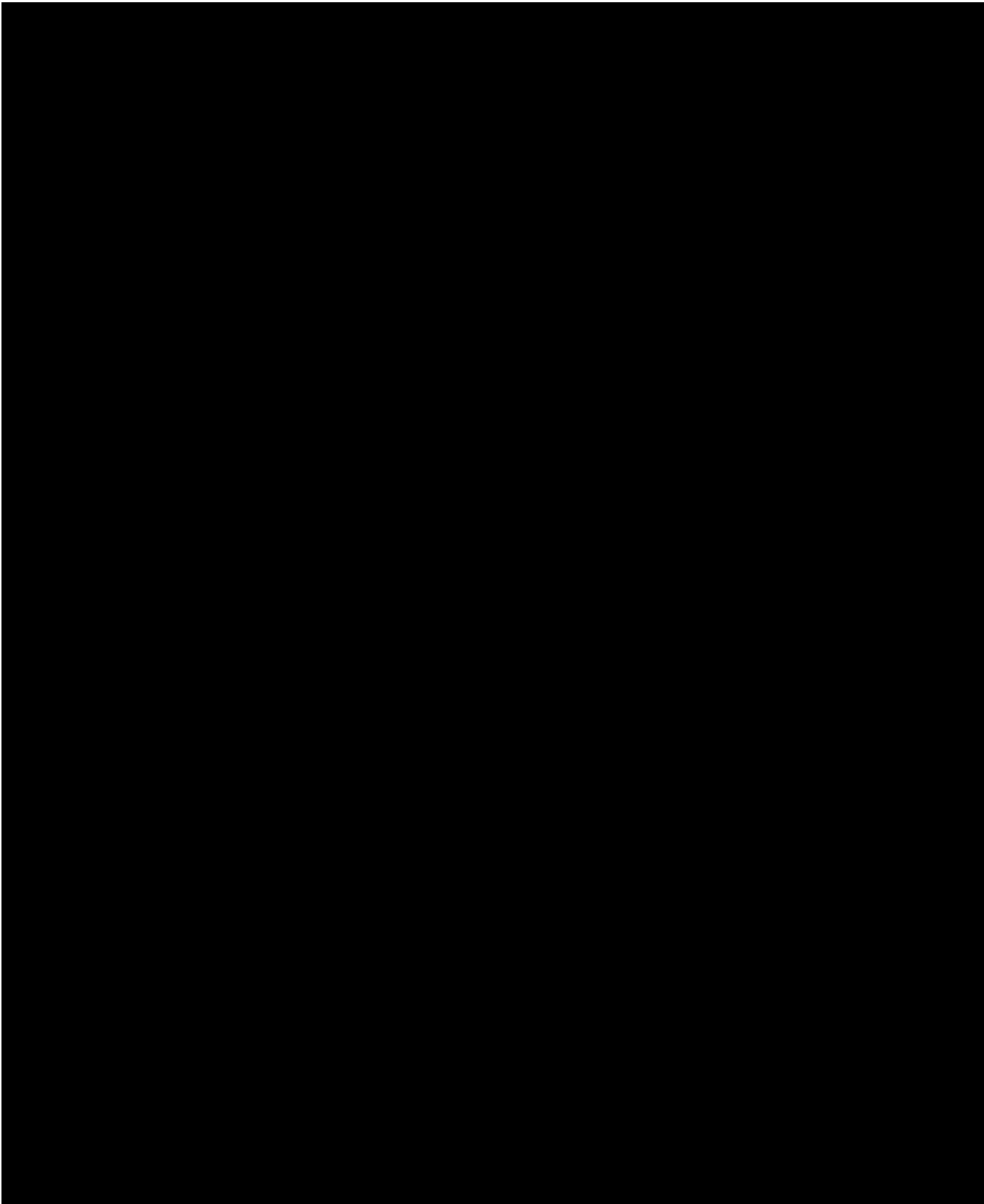
- (a) The Contractor must ensure that all Heavy Vehicle operators engaged in the Contractor's Activities, including owner drivers, are assessed and selected to ensure that they meet the minimum requirements set out in this Schedule 51 (Heavy Vehicle National Law Requirements) and the Chain of Responsibility Guideline.
- (b) A Heavy Vehicle operator includes the Contractor and its Subcontractors engaged in the following activities:
 - (i) removing excavated material or waste; or
 - (ii) delivering concrete, equipment (including Temporary Works), plant or materials.

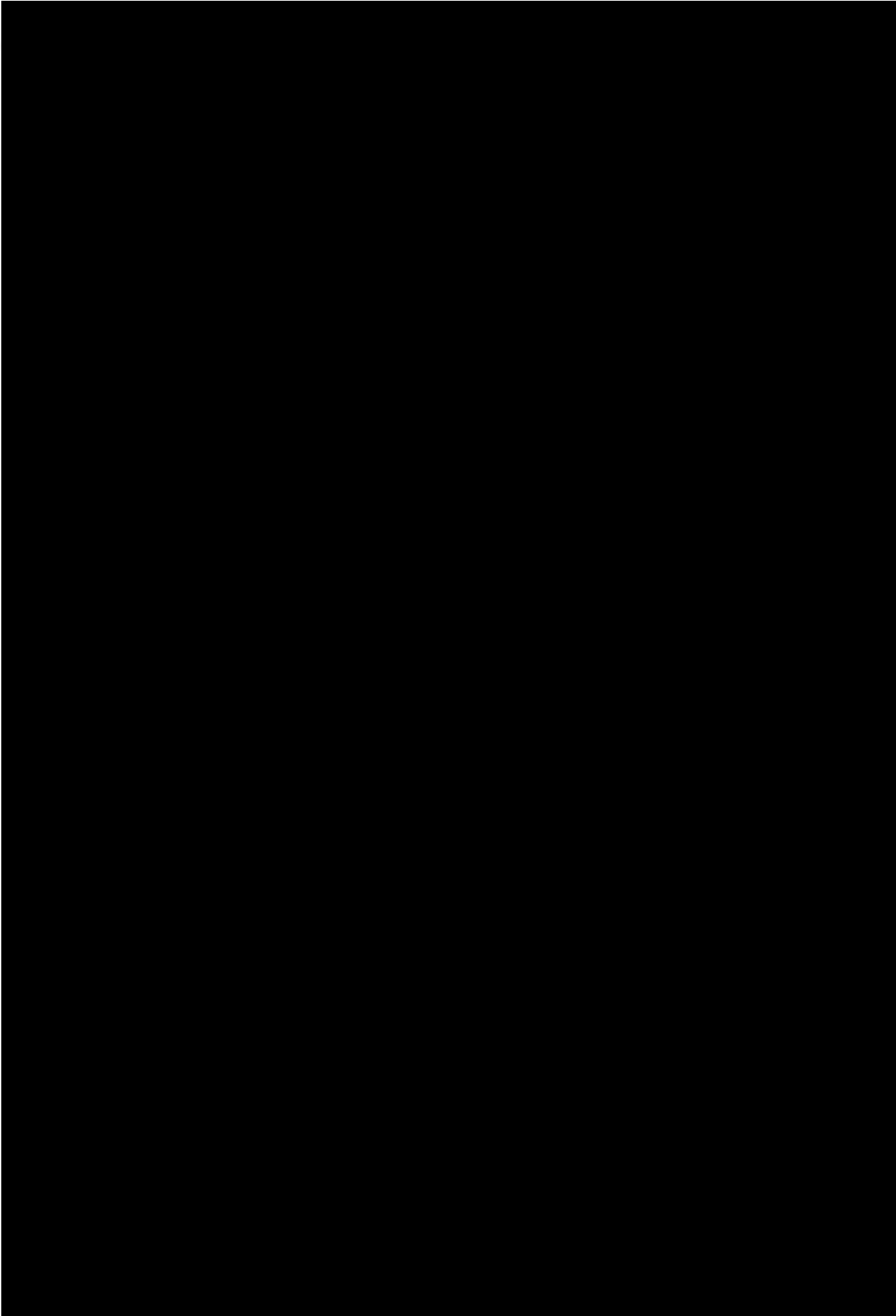
5.3 Haulage Route Compliance

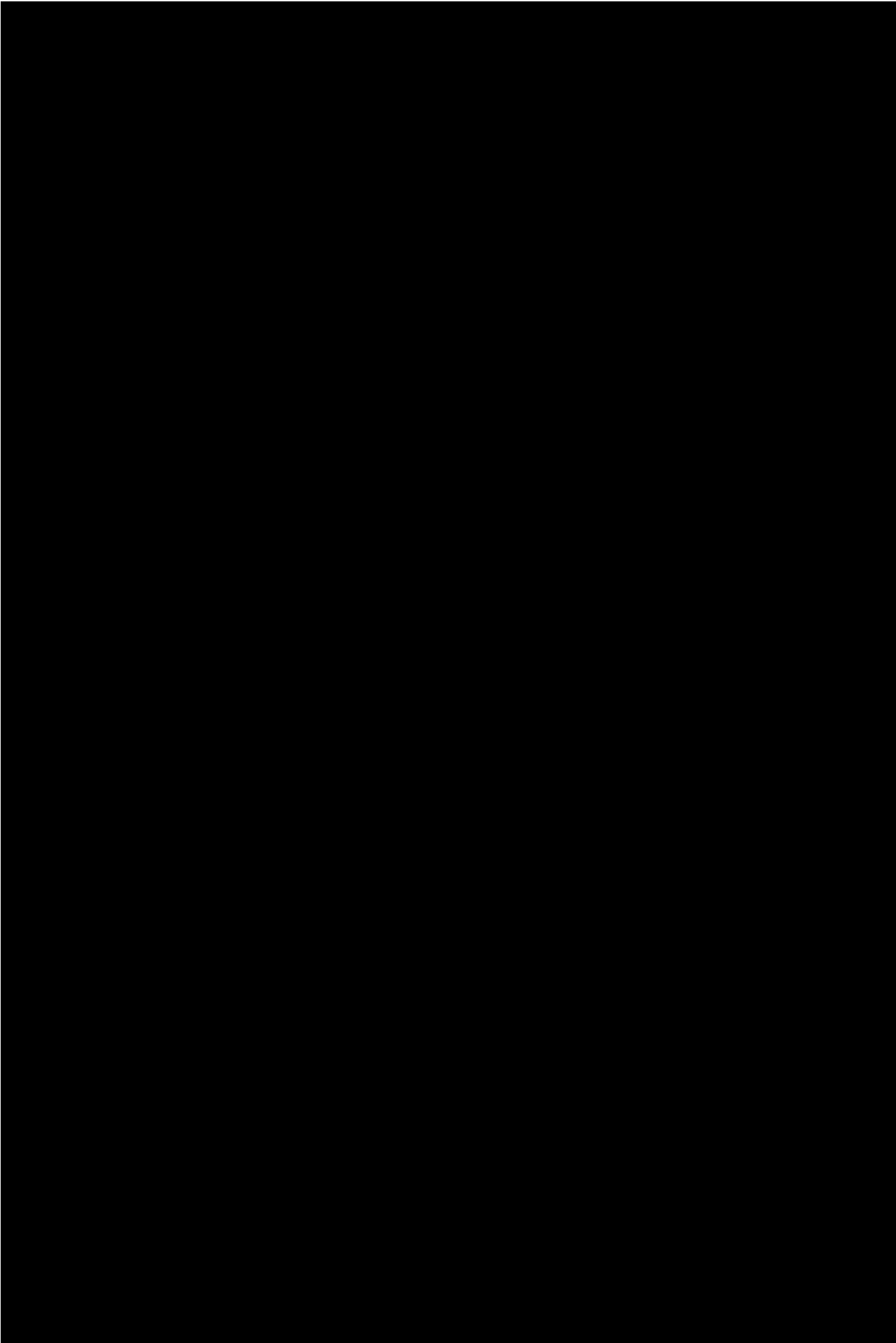
- (a) The Contractor must ensure that all Heavy Vehicles haulage routes comply with any planning approval requirements and are endorsed by the Traffic and Transport Liaison Group (as defined in the SWTC) and / or similar.

