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Date: 18th March 2021

**Framework Agreement  
for the London Highway Maintenance and Projects Framework  
(Central Area)**

**between**

**Transport for London**

**and**

**Ringway Infrastructure Services Limited**

## CONTENTS

| CLAUSE |  | PAGE |
|--------|--|------|
| 1      | DEFINITIONS AND INTERPRETATION .....   | 1    |
| 2      | FRAMEWORK AGREEMENT.....   | 11   |
| 3      | BEHAVIOUR.....   | 12   |
| 4      | TERM OF FRAMEWORK AGREEMENT AND CALL-OFF<br>CONTRACTS.....                       | 13   |
| 5      | PARENT COMPANY GUARANTEE, WARRANTIES AND<br>OBLIGATIONS.....                     | 13   |
| 6      | CALL-OFF PROCEDURE.....  | 15   |
| 7      | VOLUME REBATE AND GUARANTEED MINIMUM ANNUAL<br>SPEND .....                       | 18   |
| 8      | ADJUSTMENT FOR INFLATION.....  | 21   |
| 9      | CONTRACT MANAGEMENT .....  | 21   |
| 10     | MULTIPARTY COLLABORATION.....  | 22   |
| 11     | NOT USED .....   | 22   |
| 12     | AUDIT .....  | 22   |
| 13     | AUDIT AND SURVEILLANCE REGIME .....  | 23   |
| 14     | CONTRACTOR'S PERSONNEL .....   | 23   |
| 15     | CONFLICT OF INTEREST .....   | 24   |
| 16     | CORRUPT GIFTS AND PAYMENT OF COMMISSION .....                                    | 24   |
| 17     | QUALITY AND BEST VALUE .....   | 24   |
| 18     | IT REQUIREMENTS.....   | 25   |
| 19     | SET-OFF .....  | 25   |
| 20     | CONFIDENTIALITY AND ANNOUNCEMENTS.....   | 25   |
| 21     | DATA PROTECTION.....   | 27   |
| 22     | FREEDOM OF INFORMATION AND TRANSPARENCY .....                                    | 27   |
| 23     | NOT USED .....   | 28   |
| 24     | RESPONSIBLE PROCUREMENT.....   | 28   |
| 25     | COMPLIANCE WITH POLICIES AND LAW .....   | 29   |
| 26     | NOT USED .....   | 31   |
| 27     | LONDON LIVING WAGE .....   | 31   |
| 28     | DBS CHECKS.....  | 34   |
| 29     | QUALITY SUBMISSION .....   | 34   |
| 30     | CONSIDERATE CONTRACTOR SCHEME .....  | 34   |
| 32     | BREACH AND TERMINATION OF FRAMEWORK AGREEMENT.....                               | 35   |
| 33     | CONSEQUENCES OF TERMINATION OR EXPIRY .....                                      | 37   |
| 34     | DECLARATION OF INEFFECTIVENESS AND PUBLIC<br>PROCUREMENT TERMINATION EVENT ..... | 38   |
| 35     | SURVIVAL .....   | 40   |
| 36     | RIGHTS OF THIRD PARTIES .....  | 41   |

|    |                                   |    |
|----|-----------------------------------|----|
| 37 | CONTRACT VARIATION.....           | 41 |
| 38 | NOVATION AND ASSIGNMENT .....     | 41 |
| 39 | INDEMNITY .....                   | 42 |
| 40 | VAT.....                          | 42 |
| 41 | NON-WAIVER OF RIGHTS .....        | 42 |
| 42 | ILLEGALITY AND SEVERABILITY.....  | 43 |
| 43 | ENTIRE AGREEMENT .....            | 43 |
| 44 | RELATIONSHIP OF THE PARTIES ..... | 44 |
| 45 | NOTICES.....                      | 44 |
| 46 | FURTHER ASSURANCE .....           | 44 |
| 47 | DISPUTE RESOLUTION .....          | 44 |
| 48 | GOVERNING LAW .....               | 50 |

## **SCHEDULES**

|   |   |
|---|---|
| 1 | Framework Data                                  |
| 2 | Framework Scope                                 |
| 3 | Scope   |
| 4 | Call-Off Request Form                           |
| 5 | Call-Off Contract Form of Agreement             |
| 6 | Proforma Call-Off Contract Data                 |
| 7 | Call-Off Conditions of Contract and Appendices: |
|   | Appendix 1 - List of Transferring Staff         |
|   | Appendix 2 - TUPE                               |
|   | Appendix 3 - Proforma Task Data                 |
|   | Appendix 4 - Schedule of Cost Components        |
|   | Appendix 5 - Performance Bond                   |
|   | Appendix 6 – Not Used                           |
|   | Appendix 7 - Performance Management             |
|   | Appendix 8 - Data Protection                    |
|   | Appendix 9 – Agreement for Lease                |
|   | Appendix 10 – Affected Property                 |

|    |  |
|----|--|
| 8  | Insurance Table  |
| 9  | Meetings and Reporting   |
| 10 | Form of Parent Company Guarantee   |
| 11 | Form of Collateral Warranty from Contractor to financier or other beneficiary    |
| 12 | Form of Collateral Warranty from Sub-Contractor to a Client or other beneficiary |
| 13 | Multiparty Collaboration Schedule  |
| 14 | Strategic Labour Needs and Training and Social Value                             |
| 15 | Audit and Surveillance Regime  |
| 16 | Short Schedule of Cost Components  |
| 17 | Adjustment for Inflation   |
| 18 | Quality Submission   |
| 19 | Form of Variation  |
| 20 | Not Used   |
| 21 | Not Used   |
| 22 | Equality, Diversity and Inclusion  |
| 23 | TfL Policies   |

Volume B

Volume C

**THIS FRAMEWORK AGREEMENT** is made the 18th day of March 2021

**BETWEEN:**

- (1) **TRANSPORT FOR LONDON** a statutory corporation established under the Greater London Authority Act 1999 of 5 Endeavour Square, Stratford, London, E20 1JN (“the Framework Client”); and
- (2) **RINGWAY INFRASTRUCTURE SERVICES LIMITED**, a company registered in England and Wales (Company Registration Number 02756434) whose registered office is at Albion House, Springfield Road, Horsham, West Sussex, RH12 2RW (referred to in this Framework Agreement as “the Contractor”).

**BACKGROUND:**

- (A) The Framework Parties wish to enter into a framework agreement which enables any Client to enter into a Call-Off Contract with the Contractor for highway maintenance services, other scheme works and related services of the type described in the Framework Scope.
- (B) A Call-Off Contract issued in accordance with this Framework Agreement incorporates the Call-Off Conditions of Contract. The Call-Off Conditions of Contract are an amended version of the NEC4 Term Service Contract.
- (C) This Framework Agreement can be utilised by the Framework Client and any other Client.

**THE FRAMEWORK PARTIES AGREE THAT:**

In consideration of payment of £5.00 by each Framework Party to the other (receipt and sufficiency of which is acknowledged by the Framework Parties) and the mutual promises and covenants set out in this Framework Agreement, the Framework Parties agree as follows:

**1. Definitions and Interpretation**

- 1.1 In this Framework Agreement the following expressions have the following meanings:

“Adjudicator” an independent person appointed to act as an

adjudicator in accordance with Clause 47;

|                                   |   |
|-----------------------------------|---|
| “Aggregated Annual Spend”         | <p>the total of:</p> <ul style="list-style-type: none"><li>(a) all sums paid and all sums due to be paid but not yet paid by each Client to the Contractor (exclusive of VAT) in respect of a Financial Year pursuant to the terms of this Framework Agreement and any Call-Off Contract;</li><li>(b) the amount of any credit given to each Client under a Call-Off Contract in respect of a Volume Rebate;</li></ul> <p>and, for the purpose of calculating a Shortfall Payment only</p> <ul style="list-style-type: none"><li>(c) an amount equal to the total amount deducted and any amount due to be deducted but not yet deducted by each Client in respect of a Financial Year for Low Service Damages (as defined in Schedule 7 Appendix 7) or for other performance related reasons pursuant to the terms of any Call-Off Contract;</li><li>(d) an amount equal to the total amount that would have been payable to the Contractor in respect of a Financial Year for any part of the Services that the Contractor is instructed to cease under Schedule 7 Appendix 7 of any Call-Off Contract;</li></ul> |
| “Annual Review Panel”             | means the panel established to monitor and manage the Framework;  |
| “Business Day”                    | any day other than a Saturday or Sunday or a public bank holiday in England;  |
| “Call-Off Conditions of Contract” | the terms and conditions set out at Schedule 7;   |
| “Call-Off Contract”               | a call-off contract incorporating the Call-Off Form of Agreement issued by a Client in accordance with Clause 6 and including any attachments and any documents expressly referred to in that Call-Off Form of Agreement;   |
| “Call-Off Form”                   | the form of agreement issued in respect of a Call-Off   |

|                            |  |
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| of Agreement”              | Contract in each case in the form set out in Schedule 5;   |
| “Call-Off Proposal”        | the Contractor’s offer to provide Services in response to a Call-Off Request Form;   |
| “Call-Off Request Form”    | a document produced by a Client pursuant to Clause 6, setting out its request for a Call-Off Proposal, in the appropriate form set out in Schedule 4 or in such other form as may be notified to the Contractor by the Framework Client;   |
| “CCSL”                     | the Centre for Civil Society Limited or any relevant replacement organisation as notified by the Framework Client from time to time;   |
| “Cessation Plan”           | a plan agreed between the Framework Client and the Contractor or determined by the Framework Client pursuant to Clause 34: <ul style="list-style-type: none"> <li>(a) to give effect to a Declaration of Ineffectiveness; or</li> <li>(b) to give effect to a Public Procurement Termination Event;</li> </ul>   |
| “Client”                   | the Framework Client, any TfL Group member or members, any Principal Framework Borough or combination of Principal Framework Boroughs, any Wider Framework Borough or combination of Wider Framework Boroughs, the GLA, any of the Functional Bodies, any contractor nominated by the aforementioned parties, associations or companies formed by the aforementioned parties, or any combination of such parties utilising this Framework Agreement; |
| “Client Premises”          | any land or premises (including temporary buildings) owned or occupied by or on behalf of any Client;  |
| “Confidential Information” | all information (whether written or verbal) that by its nature may reasonably be regarded as confidential to the Framework Client, any member of the TfL Group, or any other Client whether commercial, financial, technical or otherwise, and including information which relates to the business affairs, customers, suppliers, products, software, telecommunications, networks, trade secrets,   |

|                                  |  |
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|                                  | know-how or personnel of any Client;   |
| “Contract Information”           | means (i) this Framework Agreement in its entirety (including agreed changes to this Framework Agreement) and (ii) data extracted from invoices submitted pursuant to each Call-Off Contract which consists of the Contractor’s name, the expenditure account code, the expenditure account code description, purchase order number, the clearing date and the invoice amount;   |
| “Contractor Manager”             | is as stated in Schedule 1;  |
| “Contractor’s Personnel”         | all such employees, officers, suppliers, sub-contractors, sub-consultants and agents of the Contractor as are engaged in providing any works or services under a Call-Off Contract;  |
| “Data Protection Laws”           | all laws and rules, policies, guidance or recommendations issued by any governmental, statutory or regulatory body and any legally binding industry code of conduct or guideline, in each case relating to data protection, the processing of personal data and privacy and in force from time to time; and references to “ <b>Data Subjects</b> ”, “ <b>Personal Data</b> ”, “ <b>Process</b> ”, “ <b>Processed</b> ”, “ <b>Processing</b> ” and “ <b>Processor</b> ” have the meanings set out in, and will be interpreted in accordance with, such laws, rules, policies, guidance, recommendations, codes of conduct and guidelines; |
| “Declaration of Ineffectiveness” | a declaration of ineffectiveness in relation to this Framework Agreement made by a Court of competent jurisdiction pursuant to Regulation 98 of the Public Contracts Regulations 2015;   |
| “Dispute”                        | any dispute, controversy or claim arising out of or in connection with this Framework Agreement;   |
| “e-GIF”                          | the UK Government’s “e-government inter-operability framework” standard, as may be updated from time to  |

time, details of which are available on the Cabinet Office website, [www.govtalk.gov.uk](http://www.govtalk.gov.uk);

“Euro Compliant” means that the software, electronic or magnetic media, hardware or computer system (whichever is applicable) is capable of, and will not require any replacement or changes in order to be capable of, supporting the introduction of, changeover to and operation of the Euro as a currency and in dual currency (Sterling and Euro) and will not manifest any material error nor suffer a diminution in performance or loss of functionality as a result of such introduction, changeover or operation and it is (if applicable) capable of processing transactions calculated in Euros separately from or in conjunction with other currencies and is capable of complying with any legislative changes relating to the Euro;

“Fee” is the fee percentage as stated in Schedule 1;

“Financial Year” a calendar year ending 31 March;

“FOI Legislation” means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance or statutory codes of practice issued by the Information Commissioner, the Ministry for Justice, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

“Framework” the framework of agreements entered into between the Framework Client and various contractors (including the Contractor) referred to as the London Highway Maintenance and Projects Framework;

“Framework Agreement” this Framework Agreement, including the Schedules and all other documents referred to in this Framework Agreement;

|   |   |
|---|---|
| “Framework Agreement Service Commencement Date” | is as stated in Schedule 1;   |
| “Framework Data”                                | is set out at Schedule 1;   |
| “Framework Manager”                             | is as stated in Schedule 1;   |
| “Framework Parties”                             | means the Framework Client (including its successors in title and permitted assigns) and the Contractor and “Framework Party” means either of them as the case may be;  |
| “Framework Scope”                               | the document at Schedule 2;   |
| “Framework Term”                                | is as stated in Schedule 1;   |
| “Functional Bodies”                             | the functional bodies of the GLA (other than any member of the TfL Group) which are the London Legacy Development Corporation, the Mayor’s Office for Policing and Crime, the London Fire Commissioner and the Old Oak and Park Royal Development Corporation in their current and future form; |
| “GLA”   | means the Greater London Authority;   |
| “Guaranteed Minimum Annual Spend”               | is the amount set out in Schedule 1;  |
| “Highways Service Delivery Meeting”             | means the meeting established to monitor and manage the Contractor’s performance under this Framework Agreement and all Call-Off Contracts;   |

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| “Holding Company”            | any company which directly or indirectly controls any one of the companies which comprise the Contractor where “control” is as defined by Section 1124 of the Corporation Tax Act 2010;  |
| “Indirect Subcontractor”     | means any subcontractor or subconsultant of whatever tier beneath any Subcontractor appointed in relation to the Services;   |
| “Information”                | means information recorded in any form held by a Client or by the Contractor on behalf of a Client;  |
| “Information Access Request” | means a request for any Information under the FOI Legislation;   |
| “Insolvency”                 | (in the case of a company or partnership) the making of a winding-up order against it, the appointment of a provisional liquidator, the passing of a resolution for winding-up (other than in order to amalgamate or reconstruct without insolvency), the appointment of administrators to it (including appointments made by filing prescribed documents with the court), the appointment of a receiver or administrative receiver over the whole or a substantial part of its undertaking or assets, the making or proposal of a composition or an arrangement with all or any class of its creditors, the making of a bankruptcy order against any of its partners, or it ceases to carry on business or is the subject of a notice of striking off or (in the case of an individual) the presentation of a petition for bankruptcy, the making of a bankruptcy order against him, the appointment of a receiver over his assets, the making of a composition or an arrangement with his creditors or he ceases to carry on business, or (in the case of a company, partnership or individual) is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction; |
| “Insurance Table”            | the table set out at Schedule 8;   |

|                            |  |
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| “Key Personnel”            | the personnel of the Contractor identified in Schedule 1 including the Contractor Manager;   |
| “London Living Wage”       | the London rate for the basic hourly wage as updated and published annually by the CCSL (or any relevant replacement organisation) on its website ( <a href="http://www.livingwage.org.uk">www.livingwage.org.uk</a> );  |
| “Losses”                   | all expenses, liabilities, losses, claims, proceedings, compensation and costs whatsoever;   |
| “Mini-Competition”         | a competitive process which a Wider Framework Borough utilises to select a contractor to carry out Services from time to time;   |
| “Nominating Authority”     | means the President or Vice President or other duly authorised officer of the London Court of International Arbitration;   |
| “Notice of Adjudication”   | any notice given by a party to the Dispute to the other party or parties to the Dispute requiring reference of a Dispute to the Adjudicator in accordance with Clause 47. The Notice of Adjudication includes <ul style="list-style-type: none"> <li>• the nature and a brief description of the Dispute;</li> <li>• details of where and when the Dispute arose; and</li> <li>• the nature of the redress which is sought;</li> </ul> |
| “Parent Company”           | is as stated in Schedule 1;  |
| “Parent Company Guarantee” | a guarantee by the Parent Company in the form at Schedule 10 of the Contractor’s obligations pursuant to this Framework Agreement and each Call-Off Contract;  |
| “Parties”                  | a Client (including successors and permitted assigns) and the Contractor and “Party” means either of them as the case may be;  |
| “Policies”                 | the policies and standards set out in Schedule 23;   |

|                                     |   |
|-------------------------------------|---|
| “Price List”                        | the proposed <i>price list</i> for a Call-Off Contract;   |
| “Principal Framework Borough”       | any 1 of the following London Boroughs:<br><br>Camden, Hackney, Hammersmith & Fulham, Islington, Kensington & Chelsea, Lambeth, Southwark, Tower Hamlets, Wandsworth, Westminster and the City of London.   |
| “Relevant Area”                     | has the meaning given to it in Schedule 2;  |
| “Quality Submission”                | the quality submission provided by the Contractor with his tender and included in Schedule 18;  |
| “Responsible Procurement Policy”    | the GLA Group’s Responsible Procurement Policy and any amendment to or replacement of such policy a copy of the current version of which is on the Mayor of London’s website at <a href="https://www.london.gov.uk/sites/default/files/gla_group_r_pp_v7.12_final_template_for_web.pdf">https://www.london.gov.uk/sites/default/files/gla_group_r_pp_v7.12_final_template_for_web.pdf</a> |
| “Schedule of Rates”                 | the schedule of rates and other prices tendered by the Contractor and is set out at Volume C and referred to in Schedule 1;   |
| “Scope”                             | is the scope set out at Schedule 3 and any additional scope provided by a Client;   |
| “Senior Representative”             | a representative of a Framework Party at senior executive level;  |
| “Services”                          | the works and/or services to be provided by the Contractor pursuant to a Call-Off Contract;   |
| “Short Schedule of Cost Components” | is attached at Schedule 16;   |
| “Shortfall Payment”                 | the amount calculated for the relevant Financial Year in accordance with Clause 7.4;  |
| “Subcontractor”                     | is a person or organisation who has a contract with the Contractor to   |

- provide a part of the Services or
- construct or install or design part of the Services or
- supply plant and materials which the person or organisation has wholly or partly designed specifically for the Services;

“TfL Group” means Transport for London, a statutory body set up by the Greater London Authority Act 1999, and any of its subsidiaries (as defined in Section 1159 of the Companies Act 2006) and their subsidiaries;

“Transparency Commitment” means the Framework Client’s commitment to publish its contracts, tender documents and data from invoices received in accordance with the Local Government Transparency Code 2015 and the Framework Client’s own published transparency commitments;

“Volume Rebate” the figure calculated for each Financial Year in accordance with Clause 7.4;

“Volume Rebate Percentage” is the applicable volume rebate percentage set out in Schedule 1;

“Wider Framework Borough” any 1 of the following London Boroughs:  
 Barking & Dagenham, Barnet, Brent, Ealing, Enfield, Haringey, Harrow, Havering, Hillingdon, Hounslow, Newham, Redbridge and Waltham Forest;  
 Bexley, Bromley, Croydon, Greenwich, Kingston upon Thames, Lewisham, Merton, Richmond upon Thames and Sutton.

1.2 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;

1.3 a reference to any statute, enactment, order, regulation or other similar instrument is construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent

statute, enactment, order, regulation or instrument and includes all statutory instruments or orders made pursuant to it whether replaced before or after the Framework Agreement Service Commencement Date;

1.4 a reference to any document other than as specified in Clause 1.3 and save as expressed otherwise is construed as a reference to the document as at the Framework Agreement Service Commencement Date;

1.5 headings are included in the Framework Agreement for ease of reference only and do not affect the interpretation or construction of the Framework Agreement;

1.6 except as otherwise expressly provided in any Call-Off Contract, if there is any inconsistency between any of these clauses, the Schedules, any Call-Off Contract or any other document referred to in or incorporated into this Framework Agreement or any Call-Off Contract, the order of priority for the purposes of construction is:

1.6.1 the relevant Call-Off Contract;

1.6.2 these clauses in this Framework Agreement;

1.6.3 the Schedules;

1.6.4 any other document referred to in or incorporated by reference into this Framework Agreement or any Call-Off Contract;

1.7 the Schedules form part of the Framework Agreement and have the same force and effect as if expressly set out in the body of the Framework Agreement;

1.8 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and

1.9 the words “including”, “includes” and “included” are construed without limitation unless inconsistent with the context.

## 2. **Framework Agreement**

2.1 The purpose of this Framework Agreement is to:

2.1.1 provide a mechanism whereby a Client and the Contractor may enter into a Call-Off Contract;

2.1.2 provide the framework to administer each Call-Off Contract; and

2.1.3 allow for common monitoring of Call-Off Contracts.

2.2 The Services that may be requested by a Client and provided by the Contractor are of the type described in the Framework Scope and more particularly described in each Call-Off Contract. The Client's requirements may vary and this Framework Agreement does not place any Client under any obligation to procure any works or services from the Contractor at a particular time or at all. This Framework Agreement is not an exclusive arrangement and nothing in this Framework Agreement operates to prevent any Client from engaging any other company, organisation or person to provide works or services similar to or the same as the Framework Scope.

2.3 Clause 6 sets out the procedure by which the Parties may enter into a Call-Off Contract. Each Call-Off Contract is a binding agreement on the relevant Parties to the Call-Off Contract.

2.4 The Contractor commences provision of the Services in accordance with the Call-Off Contract. The Contractor does not commence any Services without an agreed Call-Off Contract.

### 3. **Behaviour**

3.1 In order to work together in the spirit of mutual trust and co-operation the Framework Client and the Contractor encourage joint training and integrated team working, and give to each other, and welcome from the other, feedback which will enable the Framework Parties to improve the Services. The Framework Parties work to proactively avoid Disputes.

3.2 Each Client and the Contractor share information openly and highlight any difficulties at the earliest practicable time.

3.3 Each Client and the Contractor support collaborative behaviour and confront behaviour that does not comply with the provisions of this Framework Agreement. The Contractor does not enter into any contractual agreements or arrangements that conflict with the principles of this Framework Agreement.

- 3.4 The Contractor works with other contractors appointed to the Framework by the Framework Client in a co-operative and collaborative manner.
- 3.5 Not used.
- 3.6 The Contractor complies with the requirements of Schedule 9 regarding reporting and meetings of the Framework Agreement and Call-Off Contracts. No Client is liable to the Contractor for any costs, charges or expenses arising out of or associated with compliance with Schedule 9.

#### **4. Term of Framework Agreement and Call-Off Contracts**

- 4.1 This Framework Agreement (but not a Call-Off Contract) commences on the Framework Agreement Service Commencement Date and continues in force for the Framework Term unless terminated earlier, either in whole or in part, in accordance with this Framework Agreement.
- 4.2 The Framework Client may, at its option and in its sole discretion, extend the duration of this Framework Agreement for a period up to a maximum of 48 (forty eight) months and for a minimum period of 12 (twelve) months by giving notice in writing to the Contractor, provided that such written notice is served at least 24 (twenty four) months prior to expiry of the initial Framework Term.
- 4.3 The provisions of this Framework Agreement survive expiry or termination to the extent that such provisions are relevant to any Call-Off Contract.
- 4.4 Expiry or termination of a Call-Off Contract in accordance with its terms does not, in and of itself, give rise to an expiry or termination of any other Call-Off Contract or this Framework Agreement.
- 4.5 The *service period* specified in a Call-Off Contract does not extend beyond the end of the Framework Term, save in respect of any instructed Task.

#### **5. Parent Company Guarantee, Warranties and Obligations**

- 5.1 Within 20 Business Days of the date of a Call-off Contract the Contractor delivers to the relevant Client under the Call-off Contract a duly executed Parent Company Guarantee from the Parent Company (or such other person as the relevant Client approves in writing) and, if requested by the Client, a legal opinion (in the form set out in Schedule 10) as to its enforceability.

5.2 Without prejudice to any other warranties expressed elsewhere in this Framework Agreement or implied by law, the Contractor warrants, represents and undertakes that:

5.2.1 it:

5.2.1.1 has full capacity and authority and all necessary permissions, powers and consents (including, where its procedures so require, the consent of its Holding Company) to enter into and to perform the Framework Agreement and any relevant Call-Off Contract; and

5.2.1.2 is entering into this Framework Agreement and any relevant Call-Off Contract as principal and not as agent for any person and that it acts as an independent contractor in carrying out its obligations under this Framework Agreement; and

5.2.2 the Framework Agreement is and each Call-Off Contract will be duly executed by the Contractor.

5.3 Each warranty and obligation in Clause 5.2 is construed as a separate warranty or obligation (as the case may be) and is not limited or restricted by reference to, or reference from, the terms of any other such warranty or obligation or any other term of this Framework Agreement.

5.4 The Contractor gives notice to the Framework Client within 7 Business Days where:

5.4.1 there is any change in ownership of the Contractor where such change relates to 50% or more of the issued share capital of such company; or

5.4.2 there is any change in ownership of the Holding Company where such change relates to 50% or more of the issued share capital of such Holding Company; or

5.4.3 (in the case of an unincorporated Contractor) there is any change in the management personnel of the Contractor, which alone or taken with any other change in management personnel not previously notified to the Framework Client, equates to a change in the identity of 50% or more of the management personnel of the Contractor.

- 5.5 Where the Contractor is a partnership the rights, obligations and liabilities of the partners in the partnership under this Framework Agreement and each Call-Off Contract are joint and several. This Framework Agreement and each Call-Off Contract and the liabilities of the partners under this Framework Agreement and each Call-Off Contract do not automatically terminate upon the death, retirement or resignation of any 1 or more members of such partnership or upon the admission of an additional partner or partners. The partners in the partnership use their reasonable endeavours to procure that any additional partner or partners enter into an agreement with the Framework Client and each other relevant Client confirming his/her acceptance of the rights, obligations and liabilities of the Contractor under this Framework Agreement and each Call-Off Contract.
- 5.6 Where the Contractor comprises 2 or more parties in joint venture the rights, obligations and liabilities of each such party under this Framework Agreement and each Call-Off Contract are joint and several.

## 6. **Call-Off Procedure**

- 6.1 From the Framework Agreement Service Commencement Date until expiry of the Framework Term, a Client may identify the Services which at its sole discretion it wishes to let under the terms of this Framework Agreement in which event the Parties follow the process set out below. The Framework Client reserves the right, at its discretion, to amend the process to reflect best practice and applicable law.
- 6.2 Subject to Clause 6.2A, a Client may issue to the Contractor a Call-Off Request Form specifying the Services required.
- 6.2A If a Wider Framework Borough requires Services it is required to undertake a Mini-Competition in which the Contractor may participate. The Wider Framework Borough issues a Call-Off Request Form specifying the Services to be provided to the Contractor and those other contractors on the Framework that it assesses in its sole discretion are capable of providing the relevant Services. The Contractor responds in accordance with Clause 6.3A.
- 6.3 In the event that the Contractor receives a Call-Off Request Form from a Client other than a Wider Framework Borough:
- 6.3.1 the Contractor within 2 Business Days confirms receipt of the Call-Off Request Form; and

- 6.3.2 the Contractor issues to the relevant Client a Call-Off Proposal incorporating the completed contract data part 2. The Contractor responds to the relevant Client by the date specified in the Call-Off Request Form, which is a minimum of 20 Business Days of receiving the Call-Off Request Form, or by such other date as may be agreed with the relevant Client. A Call-Off Proposal is an offer capable of acceptance and remains valid for at least 3 months (or such longer period as may be specified in the Call-Off Request Form) from the date it is submitted to the relevant Client.
- 6.3A In the event that the Contractor receives a Call-Off Request Form from a Wider Framework Borough:
  - 6.3A.1 the Contractor within 2 Business Days confirms receipt of the Call-Off Request Form;
  - 6.3A.2 the Contractor issues to the relevant Client a Call-Off Proposal incorporating the completed contract data part 2 or notifies the Wider Framework Borough in writing that it does not intend to submit a proposal. The Contractor responds to the Wider Framework Borough by the date specified in the Call-Off Request Form or, if no such date is specified, within 20 Business Days of receiving the Call-Off Request Form, or by such other date as may be agreed with the Wider Framework Borough. A Call-Off Proposal is an offer capable of acceptance and remains valid for at least 3 months (or such longer period as may be specified in the Call-Off Request Form) from the date it is submitted to the Wider Framework Borough; and
  - 6.3A.3 subject always to Clause 6.10, the Wider Framework Borough awards the relevant Call-Off contract to the Call-Off Proposal that is most economically advantageous with reference to the assessment criteria set out in the Call-Off Request Form as they relate to the Service(s) in question.
- 6.4 The Contractor submits with each Call-Off Proposal a completed Price List.
- 6.5 In preparing the Price List to accompany a Call-Off Proposal:
  - 6.5.1 the Contractor acknowledges that the Price List is the Schedule of Rates adjusted as follows:

- 6.5.1.1 in accordance with Clause 8 (Adjustment for Inflation);  
and
- 6.5.1.2 if the proposed Client is not the Framework Client, the relevant percentage adjustment to the Schedule of Rates specified in the Framework Data is applied (where applicable);
- 6.5.2 the Contractor may use rates, prices or percentages that are less than those stated in the Schedule of Rates but does not use any rates, prices or percentages which exceed those stated in the Schedule of Rates adjusted in accordance with Clause 8 (Adjustment for Inflation) and the relevant percentage adjustment to the Schedule of Rates specified in the Framework Data;
- 6.5.3 where a Call-Off Request Form requires the Contractor to submit a rate or lump sum price for work, services or any other activity for which there is no rate in the Schedule of Rates the relevant rate or lump sum prices are calculated by reference to rates in the Schedule of Rates for work, services or activities of a similar character and executed under similar conditions;
- 6.5.4 where a Call-Off Request Form requires the Contractor to submit a rate or lump sum price for work, services or any other activity for which there is no rate in the Schedule of Rates and there are no rates in the Schedule of Rates for work, services or activities of a similar character and executed under similar conditions, the relevant rates or lump sum prices are calculated by reference to the Short Schedule of Cost Components plus the Fee;
- 6.5.5 the Contractor submits details of any rates and lump sums specific to the relevant Client; and
- 6.5.6 the Contractor provides full supporting information, in accordance with the Schedule of Rates, to demonstrate how the Price List has been prepared.
- 6.6 If the relevant Client accepts a Call-Off Proposal issued in response to a Call-Off Request Form it notifies the Contractor that the Call-Off Contract is awarded.

- 6.7 After the relevant Client awards a Call-Off Contract pursuant to Clause 6.6 the relevant Client forwards to the Contractor 2 copies of the Call-Off Contract. The Contractor executes both copies and returns them to the relevant Client within 7 Business Days of receipt. The relevant Client executes both copies of the Call-Off Contract and sends a completed executed Call-Off Contract to the Contractor.
- 6.8 Each Call-Off Contract is a binding agreement on the relevant Parties to the Call-Off Contract and incorporates the terms and conditions in the completed Call-Off Form of Agreement and such documentation together forms a separate agreement between the relevant Parties to the Call-Off Contract.
- 6.9 A Call-Off Request Form and anything prepared or discussed by a Client constitutes an invitation to treat and does not constitute an offer capable of acceptance by the Contractor. No Client is obliged to consider or accept any Call-Off Proposal submitted by the Contractor.
- 6.10 This Framework Agreement does not oblige any Client to enter into any Call-Off Contract with the Contractor.
- 6.11 Each Call-Off Contract is specifically between the Contractor and the relevant Client. The other Clients are not liable for the obligations arising out of such Call-Off Contract. For the avoidance of doubt the Framework Client is not liable for any obligations arising out of or in connection with a Call-Off Contract entered into between the Contractor and any Client (other than where the Client is the Framework Client).
- 6.12 The Contractor is responsible for all and any costs, charges and expenses incurred by the Contractor arising from or associated with the procurement process in this Clause 6 and no Client is liable for any costs, charges or expenses borne by or on behalf of the Contractor whether or not the Contractor is awarded a Call-Off Contract, which for the avoidance of doubt includes any costs, charges and expenses arising from or associated with an abortive or cancelled procurement process.

## **7. Volume Rebate and Guaranteed Minimum Annual Spend**

- 7.1 A Client who has entered into a Call-Off Contract is entitled to volume rebates in accordance with this Clause 7.
- 7.2 Within 4 weeks of the end of:

7.2.1 each Financial Year; and

7.2.2 the end of the Framework Term

the Contractor submits to the Framework Manager details of the Aggregated Annual Spend. The details are broken down by capital and revenue expenditure and identify the payments made, or credit given, by each individual Client to the Contractor in the relevant period.

7.3 Should the Contractor not provide the details required by Clause 7.2 the Framework Manager may make his own assessment of the Aggregated Annual Spend. Where relevant the Framework Manager notifies the Contractor of his assessment of the Aggregated Annual Spend. Unless the Contractor provides a written objection (including a detailed justification for the objection and the Contractor's assessment of the Aggregated Annual Spend) within 5 Business Days of such notification the Framework Manager's assessment of the Aggregated Annual Spend is deemed accepted by the Contractor.

7.4 The Contractor submits with the details pursuant to Clause 7.2 or, within 10 Business Days of notification of the Framework Manager's assessment of the Aggregated Annual Spend under Clause 7.3:

7.4.1 if the Aggregated Annual Spend is equal to or greater than the Guaranteed Minimum Annual Spend, the Contractor's assessment of the Volume Rebate for the relevant Financial Year by applying the relevant Volume Rebate Percentage to each band of the Aggregated Annual Spend; or

7.4.2 if the Aggregated Annual Spend is less than the Guaranteed Minimum Annual Spend, the Contractor's assessment of the Shortfall Payment for the relevant Financial Year calculated as 5% of the difference between the Guaranteed Minimum Annual Spend minus the Aggregated Annual Spend.

In calculating the Volume Rebate or the Shortfall Payment for any part Financial Year the volume rebate thresholds set out in Schedule 1 are and the Guaranteed Minimum Annual Spend figure is pro-rated to allow the volume rebate calculation or Shortfall Payment calculation to be applied on a pro rata basis to the applicable proportion of the Financial Year. The

Contractor provides all relevant supporting information to show how the relevant calculation has been made.

7.5 Within 10 Business Days of receipt of the Contractor's assessment of the Volume Rebate or Shortfall Payment (or in the absence of such assessment within 20 Business Days of the date on which it was due) the Framework Manager:

7.5.1 confirms the Volume Rebate or Shortfall Payment (as applicable);  
or

7.5.2 requires the Contractor to reassess the Volume Rebate or Shortfall Payment (as applicable), giving reasons where necessary; or

7.5.3 notifies the Contractor that it will make its own assessment of the Volume Rebate or Shortfall Payment (as applicable).

If required to reassess the Contractor resubmits the assessment of the Volume Rebate or Shortfall Payment (as applicable) within 10 Business Days. If the Framework Manager notifies the Contractor of its own assessment of Volume Rebate or Shortfall Payment (as applicable), unless the Contractor provides a written objection (including detailed justification for the objection and the Contractor's assessment of the Volume Rebate or Shortfall Payment (as applicable)) within 5 Business Days of such notification the Framework Manager's assessment of the Volume Rebate or Shortfall Payment (as applicable) is deemed to be accepted by the Contractor.

7.6 Within 10 Business Days of the Framework Manager's confirmation of a Volume Rebate, the Contractor calculates the amount of the Volume Rebate payable or allowable to each Client in accordance with the following formula:  $(A/B) \times C$ . Where A is the total amount paid by the relevant Client to the Contractor in the relevant Financial Year, B is the Aggregated Annual Spend, and C is the Volume Rebate (or if he fails to do so the Framework Manager may carry out the calculation and notify the Contractor).

7.7 The Contractor notifies the Framework Manager of the amount of the Volume Rebate payable or allowable to each Client and the Contractor pays or allows the relevant amount to each Client in accordance with clause 113 of the Call-Off Contract.

- 7.8 If a Shortfall Payment is confirmed or determined as due to the Contractor then the relevant amount is included as an amount to be paid to the Contractor in the next assessment of the amount due to the Contractor, following the date of such confirmation or determination, under any Call-Off Contract entered into by the Framework Client under this Framework Agreement. If no such Call-Off Contract is in place or if the Contractor's employment under such Call-Off Contract has been terminated then either
- 7.8.1 if the Contractor's employment is terminated for reasons R1-15, R10A, R17, R18, R20, R22, R22A, R22B, R23, R24, R25, R26, R27, R28 or R29 (each as set out in clause 91 of Schedule 7) or the Call-Off Contract is not in place as a result of a Declaration of Ineffectiveness (as defined in Schedule 7), no Shortfall Payment shall be due or payable to the Contractor; or
  - 7.8.2 if the Contractor's employment is terminated for another reason, any Shortfall Payment is calculated on a pro-rata basis in accordance with clause 7.4.

No Client other than the Framework Client shall be required to make any Shortfall Payment to the Contractor.

## 8. **Adjustment for Inflation**

The rates set out in the Schedule of Rates and any other rates, values or sums set out in this Framework Agreement which are expressly stated to be adjusted for inflation are adjusted in accordance with Schedule 17 (Adjustment for Inflation).

## 9. **Contract Management**

- 9.1 The Framework Client authorises the Framework Manager to act as the Framework Client's representative for all purposes of this Framework Agreement and the Contractor deals with the Framework Manager in respect of all matters arising under this Framework Agreement, unless notified otherwise. The Framework Client may replace the Framework Manager after he has notified the Contractor of the name of the replacement.
- 9.2 The Contractor Manager acts as the Contractor's representative for all purposes of this Framework Agreement. The Contractor Manager:

9.2.1 diligently supervises the performance of any Services instructed under a Call-Off Contract;

9.2.2 attends all contract meetings with any Client (the location, frequency and time of which are specified by the relevant Client); and

9.2.3 is available to each Client on reasonable notice (or as specified in any Call-Off Contract) to resolve any issues arising in connection with this Framework Agreement or any Call-Off Contract.

9.3 The Contractor may only make any changes to the Contractor Manager (except in the event of sickness, incapacity or resignation) with the prior consent of the Framework Client (which is not unreasonably withheld).

9.4 No act of or omission by or approval or acceptance from either a Client, the Framework Manager, or any representative of a Client in performing any of their respective duties under or in connection with this Framework Agreement or relevant Call-Off Contract relieves the Contractor of any of its duties, responsibilities, obligations or liabilities under this Framework Agreement or any Call-Off Contract.

9.5 At the Framework Client's reasonable request the Contractor attends meetings with the Framework Client at no additional cost to the Framework Client.

## 10. **Multiparty collaboration**

The Contractor complies with the requirements of Schedule 13 regarding multiparty collaboration. No Client is liable to the Contractor for any costs, charges or expenses arising out of or associated with compliance with Schedule 13.

## 11. **Not Used**

## 12. **Audit**

12.1 The Contractor undertakes its (and procures that his Subcontractors undertake their) obligations and exercise any rights which relate to the performance of this Framework Agreement and any Call-Off Contract on an open-book basis. The Framework Client and its authorised representatives may audit on an open-book basis and check any and all information regarding any matter relating to the performance of or compliance with this

Framework Agreement and any Call-Off Contract, including inspection of the Contractor's technical and organisational security measures for the protection of personal data, any aspect of the Contractor's operations, costs and expenses, sub-contracts, claims related to compensation events, and financial arrangements or any document referred to therein or relating thereto. The Framework Client's rights pursuant to this clause include the right to audit and check and to take extracts from any document or record of the Contractor and/or his Subcontractors.

- 12.2 The Framework Client uses reasonable endeavours to co-ordinate such audits and to manage the number, scope, timing and method of undertaking audits so as to ensure that the Contractor is not, without due cause, disrupted or delayed in the performance of the Contractor's obligations under this Framework Agreement and any Call-Off Contract.

### 13. **Audit and Surveillance Regime**

The Contractor complies with the requirements of Schedule 15 regarding audit and surveillance. No Client is liable to the Contractor for any costs, charges or expenses arising out of or associated with compliance with Schedule 15.

### 14. **Contractor's Personnel**

- 14.1 Nothing in this Framework Agreement or any Call-Off Contract renders the Contractor's Personnel an employee, agent or partner of any Client by virtue of the provision of any Services by the Contractor under any Call-Off Contract and the Contractor is responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to the Contractor's Personnel.
- 14.2 No Client is under an obligation to provide office or other accommodation or facilities or services (including telephony and IT services) to the Contractor except as may be specified in any Call-Off Contract.
- 14.3 The Contractor does not remove any Key Personnel engaged in providing Services or managing this Framework Agreement for more than 15 consecutive Business Days without the prior consent of the Framework Client, save where such key person, is absent on sick leave, or other statutory leave (such as jury service/maternity/paternity or adoption leave) or has left the Contractor's employment.

**15. Conflict of Interest**

15.1 The Contractor acknowledges and agrees that it does not and will not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Framework Scope or any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Framework Manager.

15.2 The Contractor undertakes ongoing and regular conflict of interest checks throughout the duration of this Framework Agreement and in any event not less than once in every 6 months and notifies the Framework Manager in writing immediately on becoming aware of any actual or potential conflict of interest with the Framework Scope or any member of the TfL Group and works with the Framework Client to do whatever is necessary (including the separation of staff working on, and data relating to, any Services from the matter in question) to manage such conflict to the Framework Client's satisfaction, provided that where the Framework Client is not so satisfied (in its absolute discretion) it is entitled to terminate this Framework Agreement, and any Call-Off Contract between the Contractor and members of the TfL Group in existence, in accordance with Clause 32.1.6.

**16. Corrupt Gifts and Payment of Commission**

The Contractor does not, and ensures that its employees, agents, Subcontractors and Indirect Subcontractors do not, pay any commission, fees or grant any rebates to any employee, officer or agent of any Client nor favour any employee, officer or agent of any Client with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of any Client other than as a representative of the relevant Client, without the relevant Client's prior written approval.

**17. Quality and Best Value**

17.1 The Contractor acknowledges that each Client is a best value authority for the purposes of the Local Government Act 1999 and as such a Client may be required to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness. The Contractor assists each Client (where applicable) to discharge each Client's duty where possible and, in doing so, inter alia carries out any best value review reasonably requested by the Client.

## 18. **IT Requirements**

18.1 The Contractor ensures that any software, electronic or magnetic media, hardware or computer system used or supplied by the Contractor in connection with this Framework Agreement and each Call-Off Contract:

18.1.1 does not have its functionality or performance affected, or be made inoperable or be more difficult to use by reason of any data related input or processing in or on any part of such software, electronic or magnetic media, hardware or computer system;

18.1.2 does not cause any damage, loss or erosion to or interfere adversely or in any way with the compilation, content or structure of any data, database, software or other electronic or magnetic media, hardware or computer system used by, for or on behalf of any Client, on which it is used or with which it interfaces or comes into contact;

18.1.3 is compliant with e-GIF;

18.1.4 is Euro Compliant; and

18.1.5 any variations, enhancements or actions undertaken by the Contractor in respect of such software, electronic or magnetic media, hardware or computer system do not affect the Contractor's compliance with this Clause 18.

## 19. **Set-Off**

When under this Framework Agreement or any Call-Off Contract with any member of the TfL Group any sum of money is recoverable from or payable by the Contractor such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time thereafter may become due to the Contractor under any Call-Off Contract with any member of the TfL Group or any other contract with the Framework Client or member of the TfL Group. Any sum due from the Contractor, whether under this Framework Agreement or any other contract with the Framework Client, is payable as a debt to the Framework Client.

## 20. **Confidentiality and Announcements**

20.1 Subject to Clause 22, the Contractor keeps confidential:

- 20.1.1 the terms of this Framework Agreement; and
  - 20.1.2 any and all Confidential Information that it may acquire in relation to any Client.
- 20.2 The Contractor does not use any Client's Confidential Information for any purpose other than to perform its obligations under this Framework Agreement and any Call-Off Contract. The Contractor ensures that its officers and employees comply with the provisions of Clause 20.1.
- 20.3 The obligations on the Contractor set out in Clause 20.1 do not apply to any Confidential Information:
- 20.3.1 which either of the Framework Parties or a Client can demonstrate is in the public domain (other than as a result of a breach of this Clause 20);
  - 20.3.2 which a Framework Party or a Client is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure; or
  - 20.3.3 to the extent that such disclosure is to the Secretary for Transport (or the government department responsible for public transport in London for the time being) the Office of Rail Regulation, or any person or body who has statutory responsibilities in relation to transport in London and their employees, agents and sub-contractors.
- 20.4 The Contractor keeps secure all materials containing any information in relation to the Framework Agreement or to any Call-Off Contract and its performance.
- 20.5 The Contractor does not communicate with representatives of the general or technical press, radio, television or other communications media in relation to the existence of the Framework Agreement or any Call-Off Contract or that it is providing the Services or in relation to any matter under or arising from the Framework Agreement or any Call-Off Contract unless specifically granted permission to do so in writing by the relevant Client. The Framework Client or the relevant Client has the right to approve any announcement before it is made.
- 20.6 The provisions of this Clause 20 will survive any termination of this Contract for a period of 6 years from termination.

## 21. **Data Protection**

- 21.1 Both Framework Parties acknowledge and agree that each Framework Party is a sole and independent controller of the personal data that is processed under this Framework Agreement, should that relationship change and either Framework Party act as a processor for and on behalf of the other Framework Party, the Framework Parties act in good faith to enter into appropriate processing clauses in compliance with Data Protection Laws as directed by the Framework Client at its own cost.
- 21.2 Both Framework Parties shall comply with their respective obligations under the Data Protection Laws.
- 21.3 The Contractor follows the 10 Steps to Cyber Security issued by the National Cyber Security Centre.

## 22. **Freedom of Information and Transparency**

- 22.1 The Contractor acknowledges that each Client:
- 22.1.1 may be subject to the FOI Legislation and agrees to assist and cooperate and procure that its Subcontractors assist and cooperate with each Client to enable each Client to comply with its obligations under the FOI Legislation; and
  - 22.1.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Contractor.
- 22.2 Without prejudice to the generality of Clause 22.1, the Contractor:
- 22.2.1 transfers, and procures that its Subcontractors transfer, to the appropriate Client (or such other person as may be notified by the relevant Client to the Contractor) each Information Access Request relevant to this Framework Agreement or a Call-Off Contract, the Services or any member of the TfL Group that it or they (as the case may be) receive as soon as practicable and in any event within two (2) Business Days of receiving such Information Access Request; and
  - 22.2.2 in relation to Information held by the Contractor on behalf of a Client, provides, and procures that its Subcontractors provide, the relevant Client with details about and/or copies of all such

Information that such Client requests and such details and/or copies shall be provided within five (5) Business Days of a request from the relevant Client (or such other period as the relevant Client may reasonably specify), and in such forms as the relevant Client may reasonably specify.

- 22.3 The appropriate Client is responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Access Request in accordance with the FOI Legislation.
- 22.4 The Contractor does not itself respond to any person making an Information Access Request, save to acknowledge receipt, unless expressly authorised to do so by the appropriate Client.
- 22.5 The Contractor acknowledges that each Client may be subject to the Transparency Commitment. Accordingly, notwithstanding Clause 20.1 and Clause 22.1, the Contractor hereby gives its consent for the each Client to publish the Contract Information to the general public.
- 22.6 Each Client may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the relevant Client may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation.
- 22.7 The relevant Client may in its absolute discretion consult with the Contractor regarding any redactions to the Contract Information to be published pursuant to Clause 22.6. The relevant Client makes the final decision regarding publication and/or redaction of the Contract Information.

23. **Not Used**

24. **Responsible Procurement**

- 24.1 The Contractor acknowledges the requirements of the Responsible Procurement Policy in the performance of its obligations under this Framework Agreement and each Call-Off Contract.
- 24.2 The Contractor provides such cooperation and assistance as may be reasonably requested by each Client in relation to the Responsible Procurement Policy.

24.3 The Contractor complies with the requirements of Schedule 14 regarding strategic labour needs and training in the performance of its obligations under this Framework Agreement and each Call-Off Contract. No Client is liable to the Contractor for any costs, charges or expenses arising out of or associated with compliance with Schedule 14.

## 25. **Compliance with Policies and Law**

25.1 The Contractor, at no additional cost to any Client:

25.1.1 undertakes to procure that all the Contractor's Personnel comply with all of the Policies that are relevant to the performance of the Services, including the provisions relating to safety, security, business ethics, drugs and alcohol and any other policies and on site regulations specified by a Client in a Call-Off Contract for personnel working at Client Premises or accessing the relevant Client's computer systems;

25.1.2 provides the Services in compliance with and ensures that the Contractor's Personnel comply with all requirements of all Acts of Parliament, statutory instruments, court orders, regulations, directives, European Community decisions (insofar as legally binding), bye-laws, treaties and other regulatory requirements relevant to either or both of the Contractor's business or a Client's business, from time to time in force which are or may become applicable to the Services. The Contractor promptly notifies the relevant Client if the Contractor is required to make any change to the Services for the purposes of complying with its obligations under this Clause 25.1.2;

25.1.3 without limiting the generality of Clause 25.1.2, complies with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;

25.1.4 acknowledges that each Client is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination on the grounds of sex, marital or civil partnership status, race, sexual orientation, religion or belief, age, pregnancy or maternity, gender reassignment or disability (a "**Relevant Protected Characteristic**") (as the case may be) and to

promote equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it. In providing the Services, the Contractor assists and cooperates with each Client where possible in satisfying this duty;

- 25.1.5 where possible, provides the Services in such a manner as to:
  - 25.1.5.1 promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;
  - 25.1.5.2 eliminate unlawful discrimination; and
  - 25.1.5.3 promote good relations between persons of different racial groups, religious beliefs and sexual orientation;
- 25.1.6 where applicable and without limiting the generality of Clause 25.1.2, complies with the Modern Slavery Act 2015 and any guidance issued by the Secretary of State under it;
- 25.1.7 without prejudice to any other provision of this Clause 25.1 or the Schedules, complies with any provisions set out in the Schedules that relate to traffic management and complies with the reasonable instructions of each Client's Traffic Manager as may be made available to the Contractor from time to time. For the purposes of this Clause 25.1.7, "**Traffic Manager**" means a Client's traffic manager appointed in accordance with section 17 of the Traffic Management Act 2004; and
- 25.1.8 promptly notifies the Contractor's Personnel and the relevant Client(s) of any health and safety hazards that exist or may arise in connection with the performance of the Services.

In all cases, the costs of compliance with this Clause 25.1 are borne by the Contractor.

- 25.2 Without prejudice to Clause 25.1, the Contractor complies with the Framework Client's workplace harassment policy as updated from time to time (copies of which are available on request from the Framework Client) and with the Framework Client's Code of Conduct (which is available on the Framework Client's website, [www.tfl.gov.uk](http://www.tfl.gov.uk)).

- 25.3 In providing the Services, the Contractor (taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or vibration) has appropriate regard (insofar as the Contractor's activities may impact on the environment) to the need to:
- 25.3.1 preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;
  - 25.3.2 enhance the environment and have regard to the desirability of achieving sustainable development;
  - 25.3.3 conserve and safeguard flora, fauna and geological or physiological features of special interest; and
  - 25.3.4 sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.
- 25.4 The Contractor complies with the provisions of Schedule 22 in the performance of its obligations under this Framework Agreement and each Call-Off Contract. No Client is liable to the Contractor for any costs, charges or expenses arising out of or associated with compliance with Schedule 22.
26. **Not Used**
27. **London Living Wage**
- 27.1 The Contractor acknowledges and agrees that the Mayor of London pursuant to section 155 of the Greater London Authority Act 1999 has directed that members of the TfL Group ensure that the London Living Wage be paid to anyone engaged by any member of the TfL Group who is required to discharge contractual obligations (whether as a direct contractor or a sub-contractor (of any tier) of that direct contractor) on the Framework Client's estate in the circumstances set out in Clause 27.2.1.
- 27.2 Without prejudice to any other provision of this Framework Agreement and any Call-Off Contract, the Contractor:
- 27.2.1 ensures that its employees and procures that the employees of its Subcontractors and Indirect Subcontractors engaged in the provision of the Services:

27.2.1.1 for two (2) or more hours of work in any given day in a week, for eight (8) or more consecutive weeks in a year; and

27.2.1.2 on any Client's estate including (without limitation) premises and land owned or occupied by any Client,

be paid an hourly wage (or equivalent of an hourly wage) equivalent to or greater than the London Living Wage;

27.2.2 ensures that none of:

27.2.2.1 its employees; nor

27.2.2.2 the employees of its Subcontractors and Indirect Subcontractors;

engaged in the provision of the Services be paid less than the amount to which they are entitled in their respective contracts of employment;

27.2.3 provides to each Client such information concerning the London Living Wage as the Client or its nominees may reasonably require from time to time, including (without limitation):

27.2.3.1 all information necessary for the Client to confirm that the Contractor is complying with its obligations under this Clause 27; and

27.2.3.2 reasonable evidence that Clause 27.2.1 has been implemented;

27.2.4 15.3.4 disseminates on behalf of each Client to:

27.2.4.1 its employees; and

27.2.4.2 the employees of its Subcontractors and Indirect Subcontractors;

engaged in the provision of the Services such perception questionnaires as the Client may reasonably require from time to time and promptly collates and returns to the Client responses to such questionnaires; and

27.2.5 cooperates and provides all reasonable assistance in monitoring the effect of the London Living Wage including (without limitation):

27.2.5.1 allowing the CCSL to contact and meet with the Contractor's employees and any trade unions representing the Contractor's employees;

27.2.5.2 procuring that the Contractor's Subcontractors and Indirect Subcontractors allow the CCSL to contact and meet with the Subcontractors' and Indirect Subcontractors' employees and any trade unions representing the Subcontractors' and Indirect Subcontractors' employees,

in order to establish that the obligations in Clause 27.2.1 have been complied with.

27.3 For the avoidance of doubt the Contractor:

27.3.1 implements the annual increase in the rate of the London Living Wage; and

27.3.2 procures that its Subcontractors and Indirect Subcontractors implement the annual increase in the rate of the London Living Wage,

on or before 1 April in the year following the publication of the increased rate of the London Living Wage.

27.4 Each Client reserves the right to audit (acting by itself or its nominee(s)) the provision of the London Living Wage to the Contractor's staff and the staff of its Subcontractors and Indirect Subcontractors.

27.5 Without limiting the Framework Client's rights under any other termination provision in this Framework Agreement or any Client's rights under any termination provision in any Call-Off Contract, the Contractor shall remedy any breach of the provisions of this Clause 27 within four (4) weeks' notice of the same from the relevant Client (the "**Notice Period**"). If the Contractor remains in breach of the provisions of this Clause 27 following the Notice Period, the Framework Client may by written notice to the Contractor immediately terminate this Framework Agreement and/or any Client may immediately terminate the relevant Call-Off Contract.

28. **DBS Checks**

28.1 If required by a Client the Contractor provides all necessary details to the relevant Client of staff engaged by the Contractor to enable the relevant Client to carry out all necessary checks with the Disclosure and Barring Service on such staff. Such checks are primarily required in respect of the Contractor's staff who will be executing works or services or any part of them at any school, Adult and Community Services location or other locations identified by the relevant Client. The costs of such checks are borne by each relevant Client and the Contractor complies with all requirements of each relevant Client which may be communicated to the Contractor as a consequence of the findings of such checks and each relevant Client has no liability in respect of any consequential claim which an employee of the Contractor may make against them.

29. **Quality Submission**

29.1 The Quality Submission sets out the Contractor's proposals for the management and resourcing of the Services.

29.2 The Contractor warrants that the representations contained in the Quality Submission are accurate in every respect and may be fully relied upon by each Client, including where the standards represented exceed the minimum originally specified by the Framework Client and each other Client.

29.3 Should any discrepancy arise between the Quality Submission and other Call-Off Contract documents the Scope takes precedence except where the Quality Submission includes a standard which exceeds that specified in the other Call-Off Contract documents, in which case the Quality Submission takes precedence over those other documents.

29.4 Any failure by the Contractor to comply with the Quality Submission for any reason does not entitle the Contractor to a change in the prices for any Call-Off Contract or any allowance of time whether by way of compensation event or otherwise pursuant to a Call-Off Contract.

30. **Considerate Contractor Scheme**

30.1 The Contractor registers each Call-Off Contract under the Considerate Constructor's Scheme.

30.2 The Contractor complies with the Considerate Constructor's Scheme Code of Considerate Practice in providing Services pursuant to each Call-Off Contract.

31. **Not used**

32. **Breach and Termination of Framework Agreement**

32.1 Without prejudice to the Framework Client's right to terminate at common law, the Framework Client may terminate this Framework Agreement immediately upon giving notice to the Contractor if:

32.1.1 except as provided in and without prejudice to Clauses 32.1.3 and 32.1.4, the Contractor has committed any material or persistent breach of this Framework Agreement or any Call-Off Contract and in the case of such a breach that is capable of remedy fails to remedy that breach within 10 Business Days (or such other timeframe as specified in writing by the Framework Client) from the date of written notice to the Contractor giving details of the breach and requiring it to be remedied; or

32.1.2 the Contractor or a Holding Company is subject to Insolvency; or

32.1.3 any of the events referred to in Clause 5.4 occur (regardless of whether or not the notice required by Clause 5.4 is given by the Contractor); or

32.1.4 the Contractor is in breach of Clause 16; or

32.1.5 without limiting 32.1.4 above, the Contractor or any of its officers, employees, or agents commits any act of bribery described in the Bribery Act 2010; or

32.1.6 the Framework Client is not satisfied on the issue of any conflict of interest in accordance with Clause 15; or

32.1.7 the Contractor is in breach of Clause 25 and in the case of Clause 25.1.1 only if such failure is

32.1.7.1 irremediable; or

32.1.7.2 in the case of a failure that is capable of remedy, not remedied within 10 Business Days (or such other

timeframe as specified in writing by the Framework Client) from the date of written notice to the Contractor giving details of the failure; or

32.1.8 not used; or

32.1.9 the Contractor commits any of the money laundering related offences listed in the Public Contracts Regulations 2015; or

32.1.10 the Contractor fails to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law and such failure is

32.1.10.1 irremediable; or

32.1.10.2 in the case of a failure that is capable of remedy, not remedied within 10 Business Days (or such other timeframe as specified in writing by the Framework Client) from the date of written notice to the Contractor giving details of the failure; or

32.1.11 any other right of termination arises which is referred to in this Framework Agreement.

32.2 Without prejudice to any of the Framework Client's other rights, powers or remedies (whether under this Framework Agreement or otherwise) if the Contractor is in breach of any of its warranties and/or obligations under Clause 5 and/or any of its other obligations in respect of any Services under this Framework Agreement or any Call-Off Contract, the Contractor, if required to do so by the Framework Client, promptly remedies and/or re-performs the relevant Services or part of it at its own expense to ensure compliance with such warranties and/or obligations. Nothing in this Clause 32.2 prevents the Framework Client from procuring the provision of any Services or any remedial action in respect of any Services from an alternative service provider and, where the Framework Client so procures any Services or any remedial action, the Framework Client is entitled to recover from the Contractor all additional Losses incurred by the Framework Client as a result including those attributable to any Client procuring such Services or remedial action from such alternative service provider.

32.3 To the extent that the Framework Client has a right to terminate this Framework Agreement under this Clause 32 then, as an alternative to termination, the Framework Client may by giving notice to the Contractor require the Contractor to provide part only of the Framework Scope with effect from the date specified in the Framework Client's notice whereupon the Framework Scope is construed accordingly.

32.4 Termination of the Framework Agreement does not automatically terminate each Call-Off Contract.

### **33. Consequences of Termination or Expiry**

33.1 Notwithstanding the provisions of Clause 20 (Confidentiality and Announcements), whenever the Framework Client chooses to put out to tender for a replacement service provider some or all of the works and services within the Framework Scope, the Contractor discloses to tenderers such information concerning the Framework Scope as the Framework Client requires for the purposes of such tender. The Contractor may impose upon any recipient of such information such obligations of confidentiality as it may reasonably require.

33.2 The termination or expiry of this Framework Agreement does not prejudice or affect any right, power or remedy which has accrued or accrues to either Framework Party prior to or after such termination or expiry.

33.3 Upon expiry or termination of this Framework Agreement or relevant Call-Off Contract (howsoever caused) the Contractor, at no further cost to the Framework Client on receipt of the Framework Client's written instructions to do so (but not otherwise), arranges to remove all electronically held information by a mutually agreed date, including the purging of all disk-based information and the reformatting of all disks.

33.4 On termination of this Framework Agreement under Clause 32.1 or following an alteration of the Framework Scope under Clause 32.3 (but in the case of the latter only insofar as the right to alter the Framework Scope arises as a result of a right for the Framework Client to terminate under Clause 32.1), each Client may enter into any agreement with any third party or parties as each Client thinks fit to provide any, or all, or any part of the Framework Scope and the Contractor is liable for all additional expenditure reasonably incurred by each Client in having such works and services carried out and all other costs and damages reasonably incurred by each Client in consequence

of such termination. Each Client may deduct such costs from sums due to the Contractor or otherwise recover such costs from the Contractor as a debt.

**34. Declaration of Ineffectiveness and Public Procurement Termination Event**

34.1 In the event that a court makes a Declaration of Ineffectiveness in relation to this Framework Agreement, the Framework Client shall promptly notify the Contractor. The Framework Parties agree that the provisions of Clause 33 and Clauses 34.1, 34.2, 34.4 to 34.6 (inclusive) and 34.12 shall apply as from the time when the Declaration of Ineffectiveness is made. The provisions of Clause 33.4 shall apply (mutatis mutandis) as if (for this purpose and no other) the notice of Declaration of Ineffectiveness was a notice by the Framework Client to terminate the Call-Off Contract under Clause 33.4.

34.2 The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to the Contractor or any Client prior to or after such Declaration of Ineffectiveness in respect of the period prior to the Declaration of Ineffectiveness, save as otherwise expressly provided to the contrary in Clauses 34.1 to 34.6 inclusive.

34.3 During any court proceedings seeking a Declaration of Ineffectiveness in respect of this Framework Agreement, the Framework Client may require the Contractor to prepare a Cessation Plan in accordance with this Clause 34.3 by issuing a notice in writing. As from the date of receipt by the Contractor of such notification from the Framework Client, the Contractor and Framework Client (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Framework Client shall reasonably determine an appropriate Cessation Plan with the object of achieving:

34.3.1 an orderly and efficient cessation of the rights and obligations contained within this Framework Agreement; and

34.3.2 minimal disruption or inconvenience to the Framework Client,

in accordance with the provisions of Clauses 34.2 to 34.6 (inclusive) and which the Contractor and Framework Client agree would have effect in the event that a Declaration of Ineffectiveness is made.

34.4 Where there is any conflict or discrepancy between the provisions of Clause 33 and Clauses 34.2 to 34.6 (inclusive) and 34.12 or the Cessation Plan, the

provisions of these Clauses 34.2 to 34.6 (inclusive) and 34.12 and the Cessation Plan shall prevail.

- 34.5 The Contractor and the Framework Client will comply with their respective obligations under the Cessation Plan (as agreed by the Contractor and the Framework Client or, where agreement cannot be reached, as reasonably determined by the Framework Client) in the event that a Declaration of Ineffectiveness is made.
- 34.6 The Framework Client shall pay the Contractor's reasonable costs in assisting the Framework Client in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs agreed as part of this Framework Agreement or as otherwise reasonably determined by the Framework Client, provided that the Framework Client shall not be liable to the Contractor for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Framework Agreement pursuant to any Declaration of Ineffectiveness.
- 34.7 The Framework Client may terminate this Framework Agreement in the event that one or more of the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 ("**Public Procurement Termination Grounds**") applies. Where the Framework Client exercises its right to terminate pursuant to this Clause 34.7, the Framework Client shall promptly notify the Contractor and the Framework Parties agree that:
- 34.7.1 the provisions of Clause 33 and these Clauses 34.7 to 34.12 (inclusive) shall apply as from the date of receipt by the Contractor of the notification of termination on Public Procurement Termination Grounds; and
- 34.7.2 if there is any conflict or discrepancy between the provisions of Clause 33 and these Clauses 34.7 to 34.12 (inclusive) or the Cessation Plan, the provisions of these Clauses 34.7 to 34.12 (inclusive) and the Cessation Plan shall prevail.
- 34.8 Termination on the Public Procurement Termination Grounds shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to the Contractor or any Client prior to or after such termination on Public Procurement Termination Grounds, in respect of the period prior to such termination, save as otherwise expressly provided for in Clauses 34.7 to 34.11 inclusive.

- 34.9 As from the date of receipt by the Contractor of the notification of the termination on Public Procurement Termination Grounds, the Contractor and the Framework Client (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Framework Client shall reasonably determine an appropriate Cessation Plan with the object of achieving:
- 34.9.1 an orderly and efficient cessation of the rights and obligations contained within this Framework Agreement; and
  - 34.9.2 minimal disruption or inconvenience to the Framework Client,
- in accordance with the provisions of Clauses 34.7 to 34.11 (inclusive) and to take account of the circumstances of the Public Procurement Termination Grounds.
- 34.10 Upon agreement, or determination by the Framework Client, of the Cessation Plan the Contractor and the Framework Client will comply with their respective obligations under the Cessation Plan.
- 34.11 The Framework Client shall pay the Contractor's reasonable costs in assisting the Framework Client in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs agreed as part of this Framework Agreement or as otherwise reasonably determined by the Framework Client, provided that the Framework Client shall not be liable to the Contractor for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Framework Agreement as a result of Public Procurement Termination Grounds.
- 34.12 For the avoidance of doubt, the provisions of this Clause 34 (and applicable definitions) shall survive any termination of the Framework Agreement following a Declaration of Ineffectiveness or termination on Public Procurement Termination Grounds.

## 35. **Survival**

The provisions of Clauses 1, 3, 4, 5, 7, 8, 9.4, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 27, 28, 29, 30, 32, 33, 34, 35, 36, 39, 40, 45, 46, 47, 48 and any other clauses or Schedules that are necessary to give effect to those clauses survive termination or expiry of this Framework Agreement. In addition, any other provision of this Framework Agreement which by its nature or implication is required to survive the termination or expiry of this Framework Agreement or relevant Call-Off Contract does so.

## 36. **Rights of Third Parties**

- 36.1 Subject to Clauses 36.2 and 36.3, the Framework Parties do not intend that any of the terms of this Framework Agreement or any relevant Call-Off Contract is enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 ("Third Party Act") by any person not a party to it.
- 36.2 Any member of the TfL Group has the right to enforce the terms of this Framework Agreement or any relevant Call-Off Contract as though it were a Client and/or the Framework Client in accordance with the Third Party Act.
- 36.3 Each Client has the right to enforce the terms of Clauses 3, 4, 5, 6, 7, 9.2, 9.4, 10, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 24, 25, 27, 28, 29, 30, 33.4, 34, 35, 36, 39, 40, 45, 46, 47, 48 of this Framework Agreement in accordance with the Third Party Act subject to the terms of this Framework Agreement.
- 36.4 Notwithstanding Clauses 36.2 and 36.3, the Framework Parties are entitled to vary or rescind:
- 36.4.1 this Framework Agreement without the consent of any other Client or any members of the TfL Group (other than the Framework Client); and
  - 36.4.2 any relevant Call-Off Contract without the consent of any or all members of the TfL Group (other than the Framework Client).

## 37. **Contract Variation**

Save where the Framework Client may require an amendment to any Services and/or the Framework Scope, this Framework Agreement may only be varied or amended with the written agreement of the Framework Client and the Contractor. The details of any variations or amendments shall be set out in such form as the Framework Client may dictate and which may be substantially in the form set out in Schedule 19 and shall not be binding upon the Parties unless completed in accordance with such form of variation.

## 38. **Novation and Assignment**

- 38.1 The Framework Client may novate or otherwise transfer this Framework Agreement (in whole or in part).

38.2 Within 10 Business Days of a written request from the Framework Client, the Contractor at its expense executes such agreement as the Framework Client may reasonably require to give effect to any such novation or transfer of all or part of its rights and obligations under this Framework Agreement to 1 or more persons nominated by the Framework Client.

38.3 This Framework Agreement is personal to the Contractor who does not assign the benefit or delegate the burden of this Framework Agreement or otherwise transfer any right or obligation under this Framework Agreement without the prior written consent of the Framework Client.

### 39. **Indemnity**

39.1 The Contractor indemnifies and keeps indemnified the Framework Client against all Losses in respect of, or in any way arising out of any breach of this Framework Agreement or from any negligent act or omission of the Contractor (save to the extent that such Losses may have been caused by the Framework Client).

### 40. **VAT**

40.1 All amounts expressed in this Framework Agreement and each Call-Off Contract as being payable by the Contractor are expressed exclusive of any Value Added Tax ('VAT') which may be chargeable. In the event that VAT is chargeable on the transfer of the whole or any part of the undertaking pursuant to this Framework Agreement and each Call-Off Contract then subject to receipt by the Contractor of a valid VAT invoice or invoices the Contractor pays to the relevant Client an amount equal to the VAT payable (if any) in respect of the same together with any penalty or interest incurred for the late payment of tax.

40.2 The Contractor represents and warrants and undertakes to each Client that it is duly and properly registered for the purpose of VAT.

### 41. **Non-Waiver of Rights**

No waiver of any of the provisions of this Framework Agreement or any relevant Call-Off Contract is effective unless it is expressly stated to be a waiver and communicated to the other Framework Party in writing. The single or partial exercise of any right, power or remedy under this Framework

Agreement does not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

**42. Illegality and Severability**

If any provision of this Framework Agreement (in whole or in part) is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed from this Framework Agreement and the remaining provisions shall continue in full force and effect as if this Framework Agreement had been executed without the invalid, illegal, or unenforceable provision. In the event that in the Framework Client's reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of this Framework Agreement, the Framework Client and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

**43. Entire Agreement**

**43.1 Subject to Clause 43.2:**

43.1.1 this Framework Agreement and all documents referred to in this Framework Agreement, contain all of the terms which the Framework Parties have agreed relating to the subject matter of this Framework Agreement and such documents supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing;

43.1.2 neither Framework Party has been induced to enter into this Framework Agreement by a statement which it does not contain;

43.1.3 and without prejudice to the Contractor's obligations under this Framework Agreement, the Contractor is responsible for and makes no claim against the Framework Client in respect of any misunderstanding affecting the basis of the Contractor's tender in respect of this Framework Agreement or any incorrect or incomplete information howsoever obtained.

**43.2** Nothing in this Clause 43 excludes any liability which a Framework Party would otherwise have in respect of any statement it has made fraudulently to the other Framework Party.

#### 44. **Relationship of the Parties**

Nothing in this Framework Agreement or any Call-Off Contract constitutes, or is deemed to constitute, a partnership between the Framework Parties. Except as expressly provided in this Framework Agreement and any Call-Off Contract, no Framework Party is deemed to be the agent of any other, and no Framework Party holds itself out as the agent of any other.

#### 45. **Notices**

45.1 Any notice, demand or communication in connection with this Framework Agreement is in writing and may be delivered by hand, post or email addressed to the recipient at the address set out at Schedule 1 or any other address (including an email address) notified to the other Parties in writing in accordance with this clause as an address to which notices, invoices and other documents may be sent. The notice, demand or communication is deemed to have been duly served:

45.1.1 if delivered by hand, at the time of delivery;

45.1.2 if delivered by post, 48 hours after being posted or in the case of Airmail 14 Business Days after being posted; or

45.1.3 if delivered by e-mail, at the time of sending the e-mail, provided that the title of the e-mail begins with the words "Service of Notice" and a confirming copy is sent by first class post to the other Party within 24 hours after sending.

#### 46. **Further Assurance**

The Contractor does or procures the doing of all acts and things and executes or procures the execution of all such documents as the Framework Client reasonably considers necessary to give full effect to the provisions of this Framework Agreement and any relevant Call-Off Contract.

#### 47. **Dispute Resolution**

47.1 The Framework Parties follow the procedure below for the avoidance and resolution of any Dispute arising under or in connection with this Framework Agreement.

- 47.2 In this clause, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.
- 47.3 A Framework Party may refer a Dispute to the Adjudicator at any time by way of a Notice of Adjudication. Subject to that, by notice in writing, a Framework Party may refer a Dispute to the Framework Parties' Senior Representatives for consideration. The written notice identifies the Framework Party's Senior Representative, gives brief written particulars of the Dispute, including the provisions of this Framework Agreement that are relevant to the Dispute, the relief sought and the basis for claiming the relief sought.
- 47.4 Within 14 days of receipt of the notice of referral to Senior Representatives, the responding party provides the referring party with a brief written response and identifies the responding party's Senior Representative.
- 47.5 Within a further 14 days the Senior Representatives meet and try to reach agreement to resolve the Dispute. Each Framework Party bears its own costs and expenses in relation to any reference of a Dispute to the Senior Representatives. Any documents prepared or exchanged in relation to the reference of the Dispute to Senior Representatives and any discussions between the Senior Representatives are without prejudice and the Framework Parties do not make use of or rely upon any without prejudice statements in any subsequent Dispute proceedings.
- 47.6 If a Dispute is to be referred to the Adjudicator the Framework Parties appoint the Adjudicator.
- 47.7 Any person requested or selected to act as the Adjudicator in accordance with this Clause 47 is a natural person acting in his personal capacity and is not an employee of any of the Framework Parties, or of any other party related to the Dispute, and declares any interest, financial or otherwise, in any matter relating to the Dispute.
- 47.8 The Adjudicator acts impartially and decides the Dispute as an independent adjudicator and not as an arbitrator.
- 47.9 The Framework Parties may choose an adjudicator (or replacement adjudicator, as necessary) jointly or a Framework Party may ask the Nominating Authority to choose an adjudicator. Such joint appointment or referral to the Nominating Authority takes place immediately upon the serving

of a Notice of Adjudication, or immediately following the position of Adjudicator falling vacant.

47.10 The Nominating Authority chooses an adjudicator within 4 days of the request. The chosen adjudicator becomes the Adjudicator.

47.11 A replacement Adjudicator has the power to decide a Dispute referred to his predecessor but not decided at the time when his predecessor resigned or became unable to act. He deals with an undecided Dispute as if it had been referred to him on the date he was appointed.

47.12 The Adjudicator, his employees and agents are not liable to the Framework Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.

47.13 The Framework Parties may terminate the Adjudicator's appointment at any time. In such a case, or if the Adjudicator fails to give notice of his decision within the period required or agreed under Clause 47.25, or if at any time the Adjudicator declines to act or is unable to act as a result of his death, disability, resignation or otherwise, a person is appointed to replace the Adjudicator in accordance with the provisions of Clause 47.9.

47.14 Before a Framework Party refers a Dispute to the Adjudicator, he gives a Notice of Adjudication to the other Framework Party with a brief description of the Dispute, including the provisions of this Framework Agreement that are relevant to the Dispute, the relief sought, the basis for claiming the relief sought and the decision that he wishes the Adjudicator to make. Following the appointment of the Adjudicator, the Framework Party immediately sends a copy of the Notice of Adjudication to the Adjudicator. Within 3 days of the receipt of the Notice of Adjudication, the Adjudicator notifies the Framework Parties

47.14.1 that he is able to decide the Dispute in accordance with this Framework Agreement or

47.14.2 that he is unable to decide the Dispute and has resigned.

If the Adjudicator does not so notify within 3 days of the issue of the Notice of Adjudication, either Framework Party may act as if he has resigned.

47.15 The terms of remuneration of the Adjudicator are agreed by the Framework Parties and the Adjudicator, with the object of securing the appointment of

the Adjudicator, within 7 days of the Notice of Adjudication. If any Framework Party (but not all the Framework Parties) rejects the terms of the remuneration of the Adjudicator the same are settled (and binding upon the Framework Parties) by agreement between the Nominating Authority and the Adjudicator (provided that the level of the Adjudicator's remuneration does not exceed the level originally proposed to the Framework Parties by the Adjudicator). If all the Framework Parties reject the terms of remuneration proposed by an Adjudicator another person is selected as an Adjudicator in accordance with Clause 47.9.

47.16 Within 7 days of a Framework Party giving a Notice of Adjudication he:

47.16.1 refers the Dispute to the Adjudicator,

47.16.2 provides the Adjudicator with the information on which he relies, including the factual and contractual or other basis of the claim, the amount (if any) claimed and any supporting documents, and

47.16.3 provides a copy of the information and supporting documents he has provided to the Adjudicator to the other Framework Party.

Upon receipt of the referral notice, the Adjudicator must inform every party to the Dispute of the date that it was received.

47.17 Within 14 days from the referral, any Framework Party, who is not the Framework Party giving a Notice of Adjudication, provides the Adjudicator with the information on which he relies, including the factual and contractual or other basis of the claim, the amount (if any) claimed and any supporting documents and provides a copy of the information and supporting documents it has provided to the Adjudicator to the Party giving a Notice of Adjudication. These periods may be extended if the Adjudicator and Framework Parties agree.

47.18 The Adjudicator may:

47.18.1 make directions for the conduct of the Dispute

47.18.2 review and revise any action or inaction of the Framework Parties related to the Dispute

47.18.3 take the initiative in ascertaining the facts and the law related to the Dispute

- 47.18.4 instruct a Framework Party to provide further information related to the Dispute within a stated time and
- 47.18.5 instruct a Framework Party to take any other action which he considers necessary to reach his decision and to do so within a stated time.
- 47.19 If a Framework Party does not comply with any instruction within the time stated by the Adjudicator, the Adjudicator may continue the adjudication and make his decision based upon the information and evidence he has received.
- 47.20 The Adjudicator considers any relevant information submitted by any of the Framework Parties and makes available to them any information to be taken into account in reaching a decision.
- 47.21 If a matter disputed by a Framework Party under or in connection with different contracts including any Call-Off Contract or subcontract is also a matter disputed under or in connection with this Framework Agreement a Framework Party may, with the consent of the other Framework Party, refer the related dispute to the Adjudicator at the same time as the Framework Agreement referral. The Adjudicator then decides the disputes together and references to the Framework Parties for the purposes of the Dispute are interpreted as including any other relevant parties. The Framework Parties comply with any reasonable request by the Adjudicator for more time to decide the disputes referred to him.
- 47.22 A communication between a Framework Party and the Adjudicator is communicated to the other Framework Party at the same time.
- 47.23 All notices, written submissions and any other written communications between the Framework Parties and the Adjudicator are either delivered by hand, sent by e-mail or sent by first class pre-paid post or mail delivery service providing proof of delivery and in each case are copied simultaneously (delivered or sent as aforesaid) to the other Framework Parties. Copies by way of confirmation of all communications by e-mail between the Framework Parties and the Adjudicator are also sent by first class post within 24 hours after transmission.
- 47.24 Save as required by law, the Framework Parties and the Adjudicator keep information relating to the Dispute confidential.

- 47.25 The Adjudicator decides the Dispute and notifies the Framework Parties of his decision and his reasons in writing within 28 days of receipt by the Adjudicator of the referral notice. This period may be extended by up to 14 days with the consent of the Framework Party giving the Notice of Adjudication or by any other period agreed by the Framework Parties.
- 47.26 After the giving of a Notice of Adjudication, the Framework Parties may seek to agree how the Adjudicator allocates the costs and expenses of the adjudication, excluding the Adjudicator's own remuneration and expenses, as between the Framework Parties. Subject to any agreement of the Framework Parties, the Adjudicator allocates payment of his own remuneration and expenses and the other costs and expenses of the adjudication as between the Parties.
- 47.27 Unless and until the Adjudicator has notified the Framework Parties of his decision the Framework Parties proceed as if the matter disputed was not disputed.
- 47.28 If the Adjudicator does not make his decision and notify it to the Framework Parties within the time provided by this Framework Agreement the Framework Parties and the Adjudicator may agree to extend the period for making his decision. If they do not agree to an extension, either Framework Party may act as if the Adjudicator has resigned.
- 47.29 The Adjudicator's decision is binding on the Framework Parties unless and until revised by the courts pursuant to any legal proceedings and is enforceable as a matter of contractual obligation between the Framework Parties and not as an arbitral award. The Adjudicator's decision is final and binding if neither Framework Party has:
- 47.29.1 notified the other it is dissatisfied with a matter decided by the Adjudicator and intends to refer the matter to the courts within the time required by this contract; and/or
- 47.29.2 commenced court proceedings within the time required by this contract,
- or unless agreed otherwise by the Framework Parties.
- 47.30 The Adjudicator may, on his own initiative or on the application of a Framework Party correct his decision so as to remove a clerical or

typographical error arising by accident or omission. Any correction of a decision must be made within 7 days of the delivery of the decision to the Framework Parties. As soon as possible after correcting a decision in accordance with this clause, the Adjudicator must deliver a copy of the corrected decision to each of the Framework Parties. Any correction of a decision forms part of the decision.

47.31 Unless the Framework Parties agree otherwise, a Framework Party does not refer any Dispute under or in connection with this Framework Agreement to the courts unless it has first been decided by the Adjudicator in accordance with this Framework Agreement.

47.32 Any Framework Party may apply to any appropriate court for enforcement of the Adjudicator's decision.

47.33 If, after the Adjudicator notifies his decision, a Framework Party is dissatisfied, that Framework Party may notify the other Framework Party of the matter which he disputes and state that he intends to refer it to the courts. The Dispute may not be referred to the courts unless:

47.33.1 this notification is given within 6 weeks of the notification of the Adjudicator's decision; and

47.33.2 court proceedings are commenced within six (6) months of the notification of the Adjudicator's decision.

47.34 The courts settle the Dispute referred to it. The courts have the powers to reconsider any decision of the Adjudicator and to review and revise any action or inaction of the Framework Parties related to the Dispute. A Framework Party is not limited in court proceedings to the information or evidence put to the Adjudicator.

47.35 A Framework Party does not call the Adjudicator as a witness in court proceedings.

## 48. **Governing Law**

48.1 The Framework Agreement is governed by and construed in accordance with the law of England. Without prejudice to Clause 47, and subject to Clause 48.2, the courts of England have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Framework Agreement

48.2 Any Framework Party may seek interim injunctive relief or any other interim measure of protection in any court of competent jurisdiction.

48.3 Subject to Clause 48.2, each Framework Party waives any objection to, and submits to, the jurisdiction of the courts of England and Wales. Each Framework Party agrees that a judgment or order of any such court is binding upon it and may be enforced against it in the courts of any other jurisdiction.

#### 49. **Execution**

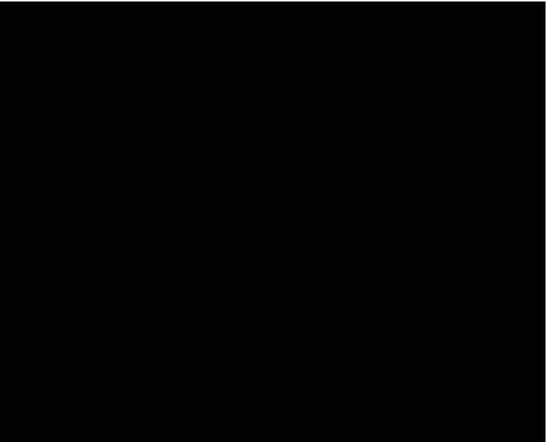
49.1 This Framework Agreement may be executed, without limitation:

49.1.1 by the electronic application of a party's authorised signatory's/signatories' signature(s) and provision of an electronic copy of the same; and

49.1.2 in any number of counterparts and each counterpart will when executed be an original of this Framework Agreement and all counterparts together will constitute one instrument.

**THE FRAMEWORK AGREEMENT** has been executed as a Deed and delivered by the Framework Parties the day and year written above.

**EXECUTED** as a **DEED** by )  
**RINGWAY INFRASTRUCTURE** )  
**SERVICES LIMITED** acting by a )  
Director and its Company )  
Secretary or two Directors )



Director

Director/Secretary

**EXECUTED** as a **DEED** by )  
**TRANSPORT FOR LONDON** acting by its attorney )  
in the presence of a witness: )



Signature of attorney

NAME (BLOCK)

Signature of Witness

Name of witness

Address of witness

# SCHEDULE 1

## FRAMEWORK DATA

1. **Agreement Reference Number:** tfl\_scp\_001746a\_1\_fw
2. **Contract title:** London Highway Maintenance and Projects Framework
3. **Name of Contractor:** Ringway Infrastructure Services Limited (Company Registration Number 02756434)  
  
Address: Albion House, Springfield Road, Horsham, West Sussex, RH12 2RW
4. **Name of Parent Company:** Eurovia UK Limited (Company Registration Number 02884116)  
  
Address: Albion House, Springfield Road, Horsham, West Sussex, RH12 2RW
5. **Framework Agreement Service Commencement Date:** the date of the Framework Agreement
6. **Framework Term:** the period from and including the Framework Agreement Service Commencement Date until and including 31 March 2029, subject to extension pursuant to clause 4.2 of the Framework Agreement

7. **Details of the Framework Manager**

**Name:** [REDACTED]  
**Address:** Palestra  
197 Blackfriars Road  
London  
SE1 8NJ  
**Tel:** [REDACTED]  
**Email:** [REDACTED]

8. The Framework Scope is as set out in Schedule 2
9. Address for service of notices and other documents in accordance with Clause 45 is:

|                                  |  |
|----------------------------------|--|
| <b>For the Framework Client:</b> | <b>Transport for London</b><br>Surface Transport<br>Palestra,<br>197 Blackfriars, London SE1 8NJ<br>E-mail address: [REDACTED]<br>For the attention of: [REDACTED] |
|----------------------------------|--|

|                            |   |
|----------------------------|---|
| <b>For the Contractor:</b> | Ringway Infrastructure Services Ltd<br>Albion House<br>Springfield Road<br>Horsham<br>West Sussex<br>RH12 2RW |
|----------------------------|---|

Telephone number: [REDACTED]  
E-mail address: [REDACTED]

- 10. The *language of this contract* is English
- 11. The *period for reply* is two weeks
- 12. Payment

The *currency of the contract* is the pound sterling (£)

The *interest rate* is 2% per annum above the base rate of the Bank of England

The *assessment interval* is 4 weeks

The Contractor's invoices contain the information required by each Call-Off Contract

The *exchange rates* are those published by the Bank of England at 12:00 Monday in the week in which the transaction takes place.

- 13. The Key Personnel of the *Contractor*

| Position   | Name       |
|--|------------|
| Contractor Manager                                       | [REDACTED] |
| Commercial Manager (or equivalent title)                 | [REDACTED] |
| Core Service Manager (or equivalent title)               | [REDACTED] |
| Projects/ Schemes Delivery Manager (or equivalent title) | [REDACTED] |

- 14. Subcontractors nominated by the *Contractor* are:

| Subcontractor | Contact details                                      | Work Type                              |
|---------------|--|--|
| [REDACTED]    | [REDACTED]<br>[REDACTED]<br>[REDACTED]               | [REDACTED]<br>[REDACTED]<br>[REDACTED] |
| [REDACTED]    | [REDACTED]<br>[REDACTED]<br>[REDACTED]<br>[REDACTED] | [REDACTED]<br>[REDACTED]<br>[REDACTED] |
| [REDACTED]    | [REDACTED]<br>[REDACTED]<br>[REDACTED]               | [REDACTED]<br>[REDACTED]               |

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

15. PRICING:

The fee percentage is [REDACTED]%

The target cost fee percentage is [REDACTED]%

The Contractor's share percentages and the share ranges are

| <i>share range</i> | <i>Contractor's share percentage</i> |
|--------------------|--------------------------------------|
| less than 80%      | 0%                                   |
| from 80% to 90%    | 25%                                  |
| from 90% to 110%   | 50%                                  |
| from 110% to 120%  | 75%                                  |
| greater than 120%  | 100%                                 |

Schedule of Rates percentage adjustments for Clients other than the Framework Client (clause 6.5 of the Framework Agreement):

The percentage adjustment for the Schedule of Rates for Services within the Relevant Area is [REDACTED] % (state plus or minus), save

that the percentage adjustment is not applied to any percentage set out in the Schedule of Rates.

The percentage adjustment for the Schedule of Rates for Services outside of the Relevant Area is [REDACTED] % (state plus or minus), save that the percentage adjustment is not applied to any percentage set out in the Schedule of Rates.

The Schedule of Rates is in Volume C of the Framework Agreement

**Data for Schedule of Cost Components**

The listed items of Equipment purchased for work on this contract, with an on cost charge, are

| Equipment                    | time-related on cost charge | per | time period |
|------------------------------|-----------------------------|-----|-------------|
| Ground Hog Welfare Unit      | [REDACTED]                  |     | per day     |
| Plant Safe                   | [REDACTED]                  |     | per day     |
| Haulage of Welfare Equipment | [REDACTED]                  |     | per move    |

The rates for special Equipment are

| Equipment                           | size or capacity | rate       |
|-------------------------------------|------------------|------------|
| EV Pick Up                          | 4.25t            | [REDACTED] |
| eBike - Cargo                       | -                | [REDACTED] |
| Cable Avoidance Tool GCAT4+ Locator | -                | [REDACTED] |
| Vacuum Slab/Kerb Lifter             | -                | [REDACTED] |
| Salt Solution Feeder Tank           | 1m3              | [REDACTED] |
| 4x2 Crash Cushion (IPV)             | 18t (GVW)        | [REDACTED] |

The rates for Defined Cost of manufacture and fabrication outside the Service Areas by the *Contractor* are

| category of employee | rate |
|----------------------|------|
|----------------------|------|

|            |            |
|------------|------------|
| Fabricator | ██████████ |
|------------|------------|

|        |            |
|--------|------------|
| Welder | ██████████ |
|--------|------------|

The rate for people providing *shared services* outside the Service Areas are

| <i>shared service</i> | category of person | rate |
|-----------------------|--------------------|------|
|-----------------------|--------------------|------|

**Data for the Short  
Schedule of Cost  
Components**

The *people rates* are

| category of person | unit | rate |
|--------------------|------|------|
|--------------------|------|------|

|                                   |          |            |
|-----------------------------------|----------|------------|
| Contractor Manager                | per hour | ██████████ |
| Commercial Manager                | per hour | ██████████ |
| Performance / quality manager     | per hour | ██████████ |
| Core Services Manager             | per hour | ██████████ |
| Projects/Schemes Delivery Manager | per hour | ██████████ |
| Site Agent                        | per hour | ██████████ |
| Senior/Section Engineer           | per hour | ██████████ |
| M & E Engineer                    | per hour | ██████████ |
| Setting Out/Site Engineer         | per hour | ██████████ |
| Assistant/Graduate Engineer       | per hour | ██████████ |
| Junior Engineer                   | per hour | ██████████ |
| Planner/Planning Engineer         | per hour | ██████████ |
| Works manager                     | per hour | ██████████ |
| Survey and setting out assistant  | per hour | ██████████ |
| laboratory staff assistant        | per hour | ██████████ |

|                         |          |
|-------------------------|----------|
| General operative       | per hour |
| Driver / plant operator | per hour |
| Traffic Safety officer  | per hour |
| Quantity surveyor       | per hour |
| Technical assistant     | per hour |

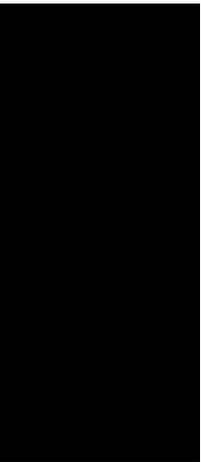


The published list of Equipment is the last edition of the list published by the Civil Engineering Contractors' Association (CECA).

The percentage for adjustment for Equipment in the published list is [REDACTED] % (state plus or minus).

The rates for other Equipment are

| Equipment                     | size or capacity | rate       |
|-------------------------------|------------------|------------|
| 4x2 Tipper                    | 7.2t (GVW)       | [REDACTED] |
| Trench Rammer 2 stroke BS60-2 | -                | [REDACTED] |
| Floor Saw Petrol              | 350mm dia        | [REDACTED] |
| Mini Excavator                | 2.5t             | [REDACTED] |
| JCB (Inc Driver)              | 3CX              | [REDACTED] |
| Grab Lorry                    | 26t (GVW)        | [REDACTED] |



The percentage for people overheads is [REDACTED] %

The rates for Defined Cost of manufacture and fabrication outside the Service Areas by the Contractor are

| category of person | rate       |
|--------------------|------------|
| Fabricator         | [REDACTED] |
| Welder             | [REDACTED] |

The rate for people providing *shared services* outside the Service Areas are

| <i>shared service</i> | category of person | rate |
|-----------------------|--------------------|------|
|-----------------------|--------------------|------|

**16. VOLUME REBATE AND GUARANTEED MINIMUM ANNUAL SPEND:**

In accordance with clause 7 of the Framework Agreement – Volume Rebate Percentage on the following Aggregated Annual Spend thresholds (note: no volume rebate will apply below £20,000,000 Aggregated Annual Spend).

| Aggregated Annual Spend threshold | Volume Rebate Percentage |
|-----------------------------------|--------------------------|
| £20,000,000 - £30,000,000         | ██████                   |
| £30,000,000.01 - £40,000,000      | ██████                   |
| £40,000,000.01 +                  | ██████                   |

The Guaranteed Minimum Annual Spend is £20,000,000

**17. Resolving and avoiding disputes**

The *Senior Representatives* of the *Client* are

Name (1) ██████████ – Director of Network Management

Address for communications Palestra  
197 Blackfriars Road  
London  
SE1 8NJ

Address for electronic communications ██████████

Name (2) ██████████ – Director of Project & Programme Delivery

Address for communications Palestra  
197 Blackfriars Road  
London  
SE1 8NJ

Address for electronic communications ██████████

Name (3) ██████████ - Head of Procurement - Surface Transport & Operations

Address for communications      Palestra  
197 Blackfriars Road  
London  
SE1 8NJ

Address for electronic communications      [REDACTED]

The *Senior Representatives* of the Contractor are

Name (1)      [REDACTED]  
[REDACTED]

Address for communications      Ringway Infrastructure Services Ltd  
Albion House  
Springfield Road  
Horsham  
West Sussex  
RH12 2RW

Address for electronic communications      [REDACTED]

Name (2)      [REDACTED]

Address for communications      Ringway Infrastructure Services Ltd  
Albion House  
Springfield Road  
Horsham  
West Sussex  
RH12 2RW

Address for electronic communications      [REDACTED]

## **SCHEDULE 2**

### **FRAMEWORK SCOPE**

#### **1. THE SERVICES**

The scope of the Framework Agreement includes highway maintenance and other related services on the Transport for London Road Network (TLRN), roads managed by London Boroughs and other Client owned assets.

The full scope of services include emergency call out, reactive repair, routine (cyclic) activities together with construction of renewal schemes and programmed works of a minor nature.

Works may be associated with the following highway assets:

- Road pavements (including minor repairs and resurfacing)
- Kerbs, footways and paved areas
- Traffic signs
- Street lighting
- Road markings
- Fencing
- Road restraint systems (including pedestrian guard railing)
- Drainage
- Embankments and other Earthworks
- Green Estate, horticulture, landscaping and ecology
- Bridges and other structures
- Street furniture

In addition, the scope covers the provision of:

- Safety inspections
- Winter service
- Street cleansing
- Response to support the Client with regard to Special Events
- Response to support the Client with regard to large scale emergencies including major weather events
- Design services associated with the works

Services include civil engineering contractor pre-construction support, including construction advice, buildability reviews, value engineering reviews, cost assessment, schedule assessment, risk assessment, construction methodology assessment and engineering surveys and investigations associated with capital renewals and enhancement or any other projects required by the Client in undertaking its statutory functions.

Services include advice, surveys and investigations, design, securing planning and consents, construction or other services as required by the Framework Client (TfL) for the provision of depots and associated facilities for the use of the Contractor or its successor(s).

The Scope included at Schedule 3 incorporating TfL's Scope and the Technical Specification, and all other documents referenced therein, supplement the description of the full scope of services covered by this Framework Agreement and should be read in conjunction with this document.

## **2. LOTS**

The Framework Agreement will be let in three Lots representing different geographic core areas across London to deliver the Framework Client's core services, as follows:

### Lot 1 – Central core area

Comprising the geographic area covered by London Boroughs of Camden, Hackney, Hammersmith & Fulham, Islington, Kensington & Chelsea, Lambeth, Southwark, Tower Hamlets, Wandsworth, Westminster and the City of London.

### Lot 2 – North core area

Comprising the geographic area covered by London Boroughs of Barking & Dagenham, Barnet, Brent, Ealing, Enfield, Haringey, Harrow, Havering, Hillingdon, Hounslow, Newham, Redbridge and Waltham Forest.

### Lot 3 – South core area

Comprising the geographic area covered by London Boroughs of Bexley, Bromley, Croydon, Greenwich, Kingston upon Thames, Lewisham, Merton, Richmond upon Thames and Sutton.

## **3. LONDON BOROUGHS**

London Boroughs may enter into a Call-Off Contract with their relevant core area Contractor to provide services in their Framework area/Lot as described above and in the OJEU Notice.

Should a London Borough require the services of a non-core area Contractor, they shall carry out a mini-competition with all Framework Contractors interested in the opportunity. The process for the mini-competition is as set out later in this document. The Contractor will not be obliged to provide the services.

## **4. TRANSPORT FOR LONDON**

TfL will enter into a Call-Off Contract for core services in each of the core areas.

TfL can instruct task orders to any or all three Framework Contractors for services to be undertaken anywhere in London.

## **5. CALL-OFF CONTRACTS**

At such time as the Framework Client or another Client places a Call-Off Contract, the particulars of the services required by the Client will be specified in the ensuing Call-Off Contract (including the relevant authority's Scope), and within specified task orders issued under those Call-Off Contracts. In all Call-Off Contracts, the technical specification (included as part of the Scope in Schedule 3) will be the specification used for the purposes of the works provided, as suitably modified or supplemented by each respective Client.

## 6. CALL-OFF CONTRACT SCOPE

Schedule 3 is the model Scope for Call-Off Contracts, written for a TfL Call-off Contract. Other Clients intending to let a Call-Off Contract are required to follow the process set out below.

## 7. MINI-COMPETITION PROCESS

A mini-competition process to establish a Call-Off Contract under this Framework Agreement uses evaluation criteria that are based on the Framework evaluation criteria and scoring, adjusted to reflect the particular requirements of the Client, as follows:

**Table 1 – Mini-Competition Criteria**

| Quality Criteria                    |  | Overall Range |
|-------------------------------------|--|---------------|
| Criteria                            | Approach   |               |
| a) Behaviours                       | A Client may require a written response, conduct a behavioural workshop and/or arrange leadership interviews should more than 50% of the Contractor's personnel who have participated in the behavioural assessments change. | 35% to 45%    |
| b) Strategic                        | A Client may require an update to the Contractor's proposed approach to framework management, leadership and collaboration should more than 50% of the Contractor's proposed personnel against this criterion change.        |               |
| c) Contract Delivery                | A Client may require an update on the Contractor's approach to contract delivery as defined by this criterion should the mini-competition be conducted more than two (2) years after Framework award.                        |               |
| d) Core Service Delivery            | A Client may require further confirmation of the Contractor's approach to delivering the actual core services selected for their proposed Call-Off Contract.   |               |
| e) Service Delivery – Capital Works | A Client may require supplementary evidence of a Contractor's approach to delivering capital works.  |               |
| f) Health and Safety                | A Client may require an update on the Contractor's approach to health and safety management.   |               |
| g) Environmental                    | A Client may require an update on the Contractor's approach to environmental management.   |               |
| h) Cyber Security                   | Not applicable for mini-competition.   |               |
| i) Social Value                     | Not applicable for mini-competition.   |               |
| j) Conflict of Interest             | Not applicable for mini-competition.   |               |
| <b>Pricing Criteria</b>             |  | 55% to 65%    |

Table 1 provides an outline of the top level criteria that can be used along with potential sub-criteria that may be included in a mini-competition. The percentages represent the range of possible relative weightings between the quality and pricing criteria that may be used for each Call-Off Contract.

### **Call-Off Contract**

The Call-Off Contract documents at Schedule 7 of the Framework Agreement is the model Call-Off Contract on which all other Call-Off Contracts established under this Framework Agreement are based.

In order to establish a Call-Off Contract or undertake a mini-competition under this Framework, a Client, with its Call-Off Request Form, includes the following documents:

- A modified Schedule 3 (Scope) to reflect their requirements;
- A modified Schedule 6 (Call-Off Contract Data) to reflect their particulars and a modified Price List to reflect the modified Scope above;
- Schedule 7, Appendices 1 and 2 to reflect their TUPE circumstances;
- A modified Schedule 7, Appendix 7 to reflect their approach to performance management; and
- A modified Schedule 7, Appendix 10 to identify their Affected Property.

The Contractor submits a proposal (should the Contractor wish to submit a proposal if the Client is a Wider Framework Borough) in response to the above-mentioned Call-Off Request Form, by considering the modified documents above and submits its proposal with a completed Price List. The Contractor may alter the rates, prices or percentages in the Schedule of Rates to prepare a Price List in accordance with the Framework Agreement, should the Call-Off Contract requirements differ materially (so as to require a change in the Contractor's resources) from that established in the model Call-Off Contract established at commencement of the Framework Agreement.

## **8. RELEVANT AREAS**

The Relevant Area is the area in which the Contractor has been appointed.

## **SCHEDULE 3**

### **SCOPE**

The Scope is included at Volume B

## SCHEDULE 4

### 4A CALL-OFF REQUEST FORM<sup>1</sup>

**Framework Number:** tfl\_scp\_001746a\_1\_fwk  
**Request Form Number:**

**To:**  
**Address:**

**From:**  
**Date:**

This is a Call-Off Request Form for the provision of works and/or services in accordance with the Framework Agreement referenced above and is issued pursuant to clause 6.2 of the Framework Agreement. This is an enquiry document only, constituting an invitation to treat, and it does not constitute an offer capable of acceptance. Your Call-Off Proposal must be submitted as an offer capable of acceptance by the Client; however such acceptance will not occur unless and until the Client posts notice of acceptance to you.

Attachment 1 of this Call-Off Request Form sets out the Contract Data Part One and other relevant information.

Attachment 2 of this Call-Off Request sets out the Client's Call Off Scope.

In your Call-Off Proposal, you must respond by completing the Contract Data Part Two and attach a copy of the duly completed Price List for the *service*, Attachment 3.

The Client is under no obligation to award any Call-Off Contract as a result of this Call-Off Request Form. The Client shall not be liable for any costs, charges or expenses borne by you or on your behalf whether or not you are awarded a Call-Off Contract, which for the avoidance of doubt includes any costs, charges and expenses arising from or associated with an abortive or cancelled procurement process.

You must complete and return your Call-Off Proposal by [INSERT DATE AND TIME]. Please e-mail your Call-Off Proposal, and send a paper copy to:

Name:

e-mail address:

Postal address:

Telephone:

Any queries regarding this Call-Off Request Form should be directed to the above via e-mail. Any queries regarding the Framework Agreement should be directed to the Framework Manager named in the Framework Agreement.

Signed: \_\_\_\_\_  
for and on behalf of [NAME OF CLIENT]

---

<sup>1</sup> Note: Use this form for call-off requests other than mini-competition call-offs undertaken by Wider Framework Boroughs.

**Attachments:** Attachment 1 of this Call-Off Request Form sets out the Contract Data Part One and other relevant information  
Attachment 2 of this Call-Off Request sets out the Client's Scope  
Attachment 3 Price List

## 4B CALL-OFF REQUEST FORM – MINI COMPETITION<sup>2</sup>

**Framework Number:** tfl\_scp\_001746a\_1\_fwk

**Request Form Number:**

**To:**

**Address:**

**From:**

**Date:**

This is a Call-Off Request Form for the provision of works and/or services in accordance with the Framework Agreement referenced above and is issued pursuant to clause 6.2A of the Framework Agreement. This is an enquiry document only, constituting an invitation to treat, and it does not constitute an offer capable of acceptance. Your Call-Off Proposal must be submitted as an offer capable of acceptance by the Wider Framework Borough as Client; however such acceptance will not occur unless and until the Client posts notice of acceptance to you.

Attachment 1 of this Call-Off Request Form sets out the Contract Data Part One and other relevant information.

Attachment 2 of this Call-Off Request sets out the Client's Call Off Scope.

If you are responding to the Call-Off Request, you must complete the Contract Data Part Two and attach a copy of the duly completed Price List for the *service*, Attachment 3 as part of your Call-Off Proposal.

The Client is under no obligation to award any Call-Off Contract as a result of this Call-Off Request Form. The Client shall not be liable for any costs, charges or expenses borne by you or on your behalf whether or not you are awarded a Call-Off Contract, which for the avoidance of doubt includes any costs, charges and expenses arising from or associated with an abortive or cancelled procurement process.

If you submit a Call-Off Proposal, it will be assessed by the Client alongside those submitted by other contractors as part of a Mini-Competition process. The Client will award the relevant Call-Off Contract to the contractor with the Call-Off Proposal that is the most economically advantageous with reference to the assessment criteria set out in Attachment 1.<sup>3</sup>

You must complete and return your Call-Off Proposal by [INSERT DATE AND TIME]. Please e-mail your Call-Off Proposal, and send a paper copy to:

Name:

e-mail address:

Postal address:

Telephone:

Any queries regarding this Call-Off Request Form should be directed to the above via e-mail. Any queries regarding the Framework Agreement should be directed to the Framework Manager named in the Framework Agreement.

---

<sup>2</sup> Note: this form is to be used if a Wider Framework Borough is undertaking a mini-competition.

<sup>3</sup> Note: the relevant Wider Framework Borough will identify its criteria / scoring which will be derived from the framework criteria and scoring.

If you do not intend to submit a Call-Off Proposal in response to this Call-Off Request, you must notify the Client as soon as possible and no later than [INSERT DATE].

Signed: \_\_\_\_\_  
for and on behalf of [NAME OF CLIENT]

**Attachments:** Attachment 1 of this Call-Off Request Form sets out the Contract Data Part One and other relevant information  
Attachment 2 of this Call-Off Request sets out the Client's Scope  
Attachment 3 Price List

## SCHEDULE 5

### CALL-OFF FORM OF AGREEMENT

#### Form of Agreement

THIS [DEED] [AGREEMENT] is made the..... day of .....20[ ].

#### BETWEEN

1. [CLIENT] of [ADDRESS] [OR] [TRANSPORT FOR LONDON a statutory corporation established under the Greater London Authority Act 1999 of 5 Endeavour Square, London, E20 1JN, United Kingdom]<sup>1</sup> ("the *Client*") which expression shall include its successors in title and assigns;

#### AND

2. [INSERT CONTRACTOR'S NAME], a company incorporated in and in accordance with the laws of [INSERT COUNTRY OF REGISTRATION (USUALLY ENGLAND AND WALES)] having as its registered number [INSERT COMPANY NUMBER] and its registered office at [INSERT CONTRACTORS REGISTERED OFFICE ADDRESS - THIS MAY BE DIFFERENT FROM THEIR TRADING/USUAL POSTAL ADDRESS] (hereinafter called "the *Contractor*").

#### RECITALS

- (1) This contract is made pursuant to a framework agreement between Transport for London (the "Framework Client") and the *Contractor* relating to the provision of highways maintenance and other works or services dated [ ] ("the Framework Agreement").
- (2) The *Client* wishes the *Contractor* to provide the *service*.
- (3) The *Client* has accepted an offer by the *Contractor* in accordance with the Framework Agreement and subject to the provisions of this contract is willing to engage the *Contractor* to carry out the *service* in accordance with this contract.

#### NOW IT IS HEREBY AGREED as follows:

1. In this Form of Agreement, unless the context otherwise requires, words and expressions shall have the same meaning as set out in the *conditions of contract*.
2. The *conditions of contract* are an amended NEC4 Term Service Contract 2<sup>nd</sup> Edition June 2017 (with amendments January 2019) as set out in Schedule 7 to the Framework Agreement.
3. This contract shall mean this Form of Agreement and the following documents which are hereby incorporated into and shall comprise this contract:
  - 3.1 the *conditions of contract*;
  - 3.2 the Contract Data Part One;
  - 3.3 the Contract Data Part Two;

---

<sup>1</sup> Details to be completed for the relevant client calling off under the Framework Agreement.

3.4 the Scope;

[3.5 **INSERT DETAILS OF ANY OTHER CONTRACT DOCUMENTS**].

4. The several documents forming this contract are to be taken as mutually explanatory of one another. In the event of any ambiguity they shall be construed in the order set out in Clause 3 of this Form of Agreement.
5. The *Contractor* Provides the Service in accordance with this contract and the terms of the Framework Agreement.
6. The *Client* pays the *Contractor* for complying with his obligations to Provide the Service the amount due in accordance with this contract.
7. Notwithstanding the manner of execution of this contract it is agreed that:
  - 7.1. the limitation period within which any claim may be brought by the *Client* for breach of this contract by the *Contractor* is 12 years from the date of breach; and
  - 7.2. the *Contractor* agrees not to raise in defence of any such claim a shorter limitation period whether pursuant to the Limitation Act 1980 (as the same may be amended or re-enacted from time to time) or otherwise.
8. This Form of Agreement may be executed, without limitation:
  - 8.1. by the electronic application of a party's authorised signatory's/signatories' signature(s) and provision of an electronic copy of the same; and
  - 8.2. in any number of counterparts and each counterpart will when executed be an original of this Form of Agreement and all counterparts together will constitute one instrument.

**THIS DOCUMENT** is executed as a deed and delivered on the date stated at the start of this Deed.

**[INSERT APPROPRIATE EXECUTION CLAUSES]**

# SCHEDULE 6

## CALL-OFF CONTRACT DATA

### CONTRACT DATA

#### Part One - Data provided by the *Client*

#### 1 General

The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Term Service Contract 2<sup>nd</sup> Edition June 2017 (with amendments January 2019) amended and supplemented as set out in Schedule 7 to the Framework Agreement

- |  |  |
|--|--|
| Main Options <sup>1</sup>                  | <ul style="list-style-type: none"><li>• for the Core Service: Main Option A and</li><li>• for instructed Tasks: either Main Option A or Main Option C, as stated in the Task Order</li></ul> |
| Option for resolving and avoiding disputes | <ul style="list-style-type: none"><li>• W2</li></ul>   |
| Secondary Options                          | <ul style="list-style-type: none"><li>• [TBC]<sup>2</sup></li></ul>  |

The *service* is..... and any instructed Task.

The *Client* is

Name

Address for communications

~~Address for electronic communications~~

The *Service Manager* is

Name

Address for communications

~~Address for electronic communications~~

The Affected Property is identified in Appendix 10 of this contract and includes any Task site identified in an instructed Task Order whether or not it is within the area identified in Appendix 10.

The relevant Core Service Area for this contract is [.....], further described in Appendix 10.

<sup>1</sup> Note: Clients entering into a Call-Off Contract may select Main Option A or Main Option C for the Core Service

<sup>2</sup> Note: to be confirmed for each Call-Off Contract. TfL's Call-Off Contract will use Secondary Options X1, X2, X10, X13, X14, X21, X23 and X24

The Scope is in the document(s) titled Scope.

The *shared services* which may be carried out outside the Service Areas are

- *Contractor's* design
- responding to telephone calls (call centre)
- [other services proposed by the *Contractor* and accepted by the *Client* prior to contract award]

The *language of this contract* is

as set out in the Framework Data, Schedule 1 to the Framework Agreement

The *period for reply* is

as set out in the Framework Data, Schedule 1 to the Framework Agreement

The following matters will be included in the Early Warning Register

[.....]

Early warning meetings are to be held at intervals no longer than 1 calendar month

## 2 The Contractor's main responsibilities

If Main Option C applies The *Contractor* prepares forecasts of the total Defined Cost for each relevant Task or the whole of the *service* (as applicable) at intervals no longer than 4 weeks

## 3 Time

The *starting date* is [DATE]

The *service period* is the period from and including the *starting date* until and including [DATE]

The *Contractor* submits revised plans on the date falling one Period before the start of each Financial Year

The period within which the *Contractor* is to submit a Task Order programme for acceptance is 2 weeks

If no plan is identified in part two of the Contract Data The period after the Contract Date within which the *Contractor* is to submit a first plan for acceptance is 4 weeks of the Contract Date

## 4 Quality management and Defects

|   |  |
|---|--|
| The period after the Contract Date within which the <i>Contractor</i> is to submit a quality policy statement and quality plan is | 8 weeks  |
| The <i>quality statement</i> is   | in Schedule 18 of the Framework Agreement  |
| Where applicable, the defects date for a Task is  | 52 weeks from the date of Task Completion or such other date as is stated in the relevant Task Order |
| The <i>defect correction period</i> is  | 1 week for Activity Tasks and 4 weeks for Project Tasks and Core Service activities                  |

## 5 Payment

See Framework Data, Schedule 1 to the Framework Agreement

Annual Price List The period after the Contract Date within which the *Contractor* is to submit a first Annual Price List for acceptance is 4 weeks of the Contract Date

The *Contractor* submits a revised Annual Price List on the date falling four weeks before the start of each Financial Year

Where Main Option C applies

The *Contractor's share percentages* and the *share ranges* are as set out in the Framework Data, Schedule 1 to the Framework Agreement.

The *exchange rates* are as set out in the Framework Data, Schedule 1 to the Framework Agreement.

**Clause 50.9A The *Client* [is] [is not] an End User for the purposes of this contract.**

## 6 Compensation events

If Option A is used The *value engineering percentage* is 50%, unless another percentage is stated here, in which case it is [ ] %<sup>3</sup>

If there are additional compensation events Not applicable

## 8 Liabilities and insurance

If there are additional *Client's* liabilities These are additional *Client's* liabilities

<sup>3</sup> Note: to be confirmed for each call-off contract.

- 1 [None]
- 2
- 3

If the *Client* is to provide Plant and Materials [The insurance against loss of or damage to Plant and Materials is to include cover for Plant and Materials provided by the *Client* for an amount of] [.....]

If the *Client* is to provide any of the insurances stated in the Insurance Table Not applicable

If additional insurances are to be provided The *Client* provides these additional insurances  
None

**Resolving and avoiding disputes**

The *tribunal* is the courts of England and Wales

The *Adjudicator* is an independent person appointed to act as an adjudicator in accordance with clause W2.2

The *Adjudicator nominating body* is the President or Vice President or other duly authorised officer of the London Court of International Arbitration the President or Vice President or other duly authorised officer of the London Court of International Arbitration

The *Senior Representatives* of the *Client* are as set out in the Framework Data, Schedule 1 to the Framework Agreement

The *Senior Representatives* of the *Contractor* are as set out in the Framework Data, Schedule 1 to the Framework Agreement

**X1: Price adjustment for inflation (used only with Options A and C)**

If Option X1 is used The proportions used to calculate the Price Adjustment Factor are

|    |                      |                         |                      |
|----|----------------------|-------------------------|----------------------|
| 0. | <input type="text"/> | linked to the index for | <input type="text"/> |
| 0. | <input type="text"/> |                         | <input type="text"/> |
| 0. | <input type="text"/> |                         | <input type="text"/> |
| 0. | <input type="text"/> |                         | <input type="text"/> |

|      |                      |                |                      |
|------|----------------------|----------------|----------------------|
| 0.   | <input type="text"/> |                | <input type="text"/> |
| 0.   | <input type="text"/> |                | <input type="text"/> |
| 0.   | <input type="text"/> | non-adjustable | <input type="text"/> |
| 1.00 | <input type="text"/> |                |                      |

The *base date* for indices is

The *inflation adjustment dates* are

These indices are

**X3: Multiple currencies (used only with Option A)**

If Option X3 is used ~~\_\_\_\_\_~~ The *Client* will pay for the items or activities listed below in the currencies stated

| items and activities | other currency          | total                |
|----------------------|-------------------------|----------------------|
| maximum              | payment in the currency |                      |
| <input type="text"/> | <input type="text"/>    | <input type="text"/> |
| <input type="text"/> | <input type="text"/>    | <input type="text"/> |
| <input type="text"/> | <input type="text"/>    | <input type="text"/> |

The *exchange rates* are those published in  as set out in the Framework Data, [Schedule 1] to the Framework Agreement  
 on  (date)

**X10: Information modelling**

If Option X10 is used

If no *information execution plan* is identified in part two of the Contract Data

The period after the Contract Date within which the *Contractor* is to submit a first Information Execution Plan for acceptance is

The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use the skill and care normally used by professionals providing information similar to the Project Information is, in respect of each claim

The period following the end of the Service Period or earlier termination for which the *Contractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is

**X13: Performance bond (not used with Option X20)**

If Option X13 is used                      The amount of the performance bond is                     

**X14: Advanced payment to the Contractor**

|                       |  |   |    |          |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |         |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |       |      |   |  |  |          |  |  |  |
|-----------------------|--|---|----|----------|------|---|--|--|----------|--|--|--|----|----------|------|---|--|--|----------|--|--|--|----|---------|------|---|--|--|----------|--|--|--|----|----------|------|---|--|--|----------|--|--|--|----|-------|------|---|--|--|----------|--|--|--|
| If Option X14 is used | The amount of the advanced payment is  | £500,000  |    |          |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |         |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |       |      |   |  |  |          |  |  |  |
|                       | If the advanced payment is not included in the assessment made at the first assessment date, the advanced payment is made in the following instalments | <table border="0" style="width: 100%;"> <tr> <td style="width: 5%;">1.</td> <td style="width: 15%;">November</td> <td style="width: 15%;">2020</td> <td style="width: 5%;">-</td> <td style="width: 60%;"></td> </tr> <tr> <td></td> <td>£100,000</td> <td></td> <td></td> <td></td> </tr> <tr> <td>2.</td> <td>December</td> <td>2020</td> <td>-</td> <td></td> </tr> <tr> <td></td> <td>£100,000</td> <td></td> <td></td> <td></td> </tr> <tr> <td>3.</td> <td>January</td> <td>2021</td> <td>-</td> <td></td> </tr> <tr> <td></td> <td>£100,000</td> <td></td> <td></td> <td></td> </tr> <tr> <td>4.</td> <td>February</td> <td>2021</td> <td>-</td> <td></td> </tr> <tr> <td></td> <td>£100,000</td> <td></td> <td></td> <td></td> </tr> <tr> <td>5.</td> <td>March</td> <td>2021</td> <td>-</td> <td></td> </tr> <tr> <td></td> <td>£100,000</td> <td></td> <td></td> <td></td> </tr> </table> | 1. | November | 2020 | - |  |  | £100,000 |  |  |  | 2. | December | 2020 | - |  |  | £100,000 |  |  |  | 3. | January | 2021 | - |  |  | £100,000 |  |  |  | 4. | February | 2021 | - |  |  | £100,000 |  |  |  | 5. | March | 2021 | - |  |  | £100,000 |  |  |  |
| 1.                    | November   | 2020  | -  |          |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |         |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |       |      |   |  |  |          |  |  |  |
|                       | £100,000   |   |    |          |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |         |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |       |      |   |  |  |          |  |  |  |
| 2.                    | December   | 2020  | -  |          |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |         |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |       |      |   |  |  |          |  |  |  |
|                       | £100,000   |   |    |          |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |         |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |       |      |   |  |  |          |  |  |  |
| 3.                    | January  | 2021  | -  |          |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |         |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |       |      |   |  |  |          |  |  |  |
|                       | £100,000   |   |    |          |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |         |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |       |      |   |  |  |          |  |  |  |
| 4.                    | February   | 2021  | -  |          |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |         |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |       |      |   |  |  |          |  |  |  |
|                       | £100,000   |   |    |          |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |         |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |       |      |   |  |  |          |  |  |  |
| 5.                    | March  | 2021  | -  |          |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |         |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |       |      |   |  |  |          |  |  |  |
|                       | £100,000   |   |    |          |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |         |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |       |      |   |  |  |          |  |  |  |
|                       | The period after the <i>starting date</i> from which the Contractor repays the instalments in assessments is   | 12 weeks  |    |          |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |         |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |       |      |   |  |  |          |  |  |  |
|                       | The repayment instalments are (either an amount or a percentage of the payment otherwise due)  | £50,000   |    |          |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |         |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |       |      |   |  |  |          |  |  |  |
|                       | An advanced payment bond is not required.  |   |    |          |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |         |      |   |  |  |          |  |  |  |    |          |      |   |  |  |          |  |  |  |    |       |      |   |  |  |          |  |  |  |

**X17: Low service damages**

If Option X17 is used                      The ~~service level table~~ is

**X18: Limitation of liability**

|                       |   |  |
|-----------------------|---|--|
| If Option X18 is used | <del>The Contractor's liability to the Client for indirect or consequential loss is limited to</del>                                |  |
|                       | <del>For any one event, the Contractor's liability to the Client for loss of or damage to the Client's property is limited to</del> |  |
|                       | <del>The Contractor's liability for Defects due to its design of an item of Equipment is limited to</del>                           |  |
|                       | The Contractor's total liability to the Client for all matters arising under or in connection with the                              |  |

contract, other than excluded matters, is limited to

[ ]  
4

The *end of liability date* is [ ] years after the end of the Service Period

**X20: Key Performance Indicators (not used with Option X12)**

If Option X20 is used

The ~~incentive schedule~~ for Key Performance Indicators is in

[ ]

A ~~report of performance against each Key Performance Indicator~~ is provided at intervals of

\_\_\_\_\_ months

**X23: Extending the Service Period**

If Option X23 is used

The *maximum service period* is

[ 12 ]

years after 1 April 2021

The *periods for extension* are

Order

*period for extension* (months)

*notice date*

First

[ up to 48 months ]

[ 31 March 2027 ]

Second

[ ]

[ ]

Third

[ ]

[ ]

Fourth

[ ]

[ ]

~~If there are criteria for extension~~

~~The criteria for extension are~~

(1)

[ ]

(2)

[ ]

(3)

[ ]

**X24: The accounting periods**

4

Note: If the client is Tfl include the following wording: "For the avoidance of doubt, this amount is in the aggregate for claims made by the *Client* per Contract Year, and not a total limit on the *Contractor's* liability for all matters arising under or in connection with this contract".

If Option X24 is used and Main Option C does not apply The *accounting periods* are

- |  |
|--|
| <p>for the Core Service</p> <ul style="list-style-type: none"> <li>• each Financial Year</li> </ul> <p>for each Task</p> <ul style="list-style-type: none"> <li>• the date of commencement of the Task until Task Completion.</li> </ul> |
|--|

If Option X24 is used and Main Option C applies The *accounting periods* are the date of commencement of the Task until Task Completion

**Y(UK)2: The Housing Grant, Construction and Regeneration Act 1996**

~~If Y(UK)2 is used and the date on which a payment is due is not fourteen weeks after the end of the accounting period or Service Period~~ The period is ~~{}~~ ~~weeks~~

~~If Y(UK)2 is used and the final date for payment is not fourteen days after the date on which payment becomes due~~ The period for payment is ~~{}~~ ~~days after the date on which payment becomes due}~~

**Y(UK)3: The Contracts (Rights of Third Parties) Act 1999**

If Option Y(UK)3 is used

term

*beneficiary*

- |  |
|--|
| all of the indemnities, warranties and/or undertakings (as applicable) in clauses 2.3 and 2.5 of Appendix 2                |
| all of the indemnities, warranties and/or undertakings (as applicable) in clauses 1.6 and 1.8 of Appendix 2                |
| all of the indemnities, warranties and/or undertakings (as applicable) in clauses 3.3, 3.6 and 4.1 of Appendix 2           |
| all of the indemnities, warranties and/or undertakings (as applicable) in clauses 1.6, 1.8, 2.3, 2.5 and 4.1 of Appendix 2 |

- |  |
|--|
| Additional Supplier and/or its subcontractor(s)  |
| Current Supplier and/or its subcontractor(s)     |
| Replacement Supplier and/or its subcontractor(s) |
| Subcontractor(s) of the <i>Client</i>            |

~~If Y(UK)3 is used with Y(UK)1 the following entry is added to the table for Y(UK)3~~

term

~~The provisions of Options~~

*beneficiary*

~~Named Suppliers~~

¥(UK)4

**Z: Additional conditions of contract**

If Option Z is used

The *additional conditions of contract* are

incorporated into Schedule 7 of the Framework Agreement

**Part two - Data provided by the Contractor**

**1 General**

The *Contractor* is named in the Framework Data, Schedule 1 to the Framework Agreement

The *fee percentage* is as set out in the Framework Data, Schedule 1 to the Framework Agreement

The *target cost fee percentage* is as set out in the Framework Data, Schedule 1 to the Framework Agreement

The *service areas* are [.....]

The *key persons* of the *Contractor* who are not already named in the Framework Agreement as Key Personnel are:

| Position               | Name                 |
|------------------------|----------------------|
| Name (1)               | (enter)              |
| Job                    | Contract Lead        |
| Responsibilities       | (enter)              |
| Qualifications         | (enter)              |
| Experience             | (enter)              |
| <i>handover period</i> | 8 weeks              |
| Name (2)               | (enter)              |
| Job                    | Commercial Lead      |
| Responsibilities       | (enter)              |
| Qualifications         | (enter)              |
| Experience             | (enter)              |
| <i>handover period</i> | 8 weeks              |
| Name (3)               | (enter)              |
| Job                    | [TITLE] <sup>5</sup> |
| Responsibilities       | (enter)              |
| Qualifications         | (enter)              |
| Experience             | (enter)              |

<sup>5</sup> Note: other key person job roles to be identified.

|                        |                |
|------------------------|----------------|
| <i>handover period</i> | <i>4 weeks</i> |
| Name (4)               | <i>(enter)</i> |
| Job                    | [TITLE]        |
| Responsibilities       | <i>(enter)</i> |
| Qualifications         | <i>(enter)</i> |
| Experience             | <i>(enter)</i> |
| <i>handover period</i> | <i>4 weeks</i> |
| Name (5)               | <i>(enter)</i> |
| Job                    | [TITLE]        |
| Responsibilities       | <i>(enter)</i> |
| Qualifications         | <i>(enter)</i> |
| Experience             | <i>(enter)</i> |
| <i>handover period</i> | <i>4 weeks</i> |
| Name (6)               | <i>(enter)</i> |
| Job                    | [TITLE]        |
| Responsibilities       | <i>(enter)</i> |
| Qualifications         | <i>(enter)</i> |
| Experience             | <i>(enter)</i> |
| <i>handover period</i> | <i>4 weeks</i> |
| Name (7)               | <i>(enter)</i> |
| Job                    | [TITLE]        |
| Responsibilities       | <i>(enter)</i> |
| Qualifications         | <i>(enter)</i> |
| Experience             | <i>(enter)</i> |
| <i>handover period</i> | <i>4 weeks</i> |
| Name (8)               | <i>(enter)</i> |
| Job                    | <i>(enter)</i> |
| Responsibilities       | <i>(enter)</i> |
| Qualifications         | <i>(enter)</i> |
| Experience             | <i>(enter)</i> |



## X10: Information modelling

If Option X10 is used

If an *information execution plan* is to be identified in the Contract Data The *information execution plan* identified in the Contract Data is [                      ]

### **Data for Schedule of Cost Components**

- is as set out in the Framework Data, Schedule 1 to the Framework Agreement

### **Data for the Short Schedule of Cost Components**

- is as set out in the Framework Data, Schedule 1 to the Framework Agreement

**APPENDIX 1**  
**LIST OF TRANSFERRING STAFF**

Refer to Client Call-Off Contract

## APPENDIX 2

### TUPE

#### 1 TRANSFER OF EMPLOYEES TO CONTRACTOR

1.1 It is understood and acknowledged by the Parties that the Regulations apply to the Transfer of Provision and accordingly, pursuant to the Regulations, the contracts of employment between the Current Supplier and the Transferring Staff will have effect from the *starting date* as if originally made between the *Contractor* and the Transferring Staff (except in relation to occupational pension scheme benefits excluded under Regulation 10 of the Regulations which will be subject to the provisions of paragraphs 1.2 and 1.3).

1.2 The *Contractor* will, and will procure that each of its Subcontractors will, comply with the provisions of sections 257 and 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 with effect from the *starting date* in respect of any Non-Eligible Employees.

1.3 The *Contractor* will, and will procure that each of its Subcontractors will, comply with the Best Value Direction in respect of any Eligible Employees in accordance with the requirements of the *Client* in relation to pension protection (if any).

1.4 In respect of the Transferring Staff, the parties agree that all Employment Costs will be apportioned on a time basis (regardless of when such sums fall to be paid) as follows:

1.4(1) up to 23:59 on the date immediately preceding the *starting date* will be the responsibility of the Current Supplier; and

1.4(2) from 00:00 on the *starting date* and thereafter will be the responsibility of the *Contractor*,

except that there will be no apportionment in respect of the Transferring Staffs' holiday entitlement.

1.5 The *Client* (on behalf of the Current Supplier) will indemnify, keep indemnified and hold harmless the *Contractor* (and any of its Subcontractors) from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profit, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and legal costs (on a full indemnity basis) which the *Contractor* (or its Subcontractors) incurs or suffers arising out of or in connection with:

1.5(1) any breach or default by or on behalf of the Current Supplier in respect of the Transferring Staff before the *starting date*; and/or

1.5(2) any failure by the Current Supplier to comply with Regulation 11 of the

Regulations; and/or

- 1.5(3) any failure by the Current Supplier to comply with Regulation 13 of the Regulations; and/or
- 1.5(4) the employment or termination of employment by the Current Supplier of any Transferring Staff (whether or not terminated by notice and, if so terminated, whenever that notice expires) before the *starting date*; and/or
- 1.5(5) any breach or default by or on behalf of the Current Supplier in respect of any person who is or was employed or engaged by it, except in the case of the Transferring Staff where the *Client's* indemnity will only apply in respect of such employees insofar as and to the extent that any such breach or default occurred on or before the *starting date* or was undertaken by, or on behalf or at the instruction of the Current Supplier; and/or
- 1.5(6) any claim or demand or other action taken against the *Contractor* (or its Subcontractors) by any person employed or engaged by the Current Supplier (other than Transferring Staff) who claims (whether correctly or not) that the *Contractor* (or its Subcontractors) has inherited any liability from the Current Supplier in respect of such person by virtue of the Regulations.

1.6 The *Contractor* will indemnify, keep indemnified and hold harmless the *Client* and the Current Supplier (and/or its or their subcontractors) from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profit, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and legal costs (on a full indemnity basis) which the *Client* or the Current Supplier (and/or its or their subcontractors) incurs or suffers arising out of or in connection with:

- 1.6(1) any breach or default by or on behalf of the *Contractor* (or its Subcontractors) in respect of any person employed or engaged by it on or after the *starting date*, including the Transferring Staff; and/or
- 1.6(2) any failure by the *Contractor* or its Subcontractors to comply with their obligations under Regulation 13 of the Regulations; and/or
- 1.6(3) any claim brought or other action taken by or on behalf of any of the Transferring Staff which arises from or in connection with (directly or indirectly) any breach or default and/or, communication made to the Transferring Staff before the *starting date* by, on behalf of and/or at the instruction of the *Contractor* or its Subcontractors;
- 1.6(4) the employment or termination of employment by the *Contractor* or its Subcontractors of any Transferring Staff (whether or not terminated by

notice and, if so terminated, whenever that notice expires) on or from the *starting date*; and/or

1.6(5) any actual, proposed or anticipated changes by the *Contractor* (or its Subcontractors) to the terms and conditions of employment of any of the Transferring Staff which are or are alleged to be to the detriment of any of the Transferring Staff.

1.7 The *Contractor* will provide the Current Supplier, as soon as practicable, but in any event in good time before the *starting date* with all information which the Current Supplier may reasonably require to enable it to comply with its information and consultation obligations under the Regulations.

1.8 The *Contractor* warrants and undertakes to the *Client* and the Current Supplier (and/or its or their subcontractors) that all information given to the *Client* or the Current Supplier (and/or its or their subcontractors) regarding the Transferring Staff and any measures it proposes to take in relation to them is and will be full and accurate in all respects.

## **2 ADDITIONAL TRANSFER OF EMPLOYEES TO CONTRACTOR**

2.1 It is understood and acknowledged by the Parties that the Regulations may apply to an Additional Transfer of Provision where there is a change in the Scope and accordingly, pursuant to the Regulations, the contracts of employment between the Additional Supplier and the Additional Transferring Staff will have effect from the Additional Starting Date as if originally made between the *Contractor* and the Additional Transferring Staff (except in relation to occupational pension scheme benefits excluded under Regulation 10 of the Regulations which will be subject to the provisions of paragraphs 1.2 and 1.3 above).

2.2 In respect of the Additional Transferring Staff, the parties agree that all Employment Costs will be apportioned on a time basis (regardless of when such sums fall to be paid) as follows:

2.2(1) up to 23:59 on the date immediately preceding the Additional Starting Date will be the responsibility of the Additional Supplier; and

2.2(2) from 00:00 on the Additional Starting Date and thereafter will be the responsibility of the *Contractor*,

except that there will be no apportionment in respect of the Additional Transferring Staffs' holiday entitlement.

2.3 The *Contractor* will indemnify, keep indemnified and hold harmless the *Client* and the Additional Supplier (and/or its or their subcontractors) from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profit, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and legal costs (on a full indemnity basis) which

the *Client* or the Additional Supplier (and/or its or their subcontractors) incurs or suffers arising out of or in connection with:

- 2.3 (1) any breach or default by or on behalf of the *Contractor* (or its Subcontractors) in respect of any person employed or engaged by it on or after the Additional Starting Date, including the Additional Transferring Staff; and/or
- 2.3 (2) any failure by the *Contractor* or its Subcontractors to comply with their obligations under Regulation 13 of the Regulations; and/or
- 2.3 (3) any claim brought or other action taken by or on behalf of any of the Additional Transferring Staff which arises from or in connection with (directly or indirectly) any breach or default and/or, communication made to the Additional Transferring Staff before the Additional Starting Date by, on behalf of and/or at the instruction of the *Contractor* or its Subcontractors;
- 2.3 (4) the employment or termination of employment by the *Contractor* or its Subcontractors of any Additional Transferring Staff (whether or not terminated by notice and, if so terminated, whenever that notice expires) on or from the Additional Starting Date; and/or
- 2.3 (5) any actual, proposed or anticipated changes by the *Contractor* (or its Subcontractors) to the terms and conditions of employment of any of the Additional Transferring Staff which are or are alleged to be to the detriment of any of the Additional Transferring Staff.

2.4 The *Contractor* will provide the Additional Supplier, as soon as practicable, but in any event in good time before the Additional Starting Date with all information which the Additional Supplier may reasonably require to enable it to comply with its information and consultation obligations under the Regulations.

2.5 The *Contractor* warrants and undertakes to the *Client* and the Additional Supplier (and/or its or their subcontractors) that all information given to the *Client* or the Additional Supplier (and/or its or their subcontractors) regarding the Additional Transferring Staff and any measures it proposes to take in relation to them is and will be full and accurate in all respects.

### **3 PROVISION OF INFORMATION**

3.1 The *Contractor* will promptly when requested by the *Client* (and not more than 14 days after the date of any notice to terminate this contract given by either Party for any reason whatsoever) provide, and use its best endeavours to procure that any relevant Subcontractor provides, the following information to the *Client*:

- 3.1(1) a list of current Contractor's Personnel and any persons employed or engaged by its Subcontractors wholly or mainly in the provision of the

*service* (each identified as such in the list) (the "Staff List");

- 3.1(2) all material terms and conditions relating to the employment or engagement of the persons listed on the Staff List;
- 3.1(3) written job descriptions of the persons listed on the Staff List;
- 3.1(4) all other information which the *Contractor* or its Subcontractors knows or ought to know about its or their rights, powers, duties and liabilities under or in connection with the contracts of employment of the persons listed on the Staff List including without limitation their job titles, grades or seniority, dates of commencement of continuous employment, remuneration (salary and benefits) and pension rights; and
- 3.1(5) in the situation where notice to terminate this contract has been given, a list of all persons who are engaged or have been engaged during the preceding six months in the provision of the *service*, whom the *Contractor* considers will not transfer under the Regulations for any reason whatsoever together with details of their role and a full explanation of why the *Contractor* thinks such persons will not transfer,

such information together being the "Staffing Information".

- 3.2 The *Contractor* will notify the *Client* in as much detail as possible as soon as practicable and in any event within 5 days of the *Contractor* becoming aware of any additional or new Staffing Information and/or any changes to any Staffing Information already provided.
- 3.3 The *Contractor* warrants to the *Client* and the Replacement Supplier that any Staffing Information which it supplies (including any copies of it) is complete and accurate in all respects and will be kept complete and accurate.
- 3.4 Subject to paragraph 3.2, the *Contractor* will provide the *Client* with a final Staff List (the "Final Staff List") not less than 14 days before the date of expiry or earlier termination of this contract.
- 3.5 If this contract is terminated by either Party in accordance with clause 90 then the Final Staff List will be provided by the *Contractor* to the *Client* within 14 days of the date of termination of the contract.
- 3.6 The *Contractor* warrants to the *Client* and the Replacement Supplier that as at the date of expiry or earlier termination of the contract:
  - 3.6(1) the Final Staff List and the Staffing Information relating to persons on that list will be complete and accurate;
  - 3.6(2) the Final Staff List will identify all actual and potential Re-Transferring Personnel; and
  - 3.6(3) it will have disclosed all terms and conditions of employment or

engagement and other Staffing Information relating to the Re-Transferring Personnel to the *Client*.

3.7 From the earlier of:

- 3.7(1) the date falling 3 calendar months before the date of expiry of this contract; or
- 3.7(2) if the contract is terminated by either Party in accordance with clause 90, the date of the relevant termination notice or
- 3.7(3) if either Party refers a dispute to adjudication in accordance with clause W2, the date of such referral;

the *Contractor* will not and will procure that its Subcontractors do not without the prior written consent of the *Client* (such consent not to be unreasonably withheld or delayed):

- 3.7(4) terminate or give notice to terminate the employment or engagement, or replace, the persons listed on the most recent Staff List and/or any Re-Transferring Personnel;
- 3.7(5) deploy or assign any other person to perform the *service* who is not included on the most recent Staff List
- 3.7(6) make, propose or permit any changes to the terms and conditions of employment or engagement of any persons listed on the most recent Staff List and/or any Re-Transferring Personnel;
- 3.7(7) increase to any significant degree the proportion of working time spent on the *service* by any of the Contractor's Personnel; or
- 3.7(8) introduce any new contractual or customary practice (including for the avoidance of doubt any payments on termination of employment) applicable to any person listed on the most recent Staff List.

3.8 The *Contractor* will promptly notify the *Client* of any notice of resignation received from any person listed on the most recent Staff List or the Final Staff List (if any) during the period referred to in paragraph 3.7 regardless of when such notice takes effect.

3.9 For the avoidance of doubt, the *Contractor* confirms that the *Client* will be permitted to disclose any information provided to it under this paragraph 3 in summary form to any person who has been invited to tender for the provision of the *service* (or similar services) and to any Replacement Supplier.

#### **4 TRANSFER OF EMPLOYEES ON EXPIRY OR TERMINATION OR APPOINTMENT OF A REPLACEMENT SUPPLIER**

4.1 If the Regulations apply on the expiration or termination of contract (in whole or in part) and/or a change in the Scope and/or the appointment of a Replacement Supplier, the

following will apply:

- 4.1(1) The contracts of employment of each member of the Re-Transferring Personnel will have effect (except in relation to occupational pension scheme benefits excluded under Regulation 10 of the Regulations which will be treated in accordance paragraphs 4.2(1) and 4.2(2) below) from the Further Transfer Date as if originally made between the Re-Transferring Personnel and the *Client* or Replacement Supplier (as appropriate).
- 4.1(2) During the period commencing on the earlier of:
- 4.1(2)(a) the date falling 6 calendar months before the Further Transfer Date; or
- 4.1(2)(b) if the contract is terminated by either Party in accordance with clause 90 the date of the relevant termination notice.
- 4.1(2)(c) and ending on the Further Transfer Date the *Contractor* will:
- (i) provide the *Client* with access to such employment records as the *Client* may require to put in place the administrative arrangements for the transfer of the contracts of employment of the Re-Transferring Personnel to the *Client* or Replacement Supplier (as appropriate);
  - (ii) allow the *Client* to have copies of any of the documents referred to in paragraph 4.1(2)(c)(i); and
  - (iii) provide all original employment records relating to the Re-Transferring Personnel to the *Client* or Replacement Supplier (as appropriate).
- If the Re-Transferring Personnel are employed or engaged by Subcontractors, the *Contractor* will procure such Subcontractors provide the *Client* or Replacement Supplier (as appropriate) with the same level of access and information
- 4.1(3) The *Contractor* warrants to each of the *Client* and the Replacement Supplier (as applicable) that as at the Further Transfer Date no Re-Transferring Personnel (except where the *Contractor* has notified the *Client* and the Replacement Supplier (if appointed) in writing to the contrary) to the *Contractor's* knowledge:

- 4.1(3)(a) is under notice of termination;
  - 4.1(3)(b) is on long-term sick leave;
  - 4.1(3)(c) is on maternity, parental or adoption leave;
  - 4.1(3)(d) has committed any serious security breach or engaged in any serious fraudulent activity or misconduct amounting to a breach of any regulations;
  - 4.1(3)(e) is entitled or subject to any additional terms and conditions of employment other than those disclosed to the *Client* or Replacement Supplier (as appropriate);
  - 4.1(3)(f) is or has been within the previous two years the subject of formal disciplinary proceedings;
  - 4.1(3)(g) has received a written warning (other than a warning that has lapsed);
  - 4.1(3)(h) has taken or been the subject of a grievance procedure within the previous two years; or
  - 4.1(3)(i) has objected, or has indicated an intention to object, in accordance with the Regulations to his or her employment transferring to the *Client* or Replacement Supplier (as appropriate) under the Regulations.
- 4.1(4) The *Contractor* undertakes to each of the *Client* and any Replacement Supplier (as appropriate):
- 4.1(4)(a) that it will (and will procure that its Subcontractors) continue to perform and observe all of its obligations and those of any of its predecessors under or in connection with the contracts of employment of the Re-Transferring Personnel up to the Further Transfer Date;
  - 4.1(4)(b) to pay to the Re-Transferring Personnel all sums to which they are entitled from the *Contractor* and/or any Subcontractor up to the Further Transfer Date (regardless of when such sums fall due) including, without limitation, all wages and salaries, sick pay, maternity pay, any liability to taxation, expenses, accrued bonus, commission and other sums payable in respect of any period up to the Further Transfer Date; and
  - 4.1(4)(c) to comply (and to procure that its Subcontractors comply) in all respects with its information and consultation obligations under the Regulations and to provide to the

*Client* or Replacement Supplier (as appropriate) such information as the *Client* or Replacement Supplier may request in order to verify such compliance.

