

# CONSORTIUM AGREEMENT

THIS CONSORTIUM AGREEMENT is made on July 1st, 2020, hereinafter referred to as the Effective Date.

BETWEEN:

**Partner 1:** Masaryk University, Faculty of Informatics (MUNI)

The Coordinator

And

**Partner 2:** University of Gdansk (UG)

**Partner 3:** Eidgenössische Technische Hochschule (ETH)

**Partner 4:** Atommagkutató Intézet (Atomki)

hereinafter, jointly or individually, referred to as “Parties” or “Party”

relating to the Project entitled

**Experimentally-oriented Device Independent Cryptography**

in short

**eDICT**

hereinafter referred to as “Project”

WHEREAS:

The Parties, having considerable experience in the field concerned, have submitted a proposal for the Project in the framework of ERA-NET “QuantERA”, which is jointly funded by national Funding Organisations.

The Project has been recommended for funding by the Call Committee of the participating national Funding Organisations.

The Parties respect the rules of the individual Grant Agreements with their respective Funding Organisations.

The Parties wish to set the terms and conditions for the implementation of their Project in addition to the provisions of the individual Grant Agreements between the respective Funding Organisation and the respective Party.

The Parties are aware that this Consortium Agreement is based upon the DESCA model consortium agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

## **Section 1: Definitions**

### **1.1 Definitions**

Words beginning with a capital letter shall have the meaning defined herein.

### **1.2 Additional Definitions**

“Access Rights”

Access Rights means licenses and user rights to Foreground or Background.

“Affiliated Entity”

Affiliated Entity means any legal entity that is under the direct or indirect control of a Party, or under the same direct or indirect control as the Party, control taking any of the following forms: (a) the direct or indirect holding of more than 50% of the nominal value of the issued share capital in the legal entity concerned, or of a majority of the voting rights of the shareholders or associates of that entity; (b) the direct or indirect holding, in fact or in law, of decision-making powers in the legal entity concerned.

“Background”

means any information including but not limited to reports, inventions, data, ideas, methods, solutions, devices, materials, prototypes, etc. irrespective of whether they are or can be protected by intellectual property rights such as copyright, patent or confidentiality— whatever its form or nature (tangible or intangible), including any rights such as intellectual property rights — that:

- a) is held by the Parties before they signed the Consortium Agreement, and/or
- b) is generated by the Parties outside the Project after they acceded to the Agreement and introduced into the Project by the relevant owning Parties, and
- c) is Needed for the implementation of the Project or Needed for Use of the Foreground, and
- d) is listed in Attachment 3.

“Consortium Body”

Consortium Body means any management body described in the Governance Structure section of this Consortium Agreement.

“Consortium Budget”

Consortium Budget means the allocation of all the resources in cash or in kind for the activities as defined in the Consortium Plan thereafter.

“Consortium Plan”

Consortium Plan means the description of the work (Joint Project Description, Attachment 1) and the related agreed Consortium Budget as updated and approved by the Core Management Board.

“Defaulting Party”

Defaulting Party means a Party which the Project Steering Committee has identified to be in breach of this Consortium Agreement as specified in Article 4.2 of this Consortium Agreement.

“Dissemination”

Dissemination means the disclosure of Foreground by any appropriate means other than that resulting from the formalities for protecting it, and including the publication of Foreground in any medium.

“Force Majeure”

Force Majeure shall mean any unforeseeable and exceptional event affecting the fulfilment of any obligation under the individual Grant Agreements by the Parties, which is beyond their control and cannot be overcome despite their reasonable endeavours. Any default of a product or service or delays in making them available for the purpose of performing the Project and affecting such performance, including, for instance, anomalies in the functioning or performance of such product or service, labour disputes, strikes or financial difficulties do not constitute Force Majeure.

“Foreground”

Foreground means all information arising from the Project, including but not limited to knowledge, reports, inventions, software, data, ideas, methods, solutions, devices, materials, prototypes, results, etc. irrespective of whether they are or can be protected by intellectual property rights such as copyright, patent or confidentiality.

“Funding Organisation”

Funding Organisation means a ministry, funding agency or other organisation providing funding to the Project or an individual Party for implementation of the Project within the framework of the ERA-Net QUANTERA Programme.

“Project Steering Committee”

The Project Steering Committee means the decision-making body of the Consortium consisting of one representative of each Party (see section 6).

“Grant Agreement”

Grant Agreement means an individual funding agreement and related obligations between a Party (or several Parties) and its respective Funding Organisation for the implementation of the Project.

“Needed”

means: For the implementation of the Project: Access Rights are Needed if, without the grant of such Access Rights, carrying out the tasks assigned to the recipient Party would be impossible, significantly delayed, or require significant additional financial or human resources. For Use of own Background: Access Rights are Needed if, without the grant of such Access Rights, the Use of own Background would be technically or legally impossible.

“Software”

Software means sequences of instructions to carry out a process in, or convertible into, a form executable by a computer and fixed in any tangible medium of expression.

“Use”

Use means the direct or indirect utilisation of Foreground in further research activities other than those covered by the Project, or for developing, creating and marketing a product or process, or for creating and providing a service.

“ERA-Net QuantERA”

ERA-Net QuantERA means the ERA-NET Cofund Action in Quantum Technologies, cofunded by the European Union’s Horizon 2020 research and innovation programme (Grant agreement number: 731473), with which the Coordinator of the Project will interact during the course of the Project.

“Days”

Days shall mean calendar days, if not specified differently, albeit beginning with capital letter or not

## **Section 2: Purpose**

The purpose of this Consortium Agreement is to specify with respect to the Project, the relationship among the Parties, in particular concerning the organisation of the work between the Parties, the management of the Project and the rights and obligations of the Parties concerning inter alia liability, Access Rights and dispute resolution.

The Project’s timetable and its technical and financial terms and conditions are stipulated in the individual Grant Agreements between each Funding Organisation and Party and the Joint Project

Description (Attachment 1). The Parties undertake to cooperate in good faith in order to complete the Project under the terms and conditions such stipulated.

## **Section 3: Entry into force, duration and termination**

### **3.1 Entry into force**

An entity becomes a Party to this Consortium Agreement upon signature of this Consortium Agreement by a duly authorised representative.

This Consortium Agreement shall have effect from the Effective Date identified at the beginning of this Consortium Agreement.

A new entity becomes a Party to the Consortium Agreement upon signature of the accession document (Attachment 5) by the new Party and the Coordinator. Such accession shall have effect from the date identified in the accession document.

### **3.2 Duration and termination**

This Consortium Agreement shall continue in full force and effect until complete fulfilment of all obligations undertaken by the Parties under this Consortium Agreement.

However, this Consortium Agreement or the participation of one or more Parties to it may be terminated in accordance with the terms of this Consortium Agreement.

If

- a Grant Agreement is not signed by the Organisation or a Party, or
- a Grant Agreement is terminated, or
- a Party’s participation in a Grant Agreement is terminated,

Each Party may terminate this Agreement for good cause by written notice. Good cause is given in case of insolvency or if the funding of the respective Funding Organisation is ceased or substantially reduced. The right to terminate the agreement without good cause is excluded.

### **3.3 Survival of rights and obligations**

The provisions relating to Access Rights, Dissemination and confidentiality, for the time period mentioned therein, as well as for liability, applicable law and settlement of disputes shall survive the expiration or termination of this Consortium Agreement.

Termination shall not affect any rights or obligations of a Party leaving the Consortium incurred prior to the date of termination, unless otherwise agreed between the Project Steering Committee and the leaving Party. This includes the obligation to provide all input, deliverables and documents for the period of its participation.

## **Section 4: Responsibilities of Parties**

### **4.1 General Principles**

Each Party undertakes to take part in the efficient implementation of the Project, and to cooperate, perform and fulfil, promptly and on time, all of its obligations under this Consortium Agreement as may be reasonably required from it and in a manner of good faith as prescribed by Belgian law.

Each Party undertakes to notify promptly, in accordance with the governance structure of the Project, any significant information, fact, problem or delay likely to affect the Project.

Each Party shall promptly provide all information reasonably required by the Project Steering Committee or by the Coordinator to carry out its tasks.

Each Party shall take reasonable measures to ensure the accuracy of any information or materials it supplies to the other Parties.

## **4.2 Breach**

In the event that the Project Steering Committee identifies a breach by a Party of its obligations under this Consortium Agreement (e.g. improper implementation of the project), the Coordinator or, if the Coordinator is in breach of its obligations, the Party appointed by the Project Steering Committee, will give formal notice to such Party requiring that such breach will be remedied within 30 calendar days from the date of receipt of the written notice by the Party.

If such breach is substantial and is not remedied within that period or is not capable of remedy, the Project Steering Committee may decide to declare the Party to be a Defaulting Party and to decide on the consequences thereof which may include termination of its participation.

## **4.3 Involvement of third parties**

A Party that enters into a subcontract or otherwise involves third parties (including but not limited to Affiliated Entities) in the Project remains solely responsible for carrying out its relevant part of the Project and for such third party’s compliance with the provisions of this Consortium Agreement and of their individual Grant Agreements. It has to ensure that the involvement of third parties does not affect the rights and obligations of the other Parties under this Consortium Agreement and their individual Grant Agreements.

# **Section 5: Liability towards each other**

## **5.1 No warranties**

In respect of any information or materials (incl. Foreground and Background) supplied by one Party to another under the Project, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties.

Therefore,

- the recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials, and
- no Party granting Access Rights shall be liable in case of infringement of proprietary rights of a third party resulting from any other Party (or its Affiliated Entities) exercising its Access Rights.

## **5.2 Limitations of contractual liability**

No Party shall be responsible to any other Party for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, provided such damage was not caused by a willful act or gross negligence.

For any remaining contractual liability, a Party’s aggregate liability towards the other Parties collectively shall be limited to once the Party’s share of the total costs of the Project as identified in the Consortium Plan provided such damage was not caused by a willful act or gross negligence.

The terms of this Consortium Agreement shall not be construed to amend or limit any Party’s mandatory statutory liability.

### **5.3 Damage caused to third parties**

Each Party shall be solely liable for any loss, damage or injury to third parties resulting from the performance of the said Party’s obligations by it or on its behalf under this Consortium Agreement or from its use of Foreground or Background.

### **5.4 Force Majeure**

No Party shall be considered to be in breach of this Consortium Agreement if it is prevented from fulfilling its obligations under the Consortium Agreement by Force Majeure.

Each Party will notify the Project Steering Committee of any Force Majeure without undue delay. If the consequences of Force Majeure for the Project are not overcome within 6 weeks after such notification, the transfer of tasks - if any - shall be decided by the Project Steering Committee.

## **Section 6: Governance Structure**

### **6.1 General structure**

The Project Steering Committee is the ultimate decision-making body of the consortium.

The Coordinator is the legal entity acting as the intermediary between the Parties and the QuantERA Coordination. The Coordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in this Consortium Agreement.

The Management Support Team assists the Project Steering Committee and the Coordinator.

### **6.2 Members**

The Project Steering Committee shall consist of one representative of each Party (hereinafter referred to as “Member”).

Each Member shall be deemed to be duly authorized to deliberate, negotiate and decide on all matters listed in Section 6.3.6 of this Consortium Agreement.

The Coordinator shall chair all meetings of the Project Steering Committee, unless decided otherwise by the Project Steering Committee.

The Parties agree to abide by all decisions of the Project Steering Committee. This does not prevent the Parties from submitting a dispute for resolution in accordance with the provisions of settlement of disputes in Section 11.8 of this Consortium Agreement.

### **6.3 Operational procedures for the Project Steering Committee**

#### **6.3.1 Representation in meetings**

Any Member:

- should be present or represented at any meeting;
- may appoint a substitute or a proxy to attend and vote at any meeting;
- and shall participate in a cooperative manner in the meetings.

#### **6.3.2 Preparation and organisation of meetings**

##### **6.3.2.1 Convening meetings:**

The chairperson shall convene ordinary meetings of the Project Steering Committee at least once

every six months and shall also convene extraordinary meetings at any time upon written request of any Member.

**6.3.2.2 Notice of a meeting:**

The chairperson shall give notice in writing of a meeting to each Member as soon as possible and no later than 14 calendar days preceding an ordinary meeting and 7 calendar days preceding an extraordinary meeting.

**6.3.2.3 Sending the agenda:**

The chairperson shall prepare and send each Member a written (original) agenda no later than 14 calendar days preceding the meeting, or 7 calendar days before an extraordinary meeting.

**6.3.2.4 Adding agenda items:**

Any agenda item requiring a decision by the Members must be identified as such on the agenda. Any Member may add an item to the original agenda by written notification to all of the other Members no later than 7 calendar days preceding the meeting.

**6.3.2.5**

During a meeting of the Project Steering Committee the Members present or represented can unanimously agree to add a new item to the original agenda.

**6.3.2.6**

Meetings of the Project Steering Committee may also be held by teleconference or other telecommunication means.

**6.3.2.7**

Decisions will only be binding once the relevant part of the minutes has been accepted according to Section 6.3.5

**6.3.2.8**

Any decision may also be taken without a meeting if the chairperson circulates to all Members a written document, which is then agreed by two-thirds (2/3) of all Members. Such document shall include the deadline for responses.

Decisions taken without a meeting shall be considered as accepted if, within the period set out in article 6.3.4.4, no Member has sent an objection in writing to the chairperson. The decisions will be binding after the chairperson sends to all Members a written notification of this acceptance.

**6.3.3 Voting rules and quorum**

**6.3.3.1**

The Project Steering Committee shall not deliberate and decide validly unless two-thirds (2/3) of its Members are present or represented (quorum).

If the quorum is not reached, the chairperson of the Project Steering Committee shall convene another ordinary meeting within 15 calendar days. If in this meeting the quorum is not reached once more, the chairperson shall convene an extraordinary meeting which shall be entitled to decide even if less than the quorum of Members are present or represented.

### **6.3.3.2**

Each Member present or represented in the meeting shall have one vote.

### **6.3.3.3**

A Party which the Project Steering Committee has declared according to Section 4.2 to be a Defaulting Party may not vote.

### **6.3.3.4**

Decisions shall be taken by a majority of two-thirds (2/3) of the votes cast.

## **6.3.4 Veto rights**

### **6.3.4.1**

A Member which can show that its own work, time for performance, costs, liabilities, intellectual property rights or other legitimate interests would be severely affected by a decision of the Project Steering Committee may exercise a veto with respect to the corresponding decision or relevant part of the decision.

### **6.3.4.2**

When the decision is foreseen on the original agenda, a Member may veto such a decision during the meeting only.

### **6.3.4.3**

When a decision has been taken on a new item added to the agenda before or during the meeting, a Member may veto such decision during the meeting and within 15 calendar days after the draft minutes of the meeting are sent.

### **6.3.4.4**

When a decision has been taken without a meeting a Member may veto such decision within 15 calendar days after written notification by the chairperson of the outcome of the vote.

### **6.3.4.5**

In case of exercise of veto, the Members shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all Members.

### **6.3.4.6**

A Party may neither veto decisions relating to its identification to be in breach of its obligations nor to its identification as a Defaulting Party. The Defaulting Party may not veto decisions relating to its participation and termination in the consortium or the consequences of them.

### **6.3.4.7**

A Party requesting to leave the consortium may not veto decisions relating thereto.

## **6.3.5 Minutes of meetings**

### **6.3.5.1**

The chairperson shall produce written minutes of each meeting which shall be the formal record of



all decisions taken. He/she shall send draft minutes to all Members within 10 calendar days of the meeting.

#### **6.3.5.2**

The minutes shall be considered as accepted if, within 15 calendar days from sending, no Member has sent an objection in writing to the chairperson with respect to the accuracy of the draft of the minutes.

#### **6.3.5.3**

The chairperson shall send the accepted minutes to all the Members of the Project Steering Committee, and to the Coordinator, who shall safeguard them. If requested the Coordinator shall provide authenticated duplicates to Parties.

### **6.3.6 Decisions of the Project Steering Committee**

The Project Steering Committee shall be free to act on its own initiative to formulate proposals and take decisions in accordance with the procedures set out herein.

The following decisions shall be taken by the Project Steering Committee:

Content, finances and intellectual property rights

- Proposals for changes to the Joint Project Description to be agreed by the respective Funding Organisations;
- Proposals for changes to the Consortium Plan to be agreed by the respective Funding Organisations;
- Modifications to Attachment 3 (Background Included);
- Additions to Attachment 4 (List of Third Parties for simplified transfer according to Section 8.2.1);
- Discussion and harmonization on access, licensing and distribution rules of Softwares/data bases as part of Foreground with the help of experts named by each Party.

Evolution of the consortium

- Entry of a new Party to the consortium and approval of the settlement on the conditions of the accession of such a new Party
- Withdrawal of a Party from the consortium and the approval of the settlement on the conditions of the withdrawal
- Identification of a breach by a Party of its obligations under this Consortium Agreement
- Declaration of a Party to be a Defaulting Party
- Remedies to be performed by a Defaulting Party
- Termination of a Defaulting Party’s participation in the consortium and measures relating thereto
- Proposal to the national Funding Organisation for a change of the Coordinator
- Proposal to the national Funding Organisation for suspension of all or part of the Project
- Proposal to the national Funding Organisation for termination of the Project and the Consortium Agreement

Appointments

- Agree on the Members of the Management Support Team, upon a proposal by the

Coordinator.

In the case of abolished tasks as a result of a decision of the Project Steering Committee, Members shall rearrange the tasks of the Parties concerned. Such rearrangement shall take into consideration the legitimate commitments taken prior to the decisions, which cannot be canceled.

## **6.4 Coordinator**

### **6.4.1**

The Coordinator shall be the intermediary between the Parties and ERA-Net QuantERA and shall perform all tasks assigned to it as described in this Consortium Agreement.

### **6.4.2**

In particular, the Coordinator shall be responsible for:

- monitoring compliance by the Parties with their obligations;
- keeping the address list of Members and other contact persons updated and available;
- collecting, reviewing to verify consistency and submitting reports, other deliverables and specific requested documents to ERA-Net QuantERA;
- transmitting documents and information connected with the Project to any other Parties concerned;
- providing, upon request, the Parties with official copies or originals of documents that are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims;
- preparing the meetings, proposing decisions and preparing the agenda of Project Steering Committee meetings, chairing the meetings, preparing the minutes of the meetings and monitoring the implementation of decisions taken at meetings
- representing the Project in joint activities in the framework of the ERA-Net QuantERA, e.g. participation in programme seminars, providing publishable information on the Project for newsletters or other publications.

For sake of clarity, the Coordinator has neither responsibility nor any obligations regarding the relationships between the Parties and their respective National Funding Organisations.

### **6.4.3**

If the Coordinator fails in its coordination tasks, the Project Steering Committee may propose to the Funding Organisation to change the Coordinator.

### **6.4.4**

The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party or of the consortium.

### **6.4.5**

The Coordinator shall not enlarge its role beyond the tasks specified in this Consortium Agreement.

## **6.5 Management Support Team**

The Management Support Team shall be proposed by the Coordinator. It shall be appointed by the

Project Steering Committee and shall assist and facilitate the work of the Project Steering Committee.

The Management Support Team shall also provide assistance to the Coordinator for executing the decisions of the Project Steering Committee. It shall be responsible for the day-to-day management of the Project.

## **Section 7: Financial provisions**

### **7.1 Funding**

Each Party receives funding relating to its share of the Project directly from the Funding Organisation responsible for that Party and according to the provisions of the Grant Agreement of the individual Funding Organisation’s decision to award aid. In countries with several participating project partners whose Grantor requires a joint application for funding, one partner must take the application for funding and is responsible for the distribution of these funds to the other partners.

By accepting national aid, each Party is required to abide with the rules and regulations concerning project funding in its own country. The articles set down in this Agreement do not replace, impinge, impede or otherwise impact the national rules and regulations which apply to each Party.

The Parties shall, if necessary, individually provide the additional funding required in order to carry-out their own share of the Project work as specified in the Consortium Plan.

In accordance with its own usual accounting and management principles and practices, each Party shall be solely responsible for justifying its costs with respect to the Project towards the respective Funding Organisation. Neither the Coordinator nor any of the other Parties shall be in any way liable or responsible for such justification of costs towards the Funding Organisation.

### **7.2 Responsibility for applying for the funding**

Payments to Parties are the exclusive tasks of Funding Organisations.

Each party is responsible for applying for the funding, except in countries with several participating project partners whose Grantor requires a joint application for funding. In this case, a partner of the country concerned must take the application for funding and is responsible for the distribution of these funds to the other partners (who receive the money from the same Grantor).

## **Section 8: Foreground**

### **8.1 Ownership of Foreground**

#### **8.1.1**

Each of the Parties retains full ownership or right of disposal over its Background, including but not limited to information listed in Attachment 3. For Background to be considered Confidential Information within the meaning of Article 10.1 of this Consortium Agreement the Disclosing Party must designate it as such according to the process outlined in Article 10.1.

#### **8.1.2**

Foreground shall be the property of the Party carrying out the work generating that Foreground.

#### **8.1.3**

Where several Parties have jointly carried out work generating Foreground and where their

respective share of the work cannot be ascertained, they shall have joint ownership of such Foreground. They shall establish an agreement regarding the allocation and terms of exercising that joint ownership. Everyone, who contributed to the Foreground, for example the design of an algorithm (like delivering data for algorithm design and validation according to the proposal, making statistics, compiling the algorithm) will be owner of the prognosis model (algorithm).