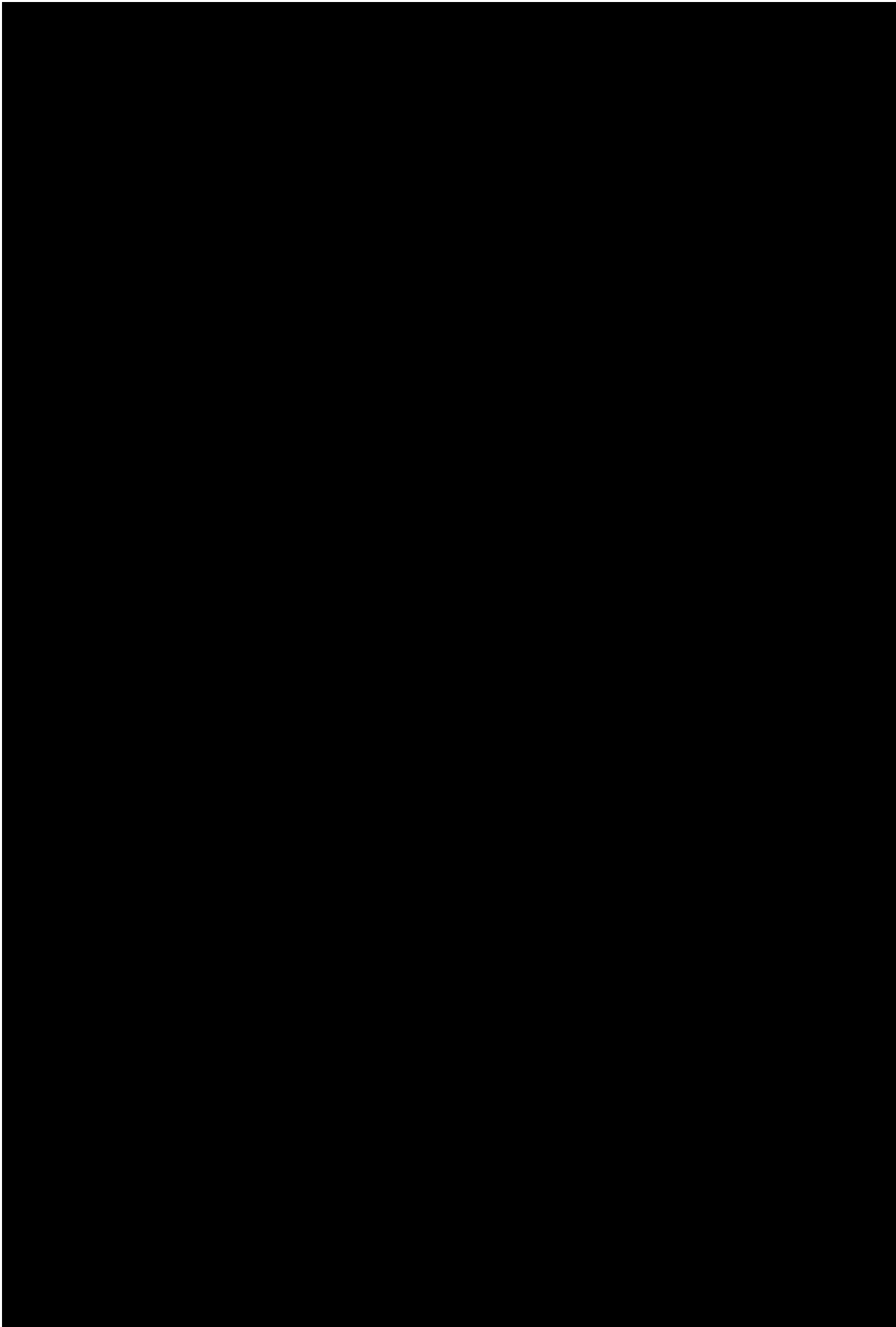


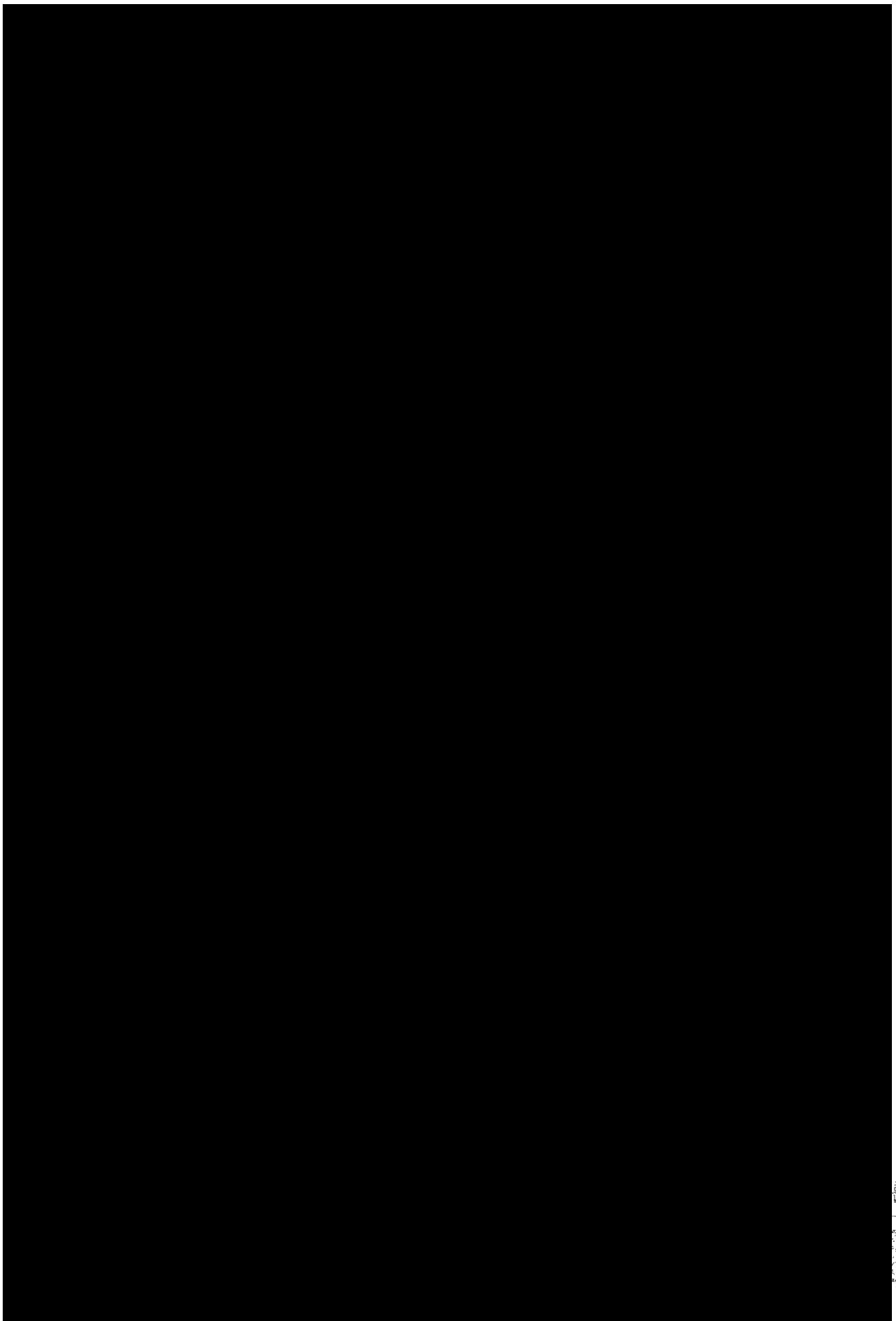




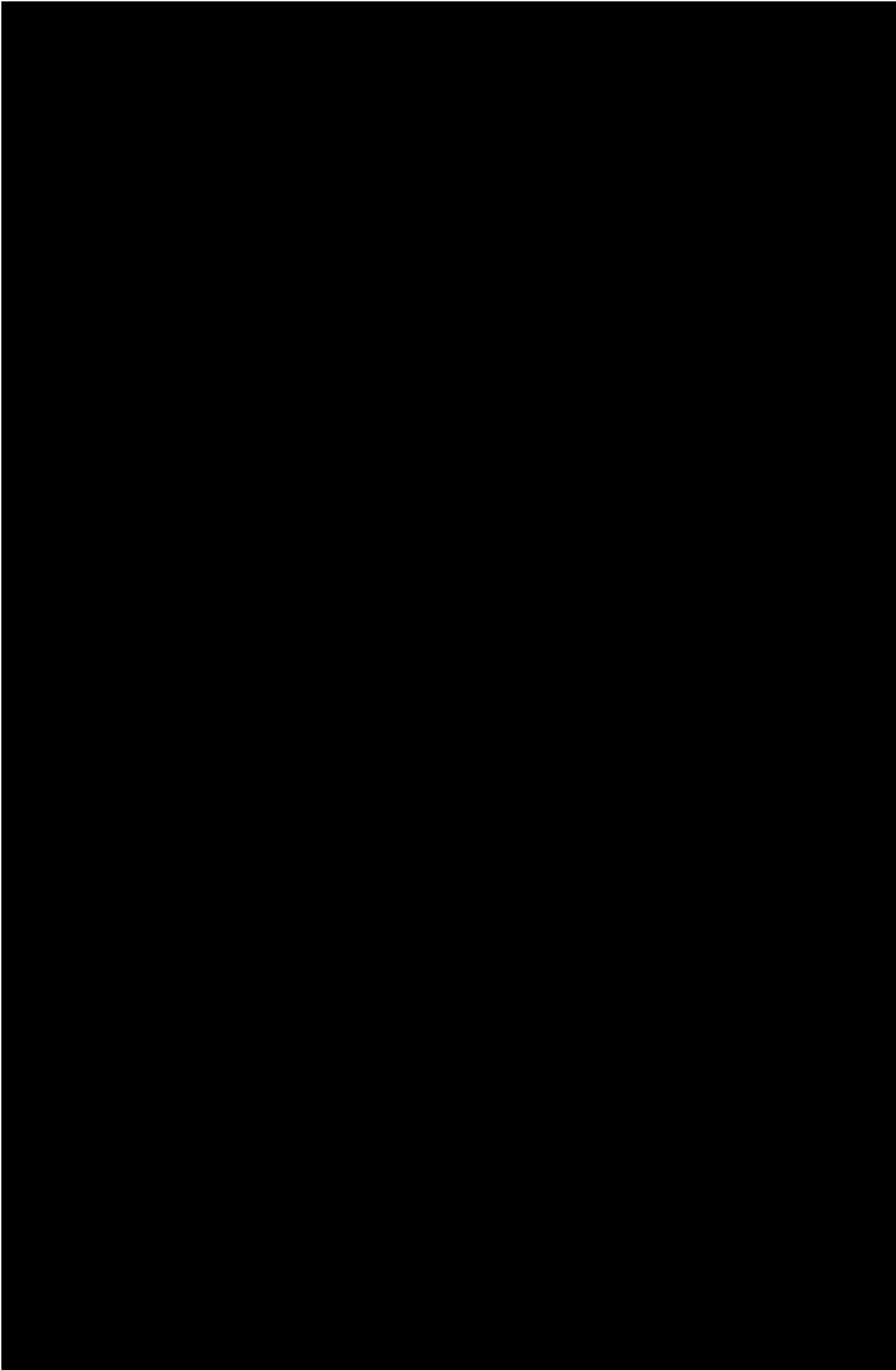


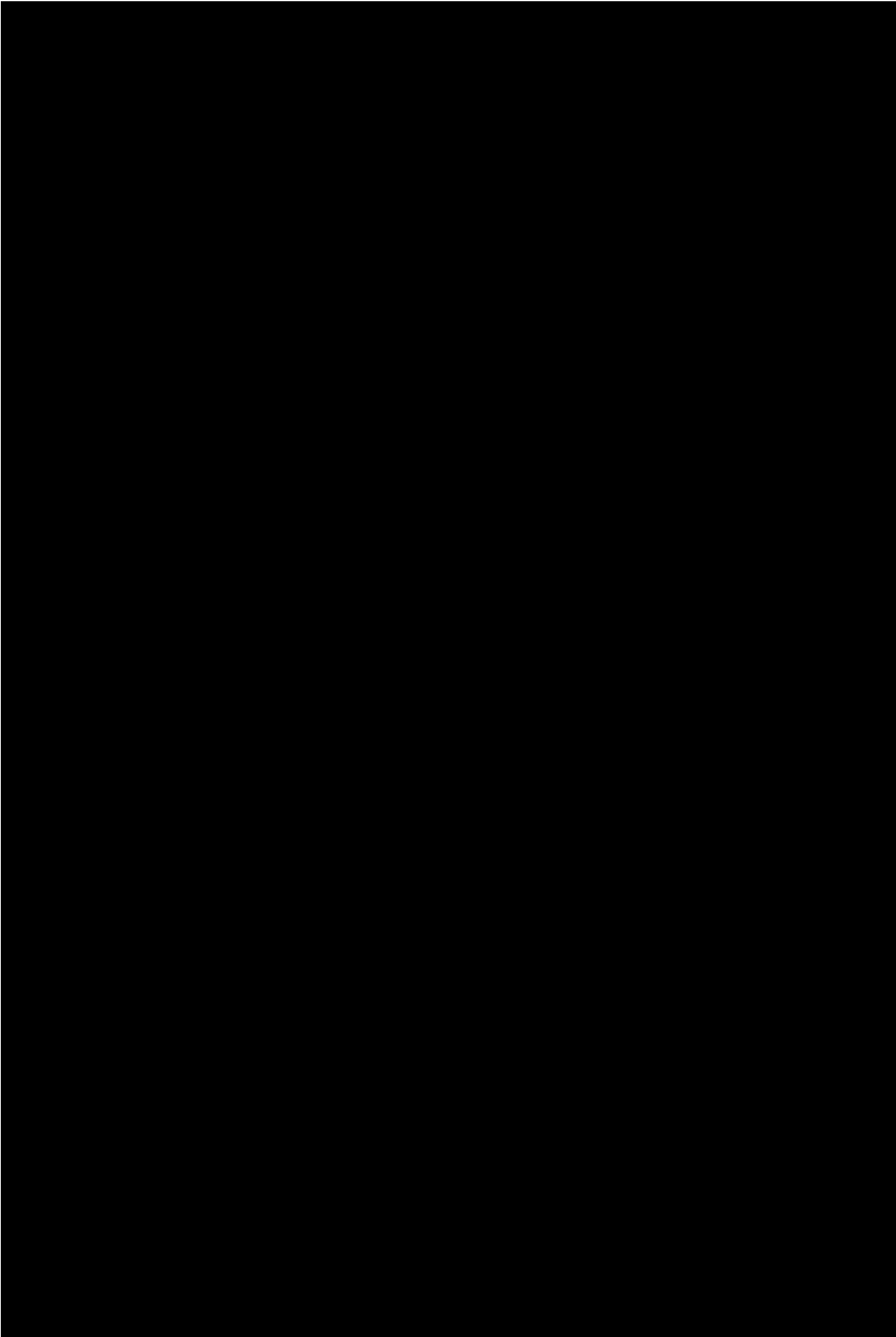


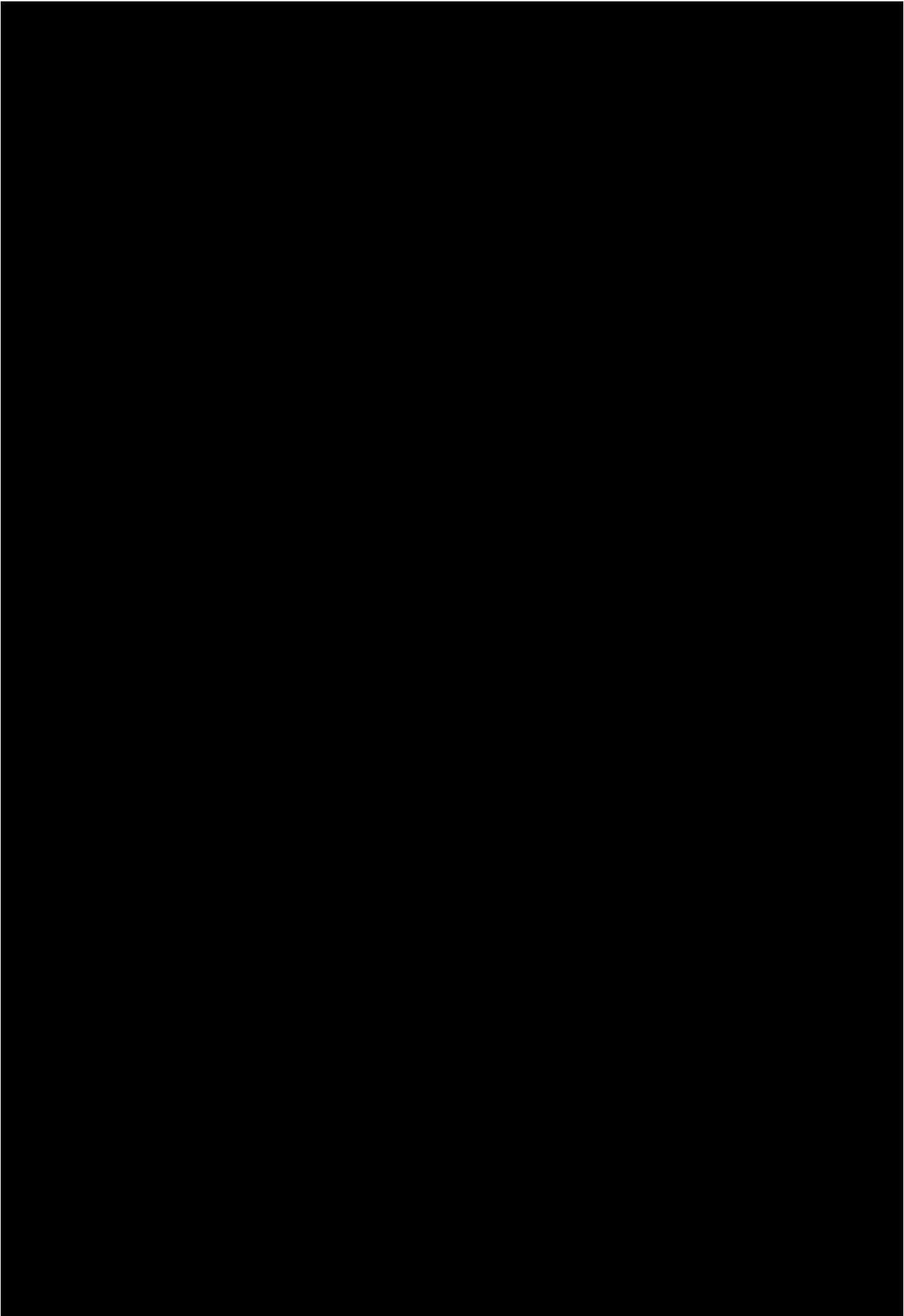