4.1(5) In respect of the Re-Transferring Personnel the Parties agree that all Employment Costs will be apportioned on a time basis (regardless of when such sums fall to be paid) as follows:

4.1(5)(a) up to 23:59 on the date immediately preceding the Further Transfer Date the *Contractor* will be responsible for the Employment Costs

4.1(5)(b) from 00:00 on the Further Transfer Date and thereafter the *Client* and/or Replacement Supplier (as appropriate) will be responsible for the Employment Costs

except that there will be no apportionment in respect of the Re-Transferring Personnel's holiday entitlements.

4.1(6) The *Contractor* will indemnify, keep indemnified and hold harmless each of the *Client* and any Replacement Supplier (and/or its or their subcontractors) from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profit, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and legal costs (on a full indemnity basis) which the *Client* and/or the Replacement Supplier (and/or its or their subcontractors) (as appropriate) incurs or suffers arising directly or indirectly out of or in connection with:

4.1(6)(a) any failure by the *Contractor* to comply with its obligations under paragraph 4.1(4);

4.1(6)(b) any breach or default by or on behalf of the *Contractor* (or any of its Subcontractors) in respect of any person who is or was employed or engaged by it, except in the case of the Re-Transferring Personnel where the *Contractor's* indemnity will only apply in respect of such employees insofar as and to the extent that any such breach or default occurred on or before the Further Transfer Date or was undertaken by, on behalf or at the instruction of the *Contractor* or its sub-contractors; and/or

4.1(6)(c) any claim or demand or other action taken against the *Client* and/or Replacement Supplier (and/or its or their subcontractors) by any person employed or engaged by the *Contractor* or its sub-contractors (other than Re-

Transferring Personnel) who claims (whether correctly or not) that the *Client* or Replacement Supplier (and/or its or their subcontractors) has inherited any liability from the *Contractor* or its Subcontractors in respect of such person by virtue of the Regulations.

- 4.1(7) If it is found that the employment of any person other than the Re-Transferring Personnel transfers to the *Client* or any Replacement Supplier (and/or any of its or their subcontractors) on or after the Further Transfer Date pursuant to the Regulations:
- 4.1(7)(a) the *Contractor* shall within seven days of becoming aware of that allegation or finding make that person a written offer of employment to commence immediately on the same terms and conditions as that person was employed prior to the transfer (actual or alleged), and under which the *Contractor* or its sub-contractors agrees to recognise that employee's prior service with the *Contractor* or its sub-contractor and the *Client* or Replacement Supplier (and/or its or their subcontractors), as appropriate, shall give all reasonable assistance requested by the *Contractor* or its sub-contractor to persuade that person to accept the offer;
  - 4.1(7)(b) the *Client* or the Replacement Supplier (and/or its or their subcontractors) may, within 28 days after becoming aware of that finding or allegation, if that person is still an employee of the *Client* or the Replacement Supplier and has not accepted an offer of employment with the *Contractor* or its sub-contractors, dismiss that person; and
  - 4.1(7)(c) the *Contractor* shall indemnify and keep indemnified the *Client* and/or the Replacement Supplier (and/or its or their subcontractors) against costs, liabilities and expenses (including legal costs on a full indemnity basis) the *Client* and/or the Replacement Supplier (and/or its or their subcontractors) may suffer or incur in relation to that dismissal and the employment of that person up to the date of that dismissal and any other claim brought by that person in each case provided the *Client* and/or the Replacement Supplier (and/or its or their subcontractors) take all reasonable steps to minimise such costs, liabilities and expenses.
- 4.1(8) If the Regulations do not apply on the expiration or termination of the contract and/or the appointment of a Replacement Supplier, the *Contractor* will remain responsible for the Re-Transferring Personnel and will indemnify,

keep indemnified and hold harmless the *Client* and/or any Replacement Supplier (and/or its or their subcontractors) from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profit, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and legal costs (on a full indemnity basis) which the *Client* and/or any Replacement Supplier (and/or its or their subcontractors) incurs or suffers arising directly or indirectly out of and/or in connection with the employment or termination of employment of any of the Re-Transferring Personnel or former Re-Transferring Personnel.

4.1(9) The *Contractor* will procure that whenever the *Client* so requires on reasonable notice at any time during the continuance in force of this contract and for 6 years following the date of expiry or earlier termination of the contract the *Client* and any Replacement Supplier will be given access to and be allowed to consult with any person, consultant or employee who, at that time:

4.1(9)(a) is still an employee or Subcontractor of the *Contractor* or any of the *Contractor's* associated companies or Subcontractors; and

4.1(9)(b) was at any time employed or engaged by the *Contractor* or its Subcontractors in order to provide the *service* to the *Client* under the applicable contract

and such access and consultation will be provided free of charge and thereafter be charged at reasonable rates for the time spent by the *Contractor* (or its Subcontractors) and/or its employees or Subcontractors on such consultation. The *Contractor* will further procure that all such persons co-operate with the *Client's* requests.

4.2 4.2(1) The *Client* or Replacement Supplier (as appropriate) will comply with the provisions of sections 257 and 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 with effect from the Further Transfer Date in respect of any Non-Eligible Employees.

4.2(2) The *Client* or Replacement Supplier (as appropriate) will comply with the Best Value Direction in respect of any Eligible Employees.

4.2(3) The *Client* or Replacement Supplier (as appropriate) will indemnify and keep indemnified the *Contractor* (and any of its Subcontractors) from and against all costs, expenses, losses, demands, actions, liabilities, claims or proceedings arising out of any breach of any of the provisions of paragraphs 4.2(1) and/or 4.2(2) of Appendix 2.

# APPENDIX 3

## TASK DATA

### TASK DATA – [PROJECT TASK] / [ACTIVITY TASK]<sup>1</sup>

#### Part One

#### 1 General

The Task is [*describe works and/or services*]

The Task manager is

Name [.....]

Address for communications [.....]

Address for electronic communications [.....]

In respect of this Task only the *Service Manager* delegates all of its actions under this contract to the Task manager pursuant to clause 14.2, except for the actions referred to in clauses 17.1, 90.1 to 93.4, 100.1 to 100.3, 113.1, X10.1 to X10.7, X13.1 and X23.1, which are not delegated.

[The Task site is [.....]] / [The boundaries of the Task site are [as shown on the drawing entitled Task site boundary] or if no drawing exists, within the boundaries of the traffic management arrangements]

The Task Scope is in the document titled [.....]

[The following matters will be included in the Task Early Warning Register]:<sup>2</sup>

[.....]

#### 3 Time

The starting date for the Task is [.....]

The completion date for the Task is [.....]

The period within which the *Contractor* is to submit a Task Order programme for acceptance is [.....] [OR]  
[as set out in Contract Data Part 1]<sup>3</sup>

<sup>1</sup> Note: Delete as appropriate.

<sup>2</sup> Note: If there are any matters to be notified at day 1 include this entry. Otherwise this can be deleted. This entry is not relevant to ATO Tasks.

The *Contractor* submits a revised Task Order programme for acceptance at intervals of no longer than [.....]<sup>4</sup>

[delay damages apply at a rate of]<sup>5</sup> [£[.....] per day]

#### 4 Quality management and Defects

The defects date for the Task is [not applicable] /  
[as set out in Contract Data Part 1]<sup>6</sup>

The defect correction period is [not applicable] /  
[as set out in Contract Data Part 1]<sup>7</sup>

#### 5 Payment

Main Option [A] [C] applies<sup>8</sup>

Where Main Option C applies to a Task

The *Contractor's share percentages* and the *share ranges* are as set out in the Framework Data, Schedule 1 to the Framework Agreement.

The *exchange rates* are as set out in the Framework Data, Schedule 1 to the Framework Agreement.

#### 8 Liabilities and insurance

If additional insurances are to be provided The *Contractor* provides these additional insurances

[.....] [None]

#### X10: Information modelling

Option X10 is [used]/[not used]

If no *information execution plan* is identified in part two of The period after the date of the Task Order within which the *Contractor* is to submit a first Information Execution Plan for acceptance is [ ] weeks

- 
- 3 Note: Delete / complete as appropriate.
  - 4 Note: Not relevant to ATO Tasks.
  - 5 Note: Delete if delay damages do not apply to the Task.
  - 6 Note: Delete as applicable.
  - 7 Note: Delete as applicable.
  - 8 Note: Select which main pricing option applies to the Task.

the Task Data

### X18: Limitation of liability

The Task [is] [is not] a “Separately Capped Task” for the purposes of clause X18.4.

[The *Contractor’s* total liability to the *Client* for all matters arising under or in connection with this Task Order, other than excluded matters, is limited to]<sup>9</sup> [ ]

---

<sup>9</sup> Note: Include this wording and an amount if the Task is a “Separately Capped Task”.

**Part two**

**1 General**

The following matters will be included in the Task Early Warning Register<sup>10</sup>

[.....]

**2 The Contractor's main responsibilities**

If the Contractor is to provide Scope for its plan

The Task Scope provided by the Contractor is in [.....]

**3 Time**

If a Task Order programme is to be identified in the Task Order

The Task Order programme identified in the Task Order is [ ]

**5 Payment**

The Task Price List is [as attached]

---

<sup>10</sup> Note: Not relevant to AT0 Tasks.

## APPENDIX 4

### SCHEDULE OF COST COMPONENTS

This schedule is part of these *conditions of contract* only when Option C is used. An amount is included

- only in one cost component and
- only if it is incurred in order to Provide the Service.

---

|               |   |
|---------------|---|
| <b>People</b> | <p>1 The following components of</p> <ul style="list-style-type: none"><li>• the cost of people who are directly employed by the <i>Contractor</i> and whose normal place of working is within the Service Areas and</li><li>• the cost of people who are directly employed by the <i>Contractor</i> and whose normal place of working is not within the Service Areas but who are working in the Service Areas, proportionate to the time they spend working in the Service Areas.</li></ul> <p>11 Wages, salaries and amounts paid by the <i>Contractor</i> for people paid according to the time worked on the contract.</p> <p>12 Payments related to work on the contract and made to people for</p> <ul style="list-style-type: none"><li>(a) bonuses and incentives</li><li>(b) overtime</li><li>(c) working in special circumstances</li><li>(d) special allowances</li><li>(e) absence due to sickness and holidays</li><li>(f) severance.</li></ul> <p>13 Payments made in relation to people in accordance with their employment contract for</p> <ul style="list-style-type: none"><li>(a) travel</li><li>(b) subsistence and lodging</li><li>(c) relocation</li><li>(d) medical examinations</li><li>(e) passports and visas</li><li>(f) travel insurance</li><li>(g) items (a) to (f) for dependents</li><li>(h) protective clothing</li><li>(i) contributions, levies or taxes imposed by law</li><li>(j) pensions and life assurance</li><li>(k) death benefit</li><li>(l) occupational accident benefits</li><li>(m) medical aid and health insurance</li><li>(n) a vehicle</li><li>(o) safety training.</li></ul> |
|---------------|---|

- 14 The following components of the cost of people who are not directly employed by the *Contractor* but are paid for by the *Contractor* according to the time worked while they are within the Service Areas.

Amounts paid by the *Contractor*.

---

**Equipment**

- 2 The following components of the cost of Equipment which is used within the Service Areas.
- 21 Payments for the hire or rent of Equipment not owned by
- the *Contractor*,
  - the *Contractor's* ultimate holding company or
  - a company with the same ultimate holding company
- at the hire or rental rate multiplied by the time for which the Equipment is required.
- 22 Payments for Equipment which is not listed in the Contract Data but is
- owned by the *Contractor*,
  - purchased by the *Contractor* under a hire purchase or lease agreement or
  - hired by the *Contractor* from the *Contractor's* ultimate holding company or from a company with the same ultimate holding company
- at open market rates, multiplied by the time for which the Equipment is required.
- 23 Payments for Equipment purchased for work included in the contract listed with a time- related on cost charge, in the Contract Data, of
- the change in value over the period for which the Equipment is required and
  - the time-related on cost charge stated in the Contract Data for the period for which the Equipment is required.
- The change in value is the difference between the purchase price and either the sale price or the open market sale price at the end of the period for which the Equipment is required. Interim payments of the change in value are made at each assessment date. A final payment is made in the next assessment after the change in value has been determined.
- If the *Service Manager* agrees, an additional item of Equipment may be assessed as if it had been listed in the Contract Data.
- 24 Payments for special Equipment listed in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.
- If the *Service Manager* agrees, an additional item of special Equipment may be assessed as if it had been listed in the Contract Data.
- 25 Payments for the purchase price of Equipment which is consumed.
- 26 Unless included in the hire or rental rates, payments for
- transporting Equipment to and from the Service Areas other than for repair and maintenance,
  - erecting and dismantling Equipment and
  - constructing, fabricating or modifying Equipment as a result of a compensation event.

- 27 Payments for purchase of materials used to construct or fabricate Equipment.
- 28 Unless included in the hire rates, the cost of operatives is included in the cost of people.

|                                    |   |
|------------------------------------|---|
| <b>Plant and Materials</b>         | <p>3 The following components of the cost of Plant and Materials.</p> <p>31 Payments for</p> <ul style="list-style-type: none"> <li>• purchasing Plant and Materials,</li> <li>• delivery to and removal from the Service Areas,</li> <li>• providing and removing packaging and</li> <li>• samples and tests.</li> </ul> <p>32 Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.</p>  |
| <b>Subcontractors</b>              | <p>4 The following components of the cost of Subcontractors.</p> <p>41 Payments to Subcontractors for work which is subcontracted without taking into account any amounts paid to or retained from the Subcontractor by the <i>Contractor</i>, which would result in the <i>Client</i> paying or retaining the amount twice.</p>  |
| <b>Charges</b>                     | <p>5 The following components of the cost of charges paid by the <i>Contractor</i>.</p> <p>51 Payments for provision and use in the Service Areas of</p> <ul style="list-style-type: none"> <li>• water,</li> <li>• gas,</li> <li>• electricity,</li> <li>• telephone and</li> <li>• internet.</li> </ul> <p>52 Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the <i>service</i>.</p> <p>53 Payments for</p> <ul style="list-style-type: none"> <li>(a) cancellation charges arising from a compensation event</li> <li>(b) buying or leasing land or buildings within the Service Areas</li> <li>(c) compensation for loss of crops or buildings</li> <li>(d) royalties</li> <li>(e) inspection certificates</li> <li>(f) charges for access to the Service Areas</li> <li>(g) facilities for visits to the Service Areas by Others</li> <li>(h) consumables and equipment provided by the <i>Contractor</i> for the <i>Service Manager's</i> offices.</li> </ul> |
| <b>Manufacture and fabrication</b> | <p>6 The following components of the cost of manufacture and fabrication of Plant and Materials which are wholly or partly designed specifically for the <i>service</i> and manufactured or fabricated by the <i>Contractor</i> outside the Service Areas.</p>  |

|  |     |   |
|--|-----|---|
|  | 61  | Amounts calculated by multiplying each of the rates for people in the Contract Data by the total time appropriate to that rate spent on manufacture and fabrication of Plant and Materials outside the Service Areas.                             |
| <hr/>  |     |   |
| <b>Shared services outside the Service Areas</b> | 7   | The following component of the cost of people who are providing a <i>shared service</i> outside the Service Areas.  |
|  | 71  | Amounts calculated by multiplying each of the rates for people in the Contract Data by the total time appropriate to that rate spent on providing a <i>shared service</i> outside the Service Areas.  |
| <b>Design</b>                                    | 7A  | The following components of the cost of design of the <i>service</i> and Equipment done outside the Service Areas.  |
|  | 71A | Amounts calculated by multiplying each of the rates for people in the Contract Data by the total time appropriate to that rate spent on design of the <i>service</i> and Equipment outside the Service Areas.                                     |
|  | 72A | The cost of travel to and from the Service Areas for the categories of design people listed in the Contract Data.   |
| <hr/>  |     |   |
| <b>Insurance</b>                                 | 8   | The following are deducted from cost <ul style="list-style-type: none"> <li>• the cost of events for which the contract requires the <i>Contractor</i> to insure and</li> <li>• other costs paid to the <i>Contractor</i> by insurers.</li> </ul> |

**APPENDIX 5**

**FORM OF PERFORMANCE BOND**

**PERFORMANCE BOND**

**Between**

**[BANK]**

**and**

**[CLIENT]**

**Relating to the**

**London Highway Maintenance and Projects Framework  
(Central Area)**

(Letterhead of Bank)

**Bond reference [     ]**

To:        *[insert name and address of the Client]*

Date:

Dear Sir/Madam

IN CONSIDERATION of you entering into a Call Off Contract ("**the Call Off Contract**") with *[insert name of Contractor]* ("**the Contractor**") in respect of *[insert brief description of scope of the call off contract]* we *[insert name of Bank]* ("**the Bank**") hereby undertake upon first demand in writing made by you upon us from time to time or at any time to pay on each occasion the sum demanded by you on the terms and conditions set out in this letter ("**this Bond**").

PROVIDED THAT:

1.        This Bond shall come into force on the date of this Bond.
2.        Any demand under this Bond shall be substantially in the form of either Annex 1 or Annex 3 to this Bond as required by the circumstances in which such demand is made, and as between you and us the facts set out in that demand shall (a) be deemed to be true and (b) shall be accepted by us as conclusive evidence for the purposes of this Bond that the amount claimed in the demand is due to you under this Bond.
3.        Any demand in the form of Annex 1 shall be accompanied by a copy of a letter from you sent to the Contractor by first class recorded delivery post 14 or more days before the date of the demand, substantially in the form of Annex 2 of this Bond.
4.        Our liability under this Bond shall be limited so as not to exceed the aggregate sum of £[FIGURE] and we shall have no liability under this Bond in respect of any demand delivered after [DATE OR PERIOD].
5.        Our obligations under this Bond shall remain in full force and effect and shall not be terminated, reduced, discharged or otherwise affected by:
  - (a)        any alteration or variation to the terms of the Call Off Contract made by agreement between you and the Contractor including, without limitation, any alteration in the extent or nature or sequence or method or timing of the works or services to be carried out under the Call Off Contract or any novation of the Call Off Contract (in whole or in part); or
  - (b)        any defence, counterclaim, withholding, set off or other deduction available to the Contractor under the Call Off Contract or otherwise; or
  - (c)        any time being given to the Contractor or any other indulgence, waiver, concession, forbearance or forgiveness to the Contractor whether express or by conduct or any other thing done, omitted or neglected to be done under the Call Off Contract; or
  - (d)        any other bond, security or guarantee now or subsequently held by you for all or any part of the obligations of the Contractor under the Call Off Contract; or
  - (e)        the release or waiver of any such bond, security or guarantee referred to in paragraph 5(d) above; or
  - (f)        any amalgamation, reconstruction or dissolution including, without limitation, winding-up of the Contractor; or

- (g) the termination of the Call Off Contract for any reason; or
  - (h) any other event which would or might operate to discharge a guarantor or any act or omission, matter or thing which, but for this provision, might operate to exonerate, discharge, reduce or extinguish your liability under this Bond; or
  - (i) the winding-up, bankruptcy, administration, receivership or insolvency of the Contractor; or
  - (j) any legal limitation, disability, incapacity, discharge by operation of law, change in the constitution, name or style of the Contractor or any other person relating to the Contractor (whether or not known to you); or
  - (k) any total or partial invalidity in, irregularity affecting or unenforceability of any of the obligations of the Contractor.
6. Any payment under this Bond shall be made by us in pounds sterling or in any currency which may from time to time replace pounds sterling.
7. This Bond is irrevocable.
8. Not used.
- 9.
- (a) This Bond, executed and delivered as a deed, is governed by and shall be construed in accordance with the law of England and Wales. Subject to paragraph 9(b) below, the courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Bond.
  - (b) You and we may seek interim injunctive relief or any other interim measure of protection in any court of competent jurisdiction.
  - (c) Subject to paragraph 9(b) above, you and we waive any objection to, and submit to, the jurisdiction of the courts of England and Wales. You and we agree that a judgment or order of any such court is binding upon the relevant party and may be enforced against it in the courts of any other jurisdiction.
10. You will be entitled to assign the benefit of this Bond in whole or in part but we may not assign the benefit and/or delegate the burden of this Bond in whole or in part or enter into any transaction which would result in any of those benefits and/or burdens passing to another person.
11. If any provision (in whole or in part) of this Bond is found by any court, tribunal, administrative body or authority of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from this Bond and shall be ineffective, without, so far as is possible, modifying any other provision of this Bond and this shall not affect any other provisions of this Bond which shall remain in full force and effect.
12. Any demand, notice or service under this Bond may be sent by first class recorded delivery post or delivered by hand. If sent by first class recorded delivery post it shall be deemed to be delivered on the expiry of two working days after the date of posting and if delivered by hand during normal business hours (9am – 5pm Monday to Friday, excluding public holidays) at the time of delivery. For the purpose of paragraph 4 any demand is deemed delivered as set out in this paragraph 12 but payment will not be made under this Bond until we have actually received such demand.

[For non-UK resident banks with only a branch or office in the UK :

10. For the purposes of this Bond we hereby appoint ..... of ..... (to be a London address) to accept service of process on our behalf, and service on the said ..... at the said address shall be deemed to be good service on us; and we hereby irrevocably agree not to revoke or terminate such appointment.

Executed as a Deed and delivered the day and year written above.

Executed as a Deed by ) \_\_\_\_\_  
[Bank] ) Director  
acting by a Director and the ) \_\_\_\_\_  
Secretary or by two Directors ) Director/Secretary

The common seal of [Bank] ) \_\_\_\_\_  
was affixed to this Deed in ) Director  
the presence of ) \_\_\_\_\_  
) Director/Secretary







**APPENDIX 6**

**NOT USED**

## APPENDIX 7

### PERFORMANCE MANAGEMENT

**Note: This Schedule will be included in TfL call-offs. Alternatives/alterations to this Schedule may be proposed in call-offs issued by other Clients.**

#### 1. Definitions

1.1 In this **Appendix 7** the following words and expressions have the following meanings:

|   |            |  |
|---|------------|--|
| <b>"Agreed Contribution"</b>                | <b>CB</b>  | the Client CB Contribution and the Contractor CB Contribution  |
| <b>"Agreed Group 3 Contribution"</b>        | <b>3</b>   | the Client Group 3 Contribution and the Contractor Group 3 Contribution  |
| <b>"Annual Review Panel"</b>                |            | is as defined in <b>Volume A, Schedule 9 Meetings and Reporting</b>  |
| <b>"Average Performance Percentage"</b>     |            | is as defined in <b>paragraph 5.4.7</b>  |
| <b>"CB Incentive Payment"</b>               |            | the incentive payment in respect of the Collaborative Behaviour KPIs referred to in <b>paragraph 5.5</b>   |
| <b>"CB Performance Score"</b>               |            | the <i>Contractor's</i> performance score in respect of the Collaborative Behaviour KPIs calculated in accordance with <b>paragraph 5.5</b> and <b>Appendix 2D</b> |
| <b>"Client Contribution"</b>                | <b>CB</b>  | £40,000  |
| <b>"Client Group 3 Contribution"</b>        | <b>3</b>   | £85,000  |
| <b>"Client Payment"</b>                     |            | the amount calculated in accordance with <b>paragraph 5.4.7.3(a)</b>   |
| <b>"Collaborative Behaviour KPI"</b>        |            | those Service Levels specified in <b>Appendix 2D</b>   |
| <b>"Collaborative Behaviour KPI Report"</b> | <b>KPI</b> | has the meaning given to it in <b>paragraph 5.5</b>  |
| <b>"Collaborative Behaviour Themes"</b>     |            | the Collaborative Behaviour Themes set out in <b>Appendix 2D</b>   |
| <b>"Contractor Contribution"</b>            | <b>CB</b>  | £15,000  |
| <b>"Contractor Group 3 Contribution"</b>    | <b>3</b>   | £125,000   |
| <b>"Contractor Payment"</b>                 |            | the amount calculated in accordance with <b>paragraph 5.4.7.3(a)</b>   |

|  |   |
|--|---|
| <b>Payment"</b>                            | <b>5.4.7.3(b)</b>   |
| <b>"Group 1 KPIs"</b>                      | those Service Levels specified in <b>Appendix 2A</b> as the same may be developed and amended from time to time in accordance with <b>paragraph 6</b> ; and <b>"Group 1 KPI"</b> means any of them  |
| <b>"Group 2 KPIs"</b>                      | those Service Levels specified in <b>Appendix 2B</b> ; and <b>"Group 2 KPI"</b> means any of them   |
| <b>"Group 3 Incentive Payment"</b>         | the Group 3 Incentive Payment in respect of the Group 3 KPIs referred to in <b>paragraph 5.4</b>  |
| <b>"Group 3 Incentive Statement"</b>       | the statement to be prepared by the <i>Contractor</i> as required under <b>paragraph 5.4</b> and setting out the calculation of the relevant Group 3 Incentive Payment  |
| <b>"Group 3 KPIs"</b>                      | those Service Levels specified in <b>Appendix 2C</b> ; and <b>"Group 3 KPI"</b> means any of them   |
| <b>"Health &amp; Safety Leadership"</b>    | <p>is:</p> <ul style="list-style-type: none"> <li>setting direction for effective health and safety management;</li> <li>introducing management systems and practices that ensure risks are dealt with sensibly, responsibly and proportionately;</li> <li>monitoring of and reporting on the performance of the <i>Client's</i> and the <i>Contractor's</i> own health and safety policy and initiatives;</li> <li>conducting strategic (boardroom) level reviews of health and safety performance at least annually; and</li> <li>putting measures in place to ensure compliance with the health and safety requirements of this contract</li> </ul> <p>in accordance with the following guidance published by the Health and Safety Executive, as may be revised, updated or replaced from time to time:</p> <ul style="list-style-type: none"> <li>INDG417 Leading Health and Safety at Work (June 2013);</li> <li>INDG277 Leadership for the Major Hazards Industries (2004); and</li> <li>HSG65 Successful Health and Safety Management (2013)</li> </ul> |
| <b>"Highways Service Delivery Meeting"</b> | is as defined in <b>Volume A Schedule 9 Meetings and Reporting</b>  |
| <b>"Highways Service Delivery Report"</b>  | has the meaning given to it in <b>paragraph 3</b>   |
| <b>"Improvement Plan"</b>                  | a plan to be prepared by the <i>Contractor</i> and at the <i>Contractor's</i> cost to set out the <i>Contractor's</i> proposals to improve performance in order to meet the relevant Service Levels   |
| <b>"Low Service</b>                        | damages payable by the <i>Contractor</i> for failure to meet the  |

|                                 |                |   |
|---------------------------------|----------------|---|
| <b>"Damages"</b>                |                | <b>Group 2 KPIs</b> as provided for in <b>paragraph 5.3</b>   |
| <b>"Minimum Service Level"</b>  | <b>Service</b> | the requirement set out in the Minimum Service Level column or row of the table set out in <b>Appendix 2A, Appendix 2C and Appendix 2D</b> in respect of that Service Level   |
| <b>"Performance Percentage"</b> |                | the <i>Contractor's</i> actual performance in respect of the Group 3 KPIs calculated in accordance with <b>paragraph 5.4.7.1</b>  |
| <b>"Reporting Period"</b>       |                | the frequency of review of a Service Level (each Period, quarterly or annual) as indicated in <b>Appendix 2A, Appendix 2B, Appendix 2C and Appendix 2D</b>  |
| <b>"Review Period"</b>          |                | subject to <b>paragraph 5.1</b> each calendar year from the <i>starting date</i>  |
| <b>"Service Levels"</b>         |                | the standards of performance required by this contract in respect of each of the Group 1 KPIs, the Group 2 KPIs, the Group 3 KPIs and the Collaborative Behaviour KPI as these may be varied, added to or replaced from time to time in accordance with this contract   |
| <b>"Service Audit"</b>          | <b>Level</b>   | an audit of the <i>Contractor's</i> performance against the relevant Service Levels, in accordance with <b>paragraph 9</b>  |
| <b>"Step-In Instruction"</b>    |                | has the meaning given to it in <b>paragraph 10</b>  |
| <b>"Surveillance Audit"</b>     |                | an audit of the <i>Contractor's</i> performance undertaken by independent auditors in accordance with <b>paragraph 11</b>   |
| <b>"Target Service Level"</b>   | <b>Service</b> | the requirement set out in the Target Service Level column of the table set out in <b>Appendix 2A, Appendix 2C and Appendix 2D</b> in respect of that Service Level as the same may be amended from time to time in accordance with <b>paragraph 6 and paragraph 7.</b> |

## 2. General

2.1 Performance of the Service Levels is measured using data captured in the *Client's* Asset Management Information System or ASITE system or any replacement system used to capture data.

## 3. Reporting of Service Levels

3.1 With effect from the *starting date* until the end of the Service Period, the *Contractor's* performance of the *service* is measured and recorded against each Service Level, in respect of each Reporting Period.

3.2 The *Client* within 5 days after the end of each Reporting Period provides the *Contractor* with the relevant data in respect of the *Contractor's* performance for that Reporting Period. The *Contractor* within 10 days after the end of each Reporting Period verifies that data and provides the *Service Manager* with a report (the "**Highways Service Delivery Report**") containing the detail required by **Volume A, Schedule 9** and **paragraph 3.3** including details of the *Contractor's* performance in respect of each of the relevant *services* during that Reporting Period.

3.3 If, by reason of any default of the *Contractor*, including any failure of the *Contractor* to add or update the relevant data in respect of an activity (whether by the time required by this contract or at all) on the system referred to at **paragraph 2**, it is not possible to measure or record a Service Level in any Reporting Period or the *Contractor* does not report upon a Service Level in the Highways Service Delivery Report in respect of that Reporting Period then, unless the default or failure is rectified within 5 Business Days of the *Contractor* having been notified by the *Client*, without prejudice to any other rights that the *Client* may have, the *Contractor* is deemed to have failed to meet the relevant Target Service Level and (where applicable) Minimum Service Level in respect of that Service Level in that Reporting Period.

3.4 Without prejudice to any other rights the *Client* may have under the contract, the *Contractor*, on request, provides to the *Service Manager* such further information as the *Service Manager* may require in order to understand or verify the contents of any Highways Service Delivery Report.

#### 4. **Agreed Contributions**

4.1 The *Client* deducts the *Contractor's* CB Contribution and the *Contractor's* Group 3 Contribution from payments otherwise due to the *Contractor* as follows:

4.1.1 in the first year the contributions are deducted from the amount due at the 6th assessment date after the *starting date*;

4.1.2 in each subsequent year the contributions are deducted from the amount due at the assessment date following payment of the Group 3 Incentive Payment for the previous year.

4.2 If at any time there is an insufficient amount due to the *Contractor* from which to deduct the *Contractor's* CB Contribution or the *Contractor's* Group 3 Contribution the *Contractor* pays any shortfall to the *Client* on demand.

#### 5. **Incentivisation**

5.1 The provisions of this **paragraph 5** do not apply to the first three Periods of the first year after the *starting date*. In respect of the Group 3 KPIs, the Group 3 Incentive Payment for the first year after the *starting date* is calculated on the basis that the Review Period is 10 Periods.

5.2 In relation to the **Group 1 KPIs**:

5.2.1 Group 1 KPIs are reviewed by the *Client* each Reporting Period following receipt of the relevant Highways Service Delivery Report.

5.2.2 If a part of the *service* does not meet the Minimum Service Level for a Group 1 KPI for two consecutive Reporting Periods **paragraph 8** applies.

5.2.3 Group 1 KPIs are benchmarked against other contractors within the Framework and where relevant, the *Client's* other suppliers of surface transport infrastructure, inspections, operations, maintenance, renewals and enhancements. The results will be shared in the form of ranked league tables, at the quarterly Multiparty Collaborative Forum (as defined in **Schedule 13 (Multiparty Collaboration Schedule)**).

5.3 In relation to the **Group 2 KPIs**:

5.3.1 Group 2 KPIs are reviewed by the *Client* each Reporting Period following receipt of the relevant Highways Service Delivery Report.

5.3.2 If a part of the *service* does not meet the required Service Level for a Group 2 KPI, the *Client* may deduct or require payment of Low Service Damages calculated in accordance with **Appendix 2B**.

- 5.3.3 In respect of each Group 2 KPI stated in **Appendix 2B** to be an annual performance type of Low Service Damages, Low Service Damages are calculated and deducted or paid for each Review Period based upon an annual percentage score for that Group 2 KPI calculated as the mean average of the *Contractor's* percentage scores for that Group 2 KPI (calculated in accordance with **Appendix 2B**) in each Reporting Period during that Review Period.
  - 5.3.4 In respect of each Group 2 KPI stated in **Appendix 2B** to be a late delivery type of Low Service Damages, if the *Contractor* achieves less than 95% performance against its accepted plan for that Group 2 KPI for two consecutive Reporting Periods **paragraph 8** applies.
- 5.4 In relation to the **Group 3 KPIs**:
- 5.4.1 On or before 1 May in each year after the first year following the *starting date*, the *Contractor* prepares and submits to the *Client* an Annual Review Report. The Annual Review Report includes an Annual Service Performance Section which clearly sets out:
    - 5.4.1.1 a tabulated statement summarising performance for each Service Level being monitored through this contract;
    - 5.4.1.2 an explanation if performance has not met the required Target Service Level and a statement of what steps the *Contractor* will take to meet such Target Service Level in the future; and
    - 5.4.1.3 the Group 3 Incentive Statement.
  - 5.4.2 The *Client* reviews the Group 3 Incentive Statement and replies within 3 weeks of its submission. The reply is either:
    - 5.4.2.1 acceptance of the Group 3 Incentive Statement;
    - 5.4.2.2 an instruction to re-submit the Group 3 Incentive Statement, explaining the reasons for requesting that the Group 3 Incentive Statement is re-submitted;
    - 5.4.2.3 rejection of the Group 3 Incentive Statement, explaining the reasons; or
    - 5.4.2.4 confirmation that the *Client* will make its own assessment.

The *Client* may reject the Group 3 Incentive Statement if it does not accurately reflect the performance data and/or if it has not been prepared in accordance with this contract.
  - 5.4.3 Where the *Contractor* submits a revised Group 3 Incentive Statement it does so within 1 week of being instructed to do so.
  - 5.4.4 Where the *Client* makes its own assessment, it does so within 1 week of notification to the *Contractor* that it will do so.
  - 5.4.5 Where the *Client* requests that the Group 3 Incentive Statement is re-issued or rejects the Group 3 Incentive Statement or makes its own assessment and the *Contractor* objects to the decision, the *Contractor* may refer the matter for dispute resolution in accordance with **Clause 47 of the Framework Agreement** provided that if no referral is made within 4 weeks of the *Client's* notification of its decision or assessment the *Client's* decision or assessment (as appropriate) is deemed final.
  - 5.4.6 Following the acceptance or determination of the Group 3 Incentive Statement, the *Client* pays to the *Contractor* in the amount due at the next assessment

date any Group 3 Incentive Payment. The balance of the Agreed Group 3 Contribution is retained by the *Client*.

5.4.7 The Group 3 Incentive Payment for each Review Period is calculated as follows:

5.4.7.1 for each Group 3 KPI the Performance Percentage is calculated at the end of each Reporting Period in accordance with **Appendix 2C**

5.4.7.2 for each Group 3 KPI the Average Performance Percentage is the mean average of all Performance Percentages for that Group 3 KPI in the Review Period

5.4.7.3 for each Group 3 KPI if:

(a) the Average Performance Percentage for a Review Period exceeds the relevant Target Service Level a Client Payment is due calculated at the rate stated in **Appendix 2C** for each 0.1% by which the Average Performance Percentage exceeds the relevant Target Service Level provided that for the purpose of this calculation the Average Performance Percentage is never greater than 100%

(b) the Average Performance Percentage for a Review Period is less than the relevant Target Service Level a Contractor Payment is due calculated at the rate stated in **Appendix 2C** for each 0.1% by which the Average Performance Percentage is less than the relevant Target Service Level provided that for the purpose of this calculation only the Average Performance Percentage is never less than the relevant Minimum Service Level

5.4.7.4 for each Group 3 KPI the Group 3 Incentive Payment for a Review Period is the total of any Client Payments due in respect of that Review Period less the total of any Contractor Payments due in respect of that Review Period. If this calculation results in a negative figure the Group 3 Incentive Payment is £0 (zero pounds).

5.4.8 If a part of the *service* does not meet the Minimum Service Level for a Group 3 KPI:

5.4.8.1 for two consecutive Reporting Periods **paragraph 8** applies

5.4.8.2 for six consecutive Reporting Periods **paragraph 10** applies.

5.5 In relation to the **Collaborative Behaviour KPI**:

5.5.1 The *Contractor* provides to the *Client* a Collaborative Behaviour KPI Report, setting out evidence of its performance against each of the Collaborative Behaviour Themes no less than 2 weeks before each quarterly Highways Service Delivery Meeting. The *Client* reviews the evidence provided and at the relevant Highways Service Delivery Meeting gives feedback on the *Contractor's* performance.

5.5.2 On or before 1 May in each year after the first year following the *starting date*, the *Client* assesses the *Contractor's* performance and notifies the *Contractor* of its proposed CB Performance Score. The proposed CB Performance Score is discussed at the Annual Review Panel and the *Client* and the *Contractor* agree the CB Performance Score. If the *Client* and the *Contractor* do not agree, the *Client* determines the CB Performance Score and notifies the *Contractor* within 7 days after the meeting of the Annual Review Panel.

- 5.5.3 Following the agreement or determination of the CB Performance Score, the *Client* pays the CB Incentive Payment (if any) to the *Contractor* in the amount due at the next assessment date and the balance of the Agreed CB Contribution is retained by the *Client*.
- 5.5.4 The CB Performance Score is determined in accordance with **Appendix 2D**.
- 5.5.5 The CB Incentive Payment for each Review Period is as follows:

| <b>CB Performance Score for the Review Period</b> | <b>CB Incentive Payment for the Review Period</b> |
|---|---|
| Exemplary   | £55,000   |
| Exceed  | £30,000   |
| Target Service Level                              | £15,000   |
| Minimum Service Level                             | £5,000  |
| Poor Performance                                  | £0  |

- 5.6 In circumstances where the *Client* is required to take steps under **paragraph 8** or **paragraph 9**, the *Client* is entitled to recover from the *Contractor* all losses costs and expenses incurred and either deducts such losses costs and expenses from the amount due to the *Contractor* and/or recovers such losses costs and expenses as a debt.
- 5.7 The provisions of this **paragraph 5** are without prejudice to the *Client's* other rights and remedies, under this contract or otherwise, for losses arising from the failure of the *Contractor* to meet its obligations to Provide the Service in accordance with the terms of this contract.

**6. Developing and Amending the Group 1 KPIs**

Group 1 KPIs are to be developed during the Mobilisation Period and thereafter reviewed annually by the Annual Review Panel, as set out in **Volume A Schedule 9 Meetings and Reporting**. If the Annual Review Panel adjusts the Group 1 KPIs the *Client* prepares and submits to the *Contractor* a revised **Appendix 2A** reflecting the adjustments which applies with effect from the date of the decision of the Annual Review Panel. The adjustments are not a compensation event.

**7. Developing and Amending the Group 3 KPIs**

Group 3 KPIs are to be reviewed annually by the Annual Review Panel, as set out in **Volume A Schedule 9 Meetings and Reporting**. If the Annual Review Panel adjusts the Group 3 KPIs the *Client* prepares and submits to the *Contractor* a revised **Appendix 2C** reflecting the adjustments which applies with effect from the date of the decision of the Annual Review Panel. The adjustments are not a compensation event.

**8. Improvement Plans and Service Level Audits**

- 8.1 Where this paragraph applies the *Client* may instruct the *Contractor* to prepare an Improvement Plan to bring its performance up to the required Service Level(s). Such Improvement Plan may include the provision of additional resources by the *Contractor*. For the avoidance of doubt, where additional resource is required, no additional amount is payable to the *Contractor*.
- 8.2 If instructed pursuant to **paragraph 8** the *Contractor* submits within 7 days its Improvement Plan to the *Service Manager* for acceptance. A reason for not accepting the

Improvement Plan is that it is not in accordance with this contract or the *Service Manager* does not consider that it will bring the *Contractor's* performance up to the required Service Level(s). If not accepted the *Service Manager* may instruct the *Contractor* to revise and resubmit the Improvement Plan.

8.3 The *Contractor* prepares and implements each accepted Improvement Plan at no cost to the *Client*.

8.4 If the Improvement Plan fails to restore the *Contractor's* performance to the required Service Level(s) within 8 weeks following acceptance of the Improvement Plan by the *Client* the *Client* may arrange for a Service Level Audit of the relevant Service Level(s) to be undertaken.

## 9. **Service Level Audit**

9.1 The *Client* may carry out Service Level Audits of the relevant Service Levels to provide the *Client* with information as to the cause of the *Contractor's* poor performance.

9.2 The *Client* procures independent auditors to carry out the Service Level Audits. The *Contractor* co-operates fully with the auditors and provides input into the audit process where required to do so.

9.3 In all cases the Service Level Audit monitors the *Contractor's* ability to deliver the Service Levels and assesses whether the *Contractor's* performance is improving in line with the relevant Service Levels and Improvement Plan.

9.4 For the avoidance of doubt, Service Level Audits may be carried out on a continuing basis until such time as the *Contractor's* performance is restored to at least the Minimum Service Level.

9.5 After the Service Level Audit, a report setting out the outcome of the audit may be submitted to the *Senior Representatives* of the *Client*.

## 10. **Step-In**

10.1 Where this paragraph applies, without limiting any other remedy, the *Service Manager* may instruct the *Contractor* (a "**Step-In Instruction**") to cease performance of the relevant part of the *service* and the *Contractor* ceases performance of that part of the *service* at the date and time specified in the instruction.

10.2 The *Client* may appoint a third party to perform the relevant part of the *service* or perform the relevant part of the *service* itself and the *Contractor* at its own cost gives all reasonable assistance to the *Client* and any such third party including providing without cost to the *Client* any reasonable information required by the *Client* in connection with the performance of the relevant part of the *service*. Where the *Client* appoints a third party to perform the relevant part of the *service*, the *Client* instructs the third party to perform the relevant part of the *service* to a standard equivalent to that required by this contract.

10.3 The *Client* may at its sole discretion revoke in whole or in part a Step-In Instruction by instructing the *Contractor* on not less than 5 Business Days' notice to resume performance of all or part of the relevant part of the *service*. The *Contractor* resumes performance of the relevant part of the *service* stated in such instruction at the date and time specified in the instruction.

10.4 If the *Service Manager* accepts an Improvement Plan in respect of the relevant part of the *service* in accordance with **paragraph 8** the *Client* instructs the *Contractor* on not less than 5 Business Days' notice to resume performance of the relevant part of the *service* in accordance with the Improvement Plan. The *Contractor* resumes performance of the relevant part of the *service* stated in such instruction at the date and time specified in the instruction.

- 10.5 The *Contractor* has no entitlement to loss of profit or any other loss arising out of or in connection with any Step-In Instruction or other instruction issued pursuant to **paragraph 10**.
- 10.6 Notwithstanding any other provision of this contract, the *Contractor* is not entitled to any payment in respect of any part of the *service* set out in a Step-In Instruction for the period between the date and time on which the *Contractor* is to cease performance and the date and time on which the *Contractor* is to resume performance of that part of the *service* in accordance with **paragraph 10**.
- 10.7 The *Client* is entitled to recover from the *Contractor* all losses costs and expenses incurred as a result of any Step-In Instruction and any other instruction under **paragraph 10** including any costs of engaging a third party or performing the relevant part of the *service* itself and either deducts such losses costs and expenses from the amount due to the *Contractor* and/or recovers such losses costs and expenses as a debt.
11. **Surveillance Audits**
- 11.1 The *Client* utilises independent auditors to undertake Surveillance Audits of the *Contractor's* performance of specific parts of the *services* conducted under this Call-Off Contract. The results of each Surveillance Audit are notified to the *Contractor* by the *Service Manager*.
- 11.2 The *Client* carries out Surveillance Audits every six (6) months (the first audit taking place during the sixth (6) Period and the second audit taking place during the twelfth (12) Period during each year of the Framework Term) or at such times agreed by the *Service Manager*.
- 11.3 The *Client*, in its absolute discretion, determines which part or parts of the *services* are the subject of a Surveillance Audit.
- 11.4 The *Service Manager* issues instructions to the *Contractor* to improve performance to address Scope Defects and general poor performance identified by any Surveillance Audit. The *Contractor* complies with such instruction.

## **APPENDIX 2A – Group 1 KPIs**

## **APPENDIX 2B – Group 2 KPIs**

## **APPENDIX 2C – Group 3 KPIs**

## APPENDIX 2D – Collaborative Behaviour KPI:

The Collaborative Behaviour KPI is a measure of the *Contractor's* contribution to the Collaborative Behavioural objectives for the Framework, to drive continuous improvement, improve communication and promote a 'can do' attitude.

### **Collaborative Behaviour Themes**

The *Contractor* is measured and scored on its commitment to the following Collaborative Behavioural Themes:

**Health and safety culture** – H&S leadership, rapid management response to issues/incidents, timely reporting and resolution of incidents and near misses, learning and implementation of best practice

**Proactive / can do attitude** – flexibility, proactivity, active participation, anticipate *Client's* needs, innovate continually

**Collaboration** – early communication, honesty, openness, win-win attitude, shared best practice, working effectively and efficiently with Client and Others, mitigation of risks owned by Client and Others

**Innovation / continuous improvement** – lessons learnt, bringing new ideas, managing change effectively, challenging established practice

**Corporate social responsibility** – community initiatives, reducing carbon footprint / improving air quality, promoting use of sustainable modes of transport, reducing waste, ethical trading, equality and diversity initiatives, approach to Social Value

**Customer relations** – pre and post works communication, seeking feedback, attentiveness

**Key persons** – retention rate, timely notification of changes, quality of proposed replacements, development of key staff

### **CB Performance Score**

The *Contractor* is awarded one of the following CB Performance Scores in each Review Period:

| <b>CB Performance Score</b>          | <b>Criteria for Award of Score</b>  |
|--------------------------------------|---|
| Exemplary                            | <i>Contractor's</i> performance meets all of the criteria for Exemplary Performance   |
| Exceed                               | <p><i>Contractor's</i> performance meets:</p> <ul style="list-style-type: none"> <li>• at least five (5) of the nine (9) criteria for Exemplary Performance, including the H&amp;S Leadership criteria; and</li> <li>• all criteria for Target Performance</li> </ul> <p>but fails to meet the criteria for Exemplary Performance</p> |
| Target Service Level                 | <i>Contractor's</i> performance meets all criteria for Target Performance but fails to meet the criteria for an Exceed score  |
| Minimum Service Level (below target) | <i>Contractor's</i> performance meets the criteria for Poor Performance for between one (1) and four (4) criteria   |
| Poor Performance                     | <i>Contractor's</i> performance meets five (5) or more of the nine (9) criteria for Poor Performance  |

**Performance Criteria Table**

| <b>Performance level</b> | <b>Criteria</b>  |
|--------------------------|--|
| Exemplary Performance    | <p>Evidence demonstrated of exemplary adherence to Health and Safety Leadership throughout the contract year</p> <p>Evidence of continually anticipating <i>Client's</i> unarticulated needs</p> <p>Flexible, proactive and innovative approach to Providing the Service, including bringing in new ideas and challenging established practices</p> <p>Consistent delivery of contractual communications and submissions in a timely, clear, concise, open and effective manner</p> <p>Proactive approach and effective measures adopted to manage contractual interfaces (e.g. other authorities, utility companies, other contractors)</p> <p>Evidence of exemplary performance against the Corporate Social Responsibility theme</p> <p>Repeated evidence of customer satisfaction resulting from actions of those under the <i>Contractor's</i> control</p> <p>Role model levels of attendance, participation, leadership, and collaboration in the <i>Client's</i> meetings, forums and workshops</p> <p>Strong workplace culture with high levels of retention and training of Key Personnel. Any changes of Key Personnel are notified in a timely manner; replacements are of an equal calibre; and a smooth transition achieved</p> |
| Target Performance       | <p>Evidence demonstrated of adequate adherence to Health and Safety Leadership</p> <p>Some evidence of anticipating <i>Client's</i> needs,</p> <p>Some evidence of flexible, proactive and innovative approach to Providing the Service</p> <p>Regular delivery of contractual communications and submissions in a timely manner</p> <p>Contractual interfaces managed with little <i>Client</i> intervention</p> <p>Evidence of adequate performance against the Corporate Social Responsibility theme</p> <p>Little evidence of positive or negative customer feedback</p> <p>Regular appropriate attendance, participation, leadership, and collaboration in the <i>Client's</i> meetings, forums and workshops</p> <p>Mid to high levels of retention and some evidence of appropriate training for Key Personnel provided. Any changes of Key Personnel are notified in a timely manner; replacements are of an equal calibre; and disruption to delivery of the <i>service</i> is low</p>  |

|                         |   |
|-------------------------|---|
|                         |   |
| <p>Poor Performance</p> | <p>Little or no evidence demonstrated of adhering to Health and Safety Leadership</p> <p>Little or no evidence of anticipating <i>Client's</i> needs</p> <p>Rigid, reactive and uncreative approach to Providing the Service</p> <p>Contractual communications and/or submissions are often late, ambiguous, and/or ineffective</p> <p>Lacking effective measures to manage contractual interfaces causing multiple <i>Client</i> interventions and/or delays</p> <p>No evidence of or poor performance against the Corporate Social Responsibility theme</p> <p>Repeated evidence of customer dissatisfaction resulting from actions of those under the <i>Contractor's</i> control</p> <p>Little, inappropriate or no attendance, and/or participation, and/or leadership, and/or collaboration in the <i>Client's</i> meetings, forums and workshops</p> <p>High levels of turnover of Key Personnel, causing disruption to the delivery of the <i>service</i>; and/or any replacement proposed is of a lower calibre and rejected by the <i>Client</i>; and/or little evidence of appropriate training of Key Personnel</p> |

**APPENDIX 2A – Group 1 KPIs - Corporate Indicators**

| Service Area                    | Ref    | Performance Measure<br><i>(Proposed title for the performance measure)</i> | Definition<br><i>(Proposed high level definition for the performance measure, detail to be developed)</i>  | Methodology | Calculation | Minimum Service Level | Target Service Level | Reporting Frequency |
|---------------------------------|--------|--|--|-------------|-------------|-----------------------|----------------------|---------------------|
| Health and Safety and Wellbeing | CI.1.1 | <b>Pre-Construction Information Plan and Construction Phase Plan</b>       | A measure to demonstrate acceptance by the Client of the Pre-Construction Information Plan and Construction Phase Plan within contractual timescales (where applicable)  | TBD         | TBD         | TBD                   | TBD                  | TBD                 |
|                                 | CI.1.2 | <b>Timely Reporting of Incident Investigation Reports</b>                  | Incident investigation reports accepted by the Client within 14 days of the incident occurring. Incidents to be reported are RIDDORs, all lost time incidents and utility strikes.   | TBD         | TBD         | TBD                   | TBD                  | TBD                 |
|                                 | CI.1.3 | <b>All Accident Frequency Rate</b>   | A holistic Performance Indicator looking for an annual reduction in recordable Contractor and sub-contractor incidents, based upon the All Accident Frequency Rate (AFR)   | TBD         | TBD         | TBD                   | TBD                  | TBD                 |
|                                 | CI.1.4 | <b>Utility Strike Rate</b>   | A measure to report on the number of utility strikes by the Contractor that caused damage or disruption to the provision of a 3rd party service e.g. water, energy, communications etc.  | TBD         | TBD         | TBD                   | TBD                  | TBD                 |
| Project Task Orders - Financial | CI.1.5 | <b>Submission of Accurate Pricing Information</b>                          | To measure the efficiency and accuracy of Task Order pricing.<br><br><i>Data Source: ASITE</i>   | TBD         | TBD         | TBD                   | TBD                  | TBD                 |
|                                 | CI.1.6 | <b>Effective Risk Management</b>   | To measure the percentage of compensations events (excluding those which arise from Client instructions or which an experienced contractor could not have reasonably been expected to have foreseen) for which a corresponding early warning notice was in place.<br><br><i>Data Source: ASITE</i> | TBD         | TBD         | TBD                   | TBD                  | TBD                 |
| Project Task Orders - Defects   | CI.1.7 | <b>Defects Rate</b>  | To measure the Scope Defect rate is the total number of Scope Defects identified (including design Scope Defects, where applicable) per 100,000 hours worked over 13 consecutive Reporting Periods.<br><br><i>Data Source: ASITE</i>   | TBD         | TBD         | TBD                   | TBD                  | TBD                 |
|                                 | CI.1.8 | <b>Correction of Scope Defects</b>   | Correction of Scope Defects (whether identified by the Contractor or Framework Client, and including design Scope Defects, where applicable) within the defect correction period.<br><br><i>Data Source: ASITE</i>   | TBD         | TBD         | TBD                   | TBD                  | TBD                 |

**[Corporate Indicators will be finalised during Mobilisation]**

**APPENDIX 2B – Group 2 KPIs - Low Service Damages Table**

The Reporting Period for all Group 2 KPIs is Periodic

| Ref   | Cyclic Requirements   | Type of low service damage | Low service damage | Unit                | Criteria  |
|---|---|----------------------------|--------------------|---------------------|---|
| <b>LS.1.1</b>   | <b>Delivery of Cyclic Safety Inspections to programme - Core Service 1</b>            |                            |                    |                     |   |
| <p>The Contractor is required to undertake Cyclic Safety Inspections (Core Service 1) within prescribed timescales. This is a safety critical activity for the Client.</p> <p>&gt; The Contractor prepares annually a Contractor's Plan, setting out the programme for the provision of the service in respect of that year and submits it for acceptance to the Service Manager. The Contractor's Plan includes the programme for delivery of the service for the relevant financial year in order to ensure optimum use of resources and minimise disruption to the TLRN.</p> <p>&gt; The Contractor shows on each plan submitted for acceptance for the forthcoming 13 periods a detailed breakdown of inspections showing for each period:</p> <ul style="list-style-type: none"> <li>- type of inspection due to be performed (e.g. night scout / safety inspection),</li> <li>- the Network Sections or assets to be inspected,</li> <li>- due date for inspection,</li> <li>- date of previous inspection.</li> </ul> <p>&gt; The frequency of Safety Inspections is defined in the Table 33.1 of Appendix 33/1A of the Technical Specification and shall be either weekly, monthly, quarterly, or biannually; dependent on the network characteristics.</p> <p>&gt; The Contractor shall update the AMIS to record completion of each activity - if the system has not been updated accurately and timely in accordance with the Scope then that activity will be failed for the purposes of this indicator.</p> <p>&gt; If an audit demonstrates an activity reported as complete has not been completed, the Contractor will fail the KPI for the Period</p> <p>&gt; Low service damages will be applied if the Contractor fails to carry out safety inspections to the specified frequency (following a grace period in accordance with the individual activity, as outlined in the Low Service Damages Table below).</p> <p>&gt; The Contractor is not liable for Low Service Damages for a KPI in this Appendix in respect of any grace period for that KPI identified in this Appendix.</p>   |   |                            |                    |                     |   |
| <b>LS.1.1</b>   | <b>Cyclic Safety Inspections (Core Service 1)</b>                                     |                            |                    |                     |   |
| LS.1.1  | Carriageways R1 Very High Flows   | late delivery              | £ 12.00            | per km per day late | rate applied multiplied by km late per day after 1 day grace period   |
| LS.1.2  | Carriageways R2 High Flows  | late delivery              | £ 10.00            | per km per day late | rate applied multiplied by km late per day after 2 day grace period   |
| LS.1.3  | Carriageways R3 Medium Flows  | late delivery              | £ 8.00             | per km per day late | rate applied multiplied by km late per day after 2 day grace period   |
| LS.1.4  | Carriageways R4 Low Flows   | late delivery              | £ 6.00             | per km per day late | rate applied multiplied by km late per day after 2 day grace period   |
| LS.1.5  | Cycling Facilities C1 High Cycle Flows  | late delivery              | £ 12.00            | per km per day late | rate applied multiplied by km late per day after 1 day grace period   |
| LS.1.6  | Cycling Facilities C2 Medium Cycle Flows  | late delivery              | £ 8.00             | per km per day late | rate applied multiplied by km late per day after 2 day grace period   |
| LS.1.7  | Cycling Facilities C3 Low Cycle Flows   | late delivery              | £ 6.00             | per km per day late | rate applied multiplied by km late per day after 5 day grace period   |
| LS.1.8  | Footways F1 High Pedestrian Density   | late delivery              | £ 12.00            | per km per day late | rate applied multiplied by km late per day after 1 day grace period   |
| LS.1.9  | Footways F2 Medium Pedestrian Density   | late delivery              | £ 8.00             | per km per day late | rate applied multiplied by km late per day after 2 day grace period   |
| LS.1.10   | Footways F3 Low Pedestrian Density  | late delivery              | £ 6.00             | per km per day late | rate applied multiplied by km late per day after 5 day grace period   |
|   |   |                            |                    |                     |   |
| <b>LS.2 - LS.8</b>  | <b>Delivery of Cyclic Activities to programme - Core Services 2, 3, 4, 5, 6, 7, 8</b> |                            |                    |                     |   |
| <p>A measure of the Contractor's ability to manage the Cyclic Activities for the Core Services against programme.</p> <p>&gt; The Contractor prepares annually a Contractor's Plan, setting out the programme for the provision of the service in respect of that year and submits it for acceptance to the Service Manager. The Contractor's Plan includes the programme for delivery of the service for the relevant financial year in order to ensure optimum use of resources and minimise disruption to the TLRN.</p> <p>&gt; The Contractor shows on each plan submitted for acceptance for the forthcoming 13 periods a detailed breakdown by Core Service Activities showing for each period:</p> <ul style="list-style-type: none"> <li>- Network Section(s) (as defined in the Scope) to be maintained,</li> <li>- asset(s) to be maintained,</li> <li>- activity to be carried out,</li> <li>- quantities planned for cyclic Core Service Activities,</li> <li>- planned dates for cyclic Core Service Activities</li> </ul> <p>&gt; Cyclic Activities are required to be carried out at set frequencies as set out in the Contract (Volume B, Annex 1, TfL Service Requirements)</p> <p>&gt; The Contractor shall update the AMIS to record completion of each activity - if the system has not been updated accurately and timely in accordance with the Scope then that activity will be failed for the purposes of this indicator.</p> <p>&gt; If an audit demonstrates an activity reported as complete has not been completed, the Contractor will fail the KPI for the Period</p> <p>&gt; Low service damages for "late delivery" will be applied if the Contractor fails to carry out cyclic activities to the specified frequency (following a grace period in accordance with the individual activity, as outlined in the Low Service Damages Table below).</p> <p>&gt; Group 2 KPIs identified as "annual performance" are reported on Periodically. The performance score for each Period is calculated as the proportion (expressed as a percentage) of the quantum of cyclic activities completed year to date versus the quantum of cyclic activities required to be completed as stated in the Accepted Plan, for each of the relevant cyclic activities required to be performed by the Contractor under the contract. The annual percentage score to which the low service damages apply will be the mean average of the performance scores for all 13 Periods in the service year.</p> <p>&gt; The Contractor is not liable for Low Service Damages for a KPI in this Appendix in respect of any grace period for that KPI identified in this Appendix.</p> |   |                            |                    |                     |   |
| <b>LS.2.2</b>   | <b>Cyclic Service Inspections of Traffic Signs (Core Service 2)</b>                   |                            |                    |                     |   |
| LS.2.2.1  | Traffic Sign Inspections ULEZ, LEZ, Safer HGV & CC Zone                               | late delivery              | £ 5.00             | per no per day late | rate applied multiplied per no. late per day after 1 day grace period |
| LS.2.2.2  | Traffic Sign Inspections  | late delivery              | £ 1.00             | per no per day late | rate applied multiplied per no. late per day after 2 day grace period |
|   |   |                            |                    |                     |   |
| <b>LS.2.3</b>   | <b>Cyclic Night Scouting (Core Service 3)</b>   |                            |                    |                     |   |
| LS.2.3.1  | Principal Roads, High Pedestrian & Cycle flows 1st April until 31st October           | late delivery              | £ 8.00             | per km per day late | rate applied multiplied by km late per day after 2 day grace period   |
| LS.2.3.2  | Principal Roads, High Pedestrian & Cycle flows 1st November until 31st March          | late delivery              | £ 8.00             | per km per day late | rate applied multiplied by km late per day after 2 day grace period   |
| LS.2.3.3  | All Other Parts of the Affected Property 1st April until 31st October                 | late delivery              | £ 8.00             | per km per day late | rate applied multiplied by km late per day after 2 day grace period   |

**APPENDIX 2B – Group 2 KPIs - Low Service Damages Table**

The Reporting Period for all Group 2 KPIs is Periodic

| Ref           | Cyclic Requirements  | Type of low service damage | Low service damage | Unit                | Criteria   |
|---------------|--|----------------------------|--------------------|---------------------|--|
| LS.2.3.4      | All Other Parts of the Affected Property 1st November until 31st March   | late delivery              | £ 8.00             | per km per day late | rate applied multiplied by km late per day after 2 day grace period  |
| <b>LS.2.4</b> | <b>Cyclic Road Markings (Core Service 4)</b>   |                            |                    |                     |  |
|               | Refresh Edge of carriageway or parking controls  | annual performance         |                    |                     |  |
|               | Refresh Transverse markings  | annual performance         |                    |                     |  |
|               | Refresh All other road marking   | annual performance         |                    |                     |  |
| LS.2.4.1      | Core Service 4 annual performance score  |                            | £ 100.00           | per 0.1%            | per 0.1% under 100%  |
| <b>LS.2.5</b> | <b>Cyclic Lighting and Electrical (Core Service 5)</b>   |                            |                    |                     |  |
|               | Routine maintenance of sign lighting units   | annual performance         |                    |                     |  |
|               | Bulk lamp change of sign lighting units  | annual performance         |                    |                     |  |
|               | Electrical testing of sign lighting units  | annual performance         |                    |                     |  |
|               | Routine maintenance of LED street lighting units   | annual performance         |                    |                     |  |
|               | Routine maintenance of NON LED street lighting units   | annual performance         |                    |                     |  |
|               | Bulk lamp change of NON LED street lighting units  | annual performance         |                    |                     |  |
|               | Electrical testing of LED street lighting units  | annual performance         |                    |                     |  |
|               | Electrical testing of NON LED street lighting units  | annual performance         |                    |                     |  |
|               | Routine maintenance of feeder pillars intake boxes and   | annual performance         |                    |                     |  |
|               | Electrical testing of feeder pillars intake boxes and cabinets   | annual performance         |                    |                     |  |
| LS.2.5.1      | Core Service 5 annual performance score  |                            | £ 120.00           | per 0.1%            | per 0.1% annual performance under 100%                               |
| <b>LS.2.6</b> | <b>Cyclic Drainage (Core Service 6)</b>  |                            |                    |                     |  |
|               | Clean gullies  | annual performance         |                    |                     |  |
|               | Clean linear drainage channel systems  | annual performance         |                    |                     |  |
|               | Clean combined drainage and kerb systems   | annual performance         |                    |                     |  |
|               | Clean interceptors   | annual performance         |                    |                     |  |
|               | Clean catchpits  | annual performance         |                    |                     |  |
|               | Clean chambers   | annual performance         |                    |                     |  |
|               | Clean soakaways  | annual performance         |                    |                     |  |
|               | Clean oil and petrol separators  | annual performance         |                    |                     |  |
|               | Clean trash screens  | annual performance         |                    |                     |  |
|               | Clean watergates   | annual performance         |                    |                     |  |
|               | Clean grills   | annual performance         |                    |                     |  |
|               | Clean sluices  | annual performance         |                    |                     |  |
|               | Clean tidal flaps  | annual performance         |                    |                     |  |
|               | Clean penstocks  | annual performance         |                    |                     |  |
|               | Clean valves to drainage systems   | annual performance         |                    |                     |  |
|               | Clean drainage ditches   | annual performance         |                    |                     |  |
|               | Clean filter drains  | annual performance         |                    |                     |  |
|               | Clean culverts   | annual performance         |                    |                     |  |
|               | Clean open surface water systems   | annual performance         |                    |                     |  |
| LS.2.6.1      | Core Service 6 annual performance score  |                            | £ 100.00           | per 0.1%            | per 0.1% annual performance under 100%                               |
| <b>LS.2.7</b> | <b>Cyclic Landscape &amp; Ecology (Core Service 7)</b>   |                            |                    |                     |  |
| LS.2.7.1      | Cut grass in High Frequency grass areas  | late delivery              | £ 1.60             | per m2 per day late | rate applied multiplied by m2 late per day after 2 day grace period  |
| LS.2.7.2      | Cut grass in Enhanced High Frequency grass areas   | late delivery              | £ 1.30             | per m2 per day late | rate applied multiplied by m2 late per day after 2 day grace period  |
| LS.2.7.3      | Cut grass in Medium Frequency grass areas  | late delivery              | £ 1.00             | per m2 per day late | rate applied multiplied by m2 late per day after 2 day grace period  |
| LS.2.7.4      | Cut grass in Low Frequency grass areas   | late delivery              | £ 0.80             | per m2 per day late | rate applied multiplied by m2 late per day after 2 day grace period  |
| LS.2.7.5      | Cut grass in Minimal Frequency grass areas   | late delivery              | £ 0.50             | per m2 per day late | rate applied multiplied per m2 late per day after 5 day grace period |
| LS.2.7.6      | Cut grass in 1.8m edge of carriageway areas  | late delivery              | £ 0.50             | per m2 per day late | rate applied multiplied per m2 late per day after 5 day grace period |
|               | Trim edges of High Frequency grass areas   | annual performance         |                    |                     |  |
|               | Trim edges of Medium Frequency grass areas   | annual performance         |                    |                     |  |
|               | Re-form edges of High Frequency grass areas  | annual performance         |                    |                     |  |
|               | Re-form edges of Medium Frequency grass areas  | annual performance         |                    |                     |  |
|               | Control weeds in High Frequency grass areas  | annual performance         |                    |                     |  |
|               | Control weeds in Medium Frequency grass areas  | annual performance         |                    |                     |  |
|               | Control weeds in Cultivated beds and areas identified in File 1.10g)   | annual performance         |                    |                     |  |
|               | Control weeds in hedges  | annual performance         |                    |                     |  |
|               | Control weeds in paved areas of roads within the Affected Property with a speed limit of 40mph                   | annual performance         |                    |                     |  |
|               | Prune areas of shrubs  | annual performance         |                    |                     |  |
|               | Coppice shrubs grown for stem colour   | annual performance         |                    |                     |  |
|               | Trim hedges  | annual performance         |                    |                     |  |
|               | Remove basal sucker growths and epicormic growth from trees  | annual performance         |                    |                     |  |
|               | Manage water bodies (lagoons and balancing ponds)  | annual performance         |                    |                     |  |
|               | Remove silt, overlying rubbish and debris from water bodies (lagoons and balancing ponds)                        | annual performance         |                    |                     |  |
| LS.2.7.7      | Core Service 7 annual performance score (excluding activities for which a LSD for late delivery already applies) |                            | £ 100.00           | per 0.1%            | per 0.1% annual performance under 100%                               |

**APPENDIX 2B – Group 2 KPIs - Low Service Damages Table**

The Reporting Period for all Group 2 KPIs is Periodic

| Ref   | Cyclic Requirements   | Type of low service damage | Low service damage | Unit     | Criteria                               |
|---|---|----------------------------|--------------------|----------|--|
| <b>LS.2.8</b>   | <b>Cyclic Street Cleaning (Core Service 8)</b>                |                            |                    |          |  |
|   | Sweeping Roads  | annual performance         |                    |          |  |
|   | Cleaning pedestrian subways, footbridges and other structures | annual performance         |                    |          |  |
|   | Annual cleaning of all surface mounted expansion joints       | annual performance         |                    |          |  |
|   | Cleaning of all bearing shelves and bearings                  | annual performance         |                    |          |  |
|   | Cleaning drinking fountains                                   | annual performance         |                    |          |  |
|   | Cleaning of traffic bollards                                  | annual performance         |                    |          |  |
|   | Cleaning of traffic signs mounted on gantries                 | annual performance         |                    |          |  |
|   | Cleaning of all other traffic signs                           | annual performance         |                    |          |  |
| LS.2.8.1  | Core Service 8 annual performance score                       |                            | £ 25.00            | per 0.1% | per 0.1% annual performance under 100% |
| <b>LS.2.9</b>   | <b>Delivery of Winter Service - Core Service 9</b>            |                            |                    |          |  |
| <p>Winter Service reactive activity shall comprise the provision of the High Risk Service and the application of treatments.</p> <p>&gt; During High Risk Periods pre-planned treatments for Principal Treatment Routes shall commence at the time given in the Client's instruction and be completed within two hours.</p> <p>&gt; During High Risk Periods responsive treatments to the Client's Principal Treatments Routes shall achieve a maximum Response Time of one hour and a maximum Treatment Time of two hours. The response times for or footway and cycleway treatments are detailed in Table 28.2 of Series 2857AR of the Technical Specification.</p> <p>&gt; Response Time is defined as the time from the Client's instruction to undertake a treatment until vehicles are loaded, manned and ready to operate. This applies to carriageway, footway and cycleway treatments and also in and outside core working hours.</p> <p>&gt; Treatment Time is defined as the time from the end of the Response Time through to completion of the treatment. The time shall include for any travelling from the compound / loading point to the start of the treatment route.</p> <p>&gt; Spreader fleets shall be fitted with GPS tracking devices with transmit data in real time to a web-based reporting system which maps and records the location of each vehicle in the fleet together with details of the rates of treatments being applied over time. This data will be made available to the Client to enable the measurement and reporting of this Low Service Damages Indicator.</p> <p>&gt; The Contractor will be paid the full contract rate for each km of instructed precautionary treatment completed within the contractual timescales, and deducted the figure specified in the Low Service Damage column for each km of precautionary treatment completed outside of the contractual timescales.</p> |   |                            |                    |          |  |
| <b>LS.2.9</b>   | <b>Instructed work to Winter Service (Core Service 9)</b>     |                            |                    |          |  |
| LS.2.9.1  | Any treatment to carriageway                                  | late delivery              | £ 3.00             | per km   | late over 2hr treatment time           |
| LS.2.9.2  | Any treatment to footways                                     | late delivery              | £ 4.50             | per km   | late over 2hr treatment time           |
| LS.2.9.3  | Any treatment to segregated cycleways                         | late delivery              | £ 4.50             | per km   | late over 2hr treatment time           |

## APPENDIX 2C – Group 3 KPIs - Service Indicators

| Service Area         | Ref    | Performance Measure                              | Description   | Methodology  | Calculation   | Minimum Service Level | Target Service Level | Reporting Period | Incentive Calculation | Client Payment for each 0.1% above target (Capped at 100%) | Contractor Payment for each 0.1% below target (Capped at Minimum Service Level) |
|----------------------|--------|--|---|--|---|-----------------------|----------------------|------------------|-----------------------|--|---|
| Emergency Works      | SI.3.1 | Emergency Call Outs                              | A measure of the Contractor's ability to manage the Emergency Call Out (ECO) service. Ensures that all Emergency Callouts (ECOs) are attended and appropriate action taken within 1 hour (for defects affecting the principal road carriageways/classified A roads or High Density Footways) or within 2 hours (for all other parts of the Affected Property) in accordance with the Scope. | The number of emergency response callouts attended and appropriate action taken within the contractual response time divided by the total amount of emergency callouts due in for the Reporting Period. Extensions of timescales are not permissible for this indicator; however exclusions may be granted by the Client in exceptional circumstances only.  | A = Total number of ECOs that were responded to and appropriate action taken within Contractual timescales within the Reporting Period of those due within the Reporting Period<br>B = Total number of ECOs due in within the Reporting Period<br>Performance Percentage = (A/B)*100  | 93%                   | 98%                  | Periodic         | Annual                | £ 750.00   | £ 300.00  |
| Reactive Works       | SI.3.2 | Cat 1 Defects                                    | A measure of the Contractor's ability to make safe or complete temporary or permanent repair within 24 hours and also the subsequent permanent repair, as required, within 7 days, if the defect was not permanently repaired within the initial 24 hours, for any identified Cat 1 defect in accordance with the Scope.  | There are two elements to this indicator:<br>Part 1A: 24hr Response: The Contractor monitors the total number of Cat 1 defects due to be made safe and repaired within 24 hours during the Reporting Period and how many of those were actually made safe and repaired within 24 hours. This calculation should include Cat 1 defects that have been permanently repaired within the first 24 hours.<br>Part 1B: 7 day Response: The Contractor monitors the total number of Cat 1 defects due to be permanently repaired within the Reporting Period and of those the actual number of Cat 1 defects permanently repaired in the Reporting Period. This calculation should include Cat 1 defects that had been repaired permanently within 24hours. | Part 1A:<br>A = Total number Cat 1 defects that were made safe and repaired within 24 hours in the Reporting Period of those due within the Reporting Period<br>B = Total number of Cat 1 defects that were due to be made safe and repaired within 24 hours in the Reporting Period<br>C = Total No. of Cat 1 Maintenance defects open from prior Reporting Periods (late defects)<br>Part 1A Calc = (A/(B+C)) x 100<br><br>Part 1B:<br>D = Total number Cat 1 defects that were permanently repaired in the Reporting Period of those due within the Reporting Period<br>E = Total number of Cat 1 defects that were due to be permanently repaired in the Reporting Period<br>F = Total No. of Cat 1 defects open from prior Reporting Periods (late defects)<br>Part 1B Calculation = (D/(E+F)) x 100<br><br>Performance Percentage = (A+D)/(B+C+E+F) x 100 | 92%                   | 97%                  | Periodic         | Annual                | £ 350.00   | £ 200.00  |
|                      | SI.3.3 | Cat 2 Defects                                    | A measure of the Contractor's ability to permanently repair any identified or reported Category 2 defects (2H and 2M only) within the prescribed timescales in accordance with the Scope.   | There are two elements to this indicator:<br>Part 2A – Cat 2H: The Contractor monitors the number of Cat 2H defects due to be permanently repaired within 7 days within the Reporting Period and monitors the actual number of those Cat 2H defects that were repaired on time in the Reporting Period.<br>Part 2B – Cat 2M: The Contractor monitors the number of Cat 2M defects due to be permanently repaired within 28 days within the Reporting Period and monitors the actual number of those Cat 2M defects that were permanently repaired on time in the Reporting Period.   | Part 2A:<br>A = Total number of Cat 2H defects that were permanently repaired on time in the Reporting Period of those due in the Reporting Period<br>B = Total number of Cat 2H defects that were due to be permanently repaired in the Reporting Period<br>C = Total No. of Cat 2H defects open from prior Reporting Periods (late defects)<br>Part 2A Calculation = (A/(B+C)) x 100<br><br>Part 2B:<br>D = Total number of Cat 2M defects that were permanently repaired on time in the Reporting Period of those due in the Reporting Period<br>E = Total number of Cat 2M defects that were due to be permanently repaired in the Reporting Period<br>F = Total No. of Cat 2M defects open from prior Reporting Periods (late defects)<br>Part 2B Calculation = (D/(E+F)) x 100  | 92%                   | 97%                  | Periodic         | Annual                | £ 650.00   | £ 400.00  |
| Activity Task Orders | SI.3.4 | Activity Task Orders - On-Time Completion        | A measure of the timely completion of Activity Task Orders, to monitor the Contractor's ability to complete minor additional works instructed outside of the scope of Core Services in accordance with the Scope.   | This indicator will review the number of Activity Task Orders due to complete within the reporting period and assess in terms of a percentage how many of those have achieved Task Completion on or before the Task Completion Date.   | A = Total number of Activity Task Orders completed on or before the Task Completion Date of those due in the Reporting Period<br>B = Total number of Activity Task Orders that were due to have been completed during the Reporting Period<br>Performance Percentage = (A / B)*100  | 90%                   | 95%                  | Periodic         | Annual                | £ 300.00   | £ 600.00  |
| Project Task Orders  | SI.3.5 | Project Task Orders - On-time Completion         | A measure of the timely completion of Project Tasks to monitor the Contractor's ability to deliver the Project Task programme in an efficient and timely manner in accordance with the Scope.   | This indicator will review the number of Project Task Orders due to complete within the Reporting Period and assess in terms of a percentage how many of those have achieved Task Completion on or before the Task Completion Date.  | A = Total number of Project Task Orders completed on or before the Task Completion Date of those due in the Reporting Period<br>B = Total number of Project Task Orders that were due to have been completed during the Reporting Period<br>Performance Percentage = (A / B)*100  | 85%                   | 90%                  | Periodic         | Annual                | £ 150.00   | £ 600.00  |
|                      | SI.3.6 | Quality of the Contractor's Programme Submission | Programmes accepted by the Service Manager within the contractual timescale (acceptance only provided if the programme complies with the contract requirements) in accordance with the Scope.   | This indicator will review the number of programmes associated with Project Task Orders to be submitted within the Reporting Period and assess in terms of percentage how many of these have been accepted by the Service Manager.   | A = Total number of programmes accepted in the Reporting Period<br>B = Total number of programmes with a planned acceptance date in the Reporting Period<br><br>Score = (A / B) x 100   | 93%                   | 98%                  | Periodic         | Annual                | £ 500.00   | £ 400.00  |

# APPENDIX 8

## DATA PROTECTION

### PART A

#### Data Protection

Unless otherwise defined in this Appendix, terms and expressions defined in the *conditions of contract* (as amended) have the same meanings herein

1. The following defined terms apply to this Appendix 8:

**Client Data** means all data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any media (including without limitation electronic, magnetic, optical and tangible media) and which are supplied to the *Contractor* by or on behalf of the *Client* and any IPR relating to the same which are vested in the *Client*.

**Client Personal Data** Personal Data and/or Sensitive Personal Data Processed by the *Contractor* (including any Subcontractor) on behalf of the *Client*, pursuant to or in connection with this contract as set out in the Processing Statement.

**Connected Persons** means all and any of the *Contractor's* employees, directors, contractors, agents, Subcontractors, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters.

**Data Controller** has the meaning given to it in Data Protection Legislation, noting that under General Data Protection Regulation this would be using the definition of "Controller".

**Data Processor** has the meaning given to it in Data Protection Legislation, noting that under General Data Protection Regulation this would be using the definition of "Processor".

**Data Protection Impact Assessment** a process used to identify and mitigate the privacy and data protection risks associated with an activity involving the Processing of Personal Data.

**Data Protection Legislation** means:

- any legislation in force from time to time in the United Kingdom which implements the European Community's Directive 95/46/EC and Directive 2002/58/EC, including but not limited to the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003;
- the General Data Protection Regulation;
- any other legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data; and
- any statutory codes of practice issued by the Information Commissioner in relation to such legislation.

**Data Subject** has the meaning given to it in Data Protection Legislation.

**Fair Processing Notice** means such information as the *Client* deems reasonably necessary to comply with its legal obligations in terms of fair, lawful and transparent Processing under the Data Protection Legislation.

**General Data Protection Regulation** means the Regulation (EU) 2016/679 on the

protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data.

**Personal Data** has the meaning given to it in the Data Protection Legislation.

**Processing** has the meaning given to it in Data Protection Legislation and “Process”, “Processes” and “Processed” will be construed accordingly.

**Processing Statement** is to be completed in the form set out at Part B of this Appendix 8.

**Restricted Countries** any country outside the European Economic Area as may be constituted from time to time or the UK.

**Sensitive Personal Data** sensitive or special categories of Personal Data including criminal allegations, offences and outcomes data (as defined in Data Protection Legislation) which is Processed pursuant to or in connection with this contract.

**Subject Access Request** a request made by a Data Subject to access his or her own Personal Data in accordance with rights granted in Data Protection Legislation.

- 1A Each of the Parties complies at all times with its obligations under the Data Protection Legislation, and the Parties acknowledge that the *Client* is a Data Controller solely responsible for determining the purposes and manner in which Personal Data is to be Processed and the *Contractor* is a Data Processor.
2. Details of the Client Personal Data to be Processed by the *Contractor* and the purposes of such Processing are as set out in the Processing Statement, which the Parties complete before any Processing takes place.
3. The *Contractor*:
- (a) Processes the Client Personal Data only in accordance with documented instructions from the *Client* to perform its obligations under this contract,
  - (b) uses its reasonable endeavours to assist the *Client* in complying with its obligations under Data Protection Legislation and does not perform its obligations under this contract in such a way as to cause the *Client* to breach any of its obligations under Data Protection Legislation to the extent the *Contractor* is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations,
  - (c) notifies the *Client* immediately if it determines or is notified that an instruction to Process Personal Data issued to it by the *Client* is incompatible with any obligations under Data Protection Legislation to the extent the *Contractor* is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations,
  - (d) maintains, and makes available to the *Client* on its request, documentation which describes the Processing operations for which it is responsible under this contract including:
    - the purposes for which Client Personal Data is Processed,
    - the types of Personal Data and categories of Data Subject involved,
    - the source(s) of the Personal Data,
    - any recipients of the Personal Data,

- the location(s) of any overseas Processing of Client Personal Data,
  - retention periods for different types of Client Personal Data and
  - where possible a general description of the security measures in place to protect Client Personal Data,
- (e) where requested to do so by the *Client*, or where Processing Client Personal Data presents a specific risk to the rights and freedoms of Data Subjects, carries out or assists the *Client* to carry out a Data Protection Impact Assessment in accordance with guidance issued from time to time by the Information Commissioner's Office (and any relevant requirements detailed in Data Protection Legislation) and makes the results of such an assessment available to the *Client*,
- (f) without prejudice to any cyber security and/or payment card industry data security standard obligations in this contract, takes appropriate technical and organisational security measures that are satisfactory to the *Client* from time to time, against unauthorised or unlawful Processing of Client Personal Data and against accidental loss, destruction of, or damage to such Client Personal Data,
- (g) without prejudice to any cyber security and/or payment card industry data security standard obligations in this contract, provides the *Client* with such information as the *Client* may from time to time require to satisfy itself of compliance by the *Contractor* (including any Subcontractor) with paragraphs 3(f) and 3(h) of this Appendix 8, Part A, including, protocols, procedures, guidance, training and manuals. For the avoidance of doubt, this includes a full report recording the results of any privacy or security audit carried out at the request of the *Contractor* itself or the *Client*,
- (h) notifies the *Client* without undue delay and in any event within 24 hours by written notice with all relevant details reasonably available of any actual or suspected breach of this Appendix 8 including the unauthorised or unlawful Processing of Client Personal Data, or its accidental loss, destruction or damage,
- (i) having notified the *Client* of a breach in accordance with paragraph 3(h) of this Appendix 8, Part A, keeps the *Client* properly and regularly informed in writing until the breach has been resolved to the satisfaction of the *Client*,
- (j) fully cooperates as the *Client* requires with any investigation or audit in relation to Client Personal Data and/or its Processing including allowing access to premises, computers and other information systems, records, documents and agreements as may be reasonably necessary (whether in relation to Processing pursuant to this contract, in relation to compliance with Data Protection Legislation or in relation to any actual or suspected breach), whether by the *Client* (or any agent acting on its behalf), any relevant regulatory body, including the Information Commissioner's Office, the police and any other statutory law enforcement agency, and does so both during the contract and after its termination or expiry (for so long as the *Contractor* retains and/or Processes Client Personal Data),
- (k) notifies the *Client* within two (2) business days if the *Contractor* (including any Subcontractor), receives:
- from a Data Subject (or third party on their behalf):
    - a Subject Access Request (or purported Subject Access Request),
    - a request to rectify, block or erase any Client Personal Data or
    - any other request, complaint or communication relating to the *Client's*

obligations under Data Protection Legislation.

- any communication from the Information Commissioner or any other regulatory authority in connection with Client Personal Data; or
  - a request from any third party for disclosure of Client Personal Data where compliance with such request is required or purported to be required by law,
- (l) provides the *Client* with full cooperation and assistance (within the timescales reasonably required by the *Client*) in relation to any complaint, communication or request made as referred to in paragraph 3(k) of this Appendix 8, Part A, including by promptly providing:
- the *Client* with full details and copies of the complaint, communication or request,
  - where applicable, such assistance as is reasonably requested by the *Client* to enable it to comply with the Subject Access Request within the relevant timescales set out in Data Protection Legislation and
  - where applicable, such assistance as is reasonably required by the *Client* to enable it to comply with a request from a Data Subject to rectify, block or erase any Client Personal Data,
- (m) when notified in writing by the *Client*, supplies a copy of, or information about, any Client Personal Data. The *Contractor* supplies such information or data to the *Client* within such time and in such form as specified in the request (such time to be reasonable) or if no period of time is specified in the request, then within two (2) business days from the date of the request,
- (n) prepares and securely maintains a record of all categories of Processing activities carried out on behalf of the *Client* in relation to the Client Personal Data, as a minimum: (i) its name and contact details and details of a Data Protection Officer (if appointed) or other person with responsibility for data protection compliance; (ii) the categories of Processing it carries out on behalf of the *Client*; (iii) transfers to Restricted Countries; (iv) a general description of the technical and organisational security measures referred to in this Appendix 8; and (v) the same information in relation to any Subcontractor, together with its name and contact details (together the "Data Record") and when notified in writing by the *Client*, complies with any agreement between the *Client* and any Data Subject in relation to any Processing which causes or is likely to cause substantial and unwarranted damage or distress to such Data Subject, or any court order requiring the rectification, blocking, erasure or destruction of any Client Personal Data,
- (o) if required to do so by Data Protection Legislation, appoints a designated Data Protection Officer,
- (p) provides all Connected Persons (and any other worker and/or visitor who may enter the Affected Property on behalf of the *Contractor*) a copy of or directions on how to access the Fair Processing Notice provided by the *Client* prior to any Connected Person (or any other worker and/or visitor) entering the Affected Property, and the *Contractor* acknowledges that, if a Connected Person (or any other worker and/or visitor of the *Contractor*) refuses or withdraws consent to use of any security system in place at the Affected Property without proper and reasonable circumstance, they may be denied access at the *Client*'s discretion, and
- (q) makes available to the *Client* all information necessary to demonstrate compliance with the obligations set out in this Appendix 8.

4. The *Contractor* does not share Client Personal Data with any Subcontractor without prior written consent from the *Client* and only where there is a written contract in place between the *Contractor* and the Subcontractor which requires the Subcontractor to:

- (a) only Process Client Personal Data in accordance with the *Client's* documented instructions to the *Contractor* and
- (b) comply with the same obligations which the *Contractor* is required to comply with under this Appendix 8 (and clause 106 of this contract and clause 20 of the Framework Agreement).

The *Contractor* remains responsible and liable to the *Client* for all acts and omissions of any Subcontractor as if they were its own.

5. The *Contractor* itself, and procures that any Subcontractor:

- (a) only Processes Client Personal Data in accordance with the *Client's* documented instructions to the *Contractor* and as reasonably necessary to perform this contract in accordance with its terms,
- (b) does not Process Client Personal Data for any other purposes (in whole or part) and specifically, but without limitation, reproduce or refer to it in training materials, training courses, commercial discussions and negotiations with third parties or in relation to proposals or tenders with the *Client*,
- (c) does not Process Client Personal Data in such a way as to:
  - place the *Client* in breach of Data Protection Legislation,
  - expose the *Client* to the risk of actual or potential liability to the Information Commissioner or Data Subjects,
  - expose the *Client* to reputational damage including adverse publicity,
- (d) does not allow its personnel to access Client Personal Data unless such access is necessary to Provide the Service,
- (e) takes all reasonable steps to ensure the reliability and integrity of all Connected Persons who can access Client Personal Data,
- (f) ensures that all Connected Persons who can access Client Personal Data:
  - are informed of its confidential nature,
  - are made subject to an explicit duty of confidence,
  - understand and comply with any relevant obligations created by either this contract or Data Protection Legislation and
  - receive adequate training in relation to the use, care, protection and handling of Personal Data on an annual basis,
- (g) does not disclose or transfer Client Personal Data to any third party without the *Contractor* having obtained the prior written consent of the *Client* (save where such disclosure or transfer is specifically authorised under this contract),
- (h) without prejudice to paragraph 3 of this Appendix 8, Part A, wherever the *Contractor* uses any mobile or portable device for the transmission or storage of Client Personal Data, ensures that each such device encrypts Client Personal

## Data and

- (i) complies during the course of this contract with any written retention and/or deletion policy or schedule provided by the *Client* to the *Contractor* from time to time.
6. The *Contractor* does not, and procures that any Subcontractor does not, Process or otherwise transfer any Client Personal Data in or to any Restricted Countries without prior written consent from the *Client* (which consent may be subject to additional conditions imposed by the *Client*).
7. If, after the Contract Date, the *Contractor* or any Subcontractor wishes to Process and/or transfer any Client Personal Data in or to any Restricted Countries, the following provisions apply:
  - (a) the *Contractor* submits a written request to the *Client* setting out details of the following:
    - the Client Personal Data which will be transferred to and/or Processed in any Restricted Countries,
    - the Restricted Countries which the Client Personal Data will be transferred to and/or Processed in,
    - any Subcontractor or other third parties who will be Processing and/or receiving Client Personal Data in Restricted Countries,
    - how the *Contractor* ensures an adequate level of protection and adequate safeguards in respect of the Client Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the *Client's* compliance with Data Protection Legislation,
  - (b) in preparing and evaluating such a request, the Parties refer to and comply with applicable policies, procedures, guidance and codes of practice produced by the Parties and/or the Information Commissioner in connection with the Processing of Personal Data in (and/or transfer of Personal Data to) any Restricted Countries,
  - (c) the *Contractor* complies with any instructions and carries out such actions as the *Client* may notify in writing when providing its consent to such Processing or transfers, including:
    - incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) into this contract or a separate data processing agreement between the Parties and
    - procuring that any Subcontractor or other third party who will be Processing and/or receiving or accessing the Client Personal Data in any Restricted Countries enters into a data processing agreement with the *Contractor* on terms which are equivalent to those agreed between the *Client* and the *Contractor* in connection with the Processing of Client Personal Data in (and/or transfer of Client Personal Data to) any Restricted Countries, and which may include the incorporation of the clauses referred to in the bullet point above.
8. The *Contractor* and any Subcontractor, acknowledges:
  - (a) the importance to Data Subjects and the *Client* of safeguarding Client Personal Data and Processing it only in accordance with the *Client's* instructions and this

contract,

- (b) the loss and damage the *Client* is likely to suffer in the event of a breach of this contract or negligence in relation to Client Personal Data,
  - (c) any breach of any obligation in relation to Client Personal Data and/or negligence in relation to performance or non-performance of such obligation is deemed a material breach of this contract and a substantial failure by the *Contractor* to comply with his obligations,
  - (d) without limiting clause 91.8, if the *Contractor* has committed a material breach under paragraph 8(c) of this Appendix 8, Part A on two or more separate occasions, the *Client* may at its option withdraw authorisation for Processing by a specific Subcontractor by immediate written notice.
9. Compliance by the *Contractor* with this Appendix 8 is without additional charge to the *Client* and is not a compensation event.
10. Following termination or expiry of this contract or termination of the *Contractor's* obligation to Provide the Service, in each case howsoever arising, the *Contractor*:
  - (a) may Process the Client Personal Data only for so long and to the extent as is necessary to properly comply with its non-contractual obligations arising under law (and will then comply with paragraph 10(b) of this Appendix 8, Part A) and only in accordance with the Data Protection Legislation,
  - (b) subject to paragraph 10(a) of this Appendix 8, Part A:
    - on written instructions from the *Client* either securely destroys or securely and promptly returns to the *Client* or a recipient nominated by the *Client* (in such usable format as and to the extent the *Client* may reasonably require) the Client Personal Data or
    - in the absence of instructions from the *Client* after 12 months from the expiry or termination of this contract or termination of the *Contractor's* obligation to Provide the Service securely destroys the Client Personal Data.
11. Client Personal Data may not be Processed following termination or expiry of this contract or termination of the *Contractor's* obligation to Provide the Service save as permitted by paragraph 10 of this Appendix 8, Part A.
12. For the avoidance of doubt, and without prejudice to paragraph 10 of this Appendix 8, Part A, the obligations in this Appendix 8 apply following termination or expiry of this contract or termination of the *Contractor's* obligation to Provide the Service to the extent the Party concerned retains or Processes Client Personal Data.
13. The *Contractor* takes reasonable precautions to preserve the integrity of the Client Data and to prevent any corruption or loss of the Client Data.
14. The *Contractor* is responsible for and indemnifies the *Client* from and against any and all fines, court awards, settlements, legal costs, expenses, liabilities, losses, claims and proceedings whatsoever resulting from any breach by the *Contractor* or any *Subcontractor* of the Data Protection Legislation or paragraphs 1 to 14 (inclusive) of this Appendix 8, Part A. The *Contractor's* liability in respect of any breach of this Appendix 8 insofar as they relate to fines, court awards, settlements and legal costs is unlimited.

## PART B

### Client Personal Data

1. The Client Personal Data to be Processed by the *Contractor* (if any) concerns the following categories of Data Subject:

***[List the relevant categories of Data Subject, e.g. staff, customers, members of the public.]***

2. The Client Personal Data to be Processed includes the following types of Personal Data and/or Sensitive Personal Data:

***[List the relevant types of Personal Data, e.g. names, email or postal addresses, telephone numbers, images, other unique identifiers.]***

3. The Client Personal Data is to be Processed for the following purpose(s):

***[List and summarise the relevant purpose(s).]***

4. The Client Personal Data is to be Processed in the following Restricted Countries:

[List if applicable]

**APPENDIX 9**  
**AGREEMENT FOR LEASE**

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**Dated:** 2021

- (1) TRANSPORT FOR LONDON
- (2) TRANSPORT TRADING LIMITED
- (3) RINGWAY INFRASTRUCTURE SERVICES LIMITED

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**Agreement for lease**

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for the letting of land and buildings at Armada Way, Beckton, London

# CONTENTS

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| <b>Clause</b> | <b>Page</b>                           |
|---------------|---------------------------------------|
| 1             | DEFINITIONS AND INTERPRETATION .....2 |
| 2             | STANDARD CONDITIONS.....3             |
| 3             | AGREEMENT FOR LEASE.....3             |
| 4             | TITLE .....3                          |
| 5             | TITLE MATTERS .....3                  |
| 6             | THE LEASE .....4                      |
| 7             | HM LAND REGISTRY APPLICATIONS .....4  |
| 8             | CONDITION OF THE PREMISES.....4       |
| 9             | ADDITIONAL PROVISIONS.....5           |
| 10            | TERMINATION .....6                    |
| 11            | EFFECT OF TERMINATION.....6           |
| 12            | NOTICES.....6                         |

**Documents attached to this Agreement**

- 1. Lease with lease plan

**THIS AGREEMENT** is made on

2021

**BETWEEN**

- (1) TRANSPORT FOR LONDON of 5 Endeavour Square, London, United Kingdom, E20 1JN ("**TfL**")
- (2) TRANSPORT TRADING LIMITED (registered number 03914810) whose registered office is at 5 Endeavour Square, London, United Kingdom, E20 1JN ("**the Landlord**"); and
- (3) RINGWAY INFRASTRUCTURE SERVICES LIMITED (registered number 05576465) whose registered office is at Albion House, Springfield Road, Horsham, RH12 2RW ("**the Tenant**").

**OPERATIVE PROVISIONS**

**1. DEFINITIONS AND INTERPRETATION**

In this Agreement:

1.1 the following words and expressions have the following meanings:

|                                |   |
|--------------------------------|---|
| <b>"Actual Completion"</b>     | actual completion of the grant of the Lease and " <b>Date of Actual Completion</b> " is to be interpreted accordingly   |
| <b>"Completion Date"</b>       | 1 April 2021  |
| <b>"Contract"</b>              | The agreement dated 2021 made between (1) Transport for London and (2) Ringway Infrastructure Services Limited relating to the provision of highway maintenance works                     |
| <b>COVID-19</b>                | the disease known as coronavirus disease (COVID-19), which is the official designation of the disease which can be caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) |
| <b>"Head Lease"</b>            | A head lease to be granted between (1) TfL and (2) the Landlord in respect of the Premises  |
| <b>"Landlord's Solicitors"</b> | Eversheds Sutherland (International) LLP of 50/60 Station Rd, Cambridge CB1 2JY (Ref: 319303.000003)  |
| <b>"Lease"</b>                 | a lease to be granted by the Landlord to the Tenant in the form attached to this Agreement  |
| <b>"Notice"</b>                | Any notice, notification or request given or made under this Agreement  |
| <b>"Premises"</b>              | the premises known as Land and Buildings at Armada Way, Beckton, London described in more detail in the Lease   |
| <b>"Standard Conditions"</b>   | the Standard Commercial Property Conditions (Third Edition – 2018 revision)   |
| <b>"Title Matters"</b>         | the matters contained or referred to in the register or plan of the titles to the Premises  |

1.2 references to clauses are to the clauses of this Agreement;

- 1.3 all headings are for ease of reference only and will not affect the construction or interpretation of this Agreement;
- 1.4 references to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time;
- 1.5 references to the Premises include any part of them;
- 1.6 "including" means "including, without limitation";
- 1.7 "indemnify" means to indemnify against all actions, claims, demands and proceedings taken or made against the Landlord and all costs, damages, expenses, liabilities and losses incurred by the Landlord; and
- 1.8 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected.

## 2. **STANDARD CONDITIONS**

This Agreement incorporates Part 1 of the Standard Conditions so far as they are applicable to the letting of the Premises and are not excluded by, varied by or inconsistent with the terms of this Agreement.

## 3. **AGREEMENT FOR LEASE**

- 3.1 TfL will procure that the Landlord grants the Lease and the Landlord agrees to grant the Lease and the Tenant agrees to accept the grant of the Lease on the Completion Date.
- 3.2 Neither party will be under any obligation to complete the grant of the Lease on a day that is not a working day or after 5:00 pm on a working day, even where time is of the essence for completion.
- 3.3 The Premises are let subject to all existing third party interests, whether or not disclosed to the Tenant.

## 4. **TITLE**

- 4.1 TfL agrees to grant and the Landlord agrees to accept the grant prior to Actual Completion of a Head Lease and the Landlord shall supply a copy of the completed Head Lease to the Tenant prior to Actual Completion.
- 4.2 TfL and the Landlord are under no obligation to the Tenant to deduce its title to the Premises and:
  - 4.2.1 the operation of section 44(4A) Law of Property Act 1925 is excluded from this Agreement; and
  - 4.2.2 the Tenant is to assume the Landlord has title to grant the Lease.

## 5. **TITLE MATTERS**

- 5.1 The Premises are let subject to the Title Matters and all incumbrances affecting the Premises, whether or not disclosed to the Tenant and the Tenant must not raise any requisitions or enquiries in respect of TfL's or the Landlord's title to the Premises.
- 5.2 In addition to the incumbrances referred to in Standard Condition 4.1.2, the Premises are let subject to:
  - 5.2.1 matters registered or capable of registration as local land charges;

- 5.2.2 matters registered or capable of registration by any competent authority or under the provisions of any statute or as local land charges;
- 5.2.3 rights, easements, quasi-easements and wayleaves;
- 5.2.4 outgoing and other liabilities;
- 5.2.5 any interest that falls within Schedule 3 to the Land Registration Act 2002.

## 6. THE LEASE

- 6.1 The Lease and its counterpart are to be prepared by the Landlord's Solicitors and the engrossment is to be delivered to the Tenant at least five working days before the Completion Date.
- 6.2 The Landlord and the Tenant have agreed to exclude the provisions of sections 24 to 28 Landlord and Tenant Act 1954 in relation to the tenancy to be created by the Lease. The Tenant confirms that before the date of this Agreement:
  - 6.2.1 the Landlord served on the Tenant a notice (the "Notice") dated [ ] 2021 in relation to the tenancy to be created by the Lease in a form complying with the requirements of Schedule 1 to The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003;
  - 6.2.2 the Tenant, or a person duly authorised by the Tenant, in relation to the Notice made a statutory declaration (the "**Declaration**") dated [ ] 2021 in a form complying with the requirements of Schedule 2 to The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003; and
  - 6.2.3 where the Declaration was made by a person other than the Tenant, the declarant was duly authorised by the Tenant to make the Declaration on the Tenant's behalf.

## 7. HM LAND REGISTRY APPLICATIONS

- 7.1 The Tenant must not send this Agreement or any copy of it to HM Land Registry and must not protect the benefit of this Agreement at HM Land Registry.

## 8. CONDITION OF THE PREMISES

- 8.1 No damage to or destruction of the Premises occurring on or after the date of this Agreement will affect the obligations of the parties under this Agreement in any way.
- 8.2 As soon as reasonably practicable after the date of this Agreement, taking into account any restrictions on travel and requirements for social distancing which are imposed as a result of COVID-19, the Landlord shall arrange for the Tenant to enter upon the Premises for the purpose only of preparing the proposed photographic schedule of condition of the Property at the tenant's cost and expense.
- 8.3 The schedule of condition is intended to record the state of condition and repair of the Property on 1 April 2021 as far as reasonably practicable but taking into account the fact that that because of the restrictions on travel and requirements for social distancing referred to in **clause 8.2** above it may not be possible to inspect the Property for the purposes of preparing the schedule of condition on 1 April 2021.
- 8.4 As soon as reasonably practicable after the proposed schedule of condition has been prepared and no later than two months prior to the Completion Date the Tenant is to submit the schedule of condition to the Landlord for approval (not to be unreasonably withheld or delayed) and the Landlord shall bear its own costs of such approval.

- 8.5 If, despite both parties using reasonable endeavours (including the matter being escalated to in the first instance involve direct discussions between the relevant commercial manager of Transport for London and the relevant contractor manager of the Tenant), the schedule of condition has not been agreed by the parties (both acting reasonably) within one month of its submission to the Landlord for approval either the Landlord or the Tenant can require the schedule of condition to be decided by an independent expert.
- 8.6 The independent expert is to be an independent chartered surveyor of not less than ten years' qualification who is experienced in the preparation of schedule of conditions for premises similar to the Property who is a member of the Royal Institution of Chartered Surveyors.
- 8.7 The Landlord and the Tenant will use all reasonable endeavours to agree the identity of the independent expert to determine the schedule of condition.
- 8.8 Unless the Landlord and the Tenant agree the identity of the independent expert within one week of a request to do so, the independent expert is to be appointed at the written request of the Landlord or the Tenant to the President or other most senior available officer of the Royal Institution of Chartered Surveyors if the independent expert is to be a surveyor or to the President.
- 8.9 The reference to an independent expert is to be made to him as an expert unless the Landlord and the Tenant agree at the time of his appointment that he should act as an arbitrator in which case the provisions of clause 8.10 shall apply to an arbitrator.
- 8.10 The costs of referring a dispute to an independent expert under this **clause 8**, including costs connected with the appointment of the independent expert and the independent expert's own costs will be borne by the parties equally and each party shall bear their own costs of such dispute determination.
- 8.11 Once the schedule of condition has been agreed pursuant to this **clause 8** it will be the schedule of condition for the purposes of the Lease and attached to the Lease upon completion.
- 8.12 Standard Conditions 8.1 and 8.2 shall not apply to this Agreement.

## 9. **ADDITIONAL PROVISIONS**

- 9.1 This Agreement constitutes the entire agreement between the parties and:
- 9.1.1 the Tenant has not entered into this Agreement in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the Landlord or any other person and whether made to the Tenant or any other person) which is not expressly set out in this Agreement;
- 9.1.2 the only remedies available for any misrepresentation or breach of any representation or statement which was made prior to entry into this Agreement will be for breach of contract;
- 9.1.3 nothing in this **clause 9.1** will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation; and
- 9.1.4 this Agreement may only be varied in writing signed on behalf of each of the parties.
- 9.2 Nothing in this Agreement creates any demise of the Premises.
- 9.3 Sums payable under this Agreement are exclusive of VAT. Where, under the terms of this Agreement, a supply is made that is subject to VAT, the person receiving the supply is to pay the VAT to the person making the supply and a valid VAT invoice is to be issued by the person making the supply. Standard Condition 2 will not apply.

10. **TERMINATION**

TfL and the Landlord will be entitled to end this Agreement by serving written notice on the Tenant if:

- 10.1 anything occurs in relation to the Tenant which, had the Lease been granted, would entitle the Landlord to exercise its right of re-entry under the Lease; or
- 10.2 the Contract has been terminated.

11. **EFFECT OF TERMINATION**

If this Agreement comes to an end before the grant of the Lease:

- 11.1 it will not prejudice the rights of the parties in respect of any breach of this Agreement outstanding at the date this Agreement ends; and
- 11.2 except in relation to this **clause 11**, neither the Landlord or the Tenant will be under any future liability to the other under this Agreement.

12. **NOTICES**

- 12.1 Any Notice must be in writing and sent by pre-paid first class post or special delivery to or otherwise delivered to or left at the address of the recipient specified under clause 13 of the Contract.
- 12.2 Any Notice given will be treated as served on the second Business Day after the date of posting if sent by pre-paid first class post or special delivery or at the time the Notice is delivered to or left at the recipient's address if delivered to or left at that address. If a Notice is treated as served on a day that is not a Business Day or after 5.00pm on a Business Day it will be treated as served at 9.00am on the immediately following Business Day.
- 12.3 Service of a Notice by fax or e-mail is not a valid form of service under this Agreement.

13. **EXECUTION**

- 13.1 This Agreement may be executed, without limitation:
  - 13.1.1 by the electronic application of a party's authorised signatory's/signatories' signature(s) and provision of an electronic copy of the same; and
  - 13.1.2 in any number of counterparts and each counterpart will when executed be an original of this Agreement and all counterparts together will constitute one instrument.

**SIGNED BY** or on behalf of the parties on the date stated at the beginning of this Agreement.

Signed for and on behalf of TRANSPORT FOR LONDON by:

..... Authorised Signatory

..... NAME (BLOCK)

..... Position

SIGNED by TRANSPORT TRADING LIMITED

SIGNED by RINGWAY INFRASTRUCTURE SERVICES LIMITED

## **Form of Lease and Lease Plan**

## APPENDIX 10

### AFFECTED PROPERTY

#### Affected Property

#### AP100

- 1 The Affected Property is.....
- (a) **the area within the boundaries of the relevant Core Service Area described below in AP300 as identified in the Contract Data and**
- (b) **any Task site identified in an instructed Task Order whether or not the Task site is within the relevant Core Service Area identified in the Contract Data.<sup>1</sup>**

#### Client's Property and property owned by Others

#### AP200

- 2 The Client's Property is a part of the Affected Property and is.....
- the list of assets provided at Appendix A to the Scope and any other assets of the type included in Appendix A to the Scope owned, operated or managed by the *Client* within the boundaries of the relevant Core Service Area identified in the Contract Data.<sup>2</sup>**
- 3 The Affected Property includes property owned by Others<sup>3</sup> including other highway authorities, statutory authorities and private entities which may be affected by the work of the *Contractor* whilst Providing the Service.

#### Core Service Areas

#### AP300

- 4 The Core Service Areas for the Framework are described below. The relevant Core Service Area for this contract is identified in the Contract Data, being one of the three Core Service Areas described below.
- 5 The Core Service Area for North comprises the area within the boundaries of the London Boroughs of
- Barking & Dagenham,
  - Barnet,
  - Brent,
  - Ealing,
  - Enfield,
  - Haringey,
  - Harrow,
  - Havering,
  - Hillingdon,
  - Hounslow,
  - Newham,
  - Redbridge and
  - Waltham Forest.

<sup>1</sup> Other Clients should enter their Affected Property definition as a replacement to the bold text.

<sup>2</sup> Other Clients should enter their Client's Property definition as a replacement to the bold text.

<sup>3</sup> This is to include apparatus owned by Others such as utilities, e.g. chamber covers as relevant to Providing the Service.

- 6 The Core Service Area for North includes
- the elevated section of the A40 Westway from the boundary between the LB of Ealing and LB of Hammersmith & Fulham, eastwards to its junction with the A501, Edgware Road.
  - the A3220 West Cross Route between the A40 and the A402, including the Northern Roundabout and its slip roads and the Holland Park Roundabout and
  - the section of the A4 from the boundary of the London Borough of Hounslow with Hammersmith & Fulham, through to its junction with Warwick Road in Kensington & Chelsea.
- 7 The Core Service Area for Central comprises the area within the boundaries of the London, or Royal Boroughs of
- Camden,
  - Hackney,
  - Hammersmith & Fulham,
  - Islington,
  - Kensington & Chelsea,
  - Lambeth,
  - Southwark,
  - Tower Hamlets,
  - Wandsworth,
  - the City of London and
  - The City of Westminster.
- 8 The Core Service Area for Central excludes
- the elevated section of the A40 Westway from the boundary between the LB of Ealing and LB of Hammersmith & Fulham, eastwards to its junction with the A501, Edgware Road.
  - the A3220 West Cross Route between the A40 and the A402, including the Northern Roundabout and its slip roads and the Holland Park Roundabout and
  - the section of the A4 from the boundary of the London Borough of Hounslow with Hammersmith & Fulham, through to its junction with Warwick Road in Kensington & Chelsea.
- 9 The Core Service Area for South comprises the area within the boundaries of the London, or Royal Boroughs of
- Bexley,
  - Bromley,
  - Croydon,
  - Greenwich,
  - Kingston upon Thames,
  - Lewisham,
  - Merton,
  - Richmond upon Thames and
  - Sutton.

## **SCHEDULE 7**

### **CONDITIONS OF CONTRACT**

These conditions are based on the NEC family of contracts, the copyright of which belongs to the Institution of Civil Engineers

# Contents

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|  |               |
|--|---------------|
| <b>Core Clauses</b>  | <b>4</b>      |
| 1 General  | 4             |
| 2 The <i>Contractor's</i> main responsibilities                                    | 17            |
| 3 Time   | 21            |
| 4 Quality management   | 27            |
| 5 Payment  | 29            |
| 6 Compensation events  | 34            |
| 7 Use of equipment, Plant and Materials  | 41            |
| 8 Liabilities and insurance  | 42            |
| 9 Termination  | 46            |
| 10 <b>Additional Conditions of Contract</b>  | <b>53</b>     |
| <b>Main Option Clauses</b>   | <b>66</b>     |
| Option A: Priced contract with price list  | 66            |
| Option C: Target contract with price list  | 69            |
| <del>Option E: Cost reimbursable contract</del>                                    | <del>73</del> |
| <b>Resolving and Avoiding Disputes</b>   | <b>75</b>     |
| Option W2  | 75            |
| <b>Secondary Option Clauses</b>  | <b>81</b>     |
| Option X1: Price adjustment for inflation (used only with Options A and C)         | 81            |
| Option X2: Changes in the law  | 81            |
| <del>Option X3: Multiple currencies (used only with Option A)</del>                | <del>82</del> |
| <del>Option X4: Ultimate holding company guarantee</del>                           | <del>82</del> |
| <del>Option X8: Undertakings to the <i>Client</i> or Others</del>                  | <del>82</del> |
| Option X10: Information modelling  | 83            |
| <del>Option X11: Termination by the <i>Client</i> (not used with Option X19)</del> | <del>84</del> |
| <del>Option X12: Multiparty collaboration (not used with Option X20)</del>         | <del>84</del> |
| Option X13: Performance bond   | 85            |
| <b>Option X14: Advanced Payment to the <i>Contractor</i></b>                       | <b>86</b>     |
| <del>Option X17: Low service damages</del>   | <del>86</del> |
| Option X18: Limitation of liability  | 86            |
| <del>Option X19: Termination by either Party (not used with Option X11)</del>      | <del>87</del> |
| <del>Option X20: Key Performance Indicators (not used with Option X12)</del>       | <del>87</del> |
| Option X21: Whole life cost  | 88            |
| Option X23: Extending the Service Period   | 88            |
| Option X24: The <i>accounting periods</i>  | 88            |

|   |    |
|---|----|
| Option Y(UK)1: Project Bank Account                                       | 90 |
| Option Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996 | 94 |
| Option Y(UK)3: The Contracts (Rights of Third Parties) Act 1999           | 95 |
| <br>  |    |
| Option Z: <i>Additional conditions of contract</i>                        | 95 |

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# Core Clauses

## 1. GENERAL

|                                     |           |  |
|-------------------------------------|-----------|--|
| <b>Actions</b>                      | <b>10</b> |  |
|                                     | 10.1      | The Parties and the <i>Service Manager</i> shall act as stated in this contract.   |
|                                     | 10.2      | The Parties and the <i>Service Manager</i> act in a spirit of mutual trust and co-operation.   |
| <b>Identified and defined terms</b> | <b>11</b> |  |
|                                     | 11.1      | In these <i>conditions of contract</i> , terms identified in the Contract Data are in italics and defined terms have capital initials.   |
|                                     | 11.2      | <p>(1) The Accepted Plan is the plan identified in the Contract Data or is the latest plan accepted by the <i>Service Manager</i>. The latest plan accepted by the <i>Service Manager</i> supersedes previous Accepted Plans. <b>Neither the Accepted Plan, nor any method statement attached to the Accepted Plan, form part of the Scope.</b></p> <p>(2) Affected Property is property of the <i>Client</i> or Others which is</p> <ul style="list-style-type: none"> <li>• affected by the work of the <i>Contractor</i> or used by the <i>Contractor</i> in Providing the Service and</li> <li>• identified in the Contract Data, unless later changed in accordance with the contract.</li> </ul> <p>(3) The Contract Date is the date <del>when the contract came into existence</del> <b>of the Form of Agreement.</b></p> <p><del>(4) A Corrupt Act is</del></p> <ul style="list-style-type: none"> <li><del>• the offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust or</del></li> <li><del>• abusing any entrusted power for private gain</del></li> </ul> <p><del>in connection with this contract or any other contract with the <i>Client</i>. This includes any commission paid as an inducement which was not declared to the <i>Client</i> before the Contract Date.</del></p> <p>(5) A <b>Scope Defect</b> is</p> <ul style="list-style-type: none"> <li>• a part of the <i>service</i> which is not in accordance with the Scope or <b>a Task Order (as appropriate) or the <i>Contractor's</i> obligations under this contract or</b></li> <li>• a part of the <i>service</i> which is not in accordance with the applicable law <b>or the <i>Contractor's</i> design which the <i>Service Manager</i> has accepted or all applicable licences and approvals</b> or the Accepted Plan.</li> </ul> <p>(6) The Early Warning Register is a register of matters which are</p> <ul style="list-style-type: none"> <li>• listed in the Contract Data for inclusion and</li> <li>• notified by the <i>Service Manager</i> or the <i>Contractor</i> as early warning matters.</li> </ul> <p>It includes a description of the matter and the way in which the effects of the matter are to be avoided or reduced.</p> <p>(7) Equipment is items provided and used by the <i>Contractor</i> to Provide the Service and which the Scope does not require the <i>Contractor</i> to include in the Affected Property.</p> <p>(8) The Fee is</p> <ul style="list-style-type: none"> <li>• where <b>Main Option A applies</b>, the amount calculated by applying the <i>fee percentage</i> to the amount of Defined Cost</li> </ul> <p><b>or</b></p> <ul style="list-style-type: none"> <li>• <b>where Main Option C applies, the amount calculated by applying the <i>target cost fee percentage</i> to the amount of Defined Cost.</b></li> </ul> <p>(9) Others are people or organisations who are not the <i>Client</i>, the <i>Service Manager</i>, the <i>Adjudicator</i>, the <i>Contractor</i> or any employee, Subcontractor or supplier of the <i>Contractor</i>.</p> <p>(10) The Parties are the <i>Client</i> <b>(which expression includes its successors in title and</b></p> |

permitted assigns) and the Contractor.

(11) Plant and Materials are items intended to be included in the Affected Property.

(12) The Price List is the *price list* unless later changed in accordance with the contract. The Price List includes a statement of the method and rules used to compile it.

(12A) The Prices are the amounts stated in the Price column of the Price List, the Task Price List and/or the accepted Annual Price List (as applicable). Where a quantity is stated for an item in the Price List, the Task Price List and/or the accepted Annual Price List (as applicable), the Price is calculated by multiplying the quantity by the relevant rate or lump sum prices stated in the Price column of the Price List, the Task Price List and/or the accepted Annual Price List (as applicable).

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(13) To Provide the Service means to do the work necessary to provide the *service* in accordance with the contract and all incidental work, services and actions which the contract requires.

(14) Scope is information which

- specifies and describes the *service* and/or
- states any constraints on how the Contractor Provides the Service

and is either

- in the documents which the Contract Data states it is in or
- in an instruction given in accordance with the contract.

(15) The Service Areas are the Affected Property and those parts of the *service areas* which are

- necessary for Providing the Service and
- used only to provide services in the contract but may include shared service depots or compounds used to provide services in this contract and services for other contracts

unless later changed in accordance with the contract.

(16) The Service Period is the *service period* unless later changed in accordance with the contract.

(17) A Subcontractor is a person or organisation including, without limitation any sub-consultant who has a contract with the Contractor to provide a service which is necessary to Provide the Service, except for the

- hire of Equipment or
- supply of people paid for by the Contractor according to the time they work.

(18) A Task is work included in the *service* which the Service Manager may instructs the Contractor to carry out and for which a Task Order programme is required.

(19) Task Completion is when the Contractor has done all the work or services in the Task which the Task Order states the Contractor is to do and corrected Scope Defects which would have prevented the Client or Others from using the Task or the Affected Property or Others from doing their work.

(20) Task Completion Date is the date for completion stated in the Task Order unless later changed in accordance with the contract.

(21) A Task Order is the Service Manager's instruction to carry out a Task.

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(30) Task Defect Certificate is either a list of Scope Defects that the Service Manager has notified before the relevant defects date identified in a Task Order for a Task which the Contractor has not corrected or, if there are no such Scope Defects in respect of the relevant Task, a statement that there are none.

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(31) The Task Early Warning Register is a register of the matters which are listed in the Task Order relating to and in connection with the relevant Task, and the matters which the Service Manager or the Contractor has notified as an early warning matter, in connection with the relevant Task. It includes a description of the matter and the way in which the effects of the matter are to be avoided or reduced.

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(32) Task Price List means the price list for a Task submitted with Task Data Part Two.

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(33) Task Data Part One is in the form of the template at Appendix 3 of this contract and is to be provided in accordance with this contract for a proposed Task.

(34) Task Data Part Two is in the form of the template at Appendix 3 of this contract and is to be provided in accordance with this contract for a proposed Task.

(35) Task Scope is information specific to a Task which

- supplements the Scope
- specifies and describes the Task and/or
- states any constraints on how the *Contractor* is to provide the Task and is provided with a Task Order.

(36) The Act is the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.

(37) Activity Task has the meaning given to it in the Scope.

(38) Additional Service means the additional works and/or services to be provided by the *Contractor* arising from an instruction from the *Service Manager* changing the Scope involving an Additional Transfer of Provision.

(39) Additional Starting Date means the commencement date of the Additional Service.

(40) Additional Supplier means any provider of services, other than the Current Supplier, substantially similar to the *service* immediately before the Additional Starting Date.

(41) Additional Transfer of Provision means the transfer of the provision of the Additional Service from the provision by an Additional Supplier to the provision by the *Contractor*.

(42) Additional Transferring Staff means such employees of the Additional Supplier as are assigned (for the purposes of the Regulations) to the Additional Service immediately before the Additional Starting Date.

(42A) Agreement for Lease is the agreement for lease annexed at Appendix 9.

(43) Avoidable Lane Rental Charges are those lane rental charges which are not Unavoidable Lane Rental Charges

(44) Background IPR means IPR owned by the *Contractor* or a Subcontractor or other third party and which is not assigned to the *Client* pursuant to clause 28.

(45) Best Value Direction means the Best Value Authorities Staff Transfers (Pensions) Direction 2007, as amended and supplemented from time to time.

(46) CDM Regulations are the Construction (Design and Management) Regulations 2015 and any amendment, consolidation, revision and/or replacement thereto and any related Approved Code of Practice together with any requirements issued from time to time by the Health and Safety Executive.

(47) Cessation Plan means a plan agreed between the Parties or determined by the *Client* pursuant to Clause 94 to give effect to a Declaration of Ineffectiveness.

(48) Client Lane Rental Scheme (comprising Scheme document, Appendix and Borough Lane Rental Map) is the Lane Rental Scheme described in the Scope.

(49) Client Premises are any premises owned, leased or under the control of the *Client* provided that such premises do not include any premises leased to the *Contractor* pursuant to the Agreement for Lease and Lease.

(50) Construction Industry Scheme means the provisions of Chapter 3 of Part 3 of the Finance Act 2004 (Construction Industry Scheme) together with any regulations made pursuant to these provisions, including the Income Tax (Construction Industry Scheme) Regulations 2005.

(50A) Construction Operations has the same meaning given to it in section 74 Finance Act 2004.

(50B) Contract Year means each successive period of twelve (12) months with the first such period starting on the *starting date*.

(51) Contractor's Personnel means all such employees, officers, suppliers, Subcontractors and agents of the *Contractor* as are engaged in providing the *service*.

(52) Core Service means the *service* excluding instructed Tasks.

(53) Core Service Area has the meaning given to it in Appendix 10.

(53A) Coronavirus Pandemic means the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) pandemic designated as such by the World Health Organization on 11

March 2020 and which causes the disease known as “COVID-19”.

(53B) COVID-19 Guidance means the non-statutory guidance issued by the UK Government titled “Working safely during COVID-19 in construction and other outdoor work” included or referred to in the Scope at the Contract Date and, as referred to in 60.1(24), any instructed amendment, supplement, replacement of such guidance and any other instructed guidance in relation to the Coronavirus Pandemic.

(53C) COVID-19 Lump Sum has the meaning given to it in the Price List.

(53D) COVID-19 Percentage Adjustments has the meaning given to it in the Price List.

(54) Current Supplier means any provider of services substantially similar to the *service* immediately before the *starting date* including, for the avoidance of doubt, the *Client* in circumstances where it sources in-house the provision of services substantially similar to the *service* immediately before the *starting date*.

(54A) Data Protection Legislation has the meaning given to it in Appendix 8;

(55) Declaration of Ineffectiveness means a declaration of ineffectiveness in relation to this contract made by a Court of competent jurisdiction pursuant to Regulation 98 of the Public Contracts Regulations 2015.

(56) Dispute means any dispute, controversy or claim arising out of or in connection with this contract.

(57) Eligible Employees means Transferring Staff and any Additional Transferring Staff who are either active members of, or eligible to join the LGPS on the *starting date* or the Additional Starting Date respectively.

(58) Employment Costs means salaries, wages, commissions, bonuses, all statutory contributions, holiday pay (including payment for accrued but untaken holiday), national insurance contributions, pension contributions made to or on behalf of an employee, taxation (including all income tax deductible under PAYE) and all other employment costs in respect of the Transferring Staff, any Additional Transferring Staff or the Re-Transferring Personnel.

(58A) End User has the meaning given to it in Article 2 of the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019.

(59) Financial Year means a calendar year ending 31 March.

(60) Form of Agreement is the document executed by the *Client* and the *Contractor* under which the *Contractor* has agreed to Provide the Service.

(61) Framework means the framework of agreements entered into between the Transport for London and various contractors (including the *Contractor*) referred to as the Highway Maintenance and Projects Framework.

(62) Framework Agreement means the framework agreement between Transport for London and the *Contractor* referred to in the Form of Agreement, pursuant to which this contract was issued.

(63) Group Company means in respect of a person its “Parent Undertakings”, its “Subsidiary Undertakings” and the Subsidiary Undertakings of any of its Parent Undertakings from time to time, each as defined in section 1162 Companies Act 2006.

(64) Further Transfer Date means the date of the transfer of employment of the Re-Transferring Personnel from the *Contractor* to the *Client* or any Replacement Supplier.

(65) Holding Company means any company which directly or indirectly controls the *Contractor* where “control” is as defined by Section 1124 of the Corporation Tax Act 2010.

(66) Indirect Subcontractor means any subcontractor or subconsultant of whatever tier beneath any Subcontractor appointed in relation to the *service*.

(67) IPR means intellectual property rights including patents, trade marks or names, service marks, trade names, design rights (in each case whether registered or unregistered), copyright (including rights in computer software and databases), moral rights, rights in know-how, rights in domain names, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, (including any professional, manufacturer's or supplier's warranties and/or indemnities) in each case whether registered or unregistered, and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect anywhere in the world.

(68) Lane Rental Road Segment or Pinchpoint is as identified in the Client's Lane Rental Scheme.

(69) Lane Rental Times and Charge Rates are the times and rates identified in the Client's Lane Rental Scheme.

(69A) Lease is the lease annexed at Appendix 9.

(70) LGPS means the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under sections 7 and 12 of the Superannuation Act 1972.

(71) Mobilisation Plan is the mobilisation plan submitted in accordance with the Scope.

(72) Not used.

(73) Non-eligible employees means Transferring Staff or any Additional Transferring Staff who are not active members of, or eligible to join the LGPS on the *starting date* or the Additional Starting Date respectively.

(74) Notice of Adjudication means any notice given by a party to the Dispute to the other party or parties thereto requiring reference of a Dispute to the *Adjudicator* in accordance with clause W2.1. The Notice of Adjudication includes

- the nature and a brief description of the Dispute,
- details of where and when the Dispute arose, and
- the nature of the redress which is sought.

(75) Pay Less Notice means the notice referred to in clause 51.6/Y2.3.

(76) Period means the *Client's* accounting periods as notified from time to time by the *Client* to the *Contractor*, each such Period being of between 25 and 32 days and one of 13 periods during the Financial Year.

(77) Project Task has the meaning given to it in the Scope.

(78) Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended.

(79) Replacement Supplier means any replacement supplier or provider to the *Client* of the *service* (or any part of it).

(80) Re-Transferring Personnel means any Contractor's Personnel or personnel engaged by any relevant Subcontractor who

- will transfer to the employment of either the *Client* or the Replacement Supplier pursuant to the Regulations; or
- accepts an offer of employment from the *Client* or a Replacement Supplier (as appropriate), provided that the *Contractor* shall not be required to provide any information in relation to such an individual in breach of Data Protection Legislation,

upon the expiration or termination (in whole or in part) of this Contract or the appointment of a Replacement Supplier.

(81) Reverse Charge Order means the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019/892.

(82) Short Schedule of Cost Components is set out at Schedule 16 of the Framework Agreement.

(82A) Standard on Electronic Invoicing is the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.

(83) A Statutory Requirement is

- any Act of Parliament
- any instrument, rule or order made under any Act of Parliament
- any regulation or bylaw of any local authority or of any Statutory Undertaker which has any jurisdiction with regard to the *service* or with whose systems the same are or will be connected including any statutory provisions and
- any decisions of a relevant authority under the statutory provisions which control the right to develop the Affected Property on which the *service* is to be provided (including, without limitation, any planning permission).

(84) Statutory Undertaker means any governmental or local authority or statutory undertaker

- which has any jurisdiction with regard to the *service* including without limitation any jurisdiction to control development of the Affected Property or any part thereof,
- with whose requirements the *Client* is accustomed to comply or
- with whose systems and/or utilities the *service* will be associated.

(85) TfL Group means Transport for London (“TfL”), a statutory body set up by the Greater London Authority Act 1999 and all of its subsidiaries and their subsidiaries (as defined in Section 1159 of the Companies Act 2006) from time to time, together with Cross London Rail Links Limited (company number 04212657) and reference to any “member of the TfL Group” refers to TfL or any such subsidiary.

(86) Third Party Losses are any claim by a third party arising out of death or personal injury or loss of or damage to property (including any associated costs or expense) arising out of or in connection with the *service*.

(87) Transfer of Provision means the transfer of the provision of the *service* from the provision by the Current Supplier to the provision by the *Contractor*.

(87A) Transferring Staff means such employees as are named in Appendix 1 to this contract.

(88) Unavoidable Lane Rental Charges are those charges that have occurred because of occupation in chargeable areas solely due to:

- the occurrence of a *Client’s* liability or
- the *Contractor* fulfilling his obligations to provide emergency response services to a third party or
- the *Contractor* attending site at the request of the emergency services as long as the response request is not due to a failure of the *Contractor’s* contractual obligations or
- the *Client* requiring the occupation during the chargeable period.

(89) VATA means the Value Added Tax Act 1994.

(90) Volume Rebate is the amount payable or allowable to the *Client* in each Financial Year calculated in accordance with clause 7 of the Framework Agreement.

**Interpretation and the law**

**12**

- 12.1 In the contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round.
- 12.2 The contract is governed by ~~the law of the contract~~ English law and, without prejudice to Option W2 and subject to clause 12.2A, the parties submit to the exclusive jurisdiction of the English Courts.
- 12.2A Any party may seek interim injunctive relief or any other interim measure of protection in any court of competent jurisdiction.
- 12.2B Subject to clause 12.2A, each party waives any objection to, and submits to, the jurisdiction of the courts of England and Wales. Each party agrees that a judgment or order of any such court is binding upon it and may be enforced against it in the courts of any other jurisdiction.
- 12.3 No change to the contract, unless provided for by these *conditions of contract*, has effect unless it has been agreed, confirmed in writing and signed by the Parties.
- 12.4 ~~The contract is the entire agreement between the Parties.~~ Without prejudice to the terms of the Framework Agreement, this contract supersedes any previous agreement, arrangement or understanding between the *Client* and the *Contractor* in relation to the matters dealt with in this contract and represents the entire understanding and agreement between the *Client* and the *Contractor* in relation to such matters. The *Client* and *Contractor* acknowledge and agree that each of them has not relied upon any prior representation by the other in entering into this contract.
- 12.5 Where the *Client* is a member of the TfL Group then any other member of the TfL Group has the right to enforce the terms of this contract in accordance with the Contracts (Rights of Third Parties) Act 1999, but otherwise the *Client* and the *Contractor* do not intend that any of the terms of this contract are enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a Party. Notwithstanding the terms of this clause, the Parties are entitled to vary or rescind this contract without the consent of any or all

members of the Tfl Group (other than the *Client*).

|                       |  |
|-----------------------|--|
| 12.6                  | If any clause or part of this contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this contract and will be ineffective without, as far as is possible, modifying any other clause or part of this contract and this will not affect any other provisions of this contract which will remain in full force and effect. In the event that in the <i>Client's</i> reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of this contract, the <i>Client</i> and the <i>Contractor</i> immediately commence good faith negotiations to remedy such invalidity. |
| 12.7                  | The headings to the sections, clauses and sub-clauses of these <i>conditions of contract</i> are for convenience only and do not affect their construction or interpretation.  |
| 12.8                  | A reference in these <i>conditions of contract</i> to any applicable law or Statutory Requirement includes <ul style="list-style-type: none"><li>• that law or Statutory Requirement as from time to time amended, re-enacted or substituted and</li><li>• any orders, rules, regulations, schemes, warrants, bye-laws, directives or codes of practice raised under any such law or Statutory Requirement.</li></ul>  |
| 12.9                  | Notwithstanding the Contract Date, the conditions of this contract cover all work and services carried out by the <i>Contractor</i> from the date when the <i>Contractor</i> first commenced performance of the <i>service</i> and this contract and the warranties and undertakings in this contract are deemed to apply to all work and services performed by the <i>Contractor</i> both before and after the Contract Date.   |
| 12.10                 | Failure by the <i>Client</i> to exercise its rights under this contract does not constitute waiver of those rights nor any of them nor does any such failure relieve the <i>Contractor</i> from any of its obligations under this contract. The waiver in one instance of any right, condition or requirement does not constitute a continuing or general waiver of that or any other right, condition or requirement.   |
| 12.11                 | A period of time stated in days is a period calculated in accordance with Section 116 of the Act unless otherwise stated in the Scope or the Price List.   |
| 12.12                 | In this contract the words "including", "includes" and "included" are construed without limitation unless inconsistent with the context.   |
| <b>Communications</b> | <b>13</b>  |
| 13.1                  | Each communication which the contract requires is communicated in a form which can be read, copied and recorded. Writing is in the <i>language of the contract</i> .   |
| 13.2                  | If the Scope specifies the use of a communication system, a communication has effect when it is communicated through the communication system specified in the Scope.<br><br>If the Scope does not specify a communication system, a communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.   |
| 13.3                  | If the contract requires the <i>Service Manager</i> or the <i>Contractor</i> to reply to a communication, unless otherwise stated in these <i>conditions of contract</i> , they reply within the <i>period for reply</i> . Where the <i>period for reply</i> includes Christmas Day, Good Friday, a day under which the Banking and Financial Dealings Act 1971 is a Bank Holiday in England and Wales or any other public holiday in England, that day is excluded for the purpose of calculating the period.   |
| 13.4                  | The <i>Service Manager</i> replies to a communication submitted or resubmitted by the <i>Contractor</i> for acceptance. If the reply is not acceptance, the <i>Service Manager</i> states the reasons in sufficient detail to enable the <i>Contractor</i> to correct the matter. The <i>Contractor</i> resubmits the communication within the <i>period for reply</i> taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess the <i>Contractor's</i> submission fully.  |
| 13.5                  | The <i>Service Manager</i> may extend the period for reply to a communication if the <i>Service Manager</i> and the <i>Contractor</i> agree to the extension before the reply is due. The <i>Service Manager</i> informs the <i>Contractor</i> of the extension which has been agreed.   |
| 13.6                  | The <i>Service Manager</i> issues certificates to the <i>Client</i> and the <i>Contractor</i> .  |
| 13.7                  | A notification or certificate which the contract requires is communicated separately from  |

other communications.

- 13.8 The *Service Manager* may withhold acceptance of a submission by the *Contractor*. Withholding acceptance for a reason stated in these *conditions of contract* is not a compensation event.

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**The Service Manager**

- 14
- 14.1 ~~The *Service Manager*'s acceptance of a communication from the *Contractor* or acceptance of the work does not change the *Contractor*'s responsibility to Provide the Service or liability for its plan or its design. No acceptance, approvals, comments, instructions, consents or advice or indication of satisfaction given by or from the *Client* or the *Service Manager*, nor any enquiry or inspection which the *Client* or the *Service Manager* makes or has carried out for its benefit or on its behalf at any time, operates to reduce, extinguish, exclude, limit or modify the *Contractor*'s duties and obligations under this contract unless it is in writing from the *Client*, refers to this contract and clearly identifies the duty or obligation and the extent to which such duty or obligation is to be reduced, extinguished, excluded, limited or modified.~~
- 14.2 The *Service Manager*, after notifying the *Contractor*, may delegate any of their actions and may cancel any delegation. The notification contains the name of the delegate and details of the actions being delegated or any cancellation of delegation. A reference to an action of the *Service Manager* in the contract includes an action by their delegate. The *Service Manager* may take an action which they have delegated.
- 14.3 The *Service Manager* may give an instruction to the *Contractor* which changes the Scope, a Task or the Affected Property.
- 14.4 The *Client* may replace the *Service Manager* after notifying the *Contractor* of the name of the replacement.
- 14.5 The *Service Manager* gives an instruction to correct a mistake in the Price List or Task Price List (as applicable) which is
- a departure from the method and rules stated in the Price List or Task Price List (as applicable) and used to compile it or
  - due to an ambiguity or inconsistency.
- 
- 14.6 The *Service Manager* is for relevant purposes the "specified person" as defined in Section 110A(6) of the Act.

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**Early warning**

- 15
- 15.1 The *Contractor* and the *Service Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could
- increase the total of the Prices,
  - interfere with the timing of the *service* or
  - impair the effectiveness of the *service*.
- The *Service Manager* or the *Contractor* may give an early warning by notifying the other of any other matter which could increase the *Contractor*'s total cost. The *Service Manager* enters early warning matters in the Early Warning Register or Task Early Warning Register (as appropriate). Early warning of a matter for which a compensation event has previously been notified is not required.
- 15.2 The *Service Manager* prepares a first Early Warning Register and issues it to the *Contractor* within one week of the *starting date*. The *Service Manager* instructs the *Contractor* to attend a first early warning meeting within two weeks of the *starting date*. If an early warning is notified in relation to a Task, the *Service Manager* prepares a first Task Early Warning Register and issues it to the *Contractor* within one week of the notification. The *Service Manager* instructs the *Contractor* to attend a first Task early warning meeting within two weeks of the first notification.
- Later early warning meetings are held
- if either the *Service Manager* or *Contractor* instructs the *Contractor* to attend an early warning meeting,
  - if the *Contractor* requests that the *Service Manager* attends an early warning meeting and the *Service Manager* accepts such request (such request not to be unreasonably refused) and, in any case,
  - at no longer interval than the interval stated in the Contract Data until the end of the

Service Period.

The *Service Manager* or *Contractor* may instruct other people to attend an early warning meeting if the other agrees.

A Subcontractor attends an early warning meeting if its attendance would assist in deciding the actions to be taken.

- 15.3 At an early warning meeting, those who attend co-operate in
- making and considering proposals for how the effects of each matter in the Early Warning Register **and/or Task Early Warning Register (as appropriate)** can be avoided or reduced,
  - seeking solutions that will bring advantage to all those who will be affected,
  - deciding on the actions which will be taken and who, in accordance with the contract, will take them,
  - deciding which matters can be removed from the Early Warning Register **and/or Task Early Warning Register (as appropriate)** and
  - reviewing actions recorded in the Early Warning Register **and/or Task Early Warning Register (as appropriate)** and deciding if different actions need to be taken and who, in accordance with the contract, will take them.
- 15.4 The *Service Manager* revises the Early Warning Register **and/or Task Early Warning Register (as appropriate)** to record the decisions made at each early warning meeting and issues the revised Early Warning Register **and/or Task Early Warning Register (as appropriate)** to the *Contractor* within one week of the early warning meeting. If a decision needs a change to the Scope **or Task Order**, the *Service Manager* instructs the change at the same time as the revised Early Warning Register **or Task Early Warning Register (as appropriate)** is issued.

- 15.5 For the avoidance of doubt, entry of a matter in the Early Warning Register or a Task Early Warning Register (as appropriate) and any revisions to the Early Warning Register or a Task Early Warning Register (as appropriate) do not give rise to a compensation event and merely reflect the acknowledgement of an early warning matter or the decisions reached at an early warning meeting. The *Contractor's* only entitlement to a change in the Prices, and any Task Completion Date, as a result of an early warning matter or any revision to the Early Warning Register or a Task Early Warning Register is in accordance with clauses 60 to 65.

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**Contractor's proposals**

- 16
- 16.1 The *Contractor* may propose to the *Service Manager* that the Scope **and/or any Task Scope** provided by the *Client* is changed in order to
- reduce the amount the *Client* pays to the *Contractor* for Providing the Service,
  - **reduce the Client's total cost and/or**
  - **improve the effectiveness of the service, including in terms of efficiency, network reliability and integrity, whole life costs, sustainability, use of emerging technology and working methods and use of new products and materials.**
- The *Service Manager* consults with the *Client* and the *Contractor* about the change.
- 16.2 Within four weeks of the *Contractor* making the proposal the *Service Manager*
- accepts the *Contractor's* proposal and issues an instruction changing the Scope **and/or the Task Scope**,
  - informs the *Contractor* that the *Client* is considering the proposal and instructs the *Contractor* to submit a quotation for a proposed instruction to change the Scope **and/or the Task Scope** or
  - informs the *Contractor* that the proposal is not accepted.
- The *Service Manager* may give any reason for not accepting the proposal.
- 16.3 The *Contractor* may submit a proposal for adding an area to the Service Areas to the *Service Manager* for acceptance. A reason for not accepting is that the proposed area is
- not necessary for Providing the Service or
  - used for services not in the contract.