#### **8.1.4**

Where no joint ownership agreement has yet been concluded:

- each of the joint owners shall be entitled to Use their jointly owned Foreground for research activities on a royalty-free basis, and without requiring the prior consent of the other joint owner(s), and
- each of the joint owners shall be entitled to Exploit and/or grant non-exclusive licenses to third parties, without any right to sub-license, subject to the following conditions: at least 45 days prior written notice must be given to the other joint owner(s); and fair and reasonable compensation must be provided to the other joint owner(s).

#### **8.1.5**

If employees or other personnel working for a Party are entitled to claim rights to Foreground, the Party shall ensure that it is possible to exercise those rights in a manner compatible with its obligations under this Consortium Agreement.

### **8.2 *Transfer of Foreground***

#### **8.2.1**

If not otherwise stated in the rules of the individual Grant Agreements with the Funding Organisations, each Party may transfer ownership of its own Foreground.

It may identify specific third parties it intends to transfer the ownership of its Foreground to in Attachment 4 to this Consortium Agreement. The other Parties hereby waive their right to object to a transfer to listed third parties according to Section 8.2.5. Any addition to Attachment 4 after signature of this Agreement requires a decision of the Project Steering Committee.

#### **8.2.2**

The transferring Party shall, however, notify the other Parties of such transfer in writing and shall ensure that the rights of the other Parties will not be affected by such transfer.

#### **8.2.3**

Where a Party transfers ownership of Foreground, it shall pass on its obligations regarding that Foreground to the assignee including the obligation to pass those obligations on to any subsequent assignee.

#### **8.2.4**

Subject to its obligations concerning confidentiality such as in the framework of a merger or an acquisition of an important part of its assets, where a Party is required to pass on its obligations to provide Access Rights, it shall give at least 45 days prior written notice to the other Parties of the envisaged transfer, together with sufficient information concerning the envisaged new owner of the Foreground to permit the other Parties to exercise their Access Rights.

## **8.2.5**

Following notification in accordance with Section 8.2.4, any other Party may object within 30 days of the notification or within a different time-limit agreed in writing, to any envisaged transfer of ownership on the grounds that it would adversely affect its Access Rights.

Where any of the other Parties demonstrate that their Access Rights would be adversely affected, the intended transfer shall not take place until agreement has been reached between the Parties concerned.

## **8.3 Dissemination**

### **8.3.1**

For the avoidance of doubt, nothing in this Section 8.3. has impact on the confidentiality obligations set out in Section 10.

### **8.3.2 Dissemination of own Foreground**

#### **8.3.2.1**

During the Project and for a period of one (1) year after the end of the Project, the dissemination of own Foreground by one or several Parties including but not restricted to publications and presentations, shall be subject to the following provisions.

Prior notice of any planned publication shall be given to the concerned Parties at least forty-five (45) calendar days before the publication. Any objection to the planned publication shall be made in writing to the Coordinator and to the Party or Parties proposing the dissemination within thirty (30) calendar days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted.

#### **8.3.2.2**

An objection is justified if

- the protection of the objecting Party’s Foreground or Background would be adversely affected
- the objecting Party’s legitimate interests in relation to the Foreground or Background would be significantly harmed.

The objection has to include a precise request for necessary modifications.

#### **8.3.2.3**

If an objection has been raised the involved Parties shall discuss how to overcome the justified grounds for the objection on a timely basis (for example by amendment to the planned publication and/or by protecting information before publication) and the objecting Party shall not unreasonably continue the opposition if appropriate measures are taken following the discussion.

### **8.3.3 Dissemination of another Party’s unpublished Foreground or Background**

A Party shall not include in any dissemination activity another Party’s Foreground or Background without obtaining the owning Party’s prior written approval, unless they are already published.

### **8.3.4 Cooperation obligations**

The Parties undertake to cooperate to allow the timely submission, examination, publication and defence of any dissertation or thesis for a degree that includes their Foreground or Background subject to the confidentiality and publication provisions agreed in this Consortium Agreement.

In accordance with scientific customs, the Party’s contributions will be expressly reflected in all written or oral public disclosures concerning Foreground by acknowledgment or co-authorship, as appropriate.

### **8.3.5 Use of names, logos or trademarks**

Nothing in this Consortium Agreement shall be construed as conferring rights to use in advertising, publicity or otherwise the name of the Parties or any of their logos or trademarks without their prior written approval.

### **8.3.6**

All publications or communications relating to Foreground shall include the following statement to indicate that said Foreground was generated with the assistance of financial support from the ERA-Net QuantERA Programme:

“This research was made possible by funding from QuantERA, an ERA-Net cofund in Quantum Technologies ([www.quantera.eu](http://www.quantera.eu)), under the project eDICT.”. Respective partners should acknowledge their national funding in an appropriate way as well.

## **Section 9: Access Rights**

### **9.1 Background included**

#### **9.1.1**

In Attachment 3, the Parties have identified and agreed on the Background for the Project and have also, where relevant, informed each other that Access to specific Background is subject to legal or contractual restrictions or limits.

Anything not identified in Attachment 3 shall not be the object of Access Right obligations regarding Background.

#### **9.1.2**

Any Party may add further own Background to Attachment 3 during the Project by written notice to the other Parties. However, approval of the Project Steering Committee is needed should a Party wish to modify or withdraw its Background in Attachment 3. .

### **9.2 General Principles**

#### **9.2.1**

Each Party shall implement its tasks in accordance with the Consortium Plan and shall bear sole responsibility for ensuring that its acts within the Project do not knowingly infringe third party property rights.

### **9.2.2**

Any Access Rights granted expressly exclude any rights to sublicense unless expressly stated otherwise.

### **9.2.3**

Access Rights needed for the performance of the work of a Party under the Project shall be free of any administrative transfer costs.

### **9.2.4**

Access Rights are granted on a non-exclusive basis.

### **9.2.5**

Foreground and Background shall be used only for the purposes for which Access Rights to it have been granted.

### **9.2.6**

All requests for Access Rights shall be made in writing. The granting of Access Rights may be made conditional on the acceptance of specific conditions aimed at ensuring that these rights will be used only for the intended purpose and that appropriate confidentiality obligations are in place.

### **9.2.7**

The requesting Party must show that the Access Rights are Needed.

## **9.3 *Access Rights for implementation***

Access Rights to Foreground and Background Needed for the performance of the own work of a Party under the Project shall be granted on a royalty-free basis, unless otherwise agreed for Background in Attachment 3.

## **9.4 *Access Rights for Exploitation***

### **9.4.1 Access Rights to Foreground**

Access Rights to Foreground if Needed for Exploitation of a Party’s own Foreground shall be granted on Fair and Reasonable Conditions.

Access rights to Results for internal research activities shall be granted on a royalty-free basis.

### **9.4.2**

Access Rights to Background if Needed for Exploitation of a Party’s own Foreground, including for research on behalf of a third party, shall be granted on Fair and Reasonable conditions.

### **9.4.3**

A request for Access Rights may be made up to twelve months after the end of the Project or, in the case of Section 9.7.2.1.2., after the termination of the requesting Party’s participation in the Project.

## **9.5 Access Rights for Affiliated Entities**

Access Rights to Affiliated Entities shall be granted on Fair and Reasonable conditions and upon written bilateral agreement.

Affiliated Entities which obtain Access Rights in return grant Access Rights to all Parties and fulfil all confidentiality and other obligations accepted by the Parties under this Consortium Agreement as if such Affiliated Entities were Parties.

Access Rights may be refused to Affiliate Entities if such granting is contrary to the legitimate interests of the Party which owns the Background or the Foreground.

Access Rights granted to any Affiliated Entity are subject to the continuation of the Access Rights of the Party to which it is affiliated, and shall automatically terminate upon termination of the Access Rights granted to such Party.

Upon cessation of the status as an Affiliated Entity, any Access Rights granted to such former Affiliated Entity shall lapse.

Further arrangements with Affiliated Entities may be negotiated in separate agreements.

## **9.6 Additional Access Rights**

For the avoidance of doubt any grant of Access Rights not covered by this Consortium Agreement shall be at the absolute discretion of the owning Party and subject to such terms and conditions as may be agreed between the owning and receiving Parties.

## **9.7 Access Rights for Parties entering or leaving the consortium**

### **9.7.1 New Parties entering the consortium**

As regards Foreground developed before the accession of the new Party, the new Party will be granted Access Rights on the conditions applying for Access Rights to Background.

### **9.7.2 Parties leaving the consortium**

#### **9.7.2.1 Access Rights granted to a leaving Party**

##### **9.7.2.1.1 Defaulting Party**

Access Rights granted to a Defaulting Party and such Party’s right to request Access Rights shall cease immediately upon receipt by the Defaulting Party of the formal notice of the decision of the Project Steering Committee to terminate its participation in the consortium.

##### **9.7.2.1.2 Non-defaulting Party**

A non-defaulting Party leaving voluntarily and with the other Parties’ consent shall have Access Rights to the Results developed until the date of the termination of its participation.

#### **9.7.2.2 Access Rights to be granted by any leaving Party**

Any Party leaving the Project shall continue to grant Access Rights pursuant to this Consortium Agreement as if it had remained a Party for the whole duration of the Project.

## **9.8 Specific Provisions for Access Rights to Software**

For the avoidance of doubt, the general provisions for Access Rights provided for in this Section 9 are applicable also to Software.



If not otherwise agreed (see section 6.3) parties’ Access Rights to Software do not include any right to receive source code or object code ported to a certain hardware platform or any right to receive respective Software documentation in any particular form or detail, but only as available from the Party granting the Access Rights.

## **Section 10: Non-disclosure of information**

### **10.1**

All information, including but not limited to data, documents or other materials, in whatever form or mode of communication, which is disclosed by a Party (the “Disclosing Party”) to any other Party (the “Recipient”) in connection with the Project during its implementation and which has been explicitly marked as “confidential” at the time of disclosure, or when disclosed orally has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within fifteen (15) calendar days from oral disclosure at the latest as confidential information by the Disclosing Party, is “Confidential Information”.

### **10.2**

The Recipients hereby undertake in addition and without prejudice to any commitment on non-disclosure under the Consortium Agreement, for a period of 5 years after the end of the Project:

- not to use Confidential Information otherwise than for the purpose for which it was disclosed;
- not to disclose Confidential Information without the prior written consent by the Disclosing Party;
- to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and
- to return to the Disclosing Party, or destroy, on request all Confidential Information that has been disclosed to the Recipients including all copies thereof and to delete all information stored in a machine readable form to the extent practically possible. The Recipients may keep a copy to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable laws and regulations or for the proof of on-going obligations provided that the Recipient comply with the confidentiality obligations herein contained with respect to such copy for as long as the copy is retained.

### **10.3**

The recipients shall be responsible for the fulfilment of the above obligations on the part of their employees or third parties involved in the Project and shall ensure that they remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of the contractual relationship with the employee or third party.

### **10.4**

The above shall not apply for disclosure or use of Confidential Information, if and in so far as the Recipient can show that:

- the Confidential Information has become or becomes publicly available by means other than a breach of the Recipient’s confidentiality obligations;
- the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;
- the Confidential Information is communicated to the Recipient without any obligation of

confidentiality by a third party who is to the best knowledge of the Recipient in lawful possession thereof and under no obligation of confidentiality to the Disclosing Party;

- the disclosure or communication of the Confidential Information is foreseen by provisions of the individual Grant Agreements;
- the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party;
- the Confidential Information was already known to the Recipient prior to disclosure, or the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, subject to the provision Section 10.7 hereunder.

## **10.5**

The Recipient shall apply the same degree of care with regard to the Confidential Information disclosed within the scope of the Project as with its own confidential and/or proprietary information, but in no case less than reasonable care

## **10.6**

Each Party shall promptly advise the other Party in writing of any unauthorised disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorised disclosure, misappropriation or misuse.

## **10.7**

If any Party becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure notify the Disclosing Party, and comply with the Disclosing Party’s reasonable instructions to protect the confidentiality of the information.

## **Section 11: Miscellaneous**

### ***11.1 Attachments, inconsistencies and severability***

This Consortium Agreement consists of this core text and

Attachment 1: Joint project description

Attachment 2: Initial list of Members and other contact persons

Attachment 3: Background included

Attachment 4: List of Third Parties for simplified transfer according to Section 8.2.1

Attachment 5: Accession document

Attachment 6: Listed affiliated entities

In case the terms of this Consortium Agreement are in conflict with the terms of the individual Grant Agreements, the terms of the latter shall prevail. In case of conflicts between the attachments and the core text of this Consortium Agreement, the latter shall prevail.

Should any provision of this Consortium Agreement become invalid, illegal or unenforceable, it shall not affect the validity of the remaining provisions of this Consortium Agreement. In such a case, the

Parties concerned shall be entitled to request that a valid and practicable provision be negotiated that fulfils the purpose of the original provision.

### **11.2 No representation, partnership or agency**

The Party shall not be entitled to act or to make legally binding declarations on behalf of any other Party or of the consortium. Nothing in this Consortium Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.

### **11.3 Notices and other communication**

Any notice to be given under this Consortium Agreement shall be in writing to the addresses and recipients as listed in the most current address list kept by the Coordinator.

Formal notices:

If it is required in this Consortium Agreement (in particular Sections 4.2, 9.7.2.1.1, and 11.4) that a formal notice, consent or approval shall be given, such notice shall be signed by an authorised representative of a Party and shall either be served personally or sent by mail with recorded delivery or telefax with receipt acknowledgement.

Other communication and notices:

Other communication between the Parties may also be effected by other means such as e-mail with acknowledgement of receipt, which fulfils the conditions of written form.

Any change of persons or contact details shall be notified immediately by the respective Party to the Coordinator. The address list shall be accessible to all Parties.

### **11.4 Assignment and amendments**

Except as set out in Section 8.2, no rights or obligations of the Parties arising from this Consortium Agreement may be assigned or transferred, in whole or in part, to any third party without the other Parties' prior formal approval.

Amendments and modifications to the text of this Consortium Agreement not explicitly listed in Section 6.3.6 require a separate written agreement to be signed between all Parties.

### **11.5 Mandatory national law**

Nothing in this Consortium Agreement shall be deemed to require a Party to breach any mandatory statutory law under which the Party is operating.

### **11.6 Language**

This Consortium Agreement is drawn up in English, which language shall govern all documents, notices, meetings, arbitral proceedings and processes relative thereto.

### **11.7 Applicable law**

This Consortium Agreement shall be construed in accordance with and governed by the laws of Belgium excluding its conflict of law provisions.

### **11.8 Settlement of disputes**

The Parties shall endeavour to settle their disputes amicably.

Nothing in this Consortium Agreement shall limit the Parties’ right to seek injunctive relief or to enforce an arbitration award in any applicable competent court.

## **Section 12: Signatures**

AS WITNESSES:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written

Masaryk University

Signature(s)

Name(s)

Title(s)

Dates 9. 9. 2020

University of Gdansk

Signature(s)

Name(s)

Title(s)

Dates

Eidgenössische Technische Hochschule

Signature(s)

Name(s)

Title(s)

Dates 04. SEP. 2020

Atommagkutató Intézet (Atomki)

Signature(s)

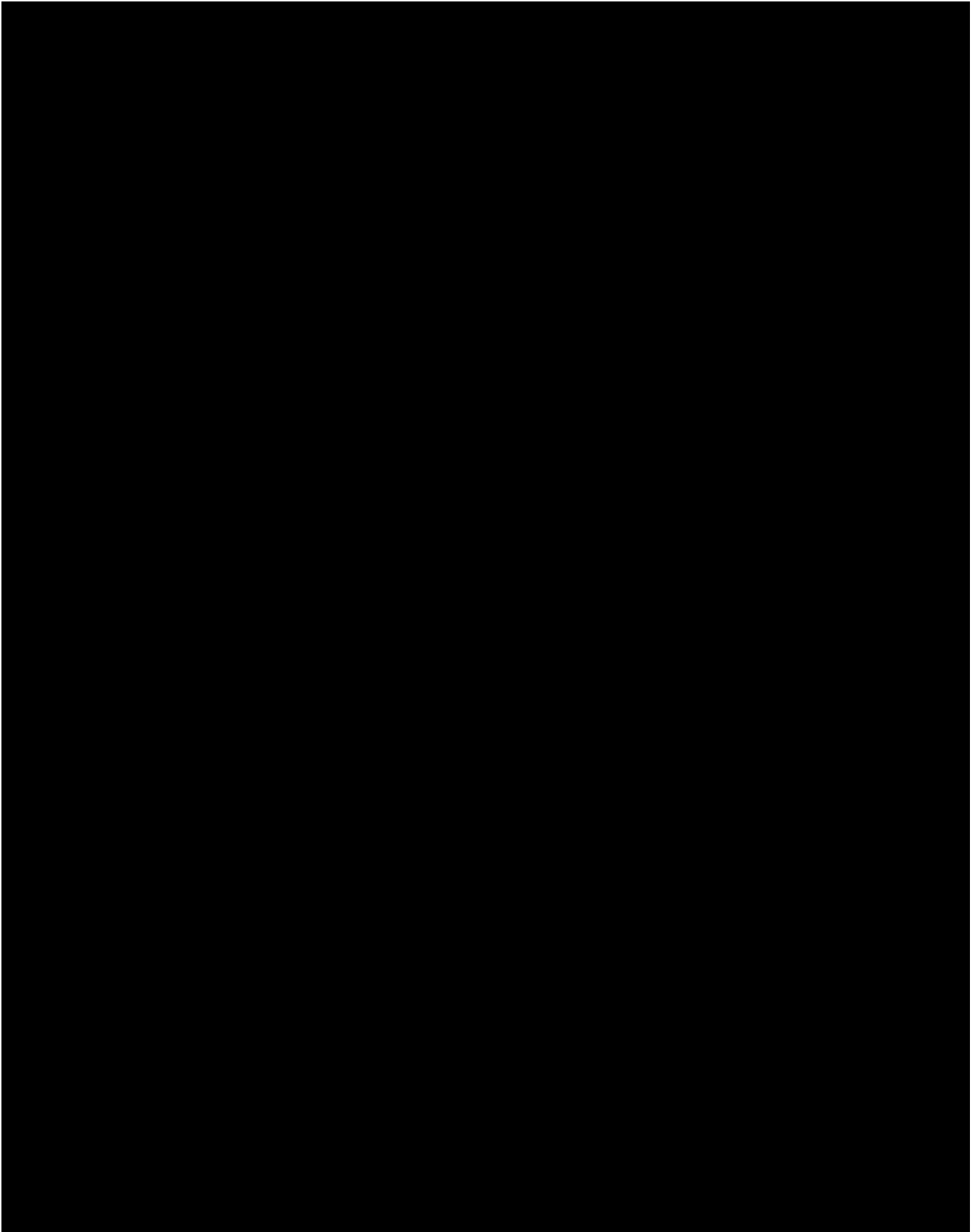
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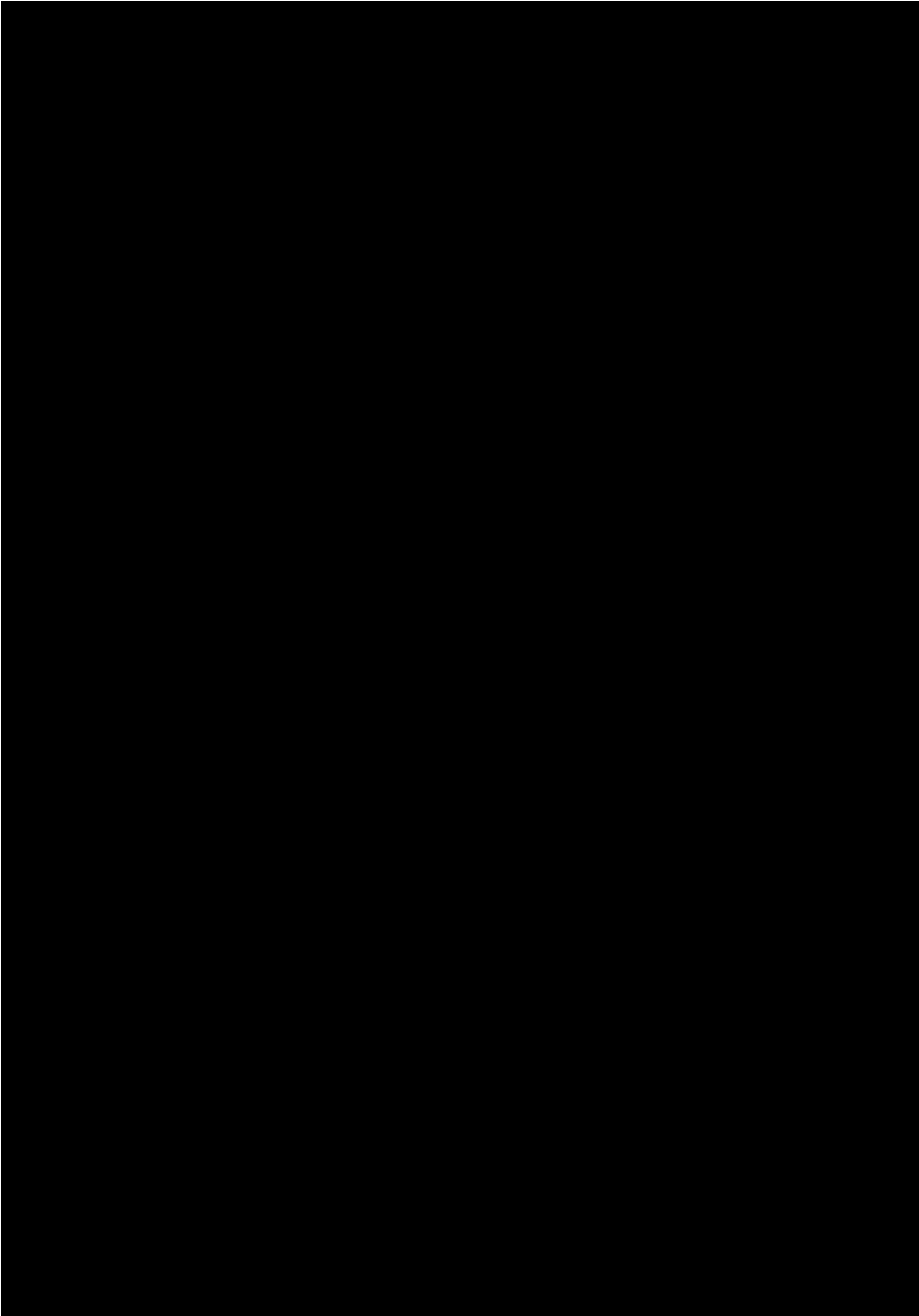
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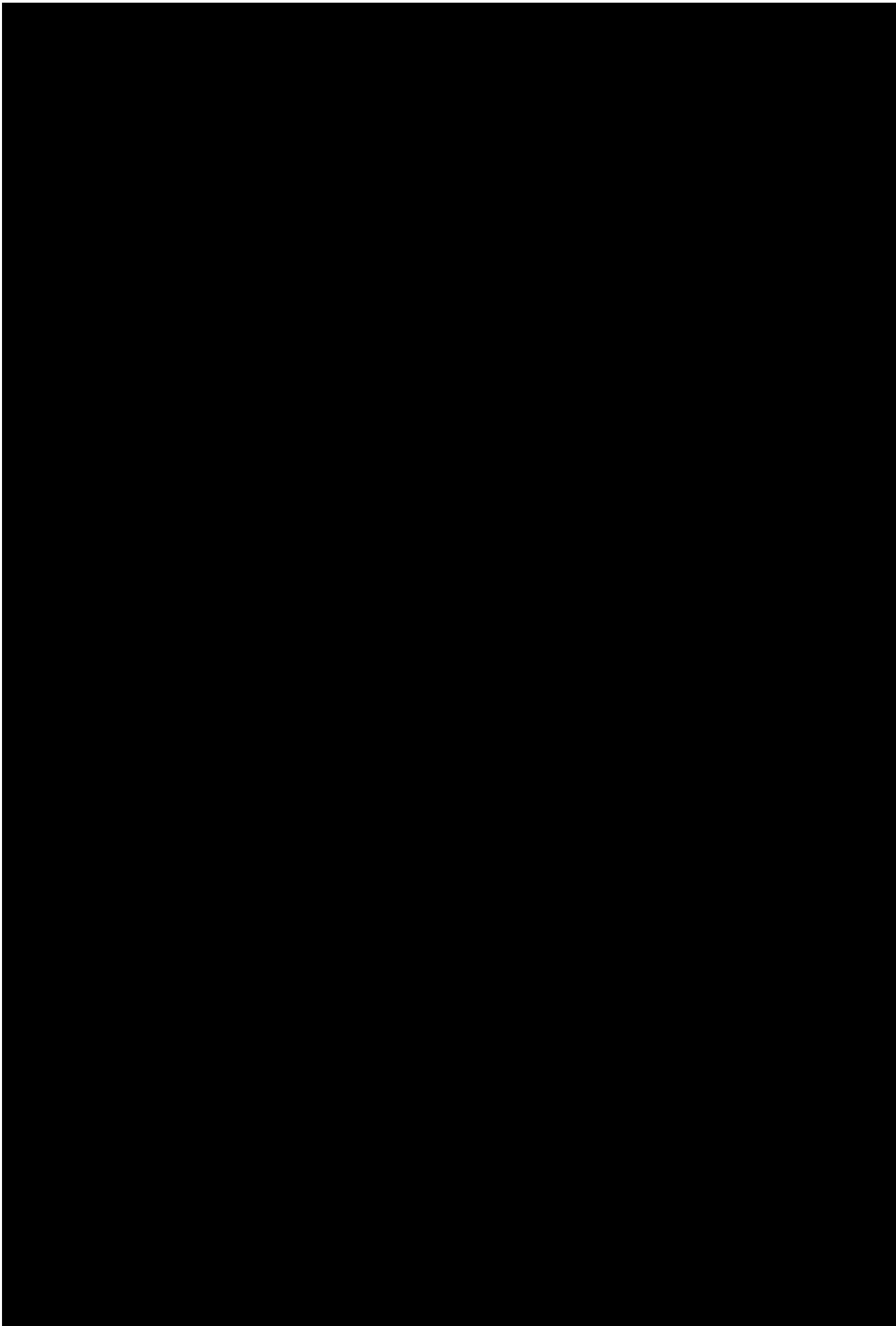
Dates        03 September 2020

