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City and County of San Francisco

OFFICE OF CONTRACT ADMINISTRATION

Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685

LICENSE, SUPPORT, AND HOSTING AGREEMENT

BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO

AND

Epic City Government, LLC

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This agreement (the "Agreement") is made by and between the City and County of San Francisco, State of California, by and between: Epic City Government, LLC, hereinafter referred to as "Contractor" or "Epic" and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City" or "You" acting by and through its Director of the Office of Contract Administration (collectively, City and Contractor are the "Parties").

Recitals

WHEREAS, a Request for Proposal ("RFP") was issued on January 17, 2017, and City selected Contractor as the highest qualified scorer pursuant to the RFP;

WHEREAS, approval for this Agreement was obtained by the San Francisco Board of Supervisors by Ordinance attached hereto as Exhibit 9;

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number PSC # 48637 – 17/18 on November 20, 2017;

WHEREAS, Contractor will provide certain software, support, and hosting services required by City as set forth under this Agreement; and

WHEREAS, the terms of this Agreement are to be read and interpreted together with all other documents, appendices, exhibits, and addenda attached to the Agreement as a single agreement.

Terms

Now, THEREFORE, the Parties agree as follows:

ARTICLE 1 – DEFINITIONS

Defined terms are listed in Appendix C.

ARTICLE 2 - TERM OF THIS AGREEMENT

1. Effective Date of the Agreement.

Following execution by both Parties, this Agreement shall become effective on the date the Controller has certified the availability of funds in writing ("Effective Date") for the Agreement ("Certification of Funds"). City will notify Contractor in writing of the Certification of Funds, and Contractor's obligations under this Agreement will begin following such notice. City represents that City has budgeted the anticipated fees that City is agreeing to pay under the Agreement, including, without limitation, the anticipated software, Hosting Services and Service fees, which amounts are subject to the Controller's Certification of Funds.

2. Initial Term.

Subject to the Controller's Certification of Funds, the Term of this Agreement shall commence upon the Effective Date and shall continue for a period of 10 years, with charges as outlined in Exhibit 1(a)-1 (Calculation of Charges), Exhibit 1(a)-2 (Payment Plan Pricing Details), and Exhibit 1(a)-4 (Implementation Payment Plan Schedule) unless earlier terminated in accordance with the provisions of this Agreement.

3. City Option.

The Parties shall have the right to extend the term of this Agreement for one or more additional terms as mutually agreed in a Formal Amendment, subject to the approval of the San Francisco

ARTICLE 3 - FINANCIAL MATTERS

4. **Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.**

The City has informed Contractor that this Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after the Controller's Certification of Funds, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such Certification of Funds as listed in Exhibit 1(a)-1 (Calculation of Charges), except as increased or decreased by Formal Amendment of this Agreement and further certified by the Controller. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. However, in any case, Uncontested Amounts incurred during the period certified will be paid from the project budget as listed in Exhibit 1(a)-1 (Calculation of Charges). City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration of this Agreement. Notwithstanding anything to the contrary in the Agreement, Contractor is under no obligation to provide software or perform services for which City has not obtained Certification of Funds.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

5. **Guaranteed Maximum Price ("GMP").**

City has informed Contractor of the following:

The GMP for this Agreement is $167,384,597. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the Agreement unless the Agreement is amended in writing and approved as required by law to authorize additional services, materials, equipment or supplies. The City is not required to reimburse Contractor for services, materials, equipment or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment and supplies agreed upon in this Agreement and which were not approved by a Formal Amendment to the Agreement having been lawfully executed by the City. The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for this Agreement which would exceed the maximum amount of funding provided for in the Agreement for Contractor's performance under the Contract. Additional funding for the Agreement in excess of the maximum provided in the Agreement shall require lawful approval and certification by the Controller of the City and

County of San Francisco. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

Contractor understands that, of the GMP dollar obligation listed above, $17,934,064 are included as a contingency amount to be used by the City through a written City Program Budget Revision, in the City's sole discretion, subject to the prior written approval by the City's Contract Administrator. Contractor further understands that no payment of any portion of this contingency amount will be made unless and until such City Program Budget Revision has been fully approved and executed in accordance with applicable City and Department of Public Health rules, regulations and policies/procedures and certification as to the availability of funds by Controller.

6. City Approval.

No payment will be due to Contractor until the terms for payment set forth in the Agreement have been satisfied. City may withhold Contested Amounts from Contractor. Contractor shall not stop work as a result of City's withholding Contested Amounts.

7. No Interest or Late Fees.

In no event shall the City be liable for interest or late fees for overdue invoices except as expressly set forth in the Agreement.

8. Graduated Payment for Program Property Implementation.

A schedule setting forth a graduated payment is set forth in Exhibit 1(a)-4 (Implementation Payment Plan Schedule).

9. Payment Does Not Imply Acceptance of Work.

The granting of any payment by City shall not imply the City's acceptance of any work performed by Contractor under this Agreement.

10. Compensation.

10.1.   Payment.

Contractor shall provide invoices to the City in accordance with the terms of this Agreement. City will pay all funds due to Contractor by 45 days after the date the invoice was received by City after being submitted in accordance with the requirements set forth in Section 10.2 of the Agreement (which receipt will be deemed to have occurred successfully unless Contractor receives an email message indicating that the invoice was not submitted in compliance with Section 10.2). During such 45 day period, City may conduct its required compliance checks and processes, and if City identifies a potential Contractor compliance issue, it will promptly inform Contractor. If a payment for an Uncontested Amount remains unpaid after the 45 day period, Contractor will give written notice to City and if the payment for the Uncontested Amount remains unpaid 45 days after receipt of such notice, then such Uncontested Amount may accrue interest until paid at the rate of the lesser of ▓▓▓▓▓▓▓▓▓▓▓▓▓▓▓▓▓▓▓ per month or the maximum rate allowed by law. All payments may be applied first to accrued and unpaid interest

charges and then to other amounts due to Contractor under this Agreement, as determined in Contractor's sole discretion. City agrees that if any Uncontested Amounts that City owes to Contractor remain unpaid more than one hundred eighty (180) days after such amounts are due to Contractor, Contractor may, in its sole discretion and with written notice to City, suspend the performance of Contractor's Services and the Hosting Services under this Agreement until such amounts are paid in full.

10.2. **Invoice Format.**

Invoices furnished by Contractor under this Agreement must be in a form mutually agreed upon and acceptable to the City's Contract Administrator, a sample of which is attached as Exhibit 1(e), "Invoice Format" (or such alternate form as the Parties mutually agree in writing with all requisite City approvals) and must include a unique invoice number. Payment shall be made by City to Contractor at the address specified in Section 76, "Payments to Contractor," or in such alternate manner as the Parties have mutually agreed upon in writing.

10.3. **Getting paid for goods and/or services from the City.**

10.3.1 As of the Effective Date, all City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City's Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach.

10.3.2 The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

10.4. **Audit and Inspection of Records.**

10.4.1 Contractor agrees to maintain and make available to the City, upon reasonable notice and during regular business hours, accurate books and records relating to its work under the Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement, in such a manner as not to unduly interfere with Contractor's operations. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all Subcontracts. In addition, Contractor understands that City is subject to a variety of types of audits, including audits of City's financial systems. Upon City's request, Contractor will reasonably cooperate with City's audit processes by providing City with information it generally makes available to its customers regarding its software, Services, and operations. If City believes additional information is required and after commercially reasonable efforts Contractor is not able or willing to provide such information, City may escalate the matter

in accordance with Section 79.1. Any books, records, or other materials subject to audit under this Section 10.4 may constitute Epic Confidential Information and are subject to all protections applicable to Epic Confidential Information under this Agreement and at law.

          10.4.2 Contractor shall annually have its books of accounts audited by a Certified Public Accountant and a copy of said audit report and the associated management letter(s) shall be transmitted to the Director of Health or his/her designee within one hundred eighty (180) calendar days following Contractor's fiscal year end date. Such audit report constitutes Epic Confidential Information and is subject to all protections applicable to Epic Confidential Information under this Agreement and at law.

11. Contract Amendments; Budgeting Revisions.

11.1. Formal Contract Amendment:

Contractor shall not be entitled to an increase in the Guaranteed Maximum Price or an extension of the Term unless the Parties agree to a Formal Amendment in accordance with the San Francisco Administrative Code and this Agreement.

11.2. City Revisions to Program Budgets:

The City shall have authority, without the execution of a Formal Amendment, to purchase product options and/or make changes to the work in accordance with the terms of this Agreement (including such terms that require Contractor's agreement), not involving an increase in the GMP or the Term by use of a written City Program Budget Revision.

ARTICLE 4 – LICENSE (RESERVED – INCLUDED IN APPENDICES A AND B)

ARTICLE 5 – CONTRACTOR SERVICES AND RESOURCES

12. Services Contractor Agrees to Perform.

Contractor agrees to perform the Services listed as its responsibility in Exhibits 2(a) and 4 (the Implementation and Maintenance and Hosting Scopes of Work, respectively). Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Services listed in such Exhibits and related Exhibits unless such Exhibits are modified in accordance with the terms of this Agreement.

13. Implementation Schedule.

Contractor understands and agrees that the Program Property must be implemented in accordance with the schedule and milestones set forth in the Appendix E: Initial Schedule (as such document is finalized and modified in accordance with the terms of this Agreement).

14. Qualified Personnel.

As detailed in Exhibit 2(a) (Implementation and Maintenance Scope of Work), Contractor shall use only competent personnel to perform work under this Agreement (i.e., personnel who are certified by Contractor to perform work under this Agreement or who have substantial experience with the relevant applications or services) under the supervision of, and in the employment of, Contractor (or Contractor's authorized Subcontractors). Such Contractor personnel will be comprised of a mix of experienced staff and newly certified staff. Less experienced Contractor personnel are supervised by Contractor's Implementation Executive, Implementation Director and other experienced staff. Contractor shall commit adequate resources to allow timely completion of its responsibilities. City shall commit adequate

resources to allow timely completion of its responsibilities. As set forth in Section 7(a) of Appendix B (Hosting Terms), Contractor will provide the Hosting Professional Services in a competent and workmanlike manner (including that the personnel providing such Services will have adequate skill, training, expertise, knowledge and/or experience to perform the applicable Hosting Professional Services).

15. Project Coordination – Implementation Phase

In order to facilitate communication during its implementation of the Program Property, Each party will designate a Project Director to coordinate with each other concerning administration of this Agreement. The Parties anticipate that Contractor's Implementation Director will be on site at City's facilities approximately 150 days over the course of the implementation, as needed for Contractor to comply with the Implementation Schedule milestones and activities set forth in Exhibit 2(a) (Implementation and Maintenance Scope of Work).

15.1. **Key Personnel List.**

Contractor shall provide a list of Key Personnel roles that shall be contained in Exhibit 2(a) (Implementation and Maintenance Scope of Work). At City's request, Contractor will provide City with resumes showing the qualifications and experience of the Implementation Executive and the Implementation Director whom Contractor proposes to assign to City's project and allow City leadership to speak or meet with such individuals prior to City's implementation project kick-off. The City maintains the right to refuse such proposed staff.

15.2. **Continuity of Personnel; Key Personnel Replacement.**

Contractor will comply with City's reasonable requests regarding removal of personnel assigned to City's implementation team, after City has had an opportunity that is reasonable under the circumstances to evaluate the individual's performance. If City makes such a removal request to Contractor and includes at least a brief summary of City's concerns regarding such individual's performance, Contractor will promptly investigate the situation and comply with City's request unless Contractor reasonably disagrees with City, in which case City and Contractor will discuss the situation and resolve it promptly, with Contractor making the replacement as promptly as is reasonably practicable if City continues to so request. Any removal directive by the City must be made in writing on 14 calendar days' notice and must provide grounds for removal. Notwithstanding the foregoing, the City shall have the right acting in its sole discretion to request the removal of any Contractor personnel upon a determination that such removal is in the City's best interests. City will not request any removal in violation of any federal, state or local law.

Except upon City's request or in the event of termination, death, disability, leave of absence, promotion, personal request, or other circumstance out of Contractor's control, Contractor shall use its commercially reasonable efforts to maintain the same Key Personnel on the Contractor implementation team throughout the implementation phase described in Exhibit 2(a) (Implementation and Maintenance Scope of Work). Contractor understands and agrees that loss of any Key Personnel member may result in project disruption, inefficiencies, and/or delay, as well as the need for a new resource to transition into the role. City understands that the replacement of City staff on the project could have an adverse impact on the timely completion of the implementation, and City will seek to avoid the replacement of City's staff.

If Contractor needs to replace a Key Personnel member, Contractor shall seek to inform the City in writing in advance before the date the Key Personnel member shall be replaced, if feasible

under the circumstances. To the extent that Key Personnel are employees of a Contractor Owned Entity, the City shall have the same rights of removal as if the Key Personnel were employees of Contractor.

16. Project Coordination – Maintenance Phase

In order to facilitate communication during the Maintenance Program, the Parties shall define Key Maintenance roles and responsibilities that shall be defined in Exhibit 2(a) (Implementation and Maintenance Scope of Work).

17. Protect Coordination – Hosting

In order to facilitate communication with respect to the Hosting Services and Hosting Professional Services, the Parties shall define hosting roles and responsibilities in Exhibit 4 (Hosting Scope of Work).

18. Progress Reports, Meetings, and Readiness Assessments.

Contractor will provide City with progress reports, and City and Contractor will hold project review meetings (including to review hosting readiness), all in accordance with Exhibit 2(a) (Implementation and Maintenance Scope of Work). City and Contractor will also conduct readiness assessments in accordance with Exhibit 2(a) (Implementation and Maintenance Scope of Work).

19. Alert Reports.

As detailed in Exhibit 2(a) (Implementation and Maintenance Scope of Work), both parties shall seek to be proactive about monitoring the implementation (including the hosting implementation) by promptly informing the other in writing on becoming aware of any change or problem that would materially and negatively impact completion or performance of each Item of Program Property, Third Party Software and Data, Services, Deliverables, the progress of tasks assigned or any scheduled work. The writing shall provide a detailed description of the issue and shall be provided to the City's Project Director or Contractor's Implementation Director, as applicable.

20. Correction of Substantive Program Errors before Go-Live.

As set forth in Section 8 of Appendix A (License Terms), Contractor shall use its best efforts to correct all Substantive Program Errors of which City has notified Contractor during the Warranty Period for an Item. At the City's option, acting in its sole discretion, the City may choose to delay First Live Use if it has concerns regarding outstanding Substantive Program Errors for an applicable Item. The remedy for failure to correct a Substantive Program Error ███████████ under Contractor's functionality warranty is set forth in Section 8 of Appendix A (License Terms).

21. First Live Use Dates.

City, acting in its sole discretion, will enable each Item of Program Property's First Live Use following written approval by the City's Project Director, as detailed in Exhibit 2(a) (Implementation and Maintenance Scope of Work).

22. Document Delivery.

Contractor will deliver completed Documentation Manuals in electronic format for each Item of Program Property promptly following the Effective Date of the Agreement, as detailed in Appendix A (License Terms).

23. Subcontracting.

Contractor may Subcontract portions of the Services as provided below. Contractor will be responsible to the City for the work performed by the Subcontractor to the same extent that Contractor would be if it were Contractor's own work. All other provisions of this Agreement will apply to the Subcontractor in the same manner and to the same extent as if the work were performed by Contractor. Contractor must provide the Subcontractor with a copy of those sections of this Agreement with which the Subcontractor must comply. If the Subcontractor needs access to the City's Confidential Information to perform the Subcontracted Services, Contractor may provide such access if the City provides its written prior written approval and Subcontractor first agrees in writing to comply with all confidentiality provisions contained in this Agreement that apply to such information, including execution of a Business Associate Agreement. Contractor shall bear responsibility for any Subcontract made in violation of this provision, subject to the terms of this Agreement. City's execution of this Agreement constitutes its approval of the Subcontractors listed below, including each such Subcontractor's access to City's Confidential Information.

23.1.   Subcontracting to Contractor Owned Entities.

Contractor may Subcontract any services to be performed under this Agreement to any Contractor Owned Entity at any time. The following is a list of the potential Contractor Owned Entities with whom Contractor may Subcontract. Contractor must inform the City in writing of additions to the Owned Entity list.

1. Epic Systems Corporation
2. Boost, Inc.
3. Epic Hosting, LLC
4. EpicCorps International, Inc.

23.2.   Subcontracting to Non-Contractor-Owned Entity Subcontractors.

Contractor also may Subcontract services to be performed under this Agreement to one or more other Subcontractors. Contractor must inform the City of the proposed Subcontractor and the services being Subcontracted. The City will have the right to reject the particular proposed Subcontractor, in which event Contractor may propose a different Subcontractor or Contractor or Contractor Owned Entity personnel may perform such services.

23.3.   Hosting Components.

Certain components used generally across Contractor's hosting operations and provided under the Hosting Terms and associated Exhibits may be provided by third party vendors (e.g., software licensors like Citrix or Microsoft, infrastructure providers, hardware or storage providers, security monitoring services, and telecommunications companies).

24. Independent Contractor

Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and Contractor is wholly responsible for carrying out its obligations under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. City is not liable as an employer for the acts or omissions of Contractor, its employees or its agents. City is not responsible for employment-related obligations and payments for Contractor employees or agents, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. City does not retain the right to control as an employer the means or the method by which Contractor performs work under this Agreement.

25. Assignment.

25.1   The Services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor except as provided in accordance with the terms of this Agreement. Any purported assignment made in violation of this provision shall be null and void.

25.2   Contractor may assign this Agreement either to any Owned Entity or pursuant to a complete assignment in conjunction with the transfer by sale of substantially all of Contractor's assets to a successor organization if the Owned Entity or successor organization (a) accepts a formal assignment of this Agreement in writing and (b) agrees to be bound by all of the Agreement's terms, including the terms of Article 18, Additional Requirements. Contractor will remain liable for Contractor's obligations under this Agreement if the successor organization fails to satisfy such obligations. A written notice of any such assignment shall be provided to City within 30 days of such Assignment, which assignment must be effected by a Formal Amendment to this Agreement in accordance with San Francisco Administrative Code Section 21.22. City will not unreasonably withhold its signature with respect to such Formal Amendment if the assignment meets the requirements set forth in this Section 25.2.

ARTICLE 6 - ACCEPTANCE TESTING (RESERVED – INCLUDED IN EXHIBIT 2(A))

ARTICLE 7 - FORCE MAJEURE

26. Force Majeure.

Neither Party shall be liable for any delay in the performance of its obligations under this Agreement: (i) if and to the extent such default or delay is caused, directly or indirectly, by: fire, war, terrorism, acts of a common enemy, third party criminal acts, embargo, any law or governmental regulations or labor dispute, flood, earthquake, elements of nature or acts of God; riots, civil disorders, network outages or any other cause beyond the reasonable control of such Party, and (ii) provided the Party uses commercially reasonable efforts to continue or resume its obligations through alternate sources, workaround plans or other means. If a force majeure event

occurs, the period of performance will be deemed extended to reflect such delay as agreed upon by the parties hereto.

ARTICLE 8 - CITY DATA

27. City Data

The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data shall remain the exclusive property of the City. Contractor is prohibited from using City Data except as authorized under this Agreement.

28. Access to and Extraction of City Data.

City shall have access to City's Data and the ability to extract City Data as detailed in the Hosting Terms and Exhibit 4 (Hosting Scope of Work).

29. Backup and Recovery of City Data.

Contractor is responsible for maintaining a backup of City Data and for an orderly and timely recovery of such data in the event of data corruption or interruption of Service, as further detailed in Exhibit 4 (Hosting Scope of Work).

30. Disaster Recovery Business Continuity Plan

Contractor shall work with City to assist City's development of its Business Continuity plan, as further detailed in Exhibit 2(a) (Implementation and Maintenance Scope of Work).

31. Disaster Recovery (DR) Services.

Contractor shall provide the City with disaster recovery services, as detailed in Exhibit 4 (Hosting Scope of Work). Upon either parties' written request, the parties will cooperatively plan and execute annual disaster recovery tests, which may include a temporary cutover to the disaster recovery environment (and City's personnel will participate in such tests to the extent requested by Contractor, including that the DR environment will be made available to City's analysts for validation after the temporary cutover). The Hosting Services will be subject to the service level agreements set forth in Exhibits 5(b) and 5(c).

ARTICLE 9 - CONFIDENTIAL INFORMATION

32. Confidentiality.

Subject to San Francisco Administrative Code §67.24(e) and to any state open records or freedom of information statutes, and any other applicable laws, the Parties agree to hold all Confidential Information in strict confidence. Additional terms related to such requirements are set forth in Section 77 below and Exhibit 8. Neither Party shall disclose to any person or entity the other Party's Confidential Information, except: (a) as required by law or court order; or (b) with the other Party's consent.

33. Business Associate Exhibit.

In order to address the requirements of certain state regulations and regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Parties agree to the terms of the Business Associate Exhibit that is attached as Appendix D to the Agreement.

ARTICLE 10 - DATA SECURITY (RESERVED – INCLUDED IN EXHIBIT 4 (HOSTING SCOPE OF WORK))

ARTICLE 11 - CONTRACTOR WARRANTIES (RESERVED – INCLUDED IN APPENDIX A (LICENSE TERMS))

ARTICLE 12 - INSURANCE

34. Insurance.
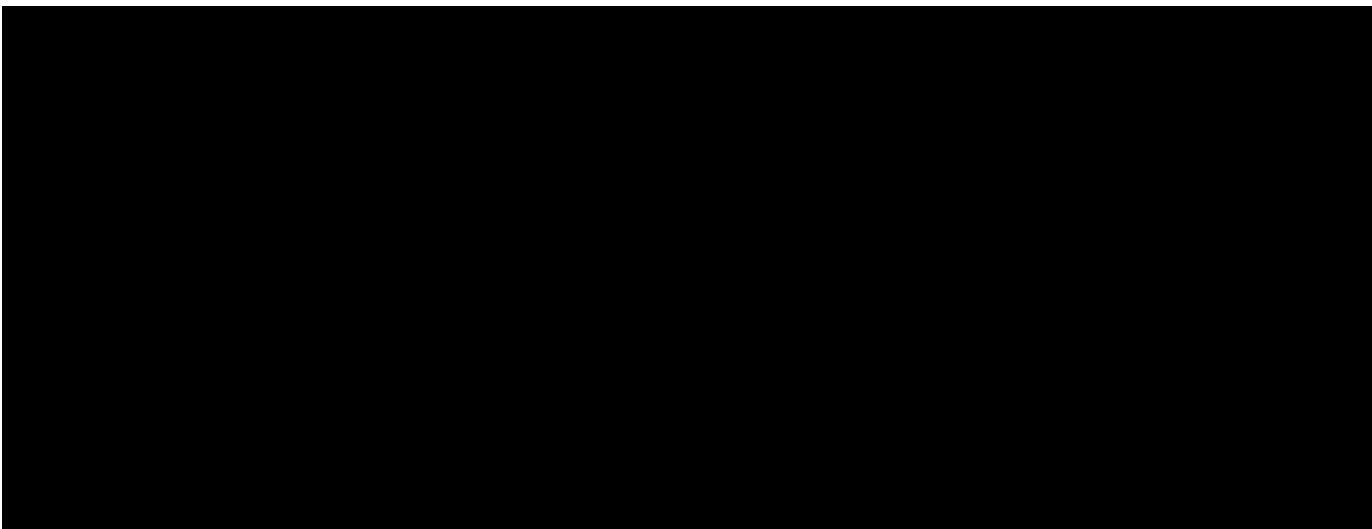
34.1.   Without in any way limiting Contractor's liability pursuant to the "Third Party Claims" section of this Agreement, Contractor must maintain in force, during the full Term of the Agreement, insurance in the following amounts and coverages:

(a)   Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than $1,000,000 each accident, injury, or illness; and

(b)   Commercial General Liability Insurance with limits not less than $1,000,000 each occurrence and $2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(c)   Commercial Automobile Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

Contractor shall be permitted to use excess, umbrella, or actuarially sound self-insurance (or a combination thereof) to meet the limits above in this section.

34.2.   Contractor also presently maintains Technology Errors and Omissions Liability coverage (including Cyber and Privacy Insurance), with limits of ███████ each occurrence and each loss, and ███████ general aggregate, which at a minimum covers professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and also provides coverage for the following risks:

(a)   Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(b)   Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

(c)   Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

[BLACK REDACTED BOX]

34.4.   Commercial General Liability (other than for claims arising from the provision of patient care) and Commercial Automobile Liability Insurance policies must be endorsed to provide:

[BLACK REDACTED BOX]

(b)   That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

34.5.   Regarding Workers' Compensation, each Party hereby agrees to waive any rights to subrogation which that Party or its insurer may have with respect to any and all claims that are covered by Workers' Compensation. Unless self-insured, each Party agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

34.6.   Thirty (30) days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no fewer than ten (10) days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 75, entitled "Notice to the Parties."

34.7.   Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the Term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the Term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

34.8.   Should any required insurance lapse during the term of this Agreement, City has informed Contractor that requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date.

34.9.   Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above.

For purposes of the preceding sentence, "satisfactory" shall mean consistent with the terms of this Section.

34.10. Approval of the insurance by City shall not relieve, decrease or increase the liability of Contractor hereunder.

ARTICLE 13 – THIRD PARTY CLAIMS

35. Intellectual Property Indemnifications

35.1. **Epic's Intellectual Property Indemnification.**

Contractor agrees to defend or settle, and to indemnify and to hold City's Indemnitees harmless from, any third-party Claim brought against any of City's Indemnitees to the extent that: (1) it is a Claim of infringement of any patent, copyright, or trademark, or misappropriation of trade secrets (excluding trade secrets disclosed to Contractor by City or City's Personnel) in each case enforceable in the United States; (2) it is either (a) based on the Program Property in the form supplied to City by Contractor and City's use of that Program Property in accordance with the Documentation Manuals and this Agreement or (b) based on the Hosting Services in the form provided to City by Contractor and City's use of such Hosting Services in accordance with this Agreement; and (3) it is not based on (i) the use of the Program Property in combination with other hardware (for example, use of the Program Property in combination with an infusion pump) or software except for third party software embedded in the Program Property or (ii) the Hosting Services in combination with third party hardware or software (except to the extent that use of the Hosting Services alone would constitute infringement).

City will promptly notify Contractor in writing of the Claim, promptly provide Contractor with the information reasonably required for the defense of the same, and grant to Contractor exclusive control over its defense and settlement. Contractor will not enter into a settlement acknowledging any fault on a City Indemnitee's part (other than a finding that there was infringement) without City's prior written consent, such consent not to be unreasonably withheld.

With respect to the Program Property, if such a Claim is or Contractor determines may be brought by a third party, Contractor may, at its sole option and expense:

(a) procure the right for City to continue to use the Item of Program Property that is the subject of the Claim (or a portion thereof, including as the Program Property may be modified, replaced or reduced as provided below); or

(b) modify or replace the Item of Program Property that is the subject of the Claim or a portion of the Program Property such that the modified or replaced Program Property has substantially similar or better capabilities than the version of such Item of Program Property as of the date of the Claim; or

(c) modify, replace or remove the Item of Program Property that is the subject of the Claim or a portion of the Program Property such that the resulting Program Property has capabilities substantially similar to or better than the version of such

Item of Program Property as of the date of this Agreement (including replacing the infringing Item with a prior release of such Item);

or, if Contractor determines that none of the foregoing is technically feasible or commercially reasonable,

(d)   modify, replace or remove the Item of Program Property that is the subject of the Claim or a portion of the Program Property such that the resulting Program Property may have fewer capabilities than the version of such Item of Program Property as of the date of the Agreement but is non-infringing. Contractor will use all reasonable commercial efforts to minimize such elimination of capabilities, and where commercially reasonable to replace eliminated capabilities with non-infringing substitute capabilities or other workaround solutions. If there is a material reduction in the capabilities of the resulting Program Property as a result, then City will have the option to terminate the license to and Maintenance Program for the Item of Program Property that is the subject of the Claim;

or, if Contractor determines that none of the foregoing is technically feasible or commercially reasonable,

(e)   terminate the City's license to, and the Maintenance Program solely for, the Item of Program Property that is the subject of the Claim.

Upon termination by either Contractor or the City, as applicable, of an Item of Program Property under Section 35.1(d) or (e) of the Agreement, Contractor will repay to City the license fee City paid to Contractor for such Program Property less depreciation calculated on a straight line basis over a ten (10) year period from the Effective Date of this Agreement through the date that the license is terminated and the Item ceases to be used. For example, if the license fee of an Item is $100,000, and the license termination occurs at the end of the fifth year of the Agreement, then the license fee refund would be $50,000. Further, upon termination of a license to an Item in accordance with this paragraph, Contractor will also repay to City any prepaid but unaccrued maintenance fees for such Item, the Maintenance Program for such Item will terminate, and City's maintenance fees will be adjusted accordingly.

In addition, if a Claim of infringement is brought against City and such Claim would be subject to the indemnification set forth in Section 35.1 of the Agreement except that such Claim is based on the use of the Program Property in combination with InterSystems Caché and neither Contractor nor InterSystems is able to provide City with a license or modification that will avoid continuing infringement within a reasonable period, then City will have the right to terminate City's license to the infringing Item(s) of Program Property and receive a refund of City's license fees, and reduction of unpaid license fee(s), for such Item(s) in the same manner as provided under this paragraph.

With respect to the Hosting Services, if such a Claim is or may be brought, Contractor may, at its sole option and expense:

(f)   procure the right for City to continue to use the applicable Hosting Services (including as may be modified or replaced as described below);

(g)   modify or replace the applicable Hosting Services or a portion of the Hosting Services such that the resulting Hosting Services have substantially similar or better capabilities;

or if Contractor determines that none of the foregoing is technically feasible or commercially reasonable, or

(h)   terminate all or part of this Agreement (based on Contractor's determination regarding technical feasibility or commercial reasonableness) and refund any unused, prepaid fees that City may have paid under this Agreement, and in such event the transition period terms and conditions of Section 4(b) (Termination Transition Assistance) of the Hosting Terms will apply.

In addition to the provisions above, as allowable, Contractor agrees to pass through to City all intellectual property indemnities, if any, that Contractor receives from any vendor listed in the "Contracts Through Epic Service" table in Exhibit 2(d).

This Section 35.1 states the entire liability and obligation of Contractor to City's Indemnitees arising out of or relating to any infringement and other violations of intellectual property rights.

35.2.   **City's Intellectual Property Indemnification.**

City agrees to defend or settle, and to indemnify and to hold Contractor Indemnitees harmless from, any third-party Claim brought against any Contractor Indemnitees alleging that City's Stored Materials infringe any patent, copyright or trademark. City will not enter into a settlement acknowledging any fault on a Contractor Indemnitee's part (other than a finding that there was infringement) without Contractor's prior written consent, such consent not to be unreasonably withheld.

36. Medical Malpractice Indemnification.

The Program Property is a sophisticated tool for use only by trained personnel, and it is not a substitute for competent human intervention and discretionary thinking. Therefore, City and City's Personnel will use best efforts to do each of the following (collectively, the "Customer Responsibilities"):

(a)   Enter information into the Program Property accurately and completely.

(b)   Read information displayed or transmitted by the Program Property accurately and completely.

(c)   Ensure that City's Personnel are trained on and operating the Program Property properly.

(d)   Be responsible for decisions in configuring the Program Property (including with respect to workflows and enabling or disabling features and functionality) and regarding Support and Other Materials, Third Party Products and other products and services in City's environment. As part of Contractor's services under the Agreement, Contractor will assist with project management of these activities as described in Exhibit 2(a) (Implementation and Maintenance Scope of work), however, City and City's Personnel will be responsible for all configuration decision.

(e)   Confirm the accuracy of life threatening information and important results that are accessed or stored through or in the Program Property in the same manner that such information and results would be confirmed or verified if they were in paper form and as would otherwise be confirmed or verified if City's Personnel were using applicable standards of good medical practice. For example, City's Personnel must verify allergies, current medications, relevant histories and problems with the patient and confirm questionable results (including lab pathology and radiology results) with the applicable department using applicable standards of good medical practice to no less a degree than if City's Personnel were using paper records.

(f)   Report to Contractor as soon as reasonably practicable all Program Errors and suspected Program Errors and other problems related to the Program Property that City's Personnel know or should know could adversely affect patient care. If any of City's Personnel are alerted to such a problem, City will as soon as reasonably practicable alert all of City's Personnel whom City knows or should know could be affected by the problem; educate City's Personnel about the problem, including affected workflows, workarounds and potential impacts; take all measures reasonably likely to avoid or mitigate such impacts, including implementing additional safeguard procedures, deploying other available workflows or functionality and turning off the Program Property functionality related to the problem; and promptly cooperate with Contractor to install an Update that helps avoid or mitigate any impact on patient care promptly following the Update being made available. After Contractor testing, validate the Program Property in City's environment before release into production (including validating all Support and Other Materials, Third Party Products and other products and services in City's environment), and City will not permit use until City has assured itself of accuracy, completeness and appropriateness for City's environment. As part of Contractor's Services under this Agreement, Contractor will perform its responsibilities under Exhibit 2(a) (Implementation and Maintenance Scope of Work) related to these testing activities, however, City and City's Personnel will be responsible for final validation and not permitting use except in accordance with the preceding sentence.

(g)   Maintain business continuity policies and procedures for any systems related to City's operation and use of the Program Property that will permit City and City's Personnel to provide patient care in the event of a disaster or system unavailability, train City's Personnel on such policies and procedures and promptly utilize them if City encounters any event that results in unavailability for any such system. For any portion of the Term that exceeds beyond the Hosting Term, City is also responsible for maintaining disaster recovery and system unavailability policies and procedures that meeting requirements in the preceding sentence.

(h)   Use the Program Property only in accordance with applicable standards of good medical practice.

City agrees to indemnify, hold harmless and defend Contractor Indemnitees from any Claim by or on behalf of any patient of City's Personnel, or by or on behalf of any other third party or

person claiming damage by virtue of a familial or financial relationship with such a patient, regardless of the cause (including Contractor Indemnitee negligence, except as provided in the following sentence), if such Claim in any way arises out of or relates to patient care or outcomes (including as may be affected by the operation of the Program Property or use or inability to use the Hosting Services).

The indemnification under this Section 36 will not apply to a Claim if ████████████

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Contractor will promptly notify City in writing of the Claim, promptly provide City with the information reasonably required for the defense of the same, and grant to City exclusive control over its defense and settlement. City will not enter into a settlement acknowledging any fault on a Contractor Indemnitee's part or any defect in the Program Property or Contractor's services or agreeing to any action or forbearance by Contractor without Contractor's prior written consent.

37. Misuse of Third Party Product.

City agrees that City will use Third Party Products only in accordance with the permitted or licensed use of such Third Party Products and City agree to defend, indemnify and hold Contractor Indemnitees harmless from any third-party Claim which is brought against any Contractor Indemnitee arising out of any improper use of any Third Party Product or any infringement or other violation of any third party's rights with respect to City's use, copying, modification, distribution, display or other activity relating to any Third Party Product unless such activity is licensed to City under this Agreement with respect to the applicable Third Party Product. City will not enter into a settlement acknowledging any fault on a Contractor Indemnitee's part without Contractor's prior written consent.

38. Mutual General Indemnification.

Each party will defend, indemnify and hold the other and its Indemnitees harmless from any Claim brought by a third party for damage to tangible personal property or for death or bodily injury, all to the extent that both (1) such damage, death or injury is proximately caused by any negligent or willful acts or omissions of the employees of the Indemnifying Party (as defined below) while the Indemnifying Party's employees are at the site of the Indemnified Party (as defined below) and (2) the Claim is not related to the operation, design, programming, maintenance, use or implementation of the Program Property. The party requesting indemnification (the "Indemnified Party") will promptly notify the other party (the "Indemnifying Party") in writing of any Claim subject to this indemnification, promptly provide the Indemnifying Party with the information reasonably required for the defense of the same, and grant to Indemnifying Party exclusive control over its defense and settlement. The Indemnifying Party will not enter into a settlement acknowledging any fault on the part of the Indemnified Party without the Indemnified Party's prior written consent.

ARTICLE 14 – LIABILITY OF THE PARTIES

39. Disclaimer; Cap.

NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, ENHANCED, CONSEQUENTIAL OR INDIRECT DAMAGES, OR FOR ANY LOSS OF BUSINESS, PROFIT OR REVENUE (OTHER THAN AMOUNTS OWED FOR CONTRACTOR SOFTWARE AND SERVICES), ANTICIPATED SAVINGS, GOODWILL OR REPUTATION, EVEN IF THE PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES OR THEY OTHERWISE WERE FORESEEABLE.

UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER, FOR ANY INDIVIDUAL CLAIM AND IN THE AGGREGATE FOR ALL CLAIMS, FOR ANY AMOUNT IN EXCESS OF ███████████████████████████████ WHETHER THE LIABILITY ARISES OUT OF THE SOFTWARE, SERVICES OR OTHERWISE. ██ THE SUM OF (I) ███ THAT HAS BEEN PAID BY CITY TO CONTRACTOR, AND (II) THE ███████████████████████████ THAT HAS BEEN PAID BY CITY TO CONTRACTOR. ████████████████ ███

HOWEVER, NOTWITHSTANDING THE IMMEDIATELY PRECEDING PARAGRAPH, WITH RESPECT TO THE HOSTING SERVICES AND ANY HOSTING PROFESSIONAL SERVICES, UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER, FOR ANY INDIVIDUAL CLAIM AND IN THE AGGREGATE FOR ALL CLAIMS, FOR ANY AMOUNT IN EXCESS OF AN AMOUNT EQUAL TO ████████████████ ██████████████ PAID BY CITY TO CONTRACTOR FOR SUCH HOSTING SERVICES AND HOSTING PROFESSIONAL SERVICES UNDER THIS AGREEMENT, WHETHER THE LIABILITY ARISES OUT OF THE SERVICES OR OTHERWISE.

THE LIMITATIONS SET FORTH IN THIS SECTION WILL NOT APPLY TO: (I) CLAIMS ARISING OUT OF THE PARTIES' EXPRESS INDEMNIFICATION OBLIGATIONS AS SET FORTH IN ARTICLE 13 OF THIS AGREEMENT; (II) ANY CLAIM FOR DAMAGES FOR DAMAGE TO TANGIBLE PERSONAL PROPERTY OR BODILY INJURY (INCLUDING DEATH) TO A PERSON TO THE EXTENT THAT BOTH (A) SUCH INJURY IS CAUSED BY ANY WILLFUL ACTS OR OMISSIONS OF THE PARTY OTHERWISE PROTECTED UNDER THE LIMITATION OF LIABILITY, AND (B) THE CLAIM IS NOT SPECIFICALLY RELATED TO THE OPERATION, DESIGN, PROGRAMMING, MAINTENANCE, USE OR IMPLEMENTATION OF THE PROGRAM PROPERTY OR HOSTING SERVICES; OR (III) CITY'S OBLIGATION TO PAY ALL UNCONTESTED AMOUNTS PAYABLE IN ACCORDANCE WITH THIS AGREEMENT (INCLUDING, IF CITY USES THE PROGRAM PROPERTY IN A MANNER THAT EXCEEDS THE

LICENSED VOLUME OR OTHER RESTRICTIONS SET FORTH IN THE AGREEMENT, THE AMOUNT CONTRACTOR WOULD CHARGE CITY WITH RESPECT TO SUCH USE).

For the sake of clarity, which may be initiated at City's request or Contractor's offer, the limitations set forth in this Section 39 are subject to waiver if and to the extent expressly provided by Contractor in its sole discretion in writing by a duly authorized Contractor representative.

40. Timing of Actions.

City will not commence any Claim in a court of law for any matter arising out of or relating to this Agreement or any software, services, materials, reports, or other information provided by Contractor more than ██████████ months after the date that the City becomes aware of the applicable cause of action. The passage of any ██████████ month period described in this Section will be tolled during all informal escalation processes exercised by the parties pursuant to Section 79.1 that are in any way related to the dispute that gives rise to the cause of action, such tolling period not to exceed 180 days unless otherwise mutually agreed in writing by the Parties. The tolling period will start upon written notice from the City that it is beginning escalation for the issue and terminate 180 days later unless either Party provides earlier written notice it is ending the escalation.

41. Liability for Use of Equipment.

City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its Subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

ARTICLE 15 - PAYMENT OF TAXES

42. Taxes in General

Except for Contractor's income taxes or as expressly provided in this Agreement (including the other Sections in this Article 15), all taxes arising out of this Agreement (including the license, use, implementation, hosting, maintenance and modification of the Program Property) will be City's responsibility. If Contractor pays or is required to pay any such taxes or related penalties or interest, City will promptly pay to Contractor all such amounts. Upon Contractor's request, City agrees to confirm City's payment of such taxes or facilitate Contractor's collection of taxes.

43. Employment Taxes.

Should the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to the employee portion of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should such taxing authority determine a liability for past services performed by Contractor for City, and if such liability is Contractor's responsibility under this Agreement, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status shall be solely for the

purposes of the particular tax in question, and for all other purposes of this Agreement Contractor shall not be considered an employee of City.

44. Sales and Use Tax.

If any aspect of this Agreement is subject to federal, state, or local sales or use taxes, Contractor shall charge to City, City shall pay, and Contractor shall remit to the State of California any sales or use taxes arising under this Agreement. Contractor agrees to promptly provide information reasonably requested by the City to verify Contractor's compliance with any state requirements for reporting sales and use tax paid by City under this Agreement.

45. Possessory Interest Tax.

City has informed Contractor that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

45.1. **Real Property Tax.**

Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

45.2. **Change in Ownership.**

Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision, if applicable.

45.3. **Reporting Requirements.**

Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). To the extent a possessory interest tax arises under this Agreement, Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

45.4. **Cooperation with City.**

Contractor further agrees to provide such other information as may be requested and reasonably required by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

ARTICLE 16 – TERMINATION

46. General.

This Agreement and the licenses granted hereunder will continue in effect until the end of the Term unless and until this Agreement or the applicable license is terminated solely as expressly provided in this Agreement.

47. Termination Upon Bankruptcy, Insolvency and the Like.

Subject to applicable bankruptcy and insolvency laws, if Contractor (i) ceases the active conduct of business; (ii) voluntarily becomes subject to any bankruptcy or insolvency proceeding under federal or state statute; (iii) has filed against it an involuntary petition for bankruptcy that is not dismissed within sixty (60) days of filing; (iv) becomes insolvent or subject to direct control by a trustee, receiver, or similar authority; or (v) winds up or liquidates its business, voluntarily or otherwise, then City may, at its sole option, terminate this Agreement immediately.

48. Termination Upon Material Breach; Cure Periods.

City may terminate this Agreement for a material breach by Contractor, but only if City first provides written notice of such breach to Contractor as provided herein and the breach has not been cured within ▇▇▇▇▇▇▇▇ after Contractor receives such notice. The notice will be provided in the manner specified in Section 75, will reference this Section 48 or state that it is a notice of material breach, and will describe each material breach of the Agreement with enough detail to permit Contractor to cure the breach. City may not terminate this Agreement for a material breach until the foregoing periods have expired. Termination and cure periods with respect to the provisions of Section 8 (Warranty) of Appendix A (License Agreement) and Section 35.1 above (Epic's Intellectual Property Indemnification) are set forth in such Sections and this Section 48 will not apply to those sections.

49. Effect of Termination.

If this Agreement or the license to any Item of Program Property is terminated for any reason, then City will return all copies of the applicable Program Property (both Code and Documentation) to Contractor, or destroy such copies and certify to Contractor that such actions have occurred, within thirty (30) days of the effective date of termination. In the event of termination of this Agreement for any reason, City will remain liable to Contractor for all Uncontested Amounts of fees and expenses, if any, accrued prior to such termination and during any Software Termination Transition Period, Hosting Termination Transition Period and Extended Hosting Transition Period. Any additional fees beyond those set forth in the Agreement that are added during the Software Termination Transition Period, Hosting Termination Transition Period, or Extended Hosting Transition Period must be documented via a Formal Amendment.

In the event of any termination of this Agreement, City may continue to use the Program Property or any portion thereof while City is actively converting to a replacement system as quickly as practicable that does not exceed ▇▇▇▇▇▇▇▇▇▇▇▇ from the effective date of the termination (the "Software Termination Transition Period"). During any Software Termination Transition Period, City may use the Program Property in accordance with this Agreement and City's use as of the effective date of such termination, but City may not extend or

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increase the use of any Item of Program Property or receive any customizations, retrofits or other special changes to any Item of Program Property.

During the Software Termination Transition Period, City may continue to take part in the Maintenance Program assuming full payment of all maintenance fees and other fees, but Contractor in its discretion may not provide City with Updates other than error corrections. During the Software Termination Transition Period, Contractor further will provide reasonable assistance at City's request and expense to help City effect a transition to another information system, including Contractor reasonably cooperating with City or a third party vendor with respect to conversions and interfaces and providing the patient data previously processed by the Program Property in a standard electronic format that City can transition to another information system or media (e.g., transition of data to another proprietary EMR system, extraction to reports City can archive on disks or print and file, extraction from Clarity for Oracle or SQL server, or other feasible desired methods). City agrees to provide Contractor with reasonable advance written notice of any requests for cooperation, and the parties will in good faith seek to agree on a timeline for Contractor to perform such services, taking into account Contractor's available resources, current development projects and commitments and the scope and nature of the services required. Contractor will provide the services hereunder at Contractor's then standard rates for such services.

In no event may the Software Termination Transition Period extend the Term or increase the GMP without mutual agreement and a Formal Amendment to the Agreement.

Terms related to transition following termination of the Hosting Services are set forth in Appendix B.

50. Survival.

The following provisions in this Agreement will survive termination or expiration of this Agreement:

Document	Section	Title
This Agreement	Section 10.1 (to the extent applicable relating to use or obligations prior to termination and during any Software Termination Transition Period, Hosting Transition Period, and Extended Hosting Transition Period)	Payment
	Section 10.4.1	Audit and Inspection of Records
	Section 23	Subcontracting
	Section 24	Independent Contractors
	Section 25	Assignment
	Article 7	Force Majeure
	Article 9	Confidential Information
	Article 12	Insurance
	Article 13	Third Party Claims

	Article 14	Liability of the Parties
	Article 15	Payment of Taxes
	Section 49	Effect of Termination
	Section 75	Notice to the Parties
	Article 19	General Provisions
Appendix A: License Terms	2(c)	Ownership
	4(g)(iii) and (v)	Copyrights, Etc.; Disclaimer and Waiver; Your Responsibilities
	5(c)	Ownership
	8(c)	Refund Remedy
	8(e)	Warranty Limitations
	8(i)	No Other Representation or Warranty
	11	Program Property Protections
	18	Source Code; Extensions
	20	Record Requirements
Appendix B: Hosting Terms	3(b)	Changes to Hosting Scope of Work
	4(d)	Termination Transition Assistance
	7(c)	Limitations
	7(d)	Exclusion of Representations and All Other Warranties
	14	Availability of Records
	15(a)	Title, Risk of Loss, Shipment and Product Return
Exhibit 1(a)	Exhibit 1(a) (to the extent applicable relating to use or obligations prior to termination and during any Software Termination Transition Period, Hosting Transition Period, and Extended Hosting Transition Period)	
Exhibit 3(a)	Section V (for Performance Data collected before termination and during any Software Termination Transition Period)	
Addenda	The provisions of each addendum to this Agreement to the extent provided in such addendum or covering similar subject matter to a section listed in this Section.	

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51.1. **Termination of the Agreement**

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shall specify the ████████████████ shall become ████████

51.2. **Termination of the Hosting Services and Hosting Professional Services**

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51.3. **Termination of Additional Services**

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51.4. **Contractor Obligations.**

Upon receipt of the notice of termination, City may request that Contractor take the following actions to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination:

(a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by City.

(b) Not placing any future orders or Subcontracts for materials, Services, equipment or other items, except as requested by City.

(c) Completing performance of any Services that City and Contractor mutually agree may be completed prior to the date of termination specified by City.

51.5. Contractor's Final Invoice.

Within 30 days after the specified termination date or the end of the Software Termination Transition Period (whichever is later), Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

(a) All fees that have accrued under the Agreement prior to the specified termination date (or the end of the Software Termination Transition Period, whichever is later), including fees for all software and Services provided prior to such date (whether or not then due) for which City has not already tendered payment.

(b) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as reasonably directed by the City.

51.6. Recoverable and Non-Recoverable Costs.

In no event shall City be liable for costs incurred by Contractor or any of its Subcontractors after the termination date specified by City, except for those costs specifically enumerated and described above (including any fees incurred during the Software Termination Transition Period). Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit (except as provided by law), prejudgment interest, or any other expense which is not reasonable, authorized above, or provided by law.

51.7. Permitted City Deductions.

In arriving at the amount due to Contractor under this Section, City may deduct payments previously made by City for Services covered by Contractor's final invoice.

ARTICLE 17 - RIGHTS IN PROGRAM PROPERTY (RESERVED – APPENDIX A (LICENSE TERMS))

ARTICLE 18 - ADDITIONAL REQUIREMENTS

52. Laws Incorporated by Reference.

City has informed Contractor that the laws listed in this Article 18, including enforcement and penalty provisions, may apply to Contractors' performance under this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at www.sfgov.org under "Government."

53. LBE Payment and Utilization Tracking System.

City has informed Contractor of the following:

Contractor must submit all required payment information using the online LBE Utilization Tracking System (LBEUTS) as required by CMD to enable the City to monitor Contractor's compliance with the LBE Subcontracting commitments in this Agreement, unless otherwise directed by the City. Contractor shall pay its LBE Subcontractors within three working days after receiving payment from the City, except as otherwise authorized by the LBE Ordinance. The

Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of all required CMD payment information. Failure to submit all required payment information to the LBEUTS with each payment request may result in the Controller withholding 20% of the payment due pursuant to that invoice until the required payment information is provided. Following City's payment of an invoice, Contractor has ten calendar days to acknowledge using the online LBEUTS that all Subcontractors have been paid. Contractor shall attend a LBEUTS training session. LBEUTS training session schedules are available at www.sfgov.org/lbeuts.

54. Submitting False Claims.

City has informed Contractor that the full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, applies to Contractor in its performance of this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or Subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section.

55. Conflict of Interest.

City has informed Contractor that City is subject to Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*).

56. Prohibition on Use of Public Funds for Political Activity.

In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure.

57. Nondisclosure of Private, Proprietary or Confidential Information.

If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and Subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services.

58. Nondiscrimination Requirements.

58.1. Non Discrimination in Contracts.

Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all Subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all Subcontractors to comply with such provisions.

58.2. Nondiscrimination in the Provision of Employee Benefits.

Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with

spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

58.3. **Local Business Enterprise and Non-Discrimination in Contracting Ordinance.**

Contractor shall comply with all applicable provisions of Chapter 14B ("LBE Ordinance"). Contractor shall utilize LBE Subcontractors for at least 3.5% of the Services except as otherwise authorized in writing by the Director of CMD. Contractor shall incorporate the applicable requirements of the LBE Ordinance in each Subcontract made in the fulfillment of Contractor's LBE Subcontracting commitments.

59. Minimum Compensation Ordinance.

Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

60. Health Care Accountability Ordinance.

Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3.

61. First Source Hiring Program.

Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement.

62. Alcohol and Drug-Free Workplace.

City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or Subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

63. Limitations on Contributions.

By executing this Agreement, Contractor acknowledges that City has informed it of section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination

of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any Subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor.

64. Reserved. (Slavery Era Disclosure).

65. Reserved. (Working with Minors).

66. Consideration of Criminal History in Hiring and Employment Decisions.

Contractor agrees to comply with the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The text of the Chapter 12T is available on the web at http://sfgov.org/olse/fco.

The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

67. Reserved. (Public Access to Nonprofit Records and Meetings).

68. Food Service Waste Reduction Requirements.

Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

69. Sugar-Sweetened Beverage Prohibition.

Contractor agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

70. Tropical Hardwood and Virgin Redwood Ban.

Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

71. Reserved. (Preservative Treated Wood Products).

72. Compliance with Americans with Disabilities Act.

As between City and Contractor, Contractor will be responsible for compliance with employment and employment-related laws and regulations relating to Contractor's employees

performing services under this Agreement, such as disability rights legislation (e.g., the Americans with Disabilities Act (ADA).

73. Compliance with Laws.

Contractor shall use reasonable efforts to keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state and federal laws to the extent Contractor is aware such laws and regulations affect the performance of this Agreement.

74. Remedies.
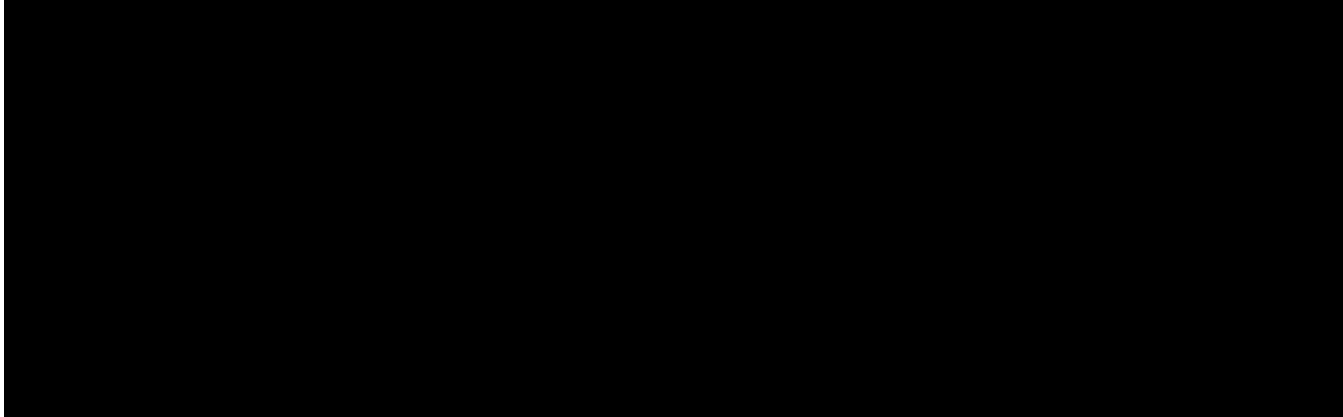
ARTICLE 19 - GENERAL PROVISIONS

75. Notices to the Parties.

No notice required to be provided in this Agreement will be effective unless it is in writing; is delivered to the other party by either reputable overnight courier; U.S. mail by registered, certified or overnight delivery service, with all postage prepaid and return receipt requested, or by personal delivery; and is addressed to:

To City:
Office of Contract Management and Compliance
San Francisco Department of Public Health
101 Grove Street, Room 410
San Francisco, CA

with a copies to:

Chief Information Officer
EHR Program Director
San Francisco Department of Public Health
101 Grove Street, Room 302
San Francisco, CA

General Counsel, Department of Public Health
San Francisco City Attorney's Office,
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

To Contractor: Judith R. Faulkner
CEO
Epic City Government, LLC
1979 Milky Way
Verona, WI 53593

with a copy to:

General Counsel
Epic Systems Corporation
1979 Milky Way
Verona, WI 53593

<u>Any notice of default must be sent by registered mail</u>. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party.

76. Payments to Contractor

Payments should be made payable to Epic City Government, LLC, and should be sent to:

Epic City Government, LLC
Box 88314
Milwaukee, WI 53288-0314

or to such other address as Contractor may designate by written notice to City.

77. Sunshine Ordinance.

Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment may be subject to the California Public Records Act (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance (San Francisco Administrative Code Chapter 67) (collectively, "Public Records Laws"). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law. Exhibit 8 sets forth additional obligations of the Parties regarding this provision.

78. Modification of this Agreement.

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate when requested by the City with the San Francisco Department of Public Health to submit to the Director of CMD any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

79. Dispute Resolution Procedure.

79.1. **Negotiation; Alternative Dispute Resolution.**

Both City and Contractor wish to work together to assure an effective project and to resolve issues as they may arise. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement prior

to resorting to litigation. If the Parties' Project Directors cannot resolve disputes through such negotiations, then the Parties will escalate the dispute to their respective executives, who are at a higher management level than the Project Directors. The goal of the escalation procedures will be to resolve the specific issue as quickly as reasonably possible. At each stage of this process, the individuals occupying the positions listed below (or their functional equivalents, e.g., if titles have changed) will discuss and attempt to resolve the relevant issues. Escalation at each step of this process will occur based on a determination that the existing level of involvement by the other party cannot resolve or is not satisfactorily resolving the problem. The escalation path is as follows:

CONTRACTOR:	CITY:
Implementation Executive or Technical Coordinator	EHR Program Director
Senior Vice President or Division Manager	Contract Administrator
President	Chief Financial Officer
Chief Executive Officer	Director of Health
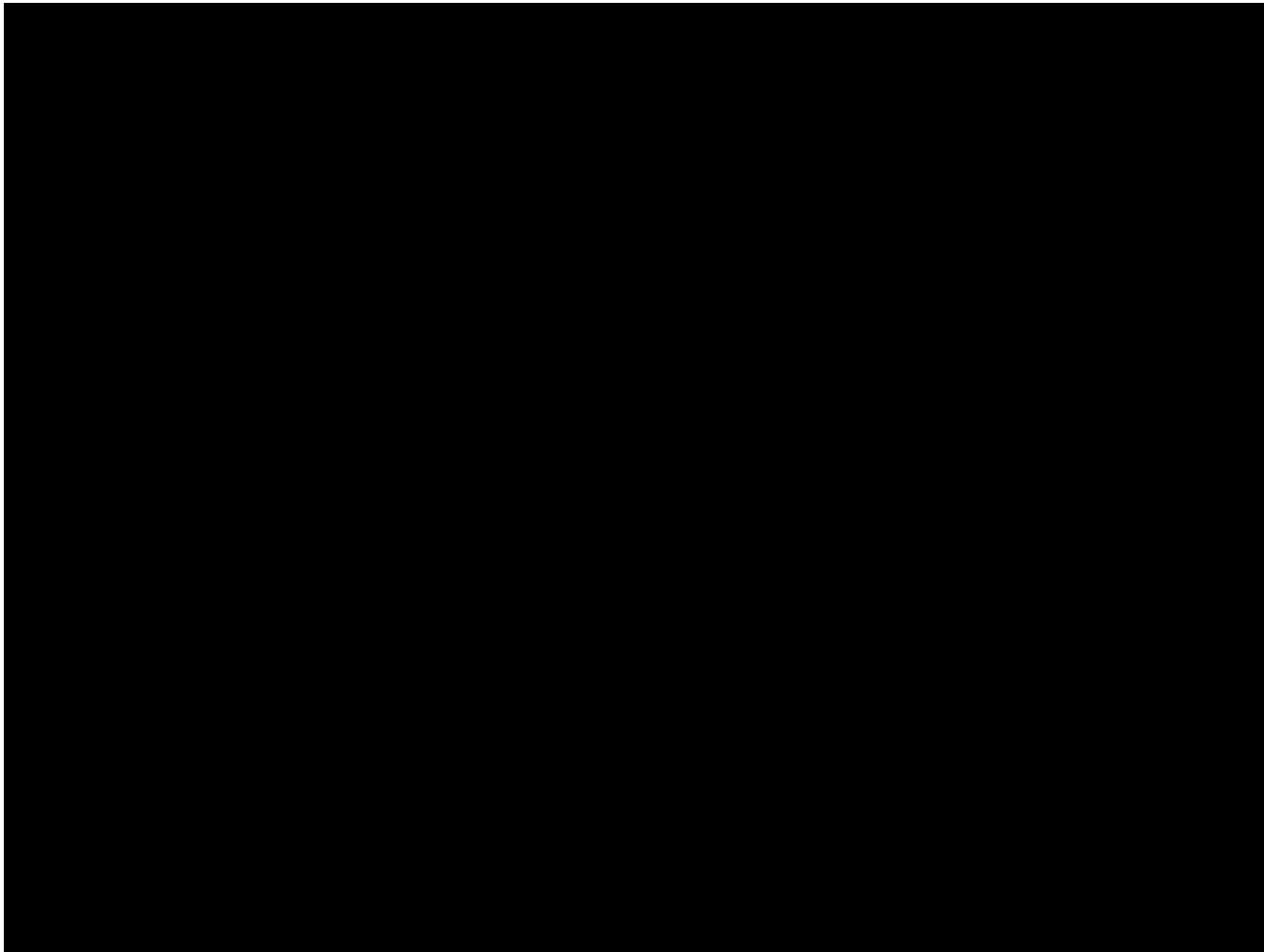
79.2. **Agreement** ██████████████████████

Subject to Section 79.1 above, the formation, interpretation and performance of this Agreement shall be governed by the laws of the State of ████████ Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in ███████████ Notwithstanding this provision, at Contractor's request, City depositions, to the extent either is in person, shall take place in ███████████████

79.3. **Government Code Claim Requirement.**

City has informed Contractor that no suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq., and that nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

80. Construction.

All paragraph and headings captions are for reference only and shall not be considered in construing this Agreement.

81. Entire Agreement.

This Agreement sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 78, "Modification of this Agreement." Each party represents that the individual signing below on behalf of the party has the authorization to bind the party indicated to this Agreement.

82. Severability.

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable; provided that no such severability will be effective absent mutual agreement of the Parties if it materially changes the benefit of this Agreement to either party.

83. Cooperative Drafting.

This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

84. No Waiver; No Course of Conduct.

The failure of either party to require the performance of any obligation or to exercise any right under this Agreement, or the waiver by either party of any breach of this Agreement, will not

change the meaning of such obligation or right or act as a bar to subsequent enforcement of such obligation or right or be deemed a waiver of any subsequent breach. Likewise, the conduct of the parties will not be used to interpret this Agreement, and any performance beyond what is required by this Agreement will not change this Agreement, require further performance, or act as a bar or be deemed a waiver.

85. Purchase Orders.

City's purchase orders will be accepted by Contractor for accounting convenience only. No terms or conditions contained in any purchase order will amend this Agreement or otherwise constitute an agreement between the parties.

86. RFP.

Each party agrees to perform its obligations under this Agreement in accordance with the terms and conditions of this Agreement, all Appendices, Exhibits and Addenda, including the RFP documents incorporated in Exhibit 6.

87. Non-Solicitation.

Contractor and its employees typically enter into agreements under Wisconsin law in which the employees generally promise that they will not work for customers for twelve (12) months after the termination of their employment with Contractor. Members of the City's project team agree not to solicit the employment of Contractor's employees during the Term of this Agreement, without the express consent of Contractor. ███████████████████████████████ ████████████████████████████████████ Contractor may choose not to work with or provide training for any former Contractor employee employed by City or working with City as an employee of a consultant hired by City if such employee is hired less than 12 months after the date of the termination of such former employee's employment with Contractor.

88. Independent Contractors; Third-Party Beneficiaries; Joint Employers.

Each party to this Agreement is an independent contractor and is not and will not be considered to be the agent of the other for any purpose. Otherwise, except to the extent an addendum to this Agreement expressly specifies that a person or entity will be a "third party beneficiary," this Agreement is not intended to create and will not create any third party beneficiary. Neither party will be deemed a joint employer of the other's employees. Each party will be responsible for satisfying all applicable governmentally-imposed obligations and wage and benefit obligations with regard to its own personnel, and neither party will have the right to make decisions related to the conditions of employment with respect to the other's employees.