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|--------------------------------------|-----------------|--|
| <b>Requirements for instructions</b> | <b>17</b>       |  |
|                                      | 17.1            | The <i>Service Manager</i> or the <i>Contractor</i> notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of the contract. The <i>Service Manager</i> states how the ambiguity or inconsistency should be resolved. <b>There is no addition to the Prices, or any change to a Task Completion Date arising from any such ambiguity or inconsistency where the <i>Service Manager</i> decides that the ambiguity or inconsistency in question is one arising from a document which the <i>Contractor</i> prepared or is responsible for. The <i>Service Manager</i> notifies the <i>Contractor</i> of this decision.</b>   |
|                                      | 17.2            | The <i>Service Manager</i> or the <i>Contractor</i> notifies the other as soon as either becomes aware that the <b>Scope or Task Scope (as appropriate)</b> includes an illegal or impossible requirement or a requirement to carry out works or services which if completed in accordance with this contract will result in the <i>service</i> not being in accordance with the Statutory Requirements. If the <b>Scope or Task Scope (as appropriate)</b> does include <b>such a an illegal or impossible</b> requirement, the <i>Service Manager</i> gives an instruction to change the <b>Scope or Task Scope (as appropriate)</b> appropriately.  |
| <b>Corrupt Acts</b>                  | <b>18</b>       | <b>Not used. [Note: refer to clause 107]</b>   |
|                                      | <del>18.1</del> | <del>The <i>Contractor</i> does not do a Corrupt Act.</del>  |
|                                      | <del>18.2</del> | <del>The <i>Contractor</i> takes action to stop a Corrupt Act of a Subcontractor or supplier of which it is, or should be, aware.</del>  |
|                                      | <del>18.3</del> | <del>The <i>Contractor</i> includes equivalent provisions to those in subcontracts and contracts for the supply of Plant and Materials and Equipment.</del>  |
| <b>Tasks-Orders</b>                  | <b>19</b>       |  |
| <b>General</b>                       | <b>19.1</b>     |  |
|                                      | 19.1.1          | The <i>Client</i> is not obliged to issue Task Data Part One or Task Orders at any time. The <i>Client</i> is entitled to invite other contractors to submit offers for a proposed Task in the Affected Property or otherwise.   |
|                                      | 19.1.2          | The <i>Client</i> may issue Task Data Part One or a Task Order relating to a proposed Task outside the Core Service Area.  |
|                                      | 19.1.3          | No Task Order is issued after the end of the Service Period.   |
| <b>Task Request</b>                  | <b>19.2</b>     |  |
|                                      | 19.2.1          | The <i>Service Manager</i> may submit to the <i>Contractor</i> Task Data Part One in relation to a proposed Task. The <i>Service Manager</i> includes the data required to complete the Task Data Part One together with other information necessary for the <i>Contractor</i> to properly assess the proposed Task and a copy of the Task Data Part Two for completion by the <i>Contractor</i> .   |
|                                      | 19.2.2          | On receipt of Task Data Part One, the <i>Contractor</i> provides the Task Data Part Two <ul style="list-style-type: none"> <li>• within 4 weeks for a Project Task or</li> <li>• within 2 weeks for an Activity Task or</li> </ul> within such alternative timescale as the <i>Service Manager</i> and the <i>Contractor</i> may agree.  |
|                                      | 19.2.3          | The completed Task Data Part Two includes any information necessary for the <i>Service Manager</i> to properly assess the Task Data Part Two and, unless provided by the <i>Client</i> , a Task Price List.  |
|                                      | 19.2.4          | When preparing a Task Price List for a proposed Task <ul style="list-style-type: none"> <li>• the Prices are built up from the rates and lump sums in and in accordance with the Price List,</li> <li>• the <i>Contractor</i> may use rates and lump sums that are less than those in the Price List but does not use any rates and lump sums which exceed those in the Price List,</li> <li>• where there is no item in the Price List that corresponds to an item of work or services for the proposed Task, the relevant Prices are calculated by reference to the rates and lump sums in and in accordance with the Price List for works or services of a similar character and executed under similar conditions,</li> <li>• where there is no item in the Price List that corresponds to an item of work or services for a proposed Task and there are no rates or lump sums in the Price List for works or services of a similar character and executed under similar conditions, the <i>Service Manager</i> and the <i>Contractor</i> may agree a reasonable rate or lump sum for the</li> </ul> |

relevant item and if such a rate is agreed it is added to the Price List,

- where the *Service Manager* and the *Contractor* cannot agree a rate pursuant to the bullet point immediately above, the relevant Prices are calculated by reference to the Short Schedule of Cost Components,
- if the Task Data Part One includes delay damages a reasonable adjustment is made in the Task Price List to the rates and lumps sums from the Price List.

19.2.5 Upon receipt of Task Data Part Two (and any revised Task Data Part Two) the *Service Manager* may

- issue a Task Order for the Task on the terms of the Task Data Part One and the Task Data Part Two, or
- instruct the *Contractor* to submit a revised Task Data Part Two, on the terms of
  - the original Task Data Part One or
  - a revised Task Data Part Onein each case giving reasons for the decision, or
- notify the *Contractor* that the *Service Manager* will be making an assessment of the Task Price List for the Task in accordance with clause 19.2.4, or
- notify the *Contractor* that it does not intend to proceed with the Task under the contract.

19.2.6 The *Contractor* does not charge the *Client* and the *Contractor* is responsible for all and any costs, charges and expenses incurred by the *Contractor* arising from or associated with any work involved in receipt of any Task Data Part One and the preparation of Task Data Part Two.

## Task Order

### 19.3

19.3.1 The *Service Manager* may issue a Task Order to the *Contractor* at any time whether following submission of Task Data Part One or otherwise, provided that a Task Order for a Task to be delivered using Main Option C will not be issued other than following submission by the *Service Manager* of Task Data Part One. In the case of Activity Tasks 'AT0' the *Service Manager* may issue a Task Order by way of telephone, e-mail or verbal instructions.

19.3.2 Other than for Activity Tasks 'AT0' issued by way of telephone, e-mail or verbal instructions, a Task Order includes,

- where a Task Order is issued following receipt of an accepted Task Data Part Two confirmation that the Task is to be provided in accordance with the Task Data Part One and accepted Task Data Part Two

otherwise

- for Project Tasks and Activity Tasks, completed Task Data Part One and Task Data Part Two.

19.3.3 For Activity Tasks 'AT0' issued by way of telephone, e-mail or verbal instructions, the Task Order instruction includes as a minimum a description of the work or services in the Task, the starting date for the Task and a description of the Task site. Within 2 days of the instruction (or within such alternative timescale as the *Service Manager* and the *Contractor* may agree) the *Contractor* provides the Task Data Part One and Task Data Part Two for the Task completed in accordance with clauses 19.2.3 and 19.2.4.

Upon receipt of such Task Data Part One and Task Data Part Two (and any revised Task Data Part One and/or Task Data Part Two) for an Activity Task 'AT0', the *Service Manager* may

- confirm acceptance of the Task Data Part One and Task Data Part Two or
- instruct the *Contractor* to submit revised Task Data Part One and/or Task Data Part Two, giving reasons for the decision.

## Providing the Task

### 19.4

19.4.1 On receipt of a Task Order, the *Contractor* provides the works or services in accordance with the Task Order and the provisions of this contract. Without prejudice to the *Contractor's* obligation to do so and its liabilities under this contract the *Contractor* notifies the *Client* if for any reason it is unable to do so.

- 19.4.2 In case of conflict the requirements of any Task Order take precedence over the Scope.
- 19.4.3 The *Contractor* designs the parts of the Task which the Task Order states the *Contractor* is to design. The *Contractor* integrates and coordinates its design (if any) with the designs of Others and in accordance with the Task Order and the instructions of the *Service Manager*.
- 19.4.4 The *Contractor* proceeds regularly and diligently to provide the Task in accordance with this contract, and uses all reasonable endeavours to prevent and/or reduce any delay in the progress of the Task.

## Time

### 19.5

- 19.5.1 The *Contractor* does not start any work or services included in the Task until the *Service Manager* has instructed him to carry out the Task and does the work so that Task Completion is on or before the Task Completion Date.
- 19.5.2 The *Service Manager* decides the date of Task Completion. The *Service Manager* certifies Task Completion within 1 week of Task Completion.
- 19.5.3 If the Task Order states that delay damages apply, if Task Completion is later than the Task Completion Date, the *Contractor* pays delay damages at the rate stated in the Task Order from the Task Completion Date until the earlier of
- Task Completion or
  - the date on which the *Client* takes over the relevant Task.
- 19.5.4 If the *Client* takes over a part of the Task before Task Completion, the relevant delay damages (if applicable) are reduced from the date on which the part is taken over. The *Service Manager* assesses the benefit to the *Client* of taking over the part of the Task as a proportion of the benefit to the *Client* of taking over the whole of the Task not previously taken over. The relevant delay damages are reduced in this proportion.
- 19.5.5 The *Service Manager* may instruct the *Contractor* to submit a quotation for an acceleration to achieve Task Completion for a Task before the relevant Task Completion Date. A quotation for an acceleration comprises proposed changes to the Prices and a revised Task Order programme showing the earlier Task Completion Date. The *Contractor* submits details of its assessment with each quotation. The *Contractor* submits a quotation or gives its reasons for not doing so within the *period for reply*.
- 19.5.6 When the *Service Manager* accepts a quotation for an acceleration, it changes the Prices and the Task Completion Date accordingly and accepts the revised Task Order programme.

## Take Over

### 19.6

- 19.6.1 The *Client* need not take over a Task before the Task Completion Date if it is stated in the Task Order that it is not willing to do so. Otherwise the *Client* takes over a Task not later than 2 weeks after Task Completion.
- 19.6.2 The *Client* and Others may use any part of a Task and the Task site before Task Completion has been certified. If it does so, it does not take over the part of the Task when it begins to use it and the *Contractor* remains responsible for the Task unless the *Service Manager* issues a certificate in accordance with clause 19.6.3.
- 19.6.3 If the *Client* wishes (in its absolute discretion) to take over any part of a Task prior to the date of issue of a certificate of Task Completion pursuant to clause 19.6.2 then the *Service Manager* certifies the date on which the *Client* has taken over such part of the relevant Task and the extent of the relevant Task taken over by the *Client*.
- 19.6.4 Notwithstanding any other clause in this contract, for the avoidance of doubt, the *Client* is not regarded as having taken over a Task, or any part of a Task, during any period when a Task or a Task site is being used by the *Client* and/or Others and unless the *Service Manager* issues a certificate in accordance with clause 19.6.3.
- ~~19.1 The *Service Manager* may issue a Task Order to the *Contractor*. Before issuing a Task Order, the *Service Manager* instructs the *Contractor* to submit a quotation for the Task. The instruction includes~~
- ~~• a detailed description of the work in the Task,~~
  - ~~• the Task starting date and Task Completion Date and~~

- the amount of delay damages for the late completion of the Task.

The delay damages in a Task Order, if any, are not more than the estimated cost to the *Client* of late completion of the Task.
- 19.2 The *Contractor* submits a quotation for a Task within three weeks of being instructed to do so by the *Service Manager*. The *Contractor* submits details of its assessment with the quotation. The *Service Manager* replies within two weeks of the submission. The reply is
  - acceptance of the quotation and the issue of the Task Order,
  - an instruction to submit a revised quotation,
  - that the *Service Manager* will be making the assessment or
  - a notification that the Task will not be instructed.
- 19.3 The *Service Manager* instructs the *Contractor* to submit a revised quotation only after explaining the reasons for doing so to the *Contractor*. The *Contractor* submits the revised quotation within three weeks of being instructed to do so.
- 19.4 The *Service Manager* extends the time allowed for
  - the *Contractor* to submit quotations for a Task or
  - the *Service Manager* to reply to a quotation

if the *Service Manager* and the *Contractor* agree to the extension before the submission or reply is due. The *Service Manager* informs the *Contractor* of the extension which has been agreed.
- 19.5 The *Service Manager* assesses the pricing for the Task if
  - the *Contractor* has not submitted a quotation and details of its assessment within the time allowed or
  - the *Service Manager* decides that the *Contractor* has not assessed the Task correctly in a quotation and has not instructed the *Contractor* to submit a revised quotation.

The *Service Manager* notifies the *Contractor* of the assessment of the pricing for a Task, gives details of the assessment and issues the Task Order within the period allowed for the *Contractor*'s submission of its quotation for the same Task. This period starts when the need for the *Service Manager*'s assessment becomes apparent.
- 19.6 The assessment of a Task is in the form of a Task price list. Where items of work in the Task price list are covered by rates in the Price List, the items are priced using those rates. The prices for items in the Task price list which are not taken from the Price List are assessed in the same way as a compensation event is assessed.
- 19.7 If Task Completion is later than the Task Completion Date, the *Contractor* pays delay damages at the rate stated in the Task Order from the Task Completion Date until Task Completion.
 

If the Task Order Completion Date is changed to a later date after delay damages have been paid, the *Client* repays the overpayment of damages with interest. Interest is assessed from the date of payment to the date of repayment.
- 19.8 When a Task Order is issued
  - the Task price list is inserted in the Price List and
  - the work involved is added to the Scope.

The issue of a Task is not a compensation event.

## 2. THE CONTRACTOR'S MAIN RESPONSIBILITIES

|                         |       |   |
|-------------------------|-------|---|
| Providing the Service   | 20    |   |
|                         | 20.1  | The <i>Contractor</i> Provides the Service in accordance with the Scope, each instructed Task Order, Statutory Requirements and this contract.  |
|                         | 20.2  | In Providing the Service, the <i>Contractor</i> minimises the interference caused to the Affected Property and the activities taking place in it and also minimises interference to all users of the Affected Property.   |
|                         | 20.5  | <p>The <i>Contractor</i> warrants and undertakes to the <i>Client</i> as a condition of this contract that</p> <ul style="list-style-type: none"> <li>it has examined the Scope and all other documents forming this contract and is not aware of any ambiguity or discrepancy within or between any of the contract documents which might adversely affect the carrying out of the work and services in accordance with this contract,</li> <li>it has all the resources including financial, technical and human resources as are required to carry out and complete its work and services in accordance with this contract,</li> <li>it has visited the Affected Property and satisfied itself regarding the resourcing and methods required to Provide the Service,</li> <li>in respect of each Task, it will visit the relevant Task site and satisfy itself of the resourcing and methods required to deliver the Task,</li> <li>its work and services under this contract will be designed and specified using the best modern engineering principles and practices at the time of preparing the design and in accordance with good industry practice and</li> <li>the proceeds of a claim made in connection with this contract under insurance taken out by the <i>Contractor</i> pursuant to clause 83 of the <i>conditions of contract</i> will be used solely for the purposes of the <i>service</i> and for no other purpose.</li> </ul> |
| Design of Equipment     | 21    |   |
|                         | 21.1  | <p>The <i>Contractor</i> submits particulars of the design of an item of Equipment to the <i>Service Manager</i> for acceptance if the <i>Service Manager</i> instructs the <i>Contractor</i> to. A reason for not accepting is that the design of the item will not allow the <i>Contractor</i> to Provide the Service in accordance with</p> <ul style="list-style-type: none"> <li>the Scope,</li> <li>this contract,</li> <li>(where relevant) a Task Order,</li> <li>the Accepted Plan or</li> <li>the applicable law.</li> </ul>  |
| The Contractor's design | 21A   |   |
|                         | 21A.1 | The <i>Contractor</i> designs the parts of the <i>service</i> which the Scope and any Task Order states it is to design. The <i>Contractor</i> integrates and coordinates its design (if any) with the designs of Others and in accordance with the Scope, a Task Order and the instructions of the <i>Service Manager</i> . The <i>Contractor</i> accepts entire responsibility for the <i>Contractor's</i> design and for any mistake, inaccuracy, discrepancy or omission contained in the same.   |
|                         | 21A.2 | <p>The <i>Contractor</i> submits the particulars of its design as the Scope or a Task Order requires to the <i>Service Manager</i> for acceptance. Reasons for not accepting the <i>Contractor's</i> design are that</p> <ul style="list-style-type: none"> <li>it does not comply with the Scope, the Task Order (if applicable), applicable law or Statutory Requirements,</li> <li>it is not integrated and coordinated with the designs of Others where the <i>Contractor</i> is required by the Scope, a Task Order or the instructions of the <i>Client</i> to integrate and/or coordinate its design with the designs of Others or such integration is necessary for the <i>Contractor</i> to Provide the Service, or</li> <li>it does not comply with this contract.</li> </ul> <p>The <i>Contractor</i> does not proceed with the relevant work or services until the <i>Service</i></p>   |

*Manager has accepted its design.*

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|        |   |
|--------|---|
| 21A.3  | The <i>Contractor</i> may submit its design for acceptance in parts if the design of each part can be assessed fully.   |
| 21A.4  | <p>(1) The <i>Contractor</i> warrants to the <i>Client</i> that insofar as it is responsible for the design of works or services under this contract, it has exercised and exercises in such design all reasonable skill, care and diligence as may be expected of a properly qualified designer of the appropriate discipline(s) for such design, experienced in carrying out works or services of a similar scope, nature, timescale and complexity and on a similar site or at a similar location to the <i>service</i>.</p> <p>(2) The <i>Contractor</i> warrants to the <i>Client</i> that it uses the reasonable skill, care and diligence set out in clause 21A.4(1) to see that the works or services provided under this contract comply with any performance specification or requirement included or referred to in the Scope, any Task Order (where applicable) and the <i>Contractor's</i> design (including any changes to the Scope and any Task Order) and comply with all Statutory Requirements. The <i>Contractor</i> warrants that any works or services designed by the <i>Contractor</i> will interface and integrate fully with any design prepared by, or on behalf, of the <i>Client</i>.</p> <p>(3) Notwithstanding any other clause in this contract, no provision in this contract is interpreted as imposing either an implied or express fitness for purpose obligation on the <i>Contractor</i> in relation to the design of the works or services under this contract.</p>  |
| 21A.5  | <p>(1) Subject to the Scope and any Task Order (where applicable) and any changes to them the <i>Contractor</i> warrants that to the extent the <i>Contractor</i> either is obliged to specify or approve products or materials for use in the <i>service</i> or does so specify or approve, the <i>Contractor</i> does not specify, approve or use any products or materials which are generally known within the construction industry to be deleterious at the time of use in the particular circumstances in which they are used, or those identified as potentially hazardous in or not in conformity with</p> <ul style="list-style-type: none"><li>• the guidance given in the edition current at the date of specification, approval and/or use of the publication entitled "Good Practice in the Selection of Construction Materials" (published by the British Council for Offices),</li><li>• relevant British or European Standards or Codes of Practice or</li><li>• any publications of the Building Research Establishment related to the specification of products or materials.</li></ul> <p>(2) If in the performance of its duties under this contract, the <i>Contractor</i> becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others of, any such products or materials, the <i>Contractor</i> notifies the <i>Service Manager</i> in writing immediately. This clause does not create any additional duty for the <i>Contractor</i> to inspect or check the work of others which is not required by this contract.</p> |
| People | 22  |
| 22.1   | <p>The <i>Contractor</i> either provides each <i>key person</i> named to do the job stated in the Contract Data or provides a replacement person who has been accepted by the <i>Service Manager</i>.</p> <p>The <i>Contractor</i> submits the name, relevant qualifications and experience of a proposed replacement person to the <i>Service Manager</i> for acceptance. A reason for not accepting the person is that their relevant qualifications and experience are not as good as those of the person who is to be replaced. The <i>Contractor</i> does not remove any <i>key person</i> from the contract for more than 21 consecutive days without the prior written consent of the <i>Service Manager</i>, save where such <i>key person</i> is absent on sick leave, or other statutory leave (such as jury service/maternity/paternity or adoption leave) or has left the <i>Contractor's</i> employment. In the case of leave due notice of the arrangements for cover during the leave will be notified in advance of the leave commencing and for sick leave as soon as the <i>Contractor</i> is aware that the absence will extend beyond 21 days.</p>  |
| 22.2   | <p>The <i>Service Manager</i> may, having stated the reasons, instruct the <i>Contractor</i> to remove <del>a person</del> any person under the control of the <i>Contractor</i>. The <i>Contractor</i> then arranges that, after one day, <del>the</del> such person has no further connection with the work included in the contract.</p>   |
| 22.3   | <p>Where the <i>Contractor</i> proposes the replacement of any <i>key person</i> the <i>Contractor</i>, at no cost to the <i>Client</i>, ensures that during the relevant <i>handover period</i> the proposed</p>   |

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replacement key person works alongside the existing *key person* in order to ensure a seamless handover of responsibilities with no disruption in service delivery to the *Client*.

|   |      |   |
|---|------|---|
| <b>Working with the Client and Others</b> | 23   |   |
|   | 23.1 | The <i>Contractor</i> co-operates with Others, including in obtaining and providing information which they need in connection with the <i>service</i> . The <i>Contractor</i> shares the Affected Property with Others as stated in the Scope <b>or Task Order (as appropriate)</b> .   |
|   | 23.2 | The <i>Client</i> and the <i>Contractor</i> provide services and other things as stated in the Scope <b>and any Task Order (as appropriate)</b> . Any cost incurred by the <i>Client</i> as a result of the <i>Contractor</i> not providing the services and other things which it is to provide is assessed by the <i>Service Manager</i> and paid by the <i>Contractor</i> .  |
| <b>Subcontracting</b>                     | 24   |   |
|   | 24.1 | If the <i>Contractor</i> subcontracts work, it is responsible for Providing the Service as if it had not subcontracted. The contract applies as if a Subcontractor's employees and equipment were the <i>Contractor's</i> .   |
|   | 24.2 | The <i>Contractor</i> submits the name of each proposed Subcontractor to the <i>Service Manager</i> for acceptance. A reason for not accepting the Subcontractor is that the appointment will not allow the <i>Contractor</i> to Provide the Service. The <i>Contractor</i> does not appoint a proposed Subcontractor until the <i>Service Manager</i> has <ul style="list-style-type: none"> <li>accepted the Subcontractor and, to the extent these <i>conditions of contract</i> require,</li> <li>accepted the subcontract documents.</li> </ul>  |
|   | 24.3 | The <i>Contractor</i> submits the proposed subcontract documents, <b>which, where Main Option C applies only, include any pricing information</b> , <del>except any pricing information</del> , for each subcontract to the <i>Service Manager</i> for acceptance unless <ul style="list-style-type: none"> <li>the proposed subcontract is an NEC contract which has not been amended other than in accordance with <del>the additional conditions of</del> <b>this</b> contract or</li> <li>the <i>Service Manager</i> has agreed that no submission is required.</li> </ul> <p>A reason for not accepting the subcontract documents is that</p> <ul style="list-style-type: none"> <li>they will not allow the <i>Contractor</i> to Provide the Service or</li> <li>they do not include a statement that the parties to the subcontract act in a spirit of mutual trust and co-operation- <b>or</b></li> <li><b>they contain payment terms that do not comply with the Public Contracts Regulations 2015 or</b></li> <li><b>in the opinion of the <i>Service Manager</i> they are not consistent with the terms of this contract.</b></li> </ul> |
|   | 24.5 | <b>Where the <i>Contractor</i> has proposed a Subcontractor in Contract Data Part Two for part of the <i>service</i>, acceptance of Contract Data Part Two by the <i>Client</i> without qualification of such proposal is deemed to be a consent on the same legal basis as consent by the <i>Service Manager</i> under clause 24.2. Any such Subcontractor is not removed by the <i>Contractor</i> from the part of the <i>service</i> for which it has been proposed without the prior written consent of the <i>Service Manager</i>.</b>   |
|   | 24.6 | <b>Neither the objection to nor any failure to raise an objection to a proposed Subcontractor either by or through the <i>Service Manager</i> relieves the <i>Contractor</i> of any liability or obligation under this contract.</b>  |
|   | 24.7 | <b>Within 21 days of entering into a subcontract, the <i>Contractor</i> provides the <i>Client</i> with a certified copy of the relevant subcontract. The <i>Contractor</i> does not alter, waive, vary, or depart from any terms of the relevant subcontract without the <i>Service Manager's</i> prior approval.</b>  |
| <b>Other responsibilities</b>             | 25   |   |
|   | 25.1 | The <i>Contractor</i> obtains approval from Others where necessary.   |
|   | 25.2 | The <i>Contractor</i> provides access to work being done and to Plant and Materials being stored for the contract for <ul style="list-style-type: none"> <li>the <i>Service Manager</i> and</li> </ul>  |

- Others as named by the *Service Manager*.

25.3 The *Contractor* obeys an instruction which is in accordance with the contract and is given by the *Service Manager*.

25.4 The *Contractor* acts in accordance with the health and safety requirements stated in the Scope and, where applicable, each Task Order.

25.5 The *Contractor* obtains from and/or gives to Others all licences, consents, notices and approvals necessary or appropriate to enable him to Provide the Service other than those which the Scope or the relevant Task Order (as applicable) states will be obtained or given by the *Client* or Others. The *Contractor* ensures that during the Service Period and prior to Task Completion of each instructed Task the conditions and requirements of the licences, consents, notices and approvals, whether obtained by the *Contractor* or the *Client*, are complied with and that the same are renewed whenever necessary or appropriate.

25.6 (1) The *Contractor* takes full responsibility for the adequacy stability and safety of all site operations and methods of construction and complies fully with the requirements of the CDM Regulations.

(2) Unless otherwise stated, to the extent that the CDM Regulations apply the *Contractor* performs all the functions and duties of and exercises the powers of the "principal contractor", "principal designer" and, where the *Contractor* is responsible for design, a "designer" as defined in the CDM Regulations.

(3) The *Contractor* warrants to the *Client* that it has the skills, knowledge, experience, organisational capability and level of resources necessary to meet the requirements of the CDM Regulations and to fulfil the role of "principal contractor", "principal designer", "contractor" and "designer" (as applicable) as defined in the CDM Regulations.

(4) The *Contractor* warrants that it is fully conversant with the guidance and any codes of practice published by the Health and Safety Executive in relation to the CDM Regulations.

(5) The *Contractor* warrants to the *Client* that to the extent it is responsible for design it is fully aware of the provisions of Regulation 9 ("Duties of designers") of the CDM Regulations and that it possesses the requisite degree of competence and level of resources to meet (and shall meet) the requirements of Regulation 9.

25.7 In respect of the Core Service, the *Contractor* is deemed to be fully acquainted with the physical conditions (including the sub-surface conditions) and other conditions of or affecting the Affected Property before the Contract Date and to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the execution of the Core Service under this contract. No failure on the part of the *Contractor* to discover or foresee any such condition, risk, contingency or circumstance entitles the *Contractor* to a compensation event and/or any additional payment (whether by way of an addition to the Prices or otherwise). As between the *Contractor* and the *Client*, the *Contractor* does not rely upon any survey, report or other document prepared by or on behalf of the *Client* regarding any such matter as is referred to in this clause or as set out in the Scope and the *Client* makes no representation or warranty as to the accuracy or completeness of any such survey, report or document. The *Client* has no liability arising out of or in relation to any such survey, report or document or from any representation or statement, whether negligently or otherwise made, contained in such survey, report or other document.

25.8 In respect of each Task with the exception of Project Tasks, the *Contractor* is deemed to be fully acquainted with the physical conditions (including the sub-surface conditions) and other conditions of or affecting the relevant Task site before commencing the Task and to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the execution of works or services required by the Task Order. No failure on the part of the *Contractor* to discover or foresee any such condition, risk, contingency or circumstance entitles the *Contractor* to a compensation event and/or any additional payment (whether by way of an addition to the Prices or otherwise) or to any change to a Task Completion Date. As between the *Contractor* and the *Client*, the *Contractor* does not rely upon any survey, report or other document prepared by or on behalf of the *Client* regarding any such matter as is referred to in this clause or as set out in the Scope or any Task Order and the *Client* makes no representation or warranty as to the accuracy or completeness of any such survey, report or document. The *Client* has no liability arising out of or in relation to any such survey, report or document or from any representation or statement, whether negligently or otherwise made, contained in such survey, report or other document.

25.9 The *Contractor* gives notice to the *Client* within 10 days where

- there is any change in ownership of the *Contractor* where such change relates to fifty

percent (50%) or more of the issued share capital of the *Contractor* or

- there is any change in ownership of the Holding Company where such change relates to fifty percent (50%) or more of the issued share capital of the Holding Company or
- (in the case of an unincorporated *Contractor*) there is any change in the management personnel of the *Contractor*, which alone or taken with any other change in management personnel not previously notified to the *Client*, equates to a change in the identity of fifty percent (50%) or more of the management personnel of the *Contractor*.

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25.10 If requested by the *Client*, the *Contractor* enters into a novation agreement within the period for reply in such form as the *Client* may reasonably require in order to novate the benefit and burden of this contract to a person or persons nominated by the *Client* who has or will assume the responsibilities of the *Client* in relation to the procurement of the *service*.

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**Assignment** 26

26.1 ~~Either Party notifies the other Party if they intend to transfer the benefit of the contract or any rights under it. The *Client* does not transfer a benefit or any rights if the party receiving the benefit or right does not intend to act in a spirit of mutual trust and co-operation. The *Client* may assign the benefit of and its rights under this contract without the consent of the *Contractor* being required. The *Contractor* does not assign the benefit of and its rights under this contract without the prior written consent of the *Client*.~~

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**Disclosure** 27

Not used

~~27.1 The Parties do not disclose information obtained in connection with the *service* except when necessary to carry out their duties under the contract.~~

~~27.2 The *Contractor* may publicise the *service* only with the *Client*'s agreement.~~

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**Intellectual Property Rights** 28

28.1 The parties agree that the IPR in all documents, drawings, models, materials, computer software, any other material or works prepared or developed by or on behalf of the *Contractor* in the performance of this contract (including IPR in materials or works created by a Subcontractor or Indirect Subcontractor) vests in the *Client*. The *Contractor* procures that each Subcontractor and Indirect Subcontractor assigns such IPR to the *Client*.

28.2 In respect of Background IPR, the *Contractor* grants (in respect of its own Background IPR) and procures the grant of (in respect of a Subcontractor or Indirect Subcontractor's Background IPR) a non-exclusive, perpetual, irrevocable, royalty free licence (including the right to sub-licence) to the *Client* and any novated *Client* to use the Background IPR for all purposes, including (without limitation) for the purposes of

- understanding the *service*,
- completing, operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the *service* and
- extending, interfacing with, integrating with, connection into and adjusting the *service* and/or the works or services of Others.

28.3 The *Contractor* warrants and undertakes that it has the right to grant the *Client* a licence to use the *Contractor*'s Background IPR for all purposes, including (without limitation) for the purposes listed in clause 28.2.

28.4 The *Contractor* indemnifies the *Client* against all losses arising out of any use by the *Client* of the Background IPR, including, without limitation, any claim that the exploitation of the licence granted by the *Contractor* under clause 28.2 infringes the intellectual property rights or other rights of any third party.

28.5 The *Contractor* has no right (save where expressly permitted under this contract or with the *Client*'s prior written consent) to use any trade marks, trade names, logos or other intellectual property rights of the *Client*.

28.6 The *Contractor* acknowledges that it is the author of all documents, drawings, materials, computer software, and any other materials or works prepared and developed by it in the performance of this contract and waives any moral rights which it might be deemed to possess under Chapter IV of the Copyright Design & Patents Act 1988 in respect thereof and of the *service*.

28.7 IPR in all items supplied and owned by the *Client* to the *Contractor* remains the property of the *Client*.

28.8 The *Client* grants to the *Contractor* a non-exclusive, non-transferable, revocable licence to

use all IPR owned (or capable of being so licensed) by the *Client* and required by the *Contractor* in order to Provide the Service. Any such licence is granted for the duration of this contract solely to enable the *Contractor* to comply with its obligations under this contract.

- 28.9 The *Contractor* promptly notifies the *Client* upon becoming aware of an infringement, alleged infringement or potential infringement of any IPR (including any claims and demands relating to the same) which affects or may affect the provision of the *service*.
- 28.10 Subject to the *Client's* proper observance of its obligations under this contract, the *Contractor* indemnifies the *Client* against all actions, claims, demands, costs, damages, charges or expenses (including legal costs on a full indemnity basis) that arise from or are incurred by reason of any infringement or alleged infringement of any IPR.
- 28.11 The *Client*, at the request of the *Contractor*, gives the *Contractor* all reasonable assistance for the purpose of contesting any such claim, demand or action. The *Contractor* reimburses the *Client* for all costs and expenses (including legal costs) incurred in doing so and/or the *Contractor* conducts any litigation and all negotiations at its own expense arising from such claim, demand or action. The *Contractor* consults with the *Client* in respect of the conduct of any claim, demand or action and keeps the *Client* regularly and fully informed as to the progress of such claim, demand or action.

### 3. TIME

|  |           |  |
|--|-----------|--|
| <b>Starting and the Service Period</b> | <b>30</b> |  |
|  | 30.1      | <b>The Contractor provides the mobilisation services required by the Scope before the starting date. Otherwise</b> <del>The Contractor</del> does not start work until the <i>starting date</i> and Provides the Service throughout the Service Period.  |
|  | 30.2      | <del>The Contractor does not start work included in a Task until the Service Manager has issued the Task Order and does the work so that Task Completion is on or before the Task Completion Date.</del><br>A Task Order is not issued after the end of the Service Period.  |
|  | 30.3      | If Task Completion of any Task is after the end of the Service Period, the Service Period is extended until the latest Task Completion. During this extended period <ul style="list-style-type: none"> <li>• the <i>Service Manager</i> does not issue a Task Order and</li> <li>• the <i>Contractor</i> only Provides the Service related to the outstanding Tasks <del>and</del></li> <li>• <del>the Contractor's liabilities are limited to those resulting from the outstanding Tasks.</del></li> </ul>  |
| <hr/>                                  |           |  |
| <b>The Contractor's plan</b>           | <b>31</b> |  |
|  | 31.1      | If a plan is not identified in the Contract Data, the <i>Contractor</i> submits a first plan to the <i>Service Manager</i> for acceptance within the period stated in the Contract Data.   |
|  | 31.2      | The <i>Contractor</i> shows on each plan submitted for acceptance <ul style="list-style-type: none"> <li>• <b>an overview of the Contractor's plan for delivery of the Core Service (as defined in the Scope) in each Period from the starting date to the end of the Service Period,</b></li> <li><del>• the starting date and the end of the Service Period,</del></li> <li>• <b>for the forthcoming 13 Periods a detailed breakdown of</b> <ul style="list-style-type: none"> <li>– <b>for works (broken down by Core Service) showing for each Period</b> <ul style="list-style-type: none"> <li>▪ <b>Network Section(s) (as defined in the Scope) to be maintained,</b></li> <li>▪ <b>asset(s) to be maintained,</b></li> <li>▪ <b>activity to be carried out,</b></li> <li>▪ <b>quantities planned for cyclic Core Service activities,</b></li> <li>▪ <b>planned dates for cyclic Core Service activities,</b></li> </ul> </li> <li>– <b>for inspections (broken down by Core Service) showing for each Period</b> <ul style="list-style-type: none"> <li>▪ <b>type of inspection due to be performed (e.g. night scout / safety inspection),</b></li> <li>▪ <b>the Network Sections or assets to be inspected,</b></li> <li>▪ <b>due date for inspection,</b></li> <li>▪ <b>date of previous inspection,</b></li> </ul> </li> </ul> </li> <li><del>• for each Task</del> <ul style="list-style-type: none"> <li><del>– the Task starting date,</del></li> <li><del>– planned Task Completion and</del></li> <li><del>– the Task Completion Date,</del></li> </ul> </li> <li>• the order and timing of the work of the <i>Client</i> and Others as last agreed with them by the <i>Contractor</i> or, if not so agreed, as stated in the Scope,</li> <li>• provisions for <ul style="list-style-type: none"> <li>– time risk allowances,</li> <li>– <b>environmental and</b> health and safety requirements and</li> <li>– the procedures set out in the contract,</li> </ul> </li> <li>• the dates when, in order to Provide the Service <b>for the Core Service</b> in accordance</li> </ul> |

with the plan, the *Contractor* will need

- access to the Affected Property as stated in the Scope ~~or required for a Task~~,
- acceptances,
- Plant and Materials, equipment and other things to be provided by the *Client* and
- information from Others,
- for each **service and** operation, a statement of how the *Contractor* plans to do the work identifying the principal Equipment and other resources which will be used and
- other information which the Scope requires the *Contractor* to show on a plan submitted for acceptance.

A plan issued for acceptance is in the form stated in the Scope.

31.3 Within two weeks of the *Contractor* submitting a plan for acceptance, the *Service Manager* notifies the *Contractor* of the acceptance of the plan or the reasons for not accepting it. A reason for not accepting a plan is that

- the *Contractor's* plans which it shows are not practicable,
- it does not show the information which the contract requires,
- it does not represent the *Contractor's* plans realistically or
- it does not comply with the Scope.

If the *Service Manager* does not notify acceptance or non-acceptance within the time allowed, the *Contractor* may notify the *Service Manager* of that failure. If the failure continues for a further one week after the *Contractor's* notification, it is treated as acceptance by the *Service Manager* of the plan.

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**Revising the  
Contractor's plan**

**32**

32.1

The *Contractor* shows on each revised plan

- the actual progress achieved and its effect upon the timing of the remaining work and services,
- how the *Contractor* plans to deal with any delays and to correct notified **Scope** Defects and
- any other changes which the *Contractor* proposes to make to the Accepted Plan.

32.2

The *Contractor* submits a revised plan to the *Service Manager* for acceptance

- within the *period for reply* after the *Service Manager* has instructed the *Contractor* to,
- within the *period for reply* after the *Service Manager* has instructed a change to the Affected Property,
- when the *Contractor* chooses to and, in any case,
- ~~at no longer interval than the interval~~ **as** stated in the Contract Data throughout the Service Period.

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**Task Order  
programme**

**33**

33.1

**If required by the Task Order**, The *Contractor* submits a Task Order programme to the *Service Manager* for acceptance within the period stated in the **Task Order** ~~Contract Data~~.

33.2

The *Contractor* shows on each Task Order programme submitted for acceptance

- the Task starting date and the Task Completion Date,
- planned Task Completion,
- the order and timing of the operations which the *Contractor* plans to do in order to complete the Task,
- provisions for
  - float,
  - time risk allowances,
  - **environmental**, health and safety requirements and
  - the procedures set out in the contract,

- the dates when, in order to Provide the Service in accordance with the Task Order programme, the *Contractor* will need
  - access to the **Task site** ~~Affected Property~~,
  - acceptances,
  - Plant and Materials, equipment and other things to be provided by the *Client* and
  - information from Others,
- for each operation, a statement of how the *Contractor* plans to do the work **or services** identifying the principal Equipment and other resources which will be used and
- other information which the Scope **or Task Order Scope** requires the *Contractor* to show on a Task Order programme submitted for acceptance.

A Task Order programme issued for acceptance is in the form stated in **the Scope or Task Order Scope**.

33.3 Within one week of the *Contractor* submitting a Task Order programme for acceptance, the *Service Manager* notifies the *Contractor* of the acceptance of the Task Order programme or the reasons for not accepting it. A reason for not accepting the Task Order programme is that

- the *Contractor's* plans which it shows are not practicable,
- it does not show the information which the contract requires,
- it does not represent the *Contractor's* plans realistically or
- it does not comply with the Scope **or the Task Order**.

If the *Service Manager* does not notify acceptance or non-acceptance within the time allowed, the *Contractor* may notify the *Service Manager* of that failure. If the failure continues for a further one week after the *Contractor's* notification, it is treated as acceptance by the *Service Manager* of the Task Order programme.

|  |           |   |
|--|-----------|---|
| <b>Revising the Task Order programme</b>         | <b>34</b> |   |
|  | 34.1      | The <i>Contractor</i> shows on each revised Task Order programme <ul style="list-style-type: none"> <li>• the actual progress achieved on each operation and its effect upon the timing of the remaining work <b>or services</b>,</li> <li>• <b>the effects of implemented compensation events and of notified early warning matters</b>,</li> <li>• how the <i>Contractor</i> plans to deal with any delays and to correct notified <b>Scope</b> Defects and</li> <li>• any other changes which the <i>Contractor</i> proposes to make to the Task Order programme.</li> </ul>   |
|  | 34.2      | The <i>Contractor</i> submits a revised Task Order programme to the <i>Service Manager</i> for acceptance <ul style="list-style-type: none"> <li>• <b>at intervals stated in the Task Order</b>,</li> <li>• within the <i>period for reply</i> after the <i>Service Manager</i> has instructed the <i>Contractor</i> to and</li> <li>• when the <i>Contractor</i> chooses to.</li> </ul> <p>The latest Task Order programme accepted by the <i>Service Manager</i> supersedes a previously accepted Task Order programme.</p>   |
| <b>Access</b>                                    | <b>35</b> |   |
|  | 35.1      | <b>Subject to any constraints stated in the Scope or the Task Order (as appropriate),</b> <del>The</del> <i>Client</i> provides the right of access for the <i>Contractor</i> to the Affected Property <b>as necessary for the work in this contract</b> <del>shown on the Accepted Plan or the date for access shown on the latest accepted Task Order programme.</del> <b>Subject to any access arrangements identified in the Scope or the Task Order (as appropriate) as being the Client's responsibility, the Contractor arranges for access to and use of the Affected Property which is necessary for work or services included in this contract.</b> |
| <b>Instructions to stop or not to start work</b> | <b>36</b> |   |
|  | 36.1      | The <i>Service Manager</i> may instruct the <i>Contractor</i> to stop or not to start any work. The   |

*Service Manager* subsequently gives an instruction to the *Contractor* to

- re-start or start the work or
- remove the work from the Scope or relevant Task Order.

## 4. QUALITY MANAGEMENT AND **SCOPE** DEFECTS

|  |       |  |
|--|-------|--|
| <b>Quality management system</b>   | 40    |  |
|  | 40.1  | The <i>Contractor</i> operates a quality management system which complies with the requirements stated in the Scope.   |
|  | 40.2  | Within the period stated in the Contract Data, the <i>Contractor</i> provides the <i>Service Manager</i> with a quality policy statement and a quality plan for acceptance. A reason for not accepting a quality policy statement or quality plan is that it does not allow the <i>Contractor</i> to Provide the Service.<br><br>If any changes are made to the quality plan, the <i>Contractor</i> provides the <i>Service Manager</i> with the changed quality plan for acceptance.  |
|  | 40.3  | The <i>Service Manager</i> may instruct the <i>Contractor</i> to correct a failure to comply with the quality plan. This instruction is not a compensation event.  |
| <b>Tests and inspections</b>   | 41    |  |
|  | 41.1  | This clause only applies to tests and inspections required by the Scope, a <b>Task Order</b> or the applicable law.  |
|  | 41.2  | The <i>Contractor</i> and the <i>Client</i> provide materials, facilities and samples for tests and inspections as stated in the Scope, or a <b>Task Order (as appropriate)</b> .  |
|  | 41.3  | The <i>Contractor</i> and the <i>Service Manager</i> informs the other of each of their tests and inspections before the test or inspection starts and afterwards informs the other of the results. The <i>Contractor</i> informs the <i>Service Manager</i> in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The <i>Service Manager</i> may watch any test done by the <i>Contractor</i> .   |
|  | 41.4  | If a test or inspection shows that any work has a <b>Scope Defect</b> , the <i>Contractor</i> repeats the work or otherwise corrects the <b>Scope Defect</b> , and the test or inspection is repeated.   |
|  | 41.5  | The <i>Service Manager</i> does tests and inspections without causing unnecessary delay to the work or to a payment which is conditional upon a test or inspection being successful. A payment which is conditional upon a <i>Service Manager</i> 's test or inspection being successful becomes due at the end of the Service Period if <ul style="list-style-type: none"> <li>• the <i>Service Manager</i> has not done the test or inspection and</li> <li>• the delay to the test or inspection is not the <i>Contractor</i>'s fault.</li> </ul>   |
|  | 41.6  | The <i>Service Manager</i> assesses the cost incurred by the <i>Client</i> in repeating a test or inspection after a <b>Scope Defect</b> is found. The <i>Contractor</i> pays the amount assessed.   |
| <b>Testing and inspection before delivery</b>                              | 42    |  |
|  | 42.1  | The <i>Contractor</i> does not deliver those Plant and Materials which the Scope or a <b>Task Order</b> states are to be tested or inspected before delivery until the <i>Service Manager</i> has notified the <i>Contractor</i> that they have passed the test or inspection.   |
| <b>Searching for and notifying Scope Defects in connection with a Task</b> | 42A   |  |
|  | 42A.1 | Without prejudice to any other provision in this section 4, for each Task where there is a defects date stated in the Task Order, the <i>Service Manager</i> may, until the relevant defects date, instruct the <i>Contractor</i> to search for a <b>Scope Defect</b> . The <i>Service Manager</i> gives a reason for the search with the instruction. Searching may include <ul style="list-style-type: none"> <li>• uncovering, dismantling, re-covering and re-erecting work,</li> <li>• providing facilities, materials and samples for tests and inspections done by the <i>Service Manager</i> and</li> <li>• doing tests and inspections which the Scope or Task Order does not require.</li> </ul> |
|  | 42A.2 | For each Task where there is a defects date identified in the Task Order, until the relevant defects date, the <i>Service Manager</i> notifies the <i>Contractor</i> of each <b>Scope Defect</b> as soon as it finds it and the <i>Contractor</i> notifies the <i>Service Manager</i> of each <b>Scope Defect</b> as soon as it finds it.  |
| <b>Notifying and correcting Scope Defects</b>                              | 43    |  |
|  | 43.1  | Until the end of the Service Period the <i>Service Manager</i> and the <i>Contractor</i> notifies the other as soon as they become aware of a <b>Scope Defect</b> .  |

- 43.2 The *Contractor* corrects a **Scope** Defect whether or not the *Service Manager* has notified it.
- 43.3 The *Contractor* corrects a notified **Scope** Defect in the **Core Service** within the **defect correction period** a time which minimises the adverse effect on the *Client* or *Others*. If the *Contractor* does not correct a **Scope** Defect within the time required by the contract, the *Service Manager* assesses the cost to the *Client* of having the **Scope** Defect corrected by other people and the *Contractor* pays this amount. The **Scope** is treated as having been changed to accept the **Scope** Defect.
- 43.4 ~~The *Service Manager* arranges for the *Client* to allow the *Contractor* access if it is needed for correcting a Defect.~~ The *Contractor* arranges for access and permissions to and use of the **Affected Property** if it is needed for correcting a **Scope** Defect.
- 43.5 In connection with a **Task** the *Contractor* corrects a **Scope** Defect within the defect correction period stated in the relevant **Task Order** (if applicable). The relevant defect correction period (if applicable) begins from the earlier of (i) when the **Scope** Defect is notified, and (ii) when the *Contractor* becomes aware or ought reasonably to have become aware of the **Scope** Defect.
- 43.6 For each **Task** where there is a defects date identified in the **Task Order**, the *Service Manager* issues a **Task Defect Certificate** at the later of the defects date stated in the **Task Order** and the end of the last defect correction period for the **Task**. The *Client's* rights in respect of a **Scope** Defect which the *Service Manager* has not found or notified are not affected by the issue of a **Task Defect Certificate**.

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**Accepting **Scope** Defects**

- 44
- 44.1 The *Contractor* and the *Service Manager* may propose to the other that the **Scope** or **Task **Scope** (as applicable)** should be changed so that a **Scope** Defect does not have to be corrected.
- 44.2 If the *Contractor* and the *Service Manager* are prepared to consider the change, the *Contractor* submits a quotation for reduced **Prices** or an earlier **Task Completion Date** or both to the *Service Manager* for acceptance. If the quotation is accepted, the *Service Manager* changes the **Scope**, the **Task**, the **Prices** and the **Task Completion Date** accordingly and accepts the revised plan or **Task Order** programme.
- 44.3 For the avoidance of doubt, the *Contractor* continues to be liable for **Scope Defects** (including **Scope Defects** listed in any **Task Defect Certificate** and latent or inherent **Scope Defects**) after
- the issue of any **Task Defect Certificate**
  - the operation of this core clause 4 and
  - the termination of this contract for any reason (including breach by the *Client*)
- in accordance with the *law of the contract*, subject to any time limit on claims and limitation on liability expressly provided by this contract.

## 5. PAYMENT

### Assessing the amount due

- 50
- 50.1 The *Service Manager* assesses the amount due at each assessment date. The first assessment date is decided by the *Service Manager* to suit the procedures of the *Client Parties* and is not later than the *assessment interval* after the *starting date*. Later assessment dates occur at the end of each *assessment interval* until
- four weeks after the end of the Service Period **and where any Task has not been completed by the end of the Service Period the later of the last Task Completion or (where relevant) issue of the last Task Defect Certificate** or
  - the *Service Manager* issues a termination certificate.
- 50.2 The *Contractor* submits an application for payment to the *Service Manager* **not less than 7 days** before each assessment date setting out the amount the *Contractor* considers is due at the **assessment payment due date and the basis on which that amount is calculated**. The *Contractor's* application for payment includes details of how the amount has been assessed **and, where Main Option C applies to a Task, such application sets out the Defined Cost and the Fee as separate entries.** ~~and The application for payment is in the a form approved by the *Service Manager* stated in the Scope.~~
- In assessing the amount due, the *Service Manager* considers an application for payment submitted by the *Contractor* ~~before the assessment date~~ **in accordance with this clause 50.2.**
- Where Main Option C applies, the *Contractor* maintains and submits with each application for payment all timesheets, labour allocation sheets, invoices, Equipment records and all other relevant supporting documents and information as may be reasonably required by the *Service Manager*.**
- 50.2A/Y2.2 The date on which a payment becomes due is ~~seven days after the assessment date~~ **the later of**
- **the assessment date and**
  - **7 days after the date of receipt by the *Service Manager* of the *Contractor's* application for payment in accordance with clause 50.2.**
- The final date for payment is ~~the later of~~
- ~~fourteen~~ **28** days after the date on which payment becomes due, or a different period for payment if stated in the Contract Data ~~and~~
  - ~~7 days after the receipt by the Party making the payment of an invoice, issued in accordance with these conditions of contract.~~
- 50.3 If the *Contractor* submits an application for payment **in accordance with clause 50.2** ~~before the assessment date~~, the amount due at the **assessment payment due date** is
- the Price for Service Provided to Date **calculated by reference to the applicable Main Option,**
  - **the Task Price to Date for instructed Tasks calculated for each Task by reference to the applicable Main Option,**
  - plus other amounts to be paid to the *Contractor*,
  - less amounts to be paid by or retained from the *Contractor*.
- 50.4 If the *Contractor* does not submit an application for payment **in accordance with clause 50.2** ~~before the assessment date~~, the amount due at the **assessment payment due date** is the lesser of
- the amount the *Service Manager* assesses as due at the assessment date, assessed as though the *Contractor* had submitted an application **in accordance with clause 50.2** ~~before the assessment date~~, and
  - the amount due at the previous assessment date.
- 50.5 If no plan is identified in the Contract Data, one quarter of the Price for Service Provided to Date is retained in assessments of the amount due until the *Contractor* has submitted a first plan to the *Service Manager* for acceptance showing the information which the contract requires.

If no Task Order programme is identified in a Task Order, one quarter of the Task Price to Date for the relevant Task is retained in assessments of the amount due until the *Contractor* has submitted a first Task Order programme to the *Service Manager* for acceptance showing the information which the contract requires.

50.6 The *Service Manager* corrects any incorrectly assessed amount due in a later payment certificate.

50.8 For each instructed Project Task and Activity Task,

- £2,000 is retained in the first assessment of the amount due for the relevant Task or if the amount due in the first assessment for the relevant Task is less than £2,000 an amount is retained in each subsequent assessment of the amount due until £2,000 is retained or the amount retained equals the total of the Prices for the relevant Task and
- when an amount equal to £2,000 has been retained in respect of the relevant Task, a further amount equal to 5% of the Task Price to Date for the relevant Task is retained in each subsequent assessment of the amount due for the relevant Task.

The amounts are retained until the *Contractor* confirms to the *Service Manager* that the asset data relating to the relevant Task in the *Client's* asset management information system referred to in the Scope has been updated and such update satisfies the requirements of the Task Scope.

50.9 The consideration for any supply made pursuant to or in connection with the terms of this contract, and all sums payable under this contract, are exclusive of value added tax ("VAT"). Where, under the terms of this contract, a supply is made that is subject to VAT, the person receiving the supply must pay a sum equal to the amount of VAT which is or becomes chargeable on that supply to the person making the supply in addition to, and at the same time as paying, any other consideration for that supply and a valid VAT invoice must be issued by the person making the supply.

If any VAT invoice delivered by the *Contractor* under this contract is an electronic invoice, the *Client* accepts and processes the electronic invoice submitted by the *Contractor* where the invoice is undisputed and where it complies with the Standard on Electronic Invoicing.

50.9A The Parties acknowledge that the Reverse Charge Order will enter into force on 1 March 2021 and is expected to have effect for supplies made on or after that date.

The *Client* is an End User for the purposes of this contract if stated in the Contract Data.

Where the *Client* is an End User for the purposes of this contract, the Parties acknowledge that:

- services provided by the *Contractor* to the *Client* on or after 1 March 2021 pursuant to this contract are expected to include "specified services" (within the meaning of article 4 of the Reverse Charge Order) and will be "excepted supplies" (within the meaning of article 8 of the Reverse Charge Order) on the basis that the *Client* is an End User in respect of such specified services and
- accordingly the Reverse Charge Order will not apply and the *Client* will not be required to account for VAT to HM Revenue & Customs in respect of such supplies under section 55A of VATA.

Where the *Client* is not an End User for the purposes of this contract:

- the Parties acknowledge that services provided by the *Contractor* to the *Client* on or after 1 March 2021 pursuant to this contract will include "specified services" (within the meaning of article 4 of the Reverse Charge Order) and are expected to be subject to the Reverse Charge Order on the basis that the *Client* is not an End User,
- accordingly, the Parties acknowledge that the *Client* will be required to account for VAT to HM Revenue & Customs in respect of such supplies from the *Contractor* under section 55A of VATA and
- the *Contractor* will deliver an invoice to the *Client* in accordance with clause 51.1 stating that the Reverse Charge Order applies or any other appropriate language as suggested by HM Revenue & Customs in their relevant guidance

In any event the *Contractor* indemnifies the *Client* on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the *Client* at any time in respect of the *Contractor's* failure to account for or to pay any VAT

relating to payments made to the *Contractor* under this contract. Any amounts due under this clause 50.9A are paid in cleared funds by the *Contractor* to the *Client* not less than five (5) days before the date upon which the tax or other liability is payable by the *Client*.

Where under this contract any amount is calculated by reference to any sum which has been or may be incurred by any person, the amount includes any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group) whether by set off or repayment.

If the Reverse Charge Order is incorrectly applied and the *Client* pays an amount in respect of VAT to the *Contractor* in error, then the *Contractor* will pay to the *Client* on demand an amount equal to such VAT plus any interest, penalties or surcharges charged or imposed on the *Client* by HM Revenue & Customs arising from the late payment of any VAT.

If the *Client's* status as an End User changes during the term of this contract, the *Client* uses its reasonable endeavours to notify the *Contractor* and the *Contractor* applies the Reverse Charge accordingly.

|                |   |
|----------------|---|
| 50.10          | <p>(1) If a performance bond has been required from the <i>Contractor</i> pursuant to Option X13 (performance bond) then one quarter of the sum of the Price for Service Provided to Date and the Task Price to Date is retained in assessments of the amount due until the <i>Contractor</i> has provided the relevant performance bond in accordance with Option X13 and</p> <p>(2) the <i>Client</i> pays any amount retained pursuant to clause 50.10(1) to the <i>Contractor</i> within 10 days of the provision to the <i>Client</i> of the relevant performance bond. The total amount retained by the <i>Client</i> pursuant to this clause 50.10 does not exceed the value of the relevant performance bond.</p>   |
| 50.11          | <p>The <i>Client</i> reserves the right to audit on an open book basis any costs associated with this contract and any adjustments in cost found will be adjusted at the next monthly assessment or in the final payment (as applicable).</p>   |
| 50.12          | <p>In addition to any other rights of the <i>Client</i> whether at law or equity under this contract, whenever</p> <ul style="list-style-type: none"><li>• under this contract or any other contract between the <i>Client</i> and the <i>Contractor</i> any sum of money is recoverable from or payable by the <i>Contractor</i> or</li><li>• any damages, costs, charges, expenses, debts, sums or other amounts are reasonably and properly owed to, or incurred by, the <i>Client</i> arising out of or attributable to this contract or any other contract between the <i>Client</i> and the <i>Contractor</i></li></ul> <p>then the same may be deducted from any sum otherwise due or which at any time may otherwise become due to the <i>Contractor</i> under this contract.</p>                             |
| 50.13          | <p>Main Option C applies to Tasks where stated in a Task Order otherwise Main Option A applies to the Task.</p>   |
| 50.14          | <p>If the <i>Contractor's</i> employment is terminated under clause 91.1 because the <i>Contractor</i> has become insolvent within the meaning of Section 113 of the Act (R10A), the <i>Client</i> need not pay any sum due to the <i>Contractor</i> other than any amount due to him under clause 53.1 following issue of a termination certificate either</p> <ul style="list-style-type: none"><li>• where the <i>Contractor</i> becomes insolvent prior to the prescribed period before the final date for payment, provided that the <i>Client</i> or <i>Service Manager</i> issues a Pay Less Notice notifying the <i>Client's</i> intention not to pay such sum or</li><li>• in any event, if the <i>Contractor</i> becomes insolvent after the prescribed period before the final date for payment.</li></ul> |
| 50.15/<br>Y2.4 | <p>If the <i>Client</i> terminates for one of reasons R1 to R15, R10A, R14A, R18 or R24, R22, R22A, R22B or R23 and a certified payment has not been made at the date of the termination certificate, the <i>Client</i> makes the certified payment unless</p> <ul style="list-style-type: none"><li>• it has notified the <i>Contractor</i> in accordance with the contract that it intends to pay less than the notified sum or</li><li>• the termination is for one of reasons R1 to R10 or R10A and the reason occurred after the last date on which it could have notified the <i>Contractor</i> in accordance with the contract that it intends to pay less than the notified sum.</li></ul>  |
| 50.16          | <p>The <i>Client</i> has the full beneficial interest in any amounts retained under this contract, without any fiduciary obligation; and the relationship of the <i>Client</i> and the <i>Contractor</i> with regard to the amounts retained is solely that of debtor and unsecured creditor, subject to</p>  |

the terms of this contract.

|                         |           |  |
|-------------------------|-----------|--|
| <b>Payment</b>          | <b>51</b> |  |
|                         | 51.1      | The <i>Service Manager</i> certifies a payment <b>not later than 5 days after each payment due date and issues a copy of the payment certificate to the Contractor</b> <del>within one week of each assessment date</del> . The <i>Service Manager's</i> certificate includes details of how the amount due has been assessed. The first payment is the amount due. Other payments are the change in the amount due since the previous assessment. A payment is made by the <i>Contractor</i> to the <i>Client</i> if the change reduces the amount due. Other payments are made by the <i>Client</i> to the <i>Contractor</i> . The Party to which payment is due submits an invoice to the other Party for the amount to be paid within one week of the <i>Service Manager's</i> certificate. <b>The Contractor issues invoices in the manner and format required by the Scope. The Contractor issues a corrected VAT invoice, where required, within 5 days of receipt of any Pay Less Notice.</b> Payments are in the <i>currency of the contract</i> unless otherwise stated in the contract. |
|                         | 51.1A     | <b>If a certificate is not issued by the Service Manager in accordance with clause 51.1, the sum to be paid by the Client is, subject to clause 51.6/Y2.3, the sum stated as due in the Contractor's application in accordance with clause 50.2.</b>   |
|                         | 51.2      | Each certified payment is made by <b>the relevant final date for payment.</b> <del>the later of</del> <ul style="list-style-type: none"><li><del>one week after the paying Party receives an invoice from the other Party and</del></li><li><del>three weeks after the assessment date, or, if a different period is stated in the Contract Data, within the period stated.</del></li></ul> <p>If a certified payment is late, or if a payment is late because the <i>Service Manager</i> has not issued a certificate which should be issued, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.</p>  |
|                         | 51.3      | If an amount due is corrected in a later certificate <ul style="list-style-type: none"><li>in relation to a mistake or a compensation event,</li><li>because a payment was delayed by an unnecessary delay to a test or inspection done by the <i>Service Manager</i> or</li><li>following a decision of the <i>Adjudicator</i> or the <i>tribunal</i>,</li></ul> <p>interest on the correcting amount is paid. Interest is assessed from the date when the incorrect amount was certified until the date when the changed amount is certified and is included in the assessment which includes the changed amount.</p>  |
|                         | 51.4      | Interest is calculated on a daily basis at the <i>interest rate</i> and is compounded annually. <b>The parties agree that the provisions in this contract for the payment of interest constitute a substantial remedy for late payment of any sum payable under this contract in accordance with section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.</b>   |
|                         | 51.5      | Any tax which the law requires a Party to pay to the other Party is added to any payment made under the contract.  |
|                         | 51.6/Y2.3 | <b>If either Party intends to pay less than the notified sum, it notifies the other Party not later than <del>seven days</del> 1 day (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under the this contract unless it has notified its intention to pay less than the notified sum as required by this contract. In the case of the Client, the notice may be given on its behalf by the Service Manager.</b>  |
| <b>Defined Cost</b>     | <b>52</b> |  |
|                         | 52.1      | All the <i>Contractor's</i> costs which are not included in the Defined Cost are treated as included in the Fee. Defined Cost includes only amounts calculated using rates and percentages stated in the Contract Data and other amounts at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.  |
| <b>Final assessment</b> | <b>53</b> |  |
|                         | 53.1      | The <i>Service Manager</i> makes an assessment of the final amount due and certifies a final payment, if any is due, no later than   |

- thirteen weeks after the end of the Service Period or, if a different period is stated in the Contract Data, within the period stated, or
- thirteen weeks after the *Service Manager* issues a termination certificate.

The *Service Manager* gives the *Contractor* details of how the amount due has been assessed. The Party to which payment is due submits an invoice to the other Party for the amount to be paid within one week of the *Service Manager*'s certificate. ~~The final payment is made by the later of~~

- ~~• one week after the paying Party receives an invoice from the other Party and~~
- ~~• three weeks after the assessment date, or, if a different period is stated in the Contract Data, within the period stated.~~

53.1A/Y2.  
2

The date on which a final payment becomes due is

- if the *Service Manager* makes an assessment after the end of an *accounting period*, fourteen weeks after the end of the *accounting period* or, if a different period is stated in the Contract Data, within the period stated,
- if the *Service Manager* makes an assessment after the end of the Service Period, fourteen weeks after the end of the Service Period or, if a different period is stated in the Contract Data, within the period stated,
- if the *Service Manager* does not make an assessment after the end of the Service Period, one week after the *Contractor* issues its assessment or
- if the *Service Manager* has issued a termination certificate, fourteen weeks after the issue of the certificate.

The final date for payment is ~~the later of~~

- ~~• fourteen 28 days after the date on which payment becomes due, or a different period for payment if stated in the Contract Data and~~
- ~~• 7 days after the receipt by the Party making the payment of an invoice, issued in accordance with these conditions of contract.~~

53.2

If the *Service Manager* does not make this assessment within the time allowed, the *Contractor* may issue to the *Client* an assessment of the final amount due, giving details of how the final amount due has been assessed. If the *Client* agrees with this assessment, the Party to which payment is due submits an invoice for the amount agreed for payment within one week of the date of the assessment. ~~The final payment is made by the later of~~

- ~~• one week after the paying Party receives an invoice from the other Party and~~
- ~~• three weeks after the assessment date, or, if a different period is stated in the Contract Data, within the period stated.~~

53.3

An assessment of the final amount due issued within the time stated in the contract is conclusive evidence of the final amount due under or in connection with the contract unless a Party takes the following actions.

~~If the contract includes Option W1, a Party~~

- ~~• refers a dispute about the assessment of the final amount due to the Senior Representatives within four weeks of the assessment being issued,~~
- ~~• refers any issues not agreed by the Senior Representatives to the Adjudicator within three weeks of the list of the issues not agreed being produced or when it should have been produced and~~
- ~~• refers to the tribunal its dissatisfaction with a decision of the Adjudicator as to the final assessment of the amount due within four weeks of the decision being made.~~

If the contract includes Option W2, a Party

- refers a dispute about the assessment of the final amount due to the *Senior Representatives* or to the *Adjudicator* within four weeks of the assessment being issued,
- refers any issues referred to but not agreed by the *Senior Representatives* to the *Adjudicator* within three weeks of the list of issues not agreed being produced or when it should have been produced and

- refers to the *tribunal* its dissatisfaction with a decision of the *Adjudicator* as to the final assessment of the amount due within four weeks of the decision being made.

53.4 The assessment of the final amount due is changed to include

- any agreement the Parties reach and
- a decision of the *Adjudicator* which has not been referred to the *tribunal* within four weeks of that decision.

A changed assessment becomes conclusive evidence of the final amount due under or in connection with the contract.

**The Price List,  
Task Price Lists  
and Annual Price  
Lists**

**55**

55.12 (1) If the *Service Manager* informs the *Contractor* that, in the *Service Manager's* reasonable opinion, the COVID-19 Guidance no longer applies to the *Contractor* in connection with Providing the Service and instructs the *Contractor* that it no longer has to comply with the COVID-19 Guidance then, from and including the date identified in the *Service Manager's* instruction,

- the COVID-19 Percentage Adjustments will no longer be applicable for calculating the amount due for works or services provided after such date and the Prices in the Price List and any Task Price List (as applicable) are adjusted accordingly following the applicable method and rules referred to in the Price List, and
- the COVID-19 Lump Sum in the accepted Annual Price List and/or the Price List will no longer be payable to the *Contractor* in respect of works or services provided after such date.

The *Contractor* submits a revision of the Price List, any relevant Task Price List and/or the Annual Price List showing the adjusted Prices to the *Service Manager* for acceptance.

(2) Following an instruction under sub-clause 55.12(1), if the *Service Manager* subsequently informs the *Contractor* that the COVID-19 Guidance applies to the *Contractor* in connection with Providing the Service and instructs the *Contractor* that it has to comply with the COVID-19 Guidance, then from and including the date identified in the *Service Manager's* instruction,

- the COVID-19 Percentage Adjustments are applicable for calculating the amount due for works or services provided after such date and the Prices in the Price List and any relevant Task Price List (as applicable) are adjusted accordingly following the applicable method and rules referred to in the Price List, and
- the COVID-19 Lump Sum in the accepted Annual Price List or, if the COVID-19 Lump Sum is not in the accepted Annual Price List, in the Price List (as applicable) is payable to the *Contractor* as part of the Price for Service Provided to Date in respect of works or services provided after such date.

The *Contractor* submits a revision of the Price List, any relevant Task Price List and/or the Annual Price List showing the adjusted Prices to the *Service Manager* for acceptance.

(3) Within two weeks of the *Contractor* submitting a revision of the Price List, any relevant Task Price List and/or the Annual Price List for acceptance under sub-clause 55.12(1) or 55.12(2), the *Service Manager* notifies the *Contractor* of

- acceptance of the Price List, Task Price List and/or the Annual Price List (as applicable) or
- the reasons for non-acceptance.

A reason for not accepting a revised Price List, Task Price List or Annual Price List is that the *Contractor* has not adjusted the Prices in accordance with this clause 55.12.

(4) If the *Contractor* does not submit a revised Price List, relevant Task Price List or Annual Price List for acceptance within the time allowed, or the *Service Manager* does not accept the revision submitted by the *Contractor*, the *Service Manager* notifies the *Contractor* that it will make its own assessment of the Price List, relevant Task Price List and/or Annual Price List (as applicable). The *Service Manager* notifies the *Contractor* of its assessment of the Price List, relevant Task Price List and/or the Annual Price List within

- two weeks of the date on which the *Contractor* should have provided the Price List, Task Price List and/or Annual Price List for acceptance or
- two weeks after the *Service Manager's* notification that it will make its own assessment,

as applicable, and the *Service Manager's* assessment of the Price List, Task Price List and/or Annual Price List will become the accepted Price List, Task Price List and/or Annual Price List (as applicable).

(5) A *Service Manager* instruction that the COVID-19 Guidance applies or does not apply (as applicable) under this clause 55.12 is not a compensation event.

## 6. COMPENSATION EVENTS

### Compensation events

60

60.1

The following events are compensation events.

(1) The *Service Manager* gives an instruction changing the Scope, ~~or a Task Order or the Affected Property~~ except

- a change made in order to accept a **Scope Defect** or
- a change to the Scope **or Task Scope** provided by the *Contractor* for its plan **or its design** which is made **either**
  - at the *Contractor's* request or
  - in order to comply with the Scope **or Task Scope** provided by the *Client* **or**
- **any of the instructions referred to in clause 60.1(24).**

(2) The *Client* does not provide **or obtain** the right of access for which it is responsible to the Affected Property **(which for the purpose of this compensation event excludes any Task site)** in accordance with the Accepted Plan ~~or the date for access shown on the latest accepted Task Order programme.~~

**(2A) The *Client* does not provide or obtain the right of access to a Task site for which it is responsible in accordance with the latest accepted Task Order programme.**

(3) The *Client* does not provide something which it is to provide by the date shown on

- the Accepted Plan ~~or~~
- ~~the latest accepted Task Order programme.~~

**(3A) The *Client* does not provide something which it is to provide by the date shown on the latest accepted Task Order programme.**

(4) ~~The *Contractor* receives a Task Order after the starting date stated in the Task Order.~~  
**Not used.**

(5) The *Service Manager* gives an instruction to stop or not to start any work.

(6) The *Client* or Others do not work in accordance with

- the Accepted Plan or
- the latest accepted Task Order programme or
- the conditions stated in the Scope **or Task Order (as applicable).**

(7) The *Service Manager* does not reply to a communication from the *Contractor* within the period required by the contract.

**(7A) The *Service Manager* gives an instruction for dealing with an object of value or of historical or other interest found within the Affected Property.**

(8) The *Service Manager* changes a decision which the *Service Manager* had previously communicated to the *Contractor*.

(9) The *Service Manager* withholds an acceptance (other than acceptance of a quotation for not correcting a **Scope Defect**) for a reason not stated in the contract.

(10) A test or inspection done by the *Service Manager* causes unnecessary delay, **but delay is not unnecessary if it arises only from the proper carrying out of a test which is provided for in the contract, a Task Order or the Scope.**

(11) **A change in the Affected Property other than a change as a result of Providing the Service** ~~A change to the Affected Property~~

- ~~by the *Client* or Others or~~
- **as a result of a Task Order.**

(12) An event which is a *Client's* liability stated in these *conditions of contract*.

(13) The *Client* does not provide materials, facilities and samples for tests and inspections as stated in the Scope **or a Task Order.**

(14) The *Service Manager* notifies the *Contractor* of a correction to an assumption which

the *Service Manager* stated about a compensation event.

(15) A breach of contract or act of prevention on the part of by the *Client* (except to the extent that it is caused or contributed to by the *Contractor* any Subcontractor or Indirect Subcontractor or any person for whom those parties are responsible) which is not one of the other compensation events in the contract.

(16) The *Service Manager* gives an instruction to correct a mistake in the Price List or a Task Price List (as applicable).

(17) The *Service Manager* notifies the *Contractor* pursuant to the fourth bullet point in clause 19.2.5 that a quotation for a proposed instruction is not accepted or that a Task will not be instructed it does not intend to proceed with a Task under the contract.

(18) ~~Not used Additional compensation events stated in Contract Data part one.~~

(19) The *Service Manager* certifies take over of a part of a Task before both Task Completion and the Task Completion Date.

(20) In respect of instructed Project Tasks only, the *Contractor* encounters physical conditions which

- are within the relevant Task site,
- are not weather conditions and
- an experienced contractor would have judged at the date of the Task Order to have such a small chance of occurring that it would have been unreasonable to have allowed for them.

Only the difference between the physical conditions encountered and those for which it would have been reasonable to have allowed is taken into account in assessing a compensation event. This compensation event does not apply to Tasks other than Project Tasks.

(21) In respect of the Core Service only and if an express quantity for an asset is stated in the Scope, the actual quantity of the relevant asset is greater or less than the express stated quantity taking into account any tolerance stated in the Scope applicable to the relevant asset.

(22) The *Contractor* exercises its right under the Act to suspend performance whether or not the event has been notified by the *Contractor* within the period specified in clause 61.3.

(23) The *Service Manager* instructs the *Contractor* to search for a Scope Defect in accordance with clause 42A.1 and no Scope Defect is found unless the search is needed only because the *Contractor* did not provide the information and/or evidence required by the Scope relating to the relevant work or gave insufficient notice of doing work obstructing a required test or inspection.

(24) The *Service Manager* instructs the *Contractor* to comply with guidance in relation to the Coronavirus Pandemic which amends, supplements, replaces or supersedes the COVID-19 Guidance or otherwise and which in the *Service Manager's* reasonable opinion applies to the *Contractor* in connection with Providing the Service.

60.3 If clause 60.1(20) applies to a Task, then in judging the physical conditions for the purpose of assessing the compensation event, the *Contractor* is assumed to have taken into account

- the relevant Task Order and the Scope,
- publicly available information referred to in the relevant Task Order or the Scope,
- information obtainable from a visual inspection of the relevant Task site and
- other information which an experienced contractor could reasonably be expected to have or to obtain.

**Notifying compensation events**

61

61.1 For a compensation event which arises from the *Service Manager* giving an instruction or notification or changing an earlier decision, the *Service Manager* notifies the *Contractor* of the compensation event at the time of that communication.

61.2 The *Service Manager* includes in the notification of a compensation event an instruction to the *Contractor* to submit quotations, including sufficient supporting information, unless

- the event arises from a fault of the *Contractor* including, without limitation, any error, omission, negligence, default, breach of contract or breach of statutory duty of the

*Contractor* or any of its employees or agents or of any Subcontractor Indirect Subcontractor or supplier or any of their employees or agents or

- the event has no effect upon ~~the cost to the Contractor Defined Cost~~ or a Task Completion.
- 61.3 The *Contractor* notifies the *Service Manager* of an event which has happened or which is expected to happen as a compensation event if
- the *Contractor* believes that the event is a compensation event and
  - the *Service Manager* has not notified the event to the *Contractor*.

If the *Contractor* does not notify a compensation event within eight weeks of becoming ~~when it becomes aware or ought reasonably to have become~~ aware that the event has happened, the Prices or a Task Completion Date are not changed unless the event arises from the *Service Manager* giving an instruction or notification or changing an earlier decision.

- 61.4 The *Service Manager* replies to the *Contractor's* notification of a compensation event within
- ~~one~~ two weeks after the *Contractor's* notification or
  - a longer period to which the *Contractor* has agreed.

If the event

- arises from a fault of the *Contractor* including, without limitation, any error, omission, negligence, default, breach of contract or breach of statutory duty of the *Contractor* or any of its employees or agents or of any Subcontractor Indirect Subcontractor or supplier or any of their employees or agents,
- has not happened and is not expected to happen,
- has not been notified within the timescales set out in these *conditions of contract*,
- has no effect upon ~~the cost to the Contractor Defined Cost~~ or a Task Completion or
- is not one of the compensation events stated in the contract

the *Service Manager* notifies the *Contractor* that the Prices and Task Completion Date are not to be changed and states the reasons in the notification. Otherwise, the *Service Manager* notifies the *Contractor* that the event is a compensation event and includes in the notification an instruction to the *Contractor* to submit quotations including sufficient supporting information.

If the *Service Manager* fails to reply to the *Contractor's* notification of a compensation event within the time allowed, the *Contractor* may notify the *Service Manager* of that failure. If that failure continues for a further two weeks after the *Contractor's* notification it is treated as acceptance by the *Service Manager* that the event is a compensation event and an instruction to submit quotations including sufficient supporting information.

- 61.5 If the *Service Manager* decides that the *Contractor* did not give an early warning of the event which an experienced *Contractor* could have given, the *Service Manager* states this in the instruction to the *Contractor* to submit quotations.
- 61.6 If the effects of a compensation event are too uncertain to be forecast reasonably, the *Service Manager* states assumptions about the compensation event in the instruction to the *Contractor* to submit quotations. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the *Service Manager* notifies a correction.
- 61.7 A compensation event is not notified by the *Service Manager* or the *Contractor* later than ~~eight weeks after the end of the Service Period.~~
- for the Core Service
- the date 8 weeks after the end of the Financial Year in which the compensation event occurred and
- for each Task
- the date 8 weeks after the relevant Task Completion.

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Quotations for compensation events

62

- 62.1 After discussing with the *Contractor* different ways of dealing with the compensation event which are practicable, the *Service Manager* may instruct the *Contractor* to submit alternative quotations. The *Contractor* submits the required quotations to the *Service Manager* and may submit quotations for other methods of dealing with the compensation

event which it considers practicable.

- 62.2 Quotations for a compensation event comprise proposed changes to the Prices and any delay to a Task Completion Date assessed by the *Contractor*. The *Contractor* submits details of the assessment, including a detailed breakdown of any changes to the Prices and the measures to be taken in respect of Subcontractors and Indirect Subcontractors (where relevant) with regards to the service and any planned service by Others, with each quotation. If the plan or a programme for remaining work is altered by the compensation event, the *Contractor* includes the alterations to the Accepted Plan or the relevant Task Order programme in the quotation.
- 62.3 The *Contractor* submits quotations within three weeks of being instructed to do so by the *Service Manager*. The *Service Manager* replies within two weeks of the submission. The reply is
- a notification of acceptance of the quotation,
  - an instruction to submit a revised quotation or
  - that the *Service Manager* will be making the assessment.
- 62.4 The *Service Manager* instructs the *Contractor* to submit a revised quotation only after explaining the reasons for doing so to the *Contractor*. The *Contractor* submits the revised quotation within three weeks of being instructed to do so.
- 62.5 The *Service Manager* extends the time allowed for
- the *Contractor* to submit quotations for a compensation event or
  - the *Service Manager* to reply to a quotation
- if the *Service Manager* and the *Contractor* agree to the extension before the submission or reply is due. The *Service Manager* informs the *Contractor* of the extension which has been agreed.
- 62.6 If the *Service Manager* does not reply to a quotation within the time allowed, the *Contractor* may notify the *Service Manager* of that failure. If the *Contractor* submitted more than one quotation for the compensation event, the notification states which quotation the *Contractor* proposes is to be used. If the failure continues for a further two weeks after the *Contractor*'s notification it is treated as acceptance by the *Service Manager* of the quotation.

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**Assessing  
compensation  
events**

**63**

63.1 ~~For a compensation event which only affects the quantities of work shown in the Price List, the change to the Prices is assessed by multiplying the changed quantities of work by the appropriate rates in the Price List.~~

Save where Main Option C applies, to the extent that a compensation event affects either work or services done or work or services not yet done the change to the Prices for a compensation event is assessed

- to the extent that the compensation event only affects the quantities of work shown in the Price List, accepted Annual Price List or the Task Price List (as applicable), by multiplying the changed quantities of work by the appropriate rate in the Price List, accepted Annual Price List or the Task Price List (as applicable),
- to the extent that the compensation event does not only affect the quantities of work shown in the Price List, accepted Annual Price List or the Task Price List (as applicable)
  - by using other appropriate rates and Prices in the Price List, accepted Annual Price List or the Task Price List (as applicable),
  - in respect of a Task or the Core Service, and to the extent that there is no appropriate rate or Prices in the accepted Annual Price List or the Task Price List (as applicable), by using the appropriate rates or Prices in the Price List,
  - to the extent that there is no appropriate rate or Prices in the Price List, accepted Annual Price List or the Task Price List (as applicable), by using the rates or Prices in the Price List, accepted Annual Price List or the Task Price List (as applicable) for works or services of a similar character and executed under similar conditions to the compensation event,
  - to the extent that there is no rate or prices in the Price List, accepted

Annual Price List or the Task Price List (as applicable) for works or services of a similar character and executed under similar conditions to the compensation event, in accordance with clause 63.2.

- 63.2 ~~For other compensation events~~ Where stated in clause 63.1 or where Main Option C applies, the change to the Prices is assessed as the effect of the compensation event upon
- the actual Defined Cost of the work done by the dividing date,
  - the forecast Defined Cost of the work not done by the dividing date and
  - the resulting Fee.

For a compensation event that arises from the *Service Manager* giving an instruction or notification or changing an earlier decision, the dividing date is the date of that communication.

For other compensation events, the dividing date is the date of the notification of the compensation event.

- 63.2A Notwithstanding any other provision of this contract, the change to the Prices in respect of a compensation event under clause 60.1(24) is assessed as follows:

- in the case of the Prices in the Annual Price List, as a change to the COVID-19 Lump Sum assessed in accordance with clause 63.1 but for that purpose the COVID-19 Percentage Adjustments or Amended COVID-19 Percentage Adjustments do not apply to any rates or prices in the Price List or Task Price List and
- in the case of the Prices in the Price List and any Task Price List,
  - as a fair and reasonable adjustment to the COVID-19 Percentage Adjustments to reflect the effect of the compensation event upon the cost to the *Contractor* (the “Amended COVID-19 Percentage Adjustments”) applied to
  - the Prices in the Price List and any Task Price List (as applicable) for works and services provided after the dividing date.

Notwithstanding any other provision of this contract, for a compensation event under clause 60.1(24) the dividing date is the date that the *Service Manager’s* instruction under clause 60.1(24) takes effect.

- 63.2B The *Contractor’s* only entitlement to a change in the Prices in respect of the implementation of guidance in relation to the Coronavirus Pandemic which amends, supplements, replaces or supersedes the COVID-19 Guidance or otherwise is a compensation event under clause 60.1(24) and no other compensation event in this contract applies.

- 63.3 The *Service Manager* and the *Contractor* may agree rates or lump sums to assess the change to the Prices.

- 63.4 If the effect of a compensation event is to reduce the ~~cost to the Contractor total Defined Cost~~, the Prices are not reduced unless otherwise stated in these *conditions of contract*.

- 63.5 If the effect of a compensation event is to reduce the ~~cost to the Contractor total Defined Cost~~ and the event is

- a change to the Scope other than a change to the Scope provided by the *Client*, which the *Contractor* proposed and the *Service Manager* accepted,
- a change to a Task Order other than a change to the Task Scope provided by the *Client*, which the *Contractor* proposed and the *Service Manager* accepted,
- a change in the Affected Property,
- an instruction to correct a mistake in the Price List, or
- a change in a decision which the *Service Manager* has previously communicated to the *Contractor*
- a correction to an assumption stated by the *Service Manager* for assessing an earlier compensation event
- if a quantity and a tolerance for an asset is stated in the Scope, the actual quantity of the relevant asset is outside the quantity and tolerance stated in the Scope for the relevant asset
- a change in law of the country in which the Affected Property is located occurs after the

Contract Date which affects the Core Service or

- The *Service Manager* instructs the *Contractor* to comply with guidance in relation to the Coronavirus Pandemic.

the Prices are reduced.

- 63.6 A delay to a Task Completion Date is assessed as the length of time that, due to the compensation event, planned Task Completion is later than planned Task Completion as shown on the **relevant accepted** Task Order programme current at the dividing date.
- The assessment takes into account any delay caused by the compensation event already in the Task Order programme and events which have happened between the date of the Task Order programme and the dividing date.
- 63.7 The rights of the *Client* and the *Contractor* to changes to the Prices and the Task Completion Dates are their only rights in respect of a compensation event **and the *Client* has no financial liability to the *Contractor* other than amounts claimable and recoverable under this contract.**
- 63.8 If the *Service Manager* has stated in the instruction to submit quotations that the *Contractor* did not give an early warning of the event which an experienced contractor could have given, the compensation event is assessed as if the *Contractor* had given the early warning.
- 63.9 If the assessment of the effect of a compensation event is made using Defined Cost, it includes **reasonable and proportionate** risk allowances for cost and time for matters which have a significant chance of occurring and are not compensation events.
- 63.10 If the assessment of the effect of a compensation event is made using Defined Cost, it is based upon the assumptions that the *Contractor* reacts competently and promptly to the event and that any **cost (including where relevant Defined Cost) ~~Defined Cost~~** and time due to the event are reasonably incurred. **Where the *Client* decides that the *Contractor* has failed to act in accordance with the assumptions in this clause the failure is taken into account when making the assessment.**
- 63.11 A compensation event which is an instruction to change the Scope **or Task Scope (as applicable)** in order to resolve an ambiguity or inconsistency is assessed as if the Prices and the Task Completion Dates were for the interpretation most favourable to the Party which did not provide the Scope **or, where applicable, the Task Scope.**
- 
- 63.15 **In respect of a compensation event under clause 60.1(21) a change to the Prices is assessed only to reflect that part of the excess or reduction in quantity that is outside the tolerances stated in the Scope applicable to the relevant asset(s).**

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**The *Service Manager's* assessments**

- 64
- 64.1 The *Service Manager* assesses a compensation event
- if the *Contractor* has not submitted the quotation and details of its assessment within the time allowed **including a detailed breakdown of any changes to the Prices and the measures to be taken with regard to each Subcontractor and Indirect Subcontractor and with regard to the *service* and planned works by Others,**
  - if the *Service Manager* decides that the *Contractor* has not assessed the compensation event correctly in the quotation and has not instructed the *Contractor* to submit a revised quotation,
  - if, when the *Contractor* submits quotations for the compensation event, it has not submitted a plan or alterations to a plan which the contract requires it to submit,
  - if, when the *Contractor* submits quotations for the compensation event, the *Service Manager* has not accepted the *Contractor's* latest plan for one of the reasons stated in the contract or
  - if a Task is affected by the event and the *Contractor* has not submitted alterations to a Task Order programme which the contract requires it to submit or the *Service Manager* has not accepted the programme for one of the reasons stated in the contract.

- 64.2 The *Service Manager* assesses the plan for the remaining work and uses it in the assessment of a compensation event if
- there is no Accepted Plan,
  - the *Contractor* has not submitted a plan or alterations to a plan for acceptance as required by the contract or
  - the *Service Manager* has not accepted the *Contractor's* latest plan for one of the reasons stated in the contract.
- If a compensation event affects a Task, the *Service Manager* assesses the programme for the remaining work on the Task and uses it in the assessment of the compensation event if
- there is no Task Order programme,
  - the *Contractor* has not submitted a Task Order programme or alterations to a Task Order programme for acceptance as required by the contract or
  - the *Service Manager* has not accepted the *Contractor's* latest Task Order programme for one of the reasons stated in the contract.
- 64.3 The *Service Manager* notifies the *Contractor* of the assessment of a compensation event and gives details of the assessment within the period allowed for the *Contractor's* submission of its quotation for the same compensation event. This period starts when the need for the *Service Manager's* assessment becomes apparent.
- 64.4 If the *Service Manager* does not assess a compensation event within the time allowed, the *Contractor* may notify the *Service Manager* of that failure. If the *Contractor* submitted more than one quotation for the compensation event, the notification states which quotation the *Contractor* proposes is to be used. If the failure continues for a further two weeks after the *Contractor's* notification it is treated as acceptance by the *Service Manager* of the quotation.

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**Proposed instructions**

**65**

- 65.1 The *Service Manager* may instruct the *Contractor* to submit a quotation for a proposed instruction. The *Service Manager* states in the instruction the date by which the proposed instruction may be given. The *Contractor* does not put a proposed instruction into effect.
- 65.2 The *Contractor* submits quotations for a proposed instruction within three weeks of being instructed to do so by the *Service Manager*. The quotation is assessed as a compensation event. The *Service Manager* replies to the *Contractor's* quotation by the date when the proposed instruction may be given. The reply is
- an instruction to submit a revised quotation including the reasons for doing so,
  - the issue of the instruction together with a notification of the instruction as a compensation event and acceptance of the quotation or
  - a notification that the quotation is not accepted.
- If the *Service Manager* does not reply to the quotation within the time allowed, the quotation is not accepted.
- 65.3 If the quotation is not accepted, the *Service Manager* may issue the instruction, notify the instruction as a compensation event and instruct the *Contractor* to submit a quotation.

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**Implementing compensation events**

**66**

- 66.1 A compensation event is implemented when
- the *Service Manager* notifies acceptance of the *Contractor's* quotation,
  - the *Service Manager* notifies the *Contractor* of an assessment made by the *Service Manager* or
  - a *Contractor's* quotation is treated as having been accepted by the *Service Manager*.
- 66.2 When a compensation event is implemented the Prices and, where applicable, the relevant Task Completion Date are changed accordingly.
- 66.3 The assessment of an implemented compensation event is not revised except as stated in these *conditions of contract*.

## 7. USE OF EQUIPMENT, PLANT AND MATERIALS

|   |           |  |
|---|-----------|--|
| <b>The Client's title to Plant and Materials</b>          | <b>70</b> |  |
|   | 70.1      | Whatever title the <i>Contractor</i> has to Plant and Materials passes to the <i>Client</i> if they have been brought within the Service Areas (or, if earlier, when it is delivered to the place where it is going to be stored by or on behalf of the <i>Contractor</i> for use in the provision of the service). The title to Plant and Materials passes back to the <i>Contractor</i> if they are removed from the Service Areas with the <i>Service Manager's</i> permission. |
| <b>The Parties' use of equipment, Plant and Materials</b> | <b>71</b> |  |
|   | 71.1      | The <i>Contractor</i> has the right to use equipment, Plant and Materials provided by the <i>Client</i> only to Provide the Service.   |
|   | 71.2      | At the end of the Service Period the <i>Contractor</i> <ul style="list-style-type: none"><li>• returns to the <i>Client</i>, equipment and surplus Plant and Materials provided by the <i>Client</i>,</li><li>• provides items of Equipment for the <i>Client's</i> use as stated in the Scope and</li><li>• provides information and other things as stated in the Scope.</li></ul>   |
| <b>The Contractor's use of material</b>                   | <b>72</b> |  |
|   | 72.1      | <del>The <i>Contractor</i> has the right to use material provided by the <i>Client</i> only to Provide the Service. The <i>Contractor</i> may make this right available to a Subcontractor.</del>  |

## 8. LIABILITIES AND INSURANCE

|                                 |             |   |
|---------------------------------|-------------|---|
| <b>Client's liabilities</b>     | <b>80</b>   | <p>80.1 The following are <i>Client's</i> liabilities.</p> <ul style="list-style-type: none"> <li>• Claims and proceedings from Others and compensation and costs payable to Others which are due to <ul style="list-style-type: none"> <li>– use or occupation of the Affected Property for the purpose of the <i>service</i> which is the unavoidable result of the <i>service</i> or</li> <li>– negligence, breach of statutory duty or interference with any legal right by the <i>Client</i> or by any person employed by or contracted to it except the <i>Contractor</i>.</li> </ul> </li> <li>• A fault of the <i>Client</i> or any person employed by or contracted to it, except the <i>Contractor</i>.</li> <li>• Loss of or damage to equipment and Plant and Materials supplied to the <i>Contractor</i> by the <i>Client</i>, or by Others on the <i>Client's</i> behalf, until the <i>Contractor</i> has received and accepted them.</li> <li>• Loss of or damage to Plant and Materials due to <ul style="list-style-type: none"> <li>– war, civil war, rebellion, revolution, insurrection, military or usurped power,</li> <li>– strikes, riots and civil commotion not confined to the <i>Contractor's</i> employees or</li> <li>– radioactive contamination.</li> </ul> </li> <li>• Loss of or damage to any Equipment, Plant and Materials retained by the <i>Client</i> after a termination, except loss or damage due to the activities of the <i>Contractor</i> <del>in the Affected Property</del> after the termination.</li> <li>• Loss of or damage to Affected Property and any other property owned or occupied by the <i>Client</i>, unless the loss or damage arises from or in connection with the <i>Contractor</i> Providing the Service.</li> <li>• Loss of or damage to any Plant and Materials after they have been included in the Affected Property.</li> <li>• <del>Additional <i>Client's</i> liabilities stated in the Contract Data.</del></li> </ul> |
| <b>Contractor's liabilities</b> | <b>81</b>   | <p>81.1 The following are <i>Contractor's</i> liabilities unless they are stated as being <i>Client's</i> liabilities.</p> <ul style="list-style-type: none"> <li>• Claims and proceedings from Others and compensation and costs payable to Others which arise from or in connection with the <i>Contractor</i> Providing the Service.</li> <li>• Loss of or damage to any Plant and Materials before they are included in the Affected Property and Equipment.</li> <li>• Loss of or damage to the Affected Property and other property owned or occupied by the <i>Client</i>, which arises from or in connection with the <i>Contractor</i> Providing the Service.</li> <li>• Death or bodily injury to the employees of the <i>Contractor</i>.</li> </ul>  |
|                                 | <b>81.2</b> | <p>For each Task, until the later of Task Completion or (where relevant) issue of the Task Defect Certificate and unless otherwise instructed by the <i>Service Manager</i>, the <i>Contractor</i> promptly replaces loss of and repairs damage to the works or services, Plant and Materials and (when required) undertakes the removal and disposal of debris. The <i>Contractor</i> bears the cost of dismantling and replacing any Plant necessary to affect such replacements or repairs. The <i>Client</i> in its sole and absolute discretion is entitled to decide not to replace and/or repair any loss and/or damage to works or services, Plant and Materials.</p>   |
| <b>Recovery of costs</b>        | <b>82</b>   | <p>82.1 <del>Any cost which the <i>Client</i> has paid or will pay as a result of an event for which the <i>Contractor</i> is liable is paid by the <i>Contractor</i>.</del><br/> The <i>Contractor</i> is responsible for and indemnifies the <i>Client</i>, its employees and agents against all expenses, liabilities, losses, claims, proceedings, compensation and costs whatsoever ("Losses") incurred in respect of</p> <ul style="list-style-type: none"> <li>• death or injury to any person,</li> <li>• loss or damage to property (including property belonging to the <i>Client</i> or for which the <i>Client</i> is responsible, other than (1) any works the <i>Contractor</i> is instructed to</li> </ul>   |

undertake under this contract as part of the Core Service and (2) any works instructed as a Task which have not been taken over) and

- any other loss, damage, cost or expense including but not limited to that incurred or suffered by the *Client* due to losses arising under its contracts with Others (provided that the *Contractor* is given notice of such contract(s) with Others, whether such notice is given before or after the Contract Date) which may arise out of or in the course of or by reason of the *Contractor's* performance, non-performance or part performance of this contract,

to the extent that such Losses are due to any negligence, breach of contract, breach of statutory duty, error, act, omission, or default by the *Contractor*, its employees, Subcontractors, Indirect Subcontractors or agents or due to matters, circumstances or events which are *Contractor's* liabilities.

~~82.2 Any cost which the Contractor has paid or will pay to Others as a result of an event for which the Client is liable is paid by the Client.~~

~~82.3 The right of a Party to recover these costs is reduced if an event for which it was liable contributed to the costs. The reduction is in proportion to the extent that the event for which that Party is liable contributed, taking into account each Party's responsibilities under the contract.~~

The *Contractor's* indemnity under sub-clause 82.1 remains in force for the duration of this contract and continues to survive the expiry or termination of the *Contractor's* appointment under this contract and/or the expiry or termination of this contract. Without prejudice to the survival of any other clauses or schedules, the clauses or schedules of this contract necessary to give effect to the *Contractor's* indemnity under clause 82.1 also survive expiry or termination of the *Contractor's* appointment under this contract and/or the expiry or termination of this contract.

82.3 The *Contractor* is not responsible for and does not indemnify the *Client* for Losses to the extent that such Losses are caused by the negligence of the *Client*, its employees or agents.

**Insurance cover 83**

83.1 The *Client* provides the insurances which the *Client* is to provide as stated in the Contract Data.

83.2 The *Contractor* provides the insurances stated in the Insurance Table set out in Schedule 8 of the Framework Agreement except any insurances which the *Client* is to provide as stated in the Contract Data. The *Contractor* provides additional insurances as stated in the Contract Data. Subject to clause 83.5, the insurances provide cover from the Contract Date or, if earlier, the date of the first issued Task Order until a termination certificate in relation to the *Contractor's* obligation to Provide the Service has been issued or until the later of the end of the Service Period and where any Task has not been completed by the end of the Service Period the later of the last Task Completion or (where relevant) issue of the last Task Defect Certificate (or for such other period as stated in the Contract Data). The *Contractor* bears the cost of all deductibles for the insurances it provides save in respect of any deductibles for claims arising as a consequence of the acts and omissions of the *Client* or matters for which it is responsible under this contract.

~~83.3 The insurances in the Insurance Table are in the joint names of the Parties except the third insurance stated. The insurances provided by the Contractor as required by the Insurance Table set out in Schedule 8 of the Framework Agreement provide cover for events which are the Contractor's liability and in the case of each of the Public and Product Liability insurance and the Employer's Liability insurance as required by the Insurance Table set out in Schedule 8 of the Framework Agreement extend to indemnify the Client as principal under such insurance from the starting date until the end of the Service Period or a termination certificate has been issued.~~

| INSURANCE TABLE   |   |
|---|---|
| INSURANCE AGAINST   | MINIMUM AMOUNT OF COVER   |
| Loss of or damage to Plant and Materials and Equipment  | The replacement cost, including the amount stated in the Contract Data for the replacement of any Plant and Materials provided by the <i>Client</i> |
| Loss of or damage to property (except Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i> ) arising from or in connection with the | The amount stated in the Contract Data for any one event with cross liability so that the insurance applies to the Parties separately               |

|  |  |
|--|--|
| <del>Contractor Providing the Service</del>  |  |
| <del>Death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with the contract</del> | <del>The greater of the amount required by the applicable law and the amount stated in the Contract Data for any one event</del> |

83.4 The insurance requirements under this contract do not relieve the *Contractor* from any of its other obligations and liabilities under this contract.

83.5 The *Contractor*, at its own cost, takes out and maintains professional indemnity insurance with a limit of indemnity of not less than the sum stated in Schedule 8 of the Framework Agreement for any one occurrence or series of occurrences arising out of any one event, in relation to the *service* provided always that

- such insurance is in place from the Contract Date until no less than 12 years after the end of the Service Period or where any Task has not been completed by the end of the Service Period 12 years after the later of the last Task Completion or (where relevant) issue of the last Task Defect Certificate,
- the insurance premiums in respect of the insurance are at all times the responsibility of the *Contractor* and
- if such insurance ceases to be available to the *Contractor* (and/or contractors engaged in services of a similar size, nature and complexity as the *Contractor*) at commercially reasonable rates and terms (such non availability to be confirmed by an independent insurance agent operating in the UK market), excluding any increase in premiums attributable to the actions, omissions, claims record, error or defaults of the *Contractor*, the *Contractor* immediately notifies the *Client* and the *Contractor* and the *Client* then meet and the *Contractor* outlines the steps it intends to take to manage such risks. If the steps proposed by the *Contractor* are not reasonably acceptable to the *Client*, the parties agree an alternative method of managing such risk.

83.6 The *Contractor* carries out its obligations under this contract and ensures that its servants or agents carry out their respective obligations in such manner that all requirements, terms, conditions, stipulations and provisos of the insurance required by clause 83.5 are at all times fully complied with.

83.7 The *Contractor* provides insurance covering loss or damage to motor vehicles and liability to third parties arising out of the use of motor vehicles used in connection with the *service*. The minimum amount of cover/indemnity provided by such insurance shall be the amount required by the applicable law in respect of third party liability.

83.8 The *Client* provides the insurances set out in the Contract Data to the extent such insurance is available at reasonable commercial rates. Nothing in such insurance changes the allocation of risks to the *Contractor* and the *Client* as set out in clause 80 and clause 81.

**Insurance policies**

**84**

84.1 ~~Before the starting date~~ On or before the **Contract Date** and on each renewal of the insurance policy until the end of the Service Period, the *Contractor* submits to the *Service Manager* for acceptance certificates which state that the insurance required by the contract is in force. The certificates are signed by the *Contractor's* insurer or insurance broker. The *Service Manager* accepts the certificates if the insurance complies with the contract and if the insurer's commercial position is strong enough to carry the insured liabilities.

84.2 Insurance policies include a waiver by the insurers of their subrogation rights against the Parties and the directors and other employees of every insured except where there is fraud.

84.3 The Parties comply with the terms and conditions of the insurance policies to which they are a party.

84.4 Any amount not recovered from an insurer is borne by the *Client* for events which are its liabilities and by the *Contractor* for events which are its liabilities.

84.5 In relation to all claims made under insurances obtained by the *Client* (as set out in the Contract Data) the following provisions apply

- (1) Unless the *Client* otherwise decides, the *Contractor* authorises the *Client* to submit all claims and the *Client* submits and administers all claims.
- (2) Without prejudice to any other right, remedy or power of the *Client*, the *Contractor* must provide such information, documents and records in connection with such claims as the *Client* requires forthwith on demand, regardless of

whether the *Client* is submitting or administering the claim.

- (3) Without prejudice to any other right, remedy or power of the *Client*, the *Contractor* authorises insurers to pay monies under the insurances to the *Client*.
- (4) The *Client*, after receipt of monies paid under the insurances, allocates and pays to each party insured that portion of the monies received for the purpose of rectifying the loss that each party insured has suffered.

|   |  |
|---|--|
| 84.6  | The <i>Contractor</i> effects any insurances which it is required to provide under this contract promptly with a reputable insurer or insurers accepted by the <i>Service Manager</i> and authorised to underwrite such risks in the United Kingdom.   |
| 84.7  | The <i>Contractor</i> promptly notifies the <i>Service Manager</i> in writing of any claim, event, fact, matter or circumstance which may give rise to the right to make any claim on any insurance.   |
| 84.8  | The <i>Contractor</i> does not compromise, surrender, release, settle or waive any claim or potential claim which the <i>Contractor</i> has or may have the right to bring, or has brought, under any insurance without the prior consent of the <i>Service Manager</i> .  |
| 84.9  | The <i>Contractor</i> does not by any act or omission exclude, limit, reduce, vitiate, prejudice, lose or forgo any of the <i>Contractor's</i> and/or the <i>Client's</i> rights to make or proceed with a claim against any insurer.  |
| 84.10   | If the <i>Contractor</i> is informed that any insurer providing insurance required by this contract intends to cancel or change any term of any insurance required by this contract, the <i>Contractor</i> promptly notifies the <i>Service Manager</i> of such intention.   |
| 84.11   | The <i>Contractor</i> promptly notifies the <i>Service Manager</i> in writing of any anticipated or actual event or circumstance which may lead or has led to any insurance required by this contract lapsing or being terminated or the cover under it being reduced or modified.   |
| 84.12   | To the extent that the <i>Contractor</i> is entitled to bring any claim or claims under any insurance relating to this contract then the <i>Contractor</i> deals with all such claims promptly and diligently and (subject to the requirements of this contract) in accordance with all insurer requirements and recommendations.  |
| 84.13   | The <i>Contractor</i> acknowledges that the <i>Client</i> has the right to control and to supervise all dealings with the press, television, reporters, and any other media in relation to any incident, event, claim or action arising in connection with this contract and the <i>Contractor</i> complies with clause 20.5 of the Framework Agreement.   |
| 84.14   | If and to the extent that the <i>Contractor</i> receives payment in respect of any damage or destruction following an insurance claim in respect of damage or destruction of the <i>services</i> the <i>Contractor</i> applies the same to remedy the damage or destruction.   |
| <b>If the <i>Contractor</i> does not insure</b> | <b>85</b>  |
|   | 85.1 The <i>Client</i> may insure an event or liability which the contract requires the <i>Contractor</i> to insure if the <i>Contractor</i> does not submit a required certificate. The cost of this insurance to the <i>Client</i> is paid by the <i>Contractor</i> .  |
| <b>Insurance by the <i>Client</i></b>           | <b>86</b>  |
|   | 86.1 The <i>Service Manager</i> submits certificates for insurance provided by the <i>Client</i> to the <i>Contractor</i> for acceptance before the <i>starting date</i> and afterwards as the <i>Contractor</i> instructs. The <i>Contractor</i> accepts the certificates if the insurance complies with the contract and if the insurer's commercial position is strong enough to carry the insured liabilities. |
|   | 86.2 The <i>Contractor's</i> acceptance of an insurance certificate provided by the <i>Client</i> does not change the responsibility of the <i>Client</i> to provide the insurances stated in the Contract Data.   |
|   | 86.3 The <i>Contractor</i> may insure an event or liability which the contract requires the <i>Client</i> to insure if the <i>Client</i> does not submit a required certificate. The cost of this insurance to the <i>Contractor</i> is paid by the <i>Client</i> .  |

## 9. TERMINATION

Termination

90

90.1

If either Party wishes to terminate the *Contractor's* obligation to

- Provide the Service,
- **provide an instructed Task or**
- **provide the Core Service**

it notifies the *Service Manager* and the other Party giving details of the reason for terminating. If the reason complies with these *conditions of contract*, the *Service Manager* issues a termination certificate promptly or, if a *notice period* is required by these *conditions of contract*, at the end of the *notice period*.

90.2

A Party may terminate for a reason identified in the Termination Table. The procedures followed and the amounts due on termination are in accordance with the Termination Table.

| TERMINATION TABLE |  |   |   |  |  |
|-------------------|--|---|---|--|--|
| TERMINATING PARTY | REASON   | PROCEDURE   | AMOUNT DUE  |  |  |
| The <i>Client</i> | <b>Termination of obligation to Provide the Service:</b>   | <b>Termination of obligation to Provide the Service:</b>        | <b>Termination of obligation to Provide the Service:</b>        |  |  |
|                   | A reason other than the reasons listed in this Termination Table   | P1, P1C, P2 and P4  | A1, A2, A4 and A4A  |  |  |
|                   | R1–R15, R10A   | P1, P1C, P2 and P3  | A1 and A3   |  |  |
|                   | R18, <del>or R24</del> R22, R22A, R22B, R22C R23, R24, R26 or R27  |   |   |  |  |
|                   | R17, <del>or R20</del> R25 or R28  | P1, P1C and P4  | A1 and A2   |  |  |
|                   | R29  | P1, P1C, P3 and P4  | A1 and A2   |  |  |
|                   | <b>Termination of obligation to provide an instructed Task:</b>  | <b>Termination of obligation to provide an instructed Task:</b> | <b>Termination of obligation to provide an instructed Task:</b> |  |  |
|                   | A reason other than the reasons listed in this Termination Table for instructed Tasks other than Project Tasks | P1A, P1C, P2A and P3A   | A1A, A2A and A4A  |  |  |
|                   | A reason other than the reasons listed in this Termination Table for instructed Project Tasks                  | P1A, P1C, P2A and P3A   | A1A and A2A   |  |  |
|                   | R1-R15, R10A, R14A, R18, R22, R22A, R22B, R22C, R23, R24,  | P1A, P1C, P2A and P3A   | A1A and A3A   |  |  |

|                |  |   |   |
|----------------|--|---|---|
|                | R26 or R27   |   |   |
|                | R17A, or R20, R25 or R28   | P1A and P1C   | A1A and A2A   |
|                | R29  | P1A, P1C, and P3A   | A1A and A2A   |
|                | <b>Termination of obligation to provide the Core Service:</b>    | <b>Termination of obligation to provide the Core Service:</b>   | <b>Termination of obligation to provide the Core Service:</b>   |
|                | A reason other than the reasons listed in this Termination Table | P1B, P1C, P2 and P4   | A1B, A2 and A4  |
|                | R1-R15, R10A, R18, R22, R22A, R22B, R22C, R23, R24, R26 or R27   | P1B, P1C, P2 and P3   | A1B and A3  |
|                | R17B or R20, R25 or R28  | P1B and P1C   | A1B and A2  |
|                | R29  | P1B, P1C, and P3  | A1B and A2  |
| The Contractor | <b>Termination of obligation to Provide the Service:</b>         | <b>Termination of obligation to Provide the Service:</b>        | <b>Termination of obligation to Provide the Service:</b>        |
|                | R1–R10, R10A, R16 or R19   | P1, P1C and P4  | A1, A2 and A4 and A4A   |
|                | R17 or R20   | P1, P1C and P4  | A1 and A2   |
|                | <b>Termination of obligation to provide an instructed Task:</b>  | <b>Termination of obligation to provide an instructed Task:</b> | <b>Termination of obligation to provide an instructed Task:</b> |
|                | R1–R10, R10A, R16A or R19  | P1A and P1C   | A1A, A2A and A4A  |
|                | R17A or R20  | P1A and P1C   | A1A and A2A   |
|                | <b>Termination of obligation to provide the Core Service:</b>    | <b>Termination of obligation to provide the Core Service:</b>   | <b>Termination of obligation to provide the Core Service:</b>   |
|                | R1–R10, R10A, R16 or R19   | P1B and P1C   | A1B, A2 and A4  |
|                | R17B or R20  | P1B and P1C   | A1B and A2  |

- 90.3 The procedures for termination are implemented immediately after the *Service Manager* has issued a termination certificate.
- If the *Client* terminates for one of reasons R1 to R15, R10A, R14A, R18, or R24, R22, R22A, R22B or R23 and a certified payment has not been made at the date of the termination certificate, the *Client* need not make the certified payment unless these *conditions of contract* state otherwise.
- 90.4 After a termination certificate has been issued, the *Contractor* does no further work necessary to
- Provide the Service, where the termination certificate states that it relates to the *Contractor's* obligation to Provide the Service or

|                         |      |   |
|-------------------------|------|---|
|                         |      | <ul style="list-style-type: none"> <li>• provide the relevant Task identified in the termination certificate, where the termination certificate states that it relates to the <i>Contractor's</i> obligation to provide the Task or</li> <li>• provide the Core Service, where the termination certificate states that it relates to the <i>Contractor's</i> obligation to provide the Core Service.</li> </ul>   |
| Reasons for termination | 91   |   |
|                         | 91.1 | <p>Either Party may terminate if the other Party has done one of the following or its equivalent.</p> <ul style="list-style-type: none"> <li>• If the other Party is an individual and has <ul style="list-style-type: none"> <li>– presented an application for bankruptcy (R1),</li> <li>– had a bankruptcy order made against it (R2),</li> <li>– had a receiver appointed over its assets (R3) or</li> <li>– made an arrangement with its creditors (R4).</li> </ul> </li> <li>• If the other Party is a company or partnership and has <ul style="list-style-type: none"> <li>– had a winding-up order made against it (R5),</li> <li>– had a provisional liquidator appointed to it (R6),</li> <li>– passed a resolution for winding-up (other than in order to amalgamate or reconstruct <b>without insolvency</b>) (R7),</li> <li>– had an administration order made against it or had an administrator appointed over it (R8),</li> <li>– had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets (R9) or</li> <li>– made an arrangement with its creditors (R10)</li> </ul> </li> <li>• <b>If the other Party has become insolvent as defined in Section 113 of the Act (R10A).</b></li> </ul> |
|                         | 91.2 | <p>The <i>Client</i> may terminate if the <i>Service Manager</i> has notified that the <i>Contractor</i> has not put one of the following defaults right within four weeks of the date when the <i>Service Manager</i> notified the <i>Contractor</i> of the default.</p> <ul style="list-style-type: none"> <li>• Substantially failed to comply with its obligations (R11).</li> <li>• Not provided a bond or guarantee which the contract requires (R12).</li> <li>• Appointed a Subcontractor for substantial work before the <i>Service Manager</i> has accepted the Subcontractor (R13).</li> </ul>   |
|                         | 91.3 | <p>The <i>Client</i> may terminate if the <i>Service Manager</i> has notified that the <i>Contractor</i> has not stopped one of the following defaults within four weeks of the date when the <i>Service Manager</i> notified the <i>Contractor</i> of the default.</p> <ul style="list-style-type: none"> <li>• Substantially hindered the <i>Client</i> or Others (R14).</li> <li>• <b>In performing a Task the <i>Contractor</i> substantially hindered the <i>Client</i> or Others (R14A).</b></li> <li>• Substantially broken a health or safety regulation (R15).</li> </ul>  |
|                         | 91.4 | <p><del>The <i>Contractor</i> may terminate if the <i>Client</i> has not paid an amount due under the contract within thirteen weeks of the date that the <i>Contractor</i> should have been paid (R16).</del></p> <p><b>Save when the <i>Client</i> has complied with clause 51.6/Y2.3, the <i>Contractor</i> may terminate if</b></p> <ul style="list-style-type: none"> <li>• <b>in connection with the Core Service the <i>Client</i> has not paid an amount certified by the <i>Service Manager</i> within 13 weeks of the date of the relevant certificate and the <i>Client</i> does not remedy that non-payment within a further 6 weeks of receipt of a written notice issued by the <i>Contractor</i> after expiry of the 13 week period (R16)</b></li> <li>• <b>in connection with a Task the <i>Client</i> has not paid an amount certified by the <i>Service Manager</i> within 13 weeks of the date of the relevant certificate and the <i>Client</i> does not remedy that non-payment within a further 6 weeks of receipt of a written notice issued by the <i>Contractor</i> after expiry of the 13 week period</b></li> </ul>  |

(R16A).

- 91.5 Either Party may terminate if the Parties have been released under the law from further performance of ~~the relevant obligation to the whole of the contract (R17)~~  
~~Provide the Service (R17),~~  
~~provide an instructed Task (R17A)~~  
~~provide the Core Service (R17B).~~
- 91.6 If the *Service Manager* has instructed the *Contractor* to stop or not to start any substantial work or all work ~~connected with the relevant obligations~~ and an instruction allowing the work to re-start or start or removing the work from the Scope or Task (as applicable) has not been given within thirteen weeks,
- the *Client* may terminate if the instruction was due to a default by the *Contractor* or a reason related to the Coronavirus Pandemic (R18),
  - providing the *Contractor* has given written notification to the *Client* of an intention to terminate at least 12 weeks prior to such termination and no instruction allowing the *service* to restart or start or removing the work from the Scope or Task (as applicable) has been given within that period, the *Contractor* may terminate if the instruction was due to a default by the *Client* (R19) and
  - providing written notification of an intention to terminate is given to the other Party at least 12 weeks prior to such termination and no instruction allowing the *service* to restart or start or removing the work from the Scope or Task (as applicable) has been given within that period, either Party may terminate if the instruction was due to any other reason other than a reason related to the Coronavirus Pandemic (R20).
- 91.7 ~~The *Client* may terminate if the *Contractor* does a Corrupt Act, unless it was done by a Subcontractor or supplier and the *Contractor*~~  
~~• was not and should not have been aware of the Corrupt Act or~~  
~~• informed the *Service Manager* of the Corrupt Act and took action to stop it as soon as the *Contractor* became aware of it (R21).~~
- 91.8 The *Client* may terminate if the *Contractor*
- is in breach of clause 104 (Conflict of Interest) and/or clause 107 (Corrupt Gifts) or in the event the *Contractor* has persistently failed to comply with its obligations under Clause 123 (R22),
  - any of the events referred to at clause 25.9 occur (regardless of whether or not the notice required by clause 25.9 is given by the *Contractor*) (R22A)
  - is deemed to have committed a material breach as set out in paragraph 8(c) of Appendix 8 Part A on two or more separate occasions (R22B) or
  - any cap on the *Contractor's* liability under this contract has been or is reasonably likely to be exceeded (R22C).
- 91.9 The *Client* may terminate if any circumstances arise which entitle the Framework Client to terminate the Framework Agreement (R23).
- 91.10 The *Client* may terminate if
- this contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72 of the Public Contract Regulations 2015 where the modification is due to a default by the *Contractor* (R24) or where the modification is due to any other reason (R25),
  - at the Contract Date the *Contractor* has been in one of the situations referred to in regulation 57(1) of the Public Contract Regulations 2015, including as a result of the application of regulation 57(2) of the Public Contract Regulations 2015, and should therefore have been excluded from the procurement procedure (R26), or
  - in a procedure under Article 258 of the Treaty on the Functioning of the European Union, the Court of Justice of the European Union declares that this contract should not have been awarded to the *Contractor* in view of a serious infringement of the obligations under the Treaties and the Public

Contracts Directive where the infringement is due to a default by the *Contractor* (R27) or where the infringement is due to any other reason (R28).

91.11 The *Client* may terminate if an event which the Parties could not reasonably prevent has substantially affected the *Contractor's* work in relation to the relevant obligation to Provide the Service, provide the Task or provide the Core Service (as applicable) for a continuous period of more than thirteen weeks (R29).

91.12 To the extent that the *Client* has a right to terminate any of the *Contractor's* obligations then, as an alternative to termination, the *Client* may by giving notice to the *Contractor* require the *Contractor* to provide part only of the relevant *service* with effect from the date specified in the *Client's* notice whereupon the relevant Scope and Task Order (as applicable) is construed accordingly but the *Contractor* has no entitlement to an increase to any Prices nor to additional time for completion.

Procedures on termination

92

92.1

~~On termination, the *Client* may complete the *service* and may use any Plant and Materials provided by the *Contractor*. The *Contractor* provides to the *Client* information and other things which are in its possession at the time of termination which the Scope states are to be provided at the end of the Service Period (P1).~~

On termination,

- the *Client* may complete the *service* and may use any Plant and Materials provided by the *Contractor* and the *Contractor* provides to the *Client* information and other things which the Scope states the *Contractor* is to provide at the end of the Service Period (P1)
- the *Client* may complete the relevant Task and may use any Plant and Materials provided by the *Contractor* and the *Contractor* provides to the *Client* information and other things which the relevant Task Order states the *Contractor* is to provide on Task Completion (P1A)
- the *Client* may complete the Core Service and may use any Plant and Materials provided by the *Contractor* and the *Contractor* provides to the *Client* information and other things which the Scope states the *Contractor* is to provide at the end of the Service Period (P1B).

On termination the *Contractor* makes available to the *Client* within 14 days all information prepared in relation to the *service* or, where the termination relates to a Task or Tasks only, all information prepared in relation to the relevant Task or Tasks in either electronic or documentary form including all drawings, specifications, reports and any other information held in an agreed format (P1C).

92.2

The procedure on termination also includes one or more of the following as set out in the Termination Table.

P2 The *Client* may instruct the *Contractor* to remove any Equipment, Plant and Materials and assign the benefit of and/or enter into a novation of (in such format as the *Client* may reasonably require) any subcontract or other contract related to performance of the contract to the *Client*.

P2A The *Client* may instruct the *Contractor* to remove any Equipment, Plant and Materials from the relevant Task site and assign the benefit of and/or enter into a novation of (in such format as the *Client* may reasonably require) any subcontract or other contract related to performance of the relevant Task or Tasks to the *Client*.

P3 The *Client* may use any Equipment to which the *Contractor* has title to complete the *service*. The *Contractor* promptly removes the Equipment when the *Service Manager* informs the *Contractor* that the *Client* no longer requires it to complete the *service*.

P3A The *Client* may use any Equipment to which the *Contractor* has title to complete the relevant Task or Tasks. The *Contractor* promptly removes the Equipment when the *Service Manager* notifies him that the *Client* no longer requires it to complete the relevant Task or Tasks.

P4 The *Contractor* leaves the Service Areas to the extent that they relate to this contract and removes the Equipment.

92.3

In the event that the Framework Agreement is terminated but the *Client* elects not to terminate this contract then any provisions of the Framework Agreement which

have application to this contract continue to apply and where necessary the *Client* operates and administers the relevant provisions of the Framework Agreement in place of the Framework Client.

Payment on termination

93

93.1 The amount due on termination includes (A1)

- an amount due assessed as for normal payments,
- the Defined Cost for Plant and Materials which have been delivered and retained by the *Client*,
- other Defined Cost reasonably incurred in expectation of completing the whole of the *service* and
- any amounts retained by the *Client*.

93.1A The amount due on termination includes (A1A)

- an amount due assessed as for normal payments,
- the Defined Cost for Plant and Materials for the relevant Task which have been delivered and retained by the *Client*,
- other Defined Cost reasonably incurred in expectation of completing the relevant Task and
- any amounts retained by the *Client*.

93.1B The amount due on termination includes (A1B)

- an amount due assessed as for normal payments,
- the Defined Cost for Plant and Materials (excluding any Plant and Materials for instructed Tasks) which have been delivered and retained by the *Client*,
- other Defined Cost reasonably incurred in expectation of completing the Core Service and
- any amounts retained by the *Client*.

93.2 The amount due on termination also includes one or more of the following as set out in the Termination Table.

A2 The forecast Defined Cost of removing Equipment.

A2A The forecast Defined Cost of removing the Equipment from the relevant Task site.

A3 deduction of the forecast of the additional cost to the *Client* of completing the whole of the *service*.

A3A A deduction of the forecast of the additional cost to the *Client* of completing the relevant Task or Tasks.

A4 The *fee percentage* or, if Main Option C applies, the *target cost fee percentage* (as applicable) applied to

- for Options A and C, any excess of the total of the Prices at the Contract Date over the Price for Service Provided to Date. ~~or~~
- ~~for Option E, any excess of the first forecast of the Defined Cost for the service over the Price for Service Provided to Date less the Fee.~~

A4A The *fee percentage* or, if Main Option C applies to the Task, the *target cost fee percentage* (as applicable) applied to any excess of the total of the Prices stated in the relevant Task Price List over the Task Price to Date for the relevant Task.

Ineffectiveness and Cessation

94

94.1 In the event that a court makes a Declaration of Ineffectiveness in relation to this contract, the *Client* promptly notifies the *Contractor*. The Parties agree that the provisions of clause 94 apply as from the time when the Declaration of Ineffectiveness is made. Where there is any conflict or discrepancy between the provisions of clauses 90 to 93 and this clause 94 or the Cessation Plan, the provisions of this clause 94 and the Cessation Plan prevail.

- 94.2 The Declaration of Ineffectiveness does not prejudice or affect any right, liability or remedy which has accrued or accrues to either Party prior to or after such Declaration of Ineffectiveness in respect of the period prior to the Declaration of Ineffectiveness, save as otherwise expressly provided to the contrary in this clause 94.
- 94.3 During any court proceedings seeking a Declaration of Ineffectiveness in respect of this contract, the *Client* may require the *Contractor* to prepare a Cessation Plan in accordance with this clause 94.3 by issuing a notice in writing. As from the date of receipt by the *Contractor* of the notification from the *Client*, the Parties (acting reasonably and in good faith) agree or, in the absence of such agreement, the *Client* reasonably determines an appropriate Cessation Plan with the object of achieving
- an orderly and efficient cessation of the *service* or (at the *Client's* request) a transition of the *service* to the *Client* or such other entity as the *Client* may specify and
  - minimal disruption or inconvenience to the *Client* or to road users, in accordance with the provisions of this clause 94 and to give effect to the terms of the Declaration of Ineffectiveness,
- in accordance with the provisions of clauses 94.2 to 94.6 (inclusive) and which the *Contractor* and *Client* agree has effect in the event that a Declaration of Ineffectiveness is made in relation to this contract.
- 94.4 Where there is any conflict or discrepancy between the provisions of clauses 90 to 93 and clauses 94.2 to 94.7 (inclusive) or the Cessation Plan, the provisions of these clauses 94.2 to 94.7 (inclusive) and the Cessation Plan prevail.
- 94.5 The *Contractor* and the *Client* comply with their respective obligations under the Cessation Plan (as agreed by the *Contractor* and the *Client* or, where agreement cannot be reached, as reasonably determined by the *Client*) in the event that a Declaration of Ineffectiveness is made in respect of this contract.
- 94.6 The *Client* pays the *Contractor's* reasonable costs in assisting the *Client* in preparing, agreeing and complying with the Cessation Plan. Such costs are based on any comparable costs or charges agreed as part of this contract or as otherwise reasonably determined by the *Client*. Provided that the *Client* is not liable to the *Contractor* for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of the *Contractor's* obligation to Provide the Service or this contract pursuant to this clause 94.
- 94.7 The provisions of this clause 94 (and applicable definitions) survive any termination of this contract following a Declaration of Ineffectiveness.

## 10. ADDITIONAL CONDITIONS OF CONTRACT

### Warranties

#### 100

- 100.1 The *Contractor*, within fourteen (14) days of the *Service Manager's* request, provides to the *Client* collateral warranties executed as deeds in the forms attached at Schedule 11 to the Framework Agreement in favour of
- any London Borough notified to the *Contractor*,
  - the GLA,
  - the London Legacy Development Corporation,
  - the Mayor's Office for Policing and Crime,
  - the London Fire Commissioner,
  - the Old Oak and Park Royal Development Corporation,
  - any person or institution providing finance in connection with or secured upon the service or any Task or any part of them,
  - any other person with an interest in the *service* or any Task, or providing works or services in connection with the *service* or any Task, notified to the *Contractor*.
- 100.2 The *Contractor*, within fourteen (14) days of the *Service Manager's* request, procures that the "Principal Subcontractors" enter into collateral warranties executed as deeds in the forms attached at Schedule 12 to the Framework Agreement, with such amendments as the *Client* may agree (acting reasonably), in favour of
- the *Client*,
  - any London Borough notified to the *Contractor*,
  - the GLA,
  - the London Legacy Development Corporation,
  - the Mayor's Office for Policing and Crime,
  - the London Fire Commissioner,
  - the Old Oak and Park Royal Development Corporation,
  - any person or institution providing finance in connection with or secured upon the *service* or any Task or any part of them,
  - any other person with an interest in the *service* or any Task, or providing works or services in connection with the *service* or any Task, notified to the *Contractor*
- and "the Principal Subcontractors" means all Subcontractors with a design responsibility (including those responsible for the selection of goods and materials and the supply of proprietary products and systems) and such other Subcontractors as the *Client* may from time to time by notice in writing to the *Contractor* specify as being Principal Subcontractors.
- 100.3 The *Client* specifies at the appropriate time which form of warranty is appropriate for each particular recipient. Where the terms of a collateral warranty grant the recipient a right to stand as substitute for the *Client*, then as between the *Contractor* and the *Client*, upon such recipient of the collateral warranty serving the requisite notice, the *Contractor* treats the said recipient as standing in substitution for the *Client* and the *Client* raises no objection to such substitution. Without prejudice to the obligations of the *Contractor* to the *Client* and to the rights of the *Client*:
- in the case of warranties requested under clause 100.1, the *Client* is not obliged to make any payment to the *Contractor* if (and for so long as) the *Contractor* fails within the time limit specified in clause 100.1 above to deliver the requested warranty or warranties duly executed and/or
  - in the case of warranties requested under clause 100.2, one hundred per cent (100%) of the amount due relative to the work and/or services carried out and/or goods supplied by the relevant Principal Subcontractor is retained in all

assessments of the amount due until the *Contractor* has procured execution and delivery such deed(s) of warranty to the *Client*,

provided always that the *Client* notifies the *Contractor* of the identity of the relevant beneficiaries.

**Client's Business**

**101**

101.1 The *Contractor* acknowledges that it

- has sufficient information about the *Client* and the *service*, and
- is aware of the *Client's* processes and business and
- has made all appropriate and necessary enquiries to enable it to Provide the Service in accordance with this contract, and
- is aware of the purposes for which the *service* is required, and

is neither entitled to any additional payment nor excused from any obligation or liability under this contract due to any misinterpretation or misunderstanding by it of any fact relating to the *service*.

**TUPE**

**102**

102.1 The *Contractor* complies with the provisions of Appendix 2 to this contract.

**Use of and Access to Premises**

**103**

103.1 The *Contractor* does not carry out any works at any premises owned or occupied by the *Client* (including any premises leased by the *Client* to the *Contractor* for the purposes of this contract) other than the *service* or acts incidental to the *service* without the prior written consent of the *Client* which may be withheld at its absolute discretion, provided that this clause 103.1 does not apply to any premises leased to the *Contractor* pursuant to the Agreement for Lease and Lease.

103.2 Any Client Premises made available to the *Contractor* in connection with this contract are free of charge and are used by the *Contractor* solely so the *Contractor* can Provide the Service provided, for the avoidance of doubt, that the *Contractor* is responsible for its own costs of travel including any congestion charging and/or low emission charging. The *Contractor*

- has the use of such Client Premises as licensee and does not have or purport to claim any sole or exclusive right to possession or to possession of any particular part of such Client Premises,
- vacates such Client Premises upon the termination or expiry of the contract or at such earlier date as the *Client* may determine,
- does not exercise or purport to exercise any rights in respect of any Client Premises in excess of those granted under this clause 103.2,
- ensures that the *Contractor's* employees, Subcontractors and Indirect Subcontractors and persons connected to them carry any identity passes issued to them by the *Client* at all relevant times and complies with the *Client's* security procedures as may be notified by the *Client* from time to time, and
- does not damage the Client Premises or any assets on the Client Premises.

103.3 Nothing in this clause 103 creates or is deemed to create the relationship of landlord and tenant in respect of any Client Premises between the *Contractor* and the *Client* or any member of the *Client's* group.

103.4 The *Client* is under no obligation to provide office or other accommodation facilities or services (including telephony and IT services) to the *Contractor* except as may be specified in the Scope.

103.5 The *Client* is responsible for maintaining the security of Client Premises in accordance with its standard security requirements. The *Contractor* complies with all of the *Client's* security requirements while on Client Premises, and ensures that all of the *Contractor's* employees, Subcontractors, Indirect Subcontractors and persons related to them comply with such requirements. Upon request, the *Client* provides the *Contractor* with details of the *Client's* security procedures.

- 103.6 The *Contractor* issues to its staff who have access to any relevant Client Premises security passes in such form as the *Client* may require.
- 103.7 The *Contractor* is responsible for the safekeeping of any keys, passes and any other means of access provided by the *Client* and only permits them to be given to the staff whose names and addresses have been supplied to the *Client* and then only to the extent required for the purposes of the contract. The *Contractor* ensures that the *Client* is informed immediately of the loss of any keys or passes and other means of access and pays the costs of replacement and/or any reasonable additional security measures implemented as a result of such loss.
- 103.8 The *Client* reserves the right under this contract to refuse to admit to any Client Premises any of the *Contractor's* employees, Subcontractors, Indirect Subcontractors and persons related to them who fail to comply with any of the *Client's* policies and standards referred to in this contract.
- 103.9 The *Client* reserves the right under this contract to instruct any of the *Contractor's* employees, Subcontractors, Indirect Subcontractors and persons related to them to leave any Client Premises at any time for any reason and such personnel comply with such instructions immediately.
- 103.10 Where the *Contractor* is required to access (with appropriate permission and approval of the *Client*) any areas under the control of any of the *Client's* PPP or PFI contractors, the *Contractor* must comply (and ensure that any Subcontractors and Indirect Subcontractors comply) with all of their rules, regulations and standards as appropriate.

#### **Conflict of Interest**

#### **104**

- 104.1 The *Contractor* acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the provision of the *service* or any member of the *Client's* group, save to the extent fully disclosed to and approved in writing by the *Client*.
- 104.2 The *Contractor* undertakes ongoing and regular conflict of interest checks throughout the duration of this contract and in any event not less than once in every six months and notifies the *Client* in writing immediately on becoming aware of any actual or potential conflict of interest with the provision of the *service* under this contract or any member of the *Client's* group and shall work with the *Client* to do whatever is necessary (including the separation of staff working on, and data relating to, the *service* from the matter in question) to manage such conflict to the *Client's* satisfaction, provided that, where the *Client* is not so satisfied (in its absolute discretion) it shall be entitled to terminate the contract.

#### **Compliance with Policies**

#### **105**

- 105.1 The *Contractor* notifies its personnel Subcontractors and Indirect Subcontractors and the *Client* of any health and safety hazards that exist or that may arise in connection with the provision of the *service* of which the *Contractor* is aware or ought reasonably to be aware.
- 105.2 The *Contractor* undertakes that all its personnel and those of its Subcontractors and Indirect Subcontractors comply with all of the *Client's* policies and standards that are relevant to the provision of the *service*, including those relating to safety, security, business ethics, responsible procurement, work place harassment, drugs and alcohol and illegal substances and any other on site regulations specified by the *Client* for personnel working at Client Premises or accessing the *Client's* computer systems. The *Client* provides the *Contractor* with copies of such policies on request.
- 105.3 The *Contractor* shall as it Provides the Service (while taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (insofar as the *Contractor's* activities may impact on the environment) to the need to
- preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment,

## Records, Audit and Inspection

### 106

- enhance the environment and have regard to the desirability of achieving sustainable development,
  - conserve and safeguard flora, fauna and geological or physiological features of special interest, and
  - sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.
- 106.1 In this clause 106
- “Records” means
- all necessary information for the evaluation of claims or compensation events, whether or not relating to Subcontractors and/or Indirect Subcontractors,
  - management accounts, information from management information systems and any other management records,
  - accounting records (in hard copy as well as computer readable data),
  - sub-contract files (including proposals of successful and unsuccessful bidders, bids, rebids, etc.),
  - original estimates,
  - estimating worksheets,
  - correspondence,
  - compensation event files (including documentation covering negotiated settlements),
  - schedules including capital works costs, timetable and progress reports,
  - general ledger entries detailing cash and trade discounts and rebates,
  - commitments (agreements and leases) greater than £5,000 (five thousand pounds),
  - detailed inspection records,
  - such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, in each case which have not already been provided to the *Client*, and
  - accounts and records of the Price for Service Provided to Date, the Task Price to Date and all other amounts to be paid to the *Contractor* under this contract.
- 106.2 The *Contractor* maintains and procures in each subcontract that each of its Subcontractors, maintains and retains the Records for a minimum of 6 years from the end of the Service Period with respect to all matters for which the *Contractor* and its Subcontractors and Indirect Subcontractors are responsible under this contract. The *Contractor* procures that each subcontract contains open-book audit rights in favour of the *Client* and any novated *Client* and their authorised representatives.
- 106.3 The *Contractor* undertakes and procures that its Subcontractors and Indirect Subcontractors undertake their obligations and exercise any rights which relate to the performance of this contract on an open-book basis. The *Client* and/or any novated *Client* and their authorised representatives may from time to time audit on an open-book basis and check any and all information regarding any matter relating to the performance of or compliance with this contract, including without limitation, inspection of the *Contractor's* technical and organisational security measures for the protection of personal data, any aspect of the *Contractor's* operations, costs and expenses, sub-contracts, claims related to compensation events, and financial arrangements or any document referred to therein or relating thereto. The *Client's* and any novated *Client's* rights pursuant to this sub-clause include the right to audit and check and to take extracts from any document or record of the *Contractor* and/or its Subcontractors and Indirect Subcontractors including, without limitation, the Records.

- 106.4 The *Contractor* promptly provides (and procures that its Subcontractors and Indirect Subcontractors promptly provide) all reasonable co-operation in relation to any audit (including any audit under Appendix 7) or check including, to the extent reasonably possible in each particular circumstance by
- granting or procuring the grant of access to any premises used in the *Contractor's* performance of this contract, whether the *Contractor's* own premises or otherwise,
  - granting or procuring the grant of access to any equipment or system (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of this contract, wherever situated and whether the *Contractor's* own equipment or otherwise,
  - making any contracts and other documents and records required to be maintained under this contract (whether exclusively or non-exclusively) available for audit and inspection,
  - providing a reasonable number of copies of any subcontracts and other documents or records reasonably required by the *Client's* and/or any novated *Client's* auditor and/or granting copying facilities to the *Client's* and/or any novated *Client's* auditor for the purposes of making such copies, and
  - complying with the *Client's* and/or any novated *Client's* reasonable requests for access to senior personnel engaged by the Contractor in the performance of this contract and/or the *service*.

**Corrupt Gifts,  
Fraud and the  
Payment of  
Commission**

**107**

- 107.1 If a breach of clause 16 (corrupt gifts) of the Framework Agreement is committed by an employee of the *Contractor* or by any Subcontractor (or employee or agent of such Subcontractor) then the *Client* may (at its sole discretion) choose to serve a warning notice upon the Contractor instead of exercising its right to terminate with immediate effect and unless, within 30 days of receipt of such warning notice, the *Contractor* terminates, or procures the termination of, the employee's employment or Subcontractor's appointment (as the case may be) and (if necessary) procures the provision of the affected *service* by another person, this constitutes a material breach of this contract and entitles the *Client* to terminate this contract with immediate effect in accordance with clause 91.
- 107.2 In the event of any breach of clause 16 (corrupt gifts) of the Framework Agreement by the *Contractor* the *Client* recovers from the *Contractor* any loss liability or damage incurred or suffered as a result of the breach of such clause by the *Contractor*.

**Quality Statement**

**108**

- 108.1 The *quality statement* sets out the *Contractor's* proposals for the management and resourcing of the *service*.
- 108.2 The *Contractor* warrants that the representations contained in the *quality statement* section of its tender are accurate in every respect and may be fully relied upon by the *Client*, including where the standards represented exceed the minimum originally specified by the *Client*.
- 108.3 Should any discrepancy arise between the *quality statement* and other contract documents the Scope takes precedence except where the *quality statement* includes a standard which exceeds that specified in the other contract documents, in which case the *quality statement* takes precedence over those other documents.

**Responsibility for  
Statutory  
Undertakers and  
special  
requirements of  
statutory and other  
bodies**

**109**

109.1 The *Contractor* on behalf of the *Client*

- identifies those measures which need to be taken as a consequence of or in order to facilitate the *service* with any Statutory Undertaker,
- agrees a specification for the measures which need to be taken and determines by whom those measures are to be taken with the Statutory Undertaker,
- co-ordinates the taking of those measures and the execution of the *service* with the Statutory Undertaker,

and the *Client* as the *Contractor's* principal pays the Statutory Undertaker's allowable costs in respect of these measures.

The *Contractor* indemnifies and keeps indemnified the *Client* against

- all claims demands actions and proceedings,
- costs charges and expenses,
- loss or damage to any property

which may be brought or made by any Statutory Undertaker in connection with any agreement between the *Client* and the Statutory Undertaker including but not limited to the negligence or default of the *Contractor*.

109.2 The *Contractor* allows in any plan or programme required under this contract, any notice period required by a Statutory Undertaker in relation to any matter which is the subject of clause 109.1 and for all periods required in the taking of measures which are the subject of clause 109.1.

109.3 The *Contractor*

- complies at its own cost with all special requirements of statutory undertakers and other bodies as set out in the Scope,
- is not excused from the performance of any its obligations under the contract and is not entitled to any allowance of time or to any additional remuneration or compensation in consequence of the requirement to comply with this clause 109.3,
- acknowledges and agrees that the *Client* does not warrant and has not warranted the accuracy or completeness of any data or information which has been or will be provided to the *Contractor* by the *Client*, *Service Manager* or others relating to the location, size, nature or condition of services in, on, over or under the Affected Property or in the vicinity of the Affected Property,
- further acknowledges and agrees that it neither has nor will have any claim of any kind whatsoever against the *Client* founded upon the accuracy or completeness of any such data or information.

**Nuisance**

**110**

110.2 The *Contractor* at all times prevents any public or private nuisance (including, without limitation, any such nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on the public highway) or other interference with the rights of any adjoining or neighbouring landowner, tenant or occupier or any Statutory Undertaker arising out of the carrying out of the *service* or of any obligation under clause 43 and assists the *Client* in defending any action or proceedings which may be instituted in relation to the same. The *Contractor* is responsible for and indemnifies the *Client* from and against any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from any such nuisance or interference, except only where such nuisance or interference is the consequence of an instruction of the *Client*.

110.2 Without prejudice to the *Contractor's* obligations under clause 110.1, the *Contractor* ensures that there is no trespass on or over any adjoining or neighbouring property arising out of the *service* or of any obligation under clause 43. If the carrying out of the *service* or of any obligation under clause 43 is likely to necessitate any interference (including, without limitation, the oversailing of tower crane jibs) with the rights of adjoining or neighbouring owners or occupiers, then the *Contractor*, at no cost to the *Client*, obtains the prior written agreement of such owners and/or

occupiers to the work, and such agreement will be subject to the approval of the *Client* before execution. The *Contractor* complies in every respect with any conditions in any such agreement.

**Construction Industry Scheme**

**111**

111.1 Where the Construction Industry Scheme applies to any payment to be made by the *Client* to the *Contractor* under this contract, the obligations of the *Client* to make such payment will be subject to the provisions of the Construction Industry Scheme. Unless and until HM Revenue and Customs confirms to the *Client* that the *Client* can make any payment to the *Contractor* without any tax deduction, the *Client* deducts any tax from payments due to the *Contractor* under this contract at the rate specified by HM Revenue and Customs pursuant to the Construction Industry Scheme before paying the balance to the *Contractor*. The *Client* accounts to HM Revenue and Customs for any tax so deducted.

**Use of Existing Services**

**112**

112.1 The *Client* does not warrant the suitability or availability of installations and services for the *Contractor's* use and the *Contractor* shall take measures to supplement them as necessary.

**Volume Rebate**

**113**

113.1 The *Contractor* notifies the *Service Manager* of the amount of the Volume Rebate within 5 days of calculation of such amount under clause 7 of the Framework Agreement.

113.2 Following notification pursuant to clause 113.1 the *Client* may:

- issue an invoice to the *Contractor* for the Volume Rebate and the *Contractor* pays the relevant Volume Rebate to the *Client* within 30 days of receipt of such invoice or
- request that the *Contractor* provides a credit against future sums payable by the *Client* in the amount of the Volume Rebate and any such credit is applied in accordance with the instructions of the *Client*.

**Performance Monitoring, Management and Low Service Damages**

**114**

114.1 The Parties comply with Appendix 7.

**Lane Rental**

**115**

115.1 The *Contractor* complies with the Client Lane Rental Scheme.

115.2 Prior to any works or services being instructed or carried out, the *Contractor* informs the *Client* if, in their opinion, the works or services being developed or instructed are likely to incur Unavoidable Lane Rental Charges.

115.3 The *Contractor* does not include any sums for lane rental charges within any estimates, prices or quotations for works or services instructed by or carried out for the *Client*.

115.4 The *Contractor* pays all Avoidable Lane Rental Charges as determined by the *Client* at the rate stated in the Client Lane Rental Scheme for each Lane Rental Road Segment or Pinchpoint which he occupies during lane rental times.

115.5 The *Client* sends to the contractor a summary of any lane rental charges incurred by the *Contractor* during the course of Providing the Service. The *Contractor* within fourteen days of being sent the summary either accepts liability for the charges or submits a challenge explaining why, in their opinion, they are not liable for all or some of the charges.

- 115.6 The *Client* investigates the challenge submitted by the *Contractor* and make a determination of liability. Those lane rental charges that the *Client* determines were Unavoidable Lane Rental Charges by the *Contractor* become the liability of the *Client*. Those lane rental charges that the *Client* determines to be Avoidable Lane Rental Charges become the liability of the *Contractor*. The *Client* notifies the *Contractor* of the outcome of the investigation.
- 115.7 If the *Contractor* has not replied within fourteen days of the date of notification of the lane rental charge summary, the *Client* sends a reminder. If the *Contractor* has not responded within fourteen days of the date of the reminder of the summary of lane rental charges, the *Contractor* is deemed to have accepted liability for all of the charges referred to within that summary.
- 115.8 Those lane rental charges that are determined to be the liability of the *Contractor* will be recovered from the *Contractor's* application for payment.

**Fixed Penalty Notices**

**116**

- 116.1 Save where stated otherwise in the Scope, the *Contractor* will be responsible for meeting the cost of any fixed penalty charges attributable to its operations resulting in the occupation of road space while not being covered by a valid permit, or failure to meet the conditions of a permit, or through any administrative failures including, but not limited to, failures to submit notifications within the required timescales, or failure to include accurate information within such notifications.

**Sustainable Timber**

**117**

- 117.1 For the purposes of this clause unless the context indicates otherwise, the following expressions have the following meanings:

“**Legal Timber**” means Timber in respect of which the organisation that felled the trees and/or provided the Timber from which the wood supplied under the contract derived

- had legal rights to use the forest,
- holds a register of all local and national laws and codes of practice relevant to forest operations, and
- complied with all relevant local and national laws and codes of practice including environmental, labour and health and safety laws and paid all relevant royalties and taxes.
- “**Recycled Timber**” and “**Reclaimed Timber**” Means recovered wood that has been reclaimed or re-used and that has been in previous use and is no longer used for the purpose for which the trees from which it derives were originally felled. The terms ‘recycled’ and ‘reclaimed’ are interchangeable and include, but are not limited to the following categories: pre-consumer recycled wood and wood fibre or industrial by-products but excluding sawmill co-products (sawmill co-products are deemed to fall within the category of Virgin Timber), post-consumer recycled wood and wood fibre and drift wood. recycled or reclaimed Timber must be capable of being evidenced as such to the *Client's* satisfaction in order to satisfy this definition.