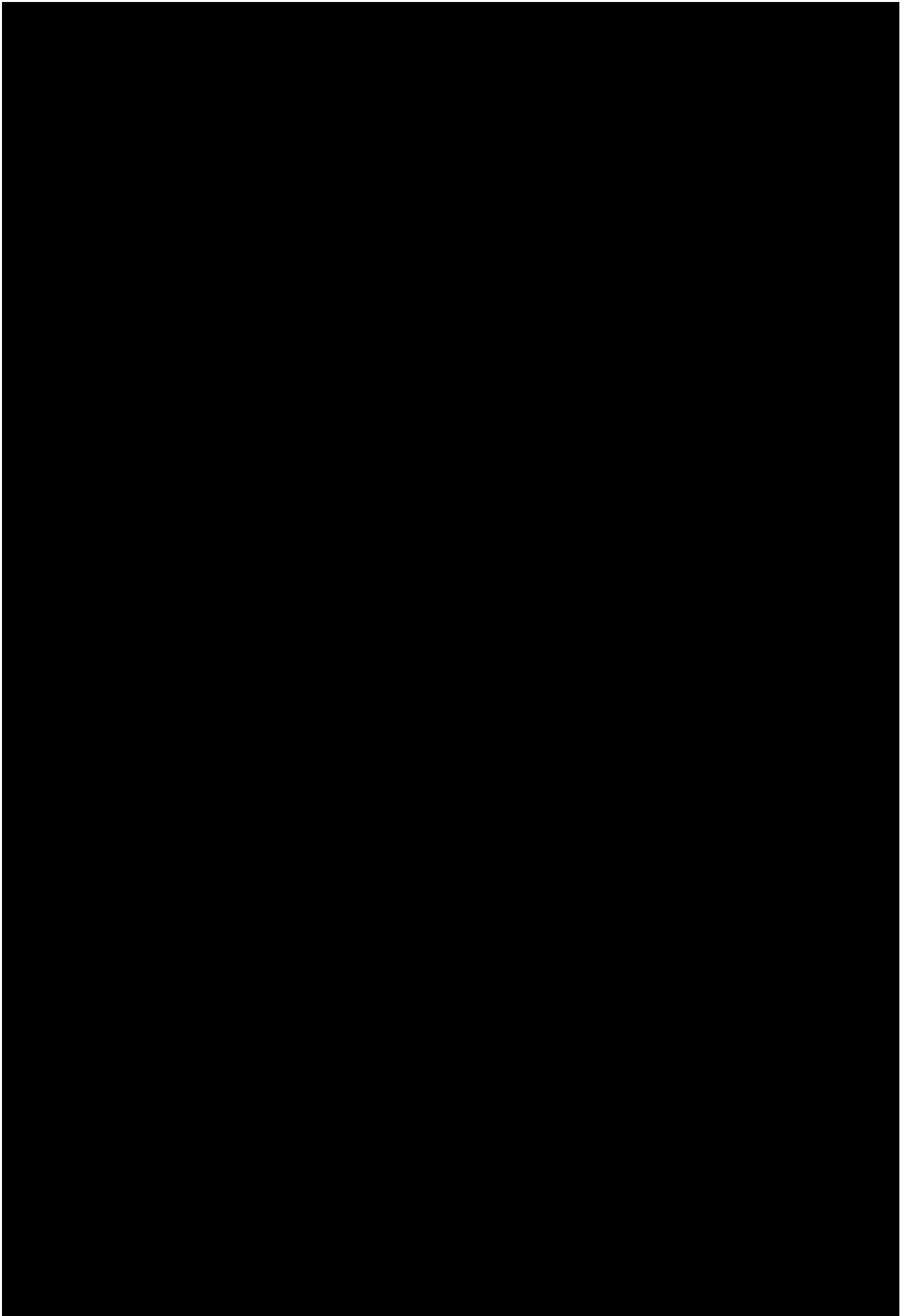


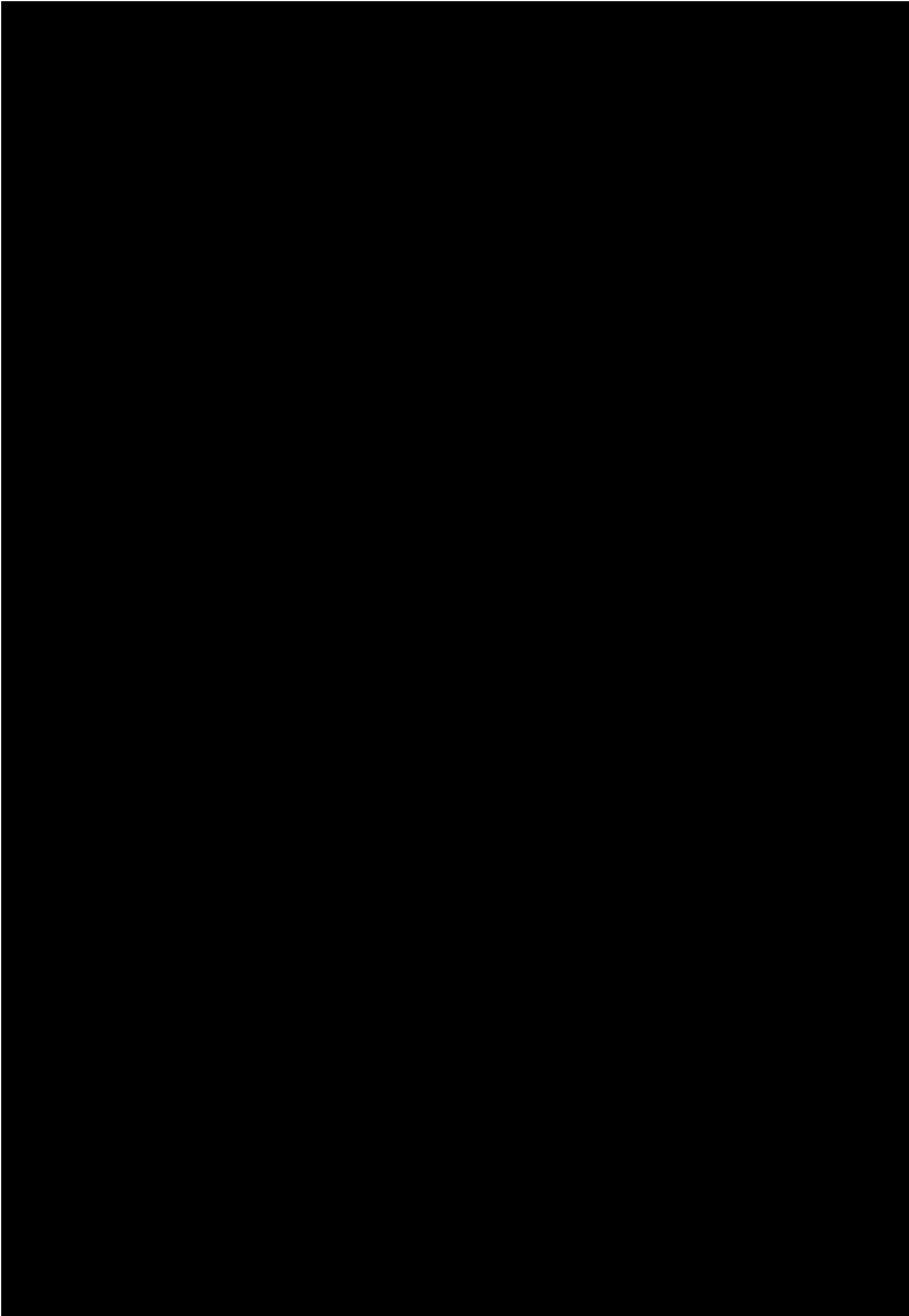
**Attachment 1: Joint project description**