89. Government Rights.

The Program Property, and the Third Party Software and Data, are "Commercial Items" as that term is defined at 48 C.F.R. §2.101. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, and notwithstanding anything to the contrary in this Agreement or any other agreement, the Program Property (and other Contractor Confidential Information), and the Third Party Software and Data, are being licensed (i) only as Commercial Items and (ii) with only those rights as are granted pursuant to the terms and conditions herein. All other rights are retained by Contractor.

90. Incorporation of Appendices, Exhibits, and Other Documents.

All appendices, exhibits and addenda to this Agreement and all fully executed forms prepared by Contractor and executed by City are incorporated into and form a part of this Agreement.

91. Headings; Interpretation; Authorization; Counterparts.

Headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning and interpretation of this Agreement. As used in the Agreement, the word "include" and all variants (e.g., "included", "includes," "including") are not words of limitation; similarly, each example in the Agreement is provided only for the purpose of a single illustration and should not be construed as a limitation. Each party represents that the individual signing below on behalf of the party has the authorization to bind the party indicated to this Agreement.

ARTICLE 20 – MACBRIDE PRINCIPLES AND SIGNATURE

92. MacBride Principles -Northern Ireland.

The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

Recommended by:

_____
Barbara A. Garcia, MPA
Director of Health
San Francisco Department of Public Health

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
        Louise S. Simpson
        Deputy City Attorney

Approved:

_____
Jaci Fong
Director of the Office of Contract
Administration, and Purchaser

CONTRACTOR

Epic City Government, LLC

_____
Judith R. Faulkner
CEO

City vendor number: 0000028174

Appendix A: LICENSE AND
SUPPORT TERMS

These License and Support Terms (the "License Terms") are made between Epic City Government, LLC, which is located at 1979 Milky Way, Verona, Wisconsin 53593 ("Epic"); and The City and County of San Francisco, having its principal place of business at 1 Dr. Carlton B. Goodlett Place, San Francisco, California 94102-4685 ("You").

You and Epic have entered into a License, Support, and Hosting Agreement (inclusive of this Appendix A: License and Support Terms, the "Agreement"), pursuant to which Epic will provide You with specified software and services during the Term. This Appendix sets forth the terms that apply to certain software and services Epic will provide You under the Agreement. Epic is willing to provide You such software and services based upon the terms and conditions set forth in this Agreement, which are to be read and interpreted together with all other documents, appendices, exhibits, and addenda to the Agreement as a single agreement.

Epic and You agree as follows:

1. **DEFINITIONS**

    The definitions provided on Appendix C apply to these License Terms.

2. **LICENSE**

    a. **General.** Epic hereby grants You a non-exclusive license to use the Program Property in the United States during the Term, subject to the terms and conditions of the Agreement (including all appendices and exhibits). In addition, incidental use of the Program Property by Your Affiliate Users from locations outside the United States in occasional circumstances, such as while on vacation or traveling abroad, for the purpose of treating Your or Your Affiliate Users' patients in the United States will not be a violation of the limitation "to use the Program Property in the United States" as set forth in the first sentence of this Section 2(a) as long as You exercise good faith in limiting any such incidental Affiliate User access for the temporary circumstance and, where reasonably practicable in permitting such access, the Affiliate User accesses the Program Property through a VPN connection or other similar secure method. For the avoidance of doubt, access to and use of the Program Property outside the United States in accordance with the preceding sentence does not permit Your Affiliate Users to use the Program Property in the treatment of patients located outside the United States. You may provide access to the Program Property to Affiliates as described in Section 14 of these License Terms.

    b. **Rights to Copy Program Property.** You may copy the Program Property as follows: (i) You may make copies of the Code to the extent such copies are required for backup, recovery, or system redundancy to ensure availability of the system to You or for training or testing purposes; (ii) You may copy Workstation Code onto any number of Your workstations for authorized Affiliate Users; (iii) You may create additional Production Directories if You notify Epic and pay Epic the applicable license and maintenance fees in the manner specified in Exhibit 1(a)-2; and (iv) You may modify and reproduce the Documentation and disseminate the Documentation to authorized Affiliate Users of the Program Property to the extent

appropriate. You may not otherwise copy the Program Property and will not permit Your employees, agents or any other person or entity to copy the Program Property.

c. **Ownership.** The grant of this license does not confer on You any right of ownership to any form of the Program Property (whether Code or Documentation). All Program Property remains the property of Epic.

d. **Sublicense for Third Party Software.** You agree to obtain a sublicense to and the maintenance for the Third Party Software and Data used in conjunction with the Program Property through Epic at Epic's then standard fees for such sublicense and maintenance. You are granted a sublicense to use the Third Party Software and Data as limited by the terms and conditions set forth in Exhibit 1(a)-2 and 1(a)-3 and the applicable third party addendum attached to this Agreement. If "TBD" is listed for the applicable Third Party Software and Data on Exhibit 1(a)-2, then no license is granted until a mutually agreed upon written form incorporating the applicable terms for such license has been signed by You and Epic and then the license is also subject to the terms and conditions of such form. Your license to Third Party Software and Data also is limited solely to use in conjunction with Your licensed use of the Program Property. If You would like to obtain a license to future versions or additional copies or expanded uses of any Third Party Software and Data, the parties may use a mutually agreed upon written form with any changes to the applicable addendum that apply to such versions or copies specified in such form.

e. **Click-Wrap Disclaimer**. For the avoidance of doubt, while the terms of various Epic-provided shrink-wrap, click-wrap, browse-wrap, or similar agreements may be required for use of certain Epic provided services, or may be required for You or Your Affiliate Users to use certain software that interacts with or connects to Items of Program Property (e.g., the end user license for various items of client software that may connect to server software such as Haiku Server), no such agreement will modify Your rights with regard to the Program Property or amend the terms of the Agreement.

3. **DELIVERY**

a. **General.** Promptly following the Effective Date of the Agreement, Epic will deliver to You the Code and the Documentation published and generally released by Epic to its similarly situated customers for the Program Property.

b. **Responsibility for Site.** Other than hardware, data center and disaster recovery services expressly provided by Epic as part of the Hosting Services during the Hosting Term under Appendix B to this Agreement, You will be responsible for providing proper hardware and establishing a suitable site for the hardware, assuring proper operating methods and adequate backup procedures, and implementing sufficient procedures and checks to assure data security and accuracy in both input and output and in the event of the need for restart or recovery from malfunction.

4. **INSTALLATION AND TRAINING**

a. **Scope of Work.** Implementation and training services for the Program Property are described in Exhibit 2(a) (Implementation and Maintenance Scope of Work).

b. **Access to Server.** You will provide Epic with access to the servers on which the Program Property is installed through an IP network connection. This connection may be implemented over one of the

following technologies: (1) a LAN-to-LAN IPSec tunnel terminated on Epic's VPN concentrator and a suitable hardware VPN device at Your site (or, during the Hosting Term, the primary data center at which Epic is hosting Your Data as part of the Hosting Services), or (2) comparable technology agreed to by the parties. For access by Epic personnel, the connection between the servers on which the Program Property is installed and an edge router of Your Internet service provider will have a minimum available bandwidth of at least 1 megabit per second and a maximum average latency of 15 milliseconds. In addition, support will be impacted if the average latency between Your and Epic's Internet service providers' edge routers exceeds 250 milliseconds. Collectively, the access technology requirement and the connection requirements are the "Minimum Access Requirements." You will be responsible for all necessary hardware and software and line costs on Your end, including configuration and Your access to the Internet, except for hardware and software expressly provided by Epic as part of the Hosting Services during the Hosting Term under Appendix B to this Agreement. Epic may revise the Minimum Access Requirements from time to time to ensure that access is still adequate given changes in technology. Epic will inform You of any such revisions to the Minimum Access Requirements. You agree to upgrade the access technology and connection, at Your cost, to meet the Minimum Access Requirements within six (6) months of Epic informing You in writing of such change; provided, however, that during the Hosting Term and as part of the Hosting Services Epic will be responsible for any upgrades to hardware and software provided by Epic as part of the Hosting Services required by such change to the Minimum Access Requirements. You also grant to Epic the right of access to the servers containing the Program Property and Your Data for support and to monitor and maintain the Program Property. After First Live Use, it will be Your responsibility to allow access by Epic using an appropriate, reasonable password-protection system.

c. **Requirement for Availability of Certain Interfaces Before First Live Use.**
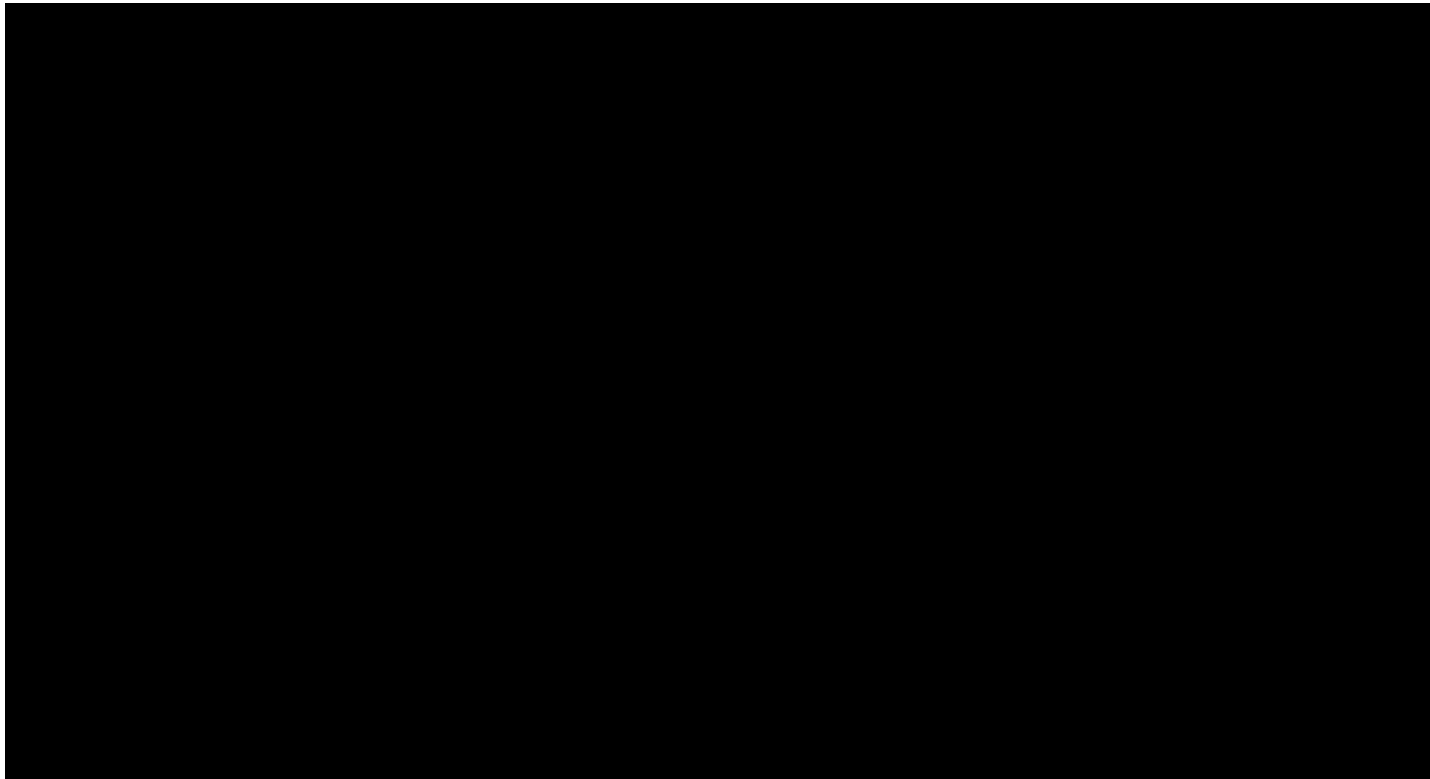
d. **Regulatory Changes to Claims Forms and Formats.** If, during the period that You are participating in the Maintenance Program with respect to a Resolute Item and any other applicable Items or formats, Epic determines that a change is required to paper claim forms or electronic claims formats because of a change to a federal regulatory requirement, Epic will modify the Program Property to comply with the change and provide the modification to You within a reasonable time to allow You to test the change before the requirement is effective, except that Epic will be allowed a reasonable period from the time Epic becomes aware of the changed requirement to develop and implement the modification in a subsequent release or other periodic Update. If You so request, a billable retrofit will be made available to You. This Section 4(d) does not apply to changes that are due to a requirement of a clearinghouse or other third-party claims processing system or that are not directly a federal regulatory requirement (for example a technical or processing deficiency of that clearinghouse or third-party system).

e. **Other Federal Regulatory Requirements**. In addition to the provisions of Section 4(d) above, Epic will make a good faith effort to make modifications to the Program Property as provided in this Section 4(e) to comply with other changes in federal regulations if:

i. You are implementing the affected Item when the regulatory change is proposed (or, if First Live Use of such Item already occurred, then You have continuously participated in the Maintenance Program for such Item following First Live Use);

ii. the change in federal regulation directly relates to the functionality of the Program Property as it is described in the Documentation Manuals and would result in the operation of the Program Property as described in the Documentation Manuals violating such federal regulation; and

iii. in Epic's good faith determination such change to the federal regulation requires modification of the Program Property and it would not be technically infeasible or commercially unreasonable to make such modification.

Modifications under the preceding sentence will be made available in a new release of the applicable Item as an Update under the Maintenance Program. Epic will make a commercially reasonable effort to deliver any modification made under this Section 4(e) prior to a reasonable period for testing before the effective date of such federal regulation if Epic becomes aware of the requirement within a reasonable period of time in advance of the effective date of the requirement in light of the nature of the requirement, the significance of the changes required to the Program Property and the status of the release cycle. If Epic in its good faith judgment determines that it cannot make a modification to the Program Property required by a change in federal regulation or cannot do so prior to the effective date of such regulation, then Epic will arrange a meeting of those of its customers for whom the change is relevant to determine if, and to what extent, using combined resources such as possible cost-sharing arrangements, the requirements of

the federal regulation can be met. Nothing in this Section will require Epic to retrofit any modifications to a previous version of the Program Property. Epic's modifications under this Section may include changes to or the elimination of certain functionality of the Program Property. Epic will use commercially reasonable efforts to maintain substantially equivalent functionality and will not, without Your consent, materially reduce the functionality of the Program Property as licensed by You on the Effective Date of this Agreement.

f. **State Regulatory Requirements.** If You notify Epic of a New State Regulation, Epic will meet with You and other customers affected by the New State Regulation to consider possible alternatives for addressing the regulation, including possible modifications to the Program Property. If You and Epic mutually agree that Epic should modify the Program Property to address such New State Regulation, You and Epic will modify the Agreement in accordance with the terms herein and will enter into a mutually agreed upon written form with respect to any such modifications and the Program Property modification will be developed and You will pay Epic its normal software modification charges, each as provided in the agreed-upon agreement modification. If other Epic customers request the modification due to the same New State Regulation, then Epic will seek to spread the cost of the software modification among those customers agreeing to enter into a change order under their software license agreements for the modification.

g. **Epic Community Library**.
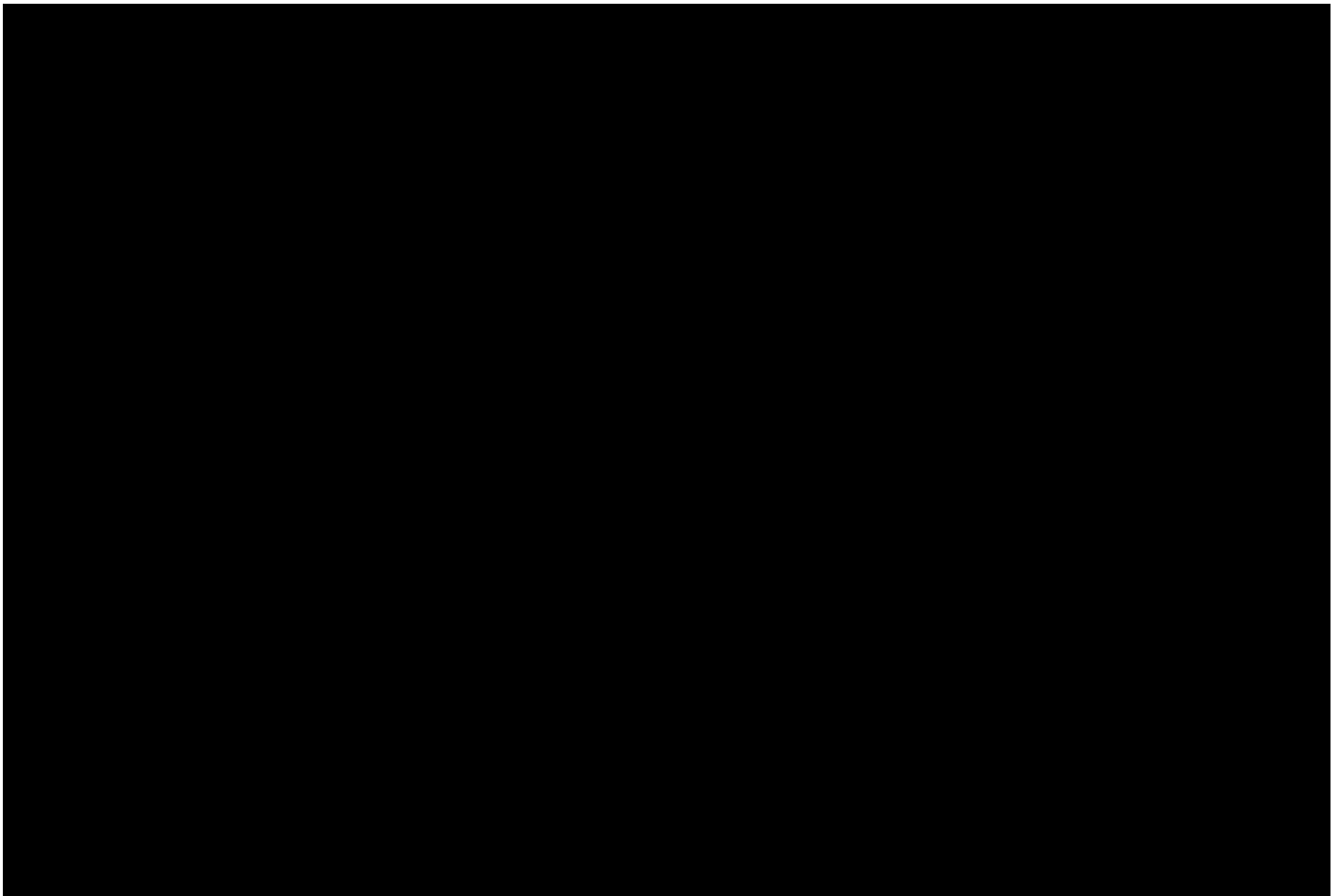
5. MODIFICATIONS TO PROGRAM PROPERTY

a. **General.** You may request that Epic modify part of the Program Property at any time more than three months after Your First Live Use of the Program Property. If You and Epic agree that Epic should modify part of the Program Property, You and Epic will enter into a mutually agreed upon written form in accordance with the terms herein with respect to such modifications, and Epic will work to develop such modification and You will pay Epic for such work in accordance with the agreed-upon terms. You may choose either a fixed-price option or an hourly charge option with an estimate. Payments with respect to any fixed-price Program Property modification will be due upon Your execution of the mutually agreed upon written form. Work with respect to any non-fixed-price modification will be invoiced as performed.

b. **Rates.** Hourly rates will vary depending on the modification services to be performed. The current rates for such services are listed on Exhibit 1(d) to this Agreement. Additional charges apply for retrofits and rush Program Property modifications, as specified in the mutually agreed upon written form for such modification. Software development services under this Section 5 are excluded from the Implementation Payment Plan Services under the Agreement.

c. **Ownership.** Epic tries to generalize requests for changes to the Program Property and then makes the modifications available to all customers as Updates under the Maintenance Program. In this way, You can obtain access to the changes requested and paid for by our many other customers without additional charge to You. For this reason and to allow Epic to properly manage its release process and provide appropriate support, Epic needs to retain ownership to all of the Code and Documentation that it develops. Therefore, the parties agree that Epic will own all Code, Documentation and modifications to the Code or Documentation that Epic develops, and all copyrights, trade secrets and other intellectual property rights relating to any such Code or Documentation. As used in this Agreement, Epic "develops" Code when it writes the Code for such software and "develops" Documentation when it writes such Documentation.

d. **Retrofits.** Modified Code will normally be made available to You through Epic's standard Update release process unless otherwise agreed to in the mutually agreed upon written terms for such modification in accordance with the terms herein. Retrofits are available only to the then current standard version of the Program Property upon Epic's consent in the mutually agreed upon written terms for the modification. A "retrofit" is a modification to the Code of a previously released version of the Program Property, rather than a modification that is made available in a subsequent release.

6. PAYMENTS

a. **General.**

(i) The prices set forth in this Agreement expire if the Agreement Effective Date occurs after March 1, 2018 or if the amount included in the Certification of Funds is less than the GMP set forth in Section 5 of the Agreement. If such prices expire, the Agreement will be of no force or effect until the parties negotiate and enter into a Formal Amendment to the Agreement to reflect any pricing changes.

(ii) In all cases in this Appendix A (License Terms) where the possibility of fees for additional products, Services or usage is referenced (i.e., fees for items and Services not licensed or committed as of the Effective date), such additional fees are subject to the terms of Section 11 of the Agreement.

b. **Program Property License Fees.** You agree to pay Epic the Program Property License Fee Amount on the schedule set forth in Exhibit 1(a)-2.

c. **Increasing the Licensed Volume.** If any Licensed Volume has been exceeded, the Licensed Volume must be increased to at least the standard Licensed Volume level offered by Epic that covers the greater of the Annual Volume for the then current license year or the estimated Annual Volume for the next license year. You may not exceed Your Licensed Volume before paying an additional license fee, equal to the difference between the then standard license fee for the new Licensed Volume after the increase and the then standard license fee for the Licensed Volume before the increase, and additional maintenance fees based on increased Licensed Volume. The additional maintenance fee will bedue from the date that the Annual Volume exceeds the previous Licensed Volume. Epic's standard fees for Licensed Volume for Affiliate Users may vary depending on the relationship You have with the applicable Affiliate User. You will permit Epic access to Your servers to check counters and run reports to determine the Annual Volume. In addition, upon Your request, Epic technical support employees will assist Your employees in understanding how to access those or similar reports, and, as mutually agreed (but no more frequently

than monthly), Epic will provide You with Epic's count of Your Annual Volume in order to assist You in planning any potential changes in Your Licensed Volume.

[REDACTED]

d. **Enterprise Discount.** [REDACTED]

e. **Additional Production Directory Fees.** The license and maintenance fees specified in this Agreement assume that You are using only one Production Directory. You may not create or use more than one Production Directory without a Formal Amendment to the Agreement, and the fees for any such additional Production Directory will be the then-current license and maintenance fees charged by Epic with respect to additional Production Directories. In order to allow for sufficient set-up time, You must notify Epic in writing that You plan to create or use an additional Production Directory at least sixty (60) days in advance of such creation or use. Additional fees may also be required with respect to applicable Third Party Software and Data for any additional Production Directories.

f. **Subscription Fees.** If an Item of Program Property is listed on Exhibit 1(a)-3 as a "Subscription Item," then You will pay Epic (in addition to other fees set forth in this Agreement) a subscription fee for Your use of that Item at the Subscription Rate for the Item. The "Subscription Rate" means the then-current standard subscription rate charged by Epic for such Item. The current Subscription Rate is stated on Exhibit 1(a)-3. No other Epic license or maintenance fees will be due for the Subscription Items specified on Exhibit 1(a)-2. Unless otherwise provided on Exhibit 1(a)-3, subscription fees will be payable on a quarterly basis, within thirty (30) days after the end of the quarter in which the subscription fee became due.

g. **Third Party Fees.** Except as otherwise stated in Exhibit 1(a)-2 or Exhibit 1(a)-3, license fees for Third Party Software and Data will be due upon delivery, and maintenance fees for Third Party Software and

Data are due annually in advance of the applicable maintenance period. Maintenance fees for Third Party Software and Data are subject to change from time to time.

h. **Hourly Fees; Out-of-pocket Expenses.** All hourly fees, travel and other out-of-pocket expenses sustained by Epic in connection with this Agreement will be billed to You as incurred, subject to the travel policy set forth in Exhibit 1(f) to the Agreement. Any commissions relating to travel may be retained by Epic to offset its travel department overhead which is not billed to You. Travel will not be initiated by Epic without Your prior written approval, which will typically include the amount of expected airfare. If You are more than sixty (60) days past due for payment of any Uncontested Amounts of out-of-pocket expenses sustained by Epic, Epic may in its sole discretion, after fifteen (15) days' written notice to You and an opportunity to cure, cease travelling in connection with this Agreement until You have resolved the circumstances of such non-payment.

i. **Rates.** All implementation and training services provided by Epic beyond those services expressly included in the Implementation Payment Plan Services will be at Epic's standard rates for such Services. The current standard rates for such services are listed on Exhibit 1(d) to the Agreement

j. **Maintenance Fees.** During the term of the Maintenance Program (which begins upon First Live use of an Item), You agree to pay Epic maintenance fees, monthly in advance, for each Item for which the Maintenance Program is then in effect. The initial monthly maintenance fee for each Item at the initial Licensed Volume is set forth in Exhibit 1(a)-2. These amounts will be increased if the Licensed Volume increases in the same manner as Your license fees, as set forth in Section 6(c) above. Except as otherwise set forth in this Agreement, the Program Property monthly maintenance fees will remain at the initial rates for from the date of this Agreement and will be increased thereafter by Epic

k. **Expanding Your Expected Type of Use.**

l. **Payments Before First Live Use.** You agree that You will begin First Live Use of each Item only if at such time there is no Uncontested Amount due to Epic under this Agreement that is unpaid. Epic may require a license key number to be entered into the applicable Item of Program Property for use of such Item of Program Property for any production purpose. You agree that Epic will not enable an Item of Program Property for such use by You if You are not current with Your payments of Uncontested Amounts to Epic.

m. **Future Software & Services.** For all future software and services not included in the Agreement as of the Effective Date, You will pay the then-current fees at the time of obtaining such software and services.

n. **Potential FQHC License Fee and Maintenance Grant.** ███

a. **General.** The Maintenance Program for the Program Property is as set forth in Exhibit 3(a) to the Agreement.

8. WARRANTY

a. **Responses Service Requests.** Epic will respond to requests for service under the Maintenance Program (whether during the Warranty Period or otherwise) as provided in Exhibit 3(b) (Epic Error Correction Services).

b. **Warranty Cure Periods.** If, during the Warranty Period, You notify Epic in writing (via a letter to the individuals and addresses set forth in Section 75 in the Agreement that specifically states it is notice of a warranty problem), that an Item of Program Property contains a Substantive Program Error and describe such Substantive Program Error, then Epic will have an initial cure period of sixty (60) days from its receipt of such notice to correct or provide a Reasonable Workaround for any Substantive Program Error. You will have an additional thirty days from receipt of the correction or Reasonable Workaround to notify Epic that either: (i) You believe the applicable Substantive Program Error(s) in such Item have not been cured by Epic; or (ii) You believe You have identified new Substantive Program Errors in such Item arising out of the correction or Reasonable Workaround. Notice by the SFDPH must again be in writing be and sent to the addresses and individuals stated in Section 75 of the Agreement and describe each Substantive Program Error. Epic will then have an additional cure period of fifteen days after such notification to correct or provide a Reasonable Workaround for any Substantive Program Errors. For the sake of clarity, the formal notice requirements set forth in this Section only apply with respect to Substantive Program Errors that You believe are subject to the warranty remedy set forth in Section 8(c) below if not cured in accordance with this Section. Other requests for support under the Maintenance Program may be submitted directly to applicable personnel (e.g., over the phone or via a ticket submitted through Sherlock, Epic's current web-based support portal).

c. **Refund Remedy.** ██
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d. **Epic Customized Code.** If You select the fixed price and warranty option for a Program Property modification under Section 5 of these License Terms, Epic also provides a warranty with respect to Substantive Program Errors in such modified Code. Such warranty will have the same provisions as Section 8(b) and 8(c) above, except that the warranty period will be the ninety (90) day period after delivery of such modified Code to You and Your remedy under Section 8(c) will relate solely to the modification and the fixed price.

e. **Warranty Limitations.** Without limiting Epic's obligations under the Hosting Terms and related Exhibits to the Agreement, in no event will Epic bear any warranty responsibility for any errors or damages of any kind caused by or resulting from defects in the hardware, input errors, third party criminal acts or changes to the Program Property made by You. Any modification of the Program Property by anyone other than Epic will relieve Epic of any and all obligations under this Section 8.

f. **Disabling Code.** Epic warrants that the Program Property does not contain any Code designed by Epic to intentionally interfere with the normal operation of the Program Property after its First Live Use. After Your First Live Use of a particular Item of Program Property, Epic agrees that it will not disable Your use of such Item of Program Property for purposes of enforcing any provision of this Agreement without first obtaining Your written consent or a court order to do so.

g. **Ownership.** Epic warrants that it is the lawful owner of the Program Property, or, to the extent Epic is not the lawful owner of the Program Property, it has all rights necessary for it to license the Program Property to You under this Agreement. ████████████████████████████████████
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i. **NO OTHER REPRESENTATION OR WARRANTY. THE ABOVE EXPRESS LIMITED WARRANTIES ARE EXCLUSIVE AND ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESSED OR IMPLIED, ARE HEREBY DISCLAIMED, INCLUDING WARRANTIES OF MERCHANTABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE AND TITLE, AND ANY IMPLIED WARRANTY AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE PROGRAM PROPERTY OR**

AGAINST INFRINGEMENT. YOU ACKNOWLEDGE THAT NO EMPLOYEE OF EPIC OR ANY OTHER PARTY IS AUTHORIZED TO MAKE ANY REPRESENTATION OR WARRANTY NOT IN THIS AGREEMENT.

9. **TESTING AND ACCEPTANCE**

a. **General.** Testing and Acceptance provisions under these License Terms are as set forth in Sections 3.4 of Exhibit 2(a) to the Agreement.

10. **LIMITATIONS OF LIABILITY (RESERVED – INCLUDED IN ARTICLE 14 OF THE AGREEMENT)**

11. **PROGRAM PROPERTY PROTECTIONS**

a. **General.** You will not, and will not permit Your employees or agents, or any other person or party, to do any of the following:

(i) Reverse engineer any of the Program Property or any part thereof; or

(ii) Use the Program Property to create a second independently operating application or database using the Program Property so that any limitations on use, such as Your Licensed Volume, may be avoided (except as may be permitted for additional Production Directories if You pay applicable fees).

b. **Copyrights and Trademarks.** You agree not to remove, modify or diminish any Epic or third party trademarks or copyright or trademark notices contained in any Program Property or any Third Party Software and Data. To the extent practical, You further agree to affix and maintain the copyright and trademark notices of Epic and third parties on all copies made of the Program Property. If You customize the appearance of any Program Property in Your system (including Epic's MyChart, EpicCare Link, PlanLink, Radar, OutReach, Welcome or Hyperspace), You agree to display Epic's logos and other trademarks in a manner, style and location that conforms to the requirements specified in Epic's then-current documentation for such Program Property.

c. **Confidentiality.** You understand and agree that Epic Confidential Information (including the Program Property) contains certain confidential information protected by operation of law and this Agreement. Consistent with that understanding and to protect the rights of Epic, You agree that You will do the following, in addition to the other obligations set forth in the Agreement:

(i) Maintain in confidence any Epic Confidential Information.

(ii) Limit access to the Program Property to Your Affiliate Users in the United States, subject to the second and third sentences of Section 2(a) of these License Terms.

(iii) If You discover that anyone who has access to any Program Property made available to You under this Agreement is assisting directly or indirectly in the development, design or enhancement of software that competes with, or is being developed to compete with, any Epic software, either promptly discontinue access to such person or promptly ensure that any such competitive activity is promptly terminated.

(iv) Notify Epic promptly and fully in writing of any person, or entity that You know has copied or obtained possession of or access to any of the Program Property without authorization from Epic.

d. **Third Party Assistance.** If You or any of Your Affiliates want a third party to provide assistance related to the use, implementation or maintenance of the Program Property (including business process outsourcing, staff augmentation, training, support or hosting) or otherwise want to provide it with access to Epic Confidential Information, You will not permit such third party to have access to the Program Property or other Epic Confidential Information unless such third party has in place at the time of such access an agreement with Epic that expressly permits such access. This Section 11(d) should not be construed as requiring an agreement that precludes such third party or its employees from providing implementation services for software that competes with any Epic software, as long as such third party and its employees do not assist in any way with the actual development, design or enhancement of the software as indicated in this Section 11(d). You may initiate Epic's access approval process under this Section 11(d) by providing Epic with a list of consultants or other third parties that You would like to provide access to the Program Property or other Epic Confidential Information.

12. YOUR CONFIDENTIAL INFORMATION (SEE ALSO ARTICLE 9 OF THE AGREEMENT)

a. For the sake of clarity, Epic does not have confidentiality obligations under the Agreement with respect to (i) information that relates to the identity of Program Property modules that have been licensed by You, the types and configuration of hardware or operating systems on which the Program Property is operated, the identity of any software or hardware systems with which the Program Property interfaces for You, the sites at which Epic either is implementing, interfacing or maintaining the Program Property or expects to implement, interface or maintain the Program Property, or any development relating to the Program Property; or (ii) any information that concerns software, programs, code, data structures, medical content, internet portals or technology offerings, or related development, implementation, maintenance, support or other services, even if included in any of or derived from the examples of City's Confidential Information.

13. PURPOSEFULLY OMITTED.

14. USE OF PROGRAM PROPERTY BY AFFILIATES

a. **General.** You may provide any Affiliate with access to and the right to use the Program Property, subject to the terms and conditions below and elsewhere in the Agreement (including Section 11):

(i) To preserve Epic Confidential Information from competitors, You will not allow access to any individual or entity which licenses software to health care organizations (or any other potential competitor of Epic) without Epic's prior written consent.

(ii) You will provide access only to Affiliates, including employees and third parties who must have access to the Program Property in order to make proper use of the accessed Program Property in Your and Your Affiliate Users' health care delivery operations (and only to the extent such access is so required and subject to any additional limitations set forth with respect to a specific Affiliate).

(iii) Except as otherwise specifically agreed in writing by Epic (e.g., an agreement with a third party under Section 11(d) that specifically permits additional access). You will grant access to an Affiliate who is

not Your employee only as an end user and such end user access will not include access to any Code other than Workstation Code.

(iv) Any rights of Affiliate Users will be subject to all of the restrictions, limitations and conditions provided in the Agreement (including these License Terms). You will have the same responsibility to Epic for the actions and omissions of Affiliate Users as You would have if they were Your actions or omissions.

b. **Single Licensee.**

(i) Except as may otherwise be provided in the Agreement or in the applicable fee quote with respect to additional Production Directories or Licensed Volume, for purposes of construing the terms and conditions imposed by the Agreement, all Affiliate Users will be combined with You and treated as a single licensee. For example, but without limitation: (1) except as provided in the definitions of Volume and Licensed Volume in Appendix A, all Volume with regard to You or any Affiliate User will be aggregated for determining whether You have exceeded the Licensed Volume; (2) no additional copies of the Program Property will be provided to any Affiliate Users (except applicable Workstation Code); (3) all implementation, training, maintenance, support, requests for customization and the like will be conducted through the responsible employees designated by You to contact Epic; and (4) You will be responsible for all payments to be made to Epic with regard to the activities of any Affiliate User, including any increases in license fees or maintenance fees attributable to the Affiliate User's Volume and any services provided by Epic directly or indirectly to any Affiliate User.

(ii) Any termination of the Agreement or any license granted in the Agreement will also terminate the corresponding rights of any Affiliate User.

15. INDEMNIFICATIONS (RESERVED – INCLUDED IN ARTICLE 13 OF THE AGREEMENT)

16. TAXES (RESERVED – INCLUDED IN ARTICLE 15 OF THE AGREEMENT)

17. TERM AND TERMINATION (RESERVED – INCLUDED IN ARTICLE 16 OF THE AGREEMENT)

18. SOURCE CODE; EXTENSIONS

a. **Delivery and Use.** Epic will provide You with a copy of source Code for the Program Property, as well as descriptions of proprietary data structures and program service calls that are not published for public use. You may use the source Code, proprietary data structures and non-public program service calls only for Your internal maintenance of the Program Property. You will not use, transform, modify or adapt any of the above for any other purpose or to assist in the development or functioning of any software that is competitive, in part or in whole, with any existing or reasonably anticipated Epic software. Likewise, since You have access to the source Code, descriptions of proprietary data structures and other Epic Confidential Information, You will not, without Epic's prior written consent, develop or assist any third party in developing any software that competes with or potentially could compete with any Epic software unless none of Your employees or agents and no employees or agents of the third party, if applicable, who are involved in any manner in the development of such competitive software had access to or were otherwise provided, directly or indirectly, with information relating to any of the source Code or any

descriptions of the data structures or non-public program service calls used by the Program Property and You have established and followed reasonable procedures designed to prevent such access. For such purposes, "development" includes not only writing software code or script, but participating in any way in the development, design or enhancement of the code or script or functional specifications or requirements for the competing software or assisting anyone else with any of these activities. You will maintain the source Code in the United States at all times, and You will not export or re-export any Program Property or any Third Party Software and Data in violation of any export or import laws. Notwithstanding any other provisions of the Agreement, if You make changes to the source Code, then all of Epic's warranty, acceptance, support, and maintenance obligations will cease. The development by You of Programming Points Code will not be considered by itself to be a change to the source Code. You agree that You will not modify the source Code in any way that might affect the Program Property's ability to count Volume or the accuracy of such counts (or in any way attempt to manipulate any counter or its accuracy, whether by changing Code or by any other means). As between You and Epic, any source code, object code, and associated documentation provided to You by the subcontractor pursuant to this Agreement will be owned by Epic and subject to all applicable confidentiality and use restrictions as if such code or documentation had been provided by Epic.

b. **Extensions.** Since Epic provides its source Code, data structures and other Epic Confidential Information to its customers, it is possible that customers could develop extensions to the Program Property and obtain intellectual property rights relating to such extensions. Epic also needs to be able to continue to develop the Program Property for the benefit of all of its customers without being blocked by intellectual property rights arising from any extensions. Therefore, You agree neither You nor any Affiliate Users will enforce any Extension IP Right against Epic or its Owned Entities or its or their direct or indirect customers or sublicensees relating to any software or services developed or provided by Epic or its Owned Entities relating to or for use in conjunction with the Program Property. You also agree that neither You nor any Affiliate User will assign any Extension IP Right to another person or entity unless such third party agrees not to enforce such right as provided above, and any purported assignment without such agreement will be null and void.

c. **Your Extensions**.
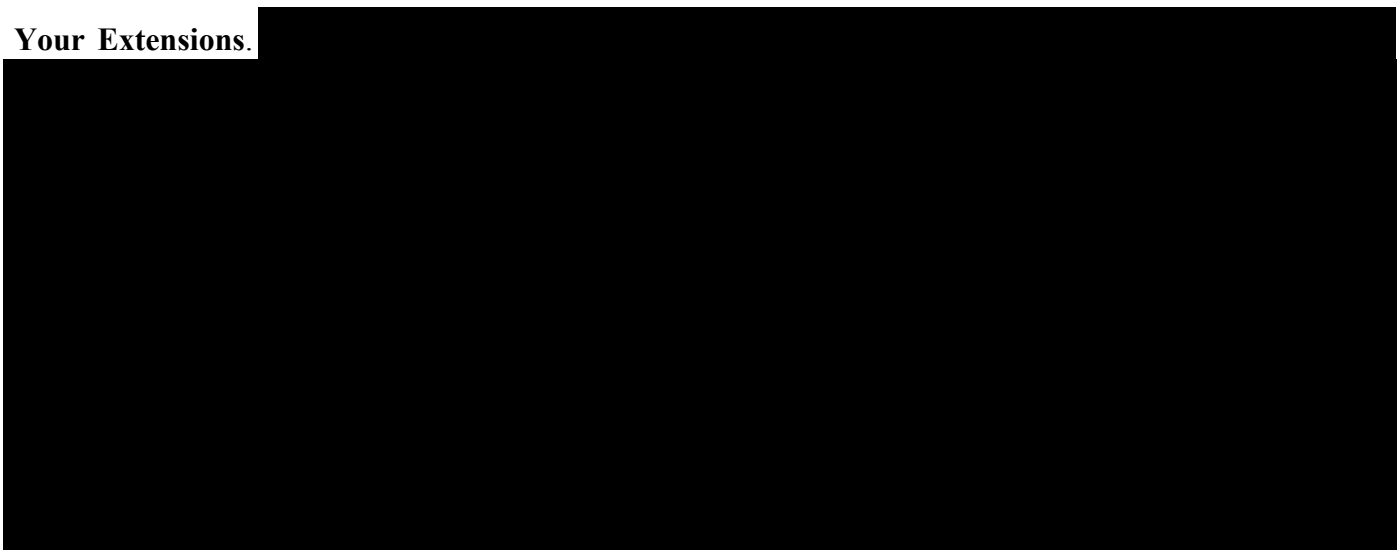
d. **Unlicensed Software.** Various items of Epic software are integrated for the benefit of Epic's customers. For Your and Epic's convenience, Epic may provide You with object and/ or source code for items of

software that are not licensed under the Agreement. In such event, Epic will normally deactivate the object and source code for the unlicensed items. You agree that You will not modify the source code or configuration of such items or of any of the Program Property in a manner that would allow You or anyone else to use the unlicensed object or source code. You agree not to use such unlicensed source or object code. You also agree not to copy such unlicensed source or object code other than as is incidental and necessary for any properly licensed copying of the licensed Program Property. In addition, although such code is not Program Property under the Agreement, the non-Program Property code and any documentation relating to it will also be subject to the restrictions on the use, confidentiality, and safekeeping under Section 11, the restrictions on copying of Program Property under Section 2(b), and the restrictions on source code in Section 18(a).

19. NOTICE (RESERVED – INCLUDED IN SECTION 75 OF THE AGREEMENT)

20. RECORDS REQUIREMENTS

a. To the extent of applicability of 42 U.S.C. s 1395x(v)(1)(I) as amended from time-to-time, and regulations promulgated under such provision, Epic agrees that until the expiration of four (4) years after furnishing services and/or products under the Agreement, it will make available, upon written request of the Secretary of the Department of Health and Human Services (the "Secretary"), or upon request of the Comptroller General of the United States, or any of their duly authorized representatives, the Agreement and the books, documents, and records of Epic that are necessary to certify the nature and extent of the costs for which You seek reimbursement.

b. Epic further agrees that if it carries out any of the duties of the Agreement through a subcontract with a value or cost of ten thousand dollars ($10,000) or more over a twelve (12) month period, with a related organization, such subcontract will contain a clause that until the expiration of four (4) years after the furnishing of such services under such subcontract, the related organization will make available, upon written request of the Secretary or Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents, and records of such organization that are necessary to verify the nature and extent of such costs.

21. MISCELLANEOUS – RESERVED – INCLUDED IN ARTICLE 19 OF THE AGREEMENT)

Appendix B: Hosting Services Terms

These Hosting Services Terms (the "Hosting Terms") are made between Epic City Government, LLC, which is located at 1979 Milky Way, Verona, Wisconsin 53593 ("Epic"); and the City and County of San Francisco, having its principal place of business at 1 Dr. Carlton B. Goodlett Place, San Francisco, California 94102-4685 ("You" and "Your Address").

You and Epic have entered into a License, Support, and Hosting Agreement (inclusive of this Appendix B: Hosting Services Terms, the "Agreement"), pursuant to which Epic will provide You with specified software and Services during the Term. This Appendix sets forth the terms that apply to certain Hosting Services and other Hosting Professional Services that Epic will provide You under the Agreement during the Hosting Term. Epic is willing to provide You such Hosting Services and Hosting Professional Services based upon the terms and conditions set forth in this Agreement, which are to be read and interpreted together with all other documents, appendices, exhibits, and addenda to the Agreement as a single agreement.

Epic and You agree as follows:

1. **DEFINITIONS**

The definitions provided on Appendix C apply to these Hosting Terms.

2. **RIGHTS GRANTED**

   a. **Services.** Epic grants You the non-exclusive, non-assignable, limited right during the Term to access and use the Hosting Services in the United States subject to the terms and conditions of this Agreement. In addition, incidental use of the Hosting Services by Your Affiliate Users from locations outside the United States in occasional circumstances, such as while on vacation or traveling abroad, for the purpose of treating Your or Your Personnel's patients in the United States will not be a violation of the limitation "to use the Hosting Services in the United States" as set forth in the first sentence of this Section 2(a) as long as You exercise good faith in limiting any such incidental access for the temporary circumstance and, where reasonably practicable in permitting such access, Your User accesses the Program Property through a VPN connection or other similar secure method. You understand and agree that the Technical Support Services terms and conditions contained in Exhibit 5(a), the Hosting Services Availability terms and conditions contained in Exhibit 5(b) and the application response time guidelines contained in Exhibit 5(c) do not apply to use and access of the Hosting Services for such incidental use of the United States, and Your Affiliate Users may not have access to the Hosting Services from outside of the United States. You may allow Your Affiliate Users to access and use the Hosting Services, subject to the preceding sentences and with You having the same responsibility to Epic for Your Affiliate Users' actions and omissions as if they were Your actions or omissions. You do not acquire under this Agreement any license or any right to access or use or to allow others to access or use the Hosting Services in excess of the scope expressly set forth in this Agreement. At the end of the Hosting Term, Your and Your Affiliate Users' right to access and use the Hosting Services will terminate.

   b. **Technical Support.** Epic agrees to provide You with technical support for the Hosting Services during the Term as described in Exhibit 5(a).

c. **Your Stored Materials.** To enable Epic to provide You with the Hosting Services and Hosting Professional Services, You grant Epic the right to use, process, store and transmit Your Stored Materials during the Hosting Term in accordance with this Agreement.

3. **SCOPE OF WORK**

a. **General.** Epic will provide the Hosting Services in accordance with the Hosting Scope of Work. The pricing provided on Exhibit 1(a)-2 is based upon the Hosting Scope of Work and the other assumptions included on Exhibit 1(a)-3. You may only use the Hosting Services in a manner consistent with the Hosting Scope of Work. If Epic identifies a situation in which it believes Your use of the Hosting Services is inconsistent with the Hosting Scope of Work, Epic will promptly inform You and You will stop the inconsistent use (however, if You disagree with Epic's assessment, then the parties will escalate their concerns and seek to reach a mutually agreeable resolution). Epic will also provide You with information to assist You in resolving the inconsistency.

b. **Changes to the Hosting Scope of Work**. Epic may make changes or updates to the Hosting Scope of Work from time to time in its sole discretion for any reason including but not limited to infrastructure, security, technical configurations and application features, subject to the pricing terms set forth on Exhibit 1(a)-3. Epic agrees that it will not make any changes to the Hosting Scope of Work during the Agreement that: (1) would result in a material degradation to the quality of the Hosting Services provided to You, and (2) would have a material adverse impact on Your organization. Epic will use commercially reasonable efforts to inform You in writing of any material changes to the Hosting Scope of Work at least thirty (30) days in advance of such changes going into effect.

4. **TERM AND TERMINATION**

a. **Term and Renewal.** By execution of this Agreement, You have contracted for the ten-year Hosting Term, which term may not be extended without a Formal Amendment executed in accordance with the terms of this Agreement.

b. **Termination Transition Assistance.**
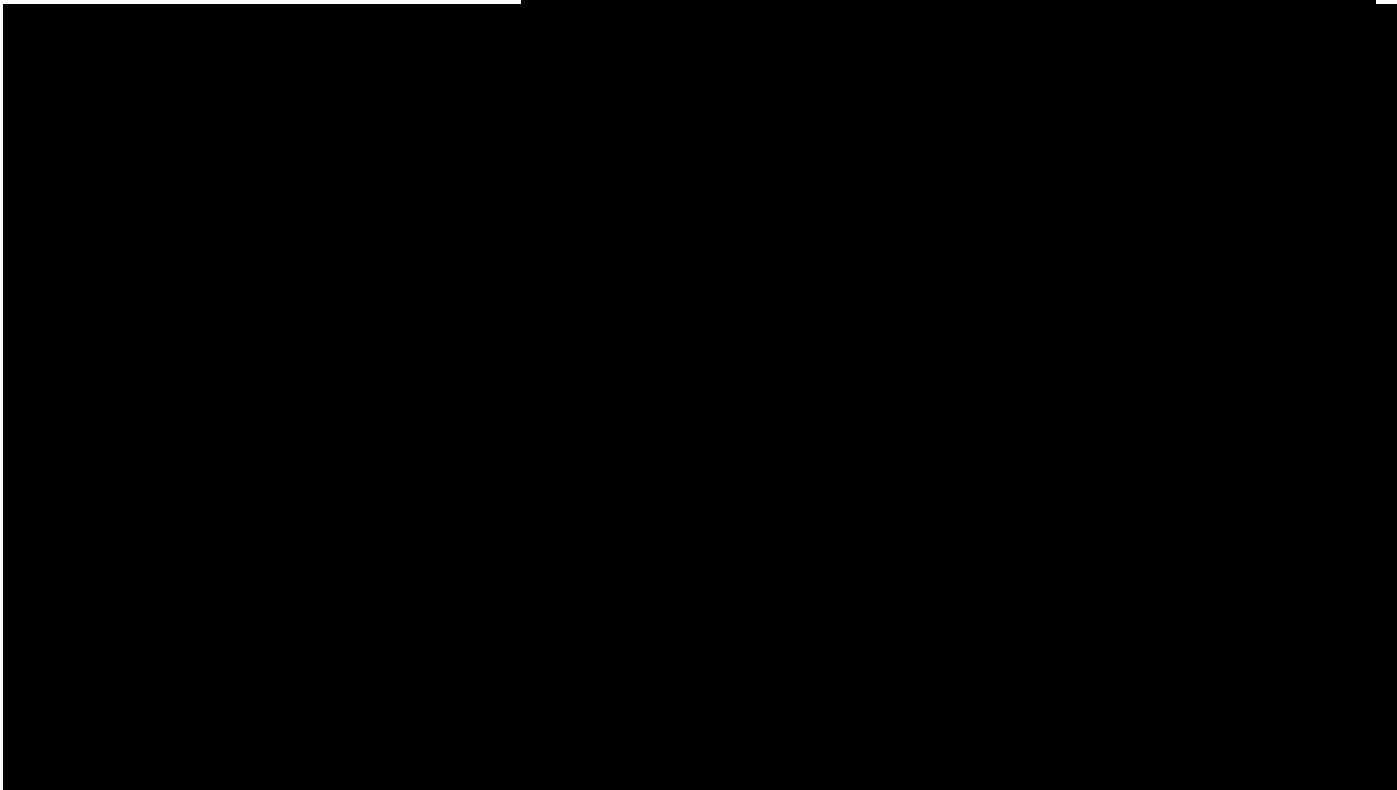
5. **PAYMENTS (RESERVED – INCLUDED IN ELSEWHERE IN THE AGREEMENT)**

6. **CONFIDENTIAL INFORMATION (RESERVED – INCLUDED IN ARTICLE 9 OF THE AGREEMENT)**

7. **REPRESENTATIONS, WARRANTIES, AVAILABILITY AND RESPONSE TIME**

   a. **Hosting Professional Services Warranty.** Epic warrants that any Hosting Professional Services provided to You by Epic under this Agreement will be performed in a competent and workmanlike manner. ██████

   b. **Hosting Services.** Provisions related to the availability of the Hosting Services are provided in Exhibit 5(b) and provisions related to Application Response Time Guidelines of the Program Property used by You through the Hosting Services are provided in Exhibit 5(c) and Exhibit 5(c)-1. ██████

   c. **Limitations.** WHILE EPIC HAS OBLIGATIONS TO YOU TO PROVIDE HOSTING SERVICES TECHNICAL SUPPORT UNDER EXHIBIT 5(a) AND OBLIGATIONS TO YOU WITH RESPECT TO AVAILABILITY OF THE HOSTING SERVICES UNDER EXHIBIT 5(b) AND RESPONSE TIMES UNDER EXHIBIT 5(c) AND EXHIBIT 5(c)-1, EPIC DOES NOT GUARANTEE THAT (A) THE PROVISION OF THE HOSTING SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR THAT EPIC WILL CORRECT ALL ERRORS IN THE HOSTING SERVICES ████████ (B) THE HOSTING SERVICES WILL OPERATE IN CONNECTION WITH ALL FORMS OF YOUR STORED MATERIALS (E.G., INCOMPATIBLE THIRD PARTY CLINICAL CONTENT) AND WITH OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY EPIC (FOR THE SAKE OF CLARITY, STORED MATERIALS EXCLUDE THE PROGRAM PROPERTY AND THIRD PARTY SOFTWARE AND DATA), OR (C) THE HOSTING SERVICES OR HOSTING PROFESSIONAL SERVICES WILL MEET ANY EXPECTATIONS OTHER THAN EPIC'S EXPRESS OBLIGATIONS UNDER THESE HOSTING TERMS. YOU ACKNOWLEDGE THAT EPIC DOES NOT CONTROL THE TRANSFER OF DATA OVER THE INTERNET, AND THAT THE HOSTING SERVICES WILL BE SUBJECT TO LIMITATIONS INHERENT IN THE USE OF THE INTERNET (E.G., MYCHART OR CARE EVERYWHERE TRAFFIC). EPIC IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. EPIC IS NOT RESPONSIBLE FOR ANY ISSUES OR DAMAGES OF ANY KIND RELATED TO THE PERFORMANCE, SECURITY OR GENERAL OPERATION OF THE HOSTING SERVICES THAT ARISE FROM YOUR STORED MATERIALS (E.G., EPIC IS NOT RESPONSIBLE IF YOUR STORED MATERIALS INTRODUCE A VIRUS), YOUR HARDWARE, THIRD PARTY CRIMINAL ACTS OR THIRD PARTY CONTENT.

   d. **Exclusion of Representations and All Other Warranties.** THE ABOVE EXPRESS LIMITED WARRANTY IS EXCLUSIVE AND ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESSED OR IMPLIED, ARE HEREBY DISCLAIMED,

INCLUDING WARRANTIES OF MERCHANTABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE AND TITLE, AND ANY IMPLIED WARRANTY AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE HOSTING SERVICES OR HOSTING PROFESSIONAL SERVICES OR AGAINST INFRINGEMENT. YOU ACKNOWLEDGE THAT NO EMPLOYEE OF EPIC OR ANY OTHER PARTY IS AUTHORIZED TO MAKE ANY REPRESENTATION OR WARRANTY NOT IN THIS AGREEMENT.

8. **LIMITATIONS OF LIABILITY (RESERVED – INCLUDED IN ARTICLE 14 OF THE AGREEMENT)**

9. **SUBCONTRACTING AND ASSIGNMENT (RESERVED – INCLUDED IN SECTION 23 OF THE AGREEMENT)**

10. **INDEMNIFICATIONS (RESERVED – INCLUDED IN ARTICLE 13 OF THE AGREEMENT)**

11. **NOTICE (RESERVED – INCLUDED IN SECTION 75 OF THE AGREEMENT)**

12. **(PURPOSEFULLY OMITTED)**

13. **NON-SOLICITATION (RESERVED – INCLUDED IN SECTION 87 OF THE AGREEMENT)**

14. **AVAILABILITY OF RECORDS**

   a. Under 42 U.S.C. 1395x(v)(1)(l), as amended from time to time, and regulations promulgated under such provision, Epic agrees that, until the expiration of four (4) years after furnishing any services and/or products under this Agreement, it will make available, upon written request of the Secretary of the Department of Health and Human Services (the "Secretary") or upon request of the Comptroller General of the United States, or any of their duly authorized representatives, this Agreement and the books, documents and records of Epic that are required to certify the nature and extent of the costs for which You may seek reimbursement.

   b. Epic further agrees that if it carries out any of the duties of this Agreement through a subcontract with a value or cost of ten thousand dollars ($10,000) or more over a twelve (12) month period, with a related organization, such subcontract will contain a clause that until the expiration of four (4) years after the furnishing of such services under such subcontract, the related organization will make available, upon written request of the Secretary or Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents, and records of such organization that are necessary to verify the nature and extent of such costs.

15. **MISCELLANEOUS (RESERVED – INCLUDED IN ARTICLE 19 OF THE AGREEMENT)**

   a. **Title, Risk of Loss, Shipment and Product Return.** Title to the On Site Equipment will remain with Epic at all times. The risk of loss to the On Site Equipment lies with You. You will be responsible for the On Site Equipment and agree to insure the On Site Equipment for full value. Upon Your request, Epic will provide You with reasonable information necessary for You to insure the On Site Equipment (e.g., serial numbers of the equipment). On Site Equipment will be returned to Epic at the end of the Hosting Term and must be in the same condition as when You received it from Epic, except for normal wear and tear. You agree to pay Epic all standard charges for repair, replacement or refurbishment, if needed, for damage to the On Site Equipment during the Hosting Term upon written request in accordance with this Agreement.

Appendix C

Definitions

1. "Acceptance" has the meaning set forth in Exhibit 2(a) (Implementation and Maintenance Scope of Work).

2. "Additional Services" are the Services set forth in Exhibit 2(a) (Implementation and Maintenance Scope of Work) as "Additional Services".
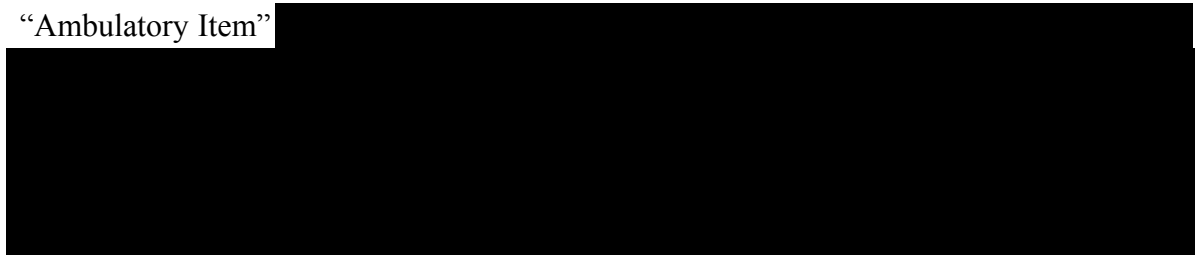
3. "Affiliate" ██
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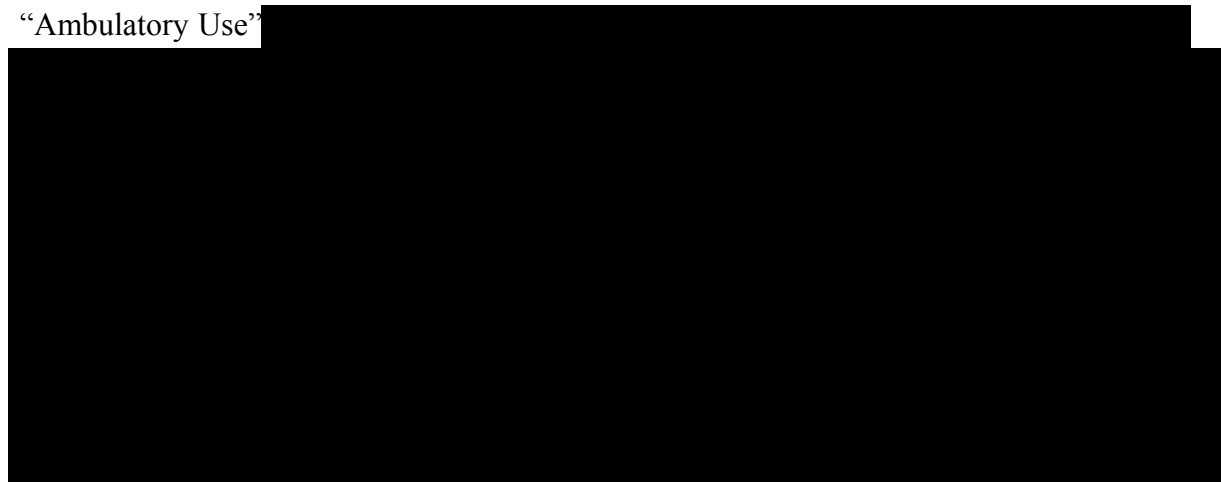
4. "Affiliate User" means any Affiliate granted access to or the right to use the Program Property pursuant to Section 14 of the License Terms.

5. "Agreement" means the License, Support and Hosting Agreement between Epic and You and any attached Appendices, Exhibits and Addenda, including any future written and executed Formal Amendments.

6. "Ambulatory Item" ██
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7. "Ambulatory Use" ██
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8. "Annual Volume" means the applicable aggregate Volume for the Program Property during the twelve-month period beginning on the Effective Date of this Agreement and for each succeeding twelve-month period thereafter during the Term (whether or not You have increased the Licensed Volume).

9. "Business Intelligence Software" means either the software published by Business Objects Software Limited that is identified on Exhibit 1(a)-2 or otherwise specified by Epic or such other business intelligence software that Epic may specify from time to time.

10. "City's Confidential Information" or "Your Confidential Information" means, except as provided below, all confidential patient data stored using the Program Property (including Protected Health Information, patient financial information, and personally identifiable information), and Your confidential financial information. "City's Confidential Information" excludes, without limitation, any information that (a) is now or subsequently becomes generally available to the public through no fault or breach on the part of Epic, (b) is rightfully known by Epic on a non-confidential basis at the time of the first receipt of such information from You or applicable access provided by You; (c) is independently developed by Epic without the use of any otherwise City's Confidential Information; or (d) is rightfully obtained by Epic from a third party which has the right at such time to transfer and disclose it on a non-confidential basis.

11. "City's Contract Administrator" means the City's designee authorized to administer this Agreement.

12. "City Data" or "Your Data" means data that meets all the following criteria: (a) the data belongs to You, and (b) the data was stored by You on Epic-owned servers in accordance with the terms of this Agreement during the Hosting Term. "City Data" excludes Epic Confidential Information and any information that concerns software, including but not limited to programs, code, data structures, medical content, internet portals or technology offerings, or related development, implementation, maintenance, support or other services, even if included in any of or derived from City Data.

13. "City Program Budget Revision" means Your reallocation of contingency amounts available with respect to the Agreement, as further described in Section 11.2 of the Agreement.

14. "Claim" means, except with respect to Sections 4(c) and (d) of the License Terms, and includes all claims, demands and actions, and all liabilities, damages, refunds and costs arising out of or relating to same, including settlements and reasonable costs and attorney's fees.

15. "Clarity RDBMS Software" means the relational database management system software specified by Epic from time to time for use with the Clarity and Analyst Reporting Package.

