

**Schedule A1**  
**Conditions Precedent**

(Clause 2.4)

<b>Condition Precedent</b>	<b>Benefiting Party</b>	<b>Condition Precedent Deadline Date</b>
<p><b>1. Project Agreements</b>            Execution of all other Project Agreements (except for the Alstom CSELRV Supply Agreement Guarantee) and the satisfaction or waiver of all conditions precedent to such documents (other than any condition precedent that requires the satisfaction or waiver of the conditions precedent to this deed).</p>	TfNSW and OpCo	31 March 2015
<p><b>2. PAFA Act Approvals</b>            The Minister's recommendation and the Treasurer's approvals under section 20 of the PAFA Act, and any approval of the Treasurer under section 22B of the PAFA Act, having been obtained.</p>	TfNSW and OpCo	31 March 2015
<p><b>3. OpCo's Delivery Phase Insurance Policies</b>            The insurances referred to in clause 39.2 (<i>OpCo's Delivery Phase insurance obligations</i>) of the Operative Provisions being effected in the form of the wording set out in Schedule D10 (<i>Insurances</i>) or as otherwise agreed by TfNSW and a certified copy of these insurance policies or a coverage placement slip being provided to TfNSW.</p>	TfNSW	31 March 2015
<p><b>4. Tax ruling</b>            OpCo obtaining a tax ruling(s) issued by and binding upon the Australian Taxation Office, acceptable to TfNSW's Representative, with respect to the key tax issues arising in relation to the proposed structure and arrangements the subject of the Project Agreements. At a minimum tax rulings should cover:</p> <ol style="list-style-type: none"> <li>1. the application of Division 250 of the <i>Income Tax Assessment Act 1997</i> (Cth)</li> <li>2. Finance Co satisfies the insolvency-remote special purpose entity (SPE) exemption in section 820-39 of the ITAA 1997</li> <li>3. the GST treatment of any non-monetary consideration arrangements between the State and OpCo</li> </ol>	TfNSW	31 March 2015

Condition Precedent	Benefiting Party	Condition Precedent Deadline Date
<p>5. <b>Base Case Financial Model</b>            TfNSW receiving:</p> <p>(a) the Base Case Financial Model in a form or forms satisfactory to TfNSW;</p> <p>(b) a letter in a form and substance satisfactory to TfNSW confirming that the Base Case Financial Model is identical to the model set out in Schedule D3 (<i>Base Case Financial Model</i>) except as updated in accordance with the Financial Close Protocol and set out in the letter; and</p> <p>(c) an audit report on the Base Case Financial Model acceptable to TfNSW from an auditor acceptable to TfNSW.</p>	<p>TfNSW</p> <p>TfNSW</p> <p>TfNSW</p>	<p>31 March 2015</p> <p>31 March 2015</p> <p>31 March 2015</p>
<p>6. <b>Counterparty Details</b></p> <p>(a) TfNSW receiving the Counterparty Details.</p> <p>(b) OpCo obtaining, and providing to TfNSW legal opinions, in a form and substance satisfactory to TfNSW, regarding the validity and enforceability of the execution of any TfNSW Project Agreements by all the parties (other than the State) entering into the Project Agreements.</p>	<p>TfNSW</p> <p>TfNSW</p>	<p>31 March 2015</p> <p>31 March 2015</p>
<p>7. <b>FIRB Approval</b></p> <p>If necessary, evidence of notifications under the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth) and/or a certified copy of the unconditional approval from the Australian Treasurer advising that there is no objection under the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth) to the ownership of OpCo and/or its interest in the SLR PPP has been provided to TfNSW's Representative.</p>	<p>TfNSW</p>	<p>31 March 2015</p>
<p>8. <b>Planning Modification</b></p> <p>Either:</p> <p>(a) the Minister for Planning has granted the Planning Modification and the Planning Modification is not subject to an Unforeseeable Modification Requirement; or</p> <p>(b) the Minister for Planning has granted the Planning Modification and the Planning Modification is subject to an Unforeseeable Modification Requirement and TfNSW has issued a Modification Request.</p>	<p>TfNSW</p>	<p>31 March 2015</p>

Condition Precedent	Benefiting Party	Condition Precedent Deadline Date
<p>9. <b>Alstom Transport Consent</b></p> <p>TfNSW receiving:</p> <p>(a) a certified copy from OpCo of the form of notice of acknowledgment and consent issued by OpCo to Alstom Transport S.A. in respect of OpCo granting security to TfNSW pursuant to the TfNSW Deed of Charge over all of OpCo's rights, title and interest in and to the D&amp;C Guarantee provided by Alstom Transport S.A.; and</p> <p>(b) evidence that Alstom Transport S.A. has acknowledged and consent to the terms set out in the acknowledgment and consent referred to above,</p> <p>in each case in form and substance satisfactory to TfNSW.</p>	TfNSW	31 March 2015
<p>10. <b>Deed of Assignment</b></p> <p>Execution of the deed of assignment for the Sydney Light Rail Inner West Extension Design and Construction Contract.</p>	TfNSW and OpCo	31 March 2015

**Schedule A2**

**Key roles and personnel**

(Clause 9.16)

**Part A**

**Delivery Phase**

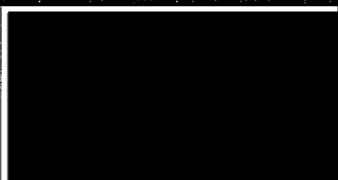
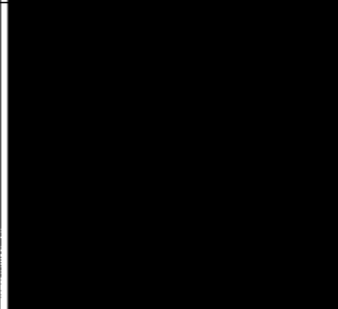
<b>Key role and description</b>	<b>Skills required</b>	<b>Relevant personnel</b>
<p><b>Project Director</b></p> <p>Direct all aspects of the Project Delivery Phase, in particular the civil works components.</p>	<p>Qualification in Engineering, Project Management or related disciplines and minimum 15 years of experience.</p>	
<p><b>Deputy Project Director</b></p> <p>Deputy to the Project Director in assisting with all his activities, with specific focus on all railway system activities.</p>	<p>Qualification in Engineering, Project Management or related disciplines and minimum 10 years of experience.</p>	
<p><b>Technical Manager</b></p> <p>Oversight of all technical issues, including from a safety and interface perspective and implementation of appropriate in-field quality control measures.</p>	<p>Qualification in Engineering, Project Management or related disciplines and minimum 10 years of experience.</p>	
<p><b>Stakeholder and Community Engagement and Communications Director</b></p> <p>Strategic communications, issues management, media relations and stakeholder management.</p>	<p>Qualification in Media, Communications, Public Relations or related disciplines and minimum 15 years of experience.</p>	
<p><b>Integration Manager</b></p> <p>Planning and coordination of all Delivery Activities, including to achieve timely Operations commencement.</p>	<p>Qualification in Engineering, Project Management or related disciplines and minimum 10 years of experience.</p>	
<p><b>Construction Manager</b></p> <p>Management of all components of the construction program, including preparatory utilities works, civil works and installation of track and systems.</p>	<p>Qualification in Engineering, Project Management or related disciplines and minimum 10 years of experience.</p>	

Key role and description	Skills required	Relevant personnel
<p><b>Environment Manager</b></p> <p>Delivery of best practice environmental systems management during the Delivery Phase and Delivery Activities, including achievement of the sustainability targets.</p>	<p>Qualification in Environmental Management, Engineering or related disciplines and minimum 10 years of experience.</p>	
<p><b>Design and construction – operations and maintenance (DCOM) Interface Manager</b></p> <p>Represent the operations and maintenance in the design and construct phase of the Project to ensure operator input is integrated within all aspects.</p>	<p>Qualification in Engineering, Project Management or related disciplines and minimum 10 years of experience.</p>	
<p><b>Commercial Manager</b></p> <p>Oversight of all Delivery Phase activities from a commercial and relationship perspective, including in regard to all Project Deed obligations.</p>	<p>Qualification in Commerce, Accounting, Economics, Project Management or related disciplines and minimum 10 years of experience.</p>	
<p><b>Quality Manager</b></p> <p>Development and oversight of appropriate quality control procedures for all Delivery Phase activities.</p>	<p>Qualification in Engineering, Project Management or related disciplines and minimum 10 years of experience.</p>	
<p><b>Stakeholder and Community Manager</b></p> <p>Support the Stakeholder and Community Engagement and Communications Director in all activities, including oversight of the SLR Site.</p>	<p>Qualification in Media, Communications, Public Relations or related disciplines and minimum 10 years of experience.</p>	
<p><b>Safety Manager</b></p> <p>WHS Manager, Senior Safety Advisor and International WHS Representative.</p>	<p>Qualification in Safety Engineering, Workplace Safety and related disciplines and minimum 10 years of experience.</p>	
<p><b>Testing and Commissioning Manager</b></p> <p>Responsible for overall Testing and Commissioning with focus on site testing</p>	<p>Qualification in engineering and minimum 10 years of experience.</p>	

**Part B**

**Operations Phase**

Key role and description	Skills required	Relevant personnel
<p><b>Managing Director</b></p> <p>Overall responsibility for the performance of the O&amp;M Core Contractor obligations</p>	<p>Qualification in Business or Commerce and minimum 15 years of experience.</p>	
<p><b>GM Finance and Commercial</b></p> <p>Responsible for all financial and commercial aspects of the O&amp;M Contractor</p>	<p>Qualification in Finance and minimum 10 years of experience.</p>	
<p><b>GM Customer and Communications</b></p> <p>Ensuring external and internal communications related to Operations and Maintenance are effective, time and inclusive.</p>	<p>Qualification in Communications and minimum 10 years of experience.</p>	
<p><b>Service Delivery Manager (IWL R Phase only)</b></p> <p>Responsible for the delivery of safe and timely light rail services on the IWL R</p>	<p>Minimum 10 years of experience in public transport operations</p>	
<p><b>General Manager, Service Delivery (SLR Phase Only)</b></p> <p>Responsible for the delivery of safe and timely light rail services on the SLR</p>	<p>Minimum 10 years of experience in public transport operations</p>	
<p><b>GM Asset Management</b></p> <p>Responsible for overseeing the performance of asset management tasks on the SLR</p>	<p>Qualification in Engineering and minimum 10 years of experience</p>	
<p><b>Health Safety and Environment Manager</b></p> <p>Responsible for Health, Safety and Environment Activities of the O&amp;M Contractor</p>	<p>Qualification in workplace health and safety and minimum 10 years of experience</p>	

Key role and description	Skills required	Relevant personnel
<p><b>Alstom Project Manager</b></p> <p>Senior manager responsible for delivery of rolling stock and systems maintenance activities</p>	<p>Qualification in engineering and minimum 10 years of experience</p>	
<p><b>General Manager, People and Culture</b></p> <p>Providing human resource and workplace relations advice, expertise, direction, coordination and guidance to senior management and the management team on a day to day basis.</p>	<p>Qualification in Human Resources or Industrial Relations and minimum 10 years of experience.</p>	

**Schedule A3**  
**Transdev Permanent Employees**

(Clause 9.15)

Surname	Name	Job classification
[REDACTED]	[REDACTED]	Driver - full time
		Driver - full time
		Driver - full time
		Casual CSO
		Driver - full time
		Casual CSO
		Driver - full time
		Driver - full time
		Driver - full time
		CSO full time
		Casual CSO
		Controller
		Controller
		Infrastructure technician
		Casual CSO
		Driver - casual
		Casual CSO
		Driver - full time
		Driver - full time
		Infrastructure technician
Controller		
Driver - full time		



Surname	Name	Job classification
		CSO perm
		CSO full time
		Casual CSO
		CSO full time
		CSO full time
		Driver - full time
		CSO full time
		CSO full time
		CSO full time
		CSO casual
		CSO part time
		CSO full time
		Driver - full time
		Driver - full time
		Controller
		Infrastructure technician
		Driver - full time
		Driver - casual
		Driver - full time
		CSO full time
		CSO full time
		Casual CSO
		Driver - full time
		Driver - full time
		Driver - full time

Surname	Name	Job classification
		Driver - full time
		CSO full time
		CSO full time
		Controller
		Casual CSO
		Casual CSO
		Driver - full time
		Controller
		CSO full time
		Driver - full time
		Driver - casual
		Driver - full time
		Driver - full time
		Casual CSO
		Casual CSO
		Driver - full time
		Controller
		Driver - full time
		CSO part time
		Driver - casual
		Casual CSO
		Casual CSO
		Driver - full time
		Driver - full time
		Infrastructure Technician supervisor

Surname	Name	Job classification
		CSO full time
		CSO part time
		Driver - casual
		Infrastructure technician
		Driver - full time
		Driver - casual
		Driver - full time
		CSO full time
		CSO full time
		Driver - full time
		Driver - full time
		Driver - full time
		Controller
		Driver - full time
		Driver - casual
		Casual CSO
		Lrv controller
		CSO full time
		CSO full time
		CSO full time
		Casual CSO
		CSO full time
		Casual CSO
		Casual CSO
		Driver - full time

Surname	Name	Job classification
		Driver - full time
		Casual CSO
		CSO perm
		CSO full time
		Driver - full time
		CSO full time
		Casual CSO
		Driver - full time
		Driver - casual
		Infrastructure technician
		Driver - full time
		Casual CSO
		DVRP

## Schedule A4

### Commercially Sensitive Information

(Clauses 1.1, 47.1 and 47.2(b))

#### 1. TFNSW PROJECT AGREEMENTS

- (a) The Base Case Financial Model, any proposed Base Case Financial Model or Operational Financial Model.
- (b) The monetary value of any Termination Payments.
- (c) The percentage values in clauses 3.3(d)(ii), 23.7(a)(i), 41.1(d)(i), 41.1(d)(ii), 41.1(e) and 43.1(b)(i), 43.1(b)(ii) and 43.1(c) of the Operative Provisions.
- (d) The rates for remediation of Contamination in clauses 11.4A and 11.4B of the Operative Provisions.
- (e) The monetary values in clause 12.3 (*Occupation of Fee Zones and Fee Areas*) of the Operative Provisions.
- (f) The monetary values in clauses 25.2(a)(vi) and 25.2(a)(vii) (*Conditional Debt Pay Down*) of the Operative Provisions.
- (g) The Alstom Systems IP, except to the extent permitted to be disclosed in accordance with Schedule A5 (*Intellectual Property*).
- (h) The monetary values in clause 3(a) and the time periods in clause 3(b) of Schedule 2 of Schedule A15 (*Independent Certifier Deed*).
- (i) The percentage value for rate adjustments in clause 4 (*Schedule of Rates*) and the monetary values in each of the tables in clauses 4 (*Schedule of Rates*) and 5 (*Monthly payment schedule for lump sums*) of Schedule 2 of Schedule A15 (*Independent Certifier Deed*).
- (j) The contents of each of the tables in clauses 1.1 (*Design Phase Services*) and 1.2 (*Construction Phase Services*) of Schedule 3 of Schedule A15 (*Independent Certifier Deed*).
- (k) The Daily Fees set out in Schedule B9 (*Occupation Fee Schedule*).
- (l) The Adjusted Indexed Availability Fee and the Availability Deduction, as calculated in accordance with Schedule D1 (*Service Payment Regime*).
- (m) The percentage value of the Daily Missed Service Tolerance in section 4.1 (*Availability Deduction*) of Schedule D1 (*Service Payment Regime*).
- (n) The values of the Monthly CDM Tolerance in section 5.1 (*Calculation of Timeliness Deductions*) of Schedule D1 (*Service Payment Regime*).
- (o) The Service Quality KPI weightings set out in the table in clause 6.3 (*Service Quality KPIs Weightings*) of Schedule D1 (*Service Payment Regime*).
- (p) The values in the tables in clause 11.3 (*Service Change Limitations*) of Schedule D1 (*Service Payment Regime*).
- (q) The values in each table in clauses 1.1(a) (*Base Availability Fee*), 1.2 (*The Benchmarked Insurance Component*), 1.3 (*Base Lifecycle Component*), 1.5 (*Floating Rate Amount*) and 1.7 (*Base Energy Price and Energy Bid*) of Annexure 1 of Schedule D1 (*Service Payment Regime*) and the Base Marginal Prices set out in

clause 1.4 (*Base marginal prices relevant to the Service Level Adjustment*) of Annexure 1 of Schedule D1 (*Service Payment Regime*).

- (r) The values and formulas used to calculate the Daily CDM Tolerance under clause 3 (*Daily CDM Tolerance*) of Annexure 1 of Schedule D1 (*Service Payment Regime*).
- (s) The percentage weightings and other values used for the measurement and assessment of KPIs set out in the tables of KPIs in Annexure 2 of Schedule D1 (*Service Payment Regime*).
- (t) Not used
- (u) The monetary value of any Net Financial Impact, as calculated in accordance with Schedule D4 (*Net Financial Impact*).
- (v) The monetary values and percentages, and clause 3.9 of Schedule D4 (*Net Financial Impact*).
- (w) The maximum amount on account of overheads and profit set out in the table in clause 3.5(c) (*Overheads and Margins*) of Schedule D4 (*Net Financial Impact*) and clause 3.9 (*The Conversion Period*).
- (x) The Financial Close Protocol set out in Schedule D7 (*Financial Close Protocol*).
- (y) The monetary values of the deductibles in the tables in clauses 1 (*Delivery Phase Insurances*) and 2 (*Operations Phase Insurances*) of Schedule D10 (*Insurances*).
- (z) The terms of any insurance policies required to be taken out in accordance with the Project Agreements or any Significant Contract.
- (aa) Schedule D12 (*Equity Purchase Deed*).
- (bb) The Concept Design set out in SPR Appendix 45 (*Concept Design*).
- (cc) References to rates, fees, monetary values, percentage values, escalation factors, formulae or costs in Schedule D5 (*Pre-Agreed Options*).
- (dd) References to percentages and other values in Schedule D9 (*Augmentations*).

## 2. CORE CONTRACTS AND SIGNIFICANT CONTRACTS

The terms of each Core Contract, each Significant Contract, the D&C Guarantee, the O&M Guarantee and the DCOM Interface Agreement (as defined in the D&C Contract).

## 3. DEBT FINANCING DOCUMENTS AND EQUITY DOCUMENTS

- (a) The Debt Financing Documents.
- (b) The Equity Documents.

## 4. ALSTOM CSELRV SUPPLY AGREEMENT

The items listed in schedule A4 of that document.

## 5. SOURCE CODE ESCROW AGREEMENT

The details of any source code which is held under any Source Code Escrow Agreement.

**Schedule A5**  
**Intellectual Property**

(Clause 48)

1. **DEFINITIONS**

In this Schedule:

**Alstom Transport Technologies SAS** means Alstom Transport Technologies SAS (752 364 778 RCS Nanterre) of 3 Avenue Andre Malraux 92 309 Levallois – Perrett, France.

**Alstom Systems** means:

- (a) the CSELRVs;
- (b) the Power Supply and Distribution Systems;
- (c) the Signalling and Telecommunications Systems;
- (d) Tracer Systems;
- (e) Depot Equipment; and
- (f) the Special Tools and Equipment required for the CSELRVs, Power Supply and Distribution Systems, the Signalling and Telecommunications Systems, the Depot Equipment and the Tracer Systems,

to be designed, manufactured and supplied by Alstom as part of the scope of the D&C Contractor under the D&C Contract.

**Alstom Systems IP** means all Intellectual Property, trade secrets and know-how comprised in all object code for the Software, design documentation, specifications, drawings and data, in each case for the manufacture of and the application, function and integration of:

- (a) the CSELRVs or any of their components;
- (b) the Power Supply and Distribution Systems or any of their components;
- (c) the Signalling and Telecommunications Systems or any of their components;
- (d) Tracer Systems or any of their components;
- (e) Depot Equipment or any of its components; and
- (f) Special Tools and Equipment required for the:
  - (i) the CSELRVs or any of their components;
  - (ii) the Power Supply and Distribution Systems or any of their components;
  - (iii) the Signalling and Telecommunications Systems or any of their components;
  - (iv) Tracer Systems or any of their components; and
  - (v) Depot Equipment or any of its components,

to be designed, manufactured and supplied by Alstom as part of the scope of the D&C Contractor under the D&C Contract.

**COTS** means, in respect of Software and Firmware, a commercial off-the-shelf product that is ready-made and available for sale to the general public.

**Deed of Assurance** means a deed of assurance substantially in the form of Annexure A.

**Depot Equipment** means the Equipment installed in the Randwick Light Rail Facility and the Rozelle Light Rail Facility to be designed, manufactured and supplied by Alstom as part of the scope of the D&C Contractor under the D&C Contract.

**Developed IP** means all Intellectual Property, trade secrets and know-how comprised in any SLR Documentation developed or created by OpCo, its Associates or any other entity for the purposes of this deed or the SLR, whether before or after the date of this deed and including all Intellectual Property in any matter developed or created for a Modification or an Augmentation Proposal, but excluding any Excluded IP, any Third Party Software, any Alstom Systems IP and any Equipment IP.

**Domain Names** means any domain names used by OpCo in relation to the SLR.

**Equipment** means any hardware, equipment, devices, plant, machinery, fixtures, vehicles and furniture forming part of the SLR.

**Equipment IP** means Intellectual Property, trade secrets and know-how in all and any part of:

- (a) the Equipment; and
- (b) computer programs supplied as a component of, embedded in or forming part of the Equipment and without which such tangible items cannot operate, such as Software known as "device" Software or Firmware,

but excluding Alstoms Systems IP, Third Party Software any Intellectual Property which is owned by OpCo or its Associates or which is Developed IP or TfNSW IP.

**ETS IP** means all Intellectual Property, trade secrets and know-how in any materials or information (including all materials and information provided to TfNSW by the ETS Contractor) which are disclosed, made available or otherwise provided by TfNSW to OpCo and relate to the ETS.

**Excluded IP** means all Intellectual Property, know how and trade secrets existing prior to the date of this deed or developed other than for the purposes of the SLR or this deed in works created or developed or modifications to those works created by OpCo or any of its Associates or any other entity but not including Intellectual Property, know-how and trade secrets comprised in SLR Documentation developed by OpCo or any of its Associates specifically for the purposes of the SLR prior to the date of this deed.

**Firmware** means a set of coded instructions embedded within a device or component of a device that performs functions or provides data to enable the device to operate in a specified manner.



**Intellectual Property** includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future, including rights of any kind in:

- (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents, innovation patents or designs, including developments or improvements of equipment, technology, processes, methods or techniques;
- (b) literary works, dramatic works, musical works, artistic works, cinematograph films, television broadcasts, sound broadcasts, published editions of works and any other subject matter in which copyright (including future copyright and rights in the nature of or analogous to copyright) may, or may upon creation of the subject matter, subsist anywhere in the world;
- (c) registered and unregistered trade marks and service marks, including goodwill in the business concerned in the relevant goods and/or services;
- (d) trade, business or company names;
- (e) internet domain names; and
- (f) proprietary rights under the *Circuit Layouts Act 1989* (Cth),

whether created or in existence before or after the date of this deed.

**IP Register** means an electronic database established in accordance with clause 8.1(a).

**IWLR IP** means all Intellectual Property, trade secrets and know-how in any materials or information (including all materials and information provided to TfNSW by the counterparties to the IWLR Contracts or the John Holland Contract) which are disclosed, made available or otherwise provided by TfNSW to OpCo and relate to the IWLR.

**John Holland Contract** means the Sydney Light Rail Inner West Extension Design and Construction Contract dated 21 May 2012 between TfNSW and John Holland.

**Licensed IP** means all Intellectual Property, trade secrets and know-how:

- (a) comprised in or related to all and any part of:
  - (i) the SLR Works or the Temporary Works;
  - (ii) the SLR Documentation;
  - (iii) the SLR; and
  - (iv) OpCo's Data; or
- (b) comprised in or related to all or any part of OpCo's Activities including Intellectual Property in or to all and any items, software tools or materials or documents used by OpCo in undertaking OpCo's Activities,

including Alstom Systems IP but excluding the Developed IP, Third Party Software, Equipment IP and TfNSW IP.

**List of Intellectual Property** means a list of each item of Intellectual Property used or to be used by OpCo or its Associates in performing its obligations under this deed, which includes, separately identified, the List of Software, and specifies in relation to any Intellectual Property not identified in the List of Software:

- (a) the nature and, if applicable, name of the material in which the Intellectual Property is comprised;
- (b) the owner of the Intellectual Property and, to the extent applicable, the licensor and the licensee of that Intellectual Property;
- (c) the duration of any licence and maintenance agreements; and
- (d) the licence and maintenance fees and similar fees,

provided that OpCo or its Associates will not be required to disclose the information specified in paragraph (d) above to the extent such information is subject to any contractual confidentiality obligations imposed on that party as a result of such information comprising confidential information.

**List of Software** means a list of each item of Software used or to be used by OpCo or its Associates in performing the OpCo Activities which specifies in relation to each item of Software:

- (a) name and release version of the Software;
- (b) owner and distributor of the Software and, if relevant, the licensor and the licensee of that Software;
- (c) whether the Software is Third Party Software;
- (d) the duration of any licence and maintenance agreements; and
- (e) the licence and maintenance fees and similar fees,

provided that OpCo or its Associates will not be required to disclose the information specified in paragraph (e) above if such information is subject to any contractual confidentiality obligations imposed on that party as a result of such information comprising confidential information.

**LTS IP** means all Intellectual Property, trade secrets and know-how in any materials or information which are disclosed, made available or otherwise provided by TfNSW to OpCo and relates to the LTS Equipment.

**Mark** means any mark, trade mark, logo, indicia or image.

**Moral Rights** means:

- (a) the right of attribution of authorship or performership;
- (b) the right not to have authorship or performership falsely attributed; and
- (c) the right of integrity of authorship or performership,

conferred by the *Copyright Act 1968* (Cth).

**Moral Rights Consent** means a consent in the form of Annexure B.

**Permitted Encumbrance** has the meaning given to it in Schedule A17 (*TfNSW Deed of Charge*).

**Planning Documents** has the meaning give to it in clause 3.2(a).

**Power Supply and Distribution Systems** means the power supply and distribution systems (including without limitation HESOP, substations, APS and, catenaries) to be designed, manufactured and supplied by Alstom as part of the scope of the D&C Contractor under the D&C Contract.

**Relevant Source Code** means:

- (a) all source code in respect of the Alstom Systems IP; and
- (b) Software tools necessary for TfNSW or any Successor OpCo (or any sub-licensee or transferee), or that person in TfNSW's position would otherwise require, to modify, maintain, test, further develop or regenerate the source code referred to in paragraph (a) or of the type referred to in paragraph (a), to exercise its rights under clause 4.2 (*Alstom Systems IP*)(subject to clause 4.2(b)).

**Signalling and Telecommunications Systems** means vehicle control, signalling and telecommunications systems (including without limitation the Operational Control Centre) to be designed, manufactured and supplied by Alstom as part of the scope of the D&C Contractor under the D&C Contract.

**SLR IP** means the Licensed IP, Developed IP, Third Party Software, Equipment IP and TfNSW Licensed IP.

**Software** means a set of coded instructions that performs functions or provides working data or parameters to enable a device or system to operate in a specified manner, and be loaded into a system or device dynamically by a user and includes all Firmware and operating systems required by a system or subsystem to perform in a specified manner.

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

**Source Code Escrow Agent** means any person who in addition or substitution, is engaged by TfNSW and OpCo (or any other relevant party) to hold any Relevant Source Code.

**Source Code Escrow Agreement means** a source code escrow agreement between TfNSW, OpCo, Alstom and any Source Code Escrow Agent to hold any Relevant Source Code.

**TfNSW Brand** means all Marks, livery, colours or other get up or brand used on or in relation to the SLR or any part of it including:

- (a) the TfNSW Marks;
- (b) all names including business names, domain names and company names registered or used in relation to the SLR (other than those business names, domain names and company names of OpCo or OpCo's Contractors which are used in their business generally);
- (c) all telephone numbers, email addresses, websites, social media accounts and all other addresses or means of communication in any medium, whether in existence at the date of this deed or not, registered or used in relation to the SLR.

**TfNSW Data** means:

all data and expressions of data contained in, or processed or generated by, the SLR or produced as a result of OpCo's Activities, including all data and expressions of data:

- (a) contained in all images contained in or processed or generated by the SLR;
- (b) comprising reports generated by the SLR; and
- (c) about or relating to or generated by OpCo or its Associates in connection with the SLR.

**TfNSW IP** means:

- (a) all Intellectual Property owned by TfNSW, including the TfNSW Brand;
- (b) all Intellectual Property licensed to TfNSW, including the ETS IP, the IWLR IP and the LTS IP but excluding Intellectual Property licensed to TfNSW by OpCo or any of its Associates (including for the avoidance of doubt, Alstom) under this deed, Third Party Software and Equipment IP;
- (c) the Developed IP; and
- (d) all Intellectual Property in and to the TfNSW Data.

**TfNSW Licensed IP** means the Developed IP, all Intellectual Property in and to the TfNSW Data and all other TfNSW IP that is required by OpCo for the purpose of performing its obligations under this deed but excludes the ETS IP, the IWLR IP and the LTS IP.

**TfNSW Marks** means the Marks notified by TfNSW to OpCo in writing from time to time and any other Marks used by or on behalf of OpCo in relation to the SLR (other than those Marks of OpCo's Contractors which are used in their business generally and are applied by them to devices or equipment they supply, but which do not include, directly or indirectly, any Marks which are created or developed in connection with, the SLR or any part of the SLR).

**TfNSW Personal Information** means Personal Information to which OpCo, any person engaged by or on behalf of OpCo under or in relation to this deed has access directly or indirectly in connection with this deed, including all Personal Information of customers or passengers of the SLR collected as part of performing the OpCo Activities and the Personal Information of any TfNSW Associate or TfNSW customer or supplier (other than OpCo).

**Third Party Licences** means all licences, maintenance and similar contracts for the Third Party Software.

**Third Party Software** means COTS Software and Firmware owned by any entity other than OpCo or its Associates that:

- (a) is comprised in all or any part of the SLR Works, the Temporary Works or the SLR;
- (b) is otherwise used or to be used by, or on behalf of, OpCo or OpCo's Contractors in performing OpCo's Activities; or
- (c) comprises Software tools necessary for TfNSW, or that a person in TfNSW's position, would otherwise require to modify, maintain, test, further develop or regenerate the bespoke Software contained in the SLR or otherwise exercise any rights of ownership given to TfNSW under clause 4.1 (*Licence of Licensed IP*),

and is identified as such in the List of Software and any information provided under clause 8.2(b)(iv).

**Tracer Systems** means the asset maintenance systems (including Train Tracer and Track Tracer) to be designed, manufactured and supplied by Alstom as part of the scope of the D&C Contractor under the D&C Contract.

## 2. INTELLECTUAL PROPERTY WARRANTIES AND INDEMNITY

### 2.1 Warranty by OpCo

OpCo represents and warrants that:

- (a) it has all appropriate licences of, or title to, all Intellectual Property that is required by it for the purpose of its obligations under this deed;
- (b) Alstom has all appropriate licences of, or title to, all Intellectual Property that is owned by or licensed to the Alstom group worldwide and that is required by Alstom for the purpose of its obligations in connection with the Project;
- (c) OpCo's Associates have all appropriate licences of, or title to, all Intellectual Property that is required for performing their obligations under the Project Agreements or performing obligations under this deed on behalf of OpCo;
- (d) it does not require any licences of, or title to, any Intellectual Property from TfNSW in order to perform its obligations under this deed other than any licences to the TfNSW Licensed IP, the ETS IP, the IWLR IP and the LTS IP granted to it under this deed;
- (e) the SLR IP, the ETS IP, the IWLR IP and the LTS IP is the only Intellectual Property that is required:
  - (i) for OpCo to carry out its obligations under this deed; and
  - (ii) for OpCo's Associates to carry out their obligations under the Project Agreements or to perform obligations under this deed on behalf of OpCo.
- (f) it has authority to assign or license (as the case may be) all Intellectual Property granted to TfNSW under this deed;
- (g) every item of the Software used or to be used by OpCo or its Associates in the SLR is contained in the List of Software or will be later identified in accordance with clause 8.1(a);
- (h) it has the authority to undertake the obligations concerning the Third Party Software contained in clause 4.5 (*Licence of Third Party Software*), the Alstom Systems IP contained in clause 4.2 (*Licence of Alstom Systems IP*); and the Equipment IP contained in clause 4.6 (*Equipment IP*);
- (i) no third party rights or interests will affect the enjoyment by TfNSW of the licences and assignments granted to it under this deed;
- (j) none of:
  - (i) the performance of OpCo's Activities, nor anything arising from the performance of OpCo's Activities;

- (ii) the SLR Works;
  - (iii) the Temporary Works;
  - (iv) the SLR Documentation; or
  - (v) the SLR,
- infringes or will infringe any rights, including any Intellectual Property or Moral Rights, of any third party;
- (k) there are no Security Interests, and it will not allow any Security Interests to be created over its rights to any Intellectual Property that is used by it for the purposes of its obligations under this deed, except for any Permitted Encumbrance; and
  - (l) the use or enjoyment of the SLR in accordance with or as contemplated by this deed by TfNSW or any person authorised by TfNSW in accordance with or as contemplated by this deed will not infringe any law, Intellectual Property or Moral Rights or other protected rights of any person, whether in Australia or overseas; and
  - (m) it is not aware of any allegations of infringement or notices of misappropriation issued by any person or any Claims that the SLR or its use or enjoyment in accordance with or as contemplated by this deed infringes or will infringe any laws or the rights, including any Intellectual Property or Moral Rights, of any third party.

Each representation and warranty in this clause 2.1 (*Warranty by OpCo*) is a continuing representation and warranty and will be repeated on each day while any obligation under this deed remains outstanding, with reference to the facts and circumstances then subsisting.

## 2.2 Indemnity

- (a) Subject to clauses 38.2 and 38.3 of the Operative Provisions, OpCo indemnifies TfNSW, and any other person authorised or licensed by TfNSW to exercise any Intellectual Property assigned, granted or licensed to TfNSW under this deed and any of their Associates (each an **Indemnified Party**) from and against:
  - (i) any Claim which may be brought or made against an Indemnified Party by any person in respect of:
    - (A) any alleged or actual infringement of any Intellectual Property by OpCo or its Associates in the course of, or incidental to, performing any obligations under this deed other than to the extent they embody any TfNSW IP other than Developed IP;
    - (B) the use by TfNSW of any SLR IP (but excluding TfNSW Licensed IP other than Developed IP); and
    - (C) an infringement of Moral Rights resulting from the use, operation, maintenance or modification of the SLR or any part of it in any manner;
  - (ii) any Loss (including legal fees on an indemnity basis) that may be suffered or incurred by any Indemnified Party in connection with any Claim referred

to in clause 2.2(a)(i) or any Claim arising from a breach of the warranties set out in clause 2.1 (*Warranty by OpCo*); and

- (iii) any Loss that may be suffered or incurred by any Indemnified Party in connection with the Intellectual Property necessary for the continuation of OpCo's Activities being unavailable as a result of or in connection with OpCo not fulfilling its obligations under clause 4.5 (*Licence of Third Party Software*), to obtain the licenses referred to in clause 4.5 (*Licence of Third Party Software*) or not fulfilling its obligations under clause 4.6 (*Equipment IP*), to obtain the licences referred to in clause 4.6 (*Equipment IP*).
- (b) To the extent that the indemnity in clause 2.2(a) is of Indemnified Parties other than TfNSW, TfNSW has sought and obtained that indemnity as agent on behalf of each Indemnified Party. TfNSW may also enforce that indemnity as agent on behalf of each Indemnified Party.
- (c) If TfNSW does not have authority to act as agent on behalf of an Indemnified Party other than TfNSW, then TfNSW will be deemed to have sought and obtained that indemnity as trustee for that Indemnified Party and holds the benefit of that indemnity as trustee. TfNSW may also enforce that indemnity as trustee for the benefit that Indemnified Party.
- (d) If the indemnity in clause 2.2(a) is unenforceable to the extent that it is expressed to be given in favour of an Indemnified Party other than TfNSW, all references in this clause 2.2 (*Indemnity*) to "the Indemnified Party" or "an Indemnified Party" will be read as a reference to "TfNSW" only.
- (e) Subject to clauses 2.2(f) and 2.2(g), an Indemnified Party must, as soon as is reasonably practicable after it becomes aware of a claim:
  - (i) notify OpCo in writing of the alleged infringement;
  - (ii) give OpCo at the time of notification the option to conduct the defence of the claim; and
  - (iii) provide OpCo (at OpCo 's expense) with reasonable assistance in conducting the defence of such claim. If OpCo declines to defend a claim, the indemnified party must consult with OpCo in respect of that claim.
- (f) Clause 2.2(e) does not apply where:
  - (i) interlocutory proceedings are commenced against an Indemnified Party on an urgent basis;
  - (ii) the Indemnified Party reasonably considers that there is insufficient time to notify OpCo and for OpCo to commence defence of such proceedings on behalf of the party indemnified;
  - (iii) the Indemnified Party initially defends such proceedings; and
  - (iv) as soon as practicable after the commencement of the proceedings gives OpCo the option to conduct the defence of such proceedings.
- (g) Clause 2.2(e) does not apply to claims which would or may prevent the continued development or operation of the SLR or continued conduct of OpCo's Activities and the Indemnified Party:

- (i) to the extent reasonably practicable, consults in good faith with OpCo with respect to such claims; and
- (ii) does not in the course of defending or compromising such claims make admissions which may materially affect the validity of the Licensed IP without the written consent of OpCo (such consent not to be unreasonably withheld).

### 2.3 Infringements

- (a) If OpCo:
  - (i) becomes aware of a Claim by a person that the use of any SLR IP infringes any rights, including Intellectual Property or Moral Rights of a third party; or
  - (iv) believes that TfNSW may have a Claim against a person for infringement or misuse of any TfNSW IP,it must promptly provide TfNSW with written notice of the alleged Claim.
- (b) Notwithstanding clauses 2.1 (*Warranty by OpCo*) and 2.2 (*Indemnity*), if as a result of any alleged infringement or threatened infringement of Intellectual Property, TfNSW, OpCo, or any other entity performing work under this deed is prevented (whether by court order or otherwise) from exercising Intellectual Property it had been exercising or was proposing to exercise to perform OpCo's Activities, OpCo must:
  - (i) secure for TfNSW, OpCo and such other entity performing any obligation or exercising any right under this deed, the right to continue to use such Intellectual Property;
  - (ii) replace such Intellectual Property with non-infringing Intellectual Property which is equivalent in terms of functionality, performance and price; or
  - (iii) modify any materials, equipment, Software, devices or processes so that they become non-infringing or remove any materials, equipment, Software, devices or processes that are infringing without prejudice to any other rights of TfNSW.
- (c) If the amount of time necessary to proceed with one of the options set out in clause 2.3(b) is deemed excessive by TfNSW, TfNSW may direct OpCo to select another option and OpCo must comply with that direction.
- (d) The steps required for OpCo to comply with its obligations under clauses 2.3(b) and 2.3(c) are at OpCo's sole cost and expense unless the alleged infringement or threatened infringement directly arises in respect of TfNSW Licensed IP (other than Developed IP), ETS IP, IWLR IP or LTS IP in which case the costs are to be borne based upon the extent of responsibility of each party for the alleged infringement or threatened infringement, as reasonably determined by TfNSW's Representative.

## 3. OWNERSHIP OF INTELLECTUAL PROPERTY

### 3.1 Ownership - General

- (a) As between the parties, TfNSW owns all right, title and interest, including all Intellectual Property, in and to the TfNSW IP and nothing in this deed confers any right in the TfNSW IP to OpCo other than as licensee as expressly set out in clause 12 (*TfNSW Licensed IP, ETS IP, IWLR IP and LTS IP*).



- (b) As between the parties, OpCo owns all right, title and interest, including all Intellectual Property, in and to the Licensed IP and nothing in this deed confers any right in the Licensed IP to TfNSW other than as licensee as expressly set out in clause 4.1(a).

### 3.2 Ownership – Planning Documents

- (a) The parties acknowledge that ownership of all Intellectual Property Rights in the Planning Approval (and any documents, reports or other information submitted as part of the Planning Approval), the Planning Modification and all Planning Modification Documents (together the **Planning Documents**) vests in TfNSW and forms part of the TfNSW IP, except for any Intellectual Property Rights that form part of Alstom Systems IP, in respect of which ownership shall remain with Alstom or Alstom Transport Technologies SAS (as relevant) and be subject to the licence granted by OpCo under clause 4.2 (*Alstom Systems IP*).
- (b) To the extent necessary to give effect to clause 3.2(a), OpCo assigns to TfNSW, and will procure the assignment to TfNSW of, all right, title and interest in and to the Planning Documents. Ownership of each Planning Document vests in TfNSW on:
  - (i) the date of this deed, for any Planning Document in existence at the date of this deed not already owned by TfNSW; and
  - (ii) upon creation, for each Planning Document created after the date of this deed.

## 4. LICENCE OF INTELLECTUAL PROPERTY

### 4.1 Licence of Licensed IP

- (a) OpCo grants to TfNSW and any entity nominated by TfNSW, a permanent, perpetual, irrevocable, transferable, royalty-free, non-exclusive, licence to use, reproduce, modify, adapt and otherwise exercise the Licensed IP, which is not the subject of the licence in clause 4.2 (*Alstom Systems IP*), for the following purposes:
  - (i) to carry out the SLR PPP or OpCo's Activities;
  - (ii) to carry out the SLR Works or the Temporary Works or to operate, maintain and modify the SLR;
  - (iii) to disclose the Licensed IP on a confidential basis to third parties solely for the purposes of a tender process for the procurement of the integration of the SLR with any Augmentation;
  - (iv) to integrate the SLR with any Augmentation or any other project that interfaces with the SLR or any Augmentation; or
  - (v) to carry out the statutory functions of TfNSW or the entity nominated by TfNSW.

### 4.2 Alstom Systems IP

OpCo grants to TfNSW and any Successor OpCo a permanent, perpetual, irrevocable, transferable, royalty free, non-exclusive licence to exercise the Alstom Systems IP owned by or licensed to Alstom, including any Alstom Systems IP contained in the Planning Documents, for the following purposes:

- (a) to refurbish, convert, upgrade and modify the Alstom Systems;
- (b) subject to clause 4.4 (*Restrictions on licenses*), to construct and manufacture the Alstom Systems;
- (c) to operate and maintain the Alstom Systems;
- (d) to disclose the Alstom Systems IP on a confidential basis to third parties solely for the purposes of a tender process for the procurement of the integration of the Alstom Systems with any Augmentation;
- (e) to integrate the Alstom Systems with any Augmentation or any other project that interfaces with the SLR.

#### 4.3 Licences

The licences granted in clauses 4.1 (*License of Licensed IP*) and 4.2 (*Alstom Systems IP*):

- (a) arise in respect of each component of the Licensed IP upon the later of the date of this deed or upon the creation of each component of the Licensed IP;
- (b) may be sub-licensed and where TfNSW grants a sub-license to RMS then RMS may itself grant a sub-license; and
- (c) will survive expiry of this deed or termination of this deed on any basis.

#### 4.4 Restrictions on licences

Notwithstanding any other provision of this deed or any Project Agreement:

- (a) subject to clause 44 of the Operative Provisions, after the Term, OpCo and its Associates are not required to provide any software support or maintenance services in relation to any Software licensed or supplied to TfNSW in respect of the SLR, unless otherwise agreed between the parties under a separate agreement;
- (b) TfNSW is not entitled to access the Source Code in any Software, except to the extent the Software is not pre-existing and is in itself Developed IP or TfNSW is entitled to be provided with Source Code pursuant to the Source Code Escrow Agreement;
- (c) the licence granted in clause 4.2 (*Alstom Systems IP*) does not entitle TfNSW, RMS or any Successor OpCo (or any sub-licensee or transferee) to undertake or procure the construction or manufacture of:
  - (i) Alstom Systems for any light rail system other than the SLR;
  - (ii) spare parts for the Alstom Systems; or
  - (iii) Alstom Systems for the SLR,unless:
  - (iv) TfNSW is entitled to access the Relevant Source Code pursuant to the Source Code Escrow Agreement; and
  - (v) either:

- (A) OpCo has not within 10 Business days of having been provided with a notice by TfNSW to do so notified TfNSW in writing that it will take over the Alstom activities in relation to this deed; or
  - (B) TfNSW is not reasonably satisfied that OpCo has the capacity to take over the Alstom activities in relation to this deed; and
- (d) any transfer by TfNSW of the licence granted in clause 4.2 (*Alstom Systems IP*) must be notified to Alstom within a reasonable period.

#### 4.5 Licence of Third Party Software

- (a) If required by TfNSW, OpCo must:
  - (i) on or after the termination or expiry of this deed, use commercially reasonable endeavours to sublicense or assign to TfNSW OpCo's rights under, or cause a novation to TfNSW of OpCo's rights and obligations under, or assist TfNSW to obtain direct rights to, Third Party Licences (and must take commercially reasonable steps to ensure that the Third Party Licences make provision for this); or
  - (ii) at TfNSW's request during the Term, if TfNSW exercises its Step-In Rights under clause 42 of the Operative Provisions, use commercially reasonable endeavours to sublicense to TfNSW and a Step-in Party (if any) and/or assist TfNSW and a Step-in Party (if any) to obtain direct rights to Third Party Licences.
- (b) In respect of any sub-licence, assignment, novation or any such direct rights obtained under clause 4.5(a):
  - (i) each party will bear its own costs of effecting the assignment or novation or obtaining direct rights, except for any fee charged by a relevant third party (not being OpCo or an Associate of OpCo) which will be paid by TfNSW;
  - (ii) TfNSW will pay all costs and expenses referable to any period after the date of their assignment;
  - (iii) without derogating from clause 2.1 (*Warranty by OpCo*), OpCo must use commercially reasonable endeavours to do all acts and things reasonably requested by TfNSW to enable TfNSW to:
    - (A) obtain copies of, and otherwise be appraised of all the terms of, and communications and information concerning, the Third Party Licences and their performance;
    - (B) exercise and enforce all rights and perform all obligations under the Third Party Licences as if named as OpCo; and
    - (C) obtain such sub-licence, assignment, novation or direct rights on the same or substantially similar terms (including the remaining duration of any term) as OpCo has acquired for itself as enables it to fulfil its obligations under this deed; and
  - (iv) on and from the date of the assignment or novation of such Third Party Licences:
    - (A) TfNSW must assume all obligations of OpCo under such Third Party Licences; and

- (B) TfNSW must indemnify OpCo against all claims in respect of such Third Party Licences which arise in relation to the period on or from the date of assignment or novation of such Third Party Licences.
- (c) Where under this clause 4.5 (*Licence of Third Party Software*) OpCo has the legal right, such as the right to grant the relevant sublicense, to perform an obligation that is qualified by "use commercially reasonable endeavours", then OpCo must perform such obligation and shall be in breach of the requirement to "use commercially reasonable endeavours" if it fails to do so.

#### 4.6 **Equipment IP**

- (a) The parties agree that ownership of the Equipment IP does not vest in TfNSW pursuant to clause 5 (*Developed IP*). OpCo must use commercially reasonable endeavours to ensure that:
  - (i) at the time ownership of tangible items (including computer hardware) forming part of the SLR Works, the Temporary Works or the SLR (including, if necessary, OpCo's confidential information) is transferred to and vests in TfNSW or TfNSW's nominee pursuant to clause 51 of the Operative Provisions; and
  - (ii) at all times during any period in which a Step-in Party is exercising its Step-in Rights in accordance with clause 42 of the Operative Provisions,

TfNSW or TfNSW's nominee has such perpetual, royalty-free, transferable licences of the Equipment IP as will enable TfNSW or TfNSW's nominee to fully and effectively use and deal with the tangible items as owner of the tangible items, and to permit others to use those tangible items (including computer hardware) under contract with TfNSW or TfNSW's nominee.

- (b) Where under clause 4.6(a) OpCo has the legal right, such as the right to grant the relevant licence, to perform an obligation that is qualified by "use commercially reasonable endeavours" then OpCo must perform such obligation and shall be in breach of the requirement to "use commercially reasonable endeavours" if it fails to do so.

### 5. **DEVELOPED IP**

#### 5.1 **Ownership**

TfNSW will own all right, title and interest, including all Intellectual Property, in and to the Developed IP and nothing in this deed confers any right in the Developed IP to OpCo other than as licensee as expressly set out in clause 5.2 (*Assignment*).

#### 5.2 **Assignment**

To the extent necessary to give effect to clause 5.1 (*Ownership*), OpCo assigns to TfNSW, and will procure the assignment to TfNSW of, all right, title and interest in and to the Developed IP throughout the world. Ownership of each component of the Developed IP vests in TfNSW on:

- (a) the date of this deed, for any component of Developed IP in existence at the date of this deed; and
- (b) upon creation, for each component of the Developed IP created after the date of this deed.

TfNSW grants to OpCo a non-exclusive, royalty free licence in respect of the Developed IP in accordance with clause 12 (*TfNSW Licensed IP, ETS IP, IWLR IP and LTS IP*).

## 6. MORAL RIGHTS

### 6.1 OpCo to take reasonable steps

To the extent permitted by law, OpCo must take all reasonable steps to ensure that no person sues, enforces any claim, brings any action or exercises or seeks to exercise any remedy in respect of any breach or alleged breach, infringement or other wrong doing (whether before or after the date of this deed) against TfNSW or any person to whom TfNSW sub-licenses or otherwise grants a right under any Licensed IP or Developed IP in respect of any person's Moral Rights in respect of any SLR IP (including Developed IP but excluding all other TfNSW Licensed IP), the SLR Works, the Temporary Works, the SLR Documentation or the SLR.

### 6.2 Moral Rights Access

To the extent that any conduct of TfNSW, OpCo or any person authorised by either of them, may infringe a person's Moral Rights in respect of any SLR IP (but excluding TfNSW Licensed IP other than Developed IP), the SLR Works, the Temporary Works, the SLR Documentation or the SLR, before the person creates any part of the material or work which may give rise to the Moral Rights claim, OpCo must obtain from that person a duly completed and executed Moral Rights Consent.

### 6.3 OpCo Obligations

OpCo must:

- (a) not coerce any person to complete or execute a Moral Rights Consent;
- (b) within 15 days of a Moral Rights Consent having been executed in accordance with this clause 6 (*Moral Rights*), provide a copy of that Moral Rights Consent to TfNSW; and
- (c) maintain an up-to-date record of the names and addresses of each person who is an author of any part of the Developed IP, a description of the work or material of which each such person is an author and shall provide a copy of the record to TfNSW whenever it is updated.

## 7. TFNSW DATA

### 7.1 Ownership of TfNSW Data

- (a) Notwithstanding any other provision of this deed, OpCo agrees and acknowledges that TfNSW owns all right, title and interest, including all Intellectual Property in and to the TfNSW Data and TfNSW may use TfNSW Data for any purpose whatsoever, including planning and marketing purposes, and purposes required by TfNSW's Associates.
- (b) To the extent necessary to give effect to clause 7.1(a), OpCo assigns to TfNSW, and will procure the assignment to TfNSW of, all right, title and interest in and to the TfNSW Data. Ownership of each item of TfNSW Data vests in TfNSW on:
  - (i) the date of this deed, for any item of TfNSW Data in existence at the date of this deed; and

- (ii) upon creation, for each item of TfNSW Data created after the date of this deed.

## 8. RECORDS OF AND ACCESS TO INTELLECTUAL PROPERTY AND TfNSW DATA

### 8.1 IP Register

- (a) Without limiting OpCo's other obligations under this deed, OpCo must establish and maintain an electronic database register and must:
  - (i) within 30 Business Days of the date of Financial Close, include in the register a List of Intellectual Property for all Intellectual Property that is in existence;
  - (ii) prior to entering into any arrangements with respect to any Intellectual Property which is not on the List of Intellectual Property, provide TfNSW with written notice specifying:
    - (A) the nature of the Intellectual Property;
    - (B) the owner of the Intellectual Property and, if relevant, the licensor and licensee of the Intellectual Property;
    - (C) details of the proposed arrangements to be entered into with respect to the Intellectual Property;
  - (iii) at the end of the Delivery Phase, update the register with any updated List of Intellectual Property provided or required to be provided by OpCo under clause 8.1(a); and
  - (iv) ensure TfNSW has access at all times and in any manner to the register, which will be available to TfNSW:
    - (A) unconditionally;
    - (B) without prior notice; and
    - (C) at no additional charge.
- (b) OpCo agrees to, and must procure that its Associates agree to, discuss and provide such assistance to TfNSW and any party nominated by TfNSW as TfNSW may reasonably require to enable TfNSW to enjoy the full benefit of its rights under and in relation to this deed.
- (c) OpCo acknowledges that the TfNSW Data is sensitive and extremely valuable to TfNSW and disclosure, use or access to it, in a manner not permitted by this deed may cause irreparable harm and damage to TfNSW.
- (d) OpCo must follow TfNSW's reasonable directions when collecting, storing and protecting the TfNSW Data.

### 8.2 Physical material

- (a) OpCo must, at its own cost, deliver from time to time or on request of TfNSW during the Term and upon termination or expiry of this deed, such physical media embodying:

- (i) Developed IP;
- (ii) Licensed IP;
- (iii) Third Party Software and Equipment IP which OpCo or its Associates owns or has appropriate rights to provide; or
- (iv) TfNSW Data,

as TfNSW reasonably requests to enable it to fully exercise its ownership and rights under this deed.

(b) Without limiting clause 8.2(a):

- (i) OpCo must create and deliver to TfNSW prior to Completion one copy of the object code or any Software comprised in the items or materials identified in sub-clauses (a)(i) to (iii) and (b) of the definition of Licensed IP;
- (ii) within 5 Business Days of any change to the Software used in the items or materials identified in sub-clauses (a)(i) to (iii) and (b) of the definition of Licensed IP, OpCo must deliver a copy of it to TfNSW;
- (iii) within 30 Business Days after the date of Financial Close, OpCo must deliver the List of Software (current as at that date) to TfNSW as part of the List of Intellectual Property delivered under clause 8.1(a); and
- (iv) within 5 Business Days of the use by OpCo of any Software which is not specified on the List of Software, OpCo must:
  - (A) provide TfNSW with the following information:
    - (aa) name of the Software;
    - (bb) owner of the Software; and
    - (cc) confirmation that the Software is the subject of the warranty in clause 2.1 (*Warranty by OpCo*); and
  - (B) use commercially reasonable endeavours to provide TfNSW with a copy of the Software licence, if any.

**9. RELEVANT SOURCE CODE**

**9.1 Deposit of Relevant Source Code**

Within 20 Business Days of each milestone identified in Annexure C, OpCo must deposit a copy of the Relevant Source Code, then existing, in escrow with the Source Code Escrow Agent on the terms of the Source Code Escrow Agreement. Following the last of the milestones identified in Annexure C, OpCo will thereafter, within 20 Business Days of Quarter End during the remainder of the Term, update the Relevant Source Code deposited with the Source Code Escrow Agent by depositing with the Source Code Escrow Agent a copy of all Relevant Source Code which has been created, or reflects Software, which has first been incorporated into the Alstom Systems IP during that Quarter (including any Source Code to which modifications have been made) to ensure that the Relevant Source Code deposited with the Source Code Escrow Agent is current as at the Quarter End.

## 9.2 Provision of Relevant Source Code

TfNSW will be entitled, at OpCo's cost, to be provided with the Relevant Source Code at any time if any of the following events occur:

- (a) an Insolvency Event occurs in relation to Alstom or Alstom Transport Technologies SAS;
- (b) TfNSW exercises any Step-In Rights in accordance with this deed, but only to the extent, and for the period, required for TfNSW to reasonably exercise its Step-In Rights; or
- (c) the parties to the Source Code Escrow Agreement otherwise agree to the release of the Relevant Source Code.

## 9.3 Audit of Relevant Source Code

TfNSW may (at TfNSW's cost), once every 12 months during the Term, have an auditor review, analyse and conduct tests on a confidential basis in relation to the Relevant Source Code maintained in escrow with the Source Code Escrow Agent for the purposes of:

- (a) verifying that OpCo is complying with clause 9.1 (*Deposit of Relevant Source Code*);
- (b) reviewing the quality of the material in escrow to ensure there has been no degradation to that material in escrow; and
- (c) providing a report as to the auditor's findings.

## 9.4 Remedy of non-compliance

OpCo must, within 30 Business Days of receipt of a written notice from TfNSW specifying that an audit pursuant to clause 9.3 (*Audit of Relevant Source Code*) has determined that OpCo is not complying with clause 9.1 (*Deposit of Relevant Source Code*) or there has been degradation to the material in escrow, remedy such non-compliance or replace such material as the case may be.

## 9.5 Deemed Licensed Intellectual Property

Intellectual Property comprised in any material which the TfNSW is entitled to be provided with under this clause 9 (*Relevant Source Code*) will be deemed to be Licensed IP during the period to which the TfNSW is entitled to be provided with that material.

## 9.6 No deposit

OpCo is not required to deposit and maintain in escrow any material that it has already given to TfNSW on a permanent basis.

## 10. PATENT VALIDITY

If any component of any Intellectual Property which is licensed or assigned under this deed expires through the effluxion of time or is or becomes invalid, then, without limiting TfNSW's rights in respect of that expiry or invalidity, that component will, to that extent only, be deemed to be excluded from the Intellectual Property licensed or assigned under this deed and this deed will otherwise continue in full force and effect.



## 11. ASSURANCE

### 11.1 Change in relationship

If any circumstances occur whereby the direct or indirect relationship between OpCo and the owner of any Licensed IP or Equipment IP not owned by OpCo concerning the Licensed IP or Equipment IP changes or is likely to change, then OpCo must use its best endeavours to procure that:

- (a) the owner of the Licensed IP or Equipment IP (as applicable) and OpCo must immediately notify TfNSW in writing, which notice must describe, with a reasonable level of detail, the nature of those circumstances and their effect or likely effect on TfNSW;
- (b) notwithstanding those circumstances, the owner of the Licensed IP or Equipment IP (as applicable) permits TfNSW to continue exercising its rights to the Licensed IP or the Intellectual Property in all or any part of the Equipment IP (as applicable) as if such circumstances did not occur, or as the case requires, had not occurred; and
- (c) the owner of the Licensed IP or Equipment IP (as applicable) and OpCo will do all such acts and things as TfNSW reasonably requests in order to give effect to this clause 11 (*Assurance*).

The circumstances referred to in this clause 11.1 (*Change in relationship*) include termination of any licensing arrangement or circumstances involving an inability to pay debts.

### 11.2 Core IP Providers

- (a) OpCo must ensure that no arrangements with respect to Intellectual Property owned by, or licensed to, a Core IP Provider are entered into in connection with OpCo's Activities without OpCo and the relevant Core IP Provider having delivered to TfNSW's Representative a duly executed Deed of Assurance in relation to any Licensed IP and/or Equipment IP owned by the Core IP Provider.
- (b) TfNSW may nominate any owner of, or holder of rights in, Intellectual Property identified in the List of Intellectual Property or in a notice from OpCo under clause 8.2(b) as a Core IP Provider, in which case clause 11.2(a) will apply.

## 12. TfNSW LICENSED IP, ETS IP AND LTS IP

### 12.1 TfNSW Licensed IP

- (a) TfNSW grants to OpCo, subject to such conditions as TfNSW may reasonably impose, an irrevocable, royalty-free, non-exclusive licence during the Term to use, reproduce, modify, adapt and otherwise exercise the TfNSW Licensed IP in accordance with this deed solely for the purpose of carrying out OpCo's Activities,.
- (b) The licence granted in clause 12.1(a) may be sublicensed (free of charge) by OpCo subject to such conditions as TfNSW may reasonably impose.

### 12.2 ETS, LTS and IWLR IP

Subject to clause 12.3 (*TfNSW additional terms and conditions*) TfNSW grants to OpCo a non-transferable, royalty free, non-exclusive licence during the Term to use the:

- (a) ETS IP solely for the purpose of OpCo carrying out OpCo's Activities in respect of the ETS;

(b) LTS IP solely for the purpose of OpCo carrying out OpCo's Activities in respect of the LTS; and

(c) IWLR IP solely for the purpose of OpCo carrying out OpCo's Activities,

and the licences granted in this clause 12.2 (*ETS, LTS and IWLR IP*) may be sublicensed (free of charge) by OpCo on such conditions as TfNSW may reasonably impose.

### 12.3 TfNSW additional terms and conditions

OpCo's use of any ETS IP, IWLR IP or LTS IP that is owned by third parties may be the subject of additional terms and conditions (including prohibitions or restrictions on sublicensing), as notified by TfNSW to OpCo from time to time.

## 13. TFNSW BRAND

### 13.1 Use of TfNSW Brand

(a) OpCo must only use the TfNSW Brand in material if TfNSW has given that material to OpCo or OpCo has submitted representative material including the TfNSW Brand to TfNSW and TfNSW has approved their use in writing.

(b) OpCo acknowledges and agrees that:

(i) the TfNSW Brand is extremely important and valuable to TfNSW;

(ii) TfNSW owns all right, title and interest in the TfNSW Brand and OpCo has no right, title or interest in the TfNSW Brand and, in particular, in respect of the TfNSW Marks the powers conferred on authorised users by section 26 of the *Trade Marks Act 1995* (Cth) are expressly excluded;

(iii) any goodwill and any other right, title or interest from OpCo's use of the TfNSW Brand accrues solely for TfNSW's benefit;

(iv) OpCo will, at TfNSW's request, immediately amend or withdraw any document or thing bearing the TfNSW Brand;

(v) OpCo must only use the TfNSW Brand in a manner which strictly accords with the terms of this deed and any directions or guidelines which TfNSW provides to OpCo from time to time; and

(vi) TfNSW may request access to any material bearing the TfNSW Brand to ensure compliance with this deed and any directions or guidelines for use of the TfNSW Brand and upon receipt of such a request, OpCo will provide TfNSW with access to the relevant material within 5 Business Days.

(c) OpCo must do all things necessary (including executing documents) and provide TfNSW with all such assistance as is reasonably required by TfNSW to register any part of the TfNSW Brand in the name of TfNSW and to maintain that registration throughout the Term.

(d) OpCo must ensure that where the TfNSW Marks appear in any written material (including any electronic material) published by or on behalf of OpCo, unless otherwise authorised by TfNSW in writing:

(i) the ® symbol must appear next to TfNSW Marks which are registered and the ™ must appear next to TfNSW Marks which are not registered; and

- (ii) the TfNSW Marks must be accompanied by the following footnote:

"The [*to be inserted*] trade mark is used by OpCo under licence from TfNSW".
- (e) OpCo must not use the TfNSW Brand in a manner which is prejudicial to TfNSW or likely to prejudice the distinctiveness of the TfNSW Brand or the validity of any registration for any of the TfNSW Marks.
- (f) OpCo must comply with any standards, directions and specifications notified in writing by TfNSW from time to time during the Term as to the appearance, colour, size and positioning of the Trade Marks and the footnote referred to in clause 13.1(d)(ii).
- (g) OpCo must not at any time during the Term use the TfNSW Marks in juxtaposition to any other trade mark, embellishment or device without the prior written consent of TfNSW.
- (h) OpCo will:
  - (i) if requested by TfNSW, take all necessary action and execute and deliver to TfNSW all necessary documents and instruments to record OpCo as a registered user of the TfNSW Marks;
  - (ii) if requested by TfNSW, submit to TfNSW, samples of all materials (including all advertisements, promotions and other marketing material) which incorporate the TfNSW Brand for TfNSW's prior written approval;
  - (iii) except to the extent expressly permitted by this agreement, not use or apply to register any TfNSW Marks as part of its corporate, business, trading or domain name;
  - (iv) not directly or indirectly contest or oppose or assist any other party to contest or oppose TfNSW's ownership of the TfNSW Brand;
  - (v) not register or use any trade mark, trade name, company name or domain name which includes any of the TfNSW Brand or which is substantially identical or deceptively similar to any part of the TfNSW Brand; and
  - (vi) not challenge the TfNSW Brand or TfNSW's ownership of the TfNSW Brand or assist a third party to do these things.
- (i) If, during the Term, OpCo becomes aware of any infringement or unauthorised use of, act inconsistent with, challenge to or claim against or in relation to any of the Trade Marks, OpCo must promptly notify TfNSW.
- (j) TfNSW will have the conduct of all proceedings relating to any infringement or unauthorised use of, act inconsistent with, challenge to or claim against or in relation to any of the Trade Marks and will in its sole discretion decide what action if any to take in respect of that matter. OpCo must, at TfNSW's reasonable cost, take any action which TfNSW reasonably requests to bring the matter to an end.
- (k) OpCo shall, upon termination or expiry of this deed, procure that any part of the TfNSW Brand which is listed or registered in the name of OpCo, or any person acting on its behalf, is transferred to TfNSW and procure that all telephone numbers, email addresses and all other electronic addresses which are designated by OpCo for use by the general public to make contact with OpCo in relation to the operation of the SLR using a telecommunication network be transferred to TfNSW.

14. **GENERAL**

14.1 **Copyright and Circuit Layout Act**

Notwithstanding any other provision of this deed, this deed does not exclude or limit, or have the effect of excluding or limiting, the operation of subsection 47B(3) or sections 47C, 47D, 47E or 47F of the *Copyright Act 1968* (Cth) or Part II, Division 3 of the *Circuit Layout Act 1989* (Cth).

14.2 **Perfecting licence and ownership**

- (a) Without limiting any other provision of this deed, including clause 11 (*Assurance*), OpCo must do all things necessary (including executing documents) to perfect the licences and ownership granted to TfNSW in this Schedule A5 (*Intellectual Property*) and otherwise to give effect to OpCo's obligations and TfNSW's rights under this Schedule A5 (*Intellectual Property*).
- (b) If and to the extent TfNSW notifies OpCo that it has failed to perform any act required under clause 14.2(a) and OpCo fails to then perform that act within a reasonable period as identified in that notice, OpCo will with effect from the expiry of the time period identified in the notice irrevocably appoint TfNSW, or such other person as TfNSW nominates from time to time, as OpCo's attorney to do such acts and things, in OpCo's name, as TfNSW reasonably requires in order to exercise the rights under this Schedule A5 (*Intellectual Property*).

14.3 **No derogation**

Nothing in this Schedule A5 (*Intellectual Property*) derogates from TfNSW's rights under Schedule 6A of the *Transport Administration Act 1988* (NSW).

14.4 **Survival**

This Schedule A5 (*Intellectual Property*) survives:

- (a) any frustration, suspension, termination or expiry of this deed; or
- (b) the exercise by TfNSW of its Step-In-Rights under clause 42 (*Step-in*) of the Operative Provisions.

## Annexure A - Deed of Assurance

### Deed of Assurance

**Dated:**

**Parties** [insert details of the owner of the Licensed Intellectual Property] (the "**Licensed IP Owner**")

**Transport for NSW ABN 18 804 239 602** a New South Wales Government agency constituted by section 3C of the *Transport Administration Act 1988 (NSW)* of Level 7, 8-12 Castlereagh Street, Sydney, New South Wales (**TfNSW**)

[to be inserted] **ABN** [to be inserted] of [to be inserted] (**OpCo**)

**Recitals**

- A. TfNSW has entered into, or may in future enter into, the Sydney Light Rail Project Deed (**Project Deed**) with OpCo.
- B. Part of OpCo's obligations under the Project Deed include the licensing under or pursuant to the Project Deed of the Intellectual Property described in Schedule 1 (all and every part of which is referred to as the **Licensed Intellectual Property**) to TfNSW and any entity nominated by TfNSW, with the right to sublicense (**Project Deed Licence**).
- C. The Licensed IP Owner owns/has appropriate rights to **[delete whichever alternative is not appropriate]** all Intellectual Property in the Licensed Intellectual Property, and has authorised OpCo to grant the Project Deed Licence to TfNSW and any entity nominated by TfNSW.
- D. By this deed, the Licensed IP Owner assures TfNSW and any entity nominated by TfNSW that TfNSW and any entity nominated by TfNSW may continue exercising its rights under the Project Deed Licence, notwithstanding any change affecting the Licensed IP Owner's direct or indirect relationship with OpCo.

**Operative Provisions**

- 1. The Licensed IP Owner warrants that it owns/has appropriate rights to **[delete whichever alternative is not appropriate]** all Intellectual Property in the Licensed Intellectual Property and is entitled to enter into this deed.
- 2. The Licensed IP Owner warrants that it has authorised OpCo to grant the Project Deed Licence.
- 3. If any circumstances occur whereby the Licensed IP Owner's direct or indirect relationship with OpCo concerning the Licensed Intellectual Property changes, or is likely to change, then:
  - (a) the Licensed IP Owner and OpCo shall immediately notify TfNSW in writing, which notice shall describe, with a reasonable level of detail, the nature of those circumstances and their effect or likely effect on TfNSW; and
  - (b) notwithstanding those circumstances, TfNSW and any entity nominated by TfNSW may continue exercising its rights under the Project Deed Licence as if such circumstances do not occur, or as the case requires, had not occurred.

Such circumstances include termination of any licensing arrangement or circumstances involving an inability to pay debts.

4. The Licensed IP Owner shall ensure that any entity which succeeds to, is assigned or otherwise becomes the owner of, any of the Intellectual Property in respect of the Licensed Intellectual Property agrees to be bound by the terms of this Deed as if it were named in this deed as the Licensed IP Owner.
5. The Licensed IP Owner shall at its cost and expense immediately, on demand by TfNSW, perform all acts and execute all agreements, assurances and other documents and instruments as TfNSW reasonably requests to perfect or give effect to the rights and powers of TfNSW created or intended to be created by this deed.
6. This deed shall be governed by the laws in force in the State of New South Wales, Australia.
7. The Licensed IP Owner irrevocably submits to and accepts, generally and unconditionally, the non-exclusive jurisdiction of the courts and appellate courts of New South Wales with respect to any legal action or proceedings which may be brought at any time relating in any way to this deed.
8. The Licensed IP Owner irrevocably waives any objection it may now or in the future have to the venue of any action or proceeding, and any claim it may now or in the future have that any action or proceeding has been brought in any inconvenient forum.
9. The Licensed IP Owner agrees that, subject to any rights of appeal which the Licensed IP Owner may have in New South Wales or to the High Court of Australia, a judgment or order of a New South Wales court in connection with this deed is conclusive and binding on the Licensed IP Owner and may be enforced against the Licensed IP Owner in the courts of any other jurisdiction.
10. The Licensed IP Owner irrevocably appoints OpCo as its agent to receive service of process or other documents in any action in connection with this deed and irrevocably agrees that service on OpCo as agent will be sufficient service on it.
11. Each warranty in this deed is a continuing warranty for the benefit of the TfNSW.
12. TfNSW may at any time assign, novate, transfer or otherwise deal with all or any part of its rights or obligations under this deed to any entity to which TfNSW assigns, novates, transfers or otherwise deals with its rights or obligations under the Project Deed, in accordance with clause 52.2(a) of the Project Deed.
13. For the purposes of this deed "**Intellectual Property**" includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future, including rights of any kind in:
  - (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents, innovation patents or designs, including developments or improvements of equipment, technology, processes, methods or techniques;
  - (b) literary works, dramatic works, musical works, artistic works, cinematograph films, television broadcasts, sound broadcasts, published editions of works and any other subject matter in which copyright (including future copyright and rights in the nature of or analogous to copyright) may, or may upon creation of the subject matter, subsist anywhere in the world;
  - (c) registered and unregistered trade marks and service marks, including goodwill in the business concerned in the relevant goods and/or services;

- (d) trade, business or company names;
- (e) internet domain names; and
- (f) proprietary rights under the *Circuit Layouts Act 1989* (Cth),

whether created or in existence before or after the date of this deed. **Executed** as a deed.

***[Insert appropriate execution clauses.]***

**Schedule 1:**

***[Insert a description of the component of the Licensed Intellectual Property in which the Licensed IP Owner owns the Intellectual Property.]***

## Annexure B - Moral Rights Consent

### Deed Poll

**Dated:**

By: [to be inserted] of [to be inserted] (**Author**)

In favour of: Transport for NSW (ABN 18 804 239 602) a New South Wales Government agency constituted under section 3C of the *Transport Administration Act 1988* (NSW) of Level 5, Tower A, Zenith Centre 821 Pacific Highway, Chatswood NSW 2067 (**TfNSW**).

**Recitals**

- A. TfNSW and [insert name and ABN of OpCo] (**OpCo**) have entered into a deed entitled Sydney Light Rail - Project Deed in relation to the Sydney Light Rail project dated [insert] to perform, create and deliver certain works (the **Project**).
- B. The Author has created or may create material in which copyright subsists for the purposes of the *Copyright Act 1968* (Cth) (as amended), which may be used in connection with, or as part of, the Project (the **Work**).

**This deed poll provides:**

In relation to the Work, the Author:

- 1. agrees, to the extent permitted by law, not to sue, enforce any claim, bring any action or exercise any remedy in respect of any breach, alleged breach, infringement or other wrongdoing in relation to the Author's moral rights under the *Copyright Act 1968* (Cth) by:
  - (a) TfNSW;
  - (b) OpCo;
  - (c) any third party, to whom OpCo and/or TfNSW grants a licence to use the Work (whether express or implied); or
  - (d) any third party to whom OpCo and or TfNSW assigns the copyright in such Work,(together defined as "**OpCo, TfNSW and Associated Persons**");
- 2. without limiting paragraph 1, consents to, and waives any rights in relation to any of OpCo, TfNSW and Associated Persons:
  - (a) failing to acknowledge the Author's authorship of the Work;
  - (b) falsely attributing authorship of the Work; or
  - (c) making any modification, variation or amendment of any nature whatsoever to any of the Work, whether or not:
    - (i) it results in a material distortion of or destruction or mutilation of the Work; and
    - (ii) it is prejudicial to the honour or reputation of the Author; and



3. without limiting paragraphs 1 or 2, consents to, and waives any rights in relation to, any of OpCo, TfNSW and Associated Persons:
- (a) using the Work other than in the publication or for the purpose for which it was intended at the time the Work is created;
  - (b) altering the Work by adding to, or removing elements from the Work, including without limitation editing, altering, modifying or expanding the Work;
  - (c) incorporating the Work into other works of any kind, in any medium now known or later invented;
  - (d) deriving other works of any kind (including without limitation films, sound recordings and other deliverables in any medium now known or later invented) from the Work;
  - (e) using the Work, or any part of the Work or any other work derived from the Work, in conjunction with other material of any kind;
  - (f) changing, relocating, demolishing or destroying any building or structure which incorporates, is based on, or is constructed in accordance with, any of the Work; and
  - (g) doing any of the acts referred to in paragraphs (b), (c), (d) and (e) in relation to any:
    - (i) adaptation of the Work or any part of such adaptation;
    - (ii) other work derived from or based on the Work or any part of such other work; and
    - (iii) omitting to attribute the Author's authorship of the Work.

**Executed** as a Deed Poll

**Signature of Author:**..... **Signature of witness:** .....

**Name of Author** ..... **Name of witness:** .....

**Annexure C – Milestones for deposit of Escrow Materials**

1. **TRACER SYSTEMS AND SPECIAL TOOLS AND EQUIPMENT IN RELATION TO THE TRACER SYSTEMS**
  - (a) Financial Close;
  - (b) Design Stage 3 following certification by the Independent Certifier in accordance with clause 13.7(b) of the Operative Provisions;
  - (c) First type test conducted in accordance with SPR Appendix 33 (*Testing and Commissioning*);
  - (d) Factory Acceptance Test (Routine) (as defined in SPR Appendix 33 (*Testing and Commissioning*)) in respect of the 25th CSELRV;
  - (e) Final Performance Test (as defined in SPR Appendix 33 (*Testing and Commissioning*));
  - (f) Date of Completion; and
  - (g) Final Completion.
  
2. **CSELRVS AND SPECIAL TOOLS AND EQUIPMENT IN RELATION TO THE CSELRVS**
  - (a) Financial Close;
  - (b) Design Stage 3 following certification by the Independent Certifier in accordance with clause 13.7(b) of the Operative Provisions;
  - (c) First type test conducted in accordance with SPR Appendix 33 (*Testing and Commissioning*);
  - (d) Factory Acceptance Test (Routine) (as defined in SPR Appendix 33 (*Testing and Commissioning*)) in respect of the 25th CSELRV;
  - (e) Final Performance Test (as defined in SPR Appendix 33 (*Testing and Commissioning*));
  - (f) Date of Completion; and
  - (g) Final Completion.

**Schedule A6**  
**Existing Moveable Assets**

(Clause 51.3)

The Existing Moveable Assets are set out below.

**1. Pyrmont light rail maintenance and stabling facility**

Component Item Name	Quantity
Gantry Platform	1
Gantry Hoist on service road 2	1
8 tonne Mobile Lifting Jacks	8
Re-railing Equipment	1 set
Bench Press	1
Pedestal Drill	1
Pedestal Grinder	1
EPROM Programmer	1
Arc Welder	1
Workbenches	3
External Brake System Bleed Pump	1
External Traction System Coolant Bleed Pump	1
Service Road 1 Fall Arrest System	1
Service Road 1,2 and Hospital Road Isolating Switches	1
Pantograph Lifting Beam	1
A/C Welding Equipment	1
Wheel Grinding Machine	1

**2. IWLRVs**

Component Item Name	Quantity
CAF URBOS 3 Light Rail Vehicles	12

3. **IWLRV Spares: CAF URBOS 3**

Component Item Name	Quantity
<b>Car Body</b>	
Intercommunication Gangway	4
Automatic Coupler	2
Semipermanent Coupler Assembly	4
Windscreen Wiper	1
Front Body End	1
Front Anticlimber	1
Shock Absorbers	1
Front Skirts	2
Side Skirts Bogie	3
Side Skirts Lateral Bogie Type 1	4
Side Skirts Lateral Bogie Type 2	2
Side Skirts Suspended Car	4
Driver Desk (not equipped)	1
<b>Windows</b>	
Fixed Department Window - Large	4
Fixed Department Window - Small	4
Hopper Window - Department	2
Windscreen	1
Cab Lateral Window	2
Cab Lateral Window Small	2
Windows – Passenger Access Doors Single	2
Windows – Passenger Access Doors Double	2

<b>Bogie</b>	
Complete Motor Bogie	2
Complete Trailer Bogie	1
Motor Axle	4
Trailer Axle	2
Primary Suspension Kit (one kit per bogie)	3
Secondary Suspension Kit (one kit per bogie)	3
<b>Propulsion System</b>	
Pantograph	1
Traction Converter - Inverter	2
Traction Motor	8
Master Controller	2
Gearbox	8
Surge Arrester	1
Circuit Breaker	1
Brake Resistors	2
<b>Battery</b>	
Battery	1
<b>HVAC</b>	
HVAC Saloon	2
HVAC Cabin	2
<b>Doors</b>	
Passenger Access Double Door Leaf	4
Passenger Access Single Door Leaf	4
Passenger Access Double Door Mechanism	4
Passenger Access Single Door Mechanism	4

Cab Interior Door (leaf and mechanism)	2
<b>Seats</b>	
Driver's Seats	1
Department Seats	37
Tip Up Seats	3
<b>Braking System</b>	
Air Production System	2
Brake Calliper	12
Brake Discs	12
<b>Miscellaneous</b>	
Train Control and Monitoring System	1
Event Register	1
Rear View Exterior Cameras	4
Interior Cameras	8
Interior Destination Display	8
Exterior Lateral Destination Display	2
Exterior Front Destination Display	2
Train Radio Station	2

4. **IWLRV Special Tools and Equipment: CAF URBOS 3**

Component Item Name	Quantity
<b>Bogie</b>	
Wheel Profiling Measuring Tool	1
Wheel Tyre Changing Tool	1
Ultrasonic Test Equipment	1

<b>Brake Air Production</b>	
Diagnostic Equipment and Software	1
Portable Brake Test Case	1
<b>HVAC</b>	
Diagnostic Equipment and Software	1
Refrigerant Recycling Station and Special Tools	1
<b>Doors</b>	
Diagnostic Equipment and Software	1
<b>Battery</b>	
Battery Charger	1
<b>Traction Motor</b>	
Diagnostic Equipment and Software	1
<b>Traction Converter - Inverter</b>	
Diagnostic Equipment and Software	1
<b>Auxiliary Converter + Battery Charger</b>	
Diagnostic Equipment and Software	1
<b>Control and Monitoring System</b>	
Diagnostic Equipment and Software	1
<b>Event Recorder</b>	
Diagnostic Equipment and Software	1
<b>Passenger Information System</b>	
Diagnostic Equipment and Software	1
<b>CCTV</b>	
Diagnostic Equipment and Software	1
<b>Depot</b>	
Re-railing Equipment	1 set

8 tonne Mobile Lifting Jacks	12
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**5. IWLR Signalling equipment and Spares**

Component Item Name	Quantity
<b>Spare Parts General</b>	
Balise General	3
Signal Globe 110V 60W	30
End Termination Turning Unit A Type	3
Turning Unit B Type	2
End Termination Turning Unit B Type	1
Turning Unit C Type	3
End Termination Turning Unit C Type	4
Turning Unit D Type	1
End Termination Turning Unit D Type	1
End Termination Turning Unit E Type	1
Power Supply T121	1
Transmitter "A"	2
Transmitter "B"	2
Transmitter "C"	2
Transmitter "D"	2
Transmitter "E"	1
Receiver "A"	2
Receiver "B"	2
Receiver "C"	3
Receiver "D"	2
Receiver "E"	1



Encoder General "R" State R64	2
Relay Spec 961	4
Relay Spec 949	1
Relay Spec 935AQLA1	4
Relay QNA1	6
Relay ENA1	2
Relay QSRA1	5
Relay QMT2	3
Relay Spec 933AQSPA1	2
Relay QXR1	7
Relay QTD5	1
Power Supply 120V/240DC	5
Relay QBCA1	5
Points Machine	1
Points Machine 84M	1
Signal Lamp Holder	4
PCB Board	1
White Relay Base	2
Black Relay Base	2
ATP Balise Connector	5
MCB 1A	1
MCB 3A	1
MCB 20A	2
LED Signal Head	1
LED Red	7
LED White	14

<b>Location Case Cabinet</b>	
Q Type Relay	30
Transmitter Unit	2
Receiver Unit	2
PSU	1
Lamp Detector Board (LDB)	2
Serial Balise Driver Board (SBDB)	1
Fuses	10 each type
Transformer Rectifier	2 each type
Isolation Transformer (250/110) – 1.0KVA	1 set
<b>Wayside Equipment</b>	
Serial Balise	2
LED Module (Red)	2
LED Module (White)	2
LED Module for Push Button & Point Control Box	1
Push Button Module	2
Point Machine 84M Model	1 set
Impedance Bond B3 4000	1
TTU (Tuning Unit)	2
ETU (End Termination Unit)	1
Capacitor Unit	2
LMU	1
<b>Onboard Equipment</b>	
ATP Logic Panel	1 set
Driver Panel	1 set
Grey Antenna Unit	1 set

Strapping Plug	1 set
Tachometer	1 set

**6. IWLR Signalling equipment and Spares**

Component Item Name	Quantity
<b>Location Case Cabinet</b>	
Q Type relay	30
Transmitter unit	2
Receiver unit	2
PSU	1
Lamp Detector Board (LDB)	2
Serial Balise Driver Board (SBDB)	1
Fuses	10 each type
Transformer Rectifier	2 each type
Isolation Transformer (250/110) - 1.0KVA	1 set
<b>Wayside Equipment</b>	
Serial Balise	2
LED Module (Red)	2
LED Module (White)	2
LED Module for Push Button & Point Control Box	1
Push Button Module	2
Point Machine 84M Model	1 set
Impedance Bond B3 4000	1
TTU (Turning Unit)	2
ETU (End Termination Unit)	1
Capacitor Unit	2
LMU	1

**7. IWLR Signalling Special Tools Equipment**

Component Item Name	Quantity
<b>Balise Test Equipment</b>	
Complete PTE Box	1 set
<b>Track Circuit Test Equipment</b>	
TTM and Rocoil included accessories	1 set
Test Probes	1 set
Rocoil RCT	1 set
Track Circuit Test Equipment (SIT)	1 set
Shunt Box	1 set

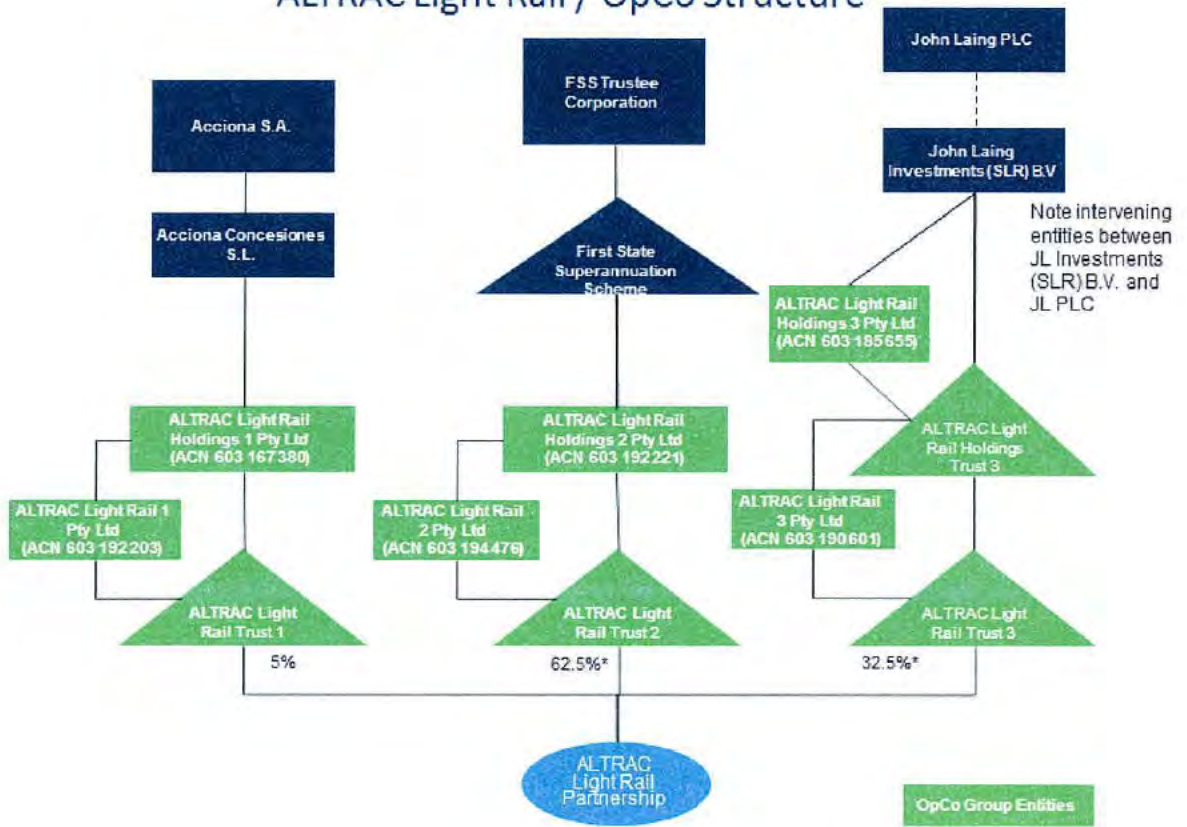
**8. IWLR Legacy Ticketing System**

Component Item Name	Quantity
Casio Ticket Machines	20
Dock Communication Cradles	2
Dock Charging Cradles	8
Float Lockers	72
Safe	1

**Schedule A7**  
**OpCo Group Structure**

(Clause 53.1)

**ALTRAC Light Rail / OpCo Structure**



**Key**



## Schedule A8

### Permitted Changes in Ownership and Control

#### Part A – Permitted Changes in Ownership

(Clauses 1.1 and 53.2)

The following events constitute a Permitted Change in Ownership for the purposes of clause 53.2(b)(iii) of the Operative Provisions:

- (a) General (to apply to all Equity Interests):
  - (i) any direct or indirect change to the legal or beneficial ownership of the shares or units or other interests described in limb (a) of the definition of Equity Interest (other than an Equity Interest in OpCo itself) which does not involve a Change in Control of any member of OpCo Group provided that:
    - (aa) for the purposes of this clause (a) only the reference to 25% in the definition of Control shall be deemed to be 20%; and
    - (bb) nothing in this clause (a) operates to reduce, diminish or otherwise remove the requirements set out in Part C of this schedule.
  - (ii) a transfer of any share or unit or other interest described in limb (a) of the definition of Equity Interest by one Equity Investor to another person who:
    - (aa) was an Equity Investor at Financial Close;
    - (bb) was the subject of a consent given by TfNSW pursuant to clause 53.2 of the Operative Provisions; or
    - (cc) became an Equity Investor through a Permitted Change in Ownership under any of paragraphs (b)(ii), (b)(iii), (c)(iv) or (c)(v) below;
- (b) in relation to John Laing Investments (SLR) B.V.:
  - (i) any change in the direct or indirect beneficial or legal ownership of John Laing Investments (SLR) B.V. arising from the sale by Henderson Group Plc (or by any of its Related Body Corporate(s) or by any entity(ies) in which Henderson Group Plc or any of its subsidiaries is directly or indirectly the general partner, trustee or manager) of shares or units in:
    - (A) John Laing plc; or
    - (B) any entity which holds an equity interest (including shares or units) in, or Controls, John Laing plc;

through the sale or issue of any shares or units or other interests in the nature of equity which are, or are to be, listed on a recognised stock exchange, provided that there is no acquisition of a relevant interest (as defined in section 608 of the Corporations Act), at the IPO, by any one party of more than 35%;
  - (ii) a Change of Ownership involving a transfer of the Equity Interest to a John Laing Associate; and
  - (iii) a Change of Ownership involving a transfer by a John Laing Associate to another John Laing Associate;

- (iv) where a John Laing Associate means:
  - (A) John Laing Investments (SLR) B.V., any company which is its subsidiary, any holding company of John Laing Investments (SLR) B.V. and any subsidiary of such holding company;
  - (B) John Laing Infrastructure Fund Limited registered in Guernsey no 52256 and the JLIF Limited Partnership registered in England and Wales no LP014109 (either of them JLIF) and any subsidiary undertaking of JLIF;
  - (C) any unit trust, investment fund, investment company, partnership or any other fund or entity with a similar purpose (in each case whether or not having a separate legal personality) of which any entity falling within sub-paragraph A of this definition is either a general partner, trustee or manager or the investment adviser (a JL Related Fund); or
  - (D) any body corporate or other entity (whether or not having a separate legal personality) in relation to which JLIF or a JL Related Fund directly or indirectly holds the majority of the shares or voting powers or the ability to appoint the majority of the board or the majority of the economic rights; or
  - (E) any general partner or trustee of any entity falling within sub-paragraphs A, B, C or D of this definition, acting in such capacity;
- (c) in relation to FSS Trustee Corporation (the **FSS Investor**), in its capacity as trustee of the First State Superannuation Scheme:
  - (i) any change in the ownership of shares in the FSS Investor (provided that such shares are held by the directors of the FSS Investor, from time to time, in their personal capacity);
  - (ii) any change in individual members of any FSS Related Fund (as defined below);
  - (iii) or any FSS Related Fund (**Relevant Person**):
    - (A) the removal or replacement by such Relevant Person (or any FSS Associate) of:
      - (aa) a custodian where they are replaced by an independent professional custodian; or
      - (bb) a trustee or custodian where they are replaced by a FSS Associate;
    - (B) in the case of any Relevant Person that is a government or statutory corporation, or that is ultimately Controlled by any government or statutory corporation, the transfer of securities in, or statutory responsibility, management rights or rights to appoint directors in relation to, that corporation to any other agency or department of the government of the same country, province, state or territory, in which the FSS Investor is resident;
    - (C) a reconstruction of such Relevant Person or an arrangement or amalgamation of such Relevant Person with another person where the person involved or arising following the reconstruction or amalgamation and that holds the securities in the Relevant Person is beneficially owned solely by any FSS Associate as at the time immediately before the reconstruction or amalgamation.
  - (iv) a Change of Ownership involving a transfer of the Equity Interest to a FSS Associate;
  - (v) a Change of Ownership involving a transfer by a FSS Associate to another FSS Associate; and

- (vi) where a FSS Associate means:
- (A) the FSS Investor, any company which is its direct or indirect wholly owned entity, any holding company of the FSS Investor and any direct or indirect wholly owned entity of such holding company;
  - (B) any unit trust, investment fund, investment company, partnership or any other fund or entity with a similar purpose (in each case whether or not having a separate legal personality) of which any entity falling within sub-paragraph A of this definition is either a general partner, trustee, custodian, manager or the investment adviser (an **FSS Related Fund**);
  - (C) any body corporate or other entity (whether or not having a separate legal personality) in relation to which the FSS Investor or a Related Fund directly or indirectly holds the majority of the shares or voting powers or the ability to appoint the majority of the board or the majority of the economic rights; or
  - (D) any general partner, custodian or trustee of any entity falling within sub-paragraphs A, B or C of this definition, acting in such capacity.

#### **Part B – Permitted Changes in Control**

(Clauses 1.1, 53.3 and 53.4)

The following events constitute a Permitted Change in Control for the purposes of clauses 53.3 and 53.4 of the Operative Provisions:

- (a) in relation to Acciona:
- (i) a Change in Control which occurs due to the acquisition of a relevant interest (as defined in section 608 of the Corporations Act) in:
    - (A) any Entity comprising the D&C Contractor, provided the relevant Entity remains directly or indirectly Controlled by the D&C Guarantor;
    - (B) in the case of a Change in Control relating to the D&C Guarantor, 35% or less of the securities of Acciona Infraestructuras S.A;
    - (C) only in the case of any other Entity listed on a stock exchange, 35% or less of the securities of that Entity; and
  - (ii) provided that a D&C Contractor Event of Default is not subsisting, a Change in Control which occurs due to a corporate restructure or reorganisation which results in a relevant interest (as defined in section 608 of the Corporations Act) but as though a reference in that section to "securities" were a reference to Securities as defined in this deed) in securities that were held by a person being held by a wholly-owned subsidiary (as defined in the Corporations Act) of that person, and in respect of which not less than 10 Business Days prior notice (including details of the restructure) has been given to TfNSW,

and for the purposes of this paragraph (a), **Securities** has the meaning in the Corporations Act; and

- (b) in relation to Alstom, any Change in Control in connection with the proposed sale to the General Electric Company by Alstom of its Thermal Power, Renewable Power and Grid businesses, or in connection with the proposed joint ventures related thereto, such proposed transactions having been publicly announced by Alstom on 21 June 2014.

#### **Part C – Variations to Clause 53.2**

Clause 53.2(c)(ii) of the Operative Provisions does not apply to the following events (but for the avoidance of doubt such events are not Permitted Changes of Ownership):



- (a) in relation to John Laing Investments Limited:
- (i) any change in the direct or indirect beneficial or legal ownership of John Laing Investments Limited arising from the sale by Henderson Group Plc (or by any of its Related Body Corporate(s) or by any entity(ies) in which Henderson Group Plc or any of its subsidiaries is directly or indirectly the general partner, trustee or manager) of shares or units in:
    - (A) John Laing plc; or
    - (B) any entity which holds an equity interest (including shares or units) in, or Controls, John Laing plc;through:
    - (C) the sale or issue of any shares or units or other interests in the nature of equity which are, or are to be, listed on a recognised stock exchange, in the event that there is an acquisition of a relevant interest (as defined in section 608 of the Corporations Act), at the IPO, by any one party of more than 35% (with clause 53.2(c) of the Project Deed, other than clause 53.2(c)(ii) of the Project Deed, to only apply in relation to the party which acquires the relevant interest (as defined in section 608 of the Corporations Act) of more than 35%); or
    - (D) a sale by any means other than the sale or issue of any shares or units or other interests in the nature of equity which are, or are to be, listed on a recognised stock exchange;
  - (ii) any sale of part of the Equity Interests held by John Laing Investments Limited or a John Laing Associate, provided that following such sale those entities in aggregate hold Equity Interests of 22.5% in the OpCo Group; or
- (b) in relation to FSS Trustee Corporation (the **FSS Investor**), in its capacity as trustee of the First State Superannuation Scheme, any sale of up to 50% of the Equity Interest held by FSS Investor or a FSS Associate.

## Schedule A9 Significant Contracts

(Clauses 1.1 and 54.3)

This Schedule A9 (*Significant Contracts*) does not limit paragraphs (a) and (c) of the definition of Significant Contracts.

### 1. DELIVERY PHASE

Significant Contracts during the Delivery Phase include those for:

- (a) the contract entered into, or to be entered into, between the D&C Contractor and Coleman Rail Pty Ltd in respect of track laying, maintenance and stabling facility construction;
- (b) the contract entered into, or to be entered into, between the D&C Contractor and its contractor in respect of the construction and fit out of the light rail maintenance and stabling facilities and the Operations Control Centre;
- (c) the contract entered into, or to be entered into, between the D&C Contractor and Jacobs/GHD in respect of design work; and
- (d) the contract entered into, or to be entered into, between the D&C Contractor and Cardno in respect of design work.

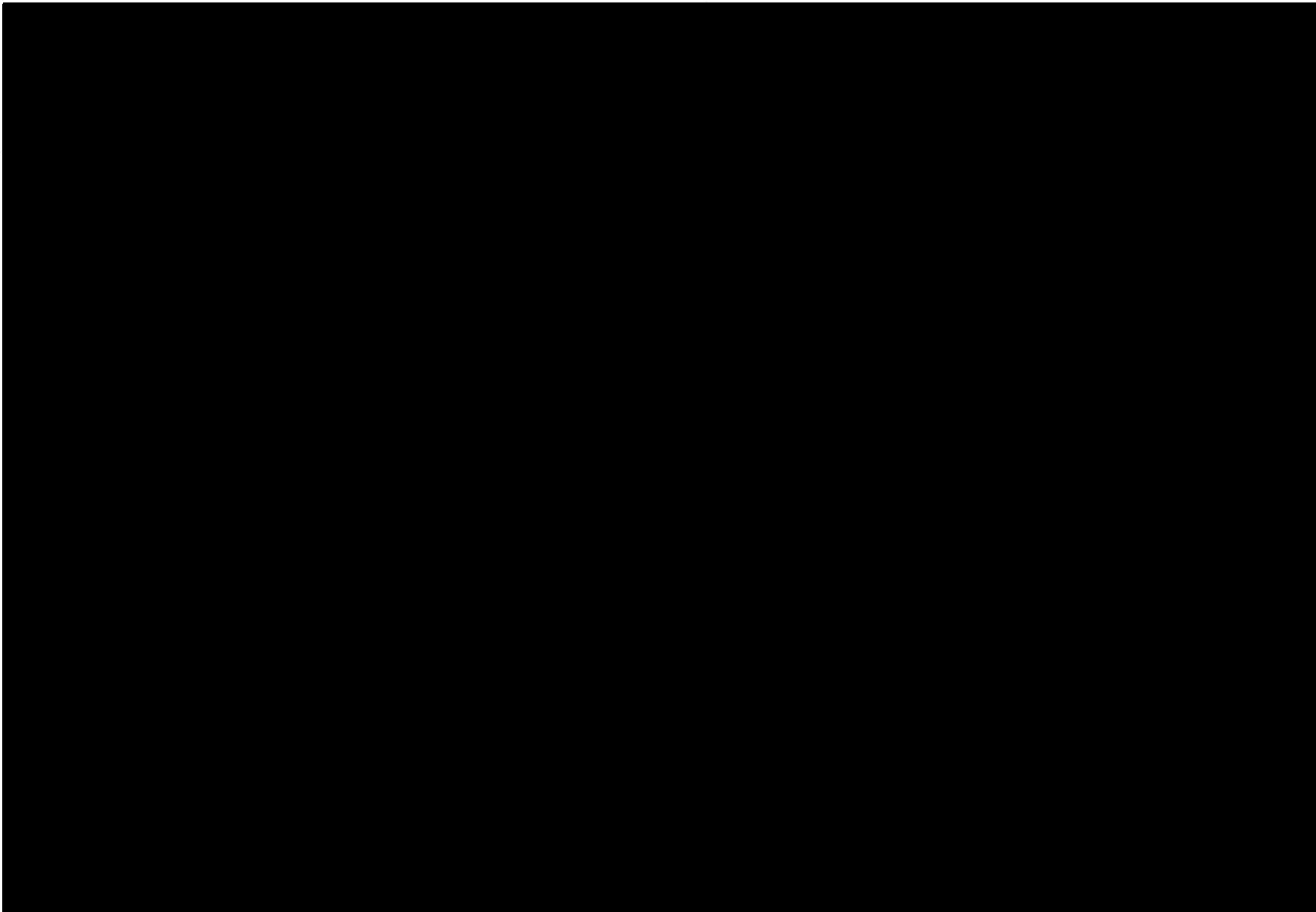
### 2. OPERATIONS PHASE

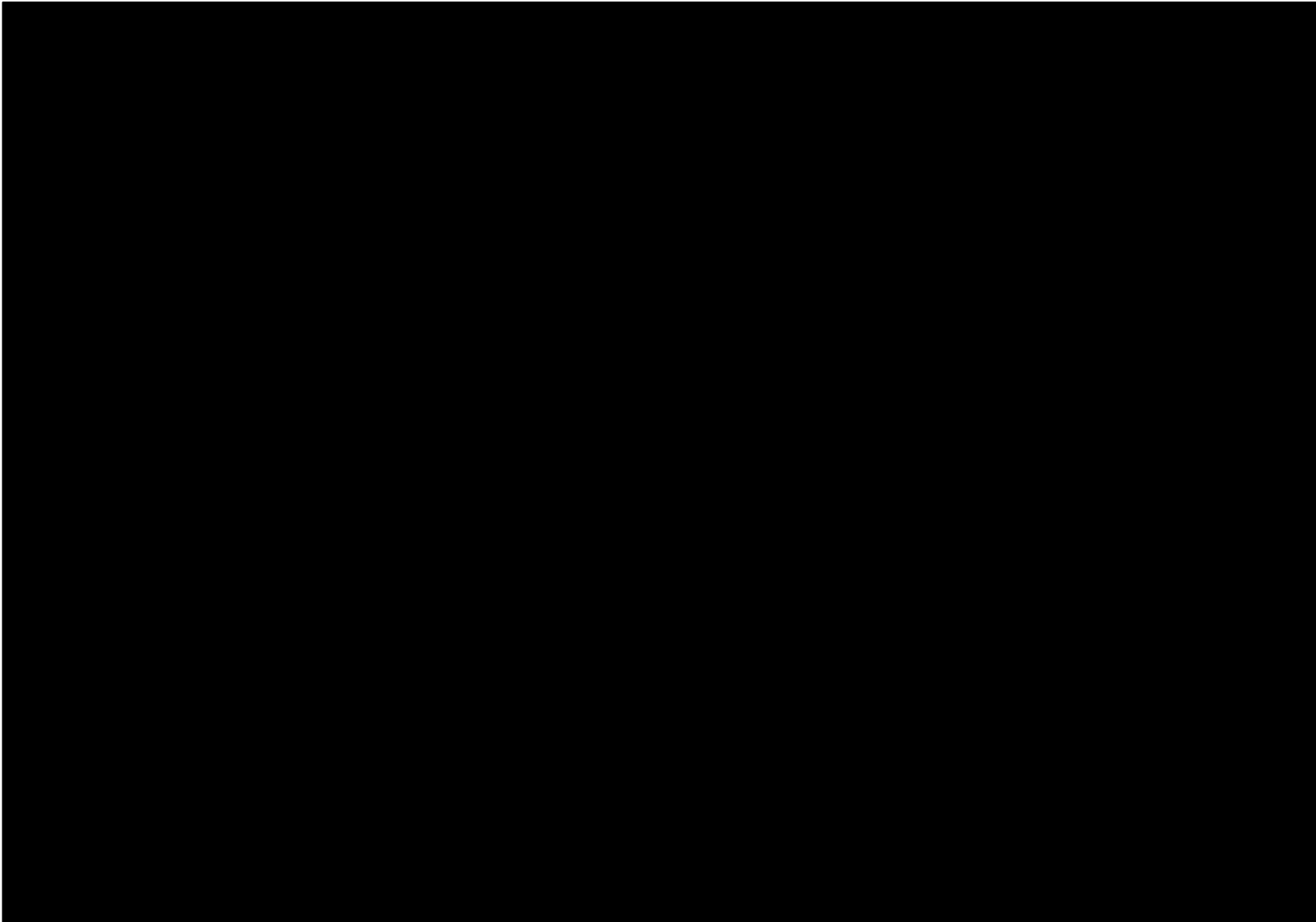
Significant Contracts during the Operations Phase include:

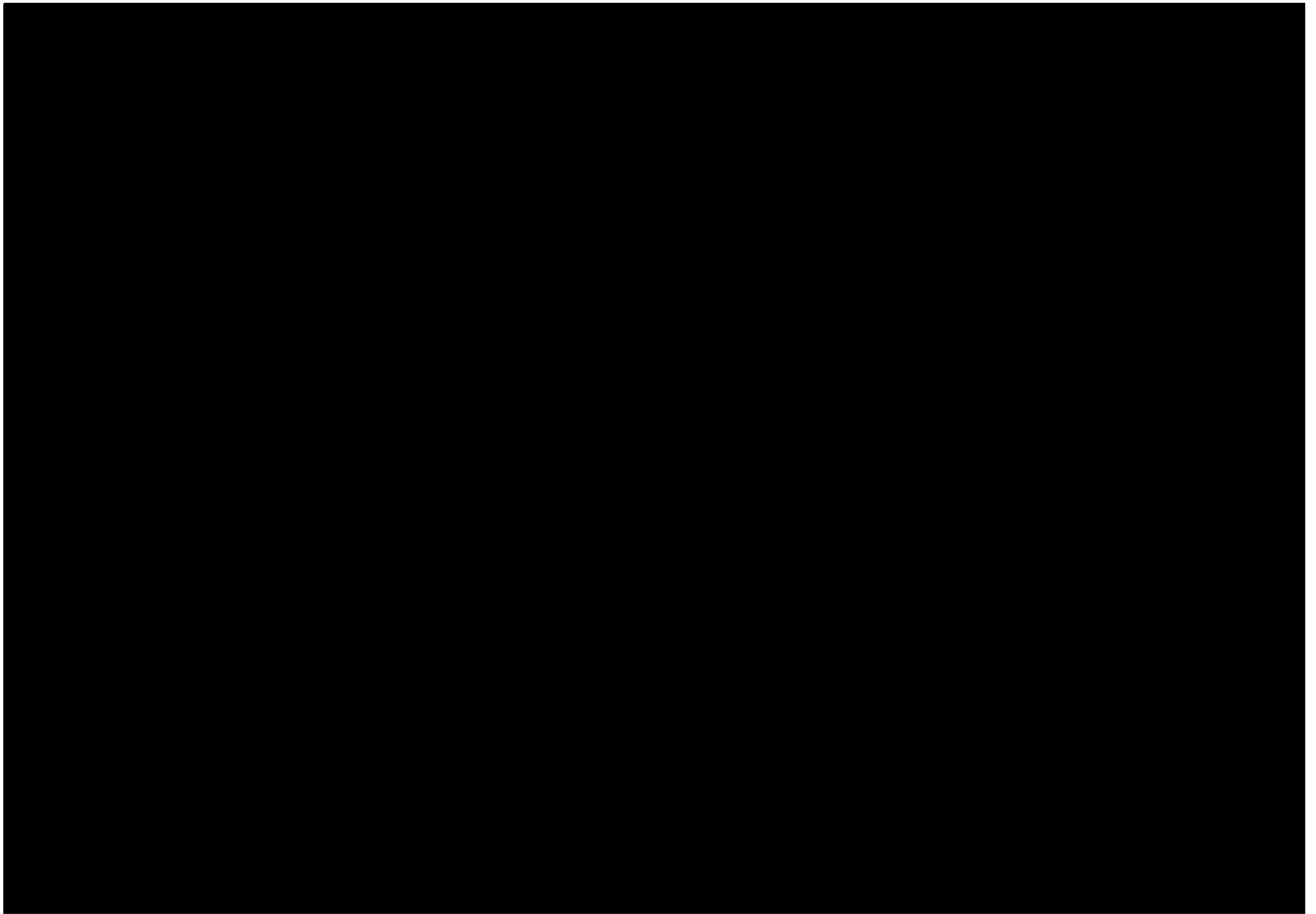
- (a) the contract entered into, or to be entered into, between the O&M Contractor and Alstom in respect of the maintenance of rail systems, track and LRVs;
- (b) the contract entered into, or to be entered into, between the O&M Contractor and its maintenance contractor (if any) for the maintenance of civil structures, buildings and facilities; and
- (c) the contract entered into, or to be entered into, between the O&M Contractor and International Cleaning Services (ICS) for the cleaning of the light rail vehicles and Stops.

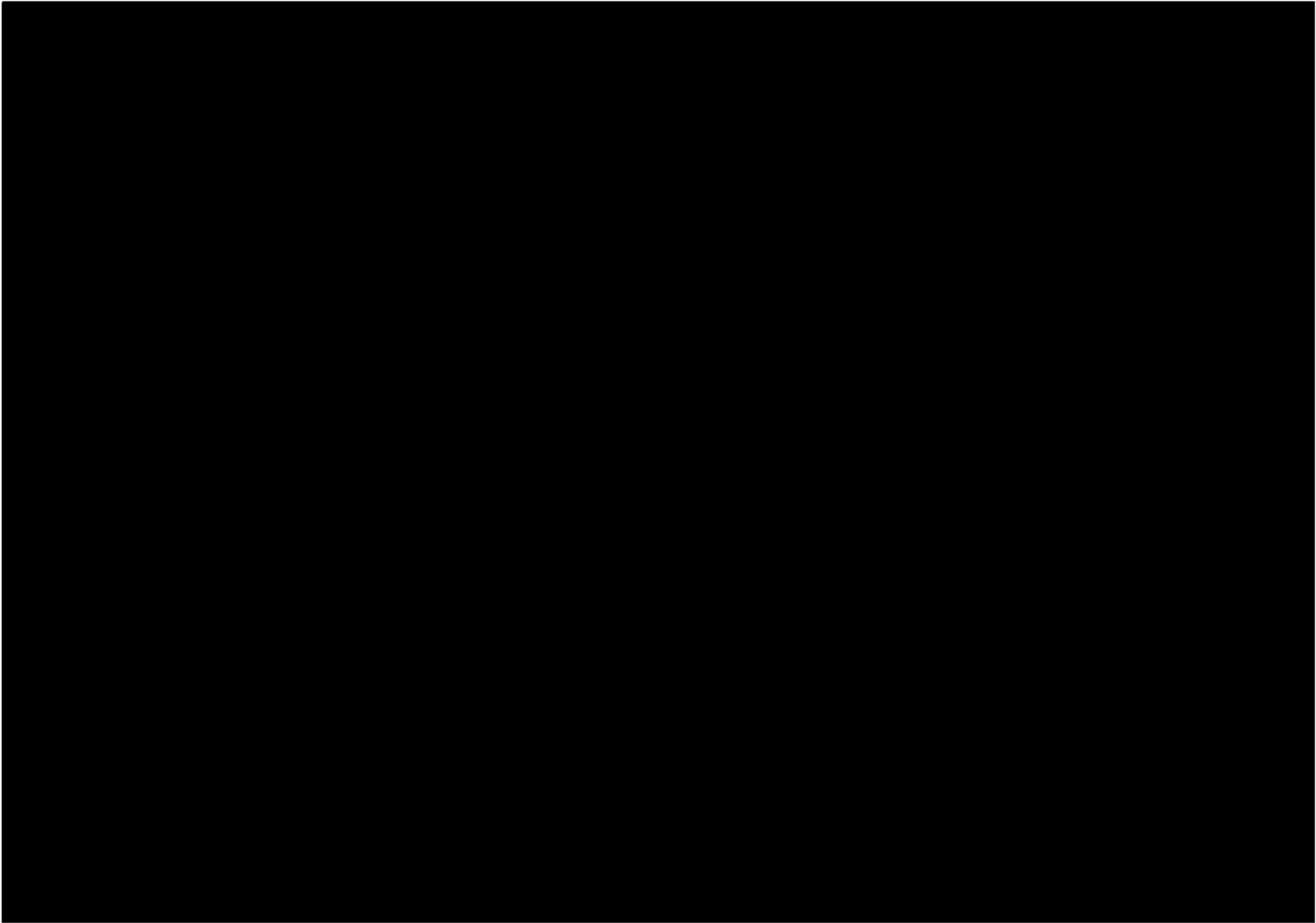
**Schedule A10**  
**Initial Delivery Program**