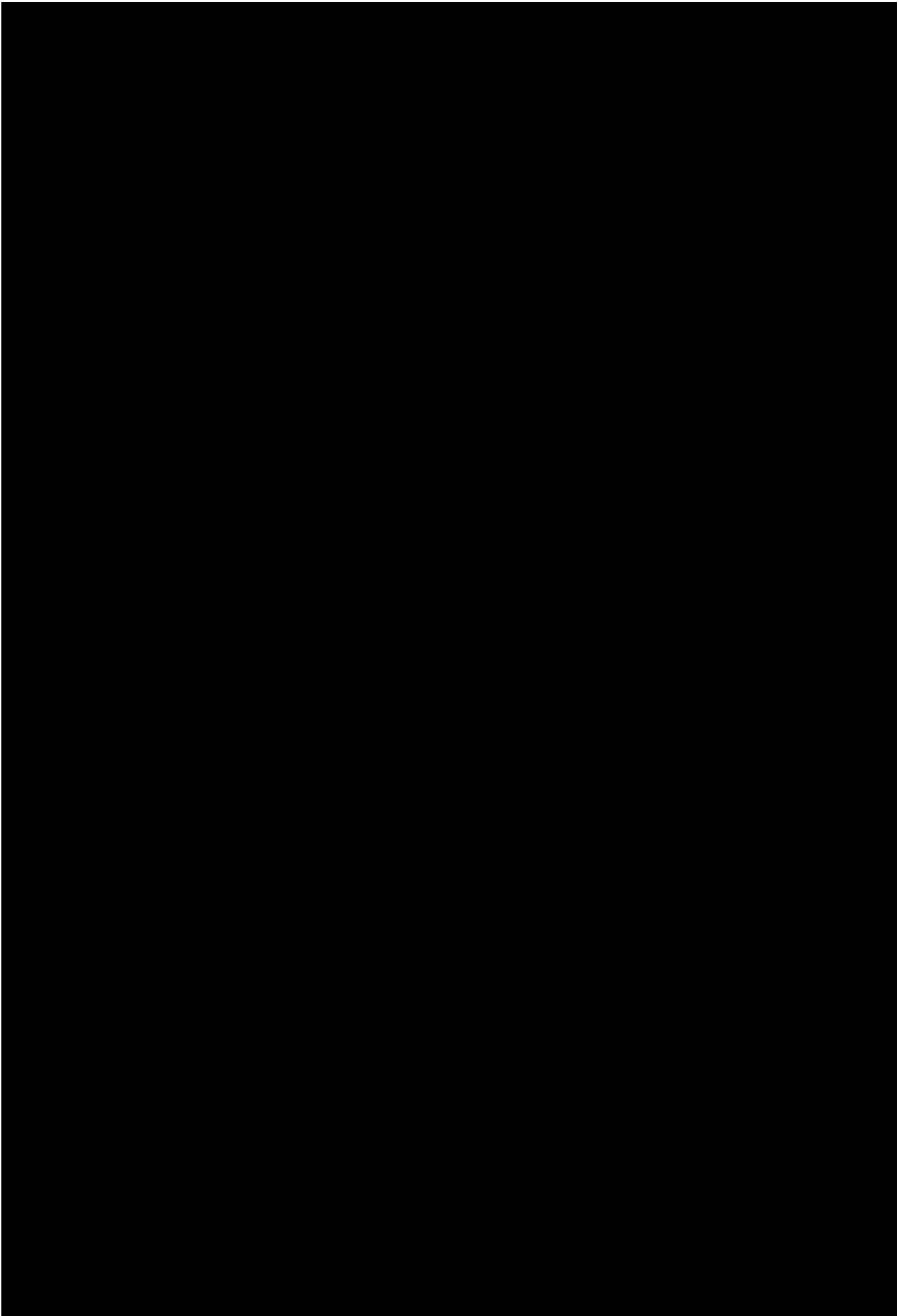


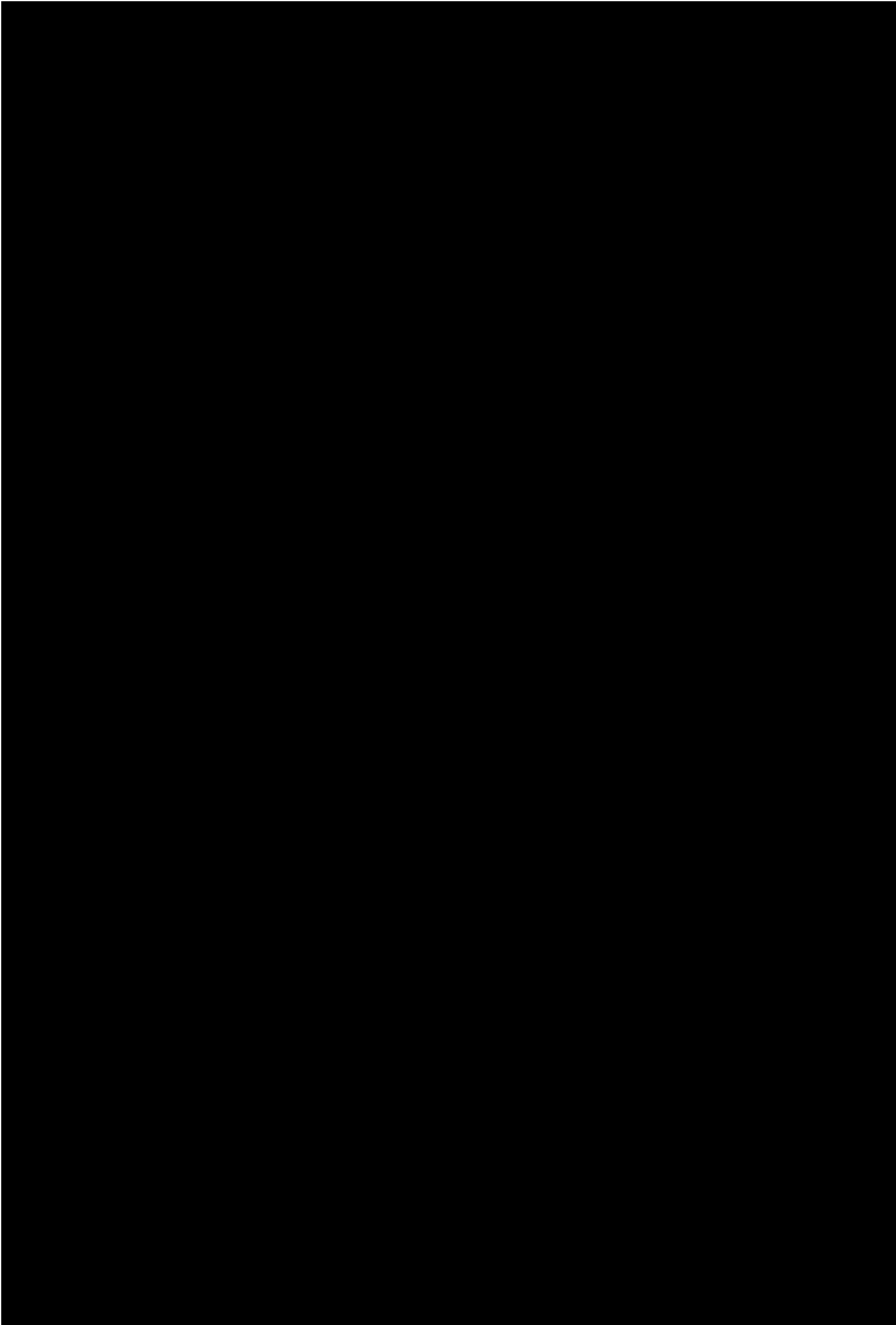


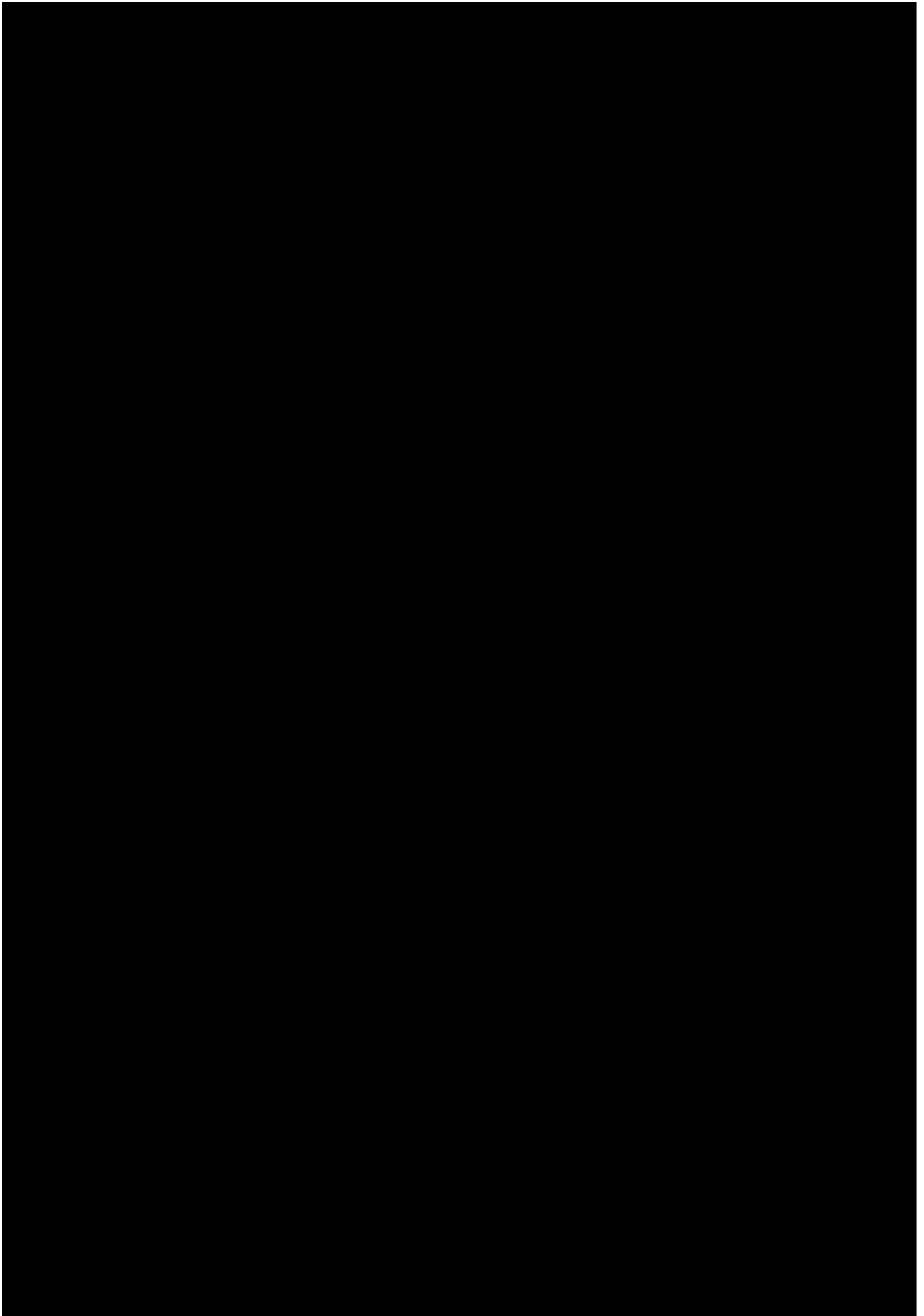




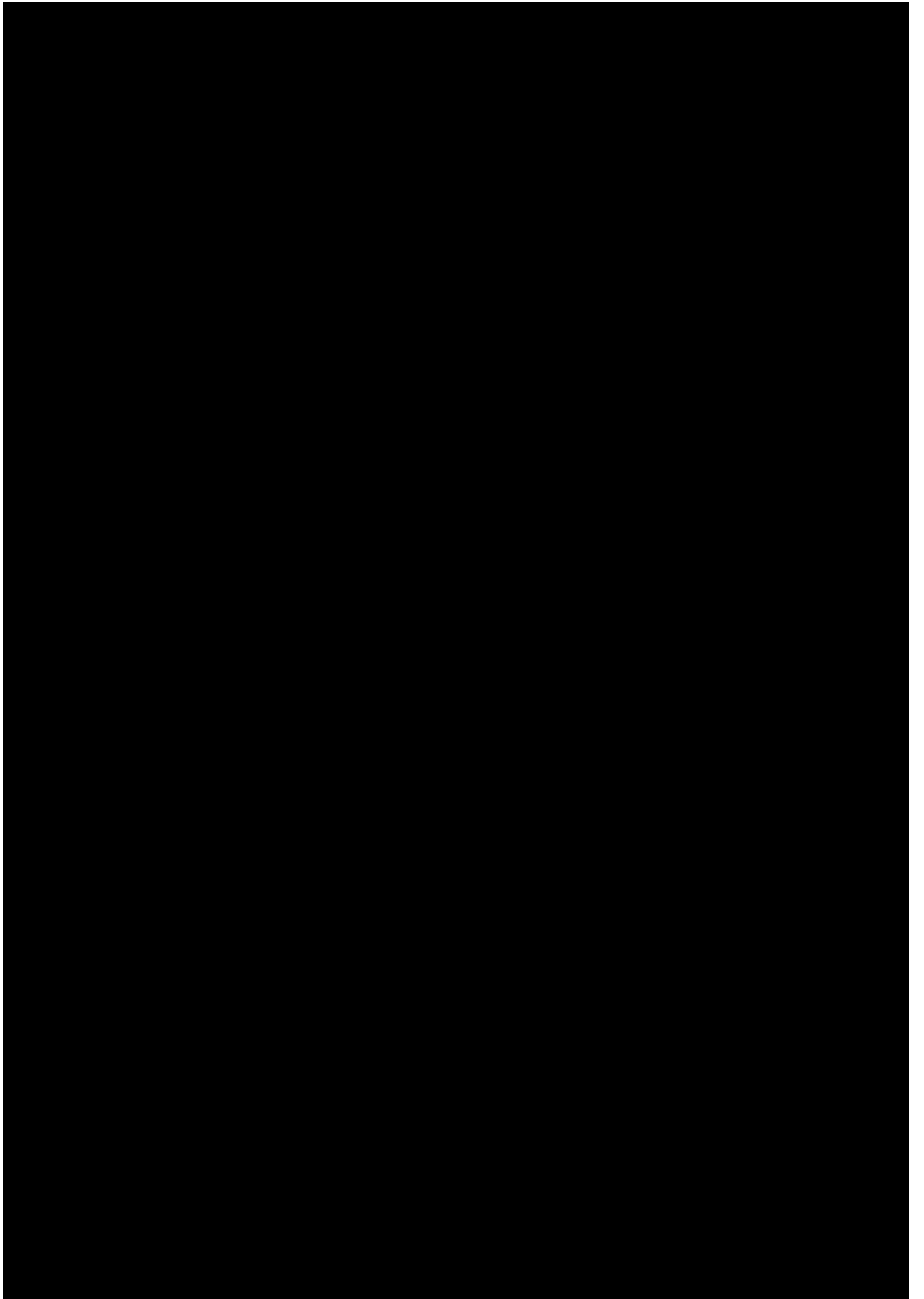


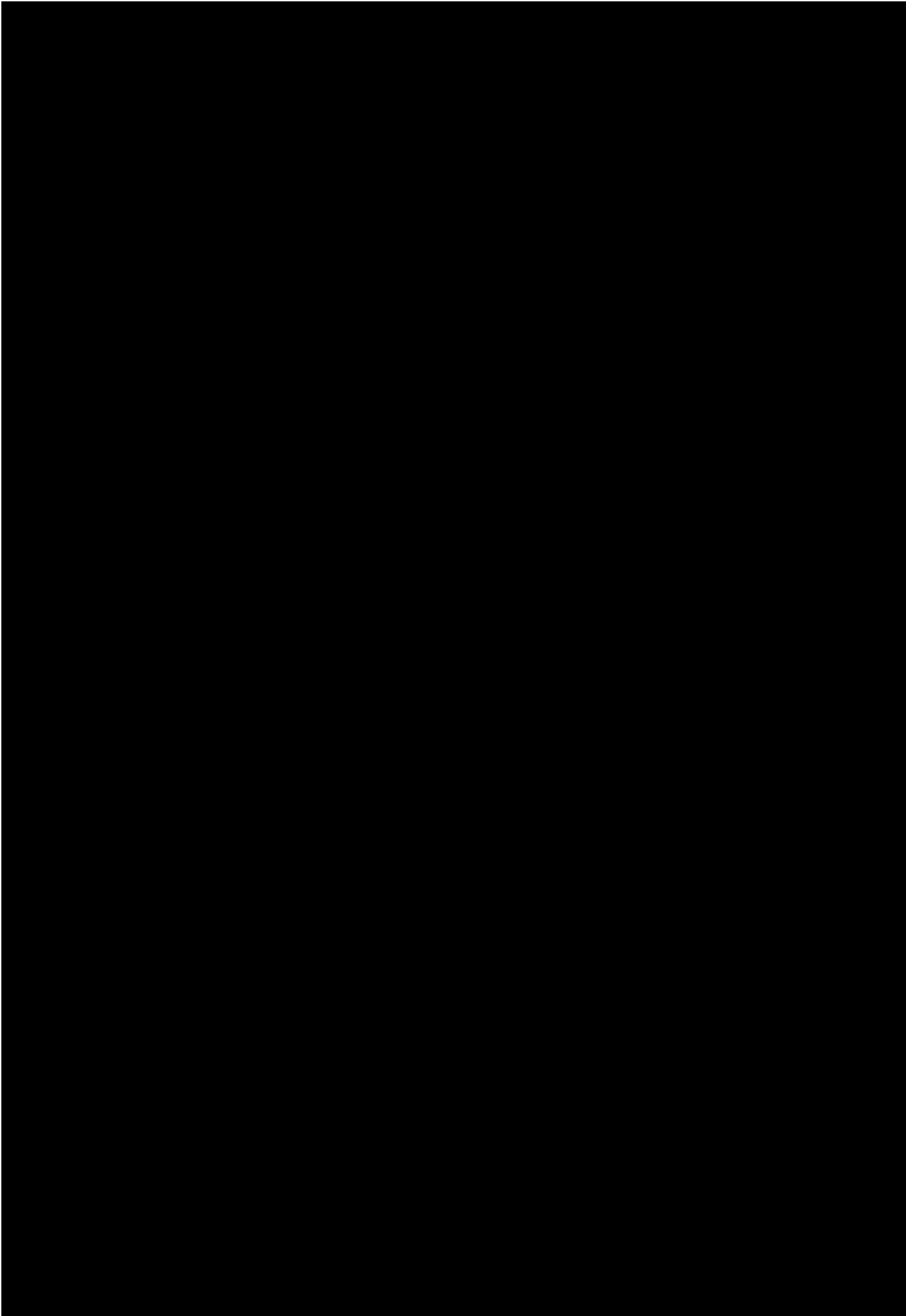


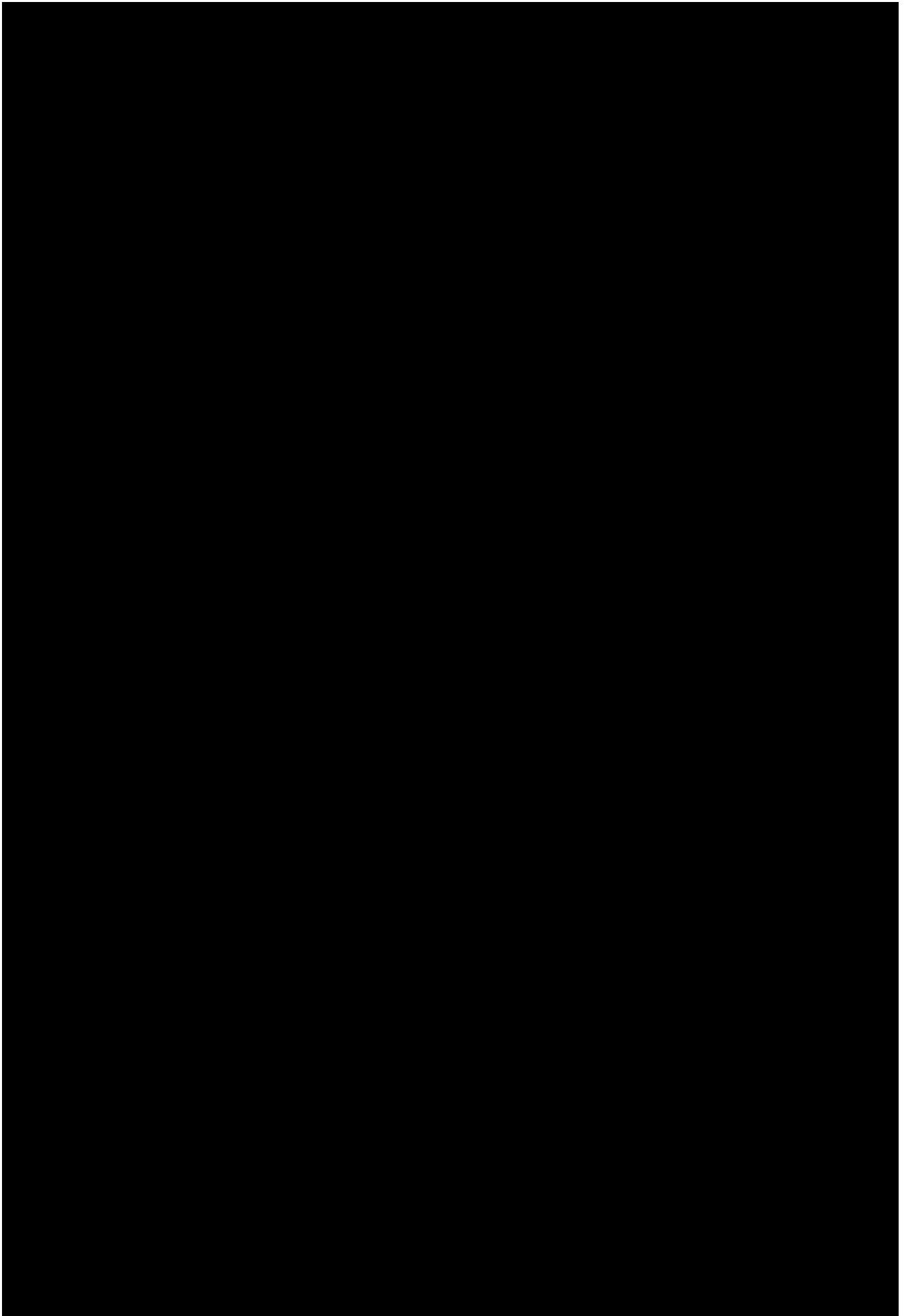


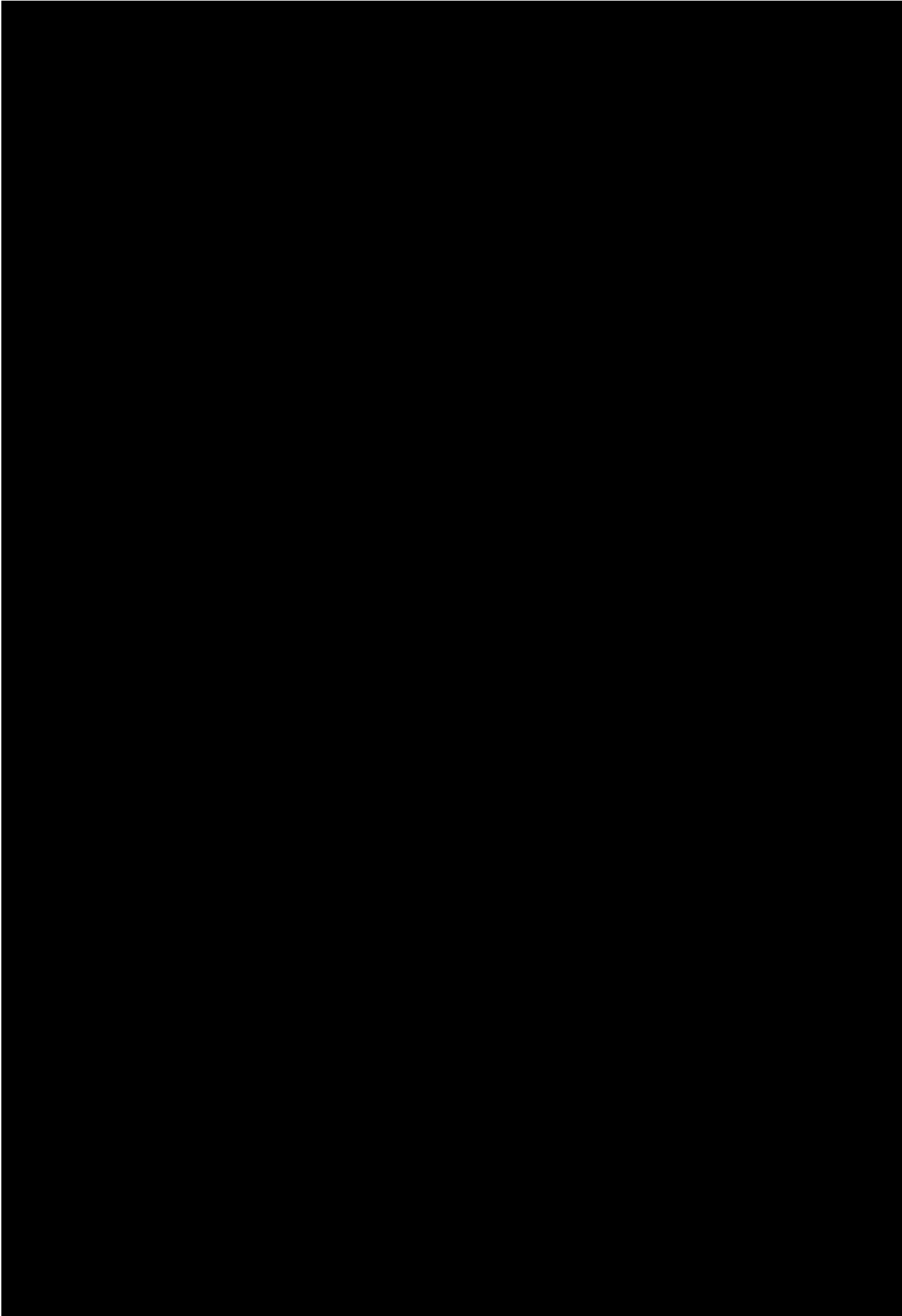


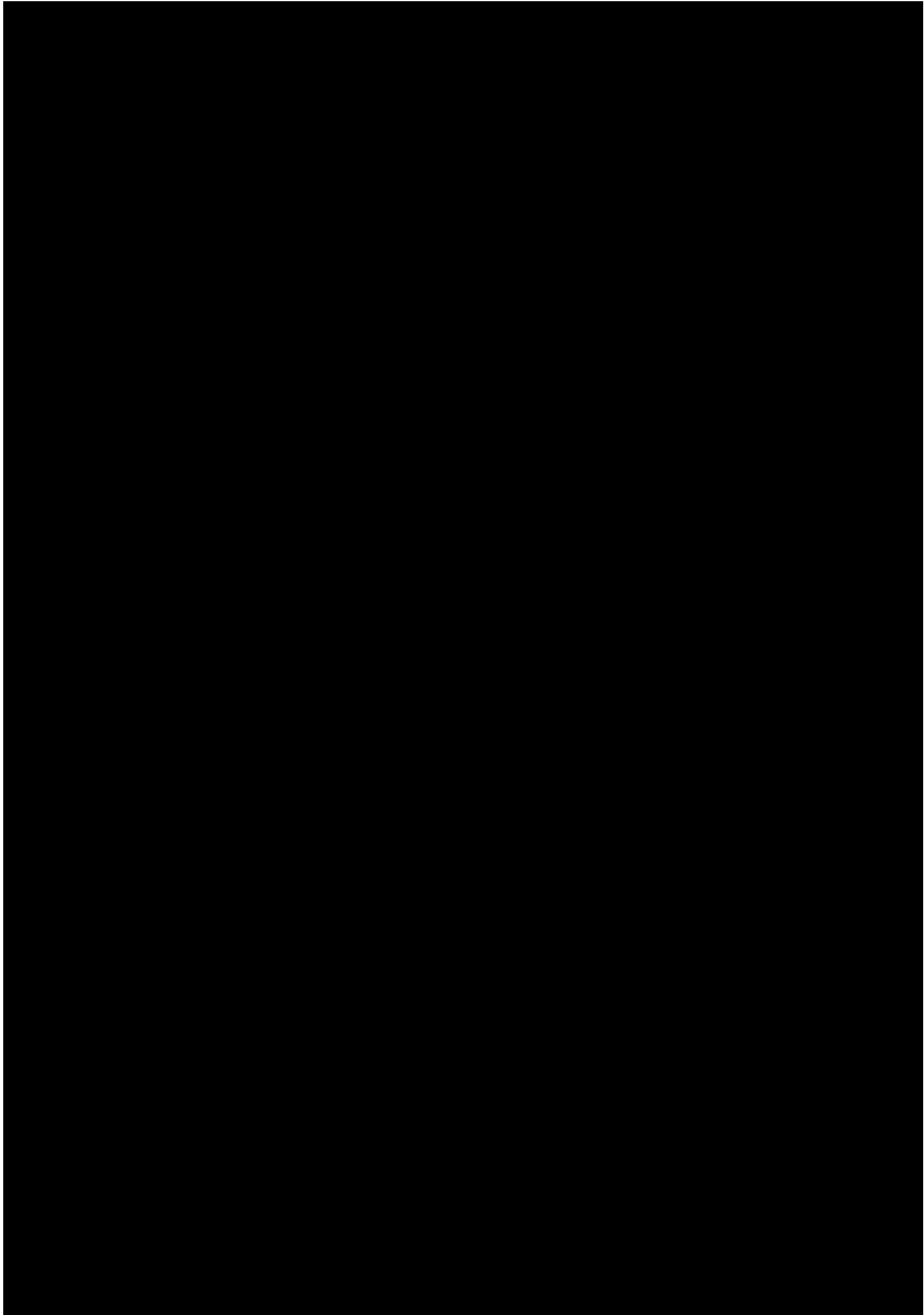