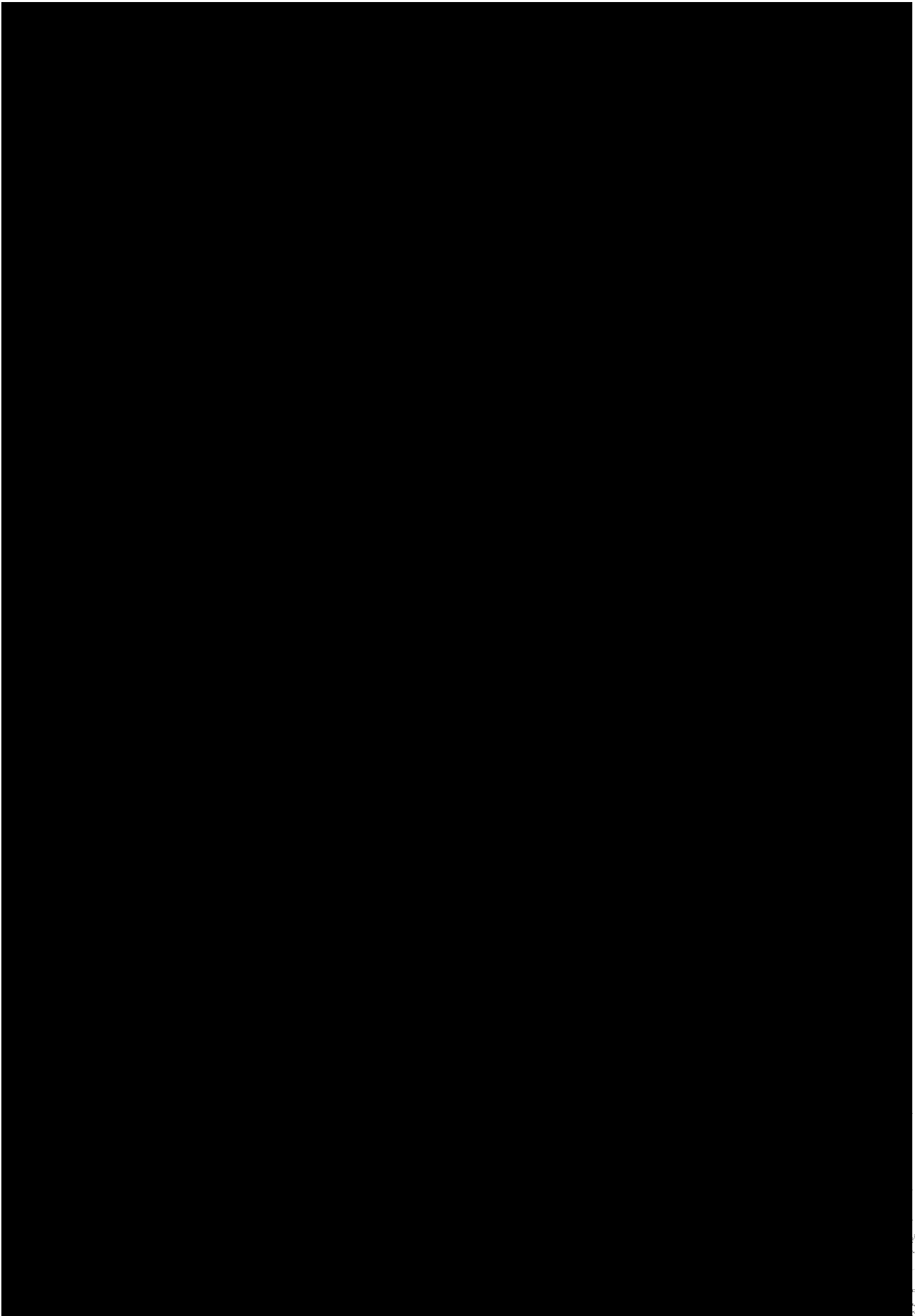


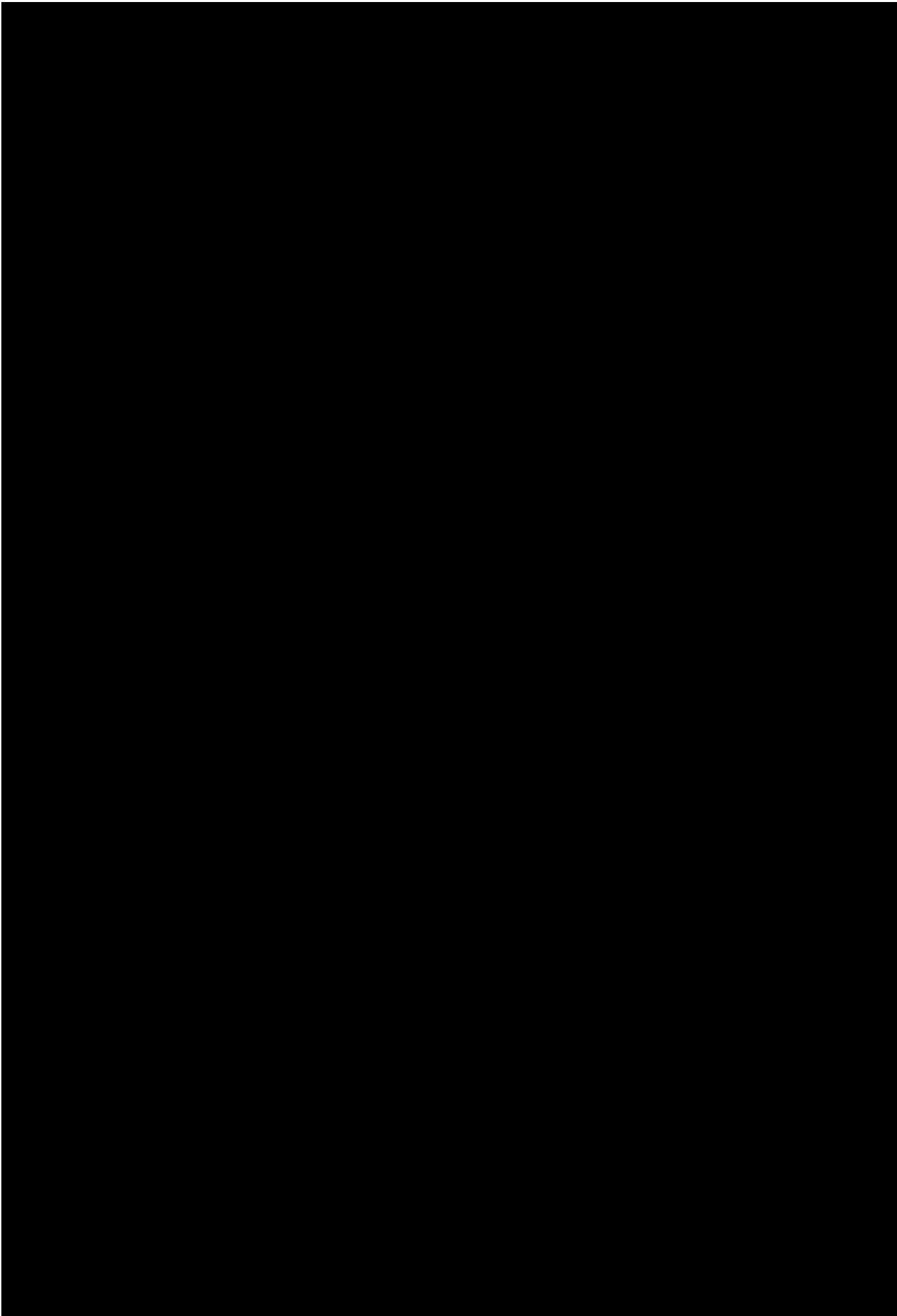
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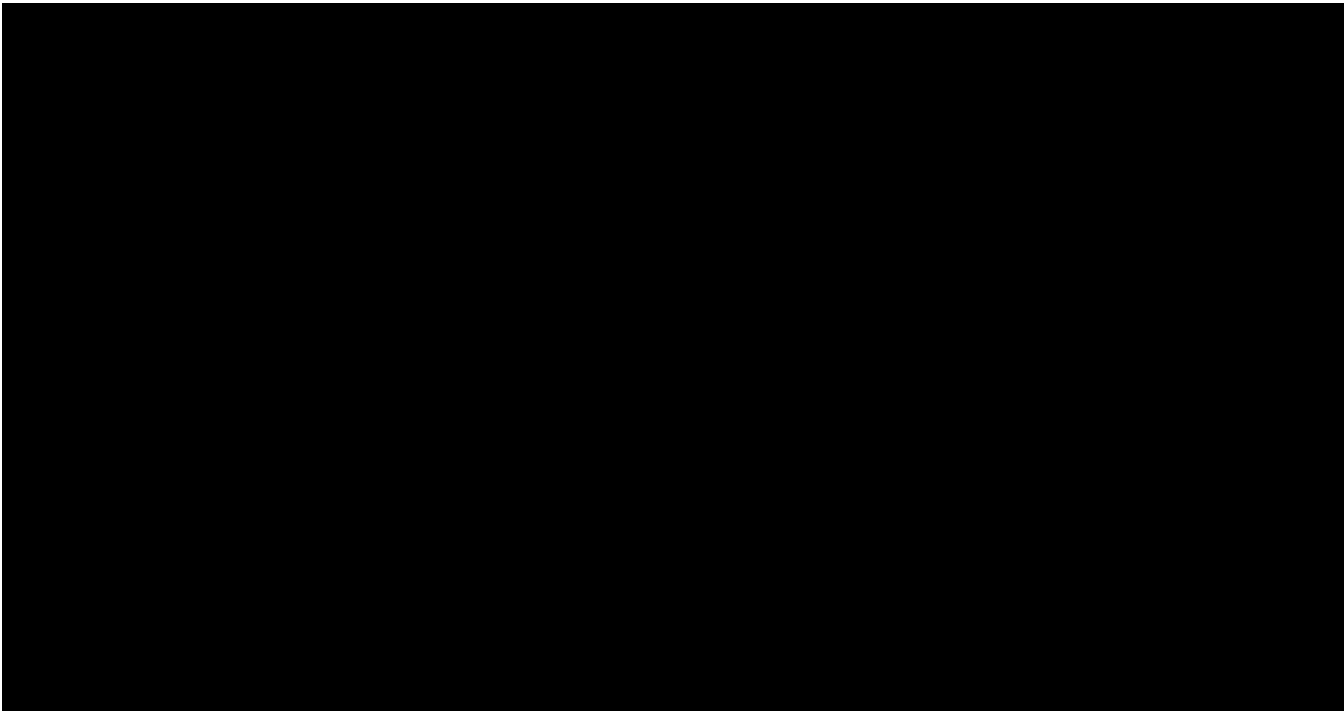