16. "Code" means the object code and source code of the Program Property, including all Updates and other modifications to the Program Property, and all other object and source code provided by Epic to You pursuant to this Agreement. "Code" includes the object code and source code of the Program Property provided to You in the master patient index environment or a system with training data. Code will be considered to have been delivered whenever first made available to You, whether physically or by e-mail, internet access, electronic download or other means, and Your license rights to the Program Property will pass to You (subject to the terms and conditions of the Agreement) upon receipt by You at Your facility.

17. "Contested Amount" means the amount of a charge from Epic to You that You dispute in writing in good faith, if the written notice of the dispute specifies the nature of the dispute and is provided to Epic ███████████████ the date the invoice is received by You in accordance with Section 10.1 of the Agreement and You have paid all other undisputed amounts due under this Agreement.

18. "Controller" means the Controller of the City and County of San Francisco.

19. "Critical Issues" ██
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20. "Current Version" means the most recent release of the particular Item. As of the Effective Date of the Agreement, major releases are typically made available approximately once per year. If You are operating the most recent release, including subsequent special updates to that release, then You will be deemed to be operating the Current Version.

21. "Customer Responsibilities" has the meaning set forth in Section 36 of the Agreement.

22. "Deliverables" mean the items defined as Deliverables in Exhibit 2(a) (Implementation and Maintenance Scope of Work).

23. "Documentation" means any written instructions, manuals, training materials, or other documents or materials, including any technical data associated with the Program Property, in paper, electronic, recorded or other format, relating to the functionality, operation, use, source code, data structures, implementation, or maintenance of the Program Property or other Epic software, which are (i) provided by Epic to You, or (ii) created by You (or on Your behalf) to the extent constituting or revealing any Epic Confidential Information.

24. "Documentation Manuals" means the online "Setup and Support Guides" and corresponding "Release Notes" for the applicable Program Property that are available via

Epic's online documentation system "Galaxy", release note management system "Nova", or other distribution mechanism specifically identified for such purpose by Epic in the future. "Documentation Manuals" do not include other guides, documents, or tools and materials, including any that may be concurrently made available to You, such as data models, data dictionaries, or objects listings.

25. "ECI" means the Employment Cost Index for total compensation (not seasonally adjusted) for private industry workers, management, professional and related occupations, excluding incentive paid occupations, December 2005 = 100, compiled by the U.S. Department of Labor, Bureau of Labor Statistics. The most recently published ECI prior to the date of this Agreement will be the base for measuring any changes in the ECI, unless otherwise specified in this Agreement. If publication of the ECI is discontinued, a similar cost index will be substituted for use for the purposes that the ECI is used in this Agreement, subject to mutual agreement of the parties (and until the parties reach such agreement, the terms of the Agreement referencing ECI are of no effect).

26. "Enterprise Item" ██
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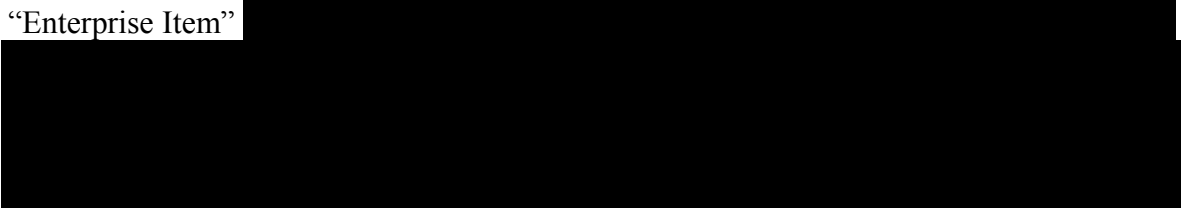
27. "Epic Confidential Information" or "Contractor Confidential Information" means, except as provided below, all information claimed by Epic to be confidential, including any non-public information concerning the Services, including any information concerning the functionality, operation, use, implementation, or support of the Hosting Services, and any information concerning the development, implementation, training or maintenance of the Program Property or other Epic software or services or Third Party Software and Data, including functionality, operation, use, source code, data structures, business strategies and the terms of this Agreement. "Epic Confidential Information" and "Contractor Confidential Information" exclude, without limitation, any information that: (a) is now or subsequently becomes generally available to the public through no fault or breach on the part of You or Your Affiliate Users, (b) is rightfully known by You on a non-confidential basis at the time of Your first receipt of such information from Epic or access to the Program Property; (c) is independently developed by You without the use of any otherwise Epic Confidential Information; or (d) is rightfully obtained by You from a third party which has the right at such time to transfer and disclose it on a non-confidential basis.

28. "EpicCare Item" means any Item on Exhibit 1(a)-3 with "EpicCare" contained in its name.

29. "Expected Type of Use" ██
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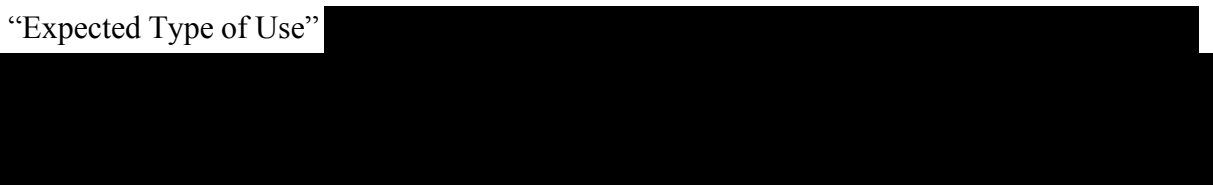
30. "Extension IP Right" means any patent or copyright, or any trade secret disclosed to Epic, in all cases relating to or claiming any software, code, functionality, interface, apparatus, system or process that is or could be an extension of or is intended to work with or involve use of any Epic software.

31. "First Live Use" of an Item of Program Property occurs when You first use such Item to process actual patient data for production purposes.

32. "Force Majeure Event" an event that meets the requirements for a force majeure event under Section 26 of the Agreement.

33. "Formal Amendment" means a fully executed written amendment to this Agreement that has been approved by each Party in accordance with the terms of Section 11 of the Agreement. A Formal Amendment can either increase the GMP or reallocate contingency amounts.

34. "Hosting Early Termination Fee" ██████████████████████████

35. "Hosting Professional Services" means the technical support services provided by Epic under Exhibit 5(a) together with any hourly Services provided to You with respect to Your use of the Hosting Services added in accordance with Section 11 of the Agreement. Epic's current standard rates for hourly Hosting Professional Services are listed on Exhibit 1(d). Hosting Professional Services do not include the Hosting Services defined in Exhibit 4 (Hosting Scope of Work).

36. "Hosting Scope of Work" means the scope of work attached hereto as Exhibit 4.

37. "Hosting Services" means the Epic hosting services defined in Exhibit 4 (Hosting Scope of Work) and ordered by You pursuant to Exhibit 1(a)-2. Hosting Services do not include any Hosting Professional Services.

38. "Hosting Term" means the Term of the Agreement, except to the extent the Hosting Services and Hosting Professional Services are earlier terminated by You in accordance with the express terms of the Agreement.

39. "Implementation Fee Amount" ████████████████████████████████ ███████████████████████

40. "Implementation Payment Plan Items" ███████████████████████████ ████████████████████████████████████

41. "Implementation Payment Plan Schedule" ███████████████████████████
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42. "Implementation Payment Plan Services" ██████████████████████████
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43. "Implementation Schedule" means the implementation schedule agreed to by the Parties and attached as Appendix E to the Agreement.

44. "Implementation and Maintenance Scope of Work" means the scope of work attached as Exhibit 2(a).

45. "Indemnitees" means the applicable party hereto, its Owned Entities, all employees, commissioners, officers, agents, boards, and directors of the applicable party and its Owned Entities, and, for Your Indemnitees, Your Affiliate Users. Thus, "Your Indemnitees" means You and each of these persons or entities that are related to You, and "Epic Indemnitees" means Epic and each of these persons or entities that are related to Epic.

46. "Inpatient Item" ██
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47. "Inpatient Use" ███
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48. "Item" means each individual line item of Program Property specified on Exhibit 1(a)-2. An Update is not a new Item, but will be deemed to be the same Item as the earlier version of Program Property upon which the Update is based.

49. "Licensed Volume" means the limitation(s) on the Annual Volume for the Program Property as initially specified in Exhibit 1(a)-3 and increased pursuant to Section 6(c) of the License Terms. You represent that the information You provided to Epic in order for Epic to calculate Your Volume represented a reasonable calculation of Your expected Annual Volume for each Item based on Your current operations as if each Item were fully implemented.

50. "M Operating Environment" means the M operating environment software identified on Exhibit 1(a)-2 or such other operating environment software that Epic may specify from time to time.

51. "Maintenance Program" means the program of maintenance and support services available to You from Epic under the Agreement and as specified in Exhibit 3(a) (Software Maintenance Support Policies).

52. "Major Issues" means, ███
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53. "New State Regulation" means a future change in the state law or regulation of California that relates directly to the functionality of Epic's Program Property as it is described in the Documentation Manuals and would result in the operation of the Program Property as described in the Documentation Manuals violating such change in state law.

54. "Non-Program Property Error" means any apparent or real defect, error, or other anomaly arising during Your use of or otherwise relating to the Program Property that is reasonably determined, after reasonable inquiry and investigation, either not to have originated from the Program Property as designed (including incorrect use of the Program Property or Your hardware; input errors; or errors or defects originating in Your hardware, Your communications equipment, the operating systems, the Operating Environment, the KB SQL software, the Business Intelligence Software, the Programming Points Code or other code developed by You or anyone other than Epic, or in any software other than the Program Property), or to have resulted from the configuration, presentation formats, or the general flow and function of the Program Property, or from modifications of the Program Property by anyone other than Epic. As used herein, "incorrect use of the Program Property" means use that does not comply with the Documentation Manuals for the applicable Program Property. In no event will a Non-Program Property Error be considered to be a Program Error. This definition of Non-Program Property Error does not

limit Epic's express responsibilities under Exhibit 2(a) (Implementation and Maintenance Scope of Work).

55. "On Site Equipment" ███
███████████████████████████████

56. "Operating Environment" means the InterSystems' Caché software identified on Exhibit 1(a)-2 or such other operating environment software that Epic may specify from time to time.

57. "Other Area Use" ██
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58. "Owned Entities" means Epic Systems Corporation and any subsidiary of Epic Systems Corporation.

59. "Performance Data" means the following relating to Your use of the Program Property: operating system metrics (e.g., CPU utilization, files system usage, disk read performance), Operating Environment metrics (e.g., database accesses per second, available licenses, database free space), Program Property activity metrics (e.g., number of appointments created, average length of stay), configuration selections (e.g., workflows, item selections) and other performance metrics and usage data.

60. "Personnel" means You, all Affiliate Users, all of Your or any Affiliate User's employees and agents, and all physicians, physician's assistants, nurse practitioners, nurses, other medical professionals or other persons involved in any way in the care of any patient involving the Program Property.

61. "Preceding Version" means the second or third most recent version of an Item released to You.

62. "Production Directory" means both: (i) each separate copy of the server Code of the Program Property used to process actual patient data; and (ii) to the extent such use is possible, each actual patient database exceeding one that is processed by the same server Code copy of Program Property. For example, if You use one copy of the server Code to process data in two patient databases, You would be using two Production Directories. Further, if You use three separate copies of the server Code of the Program Property to process actual patient data, two of those copies process only one patient database each and

one of those copies processes two patient databases, then You would be using four Production Directories. Directories used solely for testing or training; backup systems or hot site copies used solely for disaster recovery; shadow copies supporting MyChart or EpicCare Link; or Clarity-related reporting copies supporting read-only reporting functions are not considered Production Directories. For the sake of clarity, Your use of non-production directories under Appendix B is not limited (see Section 2(b) of the License Terms), however use of additional non-production directories beyond those included in the Hosting Services as described in Exhibit 4 (Hosting Scope of Work) requires a Formal Amendment and may result in additional fees.

63. "Production Environment" means the primary production M Operating Environment database containing the live production version of Your Data and the corresponding servers and other equipment provided as part of the Hosting Services (as further described in this Agreement), hosted by Epic, and necessary to deliver the Hosting Services to You. The Production Environment does not include any other additional environments that may be hosted by Epic as part of the Hosting Services, including, without limitation, test, development, training, reporting, or MyChart nor does it include any corresponding databases, servers or equipment associated with such environments.

64. "Program Error" means a reproducible error or defect in the Code that results in the failure of the Program Property to operate (including to produce output) in substantial conformity to descriptions of such operation in the Specifications for the Program Property.

65. "Program Property" means each of the following with respect to each software application listed as an Item of Program Property on Exhibit 1(a)-2: the software object and source Code, the Documentation, and all Updates and other modifications to the object or source Code that are provided by Epic to You pursuant to this Agreement.

66. "Programming Points Code" means programming code You or Your staff write that is external to the source Code that is developed to be executable at places in the Code that are designed by Epic to permit the execution of external code in accordance with Epic's instructions (e.g., for purposes of customizing of the Program Property).

67. "Project Director" means, with respect to You, Your implementation project director, and with respect to Epic, Epic's implementation director.

68. "Readiness Criteria" means Epic's then-standard implementation readiness criteria.

69. "Reasonable Workaround"

70. "Resolute Item" ██

71. "Services" means, collectively, the professional services provided by Epic under Exhibit 2(a) (Implementation and Maintenance Scope of Work), Exhibit 3(a) (Epic Support Policies), Exhibit 3(b) (Epic Error Correction Services), Exhibit 4 (Hosting Scope of Work) (but only the professional services contained therein), Exhibit 5(a) (Technical Support for Hosting Services), and Exhibit 1(d) (Current Hourly Rates for Services). The Services do not include the Hosting Services (i.e., infrastructure and software) listed on Exhibit 4 (Hosting Scope of Work).

72. "Specifications" means the descriptions of the operation, output, or interoperation of the applicable Program Property identified in the Documentation Manuals and Exhibit 6 (RFP) for the release and functions listed by Epic as currently available. To the extent modifications to the Program Property permitted under this Agreement include changes to or the elimination of certain functionality of the Program Property, the Specifications will be deemed modified accordingly.

73. "Stored Materials" means any data (including Your Data), content, software, code, routines, or other similar materials that You or one of Affiliate Users stores on servers owned or controlled by Epic. For the sake of clarity, Stored Materials exclude the Program Property and Third Party Software and Data.

74. "Subcontract" means an agreement between a third party and Epic pursuant to which the third party (the "Subcontractor") provides Services that are billed through directly to You.

75. "Substantive Program Error" ██
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76. "Superseded Version" means the second most recent release of an Item.

77. "Support Materials" means the following types of formats, data and forms: report formats, SmartForms, SmartSets, SmartText, SmartPhrases, pathways, decision support rules, selection lists, flowsheets, care plans, patient education, handouts and letter forms, after visit summary forms, preference lists, reference master files and category lists and other reference tables, and similar formats, data and forms that are created for use with the Program Property ██
████████████

78. "System Performance Credit", ██████████████████████████████████████
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79. "Technical Go-Live", for purposes of the Hosting Terms and associated Exhibits, has the meaning provided in Exhibit 1(a)-3 of this Agreement.

80. "Term" means the period commencing on the Effective Date of this Agreement and ending ten (10) years after the Effective Date of this Agreement, except to the extent the Agreement is terminated earlier than such date in accordance with the terms herein.

81. "Third Party Products", for purposes of Article 13 of the Agreement, means any equipment, software, data, code sets, or other information or material used with or by or loaded into the Program Property, whether or not provided by or licensed by Epic.

82. "Third Party Software and Data" means the items of software and data sublicensed to You and specified in the "Third Party Software and Data (not Program Property)" section of Exhibit 1(a)-2.

83. "Typical Type of Use" ███
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84. "Uncontested Amount" means an amount charged by Epic to You that is not then a Contested Amount.

85. "Update" means a release or version of the Program Property (both the Code and its associated Documentation) containing functional enhancements, extensions, error corrections or fixes if such release or version is generally made available free of charge to Epic's similarly situated customers who are then participating in Epic's Maintenance Program. An Update consists of any such Program Property code and its associated documentation.

86. "Volume" means the actual level of use of the Program Property under this Agreement determined as provided in Exhibit 1(c) and Section 14(b)(i)(1) of Appendix A (License Terms). If You add an Affiliate under Epic's Connect program pursuant to a Formal Amendment to the Agreement, the use of the Program Property by that Affiliate may be tracked separately.

87. "Warranty Period" means, for each Item of the Program Property, ███████████████ ███████ after the date of the First Live Use of such Item. ███████████████████████

88. "Workstation Code" means components of the object Code, if any, which are designed to operate on personal computers for the purpose of accessing the object Code on Your server(s).

San Francisco Department of Public Health
Business Associate Agreement

This Business Associate Agreement ("BAA") supplements and is made a part of the Agreement by and between the City and County of San Francisco, the Covered Entity ("CE"), and Epic City Government, LLC ("Contractor"), the Business Associate ("BA"). To the extent that the terms of the Agreement are inconsistent with the terms of this BAA, the terms of this BAA shall control with respect to Protected Information (as defined below).

RECITALS

A.   CE, by and through the San Francisco Department of Public Health ("SFDPH"), wishes to disclose certain information to BA pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI") (defined below).

B.   For purposes of the Agreement, CE requires Contractor, even if Contractor is also a Covered Entity under HIPAA, to comply with the terms and conditions of this BAA as a BA of CE.

C.   CE and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated there under by the U.S. Department of Health and Human Services (collectively HIPAA and the HITECH Act are referred to as the "HIPAA Regulations").

D.   As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, Title 45, Sections 164.314(a), 164.502(a) and (e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and contained in this BAA.

E.   BA has entered into an agreement with CE that requires the CE to disclose certain Protected Health Information to BA. The parties desire to enter into this BAA to permit BA to have access to such information and comply with the BA requirements of the HIPAA Regulations.

F.   BA's subcontractor owns and operates a web-based personal health records service, currently known as Lucy (the "PHR Service"), that can be made available to CE's patients by way of a link provided on CE's patient portal website.

In consideration of the mutual promises below and the exchange of information pursuant to this BAA, the parties agree as follows:

1. **Definitions.** All capitalized terms used but not otherwise defined in this BAA have the same meaning as those terms in the HIPAA Regulations.

    a. Breach shall have the meaning given to such term under the HITECH Act and the HIPAA Regulations (42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402) for the purposes

of this BAA only; with respect to all other uses of the word "breach" in this Exhibit (e.g., section 3), the word has its ordinary contract meaning.

b. Breach Notification Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.

c. Business Associate shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act (42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103).

d. Covered Entity shall have the meaning given to such term under the Privacy Rule and the Security Rule (45 C.F.R. Section 160.103).

e. Data Aggregation shall have the meaning given to such term under the Privacy Rule (45 C.F.R. Section 164.501).

f. Designated Record Set shall have the meaning given to such term under the Privacy Rule (45 C.F.R. Section 164.501).

g. Electronic Protected Health Information shall have the meaning given to such term under the HIPAA Regulations (45 C.F.R. Section 160.103).

h. Electronic Health Record shall have the meaning given to such term under the HITECH Act (42 U.S.C. Section 17921).

i. Health Care Operations shall have the meaning given to such term under the Privacy Rule (45 C.F.R. Section 164.501).

j. Privacy Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

k. Protected Health Information or PHI shall have the meaning given to such term under the Privacy Rule (45 C.F.R. Sections 160.103 and 164.501). For the purposes of this BAA, PHI may also include all medical information and health insurance information as defined in California Civil Code Sections 56.05 and 1798.82.

l. Protected Information shall mean PHI provided by CE to BA or created, maintained, received or transmitted by BA on CE's behalf.

m. Security Incident shall have the meaning given to such term under the Security Rule (45 C.F.R. Section 164.304).

n. Security Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

o. Unsecured PHI shall have the meaning given to such term under the HITECH Act (42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402).

San Francisco Department of Public Health
Business Associate Agreement

2. Obligations of Business Associate.

a. Attestations. The BA shall complete the following forms, attached and incorporated by reference as though fully set forth herein, SFDPH Attestations for Privacy (Attachment 1) and Data Security (Attachment 2) (collectively the "Attestation Forms") within sixty (60) calendar days from the date of BA's execution of the Agreement. ▮▮▮▮▮▮▮

▮▮ BA shall retain the Attestation Forms for a period of seven years after the Agreement terminates and shall make the Attestation Forms available to CE within ▮▮▮▮▮▮▮ of a written request by CE.

b. User Training. The BA shall provide appropriate training on PHI privacy and security, including HIPAA and HITECH and its regulations, to BA's employees that will access, use or disclose Protected Information, upon hire ▮▮

c. Permitted Uses. BA may use, access, and/or disclose Protected Information only for the purpose of performing functions, activities, services or obligations for, or on behalf of, CE, including the provision of software, implementation, maintenance and support services, and as permitted or required under the Agreement, BAA and any other agreements in effect between CE and BA, or as permitted by law. Further, BA shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE (45 C.F.R. Sections 164.502, 164.504(e)(2). and 164.504(e)(4)(i)).

d. Permitted Disclosures. BA shall disclose Protected Information only for the purpose of performing functions, activities, services or obligations for, or on behalf of, CE, including the provision of software implementation, maintenance and support services, and as permitted or required under the Agreement, BAA and any other agreements in effect between CE and BA, or as permitted by law. However, BA may disclose Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) satisfactory written assurances from such third party that such Protected Information will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to such third

San Francisco Department of Public Health
Business Associate Agreement

party, and (ii) a written agreement or assurance from such third party to notify BA of any instances of which it is aware in which the confidentiality of such information has been breached (42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)(4)(ii)(B)(2)). BA may disclose PHI to a BA that is a subcontractor and may allow the subcontractor to create, receive, maintain, or transmit Protected Information on its behalf, in accordance with paragraph 2.g. below.

e. Prohibited Uses and Disclosures. BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA will not sell PHI or receive any direct or indirect remuneration in exchange for PHI except as permitted by this BAA, the Agreement or federal law; however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Agreement.

f. Appropriate Safeguards. BA shall use appropriate safeguards and comply, where applicable, with Subpart C of 45 CFR Part 164 with respect to ePHI, to prevent use or disclosure, or unauthorized access of the PHI other than as provided for by this BAA or the Agreement.

g. Business Associate's Subcontractors and Agents. BA shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of BA, agree in writing to the same or similar restrictions and conditions that apply to BA with respect to such PHI and implement the safeguards required by paragraph 2.f. above with respect to Electronic PHI (45 C.F.R. Section 164.504(e)(2) through (e)(5); 45 C.F.R. Section 164.308(b)). BA shall mitigate, to the extent reasonably practicable, the effects of any such violation by BA.

h. Accounting of Disclosures. Within ten (10) business days of a request by CE for an accounting of disclosures of Protected Information, BA shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule and the HITECH Act. BA agrees to document such disclosures by BA of Protected Health Information and information related to such disclosures as would be required for CE to respond to a request by an individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528. If an individual or an individual's representative submits a request for an accounting directly to BA or its agents or subcontractors, BA shall forward the request to CE in writing within five (5) calendar days.

i. Access to Protected Information. If BA maintains PHI in a Designated Record Set for CE, BA agrees to provide access, at the request of CE, to PHI in a Designated Record Set, to CE or, as directed by CE, to an individual within ten (10) business days of request by CE. If BA maintains Protected Information in electronic format, BA shall provide such information in electronic format as necessary to enable CE to fulfill its obligations under the HITECH Act and HIPAA Regulations.

San Francisco Department of Public Health
Business Associate Agreement

j. Amendment of Protected Information. If BA maintains PHI in a Designated Record Set for CE, BA agrees to make any amendment(s) to PHI in a Designated Record Set that the CE directs or agrees to pursuant to § 164.526 of the HIPAA Regulations at the request of CE or an individual, within ten (10) business days of such request. If an individual requests an amendment of Protected Information directly from BA, BA must notify CE in writing within five (5) business days of the request (45 C.F.R. Section 164.504(e)(2)(ii)(F)).

k. Governmental Access to Records. BA shall make its internal practices, books, and records, including policies and procedures, and PHI, relating to the use and disclosure of PHI received from, or created, maintained, transmitted, or received by BA on behalf of, CE available to the CE, or to the Secretary, in a time and manner reasonably designated by CE or designated by the Secretary, for purposes of the Secretary determining CE's compliance with the HIPAA Regulations.

l. Minimum Necessary. BA shall use reasonable efforts to request, use and disclose only the minimum amount of Protected Information necessary to accomplish the intended purpose of such use, disclosure, or request. (42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d))

m. Data Ownership. As between CE and BA, BA acknowledges that BA has no ownership rights with respect to the Protected Information.

n. Notification.

    i.   BA shall report to CE any Security Incident related to Protected Health Information within BA's possession or control, and any use, disclosure, or unauthorized access of Protected Information not provided for by the Agreement of which BA becomes aware, within five (5) business days after BA becomes aware of such Security Incident or use, disclosure or unauthorized access. BA shall mitigate, to the extent practicable, any harmful effect that is known to BA of security incidents and document security incidents and their outcomes, in accordance with 45 C.F.R. 164.308(a)(6)(ii).

    ii.   Following BA's discovery of a Breach, BA shall notify CE within five (5) business days of the date on which BA's upper management (including its Security Officer) has actual knowledge of such Breach, but in no case later than sixty (60) calendar days after discovery of such Breach in accordance with 45 C.F.R. 164.410(b). The notification shall include, to the extent possible, the identification of each individual whose unsecured Protected Information has been, or is reasonably believed by the BA to have been, accessed, acquired, used, or disclosed through such Breach, as well as any other available information that CE is required to include in notification to the individual, the media, the Secretary, and any other entity under the

Breach Notification Rule. BA shall mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of Protected Information by BA in violation of the requirements of this BAA or the HIPAA Regulations.

    iii.   With regard only to Breaches that occur in connection with BA's PHR Service, BA or its designated subcontractor will (instead of CE) provide such notifications to individuals and to the media as are required by 45 C.F.R. 164.404 and 164.406 of the HIPAA Regulations.

    o. Breach Pattern or Practice by Business Associate's Subcontractors and Agents. Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(iii), if the BA knows of a pattern of activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent's obligations under its contract or arrangement with BA, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the contractual arrangement with its subcontractor or agent, if feasible.

    p. BA Carrying out CE's Obligations. To the extent BA is to carry out any of CE's obligations under Subpart E of 45 C.F.R. 164 of the HIPAA Regulations, BA will comply with the requirements of Subpart E of 45 C.F.R. 164 of the HIPAA Regulations that apply to CE in the performance of its obligations.

    3.   Termination.
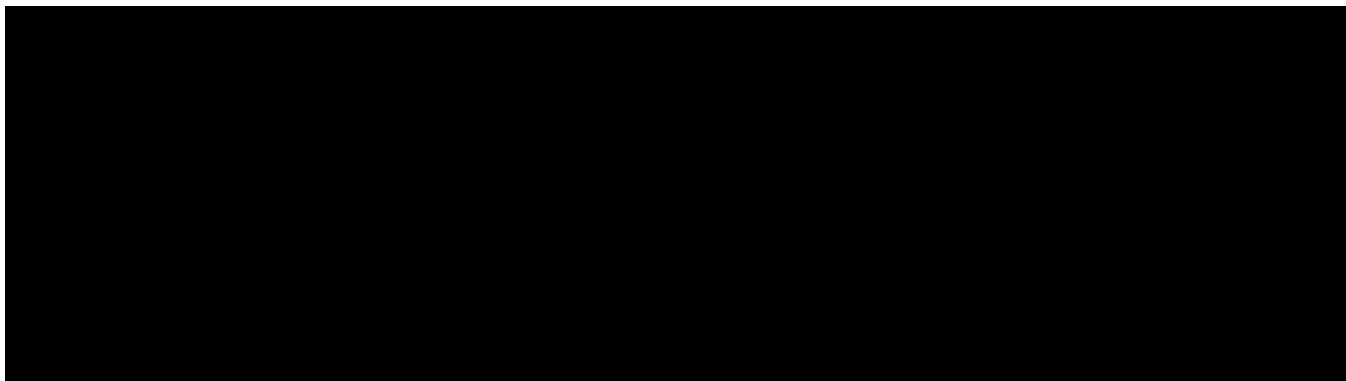
    b. Effect of Termination. Upon termination of the Agreement and this BAA for any reason, BA shall return or destroy all Protected Health Information that BA and its agents and subcontractors still maintain in any form, and shall retain no copies of such Protected Health Information. If return or destruction is not feasible, BA shall continue to extend the protections and satisfy the obligations of Section 2 of this BAA to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of the information infeasible (45 C.F.R. Section 164.504(e)(2)(ii)(J)).

San Francisco Department of Public Health
Business Associate Agreement

    c.   Civil and Criminal Penalties. BA understands and agrees that it is subject to civil or criminal penalties applicable to BA for unauthorized use, access or disclosure or Protected Information in accordance with the HIPAA Regulations.

    d.   Disclaimer. CE makes no warranty or representation that compliance by BA with this BAA, HIPAA, the HITECH Act, or the HIPAA Regulations or corresponding California law provisions will be adequate or satisfactory for BA's own purposes. BA is solely responsible for all decisions made by BA regarding the safeguarding of PHI. Notwithstanding the preceding sentence, CE agrees that it will not send unencrypted PHI to BA in any form, including via email or on mobile devices such as USB drives and should CE do so, BA is not responsible for any damages arising out of or relating to unencrypted PHI that CE sends to BA in any form.

    4.   Amendment to Comply with Law.

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Agreement or this BAA may be required to provide for procedures to ensure compliance with such developments.

Attachment 1 – SFDPH Privacy Attestation, version 06-07-2017

Attachment 2 – SFDPH Data Security Attestation, version 06-07-2017

Attachment 3 – Security and Privacy Attestation Details

Office of Compliance and Privacy Affairs
San Francisco Department of Public Health
101 Grove Street, Room 330, San Francisco, CA 94102
Email: compliance.privacy@sfdph.org
Hotline (Toll-Free): 1-855-729-6040

Contractor Name:		Contractor City Vendor ID	

PRIVACY ATTESTATION

INSTRUCTIONS: Contractors and Partners who receive or have access to health or medical information or electronic health record systems maintained by SFDPH must complete this form. Retain completed Attestations in your files for a period of 7 years. Be prepared to submit completed attestations, along with evidence related to the following items, if requested to do so by SFDPH.

Exceptions: If you believe that a requirement is Not Applicable to you, see instructions below in Section IV on how to request clarification or obtain an exception.

I. All Contractors.

	DOES YOUR ORGANIZATION…	Yes	No*
A	Have formal Privacy Policies that comply with the Health Insurance Portability and Accountability Act (HIPAA)?	■	
B	Have a Privacy Officer or other individual designated as the person in charge of investigating privacy breaches or related incidents?	■	
	If yes:	Name & Title: ■	Phone #	Email: ■
C	Require health inf■ ■ after for all employees who have access to health information? [Retain documentation of trainings for a period of 7 years.] [SFDPH privacy training materials are available for use; contact OCPA at 1-855-729-6040.]	■	
D	Have proof that employees have signed a form upon hire and annually thereafter, with their name and the date, acknowledging that they have received health information privacy training? [Retain documentation of acknowledgement of trainings for a period of 7 years.]	■	
E	Have (or will have if/when applicable) Business Associate Agreements with subcontractors who create, receive, maintain , transmit, or access SFDPH's health information?	■	
F	Assure that staff who create, or transfer health information (via laptop, USB/thumb-drive, handheld), have prior supervisorial authorization to do so **AND** that health information is **only transferred or created on encrypted devices approved by SFDPH Information Security staff**?	■	

II. Contractors who serve patients/clients and have access to SFDPH PHI, must also complete this section.

	If Applicable: DOES YOUR ORGANIZATION…	Yes	No*
G	Have (or will have if/when applicable) evidence that SFDPH Service Desk (628-206-SERV) was notified to de-provision employees who have access to SFDPH health information record systems within 2 business days for regular terminations and within 24 hours for terminations due to cause?	■	
H	Have evidence in each patient's / client's chart or electronic file that a Privacy Notice that meets HIPAA regulations was provided in the patient's / client's preferred language? (English, Cantonese, Vietnamese, Tagalog, Spanish, Russian forms may be required and are available from SFDPH.)	■	
I	Visibly post the Summary of the Notice of Privacy Practices in all six languages in common patient areas of your treatment facility?	■	
J	Document each disclosure of a patient's/client's health information for purposes other than treatment, payment, or operations?	■	
K	When required by law, have proof that signed authorization for disclosure forms (that meet the requirements of the HIPAA Privacy Rule) are obtained PRIOR to releasing a patient's/client's health information?	■	

III. ATTEST: Under penalty of perjury, I hereby attest that to the best of my knowledge the information herein is true and correct and that I have authority to sign on behalf of and bind Contractor listed above.

ATTESTED by Privacy Officer or designated person	Name: (print) ■		Signature		Date	

IV. *EXCEPTIONS: If you have answered "NO" to any question or believe a question is Not Applicable, please contact OCPA at **1-855-729-6040** or compliance.privacy@sfdph.org for a consultation. All "No" or "N/A" answers must be reviewed and approved by OCPA below.

EXCEPTION(S) APPROVED by OCPA	Name (print)		Signature		Date	

FORM REVISED 06072017 SFDPH Office of Compliance and Privacy Affairs (OCPA)

Contractor Name:		Contractor City Vendor ID	

DATA SECURITY ATTESTATION

INSTRUCTIONS: Contractors and Partners who receive or have access to health or medical information or electronic health record systems maintained by SFDPH must complete this form. Retain completed Attestations in your files for a period of 7 years. Be prepared to submit completed attestations, along with evidence related to the following items, if requested to do so by SFDPH.

Exceptions: If you believe that a requirement is Not Applicable to you, see instructions in Section III below on how to request clarification or obtain an exception.

I. All Contractors.

	DOES YOUR ORGANIZATION…	Yes	No*
A	Conduct assessments/audits of your data security safeguards to demonstrate and document compliance with your security policies and the requirements of HIPAA/HITECH at least every two years? [Retain documentation for a period of 7 years]		
B	Use findings from the assessments/audits to identify and mitigate known risks into documented remediation plans?		
	Date of last Data Security Risk Assessment/Audit:		
	Name of firm or person(s) who performed the Assessment/Audit and/or authored the final report:		
C	Have a formal Data Security Awareness Program?		
D	Have formal Data Security Policies and Procedures to detect, contain, and correct security violations that comply with the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH)?		
E	Have a Data Security Officer or other individual designated as the person in charge of ensuring the security of confidential information?		
	If yes:　Name & Title:　　　　　　Phone #　　　　Email:		
F	Require Data Security Training upon hire and annually thereafter for all employees who have access to health information? [Retain documentation of trainings for a period of 7 years.] [SFDPH data security training materials are available for use; contact OCPA at 1-855-729-6040.]		
G	Have proof that employees have signed a form upon hire and annually, or regularly, thereafter, with their name and the date, acknowledging that they have received data security training? [Retain documentation of acknowledgement of trainings for a period of 7 years.]		
H	Have (or will have if/when applicable) Business Associate Agreements with subcontractors who create, receive, maintain , transmit, or access SFDPH's health information?		
I	Have (or will have if/when applicable) a diagram of how SFDPH data flows between your organization and subcontractors or vendors (including named users, access methods, on-premise data hosts, processing systems, etc.)?		

II. ATTEST: Under penalty of perjury, I hereby attest that to the best of my knowledge the information herein is true and correct and that I have authority to sign on behalf of and bind Contractor listed above.

ATTESTED by Data Security Officer or designated person	Name: (print)		Signature		Date	

III. *EXCEPTIONS: If you have answered "NO" to any question or believe a question is Not Applicable, please contact OCPA at **1-855-729-6040** or compliance.privacy@sfdph.org for a consultation. All "No" or "N/A" answers must be reviewed and approved by OCPA below.

EXCEPTION(S) APPROVED by OCPA	Name (print)		Signature		Date	

FORM REVISED 06072017 SFDPH Office of Compliance and Privacy Affairs (OCPA)

Appendix D, Attachment 3: Security and Privacy Attestation Details

General Notes:

- Capitalized terms included in the Privacy and Security Attestations but not defined in the Agreement do not have specific definitions beyond the plain meanings of such terms.

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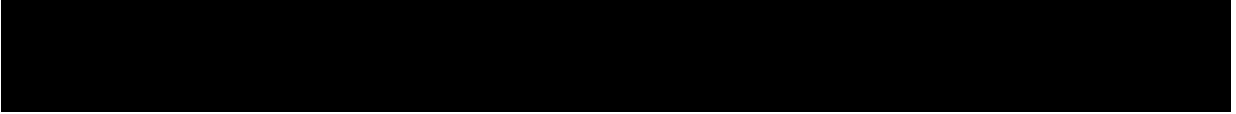
Privacy:

- *1C – Require health information Privacy Training upon hire and annually thereafter for all employees who have access to health information?*

[black redaction box]

- *1D – Have proof that employees have signed a form upon hire and annually thereafter, with their name and the date, acknowledging that they have received health information privacy training?*

[black redaction box]
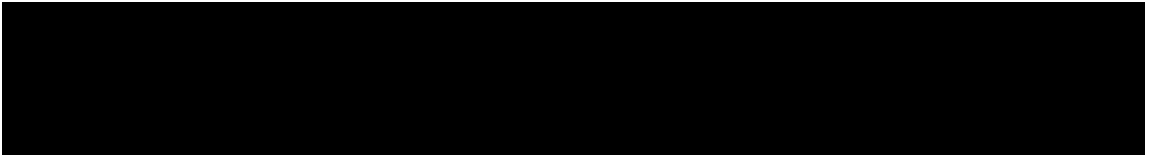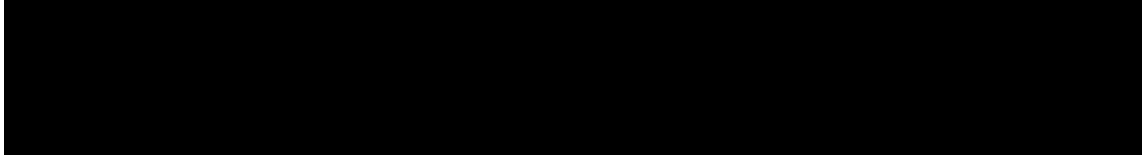
- *1F – Assure that staff who create, or transfer health information (via laptop, USB/thumb-drive, handheld), have prior supervisorial authorization to do so AND that health information is only transferred or created on encrypted devices approved by SFDPH Information Security staff?*

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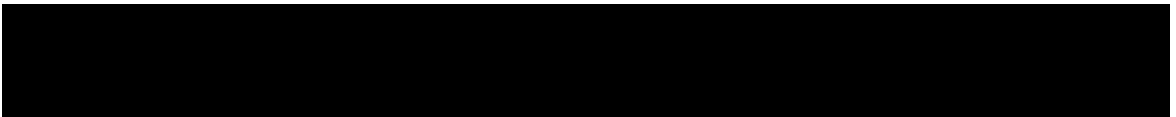
- Section 2 – These questions are not applicable because we do not provide direct patient care or patient care services.

Data Security:

- *1A - Conduct assessments/audits of your data security safeguards to demonstrate and document compliance with your security policies and the requirements of HIPAA/HITECH at least every two years?*

[black redaction box]
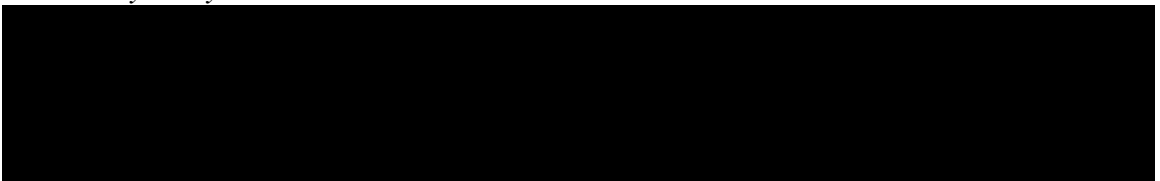
- *1B - Use findings from the assessments/audits to identify and mitigate known risks into documented remediation plans?*
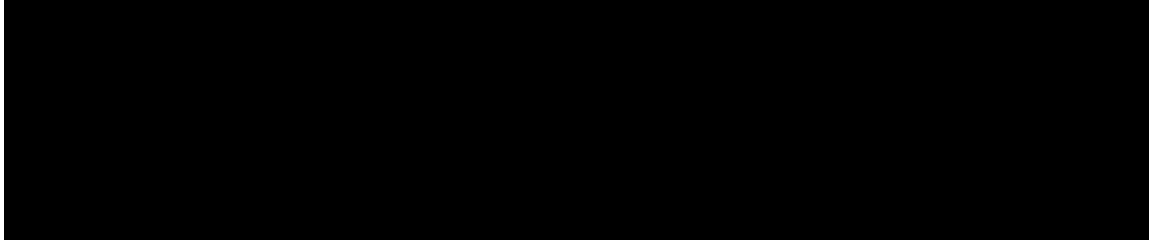
- *1F - Require Data Security Training upon hire and annually thereafter for all employees who have access to health information?*
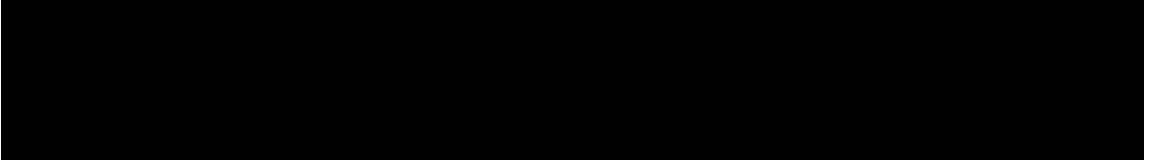
- *1G - Have proof that employees have signed a form upon hire and annually, or regularly, thereafter, with their name and the date, acknowledging that they have received data security training?*
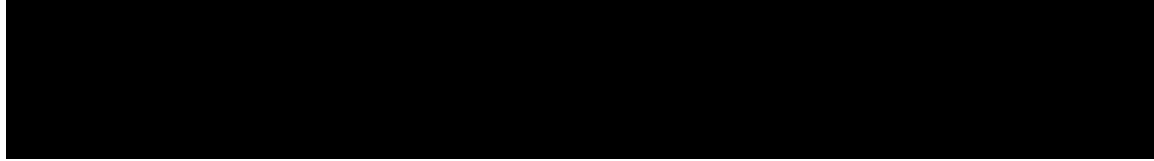
- *1I - Have (or will have if/when applicable) a diagram of how SFDPH data flows between your organization and subcontractors or vendors (including named users, access methods, on-premise data hosts, processing systems, etc.)?*
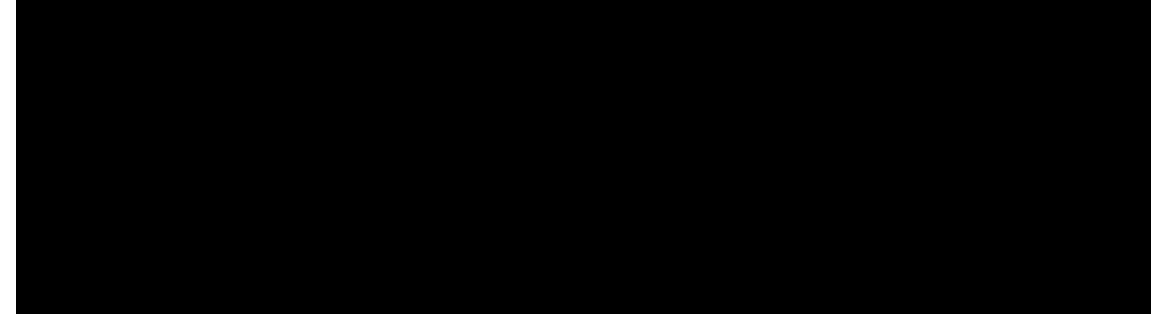
Subject: Re: Epic Security Privacy Attestation

Date: Thursday, October 12, 2017 at 9:32:02 PM Pacific Daylight Time

From: Kim, Bill (DPH)

To: Williams, Spencer (DPH), Zalatimo, Heather (DPH), Rykowski, Maggie (DPH)

CC: Simpson, Louise (CAT)

Thank you.

As the SOC 1 concern, we have addressed that issue in the contract. ███████████████

██████████████████████████

I will approve.

Bill Kim
Chief Information Officer
San Francisco Department of Public Health
101 Grove Street #312
San Francisco, CA 94102
415.554.2633 (office)
415.554.2710 (fax)
415.755.7238 (cell)
bill.kim@sfdph.org

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From: Kim, Bill (DPH)
Sent: Thursday, October 12, 2017 4:48 PM
To: Williams, Spencer (DPH); Zalatimo, Heather (DPH); Rykowski, Maggie (DPH)
Subject: RE: Epic Security Privacy Attestation

Thank you.

Bill Kim
Chief Information Officer
San Francisco Department of Public Health
101 Grove Street #312
San Francisco, CA 94102
415.554.2633 (office)
415.554.2710 (fax)
415.755.7238 (cell)
bill.kim@sfdph.org

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From: Rykowski, Maggie (DPH)
Sent: Thursday, October 12, 2017 4:44:34 PM
To: Williams, Spencer (DPH); Kim, Bill (DPH); Zalatimo, Heather (DPH)
Subject: RE: Epic Security Privacy Attestation

I approve

Maggie

Margaret A. Rykowski, RN, MS
Director, Office of Compliance and Privacy Affairs
Chief Integrity Officer
(415) 759-4025
Pager: 415 327-9261
Email: maggie.rykowski@sfdph.org
Assistant: kenya.thomas@sfdph.org 415-554-2887
SF Department of Public Health
Privacy & Compliance Toll-Free Hotline: 855-729-6040
Calls may be made confidentially and anonymously.
Always remember: SFDPH has a non-retaliation policy.
This e-mail is intended for the recipient only. If Protected Health Information (PHI) is contained in this email, unauthorized disclosure may subject the discloser to civil or criminal penalties under state and federal privacy laws. If you received this email in error, notify me and destroy the email and any attachment immediately.

From: Williams, Spencer (DPH)
Sent: Thursday, October 12, 2017 4:40 PM
To: Kim, Bill (DPH) <bill.kim@sfdph.org>; Rykowski, Maggie (DPH) <maggie.rykowski@sfdph.org>; Zalatimo, Heather (DPH) <heather.zalatimo@sfdph.org>
Subject: RE: Epic Security Privacy Attestation

Hi Bill,

Pasting Heather and my responses below in one email. I do need Maggie's sign off on this still.
Maggie do you approve?

Privacy Attestation via Spencer 10/10/17
I agree with your assessment on the Privacy attestations and the exceptions requested.
I would like your notes page to be attached to the attestations when they are submitted, to provide clarification.
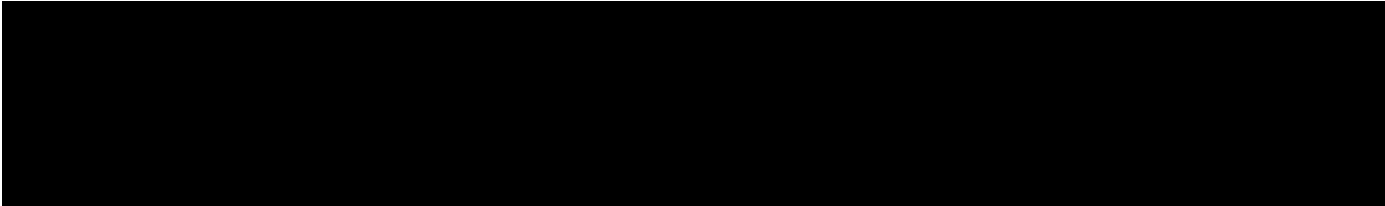
With a contract this big, I'd like Maggie to weigh in, as well.

The gist of it is:

[REDACTED]

G-K: Not applicable to them as they do not serve patients.

Will defer to Heather on the Data Security items.

Spencer

Data Security via Heather 10/10/17

[REDACTED]

Everything else I agree with.

_____

Spencer Williams
Data Sharing Officer
Office of Compliance and Privacy Affairs
SF Department of Public Health
101 Grove St., Rm 400, SF, CA 94102
Phone: 415-554-2827
Fax: 415-554-2845
spencer.williams@sfdph.org
Privacy & Compliance Toll-Free Hotline: 855-729-6040
Calls may be made confidentially and anonymously.
Always remember: SFDPH has a non-retaliation policy.

This e-mail is intended for the recipient only. If Protected Health Information (PHI) is contained in this email, unauthorized disclosure may subject the discloser to civil or criminal penalties under state and federal privacy laws. If you received this email in error, notify me and destroy the email and any attachment immediately.

From: Kim, Bill (DPH)
Sent: Thursday, October 12, 2017 4:33 PM
To: Rykowski, Maggie (DPH) <maggie.rykowski@sfdph.org>; Williams, Spencer (DPH) <Spencer.Williams@sfdph.org>; Zalatimo, Heather (DPH) <heather.zalatimo@sfdph.org>
Subject: Re: Epic Security Privacy Attestation

Have you send me your feedback? Also, Maggie and Heather will need to provide me with email approving.
Bill Kim
Chief Information Officer
San Francisco Department of Public Health

101 Grove Street #312
San Francisco, CA 94102
415.554.2633 (office)
415.554.2710 (fax)
415.755.7238 (cell)
bill.kim@sfdph.org

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From: Kim, Bill (DPH)
Sent: Tuesday, October 10, 2017 9:33:14 AM
To: Rykowski, Maggie (DPH); Williams, Spencer (DPH); Zalatimo, Heather (DPH)
Subject: Epic Security Privacy Attestation

Please see attached Epic's Security and Privacy Attestation. I reviewed and made comments on the justification and felt that they meet our standards.

We are trying to finalize this so your rapid turn around would be great:

Basically, do you agree with my assessment or do you have concerns (which is ok)?

Bill Kim
Chief Information Officer
San Francisco Department of Public Health
101 Grove Street #312
San Francisco, CA 94102
415.554.2633 (office)
415.554.2710 (fax)
415.755.7238 (cell)
bill.kim@sfdph.org