“**Sustainable Timber**” means Timber, which in order to meet the *Client's* criteria for sustainable timber, must be

- Recycled Timber, or
- Sustainably Sourced Timber, or
- a combination of the above two bullet points.

“**Sustainably Sourced Timber**” means Timber sourced from organisational, production and process methods that minimise harm to ecosystems, sustain forest productivity, ensure that both forest ecosystem health and vitality, and forest biodiversity is maintained. In order to satisfy this definition, Timber must be accredited to meet the Forest Stewardship Council (FSC) or equivalent. Where it is

not practicable to use Forest Stewardship Council (FSC) standard accredited timber, the *Client* will accept Timber accredited through other schemes approved by the Central Point of Expertise on Timber (CPET), as listed below:

- Canadian Standards Association (CSA),
- Programme for the Endorsement of Forest Certification (PEFC), or
- Sustainable Forestry Initiative (SFI),

or such other source as the Contractor may demonstrate to the *Client's* satisfaction is equivalent.

“**Timber**” means wood from trees that have been felled for that purpose, but excludes any item where the manufacturing processes applied to it has obscured the wood element, (by way of example only, paper would not be treated as timber). Where the term Timber is used as a generic term it includes both Virgin Timber and Recycled Timber.

“**Virgin Timber**” means Timber supplied or used in performance of this contract that is not Recycled Timber.

“Independent Report” means an independent report by an individual or body:

- whose organisation, systems and procedures conform to,
  - ISO Guide 65:1996 (EN 45011:1998), and
  - general requirements for bodies operating product certification systems, and
- who is accredited to audit against forest management standards by a national or international body whose organisation, systems and procedures conform to ISO Guide 61 General Requirements for Assessment and Accreditation of Certification Bodies.

117.2

- (a) The *Contractor* ensures that all Timber supplied or used in the performance of this contract is Sustainable Timber. If it is not practicable for the *Contractor* to meet this condition the *Contractor* must inform the *Client* in writing prior to the supply of any Timber that is not Sustainable Timber, and stating the reason for the inability to comply with this condition. The *Client* reserves the right, in its absolute discretion, to approve the use of Timber that is not Sustainable Timber. Alternatively the *Client* has the right to reject the proposed Timber. Where the *Client* exercises its right to reject any Timber, the provisions of clause 117.2(d) shall apply.
- (b) Without prejudice to clauses 117.2.(a), 117.4(b) and 117.4(c), all Virgin Timber procured by the *Contractor* for supply or use in performance of the contract is Legal Timber.
- (c) The *Contractor* ensures that Virgin Timber it procures for supply or use in performance of the contract shall not have derived from any species of tree that is protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) unless the supplier can prove, by producing official documentation, that he has complied with the CITES requirements that permit trading in the particular species of tree so listed under that Convention.
- (d) The *Client* reserves the right to reject at any time any Timber that does not comply with the conditions of contract or the Scope. Where the *Client* exercises its right to reject any Timber, the *Contractor* supplies contractually compliant alternative Timber, at no additional cost to the *Client* and without causing delay to the performance of this contract.
- (e) The *Contractor* maintains records of all Timber supplied and used in the performance of the contract. Such information is made available to the *Client* promptly if requested at any time.

117.3

- (a) Unless the *Client* has given its written approval in accordance with clause 117.2.(a) that Timber that is not Sustainable Timber may be used, then, if requested, the *Contractor* shall promptly provide evidence to the *Client's* satisfaction that the Timber is Sustainable Timber.

- (b) Upon a request by the *Client* referred to in clause 117.3.(a), in the event that the *Contractor* does not promptly provide such evidence, or the evidence provided does not satisfy the *Client's* requirements, then (and without prejudice to clause 117.4.(a)), the *Client* reserves the right to retain 25% of any monies payable to the *Contractor* under this contract until such date as the *Client* is in receipt of such evidence and the *Client* is satisfied that the evidence establishes that the Timber is Sustainable Timber.
  - (c) The *Contractor* reports annually on its use of Sustainable Timber in the performance of this contract, in the form set out in the Scope.
  - (d) The *Contractor* reports on the amount of Timber that has been supplied to the *Client* in accordance with clause 117.2.(a) which is not Sustainable Timber.
- 117.4
- (a) The *Client* reserves the right to determine whether the evidence supplied by the *Contractor* is sufficient to satisfy it that the Scope and the contract have been fully complied with. In the event that the *Client* is not so satisfied, the *Contractor* shall, on written request by the *Client*, commission and meet the costs of an Independent Report to
    - verify the source of the Timber, and
    - assess whether the forests of origin were managed in accordance with the specified local laws and regulations.
  - (b) The *Contractor*, before delivering any Virgin Timber under this contract, obtains documentary evidence to the *Client's* satisfaction that the Timber is both Legal and Sustainable Timber. If requested in writing by the *Client*, the *Contractor* submits such documentary evidence to the *Client* either prior to delivery or at such other times as the *Client* may require. For the avoidance of doubt, the *Contractor* identifies, as part of the evidence submitted, a chain of custody from the source of the Timber through to delivery of the final product.
  - (c) The *Client* reserves the right at any time during the execution of the contract and for a period of 6 years from final delivery of any Timber under this contract to require the *Contractor* to produce the evidence required for the *Client's* inspection within 14 days of the *Client's* written request.

**Mobilisation and Demobilisation Audits**

**118**

- 118.1 If instructed by the *Client*, an independent audit team will carry out an audit of the *Contractor's* progress against the Mobilisation Plan half way between the date of this contract and the *starting date*. If such audit concludes that the *Contractor* is not achieving the Mobilisation Plan then the *Contractor* will be required to develop and agree an Action Plan with the *Client* demonstrating how the *Contractor* will have achieved the Mobilisation Plan by the *starting date*.
- 118.2 If at any time following this audit or implementation of an associated Action Plan the *Client* believes that the *Contractor* will not be able to commence Providing the Service other than in respect of any already instructed Task on the *starting date*, then the *Client* may delay the *starting date*.
- 118.3 The *Contractor* shall be fully responsible for all its own costs resulting from any delay to the *starting date* and will reimburse the *Client* for the costs that the *Client* has directly or indirectly incurred as a result of any delays to the commencement of the *service*.
- 118.4 A delay to the *starting date* as a result of the *Contractor's* failure to successfully implement the Mobilisation Plan is treated as a substantial failure to comply with its obligations by the *Contractor* for the purposes of clause 91.2.
- 118.5 Within the last year of the Service Period a de-mobilisation audit will be conducted to review the status of contract compliance and delivery of requirements ready for handover to a new contract. This will be fully specified by the *Client* within the first six months of the last year of the Service Period.

|   |   |
|---|---|
| <b>Depot Facilities</b>                                   | <b>119</b>  |
|   | 119.1 The <i>Client</i> and the <i>Contractor</i> agree to enter into the Agreement for Lease on the Contract Date.   |
|   | <b>120</b> Not used   |
| <b>Objects and materials within the Affected Property</b> | <b>121</b>  |
|   | 121.1 The <i>Contractor</i> has no title to an object of value or of historical or other interest within the Affected Property. The <i>Contractor</i> notifies the <i>Service Manager</i> when such an object is found and the <i>Service Manager</i> instructs the <i>Contractor</i> how to deal with it. The <i>Contractor</i> does not move the object without instructions.   |
| <b>Data Protection</b>                                    | <b>122</b>  |
|   | 122.1 The <i>Contractor</i> complies at all times with all of its obligations under Appendix 8 of this contract.  |
| <b>Criminal Record Declarations</b>                       | <b>123</b>  |
|   | 123.1 In this Clause 123:<br><br><p><b>“Relevant Individual”</b> means any member of the Contractor’s Personnel engaged in any aspect of the provision of the <i>service</i> and requiring potentially the access to the <i>Client</i> Premises and</p> <p><b>“Relevant Conviction”</b> means any unspent criminal conviction relating to actual or potential acts of terrorism or acts which threaten national security.</p>   |
|   | 123.2 The <i>Contractor</i> procures from a Relevant Individual a declaration that they have no Relevant Convictions ( <b>“Declaration”</b> ) or disclosure of any Relevant Convictions they have committed. A Declaration is procured prior to any Relevant Individual being engaged in any aspect of the provision of the <i>service</i> . The <i>Contractor</i> confirms to the <i>Client</i> in writing on request and in any event not less than once in every year that each Relevant Individual has provided a Declaration. The <i>Contractor</i> procures that a Relevant Individual notifies the <i>Contractor</i> immediately if they commit a Relevant Conviction throughout the duration of this contract and the <i>Contractor</i> notifies the <i>Client</i> in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction. |
|   | 123.3 The <i>Contractor</i> is not permitted to engage or allow the engagement of any Relevant Individual any person in any aspect of the provision of the <i>service</i> any Relevant Individual who has disclosed a Relevant Conviction.  |
|   | 123.4 The <i>Client</i> may in accordance with the audit rights set out in Clause 106 audit and check any and all such records as are necessary in order to monitor compliance with this Clause 123 at any time during performance of this contract.  |
|   | 123.5 If the <i>Contractor</i> fails to comply with the requirements under Clauses 123.2 and/or 123.3, the <i>Client</i> may, without prejudice to its rights under Clause 91.8, serve notice on the <i>Contractor</i> requiring the <i>Contractor</i> to immediately remove or procure the removal of any Relevant Individual who has not provided a Declaration from the <i>Client</i> Premises with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the provision of the <i>service</i> unless (in the case of non-compliance with Clause 123.2) within 7 days of receipt of the notice the <i>Contractor</i> confirms to the <i>Client</i> that all of the Declarations required under Clause 123.2 have been procured.   |
|   | 123.6 A persistent breach of either or both of Clause 123.2 or 123.3 by the <i>Contractor</i> constitutes a material breach of this contract which is not capable of remedy and entitles the <i>Client</i> to terminate the contract in whole or in part with immediate effect in accordance with Clause 91.8.  |
|   | 123.7 If either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the <i>Contractor</i> removes or procures the removal of any Relevant   |

Individual who has not provided a Declaration from *Client* Premises with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the provision of the *service*.

123.8 Nothing in this Clause 123 in any way waives, limits or amends any obligation of the *Contractor* to the *Client* arising under this contract and the *Contractor's* obligation to Provide the Service remains in full force and effect and the *Contractor* cannot claim any extra costs or time as a result of any actions under this Clause 123.

#### Crime and Disorder Act 1998

124

124.1 The *Contractor* acknowledges that the *Client* is under a duty in accordance with Section 17 of the Crime and Disorder Act 1998:

- to have due regard to the impact of crime, disorder and community safety in the exercise of the *Client's* duties;
- where appropriate, to identify actions to reduce levels of crime and disorder; and
- without prejudice to any other obligation imposed on the *Client*, to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area,

and in the performance of this contract, the *Contractor* will assist and co-operate with the *Client*, and will use reasonable endeavours to procure that its Subcontractors and Indirect Subcontractors observe these duties and assists and co-operates with the *Client* where possible to enable the *Client* to satisfy its duty.

#### Modern Slavery Act

125

125.1 For the purposes of this clause unless the context indicates otherwise, the following expressions have the following meanings:

**Anti-Slavery Policy** means a policy implemented by the *Contractor* which sets out the procedures the *Contractor* has put in place to comply with section 54 of the Modern Slavery Act 2015 and any guidance issued by the Secretary of State under section 54 of that Act.

**Certified Ethical Labour Provider** means a labour provider who meets the qualifying requirements of a Certified Ethical Labour Scheme and who is verified and/or certified (as the case may be), at or within six months (or such longer period as the *Client* may agree, acting reasonably) of the *starting date* and thereafter as required pursuant to the terms of the relevant Certified Ethical Labour Scheme in order to maintain or renew the validity of the verification and/or certification (as the case may be), by a competent and independent third party as meeting such qualifying requirements.

**Certified Ethical Labour Scheme** means any of the following

- the BRE Ethical Labour Sourcing standard BES 6002 ("**BRE Standard**"),
- the Clearview Global Labour Provider Certification Scheme ("**Clearview Scheme**"), or
- an alternative standard or scheme which, in the reasonable opinion of the *Client*, is an acceptable substitute to the BRE Standard or Clearview Scheme ("**Alternative Labour Scheme**").

and references to the BRE Standard, Clearview Scheme and Alternative Labour Scheme are to such standard or schemes as updated from time to time.

125.2 In performing his obligations under this contract, the *Contractor*

- complies with the Anti-Slavery Policy,
- complies, and procures that his Subcontractors and Indirect Subcontractors comply, with the Modern Slavery Act 2015, and
- unless otherwise agreed in writing by the *Client* (at the *Client's* sole and absolute discretion), only procures, and ensures that his Subcontractors

and Indirect Subcontractors only procure, labour from a Certified Ethical Labour Provider.

Where the *Contractor*, a Subcontractor or Indirect Subcontractor is procuring labour from a Certified Ethical Labour Provider in accordance with the Clearview Scheme (or any Alternative Labour Scheme in respect of which audit reports are prepared), the resulting audit reports shall be made available to the *Client* (at no additional cost) through the Supplier Ethical Data Exchange (Sedex) platform or such other equivalent platform as the *Client* in its sole and absolute discretion may approve.

- 125.3 On each 12 month anniversary of the *starting date*, until the end of the Service Period or where any Task has not been completed by the end of the Service Period the later of the last Task Completion or (where relevant) issue of the last Task Defect Certificate, the *Contractor* shall submit a report to the *Client* which confirms that all labour used to Provide the Service has been procured from a Certified Ethical Labour Provider and includes such evidence as the *Client* may reasonably require to evidence compliance.
- 125.4 A failure by the *Contractor* to comply with his obligations under Clause 125.1 to 125.3 constitutes a substantial failure by the *Contractor* to comply with his obligations for the purpose of Clause 91.2 of this contract.
- 125.5 The *Client* may refuse any labourer employed or engaged by the *Contractor*, a Subcontractor or Indirect Subcontractor entry onto any property that is owned, occupied or managed by the *Client* if that labourer has not been procured from a Certified Ethical Labour Provider or if the *Client* has reasonable grounds to suspect that such employee or agent has not been procured from a Certified Ethical Labour Provider. Any losses arising from such refusal of entry shall not constitute a compensation event.

# Main Option Clauses

Where the Contract Data or Task Data indicates that Main Option A applies, the following additional amended core clauses form part of the contract and apply in addition to the amended core clauses above.

## OPTION A: PRICED CONTRACT WITH PRICE LIST

|   |      |  |
|---|------|--|
| Identified and defined terms                            | 11   |  |
|   | 11.2 | (22) Defined Cost is the cost of the components in the Short Schedule of Cost Components <b>attached at Schedule 16 of the Framework Agreement.</b>  |
|   |      | (25) The Price for Service Provided to Date is the total of <b>the following in respect of the Core Service</b>  |
|   |      | <ul style="list-style-type: none"> <li>the Price for each lump sum item in the <b>accepted Annual Price List</b> which the <i>Contractor</i> has completed <b>in accordance with this contract and the Accepted Plan</b> and</li> <li>where a quantity is stated for an item in the <b>accepted Annual Price List</b>, an amount calculated by multiplying the quantity which the <i>Contractor</i> has completed <b>in accordance with this contract and the Accepted Plan</b> by the rate <b>but not exceeding any stated cap in the accepted Annual Price List for the relevant item.</b></li> </ul>  |
|   |      | Completed work is work without notified <b>Scope</b> Defects <del>the correction of which will delay the work of the Contractor, the Client or Others.</del>   |
|   |      | (27) The People Rates are the <i>people rates</i> unless later changed in accordance with the contract.  |
|   |      | <b>(27A) The Task Price to Date is the total of the following in respect of each instructed Task</b>   |
|   |      | <ul style="list-style-type: none"> <li><b>the Price for each lump sum item in the Task Price List which the Contractor has completed in accordance with this contract and</b></li> <li><b>where a quantity is stated for an item in the Task Price List, an amount calculated by multiplying the quantity which the Contractor has completed in accordance with this contract by the rate but not exceeding any stated cap in the Task Price List for the relevant item.</b></li> </ul>  |
|   |      | <del>(28) [Note: incorporated above] The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate.</del>   |
|   |      | <b>(28A) Annual Price List is the price list for the Core Service accepted or determined pursuant to clause 55 unless later changed in accordance with the contract.</b>   |
| The Contractor's plan                                   | 31   |  |
|   | 31.4 | The <i>Contractor</i> provides information which shows how each item description on <del>the each</del> <ul style="list-style-type: none"> <li><b>Annual Price List</b> relates to the operations on the plan and</li> <li><b>Task Price List</b> relates to the operations on each Task Order programme submitted for acceptance.</li> </ul>  |
| The Price List, Task Price Lists and Annual Price Lists | 55   |  |
|   | 55.1 | Information in the Price List <b>and each Annual Price List</b> is not Scope. <b>Information in a Task Price List is not Scope or Task Scope.</b>  |
|   | 55.2 | If the <i>Contractor</i> changes a planned method of working at its discretion so that the item descriptions on the <del>Price List</del> <b>accepted Annual Price List</b> do not relate to the operations on the Accepted Plan the <i>Contractor</i> submits a revision of the <del>Price List</del> <b>Annual Price List</b> to the <i>Service Manager</i> for acceptance.<br><br><b>If the Contractor changes a planned method of working at its discretion so that the item descriptions on a Task Price List do not relate to the operations on the relevant accepted Task Order programme the Contractor submits a revision of the Task Price List to the Service Manager for acceptance.</b> |
|   | 55.3 | A reason for not accepting a revision of the <del>Price List</del> <b>Annual Price List or Task Price List (as applicable)</b> is that   |

- it does not relate to the operations on the Accepted Plan or a Task Order programme,
- any changed Prices are not reasonably distributed between the items in the ~~Price-List~~ Annual Price List or Task Price List (as applicable) or
- the total of the Prices is changed.

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55.4 The *Contractor* submits a first Annual Price List to the *Service Manager* for acceptance within the period stated in the Contract Data. If the *Contractor* does not submit a first Annual Price List for acceptance within the time allowed the *Service Manager* may make its own assessment of the Annual Price List and notify the *Contractor* and the *Service Manager's* assessment of the Annual Price List will become the accepted Annual Price List for the first Financial Year.

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55.5 The *Contractor* submits a revised Annual Price List to the *Service Manager* for acceptance

- within the *period for reply* after the *Service Manager* has instructed the *Contractor* to and
- as stated in the Contract Data throughout the Service Period.

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55.6 The *Client* may provide the form of Annual Price List that the *Contractor* will complete for acceptance. The *Client* may indicate which items in the Annual Price List should be lump sum items and which items should have a quantity and a rate.

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55.7 In each Annual Price List

- the Core Service requirements set out in the Scope are broken down into priced items in accordance with the Price List,
- the priced items relate to the planned operations to be carried out in the forthcoming Financial Year,
- each priced item reflects the Core Service requirements set out in the Scope,
- the Price for each item is built up from the rates and lump sums in the Price List for the Core Service,
- the amount payable for each item in the Annual Price List is reasonably distributed to relate to the planned operations to be carried out in the forthcoming Financial Year.

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55.8 Within two weeks of the *Contractor* submitting an Annual Price List for acceptance, the *Service Manager* notifies the *Contractor* of the acceptance of the Annual Price List or the reasons for not accepting it. A reason for not accepting an Annual Price List is that

- it does not show the information which the contract requires,
- it is not in the form provided by the *Client* (if applicable),
- it does not relate to the planned operations to be carried out in the forthcoming Financial Year,
- the Prices are not reasonably distributed to relate to the planned operations to be carried out in the forthcoming Financial Year or
- it does not comply with the Scope.

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55.9 If the *Service Manager* does not notify acceptance or non-acceptance within the time allowed, the *Contractor* may notify the *Service Manager* of that failure. If the failure continues for a further one week after the *Contractor's* notification, it is treated as acceptance by the *Service Manager* of the Annual Price List.

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55.10 If the *Contractor* does not submit a revised Annual Price List for acceptance within the time allowed the *Service Manager* will notify the *Contractor* that

- the current accepted Annual Price List will continue to apply or
- it will make its own assessment of the Annual Price List.

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55.11 If the *Service Manager* makes its own assessment of the Annual Price List it notifies the *Contractor* of its assessment of the Annual Price List within two weeks of the date on which the *Contractor* should have provided the Annual Price List for acceptance. The *Service Manager's* assessment of the Annual Price List will become the accepted Annual Price List.

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|                            |           |   |
|----------------------------|-----------|---|
| <b>Compensation events</b> | <b>60</b> |   |
|                            | 60.2      | <p>In respect of instructed Tasks only, A a difference between the final total quantity and the quantity stated for an item in the <b>Task Order Price List</b> is a compensation event if <b>the Client provided the design or entered the quantities in the Task Order and if</b></p> <ul style="list-style-type: none"> <li>• the difference does not result from a change to the <b>Task Scope</b>,</li> <li>• the difference causes the Defined Cost per unit of quantity to change and</li> <li>• the rate in the <b>Task Price List</b> for the item multiplied by the final total quantity which the <i>Contractor</i> has completed is more than <del>0.5%</del> <b>5%</b> of the total of the Price at the <del>Contract Date</del> <b>date of the Task Order</b>.</li> </ul> <p>If the Defined Cost per unit of quantity is reduced, the Prices are reduced.</p> |

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|                                      |           |  |
|--------------------------------------|-----------|--|
| <b>Assessing compensation events</b> | <b>63</b> |  |
|                                      | 63.12     | <p>If the effect of a compensation event is to reduce the total <del>Defined Cost</del> <b>cost to the Contractor</b> and the event is a change to the Scope <b>or a Task Scope</b> provided by the <i>Client</i>, which the <i>Contractor</i> proposed and the <i>Service Manager</i> accepted, the Prices are reduced by an amount calculated by multiplying the assessed effect of the compensation event by the <i>value engineering percentage</i>.</p> |
|                                      | 63.14     | <p>Assessments for changed Prices for compensation events are in the form of changes to the Price List, <b>the accepted Annual Price List or Task Price List (as applicable)</b>.</p>  |
|                                      | 63.15     | <p>If, when assessing a compensation event the People Rates do not include a rate for a category of person required, the <i>Service Manager</i> and <i>Contractor</i> may agree a new rate. If they do not agree the <i>Service Manager</i> assesses the rate based on the People Rates. The agreed or assessed rate becomes the People Rate for that category of person.</p>  |

Where the Contract Data or Task Data indicates that Main Option C applies, the following additional amended core clauses form part of the contract and apply in addition to the amended core clauses above.

## OPTION C: TARGET CONTRACT WITH PRICE LIST

### Identified and defined terms

11

11.2

(23) Defined Cost is the cost of the components in the Schedule of Cost Components attached at Appendix 4 of this contract less Disallowed Cost.

(24) Disallowed Cost is cost which

- the Contractor is unable to demonstrate has been reasonably and properly incurred by the Contractor for the purposes of this contract,
- would not have been incurred had the Contractor Provided the Service as economically as possible having regard to the nature of the service the prices of materials and goods and the rates of wages current at the time that the relevant work or service is provided,
- would not have been incurred had the number of persons engaged in the Provision of the Service been only that required for Providing the Service in accordance with this contract,
- was incurred as a result of any breach of contract or default by the Contractor,
- is not justified by the Contractor's accounts and records,
- should not have been paid to a Subcontractor or supplier in accordance with its contract,
- was incurred only because the Contractor did not
  - follow an acceptance or procurement procedure stated in the Scope or relevant Task Order (as appropriate) or
  - follow a requirement of this contract or
  - give an early warning which the contract required it to give or
  - give notification to the Service Manager of the preparation for and conduct of an adjudication or proceedings of a tribunal between the Contractor and a Subcontractor or supplier

and the cost of

- correcting Scope Defects,
- Plant and Materials not used to Provide the Service (after allowing for reasonable wastage) unless resulting from a change to the Scope, a Task or the Affected Property,
- correcting Scope Defects caused by the Contractor not complying with a constraint on how it is to Provide the Service stated in the Scope or relevant Task Order (as appropriate),
- resources not used to Provide the Service (after allowing for reasonable availability and utilisation) or not taken away from the Affected Property or Service Areas (as appropriate) when the Service Manager requested and
- preparation for and conduct of an adjudication or proceedings of the tribunal between the Parties.

(26) The Price for Service Provided to Date is, for any service other than a Task, the total Defined Cost which the Service Manager forecasts will have been paid by the Contractor before the next assessment date for work or services that has been done at the assessment date which forecast is calculated on the basis of copy invoices provided by the Contractor (whether paid or due to be paid before the next assessment date) plus the Fee.

(26A) The Task Price to Date is the total Defined Cost which the Service Manager forecasts will have been paid by the Contractor before the next assessment date for work or services that has been done at the assessment date which forecast is calculated on the basis of copy invoices provided by the Contractor (whether paid or due to be paid before the next assessment date) plus the Fee.

(28) [Note: incorporated above] The Prices are the amounts stated in the Price column

of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate.

|                                 |           |   |
|---------------------------------|-----------|---|
| <b>Providing the Service</b>    | <b>20</b> |   |
|                                 | 20.3      | The <i>Contractor</i> advises the <i>Service Manager</i> on the practical implications of the Accepted Plan or Task Order programme (as applicable) and on subcontracting arrangements.   |
|                                 | 20.4      | The <i>Contractor</i> prepares forecasts of the total Defined Cost for each relevant Task or the whole of the service (as applicable) in consultation with the <i>Service Manager</i> and submits them to the <i>Service Manager</i> . Forecasts are prepared at the start of each Task and an updated version is submitted monthly and for the Core Service forecasts are prepared at the intervals stated in the Contract Data from the starting date until the end of the Service Period. An explanation of the changes made since the previous forecast is submitted with each forecast.  |
| <b>Subcontracting</b>           | <b>24</b> |   |
|                                 | 24.4      | The <i>Contractor</i> submits the pricing information in the proposed subcontract documents for each subcontract to the <i>Service Manager</i> unless the <i>Service Manager</i> has agreed that no submission is required.   |
| <b>Tests and inspections</b>    | <b>41</b> |   |
|                                 | 41.7      | When the <i>Service Manager</i> assesses the cost incurred by the <i>Client</i> in repeating a test or inspection after a Scope Defect is found, the <i>Service Manager</i> does not include the <i>Contractor's</i> cost of carrying out the repeat test or inspection.  |
| <b>Assessing the amount due</b> | <b>50</b> |   |
|                                 | 50.7      | Payments of Defined Cost made by the <i>Contractor</i> in a currency other than the currency of the contract are included in the amount due as payments to be made to it in the same currency. Such payments are converted to the currency of the contract in order to calculate the Fee and any <i>Contractor's</i> share using the exchange rates.  |
|                                 | 50.9      | The <i>Contractor</i> notifies the <i>Service Manager</i> when the Defined Cost for a part of the service has been finalised, and makes available for inspection the records necessary to demonstrate that it has been correctly assessed. The <i>Service Manager</i> reviews the records made available, and no later than thirteen weeks after the <i>Contractor's</i> notification <ul style="list-style-type: none"> <li>• accepts that part of Defined Cost as correct,</li> <li>• notifies the <i>Contractor</i> that further records are needed or</li> <li>• notifies the <i>Contractor</i> of errors in its assessment.</li> </ul> <p>The <i>Contractor</i> provides any further records requested or advises the correction of the errors in its assessment within four weeks of the <i>Service Manager's</i> notification. The <i>Service Manager</i> reviews the records provided, and within four weeks</p> <ul style="list-style-type: none"> <li>• accepts that part of Defined Cost as correct or</li> <li>• notifies the <i>Contractor</i> of the correct assessment of that part of Defined Cost.</li> </ul> <p>If the <i>Service Manager</i> does not notify a decision on that part of Defined Cost within the time stated, the <i>Contractor's</i> assessment is treated as correct.</p> |
| <b>Defined Cost</b>             | <b>52</b> |   |
|                                 | 52.2      | The <i>Contractor</i> keeps these records <ul style="list-style-type: none"> <li>• accounts of payments of Defined Cost,</li> <li>• proof that the payments have been made,</li> <li>• communications about and assessments of compensation events for Subcontractors and</li> <li>• other records as stated in the Scope.</li> </ul>   |
|                                 | 52.3      | The <i>Contractor</i> allows the <i>Service Manager</i> to inspect at any time within working hours the accounts and records which it is required to keep.  |
| <b>The</b>                      | <b>54</b> |   |

|                                      |                  |  |
|--------------------------------------|------------------|--|
| <b>Contractor's share</b>            | 54.1             | The <i>Service Manager</i> assesses the <i>Contractor's</i> share of the difference between the total of the Prices and the Price for Service Provided to Date <b>or Task Price to Date (as applicable)</b> . The difference is divided into increments falling within each of the <i>share ranges</i> . The limits of a <i>share range</i> are the Price for Service Provided to Date <b>or Task Price to Date (as applicable)</b> divided by the total of the Prices, expressed as a percentage. The <i>Contractor's</i> share equals the sum of the products of the increment within each <i>share range</i> and the corresponding <i>Contractor's share percentage</i> .   |
|                                      | 54.2             | If the Price for Service Provided to Date <b>or Task Price to Date (as applicable)</b> is less than the total of the Prices, the <i>Contractor</i> is paid its share of the saving. If the Price for Service Provided to Date <b>or Task Price to Date (as applicable)</b> is greater than the total of the Prices, the <i>Contractor</i> pays its share of the excess.  |
|                                      | 54.3             | <del>At the dates stated in the Contract Data and when the final amount due is assessed,</del><br><b>†The <i>Service Manager</i> assesses the <i>Contractor's</i> share</b> <ul style="list-style-type: none"> <li>• <b>for each Task, 6 weeks following Task Completion and</b></li> <li>• <b>for the Core Service, 6 weeks following the end of each Financial Year.</b></li> </ul> This share is included in the next amount due following each assessment. The <i>Service Manager</i> uses in the assessment the Price for Service Provided to Date <b>or Task Price to Date (as applicable)</b> and the total of the Prices for the work done, current at the date of the assessment.   |
|                                      | 54.4             | <b>Without limiting clause 54.3 if the <i>Service Manager</i> (acting reasonably) assesses prior to the end of each Financial Year or in respect of a Task prior to Task Completion that (having regard to the Price for Service Provided to Date or, as appropriate, the Task Price to Date at the relevant time) the Price for Service Provided to Date at the end of the relevant Financial Year or in respect of a Task or the Task Price to Date at Task Completion is likely to exceed the relevant total of the Prices for the relevant Financial Year or the relevant total of the Prices for the Task (as applicable) the <i>Service Manager</i> may deduct from sums otherwise due to the <i>Contractor</i> a sum equivalent to the <i>Service Manager's</i> reasonable assessment of the likely <i>Contractor's</i> share of the relevant excess. Any sum so deducted shall be taken into account in assessing the amount due under clause 54.3</b> |
| <b>The Price List</b>                | <b>55</b>        |  |
|                                      | 55.1             | <b>Information in the Price List and each Annual Price List is not Scope. Information in a Task Price List is not Scope or Task Scope.</b>   |
| <b>Compensation events</b>           | <b>60</b>        |  |
|                                      | 60.2             | <b>In respect of instructed Tasks only, A a difference between the final total quantity and the quantity stated for an item in the Task Order Price List is a compensation event if the <i>Client</i> provided the design or entered the quantities in the Task Order and if</b> <ul style="list-style-type: none"> <li>• the difference does not result from a change to the Task Scope,</li> <li>• the difference causes the Defined Cost per unit of quantity to change and</li> </ul> the rate in the Task Price List for the item multiplied by the final total quantity which the <i>Contractor</i> has completed is more than 5% of the total of the Price at the <del>Contract Date</del><br><b>date of the Task Order.</b><br><br>If the Defined Cost per unit of quantity is reduced, the Prices are reduced.  |
| <b>Assessing compensation events</b> | <b>63</b>        |  |
|                                      | <del>63.13</del> | <del>If the effect of a compensation event is to reduce the total Defined Cost and the event is a change to the Scope provided by the <i>Client</i>, which the <i>Contractor</i> proposed and the <i>Service Manager</i> accepted, the Prices are not reduced.</del>   |
|                                      | 63.14            | Assessments for changed Prices for compensation events are in the form of changes to the Price List <b>and/or Task Price List (as applicable)</b> .  |
| <b>Payment on termination</b>        | <b>93</b>        |  |
|                                      | 93.3             | If there is a termination <b>in relation to the Core Service</b> , the <i>Service Manager</i> assesses the <i>Contractor's</i> share after certifying termination. The assessment uses as the Price for Service Provided to Date the total of the Defined Cost which the <i>Contractor</i> has paid and which it is committed to pay for work done before termination and uses as the total of the Prices <ul style="list-style-type: none"> <li>• the quantity of the work which the <i>Contractor</i> has completed for each item on the</li> </ul>  |

relevant Annual Price List multiplied by the rate and

- a proportion of each lump sum on the relevant Annual Price List which is the proportion of the work covered by the item which the Contractor has completed.

If there is a termination in relation to a Task, the Service Manager assesses the Contractor's share after certifying termination of the relevant Task. The assessment uses, as the Task Price to Date, the total Defined Cost which the Contractor has paid in relation to the Task and which it is committed to pay for work done in relation to the Task before termination. The assessment uses as the total of the Prices

- the quantity of work which the Contractor has completed for each item on the Task Price List multiplied by the rate and
- a proportion of each lump sum which is the proportion of the work covered by the item which the Contractor has completed.

93.4 The Service Manager's assessment of the Contractor's share is added to the amount due to the Contractor on termination if there has been a saving or deducted if there has been an excess.

## OPTION E: COST REIMBURSABLE CONTRACT

|                                     |      |   |
|-------------------------------------|------|---|
| <b>Identified and defined terms</b> | 44   |   |
|                                     | 41.2 | <p>(23) Defined Cost is the cost of the components in the Schedule of Cost Components less Disallowed Cost.</p> <p>(24) Disallowed Cost is cost which</p> <ul style="list-style-type: none"> <li>• is not justified by the Contractor's accounts and records,</li> <li>• should not have been paid to a Subcontractor or supplier in accordance with its contract,</li> <li>• was incurred only because the Contractor did not <ul style="list-style-type: none"> <li>— follow an acceptance or procurement procedure stated in the Scope,</li> <li>— give an early warning which the contract required it to give or</li> <li>— give notification to the Service Manager of the preparation for and conduct of an adjudication or proceedings of a tribunal between the Contractor and a Subcontractor or supplier</li> </ul> </li> </ul> <p>and the cost of</p> <ul style="list-style-type: none"> <li>• Plant and Materials not used to Provide the Service (after allowing for reasonable wastage) unless resulting from a change to the Scope, a Task or the Affected Property,</li> <li>• correcting Defects caused by the Contractor not complying with a constraint on how it is to Provide the Service stated in the Scope,</li> <li>• resources not used to Provide the Service (after allowing for reasonable availability and utilisation) or not taken away from the Service Areas when the Service Manager requested and</li> <li>• preparation for and conduct of an adjudication or proceedings of the tribunal between the Parties.</li> </ul> <p>(26) The Price for Service Provided to Date is the total Defined Cost which the Service Manager forecasts will have been paid by the Contractor before the next assessment date plus the Fee.</p> <p>(29) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate. If no Price List is included, the Prices are the forecast of the total Defined Cost for the whole of the service plus the Fee.</p> |
| <b>Providing the Service</b>        | 20   |   |
|                                     | 20.3 | The Contractor advises the Service Manager on the practical implications of the Accepted Plan and on subcontracting arrangements.   |
|                                     | 20.4 | The Contractor prepares forecasts of the total Defined Cost for the whole of the service in consultation with the Service Manager and submits them to the Service Manager. Forecasts are prepared at the intervals stated in the Contract Data from the starting date until the end of the Service Period. An explanation of the changes made since the previous forecast is submitted with each forecast.  |
| <b>Subcontracting</b>               | 24   |   |
|                                     | 24.4 | The Contractor submits the pricing information in the proposed subcontract documents for each subcontract to the Service Manager unless the Service Manager has agreed that no submission is required.  |
| <b>Tests and inspections</b>        | 41   |   |
|                                     | 41.7 | When the Service Manager assesses the cost incurred by the Client in repeating a test or inspection after a Defect is found, the Service Manager does not include the Contractor's cost of carrying out the repeat test or inspection.  |

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**Assessing the amount due**

50

50.8 ~~Payments of Defined Cost made by the Contractor in a currency other than the currency of the contract are included in the amount due as payments to be made to it in the same currency. Such payments are converted to the currency of the contract in order to calculate the Fee using the exchange rates.~~

50.9 ~~The Contractor notifies the Service Manager when the Defined Cost for a part of the service has been finalised, and makes available for inspection the records necessary to demonstrate that it has been correctly assessed. The Service Manager reviews the records made available, and no later than thirteen weeks after the Contractor's notification~~

- ~~• accepts that part of Defined Cost as correct,~~
- ~~• notifies the Contractor that further records are needed or~~
- ~~• notifies the Contractor of errors in its assessment.~~

~~The Contractor provides any further records requested or advises the correction of the errors in its assessment within four weeks of the Service Manager's notification. The Service Manager reviews the records provided, and within four weeks~~

- ~~• accepts that part of Defined Cost as correct or~~
- ~~• notifies the Contractor of the correct assessment of that part of Defined Cost.~~

~~If the Service Manager does not notify a decision on that part of Defined Cost within the time stated, the Contractor's assessment is treated as correct.~~

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**Defined Costs**

52

52.2 ~~The Contractor keeps these records~~

- ~~• accounts of payments of Defined Cost,~~
- ~~• proof that the payments have been made,~~
- ~~• communications about and assessments of compensation events for Subcontractors and~~
- ~~• other records as stated in the Scope.~~

52.3 ~~The Contractor allows the Service Manager to inspect at any time within working hours the accounts and records which it is required to keep.~~

# Resolving and Avoiding Disputes

## OPTION W2

Used when the United Kingdom Housing Grants, Construction and Regeneration Act 1996 applies.

|                           |             |   |
|---------------------------|-------------|---|
| <b>Resolving disputes</b> | <b>W2</b>   | <p><del>(1) If the Parties agree, a dispute arising under or in connection with the contract is referred to the Senior Representatives. If the dispute is not resolved by the Senior Representatives, it is referred to and decided by the Adjudicator.</del></p> <p><del>(2) The Party referring a dispute notifies the Senior Representatives, the other Party and the Service Manager of the nature of the dispute it wishes to resolve. Each Party submits to the other their statement of case within one week of the notification. Each statement of case is limited to no more than ten sides of A4 paper together with supporting evidence, unless otherwise agreed by the Parties.</del></p> <p><del>(3) The Senior Representatives attend as many meetings and use any procedure they consider necessary to try to resolve the dispute over a period of up to three weeks. At the end of this period the Senior Representatives produce a list of the issues agreed and issues not agreed. The Service Manager and the Contractor put into effect the issues agreed.</del></p> <p><del>(4) No evidence of the statement of case or discussions is disclosed, used or referred to in any subsequent proceedings before the Adjudicator or the tribunal.</del></p>  |
| <b>The Adjudicator</b>    | <b>W2.2</b> | <p><del>(1) A dispute arising under or in connection with the contract is referred to and decided by the Adjudicator. A Party may refer a dispute to the Adjudicator at any time whether or not the dispute has been referred to the Senior Representatives.</del></p> <p><del>(2) In this Option, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.</del></p> <p><del>(3) The Parties appoint the Adjudicator under the NEC Dispute Resolution Service Contract current at the starting date.</del></p> <p><del>(4) The Adjudicator acts impartially and decides the dispute as an independent adjudicator and not as an arbitrator.</del></p> <p><del>(5) If the Adjudicator is not identified in the Contract Data or if the Adjudicator resigns or becomes unable to act</del></p> <ul style="list-style-type: none"> <li><del>• the Parties may choose an adjudicator jointly or</del></li> <li><del>• a Party may ask the Adjudicator nominating body to choose an adjudicator.</del></li> </ul> <p><del>The Adjudicator nominating body chooses an adjudicator within four days of the request. The chosen adjudicator becomes the Adjudicator.</del></p> <p><del>(6) A replacement Adjudicator has the power to decide a dispute referred to a predecessor but not decided at the time when the predecessor resigned or became unable to act. The Adjudicator deals with an undecided dispute as if it had been referred on the date of appointment as replacement Adjudicator.</del></p> <p><del>(7) A Party does not refer a dispute to the Adjudicator that is the same or substantially the same as one that has already been decided by the Adjudicator.</del></p> <p><del>(8) The Adjudicator, and the Adjudicator's employees and agents are not liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.</del></p> |
| <b>The adjudication</b>   | <b>W2.3</b> | <p><del>(1) Before a Party refers a dispute to the Adjudicator, it gives a notice of adjudication to the other Party with a brief description of the dispute and the decision which it wishes the Adjudicator to make. If the Adjudicator is named in the Contract Data, the Party sends a copy of the notice of adjudication to the Adjudicator when it is issued. Within three days of the receipt of the notice of adjudication, the Adjudicator informs the Parties that the Adjudicator</del></p>  |

- ~~• is able to decide the dispute in accordance with the contract or~~
- ~~• is unable to decide the dispute and has resigned.~~

~~If the *Adjudicator* does not so inform within three days of the issue of the notice of adjudication, either Party may act as if the *Adjudicator* has resigned.~~

~~(2) Within seven days of a Party giving a notice of adjudication it~~

- ~~• refers the dispute to the *Adjudicator*,~~
- ~~• provides the *Adjudicator* with the information on which it relies, including any supporting documents and~~
- ~~• provides a copy of the information and supporting documents it has provided to the *Adjudicator* to the other Party.~~

~~Any further information from a Party to be considered by the *Adjudicator* is provided within fourteen days of the referral. This period may be extended if the *Adjudicator* and the Parties agree.~~

~~(3) If a matter disputed by the *Contractor* under or in connection with a subcontract is also a matter disputed under or in connection with the contract, the *Contractor* may, with the consent of the Subcontractor, refer the subcontract dispute to the *Adjudicator* at the same time as the main contract referral. The *Adjudicator* then decides the disputes together and references to the Parties for the purposes of the dispute are interpreted as including the Subcontractor.~~

~~(4) The *Adjudicator* may~~

- ~~• review and revise any action or inaction of the *Service Manager* related to the dispute and alter a matter which has been treated as accepted or correct,~~
- ~~• take the initiative in ascertaining the facts and the law related to the dispute,~~
- ~~• instruct a Party to provide further information related to the dispute within a stated time and~~
- ~~• instruct a Party to take any other action which is considered necessary to reach a decision and to do so within a stated time.~~

~~(5) If a Party does not comply with any instruction within the time stated by the *Adjudicator*, the *Adjudicator* may continue the adjudication and make a decision based upon the information and evidence received.~~

~~(6) A communication between a Party and the *Adjudicator* is communicated to the other Party at the same time.~~

~~(7) If the *Adjudicator's* decision includes assessment of additional cost or delay caused to the *Contractor*, the assessment is made in the same way as a compensation event is assessed. If the *Adjudicator's* decision changes an amount notified as due, the date on which payment of the changed amount becomes due is seven days after the date of the decision.~~

~~(8) The *Adjudicator* decides the dispute and informs the Parties and the *Service Manager* of the decision and reasons within twenty eight days of the dispute being referred. This period may be extended by up to fourteen days with the consent of the referring Party or by any other period agreed by the Parties. The *Adjudicator* may in the decision allocate the *Adjudicator's* fees and expenses between the Parties.~~

~~(9) Unless and until the *Adjudicator* has informed the Parties of the decision, the Parties and the *Service Manager* proceed as if the matter disputed was not disputed.~~

~~(10) If the *Adjudicator* does not inform the Parties of the decision within the time provided by the contract, the Parties and the *Adjudicator* may agree to extend the period for making a decision. If they do not agree to an extension, either Party may act as if the *Adjudicator* has resigned.~~

~~(11) The *Adjudicator's* decision is binding on the Parties unless and until revised by the *tribunal* and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The *Adjudicator's* decision is final and binding if neither Party has notified the other within the times required by the contract that it is dissatisfied with a matter decided by the *Adjudicator* and intends to refer the matter to the *tribunal*.~~

~~(12) The *Adjudicator* may, within five days of giving the decision to the Parties, correct~~

the decision to remove a clerical or typographical error arising by accident or omission.

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**The tribunal**

W2.4

- ~~(1) A Party does not refer any dispute under or in connection with the contract to the tribunal unless it has first been decided by the Adjudicator in accordance with the contract.~~
- ~~(2) If, after the Adjudicator makes a decision, a Party is dissatisfied, that Party may notify the other Party of the matter which it disputed and state that it intends to refer the disputed matter to the tribunal. The dispute may not be referred to the tribunal unless this notification is given within four weeks of being informed of the Adjudicator's decision.~~
- ~~(3) The tribunal settles the dispute referred to it. The tribunal has the powers to reconsider any decision of the Adjudicator and to review and revise any action or inaction of the Service Manager related to the dispute. A Party is not limited in tribunal proceedings to the information, evidence or arguments put to the Adjudicator.~~
- ~~(4) If the tribunal is arbitration, the arbitration procedure, the place where the arbitration is to be held and the method of choosing the arbitrator are those stated in the Contract Data.~~
- ~~(5) A Party does not call the Adjudicator as a witness in tribunal proceedings.~~

W2.1

- (1) The Parties follow the procedure below for the avoidance and resolution of any Dispute arising under or in connection with this contract.
- (2) In this clause, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.
- (3) A Party may refer a Dispute to the Adjudicator at any time by way of a Notice of Adjudication. Subject to that, by notice in writing, a Party may refer a Dispute to the Parties' Senior Representatives for consideration. The written notice identifies the Party's Senior Representative, gives brief written particulars of the Dispute, including the provisions of this contract that are relevant to the Dispute, the relief sought and the basis for claiming the relief sought.
- (4) Within 14 days of receipt of the notice of referral to Senior Representatives, the responding party provides the referring party with a brief written response and identifies the responding party's Senior Representative.

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(5) Within a further 14 days the Senior Representatives meet and try to reach agreement to resolve the Dispute. Each Party bears its own costs and expenses in relation to any reference of a Dispute to the Senior Representatives. Any documents prepared or exchanged in relation to the reference of the Dispute to Senior Representatives and any discussions between the Senior Representatives are without prejudice and the Parties do not make use of or rely upon any without prejudice statements in any subsequent Dispute proceedings.

W2.2

- (1) If a Dispute is to be referred to the Adjudicator the Parties appoint the Adjudicator.
- (2) Any person requested or selected to act as the Adjudicator in accordance with this clause W2 is a natural person acting in a personal capacity and is not an employee of any of the Parties, or of any other party related to the Dispute, and declares any interest, financial or otherwise, in any matter relating to the Dispute.
- (3) The Adjudicator acts impartially and decides the Dispute as an independent adjudicator and not as an arbitrator.
- (4) The Parties may choose an adjudicator (or replacement adjudicator, as necessary) jointly or a Party may ask the Adjudicator nominating body to choose an adjudicator. Such joint appointment or referral to the Adjudicator nominating body shall take place immediately upon the serving of a Notice of Adjudication, or immediately following the position of Adjudicator falling vacant.

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(5) The Adjudicator nominating body chooses an adjudicator within four (4) days of the request. The chosen adjudicator becomes the Adjudicator.

(6) A replacement Adjudicator has the power to decide a Dispute referred to a predecessor but not decided at the time when the predecessor resigned or became unable to act. The Adjudicator deals with an undecided Dispute as if it had been referred on the date of appointment as replacement Adjudicator.

(7) The Adjudicator, and the Adjudicator's employees and agents are not liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.

(8) The Parties may terminate the Adjudicator's appointment at any time. In such case, or if the Adjudicator fails to give notice of a decision within the period required or agreed,

or if at any time the *Adjudicator* declines to act or is unable to act as a result of the *Adjudicator's* death, disability, resignation or otherwise, a person is appointed to replace the *Adjudicator* in accordance with the provisions of this clause W2.2.

W2.3 (1) Before a Party refers a Dispute to the *Adjudicator*, it gives a Notice of Adjudication to the other Party with a brief description of the Dispute, including the provisions of this contract that are relevant to the Dispute, the relief sought, the basis for claiming the relief sought and the decision that it wishes the *Adjudicator* to make. Following the appointment of the *Adjudicator*, the Party immediately sends a copy of the Notice of Adjudication to the *Adjudicator*. Within 3 days of the receipt of the Notice of Adjudication, the *Adjudicator* notifies the Parties that the *Adjudicator*

- is able to decide the Dispute in accordance with the contract or
- is unable to decide the Dispute and has resigned.

If the *Adjudicator* does not so notify within 3 days of the issue of the Notice of Adjudication, either Party may act as if the *Adjudicator* has resigned.

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(2) The terms of remuneration of the *Adjudicator* are agreed by the Parties and the *Adjudicator*, with the object of securing the appointment of the *Adjudicator*, within 7 days of the Notice of Adjudication. If any Party (but not all the Parties) rejects the terms of the remuneration of the *Adjudicator* the same are settled (and binding upon the Parties) by agreement between the *Adjudicator nominating body* and the *Adjudicator* (provided that the level of the *Adjudicator's* remuneration does not exceed the level originally proposed to the Parties by the *Adjudicator*). If all the Parties reject the terms of remuneration proposed by an *Adjudicator* another person is selected as an *Adjudicator* in accordance with clause W2.2.

(3) Within 7 days of a Party giving a Notice of Adjudication it

- refers the Dispute to the *Adjudicator*,
- provides the *Adjudicator* with the information on which it relies, including the factual and contractual or other basis of the claim, the amount (if any) claimed and any supporting documents, and
- provides a copy of the information and supporting documents it has provided to the *Adjudicator* to the other Party.

Upon receipt of the referral notice, the *Adjudicator* must inform every party to the Dispute of the date it was received.

Within fourteen (14) days from the referral, any Party, who is not the Party giving a Notice of Adjudication, provides the *Adjudicator* with the information on which it relies, including the factual and contractual or other basis of the claim, the amount (if any) claimed and any supporting documents and provides a copy of the information and supporting documents it has provided to the *Adjudicator* to the Party giving a Notice of Adjudication.

These periods may be extended if the *Adjudicator* and Parties agree.

(4) If a matter disputed by the *Contractor* under or in connection with a subcontract is also a matter disputed under or in connection with this contract the *Contractor* may, with the consent of the Subcontractor and *Client*, refer the subcontract dispute to the *Adjudicator* at the same time as the main contract referral. The *Adjudicator* then decides the disputes together and references to the Parties for the purposes of the dispute are interpreted as including the Subcontractor. The Parties comply with any reasonable request by the *Adjudicator* for more time to decide the disputes referred to him.

If this contract is a subcontract and the main contract provides for joint adjudication of disputes, the following procedure applies.

Within two (2) weeks of the notification of the dispute by the *Contractor* to the *Client*, the *Client* notifies the *Contractor* if the matter disputed is a matter disputed under or in connection with the main contract.

The *Client* may then

- submit the subcontract dispute to the main contract adjudicator at the same time as the main contract submission and
- instruct the *Contractor* to provide any information which the *Client* may require.

The main contract adjudicator then gives a decision on the disputes together.

(5) The *Adjudicator* may

- make directions for the conduct of the Dispute
- review and revise any action or inaction of the Parties related to the Dispute
- take the initiative in ascertaining the facts and the law related to the Dispute
- instruct a Party to provide further information related to the Dispute within a stated time and
- instruct a Party to take any other action which is considered necessary to reach a decision and to do so within a stated time.

(6) If a Party does not comply with any instruction within the time stated by the *Adjudicator*, the *Adjudicator* may continue the adjudication and make a decision based upon the information and evidence received.

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(7) The *Adjudicator* shall consider any relevant information submitted by any of the Parties and shall make available to them any information to be taken into account in reaching a decision.

(8) A communication between a Party and the *Adjudicator* is communicated to the other Party at the same time.

(9) All notices, written submissions and any other written communications between the Parties and the *Adjudicator* are either delivered by hand, sent by electronic mail (if agreed between the Parties and the *Adjudicator*) or sent by first class pre-paid post or mail delivery service providing proof of delivery and in each case are copied simultaneously (delivered or sent as aforesaid) to the other Parties. Copies by way of confirmation of all communications by electronic mail between the Parties and the *Adjudicator* are also sent by first class post not later than the business day next following the date of the original electronic mail.

(10) Save as required by law, the Parties and the *Adjudicator* keep information relating to the Dispute confidential.

(11) If the *Adjudicator's* decision includes assessment of additional cost or delay caused to the Contractor, the assessment is made in the same way as a compensation event is assessed.

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(12) The *Adjudicator* decides the Dispute and notifies the Parties of the decision and reasons in writing within 28 days of receipt by the *Adjudicator* of the referral notice. This period may be extended by up to 14 days with the consent of the Party giving the Notice of Adjudication or by any other period agreed by the Parties.

(13) After the giving of a Notice of Adjudication, the Parties may seek to agree how the *Adjudicator* allocates the costs and expenses of the adjudication, excluding the *Adjudicator's* own remuneration and expenses, as between the Parties. Subject to any agreement of the Parties, the *Adjudicator* allocates payment of the *Adjudicator's* own remuneration and expenses and other costs and expenses of the adjudication as between the Parties.

(14) Unless and until the *Adjudicator* has notified the Parties of the decision the Parties proceed as if the matter disputed was not disputed.

(15) If the *Adjudicator* does not make the decision and notify it to the Parties within the time provided by this contract the Parties and the *Adjudicator* may agree to extend the period for making a decision. If they do not agree to an extension, either Party may act as if the *Adjudicator* has resigned.

(16) The *Adjudicator's* decision is binding on the Parties unless and until revised by the courts pursuant to any legal proceedings and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The *Adjudicator's* decision is final and binding if neither Party has

- notified the other it is dissatisfied with a matter decided by the *Adjudicator* and intends to refer the matter to the courts within the time required by this contract and/or
- commenced court proceedings within the time required by this contract,

or unless agreed otherwise by the Parties.

(17) The *Adjudicator* may, on the *Adjudicator's* own initiative or on the application of a Party correct the decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within 7 days of the delivery of the decision to the Parties. As soon as possible after correcting a decision in

accordance with this clause, the *Adjudicator* must deliver a copy of the corrected decision to each of the Parties. Any correction of a decision forms part of the decision.

(18) If the *Adjudicator's* decision changes an amount notified as due, payment of *the* sum decided by the *Adjudicator* is due not later than 28 days from the date of the decision or the final date for payment of the notified amount whichever is the later.

W2.4 (1) Unless the Parties agree otherwise, a Party does not refer any Dispute under or in connection with this contract to the courts unless it has first been decided by the *Adjudicator* in accordance with this contract.

(2) Any Party may apply to any appropriate court for enforcement of the *Adjudicator's* decision.

(3) If, after the *Adjudicator* notifies the decision, a Party is dissatisfied, that Party may notify the other Party of the matter which it disputes and state that it intends to refer it to the courts. The Dispute may not be referred to the courts unless

- this notification is given within six (6) weeks of the notification of the *Adjudicator's* decision and
- court proceedings are commenced within six (6) months of the notification of the *Adjudicator's* decision.

(4) The courts settle the Dispute referred to it. The courts have the powers to reconsider any decision of the *Adjudicator* and to review and revise any action or inaction of the Parties related to the Dispute. A Party is not limited in court proceedings to the information or evidence put to the *Adjudicator*.

(5) A Party does not call the *Adjudicator* as a witness in court proceedings.

# Secondary Option Clauses

## OPTION X1: PRICE ADJUSTMENT FOR INFLATION (USED ONLY WITH OPTIONS A AND C)

|                                      |      |   |
|--------------------------------------|------|---|
| <b>Defined terms</b>                 | X1   |   |
|                                      | X1.1 | <p><del>(a) The Base Date Index (B) used at the first <i>inflation adjustment date</i> is the latest available before the <i>base date</i>. The Base Date Index (B) used at subsequent <i>inflation adjustment dates</i> is the index at the date of the previous <i>inflation adjustment date</i>.</del><br/> <b>The rates, prices and lump sums set out in the Price List and any other rates, values or sums set out in this contract which are expressly stated to be adjusted for inflation are adjusted in accordance with Schedule 17 of the Framework Agreement.</b></p> <p><del>(b) The Latest Index (L) is the latest index available at the <i>inflation adjustment date</i>.</del></p> <p><del>(c) The Price Adjustment Factor (PAF) is the total of the products of each of the proportions stated in the Contract Data multiplied by <math>(L - B)/B</math> for the index linked to it.</del></p> |
| <b>Price Adjustment Factor</b>       | X1.2 | If an index is changed after it has been used in calculating a PAF, the calculation is not changed. The PAF calculated at the last assessment date before the end of the Service Period is used for calculating price adjustment after that date.   |
| <b>Price Adjustment for Option A</b> | X1.3 | <p>On each <i>inflation adjustment date</i> until the end of the Service Period</p> <ul style="list-style-type: none"> <li>• the rates and Prices in the Price List and</li> <li>• the rates in the Contract Data for people and Equipment</li> </ul> <p>are changed by multiplying the rate or Price by <math>(1 + \text{PAF})</math>. In calculating the Price for Service Provided to Date, the changed rates and Prices in the Price List are used for all works and services carried out from the <i>inflation adjustment date</i> until the next <i>inflation adjustment date</i>.</p>  |
| <b>Price Adjustment for Option C</b> | X1.4 | <p>On each <i>inflation adjustment date</i> until the end of the Service Period</p> <ul style="list-style-type: none"> <li>• the rates and Prices in the Price List and</li> <li>• the rates in the Contract Data for people and Equipment</li> </ul> <p>are changed by multiplying the rate or Price by <math>(1 + \text{PAF})</math>. In calculating the Contractor's share, the changed rates and Prices in the Price List are used for all works and services carried out from the <i>inflation adjustment date</i> until the next <i>inflation adjustment date</i>. In calculating the Price for Service Provided to Date, the changed rates in the Contract Data are used for all works and services carried out from the <i>inflation adjustment date</i> until the next <i>inflation adjustment date</i>.</p>   |
| <b>Compensation events</b>           | X1.5 | Compensation events are assessed using the rates and prices current at their dividing date.   |

## OPTION X2: CHANGES IN THE LAW

|                           |      |  |
|---------------------------|------|--|
| <b>Changes in the law</b> | X2   |  |
|                           | X2.1 | A change in the law of the country in which the Affected Property is located is a compensation event if it occurs after the Contract Date. If the effect of a compensation event which is a change in the law is to reduce the total <b>cost to the Contractor</b> Defined Cost, the Prices are reduced. |

### OPTION X3: MULTIPLE CURRENCIES (USED ONLY WITH OPTION A) **NOT USED**

#### Multiple-currencies

X3

- X3.1 ~~The Contractor is paid in currencies other than the currency of the contract for the items or activities listed in the Contract Data. The exchange rates are used to convert from the currency of the contract to other currencies.~~
- X3.2 ~~Payments to the Contractor in currencies other than the currency of the contract do not exceed the maximum amounts stated in the Contract Data. Any excess is paid in the currency of the contract.~~

### OPTION X4: ULTIMATE HOLDING COMPANY GUARANTEE **NOT USED**

#### Ultimate holding company guarantee

X4

- X4.1 ~~If the Contractor is a subsidiary of another company, the Contractor gives to the Client a guarantee of the Contractor's performance from the ultimate holding company of the Contractor in the form set out in the Scope. If the guarantee was not given by the Contract Date, it is given to the Client within four weeks of the Contract Date.~~
- X4.2 ~~The Contractor may propose an alternative guarantor who is also owned by the ultimate holding company for acceptance by the Service Manager. A reason for not accepting the guarantor is that its commercial position is not strong enough to carry the guarantee.~~

### OPTION X8: UNDERTAKINGS TO THE CLIENT OR OTHERS **NOT USED (see additional conditions of contract)**

#### Undertakings to the Client or Others

X8

- X8.1 ~~The Contractor gives undertakings to Others as stated in the Contract Data.~~
- X8.2 ~~If the Contractor subcontracts the work stated in the Contract Data it arranges for the Subcontractor to provide a Subcontractor undertakings to Others if required by the Client.~~
- X8.3 ~~If the Contractor subcontracts the work stated in the Contract Data it arranges for the Subcontractor to provide a Subcontractor undertaking to the Client.~~
- X8.4 ~~The undertakings to Others, Subcontractor undertaking to Others and Subcontractor undertakings to the Client are in the form set out in the Scope.~~
- X8.5 ~~The Client prepares the undertakings and sends them to the Contractor for signature. The Contractor signs the undertakings, or arranges for the Subcontractor to sign them, and returns them to the Client within three weeks.~~

## OPTION X10: INFORMATION MODELLING

### Defined terms

**X10** Secondary Option X10 applies to a Task only if stated to apply in the relevant Task Data

- X10.1
- (1) The Information Execution Plan is the *information execution plan* or is the latest Information Execution Plan accepted by the *Service Manager*. The latest Information Execution Plan accepted by the *Service Manager* supersedes the previous Information Execution Plan.
  - (2) Project Information is information provided by the *Contractor* which is used to create or change the Information Model.
  - (3) The Information Model is the electronic integration of Project Information and similar information provided by the *Client* and other Information Providers and is in the form stated in the Information Model Requirements.
  - (4) The Information Model Requirements are the requirements identified in the Scope for creating or changing the Information Model.
  - (5) Information Providers are the people or organisations who contribute to the Information Model and are identified in the Information Model Requirements.

|                                     |       |   |
|-------------------------------------|-------|---|
| <b>Collaboration</b>                | X10.2 | The <i>Contractor</i> collaborates with other Information Providers as stated in the Information Model Requirements.  |
| <b>Early warning</b>                | X10.3 | The <i>Contractor</i> and the <i>Service Manager</i> give an early warning by notifying the other as soon as either becomes aware of any matter which could adversely affect the creation or use of the Information Model.  |
| <b>Information Execution Plan</b>   | X10.4 | <p>(1) If an Information Execution Plan is not identified in the Contract Data or Task Data (as appropriate), the <i>Contractor</i> submits a first Information Execution Plan to the <i>Service Manager</i> for acceptance within the period stated in the Contract Data or Task Data (as appropriate).</p> <p>(2) Within two weeks of the <i>Contractor</i> submitting an Information Execution Plan for acceptance, the <i>Service Manager</i> notifies the <i>Contractor</i> of the acceptance of the Information Execution Plan or the reasons for not accepting it. A reason for not accepting an Information Execution Plan is that</p> <ul style="list-style-type: none"> <li>• it does not comply with the Information Model Requirements or</li> <li>• it does not allow the <i>Contractor</i> to Provide the Service.</li> </ul> <p>If the <i>Service Manager</i> does not notify acceptance or non-acceptance within the time allowed, the <i>Contractor</i> may notify the <i>Service Manager</i> of that failure. If the failure continues for a further one week after the <i>Contractor's</i> notification, it is treated as acceptance by the <i>Service Manager</i> of the Information Execution Plan.</p> <p>(3) The <i>Contractor</i> submits a revised Information Execution Plan to the <i>Service Manager</i> for acceptance</p> <ul style="list-style-type: none"> <li>• within the <i>period for reply</i> after the <i>Service Manager</i> has instructed it to and</li> <li>• when the <i>Contractor</i> chooses to.</li> </ul> <p>(4) The <i>Contractor</i> provides the Project Information in the form stated in the Information Model Requirements and in accordance with the accepted Information Execution Plan.</p> |
| <b>Compensation events</b>          | X10.5 | If the Information Execution Plan is altered by a compensation event, the <i>Contractor</i> includes the alterations to the Information Execution Plan in the quotation for the compensation event.   |
| <b>Use of the Information Model</b> | X10.6 | The <i>Client</i> owns the Information Model and the <i>Contractor's</i> rights over Project Information except as stated otherwise in the Information Model Requirements. The <i>Contractor</i> obtains from a Subcontractor equivalent rights for the <i>Client</i> over information prepared by the Subcontractor. The <i>Contractor</i> provides to the <i>Client</i> the documents which transfer these rights to the <i>Client</i> .  |
| <b>Liability</b>                    | X10.7 | <p>(1) The following are <i>Client's</i> liabilities.</p> <ul style="list-style-type: none"> <li>• A fault or error in the Information Model other than a <b>Scope</b> Defect in the Project Information.</li> <li>• A fault in information provided by Information Providers other than the <i>Contractor</i>.</li> </ul> <p><del>(2) The <i>Contractor</i> is not liable for a fault or error in the Project Information unless it failed to provide the Project Information using the skill and care normally used by professionals providing information similar to the Project Information.</del></p> <p><del>(3) The <i>Contractor</i> provides insurance for claims made against it arising out of its failure to provide the Project Information using the skill and care normally used by professionals providing information similar to the Project Information. The minimum amount of this insurance is as stated in the Contract Data. This insurance provides cover from the starting date until the end of the period stated in the Contract Data.</del></p>  |

**OPTION X11: TERMINATION BY THE CLIENT (NOT USED WITH OPTION X19) NOT USED**

**Termination by the Client**

X11

X11.1

The *Client* may terminate the *Contractor's* obligation to Provide the Service for a reason not identified in the Termination Table by notifying the *Service Manager* and the *Contractor*.

X11.2

If the *Client* terminates for a reason not identified in the Termination Table the termination procedure followed is P1 and P4 and the amounts due on termination are A1, A2 and A4.

**OPTION X12: MULTIPARTY COLLABORATION (NOT USED WITH OPTION X20) NOT USED**

**Identified and defined terms**

X12

X12.1

(1) Partners are those who have a contract in connection with the subject matter of the contract which includes this multiparty collaboration Option or equivalent. The *Promoter* is a Partner.

(2) The Schedule of Partners is a list of the Partners which is in the document the Contract Data states it is in and Partners subsequently added by agreement of the Partners. It sets out the objectives of the Partners and includes targets for performance.

(3) An Own Contract is a contract between two Partners.

(4) The Core Group comprises the Partners selected to take decisions on behalf of the Partners.

(5) The Schedule of Core Group Members is a list of the Partners forming the Core Group.

(6) Partnering Information is information which specifies how the Partners collaborate and is either in the documents which the Contract Data states it is in or in an instruction given in accordance with the contract.

(7) A Key Performance Indicator is an aspect of performance for which a target is stated in the Schedule of Partners.

**Actions**

X12.2

(1) The Partners collaborate with each other to achieve the *Promoter's objective* stated in the Contract Data and the objectives of every other Partner stated in the Schedule of Partners.

(2) Each Partner nominates a representative to act for it in dealings with other Partners.

(3) The Core Group acts and takes decisions on behalf of the Partners on those matters stated in the Partnering Information.

(4) The Partners select the members of the Core Group. The Core Group decides how they will work and decides the dates when each member joins and leaves the Core Group. The *Promoter's* representative leads the Core Group unless stated otherwise in the Partnering Information.

(5) The Core Group keeps the Schedule of Core Group Members and the Schedule of Partners up to date and issues copies of them to the Partners each time either is revised.

(6) This Option does not create a legal partnership between Partners who are not one of the Parties in the contract.

**Working together**

X12.3

(1) The Partners collaborate as stated in the Partnering Information and in a spirit of mutual trust and co-operation.

(2) A Partner may ask another Partner to provide information which it needs to carry out the work in its Own Contract and the other Partner provides it.

(3) Each Partner gives an early warning to the other Partners when it becomes aware of any matter that could affect the achievement of another Partner's objectives stated in the Schedule of Partners.

(4) The Partners use common information systems as set out in the Partnering Information.

~~(5) A Partner implements a decision of the Core Group by issuing instructions in accordance with its Own Contracts.~~

~~(6) The Core Group may give an instruction to the Partners to change the Partnering Information. Each such change to the Partnering Information is a compensation event which may lead to reduced Prices.~~

~~(7) The Core Group prepares and maintains a timetable showing the proposed timing of the contributions of the Partners. The Core Group issues a copy of the timetable to the Partners each time it is revised. The Contractor changes its plan if it is necessary to do so in order to comply with the revised timetable. Each such change is a compensation event which may lead to reduced Prices.~~

~~(8) A Partner gives advice, information and opinion to the Core Group and to other Partners when asked to do so by the Core Group. This advice, information and opinion relates to work that another Partner is to carry out under its Own Contract and is given fully, openly and objectively. The Partners show contingency and risk allowances in information about costs, prices and timing for future work.~~

~~(9) A Partner notifies the Core Group before subcontracting any work.~~

## Incentives

X12.4

~~(1) A Partner is paid the amount stated in the Schedule of Partners if the target stated for a Key Performance Indicator is improved upon or achieved. Payment of the amount is due when the target has been improved upon or achieved and is made as part of the amount due in the Partner's Own Contract.~~

~~(2) The Promoter may add a Key Performance Indicator and associated payment to the Schedule of Partners but may not delete or reduce a payment stated in the Schedule of Partners.~~

## OPTION X13: PERFORMANCE BOND

### Performance bond

X13

X13.1

~~The Contractor gives the Client a performance bond, provided by a bank or insurer which the Service Manager has accepted, for the amount stated in the Contract Data and in the form set out in the Scope. A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond. If the bond was not given by the Contract Date, it is given to the Client within four weeks of the Contract Date.~~

When requested by the Client, the Contractor gives the Client a performance bond in the form set out at Appendix 5 of this contract (with such amendments as the Client may agree), provided by a bank or insurer which the Service Manager has accepted, for the amount stated in the Contract Data. A reason for not accepting the bank or insurer is that it is not licensed to carry out surety business in the United Kingdom or that it is a Group Company of the provider of a guarantee under clause 5 of the Framework Agreement or that its commercial position is not strong enough to carry the bond. Its commercial position will not (unless the Client agrees otherwise) be strong enough if it is rated less than 'A+' (Standard & Poors) (or its equivalent from each of the ratings agencies which rate the bond provider).

X13.2

If a performance bond expires in accordance with its terms or the provider of a performance bond no longer holds a long-term credit rating of at least 'A' (Standard & Poors) (or its equivalent from each of the ratings agencies which rate the bond provider) the Contractor provides to the Client a bond in the same form and amount (net of any claims previously made on the bond) as that originally provided and from a bank or insurer which the Client has accepted:

- in the case of an expired bond, not later than 21 days before the expiry of the original bond; or
- in the case of a downgraded credit rating, within 35 days of the Client's request for a replacement bond.

Failure by the Contractor to provide to the Client a replacement bond will constitute default under the contract sufficient to enable the Client to make a demand under the

original bond or terminate the *Contractor's* obligation to Provide the Service.

- X13.3 If the bank or insurer providing a performance bond is not a company registered in England and Wales, the *Contractor* procures that such bank or insurer provides to the *Client* a legal opinion in such form provided by the *Contractor* and approved by the *Client* at its sole discretion on execution of any such bond by the bank or insurer (as applicable).
- X13.4 Upon any novation of this contract the *Contractor* gives to the *Client* further performance bonds and legal opinions on identical terms as any performance bonds and legal opinions required pursuant to clauses X13.1 to X13.3.

## OPTION X14: ADVANCED PAYMENT TO THE CONTRACTOR

### Advanced payment

#### X14

- X14.1 The *Client* makes an advanced payment to the *Contractor* of the amount stated in the Contract Data. The advanced payment is included either in the assessment made at the first assessment date under clause 50.1 or in the instalments stated in the Contract Data.
- X14.2 If the advanced payment to the *Contractor* is made in the instalments stated in the Contract Data, the *Service Manager* assesses the amount due to the *Contractor* in respect of each instalment at an assessment date for each instalment decided by the *Service Manager*. The *Service Manager* decides each such assessment date to suit the procedures of the *Client* and to allow each instalment to become due to the *Contractor* in the relevant month stated in the Contract Data. The *Service Manager* decides assessment dates in accordance with this clause X14.2 until the date on which the final instalment of the advance payment is made to the *Contractor*.
- Any assessment by the *Service Manager* under this clause X14.2 is not an assessment under clause 50.1 and the *Service Manager* decides the first assessment date for the purpose for clause 50.1 separately. These clauses X14.2 to X14.4 apply to the advance payment only.
- X14.3 The payment of each instalment of the advanced payment becomes due on the earlier of
- the assessment date decided by the *Service Manager* for each instalment and
  - the last day of each month in which an instalment of the advanced payment is to be made.
- The final date for payment of each instalment of the advanced payment is 28 days after the date on which payment becomes due.
- X14.4 The amount due at the payment due date is:
- the amount of each instalment specified in the Contract Data up to and including the relevant assessment date
  - less amounts to be paid by or retained from the *Contractor*.
- The provisions of clauses 51.1, 51.2, 51.4, 51.5 and 51.6 apply to any payment of an instalment of the advanced payment to be made under this clause X14.
- X14.5 The advanced payment is repaid to the *Client* by the *Contractor* in instalments of the amount stated in the Contract Data. An instalment is included in each amount due assessed after the period stated in the Contract Data has passed until the advanced payment has been repaid.

## OPTION X17: LOW SERVICE DAMAGES NOT USED

~~Low-service~~

~~X17~~

**damages**

~~X17.1 If a part of the service does not meet the service level stated in the service level table, the Contractor pays the amount of low service damages stated in the service level table.~~

**OPTION X18: LIMITATION OF LIABILITY**

**Limitation of liability**

**X18**

- X18.1 ~~Subject always to clause X18.7, Each~~ **Subject always to clause X18.7, Each** each of the limits to the Contractor's liability in this clause apply if a limit is stated in the Contract Data.
  - X18.2 ~~The Contractor's liability to the Client for the Client's indirect or consequential loss is limited to the amount stated in the Contract Data.~~ **Not used**
  - X18.3 ~~For any one event, the liability of the Contractor to the Client for loss of or damage to the Client's property is limited to the amount stated in the Contract Data.~~ **Not used**
-

- X18.4 ~~The Contractor's liability to the Client for Defects due to its design of an item of Equipment is limited to the amount stated in the Contract Data.~~ Subject always to clause X18.7, the Contractor's liability to the Client for all matters arising under or in connection with a Task Order which is identified as a "Separately Capped Task" in the relevant Task Data Part One, other than the excluded matters referred to in clause X18.5, is limited to the amount stated in the Task Data Part One.
- X18.5 Subject always to clause X18.7, ~~t~~The Contractor's total liability to the Client for all matters arising under or in connection with the contract, other than the excluded matters and any Task Order which is a "Separately Capped Task" in accordance with clause X18.4, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the law of the contract.
- The excluded matters are amounts payable by the Contractor as stated in the contract for
- loss of or damage to the Client's property,
  - low service damages if Option X17 applies,
  - delay damages in connection with Task Orders and
  - Contractor's share if Option C applies and
  - the matters listed in X18.7.
- X18.6 The Contractor is not liable to the Client for a matter unless it is notified to the Contractor before the end of liability date.
- X18.7 Nothing in this clause X18 shall exclude or limit the Contractor's liability for
- personal injury or death or
  - any matter which it would be illegal for the Contractor to exclude or attempt to exclude its liability or fraud or
  - breach of clause 122 or Appendix 8 or
  - Losses against which the Contractor is entitled to an indemnity under any policy of insurance to be maintained under this contract.

## OPTION X19: TERMINATION BY EITHER PARTY (NOT USED WITH OPTION X11) NOT USED

### No fault termination

- X19 After the *minimum period of service*, a Party may terminate the Contractor's obligations to Provide the Service for a reason not identified in the Termination Table. If a Party wishes to do so they notify the Service Manager and the other Party. The Service Manager issues a termination certificate at the end of the *notice period* following the notification.
- X19.2 If a Party terminates after the *minimum period of service* for a reason not identified in the Termination Table the termination procedures followed are P1 and P4 and the amount due on termination is A1.

## OPTION X20: KEY PERFORMANCE INDICATORS (NOT USED WITH OPTION X12) NOT USED

### Incentives

- X20
- X20.1 A Key Performance Indicator is an aspect of performance by the Contractor for which a target is stated in the Incentive Schedule. The Incentive Schedule is the *incentive schedule* unless later changed in accordance with the contract.
- X20.2 From the *starting date* until the end of the Service Period, the Contractor reports to the Service Manager its performance against each of the Key Performance Indicators. Reports are provided at the intervals stated in the Contract Data and include the forecast final measurement against each indicator.
- X20.3 If the Contractor's forecast final measurement against a Key Performance Indicator will not achieve the target stated in the Incentive Schedule, it submits to the Service Manager its proposals for improving performance.
- X20.4 The Contractor is paid the amount stated in the Incentive Schedule if the target stated

for a Key Performance Indicator is improved upon or achieved. Payment of the amount is due when the target has been improved upon or achieved.

X20.5 ~~The Client may add a Key Performance Indicator and associated payment to the Incentive Schedule but may not delete or reduce a payment stated in the Incentive Schedule.~~

## OPTION X21: WHOLE LIFE COST

|                 |       |   |
|-----------------|-------|---|
| Whole life cost | X21   |   |
|                 | X21.1 | The <i>Contractor</i> may propose to the <i>Service Manager</i> that the Scope or any Task Order is changed in order to reduce the cost of operating and maintaining the Affected Property, other than a reduction to the amount the <i>Client</i> pays to the <i>Contractor</i> for Providing the Service.   |
|                 | X21.2 | If the <i>Service Manager</i> is prepared to consider the change, the <i>Contractor</i> submits a quotation which comprises <ul style="list-style-type: none"><li>• a detailed description,</li><li>• the forecast cost reduction to the <i>Client</i> of the Affected Property over its whole life,</li><li>• an analysis of the resulting risks to the <i>Client</i>,</li><li>• the proposed changes to the Prices and</li><li>• a revised plan and/or Task Order programme showing any changes to the timing of the service.</li></ul> |
|                 | X21.3 | The <i>Service Manager</i> consults with the <i>Contractor</i> about a quotation. The <i>Service Manager</i> replies within the <i>period for reply</i> . The reply is acceptance of the quotation or the reason for not accepting it. The <i>Service Manager</i> may give any reason for not accepting the quotation.  |
|                 | X21.4 | The <i>Service Manager</i> does not change the Scope or Task Order (as appropriate) as proposed by the <i>Contractor</i> unless the <i>Contractor's</i> quotation is accepted.  |
|                 | X21.5 | When a quotation to reduce the costs of operating and maintaining the Affected Property is accepted the <i>Service Manager</i> changes the Scope or Task Order (as appropriate) and the Prices accordingly and accepts the revised plan and/or Task Order programme. The change to the Scope or Task Order (as appropriate) is not a compensation event.  |

## OPTION X23: EXTENDING THE SERVICE PERIOD

|                              |       |  |
|------------------------------|-------|--|
| Extending the Service Period | X23   |  |
|                              | X23.1 | The <i>Client</i> may, with the agreement of the <i>Contractor</i> , extend the Service Period by a <i>period for extension</i> up to the <i>maximum service period</i> . The <i>Client</i> notifies the <i>Contractor</i> and the <i>Service Manager</i> of each agreed period for extension before its <i>notice date</i> . Each <i>period for extension</i> is agreed and applied separately and in the order set out in the Contract Data. |
|                              | X23.2 | <del>If there are criteria for extension, the Service Period is not extended unless those criteria for extension are met on or before the notice date for the relevant period for extension.</del>   |

## OPTION X24: THE ACCOUNTING PERIODS

|                    |       |  |
|--------------------|-------|--|
| Accounting periods | X24   |  |
|                    | X24.1 | Within thirteen weeks after the end of each <i>accounting period</i> the <i>Service Manager</i> <ul style="list-style-type: none"><li>• makes an assessment of the final amount due for the service provided during the <i>accounting period</i> and</li><li>• notifies the <i>Contractor</i> of that assessment and provides details of how the assessment has been made.</li></ul>   |
|                    | X24.2 | The <i>Service Manager's</i> assessments at the end of each <i>accounting period</i> are conclusive evidence of the final amount due for the service provided during the <i>accounting period</i> unless a Party take the following actions.<br><br>If the contract includes Option W1, a Party <ul style="list-style-type: none"><li>• refers a dispute about the assessment of the final amount due to the <i>Senior Representatives</i> within four weeks of the assessment being issued,</li><li>• refers any issues not agreed by the <i>Senior Representatives</i> to the <i>Adjudicator</i> within three weeks of the list of the issues not agreed being produced or when it should have been produced and</li></ul> |

- refers to the *tribunal* its dissatisfaction with a decision of the *Adjudicator* as to the final assessment of the amount due within four weeks of the decision being made.

If the contract includes Option W2, a Party

- refers a dispute about the assessment of the final amount due to the *Senior Representatives* or to the *Adjudicator* within four weeks of the assessment being issued,
- refers any issues referred to but not agreed by the *Senior Representatives* to the *Adjudicator* within three weeks of the list of issues not agreed being produced or when it should have been produced and
- refers to the *tribunal* its dissatisfaction with a decision of the *Adjudicator* as to the final assessment of the amount due within four weeks of the decision being made.

# Option Y

## OPTION Y(UK)1: PROJECT BANK ACCOUNT **NOT USED**

| Project Bank Account | Y(UK)1                      |   |   |
|----------------------|-----------------------------|---|---|
| <b>Definitions</b>   | Y1.1                        | <p>(1) The Authorisation is a document authorising the <i>project bank</i> to make payments to the <i>Contractor</i> and Named Suppliers.</p> <p>(2) Named Suppliers are <i>named suppliers</i> and other Suppliers who have signed the Joining Deed.</p> <p>(3) Project Bank Account is the account used to receive payments from the <i>Client</i> and the <i>Contractor</i> and to make payments to the <i>Contractor</i> and Named Suppliers.</p> <p>(4) A Supplier is a person or organisation who has a contract to</p> <ul style="list-style-type: none"> <li>• provide part of the <i>service</i>,</li> <li>• provide a service necessary to Provide the Service or</li> <li>• supply Plant and Materials for the <i>service</i>.</li> </ul> <p>(5) Trust Deed is an agreement in the form set out in the contract which contains provisions for administering the Project Bank Account.</p> <p>(6) Joining Deed is an agreement in the form set out in the contract under which the Supplier joins the Trust Deed.</p> |   |
|                      | <b>Project Bank Account</b> | Y1.2  | The <i>Contractor</i> establishes the Project Bank Account with the <i>project bank</i> within three weeks of the Contract Date.  |
|                      |                             | Y1.3  | Unless stated otherwise in the Contract Data, the <i>Contractor</i> pays any charges made and is paid any interest paid by the <i>project bank</i> . The charges and interest by the <i>project bank</i> are not included in Defined Cost.  |
|                      |                             | Y1.4  | The <i>Contractor</i> submits to the <i>Service Manager</i> for acceptance details of the banking arrangements for the Project Bank Account. A reason for not accepting the banking arrangements is that they do not provide for payments to be made in accordance with the contract. The <i>Contractor</i> provides to the <i>Service Manager</i> copies of communications with the <i>project bank</i> in connection with the Project Bank Account. |
|                      | <b>Named Suppliers</b>      | Y1.5  | The <i>Contractor</i> includes in its contracts with Named Suppliers the arrangements in the contract for the operation of the Project Bank Account and Trust Deed. The <i>Contractor</i> notifies the Named Suppliers of the details of the Project Bank Account and the arrangements for payment of amounts due under their contracts.  |
|                      |                             | Y1.6  | The <i>Contractor</i> submits proposals for adding a Supplier to the Named Suppliers to the <i>Service Manager</i> for acceptance. A reason for not accepting is that the addition of the Supplier does not comply with the Scope. The <i>Client</i> , the <i>Contractor</i> and the Supplier sign the Joining Deed after acceptance.   |
| <b>Payments</b>      | Y1.7                        | The <i>Contractor</i> shows in the application for payment the amounts due to Named Suppliers in accordance with their contracts.   |   |
|                      | Y1.8                        | <p>Within the time set out in the banking arrangements to allow the <i>project bank</i> to make payment to the <i>Contractor</i> and Named Suppliers in accordance with the contract,</p> <ul style="list-style-type: none"> <li>• the <i>Client</i> makes payment to the Project Bank Account of the amount which is due to be paid under the contract and</li> <li>• the <i>Contractor</i> makes payment to the Project Bank Account of any amount which the <i>Client</i> has notified the <i>Contractor</i> it intends to withhold from the certified amount and which is required to make payment to Named Suppliers.</li> </ul>   |   |
|                      | Y1.9                        | The <i>Contractor</i> prepares the Authorisation, setting out the sums due to Named Suppliers as assessed by the <i>Contractor</i> and to the <i>Contractor</i> for the balance of the payment due under the contract. After signing the Authorisation, the <i>Contractor</i> submits it to the <i>Service</i>  |   |

~~Manager no later than four days before the final date for payment. The Client signs the Authorisation and submits it to the project bank no later than one day before the final date for payment.~~

~~¥1.10 The Contractor and Named Suppliers receive payment from the Project Bank Account of the sums set out in the Authorisation as soon as practicable after the Project Bank Account receives payment.~~

~~¥1.11 A payment which is due from the Contractor to the Client is not made through the Project Bank Account.~~

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~~**Effect of payment**      ¥1.12      Payments made from the Project Bank Account are treated as payments from the Client to the Contractor in accordance with the contract or from the Contractor or Subcontractor to Named Suppliers in accordance with their contracts as applicable. A delay in payment due to a failure of the Contractor to comply with the requirements of this clause is not treated as late payment under the contract.~~

---

~~**Trust Deed**      ¥1.13      The Client, the Contractor and named suppliers sign the Trust Deed before the first assessment date.~~

---

~~**Termination**      ¥1.14      If the Service Manager issues a termination certificate, no further payment is made into the Project Bank Account.~~

This agreement is made between the *Client*, the *Contractor* and the Named Suppliers.

Terms in this deed have the meanings given to them in the contract between .....  
and ..... for ..... (the *service*).

**Background**

The *Client* and the *Contractor* have entered into a contract for the *service*.

The Named Suppliers have entered into contracts with the *Consultant* or a Subcontractor in connection with the *service*.

The *Contractor* has established a Project Bank Account to make provision for payment to the *Contractor* and the Named Suppliers.

**Agreement**

The parties to this deed agree that

- ~~sums due to the *Contractor* and Named Suppliers and set out in the Authorisation are held in trust in the Project Bank Account by the *Contractor* for distribution to the *Contractor* and Named Suppliers in accordance with the banking arrangements applicable to the Project Bank Account,~~
- ~~further Named Suppliers may be added as parties to this deed with the agreement of the *Client* and *Contractor*. The agreement of the *Client* and *Contractor* is treated as agreement by the Named Suppliers who are parties to this deed,~~
- ~~this deed is subject to the law of the contract for the *service*,~~
- ~~the benefits under this deed may not be assigned.~~

**Executed as a deed on** .....

by

.....(*Client*)

.....(*Contractor*)

.....

.....

.....

.....

(Named Suppliers)

## JOINING DEED

~~This agreement is made between the *Client*, the *Contractor* and ..... (the *Additional Supplier*).  
Terms in this deed have the meanings given to them in the contract between .....  
and ..... for ..... (the *service*).~~

### **Background**

---

~~The *Client* and the *Contractor* have entered into a contract for the *service*.~~

~~The *Named Suppliers* have entered into contracts with the *Contractor* or a *Subcontractor* in connection with the *service*.~~

~~The *Contractor* has established a *Project Bank Account* to make provision for payment to the *Contractor* and the *Named Suppliers*.~~

~~The *Client*, the *Contractor* and the *Named Suppliers* have entered into a deed as set out in Annex 1 (the *Trust Deed*), and have agreed that the *Additional Supplier* may join that deed.~~

### **Agreement**

---

The Parties to this deed agree that

- ~~• the *Additional Supplier* becomes a party to the *Trust Deed* from the date set out below,~~
- ~~• this deed is subject to the law of the contract for the *service*,~~
- ~~• the benefits under this deed may not be assigned.~~

**Executed as a deed on** .....

by

..... (*Client*)

..... (*Contractor*)

..... (*Additional Supplier*)

## OPTION Y(UK)2: THE HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996

The Housing Grants,  
Construction and  
Regeneration Act  
1996

Y(UK)2

*[Note: incorporated into the core clauses, where relevant.]*

|  |      |   |
|--|------|---|
| <b>Definitions</b>                     | Y2.1 | In this Option, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.   |
| <b>Dates for payment</b>               | Y2.2 | <p>The date on which a payment becomes due is seven days after the assessment date. The date on which a final payment becomes due is</p> <ul style="list-style-type: none"> <li>• if the <i>Service Manager</i> makes an assessment after the end of an <i>accounting period</i>, fourteen weeks after the end of the <i>accounting period</i> or, if a different period is stated in the Contract Data, within the period stated;</li> <li>• if the <i>Service Manager</i> makes an assessment after the end of the <i>Service Period</i>, fourteen weeks after the end of the <i>Service Period</i> or, if a different period is stated in the Contract Data, within the period stated;</li> <li>• if the <i>Service Manager</i> does not make an assessment after the end of the <i>Service Period</i>, one week after the <i>Contractor</i> issues its assessment or</li> <li>• if the <i>Service Manager</i> has issued a termination certificate, fourteen weeks after the issue of the certificate.</li> </ul> <p>The final date for payment is the later of</p> <ul style="list-style-type: none"> <li>• fourteen days after the date on which payment becomes due, or a different period for payment if stated in the Contract Data and</li> <li>• seven days after the receipt by the Party making payment of an invoice, issued in accordance with these <i>conditions of contract</i>.</li> </ul> <p>The <i>Service Manager's</i> certificate is the notice of payment specifying the amount due at the payment due date (the notified sum, which may be zero) and stating the basis on which the amount was calculated. If the <i>Service Manager</i> does not make an assessment after the end of the <i>Service Period</i>, the <i>Contractor's</i> assessment is the notice of payment.</p> |
| <b>Notice of intention to pay less</b> | Y2.3 | If either Party intends to pay less than the notified sum, it notifies the other Party not later than seven days (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under the contract unless it has notified its intention to pay less than the notified sum as required by the contract.  |
|  | Y2.4 | <p>If the <i>Client</i> terminates for one of reasons R1 to R15, R18 or R21 and a certified payment has not been made at the date of the termination certificate, the <i>Client</i> makes the certified payment unless</p> <ul style="list-style-type: none"> <li>• it has notified the <i>Contractor</i> in accordance with the contract that it intends to pay less than the notified sum or</li> <li>• the termination is for one of reasons R1 to R10 and the reason occurred after the last date on which it could have notified the <i>Contractor</i> in accordance with the contract that it intends to pay less than the notified sum.</li> </ul>   |
| <b>Suspension of performance</b>       | Y2.5 | If the <i>Contractor</i> exercises its right under the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 to suspend performance, it is a compensation event.   |

## OPTION Y(UK)3: THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

|                    |        |  |
|--------------------|--------|--|
| Third party rights | Y(UK)3 |  |
|                    | Y3.1   | A <i>beneficiary</i> may enforce the terms of the contract stated in the Contract Data under the Contracts (Rights of Third Parties) Act 1999.   |
|                    | Y3.2   | Other than the Parties or a <i>beneficiary</i> , no person can enforce any of the terms of the contract under the Contracts (Rights of Third Parties) Act 1999.  |
|                    | Y3.3   | If a <i>beneficiary</i> is identified by class or description and not as a named person or organisation, the <i>Client</i> notifies the <i>Contractor</i> of the name of the <i>beneficiary</i> once it has been identified. |

## OPTION Z: ADDITIONAL CONDITIONS OF CONTRACT

|                                   |      |  |
|-----------------------------------|------|--|
| Additional conditions of contract | Z1   |  |
|                                   | Z1.1 | The <i>additional conditions of contract</i> stated in the Contract Data are part of the contract. |

## SCHEDULE 8

### INSURANCE TABLE

| <b>INSURANCE AGAINST</b>   | <b>WHICH PARTY PROVIDES</b> | <b>MINIMUM AMOUNT OF COVER OR MINIMUM LEVEL OF INDEMNITY</b>   |
|--|-----------------------------|--|
| All risks of loss or damage (not excluded by the terms and conditions of the policy) to permanent works and materials or equipment for incorporation therein, any temporary works (i.e. other works erected or constructed for the purpose of making possible the erection or installation of permanent works) constructional plant and equipment temporary buildings and other property owned by or supplied by a Client                                      | Contractor                  | The total cost of the relevant works, plus architect and other professional fees and debris removal or such other amount identified in each Call-Off Contract or any Task Order  |
| <p><b>Public and Product Liability</b></p> <p>All sums for which the insured shall become legally liable to pay as damages in respect of death of or injury or illness or disease to third parties and/or loss of or damage to third party property obstruction loss of amenities trespass nuisance or any like cause happening during the period of insurance and arising out of or in connection with the Framework Agreement and each Call-Off Contract</p> | Contractor                  | £10,000,000 (ten million pounds) any one occurrence and unlimited in the period of insurance (and in the annual aggregate in respect of product liability) or such other amount identified in each Call-Off Contract or any Task Order |
| <p><b>Employer's Liability</b></p> <p>Liability for death of or bodily injury or illness sustained by employees of the Contractor arising out of or in the course of their employment in connection with the Framework Agreement and each Call-Off Contract</p>  | Contractor                  | £10,000,000 (ten million pounds) any one occurrence and unlimited in the period of insurance or such other amount identified in each Call-Off Contract or any Task Order   |
| Loss or damage to constructional plant, tools, equipment, temporary buildings (including contents therein) belonging to or the responsibility of the Contractor  | Contractor                  | The replacement cost   |
| <p><b>Professional Indemnity Insurance</b></p> <p>Negligence omission or default in respect of the design for which the Contractor is responsible</p>  | Contractor                  | £ 2,000,000 (two millions pounds) each and every claim or such other amount identified in each Call-Off Contract or any Task Order   |

The Contractor ensures that each insurance is in place and provides cover from the date of the Framework Agreement until the date of completion by the Contractor of its obligations under each Call-Off Contract and in respect of Professional Indemnity Insurance until the date 12 years after the date of completion by the Contractor of its obligations under each Call-Off Contract.

## SCHEDULE 9

### MEETINGS AND REPORTING

#### 1. Introduction

This Schedule sets out the formal meeting and reporting regime.

#### 2. Key Meetings

**Table 1 – Key Service Delivery Meetings**

| Meeting Title                        | Purpose  | Frequency | Attendees   |
|--------------------------------------|--|-----------|---|
| Annual Review Panel                  | <p>Review of delivery and performance on an area specific basis between the Framework Client and <i>Contractor</i>, with agenda items to include:</p> <ul style="list-style-type: none"> <li>i. review of delivery milestones and achievements, including a forward look to the Framework Client's key delivery objectives for the following year;</li> <li>ii. review of performance of the Service Levels against the Annual Review Report (including performance against the Collaborative Behaviour KPI) and any required amendments to the Group 1 and Group 3 KPIs;</li> <li>iii. review of health and safety performance against the Framework Client's objectives;</li> <li>iv. sharing of lessons learnt and best practice; and</li> <li>v. any other such matters as raised by those in attendance.</li> </ul> | Annual    | <p><i>Service Manager</i> (Chair);</p> <p>Representatives from Commercial, Performance and Projects Delivery – Framework Client;</p> <p><i>Contractor Manager</i>;</p> <p>Commercial Lead – <i>Contractor</i>;</p> <p>Performance Lead – <i>Contractor</i>;</p> <p>those invited by mutual agreement.</p> |
| Highways and Tunnels Strategic Forum | <p>Consideration of wider and longer-term strategic issues, with agenda items to address the following objectives:</p> <ul style="list-style-type: none"> <li>i. provide leadership, commitment and motivation for a successful collaborative approach and to create and maintain a successful team culture;</li> <li>ii. provide direction at management level to ensure that wider strategic and longer-term issues are properly considered, ensuring that all decisions support best value across the network;</li> </ul>   | Quarterly | <p><i>Senior Representatives of the Client (one to Chair)</i>;</p> <p><i>Service Manager(s)</i>;</p> <p><i>Contractor Manager</i>;</p> <p>Commercial Lead – <i>Contractor</i>;</p> <p>Contract Lead and Commercial Lead,</p>  |

| Meeting Title                     | Purpose   | Frequency                                     | Attendees   |
|-----------------------------------|---|---|---|
|                                   | <ul style="list-style-type: none"> <li>iii. ensure a consistent approach in the delivery of the services across the network;</li> <li>iv. reduce bureaucracy and duplication of effort and enhance efficiency and economy by resolving issues that are common to all; and</li> <li>v. promote positive outcomes, best practice and lessons learnt.</li> </ul>   |   | <p>Maintenance and Management Contract for TfL Road Tunnels and Pumping Stations Contractor;</p> <p>those invited by mutual agreement.</p>  |
| Highways Service Delivery Meeting | <p>Review of matters relating to the performance of the <i>service</i> and any contractual requirements involved in Providing the Service, with key agenda items to focus on:</p> <ul style="list-style-type: none"> <li>i. review of periodic Highways Service Delivery Report and any other reports as submitted by the <i>Contractor</i>;</li> <li>ii. review of any commercial issues;</li> <li>iii. review of any items escalated by the Framework Client;</li> <li>iv. resolve local ambiguities in the Framework Agreement or any Call-Off Contract or inconsistencies between the instructions of the Framework Client and such contracts;</li> <li>v. quarterly review of performance against the Collaborative Behaviour KPI; and</li> <li>vi. review the outcome of any Service Level Audit or Surveillance Audit undertaken in accordance with the Performance Management Schedule (Volume A, Schedule 7, Appendix 7).</li> </ul> | Periodically                                  | <p><i>Service Manager</i> (Chair);</p> <p>Representatives from Commercial, Performance and Projects Delivery – Framework Client;</p> <p><i>Contractor Manager</i>;</p> <p>Commercial Lead – <i>Contractor</i>;</p> <p>Performance Lead – <i>Contractor</i>;</p> <p>those invited by mutual agreement.</p> |
| Project Delivery Meeting          | Review of any matters relating to delivery and progress of Project Tasks; the agenda for which will be agreed at the first meeting.   | Periodically (or as agreed with Task Manager) | <p>Task Manager(s) – Framework Client;</p> <p>Project Delivery Manager(s) – <i>Contractor</i>;</p> <p>those invited by mutual agreement.</p>  |

### 3. Multiparty Collaborative Forum

The Contractor shall promote a collaborative ethos and attend and participate in the quarterly Multiparty Collaborative Forum (MCF) in accordance with Schedule 13 (Multiparty Collaboration Schedule).

### 4. Specific Meetings

The Contractor attends other meetings as required by the Scope or relevant Schedule of the Framework Agreement.

### 5. Reporting

All reports are to be made available electronically, and only provided in hard copy to the Framework Client if requested. However, all electronic documents that are distributed must be done so in a printable format and be subject to document control. The structure and specific content of each report, as detailed below and as per the requirements outlined in the Scope or relevant Schedule of the Framework Agreement, shall be agreed with the *Service Manager* during the mobilisation period.

Contractor performance against Service Levels will be reported in accordance with Volume A, Schedule 7, Appendix 7 (Performance Management) and reviewed at the Highways Service Delivery Meeting. Part of the Highway Service Delivery Meetings' responsibility will be to review Improvement Plans and the outcome of any audits.

#### 5.1 Key Reports

**Table 2 – Key reports to be provided by the Contractor**

| Report                                | Purpose  | Frequency |
|---------------------------------------|--|-----------|
| Annual Review Report                  | Provide an annual update to the Annual Review Panel on: <ul style="list-style-type: none"> <li>• service delivery including reports on each Core Service detailing achievements against the Accepted Plan;</li> <li>• service performance in accordance with Volume A, Schedule 7, Appendix 7;</li> <li>• finance and commercial summary;</li> <li>• health and safety performance;</li> <li>• key achievements including lessons learnt and best practice; and</li> <li>• any other items as agreed.</li> </ul> | Annual    |
| Highways and Tunnels Strategic Report | Provide a quarterly update to the Highways and Tunnels Strategic Forum on: <ul style="list-style-type: none"> <li>• strategic and longer-term issues;</li> <li>• health and safety;</li> <li>• lessons learnt and best practice;</li> <li>• resource deployment including any resource constraints/shortages;</li> <li>• resolution of any issues that are common to all;</li> </ul>   | Quarterly |

| Report                           | Purpose   | Frequency    |
|----------------------------------|---|--------------|
|                                  | <ul style="list-style-type: none"> <li>opportunities for collaborative working; and</li> <li>any other items as agreed.</li> </ul>  |              |
| Highways Service Delivery Report | <p>Provide a periodic update to the Highways Service Delivery Meeting on:</p> <p><b>Section 1 - Operational Matters:</b></p> <p>Section to individually cover reporting of operational <i>service</i> delivery for each Framework Client, including:</p> <ul style="list-style-type: none"> <li>Cyclic Core Service Summary – the <i>Contractor</i> reports progress against the Accepted Plan on each Cyclic Core Service identified in the Scope;</li> <li>Reactive Core Service Summary – the <i>Contractor</i> reports in-period identified defects and in-period corrected defects by defect category for Reactive Core Services identified in the Scope, including a summary of outstanding defects from previous periods;</li> <li>Damage by Others Core Service Summary – the <i>Contractor</i> reports on progress of claims against Others including recovered sums and progress of information provided to the Client;</li> <li>Activity Task Orders Summary;</li> <li>Project Task Orders Summary; and</li> <li>update on any other associated requirements as set out in the Scope.</li> </ul> <p>This section shall also highlight any particular operational concerns within past or upcoming <i>service</i> delivery, including:</p> <ul style="list-style-type: none"> <li>identification of any risks or concerns in meeting the remaining annual programme;</li> <li>any network access concerns/upcoming network impacting special events;</li> <li>any interface concerns with Others including with the wider supply chain;</li> <li>any <i>Contractor</i> or supply chain resourcing concerns; and</li> <li>any Subcontractor quality, performance or financial health concerns.</li> </ul> <p><b>Section 2 - Performance:</b></p> <p>Section to cover reporting of performance, including:</p> <ul style="list-style-type: none"> <li>the <i>Contractor's</i> actual performance level (the Performance Percentage for the Group 3 KPIs and performance scores for the Group 1 KPIs);</li> <li>any failure to meet the relevant Target Service Level and/or Minimum Service Level and plans to recover performance;</li> <li>a quarterly update on performance against the</li> </ul> | Periodically |

| Report  | Purpose   | Frequency |
|---|---|-----------|
|   | Collaborative Behaviour KPI; and <ul style="list-style-type: none"> <li>• any Low Service Damages due to the Framework Client.</li> </ul> <b>Section 3 - Financial &amp; Commercial</b><br><b>Section 4 - Business &amp; Relationship</b><br><b>Section 5 - H&amp;S Incident Report</b> |           |
| <i>Contractor</i> obligations and information regarding other reporting shall be as per the requirements outlined in the Scope or relevant Schedule of the Framework Agreement. |   |           |

## 5.2 Specific Reports

The *Contractor* submits additional reports as required by the Scope or relevant Schedule of the Framework Agreement.

**SCHEDULE 10**  
**FORM OF PARENT COMPANY GUARANTEE**

**Parent Company Guarantee**

**between**

**[PARENT COMPANY]**

**and**

**[CLIENT]**

**Relating to the**

**London Highway Maintenance and Projects Framework  
(Central Area)**

(Letterhead of Parent Company)

To: [insert name and address of the Client]

Date:

Dear Sir/Madam

We, [insert name of Guarantor] ("**the Guarantor**"), understand that

- (a) [you/Transport for London] entered into a Framework Agreement reference number tfl\_scp\_001746a ("**the Framework Agreement**") dated [DATE] with [insert name of Contractor] ("**the Contractor**") under which the Contractor has agreed to provide works or services in accordance with the terms and conditions of the Framework Agreement; and
- (b) you have entered into a call off contract ("**the Call Off Contract**") dated [DATE] with the Contractor issued pursuant to the Framework Agreement,

on the condition that the obligations of the Contractor under the Framework Agreement and the Call Off Contract be guaranteed by a Guarantor.

We are [recite the relationship of the Guarantor to the Contractor], and we warrant to you that this description of our relationship with/to the Contractor is true and accurate in all material respects.

Terms defined in the Framework Agreement have the same meanings in this Guarantee unless otherwise defined in this Guarantee.

WE HEREBY AGREE AND UNDERTAKE with you as follows:-

- (a) We unconditionally guarantee to you on demand:
  - (i) the proper, complete and punctual performance by the Contractor of any and all its obligations, undertakings and responsibilities under the Framework Agreement and the Call Off Contract and we shall forthwith make good any default thereunder on the part of the Contractor;
  - (ii) the due and punctual payment by the Contractor of all sums, liabilities, awards, losses, damages, costs, charges and expenses that may be or become due and payable under or arising out of the Framework Agreement and the Call Off Contract in accordance with their terms or otherwise by reason or in consequence of any such default on the part of the Contractor

when and as the same shall become due for performance or payment (as the case may be).

- (b) As a separate and primary obligation we unconditionally guarantee to you that in the case of default by the Contractor in making any of the payments or in performing any of the obligations, undertakings and responsibilities set out in paragraph (a) above, we shall on demand pay all sums and observe and perform any or all of such obligations, undertakings and responsibilities as if we instead of the Contractor were the primary obligor. Any

payment under this Guarantee shall be made by us in pounds sterling or in any currency which may from time to time replace pounds sterling.

- (c) This Guarantee shall be a continuing security and shall remain in full force and effect until all obligations to be performed or observed by the Contractor under or arising out of the Framework Agreement and the Call Off Contract have been duly and completely performed and observed and the Contractor shall have ceased to be under any actual or contingent liability thereunder.
- (d) Any demand or other notice made under this Guarantee shall be duly made if sent by first class recorded delivery post to us.
- (e) This Guarantee may be enforced without first notifying the Contractor of any default or taking any proceedings or demanding upon, enforcing or exhausting any right or remedy against the Contractor or any other person or taking any action to enforce any other security, bond or guarantee or making or filing any claim in a bankruptcy, liquidation, administration or insolvency of the Contractor or any person.
- (f) If any sum due or purportedly due under this Guarantee is not or would not be recoverable under a guarantee for any reason whatsoever, whether or not known to you, such sum shall still be recoverable from us as a sole principal debtor upon the terms of this Guarantee.

PROVIDED THAT:

- 1. We shall be under no greater obligation or greater liability under this Guarantee than we would have been under the Framework Agreement or the Call Off Contract if we had been named as the Contractor in the Framework Agreement or the Call Off Contract.
- 2. Our obligations hereunder are those of primary obligor and shall remain in full force and effect and shall not be terminated, reduced, discharged or otherwise affected by:
  - (a) any alteration or variation to the terms of the Framework Agreement or the Call Off Contract made by agreement between you (or the Framework Client) and the Contractor (including, without limitation, any increase in the Contractor's obligations under the Framework Agreement or the Call Off Contract or any alteration in the extent or nature or sequence or method or timing of the works or services to be carried out under the Framework Agreement or the Call Off Contract) or any novation of the Framework Agreement or the Call Off Contract (in whole or in part); or
  - (b) any time being given to the Contractor or any other indulgence, waiver, concession, forbearance or forgiveness to the Contractor (whether express or by conduct) or any other thing done, omitted or neglected to be done under the Framework Agreement or the Call Off Contract; or
  - (c) any other bond, security or guarantee now or hereafter given for all or any part of the obligations of the Contractor under the Framework Agreement or the Call Off Contract; or

- (d) the release or waiver of any such bond, security or guarantee referred to in paragraph 2(c) above; or
- (e) any amalgamation, reconstruction or dissolution including, without limitation, winding-up of the Contractor; or
- (f) the winding-up, bankruptcy, administration, receivership or insolvency of the Contractor; or
- (g) any legal limitation, disability or incapacity relating to the Contractor or discharge by operation of law or any change in the constitution, name or style of the Contractor or any other person (whether or not known to you); or
- (h) any total or partial invalidity in, irregularity affecting or unenforceability of any of the obligations of the Contractor under the Framework Agreement or the Call Off Contract; or
- (i) the termination or partial termination of the Framework Agreement or the Call Off Contract or the cessation of any works or services for any reason or the making of any variation to the works or services in accordance with the Framework Agreement or the Call Off Contract; or
- (j) any claim or enforcement of payment from the Contractor or any other person; or
- (k) any act or omission which would not have discharged or affected the liability of a sole principal debtor instead of a guarantor or any act or omission, matter or thing which, but for this provision, might operate to exonerate, discharge, reduce or extinguish our liability under this Guarantee.

3. So long as we remain under any actual or contingent liability under this Guarantee, we shall not exercise any right of subrogation or any other right or remedy which we may have against the Contractor in respect of any payment made by or sum recovered from us pursuant to or in connection with this Guarantee or prove in any liquidation of the Contractor in competition for any sums or liabilities owing or incurred to us by the Contractor in respect of any such payment by or recovery from us or take or hold any security from the Contractor in respect of any liability of ours hereunder. We shall hold any monies recovered or security taken or held in breach of this provision in trust for you under the Call Off Contract.

4. Except where prevented from doing so by law, we waive and agree not to enforce or claim the benefit of any and all rights we have or may from time to time have as guarantor under any applicable law which is or may be inconsistent with any of the provisions of this Guarantee.

5. This Guarantee is irrevocable.

6. The parties do not intend that any of the terms of this Guarantee are enforceable by virtue of the Third Party Act by any person not a party to it.

7.

- (a) This Guarantee, executed and delivered as a deed, is governed by and shall be construed in accordance with the law of England and Wales. Subject to paragraph (b) below, the courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Guarantee.
- (b) You and we may seek interim injunctive relief or any other interim measure of protection in any court of competent jurisdiction.
- (c) Subject to paragraph (b) above, you and we waive any objection to, and submit to, the jurisdiction of the courts of England and Wales. You and we agree that a judgment or order of any such court is binding upon the relevant party and may be enforced against it in the courts of any other jurisdiction.

[For non-UK resident Guarantors only:

- 8. For the purposes of this Guarantee we hereby appoint ..... of ..... (to be a London address) to accept service of process on our behalf, and service on the said ..... at the said address shall be deemed to be good service on us; and we hereby irrevocably agree not to revoke or terminate such appointment.]
- 9. You will be entitled to assign the benefit of this Guarantee in whole or in part but we may not assign the benefit and/or delegate the burden of this Guarantee in whole or in part or enter into any transaction which would result in any of those benefits and/or burdens passing to another person.
- 10. If any provision (in whole or in part) of this Guarantee is found by any court, tribunal, administrative body or authority of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from this Guarantee and shall be ineffective, without, so far as is possible, modifying any other provision of this Guarantee and this shall not affect any other provisions of this Guarantee which shall remain in full force and effect.

Executed as a Deed and delivered the day and year written above.

Executed as a Deed by ) \_\_\_\_\_  
 [Parent Company] ) Director  
 acting by a Director and the )  
 Secretary or by two Directors ) \_\_\_\_\_  
 Director/Secretary

OR

The common seal of ) \_\_\_\_\_  
 [Parent Company] ) Director  
 was affixed in the presence of: )  
 ) \_\_\_\_\_  
 Director/Secretary

**Form of Legal Opinion for use with Guarantee (Framework Agreement)<sup>1</sup>**

To: [insert name and address of the Client]

Date:

Dear Sir/Madam

I am counsel to ..... and I am giving this legal opinion in connection with the making by ..... of the Guarantee (as defined below) in your favour.

- 1. I have examined the Deed of Guarantee (the "Guarantee") dated ..... made between ..... (the "Guarantor") and [CLIENT] ("the Client"). Terms defined in or for the purpose of the Guarantee have the same meanings in this opinion.
  
- 2. Having considered the Guarantee and examined any other document, resolution or certificate I deemed necessary to enable me to give the opinion contained herein and having regard to all applicable laws of ..... I am pleased to advise that in my opinion:
  - (a) the Guarantor was incorporated in ..... on ..... as a [company with limited liability] and validly exists under the laws of ..... as a separate legal entity possessing the capacity to sue or be sued in its own name. To the best of my knowledge having carried out [DESCRIBE APPLICABLE SEARCHES] today, no steps have been, or are being, taken to appoint a receiver or liquidator (or similar encumbrancer or officer) over, or to wind up, the Guarantor;
  
  - (b) the Guarantor has the necessary power and authority, and all necessary corporate and other action (including, without limitation, approvals and consents of members, stockholders, debenture holders or governmental or other regulatory authorities) has been taken to enable the Guarantor to enter into the Guarantee and to perform the obligations of the Guarantor and the transactions contemplated thereby; and
  
  - (c) The entry into and performance of the Guarantee and the transactions contemplated thereby will not cause:
    - (i) any limit on the Guarantor or its directors (whether imposed by the documents constituting the Guarantor, statute, regulation, agreement or otherwise) to be exceeded;
  
    - (ii) any law or order or constitutional document in respect of the Guarantor to be contravened;
  
    - (iii) any default under, or give rise to an obligation to create or impose any security interest of any nature whatsoever pursuant to, any agreement or other instrument or any judgment or other requirement known to us after due enquiry to which the Guarantor is a party or by which it or any of its assets is bound. Further, no event has occurred that, with

<sup>1</sup> Note to bidders: The Contractor may provide an alternative form of legal opinion for approval with the relevant Client acting in its sole discretion.

the giving of notice, lapse of time, determination of materiality or other conditions might constitute a default under or in respect of such agreement, instrument or judgment;

- (d) the Guarantee has been properly signed and delivered on behalf of the Guarantor and the obligations on the part of the Guarantor contained in the Guarantee, assuming them to be valid and binding according to English law by which they are expressed to be governed, are valid, legally binding on and enforceable against the Guarantor under the laws of ..... and in the courts of .....
- (e) the signature, delivery and performance of the Guarantee by the Guarantor constitute private and commercial acts by it rather than public or governmental acts;
- (f) all authorisations, approvals, consents, licences, exemptions, filings, registrations, notarisations and other requirements of governmental, judicial and public bodies and authorities of or in [COUNTRY] required or advisable in connection with the entry into, performance, validity and enforceability of the Guarantee and the transactions contemplated thereby have been obtained or effected and are in full force and effect;
- (g) the obligations of the Guarantor under the Guarantee rank at least equally and rateably (pari passu) in point of priority and security with any and all other unsecured obligations of the Guarantor;
- (h) all amounts payable by the Guarantor under the Guarantee may be made free and clear of, and without deduction for, or on account of, any taxes imposed, assessed or levied by [COUNTRY] or any authority of or in [COUNTRY];
- (i) there are no registration, stamp or other taxes or duties of any kind payable in ..... in connection with the Guarantor including its signature, performance or enforcement by legal proceedings;
- (j) The Client will not violate any law or regulation in ..... nor become liable to tax in ..... by reason of entering into the Guarantee or performing its obligations thereunder. It is not necessary to establish a place of business in ..... in order to enforce any provisions of the Guarantee;
- (k) the choice of English law to govern the Guarantee will be upheld as a valid choice of law in any action in respect of the Guarantee in the ..... Courts;
- (l) the consent to the jurisdiction by the Guarantor contained in the Guarantee is valid and binding on the Guarantor and not subject to revocation;
- (m) any judgment obtained in the courts of England against the Guarantor would be recognised and accepted by the ..... courts without re-trial or re-examination of the merits of the case;

- (n) neither the Guarantor nor any of its assets enjoys any right or immunity from set-off, suit or execution in respect of its obligations under the Guarantee;
- (o) so far as I am aware after due enquiry, no litigation, arbitration or administrative proceedings are at present current, pending or threatened that might, if adversely determined, have a material effect on the business, assets or financial condition of the Guarantor.

3. I do not purport to be expert on and do not purport to be generally familiar with or qualified to express legal opinions based on any law other than the laws of ..... and accordingly express no legal opinion herein based upon any law other than the laws of .....

.....

Signed

**SCHEDULE 11**

**FORM OF COLLATERAL WARRANTY FROM CONTRACTOR**

**Contractor Warranty**

**between**

**[CONTRACTOR]**

**and**

**[BENEFICIARY]**

**and**

**[CLIENT]**

**relating to [PROJECT]**

**BETWEEN:**

- (1) [CONTRACTOR] [(registered number [no.]) whose registered office is] [of] [Address] (“the Contractor”);
- (2) [BENEFICIARY] [(registered number [no.]) whose registered office is] [of] [Address] (“the Beneficiary” which expression includes its permitted successors in title and assigns); and
- (3) [CLIENT] of [Address] [OR] [Transport for London a statutory corporation established under the Greater London Authority Act 1999 of 5 Endeavour Square, London, E20 1JN, United Kingdom] (“the Client”).

**BACKGROUND:**

- (A) [Transport for London/The Client] has entered into a framework agreement with the Contractor dated [date] enabling the Client, from time to time, to enter into a call-off contract with the Contractor for the provision of highways maintenance and other works or services (“the Framework Agreement”).
- (B) By a contract dated [date] (“the Call-Off Contract”) the Client has appointed the Contractor for the provision of the *service* as defined in the Call-Off Contract (“the Service”).
- (C) Pursuant to the Call-Off Contract the Client may instruct the Contractor to undertake Tasks (as defined in the Call-Off Contract).
- (D) [The Beneficiary is [the/a] [purchaser][tenant] of [description of part of the site] [provider of finance in connection with [DESCRIBE] [member of the TfL Group (as defined in the Call-Off Contract)][developer] or [DESCRIBE AS APPROPRIATE].
- (E) The Contractor is obliged under the Call-Off Contract to give a warranty in this form in favour of the Beneficiary.

**OPERATIVE PROVISIONS**

**1. CONSIDERATION**

This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Contractor receipt of which the Contractor acknowledges.

**2. CONTRACTOR’S WARRANTIES**

2.1 The Contractor warrants to the Beneficiary that it has carried out and will continue to carry out and complete its obligations under the Call-Off Contract in accordance with the Call-Off Contract.

2.2 The Contractor further warrants that it has exercised and will continue to exercise reasonable skill and care (save where the Call-Off Contract imposes a higher

standard in which case such higher standard will apply) in relation to the following (so far as the Contractor is responsible for them):

2.2.1 design of the Service;

2.2.2 the selection of goods, materials, equipment or plant for the Service; and

2.2.3 the satisfaction of any performance requirement or specification of or for the Service.

### **3. INTELLECTUAL PROPERTY RIGHTS**

3.1 Subject to the following provisions of this Deed, all IPR (as defined in the Call-Off Contract) in all documents, drawings, models, materials, computer software, any other material or works prepared or developed by or on behalf of the Contractor in the course of performing its obligations under the Call-Off Contract (“the Documents”) will remain vested in the Client and all Background IPR (as defined in the Call-Off Contract) will remain vested in the Contractor.

3.2 To the extent that it is able to do so, the Client (in respect of the IPR) and the Contractor (in respect of the Background IPR) grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the Beneficiary, with effect from the date of this Deed or in the case of any of the intellectual property not yet in existence with effect from the creation of such intellectual property, an irrevocable, royalty-free, non-exclusive licence to use the relevant intellectual property and to reproduce all Documents for any purpose whatsoever connected with the Service or any relevant Task including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Service. Such licence will carry the right to grant sub-licences and will be transferable to third parties.

3.3 The Client will not be liable for any use the Beneficiary may make of the IPR or the Documents.

### **4. PROFESSIONAL INDEMNITY INSURANCE**

4.1 The Contractor by this Deed covenants with the Beneficiary that it has at its own cost taken out and will maintain professional indemnity insurance with reputable insurers authorised to carry on business in the United Kingdom with a limit of indemnity of not less than £[figures] ([words] million pounds) for each and every claim, in relation to the Service and each Task provided always that:

4.1.1 such insurance shall be in place from the date of commencement of the Service until no less than 12 years after the expiry of the Service Period or (if later) the date of Task Completion of the last Task to be completed (in each case defined in the Call-Off Contract); and

4.1.2 if such insurance is not available to the Contractor (and/or contractors engaged in services of a similar, size nature and complexity as those required by the Call-Off Contract) at commercially reasonable rates and terms

(excluding any increase in premiums attributable to the actions, omissions, errors or defaults of the Contractor), the Contractor and the Beneficiary will meet and the Contractor will outline the steps he intends to take to manage such risks. If the steps proposed by the Contractor are not reasonably acceptable to the Beneficiary, the parties shall agree an alternative method of managing such risk.

4.2 The Contractor will provide the Beneficiary with reasonable evidence that the policies referred to in this clause 4 are in full force and effect together with a summary of the policy terms and conditions.

5. **NOTICES**

Any notice to be given by either party under this Deed will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet provided that if any notice sent by hand or facsimile is sent after 4.45p.m. on any day it will be deemed to be served on the next working day. Any notice sent by post will be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45p.m. on a working day and otherwise on the next working day.

6. **ASSIGNMENT**

[Without prejudice to the provisions of clause 9,] the benefit of and the rights on the part of the Beneficiary under this Deed may be assigned without the consent of the Contractor on two occasions only. The Beneficiary will give the Contractor written notice following any such assignment specifying the name and address of the assignee and the date of the assignment. The Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary under this Deed or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the site or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

7. **OTHER RIGHTS AND REMEDIES**

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Contractor including, without limitation, any remedies in negligence.

8. **NO APPROVAL**

The Contractor's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for the Beneficiary's benefit or on its behalf.

**CLAUSE 9 TO BE USED IN FINANCIER/TFL GROUP WARRANTY**

**9. STEP-IN RIGHTS**

9.1 Subject to clause 9.7, the Contractor will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Call-Off Contract or its employment under it or discontinue or suspend the performance of any duties or obligations under the Call-Off Contract, without first giving to the Beneficiary not less than twenty-eight days' prior written notice specifying the Contractor's grounds for terminating or treating as terminated or repudiated the Call-Off Contract or its employment under it or discontinuing or suspending its performance of the Call-Off Contract and stating the amount (if any) of monies outstanding under the Call-Off Contract. Within such period of notice:

9.1.1 the Beneficiary may give written notice to the Contractor expressly confirming its intention to comply with clause 9.1.3 and that the Beneficiary shall become the client under the Call-Off Contract to the exclusion of the Client and, upon giving such notice, that will be the case and the Call-Off Contract will be and remain in full force and effect notwithstanding any of the grounds in the Contractor's notice under clause 9.1; and

9.1.2 if the Beneficiary has given notice under clause 9.1.1 or under clause 9.3, the Beneficiary will then as soon as practicable remedy any outstanding breach by the Client; and

9.1.3 if:

9.1.3.1 the Beneficiary has given such notice under clause 9.1.1 then from the date of the Contractor's notice; or

9.1.3.2 the Beneficiary has given notice under clause 9.3 then from the date of the Beneficiary's notice

the Beneficiary will, by clause 9.1.1, become responsible for all sums properly payable to the Contractor under the Call-Off Contract and for the observance and performance of all of the other duties and obligations on the part of the client to be observed and performed under the Call-Off Contract accruing due after the service of such Contractor's notice or Beneficiary's notice (as applicable) but the Beneficiary will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Client under the Call-Off Contract.

9.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Contractor the Beneficiary will not be under any obligation to the Contractor nor will the Contractor have any claim or cause of action against the Beneficiary unless and until the Beneficiary has given written notice to the Contractor under either clause 9.1.1 or clause 9.3.

- 9.3 The Contractor further covenants with the Beneficiary that if requested by the Beneficiary by written notice expressly confirming the Beneficiary's intention to comply with clause 9.1.3 and subject to clause 9.1.2 and clause 9.1.3, it will accept the instructions of the Beneficiary to the exclusion of the Client in respect of the Service and any relevant Tasks upon the terms and conditions of the Call-Off Contract. The Beneficiary shall then become the client under the Call-Off Contract to the exclusion of the Client and the Contractor will, if so requested, enter into a novation agreement in order to substitute the Beneficiary for the Client under the Call-Off Contract.
- 9.4 [Where the Contractor has given rights in relation to the Call-Off Contract similar to those contained in this clause 9 to any other person then if both the Beneficiary and any such other person serve notice under clause 9.1.1 or clause 9.3 or its equivalent the notice served by the Beneficiary shall [prevail] [not prevail] [not prevail over any notice served by [Name] but prevail over any notice served by any other person]].
- 9.5 The Client acknowledges that the Contractor will be entitled to rely on a notice given to the Contractor by the Beneficiary under clause 9.3 as conclusive evidence that the Beneficiary is entitled to serve such notice.
- 9.6 The Beneficiary may by written notice to the Contractor appoint another person to exercise its rights under this clause 9 subject to the Beneficiary remaining liable to the Contractor as guarantor for its appointee in respect of its obligations under this Deed.
- 9.7 Notwithstanding the other provisions of this clause 9, if the Call-Off Contract has for any reason been terminated prior to receipt by the Contractor of a notice from the Beneficiary served under clause 9.1.1 or clause 9.1.3, the Contractor shall on receipt of any such notice from the Beneficiary enter into a new contract with the Beneficiary on the same terms as the Call-Off Contract to continue the Service and any relevant Tasks in all respects as if the Call-Off Contract had been transferred to the Beneficiary in accordance with the provisions of this clause 9.

## 10. **LIMITATION**

- 10.1 The Contractor has no liability under this Deed which is greater or of longer duration than it would have had if in lieu of this Deed the Beneficiary had been a party to the Call-Off Contract as joint client provided that the Contractor shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Contractor from the Client.
- 10.2 The Contractor shall be entitled in any action or proceedings brought by the Beneficiary under this Deed to rely on any limitation in the Call-Off Contract and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against the Beneficiary if, in lieu of this Deed, the Beneficiary had been a party to the Call-Off Contract as joint client.
- 10.3 The parties agree that no action or proceedings may be brought or commenced under this Deed at any time after the date being 12 years after the date of expiry of the

Service Period or (if later) 12 years after the date of Task Completion of the last Task to be completed (in each case as defined in the Call-Off Contract).

**11. GOVERNING LAW AND JURISDICTION**

11.1 This Deed is governed by and construed in accordance with the law of England. Subject to Clause 11.2, the courts of England have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Deed.

11.2 Any party may seek interim injunctive relief or any other interim measure of protection in any court of competent jurisdiction.

11.3 Subject to Clause 11.2, each party waives any objection to, and submits to, the jurisdiction of the courts of England and Wales. Each party agrees that a judgment or order of any such court is binding upon it and may be enforced against it in the courts of any other jurisdiction.

**12. THIRD PARTY RIGHTS**

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

**THIS DOCUMENT** is executed as a deed and delivered on the date stated at the beginning of this Deed.

**[INSERT APPROPRIATE EXECUTION CLAUSES]**

**SCHEDULE 12**

**FORMS OF COLLATERAL WARRANTY FROM SUB-CONTRACTOR**

**PART A – WARRANTY IN FAVOUR OF THE CLIENT**

**Sub-Contractor Warranty**

**between**

**[SUB-CONTRACTOR]**

**and**

**[CLIENT]**

**and**

**[CONTRACTOR]**

**relating to [PROJECT]**

**BETWEEN:**

- (1) [SUB-CONTRACTOR] [(registered number [no.]) whose registered office is] [of] [Address] (“the Sub-Contractor”);
- (2) [CLIENT] [(registered number [no.]) whose registered office is] [of] [Address] (“the Client” which expression includes its permitted successors in title and assigns);
- (3) [CONTRACTOR] [(registered number [no.]) whose registered office is] [of] [Address] (“the Contractor”); and

**BACKGROUND:**

- (A) [Transport for London/The Client]<sup>1</sup> has entered into a framework agreement with the Contractor dated [date] enabling the Client, from time to time, to enter into a call-off contract with the Contractor for the provision of highways maintenance and other works or services (“the Framework Agreement”).
- (B) By a contract dated [date] (“the Call-Off Contract”) the Client has appointed the Contractor for the provision of the *service* as defined in the Call-Off Contract (“the Service”).
- (C) Pursuant to the Call-Off Contract the Client may instruct the Contractor to undertake Tasks (as defined in the Call-Off Contract).
- (D) The Sub-Contractor has been appointed by the Contractor under a sub-contract dated [date] (“the Sub-Contract”) to provide part of the Service as specified in the Sub-Contract (“the Sub-Contract Service”).
- (E) The Sub-Contractor is obliged under the Sub-Contract to give a warranty in this form in favour of the Client.

**OPERATIVE PROVISIONS**

**1. CONSIDERATION**

This Deed is made in consideration of the payment of one pound (£1.00) by the Client to the Sub-Contractor receipt of which the Sub-Contractor acknowledges.

**2. SUB-CONTRACTOR’S WARRANTIES**

- 2.1 The Sub-Contractor warrants to the Client that it has carried out and will continue to carry out and complete its obligations under the Sub-Contract in accordance with the Sub-Contract.
- 2.2 The Sub-Contractor further warrants that it has exercised and will continue to exercise reasonable skill and care (save where the Sub-Contract imposes a higher standard in

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<sup>1</sup> Delete as appropriate depending on whether Transport for London is the Client.

which case such higher standard will apply) in relation to the following (so far as the Sub-Contractor is responsible for them):

2.2.1 design of the Service;

2.2.2 the selection of goods, materials, equipment or plant for the Service; and

2.2.3 the satisfaction of any performance requirement or specification of or for the Service.

### **3. INTELLECTUAL PROPERTY RIGHTS**

3.1 The parties acknowledge that all IPR (as defined in the Call-Off Contract) in all documents, drawings, models, materials, computer software, any other material or works prepared or developed by or on behalf of the Sub-Contractor in the course of performing its obligations under the Sub-Contract ("the Documents") will remain vested in the Client and all relevant Background IPR (as defined in the Call-Off Contract) will remain vested in the Sub-Contractor.

3.2 In respect of the Background IPR, the Sub-Contractor grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the Client, with effect from the date of this Deed or in the case of any of the intellectual property not yet in existence with effect from the creation of such intellectual property, an irrevocable, royalty-free, non-exclusive licence to use the relevant intellectual property and to reproduce all Documents for any purpose whatsoever connected with the Service or any relevant Task including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Service. Such licence will carry the right to grant sub-licences and will be transferable to third parties.

### **4. INSURANCE**

4.1 The Sub-Contractor by this Deed covenants with the Client that it has effected professional indemnity insurance with reputable insurers authorised to carry on business in the United Kingdom with a limit of indemnity of not less than £[figures] ([words] million pounds) for each and every claim in relation to the Sub-Contract Service provided always that:

4.1.1 such insurance shall be in place from the date of commencement of the Sub-Contract Service until no less than 12 years after the expiry of the Service Period or (if later) the date of Task Completion of the last Task to be completed (in each case defined in the Call-Off Contract); and

4.1.2 if such insurance is not available to the Sub-Contractor (and/or sub-contractors engaged in services of a similar size, nature and complexity as those required by the Sub-Contract) at commercially reasonable rates and terms (excluding any increase in premiums attributable to the actions, omissions, errors or defaults of the Sub-Contractor), the Sub-Contractor and the Client will meet and the Sub-Contractor will outline the steps he intends to

take to manage such risks. If the steps proposed by the Sub-Contractor are not reasonably acceptable to the Client, the parties shall agree an alternative method of managing such risk.

4.2 The Sub-Contractor will provide the Client with reasonable evidence that the policies referred to in this clause 4 are in full force and effect together with a summary of the policy terms and conditions.

## 5. **NOTICES**

Any notice to be given by either party under this Deed will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet provided that if any notice sent by hand or facsimile is sent after 4.45p.m. on any day it will be deemed to be served on the next working day. Any notice sent by post will be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45p.m. on a working day and otherwise on the next working day.

## 6. **ASSIGNMENT**

Without prejudice to the provisions of clause 9, the benefit of and the rights on the part of the Client under this Deed may be assigned without the consent of the Sub-Contractor on two occasions only. The Client will give the Sub-Contractor written notice following any such assignment specifying the name and address of the assignee and the date of the assignment. The Sub-Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary under this Deed or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the site or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

## 7. **OTHER RIGHTS AND REMEDIES**

The rights and benefits conferred upon the Client by this Deed are in addition to any other rights and remedies it may have against the Sub-Contractor including, without limitation, any remedies in negligence.

## 8. **NO APPROVAL**

The Sub-Contractor's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Client may make or procure to be made for the Client's benefit or on its behalf.

## 9. STEP-IN RIGHTS

9.1 Subject to clause 9.7, the Sub-Contractor will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Sub-Contract or its employment under it or discontinue or suspend the performance of any duties or obligations under the Sub-Contract, without first giving to the Client not less than twenty-eight days' prior written notice specifying the Sub-Contractor's grounds for terminating or treating as terminated or repudiated the Sub-Contract or its employment under it or discontinuing or suspending its performance of the Sub-Contract and stating the amount (if any) of monies outstanding under the Sub-Contract. Within such period of notice:

9.1.1 the Client may give written notice to the Sub-Contractor expressly confirming its intention to comply with clause 9.1.3 and that the Client shall become the client under the Sub-Contract to the exclusion of the Contractor and, upon giving such notice, that will be the case and the Sub-Contract will be and remain in full force and effect notwithstanding any of the grounds in the Sub-Contractor's notice under clause 9.1; and

9.1.2 if the Client has given notice under clause 9.1.1 or under clause 9.3, the Client will then as soon as practicable remedy any outstanding breach by the Contractor; and

9.1.3 if:

9.1.3.1 the Client has given such notice under clause 9.1.1 then from the date of the Sub-Contractor's notice; or

9.1.3.2 the Client has given notice under clause 9.3 then from the date of the Client's notice,

the Client will, by clause 9.1.1, become responsible for all sums properly payable to the Sub-Contractor under the Sub-Contract and for the observance and performance of all of the other duties and obligations on the part of the Contractor to be observed and performed under the Sub-Contract accruing due after the service of such Sub-Contractor's notice or Client's notice (as applicable) but the Client will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Sub-Contract.

9.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Client to the Sub-Contractor the Client will not be under any obligation to the Sub-Contractor nor will the Sub-Contractor have any claim or cause of action against the Client unless and until the Client has given written notice to the Sub-Contractor under either clause 9.1.1 or clause 9.3.

9.3 The Sub-Contractor further covenants with the Client that if requested by the Client by written notice expressly confirming the Client's intention to comply with clause 9.1.3

and subject to clause 9.1.2 and clause 9.1.3, it will accept the instructions of the Client to the exclusion of the Contractor in respect of the Sub-Contract Service upon the terms and conditions of the Sub-Contract. The Client shall then become the client under the Sub-Contract to the exclusion of the Contractor; and the Sub-Contractor will, if so requested, enter into a novation agreement in order to substitute the Client for the Contractor under the Sub-Contract.

- 9.4 [Where the Sub-Contractor has given rights in relation to the Sub-Contract similar to those contained in this clause 9 to any other person then if both the Client and any such other person serve notice under clause 9.1 or clause 9.3 or its equivalent the notice served by the Client shall [prevail][not prevail] [not prevail over any notice served by [Name] but prevail over any notice served by any other person]].
- 9.5 The Contractor acknowledges that the Sub-Contractor will be entitled to rely on a notice given to the Sub-Contractor by the Client under clause 9.3 as conclusive evidence that the Client is entitled to serve such notice.
- 9.6 The Client may by written notice to the Sub-Contractor appoint another person to exercise its rights under this clause 9 subject to the Client remaining liable to the Sub-Contractor as guarantor for its appointee in respect of its obligations under this Deed.
- 9.7 Notwithstanding the other provisions of this clause 9, if the Sub-Contract has for any reason been terminated prior to receipt by the Sub-Contractor of a notice from the Client served under clause 9.1.1 or clause 9.1.3, the Sub-Contractor shall on receipt of any such notice from the Client enter into a new Sub-Contract with the Client on the same terms as the Sub-Contract to continue the Sub-Contract Service in all respects as if the Sub-Contract had been transferred to the Client in accordance with the provisions of this clause 9.

## 10. **LIMITATION**

- 10.1 The Sub-Contractor has no liability under this Deed which is greater or of longer duration than it would have had if in lieu of this Deed the Client had been a party to the Sub-Contract as joint client provided that the Sub-Contractor shall not be entitled to set-off or deduct from any sums payable to the Client under this Deed any sums due or claimed as due by the Sub-Contractor from the Contractor.
- 10.2 The Sub-Contractor shall be entitled in any action or proceedings brought by the Client under this Deed to rely on any limitation in the Sub-Contract and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against the Client if, in lieu of this Deed, the Client had been a party to the Sub-Contract as joint client.
- 10.3 The parties agree that no action or proceedings may be brought or commenced under this Deed at any time after the date being 12 years after the date of expiry of the Service Period or (if later) 12 years after the date of Task Completion of the last Task to be completed (in each case as defined in the Call-Off Contract).

11. **PARTNERSHIP**

[Where the Sub-Contractor is a partnership references in this Deed to “the Sub- Contractor” will be deemed to include reference to each and every present and future partner of such partnership and the liability of each and every such partner under this Deed will be deemed to be joint and several.]

12. **GOVERNING LAW AND JURISDICTION**

12.1 This Deed is governed by and construed in accordance with the law of England. Subject to Clause 12.2, the courts of England have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Deed.

12.2 Any party may seek interim injunctive relief or any other interim measure of protection in any court of competent jurisdiction.

12.3 Subject to Clause 12.2, each party waives any objection to, and submits to, the jurisdiction of the courts of England and Wales. Each party agrees that a judgment or order of any such court is binding upon it and may be enforced against it in the courts of any other jurisdiction.

13. **THIRD PARTY RIGHTS**

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

**THIS DOCUMENT** is executed as a Deed and delivered on the date stated at the beginning of this Deed.

**[ALL PARTIES TO EXECUTE AS A DEED]**

**SCHEDULE 12**

**FORMS OF COLLATERAL WARRANTY FROM SUB-CONTRACTOR**

**PART B – WARRANTY IN FAVOUR OF BENEFICIARIES OTHER  
THAN THE CLIENT**

**Sub-Contractor Warranty**

**between**

**[SUB-CONTRACTOR]**

**and**

**[BENEFICIARY]**

**and**

**[CONTRACTOR]**

**relating to [PROJECT]**

**BETWEEN:**

- (1) [SUB-CONTRACTOR] [(registered number [no.]) whose registered office is] [of] [Address] (“the Sub-Contractor”);
- (2) [BENEFICIARY] [(registered number [no.]) whose registered office is] [of] [Address] (“the Beneficiary” which expression includes its permitted successors in title and assigns);
- (3) [CONTRACTOR] [(registered number [no.]) whose registered office is] [of] [Address] (“the Contractor”);<sup>2</sup> and
- (4) [[CLIENT] of [Address] (“the Client”)]<sup>3</sup>.

**BACKGROUND:**

- (A) [The Client/Transport for London] has entered into a framework agreement with [the Contractor] [NAME (“the Contractor”)] dated [date] enabling the Client, from time to time, to enter into a call-off contract with the Contractor for the provision of highways maintenance and other works or services (“the Framework Agreement”).
- (B) By a contract dated [date] (“the Call-Off Contract”) the Client has appointed the Contractor for the provision of the *service* as defined in the Call-Off Contract (“the Service”).
- (C) Pursuant to the Call-Off Contract the Client may instruct the Contractor to undertake Tasks (as defined in the Call-Off Contract).
- (D) The Sub-Contractor has been appointed by the Contractor under a sub-contract dated [date] (“the Sub-Contract”) to provide part of the Service as specified in the Sub-Contract (“the Sub-Contract Service”).
- (E) [The Beneficiary is [the/a] [purchaser][tenant] of [description of part of the site] [provider of finance in connection with the [DESCRIBE] [member of the TfL Group (as defined in the Call-Off Contract)] [developer] or [DESCRIBE AS APPROPRIATE].
- (F) The Sub-Contractor is obliged under the Sub-Contract to give a warranty in this form in favour of the Beneficiary.

**OPERATIVE PROVISIONS**

**1. CONSIDERATION**

This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Sub-Contractor receipt of which the Sub-Contractor acknowledges.

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<sup>2</sup> Only required where step-in rights are given.

<sup>3</sup> The Client should be a party to this deed for the purposes of clause 3 (Intellectual Property Rights).

## 2. **SUB-CONTRACTOR'S WARRANTIES**

- 2.1 The Sub-Contractor warrants to the Beneficiary that it has carried out and will continue to carry out and complete its obligations under the Sub-Contract in accordance with the Sub-Contract.
- 2.2 The Sub-Contractor further warrants that it has exercised and will continue to exercise reasonable skill and care (save where the Sub-Contract imposes a higher standard in which case such higher standard will apply) in relation to the following (so far as the Sub-Contractor is responsible for them):
- 2.2.1 design of the Service;
  - 2.2.2 the selection of goods, materials, equipment or plant for the Service; and
  - 2.2.3 the satisfaction of any performance requirement or specification of or for the Service.

## 3. **INTELLECTUAL PROPERTY RIGHTS**

- 3.1 The parties acknowledge that all IPR (as defined in the Call-Off Contract) in all documents, drawings, materials, computer software, any other material or works prepared or developed by or on behalf of the Sub-Contractor in the course of performing its obligations under the Sub-Contract ("the Documents") will remain vested in the Client and all relevant Background IPR (as defined in the Call-Off Contract) will remain vested in the Sub-Contractor.
- 3.2 To the extent that it is able to do so, the Client (in respect of the IPR) and the Sub-Contractor (in respect of the Background IPR) grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the Beneficiary, with effect from the date of this Deed or in the case of any of the intellectual property not yet in existence with effect from the creation of such intellectual property, an irrevocable, royalty-free, non-exclusive licence to use the relevant intellectual property and to reproduce all Documents for any purpose whatsoever connected with the Service or any relevant Task including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Service. Such licence will carry the right to grant sub-licences and will be transferable to third parties.
- 3.3 The Client will not be liable for any use the Beneficiary may make of the IPR or the Documents.