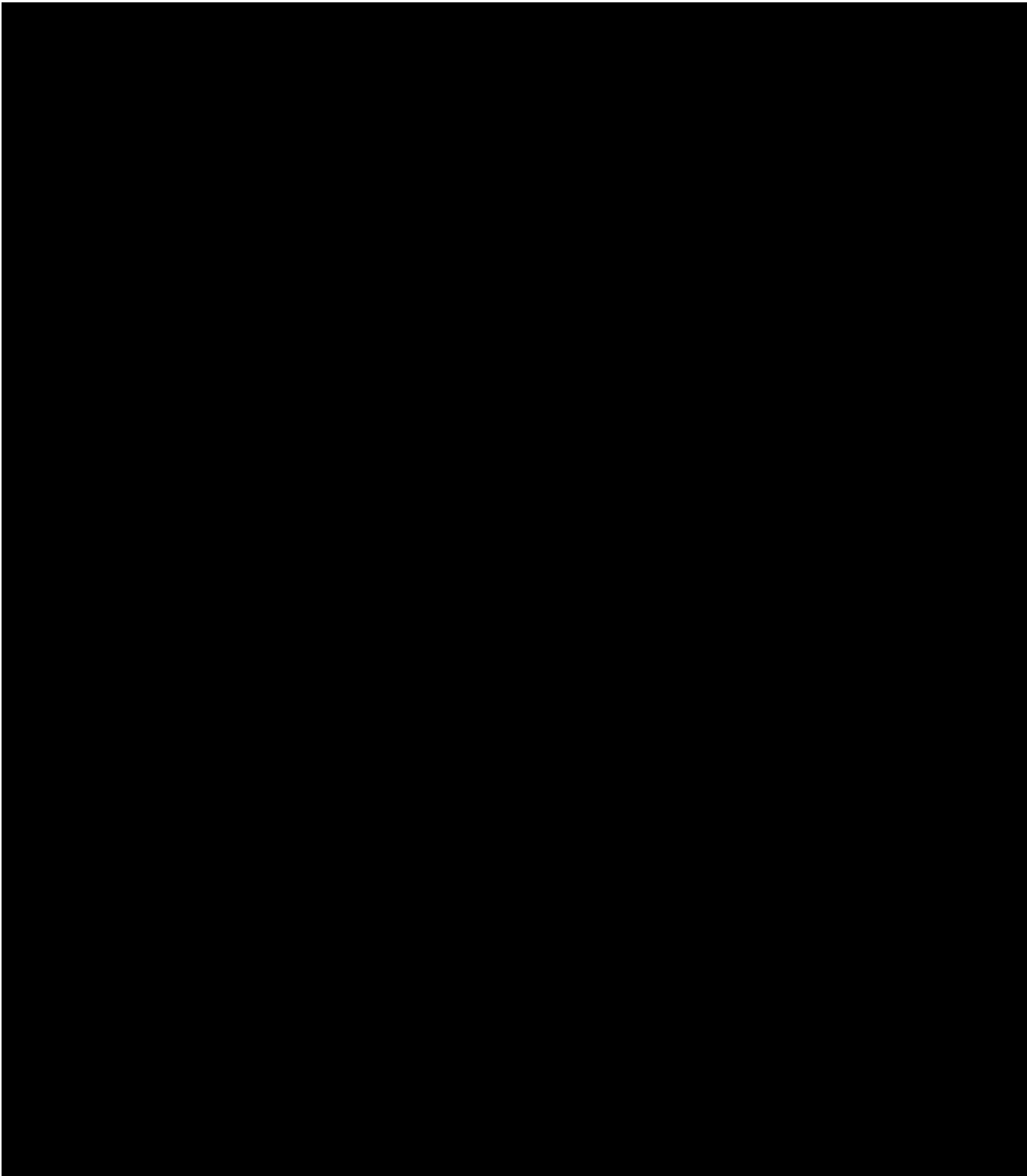


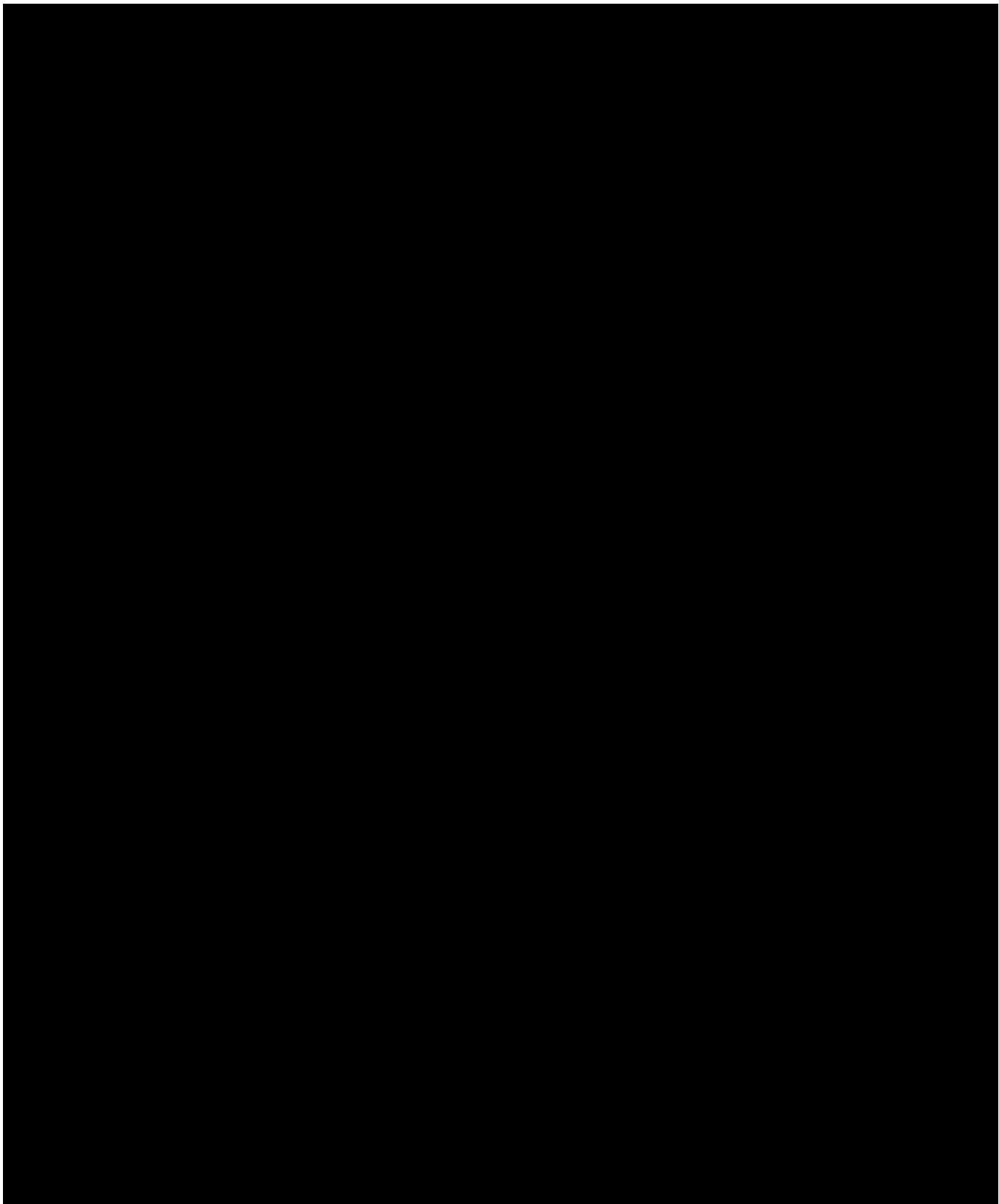


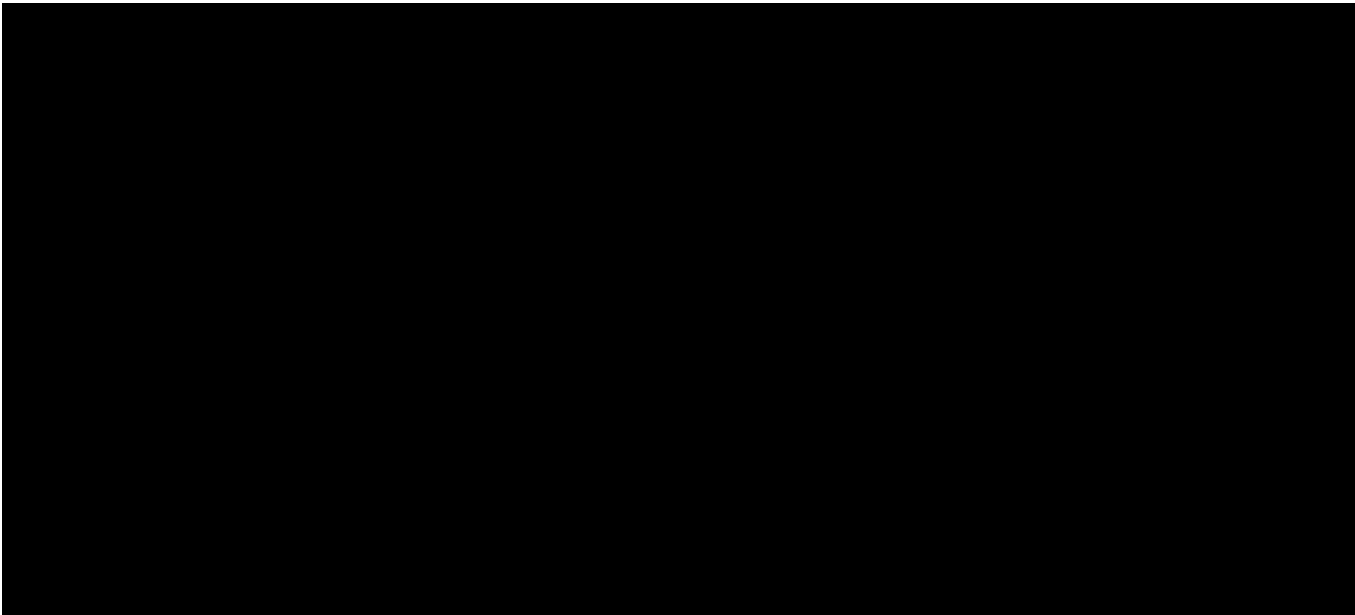


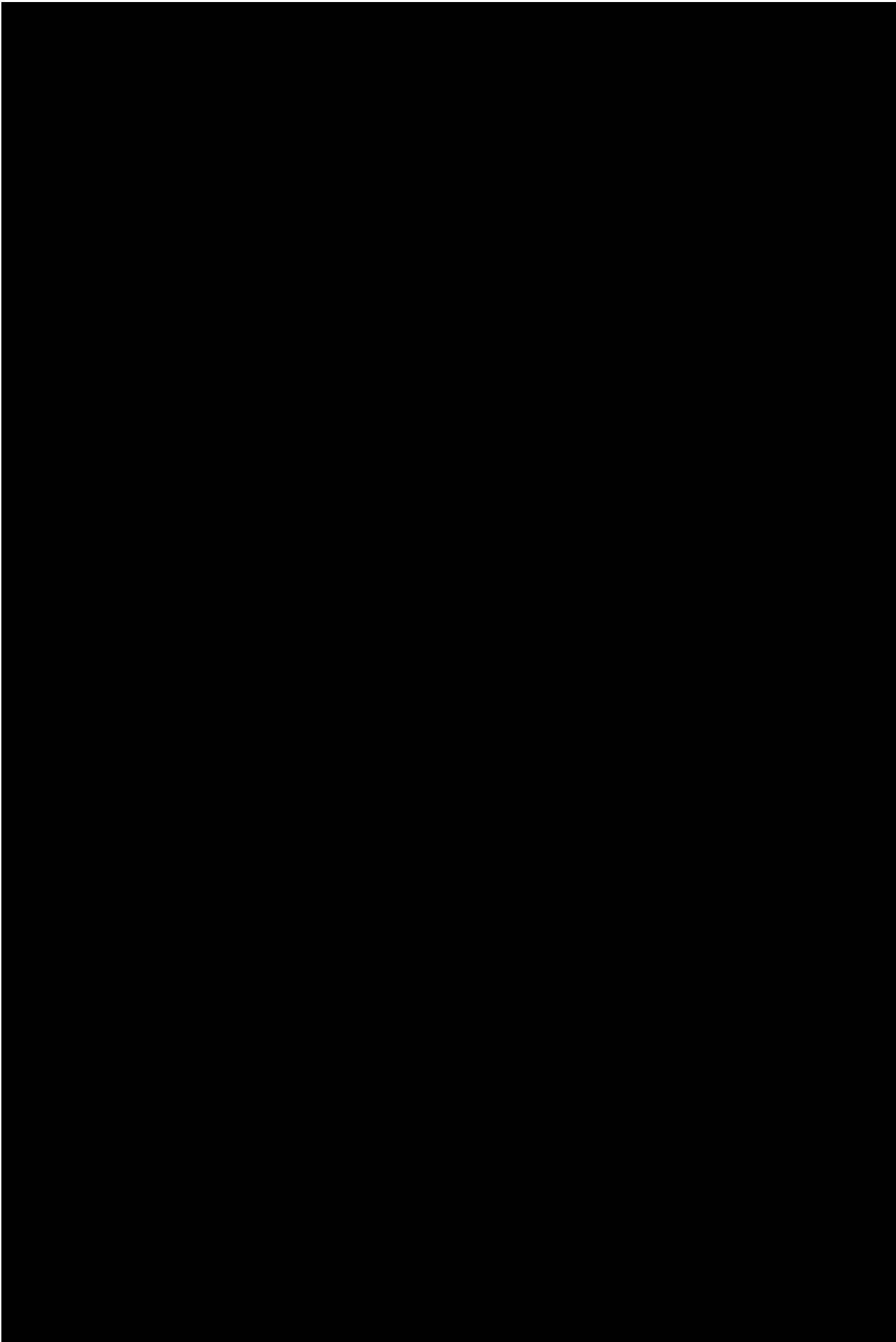