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		Appendix E: Initial (Draft) Schedule							
Project Plan		The Initial Schedule will be finalized during Phase 0 of the implementation.							
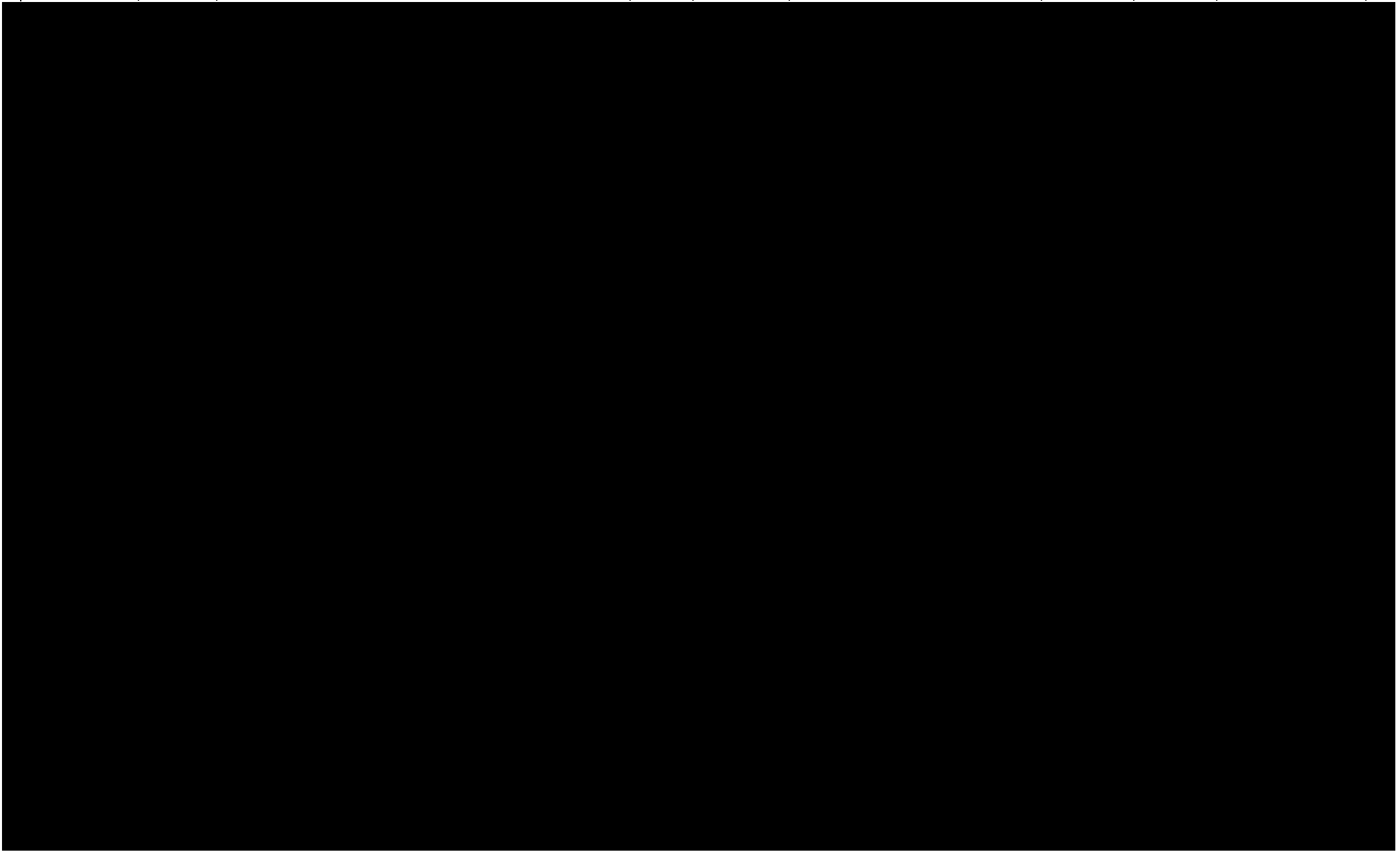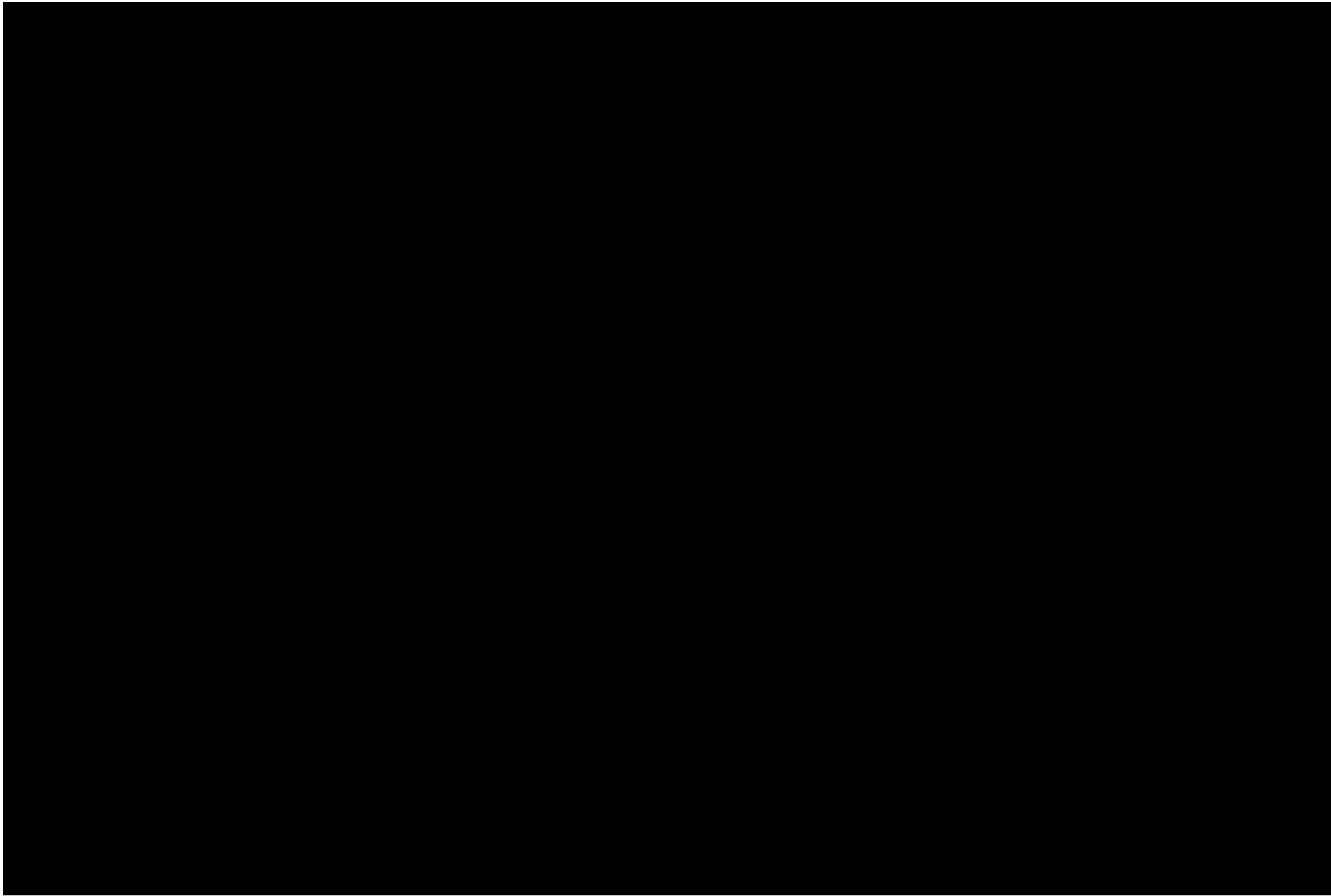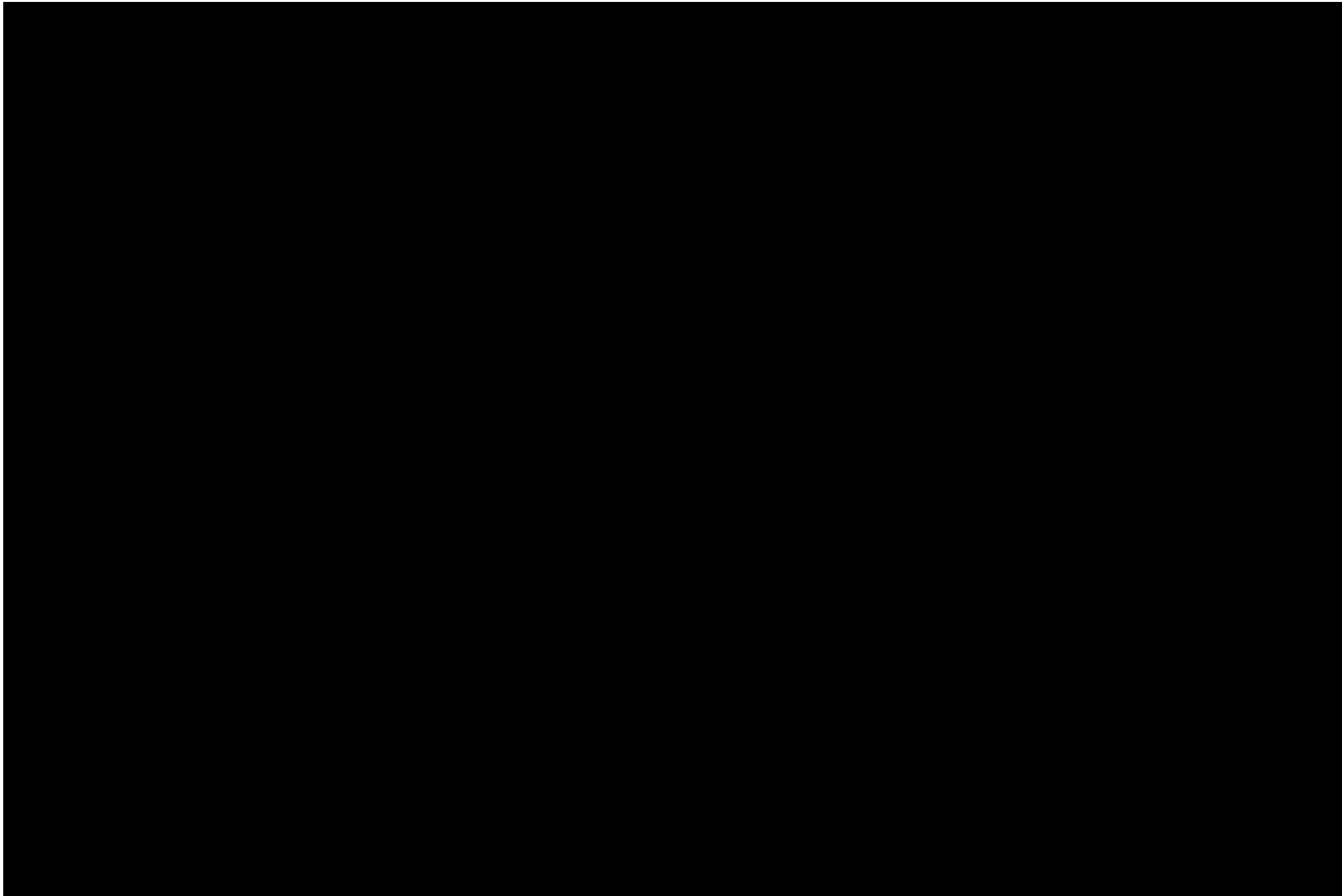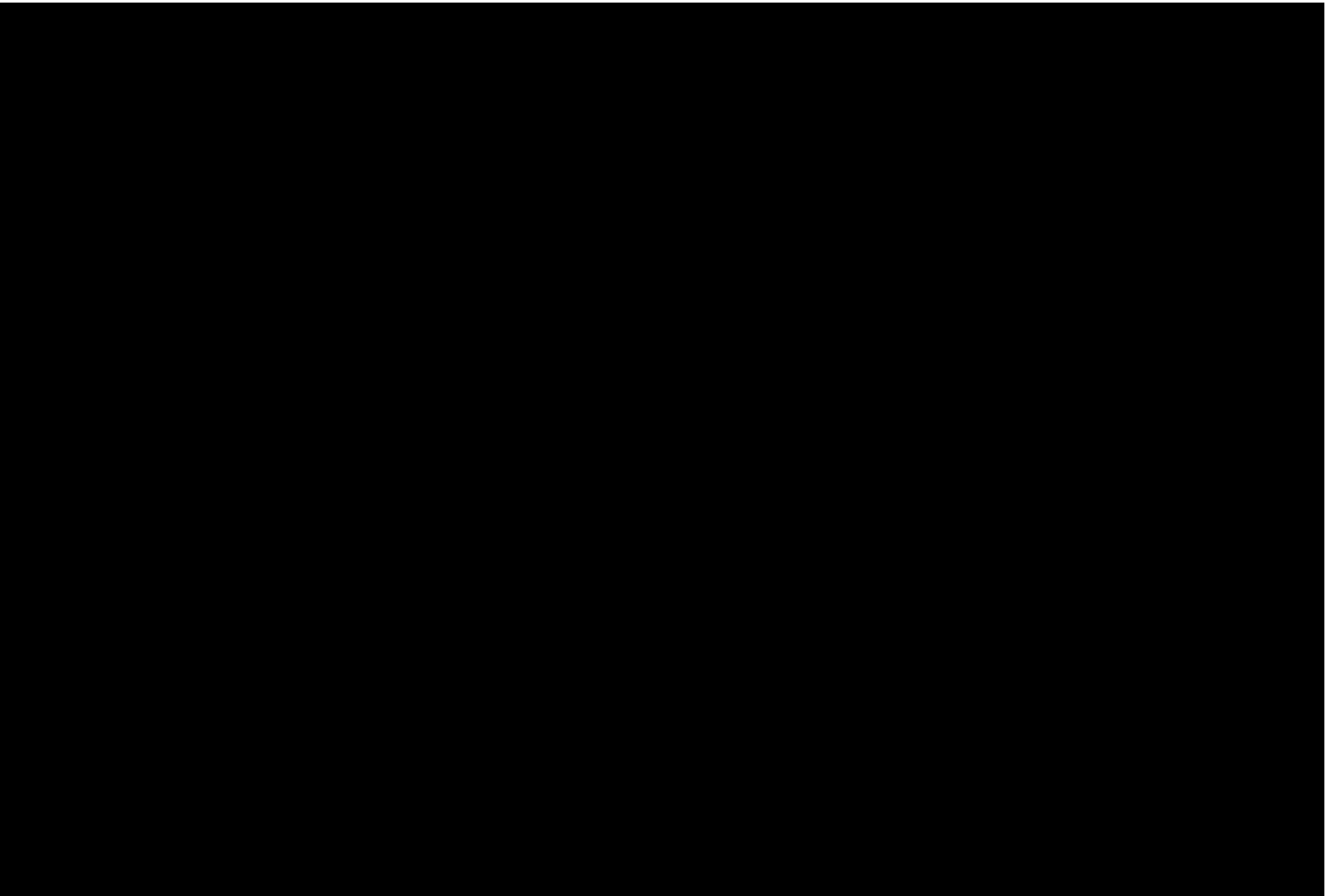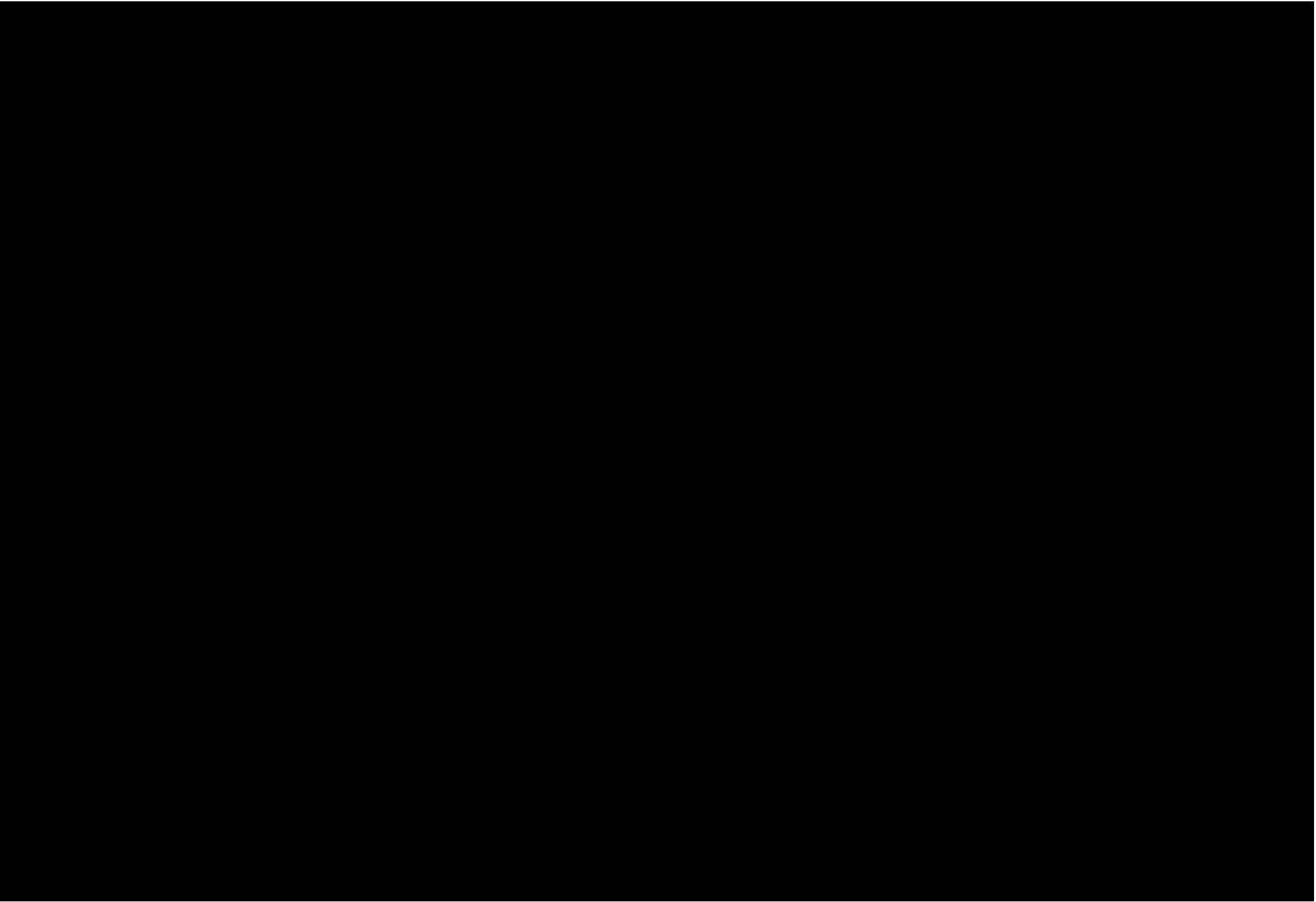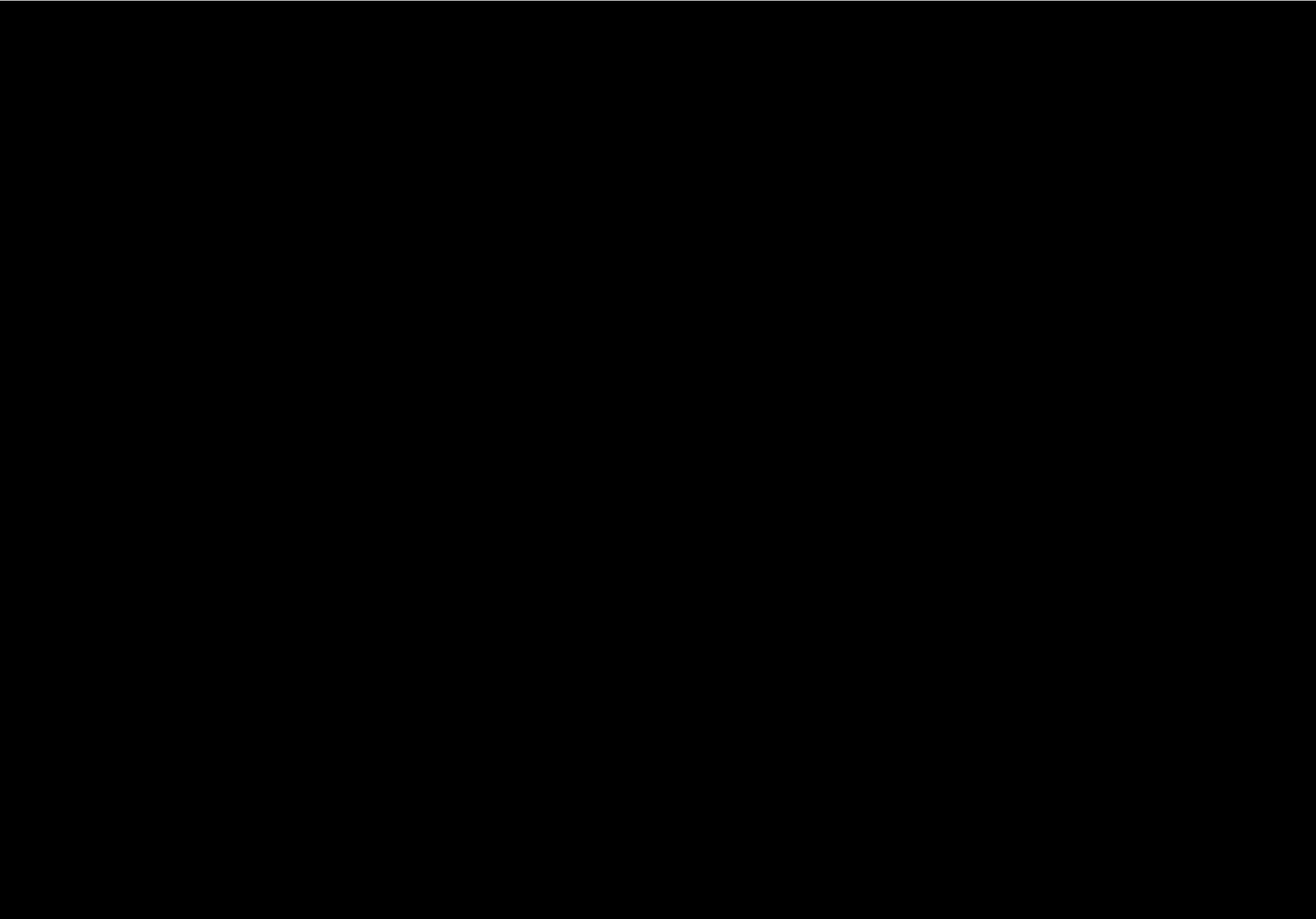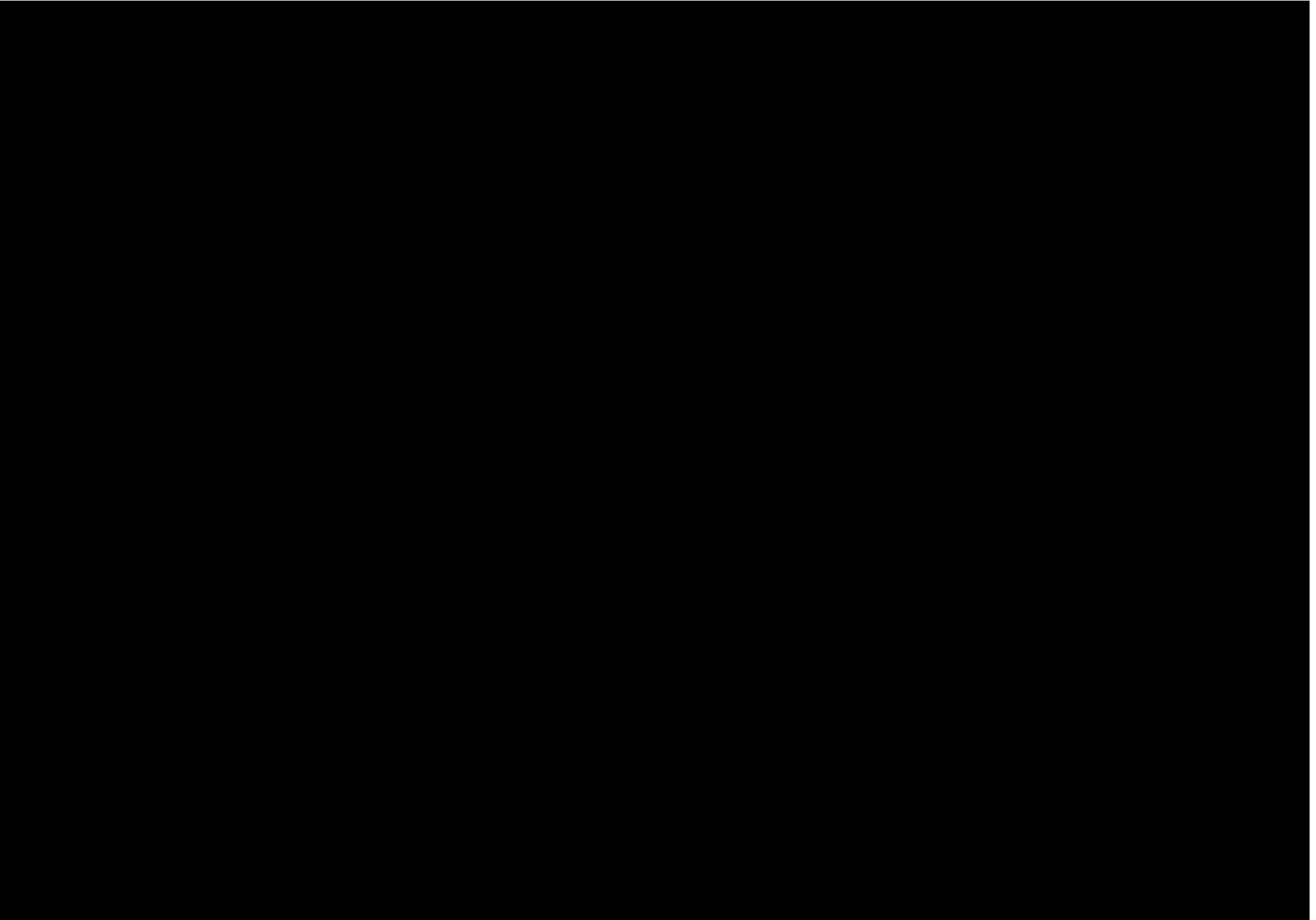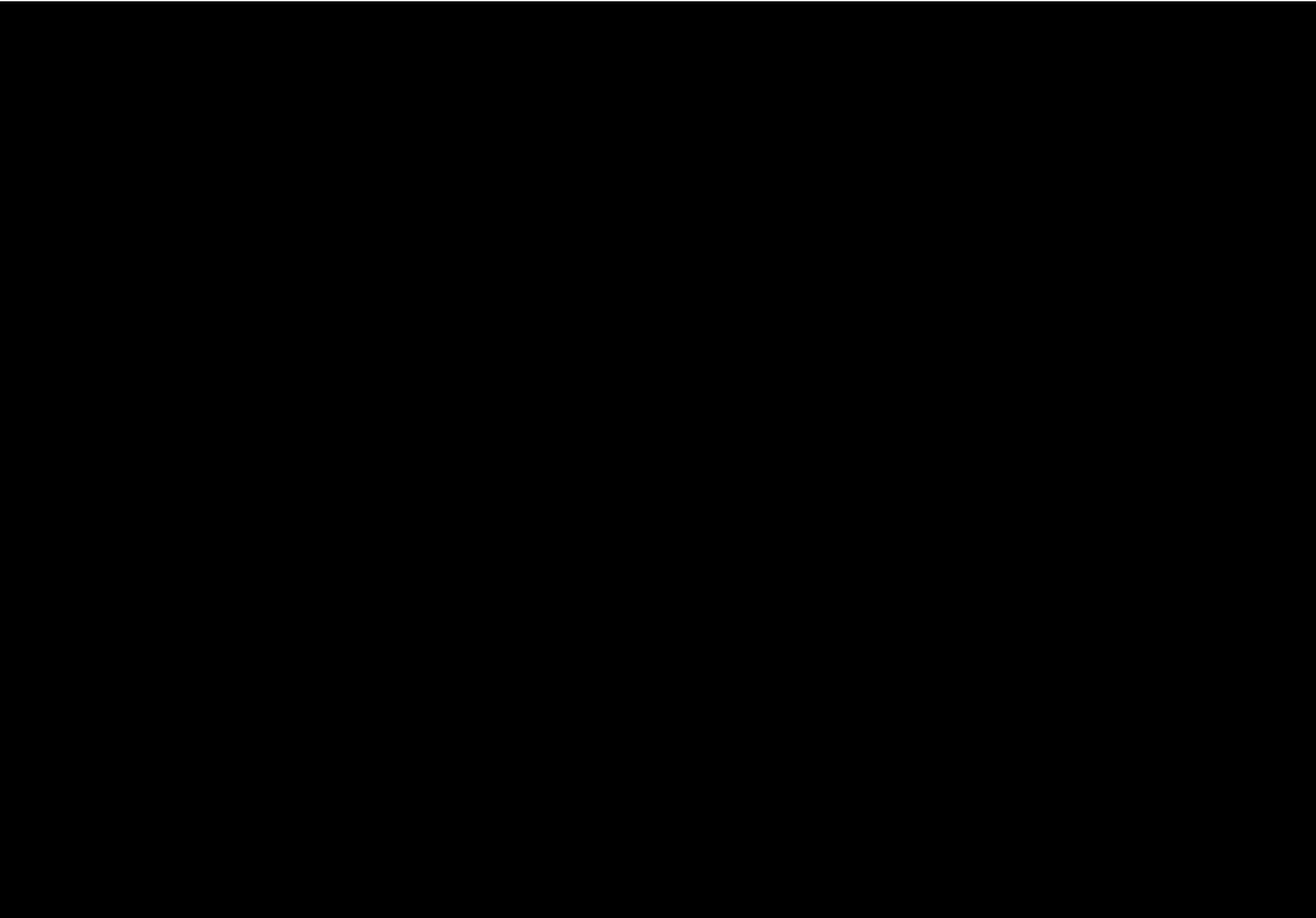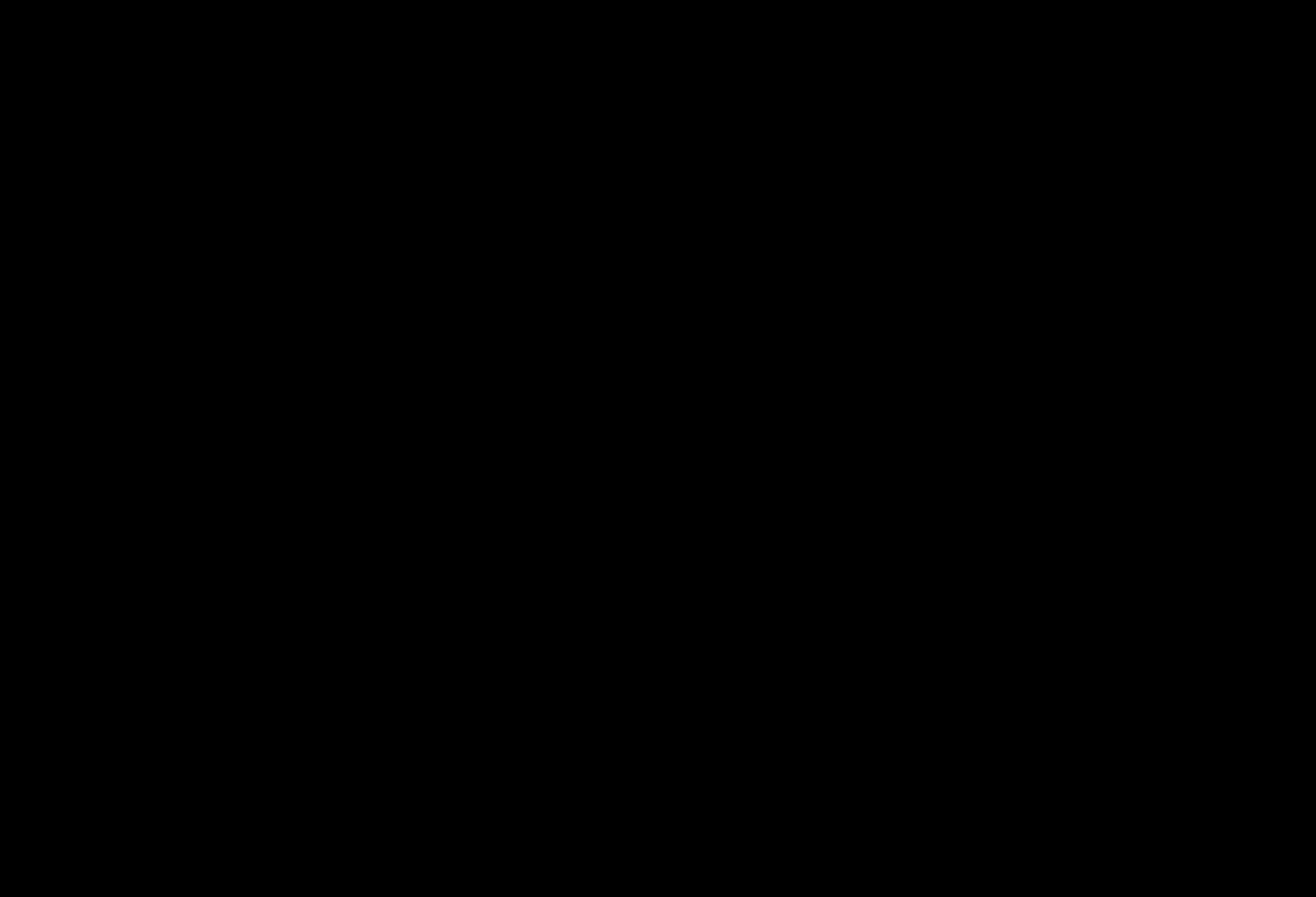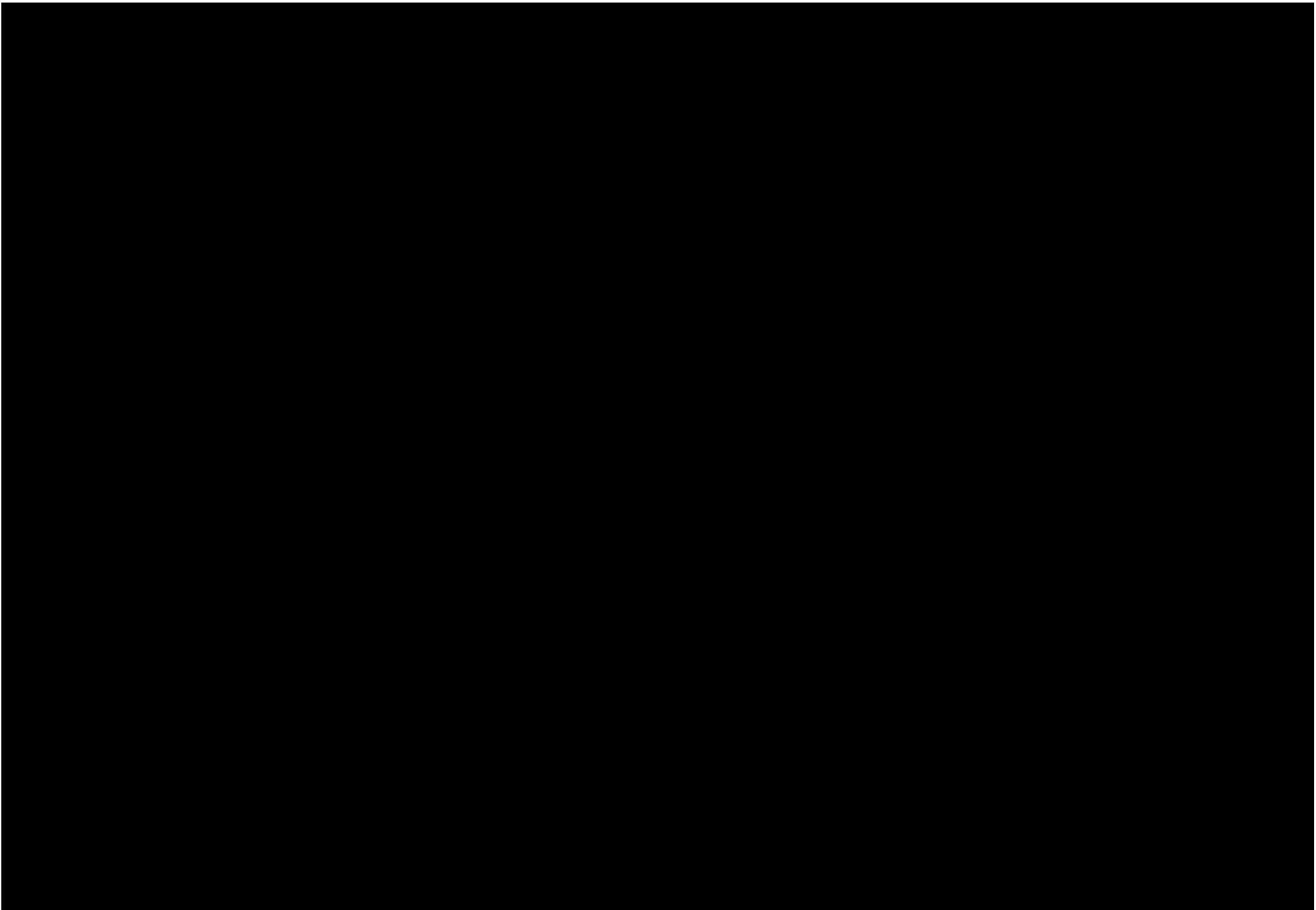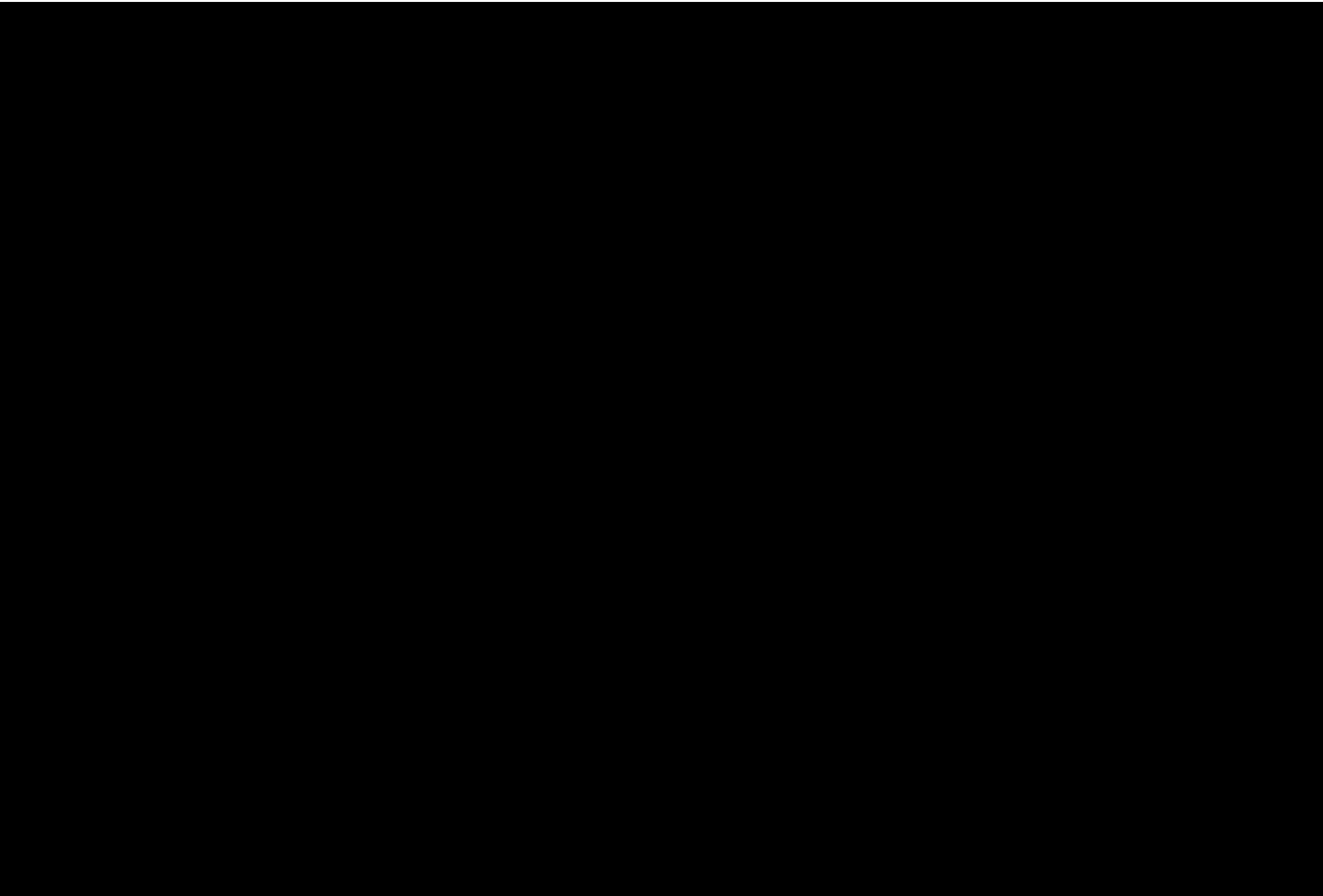
Exhibit 1(a)-1 Payment Plan 10-year GMP Budget by Fiscal Year
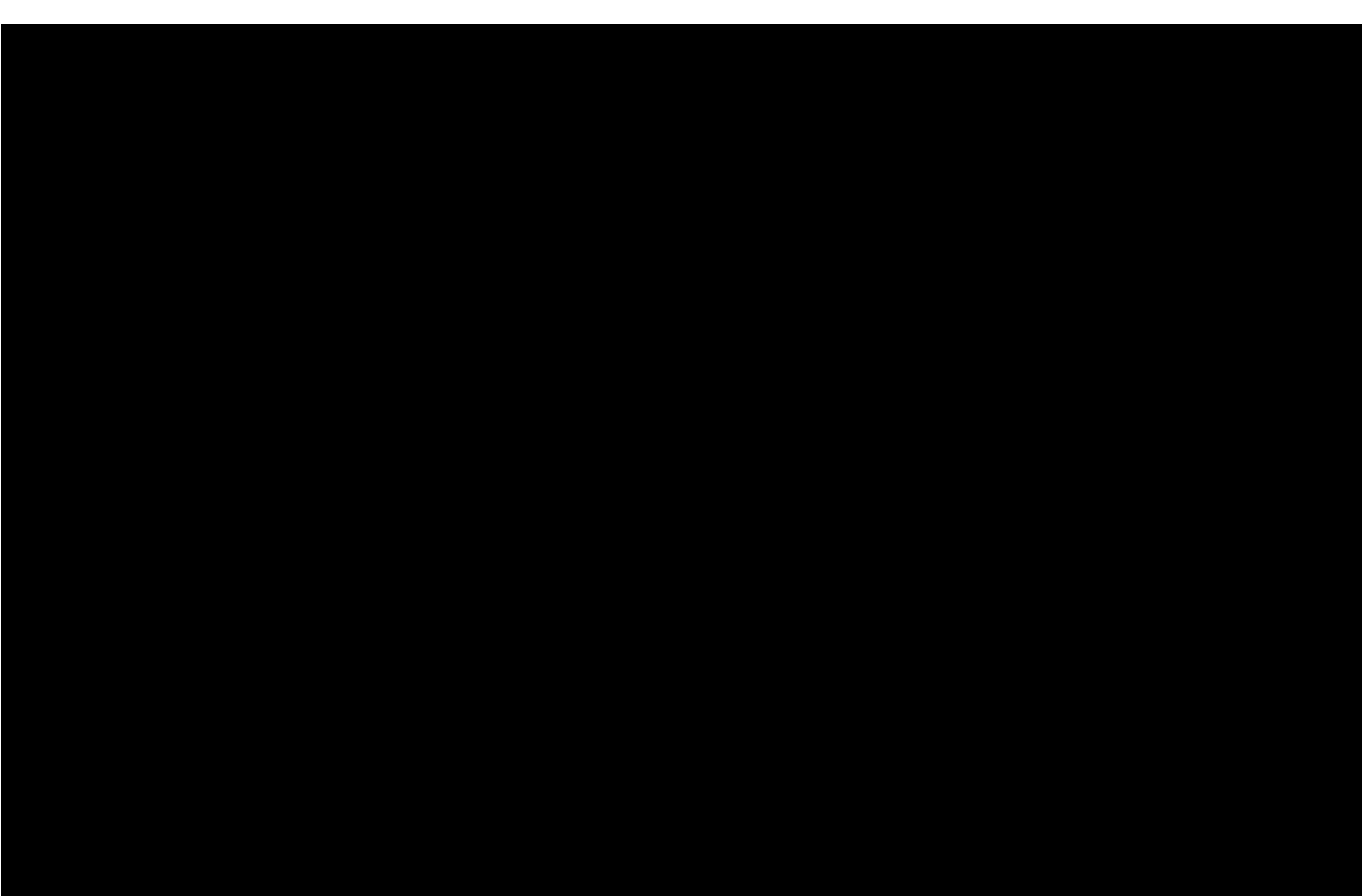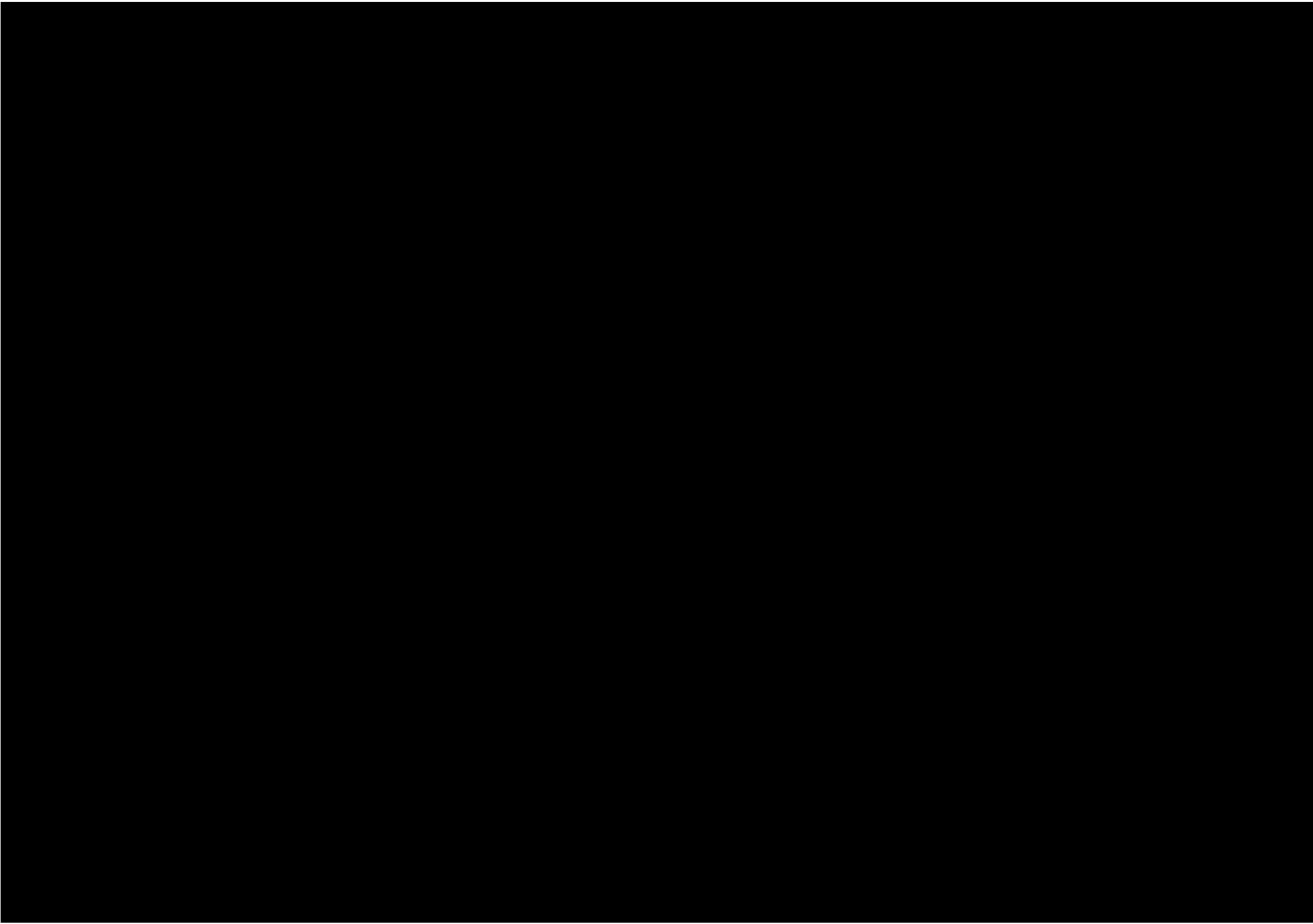
Exhibit 1(a)-2 Payment Plan Pricing Details

Pricing Item	Licensing and Implementation Pricing Details		Maintenance, Ongoing Services, and Hosting Cost		Initial Monthly Maintenance Fee
Epic Program Property License Fees and Maintenance					
EpicCare Inpatient Clinical System					
EpicCare Ambulatory Electronic Health Record					
Beacon Oncology					

Exhibit 1(a)-2 Payment Plan Pricing Details

Pricing Item	Licensing and Implementation Pricing Details		Maintenance, Ongoing Services, and Hosting Cost		Initial Monthly Maintenance Fee
Beaker Laboratory					
███████████					
Behavioral Health					
Cupid Cardiology					
EpicCare Home Health and Hospice					
EpicCare Link					
EpicCare Nephrology					
Bones Orthopaedics					
EpicCare Rehab					
Kaleidoscope Ophthalmology					
Long-Term Care					
OpTime Operating Room Management System					
███████████					
Radiant Radiology					
███████████					
Secure Chat					
Stork Obstetrics					
Willow Ambulatory Pharmacy					
███████████					
Wisdom General Dentistry					

Exhibit 1(a)-2 Payment Plan Pricing Details

Pricing Item	Licensing and Implementation Pricing Details		Maintenance, Ongoing Services, and Hosting Cost		Initial Monthly Maintenance Fee
Resolute Hospital Billing and Patient Accounting					
Resolute Professional Billing and Patient Accounting					
Tapestry Managed Care Administration for Providers					
Cadence Enterprise Scheduling					
Grand Central ADT and Prelude Inpatient Registration					
Call Management / Customer Relationship Management					
Nurse Triage					

Exhibit 1(a)-2 Payment Plan Pricing Details

Pricing Item	Licensing and Implementation Pricing Details		Maintenance, Ongoing Services, and Hosting Cost		Initial Monthly Maintenance Fee
Health Information Management – Chart Tracking					
Healthy Planet Link					
Blood Product Administration Module					
████████████████					
Remote Monitoring					
Cogito $_{ergo\ sum}$ Analytics					
██████████████████					
Clinical Device Decision Support					
Standard Interfaces and Data Connectors					
Incoming Infusion Documentation to Baxter - HL7 v2					
Outgoing Infusion Orders from Baxter - HL7 v2					
██████████████					
ECG Integration Module (with MidMark)					
Spirometry Integration Module (with MidMark)					
Holter Integration Module (with MidMark)					
HEDIS Quality Measures					

Pricing Item	Licensing and Implementation Pricing Details		Maintenance, Ongoing Services, and Hosting Cost		Initial Monthly Maintenance Fee
Third Party Software and Data (not Program Property)					
InterSystems Caché - Non-Production License					
InterSystems Caché – Single Server, Platform Independent with Shadow Production Licenses					
PKWARE SecureZIP					
KB Systems SQL					

Exhibit 1(a)-2 Payment Plan Pricing Details

Pricing Item	Licensing and Implementation Pricing Details		Maintenance, Ongoing Services, and Hosting Cost		Initial Monthly Maintenance Fee
Business Objects Starter Bundle					
CPT Non-Production License					

Exhibit 1(a)-2 Payment Plan Pricing Details

Pricing Item	Licensing and Implementation Pricing Details		Maintenance, Ongoing Services, and Hosting Cost		Initial Monthly Maintenance Fee
Epic Implementation Fee Amount					
Epic Implementation Services (Epic Portion)					
Epic Implementation Services (AJWI Portion)					
Additional AJWI Services to meet LBE requirement					
Additional Epic conversion assistance (tier 3 conversion)					
Epic Training costs for DPH Implementation staff					
Healthy Planet for Outside Patients Implementation Services					
MCAH, MPHD, LHH BH Clinics Implementation Services					
Caboodle Conversion Implementation Services					
Caboodle Conversion Training					
Epic staff travel for initial implementation					
Epic staff travel for Healthy Planet for Outside Patients					
Epic staff travel for MCAH, MPHD, LHH BH Clinics					
Epic staff travel for Caboodle Conversion					

Exhibit 1(a)-2 Payment Plan Pricing Details

Pricing Item	Licensing and Implementation Pricing Details	███	Maintenance, Ongoing Services, and Hosting Cost	███	Initial Monthly Maintenance Fee
Other Program Property - Epic Subscription Software					

Exhibit 1(a)-2 Payment Plan Pricing Details

Pricing Item	Licensing and Implementation Pricing Details		Maintenance, Ongoing Services, and Hosting Cost		Initial Monthly Maintenance Fee
Epic Per Use Item Subscription Fee					

Exhibit 1(a)-2 Payment Plan Pricing Details

Pricing Item	Licensing and Implementation Pricing Details		Maintenance, Ongoing Services, and Hosting Cost		Initial Monthly Maintenance Fee
Epic Additional Services					
Epic Additional Services					
Travel for routine support					
Epic Hosting					
Base hosting fees					
Healthy Planet for Outside Patients Hosting Fees					

Exhibit 1(a)-2 Payment Plan Pricing Details

Pricing Item	Licensing and Implementation Pricing Details		Maintenance, Ongoing Services, and Hosting Cost		Initial Monthly Maintenance Fee
Caboodle Conversion Hosting Fees					
Travel for hosting team					

Pricing Item	Licensing and Implementation Pricing Details		Maintenance, Ongoing Services, and Hosting Cost		Initial Monthly Maintenance Fee
Future Products and Services					
Future Products and Services Detailed Below					

Exhibit 1(a)-2 Payment Plan Pricing Details

Pricing Item	Licensing and Implementation Pricing Details		Maintenance, Ongoing Services, and Hosting Cost		Initial Monthly Maintenance Fee
Beaker Laboratory					
Behavioral Health					

Exhibit 1(a)-2 Payment Plan Pricing Details

Pricing Item	Licensing and Implementation Pricing Details		Maintenance, Ongoing Services, and Hosting Cost		Initial Monthly Maintenance Fee
Willow Ambulatory Pharmacy					
MyChart Bedside					

Exhibit 1(a)-2 Payment Plan Pricing Details

Pricing Item	Licensing and Implementation Pricing Details		Maintenance, Ongoing Services, and Hosting Cost		Initial Monthly Maintenance Fee
Welcome Patient Kiosk					
EpicCare Nephrology					
Call Management / Customer Relationship Management					

Exhibit 1(a)-2 Payment Plan Pricing Details

Pricing Item	Licensing and Implementation Pricing Details		Maintenance, Ongoing Services, and Hosting Cost		Initial Monthly Maintenance Fee
Nurse Triage					
Jail Implementation Services					
DPH as-needed additional implementation training, ongoing staff attrition and recertification					
Volume Increase License and Hosting Fee					

ONC Health IT Certification (for Meaningful Use) information, including pricing and limitations, is available here: http://www.epic.com/Docs/MUCertification.pdf
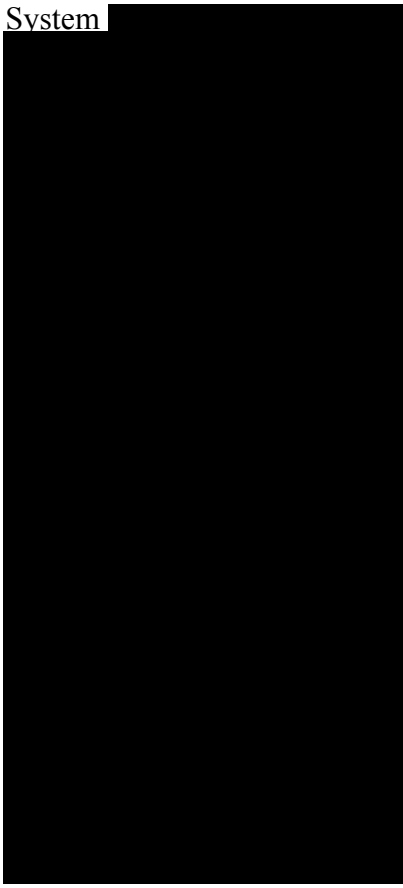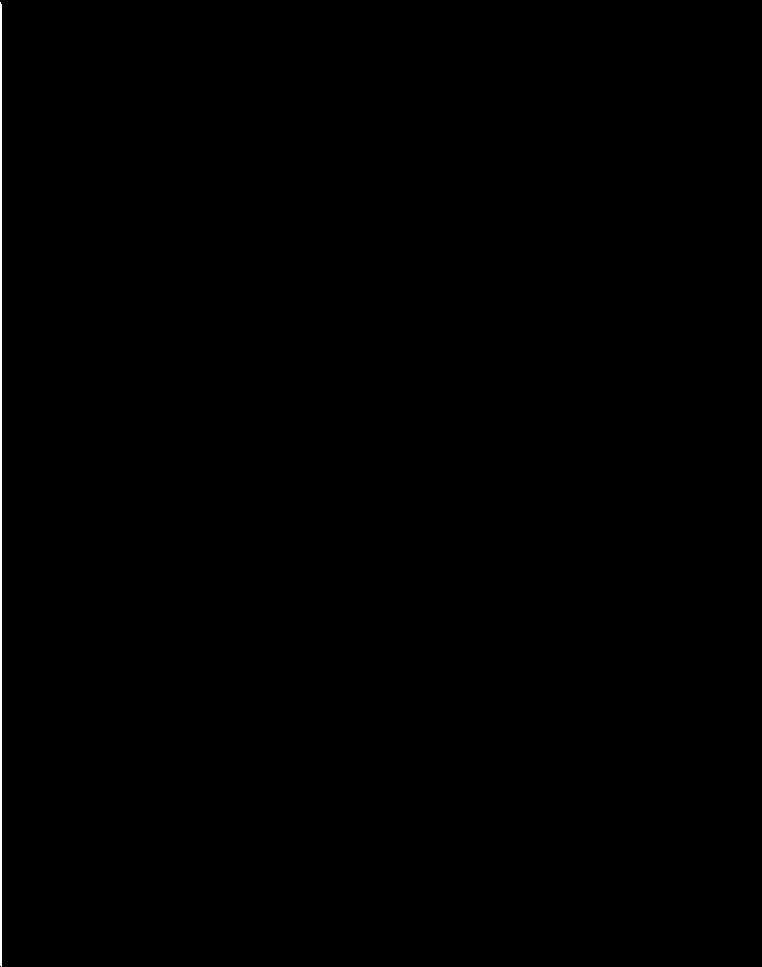
Exhibit 1(a)-3
Software and Services Purchased Under the GMP

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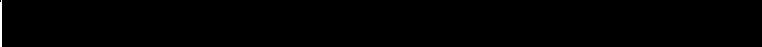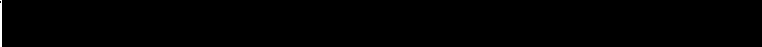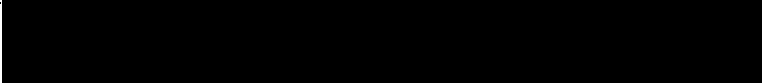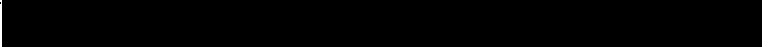
Epic Program Property – Stage 1		
Table Item #	**Epic Program Property:**	**Corresponding Comments:**
1.	EpicCare Inpatient Clinical System ████████████ ███████████████	██████████████████████████████
2.	EpicCare Ambulatory Electronic Health Record ████████████	
3.	Beacon Oncology	
4.	Cupid Cardiology	
5.	EpicCare Home Health and Hospice	
6.	EpicCare Link	
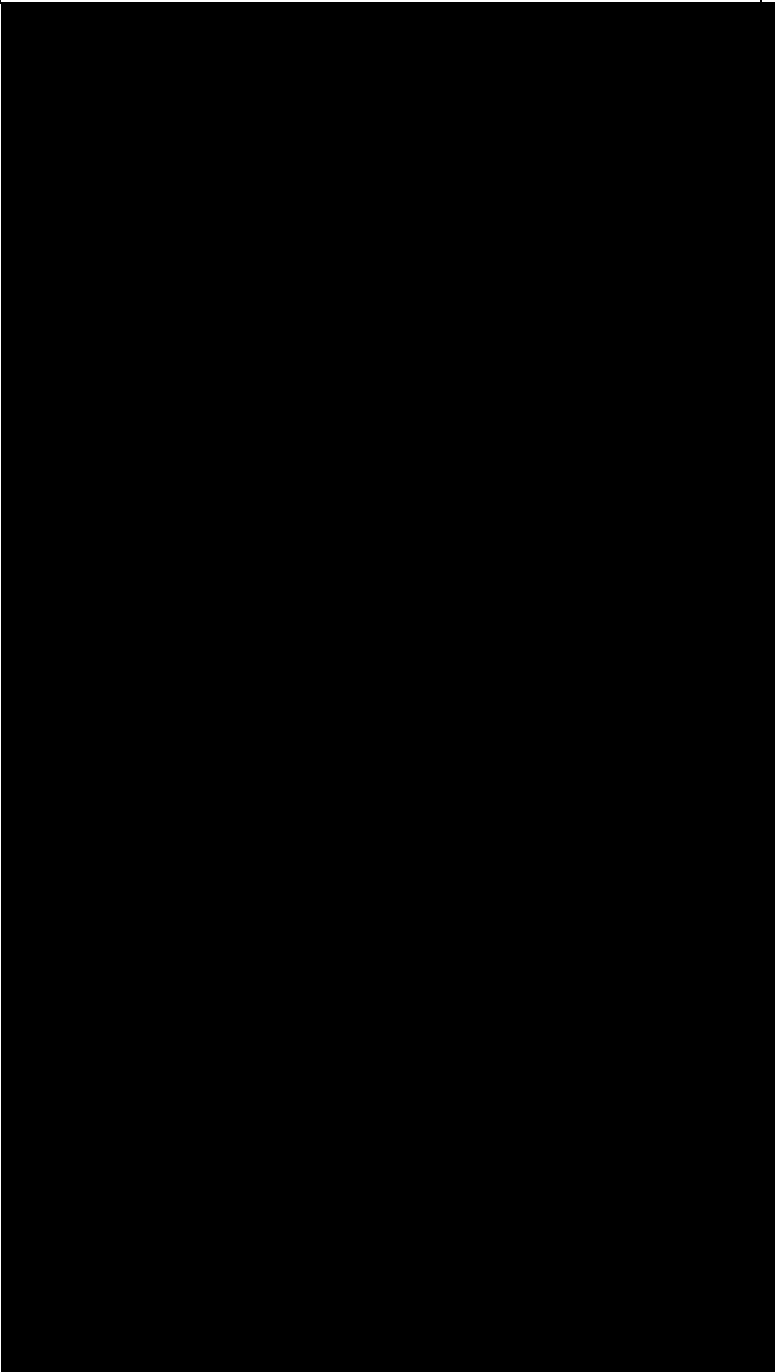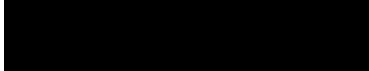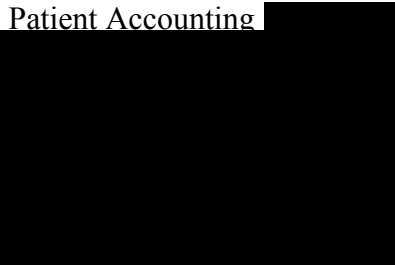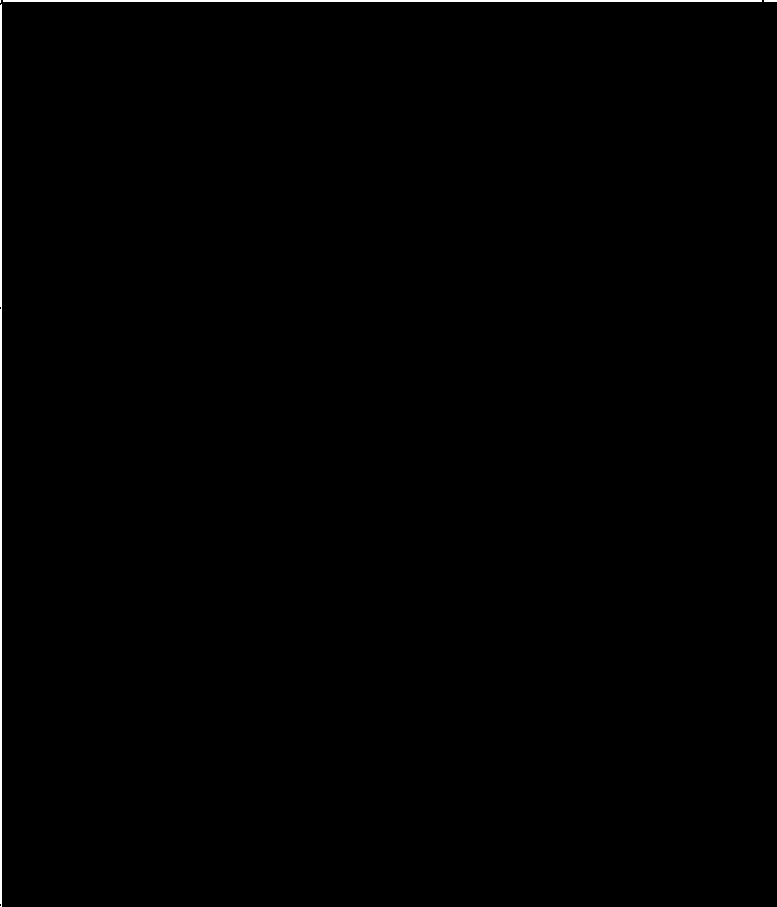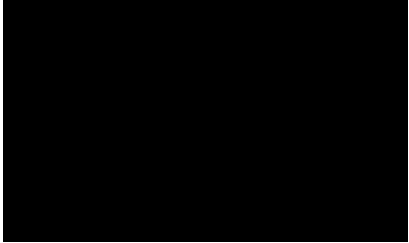
Epic Program Property – Stage 1		
Table Item #	**Epic Program Property:**	**Corresponding Comments:**
7.	Bones Orthopaedics	
8.	EpicCare Rehab	
9.	Kaleidoscope Ophthalmology	
10.	Long-Term Care	
11.	OpTime Operating Room Management System	
12.	Radiant Radiology	
13.	Secure Chat	
14.	Stork Obstetrics	
15.	Wisdom General Dentistry	
16.	Resolute Hospital Billing and Patient Accounting	
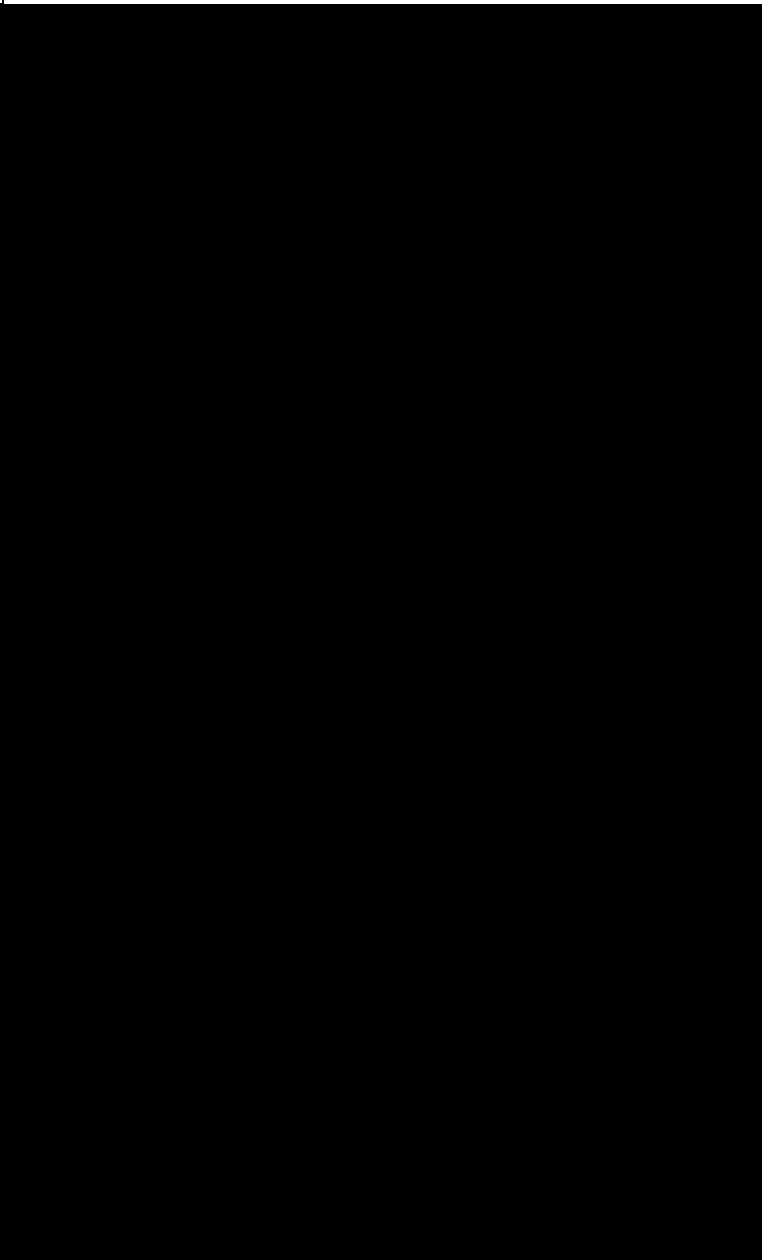
Epic Program Property – Stage 1		
Table Item #	**Epic Program Property:**	**Corresponding Comments:**
17.	Resolute Professional Billing and Patient Accounting ███████████	██████████████████████
18.	Cadence Enterprise Scheduling ██████	
19.	Grand Central ADT and Prelude Inpatient Registration ██████	
20.	Health Information Management – Chart Tracking	
21.	Healthy Planet Link	
22.	Blood Product Administration Module ██████	

Epic Program Property – Stage 1		
Table Item #	**Epic Program Property:**	**Corresponding Comments:**
23.	Remote Monitoring	████████████████████████
24.	Cogito _{ergo sum} Analytics ████████	████████████████████████

Epic Program Property – Stage 1		
Table Item #	**Epic Program Property:**	**Corresponding Comments:**
25.	Clinical Device Decision Support	
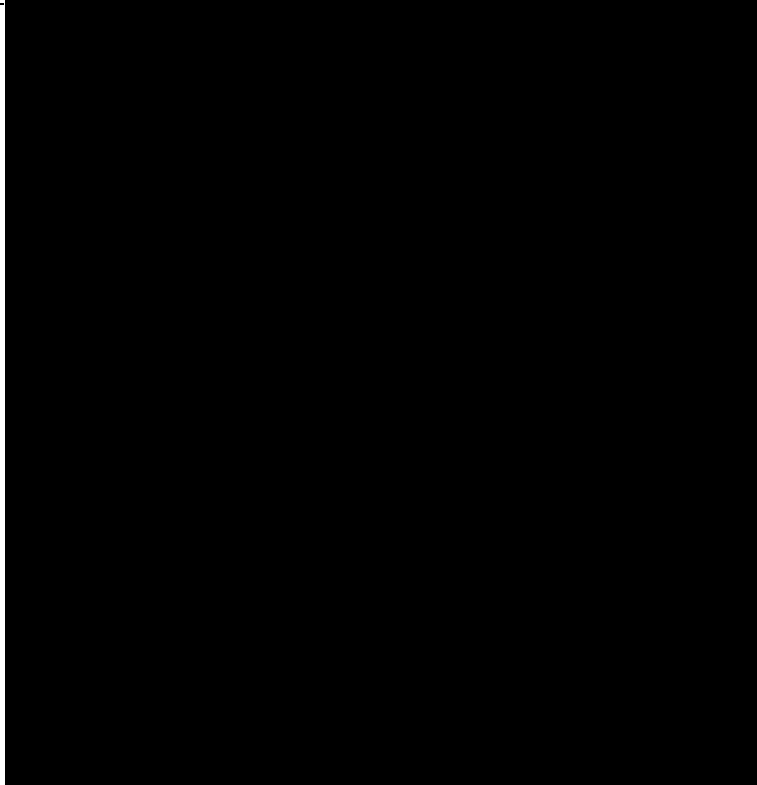
26.	Standard Interfaces and Data Connectors	