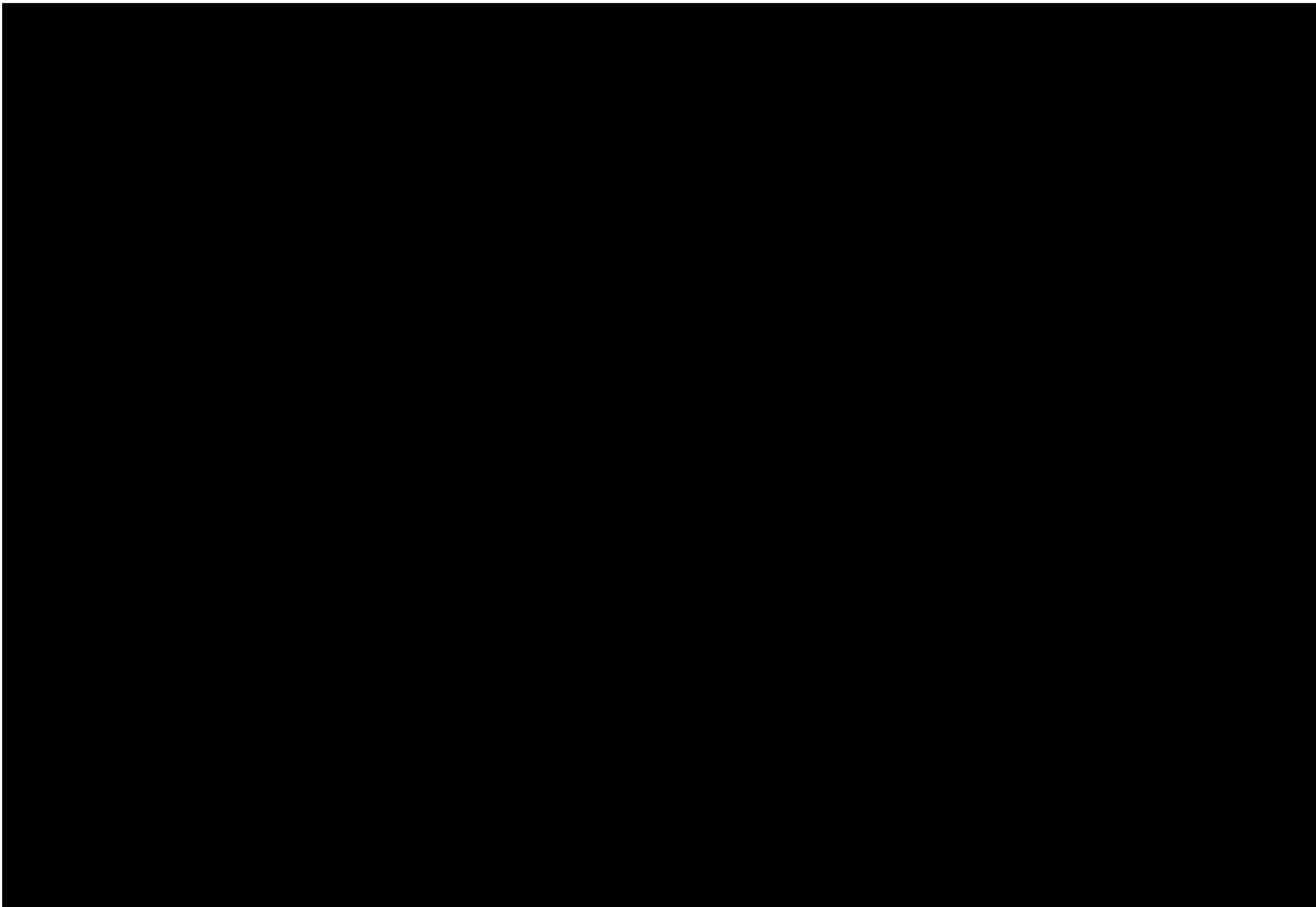


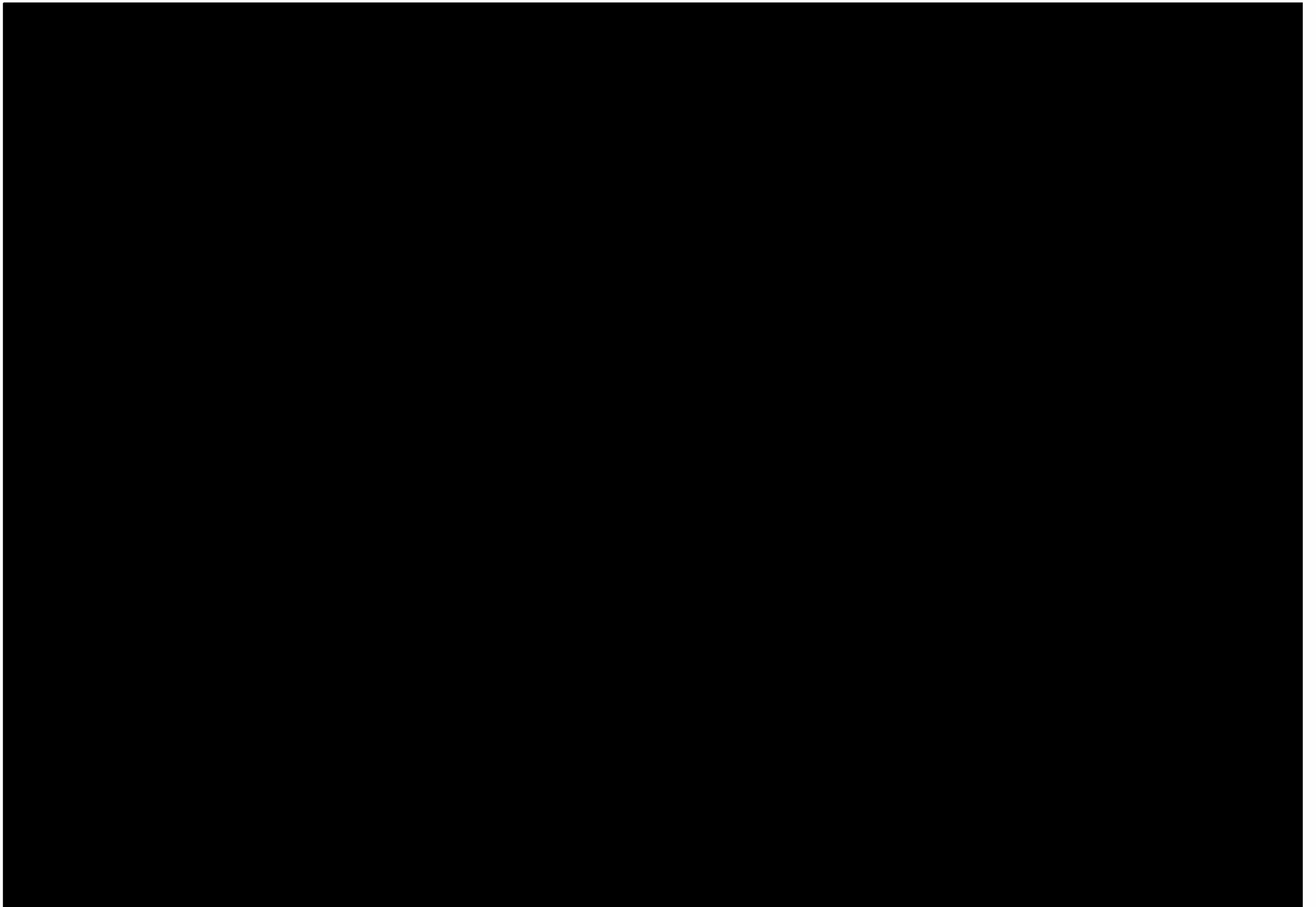


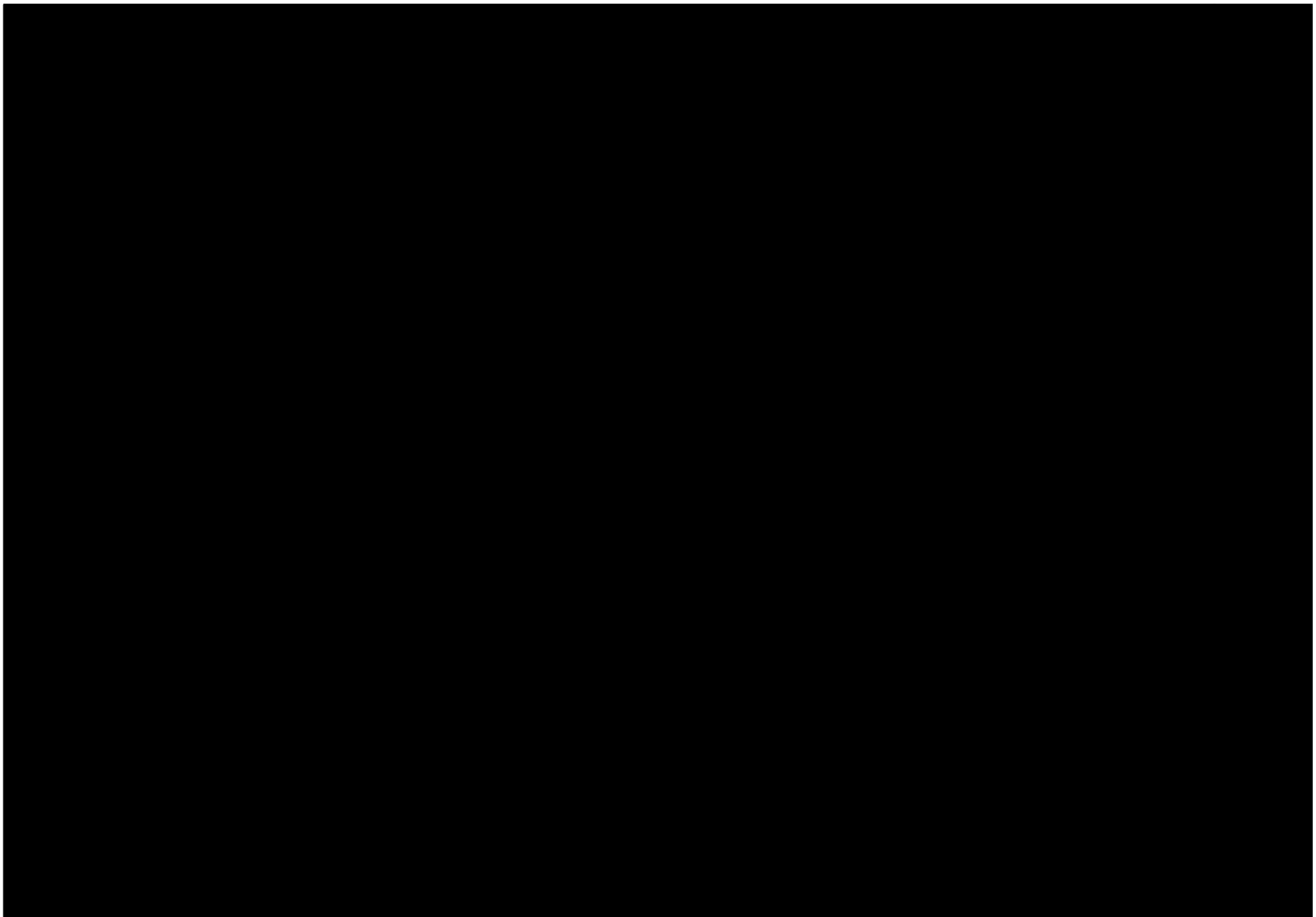


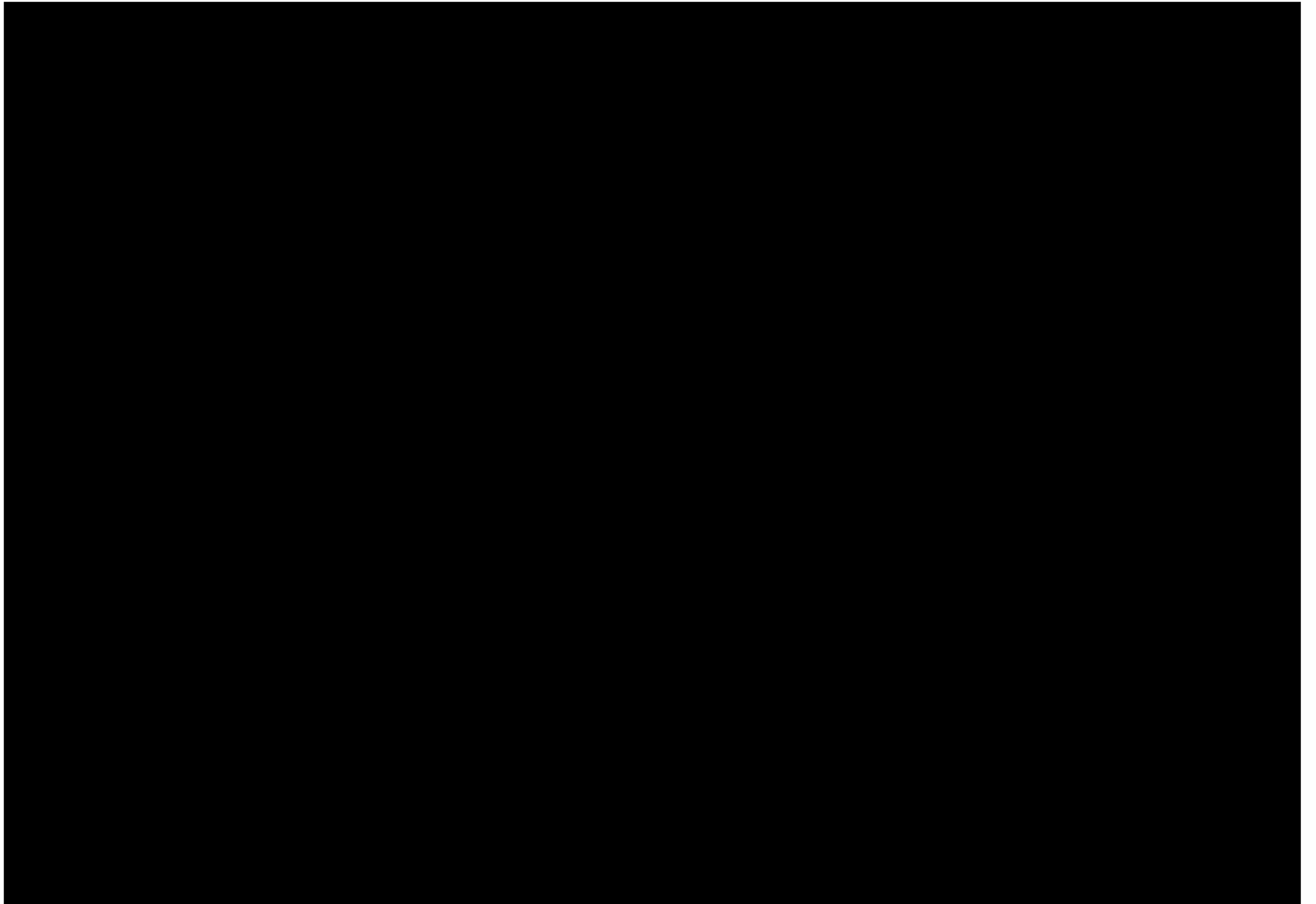


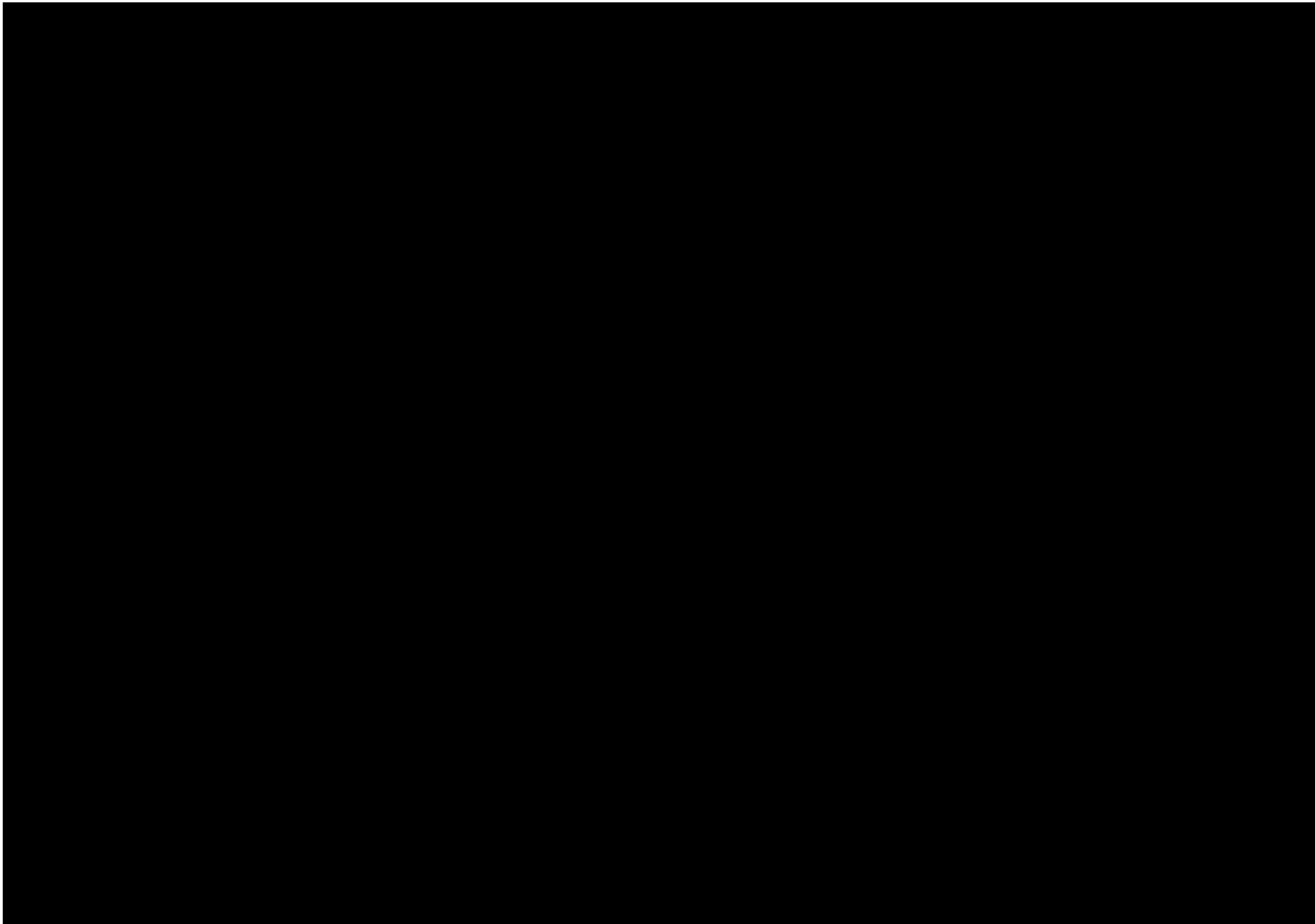


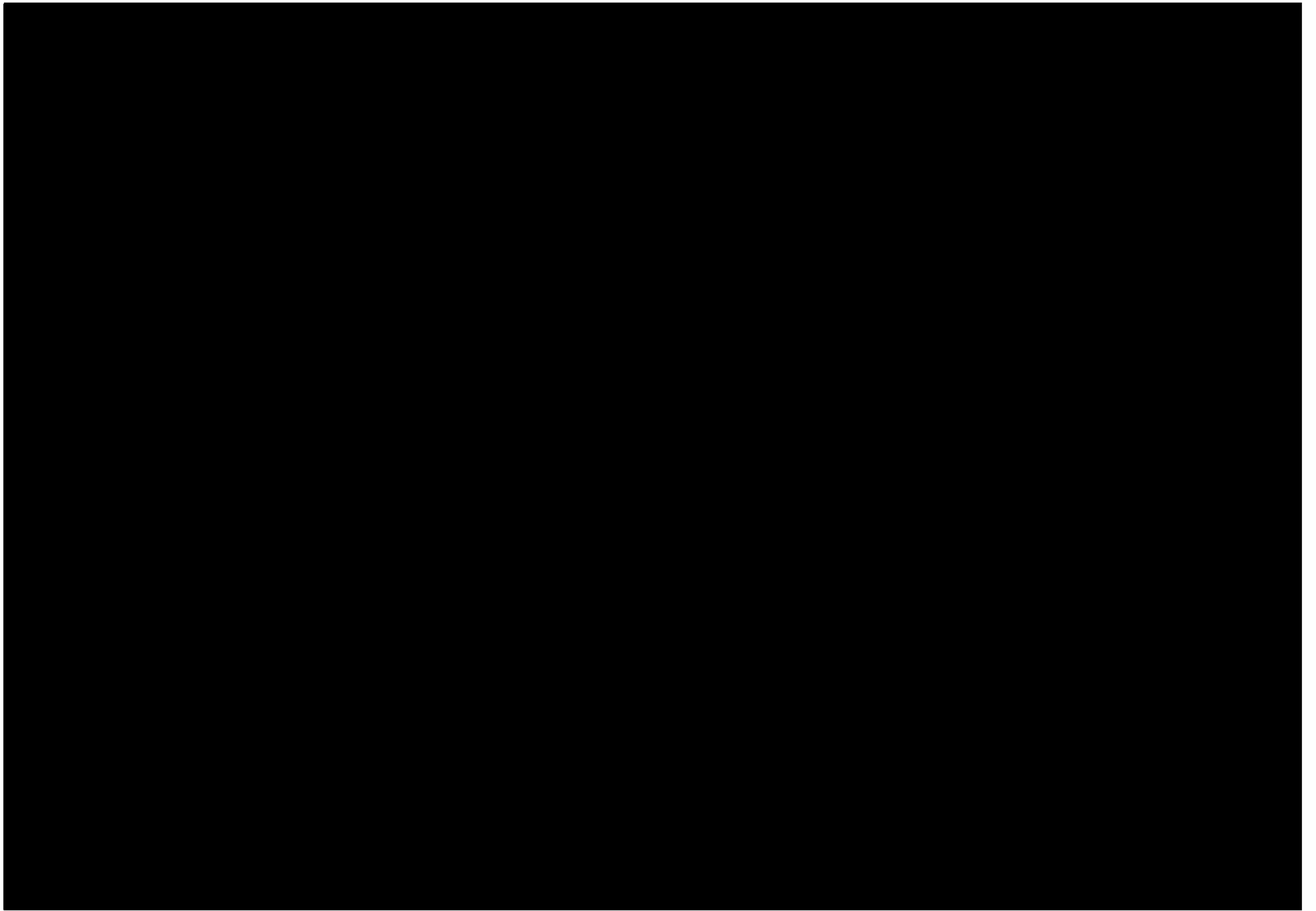


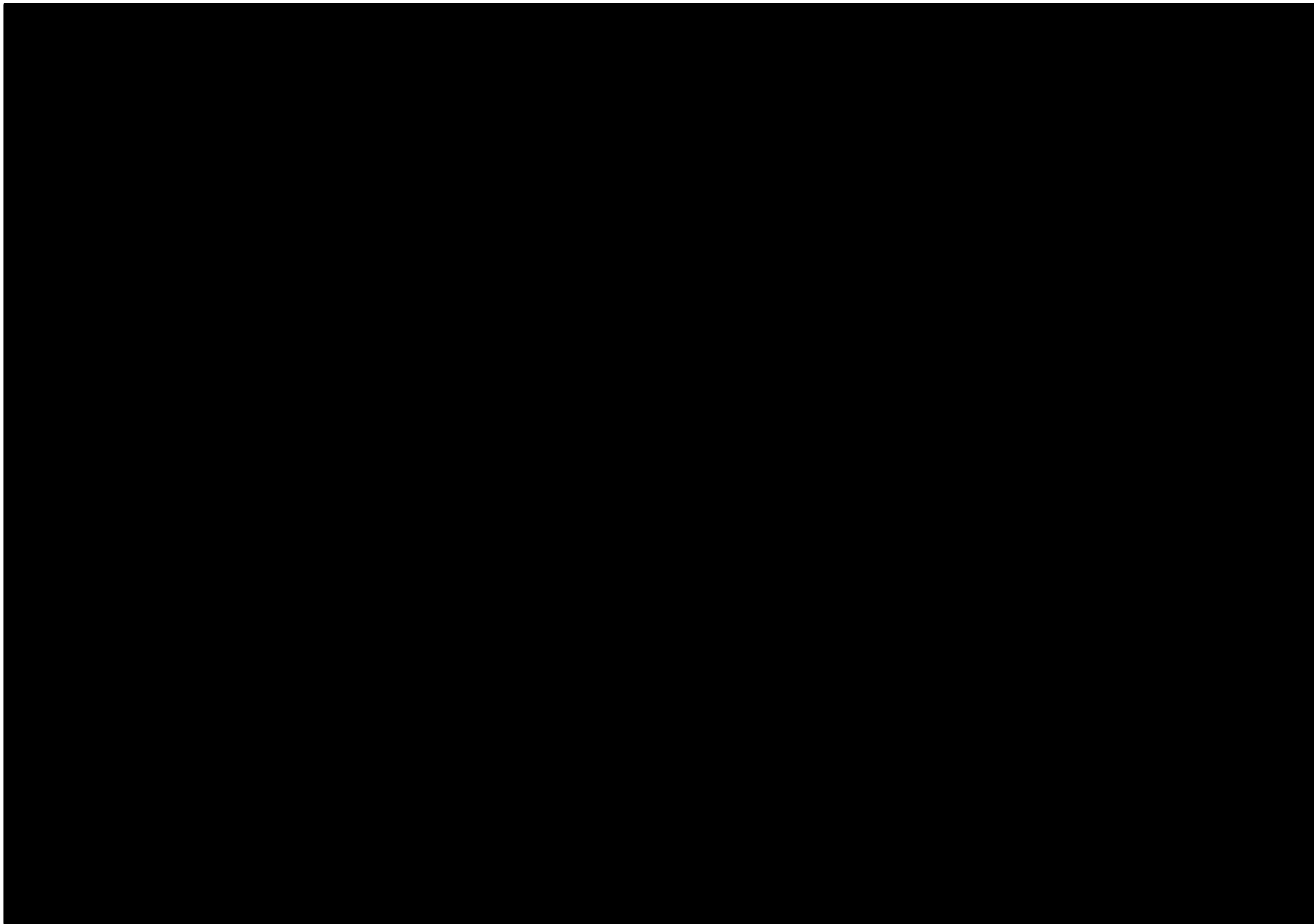


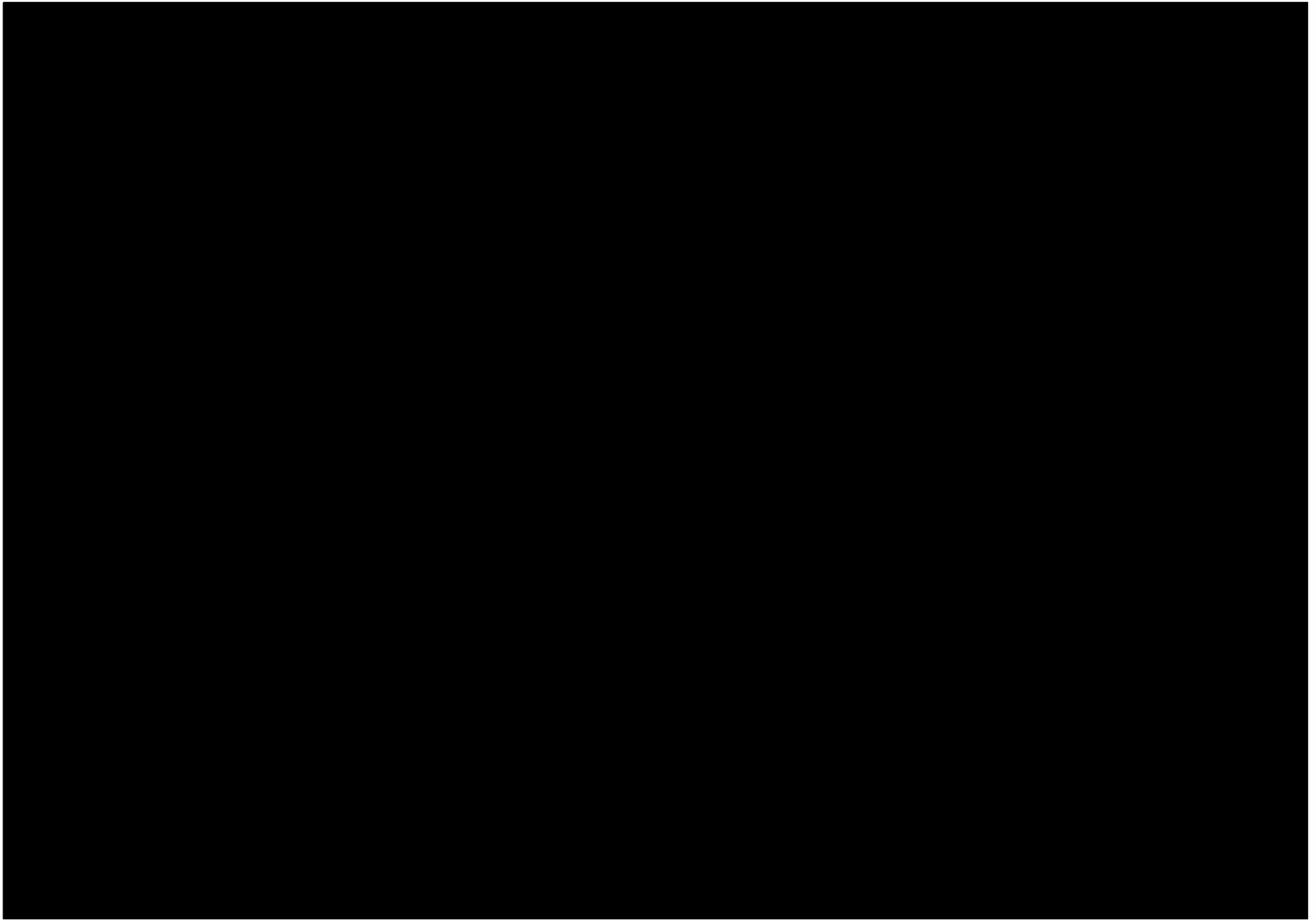




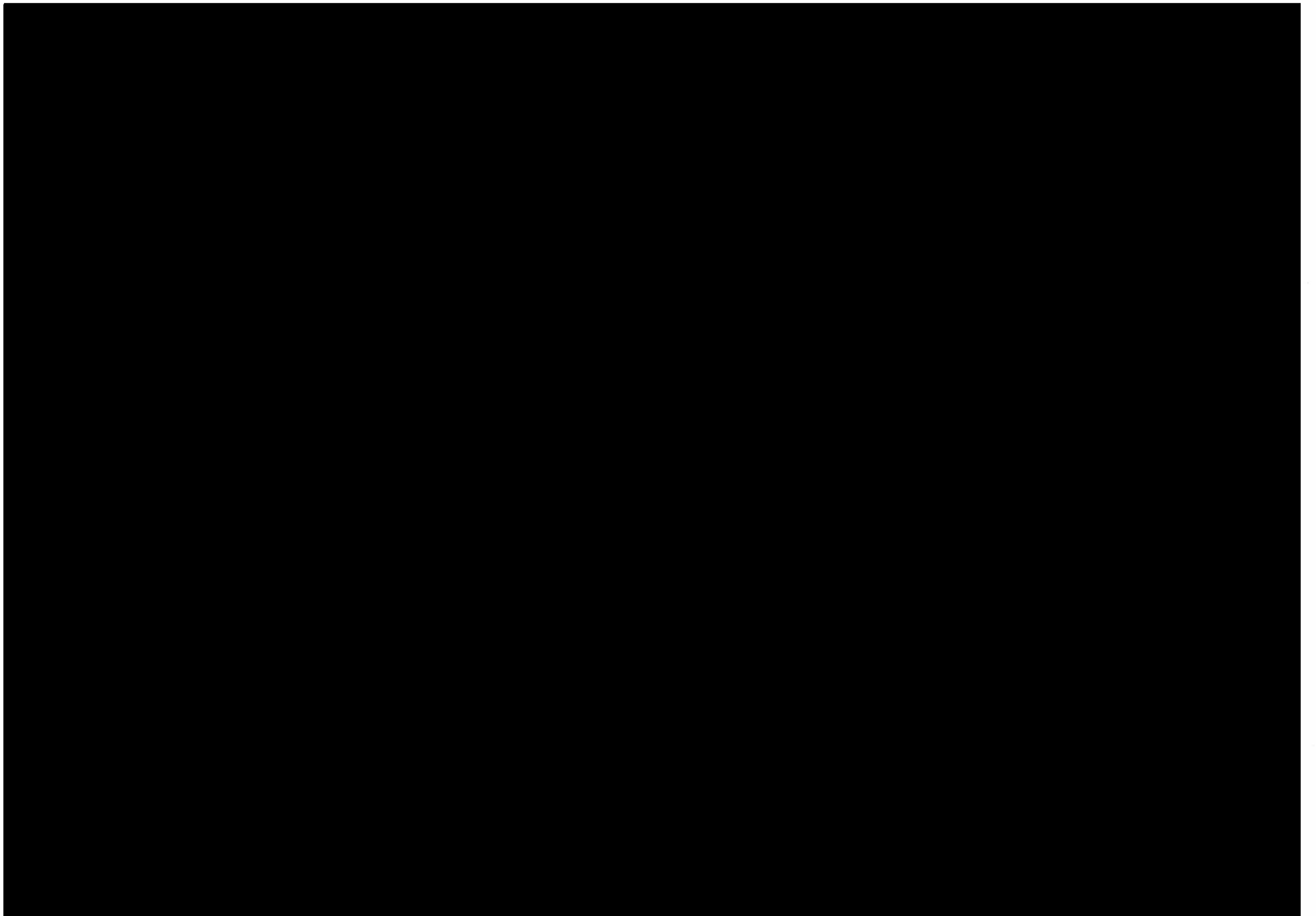


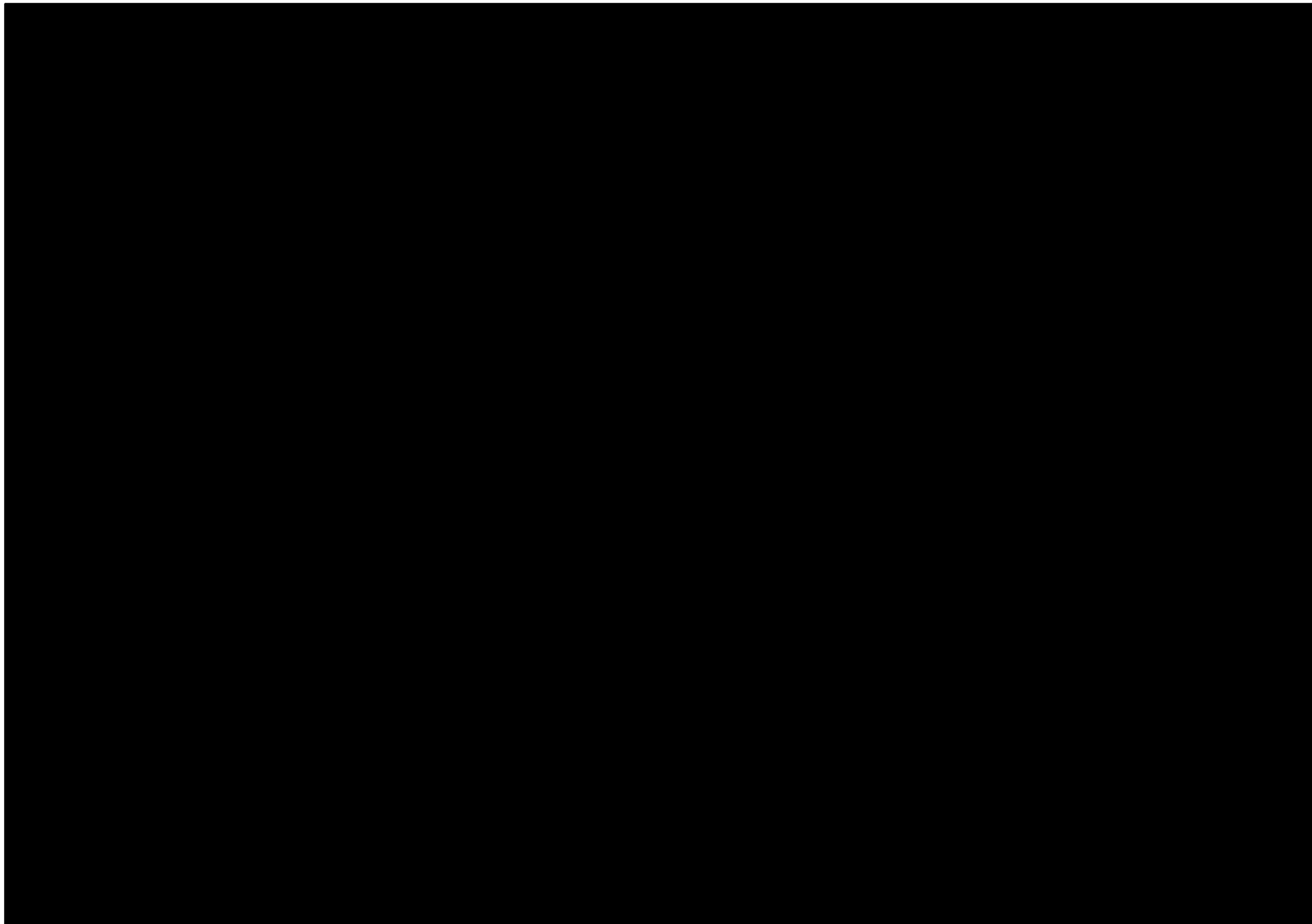


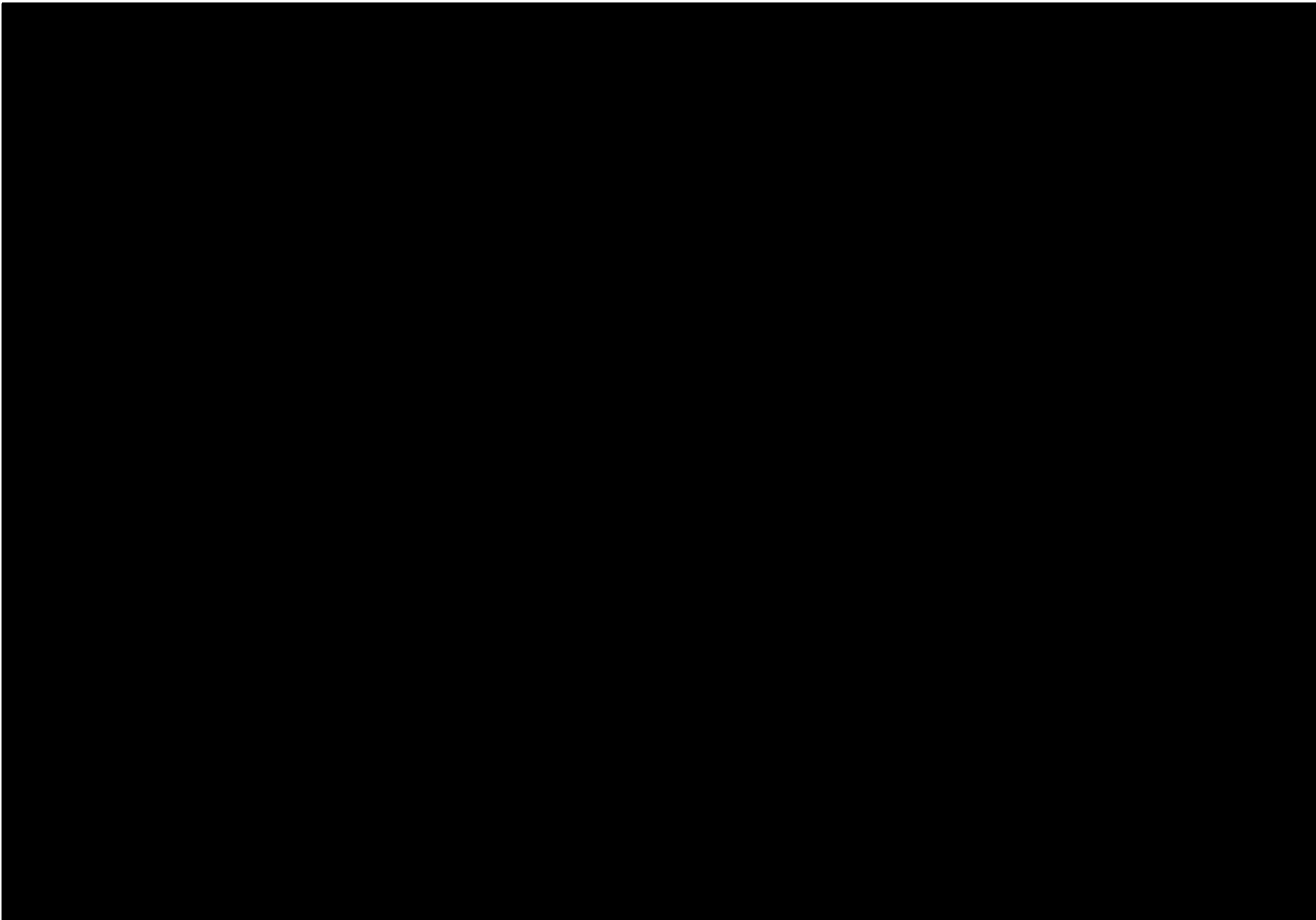


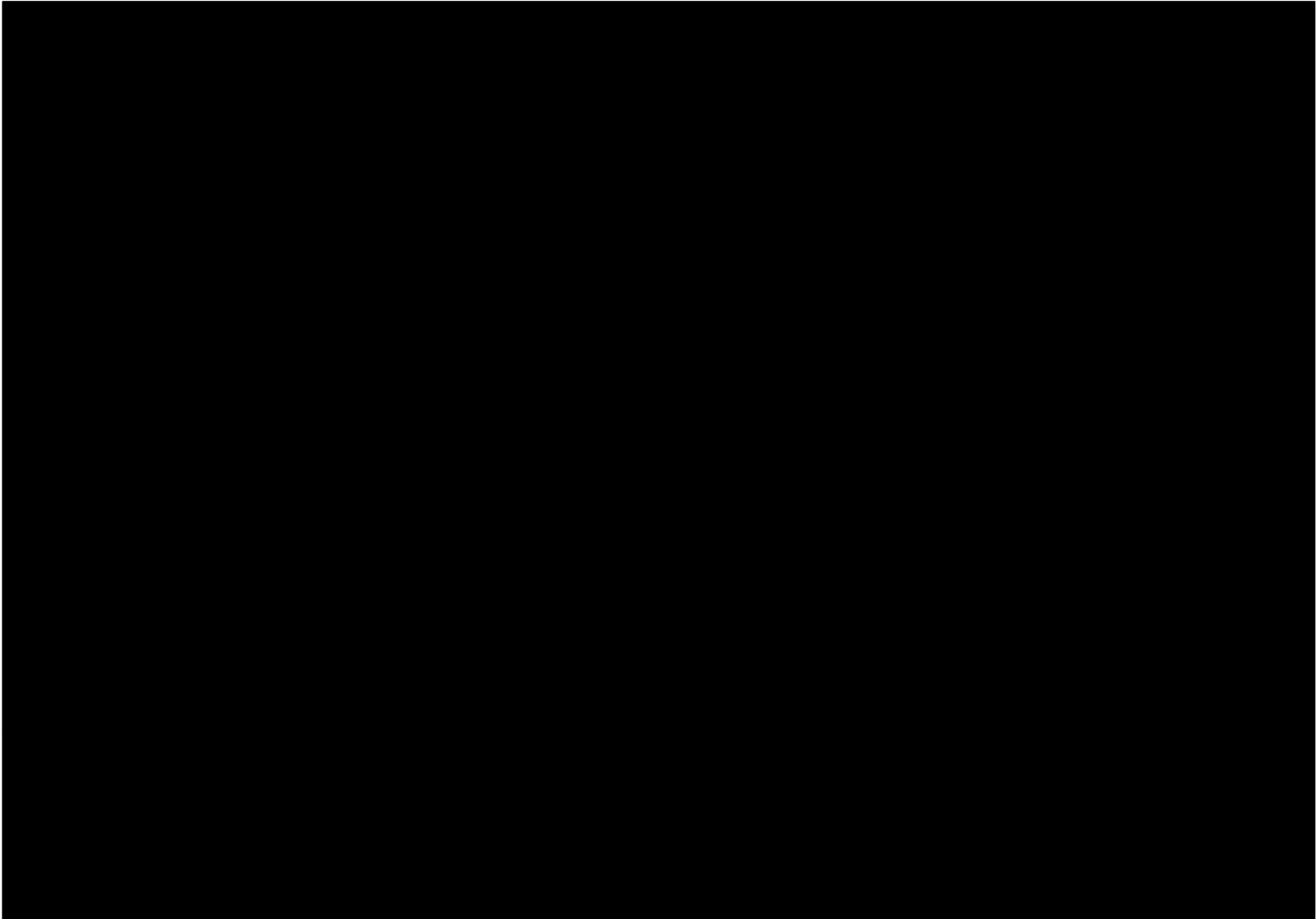


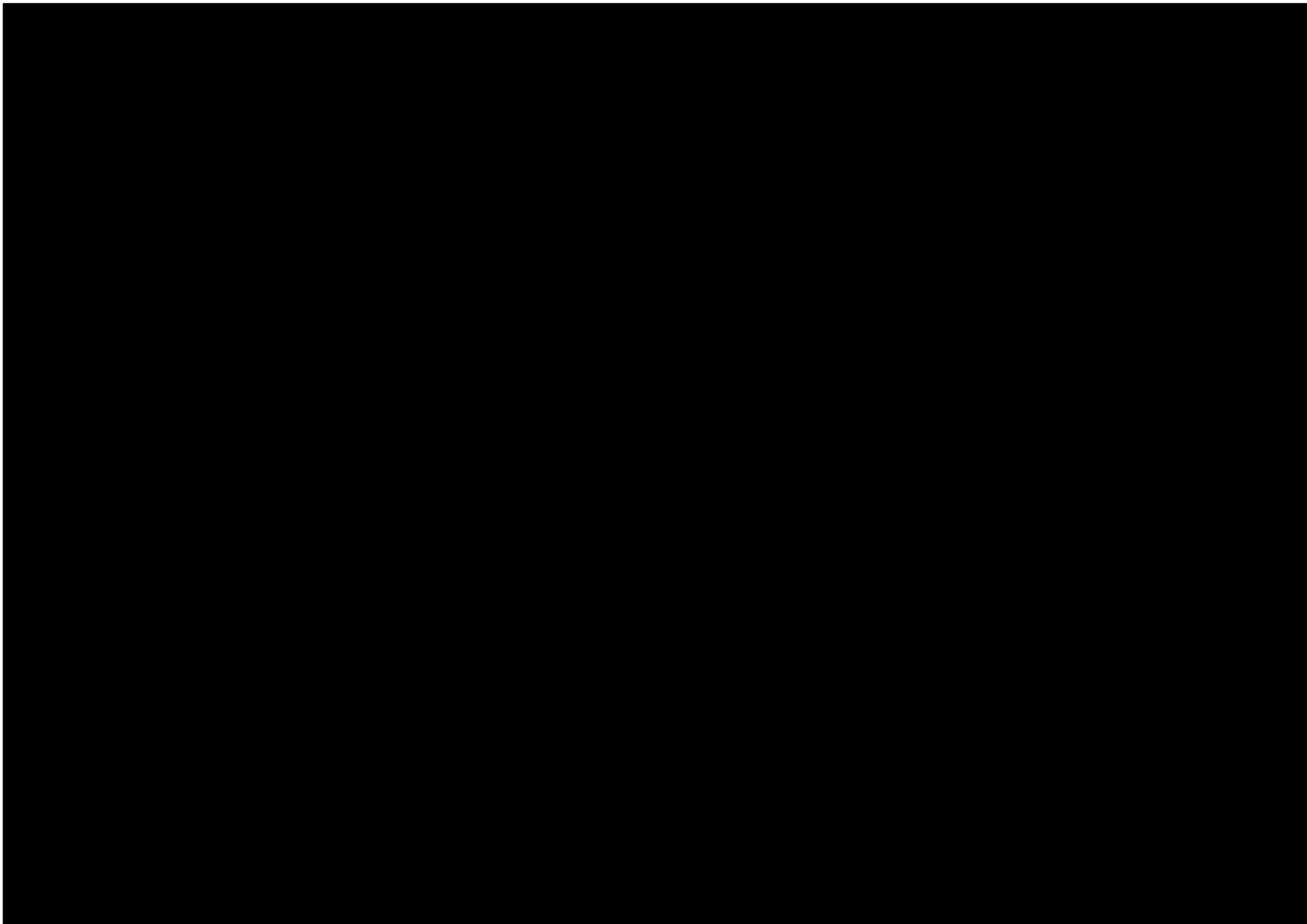


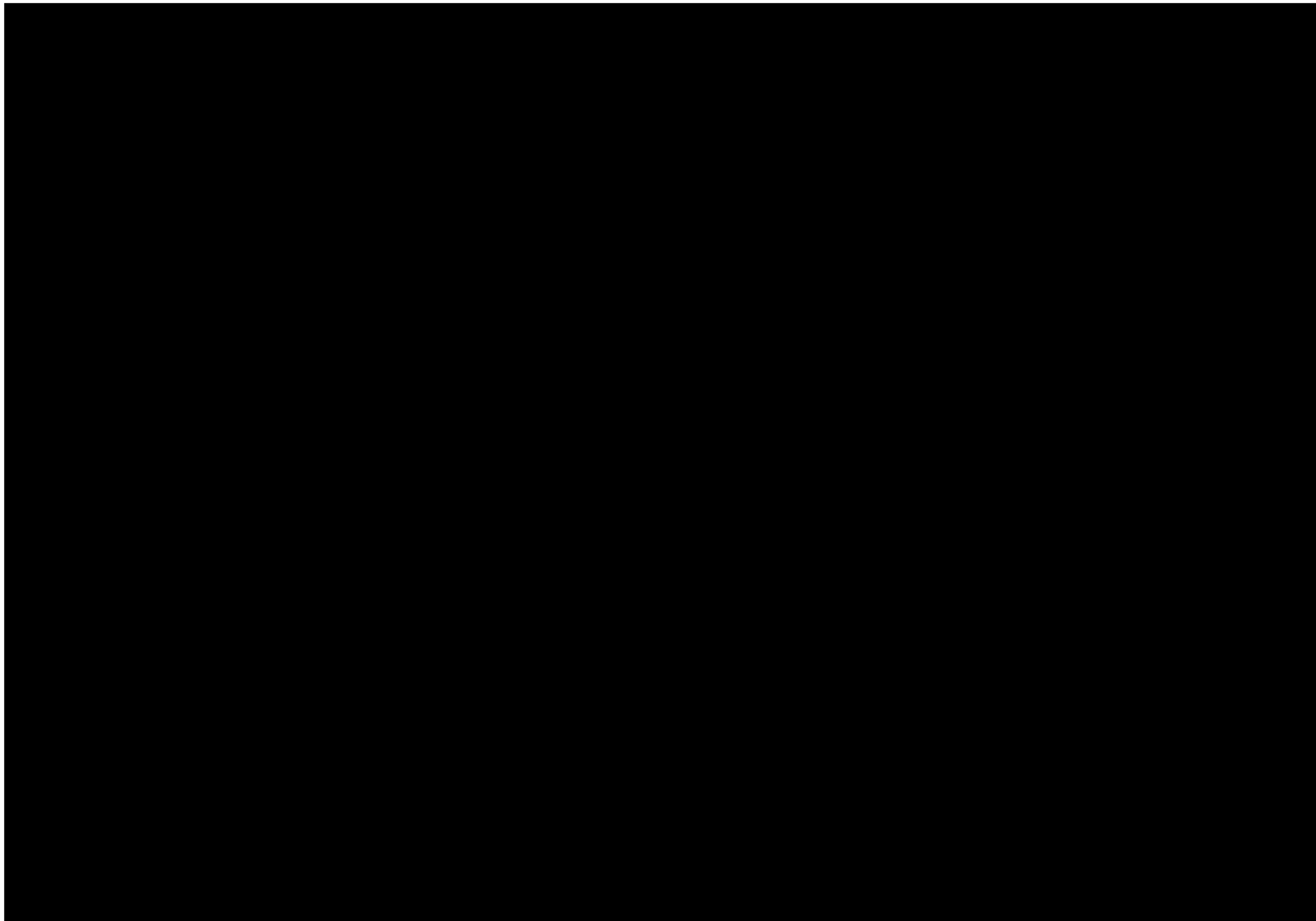


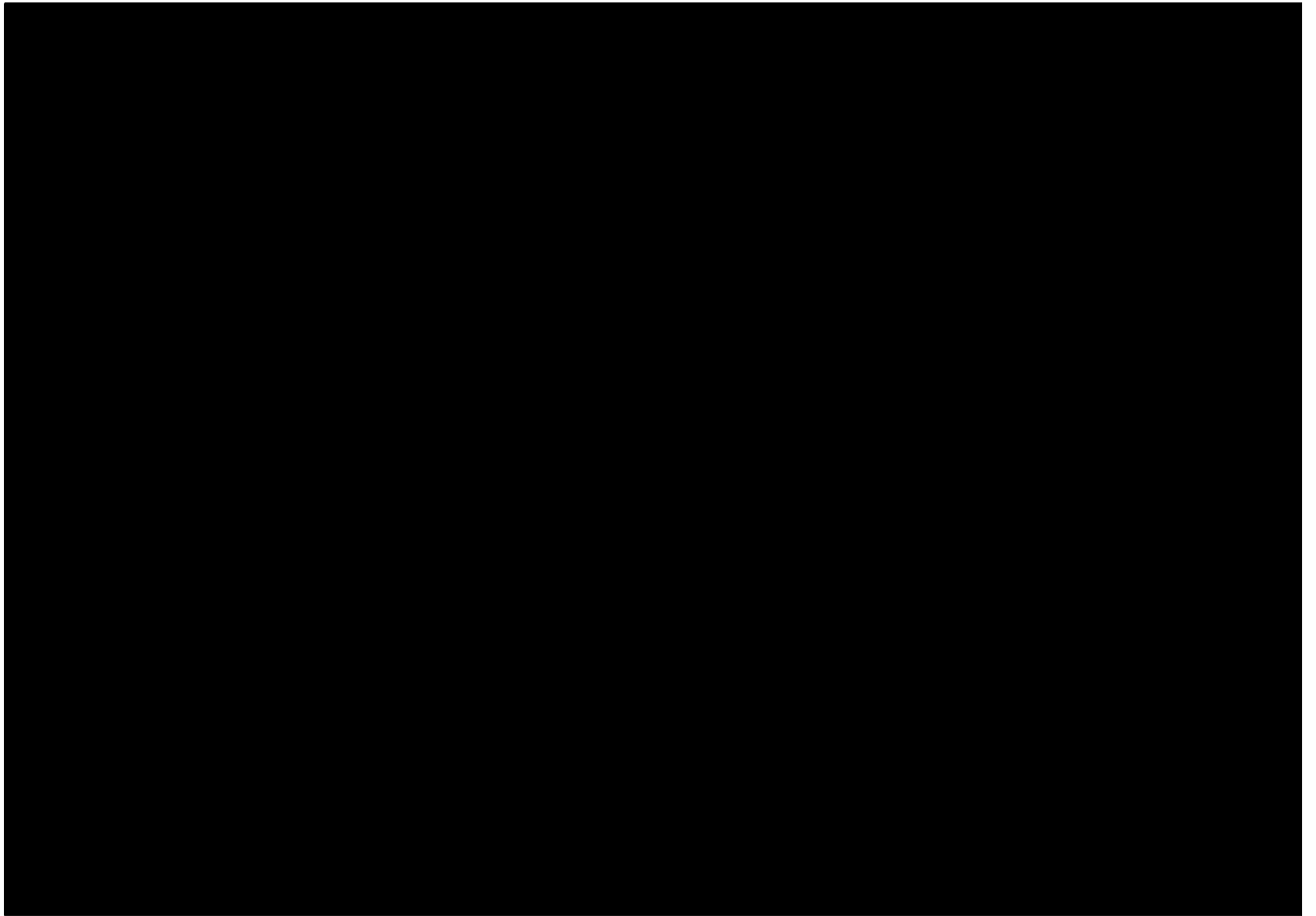


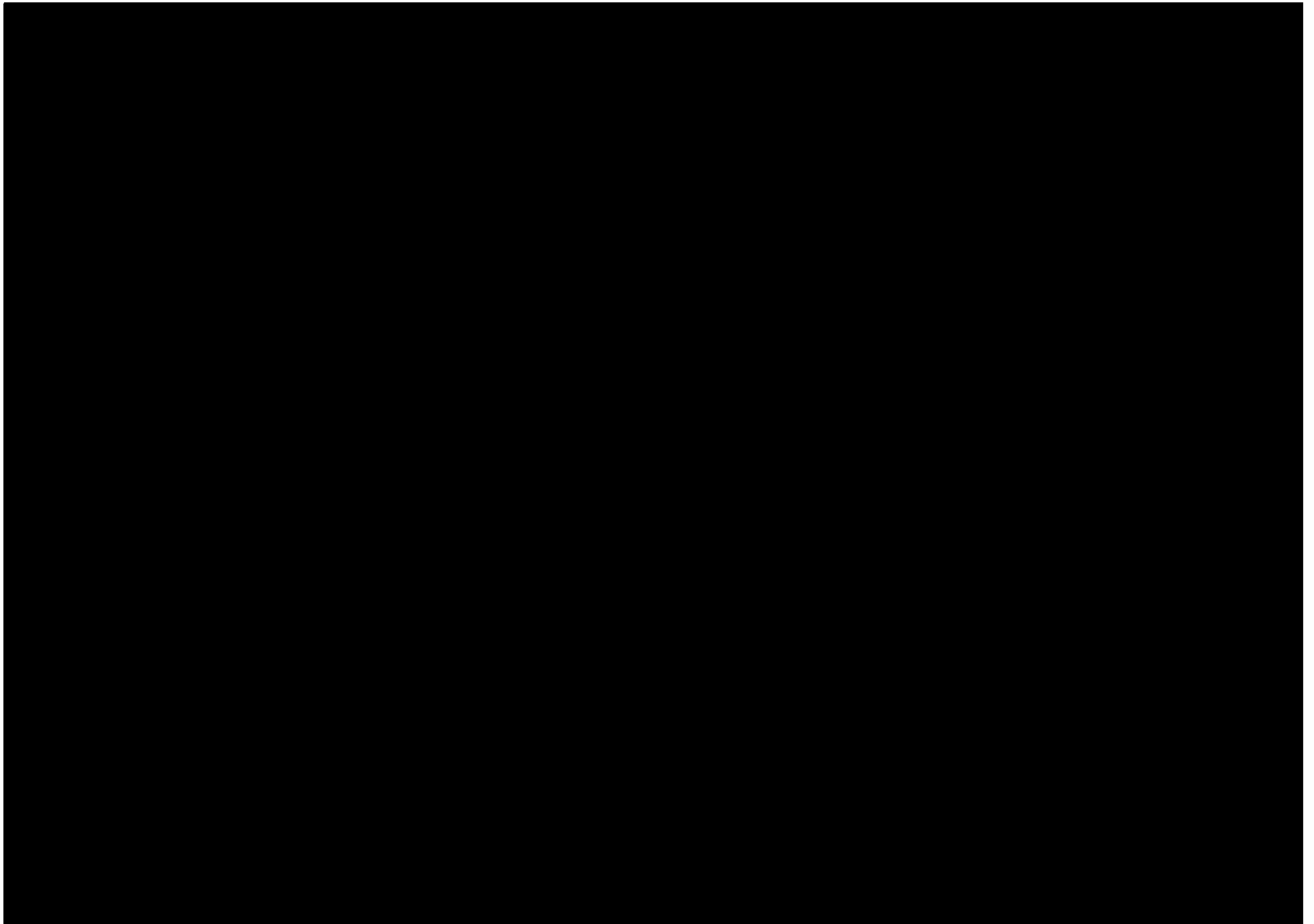




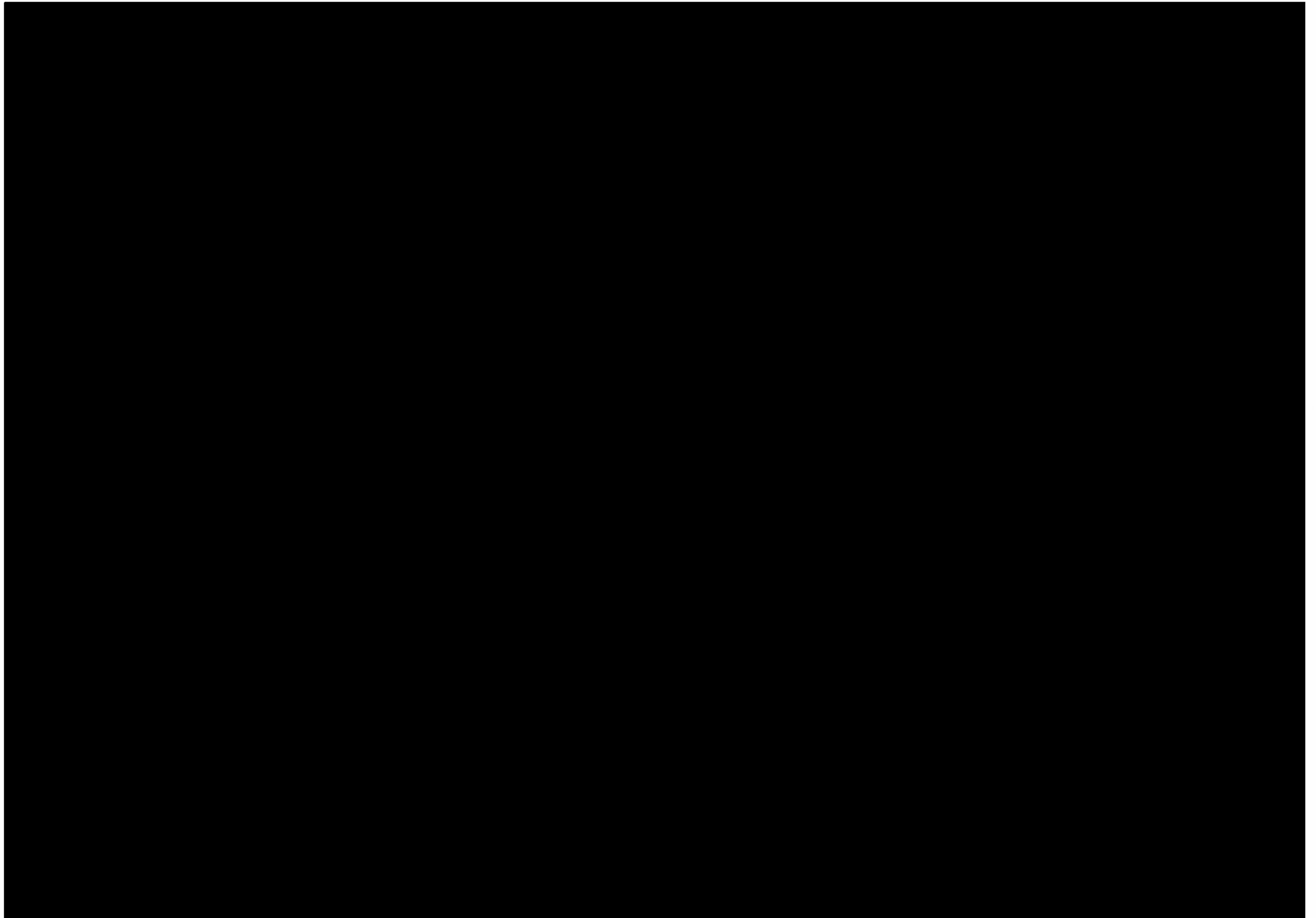


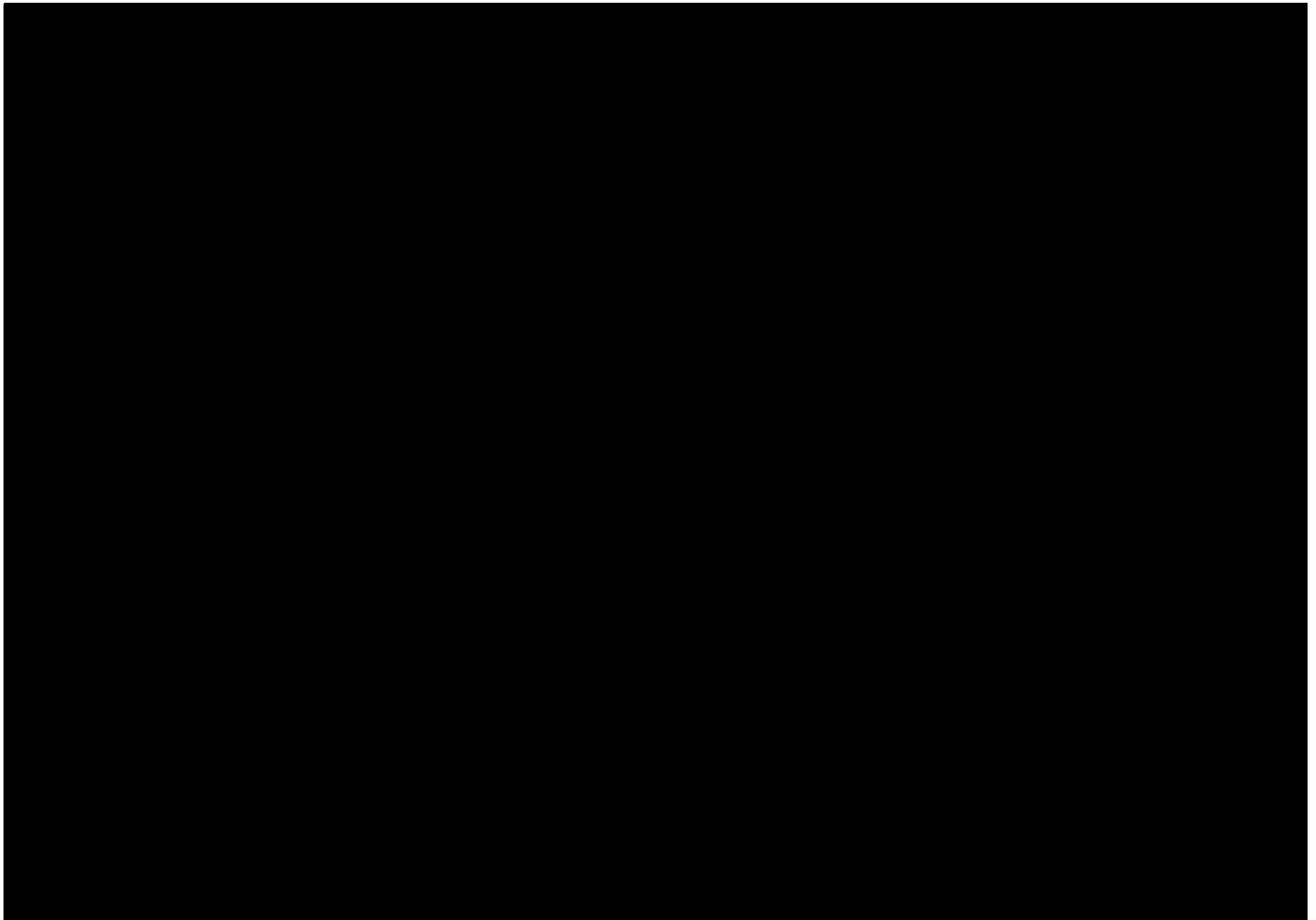


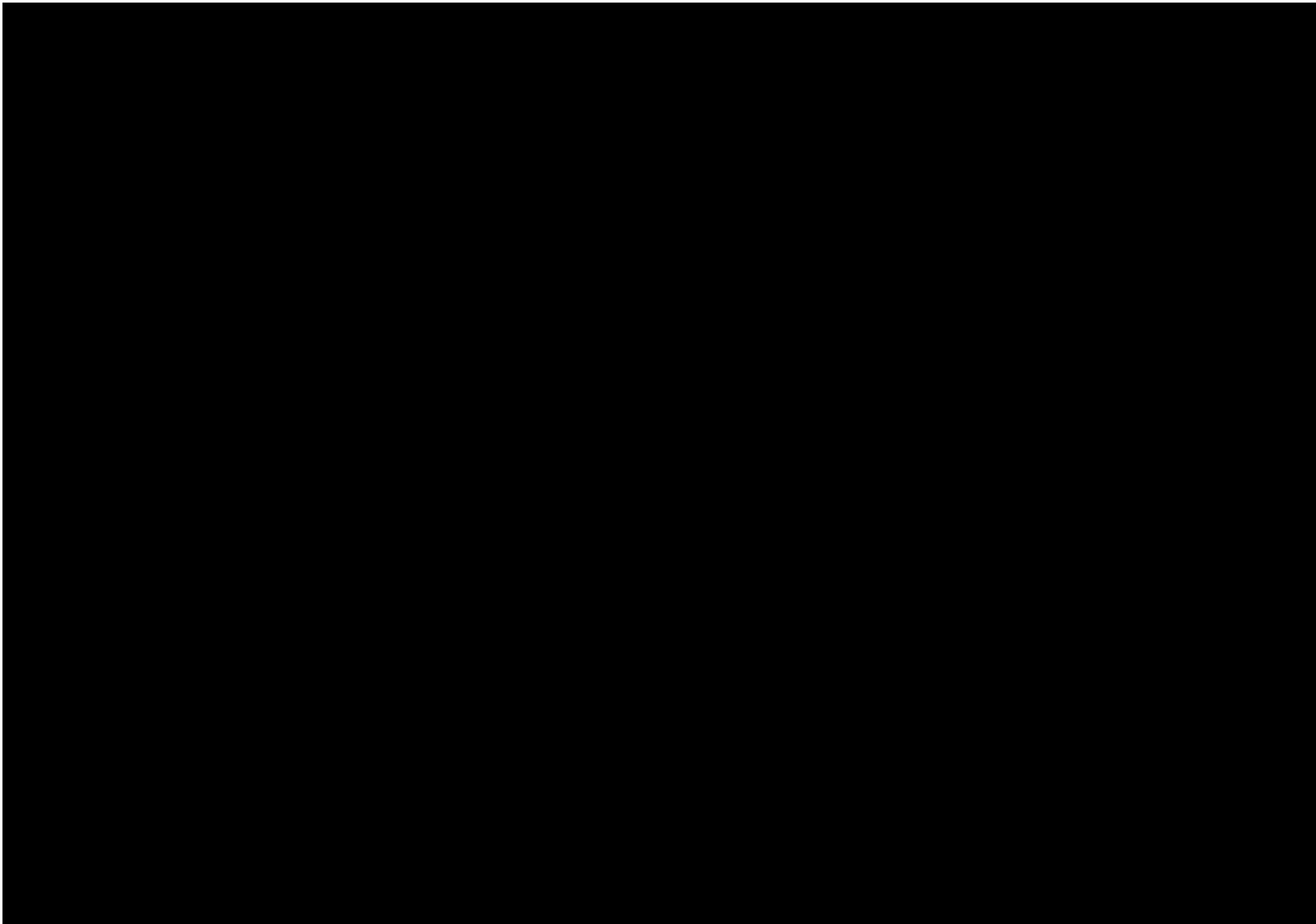


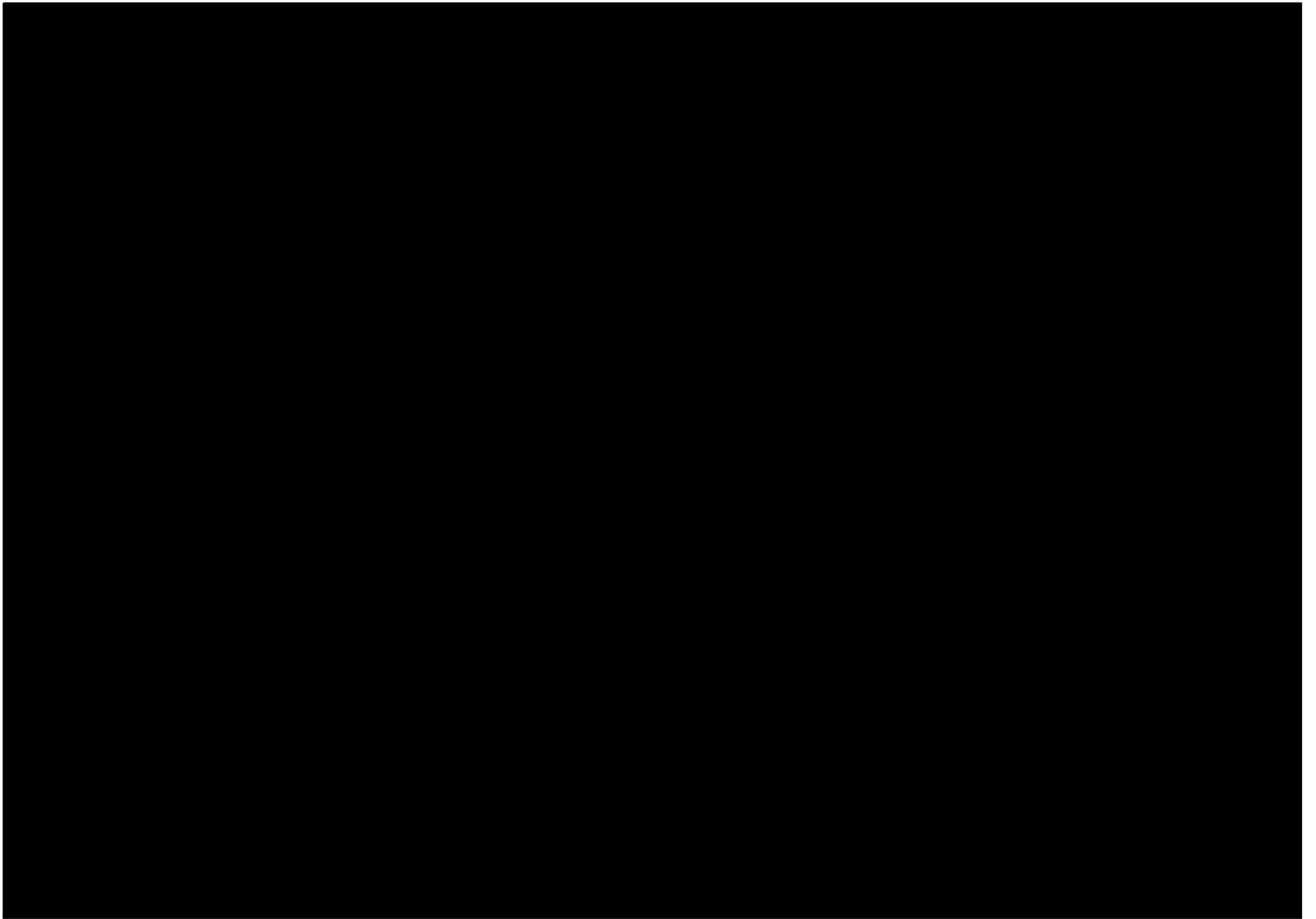


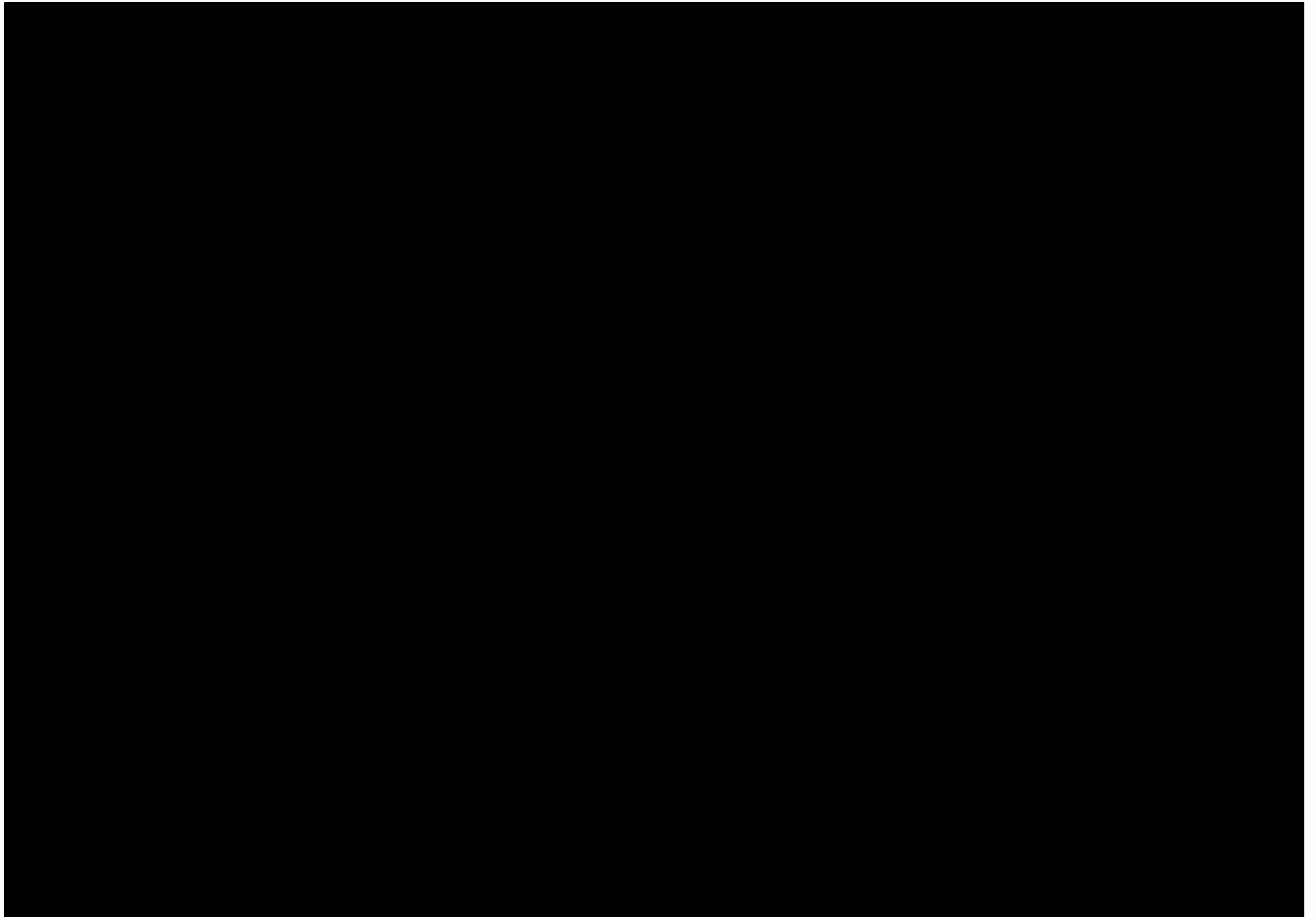




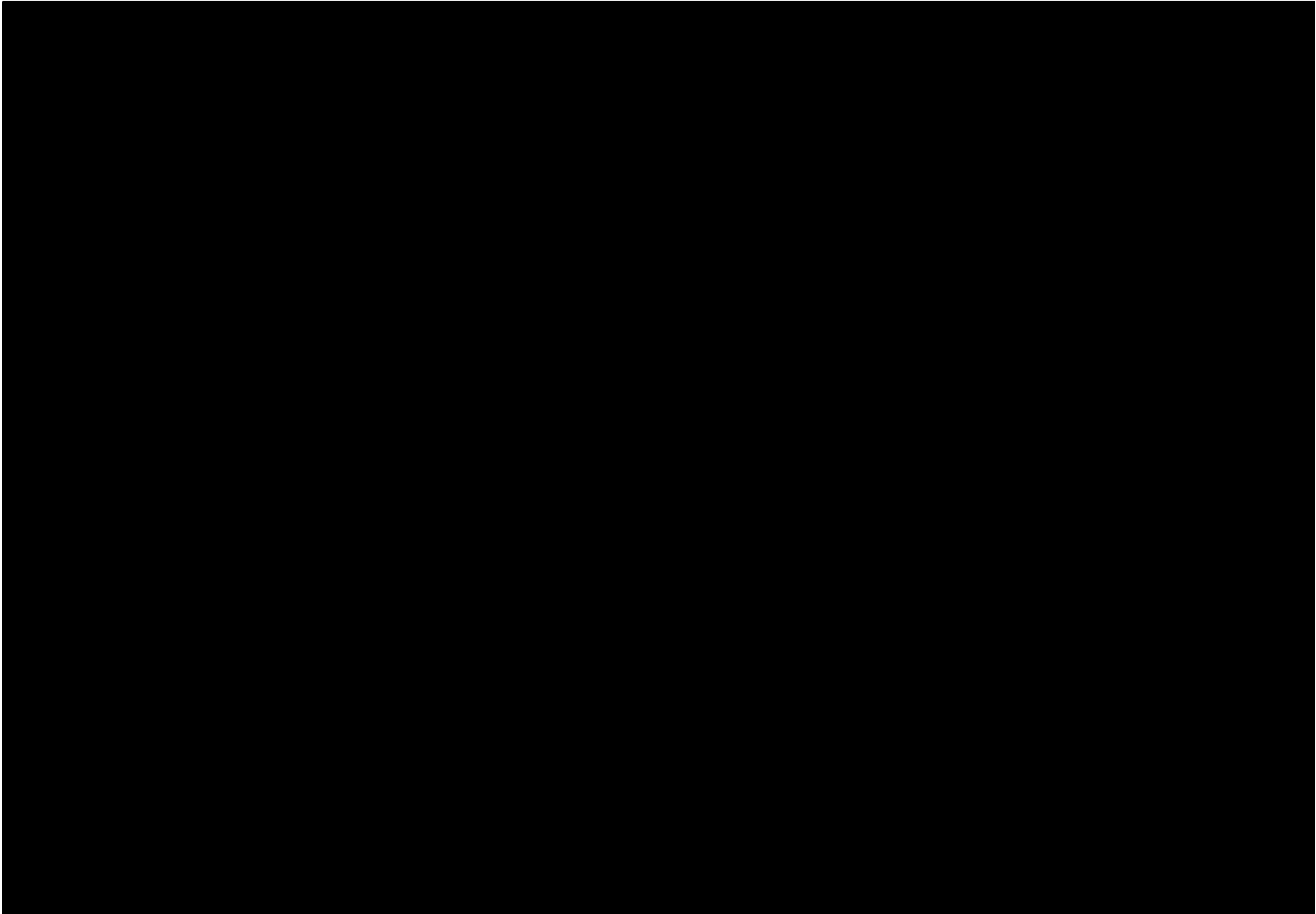


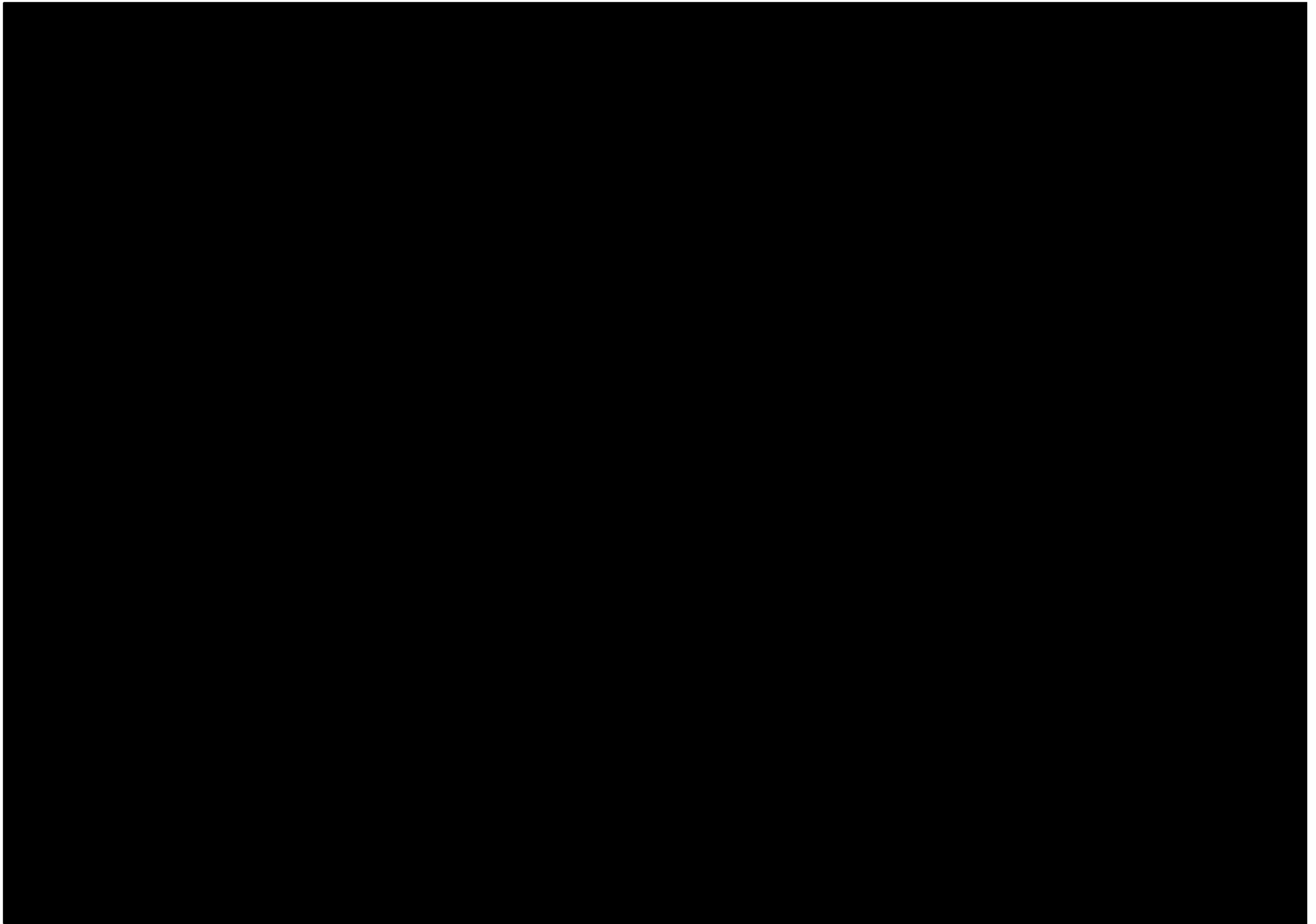




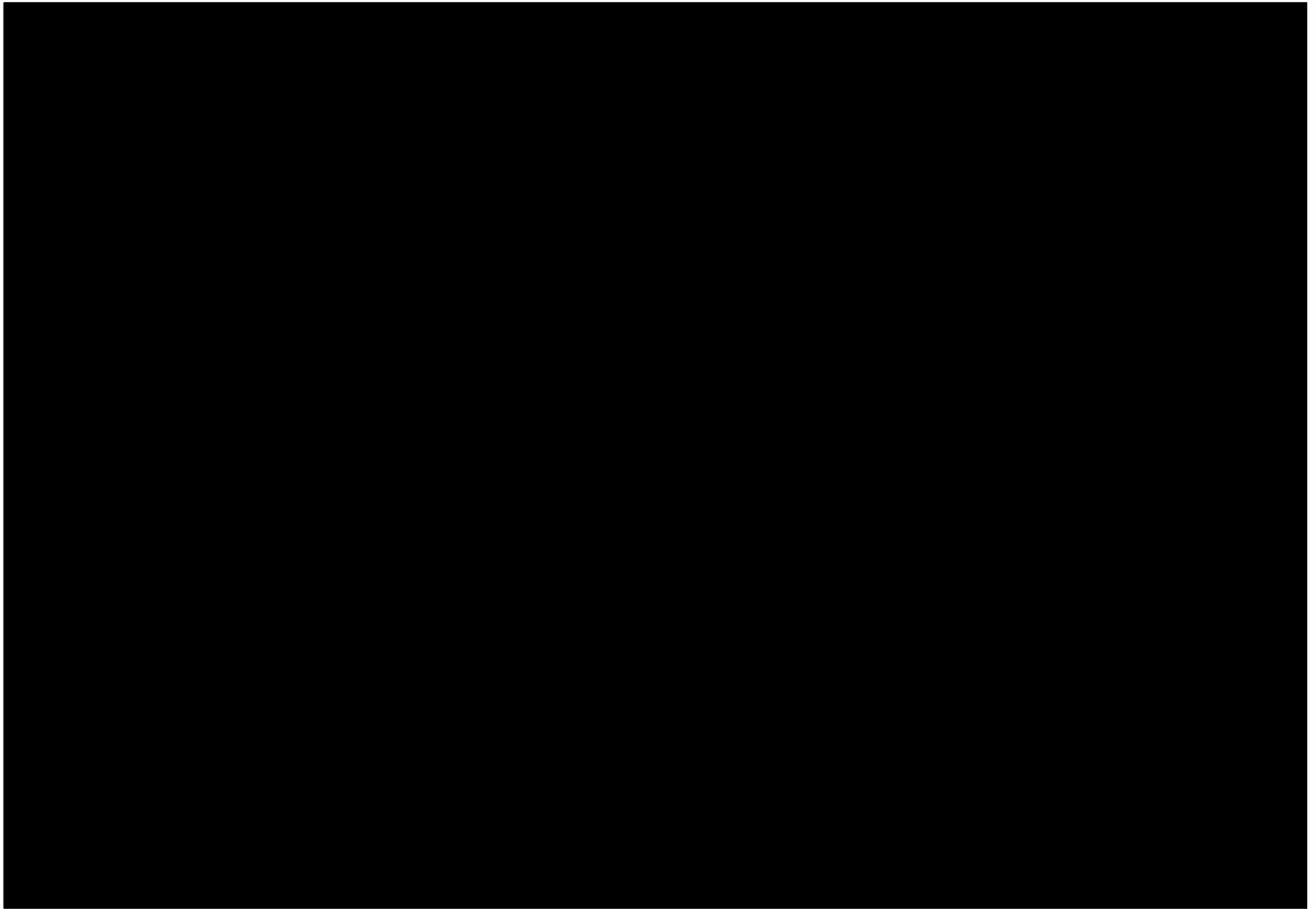


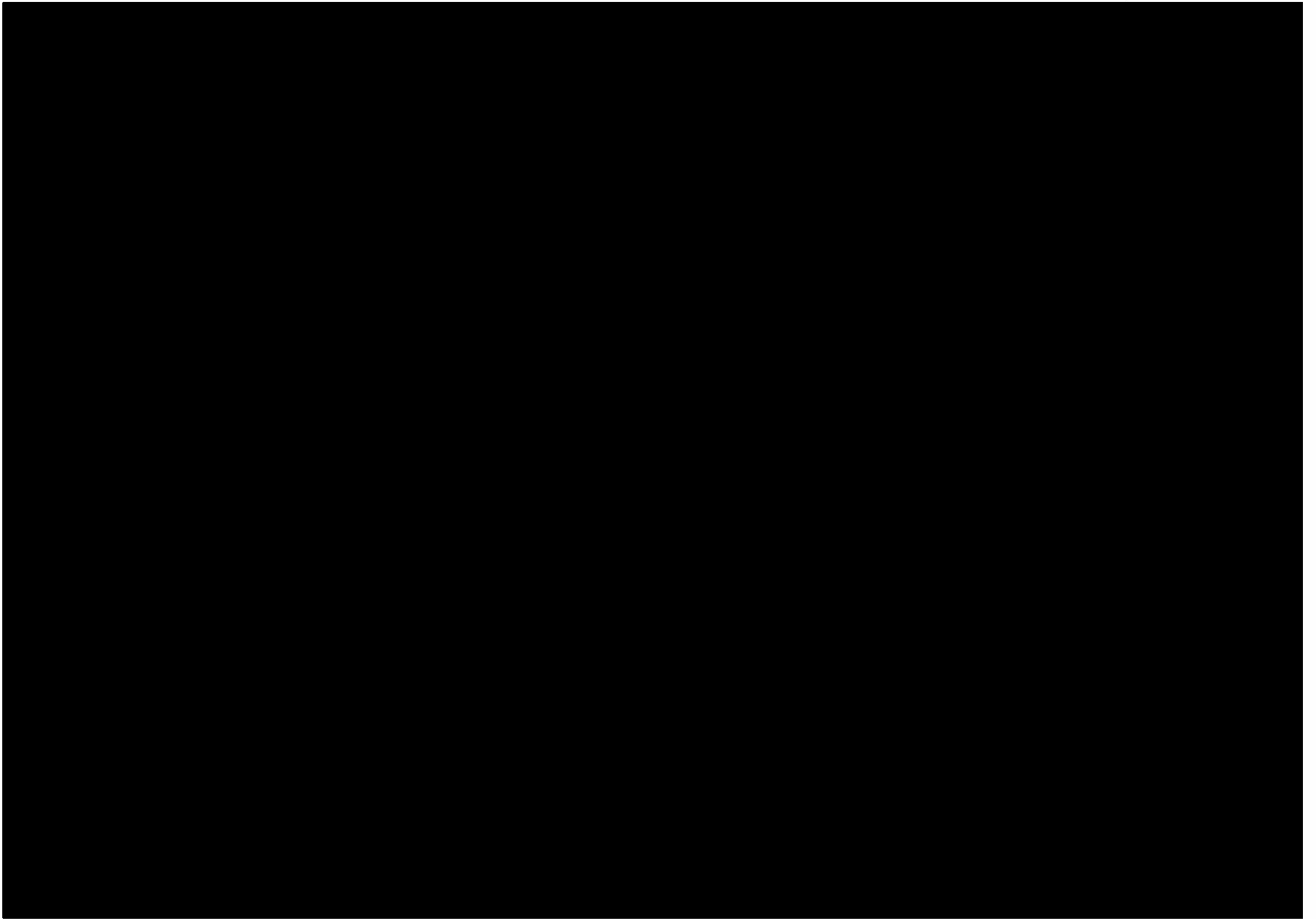


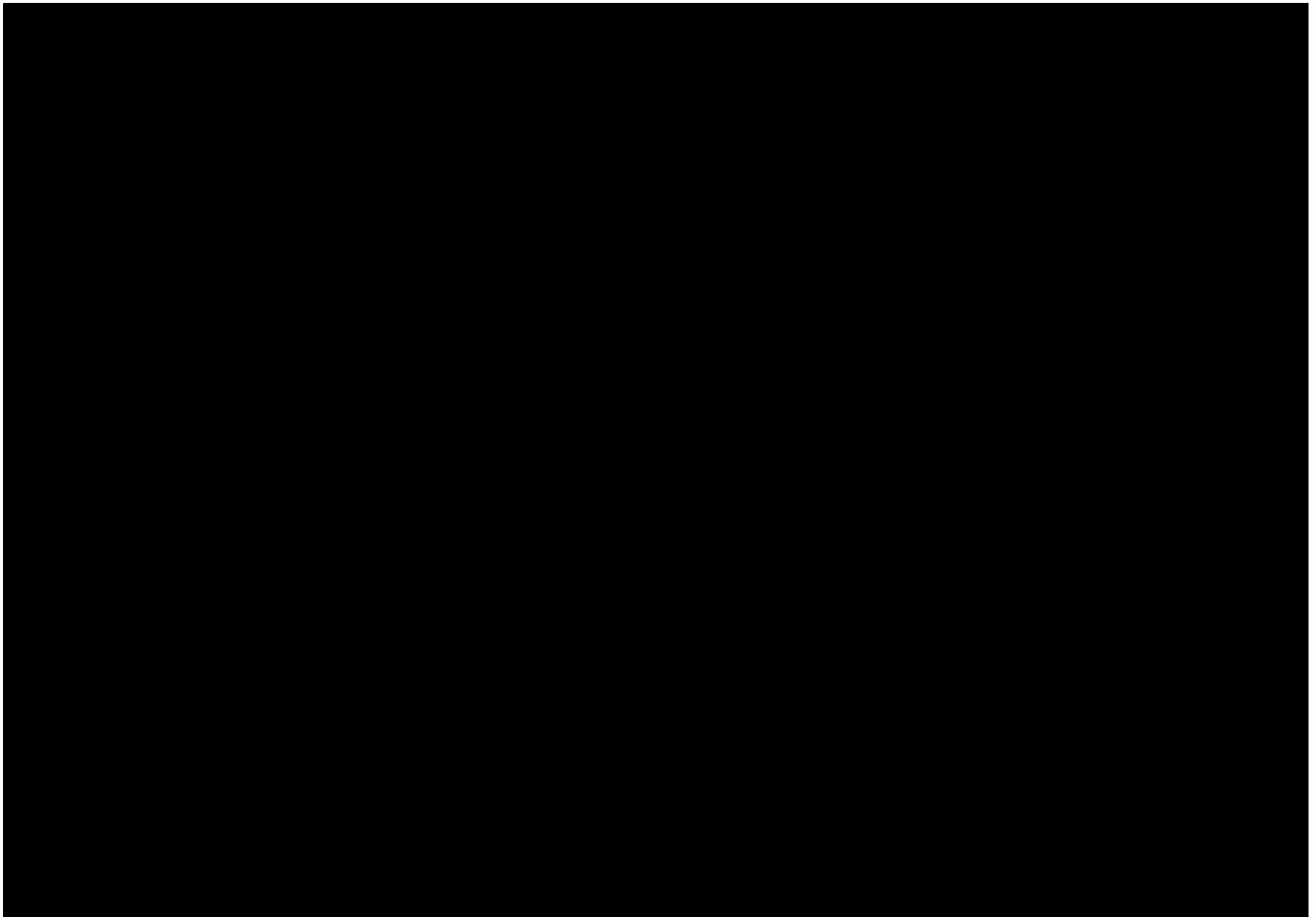


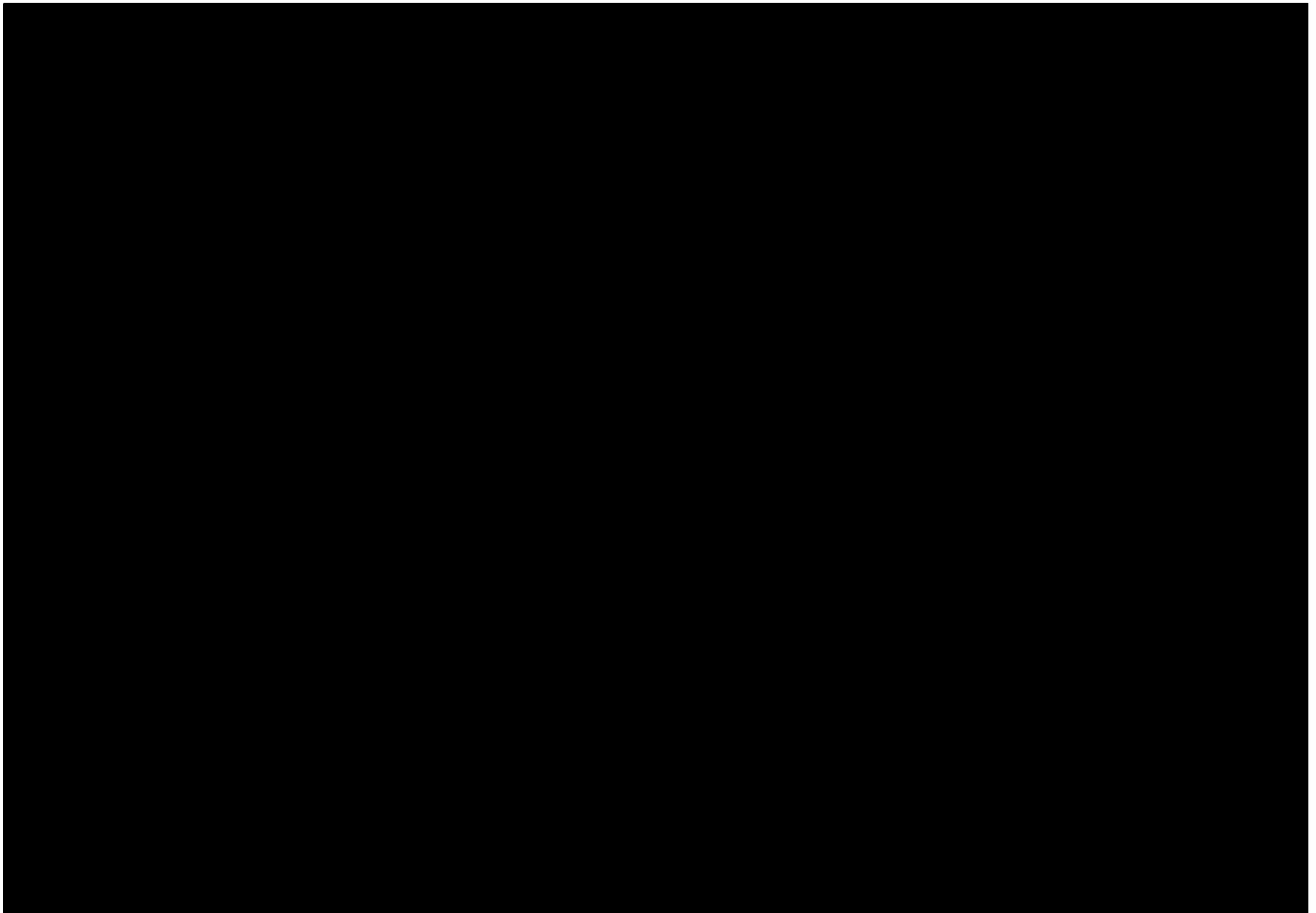


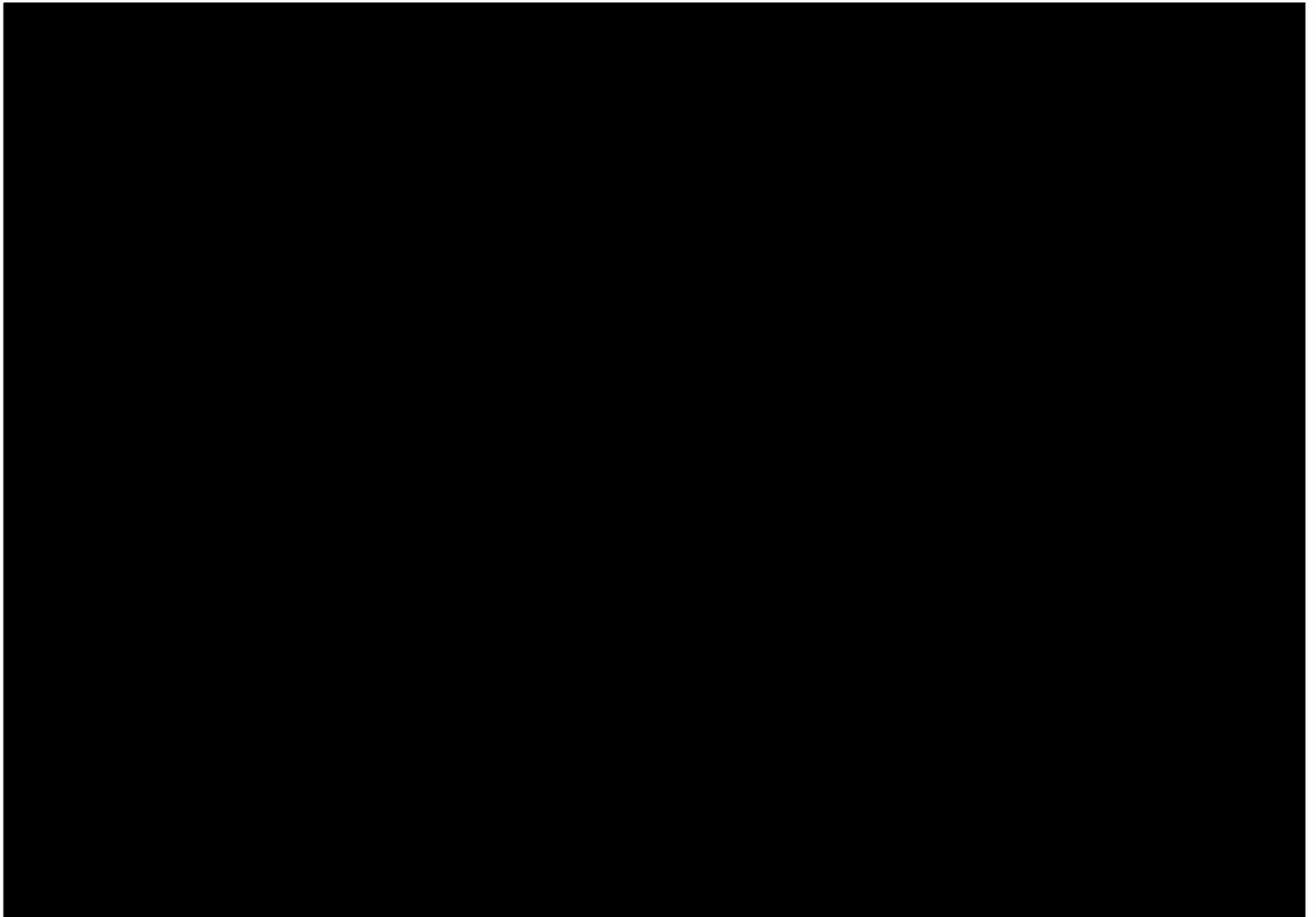


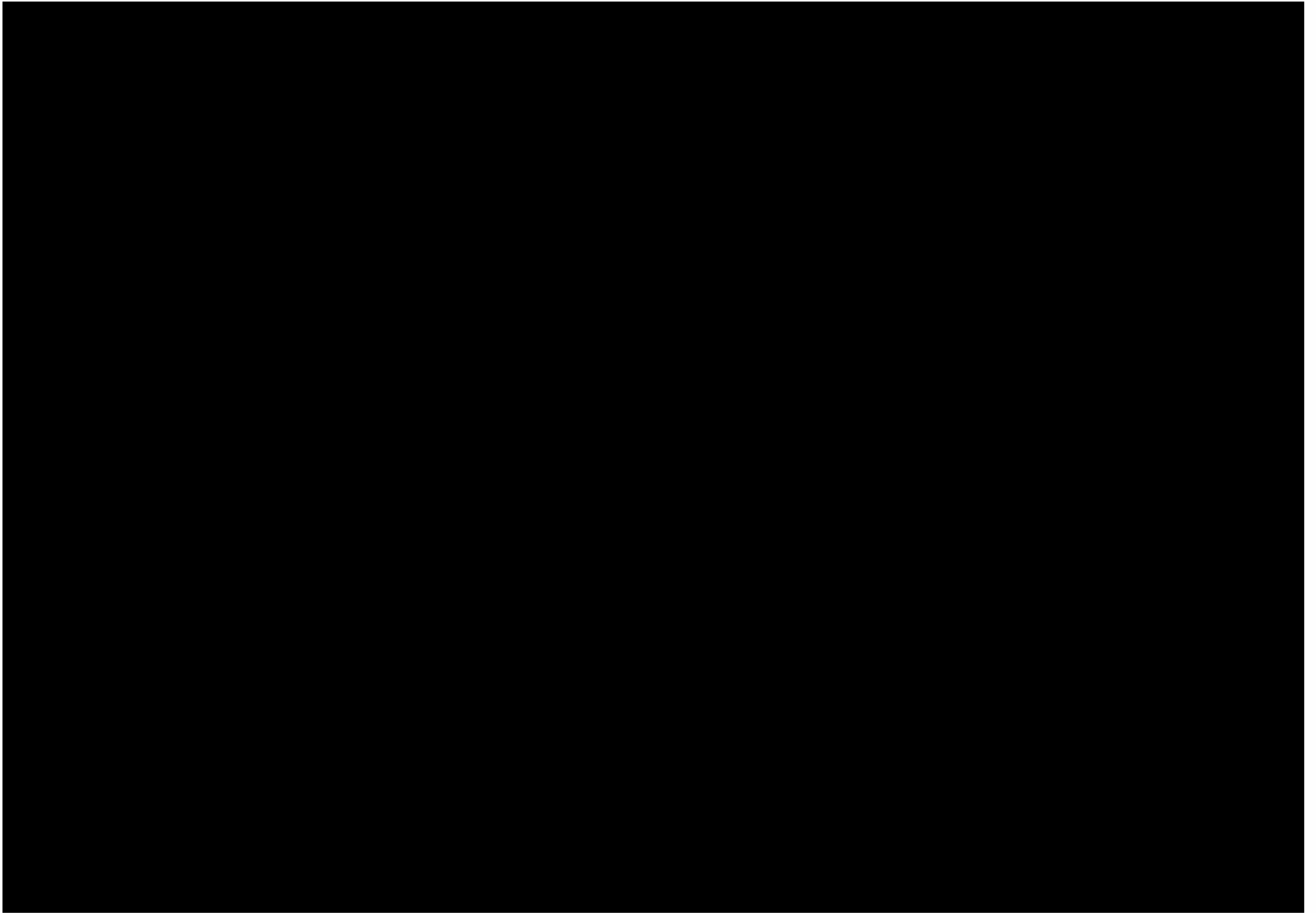


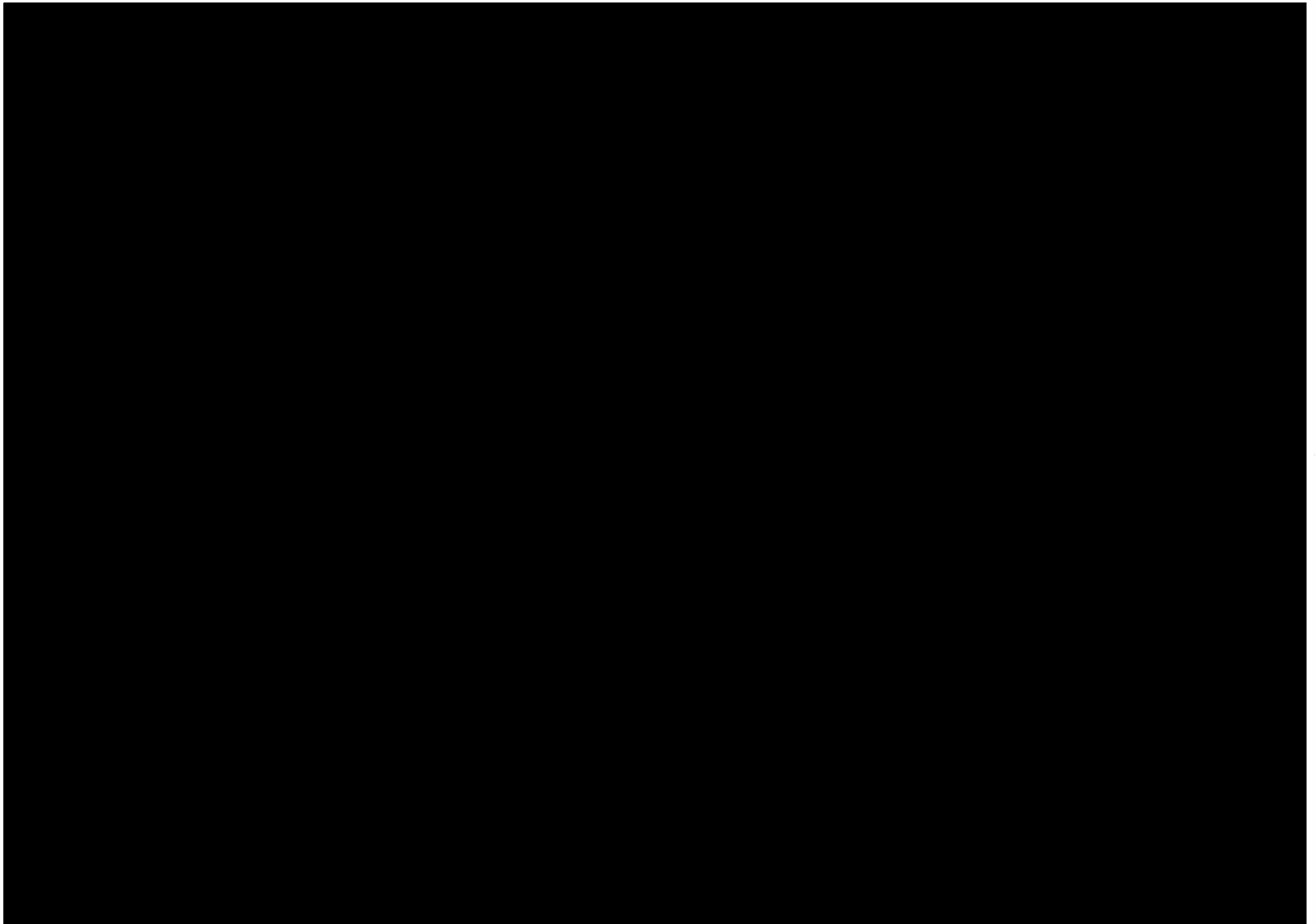


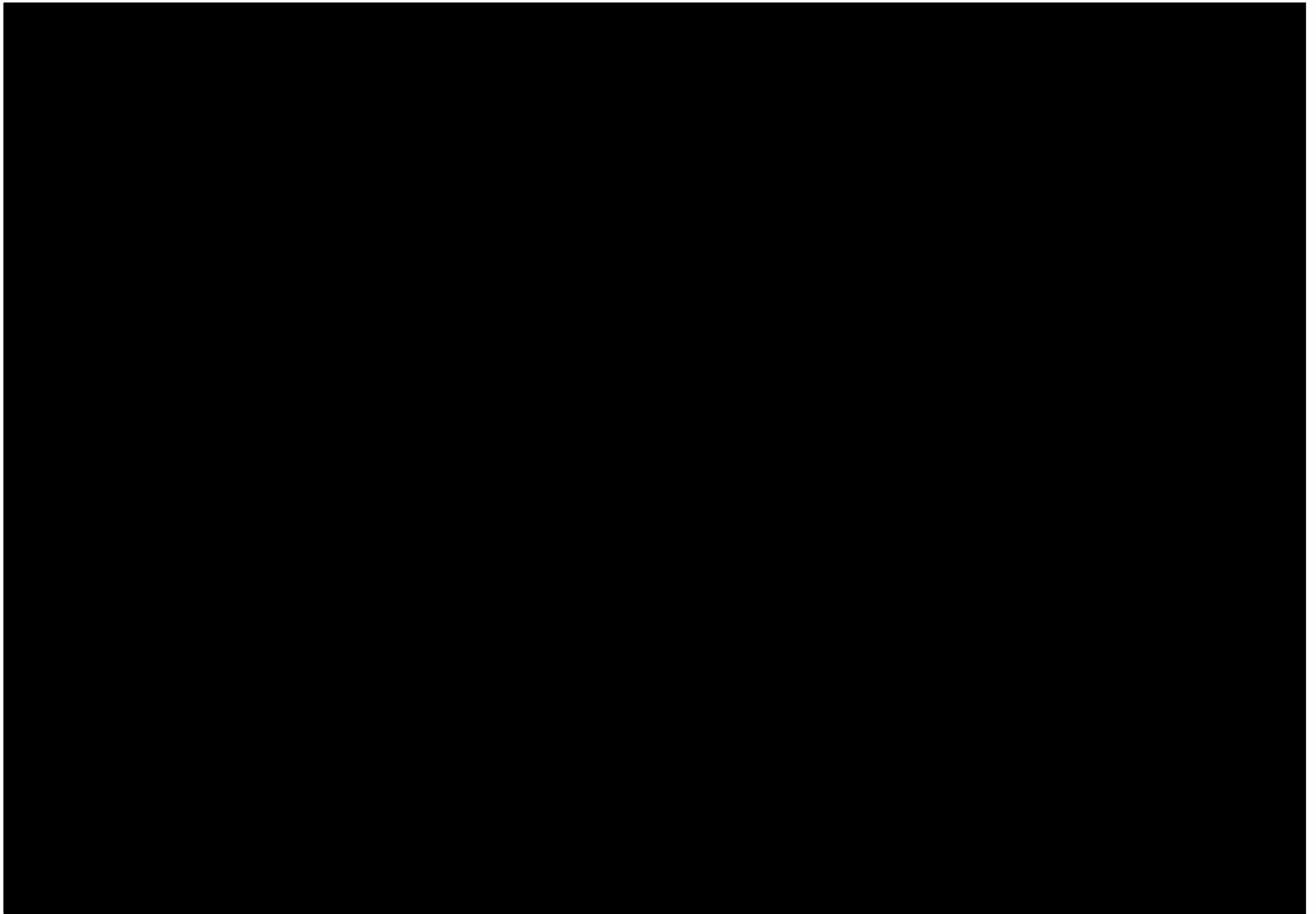




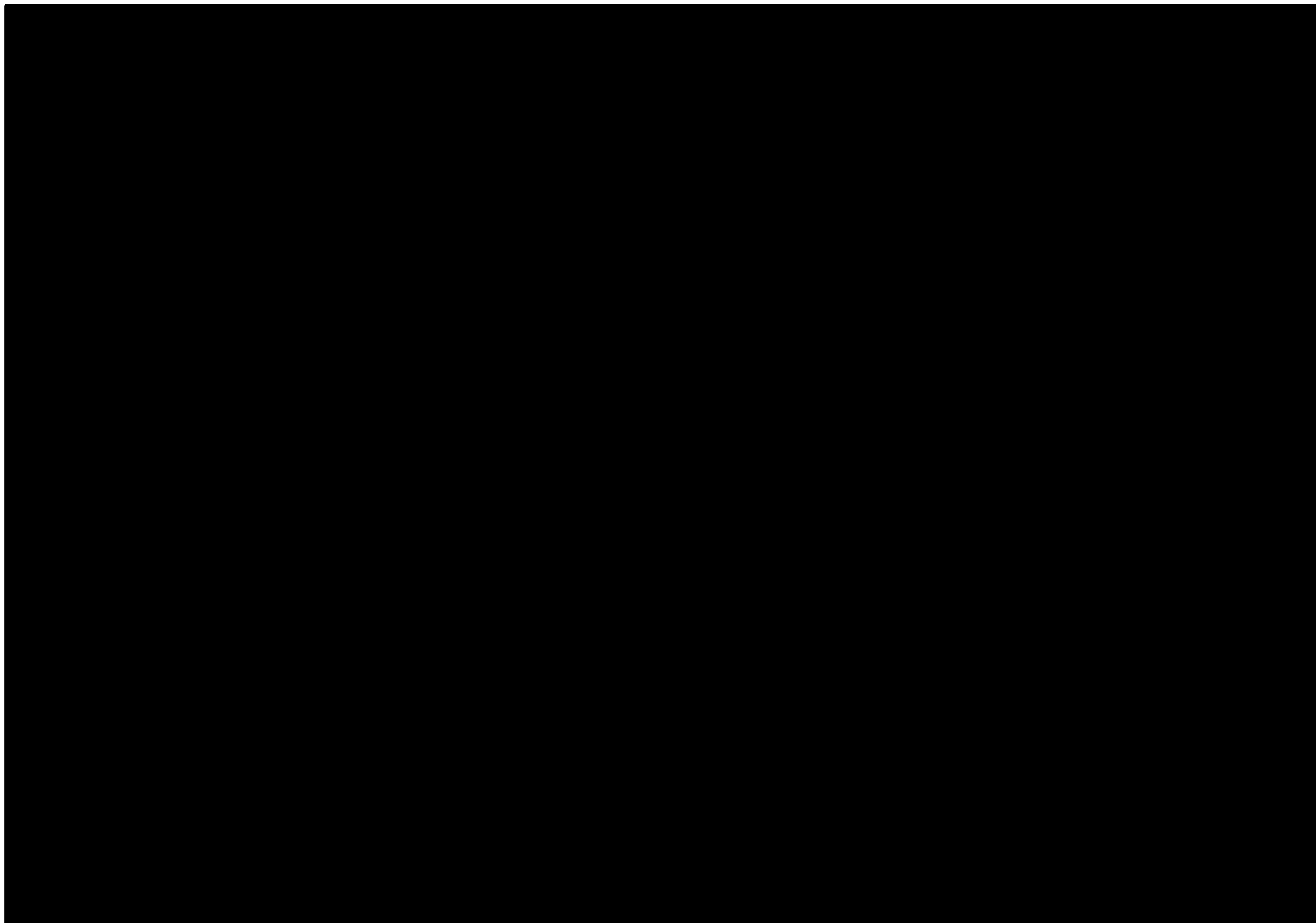


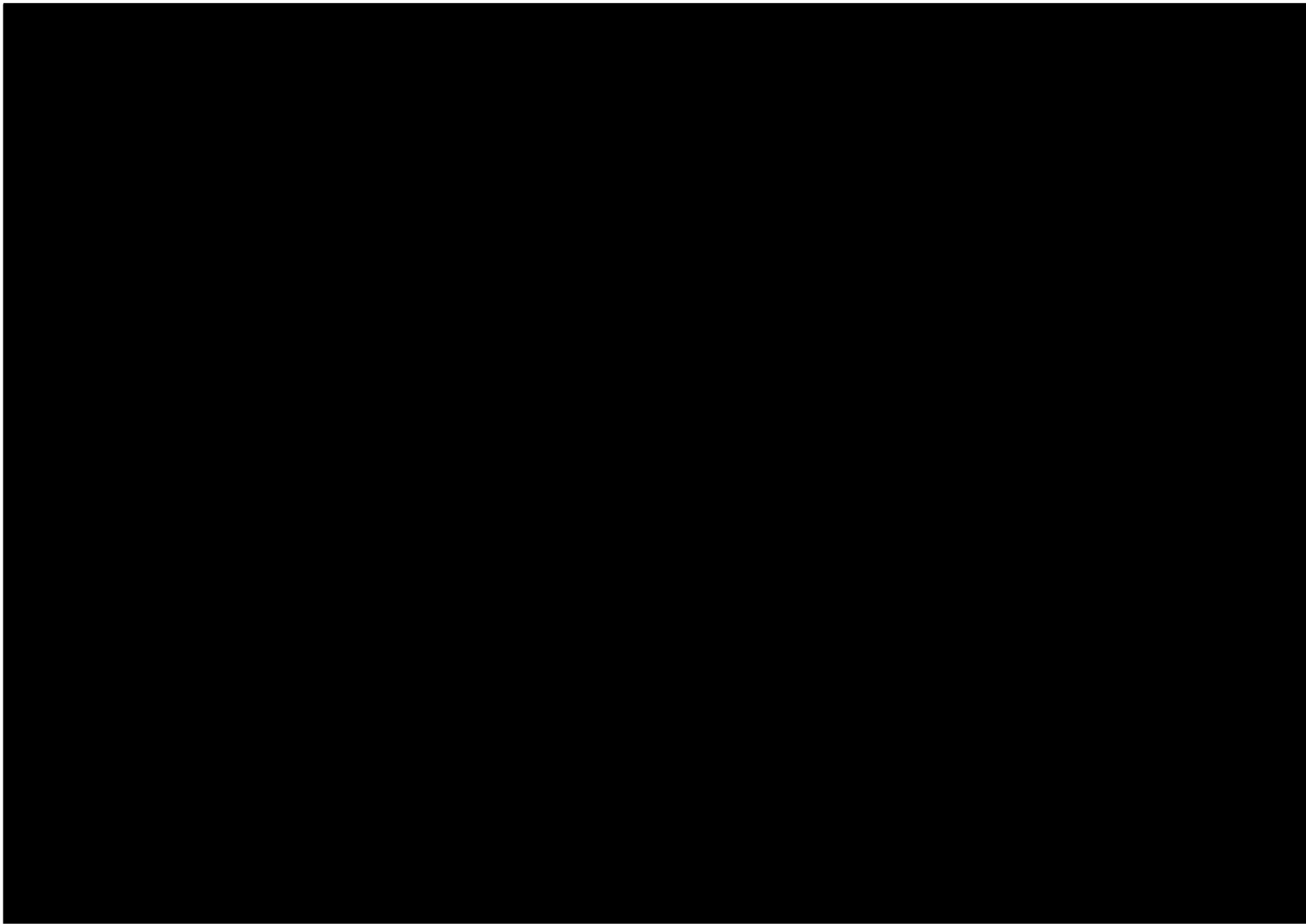


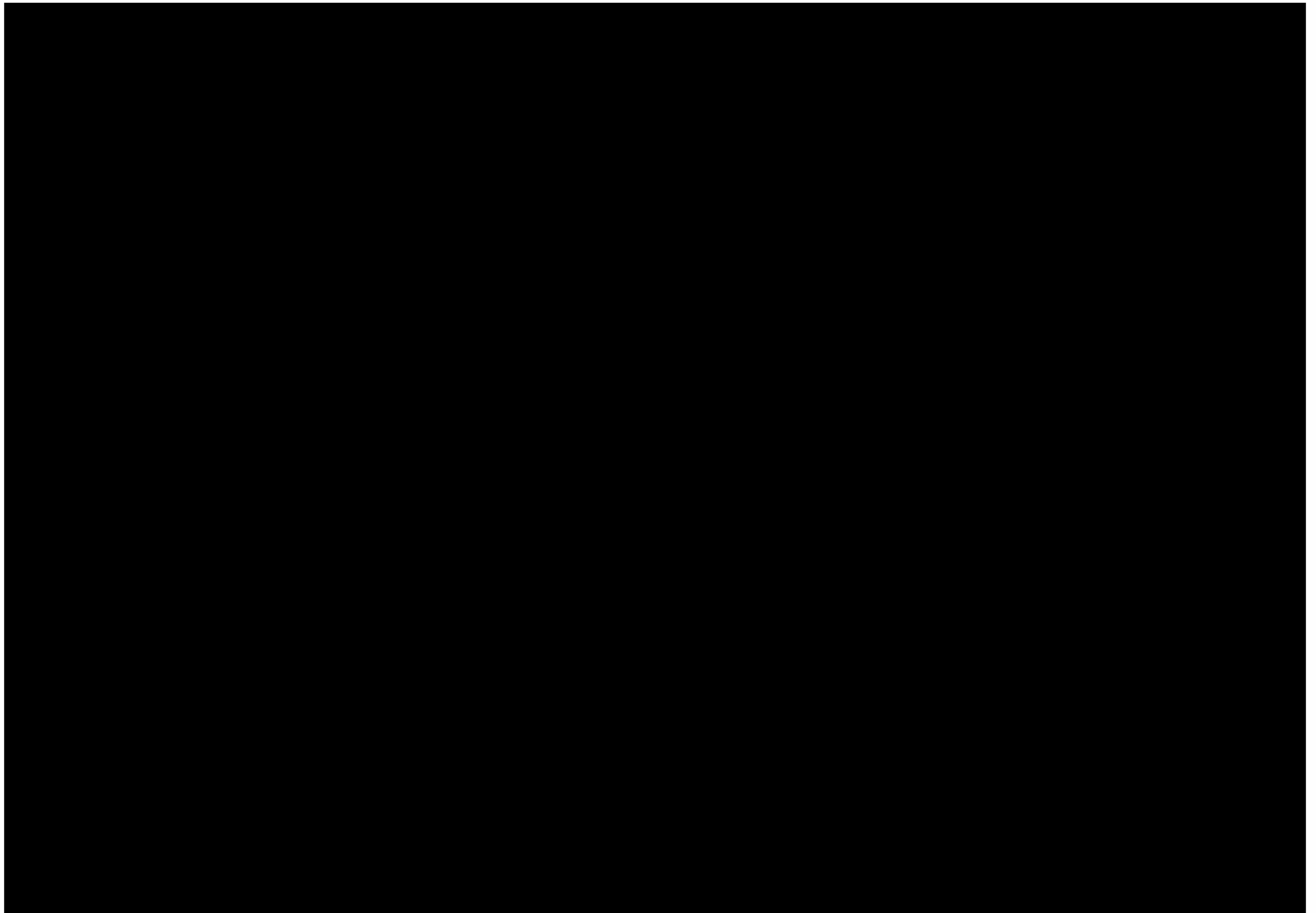


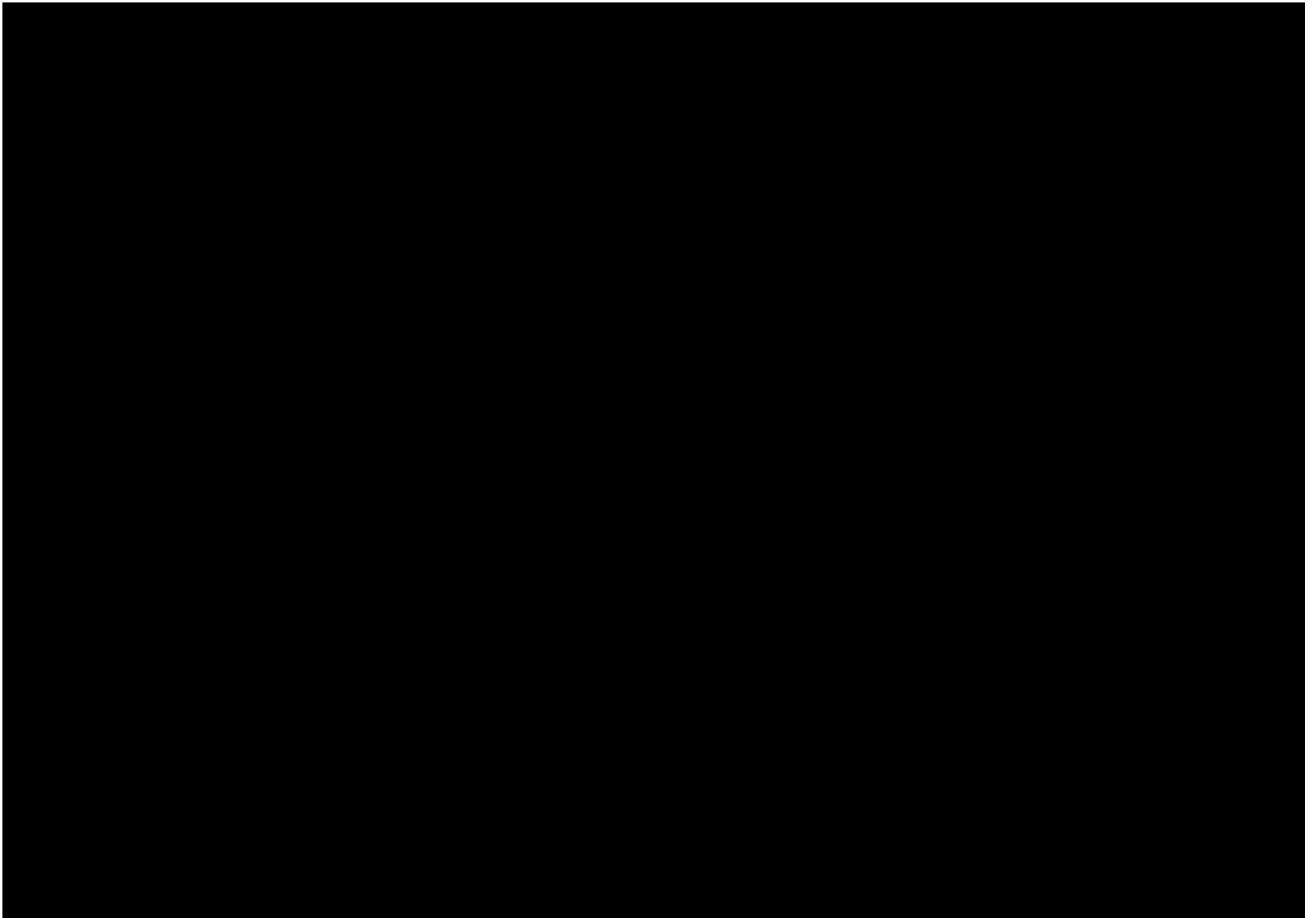


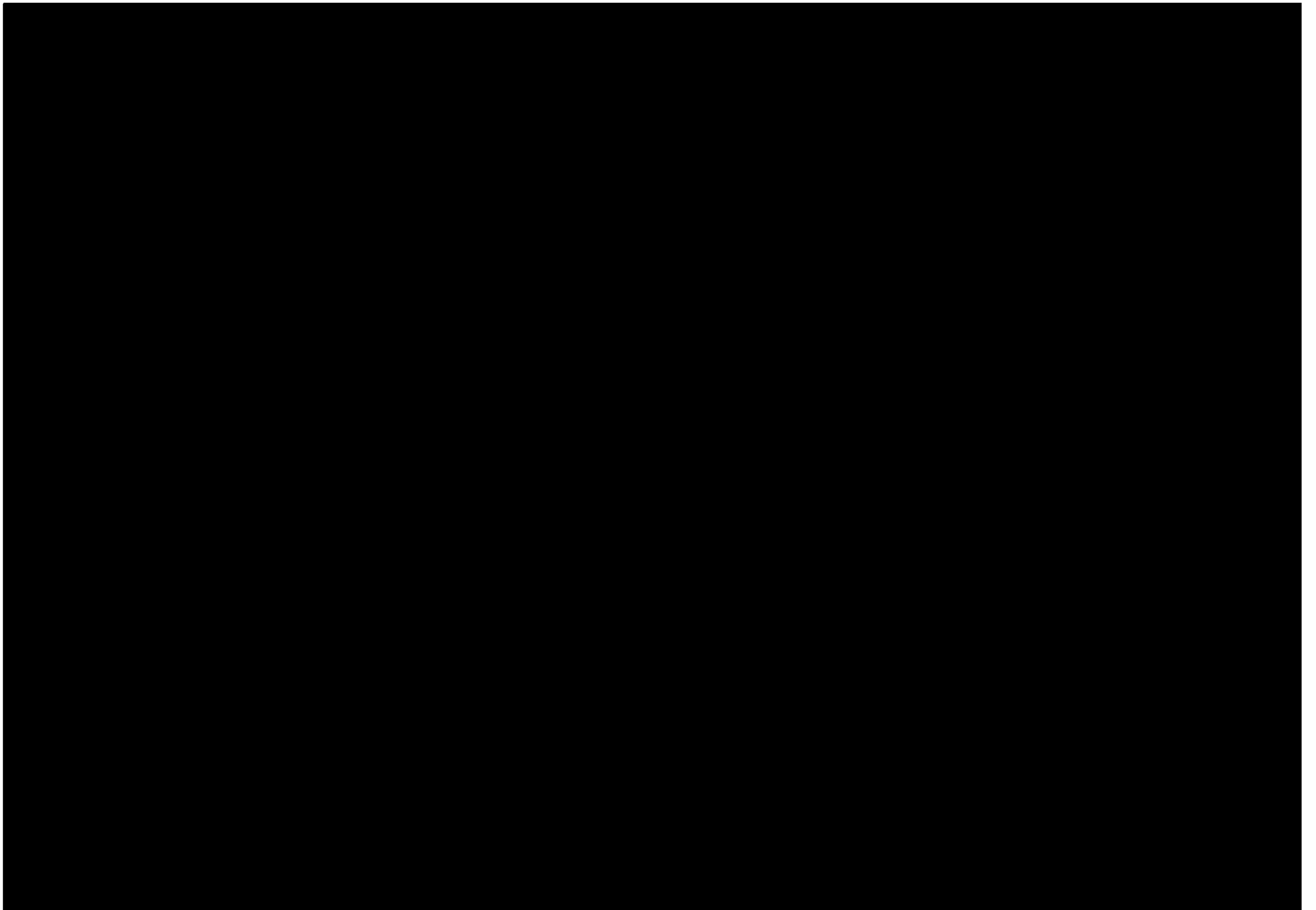


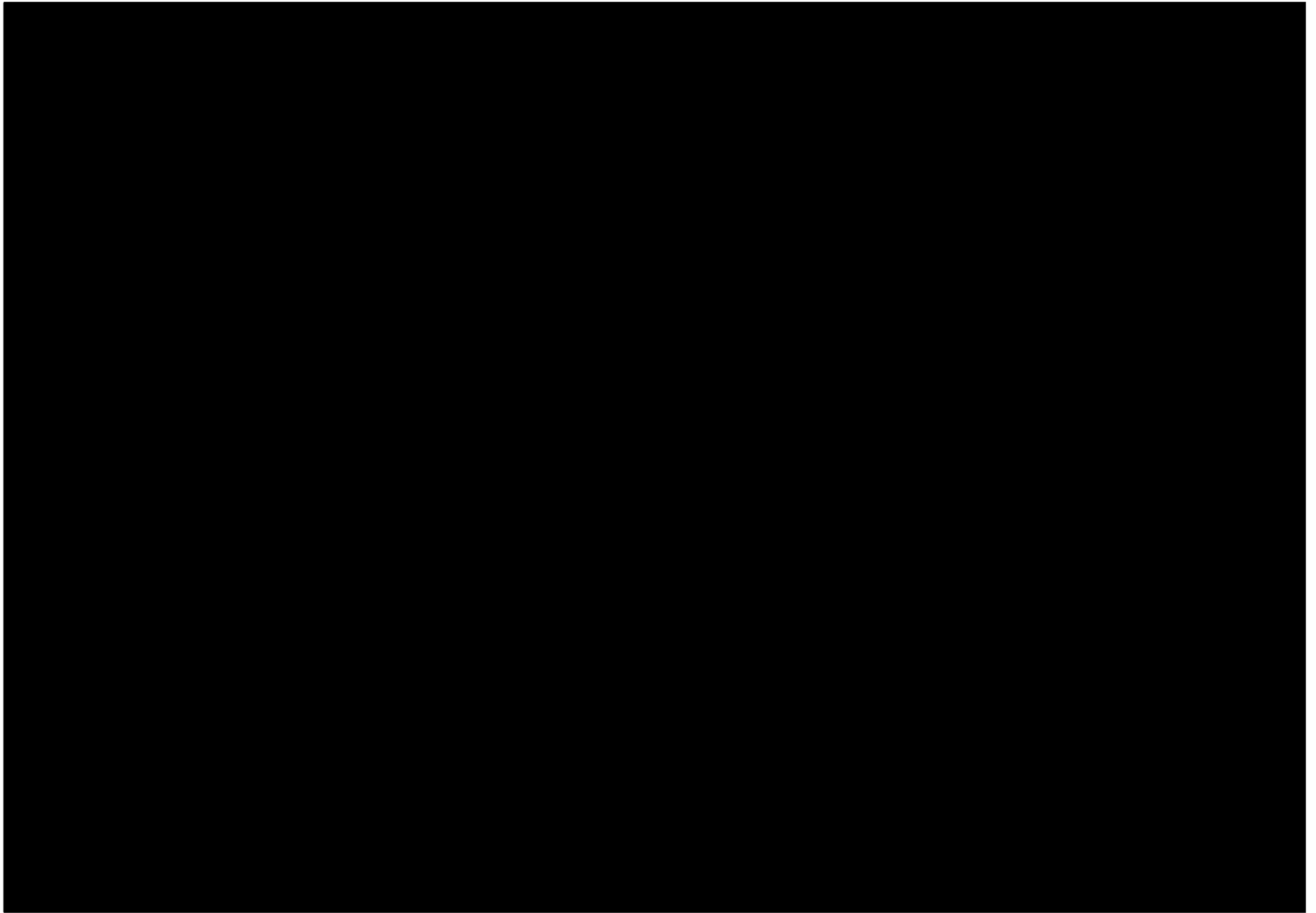


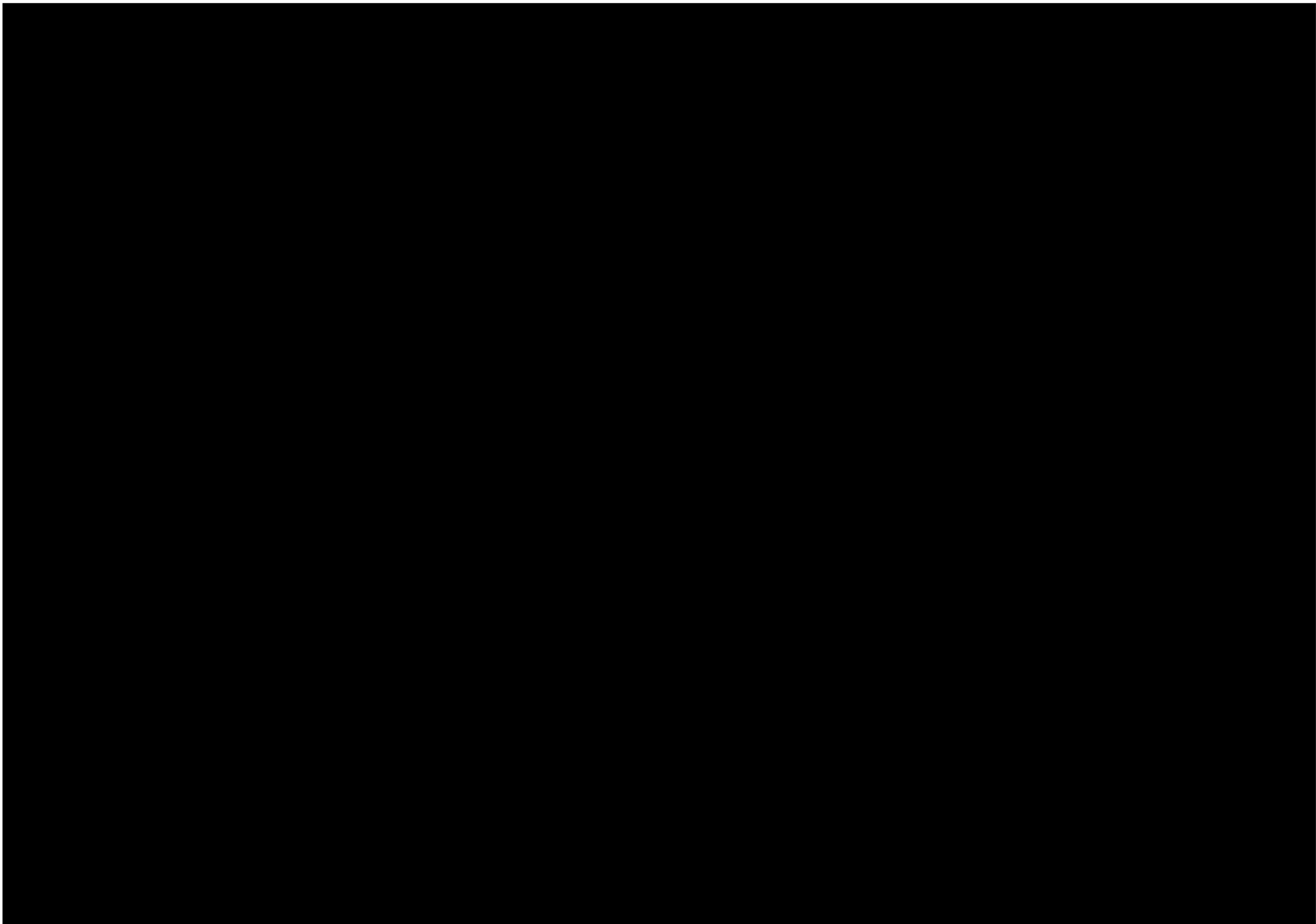


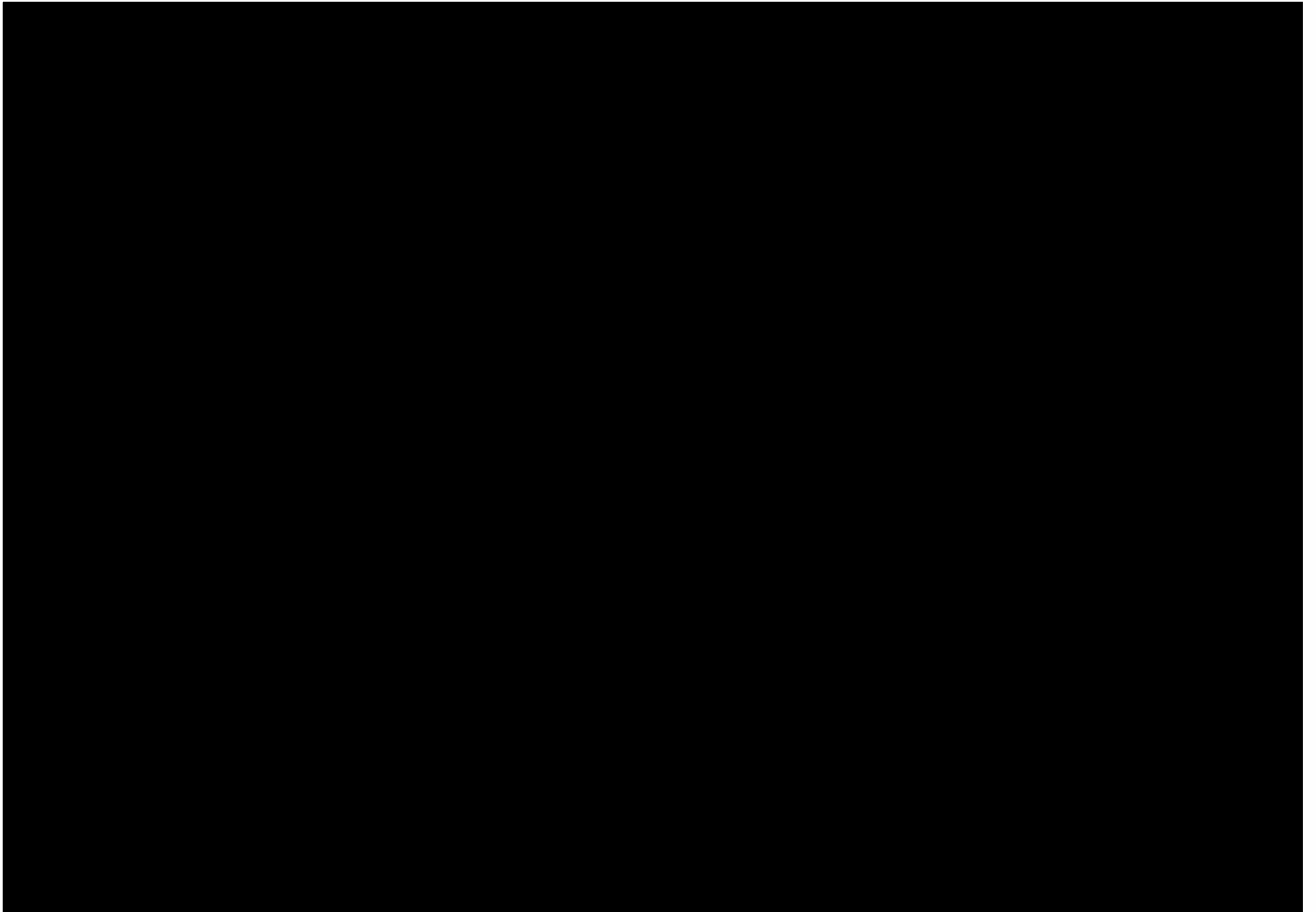




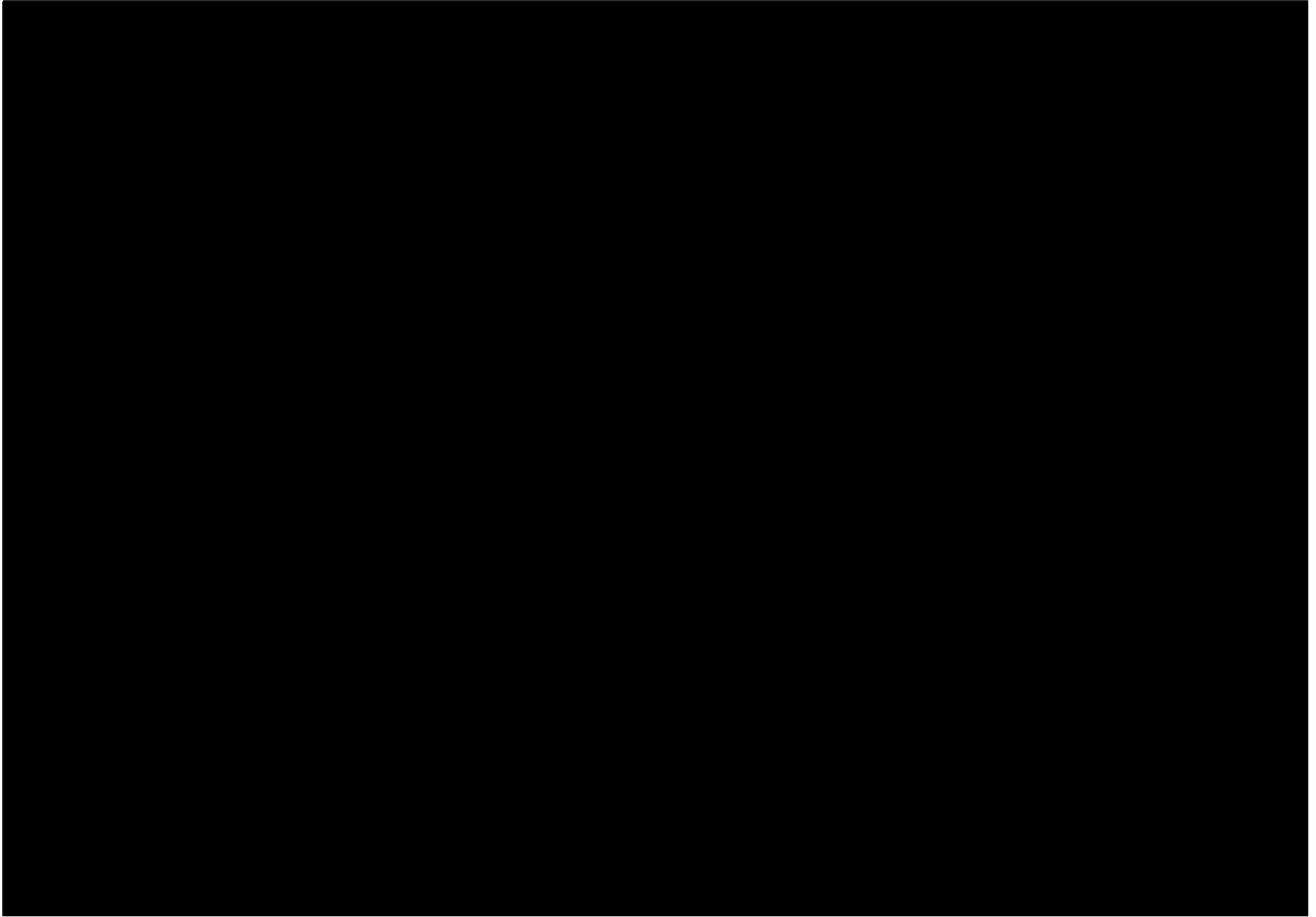


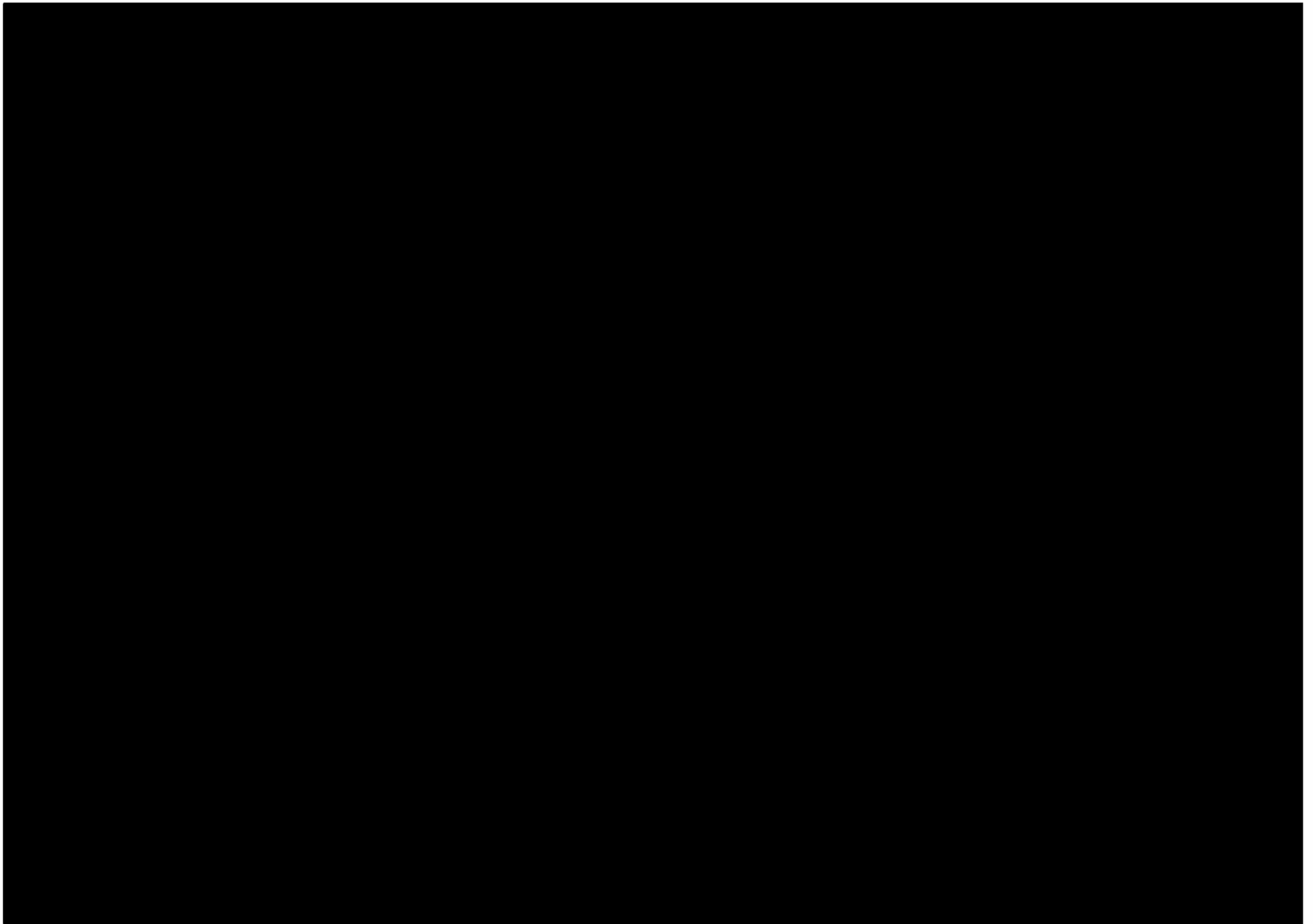


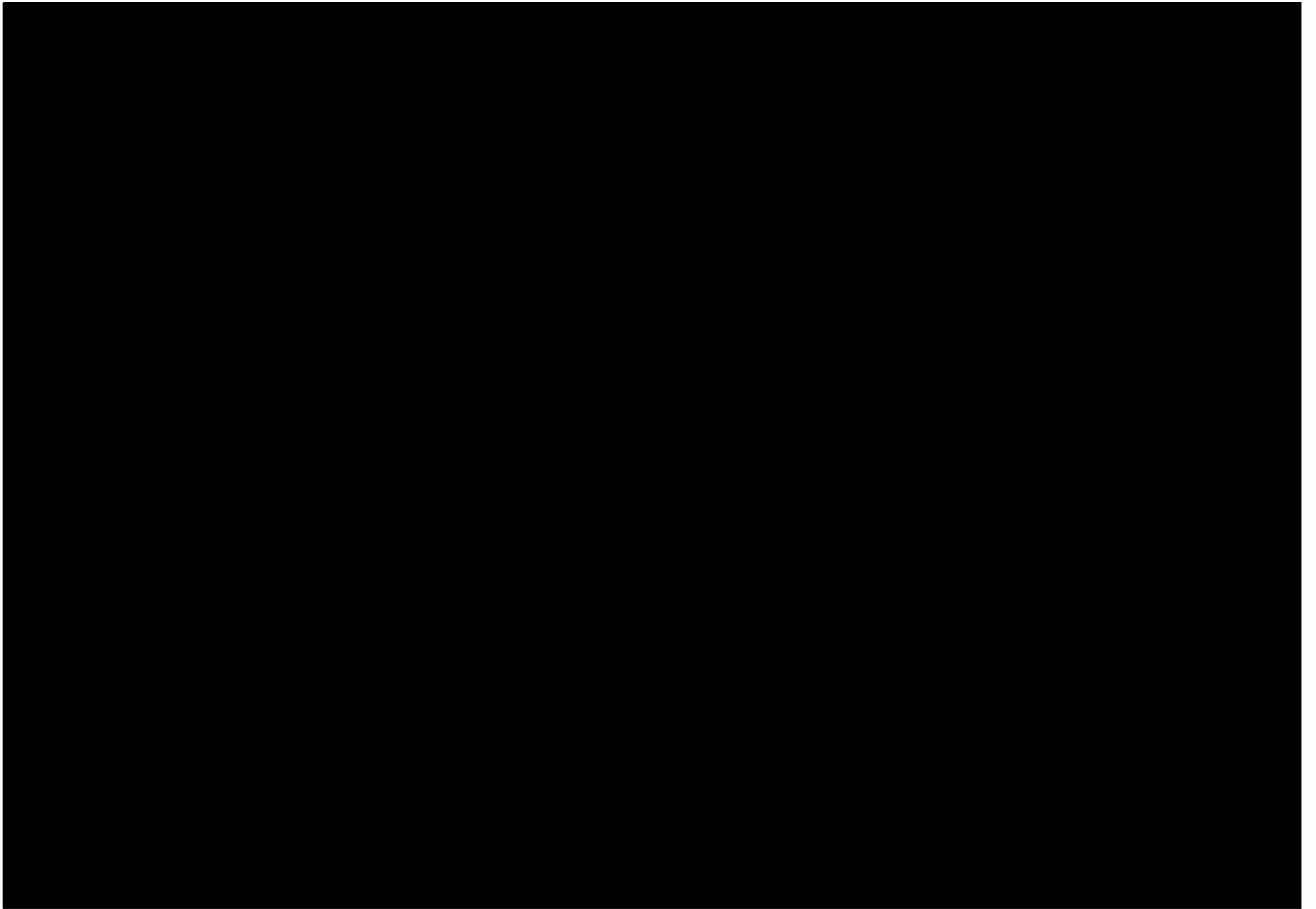


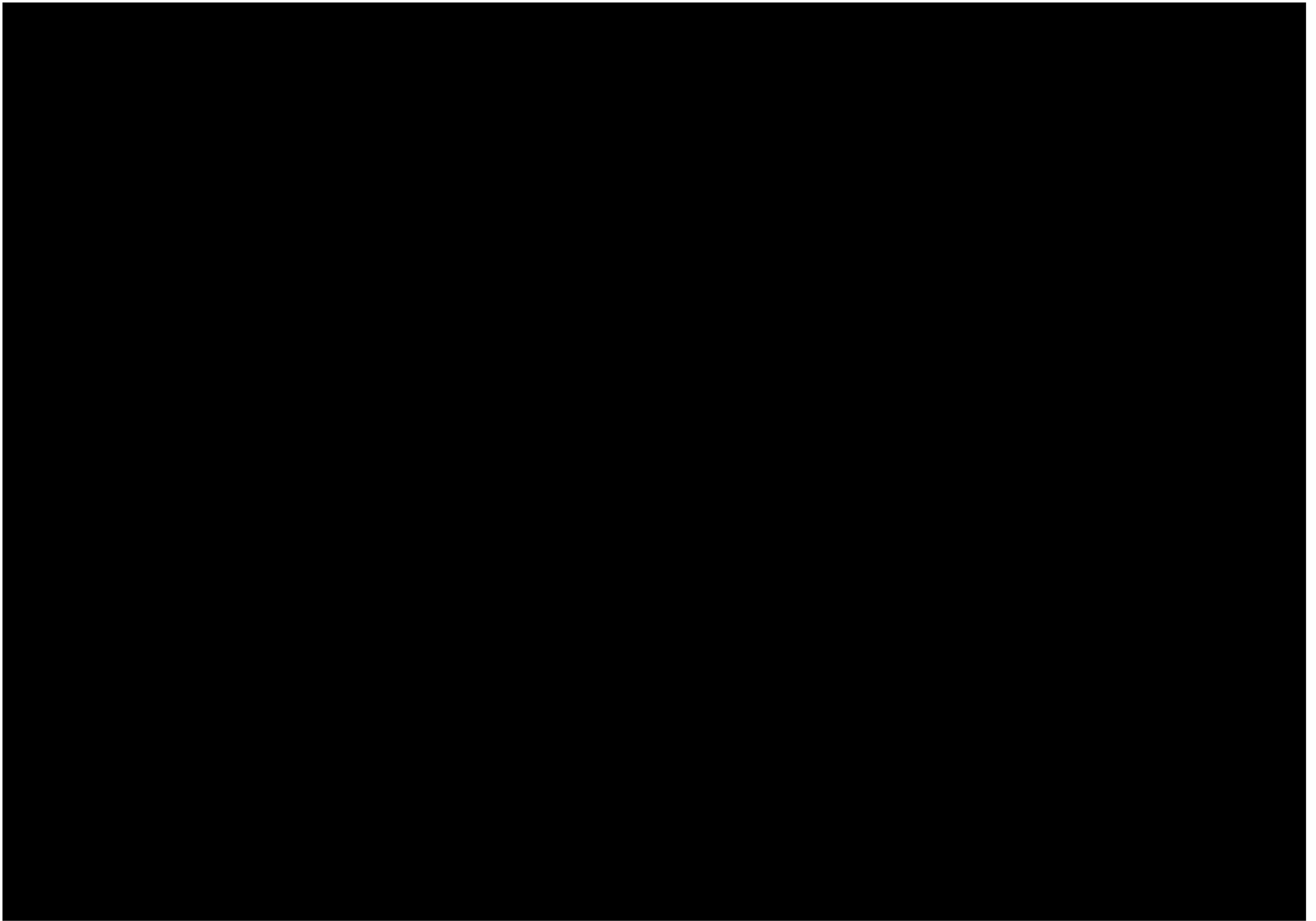


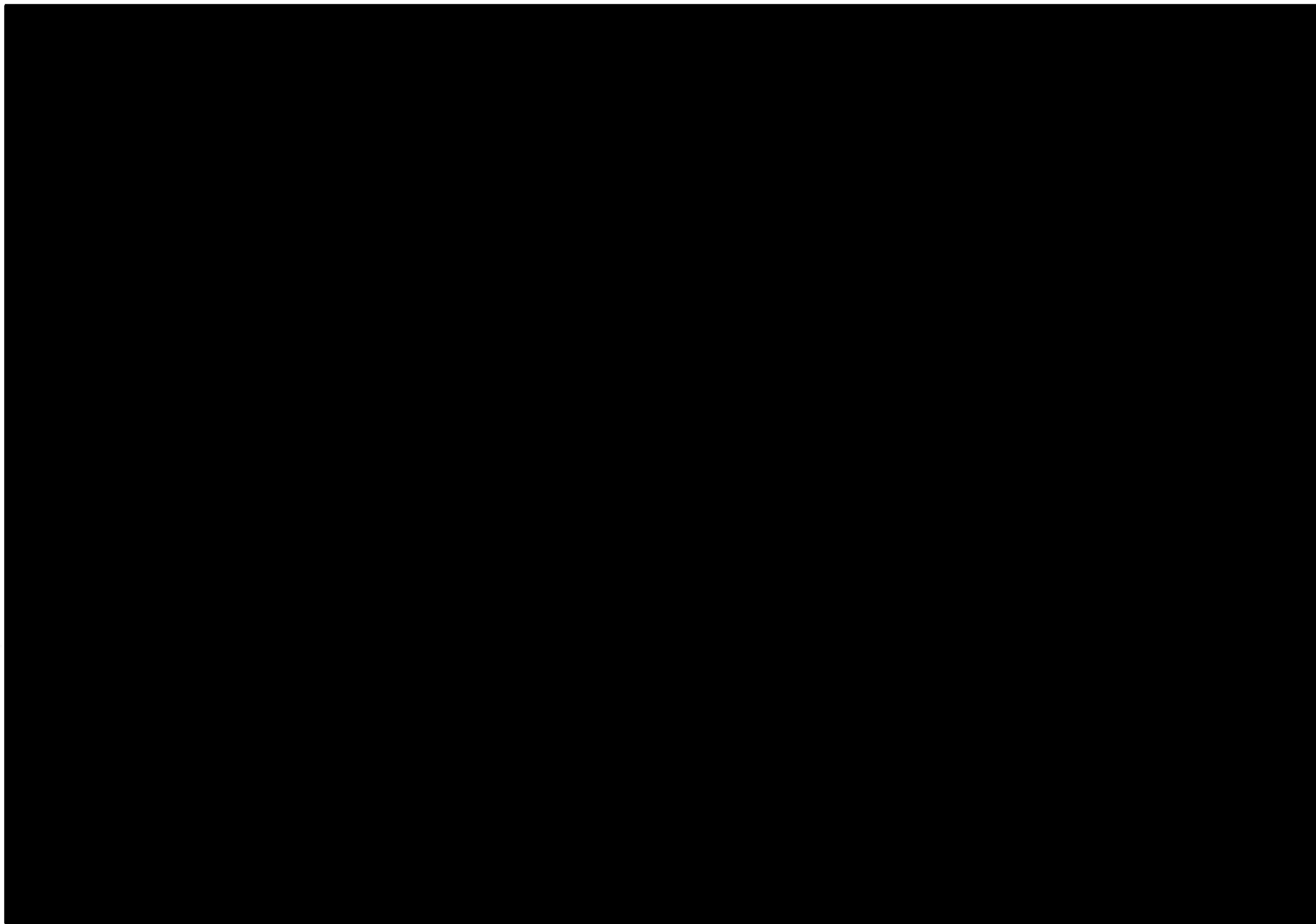


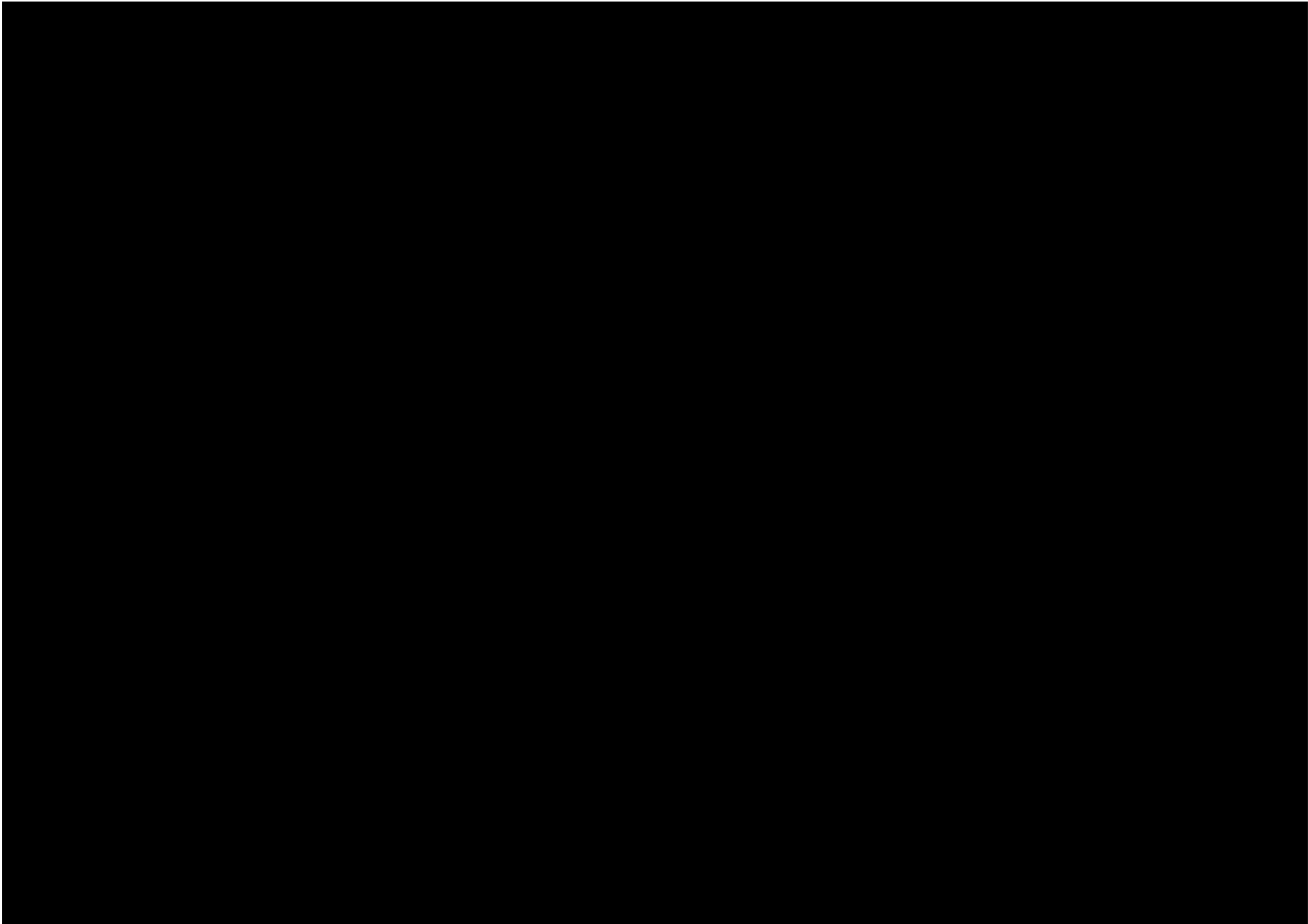


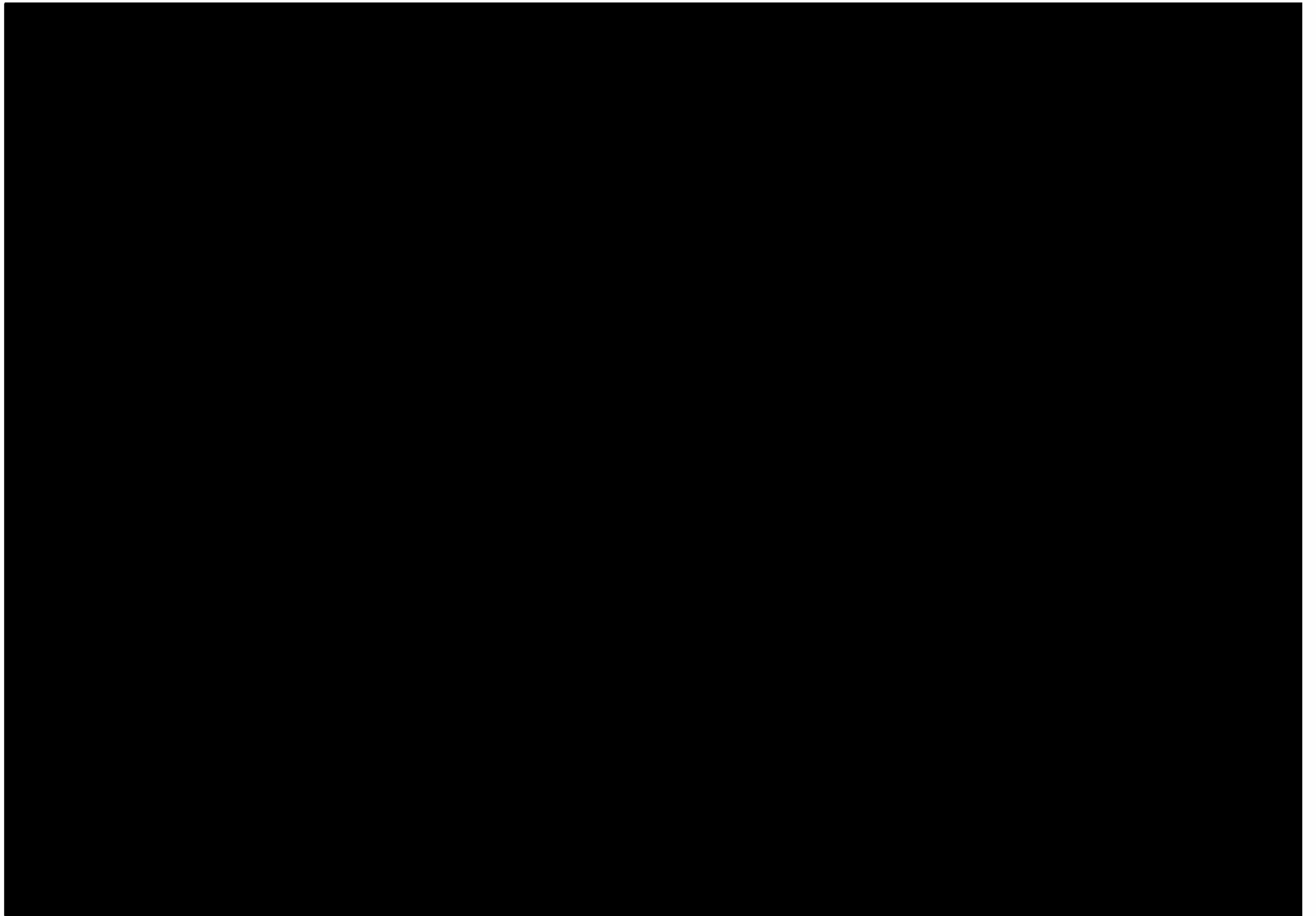


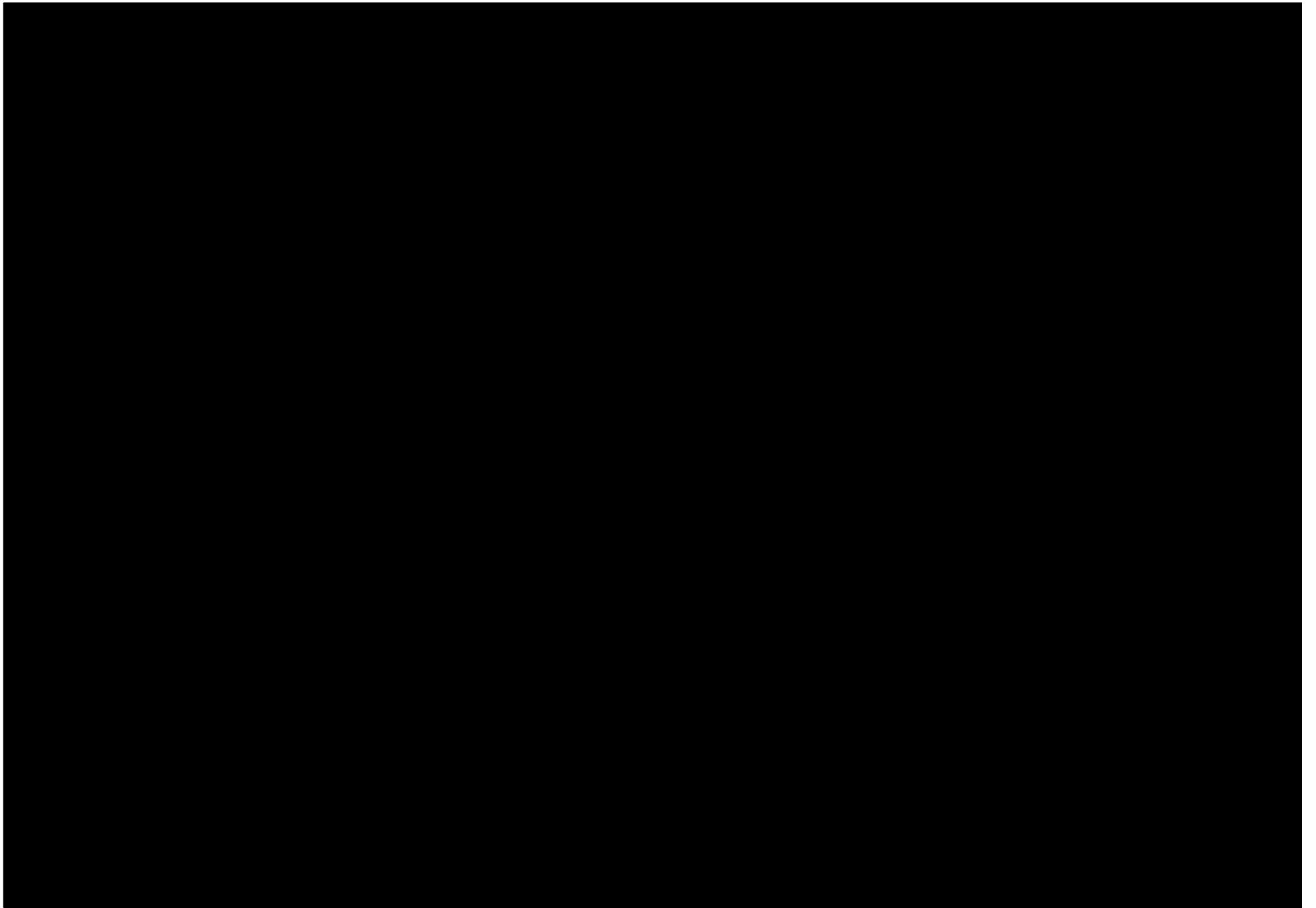




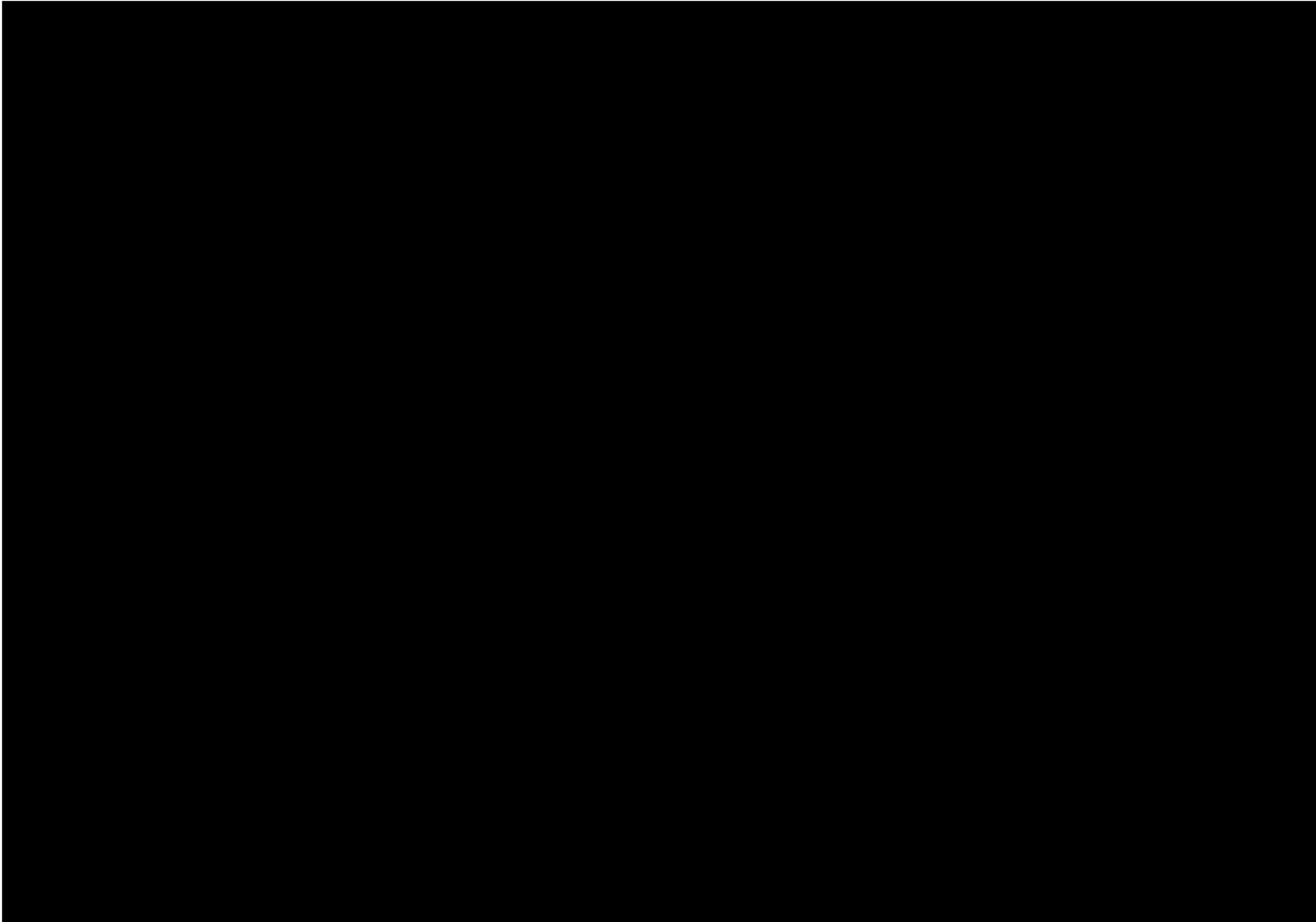


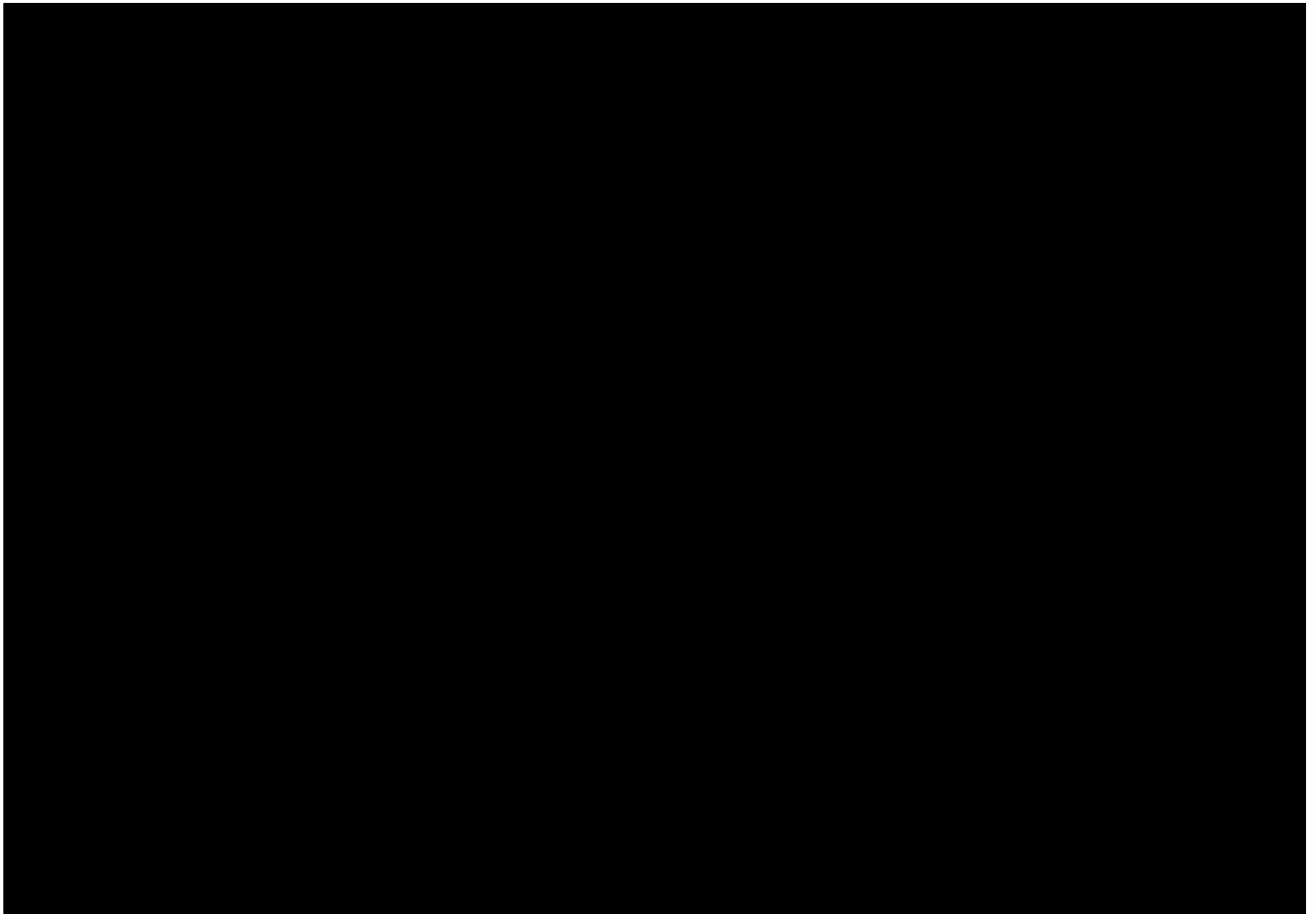


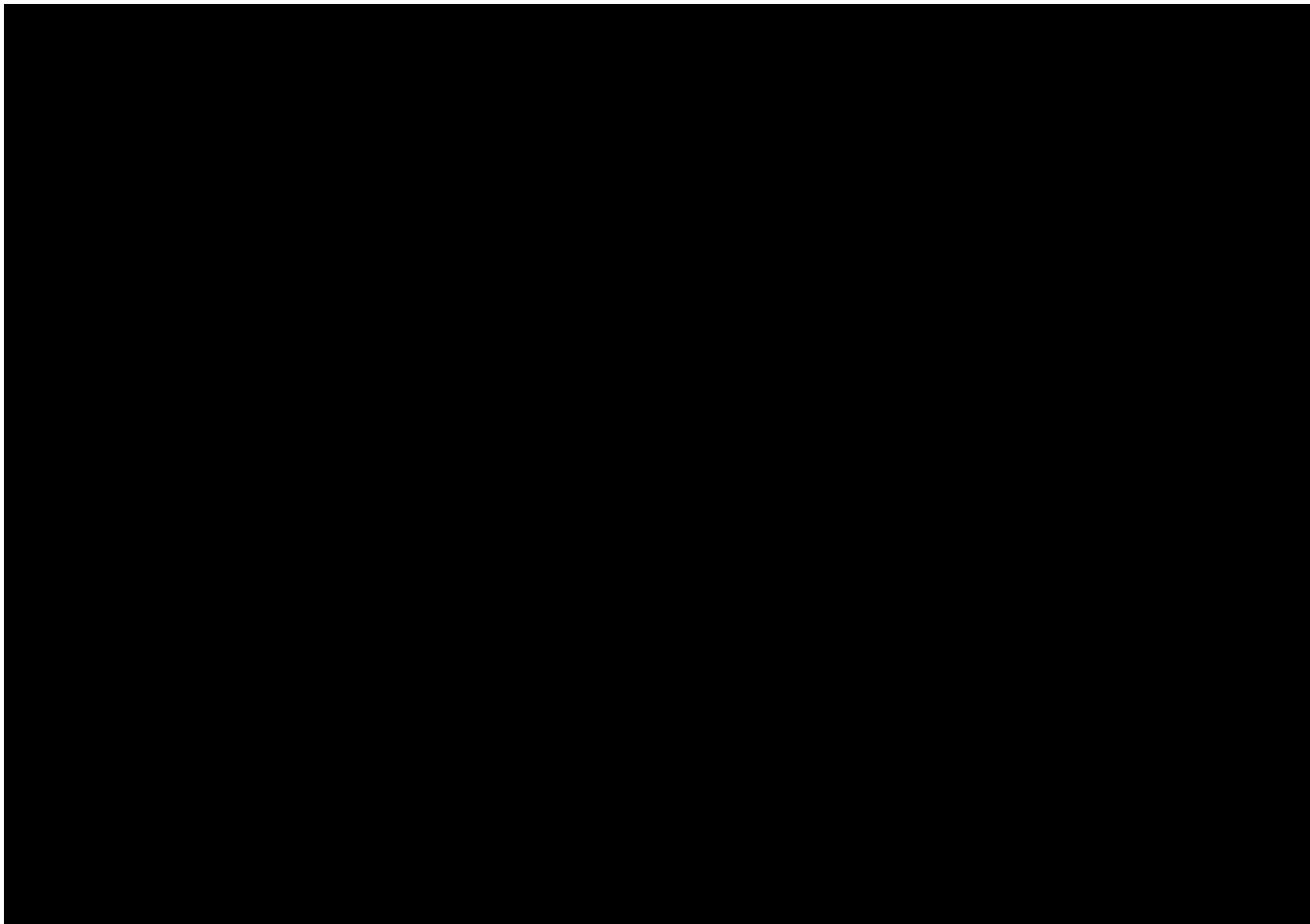


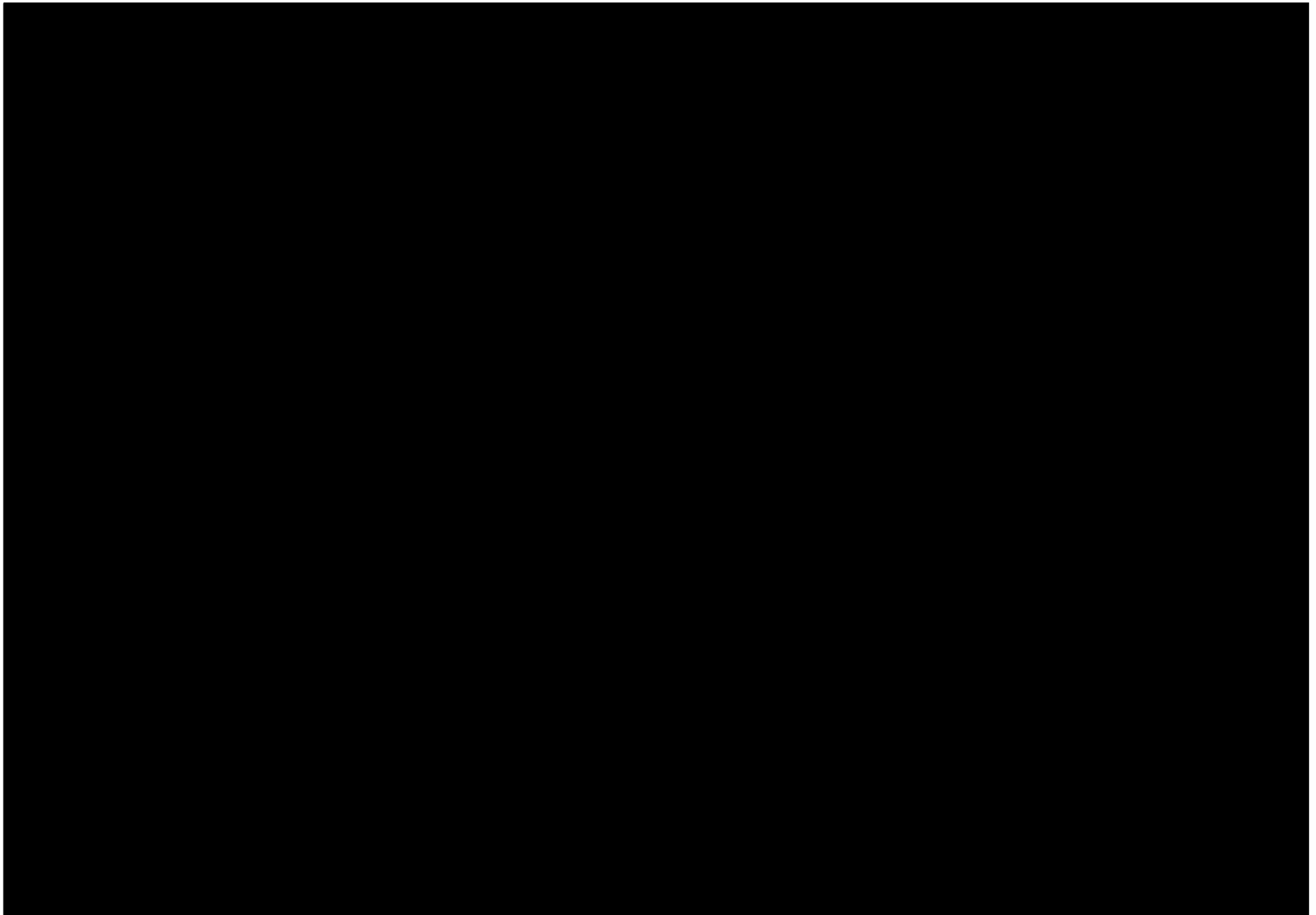


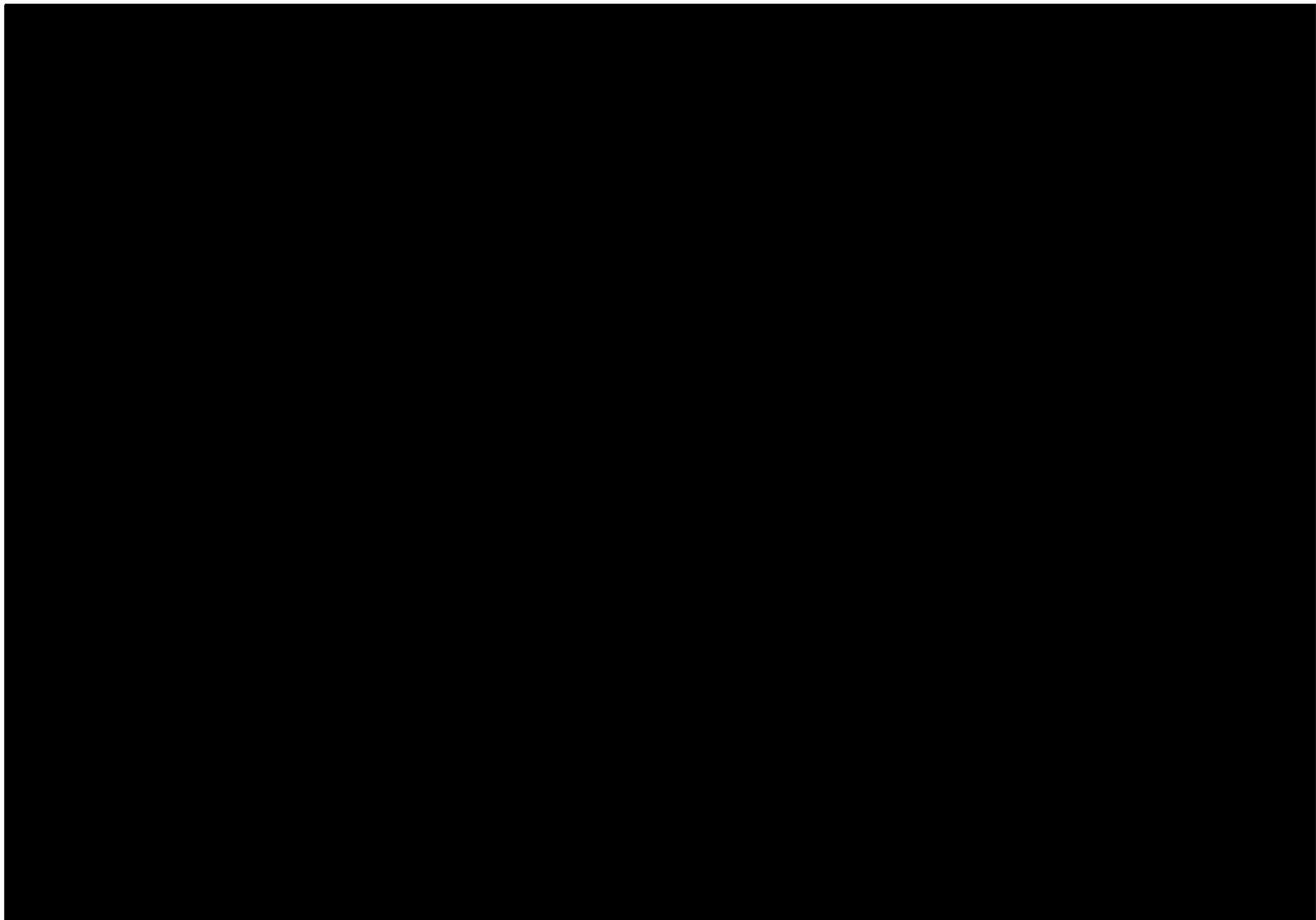


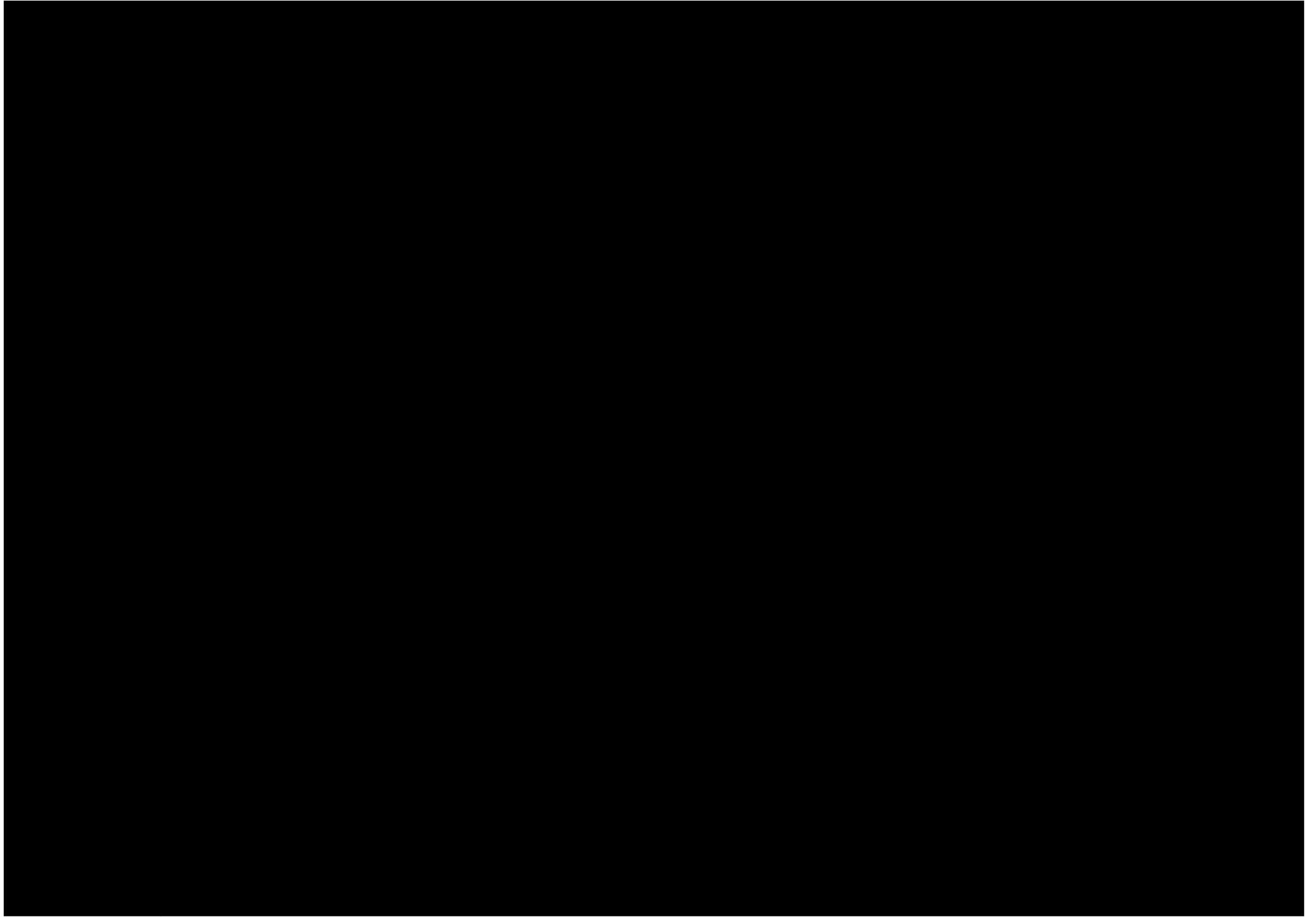


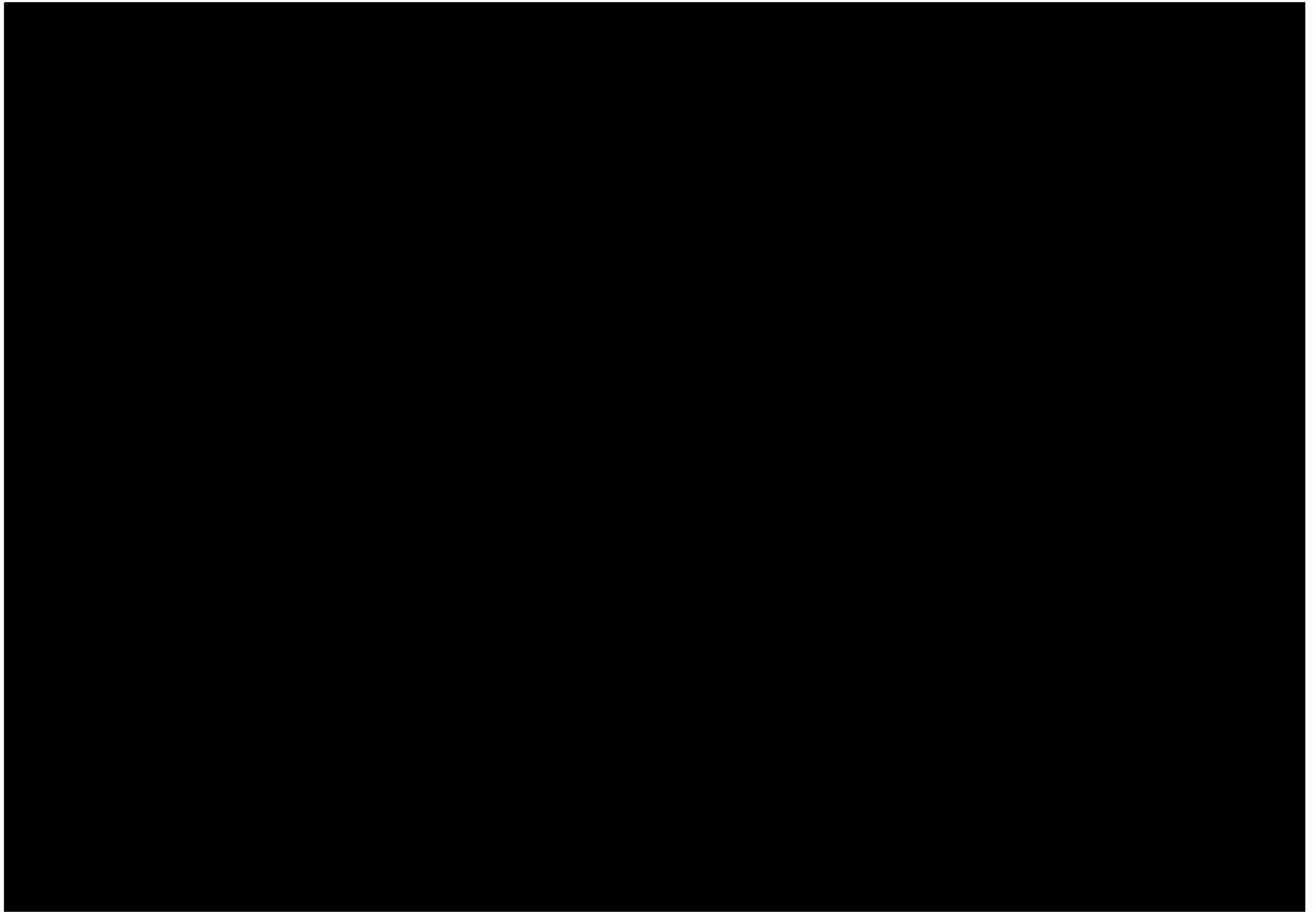


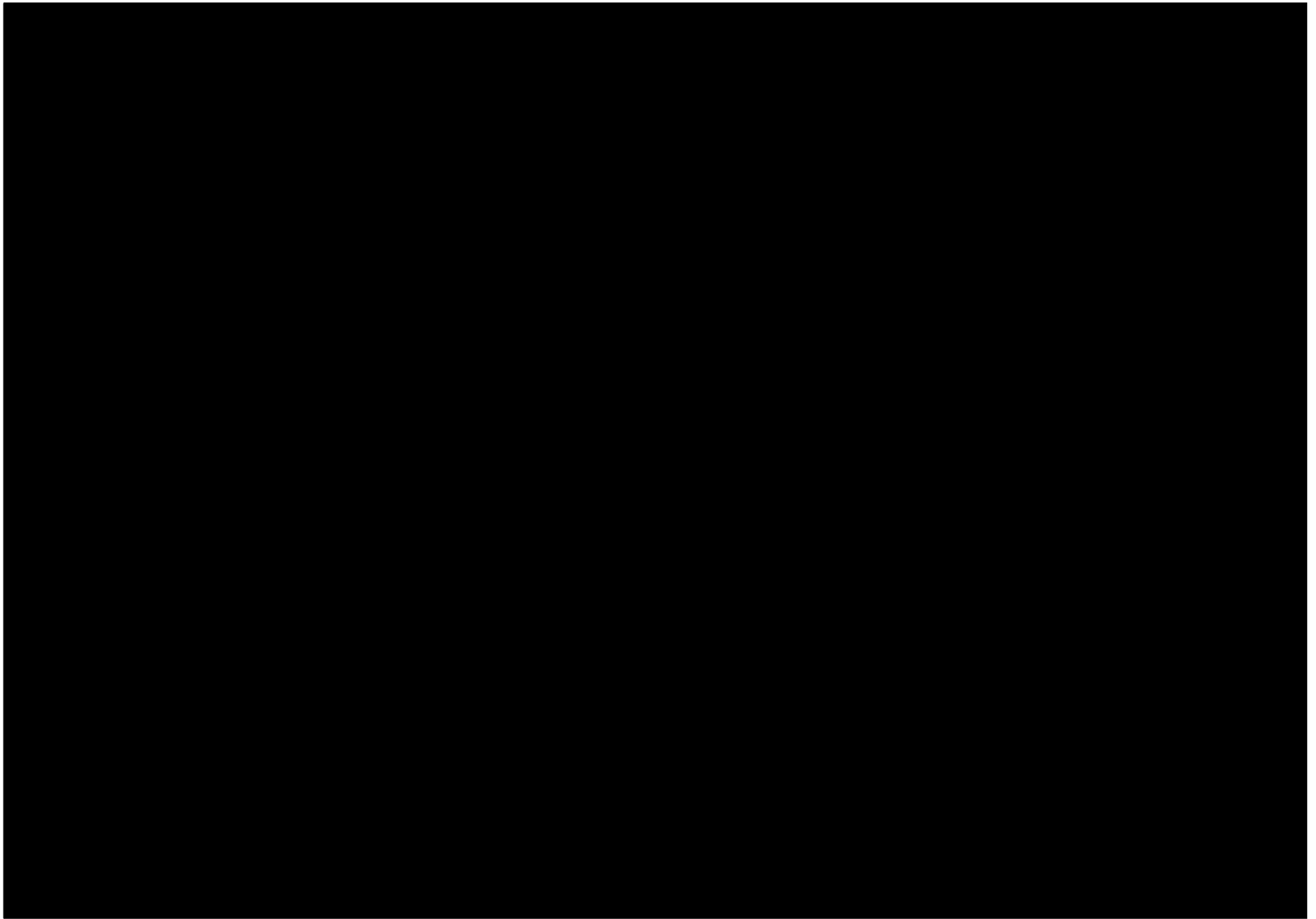




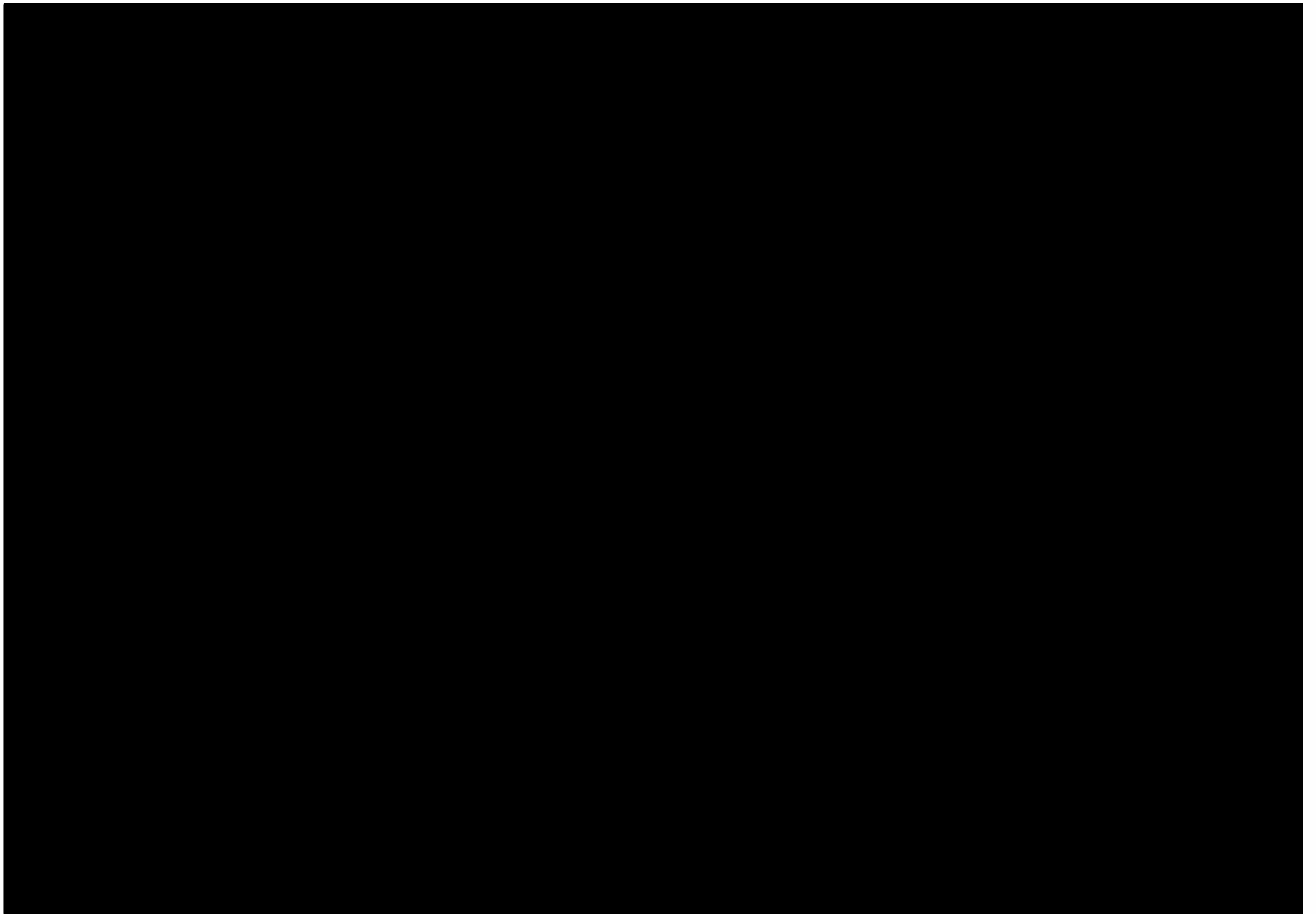


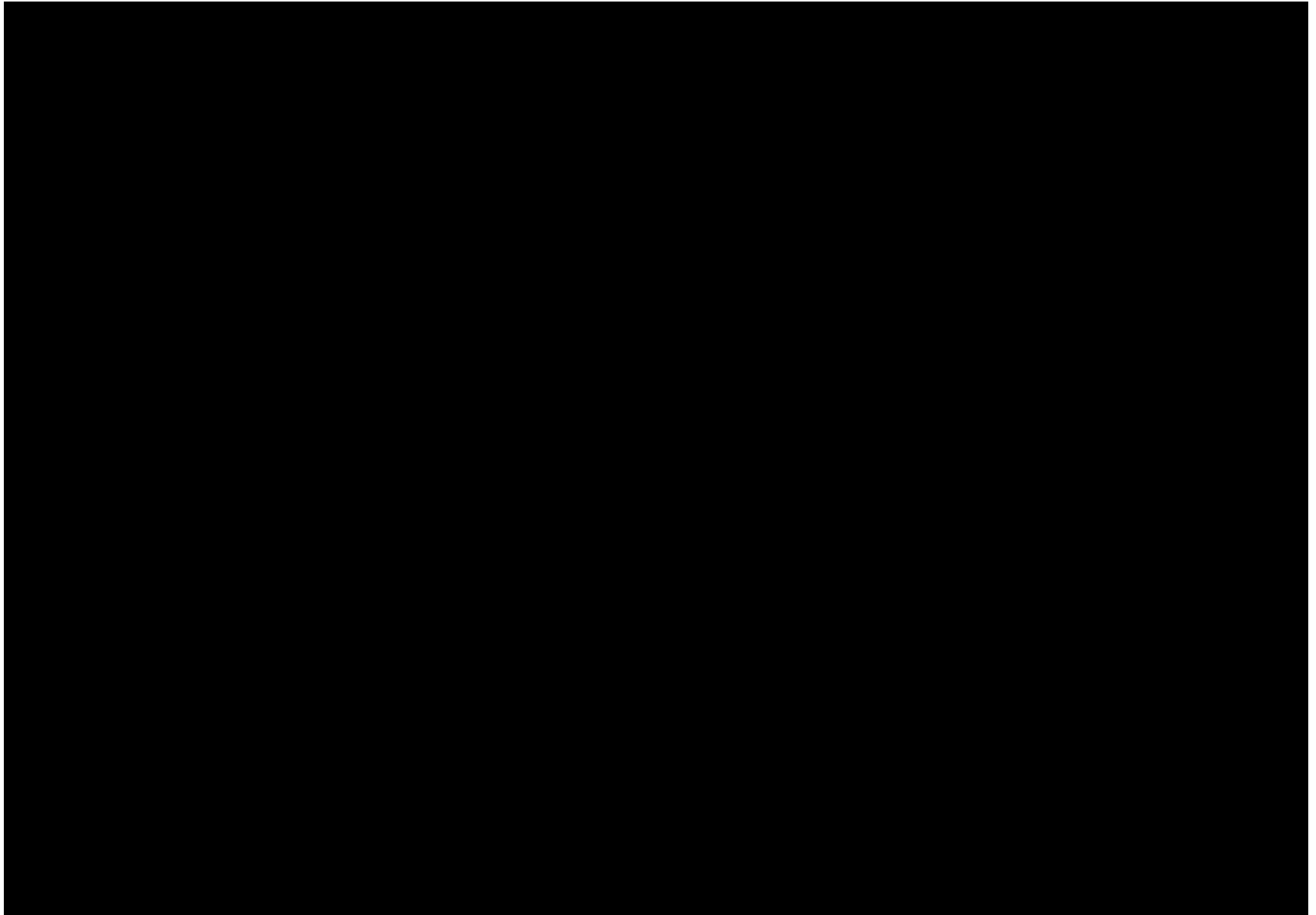


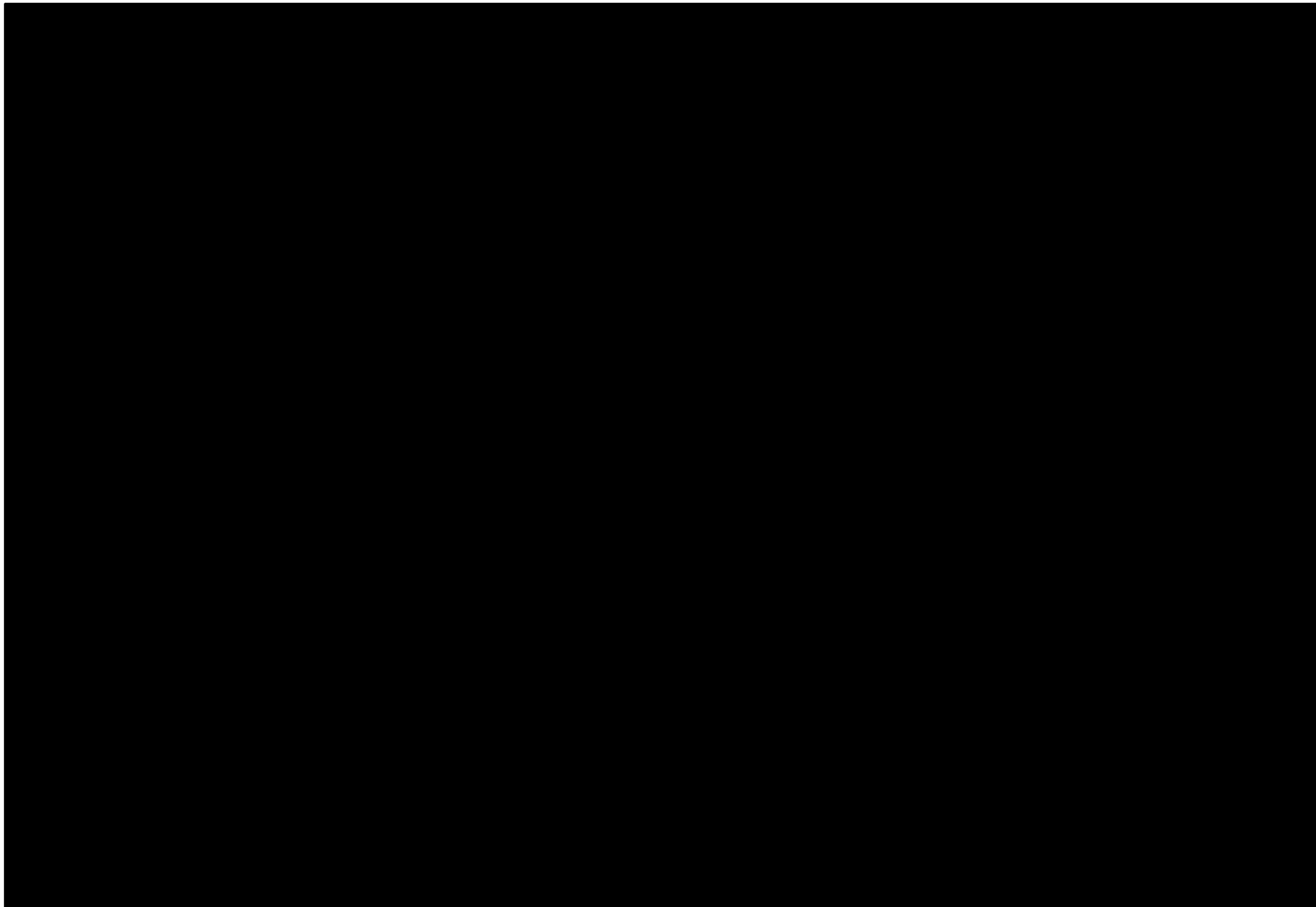




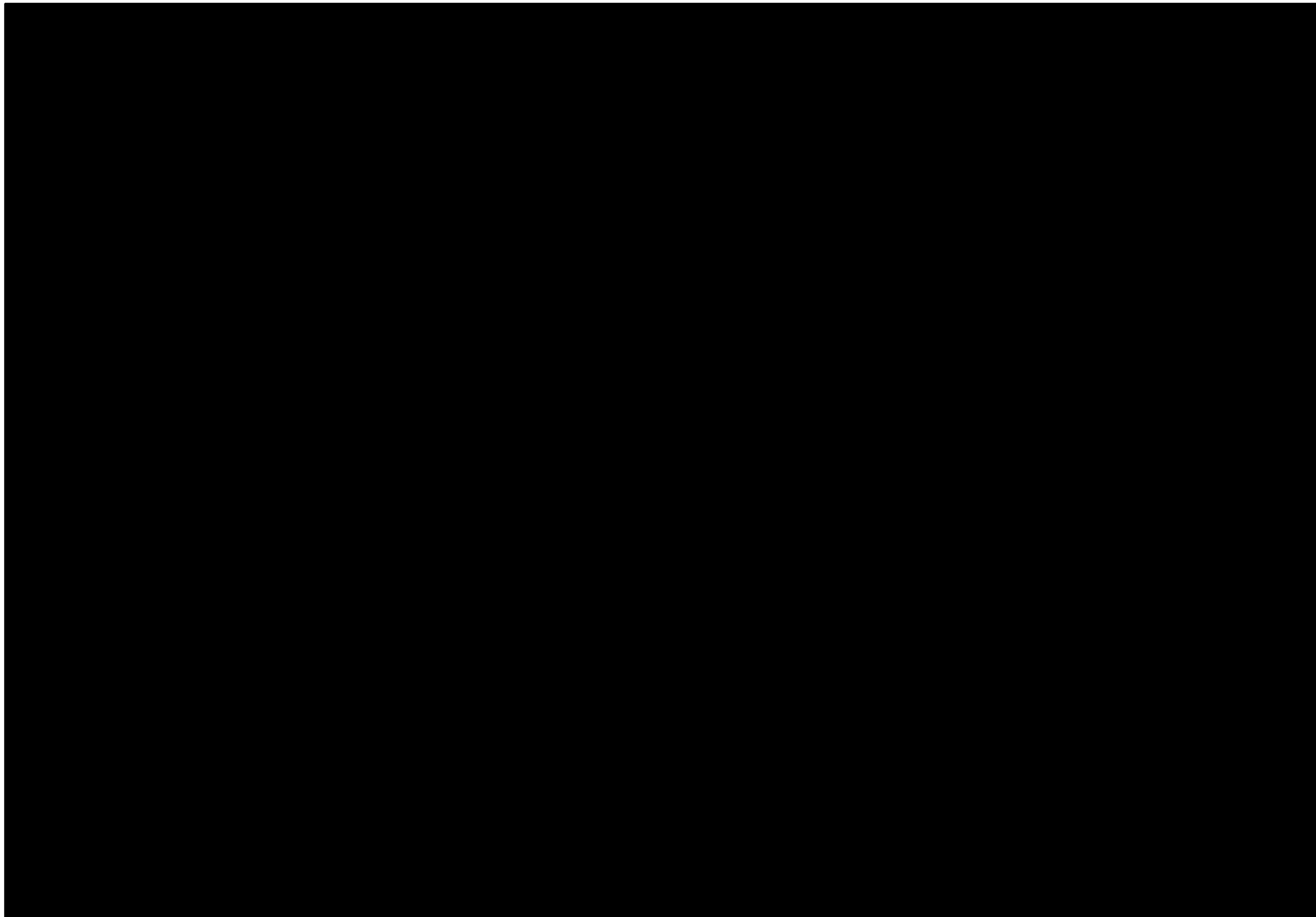




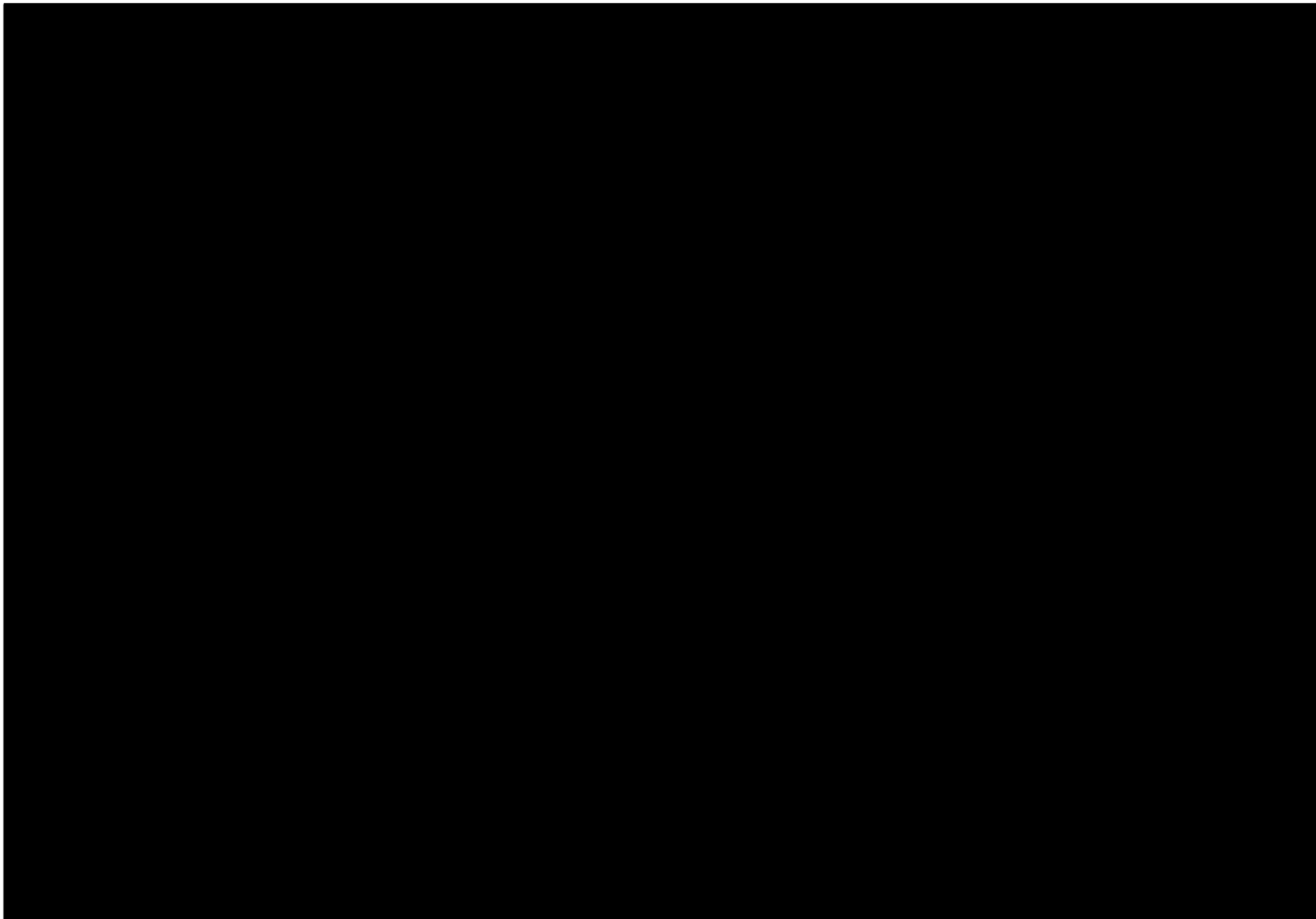


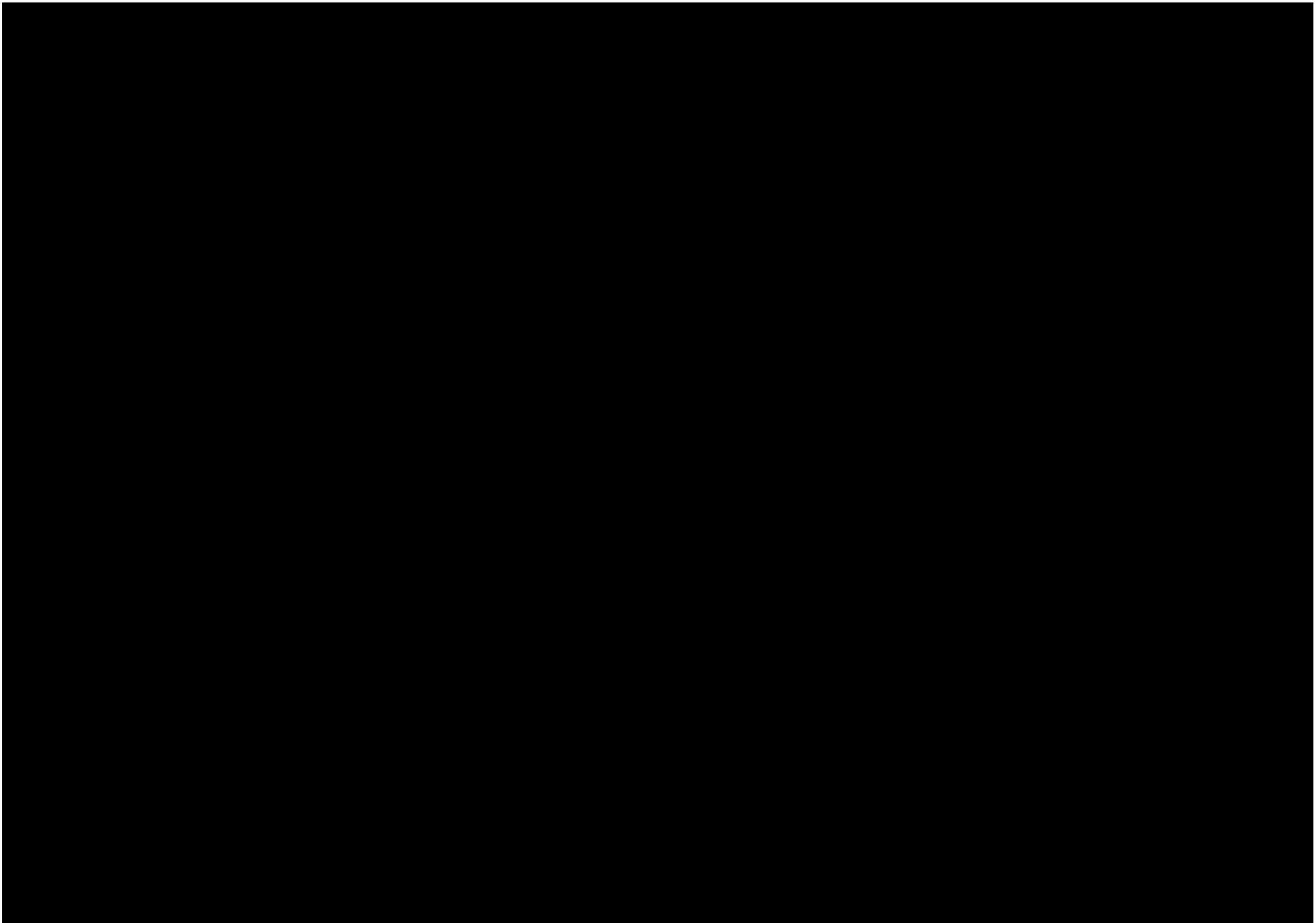




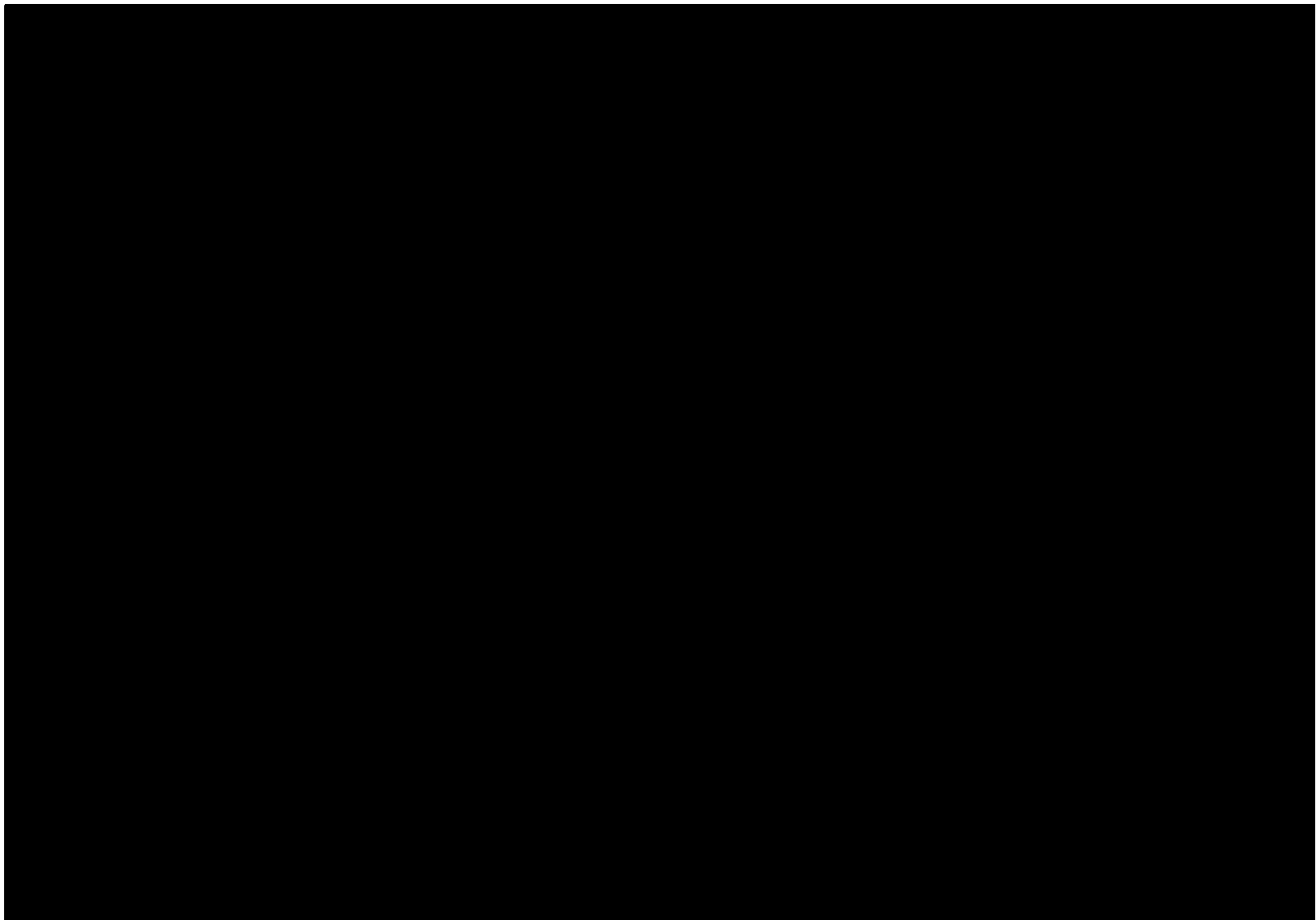




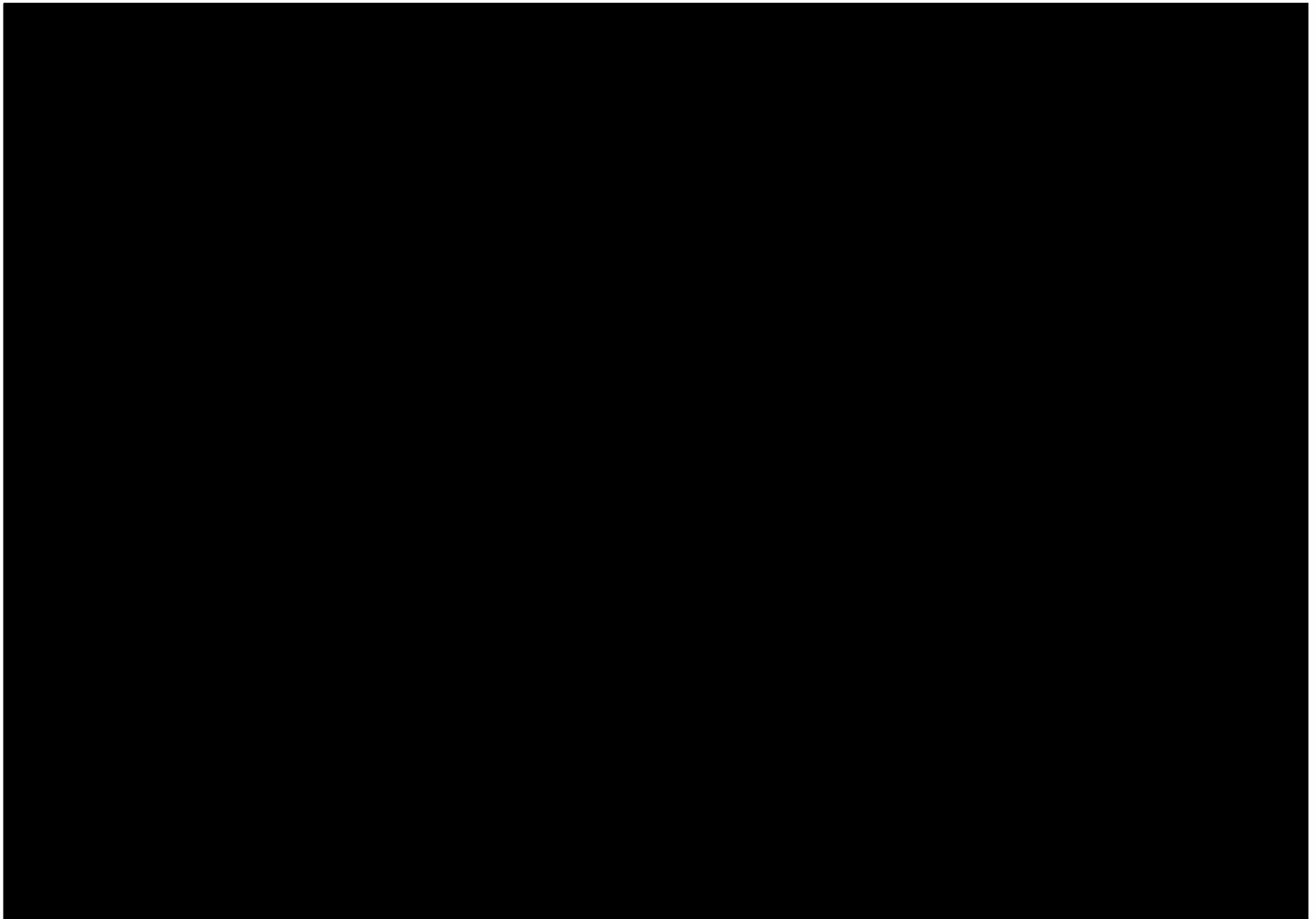


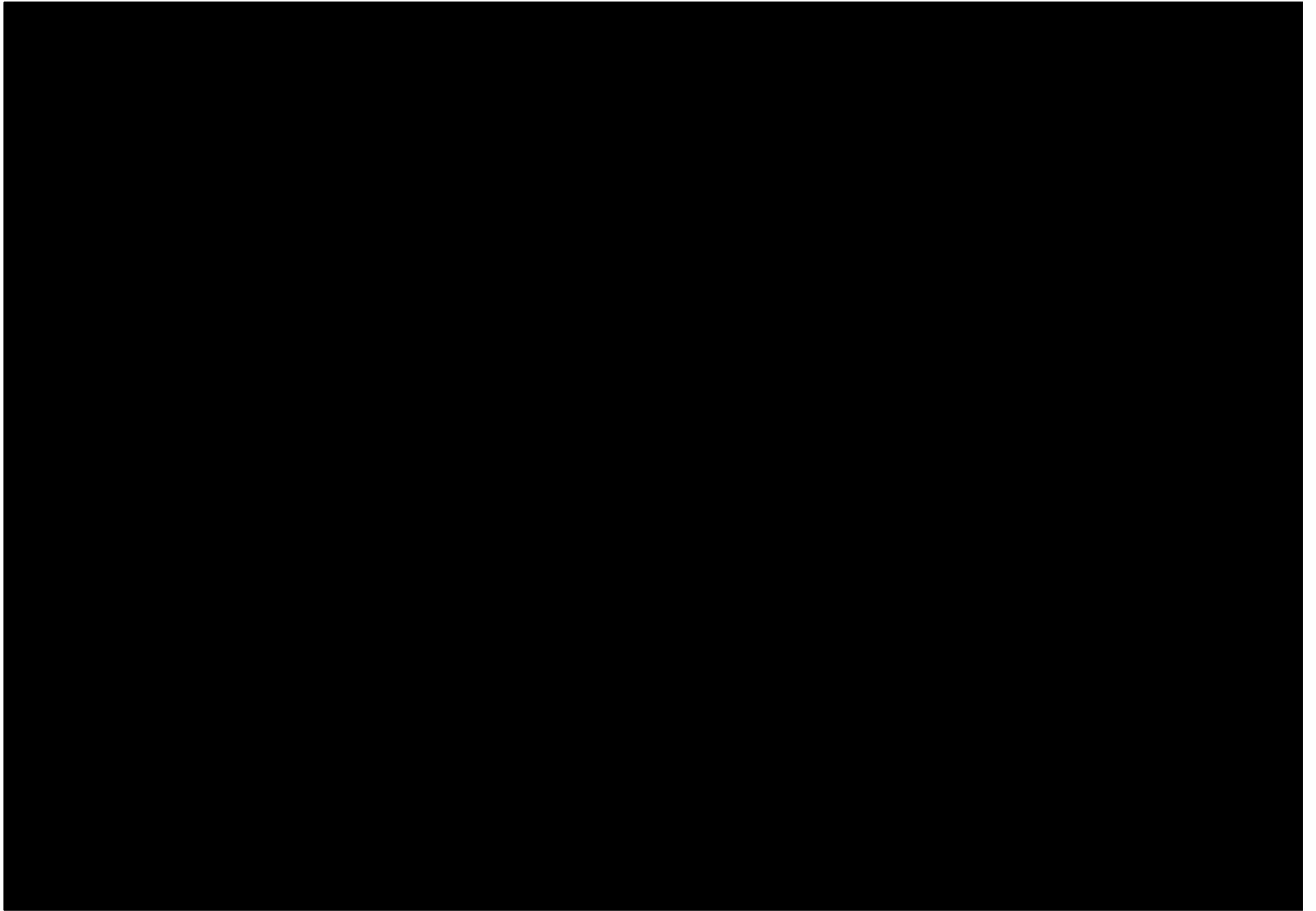


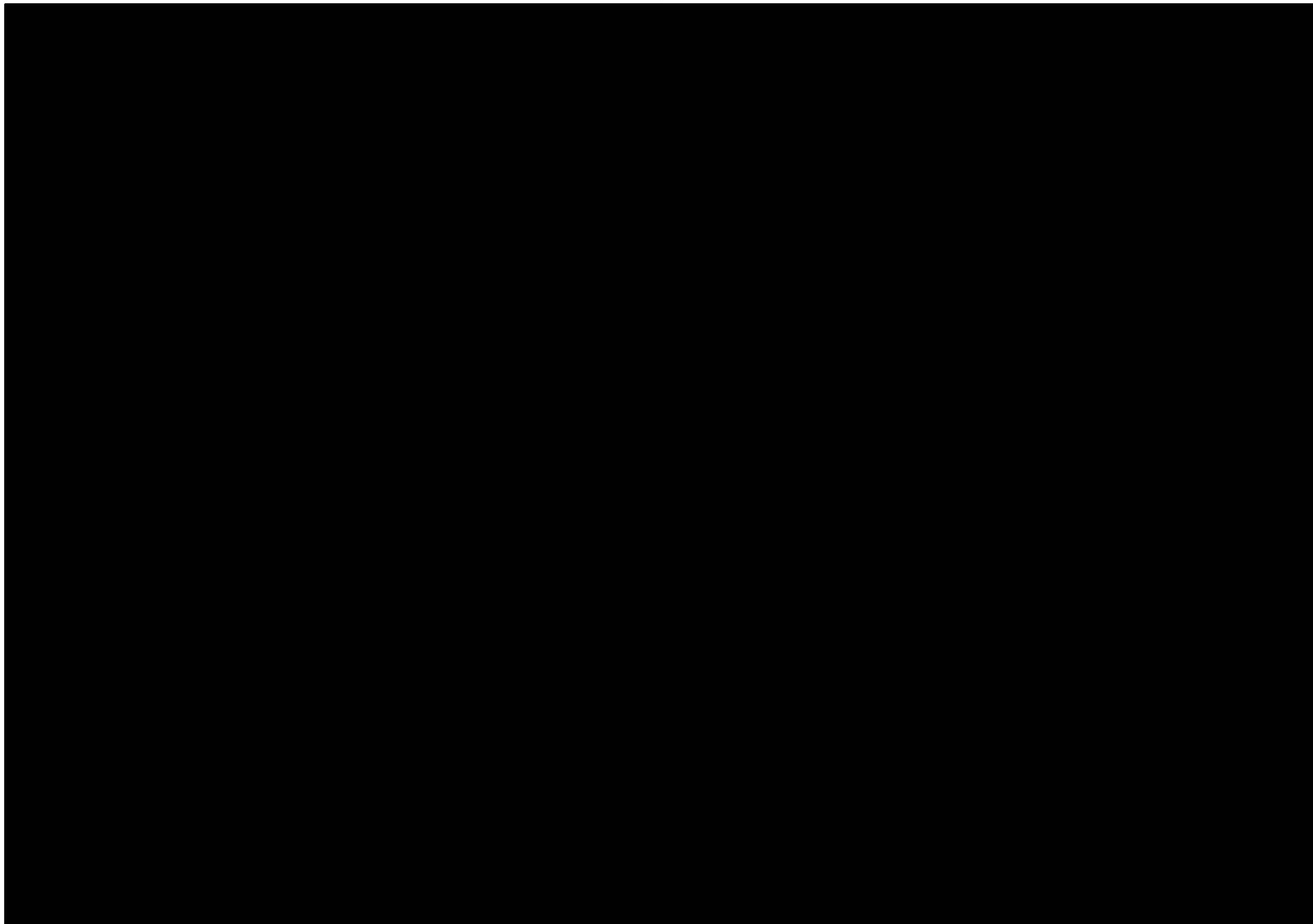


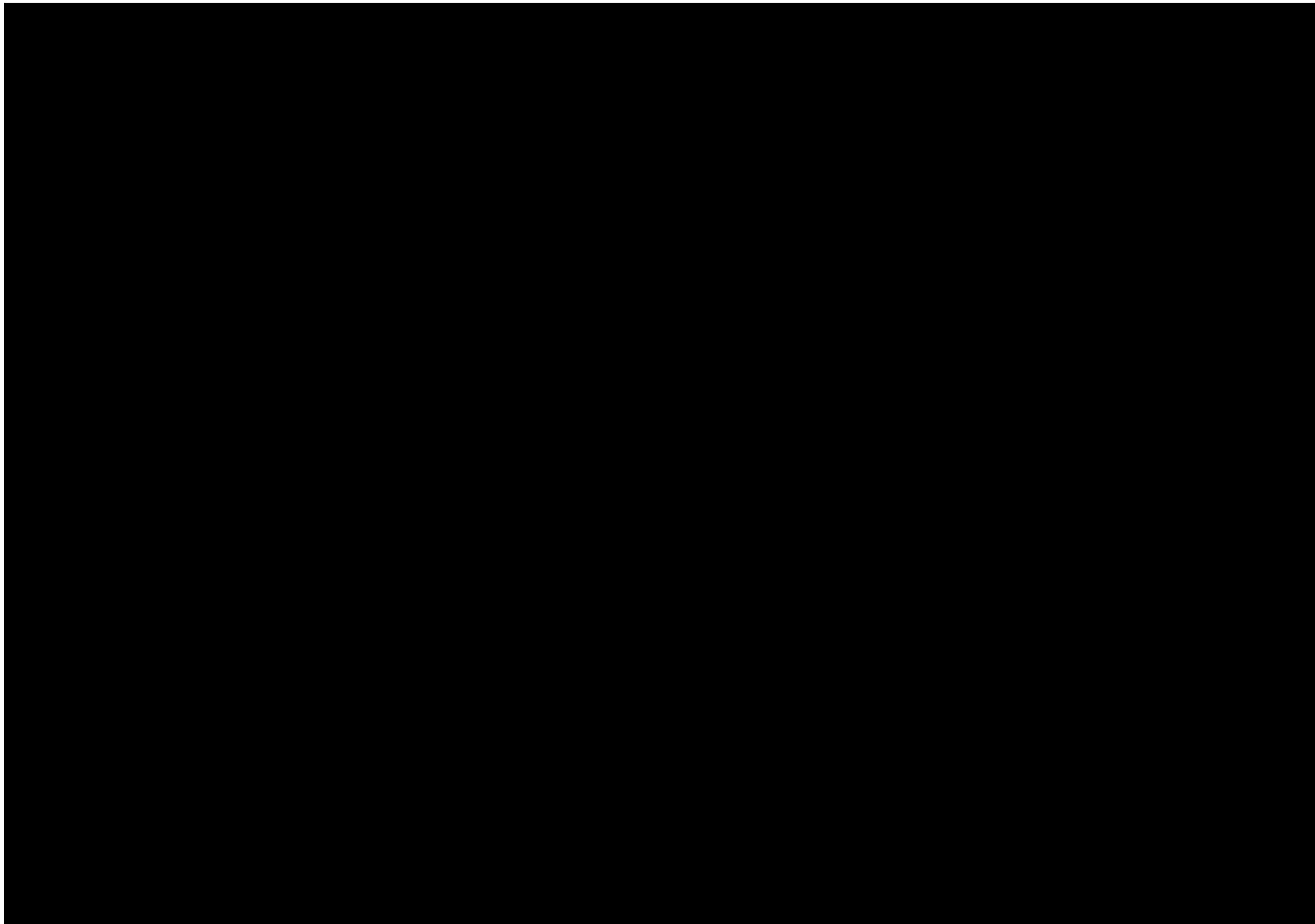


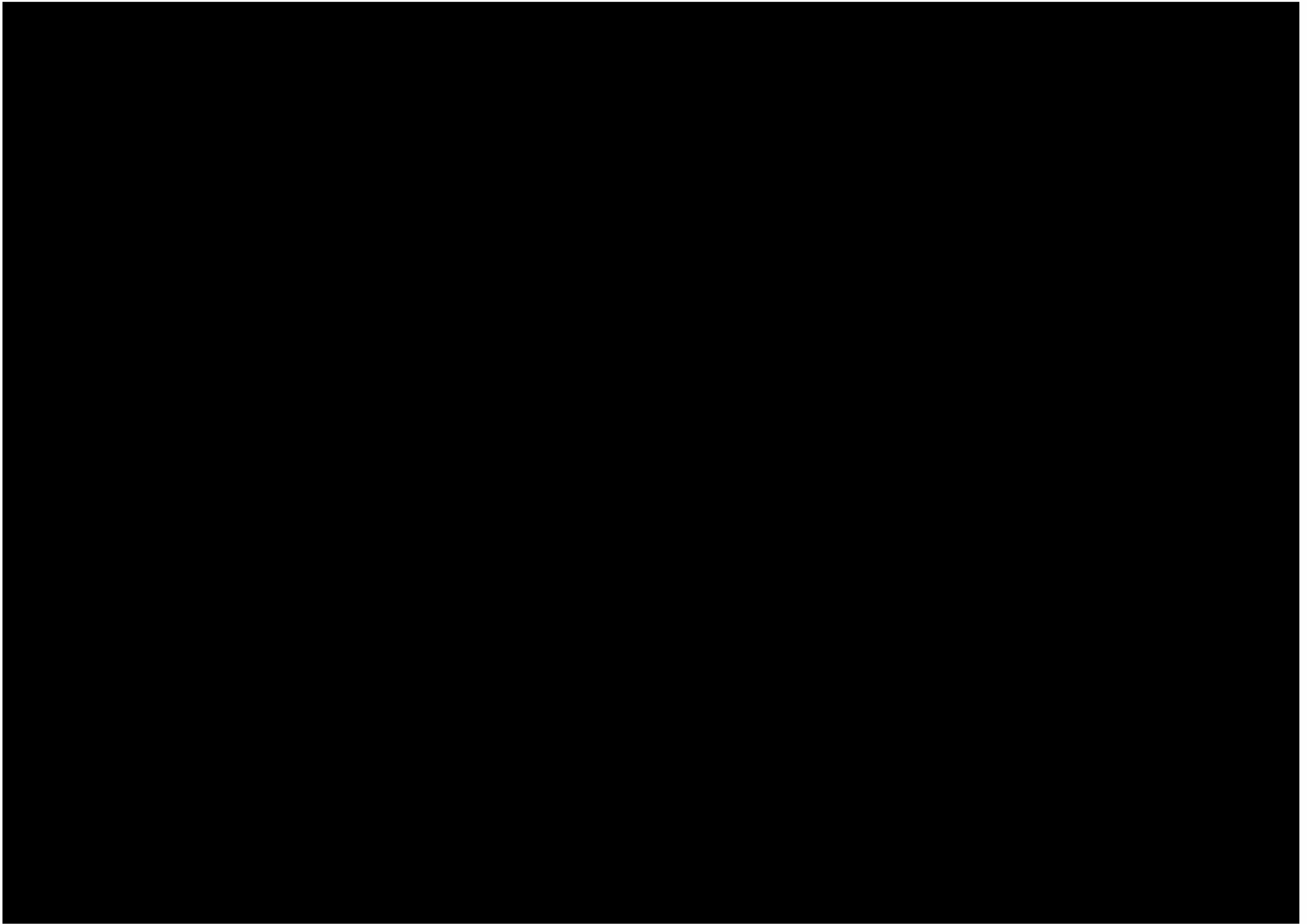


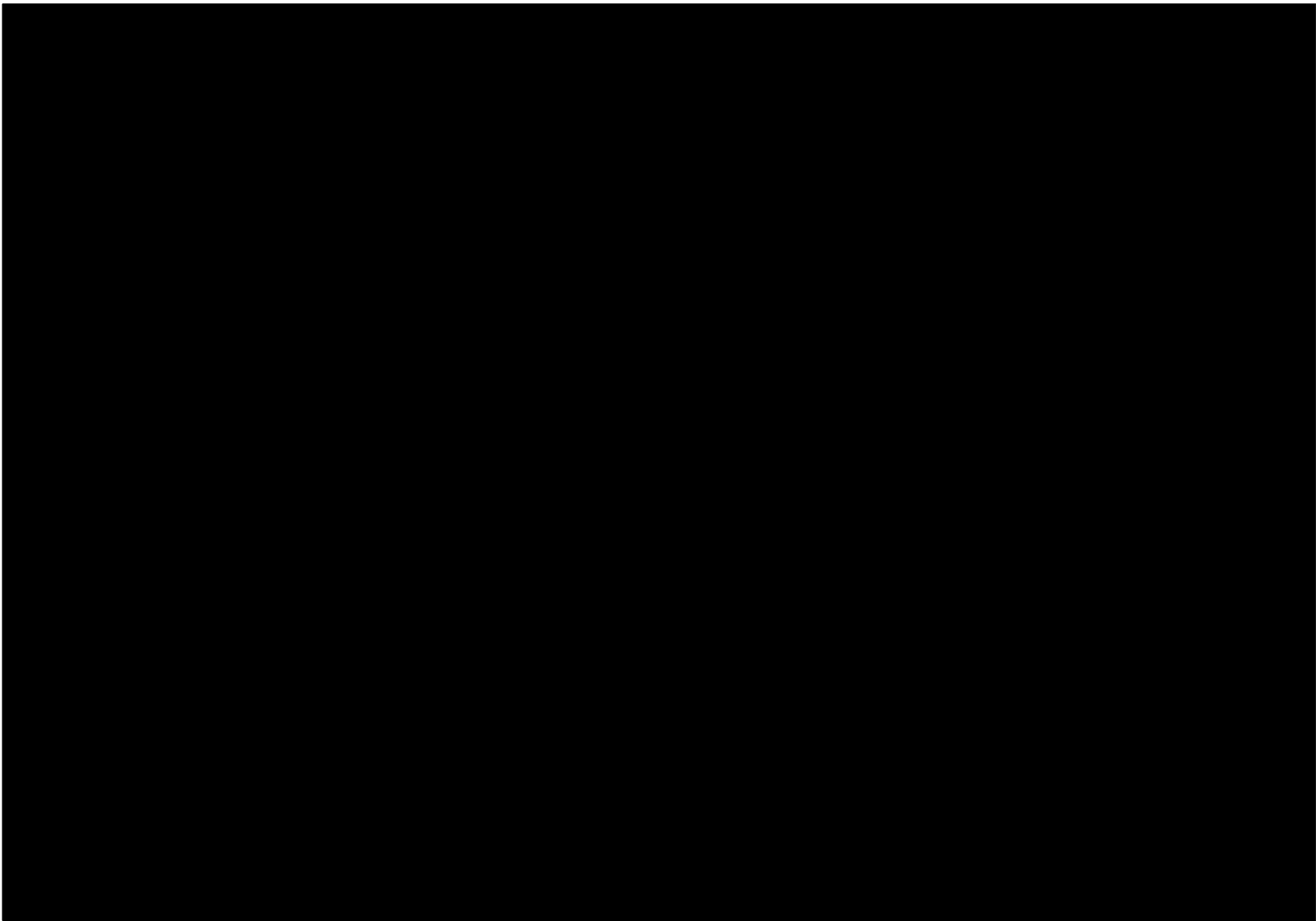




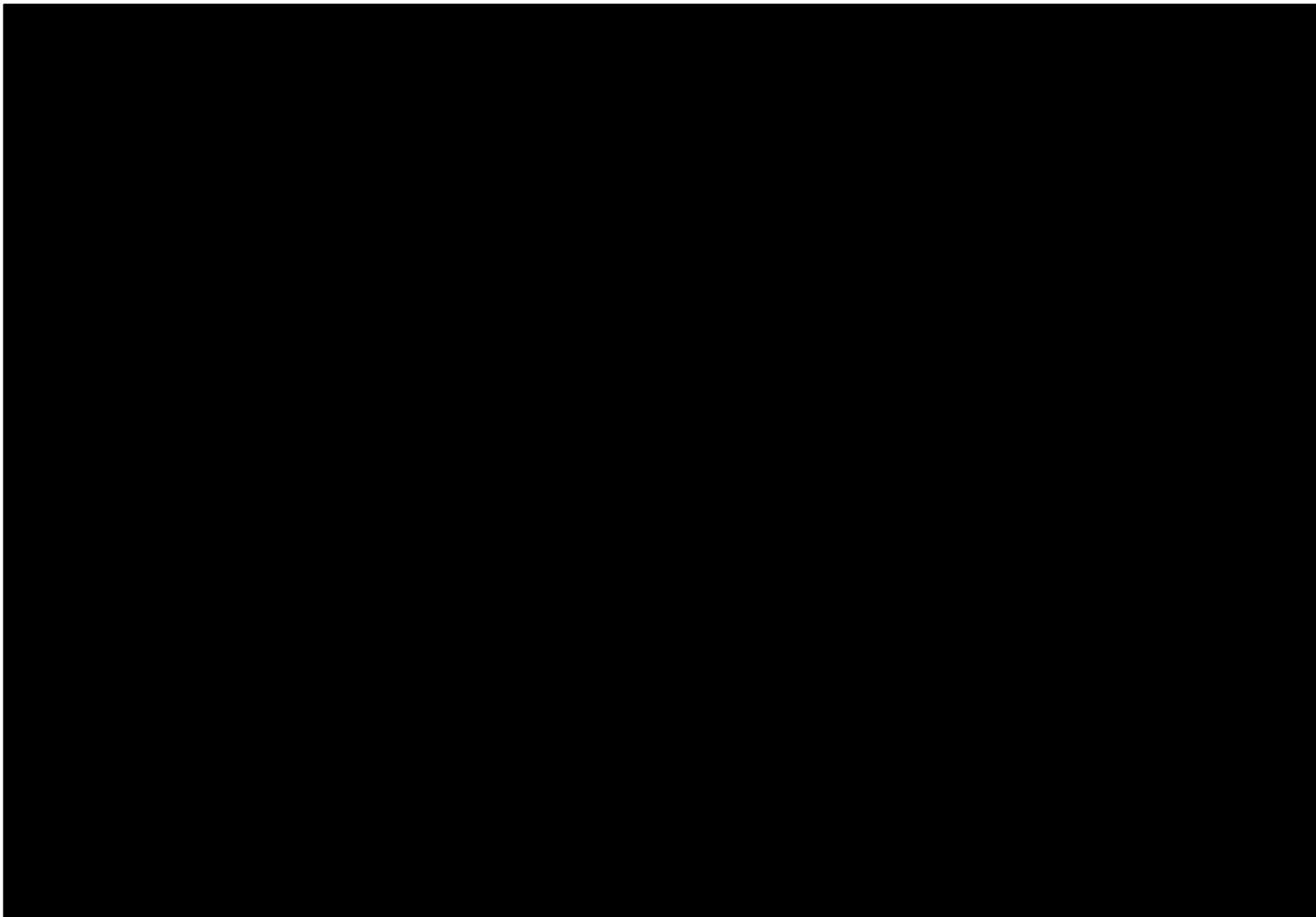


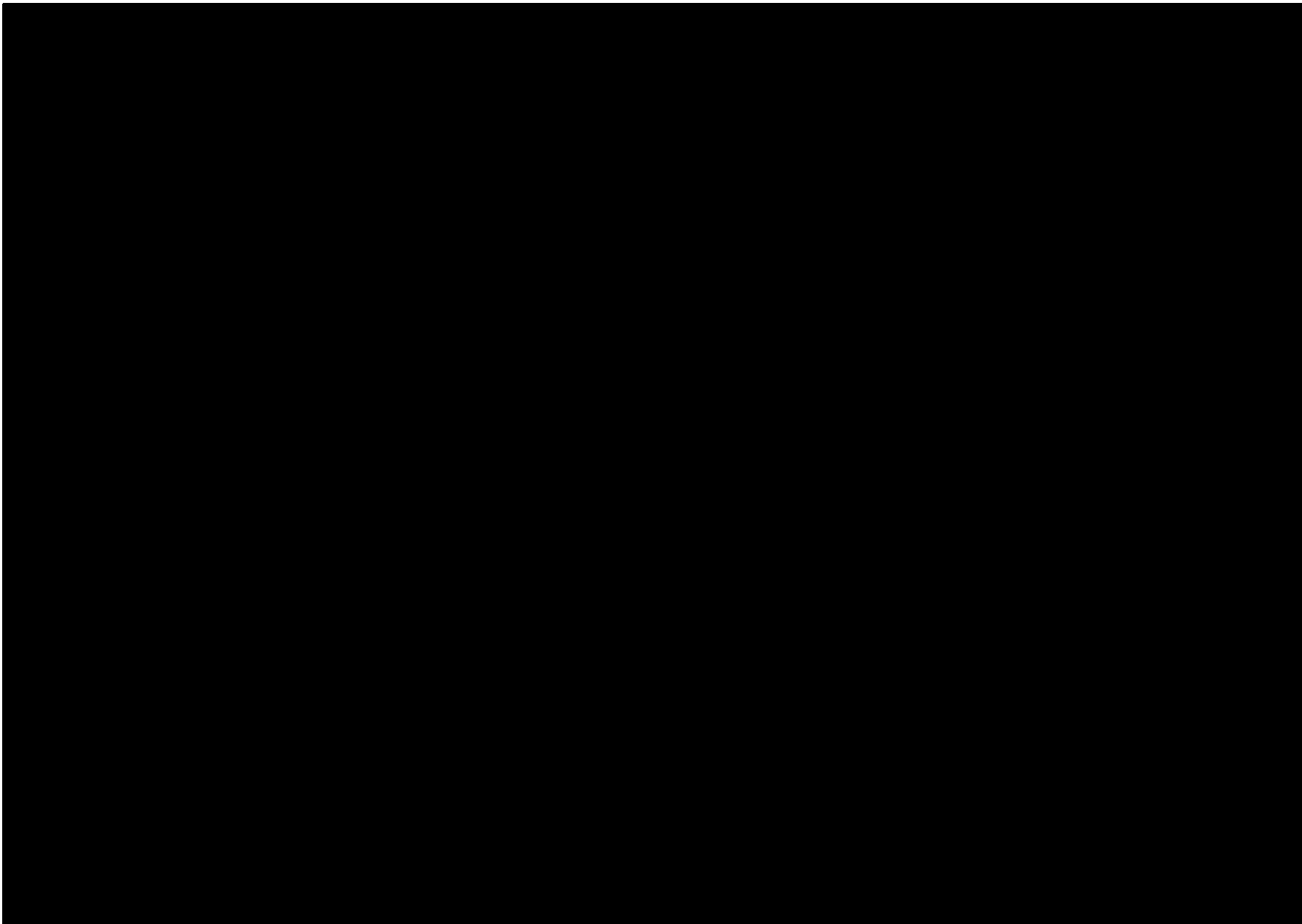


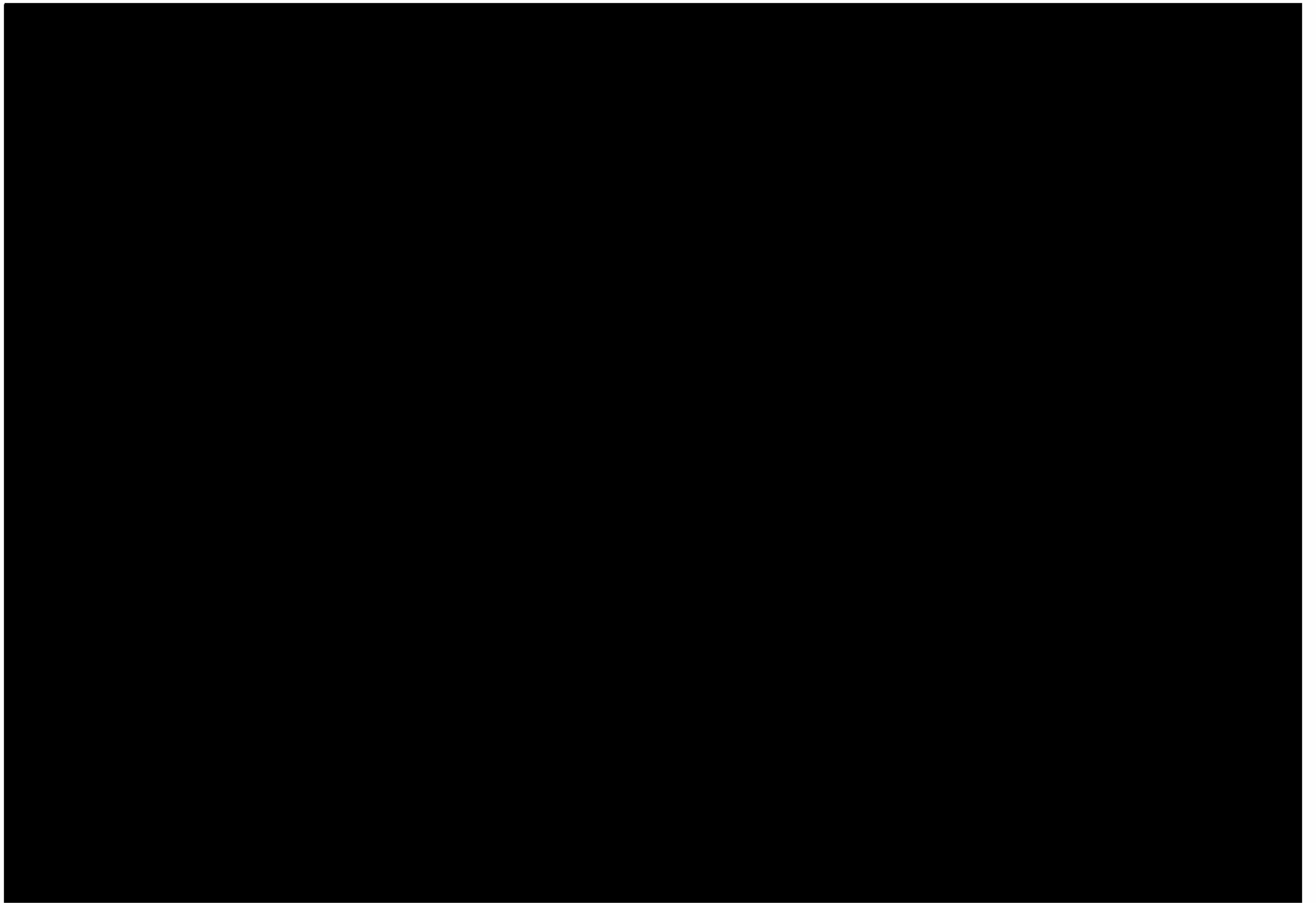




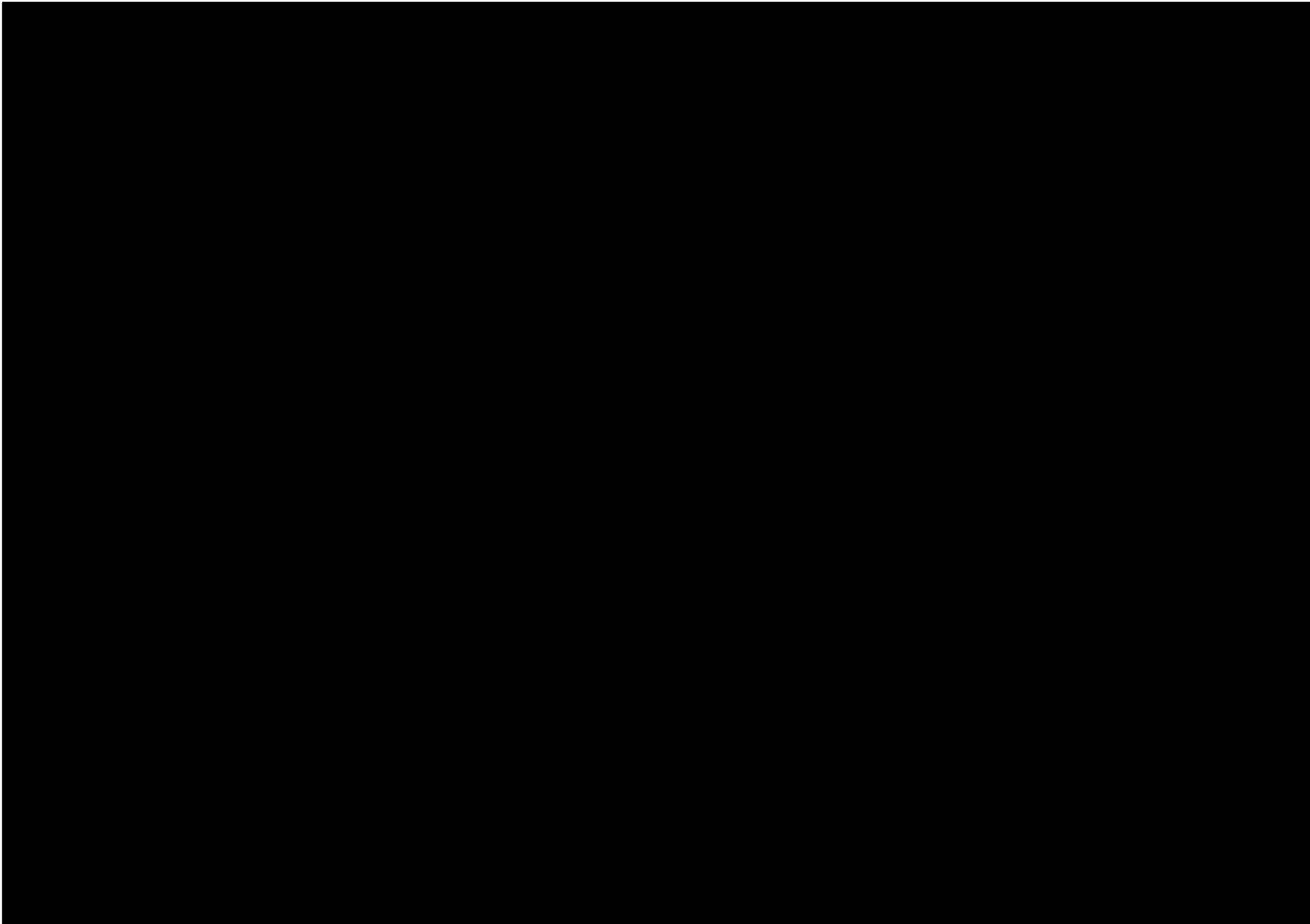


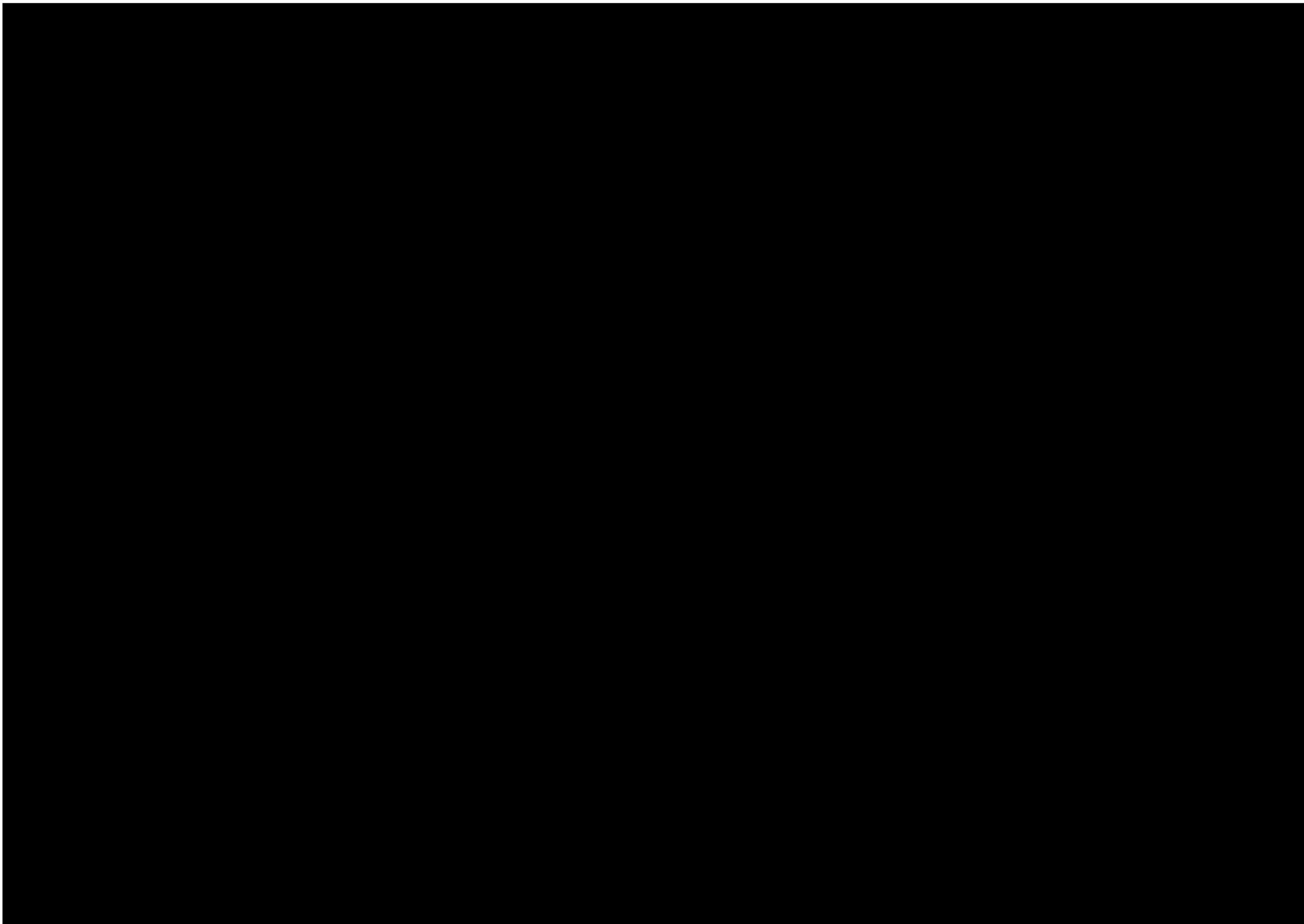


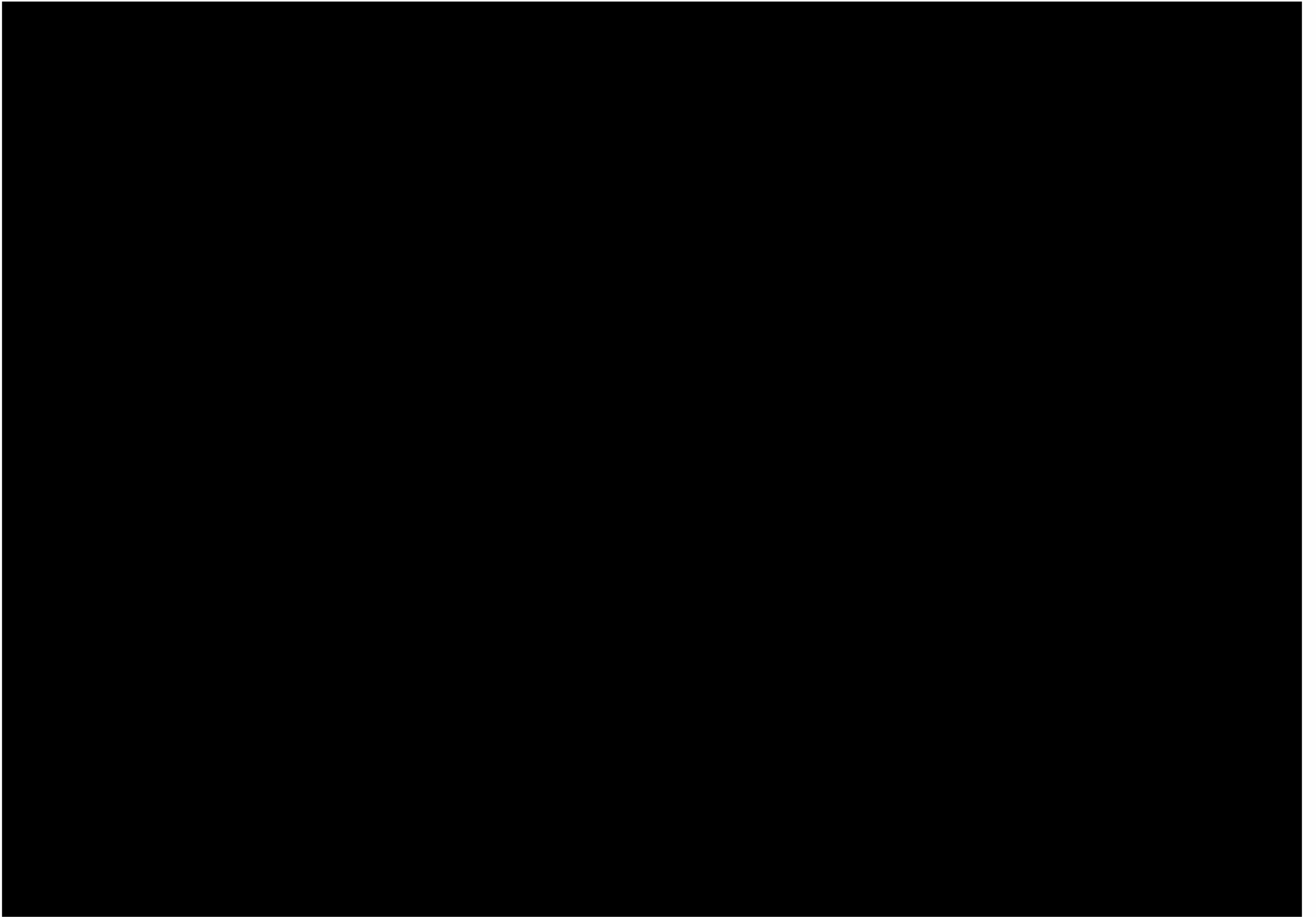


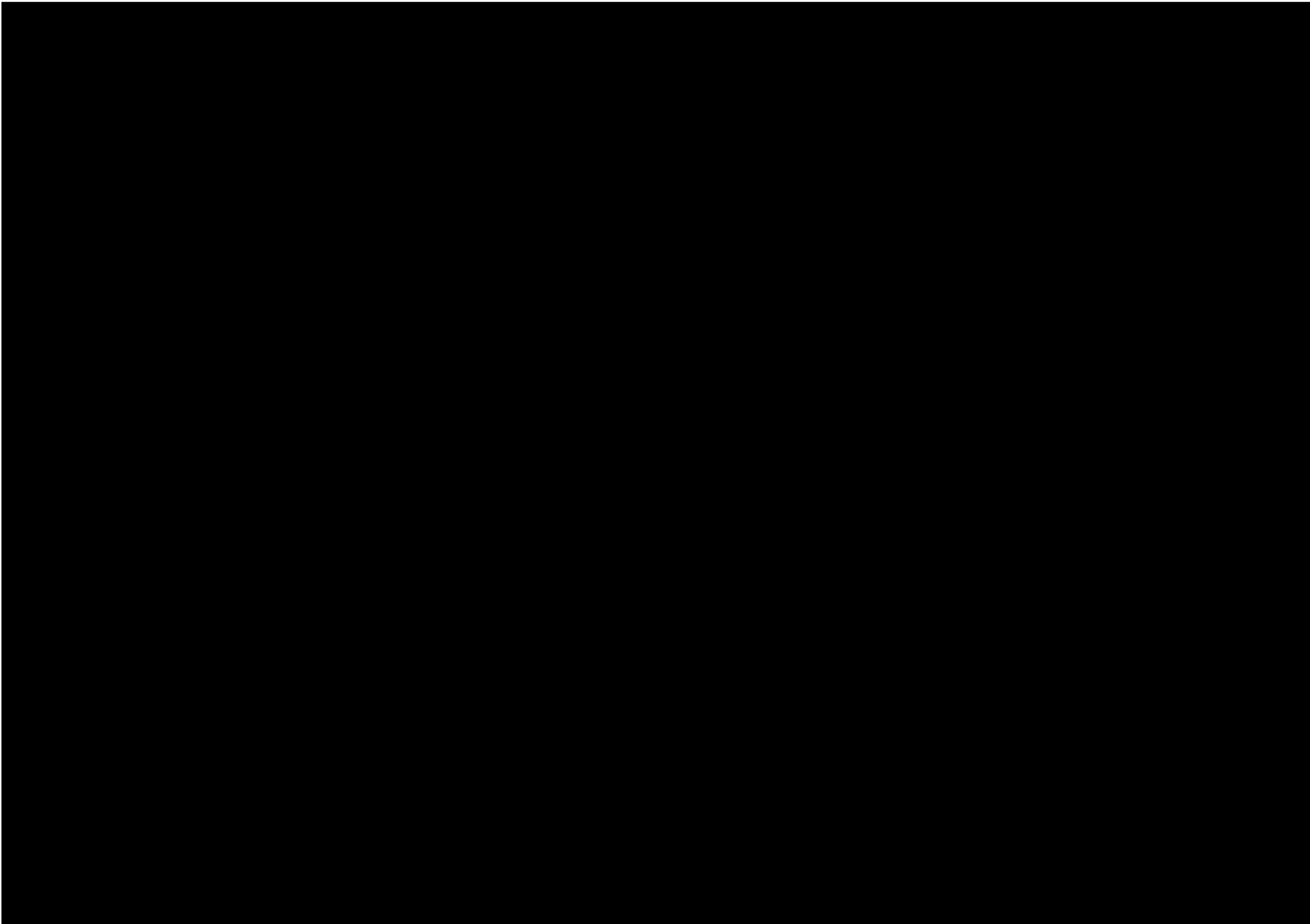




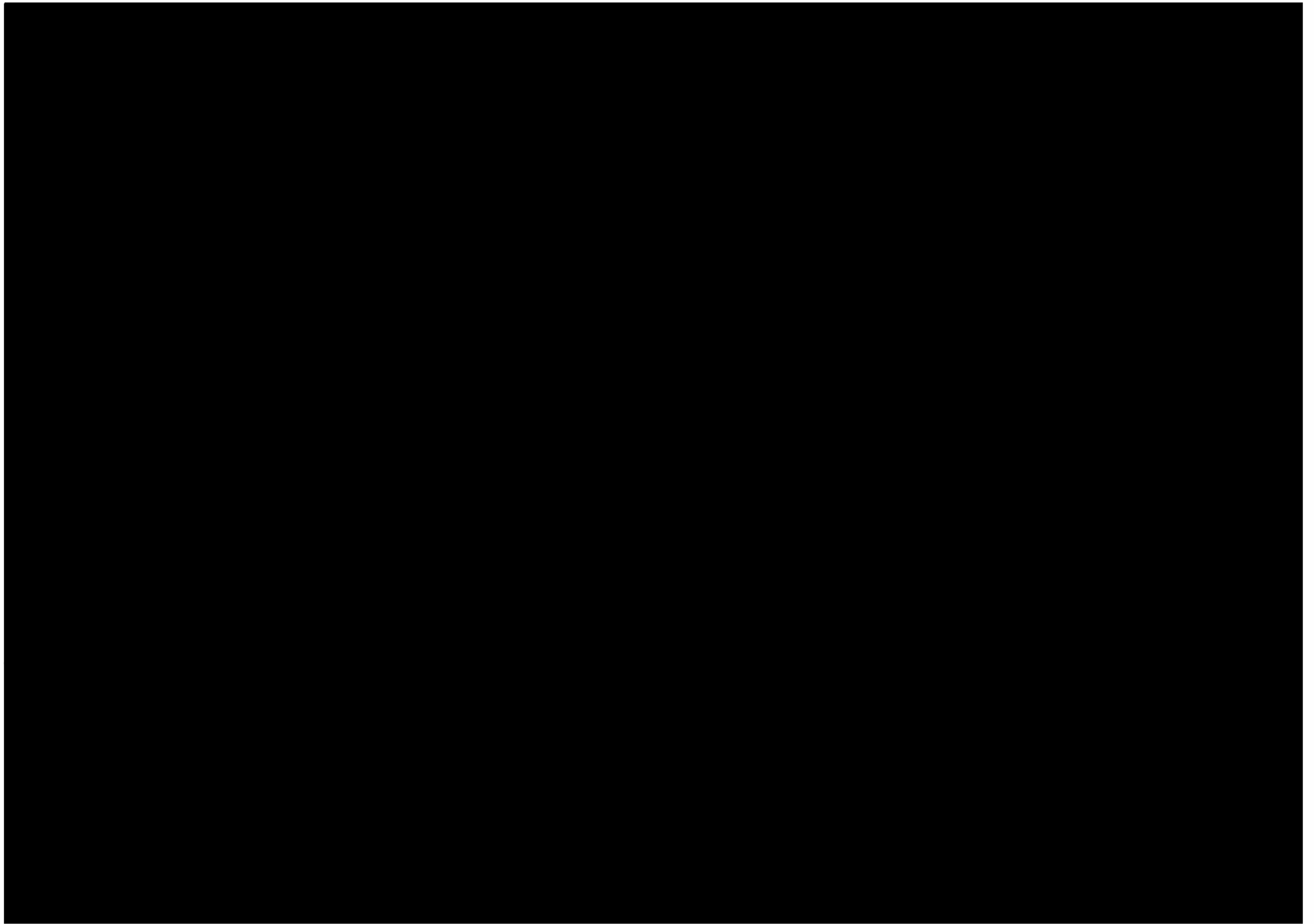


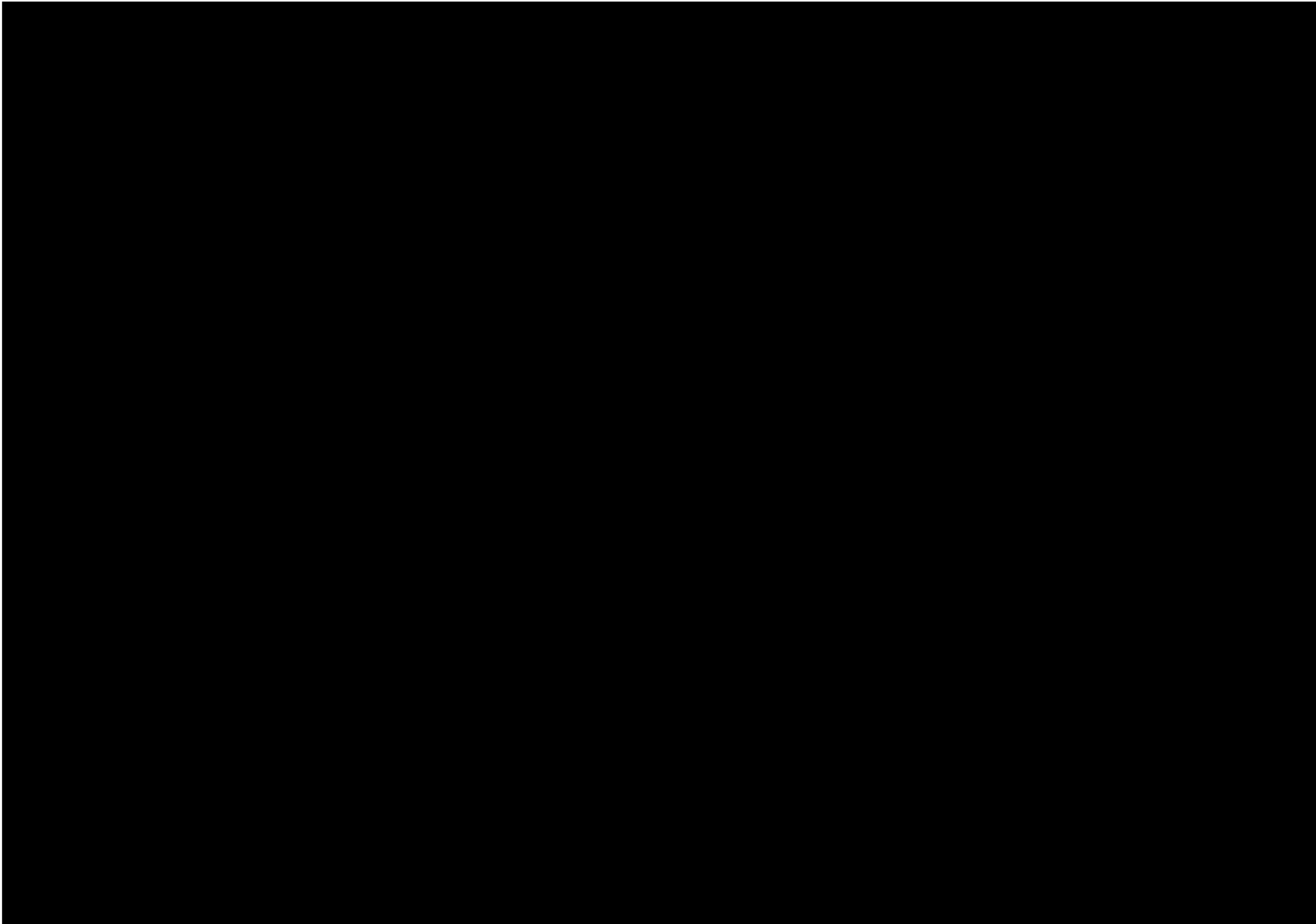


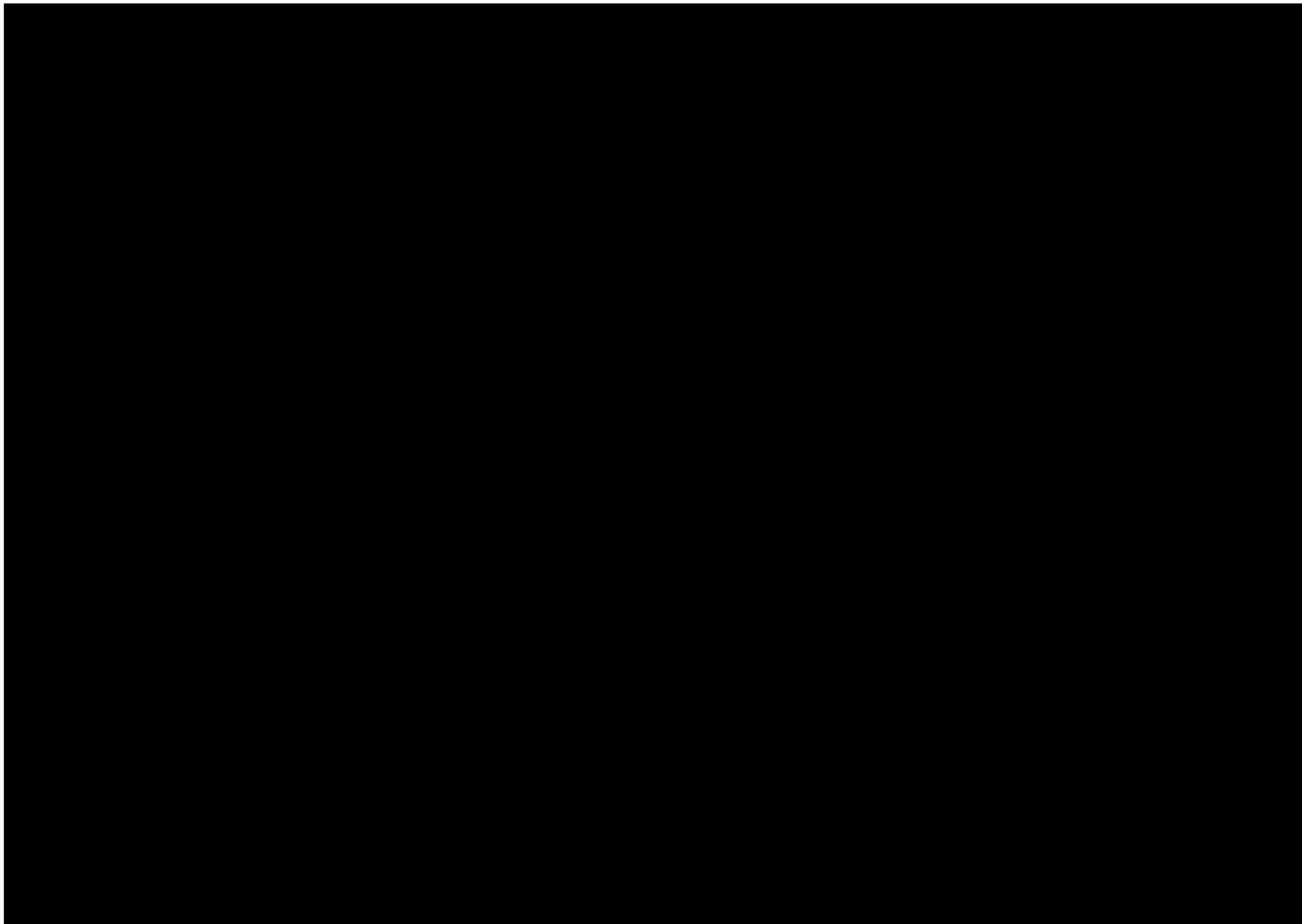


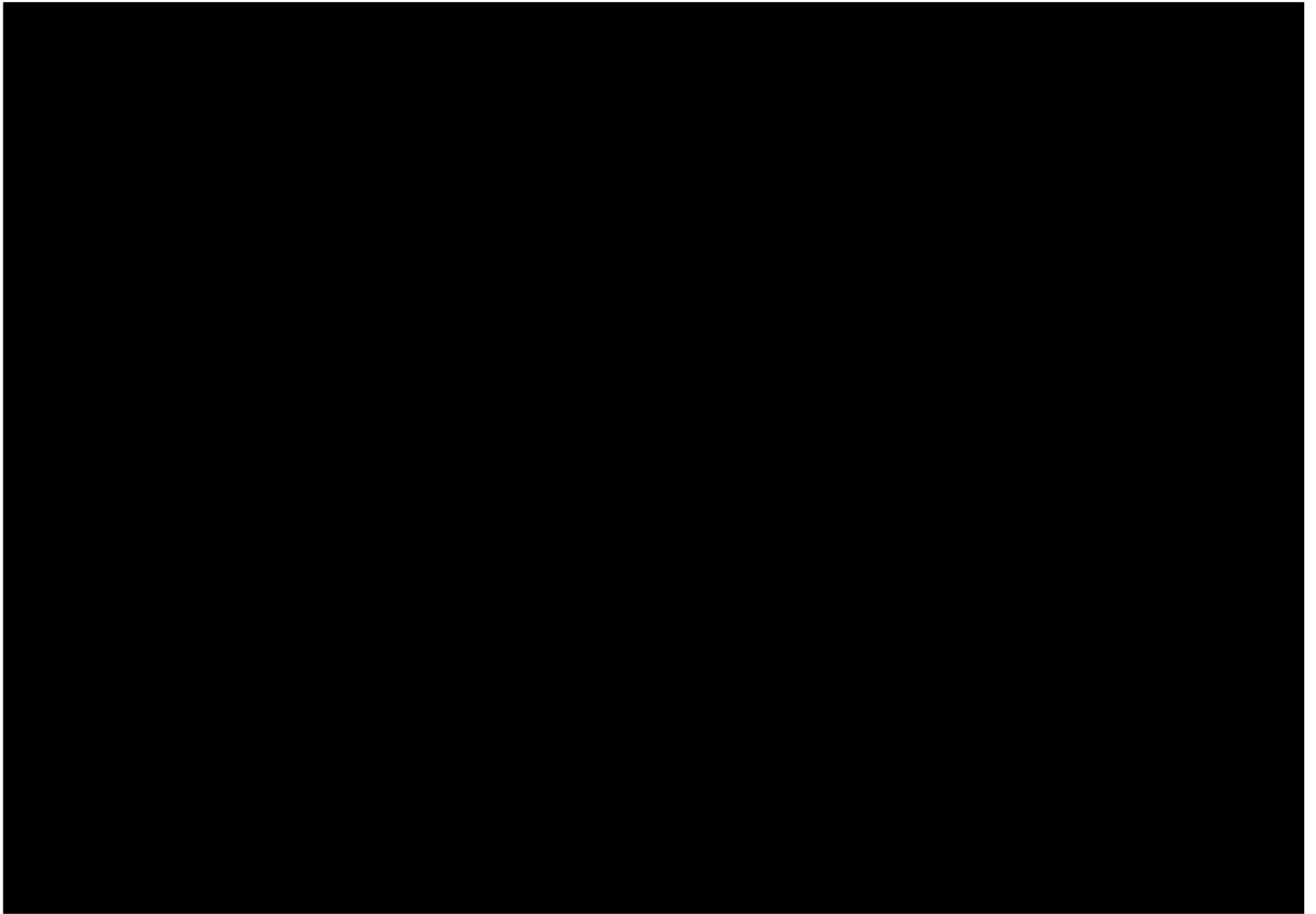


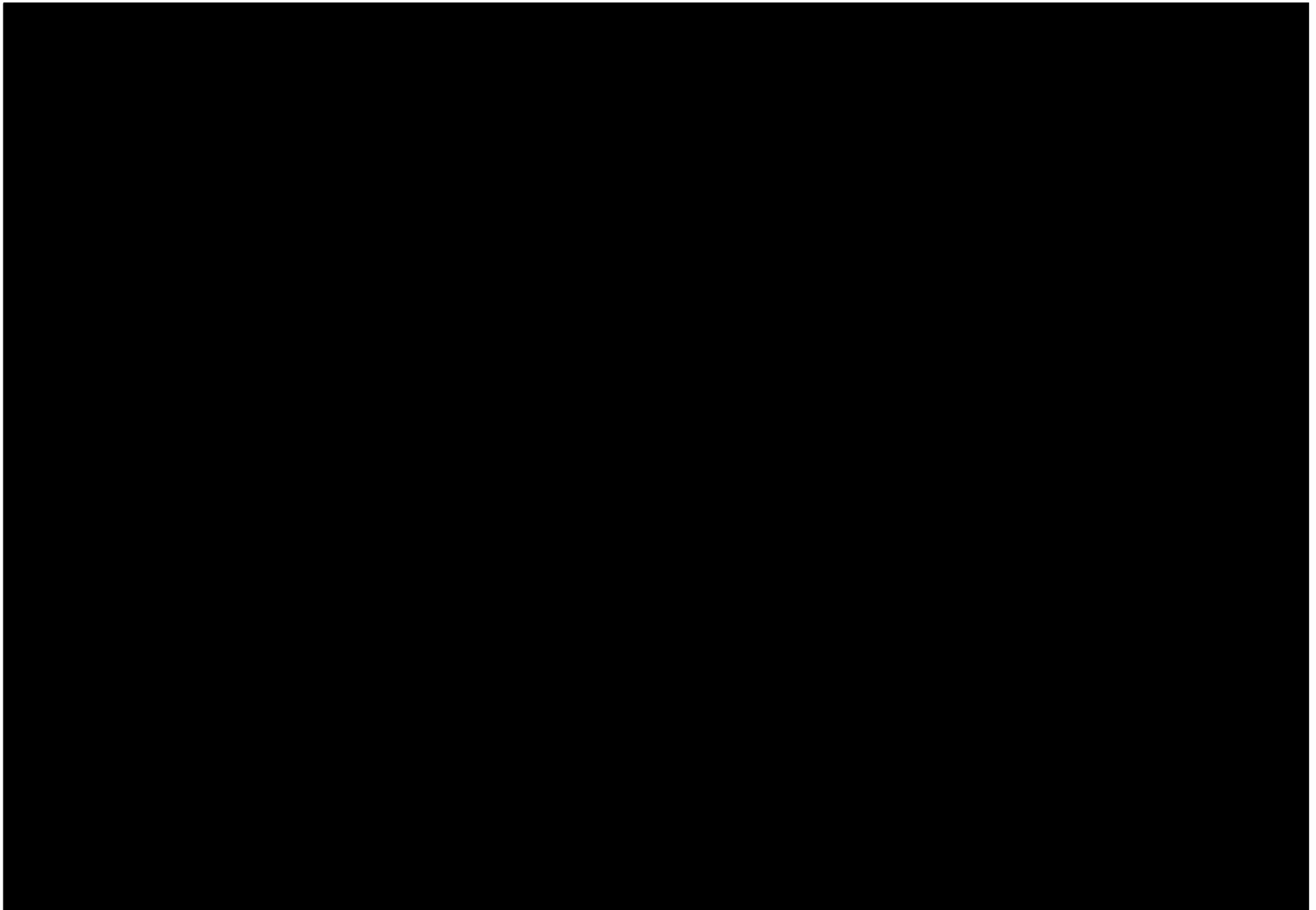


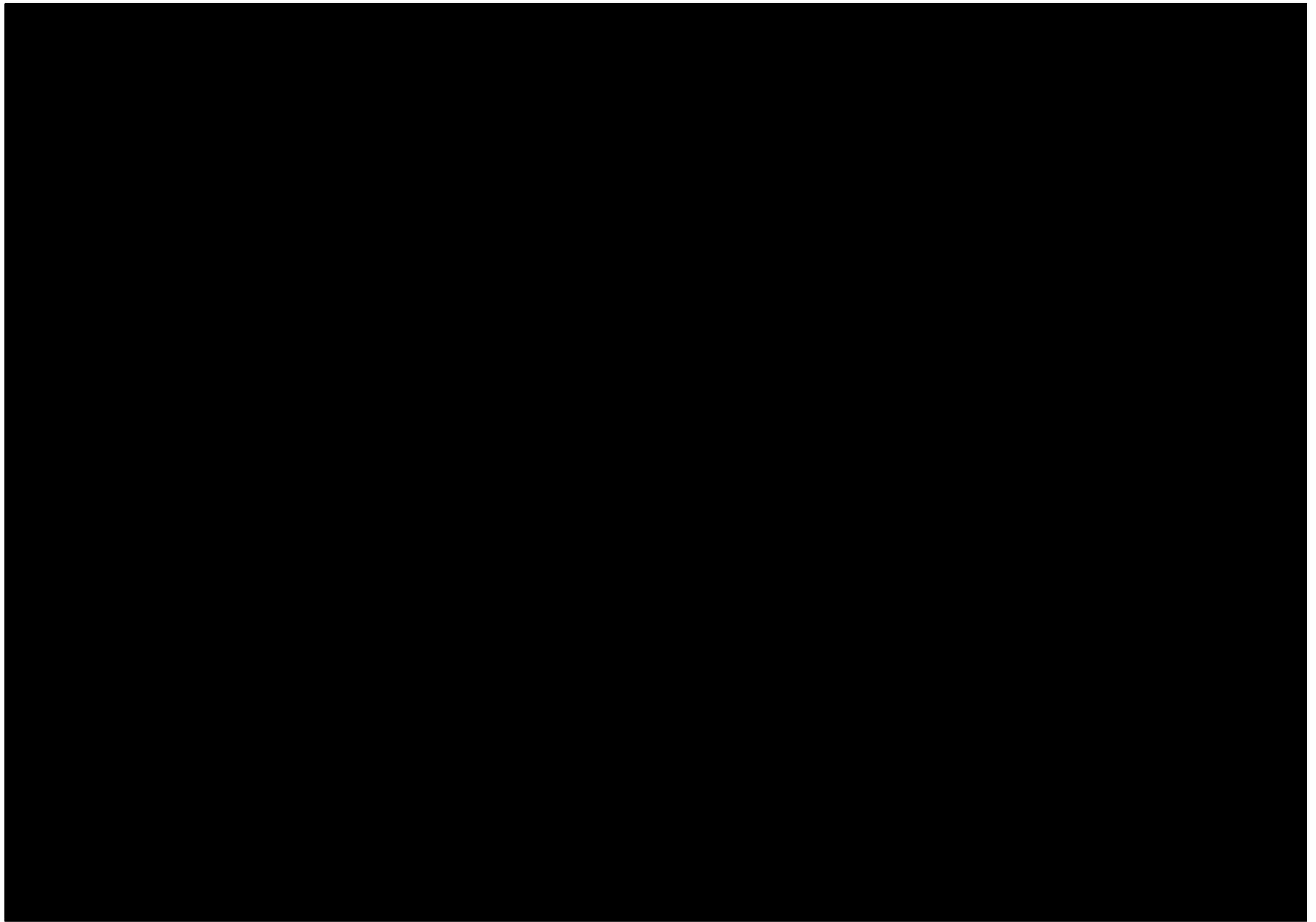


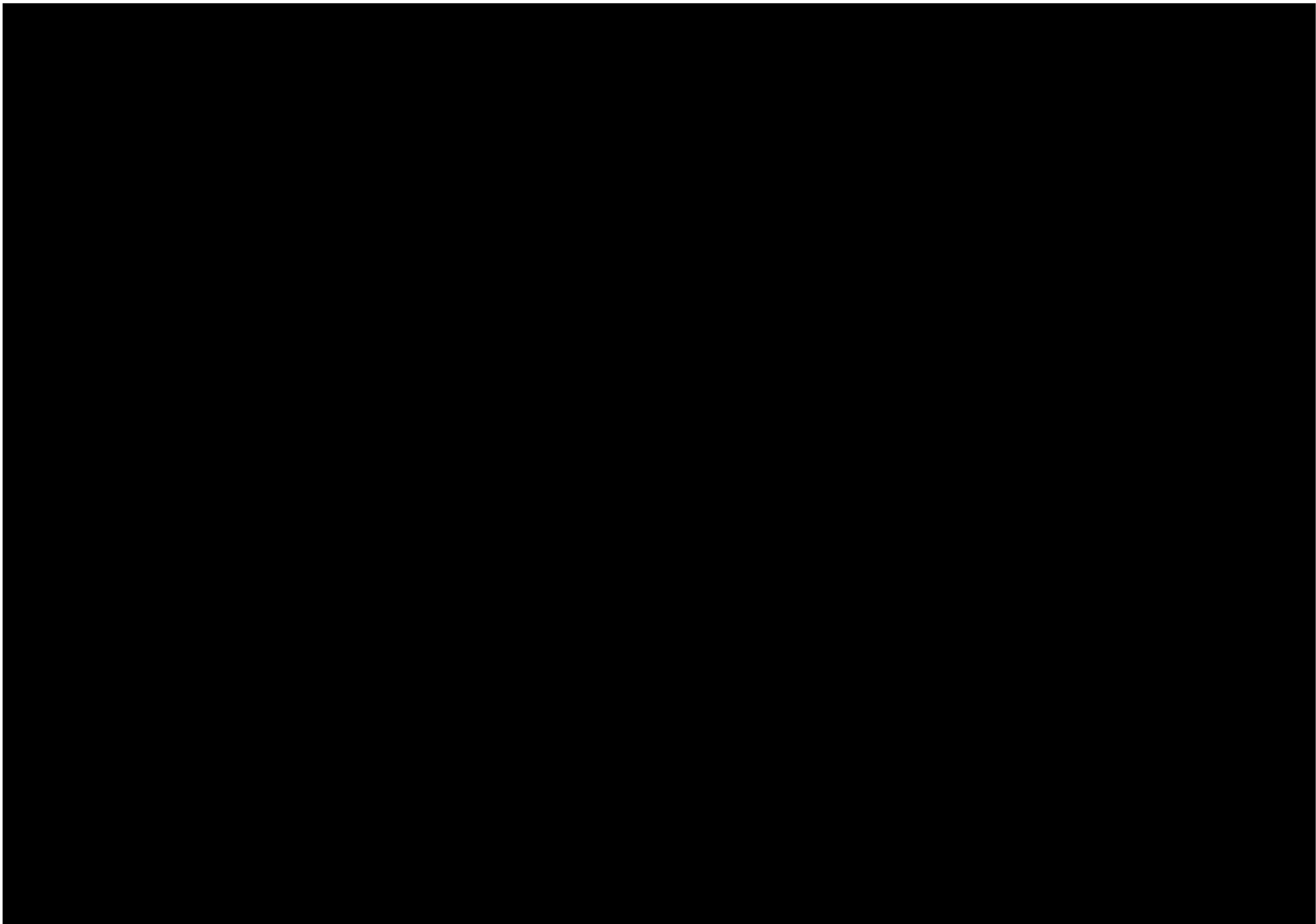


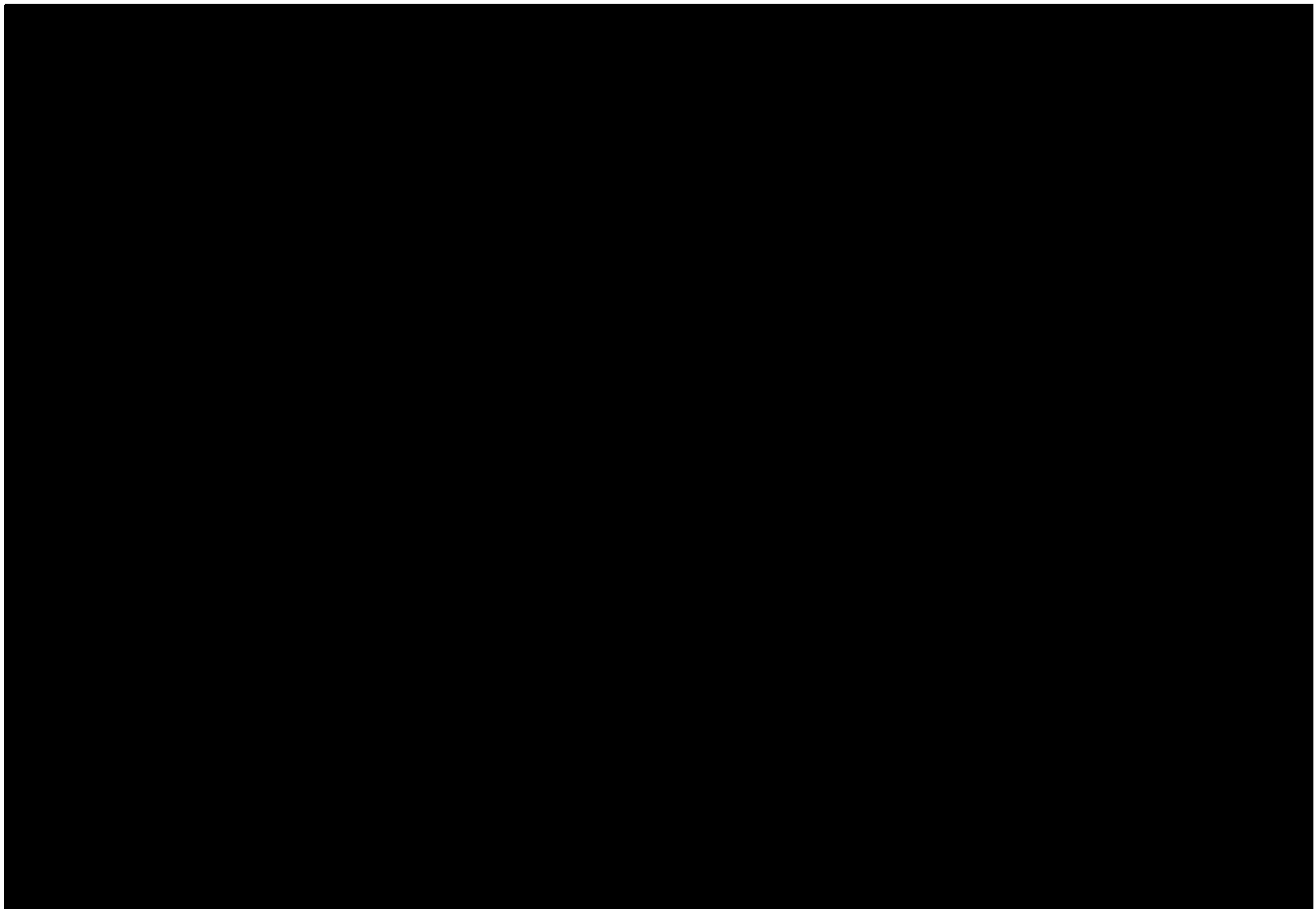




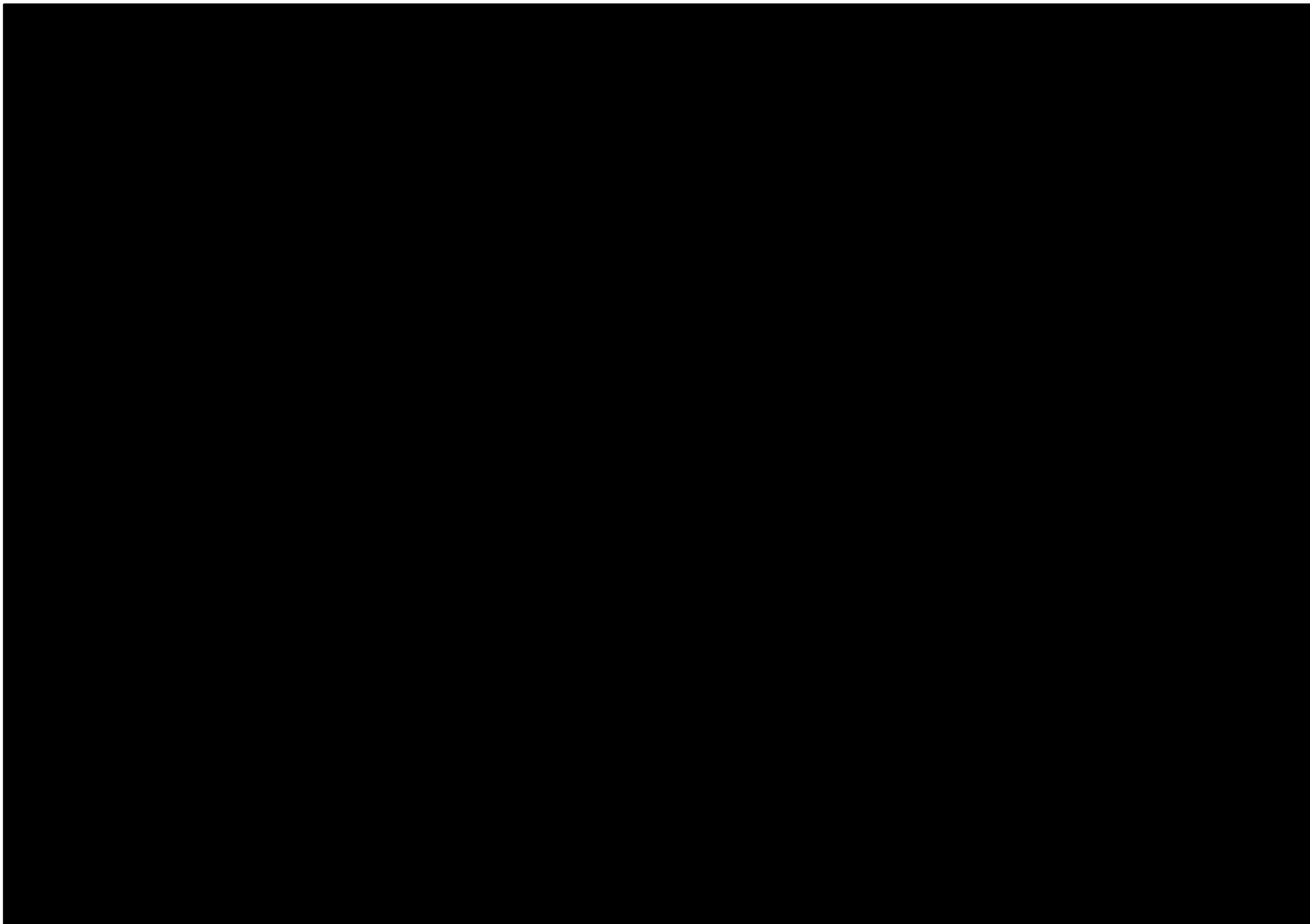


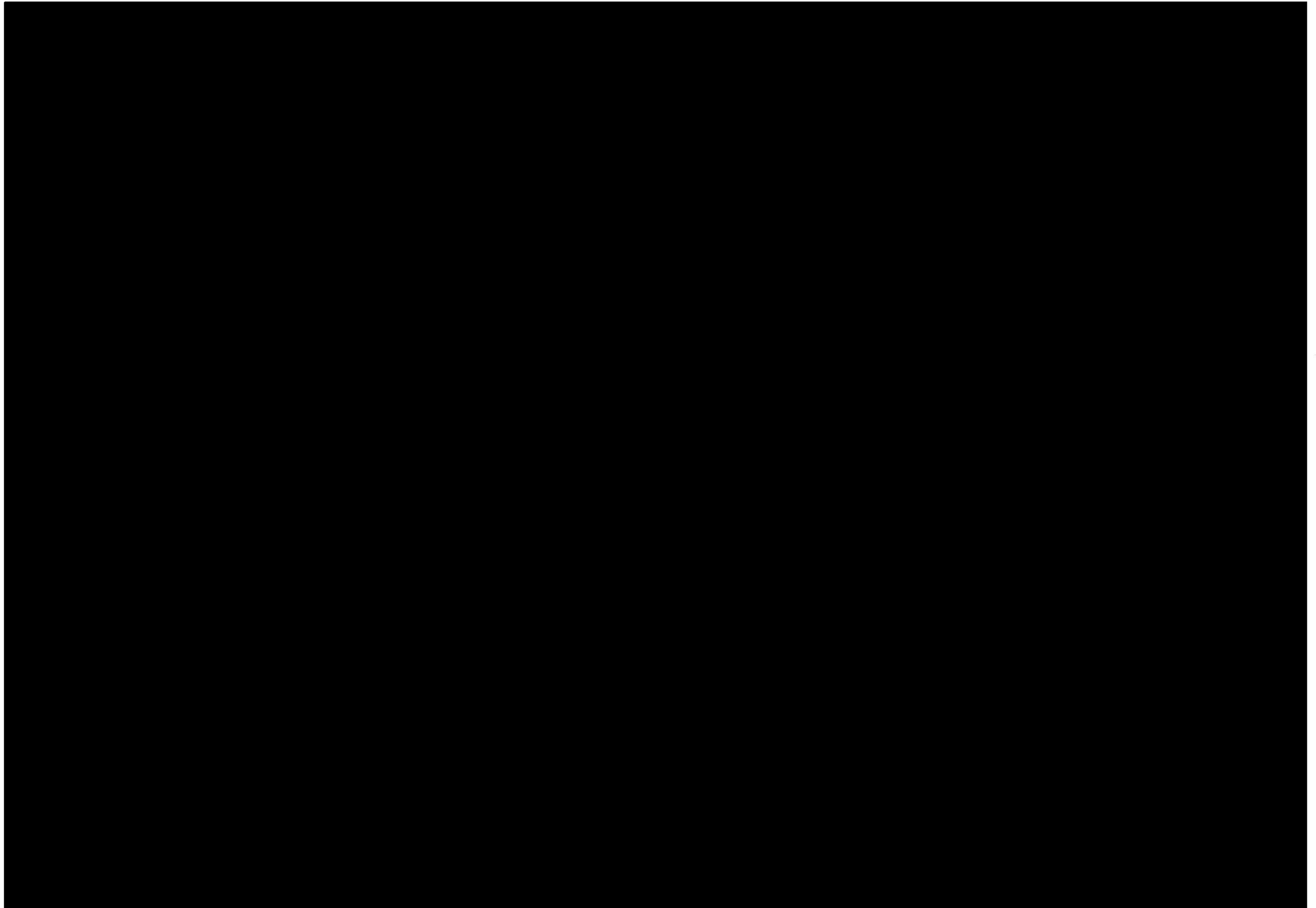


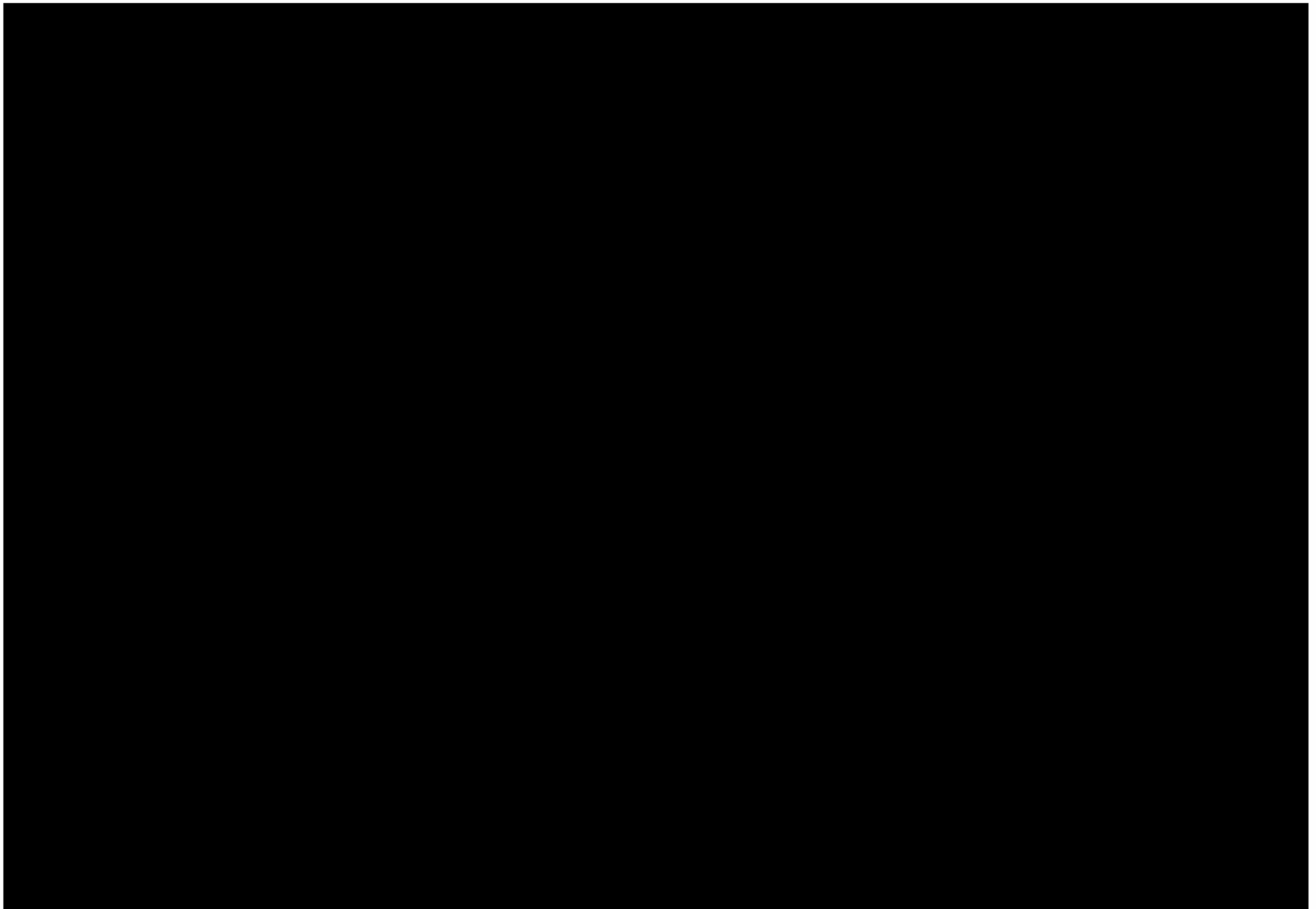


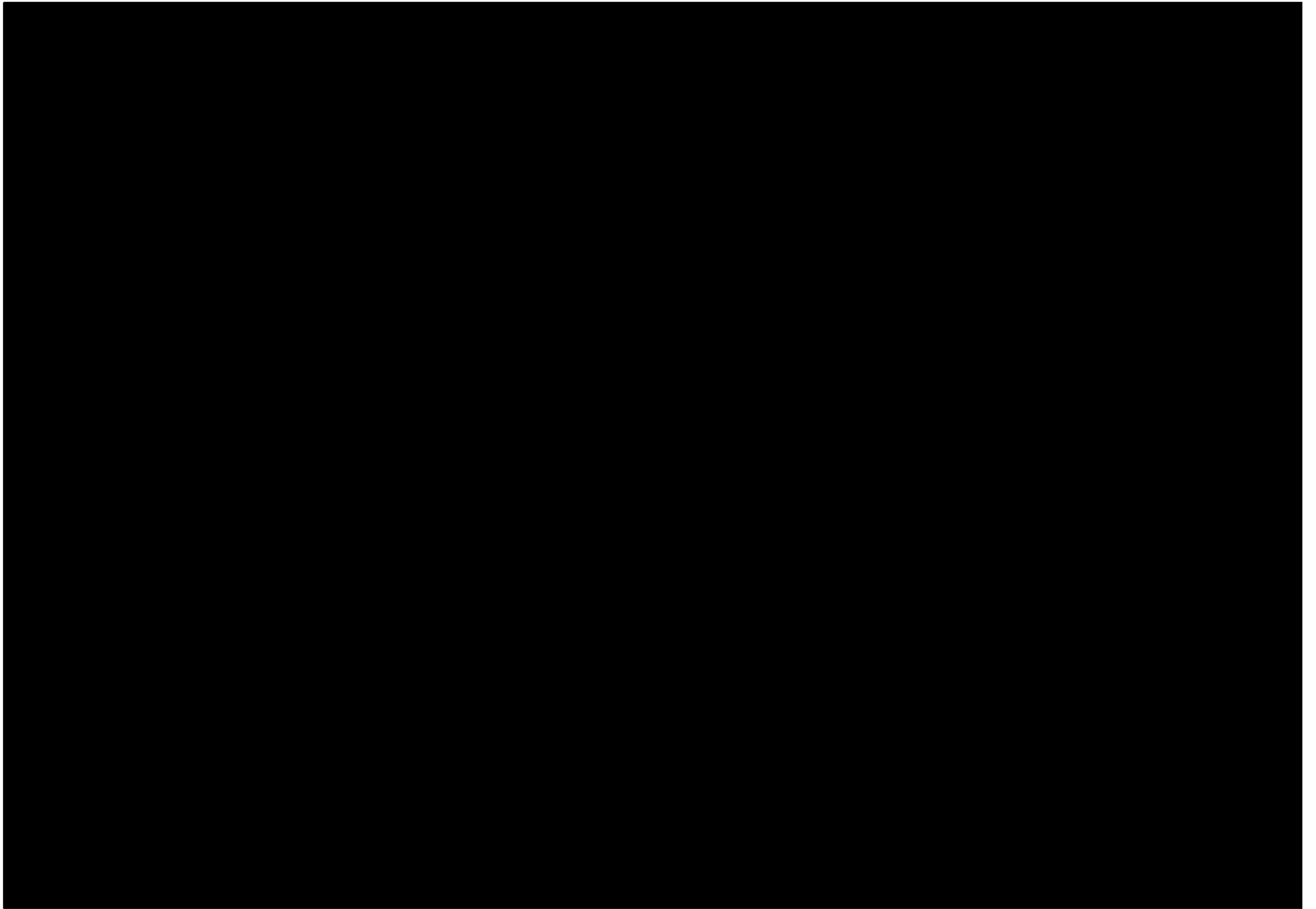


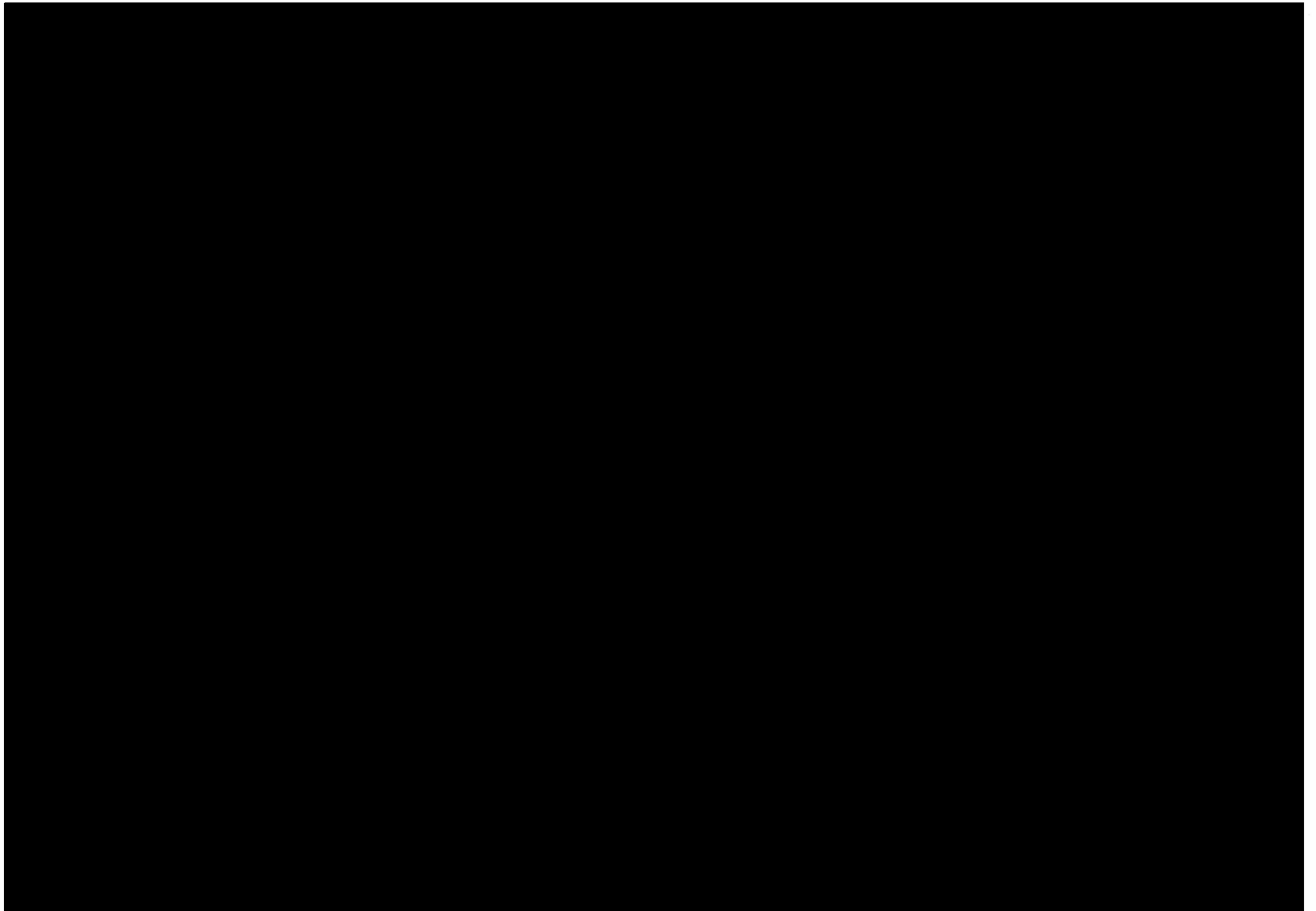


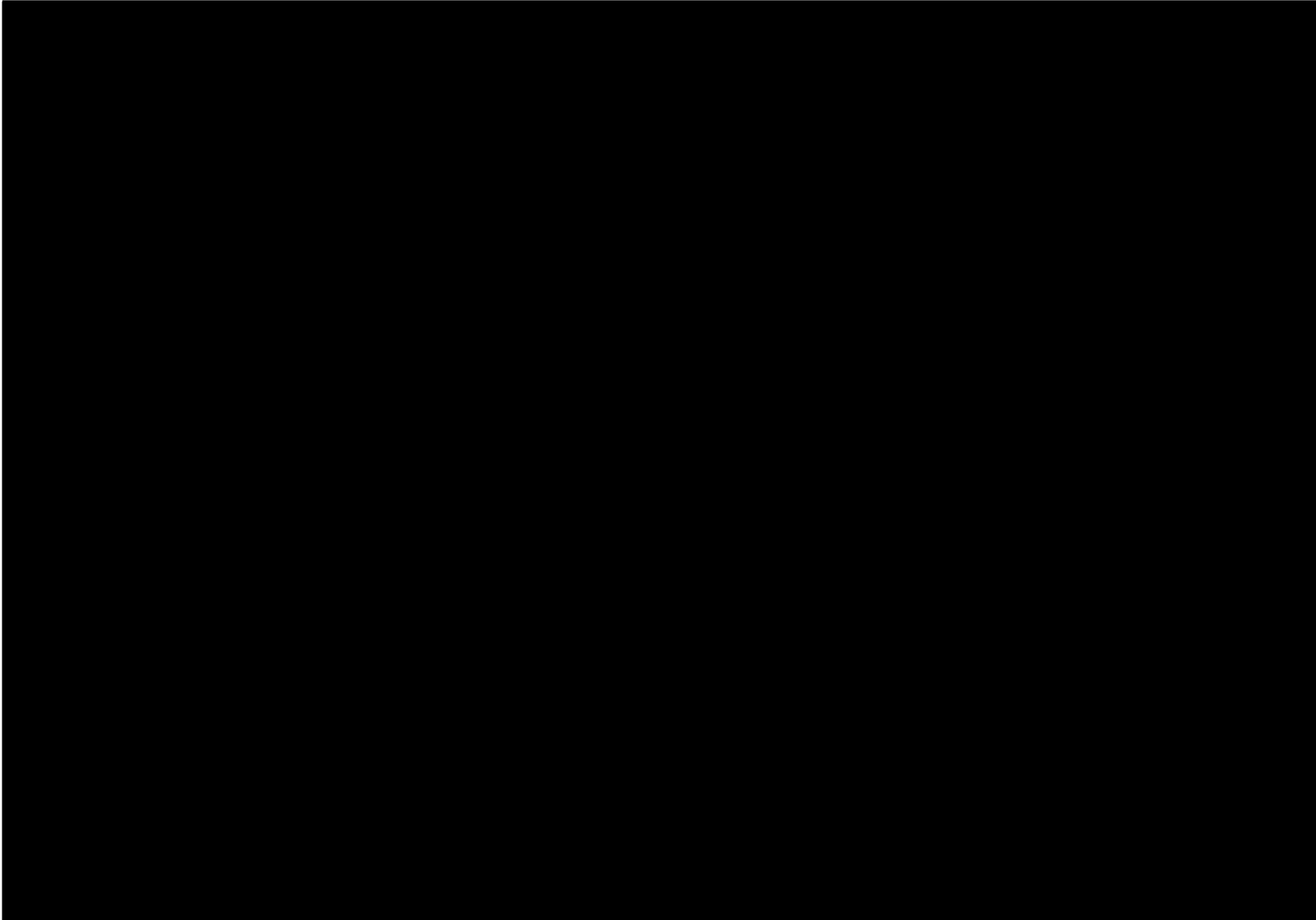












## **Schedule A11**

### **Information Documents**

(Clause 11.2)

Refer to separate electronic disc titled "*Sydney Light Rail – Schedules Electronic Documents*" dated the date of this deed, electronic folder named "*Schedules Part A - Schedule A11 (Information Documents)*", electronic file named "*Schedule A11 (Information Documents) – Attachment of SLR PPP Information Document List*".

**Schedule A12**  
**D&C Contract Side Deed**

(Clause 1.1)





# Sydney Light Rail D&C Contract Side Deed

Transport for NSW  
ABN 18 804 239 602

ALTRAC Light Rail Partnership

Alstom Transport Australia Pty Limited  
ABN 68 165 157 451

Acciona Infrastructure Australia Pty Ltd  
ABN 52 140 915 251

Acciona Infraestructuras S.A.

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**THIS DEED** is made on December 2014

**BETWEEN:**

- (1) **Transport for NSW** (ABN 18 804 239 602) a New South Wales Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW) of Level 5, Tower A, Zenith Centre 821 Pacific Highway, Chatswood NSW 2067 (**TfNSW**).
- (2) **ALTRAC Light Rail Partnership**, a partnership between ALTRAC Light Rail 1 Pty Limited ACN 603 192 203 in its capacity as trustee of ALTRAC Light Rail Trust 1, ALTRAC Light Rail 2 Pty Limited ACN 603 194 476 in its capacity as trustee of ALTRAC Light Rail Trust 2 and ALTRAC Light Rail 3 Pty Limited ACN 603 190 601 in its capacity as trustee of ALTRAC Light Rail Trust 3 (**OpCo**).
- (3) **Alstom Transport Australia Pty Limited** ABN 68 165 157 451 whose registered office is at 16 Giffnock Avenue North Ryde NSW 2113 and **Acciona Infrastructure Australia Pty Ltd** ABN 52 140 915 251 whose registered office is at Level 12, Freshwater Place, 2 Southbank Boulevard, Southbank VIC 3006 (together the **D&C Contractor**).
- (4) **Acciona Infraestructuras S.A.** whose registered office is at Avenida de Europa 18, Parque Empresarial de la Moraleja, Alcobendas, Madrid, Spain. (**Acciona Guarantor**).

**RECITALS:**

- (A) TfNSW and OpCo have entered, or will enter, into the Project Deed for the provision of the SLR PPP.
- (B) OpCo has subcontracted its obligations to undertake the SLR Works to the D&C Contractor pursuant to the D&C Contract.
- (C) The Acciona Guarantor has, pursuant to the Acciona Guarantee, guaranteed to OpCo the performance of the obligations of Acciona under the D&C Contract.
- (D) The Alstom Guarantor has, pursuant to the Alstom Guarantee, guaranteed to OpCo the performance of the obligations of Alstom under the D&C Contract.
- (E) OpCo, the D&C Contractor and the Acciona Guarantor have agreed to grant TfNSW certain rights in relation to the D&C Contract, the Core Contractor Interface Deed, the Acciona Guarantee and the Alstom Guarantee.

**THE PARTIES AGREE AS FOLLOWS:**

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Project Deed definitions**

Definitions in the Project Deed apply in this deed unless the context requires otherwise or the relevant term is defined in this deed.

1.2 **Definitions**

In this deed:

**Acciona Guarantee** means the D&C Guarantee given by the Acciona Guarantor in respect of the obligations of Acciona under the D&C Contract.

**Alstom Guarantee** means the D&C Guarantee given by the Alstom Guarantor in respect of the obligations of Alstom under the D&C Contract.

**Alstom Guarantor** means ALSTOM Transport S.A.

**Alstom SLR Maintenance Subcontract** means the contract titled "Sydney Light Rail Maintenance Subcontract" dated on or about the date of this deed between the O&M Contractor and Alstom.

**Approved Nominee** means a person nominated by TfNSW and approved by the D&C Contractor in accordance with clause 5.12 (*Approved Nominee*) as:

- (a) having legal capacity, power and authority to become a party to and perform the obligations of OpCo under the D&C Contract; and
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and subcontracts) which are sufficient to enable it to perform the obligations of OpCo under the D&C Contract.

**Assumption Notice** means the notice referred to in clause 5.1 (*Option*).

**Construction Site Interface Work** has the meaning given to it in the D&C Contract.

**Core Contractor Interface Deed** means the deed titled "DCOM Interface Agreement" between OpCo, the D&C Contractor and the O&M Contractor dated on or about the date of this deed.

**D&C Contract** means the contract titled "Sydney Light Rail D&C Contract" dated on or about the date of this deed between OpCo and the D&C Contractor.

**D&C Contractor's Activities** has the meaning given to it in the D&C Contract.

**D&C Guarantees** means each of the Acciona Guarantee and the Alstom Guarantee and, if TfNSW gives an Assumption Notice, the new guarantee entered into pursuant to clause 5.6 (*Novation of Acciona Guarantee*).

**D&C Independent Certifier** means APP Corporation Pty Ltd ABN 29 003 764 770 or such other person as may be agreed by OpCo and the D&C Contractor under the D&C Contract.

**D&C Independent Certifier Deed** means the deed so titled dated on or about the date of the D&C Contract between OpCo, the D&C Contractor and the D&C Independent Certifier.

**D&C Project Agreements** has the meaning given in the D&C Contract.

**Default Event** means:

- (a) any default (howsoever described) by OpCo under the D&C Contract; or
- (b) any other event or circumstance,

which alone or with the giving of notice or passage of time or both, would entitle the D&C Contractor to terminate, rescind, accept the repudiation of, or suspend any or all of the D&C Contractor's obligations under the D&C Contract.

**Default Event Notice** has the meaning given to it in clause 4.2(a).

**Effective Date** means the date of the Assumption Notice.

**O&M Assumption Notice** means a notice referred to in clause 4.1 of the O&M Contract Side Deed.

**O&M Contract Side Deed** means the contract titled "SLR O&M Contract Side Deed" between TfSNW, OpCo, the O&M Contractor and the O&M Guarantor dated on or about the date of this deed.

**Project Deed** means the deed entitled "Sydney Light Rail Project Deed" dated on or about the date of this deed between TfNSW and OpCo.

**TfNSW Cure Notice** has the meaning given to it in clause 4.2(c).

### 1.3 Interpretation

In this deed:

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

and unless the context indicates a contrary intention:

- (b) "**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;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;
- (d) a reference to a document (including this deed) is to that document as updated, varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word importing a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, annexure or attachment is a reference to party, clause, schedule, exhibit, annexure or attachment to or of this deed, and a reference to this deed includes all schedules, exhibits, annexures and attachments to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) "**includes**" in any form is not a word of limitation; and
- (j) a reference to "**\$**" or "**dollar**" is to Australian currency.

### 1.4 Replacement body interpretation

Where a reference is made to any body or authority which ceases to exist (**Former Body**), that reference will be to that body or authority (**Replacement Body**) which then serves substantially the same functions as the Former Body. Any reference to the

president or other senior officer of the Former Body will be to the president or senior officer of the Replacement Body.

**1.5 No bias against drafting party**

Each provision of this deed will be interpreted without disadvantage to the party who (or whose representative) drafted that provision.

**1.6 Business Day**

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

**1.7 Inconsistencies**

To the extent of any inconsistency between the terms of this deed and the D&C Contract, this deed will prevail over the D&C Contract.

**1.8 Project Deed and Financiers Tripartite Deed**

The D&C Contractor and the Acciona Guarantor acknowledge that they have received a copy of the Project Deed and the Financiers Tripartite Deed.

**1.9 Joint and several liability**

- (a) Each obligation and liability of the D&C Contractor under this deed is joint and several, and not several.
- (b) Any payment made by OpCo or TfNSW to an account nominated in writing by the D&C Contractor, or failing such nomination, to any one or more persons comprising the D&C Contractor, will be deemed to be payment to all persons comprising the D&C Contractor.
- (c) To the extent that Alstom is performing its obligations under the Alstom CSELRV Supply Agreement or the Alstom SLR Maintenance Subcontract, Alstom's acts or omissions in performing such obligations will not constitute acts or omissions of the D&C Contractor for the purposes of this deed.
- (d) Each person constituting the D&C Contractor acknowledges and agrees that it will be responsible for the acts or omissions (including breaches of any D&C Project Agreement) of the other as if those acts or omissions were its own.

**1.10 Limitation of liability**

Despite any other provision of the D&C Contract, this deed or the D&C Guarantees:

- (a) the D&C Contractor will have no greater obligations or liabilities to TfNSW under or in connection with this deed as it relates to obligations to be performed and liabilities to be incurred by the D&C Contractor under the D&C Contract, than it would have had if TfNSW had been named as the counterparty under the D&C Contract and shall have the benefit of all defences available to it under the D&C Contract;
- (b) the Acciona Guarantor will have no greater obligations or liabilities to TfNSW under or in connection with this deed as it relates to obligations to be performed and liabilities to be incurred by the D&C Contractor under the D&C Contract, than it has or would have had if TfNSW had been named as the counterparty under

the Acciona Guarantee and shall have the benefit of all defences available to it under the Acciona Guarantee;

- (c) it is the intention of the parties that, following any assignment of the Alstom Guarantee to TfNSW in accordance with clause 5.7 (*Assignment of Alstom Guarantee*), the Alstom Guarantor will have no greater obligations or liabilities to TfNSW under the Alstom Guarantee, as it relates to obligations to be performed and liabilities to be incurred by the D&C Contractor under the D&C Contract, than it has or would have had if TfNSW had been named as the counterparty under the Alstom Guarantee and shall have the benefit of all defences available to it under the Alstom Guarantee;
- (d) the maximum aggregate liability of the D&C Contractor under, in respect of, or arising out of or in connection with this deed and the D&C Project Agreements is limited to the extent described in clause 38A of the D&C Contract;
- (e) nothing in this deed is intended to make or makes the D&C Contractor or the Acciona Guarantor liable to TfNSW or OpCo for the same loss twice for the same breach of an obligation under this deed or a D&C Project Agreement and should such a case arise discharge of the liability for such loss to TfNSW or OpCo by the D&C Contractor, the Acciona Guarantor or the Alstom Guarantor shall satisfy, to the same extent, the corresponding liability to OpCo or TfNSW (as relevant); and
- (f) this clause shall survive the termination of this deed.

## 2. **SECURITIES**

### 2.1 **D&C Contractor acknowledgements and consents**

The D&C Contractor:

- (a) acknowledges and consents to the grant of, subject to the Financiers Tripartite Deed, security over all of OpCo's right, title and interest in and to the D&C Contract and the D&C Guarantees pursuant to the TfNSW Deed of Charge;
- (b) acknowledges, subject to the Financiers Tripartite Deed, the rights created under the TfNSW Deed of Charge in favour of TfNSW, including the appointment by OpCo of TfNSW as the lawful attorney of OpCo to do, perform and exercise all things, acts and rights under the D&C Contract on behalf and for the account of OpCo, pursuant to the TfNSW Deed of Charge, subject to the rights of the Security Trustee under the Financiers Tripartite Deed;
- (c) acknowledges and agrees that, without limiting TfNSW's obligations under this deed, TfNSW is not subject to any duty or obligation under the D&C Contract as a result of the TfNSW Deed of Charge; and
- (d) acknowledges that the grant of the TfNSW Deed of Charge is not, and the exercise by TfNSW of its rights under the TfNSW Deed of Charge will not of itself, constitute a Default Event.

### 2.2 **Acciona Guarantor acknowledgement and consent**

The Acciona Guarantor:

- (a) acknowledges and consents to the grant of the security over all of OpCo's rights, title and interest in and to the Acciona Guarantee pursuant to the TfNSW Deed of Charge;



- (b) acknowledges the rights created under the TfNSW Deed of Charge in favour of TfNSW, including the appointment by OpCo of TfNSW as the lawful attorney of OpCo to do, perform and exercise all things, acts and rights under the Acciona Guarantee on behalf of and for the account of OpCo, pursuant to the TfNSW Deed of Charge, subject to the rights of the Security Trustee under the Financiers Tripartite Deed;
- (c) acknowledges and agrees that, without limiting TfNSW's obligations under this deed, TfNSW is not subject to any duty or obligation under the Acciona Guarantee as a result of the TfNSW Deed of Charge; and
- (d) acknowledges that the grant of the TfNSW Deed of Charge does not, and the exercise by TfNSW of its rights under the TfNSW Deed of Charge will not of itself, give rise to any rights by the Acciona Guarantor to revoke or terminate the Acciona Guarantee.

### 3. **D&C CONTRACTOR'S WARRANTY AND LIABILITY**

- (a) The D&C Contractor warrants to TfNSW that it has carried out and, provided the D&C Contract has not been terminated, will continue to carry out its duties under the D&C Contract in accordance with the D&C Contract and that it has exercised and will continue to exercise, in carrying out the SLR Works, the level of skill and care reasonably to be expected from an appropriately qualified and competent contractor providing those services in relation to a project of a similar size and scope to the SLR Works. In particular and without limiting the generality of the foregoing, the D&C Contractor covenants with TfNSW that it has carried out and, provided the D&C Contract has not been terminated, will carry out and complete the SLR Works in accordance with the D&C Contract and duly observe and perform all its duties and obligations thereunder.
- (b) Without prejudice to any of TfNSW's other rights under this deed (including, without limitation, under clauses 4 (*TfNSW's right to cure Default Event*) and 5 (*Novation of D&C Contract, Acciona Guarantee, Core Contractor interface deed, D&C and assignment of Alstom Guarantee*), TfNSW may only exercise its rights under this clause 3 (*D&C Contractor's warranty and liability*) upon:
  - (i) TfNSW exercising its step-in rights under the Project Deed; or
  - (ii) the termination of the Project Deed or OpCo's employment under the Project Deed; or
  - (iii) OpCo no longer being responsible for performing the SLR PPP substantially on the basis set out in the Project Deed and/or the Service Payment regime no longer applying,

provided that the D&C Contract has not been novated in accordance with clause 5 (*Novation of D&C Contract, Acciona Guarantee, Core Contractor interface deed, D&C and assignment of Alstom Guarantee*).

### 4. **TFNSW'S RIGHT TO CURE DEFAULT EVENT**

#### 4.1 **TfNSW's cure rights**

- (a) On becoming aware of any Default Event (and subject to clause 4.1(b)), TfNSW may (but is not obliged to) take steps to cure or remedy, or procure the cure or remedy of, that Default Event.

- (b) Clause 4.1(a) only applies if the D&C Contractor has given a TfNSW Cure Notice in accordance with clause 4.2(c).
- (c) Upon TfNSW exercising any of its rights under this clause 4.1 (*TfNSW's cure rights*), OpCo's obligations under the D&C Contract (other than OpCo's obligations to pay the D&C Contract Price (as defined in the D&C Contract) to the D&C Contractor) are suspended to the extent and for such period as OpCo is prevented from performing such obligations by TfNSW's exercise of its step-in rights pursuant to clause 4.1(a).
- (d) If TfNSW exercises its step-in rights, TfNSW may, after giving reasonable prior notice to OpCo, cease to exercise that right, and in any event, will cease to exercise its step-in rights pursuant to clause 4.1(a) once the relevant Default Event has been remedied.

#### 4.2 **Restriction on right to terminate or suspend**

The D&C Contractor must not terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the D&C Contract unless each of the following conditions has been satisfied:

- (a) the D&C Contractor has given to TfNSW prior notice (**Default Event Notice**) (which notice may be given at the same time as the notice required under the D&C Contract in relation to the same Default Event) setting out details of the Default Event giving rise to the right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the D&C Contract, together with the statements referred to in clause 4.3 (*Statements concerning Default Event*);
- (b) if the D&C Contractor's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the D&C Contract is subject to any right of a Debt Financier to cure or remedy the Default Event, the cure or remedy period available to the Debt Financiers in respect of the Default Event under any Debt Financing Document has expired without a cure or remedy being achieved or the Security Trustee has notified the D&C Contractor in writing that it does not intend to cure the Default Event;
- (c) the D&C Contractor has given notice to TfNSW (**TfNSW Cure Notice**) confirming that, either:
  - (i) the requirements of clause 4.2(b) are satisfied; or
  - (ii) the D&C Contractor's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the D&C Contract is not subject to any right of the Debt Financiers to cure or remedy the Default Event; and
- (d) either:
  - (i) if the Default Event is capable of cure or remedy within 20 Business Days (or such longer period as is permitted under the D&C Contract or agreed to by the D&C Contractor), that Default Event has not been cured or remedied within 20 Business Days (or such longer period as is permitted under the D&C Contract or agreed to by the D&C Contractor) after the date on which TfNSW Cure Notice is given to TfNSW;
  - (ii) if the Default Event is not one described in clause 4.2(d)(i) but is nevertheless reasonably capable of cure or remedy, TfNSW has not within

20 Business Days after the date on which TfNSW Cure Notice is given to TfNSW, notified the D&C Contractor that TfNSW has elected to make arrangements to cure or remedy the Default Event;

- (iii) if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice contains a claim for reasonable compensation for the Default Event, OpCo or TfNSW (or another person on behalf of either of them) have not paid or otherwise provided that compensation within 20 Business Days (or such longer period as is permitted under the D&C Contract or agreed to by the D&C Contractor) after the date on which TfNSW Cure Notice is given to TfNSW;
- (iv) if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice does not contain a claim for reasonable compensation for the Default Event, TfNSW does not commence and continue to perform OpCo's obligations under the D&C Contract within 20 Business Days (or such longer period as is permitted under the D&C Contract or agreed to by the D&C Contractor) after the date on which TfNSW Cure Notice is given to TfNSW; or
- (v) TfNSW notifies the D&C Contractor in writing after receipt of the TfNSW Cure Notice that it elects not to cure or remedy, or procure the cure or remedy of, the Default Event.

#### 4.3 **Statements concerning Default Event**

- (a) As part of any Default Event Notice, the D&C Contractor must submit to TfNSW statements of:
  - (i) where the Default Event is a monetary default, the amount which must be paid to the D&C Contractor to remedy the Default Event;
  - (ii) where the Default Event is of a non-monetary nature:
    - (A) the provisions of the D&C Contract alleged to have been breached or not fulfilled;
    - (B) sufficient information to enable TfNSW to identify the material facts;
    - (C) the steps reasonably required to cure or remedy the specified breaches or conditions not fulfilled if reasonably capable of cure or remedy; and
    - (D) the time within which the specified steps can reasonably be expected to be taken; and
  - (iii) any rights available to the Debt Financiers, pursuant to any Debt Financing Document to which the D&C Contractor is a party, to cure or remedy that Default Event and the period within which that cure or remedy must occur before the Debt Financing Documents permit the D&C Contractor to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the D&C Contract.
- (b) If the D&C Contractor gives a TfNSW Cure Notice to TfNSW then as part of that notice it must update the matters referred to in paragraph (a) above.

4.4 **Warranty of accuracy**

The D&C Contractor warrants to TfNSW that statements submitted by it under clause 4.3 (*Statements concerning Default Event*) will be, so far as reasonably practicable, true, complete and accurate statements of the amounts to which the D&C Contractor considers itself entitled.

4.5 **Disputes as to statements**

If TfNSW disputes the amount of any claim or the existence of any default referred to in a Default Event Notice:

- (a) TfNSW must pay the amount not in dispute;
- (b) upon resolution of the dispute in accordance with this deed, the parties must make payments as determined; and
- (c) during the period of dispute resolution, all parties must continue to perform their obligations under this deed and the Project Agreements.

4.6 **Verification**

TfNSW may appoint a firm of independent chartered accountants or a firm of technical advisers, in each case approved by OpCo and the D&C Contractor (such approval not to be unreasonably withheld or delayed), to verify (at the cost of OpCo) statements submitted by the D&C Contractor, and the D&C Contractor must (subject to such firm(s) executing an appropriate confidentiality agreement as the D&C Contractor may reasonably request) permit such firm to have access to and make copies of all records, documents, data and accounting and other information not subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such statements.

4.7 **No liability**

OpCo and the D&C Contractor acknowledge that, without limiting the liability of OpCo (which continues to be responsible for the performance of its obligations under the D&C Contract), and without limiting TfNSW's obligations under clause 5 (*Novation of D&C Contract, Acciona Guarantee, Core Contractor interface deed and assignment of Alstom Guarantee*), TfNSW will not be liable for any obligation or liability of OpCo under the D&C Contract by reason only of TfNSW performing OpCo's obligations in accordance with the D&C Contract. OpCo and the D&C Contractor each release TfNSW from any such liability, except to the extent that such liability occurs or arises as a direct result of any fraud, gross negligence or wilful default on the part of TfNSW.

4.8 **OpCo to compensate TfNSW**

Any reasonable Loss suffered or incurred by TfNSW arising out of or in any way in connection with the exercise of its rights under this clause 4 (*TfNSW's right to cure Default Event*) will be a debt due from OpCo to TfNSW.

4.9 **No limitation on other rights**

The exercise (or failure to exercise) by TfNSW of its rights under this clause 4 (*TfNSW's right to cure Default Event*) will not limit TfNSW's rights against OpCo under the TfNSW Project Agreements or otherwise according to law.

5. **NOVATION OF D&C CONTRACT, ACCIONA GUARANTEE, CORE CONTRACTOR INTERFACE DEED AND ASSIGNMENT OF ALSTOM GUARANTEE**

5.1 **Option**

If TfNSW terminates the Project Deed then TfNSW may exercise its rights under this clause 5 (*Novation of D&C Contract, Acciona Guarantee, Core Contractor interface deed and assignment of Alstom Guarantee*) by giving a notice (**Assumption Notice**) to OpCo, the D&C Contractor and the Acciona Guarantor.

5.2 **Novation of D&C Contract**

With effect from the Effective Date:

- (a) TfNSW, OpCo and the D&C Contractor novate the D&C Contract so that TfNSW (or, if applicable, the Approved Nominee) and the D&C Contractor are parties to a new contract on the same terms as the D&C Contract as amended by this deed; and
- (b) any reference in the D&C Contract to OpCo shall be read as a reference to TfNSW (or, if applicable, the Approved Nominee).

5.3 **Rights and obligations of TfNSW and the D&C Contractor under the D&C Contract**

If TfNSW gives an Assumption Notice then, subject to clause 5.10 (*Obligations and liability prior to the Effective Date*), with effect from the Effective Date:

- (a) TfNSW (or, if applicable, the Approved Nominee):
  - (i) is entitled to all rights and benefits under the D&C Contract to which, but for this deed, OpCo would have been entitled at and after the Effective Date;
  - (ii) must perform all obligations and discharge all liabilities under the D&C Contract which, but for this deed, OpCo would have been required to perform or discharge at and after the Effective Date; and
  - (iii) is bound by and must comply with all other provisions of the D&C Contract by which, but for this deed, OpCo would have been bound at and after the Effective Date; and
- (b) the D&C Contractor:
  - (i) is entitled to all rights and benefits under the D&C Contract to which, but for this deed, it would have been entitled at and after the Effective Date;
  - (ii) must perform all obligations and discharge all liabilities under the D&C Contract which, but for this deed, it would have been required to perform or discharge at and after the Effective Date; and
  - (iii) is bound by and must comply with all other provisions of the D&C Contract by which, but for this deed, it would have been bound at and after the Effective Date,

as if TfNSW (or, if applicable, the Approved Nominee) had originally been a party to the D&C Contract in place of OpCo.

**5.4 Release by D&C Contractor**

Subject to clause 5.10 (*Obligations and liability prior to the Effective Date*), if TfNSW gives an Assumption Notice then, with effect from the Effective Date, the D&C Contractor releases OpCo from all obligations and liability under or in respect of the D&C Contract to be performed or discharged at or after the Effective Date.

**5.5 Release by OpCo**

Subject to clause 5.10 (*Obligations and liability prior to the Effective Date*), if TfNSW gives an Assumption Notice then, with effect from the Effective Date, OpCo releases the D&C Contractor from all obligations and liability under or in respect of the D&C Contract to be performed or discharged at or after the Effective Date.

**5.6 Novation of Acciona Guarantee**

If TfNSW gives an Assumption Notice then, subject to clause 5.10 (*Obligations and liability prior to the Effective Date*), with effect from the Effective Date:

- (a) TfNSW, OpCo and the Acciona Guarantor novate the Acciona Guarantee so that TfNSW (or, if applicable, the Approved Nominee) will be named as beneficiary to the new deed of guarantee on the same terms as the Acciona Guarantee; and
- (b) any reference in the Acciona Guarantee to OpCo shall be read as a reference to TfNSW (or, if applicable, the Approved Nominee).

**5.7 Assignment of Alstom Guarantee**

If TfNSW gives an Assumption Notice then, subject to clause 5.10 (*Obligations and liability prior to the Effective Date*), with effect from the Effective Date:

- (a) OpCo assigns its rights under the Alstom Guarantee to TfNSW (or, if applicable, the Approved Nominee); and
- (b) OpCo must immediately notify the Alstom Guarantor (with a copy to TfNSW) of the assignment effected under this clause 5.7 (*Assignment of Alstom Guarantee*).

**5.8 Novation of Core Contractor Interface Deed**

- (a) If TfNSW gives an Assumption Notice under this deed and at the same time an O&M Assumption Notice (a copy of which it shall provide to OpCo and the D&C Contractor) then, subject to clause 5.10 (*Obligations and liability prior to the Effective Date*), with effect from the Effective Date:
  - (i) TfNSW (or, if applicable, the Approved Nominee):
    - (A) is entitled to all rights and benefits under the Core Contractor Interface Deed to which, but for this deed, OpCo would have been entitled at and after the Effective Date;
    - (B) must perform all obligations and discharge all liabilities under the Core Contractor Interface Deed which, but for this deed, OpCo would have been required to perform or discharge at and after the Effective Date; and

- (C) is bound by and must comply with all other provisions of the Core Contractor Interface Deed by which, but for this deed, OpCo would have been bound at and after the Effective Date;
- (ii) the D&C Contractor:
  - (A) is entitled to all rights and benefits under the Core Contractor Interface Deed to which, but for this deed, it would have been entitled at and after the Effective Date;
  - (B) must perform all obligations and discharge all liabilities under the Core Contractor Interface Deed which, but for this deed, it would have been required to perform or discharge at and after the Effective Date; and
  - (C) is bound by and must comply with all other provisions of the Core Contractor Interface Deed by which, but for this deed, it would have been bound at and after the Effective Date,

as if TfNSW (or, if applicable, the Approved Nominee) had originally been a party to the Core Contractor Interface Deed in place of OpCo.

- (b) The parties acknowledge that:
  - (i) TfNSW and the O&M Contractor have, amongst other things, entered into the O&M Contract Side Deed;
  - (ii) under the terms of the O&M Contract Side Deed, TfNSW may give the O&M Contractor an O&M Assumption Notice in respect of the Core Contractor Interface Deed at the same time it gives an Assumption Notice under this deed; and
  - (iii) if TfNSW gives an O&M Assumption Notice under the O&M Contract Side Deed in respect of the Core Contractor Interface Deed, the O&M Assumption Notice will have an effect the same as that set out in paragraphs (a) and (b) of this clause 5.8 (*Novation of Core Contractor Interface Deed*) as if references to the D&C Contractor were reference to the O&M Contractor; and
  - (iv) the D&C Contractor will give effect to the novation of the Core Contractor Side Deed to TfNSW (or its Approved Nominee) referred to in this clause 5.8 (*Novation of Core Contractor Side Deed*) and acknowledges and agrees that the rights and obligations of both the O&M Contractor and the D&C Contractor will be novated.

#### 5.9 **Release from Core Contractor Interface Deed**

Subject to clause 5.10 (*Obligations and liability prior to the Effective Date*), if TfNSW gives an Assumption Notice and at the same time an O&M Assumption Notice then, with effect from the Effective Date:

- (a) The D&C Contractor releases OpCo from all obligations and liability under or in respect of the Core Contractor Interface Deed to be performed or discharged at or after the Effective Date; and
- (b) OpCo releases the D&C Contractor from all obligations and liability under or in respect of the Core Contractor Interface Deed to be performed or discharged at or after the Effective Date.

#### 5.10 **Obligations and liability prior to the Effective Date**

Nothing in this deed releases:

- (a) OpCo or the D&C Contractor from any obligation or liability under the D&C Contract;
- (b) OpCo or the D&C Contractor from any obligation or liability under the Core Contractor Interface Deed; or
- (c) OpCo or the D&C Guarantors from any obligation or liability under the D&C Guarantees,

arising or accruing before the Effective Date and TfNSW (or, if applicable, the Approved Nominee) does not assume any such obligation or liabilities under this deed.

#### 5.11 **Amendments to D&C Contract and Core Contractor Interface Deed**

- (a) With effect from the Effective Date, the terms of the D&C Contract and, if an Assumption Notice has been served in respect of it, the Core Contractor Interface Deed will be deemed to be amended as required to reflect the fact that the Project Deed is at an end, and that the D&C Contract and the Core Contractor Interface Deed must operate independently of the Project Deed, on the basis that:
  - (i) the rights and obligations that TfNSW (or, if applicable, the Approved Nominee) will assume under the D&C Contract and the Core Contractor Interface Deed from the Effective Date will be equivalent to those that OpCo would have had under the D&C Contract and the Core Contractor Interface Deed had the Project Deed not been terminated;
  - (ii) the rights and obligations that the D&C Contractor will assume under the D&C Contract and the Core Contractor Interface Deed from the Effective Date will be equivalent to those that the D&C Contractor would have had under the D&C Contract and the Core Contractor Interface Deed had the Project Deed not been terminated;
  - (iii) any provisions of the Project Deed incorporated by reference into the D&C Contract and the Core Contractor Interface Deed prior to the Effective Date are incorporated in the D&C Contract and the Core Contractor Interface Deed from the Effective Date; and
  - (iv) without affecting the generality of this clause 5.11(a), clauses 1.4(q), 2.2(f), 2.3(b), 2.3(c), 5.5, 28.4, 43.10A and 56A of the D&C Contract will be deleted.
- (b) If at or after the Effective Date, there is a dispute between TfNSW and the D&C Contractor as to how the terms of the D&C Contract and the Core Contractor Interface Deed are deemed to have been amended pursuant to clause 5.11(a), then upon either party serving a written notice to this effect on the other, the dispute will be determined as if clause 56 (*Dispute resolution*) of the Project Deed were incorporated in this deed but as if:
  - (i) references in those clauses to "OpCo" were references to "the D&C Contractor";
  - (ii) references to "the parties" were references to "TfNSW and the D&C Contractor";



- (iii) references to a "party" were references to "TfNSW" or "the D&C Contractor" (as appropriate);
- (iv) references in those clauses to "Dispute" were references to this dispute; and
- (v) the dispute had been appropriately referred to the Dispute Avoidance Board.

#### 5.12 **Approved Nominee**

- (a) TfNSW's nominee may be named as a party to the D&C Contract and the Core Contractor Interface Deed in substitution for OpCo if TfNSW's nominee is an Approved Nominee.
- (b) The D&C Contractor must:
  - (i) notify TfNSW as to whether TfNSW's nominee is an Approved Nominee, on or before the date falling 30 days after the date of receipt of all information reasonably required by the D&C Contractor to decide whether the nominated person is an Approved Nominee;
  - (ii) not unreasonably withhold or delay its decision on whether TfNSW's nominee is an Approved Nominee; and
  - (iii) enter into a side deed with TfNSW and the Approved Nominee on substantially the same terms as this deed.

#### 5.13 **Bonds**

If TfNSW gives an Assumption Notice then, as from the Effective Date, OpCo must at OpCo's cost (with the support of the D&C Contractor to effect this provision) either:

- (a) procure the novation or assignment to TfNSW (or, subject to clause 5.12 (*Approved Nominee*), the Approved Nominee) of any Construction Bond or Defects Correction Period Bond (each as defined in the D&C Contract) held by OpCo under the D&C Contract prior to the Effective Date (**Bonds**); or
- (b) procure the issue to TfNSW (or, if applicable, the Approved Nominee) of replacement bonds for the same undrawn value and on the same terms as the Bonds held by OpCo under the D&C Contract prior to the Effective Date.

#### 5.14 **Other documents under the D&C Contract**

If TfNSW gives an Assumption Notice then, as from the Effective Date, OpCo and the D&C Contractor (where the D&C Contractor is a party to the relevant agreement) must procure the novation or assignment to TfNSW (or, if applicable, the Approved Nominee) of:

- (a) the D&C Independent Certifier Deed;
- (b) any Deed of Assurance in favour of OpCo; and
- (c) any Moral Rights Consent in favour of OpCo.

### 6. **AMENDMENTS TO D&C CONTRACT, ACCIONA GUARANTEE, CORE CONTRACTOR INTERFACE DEED AND D&C INDEPENDENT CERTIFIER DEED**

#### 6.1 **No amendments**

Subject to clause 6.2, each of the D&C Contractor and the Acciona Guarantor, to the extent they are a party to the relevant document, agree with TfNSW that it will not agree

to or permit any modification, variation, waiver or amendment to the terms of the D&C Contract, the D&C Guarantees, the D&C Independent Certifier Deed or the Core Contractor Interface Deed without the prior consent of TfNSW.

**6.2 Exceptions for Project Deed amendments**

Clause 6.1 (*No amendments*) does not apply to any modification, variation, waiver or amendment to the terms of the D&C Contract, a D&C Guarantee, the Core Contractor Guarantee or the D&C Independent Certifier Deed that is required as a result of, or in order to ensure consistency with, a modification, variation, waiver or amendment to the Project Deed.

**7. RESTRICTION ON DEALINGS**

The D&C Contractor agrees with TfNSW that, after Financial Close, it will not transfer, assign, mortgage, charge, encumber or otherwise deal with its interest in the D&C Contract, the D&C Independent Certifier Deed or the Core Contractor Interface Deed without the prior consent of TfNSW (such consent not to be unreasonably withheld or delayed) other than in relation to or as a result of a Permitted Change in Control, and without procuring that such transferee, assignee, mortgagee, chargee or other encumbrancee enters into a deed in which it agrees to be bound by the terms of this deed.

**8. D&C CONTRACTOR'S WARRANTY**

The D&C Contractor represents and warrants for the benefit of TfNSW that it has not had any criminal, civil or other proceedings brought against it in connection with any rail safety incident (whether in Australia or elsewhere) and that no such proceedings are current, pending or, to its knowledge, threatened.

**9. ACKNOWLEDGEMENT BY OPCO**

OpCo consents to the terms of this deed and will co-operate in the implementation of this deed.

**10. PRINCIPAL CONTRACTOR**

In this clause 10 (*Principal contractor*), the terms "principal contractor", "workplace" and "construction work" have the same meanings assigned to those terms in the WHS Legislation. For the purposes of the WHS Legislation and this deed:

- (a) D&C Contactor's Activities; and
- (b) any Construction Site Interface Work,

is taken to be part of the same "construction project".

**10.2 Engagement of principal contractor**

- (a) During the Delivery Phase from the date on which OpCo is given access to a part of the Construction Site in accordance with the Project Deed, except where the Section Access Schedule provides that OpCo will not have control of that part of the Construction Site:
  - (i) to the extent that D&C Contactor's Activities or any SLR Site Interface Work includes construction work, TfNSW:

- (A) engages Acciona as the principal contractor in respect of D&C Contactor's Activities and the Construction Site Interface Work;
  - (B) authorises Acciona to have management and control of each workplace at which D&C Contactor's Activities and the Construction Site Interface Work is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation;
  - (C) must give Acciona prior notice of any Other Contractor undertaking Construction Site Interface Work before such Construction Site Interface Work commences; and
  - (D) must provide OpCo and Acciona with an executed deed poll in favour of OpCo and Acciona in the form set out in Schedule C15 (*Form of Deed Poll*) of the Project Deed from the Managing Contractor and each Other Contractor undertaking Construction Site Interface Work; and
- (ii) Acciona accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation.

#### 10.3 **Period of engagement**

Acciona's engagement and authorisation as a principal contractor will continue until:

- (a) in respect of each discrete part of the Third Party Works, the point in time when the relevant discrete part of the Third Party Works has been completed in accordance with clauses 19.5 (*Local Area Works*), 19.6 (*Utility Service Works*) or 19.7 (*Property Works*) (as applicable) of the Project Deed;
- (b) in respect of the balance of the SLR Works (other than SLR Works being performed on any Extra Land or Temporary Areas), the earlier of:
  - (i) the termination of the Project Deed; and
  - (ii) the Date of Completion under the Project Deed; and
- (c) in respect of any SLR Works being performed by the D&C Contractor on any Extra Land or Temporary Areas after the Date of Completion, the earlier of:
  - (i) the termination of the Project Deed; and
  - (ii) the Date of Final Completion under the Project Deed.

#### 10.4 **If engagement not effective**

If the engagement of Acciona as principal contractor under this clause 10 (*Principal Contractor*) is not effective for any reason, Acciona agrees that it will exercise and fulfil the functions and obligations of the principal contractor under the WHS Legislation as if it had been validly engaged and authorised as principal contractor under clause 10.2 (*Engagement of principal contractor*).

#### 10.5 **Other principal contractors**

At any time when the Section Access Schedule provides that OpCo will not have control of a part of the Construction Site, OpCo and the D&C Contractor:

- (a) acknowledge that the other contractor who is specified in the Section Access Schedule as being in control of that part of the Construction Site (**Other Principal Contractor**) is the principal contractor in respect of all construction work carried out by or on behalf of TfNSW on that part of the Construction Site during the period in which that Other Principal Contractor is in control of that part of the Construction Site; and
- (b) must comply with any exercise by the Other Principal Contractor referred to in clause 10.5(a) of such authority as is necessary to enable that Other Principal Contractor to discharge the responsibilities imposed on a principal contractor by the WHS Legislation.

## 11. GST

- (a) **(Interpretation):**
  - (i) Except where the context suggests otherwise, terms used in this clause 11 (*GST*) have the same meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
  - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 11 (*GST*).
  - (iii) Unless otherwise expressly stated, all consideration to be provided under this deed (other than under this clause 11 (*GST*)) is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 11 (*GST*).
  - (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) **(Reimbursements):** Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(Additional amount of GST payable):** If GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this deed:
  - (i) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
  - (ii) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 11(c)(i).
- (d) **(Variation of GST):**
  - (i) If the GST Amount recovered by the Supplier from the Recipient under clause 11(c) for a supply varies from the amount of GST paid or payable by

the Supplier on that supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.

(ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this deed within 7 days after the Supplier becomes aware of the adjustment event.

(e) **(No merger)**: This clause will not merge on completion or termination of this deed.

## 12. NOTICES

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

### **TfNSW**

Name: TfNSW, a New South Wales Government agency  
Address: Level 11  
338 Pitt Street  
Sydney NSW 2000  
Fax: (02) 9200 0290  
For the attention of: TfNSW's Representative

With a copy to:

Name: TfNSW, a New South Wales Government agency  
Address: Level 5  
Tower A, Zenith Centre  
821 Pacific Highway  
Chatswood NSW 2067  
Fax: (02) 9200 0290  
For the attention of: Deputy Director General, Transport Projects Division

### **OpCo**

Name: ALTRAC Light Rail Partnership  
Address: c/- Capella Capital, Level 31  
AMP Centre  
50 Bridge Street  
Sydney NSW 2000  
Fax: 02 8224 3800  
For the attention of: Malcolm Macintyre

### **D&C Contractor**

Name: Alstom Transport Australia Pty Limited  
Address: 16 Giffnock Avenue  
North Ryde NSW 2113  
Fax: (02) 8870 6005  
For the attention of: Managing Director, Alstom Transport Australia and New Zealand

and

Name: Acciona Infrastructure Australia Pty Ltd  
Address: Level 12, Freshwater Place  
2 Southbank Blvd  
Southbank VIC 3006  
For the attention of: Company Secretary

**Acciona Guarantor**

Name: Acciona Infraestructuras S.A.  
Address: Avenida de Europa  
18 Parque Empresarial de la Moraleja 28108, Alcobendas  
Madrid, Spain  
For the attention of: Angel Ledesma Calico

- (c) must be signed by the party making it (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 12(b);
- (e) is taken to be received by the addressee:
  - (i) (in the case of prepaid post) on the third working day after the date of posting to an address within Australia, and on the fifth working day after the date of posting by airmail to an address outside Australia;
  - (ii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the machine from which it was sent; and
  - (iii) (in the case of delivery by hand) on delivery,  
  
but if the communication is taken to be received on a day which is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day, where "**working day**" means a day that:
    - (iv) is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered; and
    - (v) does not fall during the period commencing on the Monday before 24 December in any given year and ending on the Friday following 1 January of the following year; and
- (f) notwithstanding clause 12.1(d) and clause 12.1(e)(ii) above, each communication to Acciona Infrastructure Australia Pty Ltd or the Acciona Guarantor must be delivered or posted by prepaid post and not sent by fax.

13. **EXCLUSION OF PROPORTIONATE LIABILITY**

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

- (b) Without limiting the above, the rights, obligations and liabilities of TfNSW and OpCo under this deed with respect to proportionate liability are as specified in this deed and not otherwise, whether these rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

## 14. **GOVERNING LAW AND JURISDICTION**

### 14.1 **Governing law**

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

### 14.2 **Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) 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 within inconvenient forum, if that venue falls within clause 14.2(a).

## 15. **MISCELLANEOUS**

### 15.1 **Entire agreement**

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

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

### 15.2 **Further acts and documents**

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

### 15.3 **Waiver**

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

15.4 **Consents**

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

15.5 **Amendments**

This deed may only be varied by a document signed by or on behalf of each party.

15.6 **Expenses**

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

15.7 **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 unenforceability under the law of any other jurisdiction of that or any other provision of this deed.

15.8 **No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

15.9 **Counterparts**

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



**EXECUTED** as a deed.

**EXECUTED** on behalf of **TRANSPORT FOR NSW** by its authorised delegate **IN THE PRESENCE OF:**

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Authorised Delegate

\_\_\_\_\_  
Name of Witness (print)

\_\_\_\_\_  
Name of Authorised Delegate (print)

Signed by the ALTRAC Light Rail Partnership by being signed by each of its partners as at the date of this deed

**SIGNED, SEALED AND DELIVERED** by  
**ALTRAC LIGHT RAIL 1 PTY LIMITED**  
**ACN 603 192 203** as trustee for  
**ALTRAC LIGHT RAIL TRUST 1:**

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of Director (print)

\_\_\_\_\_  
Name of Director (print)

**SIGNED, SEALED AND DELIVERED** by  
**ALTRAC LIGHT RAIL 2 PTY LIMITED**  
**ACN 603 194 476** as trustee for  
**ALTRAC LIGHT RAIL TRUST 2:**

\_\_\_\_\_  
Company Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of Company Secretary/Director (print)

\_\_\_\_\_  
Name of Director (print)

**SIGNED, SEALED AND DELIVERED** by  
**ALTRAC LIGHT RAIL 3 PTY LIMITED**  
**ACN 603 190 601** as trustee for  
**ALTRAC LIGHT RAIL TRUST 3** by its  
Attorney **IN THE PRESENCE OF:**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Name of Witness (print)

\_\_\_\_\_  
Name of Attorney (print)

**EXECUTED** by **ALSTOM TRANSPORT**  
**AUSTRALIA PTY LIMITED ABN 68 165**  
**157 451** in accordance with s127(1) of the  
*Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full

**EXECUTED** by **ACCIONA**  
**INFRASTRUCTURE AUSTRALIA PTY**  
**LTD ABN 52 140 915 251** in accordance  
with s127(1) of the *Corporations Act 2001*  
(Cth):

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full

**EXECUTED** by **ACCIONA  
INFRAESTRUCTURAS S.A.** by its  
Attorney **IN THE PRESENCE OF:**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Name of Witness (print)

\_\_\_\_\_  
Name of Attorney (print)

**Schedule A13**  
**O&M Contract Side Deed**

(Clause 1.1)



Sydney Light Rail

O&M Contract Side Deed

Transport for NSW

ABN 18 804 239 602

ALTRAC Light Rail Partnership

Transdev Sydney Pty Ltd

ABN 34 096 046 052

Transdev Australasia Pty Ltd

ABN 40 079 303 816

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**THIS DEED** is made on December 2014

**BETWEEN:**

- (1) **Transport for NSW** (ABN 18 804 239 602) a New South Wales Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW) of Level 5, Tower A, Zenith Centre 821 Pacific Highway, Chatswood NSW 2067 (**TfNSW**).
- (2) **ALTRAC Light Rail Partnership**, a partnership between ALTRAC Light Rail 1 Pty Limited ACN 603 192 203 in its capacity as trustee of ALTRAC Light Rail Trust 1, ALTRAC Light Rail 2 Pty Limited ACN 603 194 476 in its capacity as trustee of ALTRAC Light Rail Trust 2 and ALTRAC Light Rail 3 Pty Limited ACN 603 190 601 in its capacity as trustee of ALTRAC Light Rail Trust 3 (**OpCo**).
- (3) **Transdev Sydney Pty Ltd** ABN 34 096 046 052 whose registered office is at Level 12, 114 William Street, Melbourne VIC 3000 (**O&M Contractor**).
- (4) **Transdev Australasia Pty Ltd** ABN 40 079 303 816 whose registered office is at Level 12, 114 William Street, Melbourne VIC 3000 (**O&M Guarantor**).

**RECITALS:**

- (A) TfNSW and OpCo have entered, or will enter, into the Project Deed for the provision of the SLR PPP.
- (B) OpCo has subcontracted its obligations to operate and maintain the SLR to the O&M Contractor pursuant to the O&M Contract.
- (C) The O&M Guarantor has, pursuant to the O&M Guarantee, guaranteed to OpCo the performance of the O&M Contractor's obligations under the O&M Contract.
- (D) The O&M Contractor and the O&M Guarantor have agreed to grant TfNSW certain rights in relation to the O&M Contract, the Core Contractor Side deed and the O&M Guarantee.

**THE PARTIES AGREE AS FOLLOWS:**

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Project Deed definitions**

Definitions in the Project Deed apply in this deed unless the context requires otherwise or the relevant term is defined in this deed.

1.2 **Definitions**

In this deed:

**Approved Nominee** means a person nominated by TfNSW and approved by the O&M Contractor in accordance with clause 4.11 (*Approved Nominee*) as:

- (a) having legal capacity, power and authority to become a party to and perform the obligations of OpCo under the O&M Contract; and
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and subcontracts) which are sufficient to enable it to perform the obligations of OpCo under the O&M Contract.



**Assumption Notice** means the notice referred to in clause 4.1 (*Option*).

**Core Contractor Interface Deed** means the deed titled "DCOM Interface Agreement" between OpCo, the D&C Contractor and the O&M Contractor dated on or about the date of this deed.

**D&C Assumption Notice** means the notice referred to in clause 5.1 of the D&C Contract Side Deed.

**D&C Contract Side Deed** means the contract titled "SLR D&C Contract Side Deed" between TfNSW, OpCo, the D&C Contractor and Acciona Infraestructuras S.A. dated on or about the date of this deed.

**D&C Contractor** means the unincorporated joint venture comprised of Alstom and Acciona.

**Default Event** means:

- (a) any default (howsoever described) by OpCo under the O&M Contract; or
- (b) any other event or circumstance,

which alone or with the giving of notice or passage of time or both, would entitle the O&M Contractor to terminate, rescind, accept the repudiation of, or suspend any or all of the O&M Contractor's obligations under, the O&M Contract.

**Default Event Notice** has the meaning given to it in clause 3.2(a).

**Effective Date** means the date of the Assumption Notice.

**O&M Contract** means the contract titled Sydney Light Rail O&M Contract dated on or about the date of this deed between OpCo and the O&M Contractor.

**O&M Contractor's Activities** has the meaning given to it in the O&M Contract.

**O&M Contractor Deed of Charge** means the document entitled "Sydney Light Rail Deed of Charge – O&M Contractor" dated on or about the date of this deed between TfNSW and the O&M Contractor.

**O&M Guarantee** means the deed of guarantee dated on or about the date of this deed from the O&M Guarantor in favour of OpCo in respect of the obligations of the O&M Contractor under the O&M Contract and, if TfNSW gives an Assumption Notice, the new guarantee entered into pursuant to clause 4.6 (*Novation of O&M Guarantee*).

**O&M Guarantor** means Transdev Australasia Pty Limited.

**O&M Project Agreements** has the meaning given to it in the O&M Contract.

**Project Deed** means the deed entitled Sydney Light Rail Project Deed dated on or about the date of this deed between TfNSW and OpCo.

**TfNSW Assets** means the Assets and the ETS Equipment (each as defined in the O&M Contract).

**TfNSW Cure Notice** has the meaning given to it in clause 3.2(c).

### 1.3 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) "**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;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;
- (d) a reference to a document (including this deed) is to that document as updated, varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word importing a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, annexure or attachment is a reference to party, clause, schedule, exhibit, annexure or attachment to or of this deed, and a reference to this deed includes all schedules, exhibits, annexures and attachments to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) "**includes**" in any form is not a word of limitation; and
- (j) a reference to "\$" or "**dollar**" is to Australian currency.

#### 1.4 **Replacement body interpretation**

Where a reference is made to any body or authority which ceases to exist (**Former Body**), that reference will be to that body or authority (**Replacement Body**) which then serves substantially the same functions as the Former Body. Any reference to the president or other senior officer of the Former Body will be to the president or senior officer of the Replacement Body.

#### 1.5 **No bias against drafting party**

Each provision of this deed will be interpreted without disadvantage to the party who (or whose representative) drafted that provision.

#### 1.6 **Business Day**

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

#### 1.7 **Inconsistencies**

To the extent of any inconsistency between the terms of this deed and the O&M Contract, this deed will prevail over the O&M Contract.

**1.8 Project Deed and Financiers Tripartite Deed**

The O&M Contractor and the O&M Guarantor acknowledge that they have received a copy of the Project Deed and the Financiers Tripartite Deed.

**1.9 Limitation of liability**

Despite any other provision of the O&M Contract, the O&M Guarantee or this deed:

- (a) the O&M Contractor will have no greater obligations or liabilities to TfNSW under this deed as it relates to obligations to be performed and liabilities to be incurred by the O&M Contractor under the O&M Contract, than it would have had if TfNSW had been named as the counterparty under the O&M Contract and shall have the benefit of all defences that are available to it under the O&M Contract;
- (b) the O&M Guarantor will have no greater obligations or liabilities to TfNSW under this deed as it relates to obligations to be performed and liabilities to be incurred by the O&M Contractor under the O&M Contract, than it would have had if TfNSW had been named as the counterparty under the O&M Guarantee and shall have the benefit of all defences that are available to it under the O&M Guarantee;
- (c) the maximum aggregate liability of the O&M Contractor under, in respect of, or arising out of or in connection with this deed and the O&M Project Agreements is limited to the extent described in clause 38A of the O&M Contract;
- (d) nothing in this deed is intended to make or makes the O&M Contractor or the O&M Guarantor liable to TfNSW or OpCo for the same loss twice for the same breach of an obligation under this deed or a O&M Project Agreement and should such case arise, discharge of a liability for such loss to TfNSW or OpCo by the O&M Contractor or the O&M Guarantor shall satisfy, to the same extent, the corresponding liability to OpCo or TfNSW (as relevant); and
- (e) this clause shall survive the termination of this deed.

**2. SECURITIES**

**2.1 O&M Contractor acknowledgements and consents**

The O&M Contractor:

- (a) acknowledges and consents to the grant of, subject to the Financiers Tripartite Deed, security over all of OpCo's right, title and interest in and to the O&M Contract, the O&M Guarantee and the Core Contractor Interface Deed pursuant to the TfNSW Deed of Charge;
- (b) acknowledges, subject to the Financiers Tripartite Deed, the rights created under the TfNSW Deed of Charge in favour of TfNSW, including the appointment by OpCo of TfNSW as the lawful attorney of OpCo to do, perform and exercise all things, acts and rights under the O&M Contract or the Core Contractor Interface Deed on behalf and for the account of OpCo, pursuant to the TfNSW Deed of Charge, subject to the rights of the Security Trustee under the Financiers Tripartite Deed;
- (c) acknowledges and agrees that, without limiting TfNSW's obligations under this deed, TfNSW is not subject to any duty or obligation under the O&M Contract or the Core Contractor Interface Deed as a result of the TfNSW Deed of Charge; and

- (d) acknowledges that the grant of the TfNSW Deed of Charge is not, and the exercise by TfNSW of its rights under the TfNSW Deed of Charge will not of itself, constitute a Default Event.

## 2.2 O&M Guarantor acknowledgements and consents

The O&M Guarantor:

- (a) acknowledges and consents to the grant of the security over all of OpCo's rights, title and interest in and to the O&M Guarantee pursuant to the TfNSW Deed of Charge;
- (b) acknowledges the rights created under the TfNSW Deed of Charge in favour of TfNSW, including the appointment by OpCo of TfNSW as the lawful attorney of OpCo to do, perform and exercise all things, acts and rights under the O&M Guarantee on behalf of and for the account of OpCo, pursuant to the TfNSW Deed of Charge, subject to the rights of the Security Trustee under the Financiers Tripartite Deed;
- (c) acknowledges and agrees that, without limiting TfNSW's obligations under this deed, TfNSW is not subject to any duty or obligation under the O&M Guarantee as a result of the TfNSW Deed of Charge; and
- (d) acknowledges that the grant of the TfNSW Deed of Charge does not, and the exercise by TfNSW of its rights under the TfNSW Deed of Charge will not of itself, give rise to any rights by the O&M Guarantor to revoke or terminate the O&M Guarantee.

## 3. TFNSW'S RIGHT TO CURE DEFAULT EVENT

### 3.1 TfNSW's cure rights

- (a) On becoming aware of any Default Event (and subject to clause 3.1(b)), TfNSW may (but is not obliged to) take steps to cure or remedy, or procure the cure or remedy of, that Default Event.
- (b) Clause 3.1(a) only applies if the O&M Contractor has given a TfNSW Cure Notice in accordance with clause 3.2(c).
- (c) Upon TfNSW exercising any of its rights under this clause 3.1 (*TfNSW's cure rights*), OpCo's obligations under the O&M Contract are suspended to the extent and for such period as OpCo is prevented from performing such obligations by TfNSW's exercise of its step-in rights pursuant to clause 3.1(a).
- (d) If TfNSW exercises its step-in rights, TfNSW may, after giving reasonable prior notice to OpCo, cease to exercise those rights, and in any event, will cease to exercise its step-in rights pursuant to clause 3.1(a) once the relevant Default Event has been remedied.

### 3.2 Restriction on right to terminate or suspend

The O&M Contractor must not terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the O&M Contract unless each of the following conditions has been satisfied:

- (a) the O&M Contractor has given to TfNSW prior notice (**Default Event Notice**) setting out details of the Default Event giving rise to the right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its

obligations under, the O&M Contract, together with the statements referred to in clause 3.3 (*Statements concerning Default Event*);

- (b) if the O&M Contractor's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the O&M Contract is subject to any right of a Debt Financier to cure or remedy the Default Event, the cure or remedy period available to the Debt Financiers in respect of the Default Event under any Debt Financing Document has expired without a cure or remedy being achieved or the Security Trustee has notified the O&M Contractor in writing that it does not intend to cure the Default Event;
- (c) the O&M Contractor has given notice to TfNSW (**TfNSW Cure Notice**) confirming that, either:
  - (i) the requirements of clause 3.2(b) are satisfied; or
  - (ii) the O&M Contractor's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the O&M Contract is not subject to any right of the Debt Financiers to cure or remedy the Default Event; and
- (d) either:
  - (i) if the Default Event is capable of cure or remedy within 20 Business Days (or such longer period as is permitted under the O&M Contract or agreed to by the O&M Contractor), that Default Event has not been cured or remedied within 20 Business Days (or such longer period as is permitted under the O&M Contract or agreed to by the O&M Contractor) after the date on which TfNSW Cure Notice is given to TfNSW;
  - (ii) if the Default Event is not one described in clause 3.2(d)(i) but is nevertheless reasonably capable of cure or remedy, TfNSW has not commenced curing or remedying the Default Event within 20 Business Days after the date on which TfNSW Cure Notice is given and has not continued to diligently pursue that cure or remedy;
  - (iii) if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice contains a claim for reasonable compensation for the Default Event, OpCo or TfNSW (or another person on behalf of either of them) have not paid or otherwise provided that compensation within 20 Business Days (or such longer period as is permitted under the O&M Contract or agreed to by the O&M Contractor) after the date on which TfNSW Cure Notice is given to TfNSW;
  - (iv) if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice does not contain a claim for reasonable compensation for the Default Event, TfNSW does not commence and continue to perform OpCo's obligations under the O&M Contract within 20 Business Days (or such longer period as is permitted under the O&M Contract or agreed to by the O&M Contractor) after the date on which TfNSW Cure Notice is given to TfNSW; or
  - (v) TfNSW notifies the O&M Contractor in writing after receipt of the TfNSW Cure Notice that it elects not to cure or remedy, or procure the cure or remedy of, the Default Event.

### 3.3 Statements concerning Default Event

- (a) As part of any Default Event Notice, the O&M Contractor must submit to TfNSW statements of:
  - (i) where the Default Event is a monetary default, the amount which must be paid to the O&M Contractor to remedy the Default Event;
  - (ii) where the Default Event is of a non-monetary nature:
    - (A) the provisions of the O&M Contract alleged to have been breached or not fulfilled;
    - (B) sufficient information to enable TfNSW to identify the material facts;
    - (C) the steps reasonably required to cure or remedy the specified breaches or conditions not fulfilled if reasonably capable of cure or remedy; and
    - (D) the time within which the specified steps can reasonably be expected to be taken; and
  - (iii) any rights available to the Debt Financiers, pursuant to any Debt Financing Document to which the O&M Contractor is a party, to cure or remedy that Default Event and the period within which that cure or remedy must occur before the Debt Financing Documents permit the O&M Contractor to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under the O&M Contract.
- (b) If the O&M Contractor gives a TfNSW Cure Notice to TfNSW then as part of that notice it must update the matters referred to in paragraph (a) above.

### 3.4 Warranty of accuracy

The O&M Contractor warrants to TfNSW that statements submitted by it under clause 3.3 (*Statements concerning Default Event*) will be, so far as reasonably practicable, true, complete and accurate statements of the amounts to which the O&M Contractor considers itself entitled.

### 3.5 Disputes as to statements

If TfNSW disputes the amount of any claim or the existence of any default referred to in a Default Event Notice:

- (a) TfNSW must pay the amount not in dispute;
- (b) upon resolution of the dispute in accordance with this deed, the parties must make payments as determined; and
- (c) during the period of dispute resolution, all parties must continue to perform their obligations under this deed and the Project Agreements.

### 3.6 Verification

TfNSW may appoint a firm of independent chartered accountants or a firm of technical advisers, in each case approved by OpCo and the O&M Contractor (such approval not to be unreasonably withheld or delayed), to verify (at the cost of OpCo) statements submitted by the O&M Contractor, and the O&M Contractor must (subject to such firm(s)

executing an appropriate confidentiality agreement as the O&M Contractor may reasonably request) permit such firm(s) to have access to and make copies of all records, documents, data and accounting and other information not subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such statements.

**3.7 No liability**

OpCo and the O&M Contractor acknowledge that, without limiting the liability of OpCo (which continues to be responsible for the performance of its obligations under the O&M Contract), and without limiting TfNSW's obligations under clause 4 (*Novation of O&M Contract and O&M Guarantee*), TfNSW will not be liable for any obligation or liability of OpCo under the O&M Contract by reason only of TfNSW performing OpCo's obligations in accordance with the O&M Contract. OpCo and the O&M Contractor each release TfNSW from any such liability, except to the extent that such liability occurs or arises as a direct result of any fraud, gross negligence or wilful default on the part of TfNSW.

**3.8 OpCo to compensate TfNSW**

Any reasonable Loss suffered or incurred by TfNSW arising out of or in any way in connection with the exercise of its rights under this clause 3 (*TfNSW's right to cure Default Event*) will be a debt due from OpCo to TfNSW.

**3.9 No limitation on other rights**

The exercise (or failure to exercise) by TfNSW of its rights under this clause 3 (*TfNSW's right to cure Default Event*) will not limit TfNSW's rights against OpCo under the TfNSW Project Agreements or otherwise according to law.

**4. NOVATION OF O&M CONTRACT, O&M GUARANTEE AND CORE CONTRACTOR INTERFACE DEED**

**4.1 Option**

If TfNSW terminates the Project Deed during the Operations Phase then TfNSW may exercise its rights under this clause 4 (*Novation of O&M Contract and O&M Guarantee*) by giving a notice (**Assumption Notice**) to the O&M Contractor and the O&M Guarantor.

**4.2 Novation of O&M Contract**

With effect from the Effective Date:

- (a) TfNSW, OpCo and the O&M Contractor novate the O&M Contract so that TfNSW (or, if applicable, the Approved Nominee) and the O&M Contractor are parties to a new contract on the same terms as the O&M Contract as amended by this deed; and
- (b) any reference in the O&M Contract to OpCo shall be read as a reference to TfNSW (or, if applicable, the Approved Nominee).

**4.3 Rights and obligations of TfNSW and the O&M Contractor under the O&M Contract**

If TfNSW gives an Assumption Notice then, subject to clause 4.9 (*Obligations and liability prior to the Effective Date*), with effect from the Effective Date:

- (a) TfNSW (or, if applicable, the Approved Nominee):

- (i) is entitled to all rights and benefits under the O&M Contract to which, but for this deed, OpCo would have been entitled at and after the Effective Date;
  - (ii) must perform all obligations and discharge all liabilities under the O&M Contract which, but for this deed, OpCo would have been required to perform or discharge at and after the Effective Date; and
  - (iii) is bound by and must comply with all other provisions of the O&M Contract by which, but for this deed, OpCo would have been bound at and after the Effective Date; and
- (b) the O&M Contractor:
- (i) is entitled to all rights and benefits under the O&M Contract to which, but for this deed, it would have been entitled at and after the Effective Date;
  - (ii) must perform all obligations and discharge all liabilities under the O&M Contract which, but for this deed, it would have been required to perform or discharge at and after the Effective Date; and
  - (iii) is bound by and must comply with all other provisions of the O&M Contract by which, but for this deed, it would have been bound at and after the Effective Date,

as if TfNSW (or, if applicable, the Approved Nominee) had originally been a party to the O&M Contract in place of OpCo.

#### 4.4 Release by O&M Contractor

Subject to clause 4.9 (*Obligations and liability prior to the Effective Date*), if TfNSW gives an Assumption Notice then, with effect from the Effective Date, the O&M Contractor releases OpCo from all obligations and liability under or in respect of the O&M Contract to be performed or discharged at or after the Effective Date.

#### 4.5 Release by OpCo

Subject to clause 4.9 (*Obligations and liability prior to the Effective Date*), if TfNSW gives an Assumption Notice then, with effect from the Effective Date, OpCo releases the O&M Contractor from all obligations and liability under or in respect of the O&M Contract to be performed or discharged at or after the Effective Date.

#### 4.6 Novation of O&M Guarantee

If TfNSW gives an Assumption Notice then, subject to clause 4.9 (*Obligations and liability prior to the Effective Date*), with effect from the Effective Date:

- (a) TfNSW, OpCo and the O&M Contractor novate the O&M Guarantee so that TfNSW (or, if applicable, the Approved Nominee) will be named as beneficiary to the new deed of guarantee on the same terms as the O&M Guarantee;
- (b) any reference in the O&M Guarantee to OpCo shall be read as a reference to TfNSW (or, if applicable, the Approved Nominee); and
- (c) the O&M Guarantor will guarantee for the benefit of TfNSW (or, if applicable, the Approved Nominee) all of the obligations of the O&M Contractor in accordance with the O&M Guarantee.



#### 4.7 Novation of Core Contractor Interface Deed

(a) If TfNSW gives an Assumption Notice under this deed and at the same time a D&C Assumption Notice under the D&C Contract Side Deed then, subject to clause 4.9 (*Obligations and liability prior to the Effective Date*), with effect from the Effective Date:

- (i) TfNSW (or, if applicable, the Approved Nominee):
  - (A) is entitled to all rights and benefits under the Core Contractor Interface Deed to which, but for this deed, OpCo would have been entitled at and after the Effective Date;
  - (B) must perform all obligations and discharge all liabilities under the Core Contractor Interface Deed which, but for this deed, OpCo would have been required to perform or discharge at and after the Effective Date; and
  - (C) is bound by and must comply with all other provisions of the Core Contractor Interface Deed by which, but for this deed, OpCo would have been bound at and after the Effective Date;
- (ii) the O&M Contractor:
  - (A) is entitled to all rights and benefits under the Core Contractor Interface Deed to which, but for this deed, it would have been entitled at and after the Effective Date;
  - (B) must perform all obligations and discharge all liabilities under the Core Contractor Interface Deed which, but for this deed, it would have been required to perform or discharge at and after the Effective Date; and
  - (C) is bound by and must comply with all other provisions of the Core Contractor Interface Deed by which, but for this deed, it would have been bound at and after the Effective Date,

as if TfNSW (or, if applicable, the Approved Nominee) had originally been a party to the Core Contractor Interface Deed in place of OpCo.

- (b) The parties acknowledge that:
- (i) TfNSW, OpCo and the D&C Contractor have, amongst other things, entered into the D&C Contract Side Deed;
  - (ii) under the terms of the D&C Contract Side Deed, TfNSW may give the D&C Contractor a D&C Assumption Notice in respect of the Core Contractor Interface Deed at the same time it gives an Assumption Notice under this deed;
  - (iii) if TfNSW gives a D&C Assumption Notice under the D&C Contract Side Deed, the D&C Assumption Notice will have an effect the same as that set out in paragraphs (a) and (b) of this clause 4.7 (*Novation of Core Contractor Interface Deed*) as if references to the O&M Contractor were reference to the D&C Contractor; and
  - (iv) the O&M Contractor will give effect to the novation of the Core Contractor Side Deed to TfNSW (or its Approved Nominee) referred to in this clause

4.7(*Novation of Core Contractor Side Deed*) and acknowledges and agrees that the rights and obligations of both the D&C Contractor and the O&M Contractor will be novated.

**4.8 Release from Core Contractor Interface Deed**

Subject to clause 4.9 (*Obligations and liability prior to the Effective Date*), if TfNSW gives an Assumption Notice then, with effect from the Effective Date:

- (a) the O&M Contractor releases OpCo from all obligations and liability under or in respect of the Core Contractor Interface Deed to be performed or discharged at or after the Effective Date; and
- (b) OpCo releases the O&M Contractor from all obligations and liability under or in respect of the Core Contractor Interface Deed to be performed or discharged at or after the Effective Date.

**4.9 Obligations and liability prior to the Effective Date**

Nothing in this deed releases:

- (a) OpCo or the O&M Contractor from any obligation or liability under the O&M Contract;
- (b) OpCo or the O&M Contractor from any obligation or liability under the Core Contractor Interface Deed; or
- (c) OpCo or the O&M Guarantor from any obligation or liability under the O&M Guarantee,

arising or accruing before the Effective Date and TfNSW (or, if applicable, the Approved Nominee) does not assume any such obligation or liabilities under this deed.

**4.10 Amendments to O&M Contract and Core Contractor Interface Deed**

- (a) With effect from the Effective Date, the terms of the O&M Contract and, if an Assumption Notice has been issued in respect of it, the Core Contractor Interface Deed will be deemed to be amended as required to reflect the fact that the Project Deed is at an end, and that the O&M Contract and the Core Contractor Interface Deed must operate independently of the Project Deed, on the basis that:
  - (i) the rights and obligations that TfNSW (or, if applicable, the Approved Nominee) will assume under the O&M Contract and the Core Contractor Interface Deed from the Effective Date will be equivalent to those that OpCo would have had under the O&M Contract and the Core Contractor Interface Deed had the Project Deed not been terminated;
  - (ii) the rights and obligations that the O&M Contractor will assume under the O&M Contract and the Core Contractor Interface Deed from the Effective Date will be equivalent to those that the O&M Contractor would have had under the O&M Contract and the Core Contractor Interface Deed had the Project Deed not been terminated;
  - (iii) any provisions of the Project Deed incorporated by reference into the O&M Contract and the Core Contractor Interface Deed prior to the Effective Date are incorporated in the O&M Contract and the Core Contractor Interface Deed from the Effective Date; and

- (iv) without affecting the generality of this clause 4.10(a), clauses 1.4(q), 2.2(f), 2.3(b), 2.3(c), 5.5, 28.4, 43.10A, 47.2(c) and 56A of the O&M Contract will be deleted.
- (b) If at or after the Effective Date, there is a dispute between TfNSW and the O&M Contractor as to how the terms of the O&M Contract are deemed to have been amended pursuant to clause 4.10(a), then upon either party serving a written notice to this effect on the other, the dispute will be determined as if clause 56 (*Dispute resolution*) of the Project Deed were incorporated in this deed but as if:
  - (i) references in those clauses to "OpCo" were references to "the O&M Contractor";
  - (ii) references to "the parties" were references to "TfNSW and the O&M Contractor";
  - (iii) references to a "party" were references to "TfNSW" or "the O&M Contractor" (as appropriate);
  - (iv) references in those clauses to "Dispute" were references to this dispute; and
  - (v) the dispute had been appropriately referred to the Dispute Avoidance Board.

#### 4.11 **Approved Nominee**

- (a) TfNSW's nominee may be named as a party to the O&M Contract and the Core Contractor Interface Deed in substitution for OpCo if TfNSW's nominee is an Approved Nominee.
- (b) The O&M Contractor must:
  - (i) notify TfNSW as to whether TfNSW's nominee is an Approved Nominee, on or before the date falling 30 days after the date of receipt of all information reasonably required by the O&M Contractor to decide whether the nominated person is an Approved Nominee;
  - (ii) not unreasonably withhold or delay its decision on whether TfNSW's nominee is an Approved Nominee; and
  - (iii) enter into a side deed with TfNSW and the Approved Nominee on substantially the same terms as this deed.

#### 4.12 **Bonds**

If TfNSW gives an Assumption Notice then, as from the Effective Date, OpCo must (with the support of the O&M Contractor to effect this provision) either:

- (a) procure the novation or assignment to TfNSW at OpCo's cost (or, subject to clause 4.11 (*Approved Nominee*), the Approved Nominee) of any Bond (as defined in the O&M Contract) held by OpCo under the O&M Contract prior to the Effective Date (**Bonds**); or
- (b) procure the issue to TfNSW (or, if applicable, the Approved Nominee) of replacement bonds for the same undrawn value and on the same terms as the Bonds held by OpCo under the O&M Contract prior to the Effective Date.

**4.13 Other documents under the O&M Contract**

If TfNSW gives an Assumption Notice then, as from the Effective Date, OpCo must procure the novation or assignment to TfNSW (or, if applicable, the Approved Nominee) of:

- (a) Any Deed of Assurance in favour of OpCo; and
- (b) Any Moral Rights Consent in favour of OpCo.

**5. AMENDMENTS TO O&M CONTRACT, O&M GUARANTEE AND THE CORE CONTRACTOR INTERFACE DEED**

**5.1 No amendment**

Subject to clause 5.2, the O&M Contractor and the O&M Guarantor agree with TfNSW that they will not agree to or permit any modification, variation, waiver or amendment to the terms of the O&M Contract, the O&M Guarantee or the Core Contractor Interface Deed without the prior consent of TfNSW.

**5.2 Exceptions to Project Deed amendments**

Clause 5.1 does not apply to any modification, variation, waiver or amendment to the terms of the O&M Contract, the O&M Guarantee or the Core Contractor Interface Deed that is required as a result of, or in order to ensure consistency with, a modification, variation, waiver or amendment to the Project Deed.

**6. RESTRICTION ON DEALINGS**

The O&M Contractor agrees with TfNSW that, after Financial Close, it will not transfer, assign, mortgage, charge, encumber or otherwise deal with its interest in the O&M Contract or the Core Contractor Interface Deed without the prior consent of TfNSW (such consent not to be unreasonably withheld or delayed) other than in relation to or as a result of a Permitted Change in Control (as it applies to the O&M Contract), and without procuring that such transferee, assignee, mortgagee, chargee or other encumbrancee enters into a deed in which it agrees to be bound by the terms of this deed.

**7. O&M CONTRACTOR'S WARRANTY**

The O&M Contractor represents and warrants for the benefit of TfNSW that it has not had any criminal, civil or other proceedings brought against it in connection with any rail safety incident (whether in Australia or elsewhere) and that no such proceedings are current, pending or, to its knowledge, threatened.

**8. ACKNOWLEDGEMENT BY OPCO**

OpCo consents to the terms of this deed and will co-operate in the implementation of this deed.

**9. PRINCIPAL CONTRACTOR**

In this clause 9 (*Principal contractor*), the terms "principal contractor", "workplace" and "construction work" have the same meanings assigned to those terms in the WHS Legislation. For the purposes of the WHS Legislation and this deed:

- (a) the O&M Contractor's Activities; and
- (b) any SLR Site Interface Work,

is taken to be part of the same "construction project".

#### 9.1 Engagement of principal contractor

From the date on which OpCo is given access to a part of the Permanent Light Rail Corridor or the Non-Corridor Assets in accordance with the Project Deed;

- (a) to the extent that the O&M Contractor's Activities or any SLR Site Interface Work includes construction work, TfNSW:
  - (i) engages the O&M Contractor as the principal contractor in respect of the O&M Contractor's Activities and the SLR Site Interface Work;
  - (ii) authorises the O&M Contractor to have management and control of each workplace at which O&M Contractor's Activities and the SLR Site Interface Work is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation;
  - (iii) must give the O&M Contractor prior notice of any Other Contractor undertaking SLR Site Interface Work before such SLR Site Interface Work commences; and
  - (iv) must provide OpCo and the O&M Contractor with an executed deed poll in favour of OpCo and the O&M Contractor in the form set out in Schedule C15 (*Form of Deed Poll*) of the Project Deed from the Managing Contractor and each Other Contractor undertaking SLR Site Interface Work; and
- (b) the O&M Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation.

#### 9.2 Period of engagement

The O&M Contractor's engagement and authorisation as a principal contractor in respect of any construction work carried out within the Permanent Light Rail Corridor or in respect of the Non-Corridor Assets will continue until the point in time when the relevant construction work is completed.

#### 9.3 If engagement not effective

If the engagement of the O&M Contractor as principal contractor under this clause 9 (*Principal contractor*) is not effective for any reason, the O&M Contractor agrees that it will exercise and fulfil the functions and obligations of the principal contractor under the WHS Legislation as if it had been validly engaged and authorised as principal contractor under clause 9.1 (*Engagement of principal contractor*).

#### 9.4 Other principal contractors

At any time when the Section Access Schedule provides that OpCo will not have control of a part of the SLR Site, OpCo and the O&M Contractor:

- (a) acknowledge that the other contractor who is specified in the Section Access Schedule as being in control of that part of the SLR Site (**Other Principal Contractor**) is the principal contractor in respect of all construction work carried out by or on behalf of TfNSW on that part of the SLR Site during the period in which that Other Principal Contractor is in control of that part of the SLR Site; and
- (b) must comply with any exercise by the Other Principal Contractor referred to in clause 9.4(a) of such authority as is necessary to enable that Other Principal

Contractor to discharge the responsibilities imposed on a principal contractor by the WHS Legislation.

## 10. TFNSW ASSETS HANDBACK OBLIGATIONS

### 10.1 O&M Contractor acknowledgements

The O&M Contractor acknowledges that:

- (a) subject to clause 10.1(b), TfNSW is the owner of the TfNSW Assets and that (save as set out in the O&M Contractor Deed of Charge) it has no right to transfer, assign, mortgage, charge, encumber or otherwise deal with the TfNSW Assets other than in accordance with the O&M Contract; and
- (b) notwithstanding the acknowledgment in clause 10.1(a), due to uncertainties in the operation of the *Personal Property Securities Act 2009* (Cth), the O&M Contractor has entered into the O&M Contractor Deed of Charge pursuant to which it has agreed to grant a security interest in favour of TfNSW over any TfNSW Assets over which at any time it obtains sufficient rights to grant a security interest.

### 10.2 O&M Contractor undertakings

The O&M Contractor undertakes in favour of TfNSW to comply with its obligations contained in clause 21.12(a) and 21.12(b) of the O&M Contract.

## 11. GST

- (a) **(Interpretation):**
  - (i) Except where the context suggests otherwise, terms used in this clause 9 (*GST*) have the same meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time).
  - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 11 (*GST*).
  - (iii) Unless otherwise expressly stated, all consideration to be provided under this deed (other than under this clause 11 (*GST*)) is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 11 (*GST*).
  - (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) **(Reimbursements):** Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(Additional amount of GST payable):** If GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this deed:

- (i) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
  - (ii) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 11(c)(i).
- (d) **(Variation of GST):**
- (i) If the GST Amount recovered by the Supplier from the Recipient under clause 11(c) for a supply varies from the amount of GST paid or payable by the Supplier on that supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
  - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this deed within 7 days after the Supplier becomes aware of the adjustment event.
- (e) **(No merger):** This clause will not merge on completion or termination of this deed.

## 12. NOTICES

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

### **TfNSW**

Name: TfNSW, a New South Wales Government agency  
Address: Level 11  
338 Pitt Street  
Sydney NSW 2000  
Fax: (02) 9200 0290  
For the attention of: TfNSW's Representative

With a copy to:

Name: TfNSW, a New South Wales Government agency  
Address: Level 5  
Tower A, Zenith Centre  
821 Pacific Highway  
Chatswood NSW 2067  
Fax: (02) 9200 0290  
For the attention of: Deputy Director General, Transport Projects Division

### **OpCo**

Name: ALTRAC Light Rail Partnership  
Address: c/- Capella Capital, Level 31  
AMP Centre

50 Bridge Street  
Sydney NSW 2000  
Fax: 02 8224 3800  
For the attention of: Malcolm Macintyre

**O&M Contractor**

Name: Transdev Sydney Pty Ltd  
Address: Level 12  
114 William Street  
Melbourne VIC 3000  
Fax: (03) 9946 1330  
For the attention of: Company Secretary

**O&M Guarantor**

Name: Transdev Australasia Pty Ltd  
Address: Level 12  
114 William Street  
Melbourne VIC 3000  
Fax: (03) 9946 1330  
For the attention of: Company Secretary

- (c) must be signed by the party making it (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 12(b); and
- (e) is taken to be received by the addressee:
  - (i) (in the case of prepaid post) on the third working day after the date of posting to an address within Australia, and on the fifth working day after the date of posting by airmail to an address outside Australia;
  - (ii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the machine from which it was sent; and
  - (iii) (in the case of delivery by hand) on delivery,but if the communication is taken to be received on a day which is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day, where "**working day**" means a day that:
  - (iv) is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered; and
  - (v) does not fall during the period commencing on the Monday before 24 December in any given year and ending on the Friday following 1 January of the following year.

13. **EXCLUSION OF PROPORTIONATE LIABILITY**

- (a) To the extent permitted by law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under this deed



whether these rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

- (b) Without limiting the above, the rights, obligations and liabilities of TfNSW and OpCo under this deed with respect to proportionate liability are as specified in this deed and not otherwise, whether these rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

## 14. **GOVERNING LAW AND JURISDICTION**

### 14.1 **Governing law**

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

### 14.2 **Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) 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 within inconvenient forum, if that venue falls within clause 14.2(a).

## 15. **MISCELLANEOUS**

### 15.1 **Entire agreement**

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

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

### 15.2 **Further acts and documents**

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

### 15.3 **Waiver**

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

**15.4 Consents**

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

**15.5 Amendments**

This deed may only be varied by a document signed by or on behalf of each party.

**15.6 Expenses**

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

**15.7 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 unenforceability under the law of any other jurisdiction of that or any other provision of this deed.

**15.8 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

**15.9 Counterparts**

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

**EXECUTED** as a deed.

**EXECUTED** on behalf of **TRANSPORT FOR NSW** by its authorised delegate **IN THE PRESENCE OF:**

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Authorised Delegate

\_\_\_\_\_  
Name of Witness (print)

\_\_\_\_\_  
Name of Authorised Delegate (print)

Signed by the ALTRAC Light Rail Partnership by being signed by each of its partners as at the date of this deed

**SIGNED, SEALED AND DELIVERED** by **ALTRAC LIGHT RAIL 1 PTY LIMITED ACN 603 192 203** as trustee for **ALTRAC LIGHT RAIL TRUST 1:**

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of Director (print)

\_\_\_\_\_  
Name of Director (print)

**SIGNED, SEALED AND DELIVERED** by **ALTRAC LIGHT RAIL 2 PTY LIMITED ACN 603 194 476** as trustee for **ALTRAC LIGHT RAIL TRUST 2:**

\_\_\_\_\_  
Company Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of Company Secretary/Director (print)

\_\_\_\_\_  
Name of Director (print)

**SIGNED, SEALED AND DELIVERED** by  
**ALTRAC LIGHT RAIL 3 PTY LIMITED**  
**ACN 603 190 601** as trustee for  
**ALTRAC LIGHT RAIL TRUST 3** by its  
Attorney **IN THE PRESENCE OF:**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Name of Witness (print)

\_\_\_\_\_  
Name of Attorney (print)

**EXECUTED** by **TRANSDEV SYDNEY PTY LTD** ABN 34 096 046 052 in accordance with s127(1) of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full

**EXECUTED** by **TRANSDEV AUSTRALASIA PTY LTD** ABN 40 079 303 816 in accordance with s127(1) of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full

**Schedule A14**  
**DAB Agreement**

(Clauses 56.1 and 56.9)



## Sydney Light Rail

## DAB Agreement

TfNSW

ABN 18 804 239 602

and

ALTRAC Light Rail Partnership

and

Members of Dispute Avoidance Board  
Members

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**THIS AGREEMENT** is made on 2014

**BETWEEN:**

- (1) **Transport for NSW** (ABN 18 804 239 602) a New South Wales Government agency constituted under section 3C of the *Transport Administration Act 1988* (NSW) of Level 5, Tower A, Zenith Centre 821 Pacific Highway, Chatswood NSW 2067 (**TfNSW**)
- (2) **ALTRAC Light Rail Partnership** a partnership between ALTRAC Light Rail 1 Pty Limited ACN 603 192 203 in its capacity as trustee of ALTRAC Light Rail Trust 1, ALTRAC Light Rail 2 Pty Limited ACN 603 194 476 in its capacity as trustee of ALTRAC Light Rail Trust 2 and ALTRAC Light Rail 3 Pty Limited ACN 603 190 601 in its capacity as trustee of ALTRAC Light Rail Trust 3 (**OpCo**)
- (3) **Members of the Dispute Avoidance Board** (collectively, **Members**), namely:
  - ██████████ of [insert address]
  - ██████████ of [insert address]
  - ██████████ of [insert address]

**Background**

- (A) TfNSW and OpCo have entered into a deed for the delivery of the design, construction, testing and commissioning, operations and maintenance of the Sydney Light Rail (**Project Deed**).
- (B) Clause 56 (*Dispute resolution*) of the Project Deed provides for a dispute resolution process through the establishment and the operation of a Dispute Avoidance Board to assist in resolving Disputes under the Project Deed.
- (C) This agreement sets out the rights, obligations and duties of the Members, TfNSW and OpCo in relation to the Dispute Avoidance Board and the Disputes (**Agreement**).

**Operative provisions**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement:

**Members** means the 3 individuals appointed to the Dispute Avoidance Board in accordance with this Agreement.

**Project Deed** means the deed titled "Sydney Light Rail Project Deed" dated on or about the date of this Agreement between TfNSW and OpCo.

**Schedule of Fees and Disbursements** means the fees and disbursements of each Member as set out in Appendix 3 of this Agreement.

**1.2 Terms defined in the Project Deed**

Terms used in this Agreement which are not otherwise defined will have the meaning given to them in the Project 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 sub-paragraph in the clause in which the reference appears;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;

- (k) for all purposes (other than where designated as a Business Day), "day" means calendar day;
- (l) a reference to "\$" is to Australian currency;
- (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Agreement or any part; and
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

**2. AGREEMENT TO PREVAIL**

- (a) The parties agree that if there is any inconsistency between the terms of this Agreement and the Project Deed the terms of this Agreement 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 1.3 (*Termination of Dispute Avoidance Board*) of Schedule A18 (*Dispute resolution procedures*) of the Project Deed.

**3. FORMATION OF THE DISPUTE AVOIDANCE BOARD**

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 Project Deed and this Agreement.

**4. ESTABLISHMENT OF PROCEDURES**

- (a) During the first meeting at the SLR Site, the Dispute Avoidance Board will establish procedures for the conduct of any site visits and other matters (excluding the rules governing the Dispute Avoidance Board giving its opinion on a Dispute referred to it pursuant to clause 56 (*Dispute Resolution*) of the Project Deed) in accordance with the procedures included in Appendix 1 (*Dispute Avoidance Board General Operating Procedures*) to this Agreement (unless otherwise agreed by the parties).
- (b) The parties agree to comply with the rules for the Dispute Avoidance Board process set out in Appendix 2 (*Rules for DAB opinion*) to this Agreement in respect of any Dispute referred to the Dispute Avoidance Board pursuant to clause 56 (*Dispute resolution*) of the Project Deed.

**5. DISPUTE AVOIDANCE BOARD MEMBER'S OBLIGATIONS**

**5.1 Impartiality**

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

## 5.2 **Independence**

Each Member agrees to act honestly and independently in the performance of its obligations under this Agreement (including the consideration of facts and conditions relating to a Dispute) and in accordance with clause 4(b) of this Agreement.

## 5.3 **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 Project Deed and this Agreement; and
- (c) in compliance with all applicable Laws.

## 6. **COSTS AND FEES**

- (a) TfNSW and OpCo 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 Appendix 3 (*Schedule of fees and disbursements*).
- (b) TfNSW and OpCo agree as between themselves that:
  - (i) they will each pay one half of:
    - (A) the Members' fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Appendix 3 (*Schedule of fees and disbursements*); and
    - (B) any third party costs incurred in holding the conference referred to in clause 2 of Appendix 2 (*Rules for DAB opinion*), including any booking fee, room hire and transcript costs; and
  - (ii) they will each bear their own costs of, and incidental to, the preparation of this Agreement and their participation in any advisory process of the Dispute Avoidance Board.

## 7. **TFNSW'S COMMITMENT AND RESPONSIBILITIES**

TfNSW 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 Project Deed and this Agreement, not solicit advice or consultation from the Dispute Avoidance Board or the Members on matters dealing with the resolution of Disputes which may compromise the Dispute Avoidance Board's integrity or compliance with the Project Deed or this Agreement.

## 8. **OPCO'S COMMITMENTS AND RESPONSIBILITIES**

OpCo 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;
- (c) at TfNSW's request, procure the attendance of representatives of any Core Contractor or the Debt Financiers at meetings with the Dispute Avoidance Board as observers; and
- (d) except for its participation in the Dispute Avoidance Board's activities as provided in the Project Deed and this Agreement, not solicit advice or consultation from the Dispute Avoidance Board or the Members on matters dealing with the resolution of Disputes which may compromise the Dispute Avoidance Board's integrity or compliance with the Project Deed or 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 the resolution of the Dispute; 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 TfNSW, OpCo and the other Members of the Dispute Avoidance Board.
- (b) The other Members of the Dispute Avoidance Board will within 5 Business Days of notification under clause 10(a) confer and inform the parties and the Member, whether they believe the circumstances notified are such that the Member should be replaced. In the event that one or both of the other Members believe that the Member should be replaced, the Member will immediately resign from the Dispute Avoidance Board and a reappointment will occur pursuant to clause 14.3 (*Re-appointment*).

11. **LIABILITY**

11.1 **Liability**

Each Member is not liable to either TfNSW or OpCo for any act or omission done in good faith and with due care and diligence.

11.2 **Due care and diligence**

For the purpose of clause 11.1 (Liability), the parties agree that the Member's act will have been done in good faith and with due care and diligence unless no reasonable person in the position of the Member would have so acted or made such an omission.

12. **INDEMNITY**

**12.1 Indemnity**

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

**12.2 Due care and diligence**

For the purpose of clause 12.1 (Indemnity), the parties agree that the Member's act will have been done in good faith and with due care and diligence unless no reasonable person in the position of the Member would have so acted or made such an omission.

**13. TERMINATION OF AGREEMENT**

- (a) This Agreement will terminate in accordance with the provisions in clause 1.3 of the Schedule A18 (*Dispute resolution procedures*) of the Project Deed.
- (b) If clause 14.3 (*Re-appointment*) applies, this Agreement will remain in force until a replacement to this Agreement has been fully executed.

**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, TfNSW and OpCo.

**14.2 Termination**

A Member's appointment may be terminated at any time if TfNSW and OpCo agree to do so.

**14.3 Re-appointment**

The parties acknowledge and agree that if:

- (a) a Member resigns under clause 10(b) or 14.1 (*Resignation*); or
- (b) the appointment of a Member is terminated by TfNSW and OpCo under clause 14.2 (*Termination*);

then:

- (c) a replacement Member may be appointed in accordance with clause 1.2 of Schedule A18 (*Dispute resolution procedures*) of the Project Deed; and
- (d) the parties and any new Member must enter into a replacement agreement substantially similar to this Agreement as a condition of a valid re-appointment under the terms of the Project Deed.

**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 TfNSW, OpCo and the Members as that of partners, joint venturers or any other fiduciary relationship.

17. **NOTICES**

(a) Any notices contemplated by this Agreement must be in writing and:

- (i) delivered to the relevant address;
- (ii) sent to the facsimile number; or
- (iii) sent in electronic form (such as email) to an address,

as set out below (or to any new address, facsimile number or address that a party notifies to the others:

- (iv) to TfNSW: TfNSW, a New South Wales Government agency  
Level 11  
338 Pitt Street  
Sydney NSW 2000  
Fax: (02) 9200 0290  
Attention: TfNSW's Representative

With a copy to:

TfNSW, a New South Wales Government agency  
Level 5, Tower A, Zenith Centre  
821 Pacific Highway  
Chatswood NSW 2067  
Fax: (02) 9200 0290  
Attention: Deputy Director General, Transport Projects  
Division

- (v) to OpCo: ALTRAC Light Rail Partnership  
c/ Capella Capital, Level 31, AMP Centre  
50 Bridge Street, Sydney, NSW  
Fax: (02) 8224 3888  
Email: [Malcolm.macintyre@capellacapital.com.au](mailto:Malcolm.macintyre@capellacapital.com.au)  
Attention: Malcolm Macintyre

- (vi) to the Members: **[to be completed]**

(b) A notice sent by post will be taken to have been received:

- (i) (in the case of prepaid post sent to an address in the same country) 2 Business Days after the date of posting;
- (ii) (in the case of international post) 7 Business Days after the date of posting;  
and
- (iii) (in the case of delivery by hand) on delivery.

- (c) A notice sent by facsimile will be taken to have been received on the next Business Day after the day shown on the transmission record showing the number of the person to whom it is addressed in accordance with paragraph (a).
- (d) A notice sent by way of electronic transmission will be taken to have been received when the sender receives confirmation on its server that the message has been transmitted:
  - (i) if it is transmitted by 5.00 pm (Sydney time) on a Business Day – on that Business Day; or
  - (ii) if it is transmitted after 5.00 pm (Sydney time) on a Business Day, or on a day that is not a Business Day – on the next Business Day.

**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 the other party may reasonably require to give full effect to this Agreement.

**19. SURVIVAL OF TERMS**

The parties agree that clauses 6 (Costs and fees), 9 (Confidentiality), 11 (Liability) and this clause 19 (Survival of terms) (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 party 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. AMENDMENT**

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

23. **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.

24. **ATTORNEYS**

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



**Executed** as an agreement

**EXECUTED** on behalf of **TRANSPORT FOR NSW** by its authorised delegate **IN THE PRESENCE OF:**

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Authorised Delegate

\_\_\_\_\_  
Name of Witness (print)

\_\_\_\_\_  
Name of Authorised Delegate (print)

\_\_\_\_\_  
  
\_\_\_\_\_

\_\_\_\_\_  
  
\_\_\_\_\_

**Signed by the ALTRAC Light Rail Partnership by being signed by each of its partners as at the date of this deed**

**SIGNED, SEALED AND DELIVERED** by  
**ALTRAC LIGHT RAIL 1 PTY LIMITED**  
**ACN 603 192 203** as trustee for  
**ALTRAC LIGHT RAIL TRUST 1:**

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of Director (print)

\_\_\_\_\_  
Name of Director (print)

**SIGNED, SEALED AND DELIVERED** by  
**ALTRAC LIGHT RAIL 2 PTY LIMITED**  
**ACN 603 194 476** as trustee for  
**ALTRAC LIGHT RAIL TRUST 2:**

\_\_\_\_\_  
Company Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of Company Secretary/Director (print)

\_\_\_\_\_  
Name of Director (print)

**SIGNED, SEALED AND DELIVERED** by  
**ALTRAC LIGHT RAIL PTY LIMITED**  
**ACN 603 190 601** as trustee for  
**ALTRAC LIGHT RAIL TRUST 3** by its  
Attorney **IN THE PRESENCE OF:**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Name of Witness (print)

\_\_\_\_\_  
Name of Attorney (print)

**SIGNED** by [REDACTED] in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

**SIGNED** by [REDACTED] in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

**SIGNED** by [REDACTED] in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

## Appendix 1

### Dispute Avoidance Board General Operating Procedures

#### 1. General

- 1.1 The role of the Dispute Avoidance Board is to assist the parties to the Project Deed in:
- (a) attempting to prevent; and
  - (b) if unable to prevent, in resolving Disputes,
- in a timely manner.
- 1.2 Except when participating in the Dispute Avoidance Board's activities as contemplated by the Project Deed and this Agreement, the parties to the Project Deed shall not communicate with the Dispute Avoidance Board or its Members on matters dealing with the conduct of the work or resolution of problems.
- 1.3 OpCo will furnish to each of the Dispute Avoidance Board members those documents necessary for the Dispute Avoidance Board to perform its functions, such as copies of all Project Deed documents plus periodic reports, such as progress reports, minutes of Senior Project Group meetings and any other documents that would be helpful in informing the Members of Disputes and other related matters.
- 1.4 The individual Members are not the representative of the party that appointed that representative. The entire Dispute Avoidance Board must function as an objective, impartial and independent body at all times.
- 1.5 There must be no communication between Members and employees of the parties to the Project Deed during the life of the Dispute Avoidance Board without the Members informing the parties to the Project Deed. The parties to the Project Deed must direct any matters needing attention between meetings of the Dispute Avoidance Board to the chairperson of the Dispute Avoidance Board.
- 1.6 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.
- 1.7 Communications between the parties and the Dispute Avoidance Board for the purpose of attempting to prevent Disputes are without prejudice communications and may not be adduced as evidence in any dispute resolution process under clause 56 (*Dispute Resolution*) of the Project Deed.

#### 2. Frequency of meetings and site visits

- 2.1 The scheduling of meetings and, if required, 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 parties to the Project Deed.
- 2.2 The frequency of meetings of the Dispute Avoidance Board should generally be once every 3 months but this may be influenced by work progress, unusual events and the number and complexity of potential Disputes. TfNSW and OpCo may, by agreement, request to meet with the Dispute Avoidance Board more or less frequently than contemplated by this clause 2.2.

2.3 Subject to clauses 1.2 and 1.5 above, TfNSW or OpCo may request a meeting of the Dispute Avoidance Board other than a scheduled meeting, which request shall be accommodated by the Dispute Avoidance Board as early as practicable.

2.4 The first Dispute Avoidance Board meeting should be held within 1 month of the date of this Agreement.

**3. Agenda for and location of meetings**

3.1 The chairperson will develop an agenda for each meeting.

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 Project Deed and issues or potential issues between the parties shall be held on an in-confidence and without prejudice basis to encourage full and frank disclosure and discussions.

3.3 Meetings will be held at a location or locations agreed by TfNSW, OpCo and the Members from time to time and Members are required to attend in person. Where a Member or a representative referred to in clause 6 below is unable to attend a meeting in person at the location agreed and on the date and at the time scheduled for that meeting, that person may participate by telephone or video link.

3.4 For meetings held relating to the SLR Works, at the conclusion of the meeting, the Dispute Avoidance Board will generally inspect the SLR Works and the Construction Site in the company of representatives of both parties to the Project Deed. Any areas of the SLR Works or Construction Site that are, or may be the subject of, any potential Dispute will be pointed out by the parties to the Project Deed.

**4. Minutes of meetings**

4.1 TfNSW will prepare minutes of the regular meetings of the Dispute Avoidance Board and these draft minutes will be circulated to the Dispute Avoidance Board members for comments, additions and corrections.

4.2 In accordance with clause 3.2 above, the minutes of Dispute Avoidance Board meetings held shall be marked "in-confidence, without prejudice".

4.3 Minutes as amended will be adopted by the Dispute Avoidance Board members at the next meeting.

**5. Communications**

All communications by the parties to the Dispute Avoidance Board 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 parties should be addressed to the persons named in clause 17(a) of this Agreement.

**6. Representation**

The parties shall each ensure they are represented at Dispute Avoidance Board meetings by at least one senior project personnel and at least one senior off-site person to whom the on-site personnel reports. The parties 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 alternatives.

## Appendix 2

### Rules for DAB opinion

#### 1. Written submissions

- 1.1 Within 7 days after the referral of a Dispute to the Dispute Avoidance Board under clause 56.7(c)(ii)(D) of the Project Deed, or such other time as the Dispute Avoidance Board may consider reasonable in the circumstances, the Executive Negotiators must, in addition to any particulars provided by the Executive Negotiators in the relevant Notice of Referral to DAB, give each party and the Dispute Avoidance Board a written statement of the Dispute referred to the Dispute Avoidance Board, any agreed statement of facts and a written submission (which may include relevant contract communications) on the Dispute.
- 1.2 If the Dispute Avoidance Board considers it appropriate, each party may reply in writing to the written statement in clause 1.1 of this Appendix 2 (*Rules for DAB opinion*) within the time allowed by the Dispute Avoidance Board.
- 1.3 If the Dispute Avoidance Board decides further information or documentation is required for it to provide an opinion on the Dispute, the Dispute Avoidance Board may direct one or more parties to provide such further submissions, information or documents as the Dispute Avoidance Board may require.
- 1.4 The Dispute Avoidance Board must disclose to both parties all submissions, further submissions, information and documents received.
- 1.5 Any failure by a party to make a written submission will not terminate or discontinue the process.

#### 2. Conference

- 2.1 Either party may:
  - (a) in writing; and
  - (b) at any time prior to a Letter of Dispute being issued in accordance with clause 56.3(a) of the Project Deed,  
  
request the Dispute Avoidance Board to call a conference of the parties. Any such request shall include a summary of the matters the party considers should be included in the conference.
- 2.2 Clause 2.1 of this Appendix 2 (*Rules for DAB opinion*) will not apply in relation to a Dispute the subject of a Letter of Dispute.
- 2.3 If neither party requests the Dispute Avoidance Board to call a conference, the chairperson of the Dispute Avoidance Board may nevertheless call a conference if they think it appropriate.
- 2.4 The parties will agree the location of any conference.
- 2.5 At least 5 days before the conference, the Dispute Avoidance Board must inform the parties in writing of the date, venue and agenda for the conference.
- 2.6 The parties must appear at the conference and may make submissions on the subject matter of the conference. If a party fails to appear at a conference of which that party had been notified under clause 2.5 of this Appendix 2 (*Rules for DAB opinion*), the

Dispute Avoidance Board and the other party may nevertheless proceed with the conference and the absence of that party will not terminate or discontinue the advisory process.

- 2.7 The parties may be accompanied at a conference by:
- (a) legal or other advisers; or
  - (b) any parties permitted to attend under the Project Deed.
- 2.8 The conference must be held in private.
- 2.9 If agreed between the parties, transcripts of the conference proceedings may be taken and made available to the Dispute Avoidance Board and the parties.

### 3. **The opinion**

- 3.1 As soon as possible after receipt of the submissions or after any conference and, in any event not later than 30 days after referral of a Dispute to the Dispute Avoidance Board by the Executive Negotiators under clause 56.7(c)(ii)(D) of the Project Deed (or such other period as the parties may agree in writing), the Dispute Avoidance Board must provide its opinion on the Dispute between the parties, to the parties.
- 3.2 The opinion of the Dispute Avoidance Board must:
- (a) be in writing stating the Dispute Avoidance Board's opinion on the Dispute and giving reasons; and
  - (b) be given on the basis of the submissions (if any) of the parties, the conference (if any), and the Dispute Avoidance Board's own expertise.
- 3.3 If the Dispute Avoidance Board's opinion contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a material mistake in the description of any person, matter or thing, or a defect in form, the Dispute Avoidance Board must correct the opinion.

### 4. **Modification**

These rules may be modified only by agreement of TfNSW and OpCo.

**Appendix 3**

**Schedule of fees and disbursements**

<b>Dispute Avoidance Board Member</b>	<b>Fees and disbursements</b>
██████████	The fee will consist of: [insert]
██████████	The fee will consist of: [insert]
██████████	The fee will consist of: [insert]



**Schedule A15**  
**Independent Certifier Deed**

(Clause 5.4)



# Sydney Light Rail Independent Certifier Deed

Transport for NSW

ABN 18 804 239 602

and

ALTRAC Light Rail Partnership

and

APP Corporation Pty Ltd

ABN 29 003 764 770

2014

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**THIS DEED** is made on 2014

**Between**

- (1) **Transport for NSW** (ABN 18 804 239 602) a New South Wales Government agency constituted under section 3C of the *Transport Administration Act 1988* (NSW) of Level 5, Tower A, Zenith Centre 821 Pacific Highway, Chatswood NSW 2067 (**TfNSW**)
- (2) **ALTRAC Light Rail Partnership**, a partnership between ALTRAC Light Rail 1 Pty Limited ACN 603 192 203 in its capacity as trustee of ALTRAC Light Rail Trust 1, ALTRAC Light Rail 2 Pty Limited ACN 603 194 476 in its capacity as trustee of ALTRAC Light Rail Trust 2 and ALTRAC Light Rail 3 Pty Limited ACN 603 190 601 in its capacity as trustee of ALTRAC Light Rail Trust 3 of c/- Capella Capital, Level 31, AMP Centre, 50 Bridge Street, Sydney, NSW (**OpCo**)
- (3) **APP Corporation Pty Ltd** (ABN 29 003 764 770) of Level 7, 116 Miller Street, North Sydney, NSW, 2060 (**Independent Certifier**)

**RECITALS:**

- (A) On or about the date of this deed, OpCo entered into the Project Deed with TfNSW in respect of the SLR PPP.
- (B) The Independent Certifier represents that it is experienced generally in design, construction, installation, testing and commissioning and, in particular, in the design, construction, installation, testing and commissioning of works similar to the SLR Works and offers its expertise in those fields.
- (C) The Relevant Project Agreements contemplate that the Independent Certifier will discharge those functions set out in Schedule 1 (*Services*).
- (D) The Independent Certifier will perform its obligations on the terms and conditions of this deed.

**THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

The defined terms in clause 1.1 (*Definitions*) of the Project Deed have the same meaning in this deed unless a term is defined in this deed, in which case the meaning given in this deed will prevail.

In this deed:

**AML** means Airport Motorway Limited and Airport Motorway Custodians Pty Limited as trustee of the Airport Motorway Trust.

**Certification and Monitoring Plan** means the plan that the Independent Certifier is required to prepare in accordance with clause 3.7 (*Certification and Monitoring Plan*), and in respect of which TfNSW has not issued a notice to the Independent Certifier under clause 3.7(b)(ii), as that plan is updated from time to time in accordance with clause 3.8 (*Revisions to Certification and Monitoring Plan*).

**Completion Phase Services** means all Services related to the Completion of the SLR Works and the performance by OpCo of its obligations in respect of Completion of the SLR Works, including those relating to testing, commissioning, operational readiness, First

Passenger Service and Completion as specified in clauses 18 (*Testing and Commissioning*) and 19 (*First Passenger Service, Completion, Full Operations, Final Completion and Early Completion*) of the Project Deed.

**Construction Phase Services** means all Services directly related to the construction of the SLR Works and the performance by OpCo of its construction obligations in respect of the SLR Works, including those specified in clauses 15 (*Construction*) and 16 (*Quality*) of the Project Deed and in the Third Party Agreements and the Roads Act Approval.

**Deed Poll** has the meaning given in clause 3.1(b).

**Design Phase Services** means all Services related to the design of the SLR Works and the performance by OpCo of its design obligations in respect of the SLR Works, including those specified in clause 13 (*Design*) of the Project Deed and in the Third Party Agreements and the Roads Act Approval.

**Fee** means the amount payable to the Independent Certifier for the performance of the Services in accordance with Schedule 2 (*Payment Schedule*).

**Final Completion Phase Services** means the Services related to Defects, and the performance by OpCo of its obligations to correct Defects, to the Date of Final Completion.

**Financial Close** occurs when the last condition precedent set out in Schedule A1 to the Project Deed to be satisfied or waived has been satisfied or waived.

**GST, GST law** and other terms used in clause 9 (*GST*) have the meanings used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time) or any replacement or other relevant legislation and regulations, except that **GST law** also includes any applicable rulings. Any reference to GST payable by the Supplier (as defined in clause 9 (*GST*)) includes any GST payable by the representative member of any GST group of which the Supplier is a member.

**Independent Certifier's Representative** means the relevant person referred to in Schedule 3 (*Minimum Resources and Surveillance Levels*) or any other person holding that position in accordance with clause 3.4(b)(ii).

**Other Parties** means TfNSW and OpCo.

**Payment Schedule** means Schedule 2 (*Payment Schedule*) to this deed.

**Project Deed** means the deed titled "Sydney Light Rail - Project Deed" between TfNSW and OpCo dated on or about the date of this deed.

**Relevant Project Agreements** means:

- (a) the Project Deed;
- (b) the Third Party Agreements; and
- (c) the Roads Act Approval.

**Roads Act Approval** means the Roads Act Approval – CBD and South East Light Rail to be granted by Roads and Maritime Services substantially in the form of the document set out in Schedule B11 (*Roads Act Approval*) to the Project Deed.

**RMS** means Roads and Maritime Services.

**Services** means the services listed in Schedule 1 (*Services*) to this deed.

**SPR** means the Scope and Performance Requirements contained in the Project Deed at Schedule E1 (*Scope and Performance Requirements*).

**Substitute Certifier** has the same meaning as in clause 6(d).

**Term** means the term of this deed as set out in clause 3.13 (*Term*).

## 1.2 Interpretation

In this deed:

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

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

(b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;

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

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

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

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

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

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

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

(h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;

(i) if a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;

(j) **includes** in any form is not a word of limitation;

(k) a reference to **\$** or **dollar** is to Australian currency;

(l) where under this deed:

(i) a notice, certificate or direction is required to be given; or

(ii) a default must be remedied,

within a stated number of days, only Business Days will be counted in computing the number of days;

- (m) for all purposes other than as set out in clause 1.2(l), **day** means calendar day;
- (n) a reference to a **month** is a reference to a calendar month;
- (o) a reference to a court or tribunal is to an Australian court or tribunal;
- (p) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually; and
- (q) any reference to **information** will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

### 1.3 **Business Day**

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

### 1.4 **Ambiguous terms**

- (a) If TfNSW considers, or if the Independent Certifier or OpCo notifies TfNSW's Representative in writing that it considers, that there is an ambiguity, discrepancy, or inconsistency in, or between, the documents comprising this deed (including in any Schedules) or between this deed and other Relevant Project Agreements, TfNSW's Representative must direct the interpretation of this deed or between this deed and such other Relevant Project Agreement which the parties must follow.
- (b) TfNSW's Representative, in giving a direction in accordance with clause 1.4(a), is not required to determine whether or not there is an ambiguity, discrepancy, or inconsistency in, or between, the documents comprising this deed.
- (c) Any direction which TfNSW's Representative gives in accordance with clause 1.4(a):
  - (i) will not relieve the Independent Certifier or OpCo from or alter its liabilities or obligations under this deed or otherwise according to law;
  - (ii) will not limit or otherwise affect TfNSW's rights against the Independent Certifier or OpCo, whether under this deed or otherwise according to law; and
  - (iii) must, in respect of a notice given under clause 1.4(a) by the Independent Certifier or OpCo, be given within 20 Business Days of receipt of that notice.

### 1.5 **No bias against drafter**

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



## 1.6 **Excluding liability**

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

## 2. **APPOINTMENT OF THE INDEPENDENT CERTIFIER**

### 2.1 **Appointment**

- (a) Each of TfNSW and OpCo appoint the Independent Certifier under this deed to perform the Services.
- (b) The Independent Certifier confirms its acceptance of the appointment referred to in clause 2.1(a).
- (c) The Independent Certifier must carry out the Services in accordance with the requirements of this deed and, to the extent the Certification and Monitoring Plan is not inconsistent with the Relevant Project Agreements or the nature of the Services, it will carry out and perform the Services in accordance with the Certification and Monitoring Plan.

### 2.2 **Payment**

TfNSW and OpCo will pay the Independent Certifier the Fee subject to and in accordance with the Payment Schedule.

### 2.3 **Nature of Services**

- (a) The Independent Certifier and the Other Parties acknowledge and agree that the Certification and Monitoring Plan is incidental to, and does not limit or otherwise affect, the Services or the Independent Certifier's obligations under this deed.
- (b) Where this deed contemplates an action, agreement, decision, direction or the like by the Other Parties, and the Other Parties cannot reach agreement in respect of such action, decision, direction or the like, then subject to clause 2.3(c) and clause 2.3(f) TfNSW must, acting reasonably, determine the appropriate action, agreement, decision, direction or the like.
- (c) Before TfNSW makes a determination under clause 2.3(b) as to the appropriate action, agreement, decision, direction or the like:
  - (i) TfNSW must give OpCo a notice requesting a meeting with OpCo;
  - (ii) TfNSW and OpCo must meet within 5 Business Days of OpCo receiving TfNSW's notice under clause 2.3(c)(i) to discuss the appropriate action, decision, direction or the like; and
  - (iii) TfNSW must take into account the views of OpCo in making TfNSW's determination.
- (d) TfNSW must give OpCo written notice of a determination made by TfNSW under clause 2.3(b) within 2 Business Days of making the determination.
- (e) In reaching decisions in relation to this deed which may affect the Other Parties, TfNSW may take into account representations made by OpCo.
- (f) Nothing in this clause 2.3 permits TfNSW to amend the Services without the consent of OpCo where such amendment would adversely affect OpCo's rights or obligations under the Project Deed.

### **3. INDEPENDENT CERTIFIER'S OBLIGATIONS**

#### **3.1 Acknowledgement and execution of deeds poll**

- (a) The Independent Certifier acknowledges that:
  - (i) it has received a copy of each of the Relevant Project Agreements and that it has read, and is familiar with, the terms of these documents to the extent they relate to the Services; and
  - (ii) its obligations extend to and include the obligations, functions, duties and services of the Independent Certifier under the Relevant Project Agreements.
- (b) The Independent Certifier must, as soon as practicable after the date of this document, execute and deliver to TfNSW deeds poll in the forms set out in Schedule 7 and Schedule 8 or in such other form required by the Other Parties (**Deeds Poll**).

#### **3.2 General representations and warranties**

The Independent Certifier represents and warrants that:

- (a) it is a company duly incorporated and existing under law and has the power to execute, deliver and perform its obligations under this deed and that all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
- (b) the information provided by it in connection with this deed is true, accurate and complete in all material respects and not misleading in any material respect (including by omission);
- (c) its obligations under this deed are valid, legal and binding obligations enforceable against it in accordance with its terms, subject to equitable remedies and laws in respect of the enforcement of creditor's rights;
- (d) the execution, delivery and performance of this deed by it will not contravene any law to which it is subject or any deed or arrangement binding on it;
- (e) it does not (in any capacity) have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and
- (f) no litigation, arbitration, tax claim, dispute or administrative or other proceeding has been commenced or threatened against it which is likely to have a material adverse effect upon its ability to perform its obligations under this deed.

#### **3.3 Further acknowledgements and warranties**

The Independent Certifier:

- (a) acknowledges that each of the Other Parties:
  - (i) is relying upon the skill, expertise and experience of the Independent Certifier in the performance of its obligations under this deed; and
  - (ii) may suffer loss if the Independent Certifier does not perform its obligations in accordance with the requirements of this deed;

- (b) warrants to the Other Parties that, in performing the Services, it will comply with all law, act honestly, diligently, reasonably and with the degree of professional care, knowledge, skill, expertise, experience and care which would be reasonably expected of an expert professional providing services similar to the Services within the design and construction industries generally and the design and construction of major engineering works in particular;
- (c) 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 within the times prescribed under the Relevant Project Agreements (and, where no time is prescribed, within a reasonable time) and will comply with the requirements of the Payment Schedule;
- (d) without limiting clauses 3.3(a) and 3.3(b), acknowledges that the Other Parties are entitled to and will rely on any certificate or other document signed or given by the Independent Certifier under or pursuant to this deed or any Relevant Project Agreement;
- (e) without limiting its obligations under any provision of this deed, warrants to the Other Parties that:
  - (i) it will carry out and perform the Services;
  - (ii) in performing the Services it will provide, as a minimum, the levels of surveillance and resources specified in Schedule 3 (*Minimum Resources and Surveillance Levels*); and
  - (iii) without limiting subparagraphs (i) and (ii), to the extent the Certification and Monitoring Plan is not inconsistent with:
    - (A) the Relevant Project Agreements;
    - (B) the nature of the Services; or
    - (C) without limiting subparagraphs (A) or (B), the requirements of clause 4 (*Independence, Confidentiality and Exclusivity*),it will carry out and perform the Services in accordance with the Certification and Monitoring Plan;
- (f) will provide transport on site for the use of its site personnel and any equipment and software to support surveillance, monitoring and certification activities;
- (g) will, in carrying out the Services, carry out physical inspections of the Construction Site, the IWLR, any Extra Land, the SLR Works and OpCo's Activities when appropriate or necessary to do so (including for the purpose of determining whether Completion has been achieved by OpCo), and when reasonably requested by TfNSW or OpCo, in a manner which satisfies or exceeds the requirements ascertainable of Schedule C15 (*Form of Deed Poll*) and the Certification and Monitoring Plan (including surveillance levels and resources) and will invite TfNSW to accompany it on all such inspections;
- (h) will carry out the Services in a manner which does not prevent, hinder, disrupt, delay or otherwise interfere with any work or services performed by any person (including OpCo) except where it is the unavoidable consequence of performing the Services; and

- (i) in undertaking the Services, will comply with all the safe working requirements of OpCo.

### 3.4 Key Personnel

- (a) The Independent Certifier must provide experienced and skilled personnel to perform its obligations under this deed.
- (b) The Independent Certifier must ensure that the nominated people referred to in Schedule 3 (*Minimum Resources and Surveillance Levels*):
  - (i) perform the services required of their respective positions;
  - (ii) are 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 7 days of the request for removal), and if any of the people are removed:
    - (A) they must be replaced by people of at least equivalent skill, expertise and experience; and
    - (B) there must be, prior to their removal and replacement, a proper handover to ensure that the new personnel have a reasonable understanding of the Relevant Project Agreements and the Services; and
  - (iii) are located in Sydney for the performance of the Services and are available for consultation as any party may reasonably require from time to time.
- (c) The Other Parties (jointly) may direct the Independent Certifier to remove from the performance of the Services any of the people referred to in Schedule 3 (*Minimum Resources and Surveillance Levels*) and the Independent Certifier must comply with any such direction.
- (d) The Independent Certifier must notify the Other Parties in writing of the names of the person or persons that are authorised to sign the certificates and documents referred to in Schedule 1 (*Services*) which the Independent Certifier is required to execute as part of the Services, and must ensure that these certificates and documents are signed by the person or persons so notified.

### 3.5 Subcontracting

- (a) Subject to clause 3.5(c), the Independent Certifier may not subcontract the performance of any of the Services without the prior written consent of the Other Parties (which consent must not be unreasonably withheld or delayed, and will be deemed to have been given in relation to a party if no response has been received from that party within 7 days of the request to subcontract).
- (b) The Independent Certifier remains responsible for the performance of the Services in accordance with this deed, notwithstanding any such subcontracting and will be liable for the acts and omissions of any subcontractor as if they were acts or omissions of the Independent Certifier.
- (c) Unless the Other Parties otherwise approve in writing, the Independent Certifier must contract with the subcontractors set out in Schedule 6 (*Subcontractors*) for the performance of the relevant parts of the Services.

### 3.6 Quality Assurance

- (a) The Independent Certifier must implement a quality system in accordance with AS/NZS ISO9000 and AS/NZS ISO9001, and otherwise in a form reasonably acceptable to the Other Parties to ensure compliance of the Services with the requirements of this deed.
- (b) The Independent Certifier will not be relieved of any requirement to perform any obligation under this deed as a result of:
  - (i) compliance with the quality assurance requirements of this deed; or
  - (ii) any acts or omissions of the Other Parties with respect to the quality assurance requirements of this deed, including any review of, comments upon, or notice in respect of, the Certification and Monitoring Plan or any audit under clause 3.10 (*Audit and surveillance*).

### 3.7 Certification and Monitoring Plan

- (a) The Independent Certifier must prepare and submit to TfNSW and OpCo within 25 Business Days of the date of this deed a Certification and Monitoring Plan which must:
  - (i) be based on the initial Certification and Monitoring Plan contained in Schedule 4 (*Initial Certification and Monitoring Plan*);
  - (ii) meet or exceed the requirements of Schedule 3 (*Minimum Resources and Surveillance Levels*);
  - (iii) not reduce the effectiveness, methodology, scope, effect, resources or expertise contained in the initial Certification and Monitoring Plan;
  - (iv) comply with the requirements for the Certification and Monitoring Plan in Schedule 5 (*Requirements for Certification and Monitoring Plan*) of this deed; and
  - (v) otherwise comply with the requirements of the Relevant Project Agreements.
- (b) The Other Parties may:
  - (i) review the Certification and Monitoring Plan submitted under clause 3.7(a); and
  - (ii) if the Certification and Monitoring Plan does not comply with this deed, or if the Other Parties believe that the Certification and Monitoring Plan does not provide the information required by Schedule 5 (*Requirements for Certification and Monitoring Plan*), notify the Independent Certifier in writing of the non-compliance.
- (c) If the Independent Certifier receives a notice under clause 3.7(b)(ii), the Independent Certifier must promptly submit an amended Certification and Monitoring Plan to TfNSW and OpCo, after which clause 3.7(b) will reapply.
- (d) If the Independent Certifier does not receive a notice under clause 3.7(b)(ii) within 15 Business Days after the submission of the relevant Certification and Monitoring Plan, the relevant Certification and Monitoring Plan submitted by the Independent Certifier will be the Certification and Monitoring Plan with which the Independent

Certifier must comply (as it is updated under clause 3.8 (*Revisions to Certification and Monitoring Plan*)).

### 3.8 Revisions to Certification and Monitoring Plan

- (a) The Independent Certifier must:
  - (i) progressively amend, update and develop the Certification and Monitoring Plan throughout the performance of the Services as necessary to reflect the commencement of new stages of the SLR Works, any Modifications and any changes in the manner of performing the Services;
  - (ii) ensure that any amendments, updates or developments of the Certification and Monitoring Plan under clause 3.8(a) are consistent with, and provide, the information set out in Schedule 5 (*Requirements for Certification and Monitoring Plan*); and
  - (iii) submit each revision of the Certification and Monitoring Plan to the Other Parties for their review and comment.
- (b) The Other Parties may:
  - (i) review the Certification and Monitoring Plan submitted under clause 3.8(a)(iii); and
  - (ii) if the Certification and Monitoring Plan does not comply with this deed or the Other Parties believe that the revised Certification and Monitoring Plan will lead to a reduction in the effectiveness, methodology, scope, effort, resources or expertise contained in the Certification and Monitoring Plan, notify the Independent Certifier of that non-compliance or reduction.
- (c) If the Independent Certifier receives a notice under clause 3.8(b)(ii), the Independent Certifier must promptly submit an amended Certification and Monitoring Plan to the Other Parties after which clause 3.8(b) will reapply.
- (d) Neither TfNSW nor OpCo owes any duty to the Independent Certifier to review the Certification and Monitoring Plan for errors, omissions or compliance with this deed.
- (e) Without limiting clauses 2.1(c) or 3.3(e), the Independent Certifier must not, either in the preparation of the Certification and Monitoring Plan required by clause 3.7 (*Certification and Monitoring Plan*) or the amending, updating and development of the Certification and Monitoring Plan required by clauses 3.8(a) and 3.8(c), decrease or otherwise reduce the effectiveness, methodology, performance and timing requirements, scope, effort, resources or expertise from that set out in the initial Certification and Monitoring Plan or the then existing Certification and Monitoring Plan without the written approval of TfNSW's Representative.
- (f) The Independent Certifier may not amend the Certification and Monitoring Plan other than in accordance with this clause 3.8 (*Revisions to Certification and Monitoring Plan*).

### 3.9 Progress Reports by the Independent Certifier

Throughout the Term of this deed, the Independent Certifier must provide a monthly progress report to TfNSW's Representative and OpCo by the seventh day of the following month and in such format as is required by TfNSW's Representative and OpCo's Representative, containing, identifying or setting out:

- (a) a description of the Services undertaken during the reporting period;
- (b) a list or schedule of design and construction surveillance, monitoring and audits undertaken by the Independent Certifier during the reporting period;
- (c) a comprehensive schedule of the status of all correspondence and documentation exchanged between the Independent Certifier and the Other Parties;
- (d) a summary of key risks and issues relating to the Services;
- (e) details of any OpCo non-conformances raised by the Independent Certifier or TfNSW and details on the verification of the rectification by OpCo of non-conformances;
- (f) details of the surveillance, monitoring and auditing proposed to be undertaken by the Independent Certifier in the forthcoming reporting period, including the outcomes of the risk management processes used to determine the levels and scope of the surveillance activities;
- (g) details of the current version of the Certification and Monitoring Plan and a summary of any amendments, updates and developments to the Certification and Monitoring Plan during the reporting period; and
- (h) a list of all potential non-compliances with the requirements of the Project Deed which TfNSW has raised with the Independent Certifier and which the Independent Certifier has determined are not non-compliances, accompanied by a written statement which explains the reason for the Independent Certifier's determination.

### 3.10 **Audit and surveillance**

- (a) The Independent Certifier must:
  - (i) on reasonable notice, allow any audit of its quality assurance system under this deed by a third party, at the request of the Other Parties or any one 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 Independent Certifier must, at all times:
  - (i) give the third party access to premises occupied by the Independent Certifier where the Services are being undertaken; and
  - (ii) permit the third party to inspect applicable information relevant to the quality assurance audit.

### 3.11 **Access to records**

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

### 3.12 **Copies of notices and documents**

All notices and documents:

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

- (b) provided by an Other Party to the Independent Certifier must be provided by the Independent Certifier to the other party.

### 3.13 **Term**

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

- (a) completion of the Services; and
- (b) termination in accordance with clause 8 (*Termination of Appointment*).

## 4. **INDEPENDENCE, CONFIDENTIALITY AND EXCLUSIVITY**

### 4.1 **Independent Certifier to be independent**

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

- (a) independently of the Other Parties and any beneficiary to a deed poll executed by the Independent Certifier in accordance with clause 3.1(b);
- (b) honestly and reasonably;
- (c) with the degree of professional care, knowledge, skill, expertise, experience and diligence which would be reasonably expected of an expert professional providing services similar to the Services within the design and construction industry generally and the design and construction of major engineering works in particular; and
- (d) within the times prescribed under the Relevant Project Agreements or as anticipated by the Delivery Program.

### 4.2 **Confidentiality**

The Independent Certifier must:

- (a) keep confidential details of this deed and all information and documents provided to, or by, the Independent Certifier relating to the Services, the SLR Works, this deed, the Relevant Project Agreements or the SLR and not provide, disclose or use the information or documents except:
  - (i) to disclose them to the Other Parties;
  - (ii) for the purposes of performing the Services;
  - (iii) where required by law or to obtain legal advice on this deed; or
  - (iv) with the prior written consent of the Other Parties; and
- (b) ensure that its subcontractors comply with the terms of clause 4.2(a).

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

### 4.3 **Exclusivity**

- (a) The Independent Certifier must not, and must ensure that:



- (i) any related body corporate (as defined by sections 9 and 50 of the *Corporations Act 2001* (Cth)) of the Independent Certifier; and
- (ii) any employees, agents, subcontractors and consultants who are involved in the provision of the Services,

do not, from the date of execution of this deed until the date of expiry of the Term in accordance with clause 3.13 (*Term*):

- (iii) have any direct or indirect involvement (whether under contract or any other arrangement):
  - (A) with OpCo or any of its contractors, consultants or providers; or
  - (B) in the Relevant Project Agreements; or
- (iv) provide services to or advise any other person in relation to the Relevant Project Agreements,

other than the provision of the Services under this deed, except with the prior written consent of TfNSW which may be withheld or granted in its absolute discretion.

(b) The Independent Certifier agrees that:

- (i) having regard to the Relevant Project Agreements and the Services, clause 4.3 (*Exclusivity*) is reasonable with regards to the nature of the involvement restrained and the duration and scope of the restraint and that the restraints are reasonably necessary for the probity of the Relevant Project Agreements and to ensure the best value for money of the Relevant Project Agreements; and
- (ii) in addition to any other remedies available at law or in equity, damages may not be a sufficient remedy for a breach of clause 4.3 (*Exclusivity*) and TfNSW may be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Independent Certifier.

## **5. OBLIGATIONS OF THE OTHER PARTIES**

### **5.1 No interference or influence**

- (a) The Other Parties will not interfere with or attempt to improperly influence the Independent Certifier in the performance of any of the Services. The parties acknowledge that any communication allowed by this deed will not of itself constitute a breach of this clause 5.1 (*No interference or influence*).
- (b) Clause 5.1(a) will not prevent the Other Parties from providing written comments to the Independent Certifier in respect of the Design Documentation, the Project Plans or any other aspect of OpCo's Activities (including in connection with the Independent Certifier's determination of whether Completion has been achieved by OpCo) and the Independent Certifier must consider any comments received from the Other Parties.

### **5.2 Co-operation**

- (a) Without limiting or otherwise affecting any of the Other Parties' obligations under this deed or the Relevant Project Agreements, the Other Parties must:

- (i) co-operate with and provide the Independent Certifier with all information and documents necessary or reasonably required by the Independent Certifier, or otherwise requested by the Independent Certifier or directed by the Other Parties (jointly); and
  - (ii) allow the Independent Certifier to attend all meetings and procure for the Independent Certifier access to such premises as may be reasonably necessary to enable the Independent Certifier to perform the Services or as requested by the Independent Certifier or directed by the Other Parties (jointly), including allowing access to the SLR Site and any Extra Land and all areas where the SLR Works are being carried out.
- (b) OpCo must ensure that Hold Points and Witness Points are included in the Delivery Program as required by the Independent Certifier to enable the Independent Certifier to perform the Services.

### 5.3 TfNSW to have no liability

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

- (a) to any party to this deed by reason of TfNSW being a party to this deed; or
- (b) for the performance of any obligation of OpCo or the Independent Certifier under this deed or under any Relevant Project Agreement.

## 6. CHANGE TO SERVICES, SUSPENSION OF SERVICES AND APPOINTMENT OF SUBSTITUTE CERTIFIER

- (a) TfNSW and OpCo (jointly) may, by written notice to the Independent Certifier, direct the Independent Certifier to carry out a change to the Services (including an addition or omission) and the Independent Certifier must comply with that direction.
- (b) The Fee to be paid to the Independent Certifier in relation to a change to the Services referred to in clause 6(a) will be determined in accordance with the schedule of rates set out in the Payment Schedule. If an amount for the change to the Services cannot be determined by reference to the schedule of rates, the amount will be a reasonable amount as stated in writing by the Other Parties.
- (c) TfNSW and OpCo (jointly) may, by written notice to the Independent Certifier (copied to OpCo), direct the Independent Certifier to suspend any or all of the Services for the period of time specified in the notice.
- (d) The Independent Certifier acknowledges and agrees that the Other Parties may appoint another certifier (**Substitute Certifier**) to carry out those Services which are omitted as a result of a change to the Services as directed under clause 6(a), and any decision of a Substitute Certifier appointed shall be treated (between TfNSW, OpCo and the Independent Certifier) as if it is a decision of the Independent Certifier, and the Substitute Certifier shall have all of the rights and powers of the Independent Certifier under the Relevant Project Agreements in connection with those Services.
- (e) Notwithstanding a change to the Services or the appointment of a Substitute Certifier, the Independent Certifier must continue to perform the Services, as varied in accordance with this clause 6 (*Change to Services, Suspension of Services and Appointment of Substitute Certifier*), in accordance with this deed. Without

prejudice to any claim in respect of the performance of the Independent Certifier, the Independent Certifier is not responsible for the performance of the Substitute Certifier.

**7. LIABILITY, INSURANCE AND INDEMNITY**

7.1

[REDACTED]

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

7.2

[REDACTED]

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

7.3

[REDACTED]

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

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

7.4

[Redacted]

7.5

[Redacted]

7.6

[Redacted]

7.7

[Redacted]

7.8

[Redacted]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

## **8. TERMINATION OF APPOINTMENT**

### **8.1 Notice of termination**

TfNSW and OpCo (jointly) may terminate the appointment of the Independent Certifier under this deed by notice in writing served on the Independent Certifier if:

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

### **8.2 Termination**

Where a notice is served on the Independent Certifier under clause 8.1 (*Notice of termination*), the appointment of the Independent Certifier will terminate upon the earlier of:

- (a) the date specified in the notice issued under clause 8.1 (*Notice of termination*); and
- (b) the appointment of a replacement for the Independent Certifier.

### **8.3 Delivery of documents**

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

- (a) must deliver up to the Other Parties or to such other person as the Other Parties may direct, all books, records, drawings, specifications and other documents in the possession, custody or control of the Independent Certifier relating to the Services; and
- (b) acknowledges that the Other Parties have the right to use all such documents for any purposes in connection with the SLR, the SLR Works, OpCo's Activities or the Relevant Project Agreements.

### **8.4 Reasonable assistance**

Where the Other Parties give a notice under clause 8.1 (*Notice of termination*) of termination of the appointment of the Independent Certifier, the Independent Certifier must provide full assistance to the Other Parties and any appointed replacement for the

Independent Certifier in order to enable such replacement to be in a position to perform the Services with effect from the appointment of such replacement.

#### 8.5 **Payment until date of termination**

Where the appointment of the Independent Certifier is terminated under clause 8.1(d), the Independent Certifier is only entitled to be paid by the Other Parties the proportion of the Fee for Services performed up to the date of the termination.

#### 8.6 **Termination without prejudice**

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

#### 8.7 **Survive termination**

This clause 8 (*Termination of Appointment*) will survive the termination of this deed by the Other Parties under clause 8.1 (*Notice of termination*).

#### 8.8 **Rights upon termination**

If the appointment of the Independent Certifier is terminated pursuant to clauses 8.1(a) to 8.1(c), the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing this deed had the Independent Certifier repudiated this deed and the Other Parties elected to treat this deed as at an end and recover damages.

### 9. **GST**

- (a) Except where the context suggests otherwise, terms used in this clause 9 (*GST*) have the meaning given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 9 (*GST*).
- (c) Unless otherwise expressly stated, all consideration to be provided under this deed (other than under this clause 9 (*GST*)) is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 9 (*GST*).
- (d) Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense or other amount paid or incurred will be limited to the total costs, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (e) If GST is payable in relation to a supply made under or in connection with this deed, then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as any other consideration is to be first provided for that supply.
- (f) The Supplier must provide a tax invoice to the Recipient at the same time as any consideration is to be first provided for that supply.

- (g) If the GST payable in relation to a supply made under or in connection with this deed varies from the additional amount paid by the Recipient under clause 9(e), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 9(g) is deemed to be a payment, credit or refund of the additional amount payable under clause 9(e). If any adjustment event occurs in relation to a supply, the Supplier must give the Recipient an adjustment note event within 7 days after the date of the adjustment event.

## 10. GENERAL

### 10.1 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

**Name:** **Transport for NSW, a NSW government agency**

**Address:** Level 11  
338 Pitt Street  
Sydney NSW 2000

**Fax no:** 02 9200 0290

For the attention of: TfNSW's Representative

With a copy to:

**Address:** Level 5  
Tower A, Zenith Centre 821 Pacific Highway  
Chatswood NSW 2067

**Fax no:** 02 9200 0290

For the attention of: Deputy Director General, Transport Projects Division

**Name:** **OpCo**

**Address:** c/- Capella Capital  
Level 31, AMP Centre  
50 Bridge Street  
Sydney NSW 2000

**Fax no:** 02 8224 3800

For the attention of: Malcolm Macintyre

**Name:** **Independent Certifier**

Address: Level 7  
116 Miller Street, North Sydney, NSW, 2060

Fax no: 02 9954 1951

For the attention of: Jeff Sharp

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary, or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number of the addressee, in accordance with clause 10.1(b); and
- (e) is taken to be received by the addressee:
  - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
  - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
  - (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
  - (iv) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a Business Day or after 5:00pm, it is taken to be received at 9:00am on the next Business Day.

## 10.2 **Governing law**

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

## 10.3 **Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any action or proceedings which may be brought at any time relating in any way to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that any action or proceedings have been brought in an inconvenient forum, if that venue falls within clause 10.3(a).

## 10.4 **TfNSW as a public authority**

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of TfNSW to exercise any of its functions and powers pursuant to any law.
- (b) The Independent Certifier and OpCo acknowledge and agree that, without limiting clause 10.4(a), anything which TfNSW does, fails to do or purports to do pursuant to its functions and powers under any law will be deemed not to be an act or



omission by TfNSW under this deed and will not entitle the Independent Certifier or OpCo to make any claim against TfNSW.

- (c) The parties agree that clauses 10.4(a) and 10.4(b) are taken not to limit any liability which TfNSW would have had to the Independent Certifier or OpCo under this deed as a result of a breach by OpCo of a term of this deed but for clauses 10.4(a) and 10.4(b) of this deed.

#### 10.5 **Amendments**

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

#### 10.6 **Waiver**

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

#### 10.7 **Cost of performing obligations**

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

#### 10.8 **Further acts and documents**

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

#### 10.9 **Consents**

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

#### 10.10 **Assignment**

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior written consent of each other party unless this deed expressly provides otherwise.

#### 10.11 **Replacement body**

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

any senior officer of the Former Body will be to the equivalent senior officer of the Replacement Body.

#### 10.12 **Counterparts**

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

#### 10.13 **No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

#### 10.14 **Expenses**

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

#### 10.15 **Entire agreement**

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

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

#### 10.16 **Indemnities**

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

#### 10.17 **No agency, partnership, joint venture or other fiduciary relationship**

Nothing in this deed will be construed or interpreted as:

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

**10.18 Severance**

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

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

**10.19 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.

Executed as a deed.

**EXECUTED** on behalf of **TRANSPORT FOR NSW** by its authorised delegate **IN THE PRESENCE OF:**

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Authorised Delegate

\_\_\_\_\_  
Name of Witness (print)

\_\_\_\_\_  
Name of Authorised Delegate (print)

**Signed by the ALTRAC Light Rail Partnership by being signed by each of its partners as at the date of this deed**

**SIGNED, SEALED AND DELIVERED** by **ALTRAC LIGHT RAIL 1 PTY LIMITED ACN 603 192 203** as trustee for **ALTRAC LIGHT RAIL TRUST 1:**

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of Director (print)

\_\_\_\_\_  
Name of Director (print)

**SIGNED, SEALED AND DELIVERED** by **ALTRAC LIGHT RAIL 2 PTY LIMITED ACN 603 194 476** as trustee for **ALTRAC LIGHT RAIL TRUST 2:**

\_\_\_\_\_  
Company Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of Company Secretary/Director (print)

\_\_\_\_\_  
Name of Director (print)

**SIGNED, SEALED AND DELIVERED** by  
**ALTRAC LIGHT RAIL 3 PTY LIMITED**  
**ACN 603 190 601** as trustee for  
**ALTRAC LIGHT RAIL TRUST 3** by its  
Attorney **IN THE PRESENCE OF:**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Name of Witness (print)

\_\_\_\_\_  
Name of Attorney (print)

**EXECUTED** by **APP CORPORATION PTY**  
**LTD ABN 29 003 764 770** by or **IN THE**  
**PRESENCE OF:**

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director

## Schedule 1 – Services

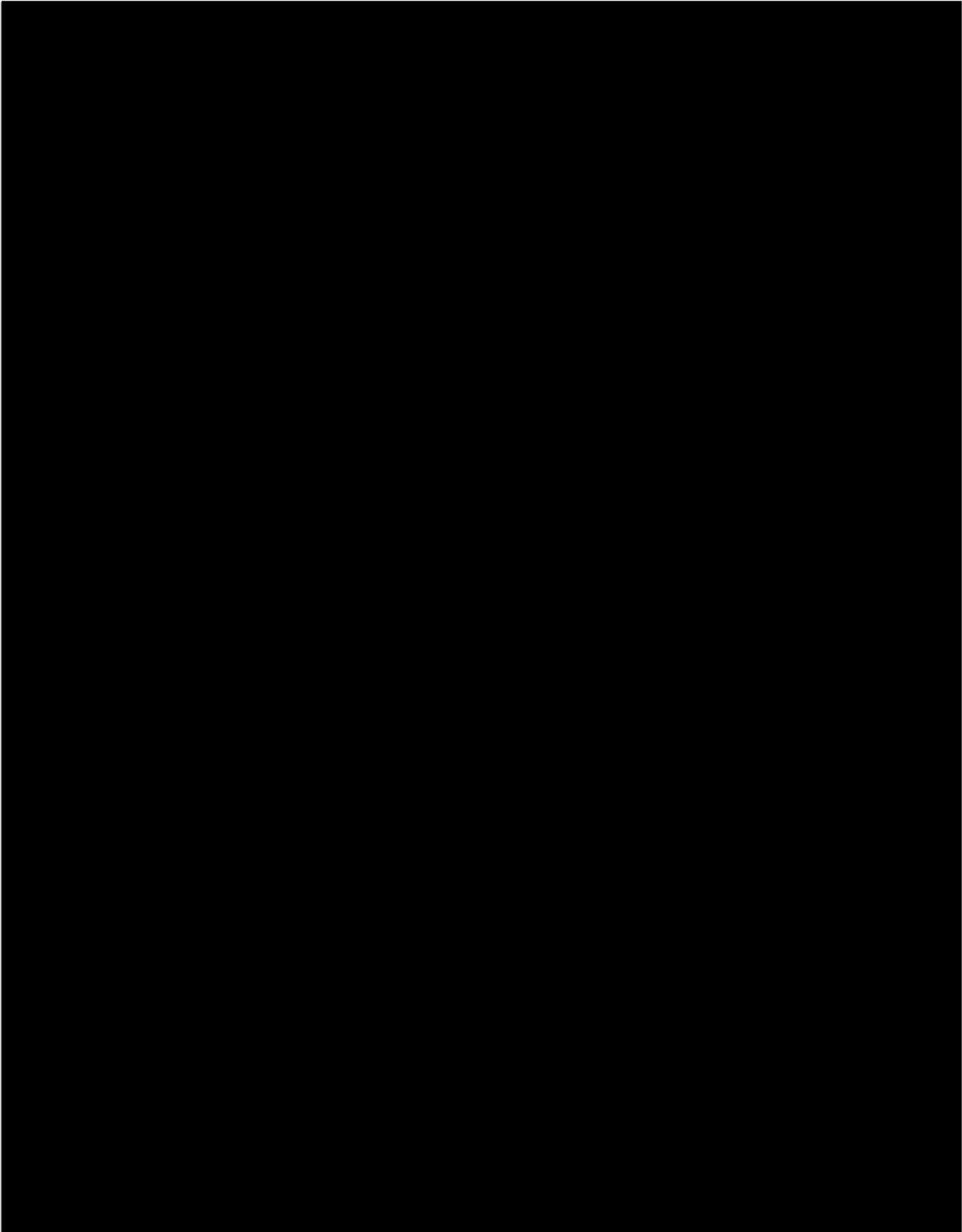
### 1. **General**

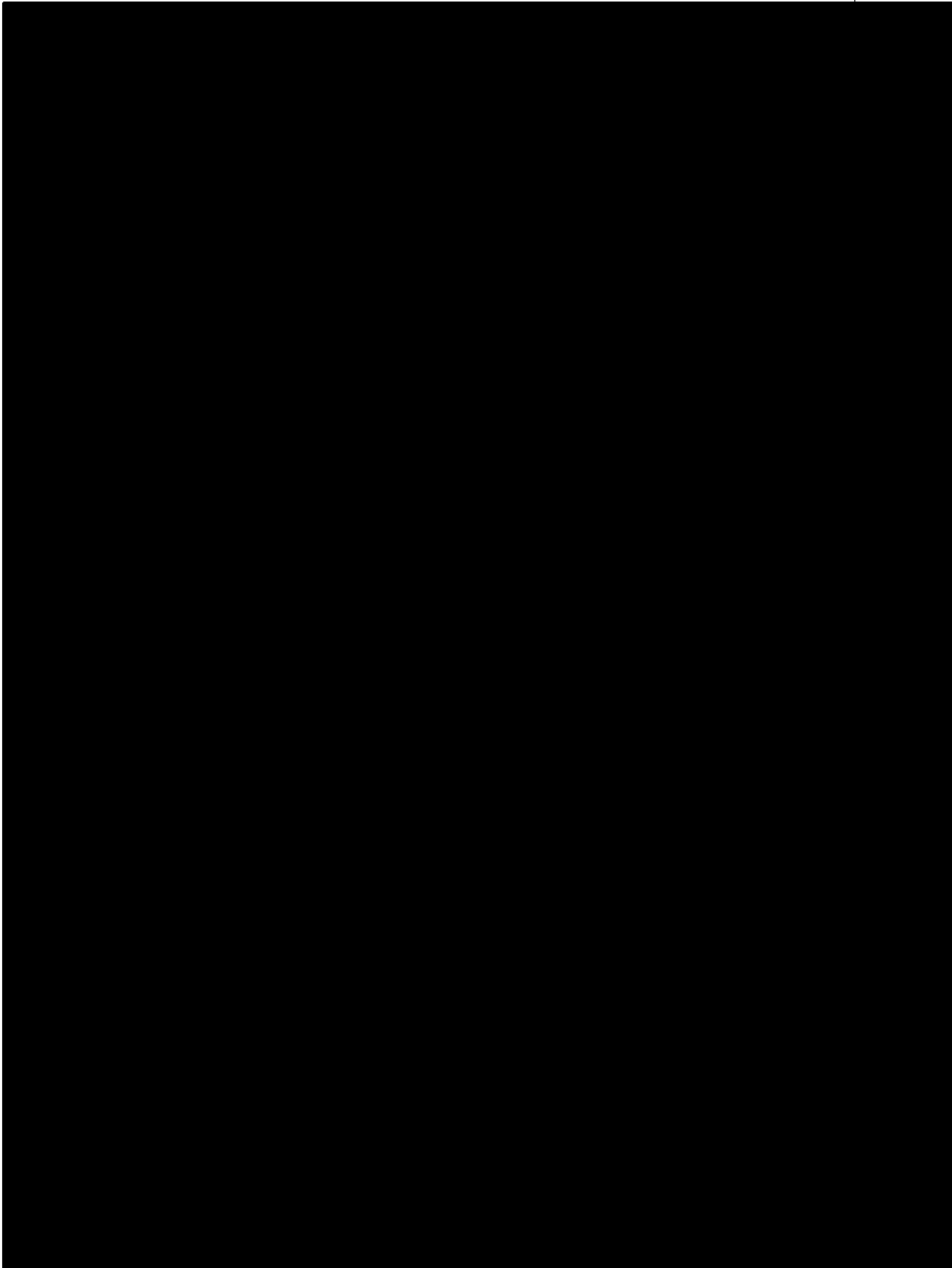
The Services include all the functions, obligations, duties and services which the Relevant Project Agreements contemplate will be discharged by the Independent Certifier, including providing various certificates required under the Relevant Project Agreements.