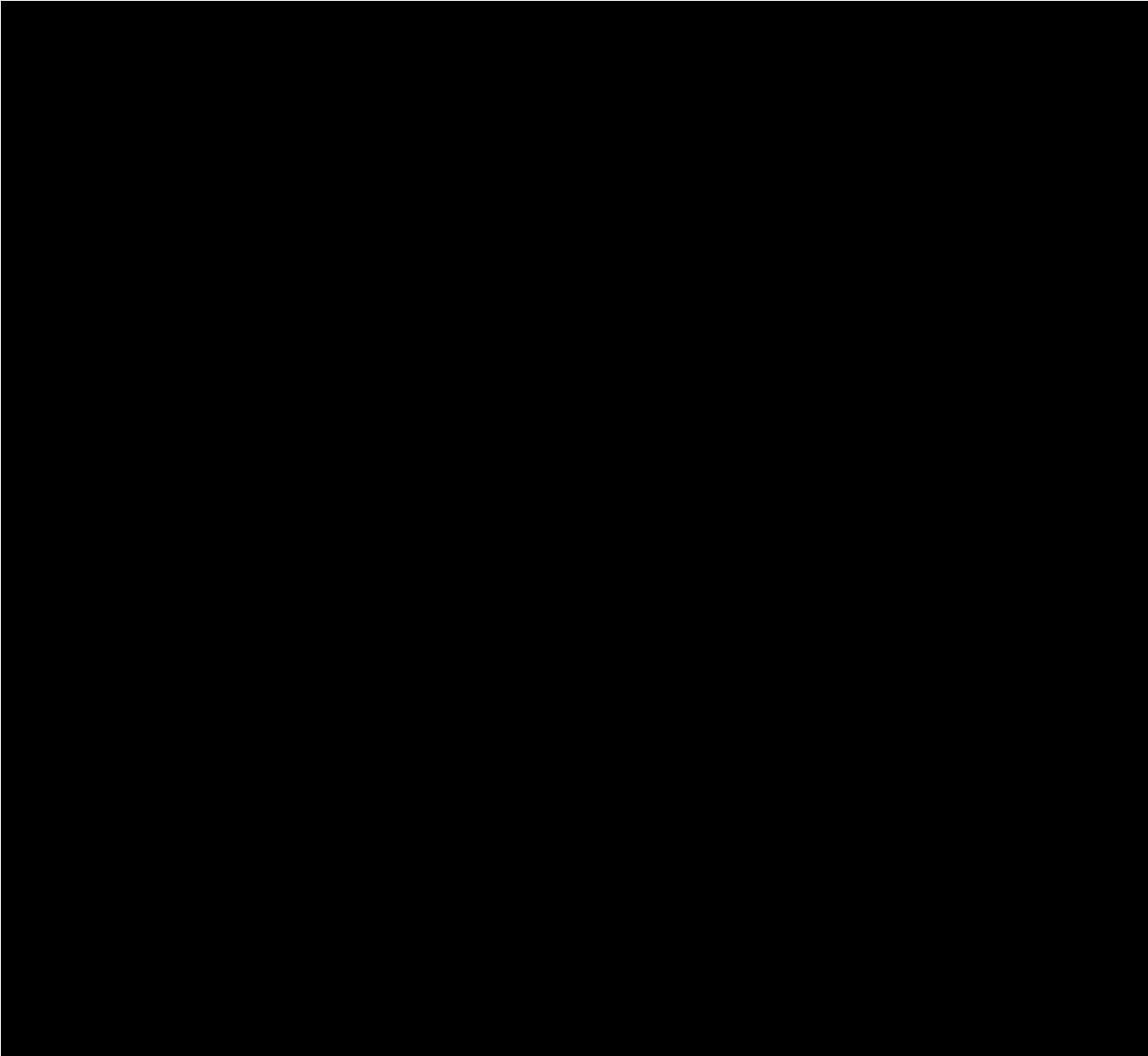
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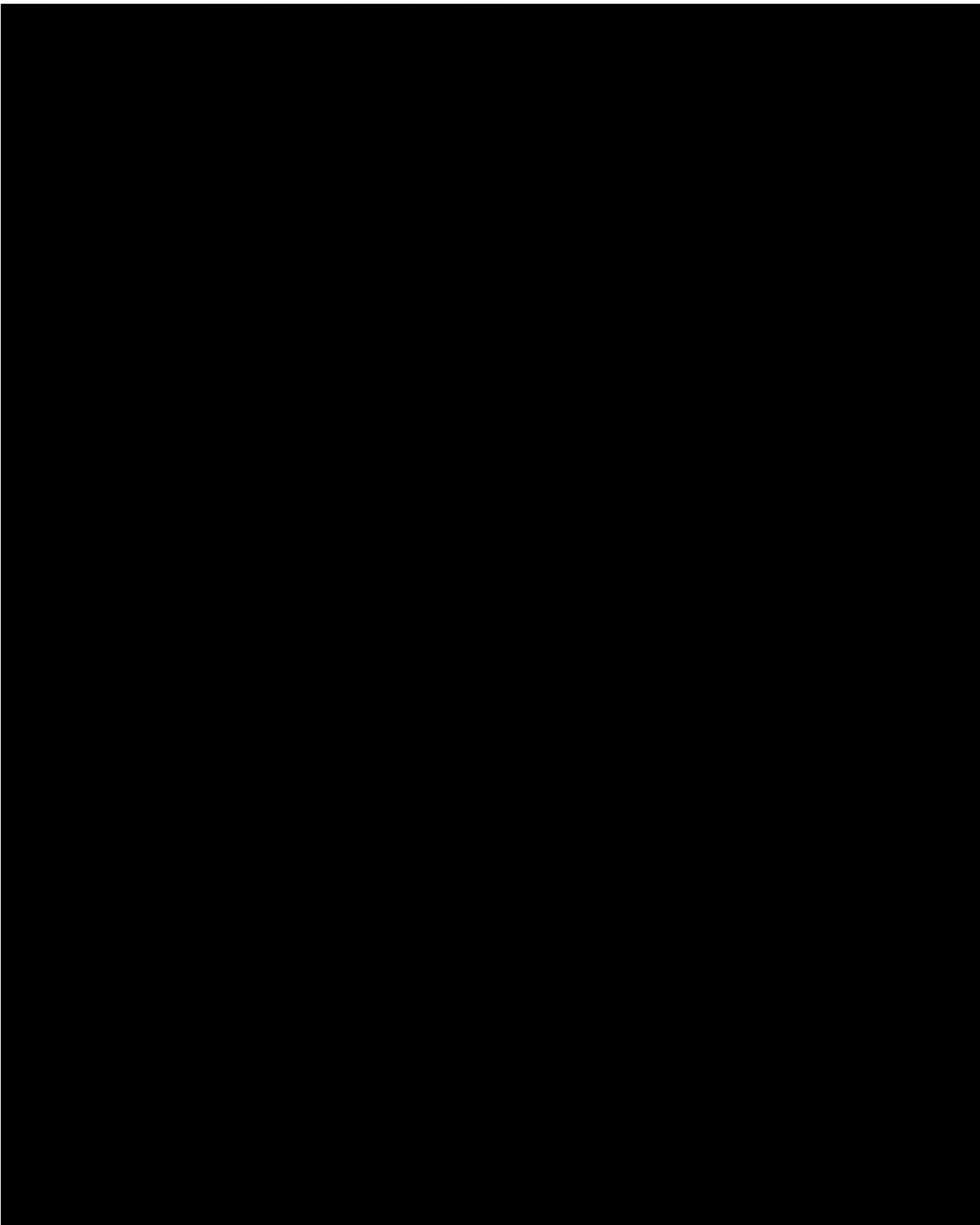