Epic Program Property – Stage 1		
Table Item #	**Epic Program Property:**	**Corresponding Comments:**
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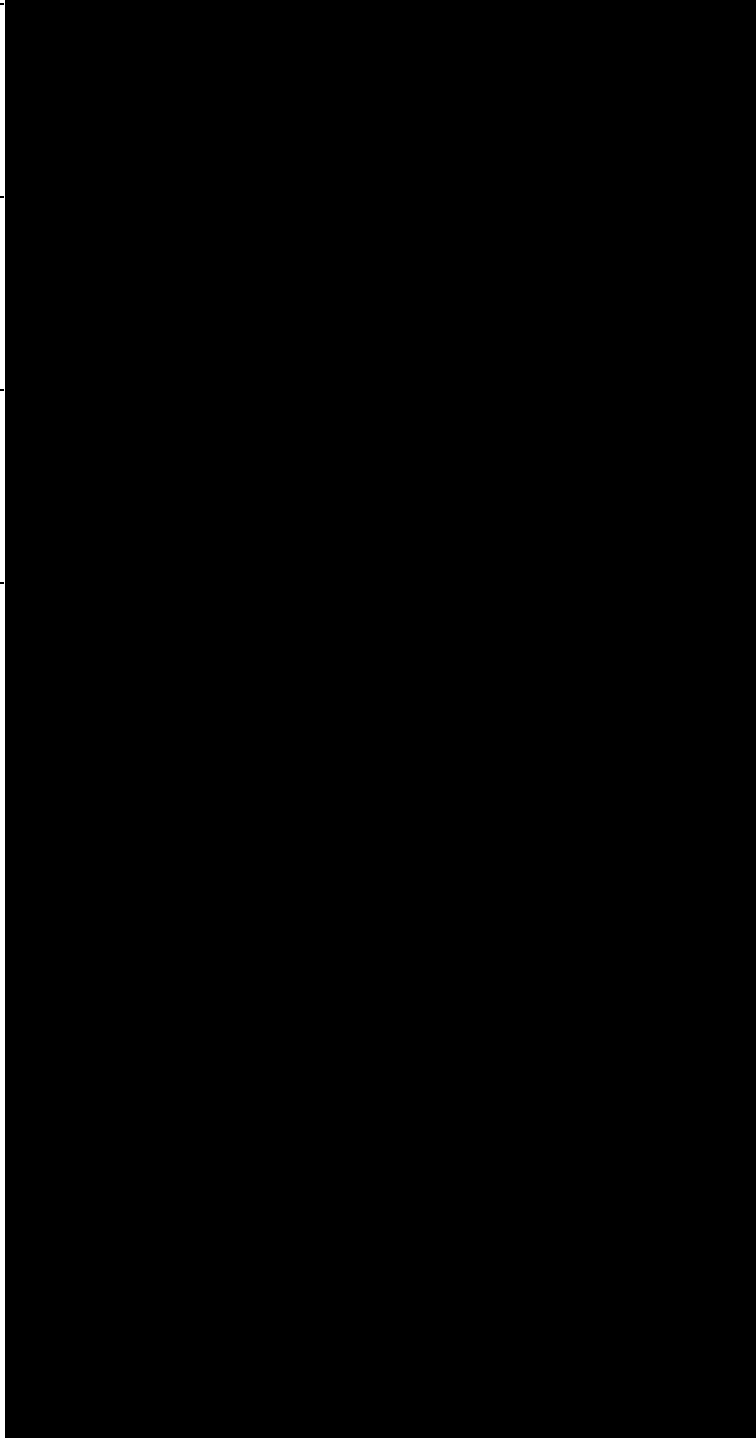
Epic Program Property – Stage 1		
Table Item #	**Epic Program Property:**	**Corresponding Comments:**
27.	Predictive Analytics	██
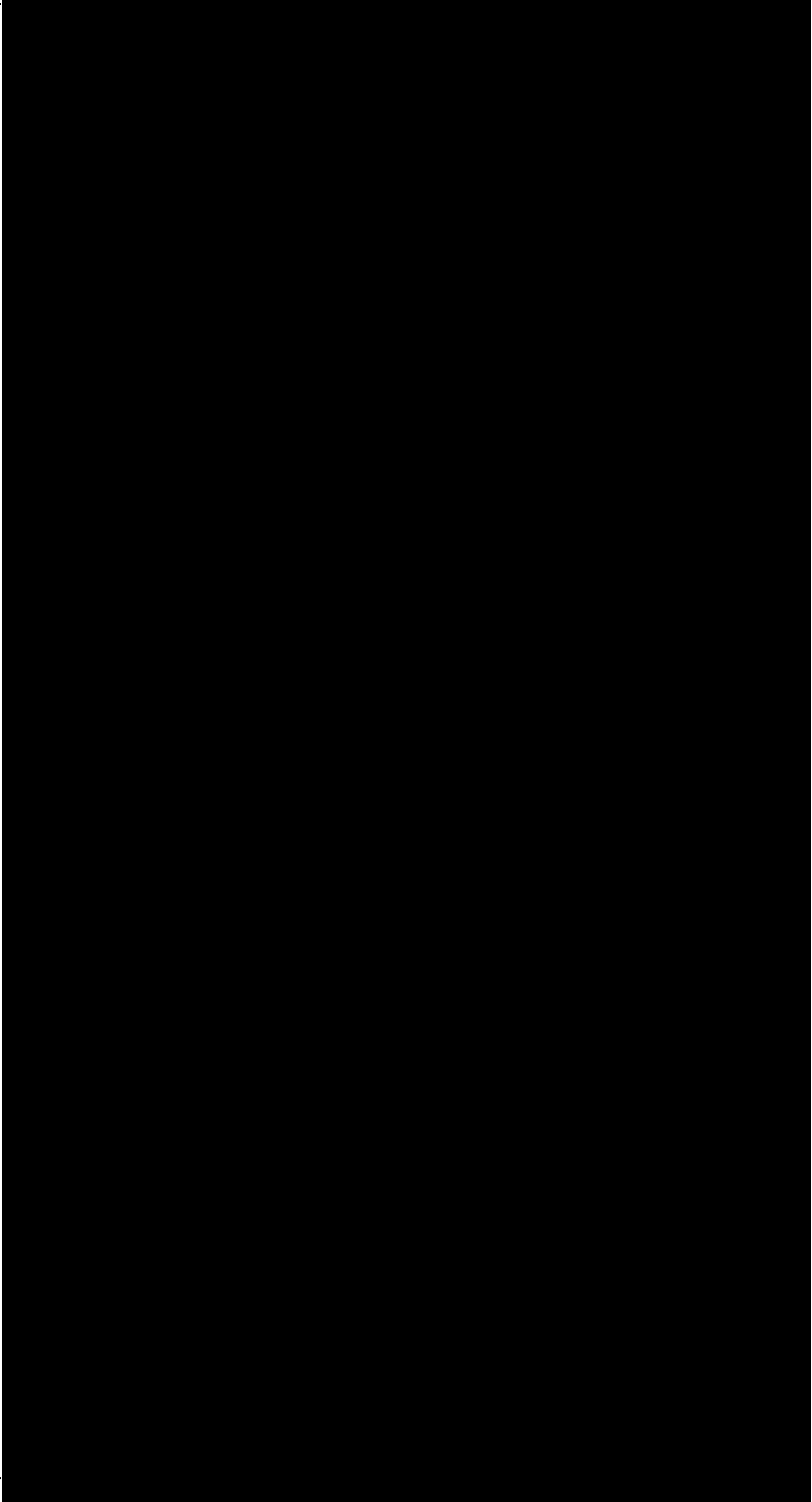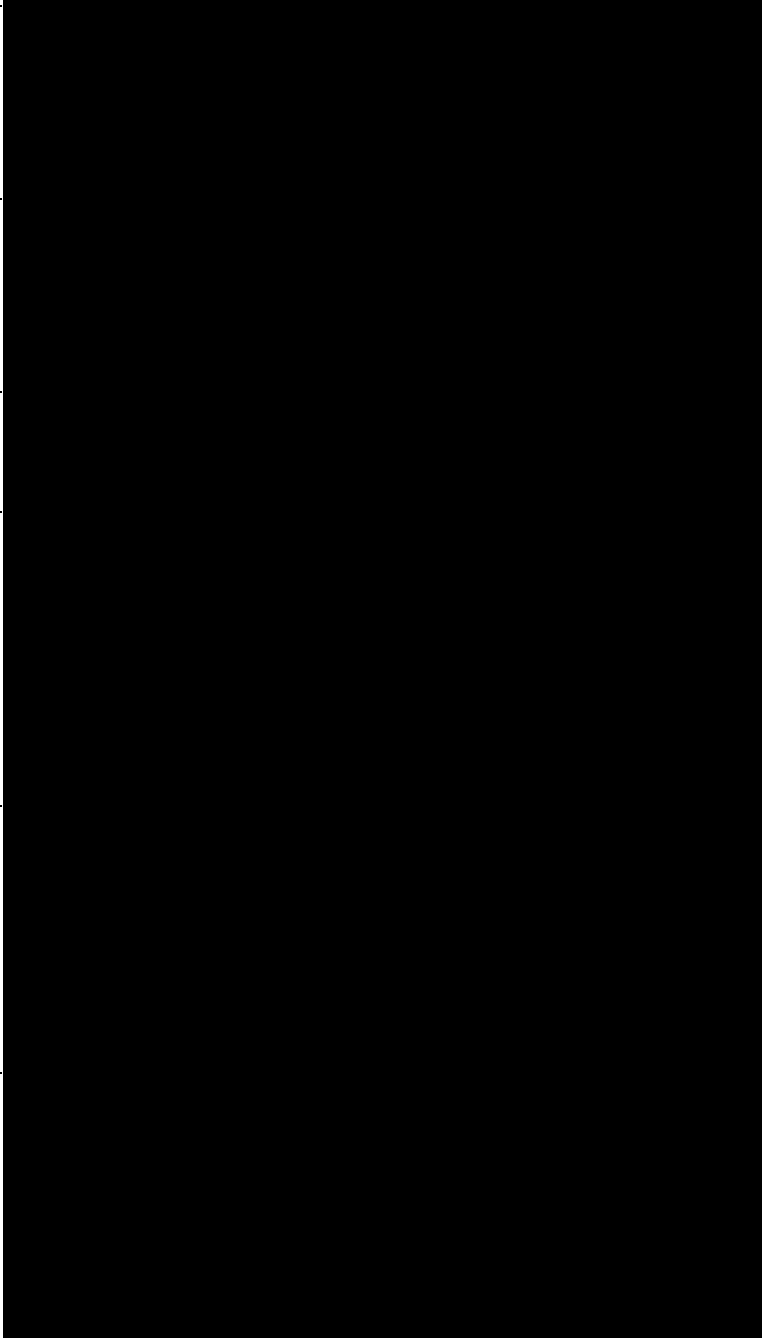
Epic Program Property – Stage 1		
Table Item #	**Epic Program Property:**	**Corresponding Comments:**
28.	Bridges EDI Developer's License	
29.	Charge Router	
30.	Identity Embedded Master Person Index	
31.	Patient Abstractor	

Epic Program Property – Stage 1		
Table Item #	**Epic Program Property:**	**Corresponding Comments:**
32.	Pulse	
33.	System Pulse	
34.	Incoming Infusion Documentation to Baxter - HL7 v2	
35.	Outgoing Infusion Orders from Baxter - HL7 v2 ███████████	
36.	ECG Integration Module (with MidMark)	
37.	Spirometry Integration Module (with MidMark)	

Epic Program Property – Stage 1		
Table Item #	**Epic Program Property:**	**Corresponding Comments:**
38.	Holter Integration Module (with MidMark)	█████████████████████████████
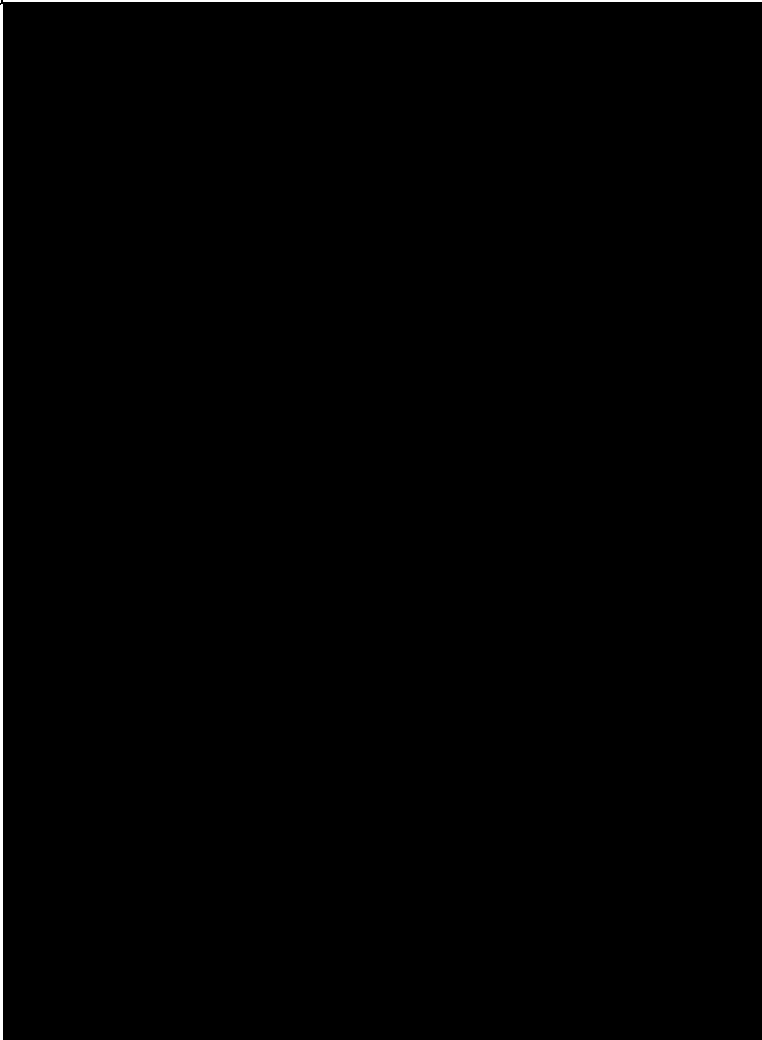
| 39. | Caboodle Data Warehouse ▮▮▮▮▮▮▮▮▮▮▮▮ and Healthy Planet ▮▮▮▮▮▮ ▮▮▮▮▮▮▮▮▮ | ▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮ |

Epic Program Property – Stage 1		
Table Item #	**Epic Program Property:**	**Corresponding Comments:**

Epic Program Property – Stage 1		
Table Item #	**Epic Program Property:**	**Corresponding Comments:**
40.	MyChart Shared Patient Record	
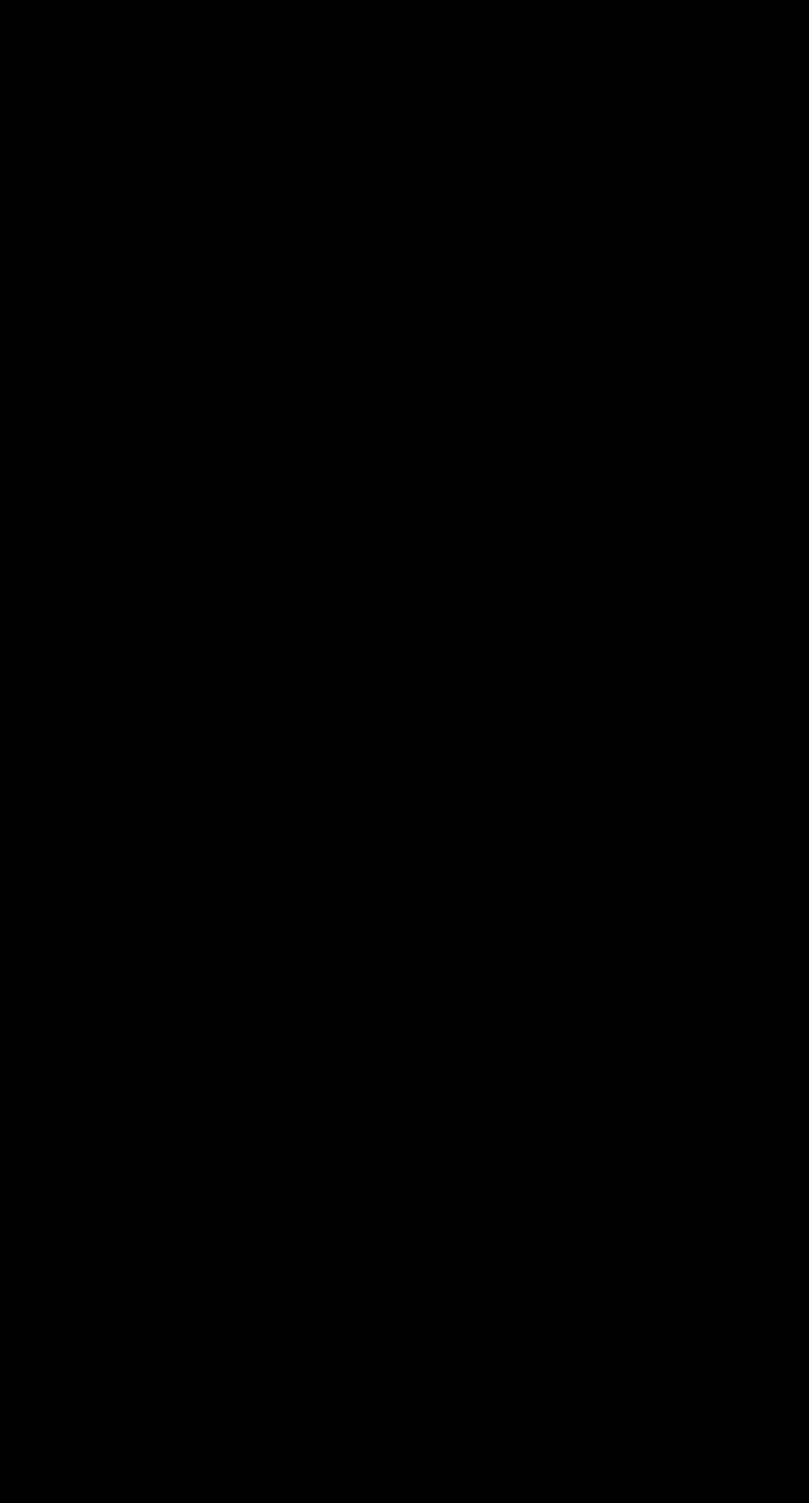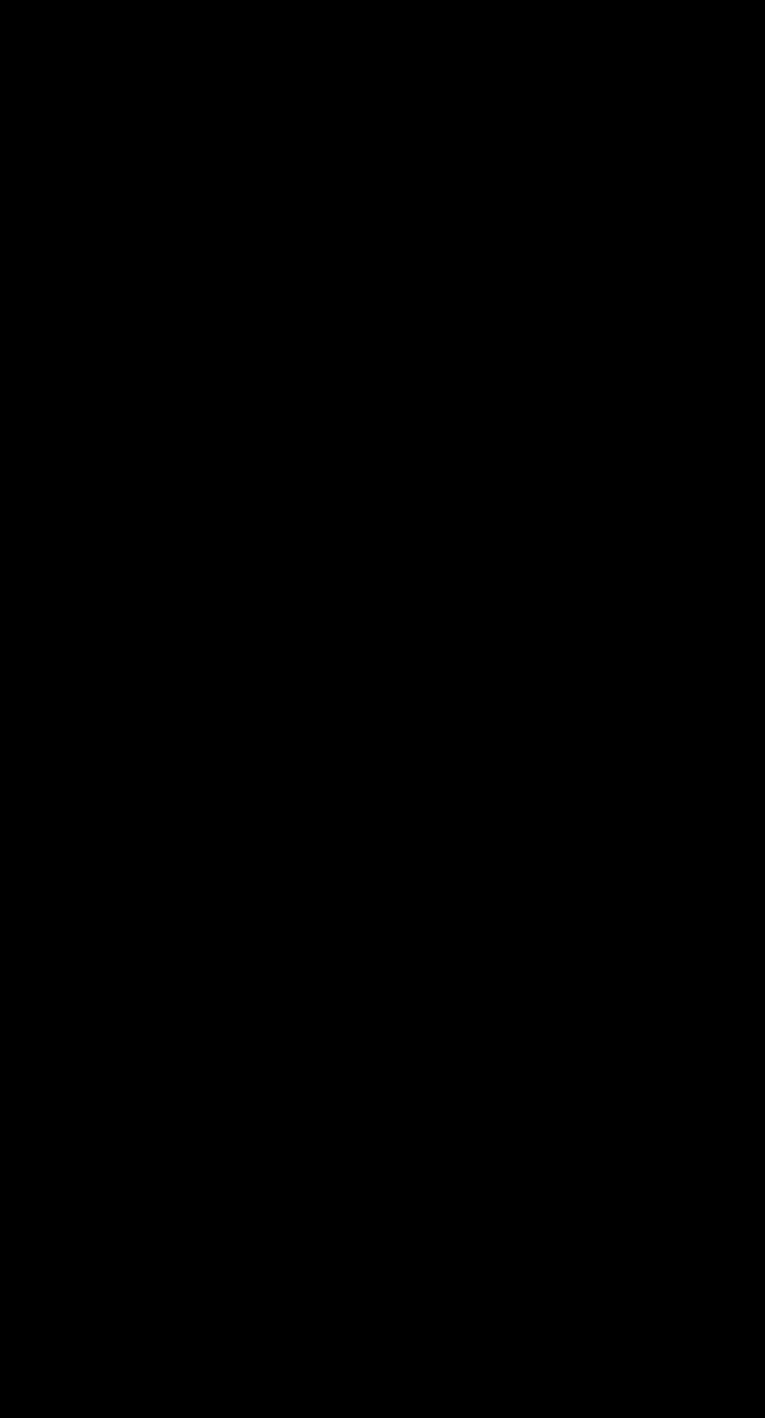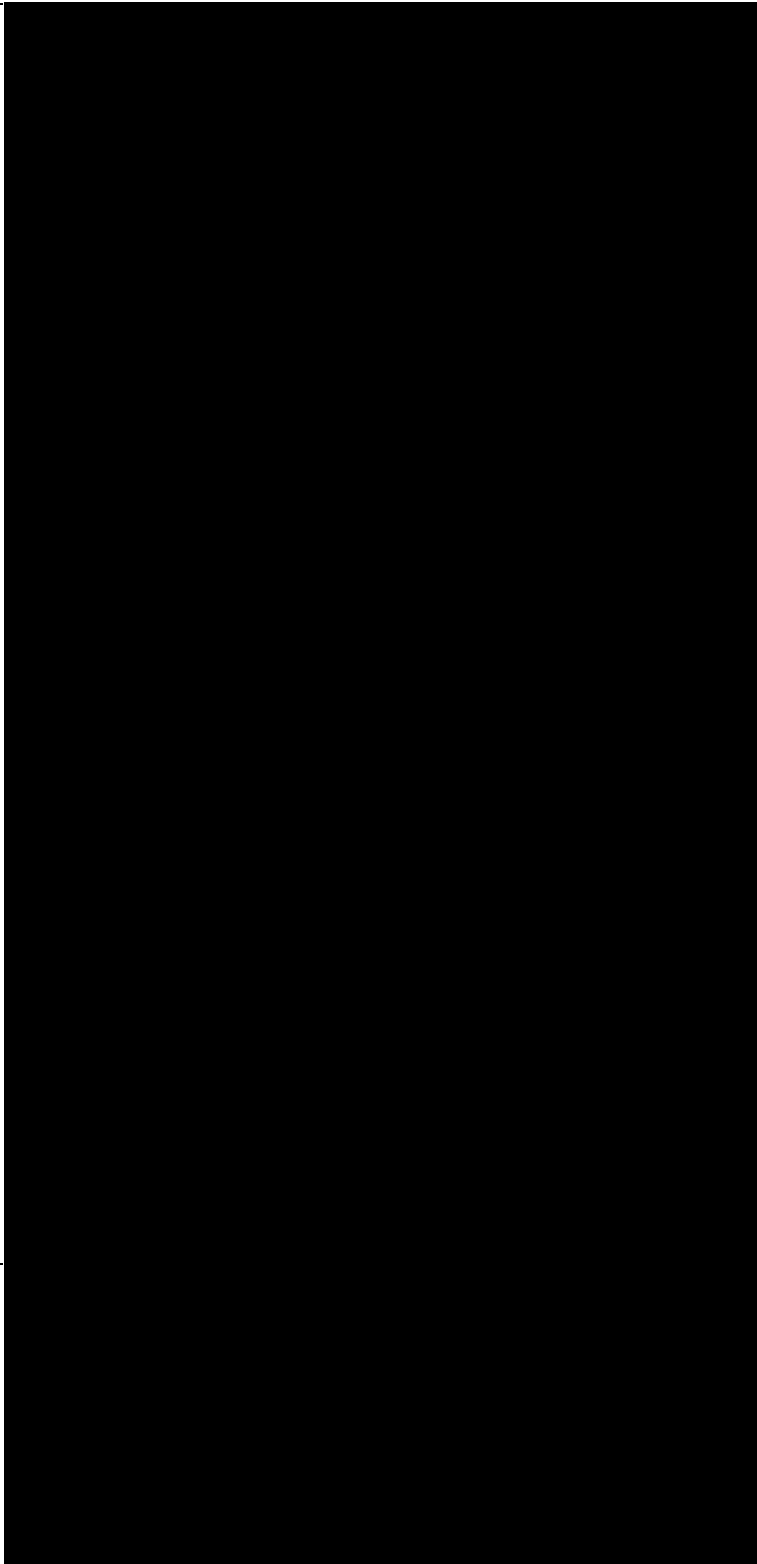
41.	Haiku Server	
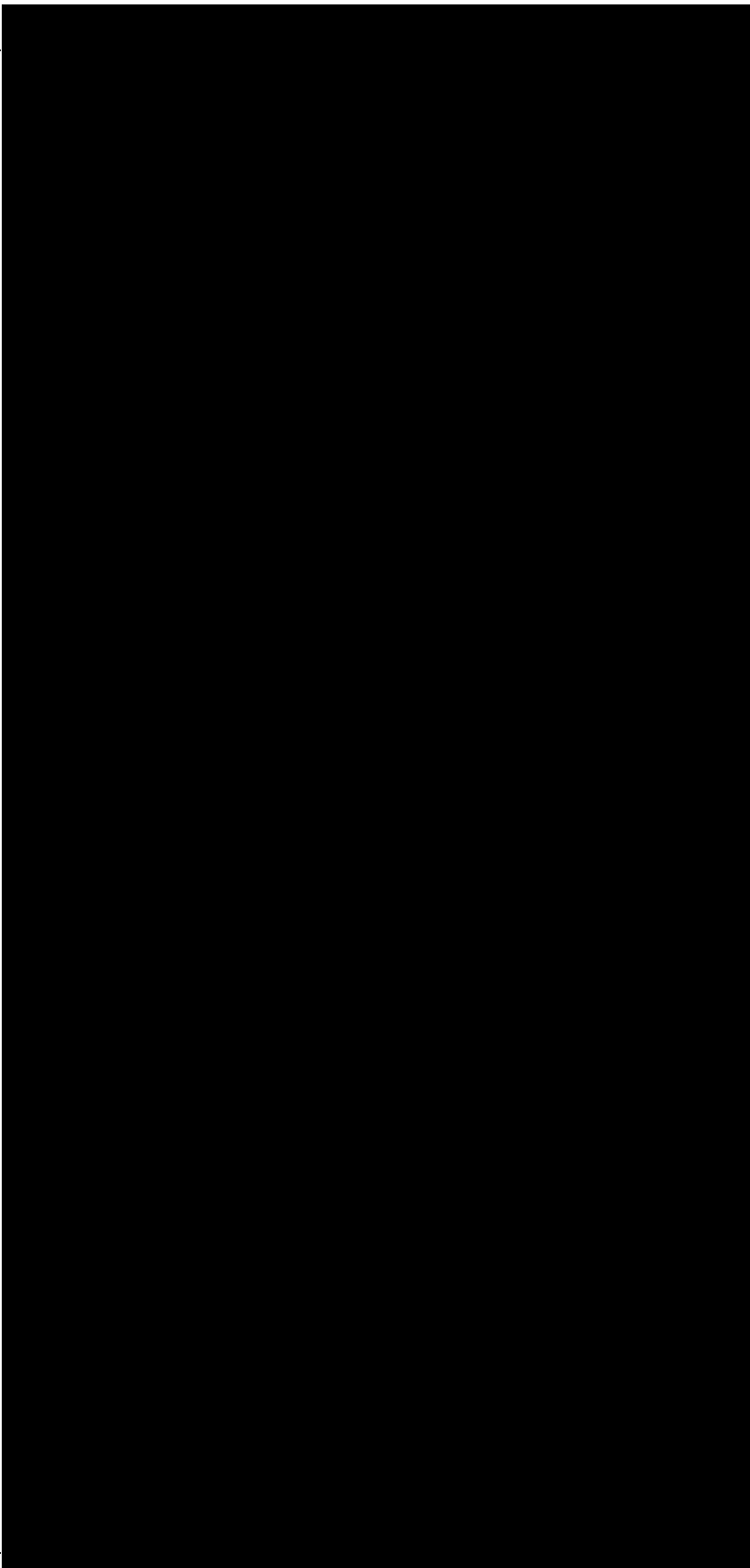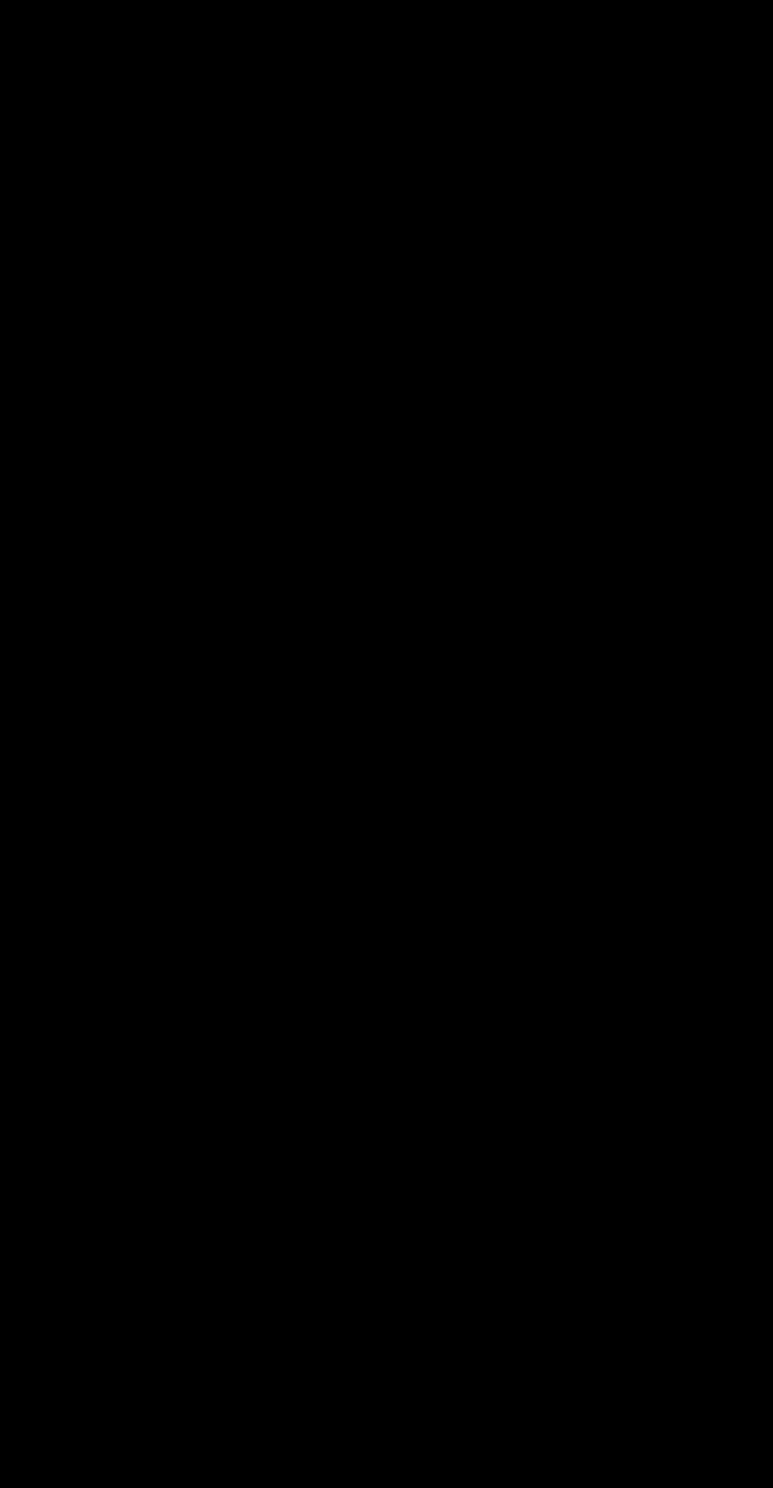
Epic Program Property – Stage 1		
Table Item #	**Epic Program Property:**	**Corresponding Comments:**
42.	Push Notifications	

Epic Program Property – Stage 1		
Table Item #	**Epic Program Property:**	**Corresponding Comments:**
43.	Care Everywhere	
44.	Care Everywhere – Carequality Exchange	

Epic Program Property – Stage 1		
Table Item #	**Epic Program Property:**	**Corresponding Comments:**

Epic Program Property – Stage 1		
Table Item #	**Epic Program Property:**	**Corresponding Comments:**
45.	ACC-NCDR® Registry Communication Module	█████████████████
46.	HEDIS Quality Measures	█████████████████

47.	MyChart Self-Branded Application Libraries	

Epic Program Property – Stage 1		
Table Item #	**Epic Program Property:**	**Corresponding Comments:**
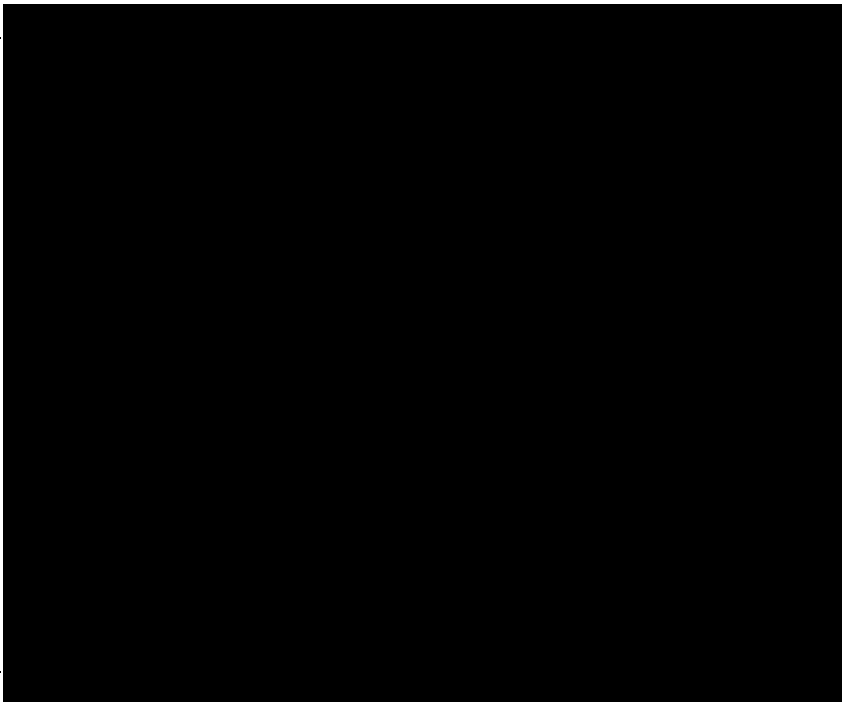
Epic Program Property – Stage 2		
Table Item #	**Epic Program Property:**	**Corresponding Comments:**
48.	EpicCare Nephrology	██████████████████
49.	Willow Ambulatory Pharmacy ███████ ███████	
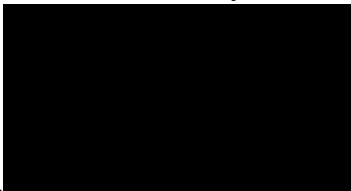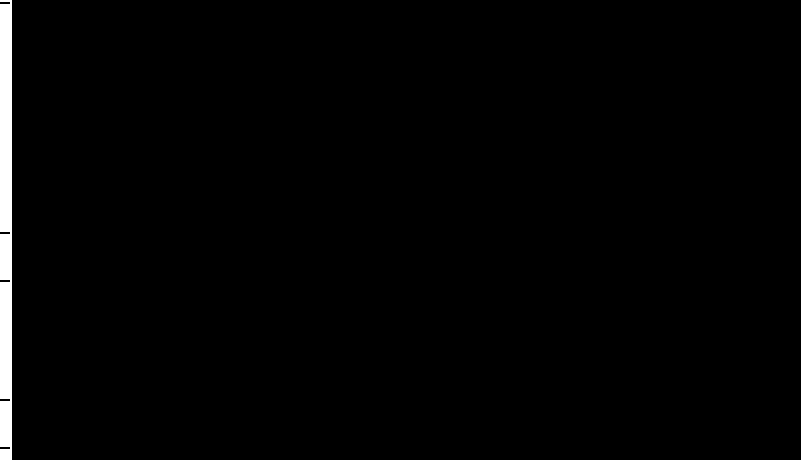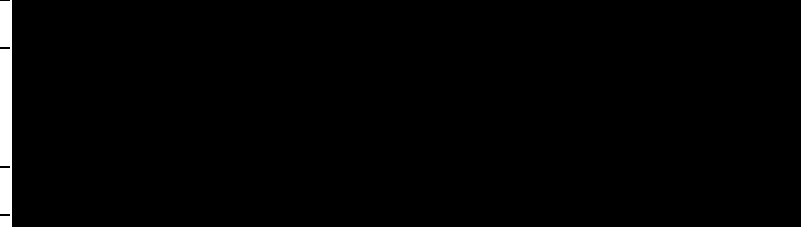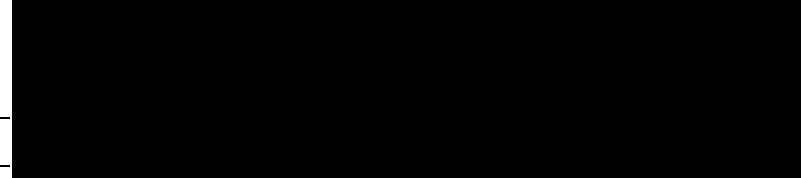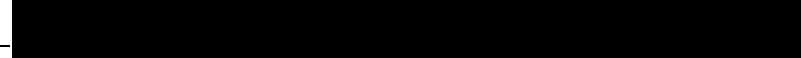
50.	MyChart Bedside	
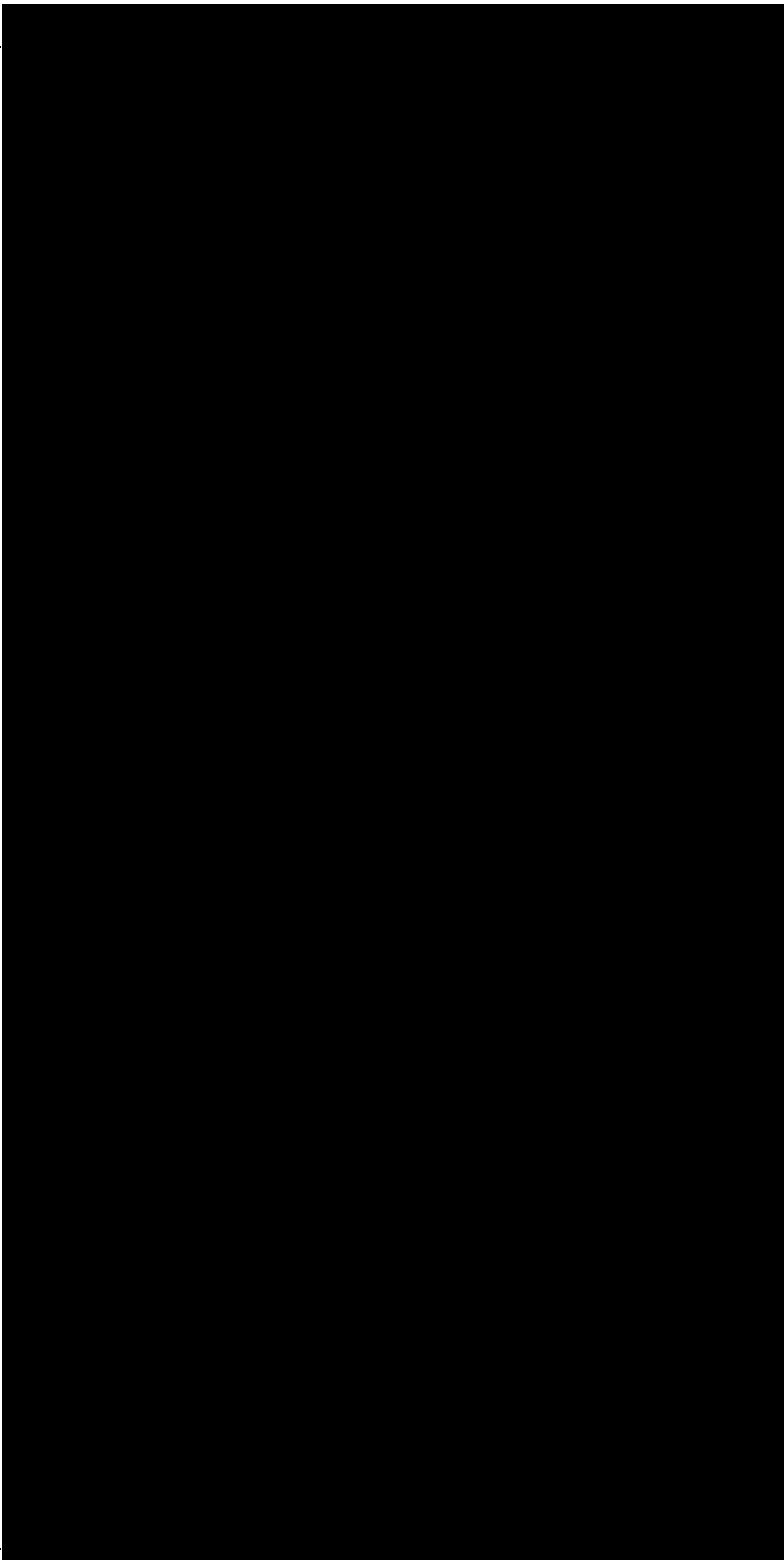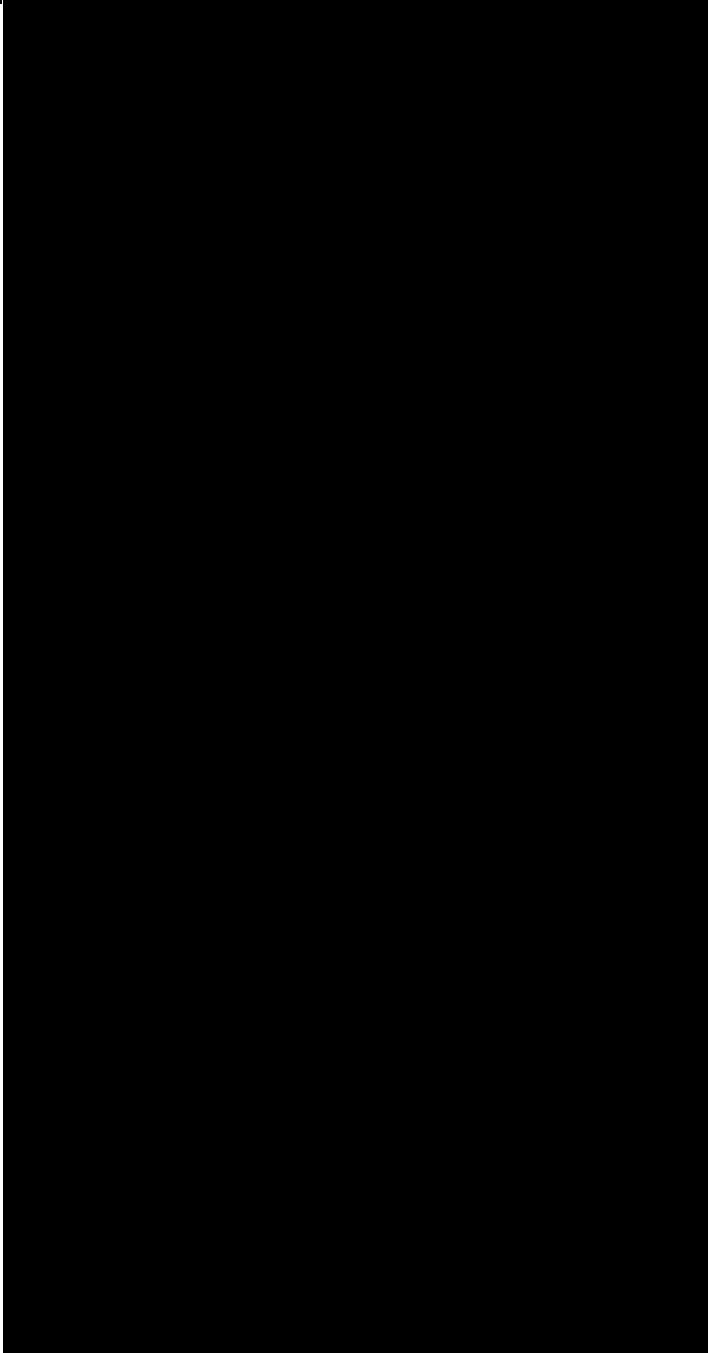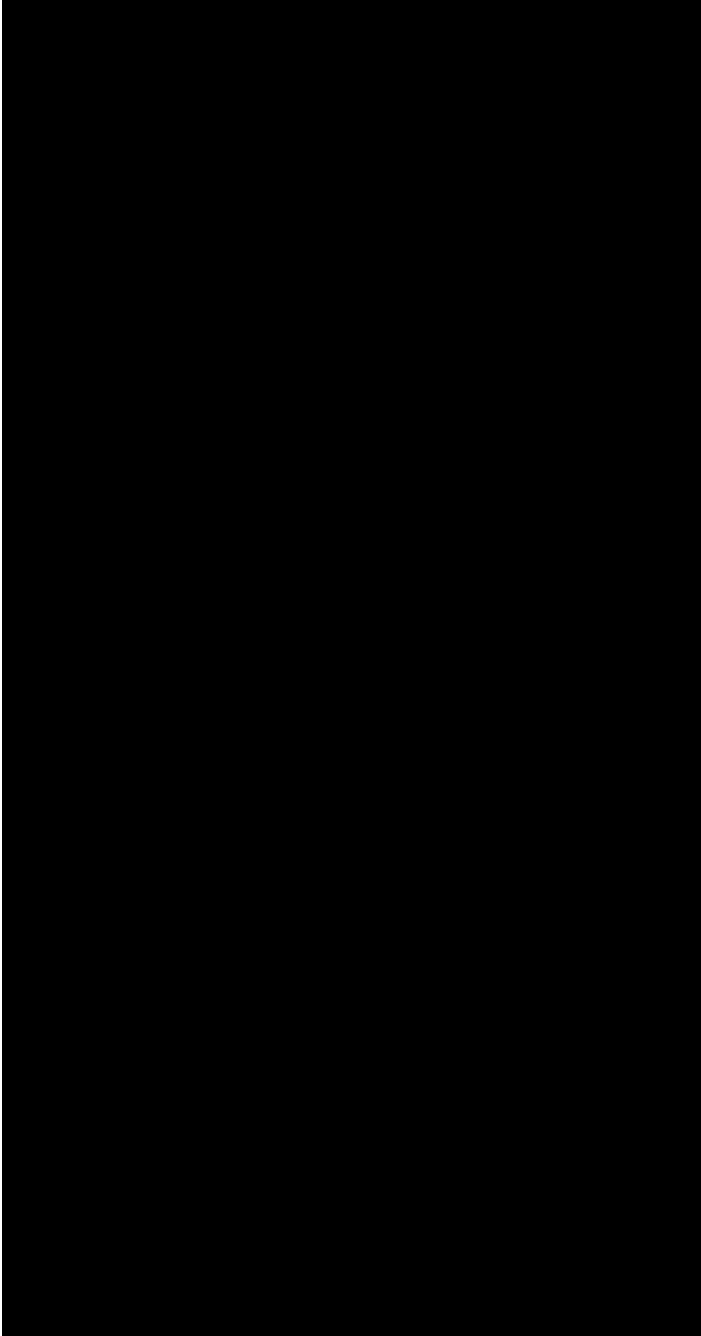
51.	Welcome Patient Kiosk	
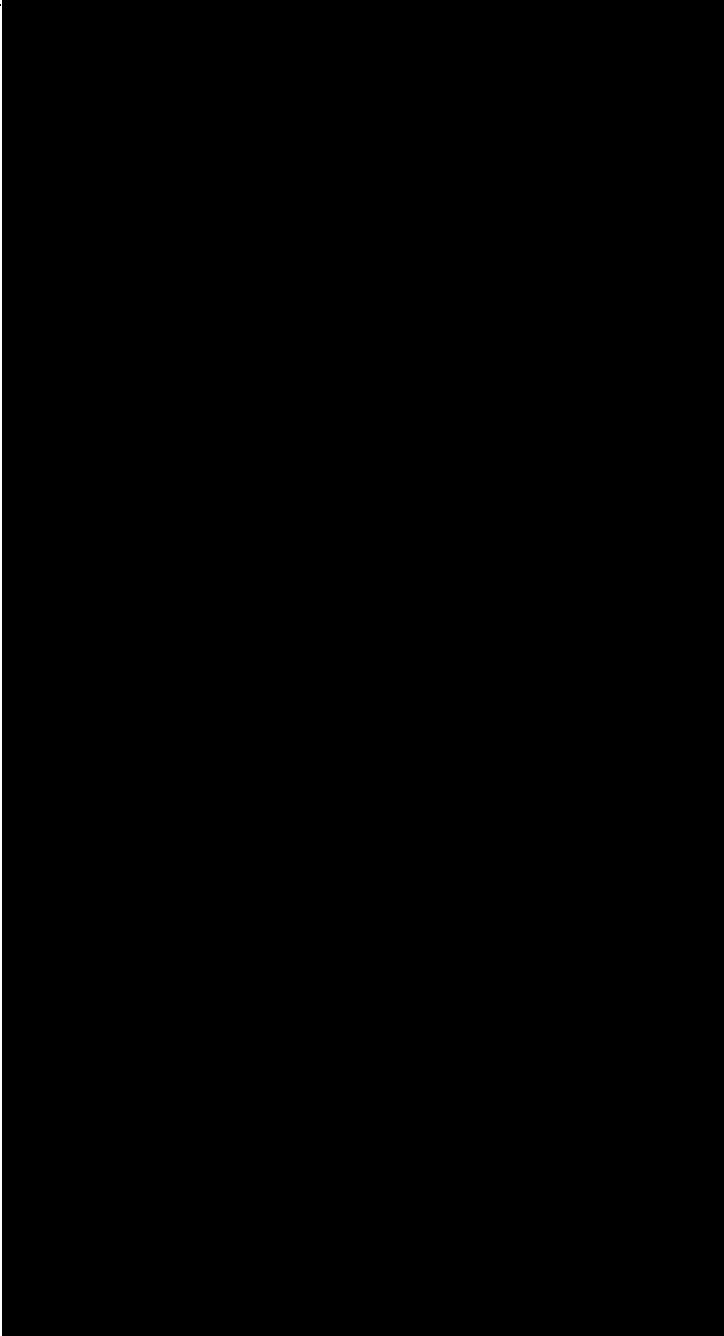
Epic Program Property – Stage 3		
Table Item #	**Epic Program Property:**	**Corresponding Comments:**
52.	Beaker Laboratory	
53.	Behavioral Health	
54.	Call Management / Customer Relationship Management	
55.	Nurse Triage	
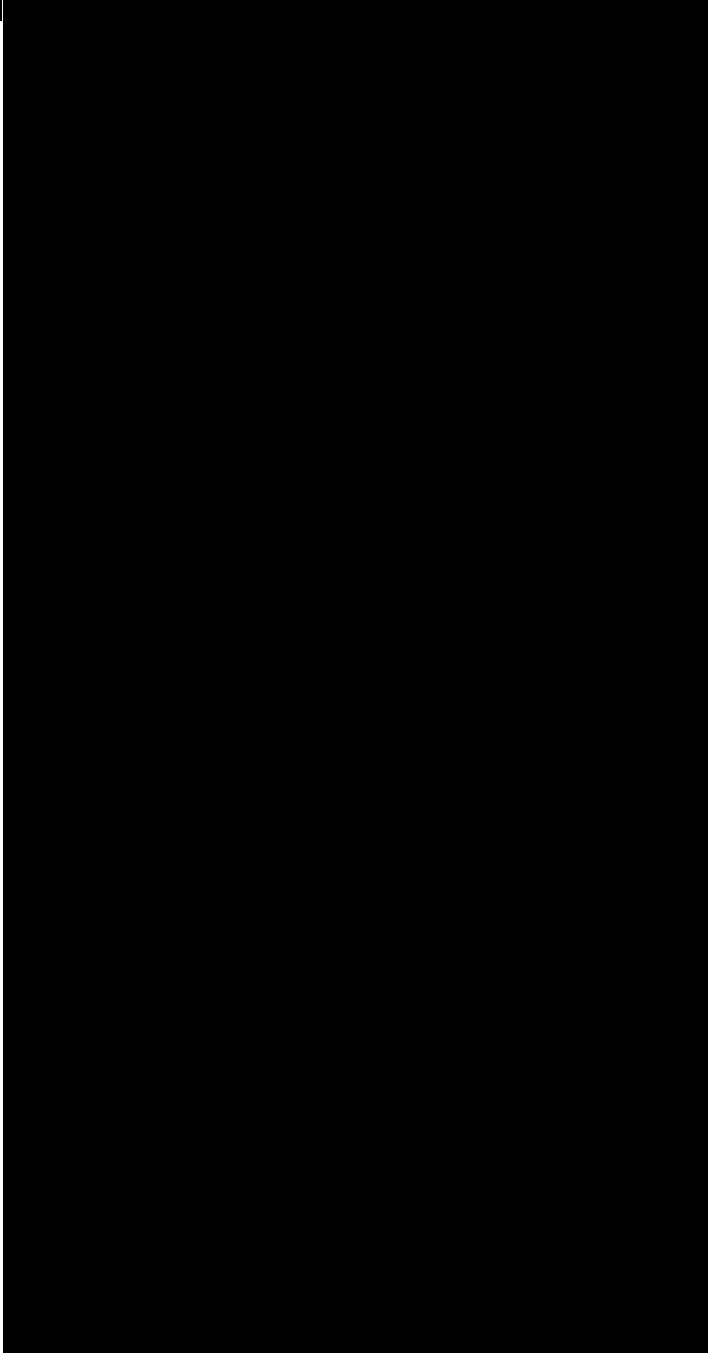
Other Epic Program Property included in Enterprise license		
Table Item #	**Epic Program Property:**	**Corresponding Comments:**
56.	Tapestry Managed Care Administration for Providers	██████████████████

Third Party Software and Data		
Table Item #	**Additional Billing Information – Description (Third Party Software and Data; not Program Property)**	**Corresponding Comments:**
57.	InterSystems Caché – Single Server, Platform Independent with Shadow	██████████████████
58.	InterSystems Caché – Large Non-Production License	██████████████████
59.	KB Systems SQL	██████████████████

Third Party Software and Data		
Table Item #	**Additional Billing Information – Description** **(Third Party Software and Data; not Program Property)**	**Corresponding Comments:**
60.	PKWARE SecureZIP	
61.	Business Objects Enterprise Professional / Crystal Report Professional	
62.	CPT Code License – iSWTD only	
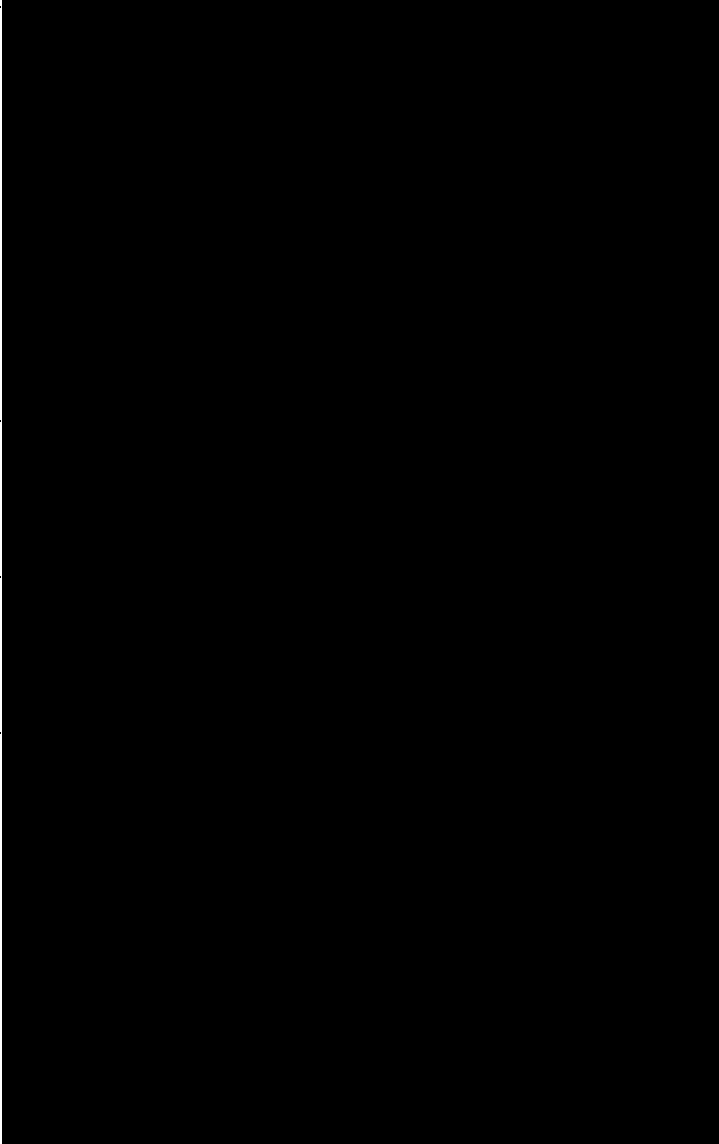
Third Party Software and Data		
Table Item #	**Additional Billing Information – Description (Third Party Software and Data; not Program Property)**	**Corresponding Comments:**
63.	Dr. Schmitt's Pediatric Telephone Triage Protocols – Office Hours Version	

Third Party Software and Data		
Table Item #	**Additional Billing Information – Description (Third Party Software and Data; not Program Property)**	**Corresponding Comments:**
64.	Dr. Schmitt's Pediatric Telephone Triage Algorithms – After Hours Version	

Third Party Software and Data		
Table Item #	**Additional Billing Information – Description** **(Third Party Software and Data; not Program Property)**	**Corresponding Comments:**
65.	Dr. Thompson's Adult Telephone Triage Protocols – Office Hours Version	

Third Party Software and Data

Table Item #	Additional Billing Information – Description (Third Party Software and Data; not Program Property)	Corresponding Comments:
66.	Dr. Thompson's Adult Telephone Triage Algorithms – After Hours Version	
67.	Diagnostic Data	