## 4. **INSURANCE**

- 4.1 The Sub-Contractor by this Deed covenants with the Beneficiary that it has effected professional indemnity insurance with reputable insurers authorised to carry on business in the United Kingdom with a limit of indemnity of not less than £[figures] ([words] million pounds) for each and every claim in relation to the Sub-Contract Service provided always that:

- 4.1.1 such insurance shall be in place from the date of commencement of the Sub-Contract Service until no less than 12 years after the expiry of the Service Period or (if later) the date of Task Completion of the last Task to be completed (in each case defined in the Call-Off Contract); and
  - 4.1.2 if such insurance is not available to the Sub-Contractor (and/or sub-contractors engaged in services of a similar size, nature and complexity as those required by the Sub-Contract) at commercially reasonable rates and terms (excluding any increase in premiums attributable to the actions, omissions, errors or defaults of the Sub-Contractor), the Sub-Contractor and the Beneficiary will meet and the Sub-Contractor will outline the steps he intends to take to manage such risks. If the steps proposed by the Sub-Contractor are not reasonably acceptable to the Beneficiary, the parties shall agree an alternative method of managing such risk.
- 4.2 The Sub-Contractor will provide the Beneficiary with reasonable evidence that the policies referred to in this clause 4 are in full force and effect together with a summary of the policy terms and conditions.

**5. NOTICES**

Any notice to be given by either party under this Deed will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet provided that if any notice sent by hand or facsimile is sent after 4.45p.m. on any day it will be deemed to be served on the next working day. Any notice sent by post will be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45p.m. on a working day and otherwise on the next working day.

**6. ASSIGNMENT**

Without prejudice to the provisions of clause 9, the benefit of and the rights on the part of the Beneficiary under this Deed may be assigned without the consent of the Sub- Contractor on two occasions only. The Beneficiary will give the Sub-Contractor written notice following any such assignment specifying the name and address of the assignee and the date of the assignment. The Sub-Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary under this Deed or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the site or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

**7. OTHER RIGHTS AND REMEDIES**

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Sub-Contractor including, without limitation, any remedies in negligence.

**8. NO APPROVAL**

The Sub-Contractor's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for the Beneficiary's benefit or on its behalf.

**CLAUSE 9 TO BE USED IN FINANCIER WARRANTY**

**9. STEP-IN RIGHTS**

9.1 Subject to clause 9.7, the Sub-Contractor will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Sub-Contract or its employment under it or discontinue or suspend the performance of any duties or obligations under the Sub-Contract, without first giving to the Beneficiary not less than twenty-eight days' prior written notice specifying the Sub-Contractor's grounds for terminating or treating as terminated or repudiated the Sub-Contract or its employment under it or discontinuing or suspending its performance of the Sub-Contract and stating the amount (if any) of monies outstanding under the Sub-Contract. Within such period of notice:

9.1.1 the Beneficiary may give written notice to the Sub-Contractor expressly confirming its intention to comply with clause 9.1.3 and that the Beneficiary shall become the client under the Sub-Contract to the exclusion of the Contractor and, upon giving such notice, that will be the case and the Sub-Contract will be and remain in full force and effect notwithstanding any of the grounds in the Sub-Contractor's notice under clause 9.1; and

9.1.2 if the Beneficiary has given notice under clause 9.1.1 or under clause 9.3, the Beneficiary will then as soon as practicable remedy any outstanding breach by the Contractor; and

9.1.3 if:

9.1.3.1 the Beneficiary has given such notice under clause 9.1.1 then from the date of the Sub-Contractor's notice; or

9.1.3.2 the Beneficiary has given notice under clause 9.3 then from the date of the Beneficiary's notice,

the Beneficiary will, by clause 9.1.1, become responsible for all sums properly payable to the Sub-Contractor under the Sub-Contract and for the observance and performance of all of the other duties and obligations on the part of the

Contractor to be observed and performed under the Sub-Contract accruing due after the service of such Sub-Contractor's notice or Beneficiary's notice (as applicable) but the Beneficiary will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Sub-Contract.

- 9.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Sub-Contractor the Beneficiary will not be under any obligation to the Sub-Contractor nor will the Sub-Contractor have any claim or cause of action against the Beneficiary unless and until the Beneficiary has given written notice to the Sub-Contractor under either clause 9.1.1 or clause 9.3.
- 9.3 The Sub-Contractor further covenants with the Beneficiary that if requested by the Beneficiary by written notice expressly confirming the Beneficiary's intention to comply with clause 9.1.3 and subject to clause 9.1.2 and clause 9.1.3, it will accept the instructions of the Beneficiary to the exclusion of the Contractor in respect of the Sub-Contract Service upon the terms and conditions of the Sub-Contract. The Beneficiary shall then become the client under the Sub-Contract to the exclusion of the Contractor; and the Sub-Contractor will, if so requested, enter into a novation agreement in order to substitute the Beneficiary for the Contractor under the Sub-Contract.
- 9.4 [Where the Sub-Contractor has given rights in relation to the Sub-Contract similar to those contained in this clause 9 to any other person then if both the Beneficiary and any such other person serve notice under clause 9.1 or clause 9.3 or its equivalent the notice served by the Beneficiary shall [prevail][not prevail] [not prevail over any notice served by [Name] but prevail over any notice served by any other person]].
- 9.5 The Contractor acknowledges that the Sub-Contractor will be entitled to rely on a notice given to the Sub-Contractor by the Beneficiary under clause 9.3 as conclusive evidence that the Beneficiary is entitled to serve such notice.
- 9.6 The Beneficiary may by written notice to the Sub-Contractor appoint another person to exercise its rights under this clause 9 subject to the Beneficiary remaining liable to the Sub-Contractor as guarantor for its appointee in respect of its obligations under this Deed.
- 9.7 Notwithstanding the other provisions of this clause 9, if the Sub-Contract has for any reason been terminated prior to receipt by the Sub-Contractor of a notice from the Beneficiary served under clause 9.1.1 or clause 9.1.3, the Sub-Contractor shall on receipt of any such notice from the Beneficiary enter into a new Sub-Contract with the Beneficiary on the same terms as the Sub-Contract to continue the Sub-Contract Service in all respects as if the Sub-Contract had been transferred to the Beneficiary in accordance with the provisions of this clause 9.

## 10. **LIMITATION**

- 10.1 The Sub-Contractor has no liability under this Deed which is greater or of longer duration than it would have had if in lieu of this Deed the Beneficiary had been a party to the Sub-Contract as joint client provided that the Sub-Contractor shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Sub-Contractor from the Contractor.
- 10.2 The Sub-Contractor shall be entitled in any action or proceedings brought by the Beneficiary under this Deed to rely on any limitation in the Sub-Contract and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against the Beneficiary if, in lieu of this Deed, the Beneficiary had been a party to the Sub-Contract as joint client.
- 10.3 The parties agree that no action or proceedings may be brought or commenced under this Deed at any time after the date being 12 years after the date of expiry of the Service Period or (if later) 12 years after the date of Task Completion of the last Task to be completed (in each case as defined in the Call-Off Contract).

## 11. **PARTNERSHIP**

[Where the Sub-Contractor is a partnership references in this Deed to “the Sub- Contractor” will be deemed to include reference to each and every present and future partner of such partnership and the liability of each and every such partner under this Deed will be deemed to be joint and several.]

## 12. **GOVERNING LAW AND JURISDICTION**

- 12.1 This Deed is governed by and construed in accordance with the law of England. Subject to Clause 12.2, the courts of England have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Deed.
- 12.2 Any party may seek interim injunctive relief or any other interim measure of protection in any court of competent jurisdiction.
- 12.3 Subject to Clause 12.2, each party waives any objection to, and submits to, the jurisdiction of the courts of England and Wales. Each party agrees that a judgment or order of any such court is binding upon it and may be enforced against it in the courts of any other jurisdiction.

## 13. **THIRD PARTY RIGHTS**

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

**THIS DOCUMENT** is executed as a Deed and delivered on the date stated at the beginning of this Deed.

**[ALL PARTIES TO EXECUTE AS A DEED]**

# SCHEDULE 13

## MULTIPARTY COLLABORATION SCHEDULE

### 1 Introduction

- 1.1 The Framework Client will deliver its functions in relation to highways and associated assets through a suite of contracts. In order to deliver the services undertaken by these contracts there will be interfaces with other contractors and affected third parties.
- 1.2 The Framework Client recognises that a collaborative ethos cultivated at both strategic and operational level offers significant benefits to all parties and stakeholders.
- 1.3 It is with this aim that the Multiparty Collaborative Forum (MCF) is established. The MCF serves to facilitate sharing of information, optimising the management of interfaces, collaborating on challenging issues, championing innovation and fostering greater understanding. The MCF shall concentrate on broad, productive and proactive issues that can benefit the overall success of the suite of contracts for all parties and stakeholders.
- 1.4 Specific issues related to individual contract delivery or management is out of scope of the MCF.

### 2 Members

- 2.1 The MCF will consist of the following Members:
  - the Framework Client (TfL);
  - other Clients (e.g. relevant London Boroughs);
  - the London Highway Maintenance and Projects Framework Contractors; and
  - the Maintenance and Management Contract for TfL Road Tunnels and Pumping Stations Contractor.
- 2.2 The Framework Client's Surface Transport Infrastructure Construction (STIC) framework contractors and Traffic Control Equipment Maintenance, Capital Works and Related Services (TCMS2) (or replacement framework as applicable) framework contractors may be invited to attend the MCF on an ad-hoc basis.
- 2.3 Other stakeholders and suppliers nominated by the Members may be invited to attend the MCF where appropriate for specific agenda items.

### 3 Multiparty Collaboration Objectives

- 3.1 The Members shall work together with their supply chains and others to achieve the following objectives:
  - 3.1.1 active participation in the Framework Client's health and safety initiatives (including Vision Zero), seeking collaboration on health and safety best practice and solutions to challenges;
  - 3.1.2 mitigate interface risks through joint management;
  - 3.1.3 generate efficiencies by reducing duplication and exploring better ways of working;

- 3.1.4 encourage innovation and promoting continuous improvement;
- 3.1.5 share learning and best practice;
- 3.1.6 share local apprenticeship scheme successes and other training initiatives; and
- 3.1.7 collaborate on other issues as raised by Members from time to time.

#### **4 Multiparty Collaborative Working**

- 4.1 The Members work with the supply chain and others to develop relationships that are:
  - supportive, friendly but business-like;
  - proactive;
  - interdependent;
  - flexible, where all Members are prepared to change;
  - open and transparent; and
  - respectful of differences.
- 4.2 The Members work together to develop an appropriate terms of reference for the MCF at the first forum to be held within 12 weeks of the *starting date*.
- 4.3 As the suite of contracts consists of long term contracts, the Members invest time and resource to continuously develop these relationships in order to achieve a successful and collaborative partnership.
- 4.4 The Members work together to achieve ISO44001:2017 Collaborative Business Relationship Management Systems certification as partners over the first 2 years of the contract.

## SCHEDULE 14

### STRATEGIC LABOUR NEEDS AND TRAINING AND SOCIAL VALUE

1.1 Without prejudice to the other provisions in this Framework Agreement relating to the Contractor's Personnel, this Schedule sets out the Contractor's obligations in respect of:

1.1.1 supporting the Framework Client (and third parties nominated by the Framework Client) in the implementation of the Skills and Employment Strategy; and

1.1.2 ensuring that the Contractor attracts, develops and retains the Contractor's Personnel with the skills necessary to deliver the Services throughout the Framework Term and the term of any Call-Off Contract.

1.2 The following terms shall have the corresponding meanings in this Schedule:

**“Agreed SLNT Plan”** means the Contractor's strategic labour needs and training plan, to be prepared in accordance with the SLNT Plan Template (Appendix 2) and approved by the Framework Client;

**“Agreed Social Value Delivery Plan”** means the Contractor's social value delivery plan which describes how the Contractor intends to deliver all of the measures committed to in the Social Value Measurement Matrix, which includes indicative timescales for delivery. The Social Value Measurement Matrix is included in the Social Value Delivery Plan.

**“Annual Social Value Monitoring Report”** means the social value monitoring report to be prepared by the Contractor and submitted to the Framework Client in accordance with this Schedule;

**“Apprentice”** means a member of the Contractor's Personnel who is registered as an apprentice or technician with an industry recognised body;

**“Initial SLNT Plan”** means the initial strategic labour needs and training plan, to be prepared in accordance with the SLNT Plan Template (Appendix 2) and submitted by the Contractor prior to the Framework Agreement Service Commencement Date;

**“Initial Social Value Delivery Plan”** means the initial social value delivery plan submitted as part of the tender submission by the

|   |   |
|---|---|
| <b>Plan”</b>                              | Contractor.   |
| <b>“Quarterly SLNT Monitoring Report”</b> | means the report to be prepared by the Contractor in the form set out at Appendix 5 ( <i>Quarterly SLNT Monitoring Report Template</i> ) to this Schedule and submitted to the Framework Client in accordance with this Schedule;   |
| <b>“Relevant Employment Vacancy”</b>      | means an employment vacancy within the Contractor’s organisation for a member of the Contractor’s Personnel;  |
| <b>“Skills and Employment Strategy”</b>   | means the Framework Client’s ten (10) year skills and employment strategy, as amended from time to time. A copy of the current Skills and Employment Strategy is provided at Appendix 1 ( <i>Skills and Employment Strategy</i> ) to this Schedule;   |
| <b>“SLNT Co-ordinator”</b>                | has the meaning set out in Clause 1.8;  |
| <b>“SLNT Output”</b>                      | means the minimum number of Apprentice positions or equivalent to be delivered by the Contractor (either directly through its own personnel and the personnel of its Subcontractors) under this Framework Agreement, as identified and agreed by the Framework Parties in the Agreed SLNT Plan; |
| <b>“SLNT Plan Template”</b>               | means the template for the SLNT Plan set out at Appendix 2 ( <i>SLNT Plan Template</i> ) to this Schedule, to be completed by the Contractor; and   |
| <b>“Social Value Measurement Matrix”</b>  | means the Contractor’s social value commitments to deliver their social value objectives during the Framework Term.   |
| <b>“Trainee”</b>                          | means a member of the Contractor’s Personnel who is registered as a trainee with an industry recognised body.   |

## **SLNT Plan**

- 1.3 The Contractor shall submit an Initial SLNT Plan to the Framework Client for approval within thirty (30) Business Days of the Framework Agreement Service Commencement Date.
- 1.4 Within 20 Business Days of the Initial SLNT Plan being submitted to the Framework Client, the Framework Client shall either:

- 1.4.1 provide feedback to the Contractor for incorporation prior to agreeing the Agreed SLNT Plan; or
  - 1.4.2 accept the Initial SLNT Plan as the Agreed SLNT Plan.
- 1.5 Should feedback be provided by the Framework Client, the Contractor shall:
- 1.5.1 further develop the Initial SLNT Plan to reflect the comments and requirements of the Framework Client;
  - 1.5.2 submit a revised copy of the Initial SLNT Plan to the Framework Client for approval within thirty (30) Business Days of receiving the feedback from the Framework Client, which becomes the Agreed SLNT Plan subject to approval by the Framework Client; and
  - 1.5.3 provide an Implementation Plan as contained in Appendix 4 to this Schedule, based on the revised copy of the Initial SLNT Plan, within thirty (30) Business Days of receiving the feedback from the Framework Client.
- 1.6 Without limiting any other provision of the Framework Agreement, the Contractor shall:
- 1.6.1 comply with provisions of the Agreed SLNT Plan; and
  - 1.6.2 at no additional cost to the Framework Client and subject to the provisions of Clause 1.7 below, review and amend the Agreed SLNT Plan and Implementation Plan every twelve (12) months following the Framework Agreement Service Commencement Date or at other times requested by the Framework Client, to reflect:
    - 1.6.2.1 good industry practice;
    - 1.6.2.2 any changes to the nature of the Services; and
    - 1.6.2.3 any amendments proposed by the Framework Client.
- 1.7 Any changes or amendments to the Agreed SLNT Plan shall not be implemented until approved in writing by the Framework Client.

### **SLNT Co-ordinator**

- 1.8 Within twenty (20) Business Days of the Framework Agreement Service Commencement Date, the Contractor shall nominate a member of Contractor's Personnel with the necessary skills and authority to:

- 1.8.1 be responsible for the implementation and on-going development and maintenance of the Agreed SLNT Plan; and
- 1.8.2 act as the single point of contact for personnel of the Framework Client on all matters concerning the Agreed SLNT Plan.

(the “**SLNT Co-ordinator**”).

### **SLNT Monitoring and Reporting**

- 1.9 The Contractor shall provide the Framework Client with a Quarterly SLNT Monitoring Report within ten (10) Business Days of quarter end date. This will detail the Contractor’s performance against the Agreed SLNT Plan.
- 1.10 The Contractor shall ensure at all times that it complies with the requirements of the Data Protection Act 2018 (as may be amended) in the:
  - 1.10.1 development and maintenance of training plans; and
  - 1.10.2 collection and reporting of the information to the Framework Client.

### **SLNT Audit**

- 1.11 The Framework Client may from time to time undertake any audit or check of any and all information regarding the Contractor’s compliance with the provisions of this Schedule in accordance with Schedule 15 (Audit and Surveillance Regime).

### **Social Value Plan**

- 1.12 The Contractor and the Framework Client work together to agree the Social Value Delivery Plan.
- 1.13 Within twenty (20) Business Days of the Framework Agreement Service Commencement Date the Framework Client shall provide feedback to the Contractor on the Initial Social Value Delivery Plan for incorporation (based on the submission at tender stage).
- 1.14 Should feedback be provided by the Framework Client, the Contractor shall:
  - 1.14.1 further develop the Initial Social Value Delivery Plan to reflect the comments of the Framework Client;
  - 1.14.2 submit a revised copy of the Initial Social Value Delivery Plan to the Framework Client for approval within thirty (30) Business Days of receiving the feedback from the Framework Client, which becomes the Agreed Social Value Delivery Plan subject to approval by the Framework Client; and

### **Social Value Monitoring**

1.15 Within 10 Business Days of every anniversary of the *starting date* during the Framework Term, the Contractor provides the Framework Client with an Annual Social Value Monitoring Report. The report shall detail the Contractor's performance against the Agreed Social Value Delivery Plan.

## **APPENDIX 1 TO SCHEDULE 14**

### **Skills and Employment Strategy**

A copy of the TfL Skills and Employment Strategy can be obtained from:

<https://www.tfl.gov.uk/cdn/static/cms/documents/skills-and-employment-strategy.pdf>

A copy of the Transport Infrastructure Skills Strategy can be obtained from:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/495900/transport-infrastructure-strategy-building-sustainable-skills.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/495900/transport-infrastructure-strategy-building-sustainable-skills.pdf)

A copy of the Transport Infrastructure Skills Strategy (TISS) – One Year On - can be obtained from:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/627255/strategic-transport-apprenticeship-taskforce-1-yr-on.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/627255/strategic-transport-apprenticeship-taskforce-1-yr-on.pdf)

A copy of the Transport Infrastructure Skills Strategy (TISS) – Two Years On - can be obtained from:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/727052/transport-infrastructure-skills-strategy-two-years-on.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727052/transport-infrastructure-skills-strategy-two-years-on.pdf)

## APPENDIX 2 TO SCHEDULE 14

### SLNT Plan Template

#### SLNT Activity Breakdown

Please complete the following table outlining how you intend to meet your SLNT commitments.

**Table 1:**

| SLNT Activity Area                  | Priority Output | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Total                      | Cross Check |             |
|-------------------------------------|-----------------|--------|--------|--------|--------|--------|----------------------------|-------------|-------------|
|                                     |                 |        |        |        |        |        |                            | SLNT Value  | SLNT Totals |
| <b>Apprenticeship Job Starts</b>    |                 |        |        |        |        |        |                            |             |             |
| New Entrant - Level 2-3 (FTE)       | Y               |        |        |        |        |        | 0                          | 1           | 0           |
| New Entrant - Level 4+ (FTE)        | Y               |        |        |        |        |        | 0                          | 1.5         | 0           |
| Social Mobility Level 2-3 (FTE)     | Y               |        |        |        |        |        | 0                          | 1           | 0           |
| Social Mobility Level 4+ (FTE)      | Y               |        |        |        |        |        | 0                          | 1.5         | 0           |
| Existing Employee Level 2-3 (FTE)   | Y               |        |        |        |        |        | 0                          | 1           | 0           |
| Existing Employee Level 4+ (FTE)    | Y               |        |        |        |        |        | 0                          | 1.5         | 0           |
| <b>Apprenticeship Success</b>       |                 |        |        |        |        |        |                            |             |             |
| Completion (FTE)                    |                 |        |        |        |        |        | 0                          | 1           | 0           |
| <b>Job Creation</b>                 |                 |        |        |        |        |        |                            |             |             |
| Social Mobility (FTE)               |                 |        |        |        |        |        | 0                          | 1           | 0           |
| <b>Educational/Career Support</b>   |                 |        |        |        |        |        |                            |             |             |
| Targeted Placement Positions (Days) |                 |        |        |        |        |        | 0                          | 10          | 0           |
| Placement Positions (Days)          |                 |        |        |        |        |        | 0                          | 20          | 0           |
| Educational Engagement (Days)       |                 |        |        |        |        |        | 0                          | 20          | 0           |
| <b>Equivalent Contract Value</b>    |                 |        |        |        |        |        | <b>Total SLNT Activity</b> |             |             |
| Services                            | £0              |        |        |        |        |        | Priority Activities        |             | 0           |
| Construction / Manufacturing        | £0              |        |        |        |        |        |                            |             |             |

## Strategic Labour Needs and Training Method Statement

### **A) Delivery of SLNT Activity Breakdown**

Referring to the SLNT Activity Breakdown outlined in Table 1, provide a method statement of how you will undertake activities in each of the SLNT areas.

Any areas where you are not proposing to undertake activity should be left blank.

You may use up to 250 words in each of the following boxes.

#### **Apprentice Job Start – New Entrant**

Method statement shall include:

- Attraction and Recruitment
- Apprenticeship Frameworks & Standards
- Training Provider
- Funding
- Apprentice welfare – Terms, Conditions and Benefits

**Content:**

#### **Apprentice Job Start – Social Mobility**

Method statement shall include:

- Attraction and Recruitment
- Apprenticeship Frameworks & Standards
- Training Provider
- Funding
- Apprentice welfare – Terms, Conditions and Benefits
- Engagement with charities and referral partners

**Content:**

#### **Apprentice Start – Existing Staff**

Method statement shall include:

- Generating interest in the existing workforce
- Apprenticeship Frameworks & Standards
- Training Provider
- Funding

**Content:**

### **Apprentice Success – Completion**

Method statement shall include:

- Support provided to ensure timely completion of the Apprenticeship
- Career pathways and opportunities available for successful Apprentices
- How Apprentices that are not retained are supported into work upon completion of the Apprenticeship

**Content:**

### **Job Start - Social Mobility**

Method statement shall include:

- Target groups or priorities
- Possible job roles available
- Training and support to retain the job start
- Charities and partner engagement to find suitable candidates

**Content:**

### **Targeted Placement Positions**

Method statement shall include:

- The target group(s) and the method of finding the candidates
- Placement objectives
- Typical length and type of placement

**Content:**

### **Placement Positions**

Method statement shall include:

- The target group(s) and the method of finding the candidates
- Placement objectives
- Typical length and type of placement

**Content:**

### **Educational Engagement**

Method statement shall include:

- The target educational establishments
- Objectives of engagement
- Engagement activities

**Content:**

## **B) Transport Infrastructure Skills Strategy Diversity and Inclusion Commitments**

Indicate what actions you will undertake to work towards meeting the following commitments contained within the Transport Infrastructure Skills Strategy:

- 20% of new entrants to engineering and technical apprenticeships in the transport sector to be women by 2020, and to achieve parity with the working population at the latest by 2030.
- A 20% increase in the number of BAME candidates undertaking apprenticeships by 2020.

This shall include:

- Engagement, attraction, retention and development strategies for candidates from underrepresented groups;
- Details of any programmes you will join or partnerships you will form with external organisations such as charities and employability groups;
- What steps you will take to ensure your recruitment is fair and open.

**Content: (Max 250 words)**

## **C) Supply Chain Compliance**

If you are using Subcontractors in your work programme, please outline how you will ensure your SLNT requirements will be met through your Subcontractors. This shall include:

- How you will include SLNT considerations in your selection, contracting and management of Subcontractors;
- How you intend to ensure your Subcontractors are aware of appropriate TfL/government support and funding streams for any SLNT activity they will be undertaking towards your stated SLNT outputs;
- How will you facilitate engagement between TfL's Supplier Skills Manager and your supply chain.
- How you will ensure complete and accurate reporting to TfL of supply chain apprenticeship starts and SLNT activity.

**Content: (Max 250 words)**

#### ***D) SLNT Implementation, Monitoring & Co-ordination***

What arrangements you will put in place to put the plan into action during contract including:

- Describe who will be responsible for implementing, managing and reporting SLNT activity within your company;
- What are the administrative and management arrangements that will be operated in relation to your SLNT activity?
- How will the proposed role/ structure interact with TfL?
- The transfer of knowledge from bid team to the project team;
- Engagement with TfL to develop the agreed SLNT Delivery Plan;
- Appointment of the SLNT Coordinator and establishment of the required administration, management and reporting structure

***Content: (Max 250 words)***

#### ***E) Assumptions, Risks and Support from Supplier Skills Manager (SSM)***

Indicate the assumptions made in the creation of this method statement and activity table. Include any anticipated risks and how these will be mitigated.

Provide details of any support that you anticipate requiring from the TfL SSM.

***Content: (Max 250 words)***

**APPENDIX 3 TO SCHEDULE 14**

***NOT USED***

## APPENDIX 4 TO SCHEDULE 14

### Implementation Plan

***[NOTE TO BIDDERS: The implementation plan is designed to provide additional information to TfL that allows the practical implementation of the Contractor's SLNT requirements, to be undertaken. The format of the implementation is appended below:]***

|   |  |  |  |  |  |  |  |                             |  |  |  |  |  |
|---|--|--|--|--|--|--|--|-----------------------------|--|--|--|--|--|
| <b>1 Contact Information</b>  |  |  |  |  |  |  |  |                             |  |  |  |  |  |
| <b>TfL Contract</b>   |  |  |  |  |  |  |  | <b>SLNT Coordinator</b>     |  |  |  |  |  |
| <b>Supplier Name</b>  |  |  |  |  |  |  |  | <b>Current Phone Number</b> |  |  |  |  |  |
| <b>Contract Manager</b>   |  |  |  |  |  |  |  | <b>Contact Email</b>        |  |  |  |  |  |
| <b>TfL Stakeholder/ SRM</b>   |  |  |  |  |  |  |  | <b>Plan Period</b>          |  |  |  |  |  |
| <b>Reporting Requirements</b>   |  |  |  |  |  |  |  |                             |  |  |  |  |  |
| <b>Supplier Skills Manager</b>  |  |  |  |  |  |  |  | <b>Plan Review Date</b>     |  |  |  |  |  |
|   |  |  |  |  |  |  |  |                             |  |  |  |  |  |
| <b>2 Overview and Background</b>  |  |  |  |  |  |  |  |                             |  |  |  |  |  |
| <b>2.1 Overview: Please provide an overview of the contract/ project to which the SLNT requirements have been applied</b>   |  |  |  |  |  |  |  |                             |  |  |  |  |  |
|   |  |  |  |  |  |  |  |                             |  |  |  |  |  |
| <b>2.2 Method: Please outline how you will deliver your SLNT requirements with particular focus on TfL priority outputs</b> |  |  |  |  |  |  |  |                             |  |  |  |  |  |
|   |  |  |  |  |  |  |  |                             |  |  |  |  |  |

| 2.3 - Forecast Outputs: Please indicate in the table below forecasted SLNT outputs |                 |          |                |          |                      |          |              |                              |                       |                           |                  |                               |
|--|-----------------|----------|----------------|----------|----------------------|----------|--------------|------------------------------|-----------------------|---------------------------|------------------|-------------------------------|
|  | Apprentices     |          |                |          |                      |          | Job Creation | Educational / Career Support |                       |                           |                  |                               |
|  | Job Start (FTE) |          | Workless (FTE) |          | Existing Staff (FTE) |          |              | Completion                   | Social Mobility (FTE) | Targeted Placement (Days) | Placement (Days) | Educational Engagement (Days) |
|  | Level 2 - 3     | Level 4+ | Level 2 - 3    | Level 4+ | Level 2 - 3          | Level 4+ |              |                              |                       |                           |                  |                               |
| Previous Year  |                 |          |                |          |                      |          |              |                              |                       |                           |                  |                               |
| June   |                 |          |                |          |                      |          |              |                              |                       |                           |                  |                               |
| July   |                 |          |                |          |                      |          |              |                              |                       |                           |                  |                               |
| August   |                 |          |                |          |                      |          |              |                              |                       |                           |                  |                               |
| September  |                 |          |                |          |                      |          |              |                              |                       |                           |                  |                               |
| October  |                 |          |                |          |                      |          |              |                              |                       |                           |                  |                               |
| November   |                 |          |                |          |                      |          |              |                              |                       |                           |                  |                               |
| December   |                 |          |                |          |                      |          |              |                              |                       |                           |                  |                               |
| January  |                 |          |                |          |                      |          |              |                              |                       |                           |                  |                               |
| February   |                 |          |                |          |                      |          |              |                              |                       |                           |                  |                               |
| March  |                 |          |                |          |                      |          |              |                              |                       |                           |                  |                               |
| April  |                 |          |                |          |                      |          |              |                              |                       |                           |                  |                               |
| May  |                 |          |                |          |                      |          |              |                              |                       |                           |                  |                               |
| June   |                 |          |                |          |                      |          |              |                              |                       |                           |                  |                               |
| Annual Total   | 0               | 0        | 0              | 0        | 0                    | 0        | 0            | 0                            | 0                     | 0                         |                  |                               |
| Future Years   |                 |          |                |          |                      |          |              |                              |                       |                           |                  |                               |
| <b>TOTAL</b>   |                 |          |                |          |                      |          |              |                              |                       |                           |                  |                               |

| 2.4 - Milestones: Please detail key milestones related to the delivery of your SLNT outputs |  |  |  |  |  |  |              |  |  |  |
|---|--|--|--|--|--|--|--------------|--|--|--|
| Milestone 1   |  |  |  |  |  |  | Milestone 6  |  |  |  |
| Milestone 2   |  |  |  |  |  |  | Milestone 7  |  |  |  |
| Milestone 3   |  |  |  |  |  |  | Milestone 8  |  |  |  |
| Milestone 4   |  |  |  |  |  |  | Milestone 9  |  |  |  |
| Milestone 5   |  |  |  |  |  |  | Milestone 10 |  |  |  |

| 2.5 - Partners: Please detail any partner organisations that will assist you in your SLNT delivery (Organisation and Key Contact) |  |  |  |  |  |  |            |  |  |  |
|---|--|--|--|--|--|--|------------|--|--|--|
| Partner 1   |  |  |  |  |  |  | Partner 6  |  |  |  |
| Partner 2   |  |  |  |  |  |  | Partner 7  |  |  |  |
| Partner 3   |  |  |  |  |  |  | Partner 8  |  |  |  |
| Partner 4   |  |  |  |  |  |  | Partner 9  |  |  |  |
| Partner 5   |  |  |  |  |  |  | Partner 10 |  |  |  |

| 3. Risks: Please detail any risks and associated mitigation measures for the delivery of your SLNT requirements |      |  |  |  |  |  |            |  |  |  |
|---|------|--|--|--|--|--|------------|--|--|--|
|   | Risk |  |  |  |  |  | Likelihood |  |  |  |
| 1   |      |  |  |  |  |  |            |  |  |  |
| 2   |      |  |  |  |  |  |            |  |  |  |
| 3   |      |  |  |  |  |  |            |  |  |  |
| 4   |      |  |  |  |  |  |            |  |  |  |
| 5   |      |  |  |  |  |  |            |  |  |  |

4. Communications: Please outline any planned SLNT communication, events or publications (internal and external) and how TfL will be notified

5. Monitoring: You are required to complete the three monitoring templates attached to this document (Sheet 1,2 & 3 of this document)

1. SLNT Monitoring Form - Outlines SLNT Outputs for each reporting period

2. Job Start/Engagement Monitoring Form

3. Apprentice Monitoring Form

6. Sign Off:

|                                    |  |      |
|------------------------------------|--|------|
| Suppliers SLNT Co-ordinator (Name) |  | Date |
| TfL Supplier Skills Manager (Name) |  | Date |
| Implementation Plan Review Date    |  |      |

## APPENDIX 5 TO SCHEDULE 14

### Quarterly SLNT Monitoring Report Template

| SLNT Reporting Table  |                 |               |                 |                     |                       |                            |          |                                 |
|---|-----------------|---------------|-----------------|---------------------|-----------------------|----------------------------|----------|---------------------------------|
| Organisation  |                 |               |                 |                     |                       |                            |          |                                 |
| TfL Contract / Project  |                 |               |                 |                     |                       |                            |          |                                 |
| Date  |                 |               |                 |                     |                       |                            |          |                                 |
| SLNT Reporting Period (Quarter)   |                 |               |                 |                     |                       |                            |          |                                 |
| SLNT Activity Area  | Priority Output | Annual Target | Annual Forecast | Outputs this Period | Total Outputs to date | Cross Check                |          | Additional Detail / Information |
| <b>Apprentices (monitoring data to be provided on Sheet 3)</b>  |                 |               |                 |                     |                       |                            |          |                                 |
| New Entrant - Level 2-3 (FTE)   | Y               |               |                 |                     |                       | 1                          | 0        |                                 |
| New Entrant - Level 4+ (FTE)  | Y               |               |                 |                     |                       | 1.5                        | 0        |                                 |
| Social Mobility - Level 2-3 (FTE)   | Y               |               |                 |                     |                       | 1                          | 0        |                                 |
| Social Mobility - Level 4+ (FTE)  | Y               |               |                 |                     |                       | 1.5                        | 0        |                                 |
| Existing Employee - Level 2-3 (FTE)   | Y               |               |                 |                     |                       | 1                          | 0        |                                 |
| Existing Employee - Level 4+ (FTE)  | Y               |               |                 |                     |                       | 1.5                        | 0        |                                 |
| <b>Apprenticeship Success (monitoring data to be provided on Sheet 2)</b>   |                 |               |                 |                     |                       |                            |          |                                 |
| Completion (FTE)  |                 |               |                 |                     |                       | 1                          | 0        |                                 |
| <b>Job Creation (monitoring data for placements to be provided on Sheet 2)</b>  |                 |               |                 |                     |                       |                            |          |                                 |
| Social Mobility (FTE)   |                 |               |                 |                     |                       | 1                          | 0        |                                 |
| <b>Job Creation (monitoring data to be provided on Sheet 2)</b>   |                 |               |                 |                     |                       |                            |          |                                 |
| Targeted Placement Position (Days)  |                 |               |                 |                     |                       | 10                         | 0        |                                 |
| Placement Positions (Days)  |                 |               |                 |                     |                       | 20                         | 0        |                                 |
| Educational Engagement (Days)   |                 |               |                 |                     |                       | 20                         | 0        |                                 |
|   |                 |               |                 |                     |                       | <b>Total SLNT Activity</b> | <b>0</b> |                                 |
|   |                 |               |                 |                     |                       | <b>Priority Activities</b> | <b>0</b> |                                 |
| <b>Highlights:</b> Please provide further information on the activities undertaken in this reporting period. This could include a summary of the apprenticeships/job starts delivered, key partners/organisations that you have engaged with, schools/career fairs attended and placements offered. |                 |               |                 |                     |                       |                            |          |                                 |
|   |                 |               |                 |                     |                       |                            |          |                                 |
| <b>Issues / Concerns / Risks:</b> Please highlight any issues that have impacted your SLNT delivery.  |                 |               |                 |                     |                       |                            |          |                                 |
|   |                 |               |                 |                     |                       |                            |          |                                 |





# SCHEDULE 15

## AUDIT AND SURVEILLANCE REGIME

### 1. General

1.1 This Schedule sets out the specific levels of audit in order to manage and monitor compliance to contractual requirements.

1.2 In this Schedule the following words and expressions have the following meanings:

“Agreed SLNT Plan” has the meaning given to it in Schedule 14.

“EDI Audit” an audit of any and all information regarding the *Contractor’s* compliance with the Equality, Diversity and Inclusion provisions under Schedule 22.

“Minimum Records” has the meaning given to it in Schedule 22.

“Service Level Audit” has the meaning given to it in Schedule 7, Appendix 7.

“Surveillance Audit” has the meaning given to it in Schedule 7, Appendix 7.

“SLNT Audit” an audit of any and all information regarding the *Contractor’s* compliance with the Strategic Labour Needs and Training provisions under Schedule 14.

### 2. Service Level Audits and Surveillance Audits

2.1 The Client may from time to time undertake Service Level Audits and Surveillance Audits as described in Schedule 7, Appendix 7 (Performance Management)

### 3. SLNT Audit

3.1 The Framework Client may from time to time undertake any audit or check of any and all information regarding the Contractor’s compliance with the provisions of Schedule 14 (Strategic Labour Needs and Training).

3.2 The Contractor shall maintain and retain records relating to the Agreed SLNT Plan and its compliance with the provisions of Schedule 14 for a minimum of seven (7) years.

### 4. EDI Audit

4.1 The Framework Client may from time to time undertake any audit or check of any and all information regarding the Contractor’s compliance with Schedule 22 (Equality, Diversity and Inclusion). The Framework Client’s right to review information pursuant to this Clause shall include any and all documents and records of the Contractor and its Subcontractors in relation to this Framework Agreement and, where applicable, subject to the provisions of Clauses 2.1 of Schedule 22 Indirect Subcontractors and shall include the Minimum Records.

4.2 The Contractor shall maintain and retain the Minimum Records for a minimum of 6 years from the termination or expiry of the Framework Agreement with respect to all matters in respect of the performance of and compliance with Clause 2.1 of Schedule 22. The Contractor shall procure that each of its Subcontractors and, where applicable subject to the provisions of Clause 2.1 of Schedule 22, Indirect Subcontractors shall, maintain and retain the Minimum Records for a minimum of 6 years from the termination or expiry of the Framework Agreement with respect to all matters in respect of the performance of and compliance with Clause 2.1 of

Schedule 22. The Contractor shall procure that each subcontract between it and its Subcontractors and, where applicable, subject to the provisions of Clause 2.1 of Schedule 22, each subcontract between its Subcontractors and any Indirect Subcontractors of the Contractor shall contain rights of audit in favour of and enforceable by the Framework Client substantially equivalent to those granted by the Contractor pursuant to this Schedule.

## **5. General Audit Regime Provisions**

- 5.1 The Framework Client shall use reasonable endeavours to co-ordinate its audits and to manage the number, scope, timing and method of undertaking audits so as to ensure that the Contractor and each Subcontractor is not, without due cause, disrupted or delayed in the performance of its obligations under this Framework Agreement or subcontract.
- 5.2 The Contractor shall promptly provide all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:
- a) granting or procuring the grant of access to any premises used in the Contractor's performance of the Framework Agreement and each Call-Off Contract, or in its relevant Subcontractor or Indirect Subcontractor's performance of its subcontract, whether the Contractor's own premises or otherwise;
  - b) granting or procuring the grant of access to any equipment (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of the Contractor's or the relevant Subcontractor or Indirect Subcontractor's obligations, wherever situated and whether the Contractor's own equipment or otherwise; and
  - c) complying with the Framework Client's reasonable requests for access to senior personnel engaged in the Contractor's performance of the Framework Agreement and each Call-Off Contract, or the relevant Subcontractor or Indirect Subcontractor's performance of its subcontract.
- 5.3 Any costs incurred by the Contractor arising out of or in connection with the carrying out by the Framework Client or anyone appointed by the Framework Client of any audit are borne by the Contractor and shall not entitle the Contractor to a compensation event nor any change in the Prices or allowance for any additional time.

## SCHEDULE 16

### SHORT SCHEDULE OF COST COMPONENTS

The schedule is part of these *conditions of contract* only when Option A is used.  
An amount is included

- only in one cost component and
- only if it is incurred in order to Provide the Service.

---

|                            |           |   |
|----------------------------|-----------|---|
| <b>People</b>              | <b>1</b>  | The following components of the cost of <ul style="list-style-type: none"><li>• people who are directly employed by the <i>Contractor</i> and whose normal place of working is within the Service Areas,</li><li>• people who are directly employed by the <i>Contractor</i> and whose normal place of working is not within the Service Areas but who are working in the Service Areas, proportionate to the time they spend working in the Service Areas and</li><li>• people who are not directly employed by the <i>Contractor</i> but are paid for by it according to the time worked while they are within the Service Areas.</li></ul> |
|                            | <b>11</b> | Amounts calculated by multiplying each of the People Rates by the total time appropriate to that rate spent within the Service Areas.   |
| <b>Equipment</b>           | <b>2</b>  | The following components of the cost of Equipment which is used within the Service Areas.   |
|                            | <b>21</b> | Amounts for Equipment which is in the published list stated in the Contract Data. These amounts are calculated by applying the percentage adjustment for listed Equipment stated in the Contract Data to the rates in the published list and by multiplying the resulting rate by the time for which the Equipment is required.   |
|                            | <b>22</b> | Amounts for Equipment listed in the Contract Data which is not in the published list stated in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.   |
|                            | <b>23</b> | The time required is expressed in hours, days, weeks or months consistent with the list of items of Equipment in the Contract Data or with the published list stated in the Contract Data.  |
|                            | <b>24</b> | Unless the item is in the published list and the rate includes the cost component, payments for <ul style="list-style-type: none"><li>• transporting Equipment to and from the Service Areas other than for repair and maintenance,</li><li>• erecting and dismantling Equipment and</li><li>• constructing, fabricating or modifying Equipment as a result of a compensation event.</li></ul>  |
|                            | <b>25</b> | Unless the item is in the published list and the rate includes the cost component, the purchase price of Equipment which is consumed.   |
|                            | <b>26</b> | Unless included in the rate in the published list, the cost of operatives is included in the cost of people.  |
|                            | <b>27</b> | Amounts for Equipment which is neither in the published list stated in the Contract Data nor listed in the Contract Data, at competitively tendered or open market rates, multiplied by the time for which the Equipment is required.   |
| <b>Plant and Materials</b> | <b>3</b>  | The following components of the cost of Plant and Materials.  |
|                            | <b>31</b> | Payments for <ul style="list-style-type: none"><li>• purchasing Plant and Materials,</li><li>• delivery to and removal from the Service Areas,</li></ul>  |

|  |  |
|--|--|
|  | <ul style="list-style-type: none"> <li>• providing and removing packaging and</li> <li>• samples and tests.</li> </ul>   |
|  | 32 Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.  |
| <b>Subcontractors</b>                            | 4 The following components of the cost of Subcontractors.  |
|  | 41 Payments to Subcontractors for work which is subcontracted.   |
| <b>Charges</b>                                   | 5 The following components of the cost of charges paid by the <i>Contractor</i> .  |
|  | 51 A charge calculated by applying the percentage for people overheads stated in the Framework Data to people item 11 to cover the costs of <ul style="list-style-type: none"> <li>• payments for the provision and use in the Service Areas of water, gas and electricity,</li> <li>• payments for buying or leasing land, compensation for loss of crops or buildings, royalties, inspection certificates, charges for access to the Service Areas, facilities for visits to the Service Areas by Others and</li> <li>• payments for the provision and use of equipment, supplies and services for accommodation, catering, medical facilities and first aid, recreation, sanitation, security, copying, telephones, telex, fax, radio, CCTV, surveying, setting out, computing and hand tools not powered by compressed air.</li> </ul> |
|  | 52 Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the <i>service</i> .   |
|  | 53 Payments for cancellation charges arising from a compensation event.  |
|  | 54 Consumables and equipment provided by the <i>Contractor</i> for the <i>Service Manager's</i> offices  |
| <b>Manufacture and fabrication</b>               | 6 The following components of the cost of manufacture and fabrication of Plant and Materials which are manufactured or fabricated by the <i>Contractor</i> outside the Service Areas.  |
|  | 61 Amounts calculated by multiplying each of the rates for people in the Contract Data by the total time appropriate to that rate spent on manufacture and fabrication of Plant and Materials outside the Service Areas.   |
| <b>Shared Services outside the Service Areas</b> | 7 The following component of the cost of people who are providing a <i>shared service</i> outside the Service Areas.   |
|  | 71 Amounts calculated by multiplying each of the rates for people in the Contract Data by the total time appropriate to that rate spent on providing a <i>shared service</i> outside the Service Areas.  |
| <b>Insurance</b>                                 | 8 The following are deducted from cost <ul style="list-style-type: none"> <li>• the cost of events for which the contract requires the <i>Contractor</i> to insure and</li> <li>• other costs paid to the <i>Contractor</i> by insurers.</li> </ul>  |

# SCHEDULE 17

## PRICE ADJUSTMENT FOR INFLATION

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### Defined Terms

In this Schedule the following words and expressions have the following meanings:

- 1 “Index” means the relevant index from the BCIS Highway Maintenance Indices as published by the Royal Institute of Chartered Surveyors (RICS) identified in the Appendix to this Schedule and “Indices” means all of them.
- 2 “Inflation Adjustment Date” means 1<sup>st</sup> of April each year from the 1 April 2021.
- 3 “Base Date Index (B)” means the relevant Index for January of the year of the previous Inflation Adjustment Date save that for the first Inflation Adjustment Date the Base Date Index is the relevant Index for January 2020.
- 4 “Latest Index (L)” is the relevant Index for January of the same year as the relevant Inflation Adjustment Date.
- 5 “Price Adjustment Factor (PAF)” is for each service or group of services listed in the Appendix the total of the products for each relevant Index of
  - $(L - B)/B$  for that Indexmultiplied by
  - the relevant proportion for that Index,each as stated in the Appendix.

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### Price Adjustment Factor

- 6 If an Index is changed after it has been used in calculating a PAF, the calculation is not changed. The PAF calculated at the last Inflation Adjustment Date before the end of the Framework Term is used for calculating price adjustment after that date.

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### Price adjustment

- 7 On each Inflation Adjustment Date until the end of the Framework Term
  - the rates and prices in the Price List for each Call-Off Contract and
  - the rates in the Framework Data for people and equipment and the rates in the Contract Data for each Call-Off Contract for people and equipment, in each case excluding any rates obtained by reference to an external list or document,

are changed by multiplying the rate or price by (1 + the relevant PAF for the relevant service).

- 8 No price adjustment is made to any percentage in
  - the Price List for each Call-Off Contract,
  - the Contract Data for each Call-Off Contract,
  - the Framework Data or
  - the Schedule of Rates in the Framework Agreement.
- 9 No price adjustment is made for rates and prices stated outside of the Price List for each Call-Off Contract including volume rebate thresholds, damage by Other thresholds, emergency call-out thresholds or reactive service thresholds.

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**Task Orders and  
compensation events**

- 10 Task Price Lists under each Call-Off Contract are not adjusted under this Schedule.
  - 11 Task Price Lists are prepared using the rates and prices current at the starting date for the Task.
  - 12 For the Core Service under each Call-Off Contract, compensation events are assessed using the rates and prices current at their dividing date. For Task Orders, compensation events are assessed using the rates and prices current at the starting date for the Task.
-

## APPENDIX

| No. | Service/Group of Services   | Relevant Indices  | Relevant Proportion |
|-----|---|---|---------------------|
| 1   | Price List part 1, excluding Core Service 5 Lighting & Electrical, Core Service 4 Road Markings and Core Services 1, 2 and 3 Inspections  | Index for Routine, Cyclic and Time Charge Works (4/HM/WC/01)                    | 1.00/1.00           |
| 2   | Price List part 1, Core Service 5 Lighting & Electrical   | Index for Routine, Cyclic and Time Charge Works (4/HM/WC/01)                    | 0.50 /1.00          |
|     |   | Index for Street Lighting (4/HM/WC/08)  | 0.50 /1.00          |
| 3   | Price List part 1, Core Service 4 Road Markings   | Index for Routine, Cyclic and Time Charge Works (4/HM/WC/01)                    | 0.25 /1.00          |
|     |   | Index for Road Markings (4/HM/WC/07)  | 0.75 /1.00          |
| 4   | Price List part 1, Core Services 1, 2 and 3 Inspections   | Index for Professional Services (4/HM/WC/03)                                    | 1.00/1.00           |
| 5   | Series 100 in each Price List and the Schedule of Rates, items 0100.0040 to 0100.0105 and the rates for people in the Framework Data  | Index for Professional Services (4/HM/WC/03)                                    | 1.00/1.00           |
| 6   | Series 100 (excluding items 0100.0040 to 0100.0105), 150, 200, 300, 400, 450, 500, 600, 1100, 1200 (excluding 1200.0385 to 1200.0925), 1700, 1750, 2000, 2300, 2400, 2850, 3000, 3150, 3350, 4000, 5000 and 5700 in each Price List and the Schedule of Rates | Index for Routine, Cyclic and Time Charge Works (4/HM/WC/01)                    | 0.50/1.00           |
|     |   | Index for Renewals and Construction Works (4/HM/WC/02)                          | 0.50/1.00           |
| 7   | Series 700 in each Price List and the Schedule of Rates   | Index for Machine Surfacing (4/HM/WC/04)  | 0.85/1.00           |
|     |   | Index for Hand Surfacing / Patching (4/HM/WC/05)                                | 0.15/1.00           |
|     |   | Index for Machine Surfacing Dressing (4/HM/WC/06) to items 700.3155 to 700.3345 | 1.00/1.00           |
| 8   | Series 1200, items 1200.0385 to 1200.0925 in each Price List and the Schedule of Rates  | Index for Road Markings (4/HM/WC/07)  | 0.85/1.00           |
|     |   | Index for Renewals and Construction Works (4/HM/WC/02)                          | 0.15/1.00           |
| 9   | Series 1300 and Series 1400 in each Price List and the Schedule of Rates  | Index for Street Lighting (4/HM/WC/08)  | 0.85/1.00           |

|  |  |  |           |
|--|--|--|-----------|
|  |  | Index for Renewals and<br>Construction Works<br>(4/HM/WC/02) | 0.15/1.00 |
|--|--|--|-----------|

**SCHEDULE 18**  
**QUALITY SUBMISSION**

## **Quality Criteria**

### **A. BEHAVIOURAL ASSESSMENT**

#### **a.1 – Written Response**

Please describe how you have embedded and will continue to embed collaborative behaviours into the delivery team and how you will use these behaviours to realise positive customer outcomes.

### **B. STRATEGIC**

#### **b.1 – Approach to Framework Management and Leadership**

Explain how you will approach the strategic management of the framework in terms of leadership and the senior management structure (explaining the rationale for selecting the Key Personnel including by reference to relevant skills, knowledge and experience). Strategic management in the context of this question is the organisation of resources, interfaces with the senior management teams of TfL and other potential framework clients, resolution of escalated issues and disputes and other strategic aspects of senior level leadership required to deliver the scope effectively, efficiently, safely and sustainably.

Provide an organisation chart with proposed individuals to include (but not be limited to) the Key Personnel listed in Volume A, Schedule 1 (including name and job title). For the Key Personnel listed in Volume A, Schedule 1 only, specify whether permanent or contract staff and what percentage of their working week will be allocated to the framework.

Submit CV's of eight members of the key management staff who will be responsible for managing the Framework and delivery of works and/or services under the Call-Off Contracts. CV's should include those Key Personnel identified in the organisation chart and Volume A, Schedule 1 e.g.: Framework/Contractor Manager; Commercial Manager, Core Services Manager; Projects/Schemes Delivery Manager; Design Manager; Performance/Quality Manager; Traffic Safety Officer and Environmental Manager. CVs should include professional qualifications, practical relevant experience and how this will contribute to the management of this framework. Bidders shall submit CV's for equivalent roles to the Key Personnel listed above, should these role titles not reflect the actual role titles they propose.

#### **b.2 – Collaboration**

Describe your approach to collaboration and openness and how it will contribute to the success of the framework. Detail your proposed arrangements to ensure collaborative working with TfL, TfL's supply chain partners, customers and other framework clients. Additionally please include details of how you will manage the interface with the road tunnels contractor. Include information on how you will share information and expertise, highlighting the risks and opportunities to collaboration and how these will be managed, to provide the optimal delivery solution.

### **C. CONTRACT DELIVERY**

#### **c.1 - Mobilisation Approach**

Describe how you will mobilise this framework and call-off contracts to deliver the scope, including specific consideration towards mobilisation of depots, plant, equipment, people and systems.

Provide a draft resourced mobilisation programme including details of the critical activities which you believe are required to achieve a successful mobilisation of the Framework and TfL's intended call-off contract. Demonstrate how the programme ensures continuity through mobilisation and commencement of works and services under the call-off contract.

State any risks associated with mobilisation and what mitigation measures you will put in place.

### **c.2 – Contractor’s Plan**

Provide specific details of how you will approach the production and management of the Contractor’s Plan. Explain how you will involve the client in early planning and how you will retain flexibility to react to emergencies. Include a draft Contractor’s Plan, including key planned resource allocations (such as staff, labour, equipment and (if applicable) subcontracted resource) to each Core Service for year 1 of the TfL call-off contract term to support your response, excluding the requirement for Planned Task Price to Date (please note that the submitted draft plan will be utilised for the purposes of quality evaluation and as a basis from which to derive the first Accepted Plan for TfL’s intended call-off contract).

### **c.3 – Supply Chain Management**

Provide details of how you will appoint, manage and coordinate supply chain inputs. Describe how you will mitigate supply chain risks and approach relationship management. Give an indication of which services, if any, are likely to be delivered by subcontractors and how you will achieve continuous improvement through utilisation of your internal resources and supply chain partners. (Note: Subcontractors include internal group companies)

### **c.4 – Quality Management**

Describe how you will manage the quality of delivery of the works and services. This should include how you will identify and rectify non-compliance, ensure continuous improvement and how you will implement and manage a Quality Management System for the delivery of works and/or services under this framework, making reference to Volume B (Scope). Provide details of how you will ensure the capture and accurate reporting of data, which includes for performance monitoring purposes.

### **c.5 – Asset Data Quality**

Provide specific details of how you will ensure the asset inventory is updated with accurate information within the required timescales. Include details of how you will ensure “as built” records, the health and safety file and associated records and manuals for task completion will be available for the update of the inventory.

## **D. CORE SERVICE DELIVERY**

### **d.1 - Core Service Delivery (Approach)**

Provide specific details of how you will deliver the core services listed below (c1.1 to c1.5), recognising the need to maintain network reliability and reduce the impact of the works and services upon local residents and businesses. Include full details of your approach to resourcing for each service (staff, labour, equipment, materials and supplies). Describe how you will build in continuous improvement to deliver quality whilst ensuring adherence to both scope and programme. Include details of any innovative delivery approaches which you will employ that will reduce costs and how you will ensure continuity of resources across the services throughout the framework term. Refer to the Scope for a description of and requirements in relation to each service.

#### **d1.1 – Cyclic Activities**

#### **d1.2 – Reactive Activities**

#### **d1.3 – Winter Service**

#### **d1.4 – Emergency Call-Out Service**

#### **d1.5 – Safety Inspections**

## **E. SERVICE DELIVERY – CAPITAL WORKS**

### **e.1 – Capital Delivery**

Provide specific details of how you will deliver capital renewal works (including carriageway and footway renewal, lighting renewal, drainage renewal, etc.) recognising the need to maintain network reliability and reduce the impact of the works and any services upon local residents and businesses. Describe how you will build in continuous improvement to deliver quality whilst ensuring adherence to both scope and programme. Include details of any innovative delivery approaches which you will employ that will reduce costs and how you will ensure continuity of resources to deliver capital works throughout the framework term.

### **e.2 – Design and Professional Services**

Provide specific details of how you will deliver design and professional services, including how you will ensure appropriate staff are assigned to specific tasks and how you will manage and monitor staff to ensure delivery of the Scope. Describe how you will build in continuous improvement to deliver quality and any innovative design approaches which you will employ that will add value, reduce costs and save time. Include details of how you will ensure continuity of resources to deliver the design and professional services throughout the framework term.

## **F. HEALTH AND SAFETY**

### **f.1 – Approach to Health and Safety**

Include details on how you will work with framework clients to drive TfL's Vision Zero and other framework clients' health and safety initiatives and contribute to the Healthy Streets approach. Detail how you will ensure health and safety is considered in your approach to planning, resourcing, training, supervision, design, construction and delivering all other requirements of the Scope.

Provide CV's of the key health and safety personnel (maximum of three) including a Health and Safety Manager (or equivalent) who will be allocated to this framework. Include professional qualifications, practical relevant experience, how this will contribute to the delivery of the Scope and specify what percentage of their working week will be allocated to this framework.

### **f.2 – Health and Safety Hazards and Associated Risks**

Identify what you perceive as the top 5 health and safety hazards and associated risks in delivering the works and/or services under this Framework. For each risk identified, describe how you will:

- Control the risks;
- Communicate risk assessment to those affected;
- Ensure control measures are effectively implemented and a culture of continuous improvement is embedded; and
- Monitor health and safety compliance at site level.

## **G. ENVIRONMENTAL**

### **g.1 – Noise**

Explain how you will ensure compliance with Best Practicable Means (BPM), as defined under Section 72 of the Control of Pollution Act (CoPA) 1974, to manage noise and vibration impacts associated with your works and/or services?

## **g.2 – Materials and Waste Efficiency**

Based on the scope of works and services, describe how you will:

- a) develop, implement and communicate the site waste management plan / waste management plan;
- b) plan for and implement the 'Waste Hierarchy' by adopting the principles: Reduce, Reuse, Recycle etc. including details of the main barriers in reducing waste to landfill and details of your proposed solutions;
- c) maximise the use of materials with recycled content; and
- d) set and use targets in relation to b) and c) above.

## **g.3 – Air Quality**

TfL seeks to continually improve the air quality in London and has stretch targets to reduce emissions within the Mayor's Transport Strategy (MTS) from all sources related to the services it provides. Describe how you will meet the emission standards from road vehicles and non-road mobile machinery (NRMM) required by the Mayor under the framework and in the performance of a call-off contract awarded under it.

Further information regarding the MTS can be found at:

<https://tfl.gov.uk/corporate/about-tfl/the-mayors-transport-strategy>

## **H. CYBER SECURITY**

Bidders shall submit an outline security management plan as their response to quality criterion "h". Where a Bidder does not currently have a particular policy, process or procedure in place, the response shall describe the policy, process or procedure that would be created, including an estimated time frame for implementation. The outline security management plan as a minimum will:

- a) set out the security measures to be implemented and maintained by the Bidder in relation to all aspects of the Services and all processes associated with the delivery of the Services;
- b) explain how the Bidder shall specify and ensure compliance at all times with security measures and procedures which are sufficient to ensure the Services comply with Appendix V, ISIT Volume B (Scope);
- c) reference and explain what the Bidder will do to ensure compliance with the security requirements set out in Appendix V, ISIT Volume B (Scope) prior to commencement of the Services;
- d) state any other cyber security industry standards over and above those set out in Appendix V, ISIT Volume B (Scope) which the Bidder will ensure are implemented and maintained in the delivery of these Services; and
- e) state all applicable law which relates to the security of the Services.

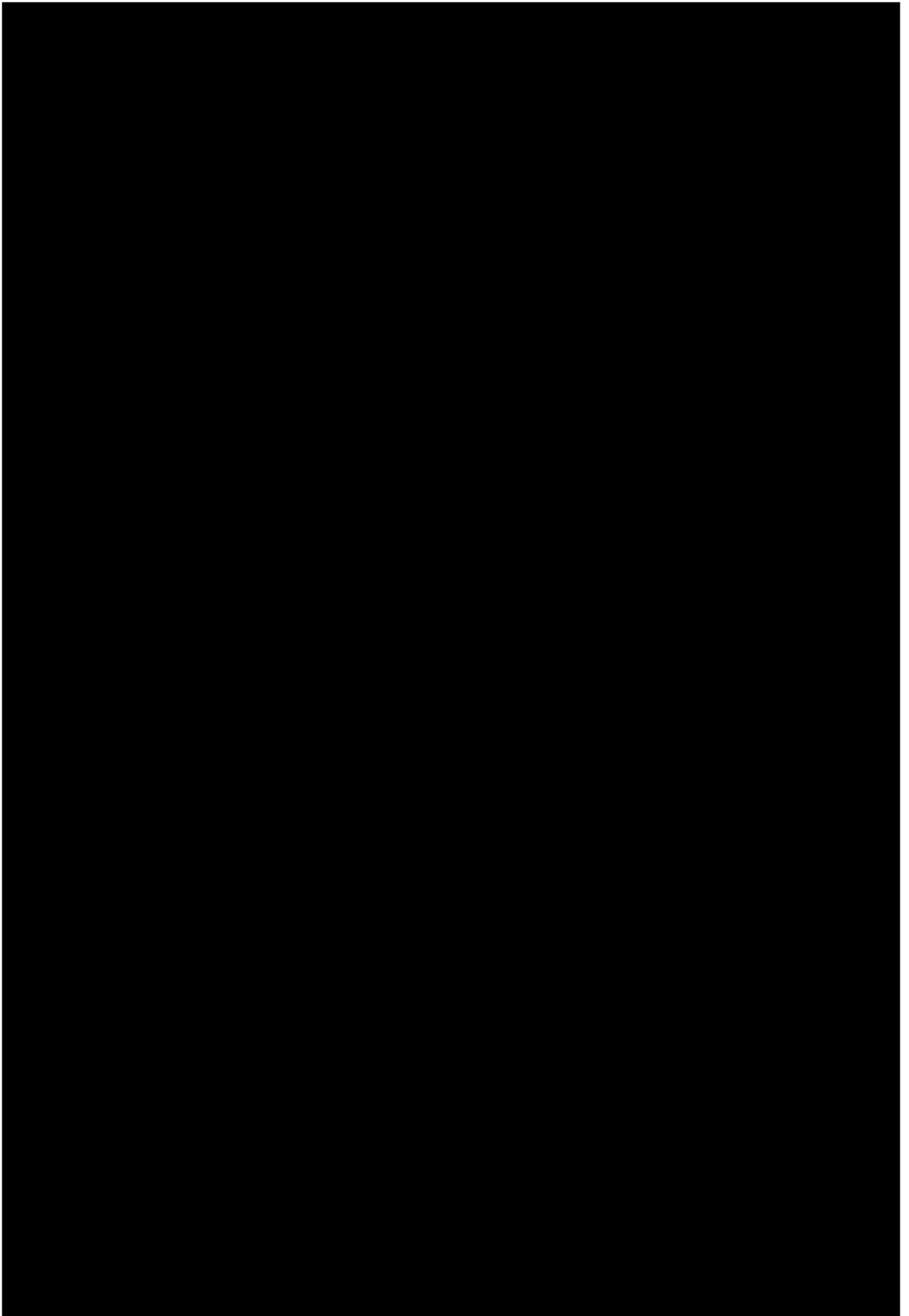
## **I. SOCIAL VALUE**

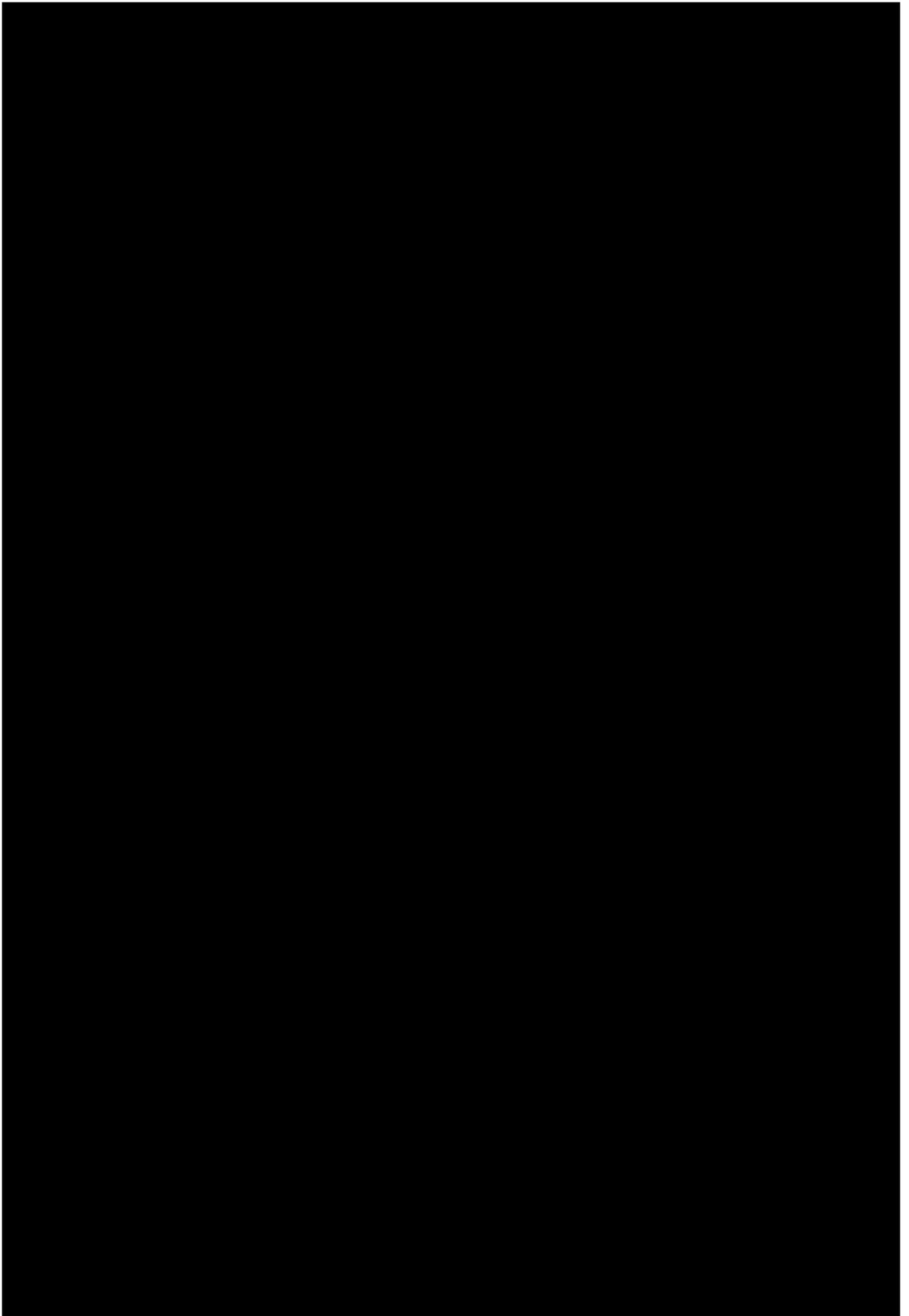
Bidders shall submit an Initial Social Value Delivery Plan to support the Social Value Measurement Matrix as part of the response to quality criterion "i". The plan shall describe how the Bidder intends to deliver all of the measures committed to in the Social Value Measurement Matrix with indicative timescales for delivery.

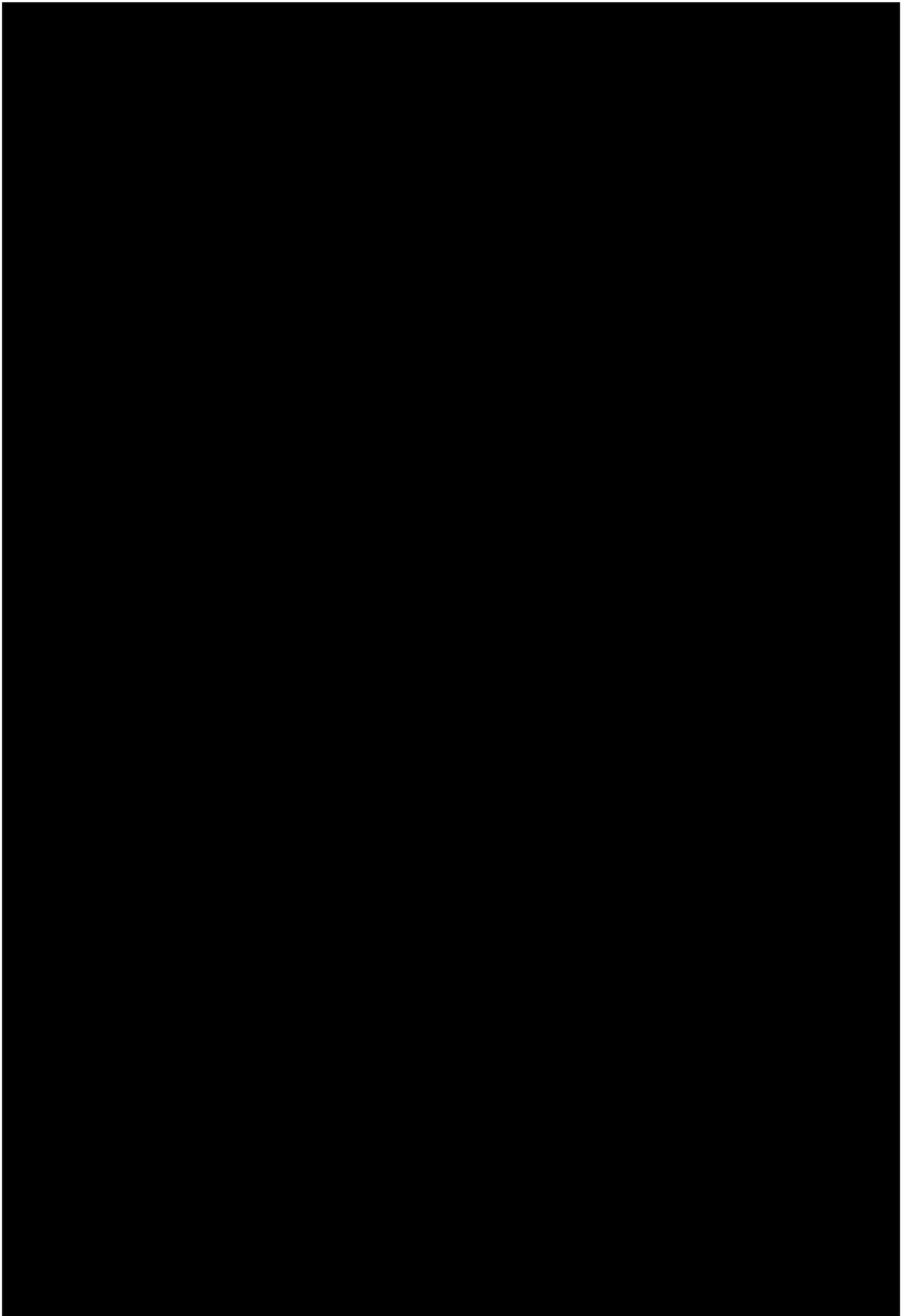
**J. CONFLICT OF INTEREST**

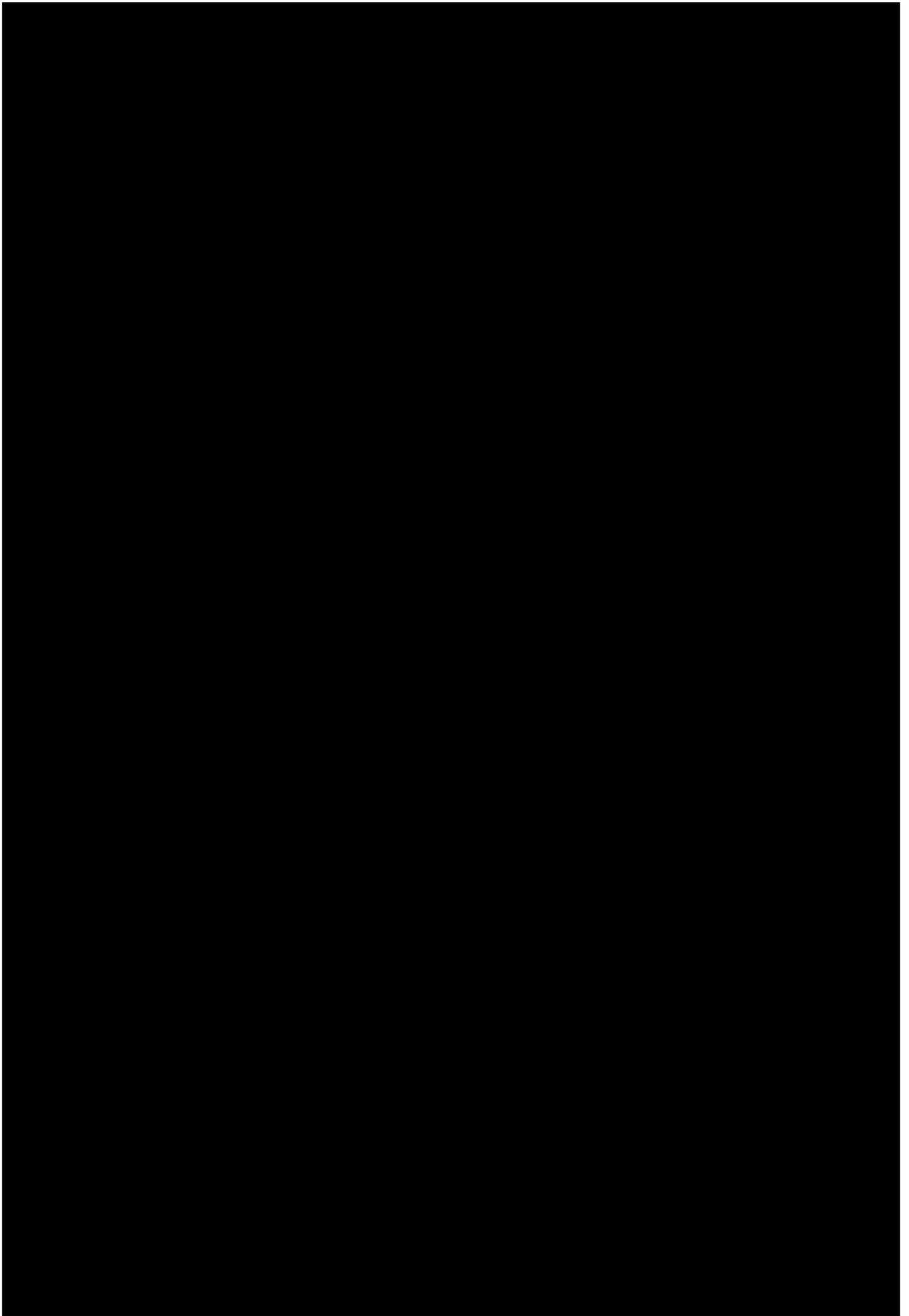
j.1 – Confirm whether you are interested in tendering for both this London Highway Maintenance and Projects Framework and the Condition Inspections Framework).

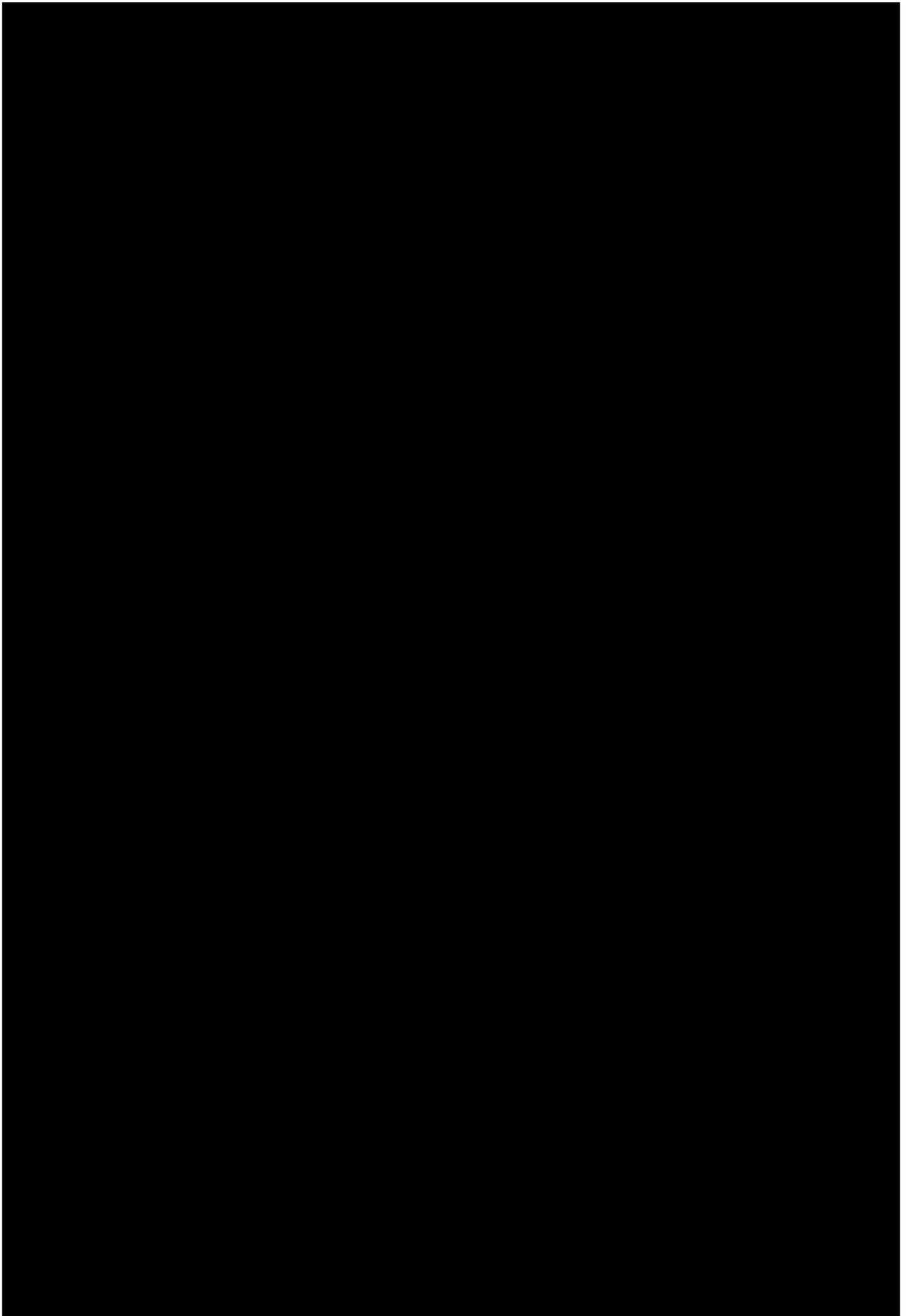
If yes, please describe how robust information barriers will be put in place and managed throughout the contract term(s) and beyond, specifically referencing the procedures and systems which will be put in place in the event that you are appointed to both this Framework and the Conditions Inspections Framework to ensure a complete separation of roles and ensure the continued independence of the Conditions Inspection Framework contractor, including escalation channels and protecting access to information.