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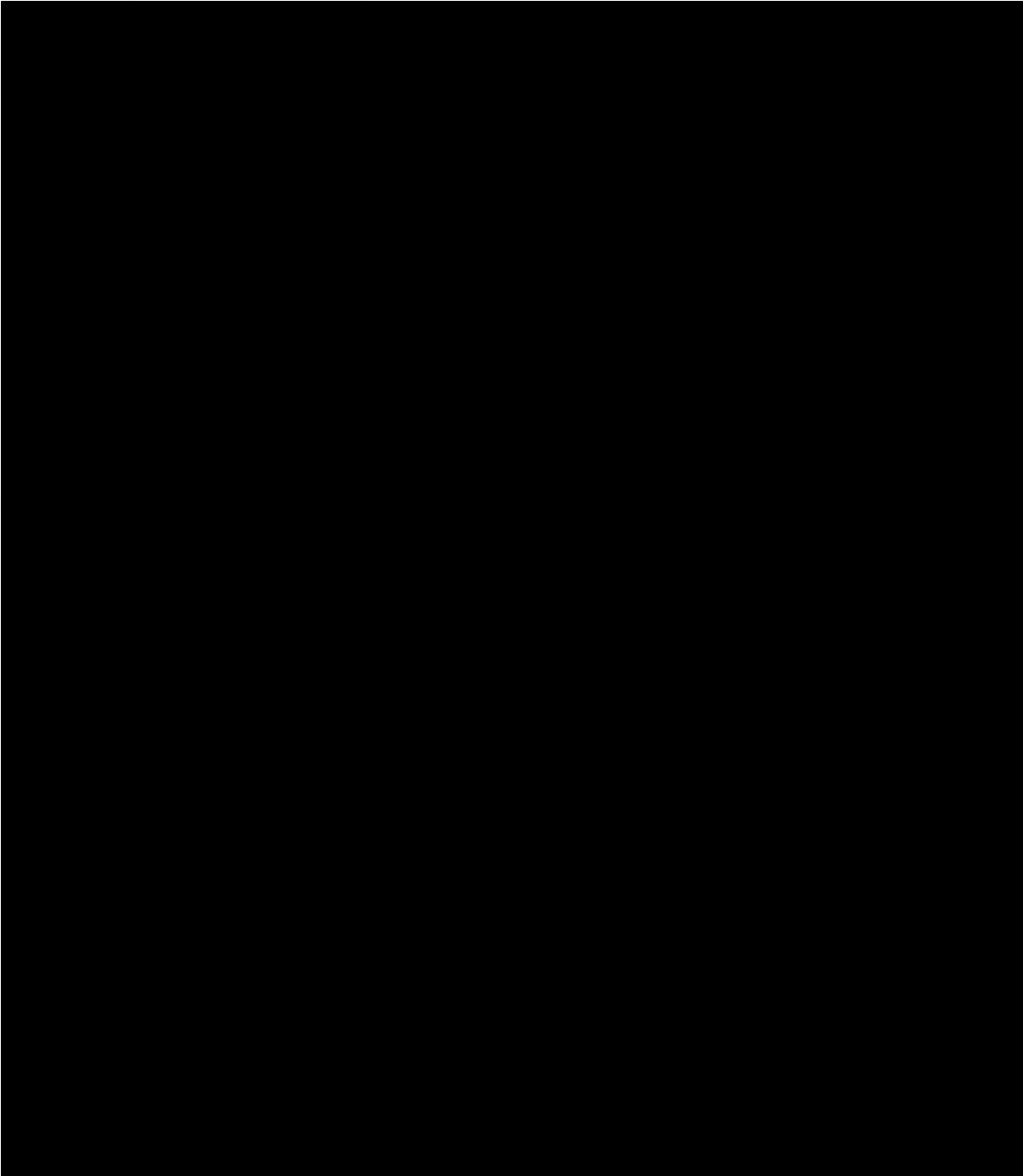


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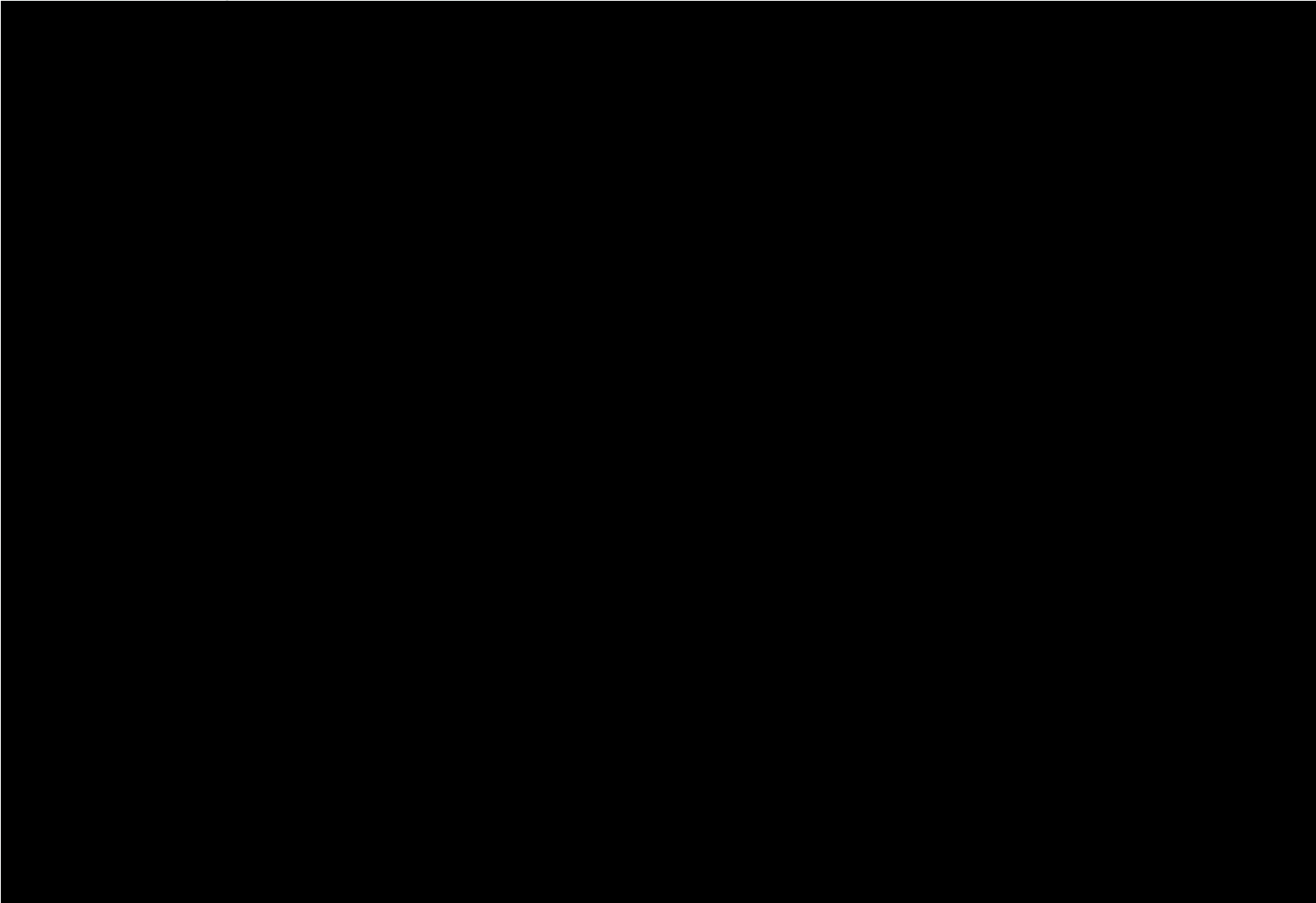