Third Party Software and Data		
Table Item #	**Additional Billing Information – Description (Third Party Software and Data; not Program Property)**	**Corresponding Comments:**
68.	BI-RADS® ATLAS	
69.	Images from the Sourcebook of Medical Illustration	
70.	Miscellaneous Assessment Tools Collection	
71.	Academy of Nutrition and Dietetics Terminology	
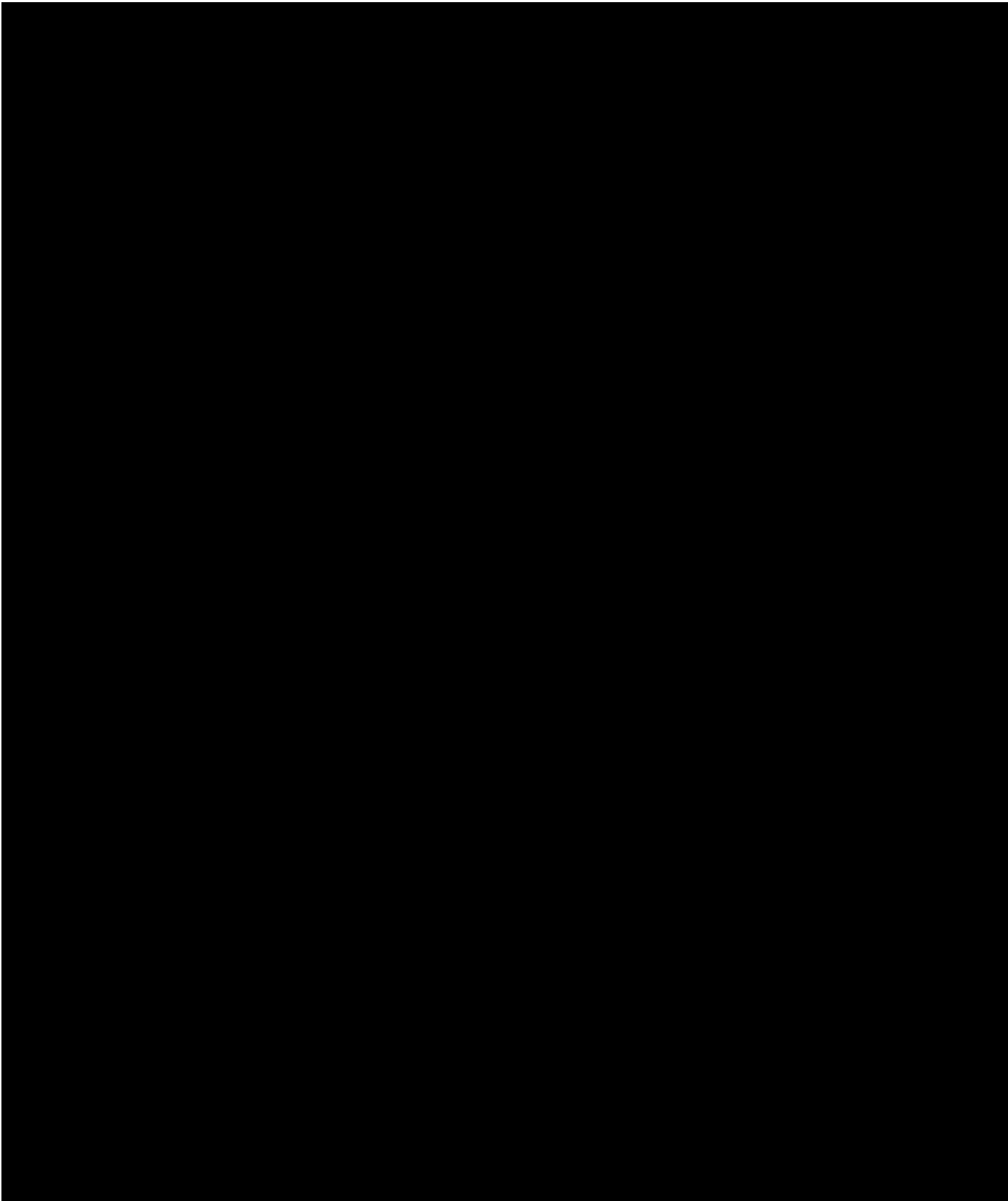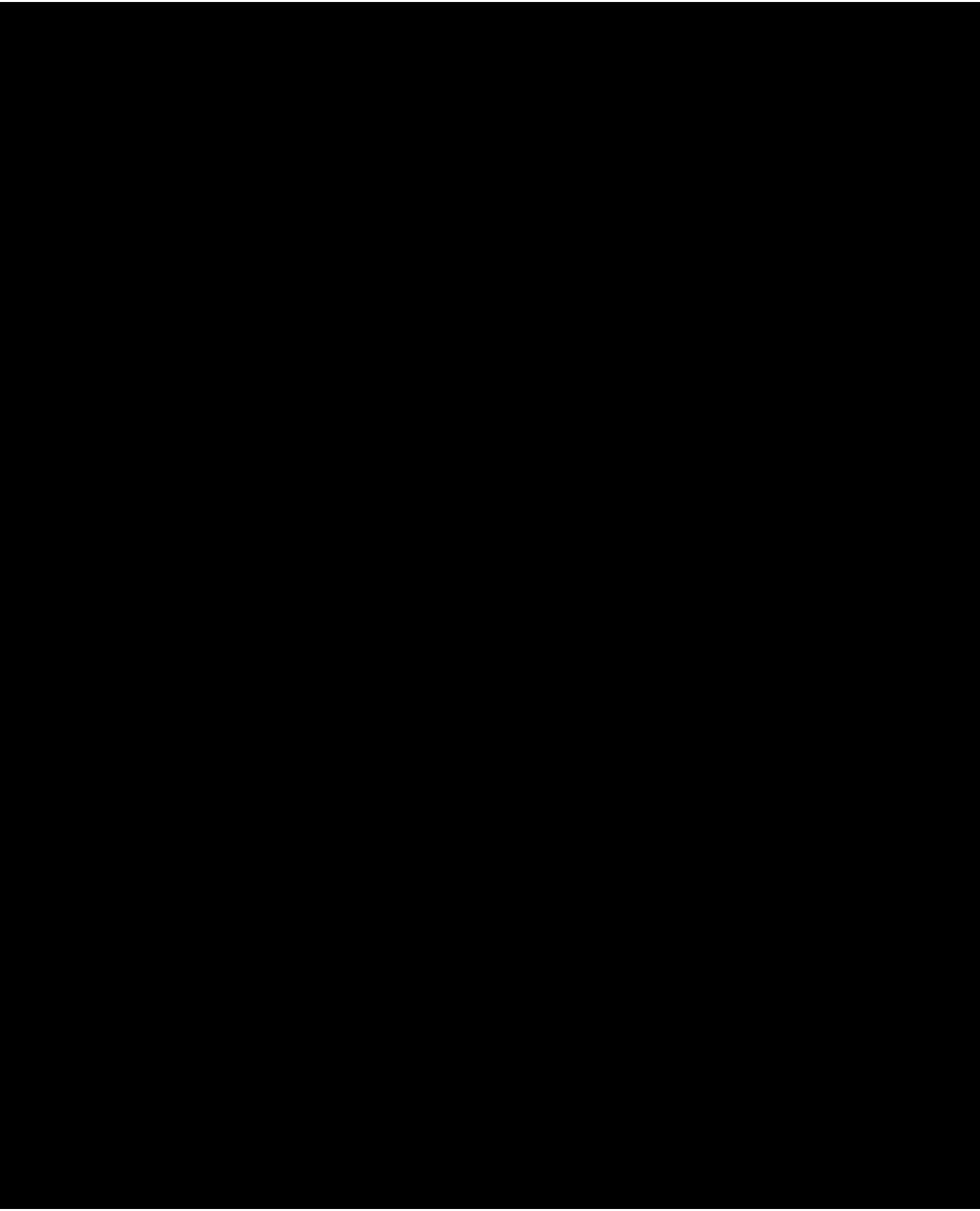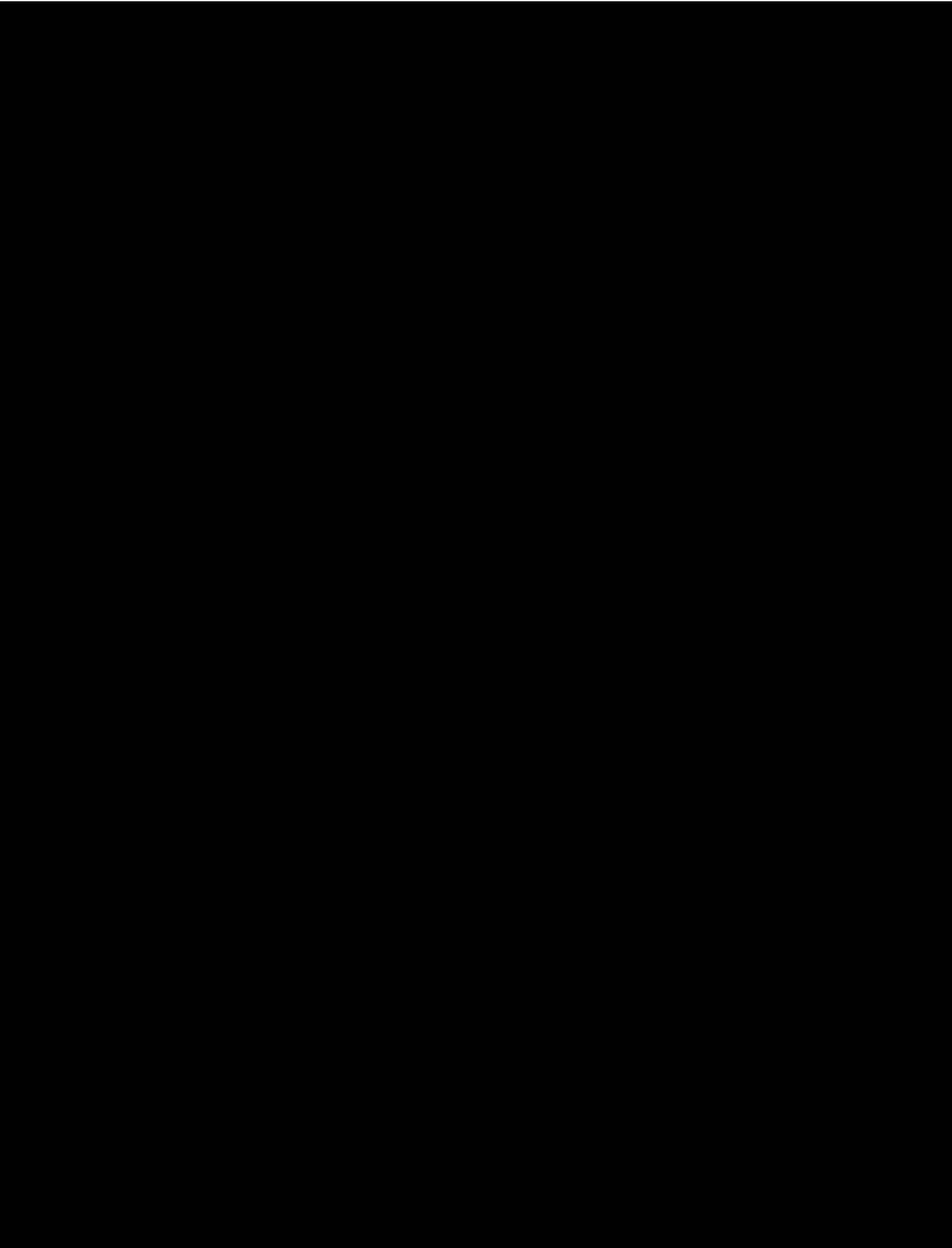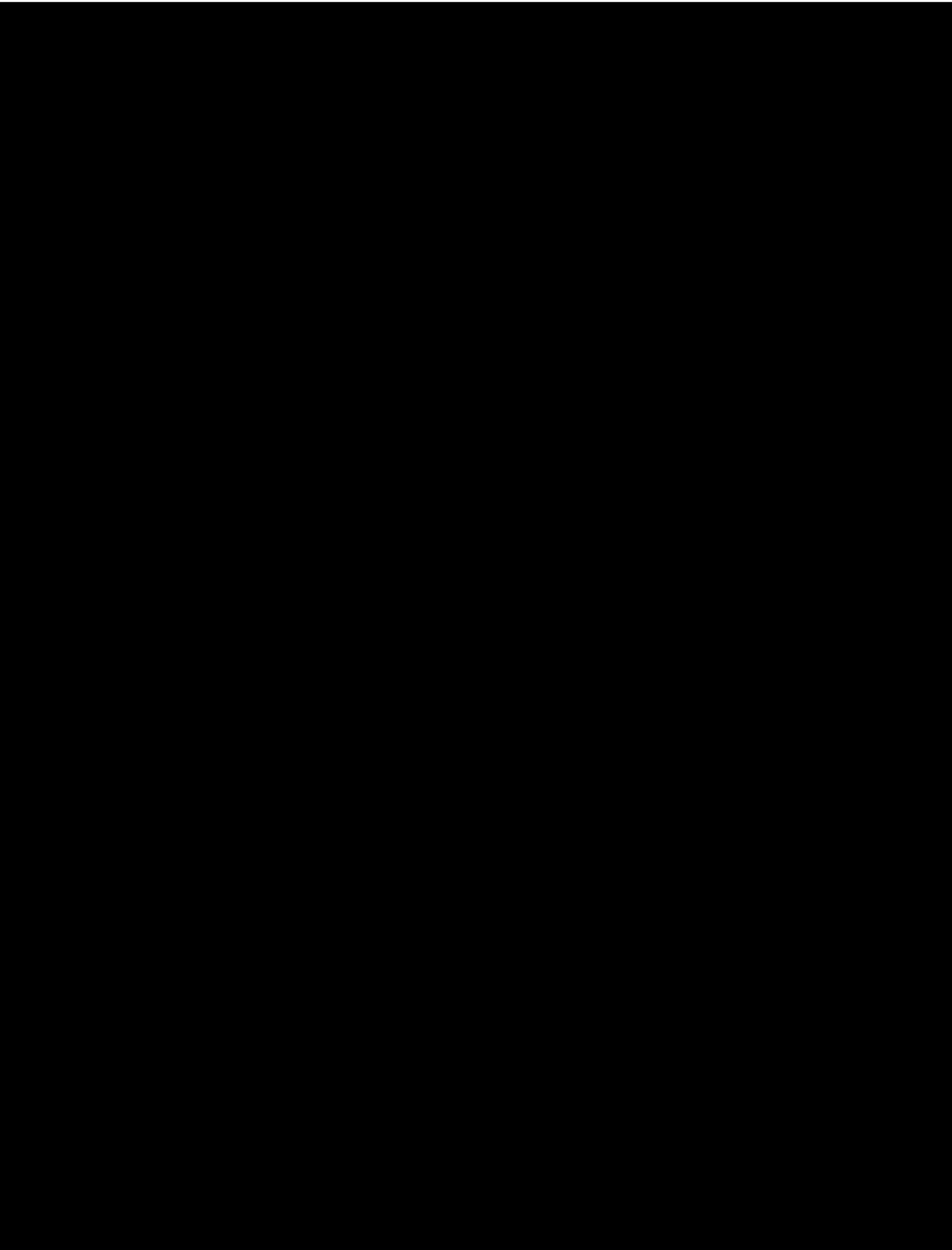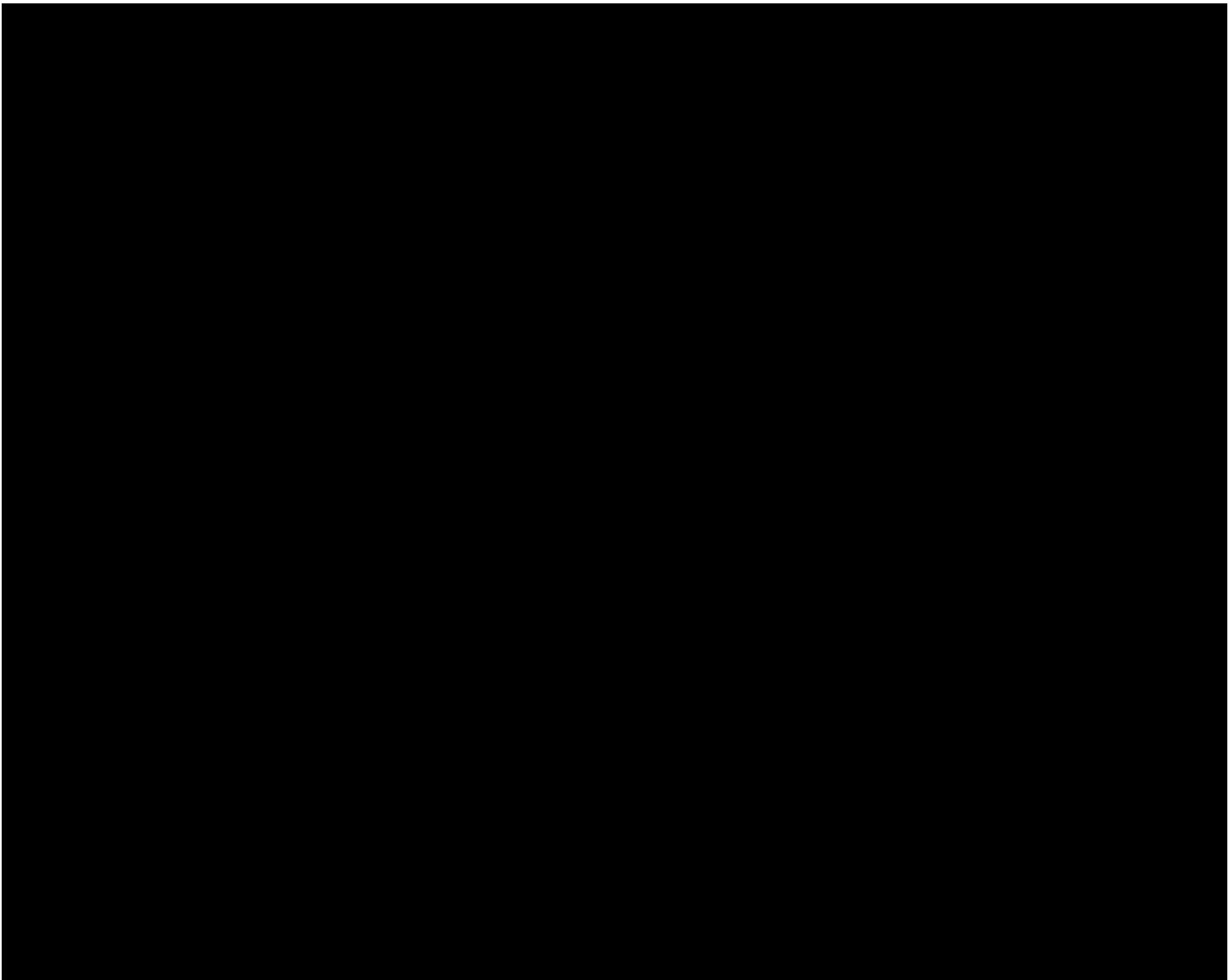
Exhibit 1(a)-4: SFDPH Epic Deliverable-Based Payment Schedule

Payment Period	Phase	Phase-Specific Deliverable Number	Exhibit 2(a) "Implemenation and Maintenance Scope of Work" Section 5.5 List of Deliverables
1	Phase 0	1	ID #1
2	Phase 0	2	Phase 0 Gate Review: ID #2-9
3	Phase 1	1	ID #10
4	Phase 1	2	Phase 1 Gate Review: ID #11-15
5	Phase 2	1	ID #16
6	Phase 2	2	Phase 2 Gate Review: ID #17-21
7	Phase 3	1	ID #22
8	Phase 3	2	Phase 3 Gate Review: ID #23-30
9	Phase 4	1	ID #31
10	Phase 4	2	Phase 4 Gate Review: ID #32-35
11	Phase 5	1	ID #36
12	Phase 5	2	Phase 5 Gate Review: ID #37-38
Final			Post Warranty Period
			Exhibit 1(a)-1 Budgetary Estimates by Fiscal Year, including ID# 47-55

Note:

Exhibit 1(a)-1 Budgetary Estimates by Fiscal Year, including ID# 47 =
Exhibit 1(a)-1 Budgetary Estimates by Fiscal Year, including ID# 48 =
Exhibit 1(a)-1 Budgetary Estimates by Fiscal Year, including ID# 49 =
Exhibit 1(a)-1 Budgetary Estimates by Fiscal Year, including ID# 50 =
Exhibit 1(a)-1 Budgetary Estimates by Fiscal Year, including ID# 51 =
Exhibit 1(a)-1 Budgetary Estimates by Fiscal Year, including ID# 52 =
Exhibit 1(a)-1 Budgetary Estimates by Fiscal Year, including ID# 53 =
Exhibit 1(a)-1 Budgetary Estimates by Fiscal Year, including ID# 54 =
Exhibit 1(a)-1 Budgetary Estimates by Fiscal Year, including ID# 55 =

Exhibit 1(a)-5
Current Incremental Fees for Increasing Licensed Volumes

The incremental fees listed below are the incremental fees as of the date of the Agreement to increase Your Licensed Volume on Your Production Directory as set forth below, based on the Epic software listed in Your Exhibit 1(a)-2 as of the date of the Agreement at Your initial Licensed Volumes.
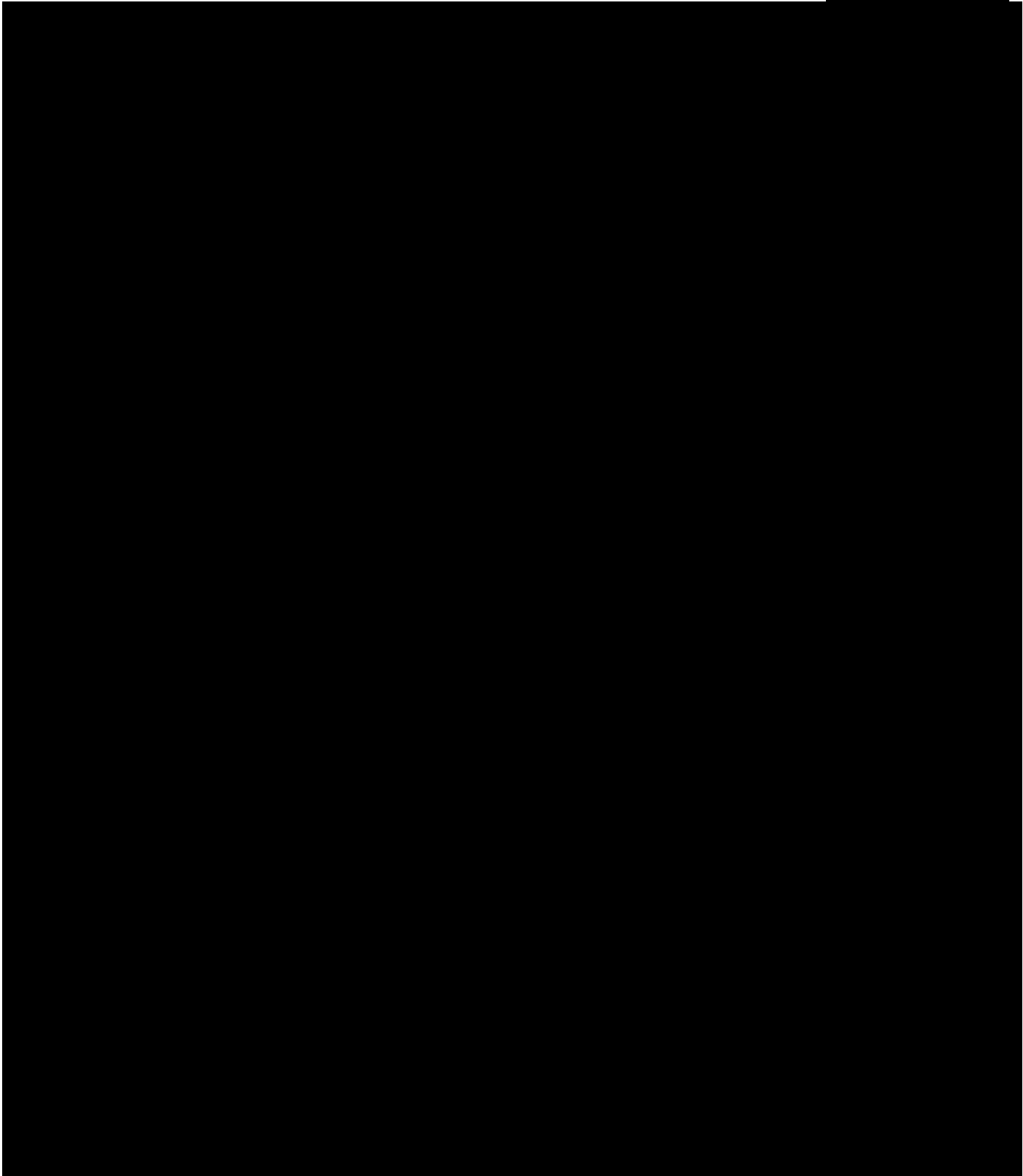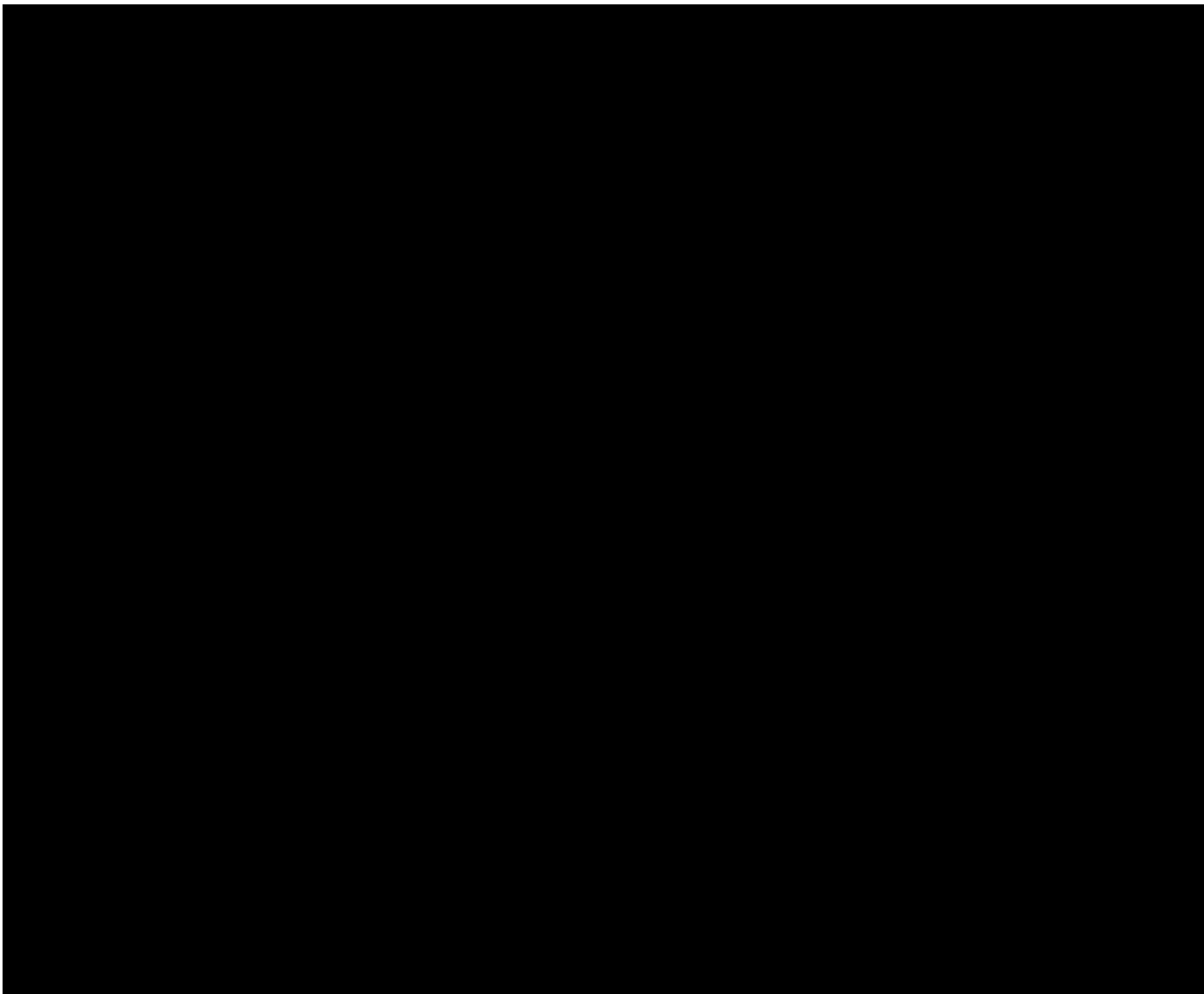
Exhibit 1(a)-6 Project Team Training Schedule
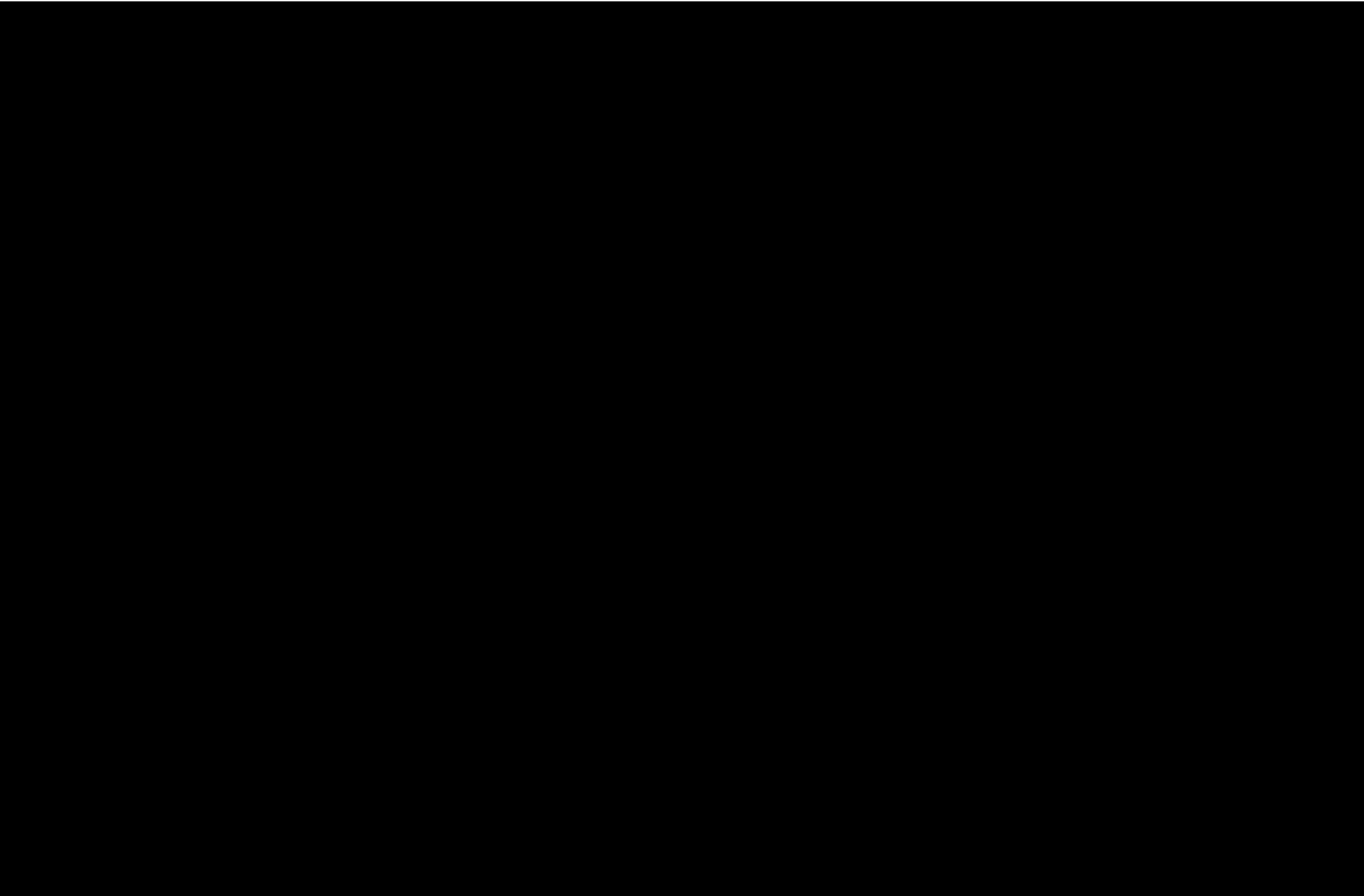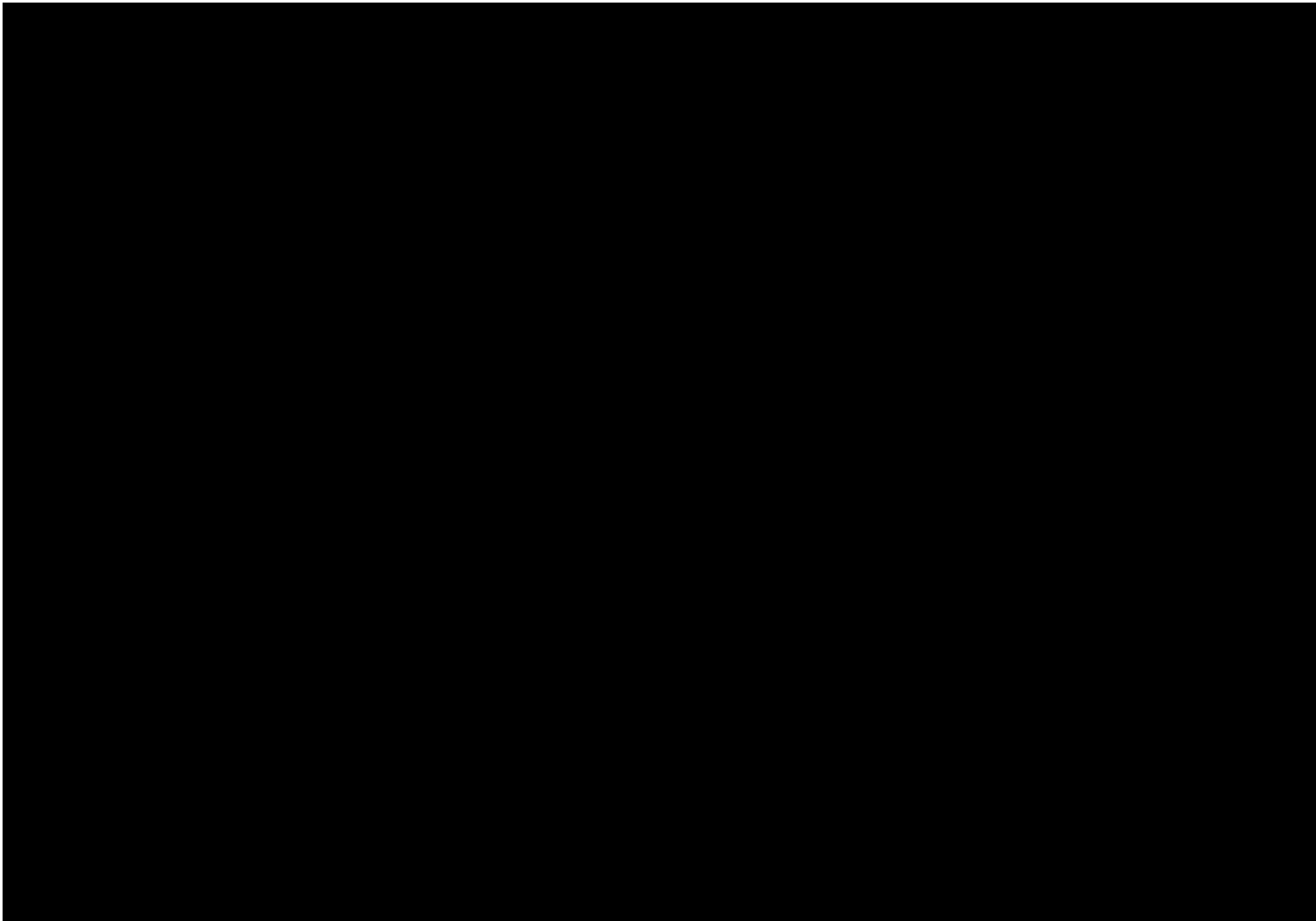
Exhibit 1(b): List of Standard Interfaces and Data Connectors and Associated Notes

The tables below list Epic's individual standard interfaces and data connectors as of August 15, 2017. An updated list of currently available standard interfaces and data connectors can be provided upon request. Implementation, customization and other hourly services related to interfaces and data connectors will be billed at Epic's then-current hourly rates.

#	Epic Standard Interfaces	Available Formats
1	Incoming Patient Administration	HL7 v2
2	Incoming External Encounters	HL7 v2
3	Outgoing Patient Administration	HL7 v2
4	Outgoing Syndromic Data	HL7 v2
5	Incoming Financial Transactions[1]	HL7 v2
6	Outgoing Financial Transactions	HL7 v2
7	Incoming Appointment Scheduling	HL7 v2
8	Outgoing Appointment Scheduling	HL7 v2
9	Incoming Schedule Query	HL7 v2
10	Incoming Ancillary Results and Orders	HL7 v2
11	Outgoing Ancillary Orders	HL7 v2
12	Outgoing Imaging Results and Orders	HL7 v2
13	Outgoing Diet Orders	HL7 v2
14	Outgoing Clinical Results	HL7 v2
15	Incoming Transcriptions	HL7 v2
16	Incoming Scanned Document Link	HL7 v2
17	Outgoing Scanned Document Link Maintenance	HL7 v2
18	Incoming Deficiency Tracking	HL7 v2
19	Incoming EOB Scanning	HL7 v2
20	Outgoing Documentation	HL7 v2
21	Incoming Pharmacy Orders from ePIMS	HL7 v2
22	Outgoing Pharmacy Orders to ePIMS	HL7 v2
23	Outgoing Medication Orders to Retail Pharmacies[2]	NCPDP v8.1; NCPDP v10.6
24	Incoming Refill Requests from Retail Pharmacies[2]	NCPDP v8.1; NCPDP v10.6
25	Outgoing Pharmacy Benefit Eligibility Query - 270/271[2,3]	X12
26	Outgoing Medication Dispense History Query[2]	NCPDP v8.1; NCPDP v10.6
27	Outgoing Prescription Prior Authorization Request and Response	NCPDP v2013101
28	Incoming Medication Dispenses from ADS to Willow Inpatient	HL7 v2
29	Incoming Load/Unload from ADS/AFS	HL7 v2
30	Incoming Medication Inventory Management	HL7 v2
31	Outgoing Verified Medication Orders from Willow Inpatient	HL7 v2
32	Outgoing Formulary Information to ADS from Willow Inpatient	HL7 v2
33	Outgoing Medication Inventory Depletion	HL7 v2
34	Outgoing Medication Stock Transfer Request and Response	HL7 v2
35	Incoming Medication Orders to Willow Ambulatory[4]	NCPDP v10.6
36	Outgoing Refill Requests from Willow Ambulatory[4]	NCPDP v10.6
37	Incoming Fill Status from Automated Fill System to Willow Ambulatory	HL7 v2
38	Outgoing Fills to Automated Fill System from Willow Ambulatory	HL7 v2
39	Outgoing Pharmacy Benefit Claim Adjudication Query	NCPDP v5.1; NCPDP vD.0
40	Incoming Shipment Notification to Willow Inventory - 856[3]	X12
41	Incoming Pharmacy Purchase Order Invoice to Willow Inventory - 810[3]	X12
42	Incoming Purchase Order Acknowledgement to Willow Inventory - 855[3]	X12
43	Outgoing Pharmacy Purchase Order from Willow Inventory - 850[3]	X12
44	Incoming Medication Orders to EpicCare Ambulatory	HL7 v2
45	Outgoing Medication Orders from EpicCare Ambulatory	HL7 v2
46	Incoming Medication Administration Notification[5]	HL7 v2

#	Epic Standard Interfaces (Continued)	Available Formats
47	Outgoing Medication Administration Notification[5]	HL7 v2
48	Incoming Device Data	HL7 v2
49	Incoming Injectable Medication Documentation[6]	HL7 v2
50	Incoming Clinical Documentation Flowsheet Data	HL7 v2
51	Outgoing Clinical Documentation Flowsheet Data	HL7 v2
52	Incoming Clinical Observations	HL7 v2
53	Incoming Procedure Log Data	HL7 v2
54	Outgoing Procedure Log Data	XML
55	Incoming Vaccination Administration[7]	HL7 v2
56	Outgoing Vaccination Administration[7]	HL7 v2
57	Outgoing Vaccination History Query[7]	HL7 v2
58	Incoming Materials Management	HL7 v2
59	Outgoing Inventory Depletion	HL7 v2
60	Incoming Surgical Instrument Data	HL7 v2
61	Incoming Surgical Cart Tracking	HL7 v2
62	Incoming Procedural Supply Usage	HL7 v2
63	Incoming Surgical Case Tracking	HL7 v2
64	Outgoing Surgical Case Scheduling	HL7 v2
65	Incoming Results from Lab Instruments	HL7 v2
66	Outgoing Orders to Lab Instruments	HL7 v2
67	Incoming Orders from CPOE Systems	HL7 v2
68	Outgoing Lab Results and Orders to External Providers	HL7 v2
69	Outgoing Cancer Reporting[8]	HL7 CDA
70	Outgoing Initial Public Health Case Report	XML
71	Outgoing IRIS Ophthalmology Encounter Summary[9]	Custom
72	Outgoing Dialysis Update to CMS	XML
73	Incoming QRDA Documents	XML
74	Incoming Provider Information	HL7 v2; Web Service
75	Outgoing Provider Information	HL7 v2
76	Incoming Personnel Management	HL7 v2; Web Service
77	Incoming Location and Department Information	HL7 v2
78	Incoming Problem List	HL7 v2
79	Outgoing Problem List	HL7 v2
80	Incoming Real-Time Location System Updates (bidirectional)	HL7 v3
81	Research Study Management and Enrollment (bidirectional)	HL7 v3 (RPE, CRPC profiles)
82	Outgoing Clinical Trials Forms Submission	HL7 v3 (RFD profile)
83	Outgoing Birth Registry Reporting IHE BFDR Profile	HL7 v3 (RFD profile or Direct)
84	Outgoing Death Registry Reporting IHE VRDR Profile	HL7 v3
85	Incoming MPI and Demographics Query	HL7 v2
86	Outgoing MPI and Demographics Query	HL7 v2
87	Incoming IVR Account and Demographics Query	HL7 v2
88	Incoming Coding Query and Response	HL7 v2
89	Incoming Patient Education	HL7 v2
90	Outgoing Patient Education	HL7 v2
91	Incoming Family Medical History	XML
92	Outgoing Family Medical History	XML
93	Incoming Flowsheet Data from Home Device Data Concentrator	HL7 v2
94	Outgoing Registration to Home Device Data Concentrator	HL7 v2
95	Outgoing Referral Notification	HL7 v2

#	Epic Standard Interfaces (Continued)	Available Formats
96	Coding (bidirectional)[10]	HL7 v2
97	Data Exchange with 3M Core Grouping Software[11]	Custom
98	Outgoing Claim Scrubber Query	HL7 v2, Custom (OptumInsight)
99	Outgoing Address Verification Query	HL7 v2
100	Outgoing Imaging Decision Support Feature Enabler	Web Service
101	Outgoing Eligibility Verification Query - 270/271 (bidirectional)[3,12]	X12
102	Outgoing Claim Status Request - 276/277 (bidirectional)[3,12]	X12
103	Outgoing Admission Notification - 278/278 (bidirectional)[3,12]	X12
104	Outgoing Health Care Services Authorization Query - 278/278 (bidirectional)[3,12]	X12
105	Tapestry Incoming Health Care Services Authorization Notification - 278/278 (bidirection:	X12
106	Tapestry Outgoing Health Care Services Authorization Notification - 278/278 (bidirection:	X12
107	Tapestry Incoming Health Care Services Review Request (Health Plan) - 278/278 (bidirectional)[3,12]	X12
108	Tapestry Outgoing Health Care Services Unsolicited - 278/278[3,12]	X12
109	Tapestry Incoming Additional Information for Health Care Services Authorization Notification - 275/275 (bidirectional)[3,12]	X12
110	Tapestry Outgoing Additional Information for Health Care Services Authorization Notification - 275/275 (bidirectional)[3,12]	X12
111	Tapestry Incoming Eligibility, Coverage or Benefit Inquiry - 270/271 (bidirectional)[3]	X12
112	Tapestry Incoming Payment Order/Remittance Advice - 820 (batch)[3]	X12
113	Tapestry Incoming Health Care Claim Status Request - 276 (batch)[3]	X12
114	Tapestry Outgoing Health Care Claim Status Response - 277 (batch response to 276)[3]	X12
115	Tapestry Outgoing Health Care Claim Acknowledgement - 277CA (batch response to 837)[3]	X12
116	Tapestry Outgoing Health Care Claim Pending Status Notification - 277P[3]	X12
117	Tapestry Incoming Benefit Enrollment and Maintenance - 834 (batch)[3]	X12
118	Tapestry Outgoing Benefit Enrollment and Maintenance - 834 (batch)[3]	X12
119	Tapestry Outgoing Health Care Claim Payment/Advice - 835 (batch)[3]	X12
120	Tapestry Incoming Health Care Claim: Institutional - 837 (batch)[3]	X12
121	Tapestry Outgoing Health Care Claim: Institutional - 837 (batch)[3]	X12
122	Tapestry Incoming Health Care Claim: Professional - 837 (batch)[3]	X12
123	Tapestry Outgoing Health Care Claim: Professional - 837 (batch)[3]	X12
124	Tapestry Incoming Health Care Claim: Professional with Dental Support - 837 (batch)[3]	X12
125	Healthy Planet Pre-adjudicated Claims: Professional - 837[3]	X12
126	Healthy Planet Pre-adjudicated Claims: Institutional - 837[3]	X12
127	Tapestry Grouper/Pricer (3M)	Web Service
128	Tapestry Grouper/Pricer (OptumInsight)	Custom
129	Tapestry Grouper/Pricer (Generic)	Custom
130	Tapestry Code Editor	Custom

#	Epic Standard Data Connectors[13]	Available Formats
1	Cost Accounting Import	ETL
2	Epic Format Eligibility Import[14]	ETL
3	Epic Format Medical Claims Import[14]	ETL
4	Epic Format Pharmacy Claims Import[14]	ETL
5	Press Ganey Patient Satisfaction Import	ETL
6	NRC Picker Patient Satisfaction Import	ETL
7	CMS CCLF Eligibility Import	ETL
8	CMS CCLF Claims Import	ETL
9	CMS CJR Claims Import	ETL

#	Other Standard Interfaces Not Licensed by Interface/Connector Units	Available Formats
1	Incoming Infusion Documentation to [Vendor][15]	HL7 v2

#	Other Standard Interfaces Not Licensed by Interface/Connector Units (Continued)	Available Formats
2	Outgoing Infusion Orders from [Vendor][15] *(Including Incoming Infusion Verification from [Vendor])*	HL7 v2
3	ECG Integration Module (with MidMark)[16]	Custom
4	Spirometry Integration Module (with MidMark)[16]	Custom
5	Holter Integration Module (with MidMark)[16]	Custom
#	**Other Standard Interfaces for Use in Australia Only**	**Available Formats**
1	Outgoing IHI Verification Query	XML
2	Outgoing Medication Orders to Prescription Exchange Service	XML
3	Outgoing OCIO Medication Orders from EpicCare Ambulatory	HL7 v2
4	Outgoing PAS Data and Response	HL7 v2; XML
#	**Other Standard Interfaces for Use in Denmark Only**	**Available Formats**
1	Outgoing FMK Ordered Refill Request and Response	XML
2	Bidirectional Correspondence	Medcom XML
3	Incoming Binary Documents	Medcom XML
4	Incoming Lab Results/Reports	Medcom XML
5	Incoming Pathology Results/Reports	Medcom XML
6	Incoming Referrals and Booking Confirmation	Medcom XML/EDIFACT
7	Incoming Rehabilitation Plan Summary	XML
8	Incoming Summary of Care	Medcom XML
9	Outgoing Binary Documents	Medcom XML
10	Outgoing Birth Notification	Medcom XML
11	Outgoing ECPR Assignment Request and Response	Medcom Web Service
12	Outgoing FMK Medication Card Services Request and Response Interface	Medcom XML
13	Outgoing Municipality Integrations	Medcom XML/EDIFACT
14	Outgoing Newborn CPR Assignment Request and Response	Medcom Web Service
15	Outgoing Order Requisitions	Medcom XML
16	Outgoing Referrals and Booking Confirmation	Medcom XML/EDIFACT
17	Outgoing Rehabilitation Plan Summary	XML
18	Outgoing Summary of Care	Medcom XML
#	**Other Standard Interfaces for Use in The Netherlands Only**	**Available Formats**
1	Outgoing Perinatal Data	Hl7 v3 NL
2	Incoming Pharmacy Purchase Order Invoice to Willow Inventory - 810	GS1 EANCOM
3	Incoming Purchase Order Acknowledgement to Willow Inventory - 855	GS1 EANCOM
4	Outgoing Pharmacy Purchase Order from Willow Inventory - 850	GS1 EANCOM
5	Incoming Shipment Notification to Willow Inventory - 856	GS1 EANCOM
6	Data Exchange with DBC Onderhoud Grouper	HL7 v3 NL
7	Outgoing BSN Verification Query	HL7 v3 NL
8	Outgoing COV Verification Query	VZ37 / VZ38
9	Outgoing Endoscopy Reporting	HL7 CDA
10	Outgoing Medication Dispense History Query	HL7 v3 NL
11	Outgoing Medication Orders	HL7 v3 NL
#	**Other Standard Interfaces for Use in Singapore Only**	**Available Formats**
1	Outgoing Discharge Summaries	NEHR Service
2	Outgoing ED Summaries	NEHR Service
3	Outgoing Laboratory Results	NEHR Service

#	Other Standard Interfaces for Use in Singapore Only (Continued)	Available Formats
4	Outgoing Medication Dispenses	NEHR Service
5	Outgoing Medication Orders	NEHR Service
6	Outgoing Radiology Results	NEHR Service
7	Outgoing Surgical Summaries	NEHR Service
#	Other Standard Interfaces for Use in The United Arab Emirates Only	Available Formats
1	Outgoing Prescription Prior Authorization Request and Response	HAAD XML
2	Outgoing Claim Submission from Willow Ambulatory	HAAD XML
3	Incoming Remittance Advice Download to Willow Ambulatory	HAAD XML
#	Other Standard Interfaces for Use in the United Kingdom Only	Available Formats
1	Incoming Referral Scheduling Request Query	HL7 v3 UK
2	Incoming Scheduling Slot Availability Query	HL7 v3 UK
3	Outgoing PDS Demographics Synchronization Query	HL7 v3 UK
4	Outgoing PDS Newborn Notification	HL7 v3 UK
5	Outgoing PDS Number Allocation Request for Acute Care	HL7 v3 UK
6	Outgoing PDS Tracing Query	HL7 v3 UK

Notes:

[2] These items are also collectively identified as the "E-Prescribing - Provider" interface bundle, for use with Surescripts. ▮

[4] These items are also collectively identified as the "E-Prescribing - Pharmacy" interface bundle, for use with Surescripts. ▮

[5] Please discuss with Your Epic representative before implementing to ensure the interface is appropriate to meet the needs of Your intended workflow.

[12] The Epic fees do not include costs that the clearinghouse or payor (e.g. HDX) may have for its services.

Notes Continued:

ᵂ Each standard interface and data connector is limited to use solely in accordance with the Documentation Manuals. You understand and acknowledge that the Epic software listed above does not include licenses to any related third party products, including the third party's interfaces, and You agree that such licenses must be obtained directly from the vendors of such products or authorized third parties. Any such third party specifications will be considered non-confidential.
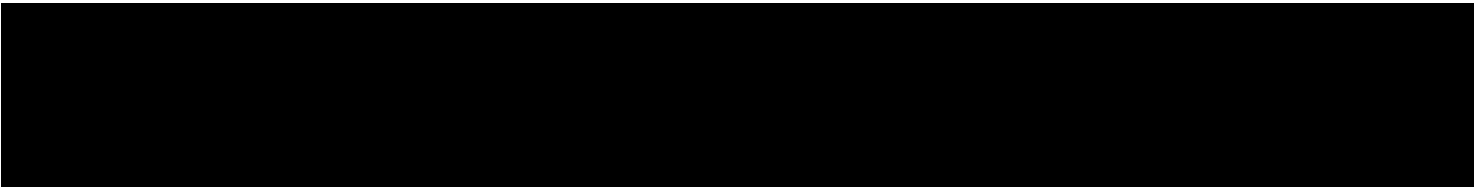
The tables and notes above are subject to change.

Exhibit 1(c)
Enterprise Volume Definitions

Exhibit 1(c)
Enterprise Volume Definitions
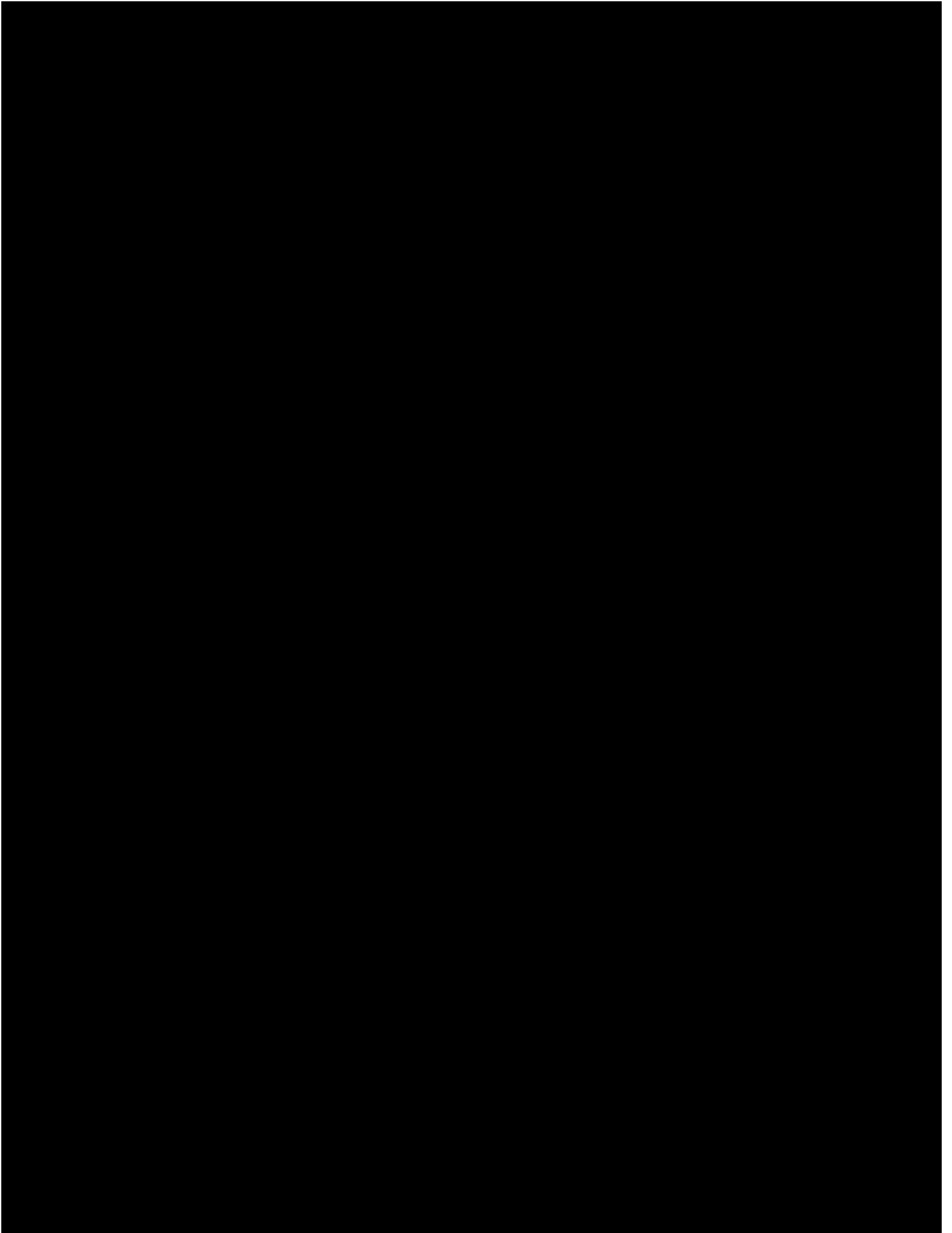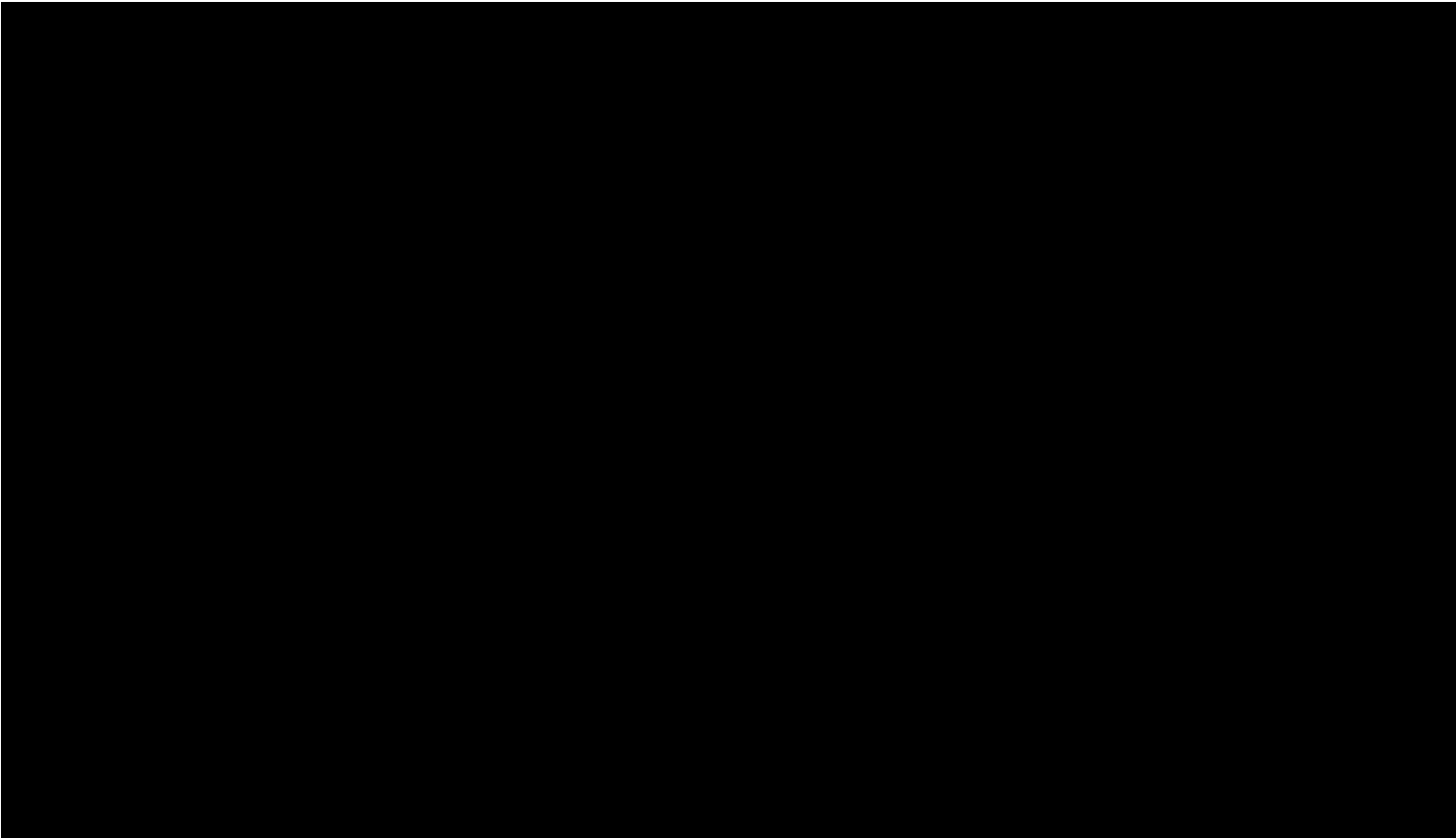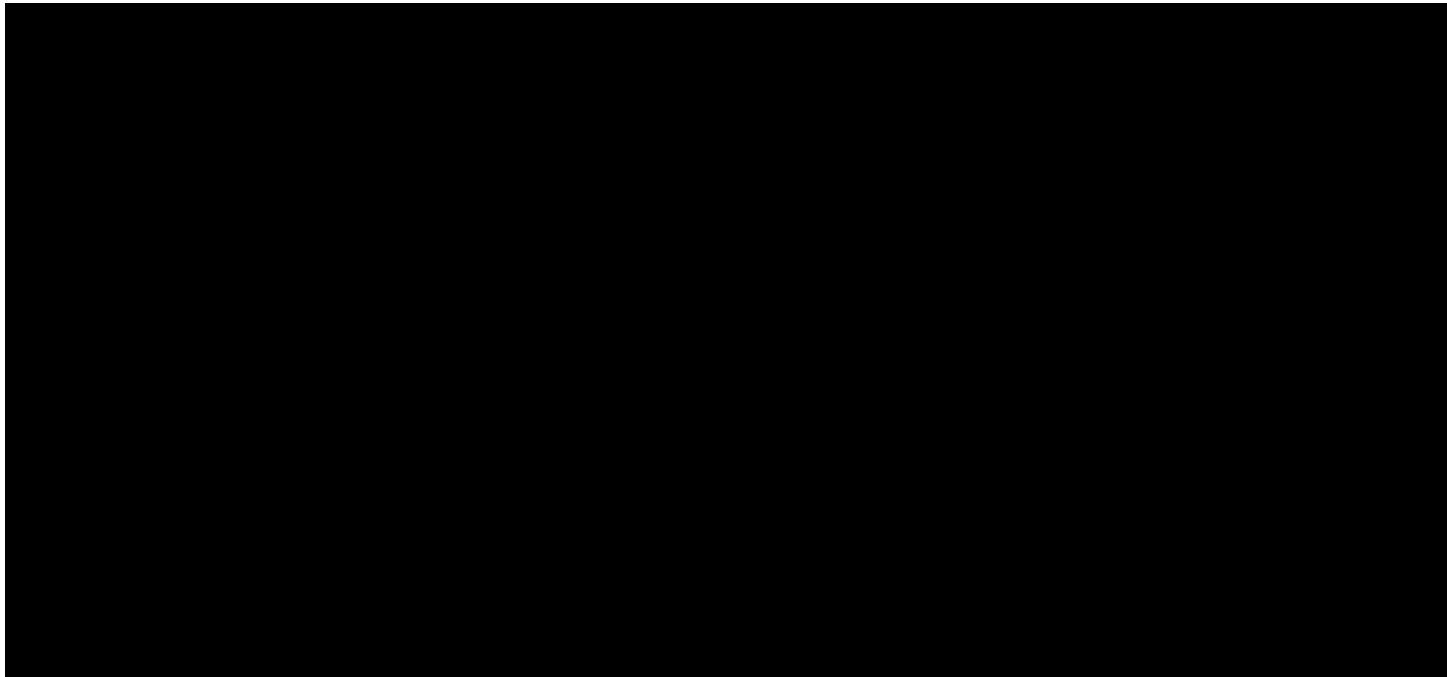
EXHIBIT 1(d)

EPIC HOURLY RATES
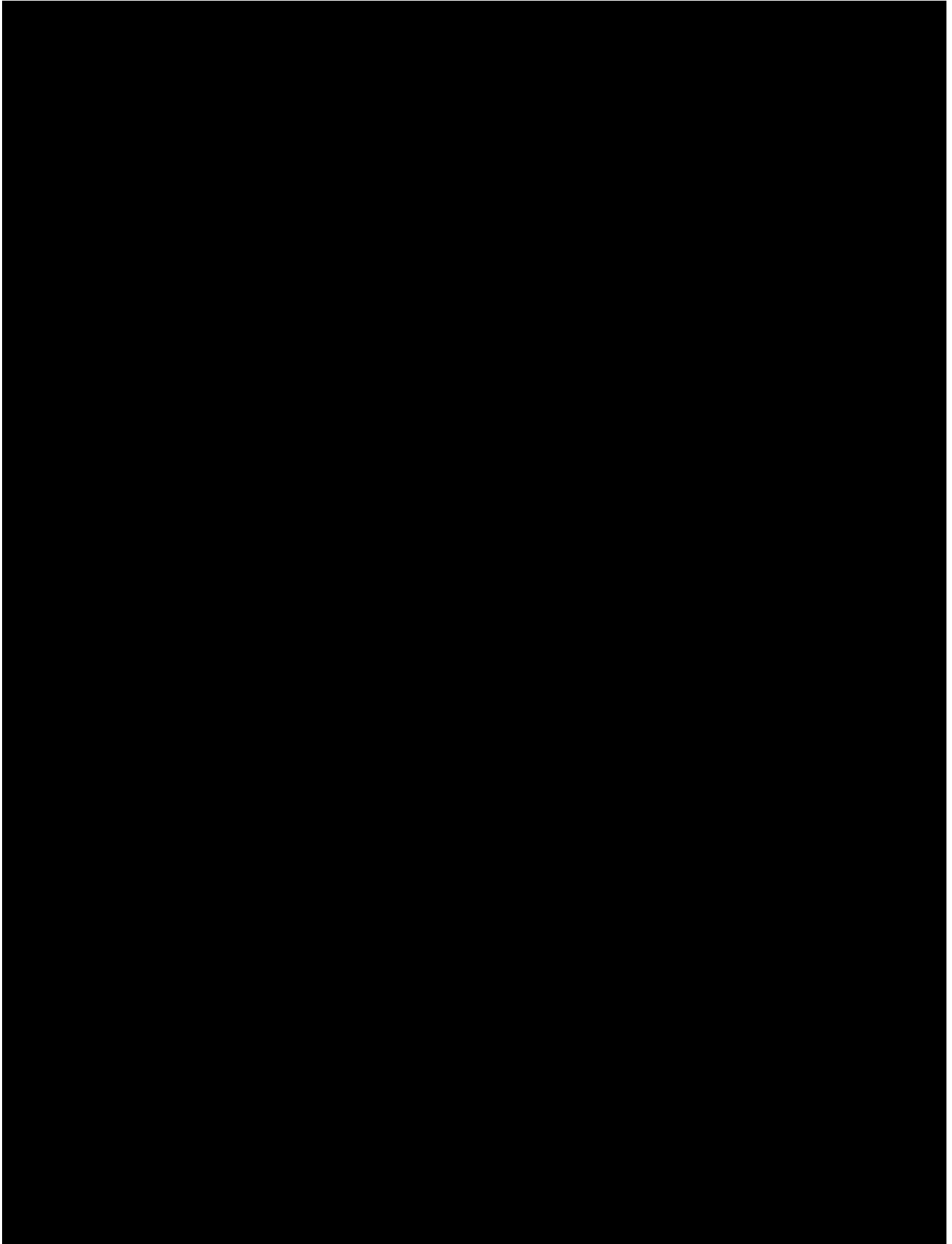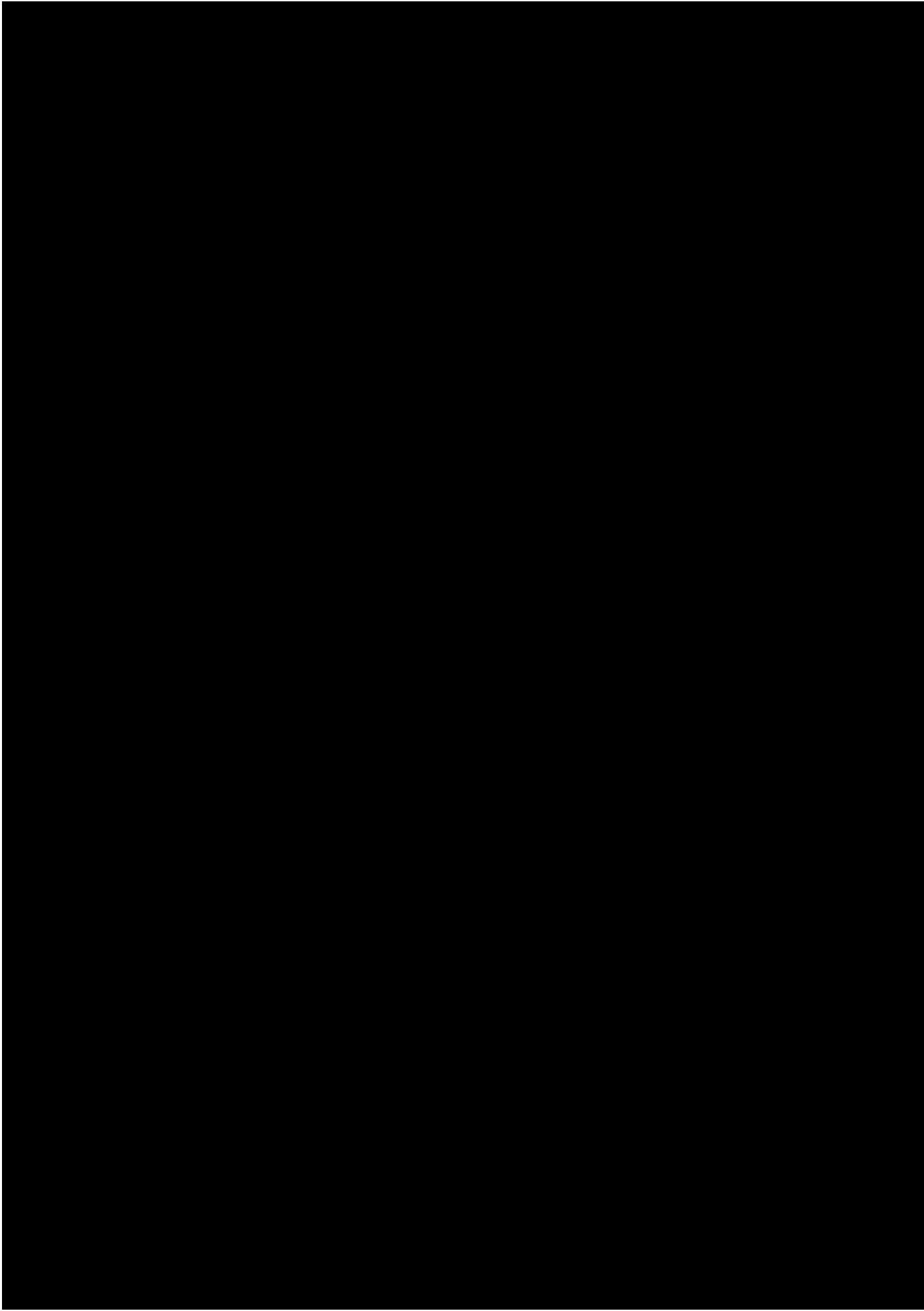
The policies and rates on this Exhibit 1(d) are subject to change except as otherwise provided in the Agreement

Exhibit 1(e)

PAGE 1

DEPARTMENT OF PUBLIC HEALTH CONTRACTOR

FEE FOR SERVICE STATEMENT OF DELIVERABLES AND INVOICE

CONTRACTOR: Epic City Government LLC   **Control Number**

Address: PHP-17-

Contract Purchase Order PO No.