### 2. **Initial Certification and Monitoring Plan**

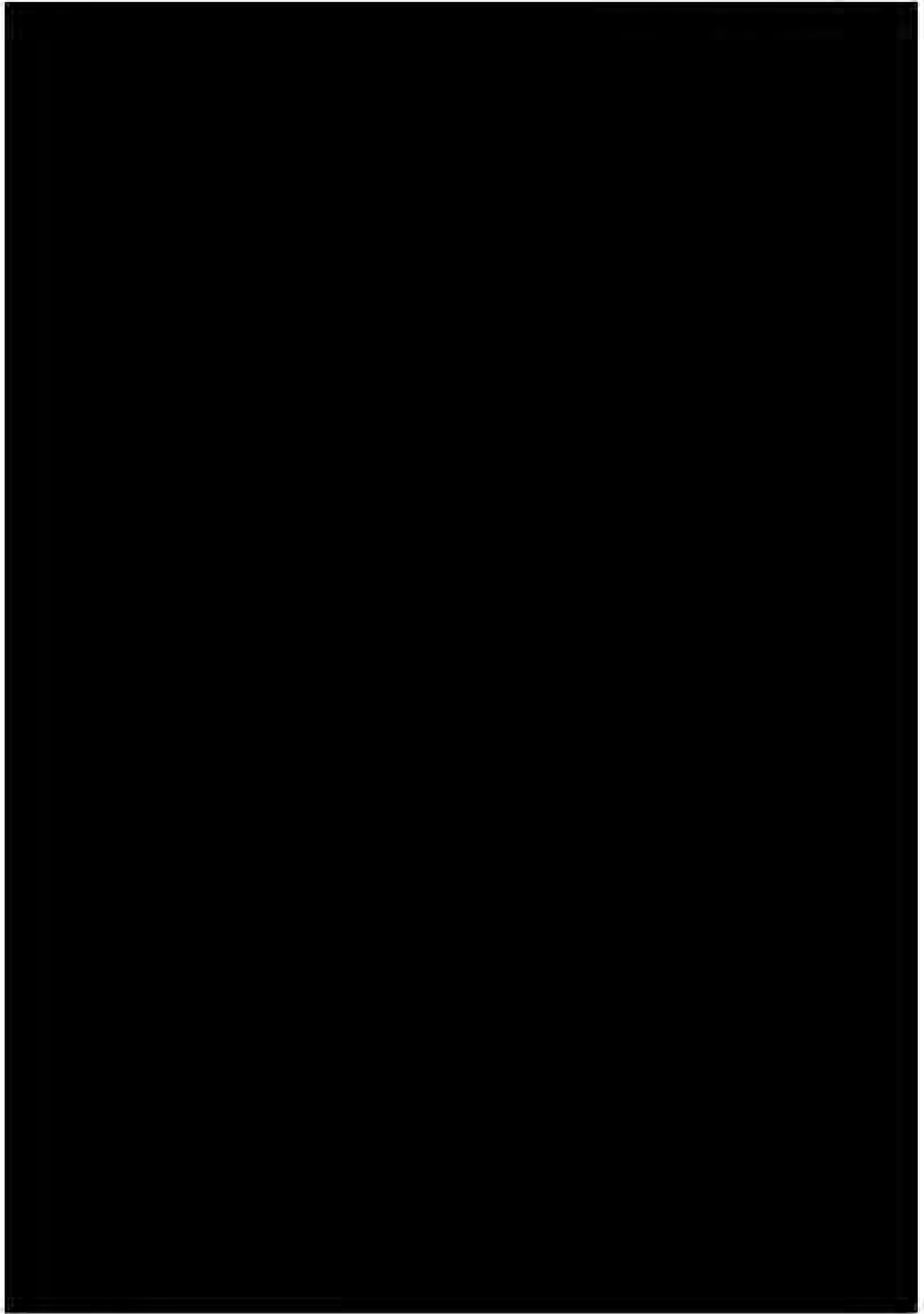
The Independent Certifier must provide the Services to no lesser effort, quality or standard than that detailed in Schedule 3 (*Minimum Resources and Surveillance Levels*) and the initial Certification and Monitoring Plan included in Schedule 4 (*Initial Certification and Monitoring Plan*).

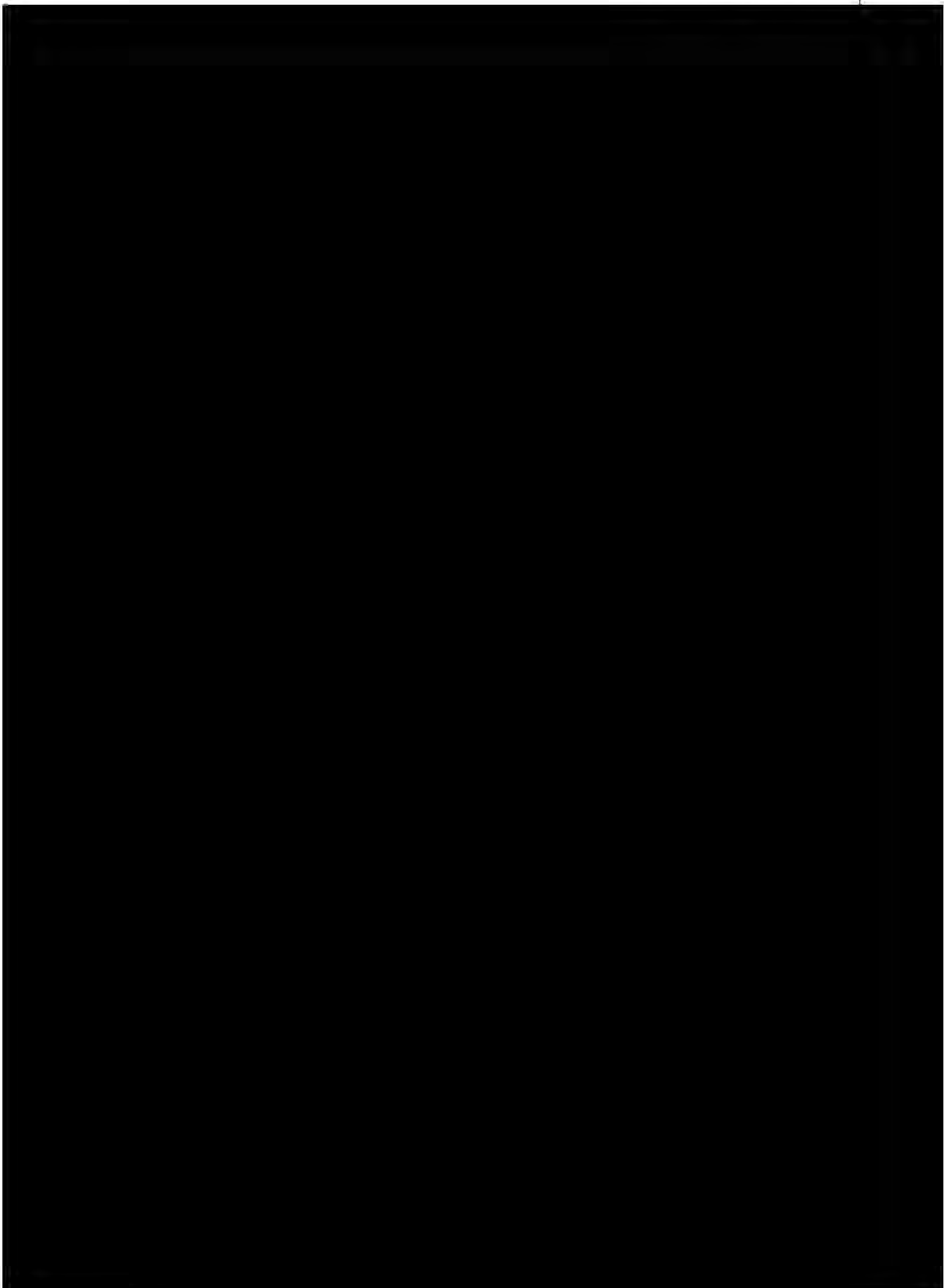
**Schedule 2 - Payment Schedule**

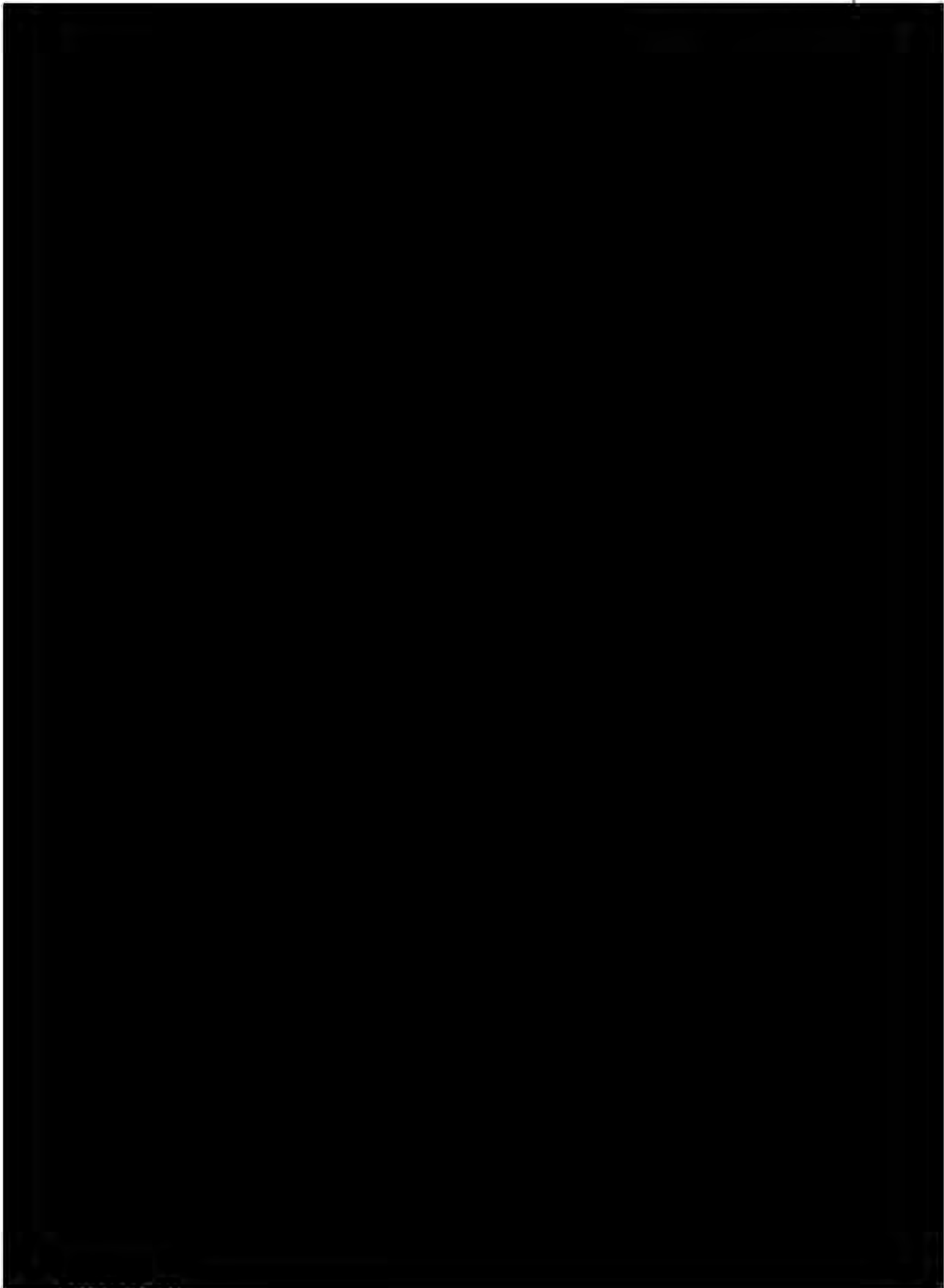


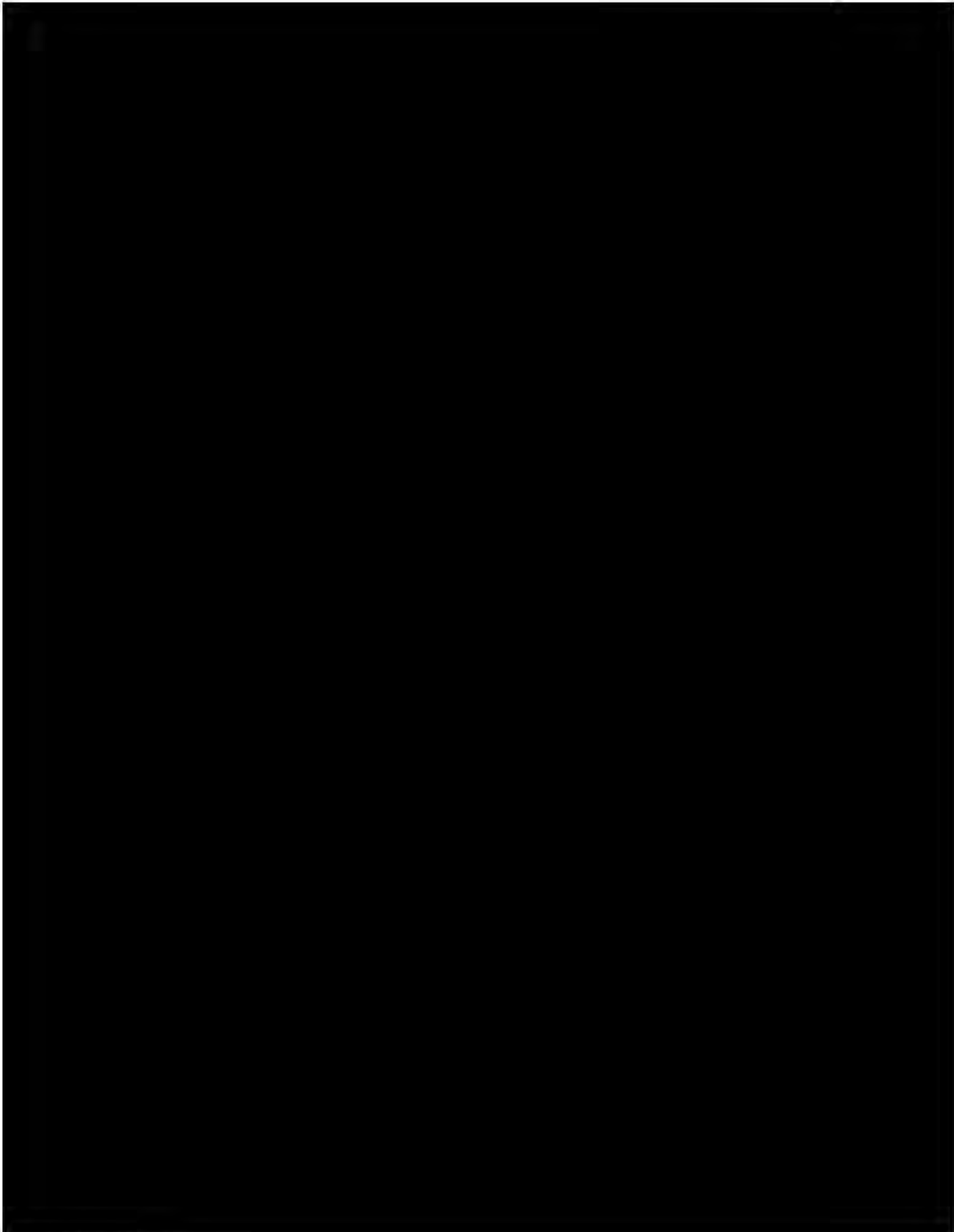


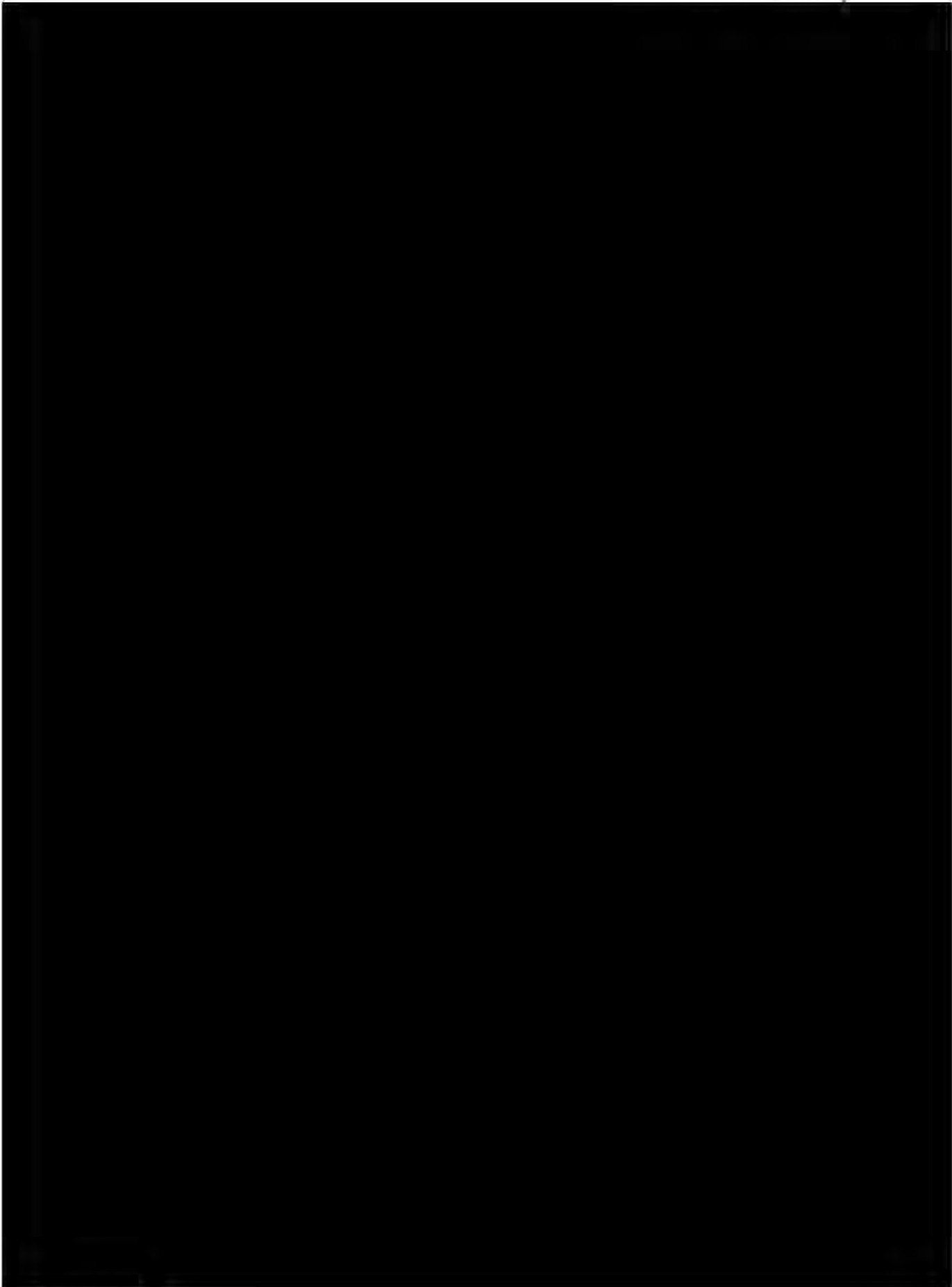


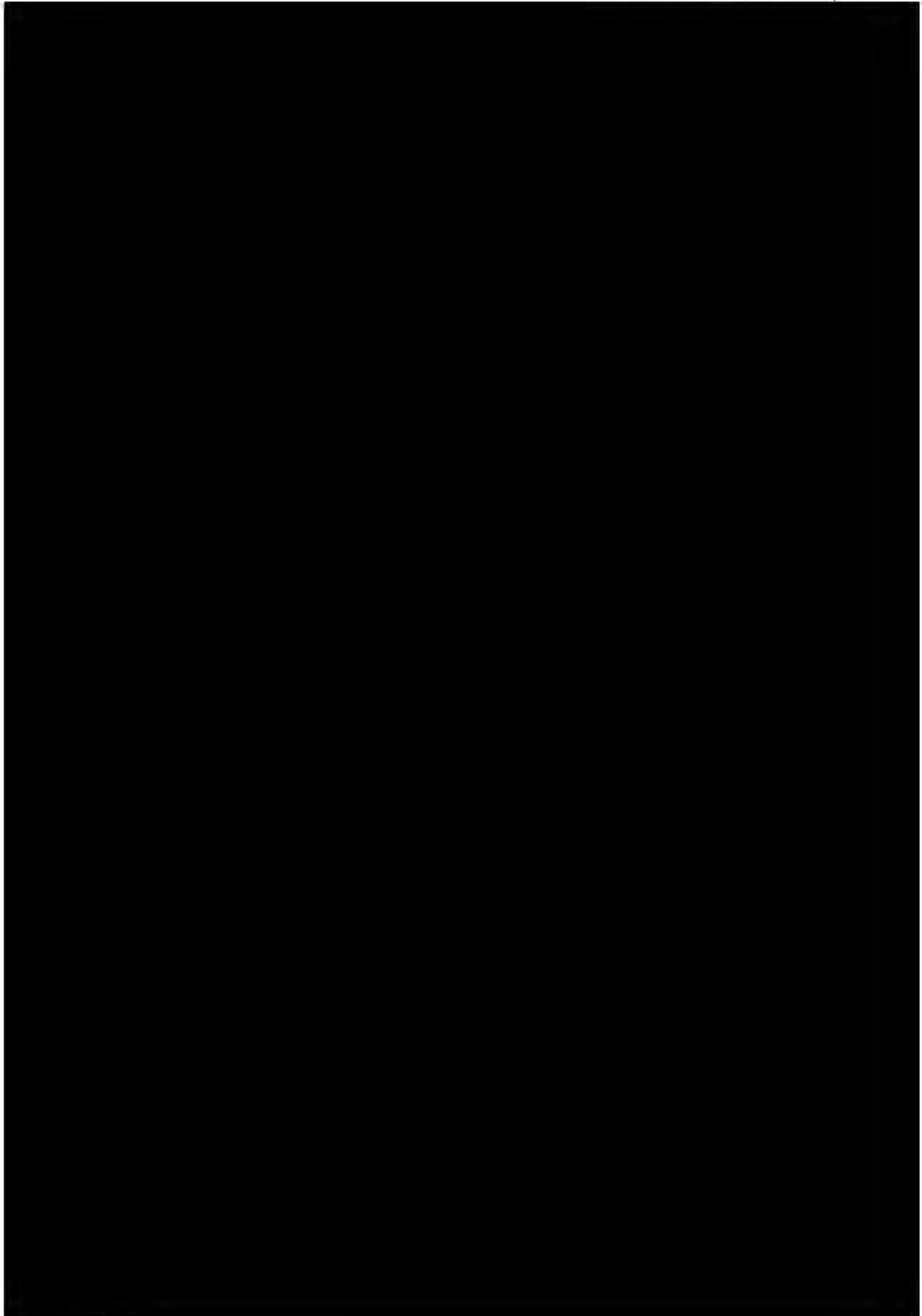


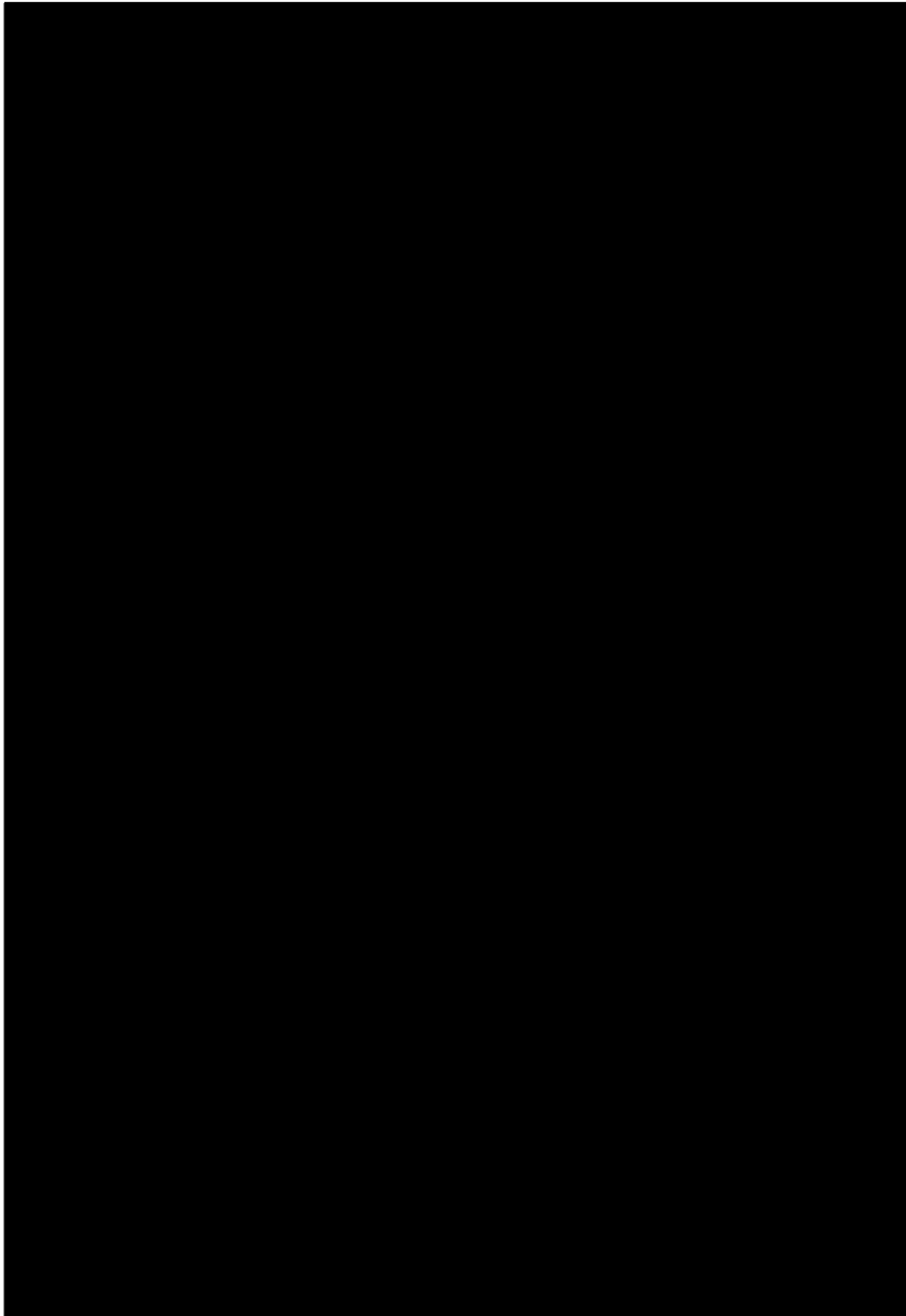


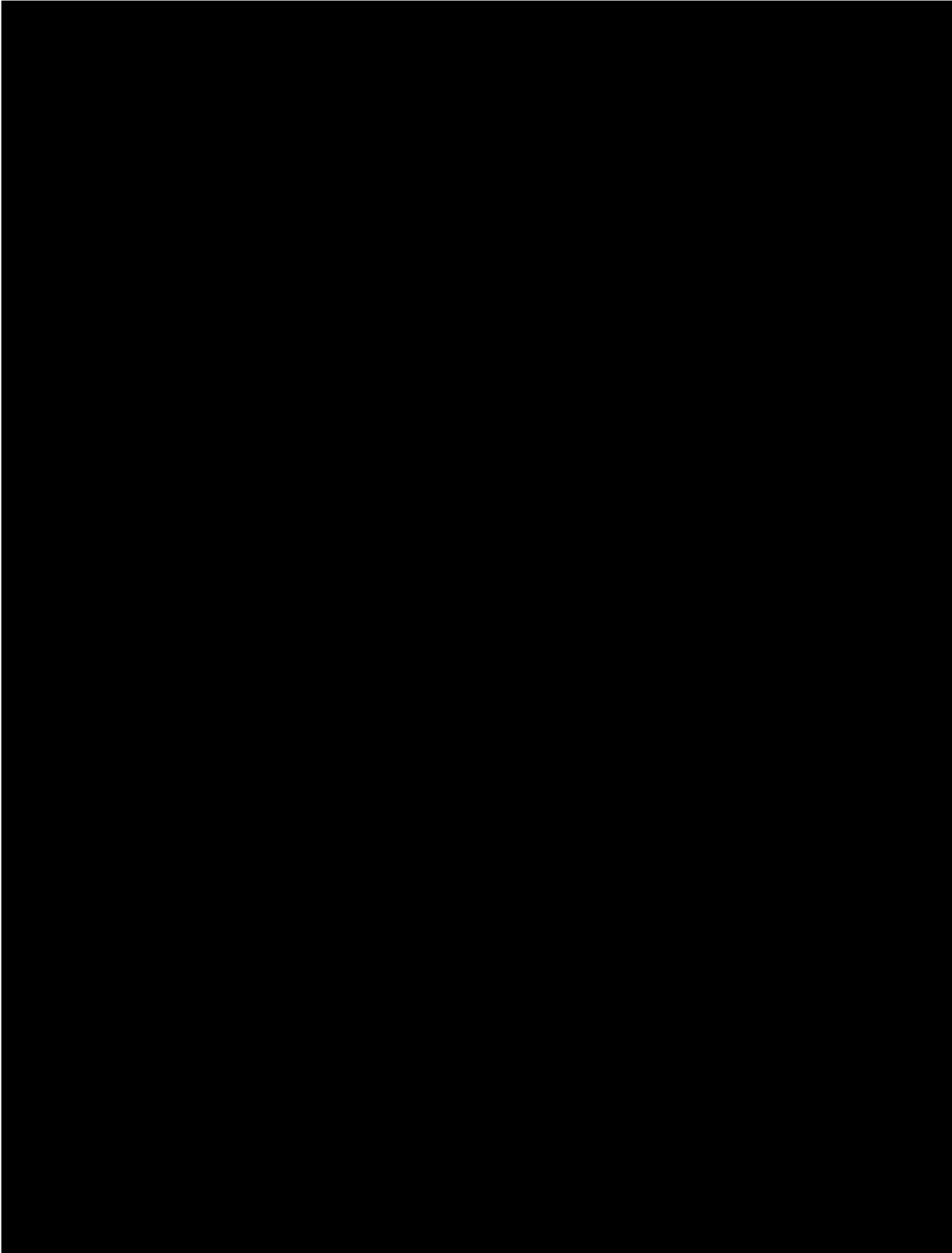




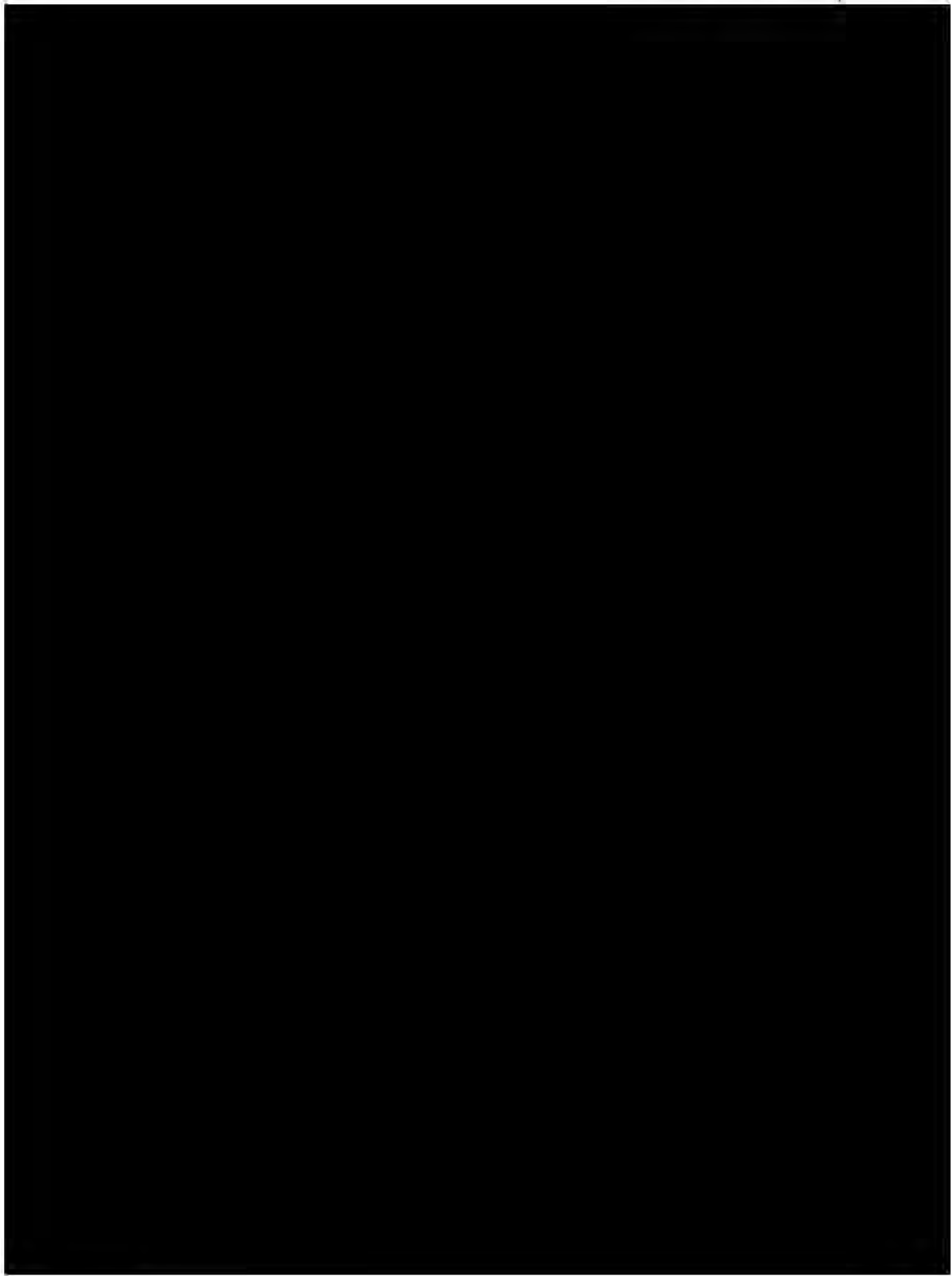


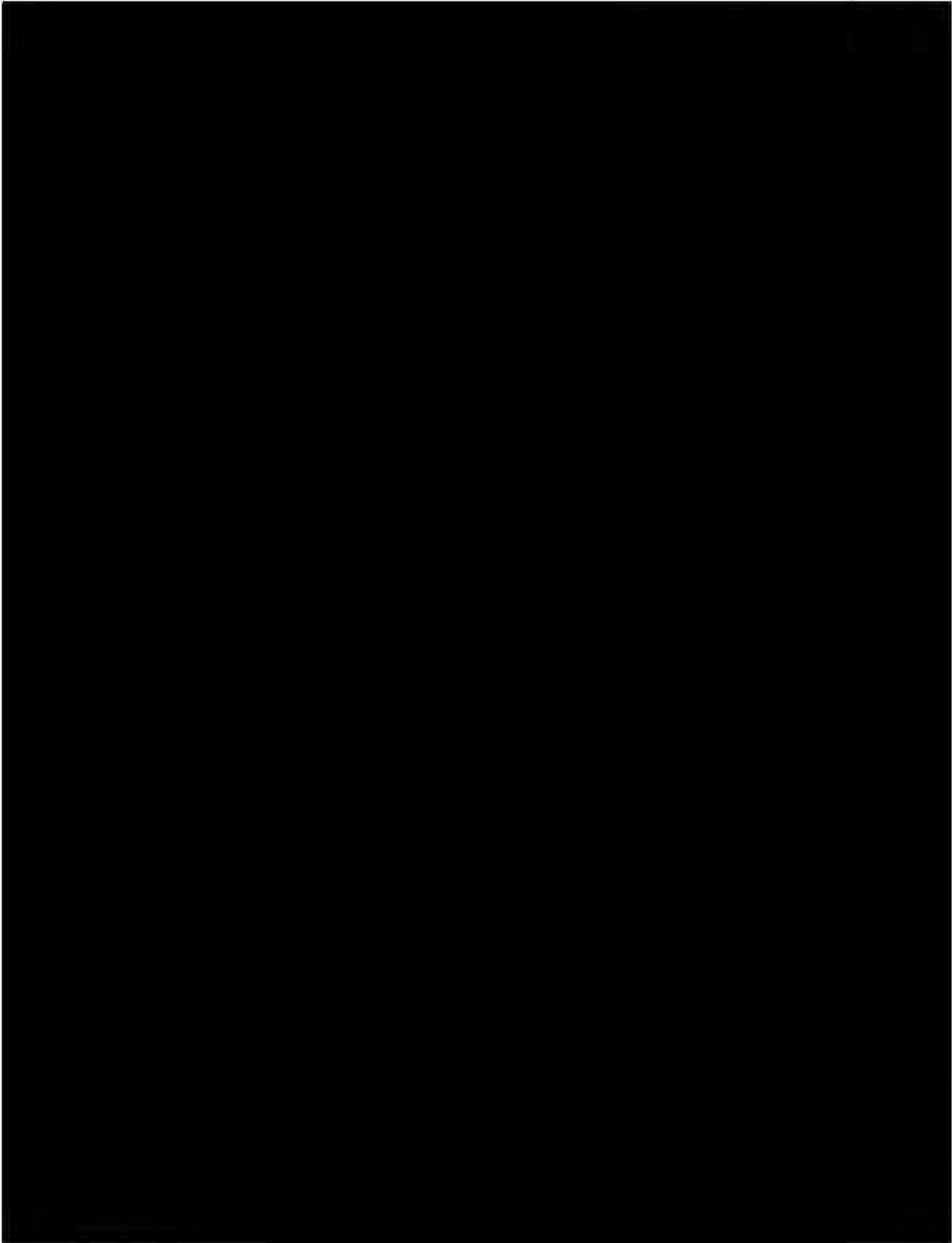


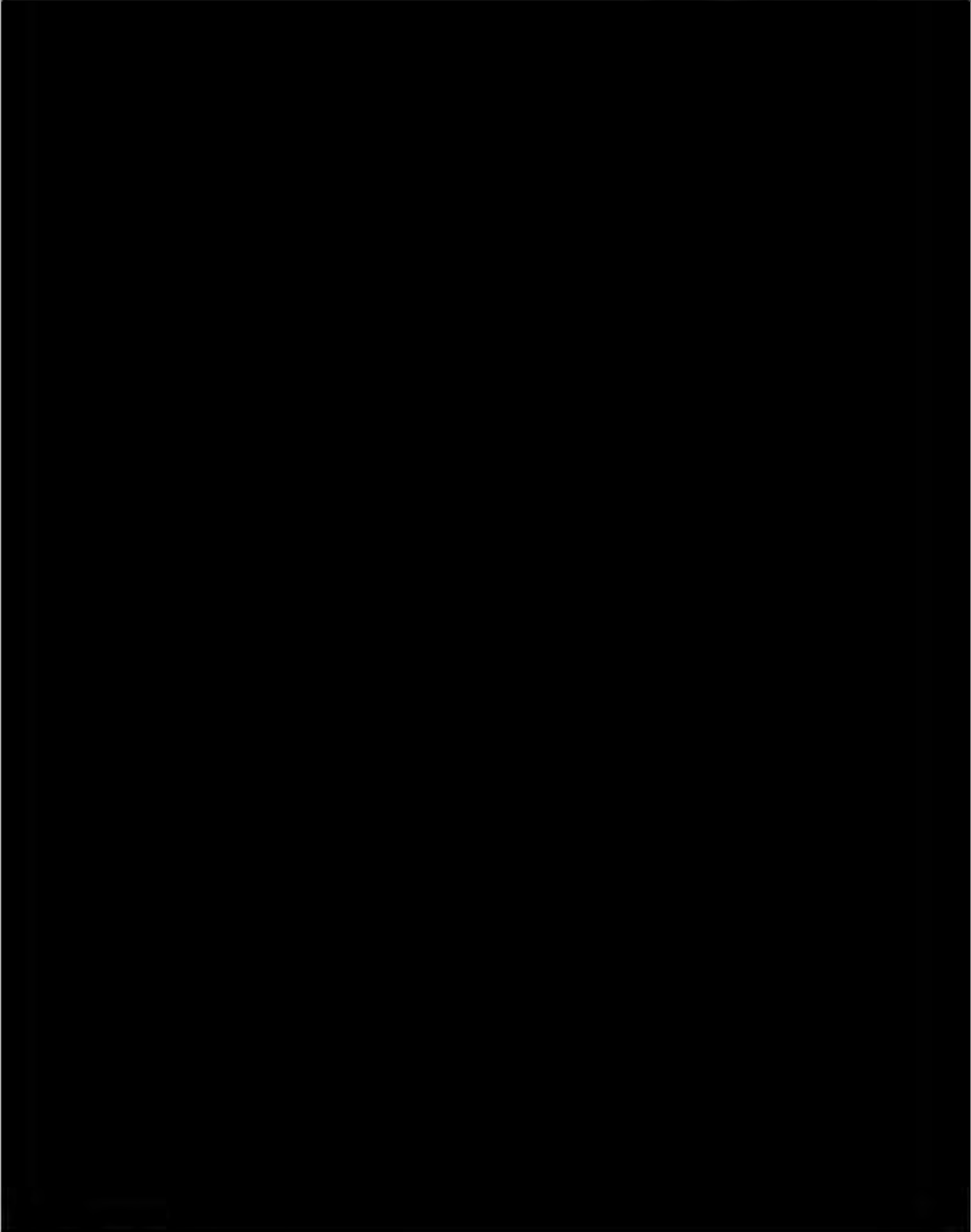


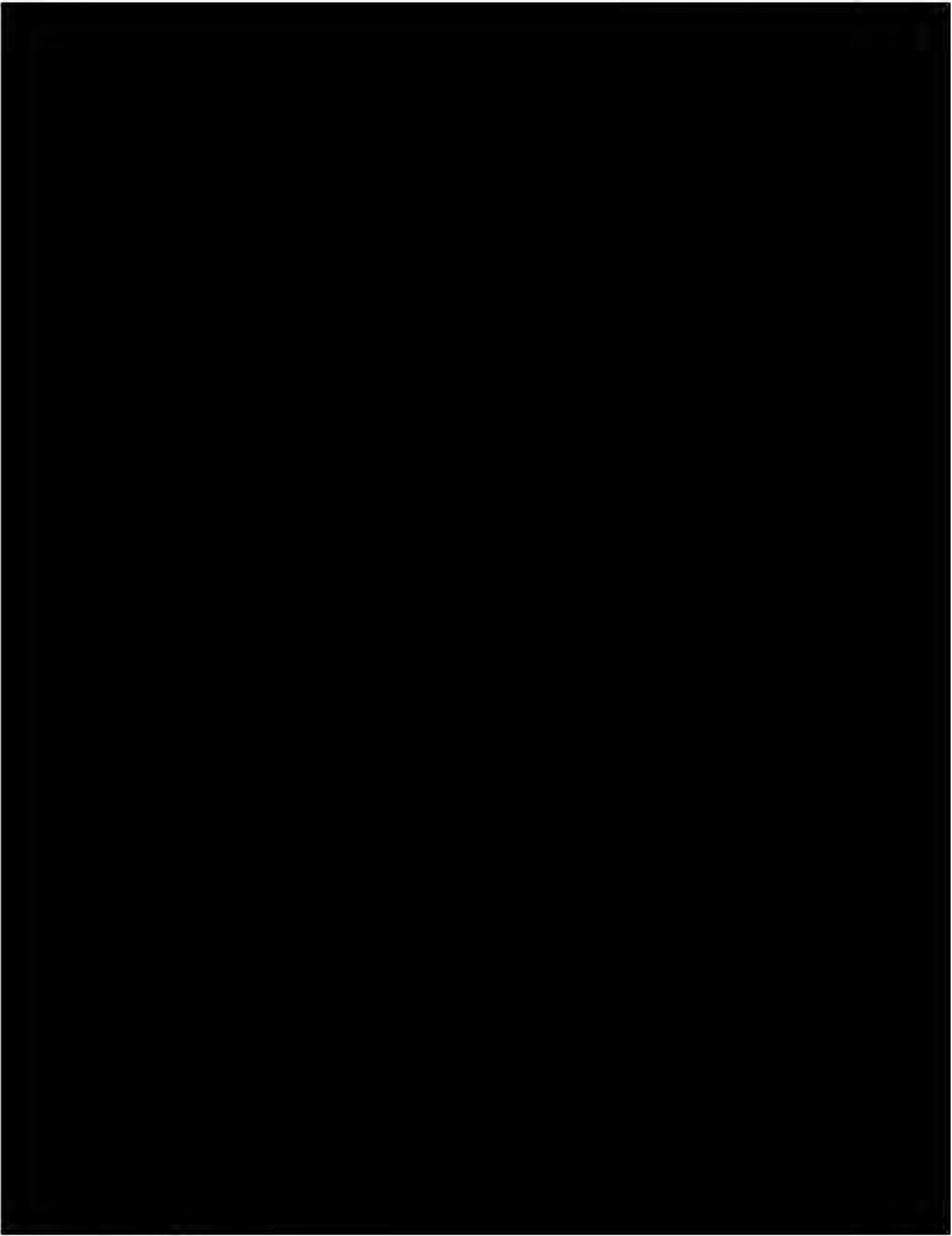


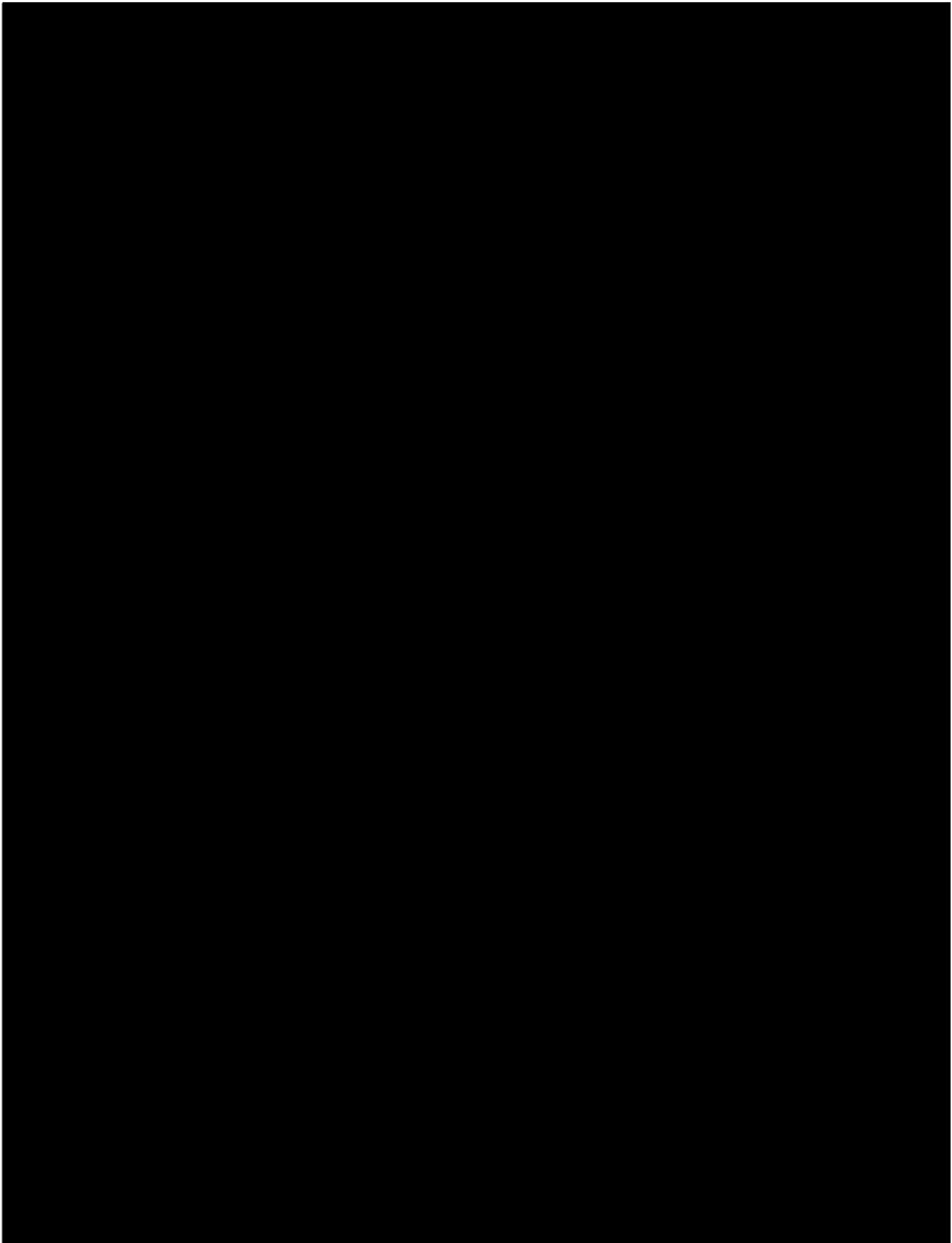


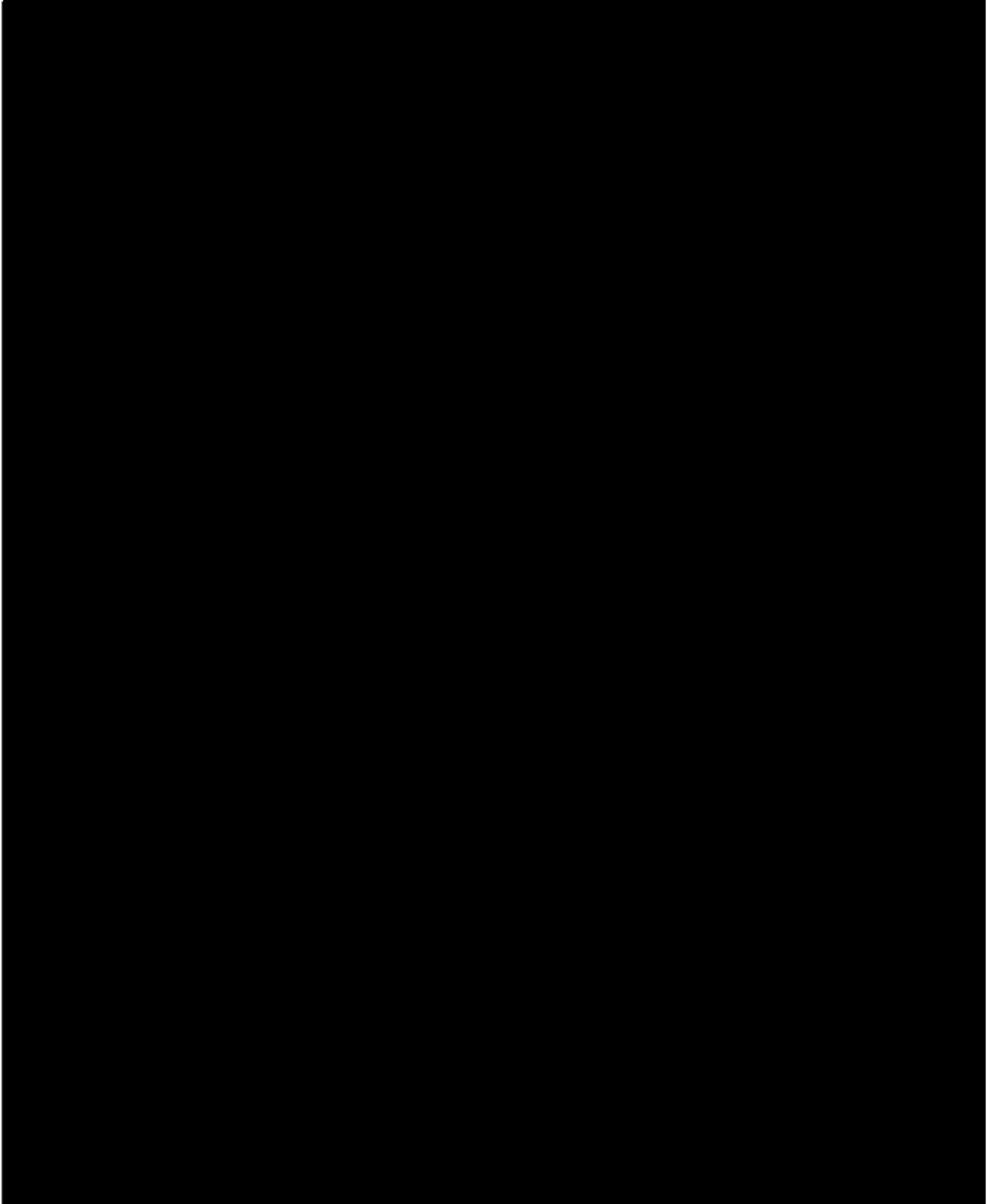


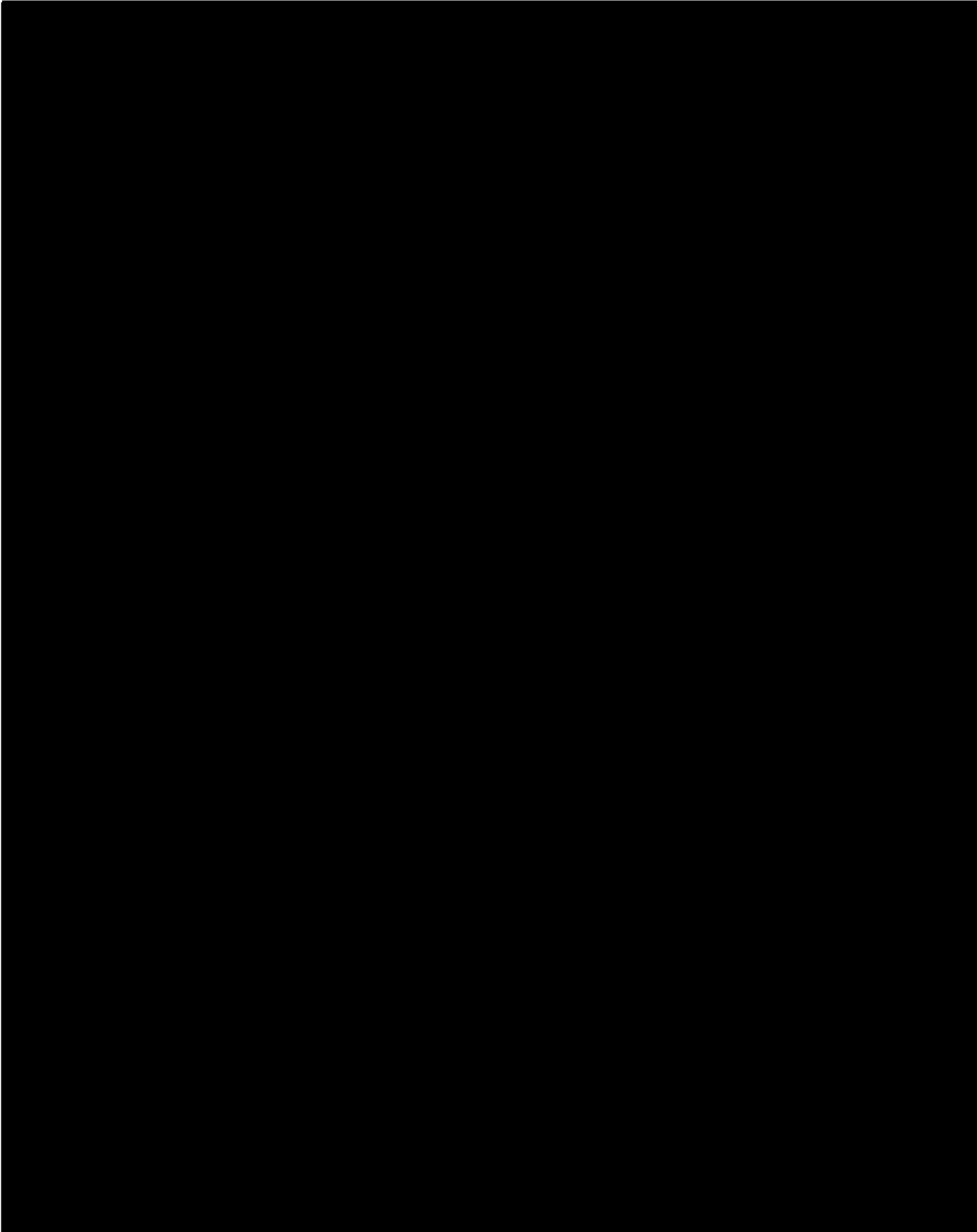












Schedule 3 - Minimum resources and surveillance levels

**Schedule 3 - Minimum resources and surveillance levels**

**1. Minimum resources commitment**

The Independent Certifier acknowledges and agrees that the minimum levels of resources, including man-days, set out in this Schedule 3 (*Minimum Resources and Surveillance Levels*) are minimum requirements only and do not in any way limit or otherwise affect the obligations of the Independent Certifier to perform the Services in accordance with this deed.

In this Schedule 3, a reference to "days" excludes public holidays and includes only those days which are stated in the Delivery Program as working days.

**1.1 Design Phase Services**

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

Position	Name	Minimum commitment (man-days)	
		During performance of OpCo's Activities relating to design, until all discrete design elements/components have passed Design Stage 3	During performance of OpCo's Activities relating to construction, until the Date of Final Completion
Environmental Representative			
Independent Certifier's Project Director			
Independent Certifier's Representative Design			
Discipline Lead – Civil / Structural Engineering			
Discipline Lead - Track Engineering			
Discipline Lead - High Voltage			
Discipline Lead – Signalling			
Discipline Lead - Traction Power			



Schedule 3 – Minimum resources and surveillance levels

Position	Name	Minimum commitment (man-days)	
		During performance of OpCo's Activities relating to design, until all discrete design elements/components have passed Design Stage 3	During performance of OpCo's Activities relating to construction, until the Date of Final Completion
Discipline Lead - Substations			
Discipline Lead – Road Works			
Discipline Lead - Systems and Safety Assurance			
Discipline Lead - Urban Design			
Discipline Lead - Fire Engineering			
Discipline Lead – Traffic and Transport Management			
Discipline Lead – Earthing and Bonding, Electrolysis and EMC			
Other Design Phase Disciplines			
Discipline Lead - Communications and Passenger Information			
Discipline Lead - Mechanical Services			

1.2 Construction Phase Services

The Independent Certifier must provide the following personnel, as a minimum, in the roles/positions for the durations and at the locations set out below, to perform the relevant aspects of the Construction Phase Services:

Role/Position	Name(s)	Minimum Attendance (in man-days) and Location
Independent Certifier's Project		

Schedule 3 – Minimum resources and surveillance levels

Role/Position	Name(s)	Minimum Attendance (in man-days) and Location
Director		
Independent Certifier's Representative - Construction		
Environmental Representative		
Construction Manager		
Quality Manager		
Safety Review Manager		
Program Reviewer		
Senior Engineer Const		
LRV Engineer		
Project Engineer Const		
Project Engineer Const		
Project Engineer Const		
Project Engineer Const		
Surveillance Officer/Civil		
Surveillance Officer/Elec		
Technical Specialists		

Note: In the table above, full time means a minimum of 10 hours per day Monday to Friday and a minimum of 6 hours on Saturday.

**1.3 Completion Phase Services**

The Independent Certifier must provide the following personnel, as a minimum, in the roles/positions for the durations and at the locations set out below, to perform the relevant aspects of the Completion Phase Services:

Role/Position	Name(s)	Minimum Attendance (in man-days) and Location
Independent Certifier's Representative - Construction		
ITS Testing/Commissioning		
OMCS Testing/Commissioning		
LRV Commissioning		
Other Construction Phase Staff		
Environmental Representative		

Note: In the table above, full time means a minimum of 10 hours per day Monday to Friday and a minimum of 6 hours on Saturday.

**1.4 Final Completion Phase Services**

The Independent Certifier must provide the following personnel, as a minimum, for the durations set out below to perform the relevant aspects of the Final Completion Phase Services:

Position	Name	Minimum man-days to be committed to the SLR Works
Project Engineer		
Surveillance Officer		
Environmental Representative		

Note: In the table above, full time means a minimum of 10 hours per day Monday to Friday and a minimum of 6 hours on Saturday.

**2. Minimum ability, knowledge, skill, expertise and experience of Independent Certifier's personnel**

**2.1 Independent Certifier's project director**

- (a) The Independent Certifier's project director must possess a recognised qualification relevant to the position and the Services and have extensive experience in the project certification of large projects similar to the SLR Works and OpCo's Activities.
- (b) The Independent Certifier's project director must at all times have authority to act on behalf of the Independent Certifier in respect of the Services.

## 2.2 **Independent Certifier's Representative for the Design Phase Services**

The Independent Certifier's Representative for the Design Phase Services must possess a recognised qualification relevant to the position and the Services and have at least five years' experience in the design certification of large projects similar to the SLR Works and OpCo's Activities and at least 20 years of experience in the design of major infrastructure projects.

## 2.3 **Independent Certifier's Representative for the Construction Phase Services**

The Independent Certifier's Representative for the Construction Phase Services must possess a recognised qualification relevant to the position and the Services and have at least five years' experience in the construction certification of large projects similar to the SLR Works and OpCo's Activities and at least 20 years of experience in construction including strong experience in infrastructure construction.

## 2.4 **Document Controller/Site Administrative Assistant**

The Document Controller/Site Administrative Assistant must have experience in document control and site administration on major civil engineering projects.

## 2.5 **Environmental Representative**

The Environmental Representative for the Construction Phase Services must be approved by the Department of Planning and Environment and must possess:

- (a) a recognised tertiary qualification in science, environmental engineering, environmental management or equivalent;
- (b) a minimum of 10 years of industry experience including relevant construction experience in senior management and/or environmental management representative/auditing roles on linear infrastructure projects;
- (c) proven understanding and application of relevant legislation and TfNSW procedures;
- (d) relevant licences and certificates necessary to perform the role; and
- (e) Rail Industry Safety Induction (RISI) certification.

## 2.6 **Independent Certifier's discipline leads for Design Phase Services**

The Independent Certifier's discipline lead in each design discipline for the Design Phase Services must:

- (a) possess a recognised qualification in the relevant field of expertise;

## Schedule 3 – Minimum resources and surveillance levels

- (b) have at least ten years' experience in the design certification of large projects similar to the SLR Works and OpCo's Activities;
- (c) have at least 15 years of experience in the design of major infrastructure projects similar to SLR Works and OpCo's Activities; and
- (d) for RMS relevant design disciplines, each Independent Certifier discipline lead must be a suitably qualified Chartered Professional Engineer registered with the Institute of Engineers Australia, who is:
  - (i) familiar with and experienced in using the Roads and Maritime Services QA Specifications;
  - (ii) independent of RMS and any person or consultancy involved in the preparation of the Design Documentation or the carrying out of the Works as defined under the Roads Act Approval; and
  - (iii) appropriately insured for professional indemnity including for any liability to TfNSW.

### 2.7 Construction surveillance personnel

The Independent Certifier's construction surveillance personnel for the Construction Phase Services must have at least five years' experience in construction of major infrastructure projects.

### 3. Minimum surveillance commitment

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

The Independent Certifier must carry out, as a minimum, the following surveillance activities at the frequencies set out below:

<b>Surveillance Activity</b>	<b>Minimum Frequency</b>
<p><b>Local Area Works (SPR Appendix 14, 15 and 16)</b></p> <p><i>Modification to existing and establishment of new works:</i></p> <ul style="list-style-type: none"> <li>• Roadworks</li> <li>• Pedestrian areas</li> <li>• Stormwater infrastructure</li> <li>• Interfaces with Utility Services</li> <li>• Street Furniture</li> <li>• Street Lighting</li> <li>• Landscaping</li> <li>• Paths</li> <li>• Signage, wayfinding and linemarking</li> </ul>	Daily



<b>Surveillance Activity</b>	<b>Minimum Frequency</b>
<ul style="list-style-type: none"> <li>• <i>Dynamic testing</i></li> <li>• <i>Integrated Factory Acceptance Tests for LRVs, signalling and control systems</i></li> </ul>	
<p><b>Maintenance and Stabling Facilities (SPR Appendix 19)</b></p> <ul style="list-style-type: none"> <li>• <i>Maintenance facility</i></li> <li>• <i>Servicing tracks</i></li> <li>• <i>Component exchange facility</i></li> <li>• <i>Automatic train wash</i></li> <li>• <i>Automatic wheel monitoring</i></li> <li>• <i>Power supply</i></li> <li>• <i>Vehicle access, internal roads, car parking and stormwater drainage</i></li> <li>• <i>Permanent Utility Services connections</i></li> <li>• <i>Administration building</i></li> <li>• <i>Landscaping</i></li> <li>• <i>Security and outdoor lighting</i></li> </ul>	<i>Daily</i>
<p><b>Operation Control Centre (SPR Appendix 20)</b></p> <ul style="list-style-type: none"> <li>• <i>Management and control facilities</i></li> <li>• <i>Administration offices and data storage rooms</i></li> <li>• <i>Equipment rooms</i></li> <li>• <i>Security</i></li> <li>• <i>Staff amenities including toilets, kitchens and break out areas</i></li> <li>• <i>Furniture, fixtures and fittings</i></li> </ul>	<i>Weekly</i>
<p><b>Utility Services Treatments (SPR Appendix 30)</b></p> <p><i>Monitor all works affecting Utility Services</i></p>	<i>Daily</i>
<p><b>Testing and Commissioning (SPR Appendix 33)</b></p> <ul style="list-style-type: none"> <li>• <i>First article inspection tests of defined unproven items</i></li> <li>• <i>Type tests of defined unproven items</i></li> <li>• <i>Factory inspection tests of define unproven items</i></li> <li>• <i>Integrated factory acceptance tests for LRVs, signalling and control systems</i></li> <li>• <i>CSELR site tests</i></li> <li>• <i>CSELR railway initial performance test</i></li> <li>• <i>Trial running of CSELR</i></li> <li>• <i>Permanent Light Rail Corridor Tests</i></li> </ul>	<i>Each test event</i>

Schedule 3 – Minimum resources and surveillance levels

<b>Surveillance Activity</b>	<b>Minimum Frequency</b>
<ul style="list-style-type: none"> <li>• System performance Test</li> <li>• Capacity performance Test</li> <li>• Final Performance Test</li> </ul>	
<p><b>Signalling and Movement Control Systems (SPR Appendix 21)</b></p> <ul style="list-style-type: none"> <li>• Cable and major equipment installation</li> <li>• Major equipment and systems testing</li> <li>• Major systems commissioning</li> </ul>	<p>As required</p> <p>Each test event</p> <p>Each test event</p>
<p><b>Earthing and Bonding, Electrolysis and EMC (SPR Appendix 28)</b></p> <ul style="list-style-type: none"> <li>• Earthing and bonding installations</li> <li>• Final Earthing and Bonding testing</li> <li>• Base line electrolysis model</li> <li>• Electrolysis mitigations/installations</li> <li>• Final Electrolysis verification/testing</li> <li>• Base line EMC model</li> <li>• EMC mitigations/installations</li> <li>• Final EMC verification</li> </ul>	<p>Daily</p> <p>Each test event</p> <p>Each test event</p> <p>Daily</p> <p>Each test event</p> <p>Each test event</p> <p>Daily</p> <p>Each test event</p>
<p><b>Communications Systems and Passenger Information (SPR Appendix 23)</b></p> <ul style="list-style-type: none"> <li>• Cable and major equipment installation</li> <li>• OpCo connections into other parties' networks/systems)</li> <li>• Major equipment and systems testing</li> <li>• Major systems commissioning</li> </ul>	<p>As required</p> <p>Each event</p> <p>Each test event</p> <p>Each test event</p>
<p><b>Ticketing System (SPR Appendix 24)</b></p> <ul style="list-style-type: none"> <li>• Civil and cabling works for power supply to ETS equipment at stations</li> <li>• Secure storage for rotatables and consumables</li> <li>• Storage and charging of portable card readers</li> <li>• Civil works for ETS equipment</li> <li>• Data communications infrastructure</li> </ul>	<p>Daily</p>
<p><b>Tunnel Ventilation System (SPR Appendix 25)</b></p> <ul style="list-style-type: none"> <li>• Tunnel ventilation system</li> <li>• Trackway exhaust system for enclosed station track areas</li> <li>• Environmental control system</li> </ul>	<p>Daily</p>



<b>Surveillance Activity</b>	<b>Minimum Frequency</b>
<ul style="list-style-type: none"> <li>• <i>Smoke management system</i></li> </ul>	
<p><b>Low Voltage Distribution and Building Services (SPR Appendix 26)</b></p> <ul style="list-style-type: none"> <li>• <i>Switchboards and distribution boards</i></li> <li>• <i>Electrical works</i></li> <li>• <i>UPS and facilities</i></li> <li>• <i>Cable installation</i></li> </ul>	Daily
<p><b>High Voltage Supply and Reticulation (SPR Appendix 27)</b></p> <ul style="list-style-type: none"> <li>• <i>Bulk power supply equipment and cables including protection and control equipment</i></li> <li>• <i>HV reticulation equipment and cables including protection and control equipment</i></li> <li>• <i>SCADA and communications equipment</i></li> <li>• <i>Auxiliary systems and backup power supply</i></li> <li>• <i>Lighting and surge protection equipment</i></li> <li>• <i>Harmonic suppression and filtering</i></li> <li>• <i>Isolation and earthing equipment</i></li> </ul>	Daily
<p><b>Traction Power, Electrification Systems and Control (SPR Appendix 29)</b></p> <ul style="list-style-type: none"> <li>• <i>Traction power supply equipment and cables, including Traction return, rectification, protection and control equipment</i></li> <li>• <i>Overhead wiring systems</i></li> <li>• <i>SCADA and communications equipment for operational control and monitoring by a Power Control System (PCS)</i></li> <li>• <i>Auxiliary systems and backup power supply for operations critical and safety service components including protection, control and monitoring devices</i></li> <li>• <i>Lightning and surge protection equipment</i></li> <li>• <i>Harmonic suppression and filtering</i></li> <li>• <i>Rail voltage limiting devices</i></li> <li>• <i>Isolation and earthing equipment</i></li> </ul>	Daily
<p><b>Hydraulic Systems</b></p> <ul style="list-style-type: none"> <li>• <i>Water services systems</i></li> <li>• <i>Potable domestic cold water</i></li> <li>• <i>Potable domestic heated water</i></li> <li>• <i>Recycled non-potable cold water, where external supply is</i></li> </ul>	Daily

<b>Surveillance Activity</b>	<b>Minimum Frequency</b>
<p>available</p> <ul style="list-style-type: none"> <li>• Drainage systems</li> <li>• Sewer drainage, including tradewaste management</li> <li>• Rainwater capture and drainage</li> <li>• Tunnel drainage of all tunnel water inflows, including seepage water</li> <li>• Associated equipment and system component supports, connections, discharge points, risers, civil and structural works, and acoustic treatments</li> <li>• Respective power supply, control, and monitoring systems and interfaces</li> <li>• Respective fire separation, fire stopping, fire proofing, and fire system interfaces</li> </ul>	
<p><b>Fire Engineering (SPR Appendix 25)</b></p> <p>Fire engineering works for:</p> <ul style="list-style-type: none"> <li>• Stops</li> <li>• Tunnels</li> <li>• Rolling stock</li> </ul>	Weekly
<p><b>Environmental Observation</b></p> <ul style="list-style-type: none"> <li>• Observe the implementation of physical environmental controls, in accordance with OpCo's Construction Environmental Management Plan and sub-plans, including: <ul style="list-style-type: none"> <li>– noise and vibration;</li> <li>– air quality;</li> <li>– mud, dirt and debris on roadways;</li> <li>– water quality;</li> <li>– contamination;</li> <li>– property accesses;</li> <li>– temporary pedestrian pathways and cycleways;</li> <li>– working within the approved hours;</li> <li>– spoil stockpiling and disposal;</li> <li>– waste management and disposal;</li> <li>– heritage management;</li> <li>– landscape maintenance; and</li> <li>– report to TfNSW and OpCo.</li> </ul> </li> </ul>	Daily
<p><b>Traffic and Transport Surveillance (SPR Appendix 12)</b></p> <ul style="list-style-type: none"> <li>• Monitor the traffic and transport management and control provisions for compliance with the relevant Project Plans,</li> </ul>	Daily



Schedule 3 – Minimum resources and surveillance levels

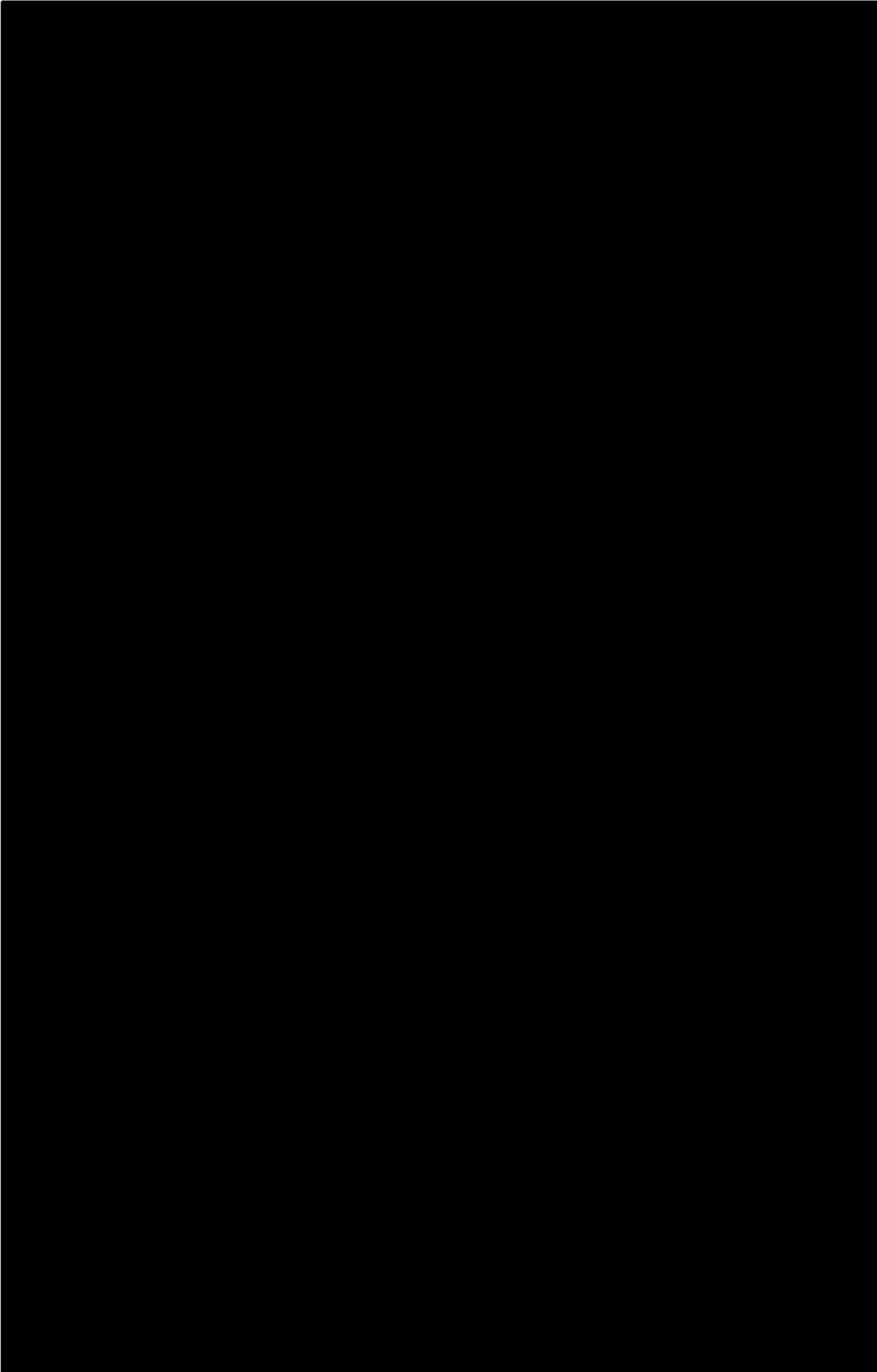
<b>Surveillance Activity</b>	<b>Minimum Frequency</b>
<i>compliance with the Project Deed.</i>	
<ul style="list-style-type: none"> <li>• <i>Check that durability requirements of the SLR Works are being addressed and applied;</i></li> <li>• <i>Witness construction trials and commissioning tests, including:</i> <ul style="list-style-type: none"> <li>– <i>use of any materials, plant and equipment that differs from accepted industry standards;</i></li> <li>– <i>concrete including in-situ concrete and precast elements;</i></li> <li>– <i>water collection, treatment and discharge systems; and</i></li> <li>– <i>Utility Service diversions.</i></li> </ul> </li> <li>• <i>Record photographically and catalogue general and detailed work in progress and occupation of Fee Zones.</i></li> <li>• <i>Witness the construction of the SLR Works and Temporary Works including:</i> <ul style="list-style-type: none"> <li>– <i>provisions to access, secure, support and hand over the Local Area Works, Utility Service Works and any unknown works;</i></li> <li>– <i>Utility Service diversions; and</i></li> <li>– <i>adjustments to or demolition of existing infrastructure and buildings.</i></li> </ul> </li> </ul>	<p>Weekly</p> <p style="text-align: center;">} Each trial and test</p> <p>20 digital photographs/day of work areas</p> <p>Daily</p>
<p><b>Quality Product Surveillance Monitoring</b></p> <ul style="list-style-type: none"> <li>• <i>Monitor structure foundation and subgrade preparation and treatments.</i></li> <li>• <i>Monitor compaction of earthworks and spoil.</i></li> <li>• <i>Monitor manufacture of off-site elements.</i></li> <li>• <i>Monitor concreting and associated works, including:</i> <ul style="list-style-type: none"> <li>– <i>preparation;</i></li> <li>– <i>formwork;</i></li> <li>– <i>bracing;</i></li> <li>– <i>reinforcement;</i></li> <li>– <i>placing;</i></li> <li>– <i>stressing;</i></li> <li>– <i>finishing;</i></li> <li>– <i>curing; and</i></li> <li>– <i>stripping formwork.</i></li> </ul> </li> </ul>	<p><i>Initial preparation and treatment</i></p> <p>Weekly</p> <p>Weekly</p> <p><i>Initial activity and twice weekly thereafter</i></p> <p><i>Initial activity and twice</i></p>

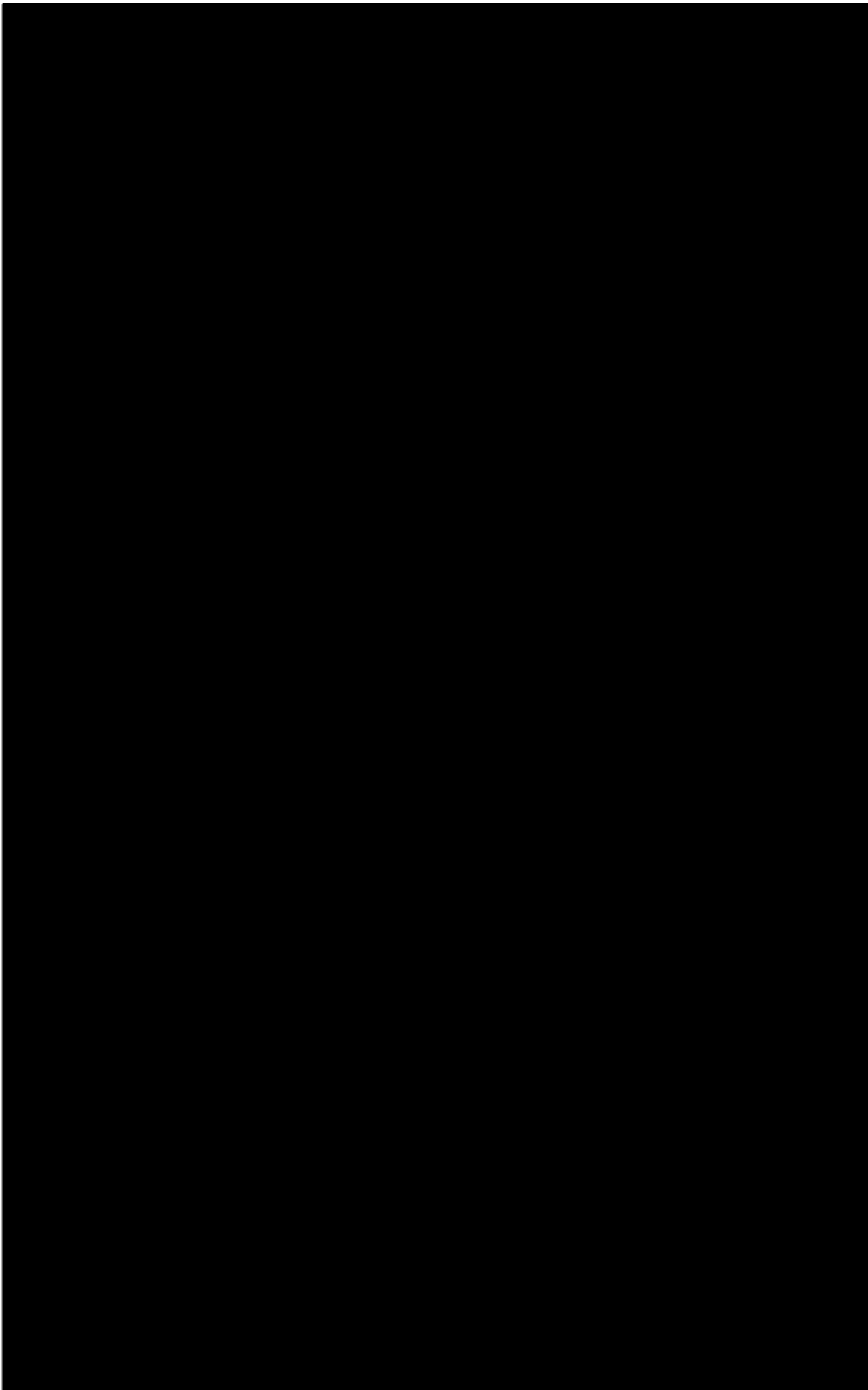
Schedule 3 – Minimum resources and surveillance levels

<b>Surveillance Activity</b>	<b>Minimum Frequency</b>
<ul style="list-style-type: none"> <li>• <i>Sprayed concrete, including:</i> <ul style="list-style-type: none"> <li>– <i>batching and mixing;</i></li> <li>– <i>application;</i></li> <li>– <i>depth control;</i></li> <li>– <i>curing;</i></li> <li>– <i>production tests;</i></li> <li>– <i>monitor steel fabrication; and</i></li> <li>– <i>reviews of welding procedures.</i></li> </ul> </li> <li>• <i>Monitoring of the fabrication and welding processes for major members (off-site).</i></li> <li>• <i>Monitor protective treatment systems (off-site).</i></li> <li>• <i>Monitor equipment monitors of construction impacts including:</i> <ul style="list-style-type: none"> <li>– <i>audit of measurements</i></li> <li>– <i>audits of equipment; and</i></li> <li>– <i>review of results.</i></li> </ul> </li> </ul>	<p><i>weekly thereafter</i></p> <p><i>Initial activity and twice weekly thereafter</i></p> <p><i>Initial activity and twice weekly thereafter</i></p> <p><i>Weekly</i></p>

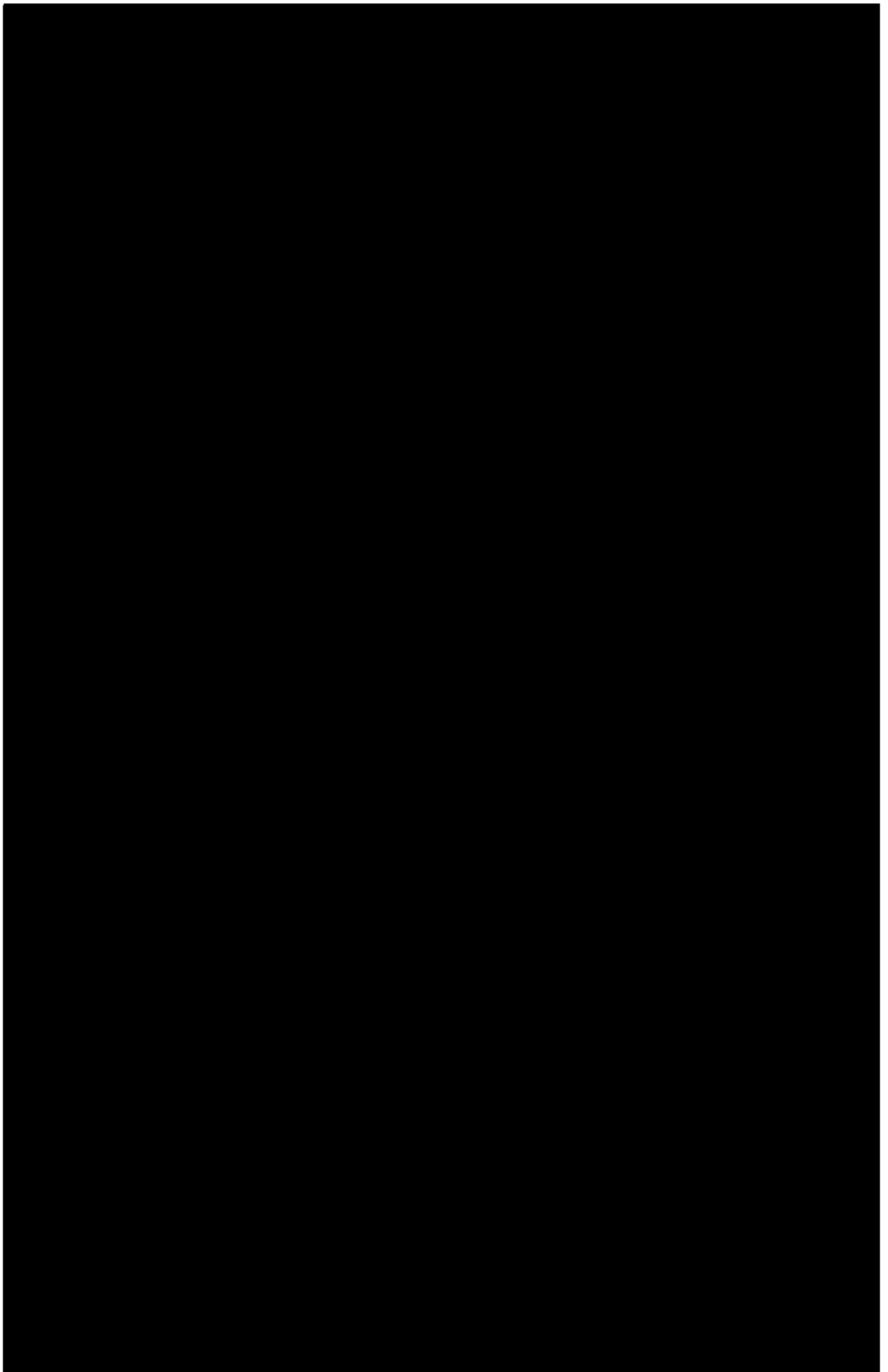
#### **Schedule 4 - Initial Certification and Monitoring Plan**

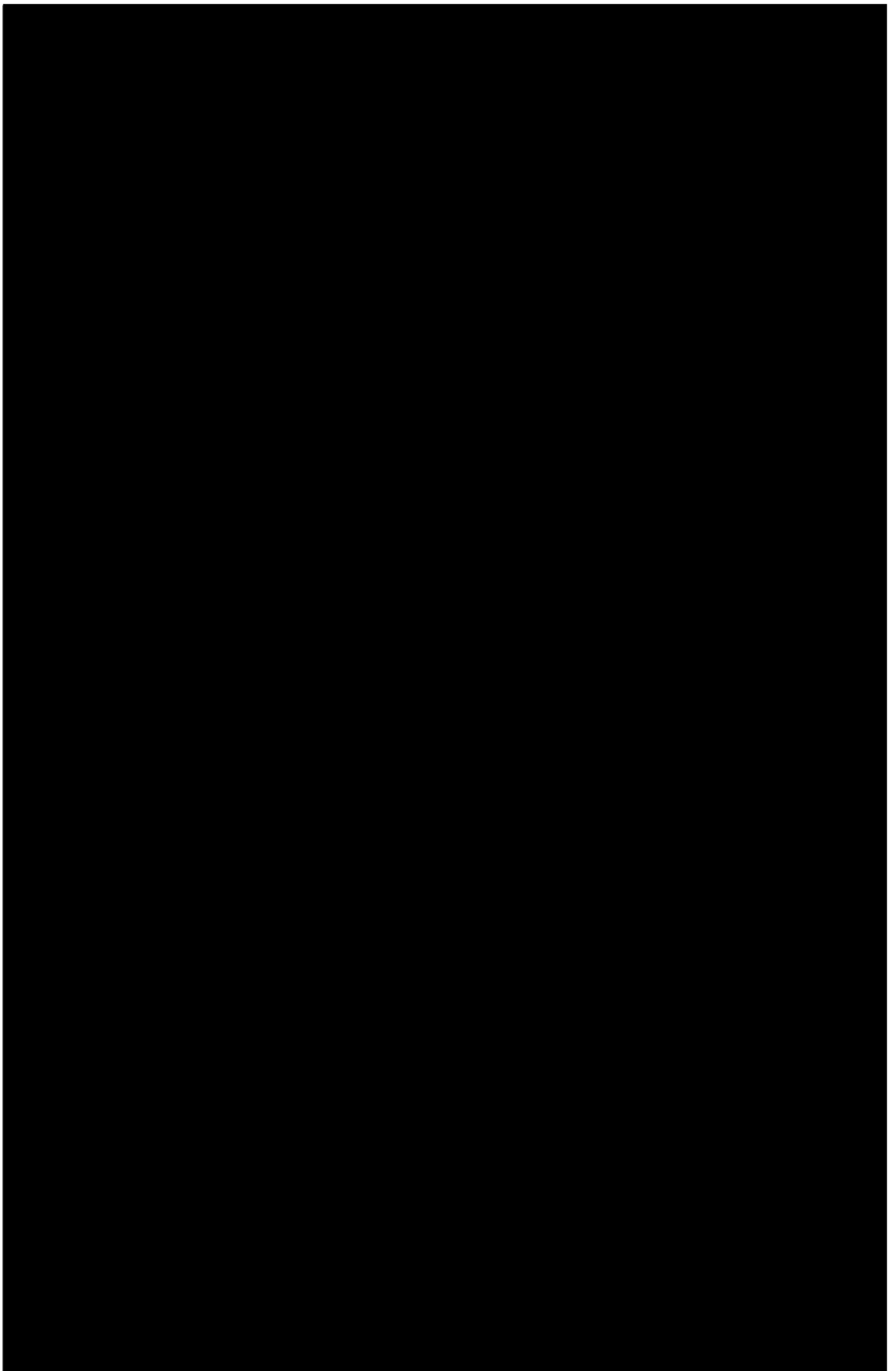
Attached to this Schedule 4 is indicative information relating to the functions, obligations, duties and services which the Project Deed contemplates will be discharged by the Independent Certifier (Attachment 1).