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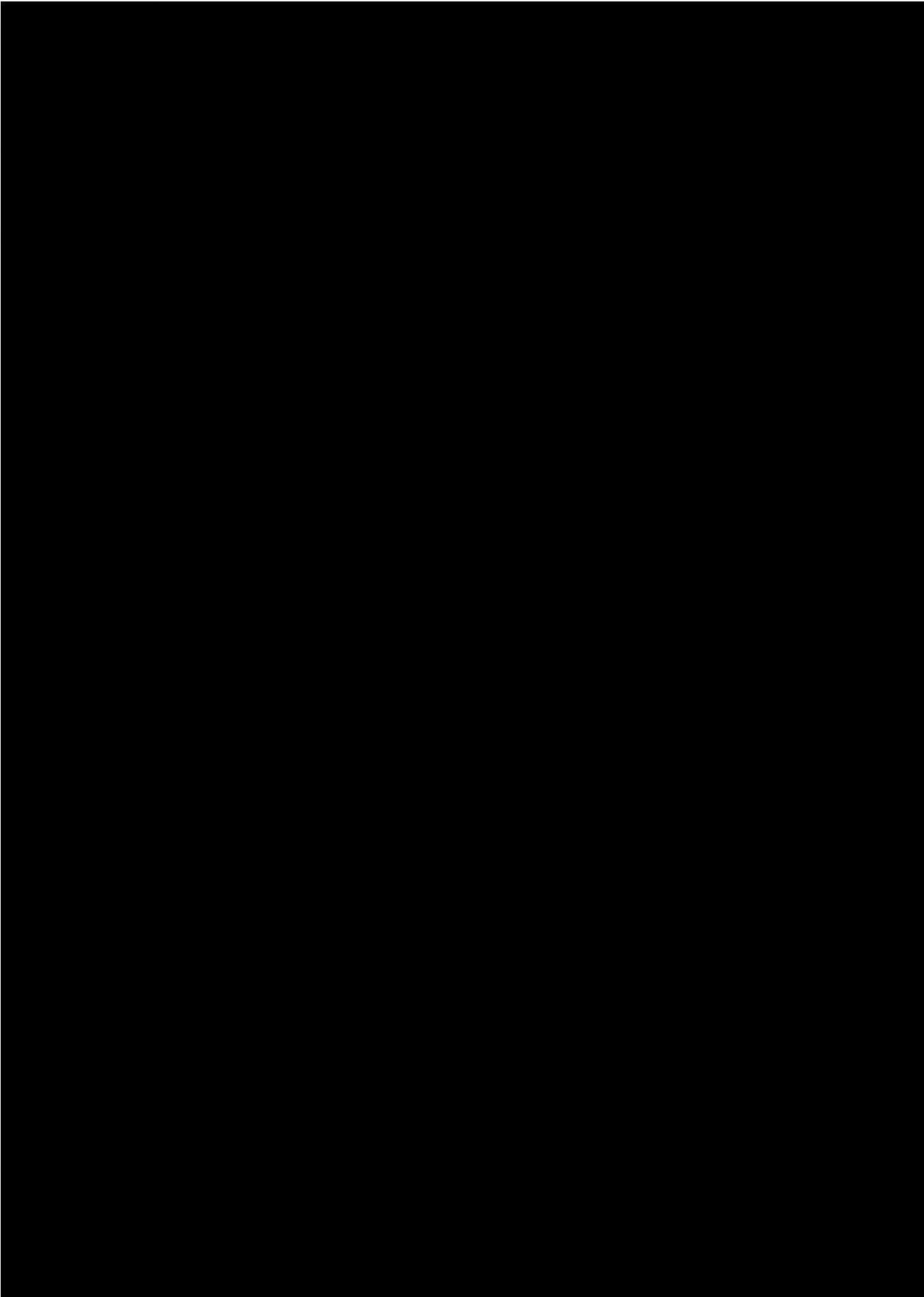


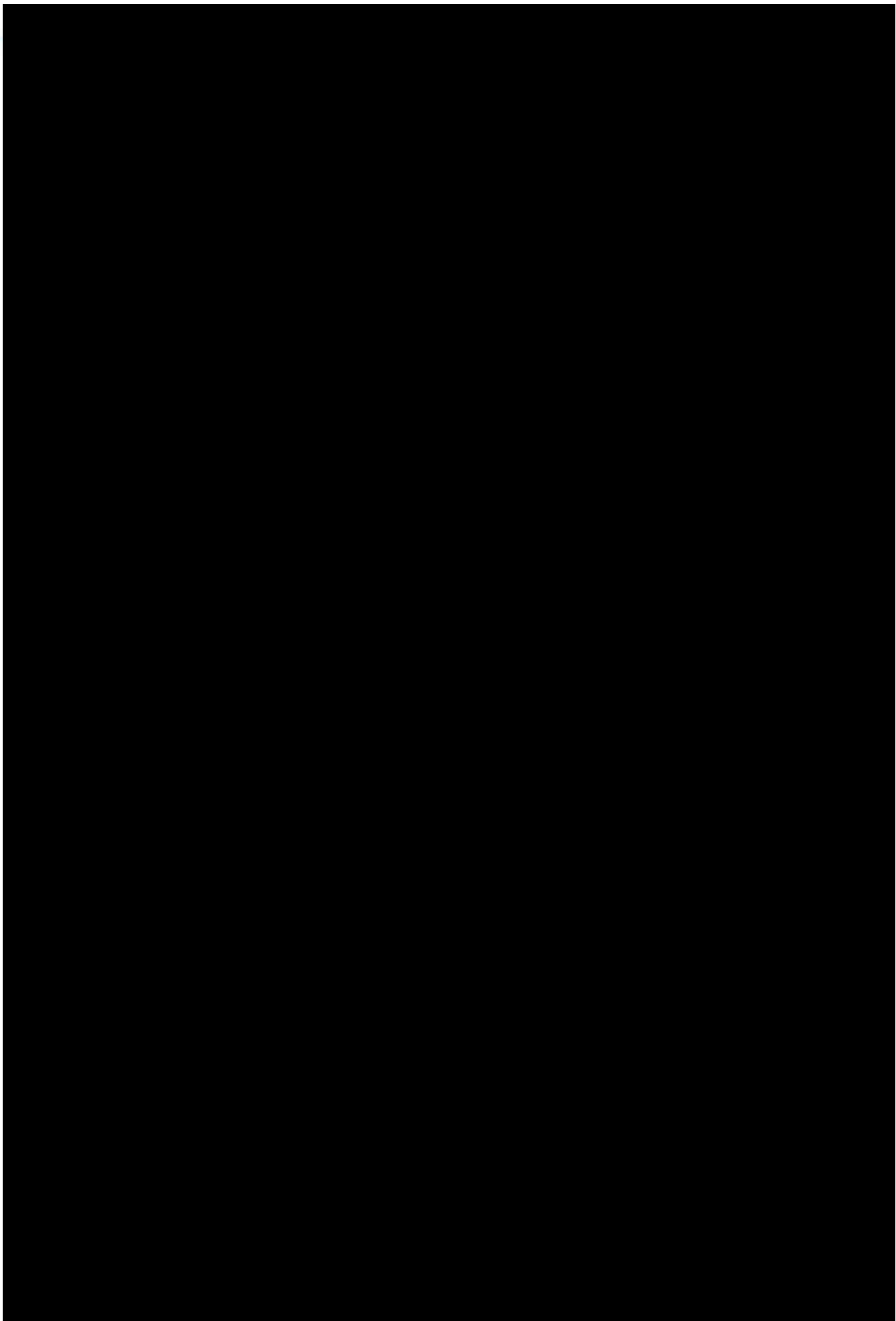
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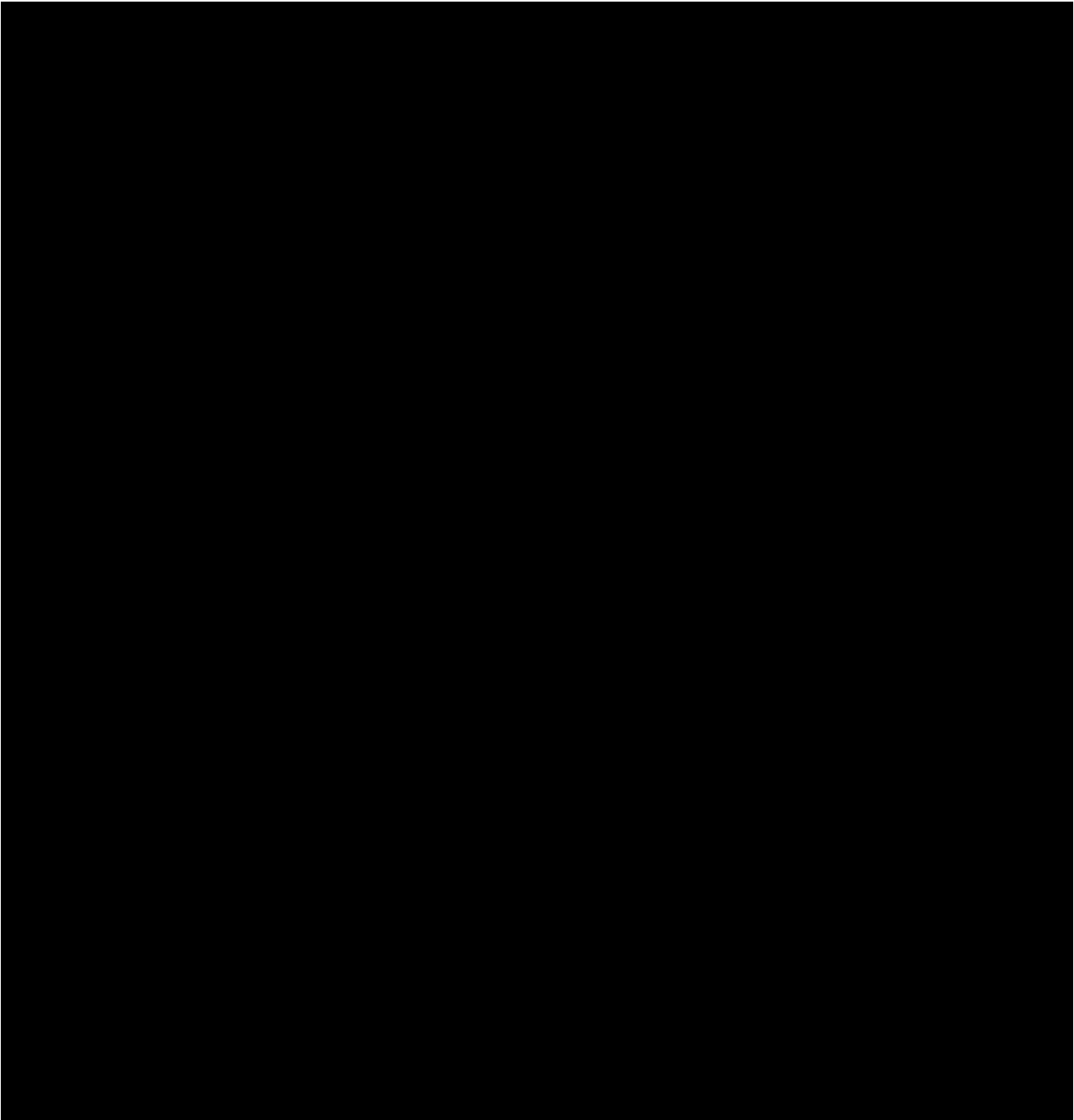