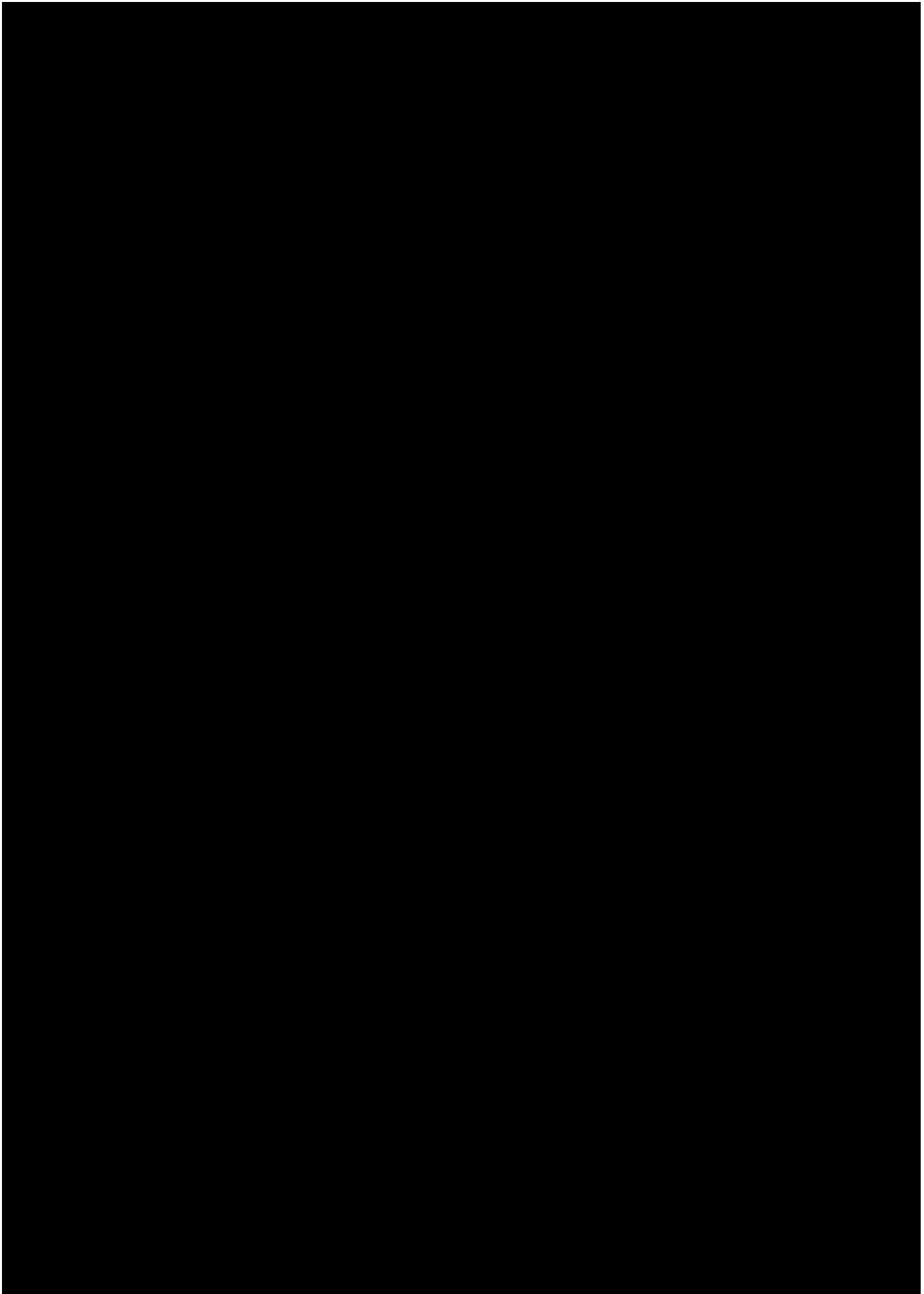


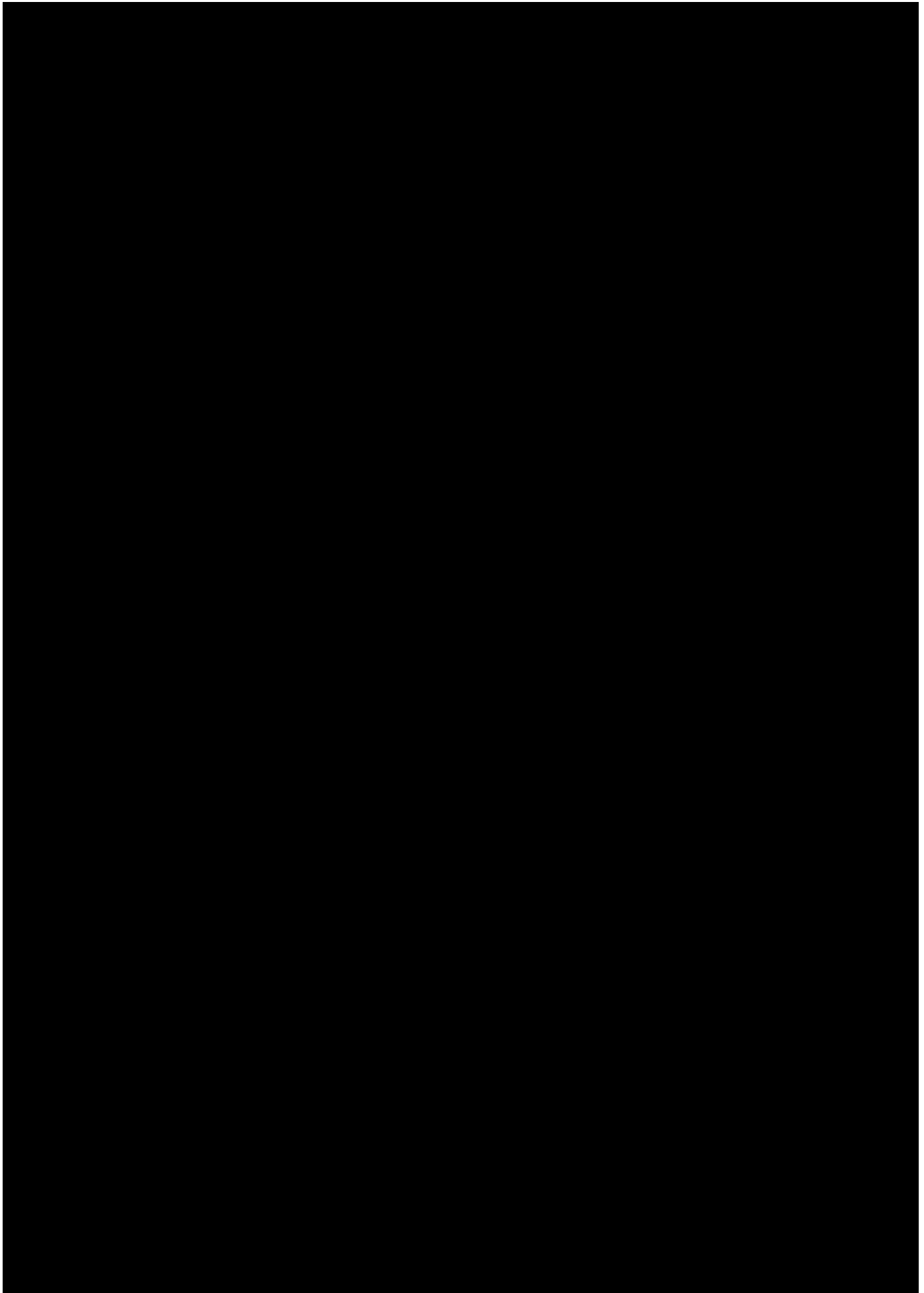


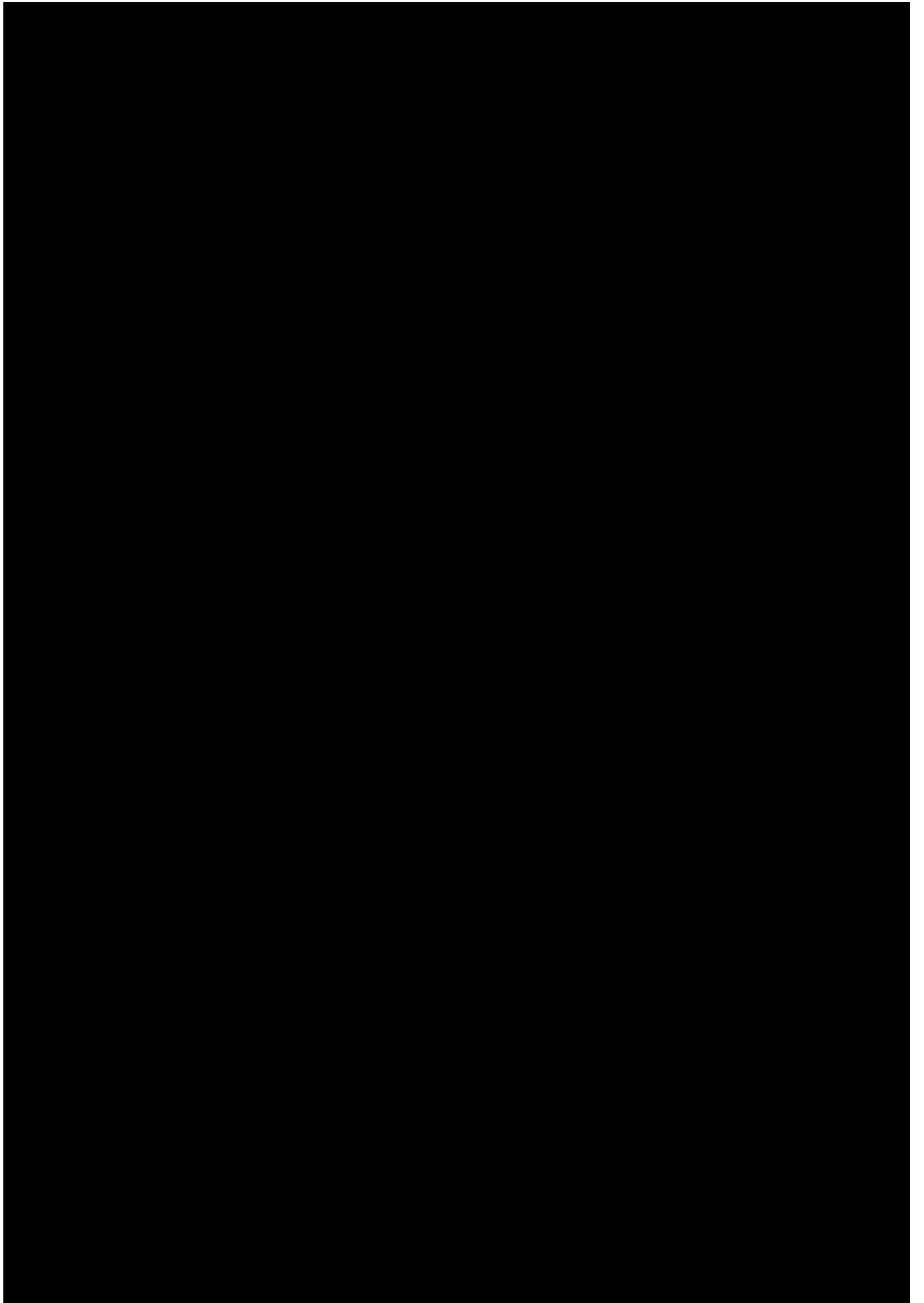




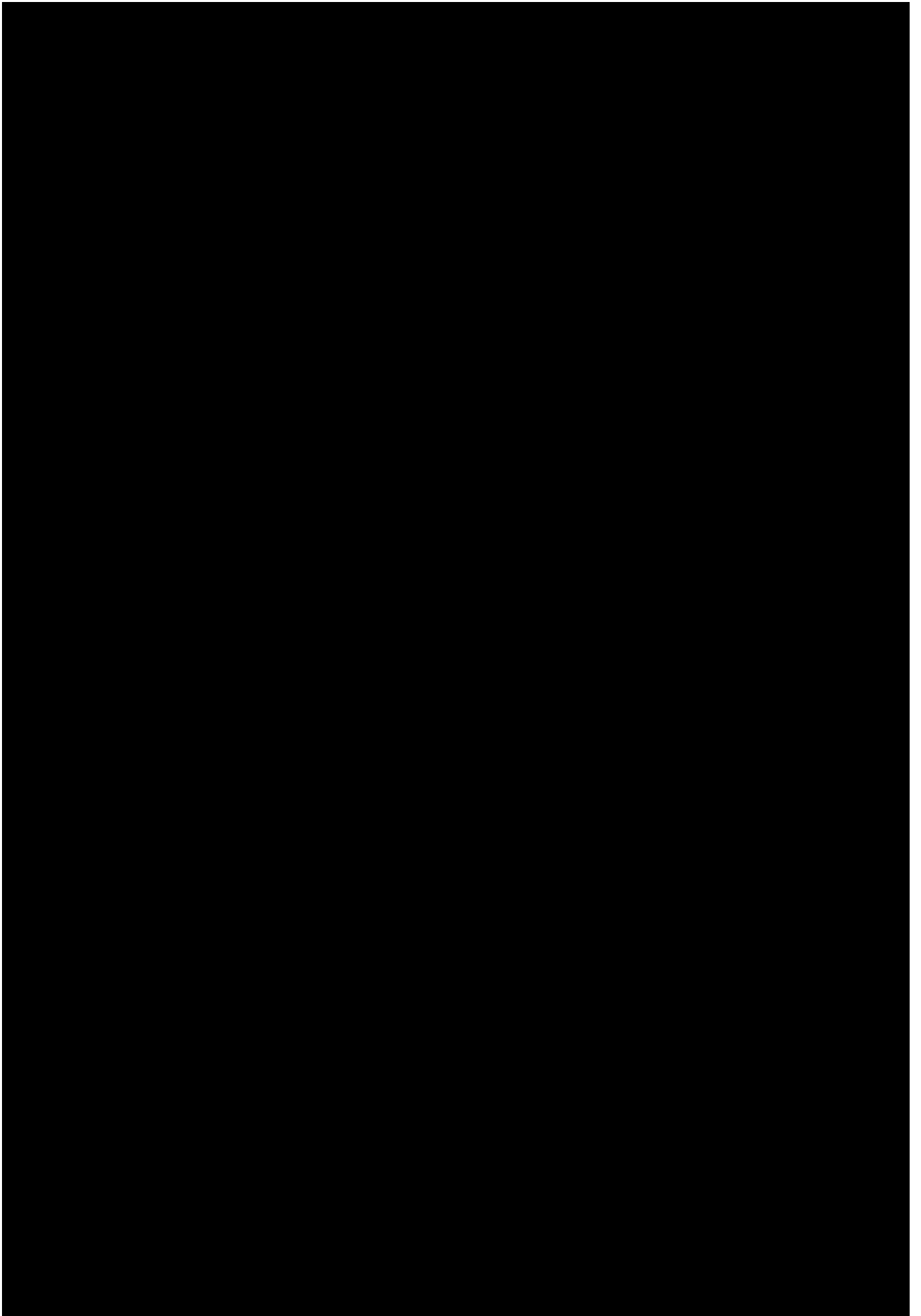


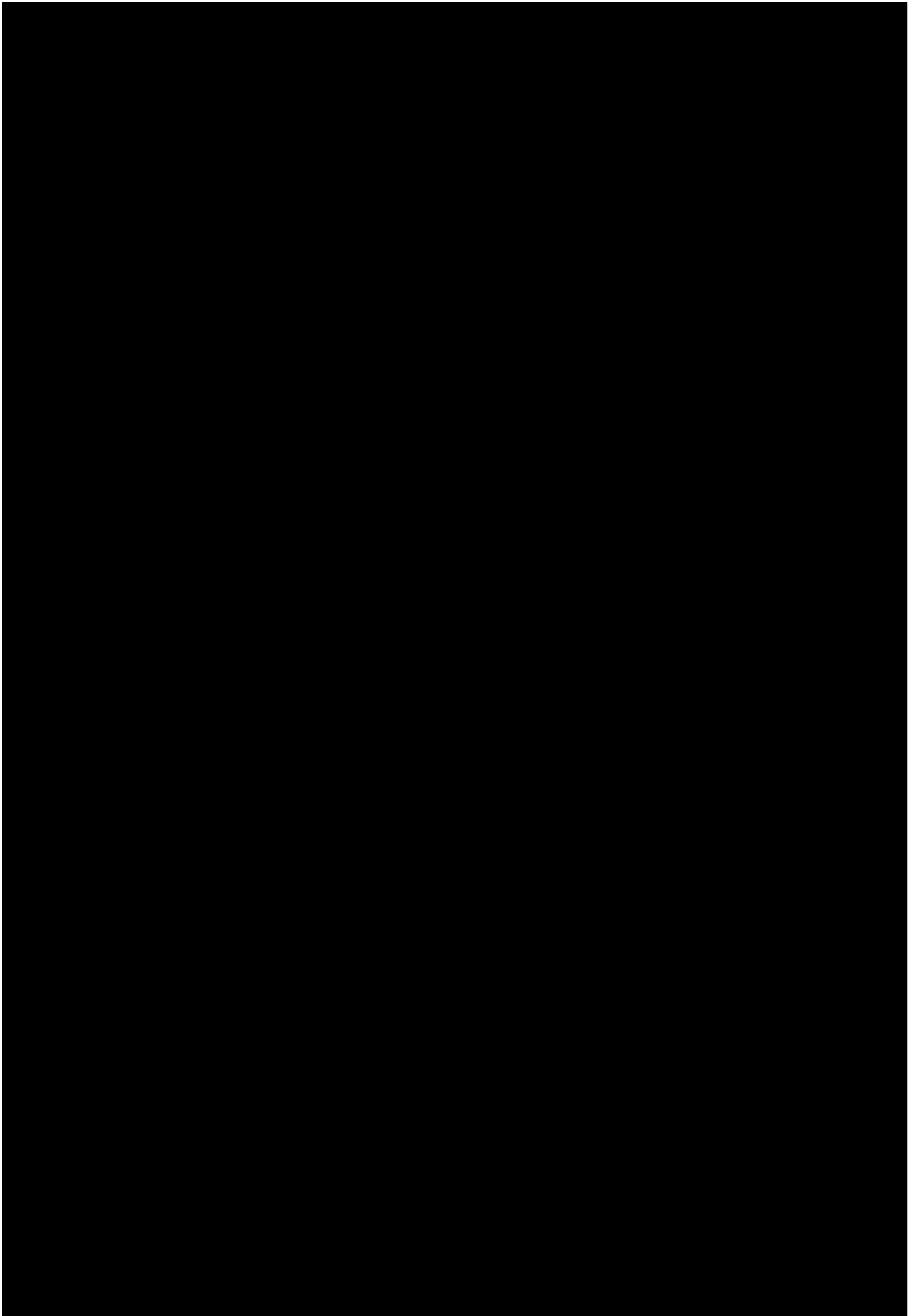


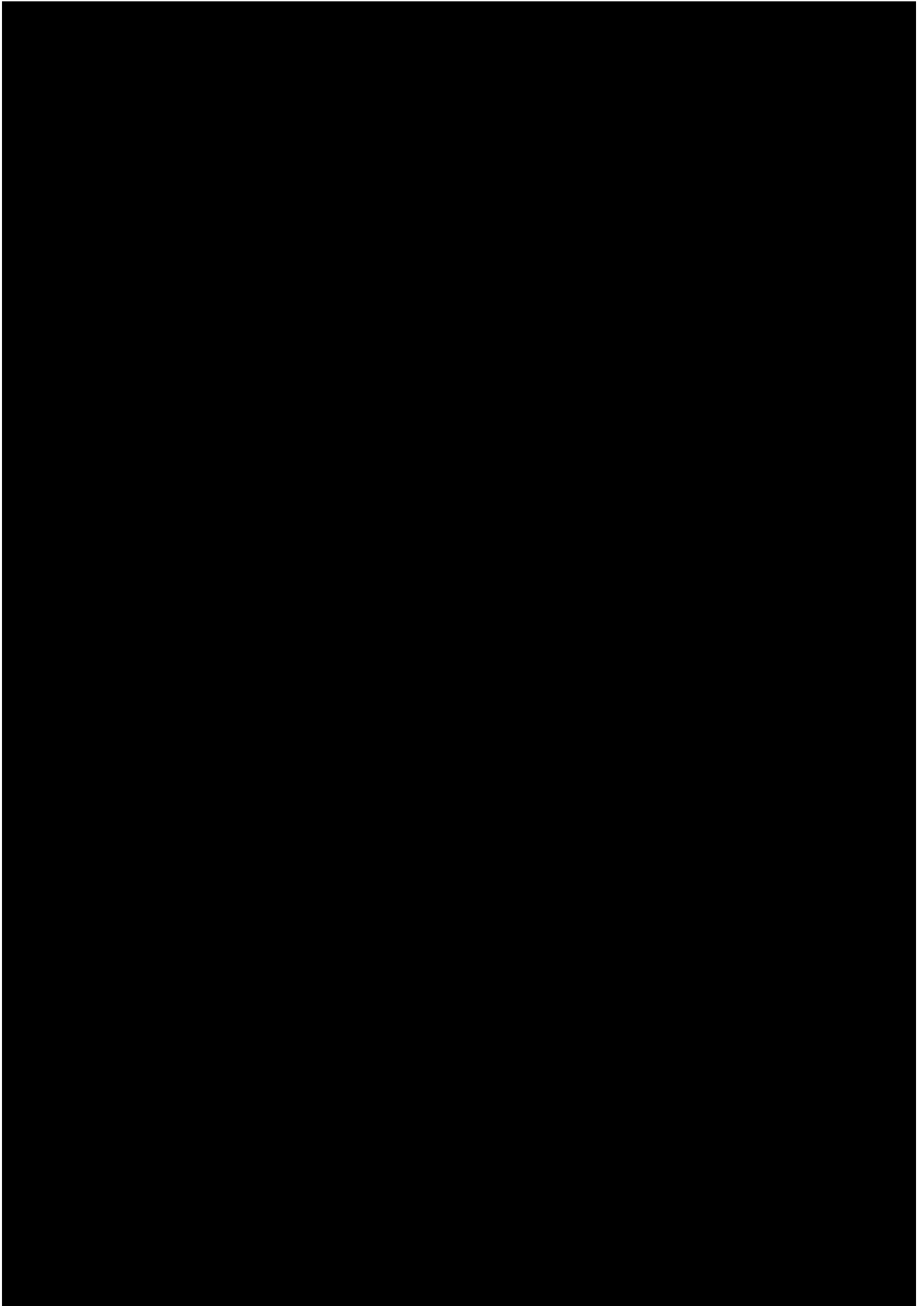


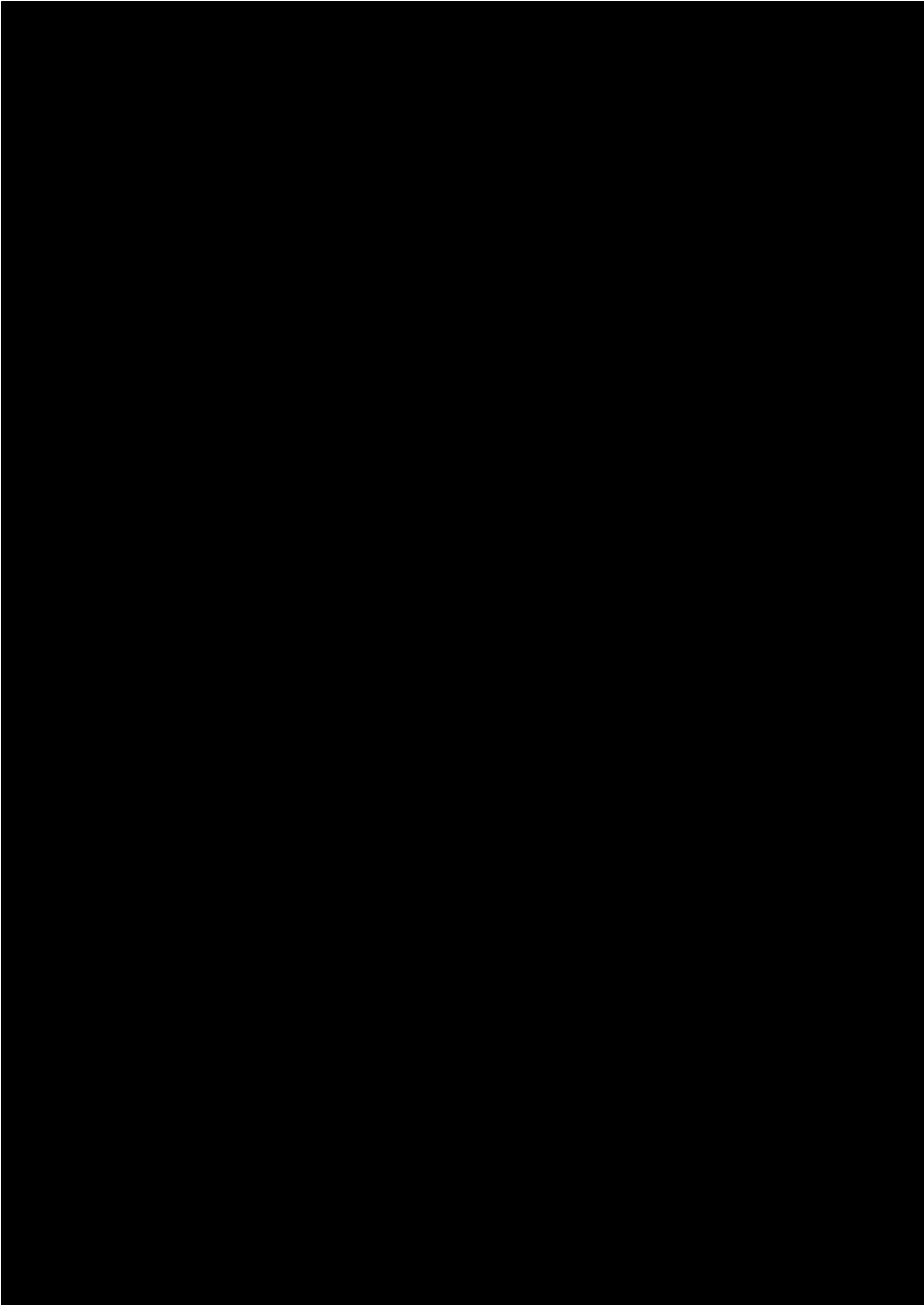