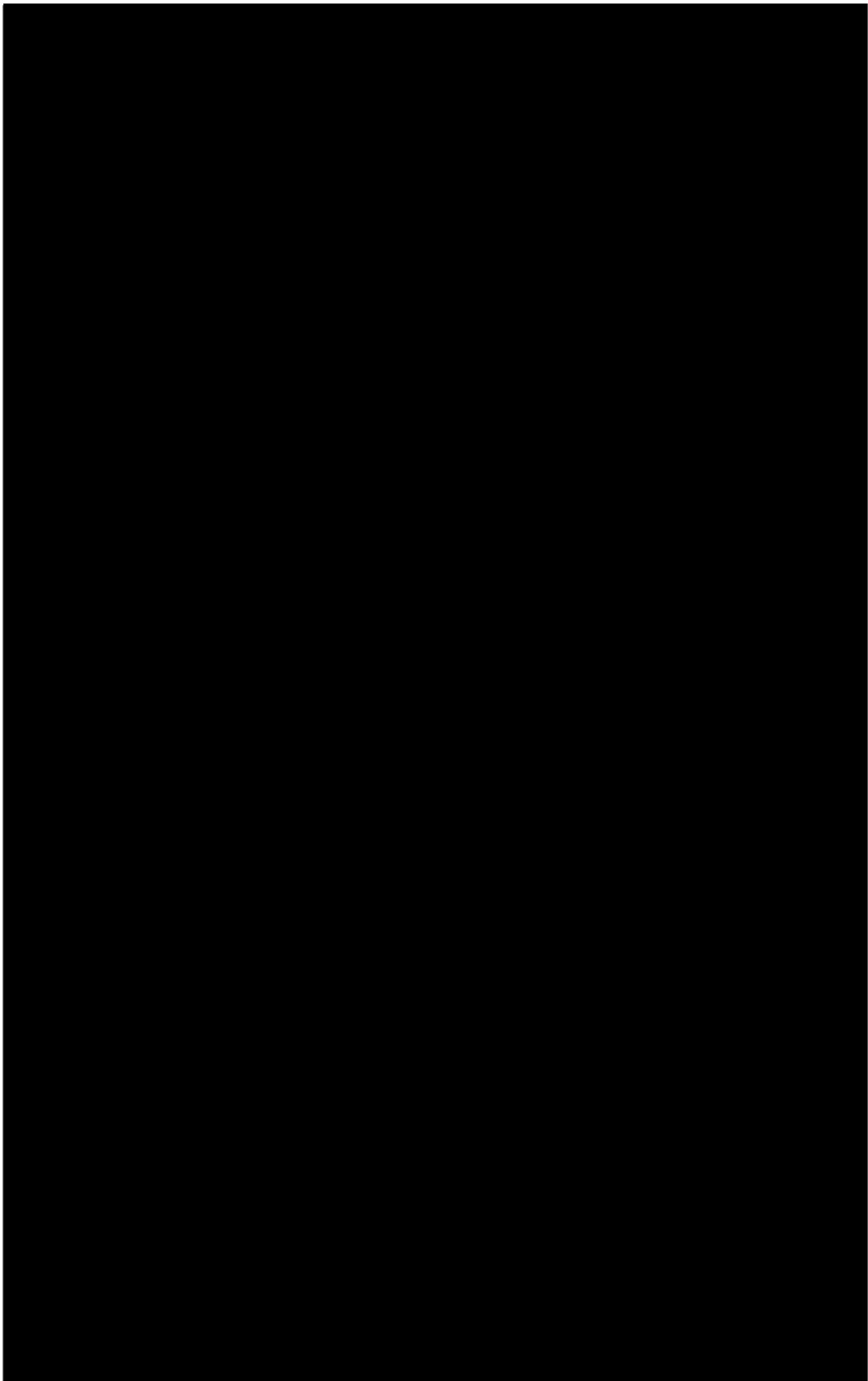


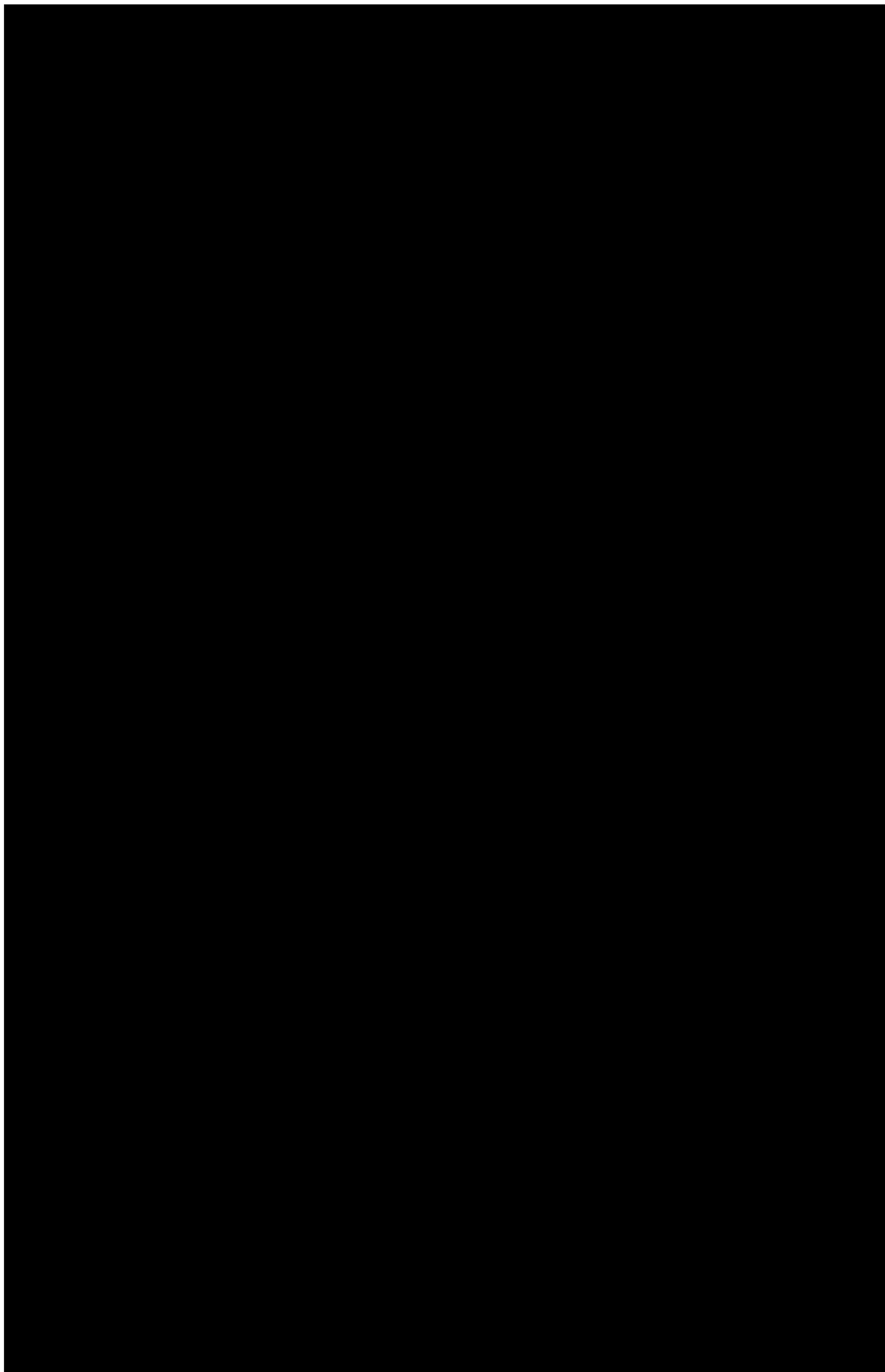


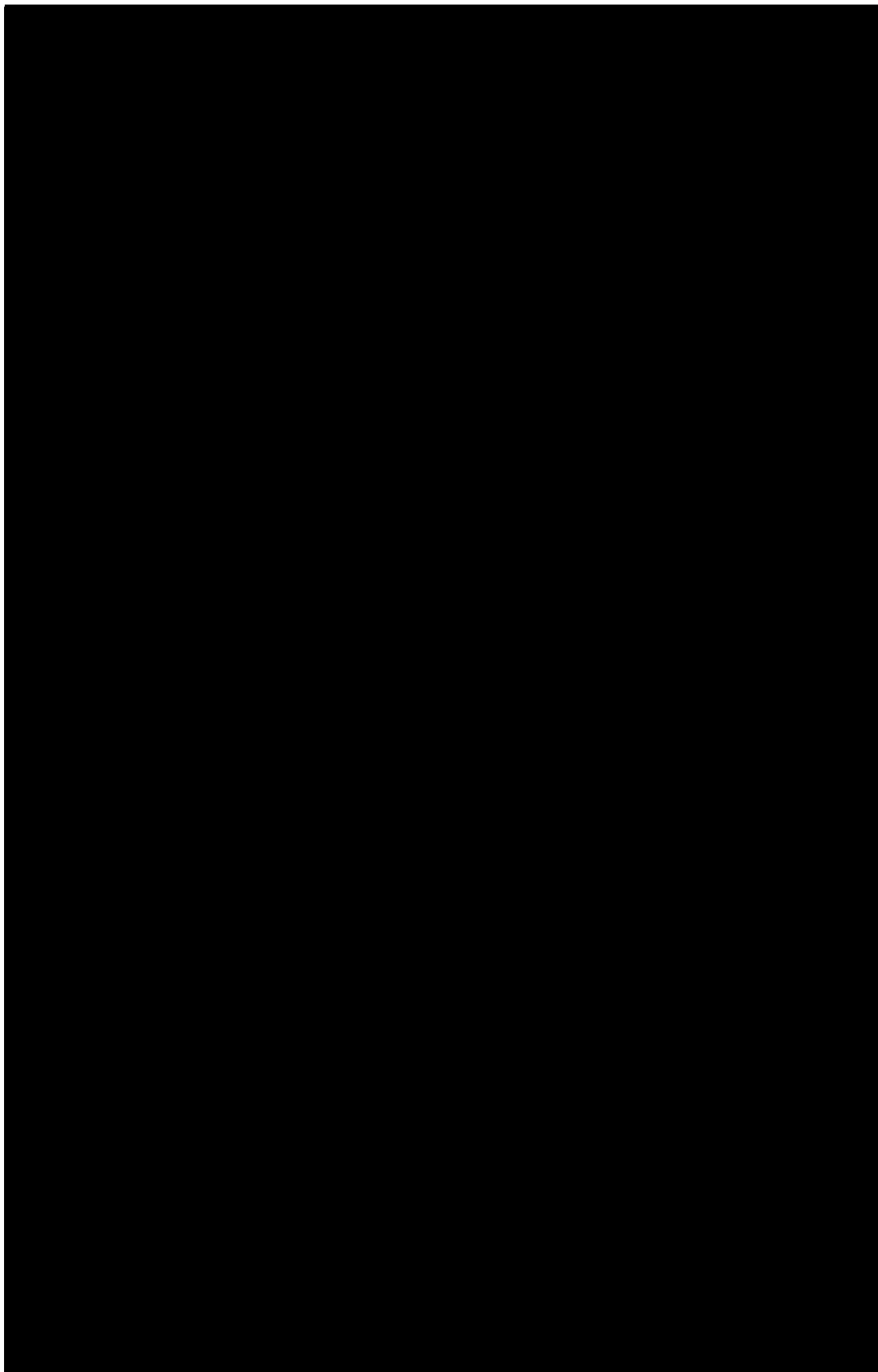


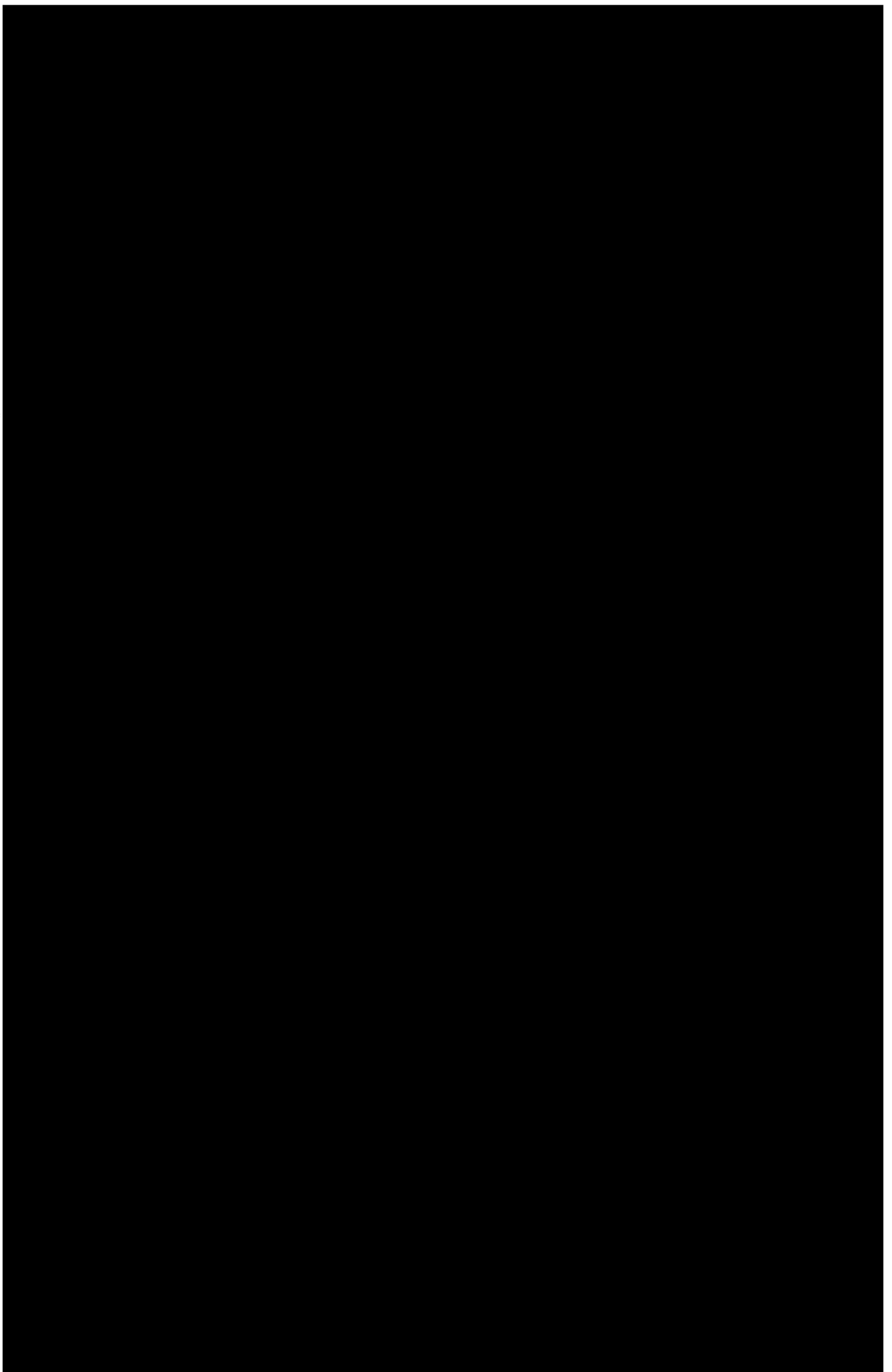


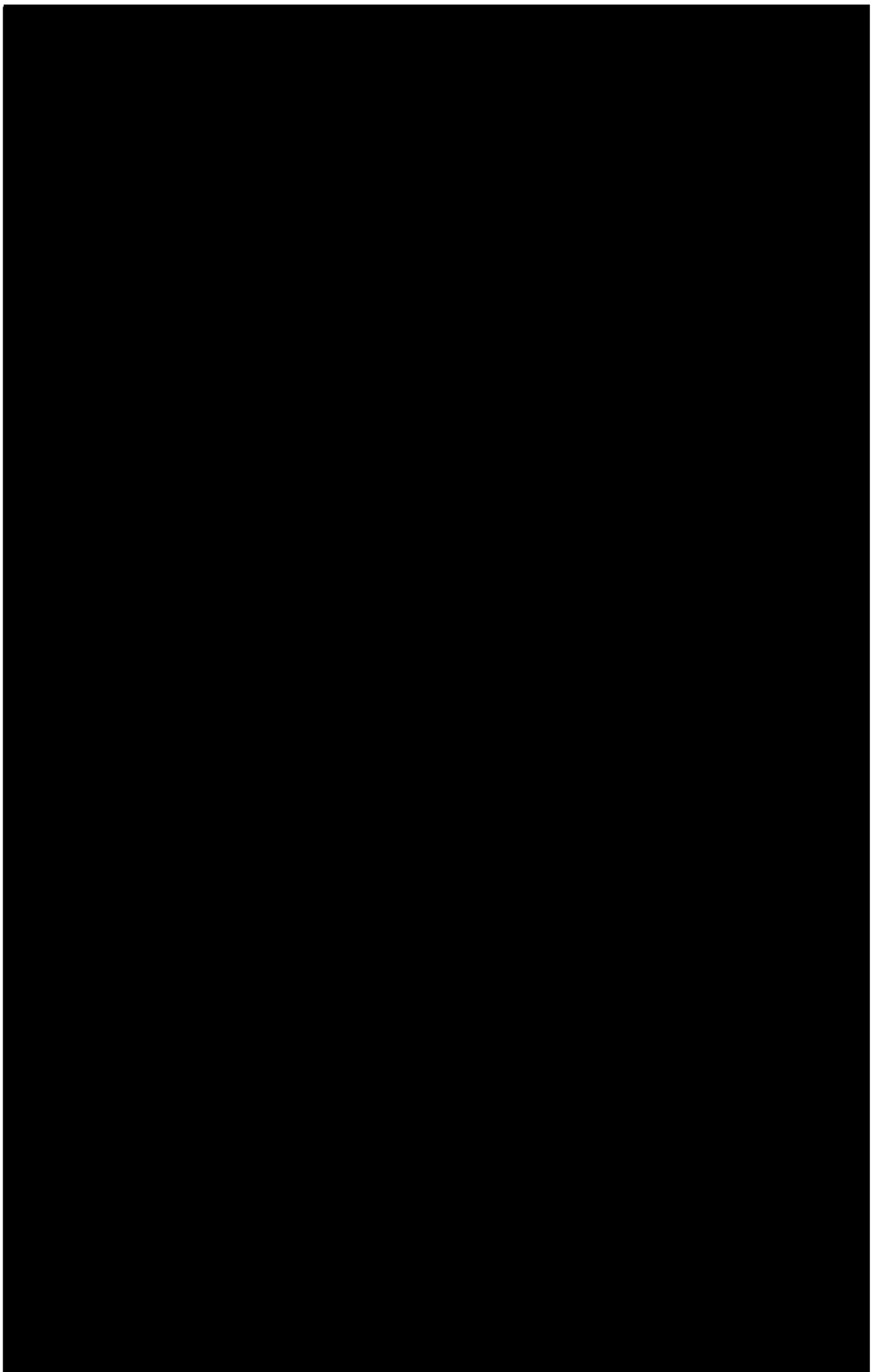


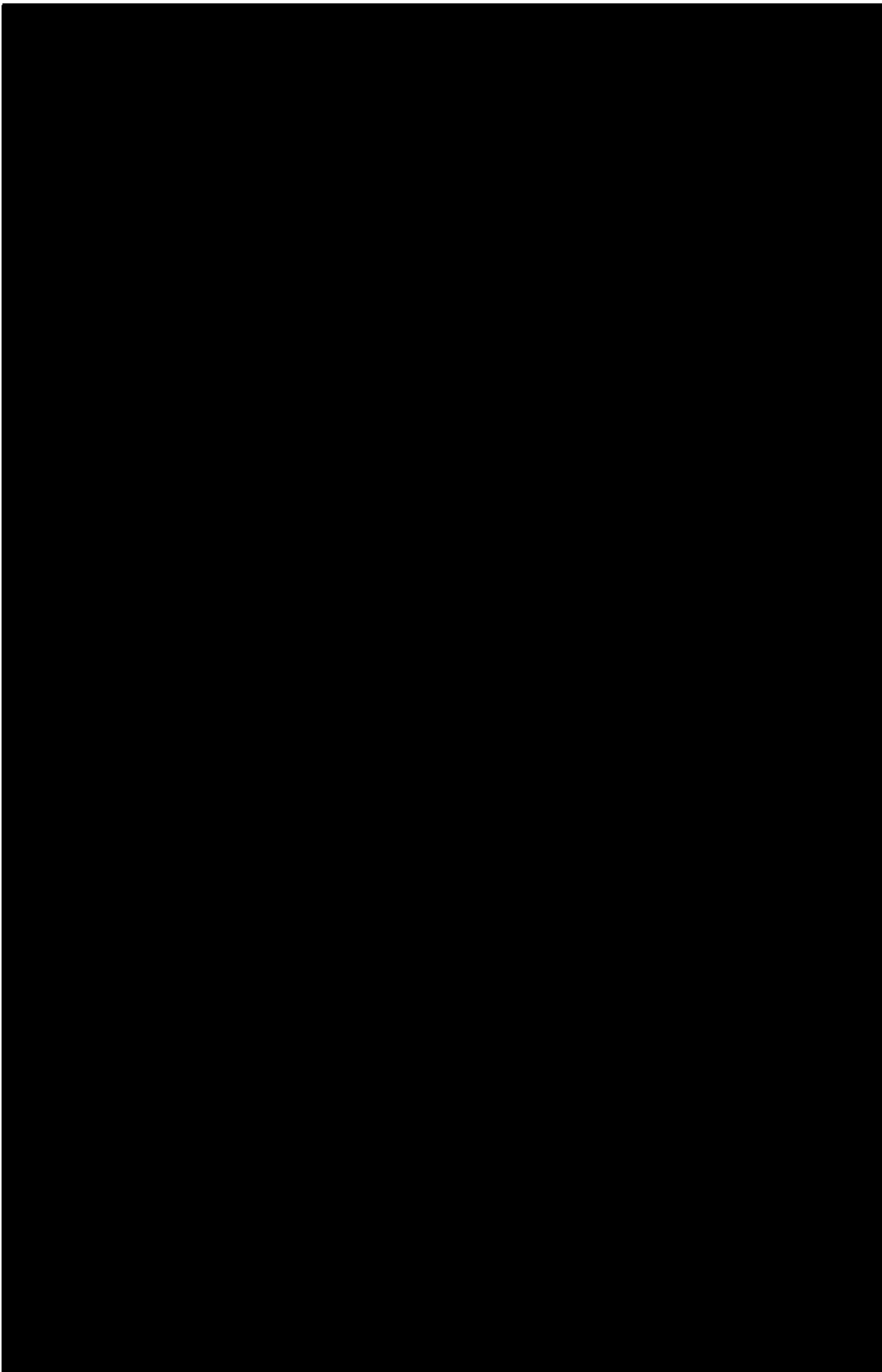




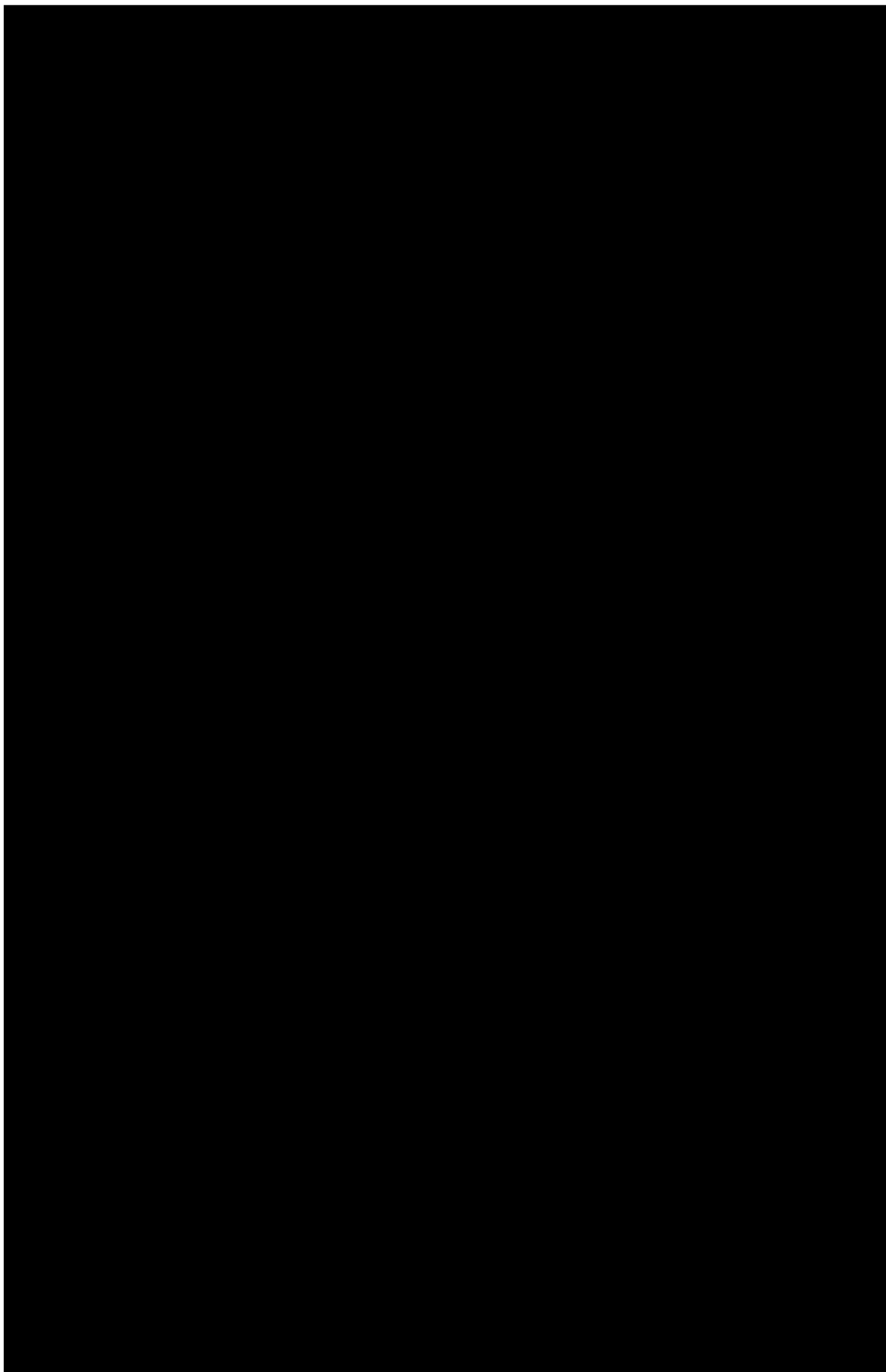


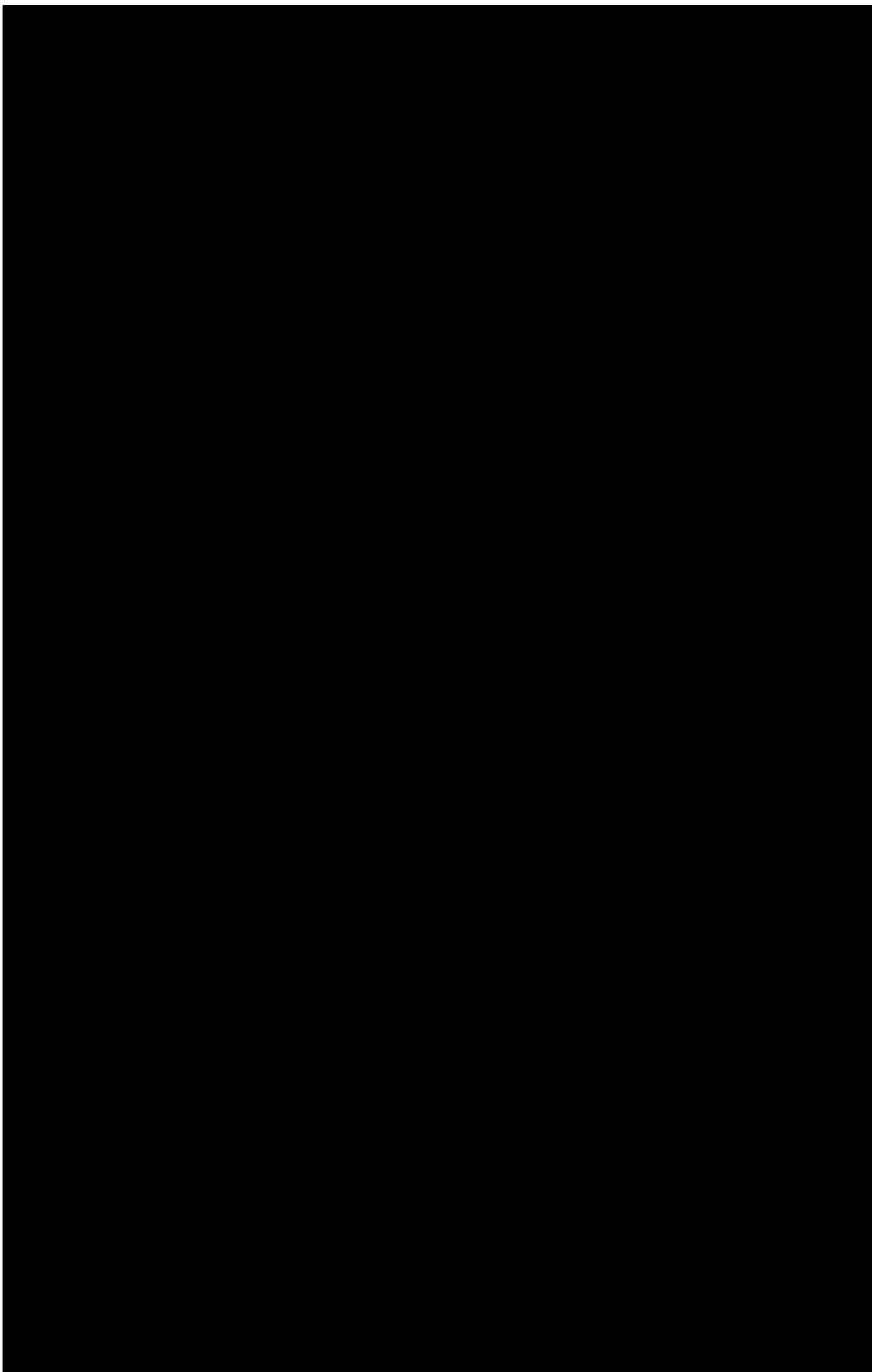


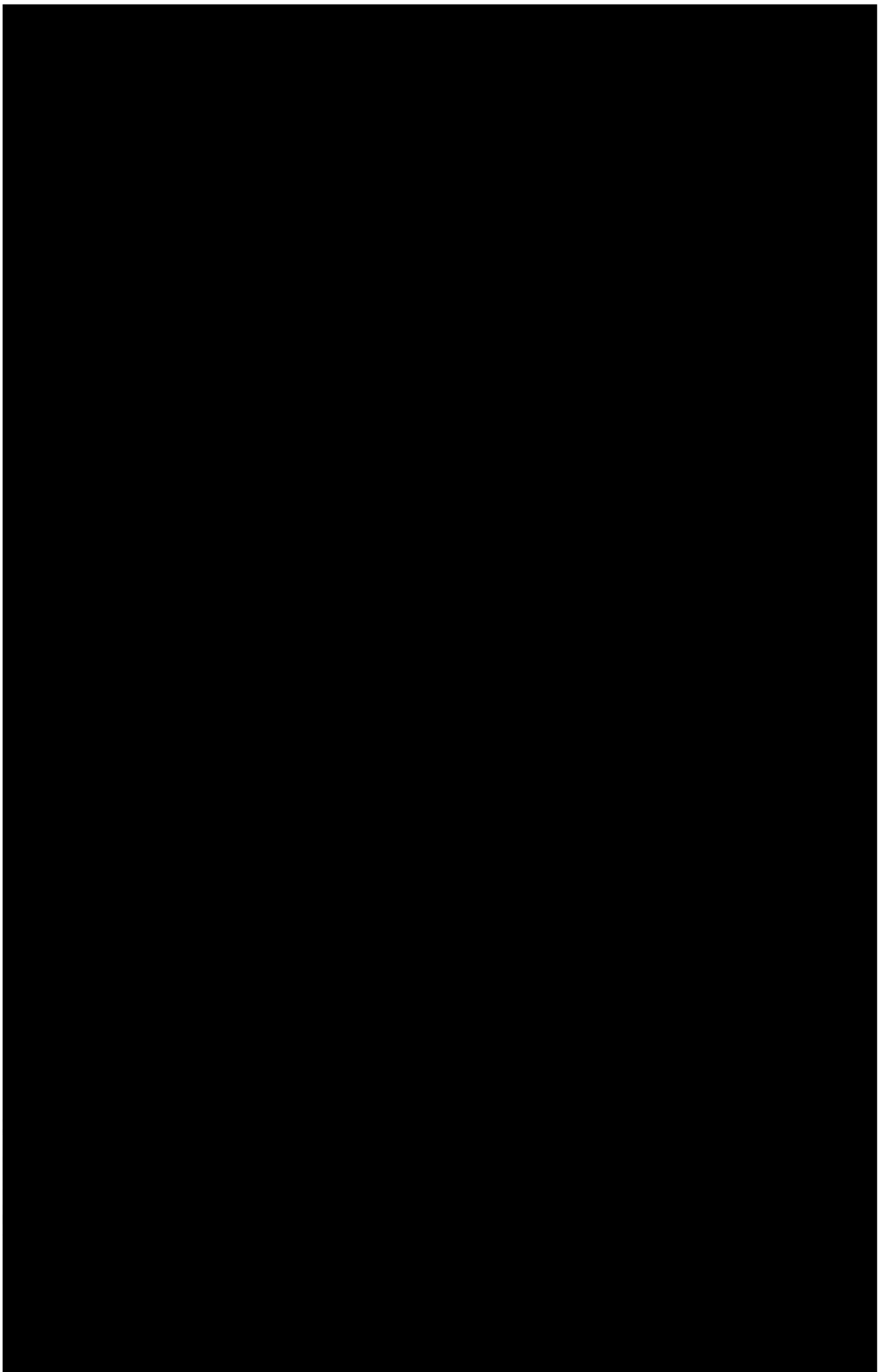


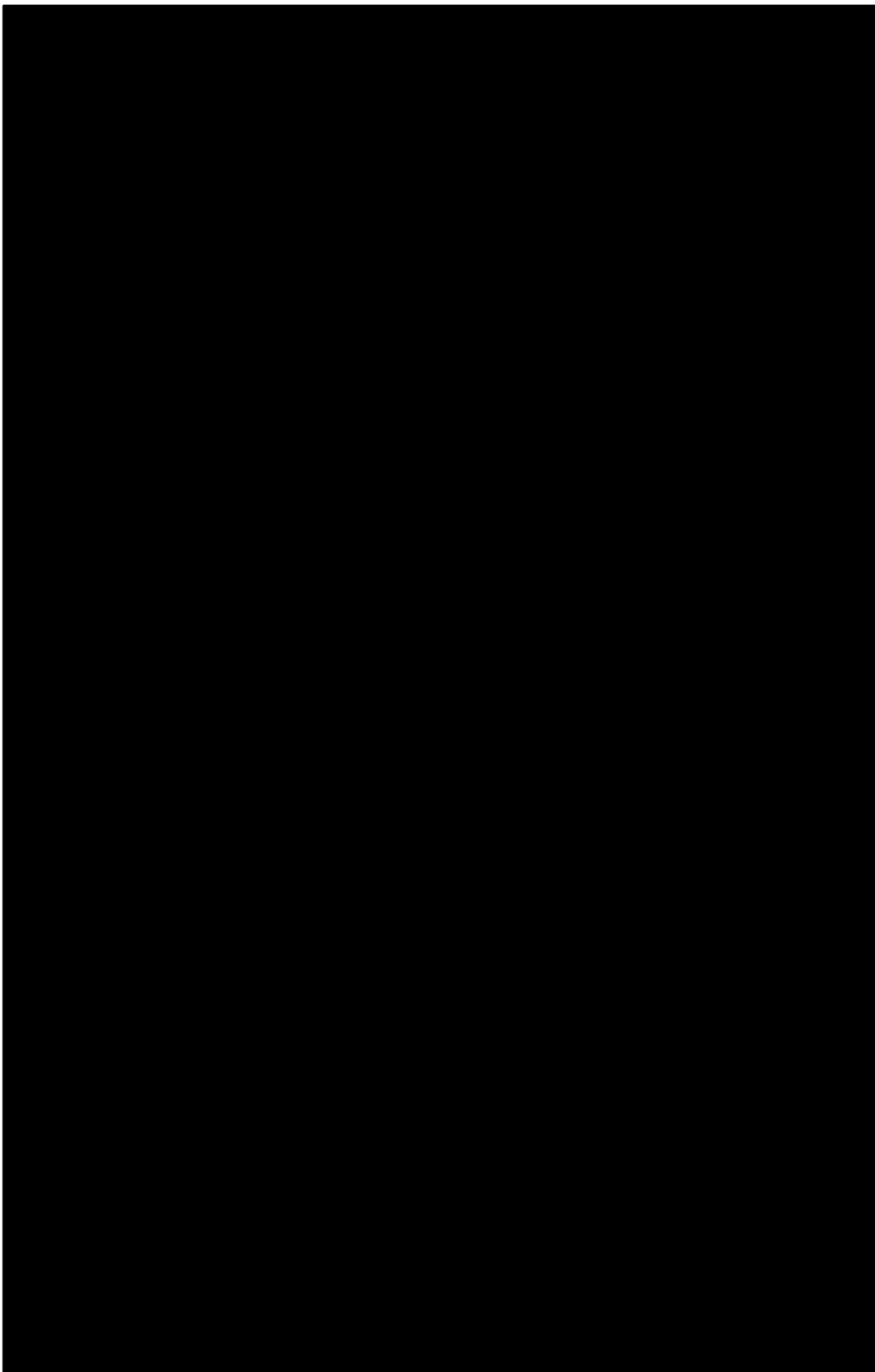


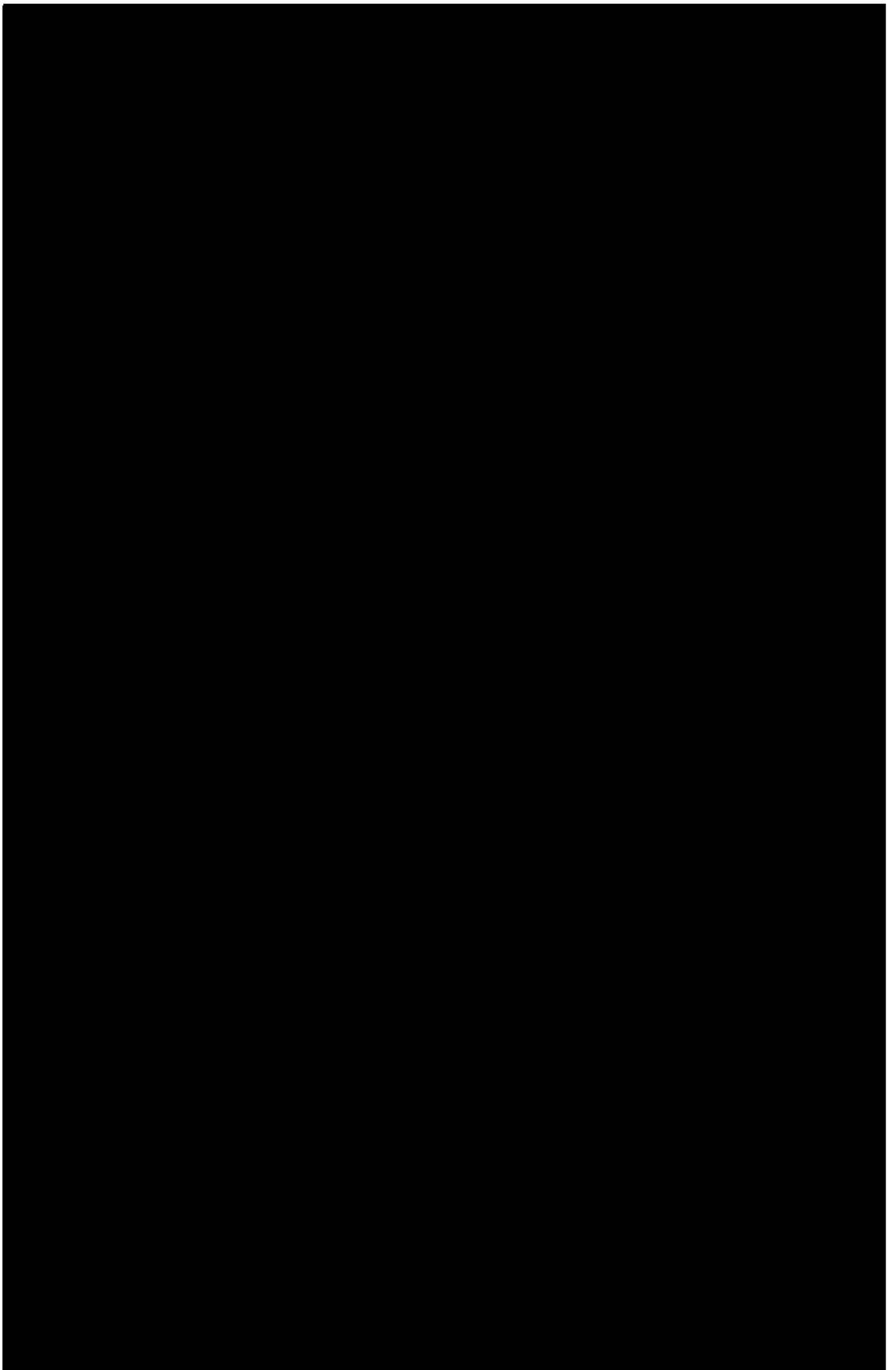


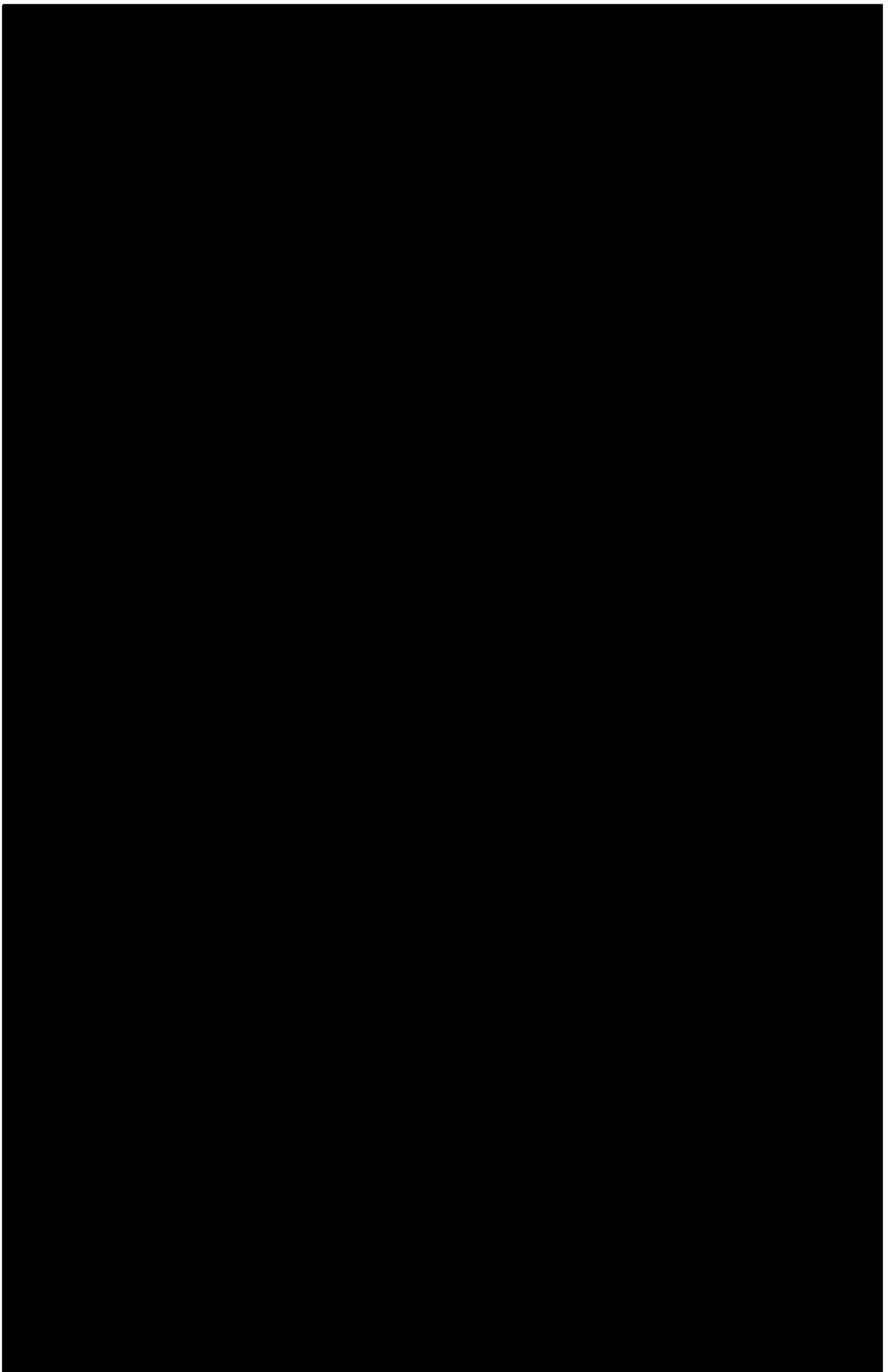


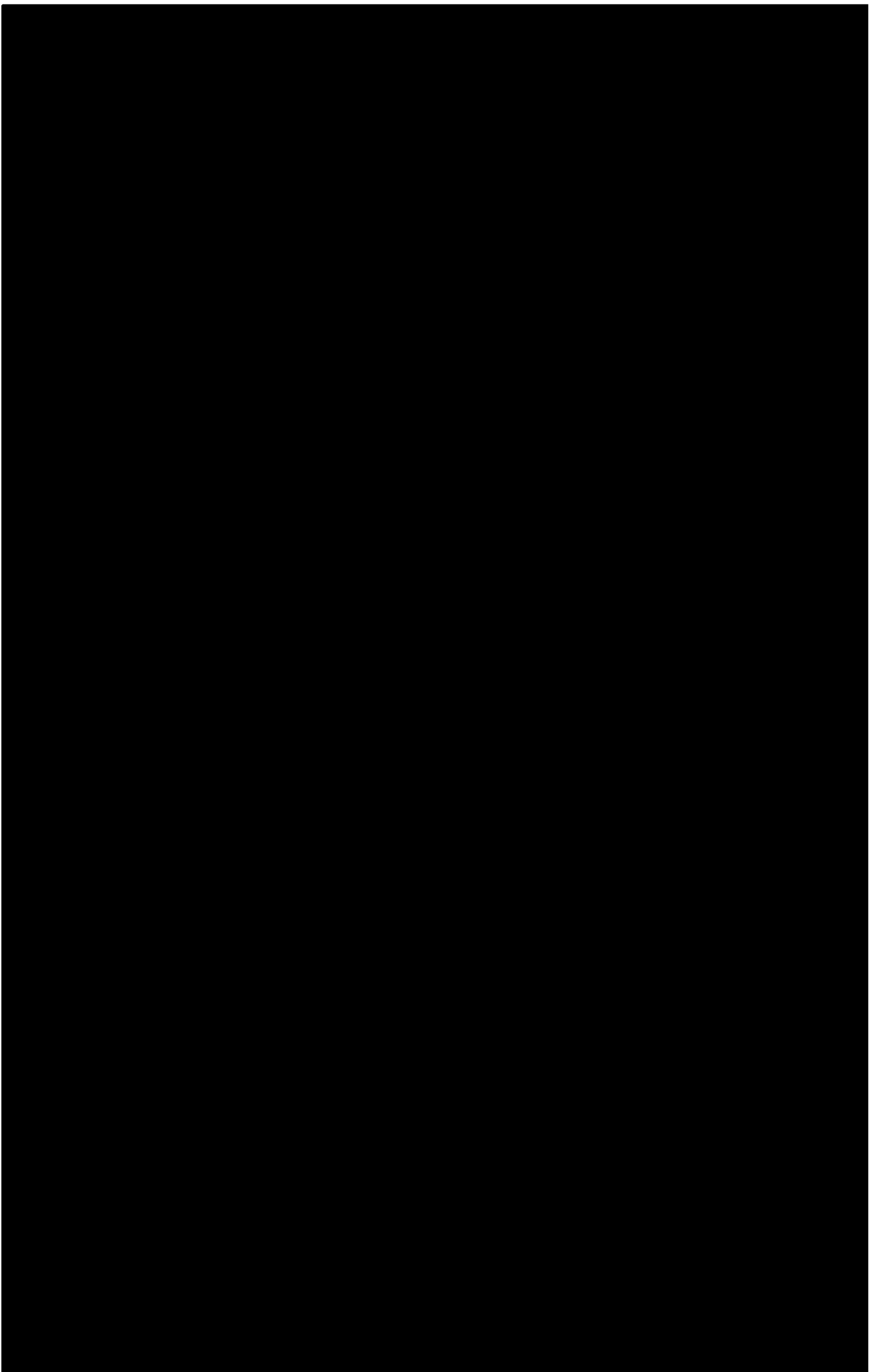


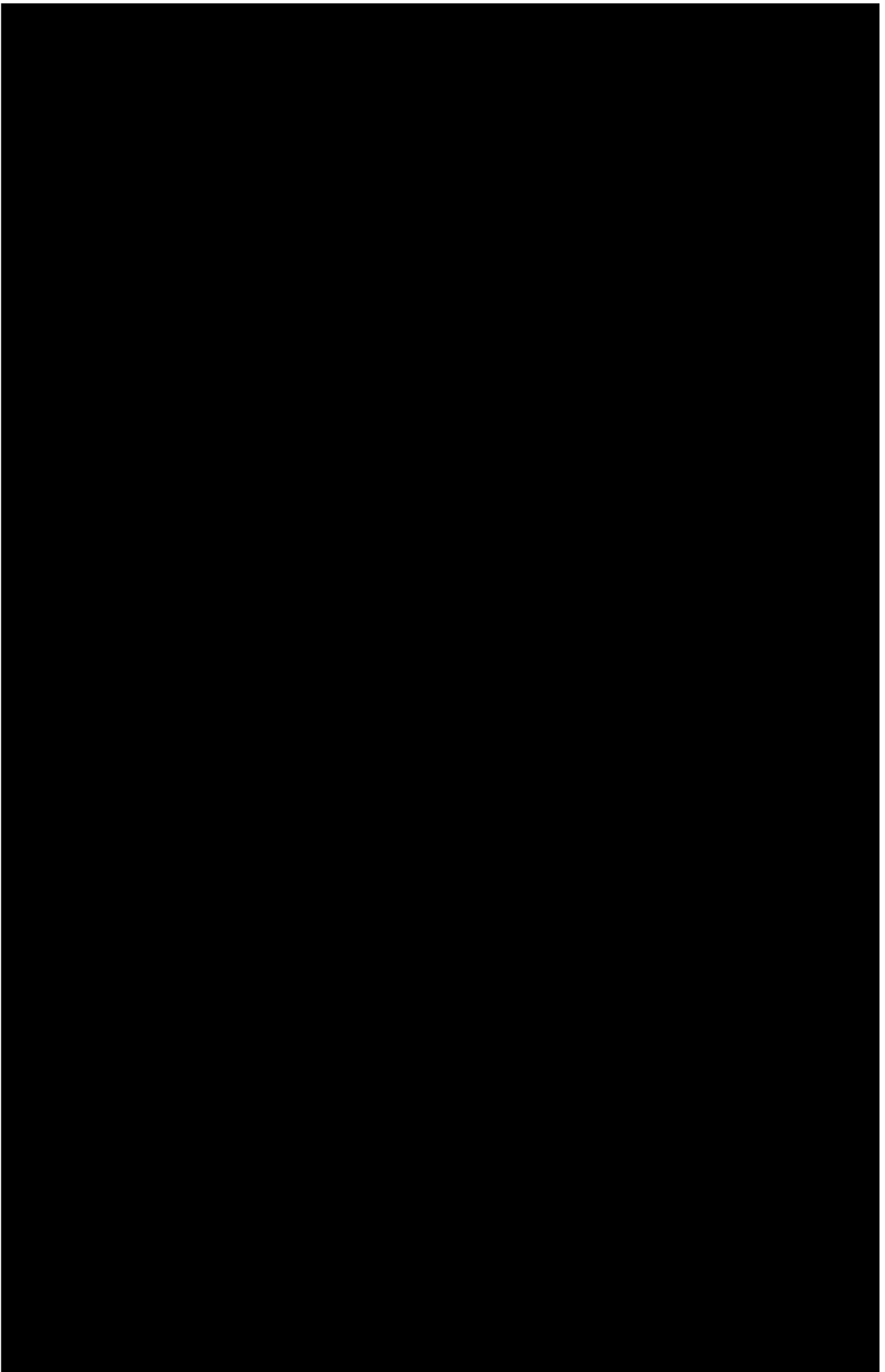




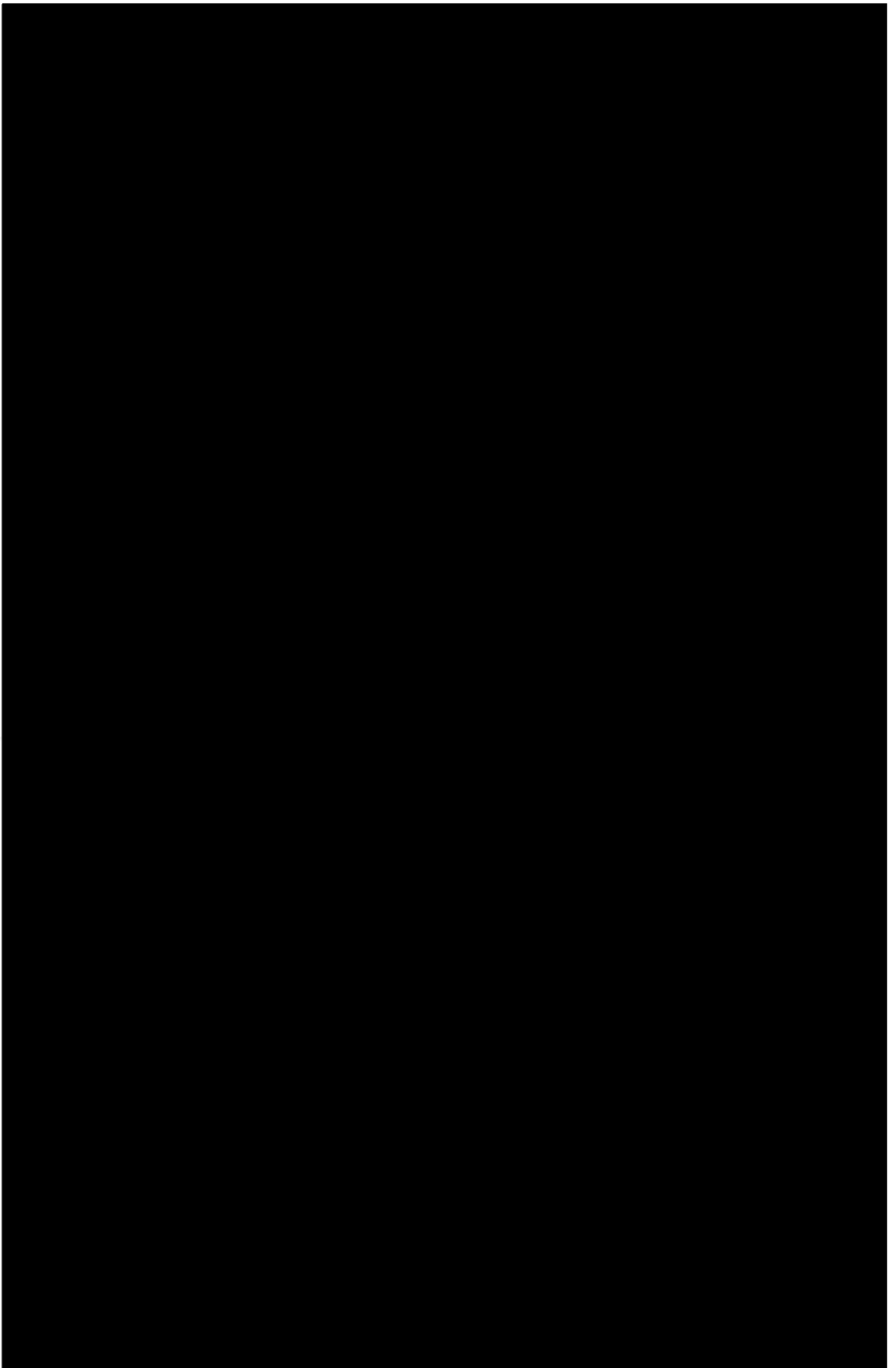


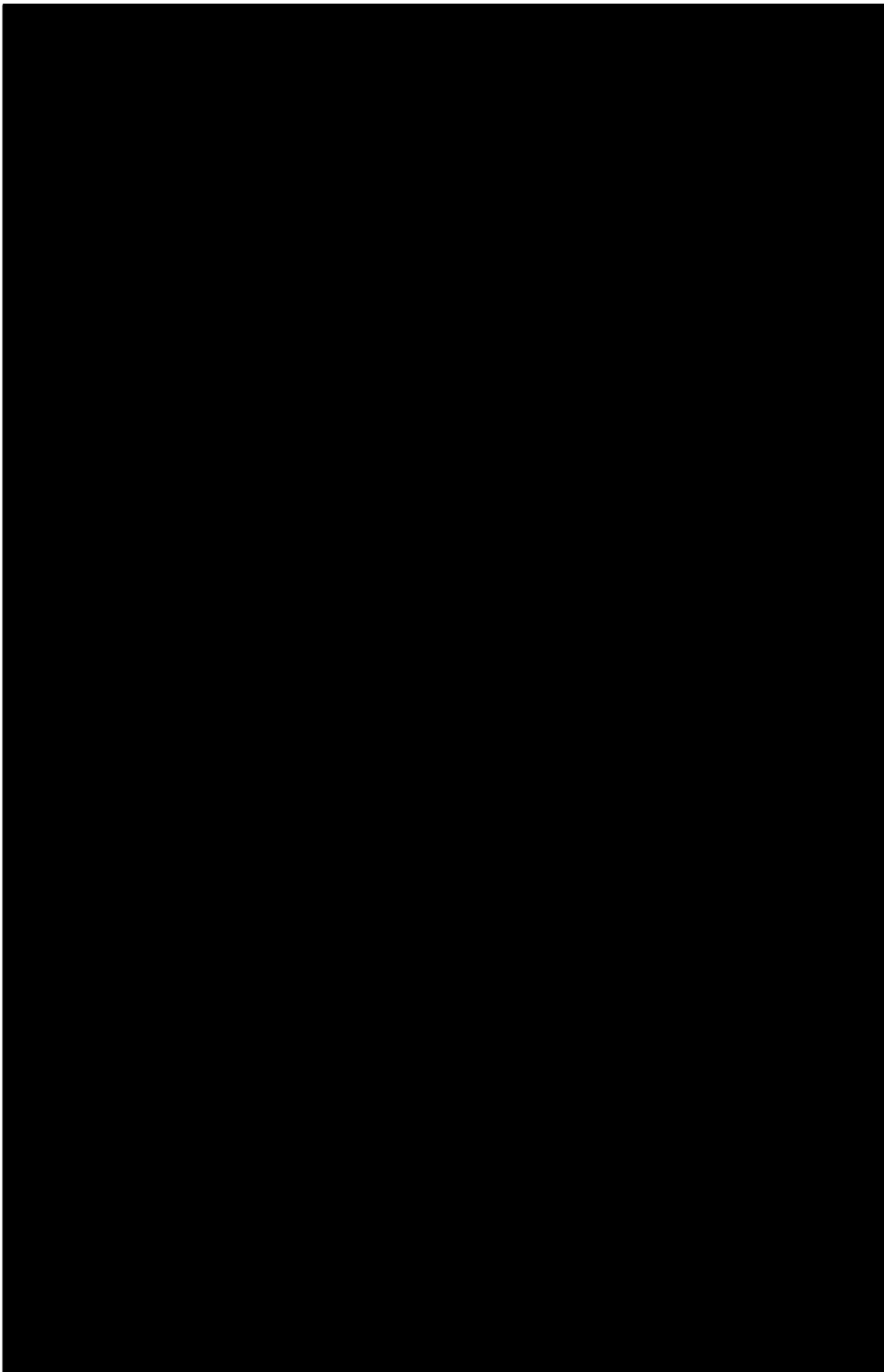


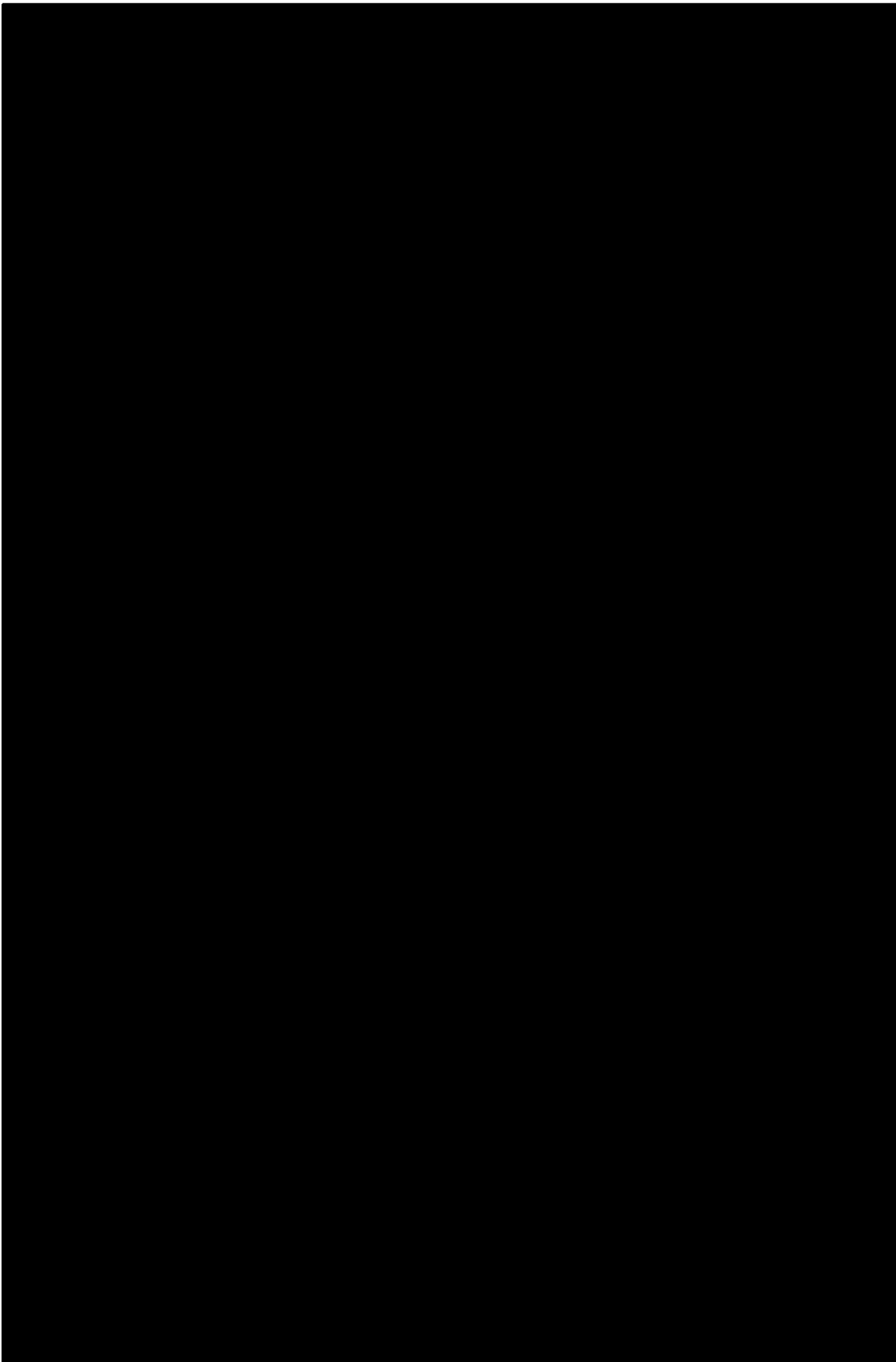


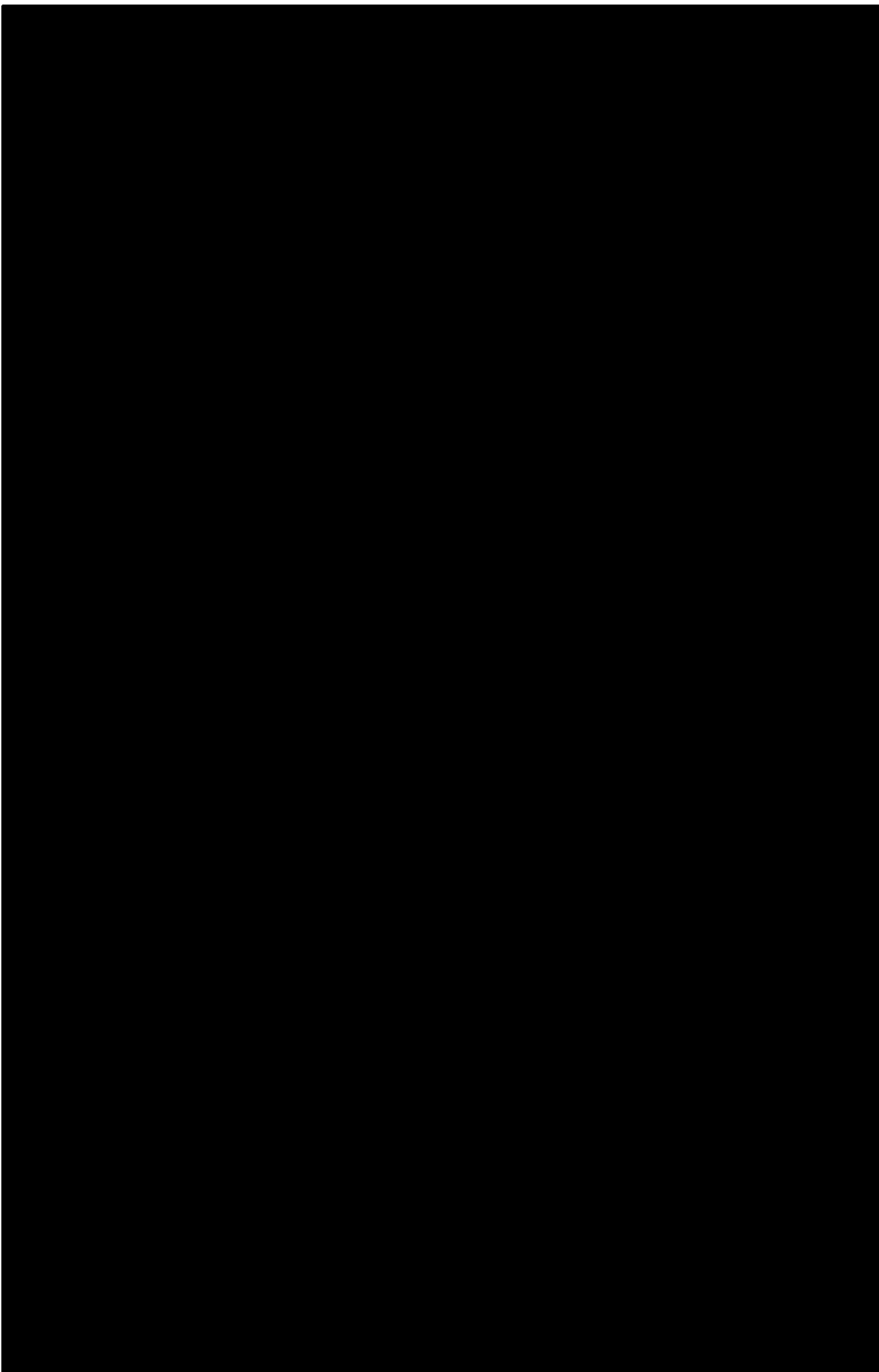


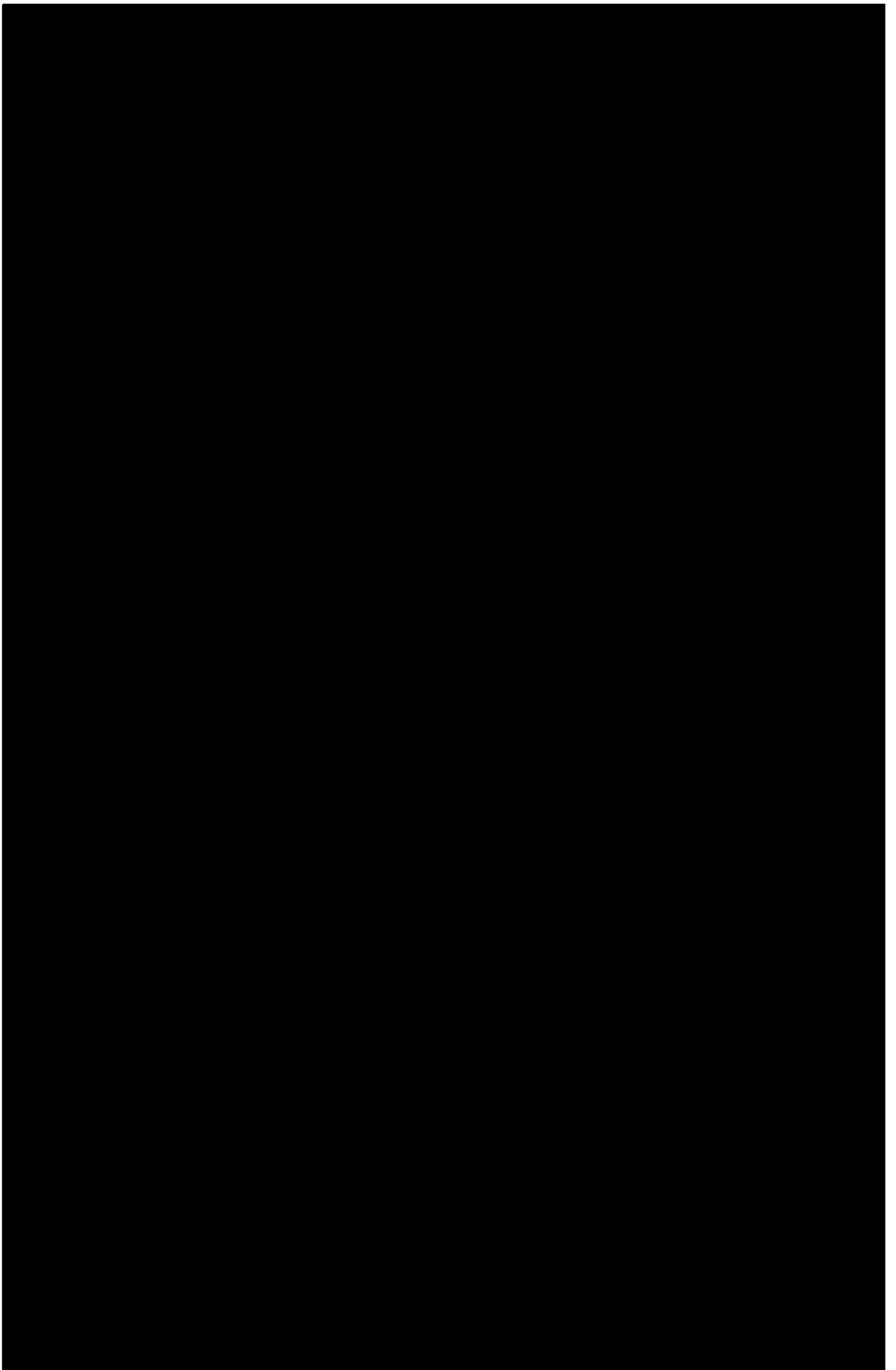


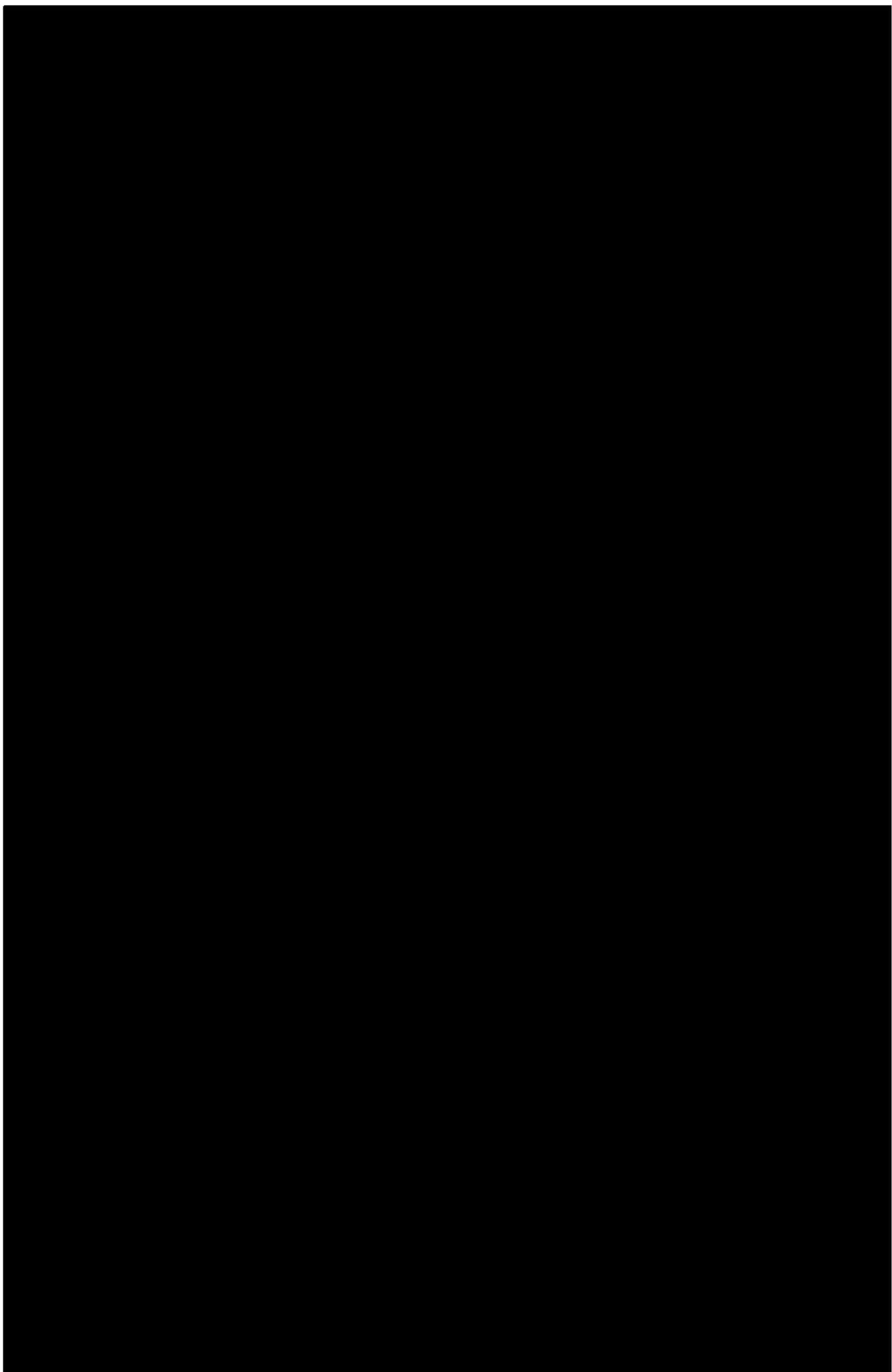


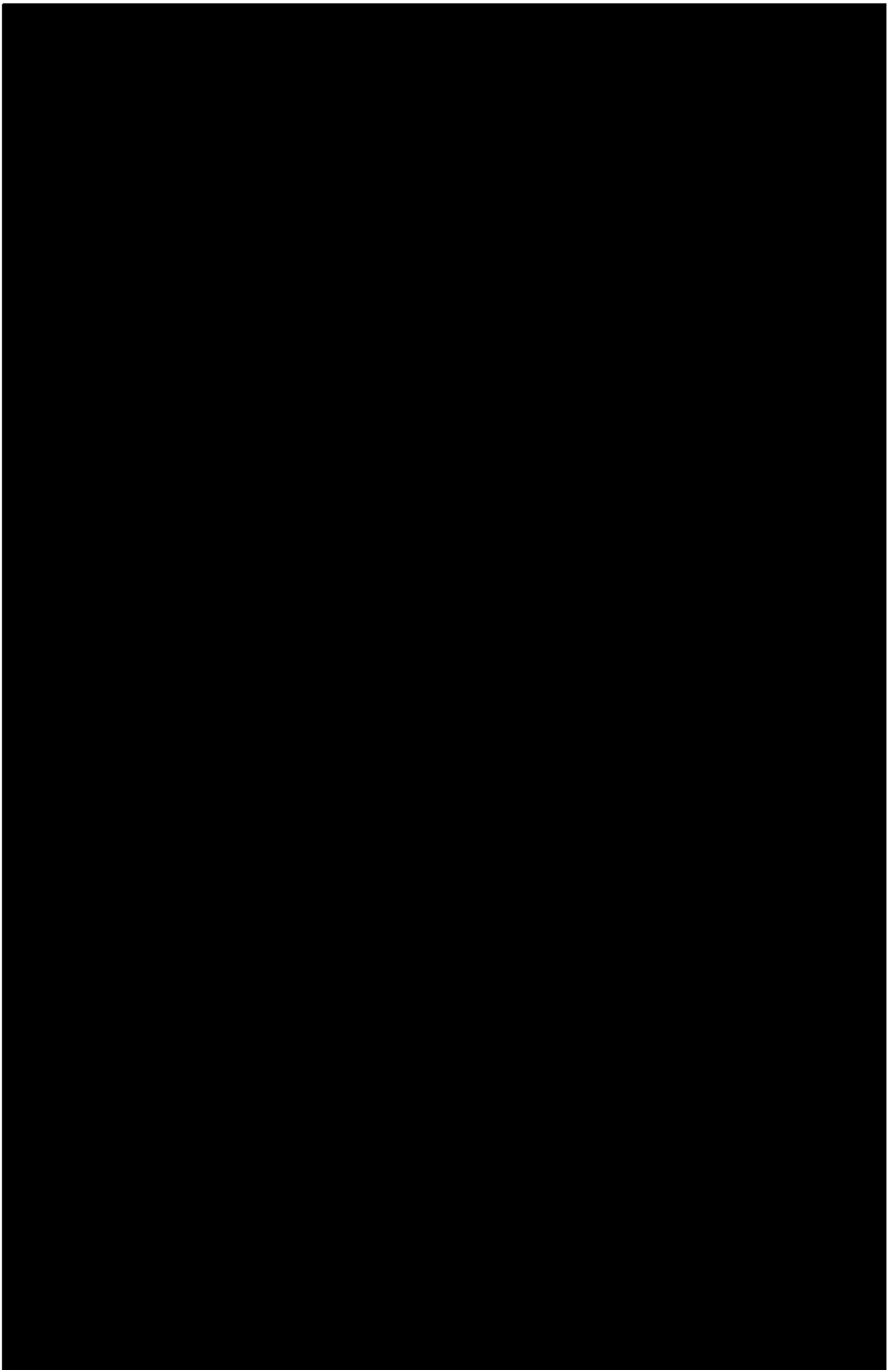


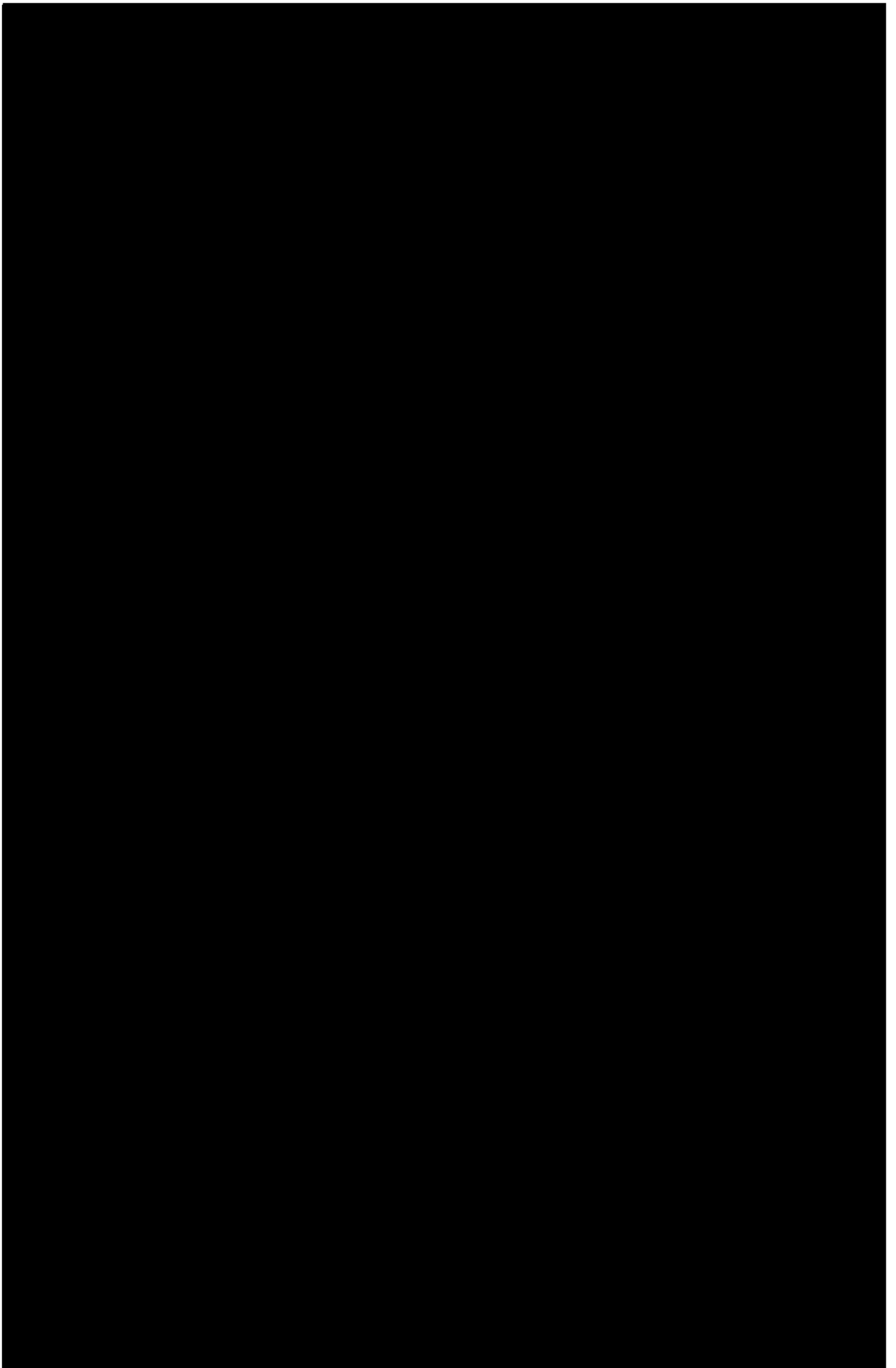




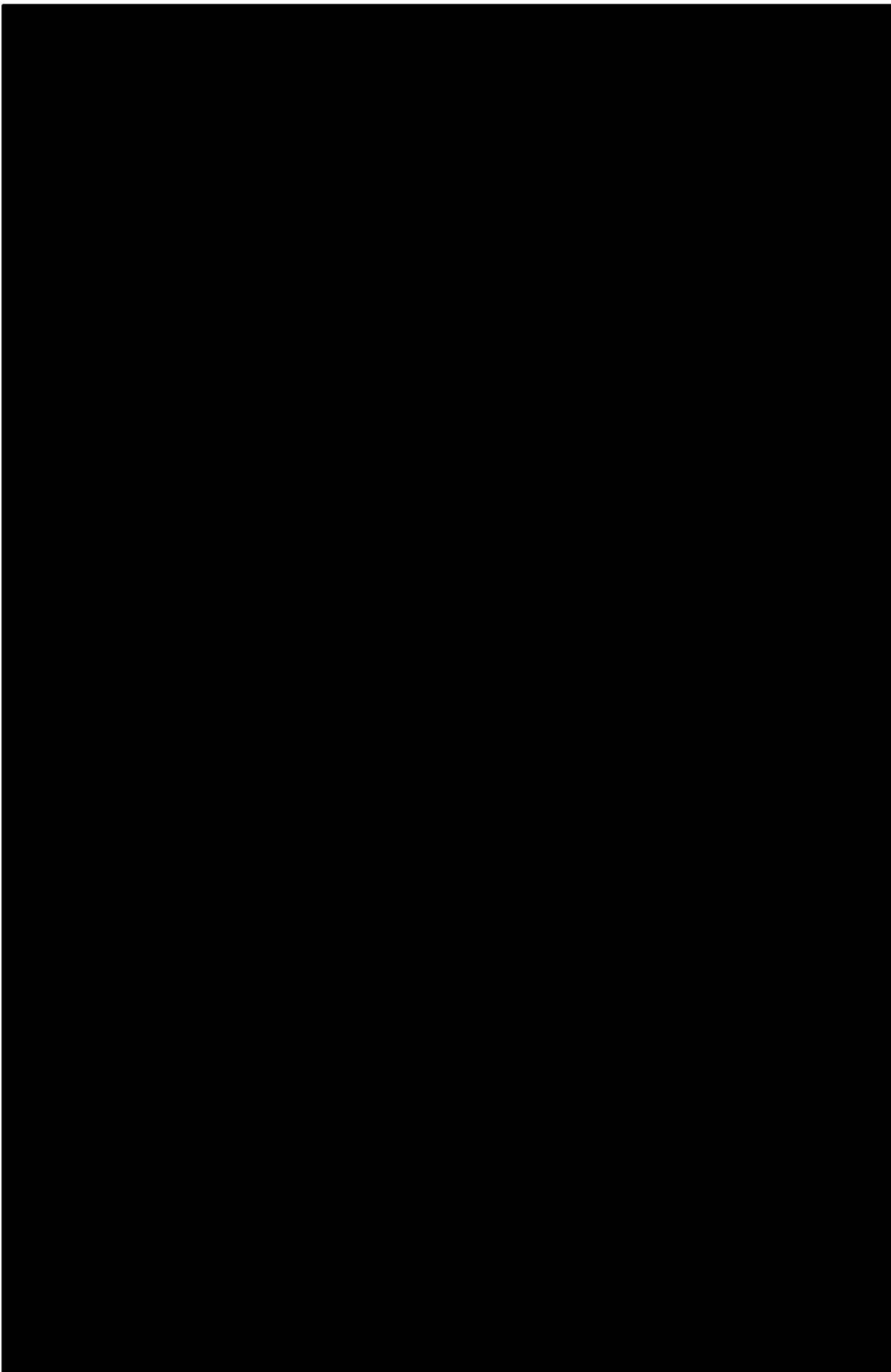




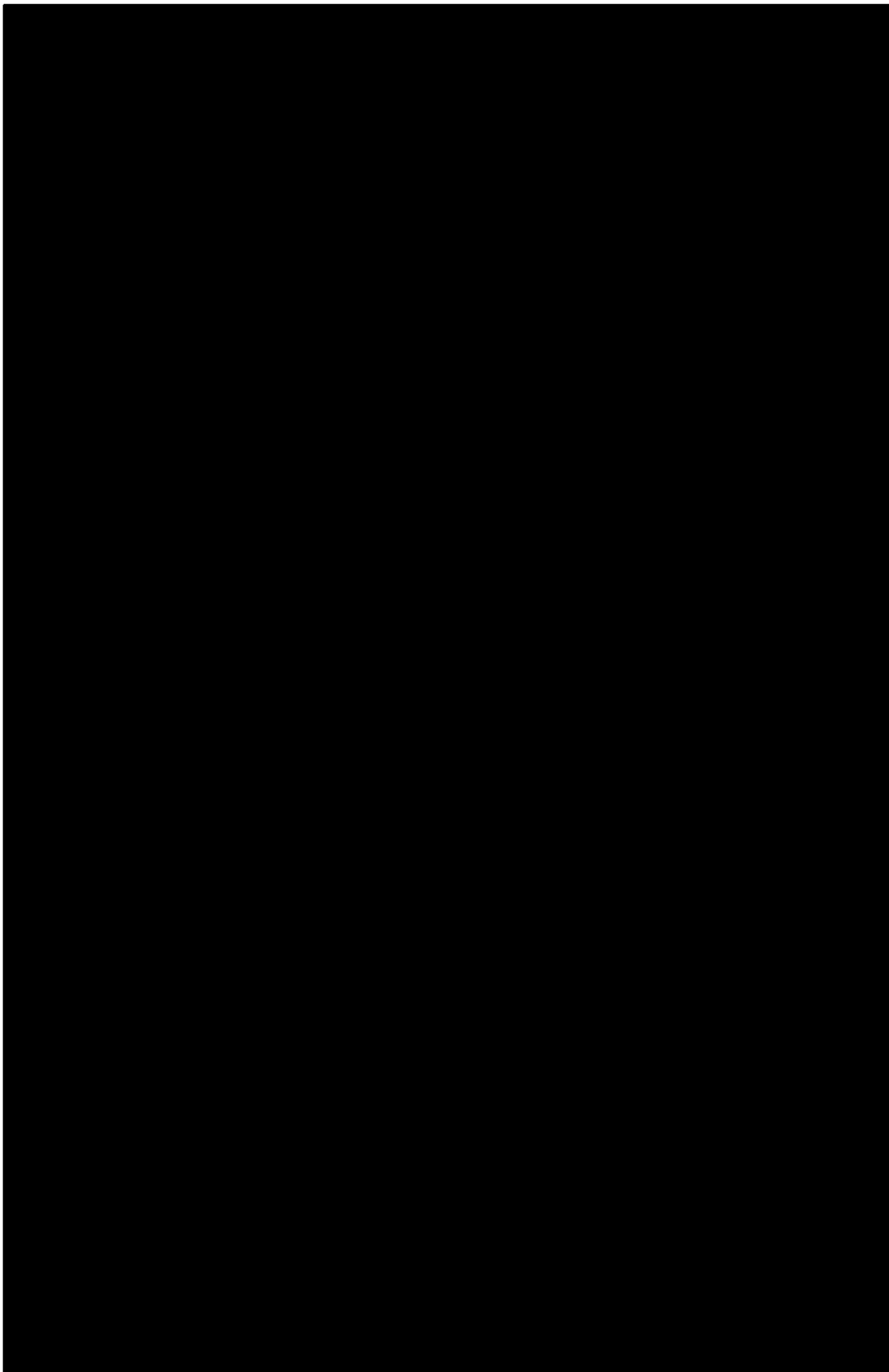


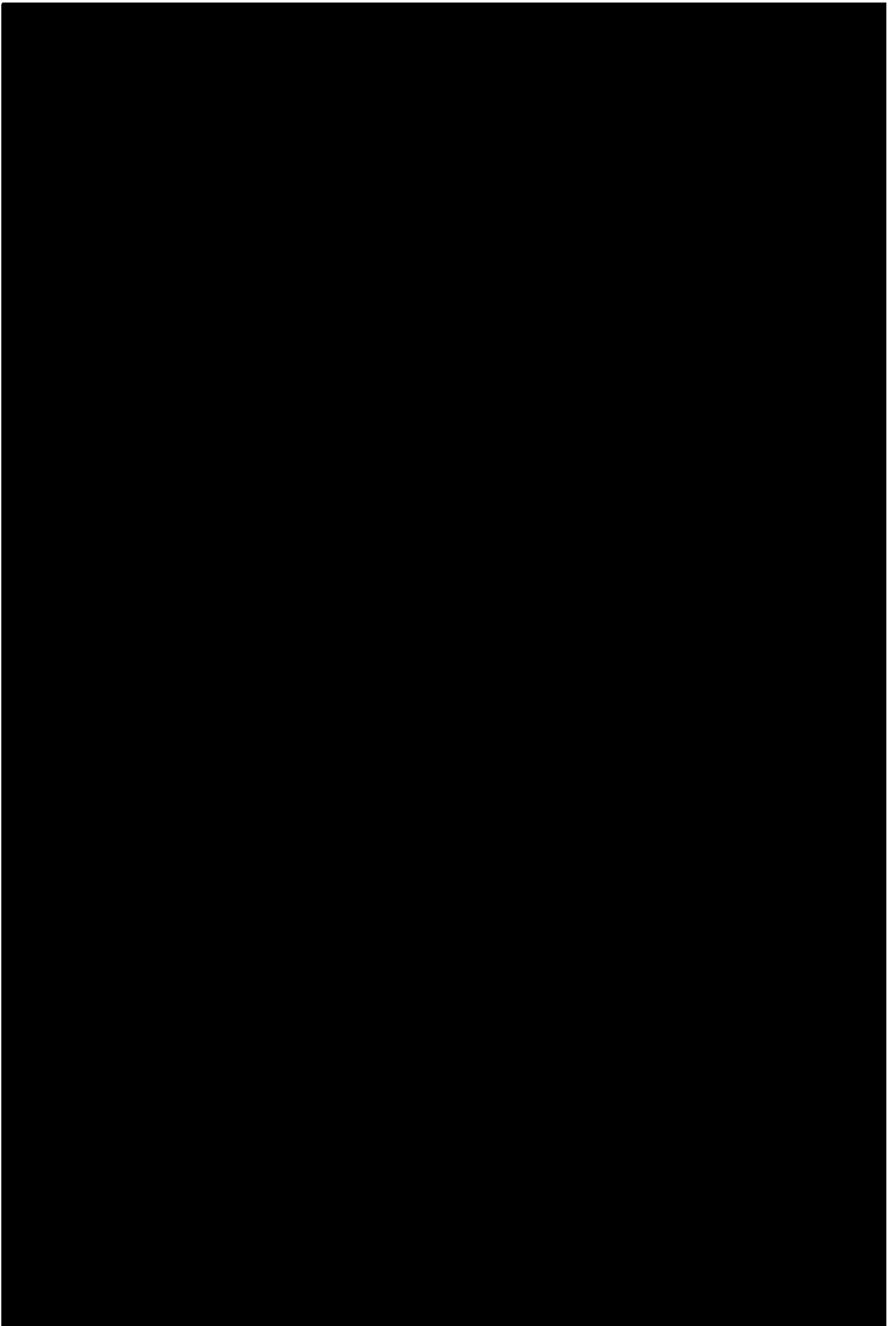


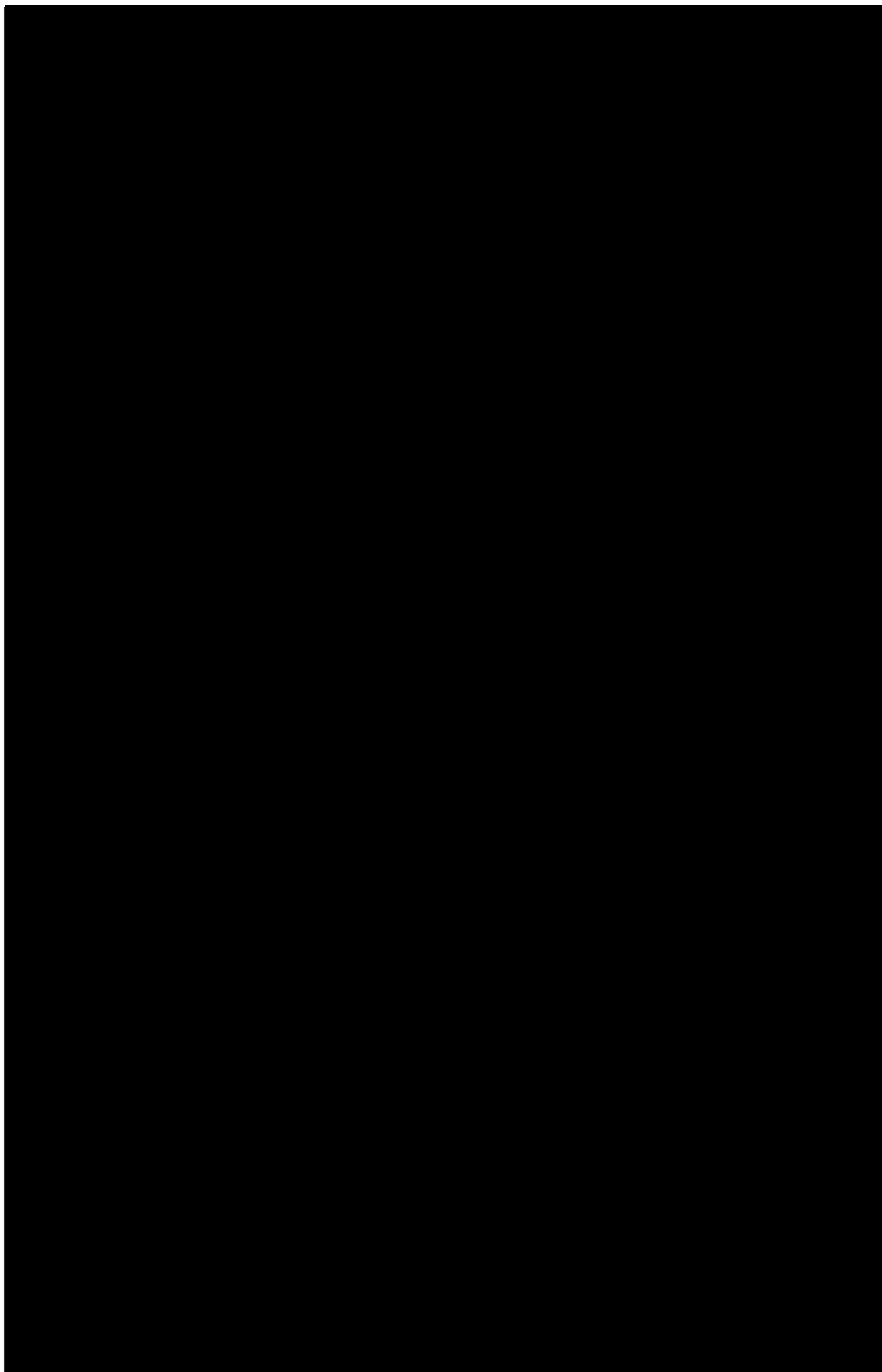


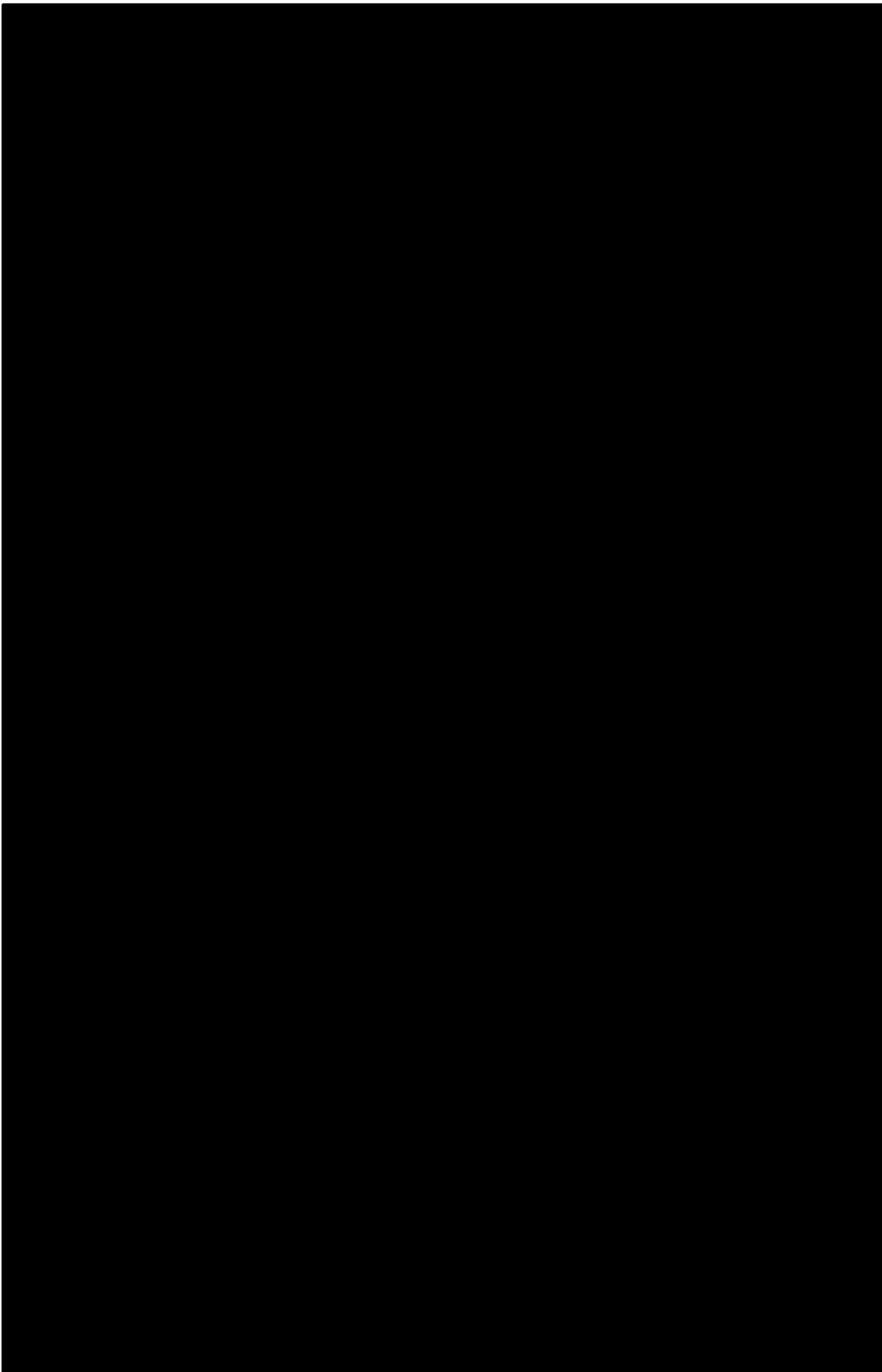


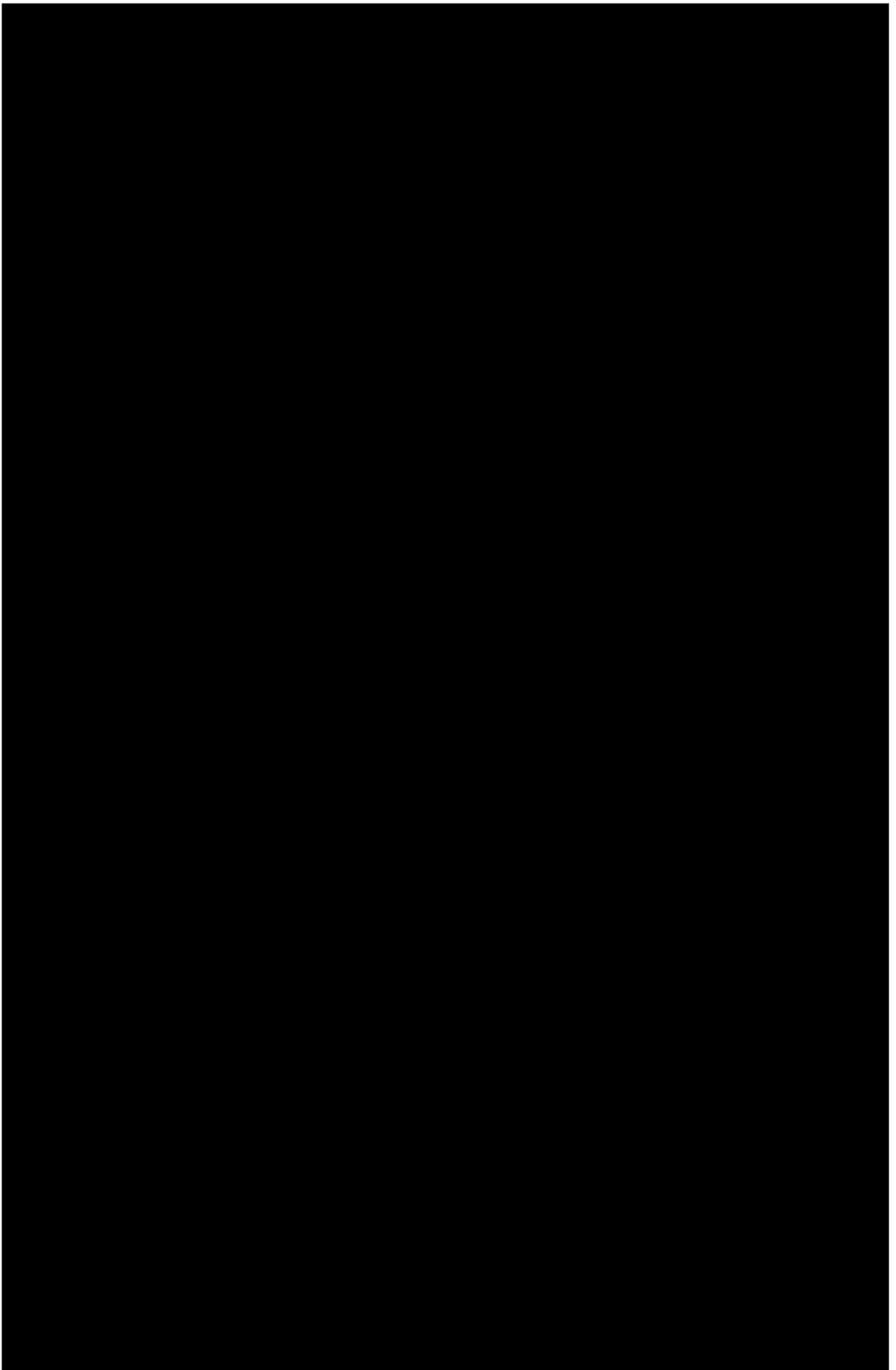


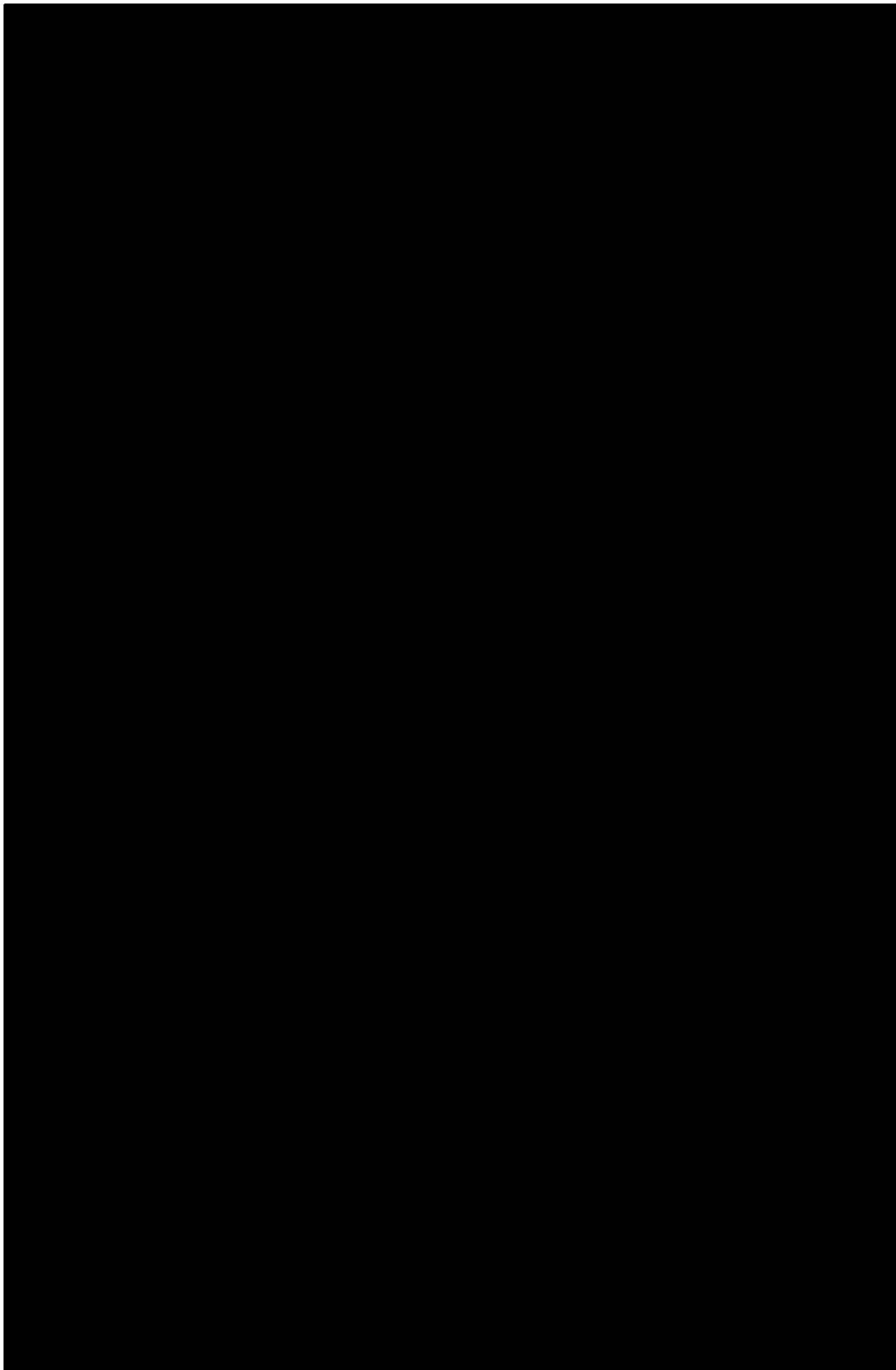




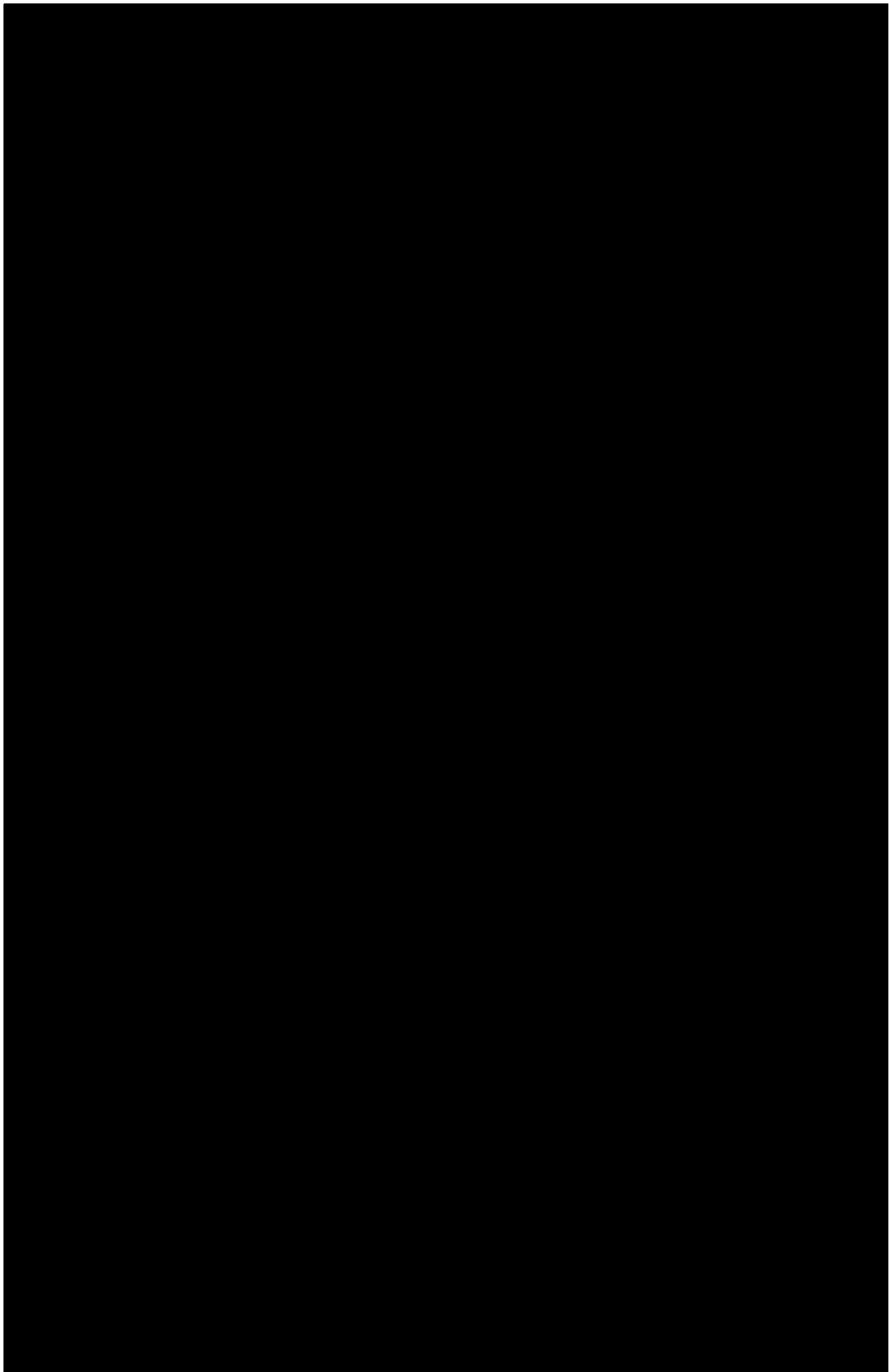


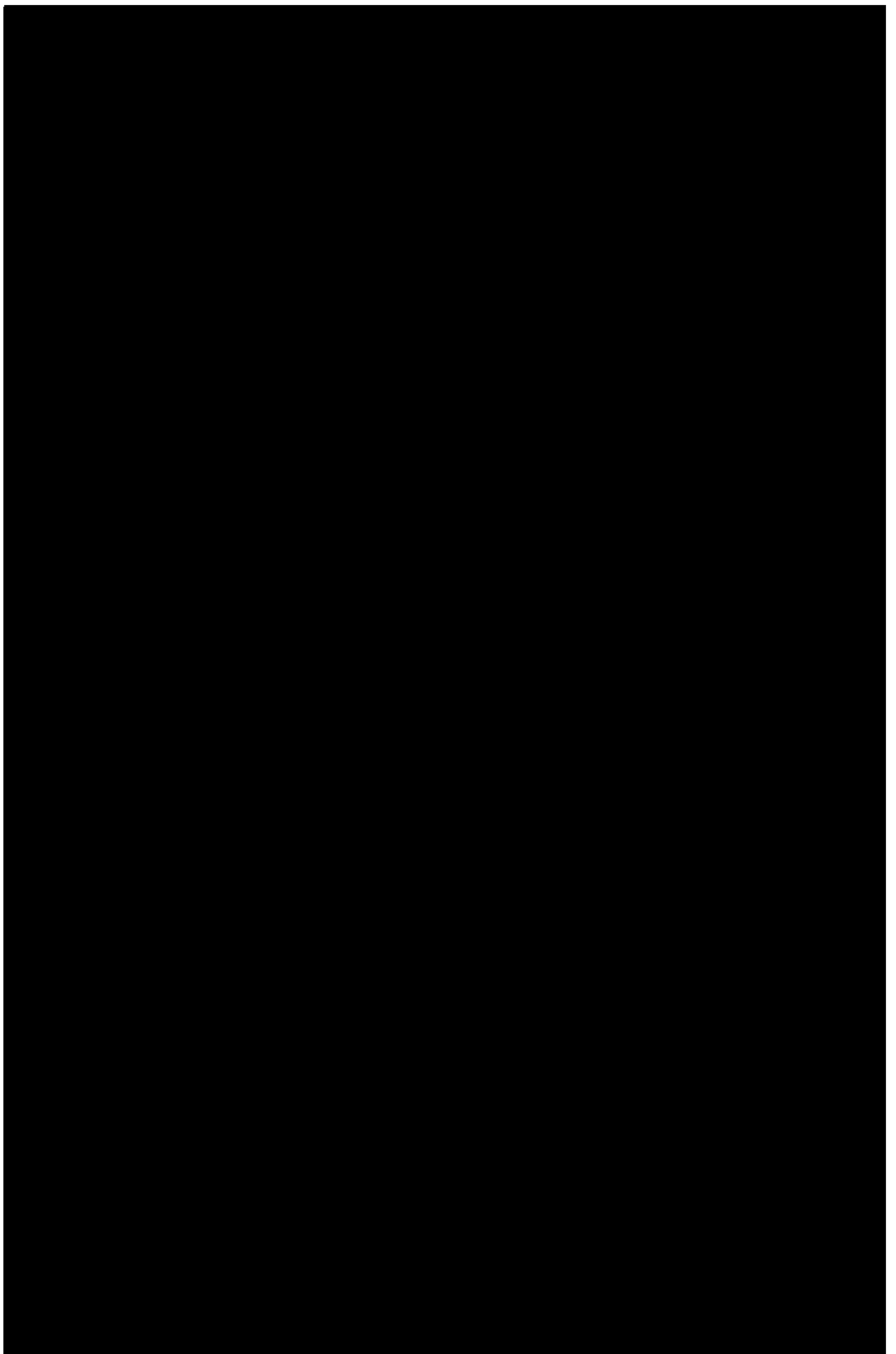


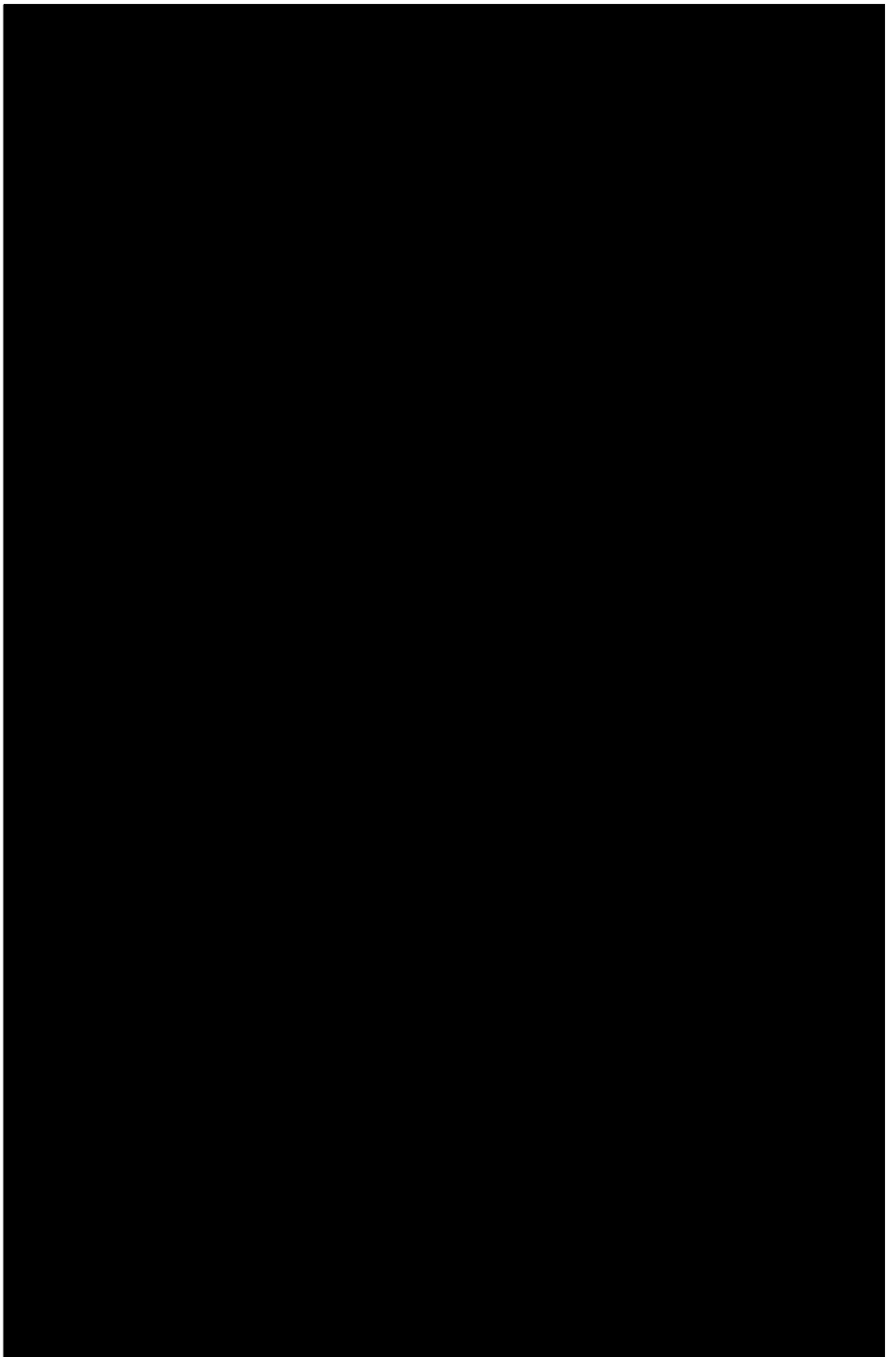


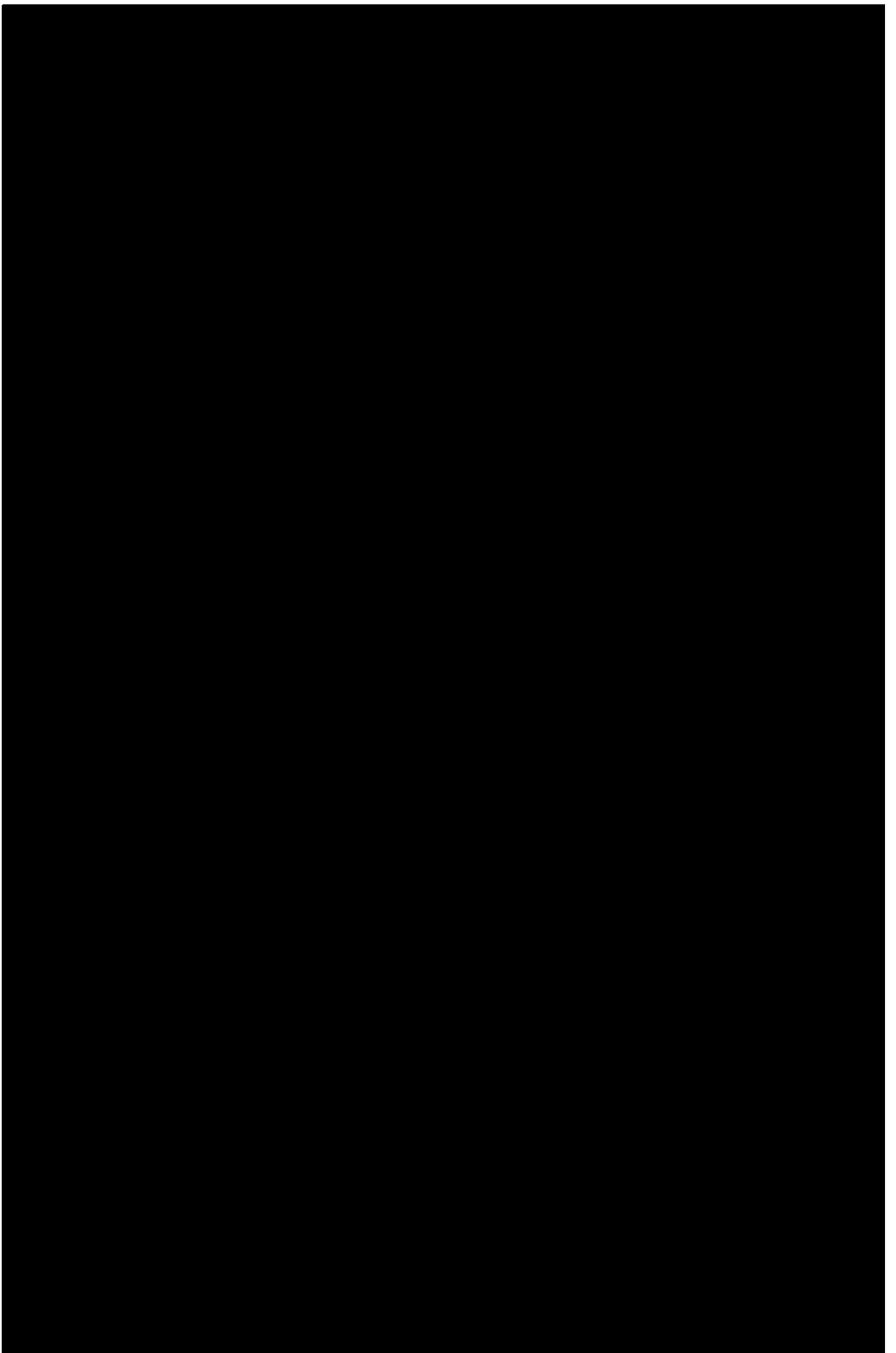


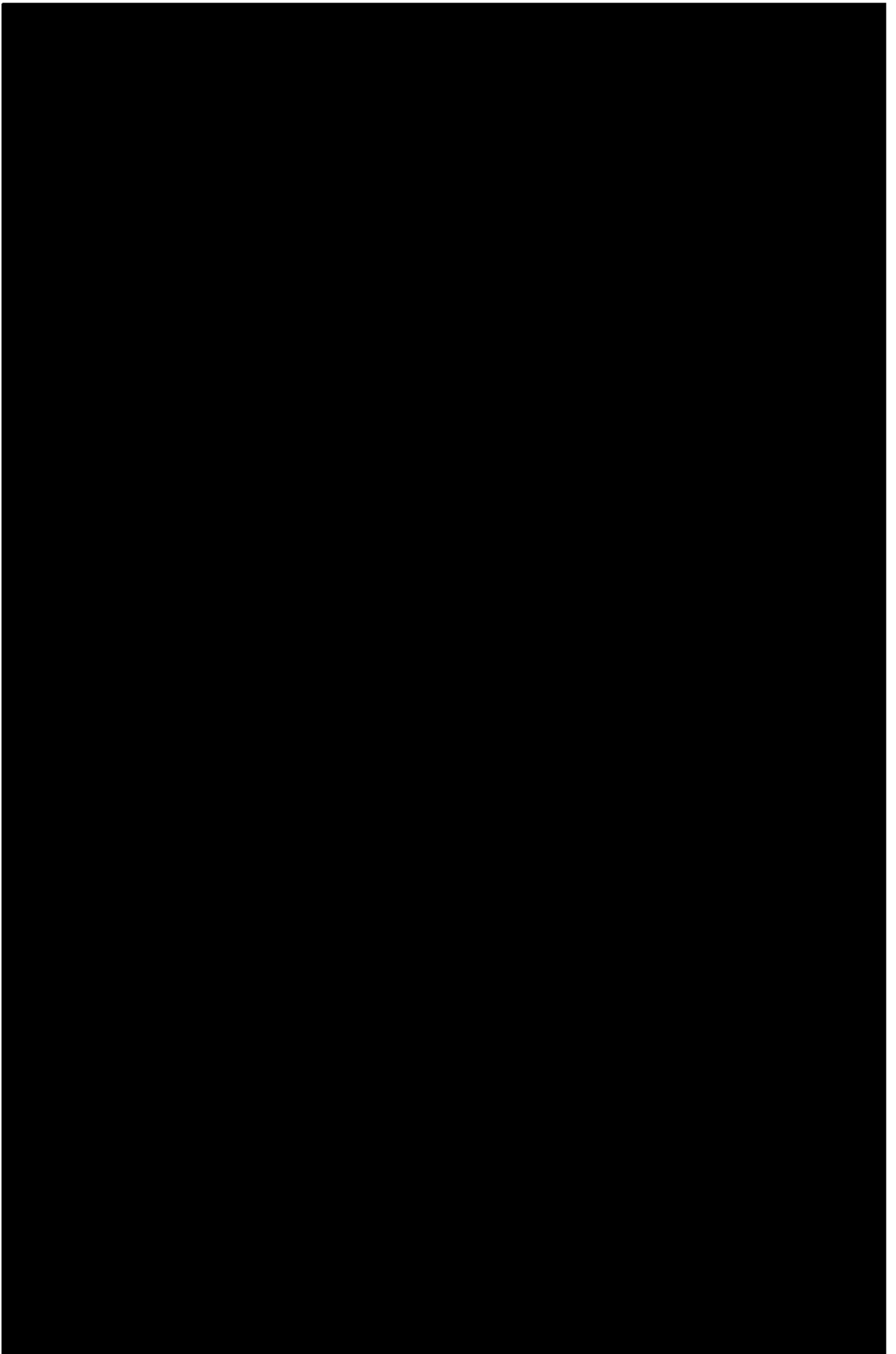


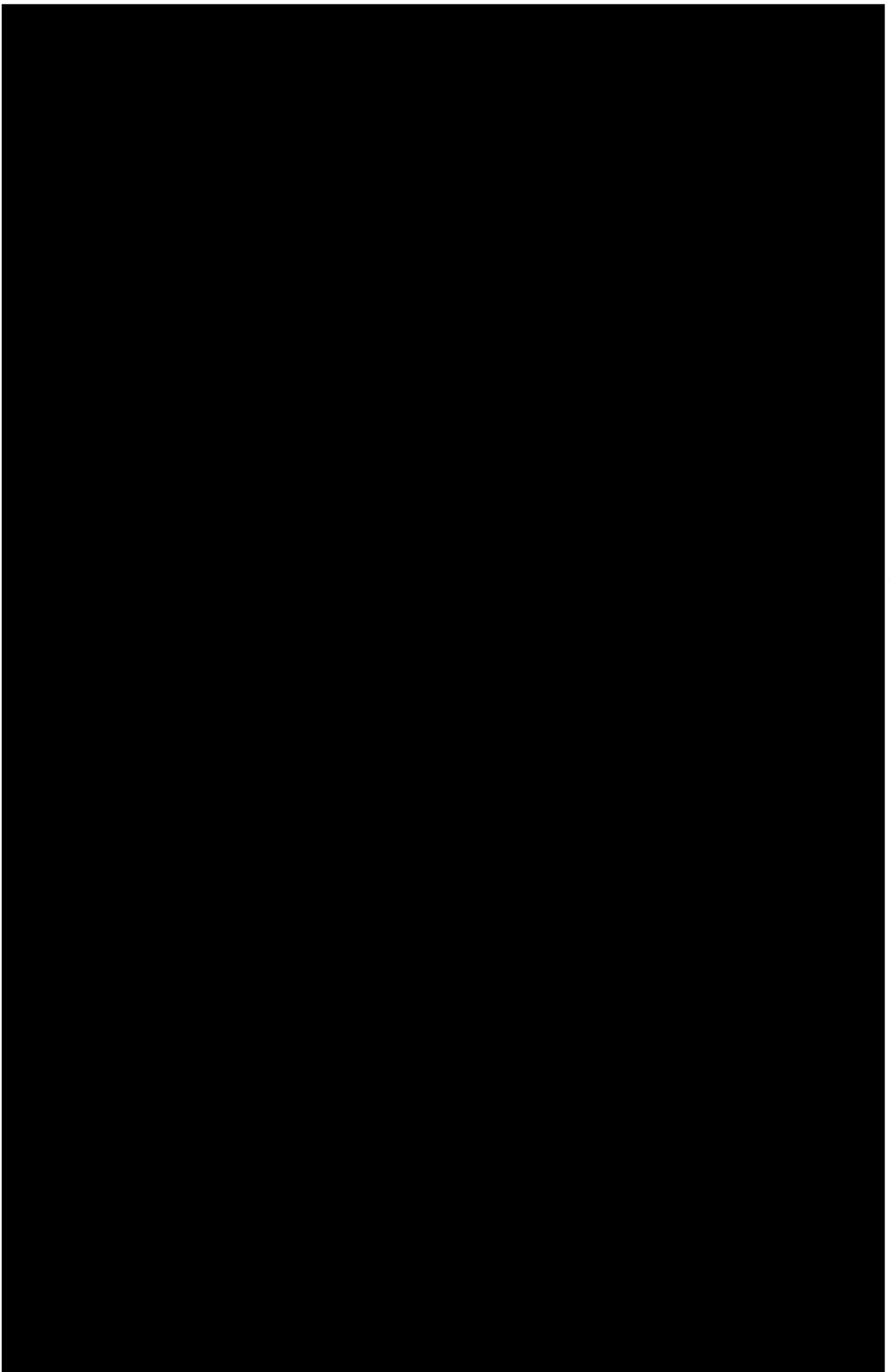


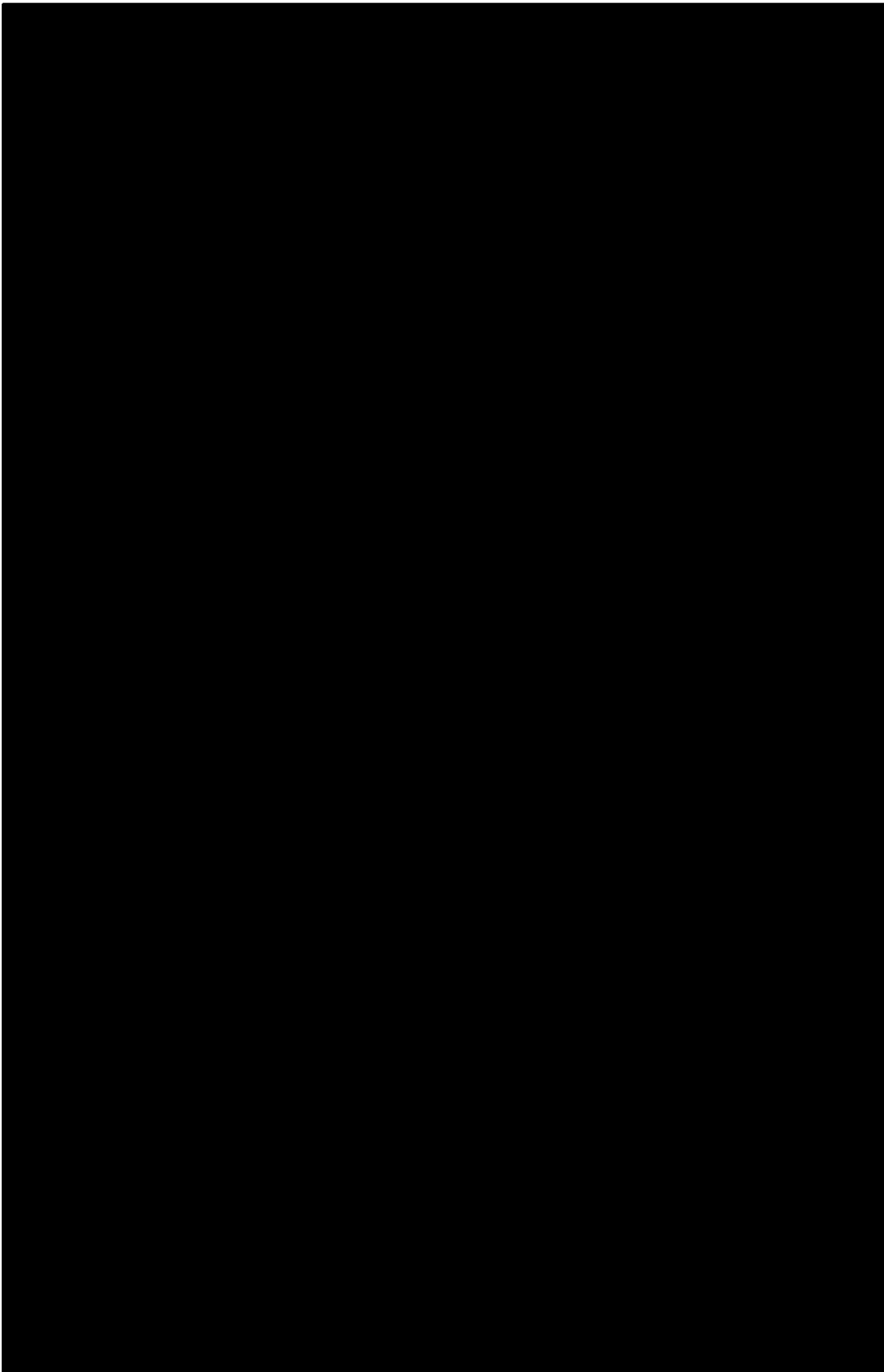


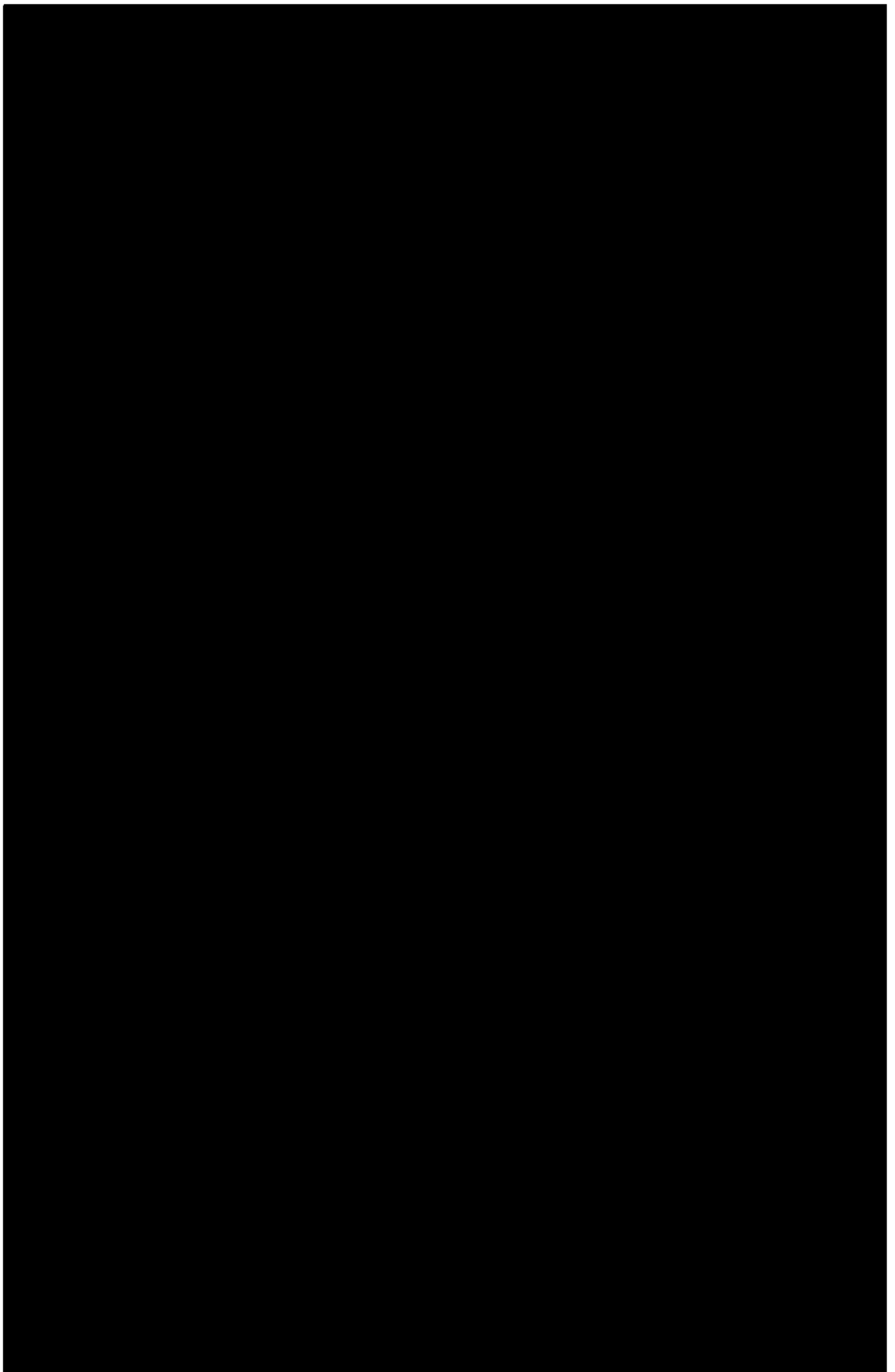




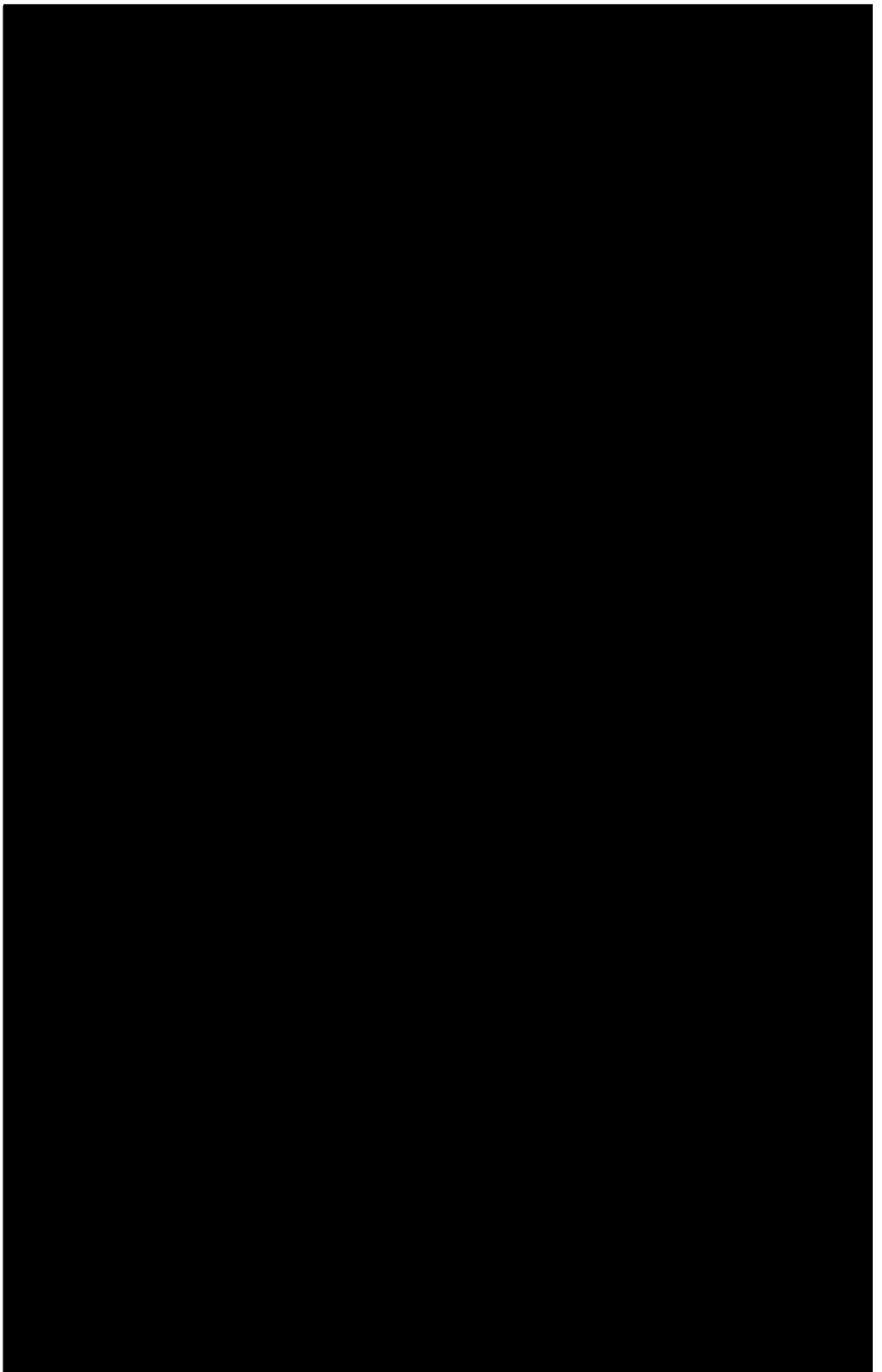


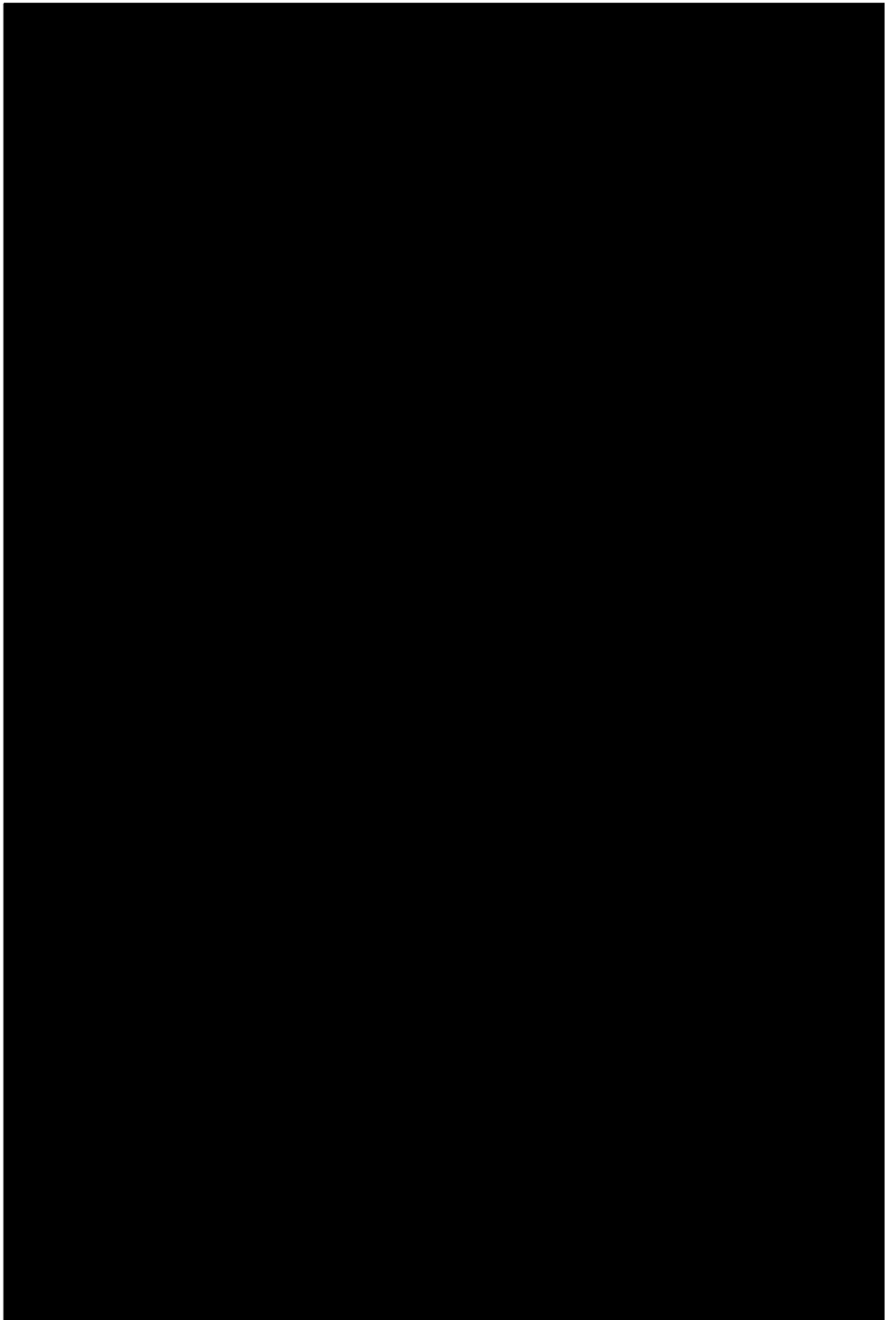


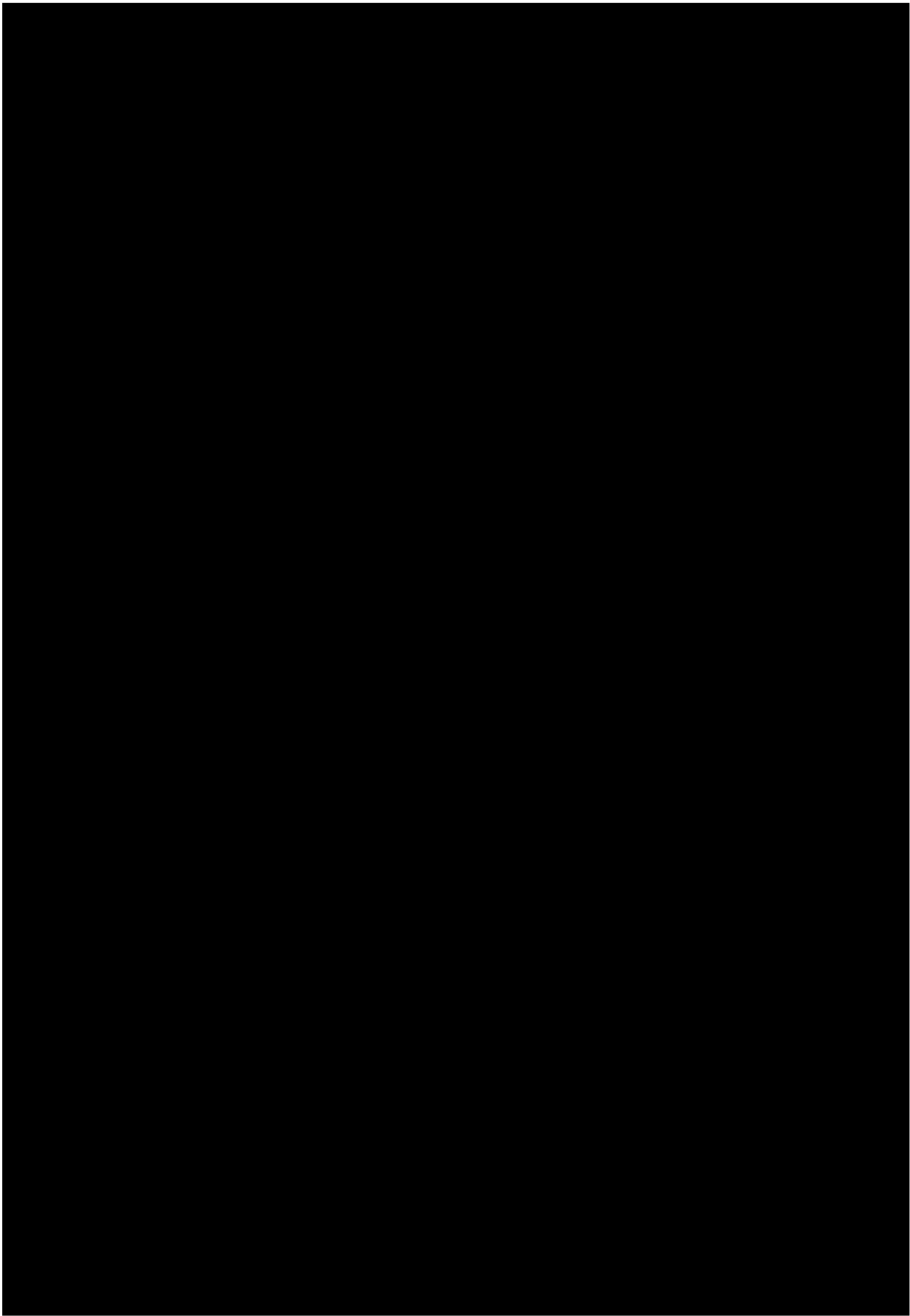


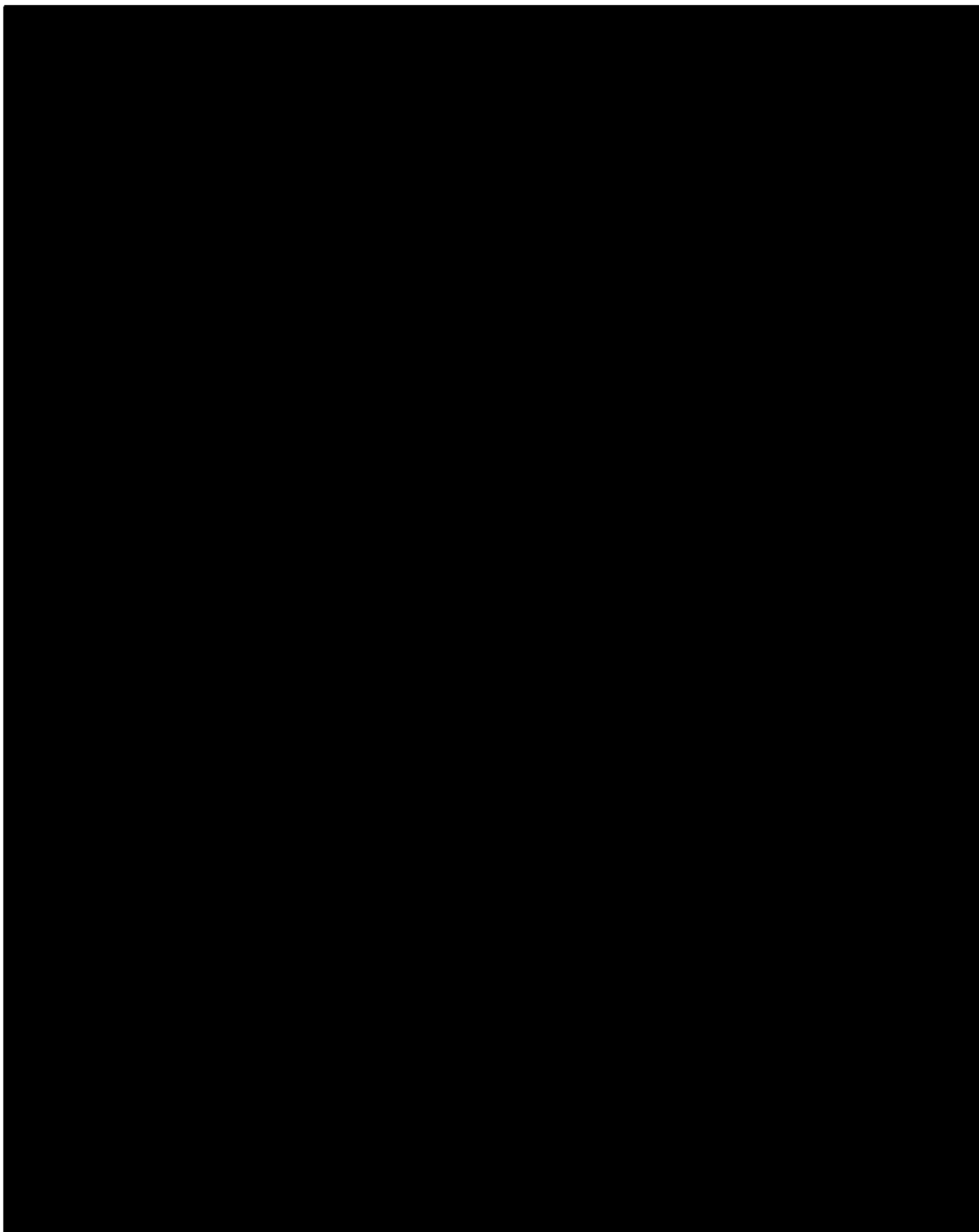


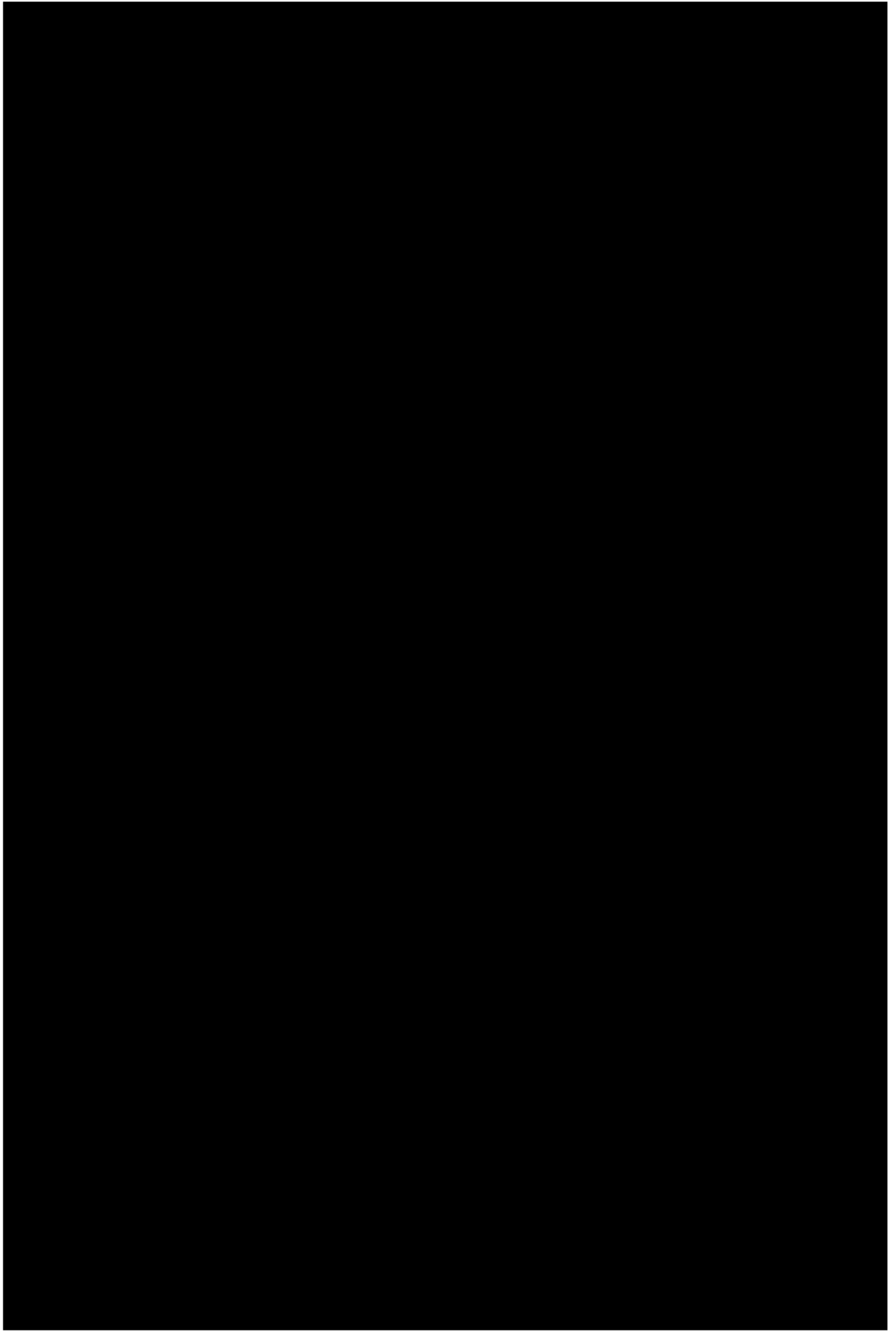


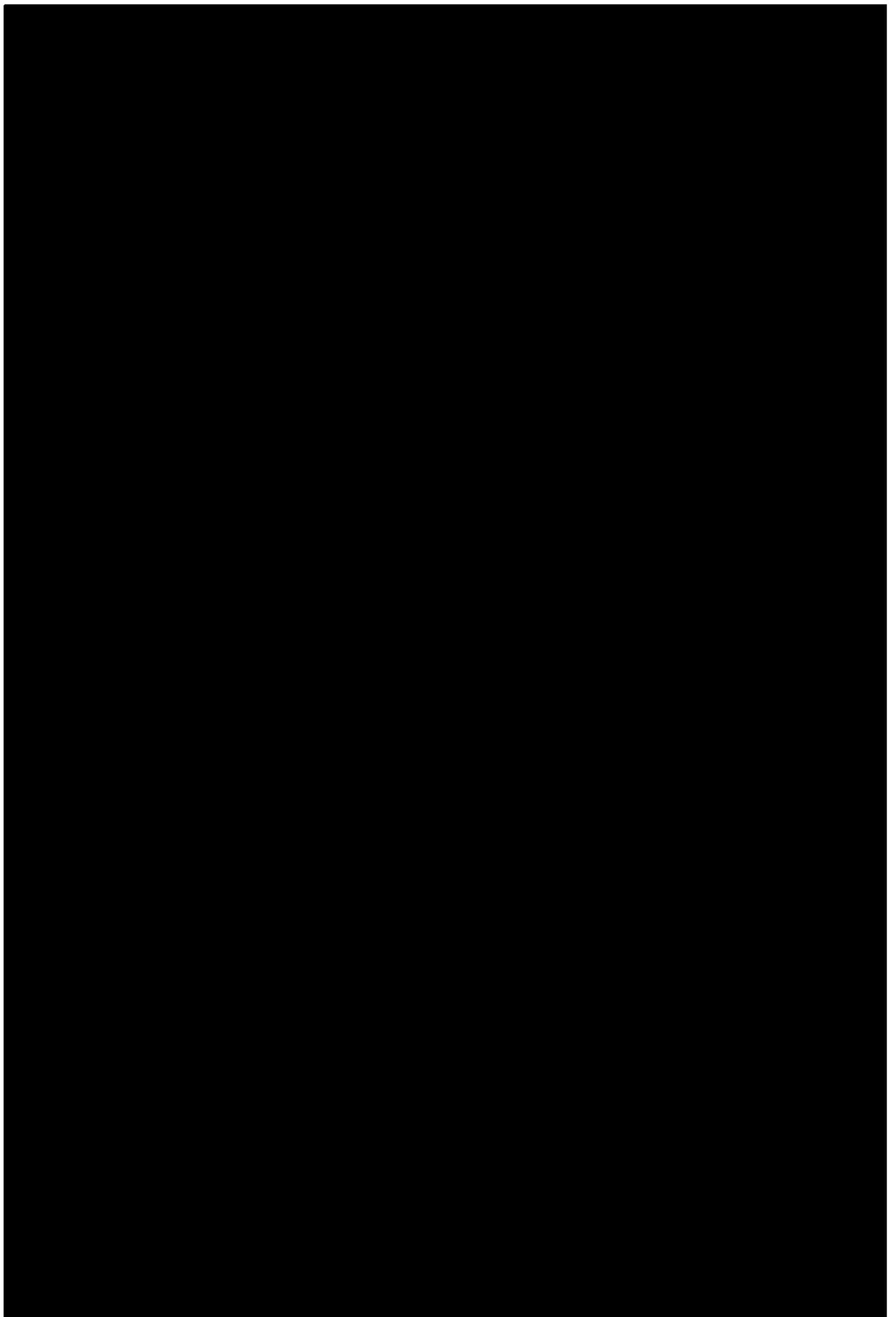


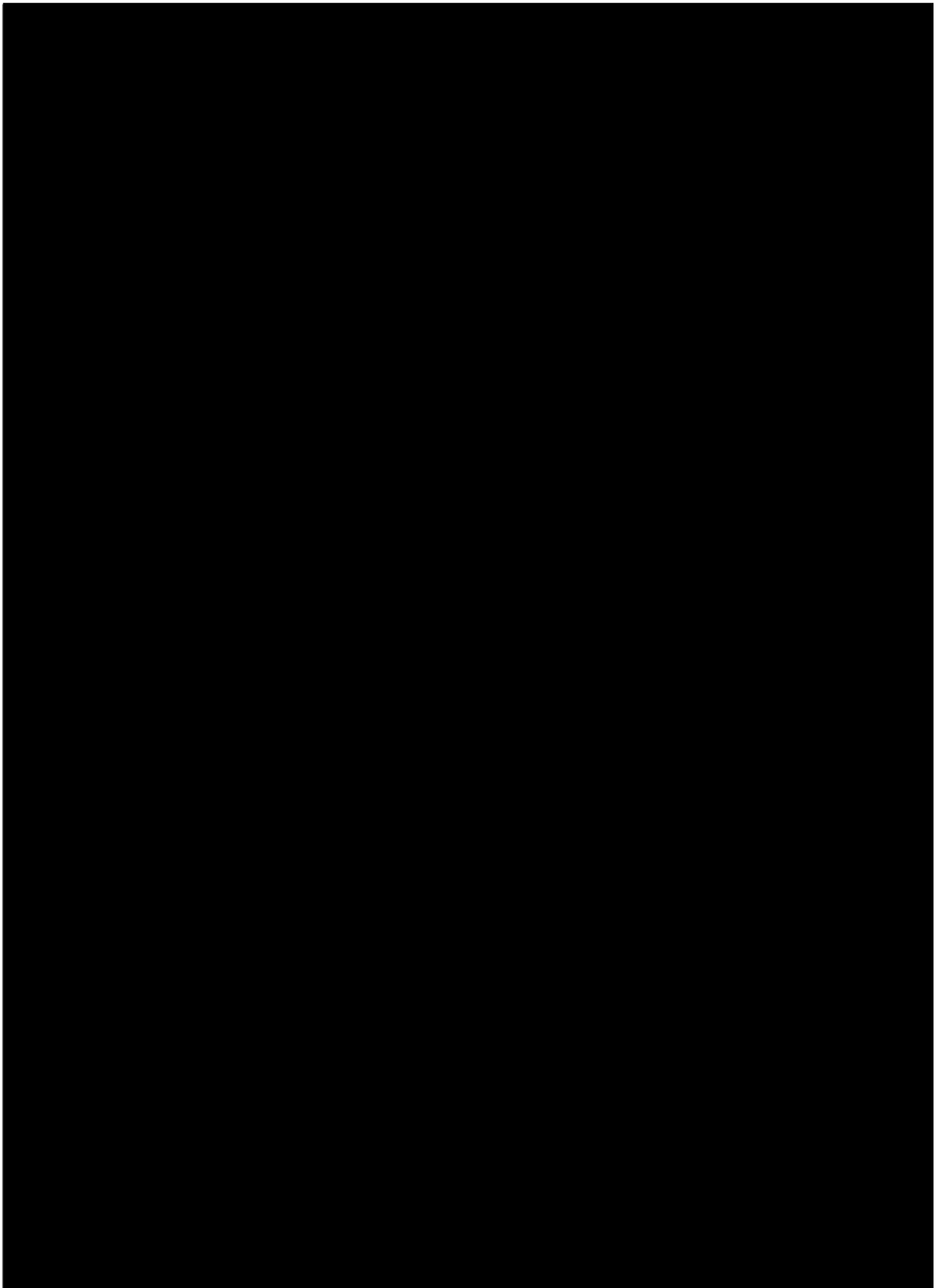


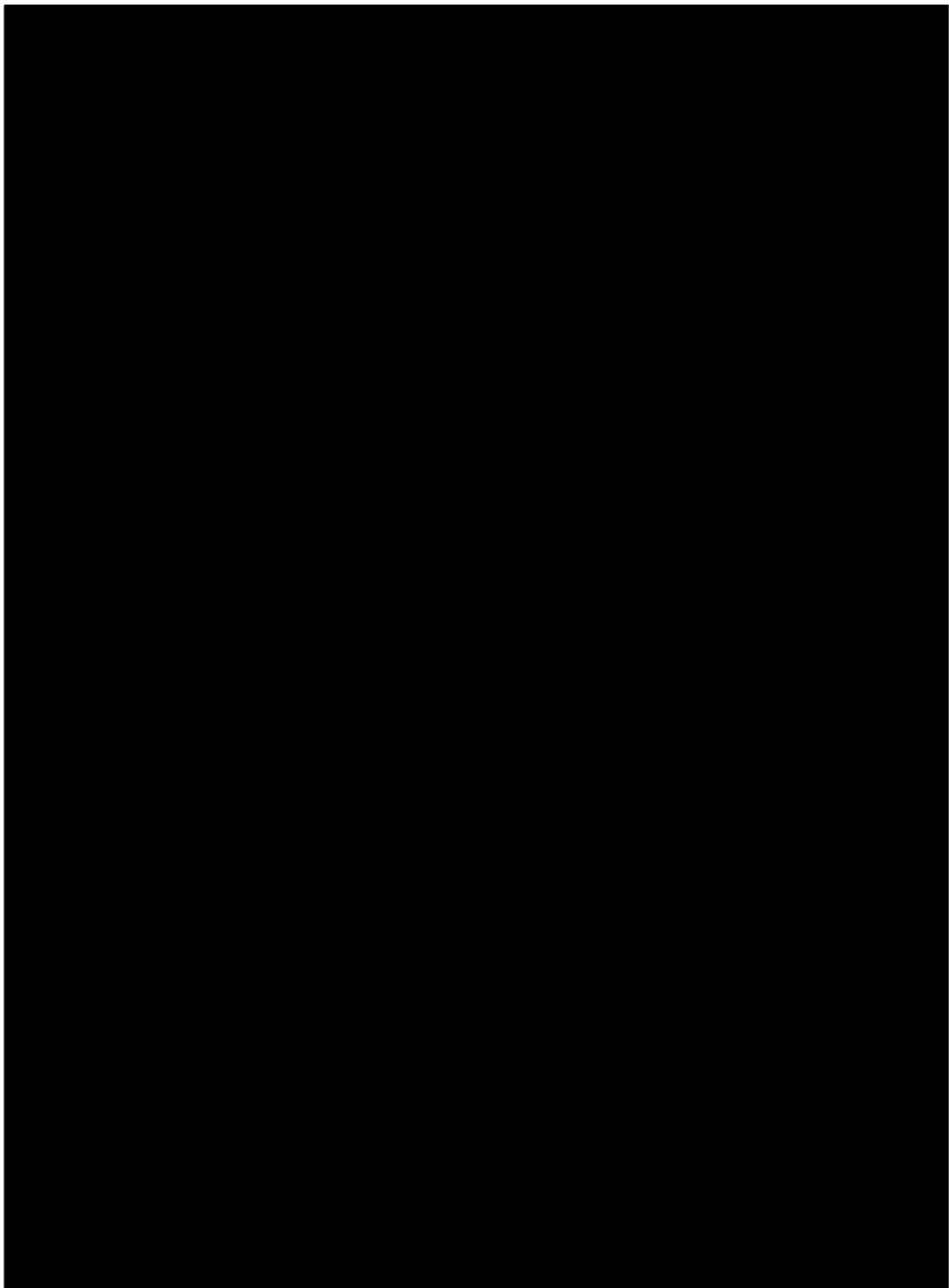




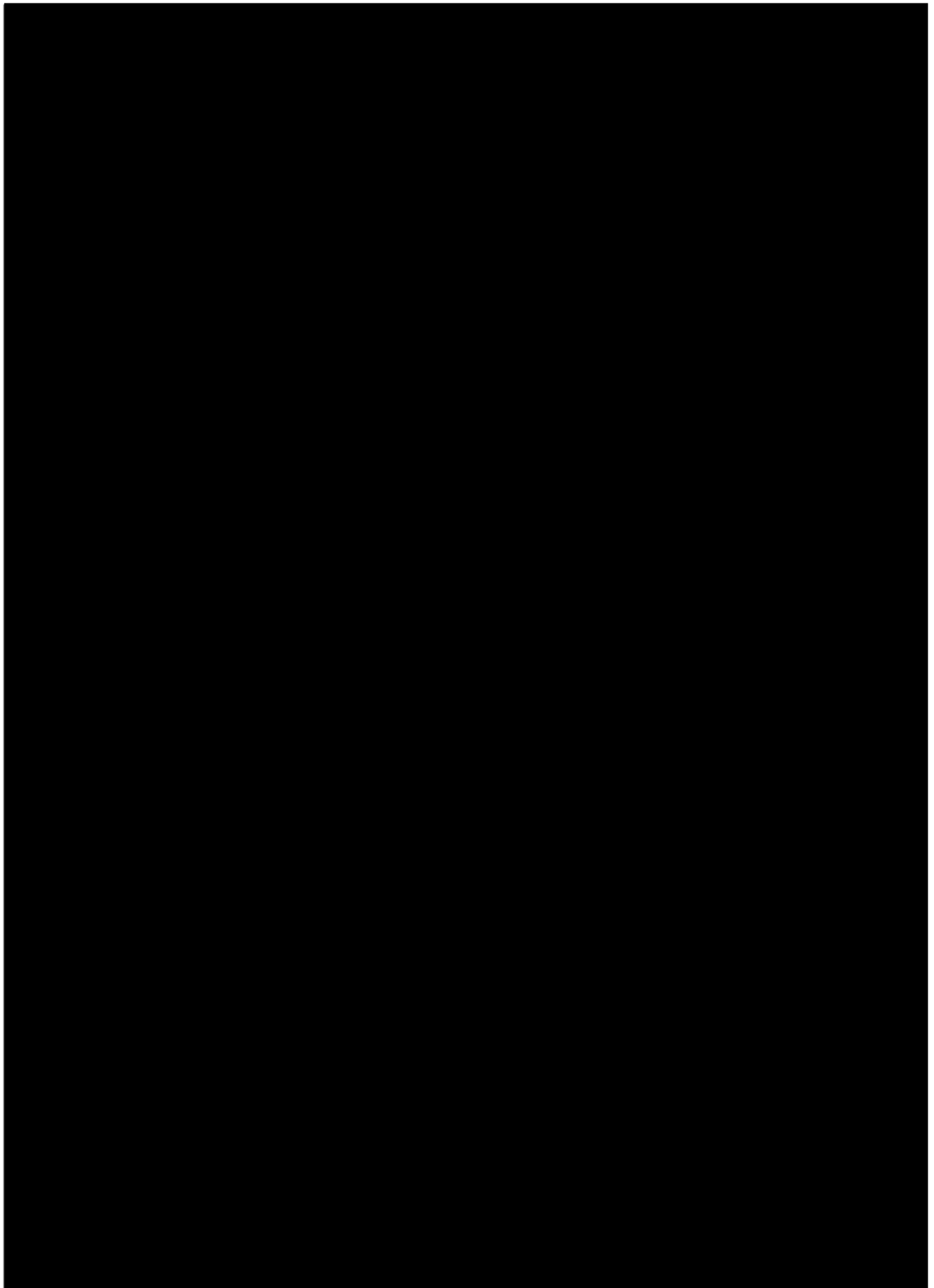


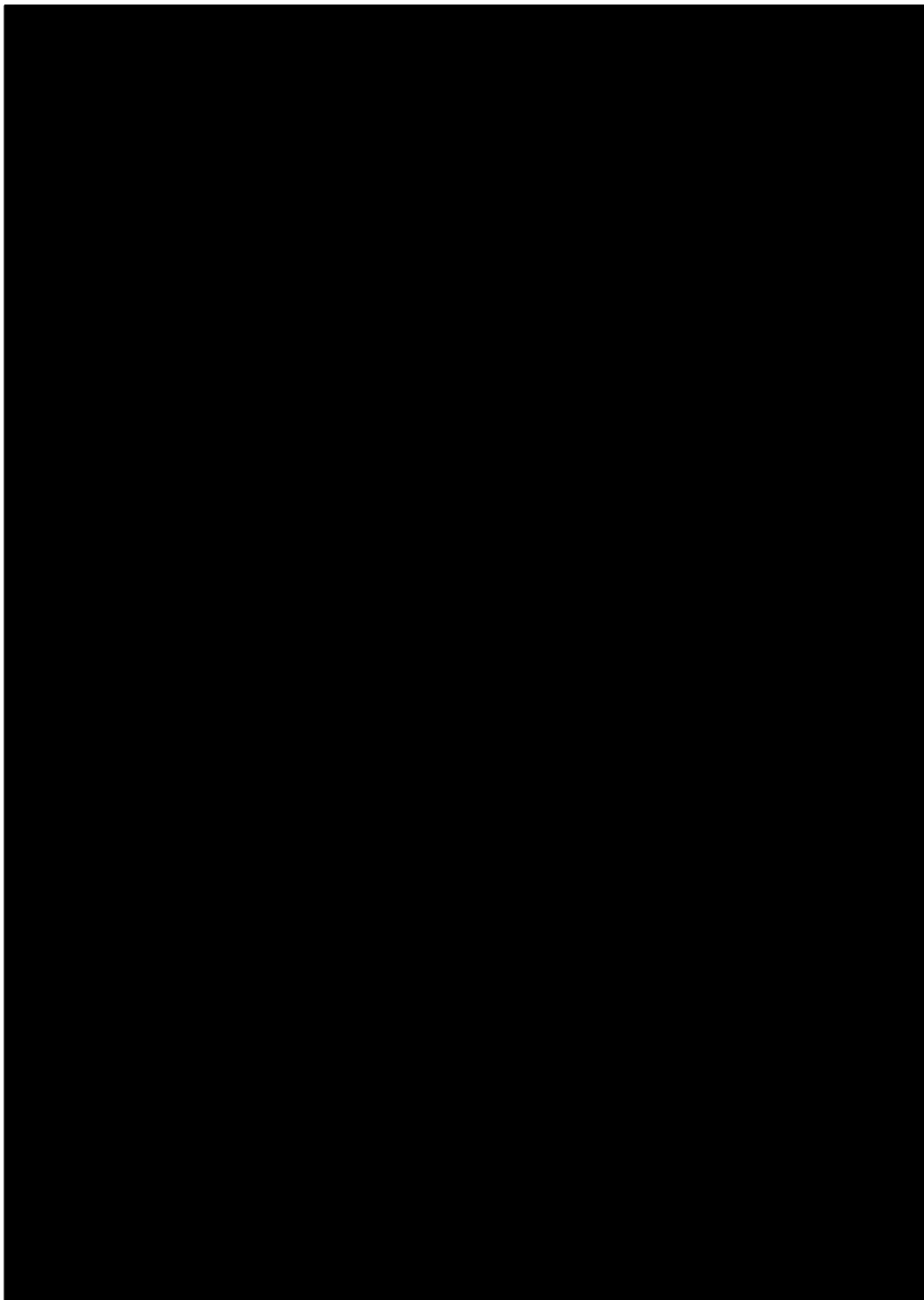


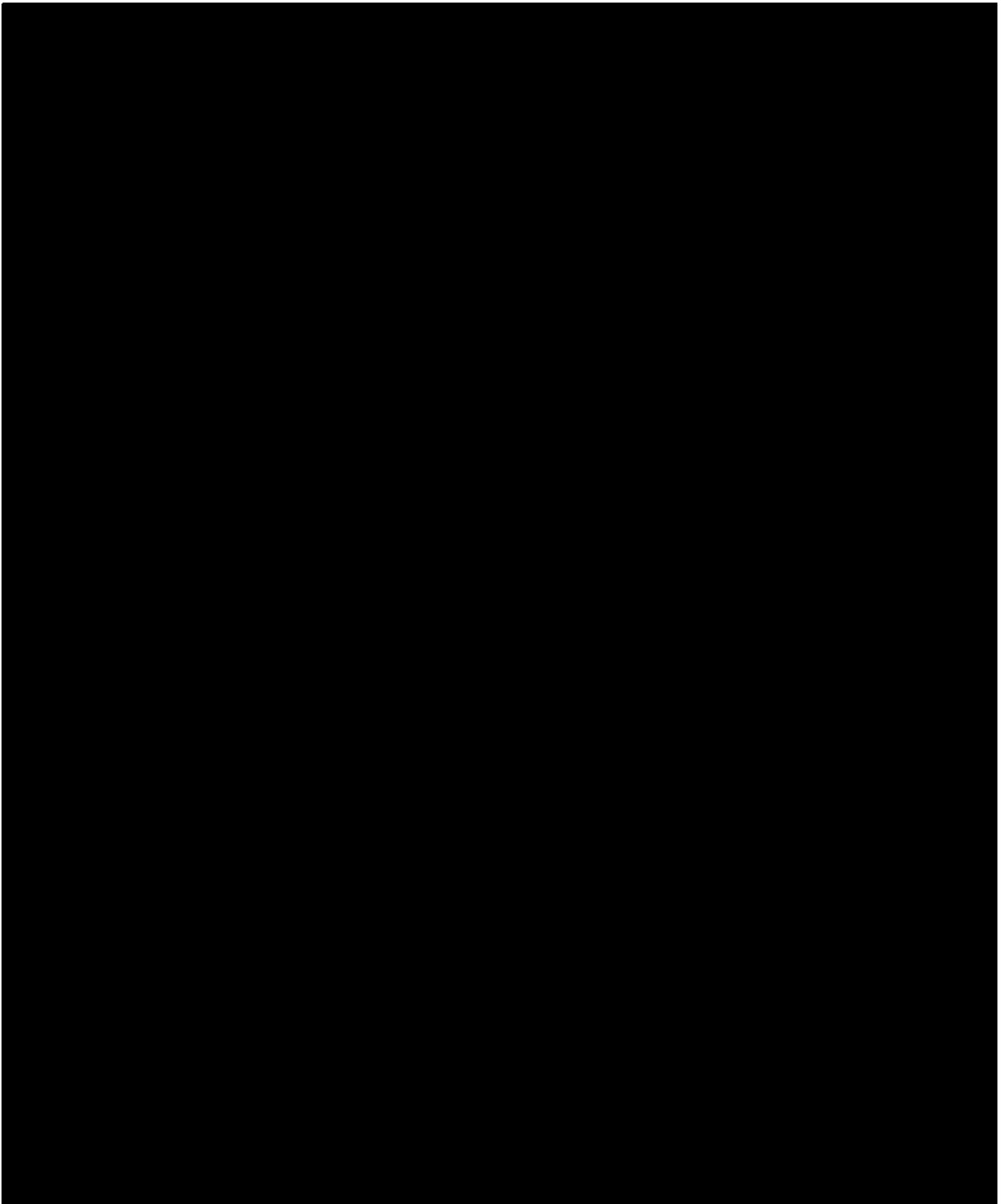


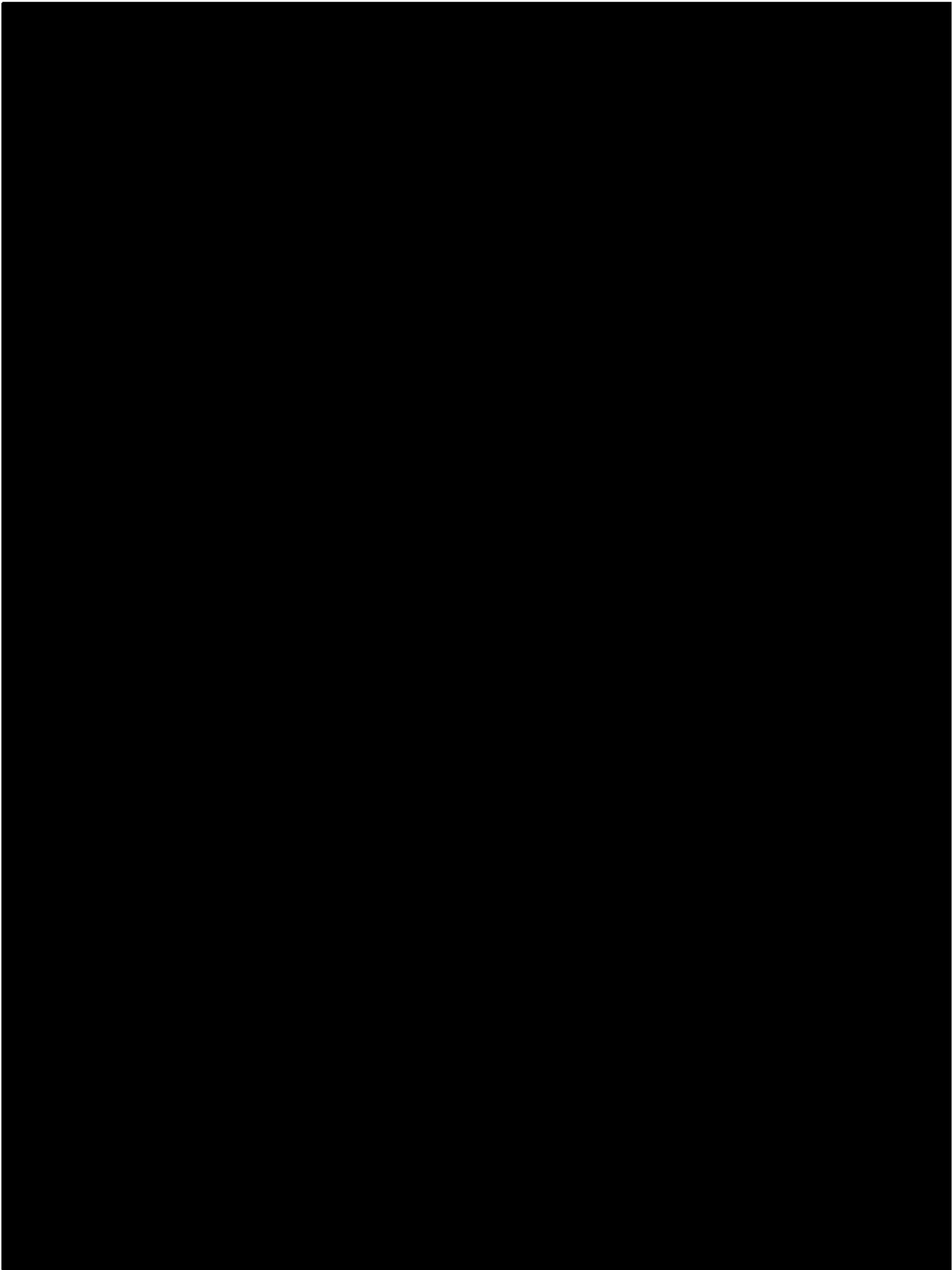


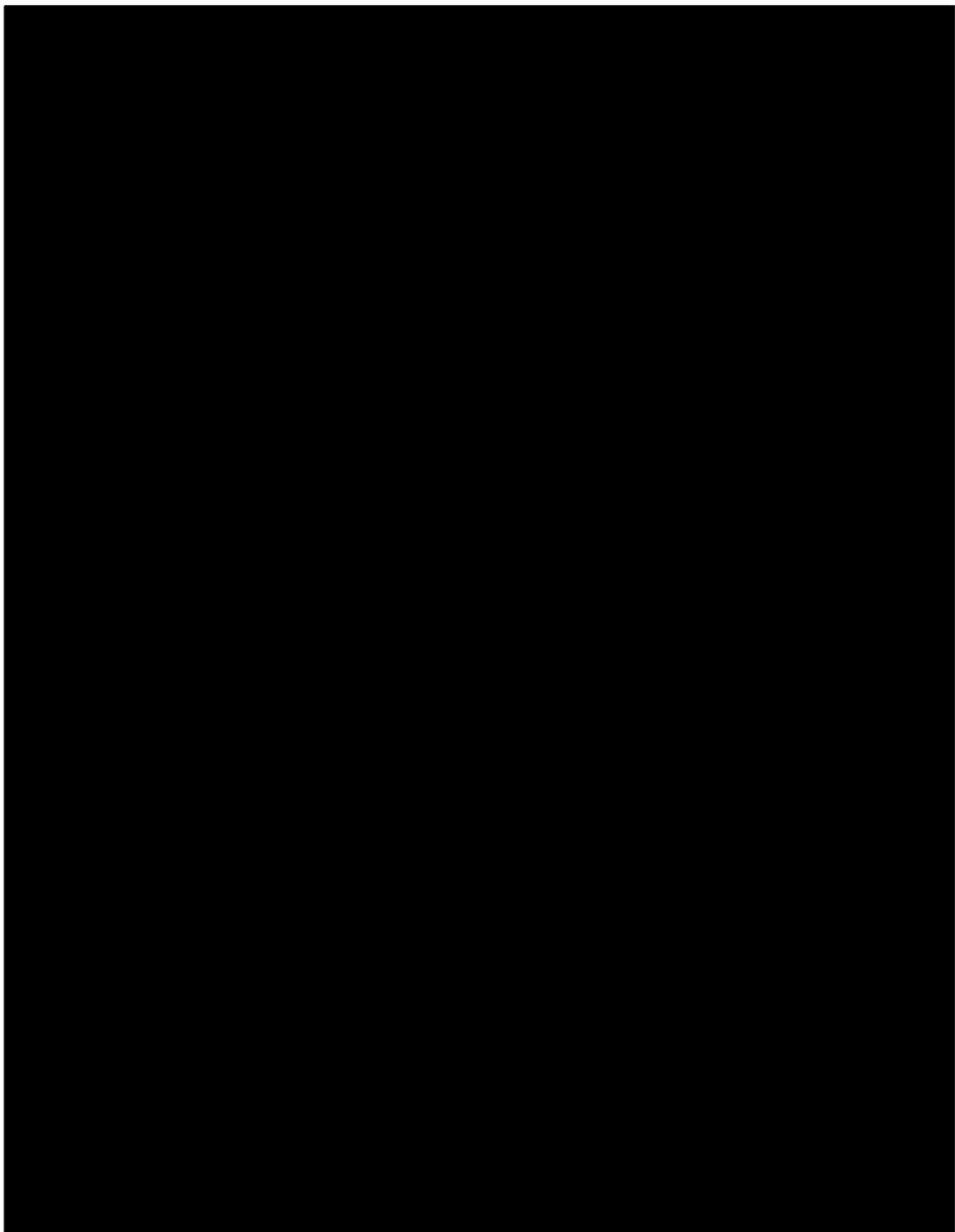


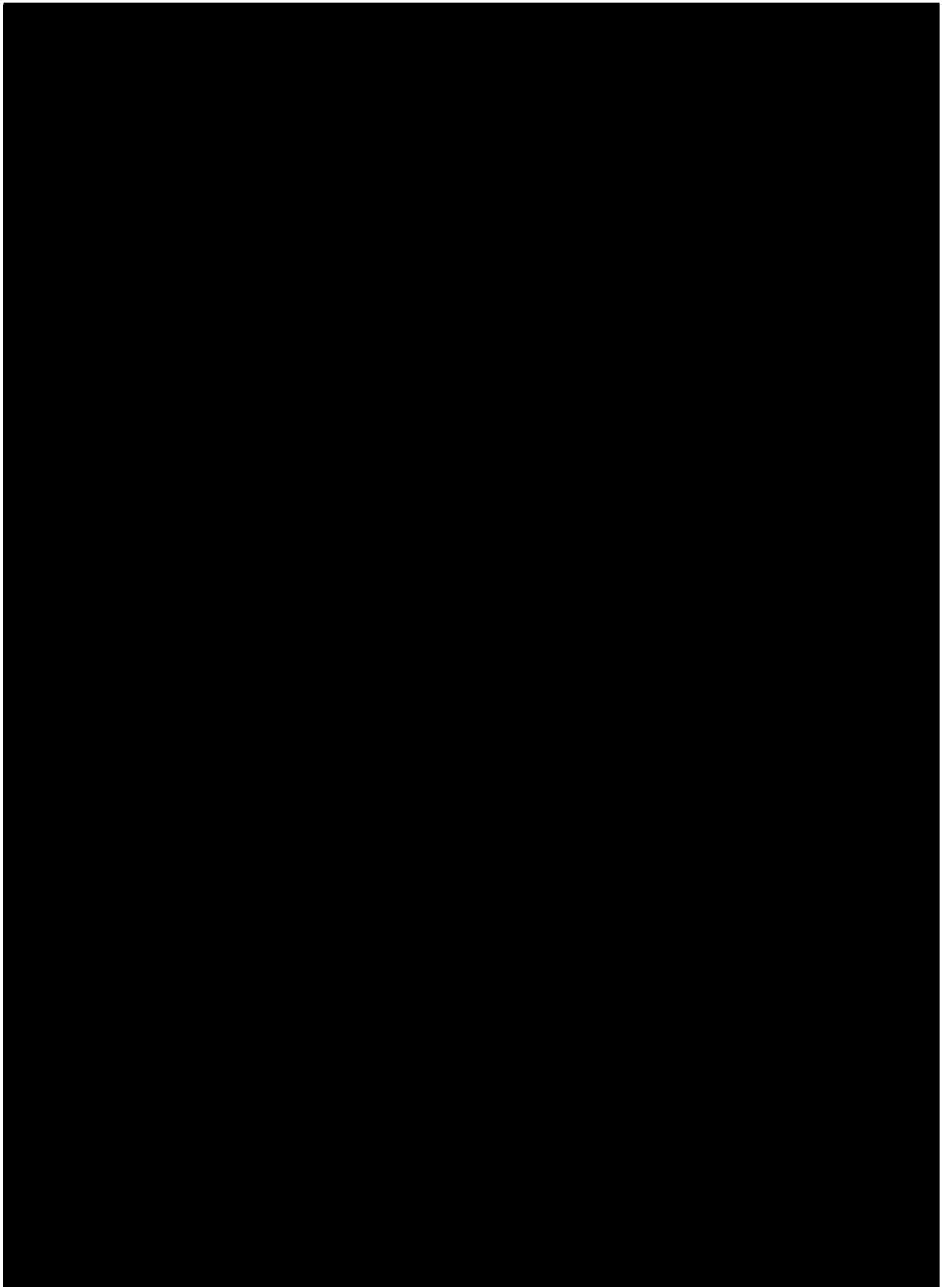


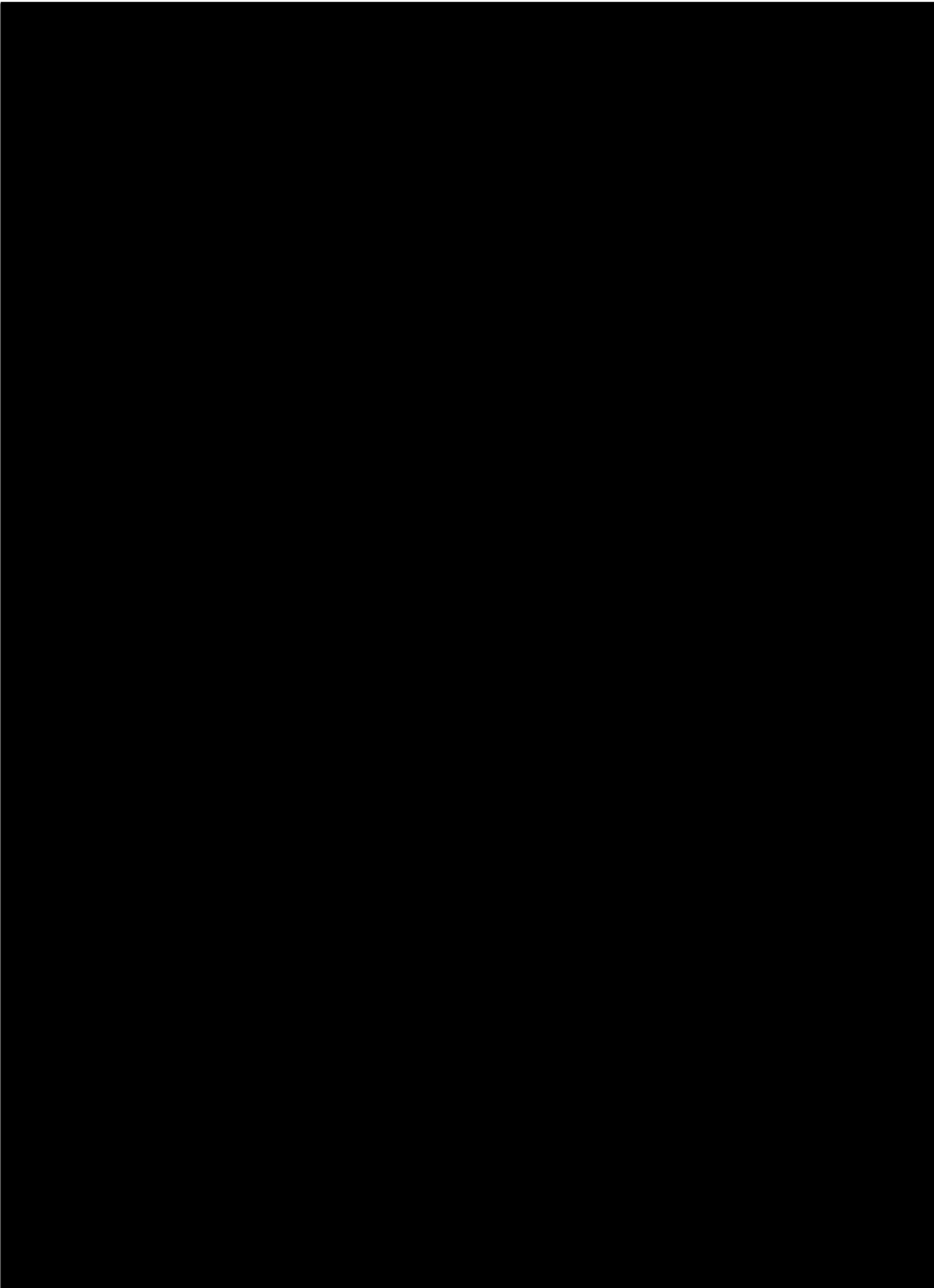


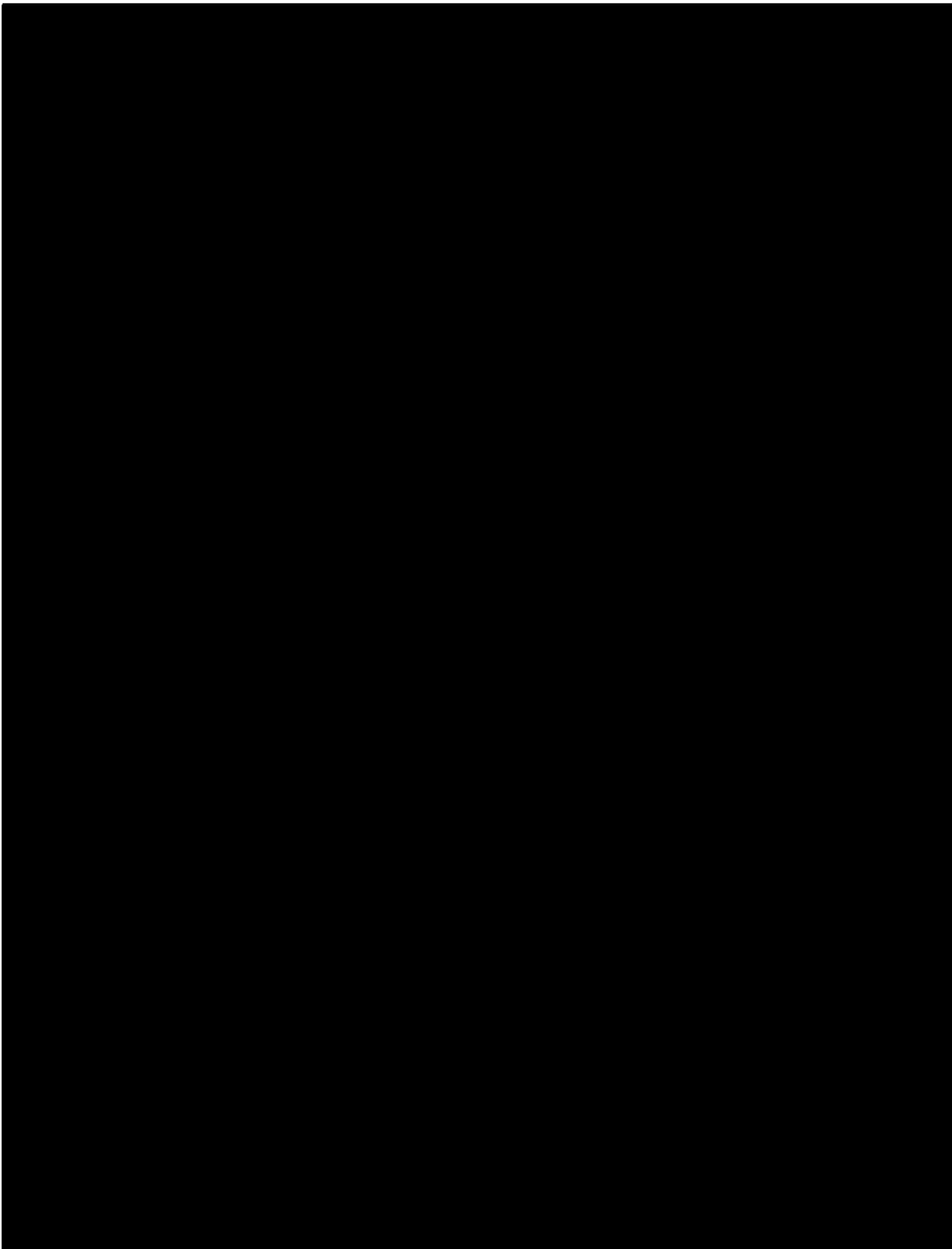




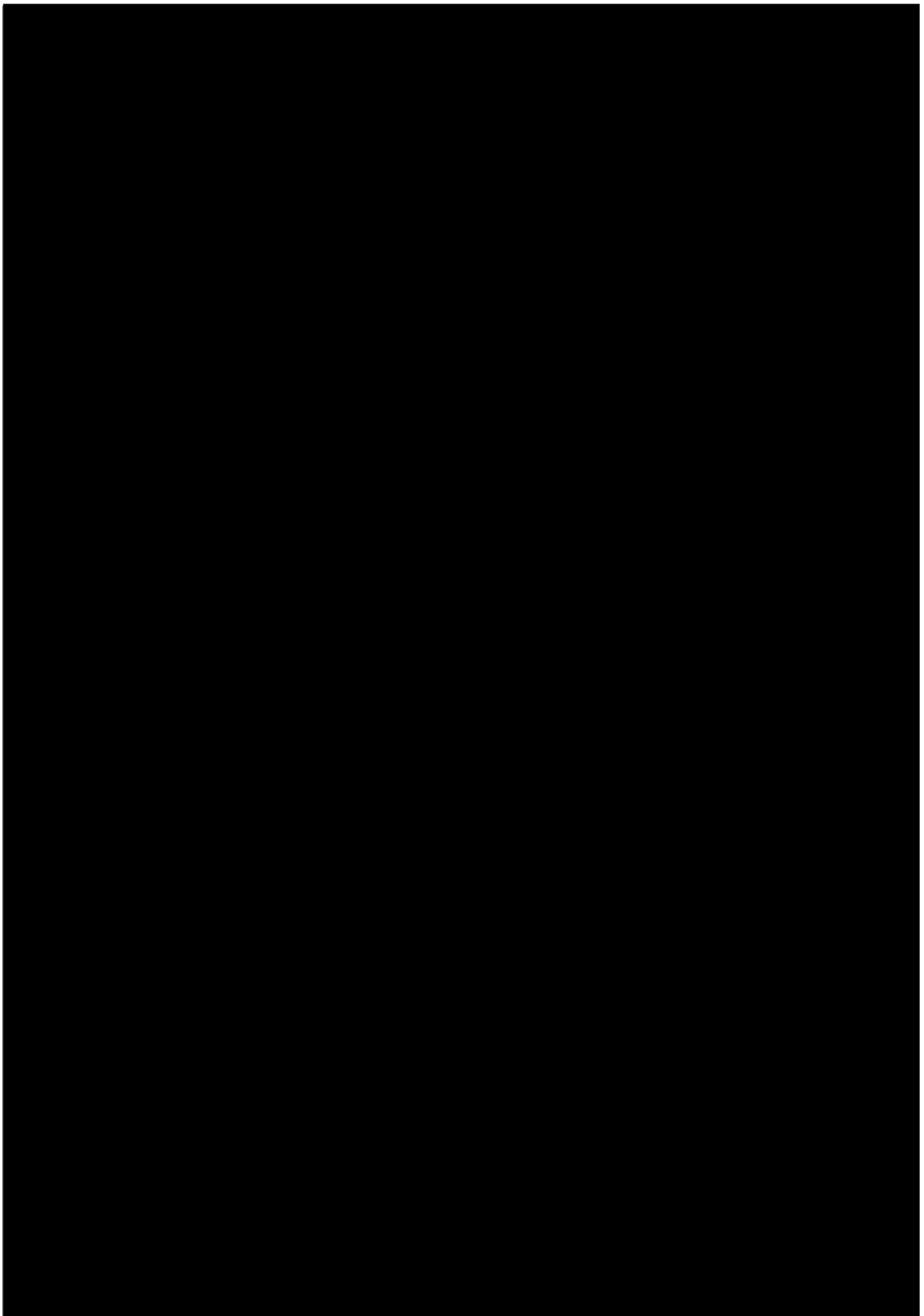


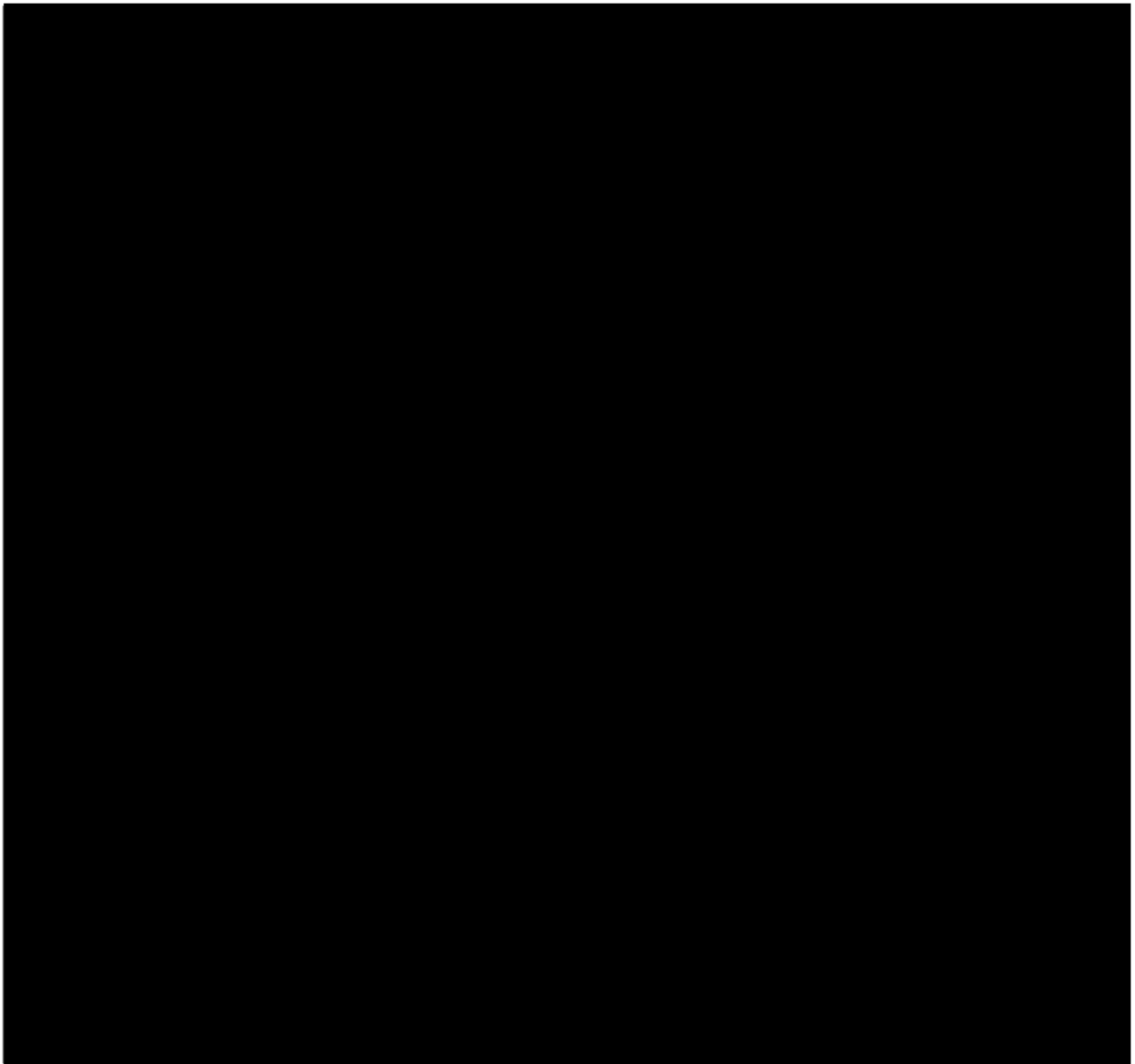


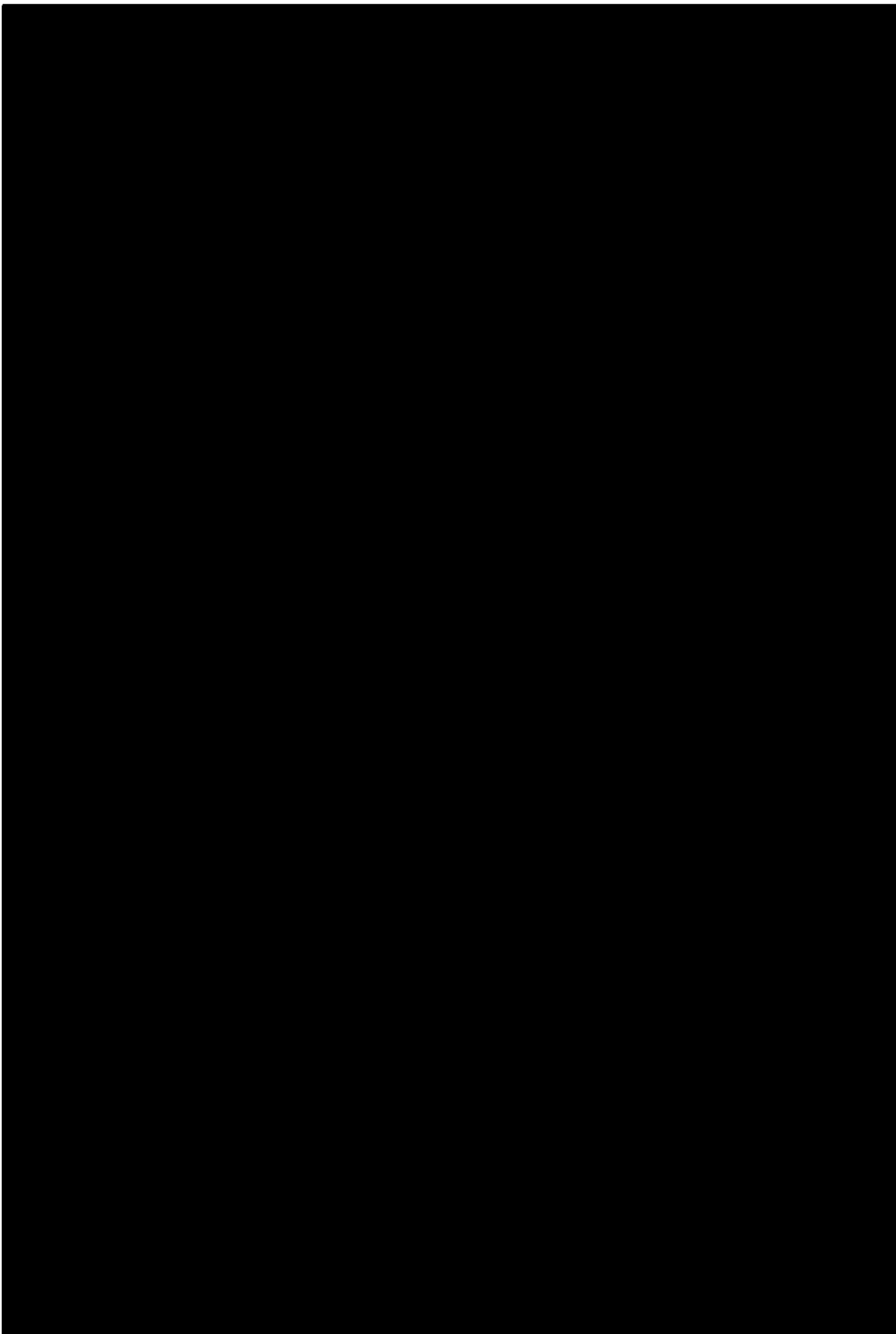


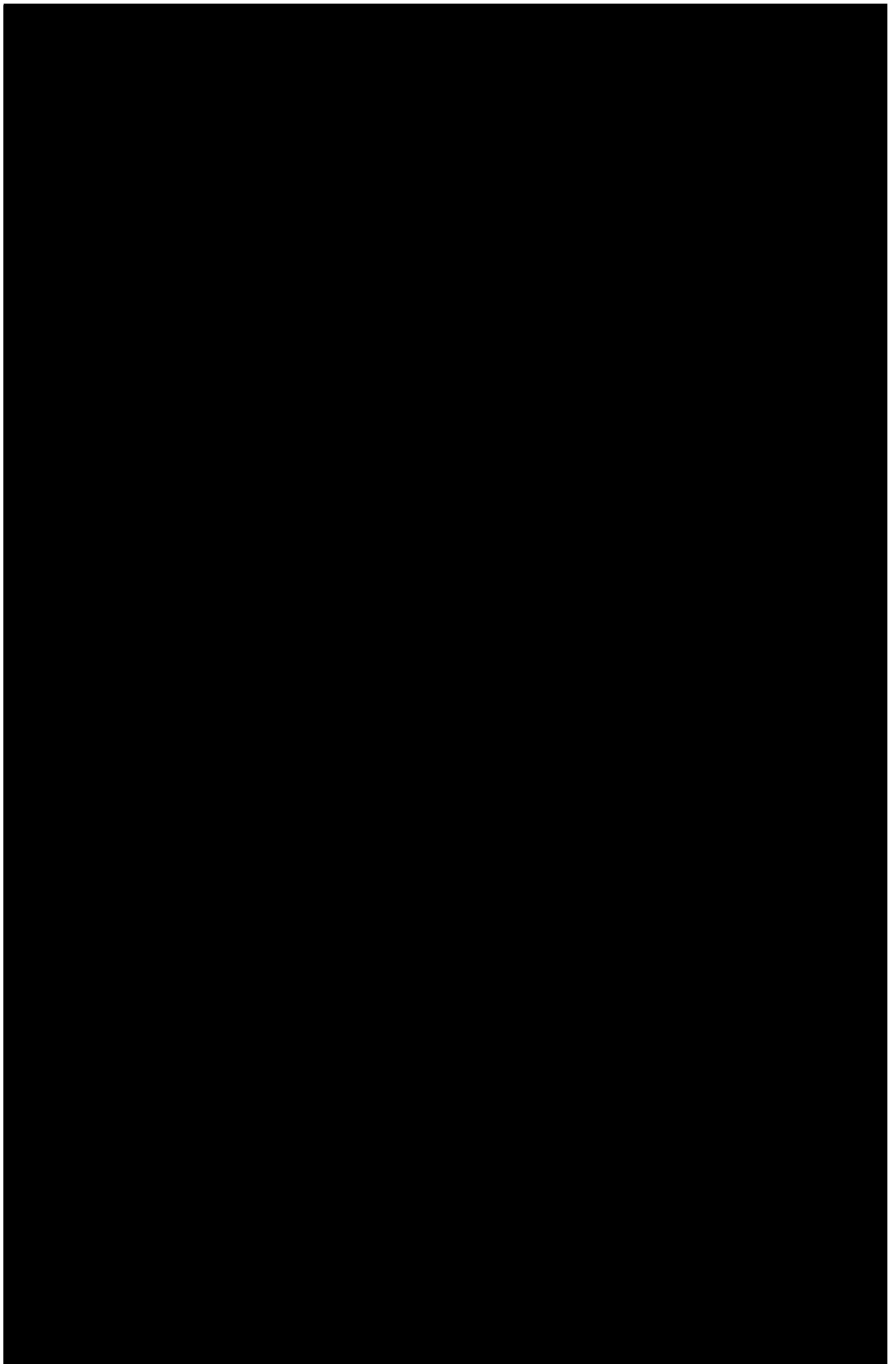


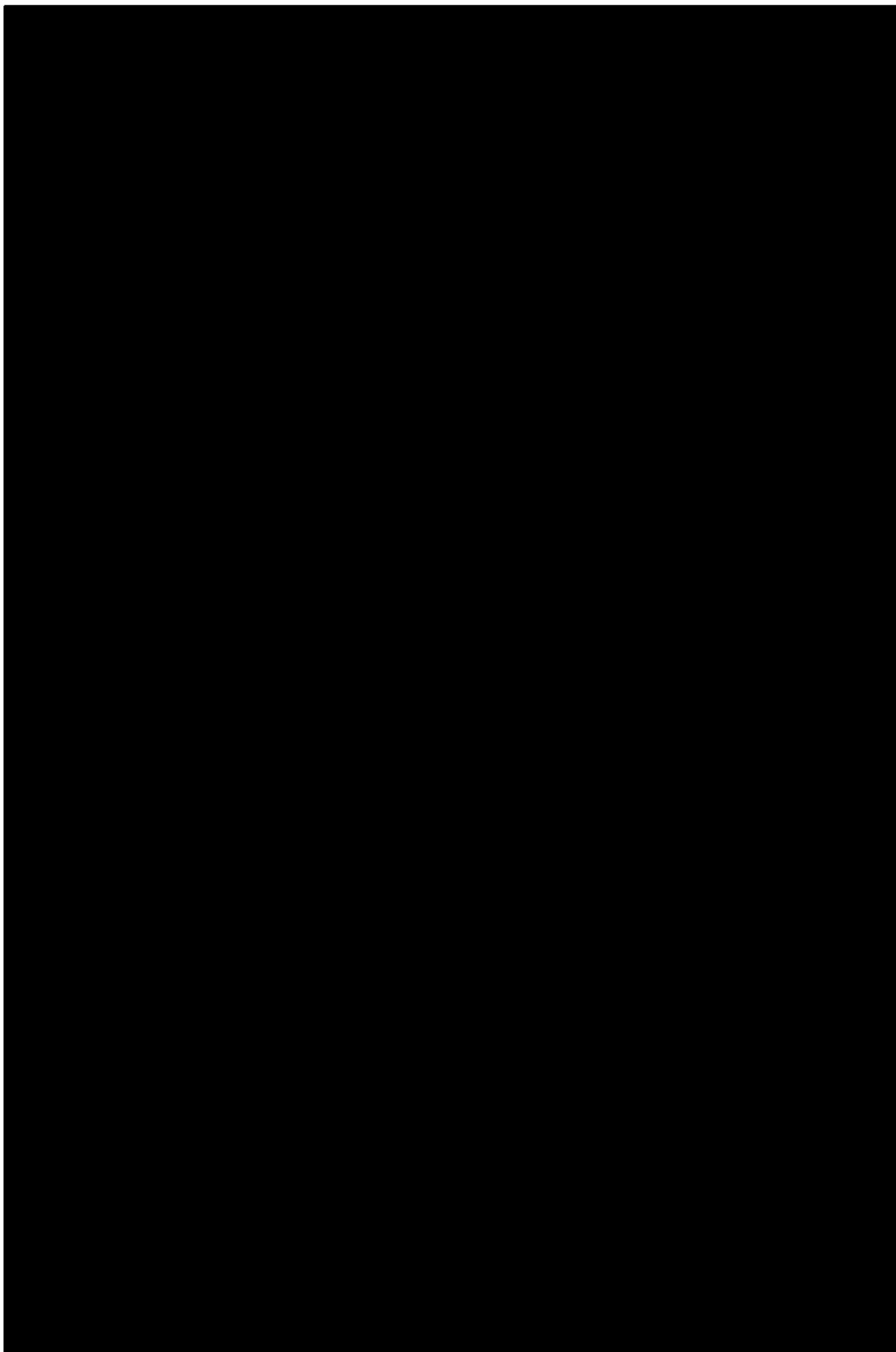


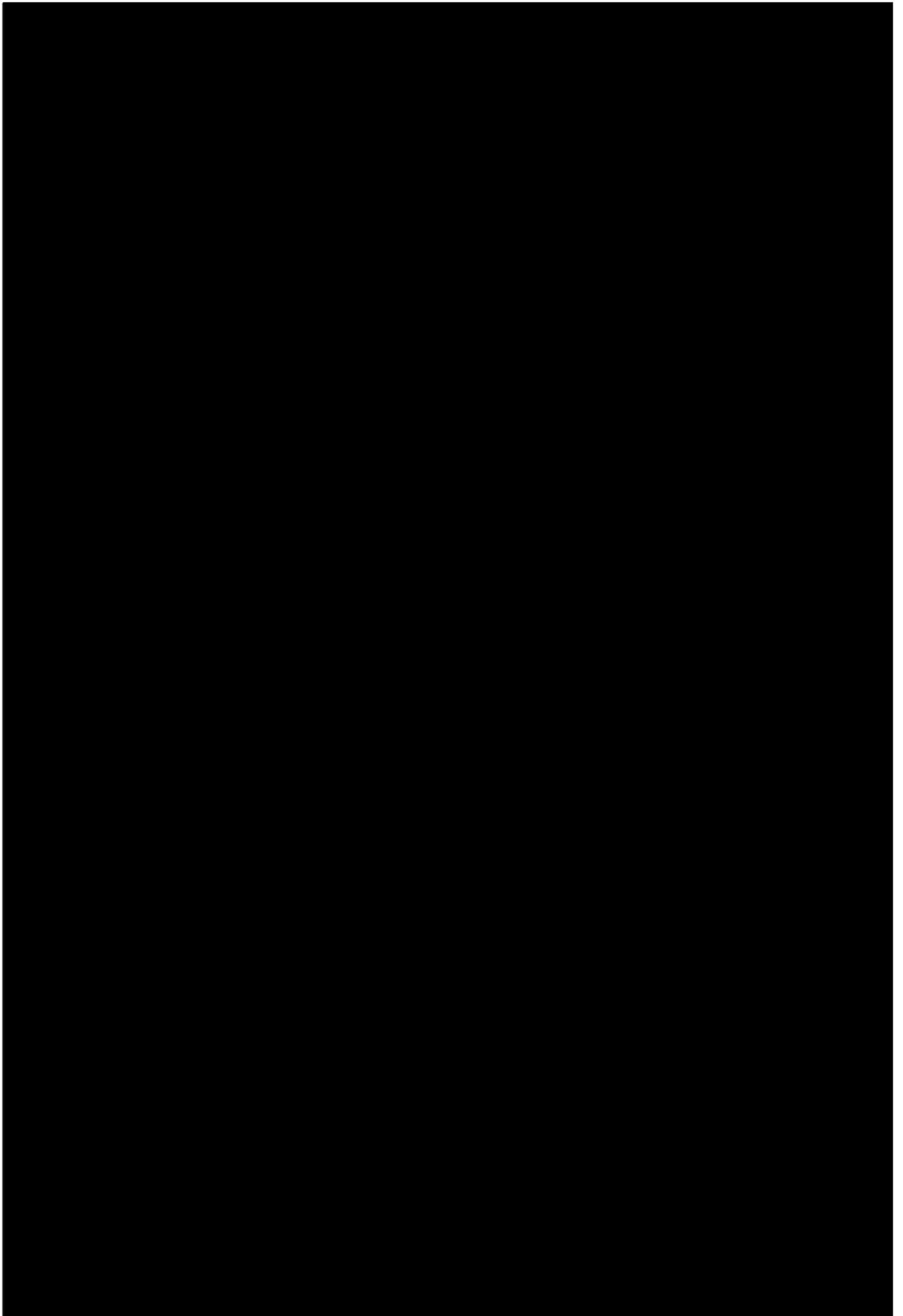


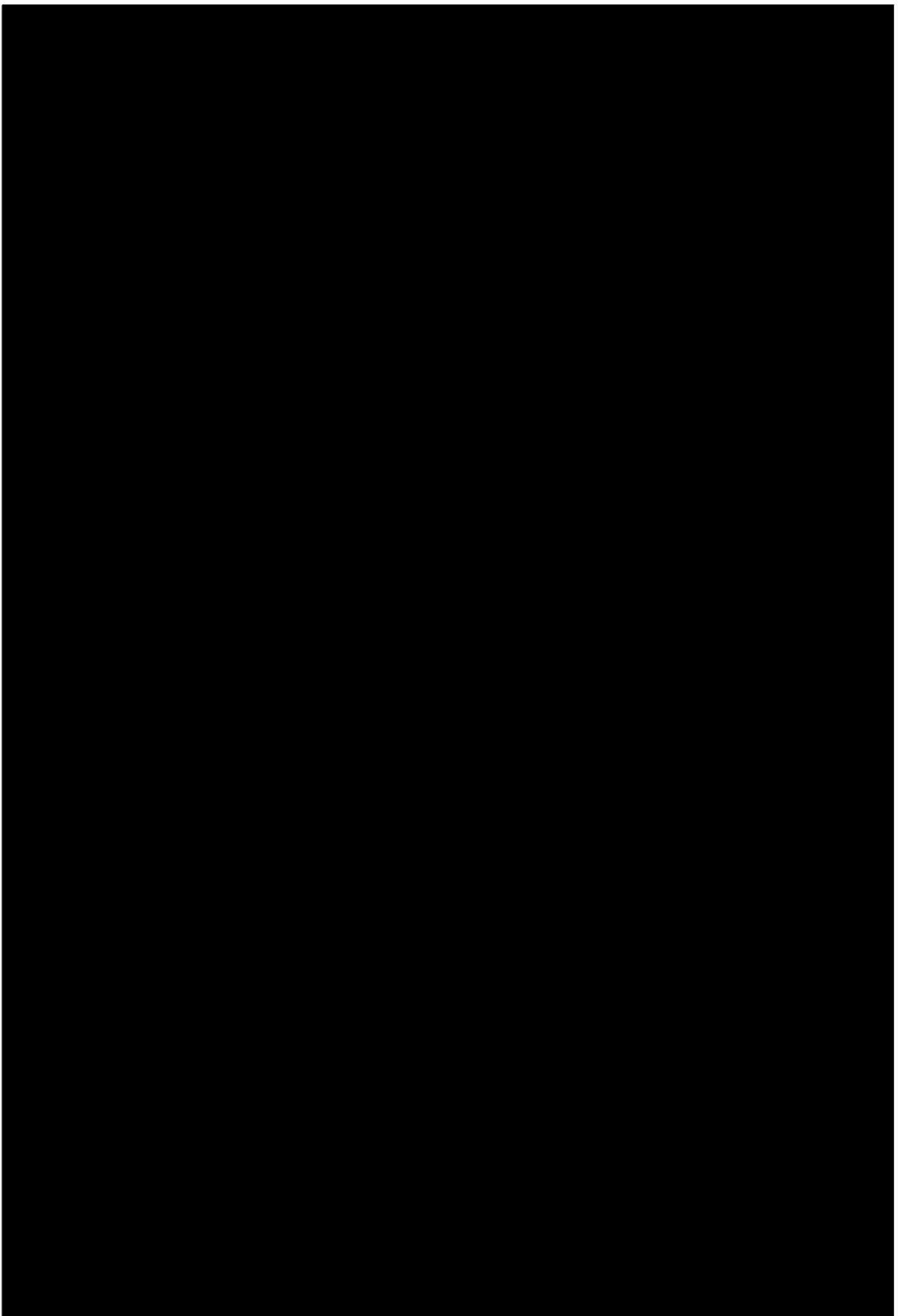


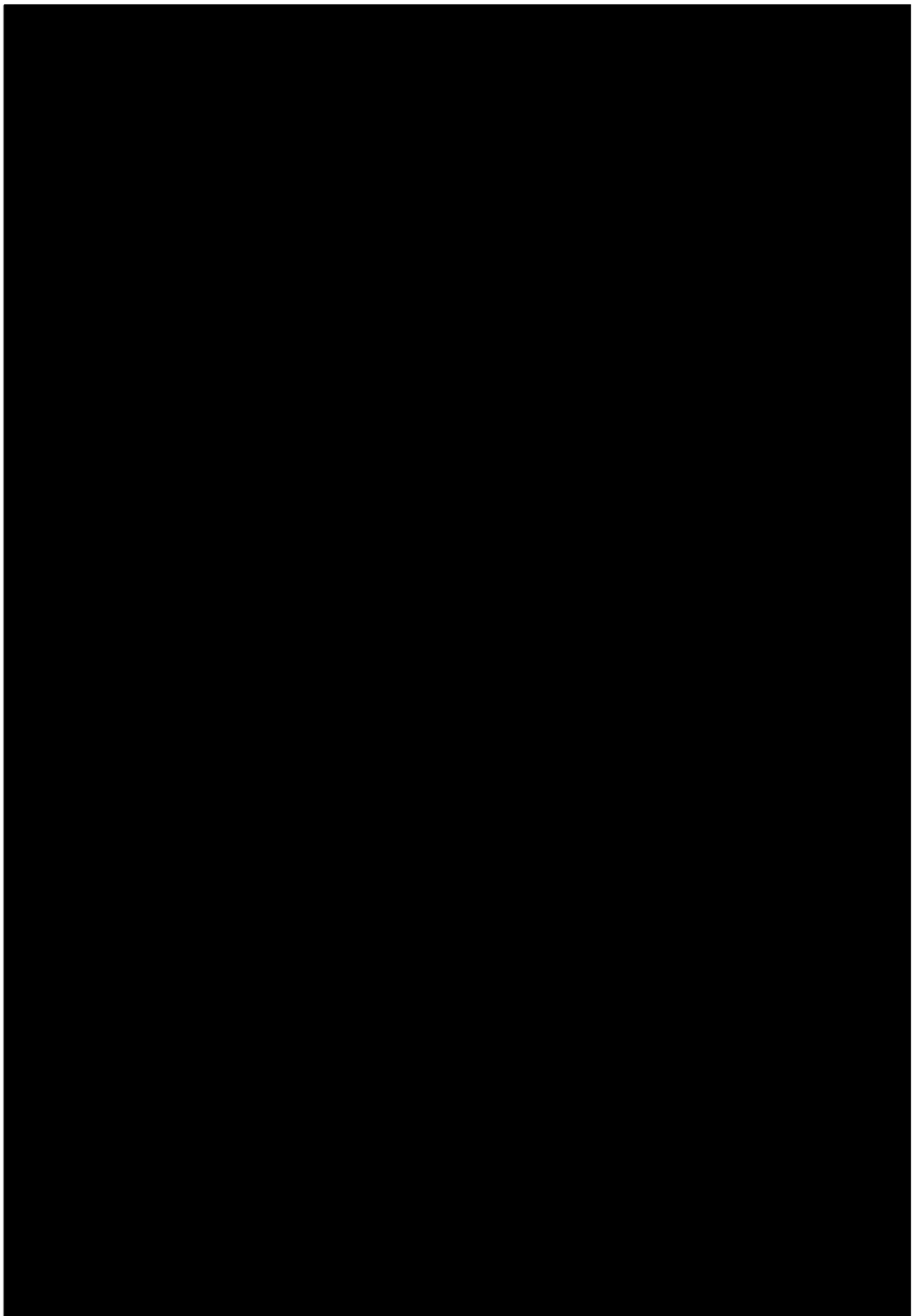




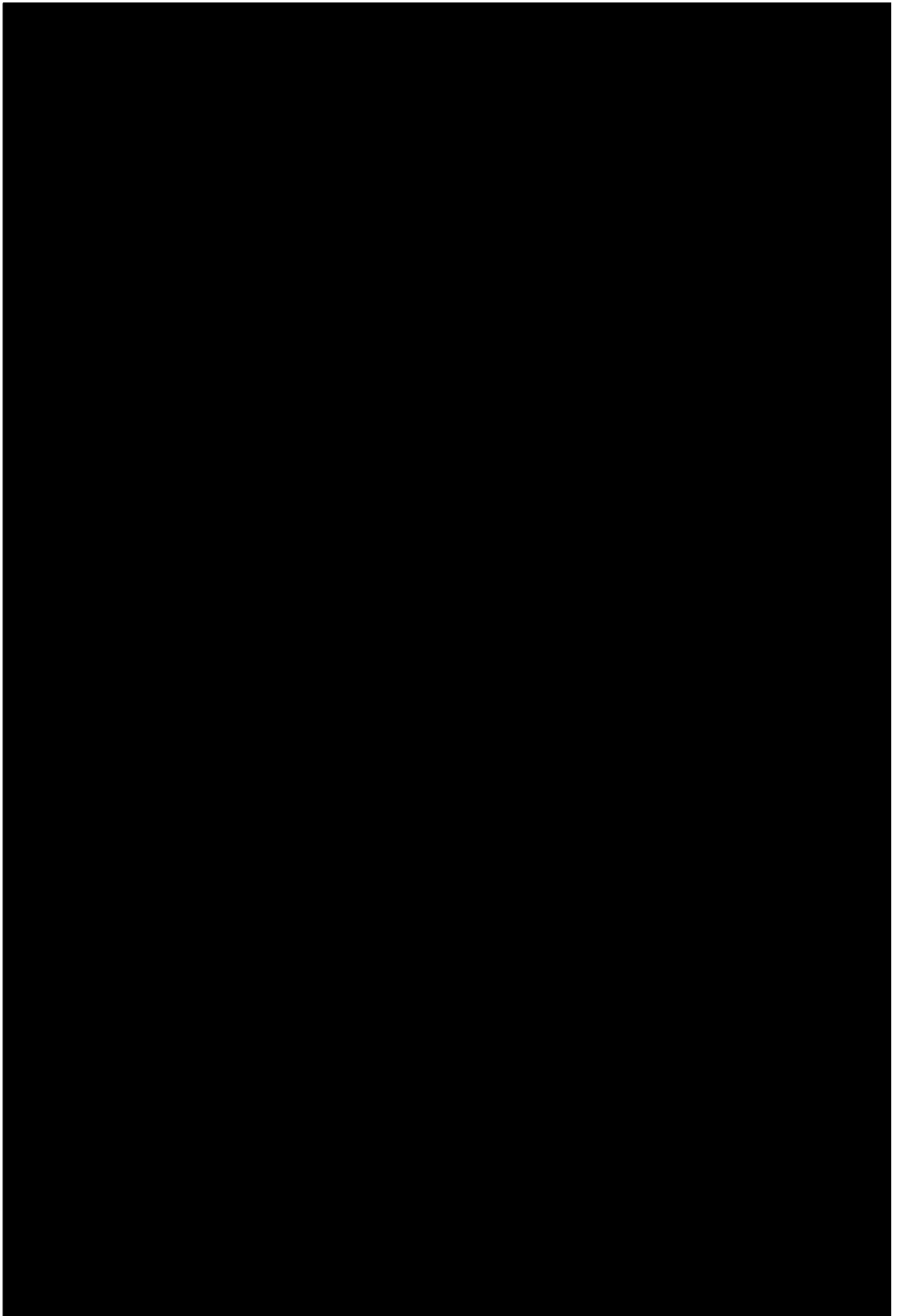


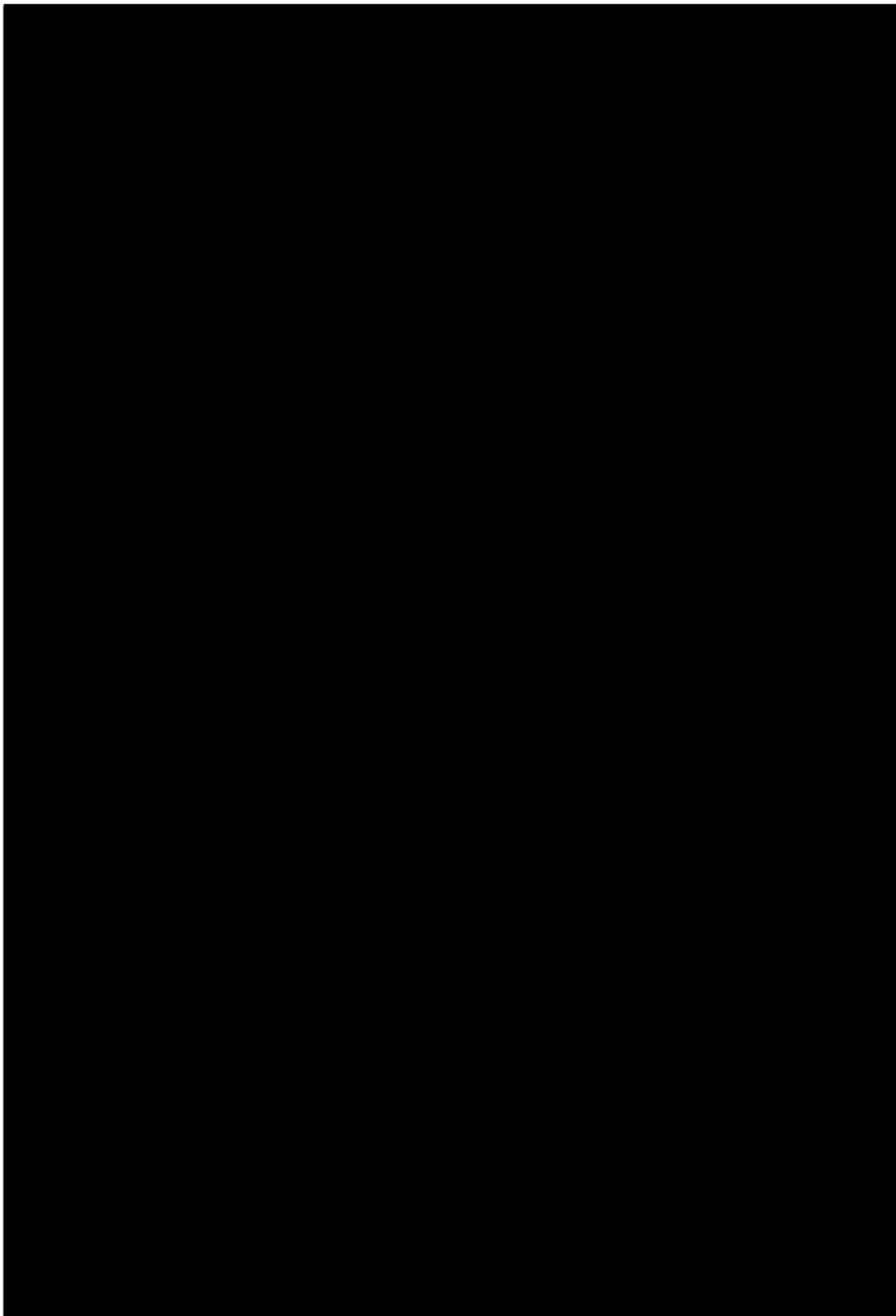


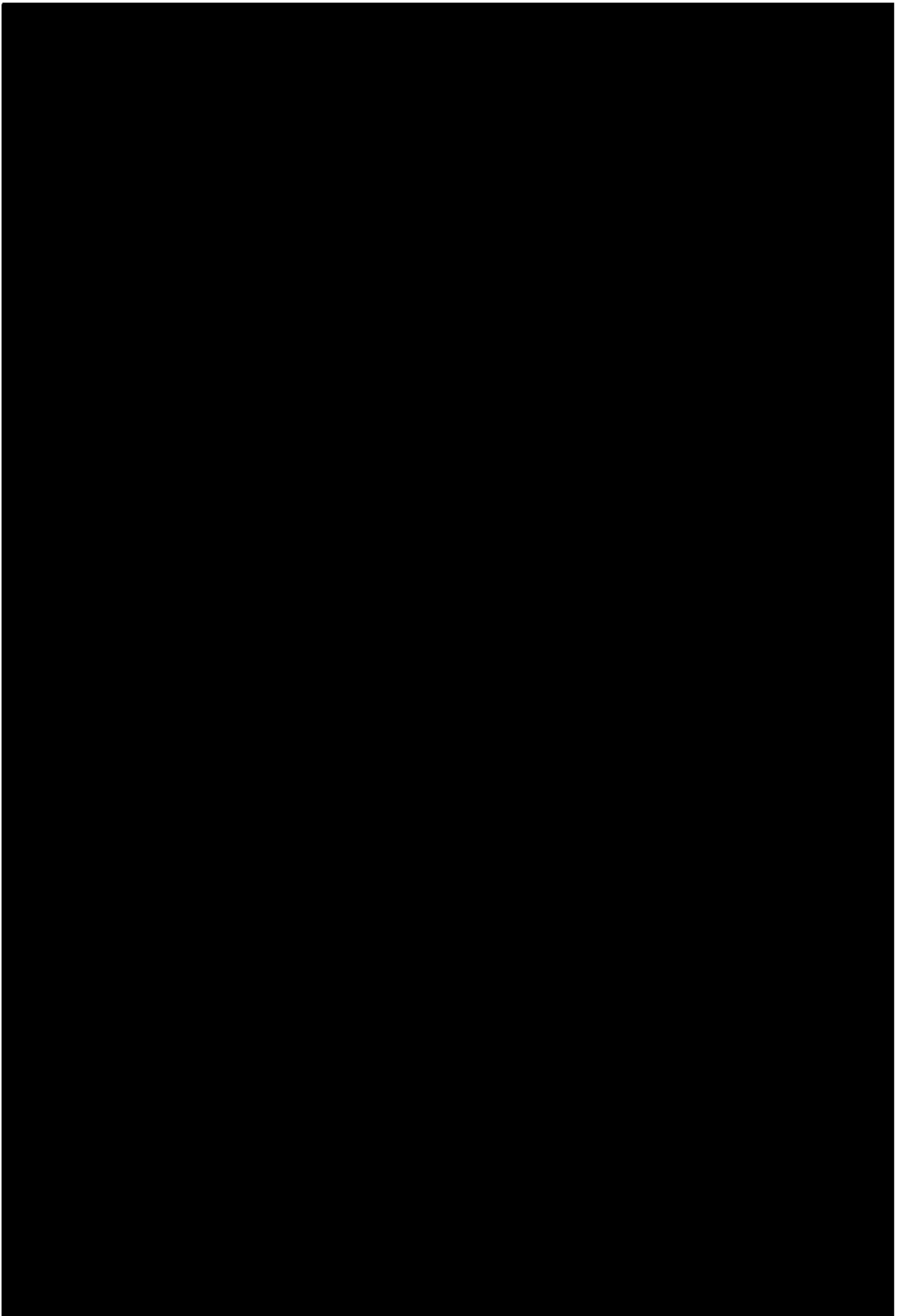


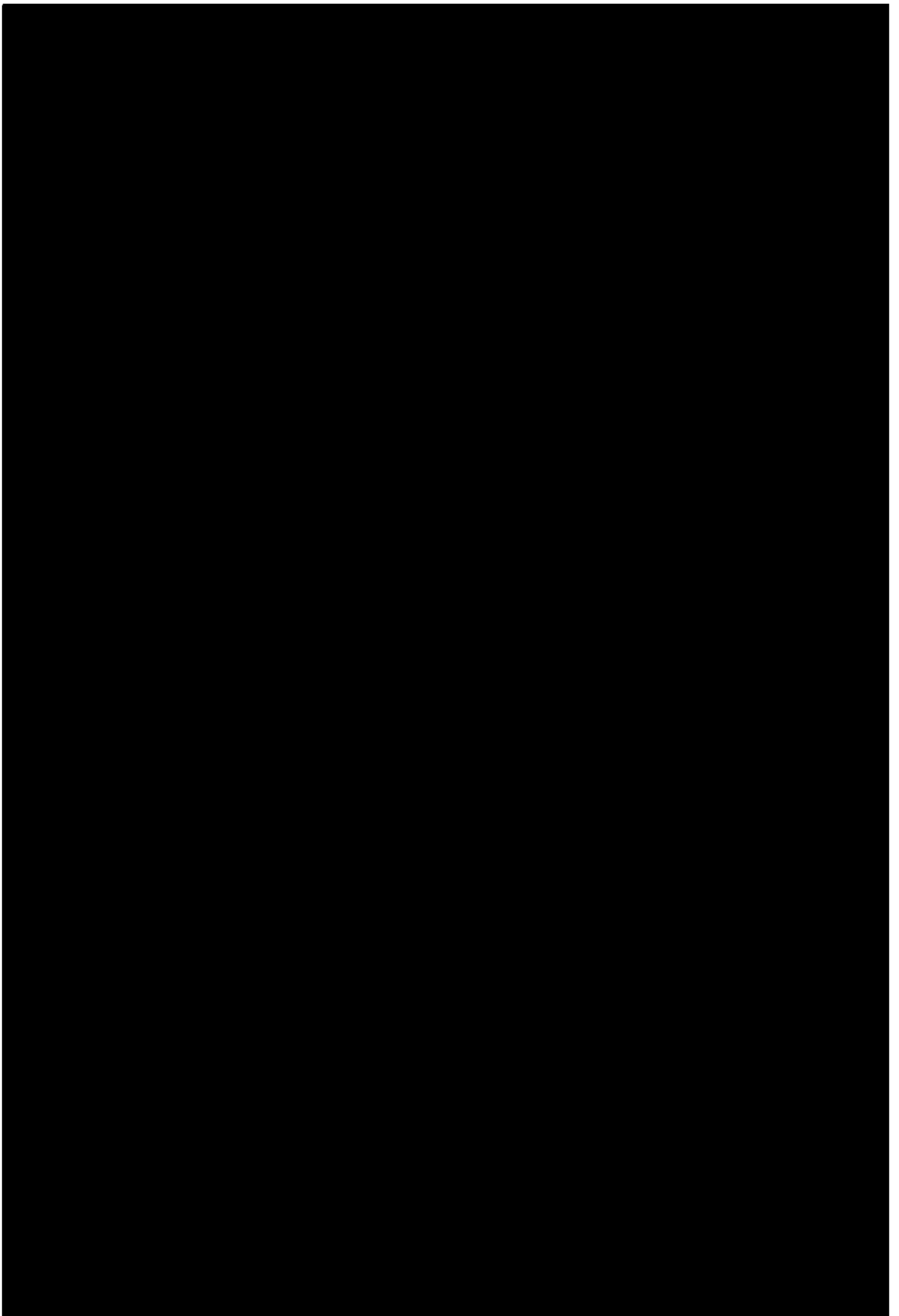


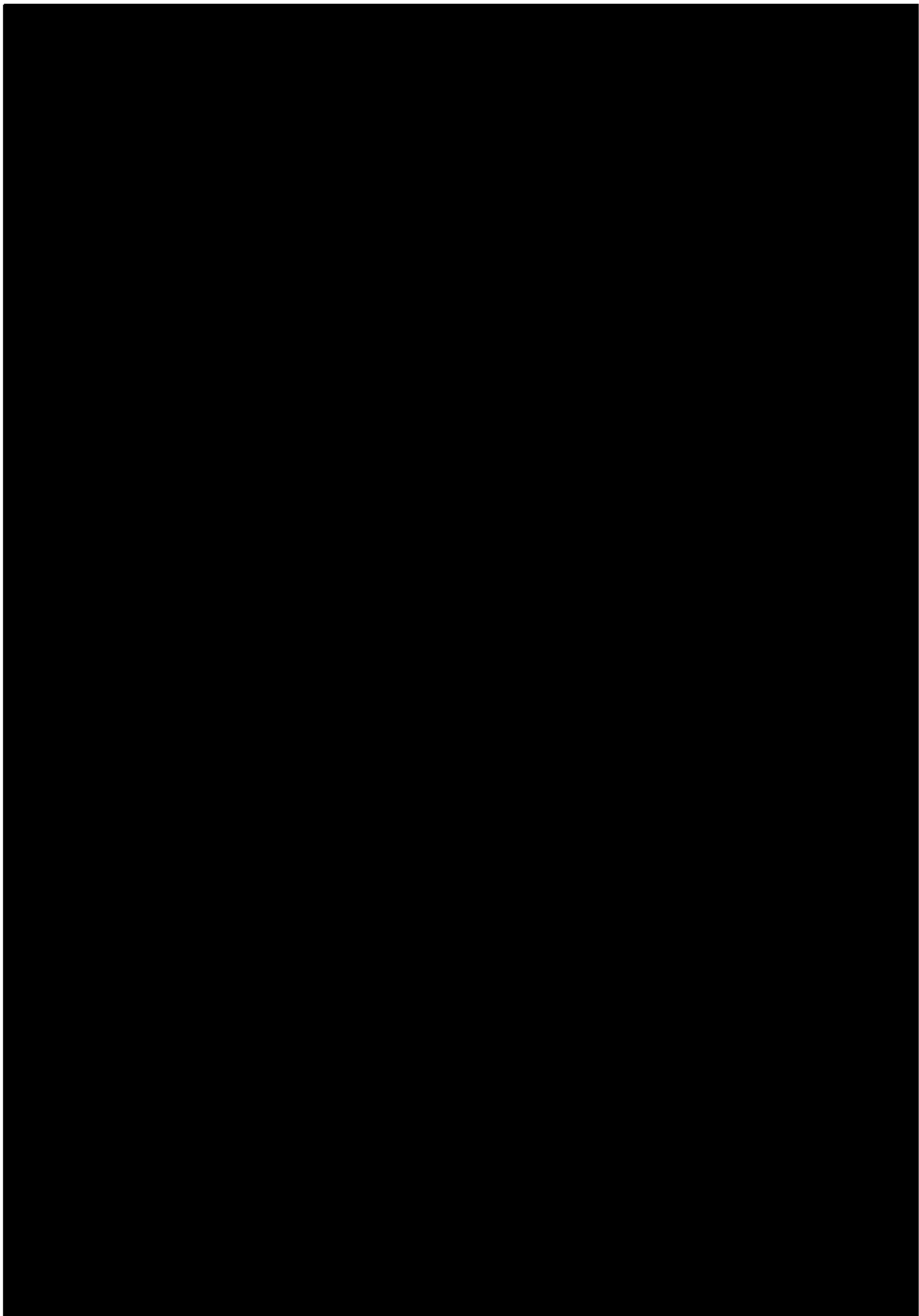


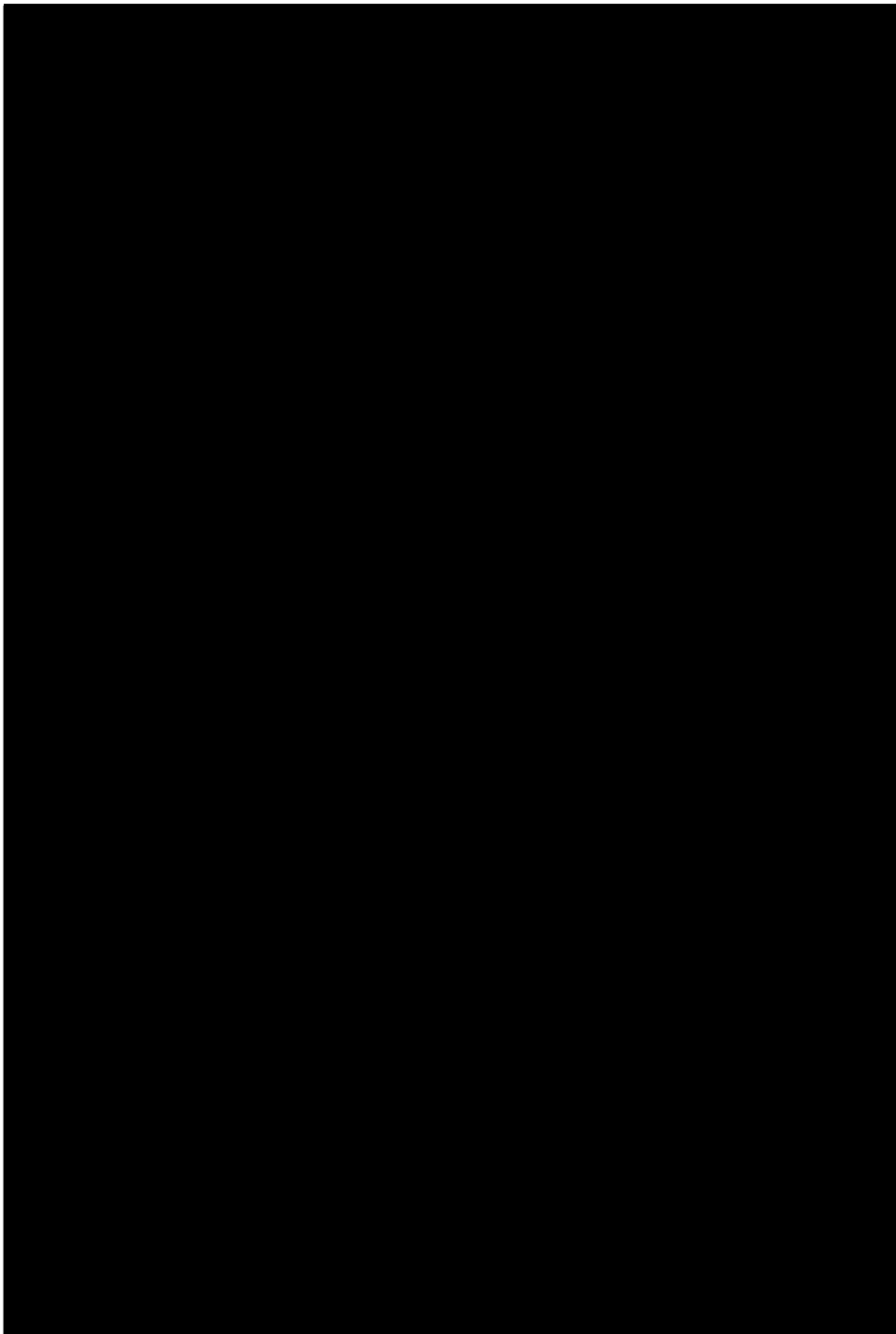


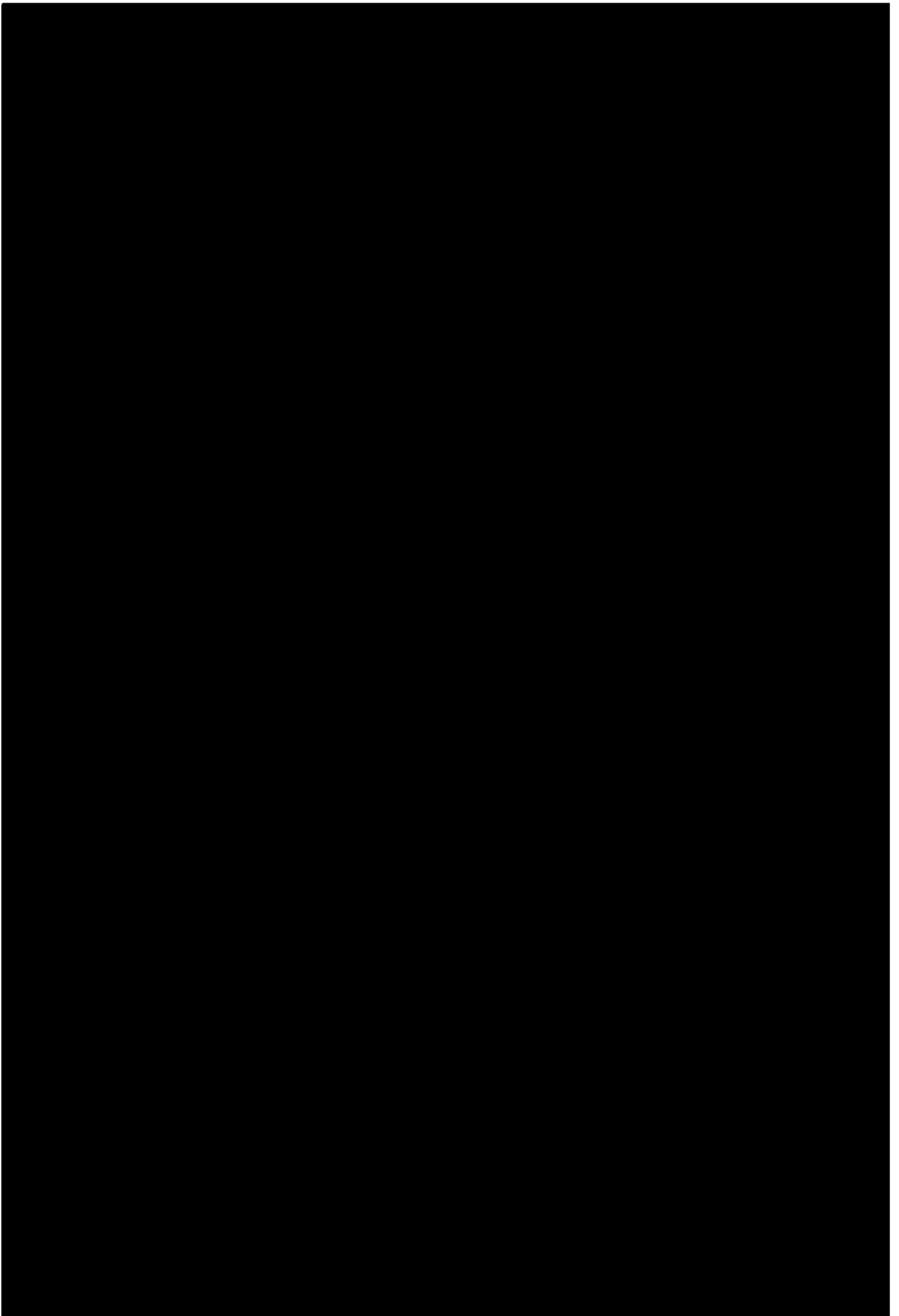


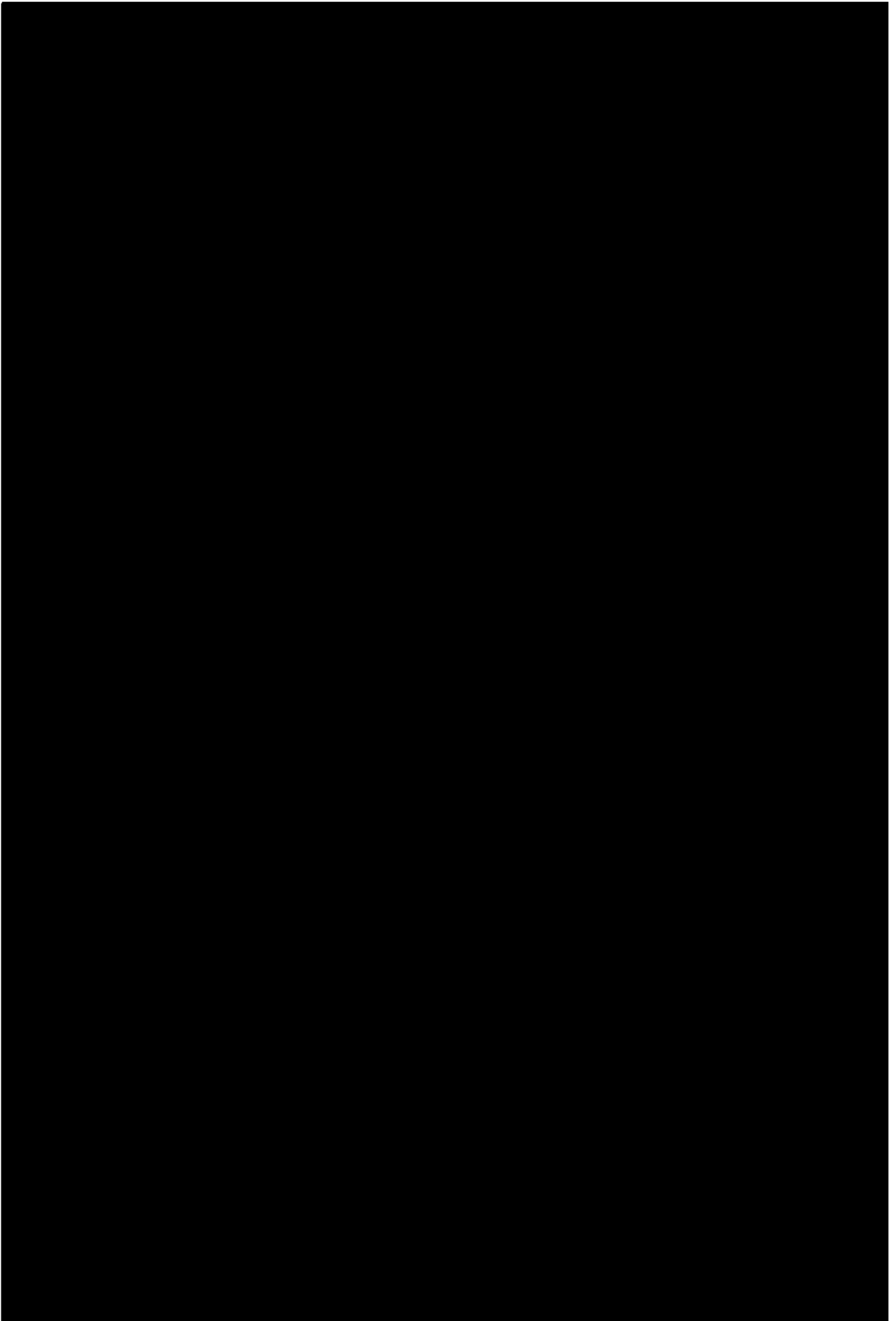




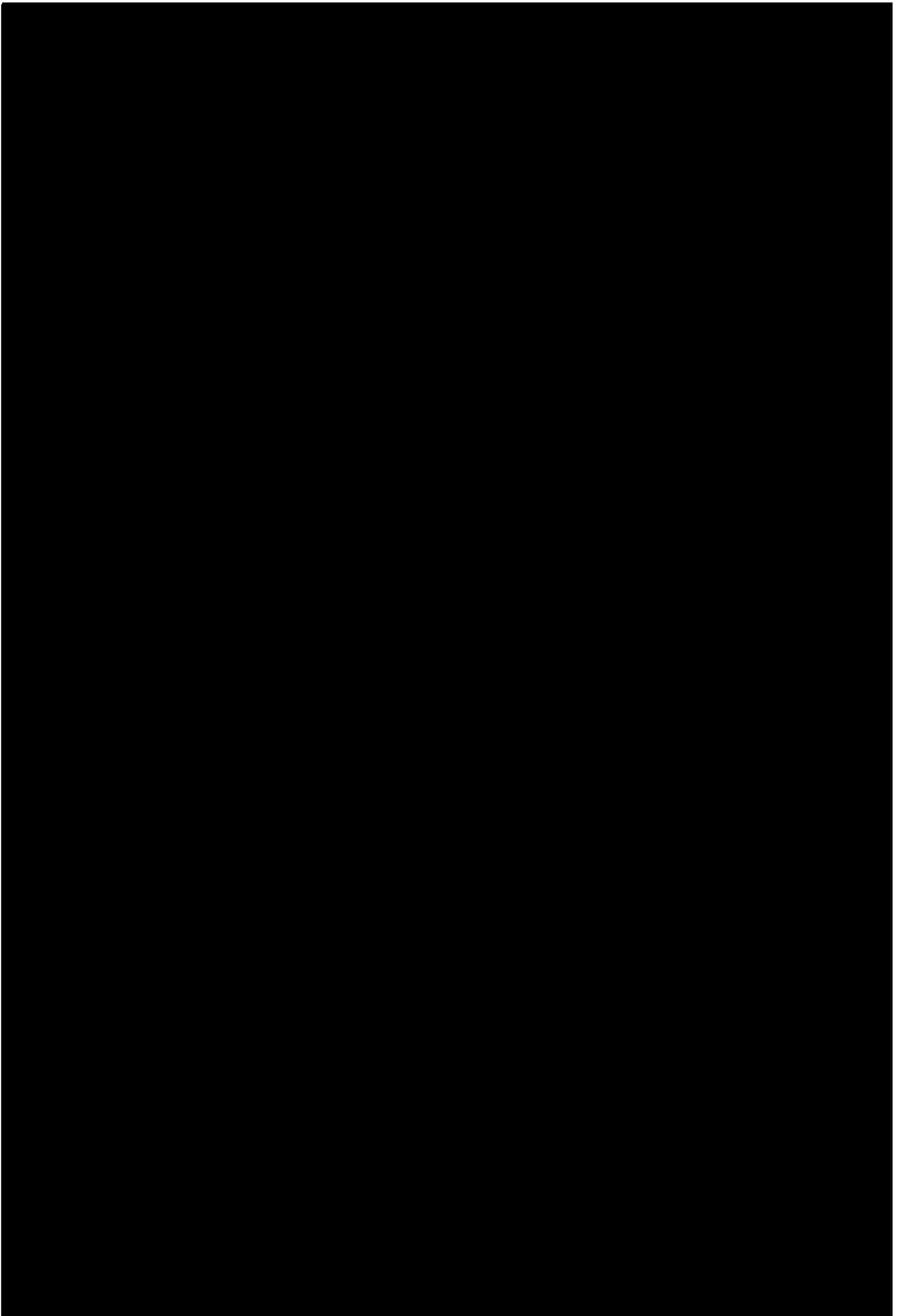


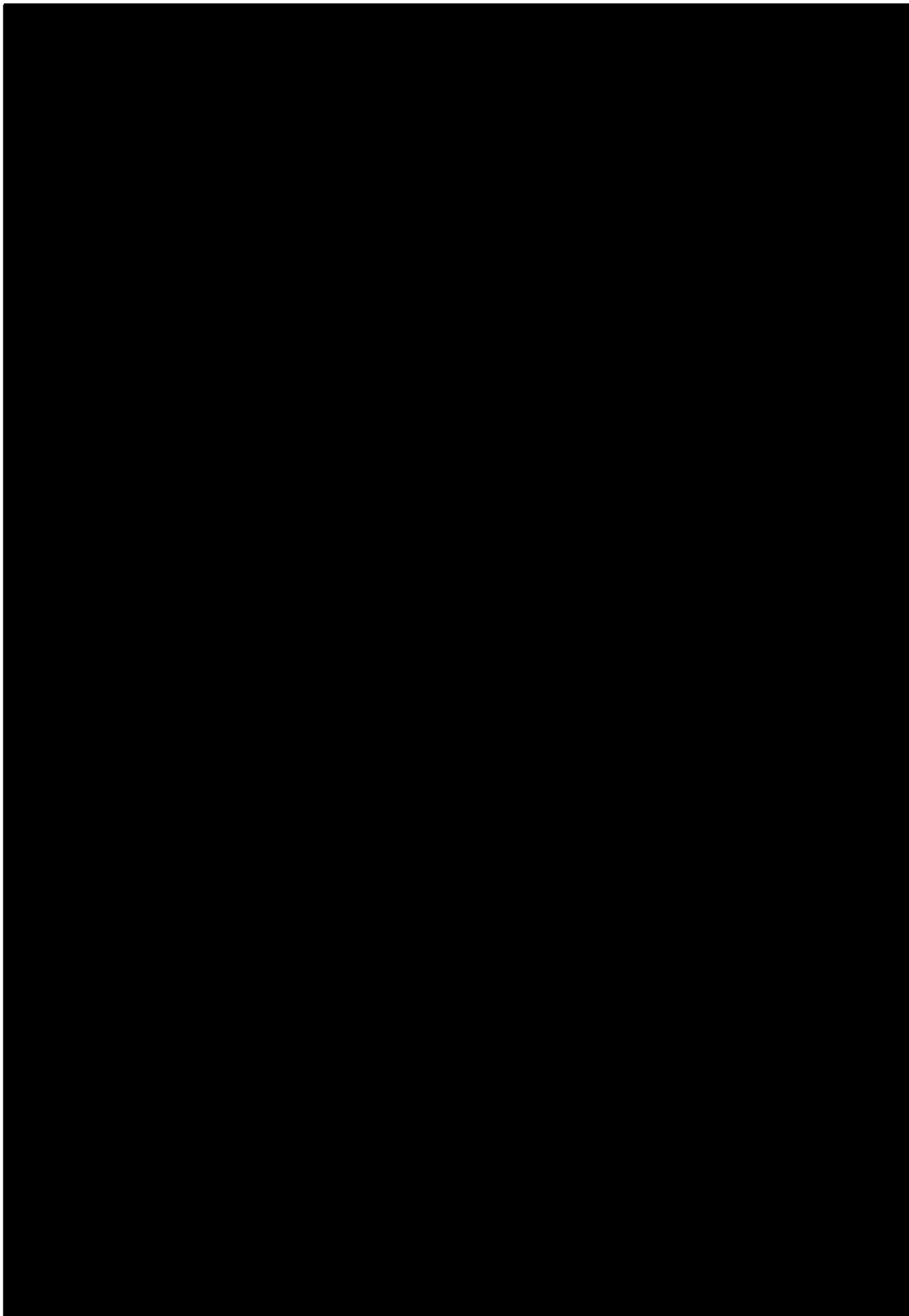


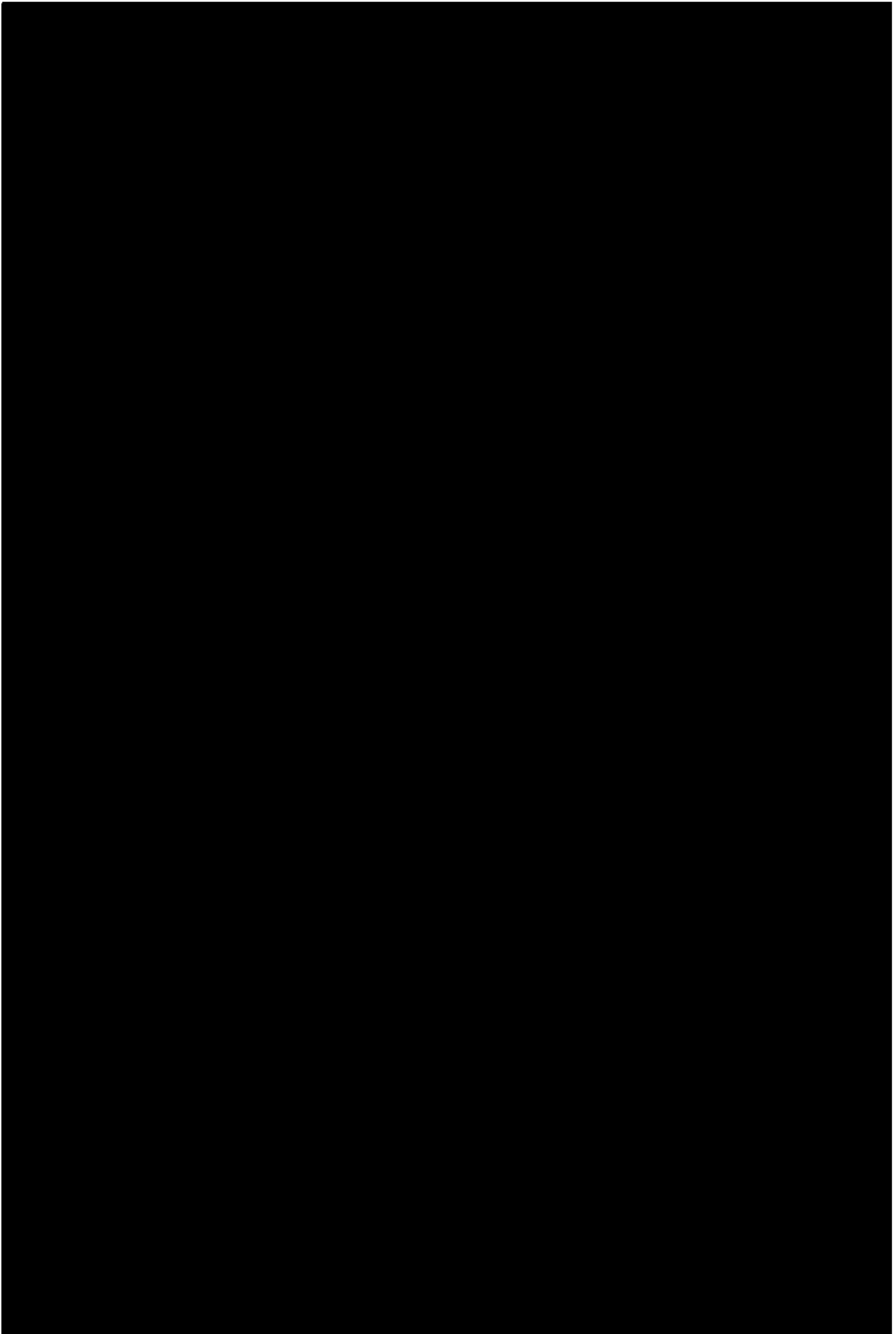


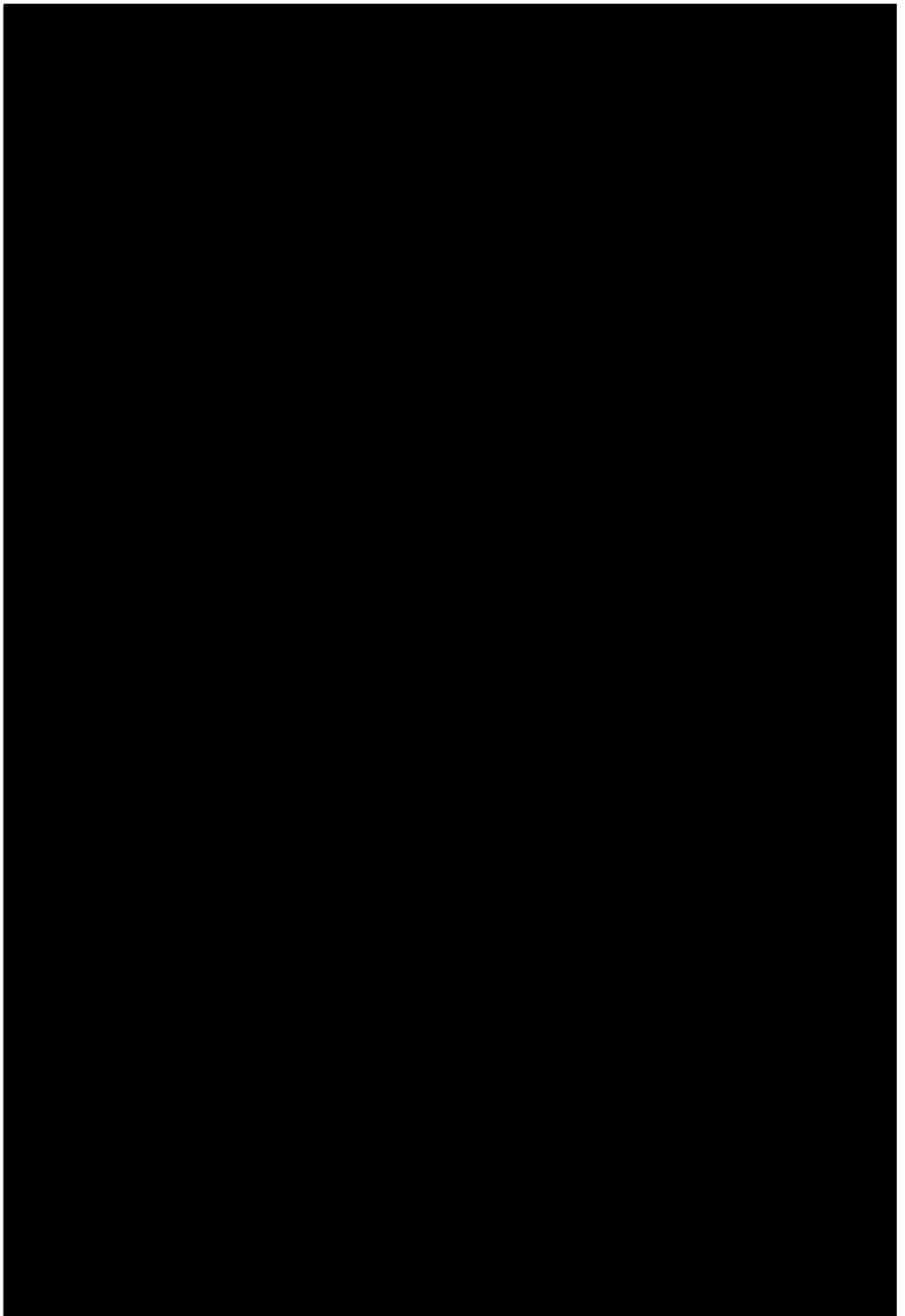


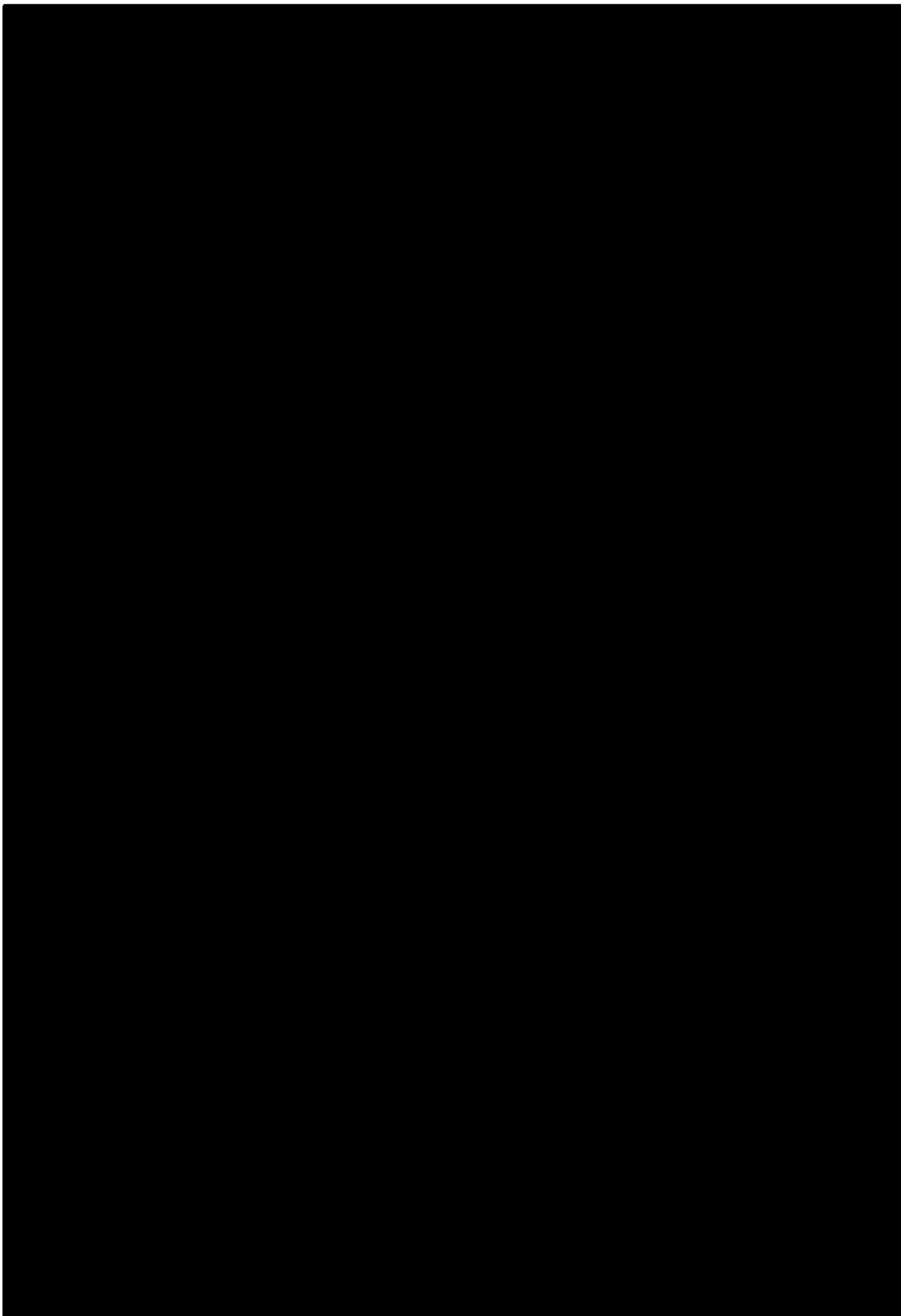


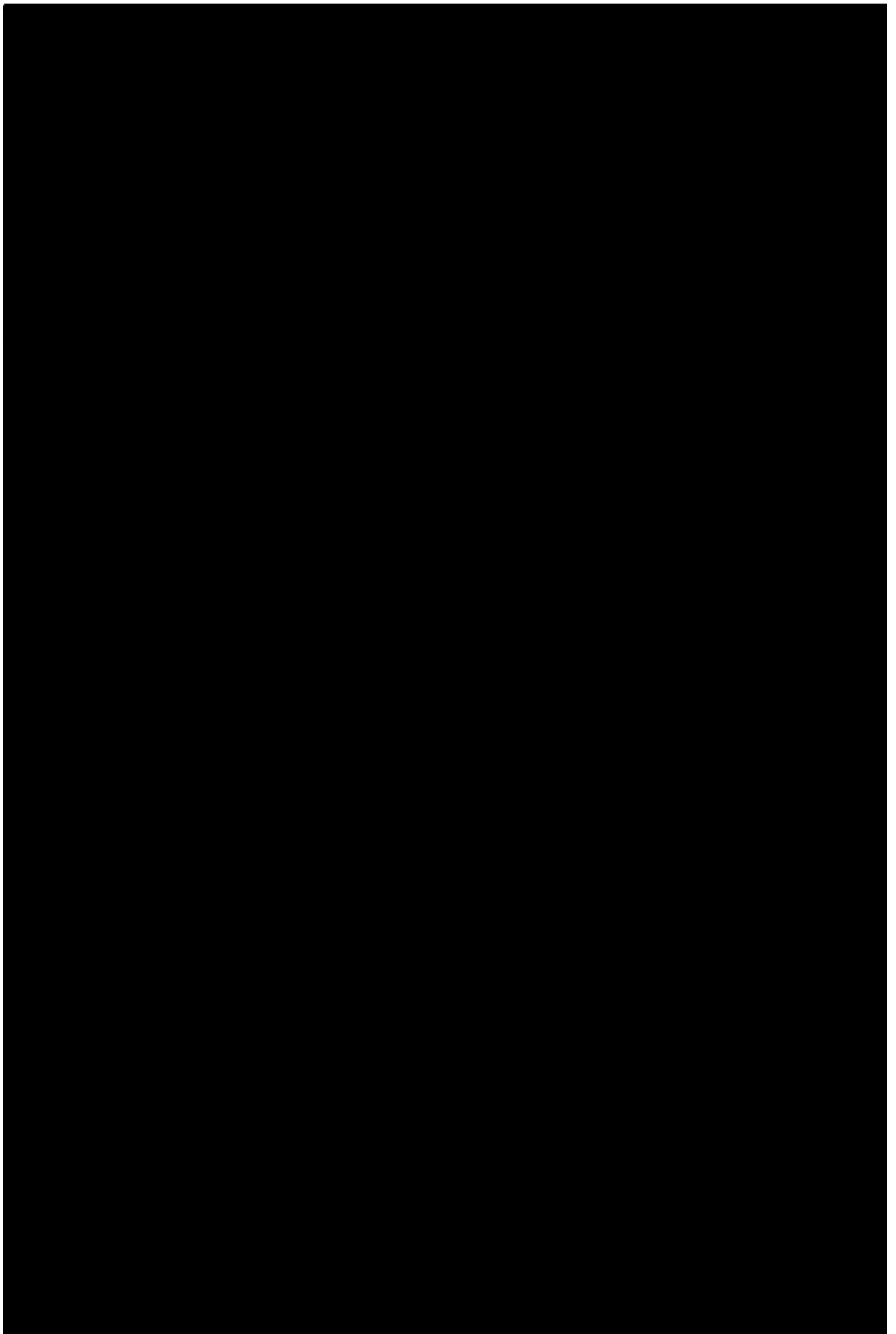


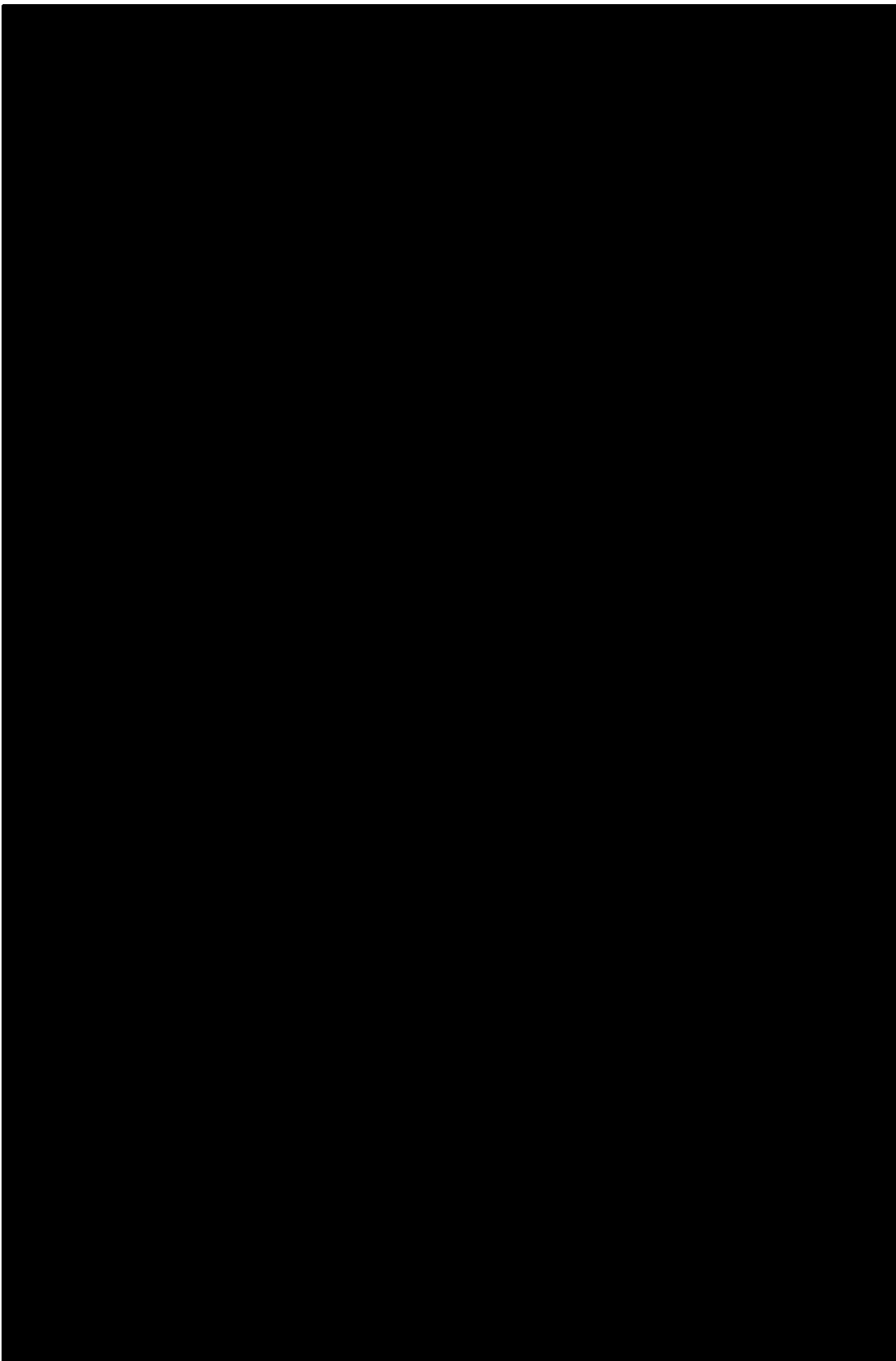


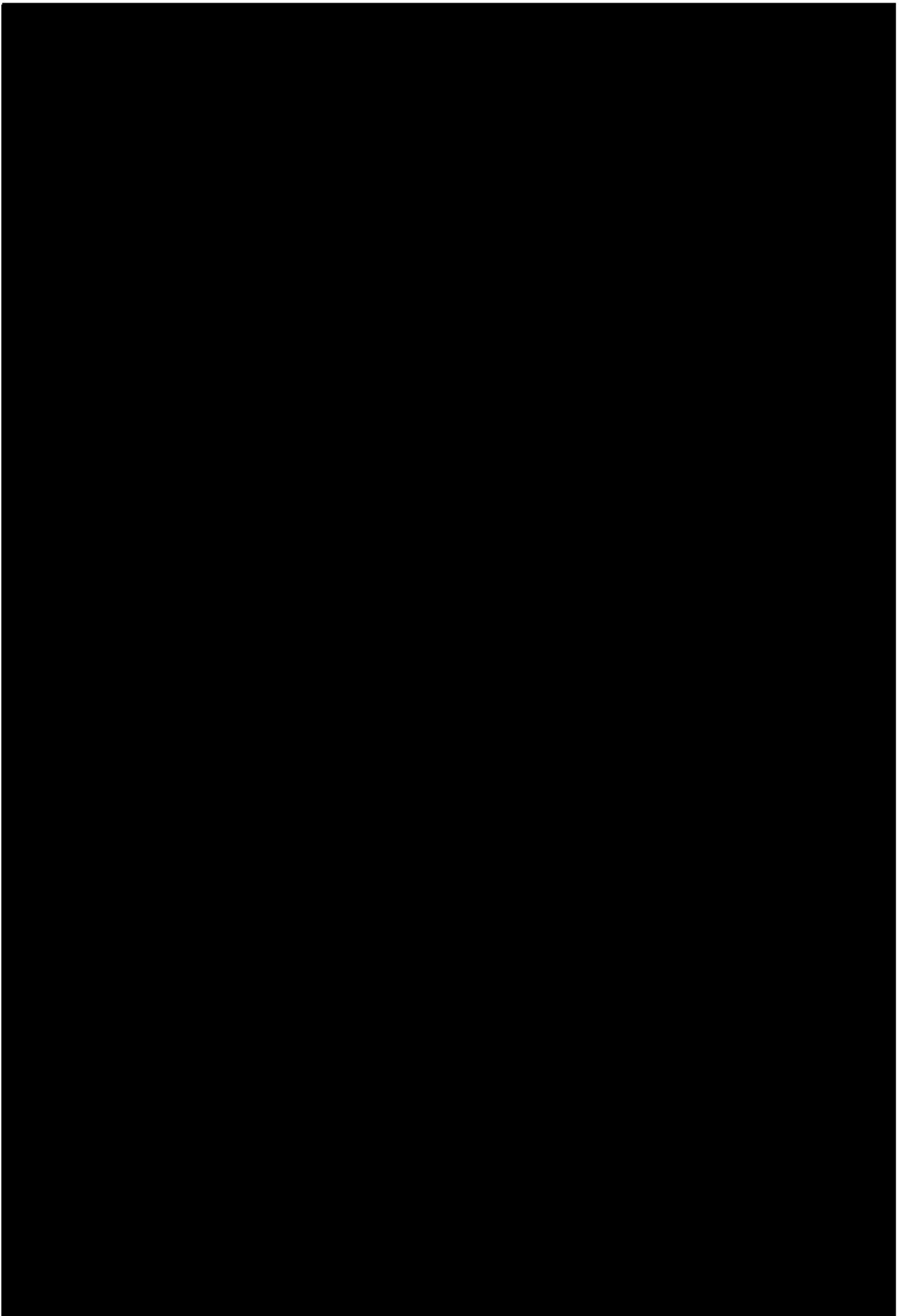




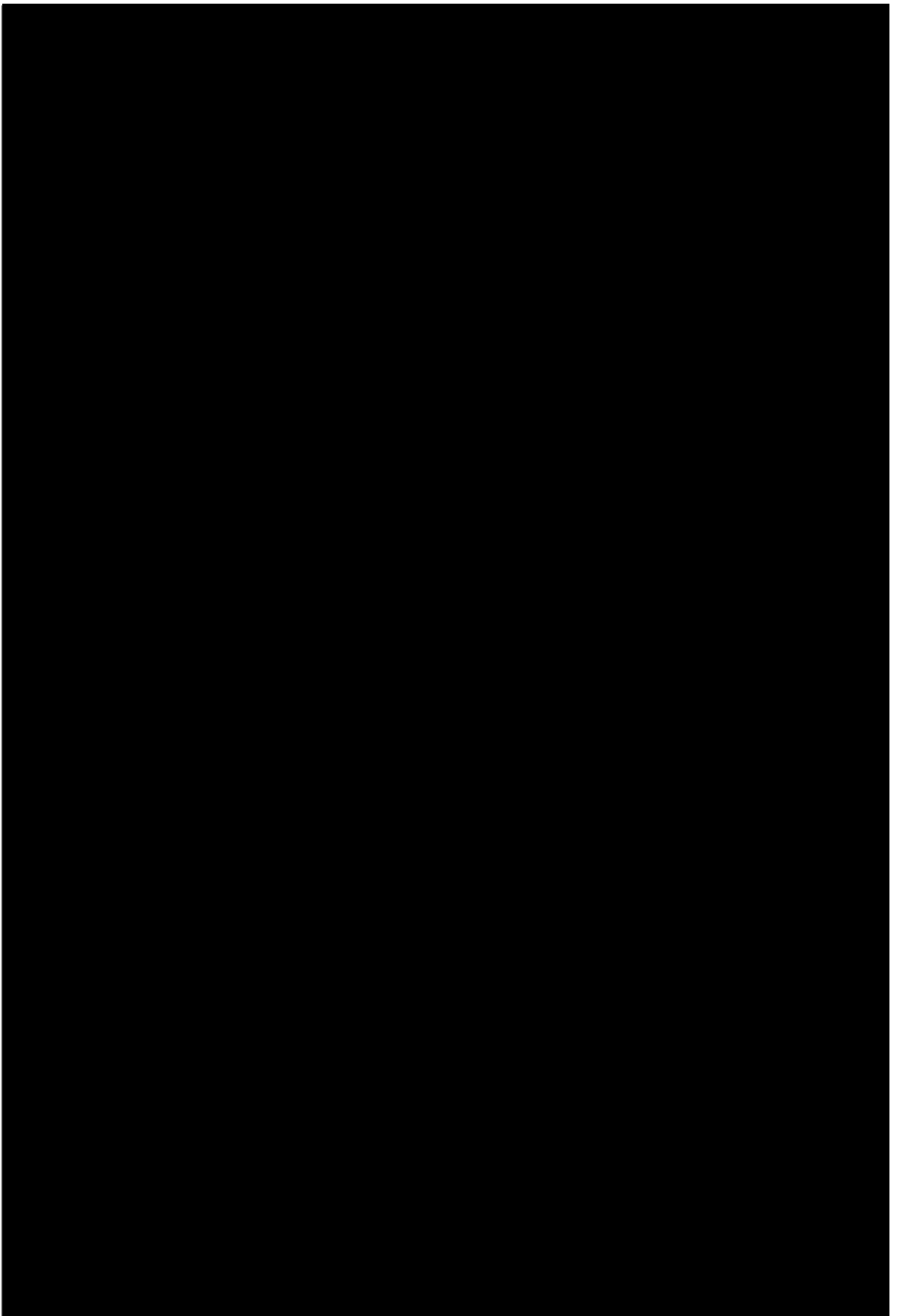


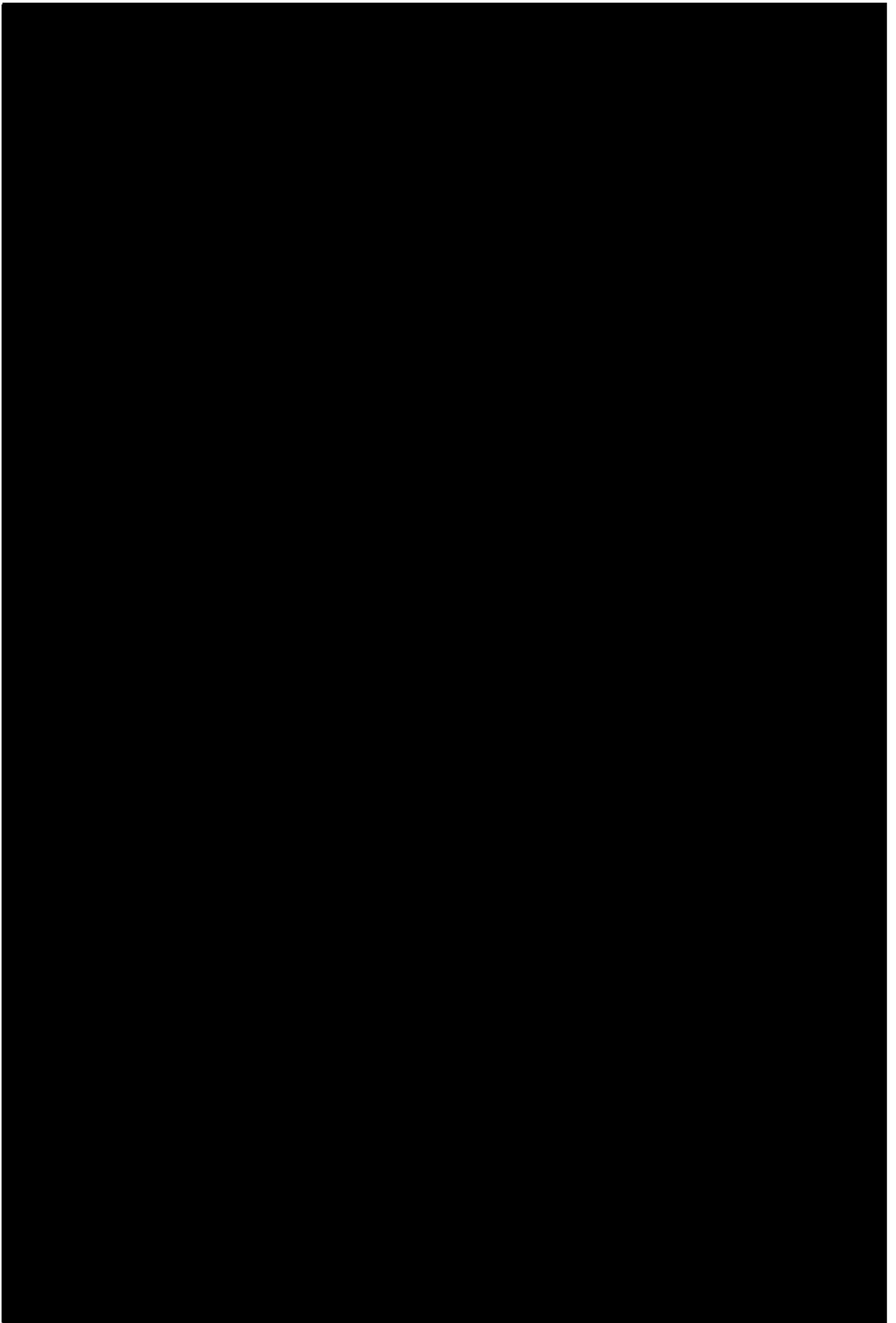


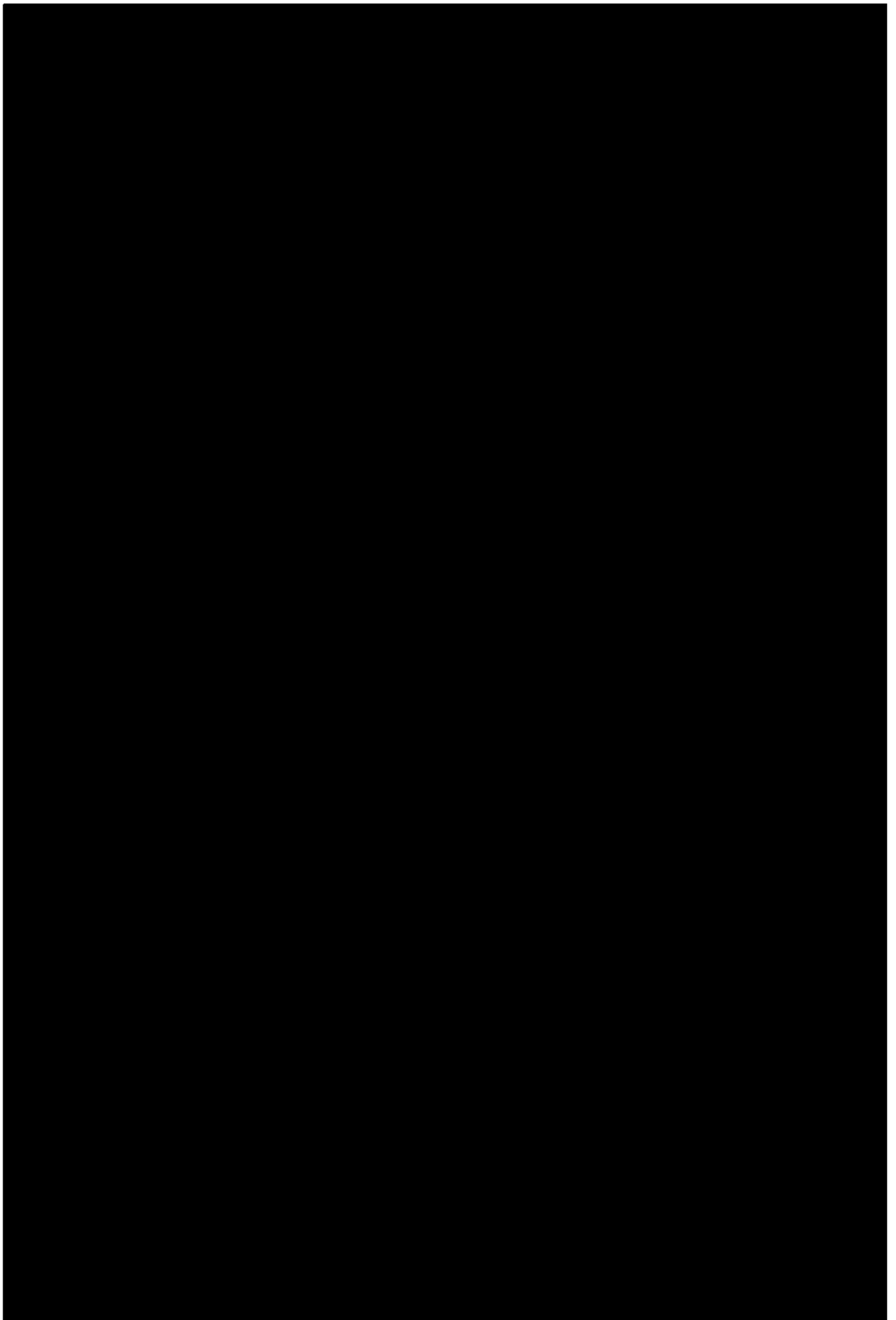


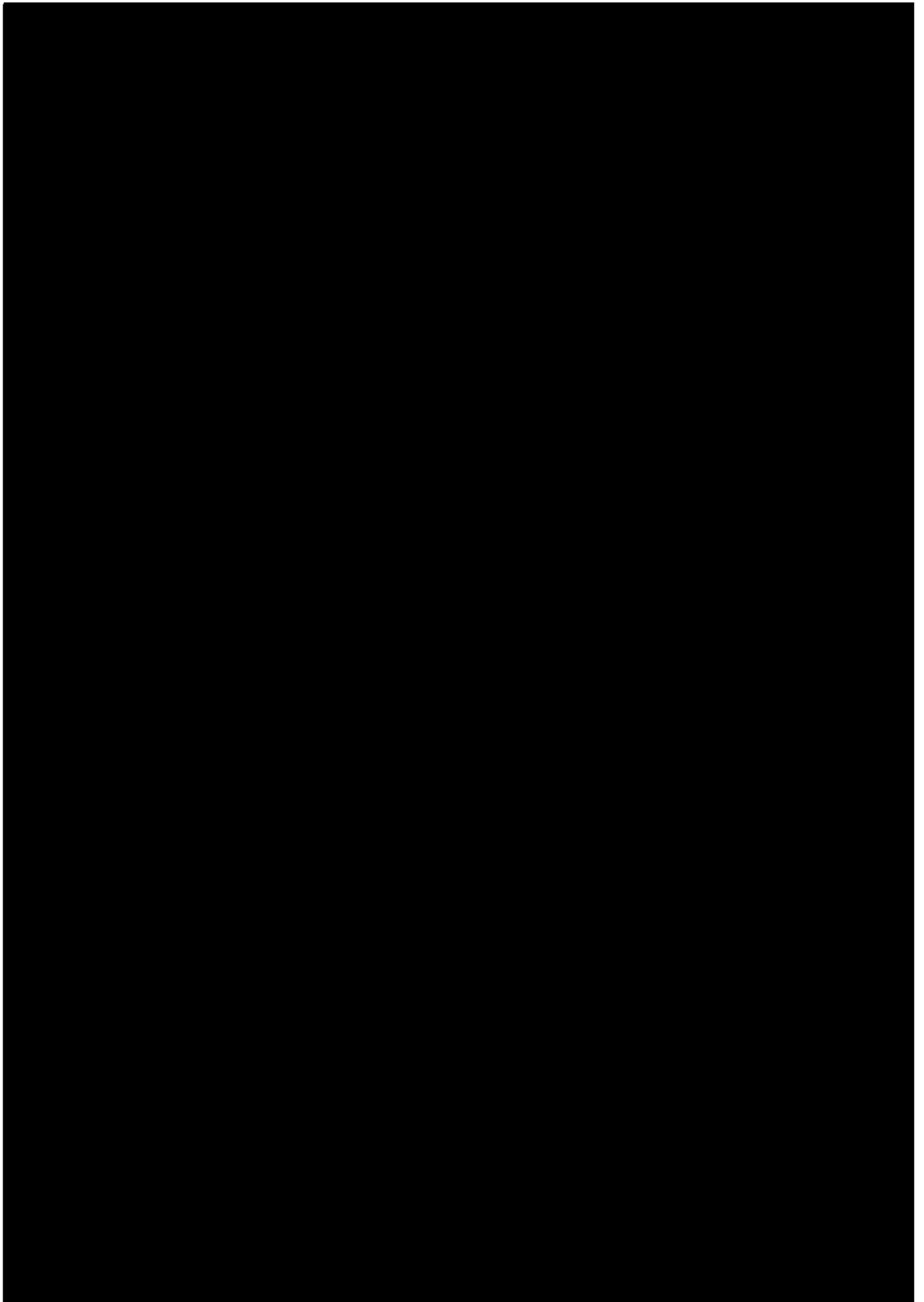


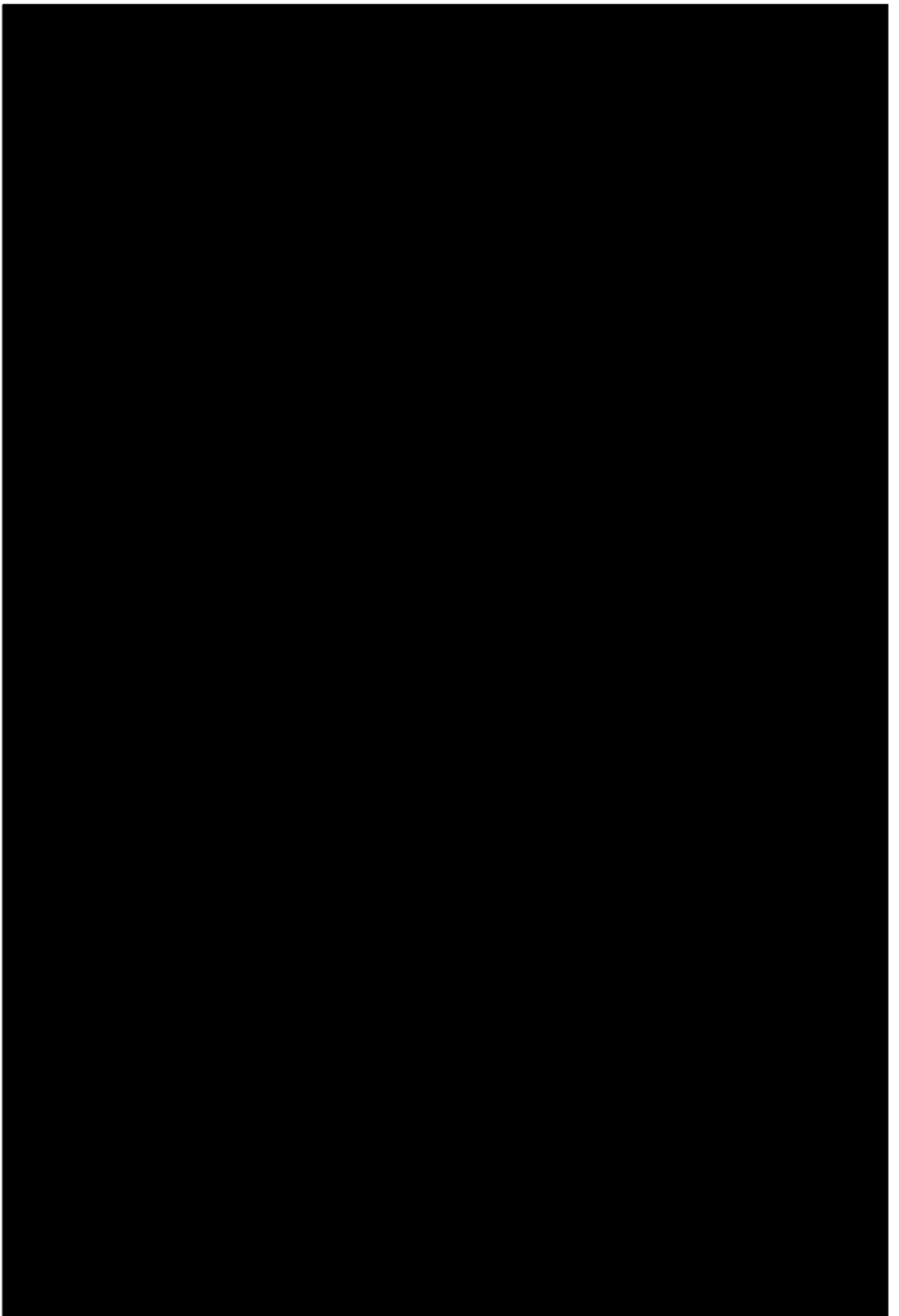


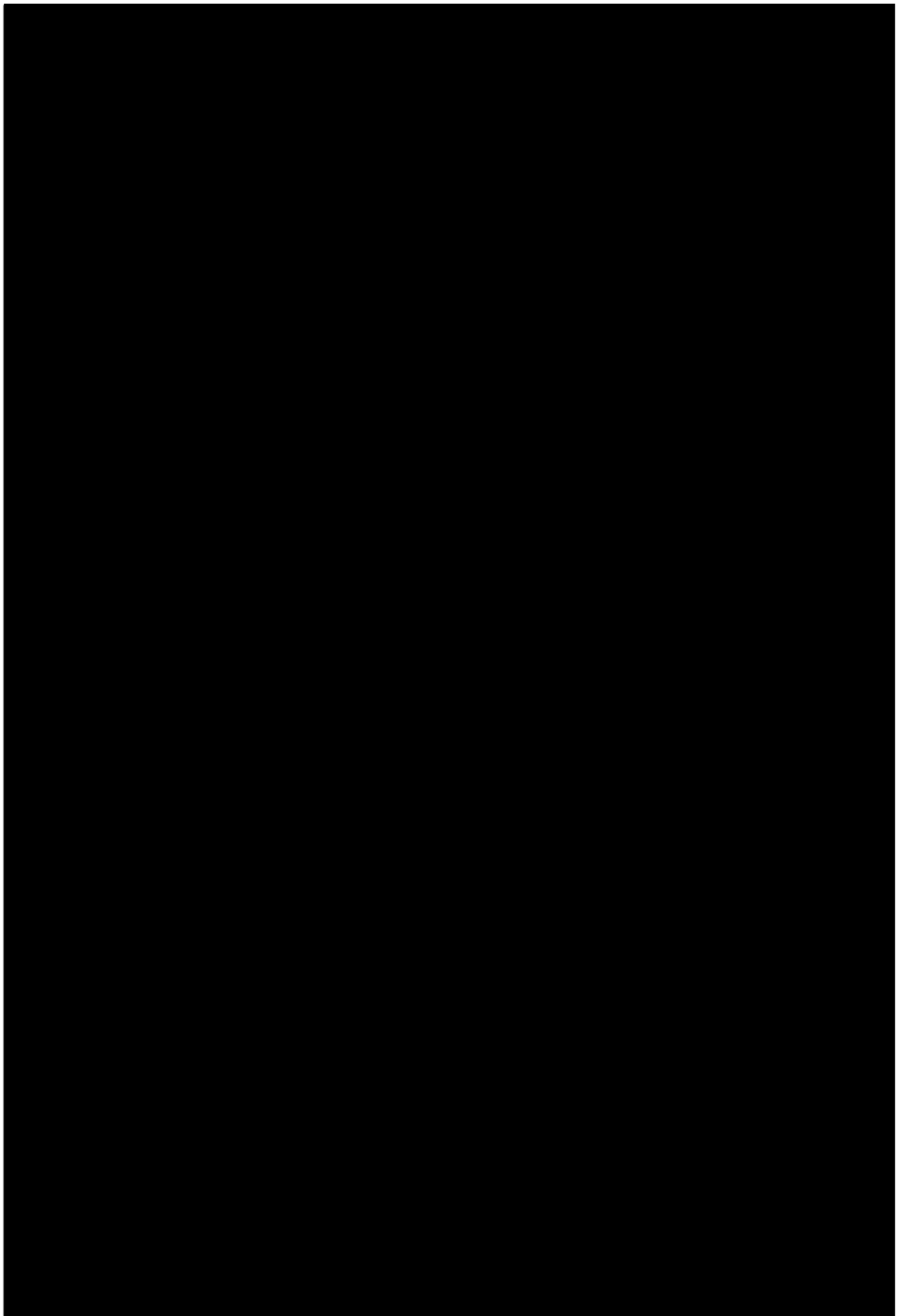


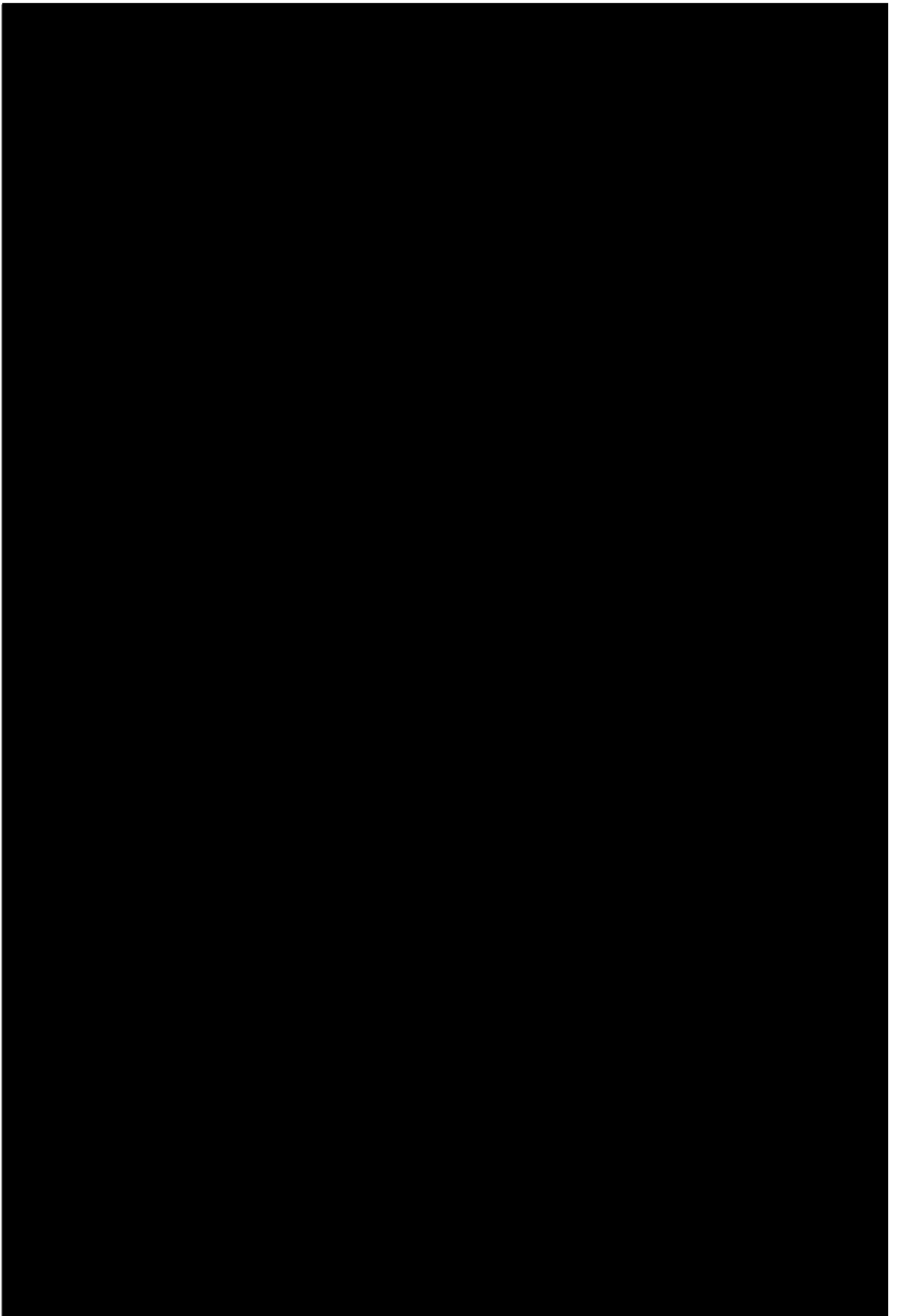


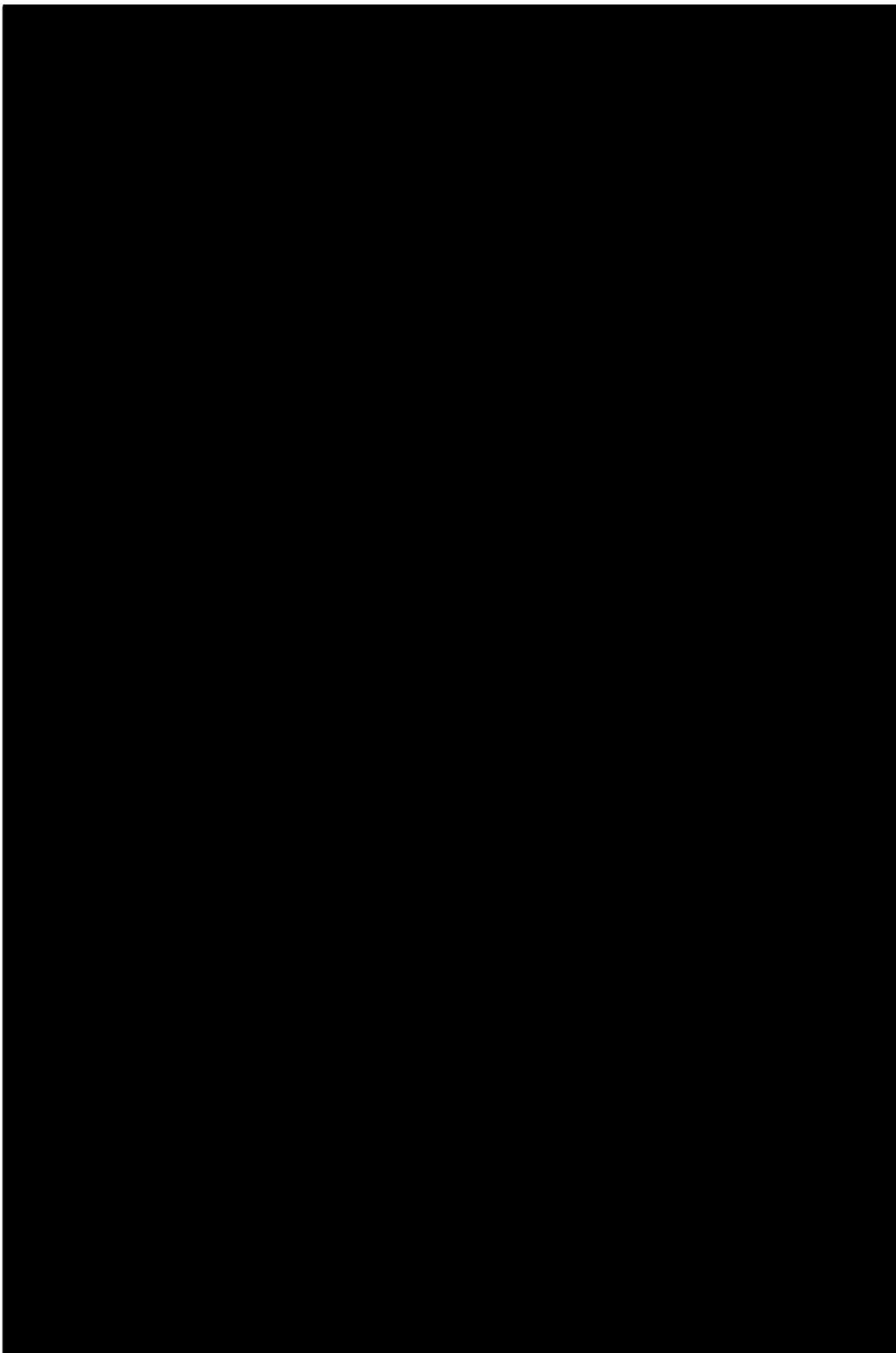




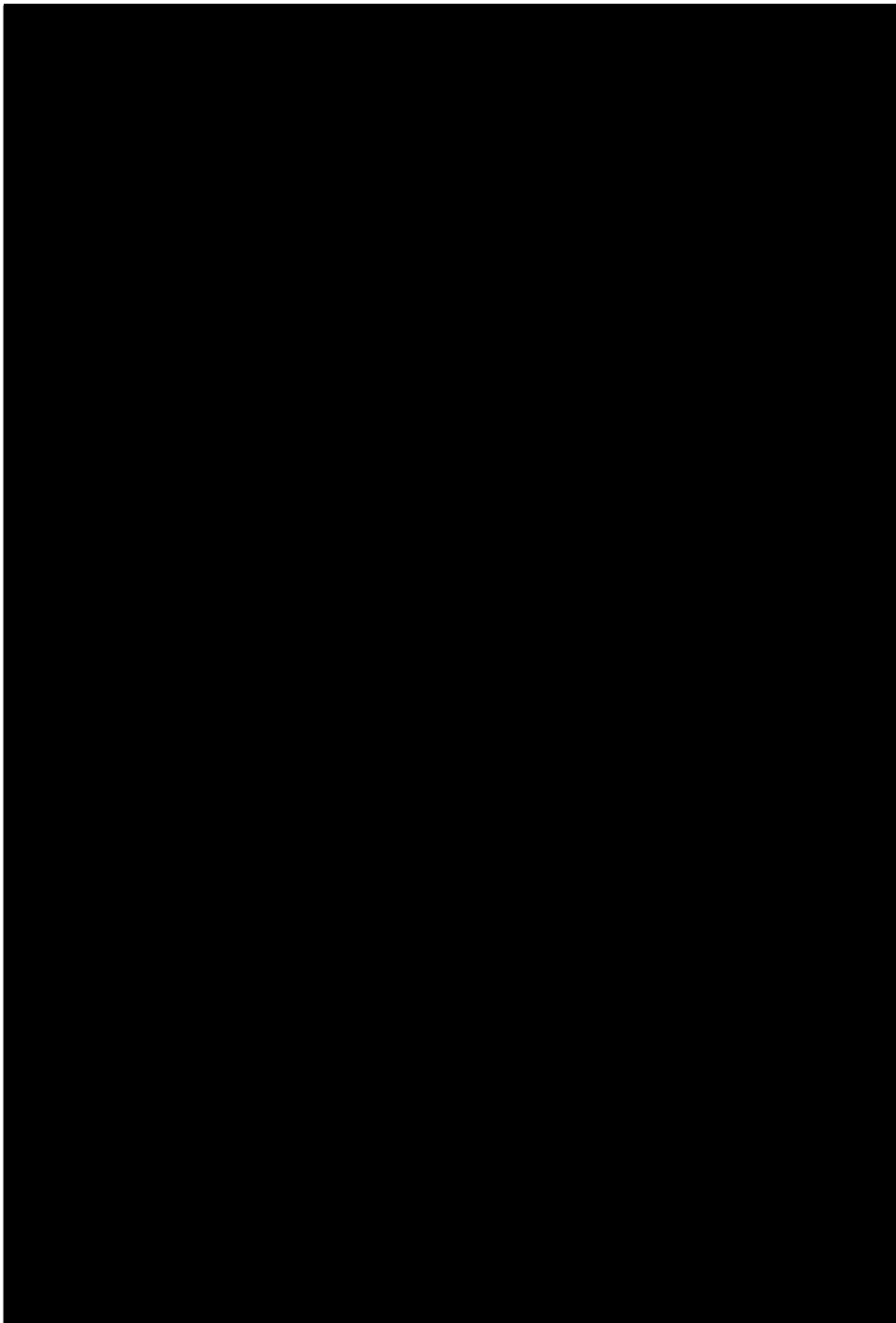


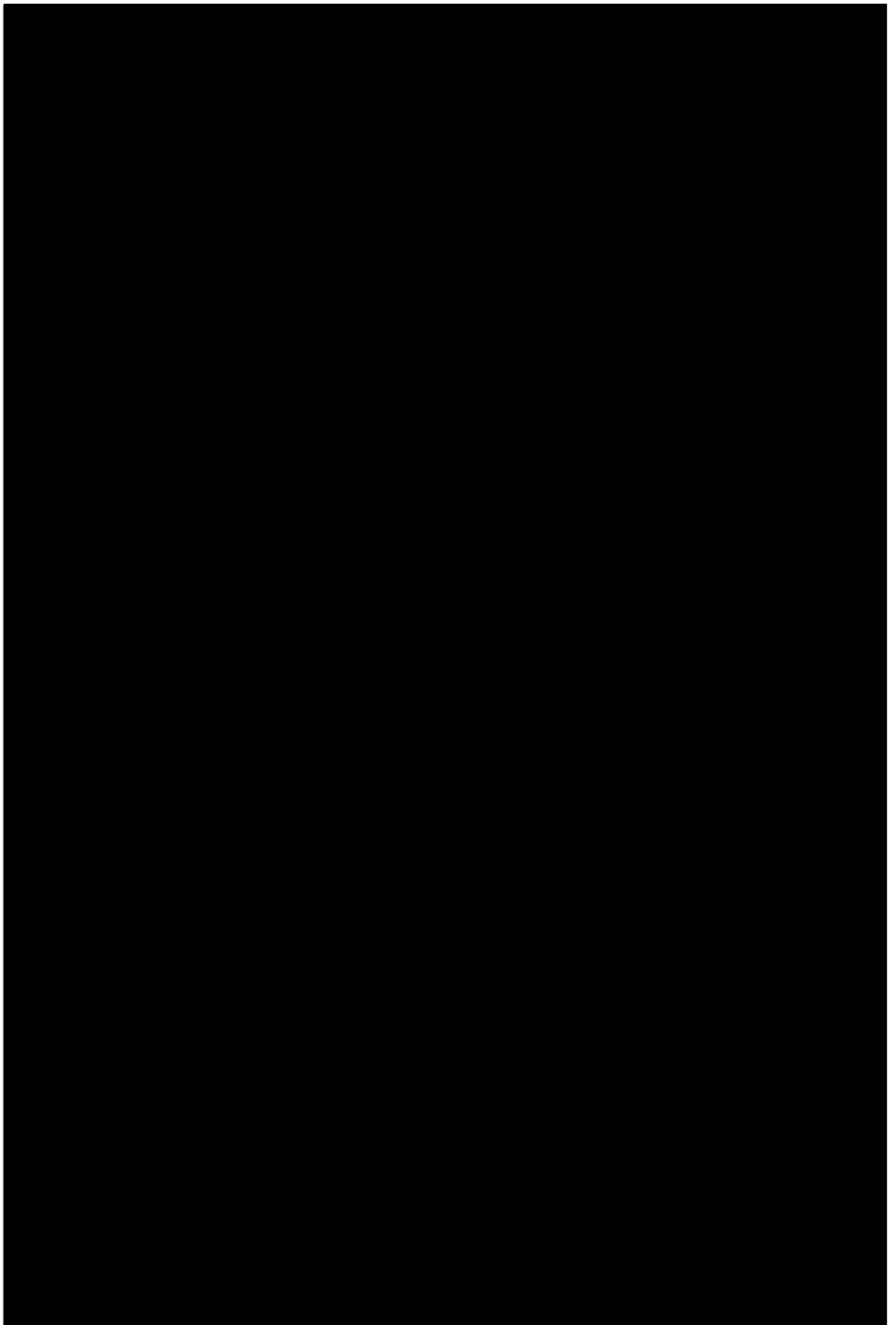




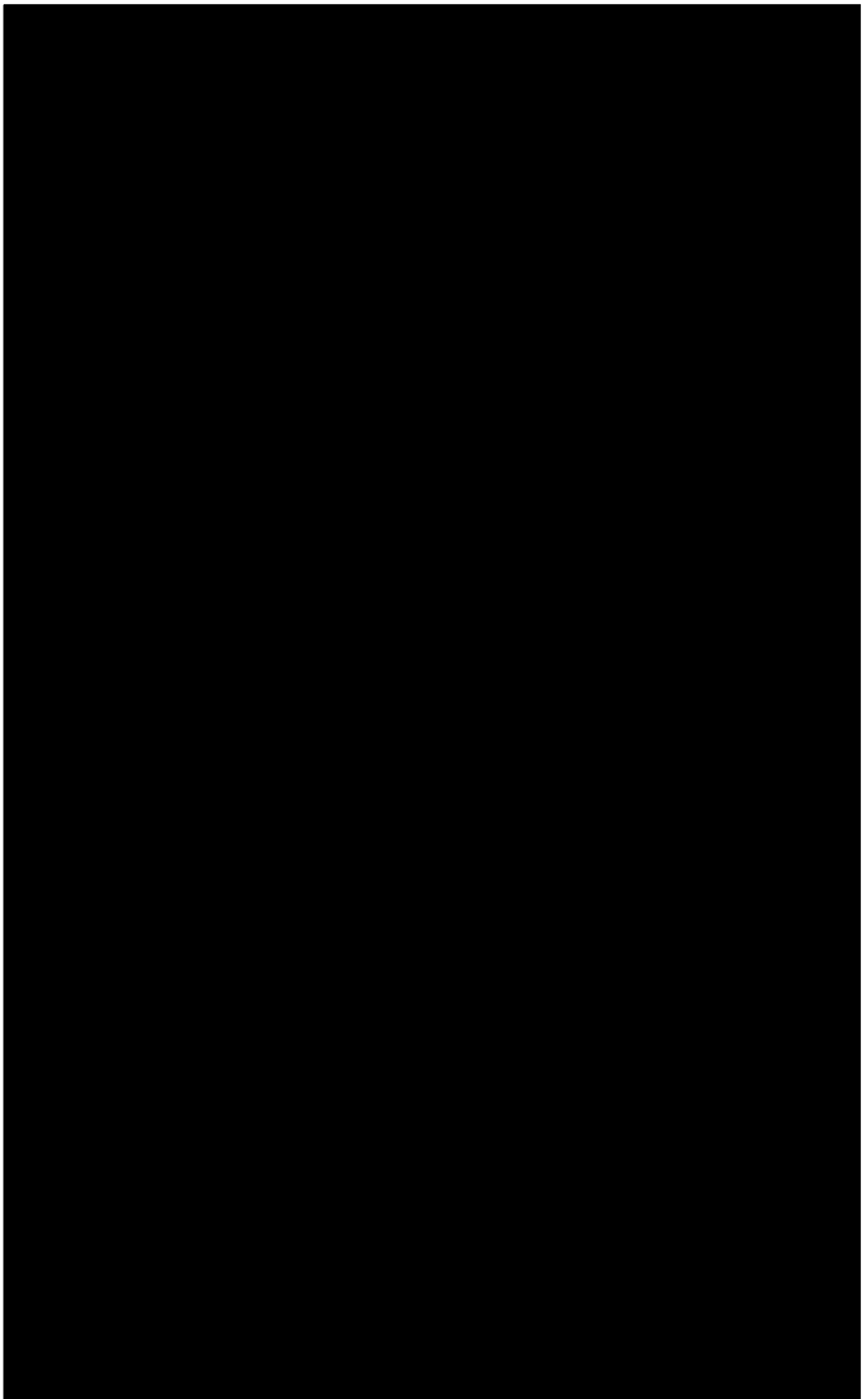


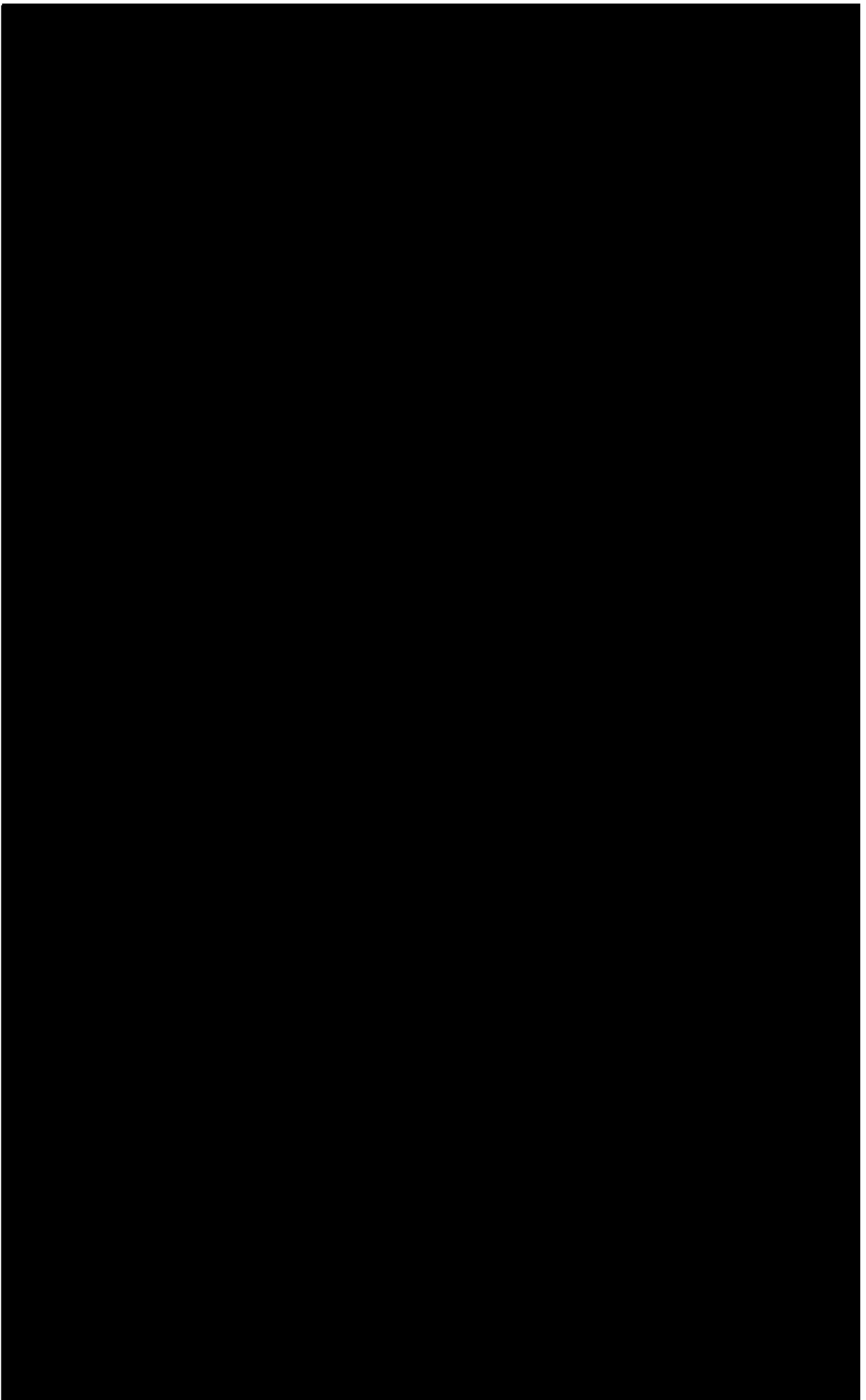


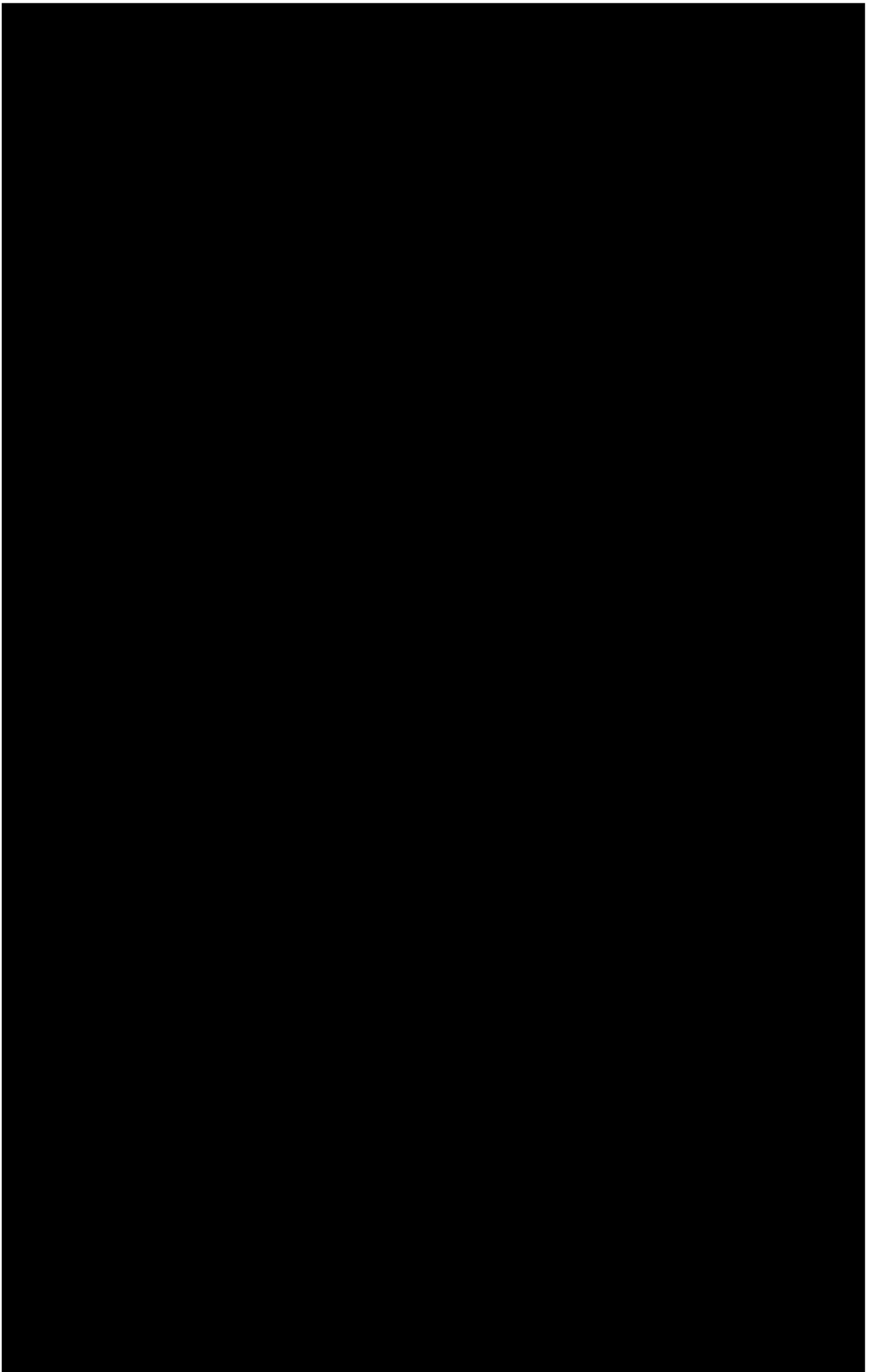


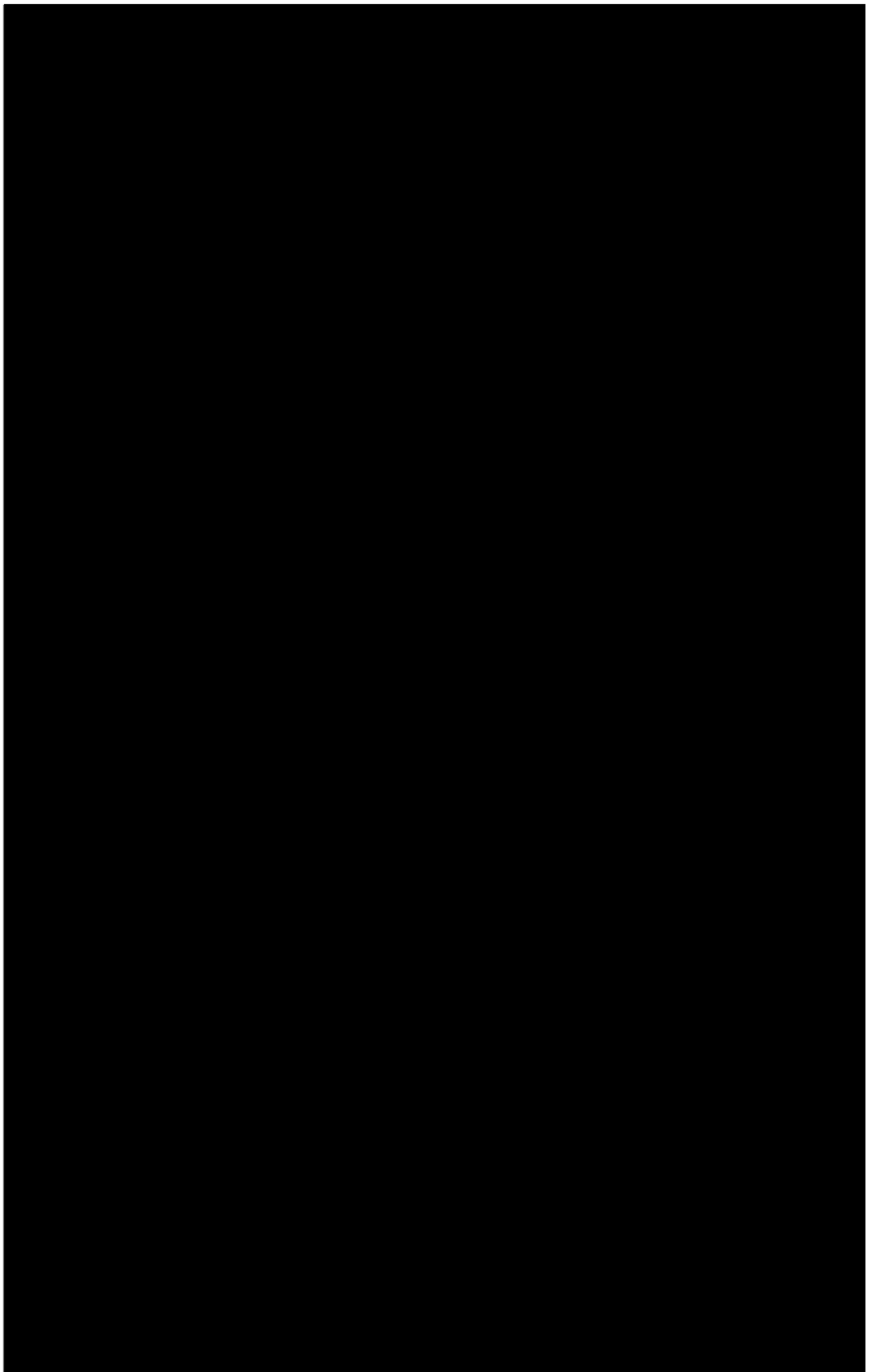


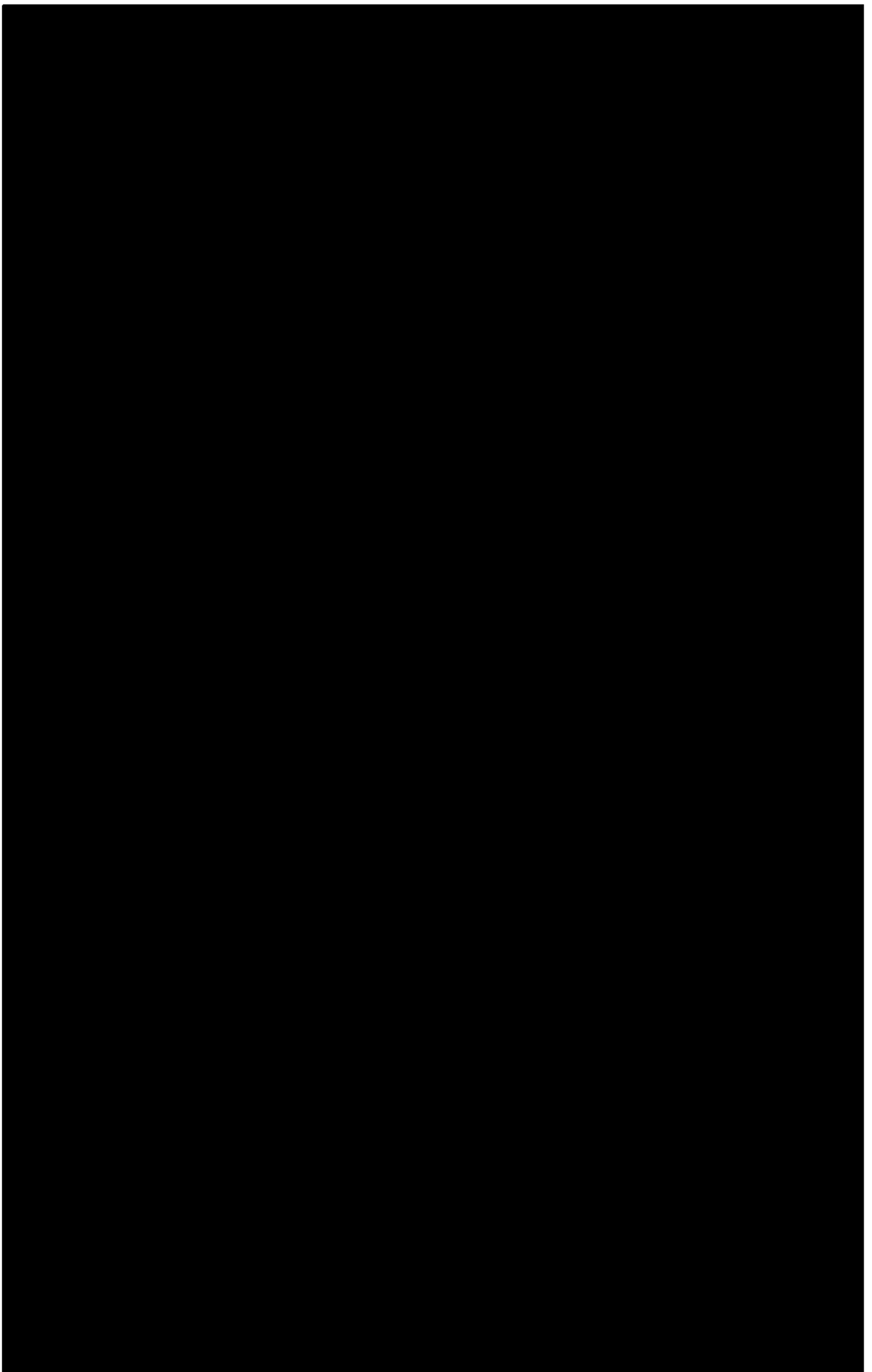




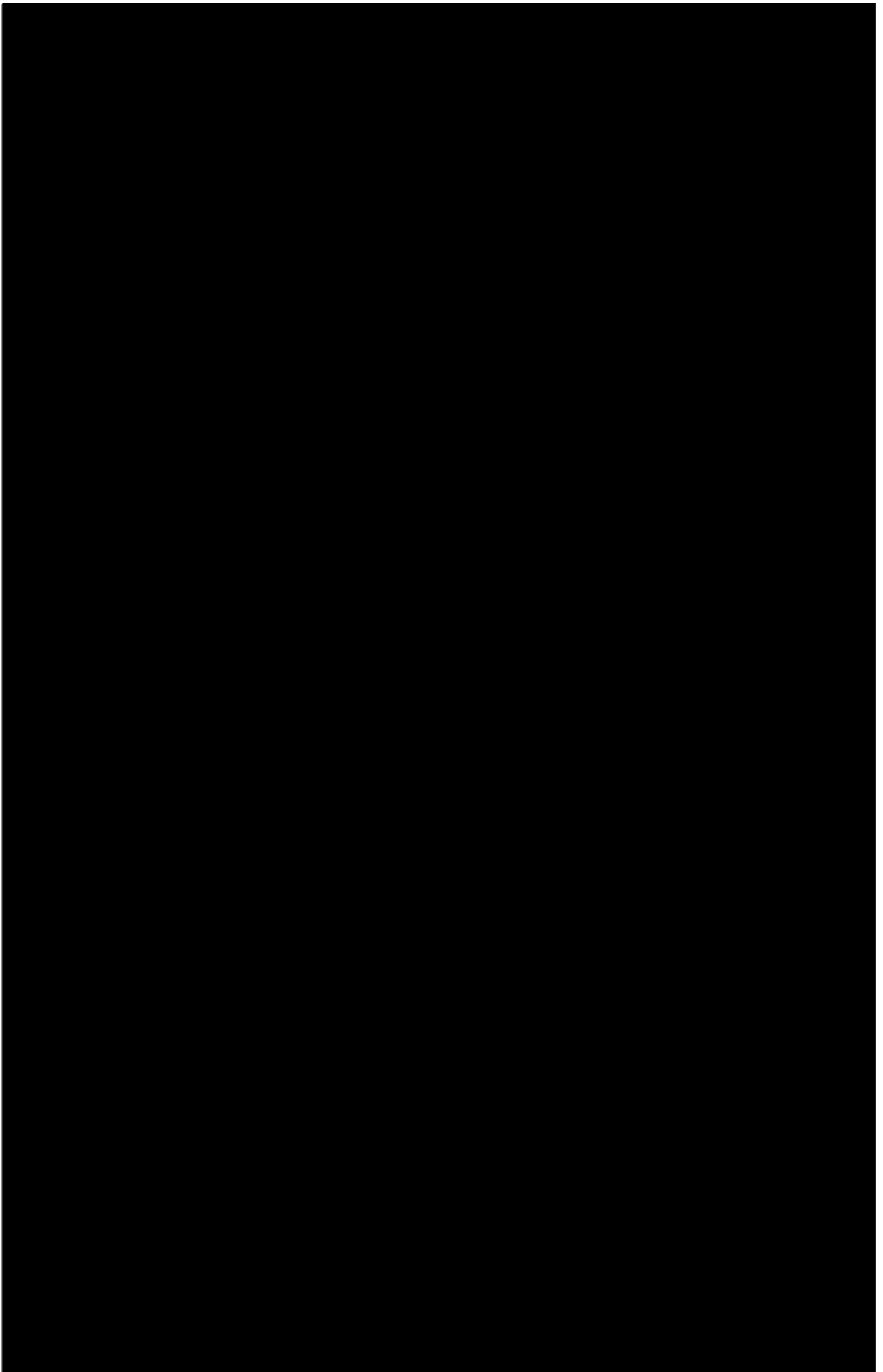


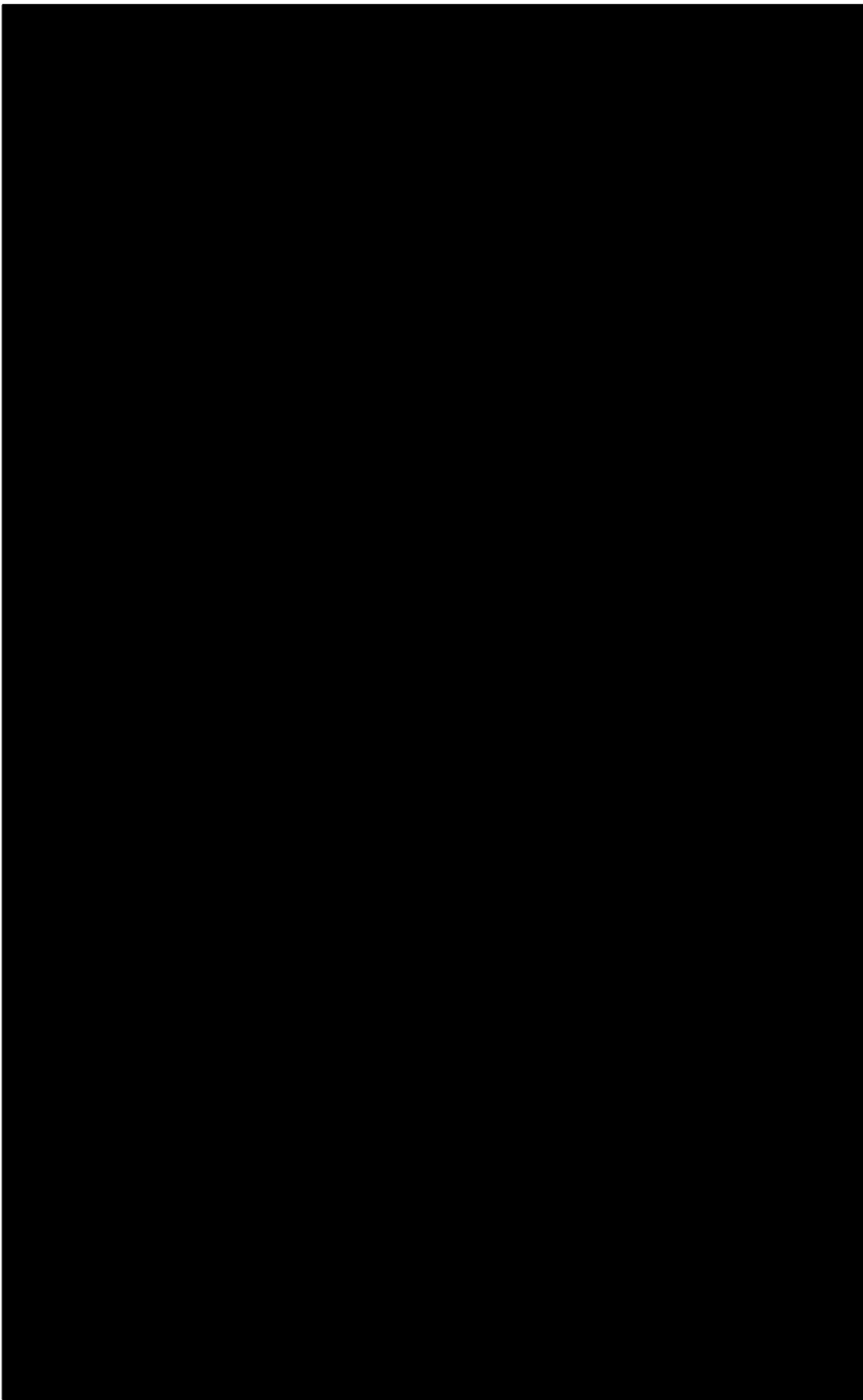


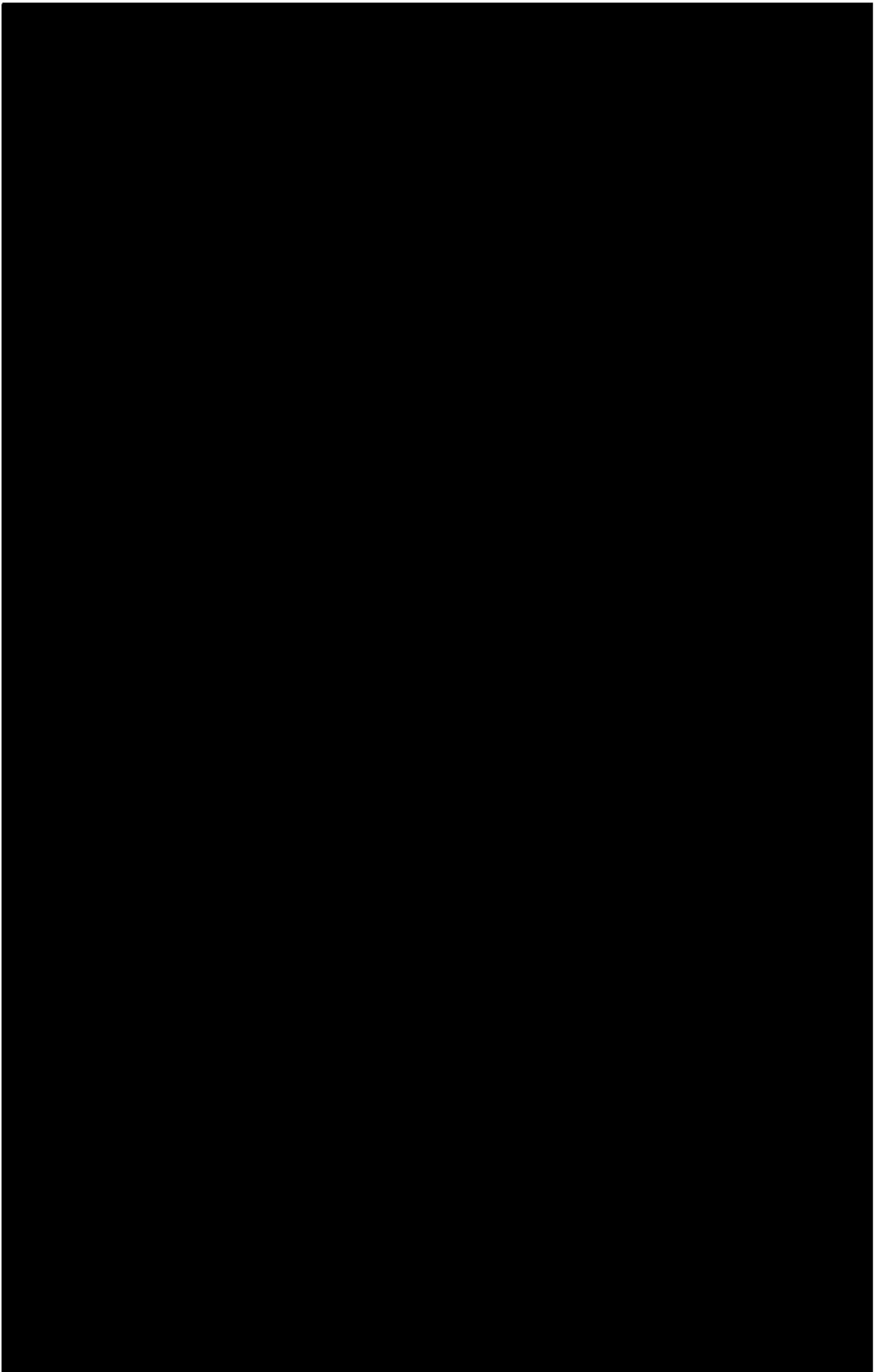


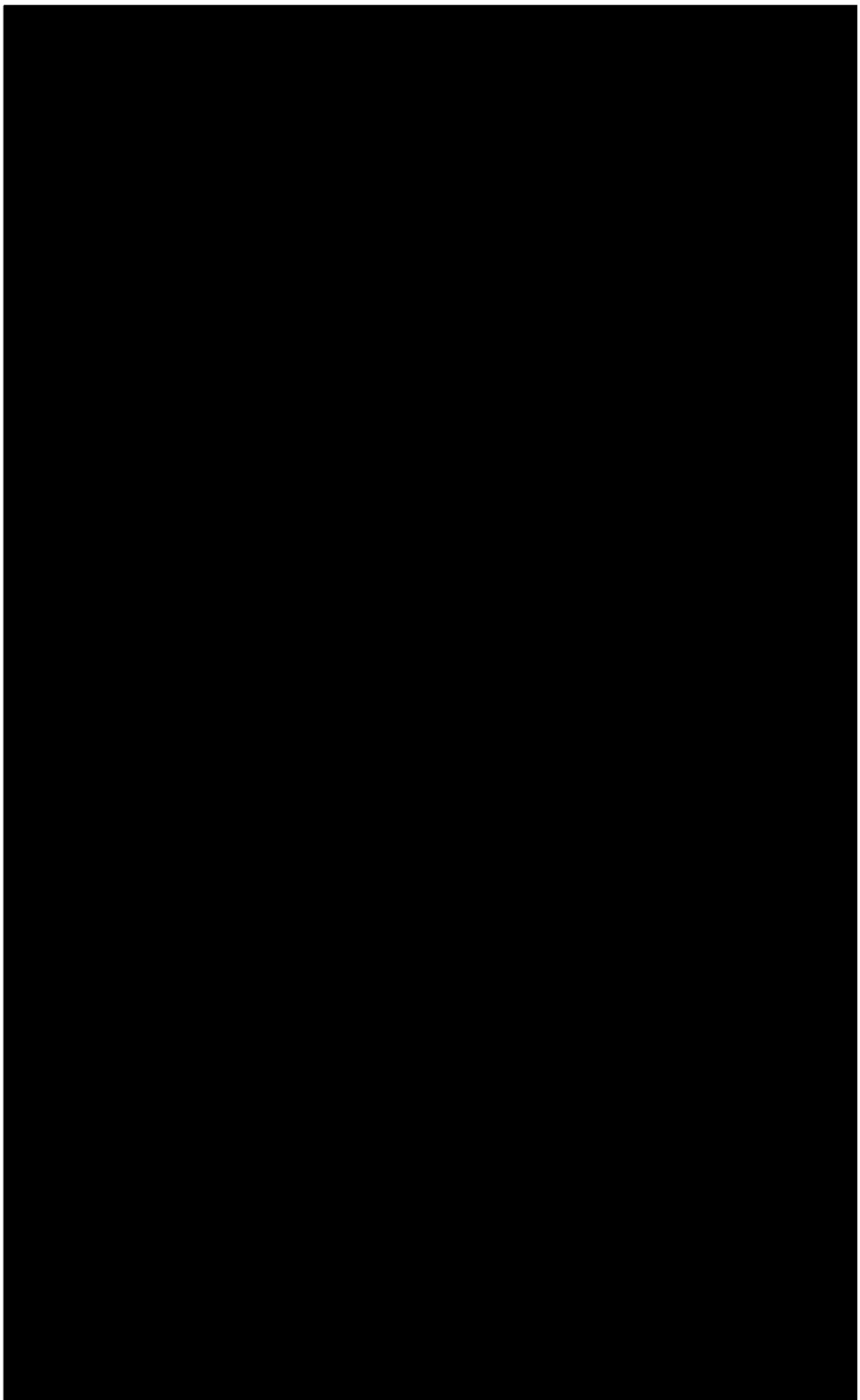


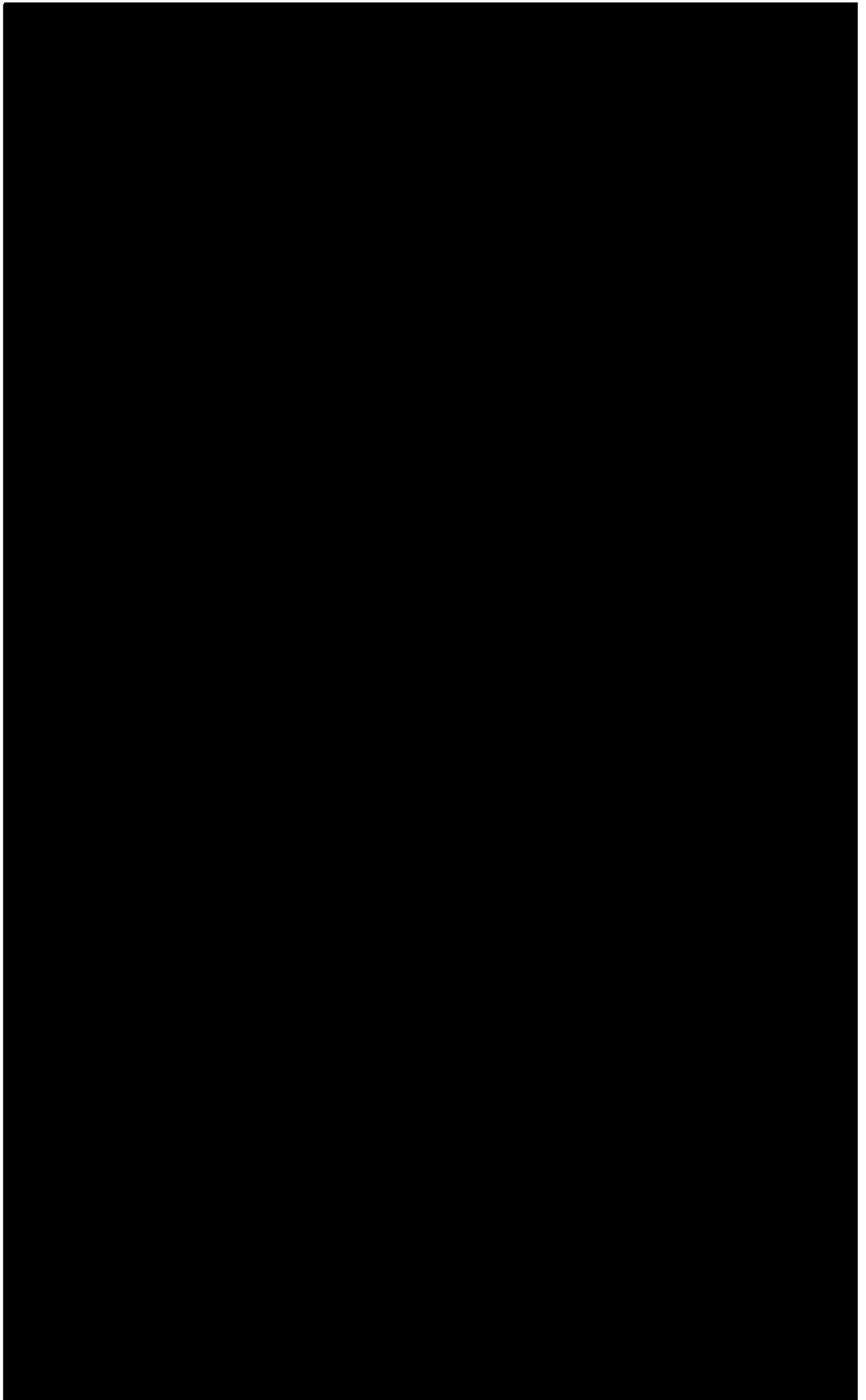


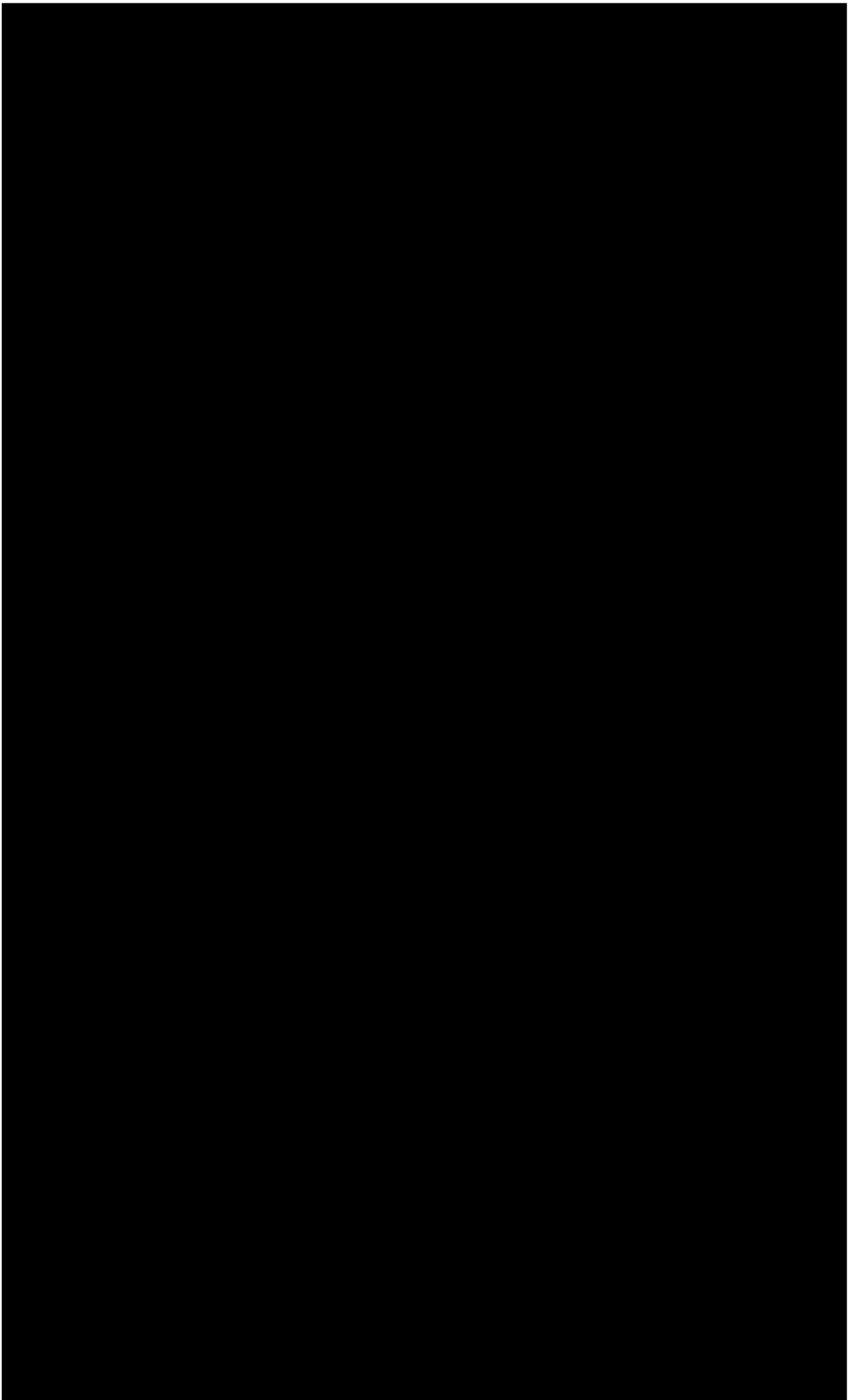


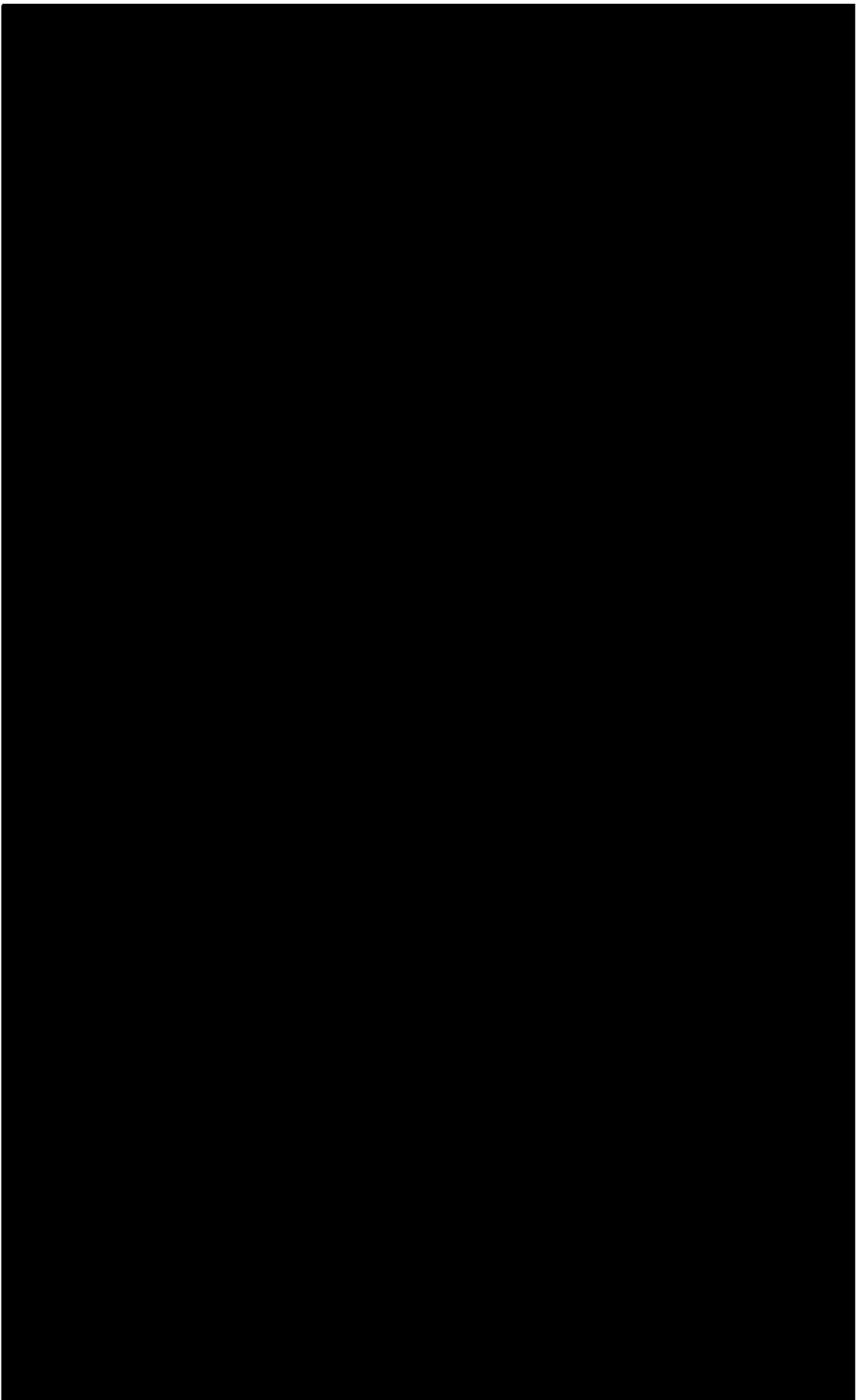


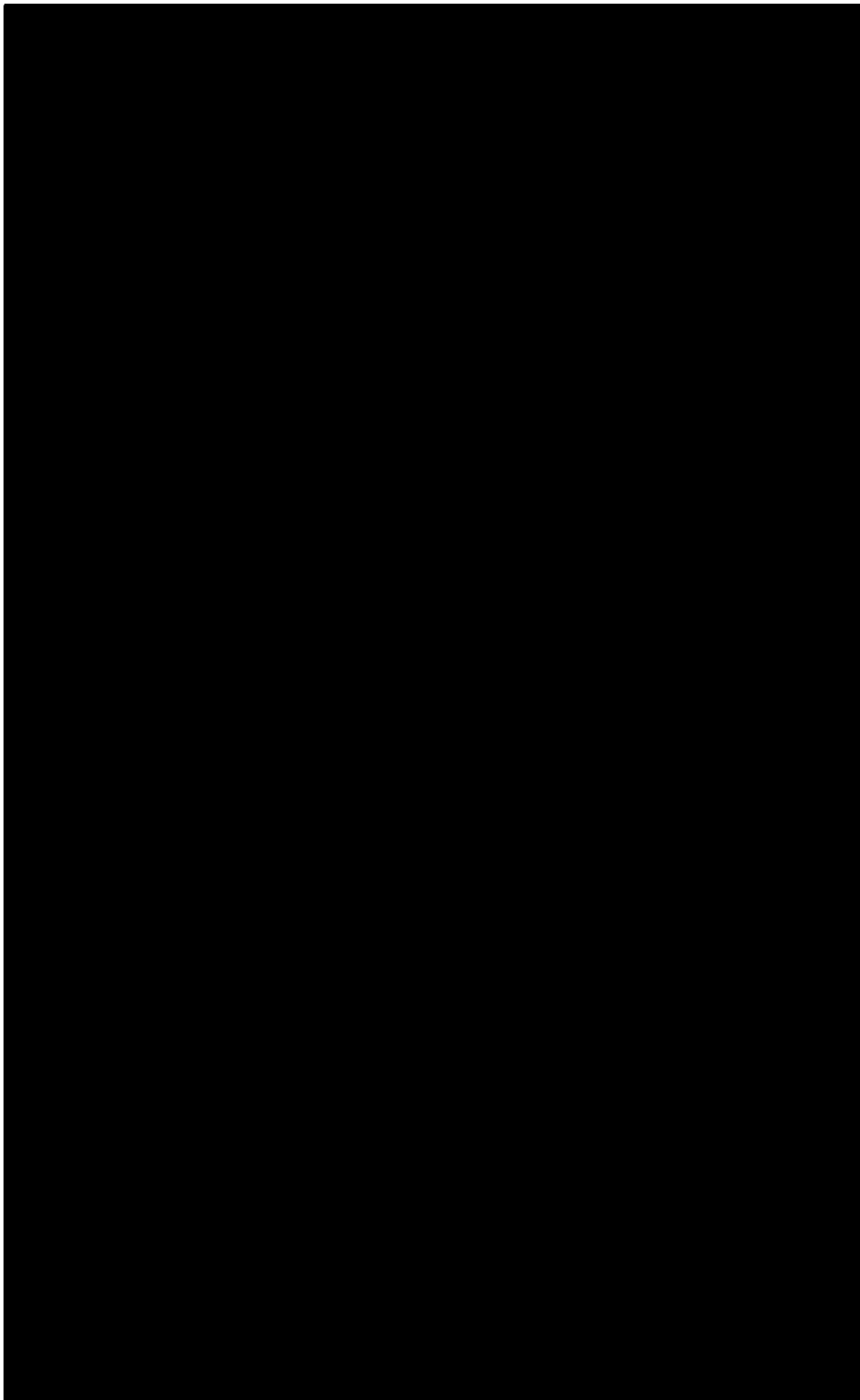




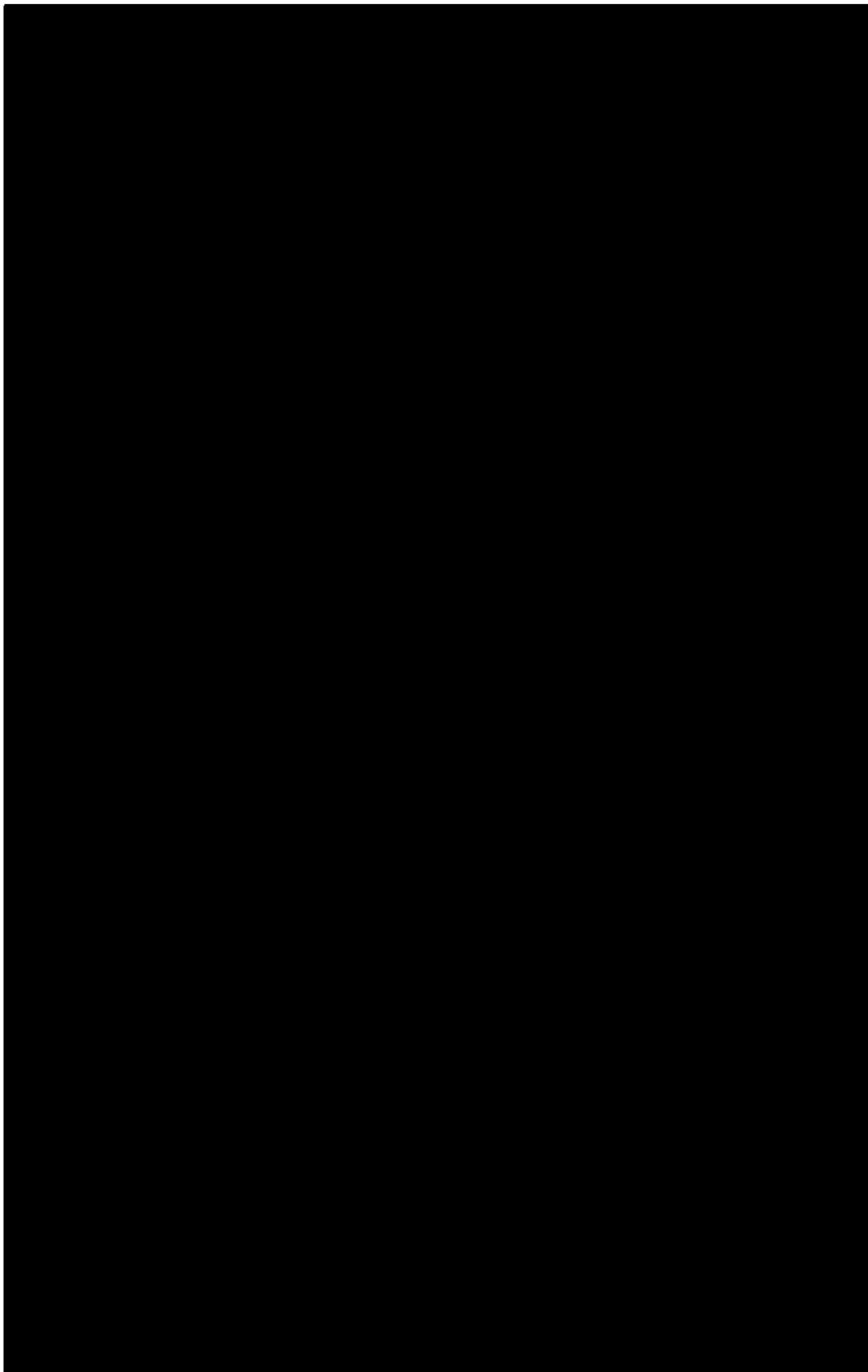


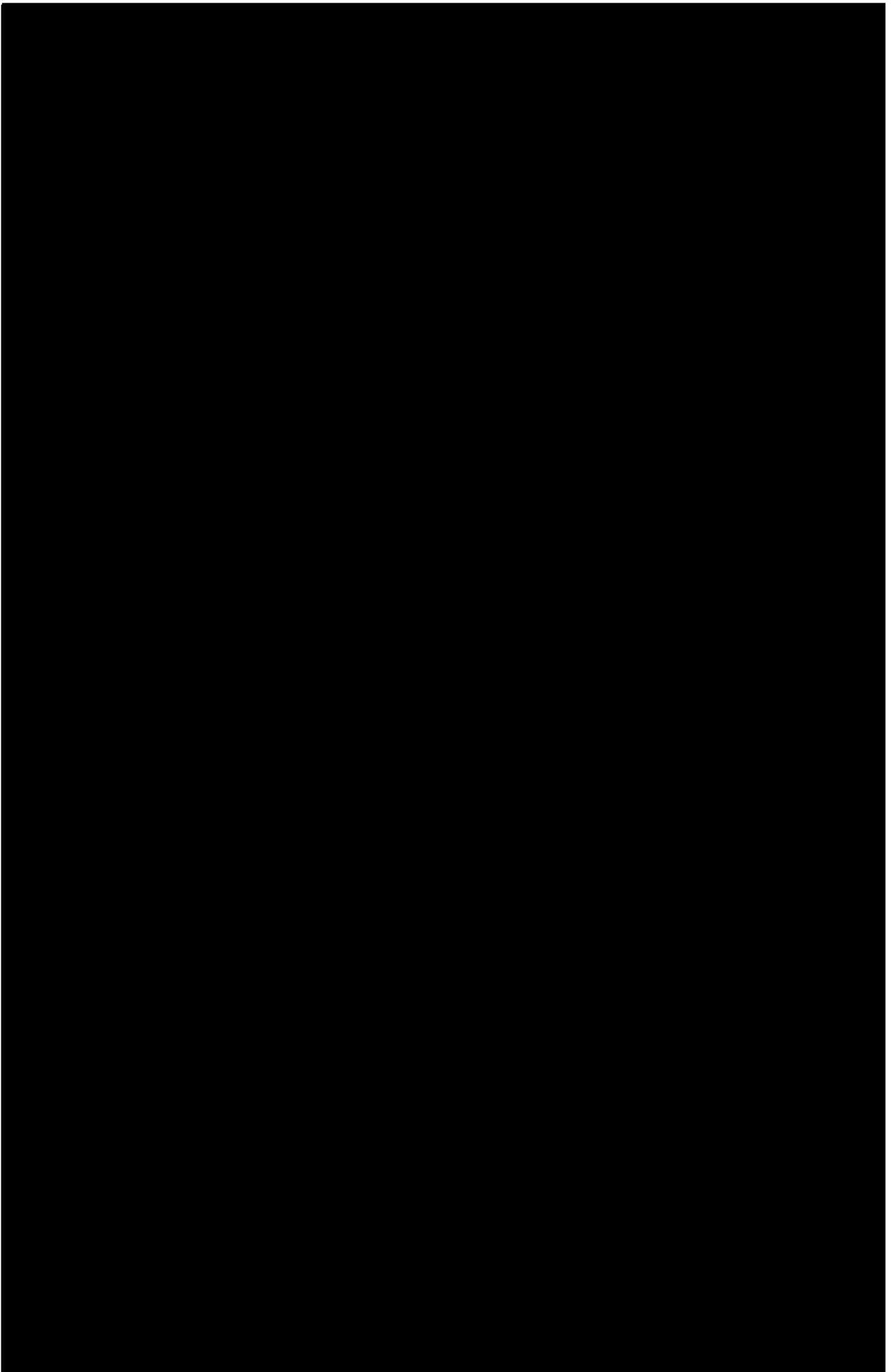


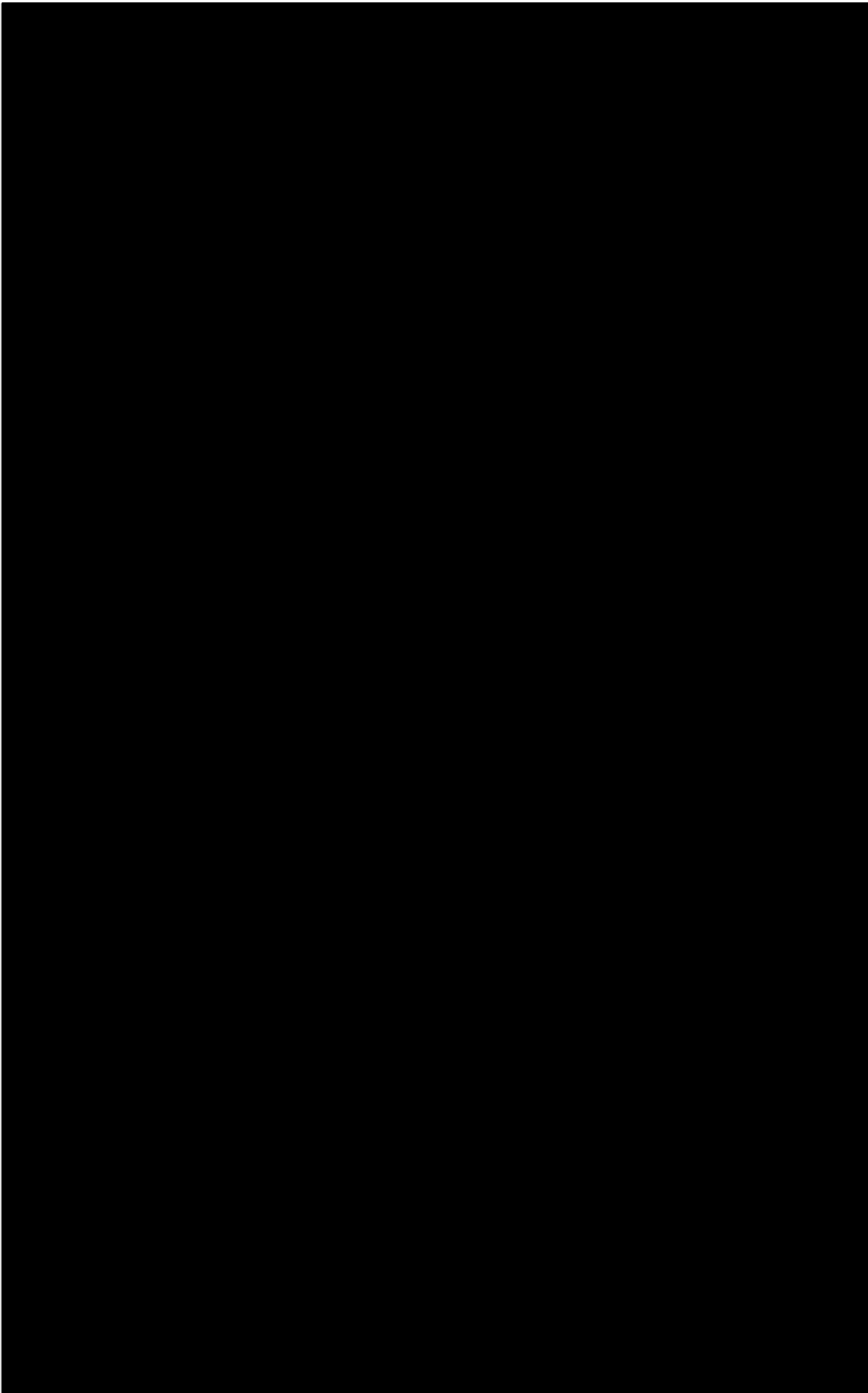


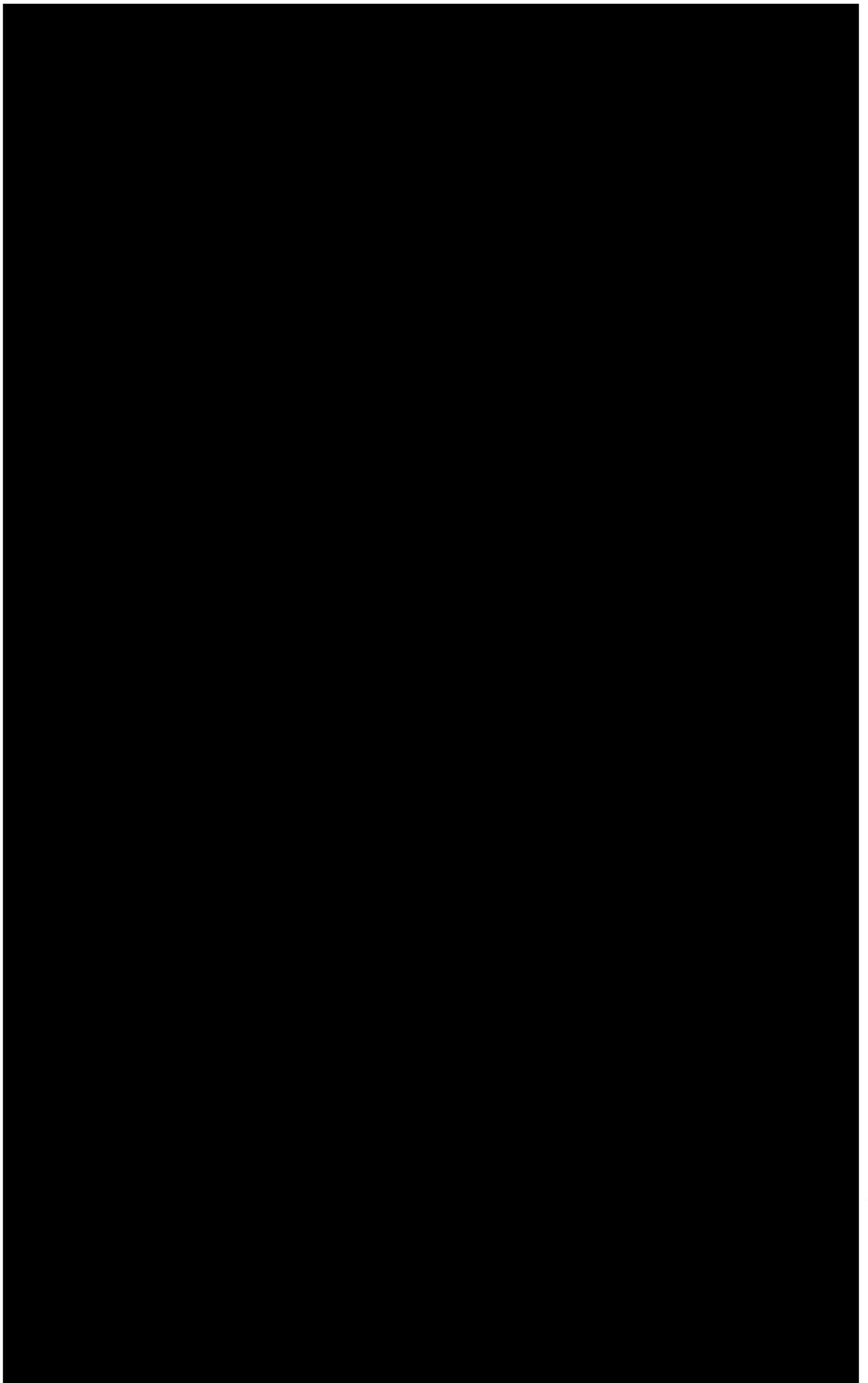


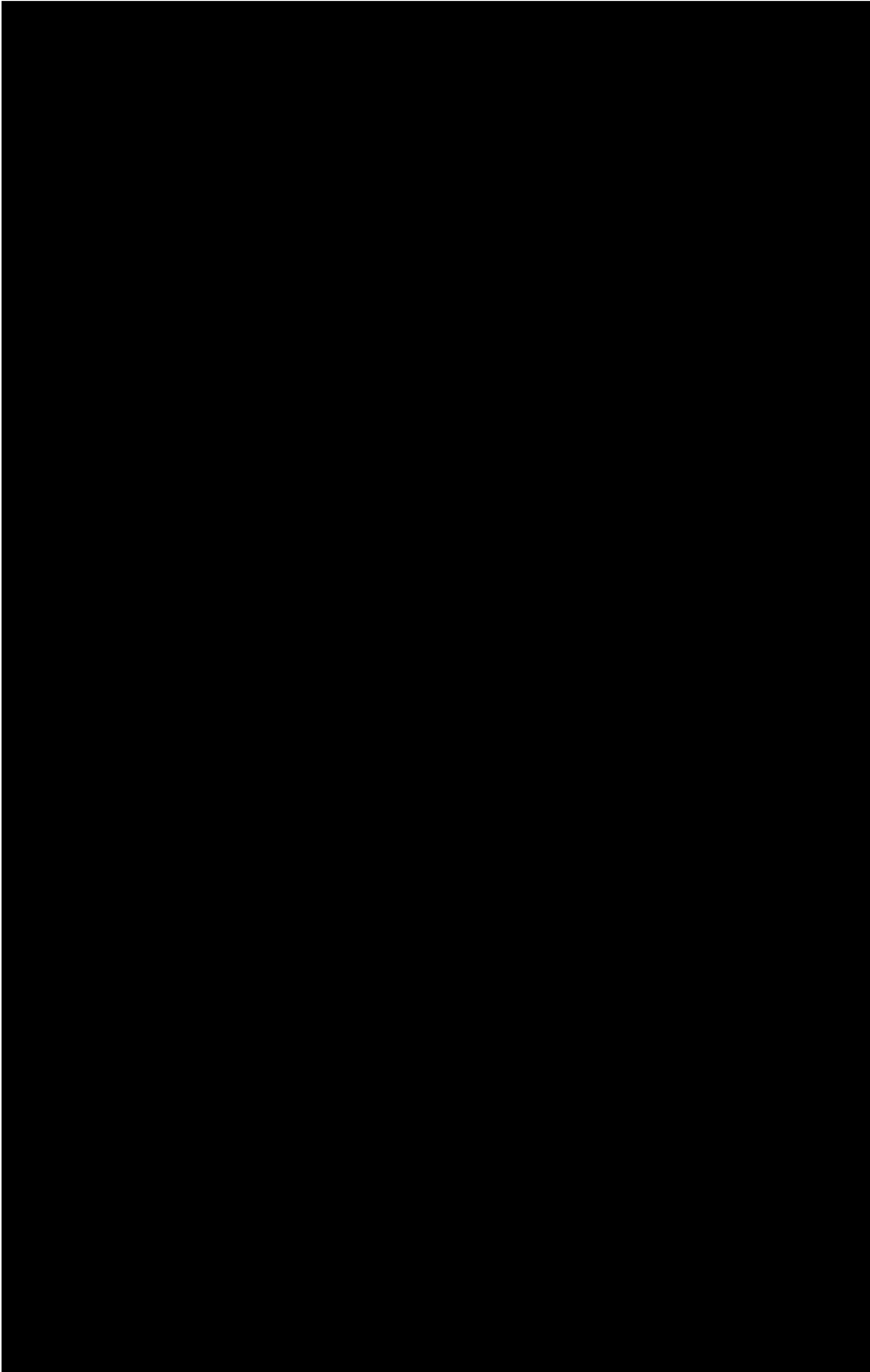


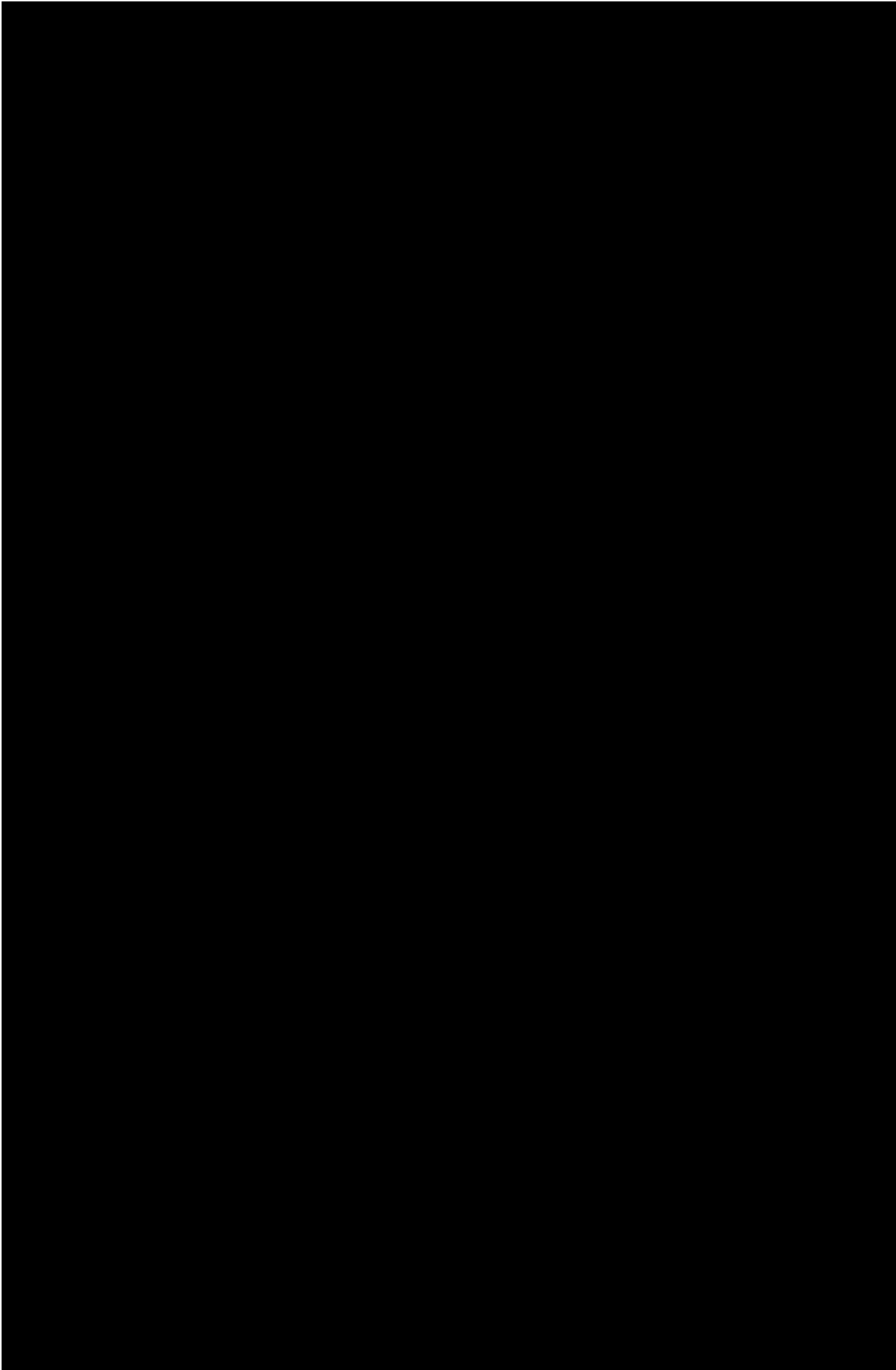


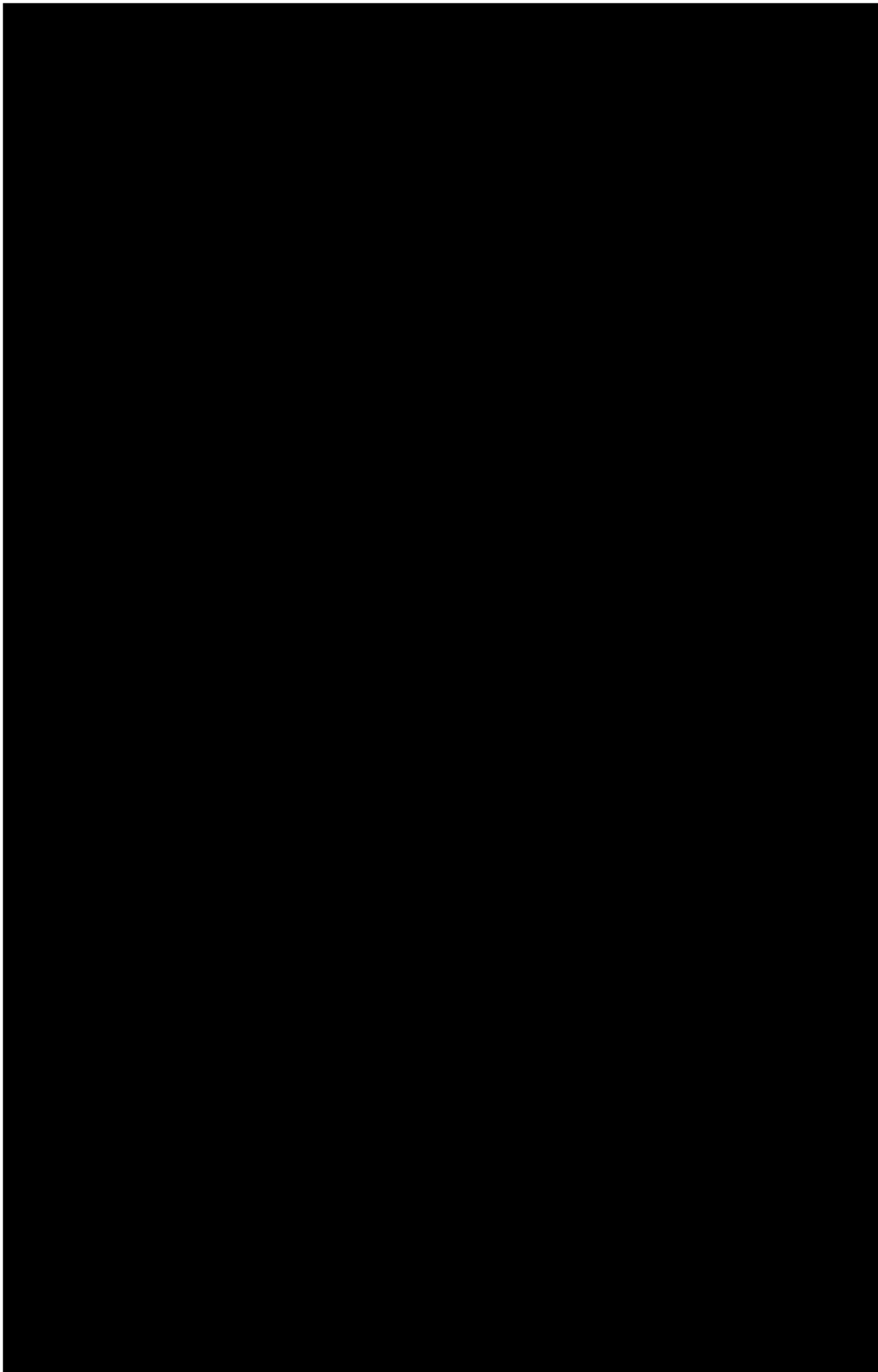


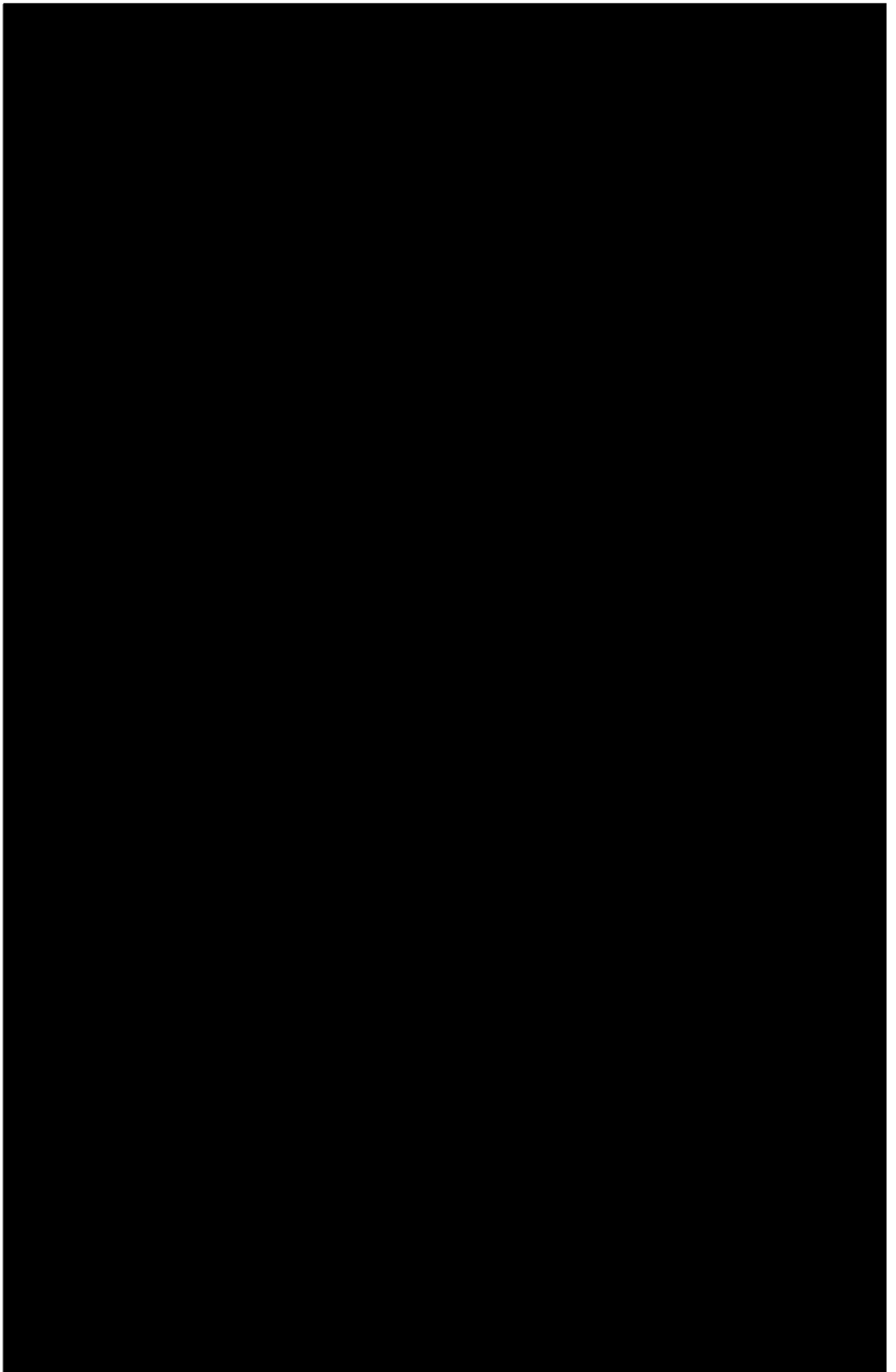




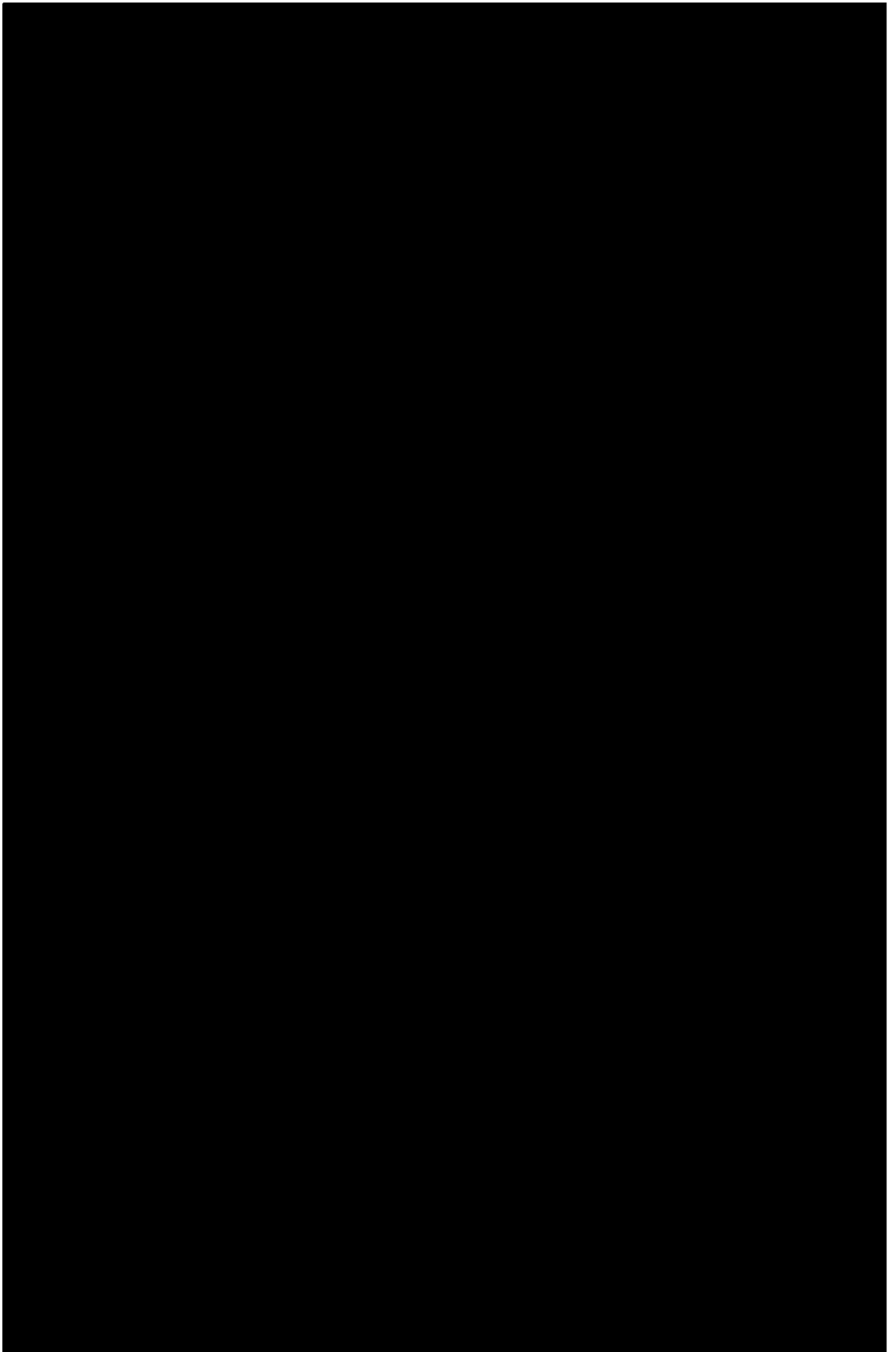


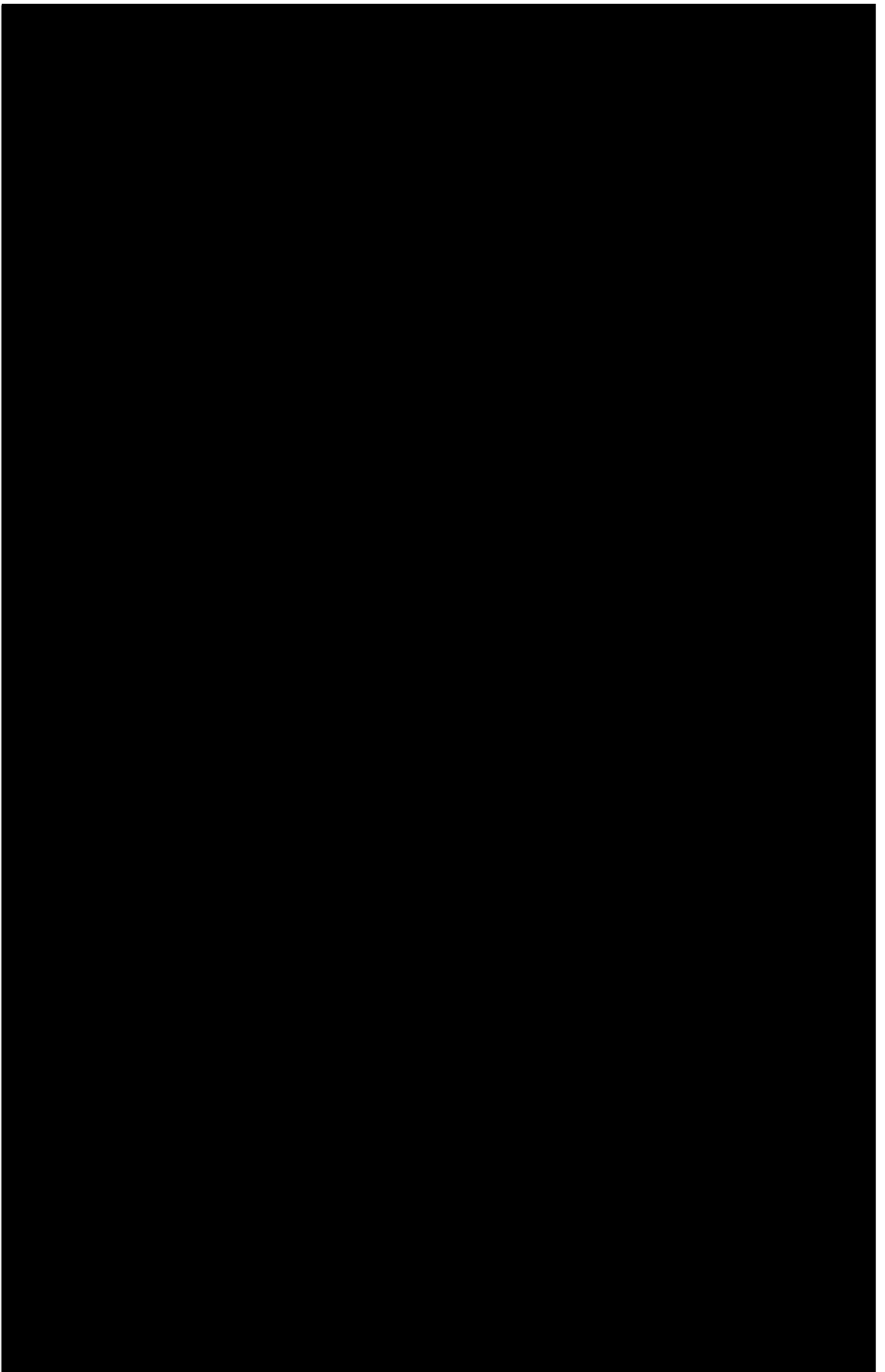


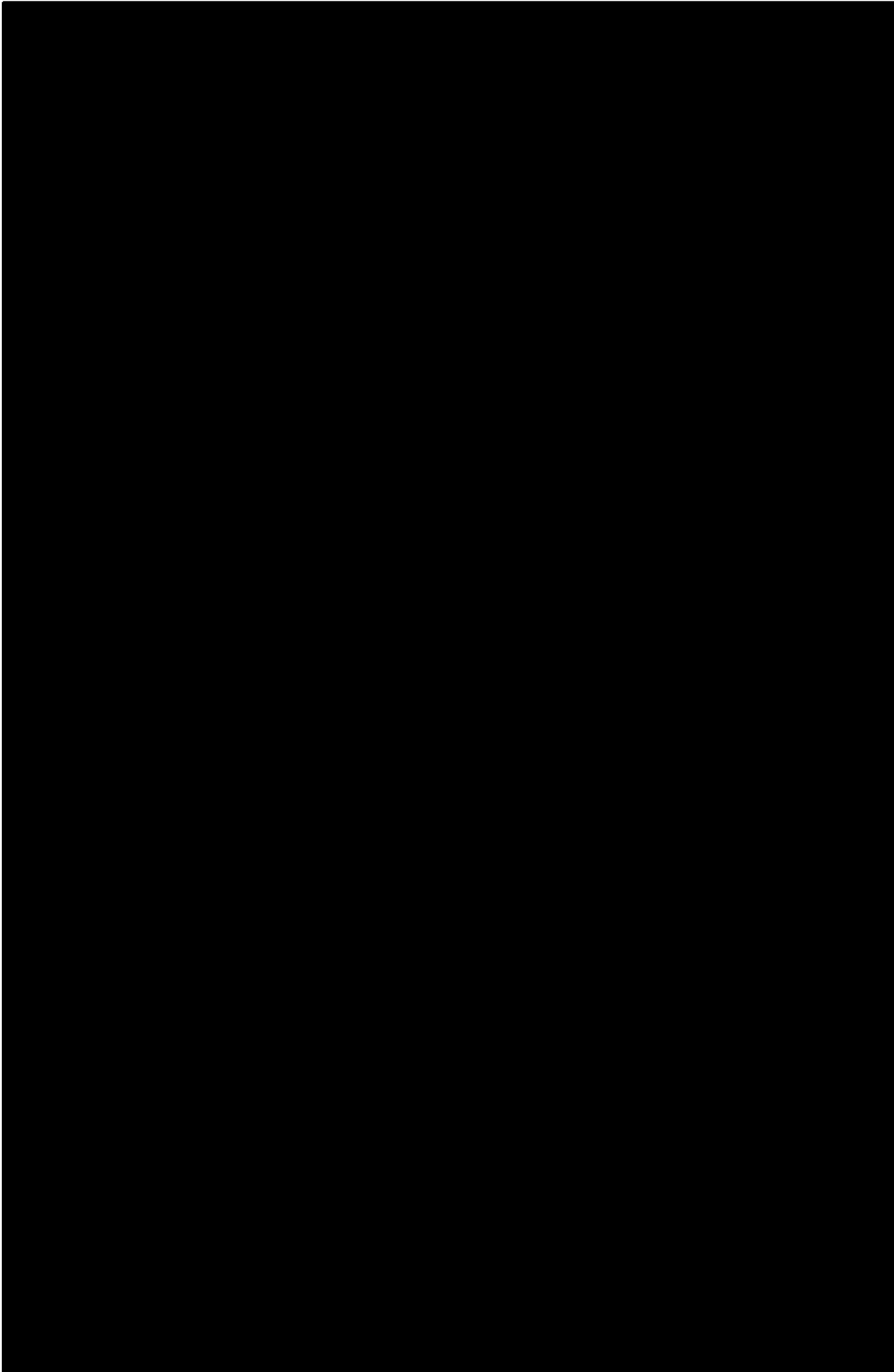


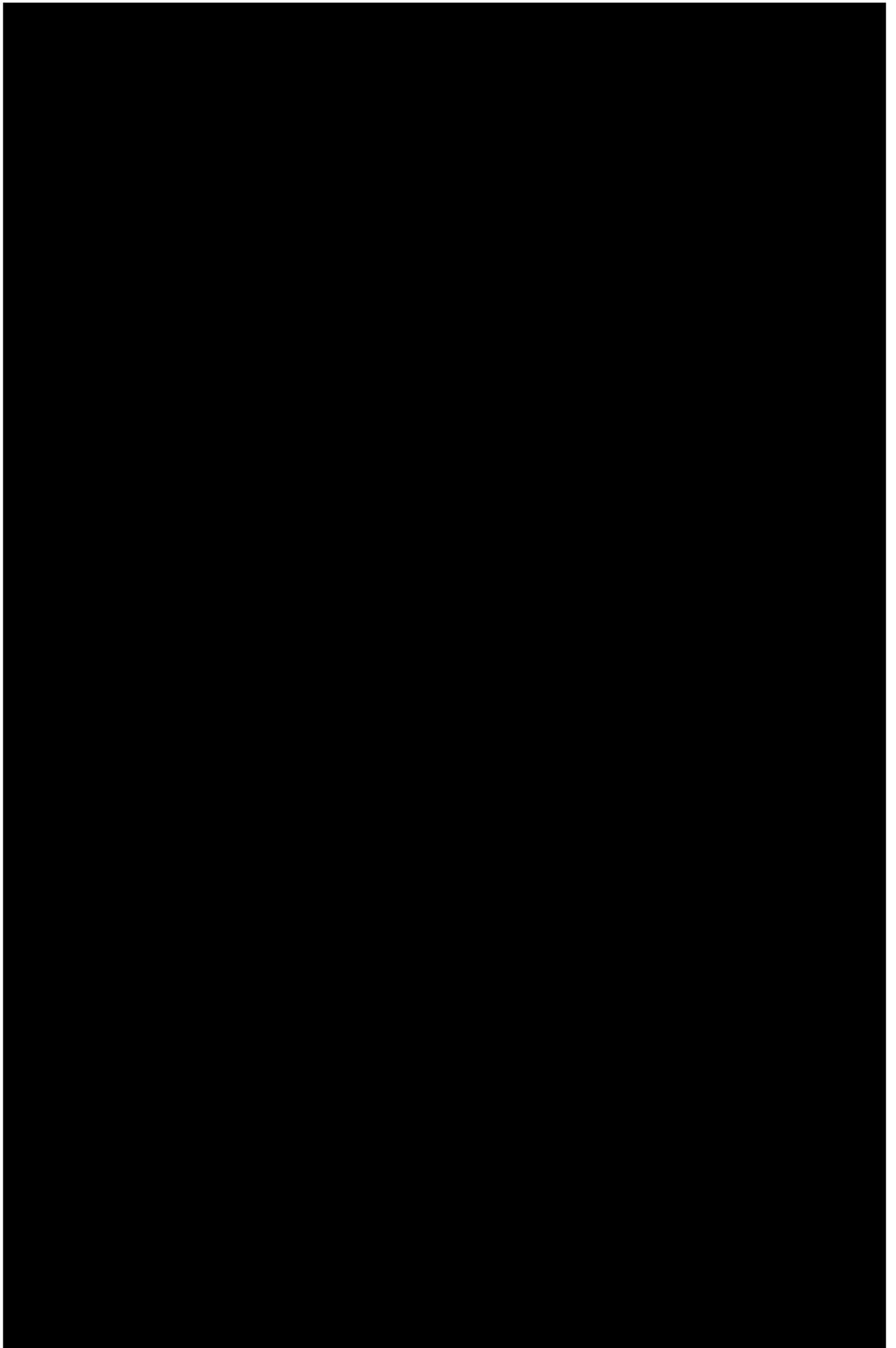




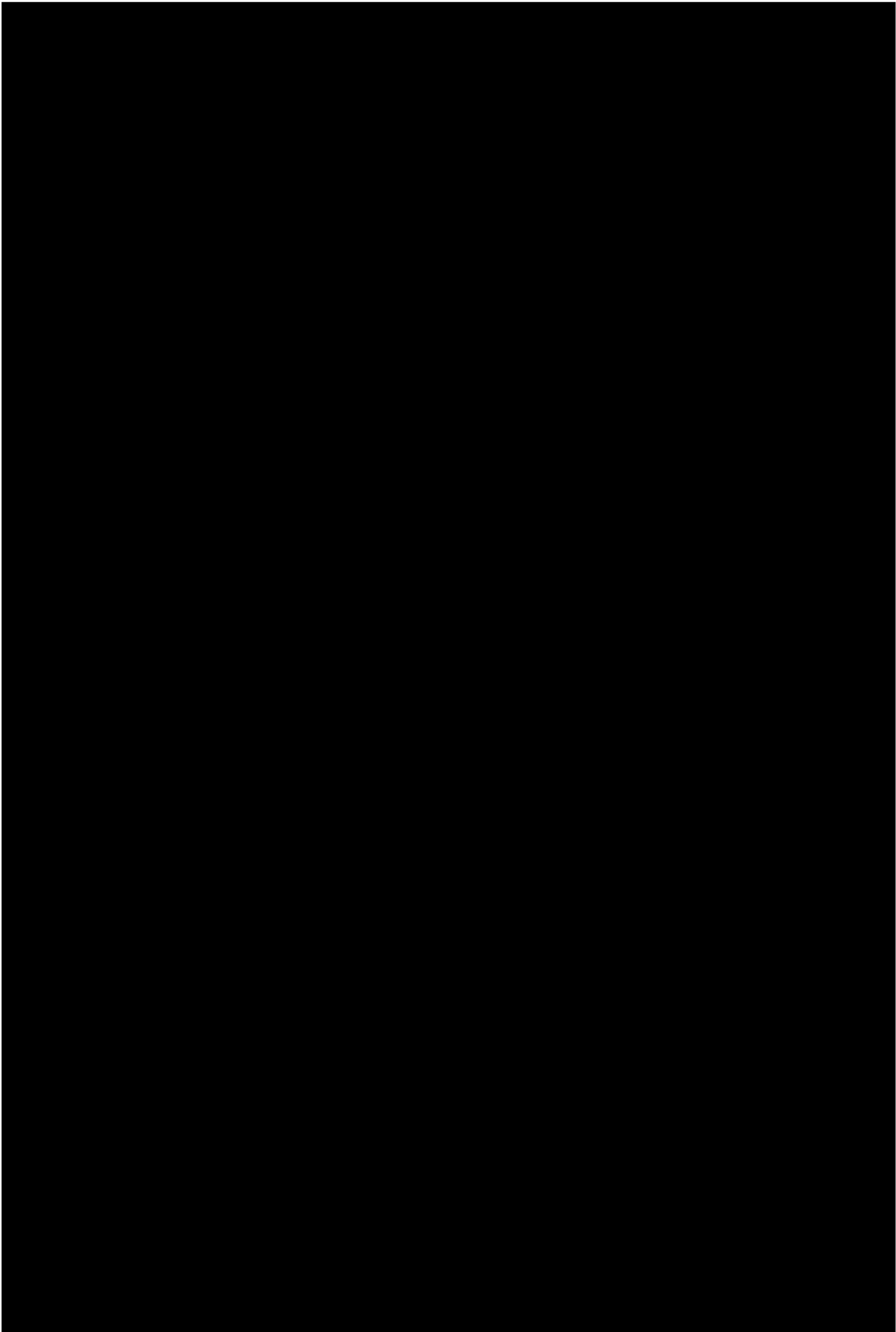


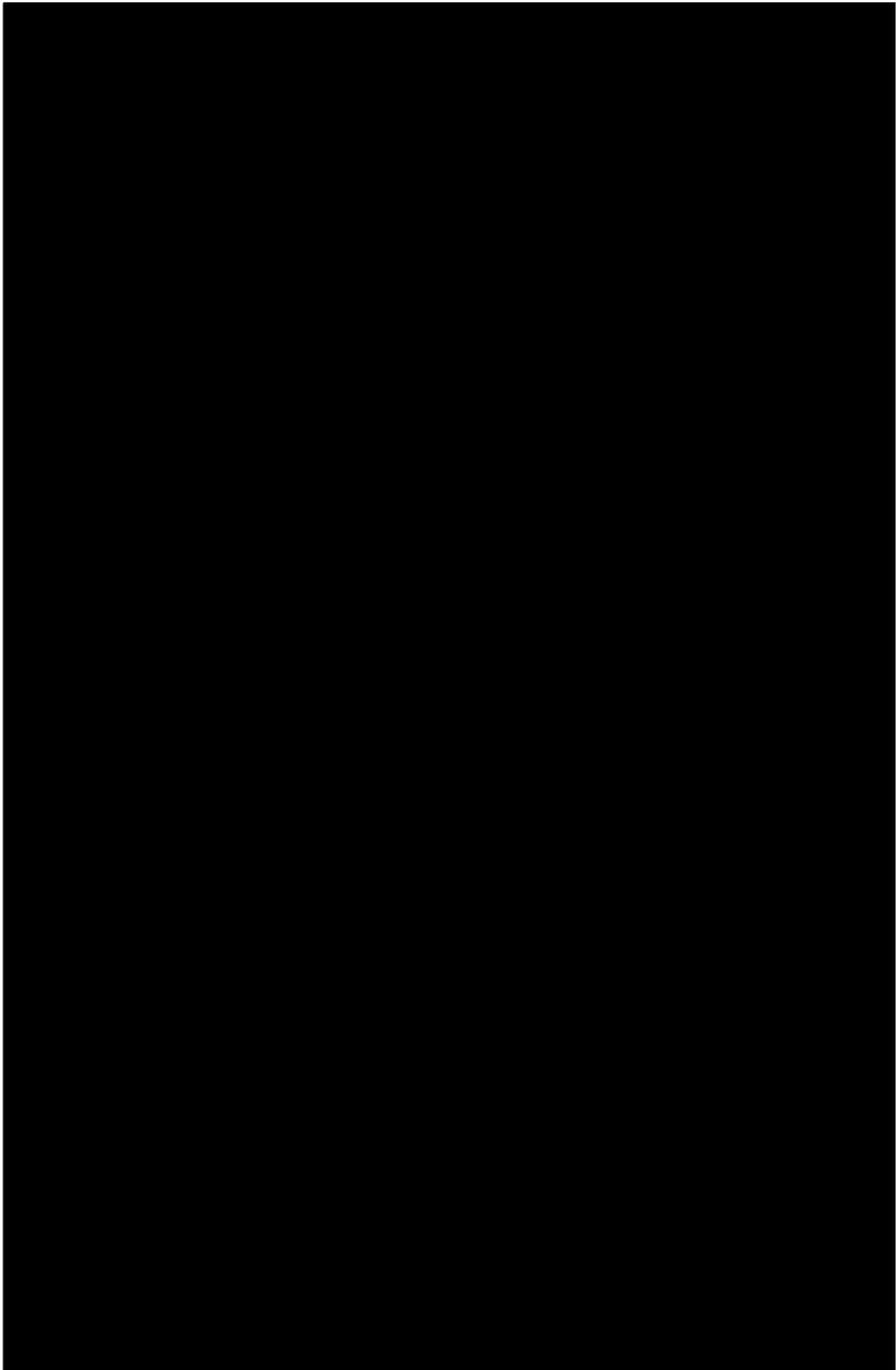


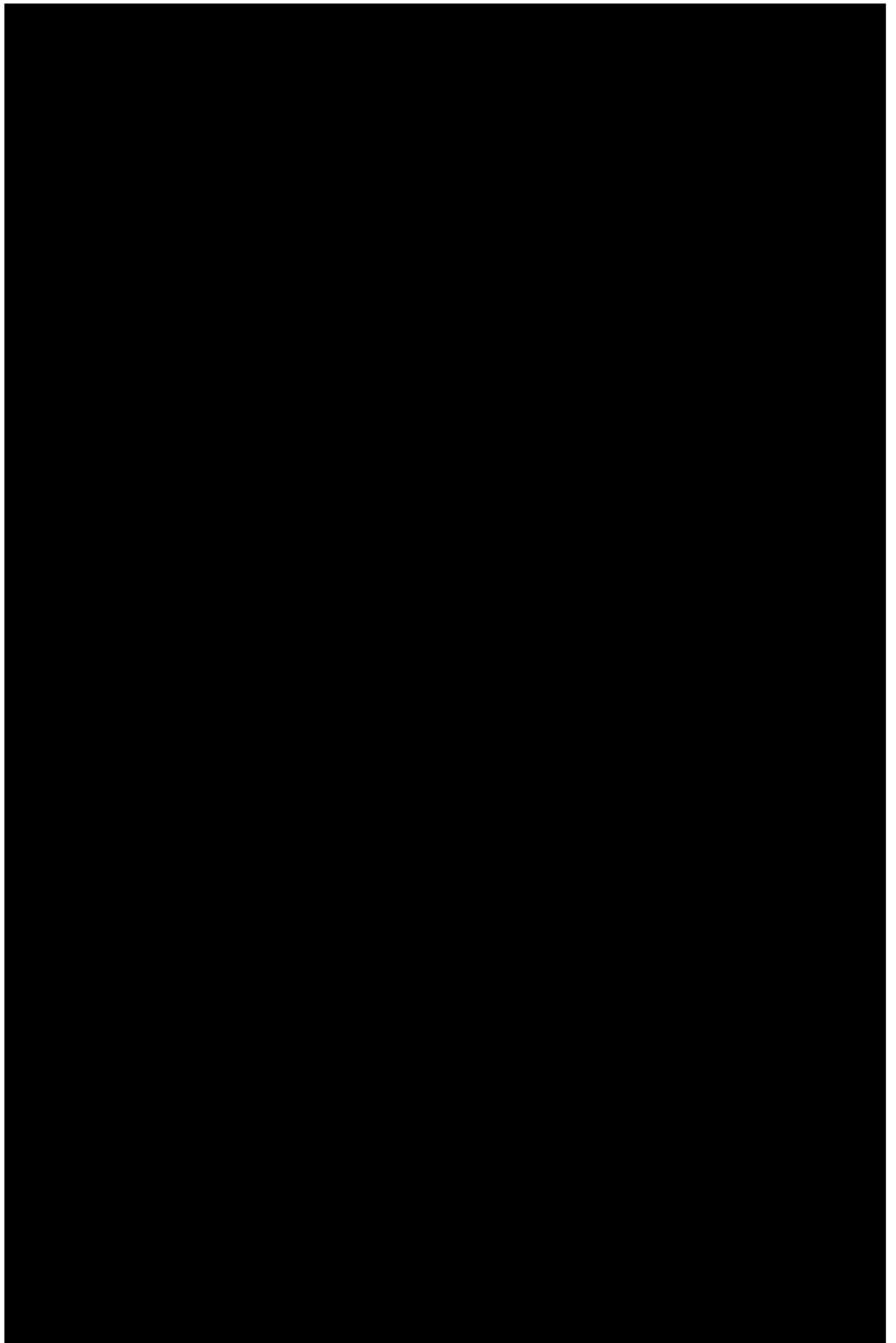




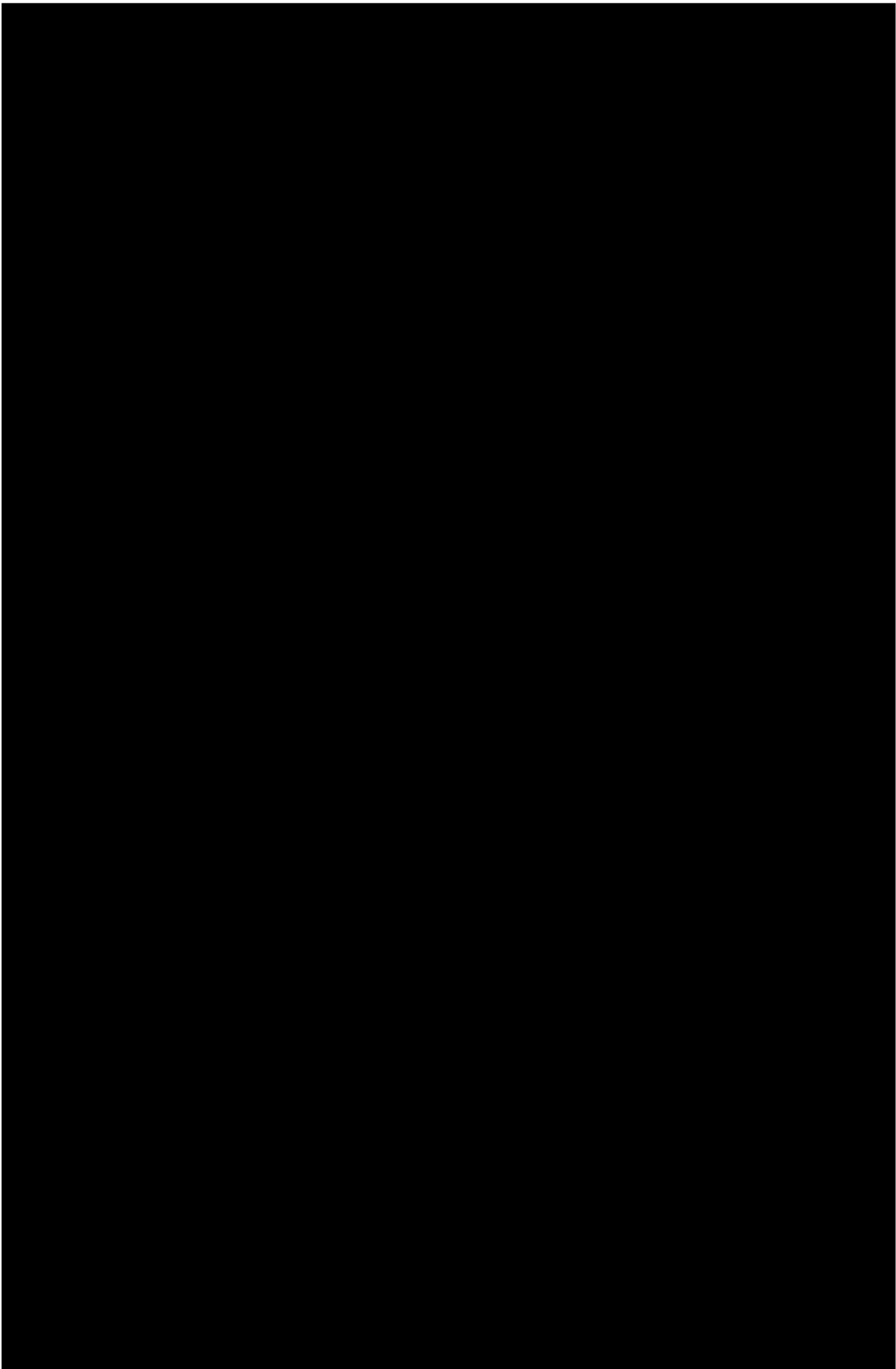


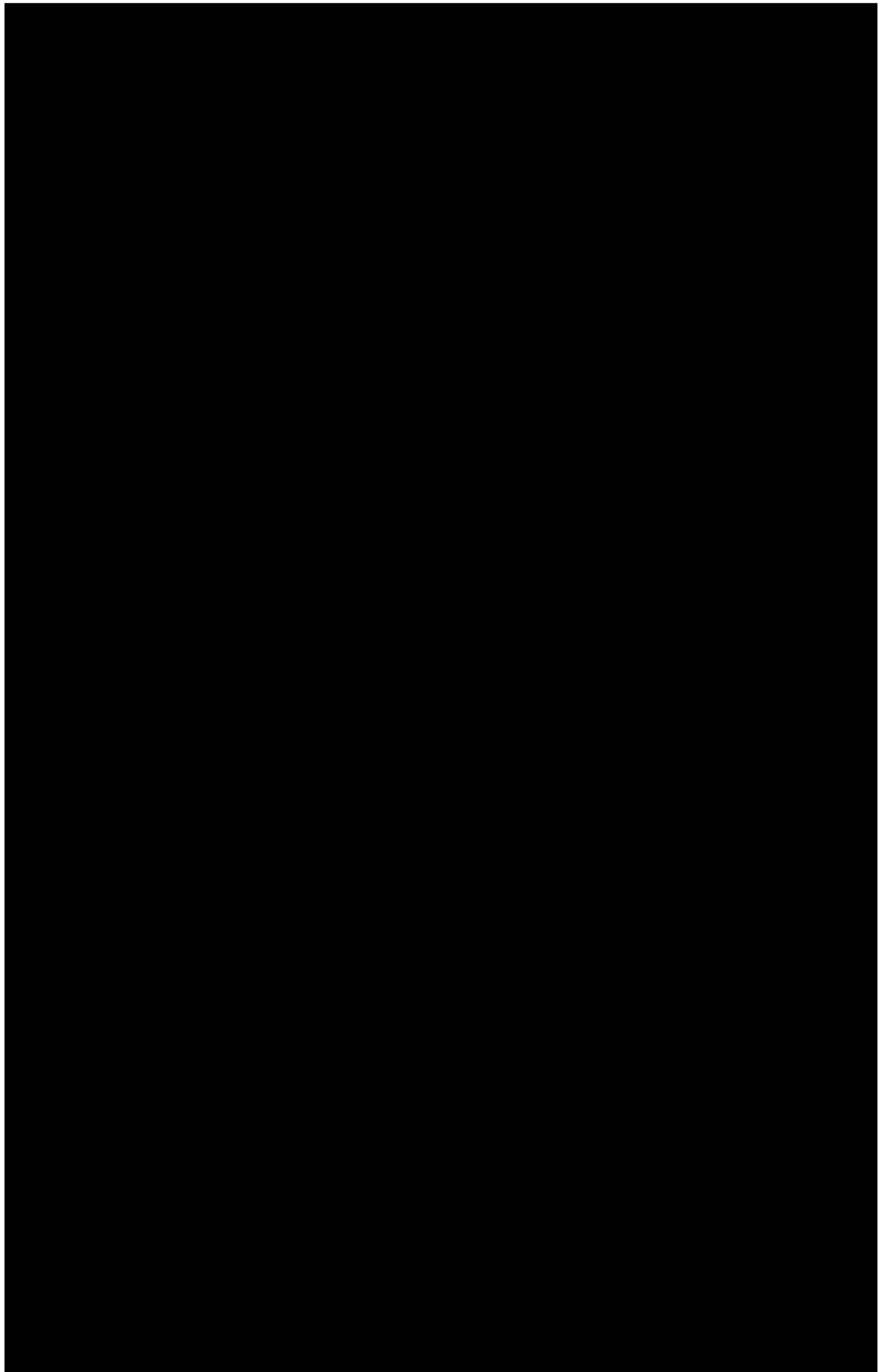


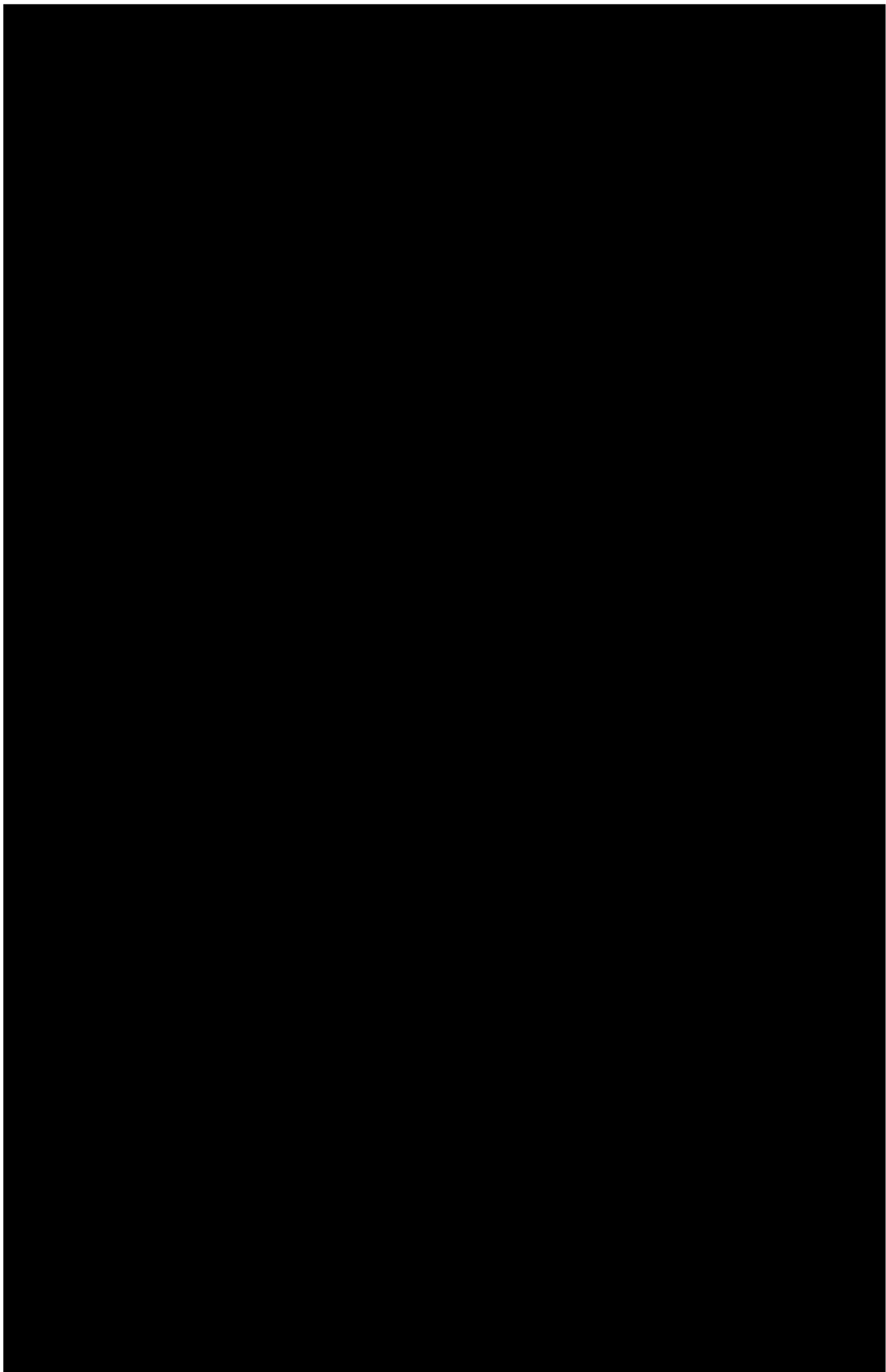


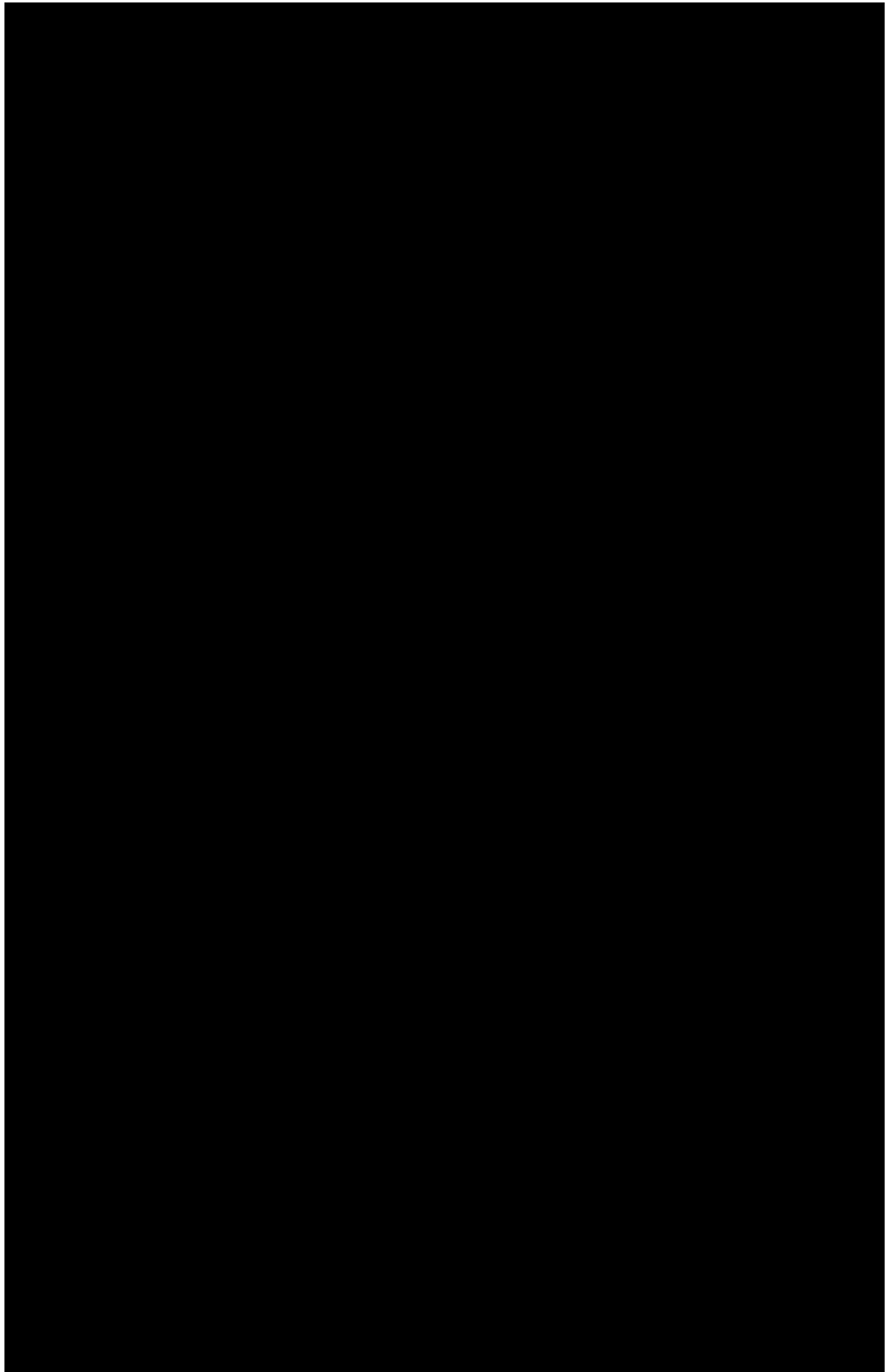


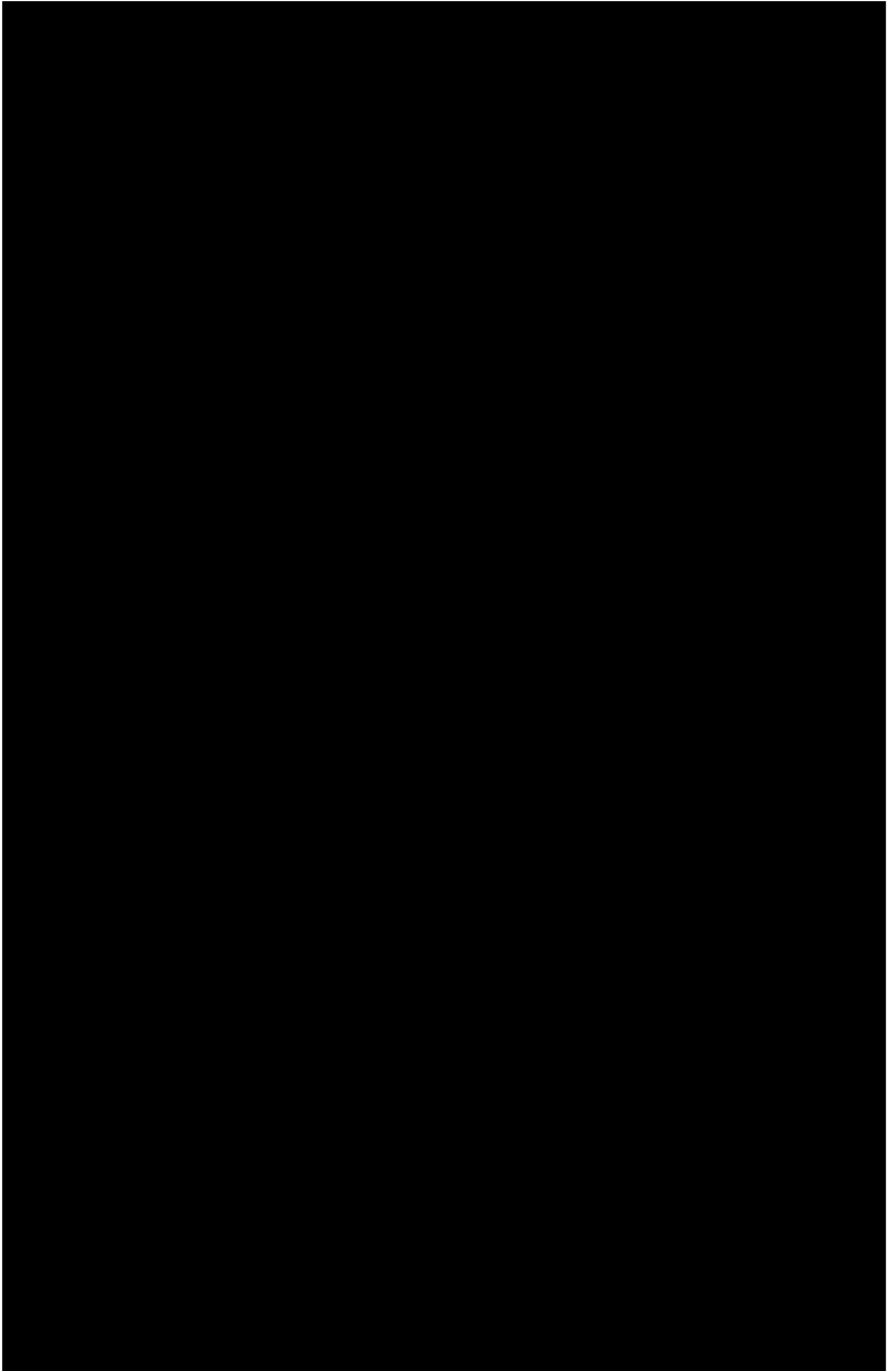


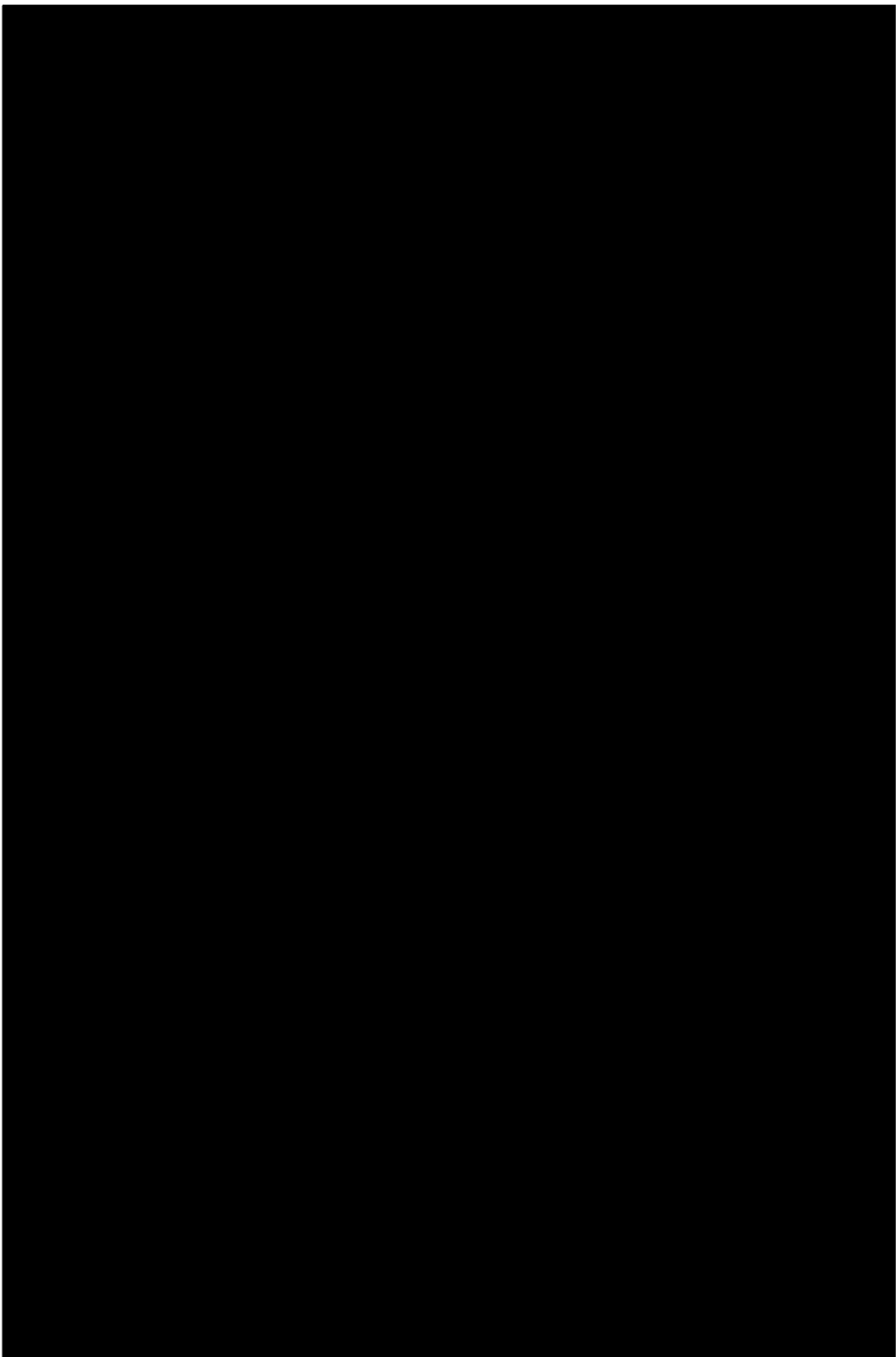


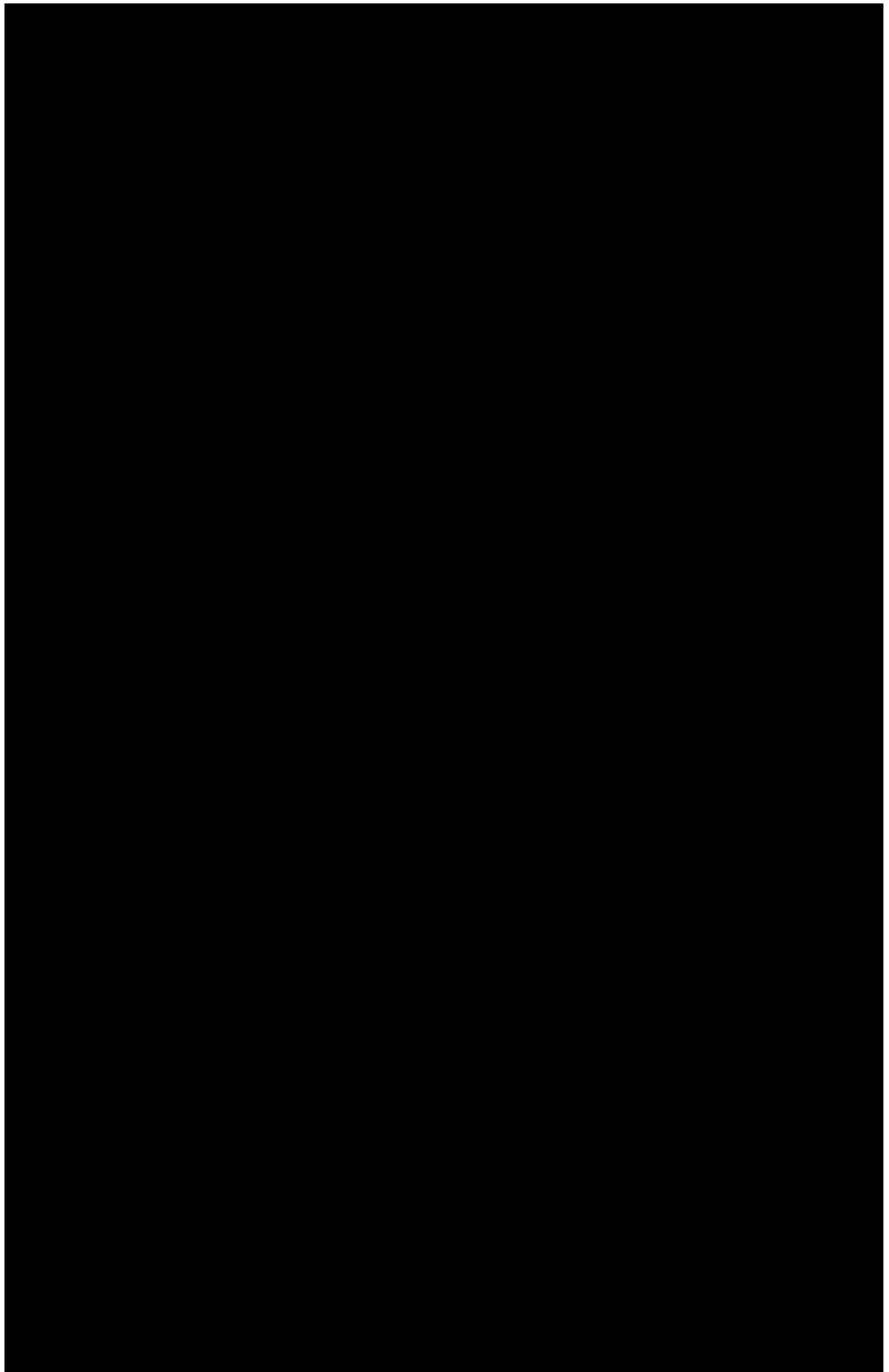


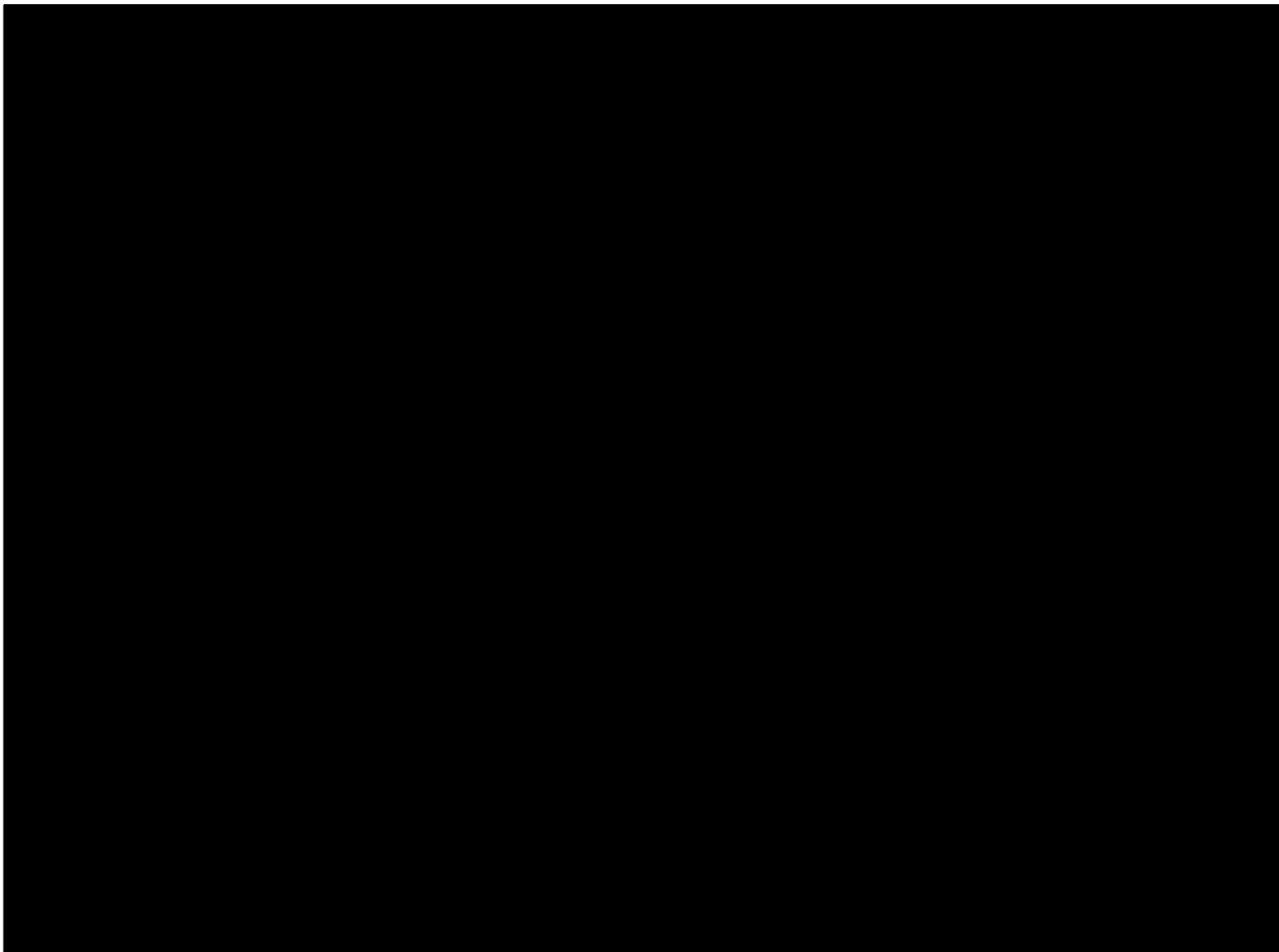




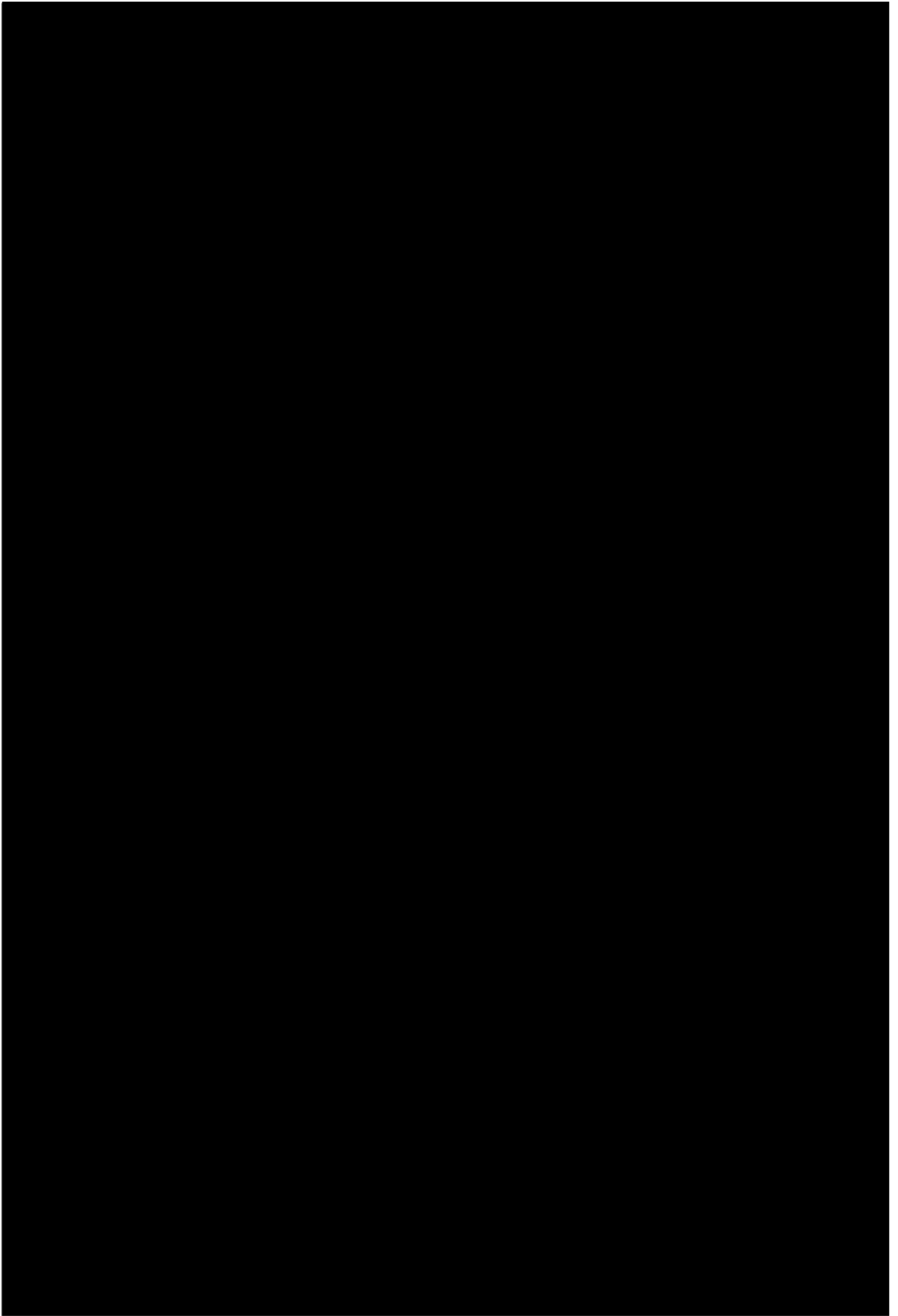


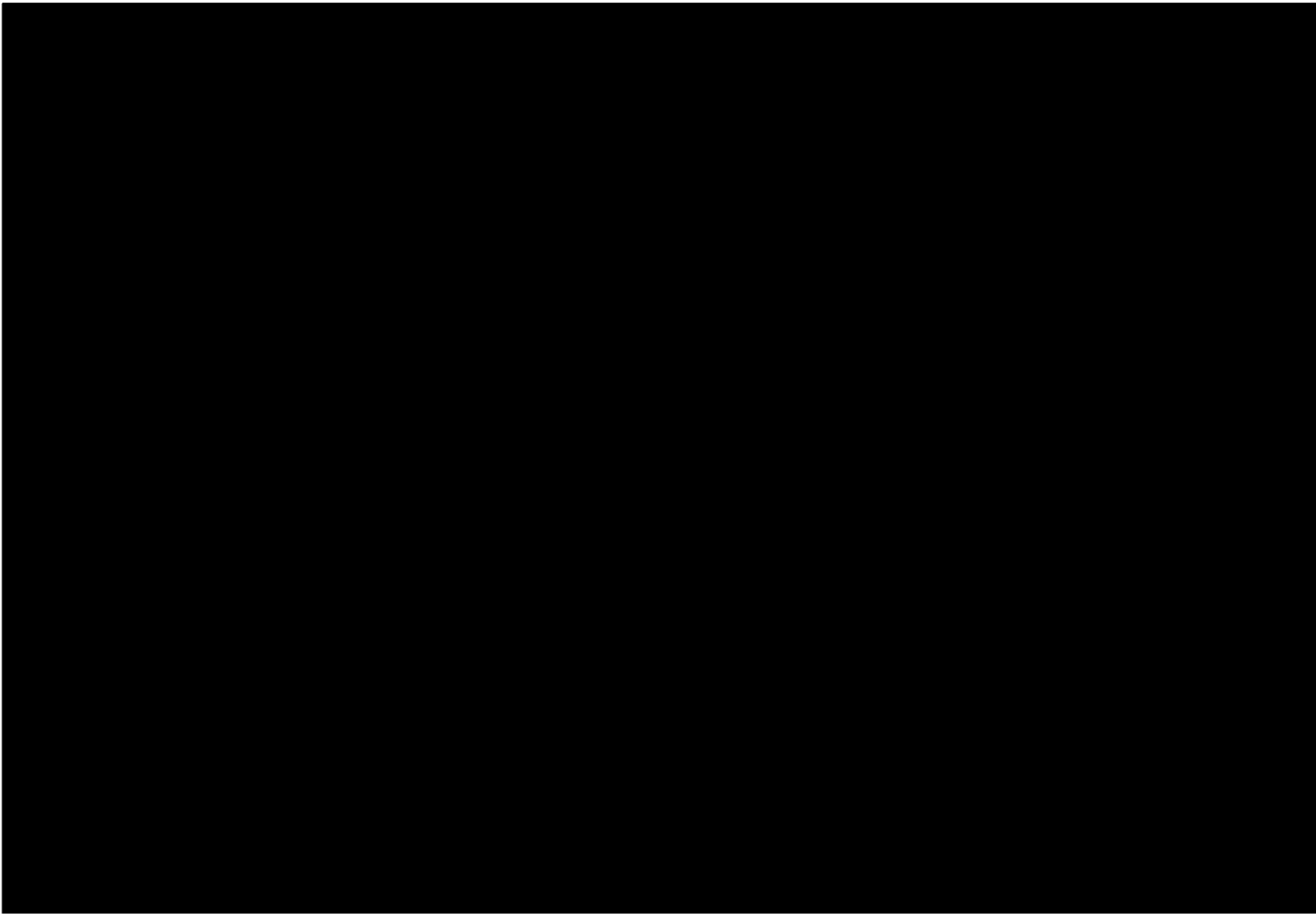


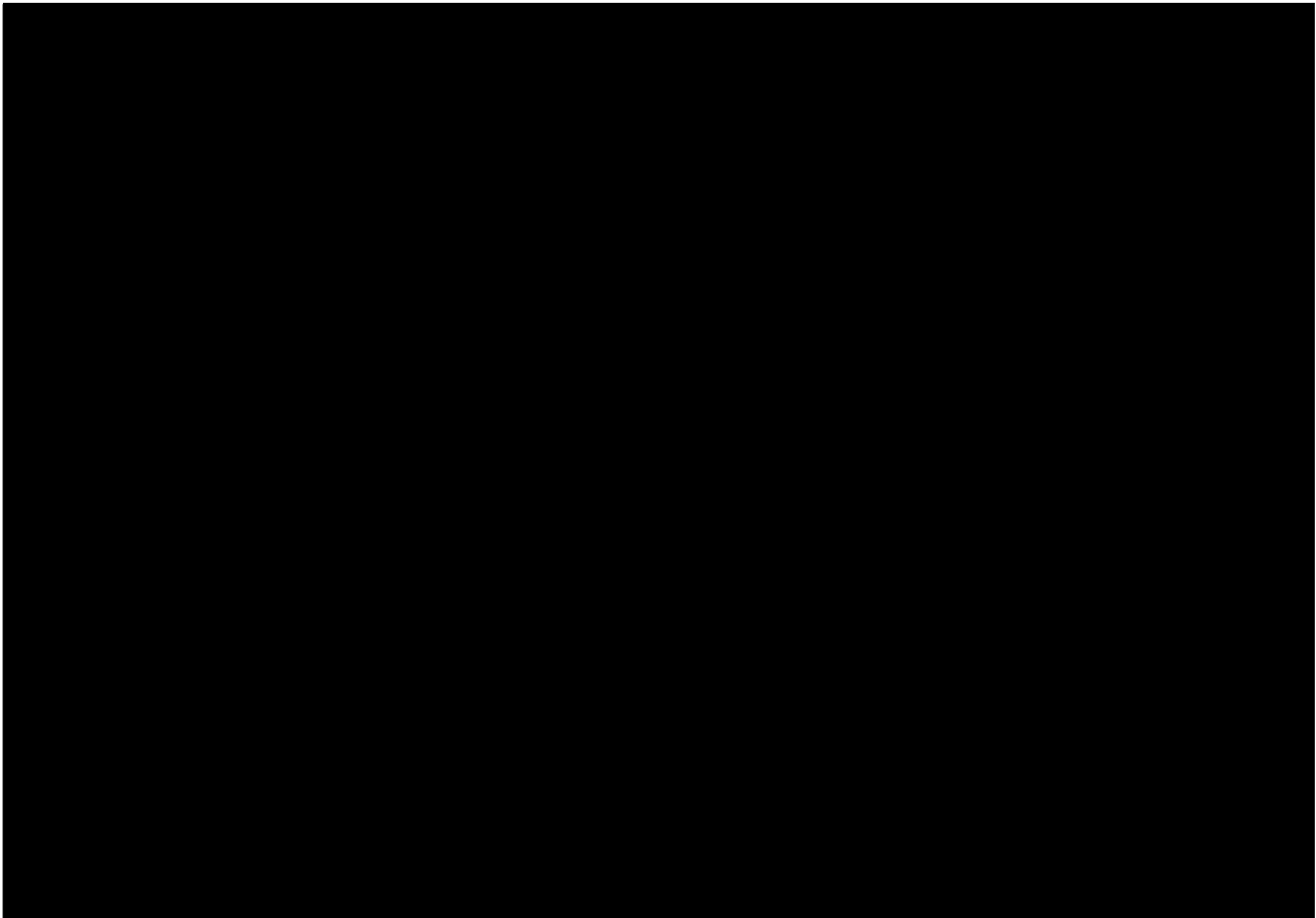


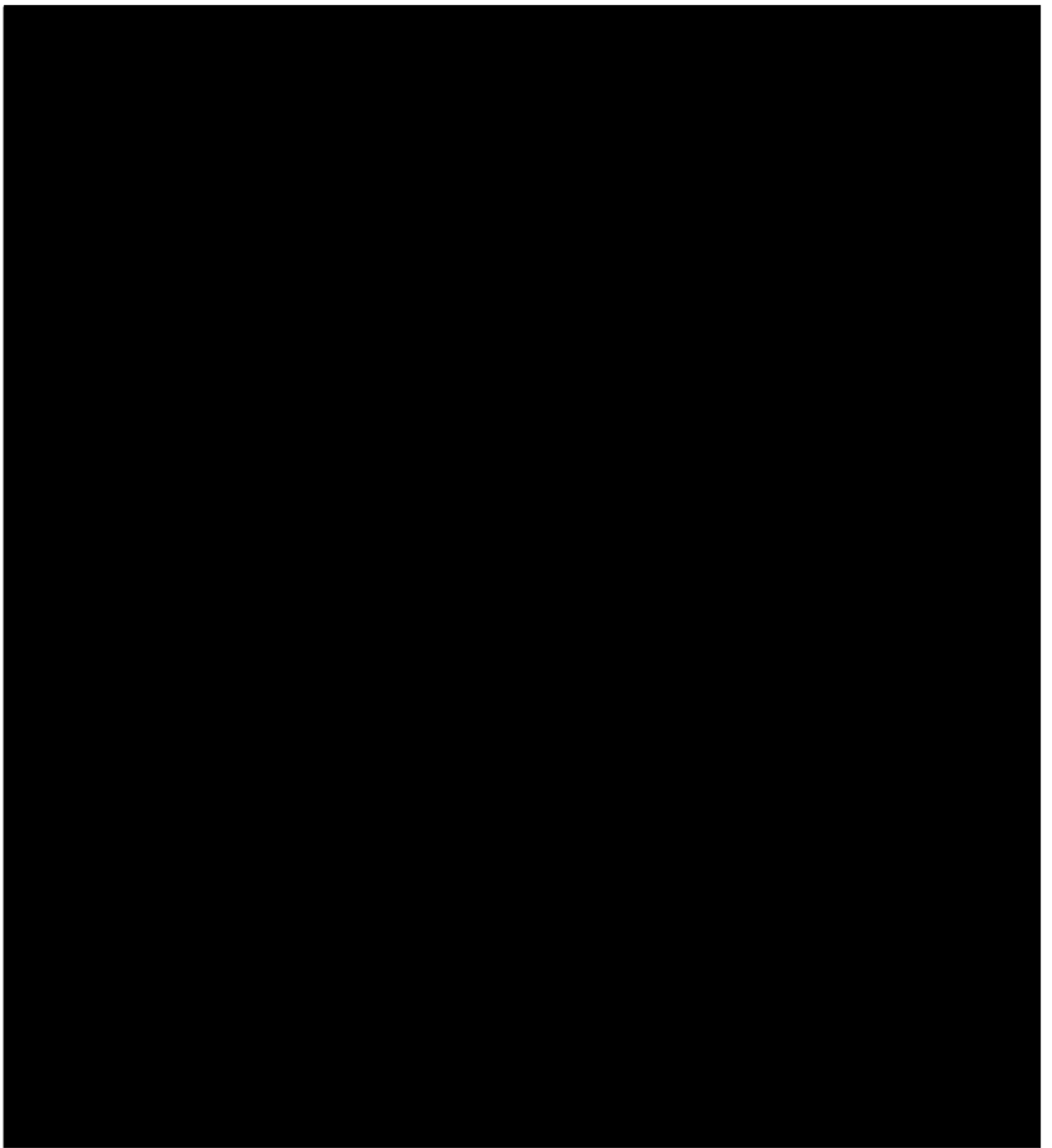


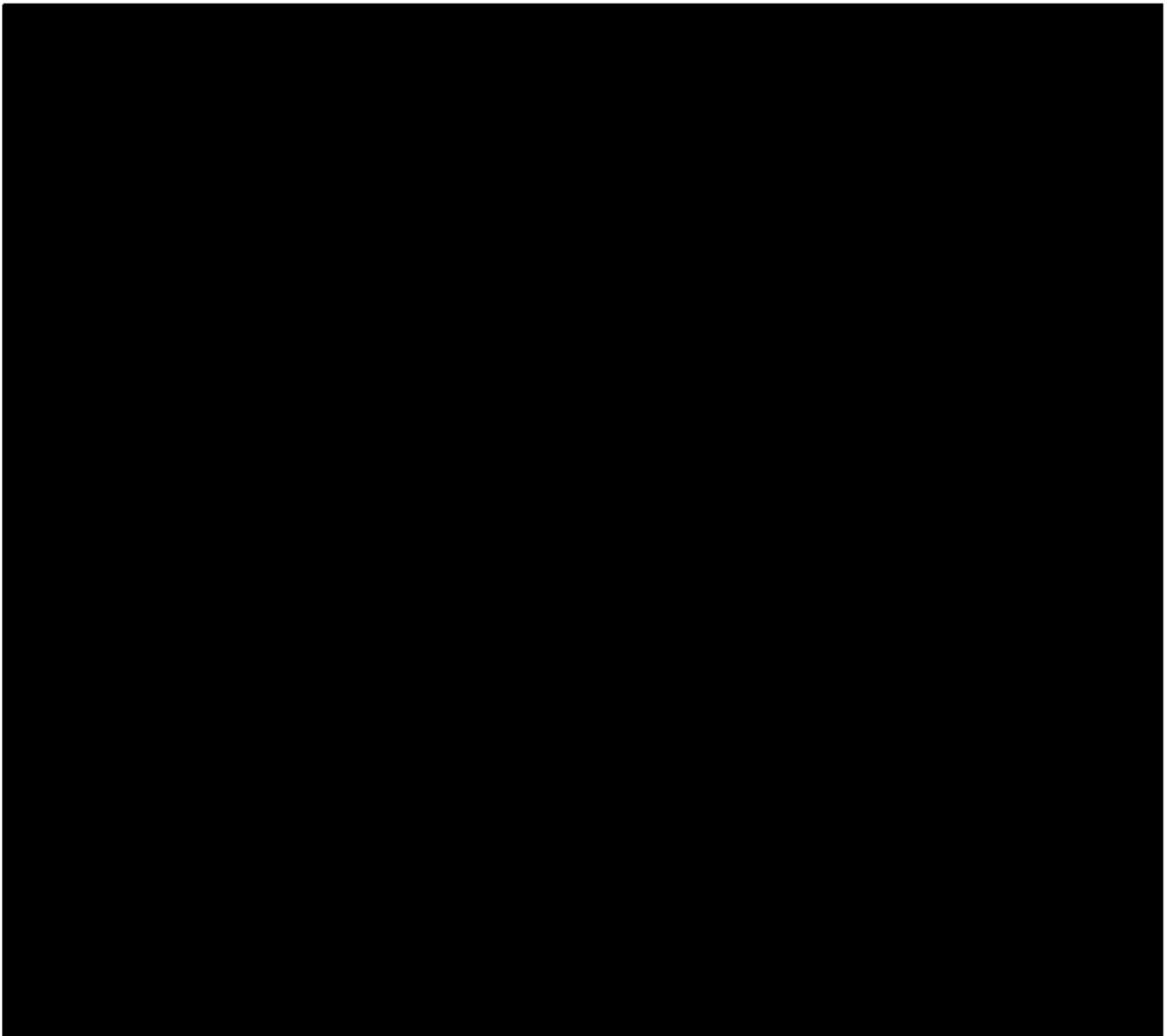




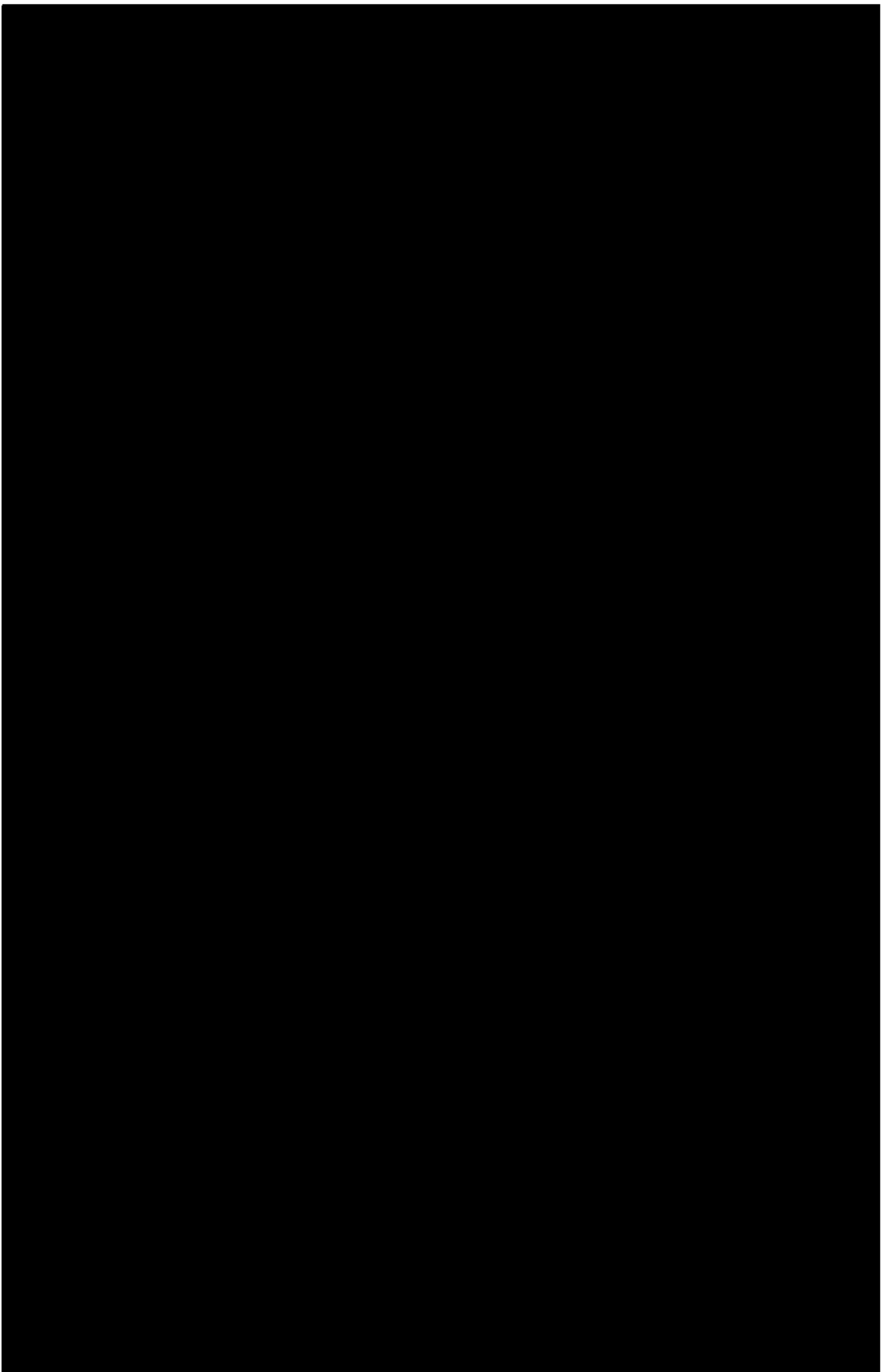


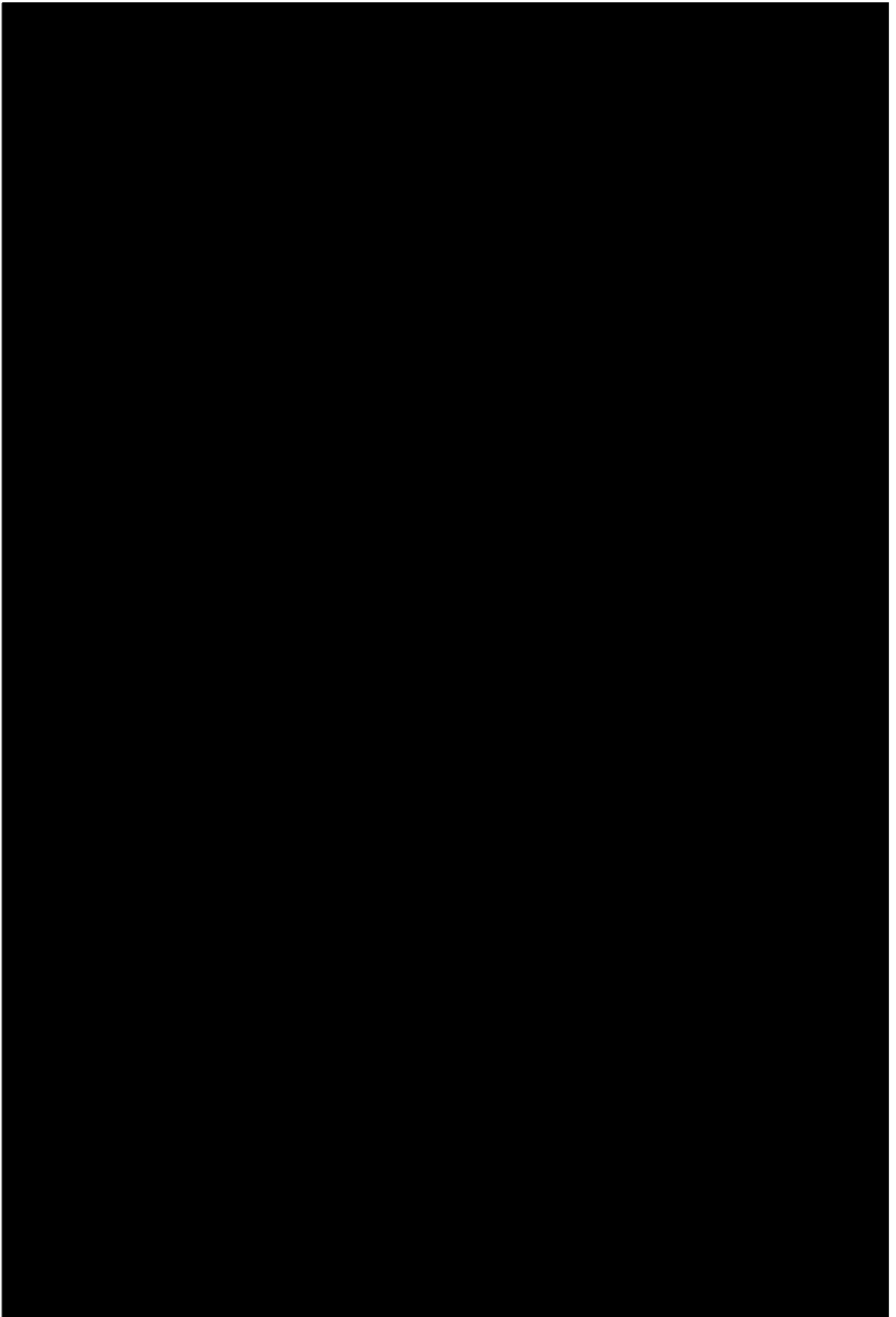


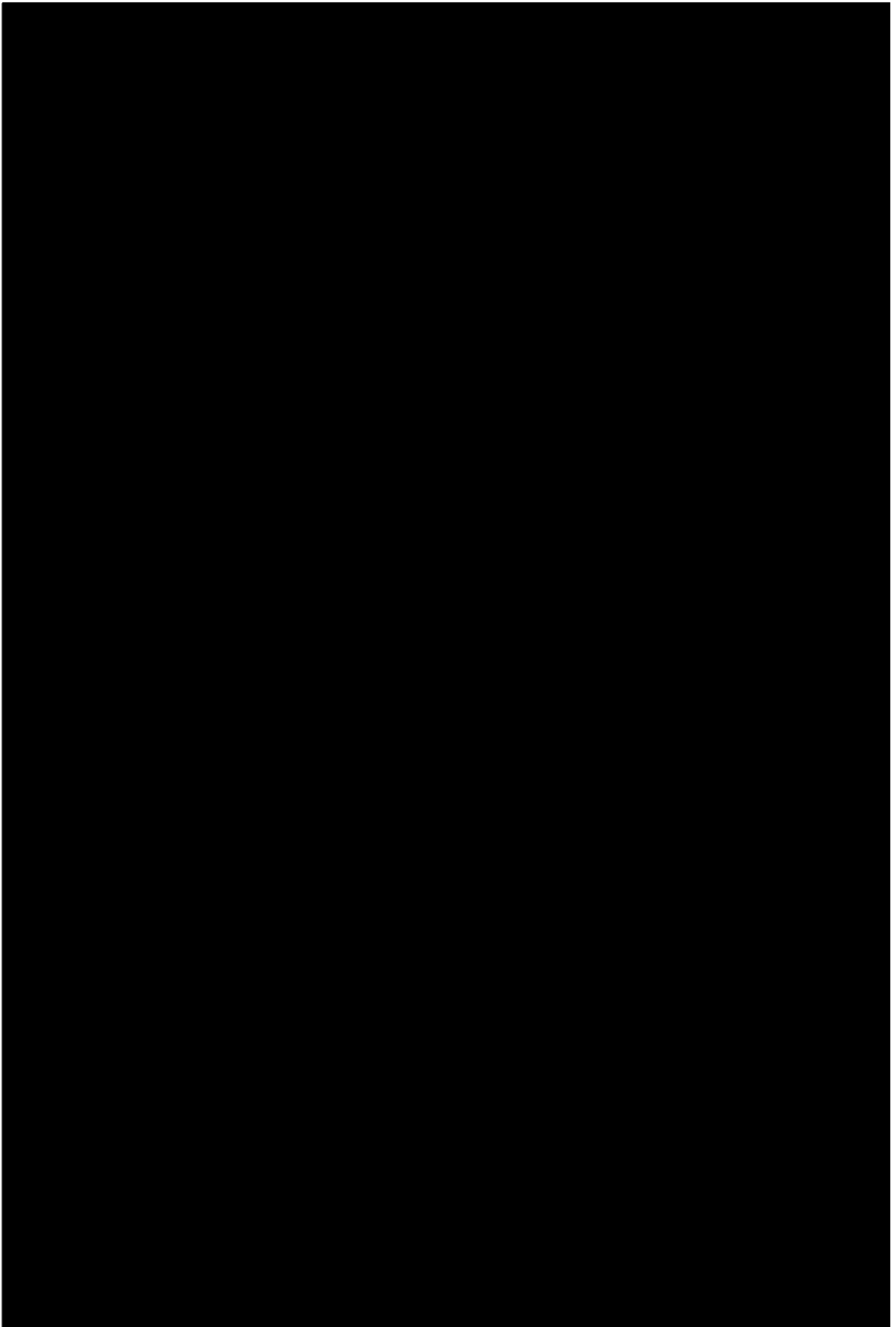




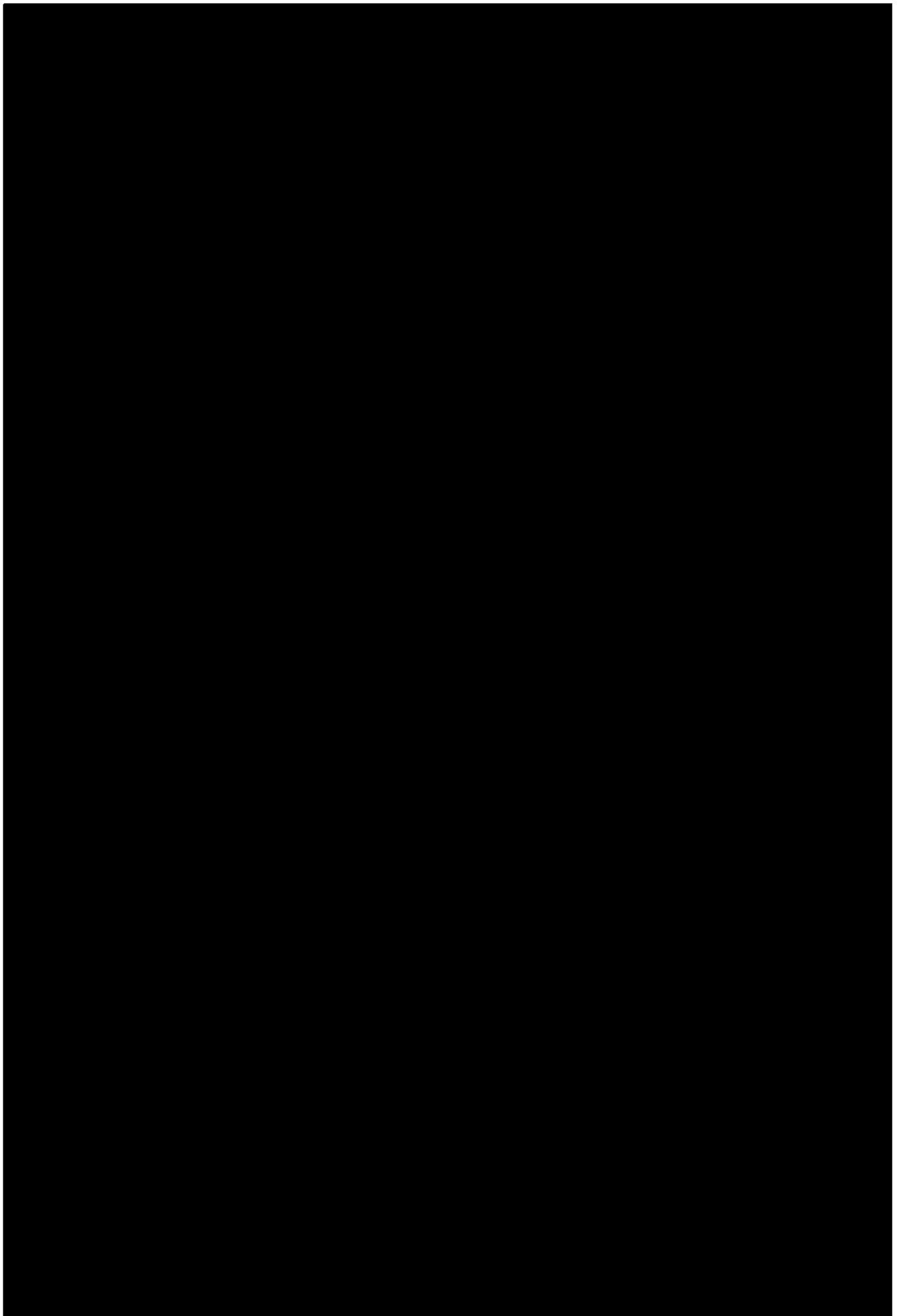
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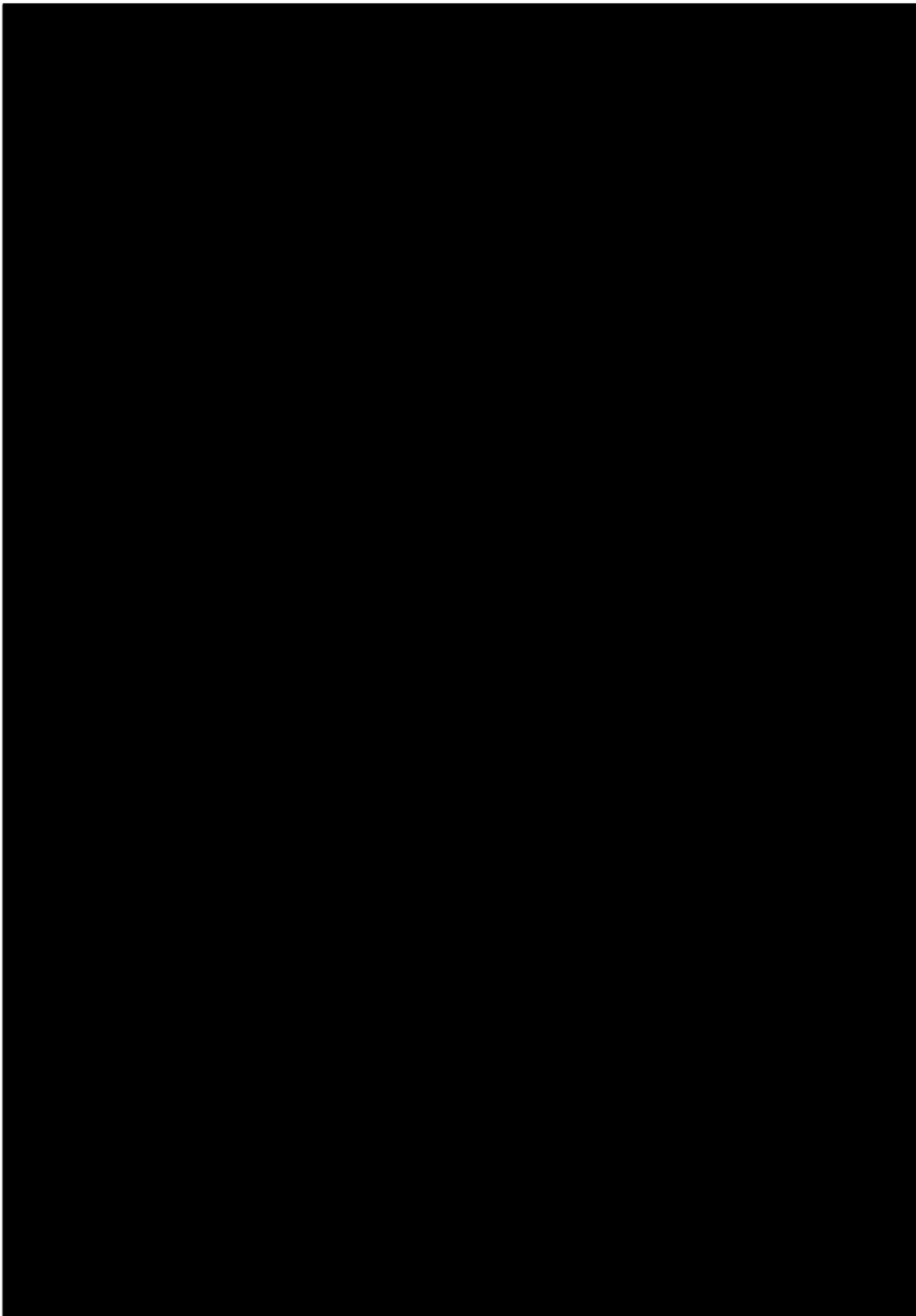