Telephone:

FAX: **Fund Source:**   GF

CONTRACT TERM: 1/1/2018 -12/31/2027   **Invoicing Period:**

CONTRACT NAME: Integrated Electronic Health Record

INVOICE TITLE & TERM:

Deliverables	Total Contracted UOS	UOS Delivered THIS	UNIT RATE	AMOUNT DUE	UOS Delivered TO DATE	% OF TOTAL	Remaining Units to be Delivered
TOTAL EXPENSES					NOTES:		
Other Adjustments:							
REIMBURSEMENT							

I certify that the information provided above is, to the best of my knowledge, complete and accurate; the amount requested for reimbursement is in accordance with the contract approved for services provided under the provision of that contract. Full justification and backup records for those claims are maintained in our office at the address indicated.

Signature: _____   Date: _____

Title: _____

Send to: Department of Public Health   SFDPH Authorization For Payment:
101 Grove St. Rm.312
San Francisco, CA 94102   DPH Approver #1 By: _____   Date: _____
Attn: Bill Kim

DPH Approver #2 By: _____   Date: _____

Exhibit 1(f)
Travel and Expense Policy

EXHIBIT 1(g)

InterSystems Cache Pricing

Exhibit 2(a) – Implementation and Maintenance Scope of Work

Exhibit 2(a): IMPLEMENTATION AND MAINTENANCE SCOPE OF WORK

Exhibit 2(a) – Implementation and Maintenance Scope of Work

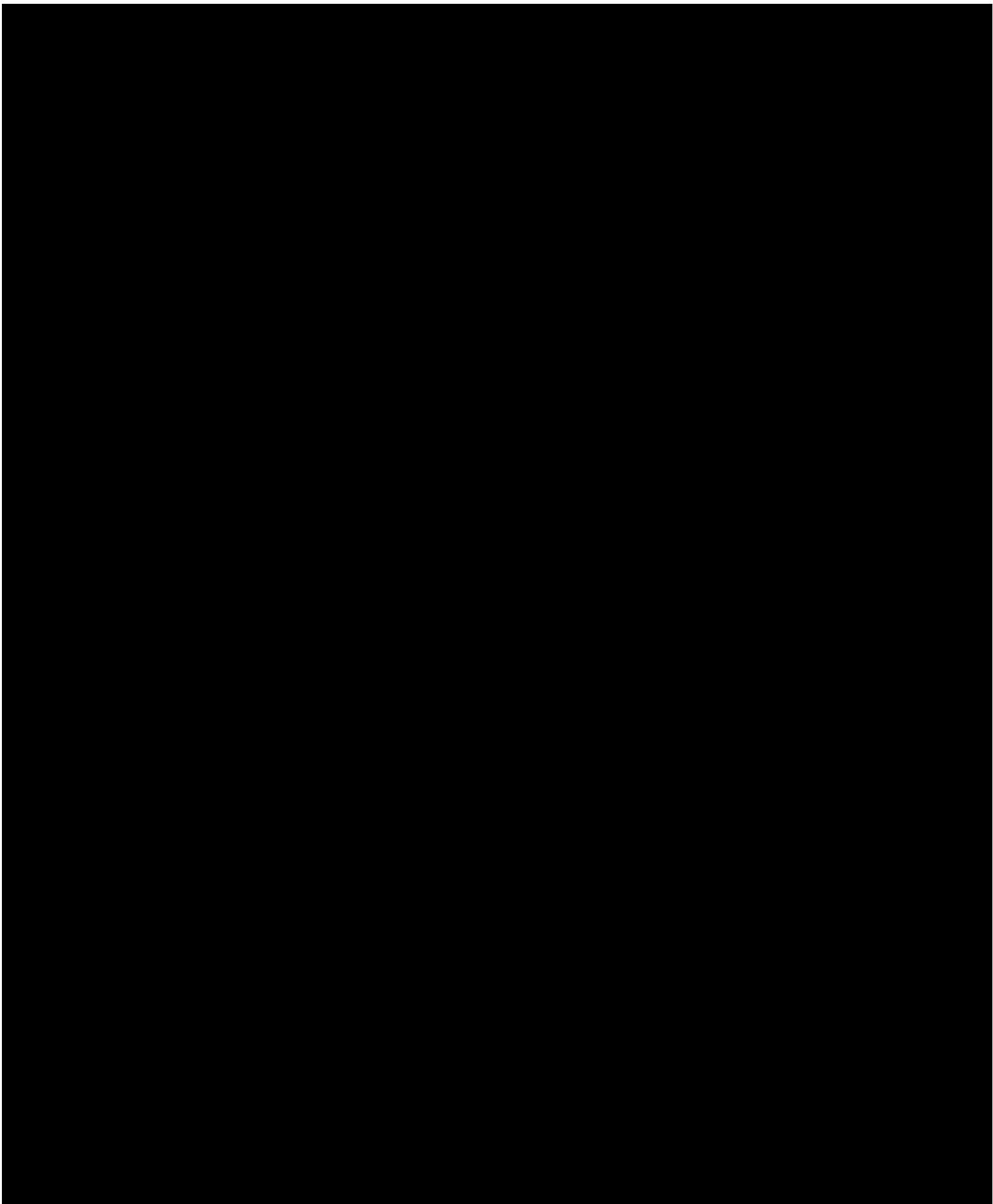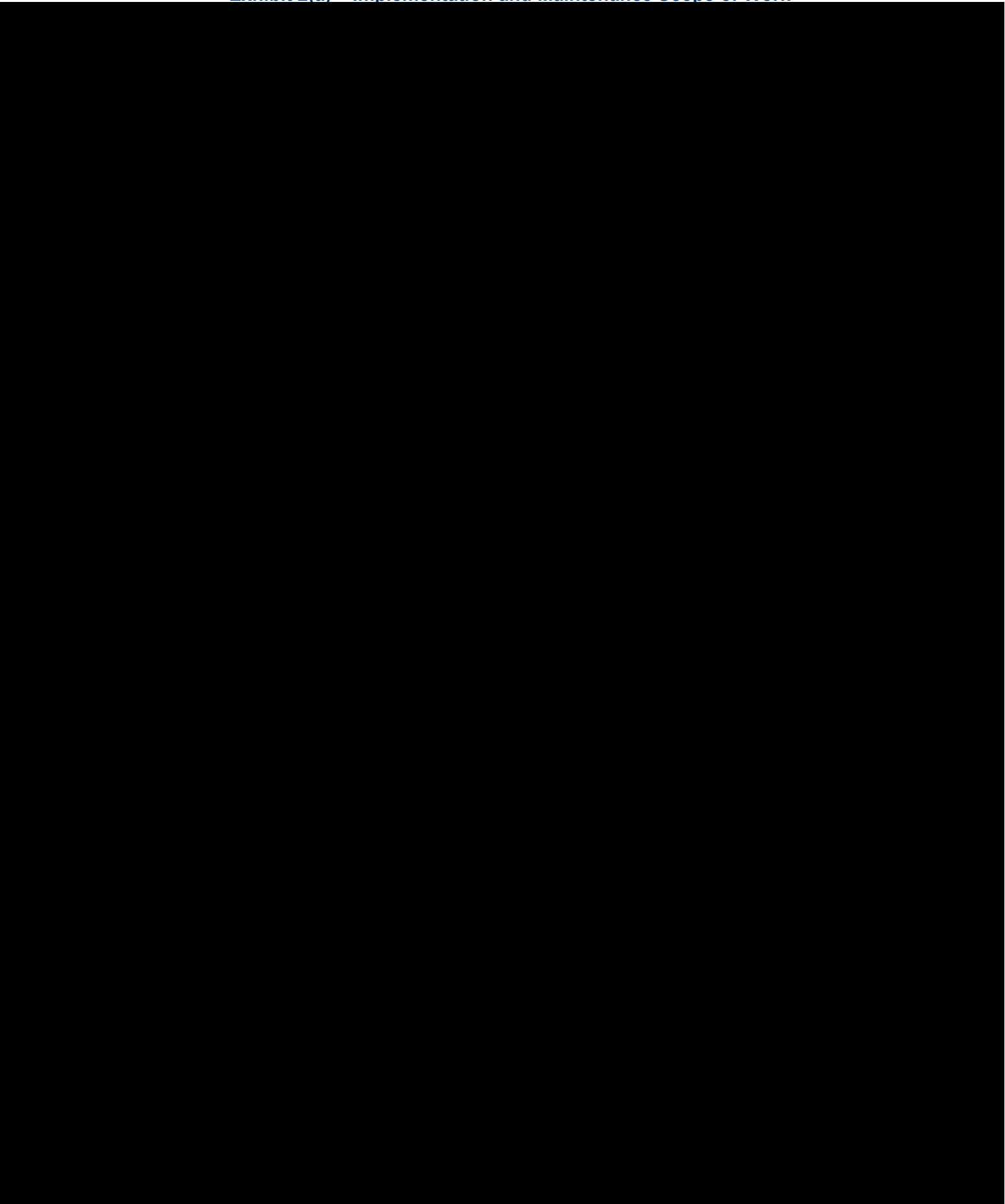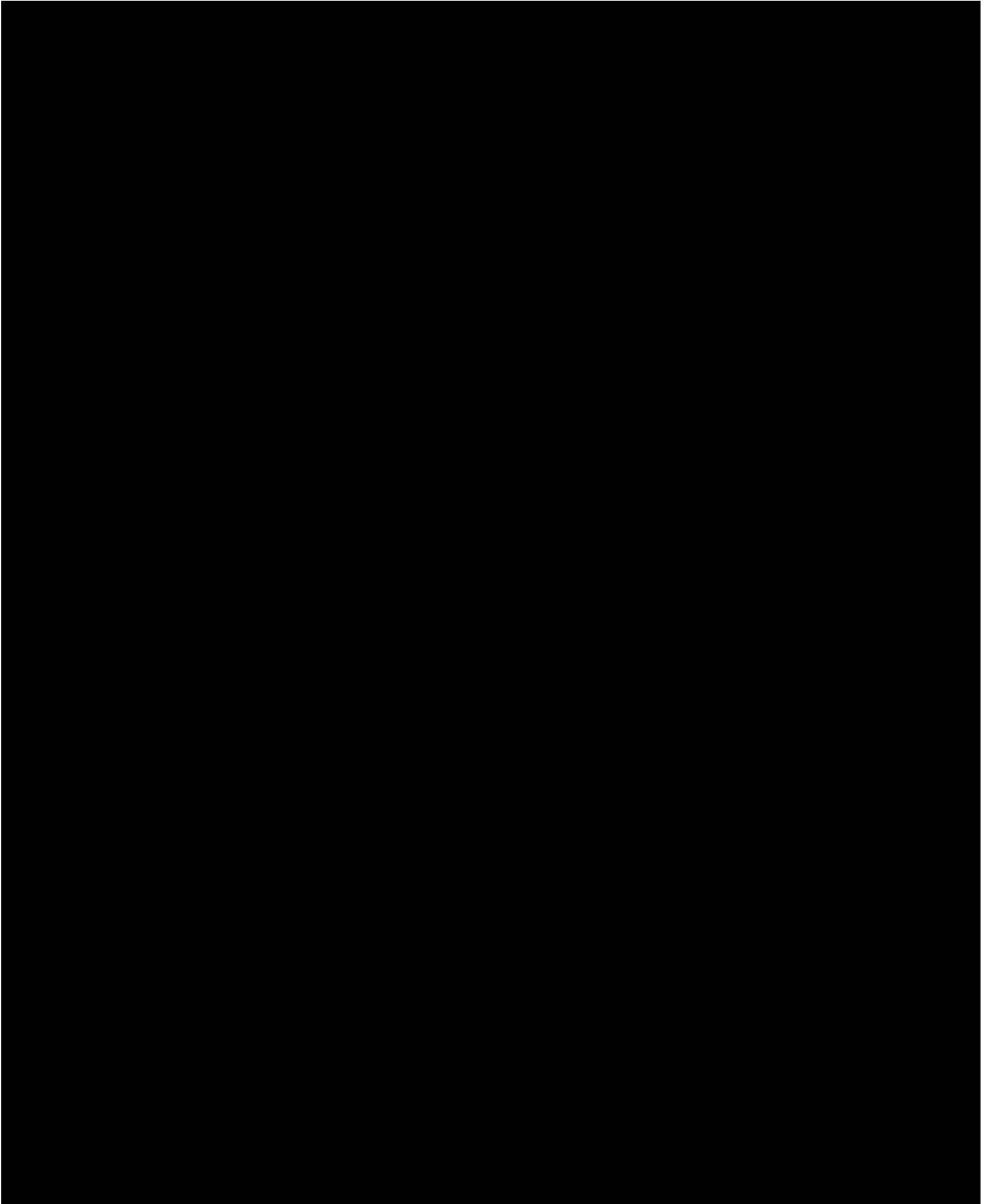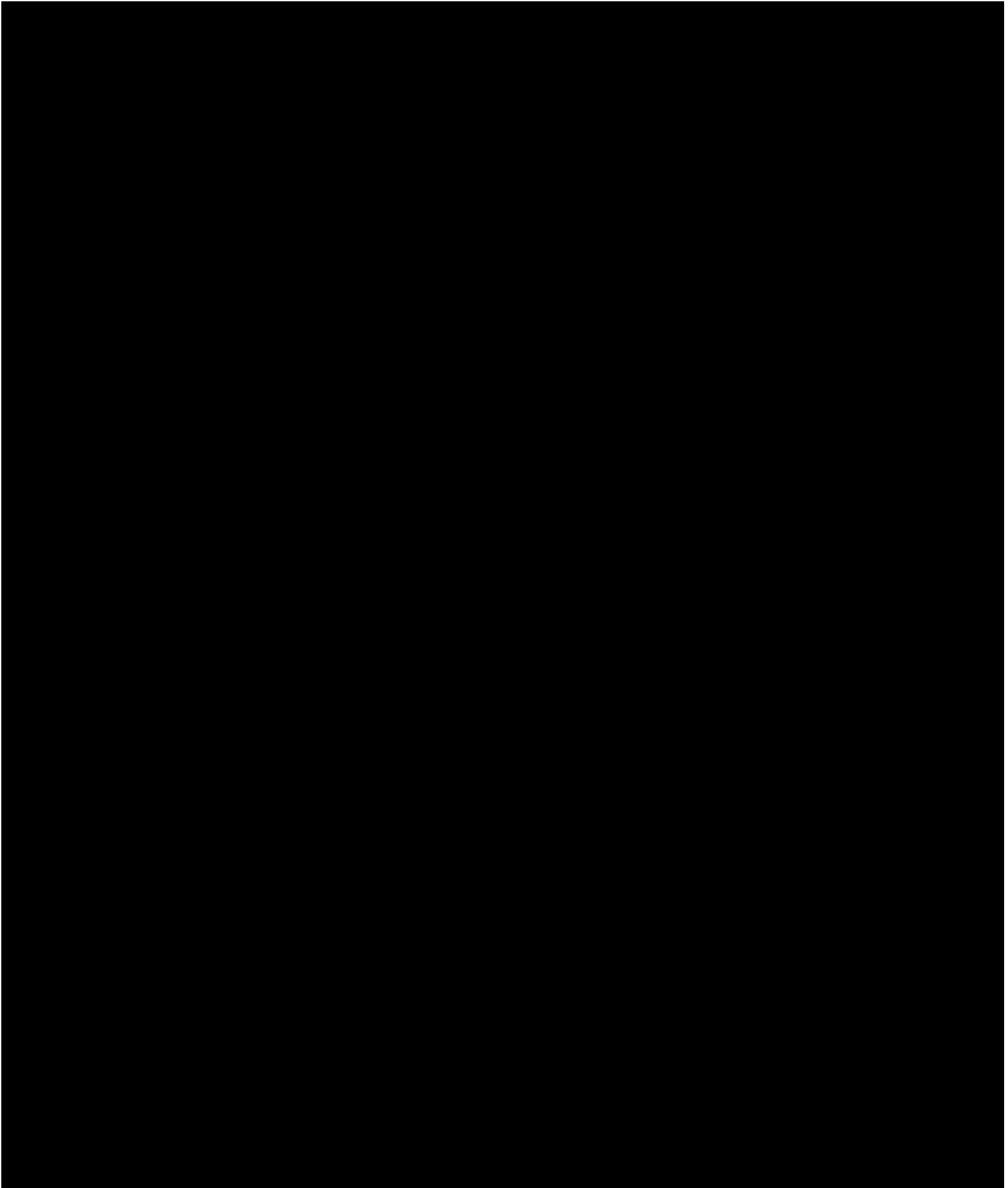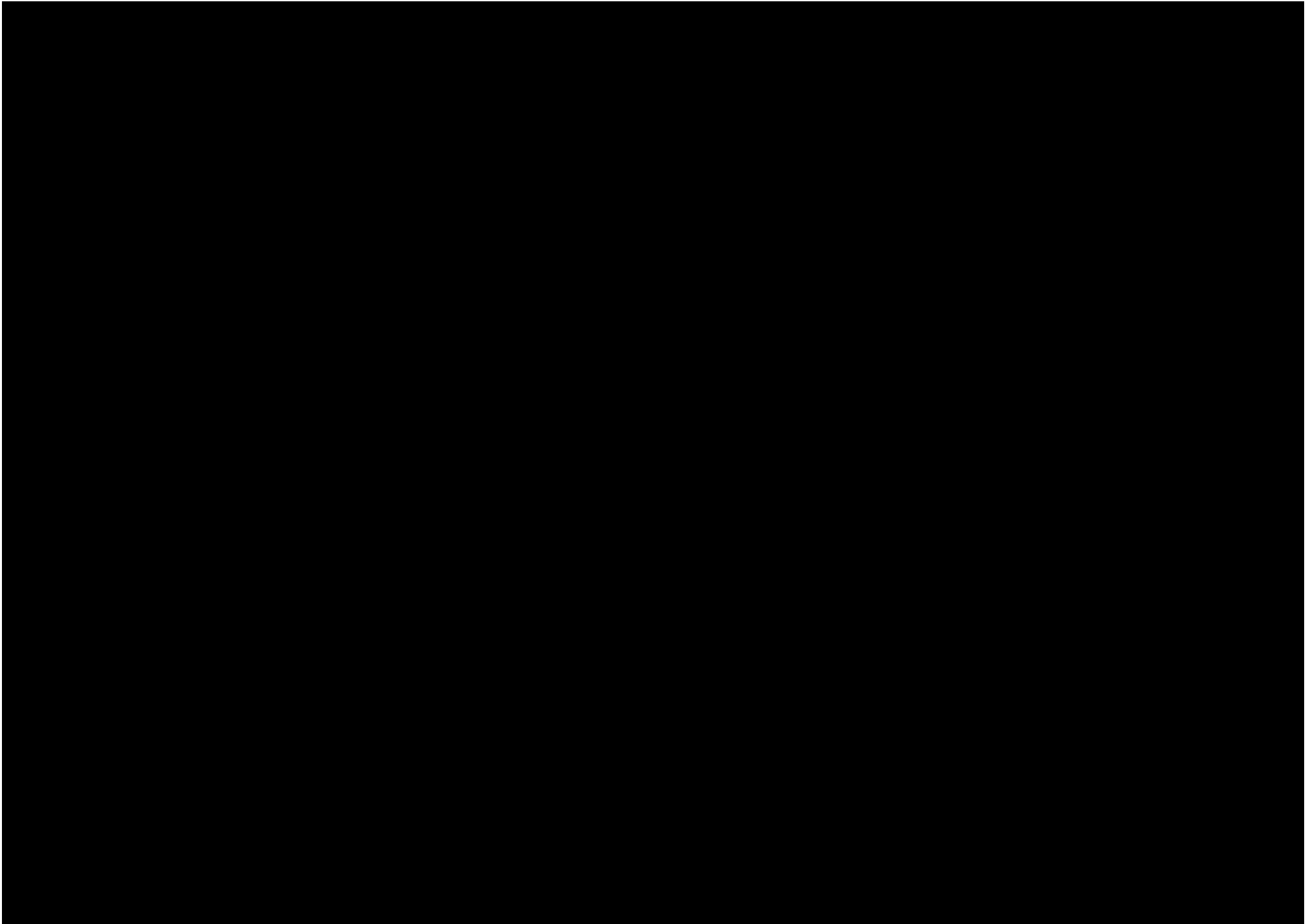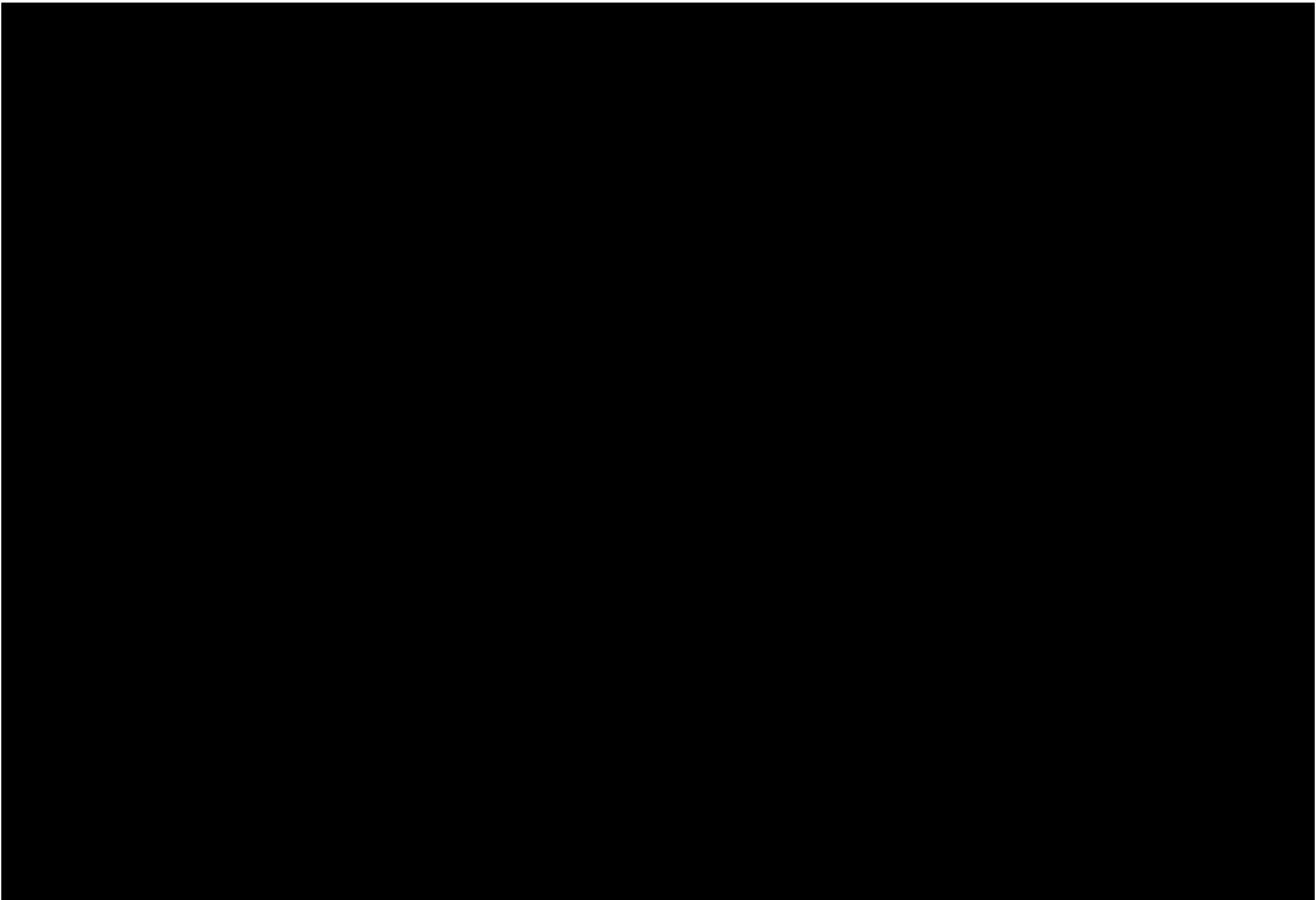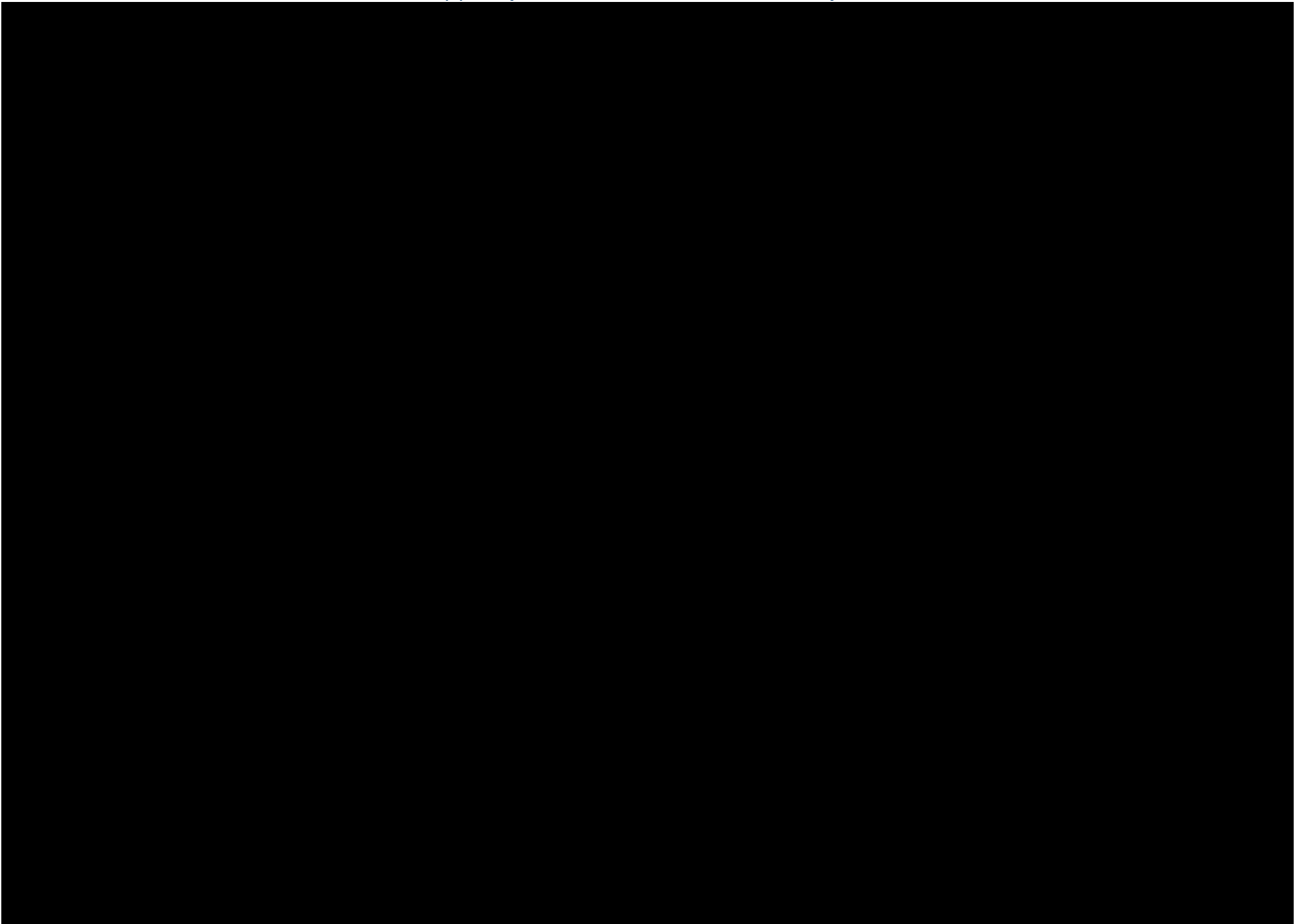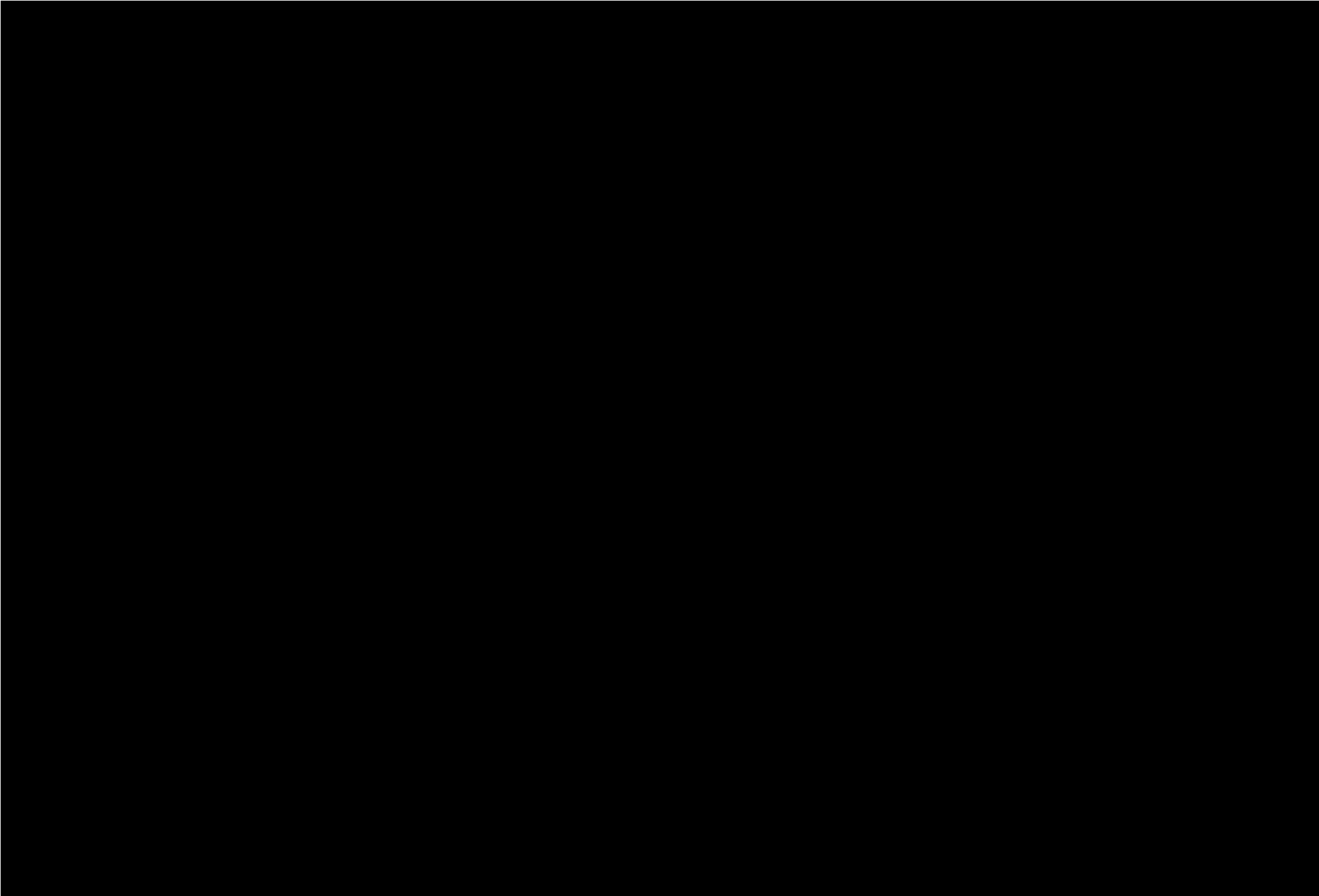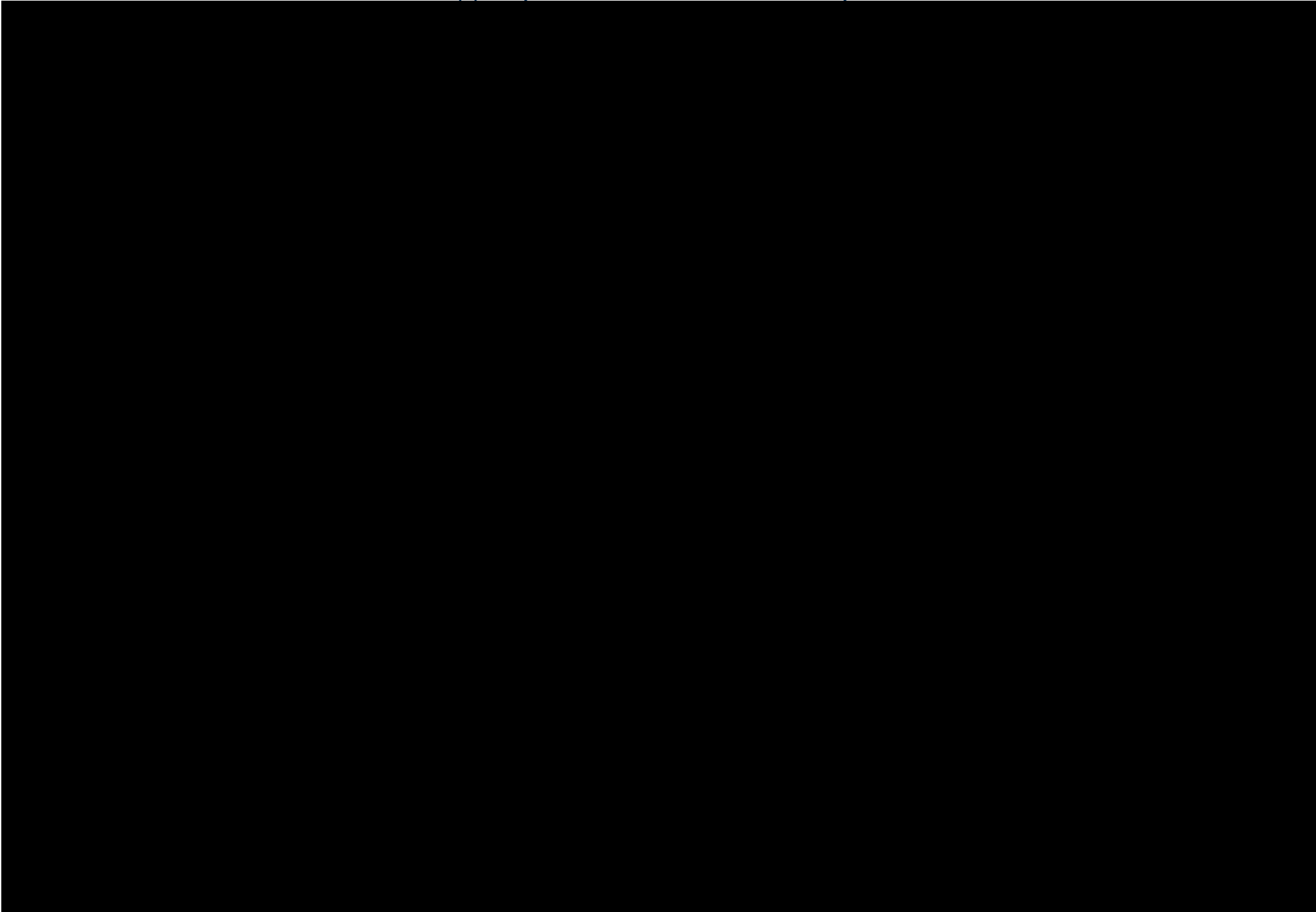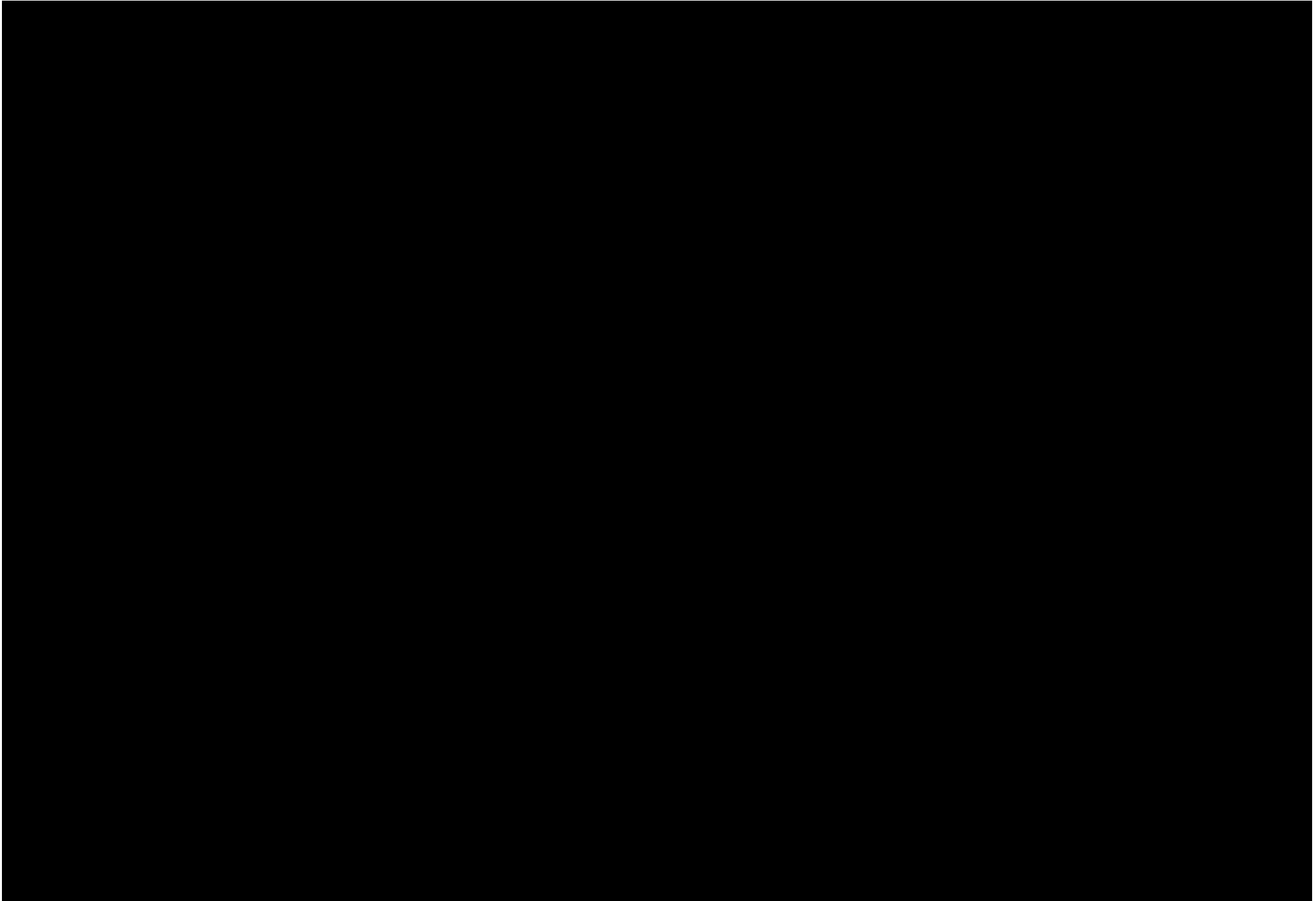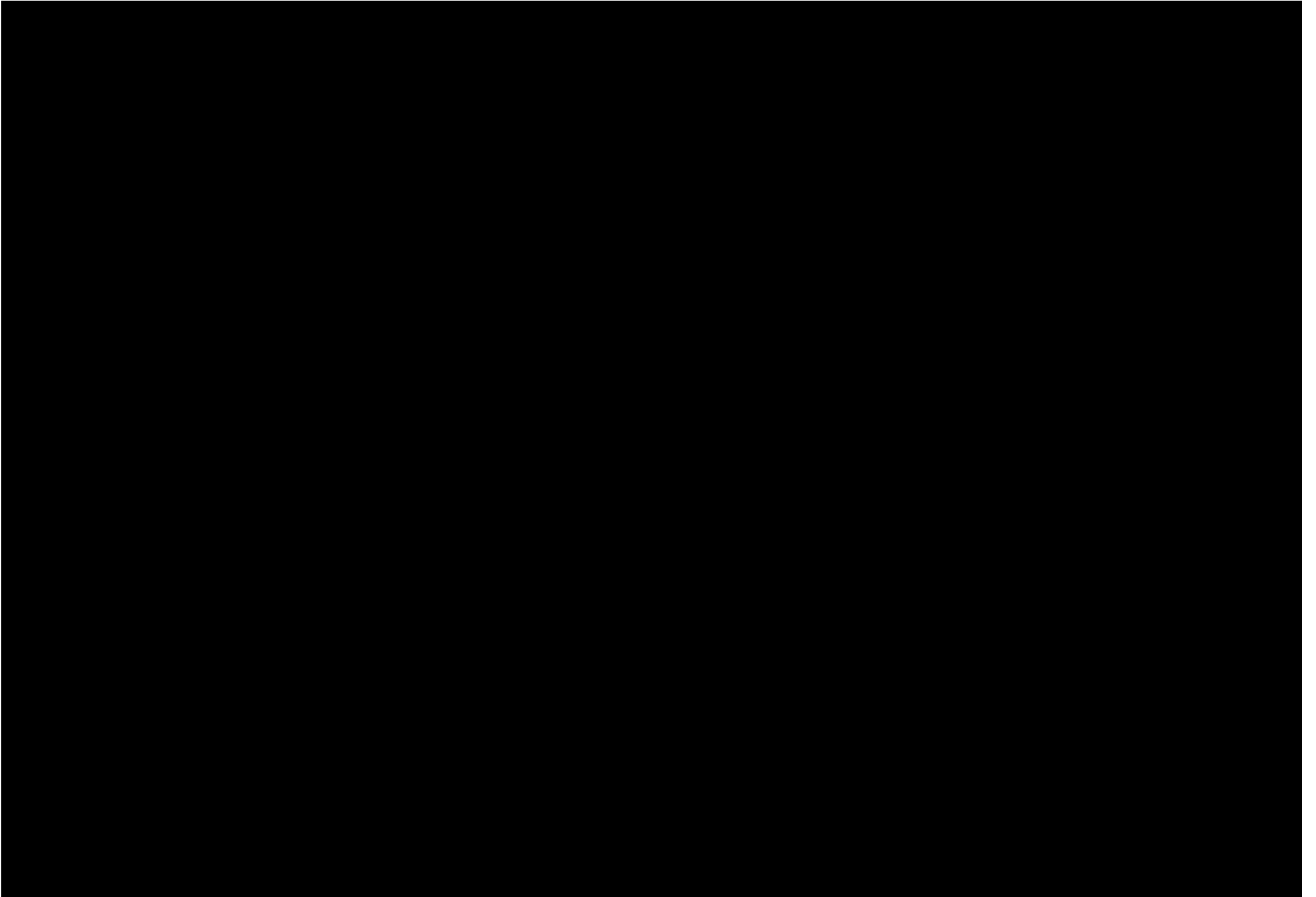**Exhibit 2(a) – Implementation and Maintenance Scope of Work**

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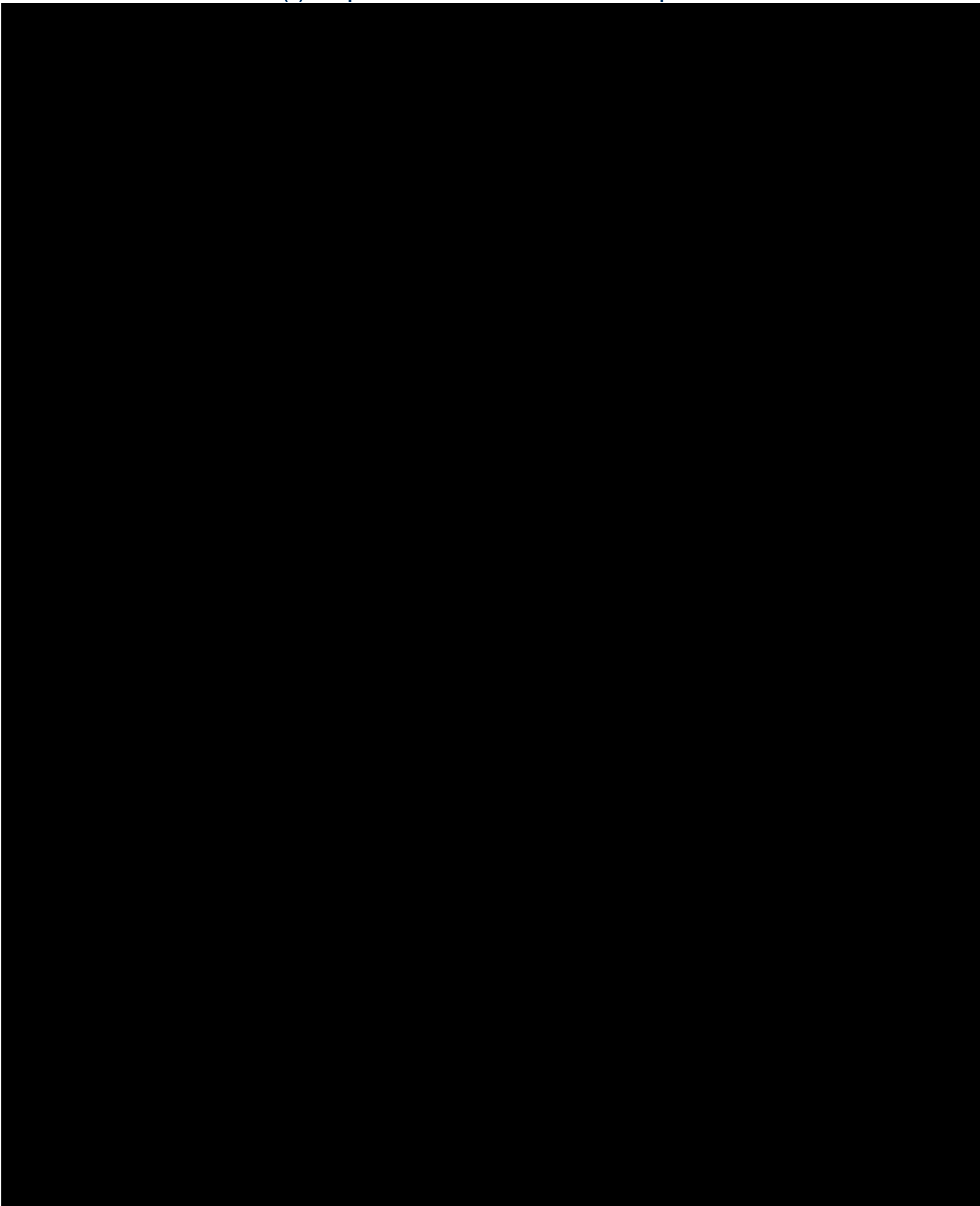Exhibit 2(a) – Implementation and Maintenance Scope of Work

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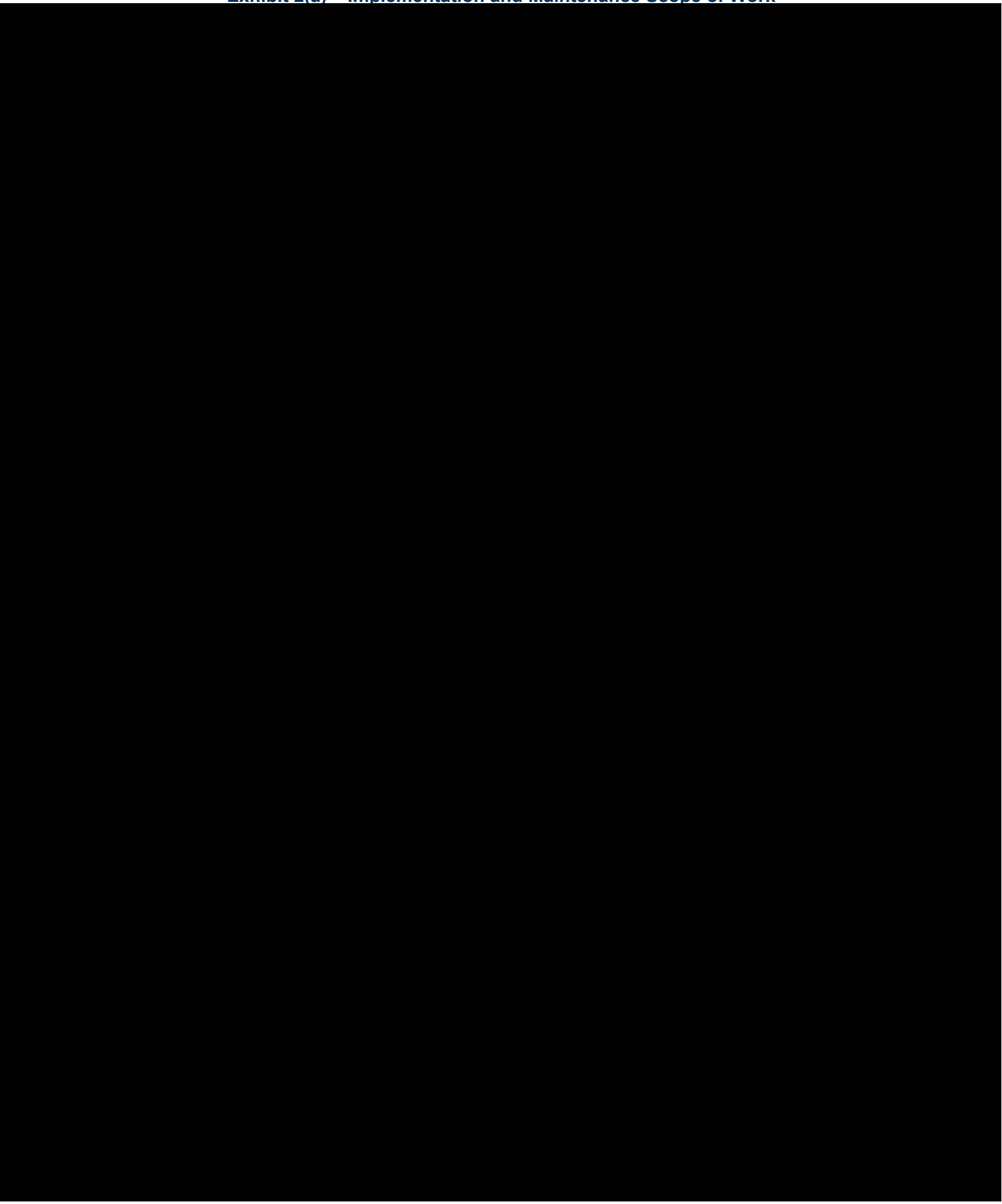**Exhibit 2(a) – Implementation and Maintenance Scope of Work**

Exhibit 2(a) – Implementation and Maintenance Scope of Work

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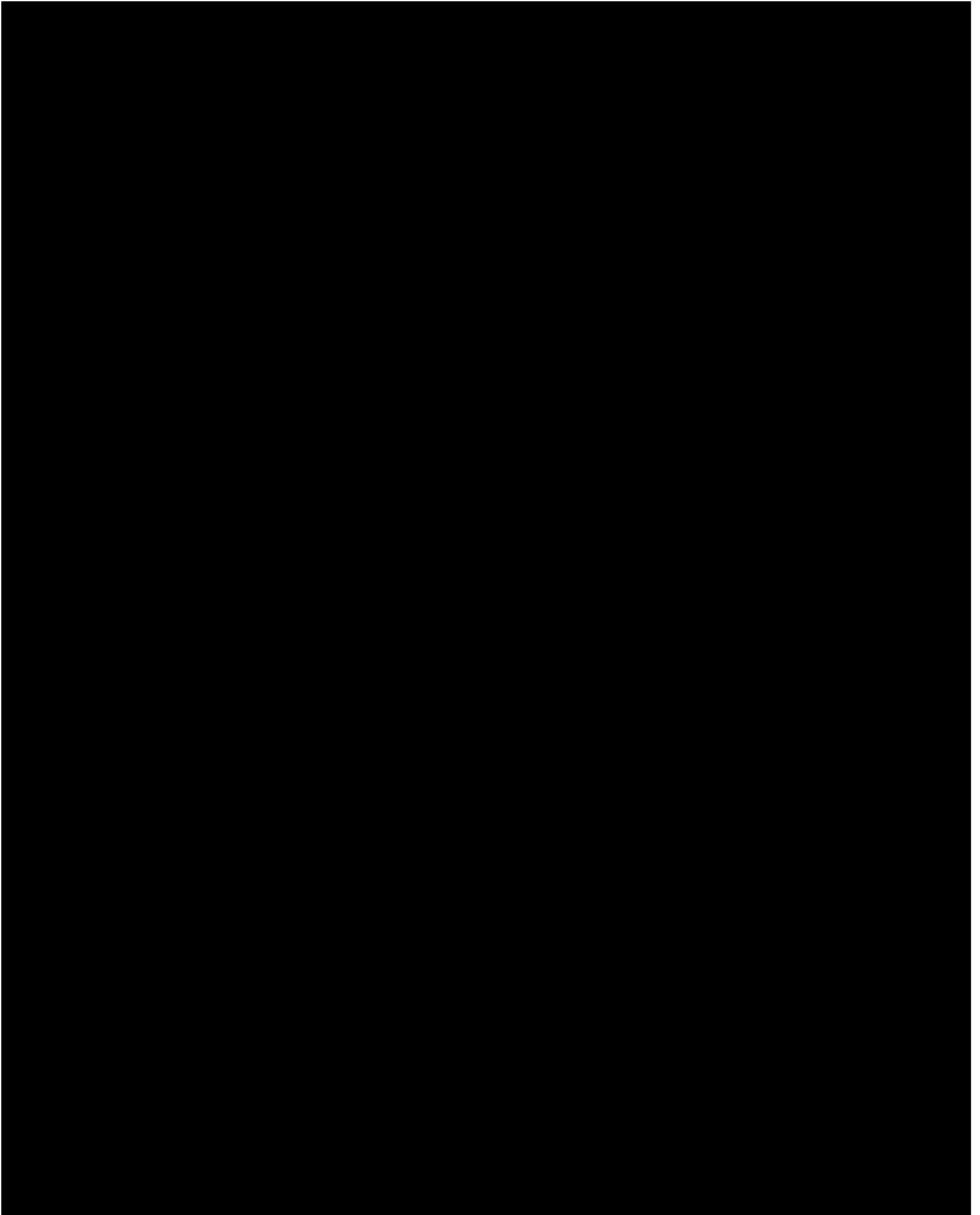
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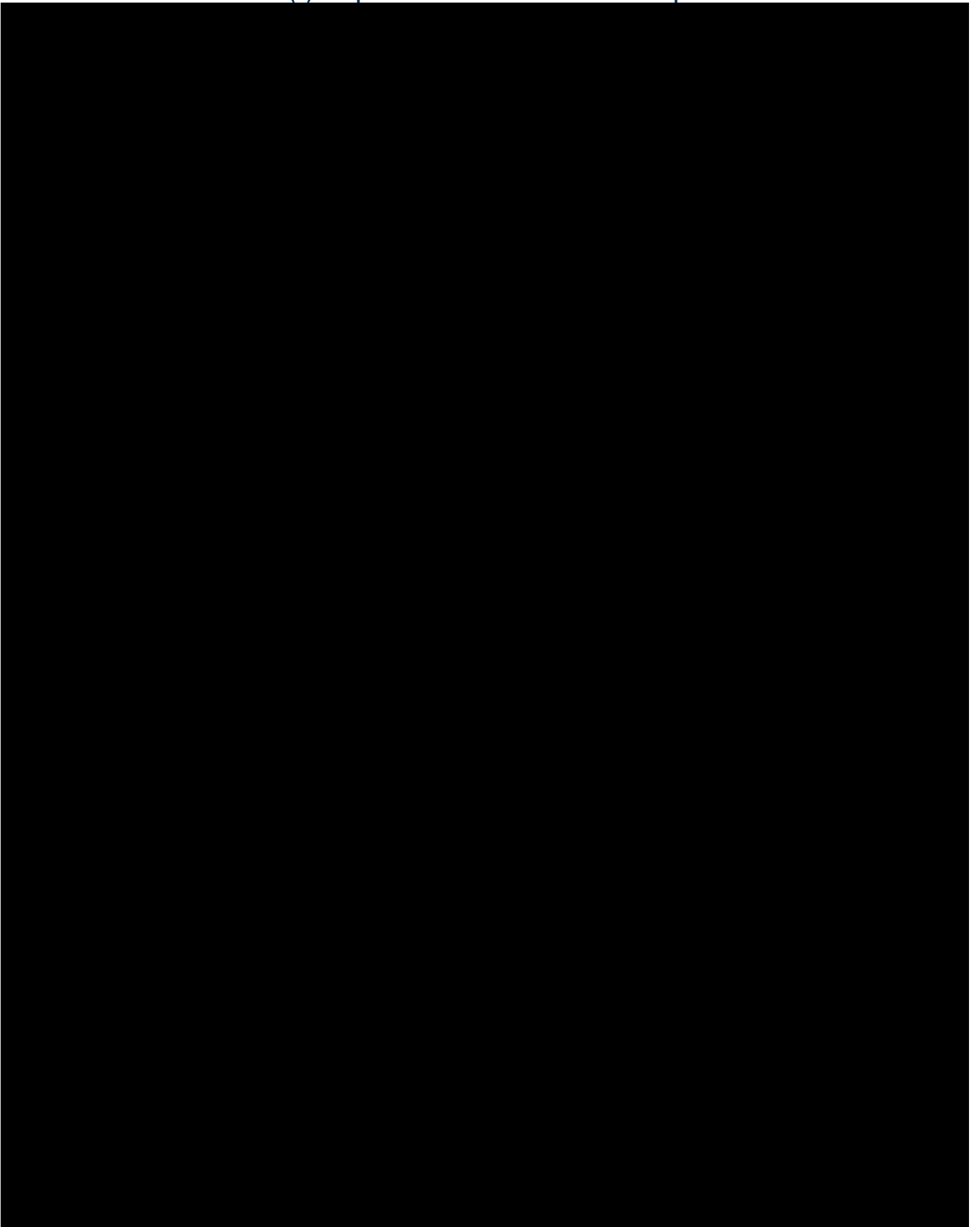
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Exhibit 2(a) – Implementation and Maintenance Scope of Work

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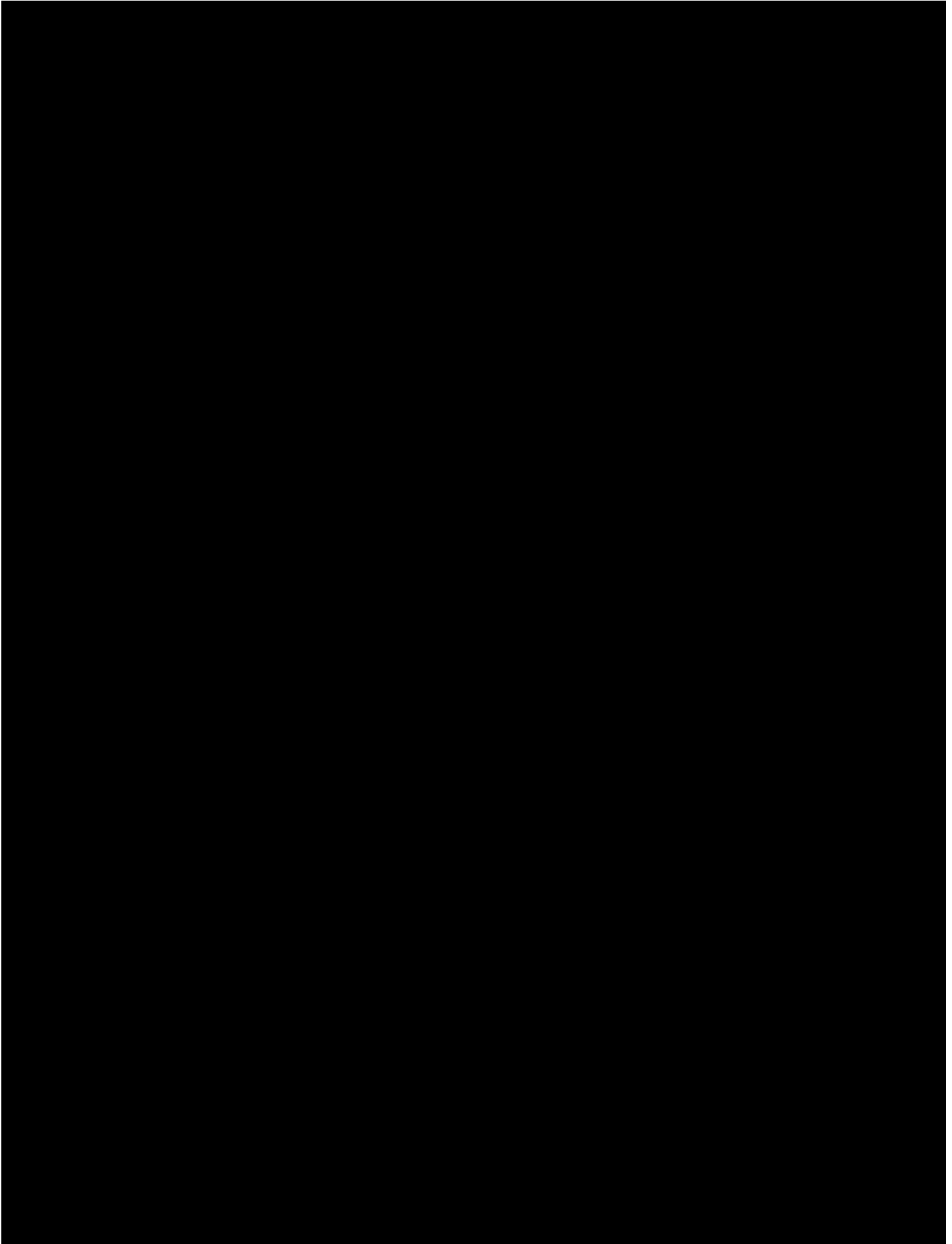**Exhibit 2(a) – Implementation and Maintenance Scope of Work**