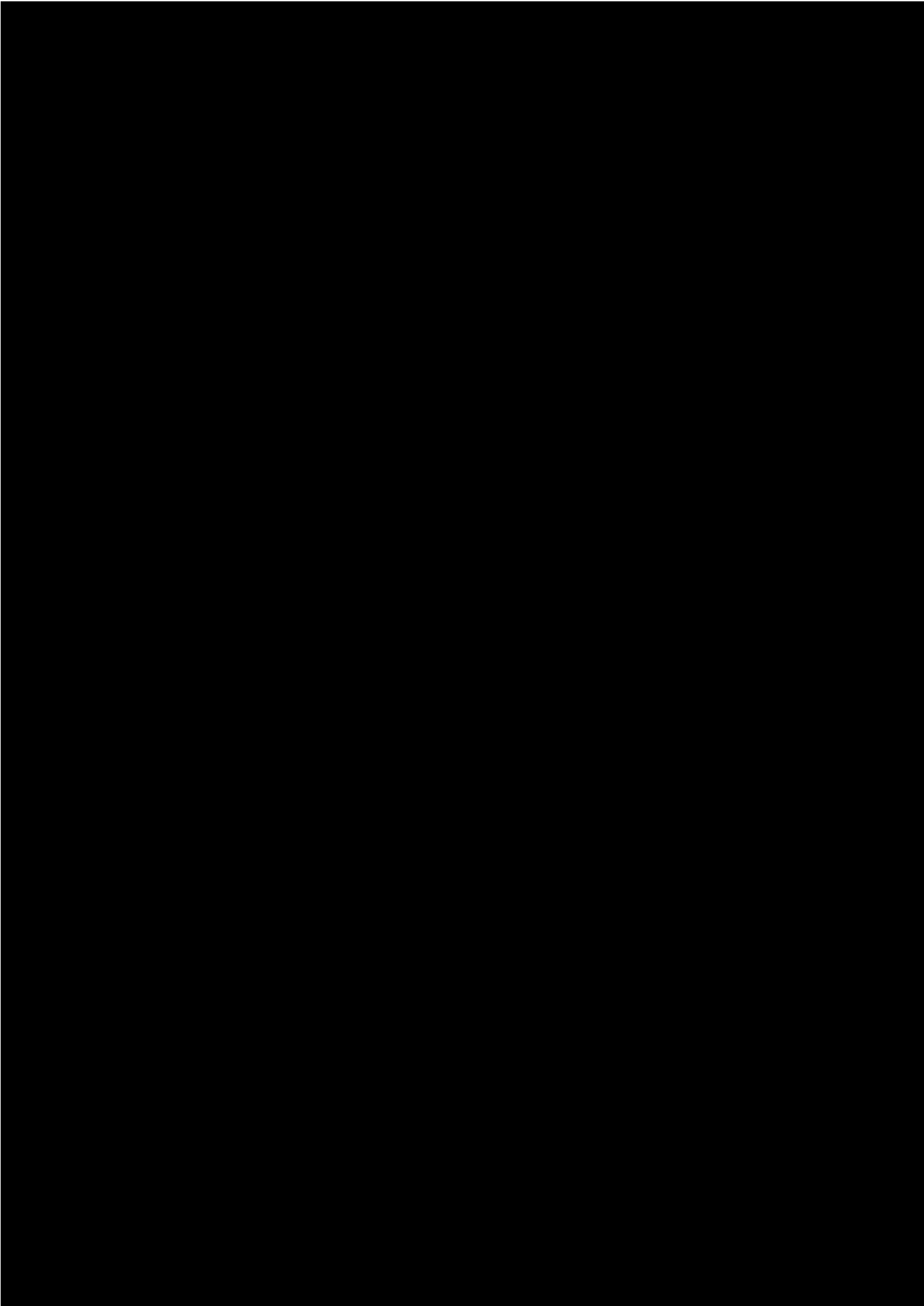


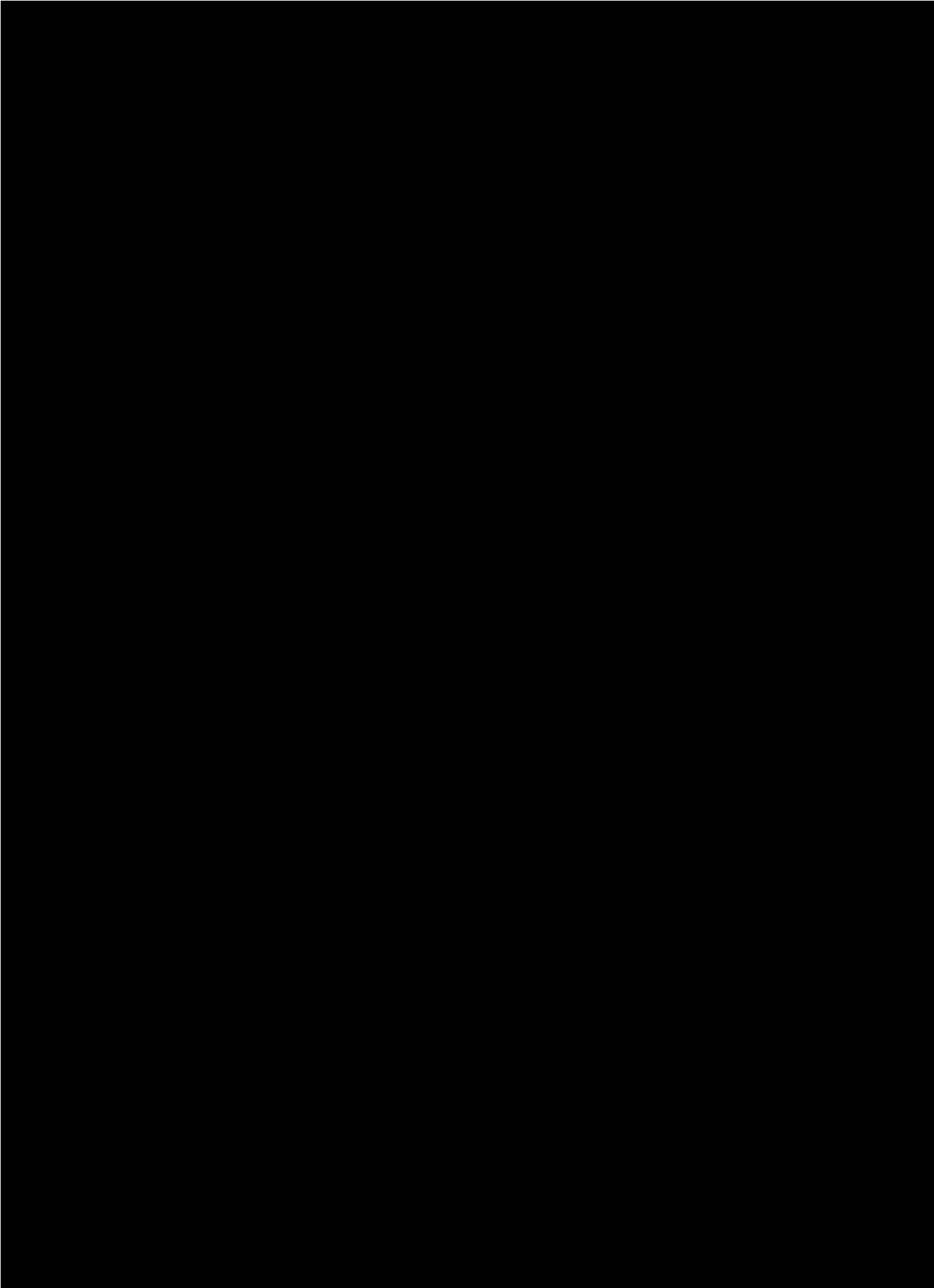


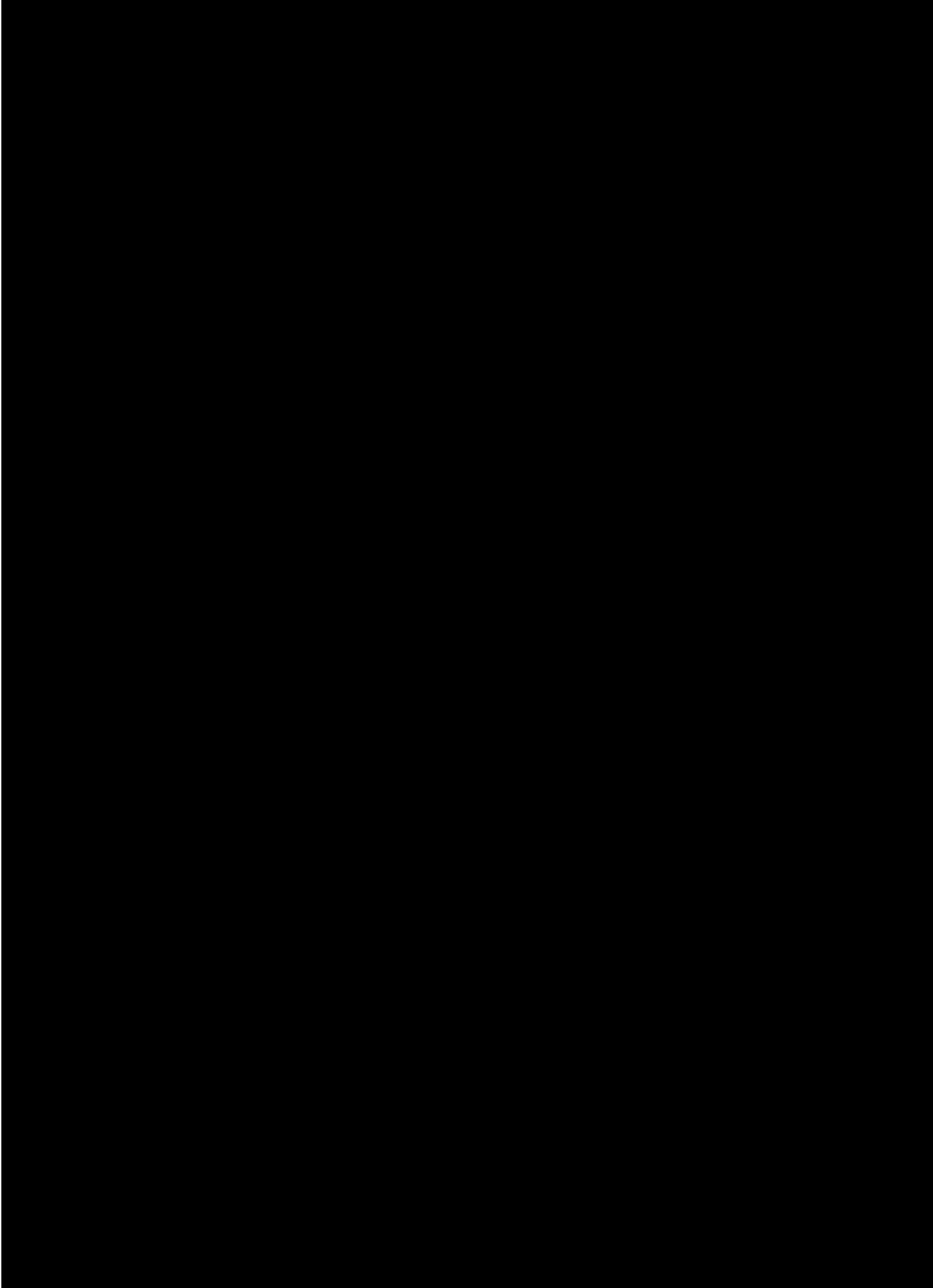


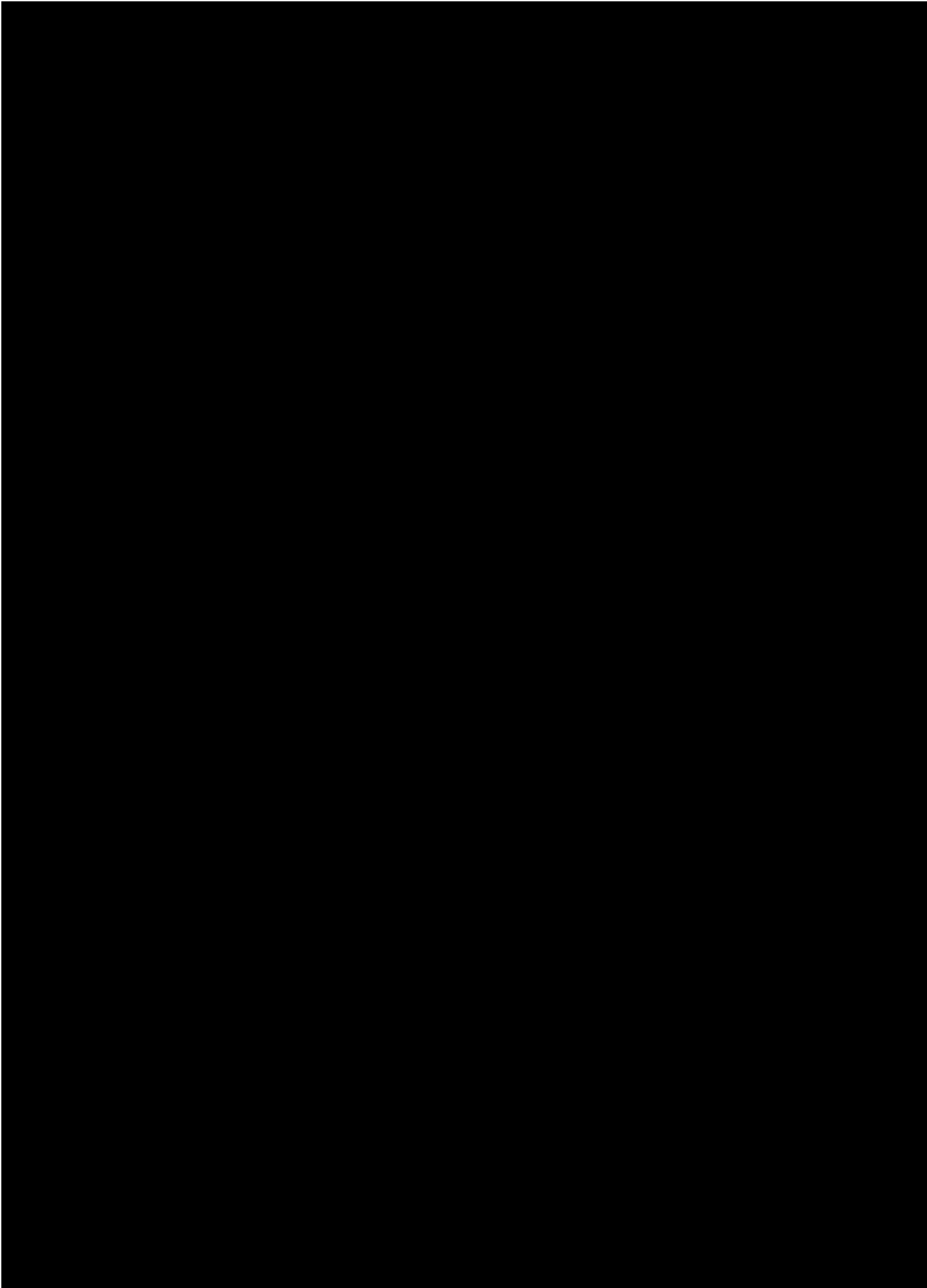




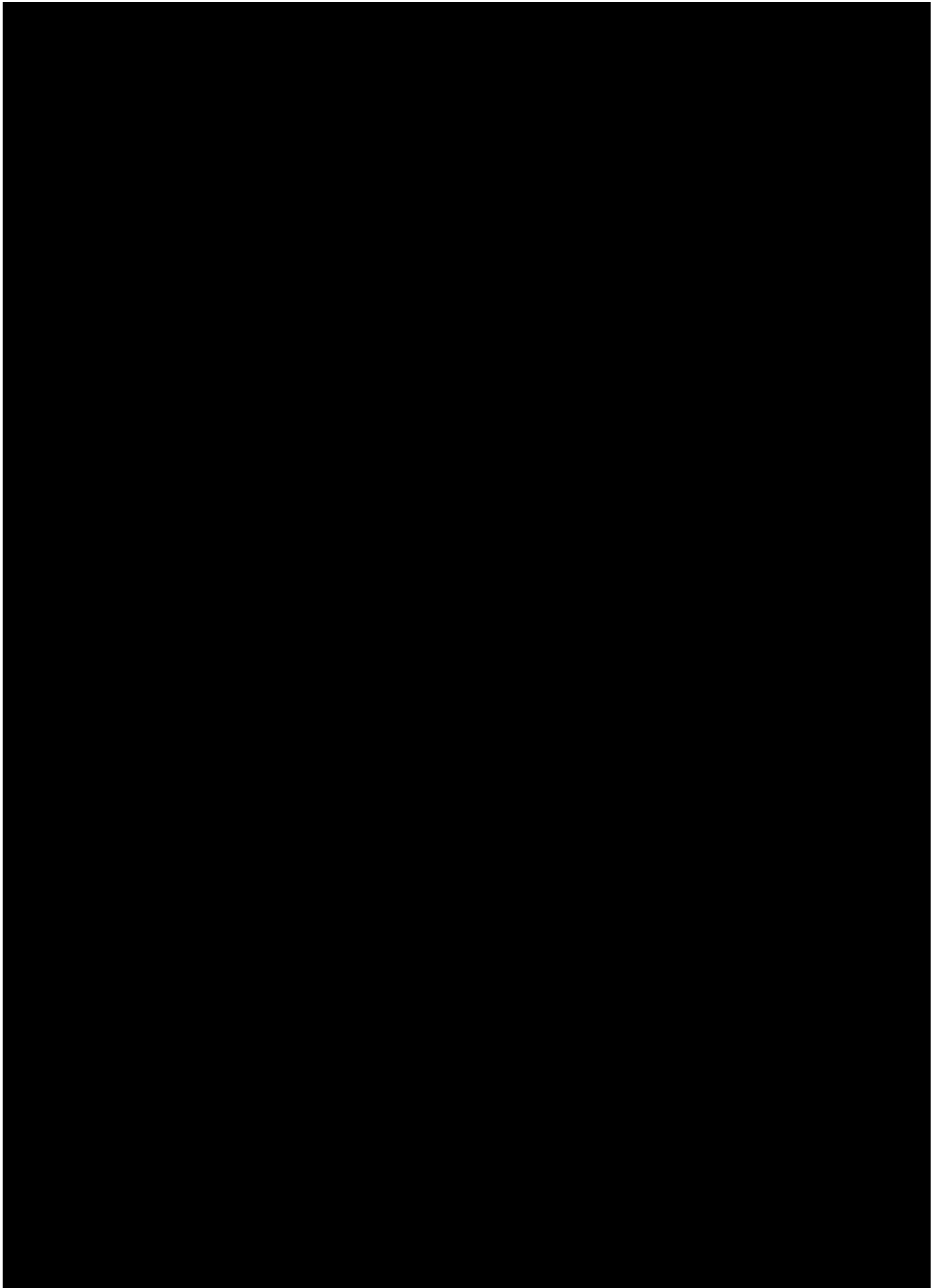


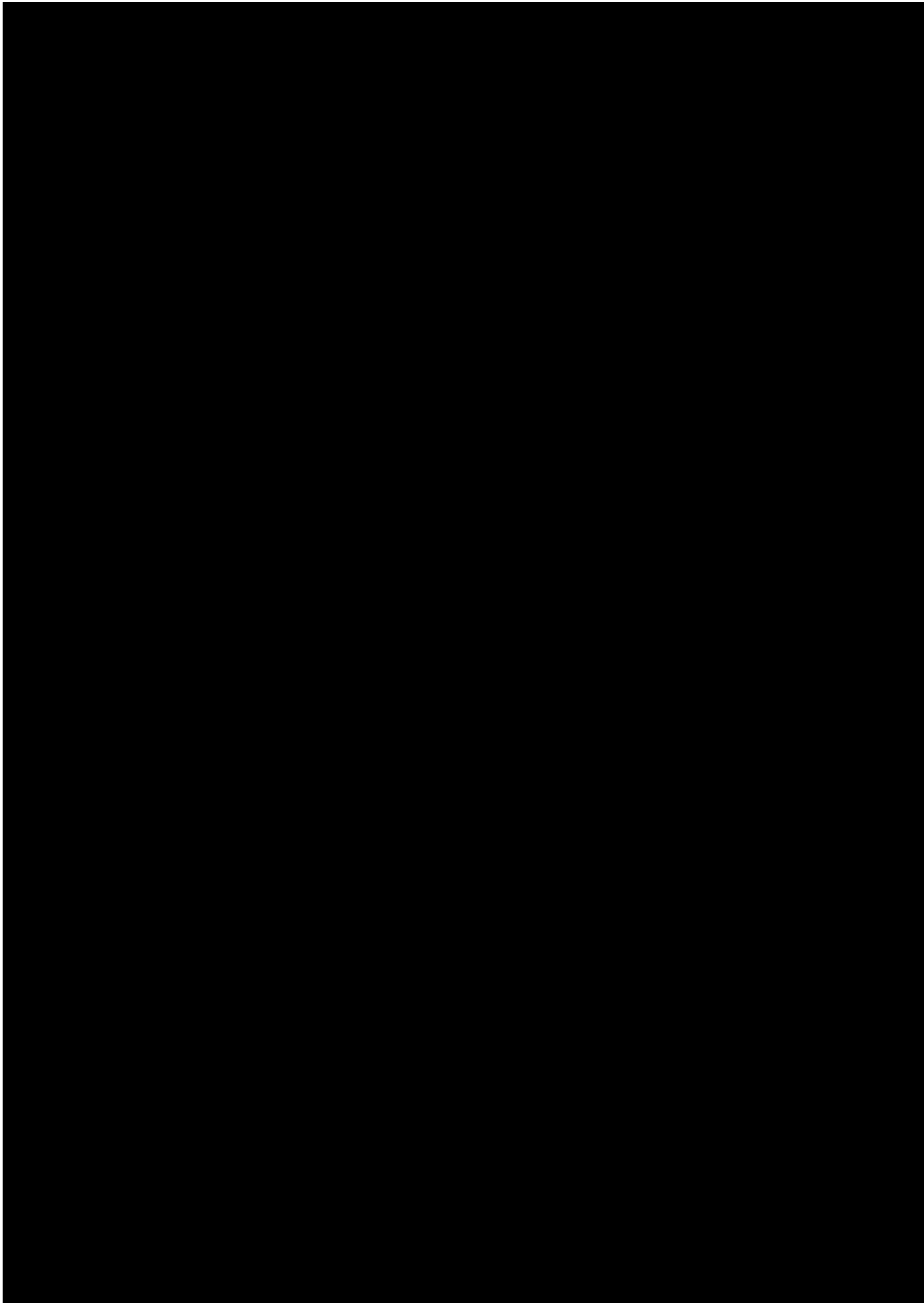


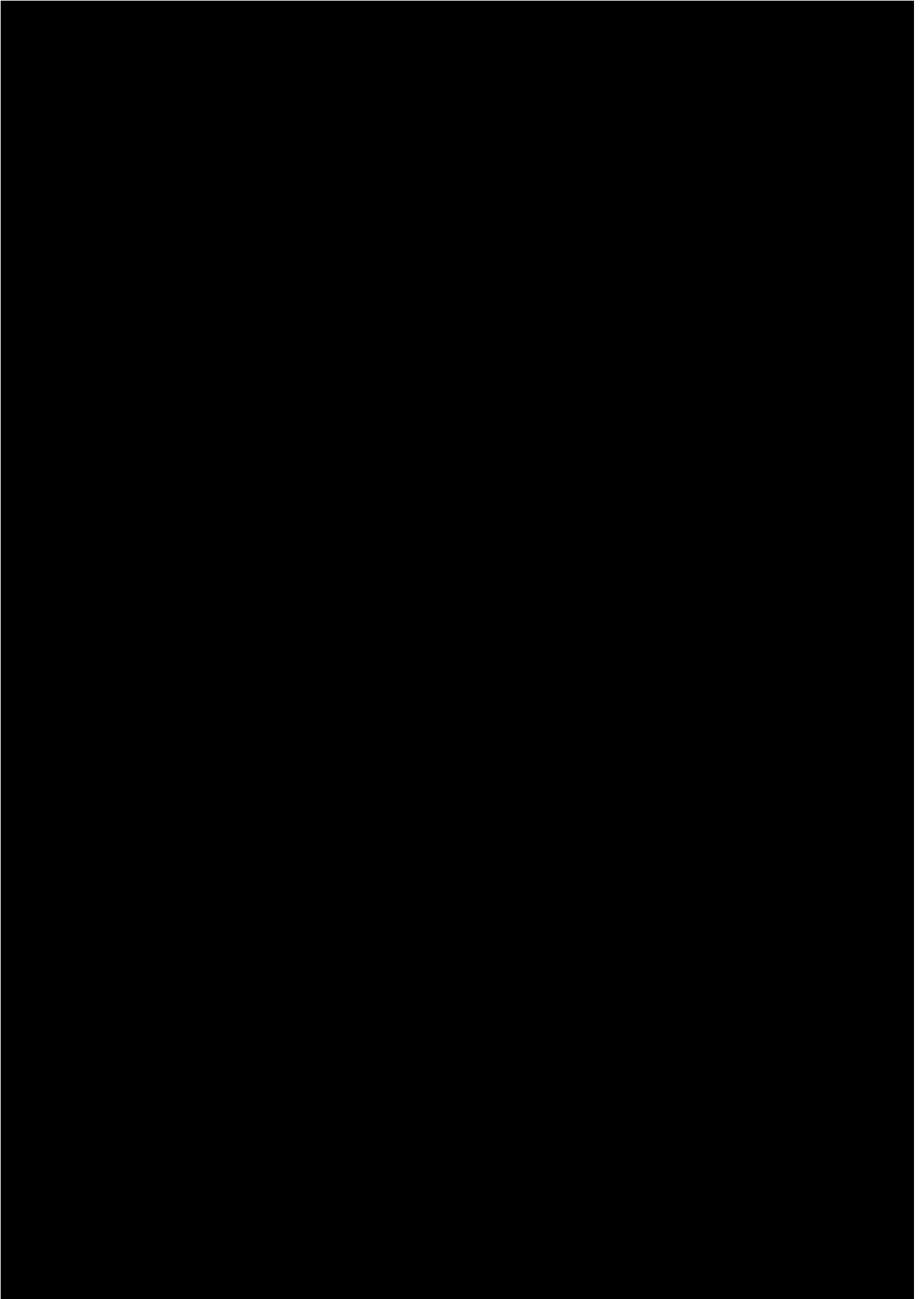


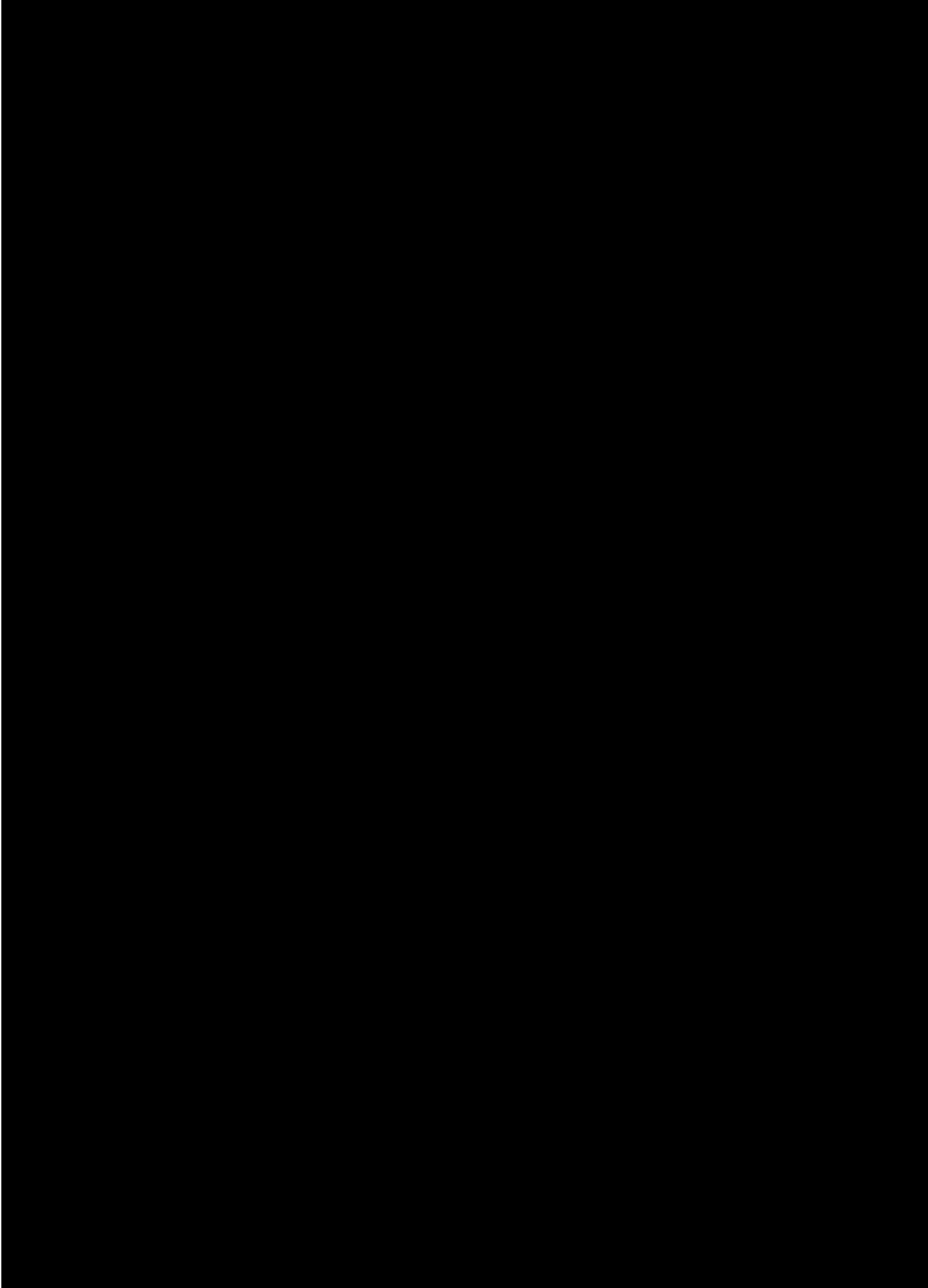