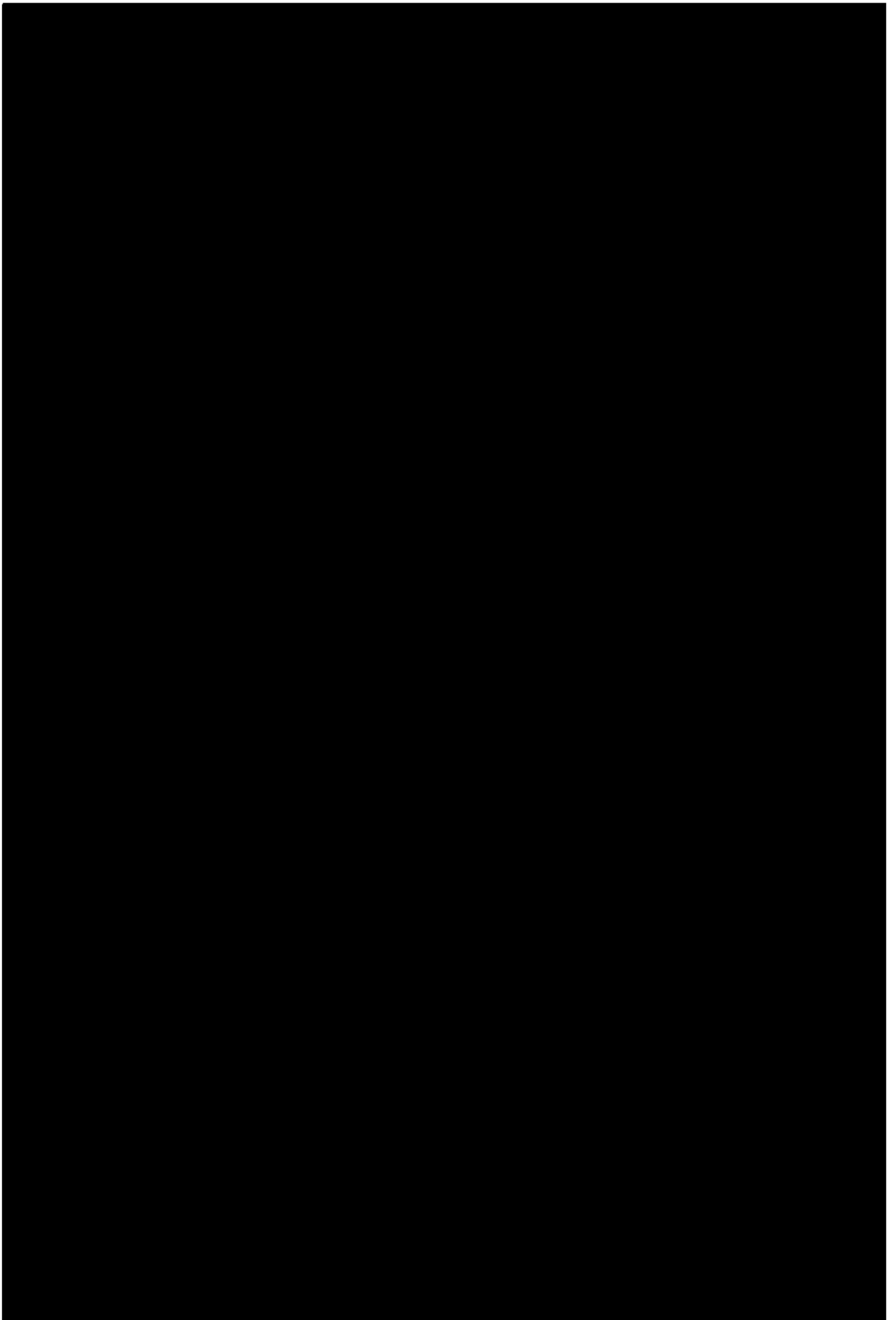


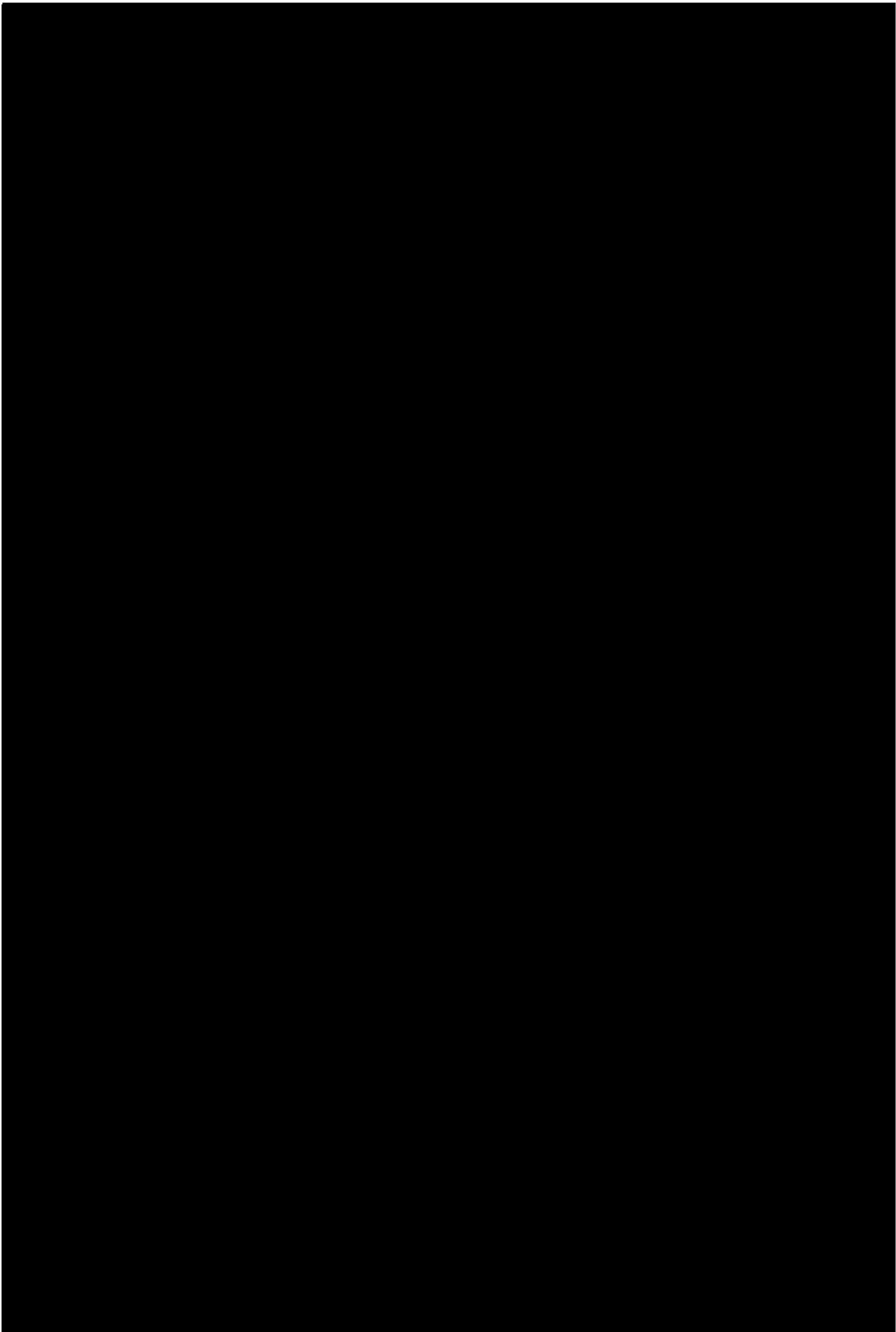


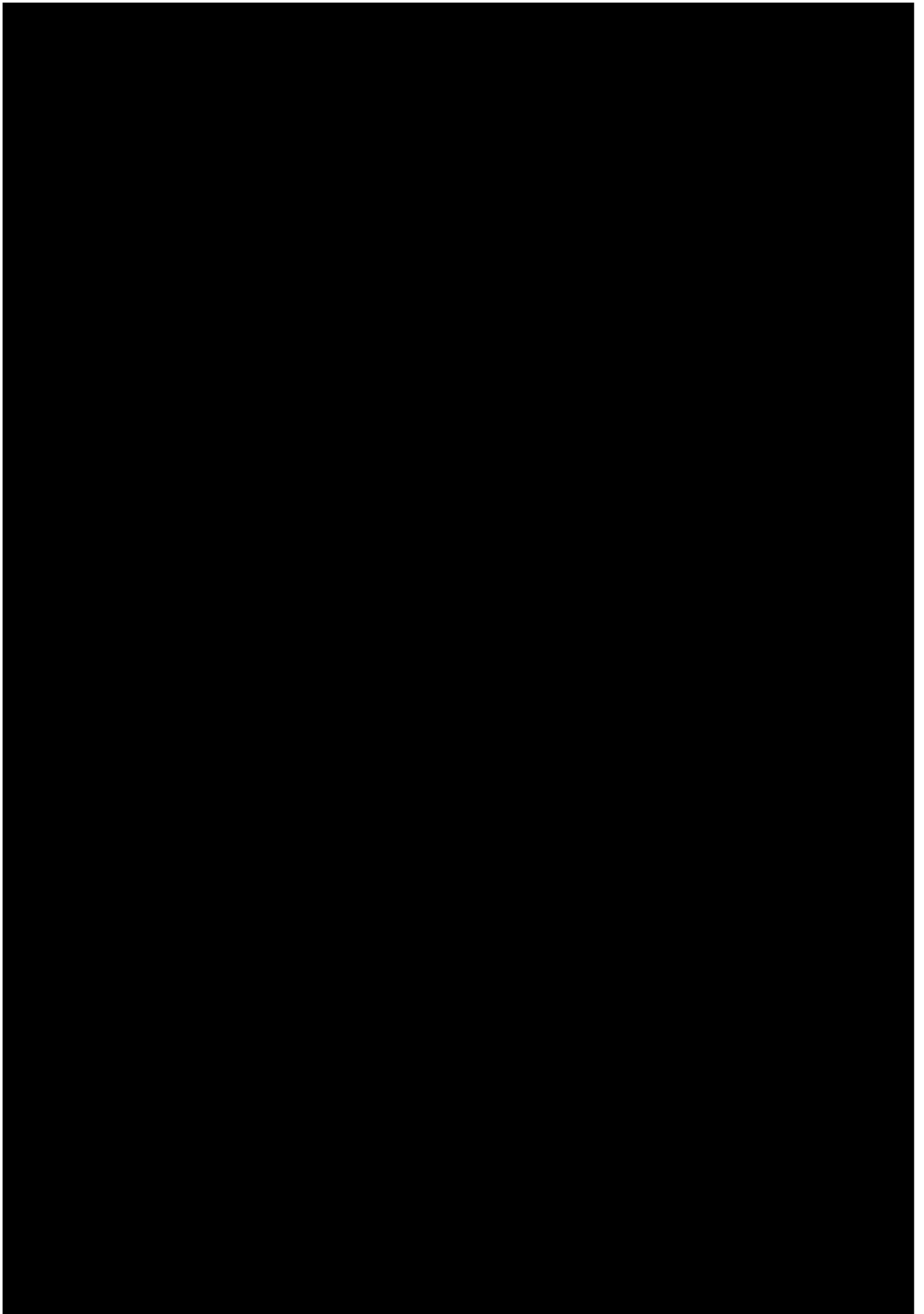


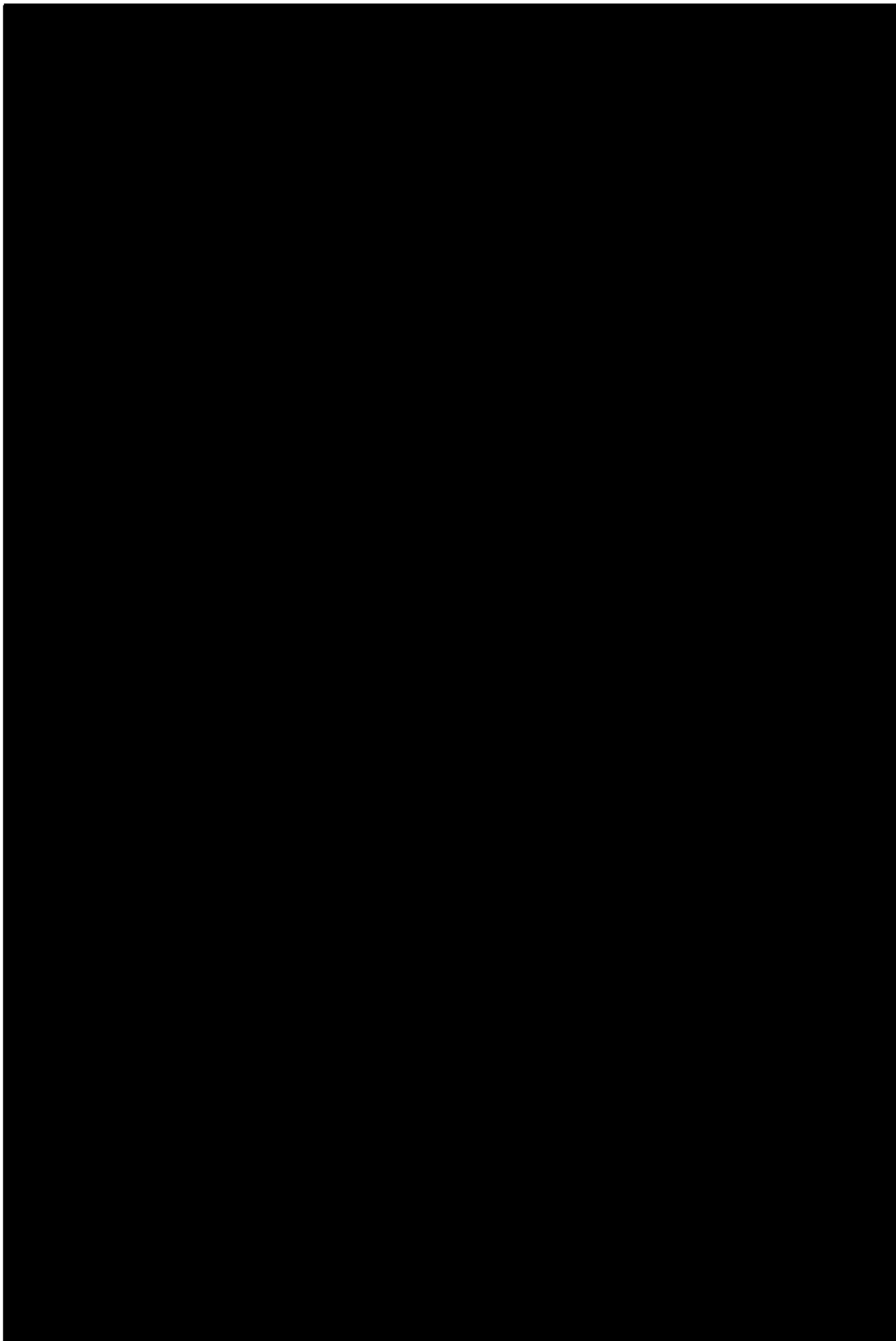


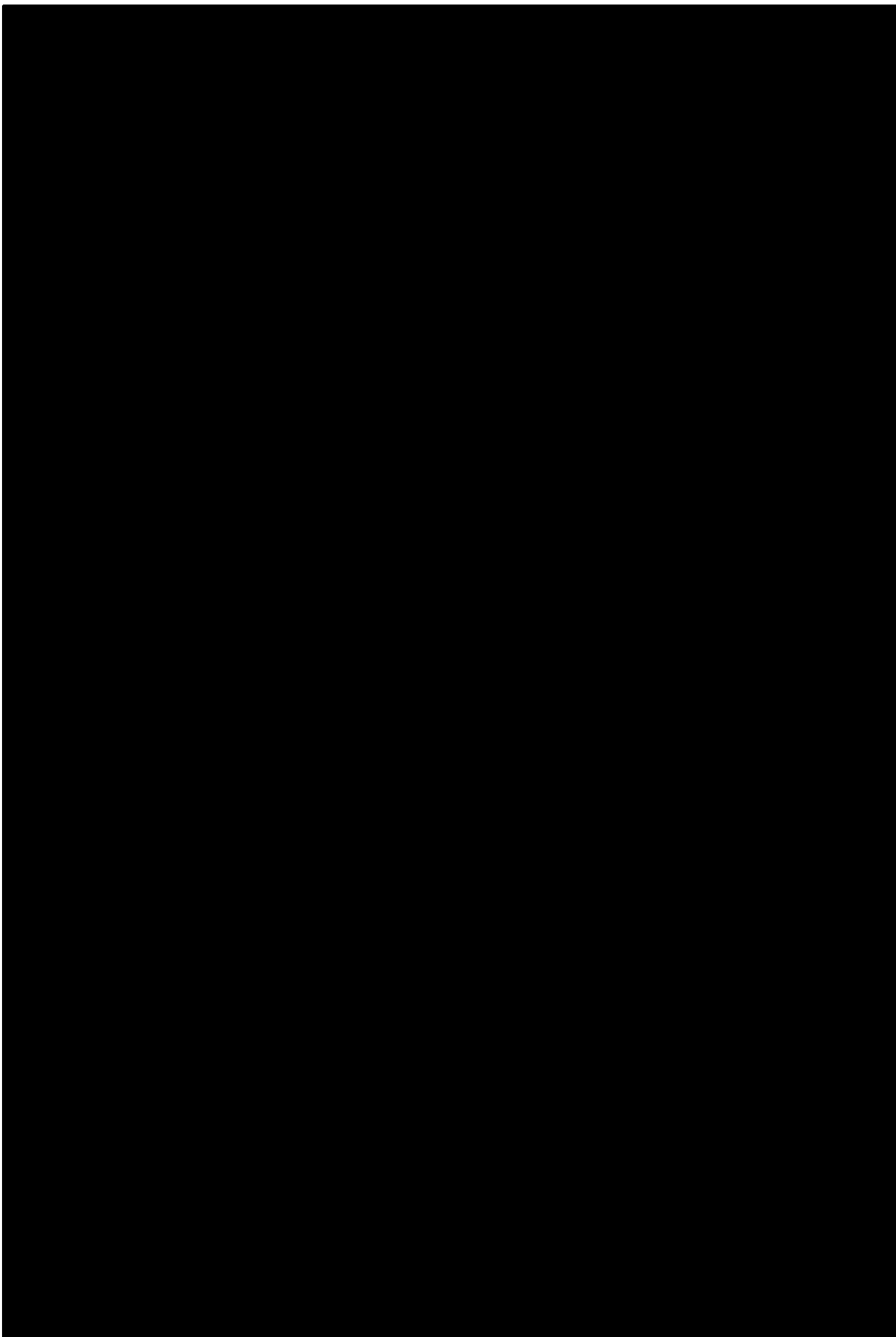


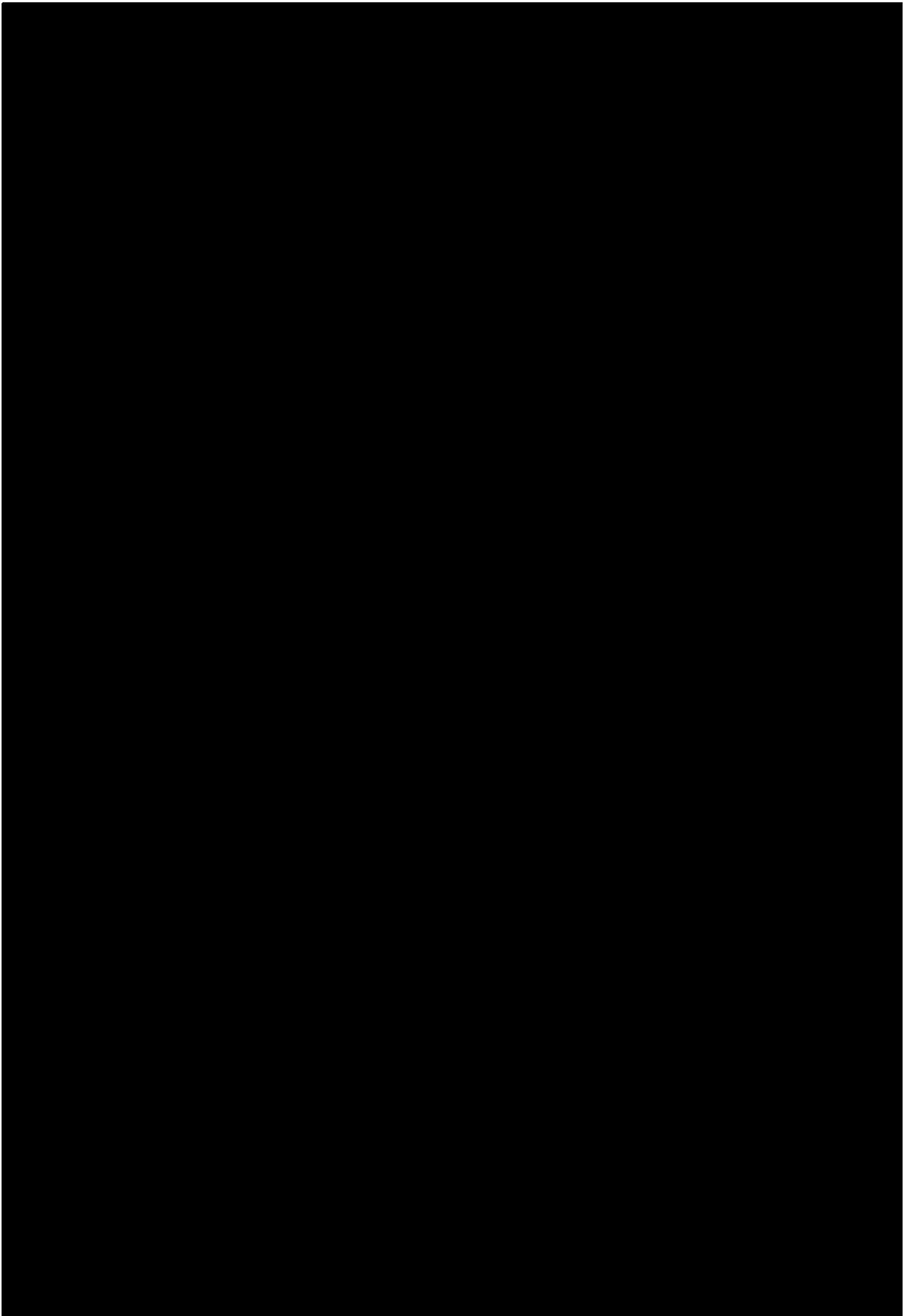




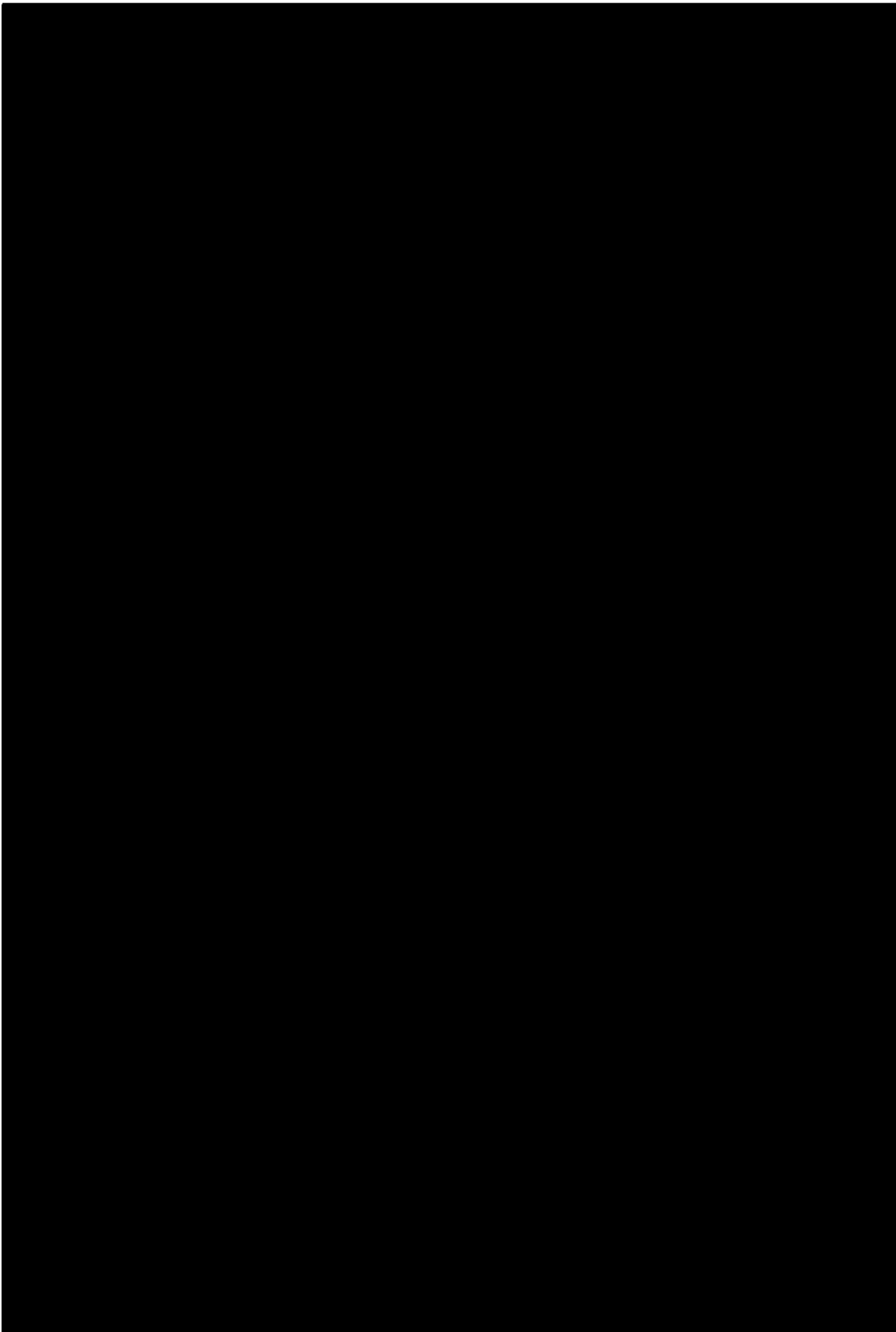


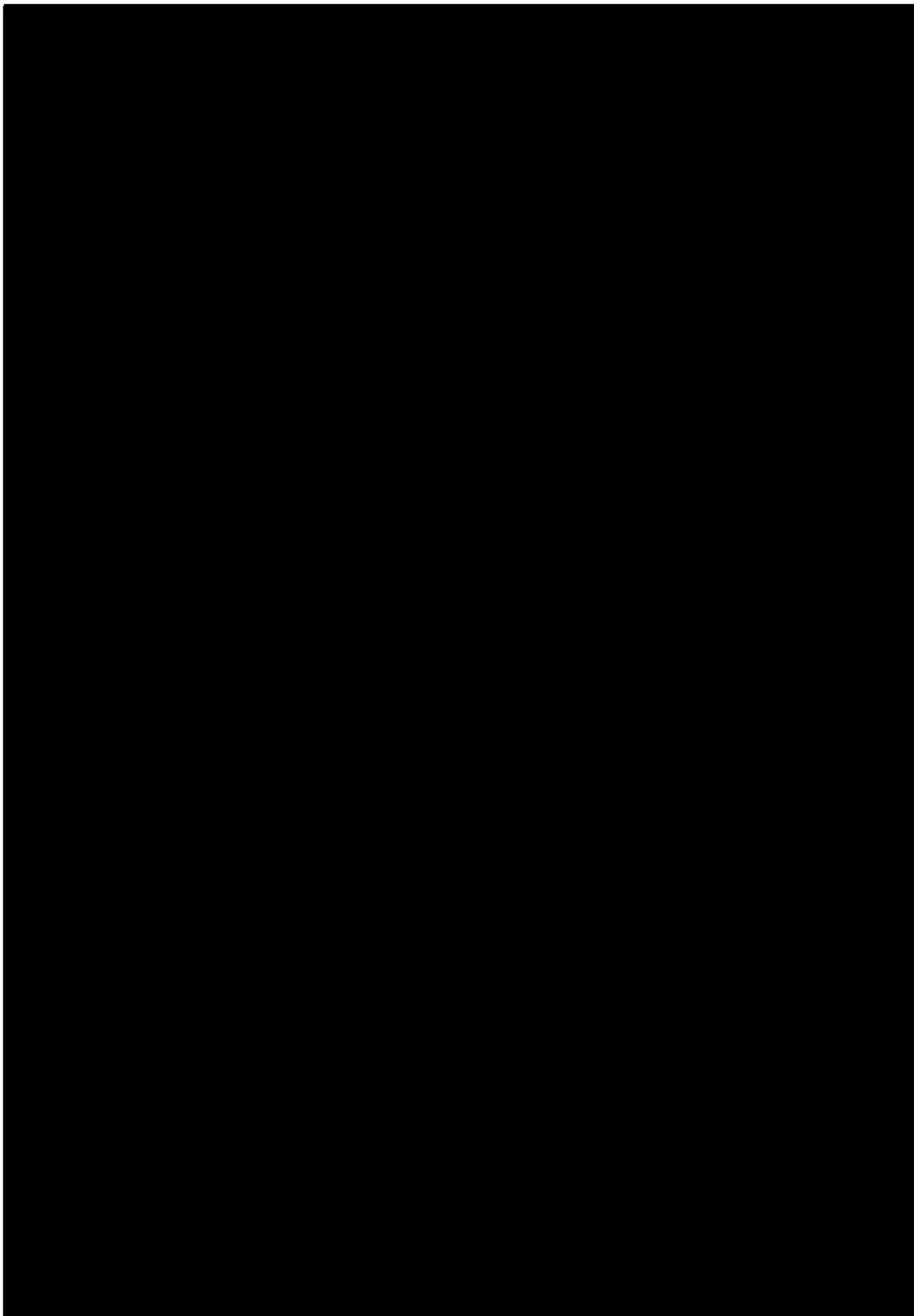


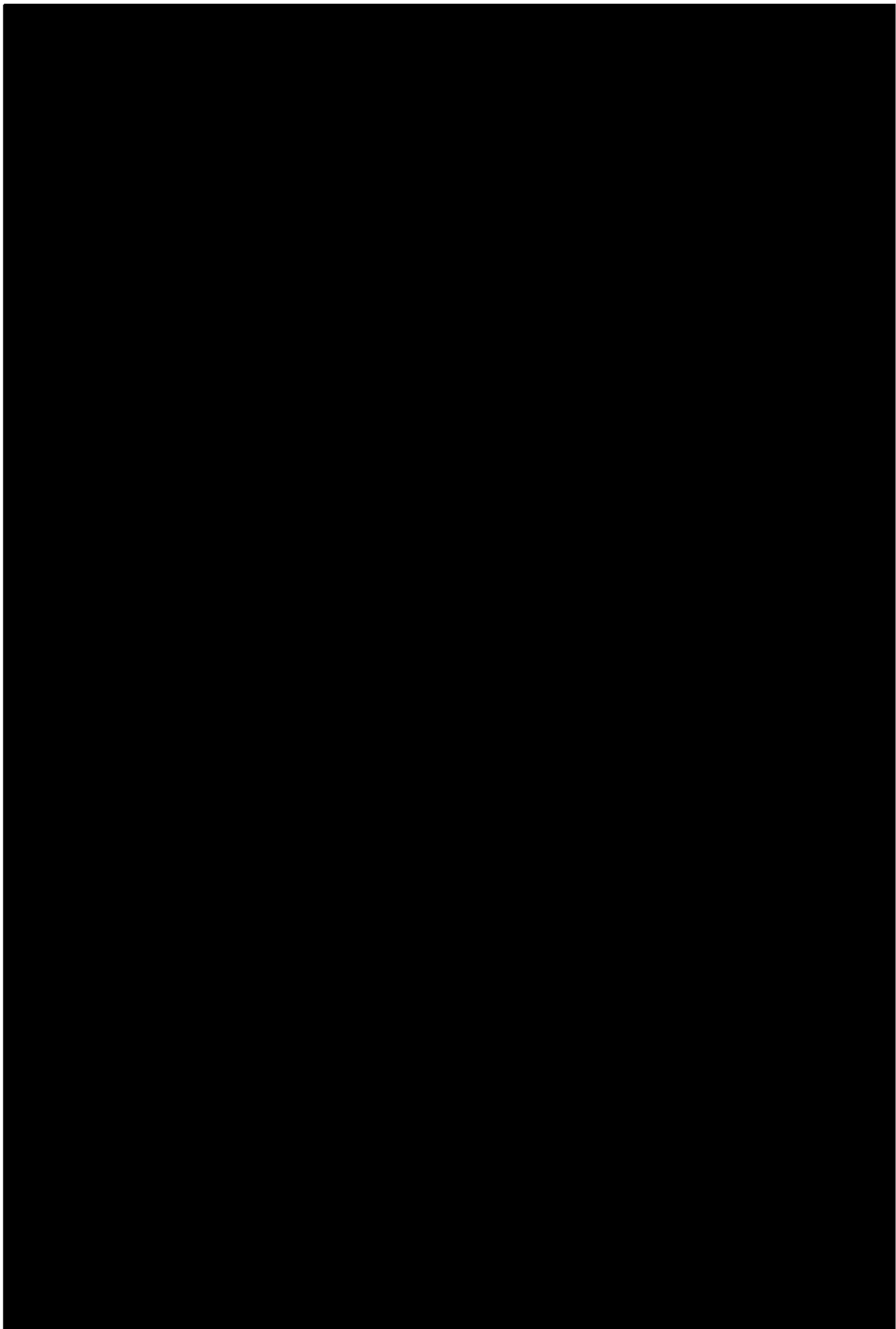


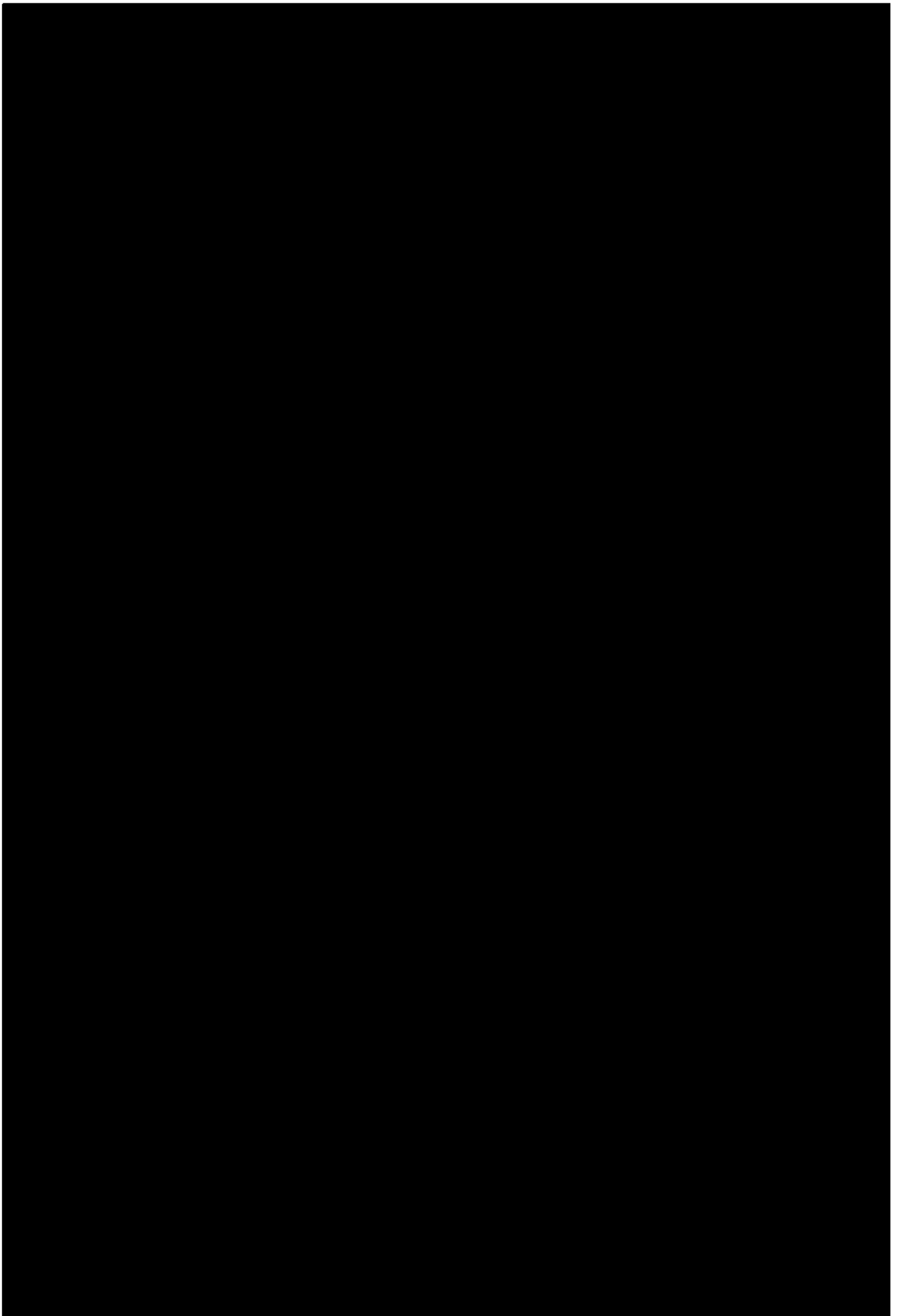


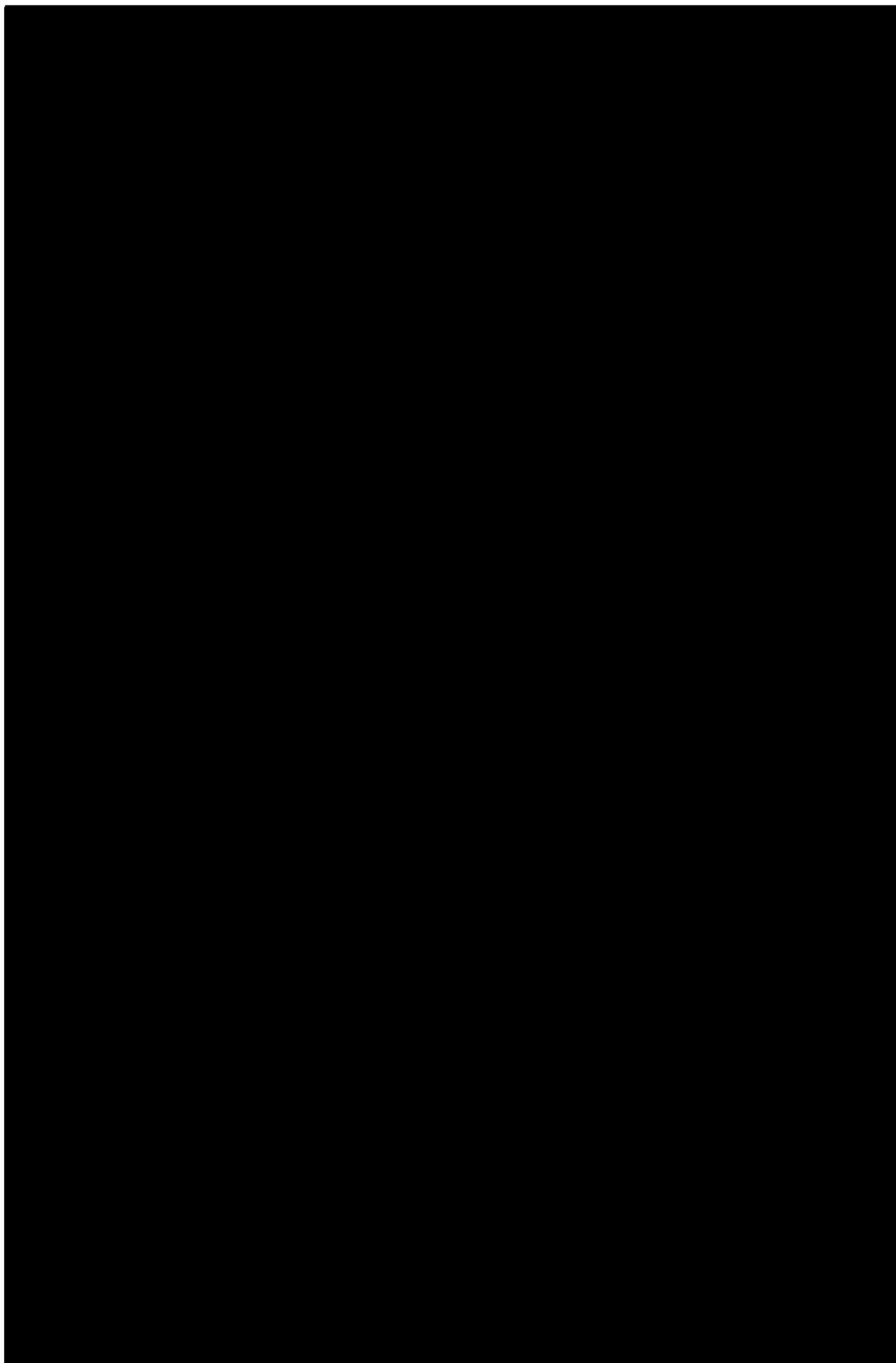


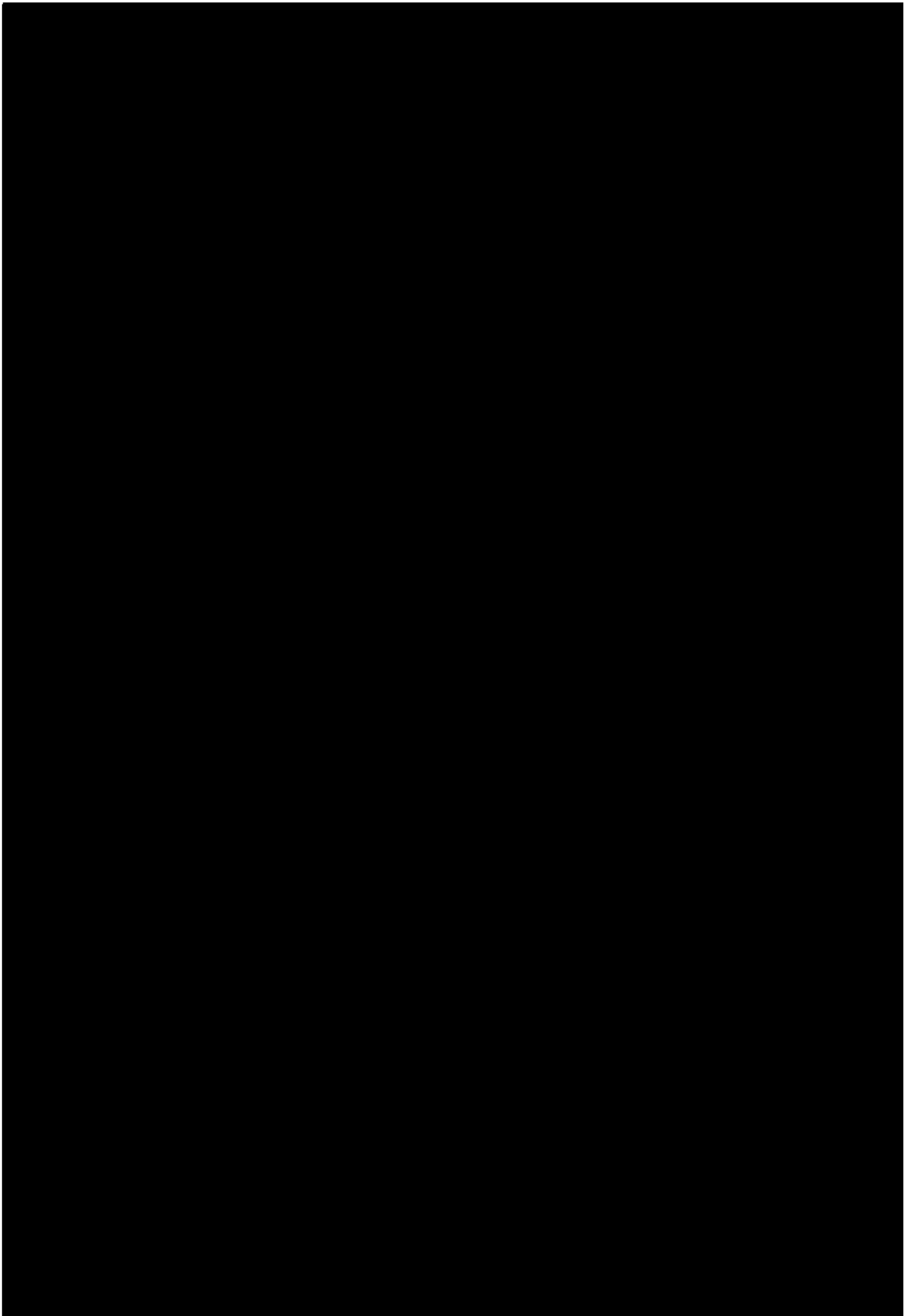


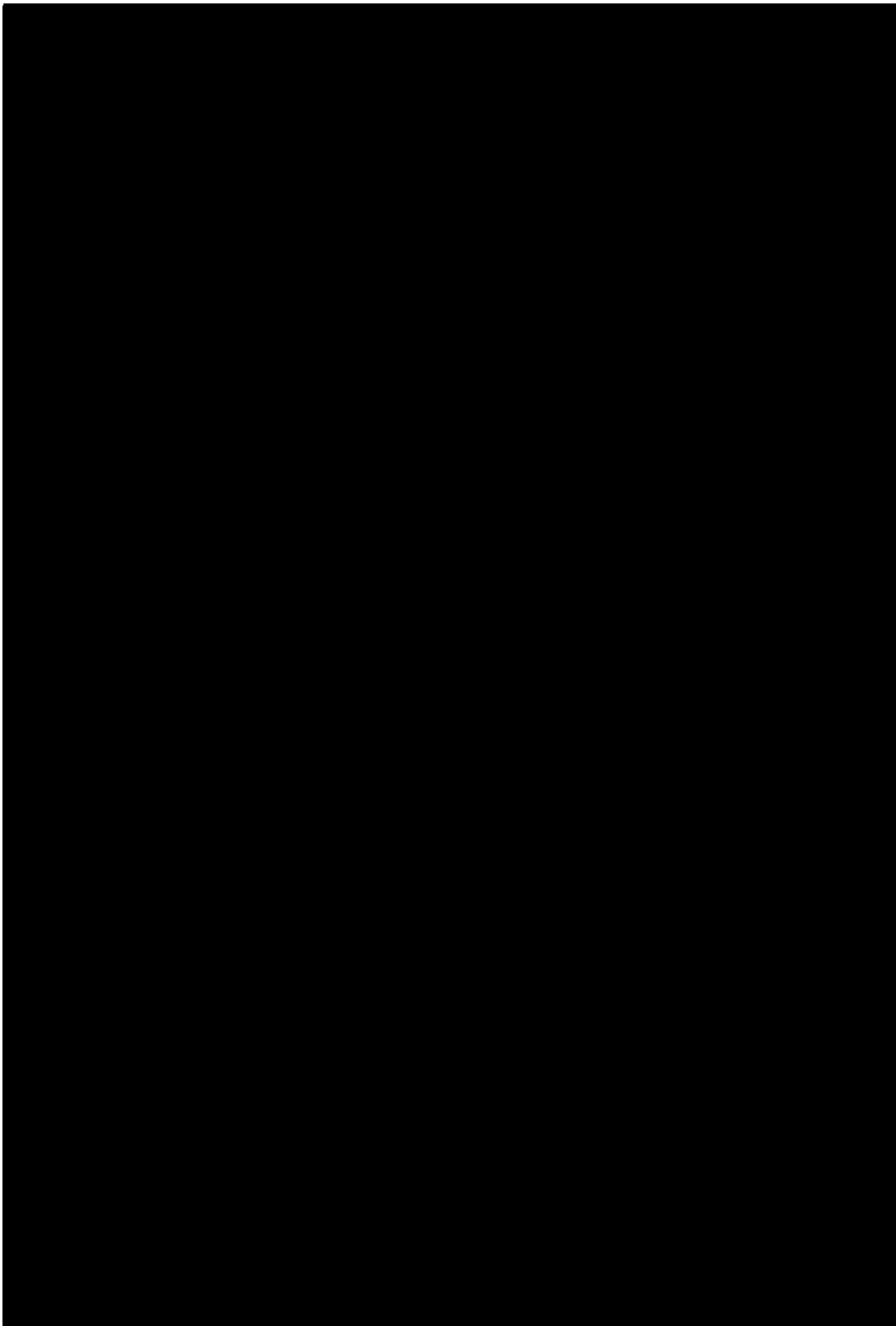


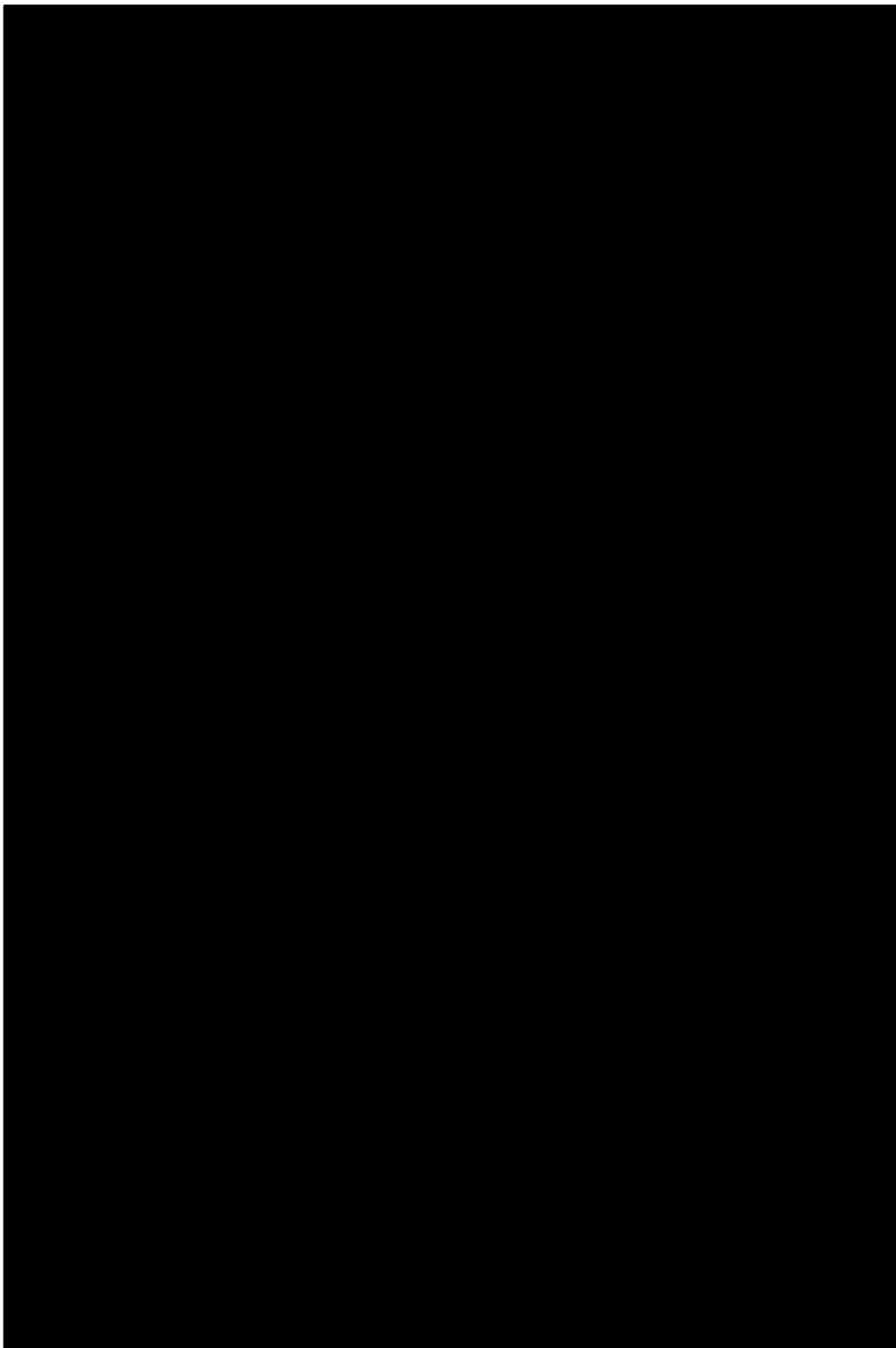




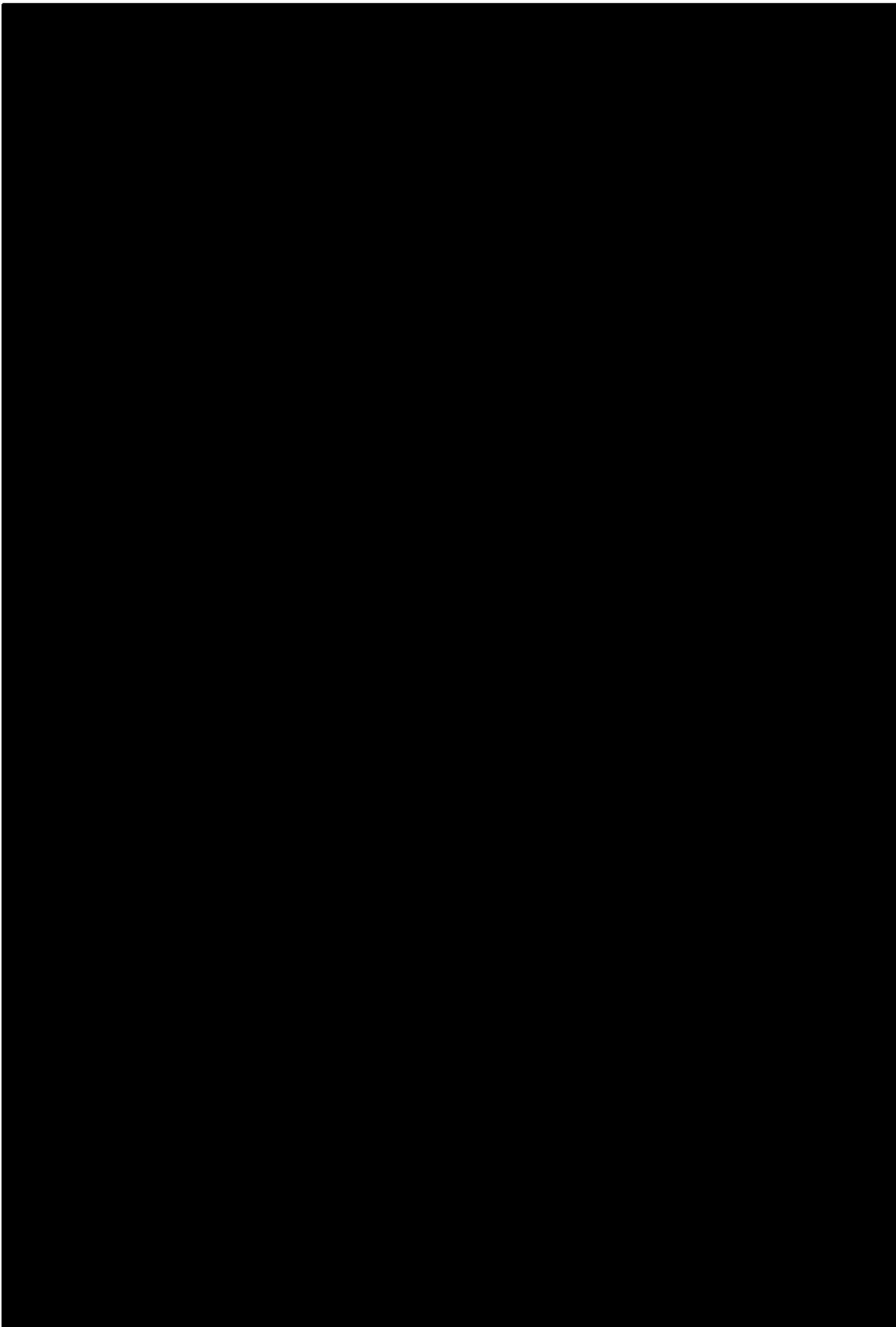


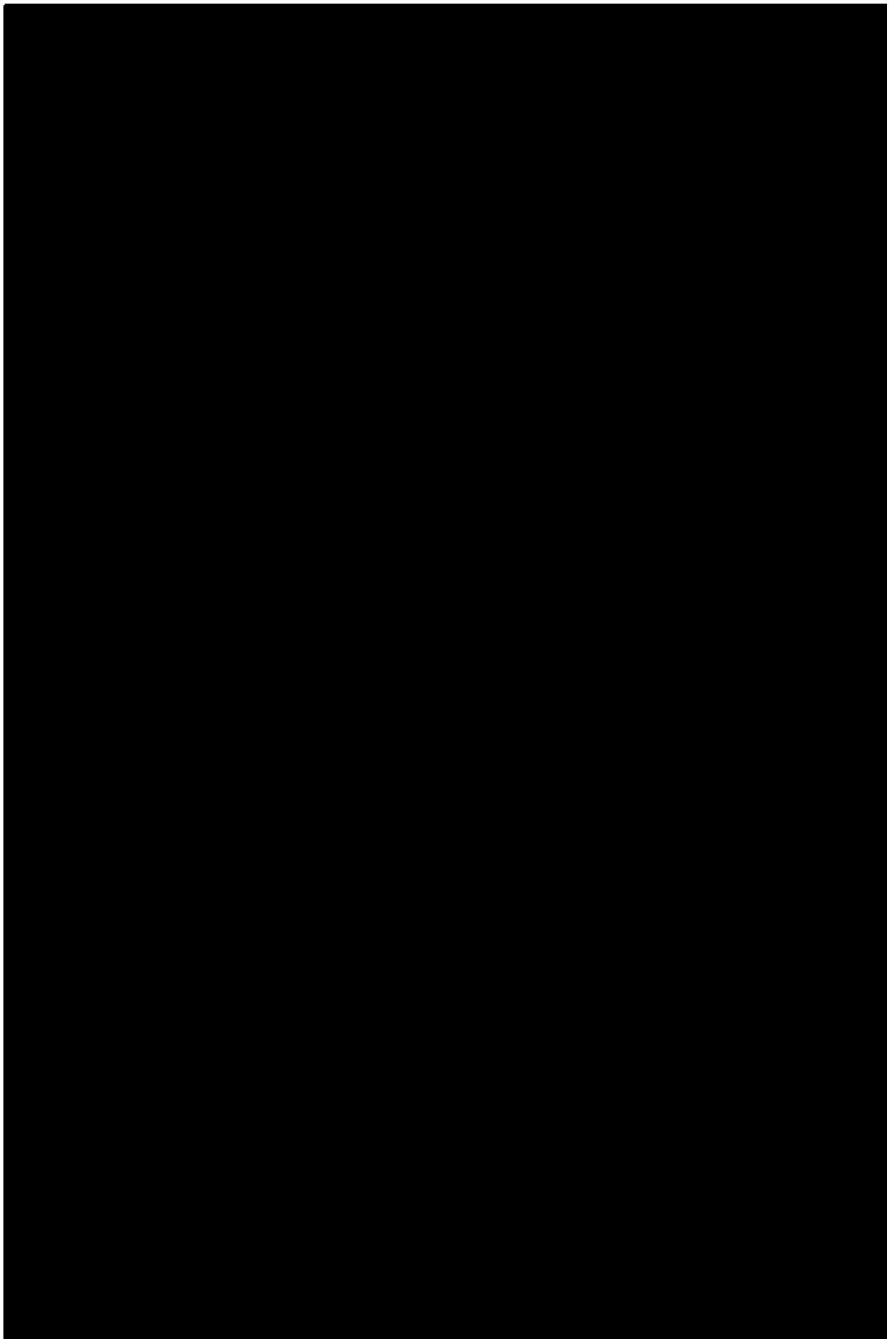


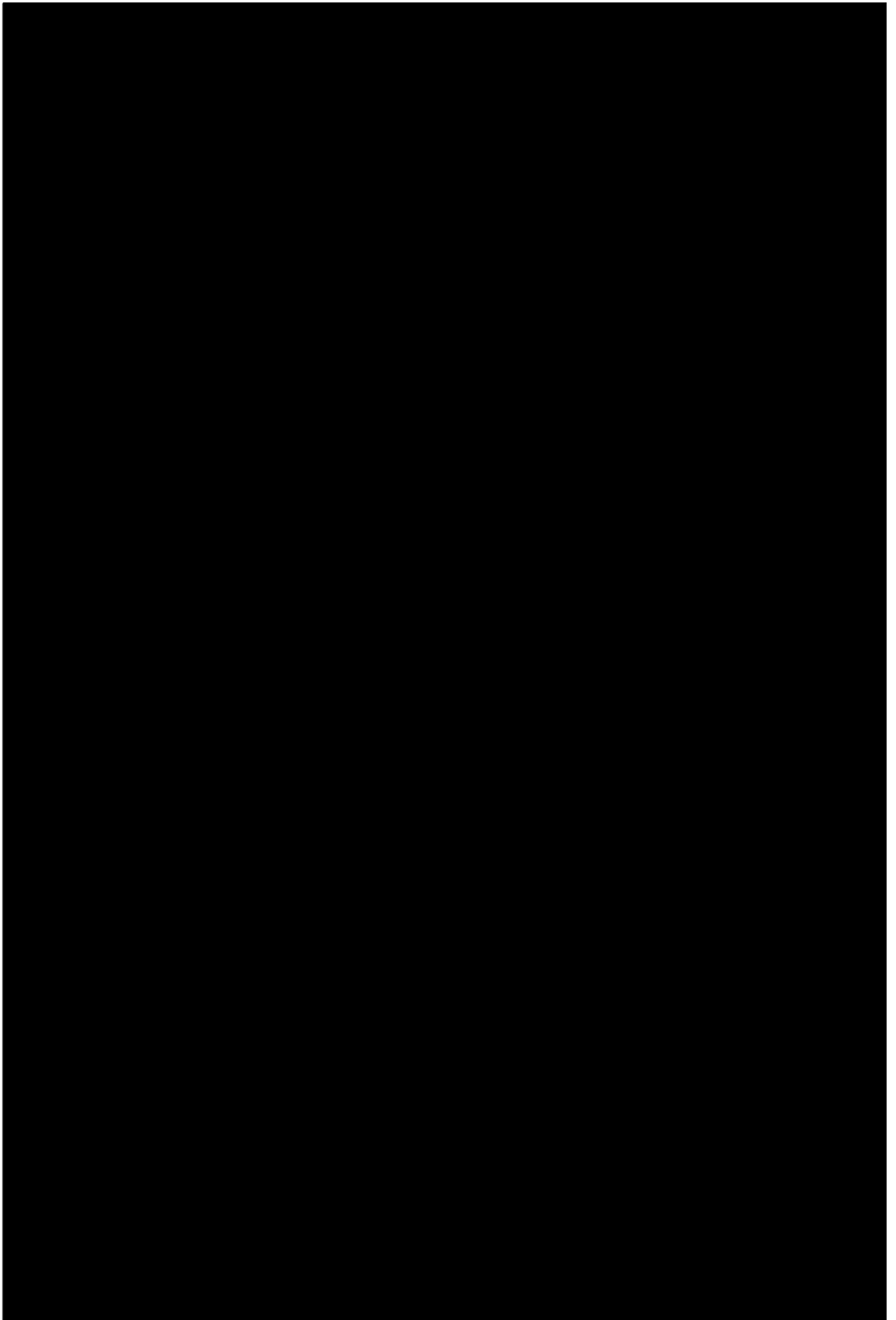


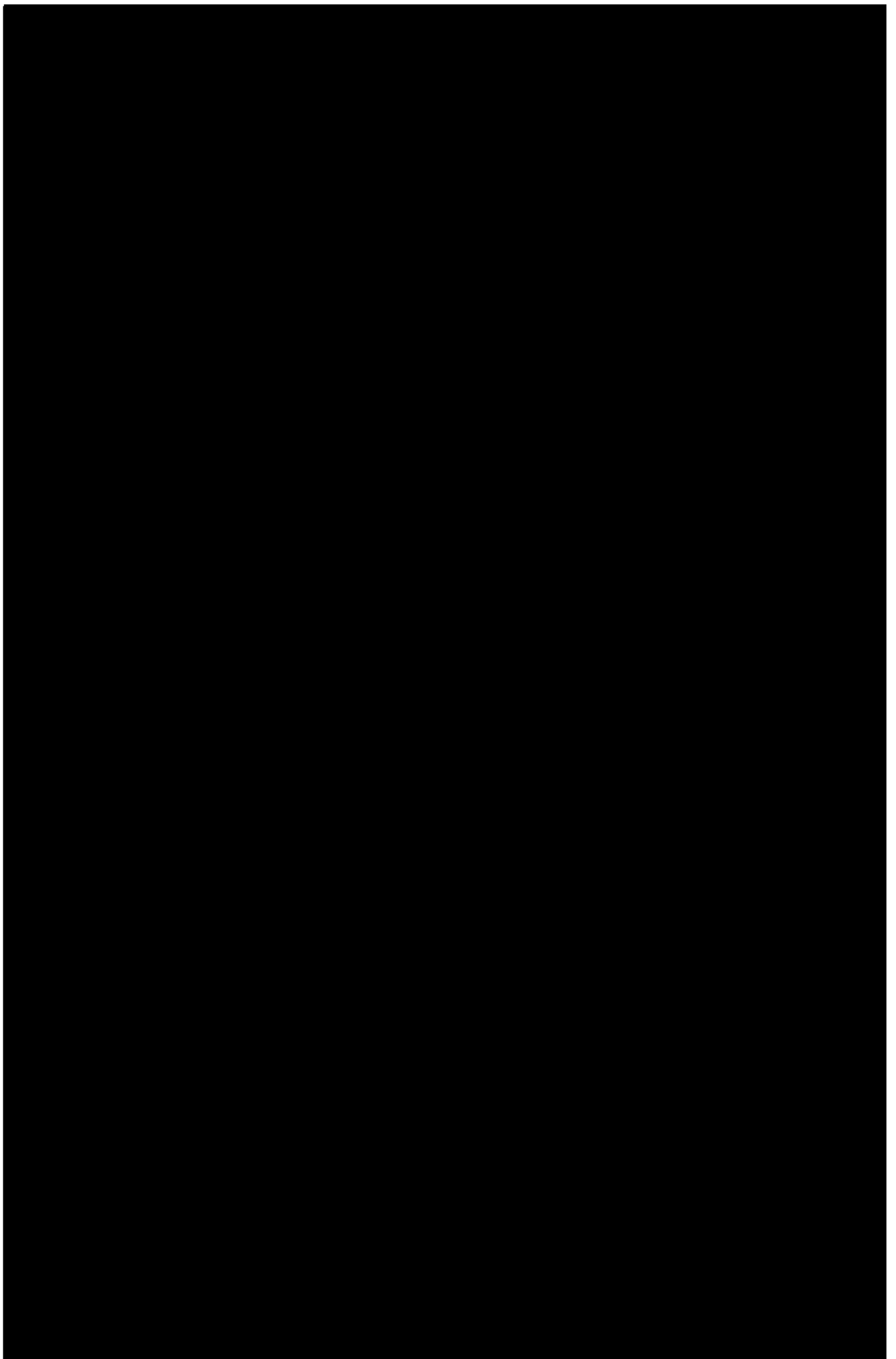


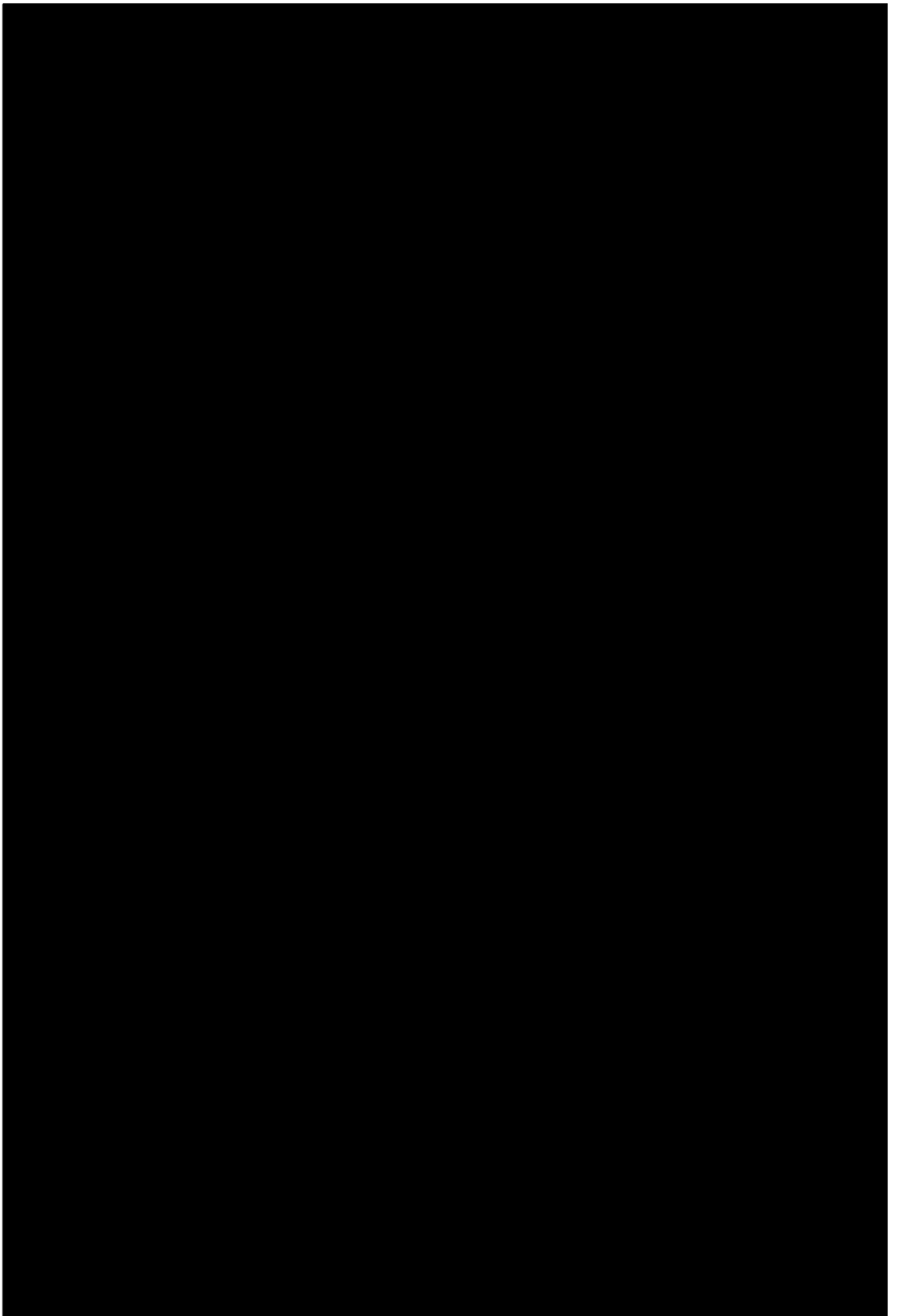


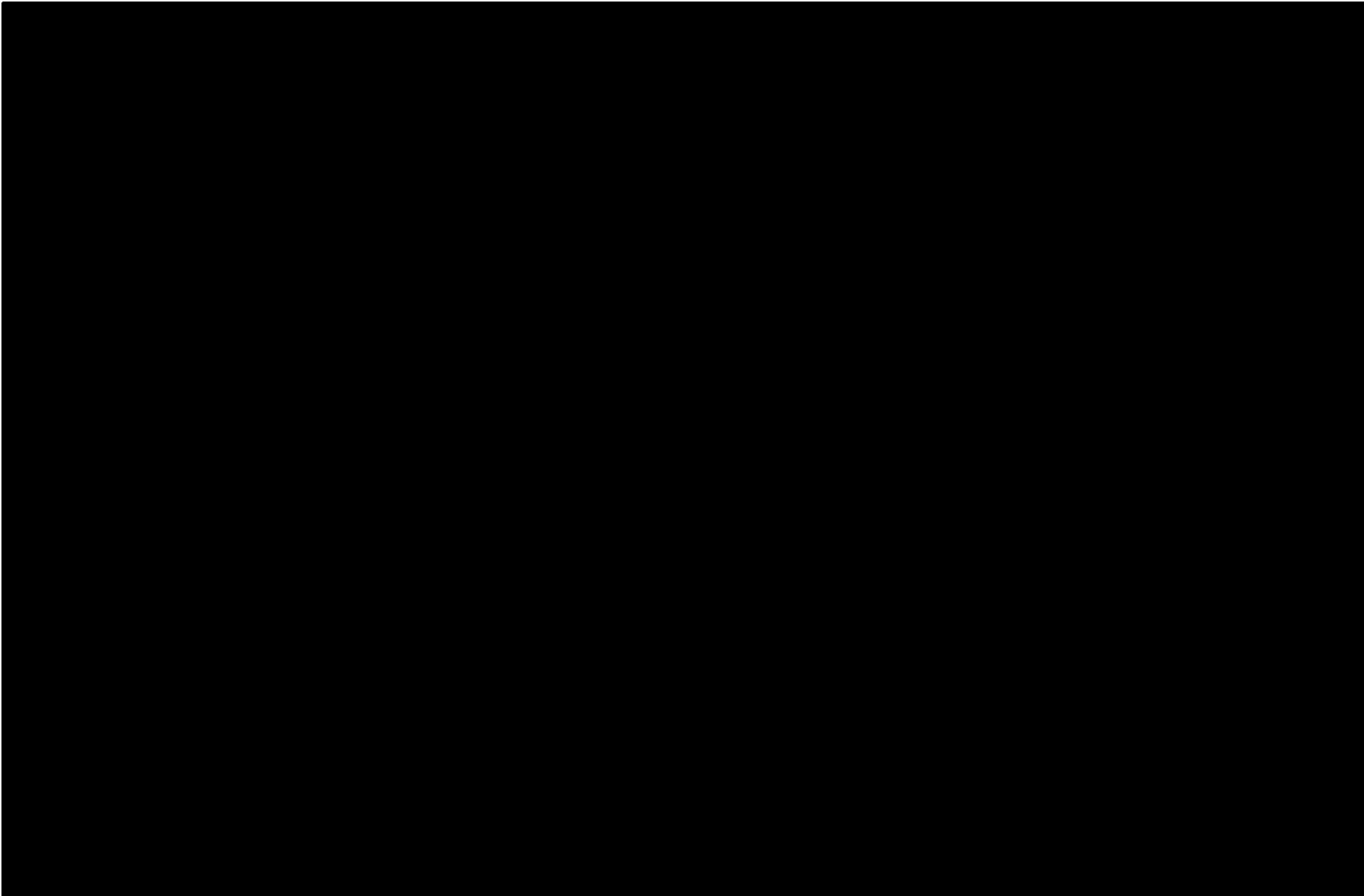


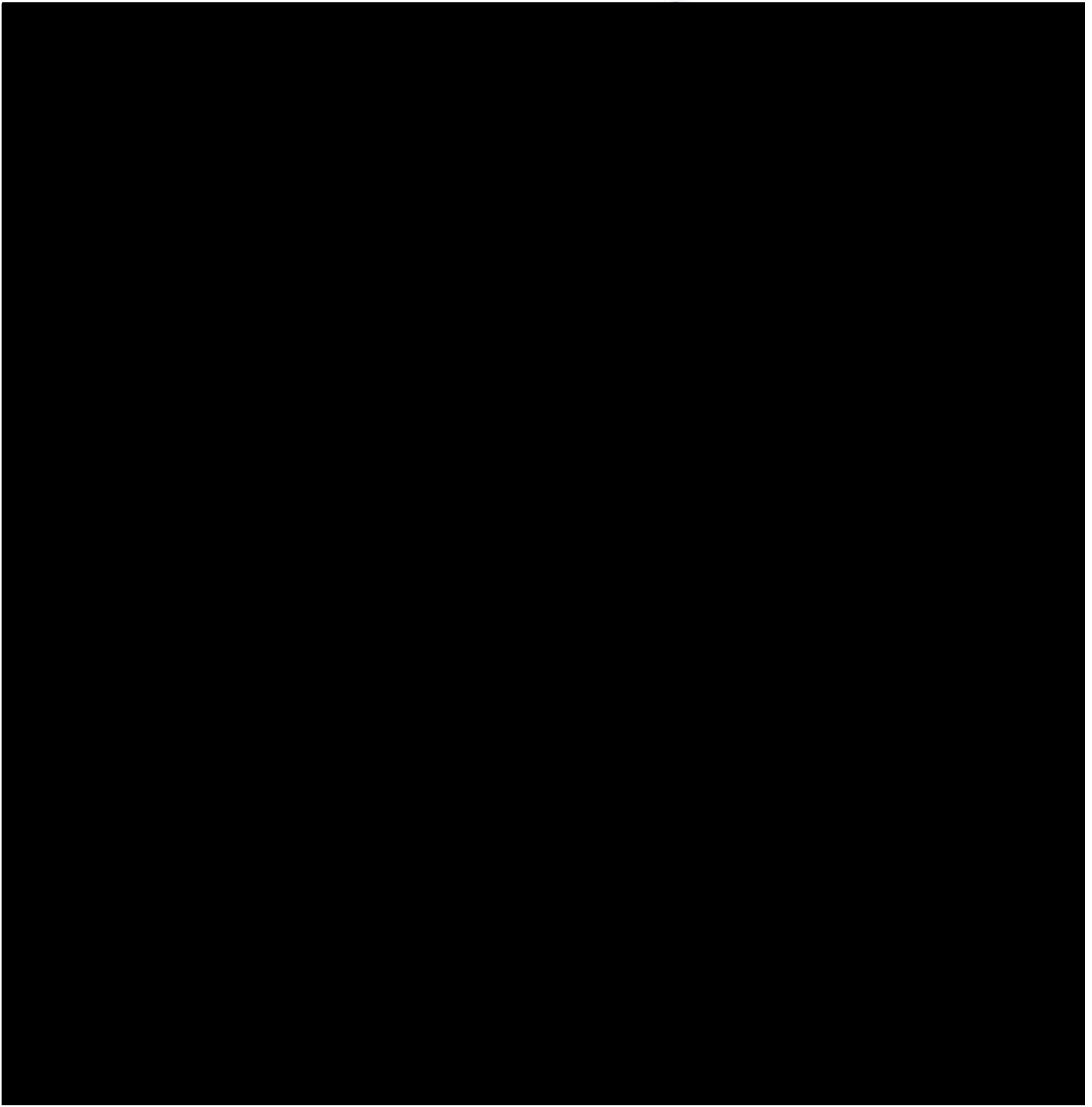


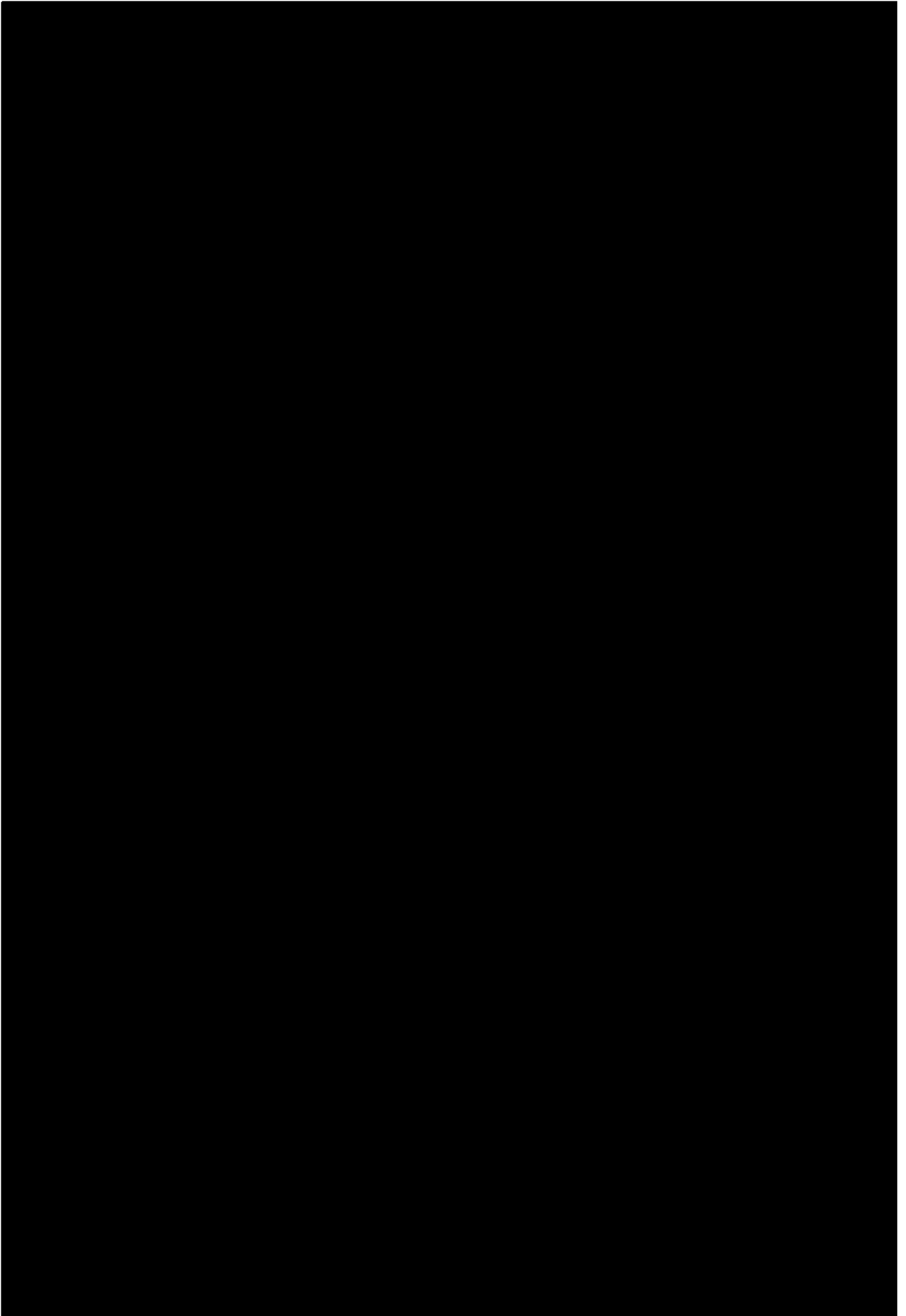




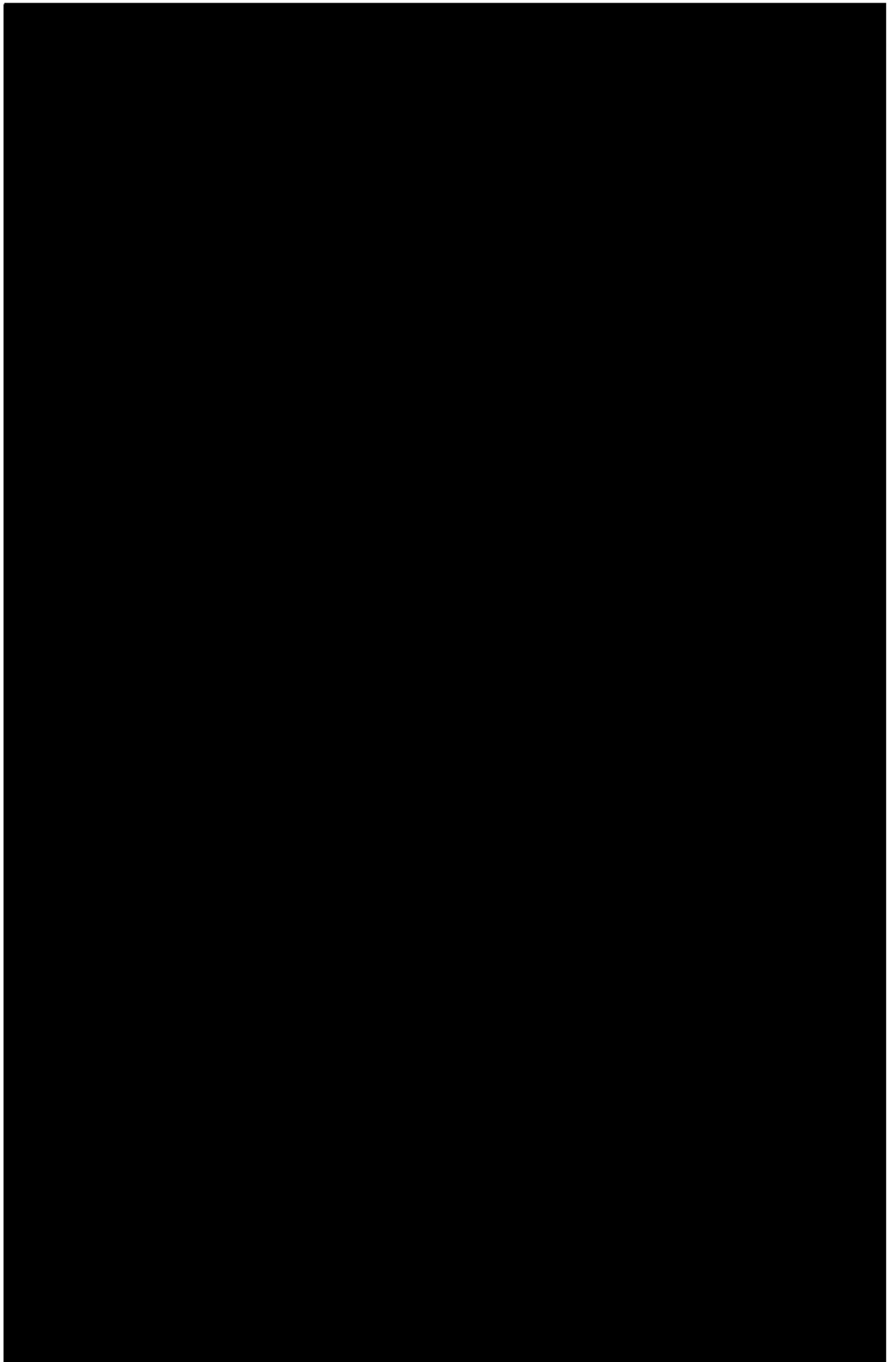


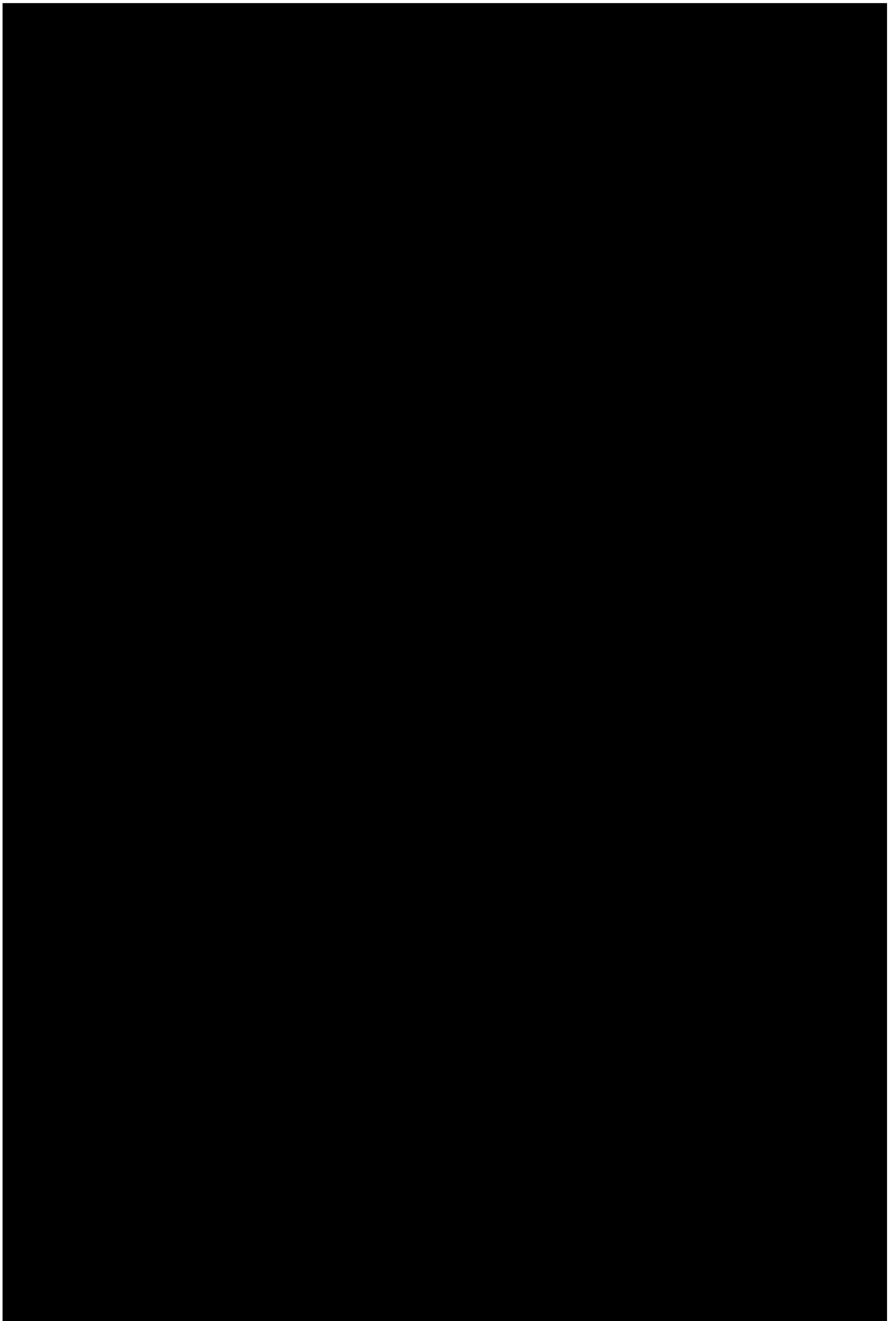


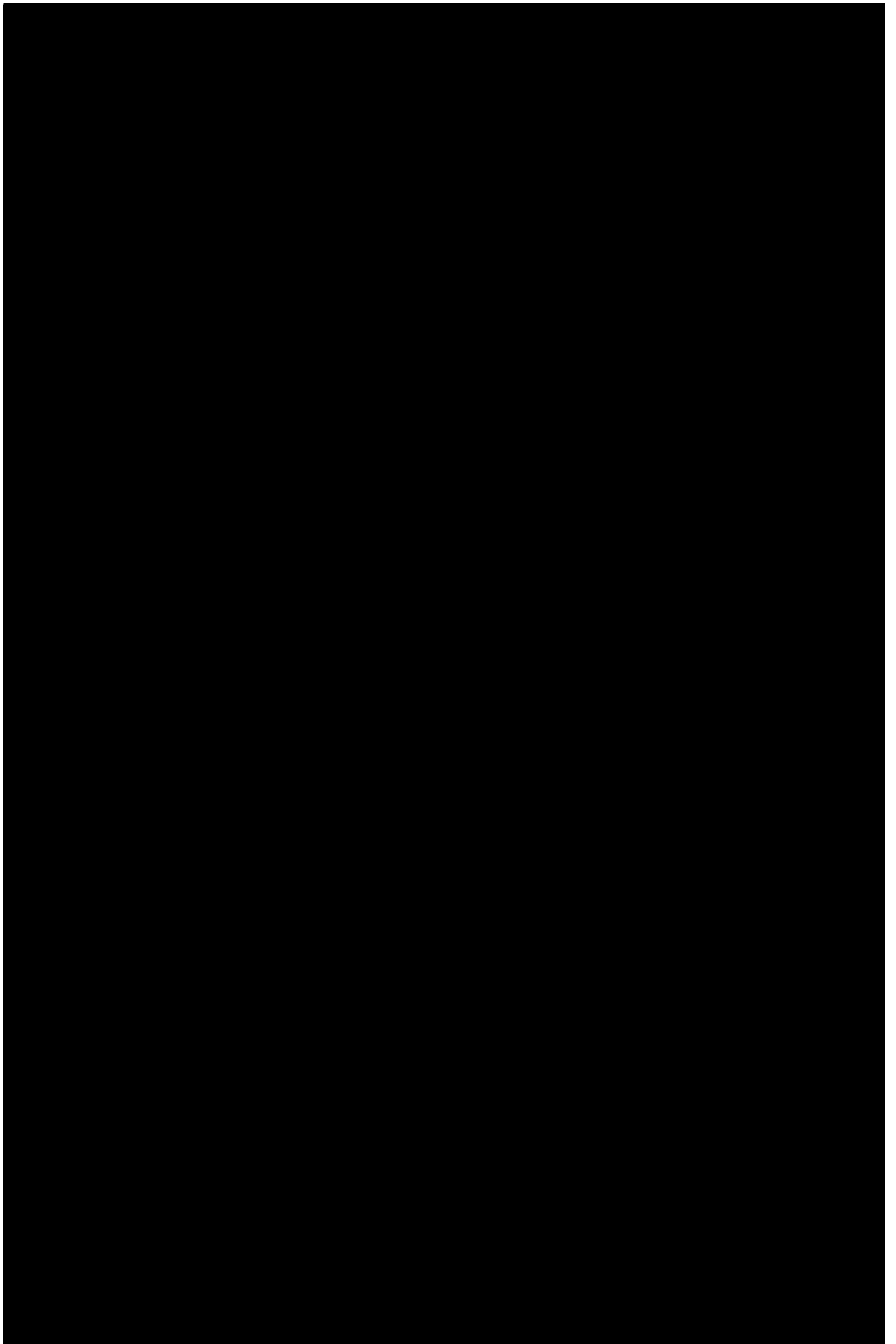


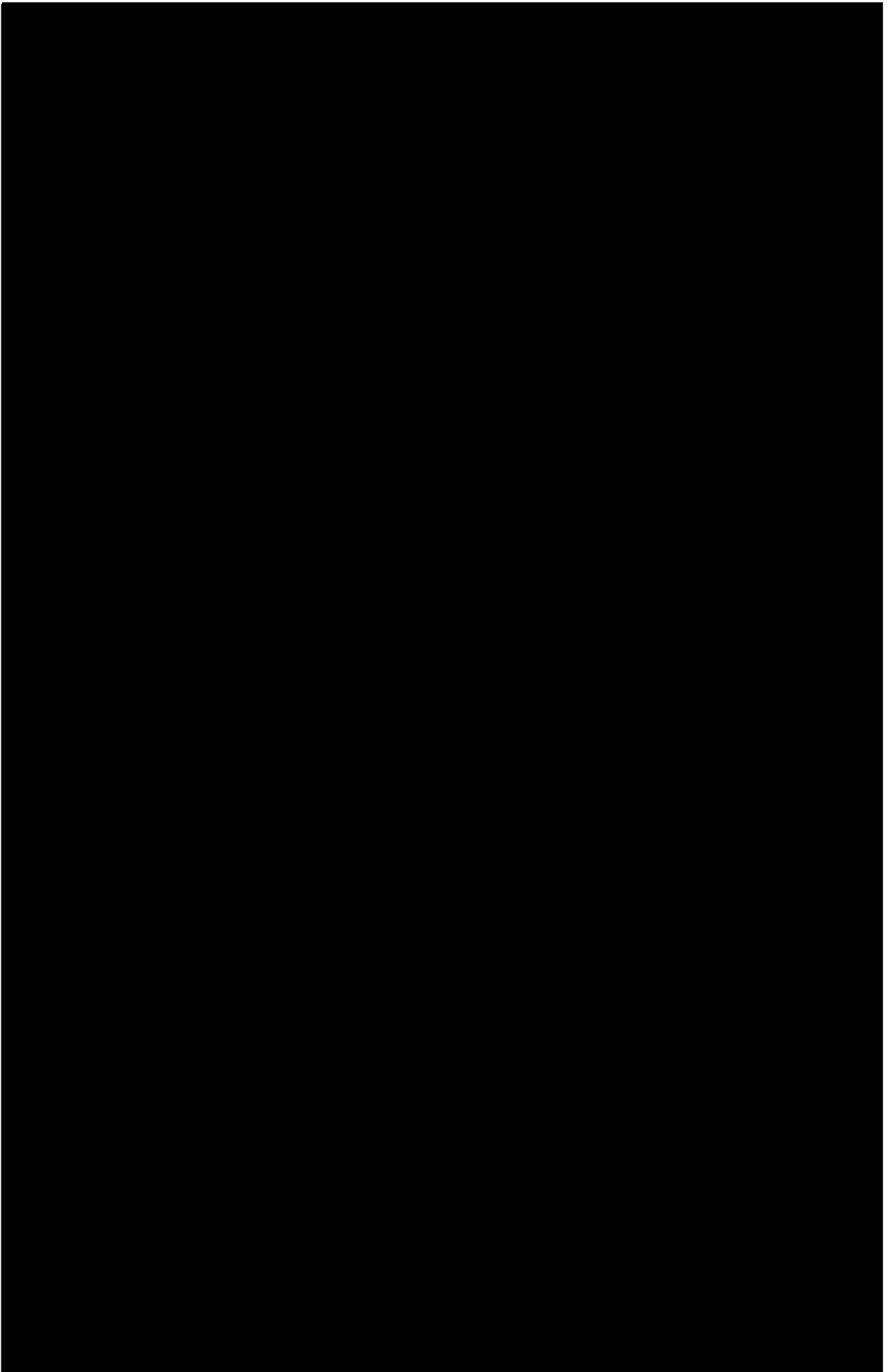


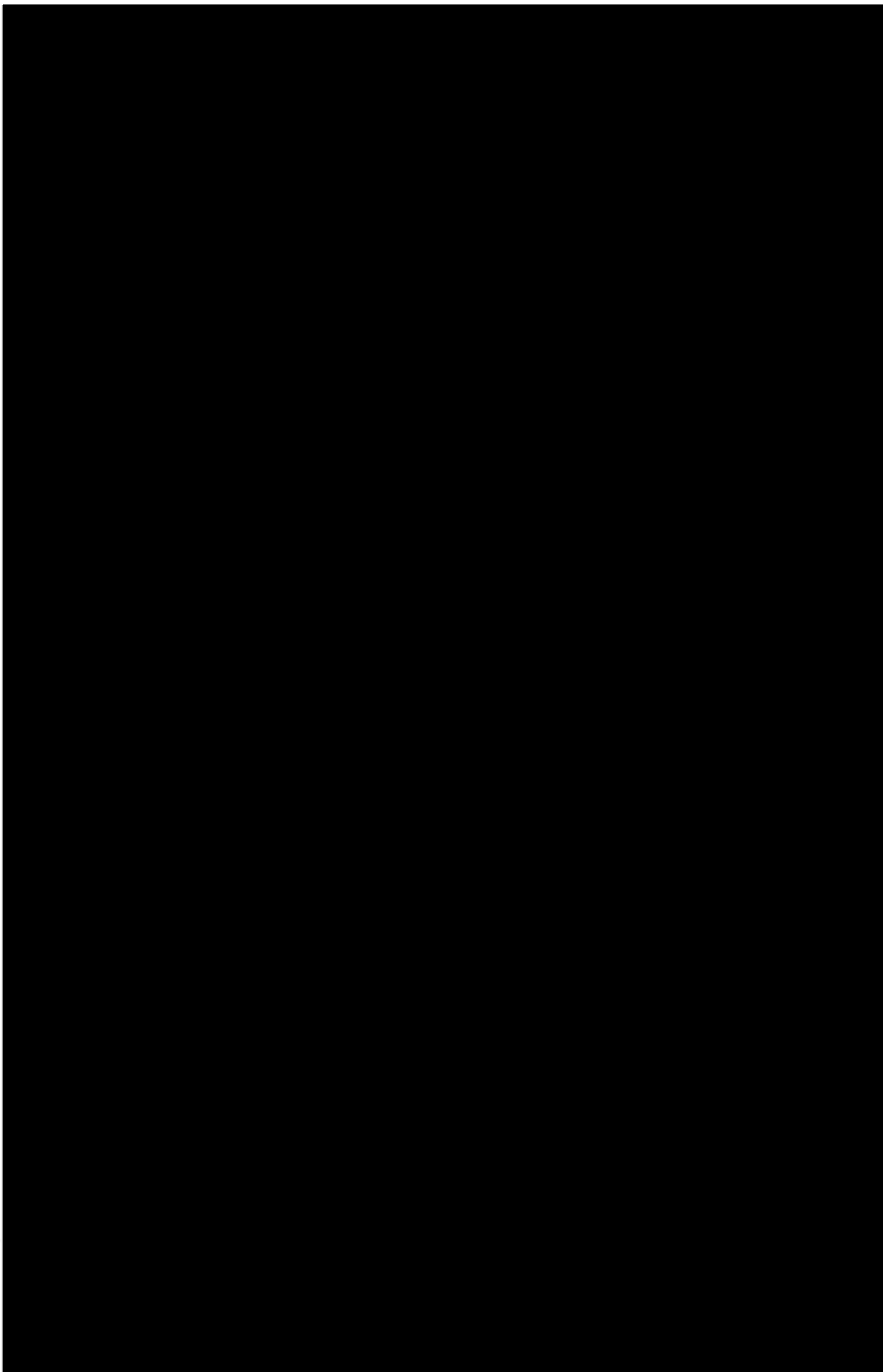


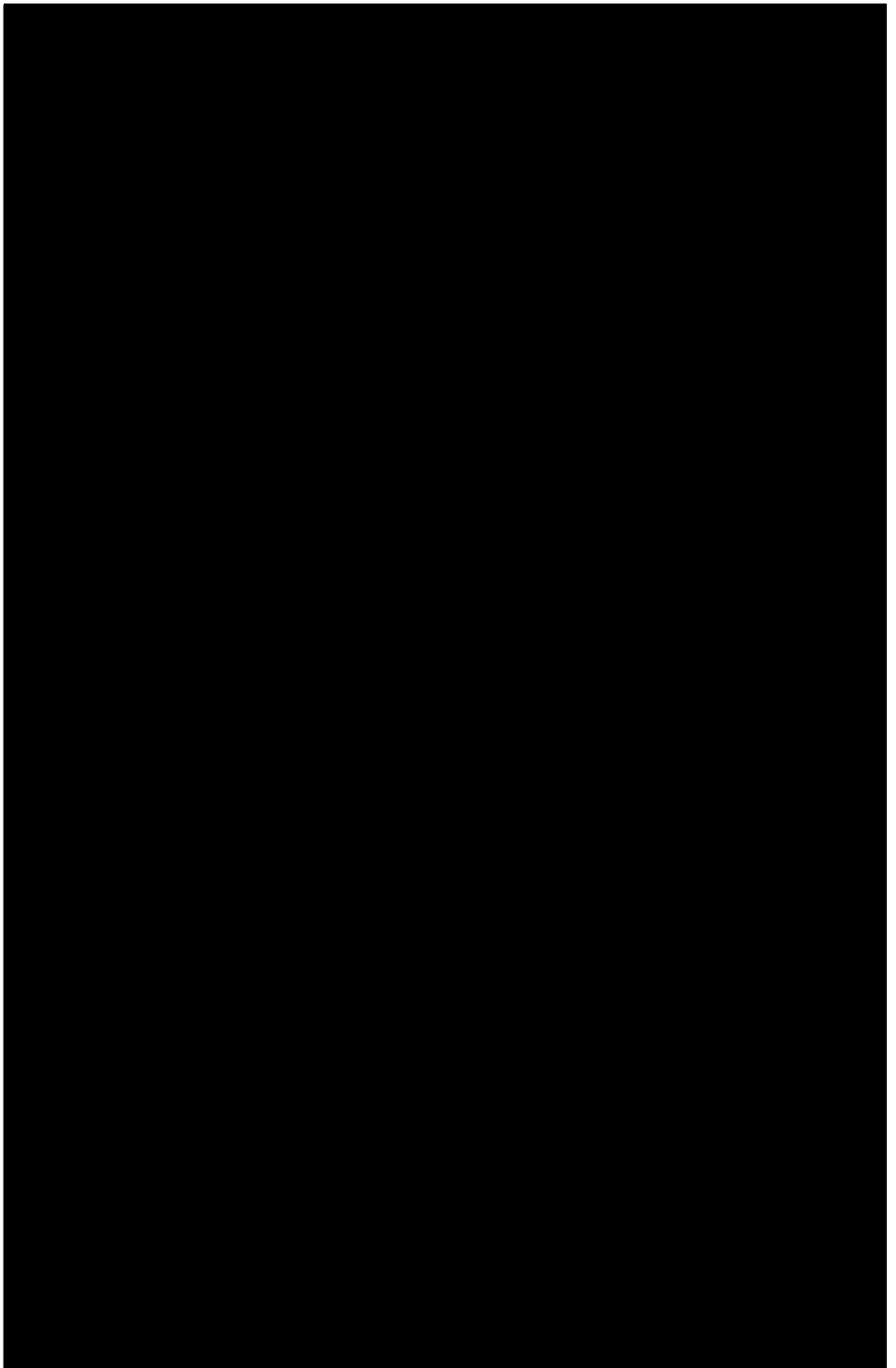


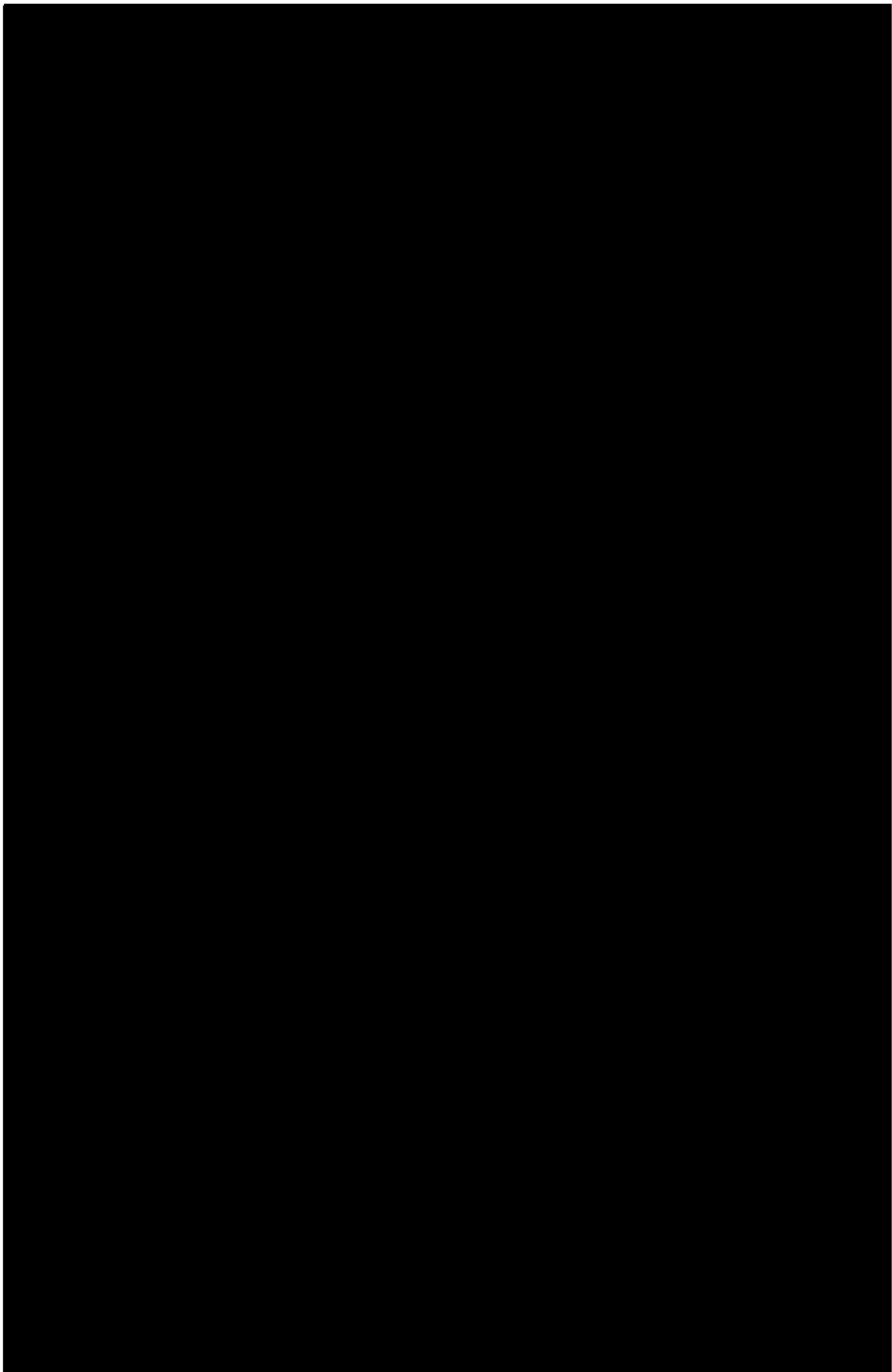


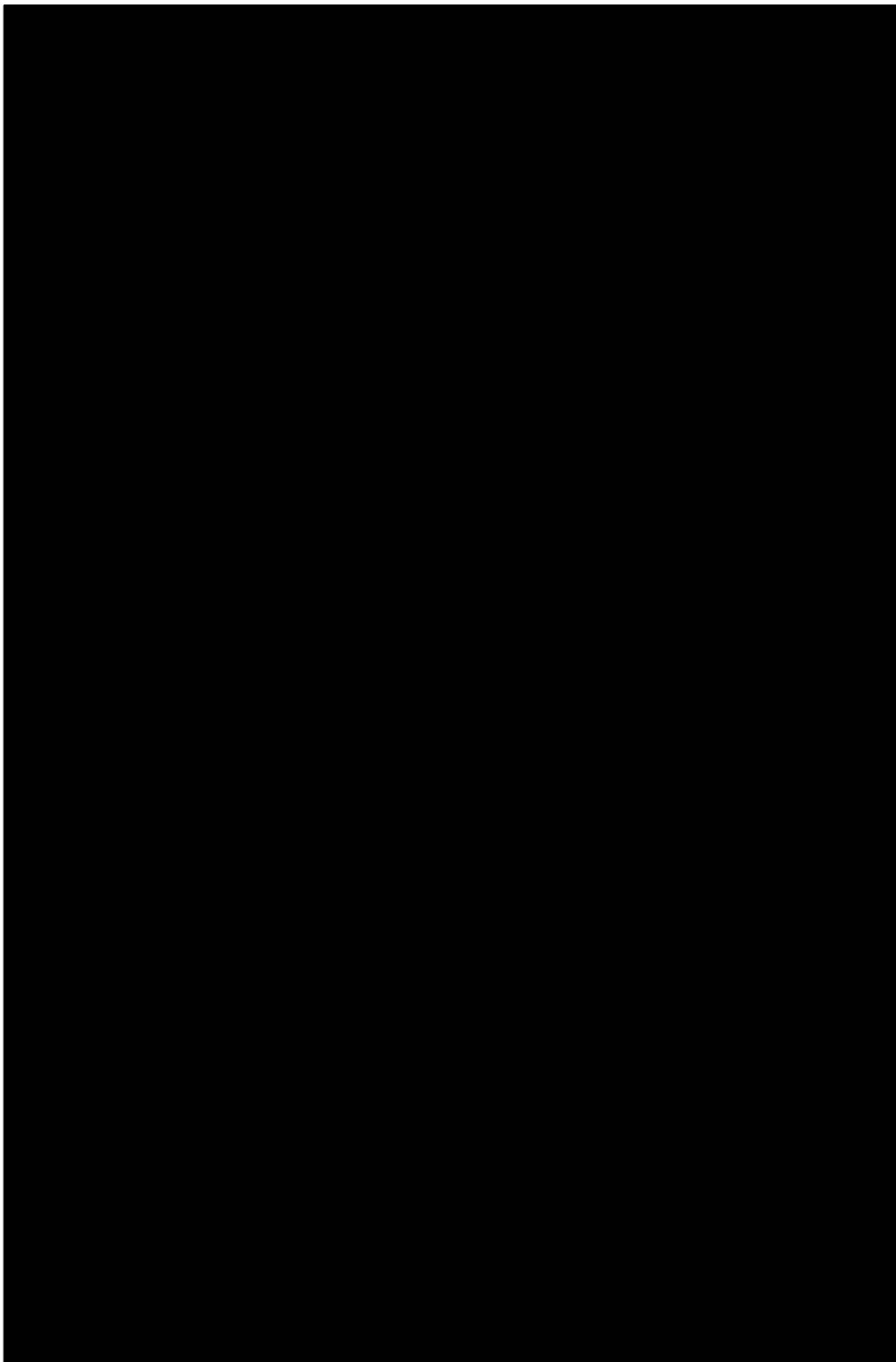




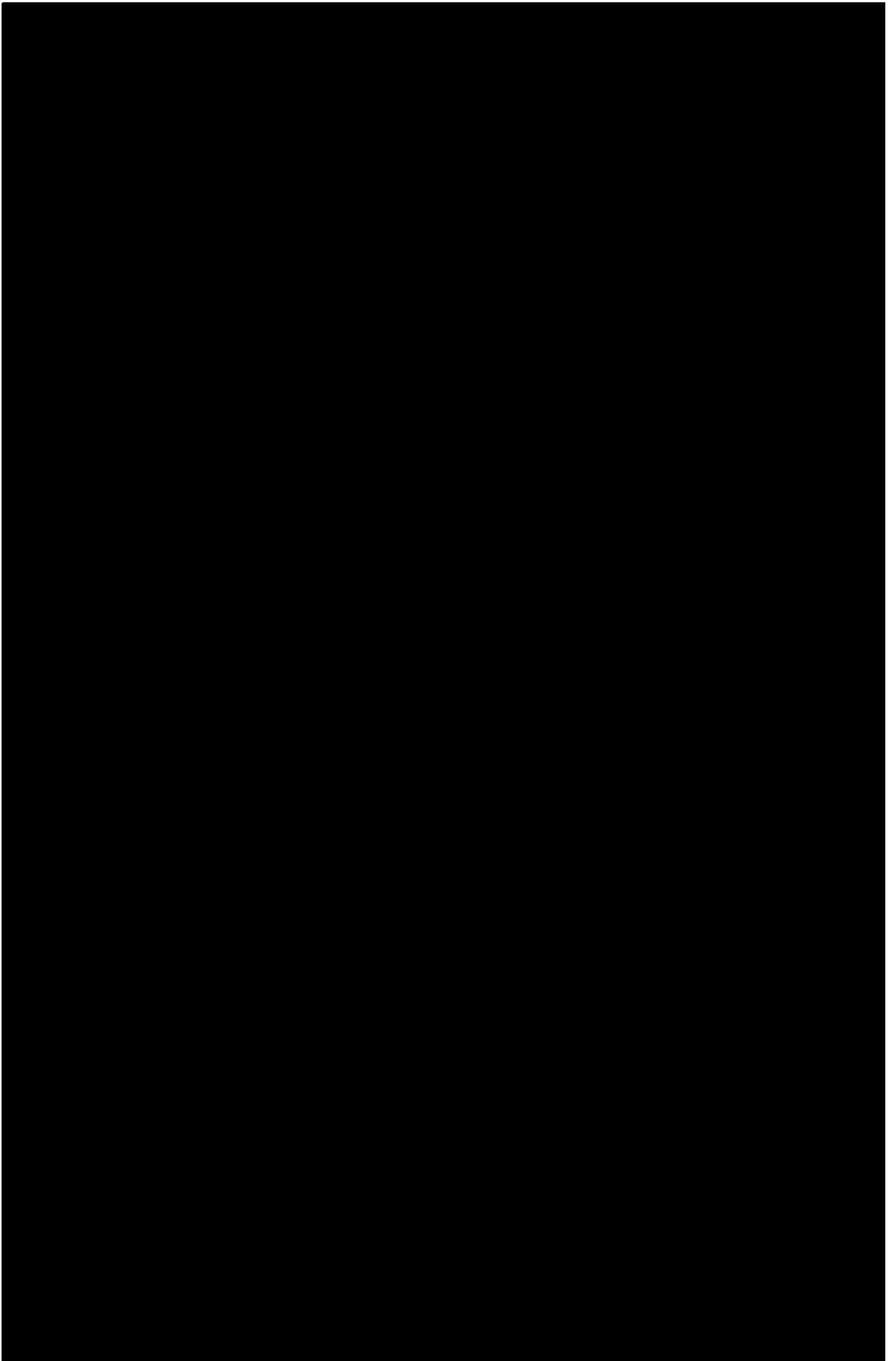


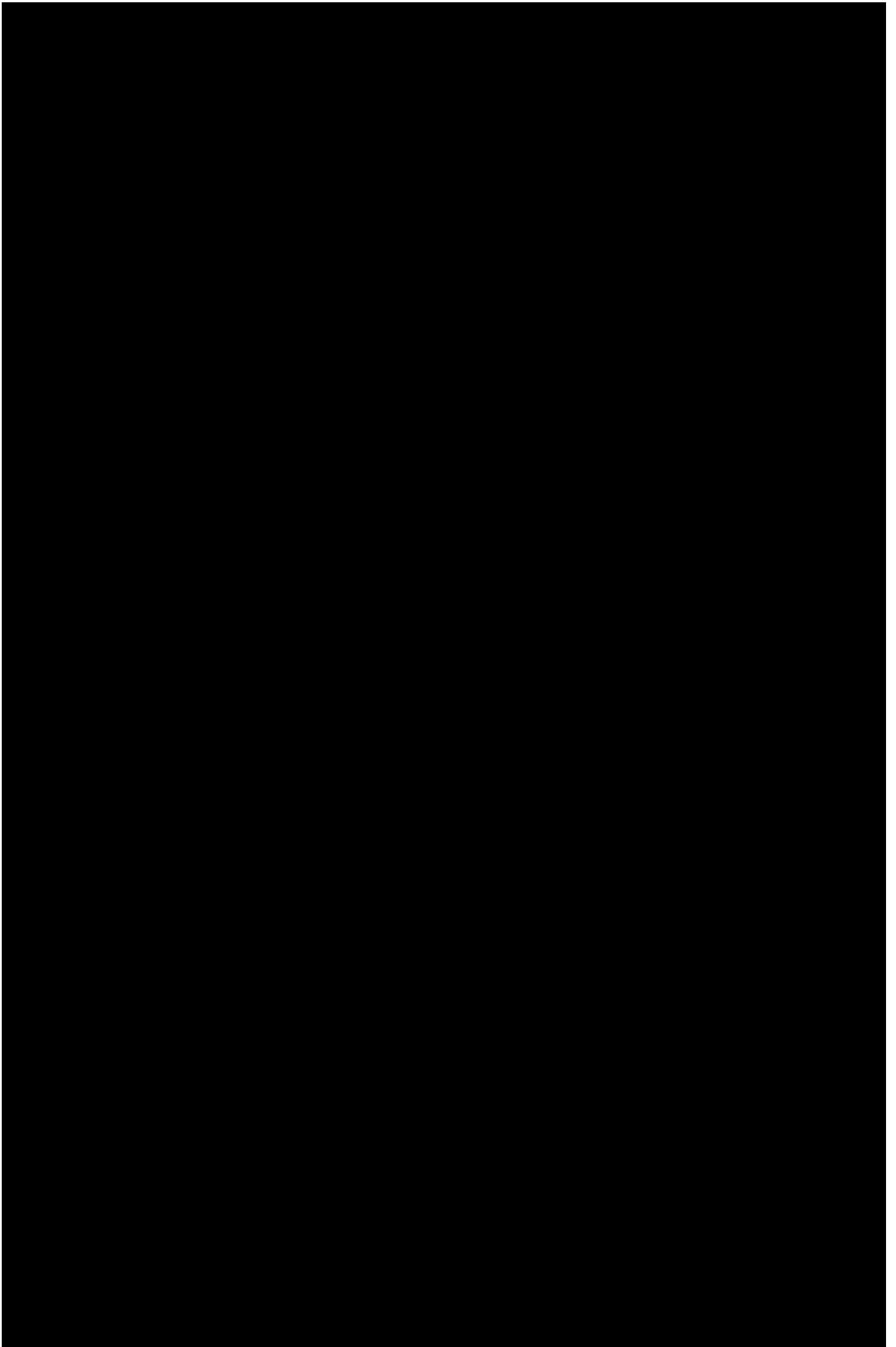


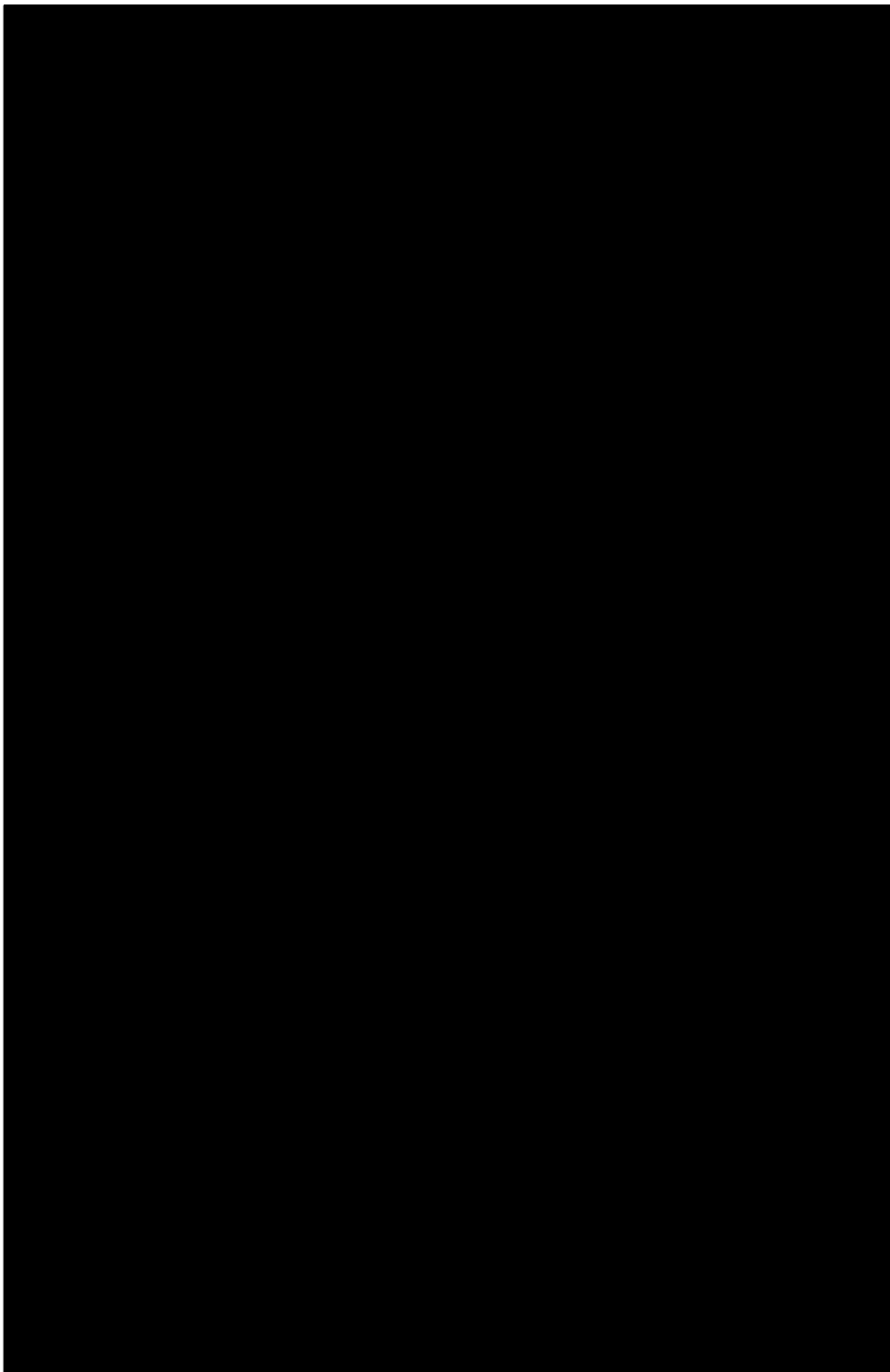


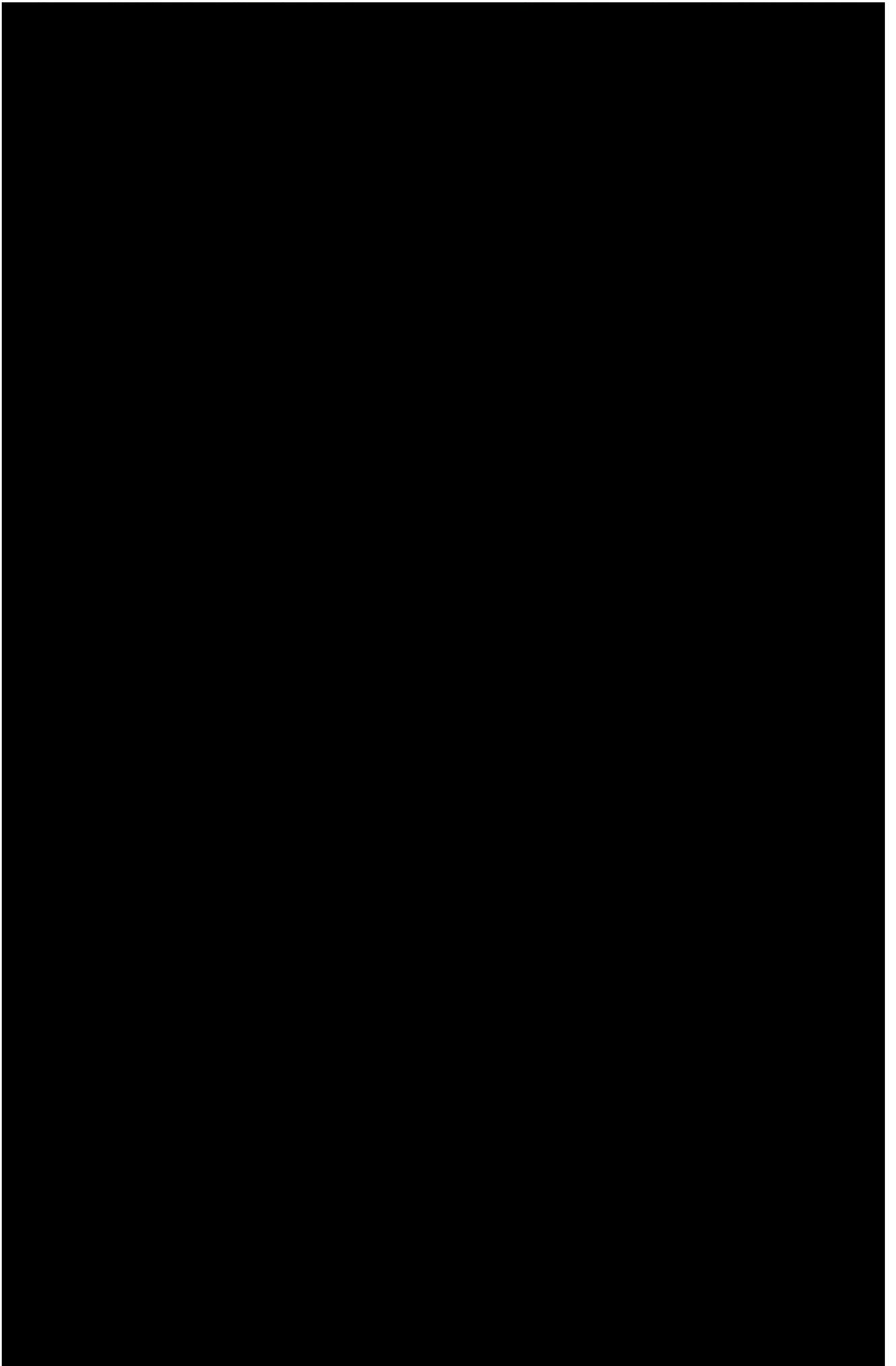


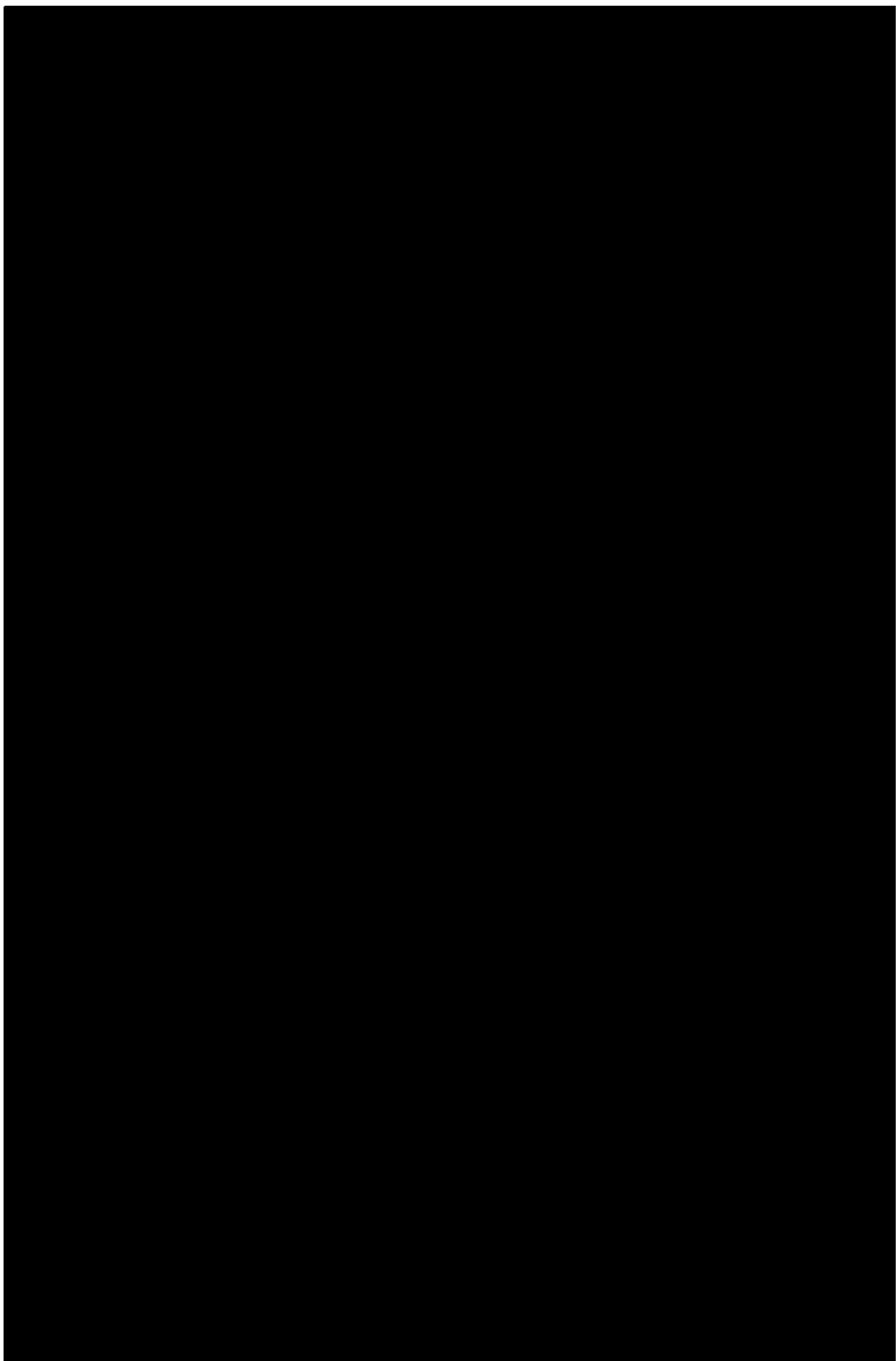


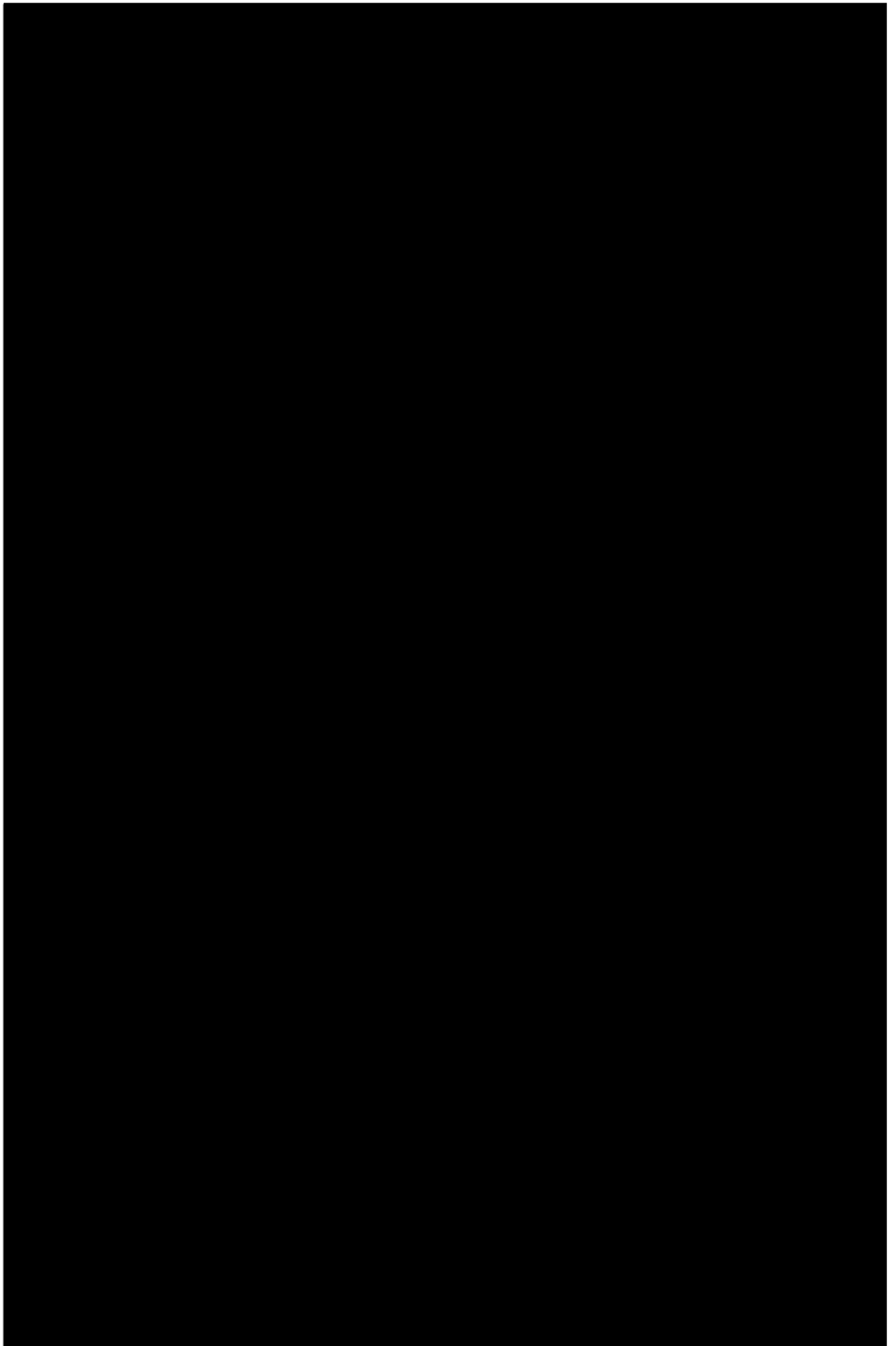


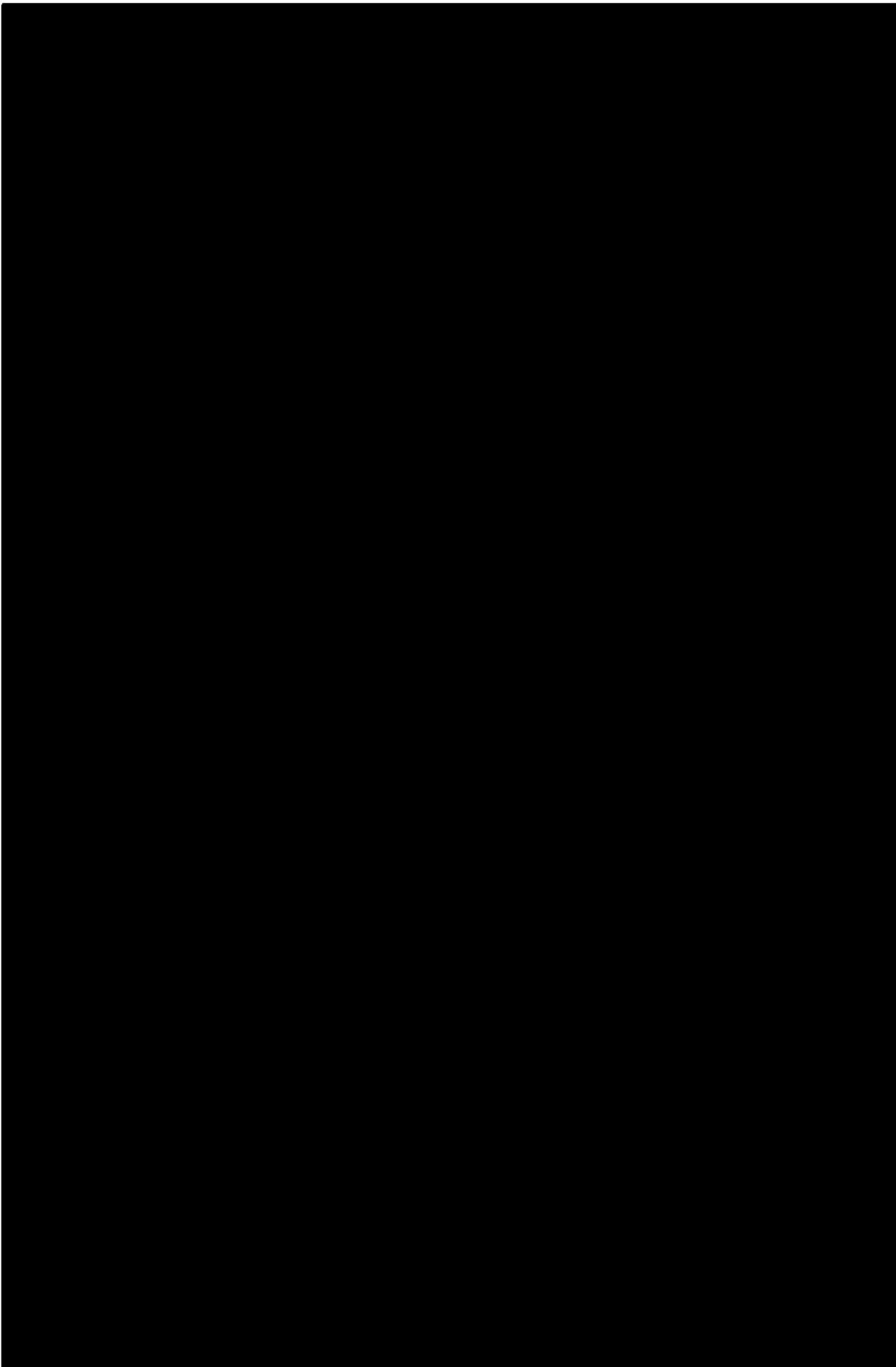


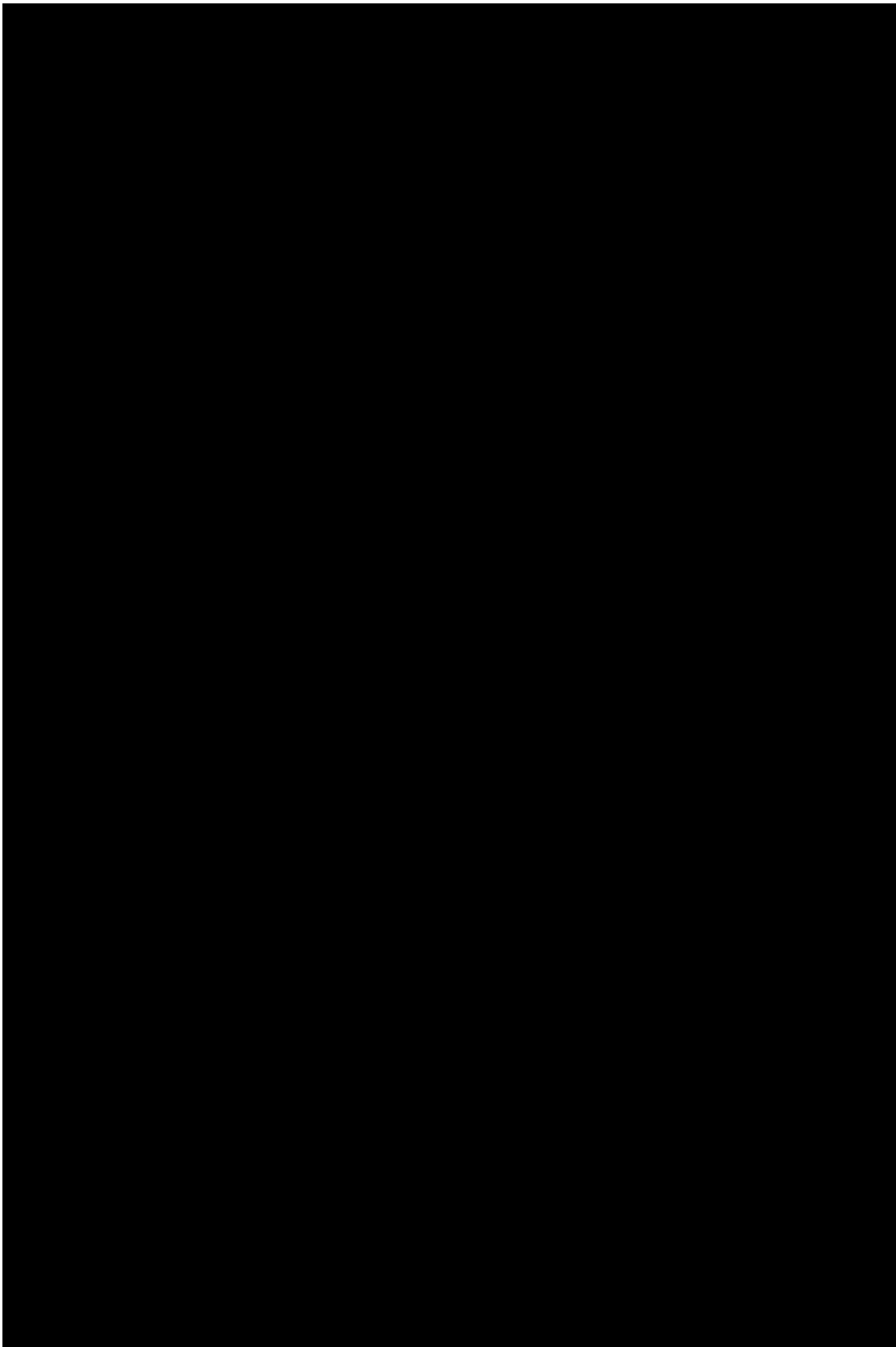




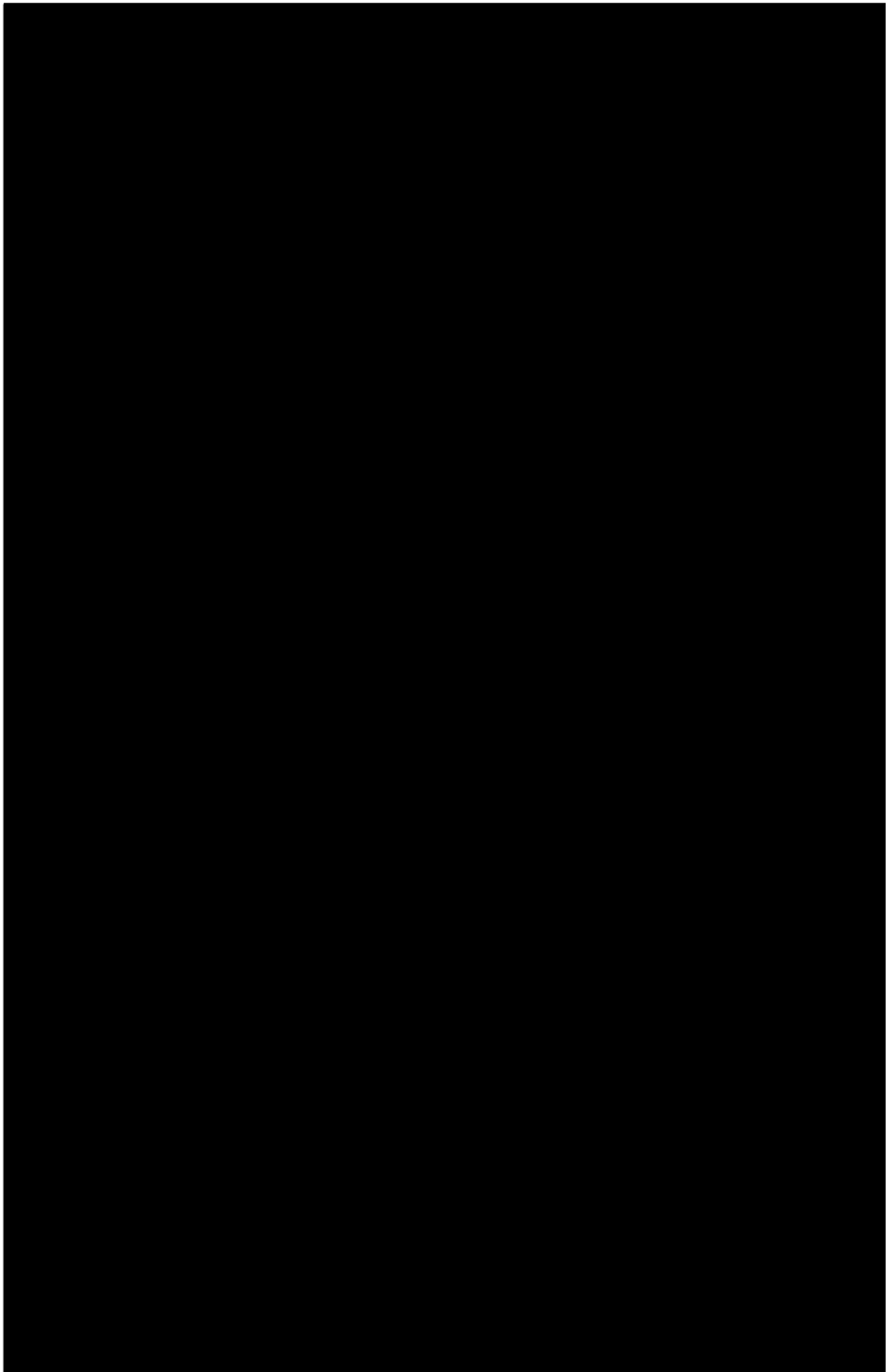


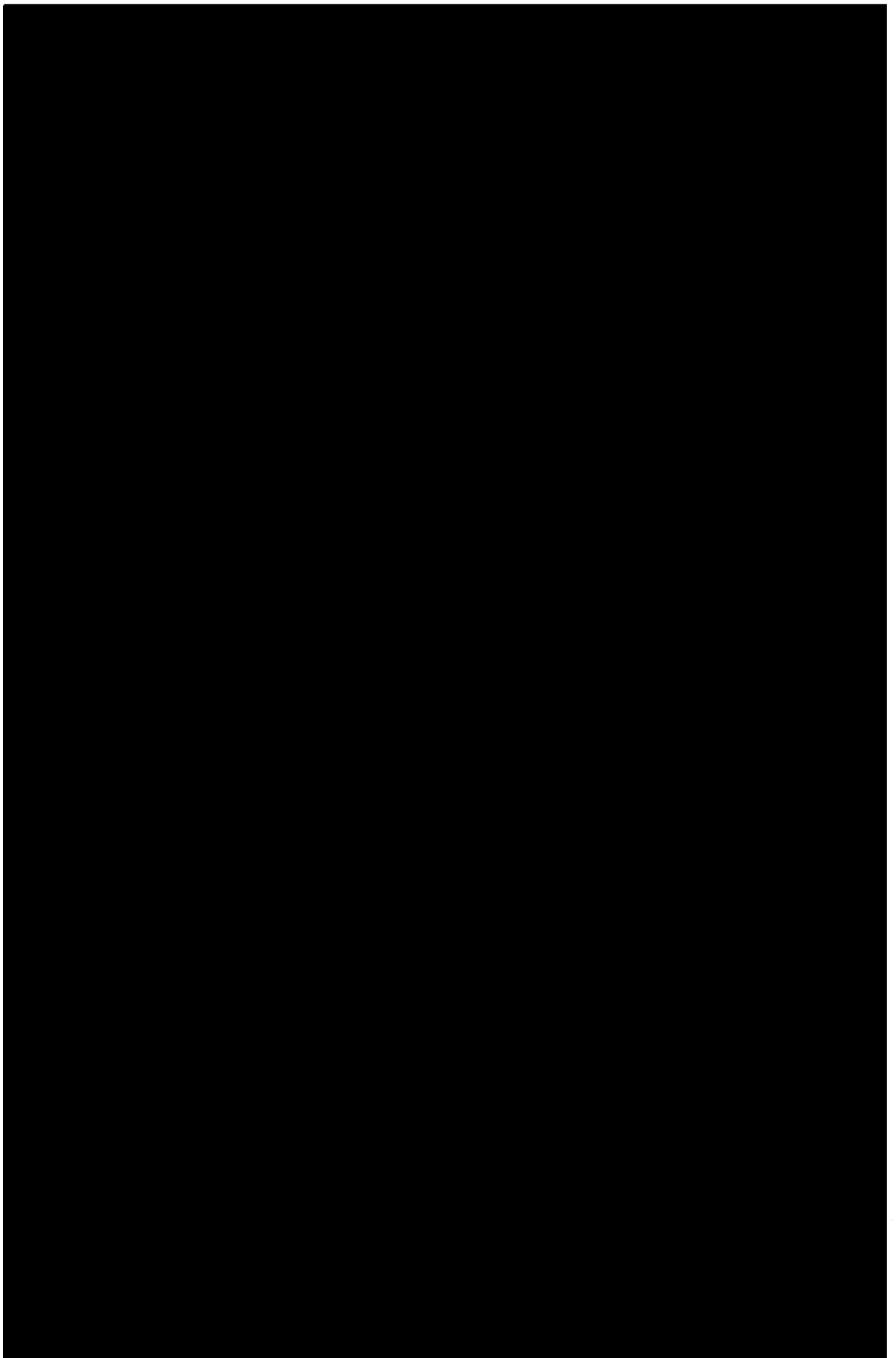


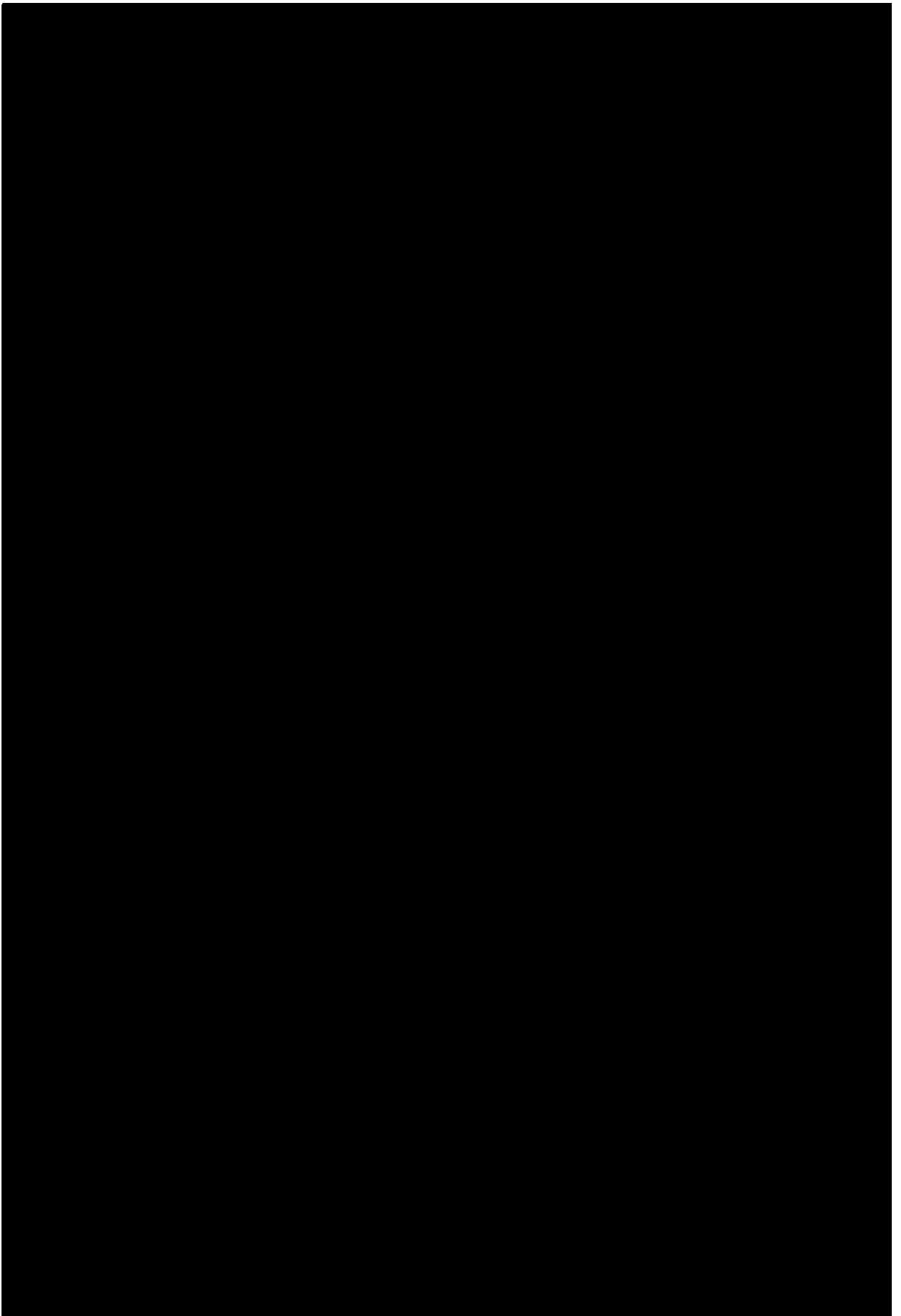


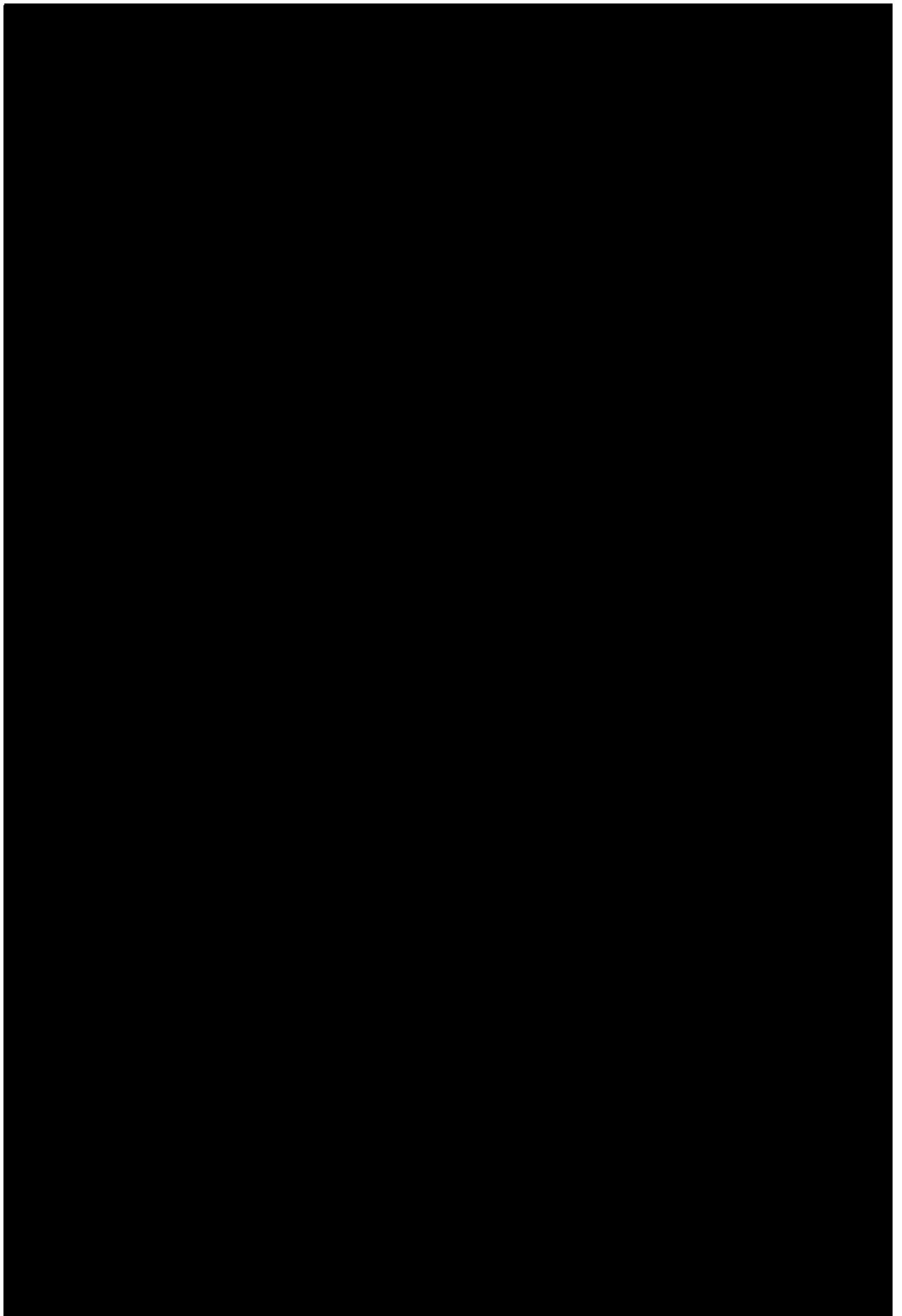


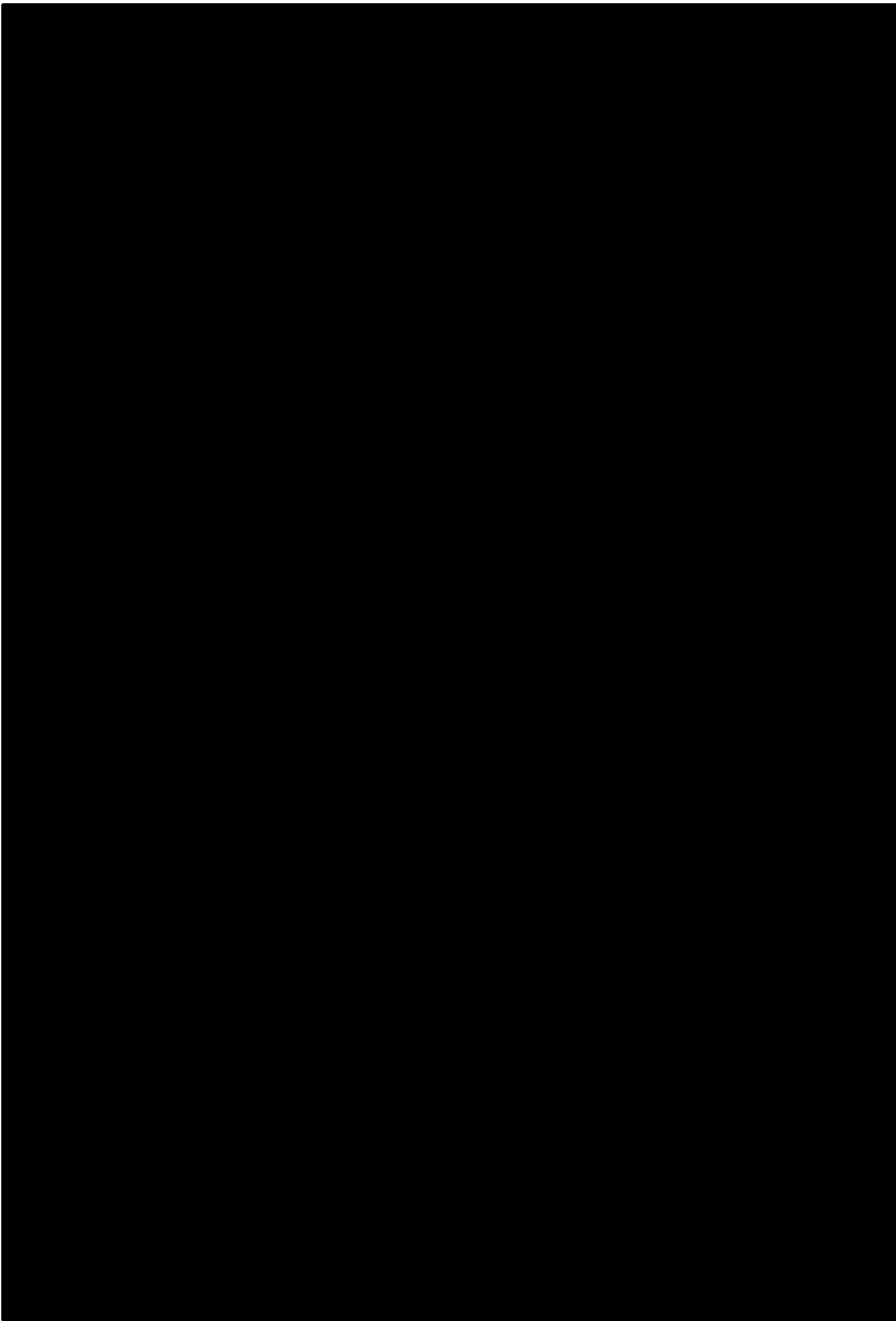


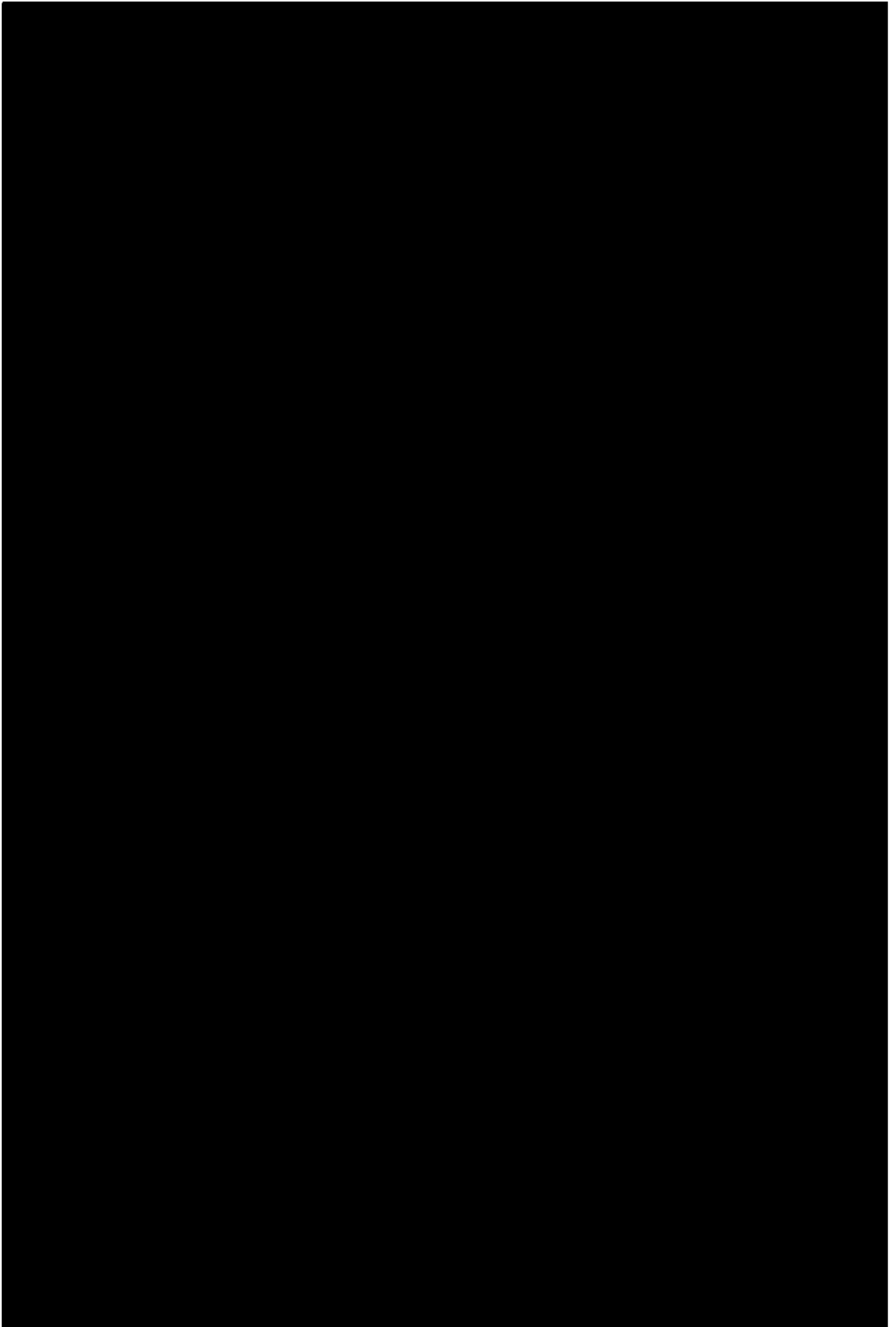


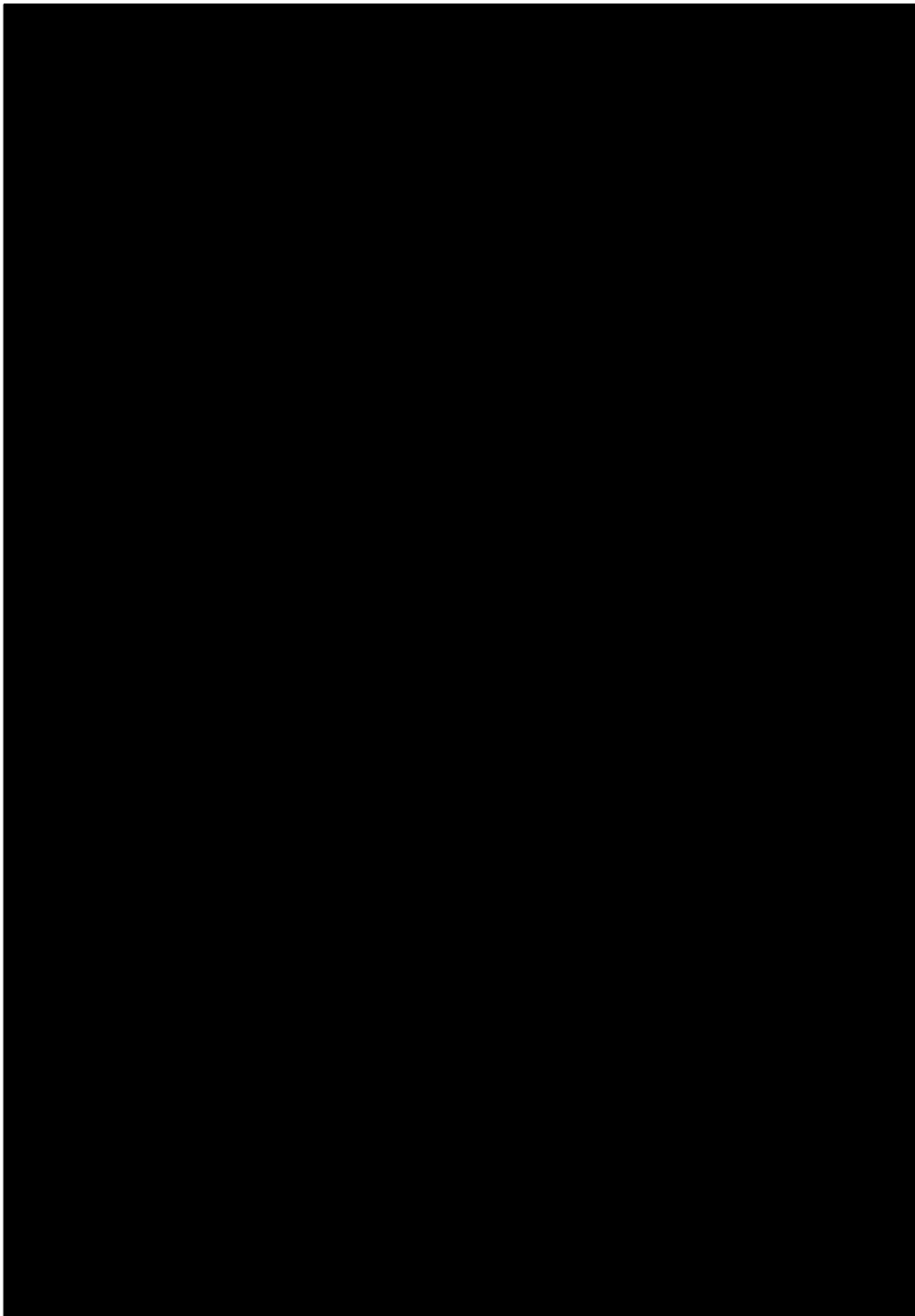


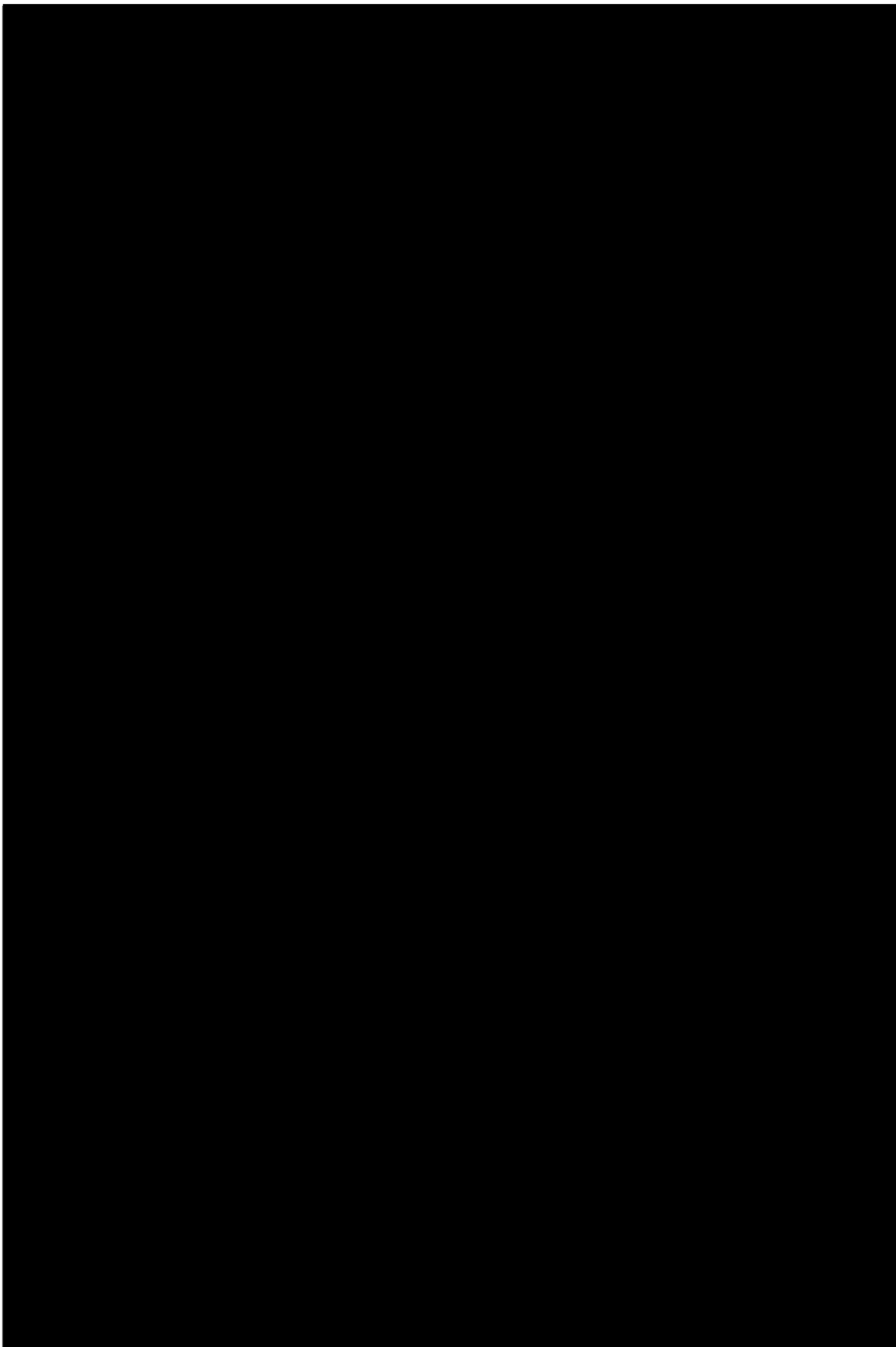




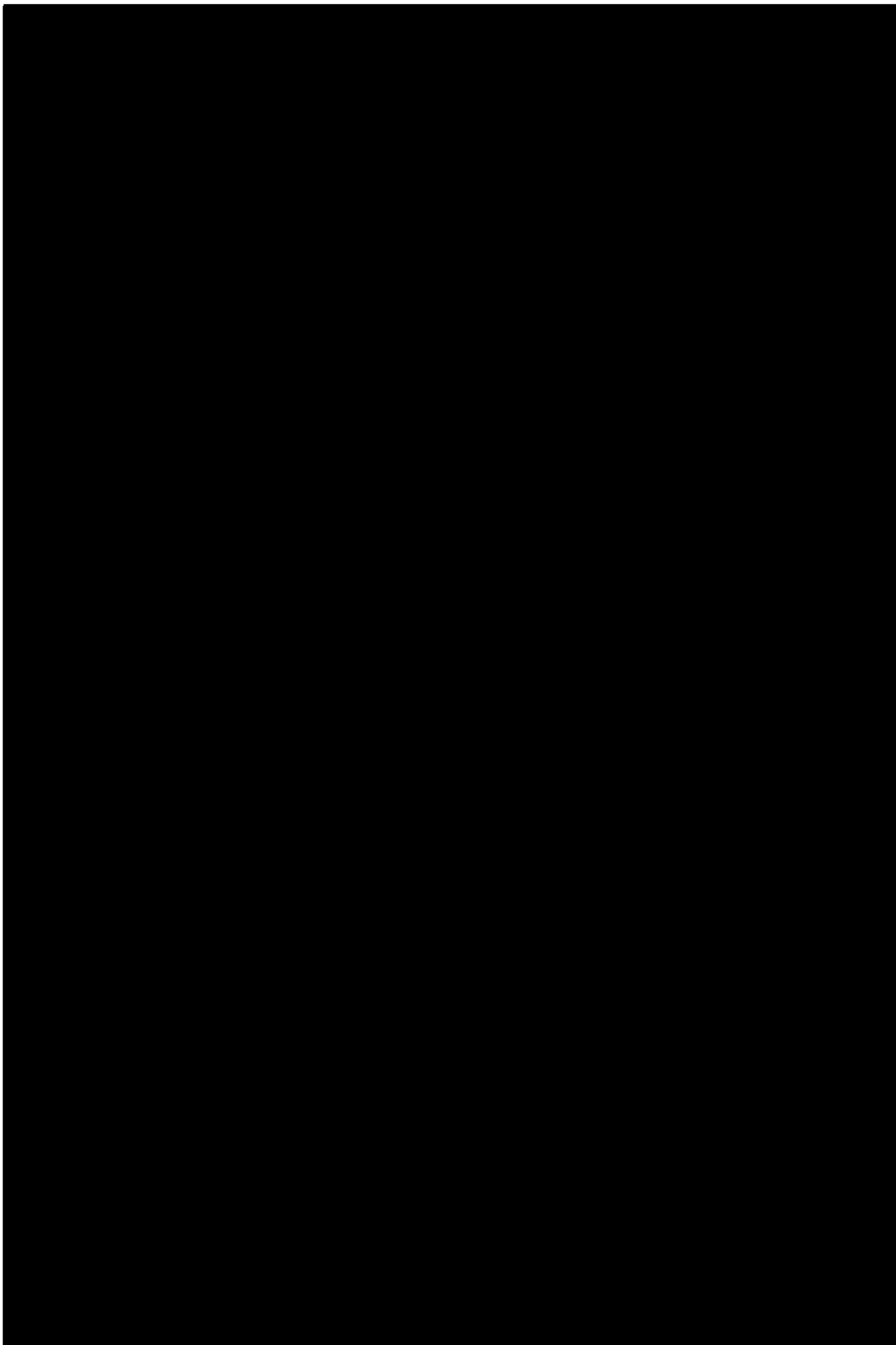


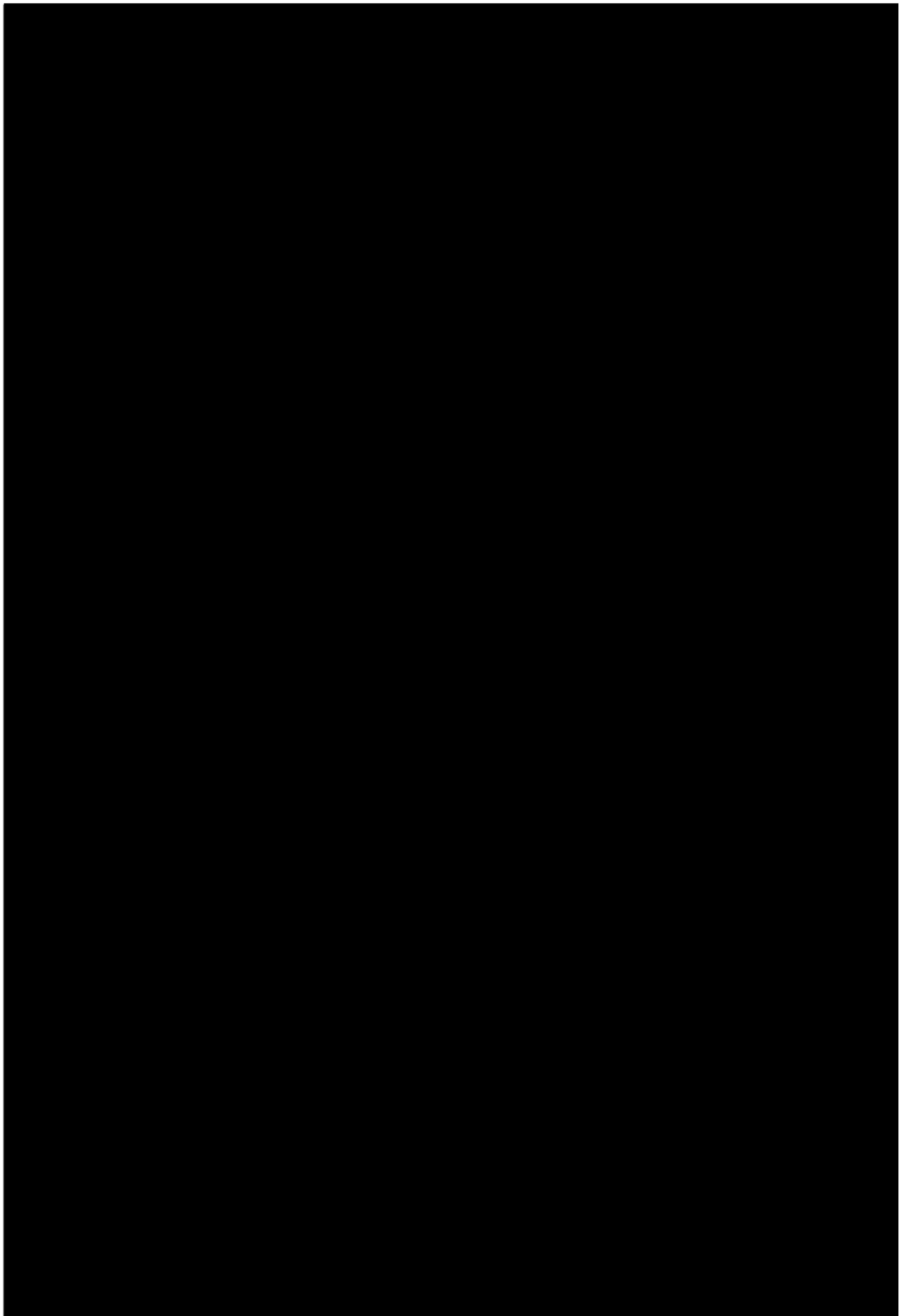


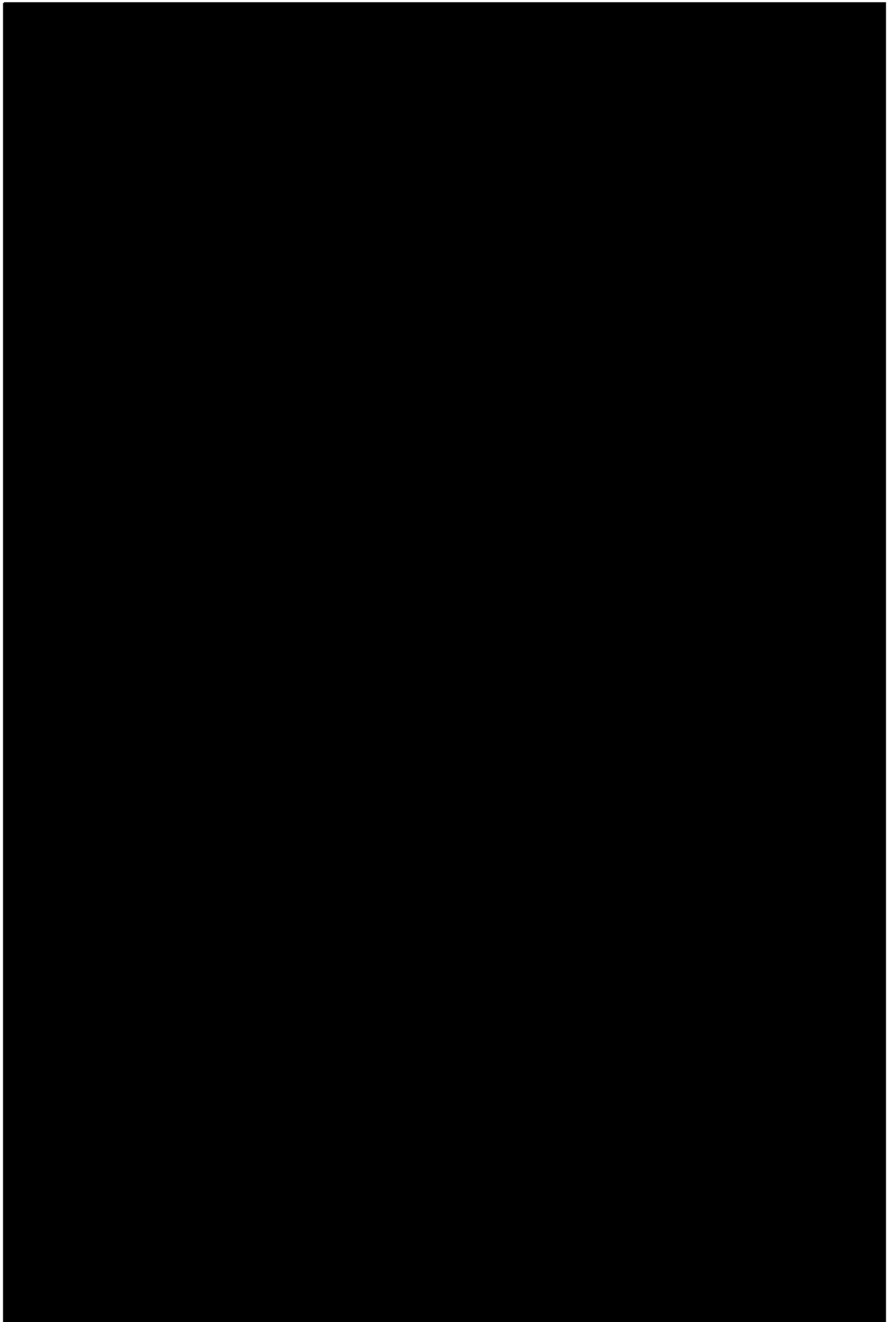


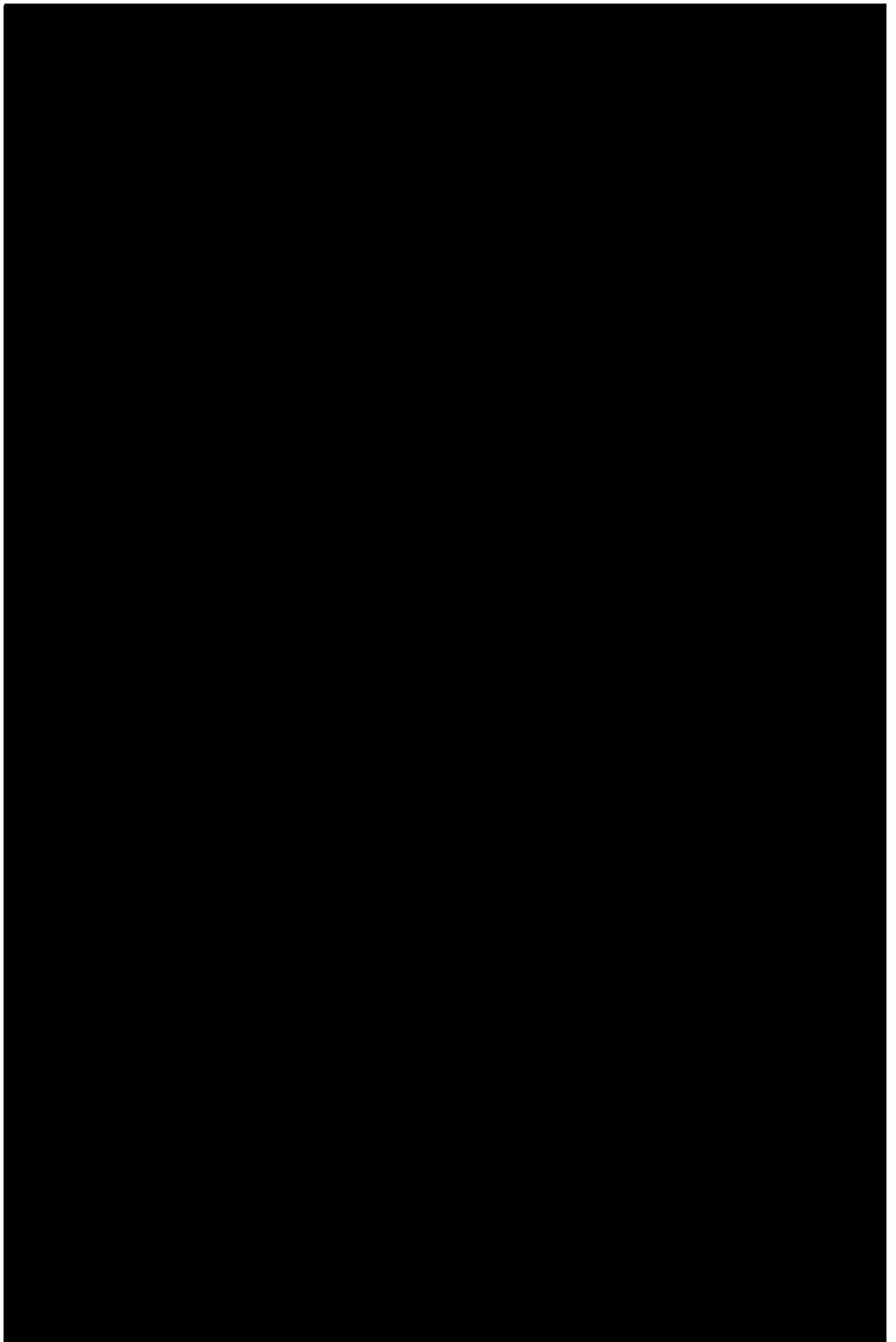


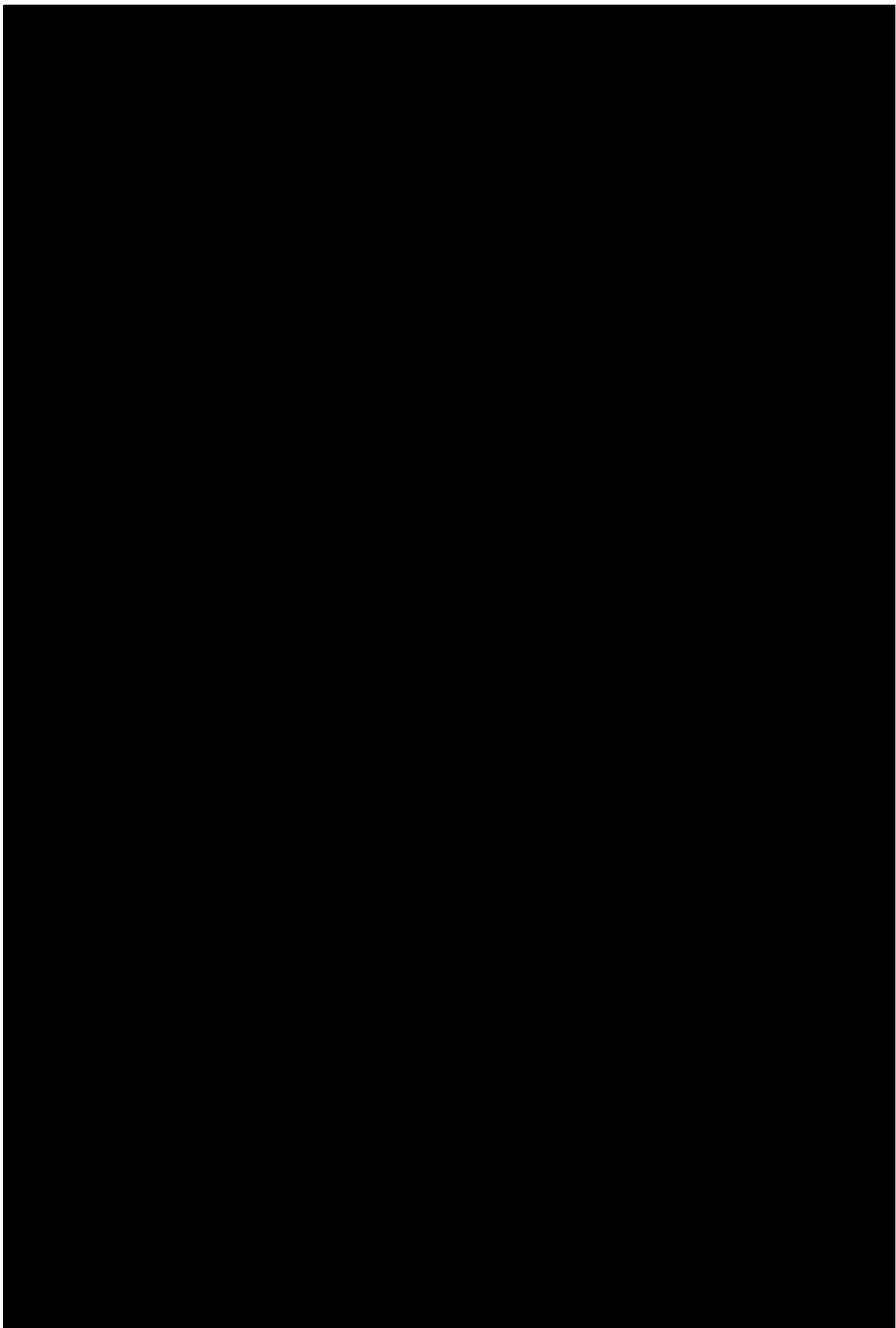


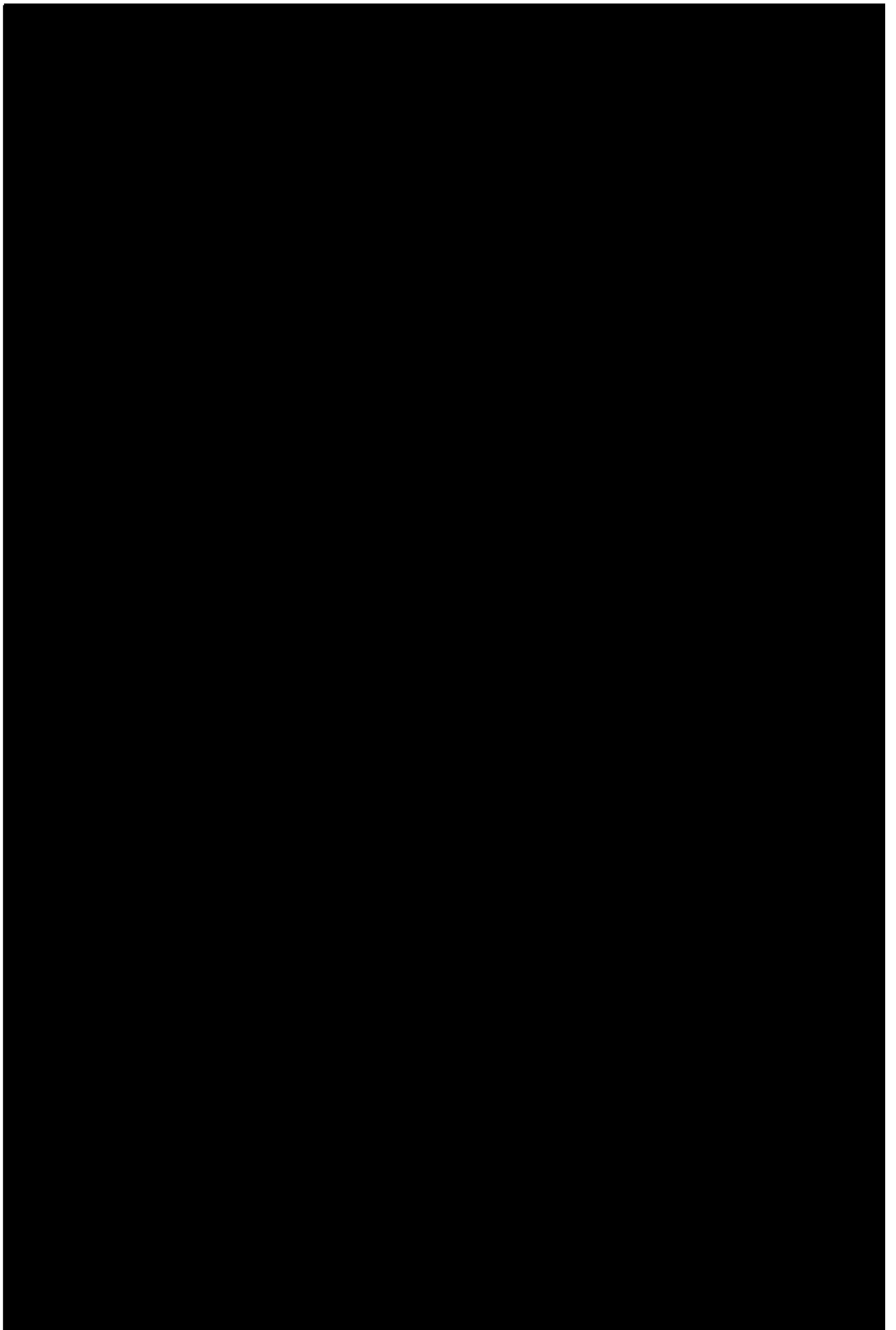


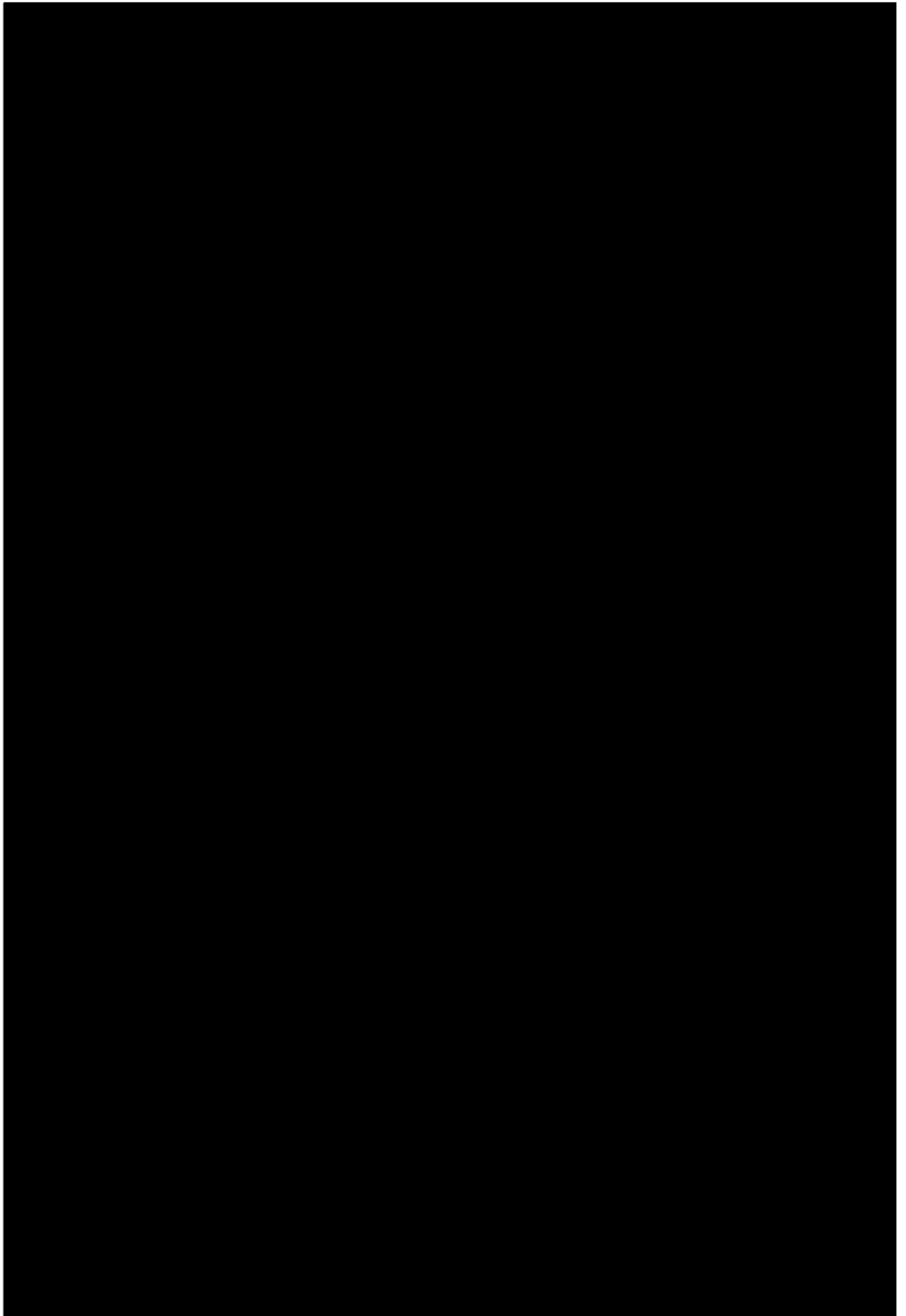


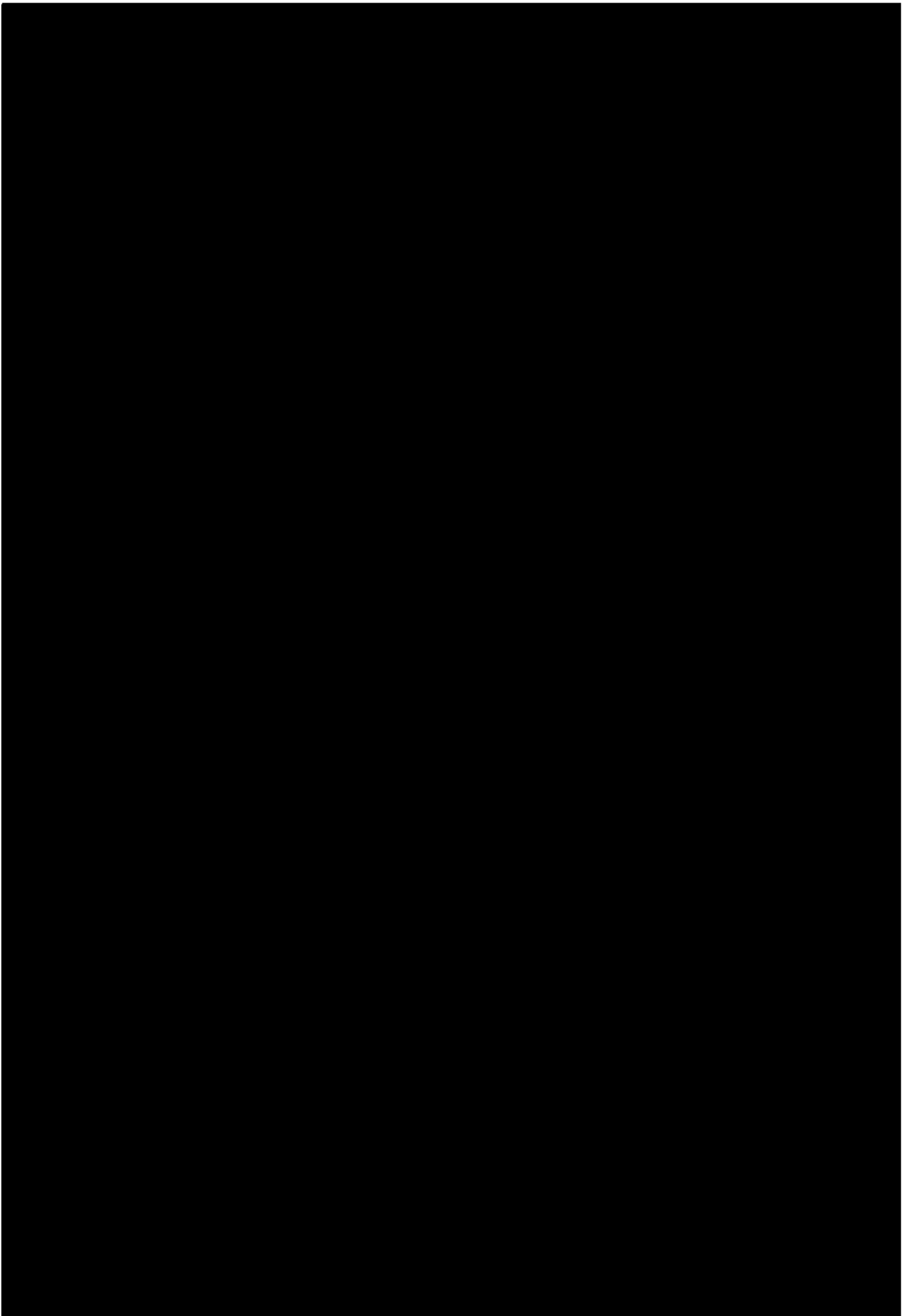




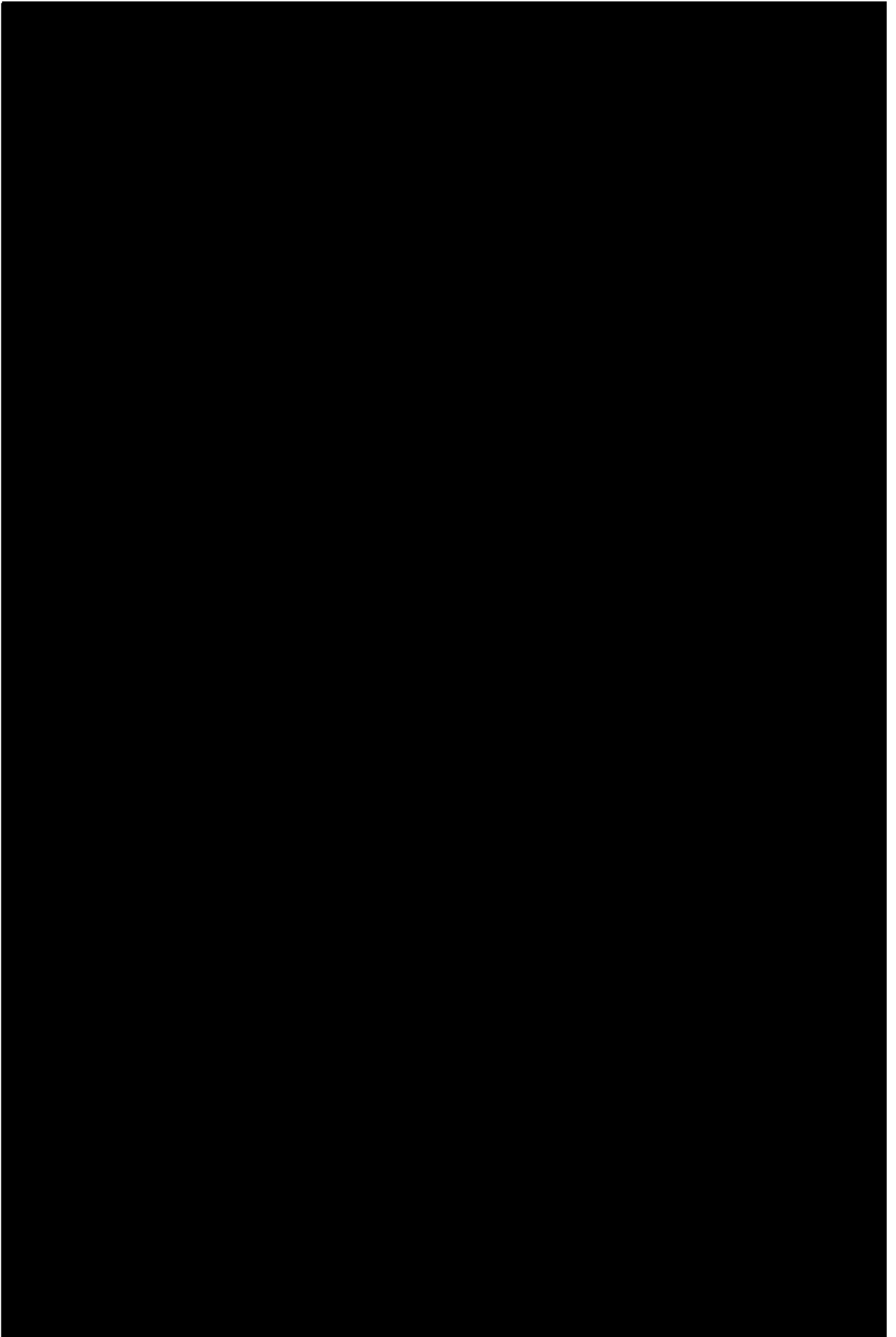


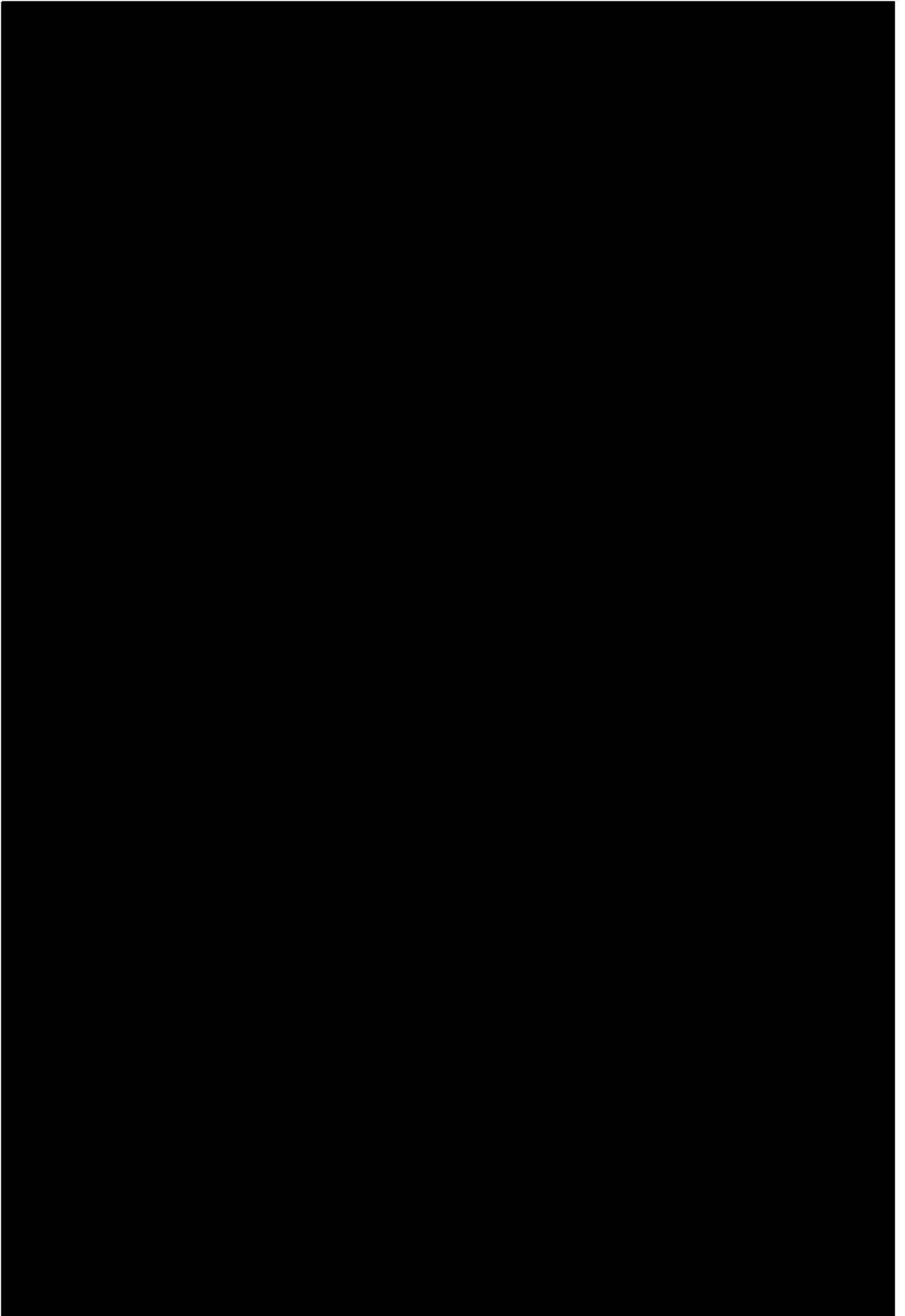


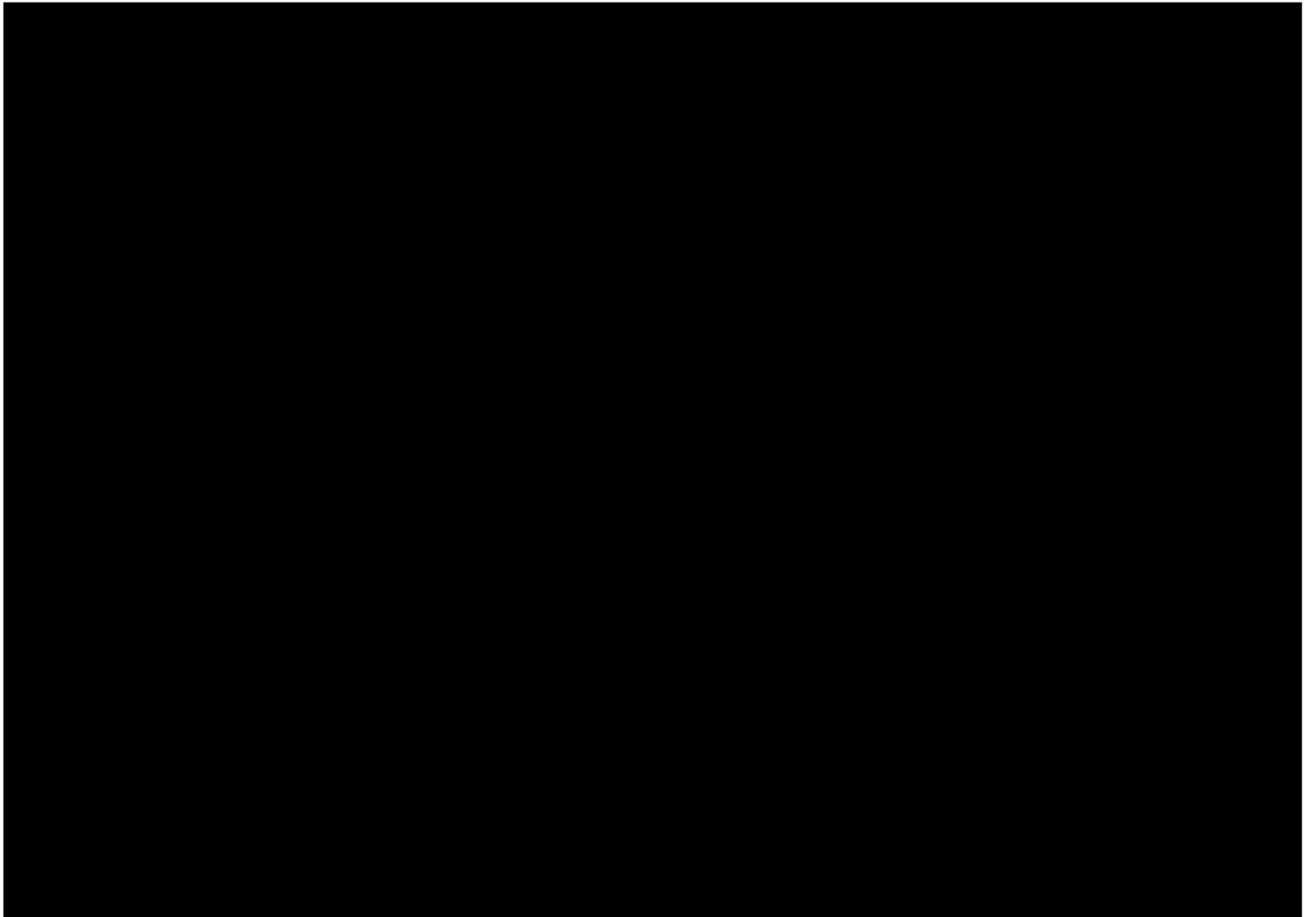


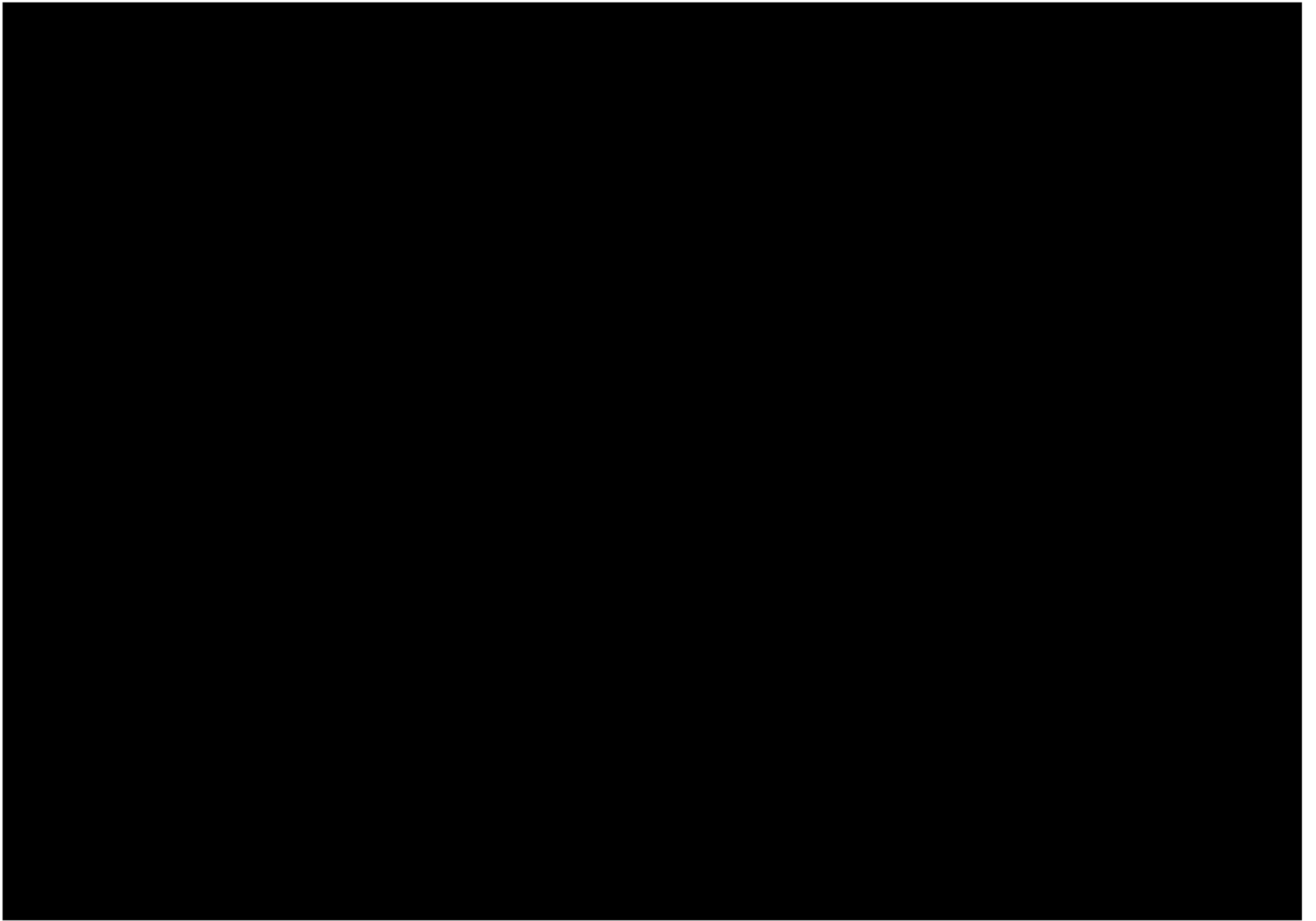


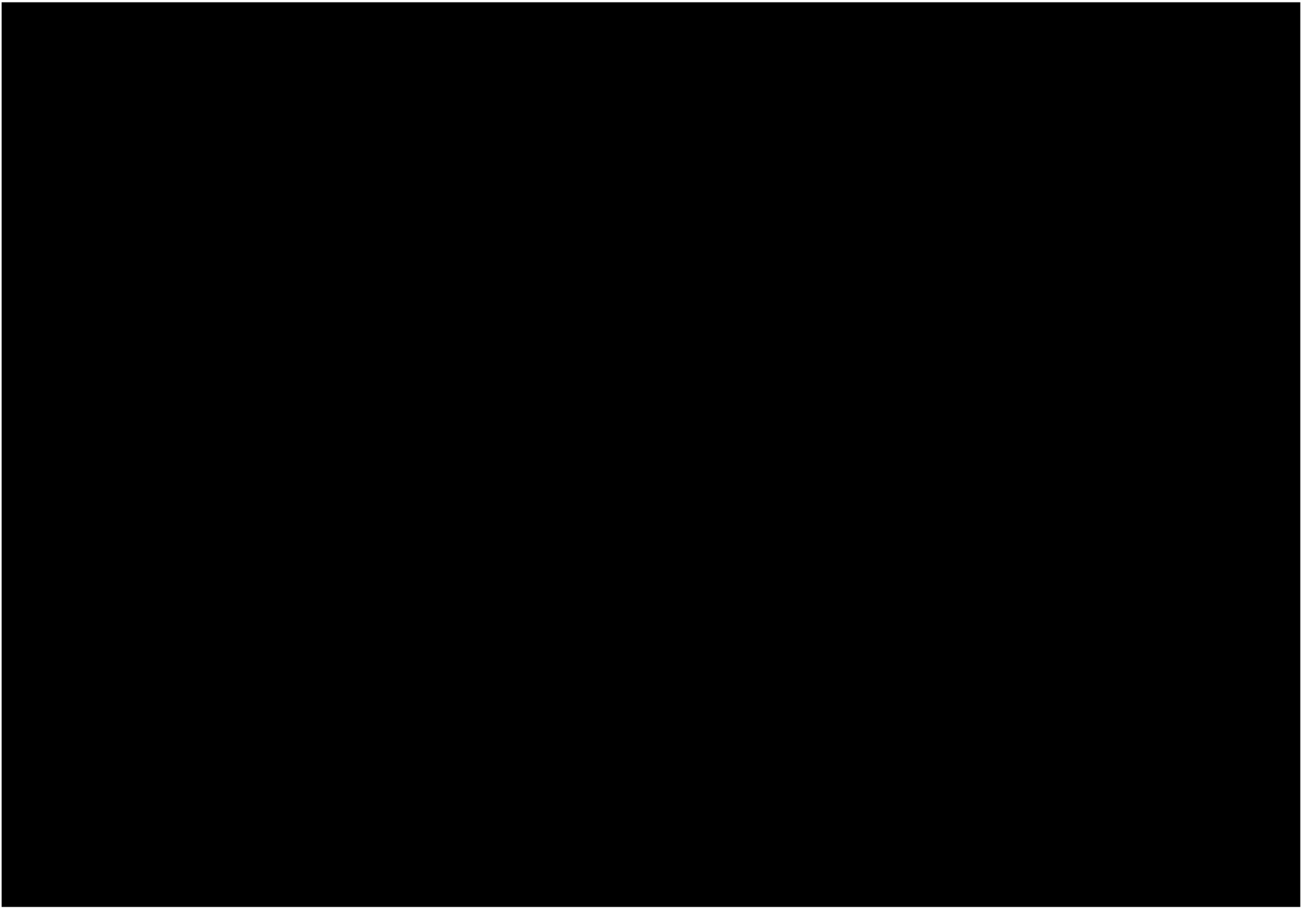


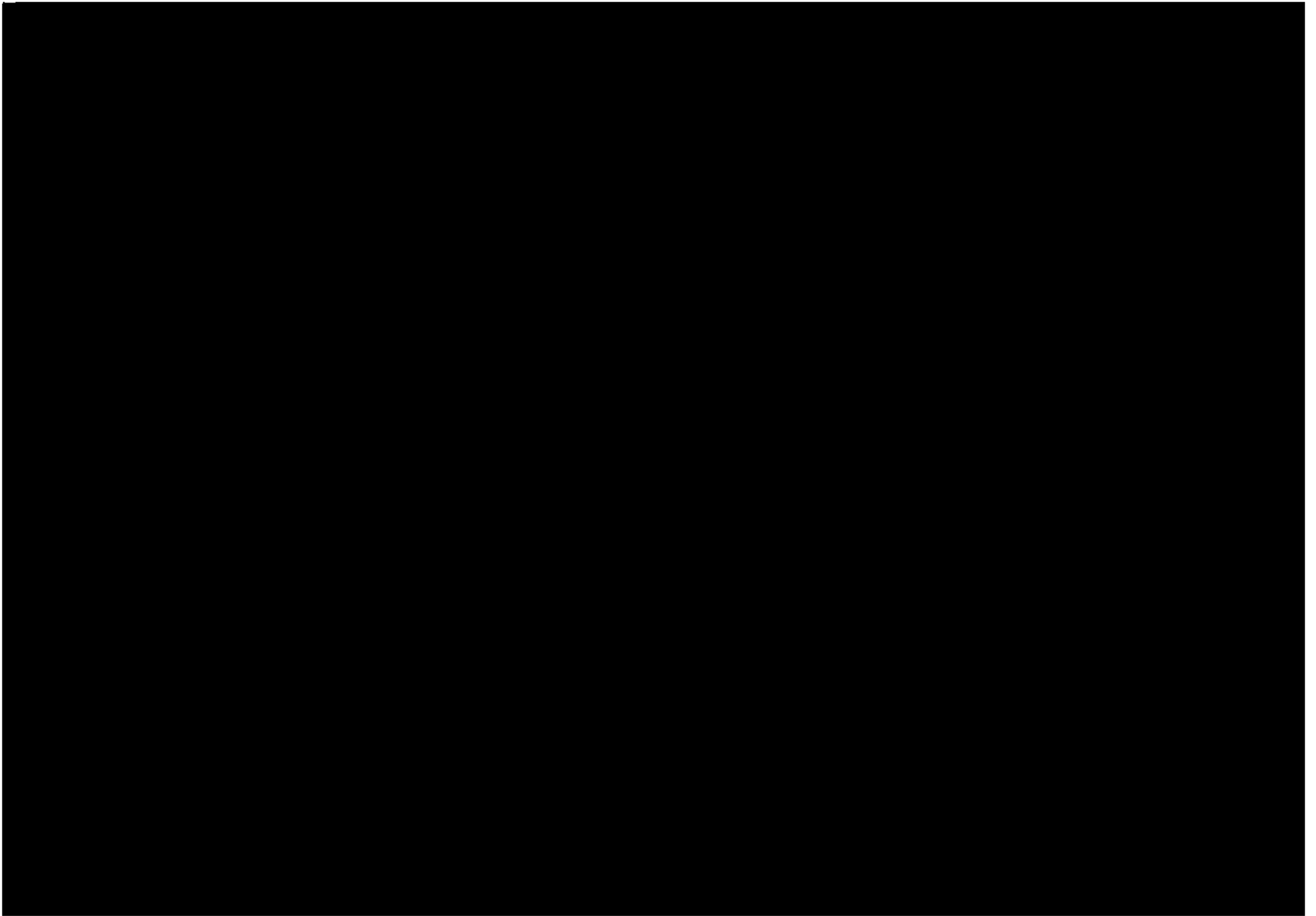


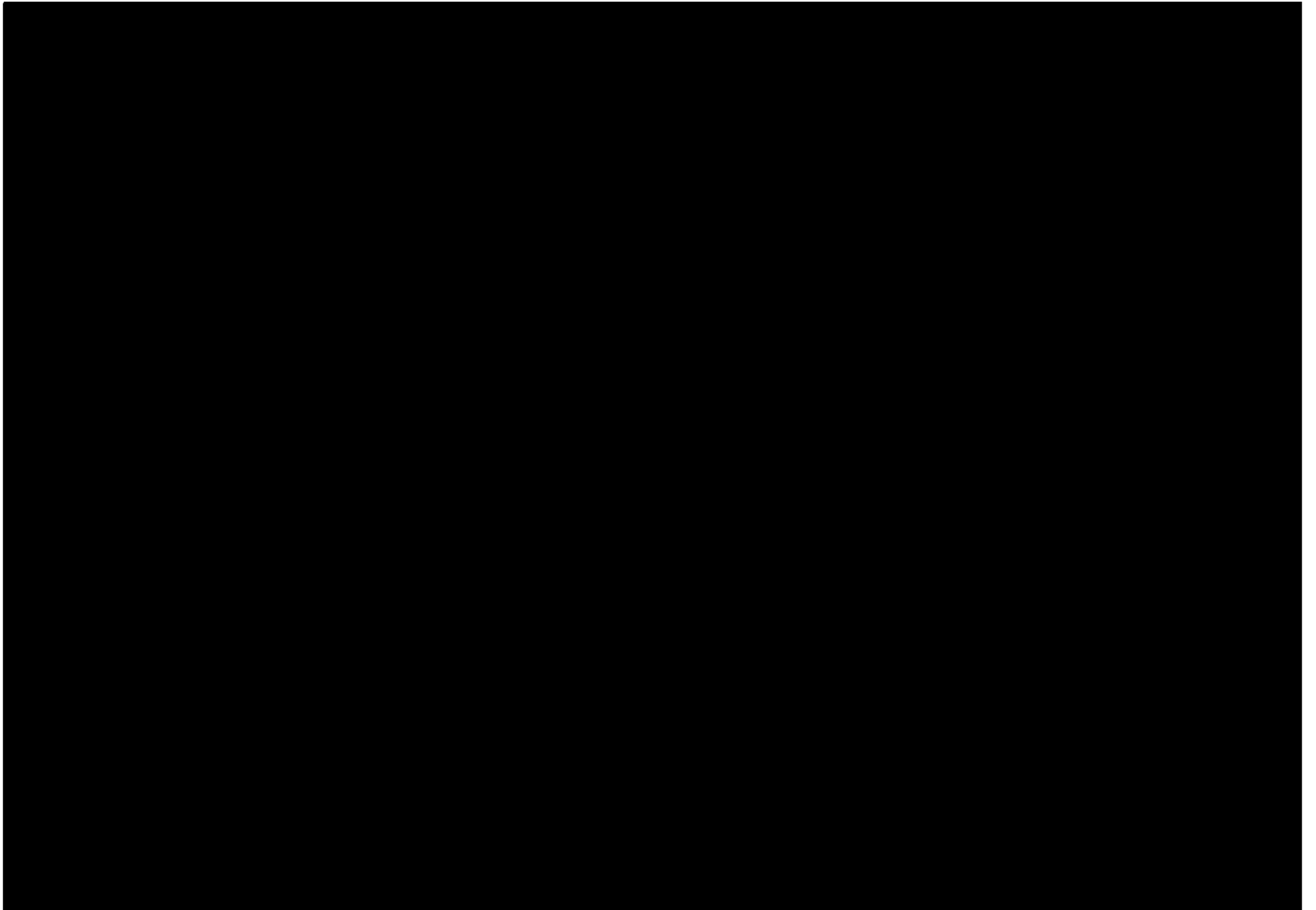






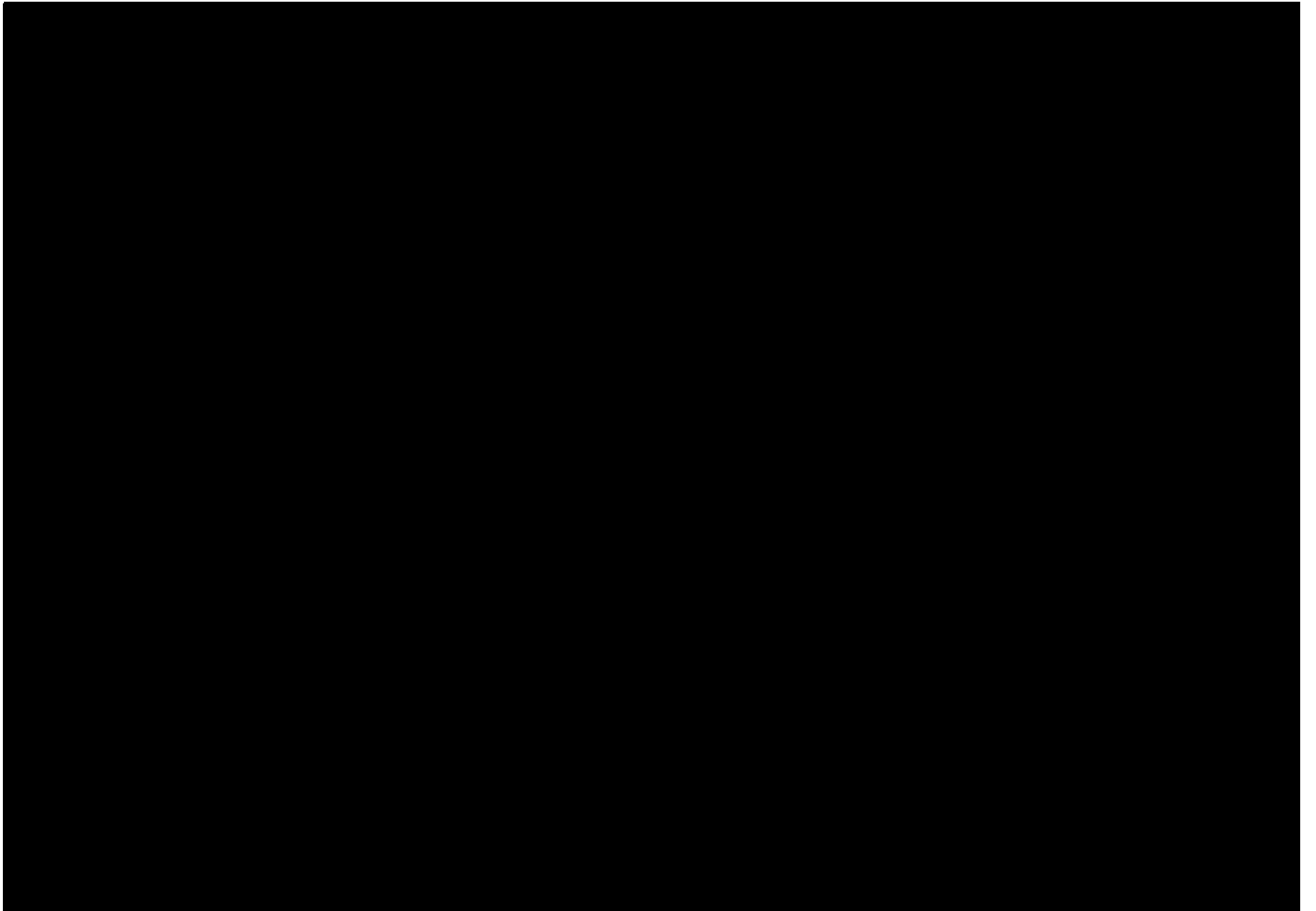


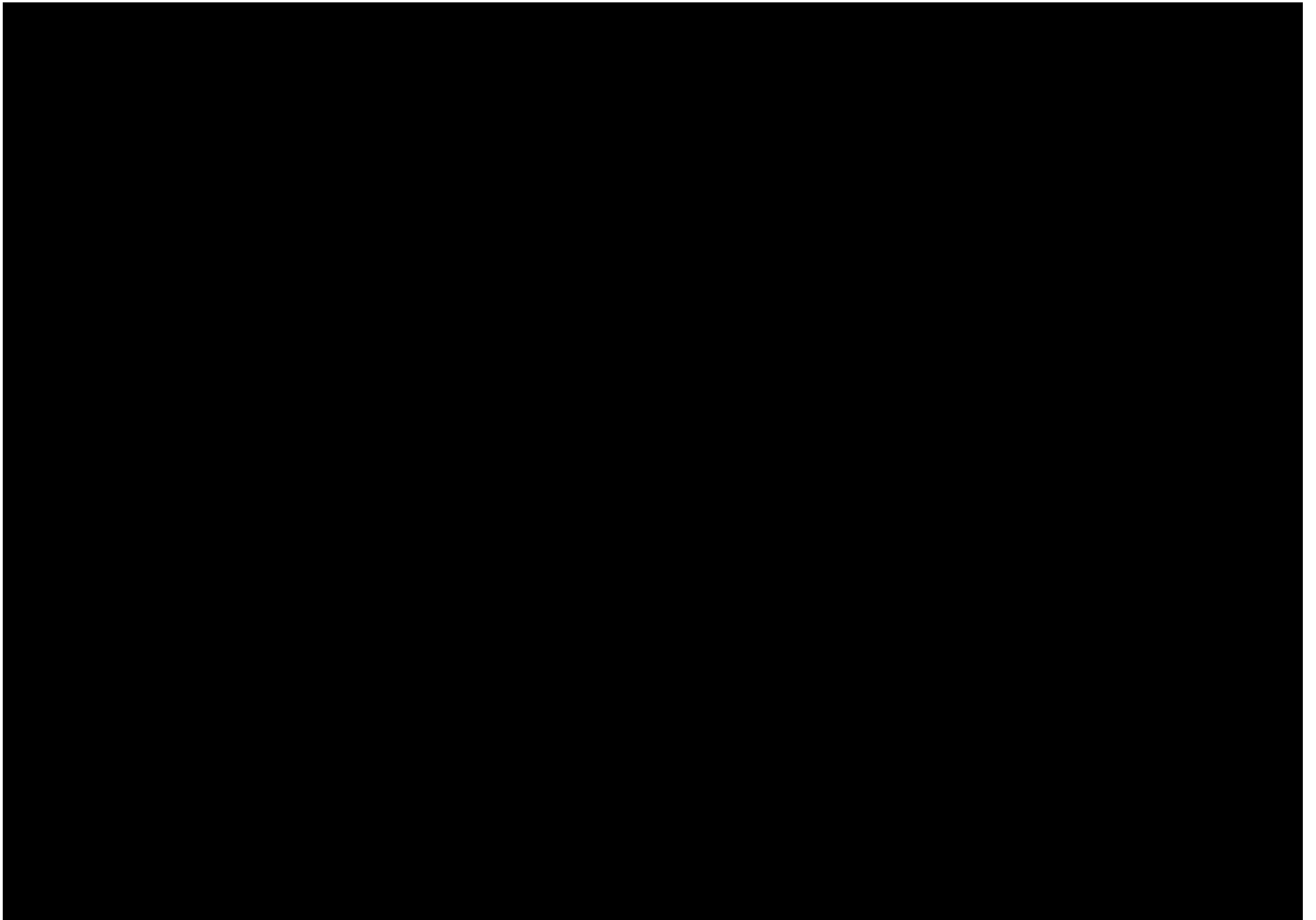




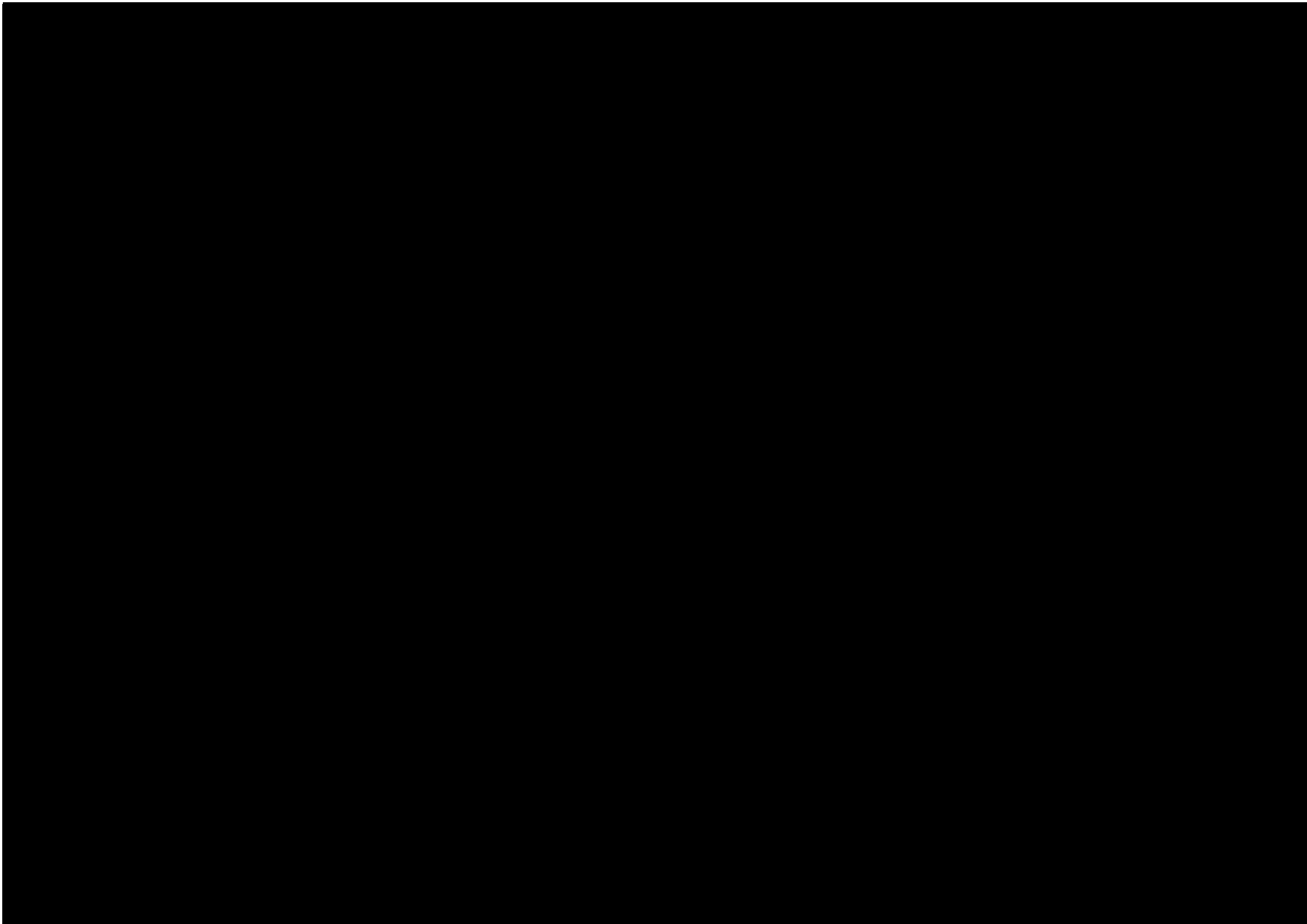


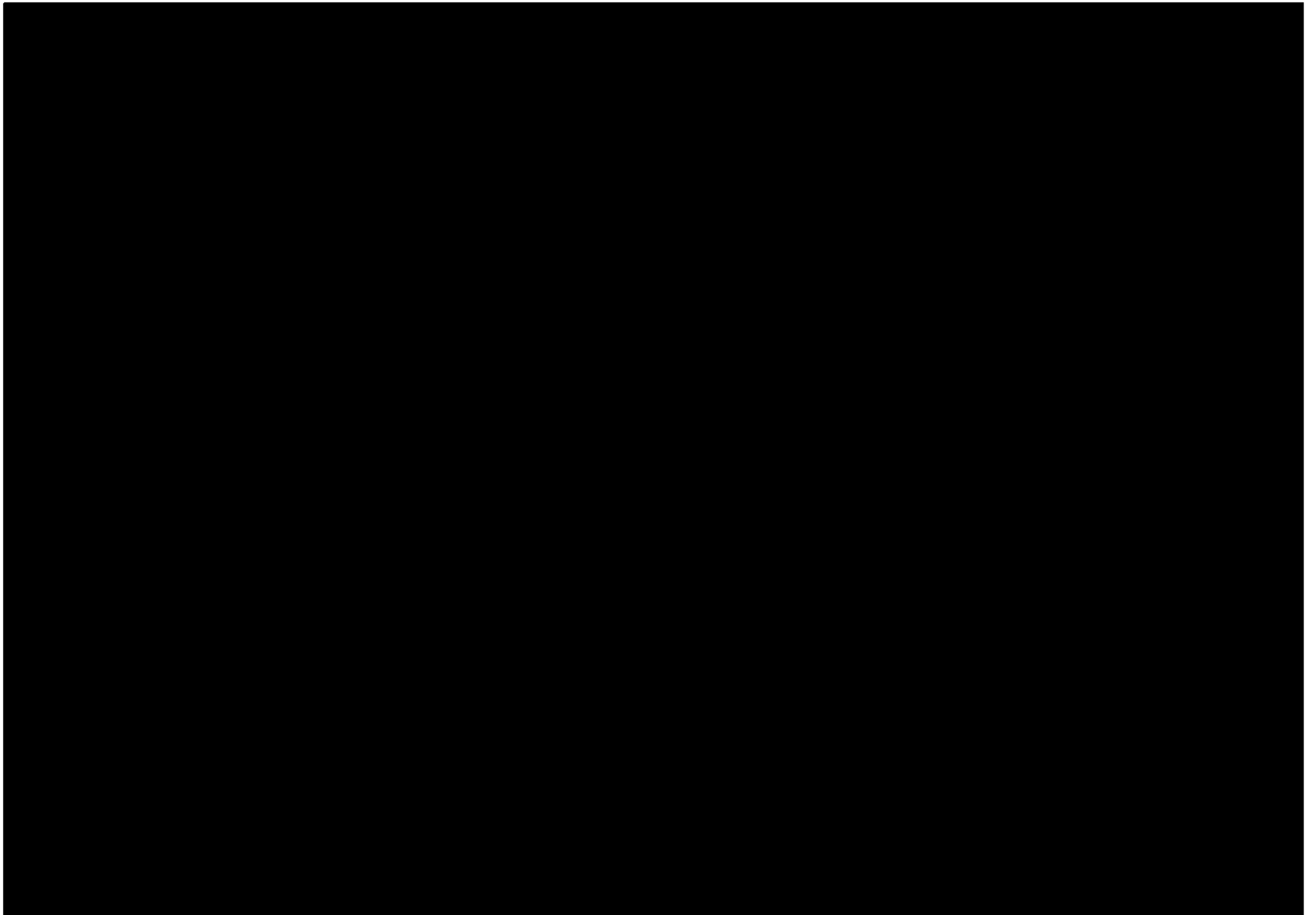


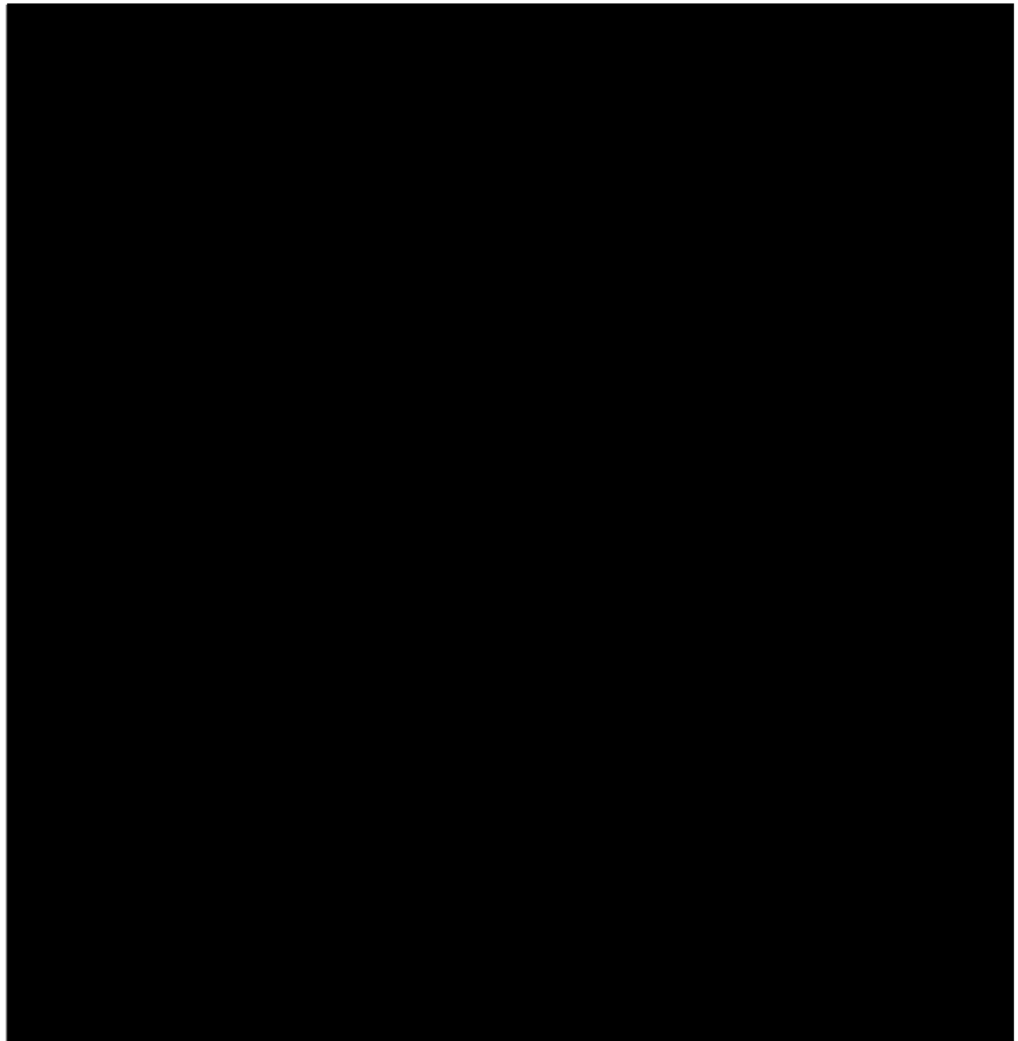


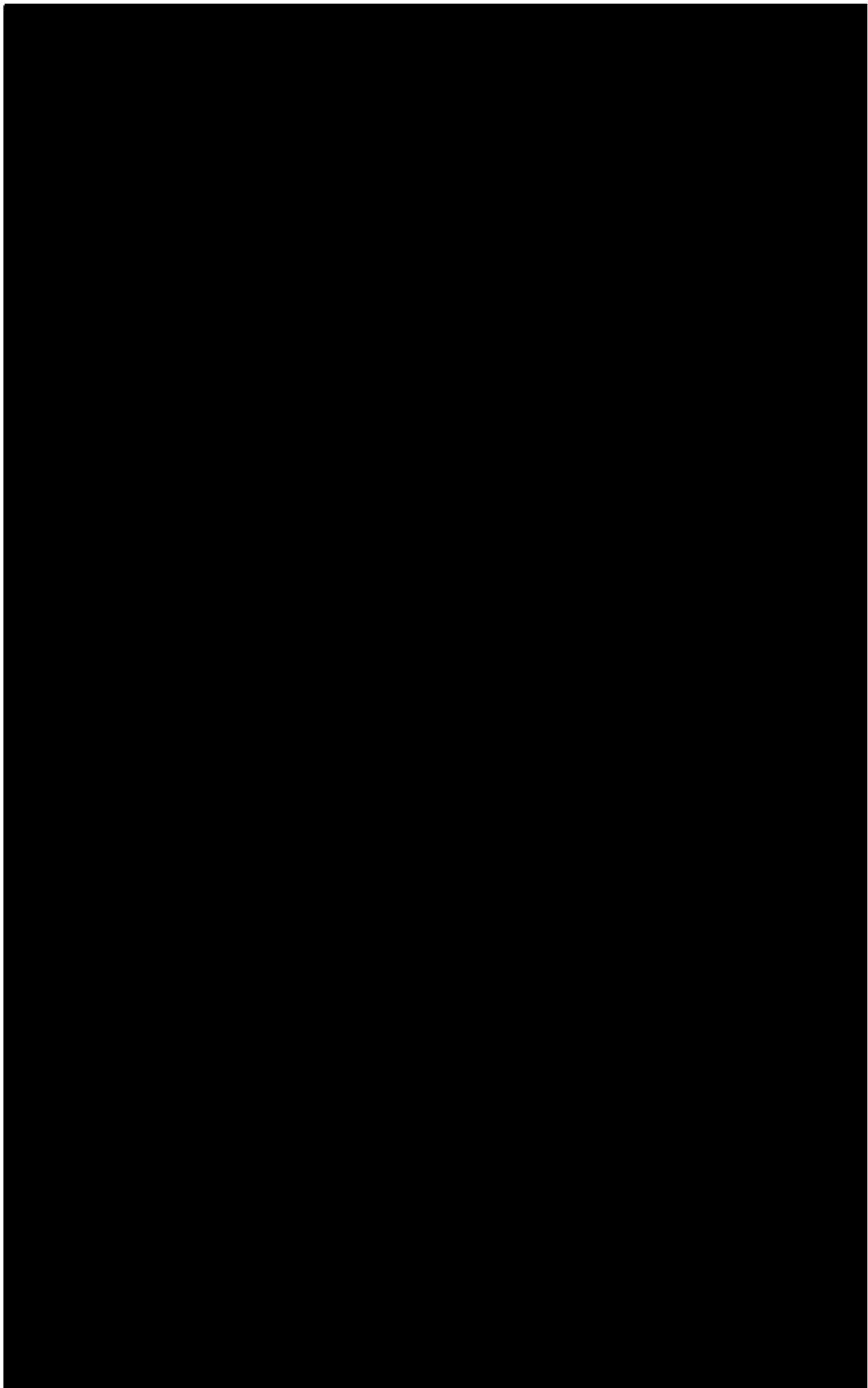


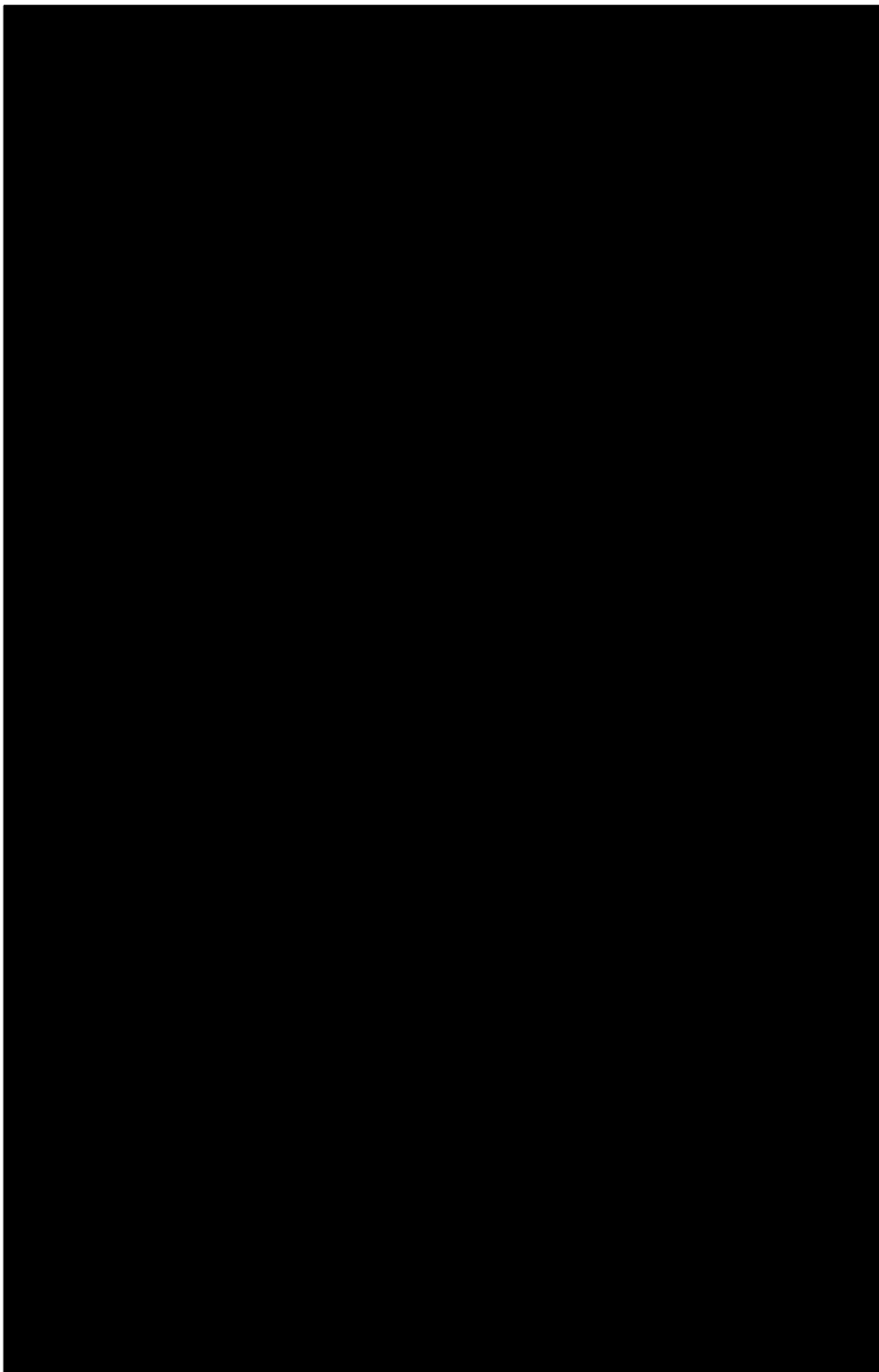




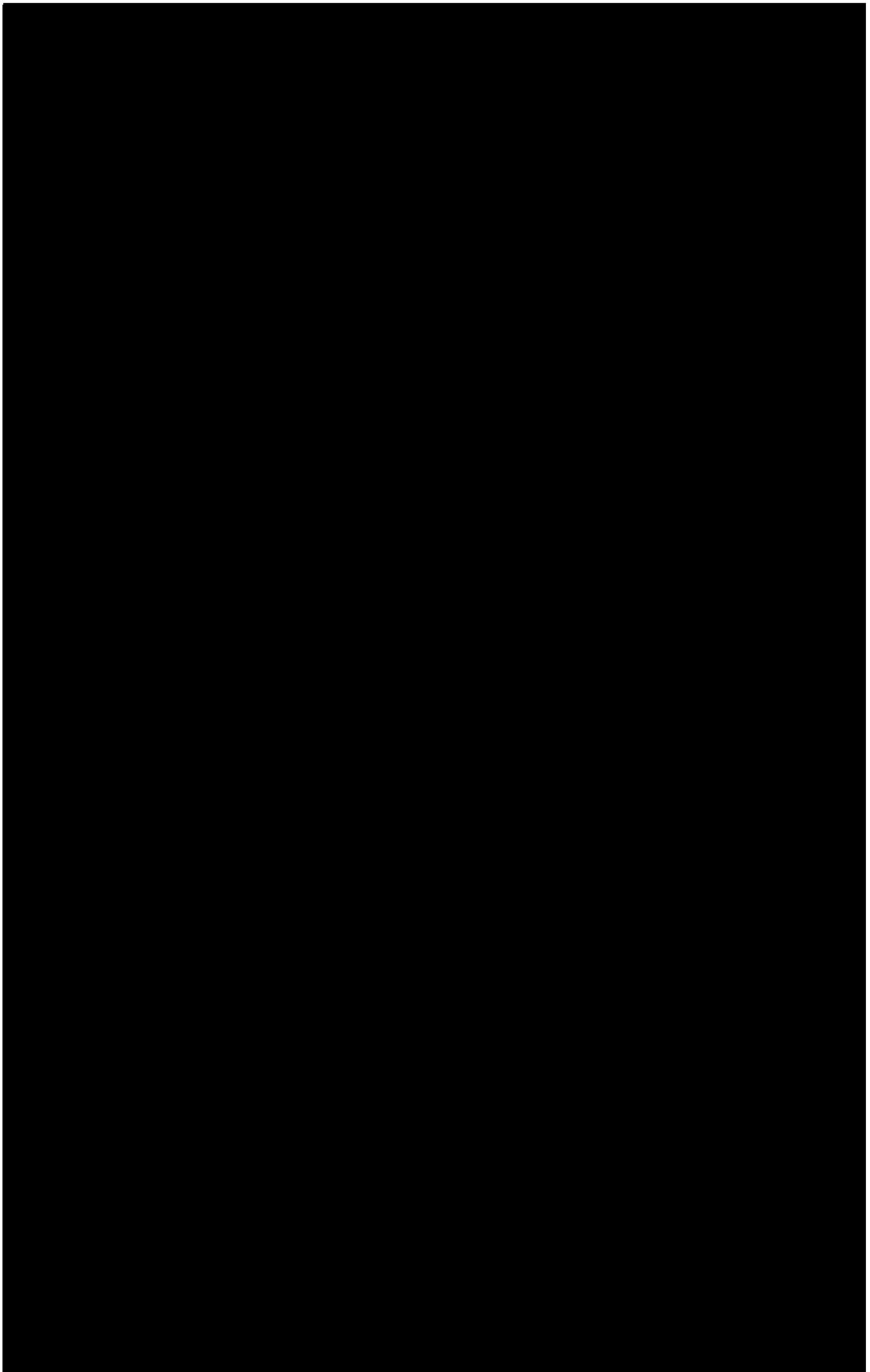


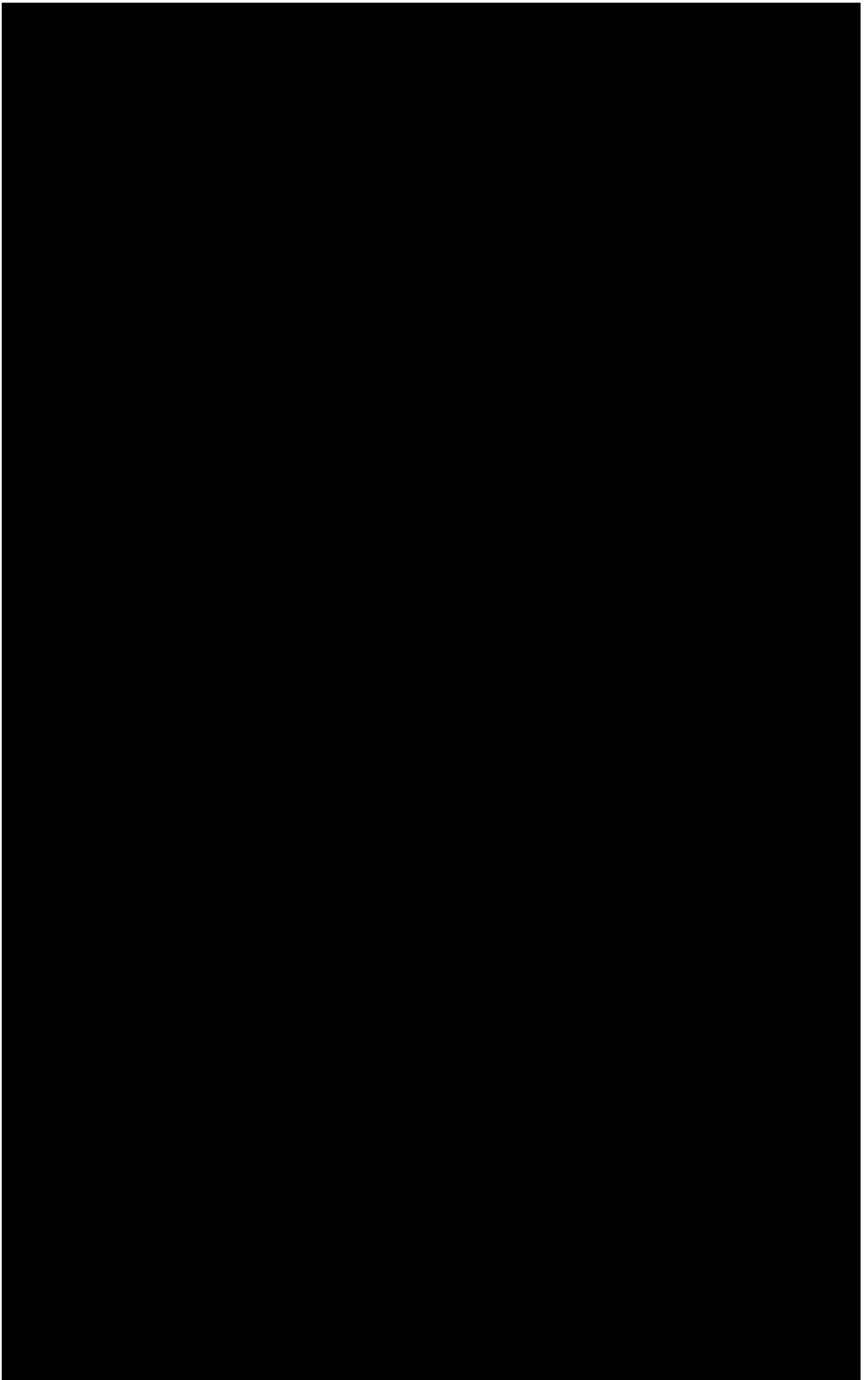


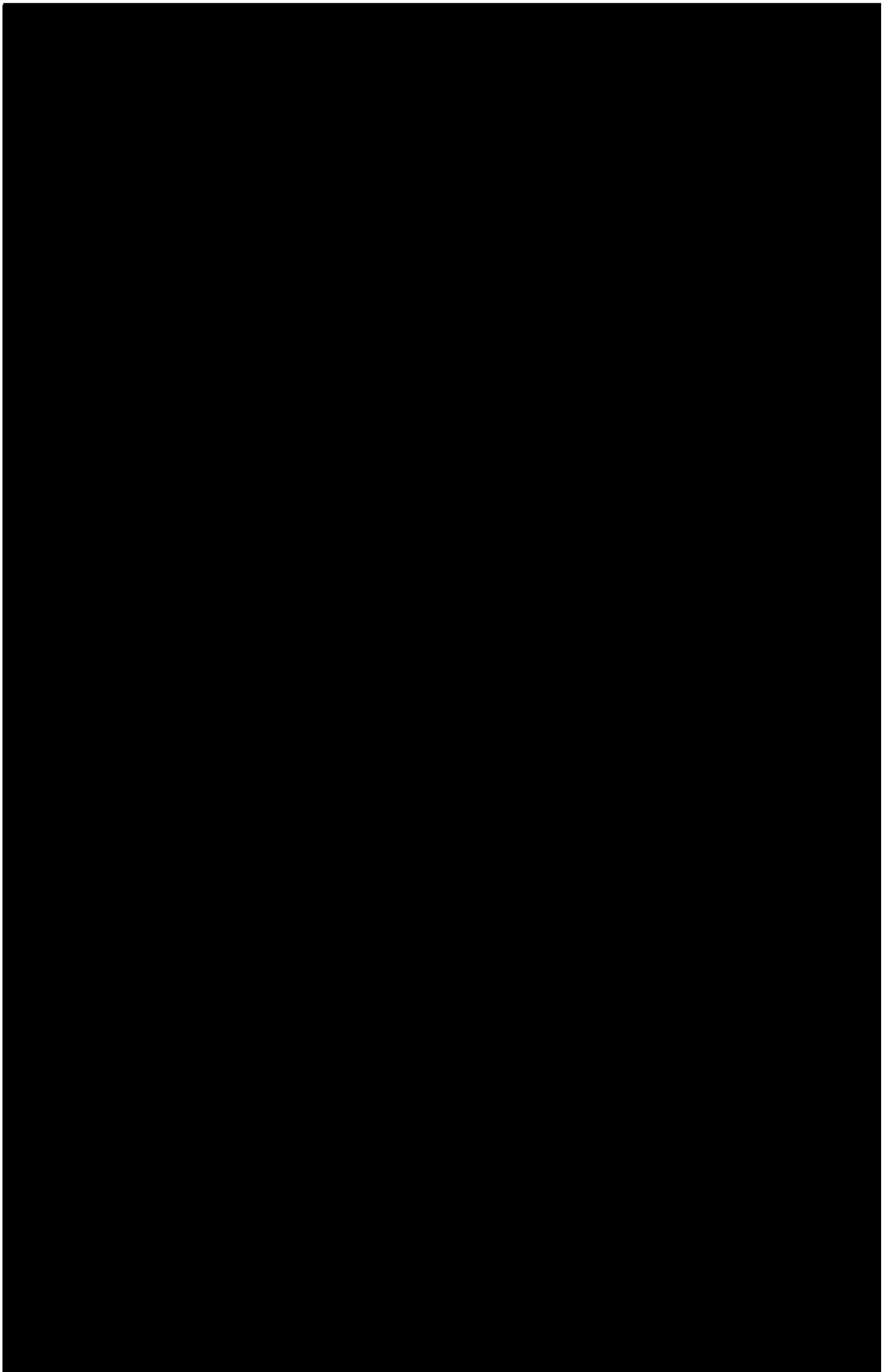


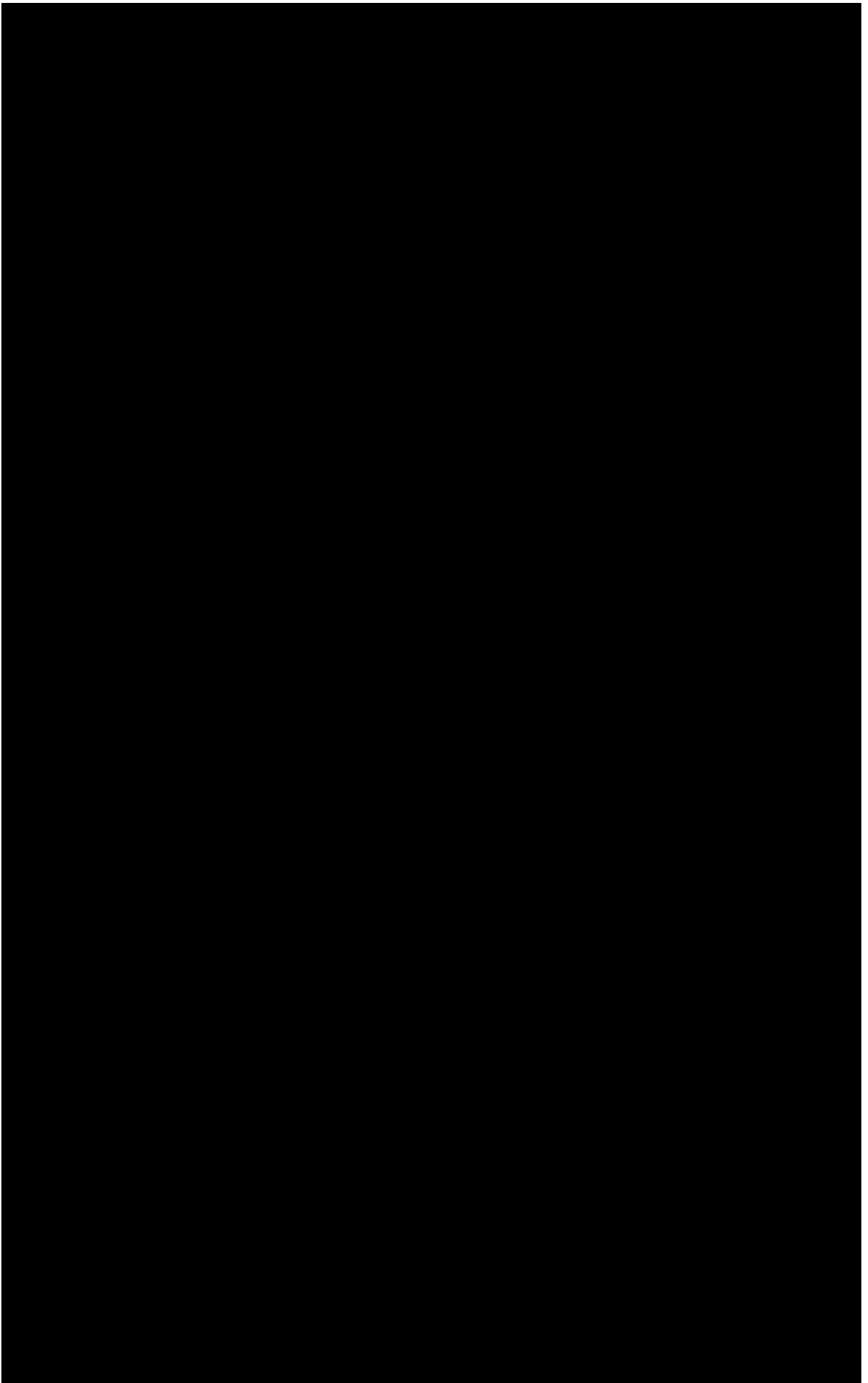


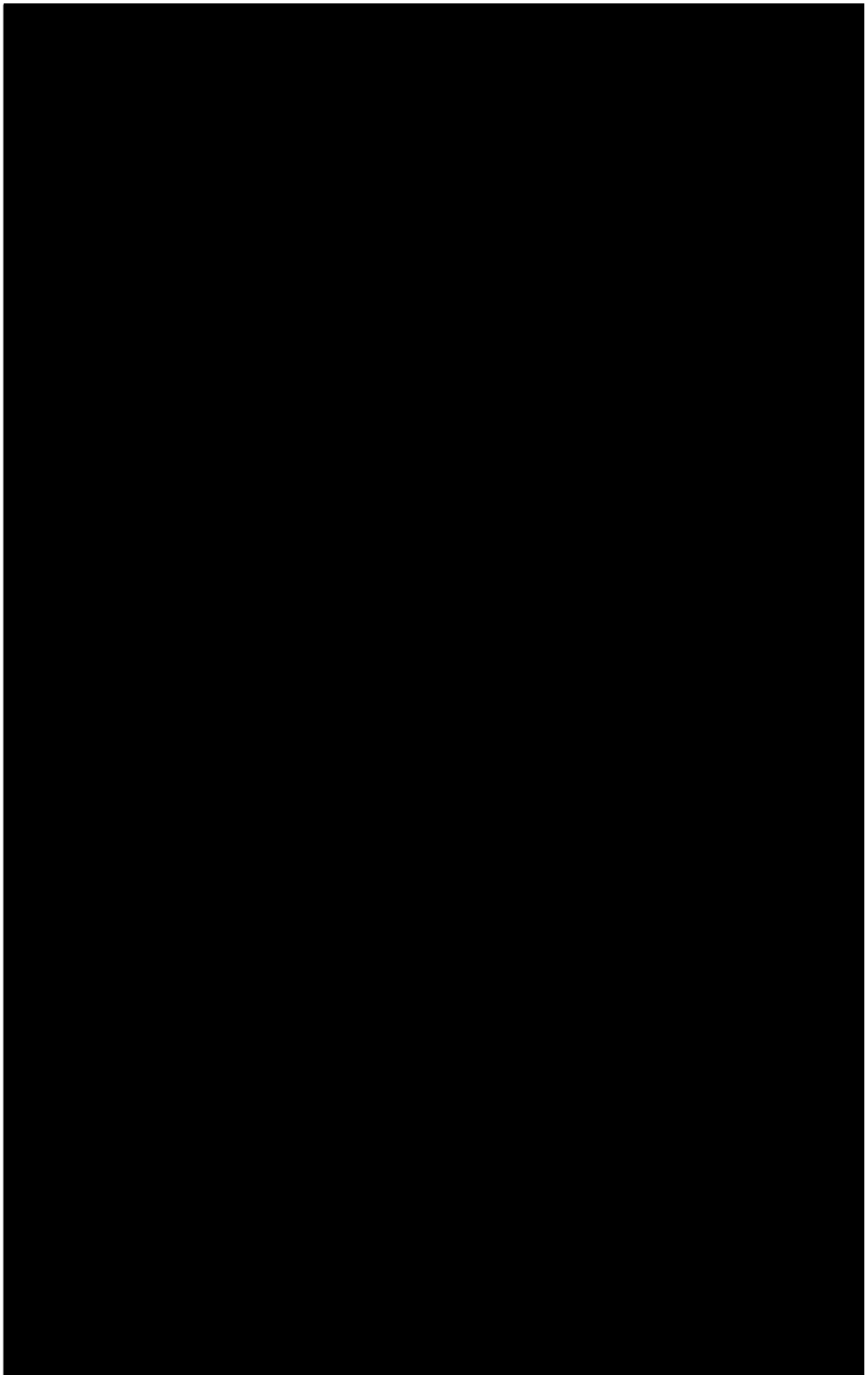


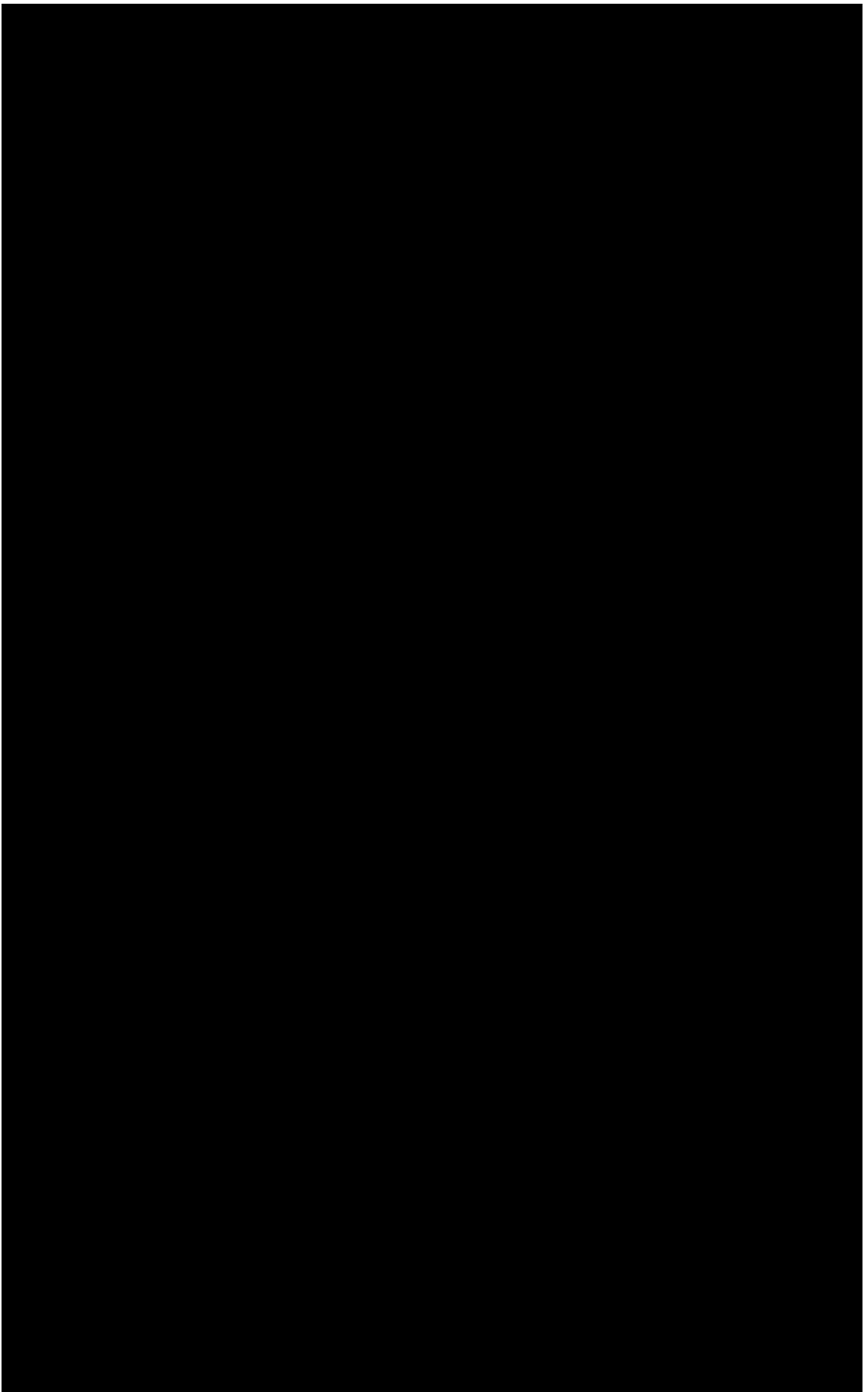


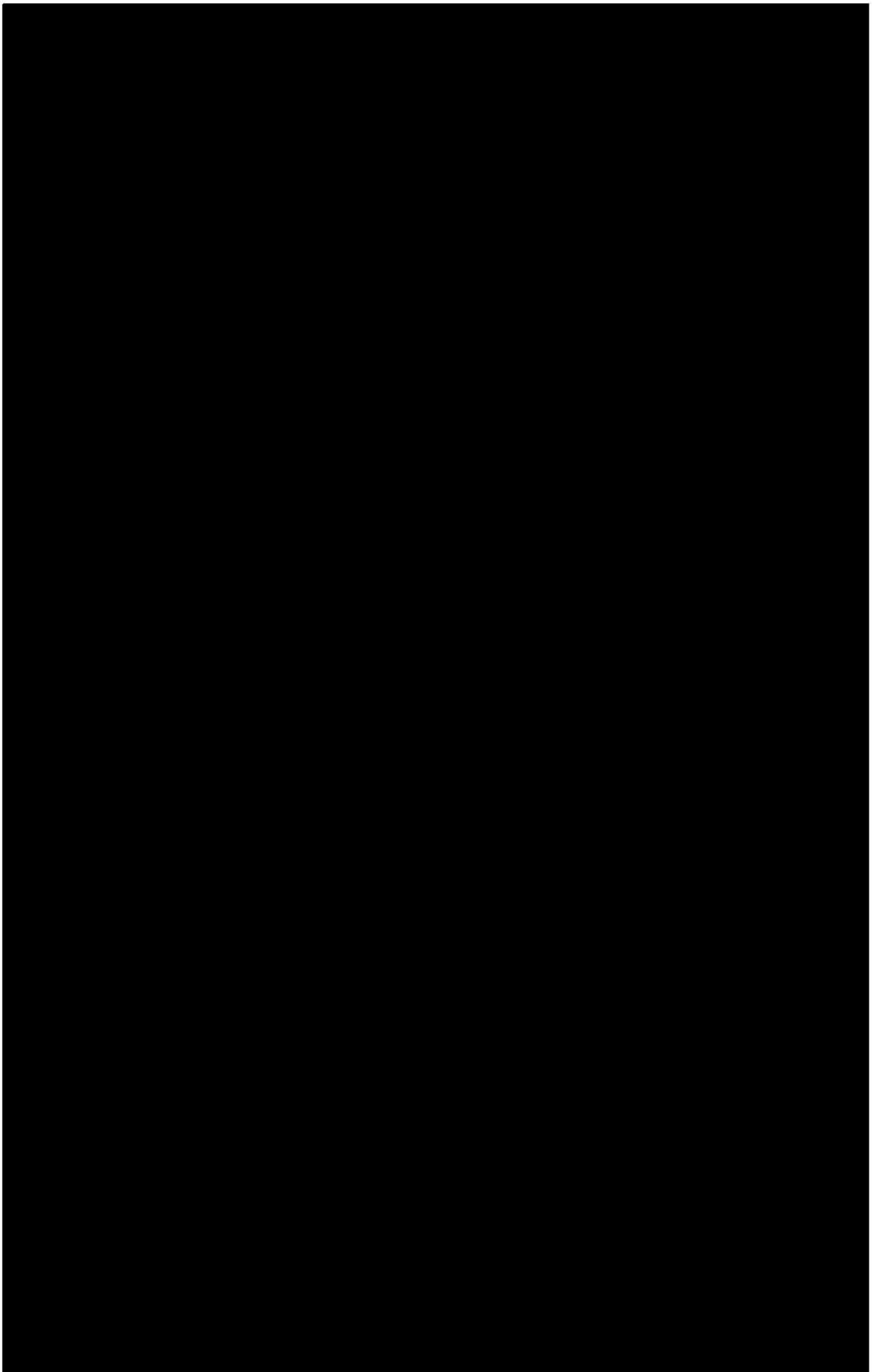


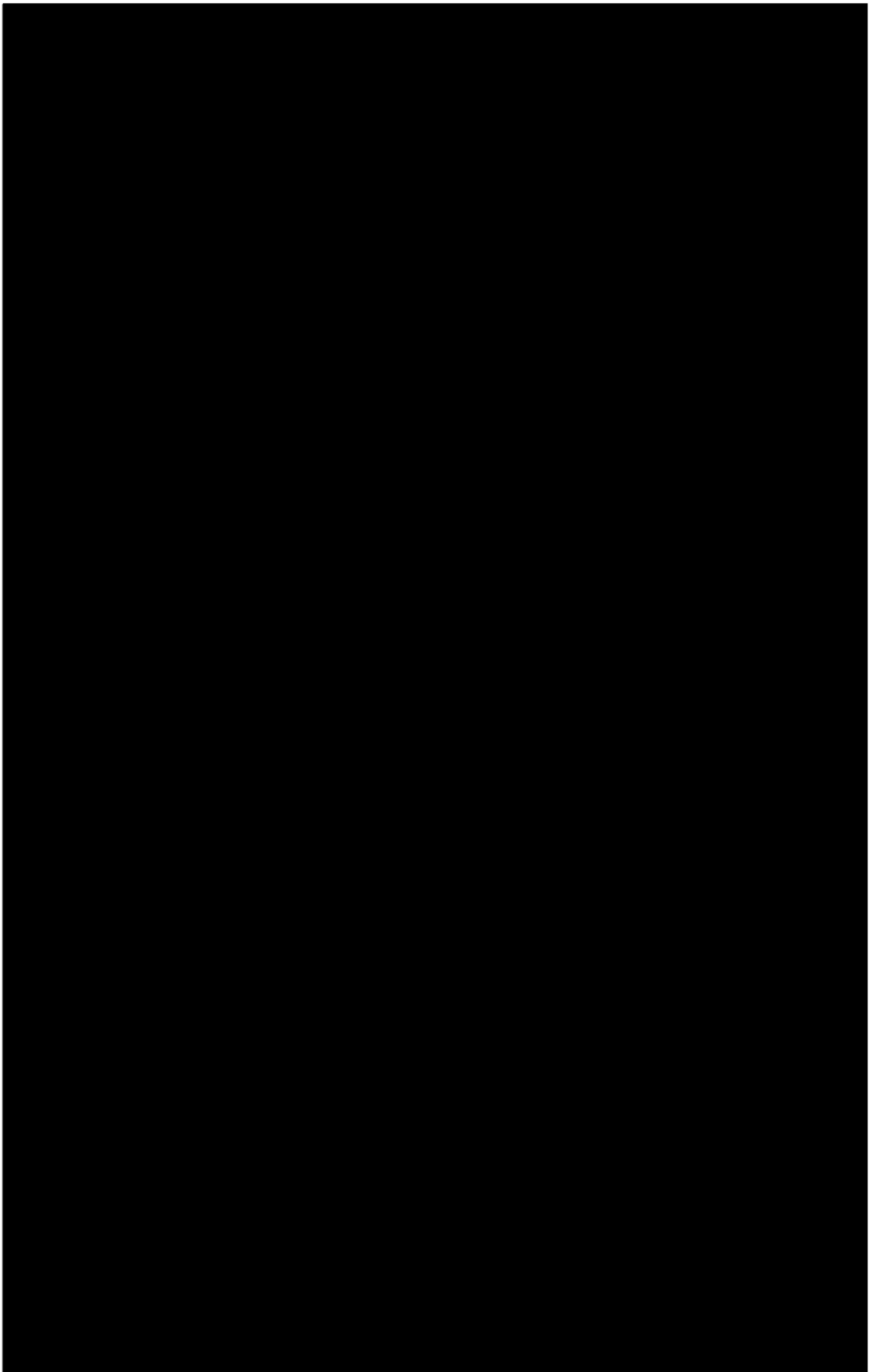




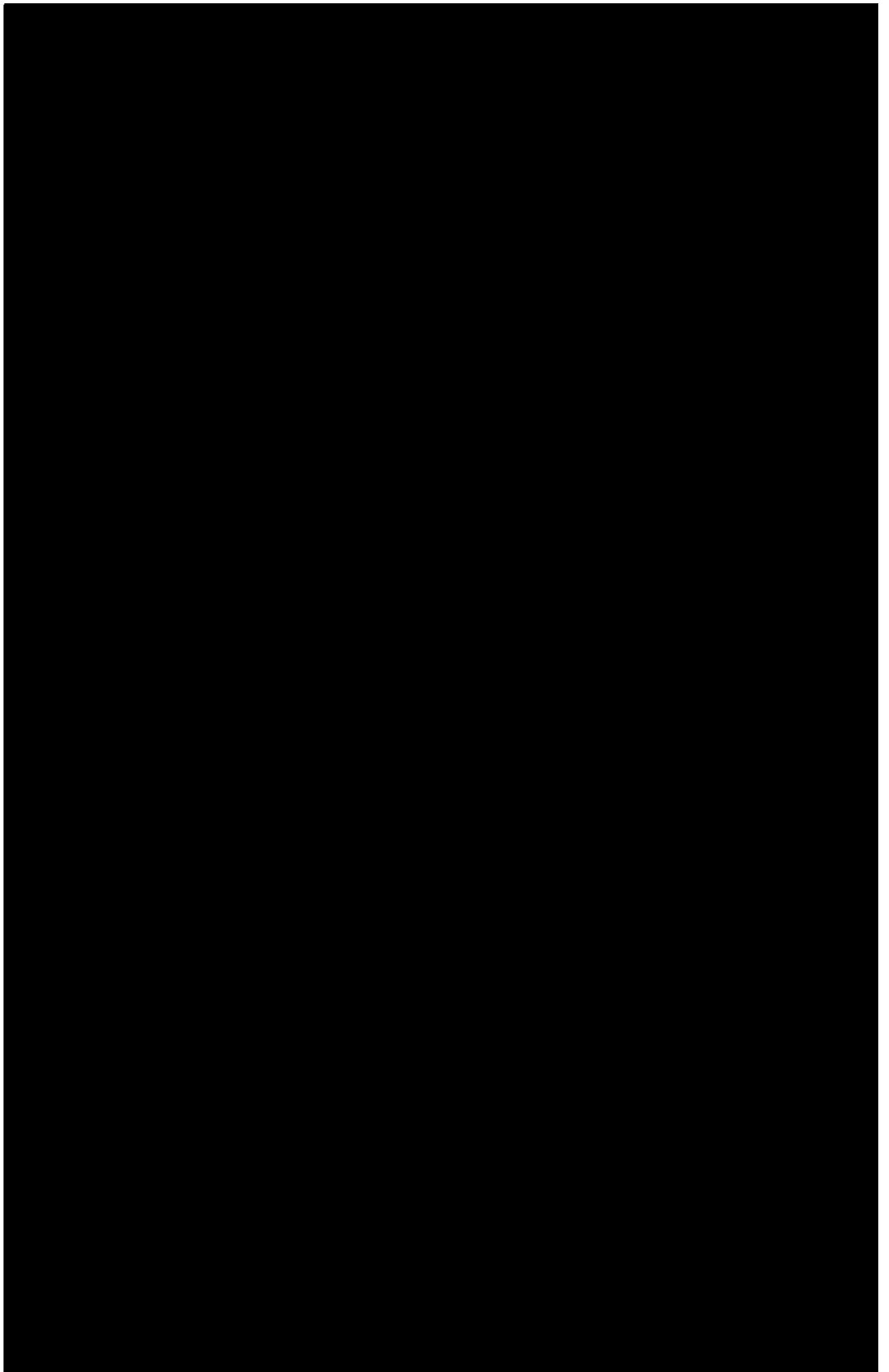


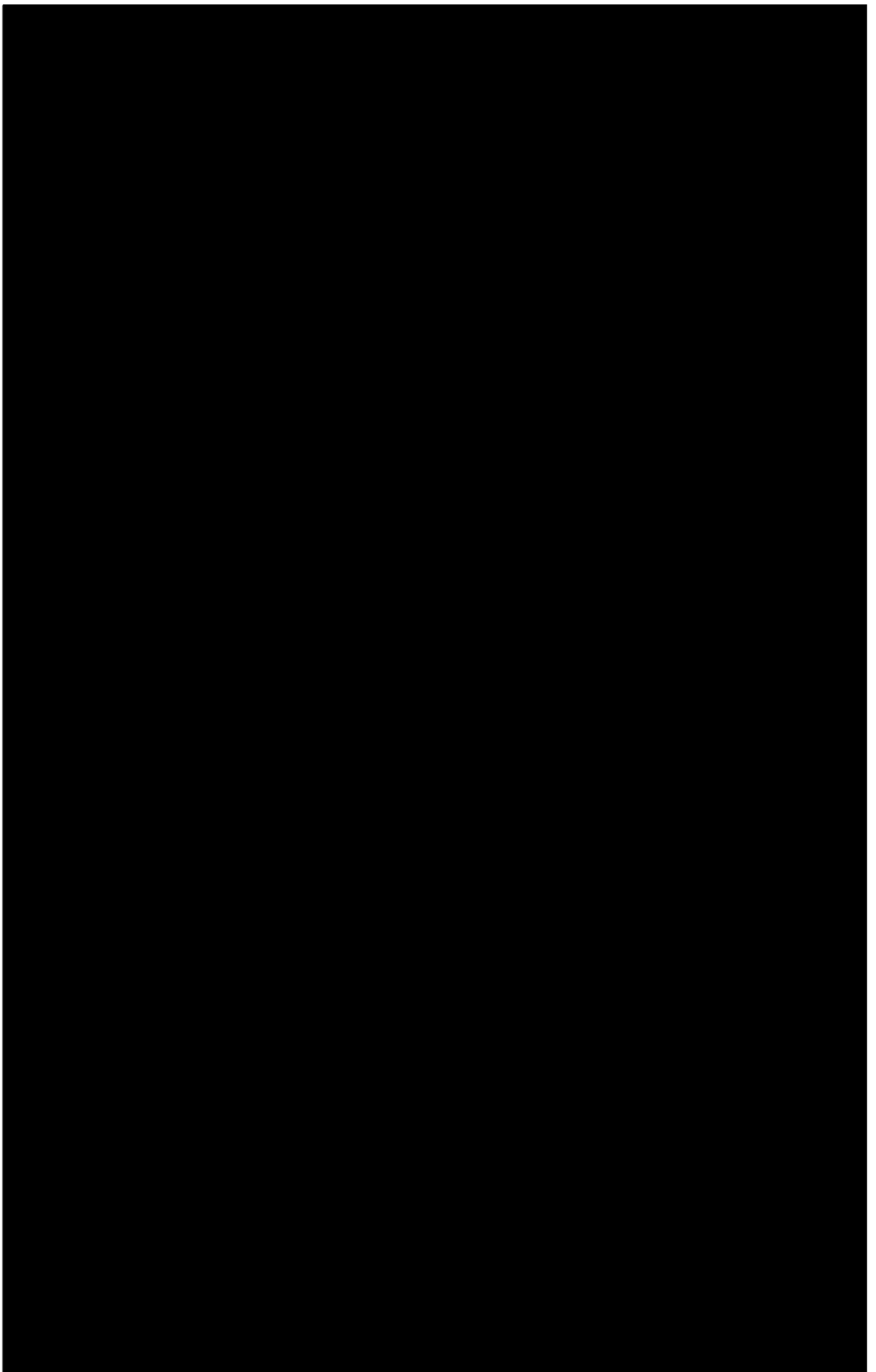


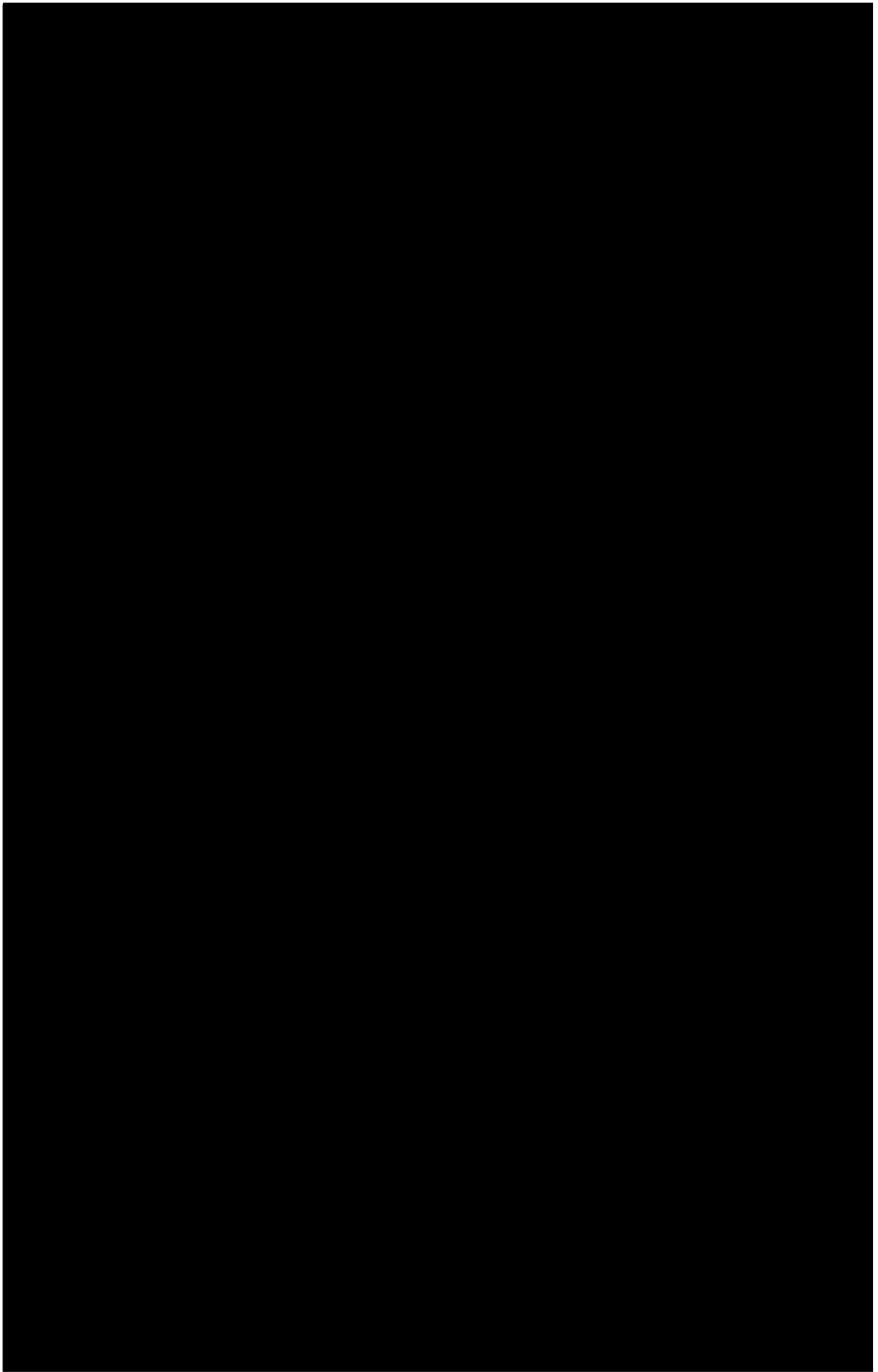


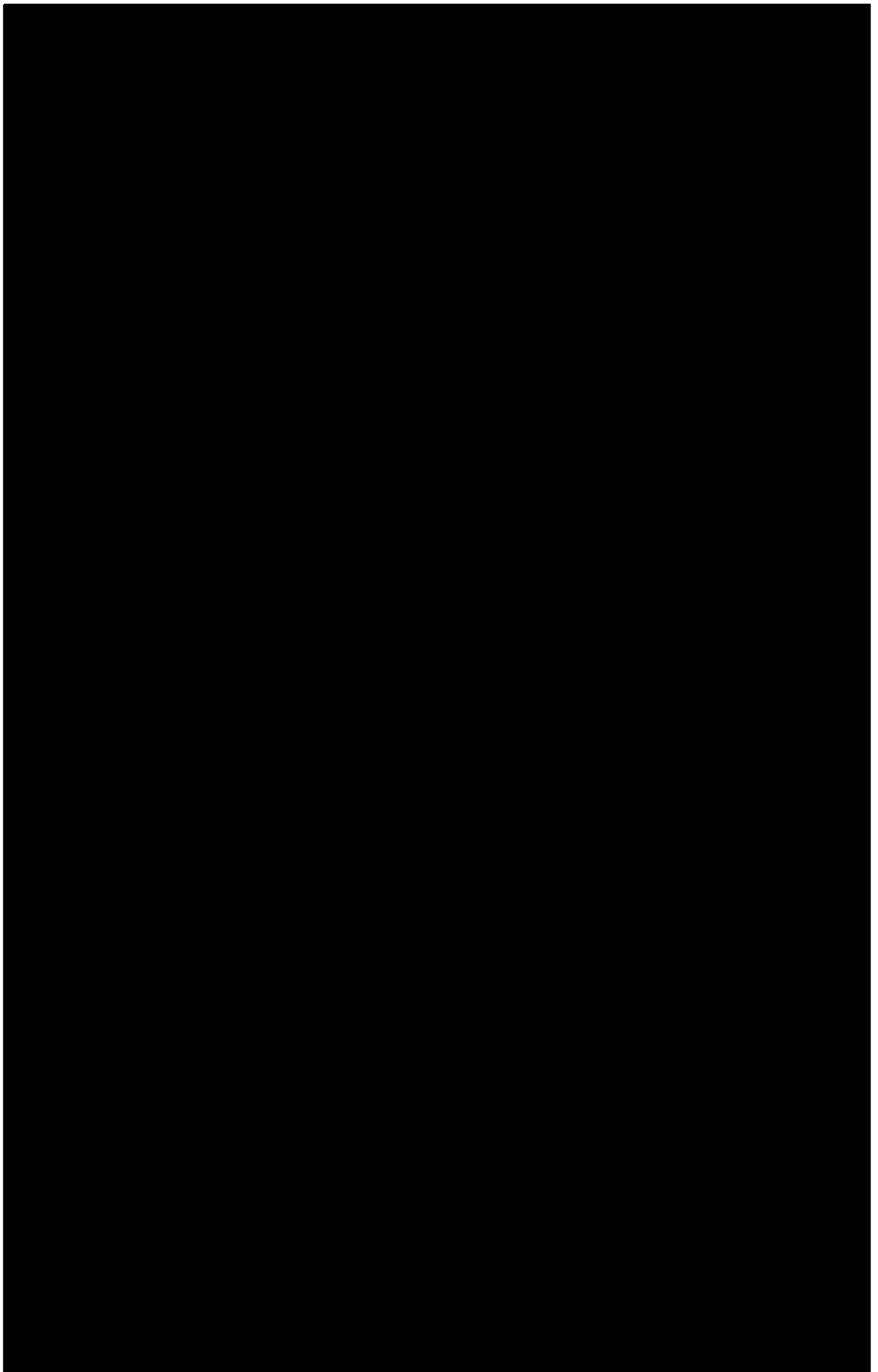


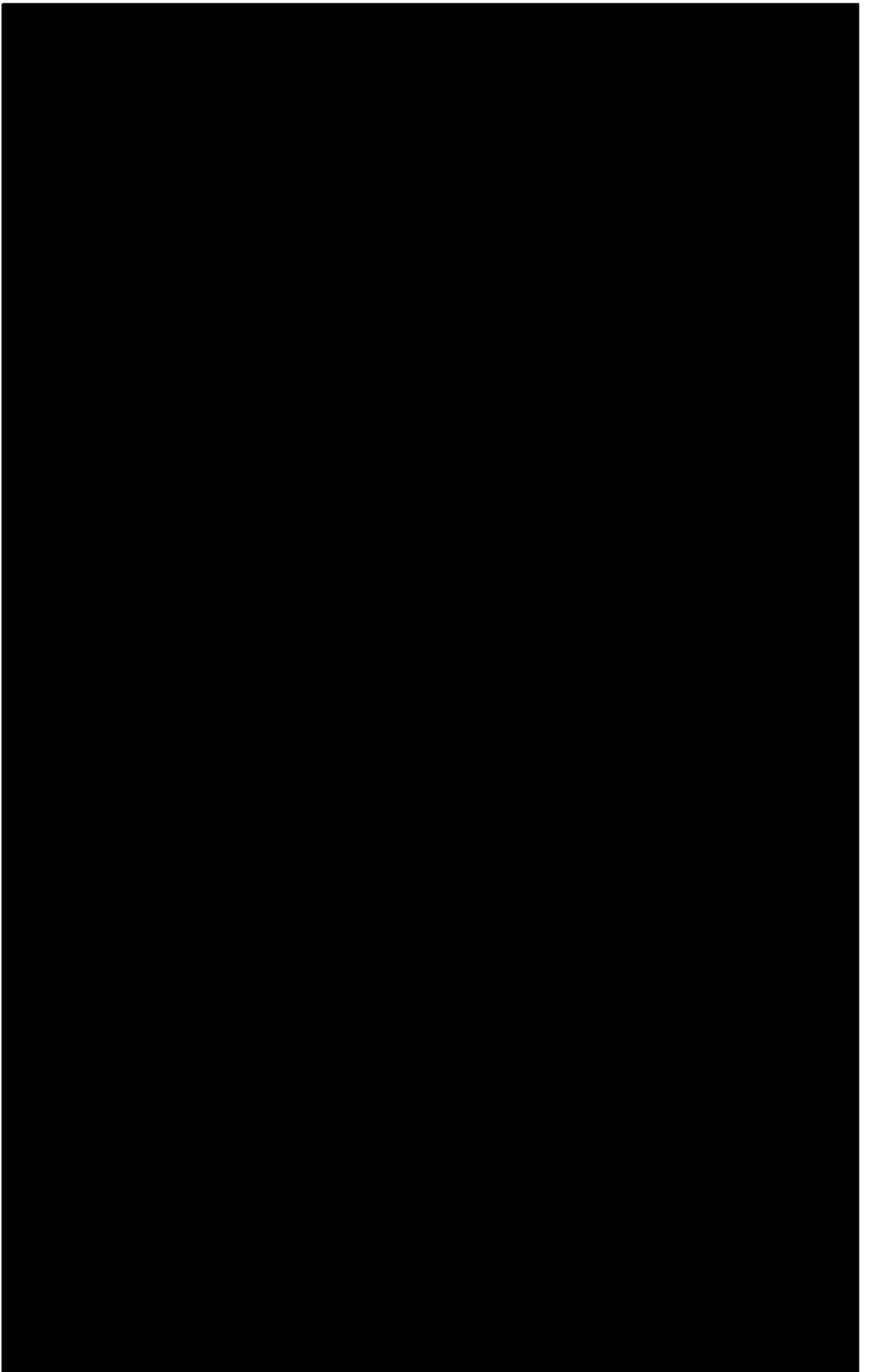


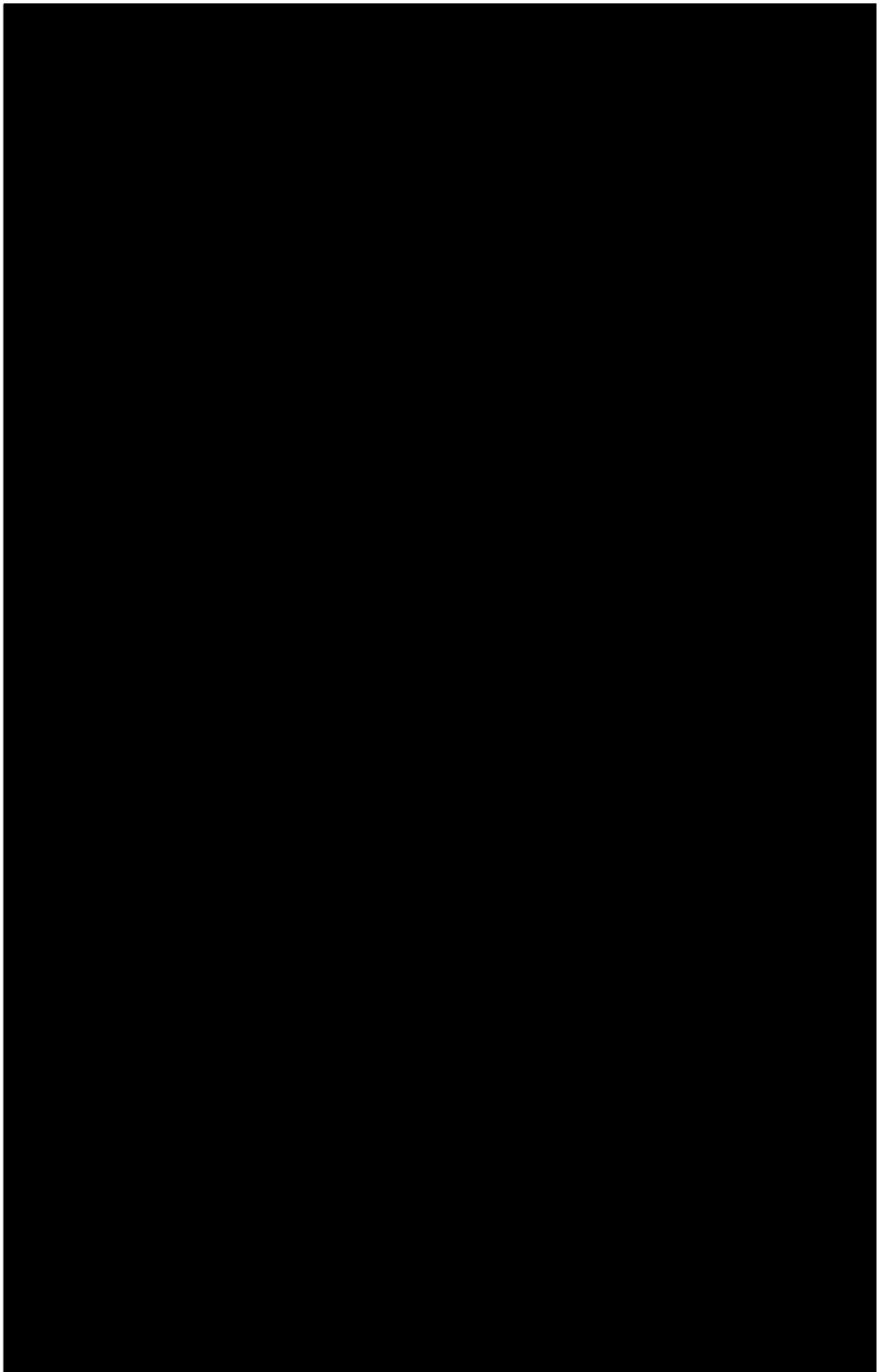


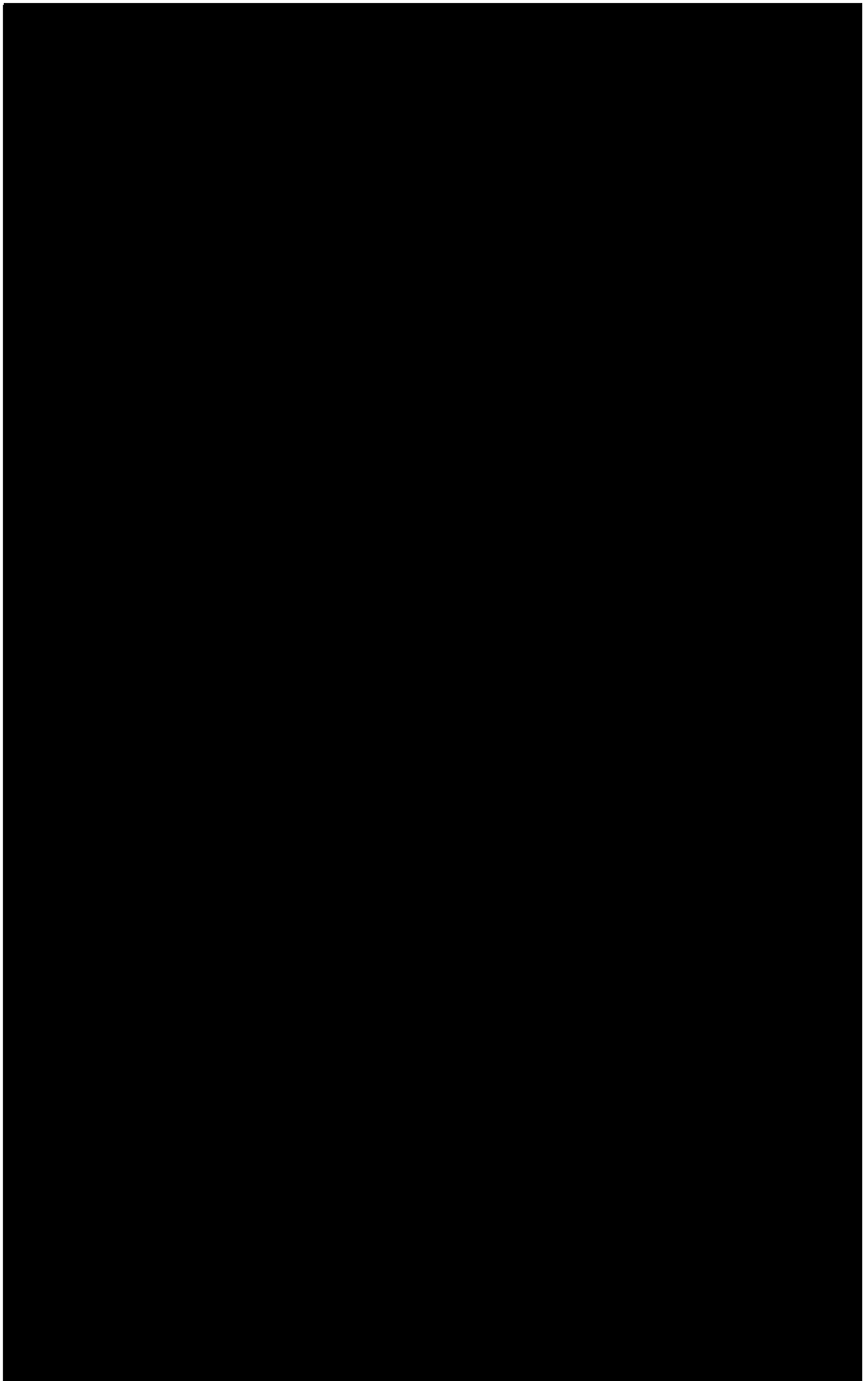


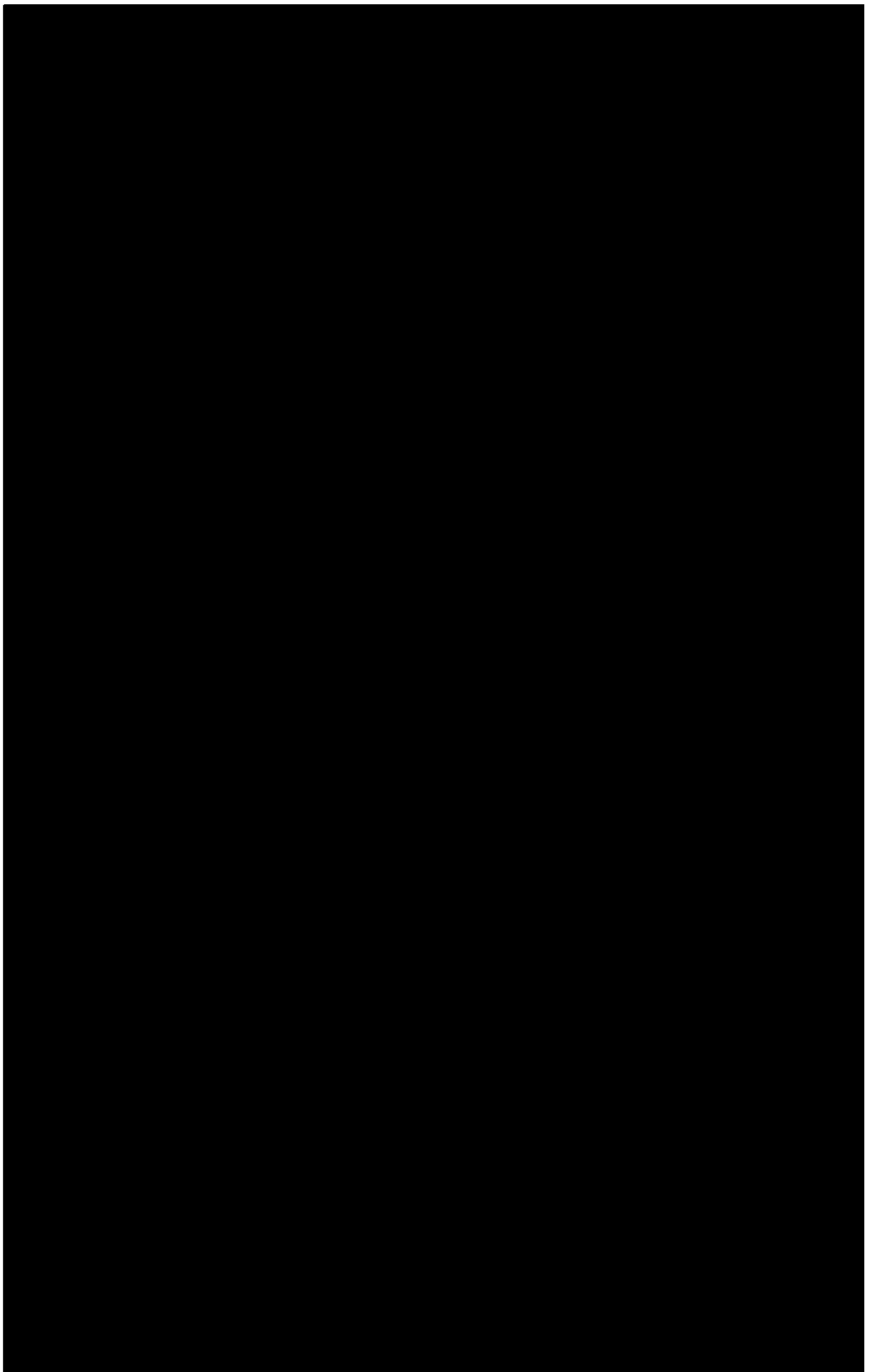




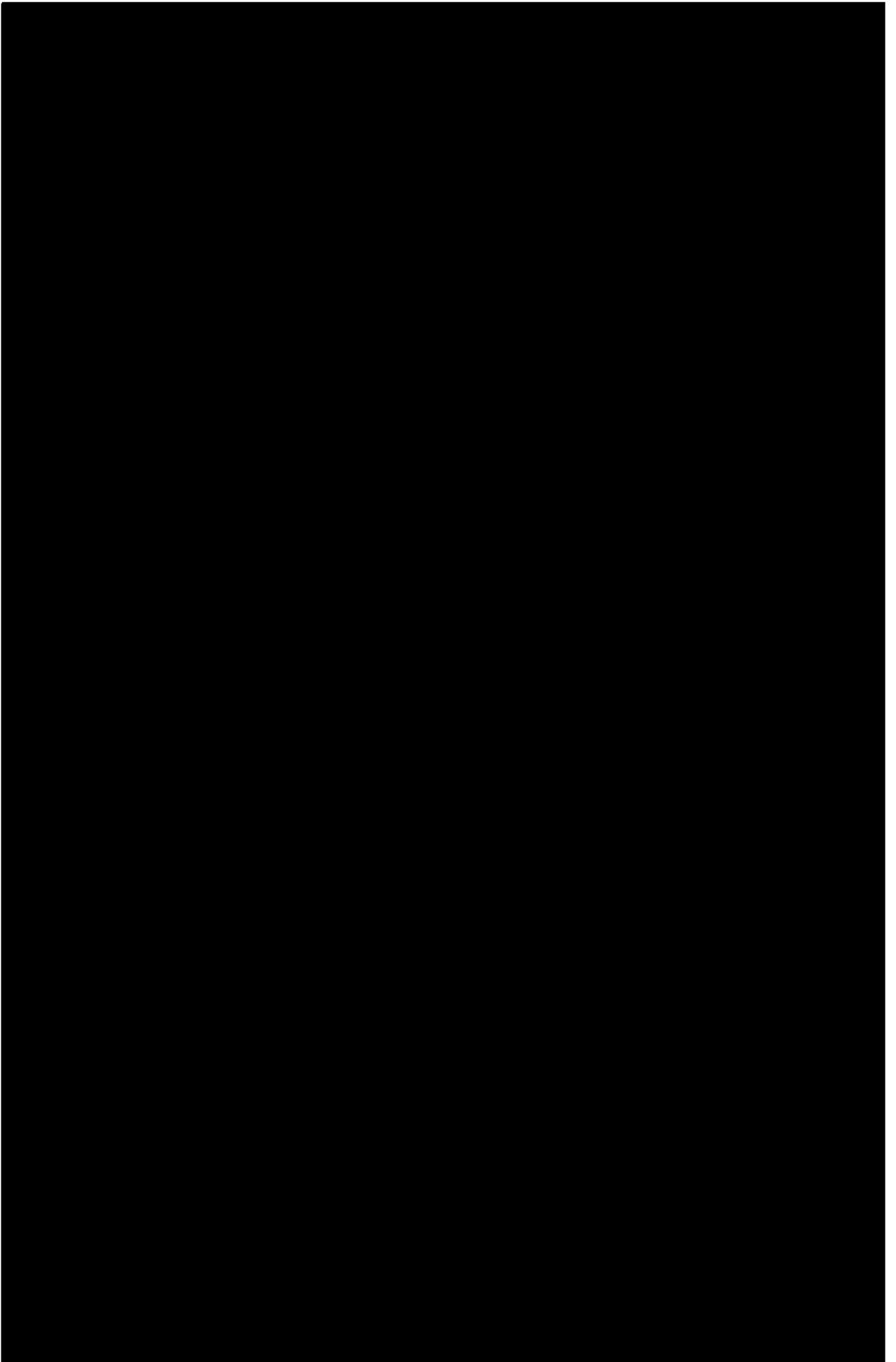


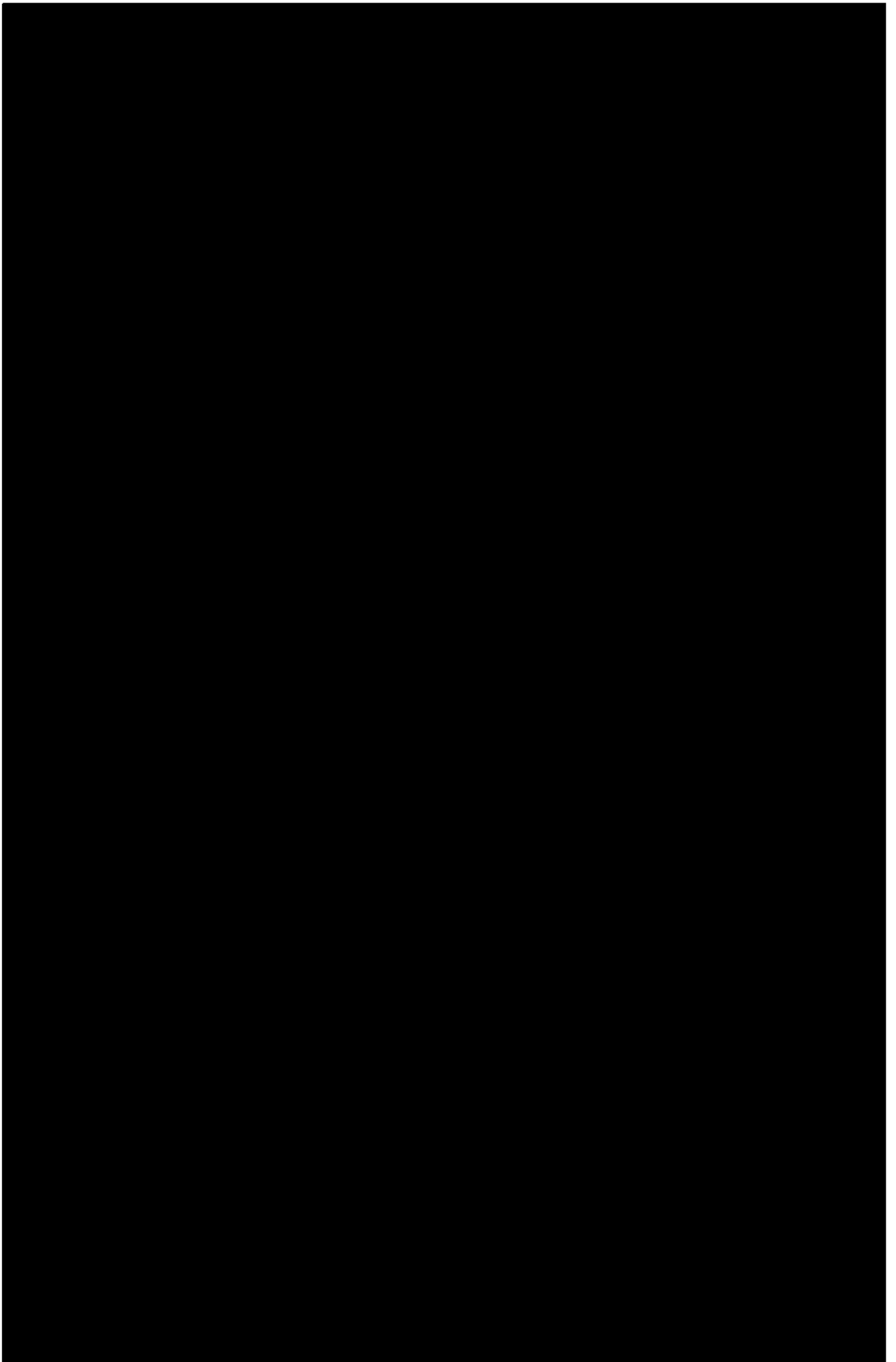


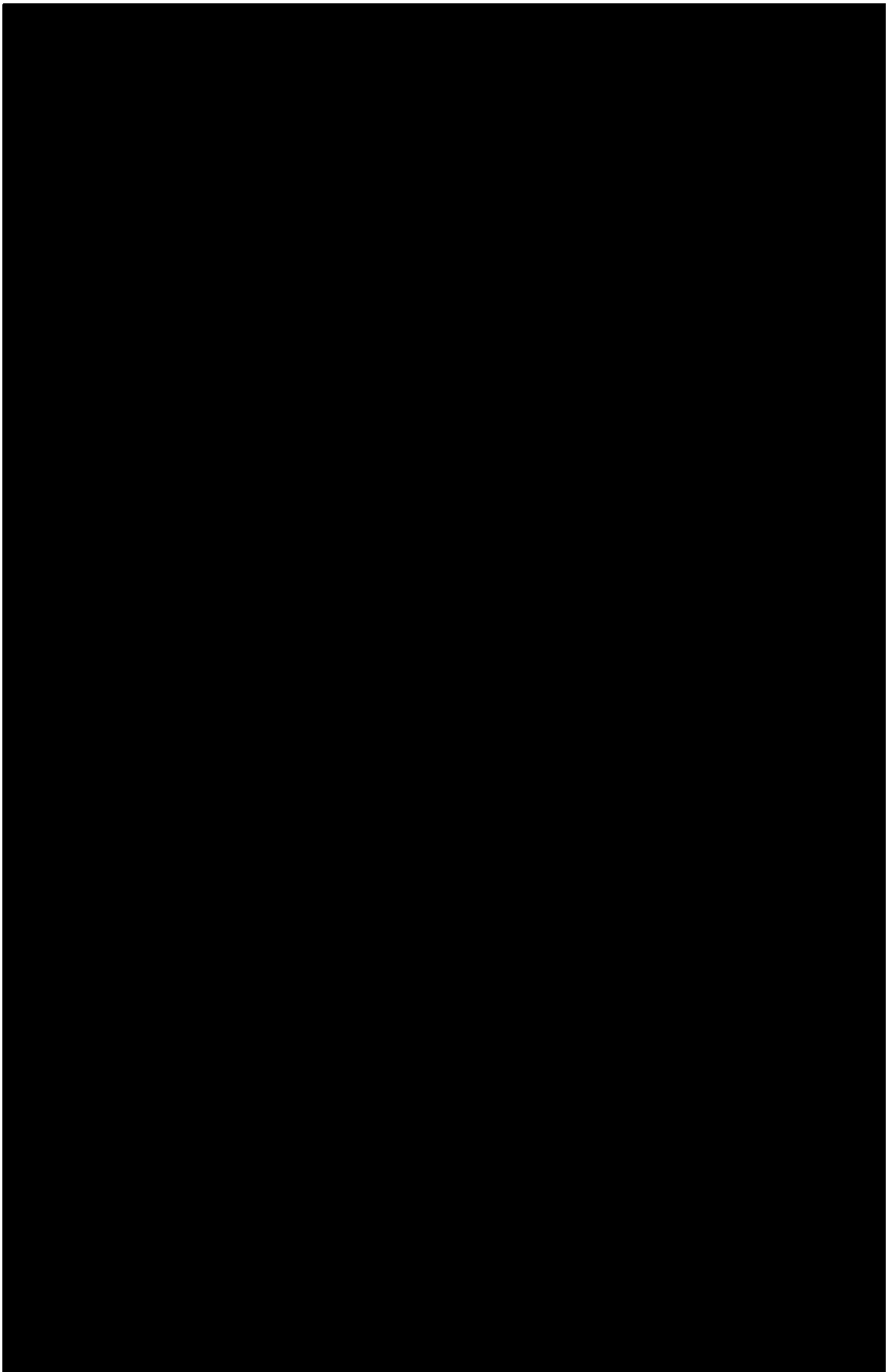


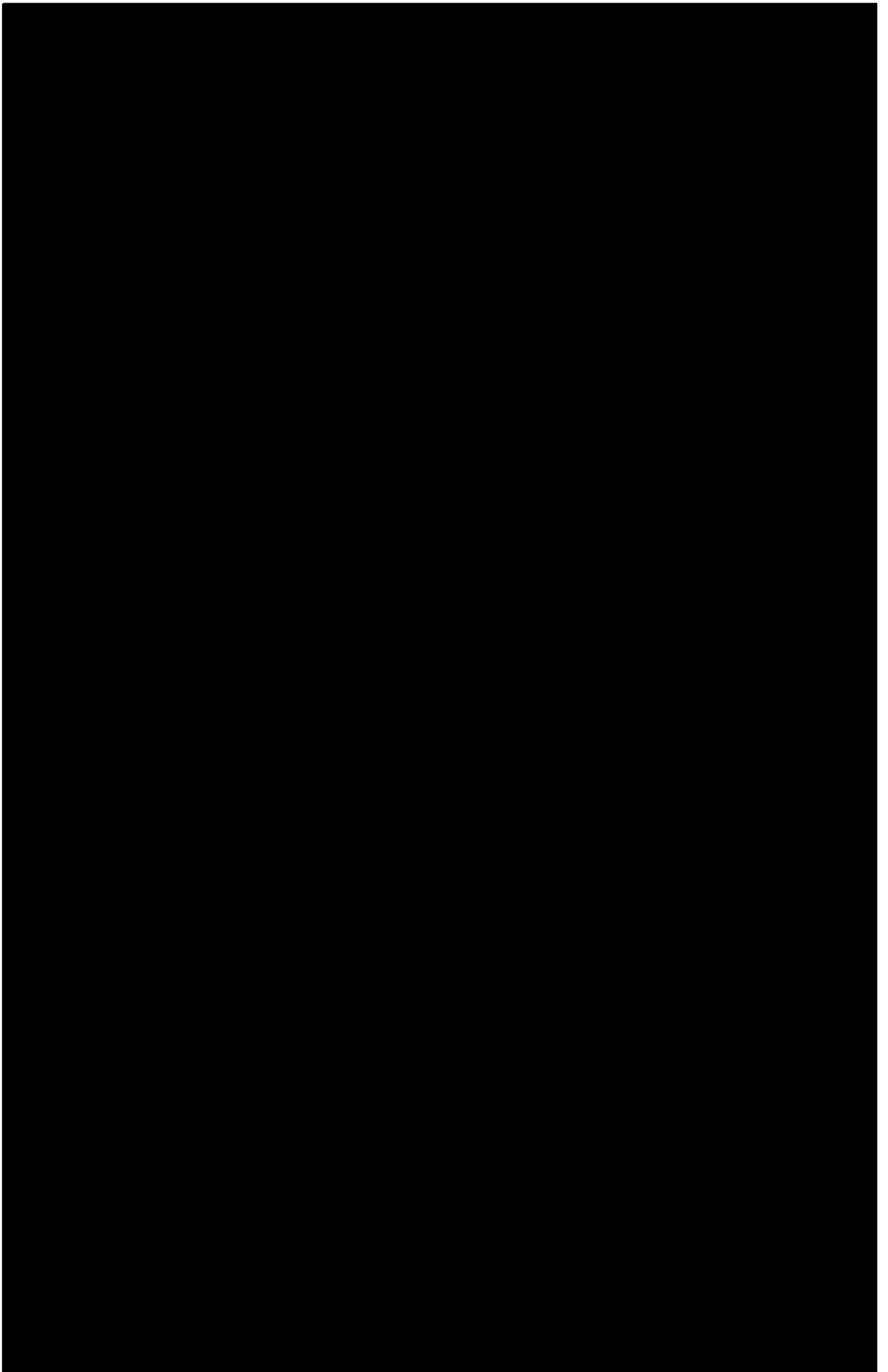


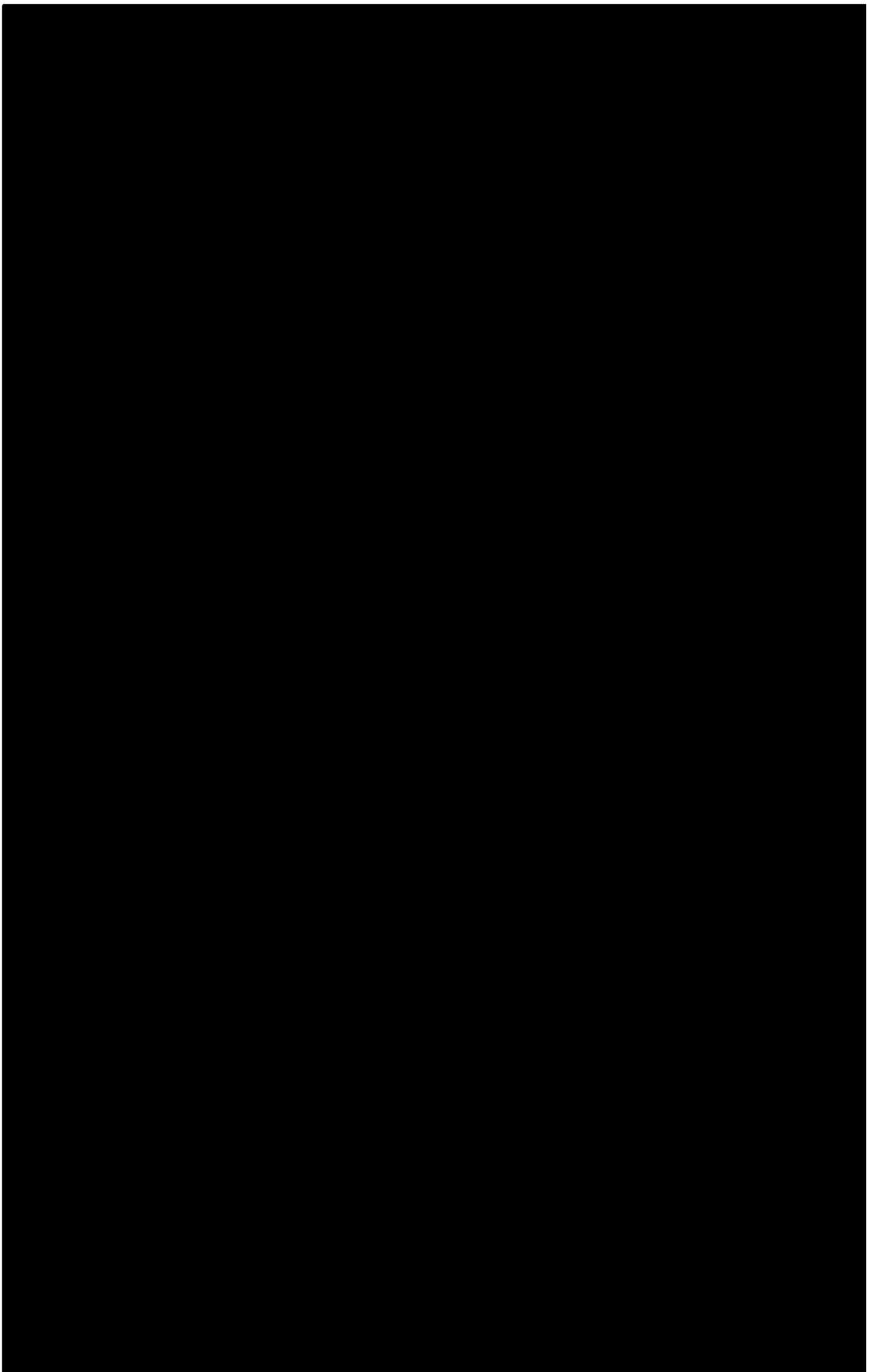


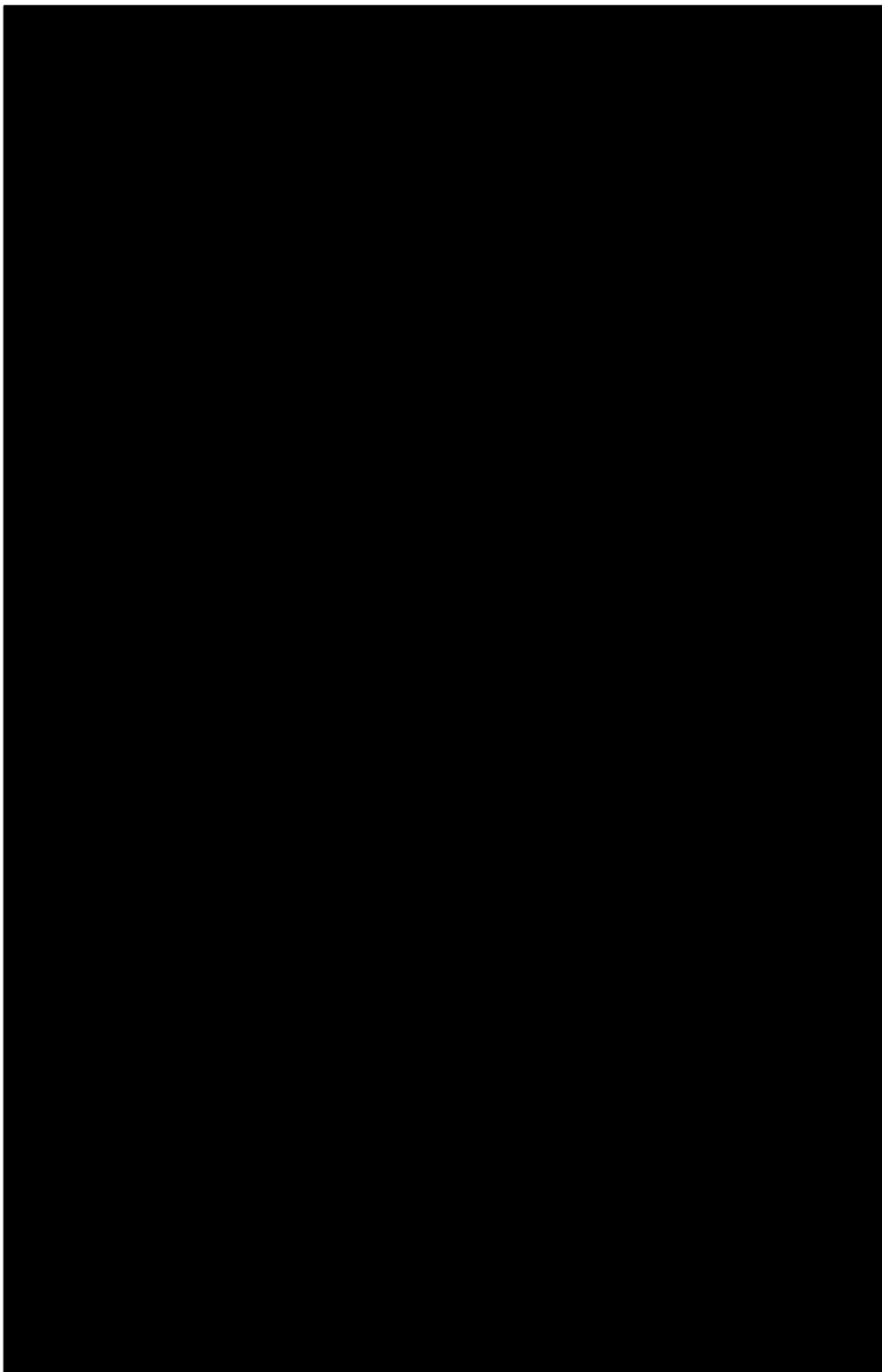


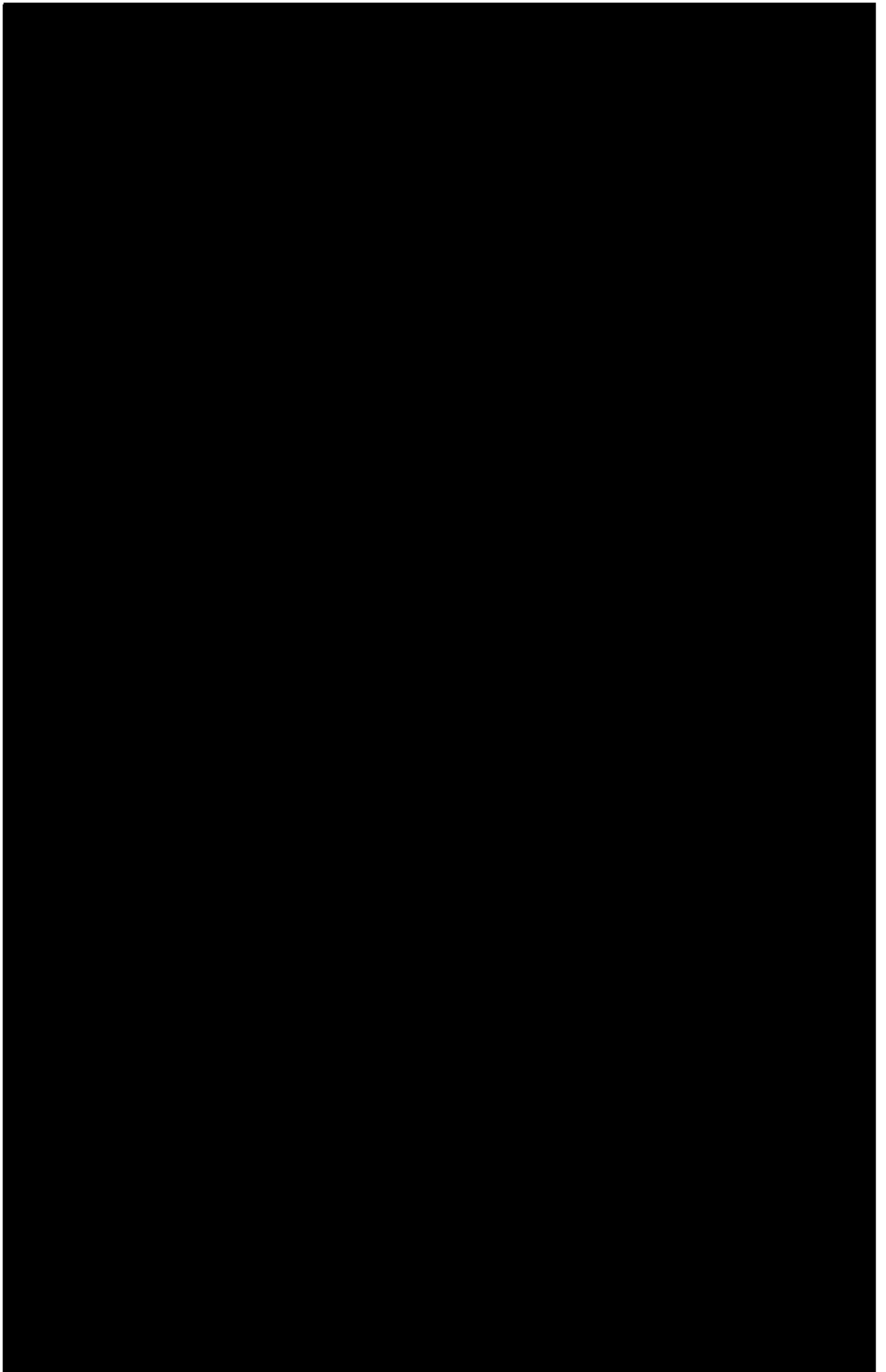


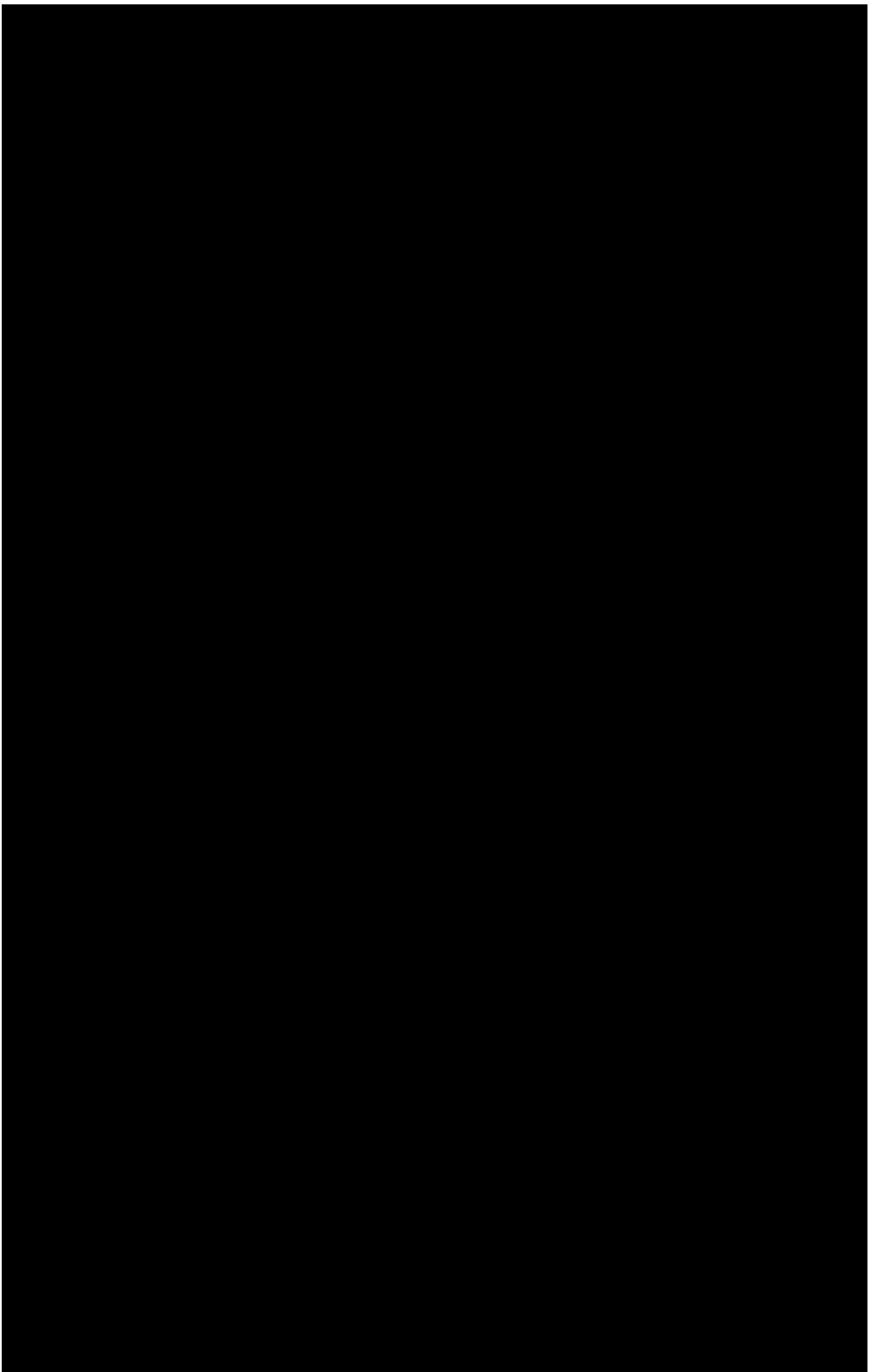




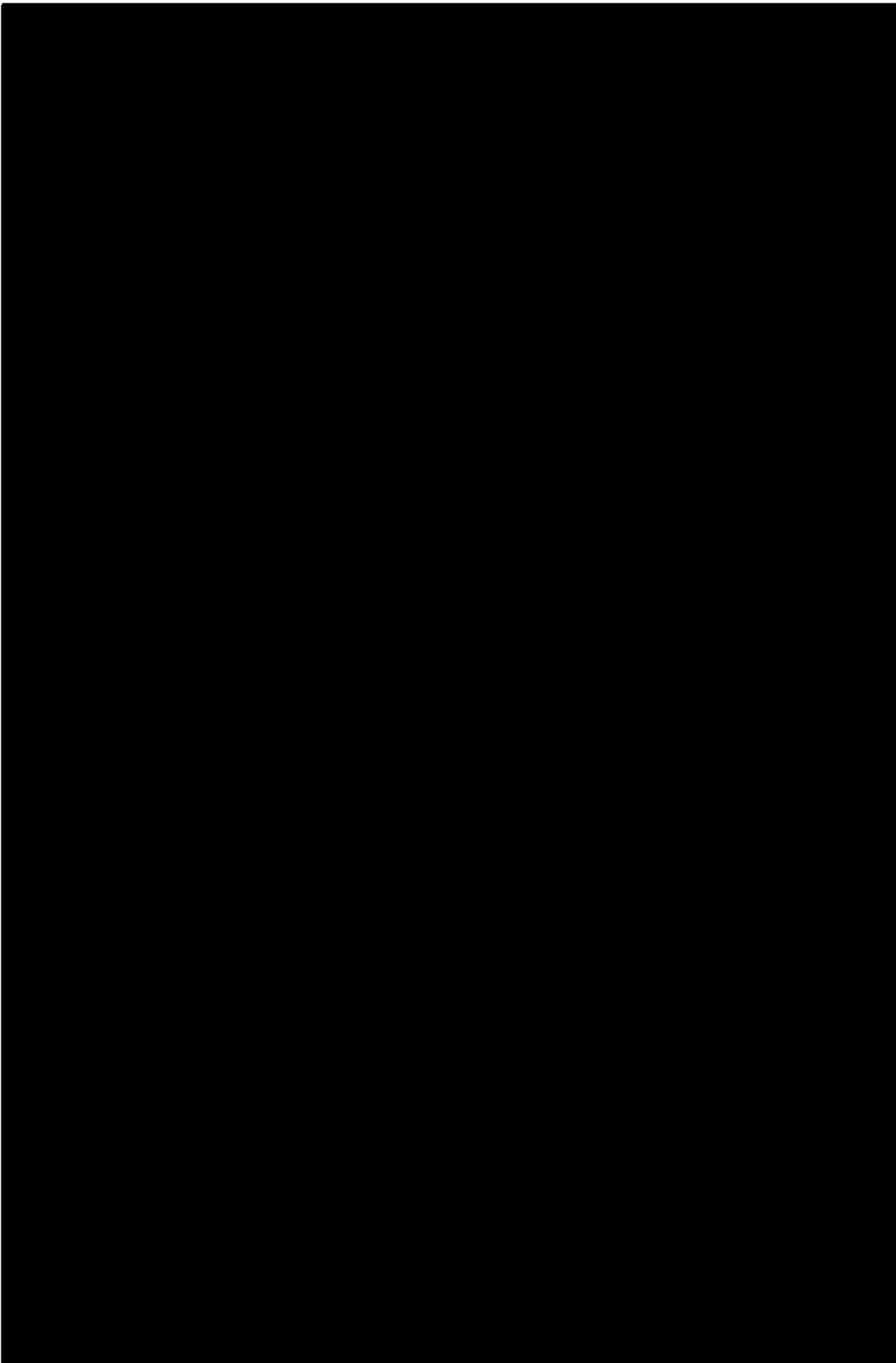


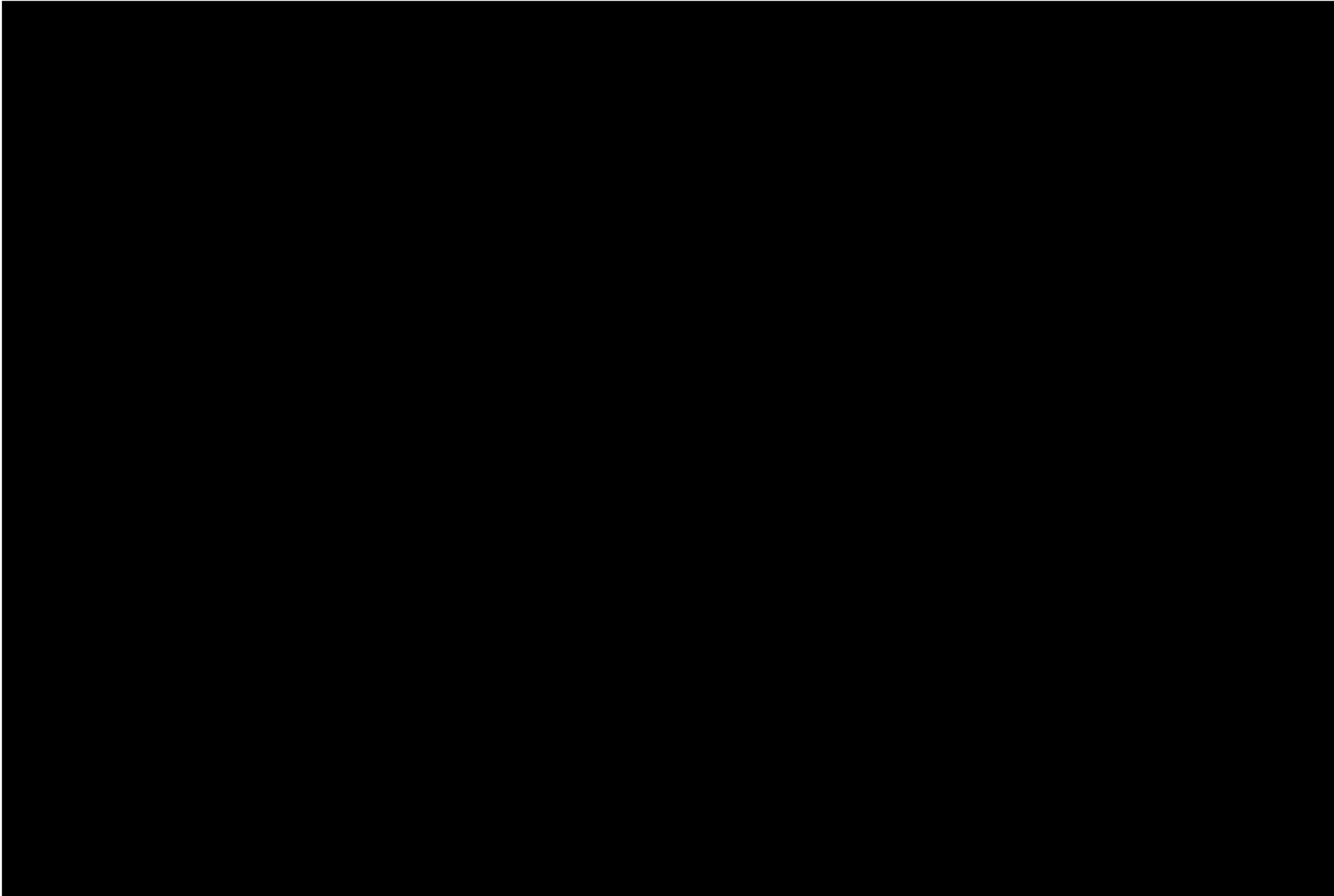


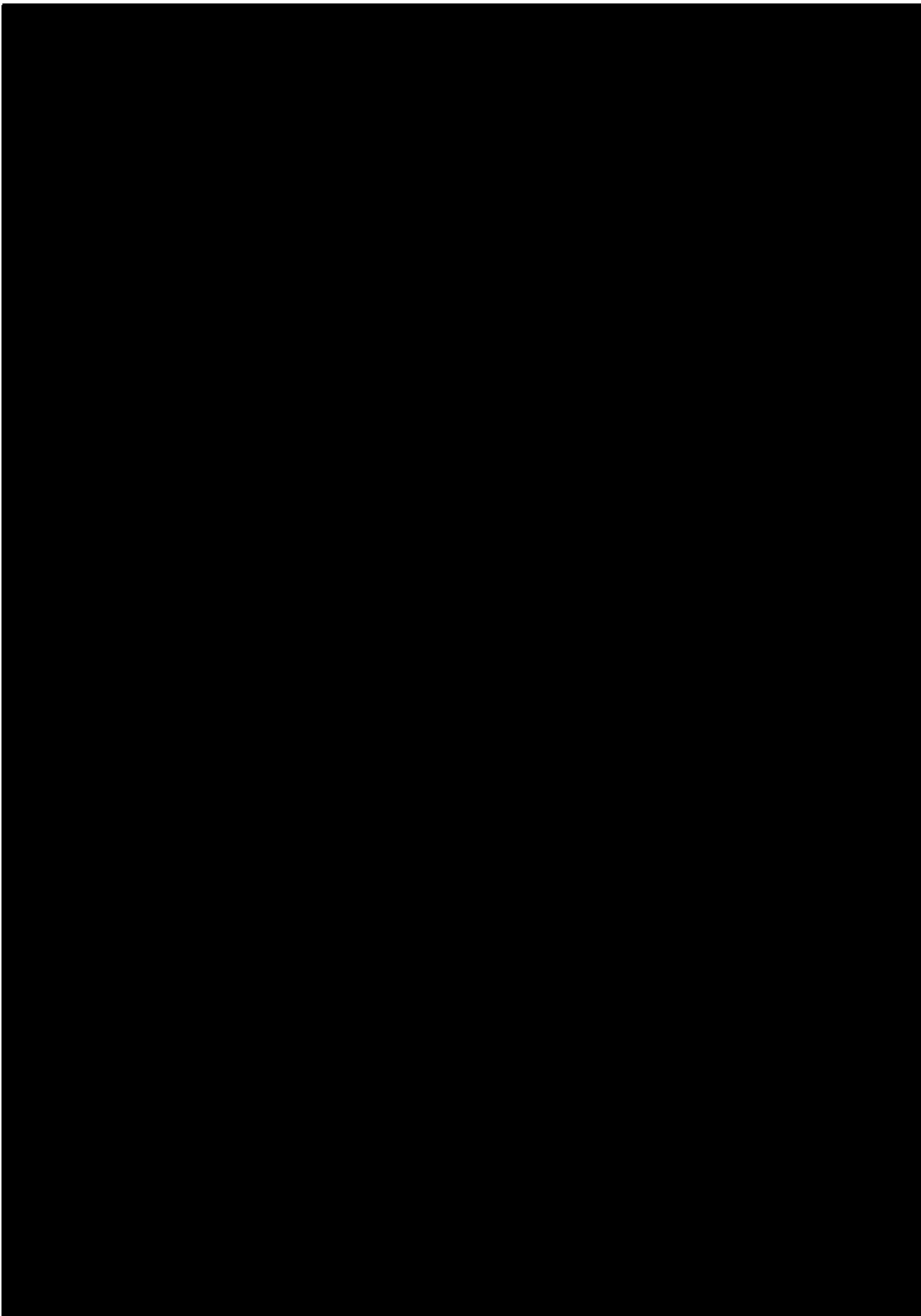


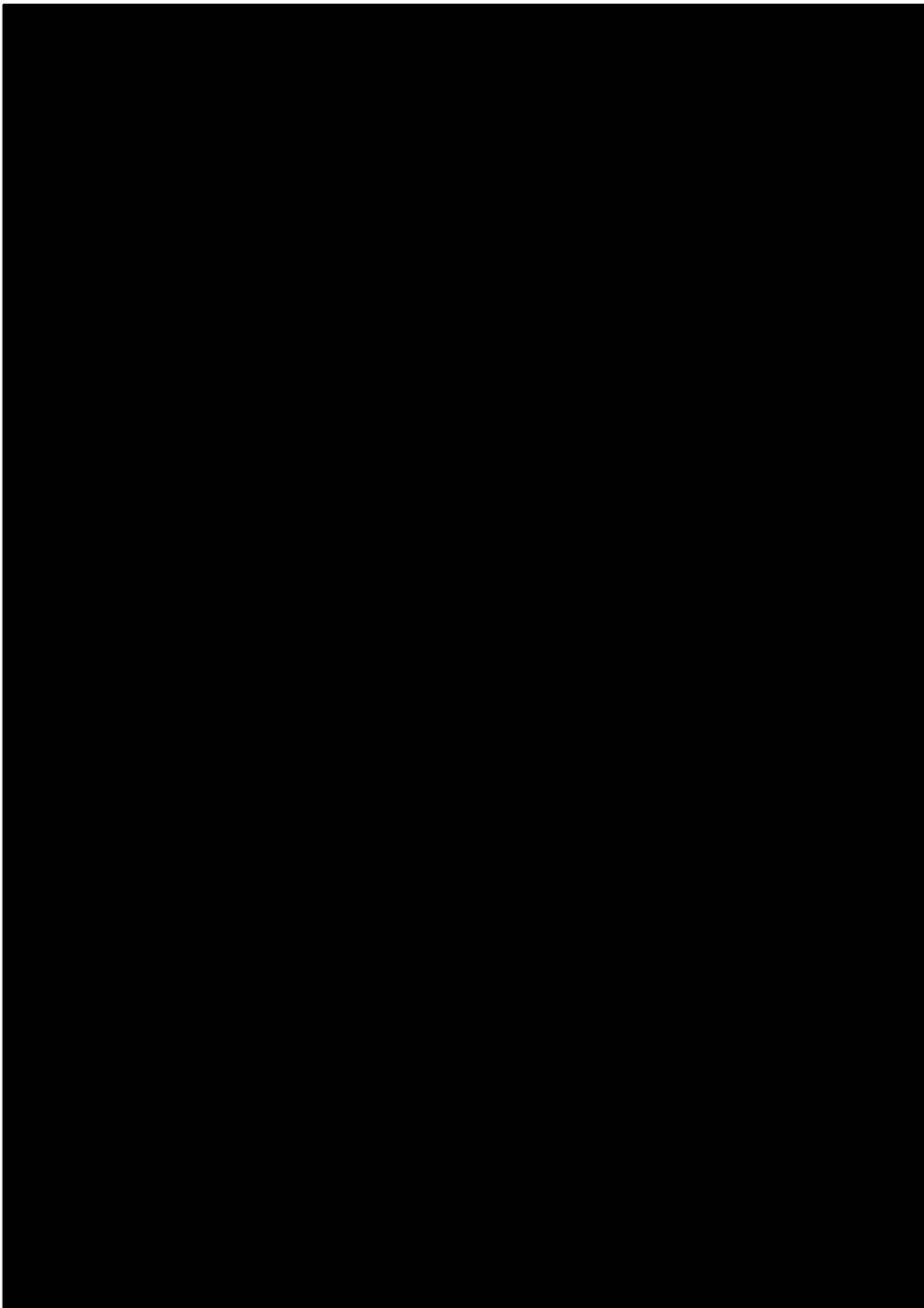


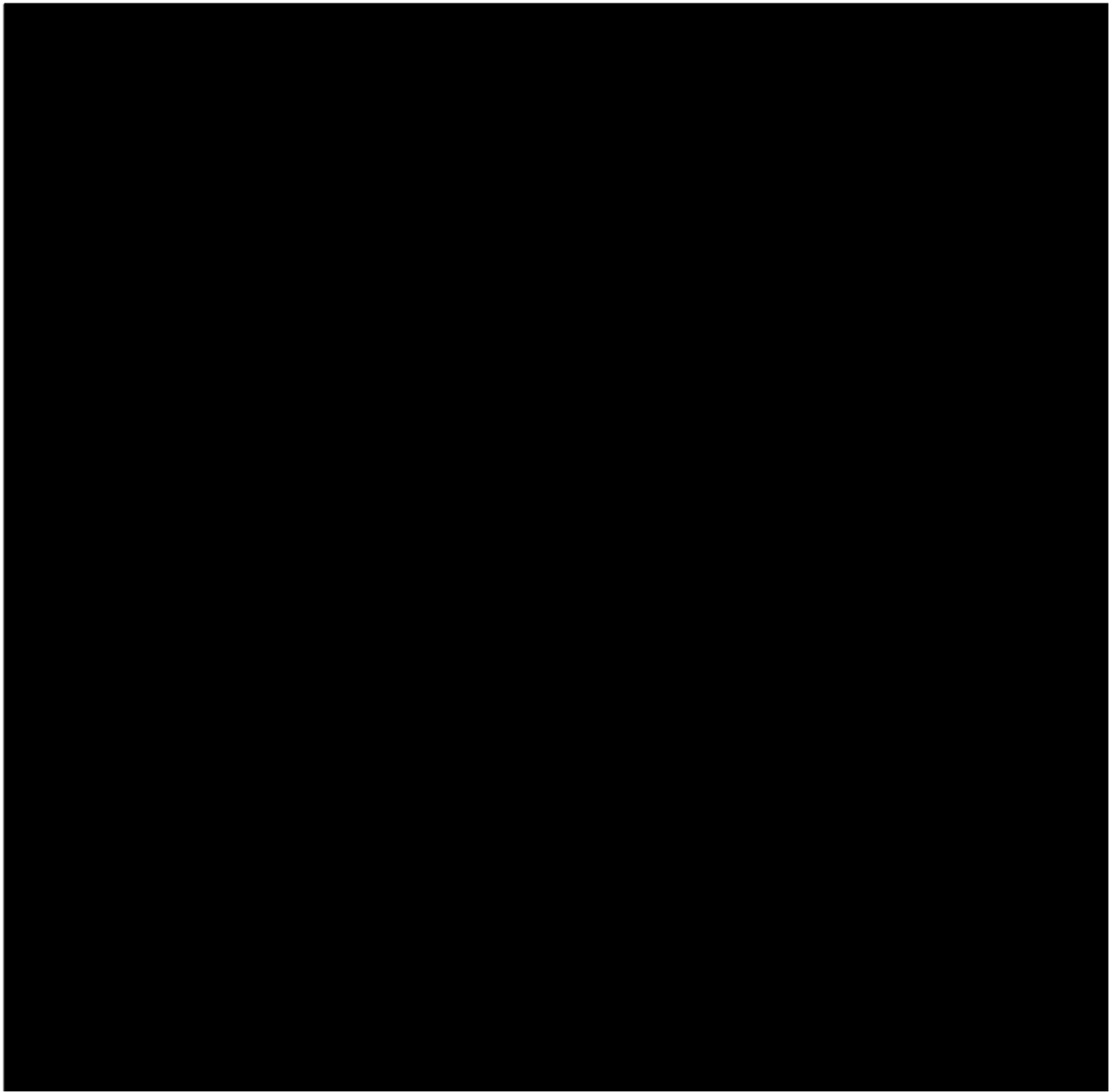


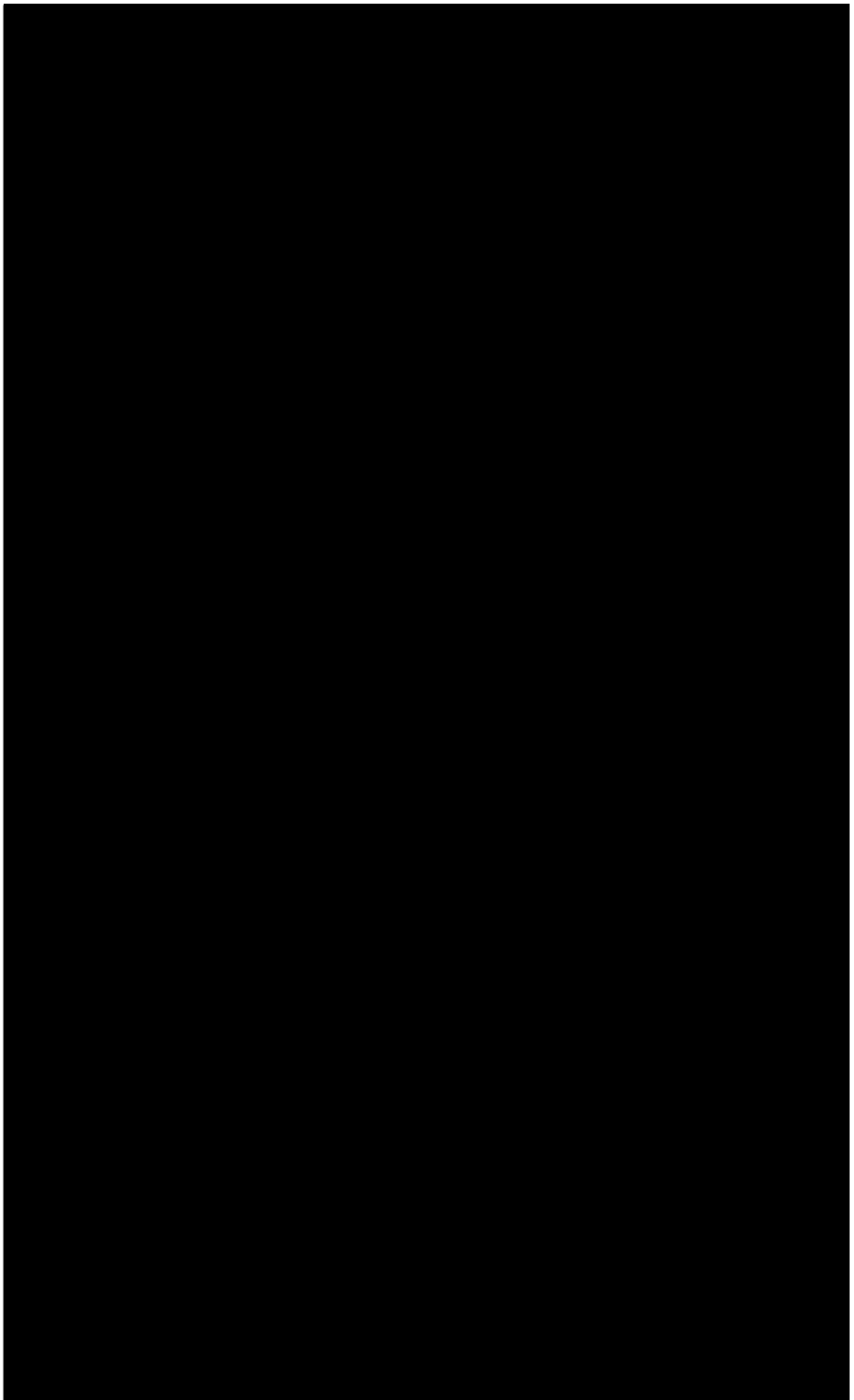


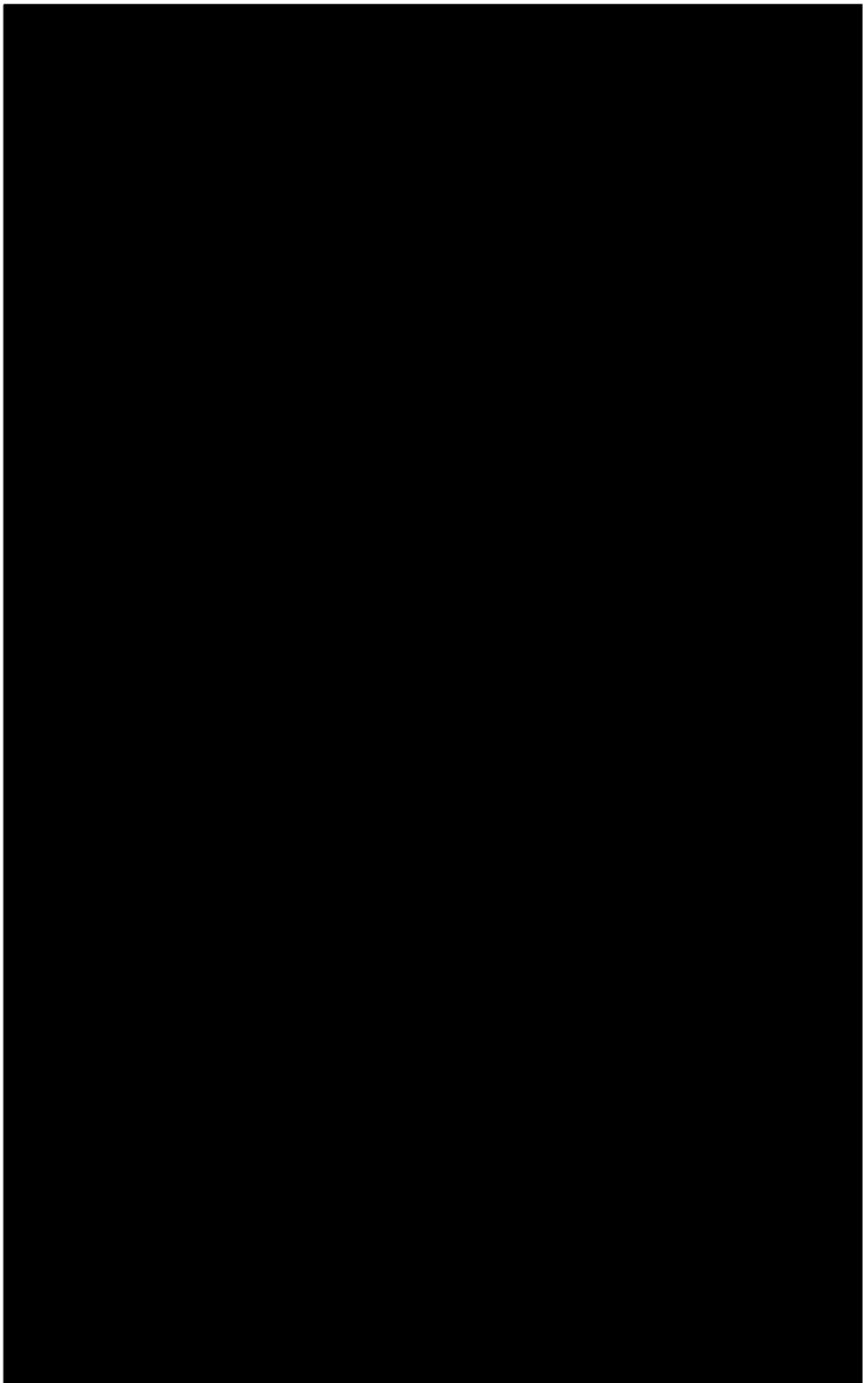


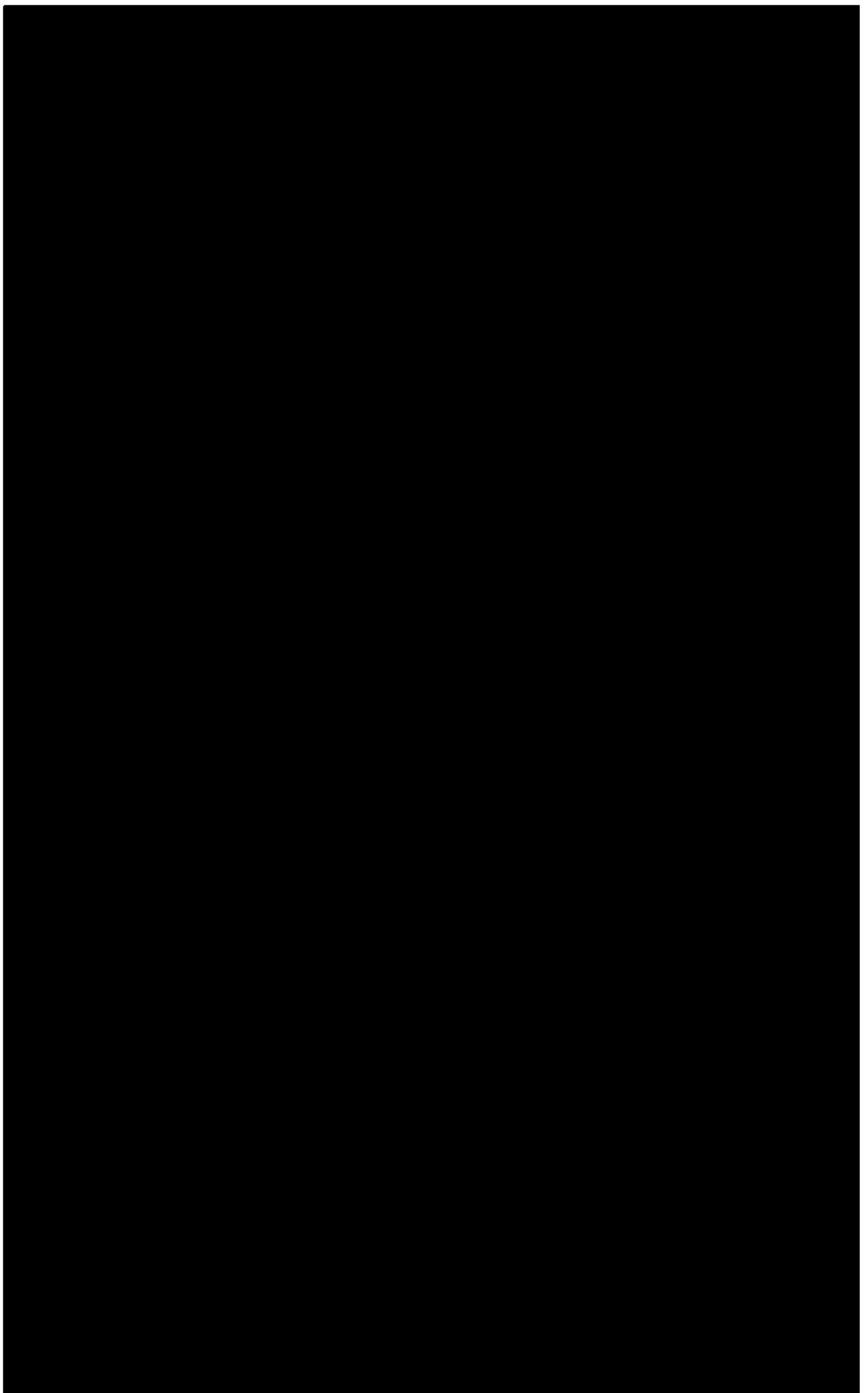




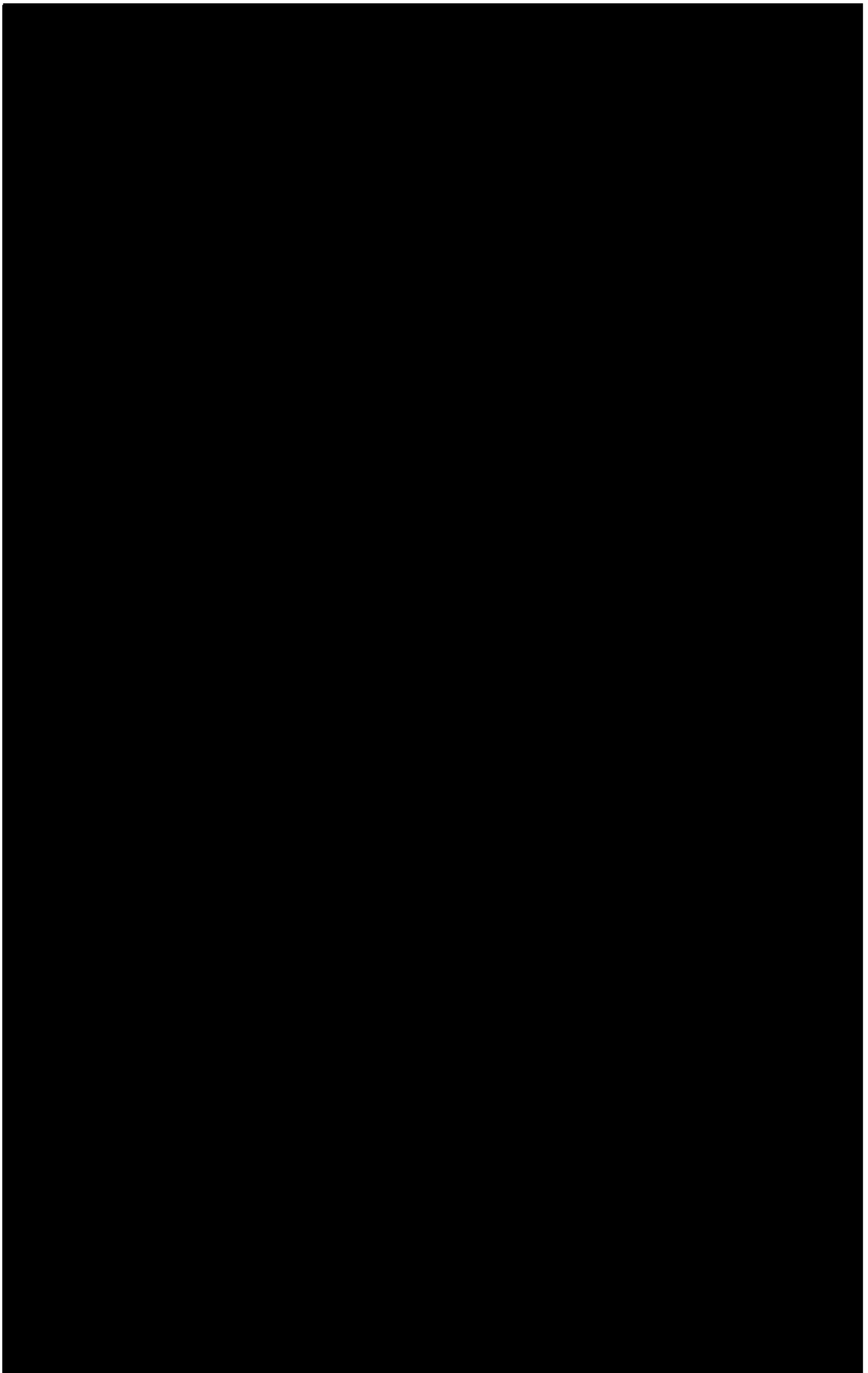


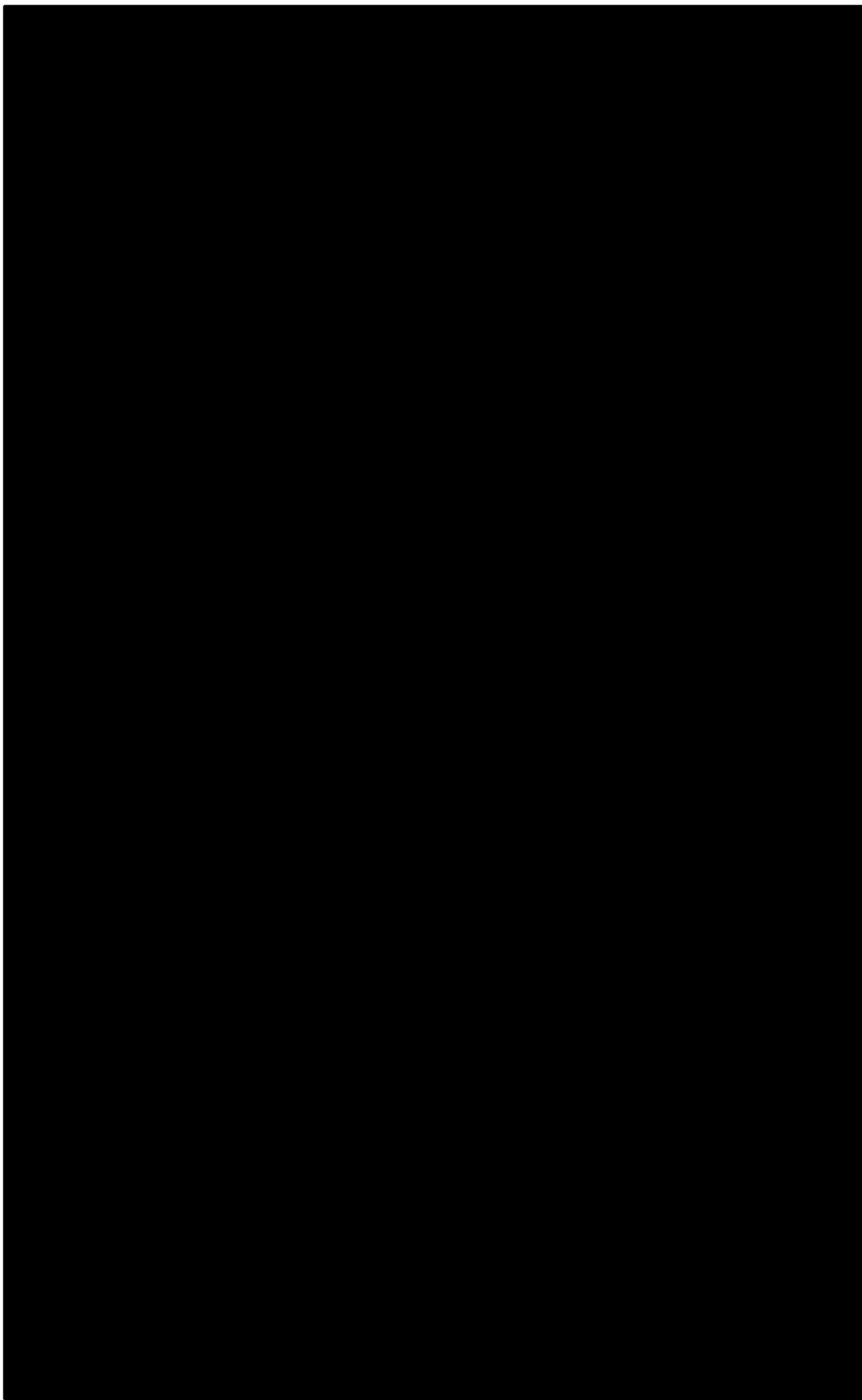


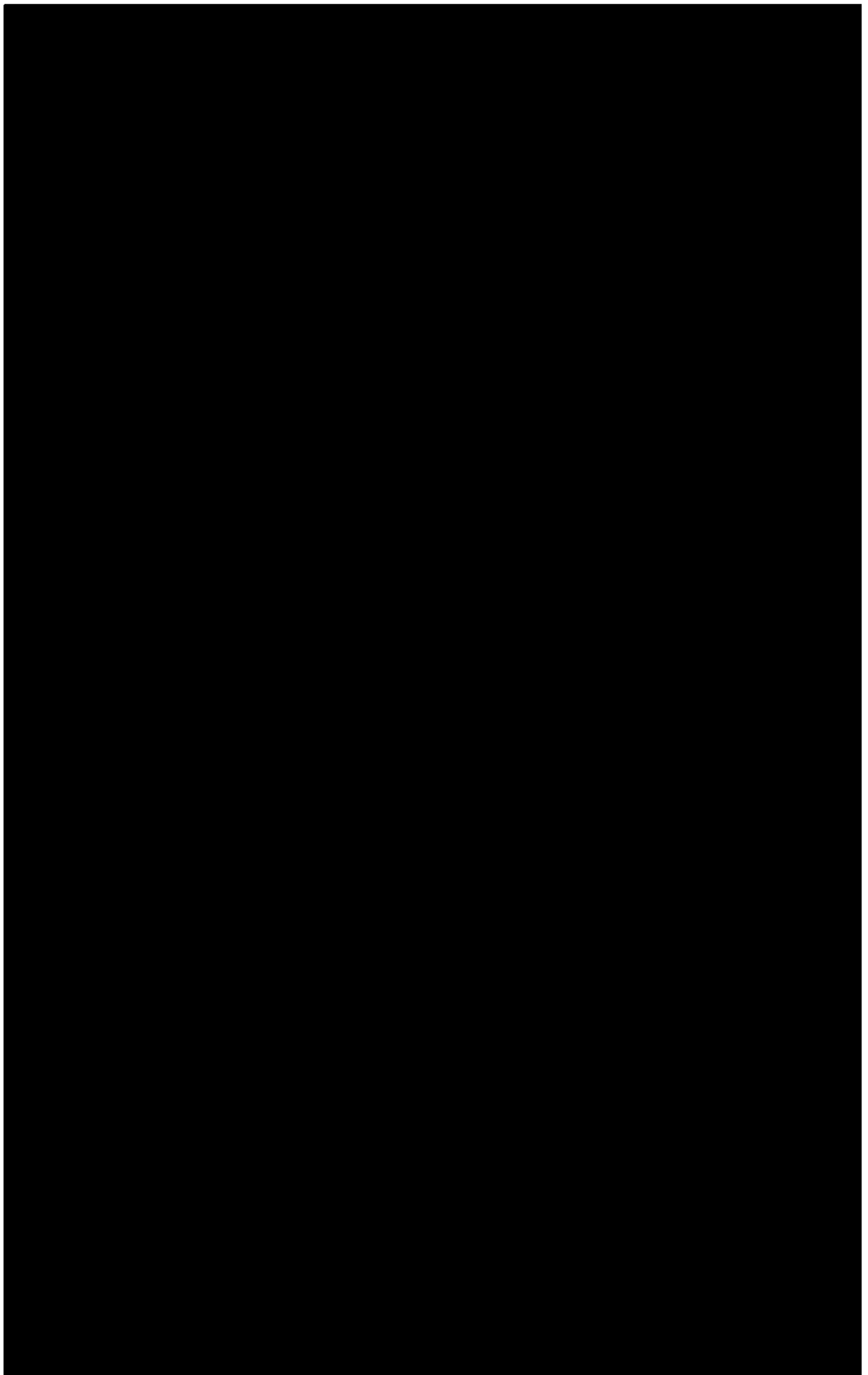


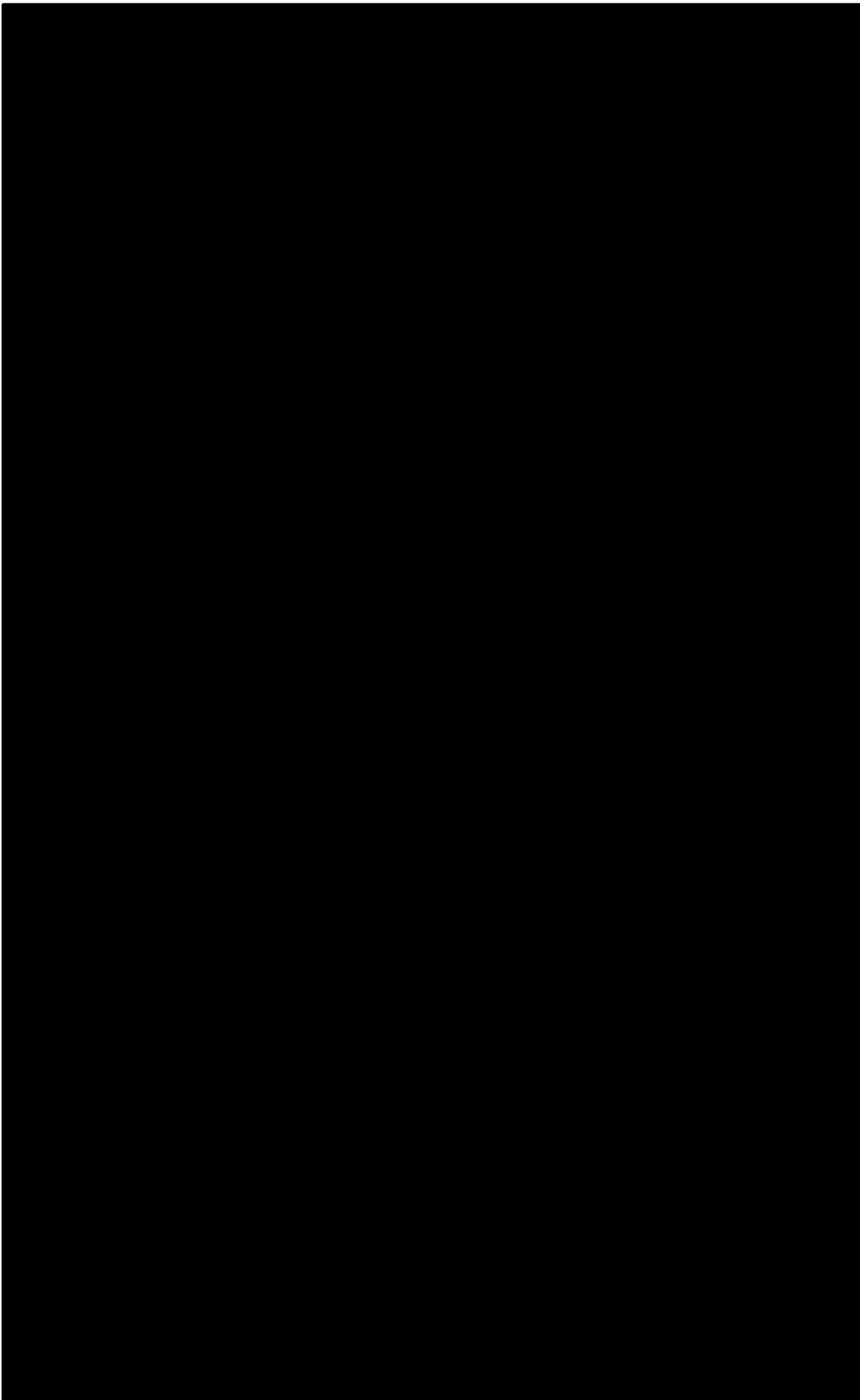


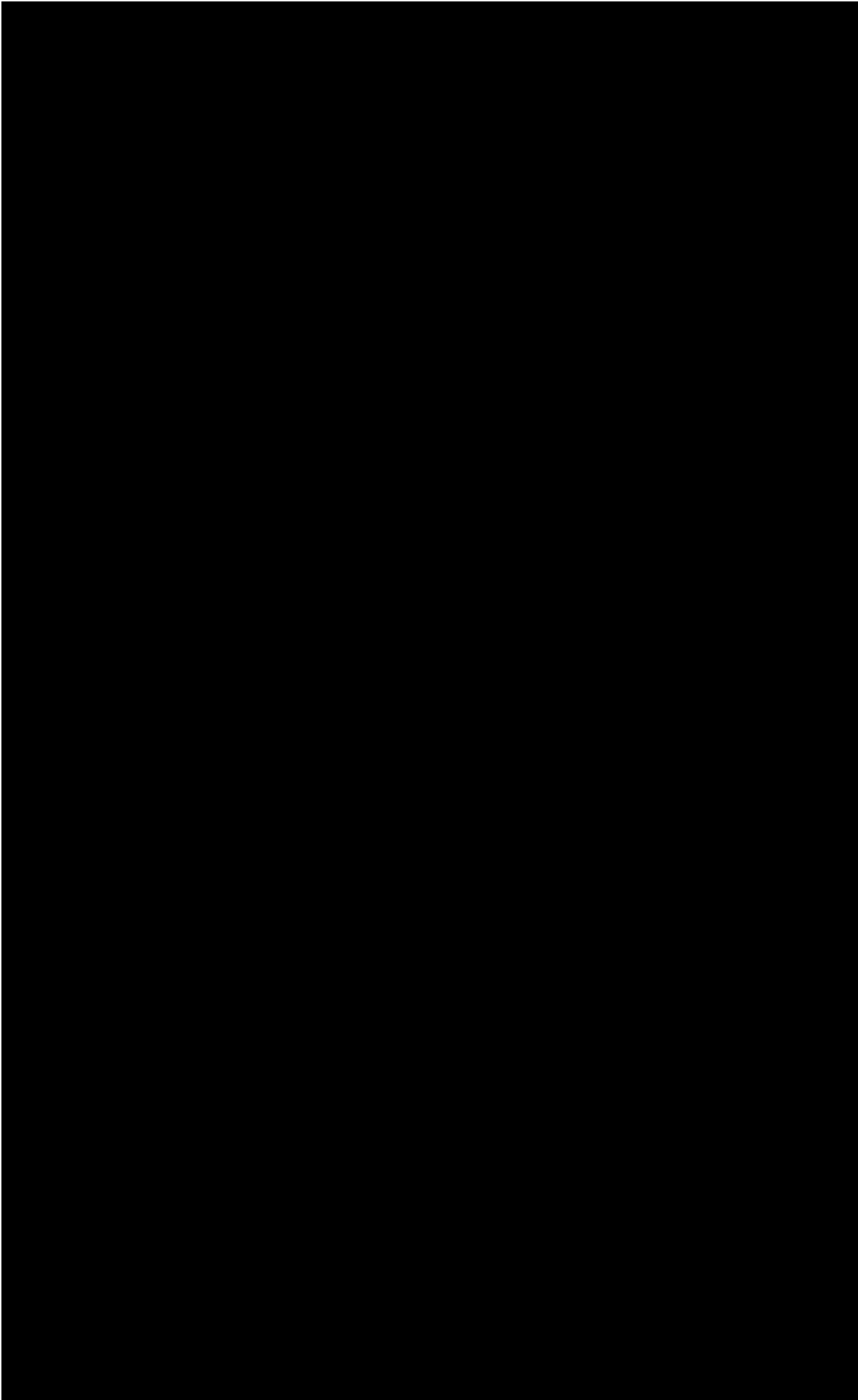


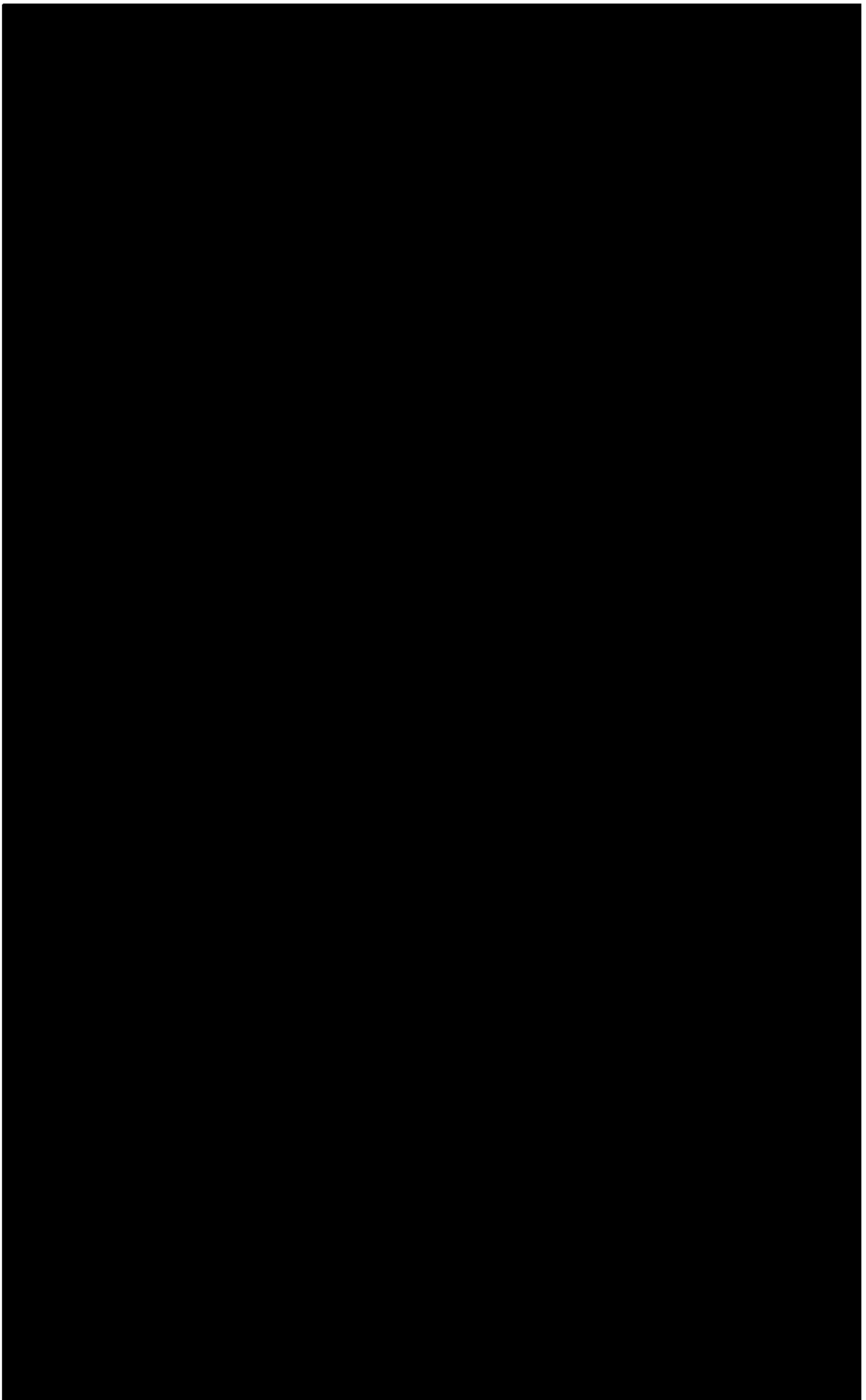


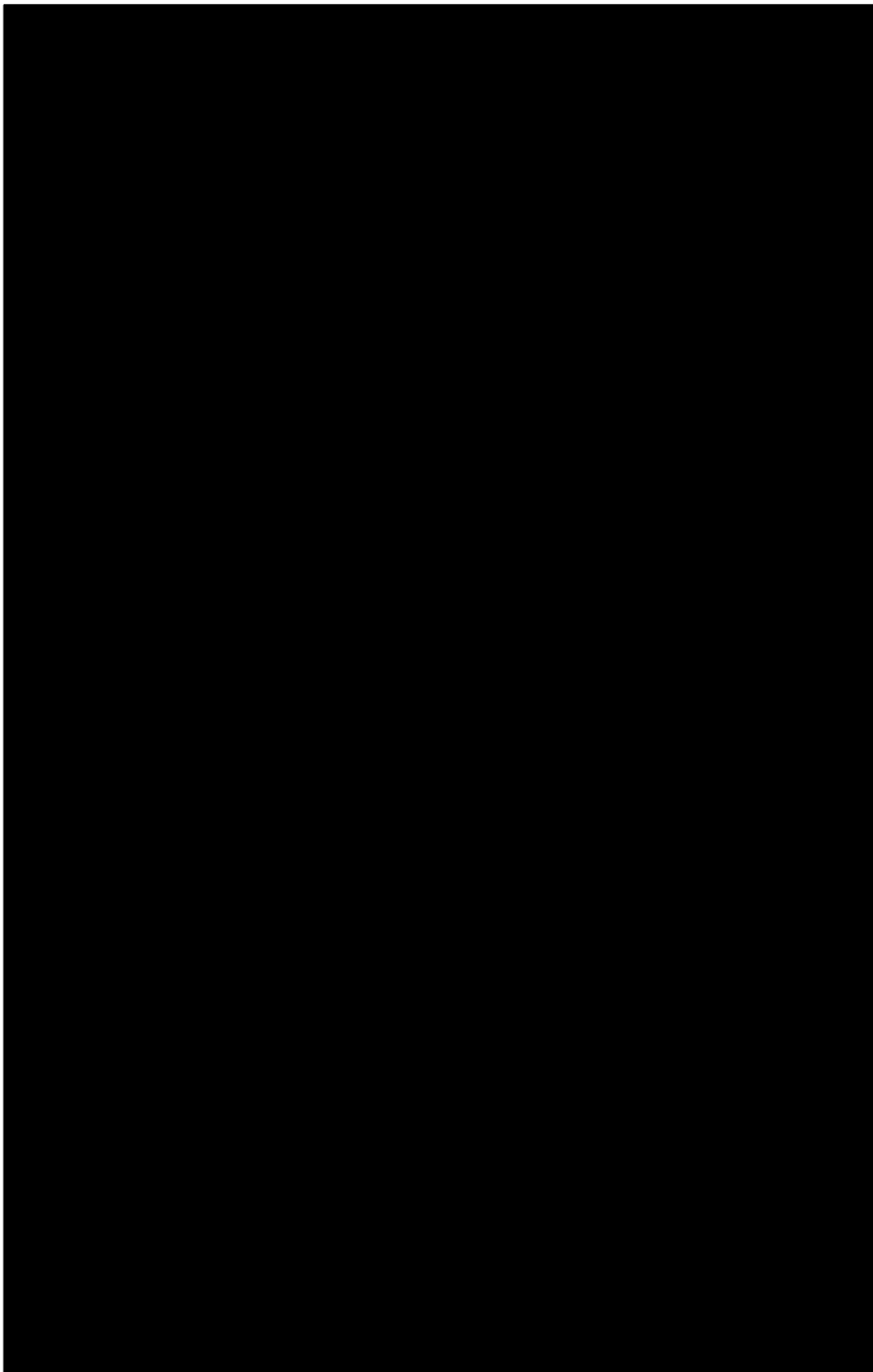


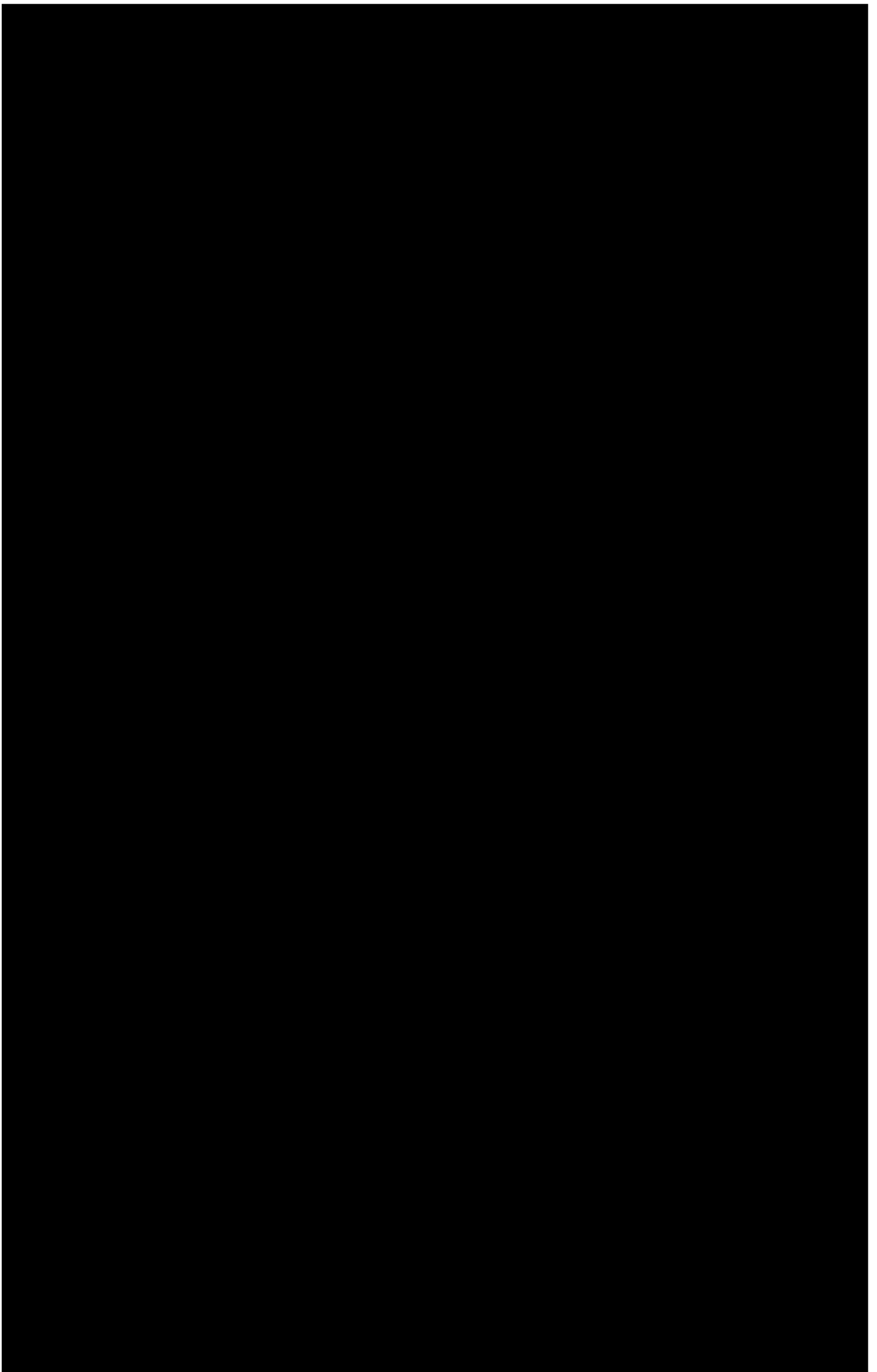




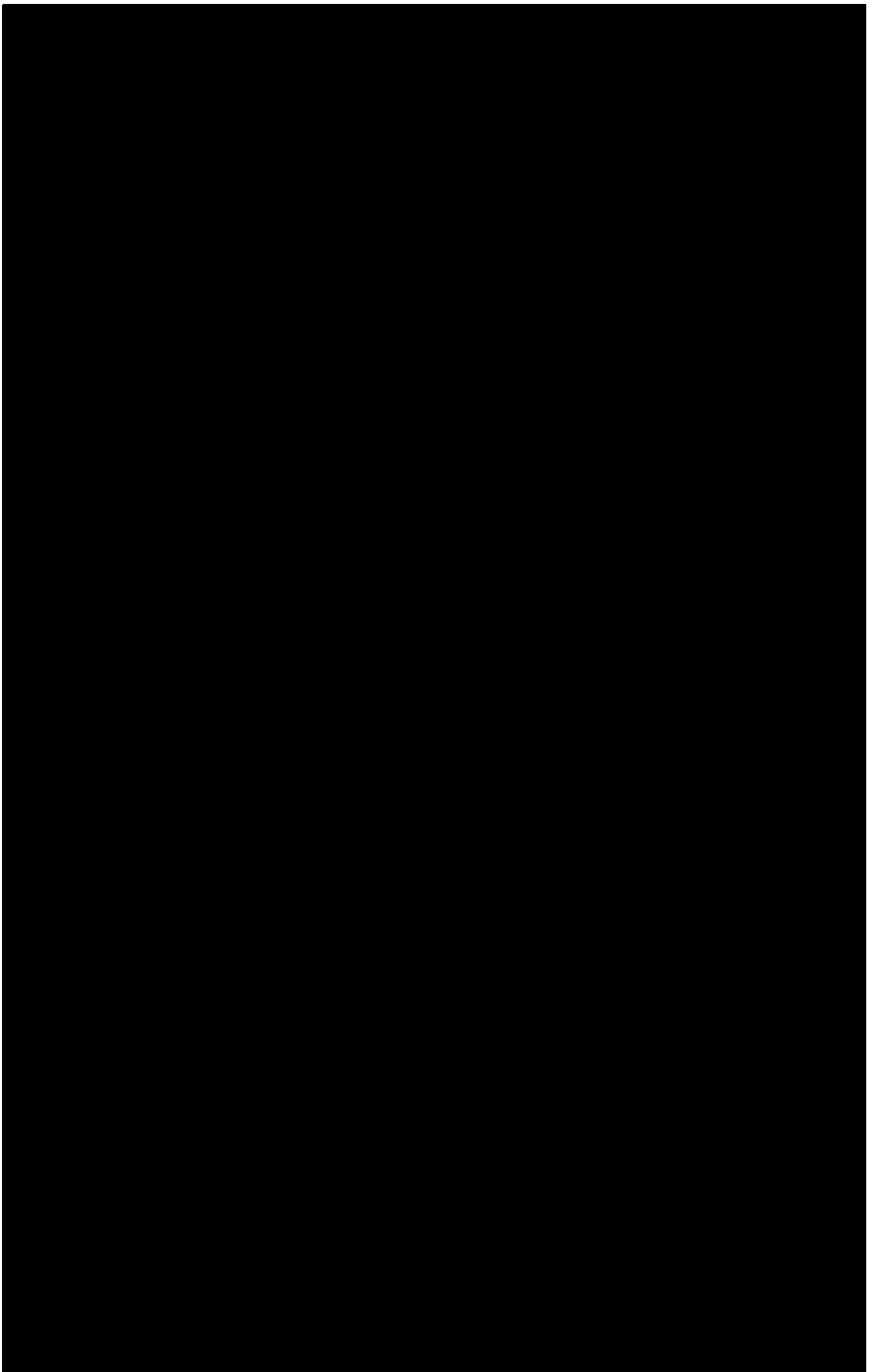


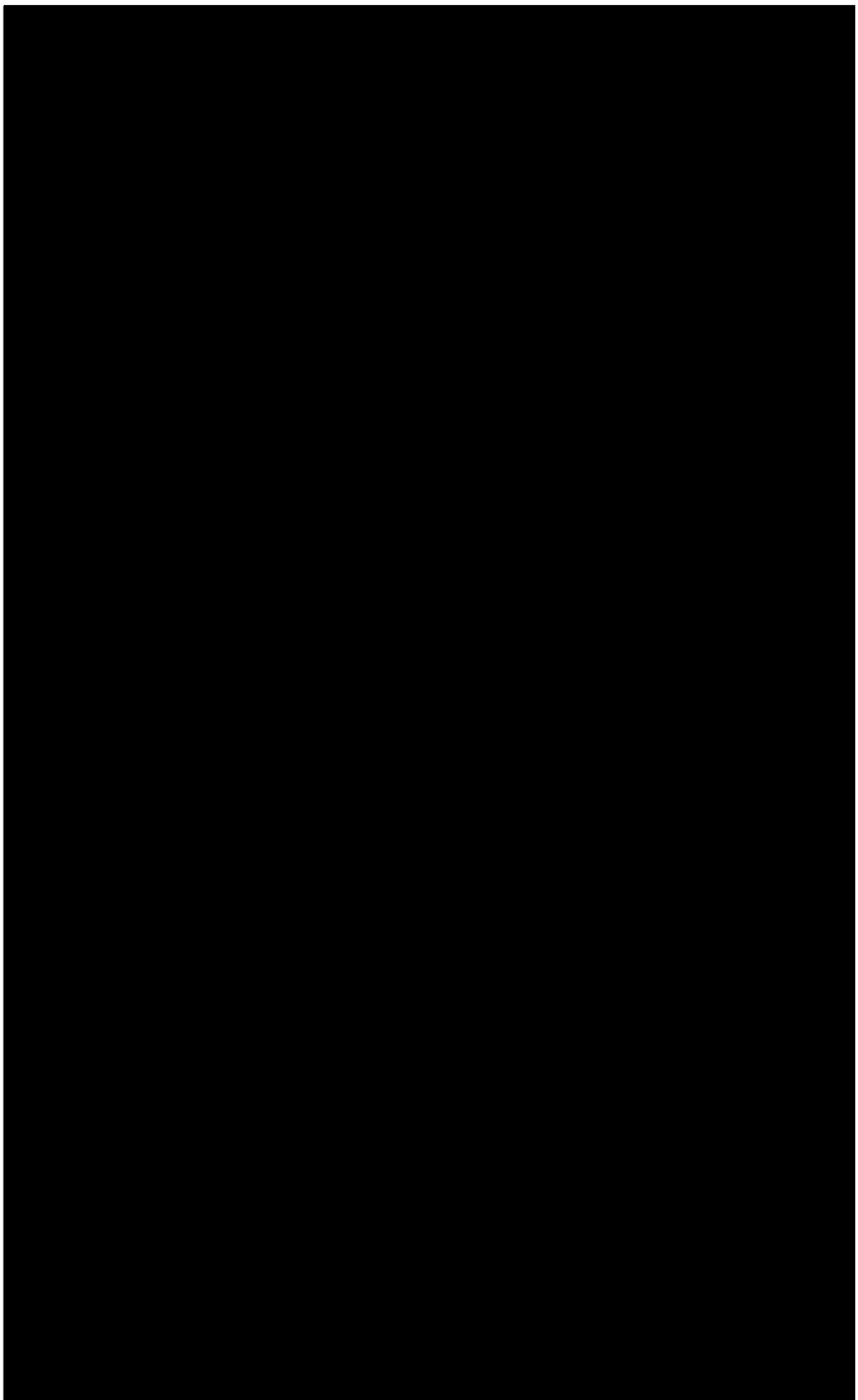


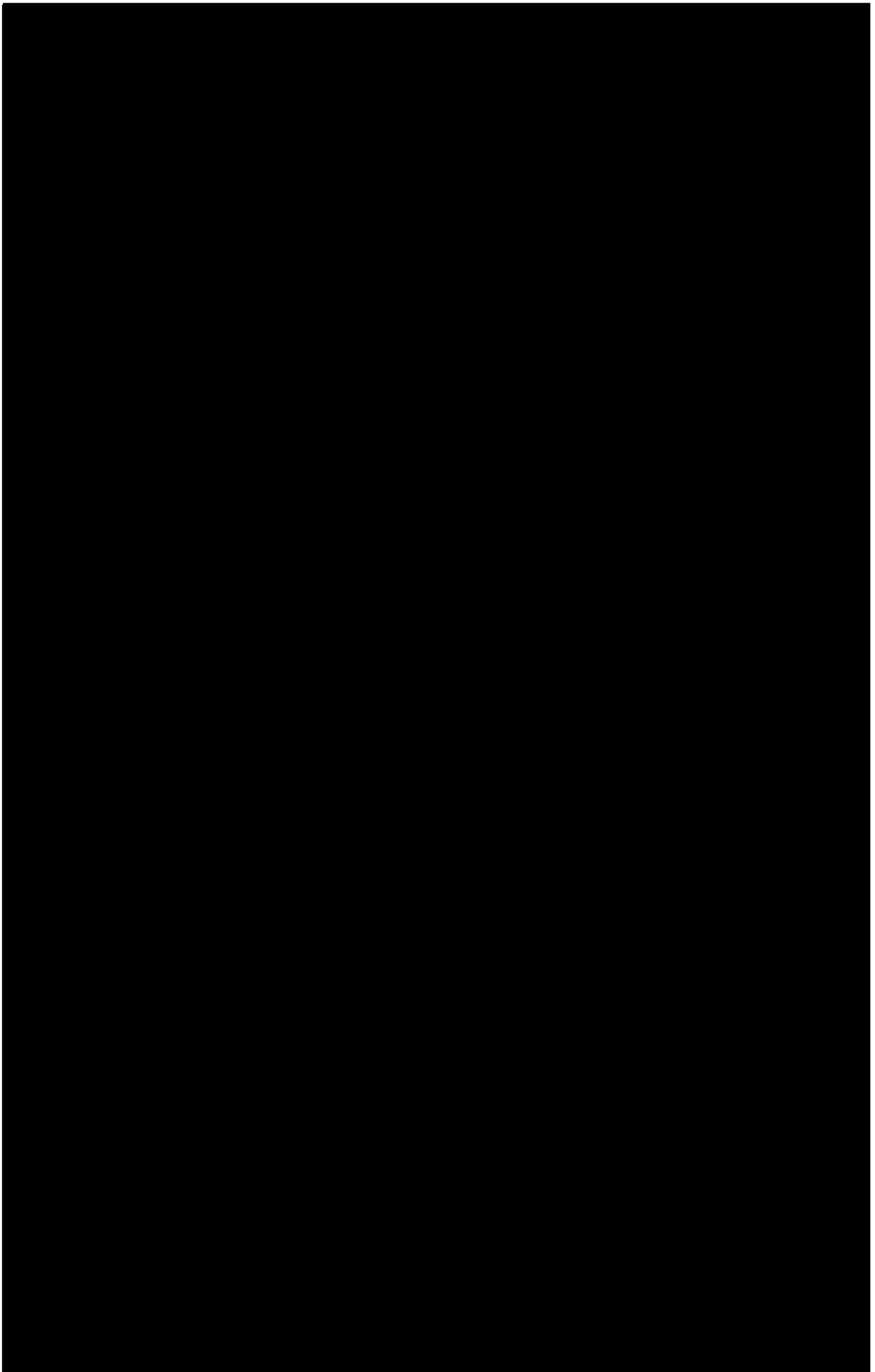


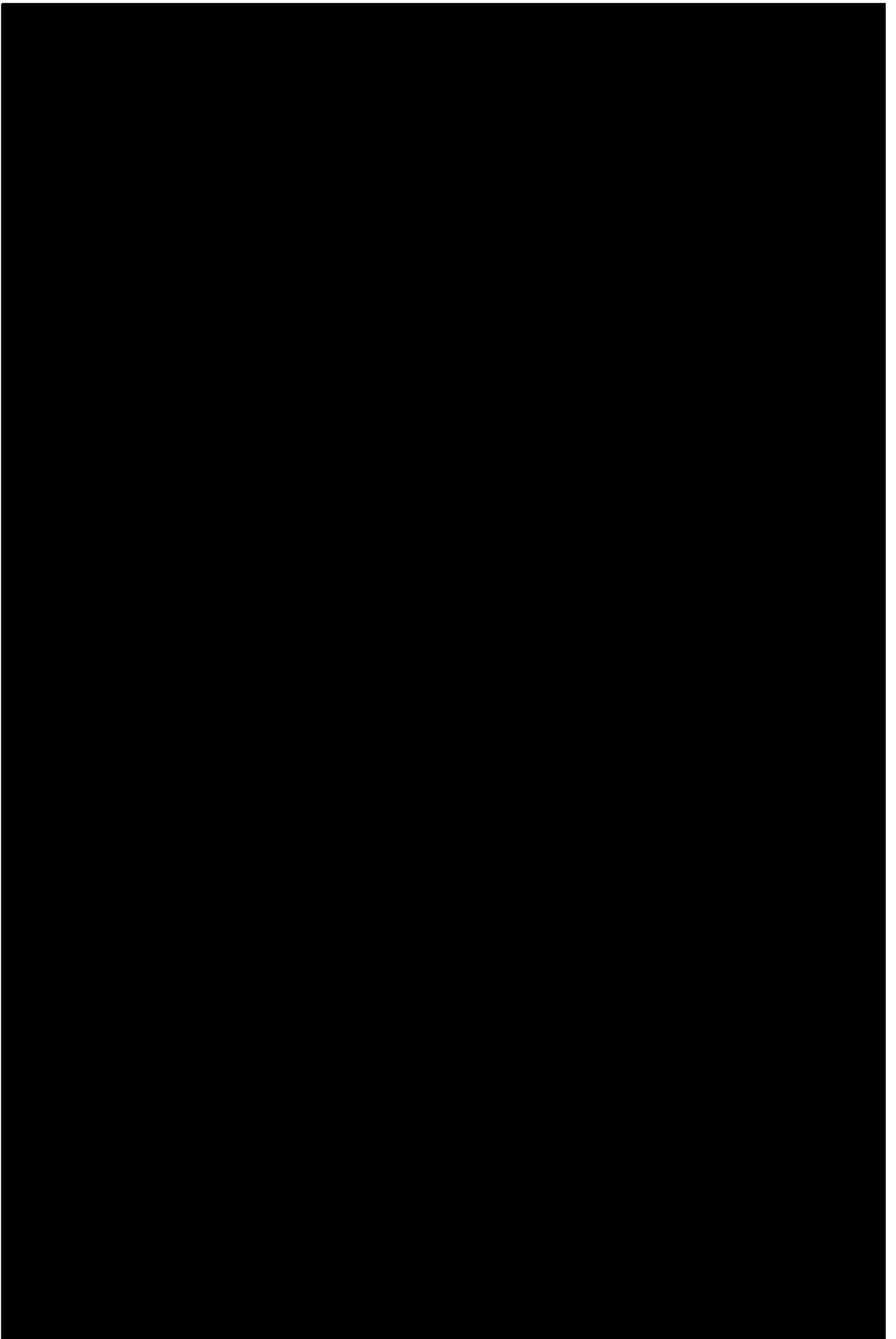


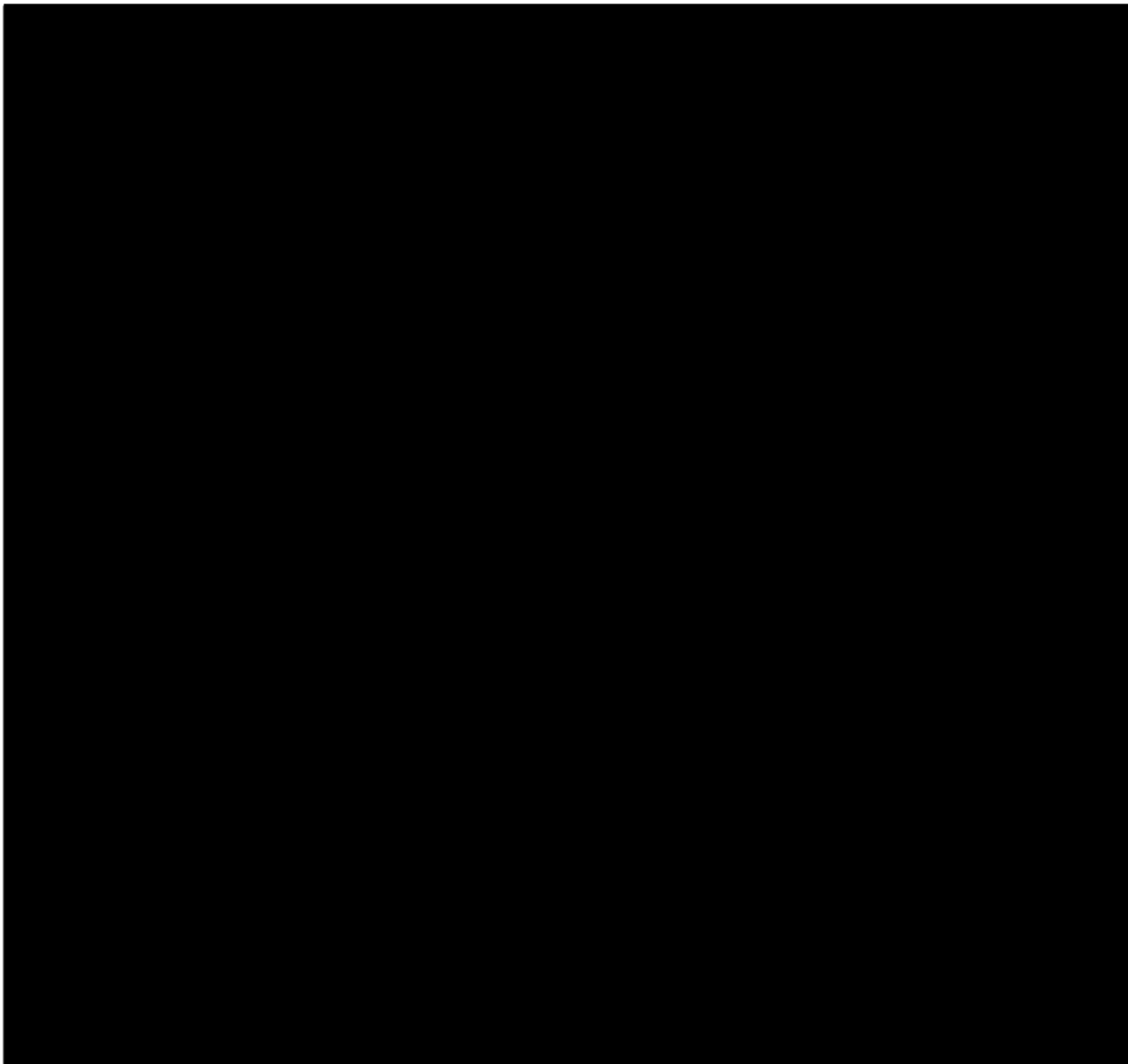


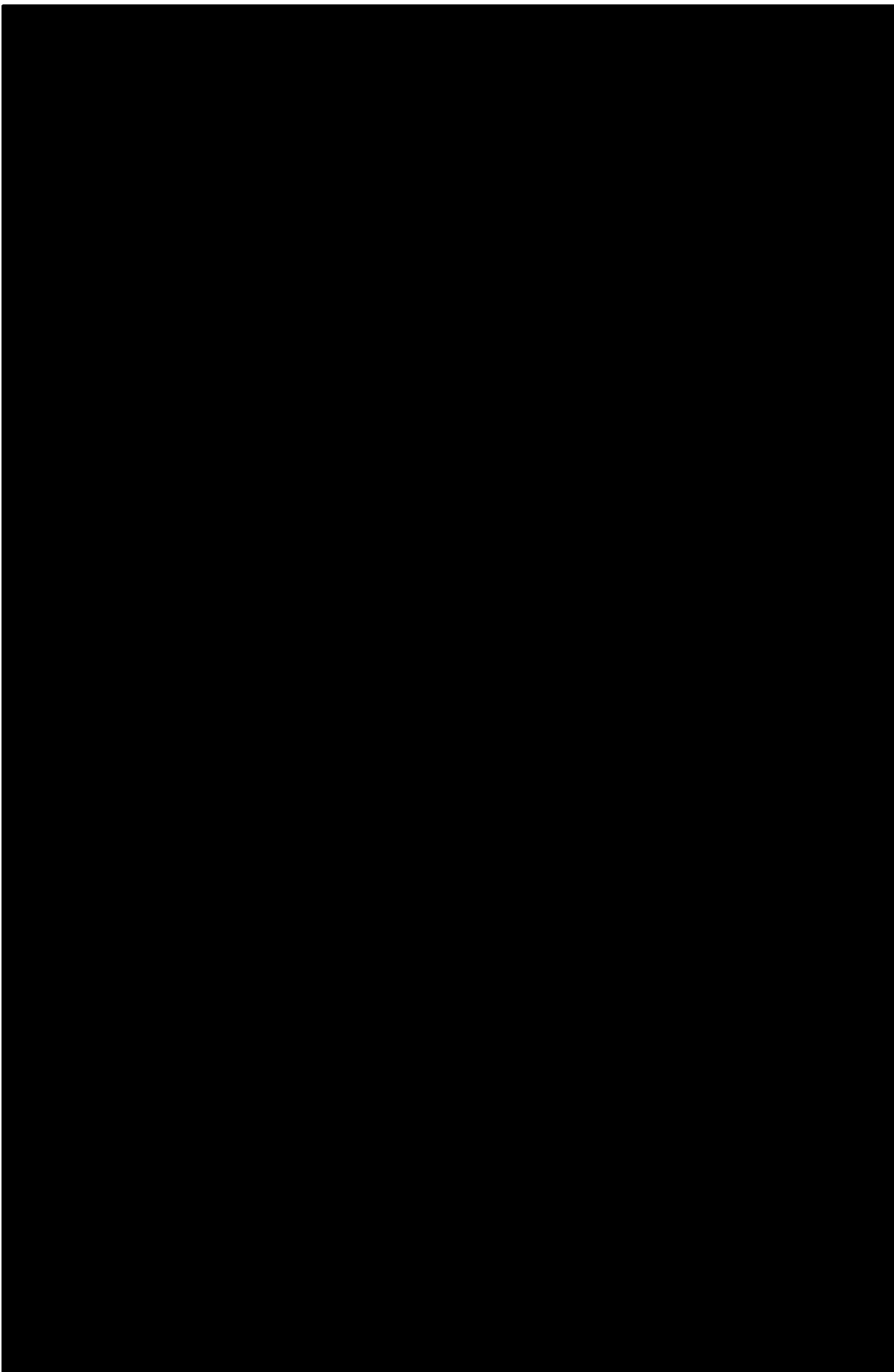


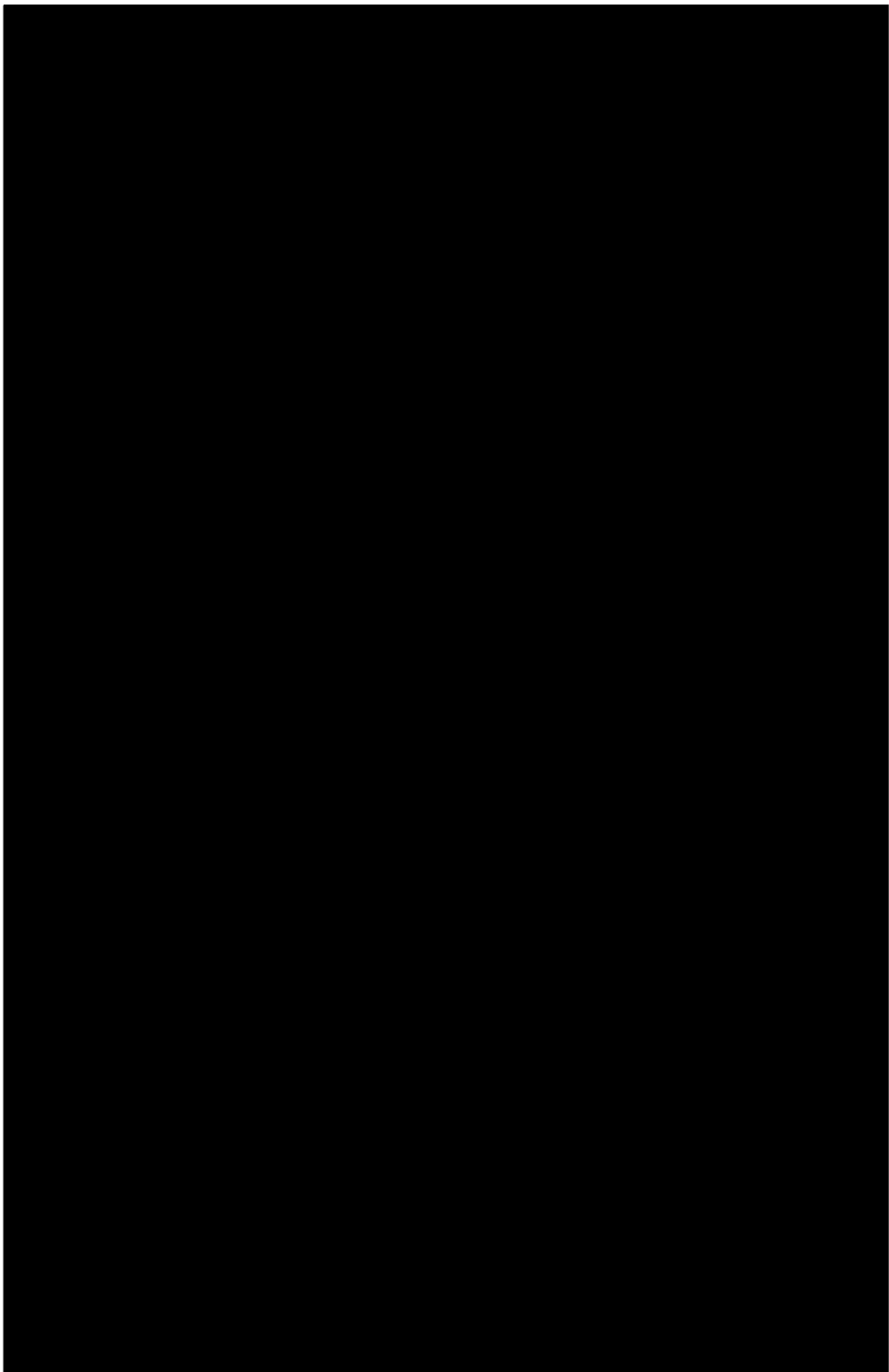


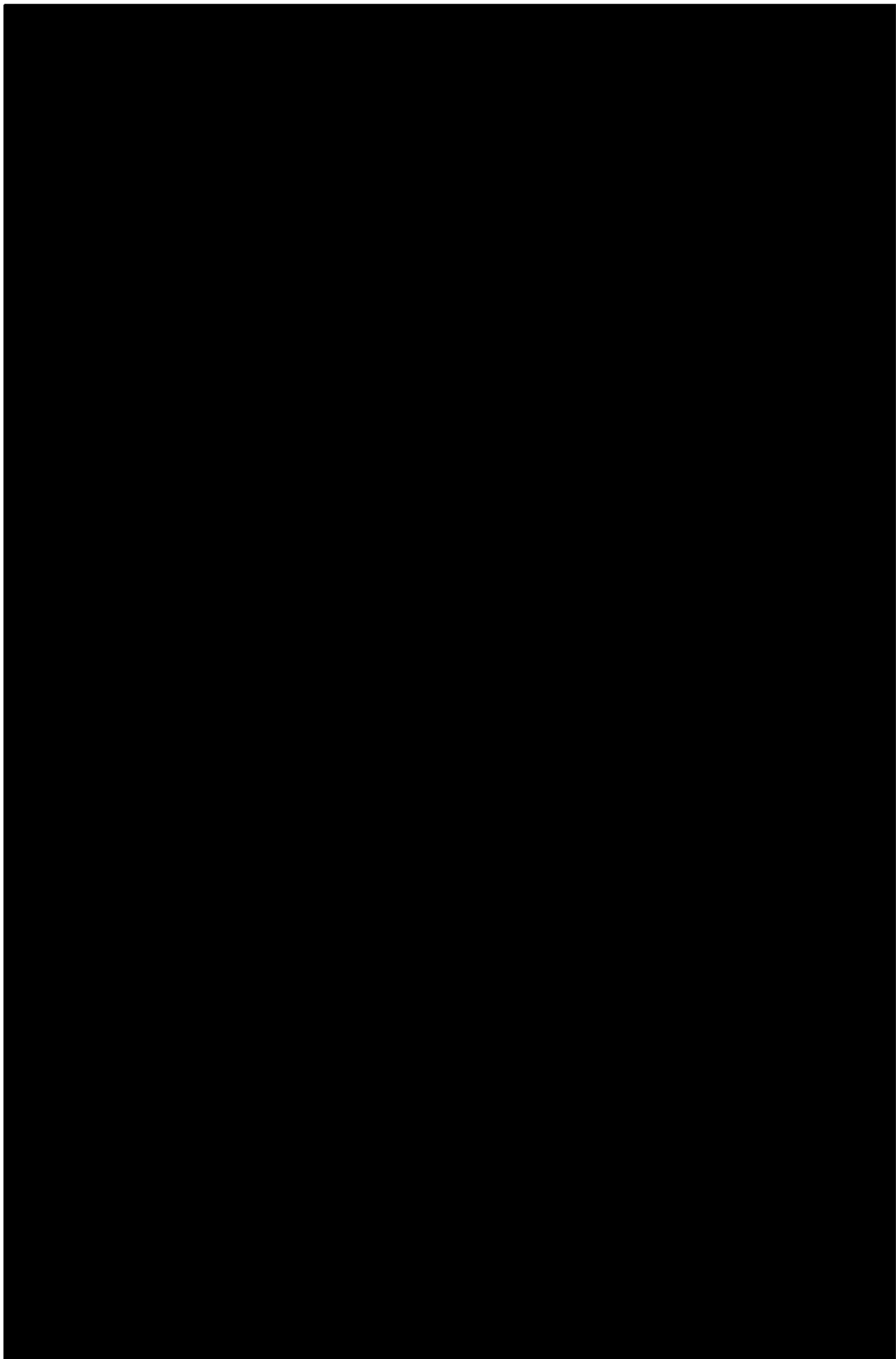




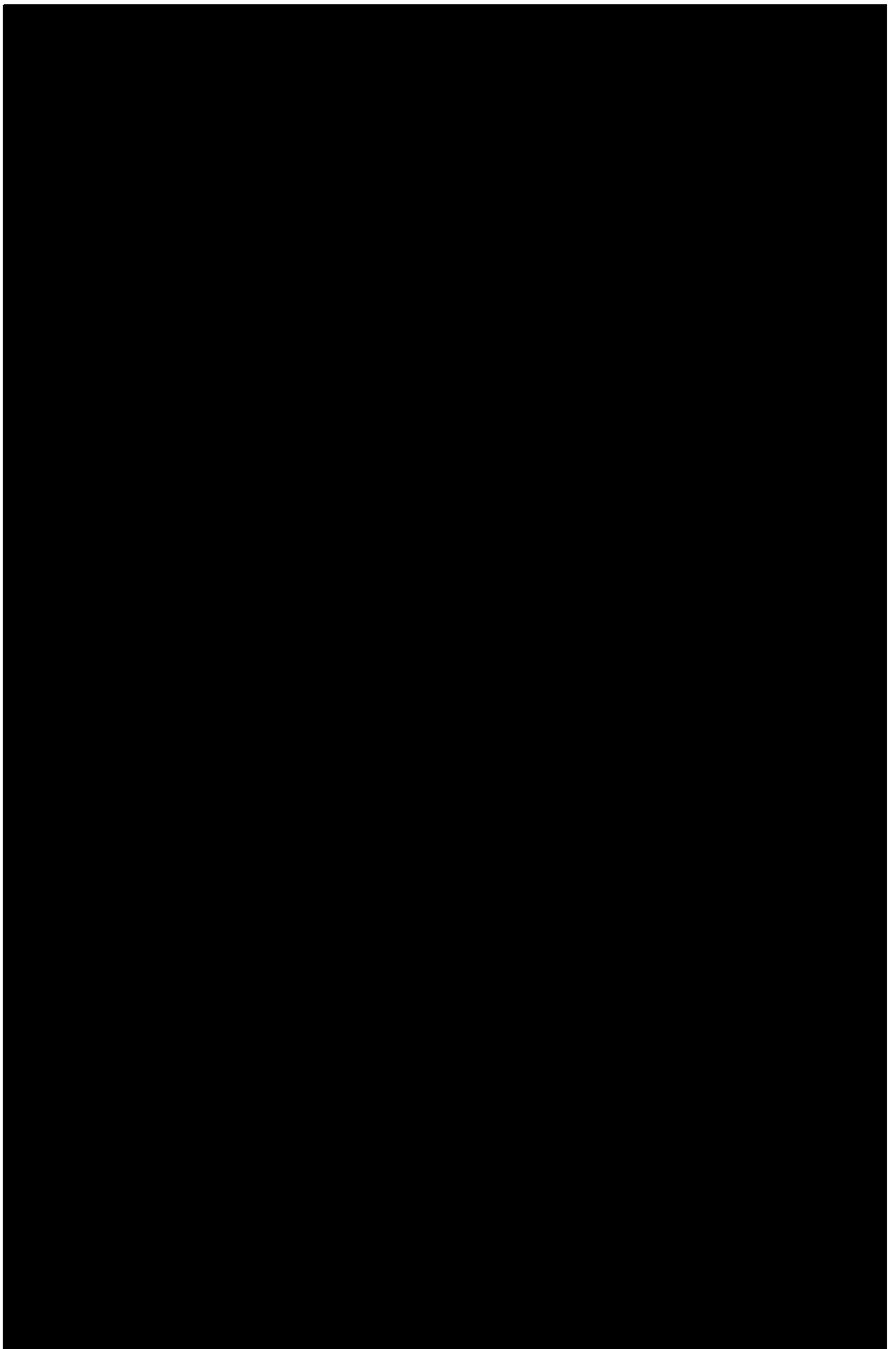


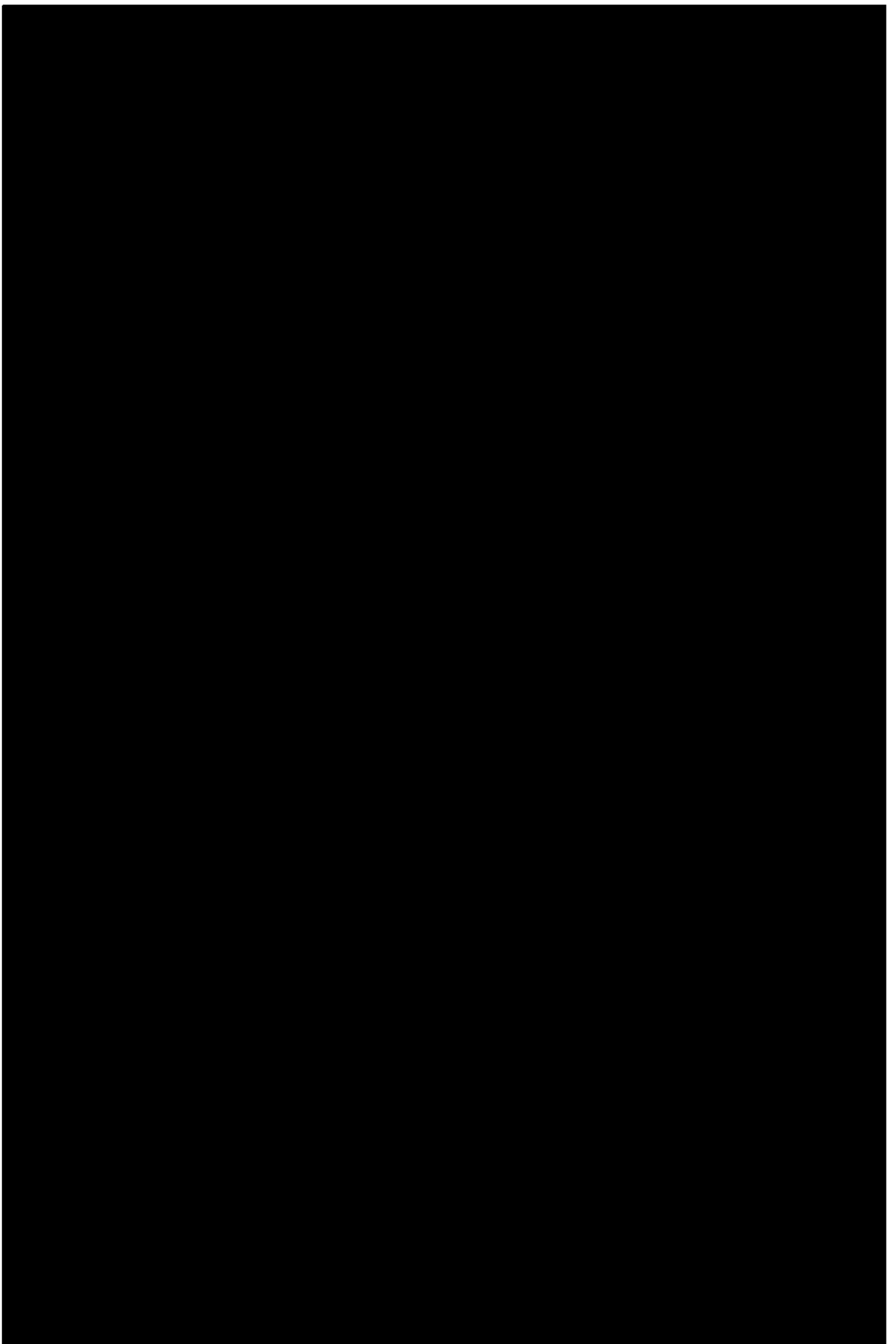


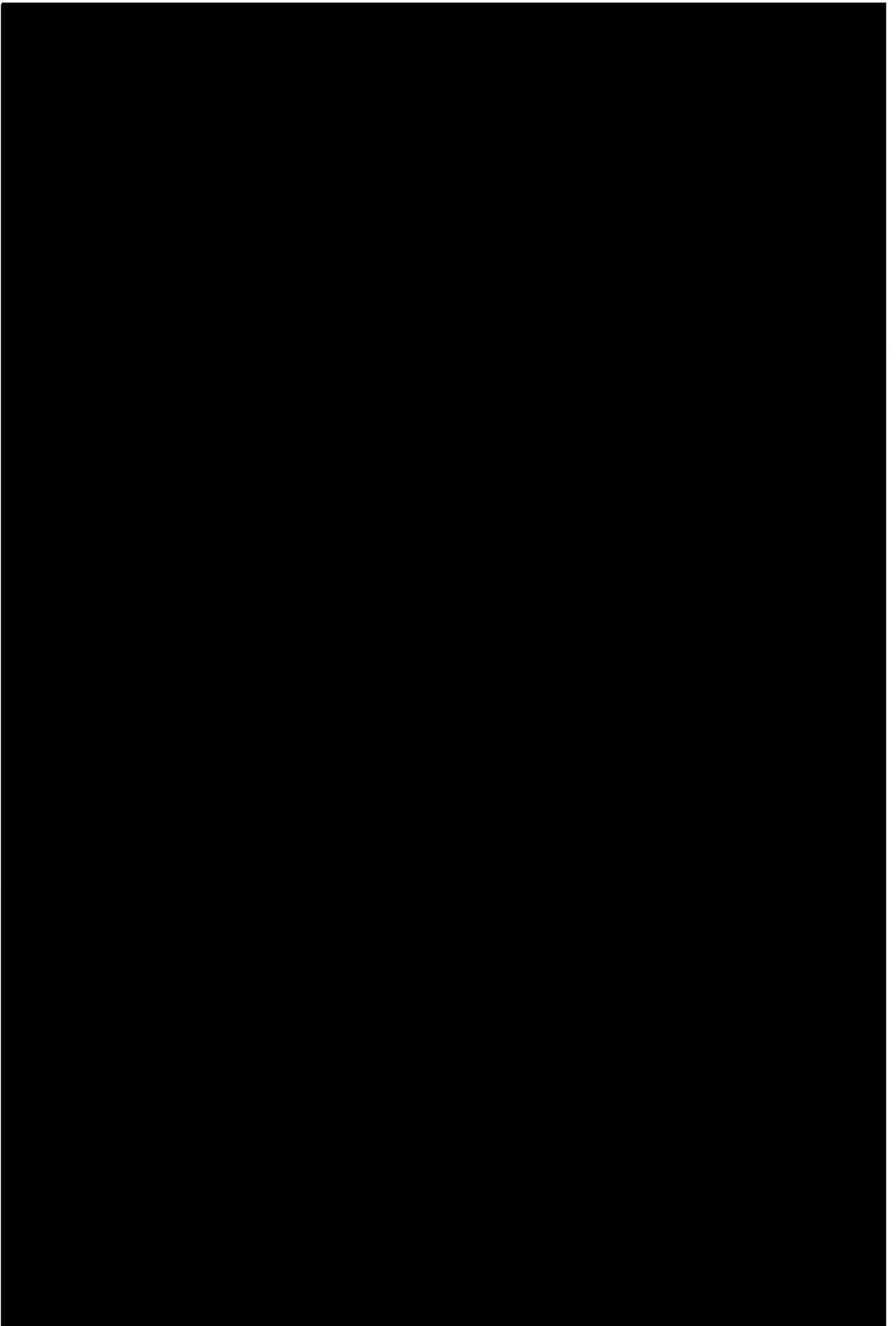


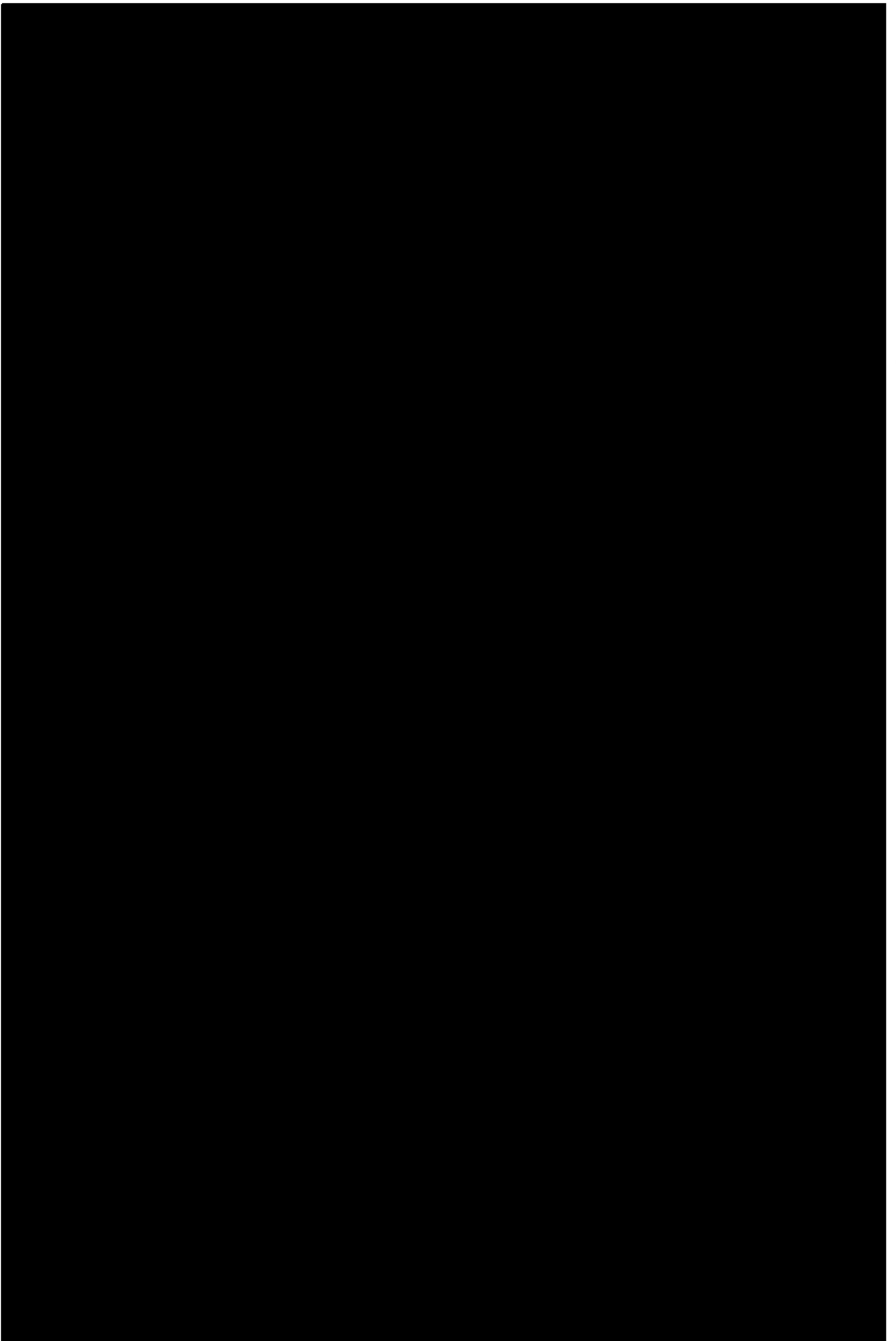


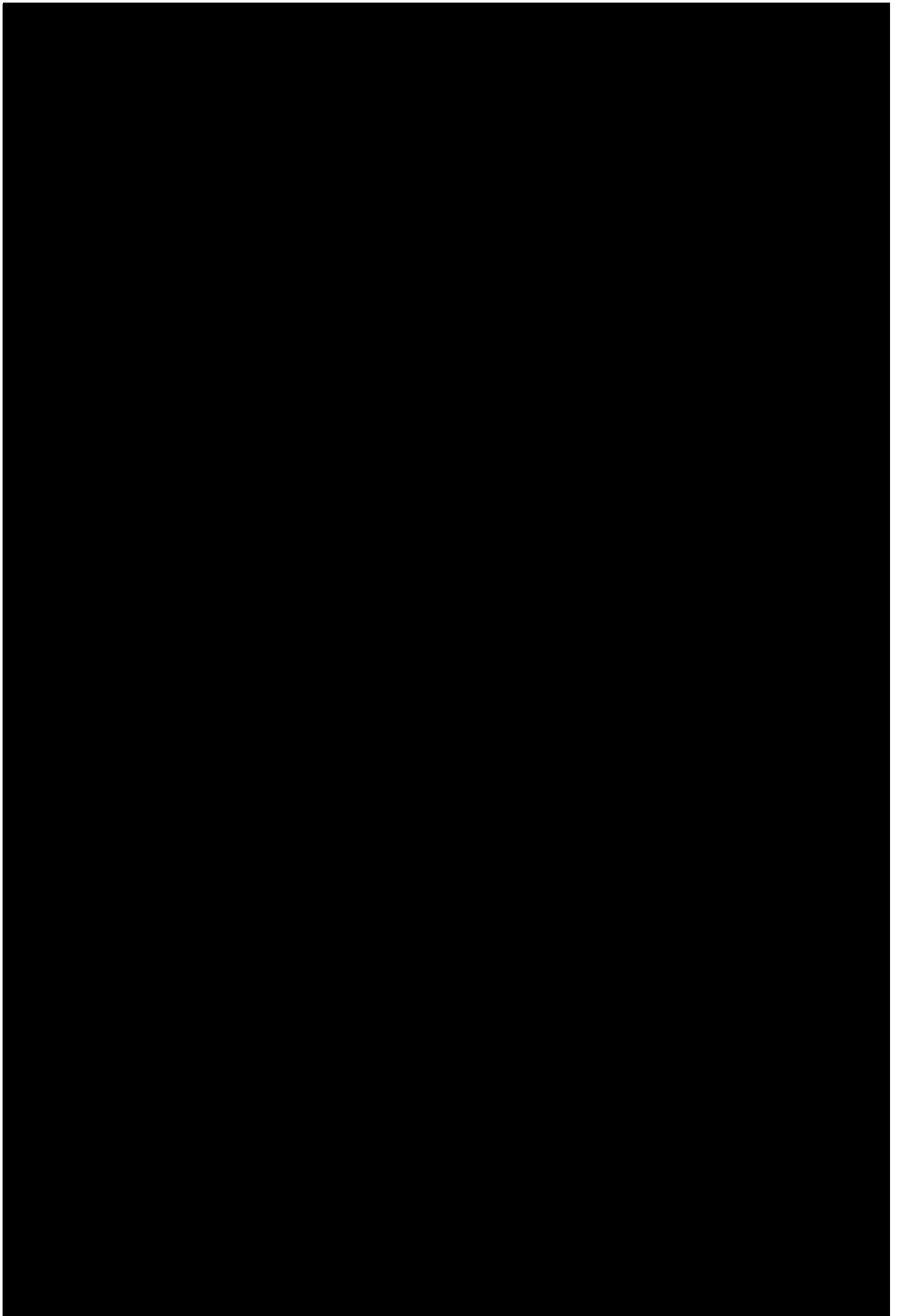


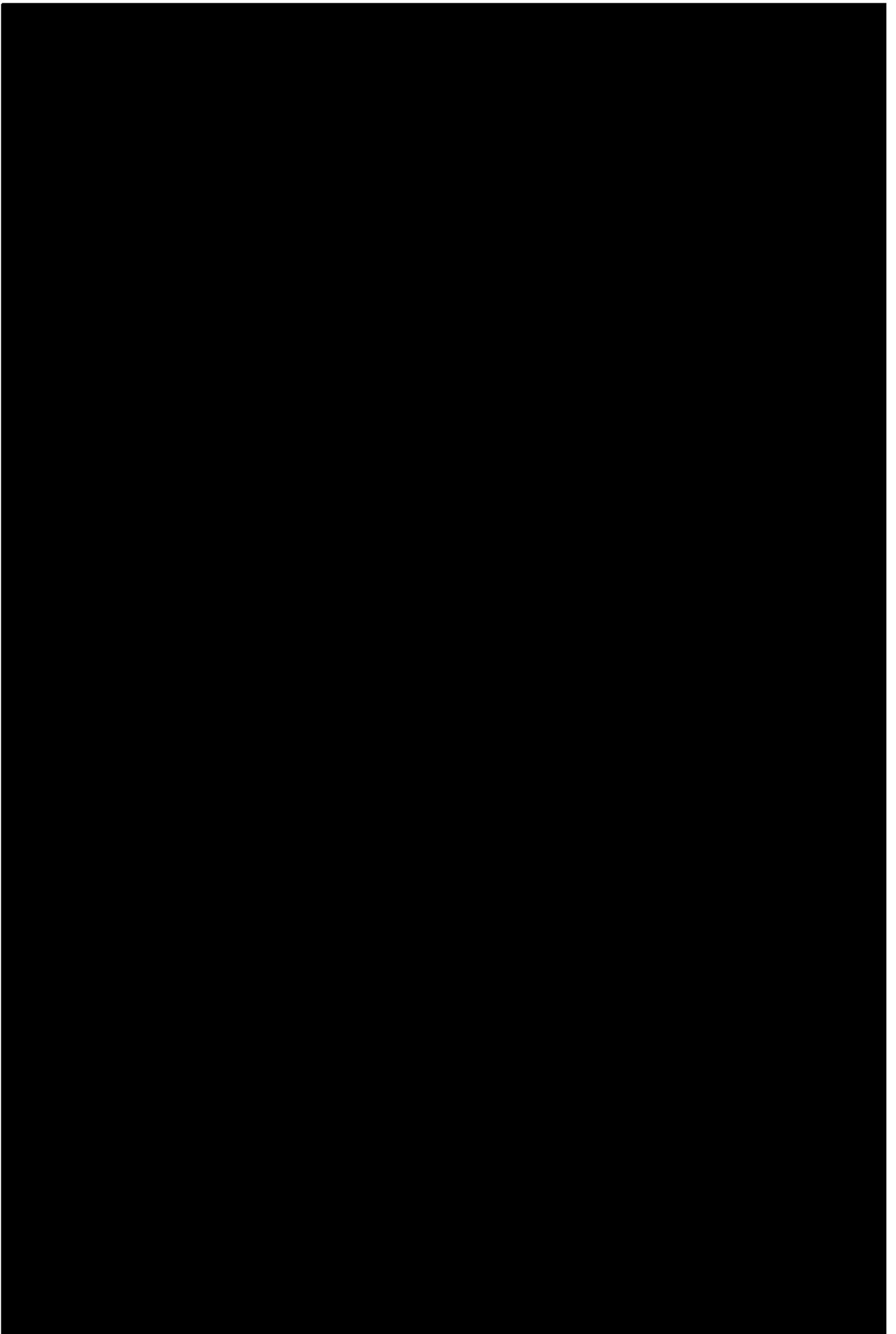


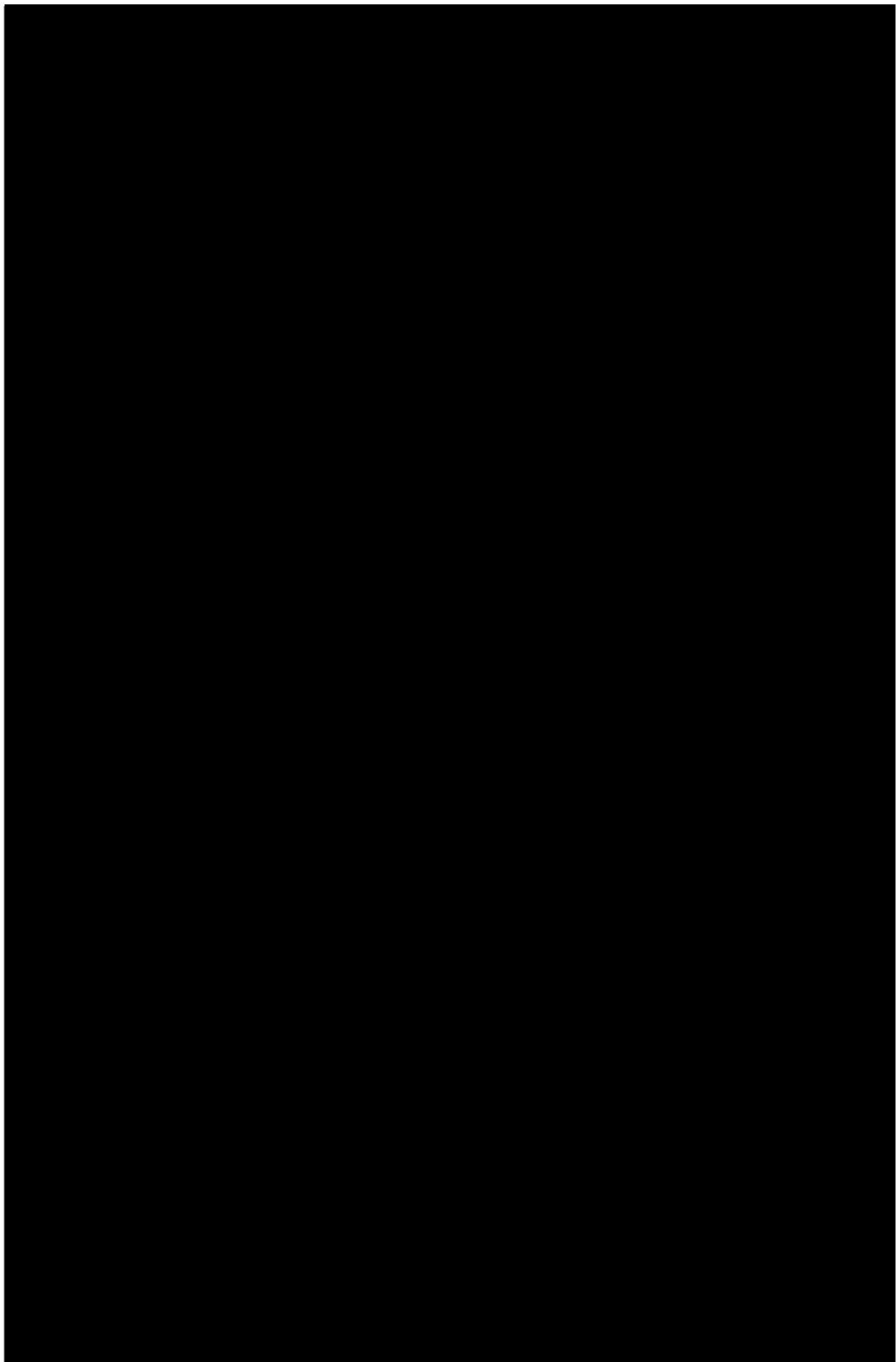


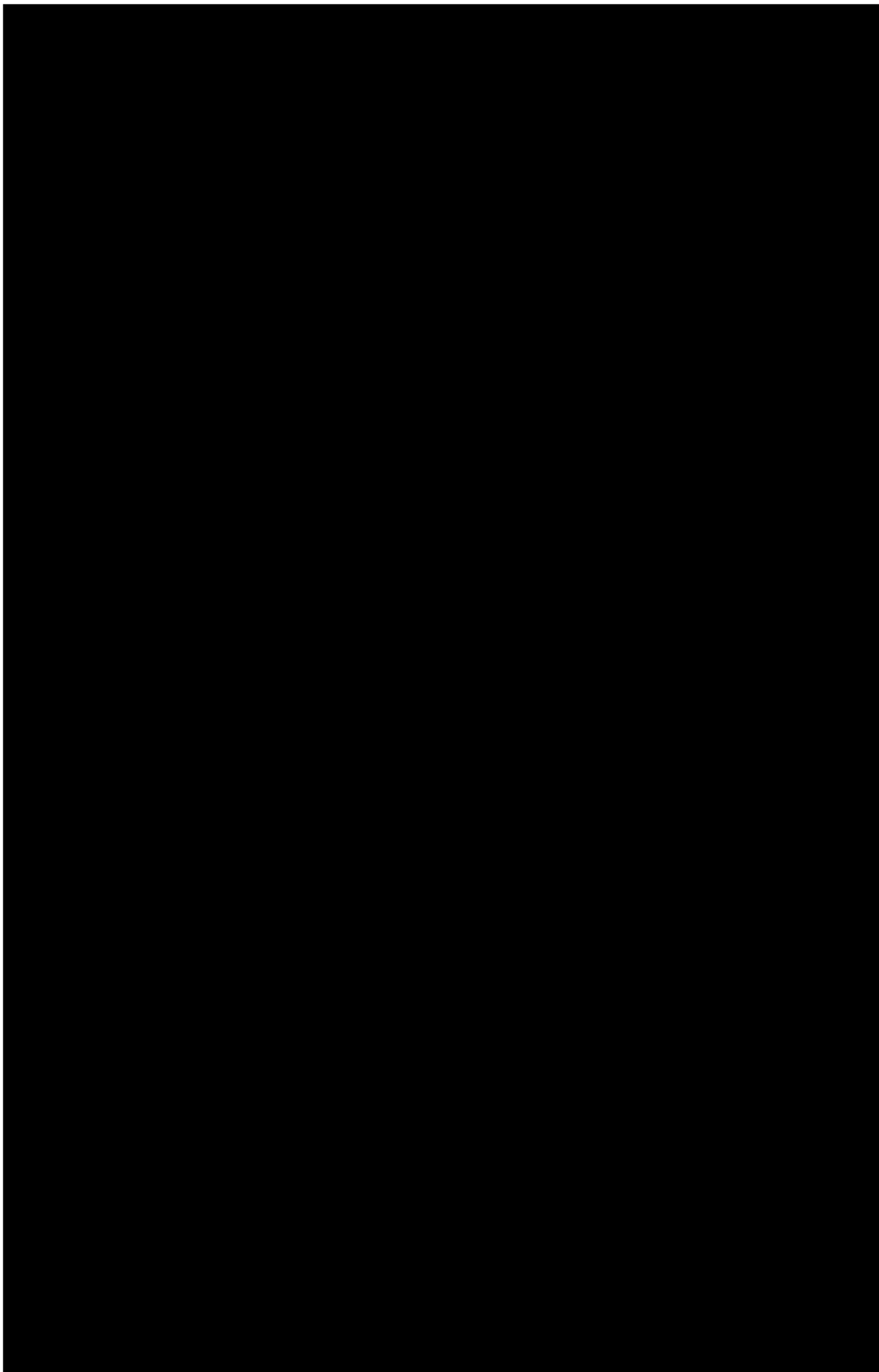














## Attachment 1 – Indicative Information for IC tenderers relating to the Services

### A.1 General

- (a) The Independent Certifier will be closely involved in the SLR PPP from its commencement, including throughout the design and construction phases of the SLR Works and through until the correction of all Defects in the SLR Works up to the Date of Final Completion.
- (b) Without limiting OpCo's obligations or liability under the Project Deed, the Independent Certifier's certification of the SLR Works having achieved Completion will be final and binding on TfNSW and OpCo (in the absence of manifest error by the Independent Certifier).
- (c) The Independent Certifier is obliged to act independently of TfNSW, OpCo, OpCo and any of their Associates.
- (d) The specific tasks and functions of the Independent Certifier are those contemplated by the Project Deed, including those in section A.2 of this Attachment.
- (e) The Other Parties consider the role of the Independent Certifier to be vital and therefore are keen to ensure that the entity appointed to the role and the entity's personnel have the skills and experience and independence appropriate for the role as well as providing the best value for money to TfNSW and OpCo.
- (f) The Independent Certifier must:
  - (i) become familiar with the role, functions, obligations, duties and services (express or implied) under the Relevant Project Agreements of the "Independent Certifier" and review information made available to the Independent Certifier by the Other Parties in order to become fully acquainted with the SLR Works;
  - (ii) attend meetings and report as required from time to time by the Other Parties;
  - (iii) carry out any additional services in relation to the SLR Works as directed in writing by the Other Parties under this deed;
  - (iv) undertake the surveillance listed in the Certification and Monitoring Plan which, as a minimum, must include the surveillance in Schedule 3 (*Minimum Resources and Surveillance Levels*) and in the initial Certification and Monitoring Plan ultimately incorporated in this Schedule 4 (*Initial Certification and Monitoring Plan*) to this deed; and
  - (v) provide the surveillance resources in the performance of the Construction Phase Services listed in the Certification and Monitoring Plan which, as a minimum, must include the surveillance resources in Schedule 3 (*Minimum Resources and Surveillance Levels*) and in the initial Certification and Monitoring Plan ultimately incorporated in this Schedule 4 (*Initial Certification and Monitoring Plan*) to this deed.

- (g) The Independent Certifier must ensure that the Environmental Representative:
- (i) fulfils the requirements of the Environmental Representative under the Project Planning Approval;
  - (ii) reviews and provides comment on environmental documentation prepared to meet the requirements of the Project Planning Approval conditions, relevant environmental legislation, other relevant regulatory requirements and relevant standards;
  - (iii) reviews and certifies the "Environmental Control Maps" prior to their implementation;
  - (iv) monitors and reports on the effective ongoing implementation of, and performance against, the environmental documentation referred to in paragraph (ii), including compliance with the conditions of the Project Planning Approval and other relevant regulatory authorisations for the Project, using the TfNSW compliance monitoring system (PECOMS or equivalent);
  - (v) reviews and certifies revisions to the environmental management documentation as required;
  - (vi) carries out weekly physical inspections (surveillance) of the Construction Site (in a format agreed with the Other Parties) to verify compliance with environmental controls as documented in "Environmental Control Maps" and relevant management plans;
  - (vii) provides independent guidance and advice to TfNSW and OpCo throughout the Construction Phase, on an as required basis, in relation to key emerging environmental and compliance issues, Project Planning Approval conditions, relevant environmental legislation, other relevant regulatory requirements and relevant standards; and
  - (viii) recommends to TfNSW and OpCo reasonable and feasible steps to be taken to avoid or minimise unintended or adverse environmental impacts (including the cessation of works).

## **A.2 Services**

The Independent Certifier must discharge the functions, obligations, duties and services which the Relevant Project Agreements contemplate will be discharged by the Independent Certifier, including providing various certifications under the Project Deed. Indicatively, the Services include the following.

### **A.2.1 Project Deed functions**

This section A.2.1 refers to clauses under the Project Deed.

#### **A.2.1.1 Clause 5.4(b)(i) - independently certify in accordance with this deed:**

- (a) that the Traffic and Transport Management Plan and the Testing and Commissioning Plan comply with the requirements of the Project Deed;

*Schedule 4 – Initial Certification and Monitoring Plan*

- (b) that the Design Documentation complies with the requirements of the Project Deed;
- (c) that the SLR Works have been completed, tested and commissioned in accordance with the Project Deed;
- (d) that the Tests and Approvals required by the Testing and Commissioning Plan will, if satisfied, allow it to certify Completion of the SLR Works;
- (e) that the OpCo ETS Works have been completed, tested and commissioned in accordance with the SPR;
- (f) that the requirements for First Passenger Service have been satisfied;
- (g) the achievement of Completion;
- (h) the achievement of Final Completion;
- (i) the achievement of Civils and Systems Completion (if applicable);
- (j) readiness for First Passenger Service;
- (k) completion of each discrete part of the Local Area Works;
- (l) the Occupation Commencement Date for each Fee Zone; and
- (m) the Occupation Cessation Date and the Actual Fee Zone Occupation Period for each Fee Zone;

**A.2.1.2** Clause 5.4(b)(ii) - independently audit in accordance with the Independent Certifier Deed:

- (a) that the Project Plans comply with the requirements of the Project Deed;
- (b) OpCo's compliance with Third Party Agreements;
- (c) the effects of OpCo's Activities;
- (d) that OpCo's Activities and Temporary Works comply with the traffic and transport management and the road, footpath and shared path requirements in the deed; and
- (e) OpCo's compliance with the Planning Approval;

**A.2.1.3** Clause 5.4(b)(iii) - participate in meetings as specified in the Design Management Plan;

**A.2.1.4** Clause 5.4(b)(iv) – attend Tests, Hold Points and Witness Points;

**A.2.1.5** Clause 5.4(b)(v) - undertake the role of the Environmental Representative, including those obligations in the Planning Approval;

**A.2.1.6** Clause 5.4(b)(vi) - make determinations on matters that the Project Deed (including the SPR) expressly requires be determined by the Independent Certifier;

**A.2.1.7** Clause 5.4(b)(vii) - issue certificates as contemplated by the Project Deed;

**A.2.1.8** Clause 5.4(b)(viii) - undertake surveillance of OpCo's Activities; and

**A.2.1.9** Clause 5.4(b)(ix) - provide written confirmation of completion of discrete parts of Utility Services Works and Property Works.

**A.2.1.9A** Clause 5.4(b)(x) – confirm the completion, testing and commissioning of the Journey Time Detection Device;

**A.2.1.10** Clause 5.4(c) - In certifying Design Documentation, the Independent Certifier is not required to act as an AEO.

**A.2.1.11** Clause 5.4(d) - act independently of TfNSW, OpCo and OpCo's Contractors;

**A.2.1.12** Clause 5.4(h) – receive all information and documents and:

- (a) attend meetings (including any Senior Project Group meetings);
- (b) access all premises; and
- (c) insert Hold Points or Witness Points in the Project Plans and designate the authority to release the Hold Points,

all as may be necessary or required to perform its obligations under this deed.

**A.2.1.13** Clause 5.4(j) – receive comments from TfNSW in respect of OpCo's Activities;

**A.2.1.14** Clause 8.3(c) - receive each updated Traffic and Transport Management Plan and Testing and Commissioning Plan during the Delivery Phase;

**A.2.1.15** Clause 8.5(b)(i) - receive any comments from TfNSW's Representative on submitted Traffic and Transport Management Plan and Testing and Commissioning Plan;

**A.2.1.16** Clause 8.5(b)(ii) – review each Traffic and Transport Management Plan and Testing and Commissioning Plan submitted during the Delivery Phase and either notify OpCo of any non-compliances with the Project Deed (including reasons) or certify that the Project Plan complies with the Project Deed, within 20 Business Days following submission of the Project Plan to the Independent Certifier;

**A.2.1.17** Clause 8.5(c) – receive any revised Project Plan during the Delivery Phase and clause 8.5 will re-apply;

**A.2.1.18** Clause 12.2(b) – receive written notice from OpCo prior to OpCo vacating a Section;

**A.2.1.19** Clause 12.2(c) – provide a notice to TfNSW's Representative and OpCo certifying that OpCo has or has not complied with the requirements of clause 12.2(b) of the Project Deed;

**A.2.1.20** Clause 13.4(c) – receive Design Documentation at each Design Stage during the Delivery Phase;

**A.2.1.21** Clause 13.6(b) – require that OpCo make available the appropriate design personnel to explain Design Documentation and provide other information regarding the Design Documentation;

**A.2.1.22** Clause 13.7(a) – receive any comments from TfNSW's Representative on submitted Design Documentation;

**A.2.1.23** Clause 13.7(b) – review the Design Documentation submissions within 22 Business Days and:

## Schedule 4 – Initial Certification and Monitoring Plan

- (a) in respect of Design Stage 1 or Design Stage 2, notify OpCo of any actual non-compliance or any potential non-compliance with the requirements of the Project Deed (with detailed reasons) or any other observation or comment which the Independent Certifier has on the Design Documentation; and
- (b) in respect of Design Stage 3, either:
  - (i) reject the Design Documentation with detailed reasons if it does not comply with the Project Deed; or
  - (ii) certify the Design Documentation;

**A.2.1.24** Clause 13.7(e) – receive amended Design Documentation and other information regarding the Design Documentation from OpCo;

**A.2.1.25** Clause 13.7(g)(i) – recommend the action that could be taken by OpCo to address any minor error or omissions;

**A.2.1.26** Clause 13.10 – receive amended Final Design Documentation, certifications or explanations from OpCo;

**A.2.1.26A** Clause 14.5(c) – Within 5 Business Days of receipt of a notice from TfNSW under clause 14.5(b), notify TfNSW in writing (with a copy to OpCo) that either:

- (a) the Installation Works are complete and the Journey Time Detection Device is fit for its intended purpose (as at the date of completion of the Installation Works) to enable OpCo to comply with its obligations under Schedule D1 (*Service Payment Regime*); or
- (b) the installation of the Journey Time Detection Device is not sufficiently complete to enable the Independent Certifier to form a view.

**A.2.1.27** Clause 17.3(b)(v) – receive and review any updates to the Delivery Program;

**A.2.1.28** Clause 18.2(a) and (b) – receive Test Procedures and any comments from TfNSW's Representative on Test Procedures;

**A.2.1.29** Clause 18.2(c) and (d) - within 20 Business Days of receiving a Test Procedure (or any amended Test Procedure), review each Test Procedure (taking into account any comments received from TfNSW's Representative) and either:

- (a) notify OpCo of any non-compliances with the Project Deed (with detailed reasons); or
- (b) certify the Test Procedure;

**A.2.1.30** Clause 18.2(e) – receive a revised Test Procedure, whereupon the provisions of clause 18.2 of the Project Deed will reapply;

**A.2.1.31** Clause 18.3 – receive 20 Business Days' notice of each Test and receive Test Programs and updated Test Programs, from OpCo;

**A.2.1.32** Clause 18.4(c) – may (but not obliged) attend and witness the conduct of all Tests;

**A.2.1.33** Clause 18.5(c) – receive Test Reports from OpCo and, within 10 Business Days, either:

- (a) certify that the Test has been passed in accordance with the Test Procedure;  
or
- (b) notify OpCo that the Test has been failed and/or the Test Report does not comply with the requirements of the Project Deed;

**A.2.1.34** Clause 18.8(a) – receive notice from TfNSW’s Representative of additional tests required by TfNSW;

**A.2.1.35** Clause 19.1(d) – receive from OpCo copies of all Approvals which the Project Deed requires OpCo to obtain prior to First Passenger Service;

**A.2.1.36** Clause 19.1(e) – receive from OpCo certificates in the form of Schedule C7 (*Form of Certificate for First Passenger Service*) of the Project Deed;

**A.2.1.37** Clause 19.2(a) – receive at least 20 Business Days’ notice of the date on which OpCo expects to satisfy the requirements for First Passenger Service;

**A.2.1.38** Clause 19.2 and 19.3 – receive a written request from OpCo for a Certificate of Readiness for First Passenger Service and, within 5 Business Days, either:

- (a) issue a Certificate of Readiness for First Passenger Service to OpCo and TfNSW; or
- (b) issue a notice to OpCo and TfNSW which:
  - (i) lists the items which remain to be completed to satisfy the requirements for First Passenger Service; or
  - (ii) states that OpCo is so far from satisfying the requirements for First Passenger Service that it is not practicable to provide the list;

**A.2.1.39** Clause 19.4(a)(ii) – receive from OpCo a certificate in the form of Schedule C8 of the Project Deed (*Form of Certification for Completion*);

**A.2.1.39A** Clause 19.4A(c)(ii) – receive from OpCo a certificate in the form of Schedule C20 (*Form of Certificate for Additional CSELRV Acceptance Requirements*) of the Project Deed from:

- (a) the D&C Contractor certifying that the CSELRV has been constructed in accordance with the Design Documentation which OpCo is entitled to use for CSELRV construction purposes under clause 13.9(a)(i), except for Minor Defects;
- (b) OpCo certifying that the CSELRV complies with all the requirements of this deed (including the SPR), except for Minor Defects and has been constructed in accordance with the Design Documentation which OpCo was entitled to use for CSELRV construction purposes; and
- (c) The O&M Contractor certifying that the CSELRV is acceptable to the O&M Contractor and will enable it to comply with its obligations under the O&M Contract;

**A.2.1.39B** Clause 19.4A(c)(iii) – certify that the CSELRV has passed the CSELRV Completion Tests;

**A.2.1.40** Clause 19.5 (b) – (c) – receive notification from OpCo that it considers that a discrete part of the Local Area Works is complete, inspect the relevant Local Area Works, determine

whether the discrete part of the Local Area Works has been completed in accordance with the Project Deed and, within 5 Business Days of inspection, will:

- (a) if the discrete part is complete, execute and provide a certificate in the form of Schedule C9 (*Certificate of Local Area Works Completion*) of the Project Deed to TfNSW's Representative and OpCo stating the date on which OpCo has completed the discrete part of the Local Area Works in accordance with the Project Deed; or
- (b) if the discrete part is not complete, notify OpCo and TfNSW in writing of the items which remain to be completed (after which the procedure in clause 19.5 of the Project Deed will reapply);

**A.2.1.41** Clause 19.8 – receive from OpCo:

- (a) at least 5 Business Days' notice of the date on which it expects to achieve Completion; and
- (b) a written request for a Certificate of Completion;

**A.2.1.42** Clause 19.9 - within 5 Business Days of receipt of OpCo's request for a Certificate of Completion, either:

- (a) if Completion has been achieved, issue a Certificate of Completion to TfNSW and OpCo stating the Date of Completion and specifying any Minor Defects; or
- (b) if Completion has not been achieved, issue a notice to OpCo and TfNSW which:
  - (i) lists the items which remain to be completed before Completion; or
  - (ii) states that the SLR Works are so far from achieving Completion that it is not practicable to provide the list of remaining works;

**A.2.1.43** Clause 19.10(c) - receive from OpCo:

- (a) notice from OpCo that it considers that Final Completion has been achieved; and
- (b) a request to issue a Certificate of Final Completion; and

**A.2.1.44** Clause 19.10(d) and (e) - within 15 Business Days of receipt of OpCo's request under clause 19.10(c) of the Project Deed, either:

- (a) if Final Completion has been achieved, issue to TfNSW and OpCo a Certificate of Final Completion; or
- (b) if Final Completion has not been achieved, issue a notice to the TfNSW and OpCo listing the work remaining to be performed to achieve Final Completion (after which the procedure in clause 19.10 (*Final Completion*) of the Project Deed will re-apply).

**A.2.1.45** Clause 19.16(b)(ii) – issue to TfNSW and OpCo a Certificate of Civils and Systems Completion substantially in the form of Schedule C22 (*Certificate of Civils and Systems Completion*):

- (a) certifying that the Civils and Systems Works are complete;

- (b) stating the date on which completion of the Civils and Systems Works was achieved; and
- (c) specifying any Minor Defects and minor finishes.



**A.2.2 SPR functions**

This section A.2.2 refers to sections under the SPR.

**A.2.2.1** Section 4.3(k) - progressively receive from OpCo:

- (a) analysis and determinations, including any revisions and re-evaluations, of the Predicted Effects and the Acceptable Effects;
- (b) results of monitoring the actual effects of OpCo's Activities, in a form which is directly comparable to the Acceptable Effects and Predicted Effects;
- (c) details of any adjustments to the manner in which OpCo's Activities are carried out which are necessary as a consequence of any re-evaluation of Predicted Effects; and
- (d) details of designs and materials for the repair and reinstatement of infrastructure required by section 4.3(j) of the SPR;

**A.2.2.2** Section 4.5(b)– receive from OpCo two copies of all site investigation reports, property and land surveys and ground and infrastructure condition surveys, including progressive copies of such documents as each is developed, promptly, and in any event within 5 Business Days of OpCo receiving such reports;

**A.2.2.3** Section 4.6(d) – receive evidence of Approvals from Authorities in accordance with the Project Deed;

**A.2.2.4** Section 4.8(i) – may attend Utility Service owner or Authority meetings as may be required from time to time;

**A.2.2.5** Section 4.8(j) – receive as constructed details of the locations of Utility Services on progressive completion of the SLR Works;

**A.2.2.6** Section 4.9(e) – receive copies of traffic control plans approved by relevant Authorities that set out specific traffic and transport management arrangements to be implemented at specific locations during the construction of the SLR Works and Temporary Works;

**A.2.2.7** Section 6.3(a) – receive details of all proposed design changes and actions to address construction non-conformances;

**A.2.2.8** Section 6.9(b) – receive and review sample as-built Design Documentation for all Assets;

**A.2.2.9** Section 11.5.1(c) – access All Management Systems records and all records relating to the quality of the SLR Works until all the Delivery Activities have been completed;

**A.2.2.10** Section 11.5.3(b) – may, at any stage during the performance of OpCo's Activities, nominate Hold Points and Witness Points for inclusion in the Project Plans;

**A.2.2.11** Section 11.5.3(d) - may nominate persons to attend or witness the release of any Hold Point or to attend any Witness Point;

**A.2.2.12** Section 11.5.4(a) - approve the designated authority assigned by OpCo to each Hold Point for the purpose of releasing the Hold Point, and the release of any Hold Points;

**A.2.2.13** Section 11.5.4(e) - may witness any inspections and tests preceding the release of any Hold Points and the release of any Hold Points;

**A.2.2.14** Section 11.5.5(b) and (d) - may advise OpCo of apparent quality non-conformances and receive details of such corrective actions from OpCo;

**A.2.2.15** Section 11.5.5(g) - receive reports of non-conformances by OpCo;

**A.2.2.16** Section 11.5.5(h) - receive and review proposals for rectification work;

**A.2.2.17** Section 11.5.6(b) - may attend any audits by an independent auditor of compliance with the Quality Plan and other Project Plans;

**A.2.2.18** Section 11.5.6(c) - receive copies of audit reports in respect of the Quality Plan and other Project Plans;

**A.2.2.19** Section 11.12(a) – receive from OpCo copies of notices, reports and submissions it gives to Authorities as well as any responses from, and details of any consultations with, Authorities;

**A.2.2.20** Section 11.12(b) - receive copies of Approvals obtained by OpCo;

**A.2.2.21** Section 11.12(c) - receive progress reports, updates of the Delivery Program, durability assessment reports, Design Documentation, as constructed documentation, construction completion reports, site investigation reports, property and land surveys, ground and infrastructure condition surveys, geotechnical mapping records and inferred ground condition reports and other documents in accordance with the Project Deed; and

**A.2.2.22** Appendices 1 (*Definitions and Acronyms*) to 49 (*Operation Commitments*) inclusive to the SPR – must discharge the role, functions, obligations and duties of the Independent Certifier identified within the Appendices.

### **A.2.3 Roads Act Approval functions**

This section A.2.3 refers to clauses under the Roads Act Approval.

#### **A.2.3.1** Schedule 3, clause 7:

- (a) provide independent review and certification of the relevant design documentation, design development and construction of the works under the Roads Act Approval;
- (b) certify the achievement of completion under the Roads Act Approval;
- (c) provide independent review and certification that the requirements of the conditions in Schedule 3 to the Roads Act Approval have been met including that the relevant works comply with all relevant codes and standards and that the quality of work and materials incorporated into the relevant works are in accordance with the design documentation and the project requirements set out in schedule 4 to the Roads Act Approval;
- (d) independently audit that the project plans set out in clause 21 of the Roads Act Approval comply with the requirements of the conditions in Schedule 3 to the Roads Act Approval;
- (e) issue the certificates (in the form agreed between TfNSW and RMS) as set out in the deed poll in Schedule 8 at the same time as the relevant Design Stage 3 certificates are issued under the Project Deed;
- (f) make determinations on any matters that the conditions in Schedule 3 to the Roads Act Approval requires be determined by the Independent Certifier;
- (g) perform any other functions identified in this deed;

**A.2.3.2** Schedule 3, clause 11 – cooperate with and receive from TfNSW all information and documents and access to the site and other premises, necessary or reasonably required by the Independent Certifier, so as to enable the Independent Certifier to exercise its functions appropriately and perform its obligations under this deed;

**A.2.3.3** Schedule 3, clause 12 – endorse the relevant design documentation under the Roads Act Approval with a certificate in the form agreed by RMS and TfNSW as set out in the deed poll in Schedule 8;

**A.2.3.4** Schedule 3, clause 17(a)(5) – if requested by RMS and facilitated by TfNSW, meet with RMS to discuss the relevant design documentation under the Roads Act Approval;

**A.2.3.5** Schedule 3, clause 17(e) – receive from TfNSW comments on the relevant design documentation by RMS and take such comments into account in its review of the relevant design documentation;

**A.2.3.6** Schedule 3, clause 24 – receive comments on the project plans provided by RMS from TfNSW and take such comments into account in its review of the project plans;

**A.2.3.7** Schedule 3, clause 34(f) – certify the Project Plans under the Roads Act Approval by providing a certificate on the form agreed by RMS and TfNSW as set out in the deed poll in Schedule 8;

**A.2.3.8** Schedule 3, clause 37(a) and (b) – receive notices from TfNSW of:

- (a) the anticipated completion of each discrete part of the relevant works under the Roads Act Approval; and
- (b) the completion of each discrete part of the relevant works under the Roads Act Approval, including details of compliance with the testing and commissioning plan requirements (including all required test certificates and conformance data) under the Roads Act Approval;

**A.2.3.9** Schedule 3, clause 38 – inspect each discrete part of the relevant works under the Roads Act Approval jointly with RMS, receive any submissions from RMS about whether the discrete part of the relevant works is complete, and determine whether the discrete part is complete in accordance with the conditions in Schedule 3 to the Roads Act Approval requirements;

**A.2.3.10** Schedule 3, clause 39 – if it determines that the discrete part of the relevant works under the Roads Act Approval is not complete, issue a notice to TfNSW identifying the work to be done to achieve completion;

**A.2.3.11** Schedule 3, clause 40 – if it determines that the discrete part of the relevant works under the Roads Act Approval is complete, within 5 business days of the date of inspection with RMS under Schedule 3 clause 38 of the Roads Act Approval, execute and provide to RMS a certificate in the form agreed by RMS and TfNSW as set out in the deed poll in Schedule 8;

**A.2.3.12** Schedule 4, clause 5.4 – provide certification to RMS stating that all findings / non-conformances of the road safety audits referred to in clauses 5.1 and 5.3 of Schedule 4 of the Roads Act Approval have been satisfactorily addressed and closed out (in the form agreed by RMS and TfNSW as set out in the deed poll in Schedule 8).

#### **A.2.4 City of Sydney Third Party Agreement**

This section A.2.4 refers to clauses under the City of Sydney Third Party Agreement.

**A.2.4.1** Clause 5.4(c) – supply information to the City of Sydney as soon as is practicable in the circumstances if in carrying out its functions it receives information that would reasonably be considered relevant to TfNSW's obligations under the City of Sydney Third Party Agreement and TfNSW has not already provided the City of Sydney with a copy of that information;

**A.2.4.2** Clause 5.4(e) – issue a copy of all its certifications or determinations under the City of Sydney Third Party Agreement to both the City of Sydney and TfNSW;

**A.2.4.3** Clause 11.3(b), (c) and (d) – in relation to disputes:

- (a) initiate such enquiries and investigations as it considers necessary or desirable in order to resolve disputes;
- (b) determine whether the dispute is of a technical nature which it can determine;
- (c) schedule a time for the parties to present their respective positions on a dispute, and inform the parties of this time. The presentation must be no later than 10 business days after the independent certifier's appointment, and unless otherwise agreed by the parties, the independent certifier may ignore any submission or response made after that time;
- (d) may request further information from either party, in writing and within the time period required for the response; and
- (e) must:
  - (i) send a copy of the response referred to in clause 11.3(c) of the City of Sydney Third Party Agreement to the other party and give them a reasonable opportunity to comment;
  - (ii) make a determination or finding in respect of the dispute within 20 business days after the presentation referred to in paragraph 11.3(b)(iii) of the City of Sydney Third Party Agreement and include reasons;
  - (iii) act as an expert and not an arbitrator;
  - (iv) have no interest or duty which conflicts with its role as an independent expert; and
  - (v) keep confidential all materials and information made available to it in respect of the dispute;

**A.2.4.4** Clause 20.2(b) and (c) - following receipt of an inspection point notice:

- (a) notify the City of Sydney and TfNSW of the date and time on which it will inspect the relevant works;
- (b) inspect the progress of the relevant Works to verify whether they have been undertaken in accordance with the City of Sydney codes and standards; and
- (c) provide to the City of Sydney and TfNSW a written copy of its findings within 5 days of the inspection;

**A.2.4.5** Clause 20.5(c)(iv) and (v) – if the City of Sydney issues an objection to the handover of relevant permanent City of Sydney assets as per the proposed handover notice:

- (a) determine whether the objections are valid matters which prevent completion of the permanent City of Sydney assets in accordance with the City of Sydney Third Party Agreement; and
- (b) once TfNSW has rectified those matters, issue a certification to that effect;

**A.2.4.6** Clause 20.5(e)(ii) – if the City of Sydney identifies what it considers to be any defects in the permanent City of Sydney assets during the defects liability period:

- (a) determine whether the City of Sydney has identified defects which require rectification by TfNSW in accordance with the City of Sydney Third Party Agreement; and
- (b) notify the City of Sydney and TfNSW of the defects that must be rectified by TfNSW;

**A.2.4.7** Clause 21.2(a) - no earlier than 45 business days before a City of Sydney contribution payment date, issue a certification that:

- (a) work:
  - (i) is continuing generally in accordance with the indicative project program; or
  - (ii) is complete; or
  - (iii) is not continuing generally in accordance with the indicative project program; or
  - (iv) is temporarily not continuing; or
  - (v) will no longer proceed; and
- (b) the fundamental obligations (in relation to both the design documentation and the works in the local government area administered by the City of Sydney) are:
  - (i) being satisfied or, in relation to the Fundamental Obligations numbered 6, 7 and 8 in Schedule 4 of the City of Sydney Third Party Agreement, being materially satisfied; or
  - (ii) not being satisfied or, in relation to the fundamental obligations numbered 6, 7 and 8 in Schedule 4 of the City of Sydney Third Party Agreement, not being materially satisfied;

**A.2.4.8** Clause 21.2(b) - on completion of the works, issue a certification certifying whether the fundamental obligations:

- (a) have been satisfied or, in relation to the fundamental obligations numbered 6, 7 and 8 in Schedule 4 of the City of Sydney Third Party Agreement, have been materially satisfied; or
- (b) have not been satisfied or, in relation to the fundamental obligations numbered 6, 7 and 8 in Schedule 4 of the City of Sydney Third Party Agreement, have not been materially satisfied;

**A.2.4.9** Clause 21.2(c) - if, at any time before the City of Sydney pays the final City of Sydney contribution payment, the independent certifier becomes aware that work on the project is temporarily not continuing or will no longer proceed, promptly issue a certification to that effect;

**A.2.4.10** Clause 21.4(a)(i) – issue a certification that the project has recommenced;

**A.2.4.11** Clause 21.4(b)(i) – issue a certification that the fundamental obligations are now being satisfied or materially satisfied (as applicable);

**A.2.4.12** Clause 21.7(a) – if it issued a certification under clause 21.2(b) of the City of Sydney Third Party Agreement on completion of the works that the fundamental obligations have not been satisfied or, in relation to the fundamental obligations numbered 6, 7 and 8 in Schedule 4 of the City of Sydney Third Party Agreement, have not been materially satisfied, once rectification works have occurred, certify, within 12 months of the date of the independent certifier's initial certification (time is of the essence), that the fundamental obligations have now been satisfied or materially satisfied (as applicable);

**A.2.4.13** Clause 21.7(e) – may issue a certification that:

- (a) the works are nearing completion;
- (b) only residual works outside of the local government area administered by the City of Sydney remain to be completed; and
- (c) the residual works are programmed for completion, and reasonably anticipated by the independent certifier to be completed, within 12 months of the date of the independent certifier's certification;

**A.2.4.14** Clause 21.8 – calculate the total value of all permanent City of Sydney assets handed over to the City of Sydney in accordance with clause 20.5 of the City of Sydney Third Party Agreement, for the purpose of calculating any refund under clause 21 of the City of Sydney Third Party Agreement; and

**A.2.4.15** Schedule 7, clause 1.6.10 – determine whether tactile ground surface indicators are required to comply with law.

**A.2.5 Centennial Park and Moore Park Trust Third Party Agreement**

This section A.2.5 refers to clauses under the Centennial Park and Moore Park Trust Third Party Agreement.

**A.2.5.1** Clause 2.4(a)(iii) - supply information to the Trust as soon as is practicable in the circumstances if in carrying out its functions it receives information that would reasonably be considered relevant to TfNSW's obligations under the Centennial Park and Moore Park Trust Third Party Agreement and TfNSW has not already provided the Trust with a copy of that information;

**A.2.5.2** Clause 2.4(a)(v) - issue a copy of all its notices, certifications or determinations under the Centennial Park and Moore Park Trust Third Party Agreement to both the Trust and TfNSW;

**A.2.5.3** Clause 7.3(b), (c) and (d) - in relation to disputes:

- (a) initiate such enquiries and investigations as it considers necessary or desirable in order to resolve disputes;
- (b) determine whether the dispute is of a technical nature which it can determine;
- (c) schedule a time for the parties to present their respective positions on a dispute, and inform the parties of this time. The presentation may be by written submissions, evidence and/or oral presentation to the independent certifier, with the other party to be invited to be present at any oral presentation and be provided with a copy of any written submissions or evidence at the same time it is provided to the independent certifier. The presentation must be no later than 10 business days after the independent certifier's appointment, and unless otherwise agreed by the parties, the independent certifier may ignore any submission or response made after that time;
- (d) may request further information from either party, in writing and within the time period required for the response;
- (e) must:
  - (i) send a copy of the request for further information and the response referred to in clause 7.3(d) of the Centennial Park and Moore Park Trust Third Party Agreement to the other party and give them a reasonable opportunity to comment;
  - (ii) determine the dispute in accordance with the parties' rights and obligations under the Centennial Park and Moore Park Trust Third Party Agreement;
  - (iii) make a determination or finding in respect of the dispute within 20 business days after the presentation referred to in clause 7.3(b)(iii) of the Centennial Park and Moore Park Trust Third Party Agreement and include reasons;
  - (iv) act as an expert and not an arbitrator;
  - (v) have no interest or duty which conflicts with its role as an independent expert; and
  - (vi) keep confidential all materials and information made available to it in respect of the dispute;



- (f) determine disputes regarding notification of defects in utilities if the parties cannot resolve them;

**A.2.5.4** Clause 13.3(b) – if the trust issues an objection to the handover of relevant permanent trust assets as per the proposed handover notice, make a determination within 10 business days either agreeing or disagreeing with the Trust objections;

**A.2.5.5** Clause 13.3(c) - if the trust fails to issue a notice to TfNSW accepting handover of the relevant permanent Trust assets as described in the proposed handover notice on the hand over date proposed in the handover notice, make a determination within 10 business days either agreeing or disagreeing whether completion of the permanent Trust assets has been achieved;

**A.2.5.6** Clause 13.3(e) – issue a written certification confirming the independent certifier's disagreement with the Trust's objections or confirming completion of the permanent Trust assets, within 10 business days of making a determination;

**A.2.5.7** Clause 13.4(b)(ii) – if the trust identifies what it considers to be any defects in the permanent trust assets during the defects liability period:

- (a) determine whether the trust has identified defects which require rectification by TfNSW in accordance with the Centennial Park and Moore Park Trust Third Party Agreement; and
- (b) notify the trust and TfNSW of the defects that must be rectified by TfNSW;

### **A.2.6 Randwick City Council Third Party Agreement**

This section A.2.6 refers to clauses under the Randwick City Council Third Party Agreement.

**A.2.6.1** Clause 5.4(c) – supply information to the Randwick City Council as soon as is practicable in the circumstances if in carrying out its functions it receives information that would reasonably be considered relevant to TfNSW's obligations under the Randwick City Council Third Party Agreement and TfNSW has not already provided the Randwick City Council with a copy of that information;

**A.2.6.2** Clause 5.4(e) – issue a copy of all its certifications or determinations under the Randwick City Council Third Party Agreement to both the Randwick City Council and TfNSW;

**A.2.6.3** Clause 11.3(b), (c) and (d) – in relation to disputes:

- (a) initiate such enquiries and investigations as it considers necessary or desirable in order to resolve a dispute;
- (b) determine whether the dispute is of a technical nature which it can determine;
- (c) schedule a time for the parties to present their respective positions on a dispute, and inform the parties of this time. The presentation must be no later than 10 business days after the independent certifier's appointment, and unless otherwise agreed by the parties, the independent certifier may ignore any submission or response made after that time;
- (d) may request further information from either party, in writing and within the time period required for the response; and
- (e) must:
  - (i) send a copy of the response referred to in clause 11.3(c) of the Randwick City Council Third Party Agreement to the other party and give them a reasonable opportunity to comment;
  - (ii) make a determination or finding in respect of the dispute within 20 business days after the presentation referred to in paragraph 11.3(b)(iii) of the Randwick City Council Third Party Agreement and include reasons;
  - (iii) act as an expert and not an arbitrator;
  - (iv) have no interest or duty which conflicts with its role as an independent expert; and
  - (v) keep confidential all materials and information made available to it in respect of the dispute;

**A.2.6.4** Clause 20.2(b) and (c) - following receipt of an inspection point notice:

- (a) notify the Randwick City Council and TfNSW of the date and time on which it will inspect the relevant works;
- (b) inspect the progress of the relevant Works to verify whether they have been undertaken in accordance with the Urban Design Guidelines; and

- (c) provide to the Randwick City Council and TfNSW a written copy of its findings within 5 business days of the inspection;

**A.2.6.5** Clause 20.5(c)(ii) and (iii) – if the Randwick City Council issues an objection to the handover of relevant permanent Randwick City Council assets as per the proposed handover notice:

- (a) determine whether the objections are valid matters which prevent completion of the permanent Randwick City Council assets in accordance with the Randwick City Council Third Party Agreement; and
- (b) once TfNSW has rectified those matters, issue a certification to that effect; and

**A.2.6.6** Clause 20.5(e)(ii) – if the Randwick City Council identifies what it considers to be any defects in the permanent Randwick City Council assets during the defects liability period:

- (a) determine whether the Randwick City Council has identified defects which require rectification by TfNSW in accordance with the Randwick City Council Third Party Agreement; and
- (b) notify the Randwick City Council and TfNSW of the defects that must be rectified by TfNSW.

#### **A.2.7 University of New South Wales Third Party Agreement**

As at the date of this deed this Third Party Agreement has not been finalised.

#### **A.2.8 Australian Turf Club Third Party Agreement**

As at the date of this deed this Third Party Agreement has not been finalised.

#### **A.2.9 Airport Motorway Limited Third Party Agreement**

This section A.2.9 refers to clauses under the Airport Motorway Limited Third Party Agreement referred to in Schedule B3 (*Requirements of Third Parties*) to be entered into by TfNSW, Airport Motorway Limited and Airport Motorway Custodians Pty Limited as trustee of the Airport Motorway Trust (**AML**), Roads and Maritime Services (**RMS**) and the Minister for Roads and Freight for and on behalf of the State of New South Wales.

**A.2.9.1** Clause 3(d) - act independently of AML, RMS and TfNSW and any of their respective contractors;

**A.2.9.2** Clause 3(e) - receive any information and documents provided by AML, RMS and TfNSW to allow the Independent Certifier:

- (a) to perform the Independent Certifier's services under this deed;
- (b) to attend any meetings in connection with the Project Activities;
- (c) access to any site upon which the Project Activities are carried out; and

*Schedule 4 – Initial Certification and Monitoring Plan*

- (d) to inspect any records of AML, RMS and TfNSW which the Independent Certifier considers are required for the performance of the Independent Certifier's services under this deed;

**A.2.9.3** Clause 5.2(b)(ii) – receive from TNSW comments on the Construction Plan and/or the Traffic Management and Safety Plan provided by AML;

**A.2.9.4** Clause 5.2(b)(iii) – certify the Construction Plan and/or the Traffic Management and Safety Plan by providing to AML, RMS and OpCo a certificate as set out in the deed poll at Schedule 7;

**A.2.9.5** Clause 5.2(b)(iv) – take into account any comments provided by AML in the certification of the Construction Plan and/or the Traffic Management and Safety Plan;

**A.2.9.6** Clause 5.3(a) – verify the Design Documentation;

**A.2.9.7** Schedule 3, clause 8(b)(i) – receive notices in cases of a detection of any exceedence of the levels specified in the Monitoring Regime;

**A.2.9.8** Schedule 3, clause 8(b)(ii) – receive results of the Monitoring Regime in the case of routine reporting under the Monitoring Regime within the time frames specified in the Monitoring Regimes from time to time;

**A.2.9.9** Schedule 4, clause 4 – receive each pre-construction condition survey report from TfNSW;

**A.2.9.10** Schedule 4, clause 4 – receive each post-construction condition survey report from TfNSW;

**A.2.9.11** Schedule 10, clause (b)(ii) – receive from TfNSW comments on Design Documentation provided by AML;

**A.2.9.12** Schedule 10, clause (b)(iii) – certify the Design Documentation by providing to AML, RMS and OpCo a certificate as set out in the deed poll at Schedule 7, at the same time as the relevant Design Stage 3 certificates are issued under the Project Deed;

**A.2.9.13** Schedule 10, clause (b)(iv) – take into account any comments provided by AML in the certification of the Design Documentation;

**A.2.9.14** Schedule 10, clause (e)(ii) – certify the Design Documentation by issuing the certificate as set out in the deed poll at Schedule 7 at the same time as the relevant Design Stage 3 certificates are issued under the Project Deed;

**A.2.9.15** Schedule 11, clause (b) – receive notices from TfNSW when TfNSW considers that a discrete part of the Works is complete; and

**A.2.9.16** Schedule 11, clause (c) – determine whether the discrete part of the Works has been completed in accordance with the AML Third Party Agreement and within 5 Business Days of the date of the inspection:

- (a) if the discrete part is complete, execute and provide a certificate to TfNSW, AML and RMS as set out in the deed poll at Schedule 7, stating the date on which TfNSW has completed the discrete part of the Works in accordance with the AML Third Party Agreement; or

- (b) if the discrete part is not complete, notify TfNSW, AML and RMS in writing of the items which remain to be completed (after which the procedure in clauses (b) and (c) of Schedule 11 to the AML third Party Agreement will reapply).

**Schedule 5 - Requirements for Certification and Monitoring Plan**

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

- (a) the detailed schedule of functions, obligations, duties and services which the Relevant Project Agreements contemplate will be discharged by the Independent Certifier;
- (b) the detailed functions, obligations, duties and services which will be discharged by the Environmental Representative;
- (c) the management team structures, positions, nominated personnel and subcontractors to be engaged on and off the Construction Site and the roles and tasks of the nominated personnel and subcontractors;
- (d) the minimum skill, expertise and experience levels of each position and details of personnel resource levels;
- (e) the Independent Certifier's internal and external lines of authority, communication and reporting, including those with the Other Parties;
- (f) the identification of delegated authorities of the Independent Certifier's personnel, including identification of personnel with delegated authority to execute certificates on behalf of the Independent Certifier;
- (g) all compliance records to be maintained;
- (h) the proposed timing of progressive performance of discrete elements of the Services including the timing for conducting reviews, audits of Project Plans and other aspects of OpCo's Activities;
- (i) Hold Points and Witness Point requirements, in the form of a schedule, including the identification of all Witness Points and Hold Points required by the Independent Certifier;
- (j) the Independent Certifier's comprehensive plans for:
  - (i) continual observation, monitoring, auditing, reviewing, assessment and testing of OpCo's Activities;
  - (ii) without limiting sub-paragraph (i), observation, monitoring, auditing, reviewing, assessment and testing of the quality and durability of the SLR Works to determine, verify and ensure OpCo's compliance with the requirements of the Project Deed;
  - (iii) audit and surveillance, including identification of resources, methodology, scope, levels of surveillance, inspection, testing and survey; and
  - (iv) off-site surveillance of critical activities.
- (k) the Independent Certifier's strategies, processes, methodologies and procedures for:
  - (i) reviewing the Delivery Program and the specified Project Plans;

*Schedule 5 – Requirements for Certification and Monitoring Plan*

- (ii) addressing environmental monitoring and protection;
  - (iii) audit, surveillance and monitoring of OpCo's design and construction activities, including the processes used for determining the levels and scope of surveillance of activities;
  - (iv) identifying and managing the Services to be subcontracted, including quality, reporting and communication aspects of the Services;
  - (v) ensuring that OpCo has addressed all issues of review, comment and consultation with TfNSW in respect of the Design Documentation, the specified Project Plans and OpCo's Activities; and
  - (vi) risk management of the work covered by sub-paragraphs (ii), (iii) and (iv) above;
- (l) the Independent Certifier's strategies, systems, procedures, processes, methodologies and reporting protocols to be applied whereby each of the following requirements will be achieved and satisfied:
- (i) certification of the Design Documentation;
  - (ii) certification of the specified Project Plans;
  - (iii) certification of the construction of the SLR Works including constructability and durability issues;
  - (iv) certification of the requirements for First Passenger Service;
  - (v) certification of Completion of the CSELR;
  - (vi) certification of the rectification by OpCo of non-conformances and Defects (if required);
  - (vii) certification of Final Completion; and
  - (viii) determination of any matters required by the Relevant Project Agreements;
- (m) the Independent Certifier's proposed standards including:
- (i) committed surveillance activities; and
  - (ii) committed surveillance resources; and
- (n) the basis of the initial Certification and Monitoring Plan in terms of the assumptions relating to OpCo's Activities including:
- (i) number of design lots developed; and
  - (ii) program durations.

**Schedule 6 - Subcontractors**

<b>Name of subcontractor</b>	<b>Part of the Services</b>
Hyder Consulting	Design review and construction support
Interfleet	Design review and construction support



**Schedule 7 - Deed Poll (AML Third Party Agreement)**



Sydney Light Rail  
Interface and Access Deed  
Independent Certifier Deed Poll

APP Corporation Pty Ltd  
ABN 29 003 764 770

[year]

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**THIS DEED** is made on [year]

**BY:**

- (1) **APP Corporation Pty Ltd** ABN 29 003 764 770 of Level 7, 116 Miller Street, North Sydney, NSW, 2060 (**Independent Certifier**).

**FOR THE BENEFIT OF:**

- (2) **Airport Motorway Limited** ABN 26 057 283 093 and **Airport Motorway Custodians Pty Limited as trustee of the Airport Motorway Trust** ABN 55 078 953 607 of Level 3, 505 Little Collins Street, Melbourne Victoria 3000 (**Asset Owner**).
- (3) **Roads and Maritime Services** ABN 76 236 371 088 of of 101 Miller Street, North Sydney, New South Wales, 2060 (**Landowner**).
- (4) **Transport for NSW** (ABN 18 804 239 602) a New South Wales Government agency constituted under section 3C of the *Transport Administration Act 1988* (NSW) of Level 5, Tower A, Zenith Centre 821 Pacific Highway, Chatswood NSW 2067 (**Interface Party**).
- (5) **The Hon. Duncan Gay MLC, Minister for Roads and Freight for and on behalf of the State of New South Wales** (**Minister**).

**RECITALS:**

- (A) The Interface Party, the Asset Owner and the Landowner are parties to the Interface and Access Deed.
- (B) The Interface Party and ALTRAC Light Rail Partnership (**Contractor**) have entered into the Project Deed.
- (C) In accordance with the Project Deed, the Interface Party and the Contractor have appointed the Independent Certifier under the Deed of Appointment of Independent Certifier.
- (D) The Independent Certifier executes this document in accordance with clause 3.1(b) of the Deed of Appointment of Independent Certifier.

**THE INDEPENDENT CERTIFIER DECLARES AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this deed:

**ALR Trust 1** means the "ALTRAC Light Rail Trust 1" established under the trust deed dated 8 December 2014 and executed by the ALR Trustee 1.

**ALR Trust 2** means the "ALTRAC Light Rail Trust 2" established under the trust deed dated 8 December 2014 and executed by the ALR Trustee 2.

**ALR Trust 3** means the "ALTRAC Light Rail Trust 3" established under the trust deed dated 8 December 2014 and executed by the ALR Trustee 3.

**ALR Trustee 1** means ALTRAC Light Rail 1 Pty Limited ACN 603 192 203.

**ALR Trustee 2** means ALTRAC Light Rail 2 Pty Limited ACN 603 194 476.

**ALR Trustee 3** means ALTRAC Light Rail 3 Pty Limited ACN 603 190 601.

**ALTRAC Light Rail Partnership**, a partnership between ALTRAC Light Rail 1 Pty Limited ACN 603 192 203 in its capacity as trustee of ALTRAC Light Rail Trust 1, ALTRAC Light Rail 2 Pty Limited ACN 603 194 476 in its capacity as trustee of ALTRAC Light Rail Trust 2 and ALTRAC Light Rail 3 Pty Limited ACN 603 190 601 in its capacity as trustee of ALTRAC Light Rail Trust 3.

**Business Day** means a day that is not a Saturday, Sunday or any other day that is a public holiday or a bank holiday in Sydney, and excludes 27 to 31 December (inclusive).

**Certification and Monitoring Plan** means the plan that the Independent Certifier is required to prepare in accordance with clause 3.7 of the Deed of Appointment of Independent Certifier, and in respect of which TfNSW has not issued a notice to the Independent Certifier under clause 3.7(b)(ii) of the Deed of Appointment of Independent Certifier, as that plan is updated from time to time in accordance with clause 3.8 of the Deed of Appointment of Independent Certifier.

**Deed of Appointment of Independent Certifier** appears as exhibit 1 to the Interface and Access Deed.

**Interface and Access Deed** means the deed entitled Sydney Light Rail Interface and Access Deed – Eastern Distributor dated [insert] between the Interface Party, the Asset Owner, the Landowner and the Minister.

**Land** has the meaning given in the Interface and Access Deed.

**Planned Occupancy Period** has the meaning given in the Interface and Access Deed.

**Project Deed** means the deed entitled Sydney Light Rail Project Deed dated [insert] between the Interface Party and the Contractor.

**Services** means the services identified in Schedule 1 to the Deed of Appointment of Independent Certifier referable to the Interface and Access Deed, including the services listed in Schedule A 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) **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;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;
- (d) a reference to a document (including this deed) is to that document as updated, varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word importing a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, annexure or attachment is a reference to party, clause, schedule, exhibit, annexure or attachment to or of this deed, and a reference to this deed includes all schedules, exhibits, annexures and attachments to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **includes** in any form is not a word of limitation; and
- (j) a reference to \$ or **dollar** is to Australian currency.

### 1.3 **No bias against drafting party**

Each provision of this deed will be interpreted without disadvantage to the party who (or whose representative) drafted that provision.

### 1.4 **Business Day**

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

### 1.5 **Inconsistencies**

To the extent of any inconsistency between the terms of this deed and the Interface and Access Deed, the Interface and Access Deed will prevail over this deed.

## 2. **INDEPENDENT CERTIFIER'S COVENANT**

The Independent Certifier agrees to carry out the Services in accordance with the terms of, and otherwise comply with its obligations under the Deed of Appointment of Independent Certifier.

## 3. **INDEPENDENT CERTIFIER'S GENERAL REPRESENTATIONS AND WARRANTIES**

The Independent Certifier represents and warrants that:

- (a) it is a company duly incorporated and existing under law and has the power to execute, deliver and perform its obligations under this deed and that all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
- (b) the information provided by it in connection with this deed is true, accurate and complete in all material respects and not misleading in any material respect (including by omission);
- (c) its obligations under this deed are valid, legal and binding obligations enforceable against it in accordance with its terms, subject to equitable remedies and laws in respect of the enforcement of creditor's rights;
- (d) the execution, delivery and performance of this deed by it will not contravene any law to which it is subject or any deed or arrangement binding on it;
- (e) it does not (in any capacity) have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and
- (f) no litigation, arbitration, tax claim, dispute or administrative or other proceeding has been commenced or threatened against it which is likely to have a material adverse effect upon its ability to perform its obligations under this deed.

#### 4. FURTHER ACKNOWLEDGEMENTS AND WARRANTIES

The Independent Certifier:

- (a) acknowledges that each of the Asset Owner and the Landowner:
  - (i) is relying upon the skill, expertise and experience of the Independent Certifier in the performance of its obligations under this deed; and
  - (ii) may suffer loss if the Independent Certifier does not perform its obligations in accordance with the requirements of this deed;
- (b) warrants to the Asset Owner and the Landowner that, in performing the Services, it will comply with all law, act honestly, diligently, reasonably and with the degree of professional care, knowledge, skill, expertise, experience and care which would be reasonably expected of an expert professional providing services similar to the Services within the design and construction industries generally and the design and construction of major engineering works in particular;
- (c) warrants to the Asset Owner and the Landowner that, at all times, it will act within the time requirements for the performance of its obligations under the Deed of Appointment of Independent Certifier and within the times prescribed under the Interface and Access Deed (and, where no time is prescribed, within a reasonable time);
- (d) warrants to the Asset Owner and the Landowner that for the purposes of carrying out the Services it will obtain access to the Land during either Planned Occupancy Periods or other permitted shut downs of the Eastern Distributor Motorway as agreed with the Asset Owner;
- (e) without limiting clauses 4(a) and 3.3(b), acknowledges that the Asset Owner and the Landowner are entitled to and will rely on any certificate or other document

signed or given by the Independent Certifier under or pursuant to this deed or the Interface and Access Deed; and

- (f) warrants that in performing the Services it will act independently of the Interface Party and the Contractor.

## **5. CERTIFICATION AND MONITORING PLAN**

The Independent Certifier must provide to the Asset Owner and the Landowner a copy of the Certification and Monitoring Plan with which it must comply under the Deed of Appointment of Independent Certifier and a copy of any updates to the Certification and Monitoring Plan relevant to the Interface and Access Deed made under clause 3.8 of the Deed of Appointment of Independent Certifier.

The Certification and Monitoring Plan (including updates) must be provided within three days of provision of the plan to TfNSW under the Deed of Appointment of Independent Certifier.

## **6. PROGRESS REPORTS**

Throughout the term of the Deed of Appointment of Independent Certifier, the Independent Certifier must provide a monthly progress report to TfNSW, the Asset Owner and the Landowner by the fourteenth day of the following month and in such format as is required by TfNSW, containing, identifying or setting out:

- (a) a description of the Services undertaken during the reporting period;
- (b) a list or schedule of any design and construction surveillance, monitoring and audits undertaken by the Independent Certifier during the reporting period relevant to the Interface and Access Deed;
- (c) a summary of key risks and issues relating to the Services;
- (d) details of any Contractor non-conformances relevant to the Interface and Access Deed raised by the Independent Certifier or TfNSW and details on the verification of the rectification by Contractor of non-conformances;
- (e) details of any surveillance, monitoring and auditing relevant to the Interface and Access Deed proposed to be undertaken by the Independent Certifier in the forthcoming reporting period, including the outcomes of the risk management processes used to determine the levels and scope of the surveillance activities;
- (f) details of the current version of the Certification and Monitoring Plan and a summary of any amendments, updates and developments to the Certification and Monitoring Plan relevant to the Interface and Access Deed during the reporting period; and
- (g) a list of all potential non-compliances with the requirements of the Interface and Access Deed which TfNSW has raised with the Independent Certifier and which the Independent Certifier has determined are not non-compliances, accompanied by a written statement which explains the reason for the Independent Certifier's determination.

## **7. GOVERNING LAW AND JURISDICTION**

### **7.1 Governing law**

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

### **7.2 Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) 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 within inconvenient forum, if that venue falls within clause 7.2(a).

## **8. MISCELLANEOUS**

### **8.1 Further acts and documents**

The Independent Certifier must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to the Independent Certifier) required by law or reasonably requested by the Interface Party, the Asset Owner or the Landowner to give effect to this deed.

### **8.2 Amendments**

This deed may only be varied by a document signed by or on behalf of the Independent Certifier.

### **8.3 Expenses**

The Independent Certifier must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

### **8.4 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 unenforceability under the law of any other jurisdiction of that or any other provision of this deed.

### **8.5 No representation or reliance**

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



- (b) The Independent Certifier 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 party, except for representations or inducements expressly set out in this deed.

**SCHEDULE A TO DEED POLL (AML THIRD PARTY AGREEMENT)**

The Independent Certifier must discharge the functions, obligations, duties and services which the Interface and Access Deed contemplates will be discharged by the Independent Certifier. The Services include to:

- clause 3(d) - act independently of Asset Owner, Landowner and Interface Party and any of their respective contractors;
- clause 3(e) - receive any information and documents provided by the Asset Owner, Landowner and the Interface Party to allow the Independent Certifier:
  - (a) to perform the Independent Certifier's Services;
  - (b) to attend any meetings in connection with the Project Activities;
  - (c) access to any site upon which the Project Activities are carried out; and
  - (d) to inspect any records of Asset Owner, Landowner and Interface Party which the Independent Certifier considers are required for the performance of the Independent Certifier's Services;
- clause 5.2(b)(ii) – receive from the Interface Party comments on the Construction Plan and/or the Traffic Management and Safety Plan provided by the Asset Owner;