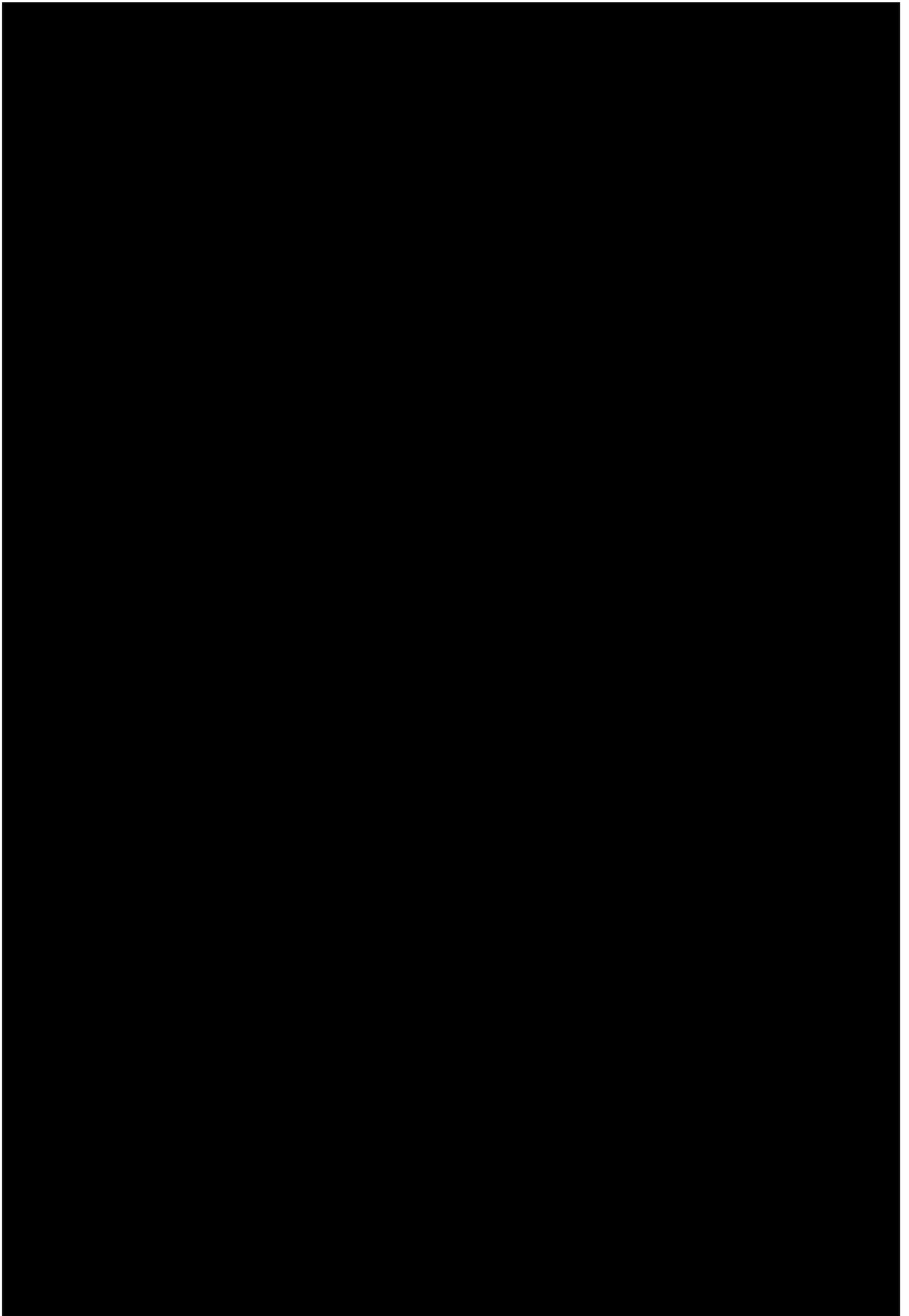


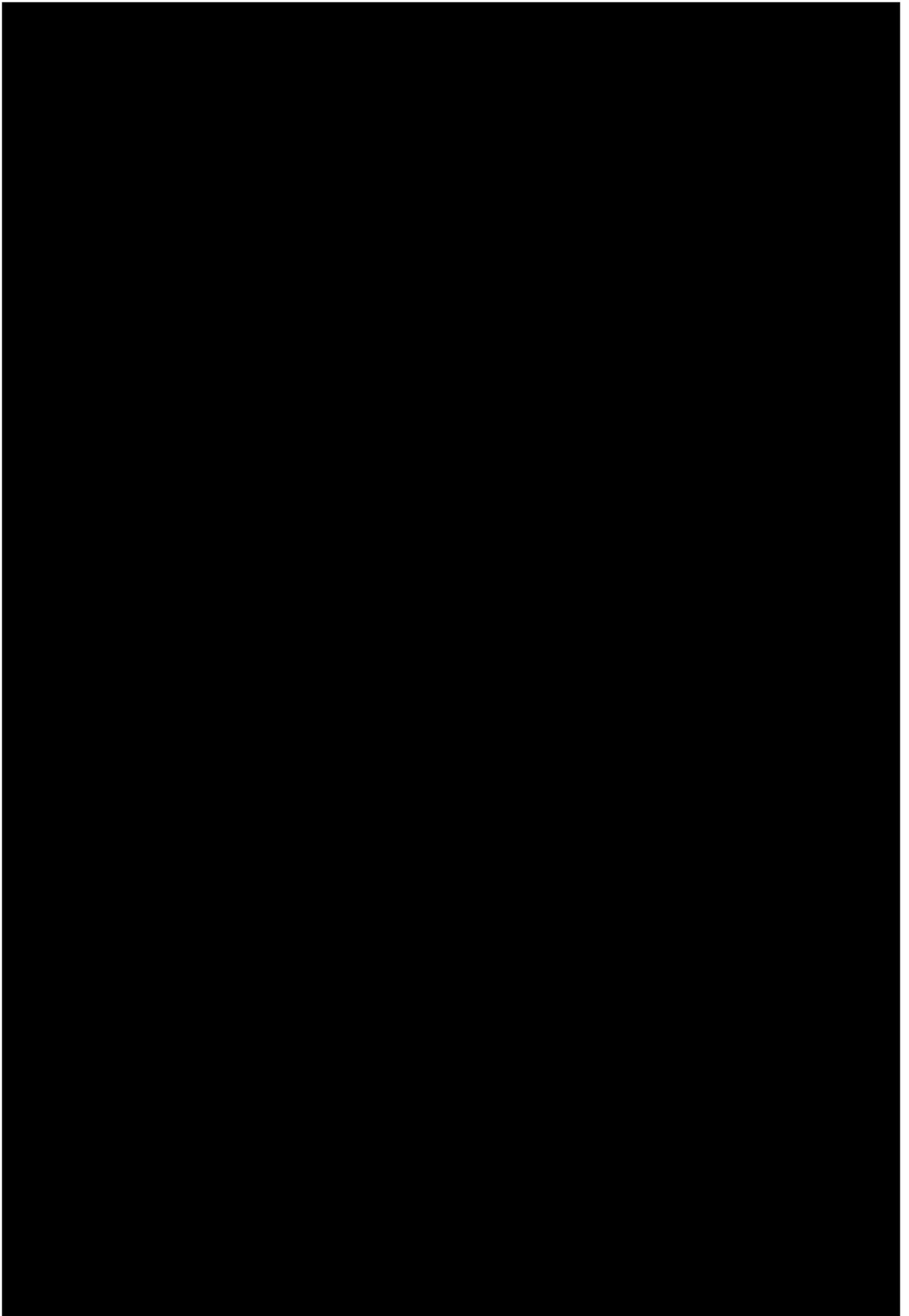


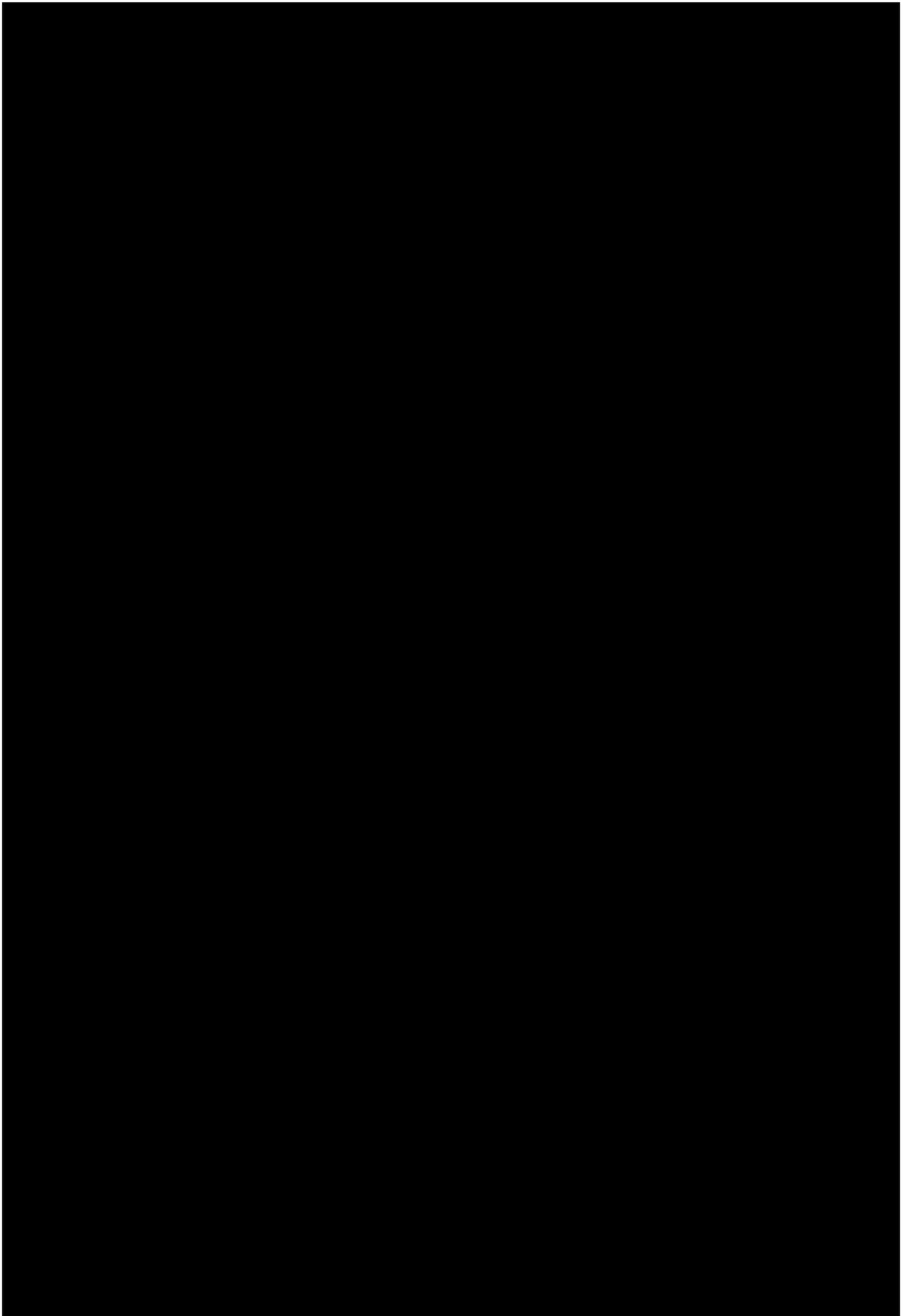


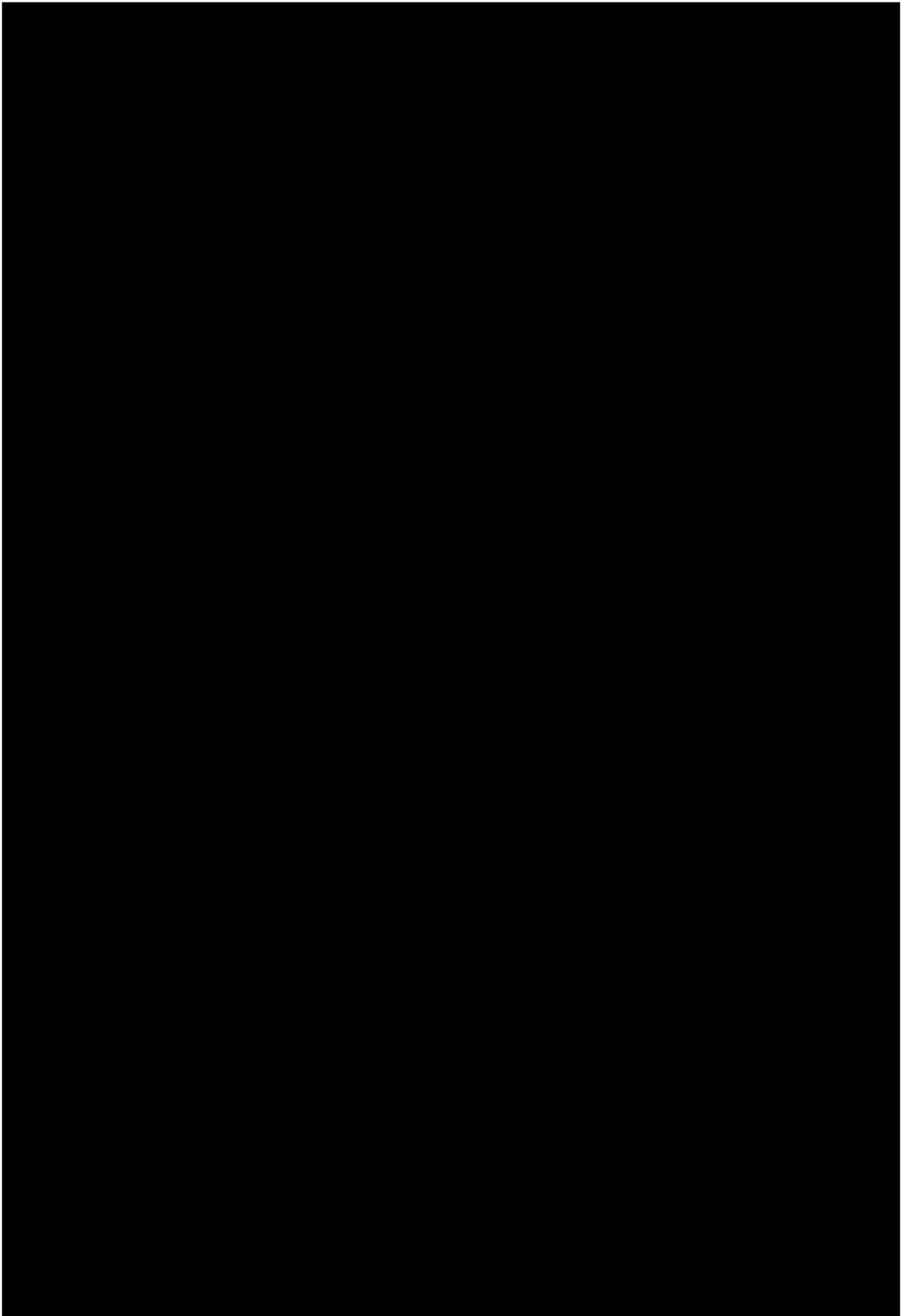


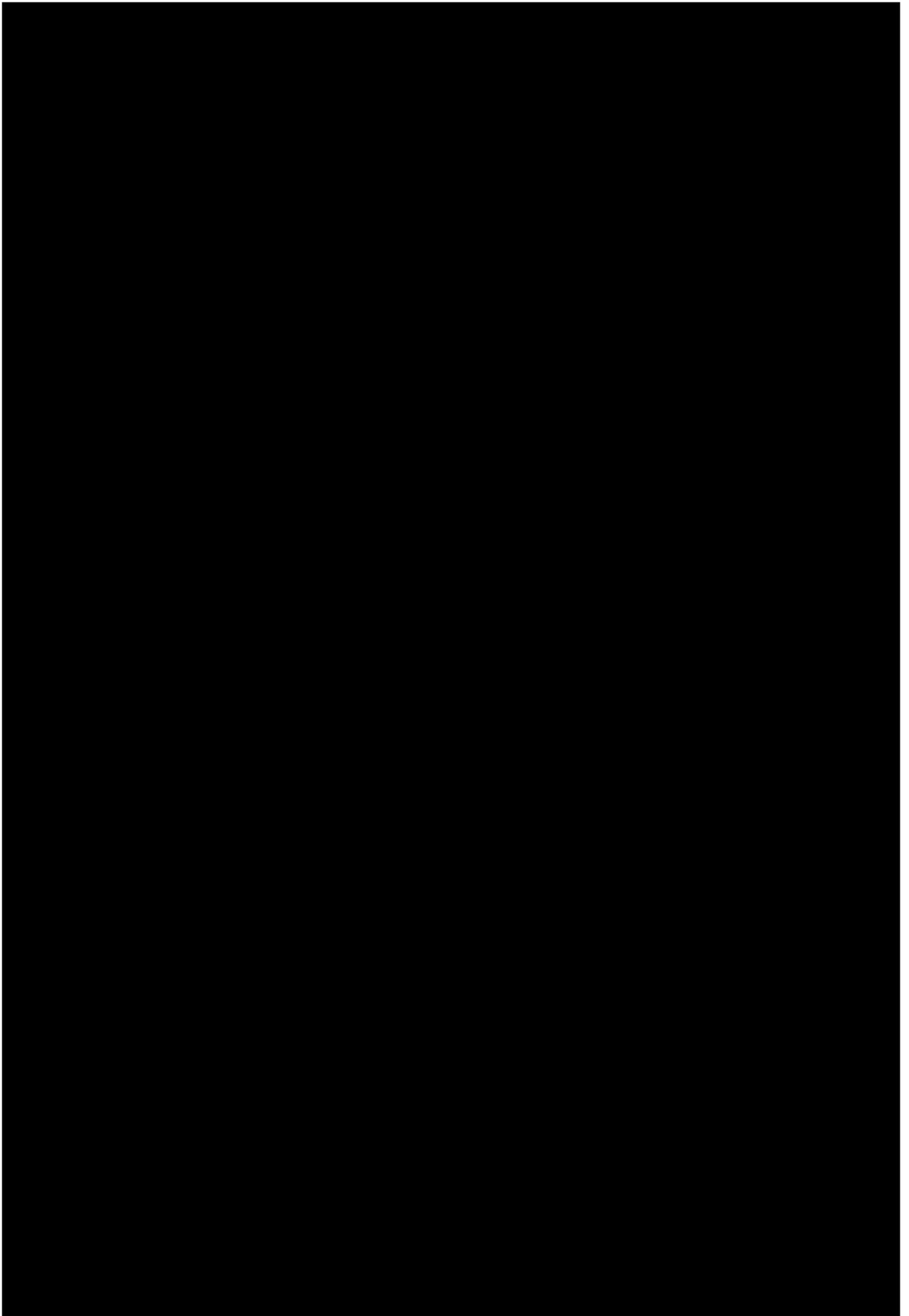


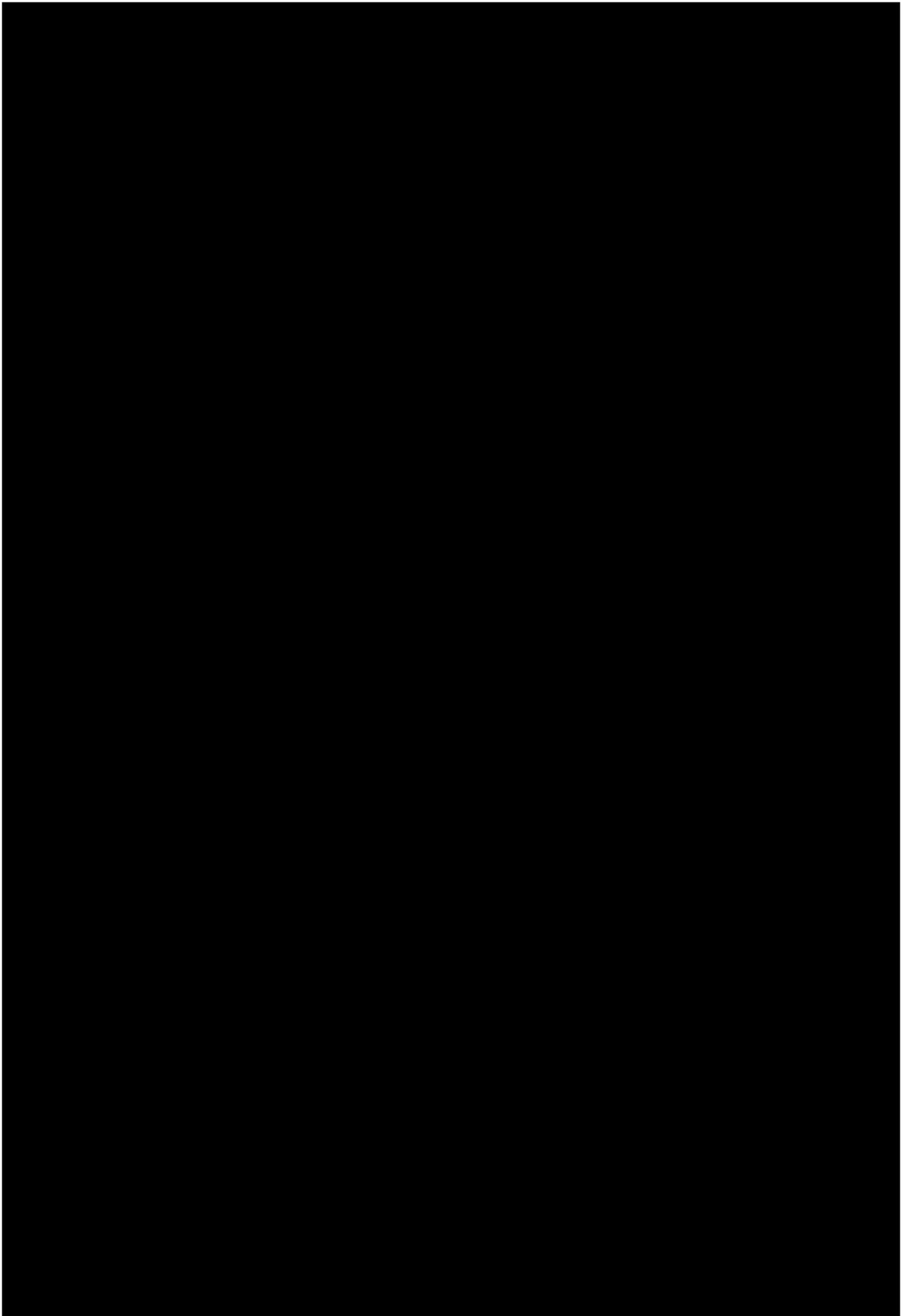


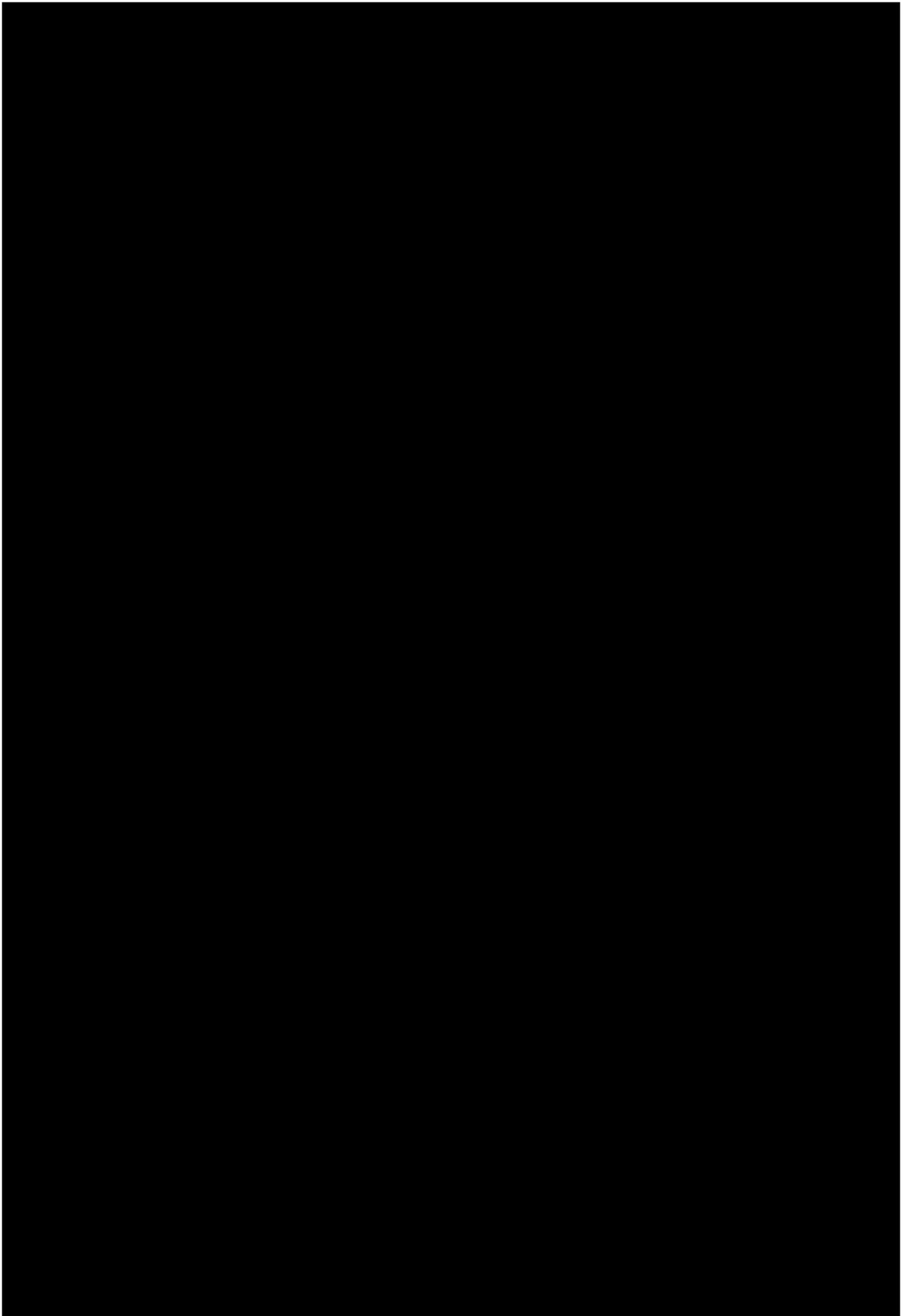


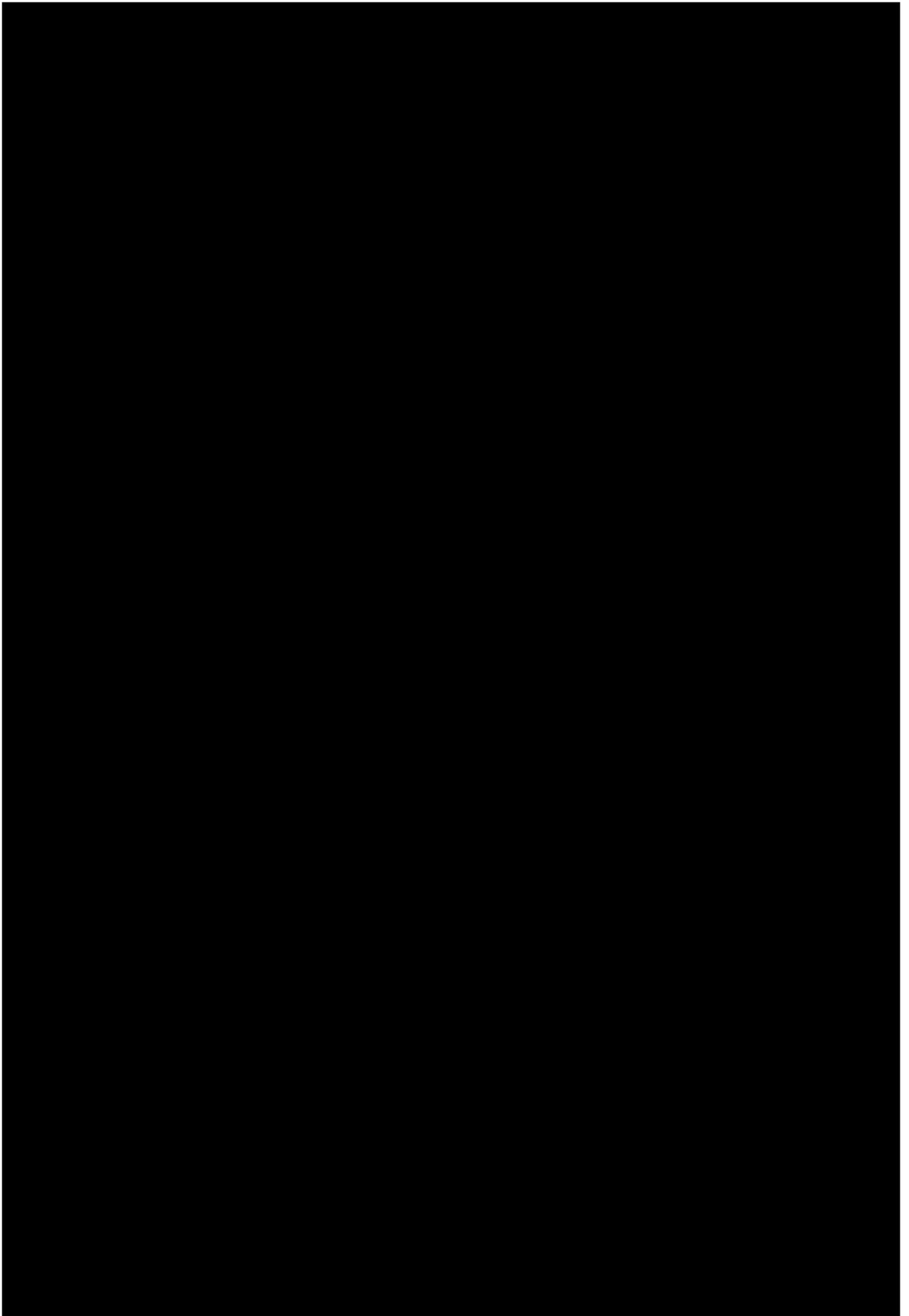


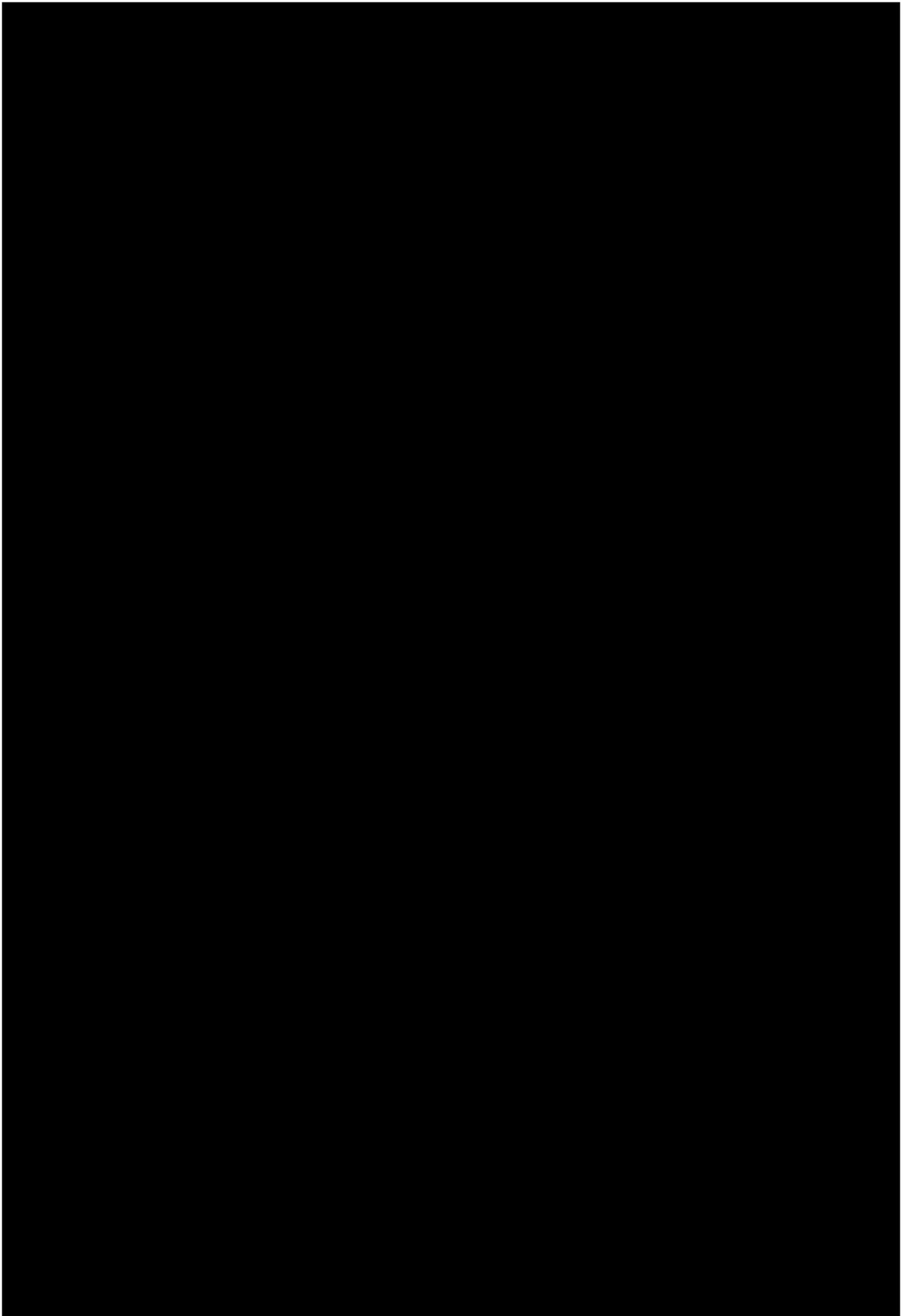


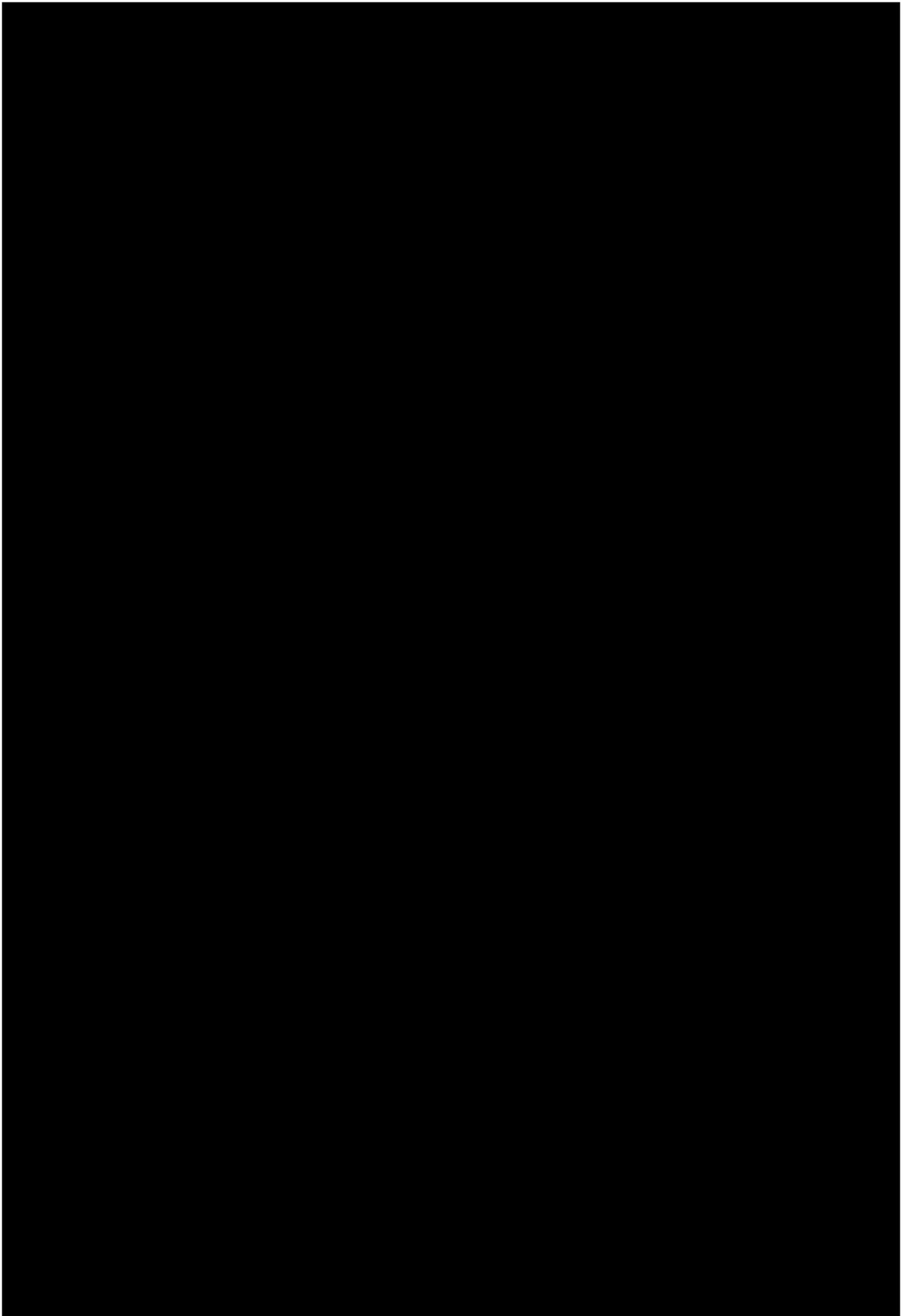


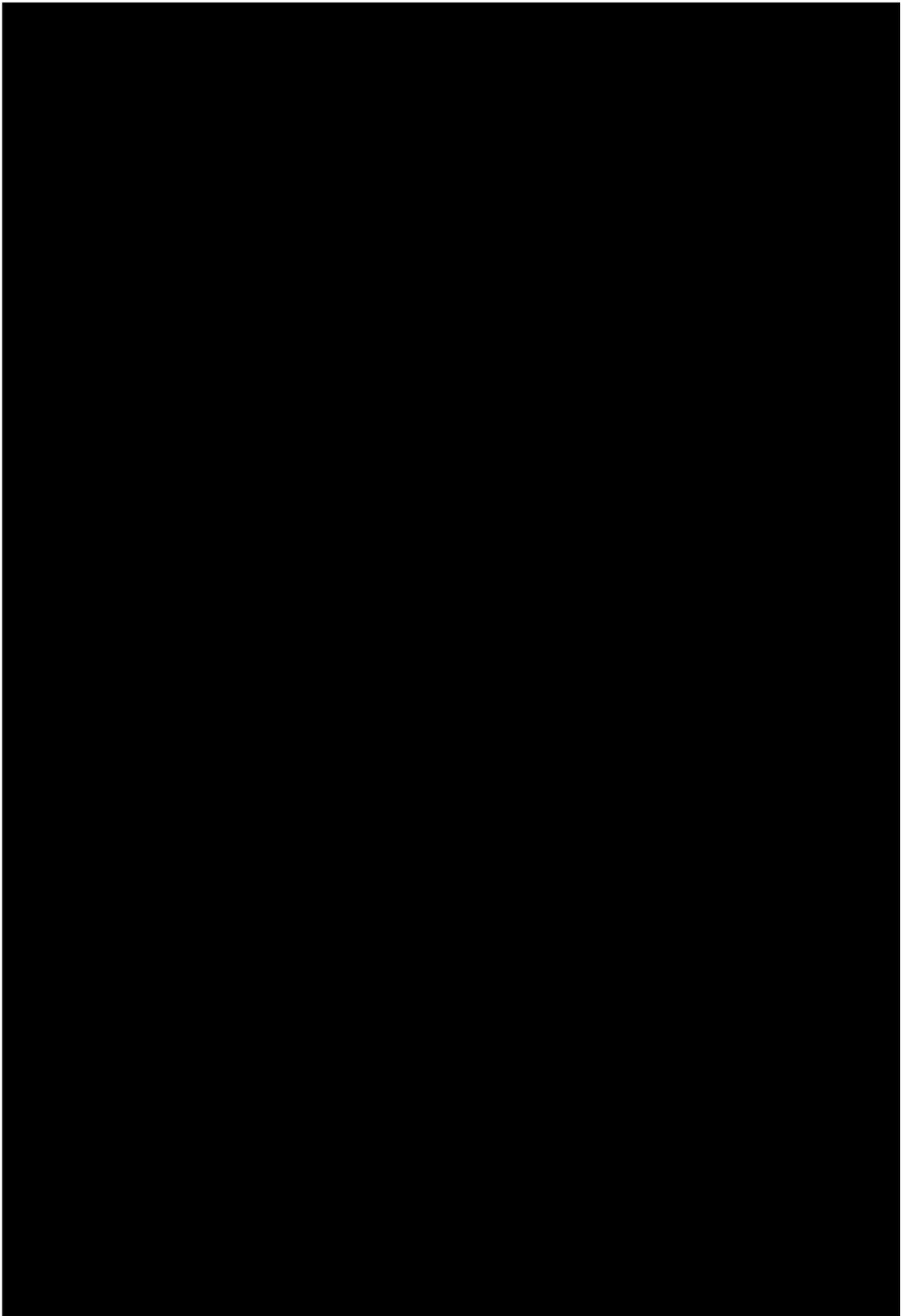


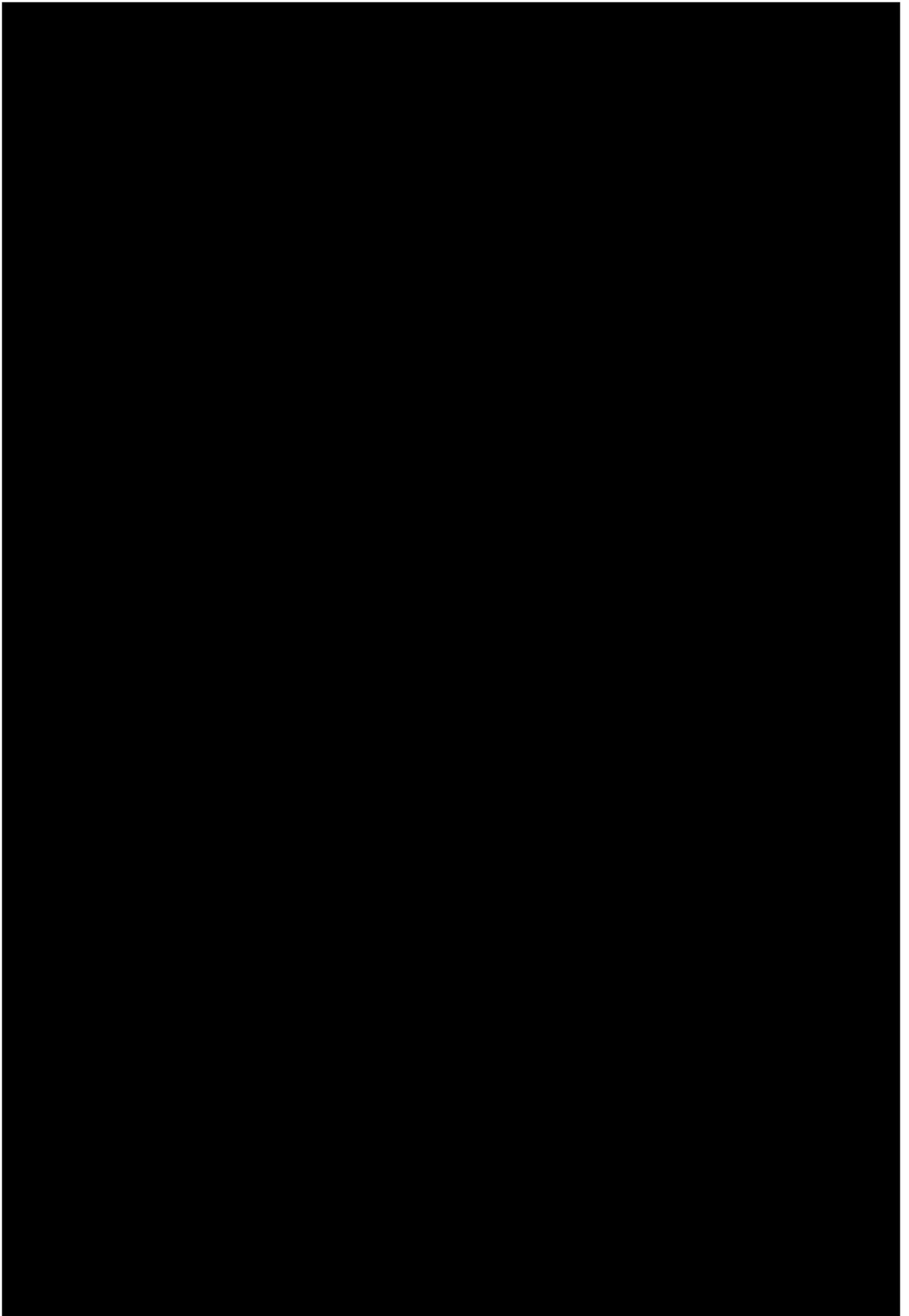


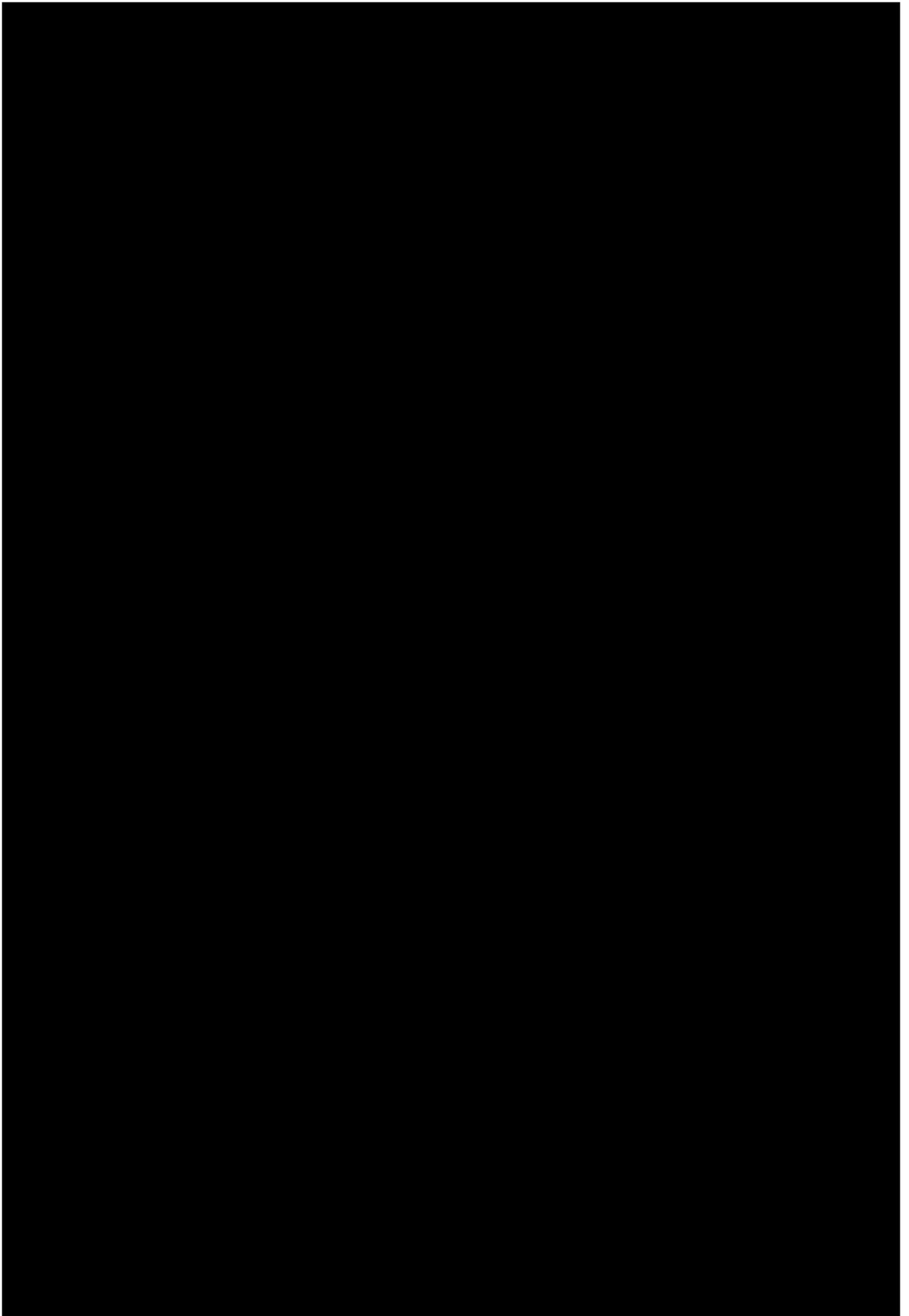


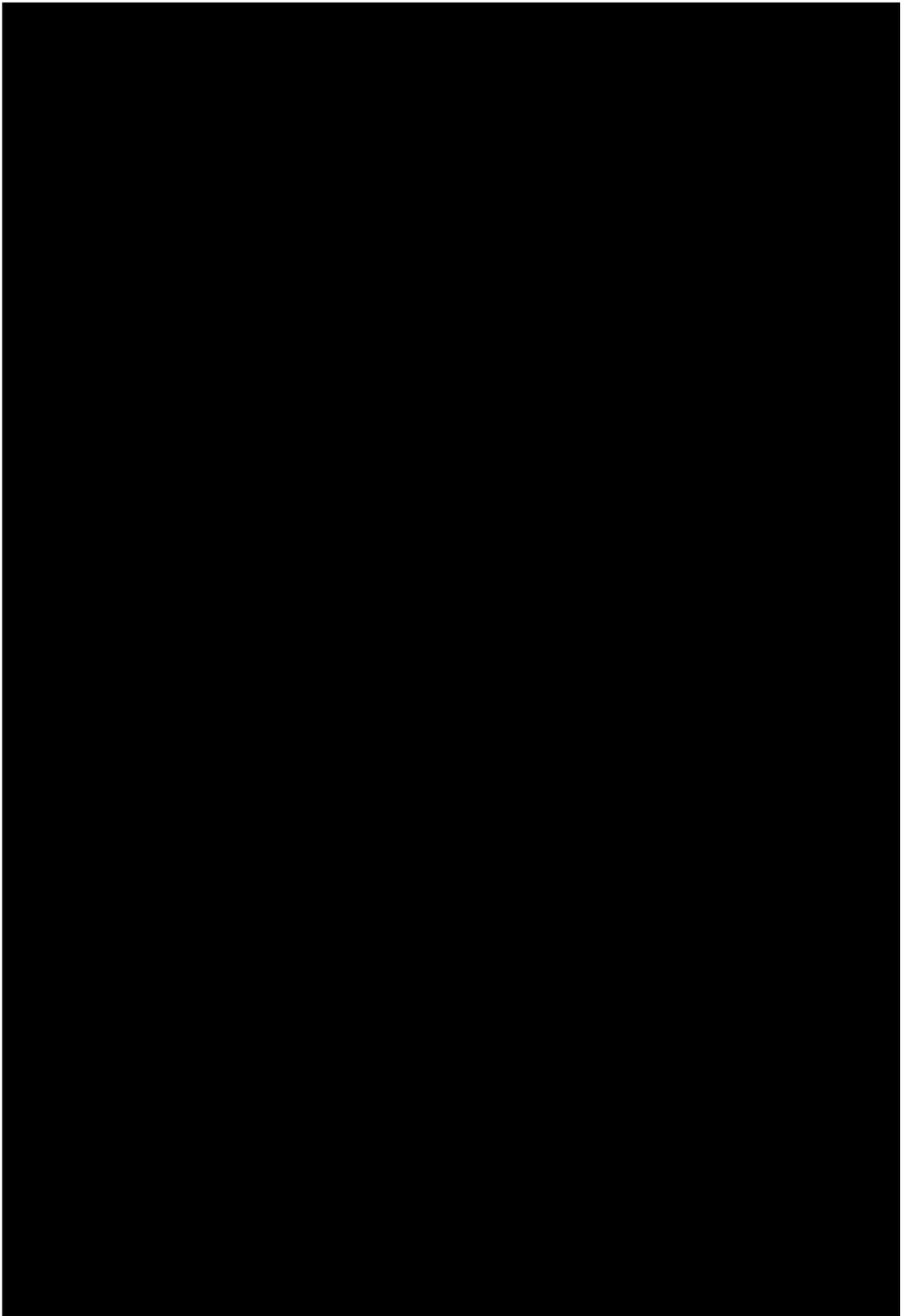


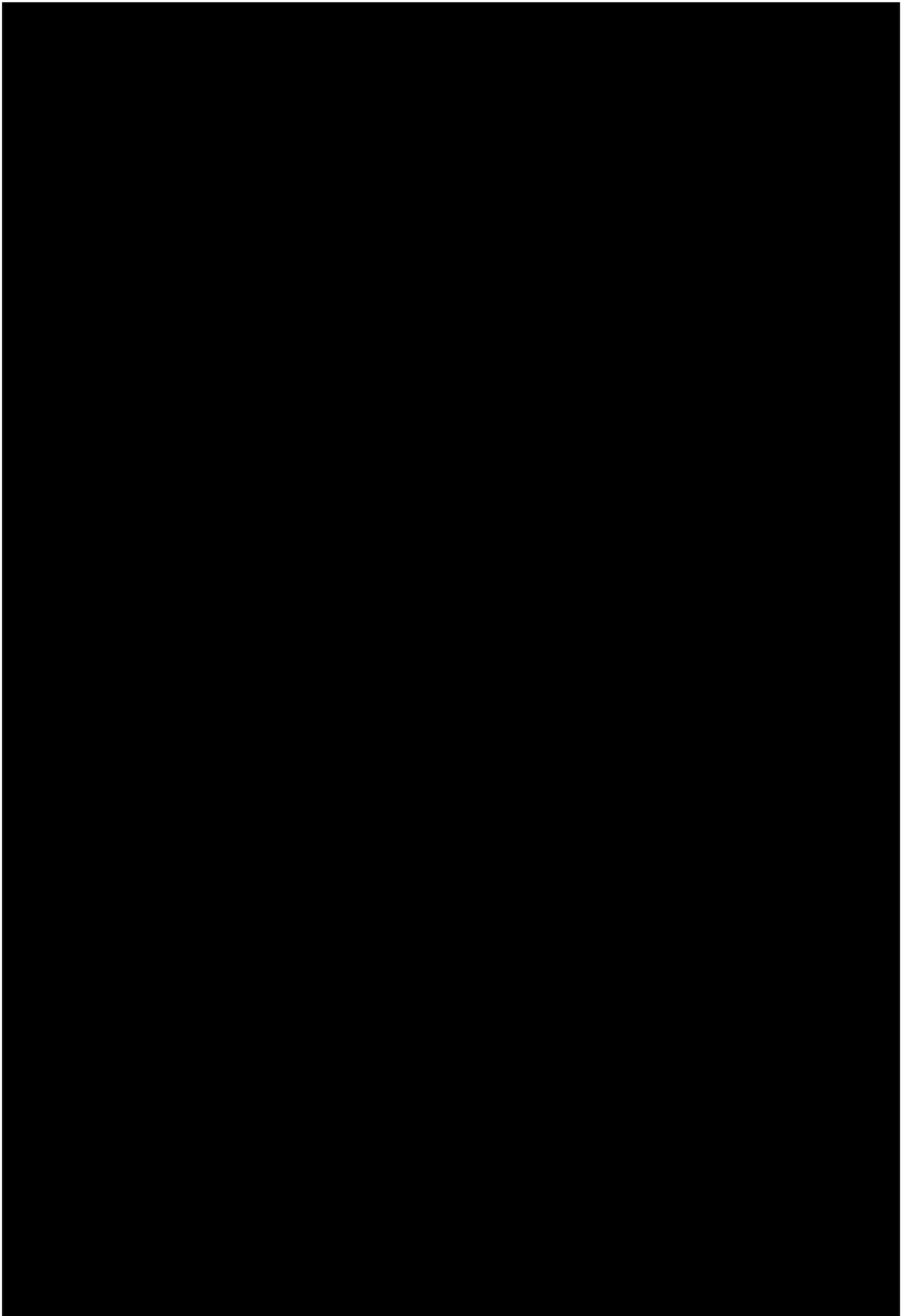


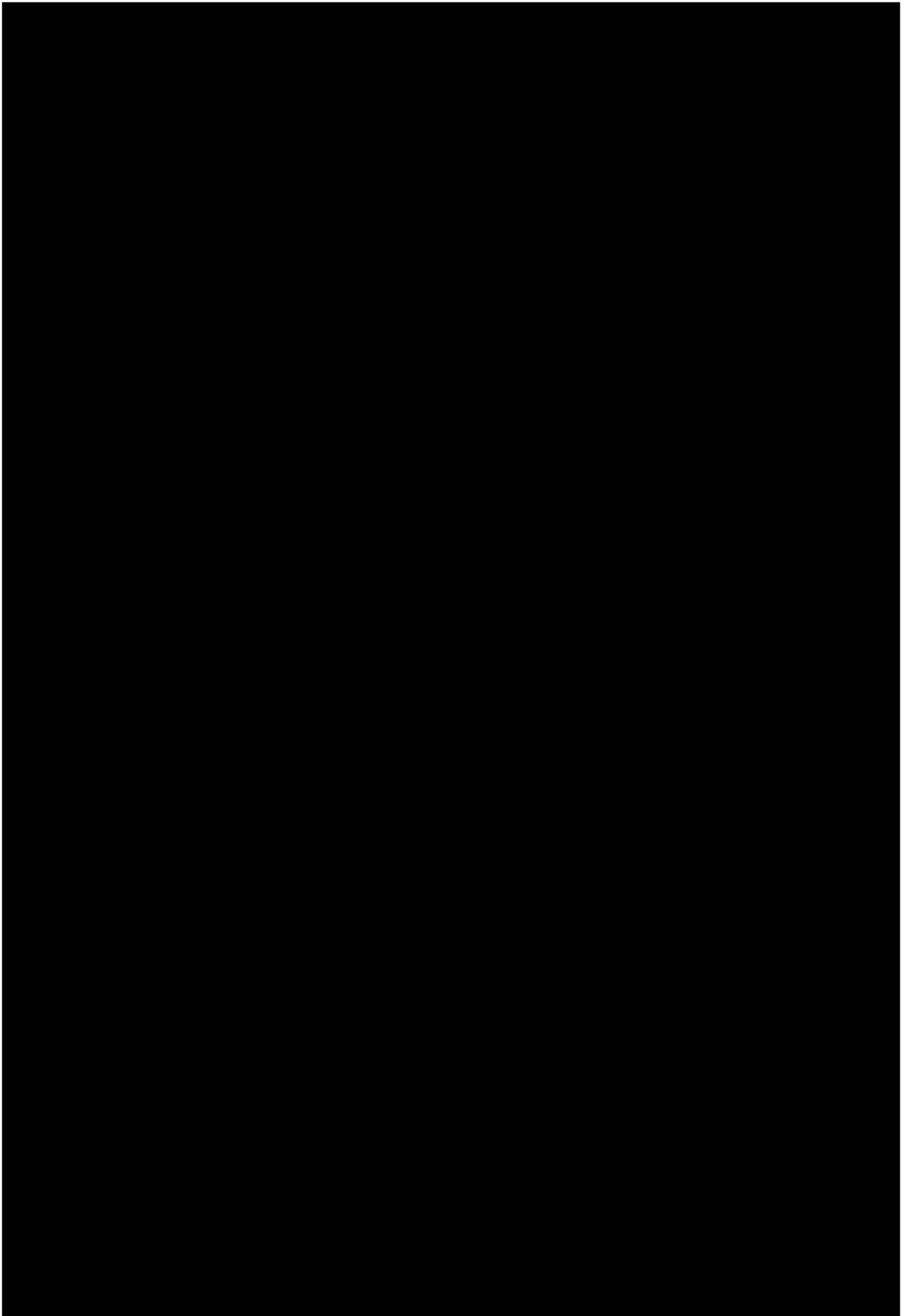


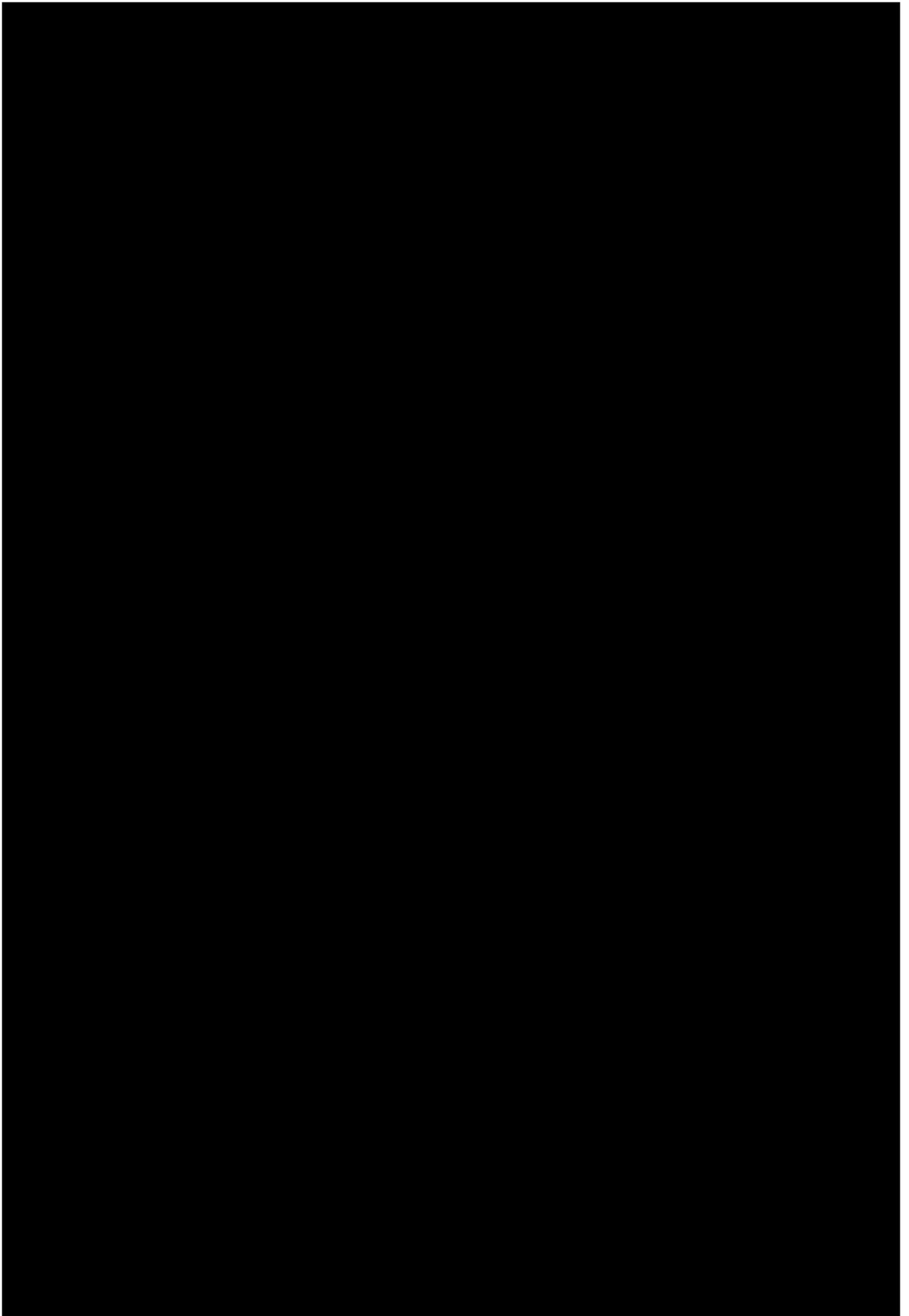


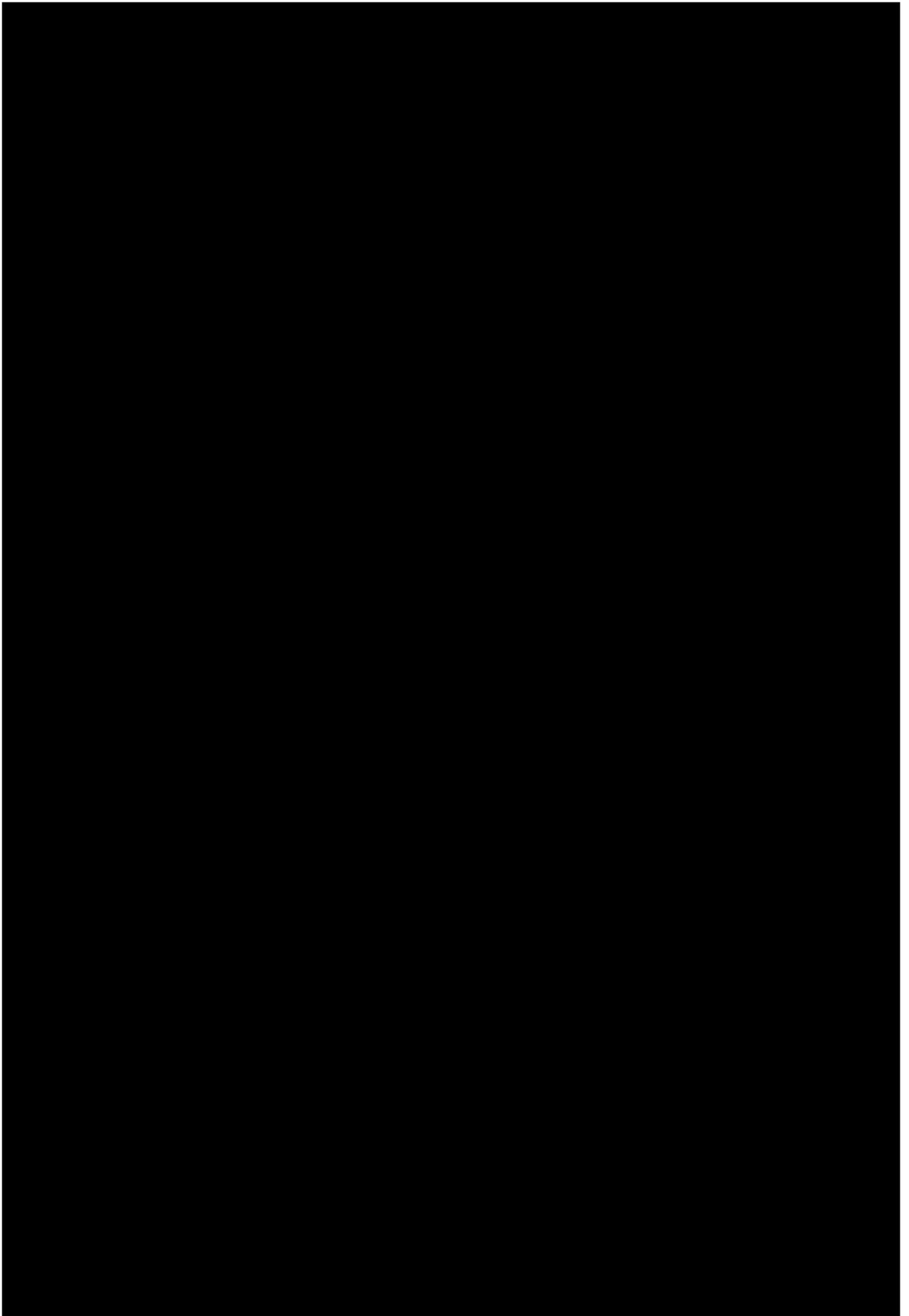


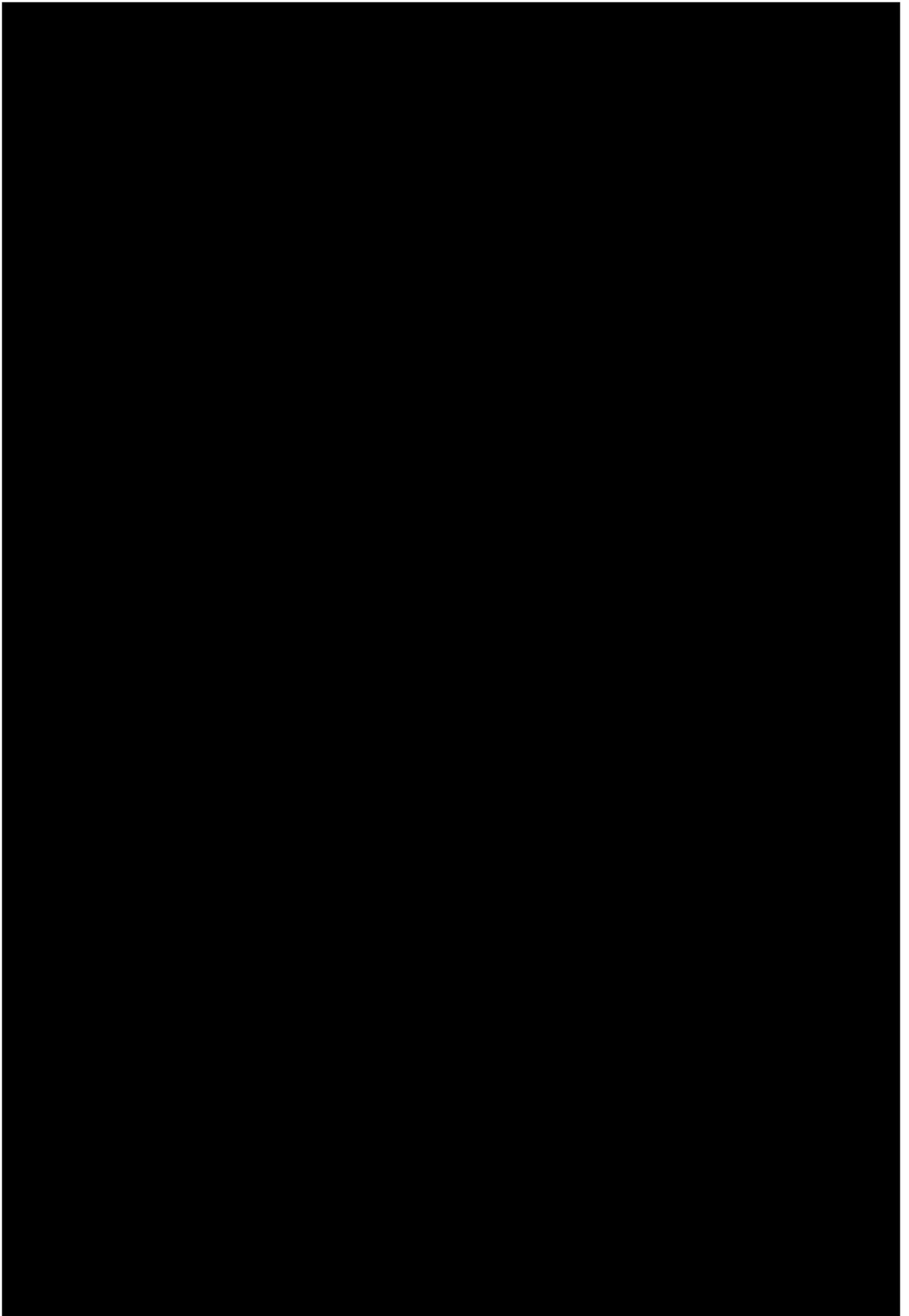


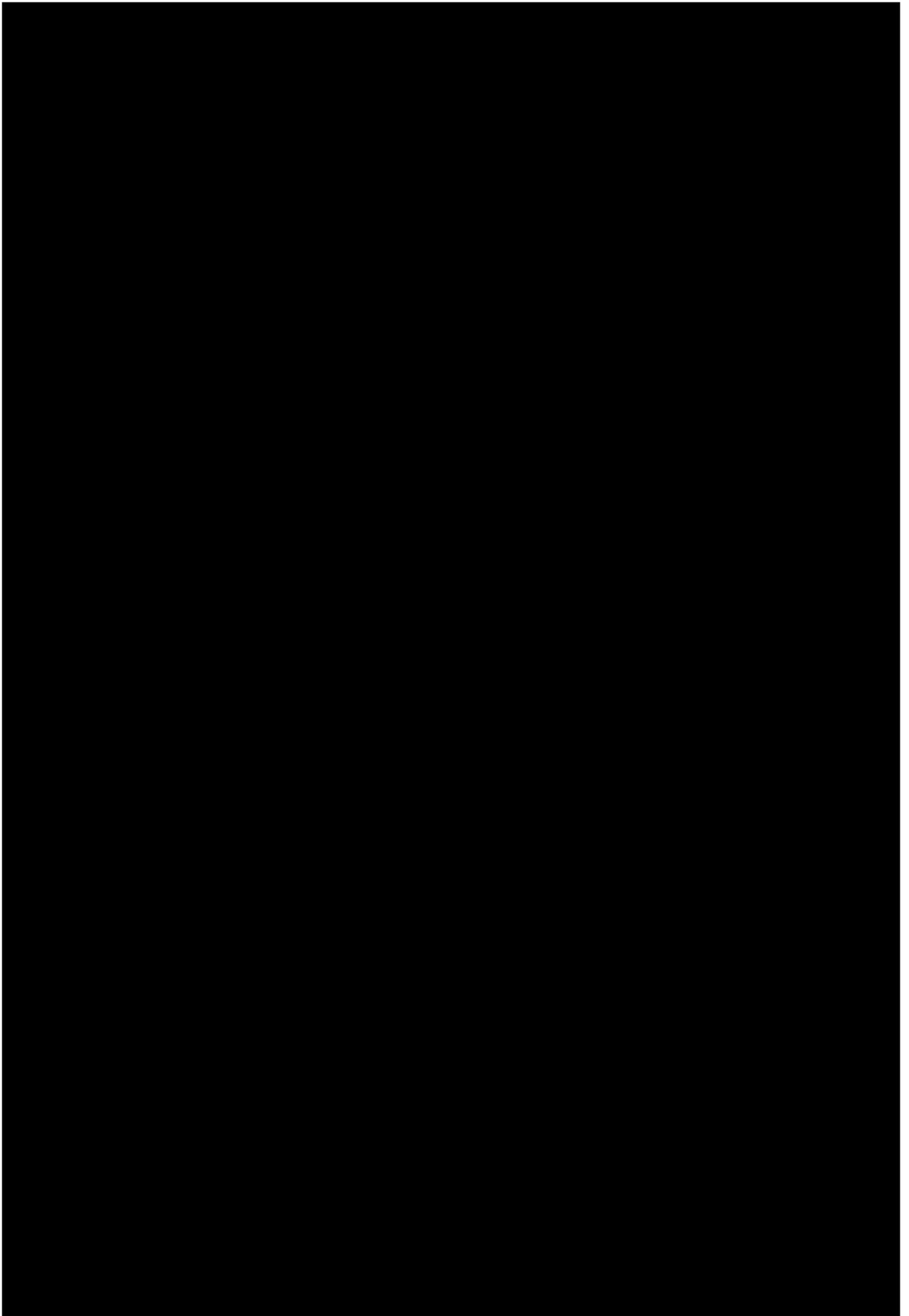


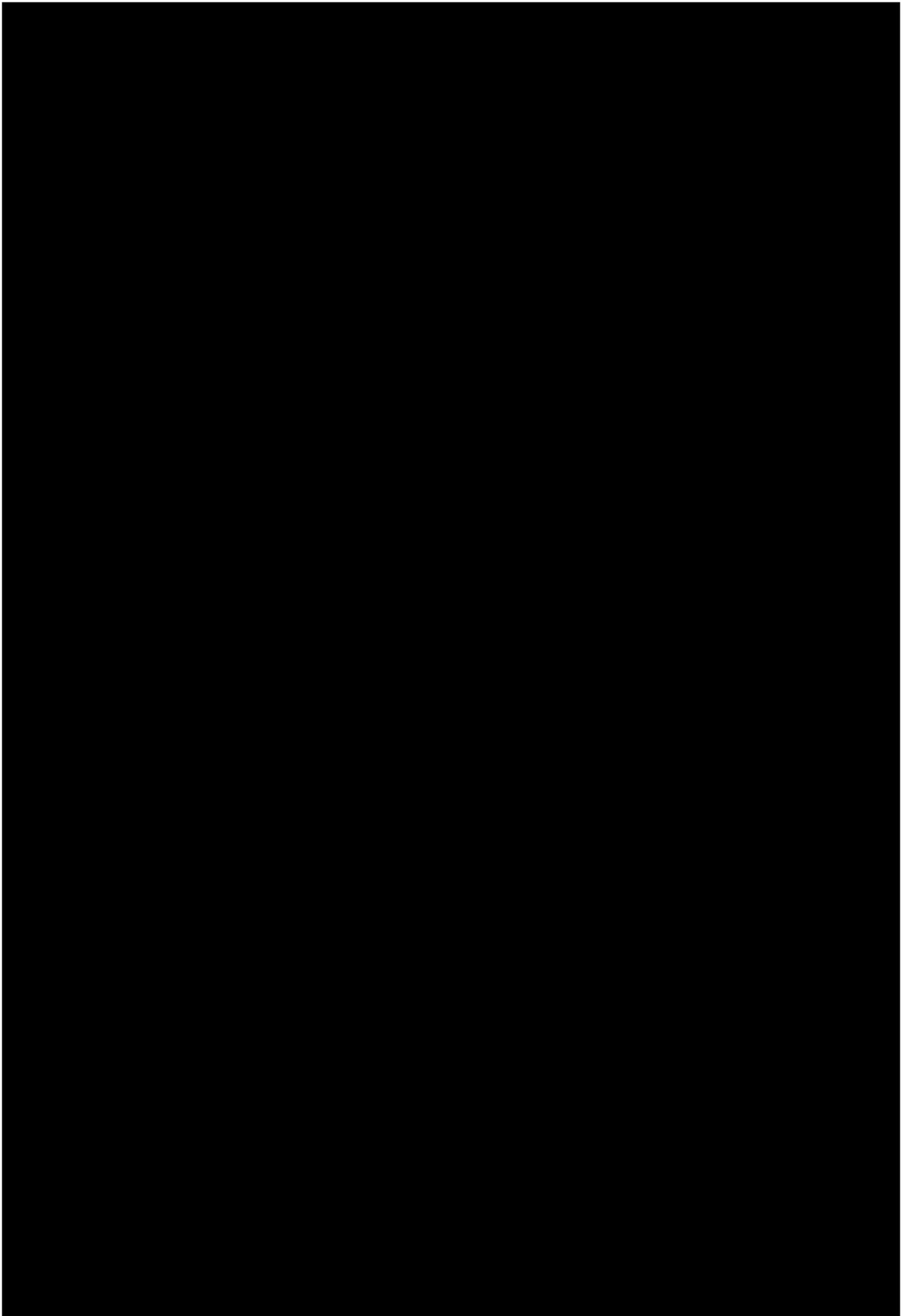


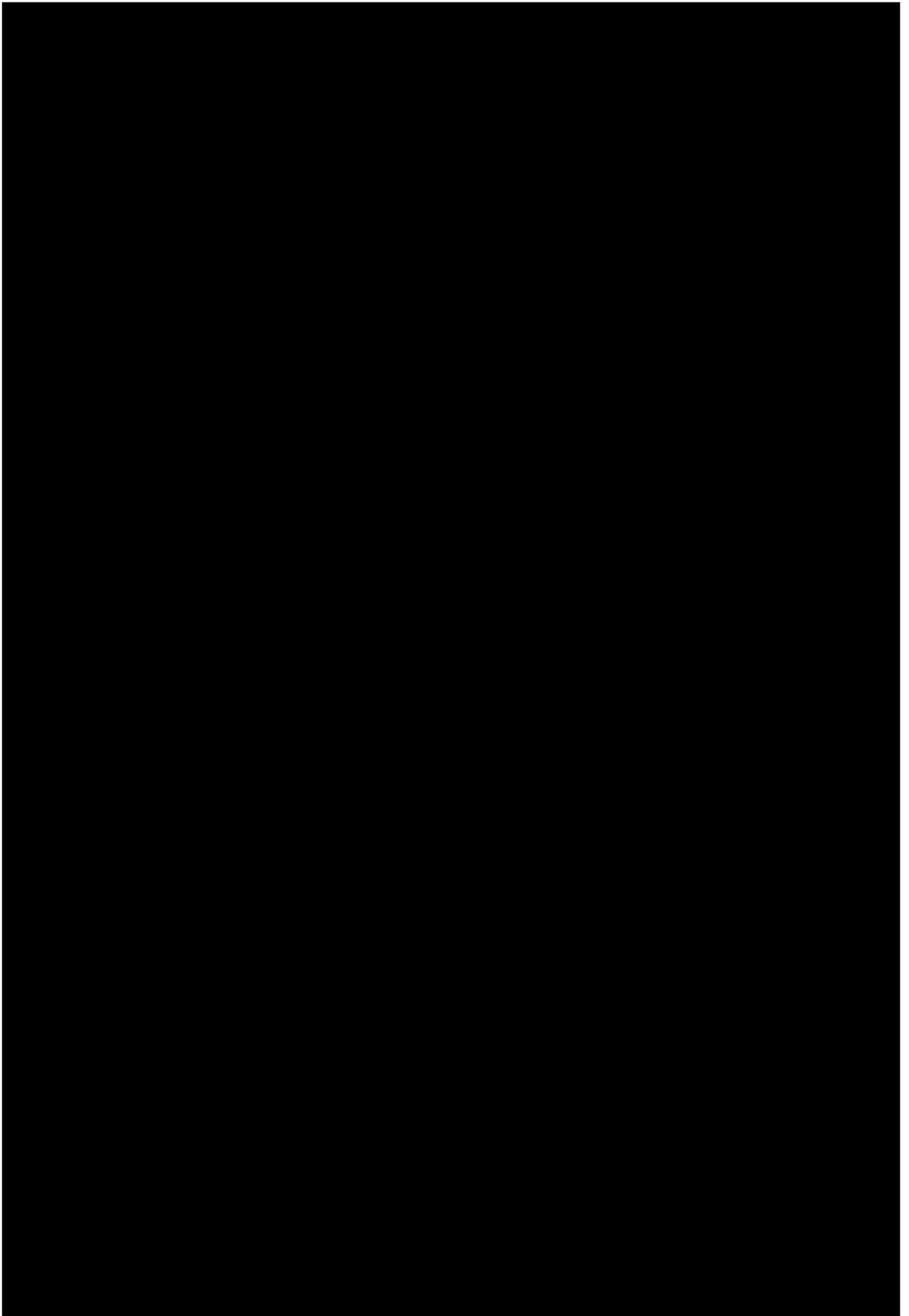


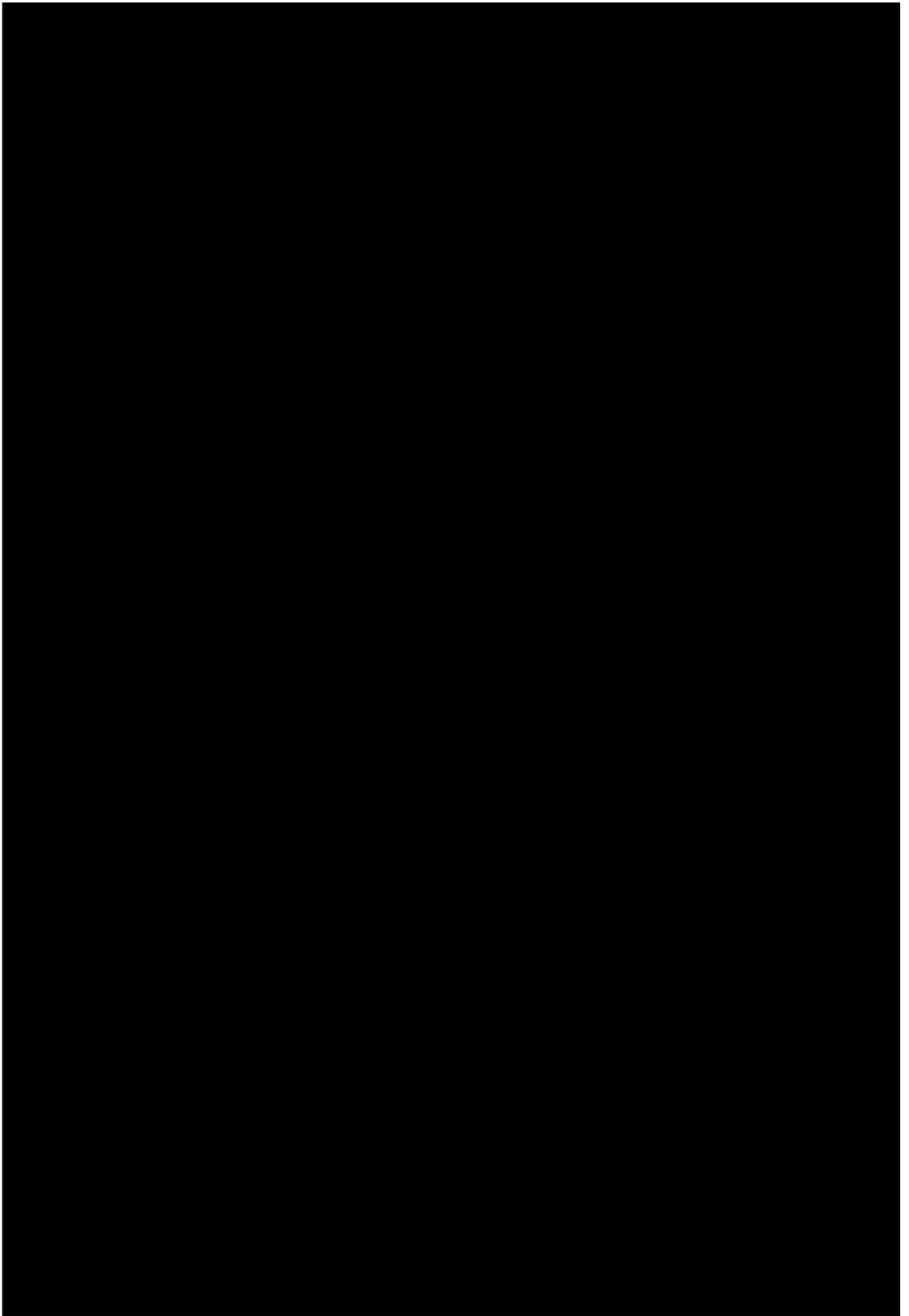


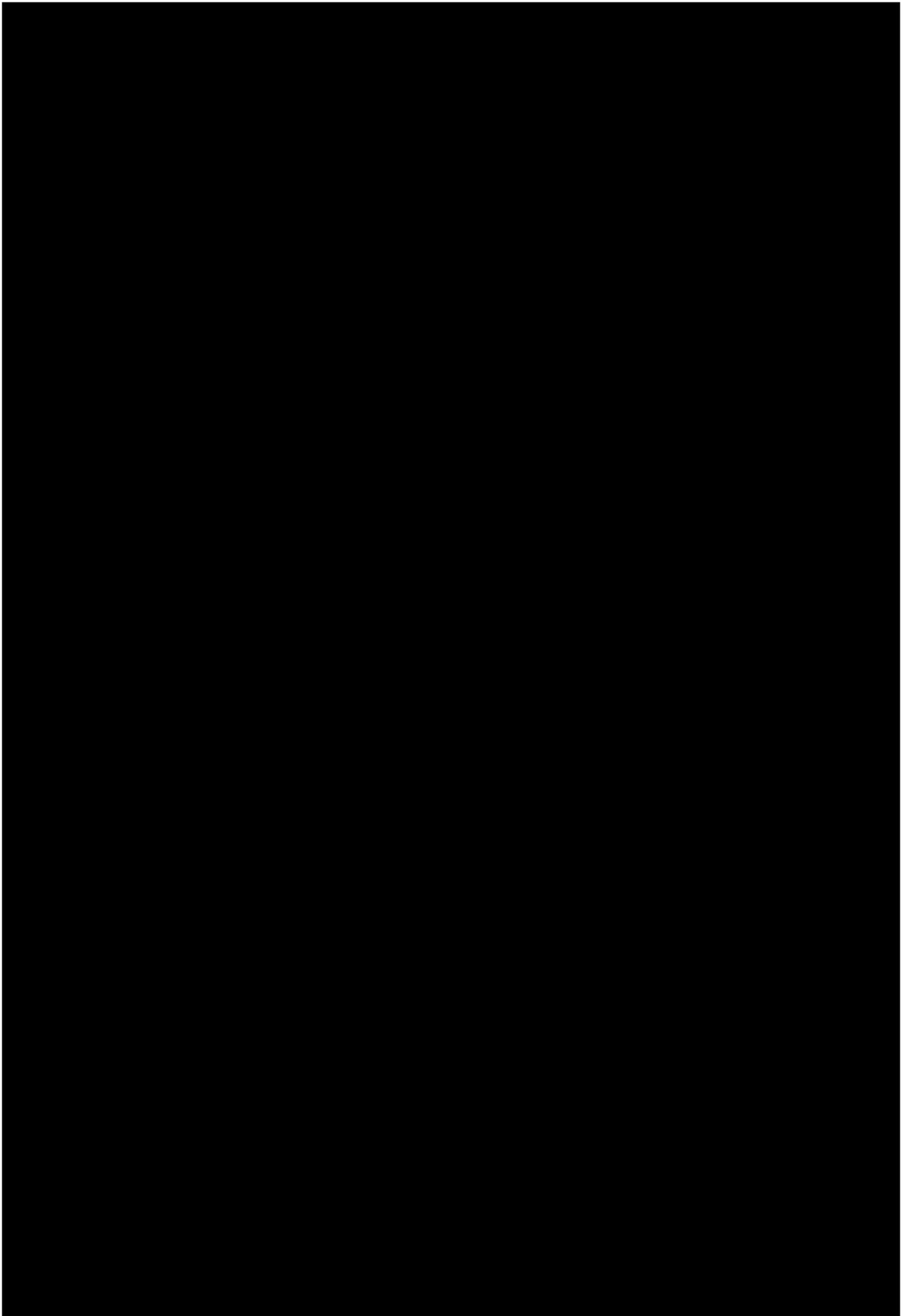


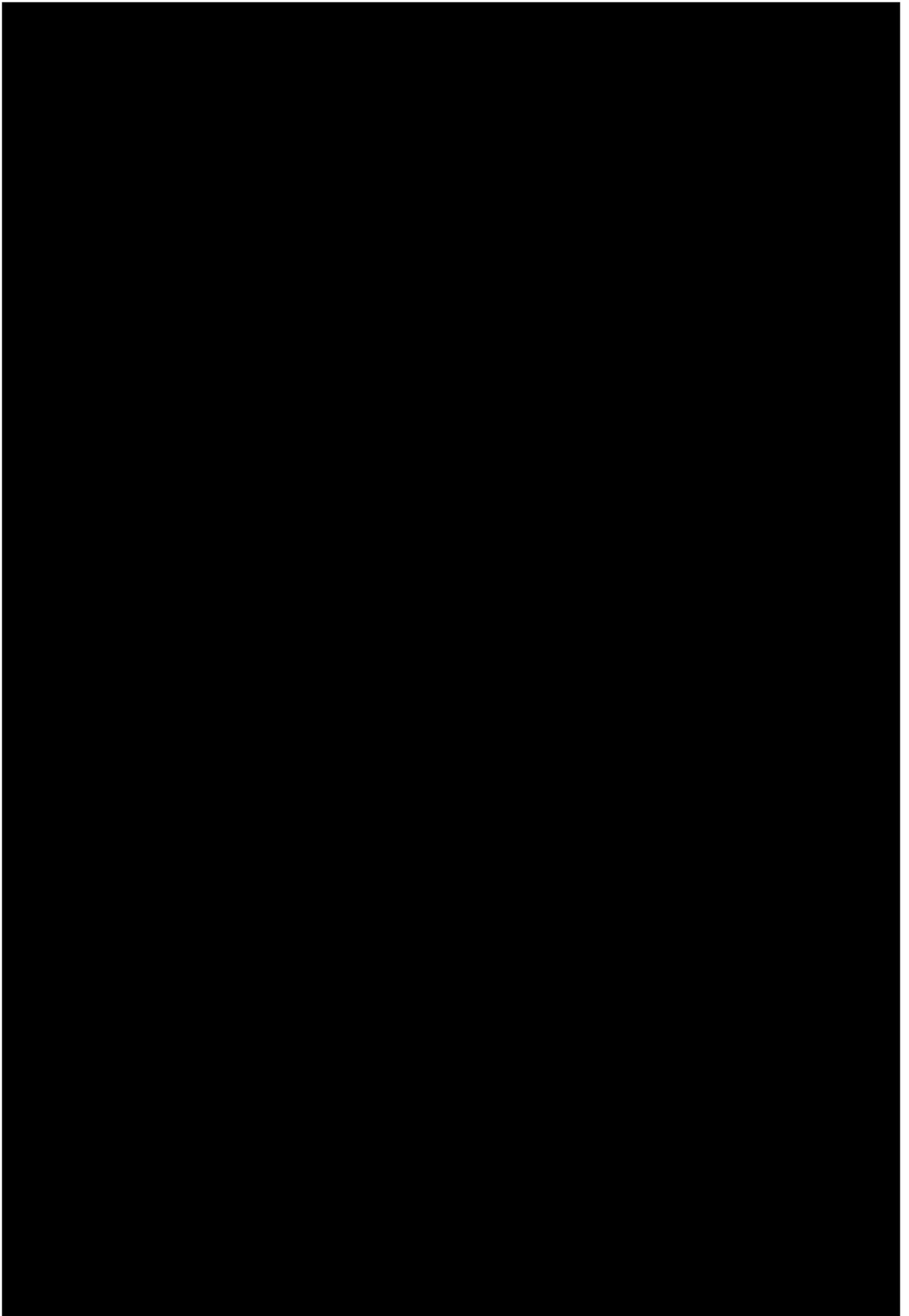


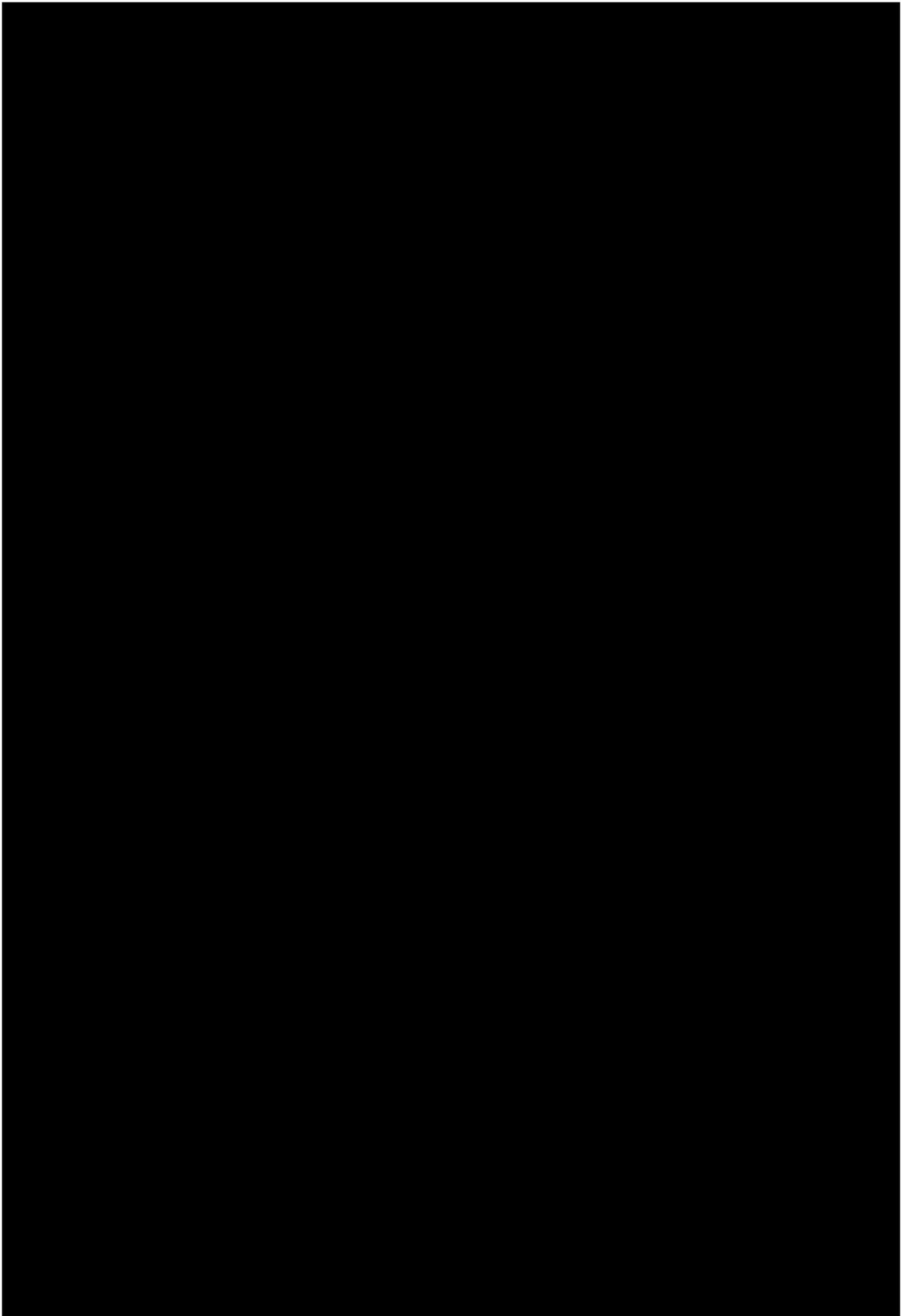


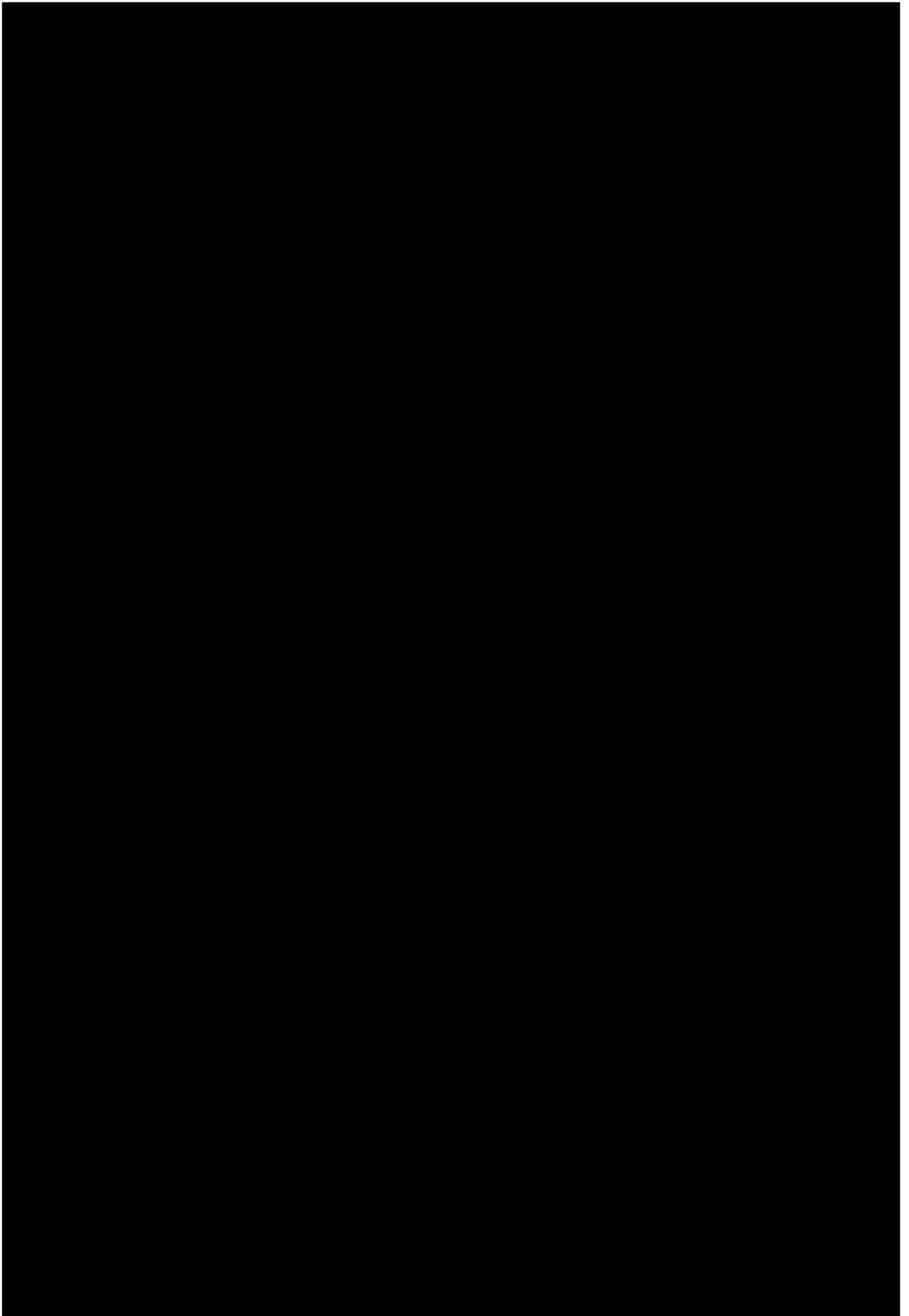


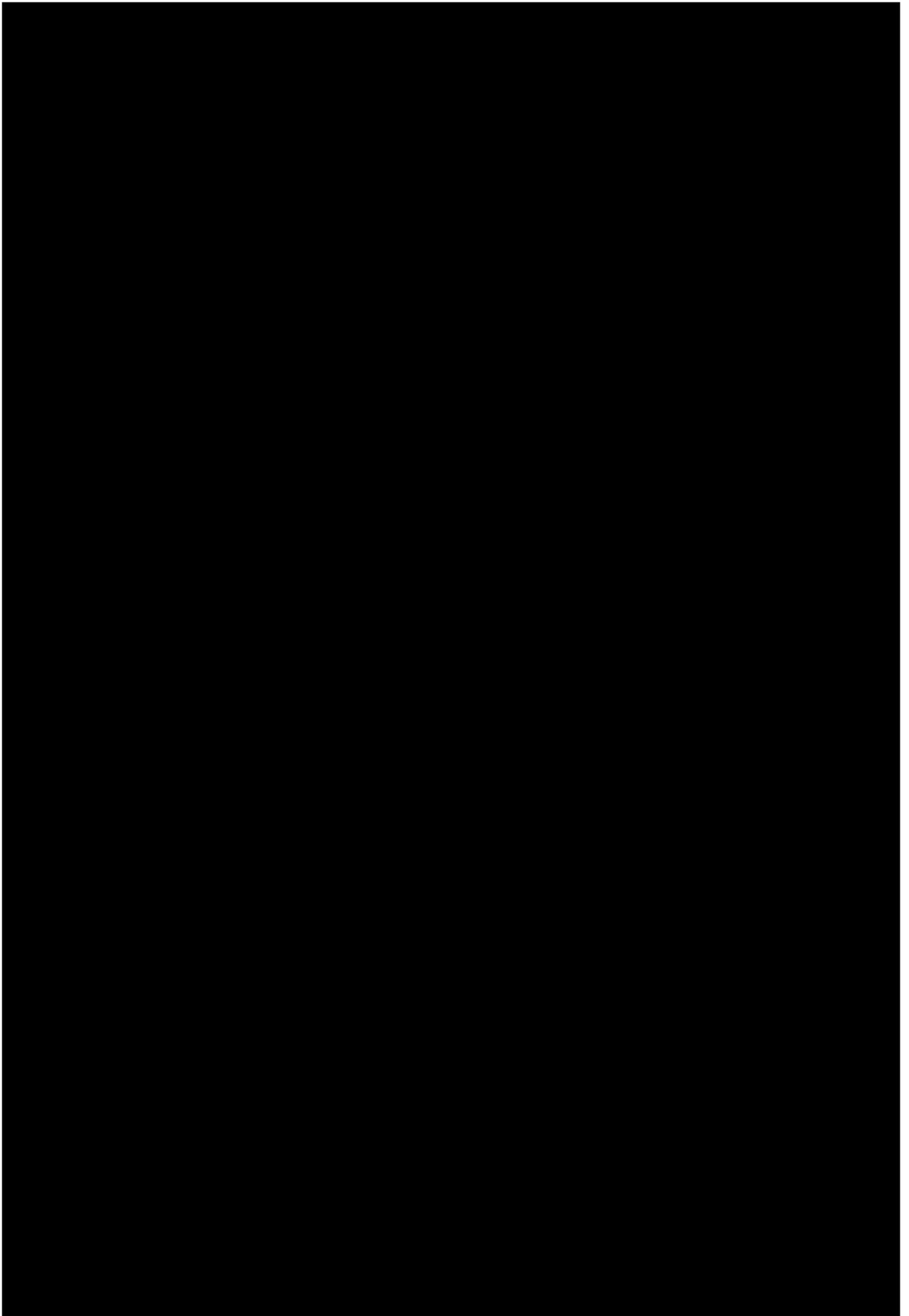


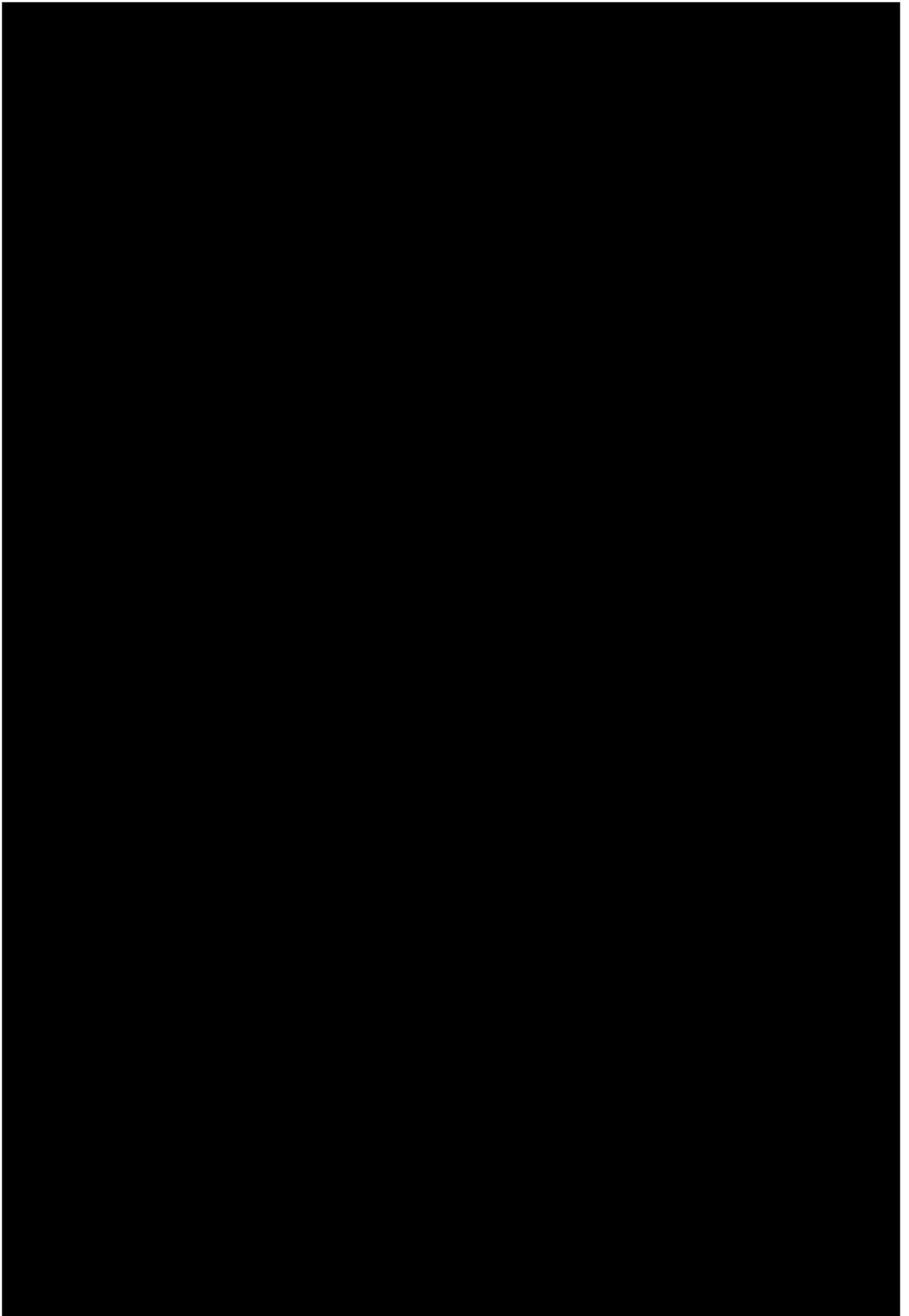


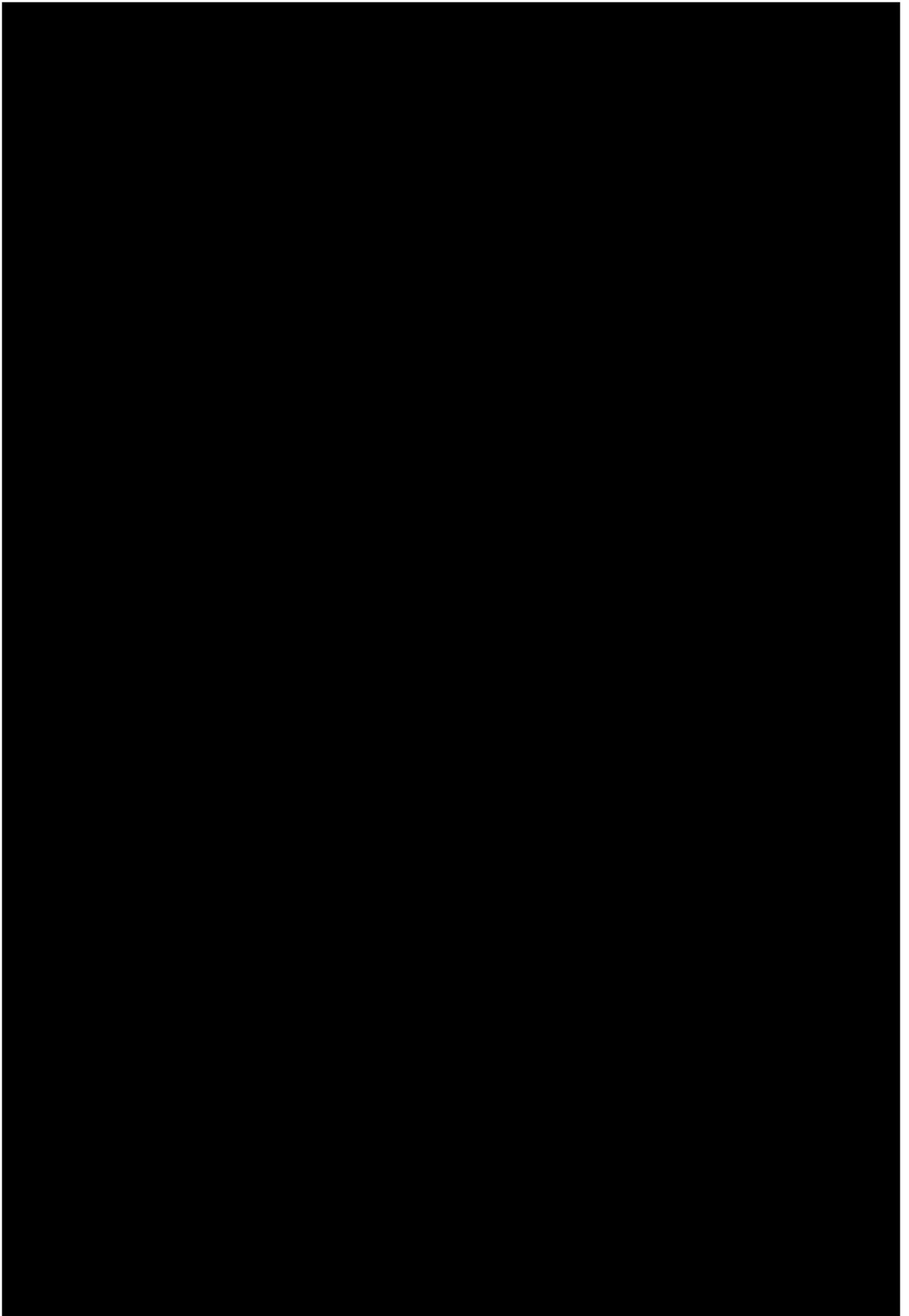


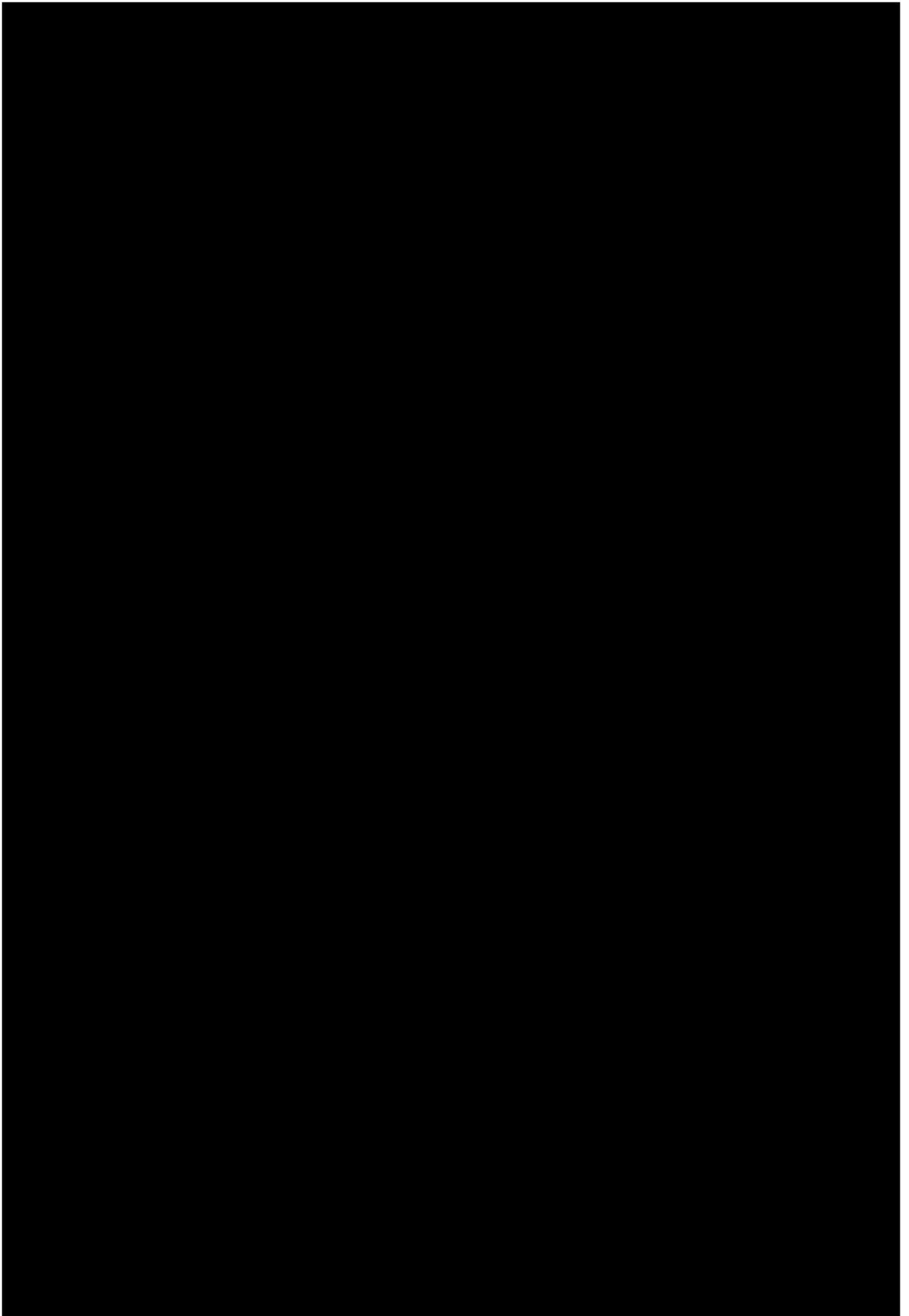


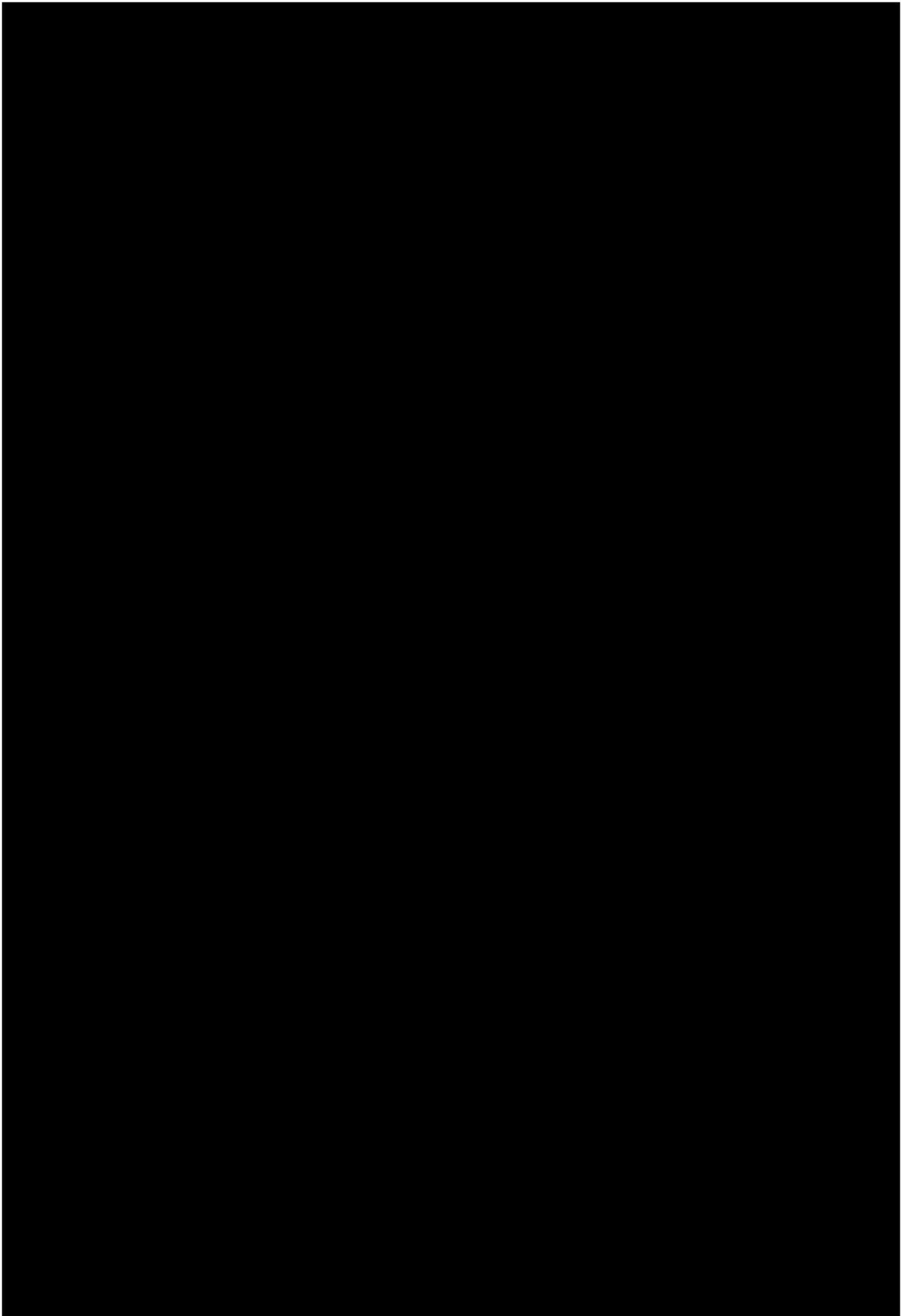


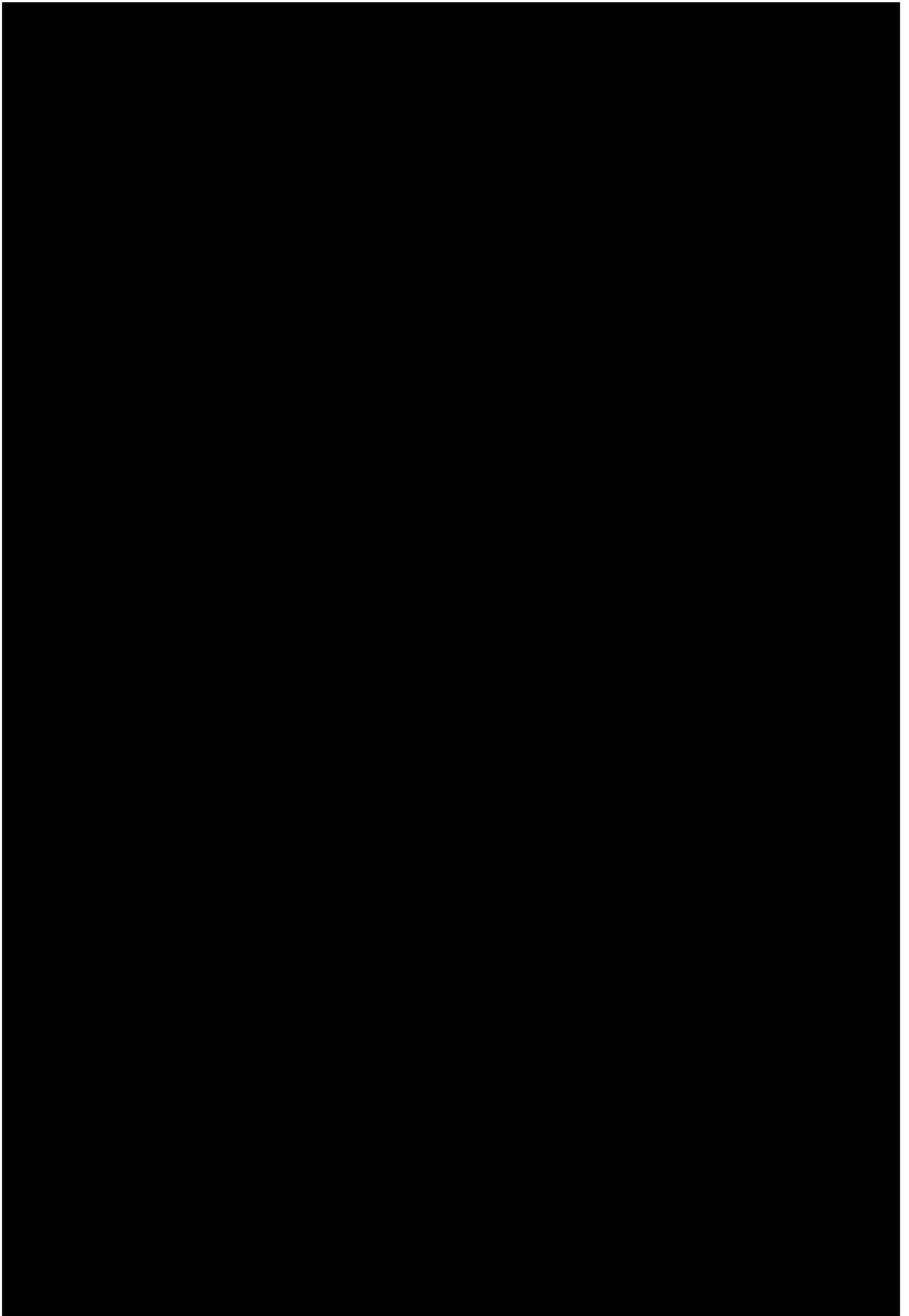


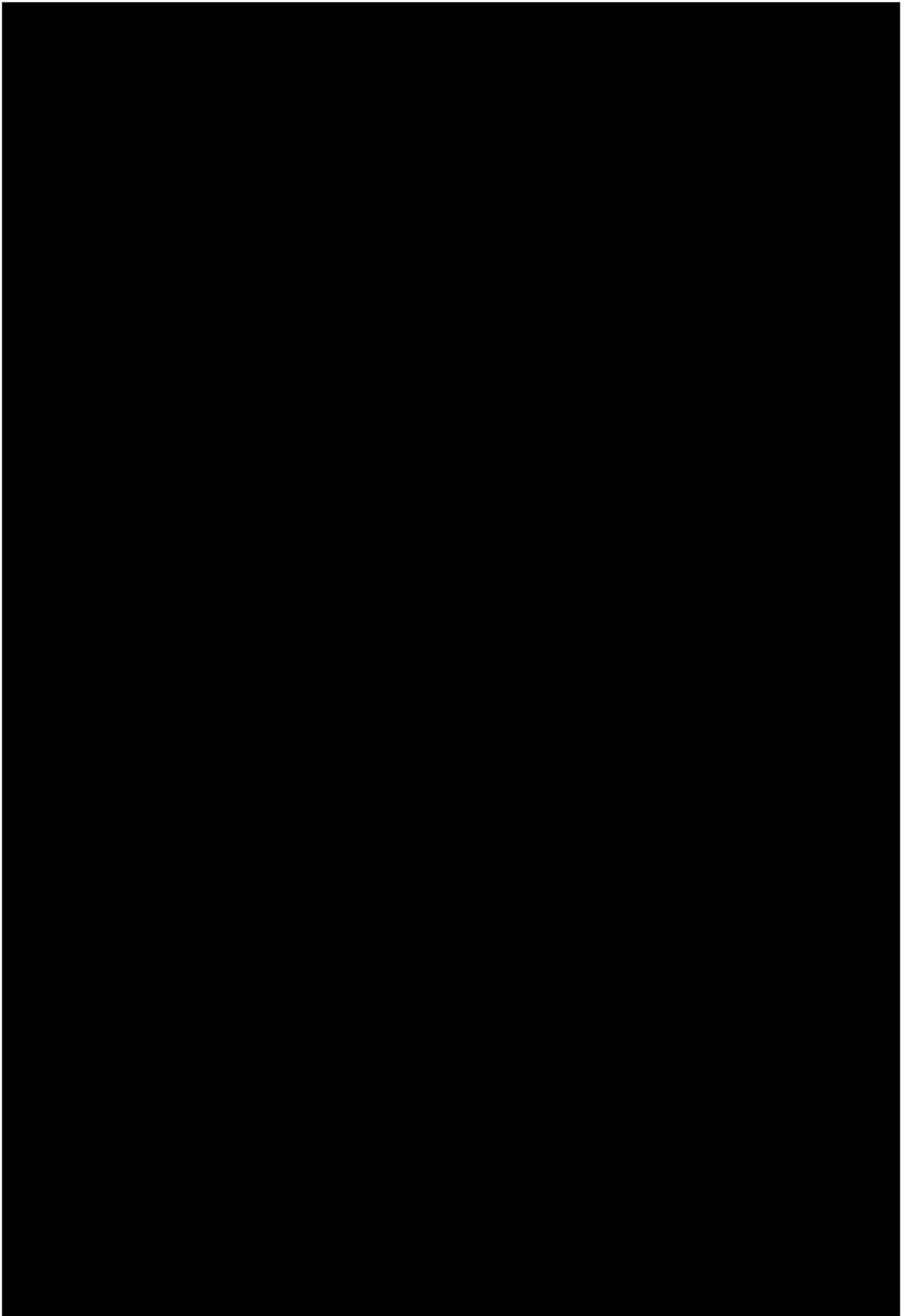


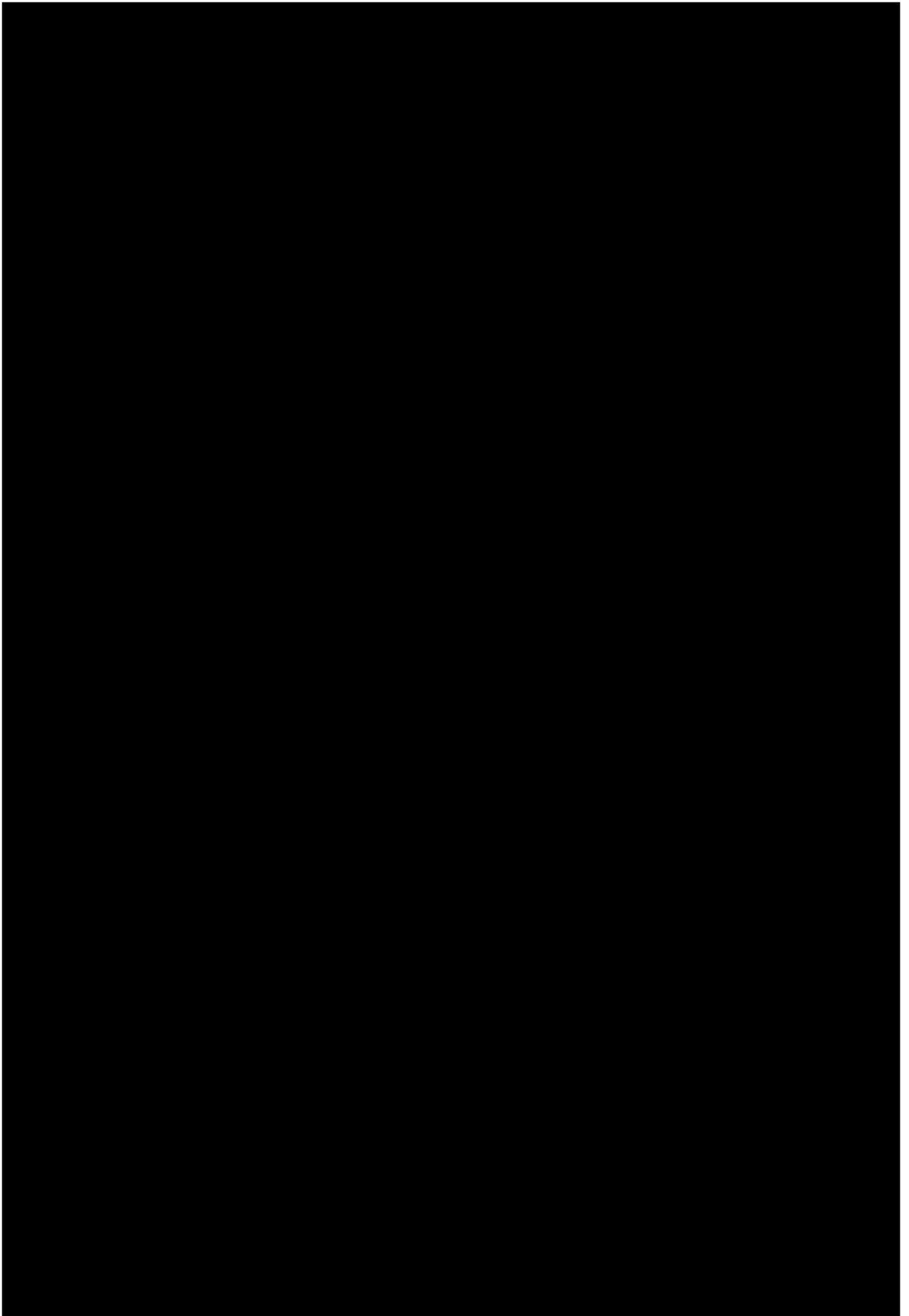


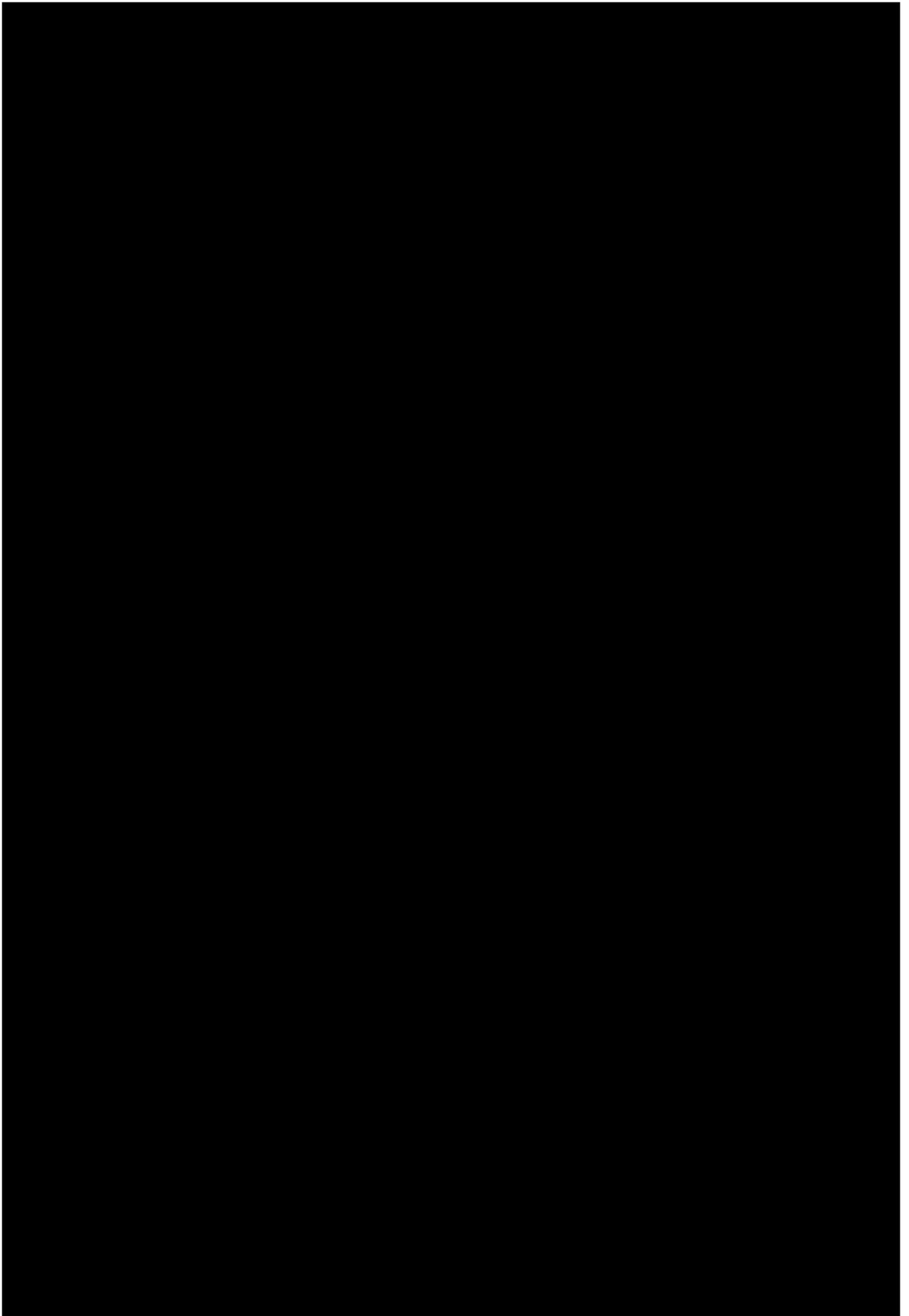


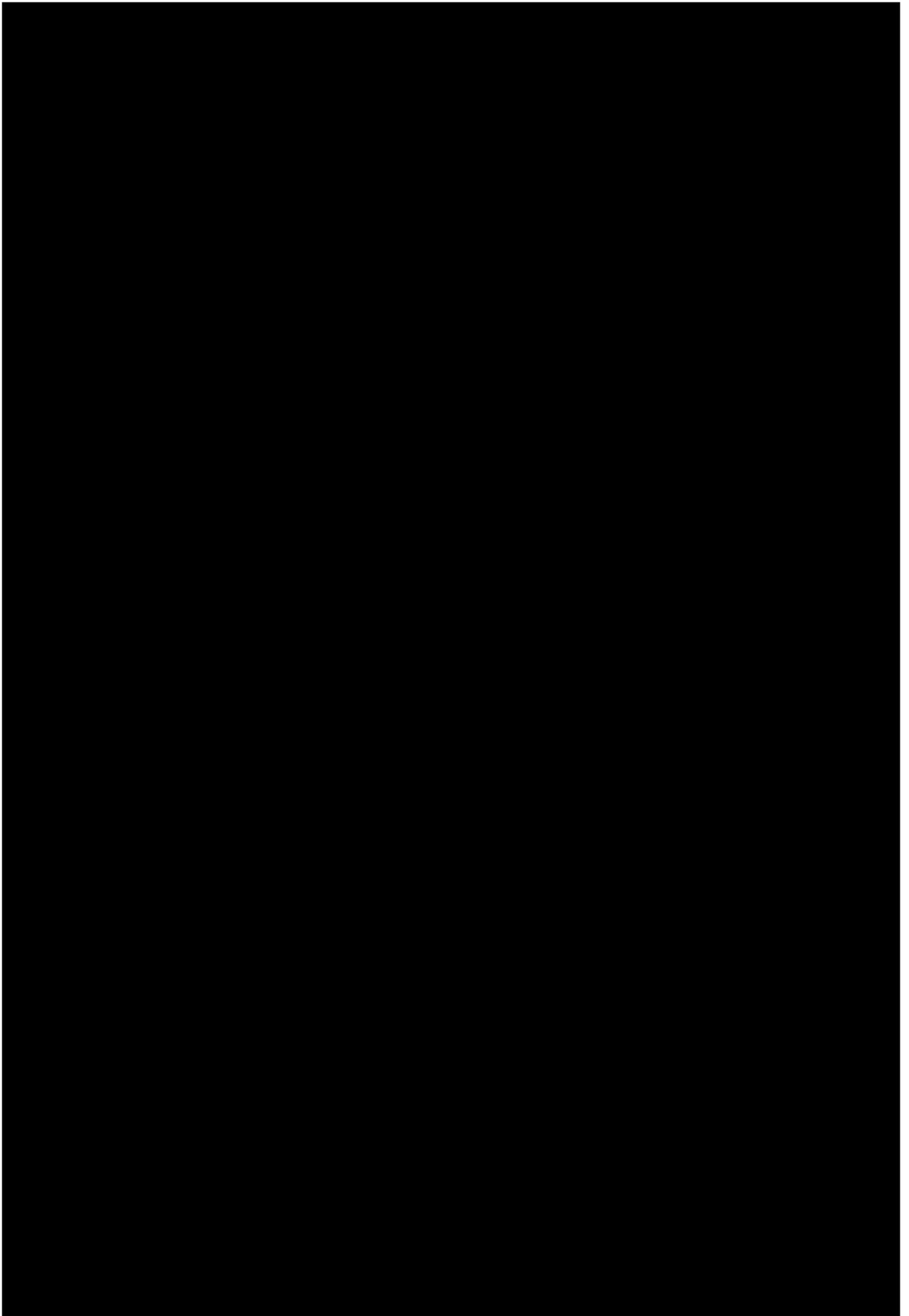


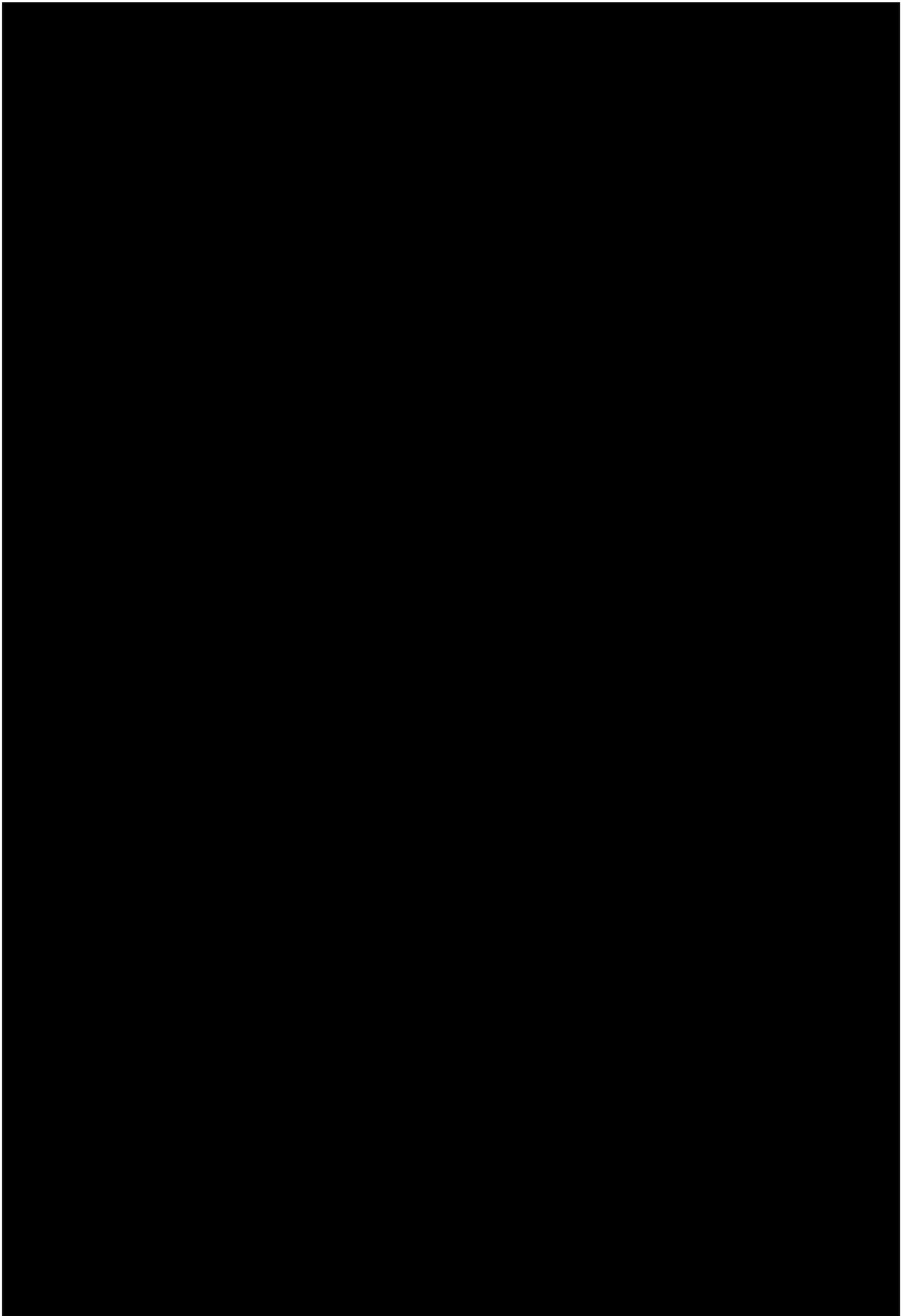


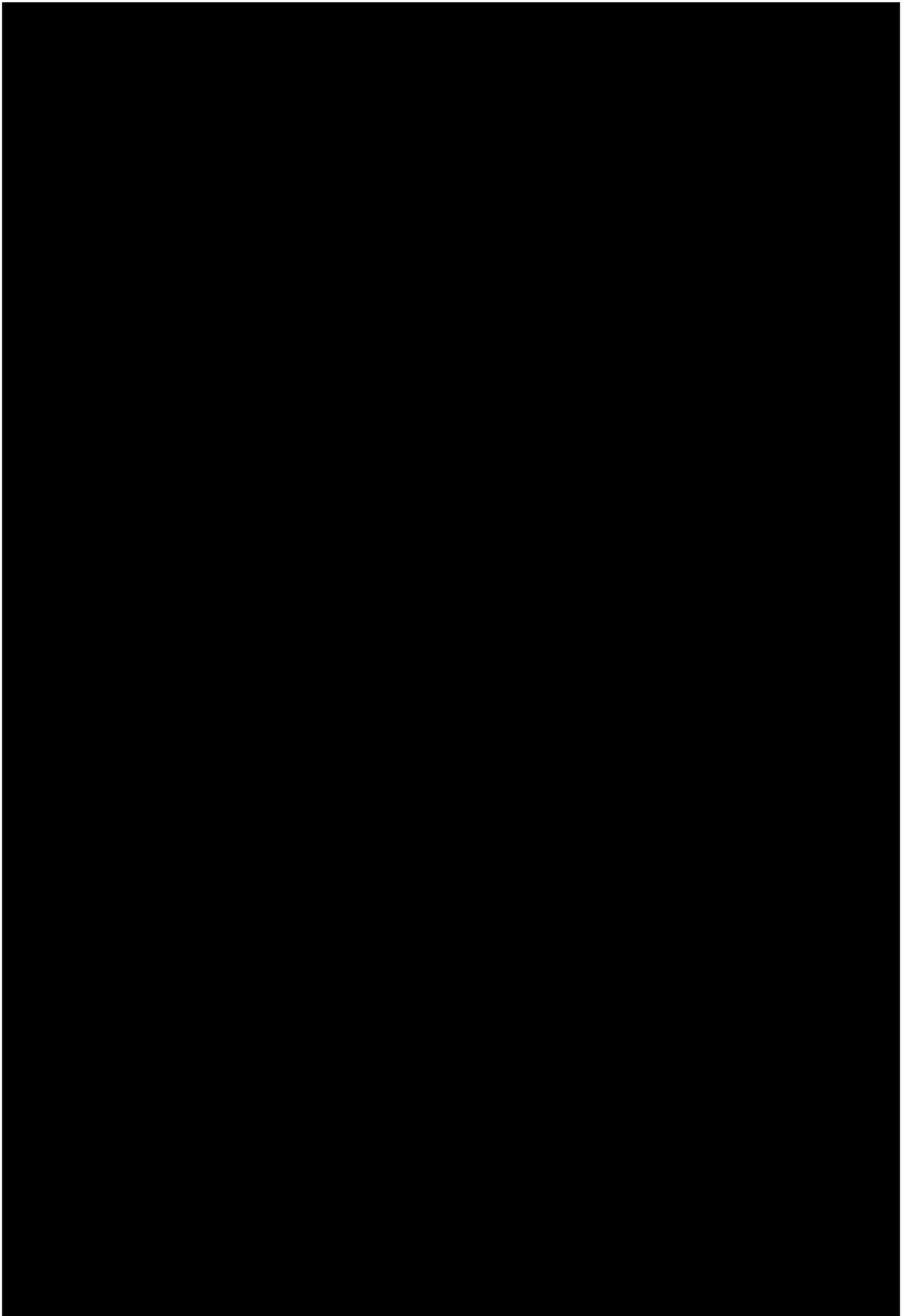


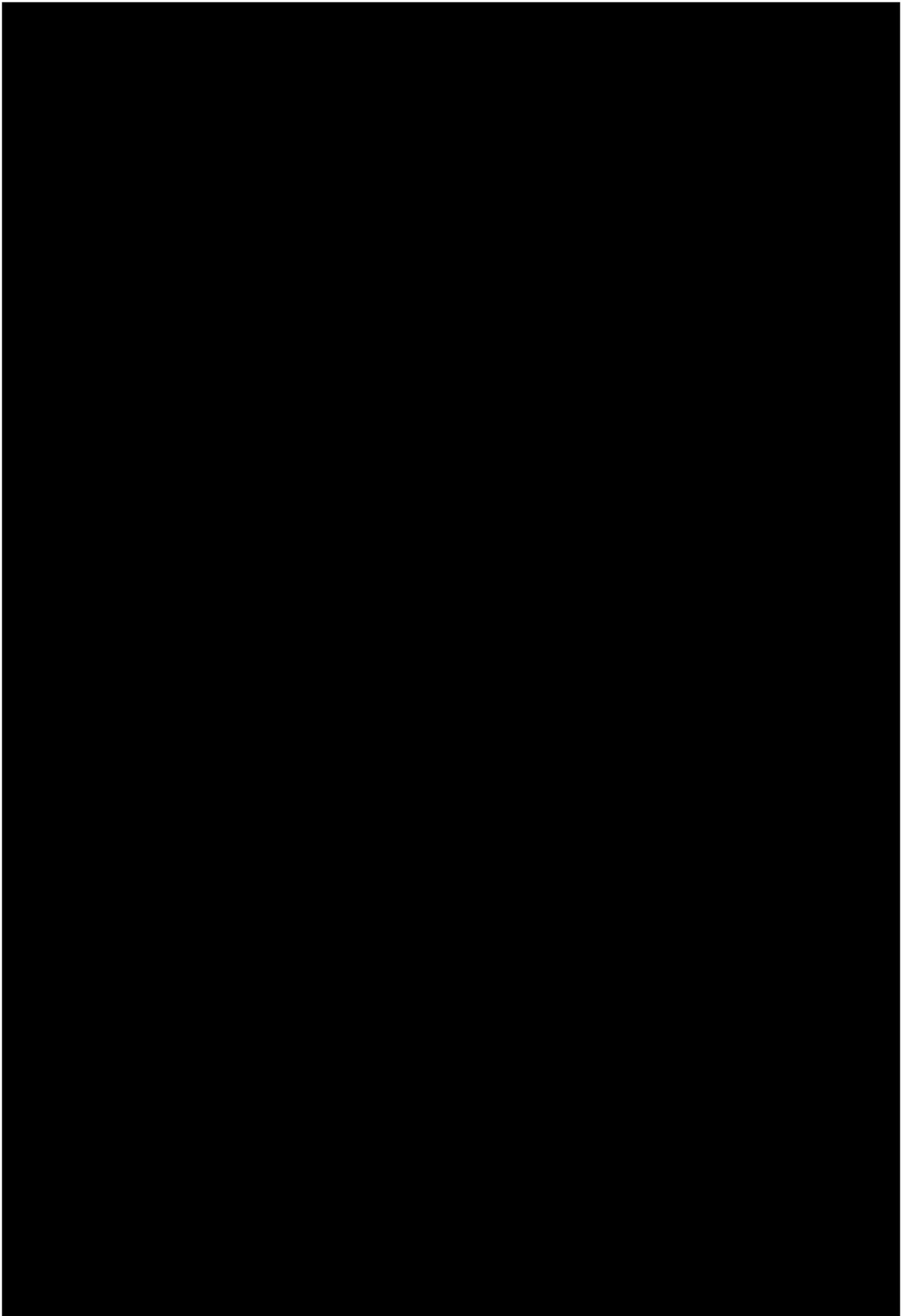


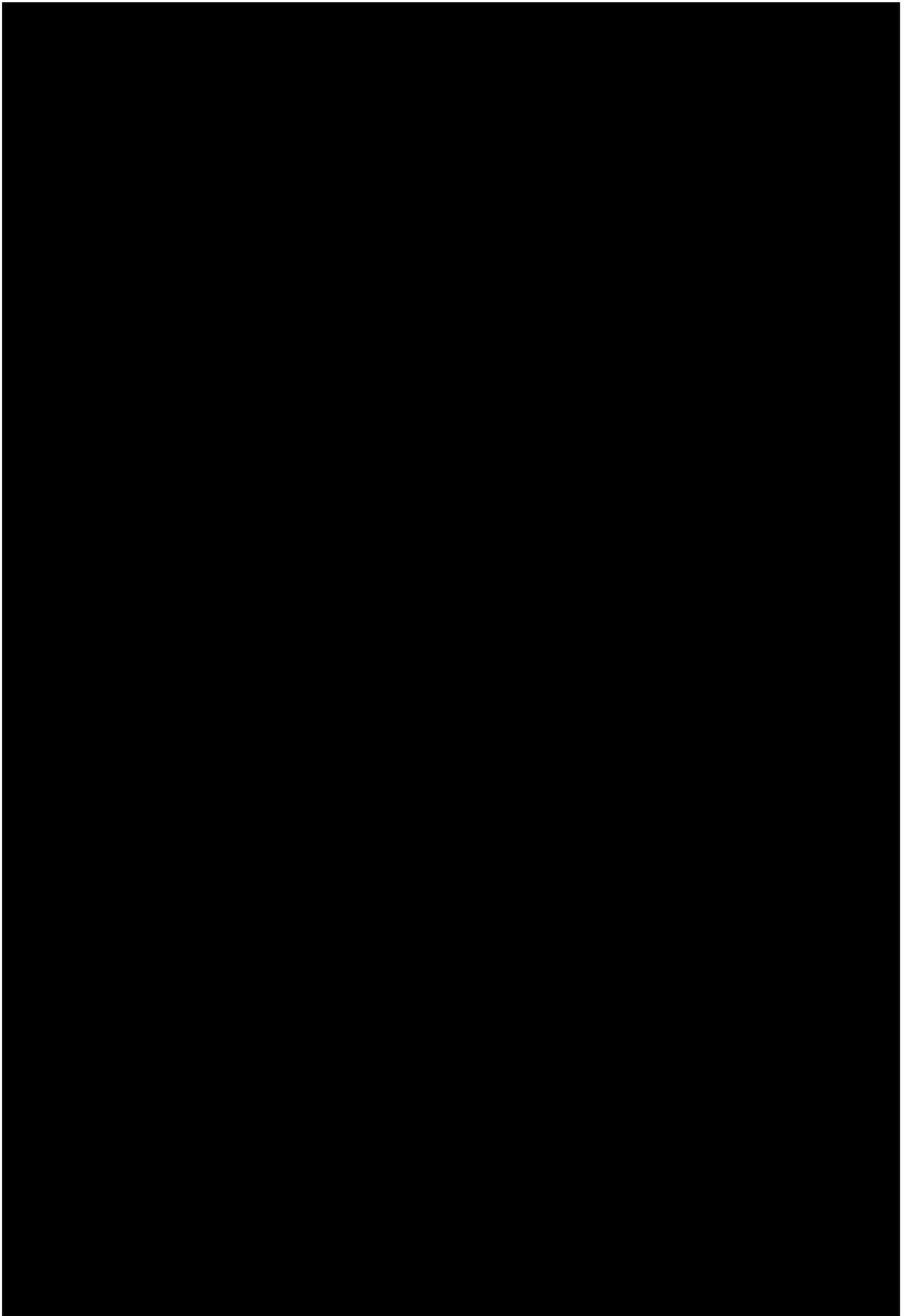


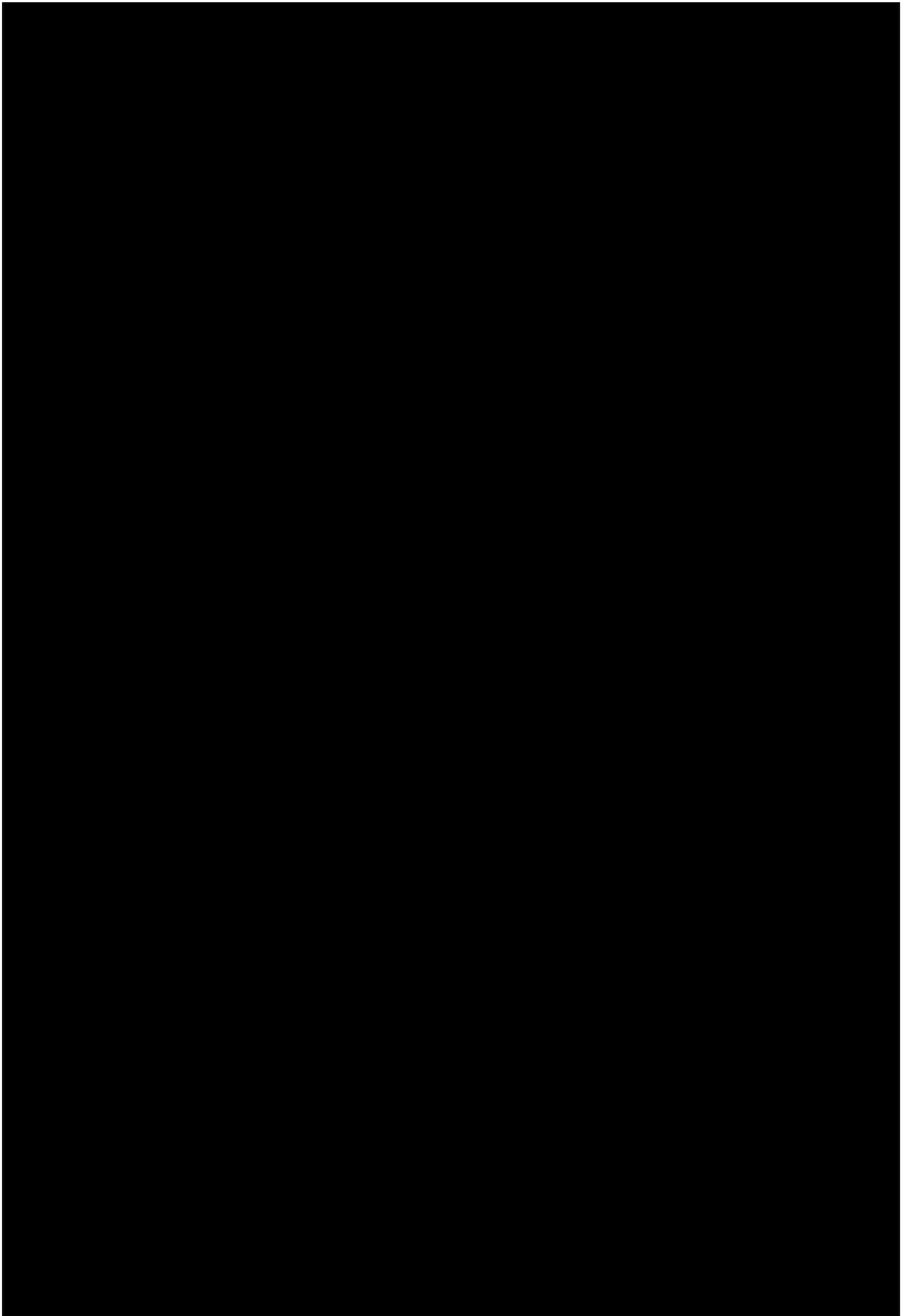


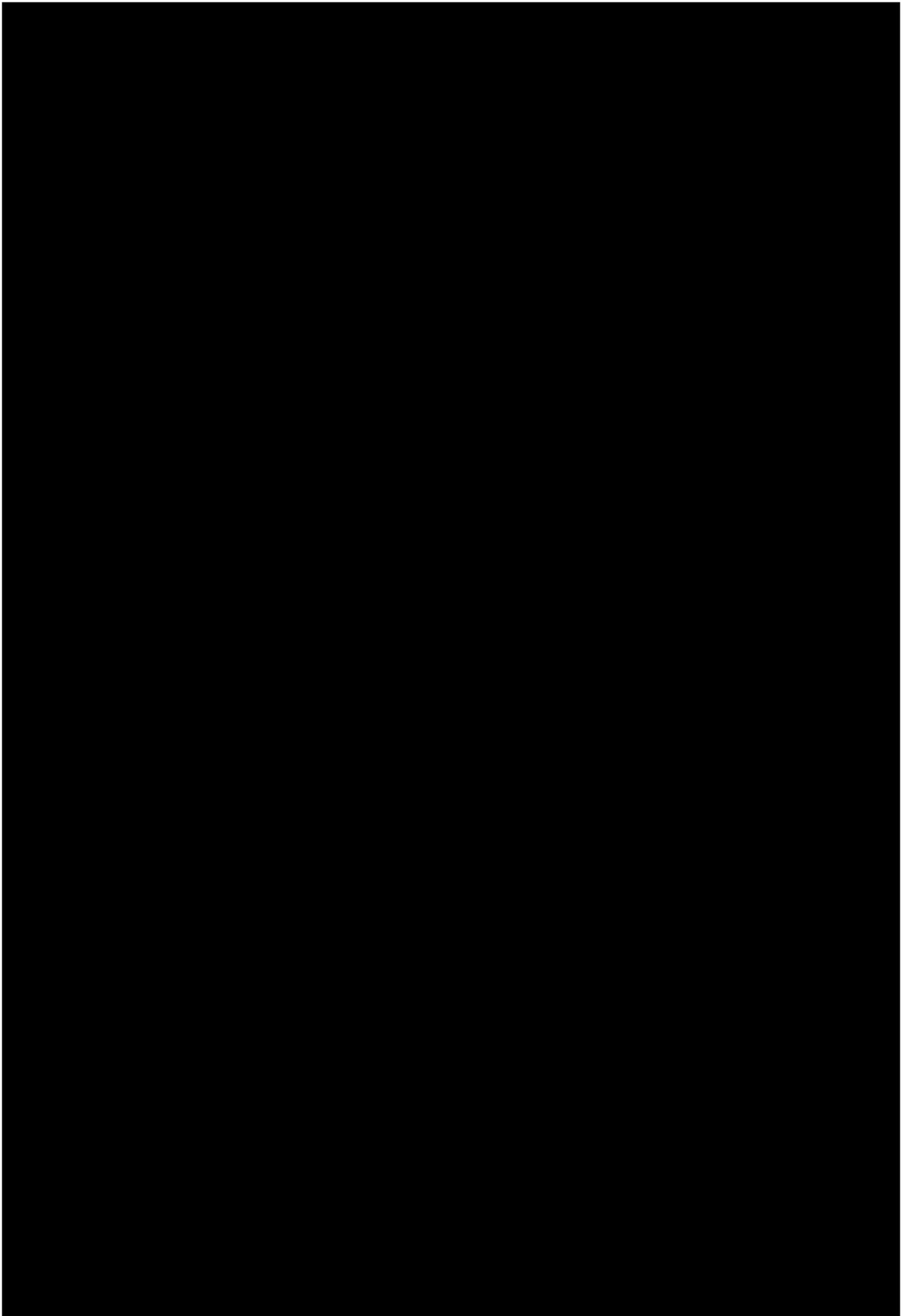


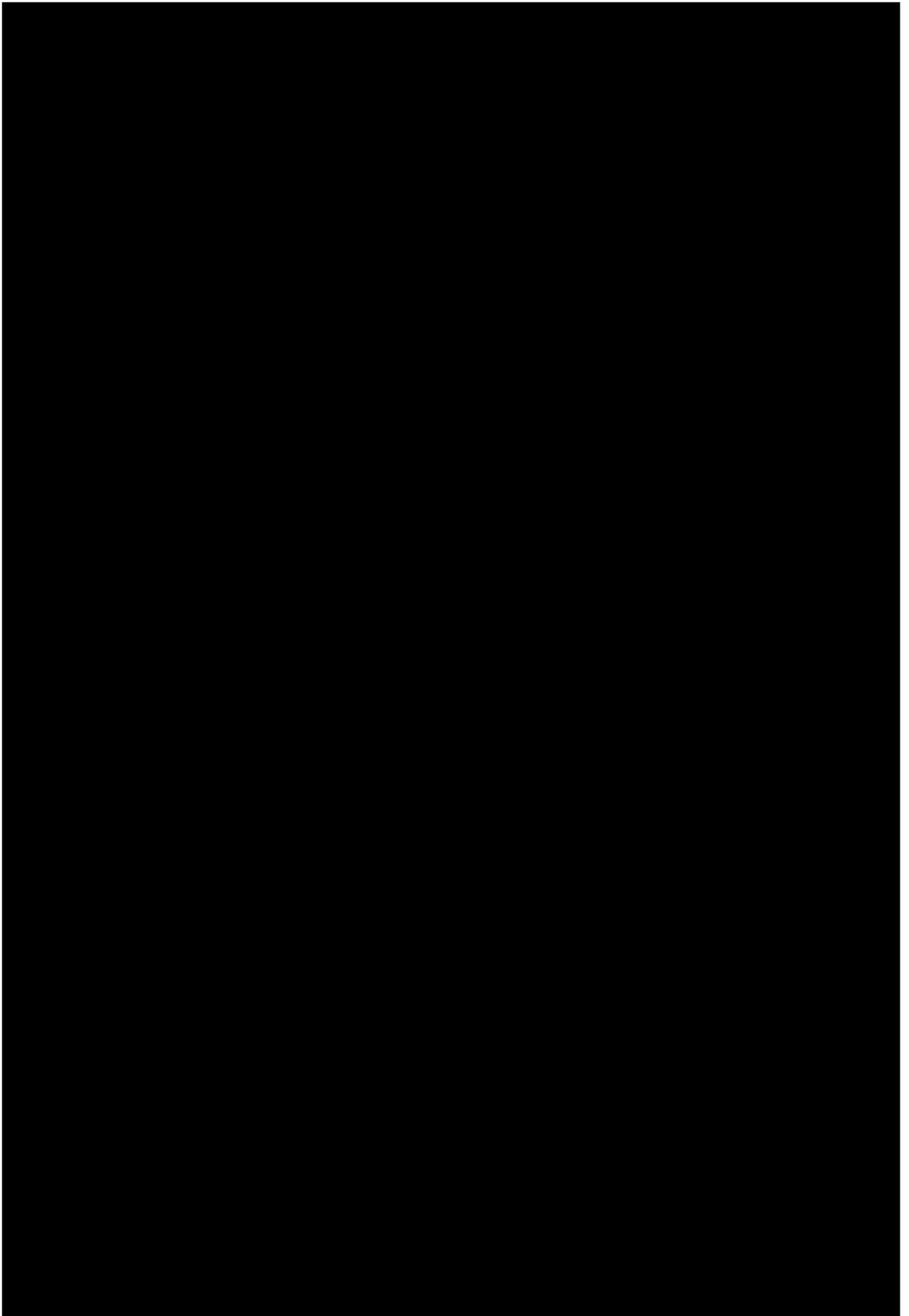


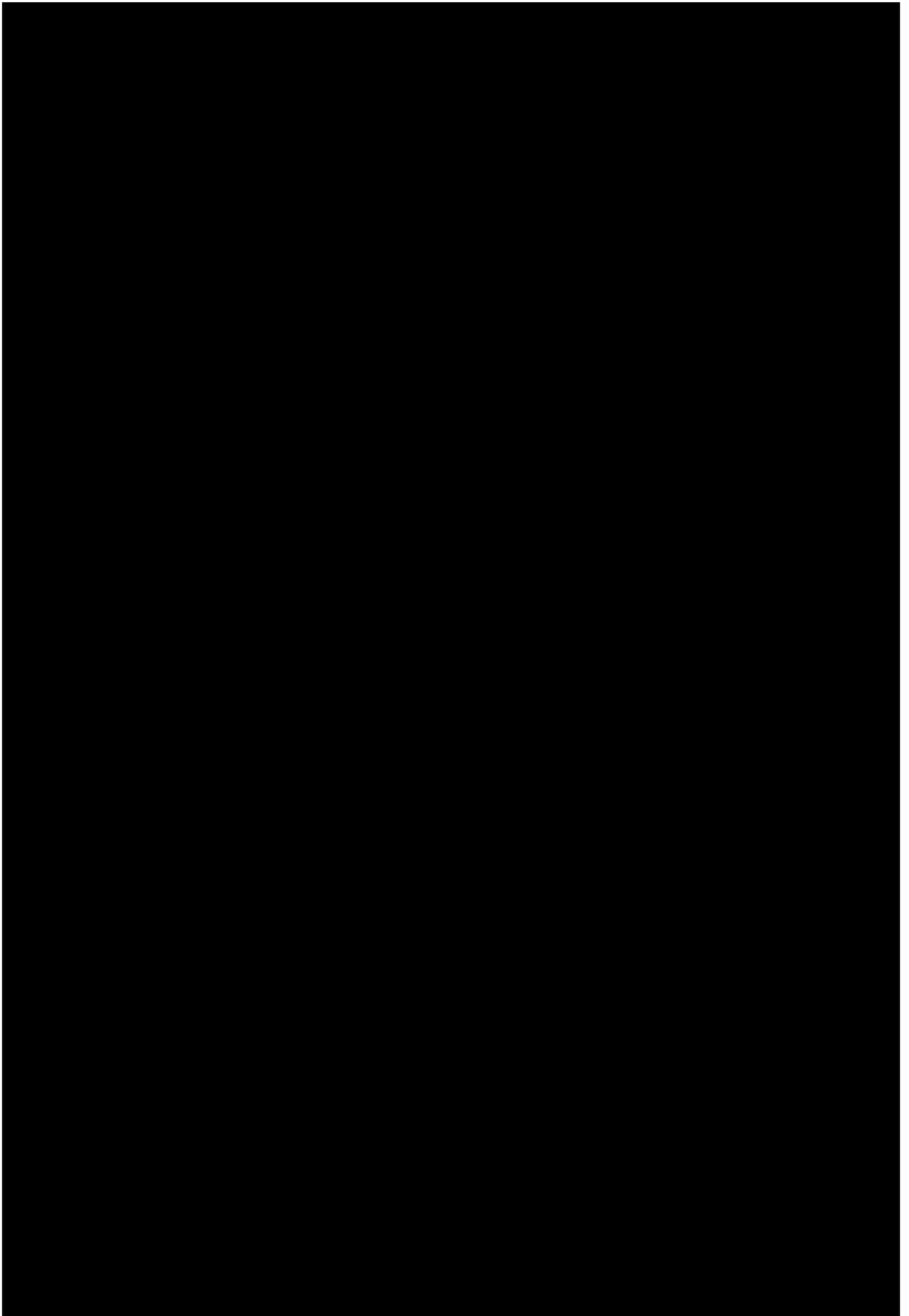


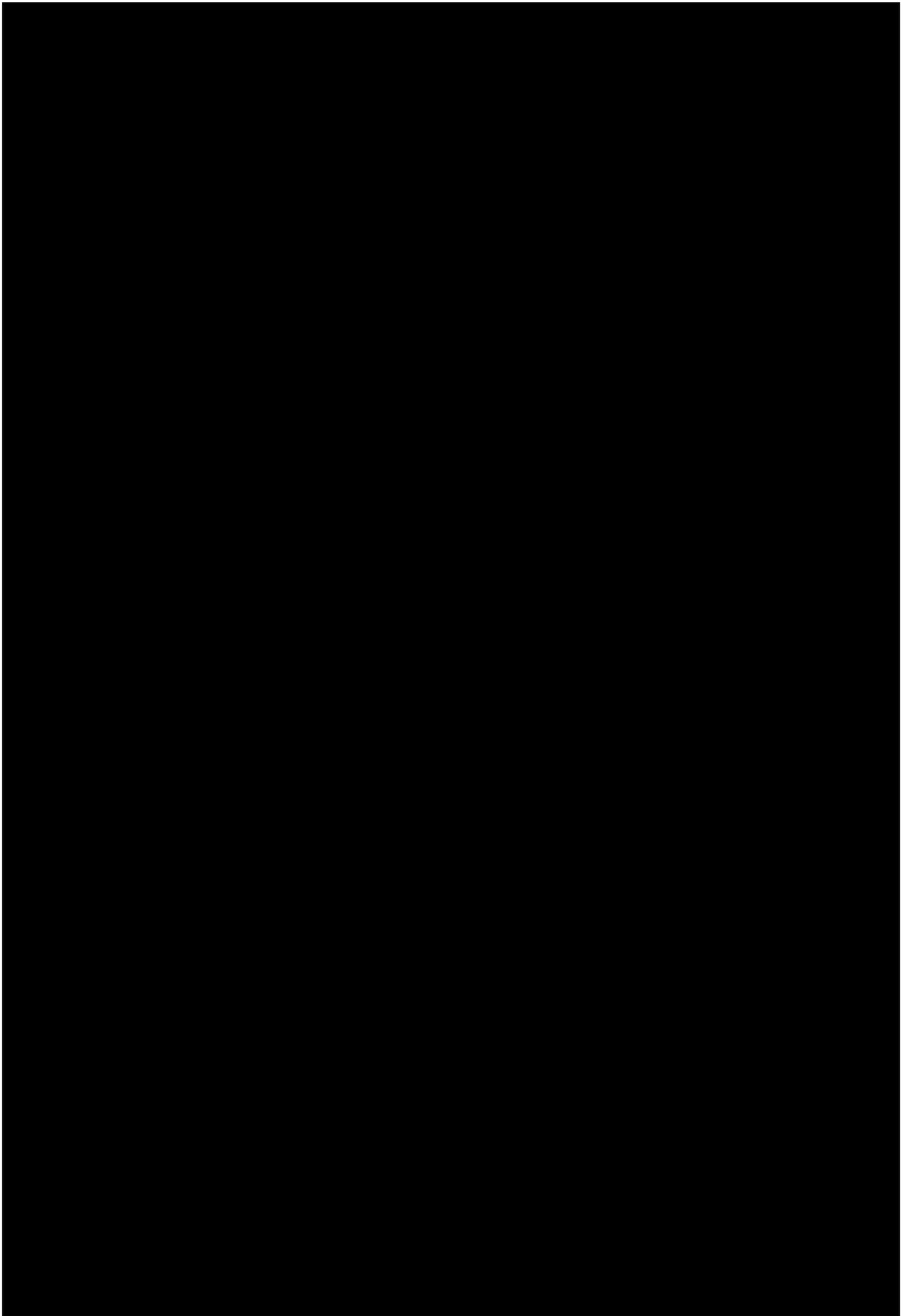


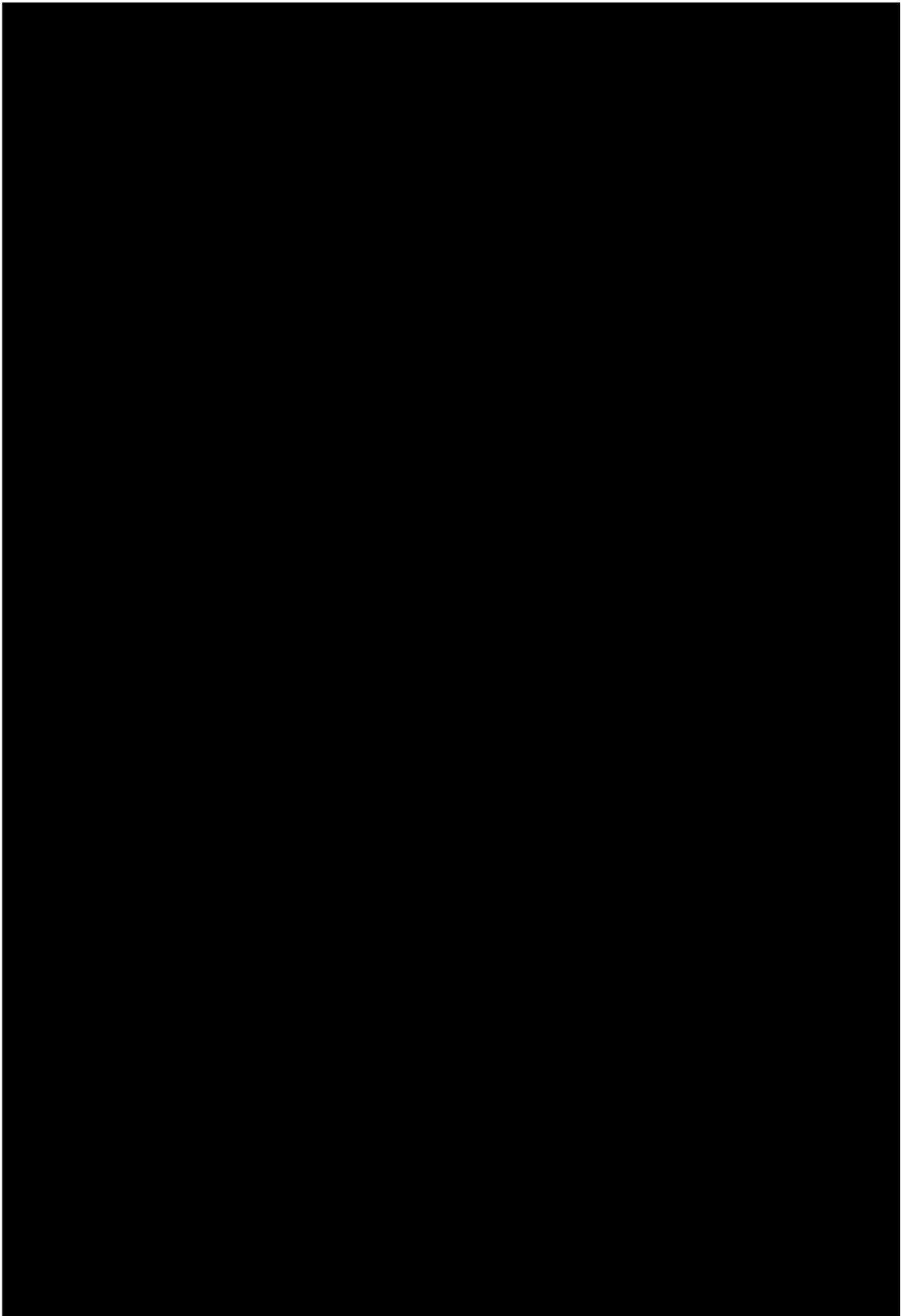


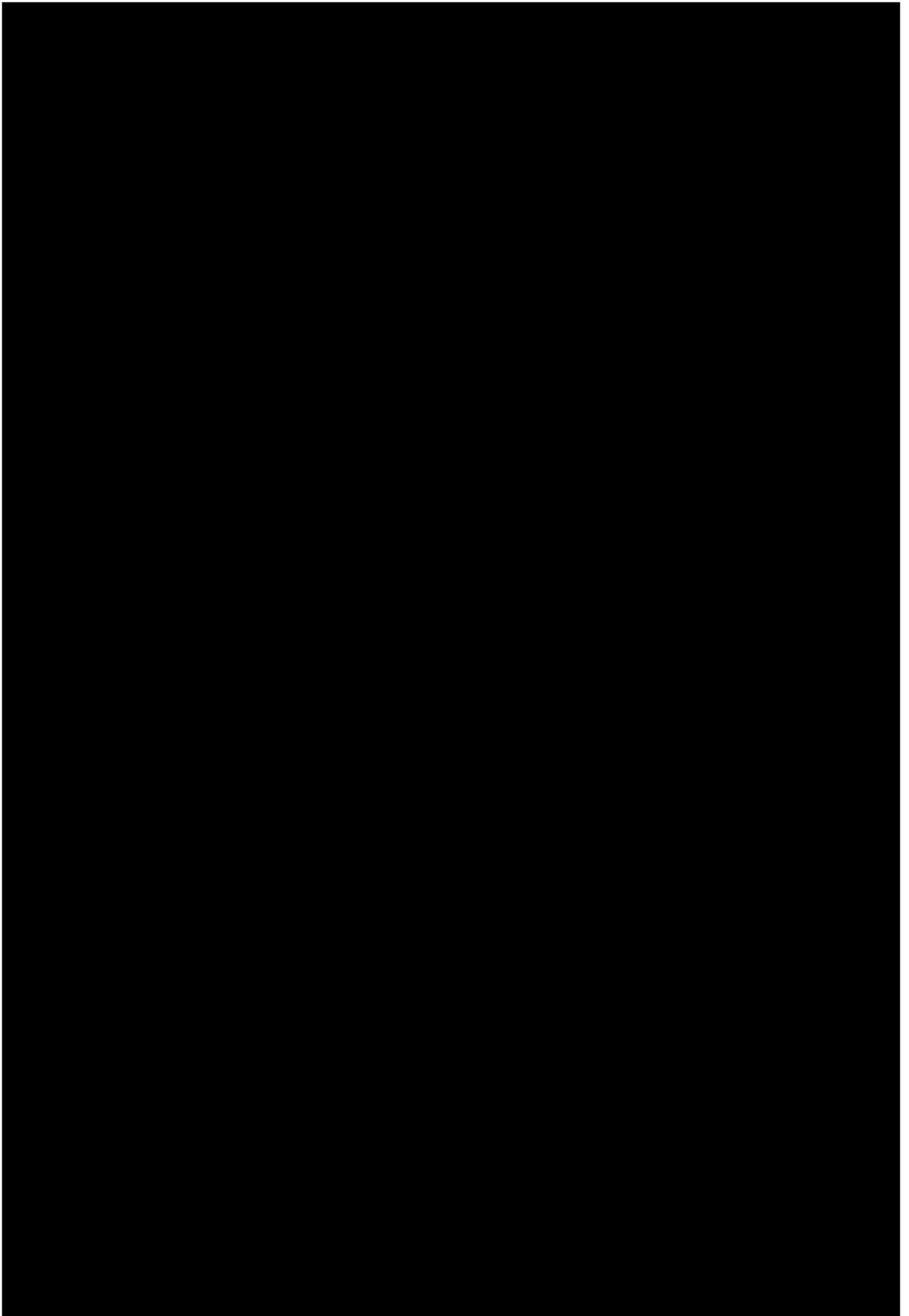


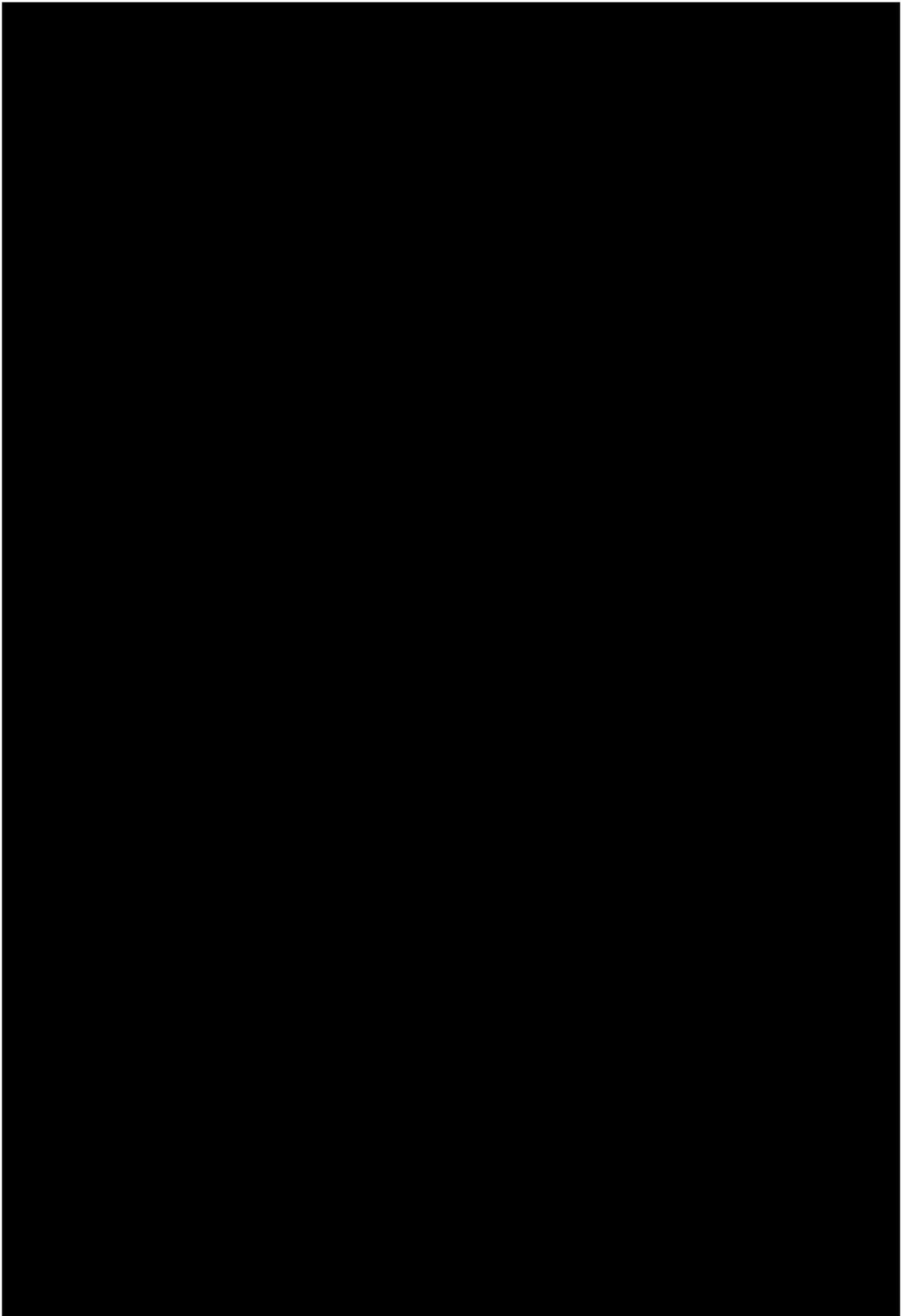


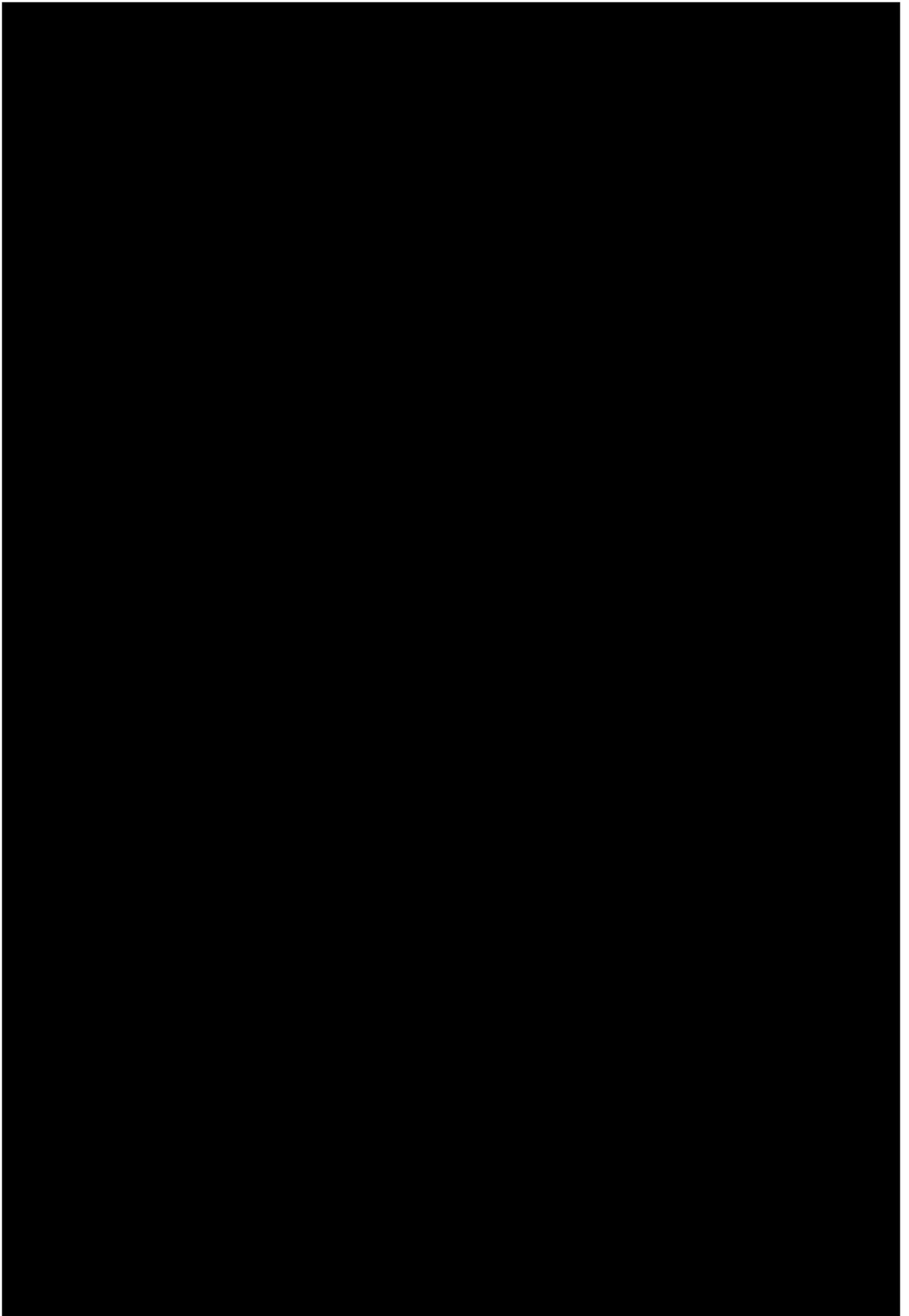


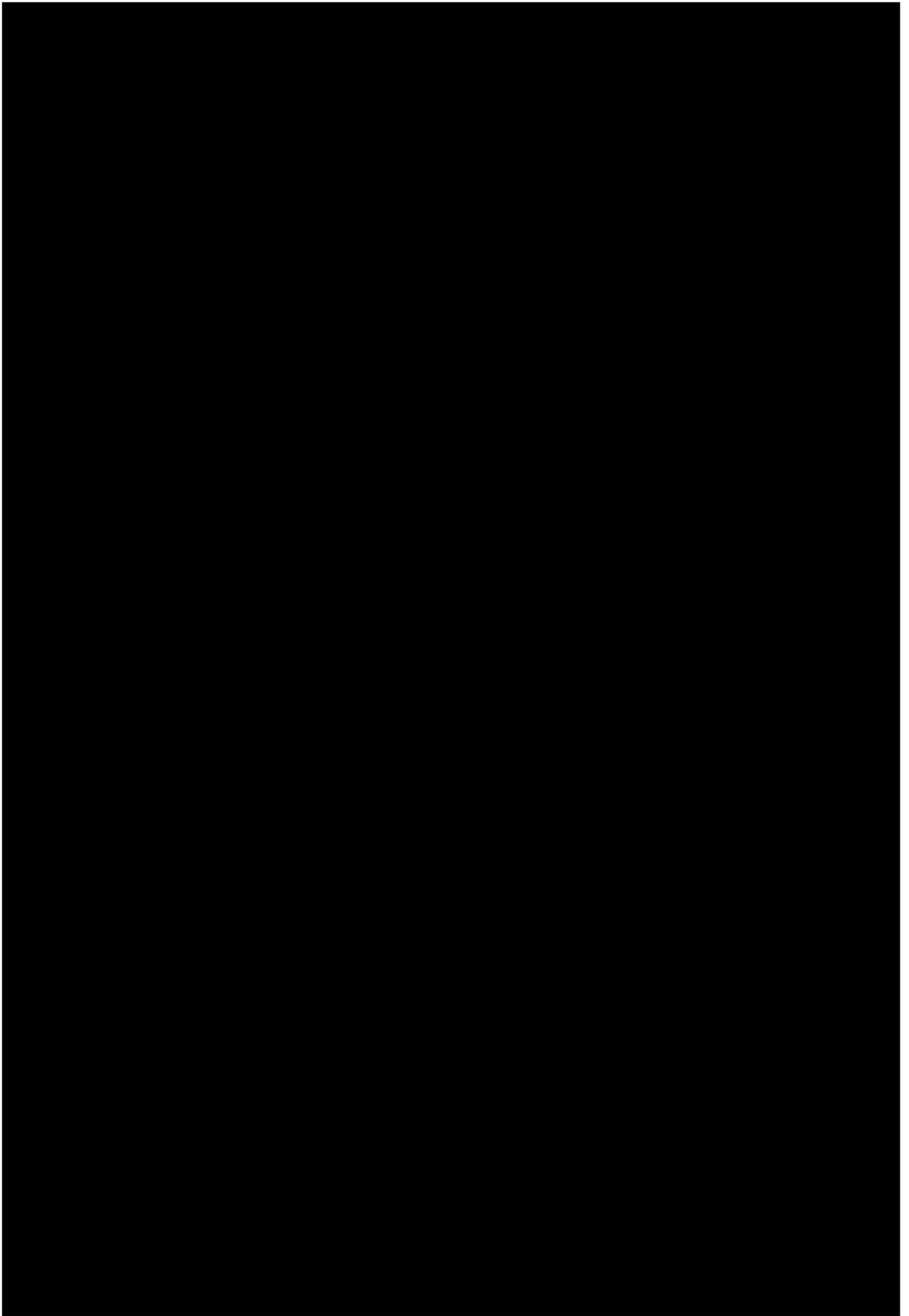


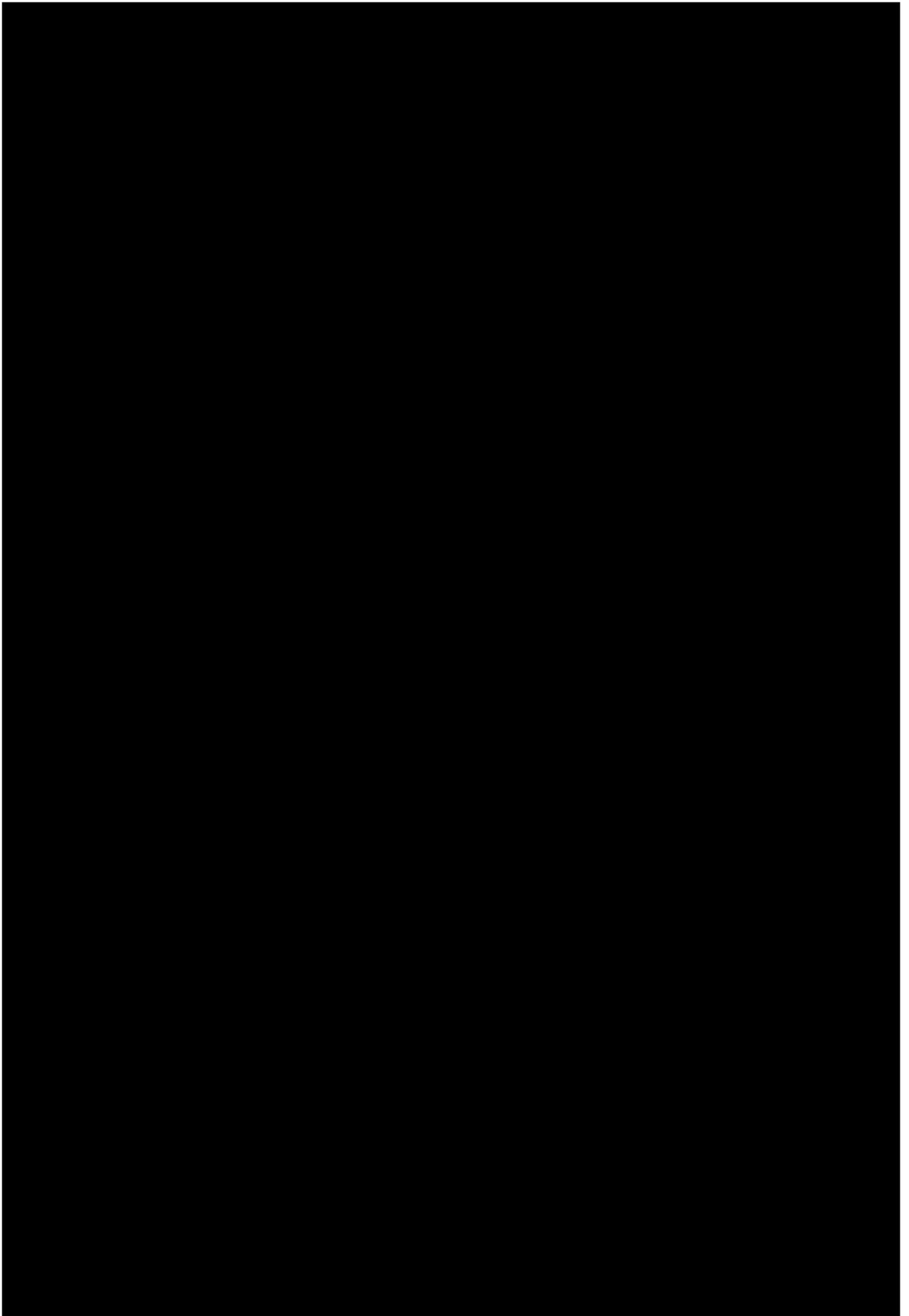


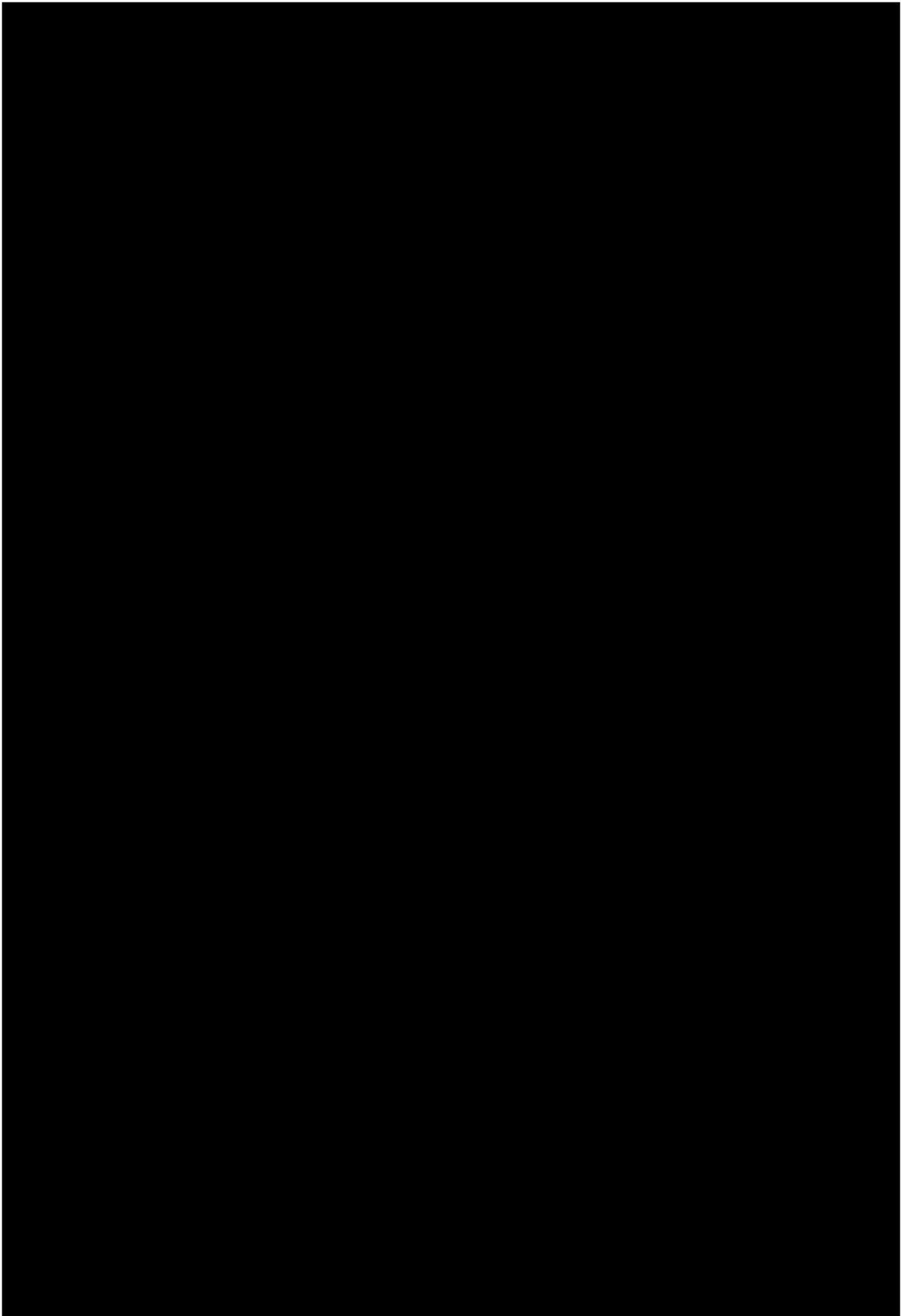


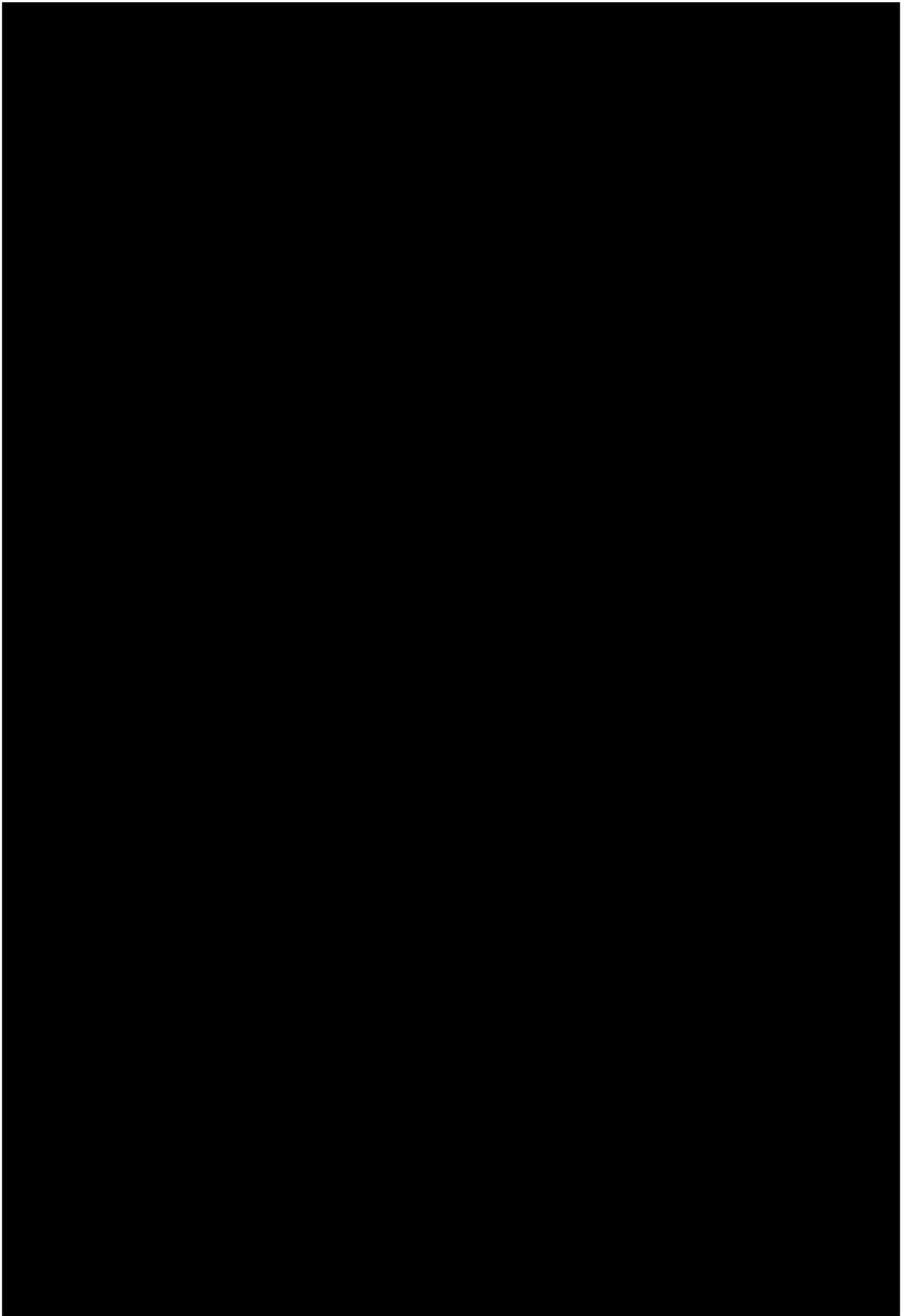


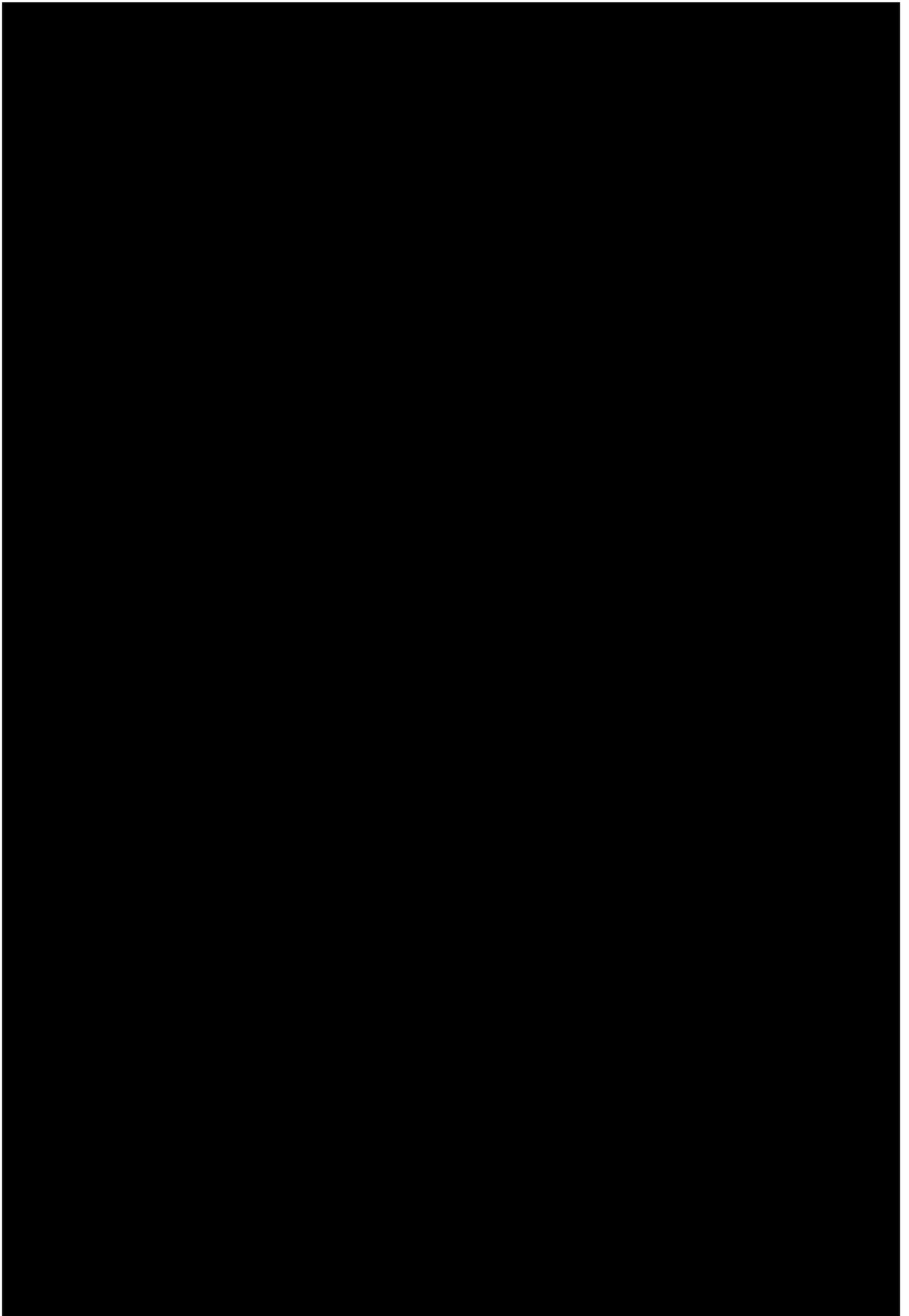


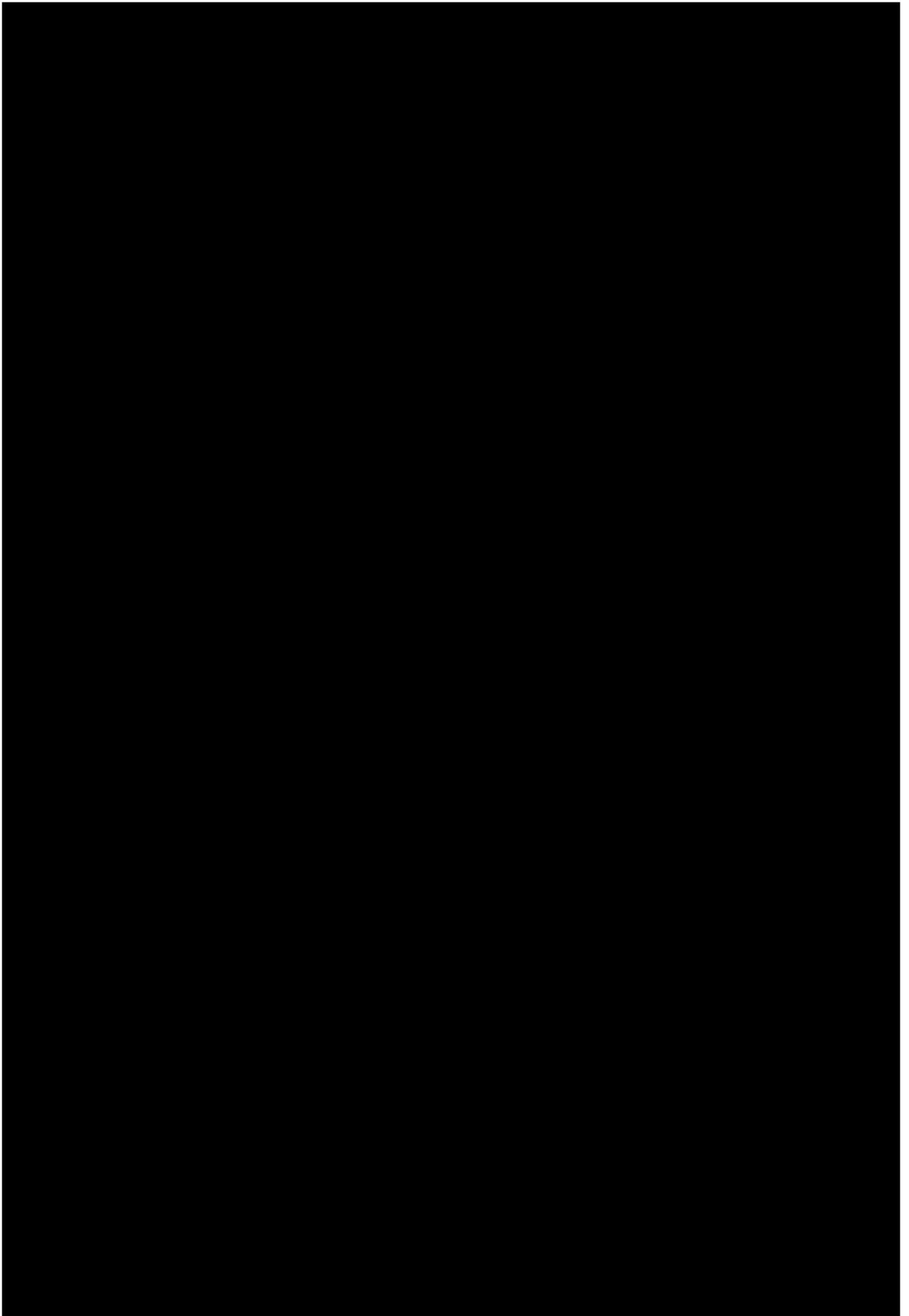


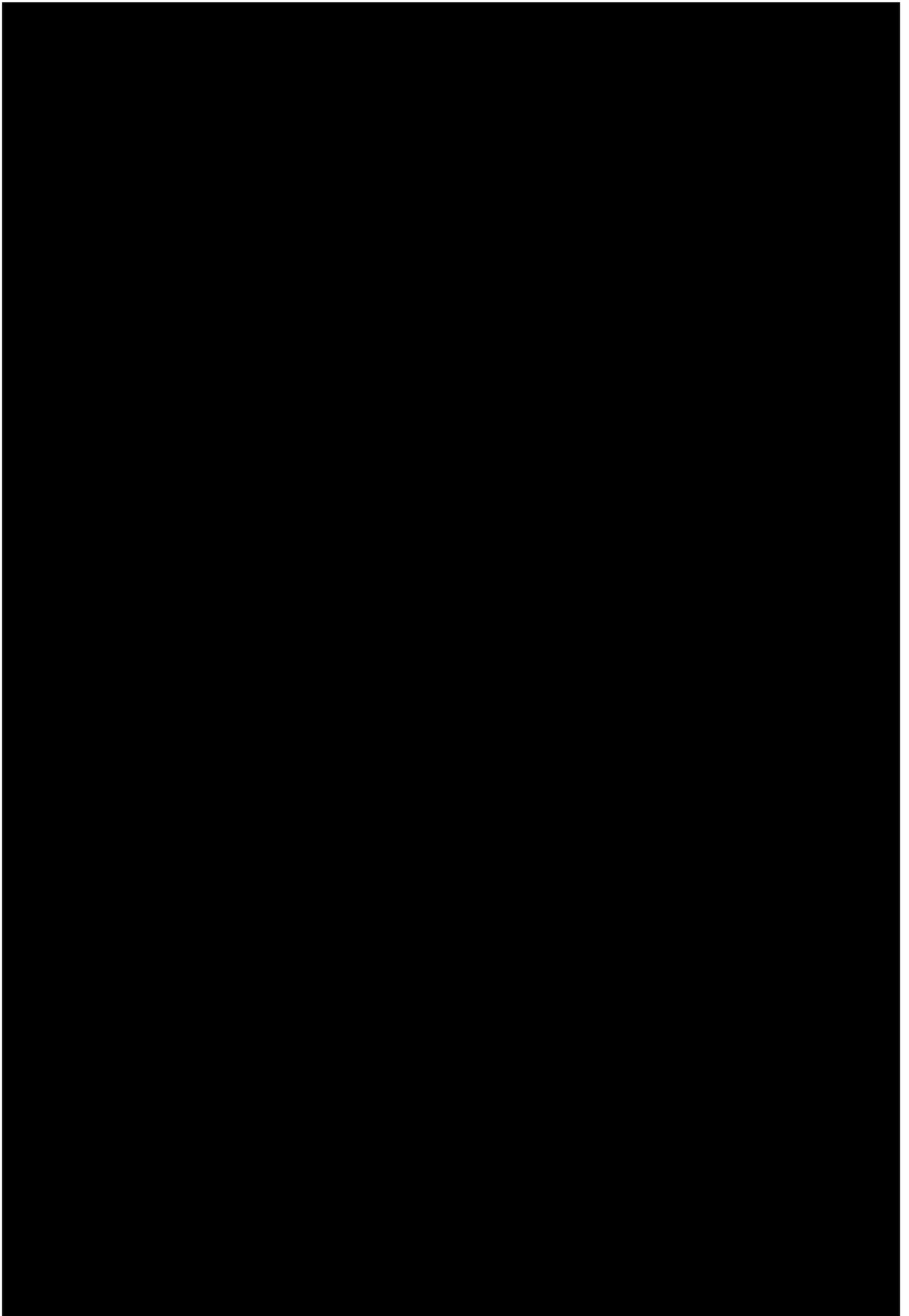


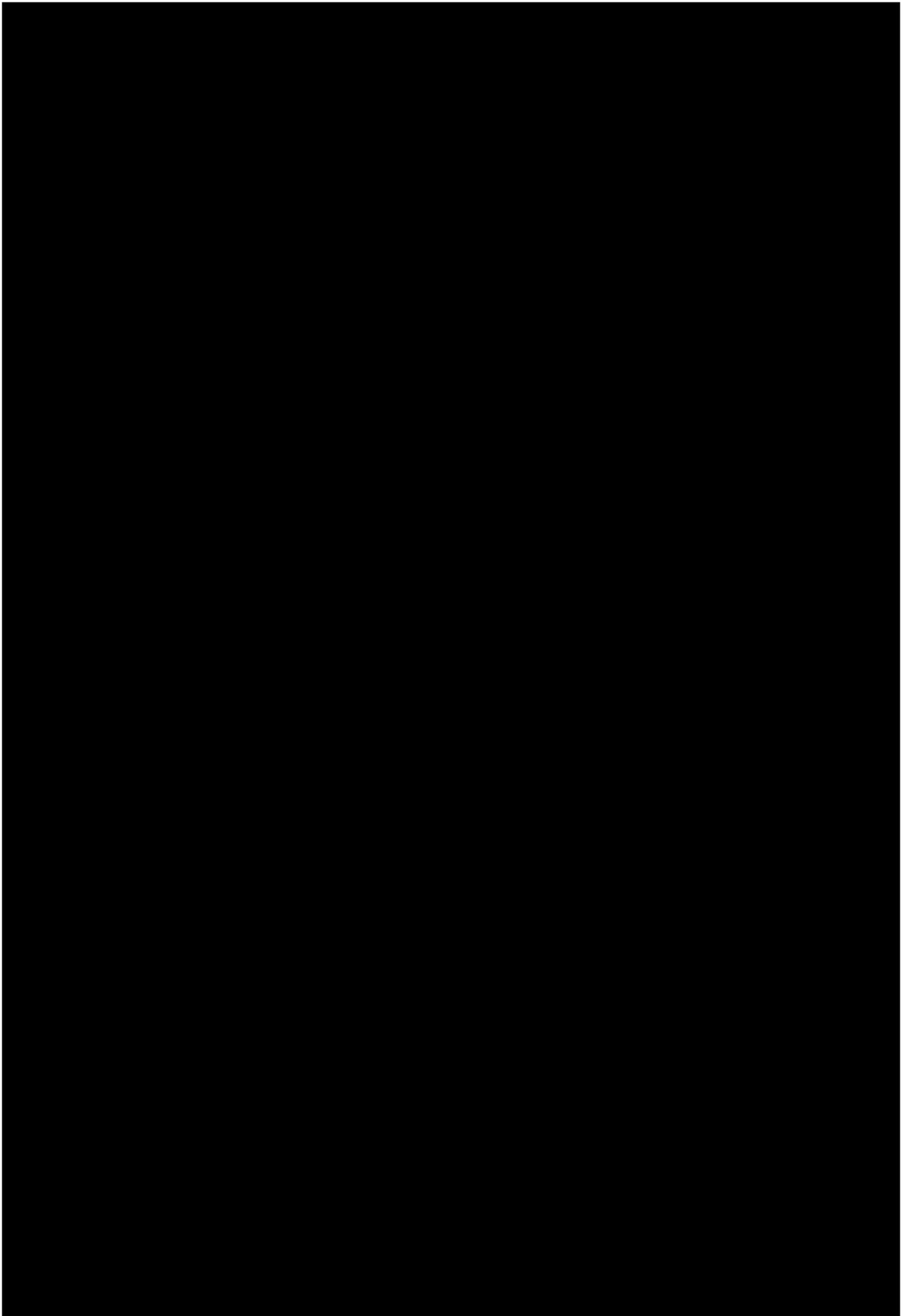


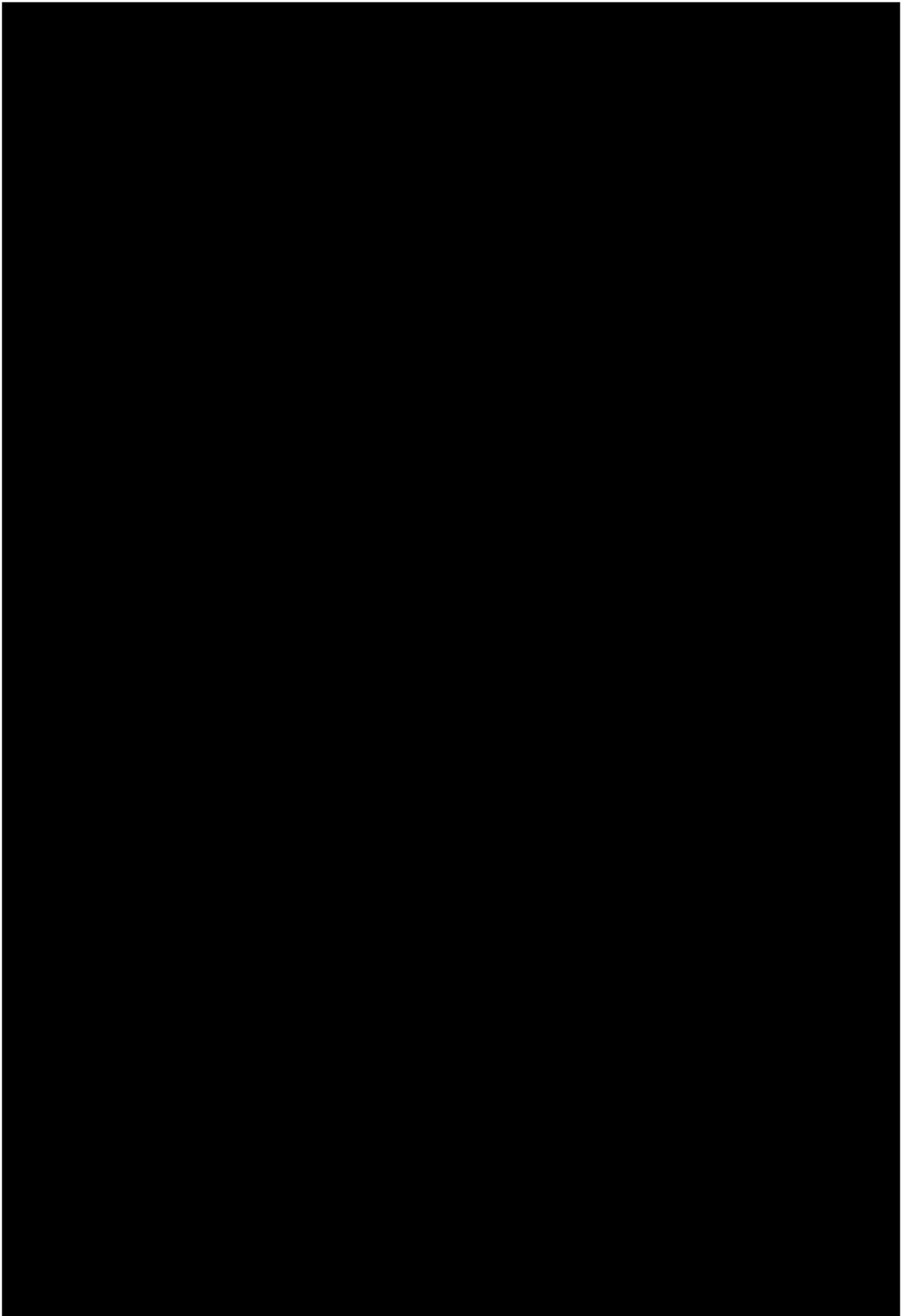


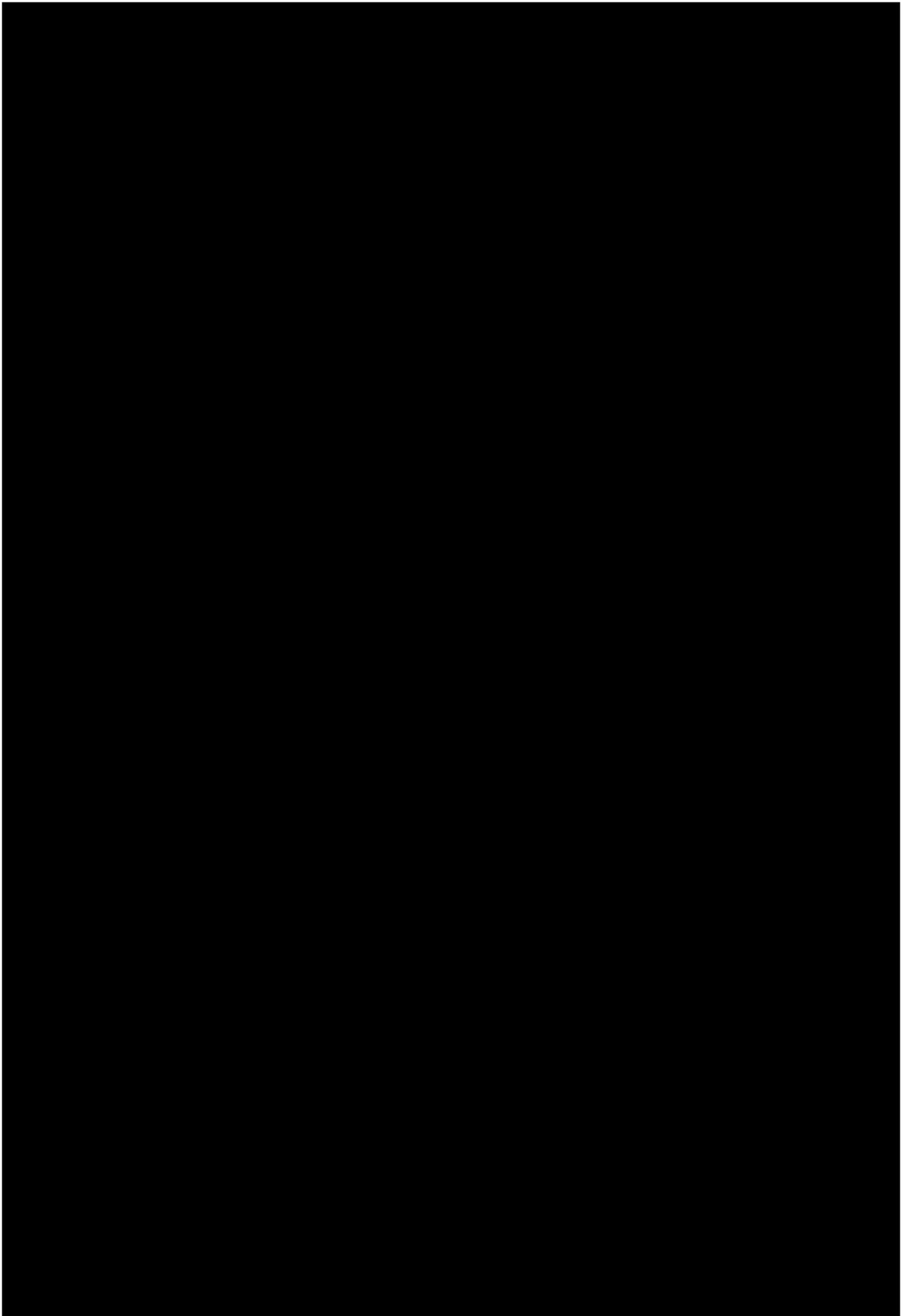


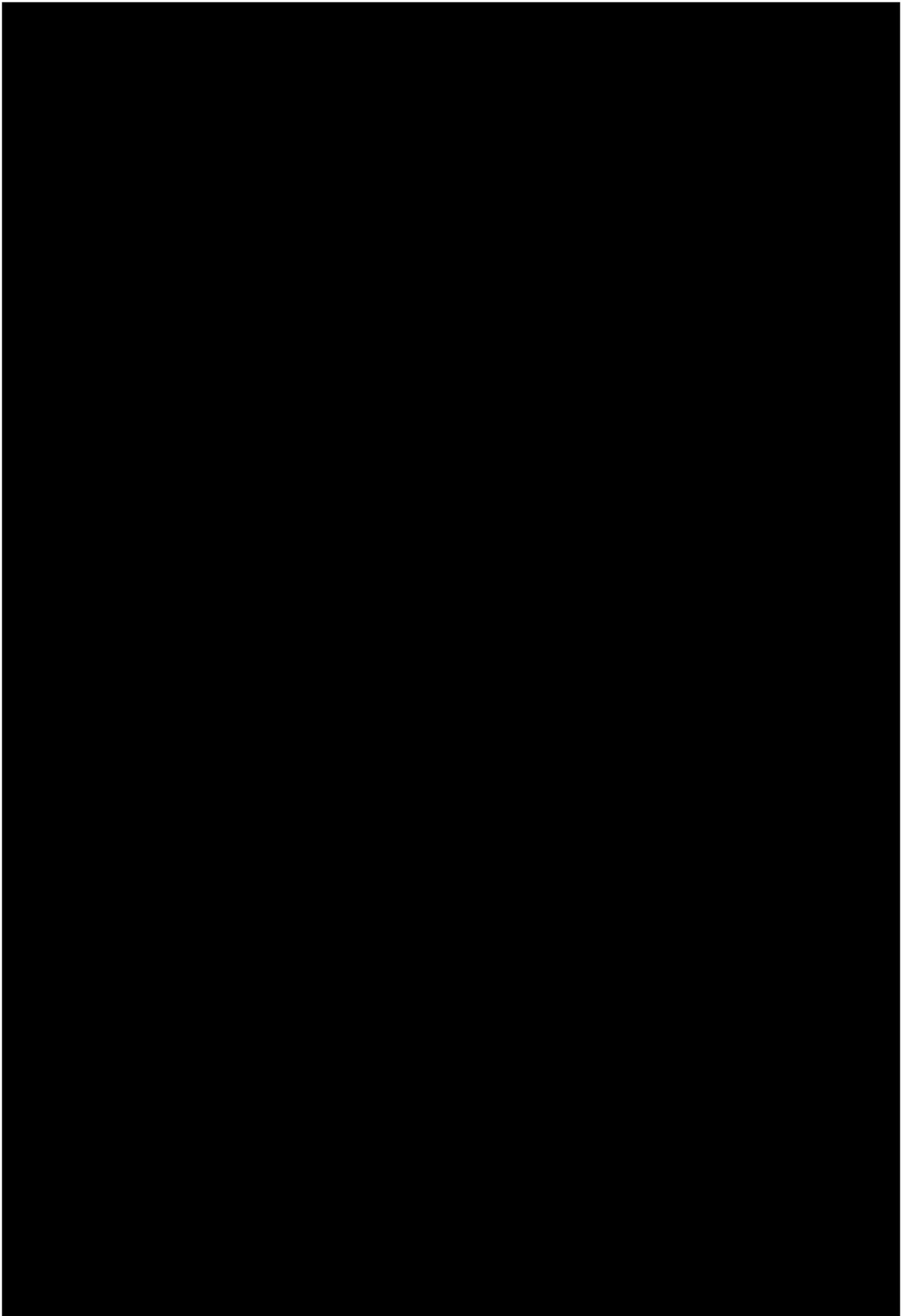


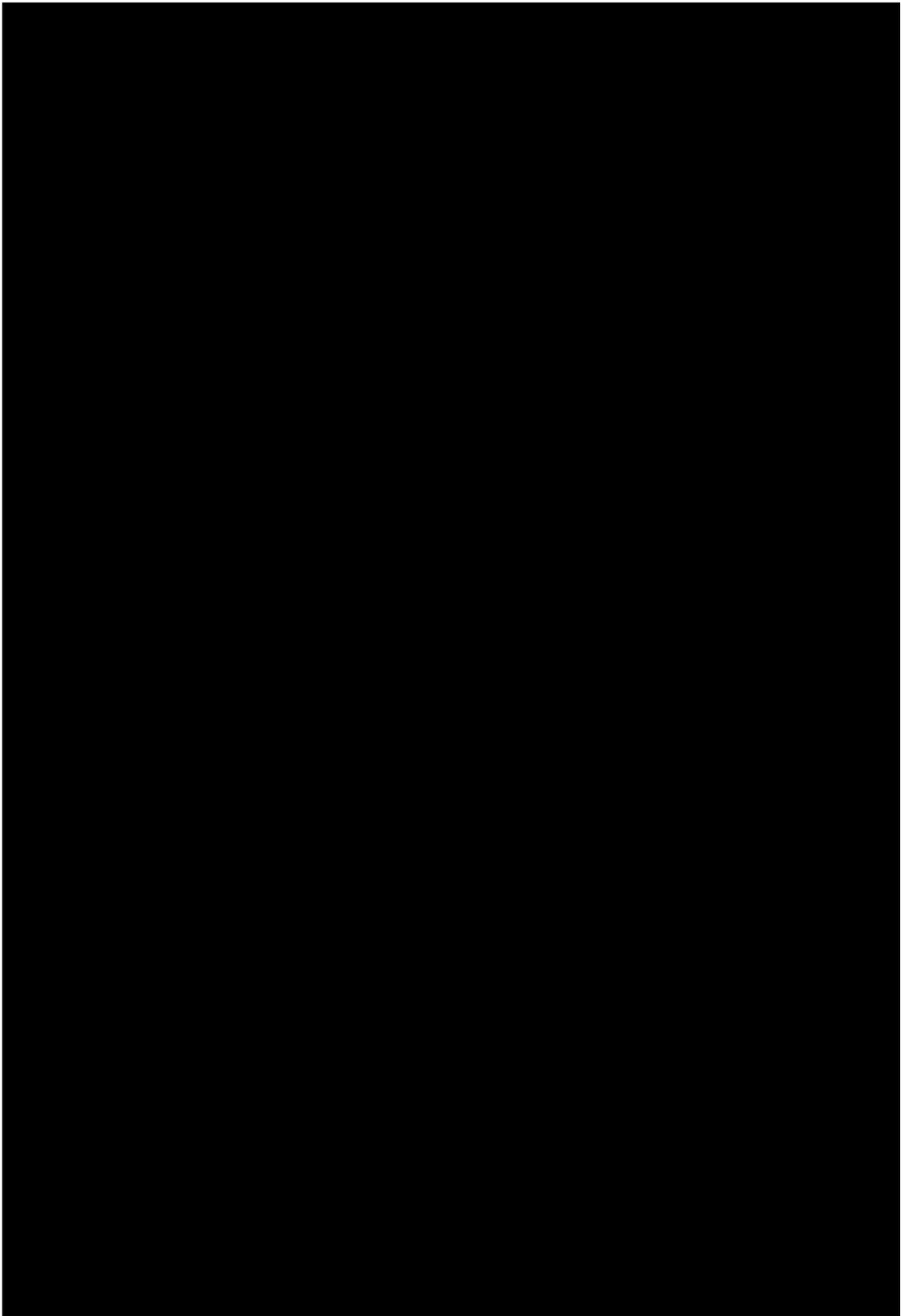


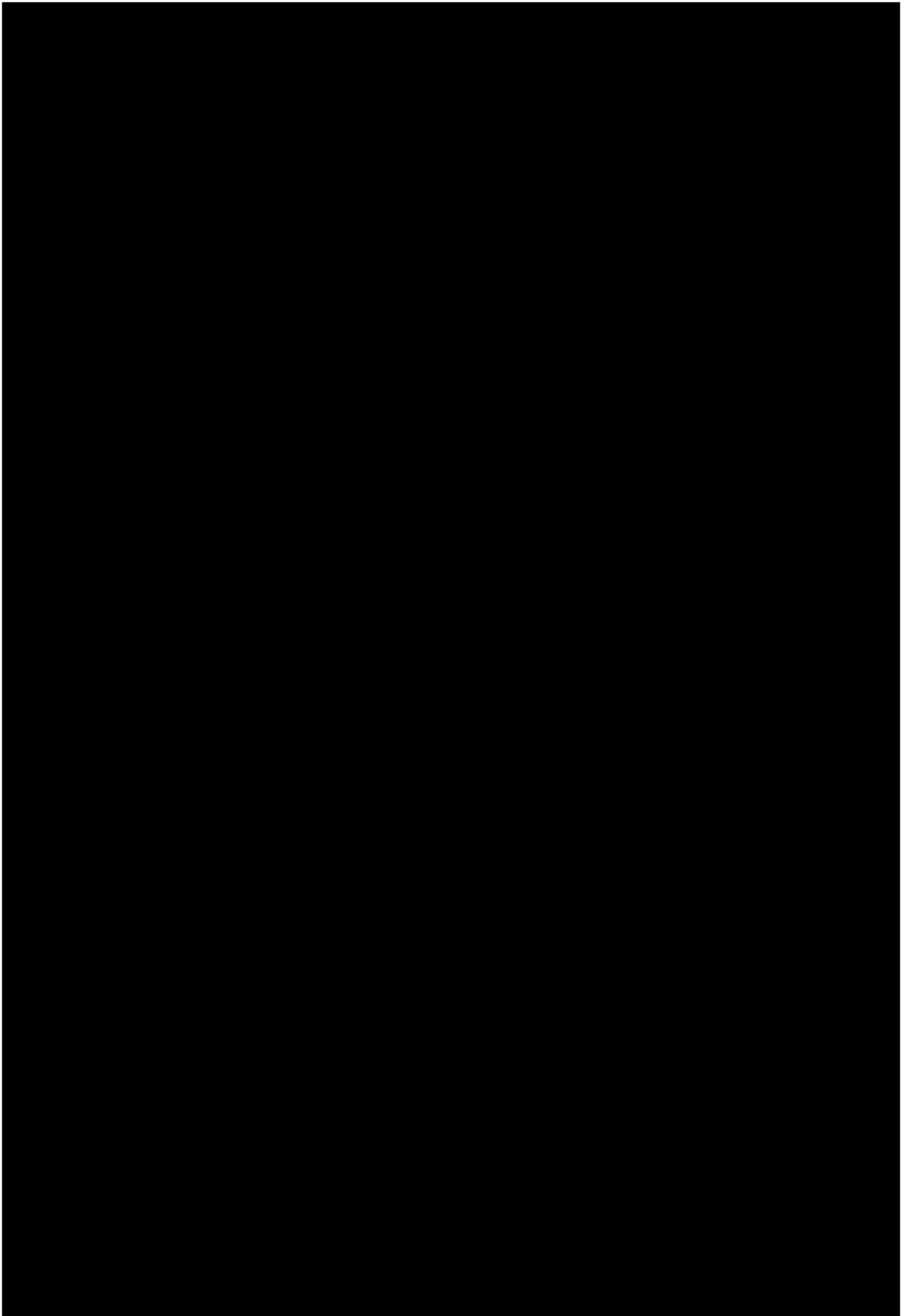


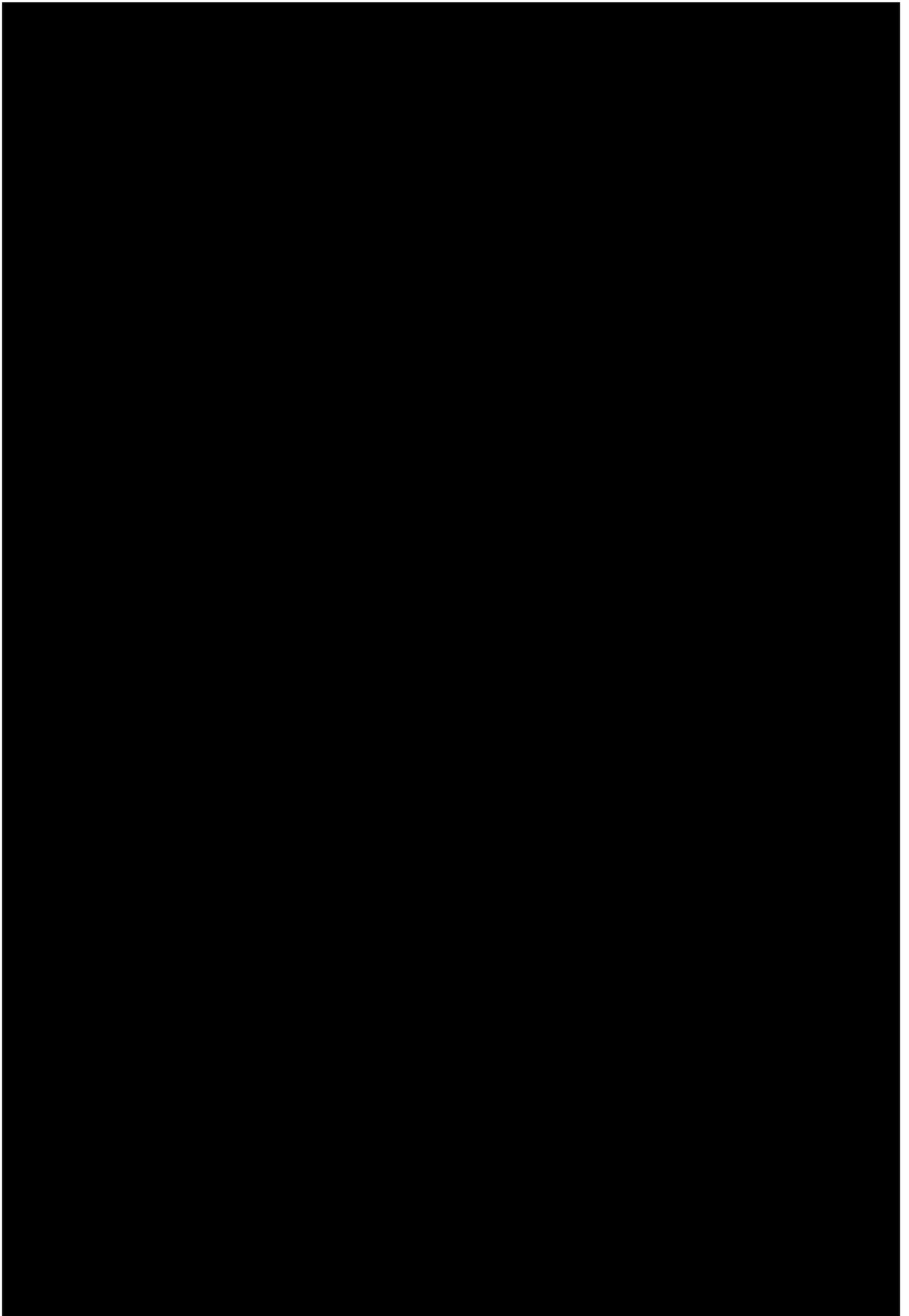


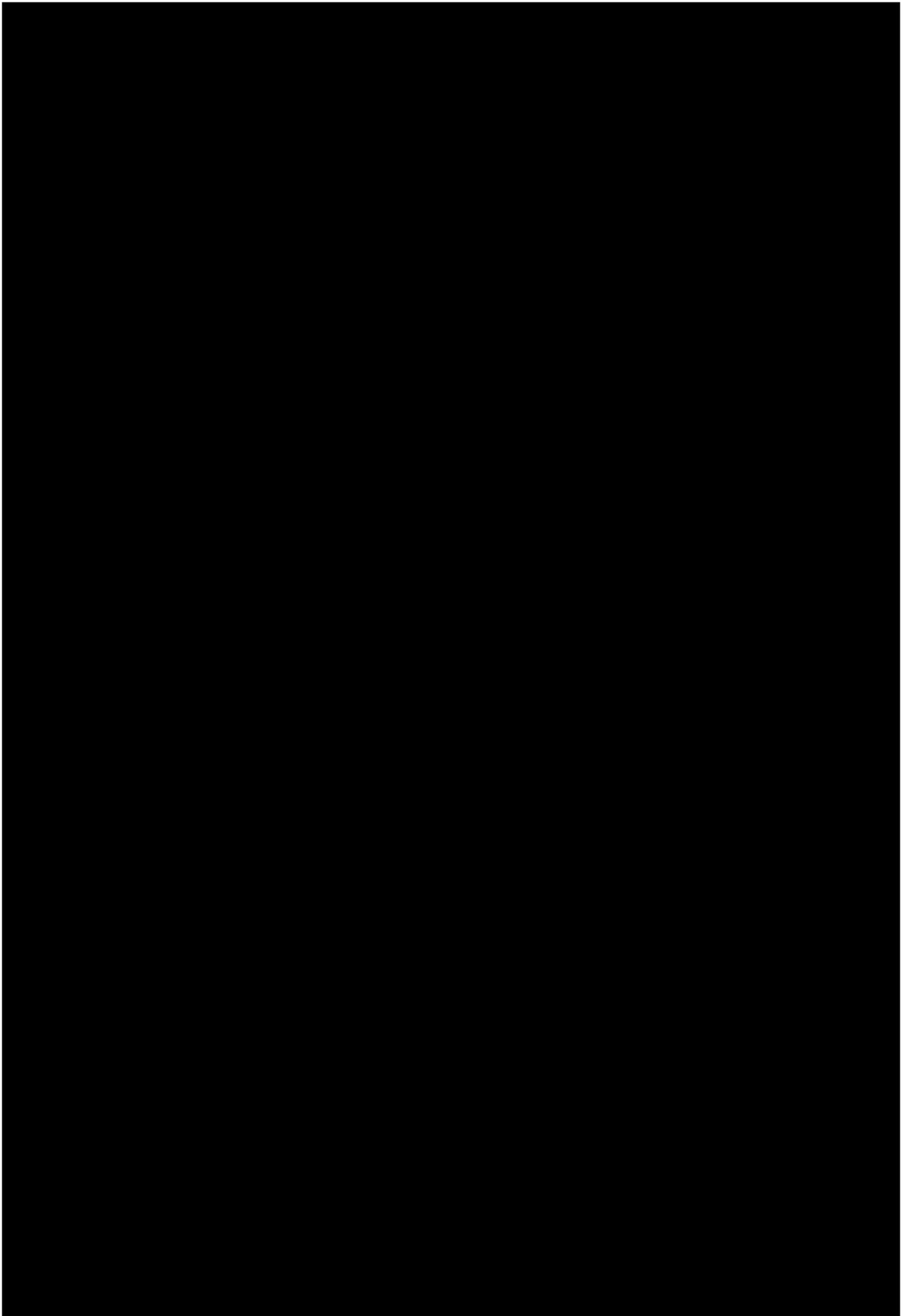


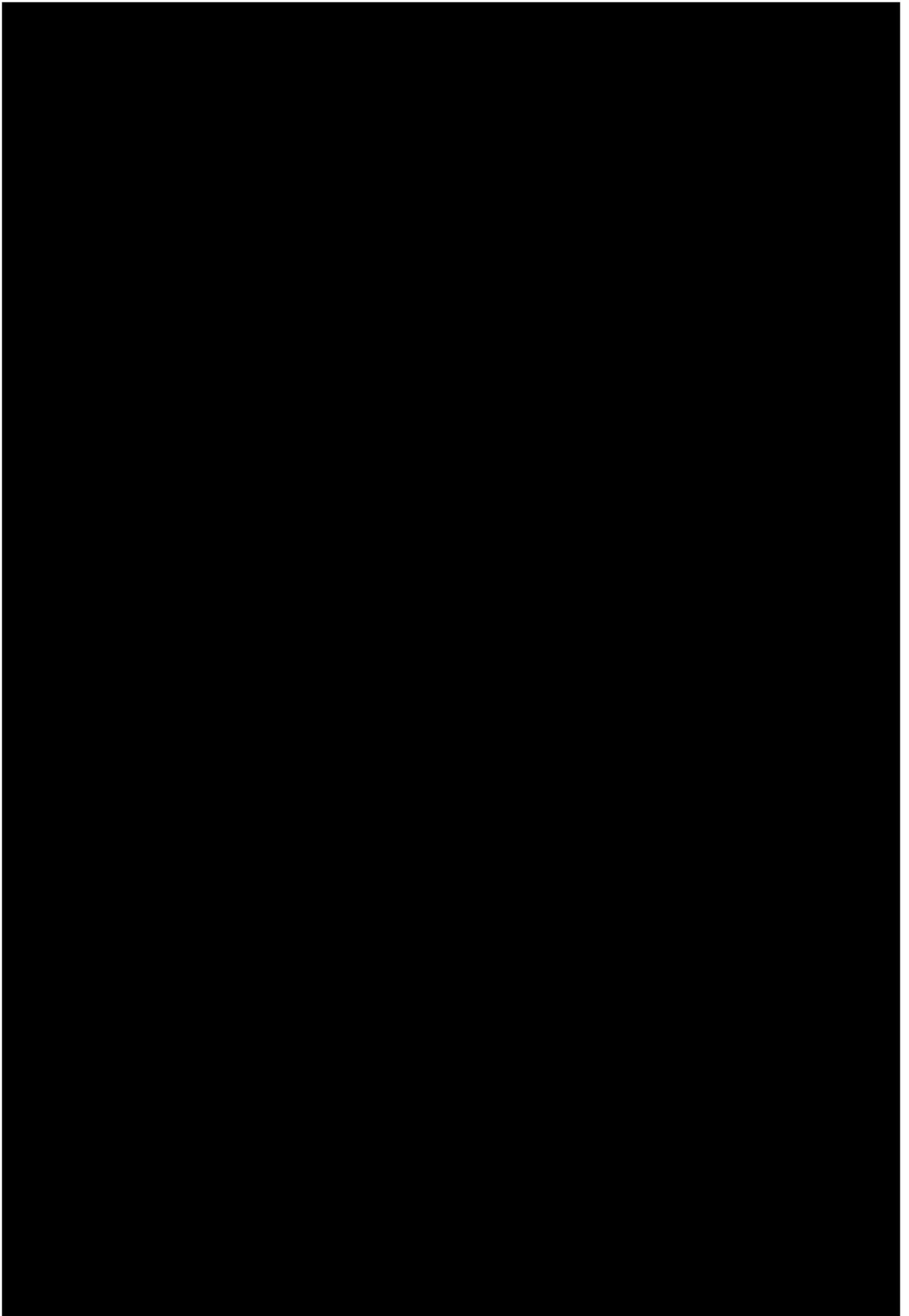


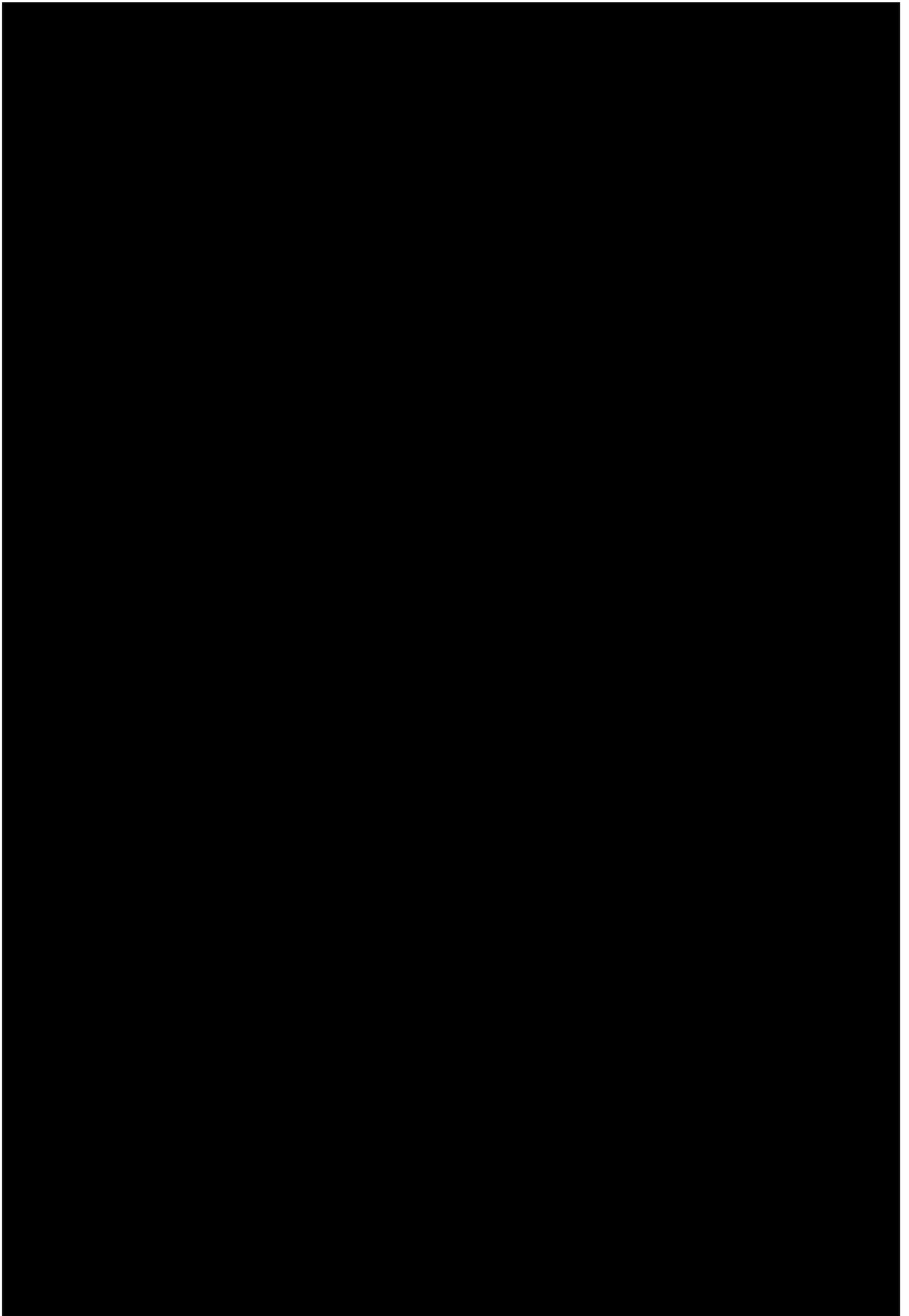


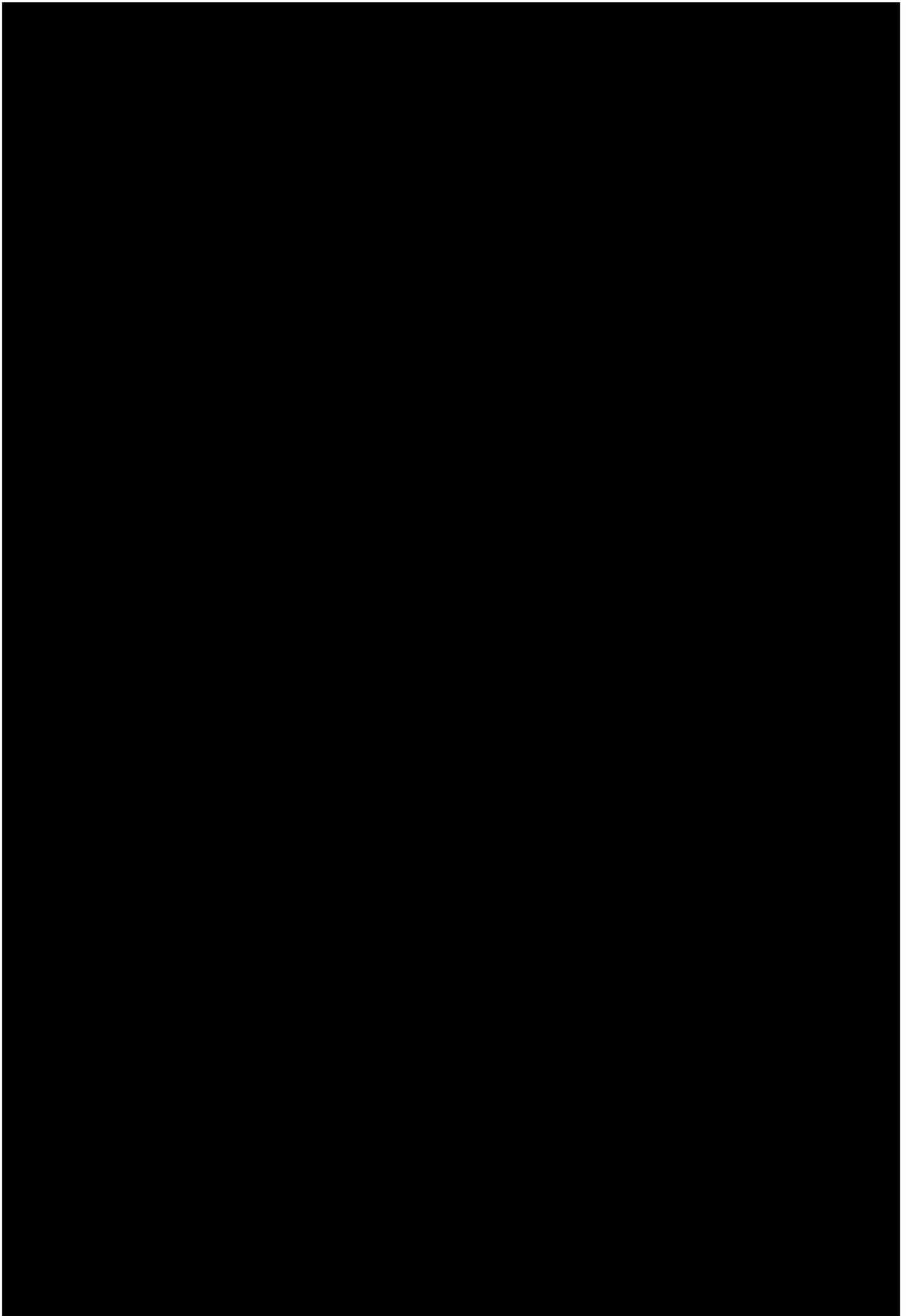


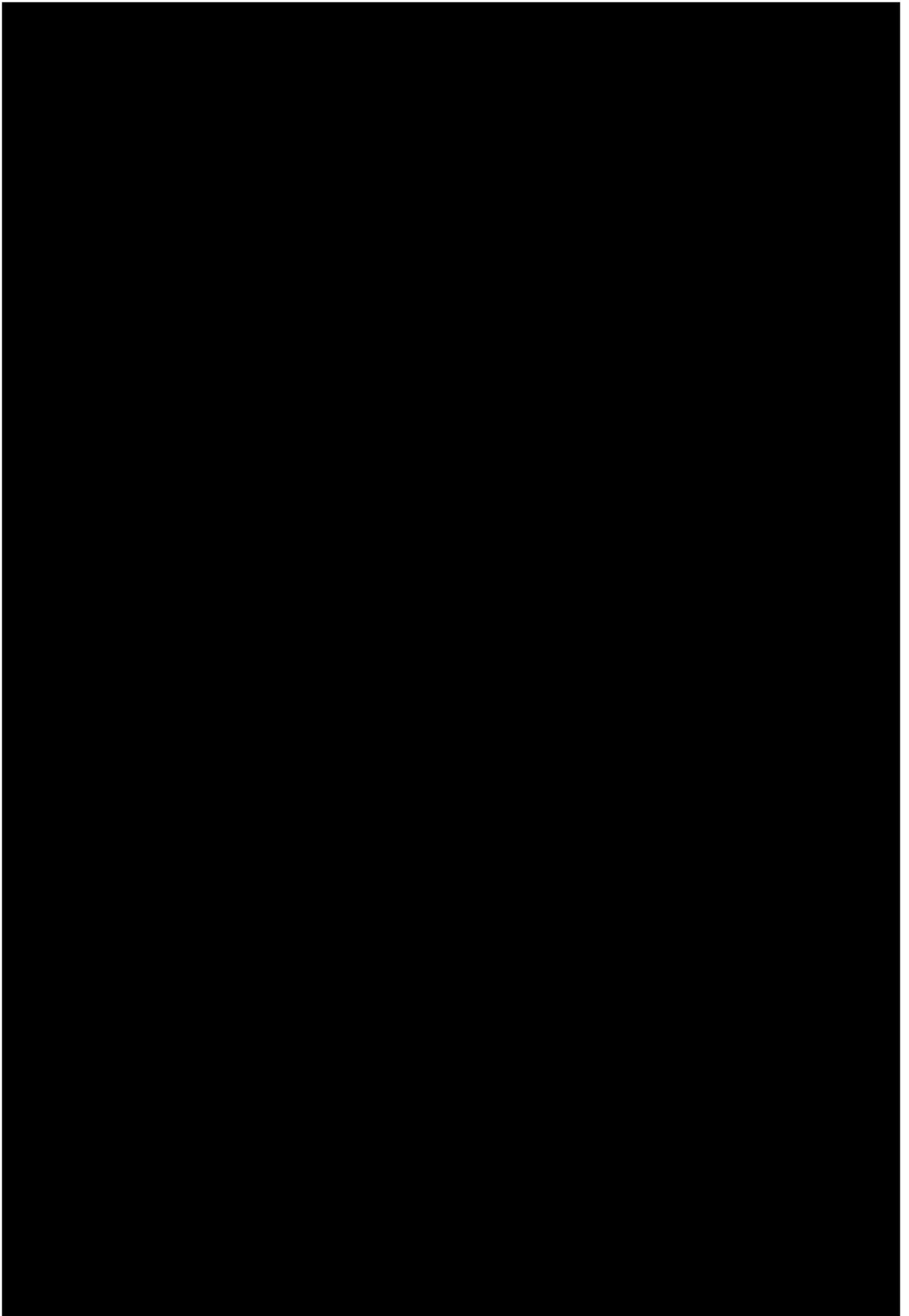


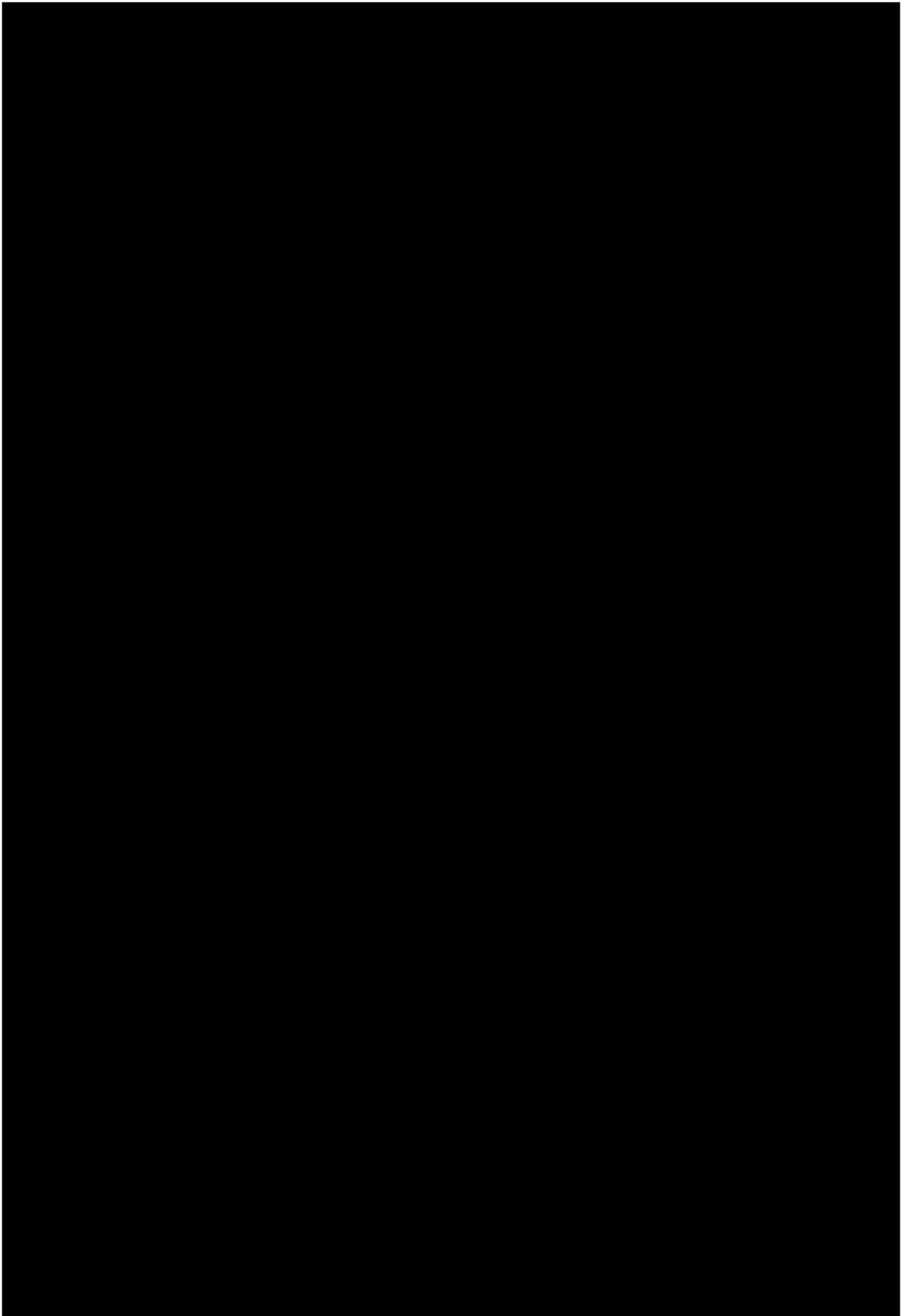


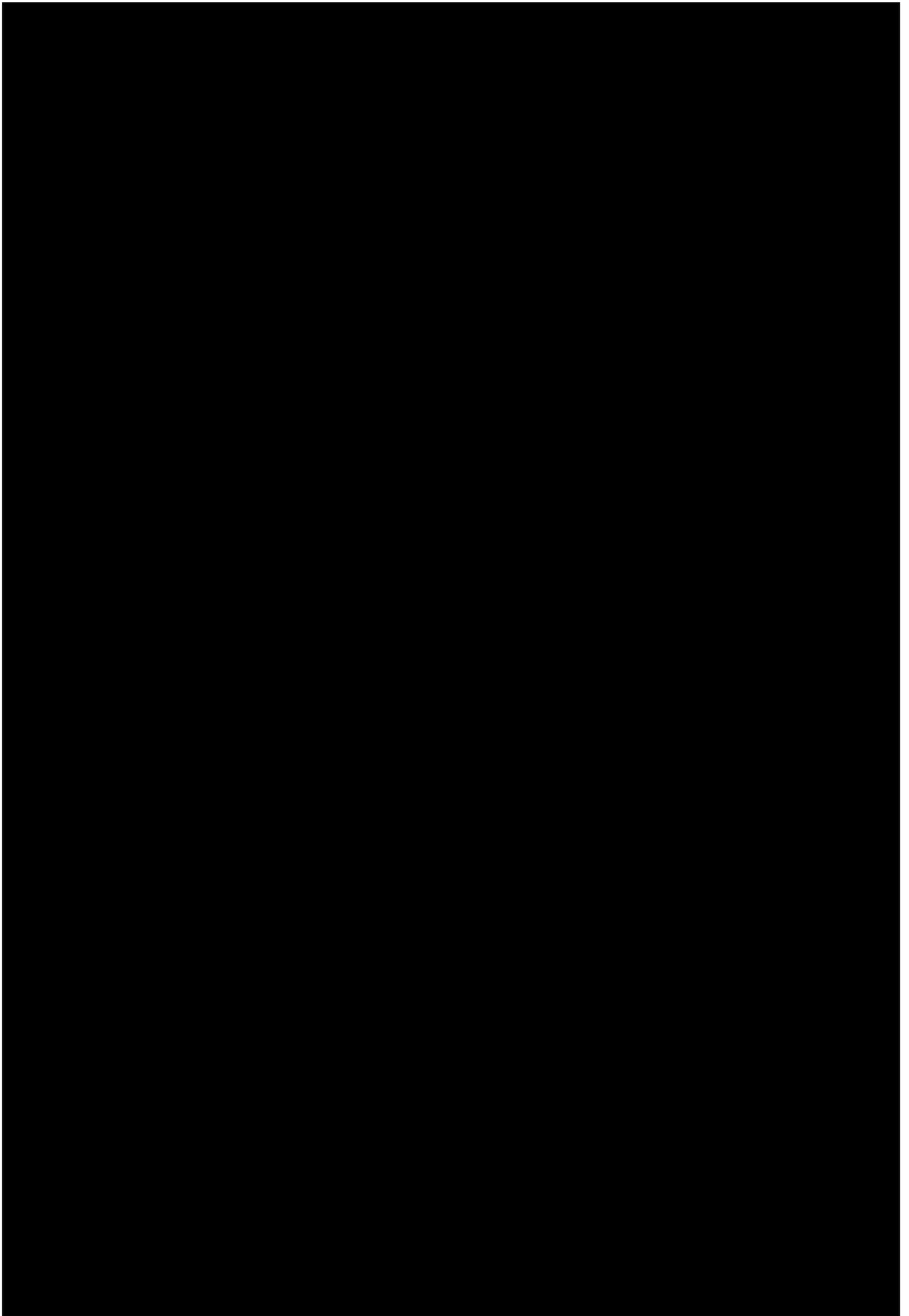


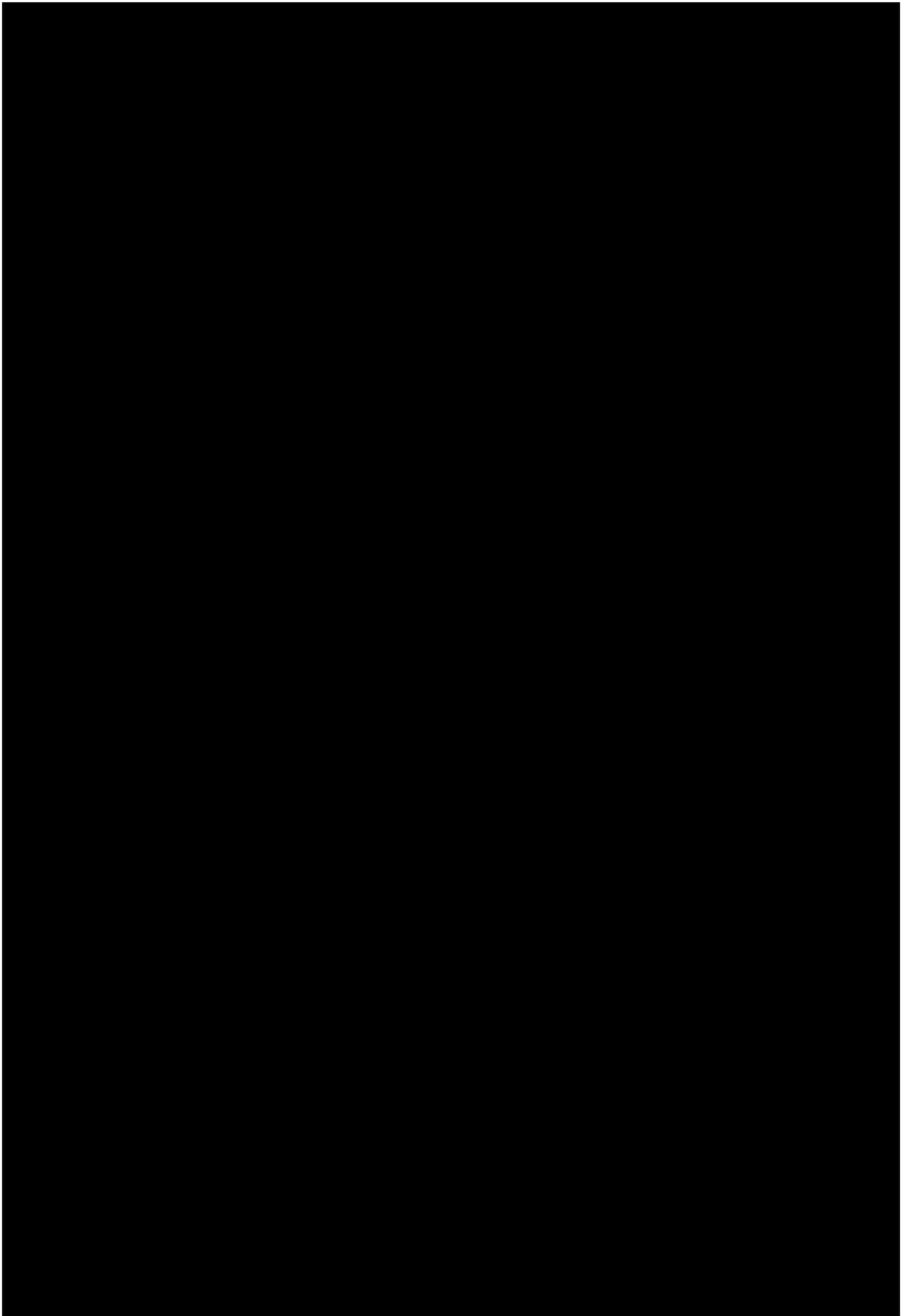


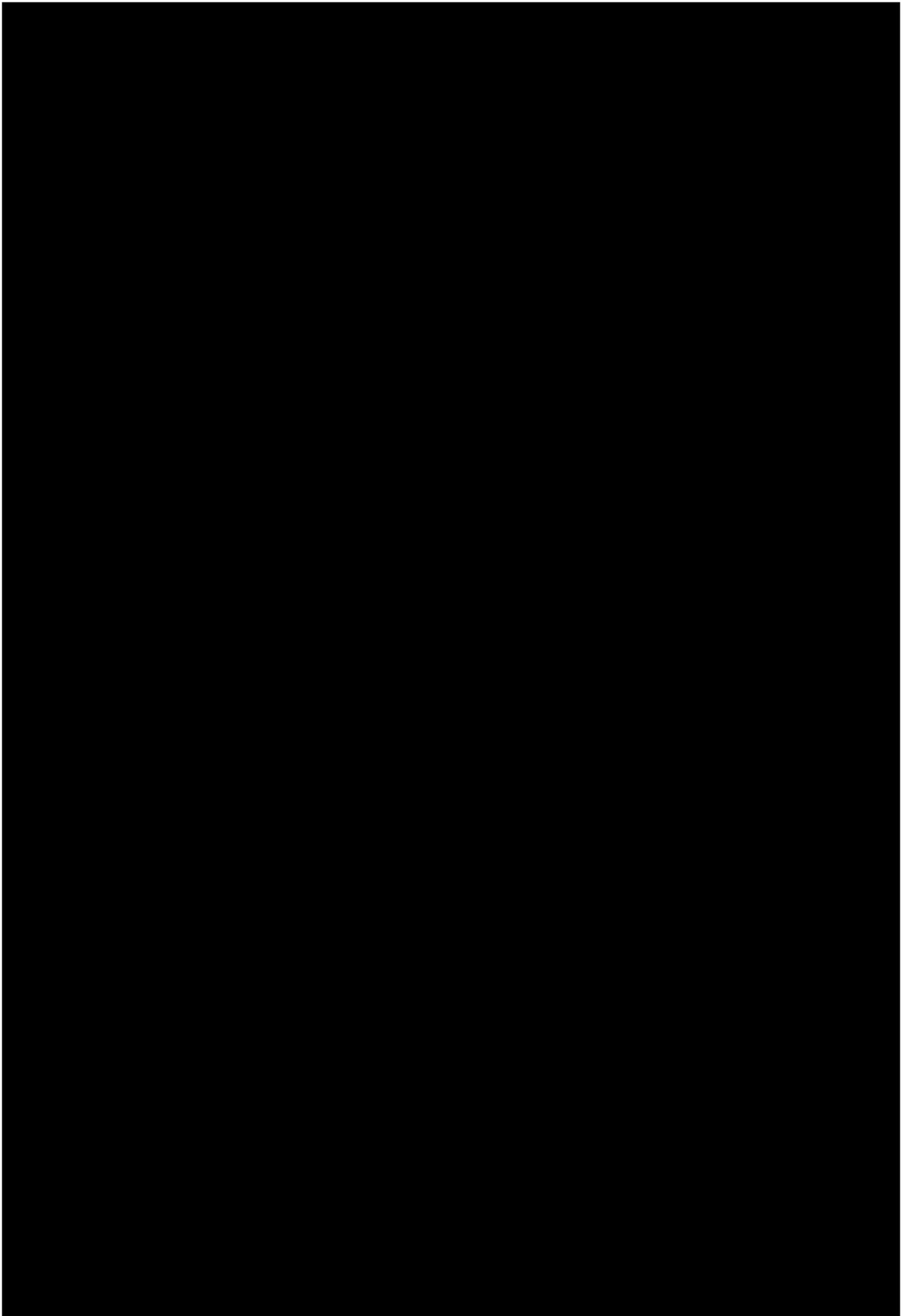


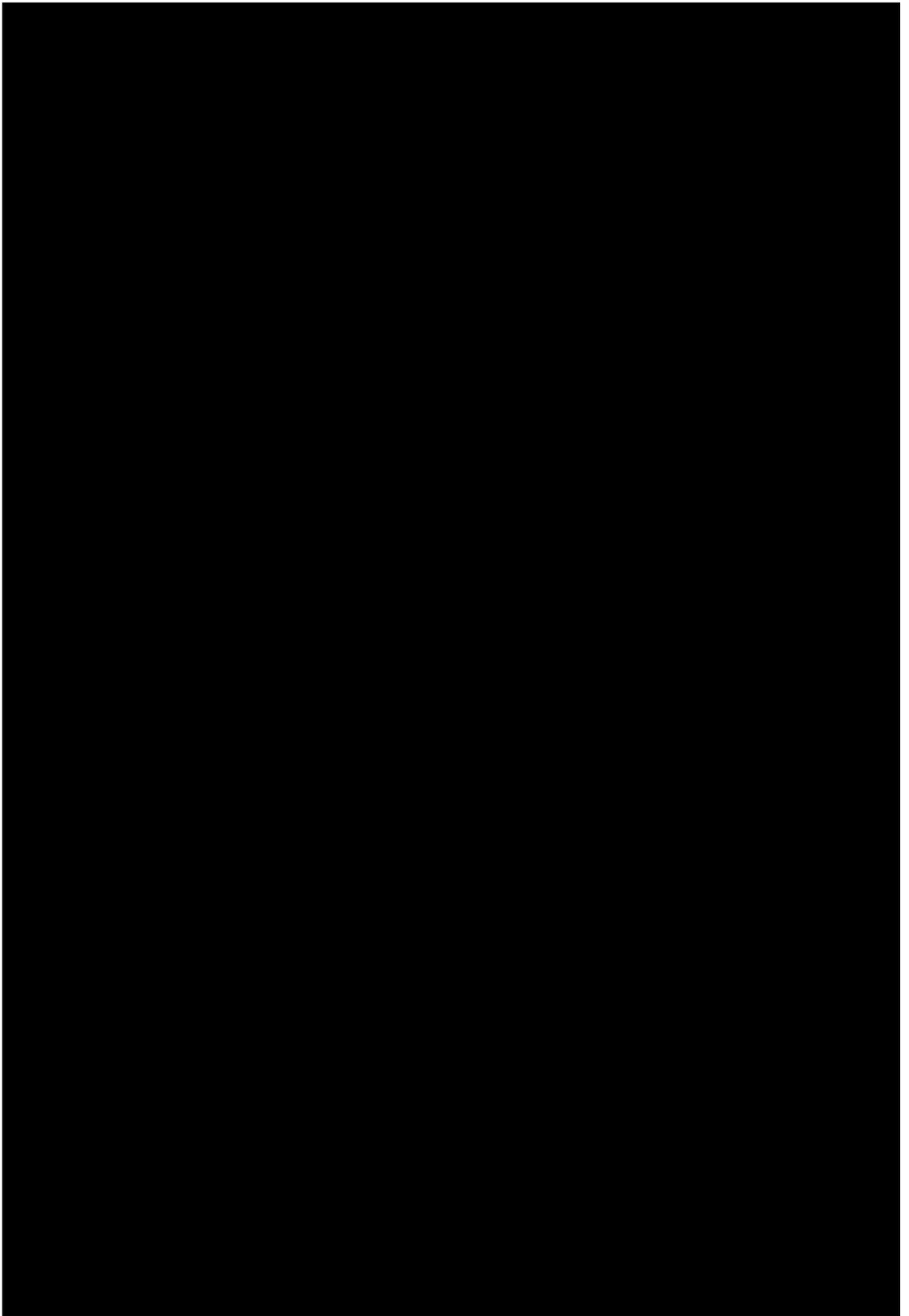


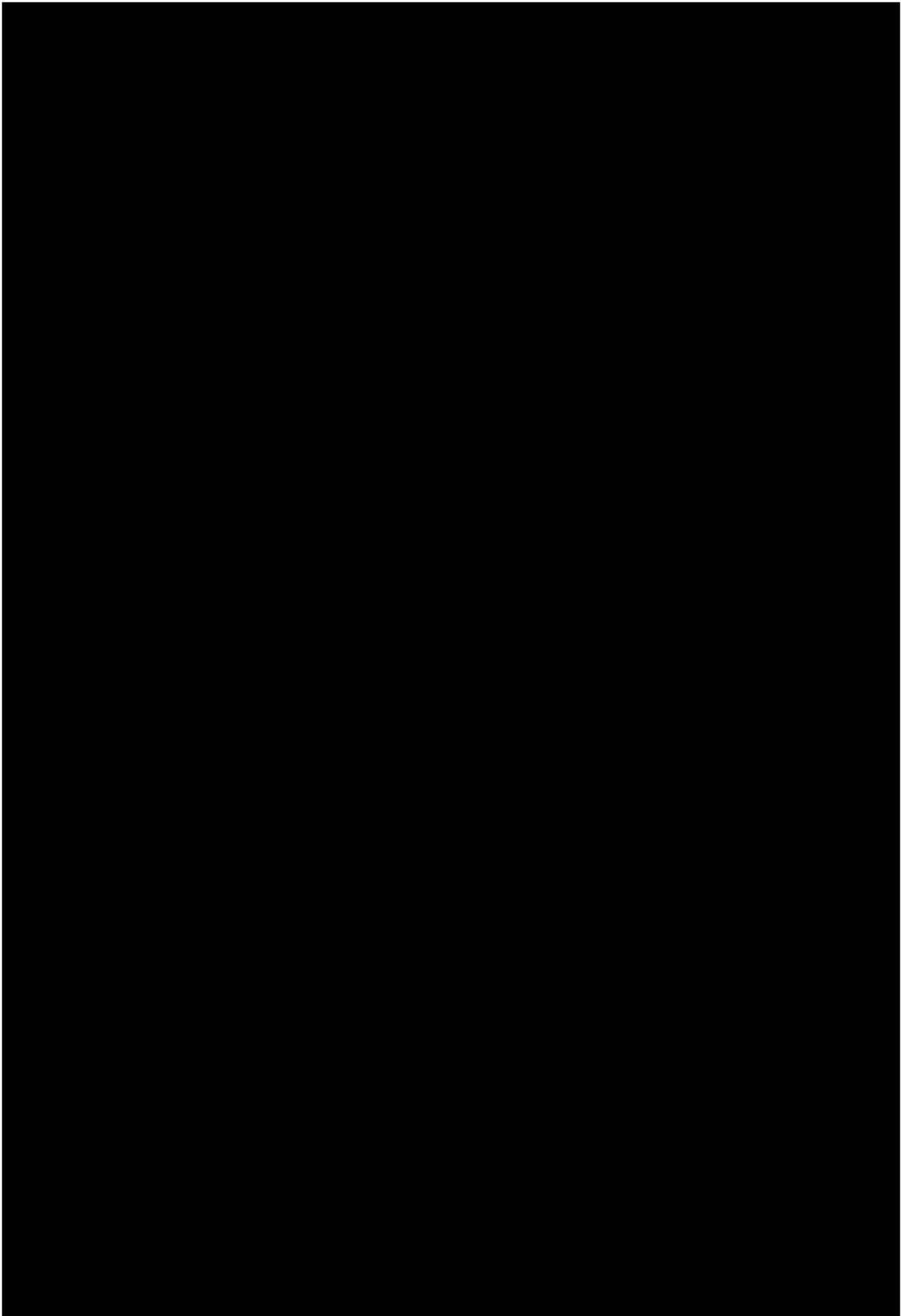


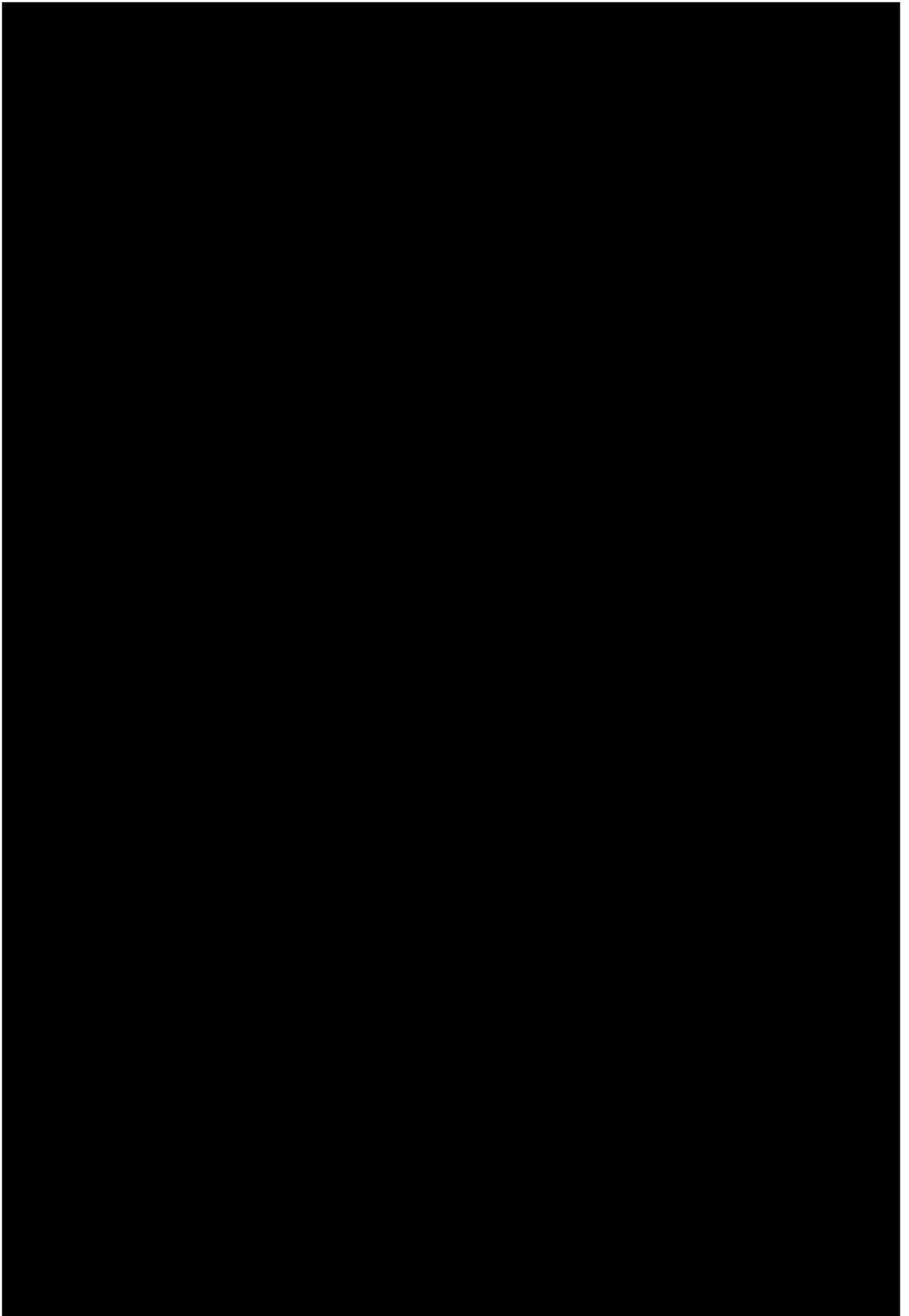


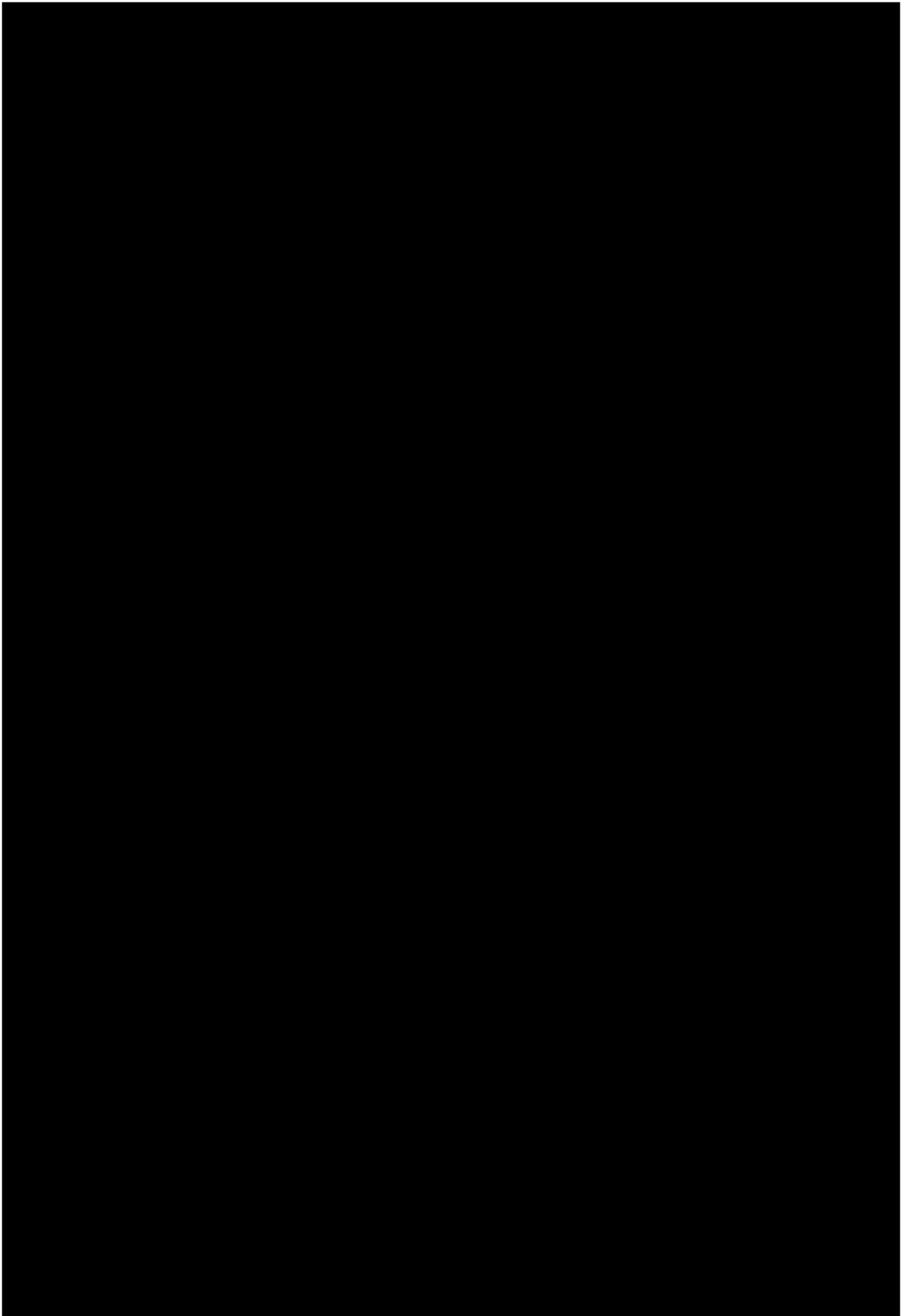


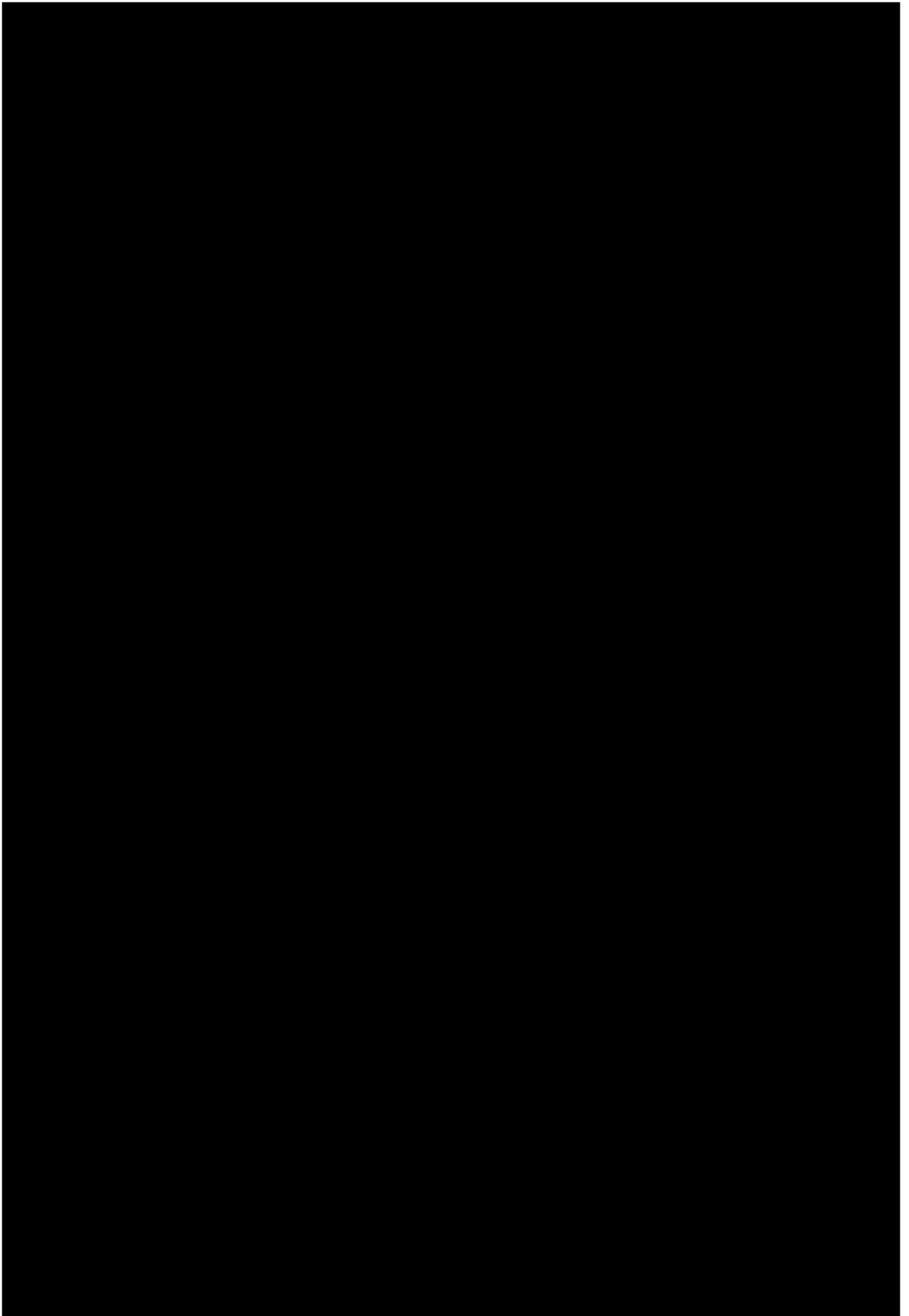


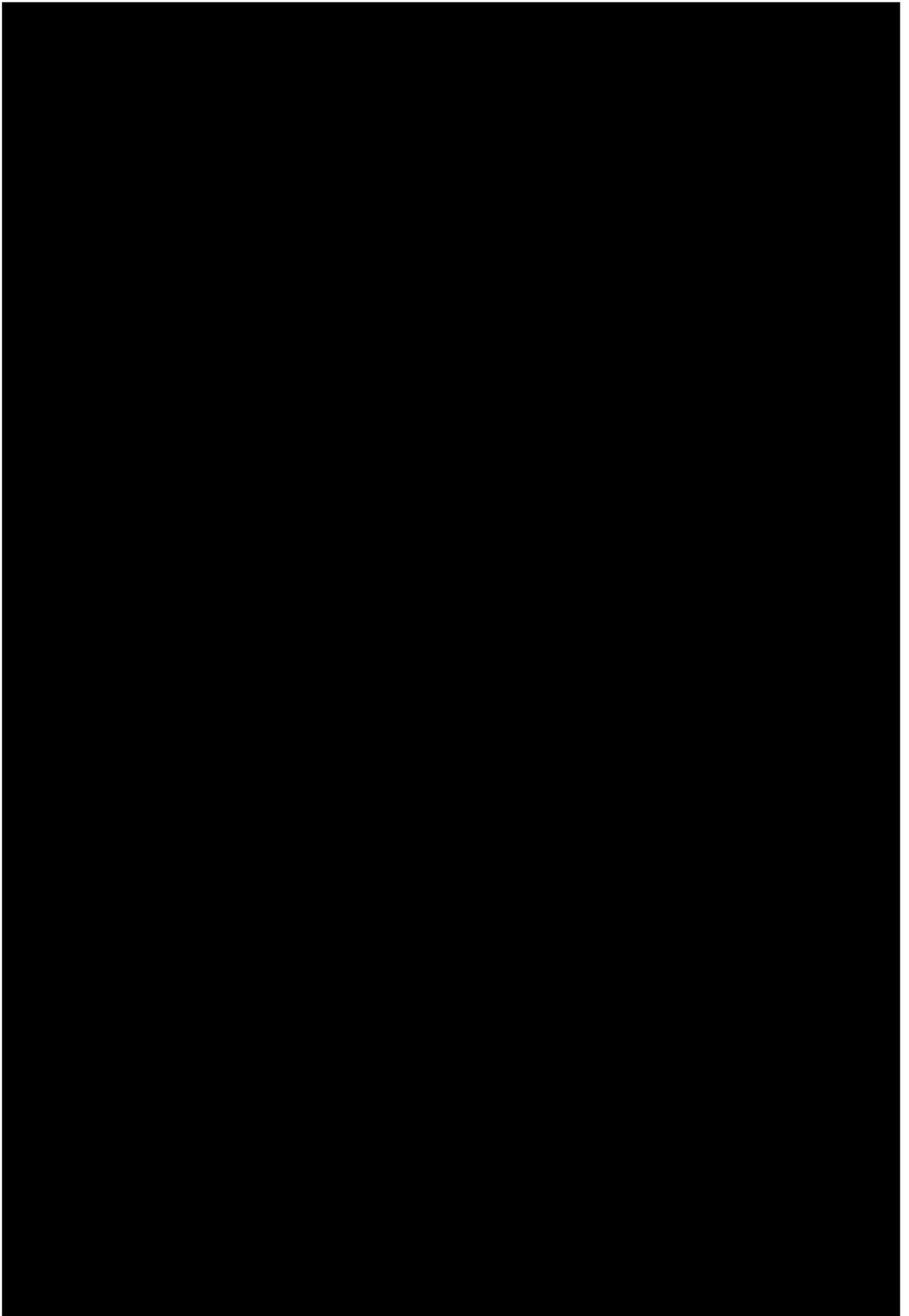


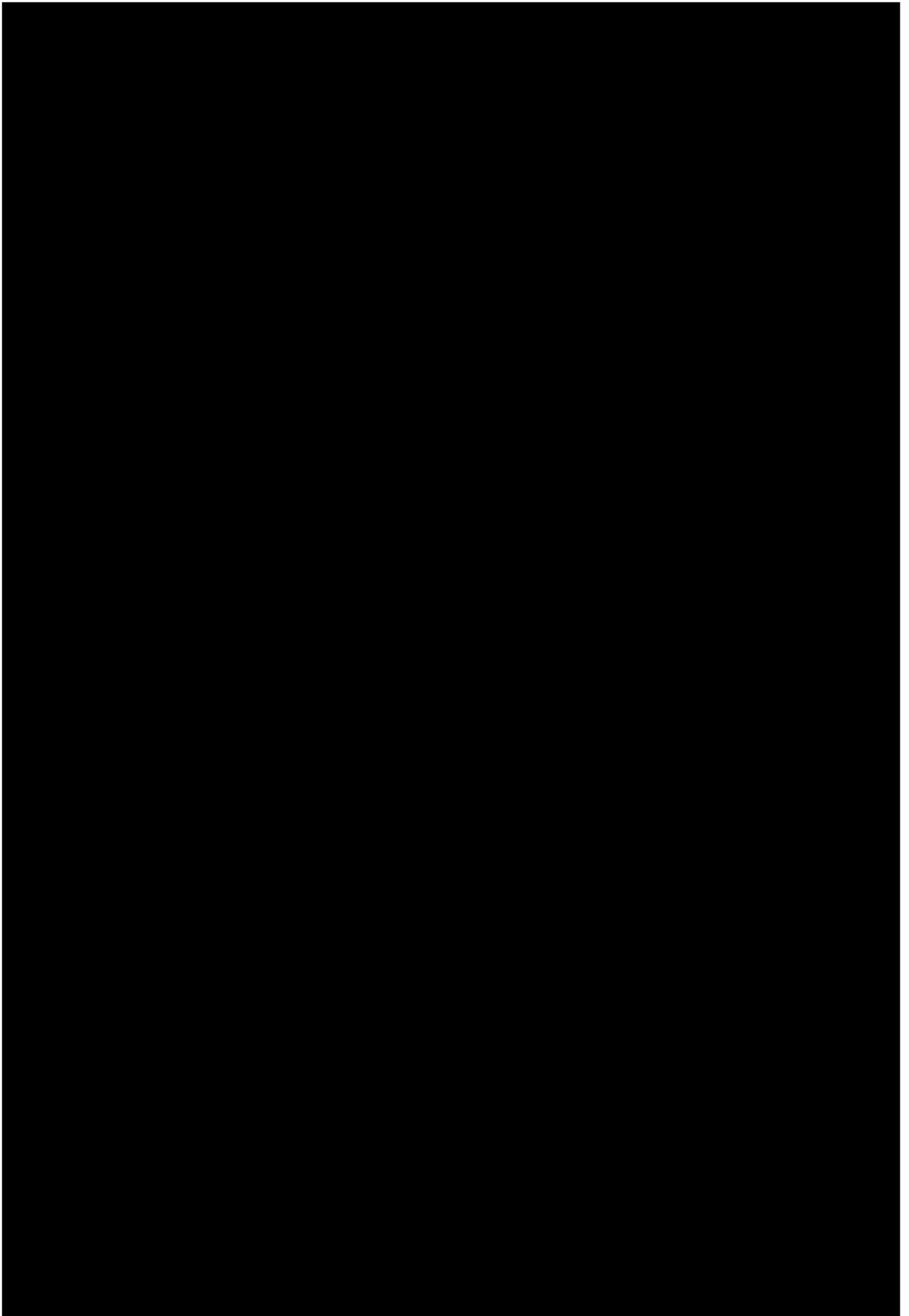


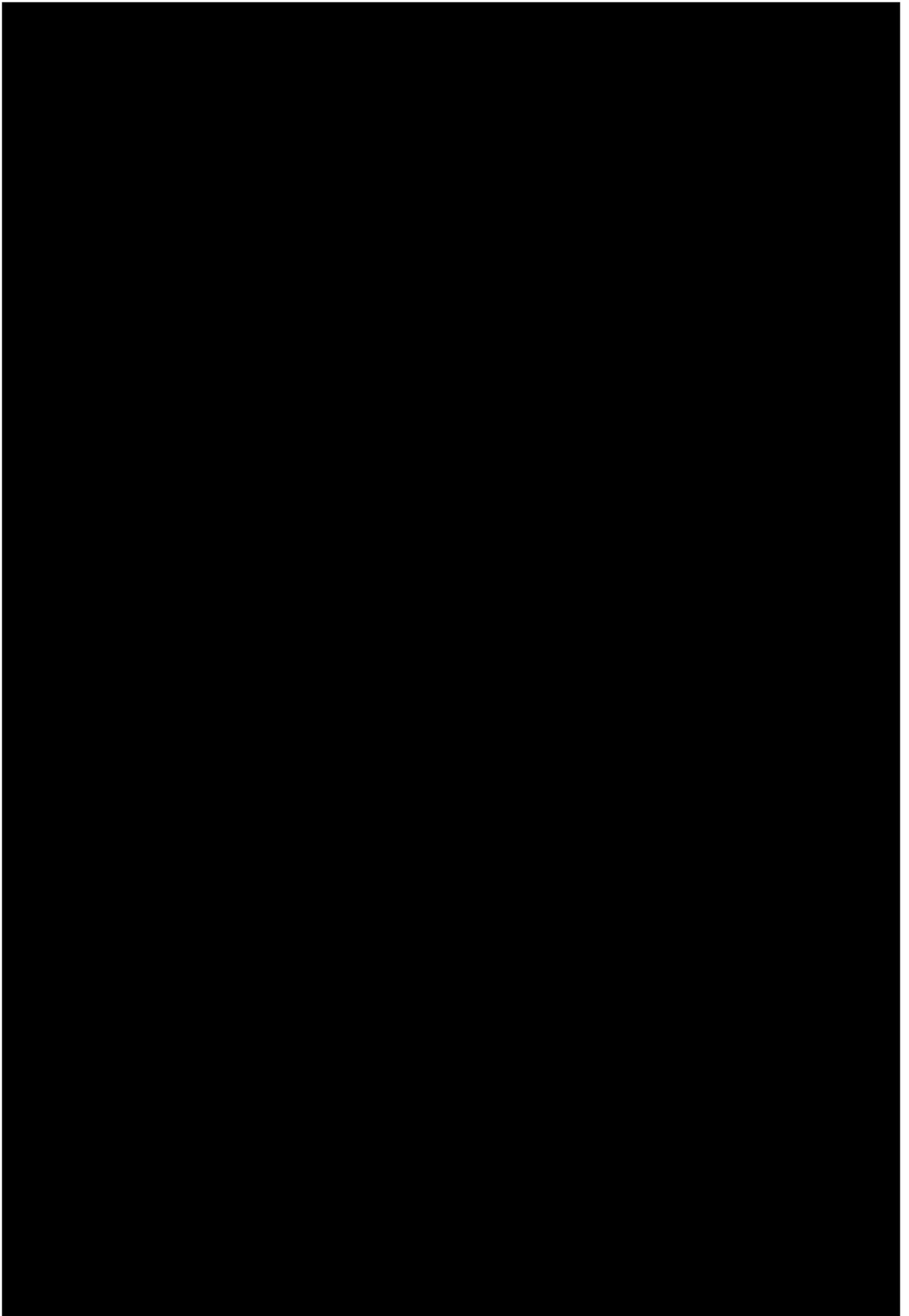


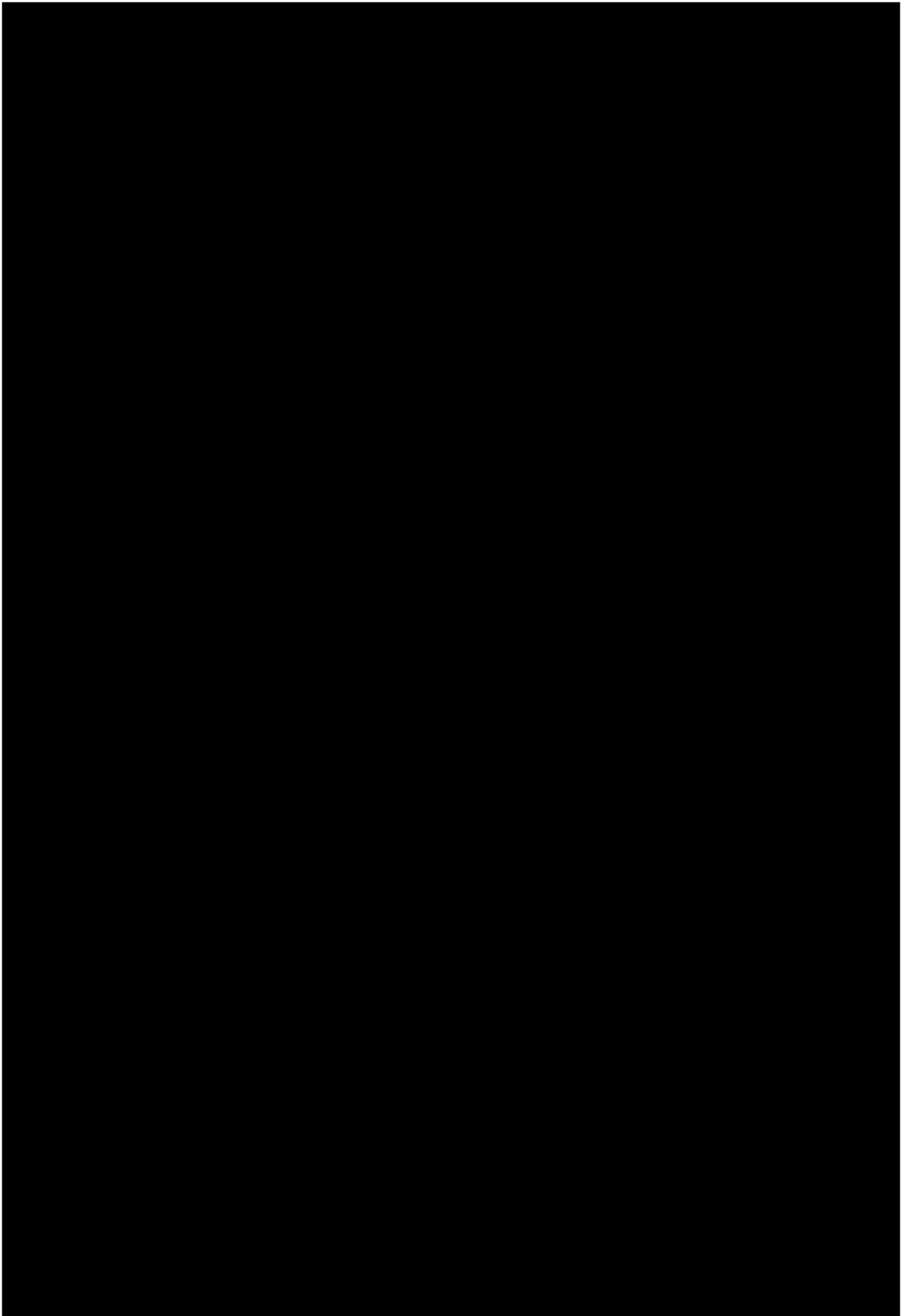


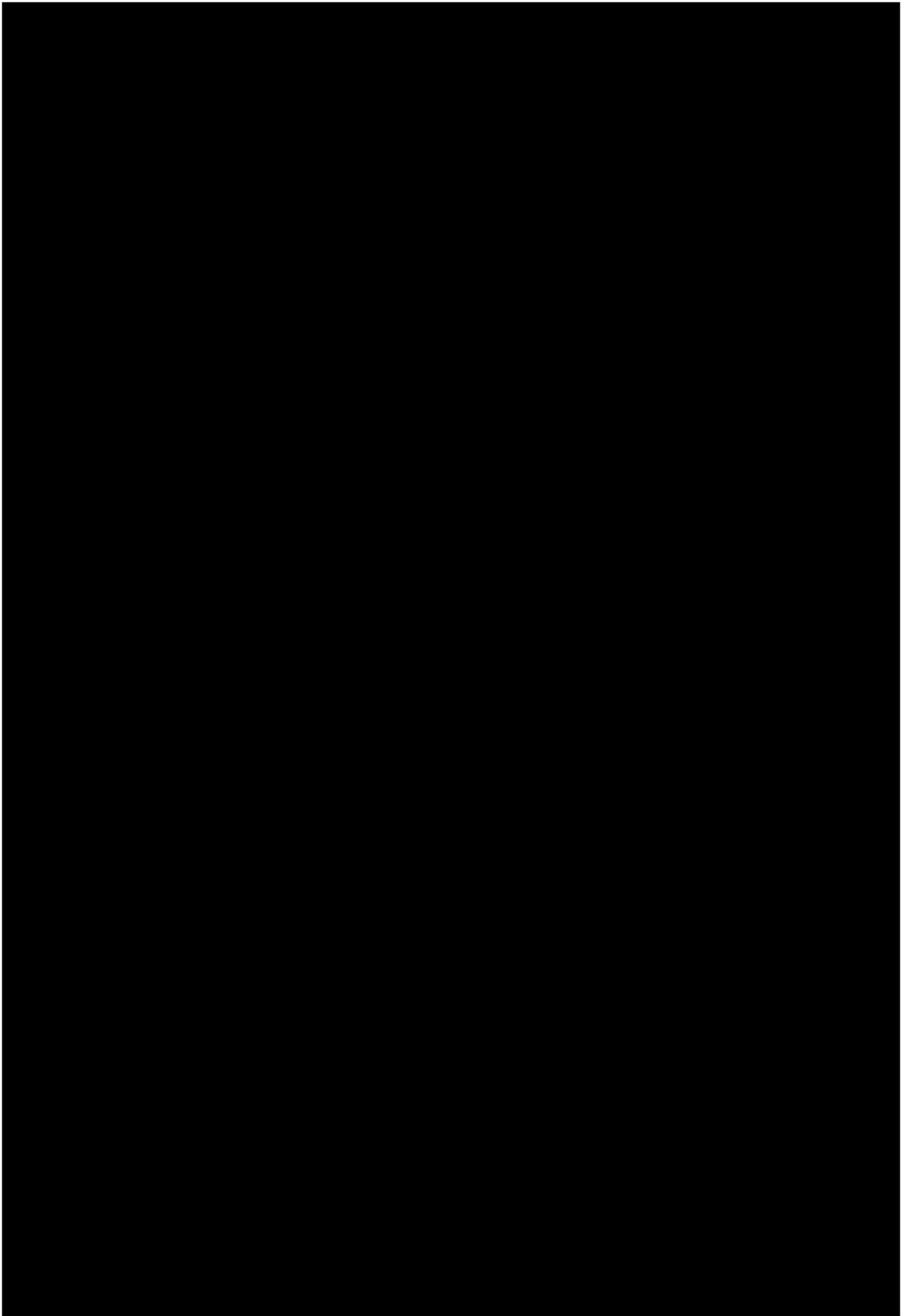


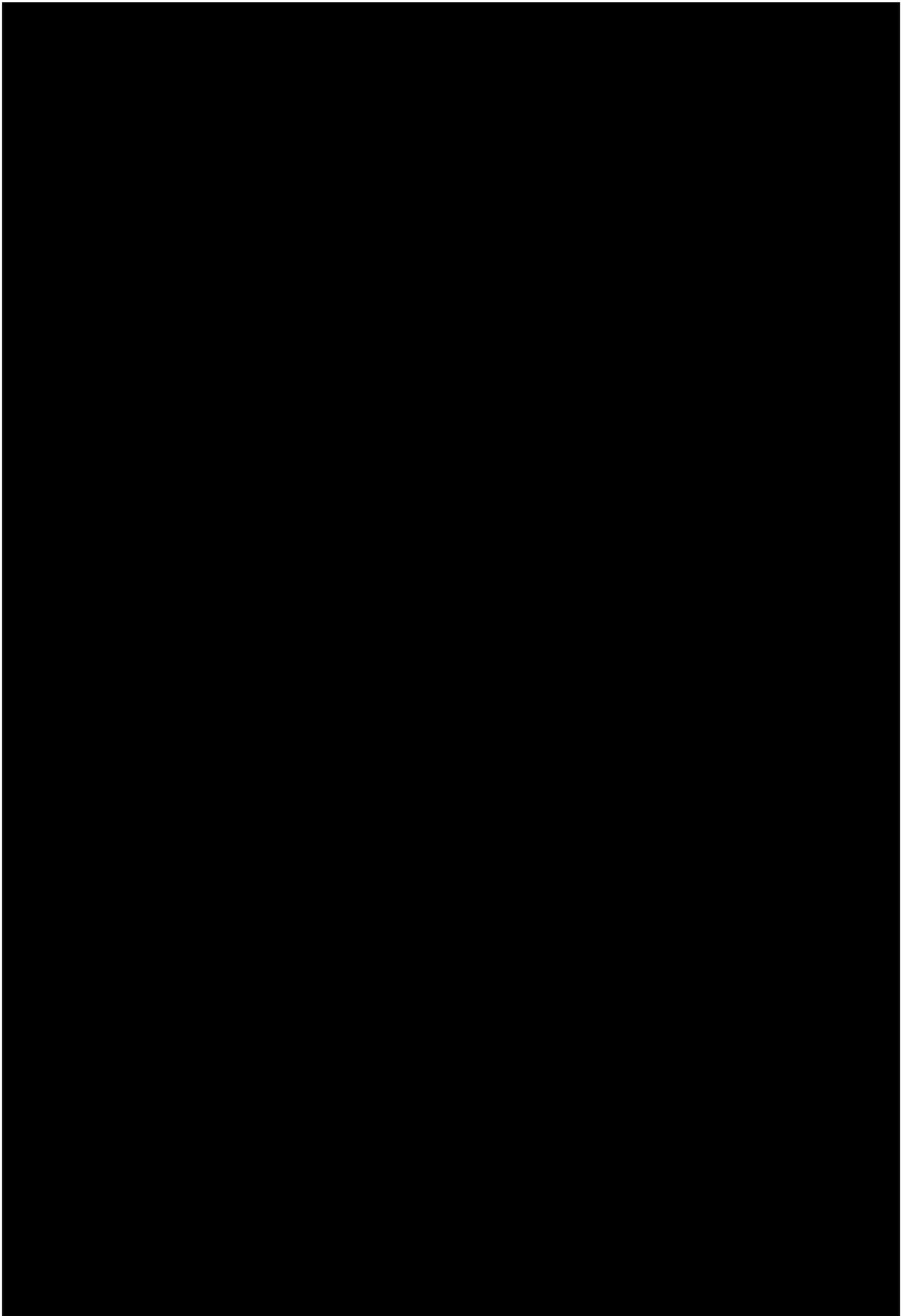


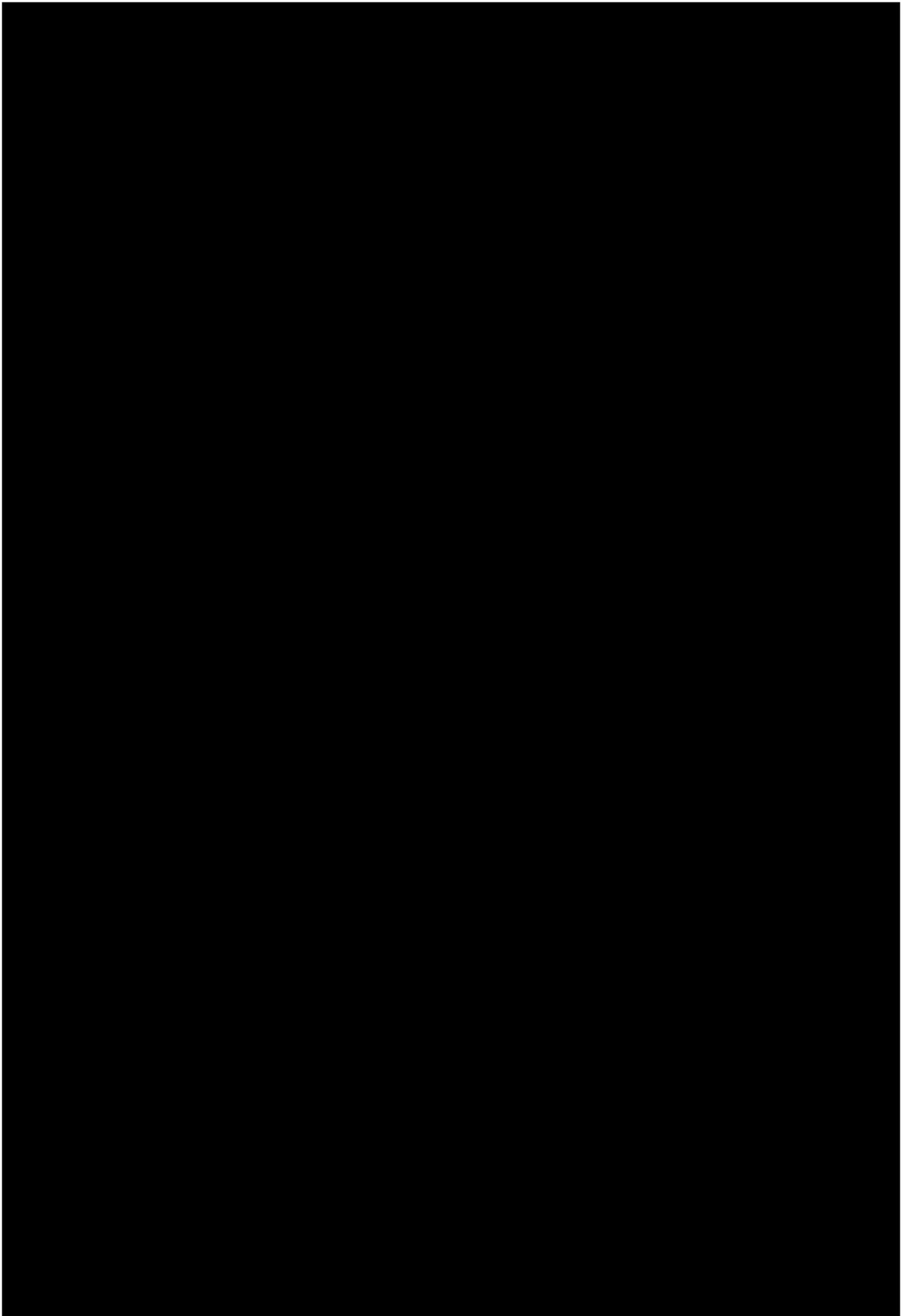


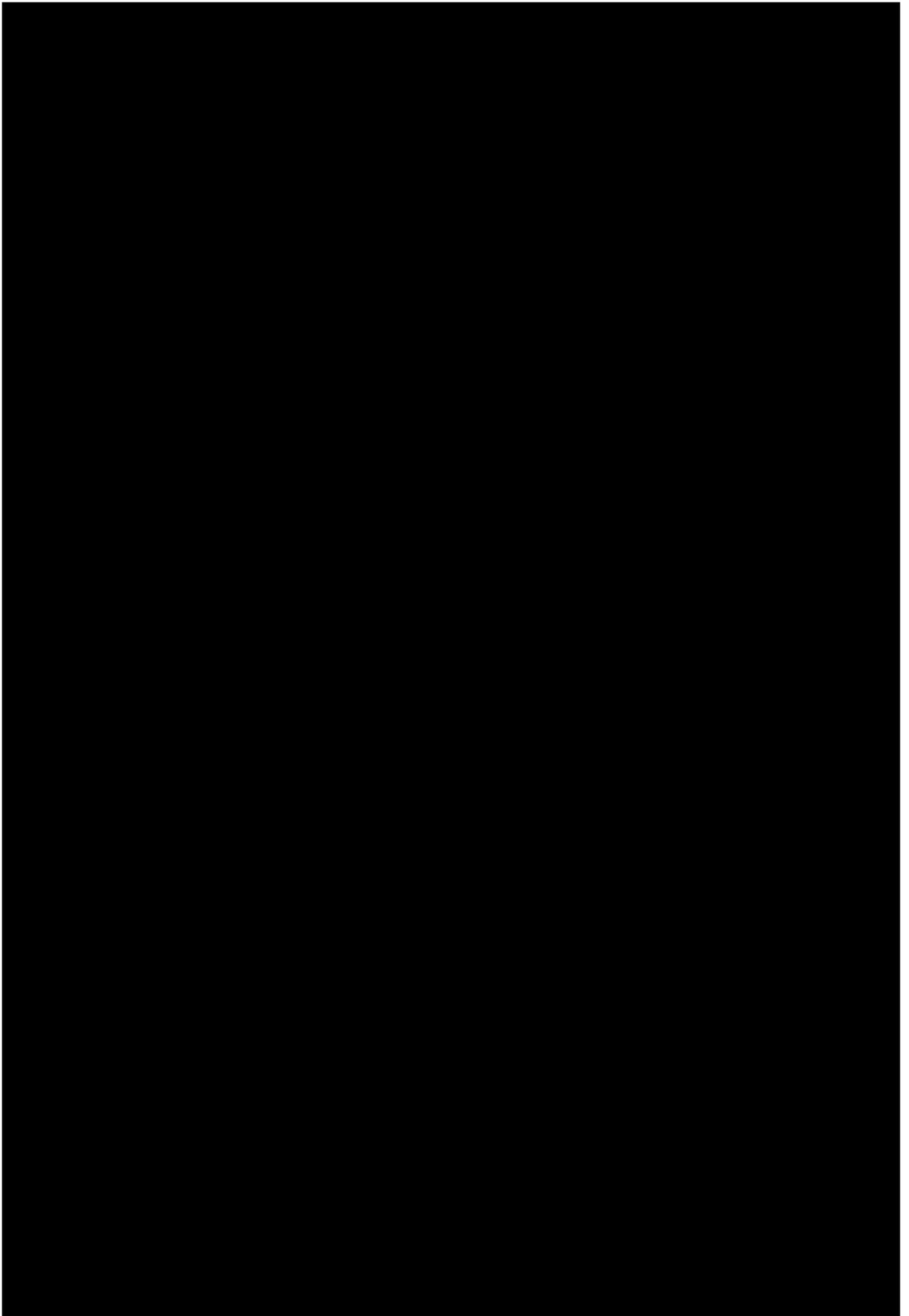


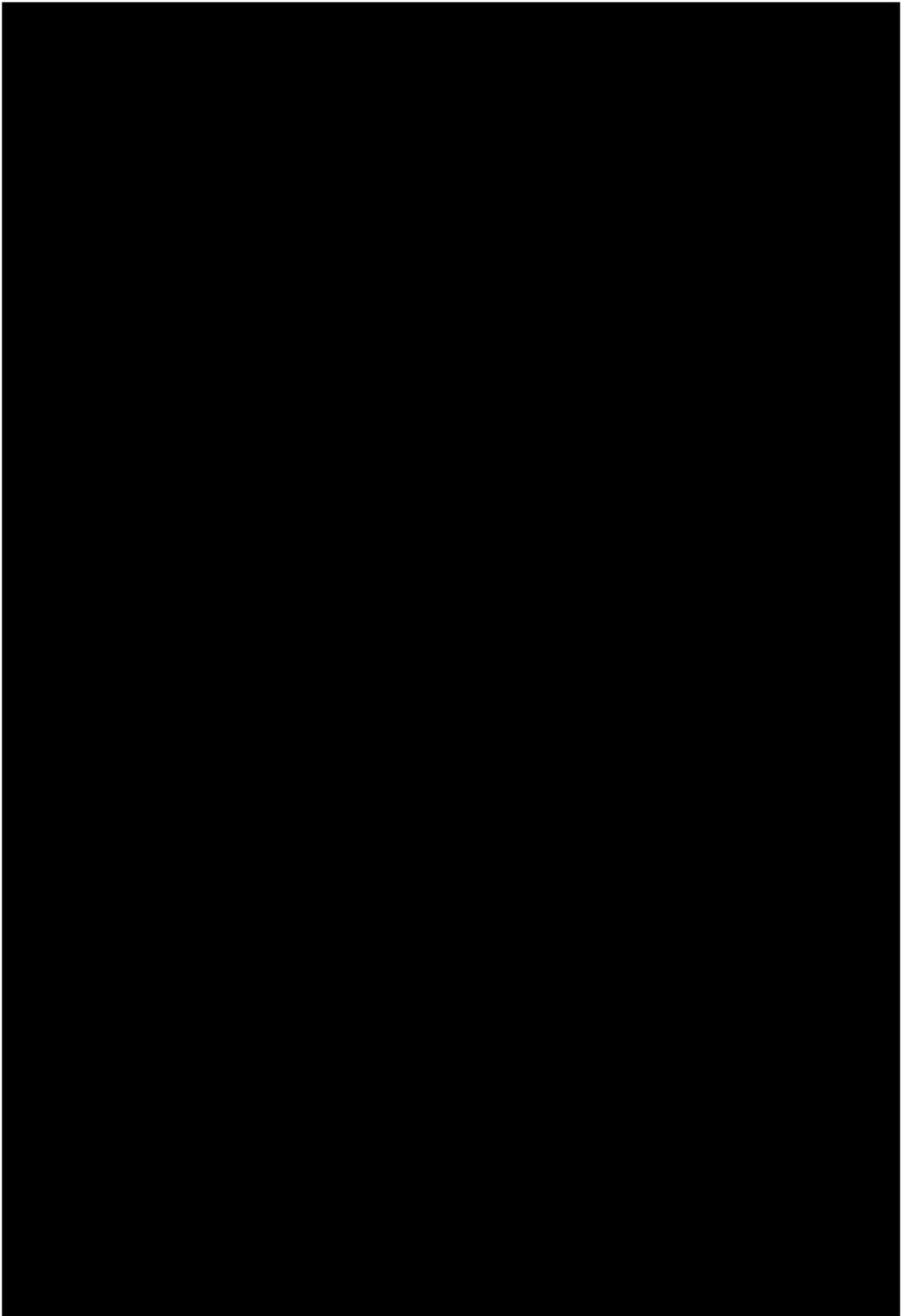


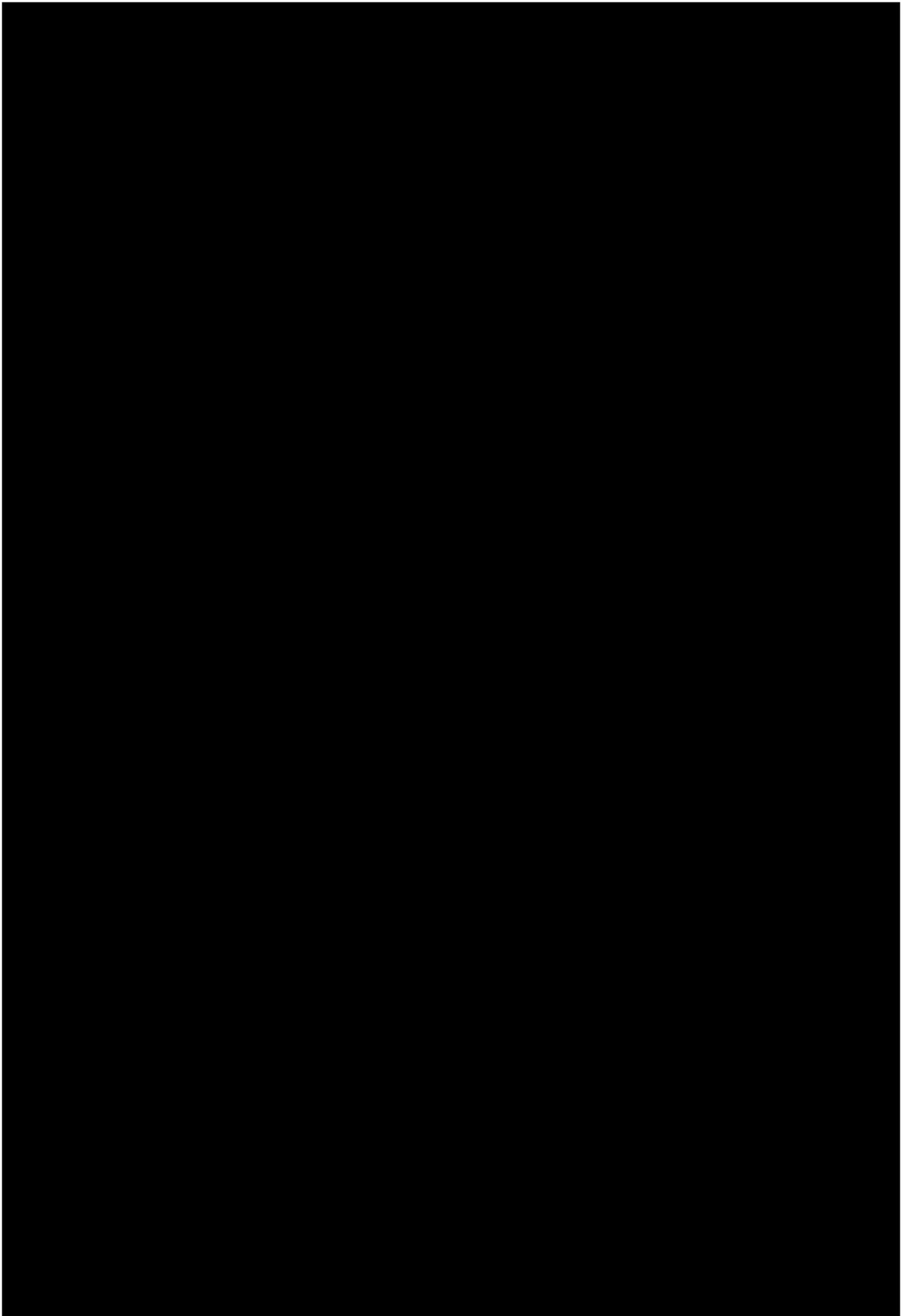


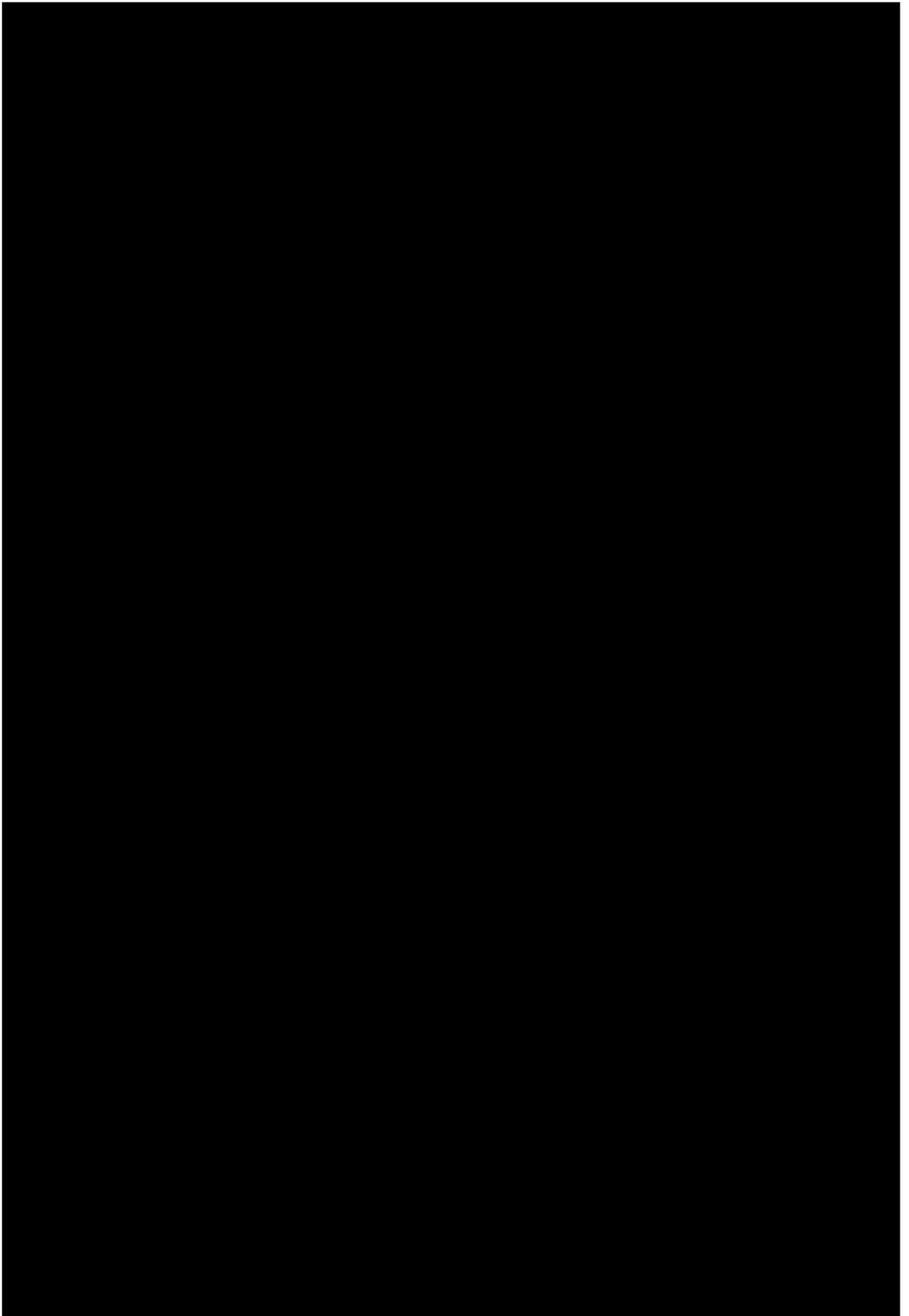


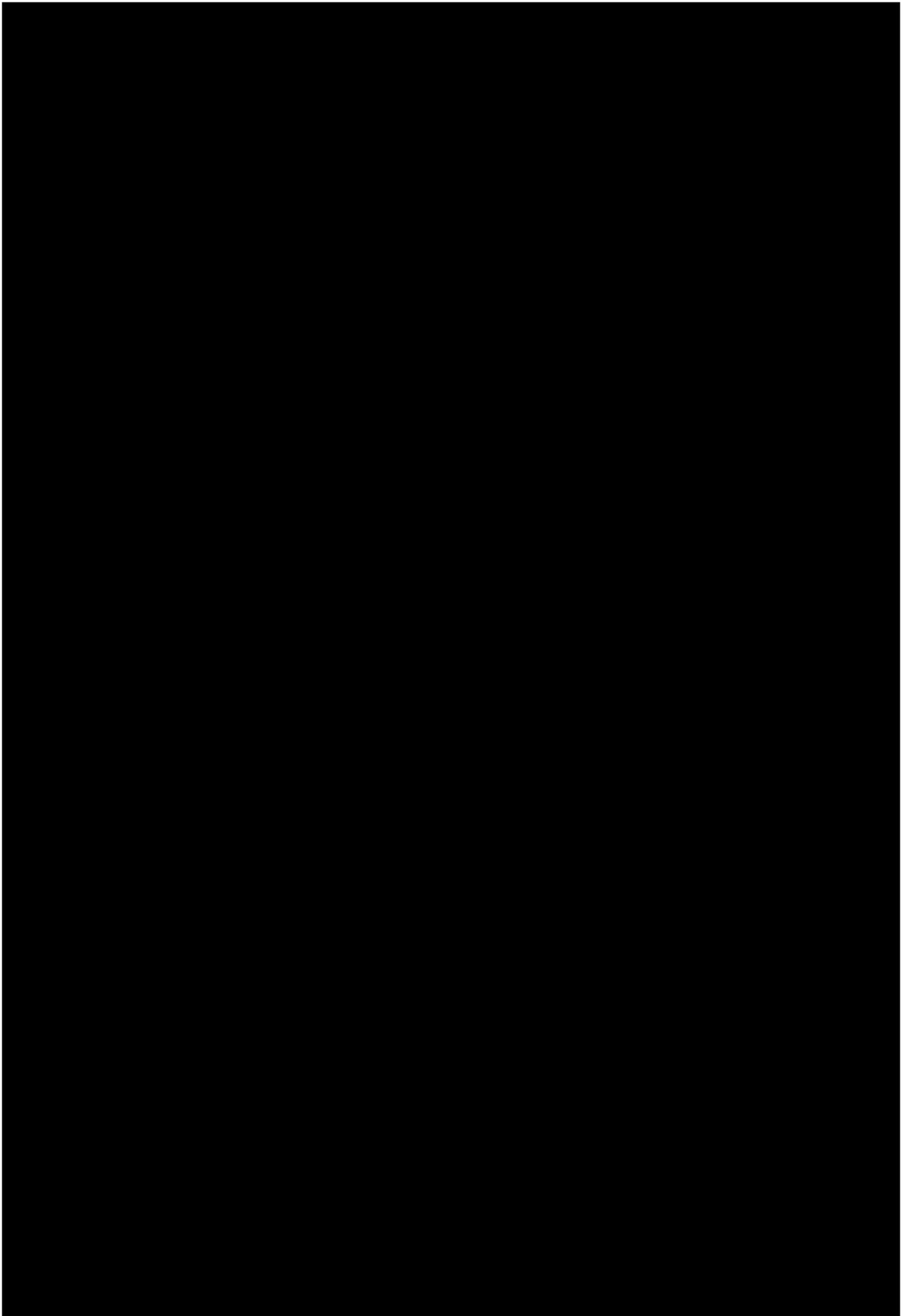


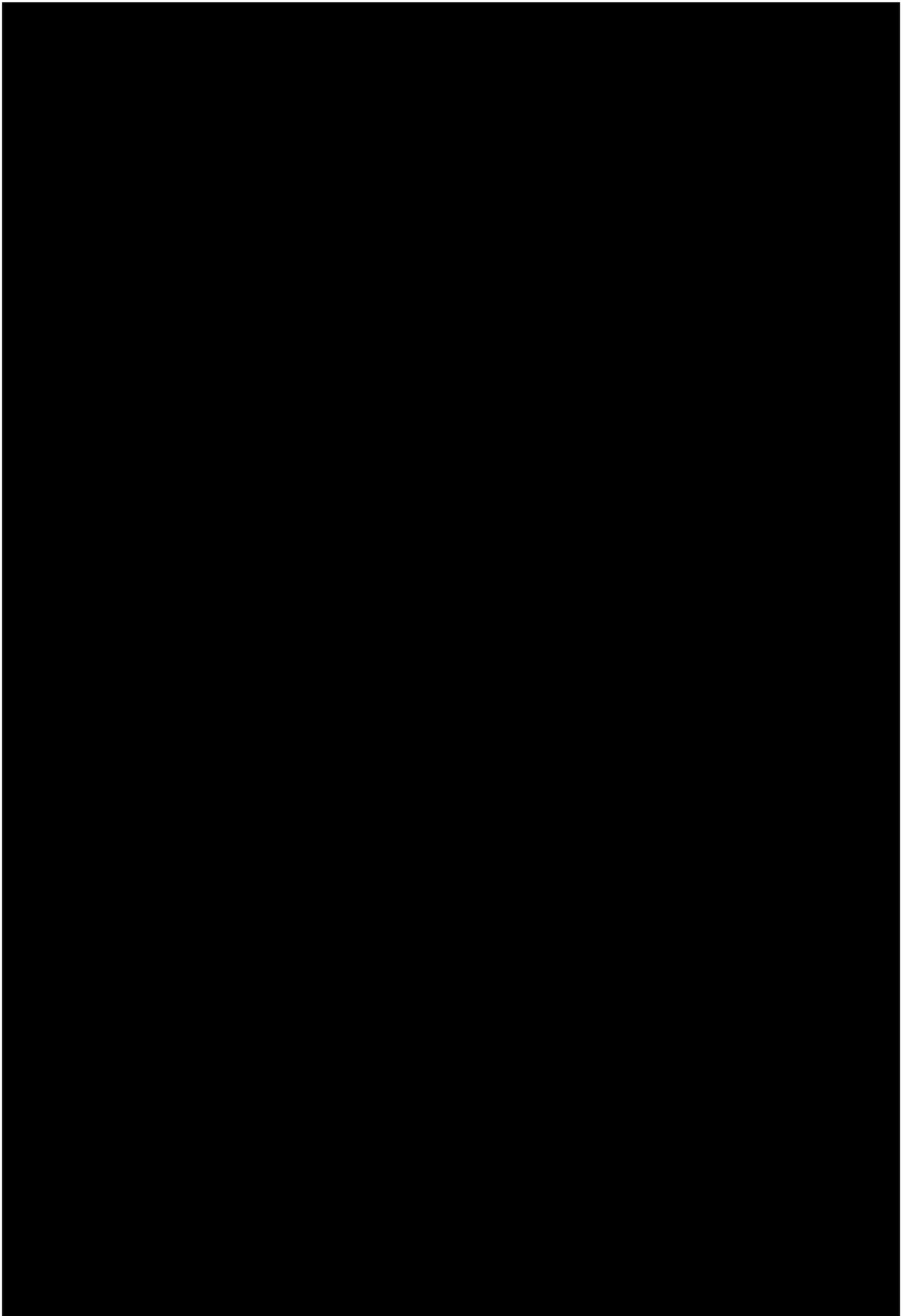


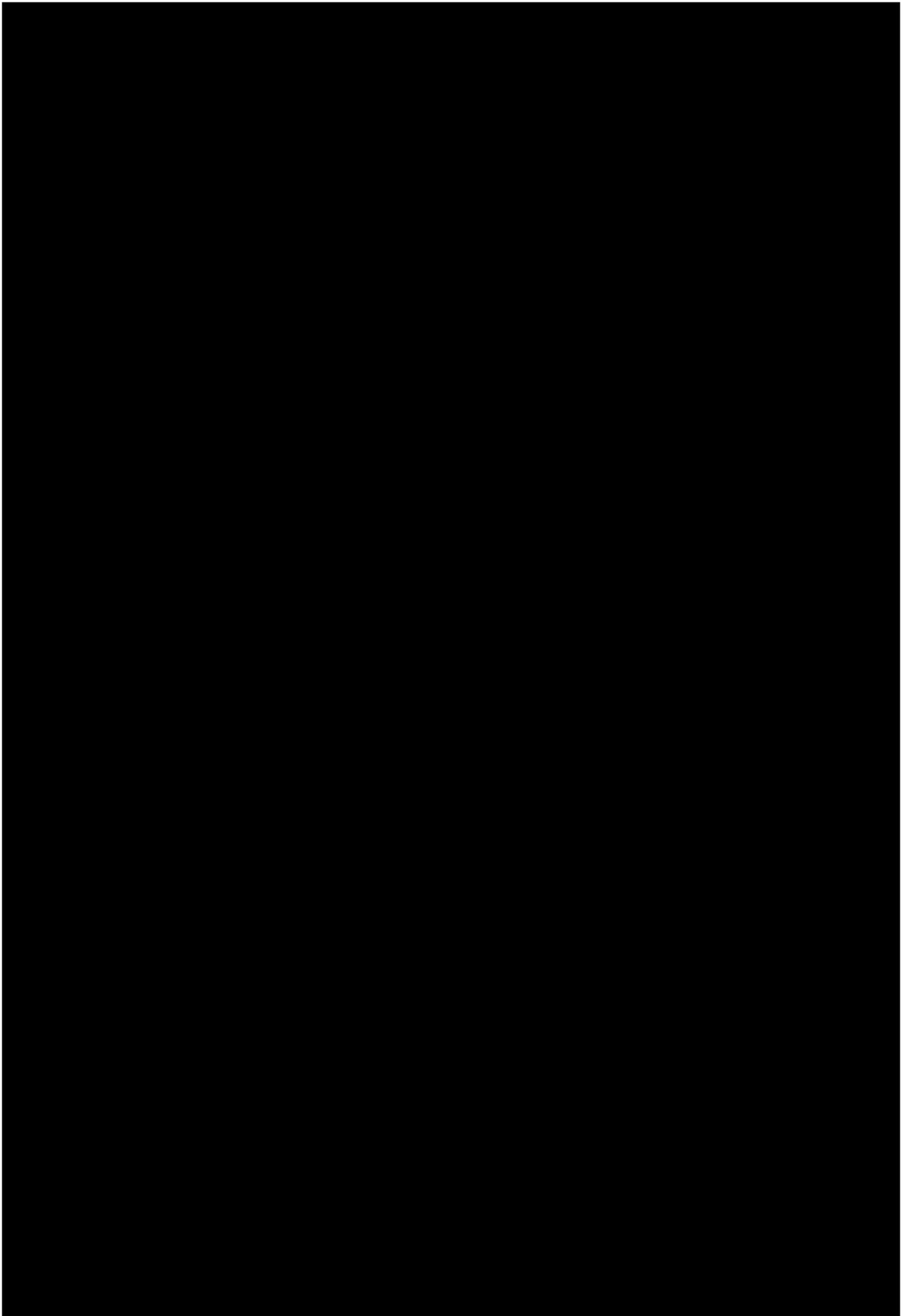


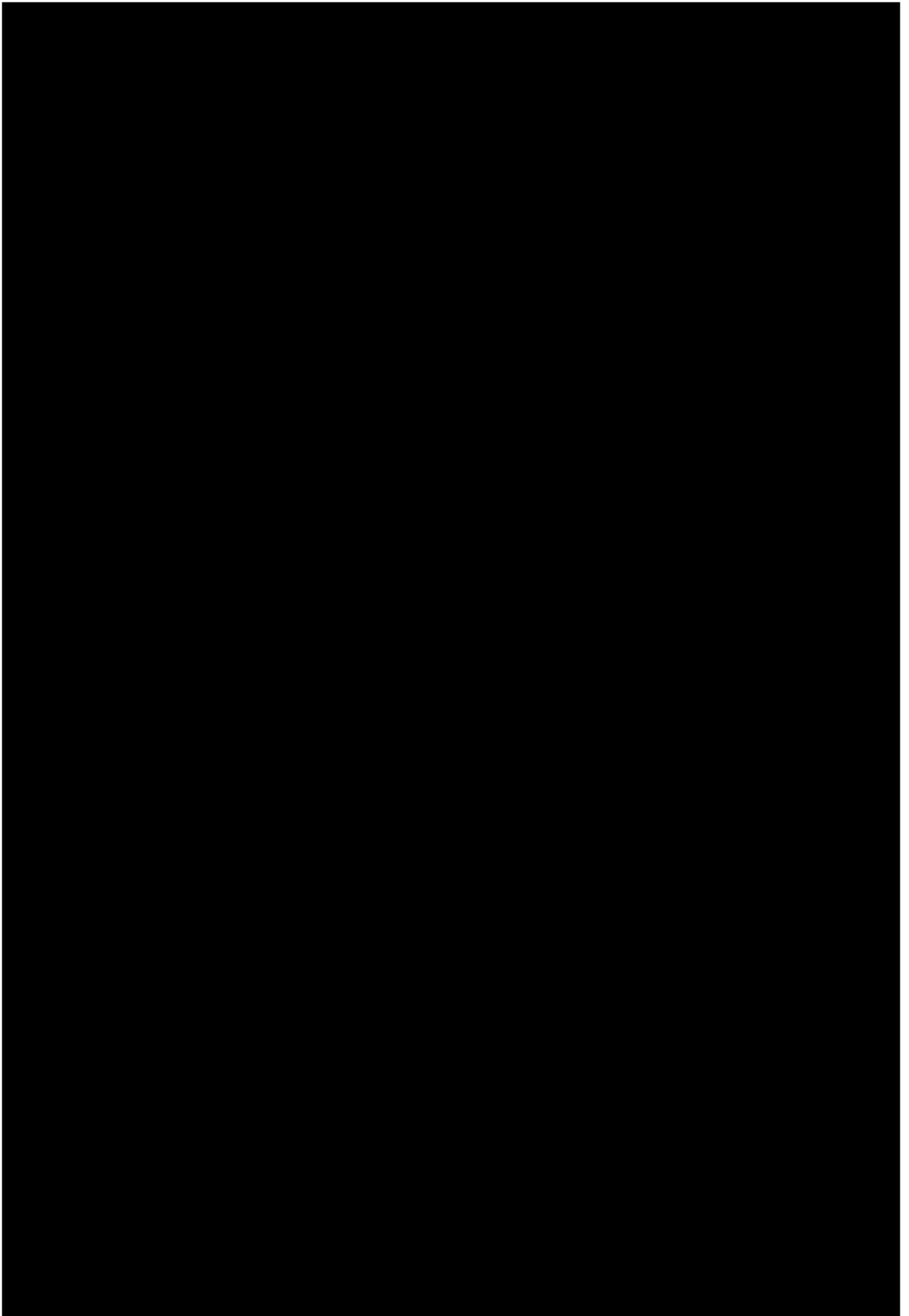


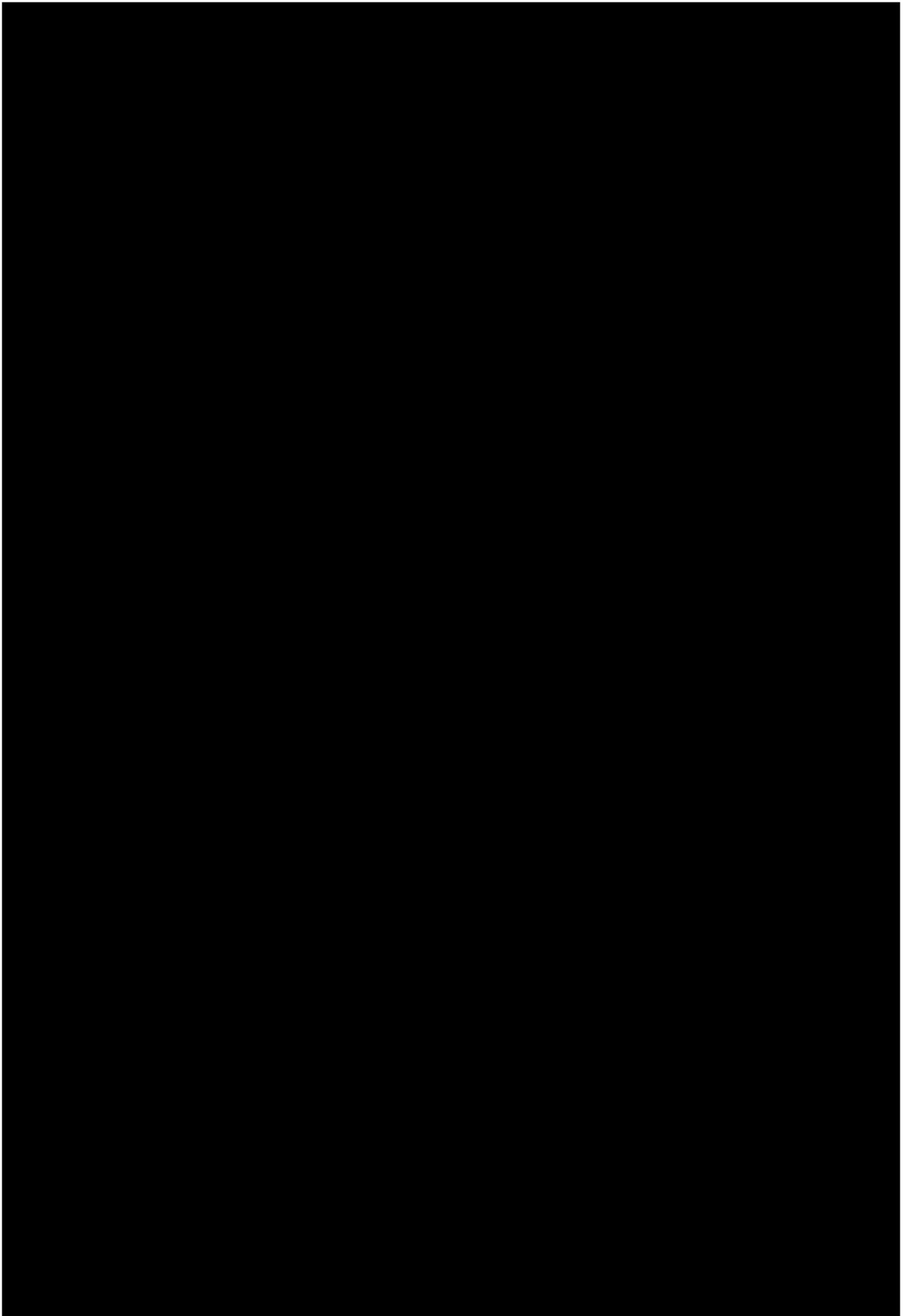


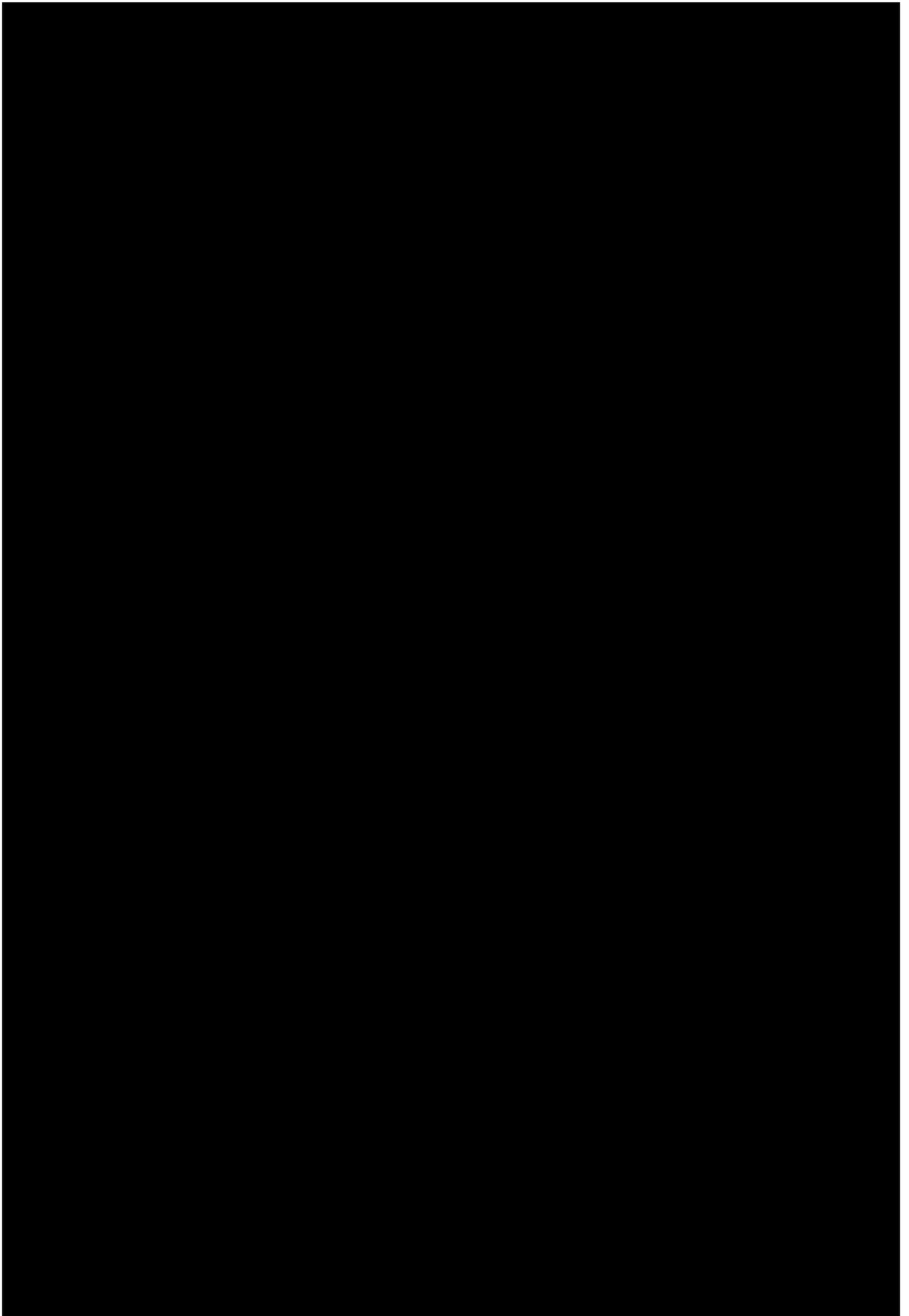


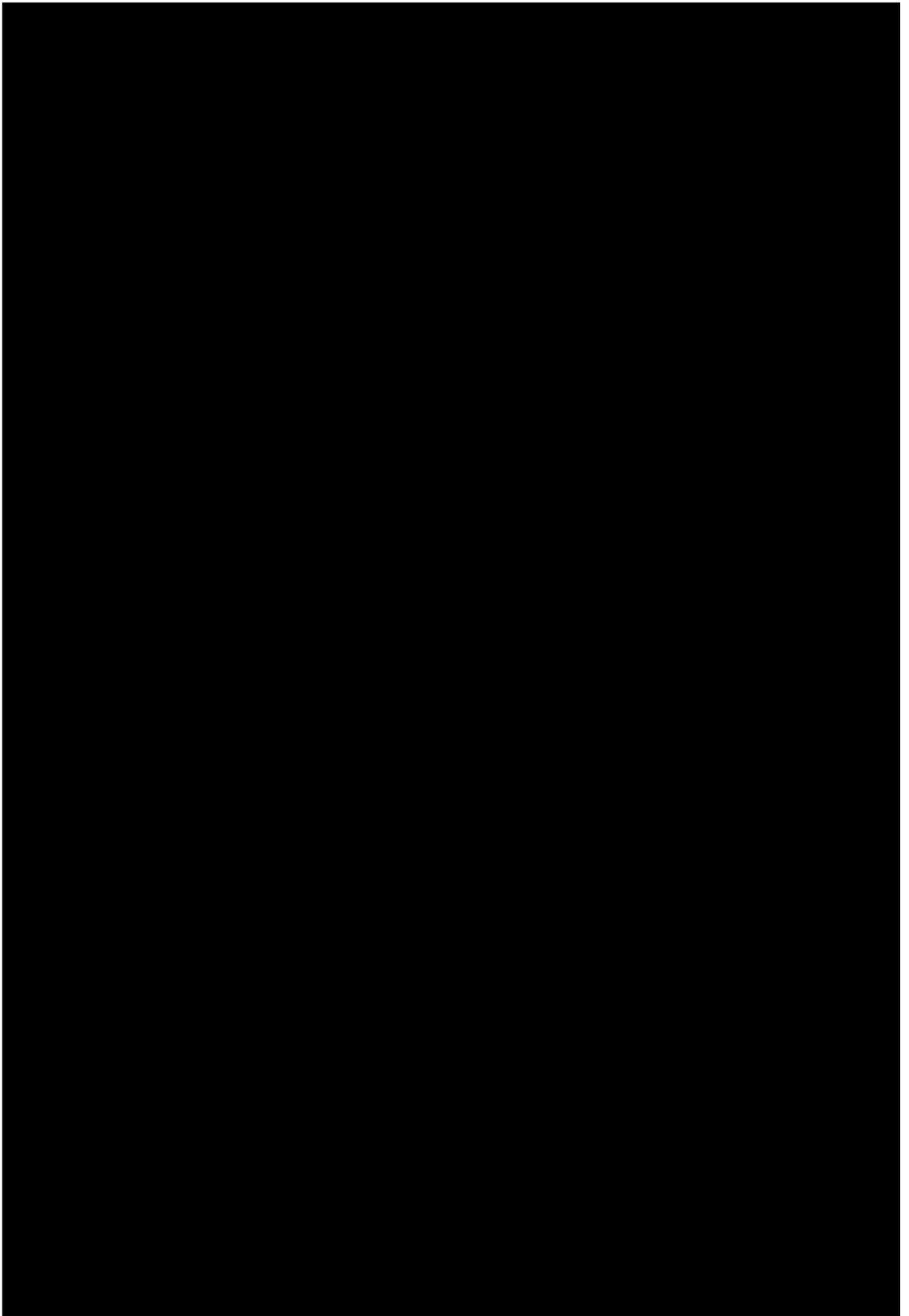


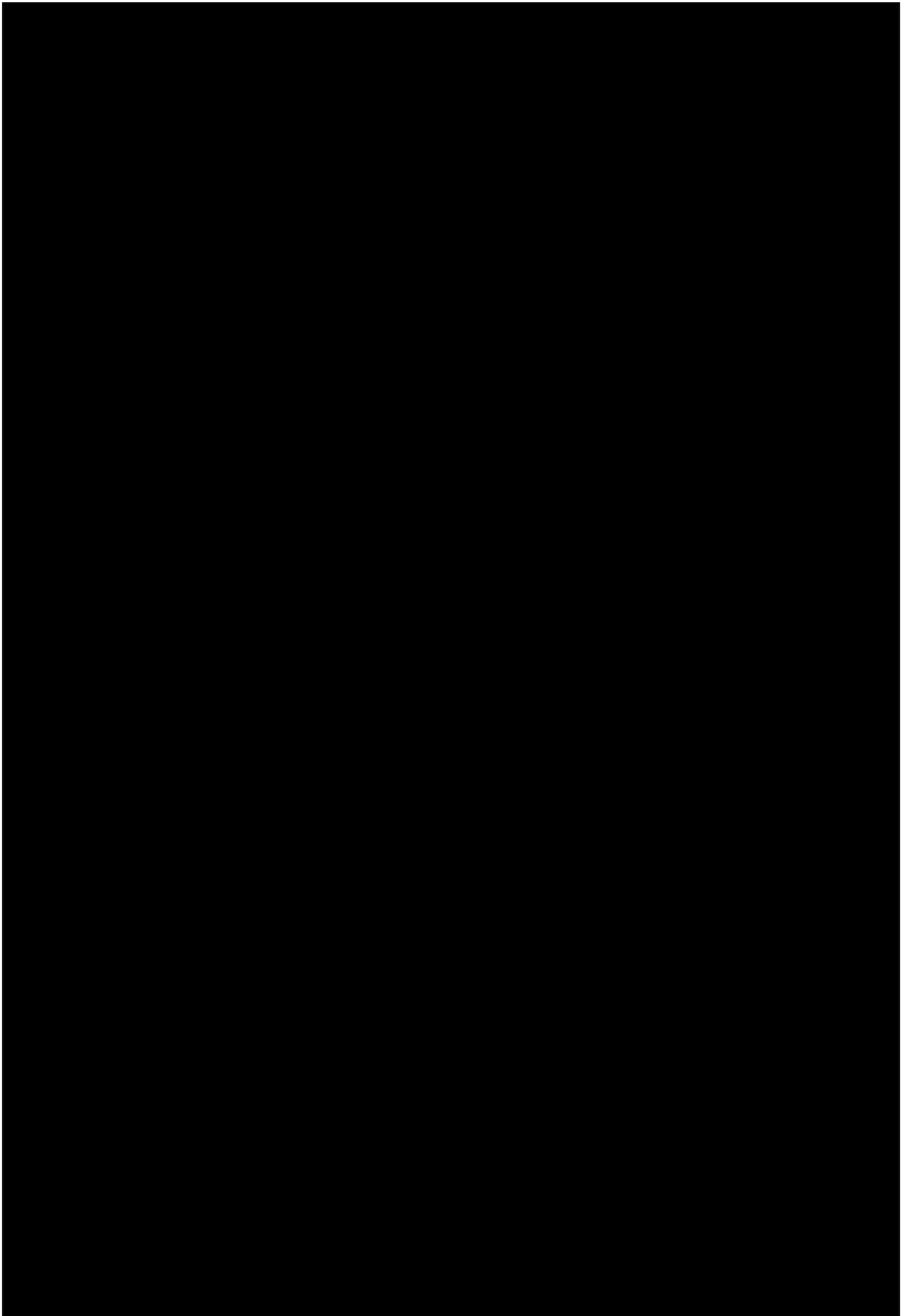


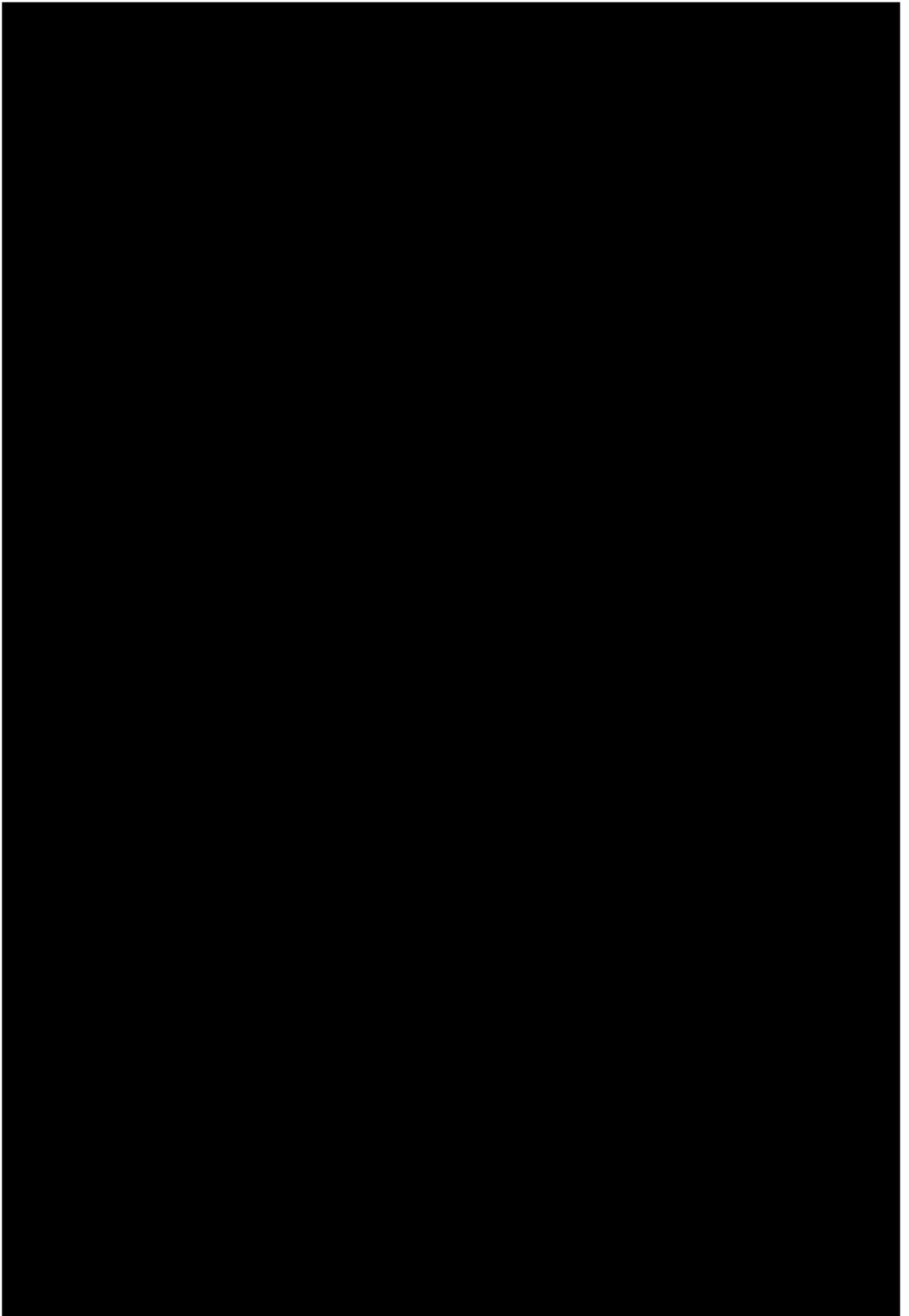


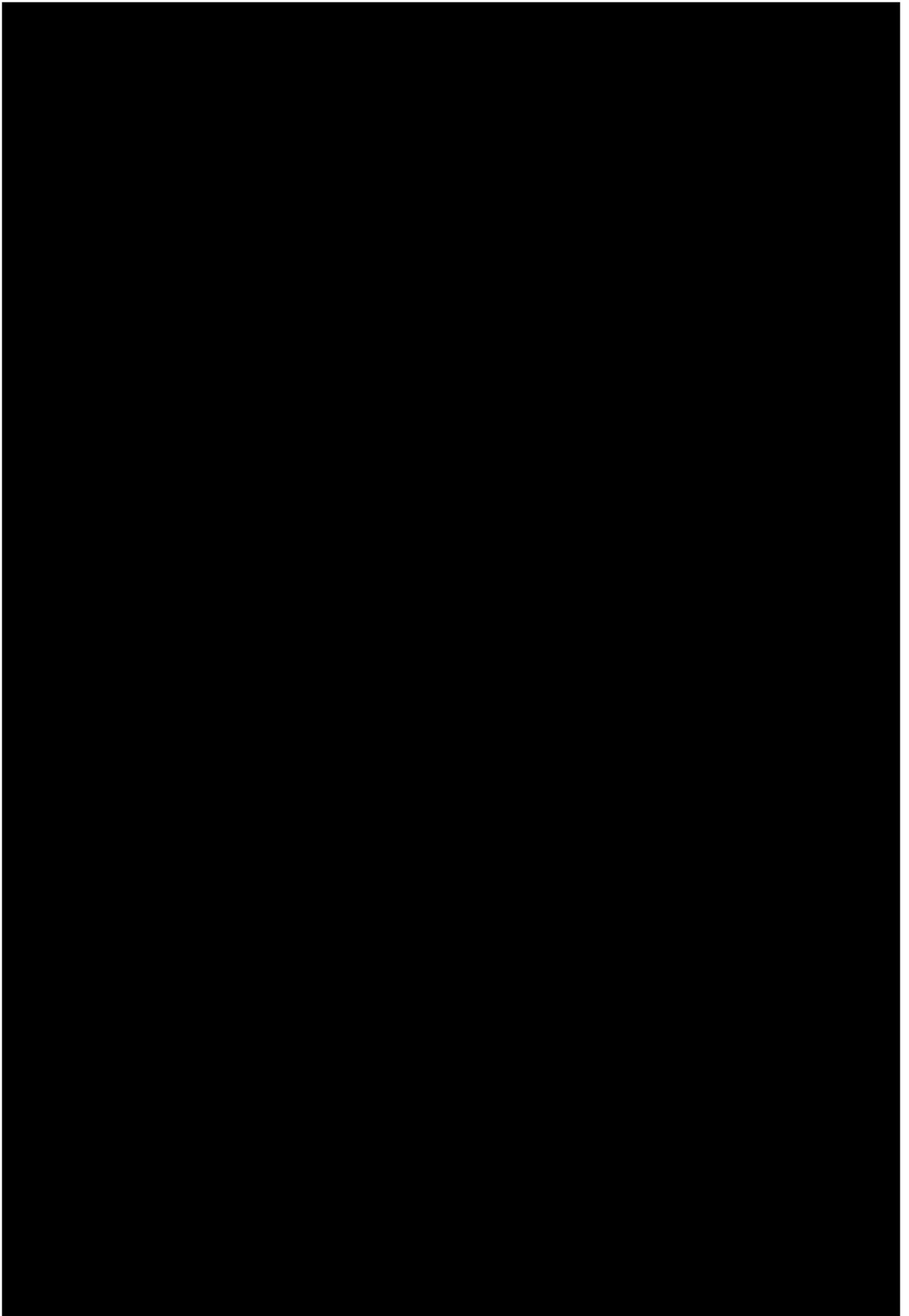


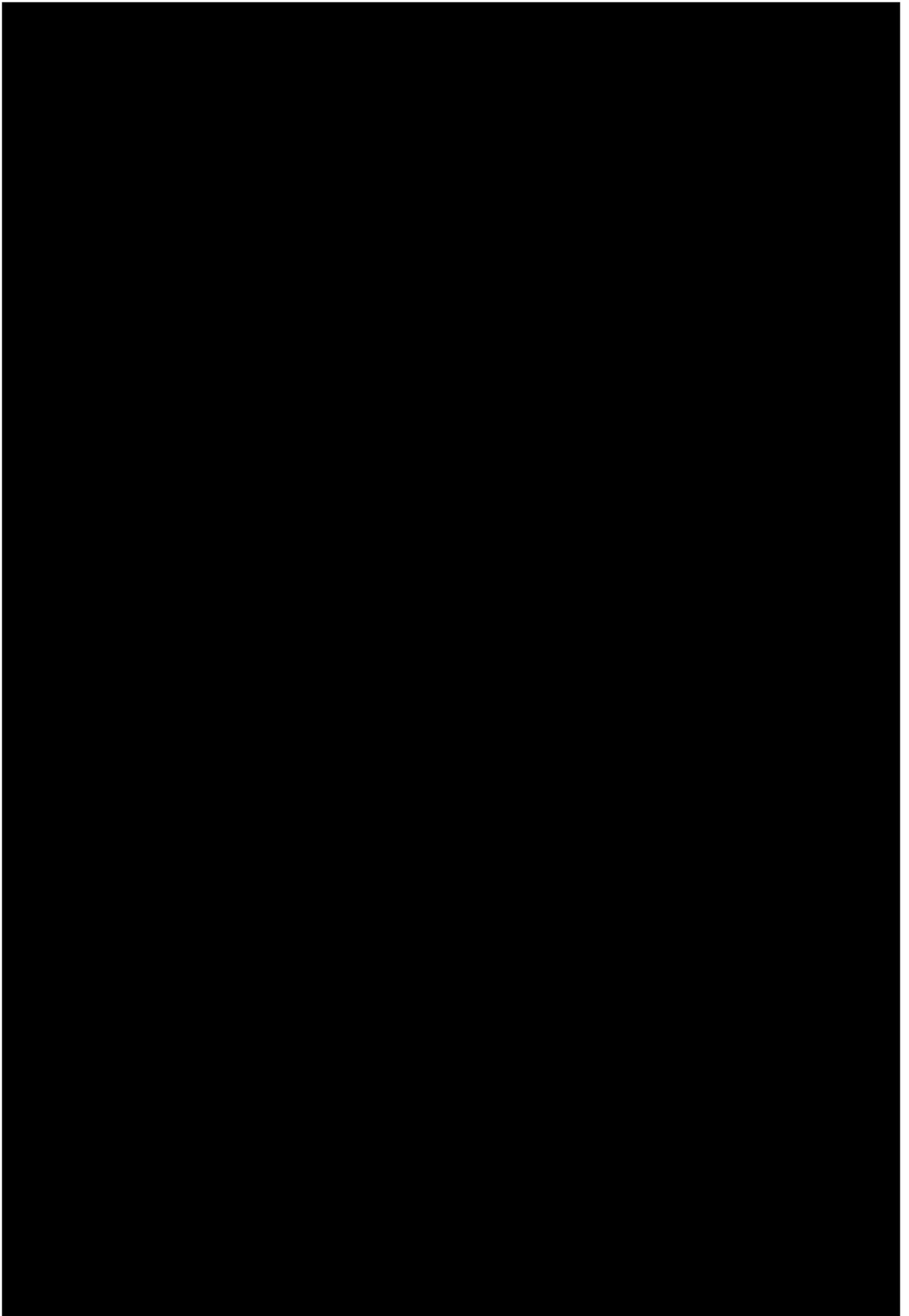


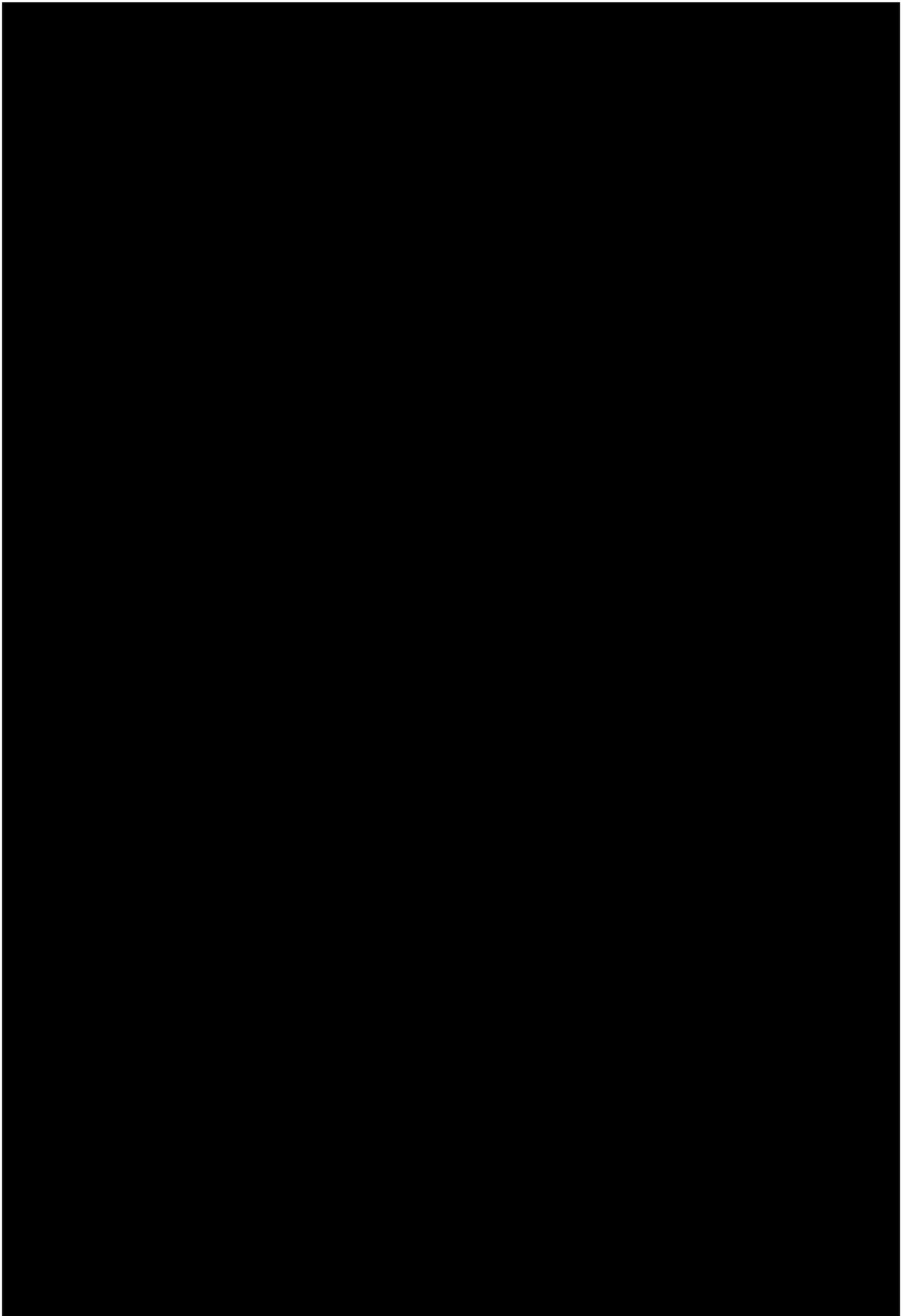


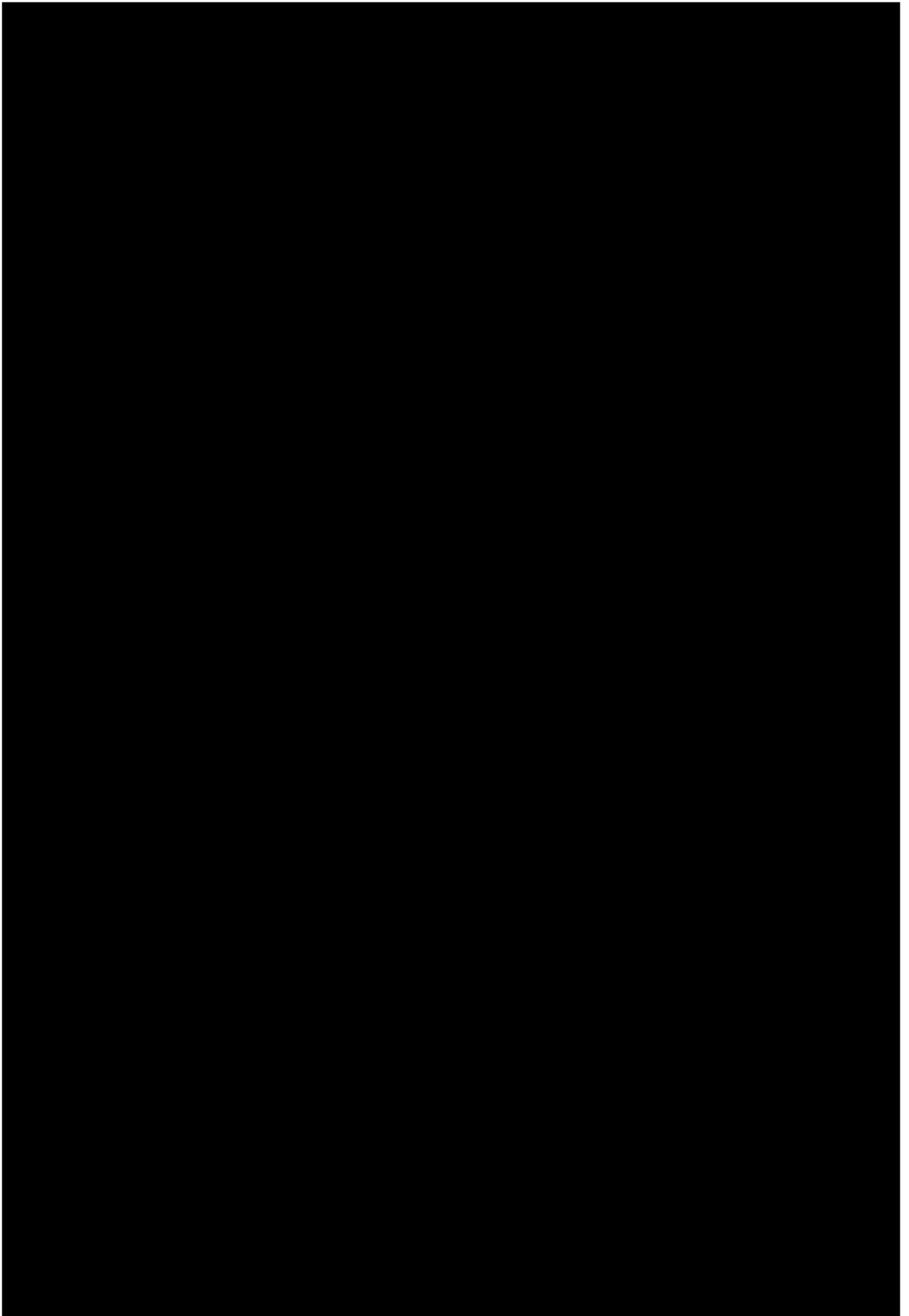


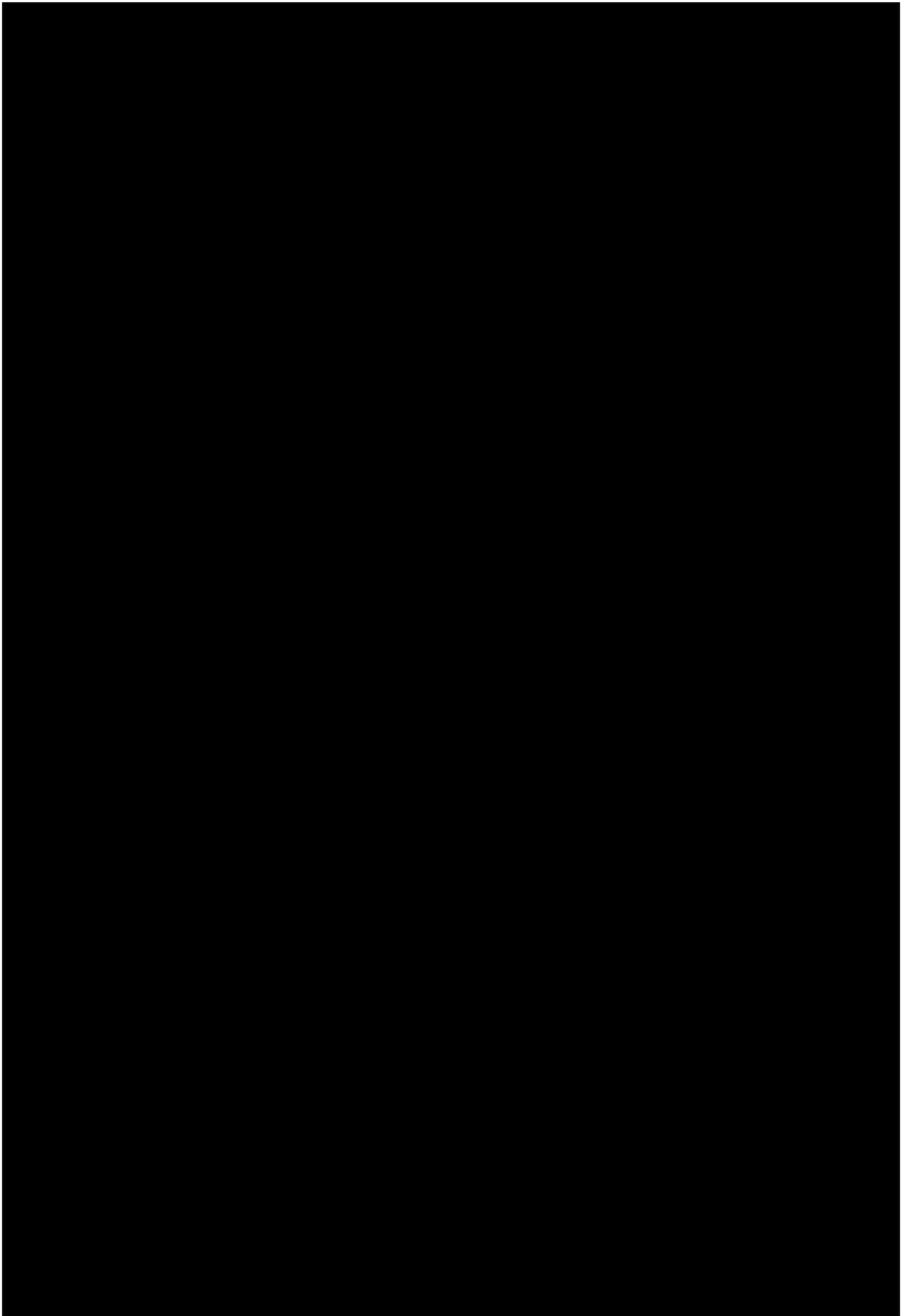


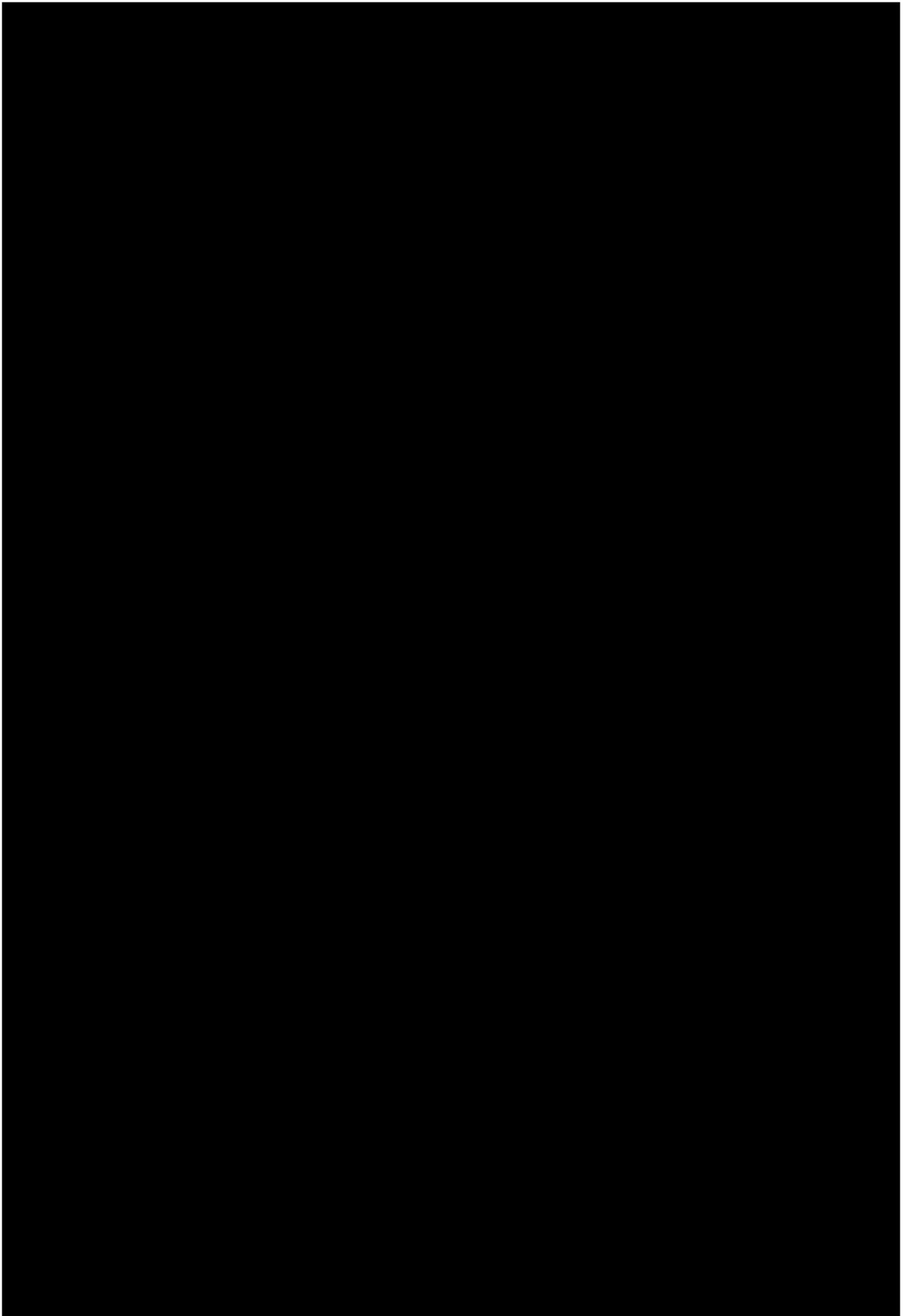


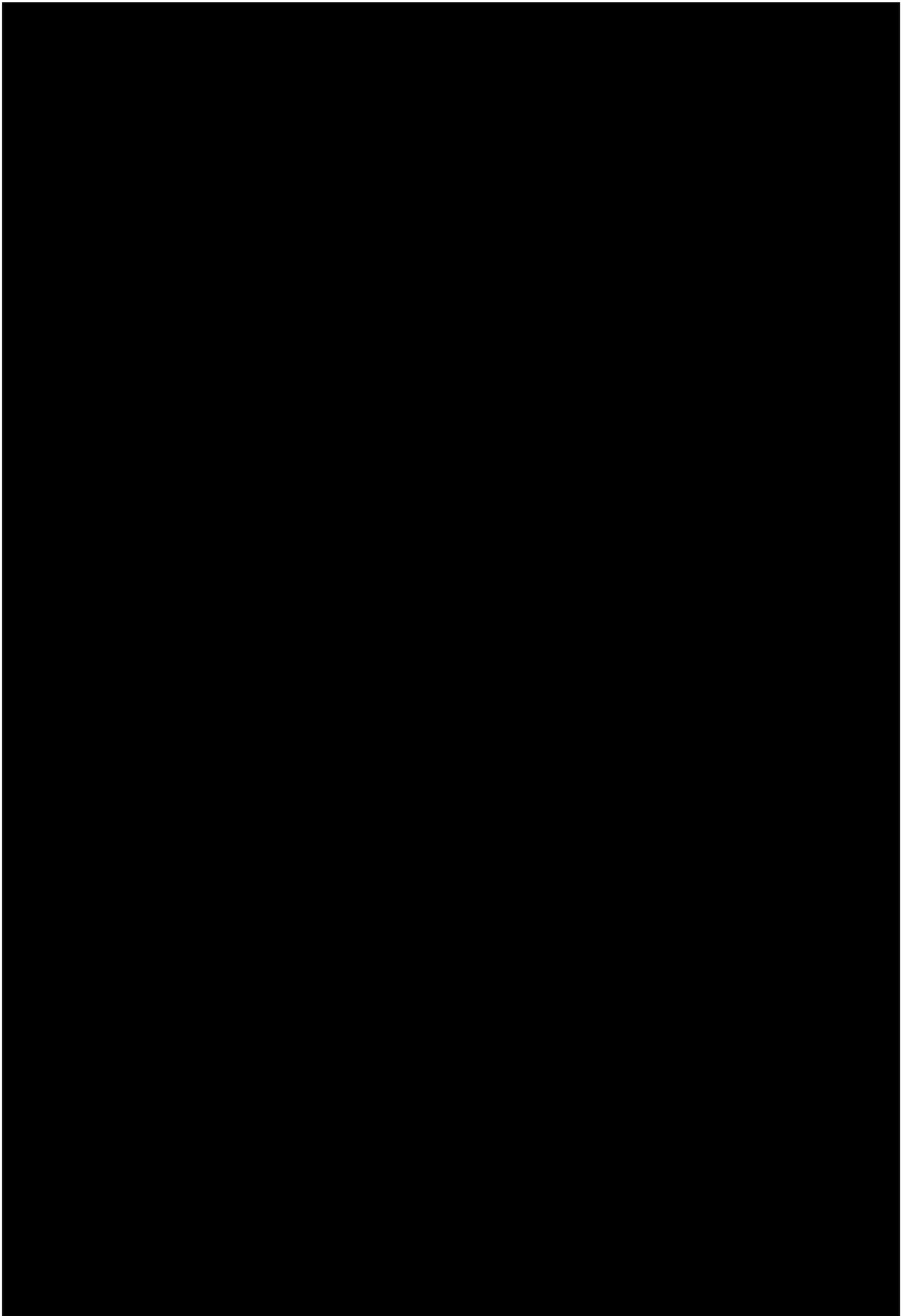


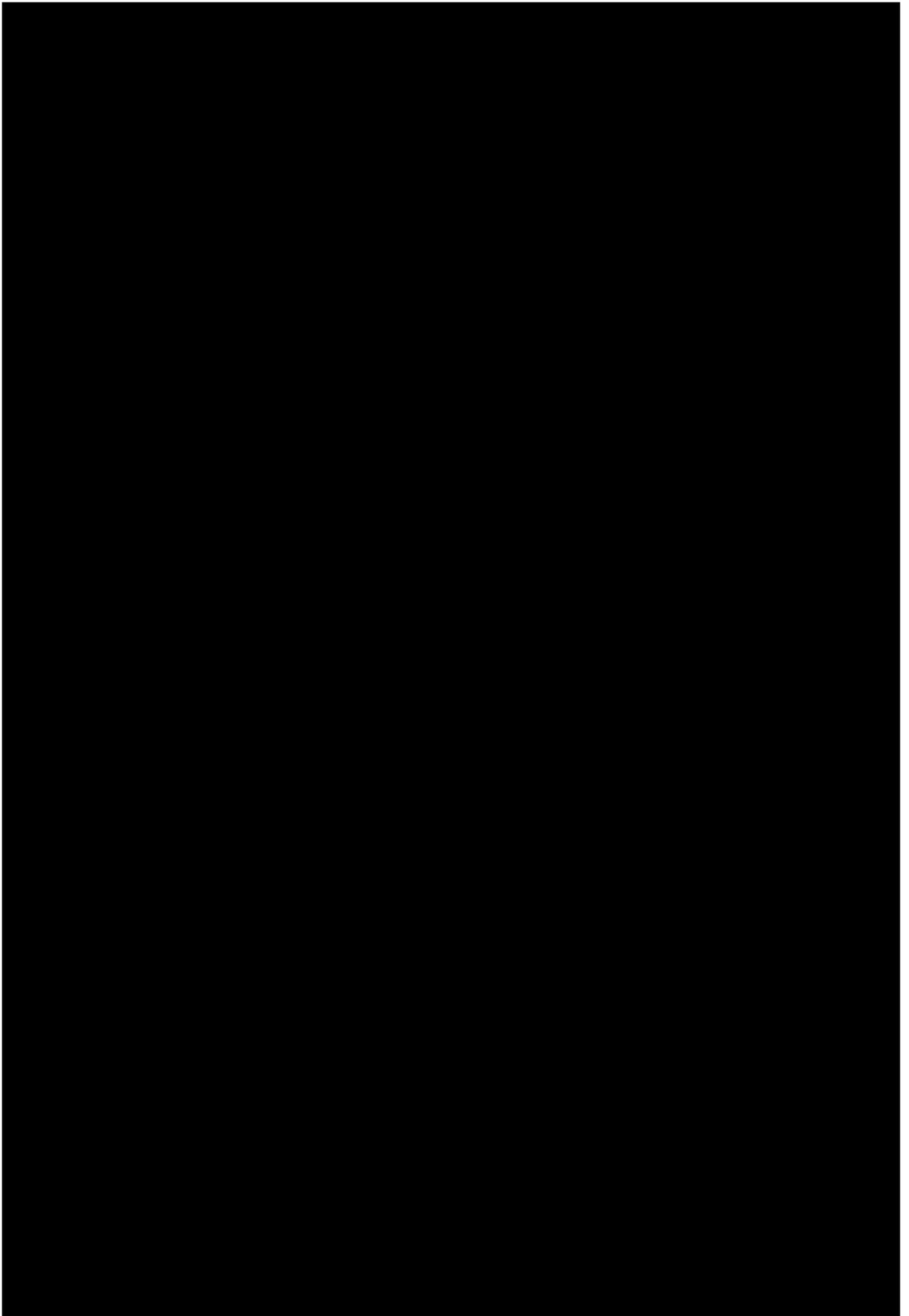


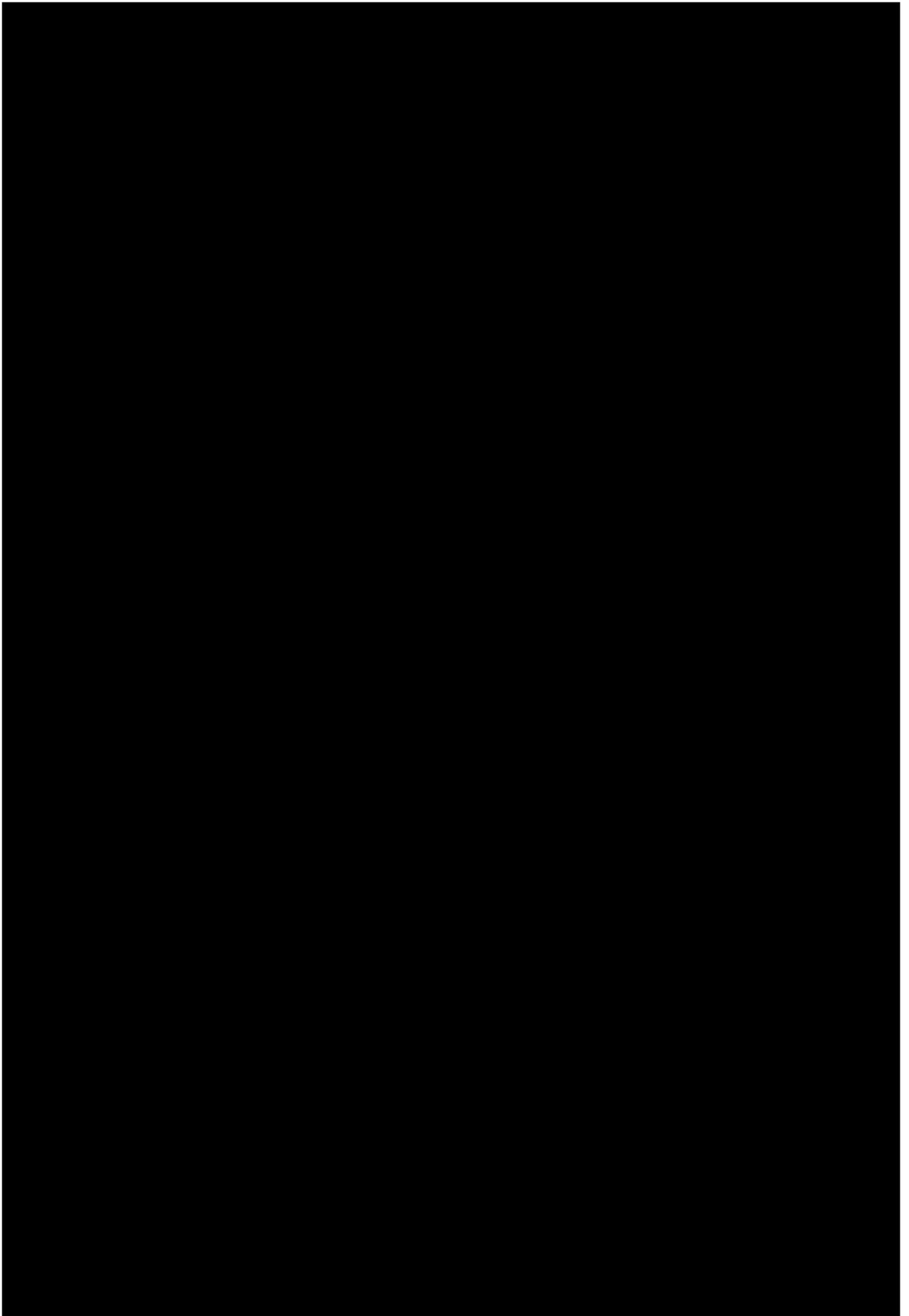


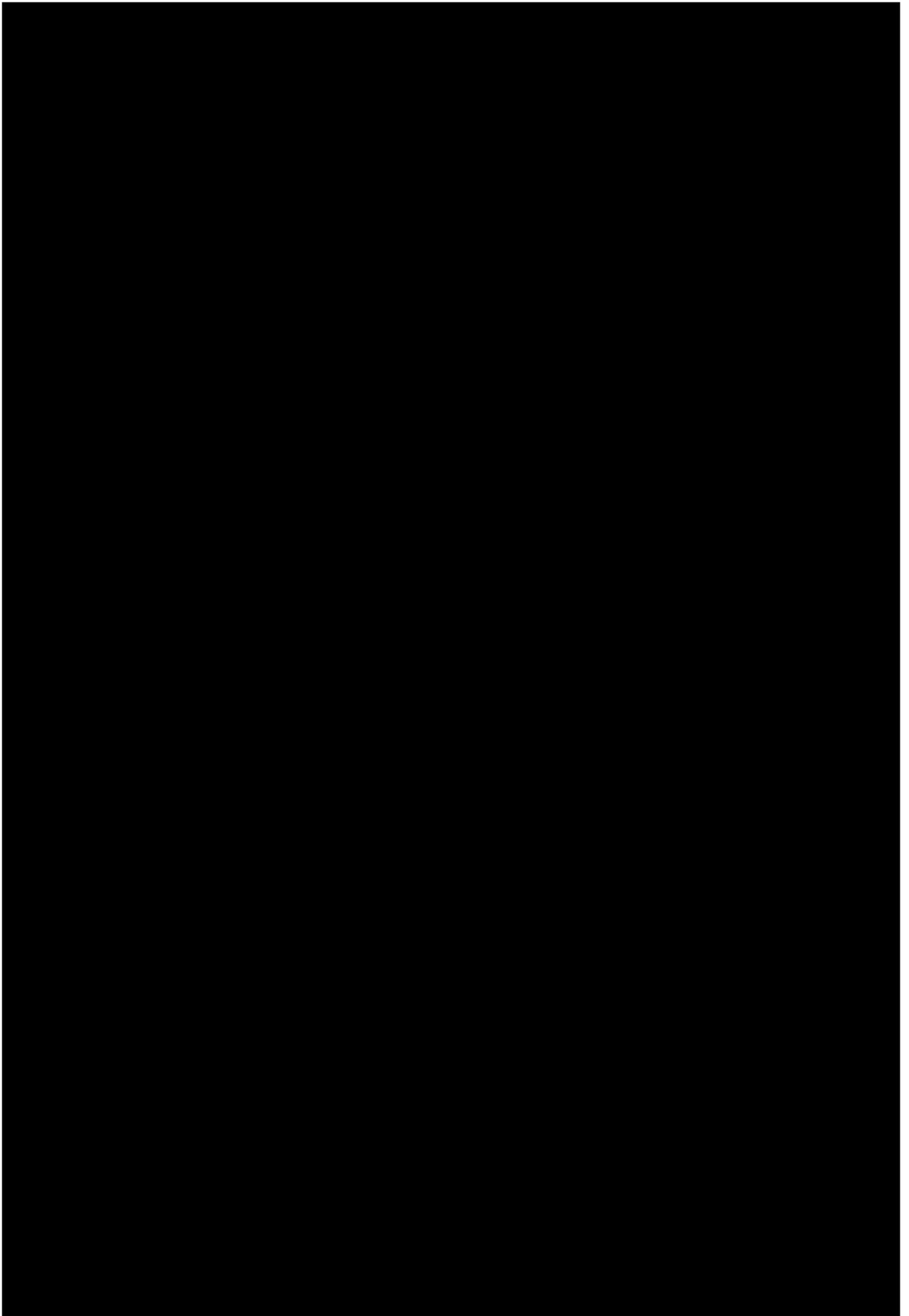


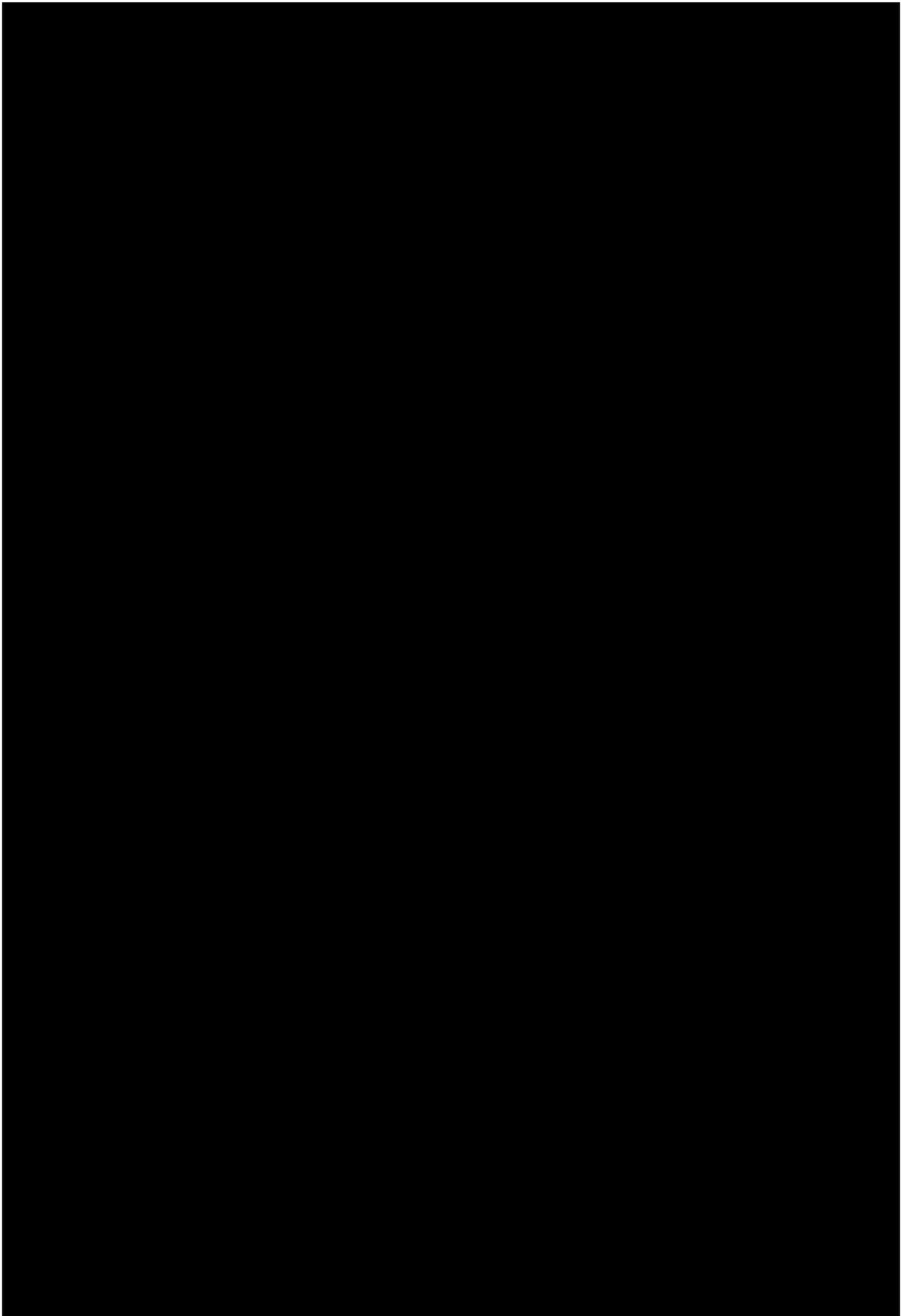


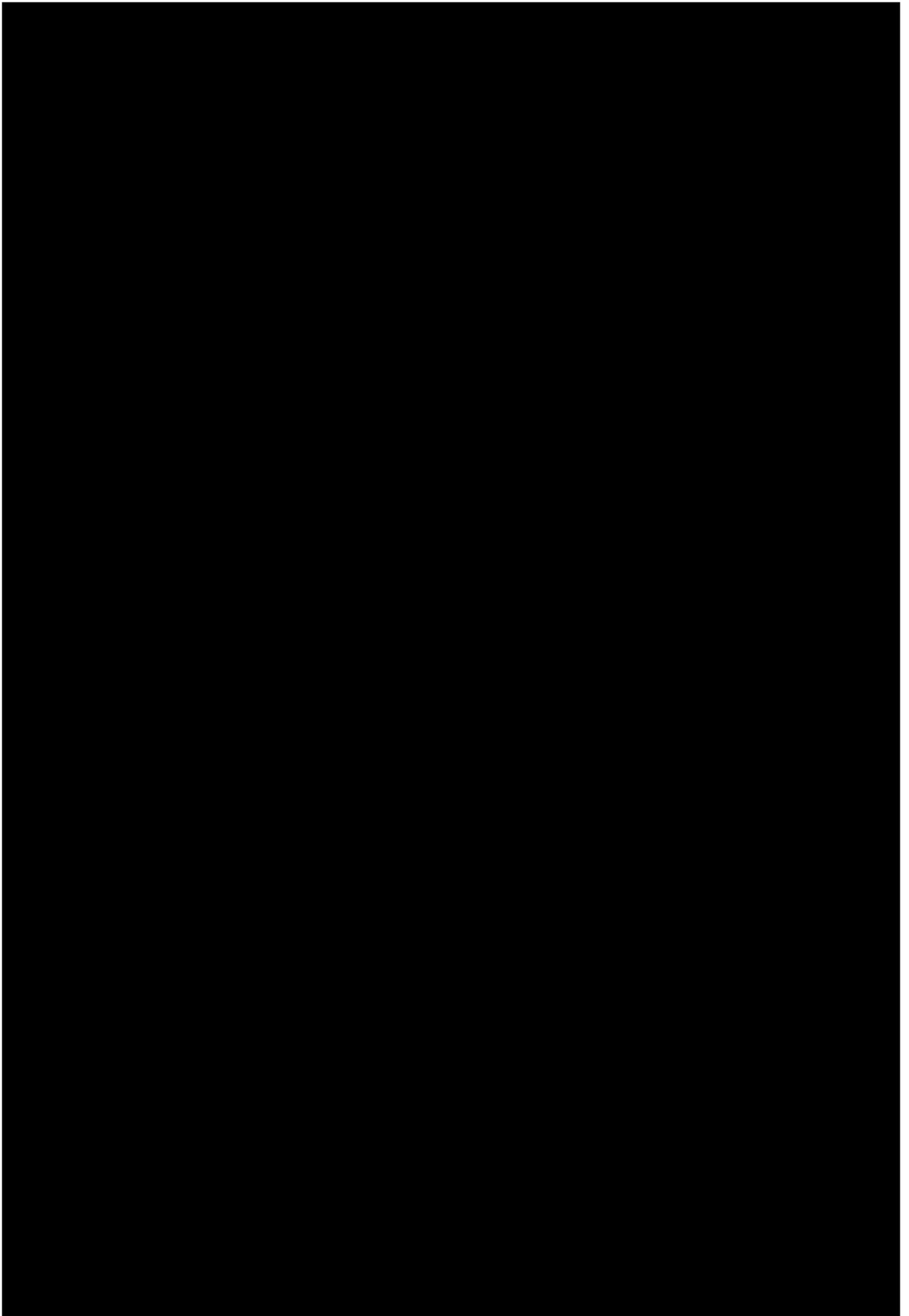


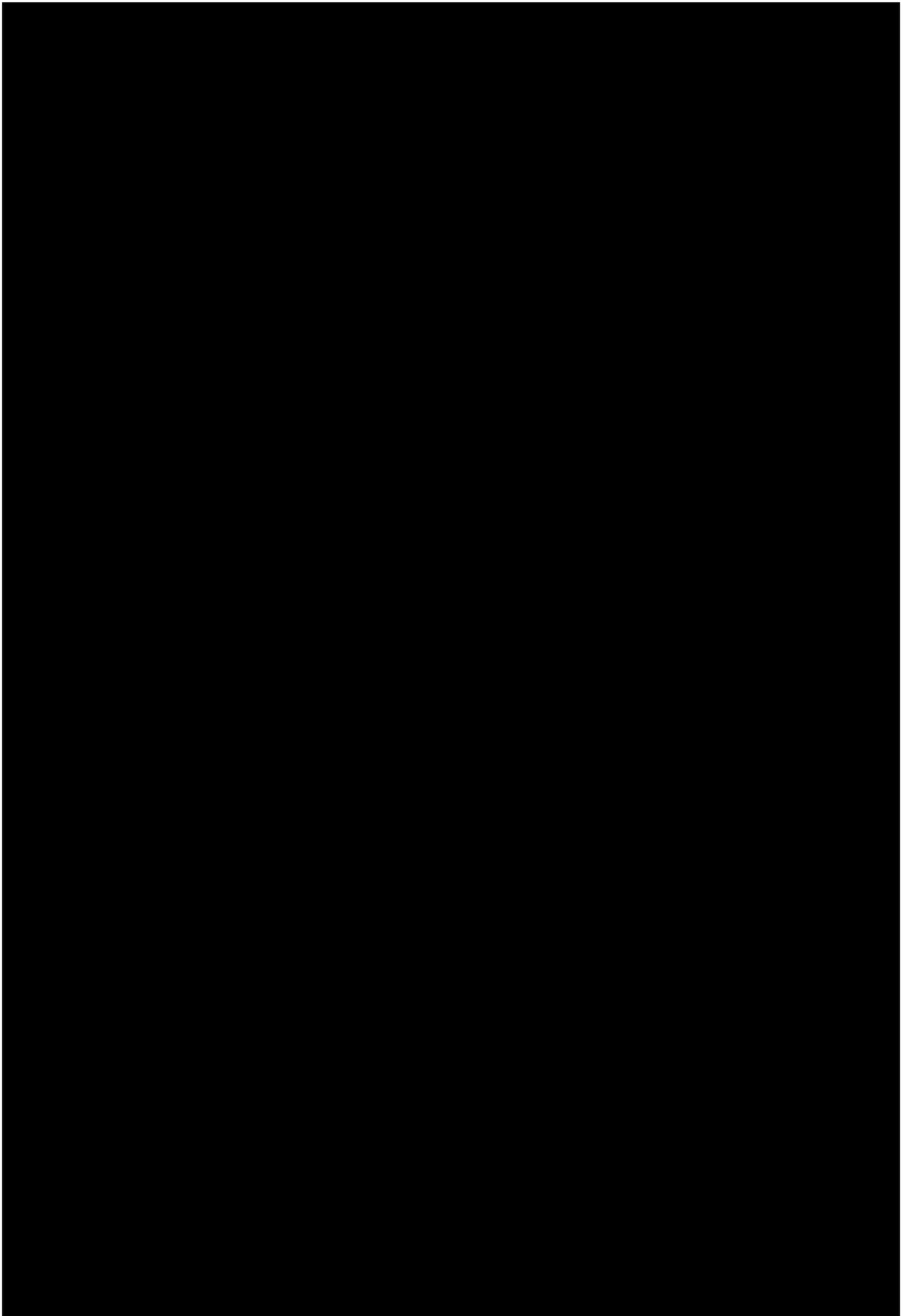


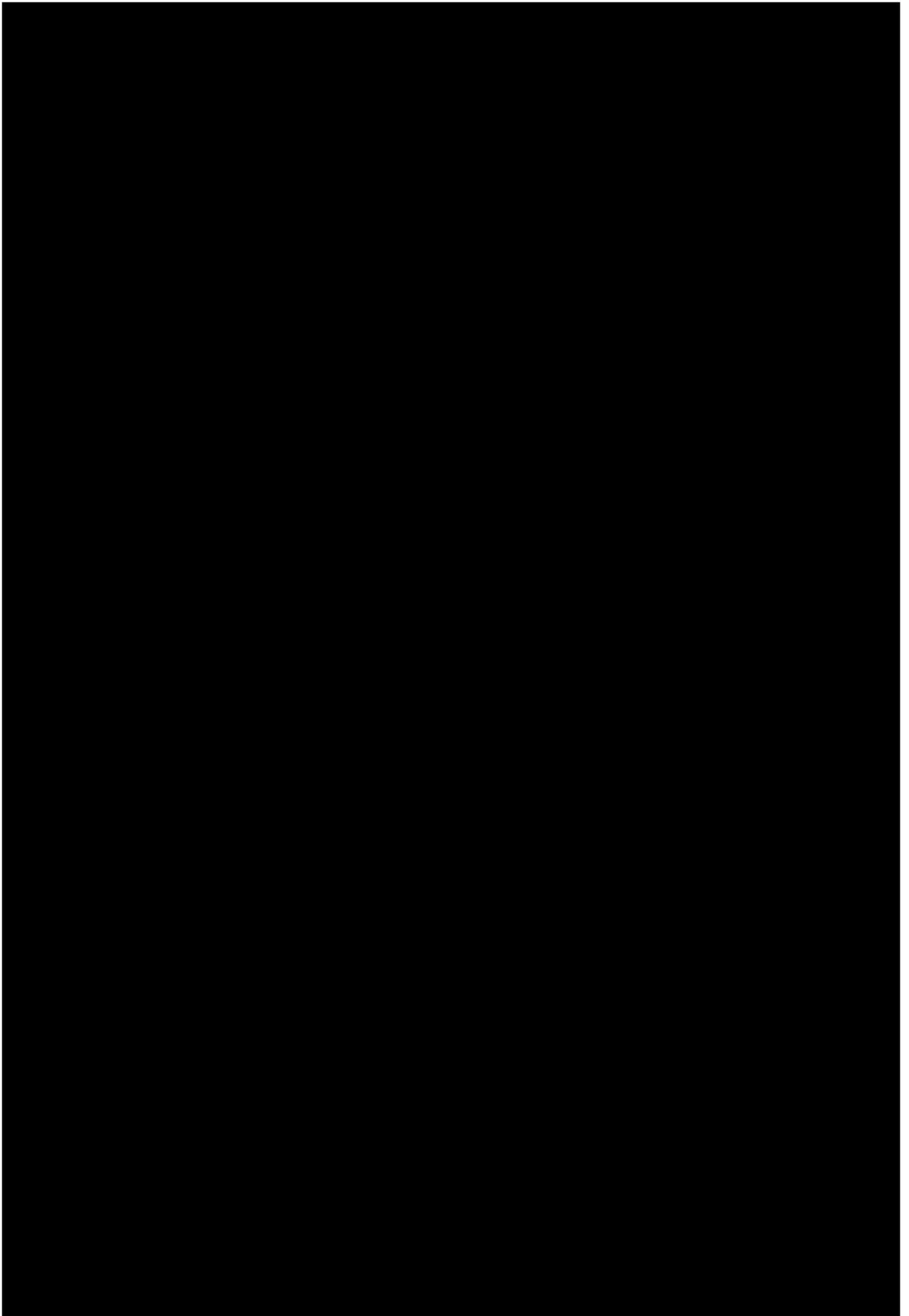


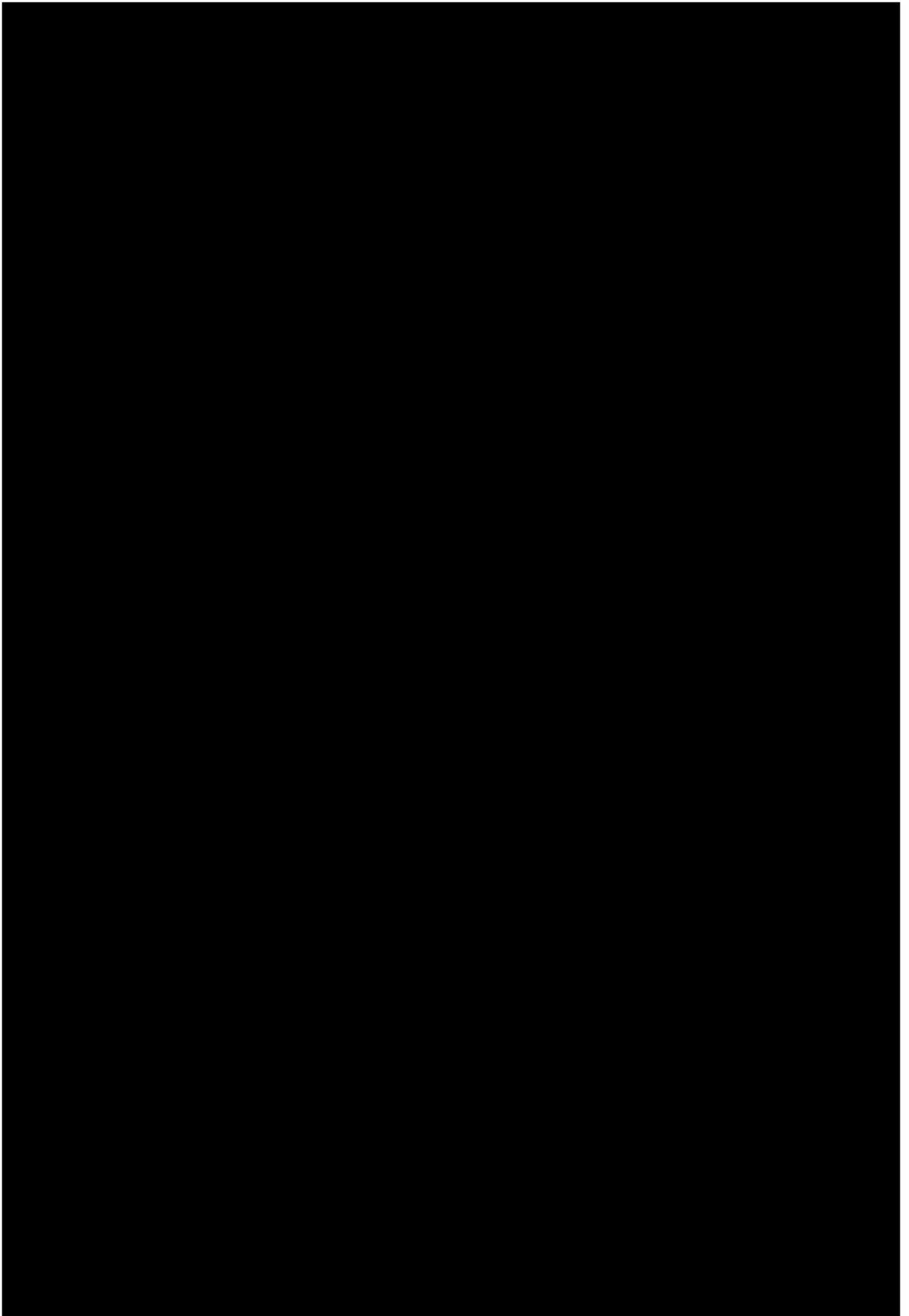


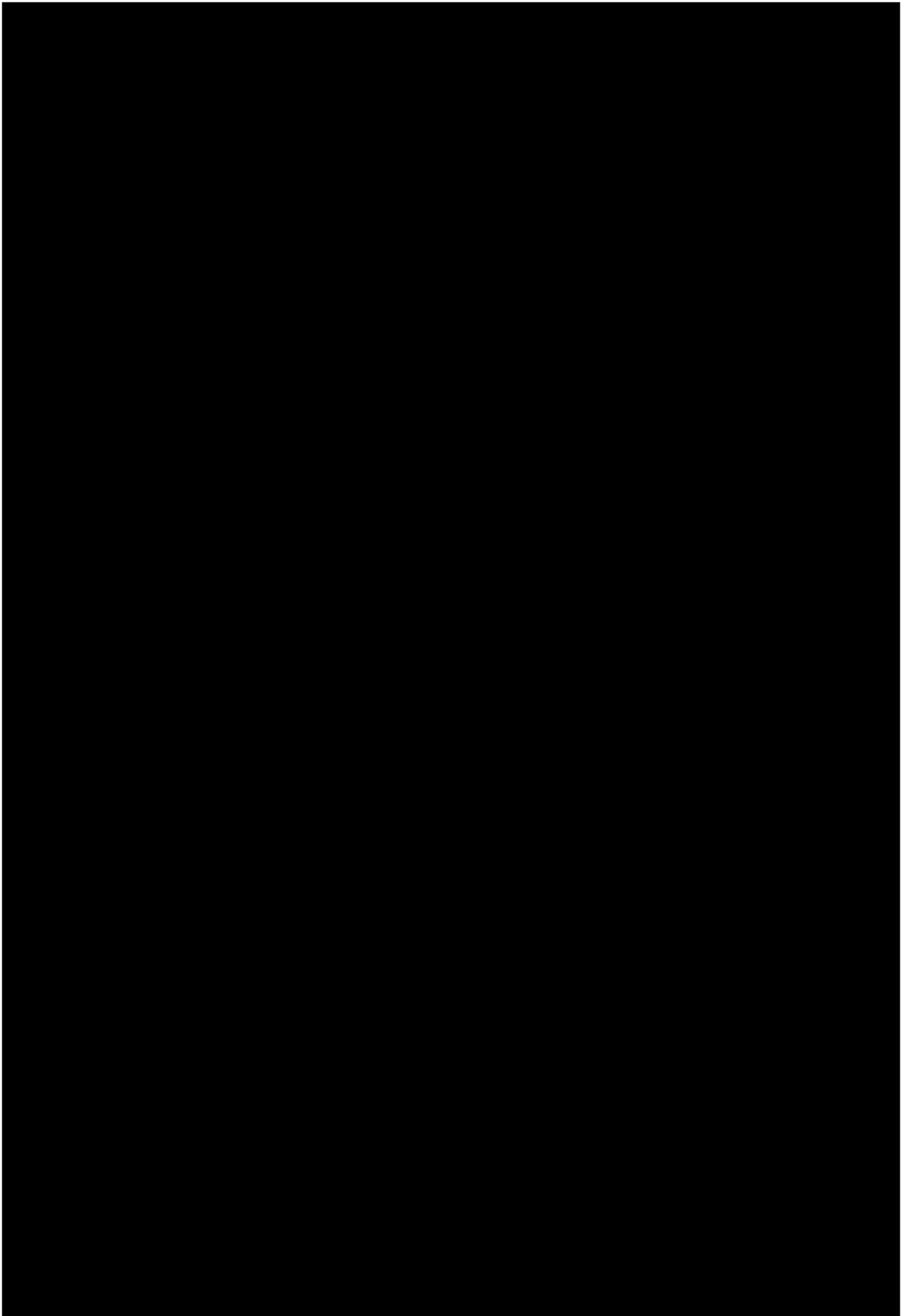


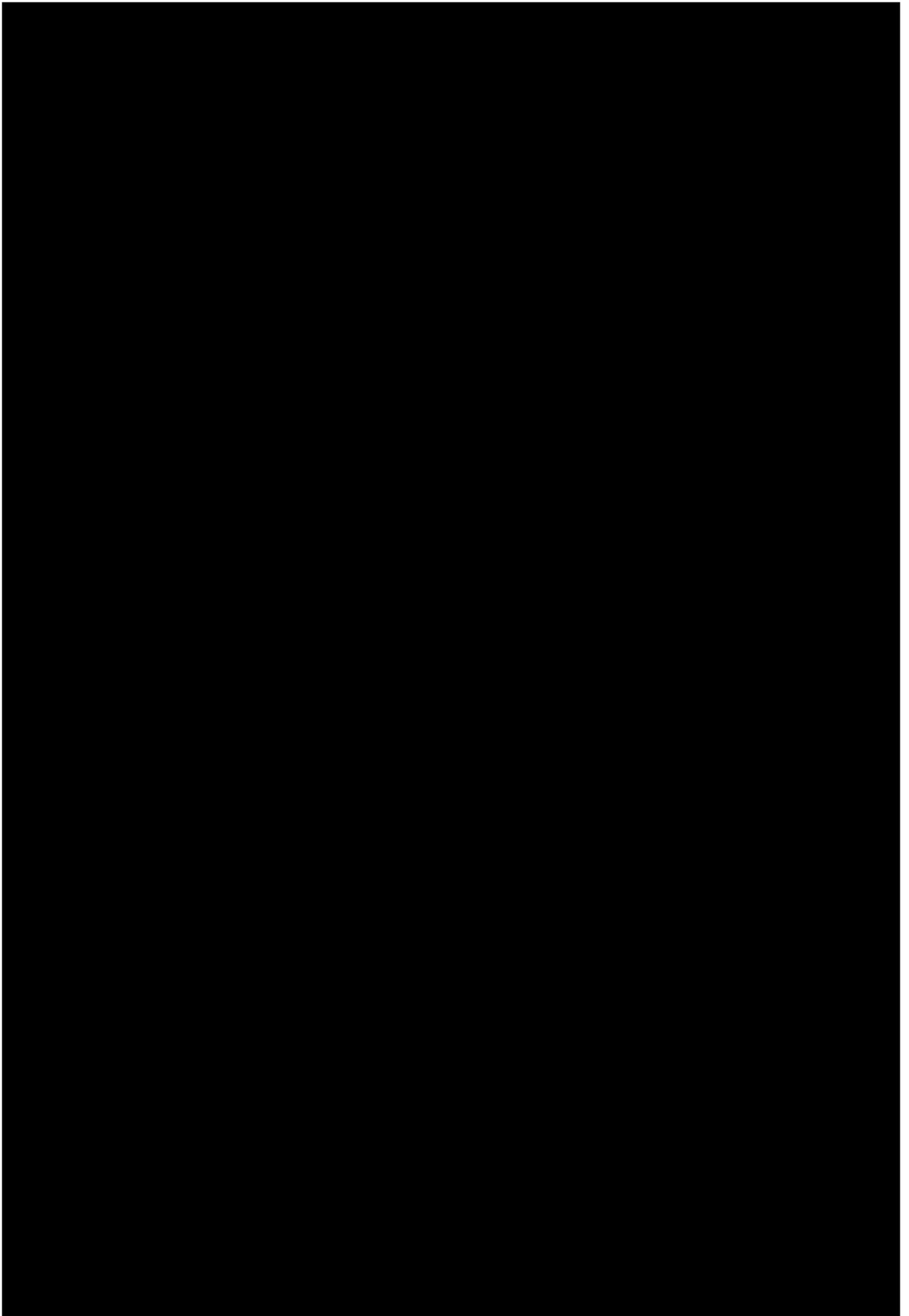


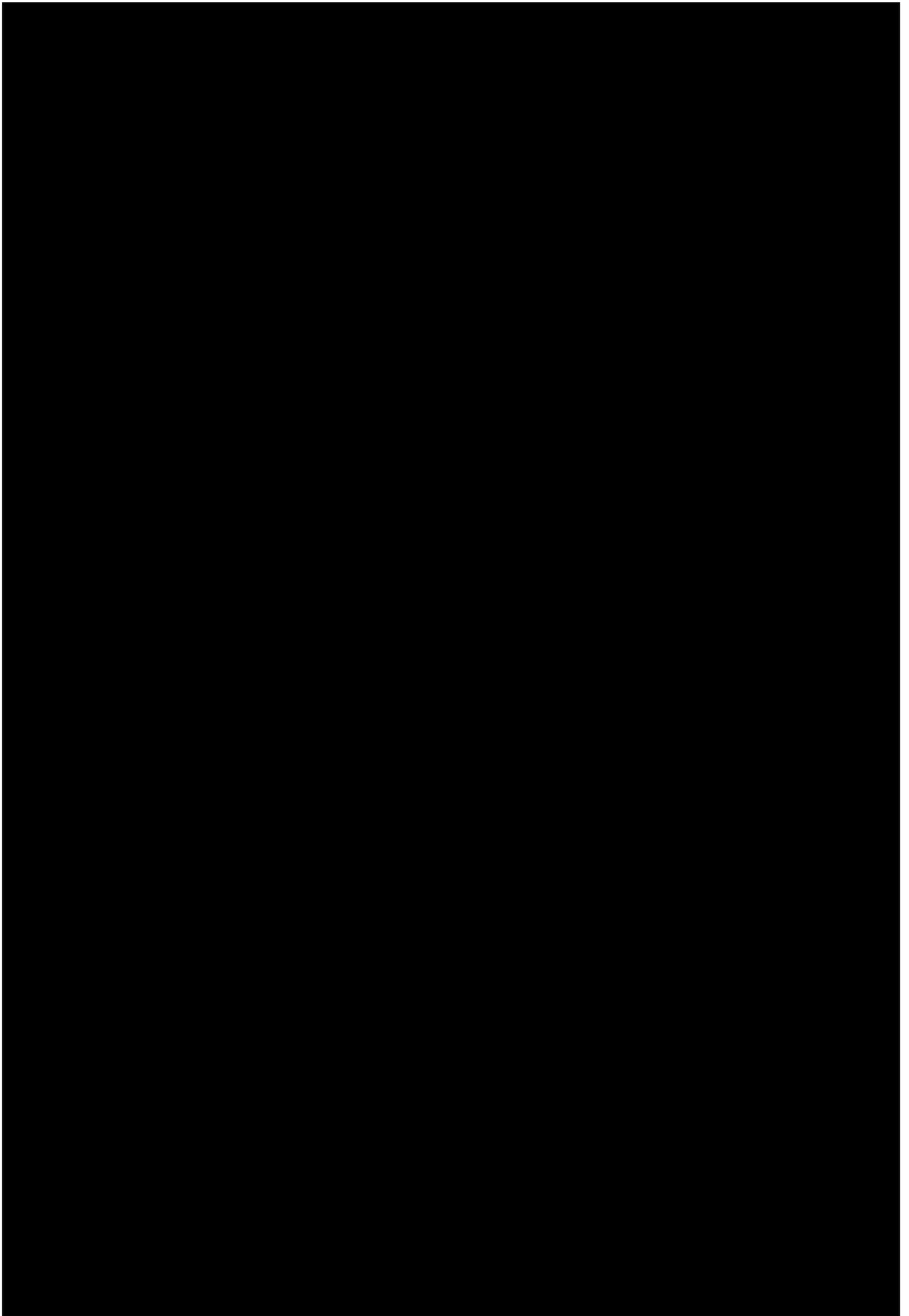


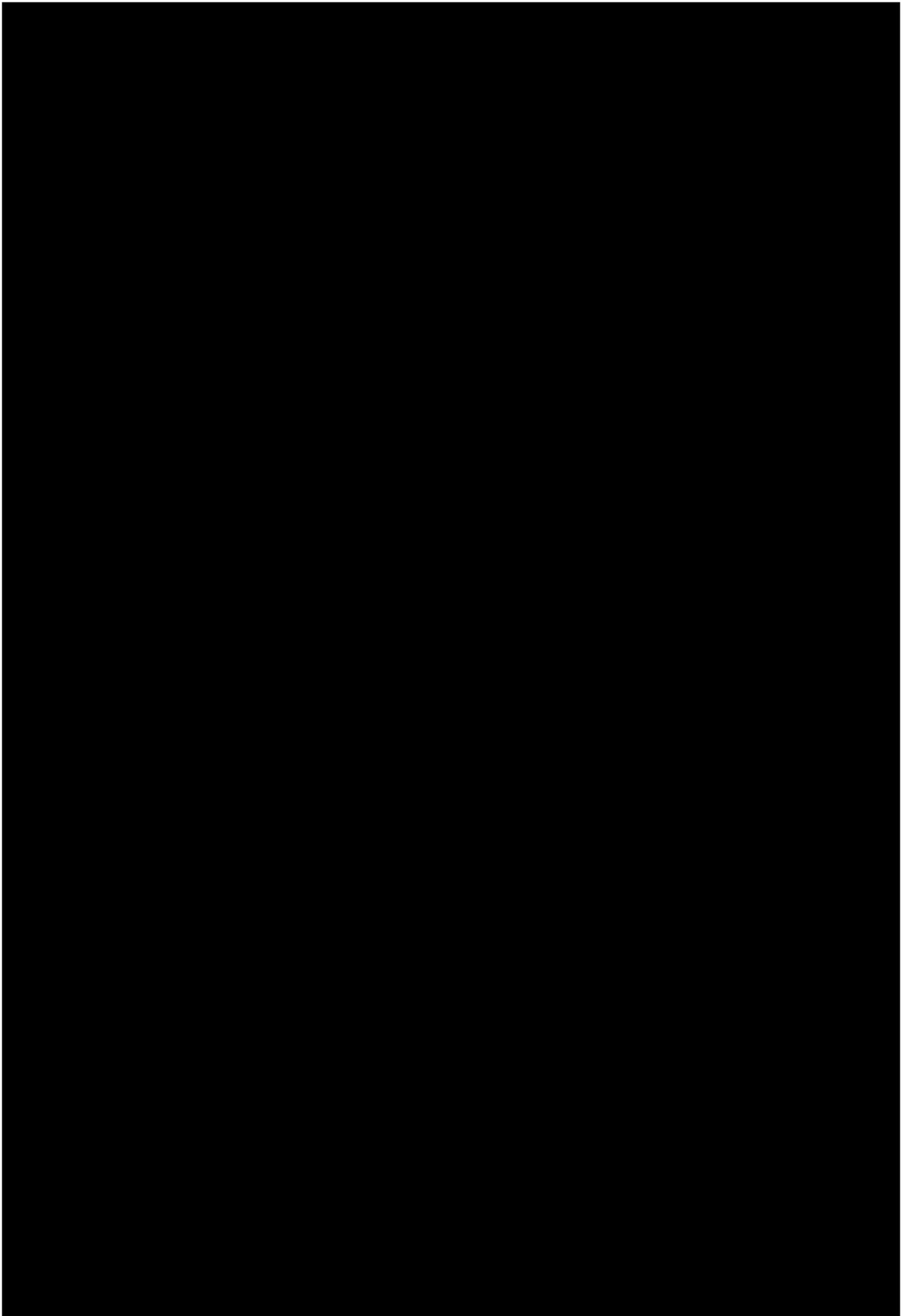


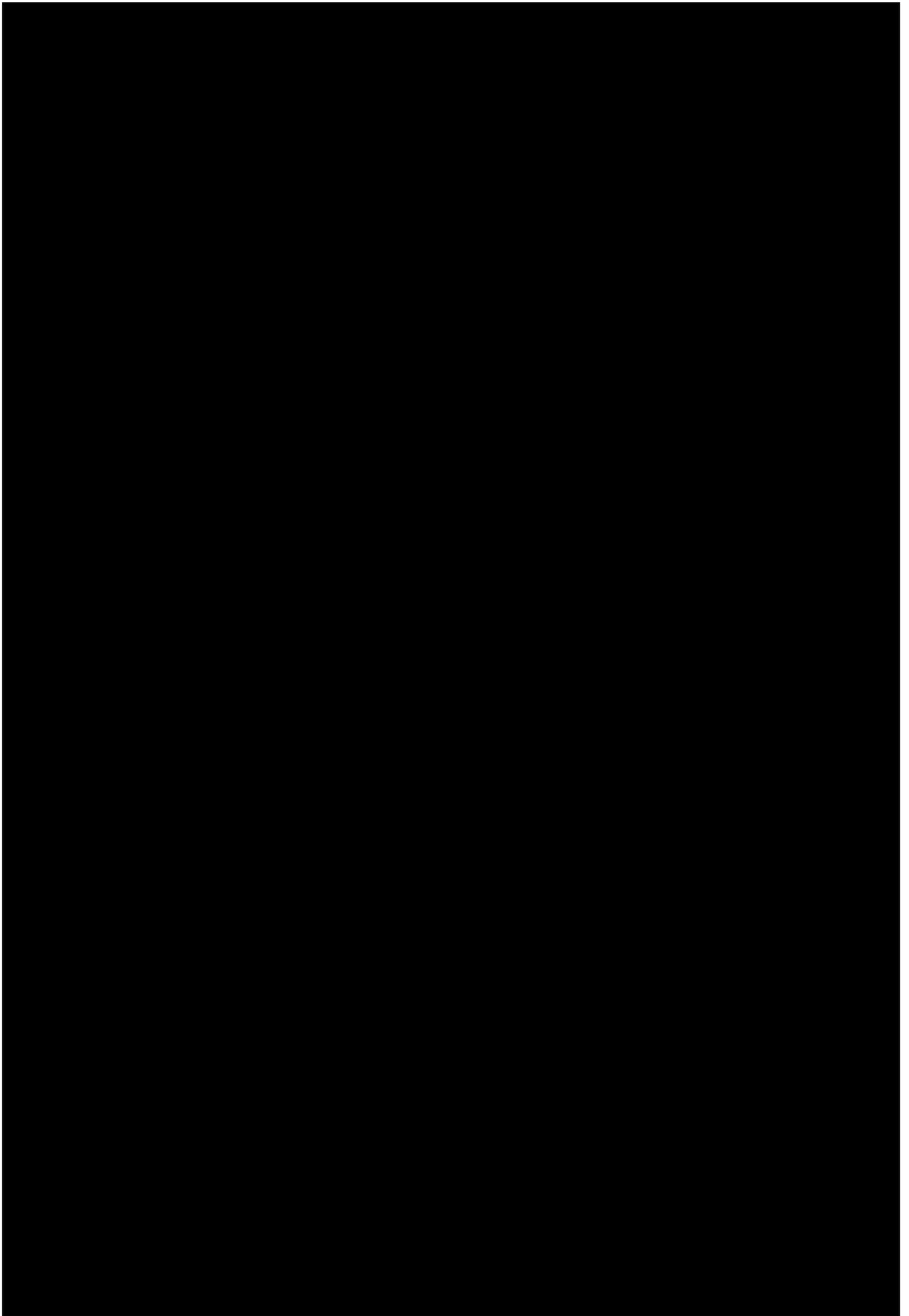


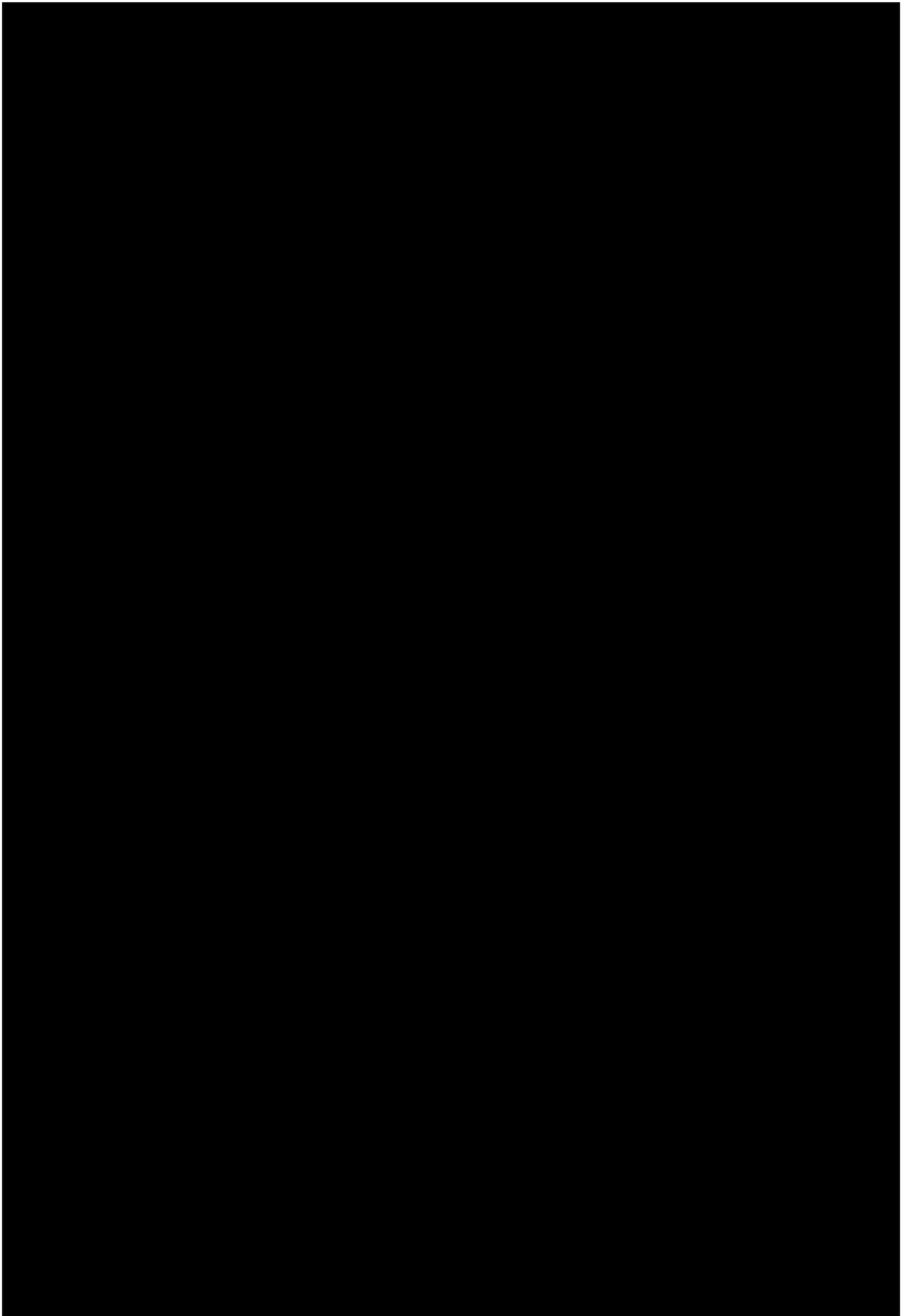


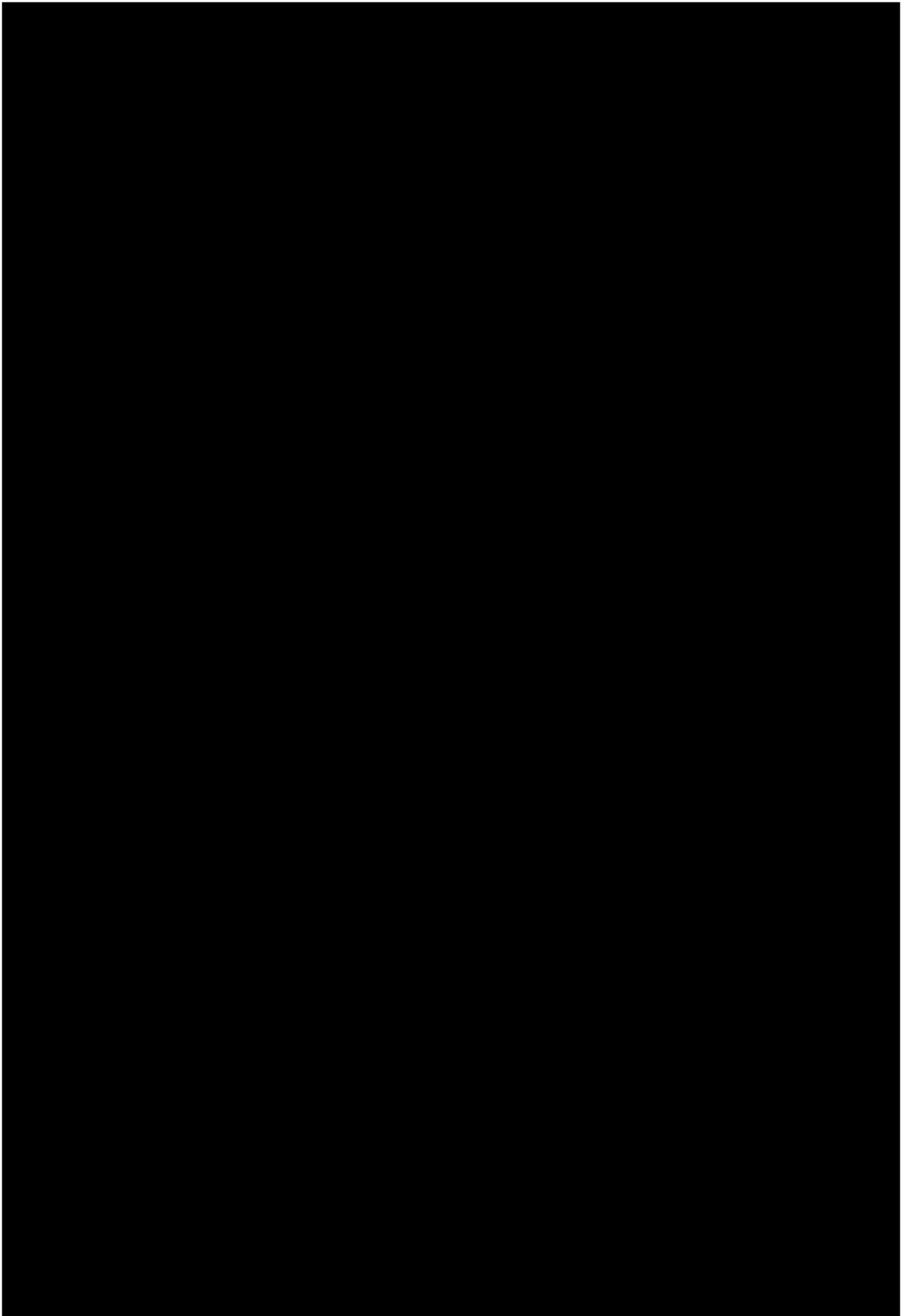


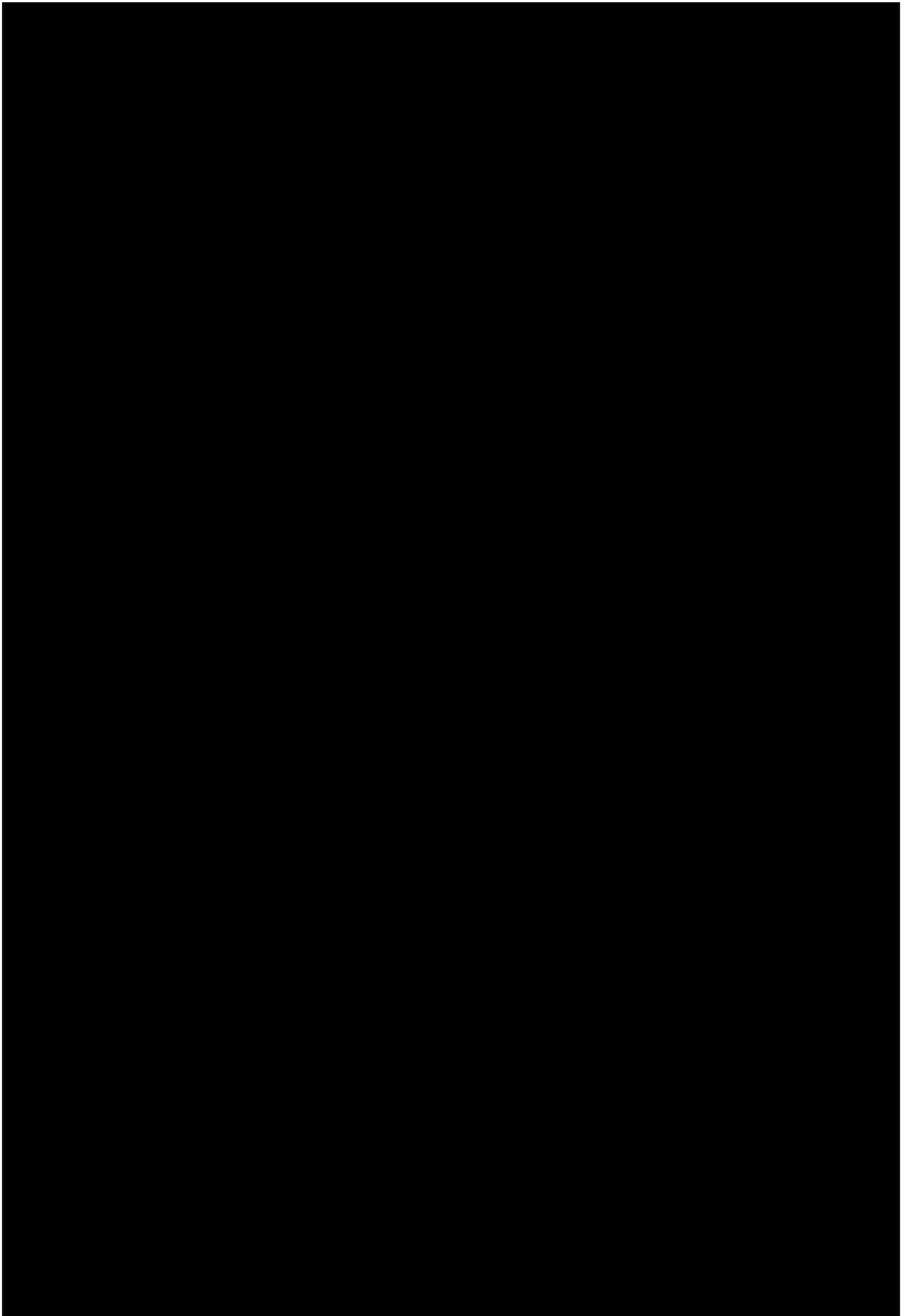


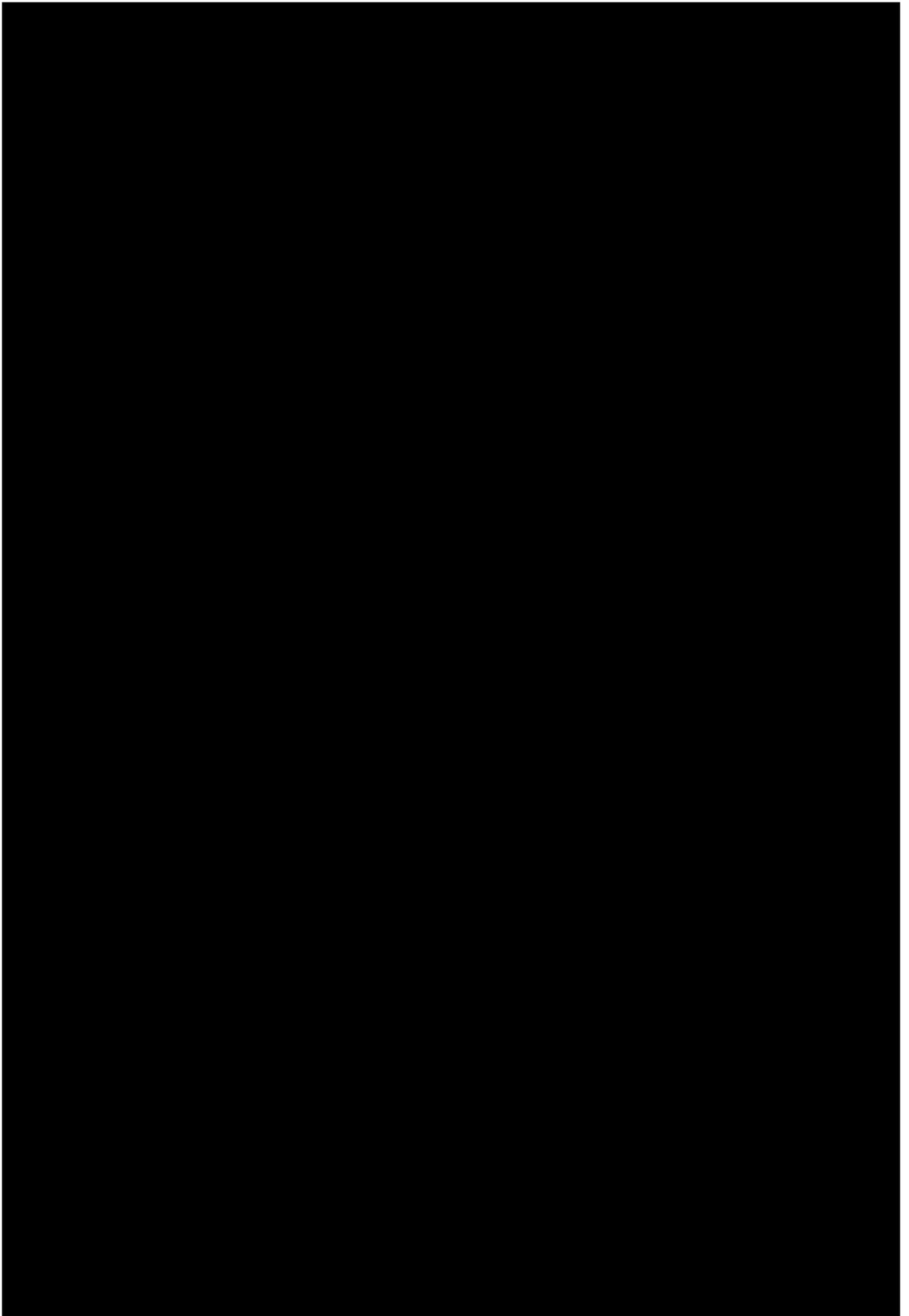


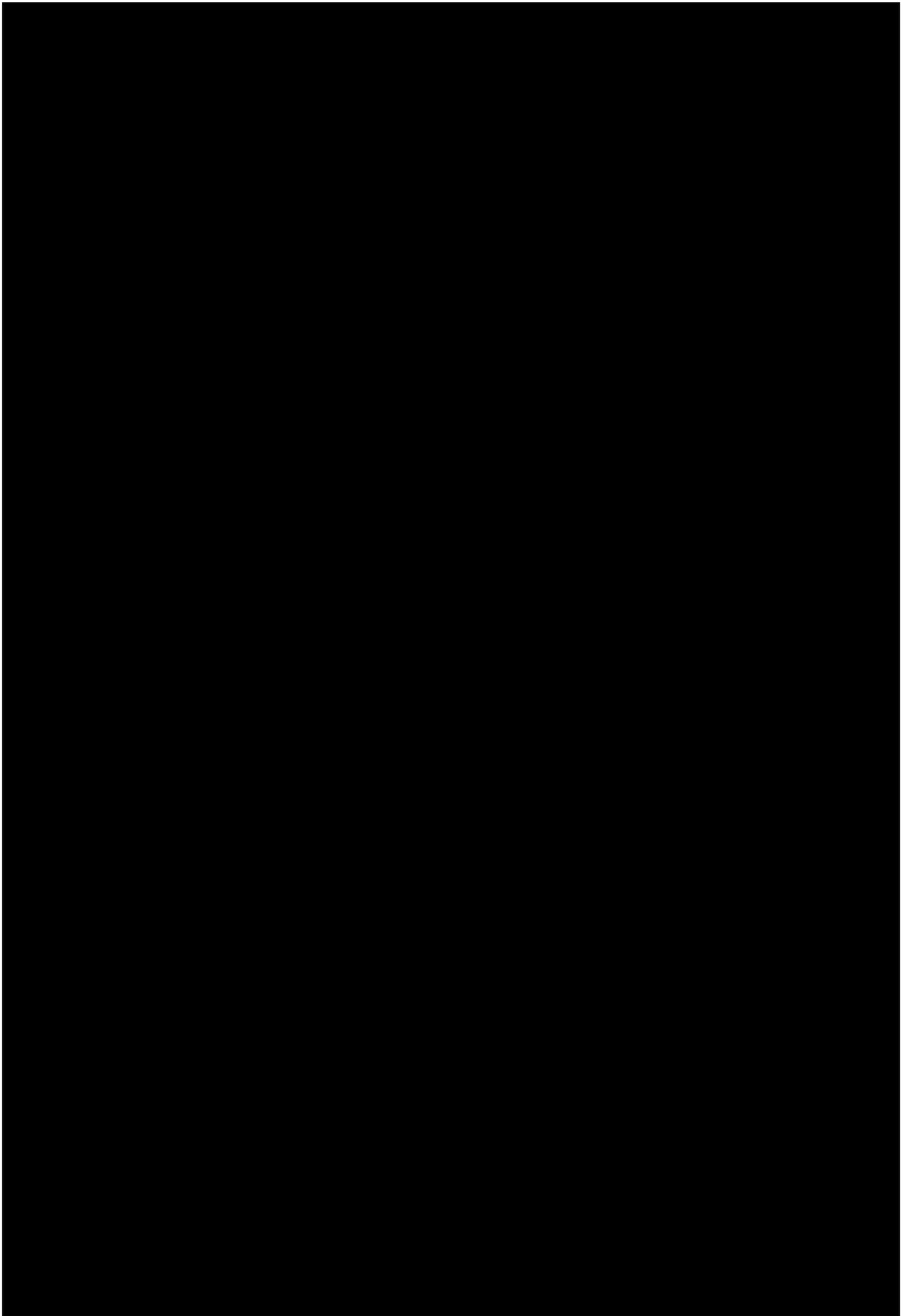


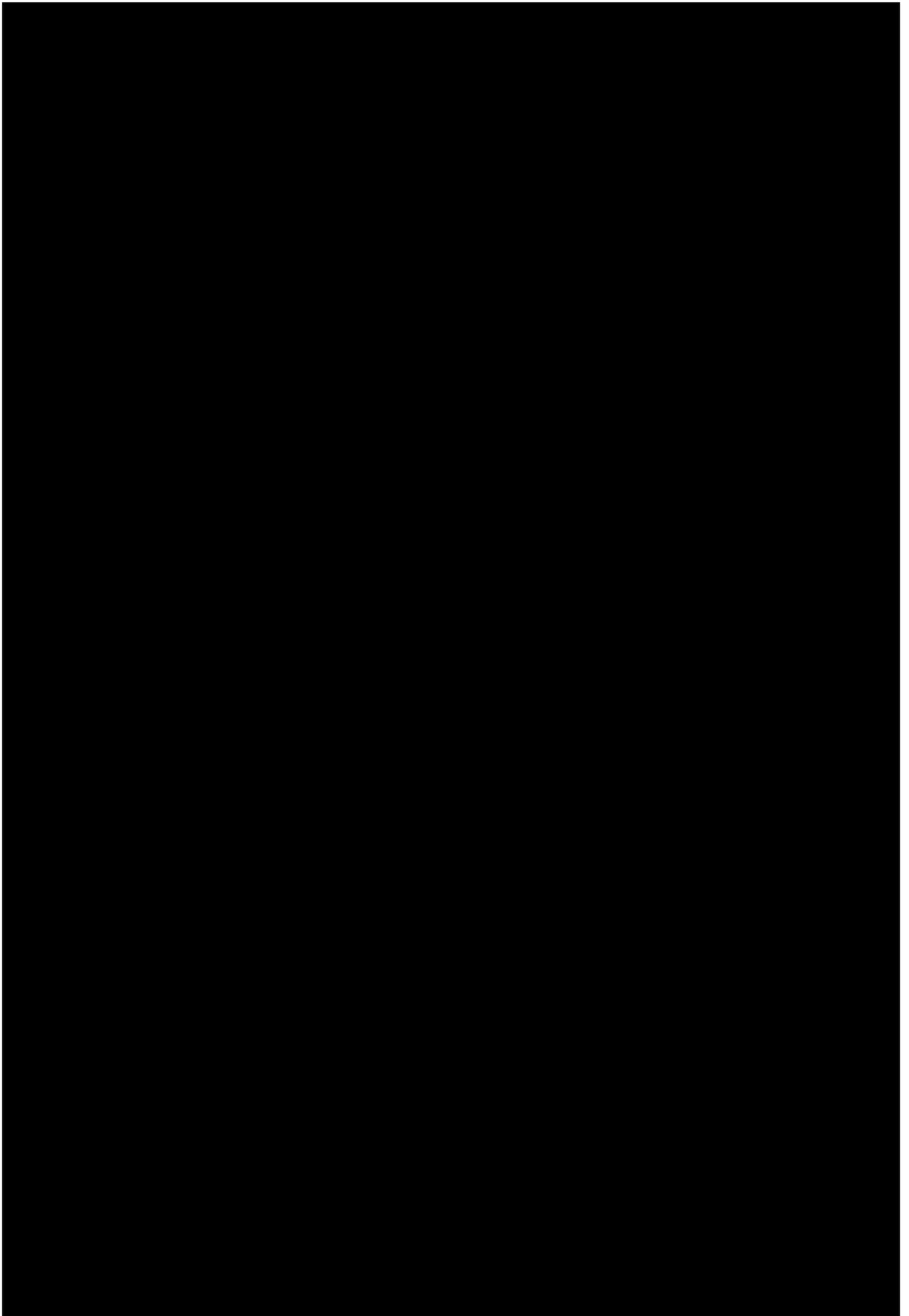


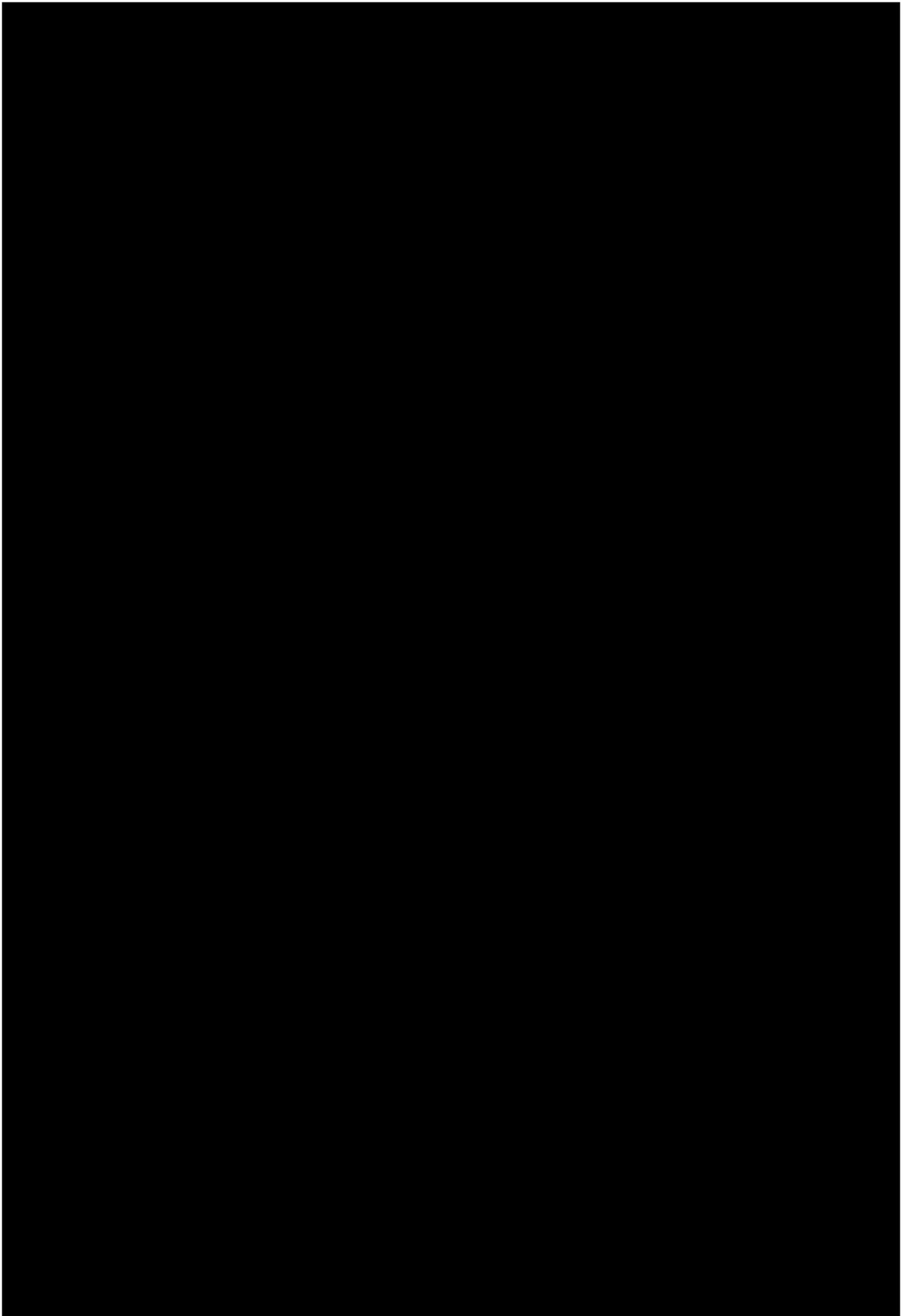


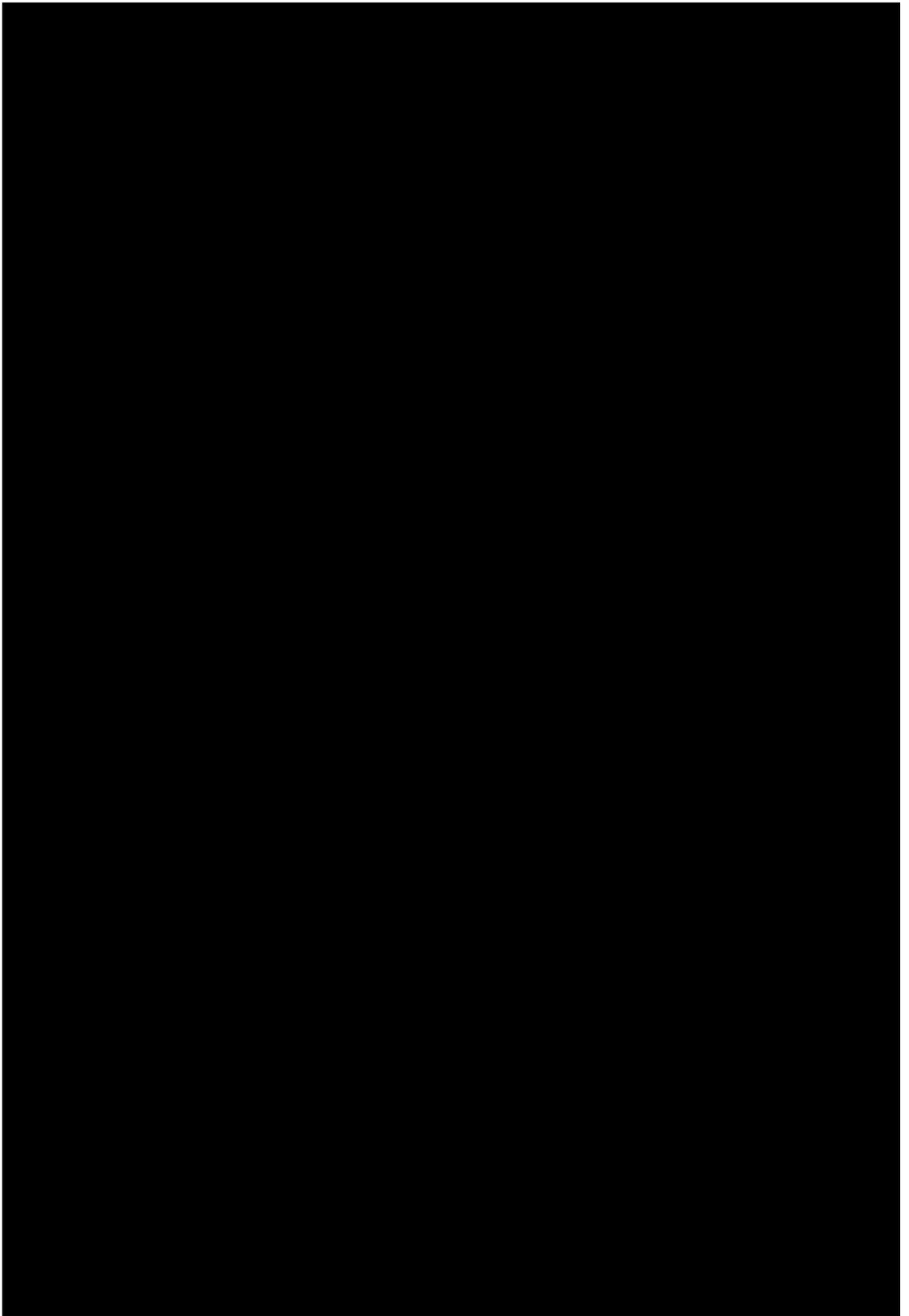












**SCHEDULE 19  
FORM OF VARIATION**

Agreement Parties: *[to be inserted]*

Agreement Reference Number: *[to be inserted]*

Variation Number: *[to be inserted]*

Framework Client Contact Telephone: *[to be inserted]*

Email: *[to be inserted]*

Date: *[to be inserted]*

**AUTHORITY FOR VARIATION TO AGREEMENT**

Pursuant to Clause 37 of this Framework Agreement, authority is given for the variation to the Services as detailed below. The duplicate copy of this form must be signed by or on behalf of the Contractor and returned to the Framework Manager as an acceptance by the Contractor of the variation shown below.

| <b>DETAILS OF VARIATION</b>     | <b>AMOUNT (£)</b> |
|---------------------------------|-------------------|
|                                 |                   |
| <b>ALLOWANCE TO THE CLIENT</b>  |                   |
| <b>EXTRA COST TO THE CLIENT</b> |                   |
| <b>TOTAL</b>                    |                   |

.....  
For the Framework Client

| <b>ACCEPTANCE BY THE CONTRACTOR</b> |               |
|-------------------------------------|---------------|
| <b>Date</b>                         | <b>Signed</b> |

**SCHEDULE 20**

**NOT USED**

**SCHEDULE 21**

**NOT USED**

## **SCHEDULE 22**

### **EQUALITY, DIVERSITY AND INCLUSION**

1. For the purposes of this Schedule, unless the context indicates otherwise, the following expressions shall have the following meanings:

- “EDI Action Plan”** means the strategic equality diversity and inclusion action plan as per the template attached as Appendix 2 and updated during the Framework Term.
- “Minimum Records”** means all information relating to the Contractor's performance of and compliance with Clause 2.1 and the adoption and implementation of an EDI Action Plan, by each Subcontractor and, where applicable, subject to the provisions of Clause 2.1, Indirect Subcontractor of the Contractor.

#### **2. Equality, Diversity and Inclusion (“EDI”)**

##### **2.1 EDI Action Plan**

2.1.1 For the duration of the Framework Agreement, the Contractor shall comply with the agreed EDI Action Plan and shall procure that each of its Subcontractors:

2.1.1.1 adopts and implements; and

2.1.1.2 in respect of Indirect Subcontractors uses reasonable endeavours to procure that those Indirect Subcontractors adopt and implement an EDI Action Plan in respect of their respective employees engaged in the performance of the Framework Agreement which is at least as extensive in scope as that agreed with the Framework Client and set out in the EDI Action Plan.

##### **2.2 Monitoring and Reporting**

2.2.1 Subject to Clause 2.2.2, the Contractor shall use reasonable endeavours to provide the Framework Client on the Framework Agreement Service Commencement Date and subsequently every 12 months from the date or such other frequency as the Framework Client may reasonably request of this Framework Agreement with the following information:

2.2.1.1 an annual report on performance and compliance with the equality, diversity and inclusion provisions as set out in Clause 2.1. The annual report should set out:

- (i) the performance of the Contractor over the past 12 months in relation to the EDI Action Plan;
- (ii) employee breakdown: the proportion of the Contractor's employees engaged in the performance of the Framework Agreement to the extent reasonably possible, the employees of its Subcontractors or Indirect Subcontractors engaged pursuant to the terms of the relevant subcontracts in the performance of the Framework Agreement who are:
  - of non-white British origin or who classify themselves as being non-white British;
  - female;
  - from the local community;
  - disabled;