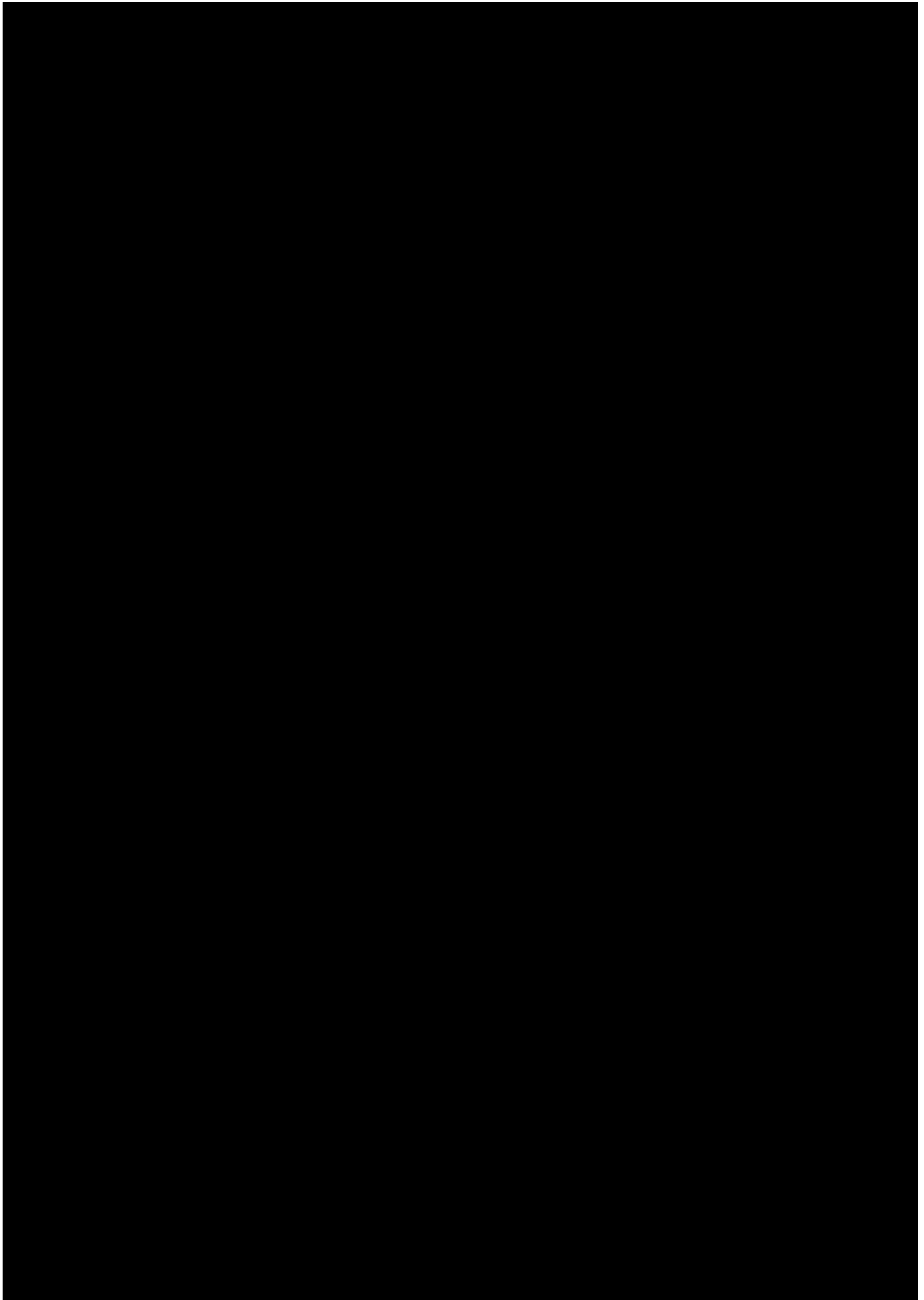


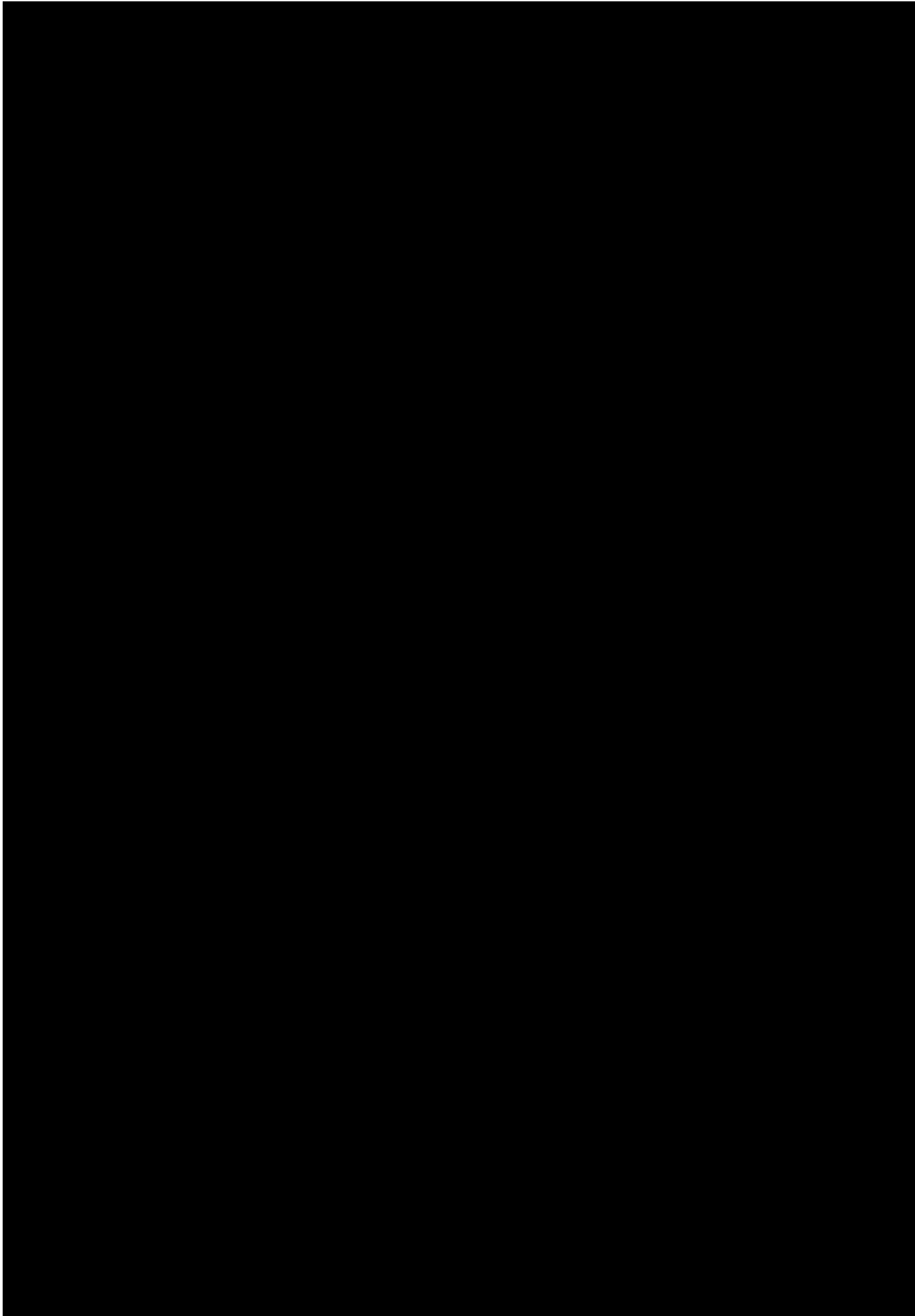


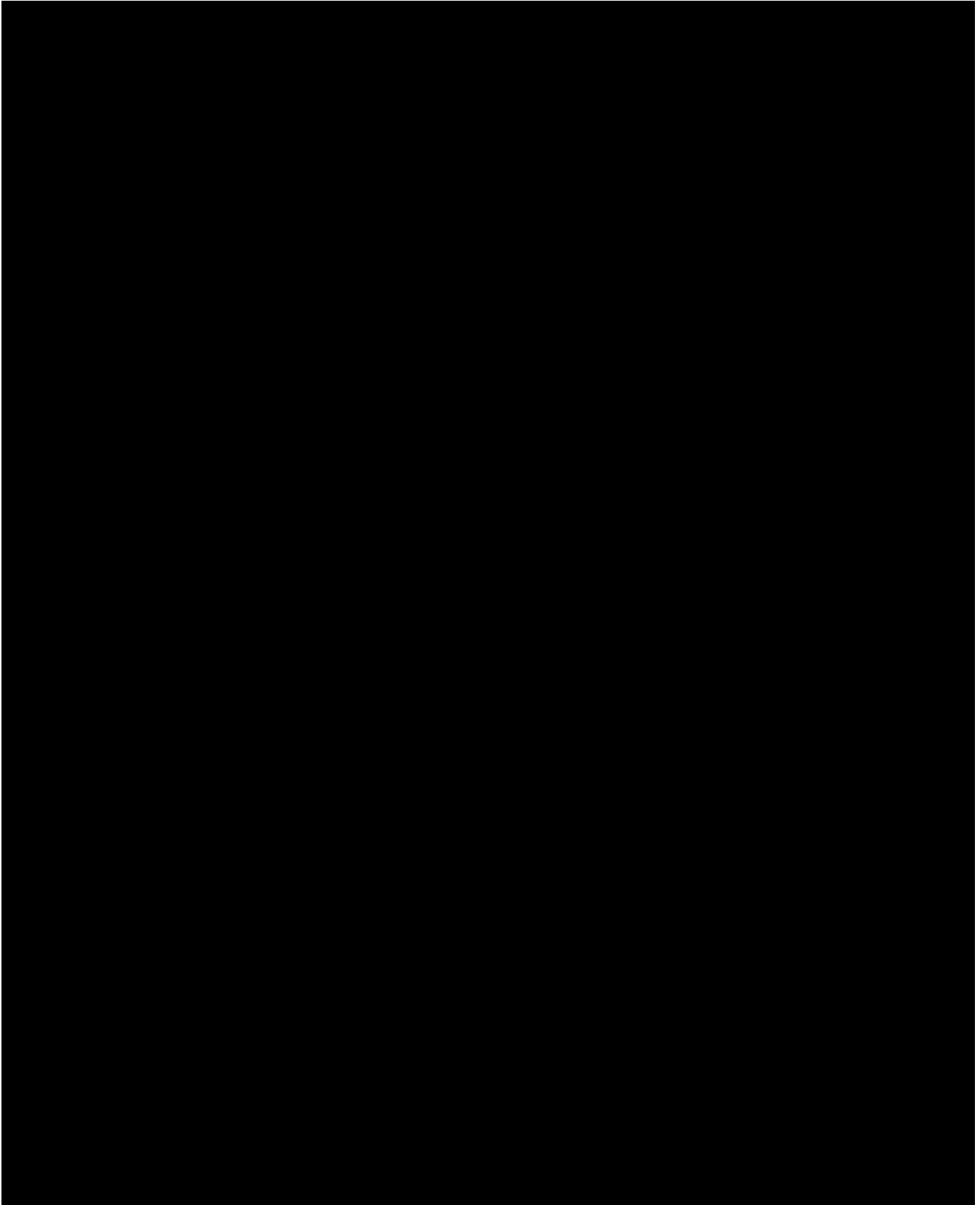


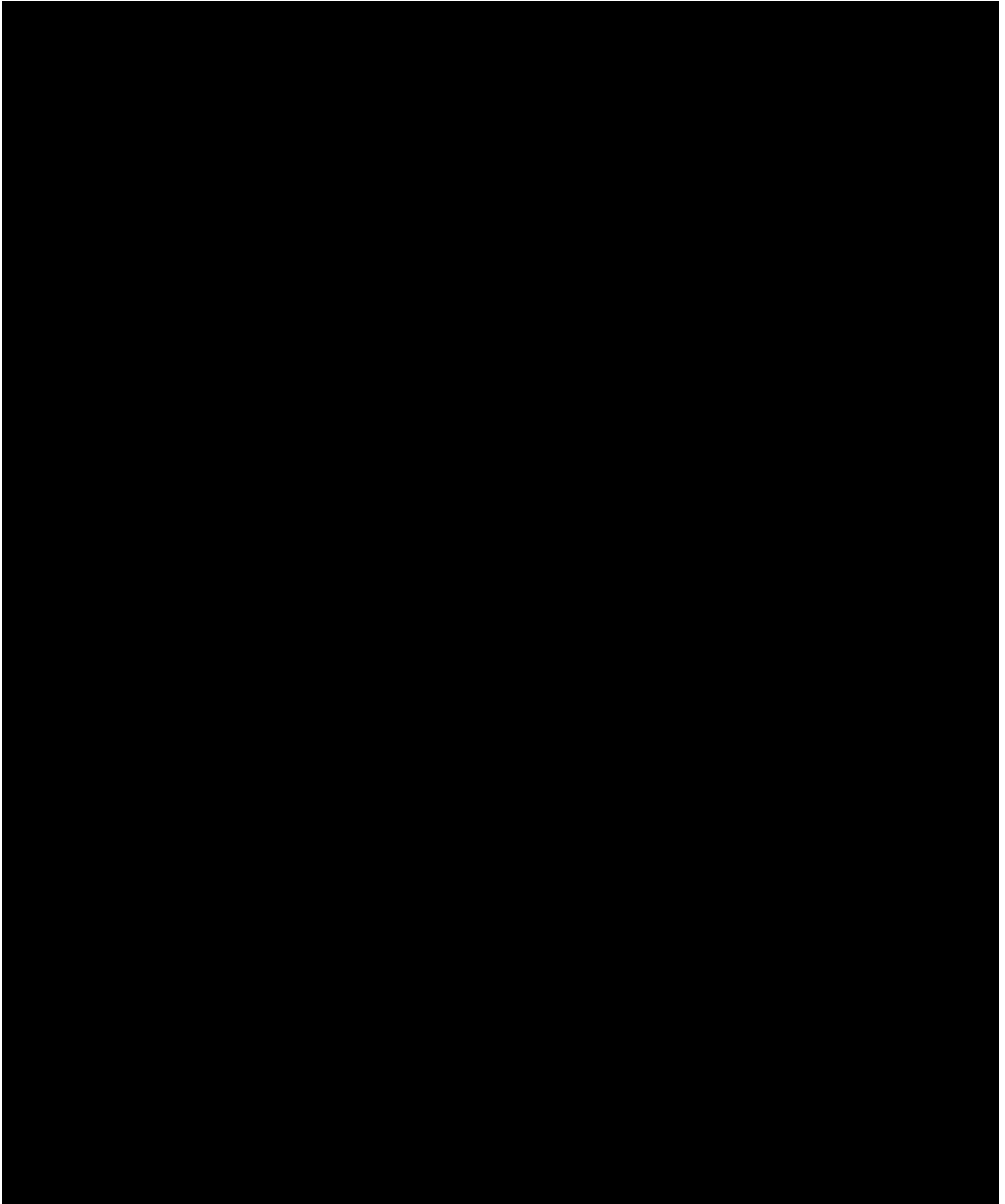






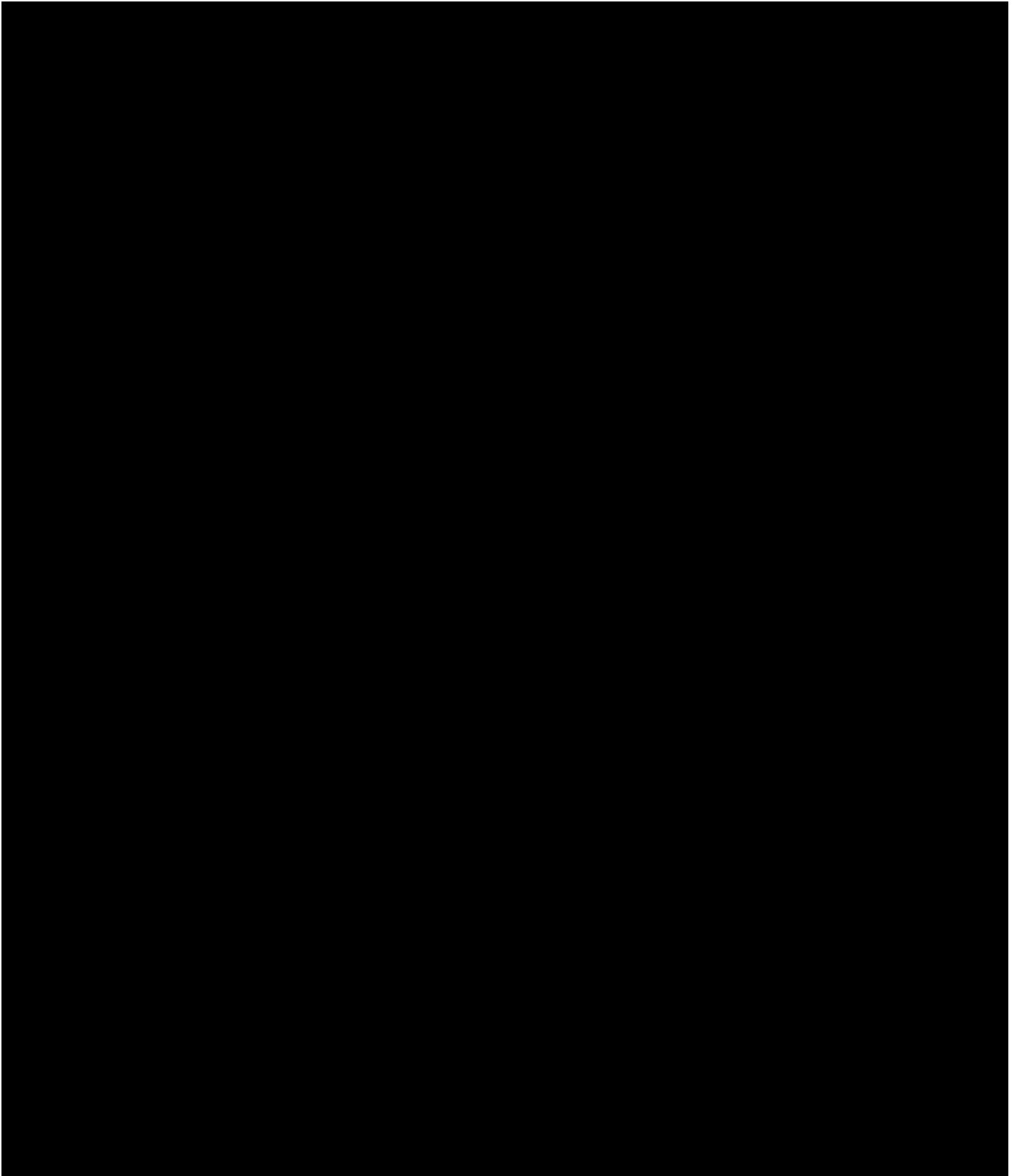




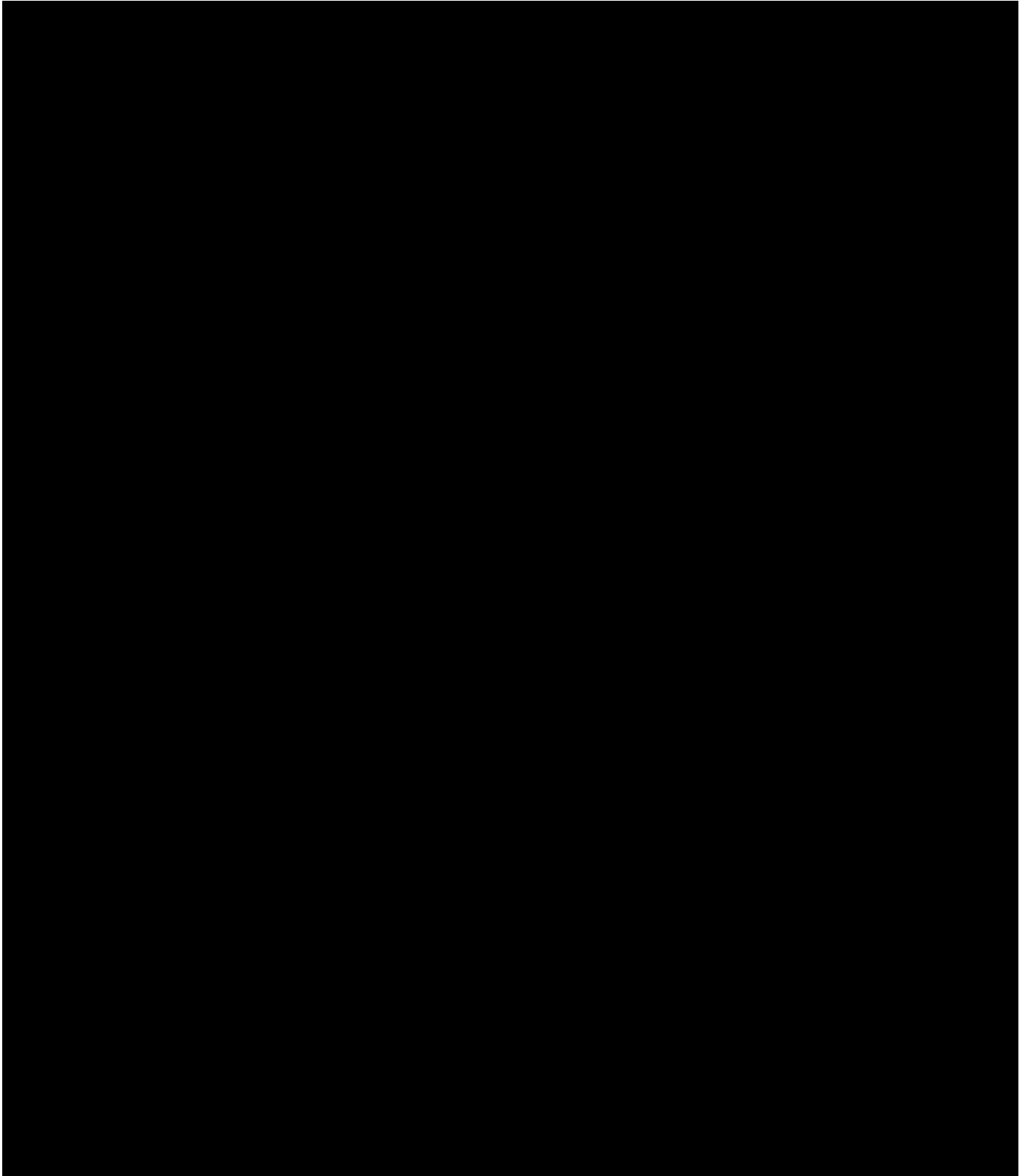




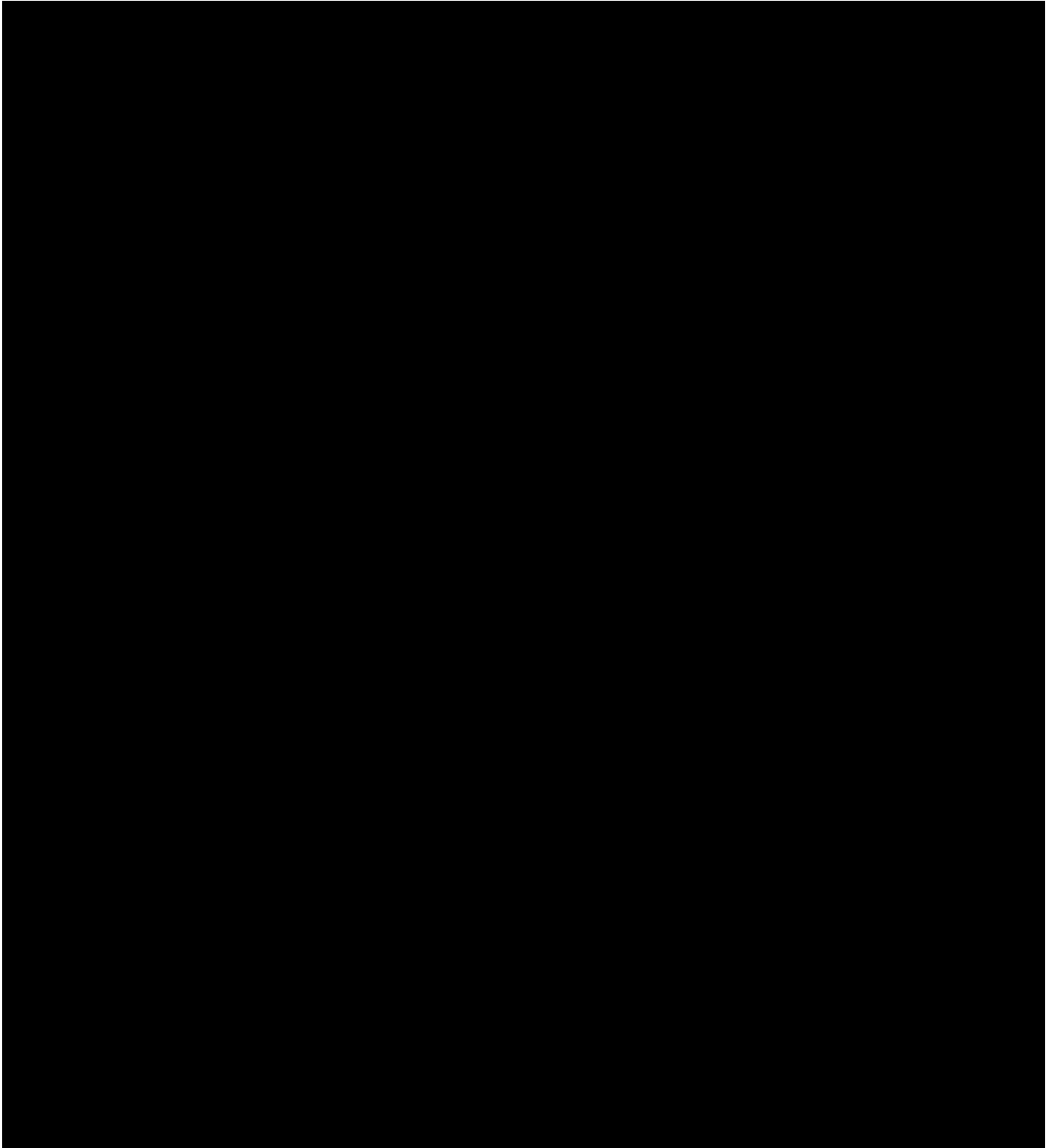