- clause 5.2(b)(iii) – certify the Construction Plan and/or the Traffic Management and Safety Plan by providing to the Asset Owner, Landowner and the Contractor a certificate as set out in Schedule D or Schedule E to this deed (as applicable);
- clause 5.2(b)(iv) – take into account any comments provided by Asset Owner in the certification of the Construction Plan and/or the Traffic Management and Safety Plan
- clause 5.3(a) – verify the Design Documentation;
- Schedule 3, clause 8(b)(i) – receive notices in cases of a detection of any exceedence of the levels specified in the Monitoring Regime;
- Schedule 3, clause 8(b)(ii) – receive results of the Monitoring Regime in the case of routine reporting under the Monitoring Regime within the time frames specified in the Monitoring Regimes from time to time;
- Schedule 4, clause 4 – receive each pre-construction condition survey report from the Interface Party;
- Schedule 4, clause 4 – receive each post-construction condition survey report from the Interface Party;
- Schedule 10, clause (b)(ii) – receive from the Interface Party comments on Design Documentation provided by the Asset Owner;
- Schedule 10, clause (b)(iii) – certify the Design Documentation by providing to the Asset Owner, Landowner and the Contractor a certificate as set out in Schedule C to this deed, at the same time as the relevant Design Stage 3 certificates are issued under the Project Deed;

*Schedule 7 – Deed Poll (AML Third Party Agreement)*

- Schedule 10, clause (b)(iv) - take into account any comments provided by Asset Owner in the certification of the Design Documentation;
- Schedule 10, clause (e)(ii) – certify the Design Documentation by issuing the certificate as set out in Schedule B to this deed at the same time as the relevant Design Stage 3 certificates are issued under the Project Deed;
- Schedule 11, clause (b) – receive notices from the Interface Party when the Interface Party considers that a discrete part of the Works is complete; and
- Schedule 11, clause (c) – determine whether the discrete part of the Works has been completed in accordance with the Interface and Access Deed and within 5 Business Days of the date of the inspection:
  - (i) if the discrete part is complete, execute and provide a certificate to Interface Party, Asset Owner and Landowner as set out in Schedule C to this deed, stating the date on which Interface Party has completed the discrete part of the Works in accordance with the Interface and Access Deed; or
  - (ii) if the discrete part is not complete, notify Interface Party, Asset Owner and Landowner in writing of the items which remain to be completed (after which the procedure in clauses (b) and (c) of Schedule 11 will reapply).

**SCHEDULE B TO DEED POLL (AML THIRD PARTY AGREEMENT)**

**INDEPENDENT CERTIFIER DESIGN CERTIFICATE**

To: Airport Motorway Limited and Airport Motorway Custodians Pty Limited as trustee of the Airport Motorway Trust (**Asset Owner**), Roads and Maritime Services (**Landowner**) and ALTRAC Light Rail Partnership (**OpCo**)

From: APP Corporation Pty Ltd (ABN 29 003 764 770) (**Independent Certifier**)

This certificate is given in accordance with the deed titled "Sydney Light Rail Interface and Access Deed - Eastern Distributor" dated *[insert]* between Transport for New South Wales, the Asset Owner, the Landowner and the Minister for Roads and Freight for and on behalf of the State of New South Wales (**Interface and Access Deed**). Words defined in the Interface and Access Deed have the same meaning in this certificate.

In accordance with the terms of clause 3 and schedule 10 of the Interface and Access Deed, the Independent Certifier certifies that the attached Design Documentation:

- (a) complies with all requirements of the Interface and Access Deed, except for the minor errors and omissions identified in the attached list; and
- (b) is appropriate for construction.

Signed for and on behalf of the Independent Certifier by:

Signature:	
Name:	
Position: (Independent Certifier's representative)	
Date:	

**Attachment - List of minor errors or omissions**

No.	Minor error or omission	Action to be taken by OpCo to address minor error or omission
1.	<i>[to be inserted]</i>	<i>[to be inserted]</i>

**SCHEDULE C TO DEED POLL (AML THIRD PARTY AGREEMENT)**

**INDEPENDENT CERTIFIER CERTIFICATE OF WORKS COMPLETION**

To: Airport Motorway Limited and Airport Motorway Custodians Pty Limited as trustee of the Airport Motorway Trust (**Asset Owner**), Roads and Maritime Services (**Landowner**) and ALTRAC Light Rail Partnership (**OpCo**)

From: APP Corporation Pty Ltd (ABN 29 003 764 770) (**Independent Certifier**)

This certificate is given in accordance with the deed titled "Sydney Light Rail Interface and Access Deed – Eastern Distributor" dated [*insert*] between Transport for New South Wales, the Asset Owner, the Landowner and the Minister for Roads and Freight for and on behalf of the State of New South Wales (**Interface and Access Deed**). Words defined in the Interface and Access Deed have the same meaning in this certificate.

For the purposes of this certificate, "minor defects" means defects which do not prevent the completed assets and the Asset from being used for their intended purpose or for which the rectification will not affect the safe and convenient use of the completed assets and the Asset.

In accordance with the terms of clause 3 and schedule 11 of the Interface and Access Deed, the Independent Certifier certifies in relation to the Works described below that:

- (a) OpCo has completed construction in accordance with the Design Documentation it was entitled to use for construction purposes under the Interface and Access Deed, subject to the minor defects identified in the attached list; and
- (b) the construction of the Works complies with the requirements of the Interface and Access Deed, subject to the minor defects identified in the attached list.

**Works**

[*insert description of relevant Works*]

Signed for and on behalf of the Independent Certifier by:

Signature:	
Name:	
Position: (Independent Certifier's representative)	
Date:	

**Attachment - List of minor defects**

No.	Minor defect	Action to be taken by OpCo to address minor defect
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*Schedule 7 – Deed Poll (AML Third Party Agreement)*

1.	[to be inserted]	[to be inserted]
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**SCHEDULE D TO DEED POLL (AML THIRD PARTY AGREEMENT)**  
**INDEPENDENT CERTIFIER CONSTRUCTION PLAN CERTIFICATE**

To: Airport Motorway Limited and Airport Motorway Custodians Pty Limited as trustee of the Airport Motorway Trust (**Asset Owner**), Roads and Maritime Services (**Landowner**) and ALTRAC Light Rail Partnership (**OpCo**)

From: APP Corporation Pty Ltd (ABN 29 003 764 770) (**Independent Certifier**)

This certificate is given in accordance with the deed titled "Sydney Light Rail Interface and Access Deed – Eastern Distributor" dated [*insert*] between Transport for New South Wales, the Asset Owner, the Landowner and the Minister for Roads and Freight for and on behalf of the State of New South Wales (**Interface and Access Deed**). Words defined in the Interface and Access Deed have the same meaning in this certificate.

In accordance with the terms of clause 5.2(b)(iii) of the Interface and Access Deed, the Independent Certifier certifies that the attached Construction Plan complies with all requirements of the Interface and Access Deed.

Signed for and on behalf of the Independent Certifier by:

Signature:	
Name:	
Position: (Independent Certifier's representative)	
Date:	

**SCHEDULE E TO DEED POLL (AML THIRD PARTY AGREEMENT)**

**INDEPENDENT CERTIFIER TRAFFIC MANAGEMENT AND SAFETY PLAN CERTIFICATE**

To: Airport Motorway Limited and Airport Motorway Custodians Pty Limited as trustee of the Airport Motorway Trust (**Asset Owner**), Roads and Maritime Services (**Landowner**) and ALTRAC Light Rail Partnership (**OpCo**)

From: APP Corporation Pty Ltd (ABN 29 003 764 770) (**Independent Certifier**)

This certificate is given in accordance with the deed titled "Sydney Light Rail Interface and Access Deed – Eastern Distributor" dated *[insert]* between Transport for New South Wales, the Asset Owner, the Landowner and the Minister for Roads and Freight for and on behalf of the State of New South Wales (**Interface and Access Deed**). Words defined in the Interface and Access Deed have the same meaning in this certificate.

In accordance with the terms of clause 5.2(b)(iii) of the Interface and Access Deed, the Independent Certifier certifies that the attached Traffic Management and Safety Plan complies with all requirements of the Interface and Access Deed.

Signed for and on behalf of the Independent Certifier by:

Signature:	
Name:	
Position: (Independent Certifier's representative)	
Date:	



**Executed** as a deed poll.

**EXECUTED** by **APP CORPORATION PTY LTD**  
**ABN 29 003 764 770** by or **IN THE**  
**PRESENCE OF:**

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full

**Schedule 8 – Deed Poll (Roads Act Approval)**



**Transport  
for NSW**

**Sydney Light Rail  
Roads Act Approval  
Independent Certifier Deed Poll**

**APP Corporation Pty Ltd**  
ABN 29 003 764 770

[year]

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**THIS DEED** is made on [year]

**BY:**

- (1) **APP Corporation Pty Ltd** ABN 29 003 764 770 of Level 7, 116 Miller Street, North Sydney, NSW, 2060 (**Independent Certifier**).

**FOR THE BENEFIT OF:**

- (2) **Roads and Maritime Services** ABN 76 236 371 088 of 101 Miller Street, North Sydney, NSW, 2060 (**RMS**).

**RECITALS:**

- (A) RMS has granted the Roads Act Approval in relation to the CBD and South East Light Rail.
- (B) TfNSW and ALTRAC Light Rail Partnership (**Contractor**) have entered into the Project Deed.
- (C) In accordance with the Project Deed, TfNSW and the Contractor have appointed the Independent Certifier under the Deed of Appointment of Independent Certifier.
- (D) The Independent Certifier executes this document in accordance with clause 3.1(b) of the Deed of Appointment of Independent Certifier.

**THE INDEPENDENT CERTIFIER DECLARES AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this deed:

**ALR Trust 1** means the "ALTRAC Light Rail Trust 1" established under the trust deed dated 8 December 2014 and executed by the ALR Trustee 1.

**ALR Trust 2** means the "ALTRAC Light Rail Trust 2" established under the trust deed dated 8 December 2014 and executed by the ALR Trustee 2.

**ALR Trust 3** means the "ALTRAC Light Rail Trust 3" established under the trust deed dated 8 December 2014 and executed by the ALR Trustee 3.

**ALR Trustee 1** means ALTRAC Light Rail 1 Pty Limited ACN 603 192 203.

**ALR Trustee 2** means ALTRAC Light Rail 2 Pty Limited ACN 603 194 476.

**ALR Trustee 3** means ALTRAC Light Rail 3 Pty Limited ACN 603 190 601.

**ALTRAC Light Rail Partnership**, a partnership between ALTRAC Light Rail 1 Pty Limited ACN 603 192 203 in its capacity as trustee of ALTRAC Light Rail Trust 1, ALTRAC Light Rail 2 Pty Limited ACN 603 194 476 in its capacity as trustee of ALTRAC Light Rail Trust 2 and ALTRAC Light Rail 3 Pty Limited ACN 603 190 601 in its capacity as trustee of ALTRAC Light Rail Trust 3.

**Business Day** means a day that is not a Saturday, Sunday or any other day that is a public holiday or a bank holiday in Sydney, and excludes 27 to 31 December (inclusive).

**Certification and Monitoring Plan** means the plan that the Independent Certifier is required to prepare in accordance with clause 3.7 of the Deed of Appointment of Independent Certifier, and in respect of which TfNSW has not issued a notice to the Independent Certifier under clause 3.7(b)(ii) of the Deed of Appointment of Independent Certifier, as that plan is updated from time to time in accordance with clause 3.8 of the Deed of Appointment of Independent Certifier.

**Deed of Appointment of Independent Certifier** appears as Schedule B to this deed.

**Project Deed** means the deed entitled Sydney Light Rail Project Deed dated [insert] between the Interface Party and the Contractor.

**Roads Act Approval** means the document titled "Roads Act Approval – CBD and South East Light Rail" to be granted by RMS substantially in the form of the document set out at Schedule 11 (*Roads Act Approval*) to the Project Deed.

**Services** means the services identified in Schedule 1 to the Deed of Appointment of Independent Certifier referable to the Roads Act Approval, including the services listed in Schedule A to this deed.

**TfNSW** means Transport for NSW (ABN 18 804 239 602), a New South Wales Government agency constituted under section 3C of the *Transport Administration Act 1988* (NSW).

## 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) **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;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;
- (d) a reference to a document (including this deed) is to that document as updated, varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word importing a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, annexure or attachment is a reference to party, clause, schedule, exhibit, annexure or attachment to or of this

deed, and a reference to this deed includes all schedules, exhibits, annexures and attachments to it;

- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **includes** in any form is not a word of limitation; and
- (j) a reference to **\$** or **dollar** is to Australian currency.

### 1.3 **No bias against drafting party**

Each provision of this deed will be interpreted without disadvantage to the party who (or whose representative) drafted that provision.

### 1.4 **Business Day**

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

### 1.5 **Inconsistencies**

To the extent of any inconsistency between the terms of this deed and the Roads Act Approval, the Roads Act Approval will prevail over this deed.

## 2. **INDEPENDENT CERTIFIER'S COVENANT**

The Independent Certifier agrees to carry out the Services in accordance with the terms of, and otherwise comply with its obligations under the Deed of Appointment of Independent Certifier.

## 3. **INDEPENDENT CERTIFIER'S GENERAL REPRESENTATIONS AND WARRANTIES**

The Independent Certifier represents and warrants that:

- (a) it is a company duly incorporated and existing under law and has the power to execute, deliver and perform its obligations under this deed and that all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
- (b) the information provided by it in connection with this deed is true, accurate and complete in all material respects and not misleading in any material respect (including by omission);
- (c) its obligations under this deed are valid, legal and binding obligations enforceable against it in accordance with its terms, subject to equitable remedies and laws in respect of the enforcement of creditor's rights;
- (d) the execution, delivery and performance of this deed by it will not contravene any law to which it is subject or any deed or arrangement binding on it;
- (e) it does not (in any capacity) have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and

- (f) no litigation, arbitration, tax claim, dispute or administrative or other proceeding has been commenced or threatened against it which is likely to have a material adverse effect upon its ability to perform its obligations under this deed.

#### **4. FURTHER ACKNOWLEDGEMENTS AND WARRANTIES**

The Independent Certifier:

- (a) acknowledges that RMS:
  - (i) is relying upon the skill, expertise and experience of the Independent Certifier in the performance of its obligations under this deed; and
  - (ii) may suffer loss if the Independent Certifier does not perform its obligations in accordance with the requirements of this deed;
- (b) warrants to RMS that, in performing the Services, it will comply with all law, act honestly, diligently, reasonably and with the degree of professional care, knowledge, skill, expertise, experience and care which would be reasonably expected of an expert professional providing services similar to the Services within the design and construction industries generally and the design and construction of major engineering works in particular;
- (c) warrants to RMS that, at all times, it will act within the time requirements for the performance of its obligations under the Deed of Appointment of Independent Certifier and within the times prescribed under the Roads Act Approval (and, where no time is prescribed, within a reasonable time);
- (d) without limiting clauses 4(a) and 3.3(b), acknowledges that RMS is entitled to and will rely on any certificate or other document signed or given by the Independent Certifier under or pursuant to this deed or the Roads Act Approval; and
- (e) warrants that in performing the Services it will act independently of TfNSW and the Contractor.

#### **5. CERTIFICATION AND MONITORING PLAN**

The Independent Certifier must provide to RMS a copy of the Certification and Monitoring Plan with which it must comply under the Deed of Appointment of Independent Certifier and a copy of any updates to the Certification and Monitoring Plan relevant to the Roads Act Approval made under clause 3.8 of the Deed of Appointment of Independent Certifier.

The Certification and Monitoring Plan (including updates) must be provided within three days of provision of the plan to TfNSW under the Deed of Appointment of Independent Certifier.

#### **6. PROGRESS REPORTS**

Throughout the term of the Deed of Appointment of Independent Certifier, the Independent Certifier must provide a monthly progress report to TfNSW and RMS by the fourteenth day of the following month and in such format as is required by TfNSW, containing, identifying or setting out:

- (a) a description of the Services undertaken during the reporting period;

- (b) a list or schedule of any design and construction surveillance, monitoring and audits undertaken by the Independent Certifier during the reporting period relevant to the Roads Act Approval;
- (c) a summary of key risks and issues relating to the Services;
- (d) details of any Contractor non-conformances relevant to the Roads Act Approval raised by the Independent Certifier, TfNSW or RMS and details on the verification of the rectification by Contractor of non-conformances;
- (e) details of any surveillance, monitoring and auditing relevant to the Roads Act Approval proposed to be undertaken by the Independent Certifier in the forthcoming reporting period, including the outcomes of the risk management processes used to determine the levels and scope of the surveillance activities;
- (f) details of the current version of the Certification and Monitoring Plan and a summary of any amendments, updates and developments to the Certification and Monitoring Plan relevant to the Roads Act Approval during the reporting period; and
- (g) a list of all potential non-compliances with the requirements of the Roads Act Approval which TfNSW or RMS has raised with the Independent Certifier and which the Independent Certifier has determined are not non-compliances, accompanied by a written statement which explains the reason for the Independent Certifier's determination.

## **7. GOVERNING LAW AND JURISDICTION**

### **7.1 Governing law**

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

### **7.2 Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) 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 within inconvenient forum, if that venue falls within clause 7.2(a).

## **8. MISCELLANEOUS**

### **8.1 Further acts and documents**

The Independent Certifier must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to the Independent Certifier) required by law or reasonably requested by TfNSW or RMS to give effect to this deed.



**8.2 Amendments**

This deed may only be varied by a document signed by or on behalf of the Independent Certifier.

**8.3 Expenses**

The Independent Certifier must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

**8.4 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 unenforceability under the law of any other jurisdiction of that or any other provision of this deed.

**8.5 No representation or reliance**

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

**SCHEDULE A TO DEED POLL (ROADS ACT APPROVAL)****SERVICES**

The Independent Certifier must discharge the functions, obligations, duties and services which the Roads Act Approval contemplates will be discharged by the Independent Certifier. The Services include to:

- Schedule 3, clause 7:
  - (a) provide independent review and certification of the relevant design documentation, design development and construction of the works under the Roads Act Approval;
  - (b) certify the achievement of completion under the Roads Act Approval;
  - (c) provide independent review and certification that the requirements of the conditions in Schedule 3 to the Roads Act Approval have been met including that the relevant works comply with all relevant codes and standards and that the quality of work and materials incorporated into the relevant works are in accordance with the design documentation and the project requirements set out in schedule 4 to the Roads Act Approval;
  - (d) independently audit that the project plans set out in clause 21 of the Roads Act Approval comply with the requirements of the conditions in Schedule 3 to the Roads Act Approval;
  - (e) issue the certificates (in the form agreed between TfNSW and RMS as set out in Schedule C to this deed) at the same time as the relevant Design Stage 3 certificates are issued under the Project Deed;
  - (f) make determinations on any matters that the conditions in Schedule 3 to the Roads Act Approval requires be determined by the Independent Certifier;
  - (g) perform any other functions identified in the Deed of Appointment of the Independent Certifier;
- Schedule 3, clause 11 – cooperate with and receive from TfNSW all information and documents and access to the site and other premises, necessary or reasonably required by the Independent Certifier, so as to enable the Independent Certifier to exercise its functions appropriately and perform its obligations under the Deed of Appointment of Independent Certifier;
- Schedule 3, clause 12 – endorse the relevant design documentation under the Roads Act Approval with a certificate in the form agreed by RMS and TfNSW as set out in Schedule C to this deed;
- Schedule 3, clause 17(a)(5) – if requested by RMS and facilitated by TfNSW, meet with RMS to discuss the relevant design documentation under the Roads Act Approval;
- Schedule 3, clause 17(e) – receive from TfNSW comments on the relevant design documentation by RMS and take such comments into account in its review of the relevant design documentation;
- Schedule 3, clause 24 – receive comments on the project plans provided by RMS from TfNSW and take such comments into account in its review of the project plans;

- Schedule 3, clause 34(f) – certify the Project Plans under the Roads Act Approval by providing a certificate in the form agreed by RMS and TfNSW as set out in Schedule F to this deed;
- Schedule 3, clause 37(a) and (b) – receive notices from TfNSW of:
  - (a) the anticipated completion of each discrete part of the relevant works under the Roads Act Approval; and
  - (b) the completion of each discrete part of the relevant works under the Roads Act Approval, including details of compliance with the testing and commissioning plan requirements (including all required test certificates and conformance data) under the Roads Act Approval;
- Schedule 3, clause 38 – inspect each discrete part of the relevant works under the Roads Act Approval jointly with RMS, receive any submissions from RMS about whether the discrete part of the relevant works is complete, and determine whether the discrete part is complete in accordance with the conditions in Schedule 3 to the Roads Act Approval requirements;
- Schedule 3, clause 39 – if it determines that the discrete part of the relevant works under the Roads Act Approval is not complete, issue a notice to TfNSW identifying the work to be done to achieve completion;
- Schedule 3, clause 40 – if it determines that the discrete part of the relevant works under the Roads Act Approval is complete, within 5 business days of the date of inspection with RMS under Schedule 3 clause 38 of the Roads Act Approval, execute and provide to RMS a certificate in the form agreed by RMS and TfNSW as set out in Schedule D to this deed;
- Schedule 4, clause 5.4 – provide certification to RMS stating that all findings / non-conformances of the road safety audits referred to in clauses 5.1 and 5.3 of Schedule 4 of the Roads Act Approval have been satisfactorily addressed and closed out (in the form agreed by RMS and TfNSW as set out in Schedule E to this deed).

**SCHEDULE B TO DEED POLL (ROADS ACT APPROVAL)**

**DEED OF APPOINTMENT OF INDEPENDENT CERTIFIER**

[insert]

**SCHEDULE C TO DEED POLL (ROADS ACT APPROVAL)**

**INDEPENDENT CERTIFIER DESIGN CERTIFICATE**

To: Roads and Maritime Services (**RMS**) and ALTRAC Light Rail Partnership (**OpCo**)

From: APP Corporation Pty Ltd (ABN 29 003 764 770) (**Independent Certifier**)

This certificate is given in accordance with the document titled "Roads Act Approval – CBD and South East Light Rail" dated *[to be inserted]* (**Roads Act Approval**). Words defined in the Roads Act Approval have the same meaning in this certificate.

In accordance with the terms of clauses 7, 12 and 19 of Schedule 3 to the Roads Act Approval, the Independent Certifier certifies that the attached Design Documentation:

- (a) complies with all requirements of the Roads Act Approval, except for the minor errors and omissions identified in the attached list; and
- (b) is appropriate for construction.

Signed for and on behalf of the Independent Certifier by:

Signature:	
Name:	
Position: (Independent Certifier's representative)	
Date:	

**Attachment - List of minor errors or omissions**

No.	Minor error or omission	Action to be taken by OpCo to address minor error or omission
1.	<i>[to be inserted]</i>	<i>[to be inserted]</i>

**SCHEDULE D TO DEED POLL (ROADS ACT APPROVAL)**

**INDEPENDENT CERTIFIER CERTIFICATE OF RELEVANT WORKS COMPLETION**

To: Roads and Maritime Services (**RMS**) and ALTRAC Light Rail Partnership (**OpCo**)

From: APP Corporation Pty Ltd (ABN 29 003 764 770) (**Independent Certifier**)

This certificate is given in accordance with the document titled "Roads Act Approval – CBD and South East Light Rail" dated *[to be inserted]* (**Roads Act Approval**). Words defined in the Roads Act Approval have the same meaning in this certificate.

In accordance with clause 40 of Schedule 3 to the Roads Act Approval the Independent Certifier certifies in relation to the Relevant Works (Completion) described below that:

- (a) OpCo has completed construction in accordance with the Design Documentation it was entitled to use for construction purposes under the Roads Act Approval, subject to the minor defects identified in the attached list; and
- (b) the construction complies with the requirements of the Roads Act Approval, subject to the minor defects identified in the attached list.

For the purposes of this certificate, "minor defects" means defects which do not prevent the Relevant Works (Completion) from being used for their intended purpose or for which the rectification will not affect the safe and convenient use of the Relevant Works (Completion).

**Relevant Works (Completion)**

*[insert description of Relevant Works (Completion)]*

Signed for and on behalf of the Independent Certifier by:

Signature:	
Name:	
Position: (Independent Certifier's representative)	
Date:	

**Attachment - List of minor defects**

No.	Minor defect	Action to be taken by OpCo to address minor defect
2.	<i>[to be inserted]</i>	<i>[to be inserted]</i>

**SCHEDULE E TO DEED POLL (ROADS ACT APPROVAL)**

**INDEPENDENT CERTIFIER CERTIFICATE – ROAD SAFETY AUDIT**

To: Roads and Maritime Services (**RMS**) and ALTRAC Light Rail Partnership (**OpCo**)

From: APP Corporation Pty Ltd (ABN 29 003 764 770) (**Independent Certifier**)

This certificate is given in accordance with the document titled "Roads Act Approval – CBD and South East Light Rail" dated [*to be inserted*] (**Roads Act Approval**). Words defined in the Roads Act Approval have the same meaning in this certificate.

In accordance with the terms of clause 5.4 of Schedule 4 to the Roads Act Approval, the Independent Certifier certifies that all findings / non-conformances identified in the attached Road Safety Audit have been satisfactorily addressed and closed out.

Signed for and on behalf of the Independent Certifier by:

Signature:	
Name:	
Position: (Independent Certifier's representative)	
Date:	

**SCHEDULE F TO DEED POLL (ROADS ACT APPROVAL)**  
**INDEPENDENT CERTIFIER CERTIFICATE – PROJECT PLANS**

To: Roads and Maritime Services (**RMS**) and ALTRAC Light Rail Partnership (**OpCo**)

From: APP Corporation Pty Ltd (ABN 29 003 764 770) (**Independent Certifier**)

This certificate is given in accordance with the document titled "Roads Act Approval – CBD and South East Light Rail" dated [*to be inserted*] (**Roads Act Approval**). Words defined in the Roads Act Approval have the same meaning in this certificate.

In accordance with the terms of clause 34(f) of Schedule 3 to the Roads Act Approval, the Independent Certifier certifies that the attached Project Plan/s described below comply with all requirements of the Roads Act Approval.

**Project Plan/s**

[*insert description of relevant Project Plans from clause 21 of Schedule 3 to the Roads Act Approval*]

Signed for and on behalf of the Independent Certifier by:

Signature:	
Name:	
Position: (Independent Certifier's representative)	
Date:	



**Executed** as a deed poll.

**EXECUTED** by **APP CORPORATION PTY LTD**  
**ABN 29 003 764 770** by or **IN THE**  
**PRESENCE OF:**

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full

**Schedule A16**

**PAFA Act Deed Poll of Guarantee**

(Clause 1.1)



# Sydney Light Rail PAFA Act Deed Poll of Guarantee

The Honourable Andrew Constance  
Treasurer for and on behalf of the Crown in right of the  
State of New South Wales

[year]

**THIS DEED POLL** is made the                      day of                      2014

In favour of:                      each **Beneficiary** (as defined in clause 1.1 below)

Given by:                      **The Honourable Andrew Constance, Treasurer** for and on behalf of the Crown in right of the State of New South Wales (the **State**)

**BACKGROUND:**

- (A) Pursuant to section 20(1) of the Act, upon the recommendation of the Minister for Transport and with the approval of the Treasurer, the Beneficiaries are to contract with TfNSW for the purpose of financing, designing, constructing, testing, commissioning, operating and maintaining the Sydney Light Rail upon the terms set out in the Guaranteed Documents.
- (B) The Beneficiaries and TfNSW have requested the State to give this Guarantee of the payment of the Guaranteed Money, pursuant to section 22B of the Act.
- (C) The State has agreed to give this Guarantee of the payment of the Guaranteed Money.
- (D) Pursuant to section 22F of the Act, the Treasurer has the authority to enter into and execute this Guarantee of the payment of the Guaranteed Money.

**THE PARTIES AGREE AS FOLLOWS:**

1. **INTERPRETATION**

1.1 **Definitions**

The defined terms in clause 1.1 (*Definitions*) of the Project Deed have the same meaning in this Guarantee unless a term is defined in this Guarantee, in which case the meaning given in this Guarantee will prevail.

In this Guarantee:

**Act** means the *Public Authorities (Financial Arrangements) Act 1987* (NSW).

**Beneficiaries** means OpCo and the Security Trustee and **Beneficiary** means either of them.

**Consolidated Fund** means the fund formed as referred to in section 39 of the *Constitution Act 1902* (NSW).

**Guarantee** means this Deed Poll of Guarantee.

**Guaranteed Documents** means the documents listed in Schedule 1 to this Guarantee.

**Guaranteed Money** means all money the payment of which from time to time forms part of the Guaranteed Obligations.

**Guaranteed Obligations** means the obligations of TfNSW to the Beneficiaries (or any of them) under the Guaranteed Documents and includes any liabilities or obligations which:

- (a) are liquidated or unliquidated;
- (b) are present, prospective or contingent;

- (c) are in existence before or come into existence after the date of this Guarantee; or
- (d) sound in damages only.

**Permitted Dealings** means:

- (a) any transfer, assignment, novation or other dealing with the rights, title, interest or obligations of a Beneficiary under the Guaranteed Documents and this Guarantee which is permitted under the terms of the Guaranteed Documents;
- (b) the granting by a Beneficiary of any mortgage, charge or encumbrance over its rights, title or interest under the Guaranteed Documents and this Guarantee; or
- (c) any transfer, assignment, novation or other dealing with the rights, title, interest or obligations of a Beneficiary under the Guaranteed Documents and this Guarantee pursuant to the terms of the Guaranteed Documents upon enforcement of any mortgage, charge or encumbrance referred to in paragraph (b).

**Project Deed** has the meaning given to that term in paragraph 1 of Schedule 1 to this Guarantee.

**Security Trust** means any security trust referred to in the Financiers Tripartite Deed as the trust of which the Security Trustee acts as trustee.

**Security Trustee** means the party to the Financiers Tripartite Deed designated as the "Security Trustee" from time to time.

**Term** means the period from the date the first Guaranteed Document comes into force and effect until the date seven months after the date upon which TfNSW has fully discharged the payment of all the Guaranteed Money (including any payment of termination payments and interest thereon) under the last of the Guaranteed Documents to remain in force.

**TfNSW** means Transport for NSW (ABN 18 804 239 602) a New South Wales Government agency constituted under section 3C of the *Transport Administration Act 1988* (NSW).

**Treasurer** means the Treasurer of the State of New South Wales.

## 1.2 **Rules for interpreting this Guarantee**

- (a) Except where the context otherwise requires, a reference in this Guarantee to:
  - (i) the singular number includes a reference to the plural number and vice versa;
  - (ii) any gender includes a reference to the other genders and each of them;
  - (iii) any **person** or **company** shall mean and include the legal personal representatives, successors in title and permitted assigns of such person or company as the circumstances may require;
  - (iv) a **company** includes a corporation and person and vice versa;
  - (v) TfNSW shall, in the event that any of it ceases to exist or is reconstituted, renamed or replaced or that its powers or functions or any of them are transferred to any other entity, refer respectively to any such entity, body or group established or constituted in lieu thereof or succeeding to similar powers or functions;

- (vi) **statutes, regulations, ordinances or by-laws** shall be deemed for all purposes to include a reference to any statutes, regulations, ordinances or by-laws amending, consolidating or replacing the same from time to time;
  - (vii) **month** shall be construed as a reference to a calendar month;
  - (viii) a **receiver** includes a receiver and manager and a liquidator includes a provisional liquidator and official manager; and
  - (ix) this Guarantee or a Guaranteed Document is a reference to this Guarantee or a Guaranteed Document, as applicable as amended, assigned, novated, supplemented, varied or replaced in accordance with their terms.
- (b) Where a word or phrase is given a defined meaning in this Guarantee, any other part of speech or other grammatical form in respect of such word or phrase shall, unless the context otherwise requires, have a corresponding meaning.
  - (c) This Guarantee (including Schedule 1) constitutes the entire agreement between the parties and supersedes all prior agreements and understandings in respect of the subject matter of this Guarantee.
  - (d) The illegality of any provision of this Guarantee shall not affect the validity or enforceability of any other provision.
  - (e) The headings and index used in this Guarantee are for convenience only and shall not affect the interpretation of this Guarantee.

### 1.3 **Business Days**

- (a) A **business day** means a day which is not a Saturday, Sunday or public holiday in the State of New South Wales.
- (b) Where any time limit pursuant to this Guarantee falls on a day which is not a business day then the time limit shall be deemed to expire on the next business day.

### 1.4 **Multiple Parties**

Where any covenant, condition, agreement, warranty or other provision of this Guarantee expressly or impliedly binds more than one person then it shall bind each such person severally and all such persons jointly.

## 2. **GUARANTEE**

### 2.1 **Guarantee**

- (a) Subject to and in accordance with the provisions of this Guarantee, the State hereby, in accordance with section 22B of the Act, unconditionally and irrevocably guarantees to each of the Beneficiaries the payment by TfNSW of the Guaranteed Money provided that there shall be no liability upon the State under this Guarantee with respect to TfNSW unless and until:
  - (i) there has been a failure on the part of TfNSW to fully and completely pay the Guaranteed Money when due;
  - (ii) any period of time allowed to TfNSW under the Guaranteed Documents to remedy its failure to pay the Guaranteed Money has expired; and

- (iii) the relevant Beneficiary has served written notice upon the State advising of such failure by TfNSW and requiring the State to satisfy its obligations under this Guarantee within 21 business days of receipt of such notice.
- (b) Subject to clause 2.1(a), this Guarantee shall be a continuing guarantee notwithstanding any settlement of account, intervening payment or other matter or thing whatsoever to the contrary and the State's liability as guarantor shall not be affected by anything which might otherwise have that effect at law or in equity.
- (c) Subject to clause 2.1(a), the State shall be and continue to be liable under this Guarantee in respect of the payment of the Guaranteed Money notwithstanding any discharge of TfNSW from the payment of any or all of the Guaranteed Money for whatever reason including, without limitation, the determination or novation of the Guaranteed Documents as a Permitted Dealing or the abolition of or other circumstance resulting in the cessation of TfNSW.
- (d) Any liability of the State under this Guarantee shall be discharged out of the Consolidated Fund.
- (e) This Guarantee is irrevocable and shall remain in force until expiration of the Term.
- (f) The Beneficiaries shall not, except pursuant to a Permitted Dealing, without the prior written consent of the State, assign or encumber the benefit of this Guarantee. The State acknowledges that:
  - (i) the Security Trustee holds the benefit of this Guarantee on trust for the Debt Financiers; and
  - (ii) OpCo has encumbered or assigned or will encumber or will assign by way of mortgage, charge or grant of a security interest under the *Personal Property Securities Act 2009* (Cth), its right, title and interest in and to the Guaranteed Documents and/or the Guarantee and that such dealing is a Permitted Dealing.
- (g) Nothing in this Guarantee shall be construed as a waiver by the State of any of the provisions of the Act and this Guarantee is to be read subject to the provisions of the Act.
- (h) The obligations of the State under this Guarantee are absolute, unconditional and irrevocable, and are not released, discharged or otherwise affected by anything which, but for this provision, might have that effect or might at law terminate or permit termination of this Guarantee or any of its provisions or excuse compliance with or performance of, or provide a defence to any proceedings to enforce, the State's obligations under this Guarantee.
- (i) This Guarantee is given pursuant to section 22B of the Act.

## 2.2 Independent Obligation

This Guarantee is independent of and unaffected by any other right or remedy which the Beneficiaries may hold at any time in respect of the payment of the Guaranteed Money.

## 2.3 Warranty

The State represents and warrants that:

- (a) the recommendation of the Minister for Transport and the approval of the Treasurer (as referred to in paragraph A of the Background) authorising TfNSW to enter into

a "joint financing arrangement" (as defined in the Act) on the terms set out in the Guaranteed Documents, have been issued and are in full force and effect;

- (b) it is authorised to issue this Guarantee under the Act and the execution, delivery and performance by it of this Guarantee and the transactions under this Guarantee do not and will not contravene any law, rule of equity, regulation or official directive; and
- (c) its obligations under this Guarantee are valid, binding and enforceable.

### 3. NOTICES

- (a) Any notice or demand to be given or made to or by the State or a Beneficiary must be in writing, delivered to the address or sent to the facsimile number of the recipient listed below or as notified by the parties from time to time.

#### State

Address: C/- NSW Treasury, GPO Box 5469, Sydney NSW 2001  
Facsimile: (02) 9228 5748  
Attention: Executive Director, Infrastructure & Structured Financing Unit

#### Beneficiaries

Notices to a Beneficiary may be posted or delivered to the address or sent to the facsimile number of the relevant Beneficiary as set out in the Notices provision of the Financiers Tripartite Deed or the Project Deed (as applicable) from time to time.

- (b) Any notice given under this clause 3 (*Notices*) shall be deemed to be given:
  - (i) if delivered, upon receipt;
  - (ii) if mailed, upon the date two business days after posting; and
  - (iii) if by facsimile, upon receipt by the sender of a confirmation from the intended recipient that the facsimile transmission was legibly received.

### 4. GENERAL

#### 4.1 Sovereign Immunity

Subject only to the provisions of the *Crown Proceedings Act 1988* (NSW), the State waives to the fullest extent permitted by the laws of the State of New South Wales any right to immunity from set-off, legal proceedings, attachment prior to judgment or any other attachment or execution of judgment or process on the grounds of sovereignty of itself and its property in respect of its obligations under this Guarantee.

#### 4.2 Exercise of Rights

A Beneficiary may exercise its rights, powers and remedies at its discretion and separately or concurrently with any right, power or remedy. A single or partial exercise of a right, power or remedy by a Beneficiary does not prevent further exercise of that right or of any other right, power or remedy and failure by a Beneficiary to exercise or delay in exercising a right, power or remedy does not prevent its exercise.



**4.3 Waiver**

A provision or a right created under this Guarantee may not be waived except by instrument in writing signed by the party granting the waiver.

**4.4 Governing Law**

This Guarantee is to be governed and interpreted by reference to the laws of the State of New South Wales and the State and any of the Beneficiaries which makes a claim on the State pursuant to this Guarantee irrevocably submits to the exclusive jurisdiction of the Courts of the State of New South Wales and Courts having jurisdiction in appeals therefrom.

**4.5 Variation of Arrangements**

- (a) No variation to or amendment of any term of this Guarantee may be made except by instrument in writing signed by the State.
- (b) This Guarantee cannot be varied, amended, replaced, restated, novated, revoked or terminated without the prior written consent of the Beneficiaries. Any such purported action without that prior written consent will be of no effect.

**4.6 Enforcement Costs**

The State agrees to reimburse each Beneficiary for any reasonable costs or expenses reasonably incurred by it in connection with the enforcement of its rights under this Guarantee.

**4.7 Deed Poll**

This Guarantee:

- (a) is a deed poll entered into and made by the State in favour of and for the benefit of; and
- (b) may be relied on and is enforceable by,

each Beneficiary from time to time even though the entity that is the Beneficiary is not party to this Guarantee or may not be in existence at the time of execution and delivery of this Guarantee. Without limiting the operation of this clause, the State acknowledges that without prejudice to any rights of TfNSW under the Guaranteed Documents:

- (c) the Security Trustee acts as trustee of the Security Trust and holds its rights under this Guarantee for the benefit of the Debt Financiers from time to time;
- (d) the Security Trustee may be replaced from time to time and this Guarantee continues for the benefit of any replacement Security Trustee; and
- (e) the State's liability to the Security Trustee is not affected by change in the Security Trustee or Debt Financiers from time to time.

## **SCHEDULE 1**

### **Guaranteed Documents**

The following documents, as amended from time to time, form the basis of the joint financing arrangement for the Sydney Light Rail Project:

1. Sydney Light Rail Project Deed between TfNSW and OpCo dated on or before the date of this Guarantee (**Project Deed**).
2. Financiers Tripartite Deed (as defined in the Project Deed).
3. Equity Purchase Deed (as defined in the Project Deed).
4. Receivables Purchase Deed (as defined in the Project Deed).
5. Payment Directions Deed (as defined in the Project Deed).
6. Such other documents as are approved in writing from time to time by the Treasurer.

**EXECUTED** as a Deed Poll.

**SIGNED, SEALED and DELIVERED** by  
**THE HONOURABLE Andrew**  
**Constance, Treasurer for and on**  
**behalf of the Crown in right of the**  
**State of New South Wales**, in the  
presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of Treasurer

\_\_\_\_\_  
Name of witness in full

**Andrew Constance**  
\_\_\_\_\_  
Name of Treasurer

**Schedule A17**  
**TfNSW Deed of Charge**

(Clause 1.1)



# Sydney Light Rail Deed of Charge - OpCo

Transport for NSW  
ABN 18 804 239 602

and

ALTRAC Light Rail Partnership

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**THIS DEED** is made on 2014

**BETWEEN:**

- (1) **Transport for NSW** (ABN 18 804 239 602) a New South Wales Government agency constituted under section 3C of the *Transport Administration Act 1988* (NSW) of Level 5, Tower A, Zenith Centre 821 Pacific Highway, Chatswood NSW 2067 (the **Chargee**); and
- (2) **ALTRAC Light Rail Partnership**, a partnership between ALTRAC Light Rail 1 Pty Limited ACN 603 192 203 in its capacity as trustee of the ALR Trust 1, ALTRAC Light Rail 2 Pty Limited ACN 603 194 476 in its capacity as trustee of the ALR Trust 2 and ALTRAC Light Rail 3 Pty Limited ACN 603 190 601 in its capacity as trustee of the ALR Trust 3 of c/- Capella Capital, Level 31, AMP Centre, 50 Bridge Street, Sydney, NSW (the **Chargor**).

**RECITALS:**

- (A) The Chargor and the Chargee are parties to the Project Deed.
- (B) The Chargor enters into this charge to secure performance of its obligations under the Project Deed.

**THE PARTIES AGREE AS FOLLOWS:**

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

**Bill** has the meaning given to "bill of exchange" in the *Bills of Exchange Act 1909* (Cth), but does not include a cheque or payment order and any reference to the drawing, acceptance, endorsement or other dealing of or with a Bill, refers to a drawing, acceptance, endorsement or other dealing within the meaning of that Act.

**Charged Debts** means all debts whether actual or contingent at any time owing to the Chargor together with all books or documents of account or records evidencing or recording such debts, including:

- (a) any accounts that arise from the Chargor granting a right, or providing services, in the ordinary course of its business whether or not the Chargor is the person to whom the right is granted or the services are provided;
- (b) any accounts that are proceeds of inventory; and
- (c) any other accounts (as defined in the PPSA).

**Charged Property** means all present and after acquired property, interests, rights and proceeds in respect of which the Chargor had at any time sufficient rights to grant a Security Interest or charge, including the Chargor's interest in all its assets, undertakings and rights anywhere (real and personal, and present and future) or any part of them and its uncalled capital and its called but unpaid capital for the time being.

**Controller** has the meaning given in section 9 of the *Corporations Act 2001* (Cth).

**Deal** means sell, convey, assign, transfer, lease, licence or otherwise dispose or part with possession of, make any bailment over, grant any option over or create or permit to exist any other interest in any part of the Charged Property.

**Debt Proceeds** means the proceeds of realisation of the Charged Debts.

**Delegate** means any agent, attorney or other delegate appointed under this charge by the Chargee or by any receiver or receiver and manager appointed under this charge.

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person and includes any Security Interest.

**Excluded Tax** means a Tax on net income in any jurisdiction, other than:

- (a) a Tax that is calculated on or by reference to the gross amount of any payment derived by a party under this charge or the transactions that this charge contemplates (unless the Tax is imposed because the party has not given its tax file number to the person who made the payment); or
- (b) a Tax that is imposed because a party is regarded as being subject to tax in a jurisdiction solely because it is a party to this charge or because it is participating in the transactions that this charge contemplates.

**Financial Liability** of a person means any liability or indebtedness (whether present or future, actual or contingent) of that person for or in respect of:

- (a) money borrowed or raised and debit balances at banks or financial institutions;
- (b) any indemnity obligation in respect of any guarantee, indemnity, bond or letter of credit or similar instrument issued by a bank or financial institution;
- (c) any guarantee, indemnity, letter of credit or similar assurance in respect of financial loss given in connection with any Financial Liability (as referred to in any other paragraph of this definition) of another person;
- (d) amounts raised under or in connection with any Bill acceptance, endorsement or discounting arrangement;
- (e) amounts raised under or in connection with any bond, debenture, note, loan stock or similar instruments;
- (f) any swap, hedge, cap, collar, ceiling or floor arrangement, futures contract, forward exchange or forward purchase contract or option contract, in each case, in respect of any currency, interest rate or commodity or any similar transaction; or
- (g) amounts raised under any transaction or series of transactions having the commercial effect of a borrowing or raising of money.

**Guarantee** means a guarantee, indemnity, letter of credit, performance bond, acceptance or endorsement, or other undertaking or obligation:

- (a) to provide funds (including by the purchase of property), or otherwise to make property available in, or to enable payment or discharge of;
- (b) to indemnify against the consequences of default in the payment of; or

(c) otherwise to be responsible for,

an obligation (whether or not it involves the payment of money) or otherwise to be responsible for the solvency or financial condition of any other person.

**Insolvency Provision** means any law relating to insolvency, sequestration, liquidation, winding up or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or of preferences and any law under which a liquidator or trustee may set aside or avoid transactions) and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

**Obligations** means each of the Chargor's obligations to the Chargee under the Project Deed and any other Project Agreement.

**Permitted Encumbrance** means:

- (a) an Encumbrance created under a Project Agreement;
- (b) a lien that arises by operation of law in the ordinary course of ordinary business, where the amount secured is not overdue or is being diligently contested in good faith;
- (c) each Debt Financiers' Security; or
- (d) any other Encumbrance to which the Chargee has given its prior written consent, but only to the extent it secures a Financial Liability in amounts to which the Chargee has given its consent.

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

**Power** means any right, power, authority, discretion, remedy or privilege conferred on the Chargee, any Receiver or any Delegate, in any case, under this charge, any Project Agreement or by law.

**Project Deed** means the deed entitled "Sydney Light Rail Project Deed" dated on or about the date of this charge between the Chargee and the Chargor.

**Receiver** means a receiver or receiver and manager appointed by the Chargee under this charge and, if more than one, then each of them and also any employee, contractor or Delegate of any receiver or receiver and manager.

**Related Body Corporate** has the meaning given in section 9 of the *Corporations Act 2001* (Cth).

**Secured Money** means all amounts (including damages) that are payable, owing but not payable, or that otherwise remain unpaid by the Chargor to the Chargee on any account at any time under or in connection with the Project Agreements or any transaction contemplated by them, whether:

- (a) present or future, actual or contingent;
- (b) incurred alone, jointly, severally or jointly and severally;
- (c) the Chargor is liable on its own account or the account of, or as surety for, another person and without regard to the capacity in which the Chargor is liable;
- (d) due to the Chargee alone or with another person;

- (e) the Chargee is entitled for its own account or the account of another person;
- (f) originally contemplated by the Chargor or the Chargee or not; and
- (g) the Chargee is the original person in whose favour the undertakings in this charge or the Project Deed were given or an assignee and, if the Chargee is an assignee:
  - (i) whether or not the Chargor consented to or knew of the assignment;
  - (ii) no matter when the assignment occurred; and
  - (iii) whether or not the entitlements of that original person were assigned with the charge.

## 1.2 Definitions in Project Deed

Subject to clauses 1.1 (*Definitions*), 1.3(b) and 1.3(c), terms used in this charge that are defined in the Project Deed have the same meanings in this charge.

## 1.3 Interpretation

The parties agree to be bound by clause 1.4 (*Interpretation*) of the Project Deed as if set out in its entirety in this clause 1.3 (*Interpretation*), except that for the purposes of this charge:

- (a) all references in clause 1.4 (*Interpretation*) of the Project Deed to "this deed" or "the Project Deed" shall be read as references to "this charge";
- (b) a reference to "proceeds" includes, where the context permits, any proceeds as that term is defined in the PPSA; and
- (c) each of the terms "ADI", "ADI account", "advance", "future advance", "purchase money security interest", "chattel paper", "financing statement", "financing change statement" and "verification statement" have the meanings given to them in the PPSA.

## 1.4 Exclusion of proportionate liability scheme

To the extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this charge howsoever such rights, obligations or liabilities are sought to be enforced.

## 1.5 Financiers Tripartite Deed

Despite any other provision of this charge, the Chargee's rights under this charge are subject to the Financiers Tripartite Deed.

## 2. CHARGE

### 2.1 The charge

- (a) By this charge the Chargor charges the Charged Property to the Chargee to secure the satisfaction of the Obligations and the payment of the Secured Money.
- (b) This charge constitutes a Security Interest which attaches to the Charged Property at the times prescribed by the PPSA.

- (c) The Chargor grants this charge in respect of the Charged Property which it owns or will own as beneficial owner.

## 2.2 **Priority**

This charge will operate as a first ranking security, except as otherwise provided in the Financiers Tripartite Deed.

## 2.3 **Nature of Charge over Non PPSA Property**

- (a) Subject to clause 2.3(b), to the extent that this charge relates to property:
  - (i) which is not personal property as defined in the PPSA; or
  - (ii) to which the PPSA does not apply,it will operate as a fixed rather than a floating charge in respect of such property.
- (b) To the extent that any of the property referred to in clause 2.3(a) consists of:
  - (i) Charged Debts;
  - (ii) Debt Proceeds;
  - (iii) property acquired for disposal in the ordinary course of the Chargor's ordinary business; or
  - (iv) inventory,the charge will operate as a floating charge in respect of that property until this charge becomes enforceable under clause 6 (*Enforcement*).

## 3. **REPRESENTATIONS AND WARRANTIES**

### 3.1 **General representations and warranties**

The Chargor represents and warrants to the Chargee that:

- (a) **(Good right to charge)** it has good right to charge the Charged Property in the manner provided in this charge and the Charged Property is free of all Encumbrances other than Permitted Encumbrances;
- (b) **(Legally binding obligation)** this charge constitutes its valid and legally binding obligation and is enforceable against it in accordance with its terms, subject to any necessary stamping and registration requirements and laws affecting creditors' rights generally;
- (c) **(Execution, delivery and performance)** the execution, delivery and performance of this charge and each transaction contemplated by this charge does not violate or breach any law or any document or agreement to which it is a party or which is binding on it or any of its assets;
- (d) **(Approvals)** all Approvals required to be obtained by it in connection with the execution, delivery and performance of this charge, the transactions contemplated by this charge and the legality, validity and enforcement of this charge have been obtained and are valid and subsisting and it is not aware of any breach of any of the conditions of any of those Approvals or aware of any fact or circumstance which may cause any of those Approvals to be suspended, forfeited, cancelled or rendered void; and

- (e) **(Information for financing statement)** the Chargee has received from the Chargor all information needed by the Chargee to complete the financing statement (or financing change statement, if necessary) for this charge and that the information is true and correct in all respects.

### 3.2 **Representations and warranties repeated**

Each representation and warranty in this clause 3 (*Representation and warranties*) will be repeated on each day that there is any Secured Money or Obligation on the basis of the facts and circumstances as at that date.

### 3.3 **Reliance on representations and warranties**

The Chargor acknowledges that the Chargee has executed this charge and agreed to take part in the transactions that this charge contemplates in reliance on the representations and warranties that are made or repeated in this clause 3 (*Representation and warranties*).

### 3.4 **No representations by the Chargee**

The Chargor acknowledges that it has not relied and will not rely on any representation, statement or promise made by or on behalf of the Chargee in deciding to enter into this charge or to exercise any right under it.

## 4. **GENERAL UNDERTAKINGS**

### 4.1 **Satisfaction of Obligations**

The Chargor will satisfy, or procure the satisfaction of, the Obligations and will pay the Secured Money in the manner provided in this charge or in any other Project Agreement.

### 4.2 **General undertakings**

- (a) **(Maintain status)** The Chargor will maintain its status as a general partnership.
- (b) **(Comply with laws)** The Chargor will comply with all laws applicable to it, including by paying when due, all Taxes for which it or its property is assessed or liable (except to the extent that these are being diligently contested in good faith and by appropriate proceedings and it has made adequate reserves for them).
- (c) **(No administrator)** The Chargor will not appoint an administrator without first giving notice to the Chargee.
- (d) **(Stamping)** The Chargor will ensure that this charge is stamped for the proper amount in each state and territory of Australia in which this charge is required to be stamped.
- (e) **(Financial Liabilities)** The Chargor will not incur any Financial Liabilities other than as permitted under any Debt Financing Document.
- (f) **(Restriction on guarantees)** The Chargor will not enter into any bond, guarantee or indemnity in favour of any person other than:
  - (i) under the Debt Financing Documents; or
  - (ii) as permitted under clause 4.2(e).
- (g) **(Charge not prohibited)** The Chargor will use best endeavours to ensure that:

- (i) the Debt Financing Documents;
- (ii) the Core Contracts and each Significant Contract;
- (iii) each contract entered into by the Chargor after the date of this charge; and
- (iv) each contract to which the Chargor is party as at the date of this charge and which is renewed or substantially renegotiated after the date of this charge,

does not prohibit the Chargor from charging or mortgaging its rights under or in respect of that contract by means of this charge.

- (h) **(Change of business)** The Chargor will not make or threaten to make any material change in the nature of its business as conducted at the date of this charge.
- (i) **(Arm's length terms)** The Chargor will not enter into any transaction with any person otherwise than on arm's length terms and for full commercial value or as permitted under any Debt Financing Document.

#### 4.3 **Chargee assumes no obligations**

The Chargee will not be deemed by virtue of this charge to have assumed any obligation of the Chargor under any law or Approval.

### 5. **ADDITIONAL UNDERTAKINGS CONCERNING THE CHARGED PROPERTY**

#### 5.1 **Restrictions in relation to the Charged Property**

- (a) Subject to clause 5.1(b), the Chargor will not, without the Chargee's prior written consent or as expressly permitted in this charge or any other Project Agreement:
  - (i) **(No Encumbrances)** create, purport or attempt to create or permit to exist any Encumbrance, however ranking, over the Charged Property other than a Permitted Encumbrance;
  - (ii) **(No Dealing)** Deal with any part of the Charged Property (other than granting, creating or permitting to exist a Permitted Encumbrance);
  - (iii) **(Not to prejudice)** do, fail to do or consent to any act, omission or thing as a result of which the Charged Property becomes or could become liable to surrender, forfeiture or cancellation, or becomes or could become prejudiced in any manner, or the value of this charge as an Encumbrance to the Chargee becomes or could become materially lessened; or
  - (iv) **(Take any steps)** take any steps towards doing any of these things.
- (b) Notwithstanding clause 5.1(a), prior to this charge becoming enforceable under clause 6.1(a), the Chargor may Deal with (but not grant any Encumbrance other than a Permitted Encumbrance over) any part of the Charged Property which is a circulating asset as defined in section 340(1)(a) of the PPSA in the ordinary course of its business.

#### 5.2 **Protection of Charged Property**

At the request of the Chargee, the Chargor will take or defend all legal proceedings that the Chargee considers necessary or desirable for the preservation, protection or recovery of the Charged Property.

### 5.3 Dealing with Proceeds

- (a) At the request of the Chargee, which request may be made at any time after the charge has become enforceable under clause 6.1(a), the Chargor will (provided it is able to do so under the Debt Financing Documents):
  - (i) open and maintain an ADI account or ADI accounts with the Chargee or an ADI approved by the Chargee; and
  - (ii) deposit all Debt Proceeds into that ADI account, but no other money.
- (b) The Chargor acknowledges that if, at the time a request is made in accordance with clause 5.3(a), the Charged Debts and the Debt Proceeds represent circulating assets (as defined in section 340(1) of the PPSA), the Chargor's ability to Deal with that property under clause 5.1(b) will cease.
- (c) The Chargee may issue a direction to the Chargor in respect of the ADI account or ADI accounts opened as required in accordance with clause 5.3(a) and the deposited money:
  - (i) requiring that a representative of the Chargee (as determined by the Chargee) will be the signatory of the ADI account or ADI accounts and will be able to direct withdrawals from such ADI accounts without further consent from the Chargor; and
  - (ii) prohibiting the Chargor from requesting or making any withdrawal or other dealing with that money or stipulating the manner in which that money may be dealt with.
- (d) Until a request under clause 5.3(a) is made or a direction is given by the Chargee under clause 5.3(c), the Chargor will be free to withdraw and apply that money in the ordinary course of its ordinary business.

### 5.4 Security Interests and PMSIs

The Chargor will:

- (a) **(Security Interests: policies and practices)** implement policies and practices and take all steps necessary to ensure that all Security Interests which it holds are attached, enforceable and continuously perfected under the PPSA until the obligations they secure are satisfied or they are released for value; and
- (b) **(PMSIs)** as and when required by the Chargee, provide the Chargee with written details of any property in which it has rights that is, or is capable of being, subject to a purchase money security interest in favour of any third party and the amount secured.

## 6. ENFORCEMENT

### 6.1 Circumstances when this charge may be enforced

- (a) This charge will immediately become enforceable (whether or not the Secured Money has become payable) if an OpCo Termination Event occurs or, subject to clause 9.4(b) of the Financiers Tripartite Deed, for the purpose of allowing the Chargee to exercise its Step In Rights under clause 42 (*Step-In*) of the Project Deed.



- (b) Upon this charge becoming enforceable, any right of the Chargor to Deal with the Charged Property (other than through a Receiver appointed under this charge) will immediately cease.

## 6.2 Enforcement despite earlier performance

This charge may be enforced:

- (a) even if the Chargee accepts a payment or performance after any default; and
- (b) without the need for any notice to, or of any consent or agreement of, the Chargor or any other person.

## 7. RECEIVERS: APPOINTMENT AND POWERS

### 7.1 Appointment of Receiver

- (a) If this charge has become enforceable (whether or not the Chargee has entered into possession of all or any of the Charged Property), the Chargee or any authorised representative of the Chargee may:
  - (i) appoint any person or any two or more persons jointly, or jointly and severally to be a receiver or receiver and manager (or an additional receiver or receiver and manager) of the Charged Property;
  - (ii) remove a Receiver and in the case of the removal, retirement or death of any Receiver, appoint another as a replacement Receiver; and
  - (iii) fix the remuneration of the Receiver.
- (b) Subject to clause 7.1(c) and 7.2 (*Receiver other than as Chargor's agent*), every Receiver appointed under this clause 7.1 (*Appointment of Receiver*) will be the Chargor's agent and the Chargor alone will be responsible for its acts, defaults and remuneration.
- (c) The Chargee may, by notice to the Chargor and the Receiver, require the Receiver to act as the Chargee's agent.

### 7.2 Receiver other than as Chargor's agent

The power to appoint a Receiver under this clause 7 (*Receivers: Appointment and powers*) may be exercised even though:

- (a) at the time when this charge becomes enforceable or when an appointment is made, an order may have been made or a resolution may have been passed to wind up the Chargor; or
- (b) a Receiver appointed in the circumstances specified in clause 7.2(a) may not, or may not in some respects, act as the Chargor's agent.