- (iii) expenditure breakdown: a statement broken down by activity and material type of how they have used and how much has been spent with:
  - Small and Medium Enterprises;
  - Black, Asian and Minority Ethnic businesses; suppliers from other under-represented or protected groups;
  - suppliers demonstrating a diverse workforce composition;
- (iv) the Contractor's annual EDI Action Plan containing actions which:
  - support the equality and diversity requirement within this Schedule;
  - have realistic target dates assigned and be challenging but achievable;
  - have been presented to and agreed by the Framework Client before the Framework Agreement Service Commencement Date or during the month preceding the next anniversary of the Framework Agreement Service Commencement Date;
  - will include progress and approval (where due) of actions monitored via a four weekly (or as otherwise agreed) progress meeting with the Framework Client. The Contractor shall provide a written update prior to the progress meetings and should request additional meetings (if necessary) with the Framework Client to discuss progress or seek sign-off for completed actions.

2.2.2 The Contractor shall ensure at all times that it complies with the requirements of the Data Protection Act 2018 in the collection and reporting of the information to the Framework Client pursuant to clause 2.2.1.

### 2.3 **EDI Audit**

2.3.1 The Framework Client may from time to time undertake any audit or check of any and all information regarding the Contractor's compliance with the provisions of this Schedule in accordance with Schedule 15 (Audit and Surveillance Regime).

## APPENDIX 1 TO SCHEDULE 22

### Equality, Diversity and Inclusion Definitions

#### General Equality, Diversity and Inclusion Definitions

##### 1. Black Asian and Minority Ethnic (BAME) Groups

This term refers to all ethnic groups who have a common experience of discrimination based on their skin colour or ethnic origin. Individuals may self-identify in different ways but BAME is the collective term used by the Framework Client to describe people who may have this range of experiences.

##### 2. Young adults – generally defined as ages 16 – 24, whether in education or employment.

Children and young people can be further subdivided into:

- (i) Young children – those that use the transport network escorted by parents or carers.
- (ii) School children – those, usually at secondary school, that use the transport network independently or with members of their peer group.

##### 3. Disability

The Equality Act 2010 defines disability as physical or mental impairment that has a 'substantial' and 'long-term' negative effect on a person's ability to do normal daily activities. The social model of disability defines disability as the effect of the barriers, discrimination and disadvantages faced by disabled people, not the impact of their specific impairment.

The Framework Client also supports the social model of disability which means we focus more on identifying the barriers faced by disabled people and not their impairments.

##### 4. Diversity

Diversity is about recognising, respecting and valuing a wide set of differences and understanding that the opportunities we get are impacted by characteristics beyond those protected by legislation like class, family background, political views, union membership etc.

##### 5. Equality

Equality is about recognising and respecting differences, including different needs, to ensure that everyone: can live their lives free from discrimination, knows their rights will be protected, and has what they need to succeed in life. It is about ensuring equality of opportunity by tackling the barriers that some groups face, and making London fairer by narrowing the social and economic divides that separate people. The characteristics protected by equality legislation are age, disability, gender, gender reassignment, ethnicity, pregnancy and maternity, religion and/or belief and sexual orientation.

## 6. Equality Impact Assessments (EqIA)

As a public body the Framework Client needs to respond positively to the Public Sector Equality Duty (PSED). This part of the Equality Act 2010 requires public bodies and organisations that carry out public functions<sup>1</sup> to consider everyone's needs when doing so. An Equality Impact Assessment (EqIA) is a tool used to demonstrate that we have met the PSED duties within the Equality Act 2010. Like a risk assessment process, an EqIA is a process that helps us to make more inclusive decisions and to make sure that our programmes, policies, projects and the way we design build and operate services works well for our staff and our customers.

## 7. Ethnicity

An individual's identification with a group sharing any or all of the following: nationality, lifestyles, religion, customs and language.

## 8. Gender

The social differences between women and men that have been learned are changeable over time and have wide variations both within and between cultures. The term is often used to differentiate from 'sex' a term referring to biological differences. It is important to note that some people considered themselves to be gender fluid (someone whose sense of their gender may vary) or gender non-binary (someone who does not wish to be defined as male or female).

## 9. Gay

This term is preferable when referring to gay men or women. The word 'homosexual' (implying a condition or illness) can be seen as an offensive term by gay people. The word 'gay' is normally attributed to men. However at times it can be used as an all-encompassing term for gay men, lesbians and bisexual people.

## 10. Inclusion

Means removing barriers and taking steps to create equality, harness diversity and produce safe, welcoming communities and cultures that encourage innovative and fresh ways of thinking and allow people to speak up, especially to suggest where things could be done better.

## 11. Inclusive Design

Inclusive Design creates environments which everyone can use to access and benefit from the full range of opportunities available; confidently, independently, with choice and dignity, which avoids separation or segregation and is made up of places and spaces that acknowledge diversity and difference, meeting the needs of everyone in society.

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<sup>1</sup> Our functions include everything we are required to do plus everything we are allowed to do e.g. policy decisions, budgetary decisions, public appointments, service provision, statutory discretion, individual decisions, employing staff and procurement of goods or services.

12. Minority-led businesses

Are businesses where over 51% of the senior management team or its owners are from a minority ethnic community.

13. Pay gap

Is the difference between the average pay of two different groups of people, for example men and women, or groups from different ethnic backgrounds.

14. Sexual Orientation

A person's emotional, physical and/or sexual attraction, and the expression of that attraction.

15. Supplier Diversity

For the purposes of the Framework Client's Equality, Diversity and Inclusion Programme, diverse suppliers are from one of the following five categories:

15.1 Small and Medium Enterprises (SMEs).

A small enterprise is a business which has both 0-49 full-time equivalent employees and either;

- Turnover per annum of no more than £5.6 million net (or £6.72 million gross) in the last financial year; or
- Balance sheet total of no more than £2.8 million net (£3.36 million gross).

A medium enterprise is a business which has both 50-249 full-time equivalent employees and either;

- Turnover per annum of no more than £22.8 million net (or £27.36 million gross) in the last financial year; or
- Balance sheet total of no more than £11.4 million net (or £13.68 million gross).

15.2 A minority-led business is a business which is 51% or more owned by members of one or more BAME groups. Minority ethnic groups are all people including those who have classified themselves as members of ethnic groups other than 'white British'. The minority ethnic classification groups used by the Framework Client for monitoring purposes are those taken from the census:

| <b>Ethnic group</b> | <b>Racial Origin</b>                |
|---------------------|-------------------------------------|
| White British       | Irish<br>Any other White background |

|                               |   |
|-------------------------------|---|
| Mixed                         | White & Black Caribbean<br>White & Black African<br>White & Asian<br>Any other Mixed background |
| Asian or Asian British        | Indian<br>Pakistani<br>Bangladeshi<br>Any other Asian background                                |
| Black or Black British        | Caribbean<br>African<br>Any other Black background  |
| Chinese or other Ethnic Group | Chinese<br>Any other ethnic group   |

15.3 A supplier from an under-represented group which is 51% or more owned by members of one or more of the following groups (where not covered by previous definitions):