**Attachment 2: Initial list of Members and other contact persons**



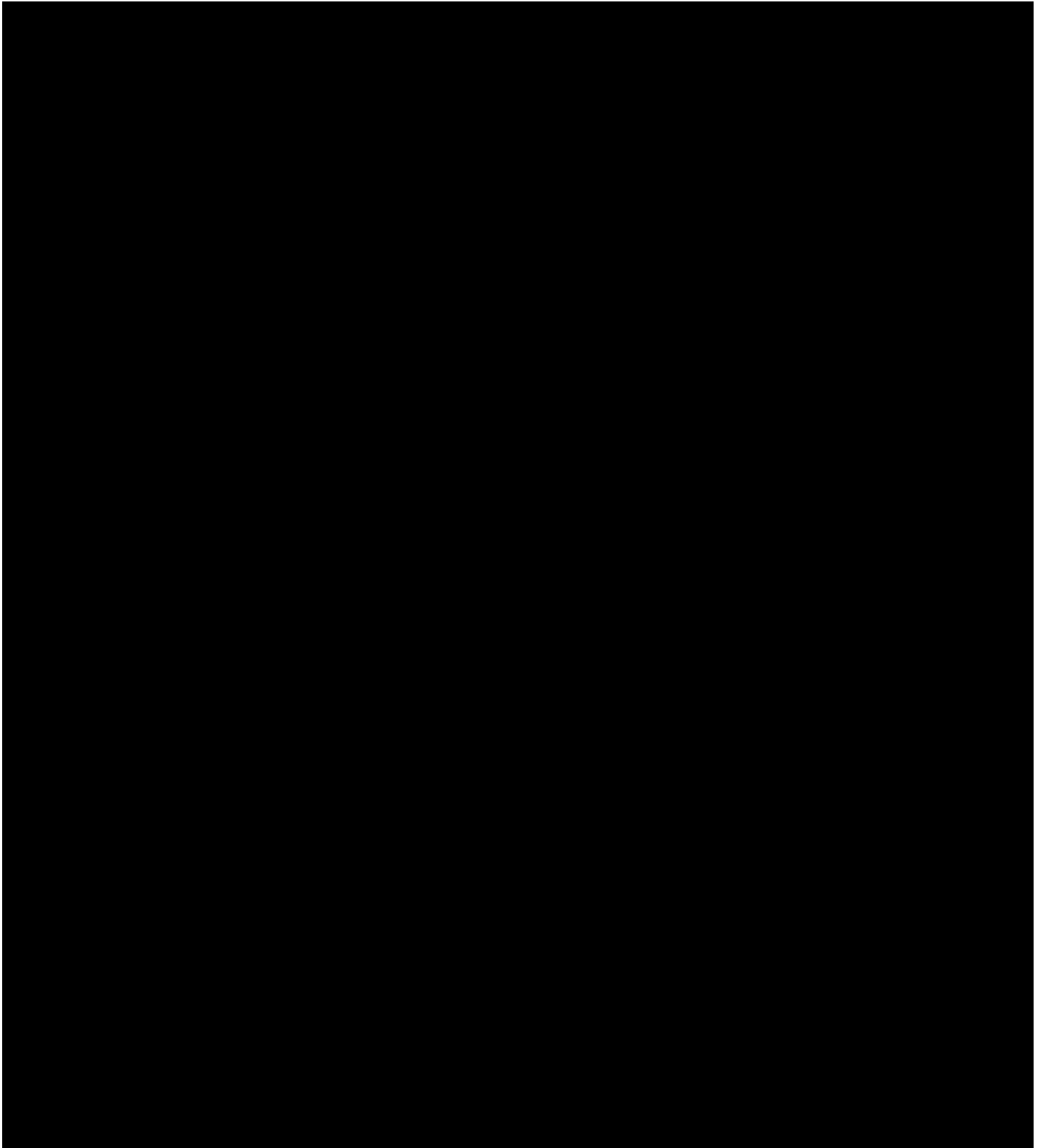
**Attachment 3: Background included**



**Attachment 4: List of Third Parties for simplified transfer according to Section 8.2.1**



**Attachment 5: Accession document**



**Attachment 6: Listed affiliated entities**