### 7.3 Powers of Receiver

Without the need for any consent from the Chargor or any other person, each Receiver will have all of the powers specified in section 420 of the Corporations Act, and in addition to those and any other rights, powers or discretions under this charge, will have the following powers:

- (a) **(Take Possession)** to take possession or control of, make use of, collect and get in Charged Property and for that purpose to take proceedings (in the name of the Chargor or otherwise);
- (b) **(Dispose)** whether or not in possession, to give of the Charged Property or to dispose of the Charged Property in such manner and on such terms as the Receiver thinks fit;
- (c) **(Exercise Chargee's rights)** to exercise all or any of the Chargee's Powers;
- (d) **(Chargor's undertakings)** to do everything necessary to perform any undertaking of the Chargor under this charge;
- (e) **(Comply with directions)** to comply with the directions given by the Chargee;
- (f) **(Convert to money)** to convert, liquidate and reduce the Charged Property into money;
- (g) **(Carry on business):** to:
  - (i) carry on and agree to carrying on the business of the Chargor in and with Charged Property and to stop doing so; and
  - (ii) effect all repairs, purchases and insurances, and generally to do everything that the Chargor might do in the ordinary conduct of its business to:
    - (A) protect or improve Charged Property; or
    - (B) obtain income or returns from Charged Property and to conduct the Chargor's business,without being responsible for any loss;
- (h) **(Borrow or raise money)** to borrow or raise from the Chargee or any other person any money which may be required for any purposes and, if the Receiver thinks fit, to secure any money borrowed or raised by the grant of any Encumbrance over the Charged Property (whether in the name of the Chargor or otherwise) so that the Encumbrance ranks in priority to, *pari passu* with or after this charge. The Chargee will not be bound to inquire as to the necessity or propriety of any financial liability nor be responsible for the misapplication or non-application of any money so borrowed or raised;
- (i) **(Hire out, Lease or Licence)** whether or not the Receiver has taken possession, to hire out, lease or licence the Charged Property in the name of the Chargor or otherwise, for any period and on any terms or to vary or terminate a lease or licence;
- (j) **(Sell)** to sell or agree to sell (whether or not the Receiver has taken possession), exchange or otherwise dispose of (absolutely or conditionally) Charged Property (or agree to do so):
  - (i) at any public auction, private sale or tender for cash or on credit;
  - (ii) in one lot or in parcels;
  - (iii) with or without special conditions (such as conditions as to title or time or method of payment of purchase money) including by allowing the purchase money to remain;

- (A) outstanding on the security of a mortgage over the property sold or over any other property; or
  - (B) owing without any security; and
- (iv) on other terms the Receiver considers desirable,  
without being responsible for any loss;
- (k) **(Transfer on sale)** to execute transfers and assignments of Charged Property (including in the name of the Chargor) and do everything to complete any sale under clause 7.3(j) that the Receiver thinks necessary;
  - (l) **(Receive money)** receive all moneys and other property payable or deliverable to the Chargor from Charged Property;
  - (m) **(Insure)** to insure Charged Property that is of an insurable nature against risk of destruction, loss or damage for the amounts and on the terms that the Receiver thinks appropriate;
  - (n) **(Collection)** to collect the Charged Debts;
  - (o) **(Give receipts)** to give receipts for all money and other property that may come into the hands of the Receiver in the exercise of any Power;
  - (p) **(Engage)** to engage consultants, contractors, professional advisors, agents and employees (including any person associated with a firm or company in which the Receiver is a member or in which the Receiver is interested and that person may charge for his or her services as if independently retained at a salary or remuneration determined by the Receiver), and the Receiver may act on any advice given by any person so engaged;
  - (q) **(Conduct works)** to repair, renew, replace, renovate or clean the Charged Property, to erect any new buildings or make any improvements to any land forming part of the Charged Property and to demolish, alter, rebuild or extend any existing buildings on the Charged Property;
  - (r) **(Sever fixtures)** to sever fixtures belonging to the Chargor and sell them apart from any other part of the Charged Property;
  - (s) **(Invest proceeds against contingencies)** if any of the Secured Money is contingent, to invest, deposit or hold the Charged Property in a form or mode of investment for the time being as the Receiver thinks fit, with like power to vary, transpose or re invest the investments or deposits from time to time until that part of the Secured Money ceases to be contingent;
  - (t) **(Enter into contracts)** to enter into any contract or arrangement with any person for any purpose connected with this charge or the Charged Property or in furtherance of any of the powers, rights or discretions under this charge, on such terms and conditions as the Receiver in its absolute discretion thinks fit, including granting or conferring options to, in favour of or exercisable by any person for the purpose of or in connection with the sale, purchase, leasing, hiring or other dealing with the Charged Property;
  - (u) **(Perform contracts)** to perform, observe, carry out, enforce specific performance of, exercise or refrain from exercising, the Chargor's rights and powers under, obtain the benefit of, and vary or rescind all contracts and rights forming part of the Charged Property or entered into in the exercise of any power;

- (v) **(Take proceedings)** to institute, conduct or defend any proceedings in law or bankruptcy and to submit to arbitration, mediation or conciliation, in the name of the Chargor or otherwise and on any terms, any proceeding, claim, question or dispute in connection with the Charged Property or otherwise;
- (w) **(Compromise)** to make any settlement, arrangement or compromise regarding any action, proceeding or dispute arising in connection with the Charged Property, to grant to any person involved, time or other indulgence and to execute all related releases or discharges as the Receiver thinks expedient in the interests of the Chargee;
- (x) **(Appeal)** to appeal against or to enforce any judgment or order in respect of the Charged Property;
- (y) **(Bankrupt debtors and wind up bodies corporate)** to make debtors bankrupt and to wind up bodies corporate and to do all things in connection with any bankruptcy or winding up which the Receiver thinks necessary for the recovery or protection of the Charged Property or for the security or other benefit of the Chargee;
- (z) **(Delegate)** with the Chargee's prior approval, to delegate to any person, for any time, any of its Powers including this power of delegation;
- (aa) **(File)** to file all certificates, registrations and other documents and to take any and all action on behalf of the Chargor which the Receiver believes is necessary to protect, preserve or improve any or all of the Charged Property and the rights of the Chargor and the Chargee in respect of any agreement for sale and to obtain for the Chargee all of the benefits of this charge and any other Project Agreement;
- (bb) **(Operate bank accounts)** to open or operate any bank account in the name of the Chargor (whether alone or jointly with any other person) to the exclusion of the Chargor and to deposit or withdraw any money standing to the credit of that account and to sign and endorse or to authorise others to sign and endorse in the name of the Chargor cheques, promissory notes, bills of exchange and other negotiable instruments;
- (cc) **(Desirable or incidental matters)** to:
  - (i) do or cause to be done everything that the Receiver thinks desirable in the interests of the Chargee; and
  - (ii) do anything incidental to the exercise of any other Power;
- (dd) **(Do all other things)** to do all things the law allows an owner of any interest in the Charged Property, or any Controller of the Charged Property, to do; and
- (ee) **(Do all things as are expedient)** to do all other acts and things without limitation as the Receiver thinks expedient,

and any further powers as the Chargee confers on a Receiver by notice in writing to that Receiver.

#### 7.4 Indemnity

The Chargee may give any indemnities to any Receiver concerning the performance of that Receiver's duties as are permitted by law. If the Chargee is obliged to pay any money under any indemnity, that money will become part of the Secured Money.

## 8. CHARGEES' POWERS

### 8.1 Chargee may exercise powers without notice

If this charge has become enforceable, the Chargee may without notice and whether or not a Receiver has been appointed:

- (a) exercise all or any of the powers conferred on a Receiver, or which would be conferred on a Receiver if appointed, as if those powers had been expressly conferred on the Chargee;
- (b) exercise all other powers exercisable under this charge, any Project Agreement or law; and
- (c) appoint an agent or agents (whether severally, jointly or jointly and severally) and delegate the powers (or any of them) to the agent or agents (in which case clause 7.1 (*Appointment of Receiver*) will apply as if the agent or agents were each appointed as a Receiver).

### 8.2 Act jointly

The Chargee and each Receiver may exercise any of the Powers in conjunction with the exercise of similar powers by the holder of any other Encumbrance over the Charged Property or by any receiver or receiver and manager appointed by that other holder and may enter into and give effect to agreements and arrangements with that other holder, receiver or receiver and manager as the Chargee or the relevant Receiver thinks fit.

### 8.3 Power of attorney

- (a) In consideration of the Chargee entering into the Project Agreements, the Chargor irrevocably appoints the Chargee, TfNSW's Representative and each Receiver, severally, as an attorney of the Chargor with power to:
  - (i) **(All acts necessary)** do anything necessary or desirable in the opinion of the Chargee or the attorney to:
    - (A) give full effect to this charge;
    - (B) better secure the Charged Property to the Chargee in a manner consistent with this charge; or
    - (C) assist in the execution or exercise of any Power,including execute any transfer (including any transfer in blank) or other document;
  - (ii) **(Recover Charged Property)** demand, sue for, recover and receive the Charged Property from any person, in the name of the Chargor or in the name of the Chargee, the relevant Receiver or any other attorney appointed under this clause 8.3 (*Power of attorney*);
  - (iii) **(Commence actions)** commence, carry on, enforce, settle, arrange and compromise any proceedings to obtain or enforce the payment or delivery of Charged Property;
  - (iv) **(Bankruptcy and winding up)** take any necessary proceedings to procure the bankruptcy or the winding up of any debtor of the Chargor in connection with the Charged Property, and attend and vote at meetings of creditors,

receive dividends in any bankruptcy or winding up or appoint a proxy for any of these things;

- (v) **(Compound debts)** compound, settle or compromise any debt of the Chargor in connection with the Charged Property;
- (vi) **(Execute deeds)** execute any deed of assignment, composition or release in connection with the Charged Property;
- (vii) **(Exercise rights)** exercise all and any powers, rights, discretions and remedies available under or in connection with the Charged Property (including rights available under the Corporations Act or any other statute);
- (viii) **(Step in)** without limiting the foregoing, exercise all or any powers, rights, discretions and remedies available under or in connection with the Project Agreements (including rights available upon exercise of the Step In Rights or the taking of any action under clause 42 (*Step-In*) of the Project Deed);
- (ix) **(Further action)** take further action and to execute further instruments which are, or are in the opinion of the Chargee, the relevant Receiver or any other attorney appointed under this clause 8.3 (*Power of attorney*), necessary or desirable to secure more satisfactorily the performance of the Obligations or the payment of the Secured Money or to sell or otherwise deal with the Charged Property; and
- (x) **(Appoint substitute)** appoint (and remove at will) at any time any person as a substitute for an attorney,

at the Chargor's cost, provided that such powers may be exercised where the Chargee is entitled to enforce this charge.

(b) The Chargor:

- (i) agrees that each attorney may exercise powers under this power of attorney notwithstanding that the exercise may or will involve or result in a conflict between the duty of that attorney to the Chargor and either the interests of that attorney or a Related Body Corporate of that attorney or another duty of that attorney; and
- (ii) ratifies and confirms now and for the future all actions undertaken by or on behalf of any attorney under this power of attorney, including any action which may or will involve or result in a conflict of the type referred to in clause 8.3(b)(i) or in respect of which that attorney has a personal interest.

For the purposes of this clause 8.3(b) a Related Body Corporate of any attorney is any Related Body Corporate of that attorney or, in the case of any attorney that is an individual, any person that is related to or has any personal or professional relationship, of any nature, with that attorney.

- (c) The Chargor declares that this power of attorney will continue in force until all actions taken under it have been completed, despite the discharge of this charge.
- (d) The Chargor will do anything requested by the Chargee, acting reasonably, to enable the Chargee to register this power of attorney in the manner and within any time limits prescribed by law to ensure the efficacy of this power of attorney.

#### 8.4 **Chargee may make good any default**

If the Chargor defaults in satisfying any of the Obligations, the Chargee may, without prejudice to any other Power, do all things and pay all money necessary or expedient in the opinion of the Chargee to make good or to attempt to make good that default to the satisfaction of the Chargee. The Chargor will take all steps which the Chargee, acting reasonably, requests to facilitate the exercise by the Chargee of its rights under this clause 8.4 (*Chargee may make good any default*). The Chargee will not be a mortgagee or chargee in possession simply as a result of the exercise of its rights under this clause 8.4 (*Chargee may make good any default*).

#### 8.5 **Workcare, WorkCover and worker's compensation**

The Chargee may from time to time debit and charge to the Chargor all costs, charges and expenses, legal or otherwise, including premiums for insurance and compensation and other money paid or payable by the Chargee or any Receiver appointed by the Chargee or any attorney of a Chargor appointed under any legislation relating to workcare, workCover and/or workers compensation.

#### 8.6 **Calls**

- (a) If this charge has become enforceable, the Chargor authorises the Chargee, each of the Chargee's authorised representatives and any Receiver to (and the directors of the Chargor may not):
  - (i) make calls on the members of the Chargor in relation to the Chargor's uncalled capital;
  - (ii) sue (in the name of the Chargor or otherwise) to recover money due in relation to calls; and
  - (iii) give valid receipts for that money.
- (b) This authority is not terminated by any change in the Chargor's directors and is assignable.

#### 8.7 **Notice for exercise of Powers**

- (a) The Powers may be exercised by the Chargee and any Receiver without any notice, demand or lapse of time being necessary unless required by a law which cannot be excluded.
- (b) Subject to clause 8.7(c), if required by any law which cannot be excluded, one day is fixed as the period for which:
  - (i) default must continue in the satisfaction of the whole or any part of the Obligations or in the payment of any part of the Secured Money before the Chargee may give any notice or demand as required by any law affecting the Powers; and
  - (ii) default in the satisfaction of the whole or any part of the Obligations or in the payment of any part of the Secured Money must continue after the giving of any notice or demand before any Power may be exercised.
- (c) If any law which cannot be excluded provides that a specific period of notice or lapse of time is mandatorily required before any Power may be exercised by the Chargee or any Receiver, that period of notice must be given or time must elapse before that Power may be exercised.

## 8.8 Exclusion of PPSA provisions

To the extent permitted by law, and in respect of each Security Interest created by this charge:

- (a) the parties contract out of sections 95, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA (to the extent, if any, mentioned in section 115(1) of the PPSA); and
- (b) the Chargor irrevocably and unconditionally waives its right to receive any notice of any verification statement in respect of any financing statement or financing change statement relating to this charge.

## 9. APPLICATION OF MONEY

### 9.1 Priority of payments

Subject to clause 9.3 (*Priority of payment*) of the Financiers Tripartite Deed, all money received by the Chargee or by any Receiver as a result of the exercise of the Powers and all other proceeds of enforcement under this charge will be applied in the following order:

- (a) **(Expenses)** first in payment of all costs, charges, expenses or disbursements that the Chargee or a Receiver incurs in or incidental to the exercise or attempted exercise of a power or otherwise in relation to any Project Agreement;
- (b) **(Outgoings)** then in payment of any other outgoings as any Receiver or the Chargee thinks it appropriate to pay;
- (c) **(Receiver)** then in payment to the Receiver of any remuneration (whether by way of commission or otherwise);
- (d) **(Indemnities)** then in payment to the Chargee or a Receiver of any amount necessary to give effect to any indemnity contained in this charge; and
- (e) **(Secured Money)** then in payment to the Chargee of the Secured Money.

Any surplus will belong to the Chargor or other persons entitled to it. The Chargee or Receiver may pay the surplus to the credit of a bank account in the name of the Chargor or other person entitled to it and will then be under no further liability in relation to it. The surplus will not accrue interest.

### 9.2 Money received

In applying any money towards satisfaction of the Secured Money in the manner contemplated by clause 9.1 (*Priority of payments*), the Chargor will be credited only with as much of the money available for that purpose as is actually received by the Chargee or any Receiver and is not required to be disgorged. Any credit will date from the time of receipt.

### 9.3 Application of money

The Chargee and each Receiver has an absolute discretion to apply any money received as a result of the exercise of any Power or which is the proceeds of enforcement of this charge (and which is to be applied in payment of the Secured Money) in reduction of any part or parts of the Secured Money, whenever and on whatever account it became secured, despite any principle or presumption of law to the contrary or any direction given at the time of receipt and without the need to communicate its election to any person.



#### 9.4 **Compensation**

Without limitation to this charge or the Financiers Tripartite Deed:

- (a) if any compensation becomes payable to the Chargee in respect of any or all of the Charged Property as a result of the exercise of any Power or which is the proceeds of enforcement of this charge, the Chargee may:
  - (i) apply the sum received on account of any compensation, at the Chargee's option, in or towards repayment of the Secured Money;
  - (ii) make, enforce, settle or compromise any claims relating to compensation; and
  - (iii) execute any necessary assurances and releases in the name of the Chargor and the Chargee; and
- (b) if any compensation payable to the Chargee in respect of any or all of the Charged Property comes into the hands of the Chargor before a final irrevocable discharge of this charge, the Chargor must immediately pay that amount to the Chargee.

#### 10. **DEFAULT INTEREST**

##### 10.1 **Chargor must pay interest**

The Chargor must pay interest on each amount that is not paid when due (unless the Chargor is already required to pay interest on the unpaid amount by the terms of an agreement between the Chargee and the Chargor) from the day after the date on which it falls due up to (and including) the day on which it is paid in full, at the Default Rate. This interest must be paid on demand.

##### 10.2 **Interest after judgment**

If a liability of the Chargor becomes merged in a judgment or order, the Chargor, as an independent obligation, must pay interest on the amount of that liability, from (and including) the date of the judgment or order until it is paid in full, at the higher of the rate that applies under the judgment or order and the rate calculated in accordance with clause 10.1 (*Chargor must pay interest*).

##### 10.3 **Accrual and calculation of interest**

Interest under this clause 10 (*Default interest*):

- (a) accrues daily; and
- (b) is calculated on the basis of the actual number of days on which interest has accrued and on a 365 day year.

#### 11. **LIABILITY AND RELEASE**

##### 11.1 **Continuing obligation**

This charge constitutes a continuing obligation regardless of any settlement of account, intervening payment, express or implied revocation or any other matter or thing.

##### 11.2 **Personal liability**

No grant of full or partial satisfaction of or discharge from this charge by the Chargee will, unless it expressly provides otherwise, release the Chargor from personal liability under

this charge or under any other Project Agreement until none of the Secured Money is owing (whether actually, contingently or prospectively) and it is not reasonably foreseeable that there could be any Secured Money owing in the future.

### 11.3 Settlement conditional

If:

- (a) (i) the Chargee has at any time released or discharged:
  - (A) the Chargor from its obligations under this charge; or
  - (B) any assets of the Chargor from this charge,in either case in reliance on a payment, receipt or other transaction to or in favour of the Chargee; or
- (ii) any payment, receipt or other transaction to or in favour of the Chargee has the effect of releasing or discharging:
  - (A) the Chargor from its obligations under this charge; or
  - (B) any assets of the Chargor from this charge; and
- (b) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under an Insolvency Provision or under any other law; and
- (c) that claim is upheld or is conceded or compromised by the Chargee, then:
  - (i) the Chargee will immediately become entitled against the Chargor to all rights as it had immediately before that release or discharge;
  - (ii) the Chargor must, to the extent permitted by law:
    - (A) immediately do all things and execute all documents as the Chargee, acting reasonably, may require to restore to the Chargee all those rights; and
    - (B) indemnify the Chargee against all Loss, damages, claims, demands and actions suffered or incurred by it in, or in connection with, any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

### 11.4 Limitations on Chargor's rights

Until the Secured Money has been irrevocably paid and discharged in full, the Chargor may not:

- (a) share in any Guarantee, Security Interest or money received or receivable by the Chargee in relation to the Secured Money or stand in the place of the Chargee in relation to any Guarantee, Security Interest or right to receive money;
- (b) in reduction of its liability under this charge, raise a defence, set off or counterclaim against the Chargee or claim a set off or make a counterclaim against the Chargee; or

- (c) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise, to the benefit of any document or agreement to which the Chargee is a party.

#### 11.5 **No marshalling**

The Chargee is not under any obligation to marshal or appropriate in favour of the Chargor or to exercise, apply, perfect or recover any Security Interest that the Chargee holds at any time or any funds or property that the Chargee may be entitled to receive or have a claim on.

#### 11.6 **Effect of Insolvency Event**

- (a) If an Insolvency Event has occurred in relation to the Chargor, any amount paid by the Chargor (**Relevant Payment**) will only be applied against any Secured Money if:
  - (i) the Chargee forms the opinion in good faith (which will be conclusively binding on the Chargor) that it will not be required to pay the Relevant Payment to any person under any law relating to bankruptcy, winding up or the protection of creditors; or
  - (ii) a final judgment is given by a court of competent jurisdiction in favour of the Chargee that it is not required to pay the Relevant Payment to any person under any law relating to bankruptcy, winding up or the protection of creditors.
- (b) If an amount is applied against any Secured Money and the Chargee forms the opinion in good faith that it is obliged to pay the Relevant Payment to any person under any law relating to bankruptcy, winding up or the protection of creditors:
  - (i) the Chargee's rights are to be reinstated and will be the same in relation to that amount as if the application, or the payment or transaction giving rise to it, had not been made; and
  - (ii) the Chargor must immediately do anything (including the signing of documents) required by the Chargee to restore to the Chargee any Guarantee or Security Interest to which it was entitled immediately before that application or the payment or transaction giving rise to it.
- (c) Any discharge or release between the Chargee and the Chargor is subject to reinstatement of the Chargee's rights under this clause 11.6 (*Effect of Insolvency Event*).

### 12. **INDEMNITY**

#### 12.1 **Indemnity for breach or preservation of rights**

The Chargor must indemnify the Chargee against, and must pay the Chargee on demand the amount of, all losses, liabilities, expenses and Taxes incurred in connection with the administration, and any actual or attempted preservation or enforcement of any rights under this charge.

#### 12.2 **Indemnity for exercise of rights or proceedings**

To the extent permitted by law, the Chargor must indemnify each of the Chargee, Receiver and Delegate against, and must pay each of them on demand the amount of all losses, liabilities, expenses and Taxes (other than Excluded Taxes) that they each incur:

- (a) directly or indirectly in the exercise or attempted exercise of any of the powers, rights, discretions or remedies (express or implied) vested in them under this charge or the Corporations Act; and
- (b) in connection with all proceedings, expenses, claims and demands in relation to anything done or omitted in any way relating to Charged Property,

including legal expenses on a full indemnity basis and expenses incurred in engaging consultants.

### 13. **PROTECTION OF CHARGE AND APPOINTEES**

#### 13.1 **Protection of Chargee and Receiver**

- (a) The Chargee is not obliged to:
  - (i) notify any debtor or member of the Chargor or any other person of this charge; or
  - (ii) enforce payment of any money payable to the Chargor, or take any step or proceeding for any similar purpose,but may do so.
- (b) None of the Chargee, the Receiver or a Delegate is liable for any omission or delay in exercising any power, right, discretion or remedy under this charge or for any involuntary loss or irregularity that may occur in relation to the exercise or non-exercise of any of them except to the extent of its own fraud, gross negligence or wilful misconduct.

#### 13.2 **Conflict of interests**

The Chargee, the Receiver and any Delegate appointed by the Chargee under this charge may exercise or agree to exercise a Power even though that person may have a conflict of interest or duty in exercising the Power. No contract will be void or voidable by virtue of that conflict of interest or duty, nor will the Chargee, Receiver or Delegate be liable to account to the Chargor or any other person for any money or property as a result of that conflict.

#### 13.3 **Liability for loss**

- (a) The Chargee, Receiver and any Delegate appointed by the Chargee under this charge are not liable for any loss that the Chargor suffers as a direct or indirect result of:
  - (i) the exercise or attempted exercise of, or failure to exercise, any of its rights contained in this charge; and
  - (ii) any release or dealing with any other Guarantee or Security Interest (including any prejudice to or loss of the Chargor's rights of subrogation),except to the extent of its own fraud, gross negligence or wilful misconduct.
- (b) If the Chargee, Receiver or any Delegate enters into possession of Charged Property, none of the Chargee, the Receiver or the Delegate is liable:
  - (i) to account as mortgagee in possession or for anything except actual receipts; or

- (ii) for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable,

except to the extent of its own fraud, gross negligence or wilful misconduct.

#### 13.4 **Waiver by Chargor**

The Chargor waives in favour of the Chargee:

- (a) all rights against the Chargee and any other person, estate or assets as far as is necessary to give effect to any provision of this charge;
- (b) promptness or diligence on the part of the Chargee, and any other requirement that the Chargee take any action or exhaust any right against any other person before enforcing this charge; and
- (c) all rights inconsistent with the provisions of this charge, including any rights of contribution or subrogation which a Chargor might otherwise be entitled to claim or enforce.

### 14. **PROTECTION OF THIRD PARTIES**

#### 14.1 **Dealings under this charge**

A purchaser or other party to a disposal or dealing in attempted exercise of a power contained in this charge is not:

- (a) bound to enquire:
  - (i) whether there has been a default;
  - (ii) whether a Receiver has been properly appointed;
  - (iii) whether any Secured Money is owing; or
  - (iv) about the propriety or regularity of a sale, disposal or dealing;
- (b) affected by actual or constructive notice that a sale, disposal, transaction, document or other dealing is unnecessary or improper; and
- (c) will not be concerned to see to the application of any money or asset, or be answerable or accountable for any loss or misapplication.

Despite any irregularity or impropriety in the exercise of any right, power or discretion under this charge, it is to be treated, for the protection of the purchaser or other party to the disposal or dealing, as being authorised by this charge and valid.

#### 14.2 **Receipts**

A receipt that the Chargee, Receiver or a Delegate gives for any money payable to or receivable by the Chargee, Receiver or Delegate because of this charge will:

- (a) relieve the person paying or handing over money or other property from all liability:
  - (i) for the application (or any loss or misapplication) of the money or other property;
  - (ii) to enquire whether the Secured Money has become payable; and

(iii) (where appropriate) as to the propriety or regularity of the appointment of the Receiver; and

(b) discharge the person paying that money from its liability to pay that money.

15. **DISCHARGE**

The Chargee must at the request and cost of the Chargor reconvey, surrender or release any remaining Charged Property (as appropriate) to the Chargor and the Charged Property will then be discharged from this charge:

(a) when the Chargee is satisfied that:

(i) all the Secured Money has been irrevocably paid and discharged in full or satisfied in accordance with this charge and (without limiting this clause) that clause 11.6 (*Effect of Insolvency Event*) will not later apply;

(ii) each of the Obligations has been performed and/or discharged in full; and

(iii) no amount remains contingently payable or may become payable on the security of this charge (including under an indemnity); and

(b) on payment or retention of all expenses incurred by or payable to the Chargee, the Receiver and any Delegate (as applicable).

16. **GST**

(a) **(Interpretation):**

(i) Except where defined in this charge or in the Project Deed or the context suggests otherwise, terms used in this clause 16 (*GST*) have the meanings given to those terms by the GST Act (as amended from time to time).

(ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 16 (*GST*).

(iii) Unless otherwise expressly stated, all consideration to be provided under this charge is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 16 (*GST*).

(iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

(b) **(Reimbursements):** Any payment or reimbursement required to be made under this charge that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

(c) **(Additional amount of GST payable):** Subject to clause 16(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this charge:

- (i) any amount payable or consideration to be provided under any provision of this charge (other than this clause 16 (GST)), for that supply is exclusive of GST;
  - (ii) any party that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
  - (iii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with this clause 16(c)(ii).
- (d) **(Variation of GST):**
- (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 16(c) and clause 16(e)), varies from the additional amount paid by the Recipient under clause 16(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 16(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 16(c).
  - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) **(Exchange of non-monetary consideration):**
- (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 16(c) applies is a Taxable Supply made by the Recipient (**Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 16(c) shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
  - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 16(c) (or the time at which such GST Amount would have been payable in accordance with clause 16(c) but for the operation of clause 16(e)).
- (f) **(No merger):** This clause 16 (GST) will not merge on completion or termination of this charge.

## 17. MISCELLANEOUS

### 17.1 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this charge:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

### The Chargee

Name: TfNSW, a New South Wales Government agency  
Address: Level 11, 338 Pitt Street, Sydney NSW 2000  
Fax: (02) 9200 0290  
For the attention of: TfNSW's Representative

With a copy to:

Name: TfNSW, a New South Wales Government agency  
Address: Level 5, Tower A, Zenith Centre, 821 Pacific Highway,  
Chatswood NSW 2067  
Fax: (02) 9200 0290  
For the attention of: Deputy Director General, Transport Projects Division

### The Chargor

Name: ALTRAC Light Rail Partnership  
Address: c/- Capella Capital, Level 31, AMP Centre, 50 Bridge  
Street, Sydney, NSW  
Fax No: (02) 8224 3800  
For the attention of: Malcolm Macintyre

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 17.1(b); and
- (e) is taken to be received by the addressee:
  - (i) **(in the case of prepaid post sent to an address in the same country)** 2 Business Days after the date of posting;
  - (ii) **(in the case of international post)** 7 Business Days after the date of posting;
  - (iii) **(in the case of fax)** at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
  - (iv) **(in the case of delivery by hand)** on delivery,

provided that if the communication would be deemed to be received on a day that is not a Business Day, or after 5:00pm on a Business Day, it is taken to be received at 9:00am on the next Business Day.

#### 17.2 The Chargee as a Public Authority

- (a) This charge will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Chargee to exercise any of its functions and powers pursuant to any law.
- (b) The Chargor acknowledges and agrees that, without limiting clause 17.2(a), anything which the Chargee does, fails to do or purports to do pursuant to its functions and powers under any law will be deemed not to be an act or omission by



the Chargee under this charge and will not entitle the Chargor to make any Claim against the Chargee.

- (c) The parties agree that clauses 17.2(a) and 17.2(b) are taken not to limit any liability which the Chargee would have had to the Chargor under this charge as a result of a breach by the Chargee of a term of this charge but for clauses 17.2(a) and 17.2(b) of this charge.

**17.3 Confidentiality**

- (a) Subject to clause 17.3(b), if the Chargor is a debtor as defined in the PPSA, the parties agree to keep all information of a kind mentioned in section 275(l) of the PPSA confidential and not to disclose that information to anyone.
- (b) Clause 17.3(a) does not apply to the information referred to in clause 47.3 (*Public Disclosure Obligations*) of the Project Deed.

**17.4 Certification**

For the purposes of this charge, a copy of a document will be regarded as duly certified by a party if it is certified as a true copy by a director, secretary or general manager of that party.

**17.5 Cost of performing obligations**

Each party must perform its obligations under this charge at its own cost, unless expressly provided otherwise.

**17.6 Governing Law**

This charge is governed by and must be construed according to the law applying in New South Wales and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts.

**17.7 Amendments**

This charge may only be varied by a deed executed by or on behalf of each party.

**17.8 Assignment**

Except as expressly contemplated by this charge or by way of security under a Permitted Encumbrance, the Chargor may not assign or transfer any of its rights or obligations under this charge without the prior written consent of the Chargee, which must not be unreasonably withheld.

**17.9 Taxes**

Subject to clause 61 (*Taxes*) of the Project Deed, the Chargor:

- (a) must pay all Taxes in respect of this charge, the performance of this charge and each transaction effected by or made under this charge;
- (b) indemnifies each other party against liability arising from failure to comply with clause 17.9(a); and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of any Taxes paid under this clause 17.9 (*Taxes*).

17.10 **Waiver**

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

17.11 **Survival of certain provisions; no merger**

- (a) Without limiting clause 17.20(a):
  - (i) clauses 12 (*Indemnity*), 17.1 (*Notices*), 17.6 (*Governing Law*) and 17.20 (*Indemnities*), any indemnities given under this charge and any other provisions which are expressed to survive termination (together, the **Surviving Clauses**) will survive rescission, termination or expiration of this charge; and
  - (ii) if this charge is rescinded or terminated, no party will be liable to any other party except:
    - (A) under the Surviving Clauses; or
    - (B) in respect of any breach of this charge occurring before such rescission or termination.
- (b) No right or obligation of any party will merge on completion of any transaction under this charge. All rights and obligations under this charge survive the execution and delivery of any transfer or other document which implements any transaction under this charge.

17.12 **Further acts and documents**

- (a) Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this charge.
- (b) Without limiting clause 17.12(a), if the Chargee determines that this charge or a Project Agreement is or contains a Security Interest, the Chargor agrees to promptly do anything (including amending any document or executing any new document) which the Chargee reasonably requires for the purposes of:
  - (i) ensuring that the Security Interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;
  - (ii) enabling the Chargee to apply for registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by the Chargee; or
  - (iii) enabling the Chargee to exercise rights in connection with the Security Interest.

**17.13 Consents**

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

**17.14 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this charge, except for representations or inducements expressly set out in this charge.
- (b) Each party acknowledges and confirms that it does not enter into this charge in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this charge.

**17.15 Reading down**

If a word, phrase, sentence, clause or other provision of this charge would otherwise be unenforceable, illegal or invalid, the effect of that provision will so far as possible be limited and read down so that it is not unenforceable, illegal or invalid.

**17.16 Severance**

Any provision of this charge which is illegal or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this charge or affecting the validity or unenforceability of such provision in any other jurisdiction.

**17.17 Remedies cumulative**

The rights and remedies provided in this charge are cumulative and are not exclusive of any rights or remedies provided by law or any other agreement, except to the extent expressly provided in this charge.

**17.18 Moratorium legislation**

Unless application is mandatory by law, any present or future law will not apply to this charge so as to abrogate or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to the Chargee.

**17.19 Entire agreement**

This charge contains the entire agreement of the parties with respect to the transactions contemplated by it. There are no understandings, agreements, warranties or representations (express or implied) with respect to the transactions contemplated by this charge except for those referred to in it.

**17.20 Indemnities**

- (a) Each indemnity in this charge is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this charge.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this charge.

- (c) A party must pay on demand any amount it must pay under an indemnity in this charge.
- (d) Where a party gives any indemnity or release to the Chargee under this charge, it gives an equivalent indemnity and release to the State. The Chargee holds for itself and on trust for the State the benefit of each such indemnity and release in this charge.

**17.21 Counterparts**

This charge may be executed in any number of counterparts and by the parties on separate counterparts. All such counterparts taken together will be deemed to constitute one and the same instrument.

**17.22 Attorneys**

Each person who executes this charge 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 and that he or she has, at the time of executing this charge, no notice of the revocation of the power of attorney under which he or she executes this charge.

**17.23 Authorised Representative**

The Chargee may from time to time appoint in writing one or more natural persons, each of whom:

- (a) may exercise any of its powers, duties, discretions and authorities as are delegated by the Chargee to be exercised by that person as agent for the Chargee; and
- (b) has the full power and authority, subject to the powers of delegation by the Chargee, to act for and on behalf of and to bind the Chargee under this charge to the extent of the delegation and in compliance with the delegation.

**17.24 Registration**

The Chargee may register this charge, or any financing statement or financing change statement relating to this charge, in the manner prescribed by law to ensure the full efficacy of this charge as an Encumbrance to the Chargee in all relevant jurisdictions.

**17.25 Blanks**

The Chargor authorises the Chargee to complete any blanks in this charge or any document, of any nature, entered into or executed by the Chargor in connection with this charge.

**EXECUTED** as a deed.

**CHARGEE**

**EXECUTED** by **TRANSPORT FOR NSW**  
by its authorised delegate **IN THE**  
**PRESENCE OF:**

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Authorised Delegate

\_\_\_\_\_  
Name of Witness (print)

\_\_\_\_\_  
Name of Authorised Delegate (print)

**Signed by ALTRAC Light Rail Partnership by being signed by each of its partners as at the date of this deed**

**CHARGOR**

**SIGNED, SEALED AND DELIVERED** by  
**ALTRAC LIGHT RAIL 1 PTY LIMITED**  
**ACN 603 192 203** as trustee for  
**ALTRAC LIGHT RAIL TRUST 1:**

\_\_\_\_\_  
Company Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of Director (print)

\_\_\_\_\_  
Name of Director (print)

**SIGNED, SEALED AND DELIVERED** by  
**ALTRAC LIGHT RAIL 2 PTY LIMITED**  
**ACN 603 194 476** as trustee for  
**ALTRAC LIGHT RAIL TRUST 2:**

\_\_\_\_\_  
Company Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of Company Secretary/Director (print)

\_\_\_\_\_  
Name of Director (print)

**SIGNED, SEALED AND DELIVERED** by  
**ALTRAC LIGHT RAIL 3 PTY LIMITED**  
**ACN 603 190 601** as trustee for  
**ALTRAC LIGHT RAIL TRUST 3** by its  
Attorney **IN THE PRESENCE OF :**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Name of Witness (print)

\_\_\_\_\_  
Name of Attorney (print)



# Sydney Light Rail Deed of Charge – Finance Co

Transport for NSW  
ABN 18 804 239 602

and

Astra SLR Finance Pty Limited  
ACN 166 382 403

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**THIS DEED** is made on 2014

**BETWEEN:**

- (1) **Transport for NSW** (ABN 18 804 239 602) a New South Wales Government agency constituted under section 3C of the *Transport Administration Act 1988* (NSW) of Level 5, Tower A, Zenith Centre 821 Pacific Highway, Chatswood NSW 2067 (the **Chargee**); and
- (2) **Astra SLR Finance Pty Limited** (ACN 166 382 403) of c/- Capella Capital, Level 31, AMP Centre, 50 Bridge Street, Sydney NSW 2000 (the **Chargor**).

**RECITALS:**

- (A) The Chargor the Chargee and OpCo are parties to the Receivables Purchase Deed, the Payment Directions Deed and the Financiers Tripartite Deed.
- (B) The Chargor enters into this charge to secure performance of its obligations under the Receivables Purchase Deed, the Payment Directions Deed and the Financiers Tripartite Deed.

**THE PARTIES AGREE AS FOLLOWS:**

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

**Bill** has the meaning given to "bill of exchange" in the *Bills of Exchange Act 1909* (Cth), but does not include a cheque or payment order and any reference to the drawing, acceptance, endorsement or other dealing of or with a Bill, refers to a drawing, acceptance, endorsement or other dealing within the meaning of that Act.

**Charged Debts** means all debts whether actual or contingent at any time owing to the Chargor together with all books or documents of account or records evidencing or recording such debts, including:

- (a) any accounts that arise from the Chargor granting a right, or providing services, in the ordinary course of its business whether or not the Chargor is the person to whom the right is granted or the services are provided;
- (b) any accounts that are proceeds of inventory; and
- (c) any other accounts (as defined in the PPSA).

**Charged Property** means all present and after acquired property, interests, rights and proceeds in respect of which the Chargor had at any time sufficient rights to grant a Security Interest or charge, including the Chargor's interest in all its assets, undertakings and rights anywhere (real and personal, and present and future) or any part of them and its uncalled capital and its called but unpaid capital for the time being.

**Controller** has the meaning given in section 9 of the *Corporations Act 2001* (Cth).

**Deal** means sell, convey, assign, transfer, lease, licence or otherwise dispose or part with possession of, make any bailment over, grant any option over or create or permit to exist any other interest in any part of the Charged Property.

**Debt Proceeds** means the proceeds of realisation of the Charged Debts.

**Delegate** means any agent, attorney or other delegate appointed under this charge by the Chargee or by any receiver or receiver and manager appointed under this charge.

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person and includes any Security Interest.

**Excluded Tax** means a Tax on net income in any jurisdiction, other than:

- (a) a Tax that is calculated on or by reference to the gross amount of any payment derived by a party under this charge or the transactions that this charge contemplates (unless the Tax is imposed because the party has not given its tax file number to the person who made the payment); or
- (b) a Tax that is imposed because a party is regarded as being subject to tax in a jurisdiction solely because it is a party to this charge or because it is participating in the transactions that this charge contemplates.

**Financial Liability** of a person means any liability or indebtedness (whether present or future, actual or contingent) of that person for or in respect of:

- (a) money borrowed or raised and debit balances at banks or financial institutions;
- (b) any indemnity obligation in respect of any guarantee, indemnity, bond or letter of credit or similar instrument issued by a bank or financial institution;
- (c) any guarantee, indemnity, letter of credit or similar assurance in respect of financial loss given in connection with any Financial Liability (as referred to in any other paragraph of this definition) of another person;
- (d) amounts raised under or in connection with any Bill acceptance, endorsement or discounting arrangement;
- (e) amounts raised under or in connection with any bond, debenture, note, loan stock or similar instruments;
- (f) any swap, hedge, cap, collar, ceiling or floor arrangement, futures contract, forward exchange or forward purchase contract or option contract, in each case, in respect of any currency, interest rate or commodity or any similar transaction; or
- (g) amounts raised under any transaction or series of transactions having the commercial effect of a borrowing or raising of money.

**Guarantee** means a guarantee, indemnity, letter of credit, performance bond, acceptance or endorsement, or other undertaking or obligation:

- (a) to provide funds (including by the purchase of property), or otherwise to make property available in, or to enable payment or discharge of;
- (b) to indemnify against the consequences of default in the payment of; or
- (c) otherwise to be responsible for,

an obligation (whether or not it involves the payment of money) or otherwise to be responsible for the solvency or financial condition of any other person.

**Insolvency Provision** means any law relating to insolvency, sequestration, liquidation, winding up or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or of preferences and any law under which a liquidator or trustee may set aside or avoid transactions) and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

**Obligations** means each of the Chargor's obligations to the Chargee under the Secured Documents.

**Permitted Encumbrance** means:

- (a) an Encumbrance created under a Secured Document;
- (b) a lien that arises by operation of law in the ordinary course of ordinary business, where the amount secured is not overdue or is being diligently contested in good faith;
- (c) each Debt Financiers' Security; or
- (d) any other Encumbrance to which the Chargee has given its prior written consent, but only to the extent it secures a Financial Liability in amounts to which the Chargee has given its consent.

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

**Power** means any right, power, authority, discretion, remedy or privilege conferred on the Chargee, any Receiver or any Delegate, in any case, under this charge, any Secured Document or by law.

**Project Deed** means the deed entitled "Sydney Light Rail Project Deed" dated on or about the date of this charge between the Chargee and OpCo.

**Receiver** means a receiver or receiver and manager appointed by the Chargee under this charge and, if more than one, then each of them and also any employee, contractor or Delegate of any receiver or receiver and manager.

**Related Body Corporate** has the meaning given in section 9 of the *Corporations Act 2001* (Cth).

**Secured Document** means:

- (a) the Receivables Purchase Deed;
- (b) the Payment Directions Deed; and
- (c) the Financiers Tripartite Deed.

**Secured Money** means all amounts (including damages) that are payable, owing but not payable, or that otherwise remain unpaid by the Chargor to the Chargee on any account at any time under or in connection with the Secured Documents and this charge or any transaction contemplated by them, whether:

- (a) present or future, actual or contingent;
- (b) incurred alone, jointly, severally or jointly and severally;

- (c) the Chargor is liable on its own account or the account of, or as surety for, another person and without regard to the capacity in which the Chargor is liable;
- (d) due to the Chargee alone or with another person;
- (e) the Chargee is entitled for its own account or the account of another person;
- (f) originally contemplated by the Chargor or the Chargee or not; and
- (g) the Chargee is the original person in whose favour the undertakings in this charge or the Secured Documents were given or an assignee and, if the Chargee is an assignee:
  - (i) whether or not the Chargor consented to or knew of the assignment;
  - (ii) no matter when the assignment occurred; and
  - (iii) whether or not the entitlements of that original person were assigned with the charge.

## 1.2 **Definitions in Project Deed**

Subject to clauses 1.1 (*Definitions*), 1.3(c) and 1.3(d), terms used in this charge that are defined in the Project Deed have the same meanings in this charge.

## 1.3 **Interpretation**

The parties agree to be bound by clause 1.4 (*Interpretation*) of the Project Deed as if set out in its entirety in this clause 1.3 (*Interpretation*), except that for the purposes of this charge:

- (a) all references in clause 1.4 (*Interpretation*) of the Project Deed to "this deed" or "the Project Deed" shall be read as references to "this charge";
- (b) all references to "OpCo" shall be read as references to "the Chargor";
- (c) a reference to "proceeds" includes, where the context permits, any proceeds as that term is defined in the PPSA; and
- (d) each of the terms "ADI", "ADI account", "advance", "future advance", "purchase money security interest", "chattel paper", "financing statement", "financing change statement" and "verification statement" have the meanings given to them in the PPSA.

## 1.4 **Exclusion of proportionate liability scheme**

To the extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this charge howsoever such rights, obligations or liabilities are sought to be enforced.

## 1.5 **Financiers Tripartite Deed**

Despite any other provision of this charge, the Chargee's rights under this charge are subject to the Financiers Tripartite Deed.

## 2. CHARGE

### 2.1 The charge

- (a) By this charge the Chargor charges the Charged Property to the Chargee to secure the satisfaction of the Obligations and the payment of the Secured Money.
- (b) This charge constitutes a Security Interest which attaches to the Charged Property at the times prescribed by the PPSA.
- (c) The Chargor grants this charge in respect of the Charged Property which it owns or will own as beneficial owner.

### 2.2 Priority

This charge will operate as a first ranking security, except as otherwise provided in the Financiers Tripartite Deed.

### 2.3 Nature of Charge over Non PPSA Property

- (a) Subject to clause 2.3(b), to the extent that this charge relates to property:
  - (i) which is not personal property as defined in the PPSA; or
  - (ii) to which the PPSA does not apply,it will operate as a fixed rather than a floating charge in respect of such property.
- (b) To the extent that any of the property referred to in clause 2.3(a) consists of:
  - (i) Charged Debts;
  - (ii) Debt Proceeds;
  - (iii) property acquired for disposal in the ordinary course of the Chargor's ordinary business; or
  - (iv) inventory,the charge will operate as a floating charge in respect of that property until this charge becomes enforceable under clause 6 (*Enforcement*).

## 3. REPRESENTATIONS AND WARRANTIES

### 3.1 General representations and warranties

The Chargor represents and warrants to the Chargee that:

- (a) **(Good right to charge)** it has good right to charge the Charged Property in the manner provided in this charge and the Charged Property is free of all Encumbrances other than Permitted Encumbrances;
- (b) **(Legally binding obligation)** this charge constitutes its valid and legally binding obligation and is enforceable against it in accordance with its terms, subject to any necessary stamping and registration requirements and laws affecting creditors' rights generally;
- (c) **(Execution, delivery and performance)** the execution, delivery and performance of this charge and each transaction contemplated by this charge does not violate or

breach any law or any document or agreement to which it is a party or which is binding on it or any of its assets;

- (d) **(Approvals)** all Approvals required to be obtained by it in connection with the execution, delivery and performance of this charge, the transactions contemplated by this charge and the legality, validity and enforcement of this charge have been obtained and are valid and subsisting and it is not aware of any breach of any of the conditions of any of those Approvals or aware of any fact or circumstance which may cause any of those Approvals to be suspended, forfeited, cancelled or rendered void; and
- (e) **(Information for financing statement)** the Chargee has received from the Chargor all information needed by the Chargee to complete the financing statement (or financing change statement, if necessary) for this charge and that the information is true and correct in all respects.

### 3.2 **Representations and warranties repeated**

Each representation and warranty in this clause 3 (*Representation and warranties*) will be repeated on each day that there is any Secured Money or Obligation on the basis of the facts and circumstances as at that date.

### 3.3 **Reliance on representations and warranties**

The Chargor acknowledges that the Chargee has executed this charge and agreed to take part in the transactions that this charge contemplates in reliance on the representations and warranties that are made or repeated in this clause 3 (*Representation and warranties*).

### 3.4 **No representations by the Chargee**

The Chargor acknowledges that it has not relied and will not rely on any representation, statement or promise made by or on behalf of the Chargee in deciding to enter into this charge or to exercise any right under it.

## 4. **GENERAL UNDERTAKINGS**

### 4.1 **Satisfaction of Obligations**

The Chargor will satisfy, or procure the satisfaction of, the Obligations and will pay the Secured Money in the manner provided in this charge or in any other Secured Document.

### 4.2 **General undertakings**

- (a) **(Maintain status)** The Chargor will maintain its status as a company limited by shares under the Corporations Act.
- (b) **(Comply with laws)** The Chargor will comply with all laws applicable to it, including by paying when due, all Taxes for which it or its property is assessed or liable (except to the extent that these are being diligently contested in good faith and by appropriate proceedings and it has made adequate reserves for them).
- (c) **(No administrator)** The Chargor will not appoint an administrator without first giving notice to the Chargee.
- (d) **(Stamping)** The Chargor will ensure that this charge is stamped for the proper amount in each state and territory of Australia in which this charge is required to be stamped.



- (e) **(Financial Liabilities)** The Chargor will not incur any Financial Liabilities other than as permitted under the Secured Documents and any Debt Financing Document.
- (f) **(Restriction on guarantees)** The Chargor will not enter into any bond, guarantee or indemnity in favour of any person other than:
  - (i) under the Secured Documents or any Debt Financing Documents; or
  - (ii) as permitted under clause 4.2(e).
- (g) **(Charge not prohibited)** The Chargor will use best endeavours to ensure that:
  - (i) the Debt Financing Documents;
  - (ii) each contract entered into by the Chargor after the date of this charge; and
  - (iii) each contract to which the Chargor is party as at the date of this charge and which is renewed or substantially renegotiated after the date of this charge,does not prohibit the Chargor from charging or mortgaging its rights under or in respect of that contract by means of this charge.
- (h) **(Change of business)** The Chargor will not make or threaten to make any material change in the nature of its business as conducted at the date of this charge.
- (i) **(Arm's length terms)** The Chargor will not enter into any transaction with any person otherwise than on arm's length terms and for full commercial value or as permitted under any Secured Document or any Debt Financing Document.

#### 4.3 **Chargee assumes no obligations**

The Chargee will not be deemed by virtue of this charge to have assumed any obligation of the Chargor under any law or Approval.

### 5. **ADDITIONAL UNDERTAKINGS CONCERNING THE CHARGED PROPERTY**

#### 5.1 **Restrictions in relation to the Charged Property**

- (a) Subject to clause 5.1(b), the Chargor will not, without the Chargee's prior written consent or as expressly permitted in this charge or any other Secured Document:
  - (i) **(No Encumbrances)** create, purport or attempt to create or permit to exist any Encumbrance, however ranking, over the Charged Property other than a Permitted Encumbrance;
  - (ii) **(No Dealing)** Deal with any part of the Charged Property (other than granting, creating or permitting to exist a Permitted Encumbrance);
  - (iii) **(Not to prejudice)** do, fail to do or consent to any act, omission or thing as a result of which the Charged Property becomes or could become liable to surrender, forfeiture or cancellation, or becomes or could become prejudiced in any manner, or the value of this charge as an Encumbrance to the Chargee becomes or could become materially lessened; or
  - (iv) **(Take any steps)** take any steps towards doing any of these things.

- (b) Notwithstanding clause 5.1(a), prior to this charge becoming enforceable under clause 6.1(a), the Chargor may Deal with (but not grant any Encumbrance other than a Permitted Encumbrance over) any part of the Charged Property which is a circulating asset as defined in section 340(1)(a) of the PPSA in the ordinary course of its business.

## 5.2 Protection of Charged Property

At the request of the Chargee, the Chargor will take or defend all legal proceedings that the Chargee considers necessary or desirable for the preservation, protection or recovery of the Charged Property.

## 5.3 Dealing with Proceeds

- (a) At the request of the Chargee, which request may be made at any time after the charge has become enforceable under clause 6.1(a), the Chargor will (provided it is able to do so under the Debt Financing Documents):
  - (i) open and maintain an ADI account or ADI accounts with the Chargee or an ADI approved by the Chargee; and
  - (ii) deposit all Debt Proceeds into that ADI account, but no other money.
- (b) The Chargor acknowledges that if, at the time a request is made in accordance with clause 5.3(a), the Charged Debts and the Debt Proceeds represent circulating assets (as defined in section 340(1) of the PPSA), the Chargor's ability to Deal with that property under clause 5.1(b) will cease.
- (c) The Chargee may issue a direction to the Chargor in respect of the ADI account or ADI accounts opened as required in accordance with clause 5.3(a) and the deposited money:
  - (i) requiring that a representative of the Chargee (as determined by the Chargee) will be the signatory of the ADI account or ADI accounts and will be able to direct withdrawals from such ADI accounts without further consent from the Chargor; and
  - (ii) prohibiting the Chargor from requesting or making any withdrawal or other dealing with that money or stipulating the manner in which that money may be dealt with.
- (d) Until a request under clause 5.3(a) is made or a direction is given by the Chargee under clause 5.3(c), the Chargor will be free to withdraw and apply that money in the ordinary course of its ordinary business.

## 5.4 Security Interests and PMSIs

The Chargor will:

- (a) **(Security Interests: policies and practices)** implement policies and practices and take all steps necessary to ensure that all Security Interests which it holds are attached, enforceable and continuously perfected under the PPSA until the obligations they secure are satisfied or they are released for value; and
- (b) **(PMSIs)** as and when required by the Chargee, provide the Chargee with written details of any property in which it has rights that is, or is capable of being, subject to a purchase money security interest in favour of any third party and the amount secured.

## 6. ENFORCEMENT

### 6.1 Circumstances when this charge may be enforced

- (a) This charge will immediately become enforceable (whether or not the Secured Money has become payable) if an OpCo Termination Event occurs or, subject to clause 9.4(b) of the Financiers Tripartite Deed, for the purpose of allowing the Chargee to exercise its Step In Rights under clause 42 (*Step-In*) of the Project Deed.
- (b) Upon this charge becoming enforceable, any right of the Chargor to Deal with the Charged Property (other than through a Receiver appointed under this charge) will immediately cease.

### 6.2 Enforcement despite earlier performance

This charge may be enforced:

- (a) even if the Chargee accepts a payment or performance after any default; and
- (b) without the need for any notice to, or of any consent or agreement of, the Chargor or any other person.

## 7. RECEIVERS: APPOINTMENT AND POWERS

### 7.1 Appointment of Receiver

- (a) If this charge has become enforceable (whether or not the Chargee has entered into possession of all or any of the Charged Property), the Chargee or any authorised representative of the Chargee may:
  - (i) appoint any person or any two or more persons jointly, or jointly and severally to be a receiver or receiver and manager (or an additional receiver or receiver and manager) of the Charged Property;
  - (ii) remove a Receiver and in the case of the removal, retirement or death of any Receiver, appoint another as a replacement Receiver; and
  - (iii) fix the remuneration of the Receiver.
- (b) Subject to clause 7.1(c) and 7.2 (*Receiver other than as Chargor's agent*), every Receiver appointed under this clause 7.1 (*Appointment of Receiver*) will be the Chargor's agent and the Chargor alone will be responsible for its acts, defaults and remuneration.
- (c) The Chargee may, by notice to the Chargor and the Receiver, require the Receiver to act as the Chargee's agent.

### 7.2 Receiver other than as Chargor's agent

The power to appoint a Receiver under this clause 7 (*Receivers: Appointment and powers*) may be exercised even though:

- (a) at the time when this charge becomes enforceable or when an appointment is made, an order may have been made or a resolution may have been passed to wind up the Chargor; or

- (b) a Receiver appointed in the circumstances specified in clause 7.2(a) may not, or may not in some respects, act as the Chargor's agent.

### 7.3 Powers of Receiver

Without the need for any consent from the Chargor or any other person, each Receiver will have all of the powers specified in section 420 of the Corporations Act, and in addition to those and any other rights, powers or discretions under this charge, will have the following powers:

- (a) **(Take Possession)** to take possession or control of, make use of, collect and get in Charged Property and for that purpose to take proceedings (in the name of the Chargor or otherwise);
- (b) **(Dispose)** whether or not in possession, to give of the Charged Property or to dispose of the Charged Property in such manner and on such terms as the Receiver thinks fit;
- (c) **(Exercise Chargee's rights)** to exercise all or any of the Chargee's Powers;
- (d) **(Chargor's undertakings)** to do everything necessary to perform any undertaking of the Chargor under this charge;
- (e) **(Comply with directions)** to comply with the directions given by the Chargee;
- (f) **(Convert to money)** to convert, liquidate and reduce the Charged Property into money;
- (g) **(Carry on business):** to:
  - (i) carry on and agree to carrying on the business of the Chargor in and with Charged Property and to stop doing so; and
  - (ii) effect all repairs, purchases and insurances, and generally to do everything that the Chargor might do in the ordinary conduct of its business to:
    - (A) protect or improve Charged Property; or
    - (B) obtain income or returns from Charged Property and to conduct the Chargor's business,
 without being responsible for any loss;
- (h) **(Borrow or raise money)** to borrow or raise from the Chargee or any other person any money which may be required for any purposes and, if the Receiver thinks fit, to secure any money borrowed or raised by the grant of any Encumbrance over the Charged Property (whether in the name of the Chargor or otherwise) so that the Encumbrance ranks in priority to, *pari passu* with or after this charge. The Chargee will not be bound to inquire as to the necessity or propriety of any financial liability nor be responsible for the misapplication or non-application of any money so borrowed or raised;
- (i) **(Hire out, Lease or Licence)** whether or not the Receiver has taken possession, to hire out, lease or licence the Charged Property in the name of the Chargor or otherwise, for any period and on any terms or to vary or terminate a lease or licence;

- (j) **(Sell)** to sell or agree to sell (whether or not the Receiver has taken possession), exchange or otherwise dispose of (absolutely or conditionally) Charged Property (or agree to do so):
  - (i) at any public auction, private sale or tender for cash or on credit;
  - (ii) in one lot or in parcels;
  - (iii) with or without special conditions (such as conditions as to title or time or method of payment of purchase money) including by allowing the purchase money to remain:
    - (A) outstanding on the security of a mortgage over the property sold or over any other property; or
    - (B) owing without any security; and
  - (iv) on other terms the Receiver considers desirable,  
without being responsible for any loss;
- (k) **(Transfer on sale)** to execute transfers and assignments of Charged Property (including in the name of the Chargor) and do everything to complete any sale under clause 7.3(j) that the Receiver thinks necessary;
- (l) **(Receive money)** receive all moneys and other property payable or deliverable to the Chargor from Charged Property;
- (m) **(Insure)** to insure Charged Property that is of an insurable nature against risk of destruction, loss or damage for the amounts and on the terms that the Receiver thinks appropriate;
- (n) **(Collection)** to collect the Charged Debts;
- (o) **(Give receipts)** to give receipts for all money and other property that may come into the hands of the Receiver in the exercise of any Power;
- (p) **(Engage)** to engage consultants, contractors, professional advisors, agents and employees (including any person associated with a firm or company in which the Receiver is a member or in which the Receiver is interested and that person may charge for his or her services as if independently retained at a salary or remuneration determined by the Receiver), and the Receiver may act on any advice given by any person so engaged;
- (q) **(Conduct works)** to repair, renew, replace, renovate or clean the Charged Property, to erect any new buildings or make any improvements to any land forming part of the Charged Property and to demolish, alter, rebuild or extend any existing buildings on the Charged Property;
- (r) **(Sever fixtures)** to sever fixtures belonging to the Chargor and sell them apart from any other part of the Charged Property;
- (s) **(Invest proceeds against contingencies)** if any of the Secured Money is contingent, to invest, deposit or hold the Charged Property in a form or mode of investment for the time being as the Receiver thinks fit, with like power to vary, transpose or re invest the investments or deposits from time to time until that part of the Secured Money ceases to be contingent;

- (t) **(Enter into contracts)** to enter into any contract or arrangement with any person for any purpose connected with this charge or the Charged Property or in furtherance of any of the powers, rights or discretions under this charge, on such terms and conditions as the Receiver in its absolute discretion thinks fit, including granting or conferring options to, in favour of or exercisable by any person for the purpose of or in connection with the sale, purchase, leasing, hiring or other dealing with the Charged Property;
- (u) **(Perform contracts)** to perform, observe, carry out, enforce specific performance of, exercise or refrain from exercising, the Chargor's rights and powers under, obtain the benefit of, and vary or rescind all contracts and rights forming part of the Charged Property or entered into in the exercise of any power;
- (v) **(Take proceedings)** to institute, conduct or defend any proceedings in law or bankruptcy and to submit to arbitration, mediation or conciliation, in the name of the Chargor or otherwise and on any terms, any proceeding, claim, question or dispute in connection with the Charged Property or otherwise;
- (w) **(Compromise)** to make any settlement, arrangement or compromise regarding any action, proceeding or dispute arising in connection with the Charged Property, to grant to any person involved, time or other indulgence and to execute all related releases or discharges as the Receiver thinks expedient in the interests of the Chargee;
- (x) **(Appeal)** to appeal against or to enforce any judgment or order in respect of the Charged Property;
- (y) **(Bankrupt debtors and wind up bodies corporate)** to make debtors bankrupt and to wind up bodies corporate and to do all things in connection with any bankruptcy or winding up which the Receiver thinks necessary for the recovery or protection of the Charged Property or for the security or other benefit of the Chargee;
- (z) **(Delegate)** with the Chargee's prior approval, to delegate to any person, for any time, any of its Powers including this power of delegation;
- (aa) **(File)** to file all certificates, registrations and other documents and to take any and all action on behalf of the Chargor which the Receiver believes is necessary to protect, preserve or improve any or all of the Charged Property and the rights of the Chargor and the Chargee in respect of any agreement for sale and to obtain for the Chargee all of the benefits of this charge and any other Secured Document;
- (bb) **(Operate bank accounts)** to open or operate any bank account in the name of the Chargor (whether alone or jointly with any other person) to the exclusion of the Chargor and to deposit or withdraw any money standing to the credit of that account and to sign and endorse or to authorise others to sign and endorse in the name of the Chargor cheques, promissory notes, bills of exchange and other negotiable instruments;
- (cc) **(Desirable or incidental matters)** to:
  - (i) do or cause to be done everything that the Receiver thinks desirable in the interests of the Chargee; and
  - (ii) do anything incidental to the exercise of any other Power;
- (dd) **(Do all other things)** to do all things the law allows an owner of any interest in the Charged Property, or any Controller of the Charged Property, to do; and

- (ee) **(Do all things as are expedient)** to do all other acts and things without limitation as the Receiver thinks expedient,

and any further powers as the Chargee confers on a Receiver by notice in writing to that Receiver.

#### 7.4 **Indemnity**

The Chargee may give any indemnities to any Receiver concerning the performance of that Receiver's duties as are permitted by law. If the Chargee is obliged to pay any money under any indemnity, that money will become part of the Secured Money.

### 8. **CHARGEES POWERS**

#### 8.1 **Chargee may exercise powers without notice**

If this charge has become enforceable, the Chargee may without notice and whether or not a Receiver has been appointed:

- (a) exercise all or any of the powers conferred on a Receiver, or which would be conferred on a Receiver if appointed, as if those powers had been expressly conferred on the Chargee;
- (b) exercise all other powers exercisable under this charge, any Secured Document or law; and
- (c) appoint an agent or agents (whether severally, jointly or jointly and severally) and delegate the powers (or any of them) to the agent or agents (in which case clause 7.1 (*Appointment of Receiver*) will apply as if the agent or agents were each appointed as a Receiver).

#### 8.2 **Act jointly**

The Chargee and each Receiver may exercise any of the Powers in conjunction with the exercise of similar powers by the holder of any other Encumbrance over the Charged Property or by any receiver or receiver and manager appointed by that other holder and may enter into and give effect to agreements and arrangements with that other holder, receiver or receiver and manager as the Chargee or the relevant Receiver thinks fit.

#### 8.3 **Power of attorney**

- (a) In consideration of the Chargee entering into the Secured Documents, the Chargor irrevocably appoints the Chargee, TfNSW's Representative and each Receiver, severally, as an attorney of the Chargor with power to:
  - (i) **(All acts necessary)** do anything necessary or desirable in the opinion of the Chargee or the attorney to:
    - (A) give full effect to this charge;
    - (B) better secure the Charged Property to the Chargee in a manner consistent with this charge; or
    - (C) assist in the execution or exercise of any Power,including execute any transfer (including any transfer in blank) or other document;

- (ii) **(Recover Charged Property)** demand, sue for, recover and receive the Charged Property from any person, in the name of the Chargor or in the name of the Chargee, the relevant Receiver or any other attorney appointed under this clause 8.3 (*Power of attorney*);
- (iii) **(Commence actions)** commence, carry on, enforce, settle, arrange and compromise any proceedings to obtain or enforce the payment or delivery of Charged Property;
- (iv) **(Bankruptcy and winding up)** take any necessary proceedings to procure the bankruptcy or the winding up of any debtor of the Chargor in connection with the Charged Property, and attend and vote at meetings of creditors, receive dividends in any bankruptcy or winding up or appoint a proxy for any of these things;
- (v) **(Compound debts)** compound, settle or compromise any debt of the Chargor in connection with the Charged Property;
- (vi) **(Execute deeds)** execute any deed of assignment, composition or release in connection with the Charged Property;
- (vii) **(Exercise rights)** exercise all and any powers, rights, discretions and remedies available under or in connection with the Charged Property (including rights available under the Corporations Act or any other statute);
- (viii) **(Step in)** without limiting the foregoing, exercise all or any powers, rights, discretions and remedies available under or in connection with the Secured Documents;
- (ix) **(Further action)** take further action and to execute further instruments which are, or are in the opinion of the Chargee, the relevant Receiver or any other attorney appointed under this clause 8.3 (*Power of attorney*), necessary or desirable to secure more satisfactorily the performance of the Obligations or the payment of the Secured Money or to sell or otherwise deal with the Charged Property; and
- (x) **(Appoint substitute)** appoint (and remove at will) at any time any person as a substitute for an attorney,

at the Chargor's cost, provided that such powers may be exercised where the Chargee is entitled to enforce this charge.

(b) The Chargor:

- (i) agrees that each attorney may exercise powers under this power of attorney notwithstanding that the exercise may or will involve or result in a conflict between the duty of that attorney to the Chargor and either the interests of that attorney or a Related Body Corporate of that attorney or another duty of that attorney; and
- (ii) ratifies and confirms now and for the future all actions undertaken by or on behalf of any attorney under this power of attorney, including any action which may or will involve or result in a conflict of the type referred to in clause 8.3(b)(i) or in respect of which that attorney has a personal interest.

For the purposes of this clause 8.3(b) a Related Body Corporate of any attorney is any Related Body Corporate of that attorney or, in the case of any attorney that is



an individual, any person that is related to or has any personal or professional relationship, of any nature, with that attorney.

- (c) The Chargor declares that this power of attorney will continue in force until all actions taken under it have been completed, despite the discharge of this charge.
- (d) The Chargor will do anything requested by the Chargee, acting reasonably, to enable the Chargee to register this power of attorney in the manner and within any time limits prescribed by law to ensure the efficacy of this power of attorney.

#### 8.4 **Chargee may make good any default**

If the Chargor defaults in satisfying any of the Obligations, the Chargee may, without prejudice to any other Power, do all things and pay all money necessary or expedient in the opinion of the Chargee to make good or to attempt to make good that default to the satisfaction of the Chargee. The Chargor will take all steps which the Chargee, acting reasonably, requests to facilitate the exercise by the Chargee of its rights under this clause 8.4 (*Chargee may make good any default*). The Chargee will not be a mortgagee or chargee in possession simply as a result of the exercise of its rights under this clause 8.4 (*Chargee may make good any default*).

#### 8.5 **Workcare, WorkCover and worker's compensation**

The Chargee may from time to time debit and charge to the Chargor all costs, charges and expenses, legal or otherwise, including premiums for insurance and compensation and other money paid or payable by the Chargee or any Receiver appointed by the Chargee or any attorney of a Chargor appointed under any legislation relating to workcare, workCover and/or workers compensation.

#### 8.6 **Calls**

- (a) If this charge has become enforceable, the Chargor authorises the Chargee, each of the Chargee's authorised representatives and any Receiver to (and the directors of the Chargor may not):
  - (i) make calls on the members of the Chargor in relation to the Chargor's uncalled capital;
  - (ii) sue (in the name of the Chargor or otherwise) to recover money due in relation to calls; and
  - (iii) give valid receipts for that money.
- (b) This authority is not terminated by any change in the Chargor's directors and is assignable.

#### 8.7 **Notice for exercise of Powers**

- (a) The Powers may be exercised by the Chargee and any Receiver without any notice, demand or lapse of time being necessary unless required by a law which cannot be excluded.
- (b) Subject to clause 8.7(c), if required by any law which cannot be excluded, one day is fixed as the period for which:
  - (i) default must continue in the satisfaction of the whole or any part of the Obligations or in the payment of any part of the Secured Money before the

Chargee may give any notice or demand as required by any law affecting the Powers; and

- (ii) default in the satisfaction of the whole or any part of the Obligations or in the payment of any part of the Secured Money must continue after the giving of any notice or demand before any Power may be exercised.
- (c) If any law which cannot be excluded provides that a specific period of notice or lapse of time is mandatorily required before any Power may be exercised by the Chargee or any Receiver, that period of notice must be given or time must elapse before that Power may be exercised.

#### 8.8 Exclusion of PPSA provisions

To the extent permitted by law, and in respect of each Security Interest created by this charge:

- (a) the parties contract out of sections 95, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA (to the extent, if any, mentioned in section 115(1) of the PPSA); and
- (b) the Chargor irrevocably and unconditionally waives its right to receive any notice of any verification statement in respect of any financing statement or financing change statement relating to this charge.

### 9. APPLICATION OF MONEY

#### 9.1 Priority of payments

Subject to clause 9.3 (*Priority of payment*) of the Financiers Tripartite Deed, all money received by the Chargee or by any Receiver as a result of the exercise of the Powers and all other proceeds of enforcement under this charge will be applied in the following order:

- (a) **(Expenses)** first in payment of all costs, charges, expenses or disbursements that the Chargee or a Receiver incurs in or incidental to the exercise or attempted exercise of a power or otherwise in relation to any Secured Document;
- (b) **(Outgoings)** then in payment of any other outgoings as any Receiver or the Chargee thinks it appropriate to pay;
- (c) **(Receiver)** then in payment to the Receiver of any remuneration (whether by way of commission or otherwise);
- (d) **(Indemnities)** then in payment to the Chargee or a Receiver of any amount necessary to give effect to any indemnity contained in this charge; and
- (e) **(Secured Money)** then in payment to the Chargee of the Secured Money.

Any surplus will belong to the Chargor or other persons entitled to it. The Chargee or Receiver may pay the surplus to the credit of a bank account in the name of the Chargor or other person entitled to it and will then be under no further liability in relation to it. The surplus will not accrue interest.

#### 9.2 Money received

In applying any money towards satisfaction of the Secured Money in the manner contemplated by clause 9.1 (*Priority of payments*), the Chargor will be credited only with as much of the money available for that purpose as is actually received by the Chargee or

any Receiver and is not required to be disgorged. Any credit will date from the time of receipt.

### 9.3 **Application of money**

The Chargee and each Receiver has an absolute discretion to apply any money received as a result of the exercise of any Power or which is the proceeds of enforcement of this charge (and which is to be applied in payment of the Secured Money) in reduction of any part or parts of the Secured Money, whenever and on whatever account it became secured, despite any principle or presumption of law to the contrary or any direction given at the time of receipt and without the need to communicate its election to any person.

### 9.4 **Compensation**

Without limitation to this charge or the Financiers Tripartite Deed:

- (a) if any compensation becomes payable to the Chargee in respect of any or all of the Charged Property as a result of the exercise of any Power or which is the proceeds of enforcement of this charge, the Chargee may:
  - (i) apply the sum received on account of any compensation, at the Chargee's option, in or towards repayment of the Secured Money;
  - (ii) make, enforce, settle or compromise any claims relating to compensation; and
  - (iii) execute any necessary assurances and releases in the name of the Chargor and the Chargee; and
- (b) if any compensation payable to the Chargee in respect of any or all of the Charged Property comes into the hands of the Chargor before a final irrevocable discharge of this charge, the Chargor must immediately pay that amount to the Chargee.

## 10. **DEFAULT INTEREST**

### 10.1 **Chargor must pay interest**

The Chargor must pay interest on each amount that is not paid when due (unless the Chargor is already required to pay interest on the unpaid amount by the terms of an agreement between the Chargee and the Chargor) from the day after the date on which it falls due up to (and including) the day on which it is paid in full, at the Default Rate. This interest must be paid on demand.

### 10.2 **Interest after judgment**

If a liability of the Chargor becomes merged in a judgment or order, the Chargor, as an independent obligation, must pay interest on the amount of that liability, from (and including) the date of the judgment or order until it is paid in full, at the higher of the rate that applies under the judgment or order and the rate calculated in accordance with clause 10.1 (*Chargor must pay interest*).

### 10.3 **Accrual and calculation of interest**

Interest under this clause 10 (*Default interest*):

- (a) accrues daily; and

- (b) is calculated on the basis of the actual number of days on which interest has accrued and on a 365 day year.

## 11. **LIABILITY AND RELEASE**

### 11.1 **Continuing obligation**

This charge constitutes a continuing obligation regardless of any settlement of account, intervening payment, express or implied revocation or any other matter or thing.

### 11.2 **Personal liability**

No grant of full or partial satisfaction of or discharge from this charge by the Chargee will, unless it expressly provides otherwise, release the Chargor from personal liability under this charge or under any other Secured Document until none of the Secured Money is owing (whether actually, contingently or prospectively) and it is not reasonably foreseeable that there could be any Secured Money owing in the future.

### 11.3 **Settlement conditional**

If:

- (a) (i) the Chargee has at any time released or discharged:
  - (A) the Chargor from its obligations under this charge; or
  - (B) any assets of the Chargor from this charge,in either case in reliance on a payment, receipt or other transaction to or in favour of the Chargee; or
- (ii) any payment, receipt or other transaction to or in favour of the Chargee has the effect of releasing or discharging:
  - (A) the Chargor from its obligations under this charge; or
  - (B) any assets of the Chargor from this charge; and
- (b) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under an Insolvency Provision or under any other law; and
- (c) that claim is upheld or is conceded or compromised by the Chargee, then:
  - (i) the Chargee will immediately become entitled against the Chargor to all rights as it had immediately before that release or discharge;
  - (ii) the Chargor must, to the extent permitted by law:
    - (A) immediately do all things and execute all documents as the Chargee, acting reasonably, may require to restore to the Chargee all those rights; and
    - (B) indemnify the Chargee against all Loss, damages, claims, demands and actions suffered or incurred by it in, or in connection with, any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

#### 11.4 Limitations on Chargor's rights

Until the Secured Money has been irrevocably paid and discharged in full, the Chargor may not:

- (a) share in any Guarantee, Security Interest or money received or receivable by the Chargee in relation to the Secured Money or stand in the place of the Chargee in relation to any Guarantee, Security Interest or right to receive money;
- (b) in reduction of its liability under this charge, raise a defence, set off or counterclaim against the Chargee or claim a set off or make a counterclaim against the Chargee; or
- (c) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise, to the benefit of any document or agreement to which the Chargee is a party.

#### 11.5 No marshalling

The Chargee is not under any obligation to marshal or appropriate in favour of the Chargor or to exercise, apply, perfect or recover any Security Interest that the Chargee holds at any time or any funds or property that the Chargee may be entitled to receive or have a claim on.

#### 11.6 Effect of Insolvency Event

- (a) If an Insolvency Event has occurred in relation to the Chargor, any amount paid by the Chargor (**Relevant Payment**) will only be applied against any Secured Money if:
  - (i) the Chargee forms the opinion in good faith (which will be conclusively binding on the Chargor) that it will not be required to pay the Relevant Payment to any person under any law relating to bankruptcy, winding up or the protection of creditors; or
  - (ii) a final judgment is given by a court of competent jurisdiction in favour of the Chargee that it is not required to pay the Relevant Payment to any person under any law relating to bankruptcy, winding up or the protection of creditors.
- (b) If an amount is applied against any Secured Money and the Chargee forms the opinion in good faith that it is obliged to pay the Relevant Payment to any person under any law relating to bankruptcy, winding up or the protection of creditors:
  - (i) the Chargee's rights are to be reinstated and will be the same in relation to that amount as if the application, or the payment or transaction giving rise to it, had not been made; and
  - (ii) the Chargor must immediately do anything (including the signing of documents) required by the Chargee to restore to the Chargee any Guarantee or Security Interest to which it was entitled immediately before that application or the payment or transaction giving rise to it.
- (c) Any discharge or release between the Chargee and the Chargor is subject to reinstatement of the Chargee's rights under this clause 11.6 (*Effect of Insolvency Event*).

**12. INDEMNITY**

**12.1 Indemnity for breach or preservation of rights**

The Chargor must indemnify the Chargee against, and must pay the Chargee on demand the amount of, all losses, liabilities, expenses and Taxes incurred in connection with the administration, and any actual or attempted preservation or enforcement of any rights under this charge.

**12.2 Indemnity for exercise of rights or proceedings**

To the extent permitted by law, the Chargor must indemnify each of the Chargee, Receiver and Delegate against, and must pay each of them on demand the amount of all losses, liabilities, expenses and Taxes (other than Excluded Taxes) that they each incur:

- (a) directly or indirectly in the exercise or attempted exercise of any of the powers, rights, discretions or remedies (express or implied) vested in them under this charge or the Corporations Act; and
- (b) in connection with all proceedings, expenses, claims and demands in relation to anything done or omitted in any way relating to Charged Property,

including legal expenses on a full indemnity basis and expenses incurred in engaging consultants.

**13. PROTECTION OF CHARGEES AND APPOINTEES**

**13.1 Protection of Chargee and Receiver**

- (a) The Chargee is not obliged to:
  - (i) notify any debtor or member of the Chargor or any other person of this charge; or
  - (ii) enforce payment of any money payable to the Chargor, or take any step or proceeding for any similar purpose,but may do so.
- (b) None of the Chargee, the Receiver or a Delegate is liable for any omission or delay in exercising any power, right, discretion or remedy under this charge or for any involuntary loss or irregularity that may occur in relation to the exercise or non-exercise of any of them except to the extent of its own fraud, gross negligence or wilful misconduct.

**13.2 Conflict of interests**

The Chargee, the Receiver and any Delegate appointed by the Chargee under this charge may exercise or agree to exercise a Power even though that person may have a conflict of interest or duty in exercising the Power. No contract will be void or voidable by virtue of that conflict of interest or duty, nor will the Chargee, Receiver or Delegate be liable to account to the Chargor or any other person for any money or property as a result of that conflict.

### 13.3 **Liability for loss**

- (a) The Chargee, Receiver and any Delegate appointed by the Chargee under this charge are not liable for any loss that the Chargor suffers as a direct or indirect result of:
  - (i) the exercise or attempted exercise of, or failure to exercise, any of its rights contained in this charge; and
  - (ii) any release or dealing with any other Guarantee or Security Interest (including any prejudice to or loss of the Chargor's rights of subrogation),except to the extent of its own fraud, gross negligence or wilful misconduct.
- (b) If the Chargee, Receiver or any Delegate enters into possession of Charged Property, none of the Chargee, the Receiver or the Delegate is liable:
  - (i) to account as mortgagee in possession or for anything except actual receipts; or
  - (ii) for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable,except to the extent of its own fraud, gross negligence or wilful misconduct.

### 13.4 **Waiver by Chargor**

The Chargor waives in favour of the Chargee:

- (a) all rights against the Chargee and any other person, estate or assets as far as is necessary to give effect to any provision of this charge;
- (b) promptness or diligence on the part of the Chargee, and any other requirement that the Chargee take any action or exhaust any right against any other person before enforcing this charge; and
- (c) all rights inconsistent with the provisions of this charge, including any rights of contribution or subrogation which a Chargor might otherwise be entitled to claim or enforce.

## 14. **PROTECTION OF THIRD PARTIES**

### 14.1 **Dealings under this charge**

A purchaser or other party to a disposal or dealing in attempted exercise of a power contained in this charge is not:

- (a) bound to enquire:
  - (i) whether there has been a default;
  - (ii) whether a Receiver has been properly appointed;
  - (iii) whether any Secured Money is owing; or
  - (iv) about the propriety or regularity of a sale, disposal or dealing;
- (b) affected by actual or constructive notice that a sale, disposal, transaction, document or other dealing is unnecessary or improper; and

- (c) will not be concerned to see to the application of any money or asset, or be answerable or accountable for any loss or misapplication.

Despite any irregularity or impropriety in the exercise of any right, power or discretion under this charge, it is to be treated, for the protection of the purchaser or other party to the disposal or dealing, as being authorised by this charge and valid.

#### 14.2 Receipts

A receipt that the Chargee, Receiver or a Delegate gives for any money payable to or receivable by the Chargee, Receiver or Delegate because of this charge will:

- (a) relieve the person paying or handing over money or other property from all liability:
  - (i) for the application (or any loss or misapplication) of the money or other property;
  - (ii) to enquire whether the Secured Money has become payable; and
  - (iii) (where appropriate) as to the propriety or regularity of the appointment of the Receiver; and
- (b) discharge the person paying that money from its liability to pay that money.

#### 15. DISCHARGE

The Chargee must at the request and cost of the Chargor reconvey, surrender or release any remaining Charged Property (as appropriate) to the Chargor and the Charged Property will then be discharged from this charge:

- (a) when the Chargee is satisfied that:
  - (i) all the Secured Money has been irrevocably paid and discharged in full or satisfied in accordance with this charge and (without limiting this clause) that clause 11.6 (*Effect of Insolvency Event*) will not later apply;
  - (ii) each of the Obligations has been performed and/or discharged in full; and
  - (iii) no amount remains contingently payable or may become payable on the security of this charge (including under an indemnity); and
- (b) on payment or retention of all expenses incurred by or payable to the Chargee, the Receiver and any Delegate (as applicable).

#### 16. GST

- (a) **(Interpretation):**
  - (i) Except where defined in this charge or in the Project Deed or the context suggests otherwise, terms used in this clause 16 (*GST*) have the meanings given to those terms by the GST Act (as amended from time to time).
  - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 16 (*GST*).
  - (iii) Unless otherwise expressly stated, all consideration to be provided under this charge is exclusive of GST. Any consideration that is specified to be



inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 16 (GST).

- (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) **(Reimbursements)**: Any payment or reimbursement required to be made under this charge that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(Additional amount of GST payable)**: Subject to clause 16(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this charge:
  - (i) any amount payable or consideration to be provided under any provision of this charge (other than this clause 16 (GST)), for that supply is exclusive of GST;
  - (ii) any party that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
  - (iii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with this clause 16(c)(ii).
- (d) **(Variation of GST)**:
  - (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 16(c) and clause 16(e)), varies from the additional amount paid by the Recipient under clause 16(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 16(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 16(c).
  - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) **(Exchange of non-monetary consideration)**:
  - (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 16(c) applies is a Taxable Supply made by the Recipient (**Recipient Supply**), the GST Amount that would be otherwise be payable by the Recipient to the Supplier in accordance with clause 16(c) shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
  - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 16(c) (or the time at which such GST Amount would

have been payable in accordance with clause 16(c) but for the operation of clause 16(e)).

- (f) **(No merger)**: This clause 16 (*GST*) will not merge on completion or termination of this charge.

17. **MISCELLANEOUS**

17.1 **Notices**

Each communication (including each notice, consent, approval, request and demand) under or in connection with this charge:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

**The Chargee**

Name: TfNSW, a New South Wales Government agency  
Address: Level 11, 338 Pitt Street, Sydney NSW 2000  
Fax: (02) 9200 0290  
For the attention of: TfNSW's Representative

With a copy to:

Name: Transport for NSW, a New South Wales Government agency  
Address: Level 5, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067  
Fax No: (02) 9200 0290  
For the attention of: Deputy Director General, Transport Projects Division

**The Chargor**

Name: Astra SLR Finance Pty Limited  
Address: c/- Capella Capital, Level 31, AMP Centre, 50 Bridge Street, Sydney, NSW  
Fax No: (02) 8224 3800  
For the attention of: Fiona White

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 17.1(b); and
- (e) is taken to be received by the addressee:
- (i) **(in the case of prepaid post sent to an address in the same country)** 2 Business Days after the date of posting;
- (ii) **(in the case of international post)** 7 Business Days after the date of posting;

- (iii) **(in the case of fax)** at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
- (iv) **(in the case of delivery by hand)** on delivery,

provided that if the communication would be deemed to be received on a day that is not a Business Day, or after 5:00pm on a Business Day, it is taken to be received at 9:00am on the next Business Day.

#### 17.2 **The Chargee as a Public Authority**

- (a) This charge will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Chargee to exercise any of its functions and powers pursuant to any law.
- (b) The Chargor acknowledges and agrees that, without limiting clause 17.2(a), anything which the Chargee does, fails to do or purports to do pursuant to its functions and powers under any law will be deemed not to be an act or omission by the Chargee under this charge and will not entitle the Chargor to make any Claim against the Chargee.
- (c) The parties agree that clauses 17.2(a) and 17.2(b) are taken not to limit any liability which the Chargee would have had to the Chargor under this charge as a result of a breach by the Chargee of a term of this charge but for clauses 17.2(a) and 17.2(b) of this charge.

#### 17.3 **Confidentiality**

- (a) Subject to clause 17.3(b), if the Chargor is a debtor as defined in the PPSA, the parties agree to keep all information of a kind mentioned in section 275(l) of the PPSA confidential and not to disclose that information to anyone.
- (b) Clause 17.3(a) does not apply to the information referred to in clause 47.3 (*Public Disclosure Obligations*) of the Project Deed (with all references to 'OpCo' to include the Chargor).

#### 17.4 **Certification**

For the purposes of this charge, a copy of a document will be regarded as duly certified by a party if it is certified as a true copy by a director, secretary or general manager of that party.

#### 17.5 **Cost of performing obligations**

Each party must perform its obligations under this charge at its own cost, unless expressly provided otherwise.

#### 17.6 **Governing Law**

This charge is governed by and must be construed according to the law applying in New South Wales and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts.

#### 17.7 **Amendments**

This charge may only be varied by a deed executed by or on behalf of each party.

17.8 **Assignment**

Except as expressly contemplated by this charge or by way of security under a Permitted Encumbrance, the Chargor may not assign or transfer any of its rights or obligations under this charge without the prior written consent of the Chargee, which must not be unreasonably withheld.

17.9 **Taxes**

Subject to clause 61 (*Taxes*) of the Project Deed, the Chargor:

- (a) must pay all Taxes in respect of this charge, the performance of this charge and each transaction effected by or made under this charge;
- (b) indemnifies each other party against liability arising from failure to comply with clause 17.9(a); and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of any Taxes paid under this clause 17.9 (*Taxes*).

17.10 **Waiver**

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

17.11 **Survival of certain provisions; no merger**

- (a) Without limiting clause 17.20(a):
  - (i) clauses 12 (*Indemnity*), 17.1 (*Notices*), 17.6 (*Governing Law*) and 17.20 (*Indemnities*), any indemnities given under this charge and any other provisions which are expressed to survive termination (together, the **Surviving Clauses**) will survive rescission, termination or expiration of this charge; and
  - (ii) if this charge is rescinded or terminated, no party will be liable to any other party except:
    - (A) under the Surviving Clauses; or
    - (B) in respect of any breach of this charge occurring before such rescission or termination.
- (b) No right or obligation of any party will merge on completion of any transaction under this charge. All rights and obligations under this charge survive the execution and delivery of any transfer or other document which implements any transaction under this charge.

**17.12 Further acts and documents**

- (a) Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this charge.
- (b) Without limiting clause 17.12(a), if the Chargee determines that this charge or a Secured Document is or contains a Security Interest, the Chargor agrees to promptly do anything (including amending any document or executing any new document) which the Chargee reasonably requires for the purposes of:
  - (i) ensuring that the Security Interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;
  - (ii) enabling the Chargee to apply for registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by the Chargee; or
  - (iii) enabling the Chargee to exercise rights in connection with the Security Interest.

**17.13 Consents**

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

**17.14 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this charge, except for representations or inducements expressly set out in this charge.
- (b) Each party acknowledges and confirms that it does not enter into this charge in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this charge.

**17.15 Reading down**

If a word, phrase, sentence, clause or other provision of this charge would otherwise be unenforceable, illegal or invalid, the effect of that provision will so far as possible be limited and read down so that it is not unenforceable, illegal or invalid.

**17.16 Severance**

Any provision of this charge which is illegal or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this charge or affecting the validity or unenforceability of such provision in any other jurisdiction.

**17.17 Remedies cumulative**

The rights and remedies provided in this charge are cumulative and are not exclusive of any rights or remedies provided by law or any other agreement, except to the extent expressly provided in this charge.

**17.18 Moratorium legislation**

Unless application is mandatory by law, any present or future law will not apply to this charge so as to abrogate or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to the Chargee.

**17.19 Entire agreement**

This charge contains the entire agreement of the parties with respect to the transactions contemplated by it. There are no understandings, agreements, warranties or representations (express or implied) with respect to the transactions contemplated by this charge except for those referred to in it.

**17.20 Indemnities**

- (a) Each indemnity in this charge is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this charge.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this charge.
- (c) A party must pay on demand any amount it must pay under an indemnity in this charge.
- (d) Where a party gives any indemnity or release to the Chargee under this charge, it gives an equivalent indemnity and release to the State. The Chargee holds for itself and on trust for the State the benefit of each such indemnity and release in this charge.

**17.21 Counterparts**

This charge may be executed in any number of counterparts and by the parties on separate counterparts. All such counterparts taken together will be deemed to constitute one and the same instrument.

**17.22 Attorneys**

Each person who executes this charge 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 and that he or she has, at the time of executing this charge, no notice of the revocation of the power of attorney under which he or she executes this charge.

**17.23 Authorised Representative**

The Chargee may from time to time appoint in writing one or more natural persons, each of whom:

- (a) may exercise any of its powers, duties, discretions and authorities as are delegated by the Chargee to be exercised by that person as agent for the Chargee; and
- (b) has the full power and authority, subject to the powers of delegation by the Chargee, to act for and on behalf of and to bind the Chargee under this charge to the extent of the delegation and in compliance with the delegation.

17.24 **Registration**

The Chargee may register this charge, or any financing statement or financing change statement relating to this charge, in the manner prescribed by law to ensure the full efficacy of this charge as an Encumbrance to the Chargee in all relevant jurisdictions.

17.25 **Blanks**

The Chargor authorises the Chargee to complete any blanks in this charge or any document, of any nature, entered into or executed by the Chargor in connection with this charge.

**EXECUTED** as a deed.

**EXECUTED** by **TRANSPORT FOR NSW**  
by its authorised delegate **IN THE**  
**PRESENCE OF:**

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Authorised Delegate

\_\_\_\_\_  
Name of Witness (print)

\_\_\_\_\_  
Name of Authorised Delegate (print)

**SIGNED, SEALED AND DELIVERED** by  
**ASTRA SLR FINANCE PTY LIMITED**  
**ACN 166 382 403** by its Attorney **IN**  
**THE PRESENCE OF:**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Name of Witness (print)

\_\_\_\_\_  
Name of Attorney (print)



**Schedule A18**  
**Dispute resolution procedures**

(Clause 56)

**1. DISPUTE AVOIDANCE BOARD**

**1.1 Dispute Avoidance Board's function**

- (a) The Dispute Avoidance Board has been constituted under the DAB Agreement.
- (b) In performing its functions the Dispute Avoidance Board must comply with this Schedule A18 (*Dispute resolution procedures*) and the DAB Agreement.
- (c) The Dispute Avoidance Board may express an opinion or a view where asked to do so but that opinion or view will not be binding upon the parties unless the parties agree in writing to be bound by it.
- (d) The Dispute Avoidance Board will be deemed to be not acting as arbitrators.
- (e) Each party must provide all reasonable assistance to the Dispute Avoidance Board in fulfilling its functions including:
  - (i) providing all information it reasonably requests; and
  - (ii) making available to the Dispute Avoidance Board access to the SLR Site and appropriate facilities as required.
- (f) For the purposes of enabling it to fulfil its functions, the Dispute Avoidance Board will keep itself informed as to the progress of OpCo's Activities and in particular any issues affecting the successful progression of OpCo's Activities.
- (g) OpCo may, with TfNSW's consent, have a representative of any Core Contractor attend any meeting with the Dispute Avoidance Board as an observer.

**1.2 Replacement of Dispute Avoidance Board member**

- (a) If a member of the Dispute Avoidance Board declines to act, resigns, is unable to act or the member's appointment is terminated in accordance with the DAB Agreement:
  - (i) if that member is the chairperson:
    - (A) the parties must, within 30 Business Days of a member declining to act, resigning, being unable to act, or having their appointment on the Dispute Avoidance Board terminated, endeavour to agree in writing to appoint a replacement member who will become the new chairperson; or
    - (B) if the parties are unable to agree, the remaining two members will appoint a replacement member who will become the new chairperson; and
  - (ii) if that member is not the chairperson:
    - (A) if the parties have previously agreed upon one or more reserve members for the Dispute Avoidance Board, and one or more such

members are willing and able to act on the Dispute Avoidance Board, the party that nominated the member to be replaced will appoint one of the reserve members to the Dispute Avoidance Board; or

- (B) if no reserve members have been agreed between the parties or none of the reserve members are willing and able to act on the Dispute Avoidance Board, the party that nominated the member to be replaced must nominate a replacement member satisfactory to the other party.
- (b) If, within 30 Business Days of a member declining to act, resigning, being unable to act, or having their appointment on the Dispute Avoidance Board terminated, the member has not been replaced by a person appointed in accordance with clause 1.2(a), either party may request the President or Acting President of the Australian Centre for International Commercial Arbitration (**ACICA**) to nominate a replacement member. This appointment will be final and conclusive.
- (c) The parties, the remaining members and the new member must enter into a replacement Dispute Avoidance Board agreement on substantially the same terms as the DAB Agreement.

### 1.3 Termination of Dispute Avoidance Board

The appointment of any member of the Dispute Avoidance Board may be terminated by mutual agreement of both parties, but not by TfNSW or OpCo acting alone. Unless otherwise agreed by both parties, the DAB Agreement will terminate upon the later of:

- (a) the Dispute Avoidance Board having provided its opinion in accordance with clause 56.9 (*Obtaining Dispute Avoidance Board's opinion*) of the Operative Provisions in respect of all Disputes that were referred to it; and
- (b) the Date of Final Completion.

## 2. EXPERT DETERMINATION RULES

- (a) Any expert determination under clause 56.10 (*Expert determination*) of the Operative Provisions is to be conducted by:
  - (i) an independent industry expert agreed in writing by TfNSW and OpCo. For this purpose, each party will nominate two preferred independent industry experts; or
  - (ii) an independent industry expert appointed by the President or Acting President of ACICA in New South Wales where:
    - (A) the parties are unable to agree upon an independent industry expert within 30 Business Days after the Executive Negotiators have agreed in writing to refer the Dispute to expert determination under clause 2(a)(i) of this Schedule A18 (*Dispute resolution procedures*); or
    - (B) an independent industry expert agreed under clause 2(a)(i) of this Schedule A18 (*Dispute resolution procedures*):
      - (aa) is unavailable;
      - (bb) declines to act;

- (cc) does not respond within 10 Business Days to a request by one or both parties for advice as to whether he or she is able to conduct the determination; or
  - (dd) does not make a determination within the time specified in the rules for expert determination.
- (b) An expert determination conducted under clause 56.10 (*Expert determination*) of the Operative Provisions is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.
- (c) The expert determination must be made in accordance with this deed and the rules for the expert determination process in Attachment A (*Expert Determination Agreement*) or such other rules as the expert may in his or her absolute discretion require.
- (d) The expert must:
  - (i) disclose to the parties any interest he or she has in the outcome of the determination; and
  - (ii) not communicate with one party to the determination without the knowledge of the other.
- (e) Each party must:
  - (i) bear its own costs in respect of any expert determination; and
  - (ii) pay one-half of the expert's costs.
- (f) The expert will not be liable to the parties arising out of, or in any way in connection with, the expert determination process, except in the case of fraud.
- (g) The parties must enter into an agreement with the appointed expert on the terms prescribed Attachment A (*Expert Determination Agreement*) or such other terms as the parties and the expert may agree.

### 3. **ARBITRATION RULES**

- (a) The arbitration is to be conducted by:
  - (i) an arbitrator agreed by TfNSW and OpCo. For this purpose, each party will nominate two preferred arbitrators; or
  - (ii) an arbitrator appointed by the President or Acting President of ACICA in New South Wales where:
    - (A) the parties are unable to agree upon an arbitrator within 30 Business Days after:
      - (aa) a notice referring the Dispute to arbitration has been provided under clauses 56.7(c)(ii)(C), 56.9(e) or 56.10(b)(iii) of the Operative Provisions; or
      - (bb) a notice of dissatisfaction has been provided under clause 56.10(b)(iii); or

- (B) an arbitrator agreed under clause 3(a)(i) of this Schedule A18 (*Dispute resolution procedures*):
  - (aa) is unavailable;
  - (bb) declines to act; or
  - (cc) does not respond within 10 Business Days to a request by one or both parties for advice as to whether he or she is able to conduct the determination.
- (b) Any arbitration conducted in relation to a Dispute will be conducted in accordance with the arbitration rules of ACICA known as the ACICA Arbitration Rules.
- (c) The seat of the arbitration will be Sydney, Australia.
- (d) The language of the arbitration will be English.
- (e) The parties further agree to the following general principles relating to the procedure of the arbitration:
  - (i) that they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
  - (ii) that any arbitration conducted pursuant to this clause 3 (*Arbitration rules*) will not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal; and
  - (iii) that in conducting the arbitration, the arbitral tribunal must take into account the matters set out above, particularly in deciding issues such as:
    - (A) the number of written submissions that will be permitted;
    - (B) where appropriate, the length of written submissions;
    - (C) the extent of document discovery permitted, if any;
    - (D) the consolidation of proceedings, when requested;
    - (E) the joinder of parties, when requested;
    - (F) the length of any hearing, if any; and
    - (G) the number of experts, if any, each party is permitted to appoint.
- (f) The parties agree that:
  - (i) subject to clause 56.13 (*Exclusion from determination or award*) of the Operative Provisions, the arbitral tribunal will have the power to grant all legal, equitable and statutory remedies, except punitive damages; and
  - (ii) section 24 of the *International Arbitration Act 1974* (Cth) will apply in an international arbitration context.
- (g) The arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitral tribunal considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party hereby consents to such joinder. In the event of such

joinder of parties in the arbitration, the arbitral tribunal has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.

- (h) Any award of the arbitral tribunal will be final and binding upon the parties.
- (i) This arbitration agreement will be governed by and must be construed according to the laws applying in New South Wales.

**Attachment A**  
**EXPERT DETERMINATION AGREEMENT**

To:

By a deed titled "Sydney Light Rail Project Deed" dated ..... (**Project Deed**) between:  
**Transport for NSW** ABN: 18 804 239 602 (**TfNSW**); and  
..... (**OpCo**).

OpCo and TfNSW agreed to submit disputes or differences that might arise between them to an expert for determination through an expert determination process, as established by the Project Deed, and the Rules for expert determination and the Code of Conduct for an expert that are attached to this letter or any other rules which you may in your absolute discretion decide.

A dispute has arisen between the parties. A short summary of the dispute is attached to this letter.

The parties agree to appoint you,

.....

..... of .....

as the sole expert to determine the Dispute or difference in accordance with the below procedures. The parties agree to pay you \$.....

The determination of the dispute or difference must be completed within 60 days (or such other period as may be agreed between you, TfNSW and OpCo) of the date of your acceptance of this appointment.

The parties agree that you are not liable for any thing you do which is bona fide and in the exercise or purported exercise of your functions as the expert.

Dated: .....

.....

For TfNSW

.....

For OpCo

.....

For the expert

### CODE OF CONDUCT FOR AN EXPERT

1. The function of the expert is to make a determination on the dispute or difference in accordance with the rules in Attachment B (*Rules for expert determination*) or the Institute of Arbitrators and Mediators Australia Expert Determination Rules (which the expert in his or her absolute discretion decides), this code of conduct and the letter of appointment of the expert.
2. The expert must receive the written submissions and responses of the parties in accordance with the procedures specified in Attachment B (*Rules for expert determination*) and may require any further information or documentation from the parties which is reasonably necessary to determine the dispute or difference.
3. The expert must decide whether a conference is necessary to receive further information. The expert must inform the parties of the subject matter of any conference and may hear representations only on those matters.
4. The expert is not bound by the rules of evidence, may receive information in any manner the expert thinks fit (including as an inquisitor), and must meet the requirements of procedural fairness.
5. The expert must disclose to both parties all information and documents received. If a party fails to make a written submission or appear at any conference after having received the appropriate notice, the expert may continue with the process. Subject to this, discussions with the expert must only take place in the presence of both parties.
6. The expert must reach a determination on the basis of the information received from the parties and on the basis of the expert's own expertise. The decision must be reached as an expert and not as an arbitrator. The expert's determination must be made as soon as possible and in any event within the period set out in the letter of appointment of the expert. The determination, signed by the expert, must be notified immediately to the parties in writing.
7. The expert must keep all information received confidential and must not disclose that information without the prior written consent of the parties.
8. The expert must inform the parties immediately of any circumstances that might adversely affect the expert's capacity to act independently or impartially. The expert, in those circumstances, must terminate the proceedings, unless the parties agree otherwise.

**ATTACHMENT B**  
**RULES FOR EXPERT DETERMINATION**

**1. COMMENCEMENT**

The expert determination process begins when the expert accepts an appointment to determine the dispute or difference in accordance with these rules and the code of conduct for experts forming part of this expert determination agreement.

**2. WRITTEN SUBMISSIONS**

- (a) Within 14 days after the date this process begins, the claimant (that is, the party who gave notice of the dispute or difference) must give the respondent and the expert a written submission setting out details of the dispute or difference, any agreed statement of facts and a written submission on the dispute or difference in support of the claimant's contentions.
- (b) Within 14 days after receipt of a copy of the submission referred to in clause 2(a), the respondent must give the claimant and the expert a written response to the claimant's submission. That response may include cross claims.
- (c) Within 14 days after receipt of the response, the claimant may reply to the response but must not raise new matters.
- (d) Within 7 days after receipt of that reply, the other respondent may make comments upon the reply but not raise new matters.
- (e) For the purpose of counting days in these rules, Saturdays, Sundays, public holidays and the period from 24 December to 15 January inclusive will not be counted. All submissions, responses and comments must be in writing. Unless the expert and the parties otherwise agree, the expert must ignore any submission, response or comment made later than the time prescribed. A party providing anything to the expert must at the same time provide a copy to the other party.
- (f) If the expert considers it appropriate, the claimant may reply in writing to the respondent's comments submitted in accordance with clause 2(d) within the time allowed by the expert.
- (g) If the expert decides further information or documentation is required for the determination of the dispute or difference, the expert:
  - (i) may require a further written submission or documents from one or both parties, giving each party a reasonable opportunity to make a written response to the other's submission;
  - (ii) must not communicate with one party without the knowledge of the other; and
  - (iii) may request a conference in accordance with clause 3 (*Conference*) below.

**3. CONFERENCE**

- (a) The expert may notify the parties that a conference between the parties is considered necessary and set out in such a notice the matters that the expert wants to discuss at the conference.
- (b) Provided that the parties agree, at the request of the expert and on such terms as the parties may agree, the expert may arrange a conference. Any such conference



will be without prejudice to the respective rights and liabilities of the parties arising under the Project Deed or otherwise at law.

- (c) At least 7 days before the conference, the expert must inform the parties of the conference agenda.
- (d) The parties must appear at the conference and make oral submissions on the subject matter of the conference.
- (e) The expert is not bound by the rules of evidence in conducting the conference.
- (f) Neither party may have legal representation at a conference.
- (g) The conference must be held in private.
- (h) If required by either party, minutes of the conference proceedings must be taken and made available to the expert and the parties.
- (i) All proceedings and submissions relating to the expert determination process must be kept confidential except:
  - (i) with the prior written consent of the parties;
  - (ii) as may be required by law; or
  - (iii) in order to enforce the determination of the expert.

#### 4. **THE DETERMINATION**

- (a) As soon as possible after receipt of the submissions or after any conference and, in any event not later than the period of time after the expert's acceptance of appointment agreed by the parties and the expert, the expert must:
  - (i) determine the dispute or difference between the parties by at least providing a written opinion and a statement of reasons for making the determination; and
  - (ii) notify the parties of that determination in writing.
- (b) The expert must make the determination on the basis of the submissions of the parties, including documents, and the expert's own knowledge and expertise.
- (c) Unless the parties agree to extend the time for making a determination, as agreed by the parties under clause 4(a), the expert cannot deliver a determination after that time.
- (d) If the determination contains clerical or mathematical errors or accidental slips or omissions, the expert may correct them after the expiry of the time for making the determination.

#### 5. **COSTS**

- (a) Each party must bear its own costs of the expert determination and must share equally the costs of the expert.
- (b) Security for costs must be deposited by both parties at the commencement of the expert determination process in accordance with any direction of the expert.

6. **MODIFICATION**

These rules may be modified only by agreement of the parties and the expert.

**Schedule A19**

**Required IWLK Works**

(Clause 15.4)

Ref	General Location	Description
1.	At Depot @ 190 Pymont St	Turnouts refurbished including replacement as required of shims, switches and sleepers. Sleeper replacement is at a rate of approximately 1 replaced in 5
2.	John St Square	Turnouts refurbished including replacement as required of shims, switches and sleepers. Sleeper replacement is at a rate of approximately 1 replaced in 5
3.	Wentworth Park	Turnouts refurbished including replacement as required of shims, switches and sleepers. Sleeper replacement is at a rate of approximately 1 replaced in 5
4.	Lilyfield	Turnouts refurbished including replacement as required of shims and switches.
5.	Lewisham	Turnouts refurbished including replacement as required of shims and switches.
6.	Dulwich Hill	Turnouts refurbished including replacement as required of shims and switches.
7.	Central to Lilyfield	All remaining mechanical joints at turnouts replaced with welded joints – running lines only
8.	Rozelle Bay - Railway Parade underbridge	Ballast logs replaced
9.	Rozelle Bay - Johnson St underbridge	Ballast logs replaced
10.	Wentworth Park Rd underbridge	Ballast logs replaced
11.	Jones Bay Road tunnel	Tunnel lighting upgraded
12.	John St tunnel	Tunnel lighting upgraded
13.	Glebe tunnel	Life expired lights in tunnel replaced.
14.	Wattle St Bridge	Guardrails installed on underbridge
15.	Wentworth Park Viaduct	Guardrails installed on viaduct
16.	Wentworth Park Bridge	Guardrails installed on underbridge
17.	Jubilee Park Viaduct	Guardrails installed on viaduct
18.	The Crescent underbridge	Guardrails installed on underbridge

Ref	General Location	Description
19.	Johnston St underpass	Guardrails installed on underbridge
20.	Wattle St Bridge	Transom timbers replaced
21.	Depot @ 190 Pymont St	Wash bay road – Permanent rail earth connection installed
22.	Between Central and Lilyfield	Section insulators to 2 sections replaced The specific insulators for replacement will be determined based on condition assessment yet to be completed.
23.	Various	Earthing, bonding and electrolysis works implemented in accordance with the recommendations contained in Information Document 01.02.03.02.47.03 IWE-01-0001-TR-0002-POW-R-INSULATION CO-ORDINATION BONDINGS AND ISOLATIONS DESIGN REPORT
24.	Substation 2 near Fish Markets	Fault in default switching arrangements investigated and repaired. Monitoring currently ongoing.
25.	Depot @ 190 Pymont St	Access/maintenance walkway installed at LRV roof level on Service Road 1. The walkway extends the full length on one side of a LRV with a safety handrail on the other.
26.	Depot @ 190 Pymont St	Maintenance shed floor epoxy painted
27.	Depot @ 190 Pymont St	Major maintenance of depot carried out including works (including some painting) to floors, roof, stairs and internal features.
28.	Depot @ 190 Pymont St	Service pit lighting upgraded
29.	Depot @ 190 Pymont St	Lighting to walkways in stabling yard installed
30.	Wentworth Park Viaduct	Ch 4.186 to Ch 4.461 – down and up tracks – Generally every second sleeper replaced with a concrete sleeper
31.	Wentworth Park underbridge and along Glebe straight	Ch 4.485 to Ch 4.632 – down and up tracks – Generally every third sleeper replaced with a concrete sleeper
32.	Glebe – on curve on city side of Darling St underbridge	Ch 4.632 to Ch 4.659 – down and up tracks – Generally every second sleeper replaced with a concrete sleeper
33.	Glebe – on curve between Darling St and Bridge Rd underbridges	Ch 4.679 to Ch 4.745 – down and up tracks – Generally every second sleeper replaced with a concrete sleeper
34.	Bridge Road Underbridge to Glebe tunnel eastern portal	Ch 4.767 to Ch 4.844 – down and up tracks – Generally every second sleeper replaced with a concrete sleeper
35.	Glebe Tunnel western portal to Jubilee Park Stop	Ch 5.588 to Ch 5.603 – down track – Generally every second sleeper replaced with a concrete sleeper

Ref	General Location	Description
36.	Glebe Tunnel western portal through Jubilee Park Stop to Jubilee Park Viaduct	Ch 5.588 to Ch 5.675 – up track – Generally every second sleeper replaced with a concrete sleeper
37.	Jubilee Park Stop to Jubilee Park Viaduct	Ch 5.638 to Ch 5.675 – down track – Generally every second sleeper replaced with a concrete sleeper
38.	Jubilee Park Viaduct	Ch 5.675 to Ch 6.011 – down and up tracks – Generally every second sleeper replaced with a concrete sleeper
39.	Jubilee Park Viaduct to Johnson St underbridge	Ch 6.011 to Ch 6.088 – down and up tracks – Generally every second sleeper replaced with a concrete sleeper
40.	Johnson St underbridge to Rozelle Bay underbridge	Ch 6.159 to Ch 6.330 – down and up tracks – Generally every second sleeper replaced with a concrete sleeper
41.	Rozelle Bay Stop to Railway Parade underbridge	Ch 6.381 to Ch 6.391 – down track – Generally every second sleeper replaced with a concrete sleeper
42.	Rozelle Bay Stop to Railway Parade underbridge	Ch 6.342 to Ch 6.391 – up track – Generally every second sleeper replaced with a concrete sleeper
43.	Railway Parade to “old 105 Points”	Ch 6.421 to Ch6.900 – down and up tracks – Generally every third sleeper replaced with a concrete sleeper
44.	Glebe Stop	Overhead electrical supply support pole replaced
45.	Wentworth Park Stop	Overhead electrical supply support pole replaced
46.	Rozelle Bay Stop	Overhead electrical supply support pole replaced
47.	Glebe Stop	Asphalt infill sections to track pedestrian crossings replaced
48.	Jubilee Park Stop	Asphalt infill sections to track pedestrian crossings replaced
49.	Rozelle Bay Stop	Asphalt infill sections to track pedestrian crossings replaced
50.	Pymont Bay Stop	Infill sections to track pedestrian crossings replaced. Timber infill sections replaced with rubber and concrete
51.	Intersection of Hay St and George St, City	Asphalt and concrete slabs repaired
52.	Intersection of Hay St and Thomas St, City	Asphalt and concrete slabs repaired
53.	Glebe Tunnel	50 Linear meters of formation of both up and down track approximately (25 m) either side of the lowest point at chainage 5345, including cess drain, refurbished. Additional drip shields to drain areas of significant drips installed. Corroded cable tray sections replaced.

Ref	General Location	Description
		<p>Fire alarm system. Conduits to detectors replaced.</p> <p>Rail defects: Removal of corroded rail defects from both tracks.</p>
54.	The Star to John St Square Station	<p>The following areas of cuttings were stabilised.</p> <p>The areas described in Information Document 01.02.04.01.15 SLR Cuttings Risk Assessment Report – GEOTLCOV25093AA-AC 2.887km to 3.020km The Star to John St. Station Square, Table 1 Risk Assessment Summary, Air Space Development Area (Up) as:</p> <ul style="list-style-type: none"> <li>• 2.930 (Up) - Area of jointed rock with several partially detached rock blocks up to about 0.5 m across;</li> <li>• 2.933 (Up) – Area of jointed rock with large block bounded by steeply dipping joint. Approx. 1m x 1 m x 0.5 m;</li> <li>• 2.958 (Up) to 2.968 (Up) – Zone of jointed rock. Several partially detached rock blocks up to about 0.5 across;</li> <li>• 2.968 (Up) to 2.975 (Up) – Several areas of undercut/overhanging sandstone with small vegetation. Potential spalling of small rocks (typically &lt;0.3m across).</li> </ul>
55.	The Star to John St Square Station	<p>The following areas of cuttings were stabilised.</p> <p>The areas described in Information Document 01.02.04.01.15 SLR Cuttings Risk Assessment Report – GEOTLCOV25093AA-AC 2.887km to 3.020km The Star to John St. Station Square, Table 1 Risk Assessment Summary, Up Side Cut - Point St to Harris St as:</p> <ul style="list-style-type: none"> <li>• Draped Chain Link Wire Mesh Area – potential for rocks larger than 0.5 m across to tear through the mesh;</li> <li>• <u>General</u> Several areas of undercut/overhanging sandstone. Potential for root jacking due to vegetation at crest.</li> </ul>
56.	John St Square Station	<p>The following areas of cuttings were stabilised.</p> <p>The areas described in Information Document 01.02.04.01.16 SLR Cuttings Risk Assessment Report – GEOTLCOV25093AA-AD 3.120km to 3.160km John St. Square Station, Table 1 Risk Assessment Summary, Up Side (Air Space Development) as:</p> <ul style="list-style-type: none"> <li>• 3.120 (Up) – Large rock slab with joint behind. Approx. 2m high, 0.5m thick;</li> <li>• 3.130 (Up) – partially detached rock slab. Approx. 0.5m x 0.5m x 1.0m;</li> <li>• 3.120 (Up) to 3.160 – <u>General</u> – Potential for fretting of rocks up to about 0.3m across from entire site, particularly from upper 4m of the cut face.</li> </ul>
57.	John St Square Station	<p>The following areas of cuttings were stabilised.</p>

Ref	General Location	Description
		<p>The areas described in Information Document 01.02.04.01.16 SLR Cuttings Risk Assessment Report – GEOTLCOV25093AA-AD 3.120km to 3.160km John St. Square Station, Table 1 Risk Assessment Summary, Down Side Cut, as:</p> <ul style="list-style-type: none"> <li>• 3.130 (Down) Small rock (about 0.1m across) resting on ledge;</li> <li>• 3.150 (Down) – Void / overhang below shotcrete layer near base of stairs;</li> <li>• 3.145 (Down) – Undercut eroding sandstone layer. Potential for rockfalls from overhanging sections of rock.</li> <li>• 3.120 (Down) to 3.160 – <u>General</u> – Potential for fretting of rocks up to about 0.3m across from entire site, particularly the exposed area of cut adjacent to stairs.</li> </ul>
58.	John St Square to Fish Market Station	<p>The following areas of cuttings were stabilised.</p> <p>The areas described in Information Document 01.02.04.01.17 SLR Cuttings Risk Assessment Report – GEOTLCOV25093AA-AE 3.352km to 3.592km John St. Station to Fish Market Station, Table 1 Risk Assessment Summary, Up Side Cut, as:</p> <ul style="list-style-type: none"> <li>• 3.394 (Up) – Undercut area of sandstone near toe of cut due to erosion of shale layer;</li> <li>• 3.352 (Up) to (3.562 (approx) – <u>General</u> – Potential for rock falls about 0.8m across from entire site, particularly from the crest due to root jacking from trees.</li> </ul>
59.	John St Square to Fish Market Station	<p>The following areas of cuttings were stabilised.</p> <p>The areas described in Information Document 01.02.04.01.17 SLR Cuttings Risk Assessment Report – GEOTLCOV25093AA-AE 3.352km to 3.592km John St. Station to Fish Market Station, Table 1 Risk Assessment Summary, Down Side Cut, as:</p> <ul style="list-style-type: none"> <li>• 3.352 (Down) to 3.385 (approx.) – Large rock falls from quarry faces above rail line. Rock blocks could potentially exceed 1m across.</li> <li>• 3.580 (Down) – Rock fall debris in cess with rocks up to 0.3m across. Potential for further rockfalls due to wedges of rock up to 0.5m across;</li> <li>• 3.592 – Area of jointed rock – potential rock wedges</li> <li>• 3.352 (Down) to 3.592 – <u>General</u> - Potential for rock falls about 0.8m across from entire site, particularly from the crest due to root jacking from trees.</li> </ul>
60.	From adjacent to Depot @ 190 Pymont St to John St Stop	Worn and/or faulty glued insulated joints replaced
61.	Wentworth Park Stop to Lilyfield Stop	Track resurfacing and tamping including minor ballast “top-up” as required
62.	Central to Wentworth	Detailed clearance survey prior to introduction of new Urbos

Ref	General Location	Description
	Park	3 LRVs
63.	Hay St	Repaint on-street lines and stencils.
64.	Glebe tunnel and, subject to a current study confirming the requirement, in The Star tunnel.	Install radio repeaters to alleviate operational radio reception "deadspots"
65.	Depot @ 190 Pymont St	Install VOIP based telephones
66.	Ticketing	Purchase of additional ticketing machines (Casio brand) to allow for extension to Dulwich Hill.
67.	Depot @ 190 Pymont St	Install additional lockers for staff
68.	Jubilee Park Viaduct	Install steel catch sheeting along handrail side (not parapet side) to alleviate ballast falling from viaduct.
69.	On curve adjacent to Darling Drive crossing	Replace rails to Up line
70.	Depot @ 190 Pymont St to Convention Stop	Widen access path from car parking area north of Depot @ 190 Pymont St to Convention Stop
71.	Depot @ 190 Pymont St to washbay	Upgrade footpath including installation of lighting.
72.	Depot @ 190 Pymont St	Replace turnout wayside selection box cabinets numbers 201,202,203.
73.	Depot @ 190 Pymont St	Install additional racking on a new slab capable of supporting forklift access
74.	Depot @ 220 Pymont St	Move fencing and install additional racking on new slab capable of supporting forklift access
75.	Bridge Structures generally	Inspections only
76.	Early Works by Managing Contractor	The works described in Schedule E1 Appendix 22 (Early Works) of this deed: <ul style="list-style-type: none"> <li>• Section 2.5.1(a) Portion 1.5 – Inner West DDA Compliance Upgrades, Scope; and</li> <li>• Attachment 2 – Inner West DDA Compliance Upgrade Schedule – SLR-AUH-GN-10505.</li> </ul>



**Schedule A20**

**Utility Services Asset Identification Information**

(Clause 1.1)

Refer to separate electronic disc titled "Sydney Light Rail – Schedules Electronic Documents" dated the date of this deed, electronic folder named "Schedule A20 (Utility Services Asset Identification Information)" for a copy of each of the files and folders (which contain the number of files and the number of sub-folders noted in brackets) in the table below.

No.	File or Folder Title
<b>TfNSW</b>	
1.	File named "01.01.15.13.04 CSELR Utilities Conflicts Database 140404"
<b>City of Sydney</b>	
2.	Folder named "01.01.04.01 City of Sydney Stormwater Plans" (2 files)
<b>Randwick City Council</b>	
3.	Folder named "01.01.05.01 Randwick City Council Stormwater Plans" (2 files)
<b>RMS</b>	
4.	Folder named "01.01.10.01 RMS TCS" (193 files)
<b>AAPT</b>	
5.	File named "01.01.15.01.01.01 26471189 NSW Metro Aapt"
6.	File named "01.01.15.01.02 23758985_NSW Metro Aapt"
<b>AARNet</b>	
7.	Folder named "01.01.15.02 AARNet" (13 files)
<b>Ausgrid</b>	
8.	File named "01.01.15.03.01.01 Ausgrid Underground Asset Plan"
9.	File named "01.01.15.03.02.01 Ausgrid Overhead Asset Plan"
10.	Folder named "01.01.15.03.03 Ausgrid Substation As-Builts" (27 files)
11.	Folder named "01.01.15.03.05 Ausgrid Pit Information" (5 files)

No.	File or Folder Title
12.	Folder named "01.01.15.03.06 Ausgrid Pit References" (2 files)
13.	Folder named "01.01.15.03.07 Ausgrid Pit Schematics" (60 files)
14.	Folder named "01.01.15.03.08 Ausgrid Pit & Substation GIS Data" (2 files)
<b>Jemena</b>	
15.	Folder named "01.01.15.04.01 Jemena DBYD Plan - PDF"(1 file)
16.	Folder named "01.01.15.04.02 Jemena DBYD Plan - DWG" (1 file)
17.	Folder named "01.01.15.04.03 Jemena High Risk Valve Plans" (4 files)
18.	Folder named "01.01.15.04.04 Jemena Isolated Main Plans" (1 files)
19.	Folder named "01.01.15.04.06 Jemena Planned Capital Works" (2 files)
20.	File named "01.01.15.04.09 Jemena Design Basis Manual - Sydney Light Rail (Jemena Assets)"
<b>Sydney Water</b>	
21.	Folder named "01.01.15.05.01 Sydney Water Plan" (2 files)
22.	Folder named "01.01.15.05.02 Sydney Water GIS" (3 files)
23.	Folder named "01.01.15.05.03 Sydney Water Asset Maps & Catchments" (3 files)
24.	Folder named "01.01.15.05.04 Sydney Water Record Drawings & Asset Plans" (3 sub-folders)
25.	Folder named "01.01.15.05.05 Sydney Water Record Drawings & Asset Plans Register" (1 file)
26.	Folder named "01.01.15.05.06 Sydney Water - Water Street Directory" (2 files)
27.	Folder named "01.01.15.05.07 Sydney Water - Sewer Street Directory" (3 files)
<b>Optus &amp; Uecomm</b>	
28.	Folder named "01.01.15.06 Optus & Uecomm" (6 sub-folders and 9 files)
<b>Telstra</b>	

No.	File or Folder Title
29.	Folder named "01.01.15.07 Telstra" (6 sub-folders and 24 files)
<b>WorldComm - Verizon</b>	
30.	Folder named "01.01.15.08 WorldComm" – Verizon (1 sub-folder and 17 files)
<b>PIPE Networks</b>	
31.	Folder named "01.01.15.09 PIPE Networks" (2 sub-folders and 11 files)
<b>Visionstream</b>	
32.	Folder named "01.01.15.10 Visionstream" (2 sub-folders and 1 file)
<b>Primus Telecomm</b>	
33.	Folder named "01.01.15.11 Primus Telecomm" (4 files)
<b>Transgrid</b>	
34.	Folder named "01.01.15.12 Transgrid" (2 sub-folders)

**Schedule A21**

**Alstom Maintenance Subcontract Side Deed**

(Clause 1.1)



## Sydney Light Rail

# Maintenance Subcontract Side Deed

Transport for NSW

ABN 18 804 239 602

Alstom Transport Australia Pty Limited

ABN 68 165 157 451

Transdev Sydney Pty Ltd

ABN 34 096 046 052

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**THIS DEED** is made on December 2014

**BETWEEN:**

- (1) **Transport for NSW** (ABN 18 804 239 602) a New South Wales Government agency constituted under section 3C of the *Transport Administration Act 1988* (NSW) of Level 5, Tower A, Zenith Centre 821 Pacific Highway, Chatswood NSW 2067 (**TfNSW**).
- (2) **Alstom Transport Australia Pty Limited** ABN 68 165 157 451 whose registered office is at 16 Giffnock Avenue North Ryde NSW 2113 (**Maintenance Subcontractor**).
- (3) **Transdev Sydney Pty Ltd** ABN 34 096 046 052 whose registered office is at Level 12, 114 William Street, Melbourne VIC 3000 (**O&M Contractor**).

**RECITALS:**

- (A) TfNSW and OpCo have entered, or will enter, into the Project Deed for the provision of the SLR PPP.
- (B) OpCo and the O&M Contractor have entered, or will enter, into the O&M Contract to operate and maintain the SLR.
- (C) The O&M Contractor has subcontracted part of its obligations to maintain the SLR to the Maintenance Subcontractor pursuant to the Maintenance Subcontract.
- (D) The Maintenance Subcontract Guarantor has, pursuant to the Maintenance Subcontract Guarantee, guaranteed to the O&M Contractor the performance of the Maintenance Subcontractor's obligations under the Maintenance Subcontract.
- (E) The Maintenance Subcontractor and the O&M Contractor have agreed to grant TfNSW certain rights in relation to the Maintenance Subcontract.
- (F) The O&M Contractor has agreed to grant TfNSW certain rights in relation to the Maintenance Subcontract Guarantee.

**THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Project Deed definitions**

Definitions in the Project Deed apply in this deed unless the context requires otherwise or the relevant term is defined in this deed.

**1.2 Definitions**

In this deed:

**Approved Nominee** means a person nominated by TfNSW and approved by the Maintenance Subcontractor in accordance with clause 3.9 (*Approved Nominee*) as:

- (a) having legal capacity, power and authority to become a party to and perform the obligations of the O&M Contractor under the Maintenance Subcontract; and
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial



resources and subcontracts) which are sufficient to enable it to perform the obligations of O&M Contractor under the Maintenance Subcontract; and

- (c) not being a competitor of Alstom in the manufacture of light rail vehicles.

**Assumption Notice** means the notice referred to in clause 3.1 (*Option*).

**Default Event** means:

- (a) any default (howsoever described) by the O&M Contractor under the Maintenance Subcontract; or
- (b) any other event or circumstance,

which alone or with the giving of notice or passage of time or both, would entitle the Maintenance Subcontractor to terminate, rescind, accept the repudiation of, or suspend any or all of the Maintenance Subcontractor's obligations under, the Maintenance Subcontract.

**Default Event Notice** has the meaning given to it in clause 2.2(a).

**Effective Date** means the date of the Assumption Notice.

**Maintenance Subcontract** means the contract titled "Sydney Light Rail Alstom Maintenance Subcontract" dated on or about the date of this deed between the O&M Contractor and the Maintenance Subcontractor.

**Maintenance Subcontract Guarantee** means the deed of guarantee dated on or about the date of this deed from the Maintenance Subcontractor Guarantor in favour of the O&M Contractor in respect of the obligations of the Maintenance Subcontractor under the Maintenance Subcontract.

**Maintenance Subcontract Guarantor** means Alstom Transport S.A.

**Maintenance Subcontract Project Agreements** has the meaning given to the term "Alstom Project Agreements" in the Maintenance Subcontract.

**O&M Contract** means the contract titled "Sydney Light Rail O&M Contract" dated on or about the date of this deed between OpCo and the O&M Contractor.

**Project Deed** means the deed entitled Sydney Light Rail Project Deed dated on or about the date of this deed between TfNSW and OpCo.

**TfNSW Cure Notice** has the meaning given to it in clause 2.1.

### 1.3 Interpretation

In this deed:

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

and unless the context indicates a contrary intention:

- (b) "**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;

- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;
- (d) a reference to a document (including this deed) is to that document as updated, varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word importing a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, annexure or attachment is a reference to party, clause, schedule, exhibit, annexure or attachment to or of this deed, and a reference to this deed includes all schedules, exhibits, annexures and attachments to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) "includes" in any form is not a word of limitation; and
- (j) a reference to "\$" or "dollar" is to Australian currency.

#### 1.4 **Replacement body interpretation**

Where a reference is made to any body or authority which ceases to exist (**Former Body**), that reference will be to that body or authority (**Replacement Body**) which then serves substantially the same functions as the Former Body. Any reference to the president or other senior officer of the Former Body will be to the president or senior officer of the Replacement Body.

#### 1.5 **No bias against drafting party**

Each provision of this deed will be interpreted without disadvantage to the party who (or whose representative) drafted that provision.

#### 1.6 **Business Day**

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

#### 1.7 **Inconsistencies**

To the extent of any inconsistency between the terms of this deed and the O&M Contract, this deed will prevail over the O&M Contract.

#### 1.8 **Limitation of liability**

Despite any other provision of the Maintenance Subcontract, the Maintenance Subcontract Guarantee or this deed:

- (a) the Maintenance Subcontractor will have no greater obligations or liabilities to TfNSW arising under or in connection with this deed as it relates to obligations to be performed and liabilities to be incurred by the Maintenance Subcontractor under the Maintenance Subcontract, than it would have had if TfNSW had been named as

the counterparty under the Maintenance Subcontract and the Maintenance Subcontractor shall have the benefit of all defences that are available to it under the Maintenance Subcontract;

- (b) the maximum aggregate liability of the Maintenance Subcontractor under, in respect of, or arising out of or in connection with this deed and the Maintenance Subcontract Project Agreements is limited to the extent described in the Maintenance Subcontract;
- (c) the liability of the Maintenance Subcontractor under, in respect of or arising out of or in connection with this deed and the Maintenance Subcontract Project Agreements at the time such liability is determined will not exceed the difference between the maximum aggregate liability of the Maintenance Subcontractor referred to in paragraph (b) above and the liability actually incurred at such time by the Maintenance Subcontractor under the Maintenance Subcontract Project Agreements;
- (d) nothing in this deed is intended to make or makes the Maintenance Subcontractor liable to TfNSW or the O&M Contractor for the same loss twice for the same breach of an obligation and should such a case arise, discharge of the liability for such loss to TfNSW or the O&M Contractor by the Maintenance Subcontractor shall satisfy, to the same extent, the corresponding liability to TfNSW or the O&M Contractor (as relevant); and
- (e) this clause shall survive the termination of this deed.

## 2. TfNSW'S RIGHT TO CURE DEFAULT EVENT

### 2.1 TfNSW's cure rights

- (a) On becoming aware of any Default Event (and subject to clause 2.1(b)), TfNSW may (but is not obliged to) take steps to cure or remedy, or procure the cure or remedy of, that Default Event.
- (b) Clause 2.1(a) only applies if the Maintenance Subcontractor has given a Default Event Notice in accordance with clause 2.2.
- (c) Upon TfNSW exercising any of its rights under this clause 2.1 (*TfNSW's cure rights*), the O&M Contractor's obligations under the Maintenance Subcontract are suspended to the extent and for such period as the O&M Contractor is prevented from performing such obligations by TfNSW's exercise of its step-in rights pursuant to clause 2.1(a).
- (d) If TfNSW exercises its step-in rights, TfNSW may, after giving reasonable prior notice to the O&M Contractor, cease to exercise that right, and in any event, will cease to exercise its step-in rights pursuant to clause 2.1(a) once the relevant Default Event has been remedied.

### 2.2 Restriction on right to terminate or suspend

The Maintenance Subcontractor must not terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Maintenance Subcontract unless each of the following conditions has been satisfied:

- (a) the Maintenance Subcontractor has given to TfNSW prior notice (**Default Event Notice**) (which notice may be given at the same time as any notice required under clause 43.6 of the Maintenance Subcontract in relation to the same Default Event) setting out details of the Default Event giving rise to the right to terminate,

rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Maintenance Subcontract, together with the statements referred to in clause 2.3 (*Statements concerning Default Event*); and

- (b) either:
- (i) if the Default Event is capable of cure or remedy within 20 Business Days (or such longer period as is permitted under the Maintenance Subcontract or agreed to by the Maintenance Subcontractor), that Default Event has not been cured or remedied within 20 Business Days (or such longer period as is permitted under the Maintenance Subcontract or agreed to by the Maintenance Subcontractor) after the date on which TfNSW Cure Notice is given to TfNSW;
  - (ii) if the Default Event is not one described in clause 2.2(b)(i) but is nevertheless reasonably capable of cure or remedy, TfNSW has not within 20 Business Days after the date on which the Default Event Notice is given to TfNSW, notified the Maintenance Subcontractor that TfNSW has elected to make arrangements to cure or remedy the Default Event . If notified, the Maintenance Subcontractor agrees:
    - (A) to use its best endeavours to reach an agreement with TfNSW in respect of the arrangements to cure or remedy the Default Event; and
    - (B) not to exercise any of its rights in relation to the Default Event, including any right to terminate the Maintenance Subcontract, for so long as TfNSW is diligently pursuing a cure or remediation for the Default Event;
  - (iii) if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice contains a claim for reasonable compensation for the Default Event, the Maintenance Contractor or TfNSW (or another person on behalf of either of them) have not paid or otherwise provided that compensation within 20 Business Days (or such longer period as is permitted under the Maintenance Subcontract or agreed to by the Maintenance Subcontractor) after the date on which TfNSW Cure Notice is given to TfNSW;
  - (iv) if the Default Event is not reasonably capable of cure or remedy and the Default Event Notice does not contain a claim for reasonable compensation for the Default Event, TfNSW does not commence and continue to perform the O&M Contractor's obligations under the Maintenance Subcontract within 20 Business Days (or such longer period as is permitted under the Maintenance Subcontract or agreed to by the Maintenance Subcontractor) after the date on which TfNSW Cure Notice is given to TfNSW; or TfNSW notifies the Maintenance Subcontractor in writing after receipt of the TfNSW Cure Notice that it elects not to cure or remedy, or procure the cure or remedy of, the Default Event; or
  - (v) TfNSW notifies the Maintenance Subcontractor in writing after receipt of the Default Event Notice that it elects not to cure or remedy, or procure the cure or remedy of, the Default Event.

### 2.3 **Statements concerning Default Event**

As part of any Default Event Notice, the Maintenance Subcontractor must submit to TfNSW statements of:

- (a) where the Default Event is a monetary default, the amount which must be paid to the Maintenance Subcontractor to remedy the Default Event; and
- (b) where the Default Event is of a non-monetary nature:
  - (i) the provisions of the Maintenance Subcontract alleged to have been breached or not fulfilled;
  - (ii) sufficient information to enable TfNSW to identify the material facts to the extent these are known to the Maintenance Subcontractor;
  - (iii) the steps reasonably required to cure or remedy the specified breaches or conditions not fulfilled if reasonably capable of cure or remedy; and
  - (iv) the time within which the specified steps can reasonably be expected to be taken.

#### 2.4 **Warranty of accuracy**

The Maintenance Subcontractor warrants to TfNSW that statements submitted by it under clause 2.3 (*Statements concerning Default Event*) will be, so far as reasonably practicable, true, complete and accurate statements of the amounts to which the Maintenance Subcontractor considers itself entitled.

#### 2.5 **Disputes as to statements**

If TfNSW disputes the amount of any claim or the existence of any default referred to in a Default Event Notice:

- (a) TfNSW must pay the amount not in dispute;
- (b) upon resolution of the dispute in accordance with this deed, the parties must make payments as determined; and
- (c) during the period of dispute resolution, all parties must continue to perform their obligations under this deed and the Project Agreements.

#### 2.6 **Verification**

TfNSW may appoint a firm of independent chartered accountants or a firm of technical advisers, in each case approved by the O&M Contractor and the Maintenance Subcontractor (such approval not to be unreasonably withheld or delayed), to verify (at the cost of the O&M Contractor) statements submitted by the Maintenance Subcontractor, and the Maintenance Subcontractor must (subject to such firm(s) executing an appropriate confidentiality agreement as the Maintenance Subcontractor may reasonably request) permit such firm(s) to have access to and make copies of all records, documents, data and accounting and other information not subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such statements.

#### 2.7 **No liability**

The O&M Contractor and the Maintenance Subcontractor acknowledge that, without limiting the liability of the O&M Contractor (which continues to be responsible for the performance of its obligations under the Maintenance Subcontract), and without limiting TfNSW's obligations under clause 3 (*Novation of Maintenance Subcontract and Assignment of Maintenance Subcontract Guarantee*), TfNSW will not be liable for any obligation or liability of the O&M Contractor under the Maintenance Subcontract by reason only of

TfNSW performing the O&M Contractor's obligations in accordance with the Maintenance Subcontract. The O&M Contractor and the Maintenance Subcontractor each release TfNSW from any such liability, except to the extent that such liability occurs or arises as a direct result of any fraud, gross negligence or wilful default on the part of TfNSW.

## 2.8 **The O&M Contractor to compensate TfNSW**

Any reasonable Loss suffered or incurred by TfNSW arising out of or in any way in connection with the exercise of its rights under this clause 2 (*TfNSW's right to cure Default Event*) will be a debt due from the O&M Contractor to TfNSW.

## 2.9 **No limitation on other rights**

The exercise (or failure to exercise) by TfNSW of its rights under this clause 2 (*TfNSW's right to cure Default Event*) will not limit TfNSW's rights against the O&M Contractor under the TfNSW Project Agreements or otherwise according to law.

## 3. **NOVATION OF MAINTENANCE SUBCONTRACT AND ASSIGNMENT OF MAINTENANCE SUBCONTRACT GUARANTEE**

### 3.1 **Option**

If:

- (a) the Project Deed; and
- (b) the O&M Contract,

are terminated, then TfNSW may exercise its rights under this clause 3 (*Novation of Maintenance Subcontract and Assignment of Maintenance Subcontract Guarantee*) by giving a notice (**Assumption Notice**) to the Maintenance Subcontractor and the O&M Contractor.

### 3.2 **Novation of Maintenance Subcontract**

With effect from the Effective Date:

- (a) TfNSW, the O&M Contractor and the Maintenance Subcontractor novate the Maintenance Subcontract so that TfNSW (or, if applicable, the Approved Nominee) and the Maintenance Subcontractor are parties to a new contract on the same terms as the Maintenance Subcontract as amended by this deed; and
- (b) any reference in the Maintenance Subcontract to the O&M Contractor shall be read as a reference to TfNSW (or, if applicable, the Approved Nominee).

### 3.3 **Rights and obligations of TfNSW and the Maintenance Subcontractor under the Maintenance Subcontract**

If TfNSW gives an Assumption Notice then, subject to clause 3.7 (*Obligations and liability prior to the Effective Date*), with effect from the Effective Date:

- (a) TfNSW (or, if applicable, the Approved Nominee):
  - (i) is entitled to all rights and benefits under the Maintenance Subcontract to which, but for this deed, the O&M Contractor would have been entitled at and after the Effective Date;

- (ii) must perform all obligations and discharge all liabilities under the Maintenance Subcontract which, but for this deed, the O&M Contractor would have been required to perform or discharge at and after the Effective Date; and
  - (iii) is bound by and must comply with all other provisions of the Maintenance Subcontract by which, but for this deed, OpCo would have been bound at and after the Effective Date; and
- (b) the Maintenance Subcontractor:
- (i) is entitled to all rights and benefits under the Maintenance Subcontract to which, but for this deed, it would have been entitled at and after the Effective Date;
  - (ii) must perform all obligations and discharge all liabilities under the Maintenance Subcontract which, but for this deed, it would have been required to perform or discharge at and after the Effective Date; and
  - (iii) is bound by and must comply with all other provisions of the Maintenance Subcontract by which, but for this deed, it would have been bound at and after the Effective Date,

as if TfNSW (or, if applicable, the Approved Nominee) had originally been a party to the Maintenance Subcontract in place of the O&M Contractor.

#### 3.4 **Release by Maintenance Subcontractor**

Subject to clause 3.7 (*Obligations and liability prior to the Effective Date*), if TfNSW gives an Assumption Notice then, with effect from the Effective Date, the Maintenance Subcontractor releases the O&M Contractor from all obligations and liability under or in respect of the Maintenance Subcontract to be performed or discharged at or after the Effective Date.

#### 3.5 **Release by O&M Contractor**

Subject to clause 3.7 (*Obligations and liability prior to the Effective Date*), if TfNSW gives an Assumption Notice then, with effect from the Effective Date, the O&M Contractor releases the Maintenance Subcontractor from all obligations and liability under or in respect of the Maintenance Subcontract to be performed or discharged at or after the Effective Date.

#### 3.6 **Assignment of Maintenance Subcontract Guarantee**

- (a) If TfNSW gives an Assumption Notice then, subject to clause 3.7 (*Obligations and liability prior to the Effective Date*), with effect from the Effective Date:
  - (i) the O&M Contractor assigns its rights under the Maintenance Subcontract Guarantee to TfNSW (or, if applicable, the Approved Nominee); and
  - (ii) the O&M Contractor must immediately notify the Maintenance Subcontract Guarantor (with a copy to TfNSW) of the assignment effected under this clause 3.6 (*Assignment of Maintenance Subcontract Guarantee*).

#### 3.7 **Obligations and liability prior to the Effective Date**

Nothing in this deed releases:

- (a) the O&M Contractor or the Maintenance Subcontractor from any obligation or liability under the Maintenance Subcontract; or
- (b) the O&M Contractor from any obligation or liability under the Maintenance Subcontract Guarantee,

arising or accruing before the Effective Date and TfNSW (or, if applicable, the Approved Nominee) does not assume any such obligation or liabilities under this deed.

### 3.8 Amendments to Maintenance Subcontract

- (a) If TfNSW gives an Assumption Notice then, with effect from the Effective Date, the terms of the Maintenance Subcontract will be deemed to be amended as required to reflect the fact that the Project Deed and the O&M Contract are at an end, and that the Maintenance Subcontract must operate independently of the Project Deed and the O&M Contract, on the basis that:
  - (i) the rights and obligations that TfNSW (or, if applicable, the Approved Nominee) will assume under the Maintenance Subcontract from the Effective Date will be equivalent to those that the O&M Contractor would have had under the Maintenance Subcontract had the Project Deed and the O&M Contract not been terminated;
  - (ii) the rights and obligations that the Maintenance Subcontractor will assume under the Maintenance Subcontract from the Effective Date will be equivalent to those that the Maintenance Subcontractor would have had under the Maintenance Subcontract had the Project Deed and the O&M Contract not been terminated;
  - (iii) any provisions of the Project Deed and the O&M Contract incorporated by reference into the Maintenance Subcontract prior to the Effective Date are incorporated in the Maintenance Subcontract from the Effective Date; and
  - (iv) without affecting the generality of this clause 3.8(a), clauses 2.3(b), 28.4, 33.2, 43.10A and 56A of the Maintenance Subcontract will be deleted.
- (b) If at or after the Effective Date, there is a dispute between TfNSW and the Maintenance Subcontractor as to how the terms of the Maintenance Subcontract are deemed to have been amended pursuant to this clause 3.8(a), then upon either party serving a written notice to this effect on the other, the dispute will be determined as if clause 56 (*Dispute resolution*) of the Project Deed were incorporated in this deed but as if:
  - (i) references in those clauses to "OpCo" were references to "the Maintenance Subcontractor";
  - (ii) references to "the parties" were references to "TfNSW and the Maintenance Subcontractor";
  - (iii) references to a "party" were references to "TfNSW" or "the Maintenance Subcontractor" (as appropriate);
  - (iv) references in those clauses to "Dispute" were references to this dispute; and
  - (v) the dispute had been appropriately referred to the Dispute Avoidance Board.

### 3.9 Approved Nominee



- (a) TfNSW's nominee may be named as a party to the Maintenance Subcontract in substitution for the O&M Contractor if TfNSW's nominee is an Approved Nominee.
- (b) The Maintenance Subcontractor must:
  - (i) notify TfNSW as to whether TfNSW's nominee is an Approved Nominee, on or before the date falling 30 days after the date of receipt of all information reasonably required by the Maintenance Subcontractor to decide whether the nominated person is an Approved Nominee;
  - (ii) not unreasonably withhold or delay its decision on whether TfNSW's nominee is an Approved Nominee; and
  - (iii) enter into a side deed with TfNSW and the Approved Nominee on substantially the same terms as this deed.

### 3.10 **Bonds**

If TfNSW gives an Assumption Notice then, as from the Effective Date, the O&M Contractor must (with the support of the Maintenance Subcontractor to effect this provision) either:

- (a) procure the novation or assignment to TfNSW at the O&M Contractor's cost (or, subject to clause 3.9 (*Approved Nominee*), the Approved Nominee) of any Bond (as defined in the Maintenance Subcontract) held by the O&M Contractor under the Maintenance Subcontract prior to the Effective Date (**Bonds**); or
- (b) procure the issue to TfNSW (or, if applicable, the Approved Nominee) of replacement bonds for the same undrawn value and on the same terms as the Bonds held by the O&M Contractor under the Maintenance Subcontract prior to the Effective Date.

To the extent that the O&M Contractor procures replacement bond pursuant to clause 3.10(b), the O&M Contractor will, on the issuing of those replacement bonds, return to the Maintenance Subcontractor the Bonds held by the O&M Contractor under the Maintenance Subcontract.

### 3.11 **Other documents under the Maintenance Subcontract**

If TfNSW gives an Assumption Notice then, as from the Effective Date, the O&M Contractor must procure the novation or assignment to TfNSW (or, if applicable, the Approved Nominee) of:

- (a) any Deed of Assurance given in favour of the O&M Contractor; and
- (b) any Moral Rights Consent given in favour of the O&M Contractor.

## 4. **AMENDMENTS TO MAINTENANCE SUBCONTRACT AND MAINTENANCE SUBCONTRACT GUARANTEE**

4.1 Subject to clause 4.2, each of the O&M Contractor and the Maintenance Subcontractor agrees with TfNSW that it will not agree to or permit any modification, variation, waiver or amendment to the terms of the Maintenance Subcontract or the Maintenance Subcontract Guarantee without the prior consent of TfNSW.

4.2 Clause 4.1 does not apply to any modification, variation, waiver or amendment to the terms of the Maintenance Subcontract or the Maintenance Subcontract Guarantee that is required as a result of, or in order to ensure consistency with, a modification, variation,

waiver or amendment to the Project Deed or to the extent that it does not impact the rights or increase the liabilities or obligations of TfNSW (including if TfNSW were to subsequently exercise its rights under clause 3).

**5. RESTRICTION ON DEALINGS**

5.1 The Maintenance Subcontractor agrees with TfNSW that, after the date of this deed, it will not transfer, assign, mortgage, charge, encumber or otherwise deal with its interest in the Maintenance Subcontract without the prior consent of TfNSW (such consent not to be unreasonably withheld or delayed) other than in relation to or as a result of a Permitted Change in Control, and without procuring that such transferee, assignee, mortgagee, chargee or other encumbrancee enters into a deed in which it agrees to be bound by the terms of this deed.

5.2 The O&M Contractor agrees with TfNSW that it will not after the date of this deed transfer, assign, mortgage, charge, encumber or otherwise deal with its interest in the Maintenance Subcontract or the Maintenance Subcontract Guarantee without the prior consent of TfNSW (such consent not to be unreasonably withheld or delayed), and without procuring that such transferee, assignee, mortgagee, charge or other encumbrance enters into a deed in which it agrees to be bound by the terms of this deed.

**6. MAINTENANCE SUBCONTRACTOR'S WARRANTY**

The Maintenance Subcontractor represents and warrants for the benefit of TfNSW that it has not had any criminal, civil or other proceedings brought against it in connection with any rail safety incident (whether in Australia or elsewhere) and that no such proceedings are current, pending or, to its knowledge, threatened.

**7. ACKNOWLEDGEMENT BY O&M CONTRACTOR**

The O&M Contractor consents to the terms of this deed and will co-operate in the implementation of this deed.

**8. GST**

**8.1 Interpretation**

(a) Except where the context suggests otherwise, terms used in this clause 8 (*GST*) have the same meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time).

(b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 8 (*GST*).

(c) Unless otherwise expressly stated, all consideration to be provided under this deed (other than under this clause 8 (*GST*)) is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 8 (*GST*).

(d) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

**8.2 Reimbursements**

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total

cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

### 8.3 Additional amount of GST payable

If GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this deed:

- (a) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
- (b) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 8.3(a).

### 8.4 Variation of GST

- (a) If the GST Amount recovered by the Supplier from the Recipient under clause 8.3 for a supply varies from the amount of GST paid or payable by the Supplier on that supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
- (b) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this deed within 7 days after the Supplier becomes aware of the adjustment event.

### 8.5 No merger

This clause will not merge on completion or termination of this deed.

## 9. NOTICES

9.1 Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

#### **TfNSW**

Name: TfNSW, a New South Wales Government agency  
Address: Level 11  
338 Pitt Street  
Sydney NSW 2000  
Chatswood NSW 2067  
Fax: (02) 9200 0290  
For the attention of: TfNSW's Representative

With a copy to:

Name: TfNSW, a New South Wales Government agency  
Address: Level 5  
Tower A, Zenith Centre  
821 Pacific Highway

Chatswood NSW 2067  
Fax: (02) 9200 0290  
For the attention of: Deputy Director General, Transport Projects Division

**O&M Contractor**

Name: Transdev Sydney Pty Ltd  
Address: Level 12  
114 William Street  
Melbourne VIC 3000  
Fax: (03) 9946 1330  
For the attention of: Company Secretary

**Maintenance Subcontractor**

Name: Alstom Transport Australia Pty Limited  
Address: 16 Giffnock Avenue  
North Ryde NSW 2113  
Fax: (02) 8870 6005  
For the attention of: Managing Director, Alstom Transport Australia and New Zealand

- (c) must be signed by the party making it (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 9.1(b); and
- (e) is taken to be received by the addressee:
  - (i) (in the case of prepaid post) on the third working day after the date of posting to an address within Australia, and on the fifth working day after the date of posting by airmail to an address outside Australia;
  - (ii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the machine from which it was sent; and
  - (iii) (in the case of delivery by hand) on delivery,  
  
but if the communication is taken to be received on a day which is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day, where "**working day**" means a day that:
    - (iv) is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered; and
    - (v) does not fall during the period commencing on the Monday before 24 December in any given year and ending on the Friday following 1 January of the following year.

**10. EXCLUSION OF PROPORTIONATE LIABILITY**

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

10.2 Without limiting the above, the rights, obligations and liabilities of TfNSW and the O&M Contractor under this deed with respect to proportionate liability are as specified in this deed and not otherwise, whether these rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

## 11. **GOVERNING LAW AND JURISDICTION**

### 11.1 **Governing law**

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

### 11.2 **Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) 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 within inconvenient forum, if that venue falls within clause 11.2(a).

## 12. **MISCELLANEOUS**

### 12.1 **Entire agreement**

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

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

### 12.2 **Further acts and documents**

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

### 12.3 **Waiver**

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

### 12.4 **Consents**

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

**12.5 Amendments**

This deed may only be varied by a document signed by or on behalf of each party.

**12.6 Expenses**

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

**12.7 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 unenforceability under the law of any other jurisdiction of that or any other provision of this deed.

**12.8 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

**12.9 Counterparts**

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

**Executed** as a deed.

**EXECUTED** on behalf of **TRANSPORT FOR NSW** by its authorised delegate **IN THE PRESENCE OF:**

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Authorised Delegate

\_\_\_\_\_  
Name of Witness (print)

\_\_\_\_\_  
Name of Authorised Delegate (print)

**EXECUTED** by **ALSTOM TRANSPORT AUSTRALIA PTY LIMITED ABN 68 165 157 451** in accordance with s127(1) of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full

**EXECUTED** by **TRANSDEV SYDNEY PTY LTD ABN 34 096 046 052** in accordance with s127(1) of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full

**Schedule A22**  
**Alstom CSELRV Supply Agreement**

(Clause 1.1)





# Sydney Light Rail Alstom CSELRV Supply Agreement

Transport for NSW

ABN 18 804 239 602

and

Alstom Transport Australia Pty Limited

ABN 68 165 157 451

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A7	Not used
A8	Not used
A9	Not used
A10	Not used
A11	Not used
A12	Not used
A13	Not used
A14	Not used
A15	Independent Certifier Deed
A16	Not used
A17	Not used
A18	Dispute resolution procedures
A19	Not used
A20	Not used
A21	Not used
A22	Guarantee

### **Part B – Land, Property and third party requirements**

B1	Not used
B2	Not used
B3	Not used
B4	Not used
B5	Not used
B6	Not used
B7	Planning Approvals
B8	Not used
B9	Not used
B10	Not used
B11	Roads Act Approval

### **Part C – Administrative**

C1	Not used
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C3	Not used
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C6	Not used
C7	Not used
C8	Not used
C9	Not used
C10	Not used
C11	Certificate of Delivery
C12	Certificate of Final Completion
C13	Independent Certifier Project Plan Certificate
C14	Not used

- C15 Not used
- C16 Form of Design Certification – CSELRVs
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- C18 Not used
- C19 Not used
- C20 Form of Certificate of Additional CSELRV Acceptance
- C21 Not used
- C22 Not used
- C23 Not used

**Part D – Financial**

- D1 Milestone Payments
- D2 Not used
- D3 Not used
- D4 Net Financial Impact
- D5 Not used
- D6 Termination Payments
- D7 Not used
- D8 Not used
- D9 Not used
- D10 Not used
- D11 Not used
- D12 Not used
- D13 Not used

**Part E – Scope and Performance Requirements**

- E1 Not used

**Part F – Not used**

**THIS DEED** is made on 2014

**BETWEEN:**

- (1) **Transport for NSW** ABN 18 804 239 602, a New South Wales Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW) of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067 (**TfNSW**); and
- (2) **Alstom Transport Australia Pty Limited** ABN 68 165 157 451, whose registered office is at 16 Giffnock Avenue, North Ryde NSW 2113 (**Contractor**).

**RECITALS:**

- (A) On 23 October 2014, following the completion of a public tender process, TfNSW selected ALTRAC Light Rail Partnership as the successful proponent for the SLR PPP.
- (B) TfNSW and ALTRAC Light Rail Partnership will enter into the Project Deed to record the terms on which the SLR PPP will be carried out.
- (C) TfNSW and the Contractor have agreed that TfNSW will have two options to purchase additional rolling stock from the Contractor. This deed records the agreed terms for those options and for the delivery of the rolling stock, if exercised.

**THE PARTIES AGREE AS FOLLOWS:**

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

**Acciona** means Acciona Infrastructure Australia Pty Ltd ABN 52 140 915 251.

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

**Actual Date of Delivery** means, for any CSELRV, the actual date that the Delivery Requirements are achieved in respect of that CSELRV (ie when Delivery occurs), as stated in the applicable Certificate of Delivery.

**Adjustment Note** has the meaning given in the GST Act.

**AEO** or **Authorised Engineering Organisation** means an organisation providing a defined engineering service or product that has been assessed and granted authorised engineering status for the Project by TfNSW.

**AEO Authorisation Management Plan** means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

**ALR Trustee 1** means ALTRAC Light Rail 1 Pty Limited ACN 603 192 203.

**ALR Trustee 2** means ALTRAC Light Rail 2 Pty Limited ACN 603 194 476.

**ALR Trustee 3** means ALTRAC Light Rail 3 Pty Limited ACN 603 190 601.

**Alstom** means Alstom Transport Australia Pty Limited ABN 68 165 157 451.

**Alstom Manufacturing Country** means any country where the Contractor is undertaking manufacturing of material, equipment or parts which will form a material part of the CSELRVs.

**Alstom Systems** has the meaning given in Schedule A5 (*Intellectual Property*).

**ALTRAC Light Rail Partnership** means a partnership between ALTRAC Light Rail 1 Pty Limited ACN 603 192 203 in its capacity as trustee of ALTRAC Light Rail Trust 1, ALTRAC Light Rail 2 Pty Limited ACN 603 194 476 in its capacity as trustee of ALTRAC Light Rail Trust 2 and ALTRAC Light Rail 3 Pty Limited ACN 603 190 601 in its capacity as trustee of ALTRAC Light Rail Trust 3.

**ALTRAC Light Rail Trust 1** means the "ALTRAC Light Rail Trust 1" established under the trust deed dated 8 December 2014 and executed by the ALR Trustee 1.

**ALTRAC Light Rail Trust 2** means the "ALTRAC Light Rail Trust 2" established under the trust deed dated 8 December 2014 and executed by the ALR Trustee 2.

**ALTRAC Light Rail Trust 3** means the "ALTRAC Light Rail Trust 3" established under the trust deed dated 8 December 2014 and executed by the ALR Trustee 3.

**Applicable Cure Period** has the meaning given in clause 41.3(c)(i) and includes any extension granted under clause 41.3(g).

**Appointed Principal Contractor** means the entity appointed by TfNSW pursuant to the Project Deed.

**Approval** means any licence, permit, consent, approval, declaration, nomination, waiver, determination, exemption, certificate or permission from any Authority or under any law, or any requirement made under any law, which:

- (a) must be obtained or satisfied (as the case may be):
  - (i) to perform the Contractor's Activities;
  - (ii) to deliver the CSELRV;
  - (iii) otherwise to comply with law; or
- (b) TfNSW notifies the Contractor from time to time is necessary to be held by TfNSW in respect of TfNSW's provision of electricity in accordance with this deed;

and for the avoidance of doubt includes:

- (c) the Planning Approvals;
- (d) the Roads Act Approval; and
- (e) any Environment Protection Licence which applies to the Contractor's Activities,

but does not include:

- (f) any Direction given by TfNSW or TfNSW's Representative pursuant to this deed; or
- (g) the exercise by TfNSW of its rights under this deed.

**Approved Cure Plan** has the meaning given in clause 41.3(c).

**Approved Prevention Plan** has the meaning given in clause 41.4(c).

**Asset** means the:

- (a) [not used];
- (b) [not used];
- (c) Moveable Assets; and
- (d) [not used].

**Asset Information System** means the system for the storage, processing, transmission and management of Asset information as described in SPR Appendix 40 (*Asset Information Management Systems*).

**Asset Management Plan** means OpCo's Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

**Asset Management System** means the Asset management arrangements described in section 9.2 of the SPR.

**Associate** means, in relation to a person, any Related Body Corporate of that person and any officer, employee, agent, contractor, consultant, nominee, licensee or advisor of that person or that Related Body Corporate and:

- (a) in the case of the Contractor, includes the Subcontractors and their respective Associates (but does not include TfNSW or any of its Associates or Acciona or any of its Associates);
- (b) in the case of TfNSW, does not include the Contractor or its Associates; and
- (c) in the case of both parties, does not include the Independent Certifier.

**Authority** means:

- (a) any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality (including TfNSW carrying out any statutory authority or function);
- (b) any other person having a right to impose a requirement, or whose consent is required, under law with respect to:
  - (i) any part of the Contractor's Activities; or
  - (ii) any exercise by the Contractor of the Contractor's rights or obligations under this deed; or
- (c) any other person having jurisdiction over, or ownership of, any Utility Service.

**Bank Bill** means a bill of exchange (as defined in the *Bills of Exchange Act 1909* (Cth)) that has been accepted by a bank authorised under a law of the Commonwealth of Australia or any state to carry on banking business.



**Bank Bill Rate** means, in respect of a period, the rate, expressed as a yield per cent per annum (rounded up, if necessary, to 4 decimal places) that is quoted as the average bid rate on the Reuters monitor system page "BBSY" (or any page that replaces that page) at about 10.10 am (Sydney time) on the first day of the relevant period for which the rate is sought, for Bank Bills that have a tenor in months which is closest to the period, provided that if there is a manifest error in the calculation of that average bid rate or if no average bid rate is so published for Bank Bills of that tenor by about 10.30 am, then the Bank Bill Rate will be the bid rate specified by the non-defaulting party reasonably, acting in good faith, having regard to the rates otherwise bid for Bank Bills having a tenor as described above at or around that time.

**Bond** means each of:

- (a) the First Bonds required under clause 22.1(a);
- (b) the Defect Bonds required under clause 22.1(b); or
- (c) the Advance Payment Bonds required under clause 25.4 (*Advance Payment Bonds*).

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

**Certificate of Delivery** means, for any CSELRV, a certificate referred to in clause 19.9B(a) substantially in the form of Schedule C11 (*Certificate of Delivery*).

**Certificate of Final Completion** means a certificate referred to in clause 19.10(d)(i) substantially in the form of Schedule C12 (*Certification of Final Completion*).

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

**Change in Disability Law** means a Change in Law relating specifically to the ability of disabled persons to access and use light rail facilities.

**Change in Environmental Law** means a Change in Law:

- (a) relating to the storage, handling or transportation of waste, dangerous goods or hazardous substances;
- (b) relating to work health and safety; or
- (c) the purpose of which relates specifically to the protection of the Environment.

**Change in Law** means a repeal of or change to or the coming into effect or implementation after the date of this deed of:

- (a) Legislation; or
- (b) any applicable judgment of a relevant court of law which changes a binding precedent,

other than any such repeal, change coming into effect or implementation which, on the date of this deed:

- (c) has been published or of which public notice has been given; or

- (d) a party experienced and competent in the delivery of works and/or services similar to the Contractor's Activities would have reasonably foreseen or anticipated,

in substantially the same form as the repeal, change, coming into effect or implementation after the date of this deed.

**Change in NSW Government Policy** means any one or more of the following which occurs after the date of this deed:

- (a) repeal of or change to a NSW Government Policy; or
- (b) the coming into effect or implementation of a new NSW Government Policy,

other than any such repeal, change, coming into effect or implementation which, on the date of this deed:

- (c) has been published or of which public notice has been given; or
- (d) a party experienced and competent in the delivery of works and/or services similar to the Contractor's Activities would have reasonably foreseen or anticipated,

in substantially the same form as the repeal, change, coming into effect or implementation after the date of this deed.

**Change in Rail Safety Law** means a Change in Law relating specifically to rail safety.

**Claim** includes any claim, action, demand, judgment or proceeding including for an increase in the Option Capital Price, for payment of money (including damages), for relief from or suspension of obligations or for an extension of time:

- (a) under, arising out of, or in any way in connection with, this deed;
- (b) arising out of, or in any way in connection with, any task, fact, matter, thing or relationship connected with the Contractor's Activities or either party's conduct prior to the date of this deed; or
- (c) otherwise at law or equity including:
  - (i) under, or for breach of, any statute;
  - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
  - (iii) for restitution, including restitution based on unjust enrichment.

**Commercially Sensitive Information** means the information identified in or of the type referred to in Schedule A4 (*Commercially Sensitive Information*).

**Compensable Change in Law** means:

- (a) a Project-Specific Change in Law (other than a Project-Specific Change in Law of the Commonwealth of Australia with respect to Tax);
- (b) a Change in Disability Law;
- (c) a Change in Environmental Law;
- (d) a Change in Rail Safety Law; or

- (e) a General Change in Law (other than with respect to Tax).

**Compensable Change in NSW Government Policy** means:

- (a) a Project-Specific Change in NSW Government Policy; or
- (b) a General Change in NSW Government Policy.

**Compensation Event** means each of the following:

- (a) a breach by TfNSW of its obligations under this deed;
- (b) a legal challenge brought about by way of commencement of court proceedings in relation to a Planning Approval except to the extent the legal challenge was due to any event the subject of clause 6.3 (*Modifications to Planning Approvals*) of the Project Deed;
- (c) a Planning Approval is modified, withdrawn, revoked or replaced except to the extent the modification, withdrawal, revocation or replacement was due to any event the subject of clause 6.3 (*Modifications to Planning Approvals*) of the Project Deed;
- (d) the CSELRVs are damaged by OpCo, the O&M Contractor or an Other Contractor;
- (e) the Contractor, or a Subcontractor, is required:
  - (i) to comply with an Environmental Notice; or
  - (ii) by any law, Approval, Environmental Notice or otherwise to dispose of, otherwise deal with or remediate Contamination,

which in each case does not arise out of or in connection with any Contamination for which the Contractor is responsible under clause 11.4 (*Contamination*);

- (f) if TfNSW fails to give the Contractor access to the SLR Site in accordance with clause 18A (*TfNSW's obligations in relation to testing and commissioning*);
- (g) if the Contractor is directed, ordered or required to cease to perform the Contractor's Activities (or to change the way it does so), or to provide reasonable assistance in connection with dealing with a Native Title Claim;
- (h) the occurrence of a Compensable Change in Law;
- (i) the occurrence of a Compensable Change in NSW Government Policy;
- (j) a Step-in Party exercises all or any of the Step-in Powers in respect of a Step-in Event;
- (k) if the CSELRVs, the SLR, the SLR Site or the Contractor's Activities are damaged or adversely affected by any Proximate Work Activity (as defined under the Project Deed); and
- (l) any Compensation Event, as that term is defined under the Project Deed,

except to the extent the event (or its effects):

- (m) occurs or arises as a direct or indirect result of any act or omission of the Contractor or the Subcontractors;
- (n) occurs or arises as a direct or indirect result of a failure by the Contractor to comply with its obligations under this deed;
- (o) occurs or arises as a direct or indirect result of any breach of this deed by the Contractor; or
- (p) is, or ought reasonably to have been, within the control of the Contractor or the Subcontractors.

**Condition Precedent** means the condition in clause 2.2(a).

**Configuration Management Plan** means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

**Consequential or Indirect Loss** means any loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract (other than the loss of this deed), loss of goodwill, loss of use, loss of production or failure to realise anticipated savings (whether the loss is direct or indirect).

**Construction Compliance Unit** or **CCU** means the unit established within NSW Industrial Relations to monitor compliance with, and receive alleged breaches of, the NSW Guidelines.

**Construction Site** has the meaning given in the Project Deed.

**Contamination** means the presence in, on or under land or any other aspect of the Environment of a substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) which is:

- (a) a presence that presents a risk of harm to human health or any other aspect of the Environment; or
- (b) toxic, flammable or otherwise capable of causing harm to humans or damage to the Environment including asbestos, toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints, water treatment chemicals and stone containing silica.

**Contractor's Documentation** means all drawings, plans, manuals, software designs, reports, computer records, specifications, calculations and any other documents (whether in hard copy or electronic form) prepared or required to be prepared by or on behalf of the Contractor in performing the Contractor's Activities, including the Design Documentation and the Project Plans.

**Contractor Event of Default** means any event specified in clause 41.1 (*Contractor Events of Default*).

**Contractor Submission** has the meaning given in clause 4.7 (*TfNSW's rights do not affect risk allocation*).

**Contractor Termination Event** means any event specified in clause 43.1 (*Contractor Termination Events*).

**Contractor's Activities** means all activities that the Contractor performs, or is required to perform:

- (a) in connection with the design and manufacture of the CSELRVs under this deed; or
- (b) to exercise its rights or comply with its obligations under this deed,

including the activities described in section 6 of the SPR.

**Control** means:

- (a) the ability to control, directly or indirectly, the composition of the board of an Entity;
- (b) the ability to exercise, or control the exercise of, the rights to vote in relation to more than 25% of the voting shares, or other form of voting equity, in an Entity;
- (c) the ability to dispose, or exercise control over the disposal of, more than 25% of the shares or other form of equity in an Entity; or
- (d) the capacity to determine the outcome of decisions about the financial and operating policies of an Entity as defined in section 50AA of the Corporations Act.

**Corporate WHS Management System** has the meaning given in the NSW Government Work Health and Safety Management Systems and Auditing Guidelines (Edition 5, September 2013).

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

**CPI** means the "Weighted Average of Eight Capital Cities: All Groups Consumer Price Index" as maintained and published quarterly by the Australia Bureau of Statistics (ABS). If the Weighted Average of Eight Capital Cities: All Groups Consumer Price Index ceases to be published quarterly or its method of calculation substantially alters, then the Weighted Average of Eight Capital Cities: All Groups Consumer Price Index is to be replaced by the nearest equivalent index as selected in good faith by TfNSW's Representative and any necessary consequential amendments are to be made.

**CPI Indexed** means, with respect to an amount, the amount must be adjusted in accordance with the indexation process detailed in clause 1.10 (*CPI Indexed*).

**CSELR** means the CBD and south east Light Rail from Circular Quay to Central Station via George Street, and to Randwick and Kingsford via Surry Hills and Moore Park including the CSELRVs as constructed.

**CSELRV** means a coupled light rail vehicle of approximately 66m which, if TfNSW exercises any Pre-Agreed Option under clause 3.2 (*Pre-Agreed Options exercise*) the Contractor must design, manufacture and supply under this deed for the purpose of conveying Customers.

**CSELRV Defect** means any Defect in a Specific CSELRV Part that is attributable to defective design, defective or faulty workmanship or defective materials (or any combination of these):

- (a) which, in respect of a bodyshell, constitutes:
  - (i) material corrosion;

- (ii) material cracking; or
- (iii) any other permanent deformity; or
- (b) which, in respect of a bogie frame, constitutes:
  - (i) any breakage; or
  - (ii) material cracking;
- (c) which has a material impact on the physical integrity of the bodyshell or bogie frame (as applicable); and
- (d) which adversely impacts upon TfNSW's ability to operate the CSELRV in accordance with the Accreditation, Rail Safety National Law, the Rail Safety Regulations, WHS Legislation or otherwise in accordance with the SPR.

**CSELRV Performance Test** means the Tests referred to and carried out in accordance with section 4.2 of SPR Appendix 37 (*Rolling Stock*) and the Testing and Commissioning Plan.

**CSELRV Warranty Period** means the period of 12 years commencing from the Actual Date of Delivery of a CSELRV.

**Customer** means all users and potential users of:

- (a) the SLR; or
- (b) services associated with the SLR.

**D&C Contract** means the contract so titled between OpCo and the D&C Contractor dated on or about the date of this deed.

**D&C Contractor** means the unincorporated joint venture comprised of the Contractor and Acciona.

**Date of Final Completion** means the date on which Final Completion is achieved, being the date stated by the Independent Certifier in the Certificate of Final Completion.

**Day 1 Clause** has the meaning given in clause 2.1 (*Conditions Precedent*).

**Deeds of Disclaimer** means the Deeds of Disclaimer:

- (a) signed by Transdev Sydney Pty Ltd ABN 34 096 046 052 on 10 July 2014; and
- (b) signed by each of Alstom, Acciona and Capella Capital Pty Ltd (ABN 63 127 727 771) (as agent for Capella Capital Partnership) on 11 July 2014.

**Default Notice** has the meaning given in clause 41.2 (*Default Notice*).

**Default Rate** means, in respect of a period, a rate equivalent to 3% per annum above the Bank Bill Rate for that period.

**Defects** means, to the extent caused or contributed to by the breach of this deed by the Contractor or any tortious or unlawful conduct by the Contractor or its Subcontractor:

(a) any defect, deficiency, fault, error or omission in the CSELRV, the Spares or the Special Tools and Equipment; or

(b) any other aspect of the CSELRV, the Spares or the Special Tools and Equipment,

which is not in accordance with the requirements of this deed.

**Defects Correction Period** means, for all items in any CSELRV and the Spares and Special Tools and Equipment applicable to that CSELRV:

(a) a period of 24 months from the Actual Date of Delivery for that CSELRV; and

(b) a further period, specified by TfNSW (acting reasonably), not exceeding 24 months in respect of any work the subject of a notice under clause 20.2(a) during the Defects Correction Period, which begins on the date of correction of the Defect (or part of it), provided that the aggregate period for any Defect does not extend beyond 36 months from the applicable Actual Date of Delivery.

**Delivery**, for any CSELRV, occurs when all the Delivery Requirements for that CSELRV are satisfied.

**Delivery Date** means, for any CSELRV, the Original Delivery Date for that CSELRV, as extended in accordance with this deed.

**Delivery Phase** means for each Pre-Agreed Option, the period commencing on the date TfNSW directs the Contractor to implement that Pre-Agreed Option in accordance with clause 3.2(a) and ending on the final Date of Final Completion of that Pre-Agreed Option.

**Delivery Phase Progress Report** means the report of that name as listed in SPR Appendix 10 (*Reporting Requirements*), excluding section 2.5 (*Stakeholder and community engagement plans*) and section 2.10 (*Traffic and transport management*).

**Delivery Program** means the program of the Contractor's Activities, as updated from time to time in accordance with clause 17.3 (*Delivery Program*).

**Delivery Requirements** means the requirements referred to in clause 19.4A(c).

**Design Documentation** means all:

(a) design documentation (including design standards, concrete mix designs, design reports, durability reports, specifications, models, samples, prototypes, calculations, shop drawings, drawings, digital records, business rules, system processes and all other relevant data) in electronic, computer readable and written or physical forms, or stored by any other means, which are prepared for the performance of the Contractor's Activities by or on behalf of the Contractor whether created before or after the date of this deed; and

(b) computer software (including both source code and object code versions) which is developed for the purposes of this deed.

**Design Life** means in respect of an Asset that falls within the category referred to in section 5.2 of the SPR, the period specified for that Asset in section 5.2 of the SPR commencing on the Actual Date of Delivery of the relevant CSELRV and ending on the day after expiry of the period specified for that Asset in section 5.2 of the SPR.

**Design Management Plan** means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

**Direction** means any decision, demand, determination, direction, instruction, notice, order, rejection or requirement in writing given by a person with the authority to do so.

**Dispute** has the meaning given in clause 56.1 (*Disputes generally*).

**Draft Cure Plan** has the meaning given in clause 41.3(a)(iv).

**Draft Prevention Plan** has the meaning given in clause 41.4(a).

**Effective Date** has the meaning given in Schedule D1 (*Milestone payments*).

**Emergency Modification** means any Modification which TfNSW believes, acting reasonably, is required:

- (a) to prevent, mitigate or repair any:
  - (i) threat, or likely threat, to the safety of any Customer or other person;
  - (ii) cause, or likely cause, of any significant damage to the SLR; or
  - (iii) suspension, interruption, or likely suspension or interruption, to the operation of the SLR; or
- (b) to discharge a legislative or public duty.

**Entity** has the meaning in the Corporations Act.

**Environment** includes all aspects of the surroundings of human beings including:

- (a) the physical characteristics of those surroundings such as the land, the waters and the atmosphere;
- (b) the biological characteristics of those surroundings such as the animals, plants and other forms of life; and
- (c) the aesthetic characteristics of those surroundings such as their appearance, sounds, smells, tastes and textures.

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

**Environmental Hazard** means a state of danger to human beings or the Environment whether imminent or otherwise resulting from the location, storage, handling or release of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics.

**Environmental Management Plans** means:

- (a) the Construction Environmental Management Plan (as defined in the Project Deed);
- (b) the Operations Phase Environmental and Sustainability Plan (as defined in the Project Deed); and
- (c) the Delivery Phase Sustainability Plan (as defined in the Project Deed).



**Environmental Notice** means any notice (including any notice of an intention to issue an order under the EP&A Act), order or request for information issued by an Authority in respect of a matter concerning the Environment.

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

**Executive Negotiator** means:

- (a) for TfNSW, TfNSW's nominated Deputy Director General; and
- (b) for the Contractor, its chief executive officer,  
(or his or her delegate).

**Expansion Modification** means a Modification under the Project Deed that:

- (a) extends the SLR by no longer than 20% of its length (such length to include parts of the SLR which are under construction or already contracted to be constructed whether or not construction has commenced); and
- (b) requires OpCo to design, build, operate and maintain the extension contemplated.

**Final Completion** has the meaning given in clause 19.10(b).

**Final CSELRV Design Documentation** means any Design Documentation which:

- (a) the Contractor is entitled to use for manufacture in accordance with clause 13.9 (*Design Documentation for manufacture*);
- (b) has been amended by a Modification directed or approved by TfNSW's Representative in accordance with clauses 29 (*TfNSW initiated Modifications*) or 30 (*the Contractor initiated Modifications*); or
- (c) has been amended in accordance with clause 20.6 (*Post Final Completion design changes*).

**Final Design Documentation** has the meaning given under the Project Deed.

**Financial Close** means when Financial Close under the Project Deed has occurred.

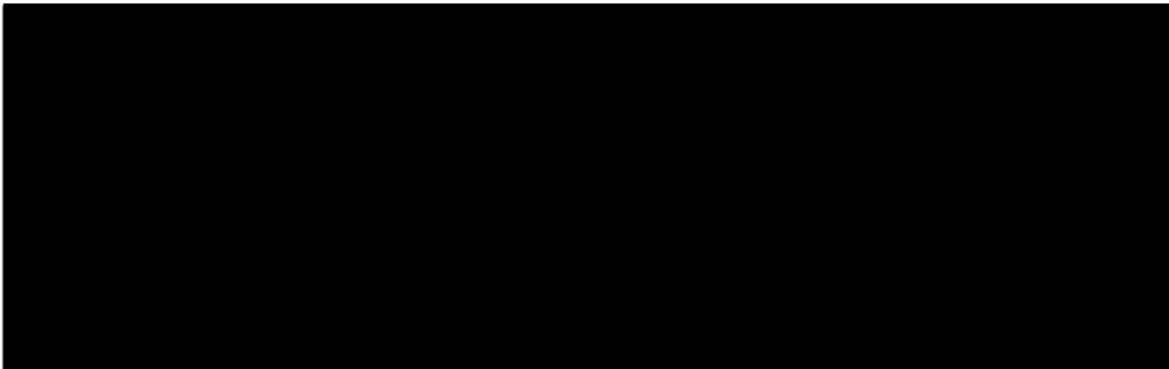
**Force Majeure Event** has the meaning given in clause 28.1 (*Force Majeure Event*).

**General Change in Law** means a Change in Law which is not:

- (a) a Project-Specific Change in Law;
- (b) a Change in Disability Law;
- (c) a Change in Environmental Law; or
- (d) a Change in Rail Safety Law.

**General Change in NSW Government Policy** means a Change in NSW Government Policy which is not a Project-Specific Change in NSW Government Policy.

**General Liability Cap** means [REDACTED]



**General Modification** is a Modification that is not:

- (a) an Emergency Modification;
- (b) [not used]; or
- (c) an Expansion Modification.

**Good Industry Practice** means that degree of skill, care, prudence, foresight and practice which would reasonably be expected of a skilled and experienced person, engaged in the same or a similar type of undertaking as that of the Contractor or its Associates, as the case may be, under the same or similar circumstances as the performance of the Contractor's Activities.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Guarantee** means a parent company guarantee from the Guarantor, in the form set out in Schedule A22 (*Guarantee*) or in such other form as TfNSW may approve.

**Guarantor** means ALSTOM Transport S.A.

**Hold Point** means a point beyond which a work process must not proceed without the authorisation or release of an authority designated by the Independent Certifier pursuant to clause 5.4(h)(iii).

**Independent Certifier** means such person as may be agreed by TfNSW and the Contractor in accordance with clause 5.5 (*Appointment of Independent Certifier*) to undertake the functions of the Independent Certifier under this deed.

**Independent Certifier Deed** means the deed so titled to be entered into in accordance with clause 5.5 (*Appointment of Independent Certifier*) between TfNSW, the Contractor and the Independent Certifier as referred to in Schedule A15 (*Independent Certifier Deed*).

**Information Documents** means any information, data, document or material (in any format or medium including any electronic form and whether oral or written) which is:

- (a) referred to in Schedule A11 (*Information Documents*) to the Project Deed;
- (b) Issued or made available by, or on behalf of, TfNSW or the State to either OpCo or the Contractor in connection with the Invitation for Expressions of Interest for the SLR PPP issued by TfNSW in October 2013, the RFP, the CSELRVs, the IWLR or the SLR (including anything issued or made available through TfNSW's website) and

which at the time of issue (or being made available) was expressly classified or stated to be an "Information Document";

- (c) issued or made available by, or on behalf of, TfNSW or the State to either OpCo or the Contractor in connection with the Invitation for Expressions of Interest for the SLR PPP issued by TfNSW in October 2013, the RFP, the CSELRVs, the IWLR or the SLR (including anything issued or made available through TfNSW's website), but which did not form part of the Invitation for Expressions of Interest or RFP (as applicable), regardless of whether or not it was expressly classified or stated to be an "Information Document"; or
- (d) referred to, or incorporated by reference, in an Information Document unless such information, data, document or material is otherwise expressly stated to form part of this deed,

whether issued or made available:

- (e) on, before or after the date of submission of the Proposal (including any such information, data, document or material made available as part of the expression of interest phase); or
- (f) on, before or after the date of execution of this deed,

other than any information, data, document or material which TfNSW is obliged by the terms of this deed to provide to the Contractor and the Contractor is expressly permitted by the terms of this deed to rely on.

**Insolvency Event** means, in relation to a person, the occurrence of any of the following events:

- (a) an application is made (other than for a frivolous or vexatious reason) for the winding up or deregistration of a person and, where an application has been made for the dismissal or withdrawal of the application for winding up within 10 Business Days, and the application is not dismissed or withdrawn within 30 Business Days;
- (b) an order is made for the winding up of a person, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by TfNSW before that order is made where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of the approval;
- (c) a person passes a resolution for its winding up or deregistration, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by TfNSW before that resolution is passed where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of that approval;
- (d) a receiver, receiver and manager, liquidator, provisional liquidator, compulsory manager, trustee for creditors or in bankruptcy or analogous person is appointed to take possession of, or the holder of a Security Interest takes (or appoints an agent to take) possession of, any property of a person or otherwise enforces its Security Interest;
- (e) a person or any other person appoints an administrator to the person, or takes any step to do so;
- (f) a person:

- (i) suspends payment of its debts (other than as the result of a failure to pay a debt or claim which is the subject of a good faith dispute);
  - (ii) ceases or threatens to cease to carry on all or a material part of its business;
  - (iii) is or states that it is unable to pay its debts; or
  - (iv) is taken to have failed to comply with a statutory demand as a result of the operation of section 459F of the Corporations Act; or
- (g) a person enters into a readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or a composition with its creditors, without the prior consent of TfNSW, except for the purposes of a solvent reconstruction or amalgamation permitted by this deed; or
- (h) any act is done or event occurs which has an analogous or similar effect to any of the events in paragraphs (a) to (g).

**Insurances** means the insurances required to be effected and maintained under this deed.

**Intellectual Property** has the meaning given in Schedule A5 (*Intellectual Property*).

**IWLR** means the inner west Light Rail from Central Station to Dulwich Hill.

**IWLR Operations Phase** has the meaning given in the Project Deed.

**Land Tax** means land tax payable in accordance with the provisions of the Land Tax Legislation.

**Land Tax Legislation** means each of the *Land Tax Act 1956 (NSW)* and the *Land Tax Management Act 1956 (NSW)*.

**Last Election Date** means:

- (a) in respect of Option 1B, 1 March 2019; and
- (b) in respect of Option 2, 1 March 2024.

**Legislation** means, in relation to New South Wales or the Commonwealth of Australia:

- (a) any act of parliament;
- (b) any subordinate legislation, rules, regulations or by-laws; and
- (c) binding rules, guidelines, regulations, policies, standards, procedures, directives, circulars, codes of practice or requirements relating to or affecting the execution of any part of the Contractor's Activities as may be published by the Commonwealth or New South Wales governments or local councils or Authorities, with which the Contractor is legally required to comply.

**Letter of Dispute** means a written communication of any Dispute issued by a party under clause 56.3(a).

**Light Rail** means any light rail system within the meaning set out in section 104N of the Transport Administration Act.

**Light Rail Vehicle** or **LRV** has the meaning given in the Project Deed.

**Liquidated Damages** has the meaning given in clause 19.15(a)

**Longstop Date** means for any CSELRV, the date that falls 12 months after the Delivery Date for that CSELRV, as extended in accordance with this deed.

**Loss** means:

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

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

**LPI** means the "Labour Price Index: Total Hourly Rates of Pay Excluding Bonuses" (No. 6345) as maintained and published quarterly by the Australian Bureau of Statistics. If the Labour Price Index: Total Hourly Rates of Pay Excluding Bonuses ceases to be published quarterly or its method of calculation substantially alters, then the Labour Price Index: Total Hourly Rates of Pay Excluding Bonuses is to be replaced by the nearest equivalent index as selected in good faith by TfNSW's Representative and any necessary consequential amendments are to be made.

**LPI Indexed** means, with respect to an amount, the amount must be adjusted in accordance with the indexation process detailed in clause 1.11 (*LPI Indexed*).

**Major Australian Bank** means Australia and New Zealand Banking Group Limited, Westpac Banking Corporation, National Australia Bank Limited and Commonwealth Bank of Australia.

**Manufacturing and Procurement Plan** means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

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

**Milestone** means each of the payment milestones identified in the Payment Schedule.

**Minor Defect** means a Defect:

- (a) which:
  - (i) does not:
    - (A) prevent the CSELRV from being fit for its intended purpose;
    - (B) prevent the achievement of the system performance requirements specified in the SPR;
    - (C) [not used]; or

- (D) in TfNSW's reasonable opinion, affect the public image of the SLR; or
  - (ii) the Independent Certifier determines that the Contractor has reasonable grounds for not promptly rectifying; or
- (b) which the parties agree is a Minor Defect.

**Modification** means any change to the requirements of this deed for:

- (a) [not used];
- (b) [not used];
- (c) [not used];
- (d) the CSELRVs; or
- (e) the Contractor's Activities (or the sequencing or timing of them),

including any addition, extension, reduction, increase, decrease or omission to or from them and includes:

- (f) an Emergency Modification;
- (g) a General Modification;
- (h) [not used];
- (i) [not used];
- (j) an Expansion Modification.
- (k) [not used]

**Modification Approval** means a notice titled "Modification Approval" issued by TfNSW under clause 30 (*the Contractor initiated Modifications*).

**Modification Impact Proposal** means a proposal issued by the Contractor under clause 29.3(b).

**Modification Request** means a notice titled "Modification Request" issued by TfNSW under clause 29.1 (*Modification Request*).

**Modification Order** means a notice titled "Modification Order" issued by TfNSW under clause 29 (*TfNSW initiated Modifications*) for a Modification that is not an Emergency Modification.

**Moral Rights Consent** has the meaning given in Schedule A5 (*Intellectual Property*).

**Moveable Assets** means:

- (a) the CSELRVs;
- (b) the Spares;
- (c) the Special Tools and Equipment;

- (d) [not used]; and
- (e) all other chattels:
  - (i) forming part of the CSELRVs; or
  - (ii) used by the Contractor or the Subcontractors for the purpose of carrying out the Contractor's Activities.

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

**Net Financial Impact** means the net financial impact of a NFI Event calculated in accordance with Schedule D4 (*Net Financial Impact*).

**NFI Event** has the meaning given in Schedule D4 (*Net Financial Impact*).

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

**NSW Government Policy** means any policy or guideline of the NSW Government, as published from time to time.

**NSW Guidelines** means the NSW Government's Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction (7 June 2013).

**O&M Contract** has the meaning given in the Project Deed.

**O&M Contractor** has the meaning given in the Project Deed.

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

**OpCo** means ALTRAC Light Rail Partnership.

**Operative Provisions** means the operative provisions of this deed, being clauses 1 (*Definitions and interpretation*) to 62 (*General*) and excluding all schedules and appendices.

**Option 1B** means the supply of up to 16 additional CSELRVs.

**Option 2** means the supply of up to 16 additional CSELRVs, where Option 1B and Option 2 operate on an aggregate basis so that no more than 16 additional CSELRVs can be required by TfNSW (e.g. if 7 CSELRVs are required under Option 1B no more than 9 CSELRVs can be required under Option 2).

**Option Capital Price** means the total capital price in A\$ for Option 1B or Option 2 (as applicable), taking into account the number of CSELRVs required to be provided, calculated by reference to the CSELRV purchase price set out in paragraph 2.1 in Schedule D1 (*Milestone payments*) after the application of the adjustments referred to in paragraphs 2.2 and 2.3 in Schedule D1 (*Milestone payments*).

**Option Commencement Date** means:

- (a) in respect of Option 1B, 1 January 2017; and

- (b) in respect of Option 2, 1 March 2019.

**Original Delivery Date** means, for any CSELRV, the following dates:

- (a) for the first four CSELRVs in each Pre-Agreed Option, the date falling 730 days after TfNSW directs that Pre-Agreed Option; and
- (b) for the subsequent two CSELRVs in each Pre-Agreed Option, the Original Delivery Date will be the date falling one calendar month after the Original Delivery Date for the first four CSELRVs (i.e. the Original Delivery Date for the fifth and sixth CSELRVs will be one month after the Original Delivery Date for the first four); and
- (c) for each subsequent two CSELRVs in each Pre-Agreed Option, the Original Delivery Date will be the date falling one calendar month after the Original Delivery Date for the previous two CSELRVs (i.e. the Original Delivery Date for the seventh and eighth CSELRVs will be two months after the first four; and so on).

**Other Contractors** means any contractor, consultant, tradesperson, supplier or other person engaged or authorised by TfNSW to do work on or about the SLR Site but excluding OpCo, OpCo's Contractors, the Managing Contractor, the Early Works Contractors and the ETS Contractor, each as defined in the Project Deed.

**Other Contractors' Activities** means any activities undertaken by an Other Contractor which interface with or affect, are affected by, the Contractor's Activities or the CSELRVs.

**Payment Schedule** means Schedule D1 (*Milestone payments*).

**PDCS** means TfNSW's web based TeamBinder project data and collaboration system, or such other electronic project data and collaboration system to be used as notified by TfNSW's Representative under clause 58(b).

**Permanent Light Rail Corridor** has the meaning given in the Project Deed.

**Permitted Change in Control** means, in relation to the Contractor, any Change in Control in connection with the proposed sale to the General Electric Company by Alstom of its Thermal Power, Renewable Power and Grid businesses, or in connection with the proposed joint ventures related thereto, such proposed transactions having been publicly announced by Alstom on 21 June 2014.

**Personal Information** means:

- (a) while the PPIPA is in force, that term as defined in the PPIPA; and
- (b) if the PPIPA is repealed, that term as defined in any Commonwealth or New South Wales Legislation that replaces the PPIPA in whole or in part.

**Planning Approvals** means:

- (a) the Project Planning Approval;
- (b) the planning approval for the light rail extension between Wentworth Park and Lilyfield which is referred to in Schedule B7 (*Planning Approvals*);
- (c) the planning approval for the light rail extension between Lilyfield and Dulwich Hill which is referred to in Schedule B7 (*Planning Approvals*); and



- (d) any other consent, concurrence or approval, or determination of satisfaction with any matter, which is made, given or issued under the Planning Approvals from time to time and all conditions to any of them, and includes all documents incorporated by reference, as that consent, concurrence, approval or determination may be modified from time to time.

**PPIPA** means the *Privacy and Personal Information Protection Act 1998 (NSW)*.

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

**Pre-Agreed Option** means Option 1B or Option 2, exercised in accordance with clause 3.2(a).

**Project** means the Sydney Light Rail project which will be delivered through the SLR PPP and any preceding, subsequent or consequent works.

**Project Deed** means the deed titled "Sydney Light Rail Project Deed" between TfNSW and OpCo, dated on or about the date of this deed.

**Project Planning Approval:**

- (a) means the approval granted by the Minister for Planning under section 115ZB of the EP&A Act dated 4 June 2014, which (as at the date of this deed) is referred to in Schedule B7 (*Planning Approvals*); and
- (b) includes all:
- (i) conditions to such approval; and
  - (ii) documents incorporated by reference,

as modified from time to time, including pursuant to the Planning Modification.

**Project Plans** means the plans listed in clause 15.1(b), including all subsidiary plans and supporting documents and information.

**Project-Specific Change in Law** means a Change in Law, the terms of which apply to:

- (a) the SLR, and not to other railways or other modes of transport in Australia;
- (b) OpCo or the Contractor, and not to other persons;
- (c) the SLR Site, and not to any other:
  - (i) similarly situated land or facilities; or
  - (ii) land or facilities where similar activities to OpCo's Activities or the Contractor's Activities are undertaken; or
- (d) projects procured or established under the NSW PPP Guidelines or other policies of the State in respect of public private partnerships and not to other projects.

**Project-Specific Change in NSW Government Policy** means a Change in NSW Government Policy, the terms of which apply to:

- (a) the SLR, and not to other railways in Australia;

- (b) OpCo or the Contractor, and not to other persons;
- (c) the SLR Site, and not to any other:
  - (i) similarly situated land or facilities; or
  - (ii) land or facilities where similar activities to OpCo's Activities or the Contractor's Activities are undertaken; or
- (d) projects procured or established under the NSW PPP Guidelines or other policies of the State in respect of public private partnerships and not to other projects.

**Proposal** means the proposal provided by OpCo or the Contractor in response to the RFP.

**Public Disclosure Obligations** has the meaning given in clause 47.3(a).

**Qualifying Nominee** means the State or an "authority" (as defined in the *Public Authorities (Financial Arrangements) Act 1987* (NSW)).

**Quality Management Plan** means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

**Quarter End** means the last day of each 3 month period ending 31 March, 30 June, 30 September or 31 December.

**Rail Safety National Law** means the *Rail Safety National Law (NSW) No 82a*.

**Rail Safety Regulations** means the regulations made under the Rail Safety National Law or the *Rail Safety (Adoption of National Law) Act 2012* (NSW).

**Rates** means all rates, taxes or charges or other amounts which any Authority levies by reference to the SLR or the SLR Site, but excluding any Land Tax.

**Related Body Corporate:**

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

**Relief Event** means each of the following:

- (a) a Compensation Event;
- (b) fire, explosion, flood, storm, lightning, hurricane, mudslide, landslide, earthquake and drought where such event of drought is declared as a state of emergency by any person having the requisite authority to do so and in each case occurring within Australia or an Alstom Manufacturing Country;
- (c) a Terrorist Act within Australia;
- (d) war, armed conflict, riot, civil commotion occurring within Australia;
- (e) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel in each case occurring within Australia;

- (f) failure by any Authority, or a provider of gas, water, sewerage, electricity or telecommunications utilities within Australia, to carry out works or provide services to the SLR Site which it is obliged by law (including by contract) to carry out or provide, or any interruption permitted by law (including by contract) to the carrying out or provision of those works or services within Australia, except where the failure is a breach of a Third Party Agreement or a Utility Provider Agreement (as defined in the Project Deed);
  - (g) any event which causes loss or damage to the SLR;
  - (h) any blockade or embargo in each case occurring within Australia or an Alstom Manufacturing Country, other than a blockade or embargo which only affects the Contractor and/or one or more of the Subcontractors;
  - (i) any industrial action within Australia, other than industrial action which only affects the Contractor and/or one or more of the Subcontractors;
  - (j) any event or occurrence which deprives the Contractor of any access to the SLR Site that it is entitled to under this deed;
  - (k) an act or omission by TfNSW not being an act or omission:
    - (i) expressly permitted or allowed by the Project Deed or this deed;
    - (ii) which is within a timeframe expressly permitted or allowed by the Project Deed or this deed; or
    - (iii) being the exercise by TfNSW of any of its statutory functions or powers; or
  - (ka) [Not used],
- except to the extent the event (or its effects):
- (l) occurs or arises as a direct or indirect result of any act or omission of the Contractor or the Subcontractors;
  - (m) occurs or arises as a direct or indirect result of a failure by Contractor to comply with its obligations under this deed;
  - (n) occurs or arises as a direct or indirect result of any breach of this deed by the Contractor; or
  - (o) is, or ought reasonably to have been, within the control of the Contractor or the Subcontractors.

**Remedy** means, in respect of a the Contractor Event of Default, to remedy or cure the Contractor Event of Default or otherwise overcome the consequences of the Contractor Event of Default.

**Replaced or Refurbished or Replacement and Refurbishment** has the meaning given in SPR Appendix 1 (*Definitions and Acronyms*).

**Reputable Insurer** means an insurance company having the Required Rating.

**Required Rating** means a credit rating (or in the case of an insurer, a financial security rating) of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's

Investors Service, Inc (or such other credit rating as TfNSW may approve in writing from time to time) or, if no rating is provided by Standard and Poor's (Australia) Pty Limited or by Moody's Investors Service, Inc, an equivalent rating with another reputable rating agency.

**RFP** means the document titled "Sydney Light Rail Public Private Partnership Request for Proposal" dated 7 March 2014.

**Risk Management Plan** means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

**RMS** means Roads and Maritime Services, a NSW Government agency constituted by section 46 of the *Transport Administration Act 1988* (NSW).

**Roads Act Approval** means the consents and approvals granted by RMS under the *Roads Act 1993* (NSW), which is referred to (as at the date of this deed) in Schedule B11 (*Roads Act Approval*).

**Safety and Systems Assurance Management Plan** means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

**Safety Management Plan** means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

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

**Security Interest** means any mortgage, charge, pledge, lien, encumbrance, assignment, hypothecation, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person or any interest in relation to personal property provided for by a transaction that in substance secures payment or performance of an obligation or otherwise would be considered to be a "security interest" under the PPSA (except in clause 59 (*PPSA*), where **Security Interest** has the meaning given in that clause).

**Service Payment Deduction** has the same meaning as given in the Project Deed and is calculated in accordance with Schedule D1 (*Service Payment Regime*) to the Project Deed.

**SLR** means the Sydney Light Rail.

**SLR PPP** has the meaning given in the Project Deed.

**SLR Site** has the meaning given in the Project Deed.

**Spares** means a stock of spares that is equivalent in quantity and nature to what the Contractor provides under the D&C Contract taking into account the number of CSELRVs ordered as part of the relevant Pre-Agreed Option.

**Special Tools and Equipment** means a stock of special tools and equipment that is equivalent in quantity and nature to what the Contractor provides under the D&C Contract taking into account the number of CSELRVs ordered as part of the relevant Pre-Agreed Option.

**Specific CSELRV Part** means:

(a) the bodyshell; and

(b) the bogie frames,

of each CSELRV.

**SPR** means the Scope and Performance Requirements contained in Schedule E1 (*Scope and Performance Requirements*) of the Project Deed to the extent relevant to the CSELRVs.

**SPR Appendix** means an appendix of the SPR.

**Staff** means all persons, whether officers, employees, agents or contractors of the Contractor or the Subcontractors, engaged in or in connection with the performance of the Contractor's Activities.

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

**Step-in Event** has the meaning given in clause 42.1 (*Step-in Events*).

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

**Step-in Powers** has the meaning given in clause 42.3 (*Step-in Powers*).

**Step-in Rights** has the meaning given in clause 42.2(a).

**Subcontract** means a contract with a Subcontractor relating to the Contractor's Activities.

**Subcontractor** means each of the Contractor's sub-contractors of any tier (including all suppliers, tradespersons and consultants) involved in performing the Contractor's Activities. The Independent Certifier is not a Subcontractor.

**Tax** means any present or future tax, levy, impost, duty, deduction, fee, charge, compulsory loan or withholding plus any interest, penalty, charge, fees or other amounts payable in respect thereof.

**Tax Invoice** has the meaning given in the GST Act.

**Taxable Supply** has the meaning given in the GST Act.

**Termination Payment** means an amount payable by TfNSW to the Contractor under clause 43.12 (*Termination Payments*), in each case calculated in accordance with Schedule D6 (*Termination Payments*).

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

**Test** means:

(a) a test required by SPR Appendix 37 (*Rolling Stock*) or the Testing and Commissioning Plan; and

(b) any additional test carried out under clause 18.8(a).

**Test Procedure** means a detailed procedure for the conduct of a Test.

**Test Program** has the meaning given in clause 18.3(b)(i).

**Test Report** means a report on the conduct of a Test, including supporting documentation.

**Testing** means the carrying out of the CSELRV Performance Test.

**Testing and Commissioning Plan** means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

**TfNSW Data** has the meaning given in Schedule A5 (*Intellectual Property*).

**TfNSW Termination Event** means any event specified in clause 43.5 (*TfNSW Termination Events*).

**TfNSW's Project Director** means the person from time to time appointed by TfNSW to lead the Project.

**TfNSW's Representative** means TfNSW's Project Director or any other person from time to time appointed by TfNSW to replace that person in accordance with clause 5.1(b).

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

**Utility Services** has the meaning given in the Project Deed.

**WHS Legislation** means:

- (a) the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2011* (NSW); and
- (b) any legislation in other States and Territories of Australia addressing work health and safety which applies to the CSELRVs.

**Witness Point** means a point in a work process for which the Contractor must give prior notice to TfNSW's Representative to allow TfNSW's Representative or the Independent Certifier to attend and witness the work should it choose to do so.

## 1.2 **SPR definitions**

The definitions and abbreviations in SPR Appendix 1 (*Definitions and Acronyms*) apply in this deed unless the relevant term is defined differently in the Operative Provisions.

## 1.3 **Schedule definitions**

The definitions in the Schedules apply in this deed unless the relevant term is defined differently in the Operative Provisions.

## 1.4 **Interpretation**

In this deed:

- (a) headings and subheadings are for convenience only and do not affect interpretation;

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

- (b) 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;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (d) subject to clause 1.4(da), a reference to a document (including this deed) is to that document as varied, novated, supplemented, assigned, ratified or replaced from time to time;
- (da) a reference to the Project Deed, the SPR, the D&C Contract or the Planning Approvals is to those documents as executed and does not include any amendments, variations, supplements or replacements (other than a replacement on the same terms or terms that do not disadvantage the Contractor) unless otherwise agreed by the parties or instructed as a Modification;
- (e) 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 object as that Authority, institute, association or body;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:
  - (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
  - (ii) any consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to:
  - (i) a party, schedule, appendix, attachment or annexure is a reference to a party, schedule, appendix, attachment or annexure to or of this deed;
  - (ii) this deed includes all schedules, appendices, attachments and annexures to it; and
  - (iii) the SPR includes all SPR Appendices;
- (i) a reference:
  - (i) in the Operative Provisions to a clause is a reference to a clause of the Operative Provisions; and

(ii) in a schedule, attachment, annexure or appendix to a clause, paragraph or annexure, is a reference to a clause, paragraph or annexure of that schedule, attachment, annexure or appendix;

(j) any reference to:

- (i) the CSELRVs;
- (ii) the Contractor's Activities;
- (iii) the Project Plans;
- (iv) the SPR;
- (v) the Design Documentation and the Contractor's Documentation; or
- (vi) any other document or thing,

or any part of any of them:

- (vii) being or remaining fit for its purpose or for its intended purpose; or
- (viii) as having an intended use,

(or any similar reference) will be read as referring to the purpose, intended purpose or intended use (in respect of any warranty given at any Actual Date of Delivery, by reference to the purpose, intended purpose or intended use as at the Actual Date of Delivery) having regard to:

(ix) TfNSW's intention that the CSELRVs will be used as an integral part of an operating Light Rail intended to provide light rail services between:

- (A) [not used];
- (B) Central Station to Circular Quay via George Street; and
- (C) Central Station and Randwick and Kingsford, via Surry Hills and Moore Park,

and which may:

- (aa) be required to accommodate and utilise various rolling stock, Light Rail track, Light Rail systems and related equipment;
- (bb) be subject to continuous operation;
- (cc) be operated by either the State of New South Wales or by private operator(s) on its behalf;
- (dd) be upgraded, augmented, extended and expanded to the extent referred to in this deed; and
- (ee) be connected to and/or integrated with other transport infrastructure to the extent referred to in this deed;

(x) any purpose, intended purpose or intended use stated in, contemplated by or reasonably ascertainable from this deed, including:



- (A) the principles and drivers referred to in sections 1.2 and 1.3 of the SPR; and
  - (B) the requirement that the CSELRVs, when completed, will be designed and constructed in compliance with all health and safety requirements of the WHS Legislation; or
- (k) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
  - (l) includes in any form is not a word of limitation;
  - (m) a reference to \$ or dollar is to Australian currency;
  - (n) a reference to construction includes development, manufacture, supply, installation, integration, testing and commissioning;
  - (o) any reference to information will be read as including information, representations, statements, data, samples, bore logs, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated; and
  - (p) any obligation of the Contractor under this deed with respect to a Project Plan, will be read as an obligation with respect to the version of the relevant Project Plan last submitted by the Contractor to TfNSW's Representative under clause 8 (*Project Plans*) in respect of which:
    - (i) during the Delivery Phase and in relation to the Testing and Commissioning Plan, the Independent Certifier has certified under clause 8.5(b)(ii)(B); or
    - (ii) for all other Project Plans, TfNSW's Representative has not given a notice under clause 8.5(a),
 (as applicable).

**1.5 Resolution of ambiguities**

- (a) The following order of precedence applies in the event of any ambiguity, discrepancy or inconsistency in, or between, the documents comprising this deed:
  - (i) if the ambiguity, discrepancy or inconsistency is in or between the documents comprising this deed, the documents will be given precedence in accordance with the following:
    - (A) this deed (excluding the SPR); and
    - (B) the SPR;
  - (ii) to the extent clause 1.5(a)(i) does not apply to or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is between different codes, standards, specifications or guidelines with which the Contractor must comply, the order of precedence set out in section 1.1(f) of SPR Appendix 34 (*Standards and Guidelines*) will apply;

- (iii) to the extent clauses 1.5(a)(i) and 1.5(a)(ii) do not apply to or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is between different requirements of the SPR, the order of precedence set out in section 1.2(c) of the SPR will apply;
  - (iv) to the extent clauses 1.5(a)(i) to 1.5(a)(iii) do not apply to or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is between the SPR and the Planning Approvals, the document which prescribes or requires the highest standard of compliance consistent with complying with all Approvals will take precedence (unless TfNSW's Representative directs otherwise);
  - (v) to the extent clauses 1.5(a)(i) to 1.5(a)(iv) do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency relates to the required quality or standard of the CSELRVs or the Contractor's Activities, the Contractor must comply with the highest quality or standard specified, perform the more onerous obligation or comply with the requirement that delivers the greater level of service; and
  - (vi) to the extent clauses 1.5(a)(i) to 1.5(a)(v) do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy, or inconsistency is between figured and scaled dimensions, figured will prevail over the scaled dimensions.
- (b) The documents comprising this deed (including the SPR and the Planning Approval) are to be regarded as mutually explanatory and anything contained in one but not the others will be equally binding as if contained in all of them.
  - (c) If an ambiguity, discrepancy or inconsistency is discovered by the Contractor, the Contractor must notify TfNSW within 5 Business Days of such discovery.
  - (d) TfNSW's Representative must, within 10 Business Days of receipt of a notice under clause 1.5(c), instruct the Contractor as to the interpretation to be followed so as to resolve the ambiguity, discrepancy or inconsistency in accordance with the rules set out in this clause 1.5 (*Resolution of ambiguities*).
  - (e) Any Direction given by TfNSW's Representative in accordance with clause 1.5(d) will not:
    - (i) entitle the Contractor to make any Claim arising out of or in connection with the Direction;
    - (ii) relieve the Contractor from or alter its liabilities or obligations whether under this deed or otherwise according to law; or
    - (iii) prejudice or limit TfNSW's rights against the Contractor whether under this deed or otherwise according to law.

1.6 **[Not Used]**

1.7 **No bias against drafter**

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

**1.8 Business Day**

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

**1.9 Excluding liability**

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

**1.10 CPI Indexed**

Unless otherwise expressly provided, a reference to "CPI Indexed" after a monetary amount in this deed means that the amount will be indexed for movements in the CPI in accordance with the following formula:

$$A \text{ (CPI Indexed)} = A \times \frac{CPI_{Q-1}}{CPI_{Base}}$$

Where:

A is the monetary amount originally specified;

$CPI_{Q-1}$  is the CPI for the Quarter End following the date that occurs 6 months before the relevant calculation date; and

$CPI_{Base}$  is the CPI for the Quarter End ending September 2014, being the Quarter End following the date that occurs 6 months before the date of Financial Close.

**1.11 LPI Indexed**

Unless otherwise expressly provided, a reference to "LPI Indexed" after a monetary amount in this deed means that the amount will be indexed for movements in the LPI in accordance with the following formula:

$$A \text{ (LPI Indexed)} = A \times \frac{LPI_{Q-1}}{LPI_{Base}}$$

Where:

A is the monetary amount originally specified;

$LPI_{Q-1}$  is the LPI for the Quarter End following the date that occurs 6 months before the relevant calculation date; and

$LPI_{Base}$  is the LPI for the Quarter End ending September 2014, being the Quarter End following the date that occurs 6 months before the date of Financial Close.

**1.12 Authorities**

- (a) This Deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of TfNSW to exercise any of its statutory functions or powers pursuant to any law.

- (b) The Contractor acknowledges that, without limiting clause 1.12(a), anything TfNSW does, fails to do, or purports to do, pursuant to its functions and powers under any law will be deemed not to be an act or omission by TfNSW (including a breach of contract) under or in connection with this deed and will not entitle the Contractor to make any Claim against TfNSW.
- (c) Clauses 1.12(a) and 1.12(b) do not limit any liability which TfNSW would have had to the Contractor under this deed as a result of a breach by TfNSW of a term of this deed but for clauses 1.12(a) and 1.12(b).
- (d) The Contractor acknowledges that:
  - (i) there may be Authorities (other than TfNSW) with jurisdiction over aspects of the Contractor's Activities or areas affected by them;
  - (ii) such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Contractor's Activities; and
  - (iii) except to the extent expressly stated otherwise in this deed, the Contractor bears the risk of all occurrences of the kind referred to in clause 1.12(d)(ii) and will not be entitled to make, and TfNSW will not be liable upon, any Claim arising out of or in any way in connection with such occurrences.

#### 1.13 Reasonable endeavours

If TfNSW is required under the terms of this deed to exercise best or reasonable endeavours, the Contractor acknowledges that:

- (a) TfNSW will only be obliged to bring about the relevant outcome to the extent that it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) TfNSW cannot guarantee the relevant outcome; and
- (c) TfNSW, by undertaking to exercise reasonable endeavours, does not agree to:
  - (i) interfere with or influence the exercise by any person of a statutory power or discretion;
  - (ii) exercise a power or discretion or otherwise act in a manner that promotes the objectives and expected outcomes of this deed if TfNSW regards that exercise as not in the public interest;
  - (iii) develop policy or legislate by reference only or predominantly to the interests of the SLR PPP or this deed;
  - (iv) procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of the SLR PPP or this deed; or
  - (v) act in any other way that TfNSW regards as not in the public interest.

## 1.14 Standards

Except as expressly stated otherwise, a reference to any standard, code, guideline or specification is a reference to the version stated in this deed or, if no version is stated, the version of that standard, code, guideline or specification as at the date of this deed.

## 2. CONDITIONS PRECEDENT

### 2.1 Conditions Precedent

This deed will not commence unless and until the Condition Precedent has been satisfied (or waived under clause 2.3 (*Waiver of Conditions Precedent*)), except for the provisions contained in:

- (a) clause 1 (*Definitions and interpretation*);
- (b) clause 2 (*Conditions Precedent*);
- (c) [not used];
- (d) clause 8.2 (*Initial Project Plans*);
- (e) clause 11.1 (*Physical conditions*);
- (f) clause 11.2 (*Information Documents*);
- (g) clause 11.3 (*Condition of the SLR Site and structures*);
- (h) clause 38A (*Liability cap*);
- (i) clause 47 (*Disclosure, confidentiality and publicity*);
- (j) [not used];
- (k) clause 52 (*Restrictions*);
- (l) clause 53 (*Change of Ownership / Control*);
- (m) clause 54 (*Subcontracting*);
- (n) clause 55 (*Representations and warranties*);
- (o) clause 56 (*Dispute resolution*);
- (p) clause 57 (*Notice of Claims*);
- (q) clause 58 (*Notices*);
- (r) clause 60 (*Proportionate liability*);
- (s) clause 61 (*Taxes*); and
- (t) clause 62 (*General*),

(each of which is a **Day 1 Clause**) which will commence on the date of this deed.

## 2.2 Satisfaction of Condition Precedent

- (a) The Condition Precedent is that Financial Close has occurred.
- (b) Upon the satisfaction (or waiver under clause 2.3 (*Waiver of Condition Precedent*)) of the Condition Precedent, the parties must promptly acknowledge in writing the fact that the Condition Precedent has been satisfied.

## 2.3 Waiver of Condition Precedent

- (a) The Condition Precedent is waived if, and only if, both parties agree in writing to waive the Condition Precedent.
- (b) [Not used]

## 2.4 [Not used]

## 3. COMMENCEMENT AND OPTION EXERCISE

### 3.1 Commencement date

Except for the Day 1 Clauses which commence on the date of this deed, this deed commences on the date that the Condition Precedent is satisfied or waived in accordance with clause 2.

### 3.2 Pre-Agreed Options exercise

- (a) TfNSW may:
  - (i) at any time after the Option Commencement Date for Option 1B and prior to the Last Election Date for Option 1B, in its absolute discretion and without being under any obligation to do so, direct the Contractor to implement Option 1B by giving notice to the Contractor; and
  - (ii) at any time after the Option Commencement Date for Option 2 and prior to the Last Election Date for Option 2, in its absolute discretion and without being under any obligation to do so, direct the Contractor to implement Option 2 by giving notice to the Contractor.

TfNSW may direct both Pre-Agreed Options, or either one, or neither, at its discretion subject to Option 1B and Option 2 operating on an aggregate basis so that no more than 16 additional CSELRVs can be required by TfNSW.

- (b) The notice must confirm the number of CSELRVs that TfNSW requires the Contractor to deliver under the Pre-Agreed Option directed. This may be any number between a minimum of four (4) and the maximum number specified in the definition of Option 1B or Option 2, as applicable.
- (c) Where TfNSW directs the Contractor to implement a Pre-Agreed Option in accordance with clause 3.2(a), on and from the date of the notice the parties must carry out their obligations under this deed in respect of that Pre-Agreed Option. For the avoidance of doubt, the Contractor will not be required to deliver, and TfNSW will not be required to pay for, any CSELRVs under this deed that are not part of a Pre-Agreed Option directed by TfNSW under clause 3.2(a).

- (d) The parties acknowledge that if a Modification or Augmentation (each as defined in the Project Deed) that affects the CSELRVs is implemented under the Project Deed, a Modification may be required under this deed. Such a Modification may need to take into account (among other things):
- (i) whether a new planning approval will be required;
  - (ii) any changes to the boundaries of the SLR Site and infrastructure at the SLR Site to be used for testing and commissioning of the CSELRVs;
  - (iii) whether different site access arrangements will be required;
  - (iv) insurance requirements;
  - (v) the effect of any Service Payment Deductions that have been changed under the Project Deed as a result of the Project Deed Modification or Augmentation;
  - (vi) any changes to the CSELRVs required as a result of the Modification or Augmentation; and
  - (vii) the impact on the Contractor's obligations under this deed due to the Project Deed Modification or Augmentation.
- (e) If a Modification or Augmentation (each as defined under the Project Deed) would impact on the Contractor's risk or obligations under this deed then TfNSW must issue a Modification Request under this deed to address those impacts. If TfNSW does not do so, or if a Modification Order is not subsequently implemented, then the Contractor's rights and obligations under this deed will be unaffected by the Project Deed Modification or Augmentation so that the Contractor's obligations and this deed will be as if the Project Deed Modification or Augmentation had not been implemented.
- (f) For the avoidance of doubt, a Modification or Augmentation (each as defined in the Project Deed) initiated by TfNSW which is implemented under the Project Deed does not trigger a Contractor initiated Modification under clause 30 (*Contractor initiated Modifications*) of this deed.

### 3.3 Guarantee

Within 20 Business Days after TfNSW directs the Contractor to implement a Pre-Agreed Option under clause 3.2(a) the Contractor must provide TfNSW with the Guarantee, duly executed by the Guarantor, together with a legal opinion from the Guarantor's legal advisor confirming the Guarantor's capacity and authority to enter into the Guarantee, and its due execution, in a form satisfactory to TfNSW.

## 4. OBJECTIVES, PRIMARY OBLIGATIONS AND RISK ALLOCATION

### 4.1 Objectives for the Project

TfNSW's strategic objectives for the Project are to:

- (a) ensure Customer needs are met through provision of a safe, high quality, integrated and affordable transport service;

- (b) deliver a transport service that has been informed by engagement with communities and stakeholders and demonstrates evidence-based decision-making;
- (c) increase the use of sustainable transport modes in the CBD, inner west Sydney and south east Sydney;
- (d) improve reliability and efficiency of travel to, from and within the CBD, inner west Sydney and south east Sydney;
- (e) satisfy long term travel demand between the CBD and suburbs in inner west Sydney and south east Sydney;
- (f) improve access to major destinations in south east Sydney, including Moore Park, University of NSW, Royal Randwick Racecourse and Randwick health precinct;
- (g) facilitate the continued, orderly and efficient growth of urban development and economic activity with the CBD and suburbs in inner west Sydney and south east Sydney; and
- (h) contribute to environmental, social and economic sustainability by improving liveability, minimising impact on the environment and the community, and delivering value for money.

The Contractor will perform the Contractor's Activities in a manner which promotes the achievement of these objectives.

#### 4.2 **Objectives for the SLR PPP**

TfNSW's objectives for the SLR PPP are:

- (a) to deliver world class Light Rail services which will provide Customers with a safe, high quality, reliable, efficient and affordable public transport solution and meet the specified performance requirements on a whole of life basis;
- (b) to provide a Customer experience with:
  - (i) a frequent, convenient and reliable public transport service that consistently provides efficient travel time along its route;
  - (ii) a fully-integrated transport solution with convenient connections between transport modes;
  - (iii) high quality stops and Light Rail Vehicles which are safe, easy to use, and highly accessible; and
  - (iv) high quality and reliable information, and intuitive and clear wayfinding and signage consistent with the TfNSW brand;
- (c) to develop a long term, collaborative working relationship between TfNSW, OpCo and the Contractor;
- (d) to design, deliver, test, commission, operate and maintain a safe Light Rail system, including the development of an effective safety culture;
- (e) to set new benchmarks for the future development and operation of Sydney's transport network;



- (f) to provide a whole of life approach to design, construction, operations and asset management;
- (g) that the Contractor will engage with the community and implement proactive stakeholder and community liaison strategies to minimise disruption and develop community "ownership" of the SLR;
- (h) that the Contractor will deliver sustainable social and environmental outcomes by minimising energy use, minimising impacts on the environment and promoting workforce development; and
- (i) that the Contractor will deliver a sound financing strategy for the SLR PPP which provides value for money to the State and a robust and financially sustainable business for the operation of the SLR.

The Contractor will perform the Contractor's Activities in a manner which promotes the achievement of these objectives.

#### 4.3 **Customer is at the centre**

- (a) The Contractor acknowledges TfNSW's vision statement, namely that "The Customer is at the centre of everything we do in transport".
- (b) The Contractor will perform the Contractor's Activities in a manner consistent with this vision statement.

#### 4.4 **Contractor's primary obligations**

Without limiting the Contractor's obligations under this deed, if TfNSW exercises any Pre-Agreed Option, then the Contractor must manufacture, deliver and commission the CSELRV applicable to that Pre-Agreed Option, subject to, and in accordance with, this deed.

#### 4.5 **TfNSW's primary obligations**

Without limiting TfNSW's obligations under this deed, TfNSW must:

- (a) provide drivers and access to the network for the Contractor to carry out testing and commissioning in accordance with clause 18A (*TfNSW's obligations in relation to testing and commissioning*); and
- (b) pay the Contractor in accordance with clause 25 (*Payment provisions*),

subject to, and in accordance with, this deed.

#### 4.6 **Project risks**

Except as expressly stated in this deed, the Contractor accepts all risks associated with the Contractor's Activities and will not be entitled to make any Claim against TfNSW arising out of or in connection with such risks.

#### 4.7 **TfNSW's rights do not affect risk allocation**

- (a) TfNSW has various rights under this deed which are designed to give TfNSW the ability to monitor the performance of the Contractor's obligations. Such rights include:

- (i) the right to review Project Plans, Design Documentation, Delivery Programs, Delivery Phase Progress Reports, Test Procedures, Test Reports, and other documents which the Contractor must submit to TfNSW (**Contractor Submissions**);
  - (ii) rights to inspect, monitor or audit the Contractor's Activities; and
  - (iii) rights to attend any CSELRV Performance Test.
- (b) Neither the exercise of, nor the failure to exercise, such rights will:
- (i) relieve the Contractor from, or alter or affect, the Contractor's liabilities, obligations or responsibilities whether under this deed or otherwise according to law;
  - (ii) prejudice or limit TfNSW's rights against the Contractor whether under this deed or otherwise according to law; or
  - (iii) without limiting clause 4.7(b)(ii), preclude TfNSW from subsequently asserting that the Contractor has not fulfilled its obligations whether under this deed or otherwise according to law.
- (c) Without limiting clause 4.7(b):
- (i) neither TfNSW nor TfNSW's Representative assumes or owes any duty of care to the Contractor:
    - (A) to review any Contractor Submission for errors, omissions or compliance with this deed; or
    - (B) if TfNSW does review any Contractor Submission, for identifying errors, omissions or non-compliance with this deed;
  - (ii) no review of, comments upon, or notice in respect of, or any failure to review, comment upon or give any notice in respect of, any the Contractor Submission or any other direction, act or omission of TfNSW or TfNSW's Representative will:
    - (A) relieve the Contractor from, or alter or affect, the Contractor's liabilities, obligations or responsibilities whether under this deed or otherwise according to law;
    - (B) prejudice or limit TfNSW's rights against the Contractor whether under this deed or otherwise according to law;
    - (C) constitute an instruction to accelerate, disrupt, prolong or vary any of the Contractor's Activities; or
    - (D) affect the time for the performance of TfNSW's obligations;
  - (iii) the Contractor will not be relieved from compliance with any of its obligations under this deed or from any of its liabilities whether under this deed or otherwise according to law as a result of:
    - (A) compliance with any Project Plan;

- (B) any audits or other monitoring by TfNSW of the Contractor's compliance with any Project Plan; or
- (C) any failure by TfNSW, or anyone acting on behalf of TfNSW, to detect any non-compliance including where any failure arises from any negligence on the part of TfNSW or such other person;
- (iv) neither TfNSW nor TfNSW's Representative assumes or owes any duty of care to the Contractor:
  - (A) to inspect the Contractor's Activities or the CSELRVs or the SLR for errors, omissions or compliance with the requirements of this deed; or
  - (B) if TfNSW does inspect the Contractor's Activities or the CSELRVs or the SLR, for identifying errors, omissions or non-compliance with the requirements of this deed; and
- (v) any inspection of the Contractor's Activities (or lack of inspection) by or on behalf of TfNSW will not in any way:
  - (A) relieve the Contractor from, or alter or affect, the Contractor's liabilities, obligations or responsibilities whether under this deed or otherwise according to law; or
  - (B) prejudice or limit TfNSW's rights against the Contractor whether under this deed or otherwise according to law.

## 5. GOVERNANCE

### 5.1 TfNSW's Representative

- (a) TfNSW's Representative will carry out all of its functions under this deed as the agent of TfNSW (and not as an assessor, valuer or independent certifier except as provided under clause 5.5 (*Appointment of Independent Certifier*)).
- (b) TfNSW may at any time by written notice to the Contractor replace TfNSW's Representative with another person.
- (c) The Contractor must comply with all Directions given by TfNSW's Representative under this deed.

### 5.2 Appointees of TfNSW's Representatives

TfNSW's Representative may:

- (a) by written notice to the Contractor appoint persons to exercise any of the functions of TfNSW's Representative under this deed;
- (b) not appoint more than one person to exercise a specific function at any one time;
- (c) revoke any appointment under clause 5.2(a) by written notice to the Contractor; and
- (d) continue to exercise a function under this deed despite appointing another person to exercise the function under clause 5.2(a) (provided that any Directions of

TfNSW's Representative take precedence over those of any other representative to the extent of any inconsistency).

All references in this deed to TfNSW's Representative include a reference to an appointee under this clause 5.2 (*Appointees of TfNSW's Representatives*).

### 5.3 Contractor's Representative

- (a) The Contractor's representative for the purposes of this deed is Contractor's Representative.
- (b) The Contractor must:
  - (i) ensure that the Contractor's Representative is available at all reasonable times for communications with TfNSW's Representative; and
  - (ii) ensure that the Contractor's Representative is, at all times an employee of the Contractor.

### 5.4 Independent Certifier

- (a) (**Independent Certifier Deed**): The Independent Certifier will be agreed by the parties in accordance with clause 5.5 (*Appointment of Independent Certifier*) and engaged within 30 Business Days after the date on which TfNSW directs a Pre-Agreed Option to be implemented under clause 3.2 (*Pre-Agreed Options exercise*) on the terms of the Independent Certifier Deed.
- (b) (**Role**): Subject to clause 5.4(c), the Independent Certifier's role is to, amongst other things:
  - (i) Independently certify in accordance with the Independent Certifier Deed:
    - (A) that the Testing and Commissioning Plan complies with the requirements of this deed;
    - (B) that the Design Documentation complies with the requirements of this deed;
    - (C) that the CSELRVs have been completed, tested and commissioned in accordance with this deed;
    - (D) that the CSELRV Performance Tests and Approvals required by the Testing and Commissioning Plan will, if satisfied, allow it to certify Delivery of the CSELRVs;
    - (E) [Not used];
    - (F) [Not used];
    - (G) the achievement of Delivery of each CSELRV;
    - (H) the achievement of Final Completion;
    - (I) [Not used];
    - (J) [Not used];

- (K) [Not used]; and
- (L) [Not used];
- (ii) independently audit in accordance with the Independent Certifier Deed:
  - (A) that the Project Plans comply with the requirements of this deed;
  - (B) [Not used];
  - (C) the effects of the Contractor's Activities, as described in section 4.3 of the SPR;
  - (D) [Not used]; and
  - (E) [Not used];
- (iii) participate in meetings as specified in the Design Management Plan;
- (iv) attend CSELRV Performance Tests, Hold Points and Witness Points;
- (v) [Not used];
- (vi) make determinations on matters that this deed (including the SPR) expressly requires be determined by the Independent Certifier;
- (vii) issue certificates as contemplated by this deed;
- (viii) undertake surveillance of the Contractor's Activities; and
- (ix) [Not used].
- (c) **(ASA and AEO)**: In certifying Design Documentation, the Independent Certifier is not required to act as an AEO.
- (d) **(Independent)**: The Independent Certifier is obliged to act independently of TfNSW, the Contractor and the Subcontractors.
- (e) **(Not approval or evidence)**: Subject to clause 19.11(a), a certification or other determination of the Independent Certifier will not:
  - (i) constitute an approval by TfNSW of the Contractor's performance of its obligations under this deed; or
  - (ii) be taken as an admission or evidence that the matters certified or determined by the Independent Certifier comply with this deed.
- (f) **(Conduct does not affect obligations)**: Without limiting clause 5.4(e), an act or omission (including negligence) of the Independent Certifier will not:
  - (i) relieve a party from, or alter or affect, a party's liabilities, obligations or responsibilities to the other party whether under this deed or otherwise according to law; or
  - (ii) prejudice or limit a party's rights against the other party whether under this deed or otherwise according to law.

- (g) **(Determinations final and binding)**: Determinations of the Independent Certifier will be immediately binding on the parties. If a party, acting reasonably, believes a manifest error has occurred in relation to a determination of the Independent Certifier, that party may (other than for a determination that is final and binding on the parties in accordance with clause 19.11(c)) dispute the determination of the Independent Certifier and must do so in accordance with clause 56 (*Dispute resolution*). Parties must give effect to determinations by the Independent Certifier unless and until they are revised pursuant to the dispute resolution process in clause 56 (*Dispute resolution*). Nothing in this clause 5.4(g) will limit the Contractor's ability to dispute (in accordance with clause 56 (*Dispute resolution*)) any determination or certification of the Independent Certifier under clauses 13.7(b), 18.2(c) or 18.5(c).
- (h) **(Provision of information)**: TfNSW and the Contractor must provide the Independent Certifier with all information and documents and allow the Independent Certifier:
- (i) to attend meetings;
  - (ii) access to all premises; and
  - (iii) to insert Hold Points or Witness Points in the Project Plans and designate the authority to release the Hold Points,
- all as may be necessary or reasonably required by the Independent Certifier to allow the Independent Certifier to perform its obligations under the Independent Certifier Deed.
- (i) **(Copy all information to other party)**: All notices and documents provided by a party to the Independent Certifier must be copied to the other party. If a party is required to provide a notice or document to the Independent Certifier within a specified time period, that notice or document must be provided to the other party within the same time period.
- (j) **(TfNSW may provide comments)**: TfNSW's Representative may provide comments to the Independent Certifier in respect of the Contractor's Activities.
- (k) **(Hold/Witness Points)**: The Contractor must comply with the Hold Point and Witness Point procedures required by this deed, including as set out in the SPR or inserted in the Project Plans by the Independent Certifier pursuant to clause 5.4(h)(iii).

## 5.5 Appointment of Independent Certifier

- (a) Both parties must use best endeavours, acting in good faith, to agree on the Independent Certifier.
- (b) The parties agree that:
- (i) TfNSW will pay 50%; and
  - (ii) the Contractor will pay 50%,
- of the Independent Certifier's fees payable for the performance of the Independent Certifier's services required under this deed.

- (c) If the parties fail to agree on the Independent Certifier within 30 Business Days after TfNSW directs the Contractor to implement a Pre-Agreed Option, TfNSW's Representative will perform the functions of the Independent Certifier under this deed.
- (d) In performing the functions of the Independent Certifier, TfNSW's Representative will at all times act fairly and impartially.
- (e) If any decision made by TfNSW's Representative in performing the functions of the Independent Certifier is not made in accordance with this deed, the Contractor may refer the matter for dispute resolution in accordance with clause 56 (*Dispute resolution*).

5.6 **[Not used]**

5.7 **Annual relationship review**

- (a) As soon as practicable after the end of each calendar year, TfNSW and the Contractor must conduct an annual relationship review.
- (b) The annual relationship review will:
  - (i) review the health and quality of the working relationship between the parties during the previous year; and
  - (ii) identify opportunities to improve the working relationship between the parties during the forthcoming year.
- (c) The annual relationship review may be combined with the annual relationship review under the Project Deed.

5.8 **Call-in**

- (a) If:
  - (i) TfNSW is dissatisfied with the Contractor's performance of the Contractor's Activities;
  - (ii) the Contractor is in breach of an obligation under this deed or, in TfNSW's reasonable view, the Contractor will be in breach of an obligation if its current performance continues unchanged; and
  - (iii) in TfNSW's reasonable view, its concerns are not being addressed in the various governance mechanisms referred to in this clause 5 (*Governance*),TfNSW may issue a notice to the Contractor outlining the nature of TfNSW's dissatisfaction.
- (b) If required by TfNSW in the notice under clause 5.8(a), the Contractor must:
  - (i) provide information;
  - (ii) attend meetings with TfNSW; and
  - (iii) prepare and implement remedial plans to improve performance in the areas identified by TfNSW.

**6. LAW AND APPROVALS**

**6.1 Compliance with laws**

The Contractor must:

- (a) in performing the Contractor's Activities, comply with all applicable laws;
- (b) ensure that the Subcontractors, in performing the Contractor's Activities, comply with all applicable laws;
- (c) ensure that the CSELRVs comply with all applicable laws;
- (d) give TfNSW's Representative copies of:
  - (i) all material documents given by the Contractor or the Subcontractors to an Authority at the time that those documents are given to the Authority; and
  - (ii) details of any other material communications between the Contractor or the Subcontractors and an Authority,
 in connection with the Contractor's Activities;
- (e) [not used]; and
- (f) provide TfNSW with such assistance as may be reasonably required by TfNSW to enable TfNSW to comply with all applicable laws.

**6.2 Approvals**

- (a) [Not used]
- (b) The Contractor must:
  - (i) obtain and maintain, and ensure that the Subcontractors obtain and maintain, all Approvals required to perform the Contractor's Activities (other than those Approvals which the Project Deed or this deed expressly states that TfNSW or OpCo has or will obtain or TfNSW agrees in its absolute discretion to obtain or maintain);
  - (ii) :
    - (A) comply with, carry out and fulfil, and ensure that the Subcontractors comply with, carry out and fulfil; and
    - (B) ensure that the CSELRVs comply with,
 the conditions and requirements of all Approvals (including those which TfNSW is expressly or impliedly under the terms of the Approval required to comply with, carry out or fulfil);
  - (iii) except to the extent prohibited by law, indemnify TfNSW against any Loss suffered by TfNSW arising out of or in any way in connection with a failure by the Contractor to comply with its obligations under clauses 6.2(b) or 6.2(b)(ii); and



- (iv) pay all fees, effect all insurances, provide any bonds and execute any undertakings or agreements or any other document required by any relevant Authority in respect of any Approval which the Contractor must obtain (and ensure that the Subcontractors do likewise in relation to any Approvals which they must maintain in connection with the Contractor's Activities).

6.3 [Not used]

6.4 [Not used]

6.5 [Not used]

6.6 [Not used]

6A [NOT USED]

## 7. RAIL SAFETY

### 7.1 Contractor's rail safety obligations

- (a) [Not used]
- (b) **(Rail transport operator):** The Contractor must ensure that the Contractor in carrying out the Contractor's Activities, acts as and complies with any obligations it has under the Rail Safety National Law and Rail Safety Regulations.
- (c) **(Subcontractors):** The Contractor must ensure that the Subcontractors engaged in, or in connection with, the Contractor's Activities comply with any obligations they have under the Rail Safety National Law.
- (d) [Not used]
- (e) **(Safety Management System):** To the extent that the Contractor or its Subcontractor is required under the Rail Safety National Law to maintain a Safety Management System, the Contractor must:
  - (i) ensure that its or its Subcontractor's Safety Management System contemplates and provides for the continuation of the Contractor's Activities following the occurrence of a Step-in Event; and
  - (ii) provides TfNSW with:
    - (A) the then current version of its or its Subcontractor's Safety Management System for the Contractor's Activities promptly upon request by TfNSW; and
    - (B) an updated version of such Safety Management System within 5 Business Days of any update.
- (f) **(Notices):** The Contractor must provide TfNSW with a copy of any notice, report and other correspondence given to or received by the Contractor or its Associates under or in connection with:
  - (i) the Rail Safety National Law;

- (ii) the Rail Safety Regulations; or
- (iii) any Accreditation held by the Contractor or its Associates,

in connection with the Contractor's Activities or which may adversely affect the ability of the Contractor or its Associates to perform the Contractor's Activities, promptly after it is given or received. The notice, report or other correspondence must be provided, as soon as possible, but in any event no later than 5 Business Days after it is given or received by the Contractor or its Associates.

## 7.2 Staff

Without limiting clauses 6.1 (*Compliance with laws*) and 6.2 (*Approvals*), the Contractor must ensure that all Staff:

- (a) are competent to carry out the work for which they are engaged for the purposes of section 117 of the Rail Safety National Law; and
- (b) comply with their obligations under the Rail Safety National Law.

## 7.3 TfNSW to provide information

If requested by the Contractor to do so, TfNSW must provide the Contractor with any information then held by TfNSW that:

- (a) the Contractor reasonably requires to fulfil its obligations under the Rail Safety National Law, in connection with the Contractor's Activities; and
- (b) the Contractor cannot obtain from another source.

## 8. PROJECT PLANS

### 8.1 Purpose

The intended purposes of the Project Plans are:

- (a) to demonstrate to TfNSW that the Contractor has the understanding, capacity and capability at all times to perform the Contractor's Activities safely and in accordance with the requirements of this deed;
- (b) to ensure that the CSELRVs (to the extent applicable) comply with the requirements of this deed;
- (c) to define responsibilities, resources and processes for planning, performing and verifying that the Contractor's Activities satisfy the requirements of this deed; and
- (d) to allow TfNSW to understand how the Contractor will achieve the performance outcomes specified in this deed, the objectives set out in clauses 4.1 (*Objectives for the Project*) and 4.2 (*Objectives for the SLR PPP*) and otherwise fulfil its obligations under this deed.

### 8.2 Initial Project Plans

- (a) [Not used].

- (b) The Contractor must submit initial versions of the Project Plans within 50 Business Days after TfNSW directs the Contractor to implement a Pre-Agreed Option under clause 3.2(a).

**8.2A Design Management Plan**

The parties acknowledge that the full design process required by SPR Appendix 37 (*Rolling Stock*) may not be appropriate for all Design Documentation that is to be submitted under clause 13 (*Design*), given it is limited to changes to the Final Design Documentation for the CSELRVs under the Project Deed. In developing the Design Management Plan under this deed, the Contractor will put forward a design review process that is appropriate in accordance with Good Industry Practice having regard to the Design Documentation submission and review requirements under clause 13 (*Design*).

**8.3 Updated Project Plans**

The Contractor may update its Project Plans. The Contractor must:

- (a) review and, if necessary, update each Project Plan to take account of events or circumstances which will, or may, affect the Contractor's Activities relevant to the Project Plan, including:
  - (i) [not used];
  - (ii) [not used];
  - (iii) changes in law;
  - (iv) the commencement of new phases or stages of design, construction, testing or commissioning; and
  - (v) any breach or potential breach of the warranty in clause 8.4 (*Fitness for purpose*);
- (b) without limiting clause 8.3(a), update each Project Plan annually or, at such other times agreed by the Parties;
- (c) promptly submit each updated Project Plan to TfNSW's Representative;
- (d) not update any Project Plan in a manner which makes TfNSW's obligations under the Project Deed or this deed more onerous or increases any liability or potential liability of TfNSW or its Associates in connection with the CSELRVs; and
- (e) ensure that any updated Project Plans:
  - (i) impose standards, levels of service, scope and requirements that are equal to, greater than or higher than those imposed by; and
  - (ii) provide an equal or greater level of detail than,
 

the initial versions of the Project Plans and any version of the Project Plan which has been either:

    - (iii) certified by the Independent Certifier under clause 8.5(b)(ii)(B); or

- (iv) submitted to TfNSW's Representative and the time specified in clause 8.5(a) has expired without TfNSW's Representative having issued a notice under that clause during that time,

(as applicable).

#### 8.4 **Fitness for purpose**

The Contractor warrants that each Project Plan will at all relevant times be fit for the purposes set out in clause 8.1 (*Purpose*).

#### 8.5 **Review of Project Plans**

- (a) Subject to clause 8.5(b), TfNSW's Representative may (but is not obliged to):

- (i) review any Project Plan submitted under this clause 8 (*Project Plans*); and
- (ii) notify the Contractor if, in the opinion of TfNSW's Representative, the Project Plan does not comply with the requirements of this deed (with detailed reasons),

within 20 Business Days following submission of the Project Plan to TfNSW's Representative.

- (b) During the Delivery Phase, in relation to the Testing and Commissioning Plan:

- (i) TfNSW's Representative may (but is not obliged to):
  - (A) review the Testing and Commissioning Plan submitted under this clause 8 (*Project Plans*); and
  - (B) notify the Independent Certifier in writing (with a copy to the Contractor) of any comments which TfNSW has in respect of the Testing and Commissioning Plan,

within 15 Business Days following submission of the Testing and Commissioning Plan to the Independent Certifier; and

- (ii) the Independent Certifier must review the Testing and Commissioning Plan submitted under this clause 8 (*Project Plans*) (taking into account any comments received from TfNSW under clause 8.5(b)(i)) and:
  - (A) if the Independent Certifier considers that the Testing and Commissioning Plan does not comply with the requirements of this deed, notify the Contractor of the non-compliances (with detailed reasons); or
  - (B) certify the Testing and Commissioning Plan by providing to the Contractor and TfNSW's Representative a certificate in the form of Schedule C13 (*Independent Certifier Project Plan Certificate*),

within 20 Business Days following submission of the Project Plan to the Independent Certifier.

- (c) If the Contractor receives a notice in accordance with clause 8.5(a)(ii) or 8.5(b)(ii)(A), the Contractor must, within 20 Business Days, submit a revised

Project Plan to TfNSW's Representative (and, during the Delivery Phase also to the Independent Certifier) whereupon the provisions of this clause 8.5 (*Review of Project Plans*) will reapply to the revised Project Plan.

#### 8.6 TfNSW may request updates

If, at any time during the Delivery Phase:

- (a) any Project Plan does not comply with the requirements of this deed; or
- (b) the Contractor has not updated any Project Plan in accordance with the requirements of clause 8.3(a),

TfNSW's Representative may by written notice request that the Contractor amend or update the Project Plan specifying:

- (c) the reasons why such updating is required (or why the Project Plan does not comply with this deed); and
- (d) the time within which such updating must occur (which must be reasonable, having regard to the amount of work required),

and the Contractor must:

- (e) amend or update the Project Plan as requested by TfNSW to comply with the requirements of this deed; and
- (f) submit the amended or updated Project Plan to TfNSW within the time specified under clause 8.6(d).

#### 8.7 Permitted use, implementation and compliance

The Contractor:

- (a) is only permitted to use; and
- (b) must implement and comply with,

each Project Plan which has been:

- (c) certified or deemed to have been certified by the Independent Certifier under clause 8.5(b)(ii)(B); or
- (d) submitted to TfNSW's Representative and TfNSW's Representative has not issued a notice under clause 8.5(a) within 20 Business Days following submission of the Project Plan,

(as applicable).

8.8 [Not used]

## 9. CONTRACTOR'S GENERAL OBLIGATIONS

### 9.1 All work included

Except as stated in this deed, the Contractor has allowed for the provision of all work and materials necessary for the Contractor's Activities, whether or not expressly mentioned in this deed. All such work and materials:

- (a) must be undertaken and provided by the Contractor at its own cost;
- (b) form part of the Contractor's Activities; and
- (c) will not entitle the Contractor to make a Claim except as expressly provided for in this deed.

### 9.2 Principal contractor

(a) **(Definitions):** In this clause 9.2 (*Principal contractor*) and in clause 9.4 (*Work health and safety*) the terms "principal contractor", "workplace" and "construction work" have the same meanings assigned to those terms in the WHS Legislation. For the purposes of the WHS Legislation and this deed:

- (i) the Contractor's Activities; and
- (ii) any construction work carried out on the SLR Site by TfNSW, the Managing Contractor, an Early Works Contractor, the ETS Contractor or an Other Contractor (each as defined in the Project Deed):
  - (A) during any period in which the Appointed Principal Contractor has been engaged as principal contractor in respect of the Construction Site or the Permanent Light Rail Corridor; and
  - (B) which interfaces with the Contractor's Activities,are taken to be part of the same "construction project".

(b) [Not used]

(c) [Not used]

(ca) The Contractor must not do anything which causes or will cause the person engaged as principal contractor to fail to meet its statutory obligations as principal contractor.

(d) [Not used]

(e) **(Authorisations and licences):** The Contractor must:

- (i) ensure that if any law, including in the State or Territory in which the CSELRVs are situated or the Contractor's Activities are carried out (as the case may be) requires that:
  - (A) a person:

- (aa) be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed and complies with any conditions of such authorisation or licence; and/or
  - (bb) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
- (B) a workplace, plant or substance (or design) or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
- (ii) not direct or allow a person to carry out work or use plant or substance at a workplace unless the requirements of clause 9.2(e)(i) are met (including any requirement to be authorised, licensed, qualified or supervised); and
  - (iii) if requested by TfNSW or required by the WHS Legislation, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience or any other information relevant to work health and safety (as the case may be) to the reasonable satisfaction of TfNSW before the Contractor or a Subcontractor (as the case may be) commences such work.
- (f) [Not used].
- (g) **(Principal Contractor):** The Contractor:
- (i) acknowledges that the Appointed Principal Contractor is the principal contractor in respect of the Construction Site or the Permanent Light Rail Corridor (as the case may be); and
  - (ii) must comply with any exercise by the principal contractor referred to in clause 9.2(g)(i) of such authority as is necessary to enable that principal contractor to discharge the responsibilities imposed on a principal contractor by the WHS Legislation.

### 9.3 Protection of persons and property

The Contractor must carry out the Contractor's Activities:

- (a) safely and in a manner that, insofar as is reasonably practicable, does not put the health and safety of persons at risk; and
- (b) in a manner that protects property.

### 9.4 Work health and safety

The Contractor must:

- (a) **(WHS Legislation):** ensure that in carrying out the Contractor's Activities under this deed on the SLR Site:

- (i) it complies with all laws and other requirements of this deed for work health, safety and rehabilitation management including the WHS Legislation;
  - (ii) all the Subcontractors comply with their respective obligations under the WHS Legislation; and
  - (iii) it complies with its obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
- (b) **(Corporate WHS Management System)**: have a Corporate WHS Management System which complies with the law and is otherwise in accordance with the NSW Government Work Health and Safety Management Systems and Auditing Guidelines (Edition 5, September 2013);
- (c) **(Notify)**: notify TfNSW's Representative as soon as possible after (and in any event, within 4 hours of) becoming aware of a 'notifiable incident' (as defined in the WHS Legislation) arising out of, or in any way in connection with, the Contractor's Activities;
- (d) **(Assurances from Subcontractors)**: institute systems to obtain regular written assurances from all the Subcontractors about their ongoing compliance with WHS Legislation including the due diligence obligations contained therein;
- (e) **(Assurances to TfNSW)**: provide TfNSW's Representative with the written assurances referred to in clause 9.4(d), together with written assurances from the Contractor about the Contractor's ongoing compliance with the WHS Legislation;
- (f) **(Report)**: provide TfNSW's Representative with a written report of all work health, safety and rehabilitation matters as TfNSW's Representative may require from time to time and no less than monthly;
- (g) **(Cooperate)**: cooperate with TfNSW to ensure that both parties are able to comply with their respective obligations under the WHS Legislation;
- (h) **(Ensure TfNSW does not breach WHS Legislation)**: ensure that it does not do anything or fail to do anything that would cause TfNSW to be in breach of the WHS Legislation; and
- (i) **(Subcontractors)**: ensure that each Subcontract includes provisions equivalent to clause 9.3 (*Protection of persons and property*) and this clause 9.4 (*Work health and safety*).

To the extent not prohibited by law, the Contractor must indemnify TfNSW from and against any claims against TfNSW, or Loss suffered or incurred by TfNSW, arising out of or in any way in connection with the failure of the Contractor to comply with clauses 9.2 (*Principal contractor*), 9.3 (*Protection of persons and property*) and this clause 9.4 (*Work health and safety*).

#### 9.5 [Not used]

#### 9.6 Prevention of nuisance and interference

- (a) In performing the Contractor's Activities, the Contractor must:



- (i) prevent nuisance and unreasonable noise, dust, vibration and disturbances; and
  - (ii) not interfere with the passage of people and vehicles, access to any premises, car parks, roads or pedestrian ways or the operations or activities carried out on or adjacent to the SLR Site, except to the extent and for such period that such interference:
    - (A) is required for unforeseeable reasons of public health or safety, in which case the Contractor must restore the access as soon as possible; or
    - (B) has been agreed between residents or businesses adjacent to the SLR Site and TfNSW.
- (b) Provided that the Contractor is complying with:
- (i) its other relevant obligations under this deed;
  - (ii) the relevant Project Plans (including construction methodology); and
  - (iii) Good Industry Practice,

any breach by the Contractor of clause 9.6(a) will not of itself constitute a breach by the Contractor for the purposes of clause 41 (*Default*) or clause 43 (*Termination*) only.

9.7 **[Not used]**

9.8 **Industrial relations**

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

- (a) assume sole responsibility for and manage all aspects of industrial relations in relation to its Staff;
- (b) [Not used];
- (c) [Not used];
- (d) [Not used];
- (e) to the extent applicable to the Contractor's Activities, comply with the NSW Code and NSW Guidelines in respect of industrial relations; and
- (f) keep TfNSW fully and promptly informed of all industrial relations problems or issues which materially affect or are likely to materially affect the carrying out of the Contractor's Activities.
- (g) [Not used]

9.9 [Not used]

9.10 [Not used]

9.11 [Not used]

9.12 **Cooperation and coordination with Other Contractors**

The Contractor:

(a) acknowledges that:

- (i) TfNSW may engage Other Contractors to carry out Other Contractors' Activities upon or in the vicinity of the SLR Site at the same time as the Contractor;
- (ii) the Contractor's Activities may interface with the Other Contractors' Activities;
- (iii) Other Contractors may be executing work on parts of the SLR Site, or adjacent to the SLR Site, at the same time as the Contractor is performing the Contractor's Activities; and
- (iv) Other Contractors may require the Contractor to provide information to them to coordinate the Other Contractors' Activities with the Contractor's Activities, and this must be provided in a timely manner by the Contractor;

(b) must at all times:

- (i) not damage the work performed by the Other Contractor or its plant and equipment;
- (ii) fully co-operate with Other Contractors, and do everything reasonably necessary to:
  - (A) facilitate the Other Contractors' Activities, including providing Other Contractors with such assistance as may be directed by TfNSW's Representative; and
  - (B) ensure the effective coordination of the Contractor's Activities with the Other Contractors' Activities;
- (iii) carefully coordinate and interface the Contractor's Activities with the Other Contractors' Activities;
- (iv) perform the Contractor's Activities so as to minimise any interference with or disruption or delay to the Other Contractors' Activities;
- (v) be responsible for coordinating the Contractor's Activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, Other Contractor's personnel and work; and
- (vi) attend coordination meetings chaired by TfNSW's Representative with Other Contractors and others at such times as may be reasonably required by TfNSW's Representative, to review current and future issues; and

- (c) must promptly advise TfNSW's Representative if the Contractor becomes aware of any matter arising out of the Other Contractors' Activities that may have an adverse effect upon the Contractor's Activities or the safety of Customers or any other persons.

**9.13 Entitlement to compensation**

Subject to clauses 26 (*Compensation Events*) and 27 (*Relief Events*), TfNSW will not be liable for any Claim by the Contractor arising out of or in any way in connection with any Other Contractors' Activities.

**9.14 [Not used]**

**9.15 [Not used]**

**9.16 Personnel**

- (a) The Contractor must provide experienced and skilled personnel to perform its obligations under this deed.
- (b) [Not used]
- (c) [Not used]
- (d) [Not used]
- (e) TfNSW's Representative may, acting reasonably, direct the Contractor to remove any person from the performance of the Contractor's Activities.
- (f) The Contractor must ensure that any person the subject of a Direction under clause 9.16(e) is not again involved in the performance of the Contractor's Activities.

**9.17 [Not used]**

**9.18 [Not used]**

**9.19 Contractor's Documentation**

The Contractor warrants that the Contractor's Documentation:

- (a) [not used];
- (b) will be sufficient, adequate and accurate so as to enable TfNSW or a third party to operate and maintain the CSELRVs and otherwise carry out the Contractor's Activities; and
- (c) at all relevant times, will be fit for the purposes set out in clauses 9.19(a) and 9.19(b).

For the purposes of this clause 9.19 (*Contractor's Documentation*), the Contractor's Documentation does not include any documentation not prepared by or on behalf of the Contractor.

**9.20 AEO status**

The Contractor must, or must procure that its relevant contractors:

- (a) obtain prior to commencing the Contractor's Activities; and
- (b) maintain during the performance of the Contractor's Activities,  
 AEO status in accordance with SPR Appendix 35 (*Authorised Engineering Organisation*).

9.21 **[Not used]**

9.22 **[Not used]**

9.23 **[Not used]**

9.24 **[Not used]**

9.25 **[Not used]**

**10. NSW CODE AND NSW GUIDELINES**

**10.1 NSW Code and NSW Guidelines**

In addition to terms defined in this deed, terms used in this clause 10 (*NSW Code and NSW Guidelines*) have the same meaning as is attributed to them in the NSW Guidelines. The NSW Code and NSW Guidelines are available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au).

**10.2 Primary obligation**

- (a) In carrying out the Contractor's Activities, to the extent applicable, the Contractor must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (b) The Contractor must notify the Construction Compliance Unit (**CCU**) and TfNSW of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) Where the Contractor engages a subcontractor or consultant, the Contractor must ensure that the contract with the subcontractor or consultant imposes on the subcontractor or consultant equivalent obligations to those in this clause 10 (*NSW Code and NSW Guidelines*), including that the subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (d) The Contractor must not appoint or engage another party in relation to the Contractor's Activities where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

**10.3 Access and information**

- (a) The Contractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it and its subcontractors and consultants.
- (b) The Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
  - (i) enter and have access to sites and premises controlled by the Contractor;

- (ii) inspect any work, material, machinery, appliance, article or facility;
- (iii) access information and documents;
- (iv) inspect and copy any record relevant to the project;
- (v) have access to personnel; and
- (vi) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines by the Contractor and its subcontractors and consultants.

- (c) The Contractor must agree to, and comply with, any request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

#### 10.4 **Sanctions**

- (a) The Contractor warrants that, at the time of entering into this deed, neither it, nor any of its Related Bodies Corporate, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (b) If the Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- (c) Where a sanction is imposed:
  - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
  - (ii) the State (through its agencies, Ministers and the CCU) is entitled to:
    - (A) record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
    - (B) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Contractor, or its Related Bodies Corporate, in respect of work to which the NSW Code and NSW Guidelines apply.

#### 10.5 **Compliance**

- (a) The Contractor bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Contractor is not entitled to make, and TfNSW and the State will not be liable for, any Claim against TfNSW or the State arising out of or in any way in connection with the Contractor's compliance with the NSW Code and the NSW Guidelines.
- (b) Compliance with the NSW Code and NSW Guidelines does not relieve the Contractor from responsibility to perform the Contractor's Activities or any other obligation under this deed, or from liability for any Defect in the CSELRVs or

anything else or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.

- (c) Where a Modification is proposed that may be likely to affect compliance with the NSW Code and NSW Guidelines, the Contractor must immediately notify TfNSW of:
- (i) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the Modification; and
  - (ii) the steps the Contractor proposes to take to mitigate any adverse impact of the Modification.

## 11. INFORMATION DOCUMENTS AND ENVIRONMENTAL ISSUES

### 11.1 Physical conditions

- (a) **(Examination and investigation):** The Contractor warrants, and for all purposes it will be deemed to be the case that, prior to the date of this deed, the Contractor:
- (i) examined this deed (including the SPR), the SLR Site and its surroundings and any other information that was made available in writing by TfNSW or any other person on TfNSW's behalf, to OpCo, the Contractor or its Associates for the purpose of submitting OpCo's Proposal;
  - (ii) examined, and relied solely upon its own assessment, skill, expertise and enquiries in respect of, all information relevant to the risks, contingencies and other circumstances having an effect on its pricing obligations under this deed;
  - (iii) satisfied itself as to the correctness and sufficiency of its pricing and that it has made adequate allowance for the costs of complying with all of its obligations under this deed and of all matters and things necessary for the due and proper performance and completion of the Contractor's Activities;
  - (iv) informed itself of all matters relevant to the employment of labour and all industrial matters relevant to its obligations;
  - (v) was given the opportunity prior to signing this deed to itself undertake tests, enquiries and investigations:
    - (A) relating to the subject matter of the Information Documents; and
    - (B) for design purposes and otherwise;
  - (vi) had a sufficient opportunity to obtain and obtained all necessary legal and other technical advice in relation to the terms of this deed, the Information Documents, as well as the risks, contingencies and other circumstances having an effect on its pricing, the performance of its obligations and its potential liabilities under this deed; and
  - (vii) had sufficient access to the SLR Site, undertook sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into this deed and assume the obligations and potential risks and liabilities which it imposes on the Contractor.

- (b) [Not used].

**11.2 Information Documents**

- (a) **(Deeds of Disclaimer):** Prior to the date of this deed, the Contractor, signed Deeds of Disclaimer and provided them to OpCo (to provide to TfNSW) in respect of Information Documents provided by TfNSW to OpCo or the Contractor.
- (b) **(No warranty):** Without limiting clause 11.2(c) or the warranties or acknowledgements in any Deed of Disclaimer:
  - (i) TfNSW does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents;
  - (ii) the Contractor acknowledges that:
    - (A) whether or not an Information Document or any part thereof forms a schedule or appendix to this deed, the Information Document or part thereof does not form part of this deed and clause 11.2(c) applies to the Information Document or part thereof; and
    - (B) where an Information Document or any part thereof forms a schedule or appendix to this deed, it does so only for the purposes of identification of that document or part thereof; and
  - (iii) TfNSW will not be liable upon any Claim by the Contractor arising out of or in any way in connection with:
    - (A) the provision of, or the purported reliance upon, or use of the Information Documents to or by the Contractor or any other person to whom the Information Documents are disclosed; or
    - (B) a failure by TfNSW to provide any information to the Contractor.
- (c) **(No reliance):** The Contractor:
  - (i) warrants that it did not in any way rely upon:
    - (A) any Information Document or any other information, data, representation, statement or document made, or provided to the Contractor, by TfNSW or anyone on behalf of TfNSW, or any other information, data, representation, statement or document for which TfNSW is responsible or may be responsible whether or not obtained from TfNSW or anyone on behalf of TfNSW; or
    - (B) the accuracy, adequacy, suitability or completeness of such Information Document or other information, data, representation, statement or document,

for the purposes of entering into this deed or carrying out the Contractor's Activities but nothing in this subparagraph will limit or otherwise affect the Contractor's obligations under this deed;
  - (ii) warrants that it enters into this deed based on its own investigations, interpretations, deductions, information and determinations; and

- (iii) acknowledges that it is aware that TfNSW has entered into this deed relying upon:
  - (A) the warranties, acknowledgements and agreements in clauses 11.2(c)(i) and 11.2(c)(ii); and
  - (B) the warranties and acknowledgements in the Deeds of Disclaimer and the Proposal.
- (d) **(Release and indemnity):** The Contractor releases and indemnifies TfNSW from and against:
  - (i) any Claim against TfNSW by, or liability of TfNSW to, any person; or
  - (ii) (without being limited by clause 11.2(d)(i)) any Loss incurred by TfNSW, arising out of or in any way in connection with:
    - (iii) the provision of, or the purported reliance upon, or use of, the Information Documents to or by the Contractor or any other person to whom the Information Documents are disclosed by the Contractor or a failure by TfNSW to provide any information to the Contractor;
    - (iv) any breach by the Contractor of clause 11.1 (*Physical conditions*) or this clause 11.2 (*Information Documents*); or
    - (v) the Information Documents being relied upon or otherwise used by the Contractor, or by any other person to whom the Information Documents are disclosed by the Contractor, in the preparation of any information or document, including any Information Document which is "misleading or deceptive" or "false and misleading" (within the meaning of those terms in sections 18 and 29 (respectively) of the *Australian Consumer Law* in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) or any equivalent provision of State or Territory legislation).

#### 11.2A **Project Deed Acknowledgement**

The Contractor acknowledges that the Contractor has received and is aware of the contents of the Project Deed.

#### 11.3 **Condition of the SLR Site and structures**

- (a) TfNSW makes no representations and gives no warranty to the Contractor in respect of:
  - (i) the physical conditions of the SLR Site likely to be encountered during the execution of the Contractor's Activities or otherwise in respect of the condition of:
    - (A) the SLR Site, or any other land; or
    - (B) any structure or other thing on, under, above or adjacent to the SLR Site or any other land; or
  - (ii) the adequacy or suitability of the SLR Site for the Contractor's Activities;



- (iii) [not used]; or
- (iv) [not used].
- (b) [Not used]
- (c) [Not used]

**11.4 Contamination**

Without limiting clause 11.3 (*Condition of the SLR Site and structures*) the Contractor is responsible for any Contamination on, in, over, under or about the SLR Site or migrating to or from the SLR Site to the extent caused by the Contractor's act or wrongful omission.

**11.5 Environmental compliance**

The Contractor must:

- (a) **(no improper use of SLR Site)**: in accessing the SLR Site, not use the SLR Site or allow the Subcontractors to use the SLR Site, so that:
  - (i) any hazardous substance is abandoned or dumped on the SLR Site or any other land;
  - (ii) any hazardous substance is handled in a manner which is likely to cause an Environmental Hazard; or
  - (iii) any other substance is released from, deposited to, or emanates from, the SLR Site such that a state of Contamination occurs;
- (b) **(be environmentally responsible)**: at all times carry out, and ensure that the Subcontractors carry out, the Contractor's Activities in an environmentally responsible manner, in accordance with Good Industry Practice, and so as to protect the Environment;
- (c) **(comply with Environmental laws)**: without limiting clause 6 (*Law and Approvals*):
  - (i) comply with, and ensure that the Subcontractors in performing the Contractor's Activities comply with:
    - (A) all laws relating to the Environment;
    - (B) the Planning Approvals; and
    - (C) all Environmental Notices; and
  - (ii) obtain and comply with all requirements of, and ensure that the Subcontractors in performing the Contractor's Activities obtain and comply with all requirements of, any Approvals required in order to release or emit anything from the SLR Site into the air or water or onto the ground or otherwise into the Environment or to emit any substantial noise or vibrations;
- (d) **(notification)**: immediately notify TfNSW in writing as soon as the Contractor:

- (i) becomes aware of any non-compliance with the requirements of any law or Approval regarding the Environment, or any Planning Approval, in the performance of the Contractor's Activities;
  - (ii) becomes aware of any information, fact or circumstance where, if TfNSW were to be aware of such information, fact or circumstance, TfNSW would be required to notify any Authority of that information, fact or circumstance pursuant to any law relating to the Environment (without limiting any other obligation of the Contractor in relation to the information, fact or circumstances); or
  - (iii) notifies any Authority of any matter pursuant to any law relating to the Environment, in which case the Contractor must provide to TfNSW a copy of such notification and of any subsequent correspondence with the Authority in relation to the subject of the notification; and
- (e) **(indemnity)**: indemnify TfNSW against any Loss incurred by TfNSW arising out of or in any way in connection with an Environmental Notice received by TfNSW that arises out of or in connection with any Contamination:
- (i) for which the Contractor is responsible under this deed; or
  - (ii) that occurs as a result of a breach by the Contractor of this deed.

#### 11.6 Environmental Management Plans

The Contractor:

- (a) must comply with, and ensure that the Subcontractors in performing the Contractor's Activities comply with, the Environmental Management Plans; and
- (b) will not be relieved from compliance with any of its obligations under this deed or from any of its liabilities whether under this deed or otherwise according to law as a result of:
  - (i) compliance with the Environmental Management Plans;
  - (ii) any audits or other monitoring by TfNSW's Representative of the Contractor's compliance with the Environmental Management Plans; or
  - (iii) any failure by TfNSW's Representative, or anyone else acting on behalf of TfNSW, to detect any non-compliance.

11.7 [Not used]

11.8 [Not used]

11.9 [Not used]

12. [NOT USED]

13. DESIGN

13.1 Design obligations

The Contractor must design the CSELRVs in accordance with:

- (a) the applicable provisions of the SPR;
- (b) any Modification:
  - (i) directed by TfNSW by a Modification Order; or
  - (ii) approved by TfNSW by a Modification Approval; and
- (c) the other requirements of this deed.

13.2 **[Not used]**

13.3 **Design warranties**

- (a) Subject to clause 3.2(d), the Contractor warrants that:
  - (i) it has checked, examined, analysed and carefully considered the SPR and Planning Approvals and that:
    - (A) it has satisfied itself as to the completeness, correctness, accuracy, appropriateness, suitability and adequacy of the SPR;
    - (B) it has satisfied itself that there are no omissions, ambiguities, discrepancies or inconsistencies in or between the SPR and Planning Approvals;
    - (C) the SPR is proper, adequate and fit for its intended purpose of enabling the Contractor to carry out the Contractor's Activities in accordance with, and to ensure that the CSELRVs comply with, this deed;
    - (D) it will be fully and exclusively responsible and liable for all risks howsoever they may arise as a result of the use by the Contractor of, or reliance upon, the SPR; and
    - (E) the use of, or reliance upon, the SPR does not affect any of its obligations under this deed or entitle the Contractor to make any Claim against TfNSW arising out of or in any way in connection with the SPR; and
  - (ii) the Design Documentation will:
    - (A) satisfy the requirements of the SPR and the other requirements of this deed; and
    - (B) be fit for its intended purpose.
- (b) The warranties given in clause 13.3(a) will not be affected by:
  - (i) [Not used];
  - (ii) any design work carried out by others prior to the date of this deed and incorporated in this deed; or
  - (iii) the termination (for any reason) of this deed.

#### 13.4 Preparation and submission of Design Documentation

The Contractor must:

- (a) [Not used]
- (b) prepare Design Documentation in respect of any changes required to the Final Design Documentation for CSELRVs certified by the Independent Certifier under the Project Deed, such Design Documentation to be prepared in accordance with SPR Appendix 37 (*Rolling Stock*);
- (c) during the Delivery Phase, submit all Design Documentation:
  - (i) in accordance with the Design Management Plan (if applicable); and
  - (ii) in a manner and at a rate which, having regard to the quantum of Design Documentation submitted, will give the Independent Certifier a reasonable opportunity to review the submitted Design Documentation;
  - (iii) [not used];
- (d) [Not used];
- (e) [Not used]
- (f) in relation to Design Documentation prepared in accordance with clause 13.4(b), ensure the Design Documentation submitted is of a level of detail which is sufficient to permit the Independent Certifier to determine whether:
  - (i) the Design Documentation complies with this deed; and
  - (ii) the CSELRVs which will be constructed in accordance with the Design Documentation will comply with this deed.

#### 13.5 Certification of Design Documentation

- (a) [Not used]
- (b) [Not used]
- (c) All Design Documentation submitted pursuant to clause 13.4 (*Preparation and submission of Design Documentation*) for CSELRVs must be accompanied by a certificate in the form of Schedule C16 (*Form of Design Certificate – CSELRVs*) from the Contractor certifying that the Design Documentation:
  - (i) complies with this deed including the SPR; and
  - (ii) is appropriate for manufacture.

#### 13.6 Explanation of Design Documentation

The Contractor must, whenever it submits Design Documentation pursuant to clause 13.4 (*Preparation and submission of Design Documentation*):

- (a) deliver a design presentation workshop within 5 Business Days of its submission; and

- (b) if required by TfNSW or the Independent Certifier, make available the appropriate design personnel to:
  - (i) explain the Design Documentation; and
  - (ii) provide such information regarding the Design Documentation as TfNSW or the Independent Certifier reasonably requests.

**13.7 Review of Design Documentation**

- (a) **(TfNSW's Representative review):** TfNSW's Representative may (but is not obliged to), within 18 Business Days for Design Documentation submitted in accordance with clause 13.4 (*Preparation and submission of Design Documentation*), review the Design Documentation and notify the Independent Certifier in writing of any comments which TfNSW has in respect of the Design Documentation.
- (b) **(Independent Certifier review):** The Independent Certifier will, within 22 Business Days for Design Documentation submitted in accordance with clause 13.4 (*Preparation and submission of Design Documentation*):
  - (i) review the Design Documentation (taking into account any comments received from TfNSW under clause 13.7(a)); and
  - (ii) [Not used];
  - (iii) [Not used]
  - (iv) reject the Design Documentation (with detailed reasons) if the Independent Certifier considers that the Design Documentation:
    - (A) does not comply with the requirements of this deed (minor errors and omissions excepted); or
    - (B) is not sufficiently complete to enable the Independent Certifier to form a view on whether it is compliant; or
  - (v) certify the Design Documentation by:
    - (A) including a notation on each document forming part of the Design Documentation; and
    - (B) providing to TfNSW's Representative and Contractor a certificate in the form of Schedule C17 (*Independent Certifier Design Certificate - CSELRVs*).
- (c) [Not used]
- (d) [Not used]
- (e) [Not used]
- (f) [Not used]
- (g) [Not used]

**13.8 [Not used]****13.9 Design Documentation for manufacture**

- (a) Unless otherwise approved in writing by TfNSW's Representative, the Contractor must not use for manufacture purposes any Design Documentation, unless it:
  - (i) has been submitted to the Independent Certifier (and copies to TfNSW's Representative) under clause 13.4 (*Preparation and submission of Design Documentation*); and
  - (ii) is not the subject of a notice of any actual non-compliance with the requirements of this deed by the Independent Certifier under clause 13.7(b)(iv).
- (b) The Contractor must give TfNSW's Representative four hard copy sets, and one electronic copy, of:
  - (i) all Design Documentation which it is entitled pursuant to clause 13.9(a) to use for manufacture purposes in accordance with the requirements of the SPR; and
  - (ii) work as executed Design Documentation in accordance with the requirements of the SPR.

**13.10 Amendments to Design Documentation**

Subject to clause 29 (*TfNSW initiated Modifications*) and clause 30 (*the Contractor initiated Modifications*), if the Contractor wishes to amend Design Documentation for CSELRVs prior to the relevant Delivery Date:

- (a) the Contractor must submit the amended Design Documentation to the Independent Certifier (with a copy to TfNSW's Representative) together with:
  - (i) the certifications referred to in clause 13.10(b); and
  - (ii) an explanation as to why it is seeking to amend the Design Documentation; and
- (b) clause 13.7 (*Review of Design Documentation*) will apply to the amended Design Documentation.

**13.11 Design Life**

- (a) The Contractor represents and warrants that in relation to the CSELRVs, each Asset that falls within a category referred to in section 5.2 of the SPR will:
  - (i) be designed and constructed so that, at Delivery, it is fit for its intended purpose at the Actual Date of Delivery;
  - (ii) [Not used]; and
  - (iii) be capable of remaining fit for its intended purpose at all times during its Design Life provided:

- (A) it is operated and maintained in accordance with the Asset Management System;
- (B) OpCo has complied with those obligations under the Project Deed during the Full Operations Phase (as defined therein), the breach of which would adversely impact on the fitness for purpose or intended purpose of the relevant Asset to the extent such obligations have not been subcontracted to the O&M Contractor; and
- (C) the O&M Contractor has complied with those obligations under the O&M Contract during the Full Operations Phase (as defined in the Project Deed), the breach of which would adversely impact on the fitness for purpose or intended purpose of the relevant Asset,

but excluding:

- (D) fair wear and tear; and
- (E) damage to the CSELR which is not caused by any act or omission of the Contractor or its Associates,

except in no case will clauses 13.11(a)(iii)(B) and 13.11(a)(iii)(C) limit the Contractor's warranty under this clause 13.11(a)(iii) to the extent that any failure by OpCo or the O&M Contractor is a consequence of a breach by the Contractor of its obligations which are required to be performed by the Contractor after the applicable Actual Date of Delivery;

(iv) [Not used]

- (b) The representations and warranties made by the Contractor under clause 13.11(a) are made, and will be deemed to have been made, in respect of each Asset that falls within a category referred to in section 5.2 of the SPR on the applicable Actual Date of Delivery of the relevant Asset.
- (c) Clause 13.11(b) will survive the rescission, termination or expiration of this deed.
- (d) The Contractor:
  - (i) waives any right to; and
  - (ii) must not,  
  
assert, make or rely on a plea, defence, claim or argument in any forum whatsoever that a cause of action that TfNSW has or may have against the Contractor arising out of or in connection with any false representation, or breach of warranty, under this clause 13.11 (*Design Life*) in respect of an Asset is statute-barred, before the period ending 12 years after the final Actual Date of Delivery to occur.
- (e) The Contractor must not enforce any judgment or award obtained on the basis of a plea, defence, claim or argument asserted, made or relied on by the Contractor in breach of clause 13.11(d).
- (f) Without limiting the indemnity in clause 38.1 (*Indemnity from the Contractor*), the Contractor must indemnify TfNSW against any Loss suffered by TfNSW as a result of:

- (i) any action by the Contractor in breach of clause 13.11(d); and
- (ii) the enforcement of any judgment or award by the Contractor in breach of clause 13.11(e).

14. **[NOT USED]**

15. **CONSTRUCTION**

15.1 **Construction obligations**

- (a) The Contractor must manufacture the CSELRVs in accordance with:
  - (i) the SPR;
  - (ii) any Design Documentation prepared by the Contractor in accordance with the requirements of this deed and which the Contractor is entitled to use for manufacturing purposes under clause 13.9 (*Design Documentation for manufacture*);
  - (iii) any Modification Request for an Emergency Modification, Modification Order or Modification Approval issued by TfNSW; and
  - (iv) the other requirements of this deed.
- (b) Subject to clause 8.7 (*Permitted use, implementation and compliance*), the Contractor must not commence any activities on the SLR Site:
  - (i) until each of the following Project Plans have been submitted to TfNSW's Representative under clause 8.5 (*Review of Project Plans*) and the time specified in clause 8.5(a) has expired without TfNSW's Representative having issued a notice under that clause during that time:
    - (A) AEO Authorisation Management Plan;
    - (B) Quality Management Plan;
    - (C) Risk Management Plan;
    - (D) Safety Management Plan;
    - (E) [not used];
    - (F) [not used];
    - (G) Safety and Systems Assurance Management Plan;
    - (H) Configuration Management Plan;
    - (I) [not used];
    - (J) Manufacturing and Procurement Plan
    - (K) Design Management Plan;
    - (L) Testing and Commissioning Plan; and



- (M) [not used];
- (ii) [not used]; and
- (iii) [not used].
- (c) The Contractor accepts full responsibility for all manufacturing means, methods and techniques used in the performance of the Contractor's Activities.

**15.2 Construction warranties**

The Contractor warrants that:

- (a) manufacturing will be carried out in accordance with the Design Documentation which the Contractor is entitled to use for manufacturing purposes in accordance with clause 13.9 (*Design Documentation for manufacture*);
- (b) manufacturing carried out in accordance with the Design Documentation which the Contractor is entitled to use in accordance with clause 13.9 (*Design Documentation for manufacture*) will satisfy the requirements of this deed;
- (c) the CSELRVs will be completed in accordance with, and satisfy the requirements of, this deed;
- (d) the CSELRVs will, upon Delivery, be safe and fit for their intended purposes; and
- (e) the CSELRVs will be capable of remaining fit for their intended purposes at all times during their design life provided:
  - (i) they are operated and maintained in accordance with the Asset Management Plan;
  - (ii) OpCo has complied with those obligations under the Project Deed during the Full Operations Phase (as defined therein), the breach of which would adversely impact on the fitness for purpose or intended purpose of the relevant Asset to the extent such obligations have not been subcontracted to the O&M Contractor; and
  - (iii) the O&M Contractor has complied with those obligations under the O&M Contract during the Full Operations Phase (as defined in the Project Deed), the breach of which would adversely impact on the fitness for purpose or intended purpose of the relevant Asset,

but excluding:

- (iv) fair wear and tear;
- (v) damage to the CSELRVs which is not caused by any act or omission of the Contractor or its Associates; and

except in no case will clause 15.2(e)(ii) and clause 15.2(e)(iii) limit the Contractor's warranty under this clause 15.2(e) to the extent that any failure by OpCo or the O&M Contractor is a consequence of a breach by the Contractor of its obligations which are required to be performed by the Contractor after the applicable Actual Date of Delivery.

15.3 **[Not used]**

15.4 **[Not used]**

16. **QUALITY**

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

- (a) use workmanship:
  - (i) of:
    - (A) the standard set out in the SPR; or
    - (B) to the extent it is not so set out, a standard consistent with Good Industry Practice for work of a similar nature to the construction of the CSELRVs; and
  - (ii) which is fit for its intended purpose; and
- (b) use Materials:
  - (i) which:
    - (A) comply with the requirements of the SPR; or
    - (B) if not fully described in the SPR, are consistent with the Good Industry Practice for work of a similar nature to the relevant Contractor's Activities; and
  - (ii) which:
    - (A) are free from defects and other imperfections; and
    - (B) are safe and fit for their intended purpose.

17. **TIME**

17.1 **Commencement**

The Contractor must promptly commence performance of the Contractor's Activities following TfNSW's direction to implement either Pre-Agreed Option.

17.2 **Dates for Delivery**

The Contractor must:

- (a) use its best endeavours to achieve Delivery of each CSELRV by the corresponding Delivery Date;
- (b) achieve Delivery of each CSELRV by the corresponding Longstop Date; and
- (c) consistent with its obligations under clause 17.2(a), diligently progress the Contractor's Activities.

**17.3 Delivery Program**

- (a) The Contractor must provide an initial Delivery Program within 30 days of TfNSW issuing a direction to the Contractor to implement a Pre-Agreed Option under clause 3.2(a). The initial Delivery Program must:
  - (i) set out in reasonable detail the program for manufacturing and delivering each CSELRV;
  - (ii) contain the details which TfNSW's Representative reasonably directs; and
  - (iii) comply with the requirements in clause 17.3(b).
- (b) The Contractor must:
  - (i) update the Delivery Program periodically at intervals no less than monthly to take account of:
    - (A) changes to the program; and
    - (B) any corrective action plan submitted by the Contractor under clause 17.5 (*Delays*) for which TfNSW does not issue any comments under clause 17.6(b);
  - (ii) ensure that each update of the Delivery Program contains the details required by the SPR and any other details which TfNSW's Representative reasonably directs;
  - (iii) explain any changes to the critical path in the Delivery Program;
  - (iv) ensure that each update of the Delivery Program makes allowance for the Project Plans and Design Documentation to be submitted to the Independent Certifier in a manner and at a rate which will give the Independent Certifier a reasonable opportunity to review the submitted Project Plans or Design Documentation within the 20 Business Day period referred to in clause 8.5 (*Review of Project Plans*) or the periods referred to in clause 13 (*Design*) (as the case may be); and
  - (v) give the Independent Certifier copies of each update of the Delivery Program for its review.
- (c) Nothing in the Delivery Program will bind TfNSW or otherwise affect the time for the performance of TfNSW's obligations under this deed.

**17.4 Acceleration by the Contractor**

If the Contractor chooses to accelerate progress of the Contractor's Activities then:

- (a) TfNSW may elect to assist the Contractor but will not be obliged to take any action to assist or enable the Contractor to achieve Delivery before any Delivery Date;
- (b) the time for the performance of TfNSW's or TfNSW's Representative's obligations will not be affected; and

- (c) other than in accordance with clause 19.12 (*Early Delivery*), the Contractor will not be entitled to make any Claim against TfNSW in relation to such acceleration (or any failure or inability by the Contractor or TfNSW to accelerate).

#### 17.5 Delays

- (a) If the Contractor becomes aware of any matter (other than a Relief Event) which will, or is likely to, give rise to a delay in achieving Delivery of any CSELRV, the Contractor must give TfNSW:
  - (i) a notice setting out detailed particulars of the delay; and
  - (ii) a detailed corrective action plan in accordance with clause 17.6 (*Corrective action plan*),in each case as soon as reasonably practicable.
- (b) If TfNSW reasonably believes that the Contractor will be delayed in achieving the Delivery Date for any CSELRV, other than as a result of a Relief Event, TfNSW may give notice to that effect to the Contractor, and the Contractor must then give TfNSW a detailed corrective action plan in accordance with clause 17.6 (*Corrective action plan*).
- (c) The Contractor must take all reasonable steps to:
  - (i) prevent the cause of any delay to the Contractor's Activities; and
  - (ii) avoid or minimise the consequences or duration of any delay,including any delay arising from a Relief Event or a Modification, provided the Contractor is not required to incur any additional expense or apply any additional resources in order to comply with its obligations under this clause 17.5(c).

#### 17.6 Corrective action plan

- (a) Each corrective action plan which the Contractor must provide pursuant to clause 17.5 (*Delays*) must show how the Contractor proposes to avoid, mitigate or minimise the consequences of the delay consistent with its obligations under clause 17.2 (*Dates for Delivery*) and be accompanied by a proposed updated Delivery Program.
- (b) TfNSW may, within 20 Business Days of receipt of a corrective action plan reject the corrective action plan (with detailed reasons) if the corrective action plan does not comply with the requirements of this deed.
- (c) If TfNSW rejects the corrective action plan under clause 17.6(b), the Contractor must amend and resubmit the corrective action plan to TfNSW, after which clause 17.6(b) and this clause 17.6(c) will re-apply.
- (d) The Contractor must comply with any corrective action plan which is not rejected under clause 17.6(b).
- (e) The Contractor will not be relieved of any liability or responsibility under this deed or otherwise at law arising out of or in connection with:
  - (i) any notice given by TfNSW under clause 17.6(b); or

- (ii) the implementation of any corrective action plan.
- (f) The Contractor will not be entitled to make any Claim against TfNSW arising out of or in connection with any notice by TfNSW under clause 17.6(b) or any Loss suffered or incurred by the Contractor in preparing, or complying with, a corrective action plan.

**17.7 Delivery Phase Progress Reports**

In addition to the Contractor's obligations under clauses 17.5 (*Delays*) and 17.6 (*Corrective action plan*), the Contractor must give TfNSW a Delivery Phase Progress Report containing the details required by the SPR each month until Delivery of all CSELRVs is achieved.

**18. CSELRV TESTING AND COMMISSIONING**

**18.1 Testing and Commissioning Plan**

Subject to clause 18A (*TfNSW's obligations in relation to testing and commissioning*), the Contractor must carry out the CSELRV Performance Tests in accordance with the Testing and Commissioning Plan.

**18.2 Test Procedures**

- (a) For each Test, the Contractor must
  - (i) prepare a Test Procedure which complies with clause 2.3 of SPR Appendix 33 (*Testing and Commissioning*); and
  - (ii) submit the Test Procedure to TfNSW's Representative and the Independent Certifier at least 60 Business Days prior to the date on which the Contractor proposes to conduct the Test.
- (b) TfNSW's Representative may (but is not obliged to):
  - (i) review any Test Procedure submitted under this clause 18.2 (*Test Procedures*); and
  - (ii) notify the Independent Certifier in writing (with a copy to the Contractor) of any comments which TfNSW has in respect of the Test Procedure,
 

within 15 Business Days of the date on which it is submitted to TfNSW's Representative.
- (c) The Independent Certifier must, within 20 Business Days of the date on which it receives the Test Procedure under this clause 18.2 (*Test Procedures*), review each Test Procedure (taking into account any comments received from TfNSW's Representative under clause 18.2(b)(ii)) and:
  - (i) if the Independent Certifier considers that the Test Procedure does not comply with the requirements of this deed, notify the Contractor of the non-compliances (with detailed reasons); or
  - (ii) certify the Test Procedure by providing to the Contractor and TfNSW's Representative a certificate in the form of Schedule C4 (*Independent Certifier Test Procedure Certificate*).

- (d) If the Contractor receives a notice in accordance with clause 18.2(c)(i) the Contractor must submit a revised Test Procedure to the Independent Certifier whereupon the provisions of this clause 18.2 (*Test Procedures*) will reapply to the revised Test Procedure.
- (e) The Contractor may not conduct a Test until the Test Procedure for that Test has been certified by the Independent Certifier.
- (f) The Contractor may update any Test Procedure whereupon this clause 18.2 (*Test Procedures*) will reapply.

### 18.3 Notice of CSELRV Performance Test

- (a) The Contractor must give TfNSW's Representative and the Independent Certifier at least 20 Business Days' notice of the date, time and place of each Test.
- (b) The Contractor must give TfNSW's Representative and the Independent Certifier:
  - (i) a Test Program that specifies the date, time and place of each Test to be conducted for the following 25 Business Day period (**Test Program**); and
  - (ii) an updated Test Program each week during the period that the Contractor is carrying out CSELRV Performance Test.
- (c) Unless otherwise agreed by TfNSW's Representative, the Contractor will be deemed to have failed a Test if it fails to give TfNSW and the Independent Certifier the required notice of when the Test will be conducted.

### 18.4 Conduct of CSELRV Performance Test

- (a) The Contractor must conduct all CSELRV Performance Tests in relation to a CSELRV in accordance with:
  - (i) the relevant Test Procedure, as certified by the Independent Certifier in accordance with clause 18.2 (*Test Procedures*); and
  - (ii) the other requirements of this deed.
- (b) The Contractor must ensure that the conduct of CSELRV Performance Tests do not affect the Contract Service Level Requirements (as defined in the Project Deed) for the IWLR during the IWLR Operations Phase.
- (c) TfNSW and the Independent Certifier may (but are not obliged to) attend and witness the conduct of all CSELRV Performance Tests.

### 18.5 Test Reports

- (a) The Contractor must, within 10 Business Days of carrying out a Test, submit a Test Report to TfNSW's Representative and the Independent Certifier for that Test, irrespective of the result of the Test.
- (b) Each Test Report must comply with and be submitted in accordance with the requirements of SPR Appendix 33 (*Testing and Commissioning*).
- (c) The Independent Certifier must, within 10 Business Days of the date on which it receives the Test Report:

- (i) certify that the Test has been passed in accordance with the Test Procedure by issuing a certificate in the form of Schedule C5 (*Independent Certifier Test result certificate*); or
- (ii) notify the Contractor that:
  - (A) the Test has been failed; and/or
  - (B) the Test Report does not comply with the requirements of this deed.

**18.6 Failure of Test**

- (a) If the Independent Certifier notifies the Contractor that a Test has been failed, the Contractor must:
  - (i) carry out all necessary rectification work; and
  - (ii) when it believes it has completed all necessary rectification work, give a further notice in accordance with clause 18.3(a) whereupon clauses 18.4 (*Conduct of CSELRV Performance Test*) and 18.5 (*Test Reports*) will re-apply.
- (b) If the Contractor gives a further notice under clause 18.6(a)(ii), the Contractor must give TfNSW's Representative and the Independent Certifier at least 3 Business Days' notice of the date, time and place of the Test.

**18.7 Non-compliant Test Report**

If the Independent Certifier notifies the Contractor that a Test Report is non-compliant, the Contractor must amend and re-submit the Test Report whereupon clause 18.5 (*Test Reports*) will re-apply.

**18.8 Additional testing by TfNSW**

- (a) TfNSW's Representative may carry out additional tests in respect of the CSELRVs. TfNSW's Representative must give the Contractor reasonable prior notice of these tests (being at least 24 hours). The Contractor must provide all reasonable assistance required by TfNSW's Representative and the Independent Certifier in relation to these tests.
- (b) TfNSW's Representative may, in relation to these tests, direct that any part of the CSELRVs not made inaccessible without TfNSW's Representative's prior written approval.
- (c) If TfNSW's Representative requires additional tests under this clause 18.8 (*Additional testing by TfNSW*) within 1 month prior to the applicable Delivery Date then if:
  - (i) the additional tests, or related direction of TfNSW's Representative under clause 18.8(b), give rise to a delay in achieving Delivery by the applicable Delivery Date (or if the Delivery Date has occurred, a delay in achieving Delivery); and
  - (ii) the additional tests do not demonstrate any non-compliance with the requirements of this deed (excluding any Minor Defects),

then TfNSW's Representative shall issue a Modification Order under clause 29 (*TfNSW initiated Modifications*) in respect of those additional tests. This clause 18.8(c) does not apply to additional tests required under the Rail Safety National Law, Rail Safety Regulations or any Accreditation held by the Contractor or its Associates.

#### 18A **TFNSW'S OBLIGATIONS IN RELATION TO TESTING AND COMMISSIONING**

- (a) If requested by TfNSW, the Contractor must provide TfNSW written notice setting out the best available information regarding the Contractor's indicative requirements for carrying out any testing and commissioning activities for the CSELRVs.
- (b) When a CSELRV is ready for shipment, the Contractor must give TfNSW written notice advising TfNSW of its requirements for:
  - (i) train paths;
  - (ii) drivers;
  - (iii) power supply; and
  - (iv) access to the SLR Site and the SLR network assets,for the CSELRV and when those items will be required for the purposes of carrying out any testing and commissioning activities in accordance with the Testing and Commissioning Plan under clause 18 (*CSELRV Testing and Commissioning*).
- (c) Provided the Contractor's requirements set out in any notice given under clause 18A(b) are reasonable, TfNSW must supply the train paths, appropriately qualified and accredited drivers, power supply and such access reasonably necessary to carry out testing and commissioning of a CSELRV as specified in the Contractor's notice following delivery of a CSELRV to the SLR Site.

#### 19. **DELIVERY**

19.1 **[Not used]**

19.2 **[Not used]**

19.3 **[Not used]**

19.4 **[Not used]**

#### 19.4A **Delivery of CSELRVs**

- (a) [not used]
- (b) [not used]
- (c) The Delivery Requirements in respect of each CSELRV will be achieved when:
  - (i) **(CSELRVs are complete)**: the CSELRV is complete and complies with the terms of this deed, except for Minor Defects;



- (ii) (**Certification**): the Contractor has provided the Independent Certifier and TfNSW's Representative with a certificate in the form of Schedule C20 (*Form of Certificate for Additional CSELRV Acceptance Requirements*):
  - (A) from the Contractor certifying that the CSELRV has been manufactured in accordance with the Design Documentation which the Contractor is entitled to use for CSELRV manufacturing purposes under clause 13.9(a)(i), except for Minor Defects; and
  - (B) from the Contractor certifying that the CSELRV complies with all the requirements of this deed (including the SPR), except for Minor Defects and have been manufactured in accordance with the Design Documentation which the Contractor was entitled to use for CSELRV manufacturing purposes;
- (iii) (**Transfer of Moveable Assets**): the Contractor has ensured that ownership of the CSELRV has transferred to TfNSW in accordance with clause 51.2 (*CSELRVs, Spares etc, Title Transfer*);
- (iv) (**CSELRV Performance Test**): the Independent Certifier has certified that the CSELRV has passed the CSELRV Performance Test; and
- (v) (**Everything else**): the Contractor has done everything else which this deed requires it to have done as a condition precedent or precondition to Delivery of that CSELRV.

19.5 [Not used]

19.6 [Not used]

19.7 [Not used]

19.8 [Not used]

19.9 [Not used]

**19.9A Notice of CSELRV Delivery**

The Contractor must give the Independent Certifier:

- (a) at least 5 Business Days' notice of the date on which it expects to achieve Delivery for that CSELRV; and
- (b) a written request for a Certificate of Delivery when it believes the Delivery Requirements have been achieved in respect of that CSELRV (which request must not be given earlier than 5 Business Days after the date on which Contractor gives notice under clause 19.9A(a)).

**19.9B Certification of CSELRV Delivery**

- (a) Within 5 Business Days of receipt of the request under clause 19.9A(b), the Independent Certifier must either:
  - (i) if the Delivery Requirements have been achieved in respect of the CSELRV, issue a Certificate of Delivery to the Contractor and TfNSW:

- (A) stating the date on which the Delivery Requirements were achieved in respect of the CSELRV; and
- (B) specifying any Minor Defects; or
- (ii) if the Delivery Requirements have not been achieved, issue a notice to the Contractor and TfNSW which:
  - (A) lists the items which remain to be completed before the Delivery Requirements are achieved; or
  - (B) states that the Delivery Requirements are so far from being achieved that it is not practicable to provide the list referred to in clause 19.9B(a)(ii)(a).
- (b) If the Independent Certifier issues a notice under clause 19.9B(a)(ii), the Contractor must continue with the Contractor's Activities to achieve the Delivery Requirements in respect of the CSELRV and clause 19.9A (*Notice of CSELRV Delivery*) and this clause 19.9B (*Certification of CSELRV Delivery*) will reapply.
- (c) If the Independent Certifier issues a Certificate of Delivery to the Contractor and TfNSW which specifies any Minor Defects in respect of a CSELRV then the Contractor must remedy the Minor Defect as soon as reasonably practicable. If in TfNSW's opinion (acting reasonably) the Contractor does not remedy the Minor Defect then either of them may issue a notice to the Contractor requiring it to remedy the Minor Defect and specifying the time within which this must occur.

#### 19.10 Final Completion

- (a) **(Contractor to achieve Final Completion):** Immediately after each Actual Date of Delivery, the Contractor must expeditiously and diligently progress the Contractor's Activities required to achieve Final Completion of a CSELRV.
- (b) **(Requirements for Final Completion):** Final Completion of a CSELRV will be achieved when:
  - (i) **(Minor Defects):** the Minor Defects specified in the Certificate of Delivery for the CSELRV have been corrected or waived by TfNSW;
  - (ii) [not used];
  - (iii) [not used];
  - (iv) **(Intellectual Property report):** the Contractor has provided TfNSW with a current copy of the IP Register in accordance with Schedule A5 (*Intellectual Property*);
  - (v) [Not used]; and
  - (vi) **(Everything else):** the Contractor has done everything else which this deed (including the SPR) requires the Contractor to have done as a condition precedent or precondition to Final Completion of a CSELRV.
- (c) **(Request for Final Completion):** When the Contractor considers that Final Completion of a CSELRV has been achieved, the Contractor must:

- (i) notify the Independent Certifier of its opinion; and
  - (ii) request the Independent Certifier to issue a Certificate of Final Completion.
- (d) **(Certification of Final Completion):** Within 15 Business Days of the Contractor's request under clause 19.10(c), the Independent Certifier must either:
- (i) if Final Completion of the CSELRV has been achieved, issue to TfNSW and the Contractor a Certificate of Final Completion stating as the Date of Final Completion the date on which Final Completion was achieved; or
  - (ii) if Final Completion of the CSELRV has not been achieved, issue a notice to the TfNSW and the Contractor listing the work remaining to be performed to achieve Final Completion.
- (e) **(If Final Completion not achieved):** If the Independent Certifier issues a notice under clause 19.10(d)(ii) the Contractor must continue with the Contractor's Activities to achieve Final Completion of the CSELRV and clause 19.10(d) will reapply.
- (f) **(No restriction):** The Independent Certifier, in making a determination as to whether Final Completion has been achieved for a CSELRV:
- (i) will not be restricted by any:
    - (A) certification, notice, list or opinion already provided under this deed; or
    - (B) obligation of the Contractor under this deed to correct any Defects which may be discovered after Final Completion; and
  - (ii) will be entitled to raise any items of work as a ground for determining that Final Completion has not been achieved for the CSELRV.

**19.11 Effect of Certificates**

- (a) [Not used]
- (b) [Not used]
- (c) The Independent Certifier's certification as set out in any Certificate of Delivery is final and binding on the parties for the purposes only of establishing that the Delivery Requirements have been achieved in respect of the applicable CSELRV, as relevant and the date on which it occurred.
- (d) The Independent Certifier's certification as set out in a Certificate of Final Completion is final and binding on the parties for the purposes only of establishing that Final Completion has occurred and the date on which it occurred.
- (e) Subject to clauses 19.11(c) and 19.11(d), a certification of the Independent Certifier will not:
  - (i) constitute an approval by TfNSW of the Contractor's performance of its obligations under this deed;

- (ii) be taken as an admission or evidence that the CSELRVs comply with this deed; or
- (iii) prejudice any rights or powers of TfNSW under this deed or otherwise according to law, including any rights which TfNSW may have in respect of Defects.

**19.12 Early Delivery**

- (a) [Not used].
- (b) The Contractor must not deliver any CSELRV earlier than the applicable Delivery Date unless TfNSW has provided the Contractor with its written consent.

**19.13 [Not used]**

**19.14 [Not used]**

**19.15 Liquidated damages for delay in achieving Delivery**

- (a) **(Liquidated Damages payable):**
  - (i) If the Actual Date of Delivery in respect of any CSELRV has not occurred by the relevant Delivery Date for that CSELRV, the Contractor must pay TfNSW liquidated damages (without the requirement for any further notice, certificate or demand) calculated at the Liquidated Damages Rate (as defined in clause 19.15(a)(ii)) for every day after the Delivery Date to and including the earliest of the Actual Date of Delivery for that CSELRV has occurred or termination of this deed (**Liquidated Damages**).
  - (ii) The Liquidated Damages Rate for each Pre-Agreed Option will be calculated on the Effective Date of that Pre-Agreed Option as [REDACTED] of the CSELRV purchase price (as defined in Schedule D1 (*Milestone payments*)).
  - (iii) The Liquidated Damages will be cumulative, will accrue daily and will be payable by the Contractor to TfNSW as a debt due in accordance with clause 19.16 (*Payment of Liquidated Damages*).
- (b) **(Liquidated Damages are genuine pre-estimate):** The parties acknowledge and agree that the Liquidated Damages calculated in accordance with clause 19.15(a) are a reasonable and genuine pre-estimate of the loss and damage that may be suffered or incurred by TfNSW as a result of a failure by the Contractor to satisfy the Delivery Requirements by the Delivery Date.
- (c) **(No right to claim unenforceable):** The Contractor must not commence or bring any proceedings, or seek to rely on any argument that any Liquidated Damages calculated in accordance with clause 19.15(a) is a penalty or is otherwise invalid or unenforceable or that clause 19.15(a), or any part of it, is otherwise invalid or unenforceable.
- (d) **(General law damages if Liquidated Damages found to be unenforceable):** If any part of clause 19.15(a) is found for any reason to be void, invalid or otherwise unenforceable, so as to disentitle TfNSW from recovering Liquidated Damages, TfNSW will be entitled to recover from the Contractor, and the Contractor must pay on a full indemnity basis in accordance with the timing requirements in clause 19.16, general law damages arising out of or in connection

with the Contractor's failure to achieve Delivery of a CSELRV by the relevant Delivery Date for that CSELRV.