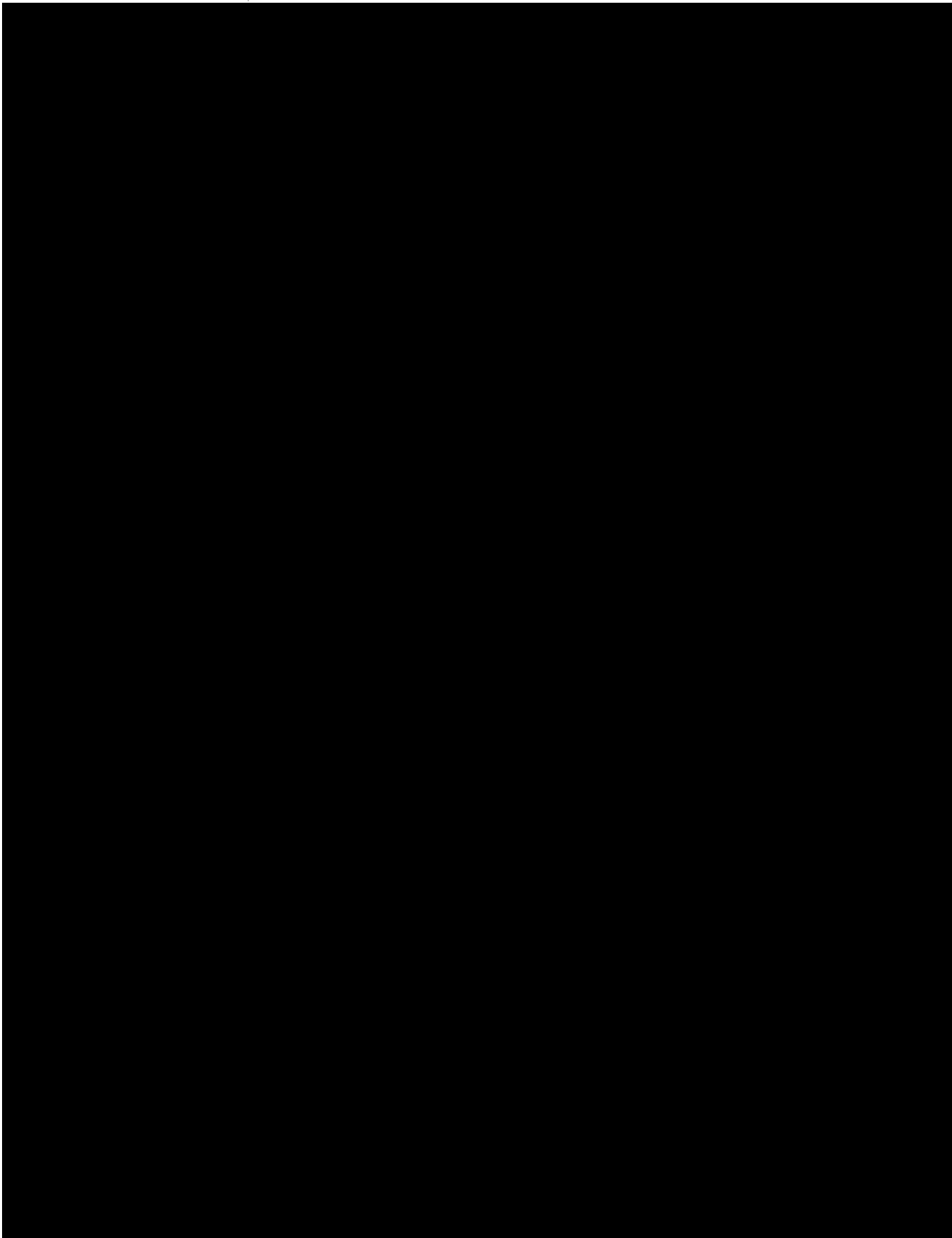
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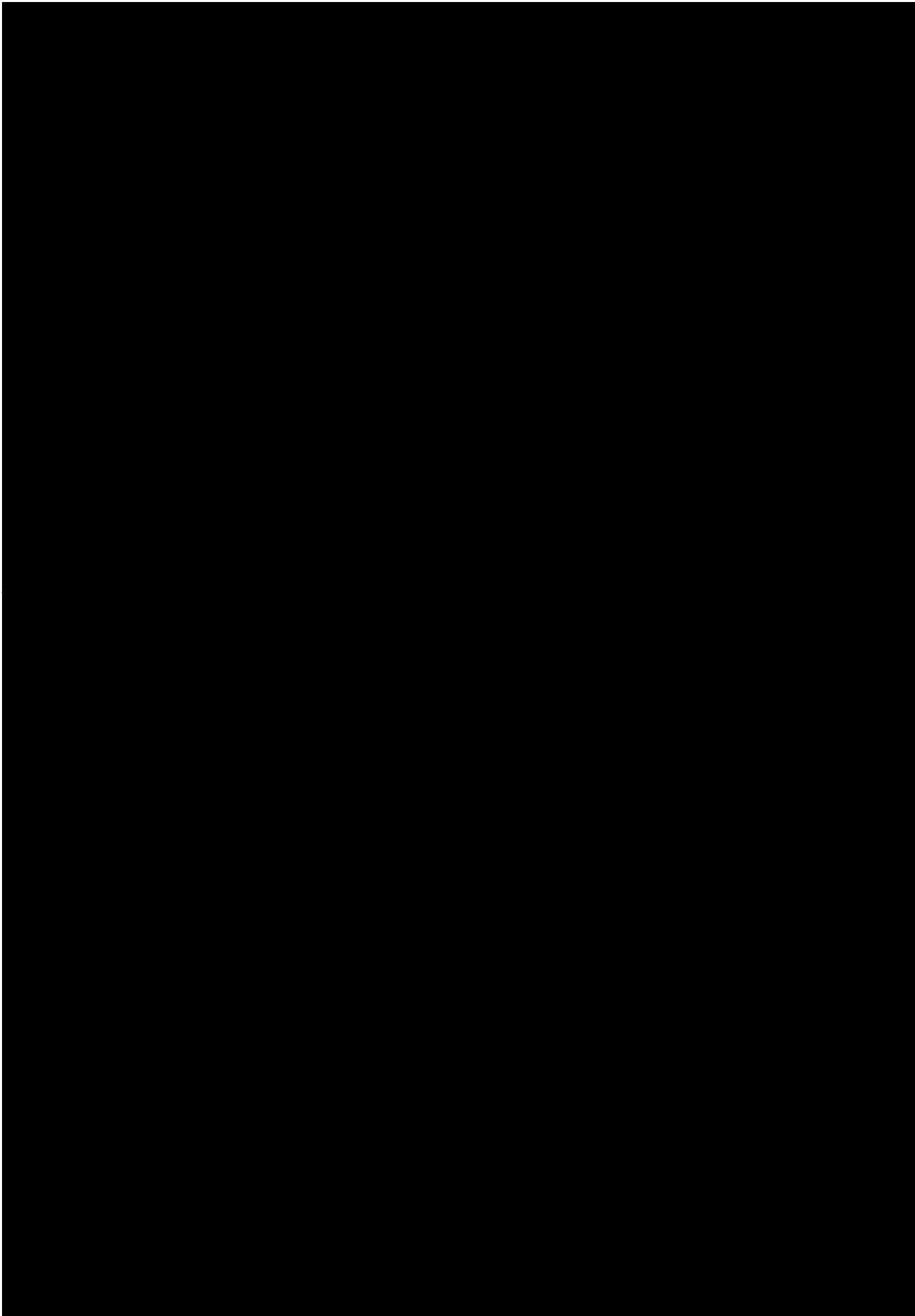
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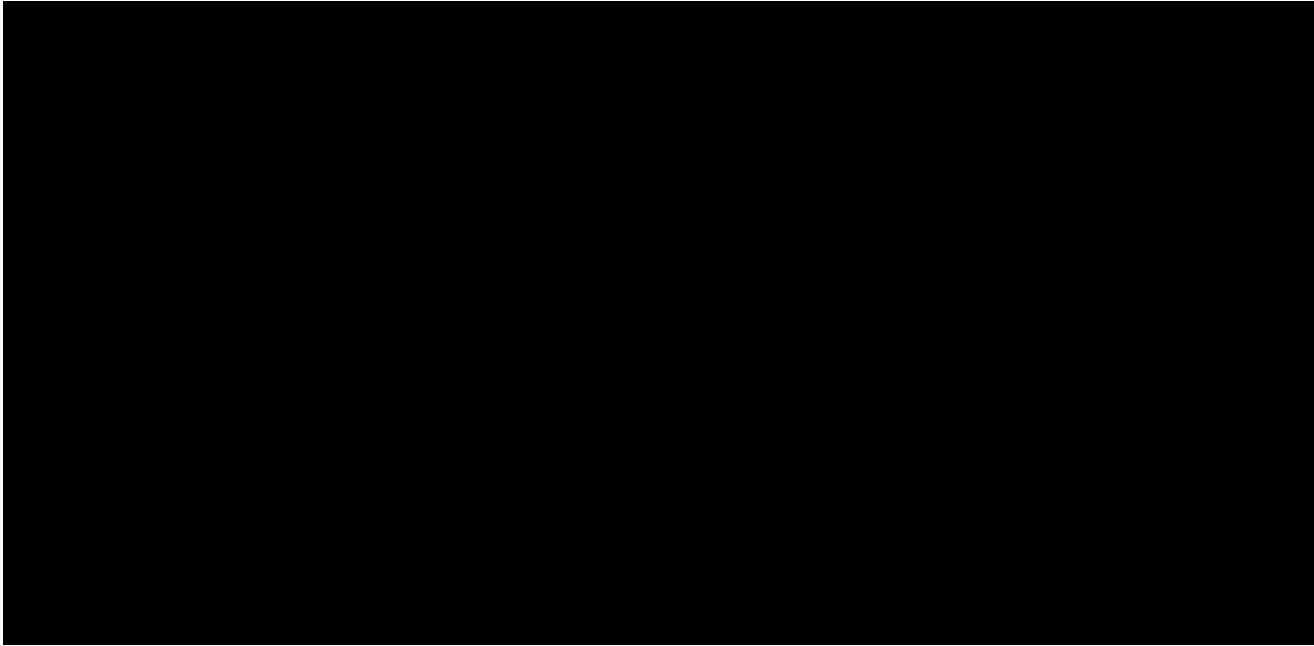












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Exhibit A Scope of Works and Technical Criteria

This Exhibit A is comprised of the documents in the folder entitled "Exhibit A - SWTC" on the electronic storage device comprising Exhibit O.

Exhibit B Site Access Schedule

This Exhibit B is comprised of the documents in the folder entitled "Exhibit B - SAS" on the electronic storage device comprising Exhibit O.



Exhibit C Contract Program

This Exhibit C is comprised of the documents in the folder entitled "Exhibit C - Contract Program" on the electronic storage device comprising Exhibit O.



Exhibit D Confidentiality Deed Poll

This Exhibit D is comprised of the documents in the folder entitled "Exhibit D - Confidentiality Deed Poll" on the electronic storage device comprising Exhibit O.



Exhibit E SSI Approval

This Exhibit E is comprised of the documents in the folder entitled "Exhibit E - SSI Approval" on the electronic storage device comprising Exhibit O.



Exhibit F Major Development Plan

This Exhibit F is comprised of the documents in the folder entitled "Exhibit F - MDP" on the electronic storage device comprising Exhibit O.

Exhibit J Chain of Responsibility Guideline

This Exhibit J is comprised of the documents in the folder entitled "Exhibit J - CoR Guideline" on the electronic storage device comprising Exhibit O.

Exhibit K WestConnex Works Design Documentation

This Exhibit K is comprised of the documents in the folder entitled "Exhibit K - WestConnex Works Design Documentation" on the electronic storage device comprising Exhibit O.

WESTCONNEX
DESIGN DOCUMENTATION
EXHIBIT K

Exhibit L Codes and Standards

This Exhibit L is comprised of the documents in the folder entitled "Exhibit L - Codes and Standards" on the electronic storage device comprising Exhibit O.

HOLLAND
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CONSTRUCTION
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SERVICES

Exhibit N Insurance Policy Wording

HO 3 POLICY | BUREAU OF INSURANCE
REGULATORY SERVICES



Transport for NSW

Design and Construction of Sydney Gateway Stage 1

EXHIBIT N (Insurance Policy Wording)



Exhibit O Electronic Files

This Exhibit O is comprised of the files on the electronic storage device titled:

Sydney Gateway - Stage 1
Design and Construct Deed
Exhibit O – Electronic files

A printed register of those files is contained in Exhibit V (Register of Electronic Files).

EXHIBIT O
DESIGN AND CONSTRUCT DEED
SYDNEY GATEWAY - STAGE 1
ELECTRONIC FILES

Exhibit P Information Documents

This Exhibit P is comprised of the documents in the folder entitled "Exhibit P - Information Documents" on the electronic storage device comprising Exhibit O.



Exhibit Q SPI Wall

This Exhibit Q is comprised of the documents in the folder entitled "Exhibit Q - SPI Wall" on the electronic storage device comprising Exhibit O.



Exhibit R Sydney Airport Service Works Land

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

Exhibit S Joint Venture Agreement

This Exhibit S is comprised of the documents in the folder entitled "Exhibit S - Joint Venture Agreement" on the electronic storage device comprising Exhibit O.

PROLIFE
HOLLYWOOD
FLORIDA

Exhibit T Deed of Appointment of Independent Verifier

This Exhibit T is comprised of the documents in the folder entitled "Exhibit T - Deed of Appointment of Independent Verifier" on the electronic storage device comprising Exhibit O.

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Exhibit U Letters of Commitment

This Exhibit U is comprised of the documents in the folder entitled "Exhibit U - Letters of Commitment" on the electronic storage device comprising Exhibit O.



Exhibit V Register of Electronic Files





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EXHIBIT V (Register of Electronic Files)