- Women
- Disabled people
- Lesbians, gay men, bisexual
- Trans people
- Older people (aged 60 or over),
- Younger people (aged 24 or under)

15.4 A supplier from a protected group is one which is 51% or more owned by members of a group for which protection is provided by anti-discriminatory legislation and which is not already covered by the above (such as religious, faith or belief groups or alternatively, ownership by a social enterprise or a voluntary/community organisation).

15.5 Suppliers demonstrating a diverse workforce composition are those with full time equivalent employees in the supplier's workforce who may be from one or more minority ethnic groups, and/or under-represented groups and/or protected groups as listed above.

15.6 Trans or transgender

Is the current terminology for people who do not want to live as the sex they were assigned at birth. Trans man (someone assigned as female at birth and wants to be accepted as male), trans female (someone assigned male at birth and wants to be accepted as female), The Equality Act 2010 uses the term gender reassignment, in terms of providing protection for discrimination, harassment and victimisation for those who are considering, are currently or plan to reassign their gender.

## APPENDIX 2 TO SCHEDULE 22

### Equality, Diversity and Inclusion (EDI) Action Plan Template

- 1 The Framework Client's approach to EDI is founded upon Inclusive London, the Mayor's Equality, Diversity and Inclusion Strategy which can be found at: <https://www.london.gov.uk/sites/default/files/mayors-equality-diversity-inclusion-strategy.pdf>. This sets out his vision for a fairer, more equal, integrated city where all people feel welcome and able to fulfil their potential.
- 2 The GLA RPP sets out how the Framework Client will encourage EDI by:
  - Removing barriers in procurement approaches and processes that inhibit Small to Medium Enterprises (SMEs), community sector organisations, diverse enterprises and under-represented groups from easily entering the supply chain. The Framework Client's procurement processes will be transparent, straightforward, and open to the whole of the supplier community;
  - Paying suppliers promptly and paying SME suppliers within ten (10) Business Days, in recognition of their specific challenge around cash flow, and encouraging our supply chain to adopt supportive practices;
  - Reviewing requirements to ensure the goods and services procured support EDI within the Framework Client's own workforce and supply chain;
  - Identifying opportunities to encourage suppliers to employ a workforce that is representative of the diversity of London's population and provide services that are inclusive;
  - Working with organisations (and their supply chains) that have a good track record and can clearly demonstrate promoting EDI within their own organisations; and
  - Maximising relevant opportunities to work with voluntary and community sector organisations including social enterprises in supply and service delivery.
- 3 Within sixty (60) Business Days of the Framework Agreement Commencement Date, the Contractor shall produce and submit to the Framework Manager for acceptance an Equality, Diversity and Inclusion (EDI) Action Plan.
- 4 The EDI Action Plan shall be specific to the Framework Agreement and as a minimum:
  - (a) explain the steps that the Contractor will take to tackle discrimination, harassment and victimisation on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation;
  - (b) outline the recruitment policies and procedures to ensure that the Contractor does not discriminate or create unequal rates of pay between different protected groups, particularly in relation to disability, ethnicity and gender;
  - (c) detail the steps the Contractor will take to publicise vacancies to encourage applicants from disadvantaged or underrepresented groups and have

measures in place to proactively recruit a diverse workforce including at a senior level;

- (d) demonstrate how the Contractor is actively engaging with local employment agencies and local unemployment programmes so that, as vacancies arise in respect of providing the Framework Agreement, local people, particularly from groups who are underrepresented in the workforce, are made aware of these opportunities; and
- (e) detail the procedures for creating safe and inclusive workplaces including ways to deal with bullying, harassment and grievances, requests for reasonable adjustments / flexible working and staff assigned to deal with issues of this nature and a robust mechanism for implementation.

5 The EDI Action Plan shall include the following with respect to training:

- (a) detail which staff are to receive training and what the nature of the particular training will be;
- (b) clear guidance for managers on how to avoid discrimination, harassment and victimisation;
- (c) clear guidance for managers on how to promote EDI within recruitment, training and appraisal;
- (d) appropriate training on delivering inclusive products and services is available to all relevant employees; and
- (e) indicate the types and levels of training, evaluation processes, and how impact will be monitored.

6 Below is a template for EDI Action Plans, with some example EDI objectives. The Contractor shall develop their own format which is relevant to the Framework Agreement, but with consideration of the below template.

| EDI Objective   | Current position/<br>baseline       | Action | Timing | Person responsible | Resources |
|---|-------------------------------------|--------|--------|--------------------|-----------|
| Recruit and retain a workforce reflective of the local area | From workforce diversity statistics |        |        |                    |           |
| Move all staff onto London Living Wage                      |                                     |        |        |                    |           |
| Collect and analyses diversity data                         |                                     |        |        |                    |           |
| Reduce gender pay gap                                       |                                     |        |        |                    |           |
| Inclusive recruitment training for hiring managers          |                                     |        |        |                    |           |
| Managing diversity for all line managers/ supervisors       |                                     |        |        |                    |           |
| Inclusive customer service for all public facing staff      |                                     |        |        |                    |           |

7 Key policy documents such as an EDI policy should be appended to the EDI Action Plan.

8 The Contractor shall use the below resources in order to help develop their EDI Action Plan.

|  |   |
|--|---|
| Mayor's Good Work Standard                       | <a href="https://www.london.gov.uk/what-we-do/business-and-economy/supporting-business/what-mayors-good-work-standard">https://www.london.gov.uk/what-we-do/business-and-economy/supporting-business/what-mayors-good-work-standard</a>   |
| Equality and Human Rights Commission             | <a href="https://www.equalityhumanrights.com/sites/default/files/good_equality_practice_for_employers_equality_policies_equality_training_and_monitoring.pdf">https://www.equalityhumanrights.com/sites/default/files/good_equality_practice_for_employers_equality_policies_equality_training_and_monitoring.pdf</a> |
| Stonewall  | <a href="https://www.stonewall.org.uk/creating-inclusive-workplaces/best-practice-toolkits-and-resources">https://www.stonewall.org.uk/creating-inclusive-workplaces/best-practice-toolkits-and-resources</a>   |
| Chartered Institute of Personnel and Development | <a href="https://www.cipd.co.uk/knowledge/fundamentals/relations/diversity">https://www.cipd.co.uk/knowledge/fundamentals/relations/diversity</a>   |
| Inclusive Employers                              | <a href="https://www.inclusiveemployers.co.uk/resources">https://www.inclusiveemployers.co.uk/resources</a>   |
| Business in the Community                        | <a href="https://www.bitc.org.uk/campaigns-programmes/employment-diversity/DiversityInclusion">https://www.bitc.org.uk/campaigns-programmes/employment-diversity/DiversityInclusion</a>   |
| Employers for Carers                             | <a href="https://www.employersforcarers.org/">https://www.employersforcarers.org/</a>   |
| Disability Rights UK                             | <a href="https://www.disabilityrightsuk.org/">https://www.disabilityrightsuk.org/</a>   |

9 The Contractor shall review and, if necessary, revise the EDI Action Plan annually on the date of the first accepted plan and submit the revised plan to the Framework Manager for acceptance.

## **SCHEDULE 23**

### **TfL POLICIES**

- Equality and Inclusion Best Practice Guidelines
- Drugs and Alcohol Policy and Procedure
- Bullying and Harassment Policy and Procedure
- Business Ethics Policy
- Safety and Wellbeing Policy