- (e) **(General damages):** The Contractor's liability for any general law damages payable under clause 19.15(d) is:
- (i) payable by the Contractor as a debt due and payable from the Contractor to TfNSW; and
  - (ii) limited to the Liquidated Damages daily rate that TfNSW would otherwise have been entitled to recover from the Contractor as contemplated by clause 19.15(a).
- (f) **(Liquidated damages cap):** The parties acknowledge and agree that the maximum liability of the Contractor for liquidated damages payable in respect of a CSELRV under clause 19.15(a) or general damages under clause 19.15(d) is limited in the aggregate to [REDACTED] of the Option Capital Price applicable to that CSELRV.

#### 19.16 **Payment of Liquidated Damages**

Where the Contractor is liable for Liquidated Damages under clause 19.15(a) or general damages under clause 19.15(d) in respect of a CSELRV, the Contractor must pay the aggregate amounts then owing to TfNSW on the 15th day of the month commencing from the Delivery Date for that CSELRV.

#### 19.17 **Sole remedy**

- (a) Subject to clause 19.17(b), but otherwise despite any other provision to the contrary, the Liquidated Damages payable under clause 19.15(a) (or general damages payable under clause 19.15(d)) are TfNSW's sole and exclusive remedy for any Loss in connection with a failure by the Contractor to achieve Delivery of a CSELRV by the Delivery Date (including any failure to diligently progress the Contractor's Activities and including with respect to any delay related loss after termination) and except as provided for in clause 19.15(d), excludes TfNSW's rights and remedies at common law (including the right to recover damages for breach of contract or otherwise).
- (b) The Contractor acknowledges and agrees that clause 19.17(a) does not limit:
- (i) TfNSW's rights to terminate this deed as a result of a Contractor Termination Event or Force Majeure or, if so, the Contractor's liability for amounts payable under clause 43.12 (*Termination Payments*);
  - (ii) TfNSW's rights and the Contractor's liability in respect of an event giving rise to delay or the consequences of such event, other than the delay; or
  - (iii) TfNSW's rights and liabilities under clause 42 (*Step-in*).

19.18 [Not used]

## 20. CONTRACTOR OBLIGATIONS

### 20.1 Interference with Operations Activities

**(Contractor to not interfere):** The Contractor must at all times when performing any Contractor's Activities on the SLR Site, including activities required to achieve Delivery of a CSELRV and in respect of rectification of Defects:

- (a) cooperate with, and co-ordinate the Contractor's Activities with the Operations Activities (as defined in the Project Deed) being performed by, OpCo and the O&M Contractor;
- (b) not interfere with the performance of the Operations Activities (as defined in the Project Deed) in a manner that will cause OpCo to suffer or incur any Service Payment Deduction; and
- (c) if the Contractor causes OpCo to suffer or incur any Service Payment Deductions, implement such measures as necessary to mitigate those Service Payment Deductions.

### 20.2 Defect

- (a) **(Defect):**
  - (i) **(Notification by TfNSW):** If, during the Defects Correction Period, TfNSW believes (acting reasonably) that there is a Defect, TfNSW may give the Contractor a notice identifying the Defect (**Defect Notice**). The Defect Notice may specify a reasonable time within which the Contractor must rectify the Defect.
  - (ii) **(Rectify Defect):** The Contractor must rectify any Defect the subject of a Defect Notice within the period specified in the Defect Notice, or such other period agreed by the parties.
  - (iii) **(TfNSW's rights):** If the Contractor fails to comply with a Defect Notice, TfNSW may engage a third party to rectify the Defect the subject of the Defect Notice, in which case the costs incurred by TfNSW in rectifying the Defect will be a debt due and payable by the Contractor to TfNSW.
  - (iv) **(Service Payment Deductions):** The parties acknowledge that the Monthly Service Payment Report prepared by OpCo under the Project Deed identifies the quantum of the Service Payment Deductions applicable to the relevant month. To the extent that TfNSW believes (acting reasonably) that any Service Payment Deduction is a consequence of a Defect or the rectification of a Defect during the Defects Correction Period, TfNSW must provide a copy of that Monthly Service Payment Report to the Contractor (and in doing so, identify those amounts which relate to a Defect or the rectification of a Defect).
  - (v) **(Contractor to pay Service Payment Deductions):** To the extent that the Monthly Service Payment Report provided to the Contractor under clause 20.2(a)(iv) identifies a Service Payment Deduction in relation to the Defect or the rectification of Defect during the Defects Correction Period, the

Contractor must pay such amount to OpCo within 20 Business Days of receipt of such Monthly Service Payment Report.

- (b) **(CSELRV Defect):**
- (i) **(Notification by TfNSW):** If, during the CSELRV Warranty Period, TfNSW believes (acting reasonably) that there is a CSELRV Defect, TfNSW may give the Contractor a notice identifying the CSELRV Defect (**CSELRV Defect Notice**). The CSELRV Defect Notice may specify a reasonable time within which the Contractor must rectify the CSELRV Defect.
  - (ii) **(Rectify CSELRV Defect):** The Contractor must rectify any CSELRV Defect the subject of a CSELRV Defect Notice within the period specified in the CSELRV Defect Notice, or such other period agreed by the parties.
  - (iii) **(TfNSW's rights):** If the Contractor fails to comply with a CSELRV Defect Notice, TfNSW may engage a third party to rectify the CSELRV Defect the subject of the CSELRV Defect Notice, in which case the costs incurred by TfNSW in rectifying the CSELRV Defect will be a debt due and payable by the Contractor to TfNSW.
  - (iv) **(Service Payment Deductions):** The parties acknowledge that the Monthly Service Payment Report prepared by OpCo under the Project Deed identifies the quantum of the Service Payment Deductions applicable to the relevant month. To the extent that TfNSW believes (acting reasonably) that any Service Payment Deduction is a consequence of a CSELRV Defect or the rectification of a CSELRV Defect during the CSELRV Warranty Period, TfNSW must provide a copy of that Monthly Service Payment Report to the Contractor (and in doing so, identify those amounts which relate to a CSELRV Defect or the rectification of a CSELRV Defect).
  - (v) **(Contractor to pay Service Payment Deductions):** To the extent that the Monthly Service Payment Report provided to the Contractor under clause 20.2(b)(iv) identifies a Service Payment Deduction in relation to the CSELRV Defect or the rectification of CSELRV Defect during the CSELRV Warranty Period, the Contractor must pay such amount to OpCo within 20 Business Days of receipt of such Monthly Service Payment Report.
- (c) **(Limitation):** The rights, entitlements and remedies of TfNSW under this clause 20.2 (*Defect*) in relation to Defects in the Alstom Systems are TfNSW's sole and exclusive rights, entitlements and remedies in respect of and in substitution for TfNSW's rights, entitlements and remedies at common law (including the right to recover damages for breach of contract or otherwise) other than:
- (i) TfNSW's right to terminate this deed as a result of a Contractor Termination Event, or the Contractor's liability for amounts under clause 43.12 (*Termination Payments*), if so; or
  - (ii) TfNSW's rights and liabilities under clause 42 (*Step-in*).
- (d) **(Service Payment Deduction Cap):** Subject to clause 20.2(c), but otherwise without limiting the Contractor's other liability and other obligations under this deed, the Contractor's liability for Service Payment Deductions is limited in the aggregate to an amount equal to ■ of the Option Capital Price (**Service Payment Deductions Cap**).

**20.3 [Not used]****20.4 Disputes**

- (a) If the Contractor disagrees with a Defect Notice or a CSELRV Notice, then:
- (i) the Contractor must within 10 Business Days of receipt of the relevant notice, give notice of its disagreement to TfNSW;
  - (ii) TfNSW and the Contractor must use reasonable endeavours to resolve the matter the subject of the disagreement; and
  - (iii) if the matter is not resolved within 10 Business Days after the date of that notice, either party may refer the matter for expert determination in accordance with clause 56 (*Dispute resolution*).
- (b) Notwithstanding any disagreement or reference to expert determination as contemplated by clause 20.4(a), the Contractor must pay OpCo any Service Payment Deduction for which the Contractor is liable that OpCo notifies under clause 20.2(a)(iv) or clause 20.2(b)(iv) in accordance with that provision.
- (c) Following resolution of the dispute in respect of:
- (i) a Defect the subject of a Defect Notice; or
  - (ii) a CSELRV Defect the subject of a CSELRV Notice,
- TfNSW and the Contractor must account to each other for the amount of any Service Payment Deductions that are due to OpCo plus interest at the Default Rate or if the dispute is determined in the Contractor's favour, to be reimbursed to the Contractor plus interest at the Default Rate.

**20.5 Assignment of CSELRV warranty, indemnity and related provisions to OpCo**

The Contractor consents to TfNSW assigning or novating to OpCo (and OpCo assigning or novating to the O&M Contractor) on the Actual Date of Delivery of any CSELRV:

- (a) the benefit of the warranties under clause 13.11 (*Design Life*) and clause 15.2 (*Construction warranties*), insofar as they relate to that CSELRV and associated Spares and Special Tools and Equipment;
- (b) its rights and obligations under clause 20.1 (*Interference with Operations Activities*), clause 20.2 (*Defect*) and clause 20.4 (*Disputes*), insofar as they relate to that CSELRV and associated Spares and Special Tools and Equipment;
- (c) the Defect Bond provided in relation to that CSELRV, subject to TfNSW also novating its obligations under clauses 22.7 (*Recourse*) and 22.11 (*Bond wrongly called*) to OpCo; and
- (d) the benefit of the indemnities:
  - (i) under clauses 38.1(a), 38.1(b)(ii) and 38.1(c)(ii); and
  - (ii) under clauses 38.1(b)(i) and 38.1(c)(i) but only to the extent the Contractor's breach or failure to comply with the terms of this deed relates to the warranties, rights and obligations assigned to OpCo in accordance



with this clause 20.5 (*Assignment of CSELRV warranty, indemnity and related provisions to OpCo*),

insofar as they relate to that CSELRV and associated Spares and Special Tools and Equipment,

provided that:

- (e) the Contractor will have no greater obligations or liabilities to OpCo or the O&M Contractor (as applicable) under, arising out of, or in connection with the right assigned under this clause than it has under this deed;
- (f) TfNSW may not concurrently enforce its rights under clause 13.11 (*Design Life*), clause 15.2 (*Construction warranties*), clause 20.1 (*Interference with Operations Activities*), clause 20.2 (*Defect*), clause 20.4 (*Disputes*), clause 22.7 (*Recourse*), clause 22.11 (*Bond wrongly called*) and clause 38 (*Indemnity and liability exclusions*) if those rights are assigned to OpCo or the O&M Contractor, and OpCo may not concurrently enforce its rights under those clauses if those rights are assigned to the O&M Contractor;
- (g) nothing in this clause 20.5 (*Assignment of CSELRV warranty, indemnity and related provisions to OpCo*) is intended to make or makes the Contractor liable for the same loss twice for the same breach of an obligation;
- (h) the Contractor has the benefit of all limitations on and exclusions of liability, counterclaims and defences expressed for the benefit of the Contractor in this deed and the Contractor will not be liable to OpCo or the O&M Contractor (as applicable) under such an assignment in circumstances where its liability is limited or excluded, or the category of loss or liability suffered or incurred by OpCo or the O&M Contractor (as applicable) is limited or excluded, by the terms of this deed;
- (i) if there is a breach by the Contractor of the right assigned under this clause 20.5 (*Assignment of CSELRV warranty, indemnity and related provisions to OpCo*), payment by or on behalf of the Contractor:
  - (i) to TfNSW or OpCo of an amount in respect of the Contractor's liability for that breach of the right assigned under this clause 20.5 (*Assignment of CSELRV warranty, indemnity and related provisions to OpCo*) also satisfies, to the same extent, any claim by OpCo or the O&M Contractor (as applicable) against the Contractor in respect of the same breach; and
  - (ii) to OpCo or the O&M Contractor (as applicable) for an amount in respect of the Contractor's liability for that breach of the right assigned under this clause 20.5 (*Assignment of CSELRV warranty, indemnity and related provisions to OpCo*) also satisfies to the same extent, any claim by TfNSW or OpCo (as applicable) under this deed in respect of the same breach; and
- (j) if, at any time the rights under clause 13.11 (*Design Life*), clause 15.2 (*Construction warranties*), clause 20.1 (*Interference with Operations Activities*), clause 20.2 (*Defect*), clause 20.4 (*Disputes*), clause 22.7 (*Recourse*), clause 22.11 (*Bond wrongly called*) and clause 38 (*Indemnity and liability exclusions*) have been assigned to OpCo or the O&M Contractor (as applicable) and OpCo or the O&M Contractor (as applicable) exercises those rights against the Contractor, the Contractor's liability to OpCo or the O&M Contractor (as applicable) in respect of those rights will accrue towards the General Liability Cap as if it was TfNSW who exercised those rights.

The Contractor agrees that TfNSW may effect the assignments or novations contemplated by this clause 20.5 (*Assignment of CSELRV warranty, indemnity and related provisions to OpCo*) by notice to the Contractor and without the need for the Contractor's approval. However, if requested by TfNSW as a result of a request by OpCo, the Contractor will execute a document to acknowledge the assignment or novation, on terms reasonably agreed between the parties.

#### 20.5A **Assignment back to TfNSW or replacement OpCo**

If the Project Deed is terminated, the Contractor consents to OpCo or the O&M Contractor (as applicable) assigning or novating back to TfNSW or TfNSW's nominated successor or replacement OpCo any rights TfNSW has assigned or novated to OpCo pursuant to clause 20.5 (*Assignment of CSELRV warranty, indemnity and related provisions to OpCo*).

#### 20.6 **Post Final Completion design changes**

- (a) Subject to clauses 29 (*TfNSW initiated Modifications*) and 30 (*the Contractor initiated Modifications*), the Contractor may only amend Final CSELRV Design Documentation after the Date of Final Completion if:
- (i) the Contractor submits the amended Final CSELRV Design Documentation to TfNSW's Representative together with:
    - (A) the certifications referred to in clause 13.9 (*Design Documentation for manufacture*), except that the certification will be amended to be certified by TfNSW's Representative; and
    - (B) an explanation as to why it is seeking to amend the Final CSELRV Design Documentation;
  - (ii) a period of 20 Business Days after submission of the amended Final CSELRV Design Documentation has expired; and
  - (iii) TfNSW's Representative has not notified the Contractor that, in TfNSW's Representative's opinion, the amended Final CSELRV Design Documentation does not comply with the requirements of this deed (with reasons).
- (b) The exercise (or failure to exercise) by TfNSW's Representative of any of its rights under this clause 20.6 (*Post Final Completion design changes*) will not preclude TfNSW from subsequently asserting that the amended Final CSELRV Design Documentation does not comply with the requirements of this deed.

### 21. **ASSET MANAGEMENT**

21.1 **[Not used]**

21.2 **[Not used]**

#### 21.3 **Asset Management System**

The Contractor must provide the assistance and information reasonably required by OpCo to allow OpCo to incorporate the requirements for the CSELRV in its Asset Management System and Asset Information System, in accordance with the Project Deed.

#### 21.4 Spares and Special Tools and Equipment

As a precondition to achieving Delivery of the last CSELRV of the relevant Pre-Agreed Option, the Contractor must provide the Spares and Special Tools and Equipment required as part of that Pre-Agreed Option.

21.5 [Not used]

21.6 [Not used]

21.7 [Not used]

21.8 [Not used]

21.9 [Not used]

### 22. SECURITY

#### 22.1 Provision of Bonds

The Contractor must provide to TfNSW for each Pre-Agreed Option that TfNSW directs under clause 3.2(a):

- (a) one or more unconditional undertakings for an amount equal in aggregate to [REDACTED] of the Option Capital Price for that Pre-Agreed Option which complies with the requirements of clause 22.3 (*Requirements of Bonds*) (**First Bond**) within 20 Business Days of the day on which TfNSW directs the Contractor to implement the Pre-Agreed Option;
- (b) one or more unconditional undertakings in respect of each CSELRV for an amount equal in aggregate to [REDACTED] of the CSELRV purchase price (as defined in Schedule D1 (*Milestone payments*)) which complies with the requirements of clause 22.3 (*Requirements of Bonds*) (**Defect Bond**) as a condition precedent to both:
  - (i) return of the First Bond; and
  - (ii) Delivery; and
- (c) the Advance Payment Bonds required under and in accordance with clause 25.4 (*Advance Payment Bonds*).

TfNSW acknowledges that upon receipt of the Defect Bond, the First Bond limit will be reduced by an amount equivalent to the Defect Bond. TfNSW's Representative shall within 6 Business Days of receipt of a written request from the Contractor, provide a notice to the Contractor addressed to the entity providing the Defect Bond setting out the amount by which the First Bond is to be reduced.

#### 22.2 Release of Bonds

Subject to TfNSW's right to have recourse to the Bonds, TfNSW must:

- (a) release the First Bond for a Pre-Agreed Option within 10 Business Days after the final Actual Date of Delivery for that Pre-Agreed Option (or the date of termination of this deed if this deed has been terminated for reasons other than for a Contractor Event of Default and either the Defect Bond has been provided or no CSELRVs have achieved Delivery);

- (b) release the Defect Bond for a Pre-Agreed Option within 10 Business Days of the later of:
  - (i) the expiry of the final Defects Correction Period for that Pre-Agreed Option; and
  - (ii) the date that all Defects notified to the Contractor in accordance with clause 20.2 (*Defect*) for that Pre-Agreed Option have been rectified in accordance with this deed; and
- (c) release the Advance Payment Bonds provided under clause 25.4 (*Advance Payment Bonds*) at the time required under that clause.

### 22.3 Requirements of Bonds

Each Bond must:

- (a) be in the form specified in Schedule D8 (*Form of Bond*) or such other form as TfNSW may approve;
- (b) be in favour of TfNSW and, in the case of the Defect Bond, capable of novation to OpCo;
- (c) be provided by a bank or insurance company that at all times maintains the Required Rating and is regulated by the Australian Prudential Regulation Authority;
- (d) be payable at an office of the issuer in Sydney (or such other place as TfNSW may approve); and
- (e) have an expiry date equal to or later than:
  - (i) in respect of the First Bond, the day 12 months after the final Delivery Date scheduled for that Pre-Agreed Option;
  - (ii) in respect of the Defect Bond, the day 4 years after that undertaking is provided to TfNSW;
  - (iii) in respect of Advance Payment Bonds provided under clause 25.4 (*Advance Payment Bonds*), the day 12 months after that undertaking is provided to TfNSW; and
  - (iv) in respect of a replacement Bond, the date required under clause 22.4(b).

### 22.4 Replacement pending expiry

- (a) The Contractor must provide TfNSW with a notice 3 months before the expiry date of any Bond held by TfNSW notifying TfNSW of the pending expiry date.
- (b) On or before the day one month before the expiry date for any Bond held by TfNSW, the Contractor must provide TfNSW with a replacement Bond for the expiring Bond that:
  - (i) is for the amount remaining undrawn by TfNSW under the Bond it is replacing;

- (ii) has an expiry date equal to or later than 12 months from the day on which the replacement Bond is provided;
  - (iii) satisfies the requirements of clause 22.3 (*Requirements of Bonds*); and
  - (iv) otherwise complies with this deed.
- (c) Within 15 Business Days of receiving a replacement Bond under clause 22.4(b), TfNSW must release the replacement Bond.

**22.5 Issuer ceases to have Required Rating**

- (a) If the issuer of any Bond ceases to have the Required Rating and, at that time, another bank or insurance company acceptable to TfNSW maintains the Required Rating and is regulated by the Australian Prudential Regulation Authority or as otherwise agreed by TfNSW, then the Contractor must:
- (i) promptly notify TfNSW of that circumstance; and
  - (ii) within 30 Business Days of being requested to do so, procure the issue to TfNSW of a replacement bond which must have a face value equal to that of the Bond being replaced and must satisfy the requirements of clause 22.3 (*Requirements of Bonds*),
- and TfNSW must promptly surrender the original Bond to the Contractor following the issue of the replacement Bond.
- (b) If the issuer of any Bond ceases to have the Required Rating and, at that time, no Major Australian Bank has the Required Rating, then:
- (i) if the current issuer of the Bond has a rating of less than the second highest rated Major Australian Bank, the Contractor must procure the issue to TfNSW of a replacement bond from an issuer which has a rating equal to or higher than the second highest rated Major Australian Bank which otherwise satisfies the requirements of clause 22.3 (*Requirements of Bonds*);
  - (ii) the Contractor must monitor the credit rating of the issuer of the replacement Bond and the credit rating of the Major Australian Banks and procure a replacement Bond from an issuer which has the Required Rating within 15 Business Days after any Major Australian Bank regains a rating equal to or greater than the Required Rating; and
  - (iii) TfNSW must promptly surrender the original Bond to the Contractor following the issue of the replacement Bond.

**22.6 No injunction**

TfNSW may make a demand under any Bond at any time. The Contractor must not take any steps to injunct or otherwise restrain:

- (a) the issuer of a Bond from paying TfNSW pursuant to the Bond;
- (b) TfNSW from making a demand under a Bond or receiving payment under a Bond in accordance with this deed; or
- (c) TfNSW from using the proceeds of a Bond in accordance with this deed.

## 22.7 Recourse

TfNSW may have recourse to all or part of a Bond:

- (a) in respect of any amount that is due and payable and unpaid by the Contractor under this deed;
- (b) if TfNSW exercises a right to terminate this deed for a Contractor Termination Event; or
- (c) if the Contractor breaches clause 22.4 (*Replacement pending expiry*) provided that if the Contractor does provide that Bond or replacement Bond, TfNSW must repay the amount called within 5 Business Days of receipt of the Bond or replacement Bond,

notwithstanding the existence of any dispute between TfNSW and the Contractor about that entitlement.

## 22.8 No interest

TfNSW is not obliged to pay the Contractor interest on a Bond or the proceeds of a Bond.

## 22.9 No trust

If TfNSW makes a demand under a Bond, it does not hold the proceeds on trust for the Contractor.

## 22.10 Condition precedent to payment

The Contractor's compliance with this clause 22 (*Security*) is a condition precedent to payment. Without limiting or otherwise affecting the remainder of this clause 22.10 (*Condition precedent to payment*), the obligation of the Contractor to provide TfNSW with the First Bond is a condition precedent to payment.

## 22.11 Bond wrongly called

- (a) **(TfNSW must repay amount called and interest):** If TfNSW makes a call under a Bond and it is subsequently determined in accordance with this deed or agreed by the parties that none of the events referred to in clause 22.7 (*Recourse*) have occurred then to that extent only, TfNSW must, subject to clause 22.11(b):
  - (i) repay the amount of the demand to the Contractor within 5 Business Days of the date the relevant determination was made;
  - (ii) pay the Contractor interest at the Default Rate for the period from the date the Bond was called until the date that TfNSW repaid the amount in accordance with clause 22.11(a)(i); and
  - (iii) reimburse the Contractor the costs associated with the provision of the replacement Bond.
- (b) **(Replacement Bond):** The Contractor must, where required by this deed to issue a Bond or replacement Bond at the relevant time, contemporaneously with the repayment of the amount wrongly called in accordance with clause 22.11(a)(i), provide such Bond or replacement Bond.

- (c) **(Sole remedy):** The Contractor acknowledges and agrees that it is not entitled to make any Claim against TfNSW for any Loss incurred by the Contractor arising out of or in connection with TfNSW calling on a Bond in circumstances permitted by this deed, except if it is subsequently determined or agreed that TfNSW was not entitled to make a demand on that Bond, in which case, the Contractor's sole entitlement will be its entitlement under this clause 22.11 (*Bond wrongly called*).
- (d) **(Amounts not included in General Liability Cap):** If TfNSW repays any amount wrongly called under the Bond under clause 22.11(a)(i), such amount wrongly called and repaid shall not count towards the General Liability Cap.

23. **[NOT USED]**

24. **NAMING AND BRANDING**

24.1 **Name**

The SLR will be called Sydney Light Rail (or such other name as is notified by TfNSW to the Contractor).

24.2 **Government logo and corporate image**

- (a) The Contractor must display the NSW Government Transport, TfNSW, and/or NSW NOW logo and corporate image and the name Sydney Light Rail (or such other name as is notified by TfNSW to the Contractor) on the CSELRVs in the locations and manner designated in the SPR.
- (b) TfNSW may at any time direct the Contractor to display the NSW Government Transport, TfNSW and/or NSW NOW logo and corporate image and the name of the Sydney Light Rail on the CSELRVs in areas not designated by the SPR.
- (c) The State and/or TfNSW may change the NSW Government Transport, TfNSW and/or NSW NOW name/corporate image and may direct the Contractor to display the new NSW Government Transport, TfNSW and/or NSW NOW logo/corporate image on the CSELRVs in those areas designated in the SPR or as directed by TfNSW under clause 24.2(b).
- (d) [Not used]
- (e) TfNSW may at any time direct the Contractor to display the 'Hop' branding and associated marks and the name Light Rail on the CSELRVs in areas not designated by the SPR.
- (f) The State and/or TfNSW may change the 'Hop' branding and may direct the Contractor to display the new branding on the CSELRVs in those areas designated in the SPR or as directed by TfNSW under clause 24.2(e).
- (g) TfNSW will compensate the Contractor for all reasonable costs incurred in compliance with clauses 24.2(b) to 24.2(e).

24.3 **Contractor name/corporate image**

- (a) The Contractor must display its livery, name/corporate image on the CSELRVs in the manner designated by the SPR.

- (b) The Contractor must not change its livery, name/corporate image without the prior written consent of TfNSW.

24.4 **[Not used]**

24.5 **Wayfinding**

The Contractor must comply with the requirements of SPR Appendix 15 (*Branding, Wayfinding, Signage and Customer Information*) and all the other requirements of the SPR in respect of wayfinding.

24.6 **Other signage and displays**

Without limiting clauses 24.1 (*Name*) to 24.5 (*Wayfinding*), the Contractor must display wayfinding, signage and other information, public art and branding on the CSELRVs as required in accordance with the SPR.

25. **PAYMENT PROVISIONS**

25.1 **TfNSW's payment obligation**

Subject to this clause 25 (*Payment Provisions*), TfNSW must pay the Contractor:

- (a) the Option Capital Price for each Pre-Agreed Option that it directs the Contractor to implement; and
- (b) any other amounts which are payable by TfNSW to the Contractor under this deed.

25.2 **Payment claims**

The Option Capital Price will be payable on a milestone basis. The Contractor may make a claim for payment to TfNSW's Representative within 5 days after the satisfaction of the relevant Milestone. In each payment claim, the Contractor may claim payment for:

- (a) any Milestone that has been completed (in accordance with the requirements in the Payment Schedule) and not yet paid;
- (b) and any other amounts payable by TfNSW to the Contractor in accordance with this deed.

The Contractor's payment claim must:

- (c) constitute valid Tax Invoices for any Taxable Supplies to which the payment relates; and
- (d) include evidence of the amounts claimed reasonably required by TfNSW's Representative.

The Contractor cannot include in any payment claim under this clause 25.2 (*Payment claims*), a Claim which is barred by clause 57.5 (*Time bar*).

25.3 **Title to goods and materials free from Security Interest**

Title to goods and material the subject of a payment claim will pass to TfNSW in accordance with clause 51.2 (*CSELRVs, Spares etc. Title Transfer*).



#### 25.4 Advance Payment Bonds

- (a) In compliance with clause 22 (*Security*), the Contractor must provide TfNSW with an advance payment bond that meets the requirements of clause 22 (*Security*) (the **Advance Payment Bond**) in respect of each Pre-Agreed Option on or before the day on which the Contractor gives TfNSW a payment claim in respect of the first completed Milestone under paragraph 3 of the Payment Schedule (**Advance Payment**) for that Pre-Agreed Option.
- (b) The amount of the Advance Payment Bond shall be equal in value to the payment claimed by the Contractor in respect of the Advance Payment Milestone under paragraph 3 of the Payment Schedule.
- (c) The amount of the Advance Payment Bond will be reduced in accordance with the application of the Advance Payment Bond against Milestones in Schedule D1 (*Milestone payments*). TfNSW's Representative shall within 6 Business Days of receipt of a written request from the Contractor, provide a notice to the Contractor addressed to the entity providing the Advance Payment Bond setting out the amount by which the Advance Payment Bond is to be reduced.
- (d) [Not used]
- (e) [Not used]
- (f) [Not used]
- (g) [Not used]

#### 25.5 Payment schedule

- (a) Within 15 Business Days of receiving a payment claim which complies with the requirements of clause 25.2 (*Payment claims*), TfNSW's Representative must issue a payment schedule to the Contractor which sets out TfNSW's determination as to the amount then payable to the Contractor, together with detailed reasons for any difference in the amount so determined from the amount in the Contractor's payment claim.
- (b) If the amount set out in the payment schedule as then payable to the Contractor is different to the amount in the Contractor's payment claim, the Contractor must, within 5 Business Days of receiving the payment schedule, issue a revised Tax Invoice or Adjustment Note (as the case may be) to TfNSW to reflect the amount in the payment schedule.
- (c) The issue of a payment schedule by TfNSW's Representative does not constitute approval of any work or services nor will it be taken as an admission or evidence that the work or services covered by the payment schedule have been satisfactorily carried out in accordance with this deed.

#### 25.6 Payment

- (a) Subject to clauses 25.12 (*Set-off*) and 25.13 (*Payment of employees and subcontractors*), TfNSW must within 20 Business Days of receiving a payment claim which complies with the requirements of clause 25.2 (*Payment claims*), pay the Contractor the amount as set out as then payable in the payment schedule, less any amounts disclosed as unpaid under clause 25.13(a) or 25.13(b).

- (b) TfNSW is not obliged to pay any amounts disclosed as unpaid under clause 25.13(a) or 25.13(b) until the Contractor produces evidence that the amounts have been paid to the relevant persons.
- (c) TfNSW must make payments due to the Contractor under this deed to the single bank account of the Contractor nominated in writing to TfNSW by the Contractor from time to time.
- (d) The Contractor is not entitled to make, and TfNSW will not be liable upon, any Claim for payment under this deed unless:
  - (i) the Contractor has provided all Bonds that it is required to provide under this deed at the time of payment;
  - (ii) the Contractor has provided the duly executed Guarantee from the Guarantor; and
  - (iii) the Contractor has submitted all the Project Plans required under clause 8.2 (*Initial Project Plans*).

**25.7 Suspension by the Contractor**

- (a) If:
  - (i) TfNSW fails to comply with its payment obligations under clause 25.6 (*Payment*) and the failure is not remedied within 10 Business Days of a written demand from the Contractor; or
  - (ii) TfNSW fails to provide a payment schedule required under clause 25.5 (*Payment schedule*) and the failure is not remedied within 10 Business Days of a written demand from the Contractor;

then, the Contractor may suspend all or part of the Contractor's Activities until such time as that failure has been remedied by TfNSW.

- (b) Nothing in this clause 25.7 (*Suspension by the Contractor*) limits the Contractor's rights to suspend under the *Building and Construction Industry Security of Payment Act 1999* (NSW) or limits its other rights under this deed.
- (c) As soon as practicable after TfNSW has rectified the failure under clause 25.7(a) the Contractor must resume the carrying out of the Contractor's Activities.

**25.8 Net amount due from the Contractor to TfNSW**

Where a payment schedule states that a net amount is due from the Contractor to TfNSW, the Contractor must (at TfNSW's election):

- (a) pay that amount to TfNSW within 20 Business Days of being requested by TfNSW's Representative to do so; or
- (b) otherwise carry forward the amount and set it off against the next payment claim.

**25.9 Payment on account**

Any payment of moneys by TfNSW to the Contractor is not:

- (a) evidence of the value of work or services, or that any work or services have been satisfactorily carried out in accordance with this deed;
  - (b) an admission of liability; or
  - (c) approval by TfNSW of the Contractor's performance or compliance with this deed,
- but is only taken to be payment on account.

**25.10 Correction of payment schedules**

TfNSW's Representative may, in any payment schedule:

- (a) correct any error in any previous payment schedule; and
- (b) modify any previous payment schedule,

issued by TfNSW.

**25.11 Interest**

Any late payment of amounts that are properly due and payable by either TfNSW or the Contractor to the other under this deed (including a previously disputed amount or an amount which is not paid due to the application of set-off by TfNSW under clause 25.12(a) where the amount set-off is determined to be incorrect) will incur simple interest at the Default Rate from the day after the date on which the payment was due to (and including) the date of payment.

**25.12 Set-off**

- (a) TfNSW will be entitled to set-off or deduct from any amount due from TfNSW to the Contractor under this deed:

- (i) any debt or other monies due from the Contractor to TfNSW; and
- (ii) any Claim to money which TfNSW may make in good faith against the Contractor whether for damages or otherwise and whether or not the amount is disputed,

under this deed.

- (b) The Contractor must make all payments due to TfNSW under this deed without set-off or counterclaim, and without any deduction to the extent permitted by law.
- (c) Nothing in this clause 25.12 (*Set-off*) affects TfNSW's right to recover from the Contractor the whole of the debt or any balance that remains owing after any set-off.

**25.13 Payment of employees and subcontractors**

The Contractor is not entitled to give TfNSW a payment claim under clause 25.2 (*Payment claims*), and TfNSW's Representative is not obliged to make any payment under clause 25.5 (*Payment schedule*), unless the Contractor has provided TfNSW's Representative with:

- (a) a statutory declaration, together with any supporting evidence which may be reasonably required by TfNSW's Representative, duly signed by the Contractor's Representative, that, except to the extent disclosed in the statutory declaration (such disclosure to specify all relevant amounts, employees and subcontractors):
  - (i) all employees of the Contractor have at the date of the payment claim been paid all moneys due and payable to them; and
  - (ii) all subcontractors of the Contractor have been paid all moneys due and payable to them in respect of the Contractor's Activities;
- (b) a statutory declaration from the Contractor which satisfies the requirements of clause 25.13(a) in relation to the employees of the Contractor and the Subcontractors;
- (c) a written statement for the purposes of, and which complies with, section 127 of the *Industrial Relations Act 1996* (NSW), section 175B of the *Workers Compensation Act 1987* (NSW) and schedule 2 part 5 of the *Pay-Roll Tax Act 2007* (NSW), which is in a form approved by TfNSW's Representative, covering the period covered by the relevant payment claim; and
- (d) copies of all relevant certificates of currency in respect of workers compensation insurance which the Contractor has in place in connection with the Contractor's Activities.

Clauses 25.13(c) and 25.13(d) will only apply in respect of those parts of the Contractor's Activities carried out in New South Wales.

## 26. COMPENSATION EVENTS

### 26.1 Entitlement to claim compensation

- (a) If a Compensation Event causes the Contractor to incur Loss, the Contractor may claim compensation in accordance with this clause 26 (*Compensation Events*).
- (b) To the extent that any Claim for compensation under this clause 26 (*Compensation Events*) includes a Claim by the Contractor for any Losses it has incurred and which arise out of or in connection with any delay to the Contractor's Activities, the Contractor is only entitled to compensation for Loss if and only in respect of the period of time for which it has been granted an extension to any Delivery Date in accordance with clause 27.4 (*Relief from obligations*).

### 26.2 Claim for compensation

To claim compensation in respect of a Compensation Event, the Contractor must:

- (a) within 20 Business Days after the earlier of when the Contractor becomes aware, or ought reasonably to have become aware, that the Compensation Event is likely to cause the Contractor to incur Loss, give to TfNSW's Representative a written notice, expressly stating:
  - (i) that the Contractor proposes to make a Claim; and
  - (ii) the Compensation Event upon which the Claim will be based; and

- (b) within 10 Business Days of giving the notice under clause 26.2(a), give TfNSW's Representative a written Claim which must include (to the extent practicable):
  - (i) detailed particulars concerning the Compensation Event upon which the Claim is based;
  - (ii) details of the obligations which have been affected by the Compensation Event;
  - (iii) details of any Net Financial Impact of the Compensation Event and how it has been calculated;
  - (iv) if pursuant to clause 26.1 (*Entitlement to claim compensation*) the Contractor is entitled to include in its Claim a delay component, detailed particulars of how the delay for which it has been granted an extension of time has caused a Net Financial Impact; and
  - (v) details of the steps which the Contractor has taken to mitigate the effects of the relevant Compensation Event.

**26.3 Continuing Compensation Events**

If the Compensation Event (or its effects) is continuing, the Contractor must:

- (a) continue to give the information required by clause 26.2(b) every 40 Business Days after the notice under clause 26.2(b) was provided to TfNSW's Representative until after the Compensation Event (or its effects) has ceased; and
- (b) provide a final written Claim within 5 Business Days after the Compensation Event (or its effects) have ceased.

**26.4 Condition precedent to compensation**

- (a) It is a condition precedent to the Contractor's entitlement to compensation that:
  - (i) a Compensation Event has occurred which has caused the Contractor to incur a Loss; and
  - (ii) the Contractor has complied with the requirements of clauses 26.2 (*Claim for compensation*) and 26.3 (*Continuing Compensation Events*).
- (b) If the Contractor fails to comply with the requirements of clauses 26.2 (*Claim for compensation*) and 26.3 (*Continuing Compensation Events*):
  - (i) TfNSW will not be liable (in so far as it is possible to exclude such liability) upon any Claim by the Contractor; and
  - (ii) the Contractor will be absolutely barred from making any Claim against TfNSW,

arising out of or in connection with the relevant Compensation Event.

## 26.5 Compensation for Net Financial Impact

If the condition precedent in clause 26.4 (*Condition precedent to compensation*) has been satisfied, TfNSW must compensate the Contractor for the Net Financial Impact of the Compensation Event.

## 26.6 Calculation and payment of Net Financial Impact

The Net Financial Impact of a Compensation Event will be calculated and paid in accordance with Schedule D4 (*Net Financial Impact*).

## 26.7 Mitigation

- (a) The Contractor must use all reasonable endeavours to mitigate the effects of any Compensation Event (including by putting in place temporary measures reasonably acceptable to TfNSW's Representative).
- (b) Without limiting clause 26.7(a), the Contractor must use all reasonable endeavours to:
  - (i) avoid or minimise the duration and consequences of any delay caused by a Compensation Event;
  - (ii) minimise any incremental costs or loss of revenue incurred or suffered as a result of a Compensation Event; and
  - (iii) maximise any cost savings or additional revenue derived as a result of a Compensation Event.
- (c) The Contractor's entitlement to compensation will be reduced to the extent that the Contractor fails to comply with its obligations under this clause 26.7 (*Mitigation*).

## 26.8 Non-compliance

The Contractor's entitlement to compensation will be reduced to:

- (a) exclude any incremental costs or loss of revenue which would not have been incurred or suffered; and
- (b) include any cost savings or additional revenue which would have been derived, had the Contractor complied with its obligations under this deed.

## 26.9 Contractor conduct

The Contractor's entitlement to compensation will be reduced to:

- (a) exclude any incremental costs or loss of revenue which would not have been incurred or suffered; and
- (b) include any cost savings or additional revenue which would have been derived,

to the extent that the Compensation Event occurs or arises as a result of any wrongful act or omission of the Contractor or the Subcontractor.

## 26.10 Limitation of liability

- (a) Except as provided for in this clause 26 (*Compensation Events*), TfNSW will not be liable upon any Claim by the Contractor arising out of or in connection with a Compensation Event, including in respect of any breach of this deed by TfNSW.
- (b) The parties agree that the Contractor's entitlements under this clause 26 (*Compensation Events*) are a limitation on TfNSW's liability to the Contractor for any breach of this deed by TfNSW and that the Contractor will not be entitled to make, nor will TfNSW be liable upon, any Claim in these circumstances other than in respect of the matters for which TfNSW may be liable under this clause 26 (*Compensation Events*).
- (c) Nothing in this clause 26.10 (*Limitation of liability*) will affect or limit the Contractor's rights or entitlements under clause 27 (*Relief Events*) or 43.12 (*Termination Payments*) or the Contractor's right to terminate this deed.

## 27. RELIEF EVENTS

### 27.1 Notification

If a Relief Event occurs and:

- (a) affects, or is likely to affect, the ability of the Contractor to comply with its obligations under this deed; or
- (b) delays an activity:
  - (i) on the critical path contained and shown in the Delivery Program; or
  - (ii) which was not on the critical path contained and shown in the Delivery Program but which has become critical as a result of the Relief Event giving rise to the delay,

in a manner which will delay the Contractor in achieving Delivery, the Contractor must:

- (c) within 10 Business Days after it becomes aware, or ought reasonably to have become aware, that a Relief Event is likely to cause delay or affect the ability of the Contractor to comply with its obligations under this deed, give to TfNSW's Representative a written notice stating that a Relief Event has occurred; and
- (d) within 10 Business Days of giving the notice under clause 27.1(c), give TfNSW's Representative full particulars of the Relief Event including (to the extent practicable):
  - (i) details of the obligations which have been affected by the Relief Event;
  - (ii) details of the steps which the Contractor has taken to mitigate the effects of the relevant Relief Event;
  - (iii) whether the Contractor considers that the Relief Event may also reasonably be expected to give rise to a Force Majeure Event; and
  - (iv) details of any extension of time required to any Delivery Date (or if the Relief Event occurs after the Delivery Date for any CSELRV but before the

applicable Longstop Date, the applicable Longstop Date) and how it has been calculated.

## 27.2 Continuing Relief Event

If the Relief Event (or its effects) is continuing, the Contractor must continue to give the information required by clause 27.1(d) every 40 Business Days after the notice under clause 27.1(d) was provided to TfNSW's Representative until after the Relief Event (or its effects) has ceased. If a Relief Event (or its effects) continues for such a period or in such a manner that a Force Majeure Event occurs, the Contractor must, within the earlier of 20 Business Days after the occurrence of the Force Majeure Event or the date of the next notice given by the Contractor under this clause 27.2 (*Continuing Relief Event*) after the occurrence of the Force Majeure Event, notify TfNSW of the occurrence of the Force Majeure Event.

## 27.3 Condition precedent to relief

- (a) It is a condition precedent to the Contractor's entitlement to relief from its obligations under clause 27.4 (*Relief from obligations*) that the Contractor has complied with the requirements of clauses 27.1 (*Notification*) and 27.2 (*Continuing Relief Event*).
- (b) If the Contractor fails to comply with the requirements of clauses 27.1 (*Notification*) and 27.2 (*Continuing Relief Event*):
  - (i) TfNSW will not be liable (in so far as it is possible to exclude such liability) upon any Claim by the Contractor; and
  - (ii) the Contractor will be absolutely barred from making any Claim against TfNSW,

arising out of or in connection with the relevant Relief Event.

## 27.4 Relief from obligations

- (a) If:
  - (i) a Relief Event occurs; and
  - (ii) the conditions precedent in:
    - (A) clause 27.1(a); or
    - (B) clause 27.1(b); and
    - (C) clause 27.3(a),

have been satisfied, TfNSW will (acting reasonably), taking into account the notices given by the Contractor under clauses 27.1 (*Notification*) and 27.2 (*Continuing Relief Event*) and without prejudice to clause 37 (*Reinstatement of loss or damage*), grant the Contractor such relief from its obligations under this deed which are affected by the Relief Event, but only to the extent and for so long as the Relief Event affects or delays the Contractor from performing those obligations including, where relevant, extending the Delivery Dates of each CSELRV (including where the Relief Event occurs



after a Delivery Date) by such time as reasonable for such Relief Event, taking into account the likely effect of such delay.

#### 27.5 **Mitigation**

The Contractor must use all reasonable endeavours to mitigate the effects of any Relief Event (including by putting in place temporary measures reasonably acceptable to TfNSW's Representative).

#### 27.6 **[Not used]**

#### 27.7 **[Not used]**

### 28. **FORCE MAJEURE**

#### 28.1 **Force Majeure Event**

A Force Majeure Event is a Relief Event (other than a Compensation Event or a Relief Event described in paragraphs (b) and (h) of the definition of Relief Event to the extent occurring in an Alstom Manufacturing Country) which:

- (a) exists or occurs, or the impacts of which exist or occur for a continuous period exceeding 180 days; and
- (b) directly causes the Contractor to be unable to achieve Delivery or to comply with a material part of its obligations under this deed,

provided that:

- (c) the Relief Event (or its effects) was beyond the reasonable control of the Contractor and the Subcontractors; and
- (d) the Relief Event did not occur or arise as a result of any act or omission of the Contractor or the Subcontractors.

#### 28.2 **Meeting**

As soon as practicable after notice of the occurrence of a Force Majeure Event is given under clauses 27.1(c) or 27.2 (*Continuing Relief Event*), the parties must meet and consult with each other in good faith and use all reasonable endeavours to determine whether a Force Majeure Event has occurred.

#### 28.3 **Termination for Force Majeure Event**

- (a) Subject to clause 28.3(b), if:
  - (i) the parties are unable to agree on appropriate measures to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this deed on or before the date falling 20 Business Days after the date of the commencement of the relevant Force Majeure Event (or the date on which the relevant Relief Event became a Force Majeure Event); and
  - (ii) the Force Majeure Event is continuing or its consequence remain such that the affected party has been or is unable to comply with a material part of its obligations under this deed during that 20 Business Day period,

then, subject to clause 28.4 (*Suspension of the Contractor's right to terminate*), either party may terminate this deed by giving 20 Business Days' written notice to the other party.

(b) [Not used]

#### 28.4 **Suspension of Contractor's right to terminate**

- (a) If the Contractor gives a termination notice under clause 28.3(a), TfNSW may suspend the Contractor's right to terminate by giving a suspension notice within 20 Business Days of receipt of the Contractor's termination notice. TfNSW may suspend the Contractor's right to terminate for up to a maximum period of 12 months, following the expiry of which the Contractor may exercise its right to terminate under clause 28.3 (*Termination for Force Majeure Event*) and TfNSW may not suspend that right under this clause 28.4 (*Suspension of Contractor's right to terminate*).
- (b) If TfNSW gives the Contractor a suspension notice under clause 28.4(a) TfNSW must pay the Contractor's reasonable mitigated prolongation costs and expenses (including mobilisation and demobilisation costs) for the period commencing on the date on which the Contractor gives notice under clause 28.3(a) and ending on the earlier of:
- (i) the date on which the Force Majeure Event ceases; and
  - (ii) termination of this deed.
- (c) This deed will not terminate until expiry of written notice (of at least 30 Business Days) from TfNSW to the Contractor that it is ending the suspension of the Contractor's right to terminate.

#### 28.5 **Event ceases**

If the Contractor becomes able to recommence performing the relevant obligations after TfNSW gives the Contractor a suspension notice:

- (a) the Contractor must recommence performance of those obligations; and
- (b) the Contractor's termination notice under clause 28.3(a) will cease to have any effect.

#### 28.6 **[Not used]**

### 29. **TFNSW INITIATED MODIFICATIONS**

#### 29.1 **Modification Request**

- (a) TfNSW's Representative may at any time issue to the Contractor a Modification Request setting out the details of a proposed Modification which TfNSW is considering.
- (b) TfNSW will not be obliged to proceed with any Modification proposed in a Modification Request.

## 29.2 Emergency Modification

If TfNSW issues a Modification Request for an Emergency Modification, the Contractor must immediately (or as soon as reasonably practicable) implement the Emergency Modification in accordance with the Modification Request notwithstanding that the full process in this clause 29 (*TfNSW initiated Modifications*) has not been followed. The clauses in the remainder of this clause 29 (*TfNSW initiated Modifications*) will apply to such Emergency Modification save that where the context requires such provisions will be read having regard to the fact that the Contractor has already commenced implementation of the Emergency Modification.

## 29.3 Modification Impact Proposal

(a) If the Modification Request requests that the Contractor provide an estimate of the third party costs that the Contractor will incur in preparing a Modification Impact Proposal, the Contractor must provide that estimate within 5 Business Days of receipt of the Modification Request.

(b) If the Modification Request requests that the Contractor provide TfNSW with a Modification Impact Proposal, then as soon as practicable after:

(i) receipt of a Modification Request; or

(ii) if the Modification Request requests that the Contractor provide an estimate of the third party costs that the Contractor will incur in preparing a Modification Impact Proposal, TfNSW advising the Contractor that the fee estimate is acceptable,

the Contractor must provide TfNSW with a Modification Impact Proposal.

(c) The Modification Impact Proposal must set out detailed particulars of the Contractor's view on:

(i) the Net Financial Impact of the proposed Modification;

(ii) [not used];

(iii) the effect which the proposed Modification will have on the Delivery Program (including any extension of time required to any Delivery Date and any Longstop Date);

(iv) [not used];

(v) any Approvals required to implement the proposed Modification, and the effect of the proposed Modification on any existing Approvals;

(vi) the effects which the proposed Modification will have on the Contractor's ability to satisfy its obligations under this deed (including any warranties given by the Contractor under this deed);

(vii) any relief which is required from the Contractor's obligations under this deed to ensure that it is left in a no better and no worse position than it would be in if the Modification were not implemented; and

(viii) any other information requested by TfNSW in the Modification Request,

having regard to:

- (ix) the type of Modification; and
- (x) Schedule D4 (*Net Financial Impact*),

as applicable and relevant to the Modification Request.

#### 29.4 **Cost of preparing Modification Impact Proposal**

If:

- (a) the Contractor prepares a Modification Impact Proposal in accordance with clause 29.3 (*Modification Impact Proposal*); and
- (b) TfNSW does not issue a Modification Order in respect of the proposed Modification,

then TfNSW will reimburse the reasonable third party costs incurred by the Contractor (which will be deemed to include the reasonable costs (excluding overheads and profit) of the Contractor in respect of design works carried out by it in relation to any additional equipment requirements (including power simulation and alignment design) and installation, noise and electromagnetic compatibility studies) in:

- (c) preparing the Modification Impact Proposal; and
- (d) if applicable, performing its obligations under clause 29.8 (*TfNSW rejects Modification Impact Proposal*),

capped at the amount of any estimate provided by the Contractor for the Modification Impact Proposal under clause 29.3(a).

#### 29.5 **[Not used]**

#### 29.6 **Election by TfNSW**

Within 30 Business Days after receiving a Modification Impact Proposal, TfNSW's Representative may:

- (a) accept the Modification Impact Proposal;
- (b) reject the Modification Impact Proposal; or
- (c) inform the Contractor that it does not wish to proceed with the proposed Modification,

by written notice to the Contractor (which in the case of paragraph (a) must be a Modification Order).

#### 29.7 **TfNSW accepts Modification Impact Proposal**

If TfNSW accepts the Modification Impact Proposal in accordance with clause 29.6(a):

- (a) the Contractor must implement the Modification on the basis of the Modification Impact Proposal (as accepted by TfNSW);
- (b) the Contractor will be relieved of its obligations under this deed to the extent specified in the Modification Impact Proposal (as accepted by TfNSW); and

- (c) the Dates for Delivery and the Longstop Dates will be extended as specified in the Modification Impact Proposal.

#### 29.8 TfNSW rejects Modification Impact Proposal

If TfNSW rejects the Modification Impact Proposal in accordance with clause 29.6(b), TfNSW may require that the parties consult in good faith and use their reasonable endeavours to agree on a mutually acceptable resolution to the matters set out in the Modification Impact Proposal.

#### 29.9 Parties reach agreement

If the parties reach agreement on the Modification Impact Proposal and TfNSW directs the Contractor to implement the Modification by issuing a Modification Order:

- (a) the Contractor must implement the Modification on the basis of the Modification Impact Proposal (as varied by the parties' agreement);
- (b) the Contractor will be relieved of its obligations under this deed to the extent specified in the Modification Impact Proposal (as varied by the parties' agreement); and
- (c) the Dates for Delivery and the Longstop Dates will be extended as specified in the Modification Impact Proposal (if applicable) (as varied by the parties' agreement).

#### 29.10 If parties fail to reach agreement

If the parties are unable to reach agreement within 20 Business Days after TfNSW rejects the Modification Impact Proposal, TfNSW may refer the matter for dispute resolution in accordance with clause 56 (*Dispute resolution*).

#### 29.11 TfNSW may direct that Modification proceed

- (a) If TfNSW refers the matter for dispute resolution under clause 29.10 (*If parties fail to reach agreement*), TfNSW may also direct the Contractor to implement the Modification by issuing a Modification Order whether or not any matters in dispute have been agreed in accordance with clause 56 (*Dispute resolution*).
- (b) If TfNSW issues such a Modification Order:
  - (i) any disputed matters will, until TfNSW and Contractor otherwise agree or a determination is made in accordance with clause 56 (*Dispute resolution*), be reasonably determined by TfNSW's Representative. In making his or her determination, TfNSW's Representative will determine all matters required to enable the Modification to be implemented;
  - (ii) the Contractor must proceed to implement the Modification on the basis determined by TfNSW's Representative (notwithstanding that any matters in dispute have not been agreed or determined in accordance with clause 56 (*Dispute resolution*));
  - (iii) the Contractor will be relieved of its obligations under this deed to the extent specified in the Modification Order;
  - (iv) the Delivery Dates and the Longstop Dates will be extended as specified in the Modification Order (if applicable); and

- (v) any necessary adjustments will be made following the determination of a dispute (where applicable).

#### 29.12 TfNSW options following determination

Following determination of the dispute referred to in clause 29.10 (*If parties fail to reach agreement*) in accordance with clause 56 (*Dispute resolution*), TfNSW may, only if it has not already exercised its right under clause 29.11 (*TfNSW may direct that Modification proceed*), elect to do either of the following:

- (a) require the Contractor to implement the Modification in accordance with the Modification Impact Proposal as varied by the determination; or
- (b) withdraw the proposed Modification,

by written notice to the Contractor (which in the case of paragraph (a) must be a Modification Order).

#### 29.13 Contractor to implement Modification

If TfNSW gives a Modification Order pursuant to clause 29.12 (*TfNSW options following determination*):

- (a) the Contractor must carry out the Modification described in the Modification Order on the basis of the Modification Impact Proposal (as varied by the determination, once made);
- (b) the Contractor will be relieved of its obligations under this deed to the extent specified in the Modification Impact Proposal (as varied by the determination, once made); and
- (c) the Delivery Dates and the Longstop Dates will be extended as specified in the Modification Impact Proposal (as varied by the determination, once made, as applicable).

#### 29.14 Instruction to proceed

- (a) Whether or not TfNSW has issued a Modification Request under clause 29.1 (*Modification Request*) and whether or not the Contractor has issued a Modification Impact Proposal under clause 29.3 (*Modification Impact Proposal*) in response to a Modification Request, TfNSW's Representative may at any time instruct the Contractor to implement a Modification by issuing a Modification Order. In these circumstances, the matters set out in clauses 29.3(c)(i), 29.3(c)(iii) and 29.3(c)(vii) will, until TfNSW and the Contractor agree otherwise or a determination is made in accordance with clause 56 (*Dispute resolution*), be reasonably determined by TfNSW's Representative.
- (b) In making his or her determination, TfNSW's Representative will:
  - (i) assume that funding for the Modification will be provided by TfNSW, unless the parties otherwise agree; and
  - (ii) determine all matters required to enable the Modification to be implemented.

- (c) If the Contractor disagrees with a matter determined by TfNSW's Representative:
- (i) the Contractor may refer the matter for dispute resolution in accordance with clause 56 (*Dispute resolution*);
  - (ii) the Contractor must proceed to implement the Modification on the basis determined by TfNSW's Representative notwithstanding that the matters in dispute have not been agreed or determined in accordance with clause 56 (*Dispute resolution*); and
  - (iii) any necessary adjustments will be made following any agreement or determination under clause 56 (*Dispute resolution*).

#### 29.15 Omissions

If a Modification omits the testing and commissioning of the CSELRVs once delivered to the SLR Site, TfNSW may carry out those omitted Contractor's Activities itself or by engaging another contractor.

#### 29.16 Calculation and payment of Net Financial Impact

The Net Financial Impact of a Modification directed by TfNSW under this clause 29 (*TfNSW initiated Modifications*) will be calculated and paid in accordance with Schedule D4 (*Net Financial Impact*).

#### 29.17 No liability unless Modification Order

The Contractor will not be entitled to make any Claim against TfNSW arising out of, or in any way in connection with, any Modification, except where the Contractor is directed to implement a Modification pursuant to a Modification Order issued by TfNSW under this clause 29 (*TfNSW initiated Modifications*).

### 30. CONTRACTOR INITIATED MODIFICATIONS

#### 30.1 The Contractor may propose a Modification

The Contractor may propose a Modification by giving to TfNSW a written notice with details of:

- (a) the proposed Modification;
- (b) the reason for the proposed Modification;
- (c) the time within, and the manner in which, the Contractor proposes to implement the proposed Modification;
- (d) the effect the proposed Modification will have on the Delivery Program (including any extension of time required to the Delivery Dates and the Longstop Dates);
- (e) any Approvals required to implement the proposed Modification, and the effect of the proposed Modification on any existing Approvals;
- (f) the effects which the proposed Modification will have on the Contractor's ability to satisfy its obligations under this deed (including any warranties given by the Contractor under this deed); and

- (g) the value for money for TfNSW arising from the Modification, including the proposed cost savings to be paid to TfNSW.

**30.2 TfNSW may approve or reject**

- (a) If the Contractor gives a notice under clause 30.1 (*Contractor may propose a Modification*), TfNSW:
  - (i) will consider the Contractor's proposed Modification in good faith; and
  - (ii) subject to clause 30.3 (*Modification required as a result of a Change in Law or Change in NSW Government Policy*), may:
    - (A) approve (with or without conditions) the proposed Modification in its absolute discretion by issuing a Modification Approval to the Contractor; or
    - (B) reject the proposed Modification in its absolute discretion; and
  - (iii) will be under no obligation to approve the proposed Modification for the convenience of or to assist the Contractor.
- (b) If TfNSW issues a Modification Approval under clause 30.2(a)(ii)(A) without conditions:
  - (i) the Contractor must proceed to implement the Modification on the basis set out in the Modification Approval; and
  - (ii) the Contractor will be relieved of its obligations under this deed to the extent specified in the Modification Approval.
- (c) If TfNSW issues a Modification Approval under clause 30.2(a)(ii)(A) with conditions:
  - (i) the Contractor may proceed to implement the Modification on the basis set out in the Modification Approval, in which case the Contractor will be relieved of its obligations under this deed to the extent specified in the Modification Approval; or
  - (ii) the Contractor may withdraw the proposed Modification if the Contractor, acting reasonably, does not accept any of the conditions attached to the Modification Approval.

**30.3 Modification required as a result of a Change in Law or Change in NSW Government Policy**

- (a) To the extent that any Modification requested by the Contractor is required to ensure that the CSELRVs comply with:
  - (i) a Change in Law; or
  - (ii) a Change in NSW Government Policy directed by TfNSW under clause 36.3(a)(i),

TfNSW must, in its discretion, either:



- (iii) approve the Modification proposed by the Contractor by issuing a Modification Approval;
  - (iv) direct the Contractor to carry out a Modification in accordance with clause 29 (*TfNSW initiated Modifications*) to ensure that the CSELRVs comply with the Change in Law or the Change in NSW Government Policy; or
  - (v) take such other action as TfNSW considers necessary to ensure the CSELRVs comply with the Change in Law or the Change in NSW Government Policy.
- (b) If TfNSW approves or directs a Modification in accordance with clause 30.3(a)(iii) or clause 30.3(a)(iv):
- (i) the Contractor must proceed to implement the Modification on the basis of the Contractor's notice under clause 30.1 (the *Contractor may propose a Modification*) or in accordance with clause 29 (*TfNSW initiated Modifications*); and
  - (ii) if the Modification is required to ensure that the CSELRVs comply with a Compensable Change in Law or a Compensable Change in NSW Government Policy, clauses 26 (*Compensation Events*) and 27 (*Relief Events*) will apply.

**30.4 Contractor to bear risks and costs**

Unless otherwise agreed in writing by TfNSW and subject to clause 30.3(b)(ii), the Contractor will:

- (a) bear all risks and costs associated with a Modification proposed by the Contractor; and
- (b) not be entitled to make any Claim against TfNSW arising out of, or in any way in connection with, a Modification proposed by the Contractor.

**31. [NOT USED]**

**32. TRANSPORT PLANNING**

The Contractor will have no entitlement to make any Claim against TfNSW or the State with respect to any consequence of the State, TfNSW or any Authority exercising, or not exercising, any right or power in relation to the development and implementation of transport planning in New South Wales, except as expressly provided in this deed.

**33. [NOT USED]**

**34. [NOT USED]**

**35. CHANGE IN LAW**

**35.1 Non-compensable changes in law**

Subject to clause 35.2 (*Compensable Change in Law*), the Contractor will be liable for the consequences of, and will have no Claim against TfNSW arising out of or in any way in connection with, a Change in Law.

**35.2 Compensable Change in Law**

Subject to clauses 26 (*Compensation Events*) and 27 (*Relief Events*) and Schedule D4 (*Net Financial Impact*), the Contractor will be entitled to compensation for a Compensable Change in Law.

**35.3 Beneficial Change in Law**

Where there is a Change in Law which results in a positive Net Financial Impact, the Contractor must pay the amount of the Net Financial Impact to TfNSW calculated in accordance with Schedule D4 (*Net Financial Impact*).

**36. NSW GOVERNMENT POLICY****36.1 Contractor to comply with NSW Government Policy**

Subject to clauses 36.2 (the *Contractor to notify of any Change in NSW Government Policy*) and 36.3 (*TfNSW's Direction*), the Contractor must comply with all NSW Government Policies, as published from time to time, which apply to the Contractor's Activities.

**36.2 Contractor to notify of any Change in NSW Government Policy**

The Contractor must, within a reasonable time, notify TfNSW of any Change in NSW Government Policy which applies to the Contractor's Activities.

**36.3 TfNSW's Direction**

- (a) Upon receipt of any notification from the Contractor under clause 36.2 (*Contractor to notify of any Change in NSW Government Policy*), TfNSW may:
  - (i) direct the Contractor to implement the changes required for the Contractor to comply with its obligation under clause 36.1 (*Contractor to comply with NSW Government Policy*); or
  - (ii) direct the Contractor to not implement any changes, despite any Change in NSW Government Policy.
- (b) Without limiting any other provisions within this deed, the Contractor must not implement any changes as a result of the Change in NSW Government Policy, unless directed to do so by TfNSW.

**36.4 Non-compensable changes in NSW Government Policy**

Subject to clause 36.5 (*Compensable Change in NSW Government Policy*), the Contractor will be liable for the consequences of, and will have no Claim against TfNSW arising out of or in any way in connection with, a Change in NSW Government Policy.

**36.5 Compensable Change in NSW Government Policy**

Subject to clauses 17 (*Time*), 26 (*Compensation Events*) and 27 (*Relief Events*) and Schedule D4 (*Net Financial Impact*), where TfNSW has issued a Direction for the Contractor to implement a change under clause 36.3(a)(i), the Contractor will be entitled to compensation for a Compensable Change in NSW Government Policy.

**36.6 Beneficial Change in NSW Government Policy**

Where the Contractor has implemented changes as a result of a Change in NSW Government Policy in accordance with this clause 36 (*NSW Government Policy*) and that change results in a positive Net Financial Impact, the Contractor must pay the amount of the Net Financial Impact to TfNSW calculated in accordance with Schedule D4 (*Net Financial Impact*).

### 37. REINSTATEMENT OF LOSS OR DAMAGE

#### 37.1 Reinstatement

(a) Subject to clauses 26 (*Compensation Events*) and 27 (*Relief Events*), if any part of:

- (i) the CSELRVs; or
- (ii) unfixed goods and materials used or to be used in carrying out the Contractor's Activities,

is lost, damaged or destroyed (including by a Relief Event but without prejudice to the Contractor's right to claim an extension of time to the Delivery Date because of that Relief Event) on or before the Actual Date of Delivery of that CSELRV (or goods and materials), the Contractor must:

- (iii) promptly provide TfNSW's Representative with written notice of any such loss, damage or destruction and any required reinstatement or repair;
- (iv) consult with TfNSW's Representative as to the programming of the works needed to effect the relevant reinstatement or repair;
- (v) promptly reinstate or otherwise make good the loss, or repair the damage, so that the Contractor continues to comply with its obligations under this deed to the greatest extent possible; and
- (vi) keep TfNSW's Representative fully informed of the progress of the reinstatement and repair activities.

(b) To the extent that the loss, damage or destruction arises from any of the following events:

- (i) war or armed conflict in each case occurring within Australia;
- (ii) chemical or biological contamination, ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel in each case occurring in Australia and not caused by the Contractor or its Associates;
- (iii) a breach of any TfNSW Project Agreement by TfNSW (except where caused by the act, breach or wrongful omission of the Contractor or its Associates); or
- (iv) any fraudulent, negligent or other wrongful act or omission of the State, TfNSW, OpCo or their Associates (excluding the Contractor and its Associates),

then TfNSW must pay the Contractor the reasonable cost of carrying out the reinstatement or repair work (to the extent the Insurance Proceeds, if any, are insufficient).

### 37.2 Direction by TfNSW to reinstate to different specifications

Prior to the Actual Date of Delivery for any CSELRV, TfNSW may require the Contractor to reinstate or repair that CSELRV on the basis of different specifications by directing a Modification pursuant to clause 29 (*TfNSW initiated Modifications*). The reinstatement or repair work will only constitute a Modification to the extent that it differs from what would have otherwise been required under this deed. The available Insurance Proceeds will be taken into account in calculating the Net Financial Impact of the Modification.

### 37.3 Damage to third party property

- (a) Without limiting clause 38 (*Indemnity and Liability Exclusions*), but subject to clause 39.12(a), where any damage to or loss or destruction of real or personal property of a third party occurs which arises out of a breach by the Contractor of this deed or a wrongful act or omission of the Contractor, the Contractor must do one of the following (where it has a legal liability to do so):
- (i) promptly repair, replace or reinstate the damage, loss or destruction; or
  - (ii) reasonably compensate the third party.
- (b) If the Contractor fails to carry out the repair, replacement or reinstatement work or pay reasonable compensation within a reasonable time, TfNSW may carry out the repair, replacement or reinstatement work or pay reasonable compensation and any Loss incurred by TfNSW will be a debt due and payable from the Contractor to TfNSW.

## 38. INDEMNITY AND LIABILITY EXCLUSIONS

### 38.1 Indemnity from the Contractor

The Contractor must indemnify TfNSW (including RMS), the State and Other Contractors (**Indemnified Party**) from and against:

- (a) any Loss incurred by an Indemnified Party in respect of:
- (i) damage to, loss or destruction of, or loss of use of (whether total or partial), any real or personal property belonging to an Indemnified Party; or
  - (ii) any claim against an Indemnified Party (including by another Indemnified Party) in respect of:
    - (A) any illness, personal injury to, or death of, any person; or
    - (B) damage to, loss or destruction of, or loss of use of or access to (whether total or partial), any real or personal property, caused by, arising out of, or as a consequence of any act or omission of the Contractor,
- and for the avoidance of doubt, clause 20.2(c) will not reduce the Contractor's liability under the indemnity in this clause 38.1(a);
- (b) any Loss incurred by an Indemnified Party arising out of or in any way in connection with:

- (i) any breach or failure to comply with the terms of this deed by the Contractor; or
- (ii) any fraudulent, negligent or other wrongful act or omission by the Contractor; or
- (c) any Loss incurred by an Indemnified Party in respect of any claim by a Third Party (as defined in the Project Deed) against an Indemnified Party or any liability of an Indemnified Party to a Third Party (as defined in the Project Deed) arising out of, or in any way in connection with:
  - (i) any breach or failure to comply with the terms of this deed by the Contractor; or
  - (ii) any fraudulent, negligent or other wrongful act or omission by the Contractor.

**38.2 Exclusions from indemnity**

The Contractor's liability under clauses 38.1(a), 38.1(b) and 38.1(c) or under any other indemnity given by the Contractor under this deed will be reduced to the extent that the Loss is caused by, arises out of, or in any way in connection with:

- (a) a fraudulent, negligent or other wrongful act or omission of the Indemnified Party or its Associates;
- (b) a breach by TfNSW of its obligations under this deed; or
- (c) a third party claim for pure economic loss arising solely as a result of:
  - (i) the decision by the State or TfNSW to proceed with the SLR; or
  - (ii) the existence or location of the SLR.
- (d) [not used]

**38.3 Exclusion of Consequential or Indirect Loss**

- (a) Subject to clause 38.3(b), but otherwise despite any other provision of this deed, the Contractor has no liability to any Indemnified Party (whether in contract, tort, negligence, under an indemnity or otherwise), nor will any Indemnified Party be entitled to make any Claim against the Contractor, in respect of Consequential or Indirect Loss incurred or sustained by the Indemnified Party as a result of any act or omission of the Contractor (whether negligent or otherwise).
- (b) Clause 38.3(a) does not operate to limit or restrict the Contractor's liability to an Indemnified Party in respect of Consequential or Indirect Loss:
  - (i) to the extent that the Contractor has:
    - (A) recovered from a third party (including any subcontractor and whether by way of indemnity or otherwise); or
    - (B) would have recovered from a third party, had it diligently pursued a claim against the third party provided that the Contractor is not required to pursue such a claim where the cost of doing so would be

disproportionate to the amount reasonably expected to be recovered by the Contractor,

an amount in respect of that liability; and

- (ii) to the extent that the Contractor:
  - (A) is indemnified in respect of that liability by a policy of insurance required under this deed; or
  - (B) would have been indemnified in respect of that liability by a policy of insurance required under this deed if the Contractor had:
    - (aa) diligently pursued a claim under that policy of insurance;
    - (bb) complied with the terms and conditions of that policy or insurance; or
    - (cc) complied with its insurance obligations under this deed;
- (iii) in respect of any liability of an Indemnified Party to a third party (including to another Indemnified Party), except to the extent that the liability to the third party is in respect of Consequential or Indirect Loss arising under a contractual claim;
- (iv) arising from any criminal acts or fraud on the part of the Contractor or an Associate of the Contractor;
- (v) arising from wilful misconduct on the part of the Contractor or an Associate of the Contractor; or
- (vi) to the extent to which, by law, the parties cannot limit or contract out of such liability.

**38.4 Liability for events triggering Service Payment Deductions**

- (a) Subject to clauses 38.4(b), the Contractor will not be liable for any Loss incurred by TfNSW as a result of any breach by the Contractor of any obligation the breach of which results in a liability of OpCo to pay a Service Payment Deduction under the Project Deed.
- (b) Clause 38.4(a) does not affect:
  - (i) the application of any liability to pay a Service Payment Deduction under clause 20.2 (*Defect*); or
  - (ii) the Contractor's liability under clause 38.1(a).

**38.5 Procedure for Third Party Claims**

- (a) In respect of any third party Claim in respect of which TfNSW is indemnified by the Contractor under clause 38.1 (*Indemnity from the Contractor*), subject to clauses 38.5(b) and 38.5(c) TfNSW must, as soon as is reasonably practicable after it becomes aware of the Claim:
  - (i) notify the Contractor of the Claim;

- (ii) give the Contractor at the time of notification the option to conduct the defence of the Claim (at the Contractor's expense); and
  - (iii) provide the Contractor (at the Contractor's expense) with reasonable assistance in conducting the defence of such Claim.
- (b) Clause 38.5(a) does not apply if:
- (i) interlocutory proceedings are commenced against TfNSW on an urgent basis;
  - (ii) TfNSW reasonably considers that there is insufficient time to notify the Contractor and for the Contractor to commence defence of such proceedings on behalf of TfNSW; and
  - (iii) TfNSW initially defends such proceedings,
- in which circumstances, TfNSW will give the Contractor, as soon as practical after commencement of the proceedings, the option to conduct the defence of such proceedings.
- (c) Clause 38.5(a) does not apply to any Claim which would prevent the continued conduct of the Contractor's Activities, in which circumstances TfNSW will notify the Contractor as soon as is reasonably practicable after it becomes aware of the Claim.
- (d) TfNSW will, in respect of any Claim managed by TfNSW:
- (i) give the Contractor prior notice before agreeing to any compromise or settlement of such Claim; and
  - (ii) consult in good faith with the Contractor and obtain the Contractor's written agreement (not to be unreasonably withheld or delayed) prior to agreeing to any such compromise or settlement.
- (e) In respect of any Claim managed by the Contractor, the Contractor will use reasonable endeavours:
- (i) to give TfNSW prior notice before agreeing to any compromise or settlement of such a Claim; and
  - (ii) to consult in good faith with TfNSW prior to agreeing to any such compromise or settlement.

**38.6 Obligations not affected**

- (a) Clause 38.1 (*Indemnity from the Contractor*) does not limit or otherwise affect the Contractor's other obligations under this deed or otherwise according to law.
- (b) The Contractor is not relieved of any obligation to indemnify an Indemnified Party under clause 38.1 (*Indemnity from the Contractor*) by reason of effecting insurance or being an insured party under an insurance policy effected by TfNSW.

### 38.7 Indemnified Parties

- (a) To the extent that the indemnity in clause 38.1 (*Indemnity from the Contractor*) is of Indemnified Parties other than TfNSW, TfNSW has sought and obtained that indemnity as agent on behalf of each Indemnified Party and TfNSW hereby confirms that it has the authority to act as agent on behalf of RMS. TfNSW may also enforce that indemnity as agent on behalf of each Indemnified Party.
- (b) If TfNSW does not have authority to act as agent on behalf of an Indemnified Party other than TfNSW, then TfNSW will be deemed to have sought and obtained that indemnity as trustee for that Indemnified Party and holds the benefit of that indemnity as trustee. TfNSW may also enforce that indemnity as trustee for the benefit of that Indemnified Party.
- (c) If the indemnity in clause 38.1 (*Indemnity from the Contractor*) is unenforceable to the extent that it is expressed to be given in favour of an Indemnified Party other than TfNSW, all references in this clause 38 (*Indemnity and liability exclusions*) to "the Indemnified Party" or "an Indemnified Party" will be read as a reference to "TfNSW" only.

### 38.8 State exclusion

- (a) Despite any other provision of this deed but subject to clauses 4.6 (*Project risks*) and 38.8(b), none of the State, RMS, TfNSW or any Associate of TfNSW has any liability to the Contractor (whether in contract, tort or otherwise), nor will the Contractor be entitled to make any Claim against the State, RMS or TfNSW or any Associate of TfNSW, in respect of Consequential or Indirect Loss incurred or sustained by the Contractor as a result of any act or omission of the State, RMS or TfNSW or any Associate of TfNSW (whether negligent or otherwise).
- (b) Clause 38.8(a) does not operate to limit or restrict the State or TfNSW's liability in respect of Consequential or Indirect Loss:
  - (i) to the extent payable for a Compensation Event or other NFI Event pursuant to Schedule D4 (*Net Financial Impact*);
  - (ii) to the extent included in any interest payable under clause 25.11 (*Interest*);
  - (iii) [not used];
  - (iv) to the extent payable under clauses 28.4 (*Suspension of the Contractor's right to termination*) or 43.6(g) if TfNSW suspends the Contractor's right to terminate;
  - (v) to the extent payable as part of a Termination Payment under clause 43.12 (*Termination Payments*);
  - (vi) [not used];
  - (vii) to the extent that TfNSW, RMS or the State:
    - (A) has recovered from a third party (including any subcontractor and whether by way of indemnity or otherwise); or
    - (B) would have recovered from a third party, had it diligently pursued a claim against the third party provided that none of TfNSW, RMS or



the State is not required to pursue such a claim where the cost of doing so would be disproportionate to the amount reasonably expected to be recovered by TfNSW,

an amount in respect of that liability;

- (viii) to the extent that TfNSW, RMS or the State:
  - (A) is indemnified in respect of that liability by a policy of insurance required under this deed; or
  - (B) would have been indemnified in respect of that liability by a policy of insurance required under this deed if TfNSW had:
    - (aa) complied with the terms and conditions of that policy of insurance; or
    - (bb) complied with its insurance obligations under this deed;
- (ix) arising from any criminal acts or fraud on the part of TfNSW, RMS or the State;
- (x) arising from wilful misconduct on the part of TfNSW, RMS, the State, or an Associate of TfNSW, RMS or the State;
- (xi) to the extent to which, by law, the parties cannot limit or contract out of such liability; or
- (xii) for amounts payable under this deed.

**38A. LIABILITY CAP**

**38A.1 General Liability Cap**

- (a) Subject to this clause 38A (*Liability Cap*), but notwithstanding any other provision of this deed, the Contractor's aggregate liability to TfNSW and to OpCo or any person claiming through them under this deed arising out of, or in any way in connection with this deed, the CSELRVs and the Contractor's Activities whether arising in contract (including Liquidated Damages and liability to reimburse Service Payment Deductions), indemnity, in tort (including negligence), in equity, by operation of law or otherwise, is limited in aggregate to an amount equal to the General Liability Cap.
- (b) The Liquidated Damages Cap is a subset of the General Liability Cap.
- (c) The Service Payment Deductions Cap is a subset of the General Liability Cap.

**38A.2 Exceptions to General Liability Cap**

Nothing in clause 38A.1 (*General Liability Cap*), will limit or exclude the Contractor's liability to TfNSW or to OpCo or anyone claiming through them in respect of:

- (a) liability for any amount which is recovered by the Contractor by making a claim under an insurance policy required to be effected and maintained by the Contractor, or which would have been recovered but for the operation of this clause 38A (*Liability Cap*) or as a result of:

- (i) failure by the Contractor to effect and maintain the relevant policy in accordance with this deed; or
- (ii) a breach by the Contractor of the conditions of the relevant policy;
- (b) liability which is due to any fraud, criminal act or omission or wilful default by the Contractor or its Associates;
- (c) liability arising from abandonment of the Contractor's Activities;
- (d) liability for any statutory fine;
- (e) liability which cannot be limited or excluded at law; or
- (f) liability in respect of any illness, personal injury to, or death of, any person.

**38A.3 Limitation of liability**

- (a) Subject to clause 38A.3(b) but notwithstanding any other provision of this deed, TfNSW waives any right to make any Claim against the Contractor arising out of, or in any way in connection with this deed, the CSELRVs and the Contractor's Activities whether arising in contract (including Liquidated Damages or liability to reimburse Service Payment Deductions), indemnity, in tort (including negligence), in equity, by operation of law or otherwise after the period ending 12 years after the Actual Date of Delivery.
- (b) Nothing in this clause 38A.3 (*Limitation of Liability*) relieves the Contractor from any:
  - (i) liability in relation to any Claim made against the Contractor before the end of the period referred to in clause 38.3A(a); and
  - (ii) liability for any amount which is recovered by the Contractor by making a claim under an insurance policy required by this deed to be effected and maintained by the Contractor.

**39. INSURANCE**

**39.1 Insurance obligations**

- (a) The Contractor must effect and maintain such insurance as would be maintained by a commercially prudent rolling stock manufacturer exercising Good Industry Practice.
- (b) If requested by TfNSW, the Contractor must give TfNSW's Representative details of the insurances it maintains to satisfy its obligation in clause 39.1(a) within 20 Business Days after it receives TfNSW's request.
- (c) If requested by TfNSW, the Contractor will discuss in good faith any amendments to the Contractor's insurances.

39.2 **[Not used]**

39.3 **[Not used]**

39.4 **[Not used]**

39.5 **[Not used]**

39.6 **[Not used]**

39.7 **[Not used]**

39.8 **[Not used]**

39.9 **[Not used]**

39.10 **[Not used]**

39.11 **Contractor's obligations not limited**

The effecting of Insurances does not limit the liabilities or obligations of the Contractor under this deed. The Contractor bears the risk of the Insurances being inadequate to enable the Contractor to fulfil its obligations under this deed.

39.12 **General insurance obligations**

In relation to the subject matter of this deed, the Contractor must:

- (a) not knowingly do or permit, or omit to do, anything which prejudices any Insurance;
- (b) rectify anything which might prejudice any Insurance;
- (c) [not used];
- (d) not cancel, vary or allow any Insurance required to be maintained under this deed to lapse without the prior written consent of TfNSW's Representative;
- (e) immediately notify TfNSW of any fact or circumstance or change in circumstances which may prejudice an Insurance;
- (f) without limiting clause 39.13(a), immediately notify TfNSW's Representative if it receives any claim or notice in connection with an Insurance;
- (g) give full and true particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the Insurance; and
- (h) comply at all times with the terms of each Insurance.

39.13 **Claims under Insurances**

In relation to the subject matter of this deed, in addition to the obligations to notify the insurer under any Insurance, the Contractor must:

- (a) notify TfNSW's Representative of any occurrence of which it is aware that may give rise to a claim (other than a claim by TfNSW or its Associates) under any Insurance other than statutory insurance; and
- (b) keep TfNSW's Representative informed of subsequent developments of which it is aware concerning the claim.
- (c) [not used]
- (d) [not used]
- (e) [not used]

39.14 **[Not used]**

39.15 **[Not used]**

40. **[NOT USED]**

41. **DEFAULT**

41.1 **Contractor Events of Default**

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

- (a) [not used]
- (b) **(failure to progress)**: the Contractor fails to diligently progress the Contractor's Activities as required under clause 17.2(c);
- (c) [not used]
- (d) [not used]
- (e) [not used]
- (f) [not used]
- (g) **(failure to pay)**: Contractor fails to pay an amount that is due under this deed and the failure is not remedied with 10 Business Days of a written demand from TfNSW;
- (h) [not used]
- (i) **(failure to report)**: the Contractor fails to comply with its reporting obligations under this deed or a report from the Contractor contains an inaccuracy which in either case has a material impact on TfNSW or Customers;
- (j) [not used]
- (k) [not used]
- (l) **(lack of or breach of Accreditation)**: the Contractor or any Subcontractor:
  - (i) undertakes any of the Contractor's Activities which require Accreditation without being Accredited to do so; or

- (ii) breaches the terms of its Accreditation in performing Contractor's Activities;
- (m) **(threatened suspension or revocation of the Contractor's Accreditation):** ONRSR notifies the Contractor that:
  - (i) the Contractor must improve a part of the Contractor's Activities to which the Contractor's Accreditation relates and a failure to do so within the time period specified by ONRSR may result in ONRSR suspending or revoking the Contractor's Accreditation;
  - (ii) it proposes to suspend or revoke the Contractor's Accreditation; or
  - (iii) a failure to take action specified by ONRSR within a time period specified by ONRSR may result in ONRSR suspending or revoking the Contractor's Accreditation;
- (n) **(fraud):** TfNSW is the victim of any fraud or dishonest conduct by the Contractor in connection with the SLR PPP or this deed, or the Independent Commission Against Corruption or similar public body determines that the Contractor has engaged in corrupt conduct, collusive pricing or other similar activity;
- (o) **(incorrect representation or warranty):** a representation or warranty made or given by the Contractor in this deed proves to be untrue which has a material adverse effect on Contractor's ability to comply with its obligations under this deed; and
- (p) **(other breach):** any other material breach by the Contractor of an obligation under this deed.
- (q) [not used]
- (r) [not used]

#### 41.2 Default Notice

If a Contractor Event of Default occurs, TfNSW may give the Contractor a notice (the **Default Notice**):

- (a) stating that it is a notice under this clause 41.2 (*Default Notice*); and
- (b) specifying the nature of the Contractor Event of Default.

#### 41.3 Cure Plan

- (a) If:
  - (i) a Default Notice is given; and
  - (ii) the Contractor Event of Default is capable of being Remedied,
 the Contractor must, within 10 Business Days after receipt of the Default Notice:
  - (iii) Remedy the Contractor Event of Default; or
  - (iv) prepare and submit to TfNSW a draft plan describing the actions and measures which the Contractor will diligently pursue to Remedy the

Contractor Event of Default (including the proposed cure period which must be no longer than 6 months) (**Draft Cure Plan**).

- (b) Within 10 Business Days after receipt of the Draft Cure Plan, TfNSW must either:
  - (i) approve the Draft Cure Plan by notifying the Contractor; or
  - (ii) reject the Draft Cure Plan by notifying the Contractor and providing reasons to the Contractor for its rejection.
- (c) If TfNSW approves a Draft Cure Plan pursuant to clause 41.3(b)(i) (**Approved Cure Plan**):
  - (i) the period of time in the Approved Cure Plan to Remedy the Contractor Event of Default or such longer period agreed by the parties is the cure period (**Applicable Cure Period**); and
  - (ii) the Contractor must comply with and implement the Approved Cure Plan (or otherwise diligently pursue the Remediation of the Contractor Event of Default) and Remedy the Contractor Event of Default within the Applicable Cure Period.
- (d) If TfNSW rejects a Draft Cure Plan pursuant to clause 41.3(b)(ii), the Contractor, in consultation in good faith with TfNSW, must amend the Draft Cure Plan to meet TfNSW's reasonable requirements and submit the amended Draft Cure Plan to TfNSW for its approval, in which case this clause 41.3 (*Cure Plan*) will apply to the amended Draft Cure Plan as if it were originally submitted under clause 41.3(a).
- (e) The parties acknowledge and agree that an Applicable Cure Period will not take into account any period of time during which the performance of the relevant obligations by the Contractor is suspended by operation of clause 27.4 (*Relief from obligations*).
- (f) If:
  - (i) a Default Notice is given;
  - (ii) the Contractor Event of Default is capable of being Remedied; and
  - (iii) the Contractor fails to:
    - (A) Remedy the Contractor Event of Default, or submit a Draft Cure Plan, in accordance with clause 41.3(a);
    - (B) if TfNSW rejects a Draft Cure Plan pursuant to clause 41.3(b)(ii), amend the Draft Cure Plan to meet TfNSW's requirements and submit the amended Draft Cure Plan in accordance with clause 41.3(d); or
    - (C) comply with and implement the Approved Cure Plan (or otherwise diligently pursue the Remediation of the Contractor Event of Default),

and such failure is not Remedied by the Contractor within 5 Business Days of notice from TfNSW regarding that failure, a Contractor Termination Event will occur.
- (g) If at any time prior to the expiry of an Applicable Cure Period the Contractor reasonably considers that it requires an extension to the Applicable Cure Period it

may request an extension to the Applicable Cure Period by notifying TfNSW in writing setting out the reasons for that belief and the reasonable period of time proposed by the Contractor for the extension of the Applicable Cure Period.

- (h) If:
- (i) the Contractor gives TfNSW a notice under clause 41.3(g); and
  - (ii) TfNSW is reasonably satisfied that Contractor has diligently pursued and is continuing to diligently pursue a Remedy of the applicable the Contractor Event of Default but that the Contractor Event of Default cannot, despite such diligence, be Remedied within the Applicable Cure Period,

TfNSW must, subject to clause 41.3(i), not unreasonably refuse to grant an extension of the Applicable Cure Period for such period as TfNSW considers is reasonably required to Remedy the Contractor Event of Default, provided that TfNSW is not required to grant more than one extension to an Applicable Cure Period.

- (i) Any Applicable Cure Period agreed under clause 41.3(c)(i), including any extension granted to the Contractor under clause 41.3(h), must not exceed 6 months and TfNSW may, in its complete discretion, refuse to grant an extension under clause 41.3(h) if the grant will result in an extension to the Applicable Cure Period that is beyond 6 months.

#### 41.4 **Prevention Plan**

- (a) If:
- (i) a Default Notice is given; and
  - (ii) the Contractor Event of Default is not capable of being Remedied,
- the Contractor must, within 10 Business Days after receipt of the Default Notice prepare and submit to TfNSW a draft plan describing the actions and measures which the Contractor will diligently pursue to prevent the Contractor Event of Default from recurring (**Draft Prevention Plan**).
- (b) Within 10 Business Days after receipt of the Draft Prevention Plan, TfNSW must either:
- (i) approve the Draft Prevention Plan by notifying the Contractor; or
  - (ii) reject the Draft Prevention Plan by notifying the Contractor and providing reasons to the Contractor for its rejection.
- (c) If TfNSW approves a Draft Prevention Plan pursuant to clause 41.4(b)(i) (**Approved Prevention Plan**), the Contractor must comply with and implement the Approved Prevention Plan.
- (d) If TfNSW rejects a Draft Prevention Plan pursuant to clause 41.4(b)(ii), the Contractor, in consultation in good faith with TfNSW, must amend the Draft Prevention Plan to meet TfNSW's reasonable requirements and submit the amended Draft Prevention Plan to TfNSW for its approval, in which case this clause 41.4 (*Prevention Plan*) will apply to the amended Draft Prevention Plan as if it were originally submitted under clause 41.4(a).

- (e) If:
  - (i) a Default Notice is given;
  - (ii) the Contractor Event of Default is not capable of being Remedied; and
  - (iii) the Contractor fails to:
    - (A) submit a Draft Prevention Plan in accordance with clause 41.4(a);
    - (B) if TfNSW rejects a Draft Prevention Plan pursuant to clause 41.4(b)(ii), amend the Draft Prevention Plan to meet TfNSW's requirements and submit the amended Draft Prevention Plan in accordance with clause 41.4(d); or
    - (C) comply with and implement the Approved Prevention Plan,

and such failure is not remedied by the Contractor within 5 Business Days of notice from TfNSW regarding that failure, a Contractor Termination Event will occur.

41.5 [Not used]

41.6 [Not used]

## 42. STEP-IN

### 42.1 Step-in Events

Each of the following is a Step-in Event:

- (a) a Contractor Termination Event; and
- (b) an event or circumstance which arises out of or in connection with the Contractor's Activities or the SLR PPP that poses a serious threat to, or causes or will cause material damage or material disruption to:
  - (i) the health or safety of persons;
  - (ii) the Environment;
  - (iii) any property; or
  - (iv) the safe and secure performance of the Contractor's Activities.

### 42.2 Step-in Rights

- (a) If:
  - (i) a Step-in Event occurs; and
  - (ii) TfNSW has given notice to the Contractor in accordance with clause 42.2(b),

then a Step-in Party may exercise all or any of the Step-in Powers set out in clause 42.3 (*Step-in Powers*) in an endeavour to remedy the Step-in Event or overcome the risk or mitigate any consequences resulting from the Step-in Event (**Step-in Right**).



- (b) The notice referred to in clause 42.2(a)(ii) must be in writing and must specify:
  - (i) the Step-in Event which has triggered the Step-in Right;
  - (ii) the CSELRV Performance Tests and other testing and commissioning activities which TfNSW proposes the Step-in Party will perform;
  - (iii) the date on which the relevant Step-in Party proposes to commence performing the relevant CSELRV Performance Tests and other testing and commissioning activities; and
  - (iv) the date on which, if any, the relevant Step-in Party proposes to cease performing the relevant CSELRV Performance Tests and other testing and commissioning activities.
- (c) The Step-in Right is without prejudice to TfNSW's other rights in respect of a Step-in Event, including its rights under clause 43 (*Termination*).

**42.3 Step-in Powers**

A Step-in Party may, in performing the CSELRV Performance Tests and other testing and commissioning activities referred to in the notice under clause 42.2(b), do anything in respect of those activities that the Contractor could do including:

- (a) [not used];
- (b) [not used];
- (c) exercise all or any of Contractor's rights, and perform all or any of Contractor's obligations:
  - (i) in connection with the performance of the CSELRV Performance Tests and other testing and commissioning activities;
  - (ii) [not used]; and
  - (iii) under or in relation to any Accreditation or other Approval held by the Contractor,

as if it were the Contractor, to the exclusion of the Contractor;
- (d) do anything the Step-in Party considers necessary or desirable to remedy the Step-in Event or overcome the risk or mitigate any consequences resulting from the Step-in Event; and
- (e) do anything incidental to the matters listed in paragraphs (a) to (d),

**(Step-in Powers).**

**42.4 Contractor's obligations**

- (a) The Contractor must:
  - (i) cooperate with the Step-in Party in the exercise of the Step-in Powers;

- (ii) assist the Step-in Party to enable the Step-in Party to perform all or any of the Contractor's obligations under or in relation to any Accreditation or other Approval held by the Contractor;
  - (iii) take any step which the Step-in Party considers necessary or desirable to remedy the Step-in Event or overcome the risk or mitigate any consequences resulting from the Step-in Event; and
  - (iv) ensure that the Subcontractors do likewise.
- (b) Without limiting clause 42.4(a), the Contractor must:
- (i) allow the Step-in Party to access and use:
    - (A) all or any of the land and assets used in the performance of the Contractor's Activities;
    - (B) its Staff; and
    - (C) any information the Step-in Party reasonably requires;
  - (ii) to the extent necessary, procure any consents to disclose Personal Information to the Step-in Party;
  - (iii) assist the Step-in Party in dealing with ONRSR in relation to any Accreditation issues;
  - (iv) comply with all reasonable directions given by the Step-in Party; and
  - (v) ensure that the Subcontractors do likewise,
- to enable the Step-in Party to exercise its Step-in Powers.
- (c) The Contractor irrevocably appoints TfNSW as its attorney with full power to exercise the Step-in Powers (or to delegate the exercise of the Step-in Powers to another Step-in Party).
  - (d) The Contractor's obligations under this deed will be suspended to the extent and for such period as is necessary to permit TfNSW to exercise its Step-in Rights.
  - (e) The Contractor acknowledges that a Step-in Party is not under any obligation to remedy the Step-in Event nor to overcome the risk or mitigate any consequences resulting from the Step-in Event.

#### 42.5 TfNSW's obligations

TfNSW must ensure that each Step-in Party, in exercising the Step-in Powers, uses its reasonable endeavours to perform the Contractor's Activities in accordance with the requirements of this deed.

**42.6 [Not used]****42.7 No liability**

The Contractor acknowledges that TfNSW will have no liability to the Contractor, and the Contractor will not be entitled to make any Claim against TfNSW, arising out of or in connection with:

(a) any conduct, delay, negligence or breach of duty in the exercise or non-exercise of a Step-in Power; nor

(b) for any Loss which results,

except where it arises from:

(c) fraud, wilful default or gross negligence on the part of the Step-in Party or its Associates;

(d) a Compensation Event; or

(e) a Relief Event.

**42.8 Step-out**

(a) A Step-in Party must cease to exercise the Step-in Powers as soon as reasonably practicable and, in any event, upon the earlier of:

(i) the relevant Step-in Event being remedied (or the risk or consequences resulting from the Step-in Event being overcome) to the satisfaction of TfNSW; and

(ii) TfNSW's Representative notifying the Contractor in writing that the Step-in Party will no longer exercise the Step-in Powers.

(b) TfNSW must give written notice to the Contractor of the date on which the Step-in Party will cease to exercise the Step-in Powers (which notice must be given by TfNSW to the Contractor at least 5 Business Days prior to the date the Step-in Party propose ceases to exercise the Step-in Powers).

(c) TfNSW and the Contractor must consult with each other with the intention of ensuring that the transition from the Step-in Party ceasing to exercise the Step-in Powers to the Contractor resuming the performance of the relevant the Contractor Activities is effected without interruption to the Contractor's Activities.

(d) Upon the Step-in Party ceasing to exercise the Step-in Powers, the Contractor must resume the performance of relevant the Contractor's Activities in accordance with this deed (unless this deed has been terminated).

**43. TERMINATION****43.1 Contractor Termination Events**

Each of the following events is a Contractor Termination Event:

(a) [not used];

- (b) [not used];
- (c) [not used];
- (d) [not used];
- (e) [not used];
- (f) [not used];
- (g) **(failure to Remedy)**: a failure by the Contractor to Remedy a Contractor Event of Default which is capable of being Remedied within the Applicable Cure Period;
- (h) **(failure to prevent)**: a failure by the Contractor to prevent the recurrence of a the Contractor Event of Default which is the subject of an Approved Prevention Plan;
- (i) **(failure to submit, amend or implement cure/prevention plan)**: an event described in clause 41.3(f) or 41.4(e);
- (j) **(failure to achieve Delivery of any CSELRV by applicable Longstop Date)**: the Contractor has not achieved Delivery of any CSELRV (as certified by the Independent Certifier), by the applicable Longstop Date;
- (k) **(abandonment)**: the Contractor abandons the Contractor's Activities;
- (l) **(insolvency of Contractor)**: an Insolvency Event occurs in relation to the Contractor, whether or not the Contractor has been in breach of this deed;
- (m) **(suspension or revocation of Accreditation)**: ONRSR suspends (other than a suspension not exceeding 6 weeks under section 74 of the Rail Safety National Law) or revokes any Accreditation required by the Contractor to perform the Contractor's Activities;
- (n) [not used]
- (o) **(insolvency of contractor or guarantor)**: an Insolvency Event occurs in relation to the Guarantor whether or not the Contractor is then in breach of this deed, and the Contractor has not provided TfNSW with a new Guarantee executed by a replacement Guarantor acceptable to TfNSW within 60 Business Days of the Insolvency Event;
- (p) **(failure to insure)**: the Contractor does not effect and maintain (or cause to be effected and maintained) an insurance as required by this deed, and fails to do so within 10 Business Days after receipt of a notice from TfNSW directing it to do so;
- (q) **(assignment etc)**: the Contractor breaches its obligations under clause 52.2(b);
- (r) **(restriction on Change in Control of Contractor)**: the Contractor breaches its obligations under clause 53.3 (*Change in Control of the Contractor*);
- (s) [not used]
- (t) [not used];
- (u) **(Illegality Event)**: the occurrence of any of the following events:

- (i) the Contractor ceases to hold an Approval or breaches a law, and such failure or breach is, in the reasonable opinion of TfNSW, material to the performance of the Contractor's obligations under this deed and is not Remedied within 30 days of the earlier of:
  - (A) the date on which TfNSW notifies Contractor of the failure or breach; or
  - (B) the date on which Contractor becomes aware of the failure or breach;
- (ii) either this deed or the Guarantee:
  - (A) ceasing to be legal, valid and binding and enforceable against the Contractor or the Guarantor; or
  - (B) becoming invalid, void or voidable in any material respect other than where TfNSW has caused it to be invalid, void or voidable,and, where the event is capable of being Remedied, the event is not Remedied within 30 days of the relevant event occurring; or
- (iii) it is or becomes unlawful for the Contractor to perform any of its obligations under this deed or the Guarantor to perform any of its obligations under the Guarantee, and such event is not Remedied within 30 days of the relevant event occurring;
- (v) **(Liquidated Damages Cap)**: the aggregate liability of the Contractor for Liquidated Damages (or general damages under clause 19.15(d)), reaches the Liquidated Damages Cap;
- (w) **(Liability cap)**: the aggregate liability of the Contractor to TfNSW reaches either:
  - (i) [REDACTED] of General Liability Cap and the Contractor does not elect to increase the General Liability Cap to a maximum of [REDACTED] of the original General Liability Cap within 5 Business Days of receipt of a notice from TfNSW that the aggregate liability has reached [REDACTED] of the General Liability Cap; or
  - (ii) [REDACTED] of the revised General Liability Cap following the Contractor's election in accordance with clause 43.1(w)(i) to increase the original General Liability Cap; or
- (x) **(failure to provide security)**: the Contractor fails to provide or replace any Bond in accordance with this deed by the date which is 5 Business Days after receipt by the Contractor of a written notice from TfNSW directing the Contractor to provide or replace such Bond.

#### 43.2 Notice of Contractor Termination Event

Without limiting TfNSW's other rights or the Contractor's other obligations under this deed, the Contractor must notify TfNSW's Representative immediately upon becoming aware of a Contractor Termination Event or an event or occurrence that, with the giving of notice, or lapse of time, would or is likely to become a Contractor Termination Event.

#### 43.3 TfNSW action following Contractor Termination Event

Without limiting TfNSW's other rights and remedies under this deed, if a Contractor Termination Event has occurred and is subsisting, TfNSW may take any action it considers appropriate or necessary to:

- (a) overcome the effects of the Contractor Termination Event; or
- (b) preserve the CSELRVs.

The amount of any Loss incurred by TfNSW in taking such action will be a debt due and payable from the Contractor to TfNSW.

#### 43.4 Termination for Contractor Termination Event

If a Contractor Termination Event has occurred, TfNSW may give a written notice to the Contractor immediately terminating this deed. The notice must set out details of the Contractor Termination Event for which TfNSW is giving the notice.

#### 43.5 TfNSW Termination Events

Each of following events is a TfNSW Termination Event:

- (a) **(Failure to pay)**: TfNSW fails to comply with its payment obligations under clause 25 (*Payment provisions*) and the failure is not remedied within 20 Business Days of a written demand from the Contractor, provided that an amount disputed bona fide under clause 25.10 (*Correction of payment schedules*) is not to be taken into account for the purposes of this clause 43.5(a);
- (b) [not used]; or
- (c) **(Frustration)**: a breach by TfNSW of this deed which substantially frustrates or renders it impossible for the Contractor to achieve Delivery or comply with a material part of its obligation under this deed for a continuous period of 2 months.

#### 43.6 Termination for TfNSW Termination Event

- (a) If a TfNSW Termination Event occurs, the Contractor may give TfNSW 30 Business Days' notice of its intention to terminate this deed.
- (b) If the Contractor gives a notice under clause 43.6(a), TfNSW may suspend the Contractor's right to terminate by giving a suspension notice within 30 Business Days of receipt of the Contractor's notice under clause 43.6(a).
- (c) TfNSW's suspension of the Contractor's right to terminate expires on the earliest of:
  - (i) TfNSW notifying the Contractor in writing that it is ending the suspension period;
  - (ii) in the case of the TfNSW Termination Event referred to in clause 43.5(a), 30 Business Days after the date of the Contractor's notice under clause 43.6(a);
  - (iii) in the case of any other TfNSW Termination Event, 6 months after the date of the Contractor's notice under clause 43.6(a); and

- (iv) when the relevant TfNSW Termination Event has been remedied (or its effects overcome).
- (d) If TfNSW's suspension of the Contractor's right to terminate expires:
  - (i) under clause 43.6(c)(i), 43.6(c)(ii) or 43.6(c)(iii) and the TfNSW Termination Event has not been Remedied, the Contractor may immediately terminate this deed by notice to TfNSW; and
  - (ii) under clause 43.6(c)(iv), this deed will continue in force.
- (e) The Contractor must continue to perform its obligations under this deed while its right to terminate is suspended, to the extent that it is lawful and practicable to do so.
- (f) If TfNSW does not give a suspension notice under clause 43.6(b) and the relevant TfNSW Termination Event has not been remedied (or its effects overcome) within 30 Business Days of receipt of the Contractor's notice under clause 43.6(a), the Contractor may, if the TfNSW Termination Event is still subsisting, immediately terminate this deed by notice to TfNSW.
- (g) If TfNSW issues a notice to the Contractor under clause 43.6(b) TfNSW must pay the Contractor monthly an amount sufficient to place the Contractor in the net after tax position it would have been in had the relevant TfNSW Termination Event not occurred, from the date TfNSW issues a notice under clause 43.6(b) until the end of the period of suspension.
- (h) TfNSW will not be entitled to give any notice under clause 41.2 (*Default Notice*) or 43.4 (*Termination for Contractor Termination Event*) to the extent the occurrence or circumstance which would otherwise entitle TfNSW to give such a notice results from the relevant TfNSW Termination Event.

**43.7 Voluntary termination by TfNSW**

TfNSW may:

- (a) at any time for its sole convenience and without giving reasons terminate this deed by written notice to the Contractor with effect from the date stated in the notice (which date must not precede the date the notice is received by the Contractor); and
- (b) thereafter either itself or by third parties carry out the CSELRV Performance Tests and other testing and commissioning activities (if TfNSW elects to do so).

**43.8 Termination for Force Majeure Event**

Either party may terminate this deed pursuant to clause 28.3 (*Termination for Force Majeure Event*).

43.9 **[Not used]**

43.10 **[Not used]**

43.11 **Consequences of termination**

Upon expiry or termination of this deed, the rights and obligations of the parties under this deed will cease except for:

- (a) any accrued rights and obligations under this deed, including those arising out of the termination of this deed; and
- (b) any rights and obligations which expressly or impliedly continue after termination of this deed, including those referred to in clause 62.6 (*Survival of certain provisions; no merger*).

43.12 **Termination Payments**

- (a) If this deed is terminated under this clause 43 (*Termination*) or clause 28.3 (*Termination for Force Majeure Event*), TfNSW must pay or procure the payment to the Contractor of, or the Contractor must pay TfNSW (as the case may be), the amounts determined in accordance with Schedule D6 (*Termination payments*).
- (b) In the calculation of Termination Payments under Schedule D6 (*Termination payments*), there will not be any double counting of any amount payable, whether such amounts are referred to in Schedule D6 (*Termination payments*) or elsewhere in this deed.
- (c) If this deed is terminated as a result of a TfNSW Termination Event or a breach by TfNSW:
  - (i) payment of the relevant Termination Payment will be full and final settlement of any Claim which the Contractor has against TfNSW arising out of that breach and/or the termination of this deed; and
  - (ii) the Contractor will not be entitled to pursue a claim of restitution of any kind, including a claim of unjust enrichment or quantum meruit.

43.13 **No other termination rights**

Despite any rule of law or equity to the contrary, this deed may not be terminated other than as provided for in this deed.

43.14 **[Not used]**

43.15 **[Not used]**

44. **TRANSITION ON TERMINATION OR STEP-IN**

44.1 **Termination obligations**

On early termination of this deed, the Contractor must:

- (a) transfer all of the Contractor's rights, title and interest (if any) in the CSELRVs (including any CSELRVs that are partly completed), the Spares and the Special



Tools and Equipment to TfNSW or TfNSW's nominee free from any Security Interests;

- (b) deliver to TfNSW's nominee all and any documents and information concerning the Contractor's Activities which is required for the efficient transfer of responsibility for their performance, including:
  - (i) the Contractor's Documentation;
  - (ii) all TfNSW Data;
  - (iii) any documentation or programs required to be provided under Schedule A5 (*Intellectual Property*); and
  - (iv) any other documentation specified in the SPR;
- (c) procure the novation to TfNSW or its nominee of, any Subcontract relating to the Contractor's Activities which TfNSW may nominate (in its absolute discretion), with effect from termination of this deed or such other date as TfNSW may agree.

44.2 **[Not used]**

44.3 **[Not used]**

44.4 **Continuity of Contractor's Activities**

The Contractor must manage, perform and maintain the Contractor's Activities in a way that an appropriately qualified and resourced Step-in Party is able at any time to immediately take over the performance of the Contractor's Activities without interruption.

44.5 **[Not used]**

44.6 **Assistance in securing continuity**

- (a) The Contractor must do everything, both before and after the termination of this deed, as TfNSW may reasonably require to assist and advise any Step-in Party, in performing the CSELRV Performance Tests and other testing and commissioning activities, including the provision of:
  - (i) information and records related to the performance of the CSELRV Performance Tests and other testing and commissioning activities (excluding Commercially Sensitive Information); and
  - (ii) training sessions to any person nominated by TfNSW in relation to the performance of the CSELRV Performance Tests and other testing and commissioning activities.
- (b) Where the Contractor is required to provide the training sessions contemplated under clause 44.6(a)(ii) after the expiry or termination of the Term, TfNSW will pay the Contractor its reasonable costs of doing so, as agreed between the parties.

44.7 [Not used]

44.8 [Not used]

44.9 [Not used]

44.10 [Not used]

44.11 [Not used]

**45. ACCESS, INSPECTIONS AND AUDITS**

**45.1 TfNSW's right of entry**

- (a) TfNSW (and any person authorised by TfNSW) may, at any time, enter the SLR Site and any other premises where the Contractor's Activities are being carried out for the purpose of:
  - (i) observing or inspecting the Contractor's Activities;
  - (ii) monitoring compliance by the Contractor with its obligations under this deed; or
  - (iii) exercising any right or performing any obligation which TfNSW has under the Deed.
- (b) The Contractor must use reasonable endeavours to:
  - (i) coordinate the Contractor's Activities so they do not interfere with the exercise by TfNSW of its right of entry; and
  - (ii) provide TfNSW with every reasonable facility and other assistance necessary for any inspection by TfNSW, including providing access to any relevant systems, registers, manuals, records (including financial records), plans and programs.
- (c) If an inspection shows that the Contractor has not complied or is not complying with its obligations under this deed, TfNSW's Representative:
  - (i) may notify the Contractor of the details of the non-compliance;
  - (ii) will specify a reasonable period within which the Contractor must carry out appropriate rectification and/or remedy activities; and
  - (iii) will be entitled to be reimbursed by the Contractor for the reasonable costs of the inspection including any reasonable administrative costs incurred by TfNSW in relation to the inspection.
- (d) Where, in accordance with clause 45.1(a), TfNSW (or any person authorised by TfNSW) enters any premises where the Contractor's Activities are being carried out, TfNSW must (or must procure that any person authorised by TfNSW) comply with:
  - (i) [not used]

- (ii) any reasonable site safety and security requirements as advised by the Contractor.

#### 45.2 Access to information

Without limiting any other provision of this deed:

- (a) TfNSW may at any time notify the Contractor that it requires access to any information held by the Contractor or the Subcontractors which relates to the Contractor's Activities;
- (b) upon receipt of a notice under clause 45.2(a), the Contractor must immediately provide TfNSW (and any person authorised by TfNSW) with access to, or a copy of, the required information, except to the extent that the information is subject to legal professional privilege; and
- (c) TfNSW (and any person authorised by TfNSW) may review, copy, retain or otherwise deal with such information.

#### 45.3 Access to third parties' information

The Contractor must:

- (a) ensure that TfNSW (and any person authorised by TfNSW) has direct access to any information, documents or material that:
  - (i) is maintained by a third party (including the Contractor's Associates); and
  - (ii) TfNSW is entitled to have access to, or have copies of, from the Contractor under this deed;
- (b) ensure that any contractual arrangements between the Contractor or the Subcontractors and any third parties acknowledge TfNSW's right of access under clause 45.3(a); and
- (c) on demand, provide to TfNSW written evidence (including copies of any contractual arrangements referred to in clause 45.3(b)) showing compliance by the Contractor with its obligations under clause 45.3(b).

#### 45.4 Contractor to cooperate

The Contractor must cooperate, and must ensure that the Subcontractors cooperate, with TfNSW and any persons authorised by TfNSW in the exercise of TfNSW's rights under this clause 45 (*Access, inspections and audits*).

### 46. RECORDS, REPORTING OBLIGATIONS AND PRIVACY

#### 46.1 Records

- (a) The Contractor must keep appropriate books of account, records, documentation and systems which evidence its performance of the Contractor's Activities and its compliance with this deed.
- (b) The Contractor must ensure its books of account, records, documentation and systems are available to TfNSW in accordance with clause 45.2 (*Access to information*).

**46.2 Financial reporting**

- (a) Not later than 4 months after the end of each financial year, the Contractor must give TfNSW its audited financial statements for the previous financial year.
- (b) Each of the documents to be provided to TfNSW in accordance with this clause 46.2 (*Financial reporting*) must be accompanied by a certificate signed by two authorised officers of the relevant entity certifying that the information provided is accurate, complete and correct in all respects.
- (c) The Contractor must prepare (or procure the preparation of) the accounts and financial statements required under this clause 46.2 (*Financial reporting*) in compliance with law and, without limitation, in accordance with the accounting principles generally accepted in Australia and consistently applied.

**46.3 Project reporting**

Without limiting the Contractor's other reporting obligations under this deed, Contractor must provide the following reports during the Delivery Phase:

- (a) the Delivery Phase Reports;
- (b) Test Reports in accordance with clause 18.5 (*Test Reports*);
- (c) an Intellectual Property report under clause 19.10 (*Final Completion*);
- (d) a report on the effects of the Contractor's Activities as described in section 4.3 of the SPR;
- (e) [not used];
- (f) [not used];
- (g) [not used];
- (h) [not used];
- (i) [not used];
- (j) [not used];
- (k) [not used];
- (l) [not used]; and
- (m) during the Delivery Phase, written reports of all work health, safety and rehabilitation matters under clause 9.4(f).

46.4 **[Not used]**

46.5 **[Not used]**

46.6 **[Not used]**

46.7 **[Not used]**

46.8 **Other information**

The Contractor must promptly give TfNSW such other information relating to the Contractor's Activities as TfNSW may reasonably require from time to time.

46.9 **Retention of records**

The Contractor must retain all records in relation to the Contractor's Activities:

- (a) until they are delivered to TfNSW pursuant to clause 44.1(b); or
- (b) if not so delivered to TfNSW, for at least 7 years after Final Completion.

46.10 **Privacy**

- (a) **(Definitions):** In this clause **Privacy Obligations** means:
  - (i) while the PPIPA is in force, obligations imposed on public sector agencies under the PPIPA; and
  - (ii) if the PPIPA is repealed, obligations imposed on Authorities and private sector organisations by any Commonwealth or New South Wales legislation that replaces the PPIPA in whole or in part.
- (b) **(PPIPA):** The Contractor acknowledges that:
  - (i) under this deed it is providing "data services" as that term is defined in the PPIPA; and
  - (ii) it is a "public sector agency" as that term is defined in the PPIPA.
- (c) **(Compliance with Privacy Obligations and privacy plans):** The Contractor must:
  - (i) comply with the Privacy Obligations and the Contractor's Privacy Plan; and
  - (ii) provide all reasonable assistance to enable TfNSW to comply with the Privacy Obligations.
- (d) **(Personal Information):** Without limiting clause 46.10(c), the Contractor must ensure that Personal Information is collected, used, disclosed and handled by it in accordance with the Contractor's Privacy Plan and this deed.
- (e) [not used]
- (f) [not used]
- (g) [not used]

- (h) [not used]
- (i) [not used]
- (j) **(Audit):** TfNSW may require the Contractor and the Subcontractors to have their privacy procedures audited by a qualified nationally recognised firm. The Contractor and the Subcontractors must take such action as is reasonable to comply with any exceptions or discrepancies discovered by any such audit.

**47. DISCLOSURE, CONFIDENTIALITY AND PUBLICITY**

**47.1 Disclosure by TfNSW**

- (a) TfNSW may publish or disclose (on the internet or otherwise):
  - (i) the terms and conditions of this deed or the Guarantee; and
  - (ii) any document or information arising under, out of or in connection with this deed or the Guarantee or relating to the performance of this deed or the Guarantee,

provided TfNSW redacts any Commercially Sensitive Information.

- (b) Despite the provisions of clauses 47.1(a) and 47.2(b), TfNSW may disclose, or require the Contractor to disclose in any form and at times TfNSW considers appropriate, any of the following information, and whether or not the information is Commercially Sensitive Information:

- (i) any information reasonably required in connection with the re-tendering or contracting of all or part of the SLR PPP, provided that the information may only be published during the period of, or during the period leading up to, the re-tendering or contracting;
- (ii) any information reasonably required in connection with any Modification, variation under this deed or the Project Deed, or proposed Modification or variation under this deed or the Project Deed, of the SLR; or
- (iii) any information TfNSW reasonably considers necessary at or around the expiry or termination of this deed in order to secure the continuity of services on the SLR,

provided that:

- (iv) such information shall not include pricing information which is specific to the Contractor or its subcontractors; and
- (v) TfNSW shall ensure that any party to which the information is disclosed is required to comply with appropriate confidentiality requirements.

**47.2 Confidentiality**

- (a) Subject to clause 47.2(c), the Contractor must:
  - (i) keep confidential this deed and information relating to the CSELRVs, the SLR PPP, the Contractor's Activities and any discussions concerning this deed; and

- (ii) ensure that each of its Associates comply with the terms of clause 47.2(a)(i).
- (b) TfNSW must keep confidential the Commercially Sensitive Information.
- (c) Neither party is obliged to keep confidential any information:
  - (i) which is in the public domain through no fault of the disclosing party; or
  - (ii) the disclosure of which is:
    - (A) required by law;
    - (B) required by any recognised stock exchange or a New South Wales or Commonwealth regulator;
    - (C) given with the written consent of the discloser;
    - (D) given to a court in the course of proceedings to which the Contractor is a party; or
    - (E) in the case of TfNSW, required by a House of Parliament, a Committee of a House of Parliament or for any legitimate government purpose.
- (d) If TfNSW requires the Contractor to provide a confidentiality deed in favour of a third party in respect of any of that third party's confidential information that is provided to the Contractor, then the Contractor must execute such a confidentiality deed in the form reasonably specified by TfNSW.
- (e) The Contractor may disclose the information referred to in clause 47.2(a)(i) to its Associates to the extent necessary for the purpose of undertaking its obligations under this deed.
- (f) Before disclosing any information referred to in clause 47.2(a)(i), the Contractor must ensure that the person to whom the information is disclosed enters into a confidentiality deed with the Contractor on terms reasonably acceptable to TfNSW.

#### 47.3 Public Disclosure Obligations

- (a) The Contractor acknowledges and agrees that disclosures regarding the SLR PPP by TfNSW, the State or any Authority may be required:
  - (i) under law, including the *Government Information (Public Access) Act 2009* (NSW) or any similar or replacement legislation; and
  - (ii) to satisfy the disclosure requirements of the Auditor General and to satisfy the requirements of Parliamentary accountability,

**(Public Disclosure Obligations).**
- (b) The Contractor must use all reasonable endeavours to assist TfNSW, the State or an Authority in meeting their Public Disclosure Obligations in connection with the subject matter of this deed.

**47.4 Publicity**

Except for notices which the Contractor is required to disclose to any recognised stock exchange, the Contractor must:

- (a) not make any public announcements or statements in relation to this deed or its subject matter (including by posting any information relating to the SLR PPP on any website) without TfNSW's prior consent;
- (b) give TfNSW a draft of any proposed media release relating to this deed or its subject matter and obtain TfNSW's approval of the media release before distributing it;
- (c) prior to release, revise the wording and timing of all media releases, public announcements and statements by the Contractor or its Associates relating to the SLR as requested by TfNSW; and
- (d) ensure that its Associates comply with the requirements referred to in this clause 47.4 (*Publicity*).

**48. INTELLECTUAL PROPERTY**

The parties' rights and obligations in relation to Intellectual Property are set out in Schedule A5 (*Intellectual Property*).



49. **[NOT USED]**

50. **[NOT USED]**

51. **OWNERSHIP OF ASSETS AND LICENCES TO USE**

51.1 **Fixtures**

All fixtures affixed to the SLR Site will be owned by TfNSW from the time they are affixed.

51.2 **CSELRVs, Spares etc Title Transfer**

Title to each CSELRV (including any CSELRVs that are partly completed) and to Spares and Special Tools and Equipment, or any part of them, shall pass to TfNSW upon payment under clause 25 (*Payment provisions*) for that item of CSELRV, Spares or Special Tools and Equipment or part of them. The Contractor must ensure that title passes free from any Security Interests.

51.3 **Risk in CSELRVs, Spares etc**

Risk in the CSELRVs, Spares and Special Tools and Equipment will pass from the Contractor to TfNSW upon Delivery.

51.4 **Moveable Asset register**

The Contractor must maintain a register of all Moveable Assets and provide it to TfNSW upon request.

51.5 **[Not used]**

52. **RESTRICTIONS**

52.1 **[Not used]**

52.2 **Restrictions on assignment**

- (a) **(TfNSW):** TfNSW may assign, novate, transfer or otherwise deal with its rights or obligations under this deed or the Guarantee without the Contractor's prior approval, provided the transferee is a Qualifying Nominee.
- (b) **(Contractor):** Except as expressly permitted by this deed, the Contractor must not assign, novate, transfer, mortgage, charge or otherwise deal with its rights or obligations under this deed, without TfNSW's prior approval.

52.3 **[Not used]**

52.4 **Restrictions on dealings with CSELRVs**

The Contractor must not:

- (a) create, permit or suffer any Security Interest over;
- (b) lease, licence, transfer, sell, part with possession of, or otherwise deal with; or
- (c) operate or use, or permit any other person to operate or use,

the CSELRVs, except as expressly permitted by this deed or approved by TfNSW.

52.5 [Not used]

52.6 [Not used]

52.7 [Not used]

52.8 [Not used]

52.9 [Not used]

53. **CHANGE OF OWNERSHIP / CONTROL**

53.1 [Not used]

53.2 [Not used]

53.3 **Change in Control of the Contractor**

- (a) **(No change without consent):** Subject to clause 53.3(c), the Contractor must not permit a Change in Control of the Contractor without TfNSW's prior written consent (which must not be unreasonably withheld).
- (b) **(Details to be provided):** The Contractor must provide to TfNSW full details of the proposed Change in Control and any further information requested by TfNSW.
- (c) **(Exceptions):** TfNSW's approval is not required for a Change in Control arising from:
  - (i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange;
  - (ii) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the Contractor gives TfNSW prior written notice of the transfer; or
  - (iii) a Permitted Change in Control, provided the Contractor gives TfNSW prior written notice.

- (d) **(When consent must be given):** TfNSW must give its consent to a Change in Control of the Contractor if:
- (i) the person which will exercise Control of the Contractor following the Change in Control:
    - (A) is solvent and reputable; or
    - (B) does not have an interest or duty which conflicts in a material way with the interests of the SLR PPP and is not involved in a business or activity which is incompatible, or inappropriate, in relation to the SLR PPP; and
  - (ii) the Contractor will continue to:
    - (A) have sufficient expertise and ability; and
    - (B) be of sufficiently high financial and commercial standing,
 

to properly carry out the obligations of the Contractor under this deed.
- (e) **(No relief):** TfNSW's approval of a Change in Control of the Contractor will not relieve the Contractor of any of its obligations under this deed.

53.4 **[Not used]**

## 54. **SUBCONTRACTING**

### 54.1 **Subcontracting**

- (a) The Contractor must not subcontract the performance of the Contractor's Activities or any part of them except in accordance with this clause 54 (*Subcontracting*).
- (b) The Contractor will be liable to TfNSW for the acts and omissions of the Subcontractors in connection with this deed as if such acts or omissions were acts or omissions of the Contractor. Subcontracting by the Contractor of any obligation under this deed will not relieve the Contractor of, or otherwise affect, any obligation or liability it has to TfNSW under this deed.

54.2 **[Not used]**

54.3 **[Not used]**

## 55. **REPRESENTATIONS AND WARRANTIES**

### 55.1 **TfNSW representations and warranties**

TfNSW represents and warrants for the benefit of the Contractor that:

- (a) it is a statutory body validly constituted and existing under the Transport Administration Act;
- (b) it has or will have in full force and effect all authorisations necessary under its constituent legislation to enter into and perform its obligations under this deed (or will have them in full force and effect at the time the obligation is to be performed);

- (c) this deed constitutes a valid and legally binding obligation of it in accordance with its terms; and
- (d) the execution, delivery and performance of this deed does not violate any law, or any document or agreement to which it is a party or which is binding on it or its assets.

## 55.2 Contractor representations and warranties

The Contractor represents and warrants for the benefit of TfNSW that:

- (a) it is duly registered and remains in existence;
- (b) the execution, delivery and performance of this deed does not violate any law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) it has taken all corporate and other action required to enter into this deed and to authorise the execution and delivery of this deed and the satisfaction of its obligations under it;
- (d) this deed constitutes a valid and legally binding obligation of it in accordance with its terms;
- (e) it subsists and is properly constituted;
- (f) it is not the trustee or responsible entity of any trust;
- (g) [not used];
- (h) [not used];
- (i) no Contractor Event of Default or Contractor Termination Event has occurred or is subsisting;
- (j) [not used];
- (k) [not used];
- (l) [not used];
- (m) it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (n) there has been no material change in its financial condition since the date of its last audited accounts which would prejudice the ability of the Contractor to perform its obligations under this deed;
- (o) [not used];
- (p) the Contractor is not aware of any material facts or circumstances that have not been disclosed to TfNSW and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this deed with the Contractor;

- (q) [not used]; and
- (r) no litigation, arbitration, mediation, conciliation, criminal or administrative procedures are current, pending or to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect upon it or its ability to perform its financial or other obligations under this deed.

**55.3 Repetition of representation and warranties**

The representations and warranties contained in clauses 55.2(i), 55.2(n),55.2(p) and 55.2(r) are made on the date of this deed. Each other representation and warranty contained in this clause 55 (*Representations and warranties*):

- (a) is made on the date of this deed; and
- (b) will be deemed to be repeated on each anniversary of the date of this deed until the end of the Delivery Phase,

with reference to the facts and circumstances then subsisting.

**56. DISPUTE RESOLUTION**

**56.1 Disputes generally**

- (a) Any:
  - (i) issue, dispute, difference, controversy or Claim (**Dispute**) between the parties to this deed directly or indirectly based upon, arising out of, relating to or in connection with the CSELRV, the Contractor's Activities or this deed; or
  - (ii) questions relating to the existence, validity, interpretation or termination of this deed,

must be resolved in accordance with this clause 56 (*Dispute resolution*).

- (b) [Not used]

**56.2 Procedure for resolving Disputes**

The sequential order to resolve a Dispute is as follows:

- (a) (**negotiation by the Contractor's Representative and TfNSW's Representative**): the parties must first negotiate the Dispute in accordance with clause 56.3 (*Letter of Dispute*); and
- (b) (**executive negotiation and subsequent steps**): if the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 56.6 (*Escalation of Dispute*), the Dispute must be referred to executive negotiation and the parties must seek to resolve the Dispute in accordance with clause 56.7 (*Executive Negotiation*).

**56.3 Letter of Dispute**

- (a) A party (**Party A**) may give the other party's representative (**Party B**) a Letter of Dispute.

- (b) A Letter of Dispute given under clause 56.3(a) must:
  - (i) state that the Letter of Dispute is a letter under clause 56.3(a);
  - (ii) specify the Dispute;
  - (iii) provide reasonable particulars of Party A's reasons for being dissatisfied; and
  - (iv) set out the position which Party A believes is correct.
- (c) Party A must provide a Letter of Dispute as required under clause 56.3(a) within 100 Business Days of the earlier of the date on which:
  - (i) Party A first became aware of; and
  - (ii) Party A ought reasonably to have become aware of,
 the fact, matter or thing on which the Dispute is based.
- (d) If Party A fails to comply with clause 56.3(c):
  - (i) Party B will not be liable (insofar as it is possible to exclude such liability); and
  - (ii) Party A will be absolutely barred from issuing a Letter of Dispute,
 arising out of, or in any way in connection with, the fact, matter or thing (as the case may be) on which the Dispute is based.

**56.4 Other provisions unaffected**

Nothing in clauses 56.3(c) or 56.3(d) will limit the operation or effect of any other provision of this deed.

**56.5 Meeting of party representatives**

- (a) Within 10 Business Days of a Letter of Dispute being given under clause 56.3(a), Party B may, in writing, seek further particulars of Party A's reasons for being dissatisfied.
- (b) Within 10 Business Days of receiving that request for further particulars under clause 56.5(a), Party A must, in writing, provide to Party B any further particulars of which it has knowledge.
- (c) [Not used].
- (d) Within 25 Business Days of a Letter of Dispute being given under clause 56.3(a), TfNSW's Representative and Contractor's Representative must meet and attempt to resolve the Dispute.
- (e) Any meeting under clause 56.5(d) may be attended by such other persons as agreed between TfNSW's Representative and Contractor's Representative.

## 56.6 Escalation of Dispute

If TfNSW's Representative and the Contractor's Representative have not met or have not resolved the Dispute within 30 Business Days after the date on which the Letter of Dispute was given under clause 56.3(a) (or such longer period of time as TfNSW's Representative and the Contractor's Representative may have agreed in writing), then either party may:

- (a) require that those parts of the Dispute that remain unresolved be referred to the Executive Negotiators; and
- (b) issue a notice to the Executive Negotiators (**Notice to Executive Negotiators**) stating that the Notice to Executive Negotiators is a notice under this clause 56.6(b).

## 56.7 Executive Negotiation

- (a) The Executive Negotiators must, within 10 Business Days after the date on which the Notice to the Executive Negotiators was given under clause 56.6(b), commence meetings and negotiations with a view to resolving the Dispute.
- (b) Any meetings under clause 56.7(a):
  - (i) may be assisted by a person who will act independently and facilitate negotiations between the Executive Negotiators where agreed between the Executive Negotiators; and
  - (ii) may be attended by such other persons as agreed between the Executive Negotiators.
- (c) The Executive Negotiators may, by agreement:
  - (i) [not used]; or
  - (ii) in writing, refer the Dispute to a form of alternative dispute resolution including:
    - (A) mediation;
    - (B) expert determination in accordance with clause 56.10 (*Expert determination*); or
    - (C) arbitration in accordance with clause 56.12 (*Arbitration*).
    - (D) [not used].
- (d) If, within 30 Business Days after the date on which the Notice to Executive Negotiators was given under clause 56.6(b), the Executive Negotiators have not:
  - (i) resolved the Dispute (in whole or in part);
  - (ii) referred the Dispute in accordance with clause 56.7(c)(ii); or
  - (iii) reached a written agreement upon a procedure to resolve the Dispute,then Party A may, if it wishes to pursue the Dispute, issue Party B with a referral to arbitration which must:

- (iv) state that the referral is a referral under this clause 56.7(d); and
  - (v) identify those parts of the Dispute that remain unresolved and the process referred to in clause 56.12 (*Arbitration*) will commence.
- (e) If Party A fails to refer the Dispute to arbitration in accordance with clause 56.7(d) within 20 Business Days of being entitled to do so:
- (i) Party B will not be liable (insofar as it is possible to exclude such liability); and
  - (ii) Party A will be absolutely barred from issuing a referral to arbitration under clause 56.7(d),
- arising out of, or in any way in connection with fact, matter or thing (as the case may be) on which the Dispute is based.

56.8 **[Not used]**

56.9 **[Not used]**

56.10 **Expert determination**

- (a) Where, in accordance with clause 56.7(c)(ii)(B), the Executive Negotiators have referred the Dispute to expert determination, the Dispute will be determined in accordance with the expert determination rules set out in clause 2 of Schedule A18 (*Dispute resolution procedures*).
- (b) The determination of the expert:
  - (i) must be given to the parties in writing;
  - (ii) unless otherwise agreed between the parties, must be notified to the parties within the period set out in the agreement between the parties and the expert;
  - (iii) will be final and binding on the parties, except where a party gives notice of dissatisfaction to the other party within 20 Business Days of the determination being given stating that the notice is a notice under this clause 56.10(b)(iii), in which case either party may refer the Dispute to arbitration; and
  - (iv) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under any arbitration.

56.11 **Amicable settlement**

- (a) Where a notice of dissatisfaction has been given under clause 56.10(b)(iii), the Executive Negotiators must attempt to settle the Dispute before the commencement of arbitration.
- (b) If no amicable settlement has been reached within 10 Business Days after the day on which the notice of dissatisfaction was given under clause 56.10(b)(iii), the Dispute will be determined in accordance with clause 56.12 (*Arbitration*), whether or not the Executive Negotiators have met and undertaken any negotiations.



**56.12 Arbitration**

Where:

- (a) a notice referring the Dispute to arbitration has been provided under clause 56.7(c)(ii)(C); or
- (b) a notice of dissatisfaction has been provided under clause 56.10(b)(iii),

the Dispute will be finally settled by binding arbitration in accordance with clause 3 of Schedule A18 (*Dispute resolution procedures*).

**56.13 Exclusion from determination or award**

- (a) The powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on an arbitral tribunal appointed in accordance with this clause 56 (*Dispute resolution*).
- (b) The arbitral tribunal has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to the arbitral tribunal.

**56.14 Payments**

TfNSW may withhold payment of that part of any amount which is the subject of a Dispute.

**56.15 Contractor to continue performing obligations**

Despite the existence of any Dispute, the Contractor must:

- (a) continue to perform the Contractor's Activities; and
- (b) perform its other obligations under this deed.

**56.16 Urgent relief**

Nothing in this clause 56 (*Dispute resolution*) will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court.

**56.17 [Not used]****56.18 [Not used]****56.19 Survive termination**

This clause 56 (*Dispute resolution*) will survive termination of this deed.

**57. NOTICE OF CLAIMS****57.1 Notice of Modification**

- (a) If a Direction of TfNSW, other than a Modification Order under clause 29 (*TfNSW initiated Modifications*), in the Contractor's opinion constitutes a Modification, the

Contractor must, if it wishes to make a Claim against TfNSW arising out of or, or in any way in connection with, the Direction:

- (i) within 10 Business Days of receiving the Direction and before commencing work on the subject matter of the Direction or otherwise complying with the Direction, give written notice to TfNSW's Representative that sets out:
    - (A) that it considers the Direction constitutes or involves a Modification;
    - (B) details of the relevant Direction; and
    - (C) details of why it considers the Direction constitutes or involves a Modification;
  - (ii) within 10 Business Days of giving the notice under clause 57.1(a)(i), submit a written claim to TfNSW's Representative which includes the details required by clause 57.3(b); and
  - (iii) continue to carry out the Contractor's Activities in accordance with this deed including any Direction in respect of which notice has been given under this clause 57.1 (*Notice of Modification*).
- (b) If the Contractor issues a notice under clause 57.1(a)(i), TfNSW may:
- (i) confirm that the Direction constitutes or involves a Modification, or entitles the Contractor to make a Claim, by the giving of a notice under this clause 57.1(b)(i), in which case the Contractor must comply with the Direction and that Direction will be deemed to be a Modification Order to which clause 29.11(b) will apply;
  - (ii) deny that the Direction constitutes or involves a Modification, or entitles the Contractor to make a Claim, by the giving of a notice under this clause 57.1(b)(ii), in which case the Contractor:
    - (A) may within 10 Business Days of the receipt of the notice issue a Letter of Dispute under clause 56.3 (*Letter of Dispute*); and
    - (B) unless otherwise directed in writing by TfNSW's Representative, must comply with the Direction irrespective of any Claim or Dispute in relation to the Direction or any part of it; or
  - (iii) withdraw the Direction by giving a notice under this clause 57.1(b)(iii).
- (c) If within 20 Business Days after first receipt of the notice under clause 57.1(a)(i), TfNSW's Representative has not taken any action under clause 57.1(b), TfNSW's Representative will be deemed to have given a notice under 57.1(b)(ii).

## 57.2 Notices of other Claims

- (a) Subject to clause 57.2(b), the Contractor must give TfNSW the notices required by clause 57.3 (*Prescribed notices*) if it wishes to make a Claim against TfNSW in respect of any Direction or any other fact, matter or thing (including a breach of this deed by TfNSW) under, arising out of, or in connection with the Contractor's Activities or this deed, including anything in respect of which it is given an express entitlement under this deed.

- (b) Clause 57.2(a) does not apply to the following claims:
  - (i) a Claim in respect of a Compensation Event under clause 26.2 (*Claim for compensation*);
  - (ii) a Claim in respect of a Relief Event under clause 27 (*Relief Events*);
  - (iii) a Claim in respect of a Modification ordered in accordance with clause 29 (*TfNSW initiated Modifications*) or to which clause 57.1 (*Notice of Modification*) applies;
  - (iv) a Claim for payment under clause 25 (*Payment provisions*); or
  - (v) a Termination Payment in accordance with clause 43.12(a).

### 57.3 Prescribed notices

The notices referred to in clause 57.2 (*Notices of other Claims*) are:

- (a) a written notice within 20 Business Days after the earlier of when the Contractor first became aware of, or ought reasonably to have become aware of, the Direction or any other fact, matter or thing on which the Claim is based, expressly specifying:
  - (i) that the Contractor intends to submit a Claim; and
  - (ii) the Direction or any other fact, matter or thing upon which the Claim will be based; and
- (b) a written Claim within 10 Business Days of giving notice under clause 57.3(a), which must include:
  - (i) detailed particulars concerning the Direction or any other fact, matter or thing on which the Claim is based;
  - (ii) the legal basis for the Claim, whether based on a term of this deed or otherwise, and if based on a term of this deed, clearly identifying the specific term;
  - (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
  - (iv) details of the amount claimed and how it has been calculated.

### 57.4 Continuing events

If the Direction or any other fact, matter or thing upon which the Claim under clause 57.3(b) is based or the consequences of the events are continuing, the Contractor must continue to give information required by clause 57.3(b) within 10 Business Days after the end of each calendar month after the written claim under clause 57.1(a)(ii) or 57.3(b) (as the case may be) was submitted, until after the Direction or fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

### 57.5 Time bar

If the Contractor fails to comply with clauses 57.1 (*Notice of Modification*), 57.2 (*Notices of other Claims*), 57.3 (*Prescribed notices*) or 57.4 (*Continuing events*):

- (a) TfNSW will not be liable (insofar as it is possible to exclude such liability) upon any Claim by the Contractor; and
- (b) the Contractor will be absolutely barred from making any Claim against TfNSW,

arising out of, or in any way in connection with, the relevant Direction or fact, matter or thing (as the case may be) to which clause 57.1 (*Notice of Modification*) or 57.3 (*Prescribed notices*) applies.

### 57.6 Other provisions unaffected

Nothing in clauses 57.1 (*Notice of Modification*) to 57.5 (*Time bar*) will limit the operation or effect of any other provision of this deed which requires the Contractor to give notice to TfNSW or TfNSW's Representative in order to preserve an entitlement to make a Claim against TfNSW.

## 58. NOTICES

- (a) Wherever referred to in this clause, **Notice** means each communication (including each notice, consent, approval, request and demand) under or in connection with this deed.
- (b) At any time and from time to time TfNSW's Representative may notify the Contractor that a PDCS will be used for giving Notices under or in connection with this deed. TfNSW's Representative's notice will set out:
  - (i) the name of the relevant PDCS;
  - (ii) the commencement date for use of the PDCS;
  - (iii) any password, login details or similar information required for the Contractor to use the PDCS; and
  - (iv) any other information reasonably necessary for the use and service of Notices via the PDCS.
- (c) Each Notice must:
  - (i) before the date referred to in clause 58(b)(ii)
    - (A) be in writing;
    - (B) be addressed:
      - (aa) in the case of a Notice from the Contractor, be addressed to TfNSW's Representative; or
      - (bb) in the case of a Notice from TfNSW, be addressed to the Contractor's Representative;

- (C) be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
- (D) be delivered or posted to the relevant address or sent to the facsimile number shown below (or to any new address or facsimile number notified by the intended recipient):

**TfNSW**

Name: TfNSW, a New South Wales Government agency  
Address: Level 11  
338 Pitt Street  
Sydney NSW 2000  
Fax: 02 9200 0290  
For the attention of: TfNSW's Representative

With a copy to:

Address: Level 5  
Tower A, Zenith Centre  
821 Pacific Highway  
Chatswood  
Fax: 02 9200 0290  
For the attention of: Deputy Director General, Transport Projects Division

**Contractor**

Name: Alstom Transport Australia Pty Limited  
Address: 16 Giffnock Avenue  
North Ryde NSW 2113  
Fax: (02) 8870 6005  
For the attention of: Managing Director, Alstom Transport Australia and New Zealand

- (ii) on and from the commencement date for use of the PDCS referred to in clause 58(b)(ii):
  - (A) be sent through the PDCS in accordance with the requirements set out in clause 58(e) and:
    - (aa) in the case of a Notice from the Contractor, be addressed to the TfNSW's Representative; or
    - (bb) in the case of a Notice from TfNSW, be addressed to the Contractor's Representative; or
  - (B) in circumstances where the PDCS is temporarily disabled or not operating, be issued in accordance with clause 58(c)(i).
- (d) Subject to clause 58(d)(iv), a communication is taken to be received by the addressee:
  - (i) (in the case of a Notice sent through the PDCS) at the time recorded on the PDCS as being the time at which the Notice was sent;

- (ii) (in the case of prepaid post sent to an address in the same country) 2 Business Days after the date of posting;
- (iii) (In the case of international post) 7 Business Days after the date of posting;
- (iv) (in the case of delivery by hand) on delivery; and
- (v) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent,

provided that if the communication would be deemed to be received on a day which is not a Business Day or after 5.00 pm on a Business Day, it is deemed to be received at 9.00 am on the next Business Day.

- (e) With respect to Notices sent through the PDCS:
  - (i) all Notices must be submitted by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
  - (ii) only the text in any Notice, or subject to paragraph 58(e)(iii), any attachments to such Notice which are referred to in the Notice, will form part of the Notice. Any text in the subject line will not form part of the Notice; and
  - (iii) an attachment to a Notice will only form part of a Notice if it is uploaded to the PDCS in:
    - (A) .pdf format;
    - (B) a format compatible with Microsoft Office; or
    - (C) such other format as may be agreed between the parties in writing from time to time.
- (f) The Contractor must:
  - (i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;
  - (ii) ensure that relevant personnel log on and use the PDCS and check whether Notices have been received on each Business Day;
  - (iii) ensure all relevant personnel attend all necessary training required by TfNSW's Representative;
  - (iv) advise TfNSW's Representatives of which personnel require access to the PDCS;
  - (v) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including Notices) using the PDCS; and
  - (vi) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send

all communications which have been issued pursuant to clause 58(c)(ii)(B) to TfNSW's Representative through the PDCS.

- (g) TfNSW has no liability for any losses the Contractor may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS, and the Contractor will not be entitled to make, and TfNSW will not be liable upon, any Claim against TfNSW arising out of or in connection with the Contractor's access to or use of the PDCS or any failure of the PDCS.

59. **PPSA**

- (a) In this clause, **Security Interest** has the meaning given to the term "security interest" in the PPSA.
- (b) If the terms of this document constitute one or more Security Interests in favour of TfNSW:
  - (i) the Contractor agrees to promptly do anything (including executing any new document, obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which TfNSW may require for the purposes of:
    - (A) ensuring that any Security Interest of TfNSW is enforceable, perfected and otherwise effective;
    - (B) ensuring that any Security Interest of TfNSW is continuously perfected and/or perfected by control and/or perfected in a way that will reduce as far as reasonably possible the risk of a third party acquiring an interest in any property the subject of the Security Interest, to the extent possible under the PPSA;
    - (C) enabling TfNSW to apply for registration, or give any notification, in connection with a Security Interest so that the Security Interest has the priority required by TfNSW; or
    - (D) enabling TfNSW to exercise any right or power in connection with the Security Interest;
  - (ii) the Contractor agrees that it will bear all costs and expenses:
    - (A) that it incurs in complying with clause 59(b)(i); and
    - (B) incurred by TfNSW for the purposes set out in clause 59(b)(i);
  - (iii) to the extent permitted by law, and in respect of any Security Interest created by this document:
    - (A) the parties contract out of sections 95, 121(4), 125, 130, 132(3)(d), 132(4), 142 and 143 of the PPSA (to the extent, if any, mentioned in section 115(1) of the PPSA);
    - (B) the application of Part 4.3 of the PPSA is contracted out of if that Part would apply by virtue of section 116(2) of the PPSA; and
    - (C) the Contractor waives its right to receive any verification statement in respect of any financing statement or financing change statement

relating to a Security Interest, and also its right to receive any other notice required under the PPSA unless the provision of such notice cannot be excluded;

- (iv) the parties agree to the full extent permitted by law not to disclose information of the kind mentioned in section 275(1) of the PPSA;
- (v) the Contractor agrees that it will only authorise the disclosure of information under section 275(7)(c), or request information under section 275(7)(d), if TfNSW approves;
- (vi) TfNSW's Security Interest attaches to any proceeds (including any proceeds within the definition of that term in the PPSA) derived, directly or indirectly from any sale or dealing with the collateral that is the subject of the Security Interest or otherwise arising out of or relating to the collateral whether or not the sale or dealing is permitted under this document;
- (vii) the Contractor will not, without TfNSW's prior written consent, create, purport, or attempt to create or permit to exist any other Security Interest, however ranking, over the collateral; and
- (viii) for the avoidance of doubt, pursuant to section 80 of the PPSA, the Contractor covenants not to assert any rights it would otherwise have under section 80(1) of the PPSA and it is intended specifically that any person TfNSW assigns some or all of its rights and obligations under this document should have the benefit of this covenant.

## 60. PROPORTIONATE LIABILITY

### 60.1 Exclusion of proportionate liability scheme

- (a) To the extent permitted by law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under this deed whether these rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting the above, the rights, obligations and liabilities of TfNSW and the Contractor under this deed with respect to proportionate liability are as specified in this deed and not otherwise, whether these rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

### 60.2 Contractor not to apply proportionate liability scheme

To the extent permitted by law:

- (a) the Contractor must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by TfNSW against the Contractor (whether in contract, tort or otherwise); and
- (b) if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by TfNSW against the Contractor (whether in contract, tort or otherwise), the Contractor will indemnify TfNSW against any loss, damage, cost or expense that forms part of a claim by TfNSW against the Contractor which TfNSW cannot recover from the Contractor because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).



**60.3 Subcontracts**

The Contractor must:

- (a) in each Subcontract into which it enters for the performance of the Contractor's Activities, include a term that (to the extent permitted by law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under each Subcontract whether these rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise; and
- (b) require each Subcontractor to include, in any further contract that it enters into with a third party for the performance of the Contractor's Activities, a term that (to the extent permitted by law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under each further agreement whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.

**61. TAXES**

**61.1 Liability for Taxes**

- (a) Subject to clause 61.2 (*GST*), the Contractor must indemnify TfNSW against, and must pay TfNSW on demand the amount of, all Taxes (excluding Rates, Land Tax and stamp duty, and any penalty, fine, charge or interest in respect of any Rates, Land Tax or stamp duty) incurred in connection with:
  - (i) the negotiation, preparation, execution, stamping and registration of this deed;
  - (ii) the transactions that this deed contemplates; and
  - (iii) any amendment to, or any consent, approval, waiver, release or discharge of or under, this deed.
- (b) [Not used]
- (c) TfNSW must pay the amount of any stamp duty assessed by the NSW Office of State Revenue as payable in respect of this deed or any transaction contemplated by it, by the later of:
  - (i) the date on which the assessment is due for payment; and
  - (ii) 7 Business Days after TfNSW receives the NSW Office of State Revenue's assessment.
- (d) [Not used]
- (e) [Not used]
- (f) [Not used]
- (g) [Not used]

**61.2 GST**

- (a) **(Interpretation):**
- (i) Except where the context suggests otherwise, terms used in this clause 61.2 (*GST*) have the meanings given to those terms by the GST Act (as amended from time to time).
  - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 61.2 (*GST*).
  - (iii) Unless otherwise expressly stated, all consideration to be provided under this deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 61.2 (*GST*).
  - (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) **(Reimbursements):** Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(Additional amount of GST payable):** Subject to clause 61.2(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this deed:
- (i) any amount payable or consideration to be provided under any provision of this deed (other than this clause 61.2 (*GST*)), for that supply is exclusive of GST;
  - (ii) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
  - (iii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 61.2(c)(ii).
- (d) **(Variation of GST):**
- (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 61.2(c) and clause 61.2(e)), varies from the additional amount paid by the Recipient under clause 61.2(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 61.2(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 61.2(c).
  - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in

connection with this deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

- (e) **(Exchange of non-monetary consideration):**
- (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 61.2(c) applies is a Taxable Supply made by the Recipient (the **Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 61.2(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
  - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 61.2(c) (or the time at which such GST Amount would have been payable in accordance with clause 61.2(c) but for the operation of clause 61.2(e)).
- (f) **(No merger):** This clause will not merge on completion or termination of this deed.

## 62. GENERAL

### 62.1 Certification

For the purposes of this deed, a copy of a document will be regarded as duly certified by the Contractor if it is certified as a true copy by a director, secretary or general manager of the Contractor.

### 62.2 Cost of performing obligations

Each party must perform its obligations under this deed at its own cost, unless expressly provided otherwise.

### 62.3 Governing law

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

### 62.4 Amendments

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

### 62.5 Waiver

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

## 62.6 Survival of certain provisions; no merger

- (a) Without limiting clause 62.13(a):
- (i) clauses 1 (*Definitions and interpretation*), 5.1 (*TfNSW's Representative*), 11.2 (*Information Documents*), 13.11 (*Design life*), 19.17 (*Sole remedy*), 22 (*Security*), 25.11 (*Interest*), 25.12 (*Set-off*), 38 (*Indemnity and liability exclusions*), 38A (*Liability Cap*), 43.11 (*Consequences of termination*), 43.12 (*Termination Payments*), 44 (*Transition Out provisions*), 46.1 (*Records*), 47 (*Disclosure, confidentiality and publicity*), 48 (*Intellectual Property*), 55 (*Representations and Warranties*), 56 (*Dispute resolution*), 57 (*Notice of Claims*), 58 (*Notices*), 59 (*PPSA*), 60 (*Proportionate liability*), 61 (*Taxes*), 62 (*General*), the representations, warranties and indemnities given by the Contractor under this deed and any other provisions which are expressed to survive termination (together, the **Surviving Clauses**) will survive rescission, termination or expiration of this deed; and
  - (ii) if this deed is rescinded or terminated, no party will be liable to any other party except:
    - (A) under the Surviving Clauses; or
    - (B) in respect of any breach of this deed occurring before such rescission or termination.
- (b) No right or obligation of any party will merge on completion of any transaction under this deed. All rights and obligations under this deed survive the execution and delivery of any transfer or other document which implements any transaction under this deed.

## 62.7 Further acts and documents

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

## 62.8 Consents

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

## 62.9 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

## 62.10 Severance

If at any time any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under applicable law, that provision is to be severed to the extent necessary

to make this deed enforceable, and it will not affect or impair the legality, validity or enforceability of any other provision of this deed.

#### 62.11 Exercise of remedies

- (a) If the Contractor breaches any of its obligations under this deed, TfNSW may exercise any or all of the rights and powers and pursue any or all of the remedies available to TfNSW under this deed and/or enforce any other legal or equitable remedy available under applicable law.
- (b) Except as expressly set out in this deed, each and every right, power and remedy of TfNSW is cumulative and in addition to any other right, power and remedy, whether under this deed or applicable law, which may be exercised by TfNSW and the exercise of a right, power or remedy will not be construed to be a waiver of the right to exercise any other right, power or remedy.
- (c) No delay or omission by TfNSW in the exercise of any right, power or remedy will impair such right, power or remedy or constitute a waiver of the relevant breach.

#### 62.12 Entire agreement

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

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

#### 62.13 Indemnities

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.
- (c) A party must pay on demand any amount it must pay under an indemnity in this deed.
- (d) Where the Contractor gives any indemnity or release to TfNSW under this deed, it gives an equivalent indemnity and release to the State. TfNSW holds for itself and on trust for the State the benefit of each such indemnity and release in this deed.
- (e) Each party must use reasonable endeavours to mitigate any Loss for which it would be indemnified by the other party under this deed.

#### 62.14 Counterparts

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

**62.15 Attorneys**

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

**62.16 Relationship between TfNSW and the Contractor**

Nothing in, or contemplated by this deed will be construed or interpreted as:

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

**62.17 Contract documents to be in English**

All documentation in computer readable or other written forms brought (whether before or after the date of this deed) or required to be brought into existence as part of, or for the purpose of, performing the Contractor's Activities, and which must be provided to TfNSW, must be written in the English language.

**62.18 Vienna convention**

The UN Convention on Contracts for the International Sale of Goods (1980) does not apply to this deed.

**62.19 [Not used]**

**Executed** as a deed.

**EXECUTED** on behalf of **TRANSPORT FOR NSW** by its authorised delegate **IN THE PRESENCE OF:**

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Authorised Delegate

\_\_\_\_\_  
Name of Witness (print)

\_\_\_\_\_  
Name of Authorised Delegate (print)

**EXECUTED** by **ALSTOM TRANSPORT AUSTRALIA PTY LIMITED ABN 68 165 157 451** in accordance with s 127(1) of the *Coroprations Act 2001* (Cth):

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary / other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary / other Director in full

**Schedule A1**

**Not used**



**Schedule A2**

**Not used**

**Schedule A3**

**Not used**

**Schedule A4**  
**Commercially Sensitive Information**

(Clauses 1.1, 47.1 and 47.2(b))

- (a) The dollar value of any Termination Payments.
- (b) The dollar and percentage values in clauses 19.15(a), 19.15(f), 20.2(g), 22.1, 43.1(w), paragraph 3(d) of Schedule D6 and the definition of "General Liability Cap" of the Operative Provisions.
- (c) The Alstom Systems IP, except to the extent permitted to be disclosed in accordance with Schedule A5 (*Intellectual Property*).
- (d) The dollar values, indexation formulae, escalation factors, costs and percentages in Schedule D1 (*Milestone Payments*).
- (e) The dollar value of any Net Financial Impact, as calculated in accordance with Schedule D4 (*Net Financial Impact*).
- (f) The dollar values in Schedule D4 (*Net Financial Impact*).
- (g) The percentage values in clause 3.5 (*Overheads and margin*) of Schedule D4 (*Net Financial Impact*).
- (h) The terms of any insurance policies required to be taken out in accordance with this deed.

**Schedule A5**  
**Intellectual Property**

(Clause 48)

1. **DEFINITIONS**

In this Schedule:

**Alstom Transport Technologies SAS** means Alstom Transport Technologies SAS (752 364 778 RCS Nanterre) of 3 Avenue Andre Malraux 92 309 Levallois – Perrett, France.

**Alstom Systems** means:

- (a) the CSELRVs;
- (b) [not used];
- (c) [not used];
- (d) [not used];
- (e) [not used]; and
- (f) the Spares and Special Tools and Equipment required for the CSELRVs,

to be designed, manufactured and supplied by Alstom.

**Alstom Systems IP** means all Intellectual Property, trade secrets and know-how comprised in all object code for the Software, design documentation, specifications, drawings and data, in each case for the manufacture of and the application, function and integration of:

- (a) the CSELRVs or any of their components;
- (b) [not used];
- (c) [not used];
- (d) [not used];
- (e) [not used];
- (f) Spares and Special Tools and Equipment required for the:
  - (i) CSELRVs or any of their components;
  - (ii) [not used];
  - (iii) [not used];
  - (iv) [not used]; and
  - (v) [not used],

to be designed, manufactured and supplied by Alstom.

**Contract IP** means the Alstom Systems IP, Third Party Software, Equipment IP and TfNSW Licensed IP.

**COTS** means, in respect of Software and Firmware, a commercial off-the-shelf product that is ready-made and available for sale to the general public.

**Domain Names** means any domain names used by the Contractor in relation to the SLR.

**Equipment** means any hardware, equipment, devices, plant, machinery, fixtures, vehicles and furniture forming part of the CSELRVs.

**Equipment IP** means Intellectual Property, trade secrets and know-how in all and any part of:

- (a) the Equipment; and
- (b) computer programs supplied as a component of, embedded in or forming part of the Equipment and without which such tangible items cannot operate, such as Software known as "device" Software or Firmware,

but excluding Alstoms Systems IP, Third Party Software, any Intellectual Property which is owned by the Contractor or its Associates or TfNSW IP.

**Excluded IP** means all Intellectual Property, know how and trade secrets existing prior to the date of this deed or developed other than for the purposes of the CSELRVs or the SLR or this deed in works created or developed or modifications to those works created by the Contractor or any of its Associates or any other entity but not including Intellectual Property, know-how and trade secrets comprised in Contractor Documentation developed by the Contractor or any of its Associates specifically for the purposes of the CSELRVs or the SLR prior to the date of this deed.

**Firmware** means a set of coded instructions embedded within a device or component of a device that performs functions or provides data to enable the device to operate in a specified manner.

**Intellectual Property** includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future, including rights of any kind in:

- (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents, innovation patents or designs, including developments or improvements of equipment, technology, processes, methods or techniques;
- (b) literary works, dramatic works, musical works, artistic works, cinematograph films, television broadcasts, sound broadcasts, published editions of works and any other subject matter in which copyright (including future copyright and rights in the nature of or analogous to copyright) may, or may upon creation of the subject matter, subsist anywhere in the world;
- (c) registered and unregistered trade marks and service marks, including goodwill in the business concerned in the relevant goods and/or services;
- (d) trade, business or company names;
- (e) internet domain names; and
- (f) proprietary rights under the *Circuit Layouts Act 1989* (Cth),

whether created or in existence before or after the date of this deed.

**IP Register** means an electronic database established in accordance with clause 8.1(a).

**List of Intellectual Property** means a list of each item of Intellectual Property used or to be used by the Contractor or its Associates in performing its obligations under this deed, which includes, separately identified, the List of Software, and specifies in relation to any Intellectual Property not identified in the List of Software:

- (a) the nature and, if applicable, name of the material in which the Intellectual Property is comprised;
- (b) the owner of the Intellectual Property and, to the extent applicable, the licensor and the licensee of that Intellectual Property;
- (g) the duration of any licence and maintenance agreements; and
- (h) the licence and maintenance fees and similar fees,

provided that the Contractor or its Associates will not be required to disclose the information specified in paragraph (d) above to the extent such information is subject to any contractual confidentiality obligations imposed on that party as a result of such information comprising confidential information.

**List of Software** means a list of each item of Software used or to be used by the Contractor or its Associates in performing the Contractor's Activities which specifies in relation to each item of Software:

- (a) name and release version of the Software;
- (b) owner and distributor of the Software and, if relevant, the licensor and the licensee of that Software;
- (c) whether the Software is Third Party Software;
- (d) the duration of any licence and maintenance agreements; and
- (e) the licence and maintenance fees and similar fees,

provided that the Contractor or its Associates will not be required to disclose the information specified in paragraph (e) above if such information is subject to any contractual confidentiality obligations imposed on that party as a result of such information comprising confidential information.

**Mark** means any mark, trade mark, logo, indicia or image.

**Moral Rights** means:

- (a) the right of attribution of authorship or performership;
- (b) the right not to have authorship or performership falsely attributed; and
- (c) the right of integrity of authorship or performership,

conferred by the *Copyright Act 1968* (Cth).

**Moral Rights Consent** means a consent in the form of Annexure B.

**Relevant Source Code** means:

- (a) all source code in respect of the Alstom Systems IP; and

- (b) Software tools necessary for TfNSW or any successor Contractor (or any sublicensee or transferee), or that person in TfNSW's position would otherwise require, to modify, maintain, test, further develop or regenerate the source code referred to in paragraph (a) or of the type referred to in paragraph (a), to exercise its rights under clause 4.2 (*Alstom Systems IP*) (subject to clause 4.2(b)).

**Software** means a set of coded instructions that performs functions or provides working data or parameters to enable a device or system to operate in a specified manner, and be loaded into a system or device dynamically by a user and includes all Firmware and operating systems required by a system or subsystem to perform in a specified manner.

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

**Source Code Escrow Agent** means the source code escrow agent appointed under the Project Deed.

**Source Code Escrow Agreement** means a source code escrow agreement between TfNSW, the Contractor, Alstom and any Source Code Escrow Agent to hold any Relevant Source Code. The agreement will be in the form agreed under the Project Deed, subject to minor amendments agreed by the parties acting reasonably.

**TfNSW Brand** means all Marks, livery, colours or other get up or brand used on or in relation to the SLR or any part of it including:

- (a) the TfNSW Marks;
- (b) all names including business names, domain names and company names registered or used in relation to the SLR (other than those business names, domain names and company names of the Contractor or its Subcontractors which are used in their business generally);
- (c) all telephone numbers, email addresses, websites, social media accounts and all other addresses or means of communication in any medium, whether in existence at the date of this deed or not, registered or used in relation to the SLR.

**TfNSW Data** means all data and expressions of data contained in, or processed or generated by, the SLR or produced as a result of the Contractor's Activities, including all data and expressions of data:

- (a) contained in all images contained in or processed or generated by the SLR;
- (b) comprising reports generated by the SLR; and
- (c) about or relating to or generated by the Contractor or its Associates in connection with the SLR.

**TfNSW IP** means:

- (a) all Intellectual Property owned by TfNSW, including the TfNSW Brand;
- (b) all Intellectual Property licensed to TfNSW but excluding Intellectual Property licensed to TfNSW by the Contractor or any of its Associates under this deed, Third Party Software and Equipment IP;
- (c) [not used]; and

(d) all Intellectual Property in and to the TfNSW Data.

**TfNSW Licensed IP** means all Intellectual Property in and to the TfNSW Data and all other TfNSW IP that is required by the Contractor for the purpose of performing its obligations under this deed.

**TfNSW Marks** means the Marks notified by TfNSW to the Contractor in writing from time to time and any other Marks used by or on behalf of the Contractor in relation to the CSELRVs (other than those Marks of the Contractor's Subcontractors which are used in their business generally and are applied by them to devices or equipment they supply, but which do not include, directly or indirectly, any Marks which are created or developed in connection with, the CSELRVs or any part of the CSELRVs).

**TfNSW Personal Information** means Personal Information to which the Contractor, any person engaged by or on behalf of the Contractor under or in relation to this deed has access directly or indirectly in connection with this deed.

**Third Party Licences** means all licences, maintenance and similar contracts for the Third Party Software.

**Third Party Software** means COTS Software and Firmware owned by any entity other than the Contractor or its Associates that:

- (a) is comprised in all or any part of the CSELRVs or the Spares or Special Tools and Equipment;
- (b) is otherwise used or to be used by, or on behalf of, the Contractor or the Contractor's Subcontractors in performing the Contractor's Activities; or
- (c) comprises Software tools necessary for TfNSW, or that a person in TfNSW's position, would otherwise require to modify, maintain, test, further develop or regenerate the bespoke Software contained in the CSELRVs or the Spares or Special Tools and Equipment,

and is identified as such in the List of Software and any information provided under clause 8.2(b)(iv).

## 2. **INTELLECTUAL PROPERTY WARRANTIES AND INDEMNITY**

### 2.1 **Warranty by the Contractor**

The Contractor represents and warrants that:

- (a) it has all appropriate licences of, or title to, all Intellectual Property that is required by it for the purpose of its obligations under this deed;
- (b) [not used];
- (c) the Contractor's Associates have all appropriate licences of, or title to, all Intellectual Property that is required for performing obligations under this deed on behalf of the Contractor;
- (d) it does not require any licences of, or title to, any Intellectual Property from TfNSW in order to perform its obligations under this deed other than any licences to the TfNSW Licensed IP granted to it under this deed;
- (e) [not used];



- (f) it has authority to assign or license (as the case may be) all Intellectual Property granted to TfNSW under this deed;
- (g) every item of the Software used or to be used by the Contractor or its Associates in the CSELRVs or Spares, or Special Tools and Equipment is contained in the List of Software or will be later identified in accordance with clause 8.1(a);
- (h) it has the authority to undertake the obligations concerning the Third Party Software contained in clause 4.5 (*Licence of Third Party Software*), the Alstom Systems IP contained in clause 4.2 (*Licence of Alstom Systems IP*) and the Equipment IP contained in clause 4.6 (*Equipment IP*);
- (i) no third party rights or interests will affect the enjoyment by TfNSW of the licences and assignments granted to it under this deed;
- (j) none of:
  - (i) the performance of the Contractor's Activities, nor anything arising from the performance of the Contractor's Activities;
  - (ii) the CSELRVs, Spares and Special Tools and Equipment;
  - (iii) [not used];
  - (iv) the Contractor Documentation; or
  - (v) [not used],infringes or will infringe any rights, including any Intellectual Property or Moral Rights, of any third party;
- (k) there are no Security Interests, and it will not allow any Security Interests to be created over its rights to any Intellectual Property that is used by it for the purposes of its obligations under this deed; and
- (l) the use or enjoyment of the CSELRVs, Spares and Special Tools and Equipment in accordance with or as contemplated by this deed by TfNSW or any person authorised by TfNSW in accordance with or as contemplated by this deed will not infringe any law, Intellectual Property or Moral Rights or other protected rights of any person, whether in Australia or overseas; and
- (m) it is not aware of any allegations of infringement or notices of misappropriation issued by any person or any Claims that the CSELRVs, Spares and Special Tools and Equipment or their use or enjoyment in accordance with or as contemplated by this deed infringes or will infringe any laws or the rights, including any Intellectual Property or Moral Rights, of any third party.

Each representation and warranty in this clause 2.1 (*Warranty by OpCo*) is a continuing representation and warranty and will be repeated on each day while any obligation under this deed remains outstanding, with reference to the facts and circumstances then subsisting.

## 2.2 Indemnity

- (a) Subject to clauses 38.2 and 38.3 of the Operative Provisions, the Contractor indemnifies TfNSW, and any other person authorised or licensed by TfNSW to exercise any Intellectual Property assigned, granted or licensed to TfNSW under this deed and any of their Associates (each an **Indemnified Party**) from and against:

- (i) any Claim which may be brought or made against an Indemnified Party by any person in respect of:
    - (A) any alleged or actual infringement of any Intellectual Property by the Contractor or its Associates in the course of, or incidental to, performing any obligations under this deed other than to the extent they embody any TfNSW IP;
    - (B) the use by TfNSW of any Contract IP (but excluding TfNSW Licensed IP); and
    - (C) an infringement of Moral Rights resulting from the use, operation, maintenance or modification of the CSELRVs, Spares and Special Tools and Equipment or any part of them in any manner;
  - (ii) any Loss (including legal fees on an indemnity basis) that may be suffered or incurred by any Indemnified Party in connection with any Claim referred to in clause 2.2(a)(i) or any Claim arising from a breach of the warranties set out in clause 2.1 (*Warranty by the Contractor*); and
  - (iii) any Loss that may be suffered or incurred by any Indemnified Party in connection with the Intellectual Property necessary for the continuation of the Contractor's Activities being unavailable as a result of or in connection with the Contractor not fulfilling its obligations under clause 4.5 (*Licence of Third Party Software*), to obtain the licenses referred to in clause 4.5 (*Licence of Third Party Software*) or not fulfilling its obligations under clause 4.6 (*Equipment IP*), to obtain the licences referred to in clause 4.6 (*Equipment IP*).
- (b) To the extent that the indemnity in clause 2.2(a) is of Indemnified Parties other than TfNSW, TfNSW has sought and obtained that indemnity as agent on behalf of each Indemnified Party. TfNSW may also enforce that indemnity as agent on behalf of each Indemnified Party.
  - (c) If TfNSW does not have authority to act as agent on behalf of an Indemnified Party other than TfNSW, then TfNSW will be deemed to have sought and obtained that indemnity as trustee for that Indemnified Party and holds the benefit of that indemnity as trustee. TfNSW may also enforce that indemnity as trustee for the benefit that Indemnified Party.
  - (d) If the indemnity in clause 2.2(a) is unenforceable to the extent that it is expressed to be given in favour of an Indemnified Party other than TfNSW, all references in this clause 2.2 (*Indemnity*) to "the Indemnified Party" or "an Indemnified Party" will be read as a reference to "TfNSW" only.
  - (e) Subject to clauses 2.2(f) and 2.2(g), an Indemnified Party must, as soon as is reasonably practicable after it becomes aware of a claim:
    - (i) notify the Contractor in writing of the alleged infringement;
    - (ii) give the Contractor at the time of notification the option to conduct the defence of the claim; and
    - (iii) provide the Contractor (at the Contractor's expense) with reasonable assistance in conducting the defence of such claim. If the Contractor declines to defend a claim, the indemnified party must consult with the Contractor in respect of that claim.
  - (f) Clause 2.2(e) does not apply where:

- (i) interlocutory proceedings are commenced against an Indemnified Party on an urgent basis;
  - (ii) the Indemnified Party reasonably considers that there is insufficient time to notify the Contractor and for the Contractor to commence defence of such proceedings on behalf of the party indemnified;
  - (iii) the Indemnified Party initially defends such proceedings; and
  - (iv) as soon as practicable after the commencement of the proceedings gives the Contractor the option to conduct the defence of such proceedings.
- (g) Clause 2.2(e) does not apply to claims which would or may prevent the continued development or operation of the CSELRVs, Spares and Special Tools and Equipment or continued conduct of the Contractor's Activities and the Indemnified Party:
- (i) to the extent reasonably practicable, consults in good faith with the Contractor with respect to such claims; and
  - (ii) does not in the course of defending or compromising such claims make admissions which may materially affect the validity of the Alstom Systems IP without the written consent of the Contractor (such consent not to be unreasonably withheld).

### 2.3 Infringements

- (a) If the Contractor:
- (i) becomes aware of a Claim by a person that the use of any Contract IP infringes any rights, including Intellectual Property or Moral Rights of a third party; or
  - (ii) believes that TfNSW may have a Claim against a person for infringement or misuse of any TfNSW IP,
- it must promptly provide TfNSW with written notice of the alleged Claim.
- (b) Notwithstanding clauses 2.1 (*Warranty by the Contractor*) and 2.2 (*Indemnity*), if as a result of any alleged infringement or threatened infringement of Intellectual Property, TfNSW, the Contractor, or any other entity performing work under this deed is prevented (whether by court order or otherwise) from exercising Intellectual Property it had been exercising or was proposing to exercise to perform the Contractor's Activities, the Contractor must:
- (i) secure for TfNSW, the Contractor and such other entity performing any obligation or exercising any right under this deed, the right to continue to use such Intellectual Property;
  - (ii) replace such Intellectual Property with non-infringing Intellectual Property which is equivalent in terms of functionality, performance and price; or
  - (iii) modify any materials, equipment, Software, devices or processes so that they become non-infringing or remove any materials, equipment, Software, devices or processes that are infringing without prejudice to any other rights of TfNSW.
- (c) If the amount of time necessary to proceed with one of the options set out in clause 2.3(b) is deemed excessive by TfNSW, TfNSW may direct the Contractor to select another option and the Contractor must comply with that direction.
- (d) The steps required for the Contractor to comply with its obligations under clauses 2.3(b) and 2.3(c) are at the Contractor's sole cost and expense unless the alleged

infringement or threatened infringement directly arises in respect of TfNSW Licensed IP, in which case the costs are to be borne based upon the extent of responsibility of each party for the alleged infringement or threatened infringement, as reasonably determined by TfNSW's Representative.

### 3. **OWNERSHIP OF INTELLECTUAL PROPERTY**

#### 3.1 **Ownership - General**

- (a) As between the parties, TfNSW owns all right, title and interest, including all Intellectual Property, in and to the TfNSW IP and nothing in this deed confers any right in the TfNSW IP to the Contractor other than as licensee as expressly set out in clause 12 (*TfNSW Licensed IP*).
- (b) As between the parties, the Contractor owns all right, title and interest, including all Intellectual Property, in and to the Alstom Systems IP and nothing in this deed confers any right in the Alstom Systems IP to TfNSW other than as licensee as expressly set out in clause 4.2.

#### 3.2 **[Not used]**

### 4. **LICENCE OF INTELLECTUAL PROPERTY**

#### 4.1 **[Not used]**

#### 4.2 **Alstom Systems IP**

The Contractor grants to TfNSW and any successor Contractor a permanent, perpetual, irrevocable, transferable, royalty free, non-exclusive licence to exercise the Alstom Systems IP owned by or licensed to the Contractor, for the following purposes:

- (a) to refurbish, convert, upgrade and modify the Alstom Systems;
- (b) subject to clause 4.4 (*Restrictions on licences*), to construct and manufacture the Alstom Systems;
- (c) to operate and maintain the Alstom Systems;
- (d) to disclose the Alstom Systems IP on a confidential basis to third parties solely for the purposes of a tender process for the procurement of the integration of the Alstom Systems with any Augmentation (as defined in the Project Deed); or
- (e) to integrate the Alstom Systems with any Augmentation (as defined in the Project Deed) or any other project that interfaces with the SLR.

#### 4.3 **Licences**

The licence granted in clause 4.2 (*Alstom Systems IP*):

- (a) arises in respect of each component of the Alstom Systems IP upon the later of the date of this deed or upon the creation of each component of the Alstom Systems IP;
- (b) may be sub-licensed; and
- (c) will survive expiry of this deed or termination of this deed on any basis.

#### 4.4 **Restrictions on licences**

Notwithstanding any other provision of this deed:

- (a) subject to clause 44 of the Operative Provisions, after the Term, the Contractor and its Associates are not required to provide any software support or maintenance services in relation to any Software licensed or supplied to TfNSW in respect of the CSELRVs, Spares and Special Tools and Equipment, unless otherwise agreed between the parties under a separate agreement;
- (b) TfNSW is not entitled to access the Source Code in any Software, except to the extent TfNSW is entitled to be provided with Source Code pursuant to the Source Code Escrow Agreement;
- (c) the licence granted in clause 4.2 (*Alstom Systems IP*) does not entitle TfNSW or any successor Contractor (or any sub-licensee or transferee) to undertake or procure the construction or manufacture of:
  - (i) Alstom Systems for any light rail system other than the SLR;
  - (ii) spare parts for the Alstom Systems; or
  - (iii) Alstom Systems for the SLR,unless:
  - (iv) TfNSW is entitled to access the Relevant Source Code pursuant to the Source Code Escrow Agreement;
  - (v) [not used]; and
- (d) any transfer by TfNSW of the licence granted in clause 4.2 (*Alstom Systems IP*) must be notified to the Contractor within a reasonable period.

#### 4.5 Licence of Third Party Software

- (a) If required by TfNSW, the Contractor must:
  - (i) on or after the termination or expiry of this deed, use commercially reasonable endeavours to sublicense or assign to TfNSW the Contractor's rights under, or cause a novation to TfNSW of the Contractor's rights and obligations under, or assist TfNSW to obtain direct rights to, Third Party Licences (and must take commercially reasonable steps to ensure that the Third Party Licences make provision for this); or
  - (ii) at TfNSW's request during the Term, if TfNSW exercises its Step-In Rights under clause 42 of the Operative Provisions, use commercially reasonable endeavours to sublicense to TfNSW and a Step-in Party (if any) and/or assist TfNSW and a Step-in Party (if any) to obtain direct rights to Third Party Licences.
- (b) In respect of any sub-licence, assignment, novation or any such direct rights obtained under clause 4.5(a):
  - (i) each party will bear its own costs of effecting the assignment or novation or obtaining direct rights, except for any fee charged by a relevant third party (not being the Contractor or an Associate of the Contractor) which will be paid by TfNSW;
  - (ii) TfNSW will pay all costs and expenses referable to any period after the date of their assignment;
  - (iii) without derogating from clause 2.1 (*Warranty by the Contractor*), the Contractor must use commercially reasonable endeavours to do all acts and things reasonably requested by TfNSW to enable TfNSW to:

- (A) obtain copies of, and otherwise be apprised of all the terms of, and communications and information concerning, the Third Party Licences and their performance;
  - (B) exercise and enforce all rights and perform all obligations under the Third Party Licences as if named as the Contractor; and
  - (C) obtain such sub-licence, assignment, novation or direct rights on the same or substantially similar terms (including the remaining duration of any term) as the Contractor has acquired for itself as enables it to fulfil its obligations under this deed; and
- (iv) on and from the date of the assignment or novation of such Third Party Licences:
- (A) TfNSW must assume all obligations of the Contractor under such Third Party Licences; and
  - (B) TfNSW must indemnify the Contractor against all claims in respect of such Third Party Licences which arise in relation to the period on or from the date of assignment or novation of such Third Party Licences.
- (c) Where under this clause 4.5 (*Licence of Third Party Software*) the Contractor has the legal right, such as the right to grant the relevant sublicense, to perform an obligation that is qualified by "use commercially reasonable endeavours", then the Contractor must perform such obligation and shall be in breach of the requirement to "use commercially reasonable endeavours" if it fails to do so.

#### 4.6 **Equipment IP**

- (a) The Contractor must use commercially reasonable endeavours to ensure that:
- (i) at the time ownership of tangible items (including computer hardware) forming part of the CSELRVs or Spares or Sepcial Tools and Equipment (including, if necessary, the Contractor's confidential information) is transferred to and vests in TfNSW or TfNSW's nominee pursuant to clause 51 of the Operative Provisions; and
  - (ii) at all times during any period in which a Step-in Party is exercising its Step-in Rights in accordance with clause 42 of the Operative Provisions,
- TfNSW or TfNSW's nominee has such perpetual, royalty-free, transferable licences of the Equipment IP as will enable TfNSW or TfNSW's nominee to fully and effectively use and deal with the tangible items as owner of the tangible items, and to permit others to use those tangible items (including computer hardware) under contract with TfNSW or TfNSW's nominee.
- (b) Where under clause 4.6(a) the Contractor has the legal right, such as the right to grant the relevant licence, to perform an obligation that is qualified by "use commercially reasonable endeavours" then the Contractor must perform such obligation and shall be in breach of the requirement to "use commercially reasonable endeavours" if it fails to do so.

#### 5. **[NOT USED]**

#### 6. **MORAL RIGHTS**

##### 6.1 **Contractor to take reasonable steps**

To the extent permitted by law, the Contractor must take all reasonable steps to ensure that no person sues, enforces any claim, brings any action or exercises or seeks to exercise any remedy in respect of any breach or alleged breach, infringement or other

wrong doing (whether before or after the date of this deed) against TfNSW or any person to whom TfNSW sub-licenses or otherwise grants a right under any Alstom Systems IP in respect of any person's Moral Rights in respect of any Contract IP (excluding all TfNSW Licensed IP), the CSELRVs, Spares, Special Tools and Equipment or the Contractor Documentation.

## 6.2 Moral Rights Access

To the extent that any conduct of TfNSW, the Contractor or any person authorised by either of them, may infringe a person's Moral Rights in respect of any Contract IP (but excluding TfNSW Licensed IP), the CSELRVs, Spares, Special Tools and Equipment or the Contractor Documentation, before the person creates any part of the material or work which may give rise to the Moral Rights claim, the Contractor must obtain from that person a duly completed and executed Moral Rights Consent.

## 6.3 Contractor Obligations

The Contractor must:

- (a) not coerce any person to complete or execute a Moral Rights Consent;
- (b) within 15 days of a Moral Rights Consent having been executed in accordance with this clause 6 (*Moral Rights*), provide a copy of that Moral Rights Consent to TfNSW; and
- (c) [not used].

## 7. TFNSW DATA

### 7.1 Ownership of TfNSW Data

- (a) Notwithstanding any other provision of this deed, the Contractor agrees and acknowledges that TfNSW owns all right, title and interest, including all Intellectual Property in and to the TfNSW Data and TfNSW may use TfNSW Data for any purpose whatsoever, including planning and marketing purposes, and purposes required by TfNSW's Associates.
- (b) To the extent necessary to give effect to clause 7.1(a), the Contractor assigns to TfNSW, and will procure the assignment to TfNSW of, all right, title and interest in and to the TfNSW Data. Ownership of each item of TfNSW Data vests in TfNSW on:
  - (i) the date of this deed, for any item of TfNSW Data in existence at the date of this deed; and
  - (ii) upon creation, for each item of TfNSW Data created after the date of this deed.

## 8. RECORDS OF AND ACCESS TO INTELLECTUAL PROPERTY AND TFNSW DATA

### 8.1 IP Register

- (a) Without limiting the Contractor's other obligations under this deed, the Contractor must establish and maintain an electronic database register and must:
  - (i) within 30 Business Days of the date of this deed, include in the register a List of Intellectual Property for all Intellectual Property that is in existence;
  - (ii) prior to entering into any arrangements with respect to any Intellectual Property which is not on the list of Intellectual Property, provide TfNSW with written notice specifying:

- (A) the nature of the Intellectual Property;
  - (B) the owner of the Intellectual Property and, if relevant, the licensor and licensee of the Intellectual Property;
  - (C) details of the proposed arrangements to be entered into with respect to the Intellectual Property;
- (iii) at the end of the Delivery Phase, update the register with any updated List of Intellectual Property provided or required to be provided by the Contractor under clause 8.1(a) of this Schedule A5 (*Intellectual Property*); and
- (iv) ensure TfNSW has access at all times and in any manner to the register, which will be available to TfNSW:
- (A) unconditionally;
  - (B) without prior notice; and
  - (C) at no additional charge.
- (b) The Contractor agrees to, and must procure that its Associates agree to, discuss and provide such assistance to TfNSW and any party nominated by TfNSW as TfNSW may reasonably require to enable TfNSW to enjoy the full benefit of its rights under and in relation to this deed.
- (c) The Contractor acknowledges that the TfNSW Data is sensitive and extremely valuable to TfNSW and disclosure, use or access to it, in a manner not permitted by this deed may cause irreparable harm and damage to TfNSW.
- (d) The Contractor must follow TfNSW's reasonable directions when collecting, storing and protecting the TfNSW Data.

## 8.2 **Physical material**

- (a) The Contractor must, at its own cost, deliver from time to time or on request of TfNSW during the Term and upon termination or expiry of this deed, such physical media embodying:
- (i) [not used];
  - (ii) Alstom Systems IP;
  - (iii) Third Party Software and Equipment IP which the Contractor or its Associates owns or has appropriate rights to provide; or
  - (iv) TfNSW Data,
- as TfNSW reasonably requests to enable it to fully exercise its ownership and rights under this deed.
- (b) Without limiting clause 8.2(a):
- (i) the Contractor must create and deliver to TfNSW prior to Delivery of each CSELRV one copy of the object code or any Software comprised in the items or materials identified in the definition of Alstom Systems IP;
  - (ii) within 5 Business Days of any change to the Software used in the items or materials identified in the definition of Alstom Systems IP, the Contractor must deliver a copy of it to TfNSW;



- (iii) within 30 Business Days after execution of this deed, the Contractor must deliver the List of Software (current as at that date) to TfNSW as part of the List of Intellectual Property delivered under clause 8.1(a); and
- (iv) within 5 Business Days of the use by the Contractor of any Software which is not specified on the List of Software, the Contractor must:
  - (A) provide TfNSW with the following information:
    - (aa) name of the Software;
    - (bb) owner of the Software; and
    - (cc) confirmation that the Software is the subject of the warranty in clause 2.1; and
  - (B) use commercially reasonable endeavours to provide TfNSW with a copy of the Software licence, if any.

## 9. RELEVANT SOURCE CODE

### 9.1 Deposit of Relevant Source Code

Within 20 Business Days of each milestone identified in Annexure C, the Contractor must deposit a copy of the Relevant Source Code, then existing, in escrow with the Source Code Escrow Agent on the terms of the Source Code Escrow Agreement. Following the last of the milestones identified in Annexure C, the Contractor will thereafter, within 20 Business Days of Quarter End during the remainder of the Term, update the Relevant Source Code deposited with the Source Code Escrow Agent by depositing with the Source Code Escrow Agent a copy of all Relevant Source Code which has been created, or reflects Software, which has first been incorporated into the Alstom Systems IP during that Quarter (including any Source Code to which modifications have been made) to ensure that the Relevant Source Code deposited with the Source Code Escrow Agent is current as at the Quarter End.

**9.2 Provision of Relevant Source Code**

TfNSW will be entitled, at the Contractor's cost, to be provided with the Relevant Source Code at any time if any of the following events occur:

- (a) an Insolvency Event occurs in relation to the Contractor or Alstom Transport Technologies SAS;
- (b) TfNSW exercises any Step-In Rights in accordance with this deed, but only to the extent, and for the period, required for TfNSW to reasonably exercise its Step-In Rights; or
- (c) the parties to the Source Code Escrow Agreement otherwise agree to the release of the Relevant Source Code.

**9.3 Audit of Relevant Source Code**

TfNSW may (at TfNSW's cost), once every 12 months during the Term, have an auditor review, analyse and conduct tests on a confidential basis in relation to the Relevant Source Code maintained in escrow with the Source Code Escrow Agent for the purposes of:

- (a) verifying that the Contractor is complying with clause 9.1 (*Deposit of Relevant Source Code*);
- (b) reviewing the quality of the material in escrow to ensure there has been no degradation to that material in escrow; and
- (c) providing a report as to the auditor's findings.

**9.4 Remedy of non-compliance**

The Contractor must, within 30 Business Days of receipt of a written notice from TfNSW specifying that an audit pursuant to clause 9.3 (*Audit of Relevant Source Code*) has determined that the Contractor is not complying with clause 9.1 (*Deposit of Relevant Source Code*) or there has been degradation to the material in escrow, remedy such non-compliance or replace such material as the case may be.

**9.5 Deemed Licensed Intellectual Property**

Intellectual Property comprised in any material which TfNSW is entitled to be provided with under this clause 9 (*Relevant Source Code*) will be deemed to be Alstom Systems IP during the period to which TfNSW is entitled to be provided with that material.

**9.6 No deposit**

The Contractor is not required to deposit and maintain in escrow any material that it has already given to TfNSW on a permanent basis.

**10. PATENT VALIDITY**

If any component of any Intellectual Property which is licensed or assigned under this deed expires through the effluxion of time or is or becomes invalid, then, without limiting TfNSW's rights in respect of that expiry or invalidity, that component will, to that extent only, be deemed to be excluded from the Intellectual Property licensed or assigned under this deed and this deed will otherwise continue in full force and effect.

**11. [NOT USED]**

**12. TFNSW LICENSED IP**

**12.1 TfNSW Licensed IP**

- (a) TfNSW grants to the Contractor, subject to such conditions as TfNSW may reasonably impose, an irrevocable, royalty-free, non-exclusive licence during the Term to use, reproduce, modify, adapt and otherwise exercise the TfNSW Licensed IP in accordance with this deed solely for the purpose of carrying out the Contractor's Activities,.
- (b) The licence granted in clause 12.1(a) may be sublicensed (free of charge) by the Contractor subject to such conditions as TfNSW may reasonably impose.

12.2 **[Not used]**

12.3 **[Not used]**

### 13. **TFNSW BRAND**

#### 13.1 **Use of TfNSW Brand**

- (a) The Contractor must only use the TfNSW Brand in material if TfNSW has given that material to the Contractor or the Contractor has submitted representative material including the TfNSW Brand to TfNSW and TfNSW has approved their use in writing.
- (b) The Contractor acknowledges and agrees that:
  - (i) the TfNSW Brand is extremely important and valuable to TfNSW;
  - (ii) TfNSW owns all right, title and interest in the TfNSW Brand and the Contractor has no right, title or interest in the TfNSW Brand and, in particular, in respect of the TfNSW Marks the powers conferred on authorised users by section 26 of the *Trade Marks Act 1995* (Cth) are expressly excluded;
  - (iii) any goodwill and any other right, title or interest from the Contractor's use of the TfNSW Brand accrues solely for TfNSW's benefit;
  - (iv) the Contractor will, at TfNSW's request, immediately amend or withdraw any document or thing bearing the TfNSW Brand;
  - (v) the Contractor must only use the TfNSW Brand in a manner which strictly accords with the terms of this deed and any directions or guidelines which TfNSW provides to OpCo from time to time; and
  - (vi) TfNSW may request access to any material bearing the TfNSW Brand to ensure compliance with this deed and any directions or guidelines for use of the TfNSW Brand and upon receipt of such a request, the Contractor will provide TfNSW with access to the relevant material within 5 Business Days.
- (c) The Contractor must do all things necessary (including executing documents) and provide TfNSW with all such assistance as is reasonably required by TfNSW to register any part of the TfNSW Brand in the name of TfNSW and to maintain that registration throughout the Term.
- (d) The Contractor must ensure that where the TfNSW Marks appear in any written material (including any electronic material) published by or on behalf of the Contractor, unless otherwise authorised by TfNSW in writing:
  - (i) the ® symbol must appear next to TfNSW Marks which are registered and the ™ must appear next to TfNSW Marks which are not registered; and
  - (ii) the TfNSW Marks must be accompanied by the following footnote:

"The [*to be inserted*] trade mark is used by the Contractor under licence from TfNSW."

- (e) The Contractor must not use the TfNSW Brand in a manner which is prejudicial to TfNSW or likely to prejudice the distinctiveness of the TfNSW Brand or the validity of any registration for any of the TfNSW Marks.
- (f) The Contractor must comply with any standards, directions and specifications notified in writing by TfNSW from time to time during the Term as to the appearance, colour, size and positioning of the Trade Marks and the footnote referred to in clause 13(d)(ii).
- (g) The Contractor must not at any time during the Term use the TfNSW Marks in juxtaposition to any other trade mark, embellishment or device without the prior written consent of TfNSW.
- (h) The Contractor will:
  - (i) if requested by TfNSW, take all necessary action and execute and deliver to TfNSW all necessary documents and instruments to record the Contractor as a registered user of the TfNSW Marks;
  - (ii) if requested by TfNSW, submit to TfNSW, samples of all materials (including all advertisements, promotions and other marketing material) which incorporate the TfNSW Brand for TfNSW's prior written approval;
  - (iii) except to the extent expressly permitted by this agreement, not use or apply to register any TfNSW Marks as part of its corporate, business, trading or domain name;
  - (iv) not directly or indirectly contest or oppose or assist any other party to contest or oppose TfNSW's ownership of the TfNSW Brand;
  - (v) not register or use any trade mark, trade name, company name or domain name which includes any of the TfNSW Brand or which is substantially identical or deceptively similar to any part of the TfNSW Brand; and
  - (vi) not challenge the TfNSW Brand or TfNSW's ownership of the TfNSW Brand or assist a third party to do these things.
- (i) If, during the Term, the Contractor becomes aware of any infringement or unauthorised use of, act inconsistent with, challenge to or claim against or in relation to any of the Trade Marks, the Contractor must promptly notify TfNSW.
- (j) TfNSW will have the conduct of all proceedings relating to any infringement or unauthorised use of, act inconsistent with, challenge to or claim against or in relation to any of the Trade Marks and will in its sole discretion decide what action if any to take in respect of that matter. The Contractor must, at TfNSW's reasonable cost, take any action which TfNSW reasonably requests to bring the matter to an end.
- (k) [Not used.]

## 14. GENERAL

### 14.1 Copyright and Circuit Layout Act

Notwithstanding any other provision of this deed, this deed does not exclude or limit, or have the effect of excluding or limiting, the operation of subsection 47B(3) or sections 47C, 47D, 47E or 47F of the *Copyright Act 1968* (Cth) or Part II, Division 3 of the *Circuit Layout Act 1989* (Cth).

### 14.2 Perfecting licence and ownership

- (a) Without limiting any other provision of this deed, the Contractor must do all things necessary (including executing documents) to perfect the licences and ownership granted to TfNSW in this Schedule A5 (*Intellectual Property*) and otherwise to give effect to the Contractor's obligations and TfNSW's rights under this Schedule A5 (*Intellectual Property*).
- (b) If and to the extent TfNSW notifies the Contractor that it has failed to perform any act required under clause 14.2(a) and the Contractor fails to then perform that act within a reasonable period as identified in that notice, OpCo will with effect from the expiry of the time period identified in the notice irrevocably appoint TfNSW, or such other person as TfNSW nominates from time to time, as the Contractor's attorney to do such acts and things, in the Contractor's name, as TfNSW reasonably requires in order to exercise the rights under this Schedule A5 (*Intellectual Property*).

**14.3 No derogation**

Nothing in this Schedule A5 (*Intellectual Property*) derogates from TfNSW's rights under Schedule 6A of the *Transport Administration Act 1988* (NSW).

**14.4 Survival**

This Schedule A5 (*Intellectual Property*) survives:

- (a) any frustration, suspension, termination or expiry of this deed; or
- (b) the exercise by TfNSW of its Step-In-Rights under clause 42 (*Step-in*) of the Operative Provisions.

**Annexure A**

**[Not used]**

## Annexure B - Moral Rights Consent

### Deed Poll

#### Dated:

By: [to be inserted] of [to be inserted] (**Author**)

In favour of: Transport for NSW (ABN 18 804 239 602) a New South Wales Government agency constituted under section 3C of the *Transport Administration Act 1988* (NSW) of Level 5, Tower A, Zenith Centre 821 Pacific Highway, Chatswood NSW 2067 (**TfNSW**).

#### Recitals

- A. TfNSW and [insert name and ABN of OpCo] (**Contractor**) have entered into a deed entitled Sydney Light Rail – Alstom CSELRV Supply Agreement in relation to the Sydney Light Rail project dated [insert] to perform, create and deliver certain light rail vehicles and associated spares and equipment (the **CSELRVs**).
- B. The Author has created or may create material in which copyright subsists for the purposes of the *Copyright Act 1968* (Cth) (as amended), which may be used in connection with, or as part of, the CSELRVs (the **Work**).

#### This deed poll provides:

In relation to the Work, the Author:

1. agrees, to the extent permitted by law, not to sue, enforce any claim, bring any action or exercise any remedy in respect of any breach, alleged breach, infringement or other wrongdoing in relation to the Author's moral rights under the *Copyright Act 1968* (Cth) by:
  - (a) TfNSW;
  - (b) the Contractor;
  - (c) any third party, to whom the Contractor and/or TfNSW grants a licence to use the Work (whether express or implied); or
  - (d) any third party to whom the Contractor and or TfNSW assigns the copyright in such Work,(together defined as "**the Contractor, TfNSW and Associated Persons**");
2. without limiting paragraph 1, consents to, and waives any rights in relation to any of the Contractor, TfNSW and Associated Persons:
  - (a) failing to acknowledge the Author's authorship of the Work;
  - (b) falsely attributing authorship of the Work; or
  - (c) making any modification, variation or amendment of any nature whatsoever to any of the Work, whether or not:
    - (i) it results in a material distortion of or destruction or mutilation of the Work; and
    - (ii) it is prejudicial to the honour or reputation of the Author; and

3. without limiting paragraphs 1 or 2, consents to, and waives any rights in relation to, any of the Contractor, TfNSW and Associated Persons:
- (a) using the Work other than in the publication or for the purpose for which it was intended at the time the Work is created;
  - (b) altering the Work by adding to, or removing elements from the Work, including without limitation editing, altering, modifying or expanding the Work;
  - (c) incorporating the Work into other works of any kind, in any medium now known or later invented;
  - (d) deriving other works of any kind (including without limitation films, sound recordings and other deliverables in any medium now known or later invented) from the Work;
  - (e) using the Work, or any part of the Work or any other work derived from the Work, in conjunction with other material of any kind;
  - (f) changing, relocating, demolishing or destroying any building or structure which incorporates, is based on, or is constructed in accordance with, any of the Work; and
  - (g) doing any of the acts referred to in paragraphs (b), (c), (d) and (e) in relation to any:
    - (i) adaptation of the Work or any part of such adaptation;
    - (ii) other work derived from or based on the Work or any part of such other work; and
    - (iii) omitting to attribute the Author's authorship of the Work.

**Executed** as a Deed Poll

**Signature of Author:**..... **Signature of witness:** .....

**Name of Author** ..... **Name of witness:** .....



**Annexure C – Milestones for deposit of Escrow Materials**

1. **[NOT USED]**
2. **CSELRVS AND SPECIAL TOOLS AND EQUIPMENT IN RELATION TO THE CSELRVS**
  - (a) [Not used];
  - (b) Certification of the CSELRV Design Documentation by the Independent Certifier in accordance with clause 13.7(b) of the Operative Provisions;
  - (c) [Not used];
  - (d) Factory Acceptance Test (Routine) (as defined in SPR Appendix 33 (*Testing and Commissioning*));
  - (e) [Not used];
  - (f) Actual Date of Delivery; and
  - (g) Final Completion.

**Schedule A6**

**Not used**

**Schedule A7**  
**Not used**

**Schedule A8**

**Not used**

**Schedule A9**  
**Not used**

**Schedule A10**

**Not used**

**Schedule A11**  
**Not used**

**Schedule A12**  
**Not used**



**Schedule A13**

**Not used**

**Schedule A14**

**Not used**

## **Schedule A15**

### **Independent Certifier Deed**

The form of the Independent Certifier Deed will match the terms of the Independent Certifier Deed under Schedule A15 to the Project Deed, subject to such amendments as are necessary so that the scope of the services reflects the services required of the Independent Certifier under this deed. The parties will agree these amendments acting reasonably.

**Schedule A16**

**Not used**

**Schedule A17**  
**Not used**

## Schedule A18

### Dispute resolution procedures

(Clause 56)

1. **NOT USED**

2. **EXPERT DETERMINATION RULES**

- (a) Any expert determination under clause 56.10 (*Expert determination*) of the Operative Provisions is to be conducted by:
  - (i) an independent industry expert agreed in writing by the parties to the Dispute. For this purpose, each party will nominate two preferred independent industry experts; or
  - (ii) an independent industry expert appointed by the President or Acting President of ACICA in New South Wales where:
    - (A) the parties are unable to agree upon an independent industry expert within 30 Business Days after the Executive Negotiators have agreed in writing to refer the Dispute to expert determination under clause 2(a)(i) of this Schedule A18 (*Dispute resolution procedures*); or
    - (B) an independent industry expert agreed under clause 2(a)(i) of this Schedule A18 (*Dispute resolution procedures*):
      - (aa) is unavailable;
      - (bb) declines to act;
      - (cc) does not respond within 10 Business Days to a request by one or both parties for advice as to whether he or she is able to conduct the determination; or
      - (dd) does not make a determination within the time specified in the rules for expert determination.
- (b) An expert determination conducted under clause 56.10 (*Expert determination*) of the Operative Provisions is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.
- (c) The expert determination must be made in accordance with this deed and the rules for the expert determination process in Attachment A (*Expert Determination Agreement*) or such other rules as the expert may in his or her absolute discretion require.
- (d) The expert must:
  - (i) disclose to the parties any interest he or she has in the outcome of the determination; and
  - (ii) not communicate with one party to the determination without the knowledge of the other.
- (e) Each party must:
  - (i) bear its own costs in respect of any expert determination; and

- (ii) pay one-half of the expert's costs.
- (f) The expert will not be liable to the parties arising out of, or in any way in connection with, the expert determination process, except in the case of fraud.
- (g) The parties must enter into an agreement with the appointed expert on the terms prescribed Attachment A (*Expert Determination Agreement*) or such other terms as the parties and the expert may agree.

3. **ARBITRATION RULES**

- (a) The arbitration is to be conducted by:
  - (i) an arbitrator agreed by the parties to the Dispute. For this purpose, each party will nominate two preferred arbitrators; or
  - (ii) an arbitrator appointed by the President or Acting President of ACICA in New South Wales where:
    - (A) the parties are unable to agree upon an arbitrator within 30 Business Days after:
      - (aa) a notice referring the Dispute to arbitration has been provided under clauses 56.7(c)(ii)(C) or 56.10(b)(iii) of the Operative Provisions; or
      - (bb) a notice of dissatisfaction has been provided under clause 56.10(b)(iii); or
    - (B) an arbitrator agreed under clause 3(a)(i):
      - (aa) is unavailable;
      - (bb) declines to act; or
      - (cc) does not respond within 10 Business Days to a request by one or both parties for advice as to whether he or she is able to conduct the determination.
- (b) Any arbitration conducted in relation to a Dispute will be conducted in accordance with the arbitration rules of ACICA known as the ACICA Arbitration Rules.
- (c) The seat of the arbitration will be Sydney, Australia.
- (d) The language of the arbitration will be English.
- (e) The parties further agree to the following general principles relating to the procedure of the arbitration:
  - (i) that they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
  - (ii) that any arbitration conducted pursuant to this clause 3 (*Arbitration rules*) will not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal; and
  - (iii) that in conducting the arbitration, the arbitral tribunal must take into account the matters set out above, particularly in deciding issues such as:

- (A) the number of written submissions that will be permitted;
  - (B) where appropriate, the length of written submissions;
  - (C) the extent of document discovery permitted, if any;
  - (D) the consolidation of proceedings, when requested;
  - (E) the joinder of parties, when requested;
  - (F) the length of any hearing, if any; and
  - (G) the number of experts, if any, each party is permitted to appoint.
- (f) The parties agree that:
- (i) subject to clause 56.13 (*Exclusion from determination or award*) of the Operative Provisions, the arbitral tribunal will have the power to grant all legal, equitable and statutory remedies, except punitive damages; and
  - (ii) section 24 of the *International Arbitration Act 1974* (Cth) will apply in an international arbitration context.
- (g) The arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitral tribunal considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitral tribunal has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.
- (h) Any award of the arbitral tribunal will be final and binding upon the parties.
- (i) This arbitration agreement will be governed by and must be construed according to the laws applying in New South Wales.



**Attachment A**  
**EXPERT DETERMINATION AGREEMENT**

To:

By a deed titled "Alstom CSELRV Supply Agreement" dated ..... (**Alstom CSELRV Supply Agreement**) between:

**Alstom Transport Australia Pty Limited** ABN: 68 165 157 451 (**Contractor**); and  
**Transport for NSW** ABN: 18 804 239 602 (**TfNSW**)

The Contractor and TfNSW agreed to submit disputes or differences that might arise between them to an expert for determination through an expert determination process, as established by the Alstom CSELRV Supply Agreement, and the Rules for expert determination and the Code of Conduct for an expert that are attached to this letter or any other rules which you may in your absolute discretion decide.

A dispute has arisen between the parties. A short summary of the dispute is attached to this letter.

The parties agree to appoint you,

.....  
..... of .....

as the sole expert to determine the Dispute or difference in accordance with the below procedures. The parties agree to pay you \$.....

The determination of the dispute or difference must be completed within 60 days (or such other period as may be agreed between you, TfNSW and the Contractor) of the date of your acceptance of this appointment.

The parties agree that you are not liable for any thing you do which is bona fide and in the exercise or purported exercise of your functions as the expert.

Dated: .....

.....  
For TfNSW

.....  
For the Contractor

.....  
For the expert

### CODE OF CONDUCT FOR AN EXPERT

1. The function of the expert is to make a determination on the dispute or difference in accordance with the rules in Attachment B (*Rules for expert determination*) or the Institute of Arbitrators and Mediators Australia Expert Determination Rules (which the expert in his or her absolute discretion decides), this code of conduct and the letter of appointment of the expert.
2. The expert must receive the written submissions and responses of the parties in accordance with the procedures specified in Attachment B (*Rules for expert determination*) and may require any further information or documentation from the parties which is reasonably necessary to determine the dispute or difference.
3. The expert must decide whether a conference is necessary to receive further information. The expert must inform the parties of the subject matter of any conference and may hear representations only on those matters.
4. The expert is not bound by the rules of evidence, may receive information in any manner the expert thinks fit (including as an inquisitor), and must meet the requirements of procedural fairness.
5. The expert must disclose to both parties all information and documents received. If a party fails to make a written submission or appear at any conference after having received the appropriate notice, the expert may continue with the process. Subject to this, discussions with the expert must only take place in the presence of both parties.
6. The expert must reach a determination on the basis of the information received from the parties and on the basis of the expert's own expertise. The decision must be reached as an expert and not as an arbitrator. The expert's determination must be made as soon as possible and in any event within the period set out in the letter of appointment of the expert. The determination, signed by the expert, must be notified immediately to the parties in writing.
7. The expert must keep all information received confidential and must not disclose that information without the prior written consent of the parties.
8. The expert must inform the parties immediately of any circumstances that might adversely affect the expert's capacity to act independently or impartially. The expert, in those circumstances, must terminate the proceedings, unless the parties agree otherwise.

**ATTACHMENT B**  
**RULES FOR EXPERT DETERMINATION**

**1. COMMENCEMENT**

The expert determination process begins when the expert accepts an appointment to determine the dispute or difference in accordance with these rules and the code of conduct for experts forming part of this expert determination agreement.

**2. WRITTEN SUBMISSIONS**

- (a) Within 14 days after the date this process begins, the claimant (that is, the party who gave notice of the dispute or difference) must give the respondent and the expert a written submission setting out details of the dispute or difference, any agreed statement of facts and a written submission on the dispute or difference in support of the claimant's contentions.
- (b) Within 14 days after receipt of a copy of the submission referred to in clause 2(a), the respondent must give the claimant and the expert a written response to the claimant's submission. That response may include cross claims.
- (c) Within 14 days after receipt of the response, the claimant may reply to the response but must not raise new matters.
- (d) Within 7 days after receipt of that reply, the other respondent may make comments upon the reply but not raise new matters.
- (e) For the purpose of counting days in these rules, Saturdays, Sundays, public holidays and the period from 24 December to 15 January inclusive will not be counted. All submissions, responses and comments must be in writing. Unless the expert and the parties otherwise agree, the expert must ignore any submission, response or comment made later than the time prescribed. A party providing anything to the expert must at the same time provide a copy to the other party.
- (f) If the expert considers it appropriate, the claimant may reply in writing to the respondent's comments submitted in accordance with clause 2(d) within the time allowed by the expert.
- (g) If the expert decides further information or documentation is required for the determination of the dispute or difference, the expert:
  - (i) may require a further written submission or documents from one or both parties, giving each party a reasonable opportunity to make a written response to the other's submission;
  - (ii) must not communicate with one party without the knowledge of the other; and
  - (iii) may request a conference in accordance with clause 3 (*Conference*) below.

**3. CONFERENCE**

- (a) The expert may notify the parties that a conference between the parties is considered necessary and set out in such a notice the matters that the expert wants to discuss at the conference.
- (b) Provided that the parties agree, at the request of the expert and on such terms as the parties may agree, the expert may arrange a conference. Any such conference

will be without prejudice to the respective rights and liabilities of the parties arising under the CSELRV Supply Agreement or otherwise at law.

- (c) At least 7 days before the conference, the expert must inform the parties of the conference agenda.
- (d) The parties must appear at the conference and make oral submissions on the subject matter of the conference.
- (e) The expert is not bound by the rules of evidence in conducting the conference.
- (f) Neither party may have legal representation at a conference.
- (g) The conference must be held in private.
- (h) If required by either party, minutes of the conference proceedings must be taken and made available to the expert and the parties.
- (i) All proceedings and submissions relating to the expert determination process must be kept confidential except:
  - (i) with the prior written consent of the parties;
  - (ii) as may be required by law; or
  - (iii) in order to enforce the determination of the expert.

#### 4. **THE DETERMINATION**

- (a) As soon as possible after receipt of the submissions or after any conference and, in any event not later than the period of time after the expert's acceptance of appointment agreed by the parties and the expert, the expert must:
  - (i) determine the dispute or difference between the parties by at least providing a written opinion and a statement of reasons for making the determination; and
  - (ii) notify the parties of that determination in writing.
- (b) The expert must make the determination on the basis of the submissions of the parties, including documents, and the expert's own knowledge and expertise.
- (c) Unless the parties agree to extend the time for making a determination, as agreed by the parties under clause 4(a), the expert cannot deliver a determination after that time.
- (d) If the determination contains clerical or mathematical errors or accidental slips or omissions, the expert may correct them after the expiry of the time for making the determination.

#### 5. **COSTS**

- (a) Each party must bear its own costs of the expert determination and must share equally the costs of the expert.
- (b) Security for costs must be deposited by both parties at the commencement of the expert determination process in accordance with any direction of the expert.

6. **MODIFICATION**

These rules may be modified only by agreement of the parties and the expert.

**Schedule A19**

**Not used**

**Schedule A20**

**Not used**

**Schedule A21**

**Not used**



## **Schedule A22**

### **Guarantee**

The form of the Guarantee will match the form of D&C Guarantee (as defined in the Project Deed) provided by ALSTOM Transport S.A., with such consequential amendments as are necessary to reflect that the Guarantee is provided in respect of this deed, and that the Guarantor is Alstom alone (and not Acciona).

**Schedule B1**

**Not used**

**Schedule B2**  
**Not used**

(

**Schedule B3**

**Not used**

**Schedule B4**  
**Not used**

**Schedule B5**

**Not used**

**Schedule B6**

**Not used**

## **Schedule B7**

### **Planning Approvals**

(Clause 6.2)

Copies of the following Planning Approvals are set out in Schedule B7 (*Planning Approvals*) to the Project Deed:

- (a) the approval granted by the Minister for Urban Affairs and Planning under Section 115B of the EP&A Act 1979 in relation to the proposed Inner West Light Rail Extension;
- (b) the approval granted by the Minister for Planning under Section 75J of the EP&A Act 1979 in relation to the proposed Inner West Extension dated 16 February 2011;
- (c) the Project Planning Approval; and
- (d) the Planning Modification.



**Schedule B8**  
**Not used**

**Schedule B9**  
**Not used**

**Schedule B10**  
**Not used**

**Schedule B11**

**Roads Act Approval**

A copy of the Roads Act Approval is set out in Schedule B11 (*Roads Act Approval*) to the Project Deed.

**Schedule C1**  
**Not used**

**Schedule C2**

**Not used**

**Schedule C3**

**Not used**

**Schedule C4**

**Independent Certifier Test Procedure Certificate**

(Clause 18.2(c))

To: Transport for NSW (**TfNSW**) and [*Alstom Transport Australia Pty Limited*] (**Contractor**)

From: [*to be inserted*] (ABN [*to be inserted*]) (**Independent Certifier**)

This certificate is given in accordance with the Alstom CSELRV Supply Agreement for the Sydney Light Rail between TfNSW and the Contractor dated [*to be inserted*] (**CSELRV Supply Agreement**). Words defined in the CSELRV Supply Agreement have the same meaning in this certificate.

In accordance with the terms of clause 18.2(c) of the CSELRV Supply Agreement, the Independent Certifier certifies that the attached Test Procedure complies with all requirements of the CSELRV Supply Agreement, including the SPR.

Signed for and on behalf of the Independent Certifier by:

Signature:	
Name:	
Position: (Independent Certifier's representative)	
Date:	



**Schedule C5**

**Independent Certifier Test Result Certificate**

(Clause 18.5(c)(i))

To: Transport for NSW (**TfNSW**) and Alstom Transport Australia Pty Limited (**Contractor**)

From: [*to be inserted*] (ABN [*to be inserted*]) (**Independent Certifier**)

This certificate is given in accordance with the Alstom CSELRV Supply Agreement for the Sydney Light Rail between TfNSW and the Contractor dated [*to be inserted*] (**CSELRV Supply Agreement**). Words defined in the CSELRV Supply Agreement have the same meaning in this certificate.

In accordance with the terms of clause 18.5(c)(i) of the CSELRV Supply Agreement, the Independent Certifier certifies that the results of the Test documented in the attached Test Report confirm that that Test has been passed in accordance with the relevant Test Procedure.

Signed for and on behalf of the Independent Certifier by:

Signature:	
Name:	
Position: (Independent Certifier's representative)	
Date:	

**Schedule C6**

**Not used**

**Schedule C7**

**Not used**

**Schedule C8**

**Not used**

**Schedule C9**

**Not used**

**Schedule C10**

**Not used**

**Schedule C11**  
**Certificate of Delivery**

(Clauses 1.1 and 19.9B(a)(i))

To: Transport for NSW (**TfNSW**) and Alstom Transport Australia Pty Limited (**Contractor**)

From: *[to be inserted]* (ABN *[to be inserted]*) (**Independent Certifier**)

This certificate is given in accordance with the Alstom CSELRV Supply Agreement for the Sydney Light Rail between TfNSW and the Contractor dated *[to be inserted]* (**CSELRV Supply Agreement**). Words defined in the CSELRV Supply Agreement have the same meaning in this certificate.

In accordance with clause 19.9B(a)(i) of the CSELRV Supply Agreement the Independent Certifier certifies that Delivery of the CSELRV specified below has been achieved. The Date of Delivery is *[to be inserted]*.

Details of CSELRV:

*[to be inserted]*

A list of Minor Defects is attached.

Signed for and on behalf of the Independent Certifier by:

Signature:	
Name:	
Position: (Independent Certifier's representative)	
Date:	

**Attachment - List of Minor Defects**

No.	Minor Defect
1.	<i>[to be inserted]</i>



**Schedule C12**

**Certificate of Final Completion**

(Clauses 1.1 and 19.10(d)(i))

To: Transport for NSW (**TfNSW**) and Alstom Transport Australia Pty Limited (**Contractor**)

From: *[to be inserted]* (ABN *[to be inserted]*) (**Independent Certifier**)

This certificate is given in accordance with the Alstom CSELRV Supply Agreement for the Sydney Light Rail between TfNSW and the Contractor dated *[to be inserted]* (**CSELRV Supply Agreement**). Words defined in the CSELRV Supply Agreement have the same meaning in this certificate.

In accordance with clause 19.10(d)(i) of the CSELRV Supply Agreement the Independent Certifier hereby certifies that Final Completion of the CSELRV specified below has been achieved. The Date of Final Completion is *[to be inserted]*.

Details of CSELRV:

*[to be inserted]*

Signed for and on behalf of the Independent Certifier by:

Signature:	
Name:	
Position: (Independent Certifier's representative)	
Date:	

**Schedule C13**

**Independent Certifier Project Plan Certificate**

(Clause 8.5(b)(ii))

To: Transport for NSW (**TfNSW**) and Alstom Transport Australia Pty Limited (**Contractor**)

From: [to be inserted] (ABN [to be inserted]) (**Independent Certifier**)

This certificate is given in accordance with the Alstom CSELRV Supply Agreement for the Sydney Light Rail between TfNSW and the Contractor dated [to be inserted] (**CSELRV Supply Agreement**). Words defined in the CSELRV Supply Agreement have the same meaning in this certificate.

In accordance with the terms of clause 8.5(b)(ii) of the CSELRV Supply Agreement, the Independent Certifier certifies that the attached Testing and Commissioning Plan complies with all requirements of the CSELRV Supply Agreement, including the SPR.

Signed for and on behalf of the Independent Certifier by:

Signature:	
Name:	
Position: (Independent Certifier's representative)	
Date:	

**Schedule C14**

**Not used**

**Schedule C15**

**Not used**

**Schedule C16**

**Form of Design Certificate - CSELRVs**

(Clause 13.5(c))

To: Transport for NSW (**TfNSW**) and [*to be inserted*] (**Independent Certifier**)

From: Alstom Transport Australia Pty Limited (ABN 68 165 157 451) (**Contractor**)

This certificate is given in accordance with the Alstom CSELRV Supply Agreement for the Sydney Light Rail between TfNSW and the Contractor dated [*to be inserted*] (**CSELRV Supply Agreement**). Words defined in the CSELRV Supply Agreement have the same meaning in this certificate.

**This section to be completed by the Contractor:**

In accordance with the terms of clause 13.5(c) of the CSELRV Supply Agreement, the Contractor certifies that the attached Design Documentation complies with all requirements of the CSELRV Supply Agreement, including the SPR and is appropriate for manufacture.

Signed for and on behalf of the Contractor by:

Signature:	
Name:	
Position:	
Date:	

**Schedule C17**

**Independent Certifier Design Certificate – CSELRVs**

(Clause 13.7(b)(v))

To: Transport for NSW (**TfNSW**) and Alstom Transport Australia Pty Limited (**Contractor**)

From: [*to be inserted*] (ABN [*to be inserted*]) (**Independent Certifier**)

This certificate is given in accordance with the Alstom CSELRV Supply Agreement for the Sydney Light Rail between TfNSW and the Contractor dated [*to be inserted*] (**CSELRV Supply Agreement**). Words defined in the CSELRV Supply Agreement have the same meaning in this certificate.

In accordance with the terms of clause 13.7(b)(v) of the CSELRV Supply Agreement, the Independent Certifier certifies that the attached Design Documentation:

- (a) complies with all requirements of the CSELRV Supply Agreement (including the SPR), except for the minor errors and omissions identified in the attached list; and
- (b) is appropriate for manufacture.

Signed for and on behalf of the Independent Certifier by:

Signature:	
Name:	
Position: (Independent Certifier's representative)	
Date:	

**Schedule C18**  
**Not used**

**Schedule C19**

**Not used**



**Schedule C20**

**Form of Certificate for Additional CSELRV Acceptance Requirements**

(Clause 19.4A(c)(ii)(A) and (B))

To: Transport for NSW (**TfNSW**)

From: Alstom Transport Australia Pty Limited (ABN [to be inserted]) (**Contractor**)

This certificate is given in accordance with the Alstom CSELRV Supply Agreement for the Sydney Light Rail between TfNSW and the Contractor dated [to be inserted] (**CSELRV Supply Agreement**). Words defined in the CSELRV Supply Agreement have the same meaning in this certificate.

**This section to be completed by the Contractor:**

In accordance with the terms of clause 19.4A(c)(ii)(A) of the CSELRV Supply Agreement, the Contractor certifies that the CSELRVs have been manufactured in accordance with the Design Documentation which the Contractor is entitled to use for CSELRV manufacturing purposes under clause 13.9(a)(i) of the CSELRV Supply Agreement, except for the Minor Defects identified in the attached list.

Signed for and on behalf of the Contractor by:

Signature:	
Name:	
Position:	
Date:	

**This section to be completed by the Contractor:**

In accordance with clause 19.4A(c)(ii)(B) of the CSELRV Supply Agreement, the Contractor certifies that the CSELRVs:

- (i) comply with all the requirements of the CSELRV Supply Agreement (including the SPR), except for the Minor Defects identified in the attached list; and
- (ii) have been manufactured in accordance with the Design Documentation which which the Contractor was entitled to use for CSELRV manufacturing purposes.

Signed for and on behalf of the Contractor by:

Signature:	
Name:	
Position:	
Date:	

**Schedule C21**  
**Certification of Milestone**

(Schedule D1 (*Milestone payments*))

To: Transport for NSW (**TfNSW**) and Alstom Transport Australia Pty Limited (**Contractor**)

From: [*to be inserted*] (ABN [*to be inserted*]) (**Independent Certifier**)

This certificate is given in accordance with the Alstom CSELRV Supply Agreement for the Sydney Light Rail between TfNSW and the Contractor dated [*to be inserted*] (**CSELRV Supply Agreement**). Words defined in the CSELRV Supply Agreement have the same meaning in this certificate.

In accordance with Schedule D1 (*Milestone payments*) of the CSELRV Supply Agreement the Independent Certifier hereby certifies that the Milestone described below has been achieved. The Date of achievement of the Milestone is [*to be inserted*].

Relevant Milestone:

[*Details to be inserted*]

Signed for and on behalf of the Independent Certifier by:

Signature:	
Name:	
Position: (Independent Certifier's representative)	
Date:	

**Schedule D1**  
**Milestone payments**

[**Note: The amendments to this Schedule D1 are subject to review by TfNSW.**]

**1. DEFINITIONS**

The following definitions apply in this Schedule D1 (*Milestone payments*).

**Advance Payment** means the payment described as such under paragraph 3 of this Schedule D1 (*Milestone Payments*).

**CSELRV purchase price** means, for each CSELRV, the purchase price specified in paragraph 2.1, as adjusted in accordance with paragraphs 2.2 and 2.3.

**Effective Date** means the date on which TfNSW directs the Contractor to implement Option 1B or Option 2 (as applicable).

**Invoice Date** means means the date on which the Contractor submits an invoice to TfNSW for payment for an achieved Milestone under paragraph 3 (*Payment Milestones*).

**2. PRICING**

The pricing set out below shall apply to the exercise of Option 1B or Option 2 (as the case may be). The price is in each case the price as at 1 June 2014, which is adjustable in accordance with paragraphs 2.2 and 2.3, as applicable, of this Schedule D1 (*Milestone payments*).

**2.1 Purchase price of each CSELRV and capital cost payment for additional spare parts**

The CSELRV purchase prices are as follows. The total price per CSELRV is the sum of the Euro component and A\$ component of the price as detailed below.

(a) **Option 1B**

(i) CSELRV purchase price of each additional Option 1B CSELRV

Purchase price of each additional Option 1B CSELRV	Currency
	A\$
	EUR

(ii) Total capital costs in respect of the provision of additional spare parts for additional Option 1B CSELRVs

Increase in fleet size	Total capital costs in respect of the provision of additional spare parts for Option 1B CSELRVs	Currency
		EUR
		EUR

Increase in fleet size	Total capital costs in respect of the provision of additional spare parts for Option 1B CSELRVs	Currency
		EUR
		EUR
		EUR
		EUR
		EUR
		EUR
		EUR
		EUR
		EUR
		EUR
		EUR
		EUR
		EUR

(b) **Option 2**

(i) CSELRV purchase price of each additional Option 2 CSELRV

Purchase price of each additional Option 2 CSELRV	Currency
	A\$
	EUR

(ii) Total capital costs in respect of the provision of additional spare parts for additional Option 2 CSELRVs

Increase in fleet size	Total capital costs in respect of the provision of additional spare parts for Option 2 CSELRVs	Currency
		EUR
		EUR
		EUR
		EUR
		EUR
		EUR
		EUR
		EUR
		EUR
		EUR
		EUR
		EUR

Increase in fleet size	Total capital costs in respect of the provision of additional spare parts for Option 2 CSELRVs	Currency
		EUR
		EUR

## 2.2 Adjustments

### (a) Escalation adjustment for those parts of the CSELRV purchase price and capital cost payment for additional spare parts denominated in Euros

Those parts of the CSELRV purchase price and the capital cost payment for additional spare parts denominated in Euros and which are converted to A\$ as of the Effective Date in accordance with paragraph 2.3, shall be adjusted on each Invoice Date according to the Contract Price Adjustment (**CPA**) formula indicated below. The CPA formula base date is 1 June 2014.



Where:

[ICHT-IME] <sub>i</sub>	= Index of Labour Hourly Rate, all employees, in Mechanical and Electrical Industries (Indice du Coût Horaire du Travail, tous salariés, dans les Industries Mécaniques et Electriques) in month i
[Fsd2] <sub>i</sub>	= Index of various products and services B (Indice des produits et services divers B) in month i
[FM0D244401] <sub>i</sub>	= Index of semi-products in copper or alloys (Indice des Demi-produits en cuivre ou alliage) in month i
[FM0D244201] <sub>i</sub>	= Index for raw Aluminium (Indice de l'Aluminium brut) in month i
[M00D241006] <sub>i</sub>	= Index of non-alloy quality steel quarto rolls (Indice des tôles quarto en aciers non alliés de qualité) in month i
[M00D241007] <sub>i</sub>	= Index for hot laminated wide band of thickness >= 3 mm (Indice des Larges bandes laminées à chaud d'épaisseur >= 3mm) in month i
M <sub>0</sub>	= June 2014, CPA Formula base date
P <sub>0</sub>	= Option Price indicated in the Contract on base date M <sub>0</sub>
P	= Option Adjusted Price being the sum of all respective Option milestones payments invoicable in month i. i being the date of invoice and i varying from 1 to n
Index [...] <sub>0</sub>	= Corresponds to index value on month M <sub>0</sub>
n	= Represents the total number of individual milestone payments for the relevant Option

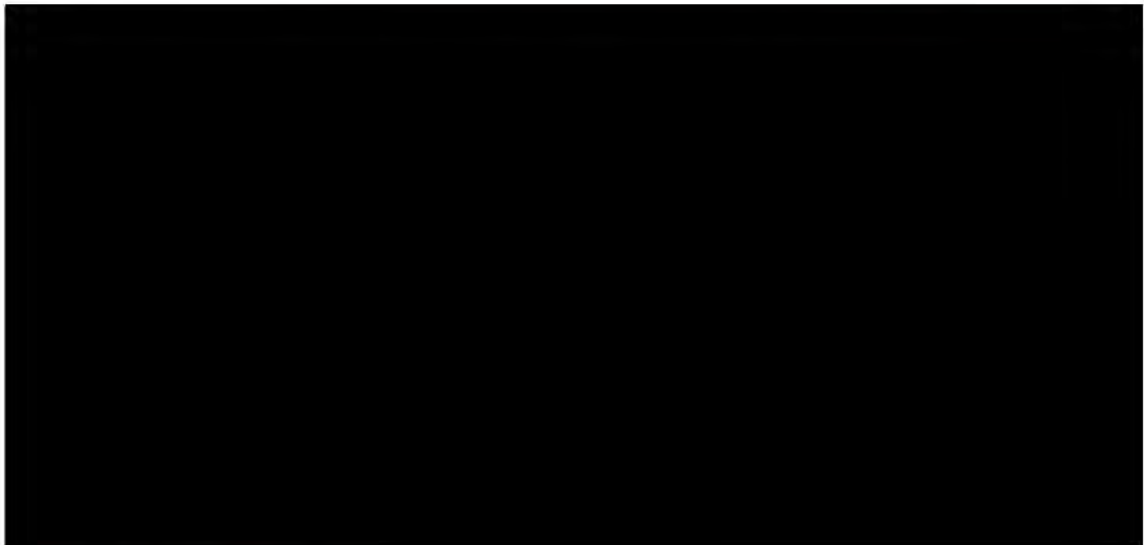
Each of the above are published in Official Bulletin for Competition, Consumption and Fraud Prevention, French Government organisation (*Bulletin Officiel de la Concurrence, de la Consommation et de la Répression des Fraudes*) and are also

published in Monitor of Building and Construction Works (*Moniteur du Bâtiment et des Travaux Publics*).

(b) **Escalation adjustment for those parts of the CSELRV purchase price denominated in A\$**

Those parts of the CSELRV purchase price denominated in A\$ shall be adjusted on each Invoice Date, applying the formula indicated below with a base date for the calculation of June 2014.

Index Code	Description
C	means the "Labour Price Index: Total Hourly Rates of Pay Excluding Bonuses" (No. 6345) as maintained and published quarterly by the Australian Bureau of Statistics. If the Labour Price Index: Total Hourly Rates of Pay Excluding Bonuses ceases to be published quarterly or its method of calculation substantially alters, then the Labour Price Index: Total Hourly Rates of Pay Excluding Bonuses is to be replaced by the nearest equivalent index as selected in good faith by TfNSW's Representative and any necessary consequential amendments are to be made.
M	means the "Consumer Price Index All Groups CPI Sydney" (No. 6401) as maintained and published quarterly by the Australia Bureau of Statistics (ABS). If the Consumer Price Index All Groups CPI Sydney ceases to be published quarterly or its method of calculation substantially alters, then the Consumer Price Index All Groups CPI Sydney is to be replaced by the nearest equivalent index as selected in good faith by TfNSW's Representative and any necessary consequential amendments are to be made.



2.3 **Foreign Exchange adjustment**

The Euro portion of the CSELRV purchase price is to be updated and converted into A\$ in accordance with the following formula as of the Effective Date:



Where:

$A_{new}$  is the new monetary amount in A\$ of the FX component specified in Euros;

$B_{old}$  is the original monetary amount in Euros of the FX component specified in Euros; and

$EA_{\$ \text{ effective date}}$  is the EUR/A\$ exchange mid-rate quoted to 5 decimal places for converting the FX component from Euros to A\$ as verified by TCorp and OpCo on the Bloomberg 'BFIX' page at at 9.00 am (Sydney time) on the Effective Date.

If TCorp ceases to verify the EUR/\$A exchange rate then the parties shall, acting reasonably, agree an alternative reference point for the provision of the exchange rate.

**2.4 Schedule of Adjustments**

Within 5 Business Days of the Effective Date, the Contractor must deliver to TfNSW a schedule setting out the prices referred to in paragraph 2.1 as at the Effective Date, which will be the prices after the adjustment in paragraph 2.3 of this Schedule D1 (*Milestone payments*) has been applied, where relevant. The schedule will detail the price both pre-adjustment and post-adjustment.

**2.5 Total compensation**

The Contractor acknowledges that the prices or adjustments set out in paragraphs 2.1, 2.2 and 2.3 represent the total compensation payable by TfNSW for the Delivery of the Option 1B or Option 2 CSELRVs (as applicable), subject to the adjustments in paragraphs 2.2 and 2.3, unless separately agreed by TfNSW as a Modification in relation to the exercise of Option 1B or Option 2, or as otherwise expressly stated in this deed.

**3. PAYMENT MILESTONES**

The following payment milestones will apply to the payment of the CSELRV purchase price and additional spare parts in paragraph 2.1.

No	Milestone	CSELRV Payment per CSELRV (refer to paragraph 2.1)	Total Capital Payment for additional spares for Pre-Agreed Option (refer to paragraph 2.1)
1	The Effective Date for the Pre-Agreed Option ( <b>Advance Payment</b> ).	An amount equal to [REDACTED] of the CSELRV purchase price.	An amount equal to [REDACTED] of the total capital payment amount for additional spares (for that Pre-Agreed Option).
2	The date on which Bogies for a CSELRV are received at assembly site as certified by the Independent Certifier.	An amount equal to [REDACTED] of the CSELRV purchase price	
3	The date on which the Braking System for the CSELRV is received at assembly site as certified by the Independent	An amount equal to [REDACTED] of the CSELRV purchase price	

No	Milestone	CSELRV Payment per CSELRV (refer to paragraph 2.1)	Total Capital Payment for additional spares for Pre-Agreed Option (refer to paragraph 2.1)
	Certifier.		
4	The date on which Factory Acceptance Testing of the CSELRV is completed as certified by the Independent Certifier.	An amount equal to [REDACTED] of the CSELRV purchase price	
5	The date on which a CSELRV is delivered for Site Tests as certified by the Independent Certifier.	An amount equal to [REDACTED] of the CSELRV purchase price	An amount equal to [REDACTED] of the total capital payment amount for additional spares (for that Pre-Agreed Option, payable after the date the last CSELRV is delivered for Site Tests).
6	The Actual Date of Delivery for the CSELRV has been achieved.	An amount equal to [REDACTED] of the CSELRV purchase price	

In the above table **Factory Acceptance Test** means the factory acceptance for a CSELRV and **Site Test** means the site test for a CSELRV, each to be specified in the Testing and Commissioning Plan.

A certification of a Milestone by the Independent Certifier must be provided in the form of Schedule C21 (*Certification of Milestone*).

For the purposes of clause 25.4(c) of the Operative Provisions, the Advance Payment will be treated as applied against the other Milestones in pro-rata proportions.



**Schedule D2**  
**Not used**

**Schedule D3**  
**Not used**

**Schedule D4**  
**Net Financial Impact**

(Clauses 26.6 and 29.16)

**1. APPLICATION**

Subject to the Operative Provisions:

- (a) the Contractor is entitled to be compensated for the Net Financial Impact of the following events (**NFI Events**):
  - (i) Compensation Events; and
  - (ii) Modifications directed by TfNSW under clause 29 (*TfNSW initiated Modifications*) of the Operative Provisions; and
- (b) TfNSW is entitled to be paid an amount calculated by reference to the Net Financial Impact in the circumstances set out in clause 35.3 (*Beneficial Change in Law*) of the Operative Provisions.

**2. CALCULATION OF NET FINANCIAL IMPACT**

- (a) The Net Financial Impact of a NFI Event will be calculated having regard to:
  - (i) the incremental costs which the Contractor incurs or will incur as a result of the NFI Event, including:
    - (A) design and construction costs which are the actual incremental direct costs of plant, labour, materials and subcontractors directly engaged in the construction of the relevant CSELRVs;
    - (B) manufacturing costs;
    - (C) financing costs;
    - (D) external third party advisory costs;
    - (E) the Subcontractors' overhead and margin costs; and
    - (F) the Contractor's overhead and margin costs;
  - (ii) not used;
  - (iii) any cost savings which accrue or will accrue to the Contractor as a result of the NFI Event;
  - (iv) any insurance proceeds, damages, compensation or other revenue which the Contractor receives or is entitled to receive as a result of the NFI Event; and
  - (v) any liability to third parties (including subcontractors) incurred by the Contractor as a result of the NFI Event.
- (b) [Not used].
- (c) If in any month the incremental costs and loss incurred or suffered by the Contractor as a result of a NFI Event exceeds the cost savings derived by the Contractor as a result of the NFI Event, the Net Financial Impact for that month will be a negative amount.

- (d) If in any month the cost savings derived by the Contractor as a result of the NFI Event exceeds the incremental costs and loss incurred or suffered by the D&C Contractor as a result of a NFI Event, the Net Financial Impact for that month will be a positive amount.

### 3. PRINCIPLES FOR CALCULATING NET FINANCIAL IMPACT

#### 3.1 Incremental costs only

Changes in costs are to be determined on an incremental basis where:

- (a) in the case of an increase in costs, only costs that would not be incurred but for the NFI Event are taken into account; and
- (b) in the case of a reduction in costs, only savings that would not have accrued but for the NFI Event are taken into account.

#### 3.2 Fair and reasonable, arm's length arrangements

All increases or decreases in costs included in the calculation must:

- (a) be fair and reasonable; and
- (b) reflect commercial arm's length arrangements.

#### 3.3 Non-compliance with other obligations

The Net Financial Impact of a NFI Event will:

- (a) exclude any incremental costs which would not have been incurred or suffered; and
- (b) include any cost savings which would have been derived,

had the Contractor complied with its obligations under this deed, other than to the extent the parties agree that an obligation is adversely affected by the relevant NFI Event.

#### 3.4 Mitigation

Without limiting paragraph 3.3 (*Non-compliance with other obligations*), the Net Financial Impact of a NFI Event will:

- (a) exclude any incremental costs which would not have been incurred or suffered; and
- (b) include any cost savings which would have been derived,

had the Contractor complied with clause 26.8 (*Non-compliance*) of the Operative Provisions.

#### 3.5 Overheads and margin

- (a) Subject to clause 3.5(b), the Contractor will not be entitled to any amount on account of profit or overheads in respect of any incremental costs incurred as a result of a NFI Event.

- (b) If the Net Financial Impact of a Modification excluding the Contractor's overhead and margin costs exceeds:

- (i) [REDACTED] or

- (ii) [REDACTED]

the Contractor will be entitled to charge [REDACTED] on the incremental costs on account of overheads and profit.

**3.6 Redundancy payments**

Any redundancy payments which are necessary as a result of a NFI Event (but excluding annual leave, rostered days off and long service leave entitlements) will be included provided the Contractor (or the relevant Subcontractor) has used reasonable endeavours to avoid or minimise those redundancies.

**3.7 Insurance costs**

All insurance cost impacts must be included in the calculations.

**3.8 Not used**

**3.9 Double counting**

Any Net Financial Impact must be calculated in accordance with this Schedule D4 (*Net Financial Impact*) without any double counting.

**3.10 [Not used]**

**4. [NOT USED]**

**5. COMPENSABLE CHANGE IN LAW OR COMPENSABLE CHANGE IN NSW GOVERNMENT POLICY**

**5.1 Project-Specific Change in Law, Project-Specific Change in NSW Government Policy or Changes in Disability Law, Environmental Law or Rail Safety Law**

Where a Compensation Event is due to:

- (a) a Project-Specific Change in Law (other than a Project-Specific Change in Law of the Commonwealth of Australia with respect to Tax);
- (b) a Project-Specific Change in NSW Government Policy;
- (c) a Change in Disability Law;
- (d) a Change in Environmental Law; or
- (e) a Change in Rail Safety Law,

TfNSW will be liable for 100% of any negative Net Financial Impact.

**5.2 General Change in Law or General Change in NSW Government Policy**

Where a Compensation Event is due to a General Change in Law (other than with respect to Tax) or a General Change in NSW Government Policy, TfNSW will only be liable for the portion of the negative Net Financial Impact as follows and on the basis that the thresholds apply to the cost and revenue impacts of General Changes in Law (other than with respect to Tax) or General Changes in NSW Government Policy throughout the Term:

- (a) **(capital expenditure)**: for capital cost impacts on the Contractor of:
  - (i) each General Change in Law (other than with respect to Tax):
    - (A) from [REDACTED] to [REDACTED], [REDACTED] of the capital cost component of the Net Financial Impact; and

- (B) from [REDACTED] upwards:
  - (aa) [REDACTED] of the capital cost component of the Net Financial Impact from [REDACTED] to [REDACTED]; and
  - (bb) [REDACTED] of the capital cost component of the Net Financial Impact from [REDACTED]; and
- (ii) all General Changes in NSW Government Policy throughout the Term in aggregate:
  - (A) from [REDACTED] to [REDACTED], [REDACTED] of the capital cost component of the Net Financial Impact; and
  - (B) from [REDACTED] upwards:
    - (aa) [REDACTED] of the capital cost component of the Net Financial Impact from [REDACTED] to [REDACTED]0; and
    - (bb) [REDACTED] of the capital cost component of the Net Financial Impact from [REDACTED].
- (b) [Not used]
- (c) Each amount referred to in this clause 5.2 (*General Change in Law or General Change in NSW Government Policy*) will be CPI Indexed.

**5.3 Beneficial Change in Law or Change in NSW Government Policy**

Where a Compensation Event is due to a General Change in Law (other than with respect to Tax) or a General Change in NSW Government Policy which results in a positive Net Financial Impact, the Contractor must pay TFSNW for the portion of the positive Net Financial Impact as follows and on the basis that the thresholds apply to the aggregate cost impacts of each General Change in Law (other than with respect to Tax) or each General Change in NSW Government Policy throughout the Term:

- (a) **(capital expenditure):** for capital cost benefits on the Contractor of each General Change in Law (other than with respect to Tax) or each General Change in NSW Government Policy:
  - (i) from [REDACTED] to [REDACTED], [REDACTED] of the capital cost component of the Net Financial Impact; and
  - (ii) from [REDACTED] upwards:
    - (A) [REDACTED] of the capital cost component of the Net Financial Impact from [REDACTED] to [REDACTED]; and
    - (B) [REDACTED] of the capital cost component of the Net Financial Impact from [REDACTED].
- (b) [Not used]
- (c) Each amount referred to in this clause 5.3 (*Beneficial Change in Law or Change in NSW Government Policy*) will be CPI Indexed.

## 6. COMPENSATION ARRANGEMENTS

### 6.1 If agreed

- (a) Subject to clause 6.2, the parties can agree that the Contractor will be compensated (or where clause 35.3 (*Beneficial Change in Law*) of the Operative Provisions applies, TfNSW will be paid) for the Net Financial Impact of a NFI Event by:
- (i) [not used];
  - (ii) a single lump sum payment, or a series of lump sum payments;
  - (iii) milestone payments; or
  - (iv) any other means which the parties may agree.
- (b) If the parties agree the arrangements by which the Contractor will be compensated then TfNSW (or if applicable, the Contractor) must provide the agreed compensation in accordance with the agreed arrangements.

### 6.2 If not agreed

If the parties do not agree upon an arrangement for the payment of compensation, then:

- (a) if the actual Net Financial Impact of a NFI Event in any month is a negative amount, that amount will become payable by TfNSW to the Contractor after the end of the relevant month; and
- (b) if the actual Net Financial Impact of a NFI Event in any month is a positive amount, that amount will become payable by the Contractor to TfNSW after the end of the relevant month.

### 6.3 Claims for payment

The Contractor may submit claims for payments due under this clause 6.3 (*Claims for payment*) in accordance with clause 25 (*Payment provisions*) of the Operative Provisions.

**Schedule D5**

**Not used**



## Schedule D6

### Termination Payments

(Clause 43.12)

#### 1. DEFINITIONS

For the purposes of this Schedule D6 (*Termination Payments*), the following definitions will apply:

**Contractor Termination Costs** means the aggregate of:

- (a) the value of the Contractor's Activities properly executed in accordance with this deed prior to the Termination Date but not yet claimed in accordance with this deed;
- (b) any amount claimed and due by the Contractor to TfNSW in accordance with the terms of this deed as at the Termination Date;
- (c) the actual costs reasonably and properly incurred by the Contractor, or for which the Contractor is liable, in the expectation of completing the Contractor's Activities which cannot be reasonably avoided by the Contractor (including the reasonable cost of materials and plant and equipment ordered for the Contractor's Activities to the extent such orders cannot be cancelled and provided that on payment unencumbered title to those materials passes to TfNSW, unavoidable breakage costs associated with cancelling contracts with the Contractor's Subcontractors and the reasonable cost of demobilising the Contractor's Activities at the factory constructing the CSELRVs);
- (d) the reasonable demobilisation costs incurred by the Contractor as a direct result of the termination, including reasonable staff redundancies and reasonable staff repatriation, and the reasonable costs of the Contractor for the removal of Temporary Works; and
- (e) any entitlement of the Contractor as at the Termination Date.

**Force Majeure Subcontractor Breakage Costs** means the amount reasonably and properly payable to the Contractor in respect of the value of work properly executed but not yet claimed in accordance with this deed prior to the Termination Date, any entitlement of the Contractor as at the Termination Date and any offsite materials, plant and equipment procured under this deed and which cannot be readily substituted for materials, plant and equipment under other contracts to which the Contractor is a party provided such amounts are:

- (a) incurred under arrangements and/or agreements on arms length commercial terms entered into:
  - (i) prior to the relevant Relief Event occurring; or
  - (ii) if after that date, then with the consent of TfNSW's Representative prior to the Termination Date; and
- (b) both the Contractor and relevant Subcontractor have used reasonable efforts to mitigate such amounts.

**Termination Date** means the date of termination of this deed in accordance with clause 28.3 (*Termination for Force Majeure Event*) or clause 43 (*Termination*) of the Operative Provisions.

**Termination Payment** means an amount calculated in accordance with this Schedule D6 (*Termination Payments*).

## 2. CONTRACTOR TERMINATION EVENT

Subject to clauses 38.3 (*Exclusion of Consequential or Indirect Loss*) and 38A (*Liability Cap*) of the Operative Provisions, if TfNSW terminates this deed following a Contractor Termination Event in accordance with clause 43.4 (*Termination for Contractor Termination Event*) of the Operative Provisions (regardless of whether TfNSW otherwise has the right to terminate for any other reason) then the Contractor shall compensate TfNSW for:

- (a) the costs of procuring a replacement contract including any increase in price of the replacement contract, including the cost of supplying any CSELRVs in the relevant Pre-Agreed Option that have not achieved Delivery (to the extent only such costs exceed the unpaid portion of the relevant Option Capital Price);
- (b) all additional reasonable costs incurred by TfNSW as a consequence of the Termination; and
- (c) any other amounts owing by the Contractor to TfNSW under this deed as at the Termination Date.

## 3. TfNSW TERMINATION EVENT

If this deed is terminated pursuant to:

- (a) clause 43.6 (*Termination for TfNSW Termination Event*) of the Operative Provisions; or
- (b) clause 43.7 (*Voluntary termination by TfNSW*) of the Operative Provisions,

the Termination Payment shall be calculated as the aggregate of:

- (c) an amount equal to the Contractor Termination Costs together with liabilities of the Contractor under its Subcontracts arising as a direct result of the termination of this deed but only to the extent that:
    - (i) such amounts are incurred under arrangements and/or agreements entered into on arms length commercial terms prior to the Termination Date; and
    - (ii) the Contractor has used its reasonable efforts to mitigate such amounts; and
  - (d) ■ of the unpaid portion of the relevant Option Capital Price (as compensation for lost profit);
- less
- (e) any amounts owing by the Contractor to TfNSW under this deed as at the Termination Date; and
  - (f) the net amount (which, for the avoidance of doubt, shall be net of any amount deductible under the relevant insurance policy) the Contractor is entitled to retain, or would be entitled to retain had the Contractor complied with the requirements of clause 39 (*Insurance*) of the Operative Provisions and the relevant insurance policy, under any insurance policy.

## 4. FORCE MAJEURE

If this deed is terminated pursuant to clause 43.8 (*Termination for Force Majeure Event*) of the Operative Provisions the Termination Payment shall be calculated as the aggregate of:

- (a) any amounts due and payable by TfNSW to the Contractor in accordance with the terms of this deed as at the Termination Date; and
- (b) an amount equal to the Force Majeure Subcontractor Breakage Costs,  
less
- (c) any amounts owing by the Contractor to TfNSW under this deed as at the Termination Date; and
- (d) the net amount (which, for the avoidance of doubt, shall be net of any amount deductible under the relevant insurance policy) the Contractor is entitled to retain, or would be entitled to retain had the Contractor complied with the requirements of clause 39 (*Insurance*) of the Operative Provisions and the relevant insurance policy, under any insurance policy.

5. **[NOT USED]**

**Schedule D7**

**Not used**



7. This Bond is governed by the laws of the State of New South Wales.

**[Note: This bond form will be amended to provide for the following principles:**

- **The Bond will have an expiry date.**
- **Within 6 Business days of receipt of a written request by the Contractor, TfNSW will notify the Issuer that the First Bond limit is to be reduced by an amount equivalent to the Defect Bond.**
- **Within 6 Business days of receipt of a written request by the Contractor, TfNSW will notify the Issuer that the Advance Payment Bond is to be reduced in accordance with the application of the Advance Payment Bond against Milestones in Schedule D1 (Milestone payments).]**

**Signed** as a deed poll.

**Signed sealed and delivered** for and on behalf of [ ] by [ ] its Attorney under a Power of Attorney dated [ ] and registered Book [ ] No. [ ] 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

---

Signature of Witness

---

Name of Witness in full

**Schedule D9**  
**Not used**

## **Schedule D10**

### **Insurances**

(Clauses 39.1 and 39.2)

The Contractor shall maintain such insurances as would be maintained by a reasonably commercially prudent rolling stock provider.



**Schedule D11**

**Not used**

**Schedule D12**

**Not used**

**Schedule D13**  
**Not used**

**Schedule E1**

**Not used**

**Schedule F1**  
**Not used**

**Schedule F2**  
**Not used**

**Schedule F3**

**Not used**

**Schedule F4**  
**Not used**



**Schedule F5**  
**Not used**

**Schedule F6**

**Not used**

**Schedule F7**

**Not used**

**Schedule F8**  
**Not used**

**Schedule A23**  
**O&M Contractor Deed of Charge**

(Clause 1.1)



# Sydney Light Rail Deed of Charge – O&M Contractor

Transport for NSW

ABN 18 804 239 602

and

Transdev Sydney Pty Ltd

ABN 34 096 046 052

2014

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**THIS DEED** is made on 2014

**BETWEEN:**

- (1) **Transport for NSW** ABN 18 804 239 602, a New South Wales Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW) of Level 5, Tower A, Zenith Centre 821 Pacific Highway, Chatswood NSW 2067 (**Chargee** or **TfNSW**); and
- (2) **Transdev Sydney Pty Ltd** ABN 34 096 046 052 whose registered office is at Level 12, 114 William Street, Melbourne VIC 3000 (**Chargor** or **O&M Contractor**).

**RECITALS:**

- (A) The Chargor, the Chargee and others are parties to the SLR O&M Contract Side Deed.
- (B) The Chargor enters into this charge to secure performance of the Primary Obligation together with its obligations to the Chargee under this charge.

**THE PARTIES AGREE AS FOLLOWS:**

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this charge:

**ALTRAC Light Rail Partnership** means a partnership between ALTRAC Light Rail 1 Pty Limited ACN 603 192 203 in its capacity as trustee of the ALR Trust 1, ALTRAC Light Rail 2 Pty Limited ACN 603 194 476 in its capacity as trustee of the ALR Trust 2 and ALTRAC Light Rail 3 Pty Limited ACN 603 190 601 in its capacity as trustee of the ALR Trust 3.

**Bill** has the meaning given to "bill of exchange" in the Bills of Exchange Act 1909 (Cth), but does not include a cheque or payment order and any reference to the drawing, acceptance, endorsement or other dealing of or with a Bill refers to a drawing, acceptance, endorsement or other dealing within the meaning of that Act.

**Charged Debts** means all debts whether actual or contingent at any time owing to the Chargor together with all books or documents of account or records evidencing or recording such debts, including:

- (a) any accounts that arise from the Chargor granting a right, or providing services, in the ordinary course of its business whether or not the account debtor is the person to whom the right is granted or the services are provided;
- (b) any accounts that are proceeds of inventory; and
- (c) any other accounts (as defined in the PPSA).

**Charged Property** means all of the Chargor's rights, property and undertaking in and to the TfNSW Assets in respect of which the Chargor has at any time sufficient rights to grant a Security Interest or charge.

**Controller** has the meaning given in section 9 of the Corporations Act.

**Deal** means sell, convey, assign, transfer, lease, licence or otherwise dispose or part with possession of, make any bailment over, grant any option over or create or permit to exist any other interest in any part of the Charged Property, and in the case of Charged Debts or Debt Proceeds, includes effecting or permitting any combination of accounts or set-off.

**Debt Proceeds** means the proceeds of realisation of the Charged Debts.

**Delegate** means any agent, attorney or other delegate appointed under this charge by the Chargee or by any receiver or receiver and manager appointed under this charge.

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person and includes any Security Interest.

**Enforcement Event** means any failure by the O&M Contractor to comply with its obligations under clause 10.2 of the SLR O&M Contract Side Deed.

**Excluded Tax** means a Tax on net income in any jurisdiction, other than:

- (a) a Tax that is calculated on or by reference to the gross amount of any payment derived by a party under this charge or the transactions that this charge contemplates (unless the Tax is imposed because the party has not given its tax file number to the person who made the payment); or
- (b) a Tax that is imposed because a party is regarded as being subject to tax in a jurisdiction solely because it is a party to this charge or because it is participating in the transactions that this charge contemplates.

**Financial Liability** of a person means any liability or indebtedness (whether present or future, actual or contingent) of that person for or in respect of:

- (a) money borrowed or raised and debit balances at banks or financial institutions;
- (b) any indemnity obligation in respect of any guarantee, indemnity, bond or letter of credit or similar instrument issued by a bank or financial institution;
- (c) any guarantee, indemnity, letter of credit or similar assurance in respect of financial loss given in connection with any Financial Liability (as referred to in any other paragraph of this definition) of another person;
- (d) amounts raised under or in connection with any Bill acceptance, endorsement or discounting arrangement;
- (e) amounts raised under or in connection with any bond, debenture, note, loan stock or similar instruments;
- (f) any swap, hedge, cap, collar, ceiling or floor arrangement, futures contract, forward exchange or forward purchase contract or option contract, in each case, in respect of any currency, interest rate or commodity or any similar transaction; or
- (g) amounts raised under any transaction or series of transactions having the commercial effect of a borrowing or raising of money.

**Guarantee** means a guarantee, indemnity, letter of credit, performance bond, acceptance or endorsement, or other undertaking or obligation:

- (a) to provide funds (including by the purchase of property), or otherwise to make property available, in or to enable payment or discharge of;
- (b) to indemnify against the consequences of default in the payment of; or
- (c) otherwise to be responsible for,

an obligation (whether or not it involves the payment of money) or otherwise to be responsible for the solvency or financial condition of any other person.

**Insolvency Provision** means any law relating to insolvency, sequestration, liquidation, winding up or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or of preferences and any law under which a liquidator or trustee may set aside or avoid transactions) and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

**OpCo** means ALTRAC Light Rail Partnership.

**Permitted Security Interests** means any Security Interest:

- (a) granted in favour of TfNSW or OpCo; or
- (b) insofar as it covers the Charged Property, to which TfNSW has given its prior written consent, which consent will not be unreasonably withheld if:
  - (i) the Security Interest is on terms reasonably satisfactory to TfNSW and ranks behind the Security Interests granted to TfNSW under this charge; and
  - (ii) the secured party in respect of such Security Interest enters into a priority deed with TfNSW in form and substance reasonably satisfactory to TfNSW.

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

**Power** means any right, power, authority, discretion, remedy or privilege conferred on the Chargee, any Receiver or any Delegate, in any case, under this charge, any Project Agreement or by law.

**Primary Obligation** means the O&M Contractor's obligations under clause 10.2 (TfNSW Assets Handback Obligations) of the SLR O&M Contract Side Deed.

**Project Deed** means the deed entitled "Sydney Light Rail Project Deed" dated on or about the date of this charge between the Chargee and OpCo.

**Receiver** means a receiver or receiver and manager appointed by the Chargee under this charge and, if more than one, then each of them and also any employee, contractor or Delegate of any receiver or receiver and manager.

**Related Body Corporate** has the meaning given in section 9 of the Corporations Act.

**Secured Obligations** means each of the Chargor's obligations to the Chargee under or by reason of the Primary Obligation or this charge and includes any liabilities or obligations which:

- (a) are present or future, actual or contingent;
- (b) are incurred alone, jointly, severally or jointly and severally;

- (c) arise from the making of any advance on or before the date of this charge or from any future advances.
- (d) are to pay damages or sound in damages only;
- (e) would exist but for an Insolvency Event;
- (f) the Chargor is liable on its own account or the account of, or as surety for, another person and without regard to the capacity in which the Chargor is liable;
- (g) are due to the Chargee alone or with another person;
- (h) the Chargee is entitled to for its own account or the account of another person;
- (i) are incurred in enforcing this charge or otherwise in connection with recovering the TfNSW Assets from the Chargor;

and irrespective of whether:

- (j) the liabilities or obligations were originally contemplated by the Chargor or the Chargee or not;
- (k) the Chargee is the original person in whose favour the undertakings in this charge or the SLR O&M Contract Side Deed were given or an assignee and, if the Chargee is an assignee:
  - (i) whether or not the Chargor consented to or knew of the assignment;
  - (ii) no matter when the assignment occurred; and
  - (iii) whether or not the entitlements of that original person were assigned with the charge.

**SLR O&M Contract Side Deed** means the deed entitled "SLR O&M Contract Side Deed" dated on or about the date of this charge between the Chargee, the Chargor and others.

**Tax** means any taxes, levies, imposts, deductions, charges and withholdings assessed, imposed, collected or withheld under any legislation and, in each case, all interest, fines, penalties, charges, fees or other amounts in respect of them.

**TfNSW Assets** means the Assets and the ETS Equipment (each as defined in the O&M Contract).

## 1.2 Definitions in Project Deed

Subject to clauses 1.1, 1.3(b) and 1.3(e), terms used in this charge that are defined in the Project Deed have the same meanings in this charge.

## 1.3 Interpretation

The parties agree to be bound by clause 1.4 (*Interpretation*) of the Project Deed as if set out in its entirety in this clause 1.3, except that for the purposes of this charge:

- (a) all references in clause 1.4 (*Interpretation*) of the Project Deed to "this deed" or "the Project Deed" shall be read as references to "this charge";
- (b) a reference to "proceeds" includes, where the context permits, any proceeds as that term is defined in the PPSA;

- (c) a reference to a document is to that document as varied, novated, ratified, replaced or restated from time to time, including for the avoidance of doubt any such variation, novation, ratification, replacement or restatement which has the effect directly or indirectly of increasing in any way the Secured Obligations;
- (d) a reference to the Charged Property or any other thing includes any part of it;
- (e) each of the terms "ABN", "ARBN", "ARSN", "ADI", "ADI Account", "advance", "future advance", "purchase money security interest", "chattel paper", "financing statement", "financing change statement" and "verification statement" have the meanings given to them in the PPSA and the Personal Property Securities Regulations 2010 (as applicable); and
- (f) a reference to "subsists" or any similar expression in relation to an Enforcement Event indicates in respect of an Enforcement Event such Enforcement Event has not been remedied or waived in accordance with the terms of the relevant Project Agreement under which it arose.

#### 1.4 **Exclusion of proportionate liability scheme**

To the extent permitted by law, the operation of Part 4 of the Civil Liability Act 2002 (NSW) is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this charge howsoever such rights, obligations or liabilities are sought to be enforced.

## 2. **CHARGE**

### 2.1 **The charge**

- (a) The Chargor grants a security interest in the Charged Property to the Chargee to secure the satisfaction of the Secured Obligations.
- (b) This security interest is a charge of the Charged Property.

### 2.2 **Priority**

This charge will operate as a first ranking security over the Charged Property.

### 2.3 **Nature of Charge over Non PPSA Property**

- (a) Subject to clause 2.3(b), to the extent that this charge relates to property:
  - (i) which is not personal property as defined in the PPSA; or
  - (ii) to which the PPSA does not apply,it will operate as a fixed rather than a floating charge in respect of such property.
- (b) To the extent that any of the property referred to in clause 2.3(a) consists of:
  - (i) Charged Debts;
  - (ii) Debt Proceeds;
  - (iii) property acquired for disposal in the ordinary course of the Chargor's ordinary business; or
  - (iv) inventory,

the charge will operate as a floating charge in respect of that property unless an Enforcement Event subsists and the Chargee takes any step to exercise a Power under this charge, and in such circumstances the charge will operate as a fixed charge in respect of such property.

- (c) If any of the Charged Property becomes subject to a fixed charge under clause 2.3(b), the Chargee may give the Chargor a notice stating that, from the date specified in the notice, the Charged Property specified in the notice is no longer subject to a fixed charge and is again subject to a floating charge.

## 2.4 **Step-In Rights**

The Chargor acknowledges and agrees that the security granted under this charge is separate and in addition to the step-in rights of the Chargee under clause 42 (*Step-In*) of the Project Deed and OpCo's Step-In rights under clause 42 (*Step-In*) of the O&M Contract.

## 3. **REPRESENTATIONS AND WARRANTIES**

### 3.1 **General representations and warranties**

The Chargor represents and warrants to the Chargee that:

- (a) (**Right to charge**): it has not granted any Encumbrance over the Charged Property other than Permitted Security Interests;
- (b) (**Authorisations**) it holds each authorisation that is necessary or desirable to:
- (i) enable it to properly execute this charge and to carry out the transactions that it contemplates;
  - (ii) ensure that this charge is legal, valid, binding and admissible in evidence; or
  - (iii) enable it to properly carry on its business as it is now being conducted,
- and it is complying in all material respects with any conditions to which any of these authorisations is subject; and
- (c) (**Information for financing statement**) the Chargee has received from the Chargor all information reasonably requested by the Chargee to complete any financing statement (or financing change statement, if necessary) for this charge and, as at the date that the information was provided, that information is true and correct in all respects.

### 3.2 **Representations and warranties repeated**

Each representation and warranty in this clause 3 will be repeated on each day that there is any Secured Obligation on the basis of the facts and circumstances as at that date.

### 3.3 **Reliance on representations and warranties**

The Chargor acknowledges that the Chargee has executed this charge and agreed to take part in the transactions that this charge contemplates in reliance on the representations and warranties that are made or repeated in this clause 3.

### 3.4 **No representations by the Chargee**

The Chargor acknowledges that it has not relied and will not rely on any representation, statement or promise made by or on behalf of the Chargee in deciding to enter into this charge or to exercise any right under it.

## 4. **GENERAL UNDERTAKINGS**

### 4.1 **Satisfaction of Secured Obligations**

The Chargor will satisfy, or procure the satisfaction of, the Secured Obligations.

### 4.2 **General undertakings**

- (a) **(Maintain status)** The Chargor will maintain its status as a company limited by shares under the Corporations Act.
- (b) **(Comply with laws)** The Chargor will comply with all laws applicable to it, including by paying when due all Taxes for which it or its property is assessed or liable (except to the extent that these are being diligently contested in good faith and by appropriate proceedings and it has made adequate reserves for them).
- (c) **(No administrator)** The Chargor will not appoint an administrator without first giving notice to the Chargee.
- (d) **(Stamping)** The Chargor will ensure that this charge is stamped for the proper amount in each state and territory of Australia in which this charge is required to be stamped.

### 4.3 **Chargee assumes no obligations**

The Chargee will not be deemed by virtue of this charge to have assumed any obligation of the Chargor under any law or Approval.

## 5. **ADDITIONAL UNDERTAKINGS CONCERNING THE CHARGED PROPERTY**

### 5.1 **Restrictions in relation to the Charged Property**

- (a) The Chargor will not without the Chargee's prior written consent or as expressly permitted in this charge or the O&M Contract:
  - (i) **(No Encumbrances)** create or purport or attempt to create any Encumbrance, however ranking, over the Charged Property other than a Permitted Security Interest;
  - (ii) **(No Dealing)** Deal with any part of the Charged Property other than by way of a Permitted Security Interest;
  - (iii) **(Not to prejudice)** do, fail to do or consent to any act, omission or thing as a result of which the Charged Property becomes or could become liable to surrender, forfeiture or cancellation, or becomes or could become prejudiced in any manner, or the value of this charge as an Encumbrance to the Chargee becomes or could become materially lessened; or
  - (iv) **(Take any steps)** take any steps towards doing any of these things.

## 5.2 Protection of Charged Property

At the request of the Chargee, the Chargor will, at the Chargee's cost, take or defend all legal proceedings that the Chargee considers necessary or desirable for the preservation, protection or recovery of the Charged Property.

## 5.3 Miscellaneous

The Chargor will:

- (a) **(Trusts)** notify the Chargee before it becomes the trustee of any trust;
- (b) **(Commingling and accessions)** not permit the Charged Property, or any part of the Charged Property to become:
  - (i) commingled with any asset that is not subject to the charge under this charge, except in the ordinary course of the Chargor's business; and
  - (ii) an accession to or affixed to any asset that is not subject to the charge under this charge.

## 5.4 Nominee

For the purposes of section 153 of the PPSA, the Chargee appoints the Chargor as its nominee, and authorises the Chargor to act on its behalf, in connection with a registration under the PPSA of any Security Interest granted in favour of the Chargor which:

- (a) is evidenced or created by any chattel paper which has been, or will be, transferred in favour of the Chargee under this charge; and
- (b) has been perfected by registration under the PPSA.

This authority ceases when the registration is transferred to the Chargee.

## 6. ENFORCEMENT

### 6.1 Circumstances when this charge may be enforced over the Charged Property

If an Enforcement Event is subsisting, then at the option of the Chargee and despite any delay or previous waiver of the right to exercise that option:

- (a) all Powers under this charge not previously exercisable in relation to the Charged Property become exercisable; and
- (b) any right of the Chargor to Deal with the Charged Property (other than through a Receiver appointed under this charge) immediately ceases.

### 6.2 Enforcement despite earlier performance

This charge may be enforced:

- (a) even if the Chargee accepts a payment or performance after any default; and
- (b) without the need for any notice to, or of any consent or agreement of, the Chargor or any other person.



**7. RECEIVERS: APPOINTMENT AND POWERS**

**7.1 Appointment of Receiver**

- (a) If an Enforcement Event is subsisting (whether or not the Chargee has entered into possession of all or any of the Charged Property), the Chargee or any authorised representative of the Chargee may:
  - (i) appoint any person or any 2 or more persons jointly, or jointly and severally to be a receiver or receiver and manager (or an additional receiver or receiver and manager) of the Charged Property;
  - (ii) remove a Receiver and in the case of the removal, retirement or death of any Receiver, appoint another as a replacement Receiver; and
  - (iii) fix the remuneration of the Receiver.
- (b) Subject to clause 7.2 and the next sentence, every Receiver appointed under this clause 7.1 will be the Chargor's agent and the Chargor alone will be responsible for its acts, defaults and remuneration. The Chargee may by notice to the Chargor and the Receiver require the Receiver to act as the Chargee's agent.

**7.2 Receiver other than as Chargor's agent**

The power to appoint a Receiver under this clause 7 may be exercised even though:

- (a) at the time when an Enforcement Event is subsisting or when an appointment is made, an order may have been made or a resolution may have been passed to wind up the Chargor; or
- (b) a Receiver appointed in the circumstances specified in clause 7.2(a) may not, or may not in some respects, act as the Chargor's agent.

**7.3 Powers of Receiver**

Each Receiver will have the following powers in relation to the Charged Property while an Enforcement Event is subsisting:

- (a) **(Take Possession)** to take possession or control of, make use of, collect and get in Charged Property and for that purpose to take proceedings (in the name of the Chargor or otherwise);
- (b) **(Dispose)** whether or not in possession, to give the Charged Property or to dispose of the Charged Property in such manner and on such terms as the Receiver thinks fit;
- (c) **(Exercise Chargee's rights)** to exercise all or any of the Chargee's Powers;
- (d) **(Chargor's undertakings)** to do everything necessary to perform any undertaking of the Chargor under this charge;
- (e) **(Comply with directions)** to comply with the directions given by the Chargee;
- (f) **(Convert to money)** to convert, liquidate and reduce the Charged Property into money;
- (g) **(Hire out, Lease or Licence)** whether or not the Receiver has taken possession, to hire out, lease or licence the Charged Property in the name of the Chargor or

otherwise, for any period and on any terms or to vary or terminate a lease or licence;

- (h) **(Sell)** to sell or agree to sell (whether or not the Receiver has taken possession), exchange or otherwise dispose of (absolutely or conditionally) Charged Property (or agree to do so):
  - (i) any public auction, private sale or tender for cash or on credit;
  - (ii) in one lot or in parcels;
  - (iii) with or without special conditions (such as conditions as to title or time or method of payment of purchase money) including by allowing the purchase money to remain:
    - (A) outstanding on the security of a mortgage over the property sold or over any other property; or
    - (B) owing without any security; and
  - (iv) on other terms the Receiver considers desirable, without being responsible for any loss;
- (i) **(Transfer on sale)** to execute transfers and assignments of Charged Property (including in the name of the Chargor) and do everything to complete any sale under clause 7.3(h) that the Receiver thinks necessary;
- (j) **(Receive money)** receive all moneys and other property payable or deliverable to the Chargor from Charged Property;
- (k) **(Collection)** to collect the Charged Debts;
- (l) **(Give receipts)** to give receipts for all money and other property that may come into the hands of the Receiver in the exercise of any Power;
- (m) **(Engage)** to engage consultants, contractors, professional advisors, agents and employees (including any person associated with a firm or company in which the Receiver is a member or in which the Receiver is interested and that person may charge for his or her services as if independently retained at a salary or remuneration determined by the Receiver) and the Receiver may act on any advice given by any person so engaged;
- (n) **(Sever fixtures)** to sever fixtures belonging to the Chargor and sell them apart from any other part of the Charged Property;
- (o) **(Enter into contracts)** to enter into any contract or arrangement with any person for any purpose connected with this charge or the Charged Property or in furtherance of any of the powers, rights or discretions under this charge, on such terms and conditions as the Receiver in its absolute discretion thinks fit, including granting or conferring options to, in favour of or exercisable by any person for the purpose of or in connection with the sale, purchase, leasing, hiring or other dealing with the Charged Property;
- (p) **(Perform contracts)** to perform, observe, carry out, enforce specific performance of, exercise or refrain from exercising, the Chargor's rights and powers under, obtain the benefit of, and vary or rescind all contracts (including the SLR O&M

Contract Side Deed) and rights forming part of the Charged Property or entered into in the exercise of any power;

- (q) **(Take proceedings)** to institute, conduct or defend any proceedings in law or bankruptcy and to submit to arbitration, mediation or conciliation, in the name of the Chargor or otherwise and on any terms, any proceeding, claim, question or dispute in connection with the Charged Property;
- (r) **(Compromise)** to make any settlement, arrangement or compromise regarding any action, proceeding or dispute arising in connection with the Charged Property, to grant to any person involved time or other indulgence and to execute all related releases or discharges as the Receiver thinks expedient in the interests of the Chargee;
- (s) **(Appeal)** to appeal against or to enforce any judgment or order in respect of the Charged Property;
- (t) **(Bankrupt debtors and wind up bodies corporate)** to make debtors bankrupt and to wind up bodies corporate and to do all things in connection with any bankruptcy or winding up which the Receiver thinks necessary for the recovery or protection of the Charged Property or for the security or other benefit of the Chargee;
- (u) **(Delegate)** with the Chargee's prior approval, to delegate to any person, for any time, any of its Powers including this power of delegation;
- (v) **(File)** to file all certificates, registrations and other documents and to take any and all action on behalf of the Chargor which the Receiver believes is necessary to protect, preserve or improve any or all of the Charged Property and the rights of the Chargor and the Chargee in respect of any agreement for sale and to obtain for the Chargee all of the benefits of this charge;
- (w) **(Operate bank accounts)** to open or operate any bank account in the name of the Chargor (whether alone or jointly with any other person) to the exclusion of the Chargor and to deposit or withdraw any money standing to the credit of that account and to sign and endorse or to authorise others to sign and endorse in the name of the Chargor cheques, promissory notes, bills of exchange and other negotiable instruments;
- (x) **(Deliver the TfNSW Assets)** do all things required by TfNSW to effect the constructive surrender, return and transfer of any of the TfNSW Assets which are not capable of delivery to TfNSW; and
- (y) **(Incidental matters)** do anything incidental to the exercise of any other Power.

#### 7.4 **Indemnity**

The Chargee may give any indemnities to any Receiver concerning the performance of that Receiver's duties as are permitted by law. If the Chargee is obliged to pay any money under any indemnity, that money will become part of the Secured Obligations.

### 8. **CHARGEES' POWERS**

#### 8.1 **Chargee may exercise powers without notice**

If an Enforcement Event is subsisting, the Chargee may without notice and whether or not a Receiver has been appointed:

- (a) exercise all or any of the powers conferred on a Receiver, or which would be conferred on a Receiver if appointed, as if those powers had been expressly conferred on the Chargee;
- (b) exercise all other powers exercisable under this charge or law; and
- (c) appoint an agent or agents (whether severally, jointly or jointly and severally) and delegate the powers (or any of them) to the agent or agents (in which case clause 7.1 will apply as if the agent or agents were each appointed as a Receiver).

## 8.2 Act jointly

The Chargee and each Receiver may exercise any of the Powers in conjunction with the exercise of similar powers by the holder of any other Encumbrance over the Charged Property or by any receiver or receiver and manager appointed by that other holder and may enter into and give effect to agreements and arrangements with that other holder, receiver or receiver and manager as the Chargee or the relevant Receiver thinks fit.

## 8.3 Power of attorney

- (a) In consideration of the Chargee entering into the SLR O&M Contract Side Deed, the Chargor irrevocably appoints the Chargee, each TfNSW Representative and each Receiver, severally, as an attorney of the Chargor with power to take action under clause 8.3(a)(i) at any time and take any other action listed below in relation to the Charged Property while an Enforcement Event is subsisting:
  - (i) **(All acts necessary)** do anything necessary or desirable in the opinion of the Chargee or the attorney to:
    - (A) give full effect to this charge;
    - (B) better secure the Charged Property to the Chargee in a manner consistent with this charge; or
    - (C) assist in the execution or exercise of any Power,including execute any transfer (including any transfer in blank) or other document;
  - (ii) **(Recover Charged Property)** demand, sue for, recover and receive the Charged Property from any person, in the name of the Chargor or in the name of the Chargee, the relevant Receiver or any other attorney appointed under this clause 8.3;
  - (iii) **(Commence actions)** commence, carry on, enforce, settle, arrange and compromise any proceedings to obtain or enforce the payment or delivery of Charged Property;
  - (iv) **(Bankruptcy and winding up)** take any necessary proceedings to procure the bankruptcy or the winding up of any debtor of the Chargor in connection with the Charged Property and attend and vote at meetings of creditors, receive dividends in any bankruptcy or winding up or appoint a proxy for any of these things;
  - (v) **(Compound debts)** compound, settle or compromise any debt of the Chargor in connection with the Charged Property;

- (vi) **(Execute deeds)** execute any deed of assignment, composition or release in connection with the Charged Property;
- (vii) **(Exercise rights)** exercise all and any powers, rights, discretions and remedies available under or in connection with the Charged Property (including rights available under the Corporations Act or any other statute);
- (viii) **(Exercise powers)** without limiting the foregoing, exercise all or any powers, rights, discretions and remedies available under or in connection with the SLR O&M Contract Side Deed;
- (ix) **(Further action)** take further action and to execute further instruments which are, or are in the opinion of the Chargee, the relevant Receiver or any other attorney appointed under this clause 8.3, necessary or desirable to secure more satisfactorily the performance of the Secured Obligations or to sell or otherwise deal with the Charged Property; and
- (x) **(Appoint substitute)** appoint (and remove at will) at any time any person as a substitute for an attorney,

at the Chargor's cost, provided that such powers may only be exercised where the Chargee is entitled to enforce this charge.

(b) The Chargor:

- (i) agrees that each attorney may exercise powers under this power of attorney notwithstanding that the exercise may or will involve or result in a conflict between the duty of that attorney to the Chargor and either the interests of that attorney or a Related Body Corporate of that attorney or another duty of that attorney; and
- (ii) ratifies and confirms now and for the future all actions undertaken by or on behalf of any attorney under this power of attorney, including any action which may or will involve or result in a conflict of the type referred to in clause 8.3(b)(i) or in respect of which that attorney has a personal interest.

For the purposes of this clause 8.3(b) a Related Body Corporate of any attorney is any Related Body Corporate of that attorney or, in the case of any attorney that is an individual, any person that is related to or has any personal or professional relationship, of any nature, with that attorney.

- (c) The Chargor declares that this power of attorney will continue in force until all actions taken under it have been completed, despite the discharge of this charge.
- (d) The Chargor will do anything requested by the Chargee, acting reasonably, to enable the Chargee to register this power of attorney in the manner and within any time limits prescribed by law to ensure the efficacy of this power of attorney.

**8.4 Chargee may make good any default**

If the Chargor defaults in satisfying any of the Secured Obligations, the Chargee may, without prejudice to any other Power, do all things and pay all money necessary or expedient in the opinion of the Chargee to make good or to attempt to make good that default to the satisfaction of the Chargee. The Chargor will take all steps which the Chargee, acting reasonably, requests to facilitate the exercise by the Chargee of its rights under this clause 8.4. The Chargee will not be a mortgagee or chargee in possession simply as a result of the exercise of its rights under this clause 8.4.

## 8.5 Notice for exercise of Powers

- (a) The Powers may be exercised by the Chargee and any Receiver without any notice, demand or lapse of time being necessary unless required by a law which cannot be excluded.
- (b) Subject to clause 8.5(c), if required by any law which cannot be excluded, one day is fixed as the period for which:
  - (i) default must continue in the satisfaction of the whole or any part of the Secured Obligations before the Chargee may give any notice or demand as required by any law affecting the Powers; and
  - (ii) default in the satisfaction of the whole or any part of the Secured Obligations must continue after the giving of any notice or demand before any Power may be exercised.
- (c) If any law which cannot be excluded provides that a specific period of notice or lapse of time is mandatorily required before any Power may be exercised by the Chargee or any Receiver, that period of notice must be given or time must elapse before that Power may be exercised.

## 8.6 Exclusion of PPSA provisions

To the extent permitted by law, and in respect of each Security Interest created by this charge:

- (a) for the purposes of sections 115(1) and 115(7) of the PPSA:
  - (i) the Chargee need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
  - (ii) sections 142 and 143 are excluded;
- (b) for the purposes of section 115(7) of the PPSA, the Chargee need not comply with sections 132 and 137(3);
- (c) the Chargor agrees not to exercise its rights to make any request of the Chargee under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section; and
- (d) the Chargor irrevocably and unconditionally waives its right to receive any notice of any verification statement in respect of any financing statement or financing change statement relating to this charge.

## 8.7 Exercise of Powers

If the Chargee exercises a Power in connection with this charge, that exercise will be taken to be an exercise of the Power under the general law unless the Power is only available under the PPSA or the Chargee states otherwise at the time of exercise.

## 9. APPLICATION OF MONEY

### 9.1 Priority of payments

All money received by the Chargee or by any Receiver as a result of the exercise of the Powers and all other proceeds of enforcement under this charge will be applied in the following order:

- (a) **(Expenses)** first in payment of all costs, charges, expenses or disbursements that the Chargee or a Receiver incurs in or incidental to the exercise or attempted exercise of a power or otherwise in relation to any this charge;
- (b) **(Outgoings)** then in payment of any other outgoings as any Receiver or the Chargee thinks it appropriate to pay;
- (c) **(Receiver)** then in payment to the Receiver of any remuneration (whether by way of commission or otherwise);
- (d) **(Indemnities)** then in payment to the Chargee or a Receiver of any amount necessary to give effect to any indemnity contained in this charge; and
- (e) **(Secured Obligation)** then in payment to the Chargee to discharge the Secured Obligation.

Any surplus will belong to the Chargor or other persons entitled to it. The Chargee or Receiver may pay the surplus to the credit of a bank account in the name of the Chargor or other person entitled to it and will then be under no further liability in relation to it. The surplus will not accrue interest.

### 9.2 Money received

In applying any money towards satisfaction of the Secured Obligation in the manner contemplated by clause 9.1, the Chargor will be credited only with as much of the money available for that purpose as is actually received by the Chargee or any Receiver and is not required to be disgorged. Any credit will date from the time of receipt.

### 9.3 Application of money

The Chargee and each Receiver has an absolute discretion to apply any money received as a result of the exercise of any Power or which is the proceeds of enforcement of this charge (and which is to be applied in discharge of the Secured Obligation) in discharge of any part or parts of the Secured Obligation, whenever and on whatever account it became secured, despite any principle or presumption of law to the contrary or any direction given at the time of receipt and without the need to communicate its election to any person.

### 9.4 Compensation

Without limitation to this charge:

- (a) if any compensation becomes payable to the Chargee in respect of any or all of the Charged Property as a result of the exercise of any Power or which is the proceeds of enforcement of this charge, the Chargee may:
  - (i) apply the sum received on account of any compensation, at the Chargee's option, in or towards satisfaction of the Secured Obligation;
  - (ii) make, enforce, settle or compromise any claims relating to compensation; and

- (iii) execute any necessary assurances and releases in the name of the Chargor and the Chargee; and
- (b) if any compensation payable to the Chargee in respect of any or all of the Charged Property comes into the hands of the Chargor before a final irrevocable discharge of this charge, the Chargor must immediately pay that amount to the Chargee.

## 10. **DEFAULT INTEREST**

### 10.1 **Chargor must pay interest**

The Chargor must pay interest on each amount that is not paid when due (unless the Chargor is already required to pay interest on the unpaid amount by the terms of an agreement between the Chargee and the Chargor) from the day after the date on which it falls due up to (and including) the day on which it is paid in full, at the Default Rate. This interest must be paid on demand.

### 10.2 **Interest after judgment**

If a liability of the Chargor becomes merged in a judgment or order, the Chargor, as an independent obligation, must pay interest on the amount of that liability, from (and including) the date of the judgment or order until it is paid in full, at the higher of the rate that applies under the judgment or order and the rate calculated in accordance with clause 10.1.

### 10.3 **Accrual and calculation of interest**

Interest under this clause 10:

- (a) accrues daily; and
- (b) is calculated on the basis of the actual number of days on which interest has accrued and on a 365 day year.

## 11. **LIABILITY AND RELEASE**

### 11.1 **Continuing obligation**

This charge constitutes a continuing obligation regardless of any settlement of account, intervening payment, express or implied revocation or any other matter or thing.

### 11.2 **Personal liability**

No grant of full or partial satisfaction of or discharge from this charge by the Chargee will, unless it expressly provides otherwise, release the Chargor from personal liability under this charge until none of the Secured Obligation is owing (whether actually, contingently or prospectively) and it is not reasonably foreseeable that there could be any Secured Obligation owing in the future.

### 11.3 **Settlement conditional**

If:

- (a) (i) the Chargee has at any time released or discharged:
  - (A) the Chargor from its obligations under this charge; or
  - (B) any assets of the Chargor from this charge,



in either case in reliance on a payment, receipt or other transaction to or in favour of the Chargee; or

(ii) any payment, receipt or other transaction to or in favour of the Chargee has the effect of releasing or discharging:

(A) the Chargor from its obligations under this charge; or

(B) any assets of the Chargor from this charge; and

(b) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under an Insolvency Provision or under any other law; and

(c) that claim is upheld or is conceded or compromised by the Chargee,

then:

(i) the Chargee will immediately become entitled against the Chargor to all rights as it had immediately before that release or discharge;

(ii) the Chargor must, to the extent permitted by law:

(A) immediately do all things and execute all documents as the Chargee, acting reasonably, may require to restore to the Chargee all those rights; and

(B) indemnify the Chargee against all Loss, damages, claims, demands and actions suffered or incurred by it in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

#### 11.4 **Limitations on Chargor's rights**

Until the Secured Obligation has been irrevocably discharged in full, the Chargor may not:

(a) share in any Guarantee, Security Interest or money received or receivable by the Chargee in relation to the Secured Obligation or stand in the place of the Chargee in relation to any Guarantee, Security Interest or right to receive money;

(b) in reduction of its liability under this charge, raise a defence, set off or counterclaim against the Chargee or claim a set off or make a counterclaim against the Chargee; or

(c) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any document or agreement to which the Chargee is a party.

#### 11.5 **No marshalling**

The Chargee is not under any obligation to marshal or appropriate in favour of the Chargor or to exercise, apply, perfect or recover any Security Interest that the Chargee holds at any time or any funds or property that the Chargee may be entitled to receive or have a claim on.

## 11.6 **Effect of Insolvency Event**

- (a) If an Insolvency Event has occurred in relation to the Chargor, any amount paid by the Chargor (the **relevant payment**) will only be applied against any Secured Obligation if:
  - (i) the Chargee forms the opinion in good faith (which will be conclusively binding on the Chargor) that it will not be required to pay the relevant payment to any person under any law relating to bankruptcy, winding up or the protection of creditors; or
  - (ii) a final judgment is given by a court of competent jurisdiction in favour of the Chargee that it is not required to pay the relevant payment to any person under any law relating to bankruptcy, winding up or the protection of creditors.
- (b) If an amount is applied against any Secured Obligation and the Chargee forms the opinion in good faith that it is obliged to pay the relevant payment to any person under any law relating to bankruptcy, winding up or the protection of creditors:
  - (i) the Chargee's rights are to be reinstated and will be the same in relation to that amount as if the application, or the payment or transaction giving rise to it, had not been made; and
  - (ii) the Chargor must immediately do anything (including the signing of documents) required by the Chargee to restore to the Chargee any Guarantee or Security Interest to which it was entitled immediately before that application or the payment or transaction giving rise to it.
- (c) Any discharge or release between the Chargee and the Chargor is subject to reinstatement of the Chargee's rights under this clause 11.6.

## 12. **INDEMNITY**

### 12.1 **Indemnity for breach or preservation of rights**

The Chargor must indemnify the Chargee against, and must pay the Chargee on demand the amount of, all losses, liabilities, expenses and Taxes incurred in connection with the administration, and any actual or attempted preservation or enforcement of any rights under this charge or the failure by the O&M Contractor to comply with the Primary Obligation.

### 12.2 **Indemnity for exercise of rights or proceedings**

To the extent permitted by law, the Chargor must indemnify each of the Chargee, Receiver and Delegate against, and must pay each of them on demand the amount of all losses, liabilities, expenses and Taxes (other than Excluded Taxes) that they each incur:

- (a) directly or indirectly in the exercise or attempted exercise of any of the powers, rights, discretions or remedies (express or implied) vested in them under this charge or the Corporations Act; and
- (b) in connection with all proceedings, expenses, claims and demands in relation to anything done or omitted in any way relating to Charged Property,

including legal expenses on a full indemnity basis and expenses incurred in engaging consultants.

**13. PROTECTION OF CHARGEES AND APPOINTEES**

**13.1 Protection of Chargee and Receiver**

- (a) The Chargee is not obliged to:
- (i) notify any debtor or member of the Chargor or any other person of this charge; or
  - (ii) enforce payment of any money payable to the Chargor, or take any step or proceeding for any similar purpose,
- but may do so.
- (b) None of the Chargee, the Receiver or a Delegate is liable for any omission or delay in exercising any power, right, discretion or remedy under this charge or for any involuntary loss or irregularity that may occur in relation to the exercise or non-exercise of any of them except to the extent of its own fraud, gross negligence or wilful misconduct.

**13.2 Conflict of interests**

The Chargee, the Receiver and any Delegate appointed by the Chargee under this charge may exercise or agree to exercise a Power even though that person may have a conflict of interest or duty in exercising the Power. No contract will be void or voidable by virtue of that conflict of interest or duty, nor will the Chargee, Receiver or Delegate be liable to account to the Chargor or any other person for any money or property as a result of that conflict.

**13.3 Liability for loss**

- (a) The Chargee, Receiver and any Delegate appointed by the Chargee under this charge are not liable for any loss that the Chargor suffers as a direct or indirect result of:
- (i) the exercise or attempted exercise of, or failure to exercise, any of its rights contained in this charge; and
  - (ii) any release or dealing with any other Guarantee or Security Interest (including any prejudice to or loss of the Chargor's rights of subrogation);
- except to the extent of its own fraud, gross negligence or wilful misconduct.
- (b) If the Chargee, Receiver or any Delegate enters into possession of Charged Property, none of the Chargee, the Receiver or the Delegate is liable:
- (i) to account as mortgagee in possession or for anything except actual receipts; or
  - (ii) for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable,
- except to the extent of its own fraud, gross negligence or wilful misconduct.

**13.4 Waiver by Chargor**

The Chargor waives in favour of the Chargee:

- (a) all rights against the Chargee and any other person, estate or assets as far as is necessary to give effect to any provision of this charge;
- (b) promptness or diligence on the part of the Chargee, and any other requirement that the Chargee take any action or exhaust any right against any other person before enforcing this charge; and
- (c) all rights inconsistent with the provisions of this charge, including any rights of contribution or subrogation which the Chargor might otherwise be entitled to claim or enforce.

**14. PROTECTION OF THIRD PARTIES**

**14.1 Dealings under this charge**

A purchaser or other party to a disposal or dealing in attempted exercise of a power contained in this charge is not:

- (a) bound to enquire:
  - (i) whether there has been a default;
  - (ii) whether a Receiver has been properly appointed;
  - (iii) whether any Secured Obligation is owing; or
  - (iv) about the propriety or regularity of a sale, disposal or dealing;
- (b) affected by actual or constructive notice that a sale, disposal, transaction, document or other dealing is unnecessary or improper; and
- (c) will not be concerned to see to the application of any money or asset, or be answerable or accountable for any loss or misapplication.

Despite any irregularity or impropriety in the exercise of any right, power or discretion under this charge, it is to be treated, for the protection of the purchaser or other party to the disposal or dealing, as being authorised by this charge and valid.

**14.2 Receipts**

A receipt that the Chargee, Receiver or a Delegate gives for any money payable to or receivable by the Chargee, Receiver or Delegate because of this charge will:

- (a) relieve the person paying or handing over money or other property from all liability:
  - (i) for the application (or any loss or misapplication) of the money or other property;
  - (ii) to enquire whether the Secured Obligation has become payable; and
  - (iii) (where appropriate) as to the propriety or regularity of the appointment of the Receiver; and
- (b) discharge the person paying that money from its liability to pay that money.

**15. DISCHARGE**

The Chargee must at the request and cost of the Chargor promptly reconvey, surrender or release any remaining Charged Property to the Chargor and the Charged Property will then be discharged from this charge:

- (a) when the Chargee is satisfied that:
  - (i) all the Secured Obligation has been irrevocably discharged in full or satisfied in accordance with this charge and (without limiting this clause) that clause 11.6 will not later apply;
  - (ii) each of the Secured Obligations has been performed and/or discharged in full; and
  - (iii) no amount remains contingently payable or may become payable on the security of this charge (including under an indemnity); and
- (b) on payment or retention of all expenses incurred by or payable to the Chargee, the Receiver and any Delegate (as applicable) under this charge.

**16. GST**

- (a) **(Interpretation):**
  - (i) Except where defined in this charge or in the SLR Project Deed or the context suggests otherwise, terms used in this clause 16 have the meanings given to those terms by the GST Act (as amended from time to time).
  - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 16.
  - (iii) Unless otherwise expressly stated, all consideration to be provided under this charge is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 16.
  - (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.]
- (b) **(Reimbursements):** Any payment or reimbursement required to be made under this charge that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(Additional amount of GST payable):** Subject to clause 16(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this charge:
  - (i) any amount payable or consideration to be provided under any provision of this charge (other than this clause 16), for that supply is exclusive of GST;
  - (ii) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the

same time as any other consideration is to be first provided for that supply;  
and

- (iii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with this clause 16(c)(ii).

(d) **(Variation of GST):**

- (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 16(c) and clause 16(e)), varies from the additional amount paid by the Recipient under clause 16(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 16(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 16(c).

- (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this charge as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

(e) **(Exchange of non-monetary consideration):**

- (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 16(c) applies is a Taxable Supply made by the Recipient (the **Recipient Supply**), the GST Amount that would be otherwise be payable by the Recipient to the Supplier in accordance with clause 16(c) shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.

- (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 16(c) (or the time at which such GST Amount would have been payable in accordance with clause 16(c) but for the operation of clause 16(e)).

- (f) **(No merger):** This clause will not merge on completion or termination of this charge.

## 17. MISCELLANEOUS

### 17.1 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this charge:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

#### **The Chargee**

Name: TfNSW, a New South Wales Government agency  
Address: Level 11, 338 Pitt Street, Sydney NSW 2000  
Fax: (02) 9200 0290  
For the attention of: TfNSW's Representative

With a copy to:

Name: Transport for NSW, a New South Wales Government agency  
Address: Level 5  
Tower A, Zenith Centre, 821 Pacific Highway  
Chatswood NSW 2067

Fax No: (02) 9200 0290

For the attention of: Deputy Director General, Transport Projects Division

**The Chargor**

Name: Transdev Sydney Pty Ltd ABN 34 096 046 052

Address: Level 12  
114 William Street  
Melbourne VIC 3000

Fax No: (03) 9946 1330

For the attention of: Company Secretary

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 17.1(b); and
- (e) is taken to be received by the addressee:
  - (i) (in the case of prepaid post sent to an address in the same country) on the third Business Day after the date of posting;
  - (ii) (in the case of prepaid post sent to an address in another country) on the fifth Business Day after the date of posting by airmail;
  - (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
  - (iv) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a Business Day, or after 5:00pm, it is taken to be received at 9:00am on the next Business Day.

**17.2 The Chargee as a Public Authority**

- (a) This charge will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Chargee to exercise any of its functions and powers pursuant to any law.
- (b) The Chargor acknowledges and agrees that, without limiting clause 17.2(a), anything which the Chargee does, fails to do or purports to do pursuant to its functions and powers under any law will be deemed not to be an act or omission by

the Chargee under this charge and will not entitle the Chargor to make any Claim against the Chargee.

- (c) The parties agree that clauses 17.2(a) and 17.2(b) are taken not to limit any liability which the Chargee would have had to the Chargor under this charge as a result of a breach by the Chargee of a term of this charge but for clauses 17.2(a) and 17.2(b) of this charge.

### 17.3 Confidentiality

- (a) Subject to clause 17.3(b), if the Chargor is a debtor as defined in the PPSA, the parties agree to keep all information of a kind mentioned in section 275(l) of the PPSA confidential and not to disclose that information to anyone.
- (b) Clause 17.3(a) does not apply to the information referred to in clause 47.3 (*Public Disclosure Obligations*) of the Project Deed.

### 17.4 Certification

For the purposes of this charge, a copy of a document will be regarded as duly certified by a party if it is certified as a true copy by a director, secretary or general manager of that party.

### 17.5 Cost of performing obligations

Each party must perform its obligations under this charge at its own cost, unless expressly provided otherwise.

### 17.6 Governing Law

- (a) This charge is governed by and must be construed according to the law applying in New South Wales.
- (b) The parties irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts.

### 17.7 Amendments

This charge may only be varied by a deed executed by or on behalf of each party.

### 17.8 Assignment

Except as expressly contemplated by this charge or by way of security under a Permitted Security Interest, the Chargor may not assign or transfer any of its rights or obligations under this charge without the prior written consent of the Chargee, which must not be unreasonably withheld.

### 17.9 Taxes

The Chargor:

- (a) must pay all Taxes in respect of this charge, the performance of this charge and each transaction effected by or made under this charge;
- (b) indemnifies each other party against liability arising from failure to comply with clause 17.9(a); and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of any Taxes paid under this clause 17.9.



**17.10 Waiver**

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

**17.11 Survival Of certain provisions; no merger**

- (a) Without limiting clause 17.20(a):
  - (i) clauses 12, 17.1, 17.6 and 17.20, any indemnities given under this charge and any other provisions which are expressed to survive termination (together, the **Surviving Clauses**) will survive rescission, termination or expiration of this charge; and
  - (ii) if this charge is rescinded or terminated, no party will be liable to any other party except:
    - (A) under the Surviving Clauses; or
    - (B) in respect of any breach of this charge occurring before such rescission or termination.
- (b) No right or obligation of any party will merge on completion of any transaction under this charge. All rights and obligations under this charge survive the execution and delivery of any transfer or other document which implements any transaction under this charge.

**17.12 Further acts and documents**

- (a) Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this charge.
- (b) Without limiting clause 17.12(a), if the Chargee determines that this charge, the SLR O&M Contract Side Deed or the O&M Contract is or contains a Security Interest, the Chargor agrees to promptly do anything (including amending any document or executing any new document) which the Chargee reasonably requires for the purposes of:
  - (i) ensuring that the Security Interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;
  - (ii) enabling the Chargee to apply for registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by the Chargee; or
  - (iii) enabling the Chargee to exercise rights in connection with the Security Interest.

**17.13 Consents**

A consent required under this charge 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 charge expressly provides otherwise.

**17.14 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this charge, except for representations or inducements expressly set out in this charge.
- (b) Each party acknowledges and confirms that it does not enter into this charge in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this charge.

**17.15 Reading down**

If a word, phrase, sentence, clause or other provision of this charge would otherwise be unenforceable, illegal or invalid the effect of that provision will so far as possible be limited and read down so that it is not unenforceable, illegal or invalid.

**17.16 Severance**

Any provision of this charge which is illegal or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this charge or affecting the validity or unenforceability of such provision in any other jurisdiction.

**17.17 Remedies cumulative**

The rights and remedies provided in this charge are cumulative and are not exclusive of any rights or remedies provided by law or any other agreement, except to the extent expressly provided in this charge.

**17.18 Moratorium legislation**

Unless application is mandatory by law, any present or future law will not apply to this charge so as to abrogate or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to the Chargee.

**17.19 Entire agreement**

This charge contains the entire agreement of the parties with respect to the transactions contemplated by it. There are no understanding, agreements, warranties or representations (express or implied) with respect to the transactions contemplated by this charge except for those referred to in it.

**17.20 Indemnities**

- (a) Each indemnity in this charge is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this charge.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this charge.

- (c) A party must pay on demand any amount it must pay under an indemnity in this charge.
- (d) Where a party gives any indemnity or release to the Chargee under this charge, it gives an equivalent indemnity and release to the State. The Chargee holds for itself and on trust for the State the benefit of each such indemnity and release in this charge.

#### 17.21 **Counterparts**

This charge may be executed in any number of counterparts and by the parties on separate counterparts. All such counterparts taken together will be deemed to constitute one and the same instrument.

#### 17.22 **Attorneys**

Each person who executes this charge 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 and that he or she has, at the time of executing this charge, no notice of the revocation of the power of attorney under which he or she executes this charge.

#### 17.23 **Authorised Representative**

The Chargee may from time to time appoint in writing one or more natural persons, each of whom:

- (a) may exercise any of its powers, duties, discretions and authorities as are delegated by the Chargee to be exercised by that person as agent for the Chargee; and
- (b) has the full power and authority, subject to the powers of delegation by the Chargee, to act for and on behalf of and to bind the Chargee under this charge to the extent of the delegation and in compliance with the delegation.

#### 17.24 **Registration**

The Chargee may register this charge, or any financing statement or financing charge statement relating to this charge, in the manner prescribed by law to ensure the full efficacy of this charge as an Encumbrance to the Chargee in all relevant jurisdictions.

#### 17.25 **Blanks**

The Chargor authorises the Chargee to complete any blanks in this charge or any document, of any nature, entered into or executed by the Chargor in connection with this charge.

**Executed** as a deed.

**EXECUTED** by **TRANSDEV SYDNEY PTY LTD**  
**ABN 34 096 046 052** in accordance with s  
127(1) of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full

**EXECUTED** by **TRANSPORT FOR NSW** by its  
authorised delegate **IN THE PRESENCE OF:**

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Authorised Delegate

\_\_\_\_\_  
Name of Witness (print)

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Name of Authorised Delegate (print)