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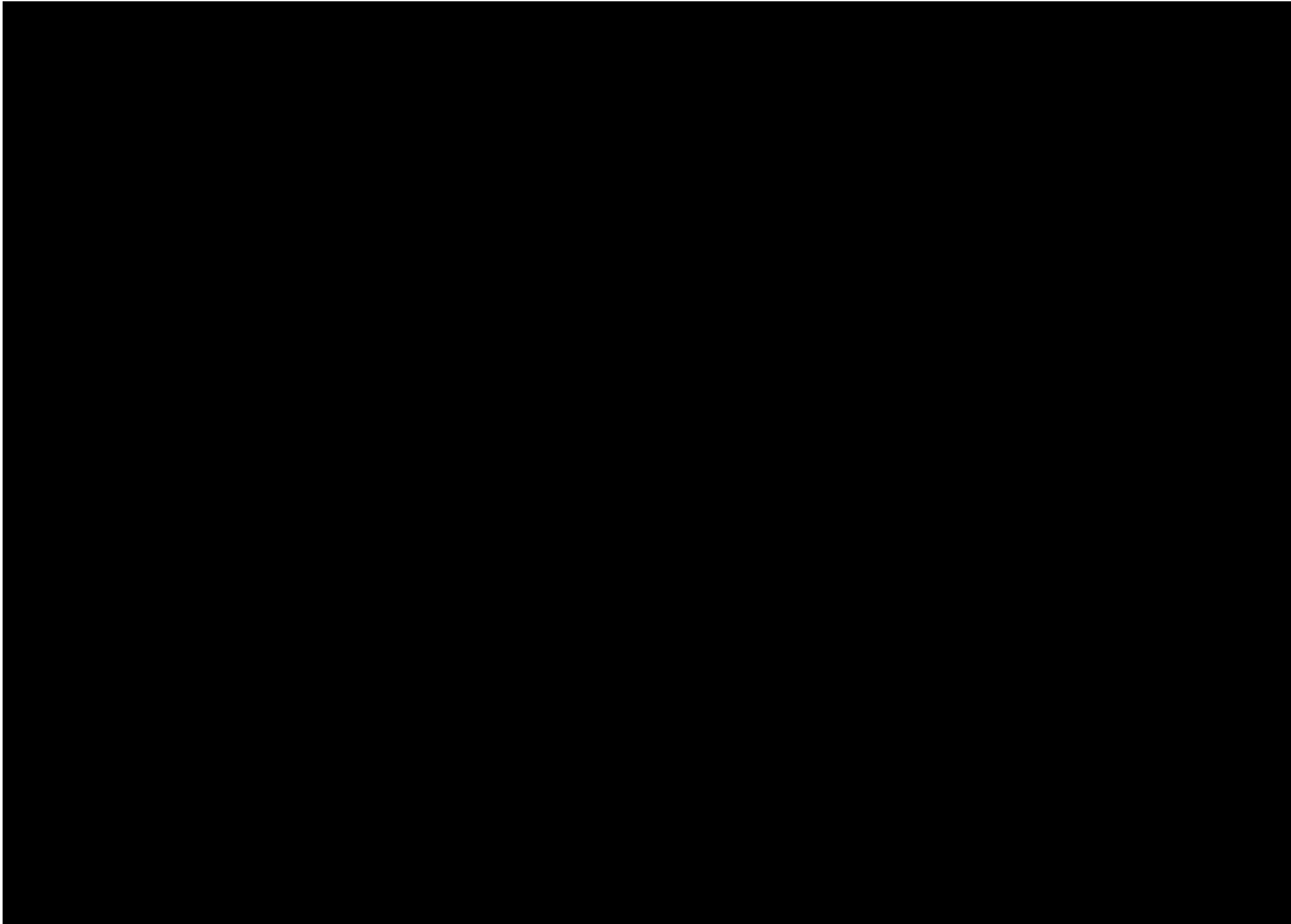# Exhibit 2(a) – Implementation and Maintenance Scope of Work

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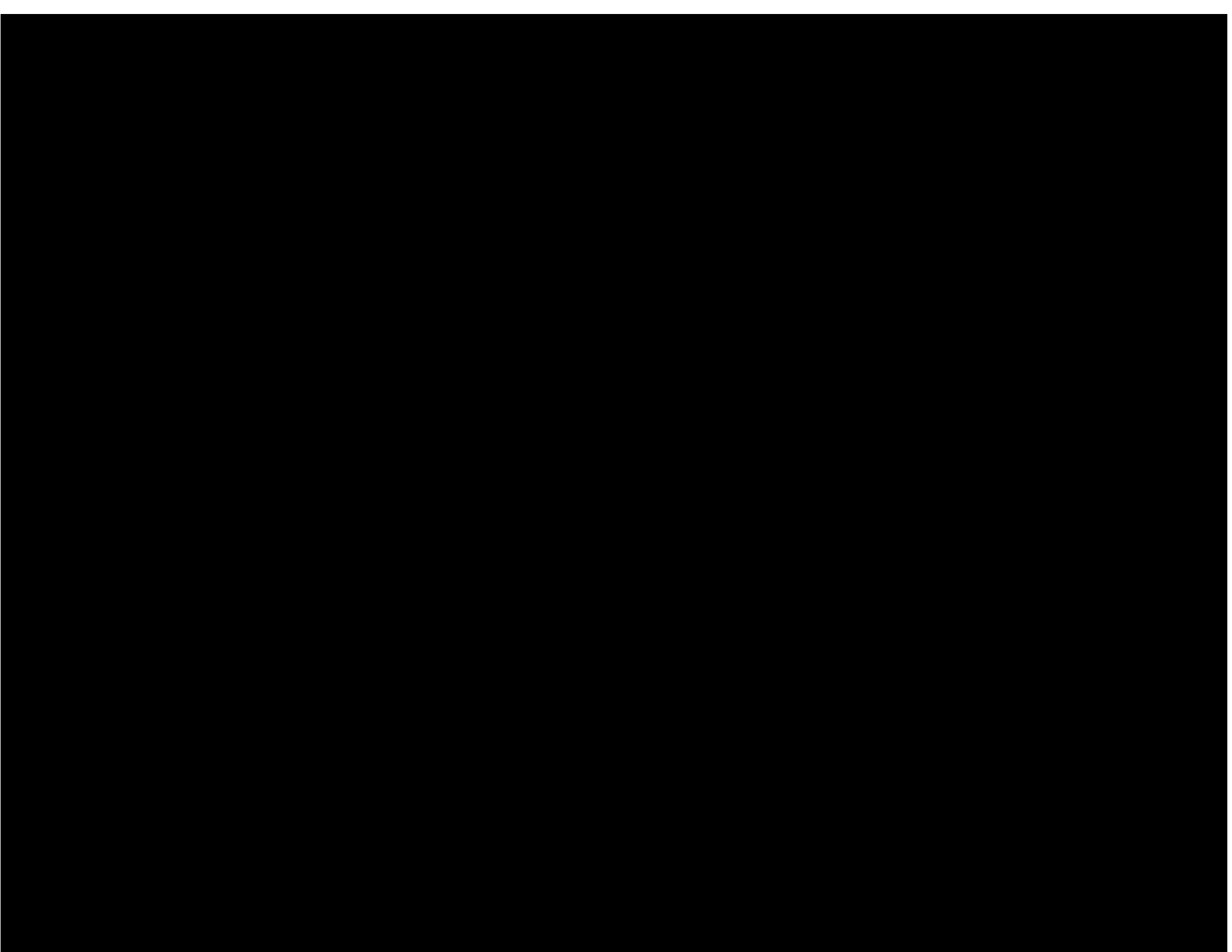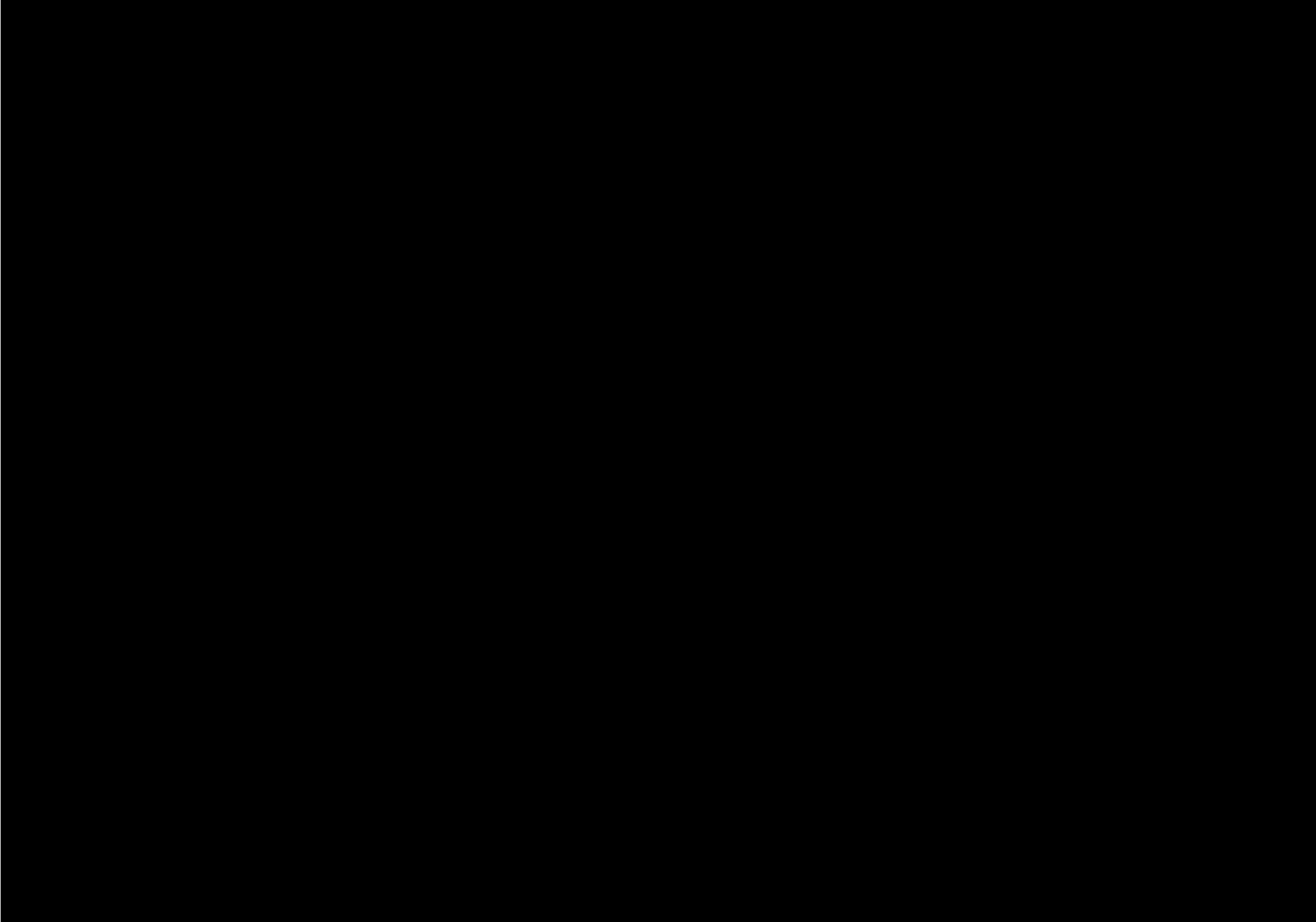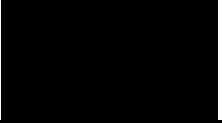**Exhibit 2(c): Implementation Staffing Estimate**

Exhibit 2(c): Implementation Staffing Estimate

Exhibit 2(d) - San Francisco - DPH Third Party Contracts List
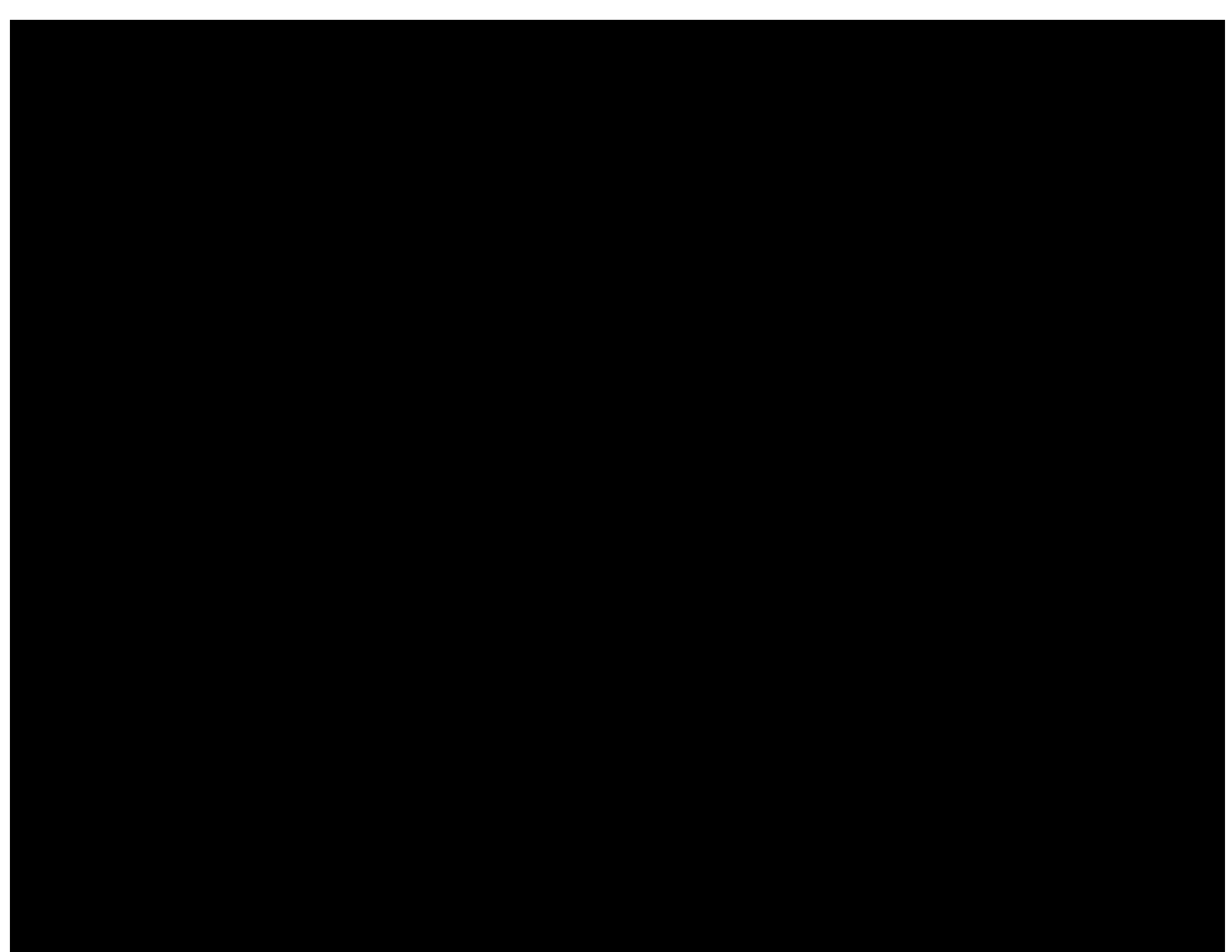
Exhibit 2(d) - San Francisco - DPH Third Party Contracts List
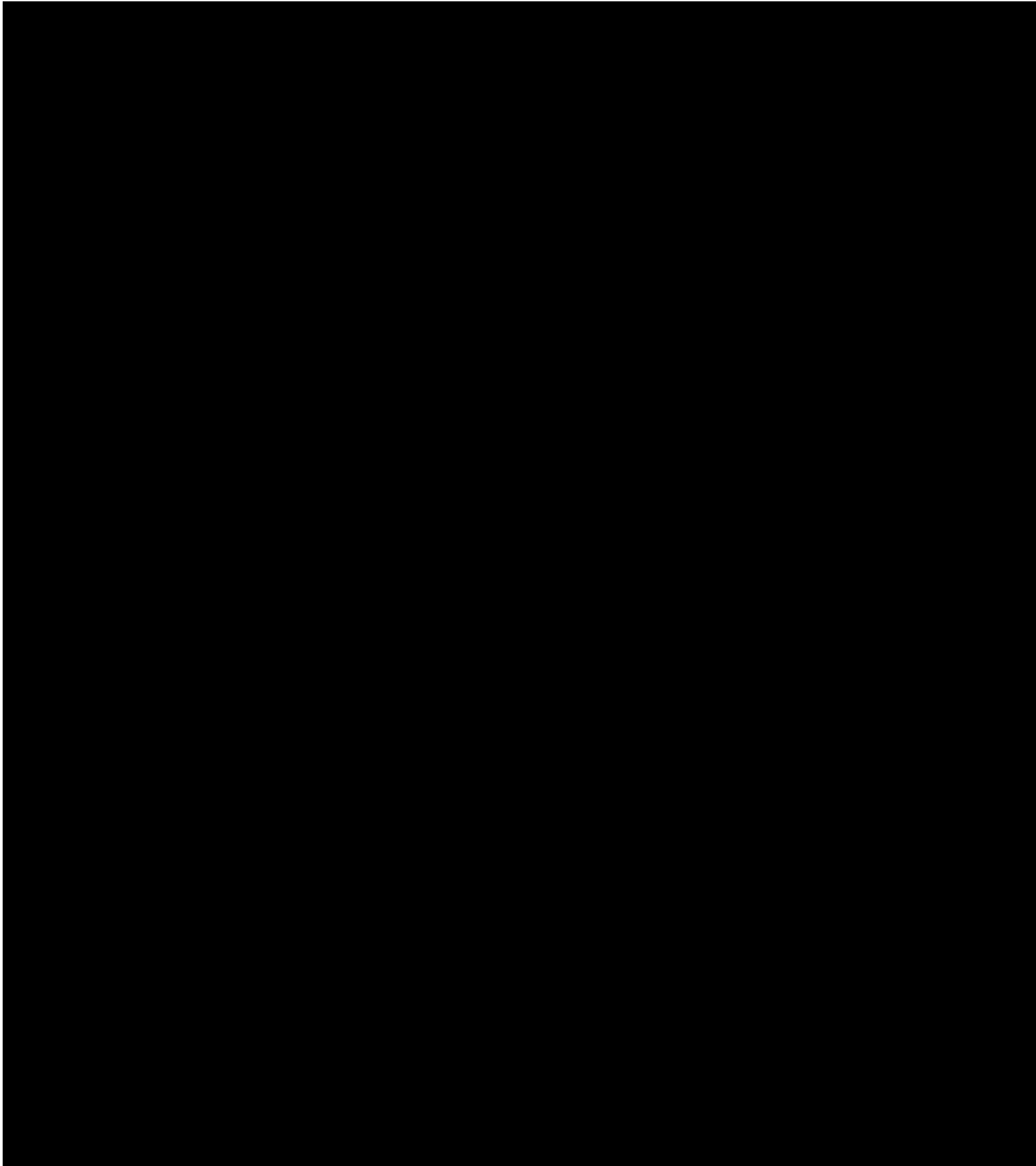
Exhibit 2(d) - San Francisco - DPH Third Party Contracts List

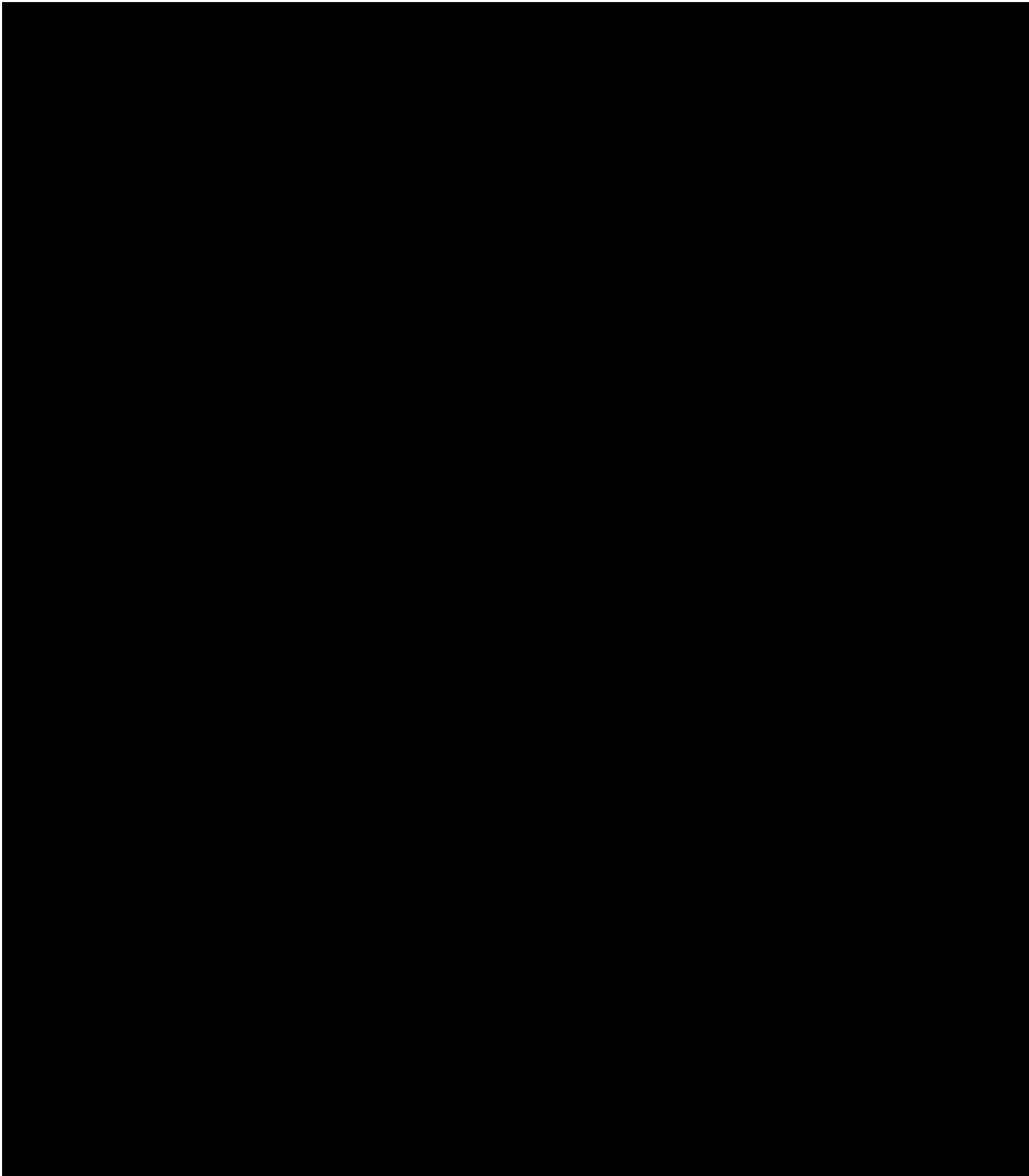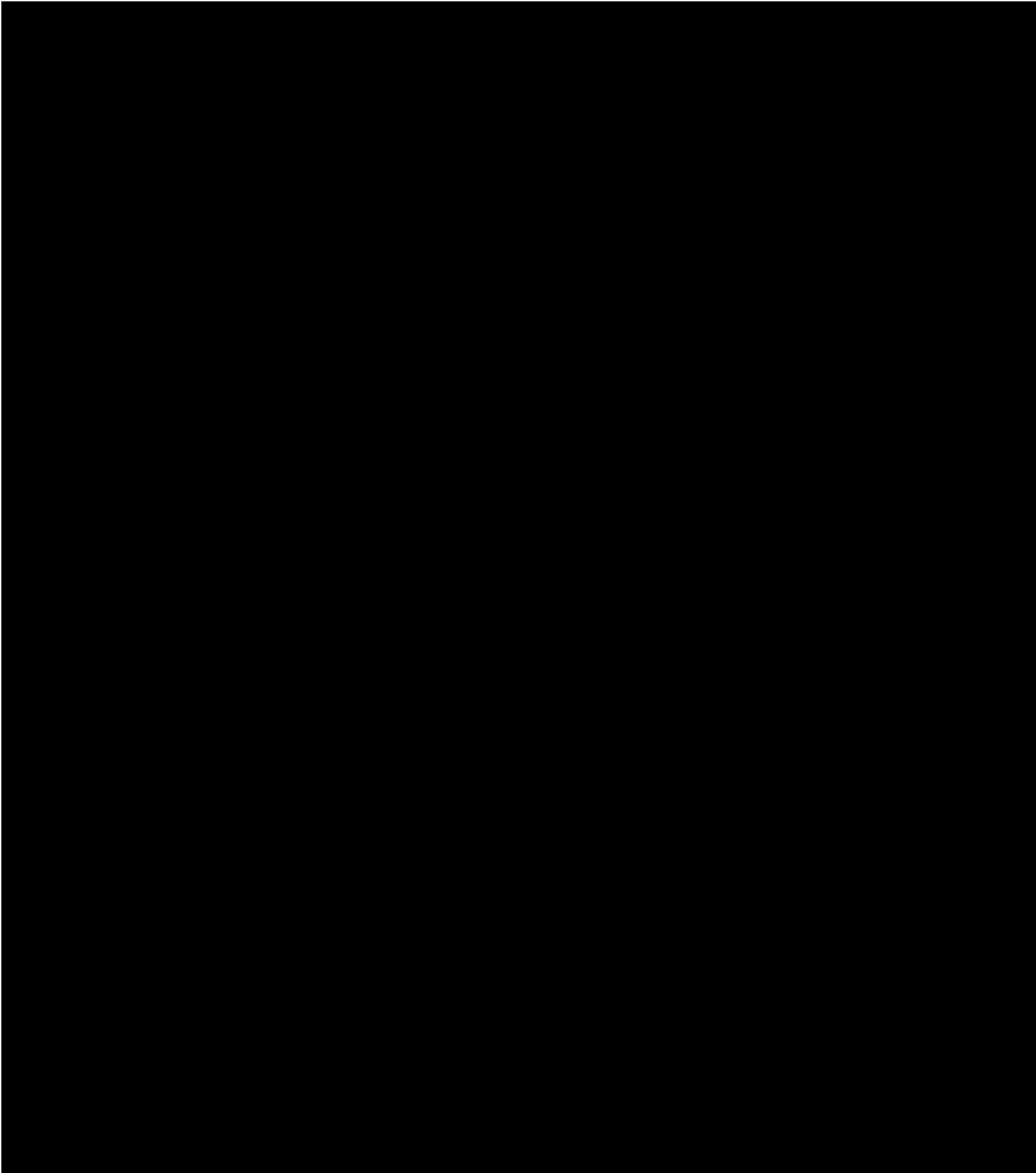Contract ID: 1000008047

Exhibit 2(d) - San Francisco - DPH Third Party Contracts List

Contract ID: 1000008047

San Francisco Department of Public Health
Exhibit 2(f): Deliverable Approval Document (example)

Project Deliverable Expectations and Acceptance Criteria Document
Title of Deliverable:
███████████████████
Contract Reference:
███████████████
Deliverable Expected Completion Date :
██████████
City's Draft Review and Comment Period:
██████
Deliverable Acceptance Criteria
██
Format of Deliverable:
██
Scope of Deliverable:
██

Project Deliverable Expectations and Acceptance Criteria Document

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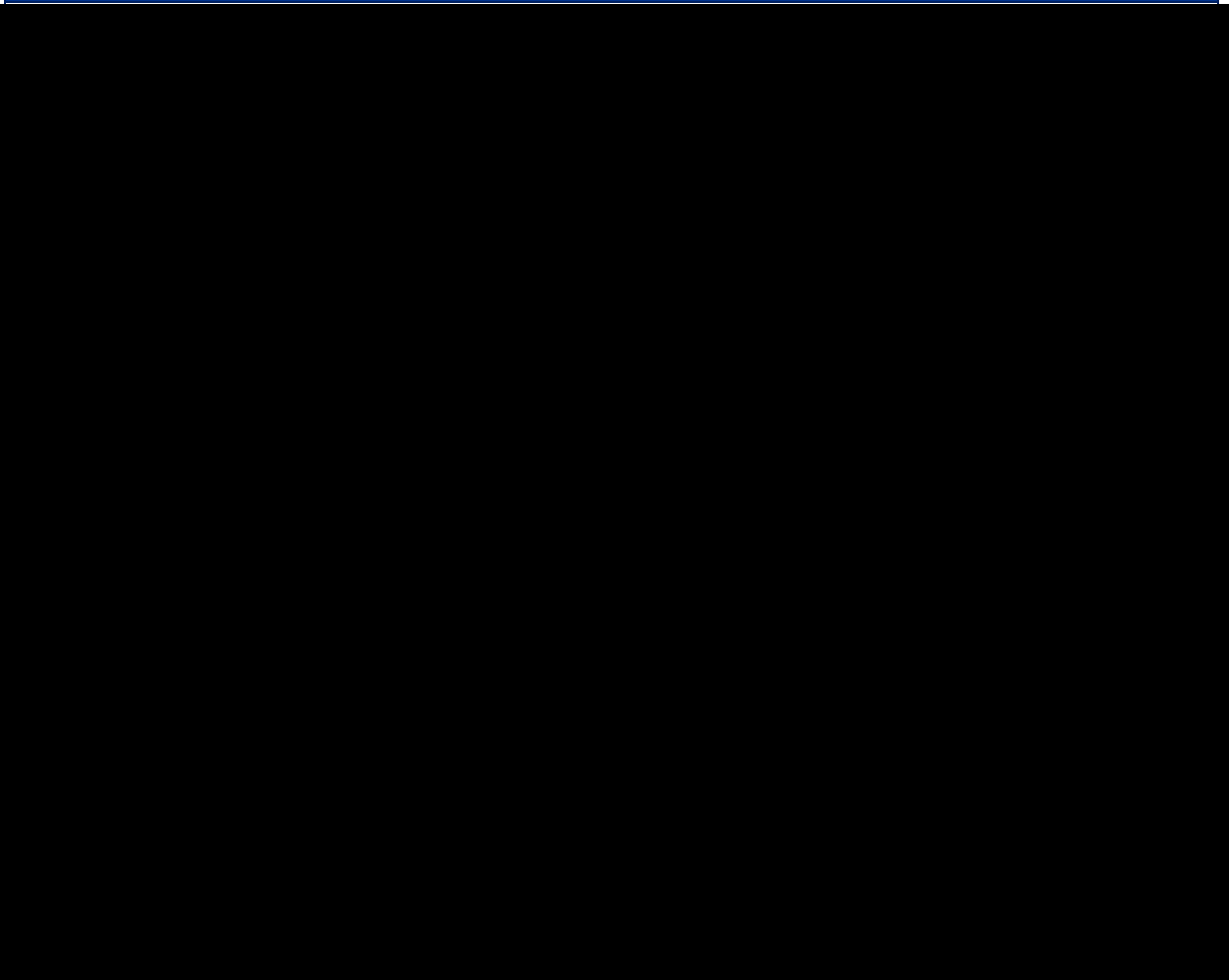
Additional Deliverable Detail or Requirements:

████████████████████████

DPH Deliverable Dependencies:

██
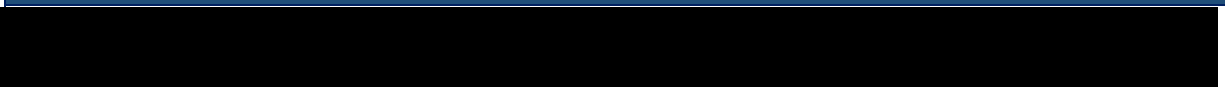
Epic Deliverable Dependencies:

███████████████████████████████████████

DPH Deliverable Expectations Approved By: (Name and Title)

████████████████████████████

Epic Deliverable Expectations Approved By: (Name and Title)

██████████████████████████
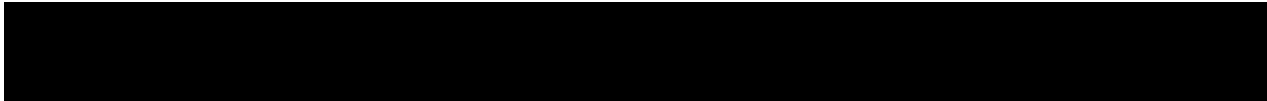
San Francisco Department of Public Health Approval/Comments	
Deliverable Approved by:	**Date:**
███	
Signature:	
███████████	
Comments:	
██████████████	
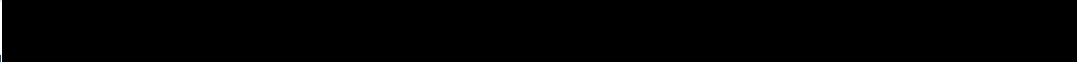
Exhibit 3(a)

Software Maintenance Support Policies

I. MAINTENANCE PROGRAM.

a. **Overview.** During the term of the Epic Maintenance Program, You will receive the maintenance and support specified in this Exhibit 3(a). ███ Refer to Exhibit 6 for a description of the software support and maintenance as provided in the RFP response.

The Services described in this Exhibit are available only to customers that participate in the Maintenance Program. All capitalized terms used in this Exhibit and not defined in this Exhibit but defined in Appendix C to the Agreement will have the meanings assigned to such terms in the Appendix C.

b. **Support Policies.**

i.   *Consultation and Assistance.* Epic will provide consultation and assistance to You by telephone concerning the live operation of the Program Property. Such consultation and assistance is 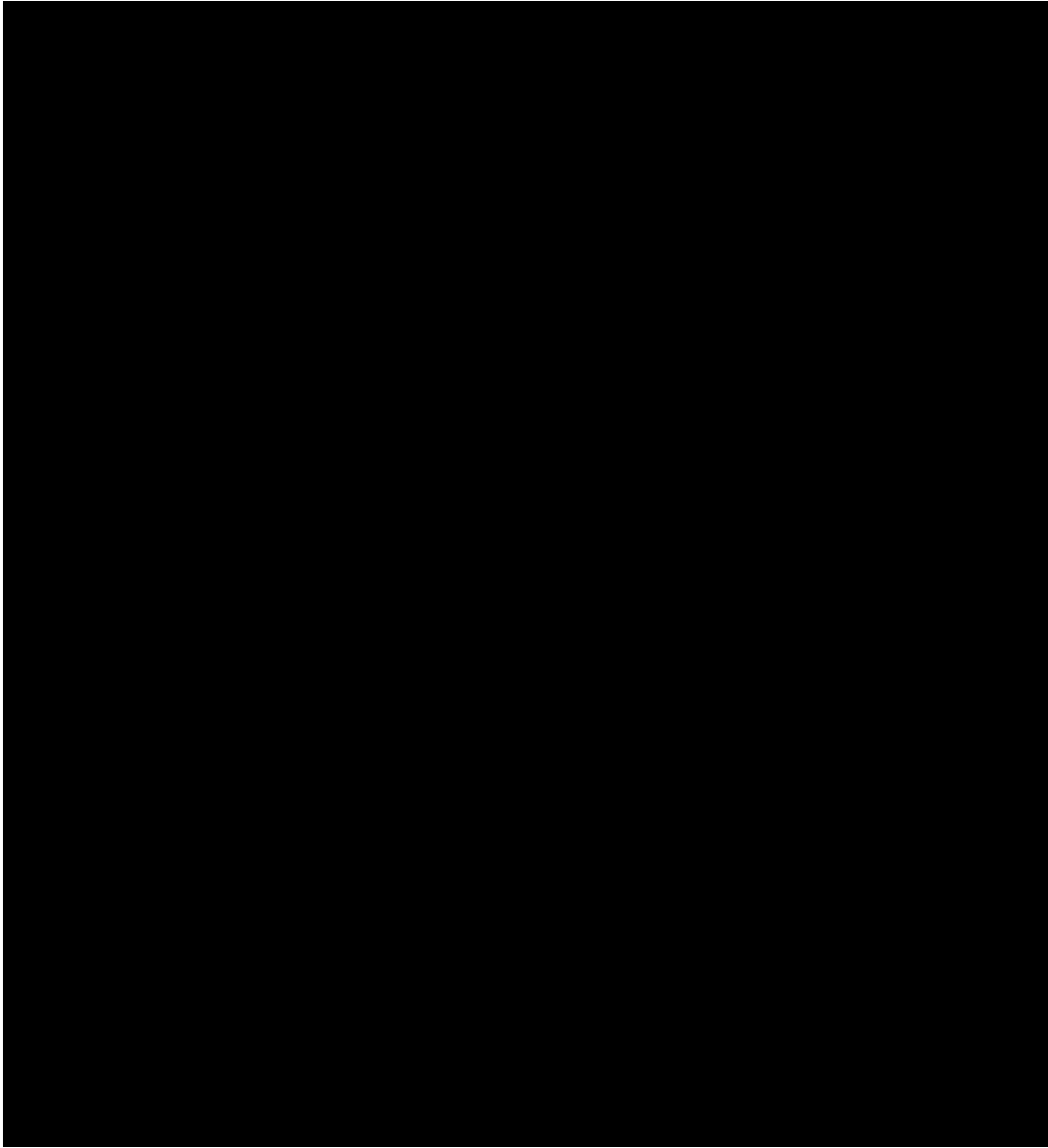provided by Epic's technical services staff and will be available 24 hours per day, 7 days per week as provided below in this Exhibit.

The following policies apply to Services Epic provides to You following Your First Live Use of the Program Property, including services under the Maintenance Program. For all calls, whether during the Daytime Support Hours or the Nighttime Support Hours, call Epic's general telephone number at (608) 271-9000. The "Daytime Support Hours" are 7 a.m. to 8:00 p.m., Monday through Friday, Central Time, excluding holidays (currently New Year's Day, Good Friday, Memorial Day, July 4, Labor Day, Thanksgiving, Christmas Eve, Christmas, and New Year's Eve). "Nighttime Support Hours" are all other times.

[██]
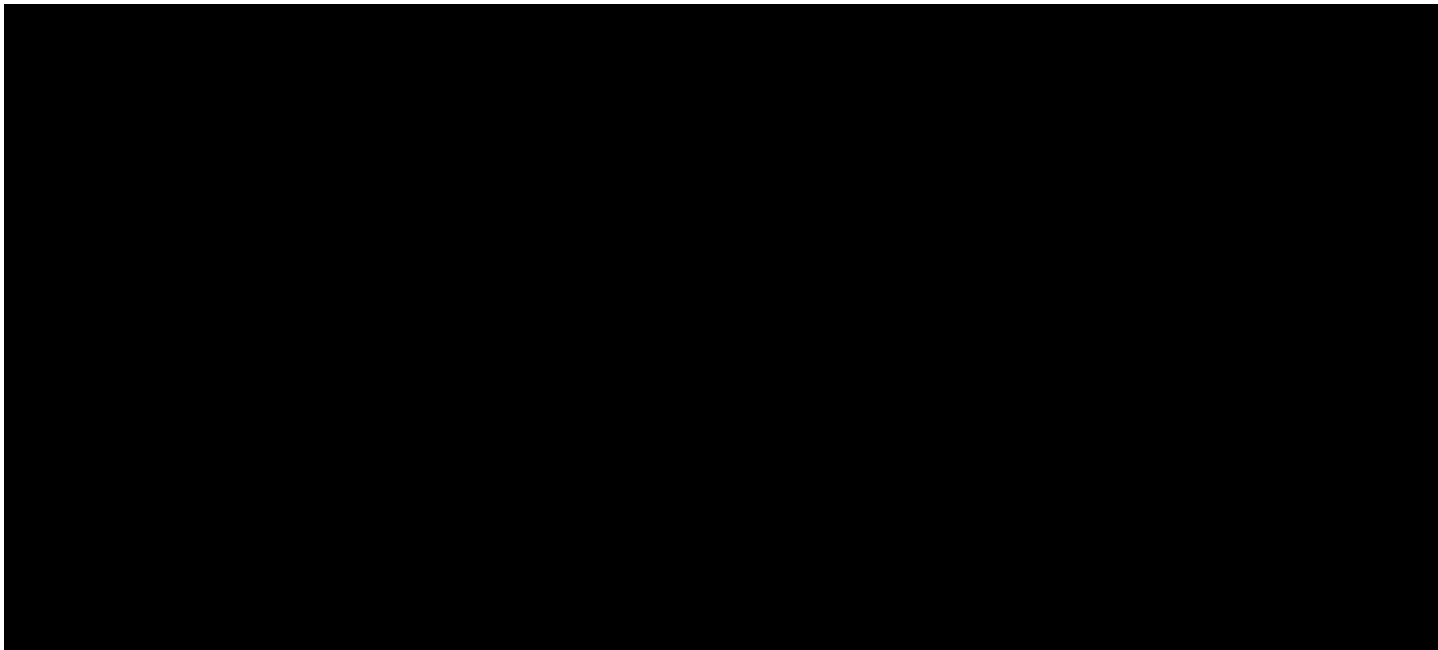
iii. [██] Epic reserves the right to change the policies and prices in this Section 1(b), [███]
[██]

c. **Error Correction.** Error correction Services under the Maintenance Program are provided as set forth in Exhibit 3(b).

d. **Non-Program Property Errors.** Epic's responsibility with respect to any Non-Program Property Error will be limited to providing assistance and advice to enable You to determine appropriate remedial action to be taken by You or others or, for third party software under maintenance with Epic, providing such other assistance as is described in Section 4, below. Epic will not charge You for time spent troubleshooting whether an issue is a Program Error or Non-Program Property Error, except Epic reserves the right to charge for such services if You repeatedly request Epic's troubleshooting services to address Non-Program Property Errors that should have been readily diagnosed by trained customer staff and such requests have been repeated after Epic has informed You of the problem. Otherwise, Epic will charge You for any associated consulting time for any Non-Program Property Error (other than for assistance provided by Epic for third party software under maintenance with Epic pursuant to Section 4, below) at Epic's then standard rates for such services.

II. **REQUESTS FOR SUPPORT.** You will designate a sufficient number of employees, who will be trained and knowledgeable concerning the Program Property, to serve as a single, centralized help desk that is responsible for contacting Epic concerning requests for service under the Maintenance Program. If direct requests to Epic for Maintenance Program services are made by other persons and such requests are not isolated and have been repeated after Epic has informed You of the problem, then Epic may charge You at its then standard rates for such requests. [███████████████████]
[██]
[██]
[██]

III. **TERM AND TERMINATION OF MAINTENANCE PROGRAM.**

a. **Term and Renewal.** By execution of this Agreement, You agree to contract for the first full year of the Maintenance Program for each Item of Program Property. The first year of the Maintenance Program for each Item commences upon First Live Use of that Item. At the end of the first year and any subsequent renewal term, the Maintenance Program will automatically be renewed for an additional one-year period for that Item unless a party has terminated the Maintenance Program as provided in this Section 3(b) [█████████████████████]

Epic will coordinate Your maintenance payments for all of Your Program Property via a uniform renewal schedule so that each Item You license has the same maintenance year.

b. **Termination.** If You would like to terminate the Maintenance Program, You must notify Epic in writing of Your intention to terminate the Maintenance Program at least ninety (90) days before the expiration of the then current term and such termination must be documented in a Formal Amendment to this Agreement. If You participate in the Maintenance Program for any Item, then You must participate for all Program Property that are available for use in Your system except Items for which maintenance has not yet commenced and Items to which Your access has been disabled as provided in the following sentence. You may terminate the Maintenance Program for a particular Item if You discontinue use of such Item and permit Epic to employ a key that disables Your access to that Item. If You terminate participation in the Maintenance Program for all Program Property, You must terminate maintenance for the Operating Environment and the Third Party Software and Data sublicensed through Epic. Such termination will become effective upon the later of thirty calendar days after You notify Epic of the termination or the effective date of the maintenance fee increase.

c. **Re-Enrollment.** If You terminate the Maintenance Program for an Item and You later seek to re-enroll, You will be subject to Epic's then current re-enrollment fees and terms, as mutually agreed in a Formal Amendment to this Agreement. If You do not participate in the Maintenance Program, then You may request any services that are normally covered by the Maintenance Program under a Formal Amendment to this Agreement and such services will be billed to You at the then current rates Epic charges for such services to those Epic customers who do not participate in the Maintenance Program.

d. **Staying Current.** During the Maintenance Program, You will use: (1) the Current Version of each Item of Program Property; (2) the version of the hardware operating system then recommended by Epic based on the Current Version and the hardware that You are using, and (3) the version of the Operating Environment, the KB SQL software and, if applicable, the Business Intelligence Software and the Clarity RDBMS then recommended by Epic based on the Current Version and the hardware that You are using, all subject to the Applicable Transition Period ("Staying Current"). As of the Effective Date of this Agreement, the "Applicable Transition Period" begins on the release date for the newer version and continues for 18 months unless You have licensed and begun First Live Use of both Inpatient Items and Ambulatory Items, in which case the Applicable Transition Period will instead continue for 24 months from the release date. Epic may modify the Applicable Transition Period from time to time in connection with changes to Epic's standard release cycle. If You are using the Superseded Version of any Item of Program Property during the Applicable Transition Period and You are otherwise Staying Current, Epic will continue to support Your Program Property as provided in this Exhibit. However, once the Current Version is released, Epic will not provide any modification services with respect to the Superseded Version and will not be required to retrofit Updates to the Superseded Version except to the extent Epic determines a retrofit is necessary to correct a Substantive Program Error for which no Reasonable Workaround is available.

If You are not Staying Current as described above, Epic may discontinue the Maintenance Program (and/or the Hosting Services) upon ninety (90) days advance notice to You (during which time You may become current to avoid such termination); provided, however that if You are taking good faith steps to upgrade during such period and You request an extension from Epic, then Epic and You will seek to mutually agree on a reasonable extension of such period and Epic will not unreasonably refuse Your request. If You use a version of an Item of Program Property other than the Current Version beyond the Applicable Transition Period and You continue to participate in the Maintenance Program, Your monthly maintenance fees will be increased by ten percent (10%) plus

five percent (5%) for every six additional months after the expiration of the Applicable Transition Period that You do not upgrade to the Current Version, until You install and begin using the Current Version.

e. **Effect on License.** Termination of the Maintenance Program under this Section 3 does not terminate Your license to use the Program Property.

IV. **THIRD PARTY SOFTWARE MAINTENANCE.** With respect to Third Party Software and Data for which a maintenance fee is charged, the maintenance programs for such software begin thirty (30) days after delivery of such software to You, except as may otherwise be stated in Exhibit 1(a) or the applicable license terms (e.g., Formal Amendment) for such item. You will contact Epic with respect to any consultation or assistance requests relating to any of this third-party software. During the maintenance period for such third-party software, ███████████████████████████████████ ███ You must participate in the software maintenance programs for all of this software during any period that You are participating in the Maintenance Program.

V. **PERFORMANCE MONITORING.** As further detailed in the Agreement, Epic may analyze usage and other trends to allow Epic to proactively suggest adjustments to enhance performance or avoid latent performance issues before they arise. Therefore, Epic may as part of the Maintenance Program monitor and collect Performance Data relating to Your use of the Program Property. Epic usually can efficiently collect this data via automated mechanisms from Your system and You and Epic agree to work together to establish this or other automated processes. You agree that Epic and Epic Owned Entities may use the Performance Data in any reasonable manner in connection with Epic's operations, but will not disclose the Performance Data to others except in a manner that does not reasonably identify You as the source of the Performance Data.

EXHIBIT 3(b)

<u>SOFTWARE ERROR CORRECTION SERVICES</u>

EXHIBIT 3(b)

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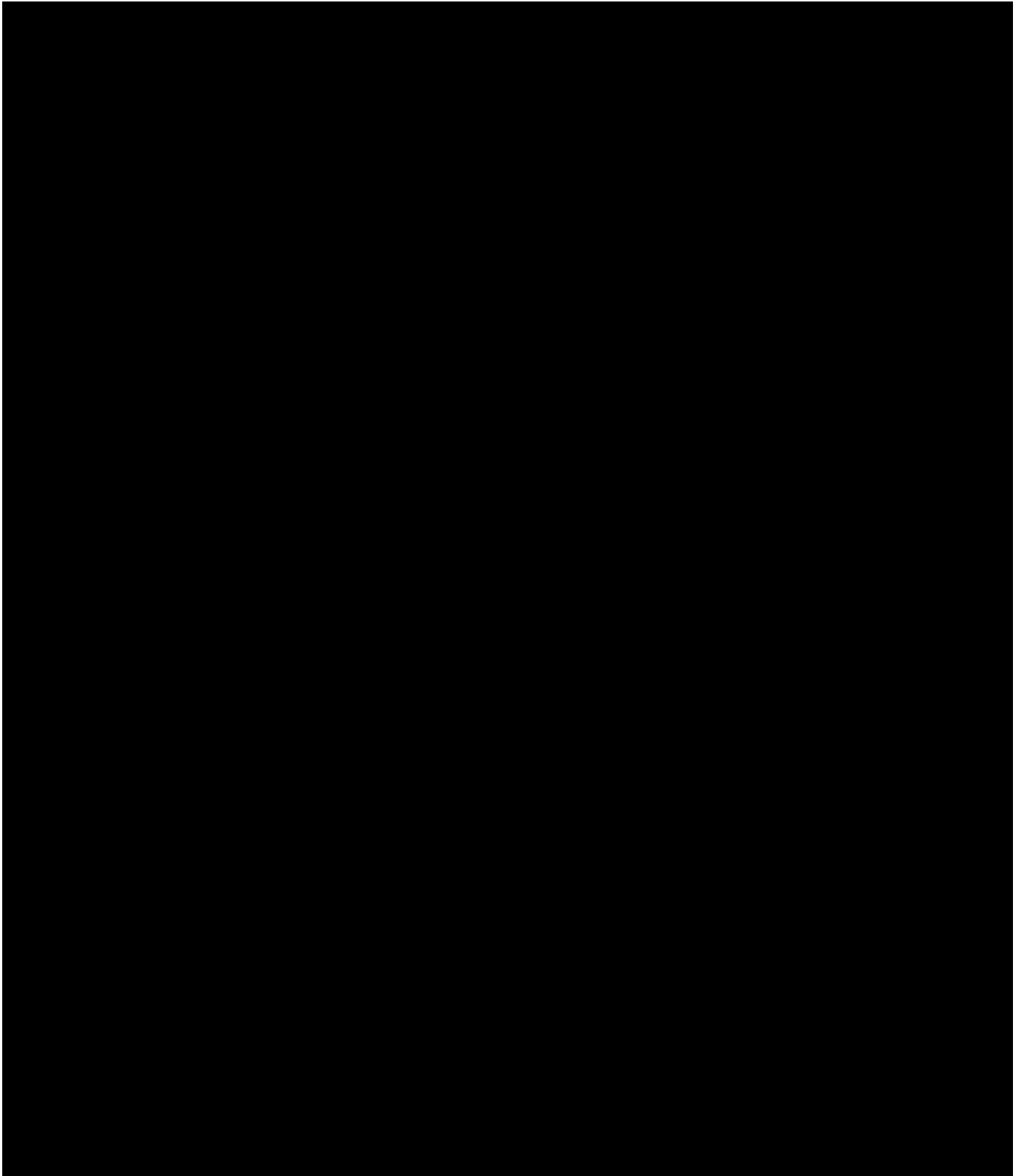
Exhibit 4

Hosting Services Scope of Work
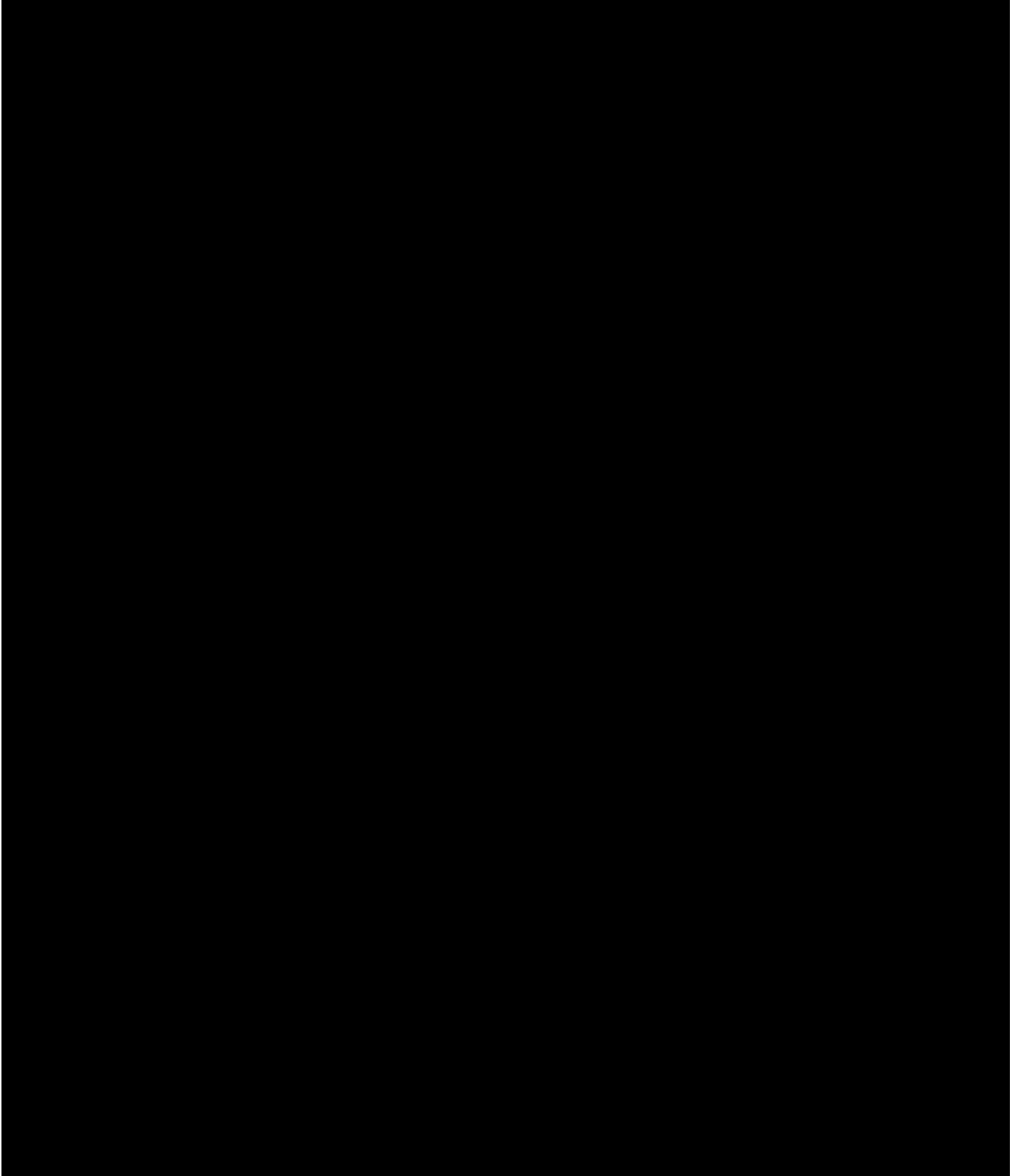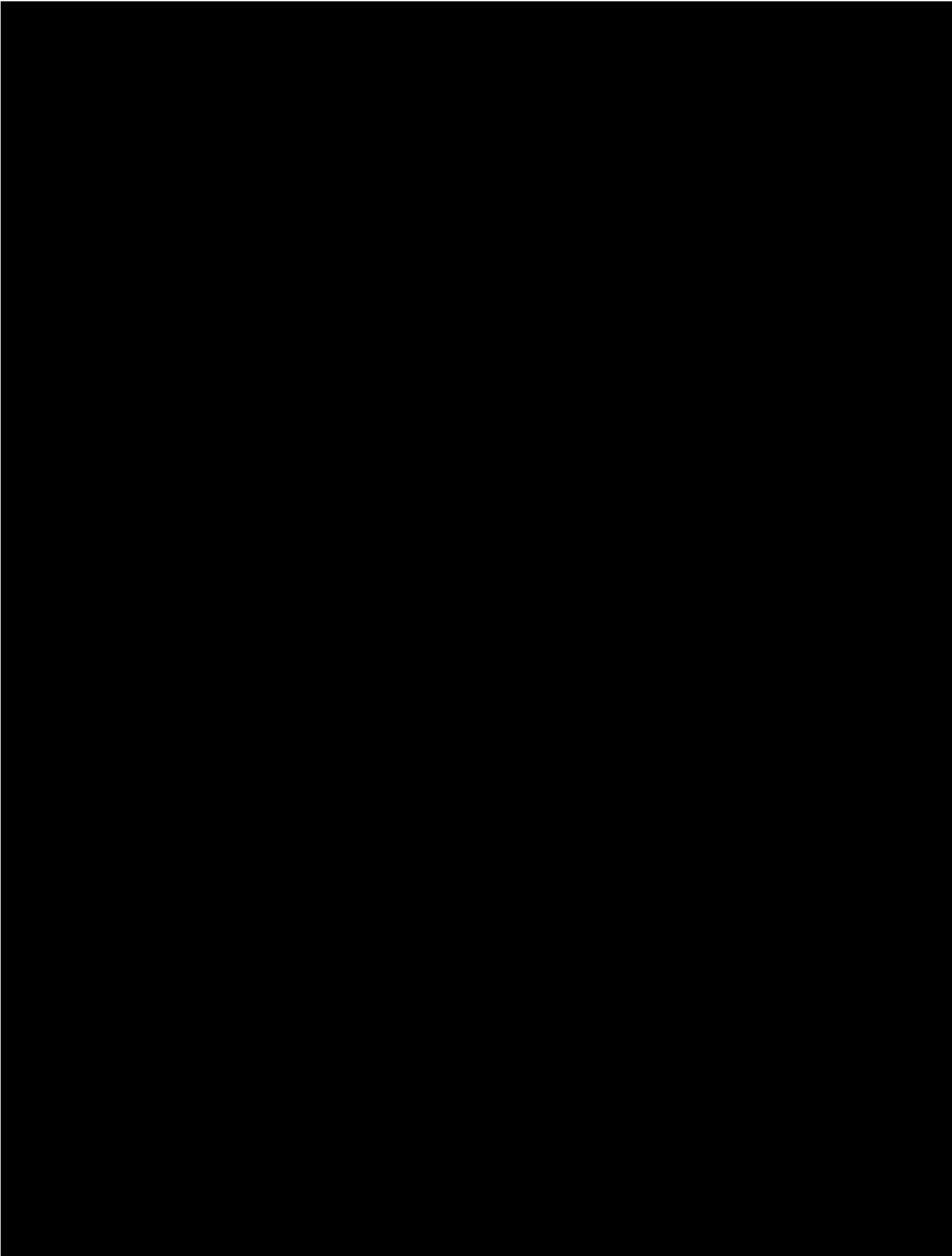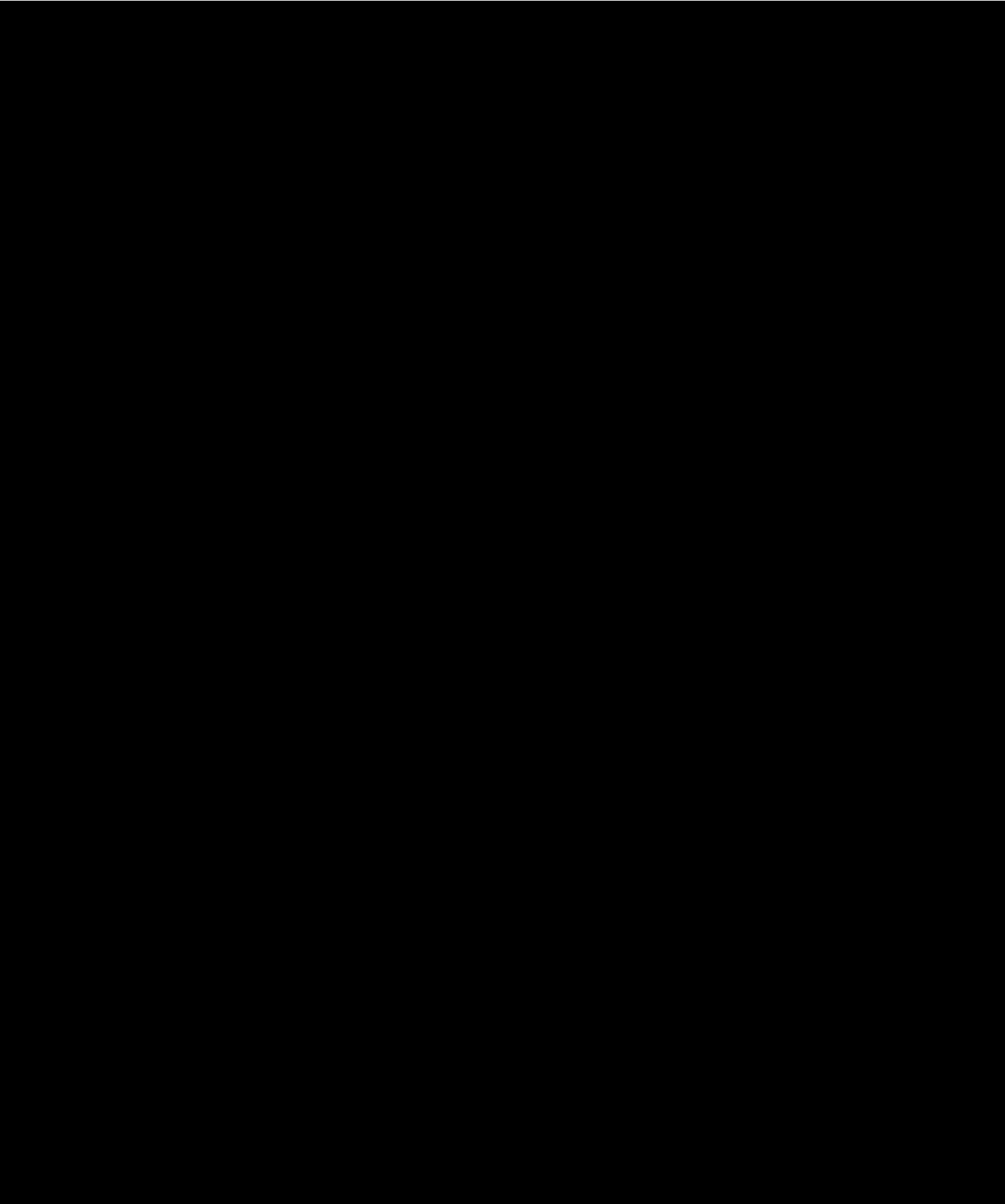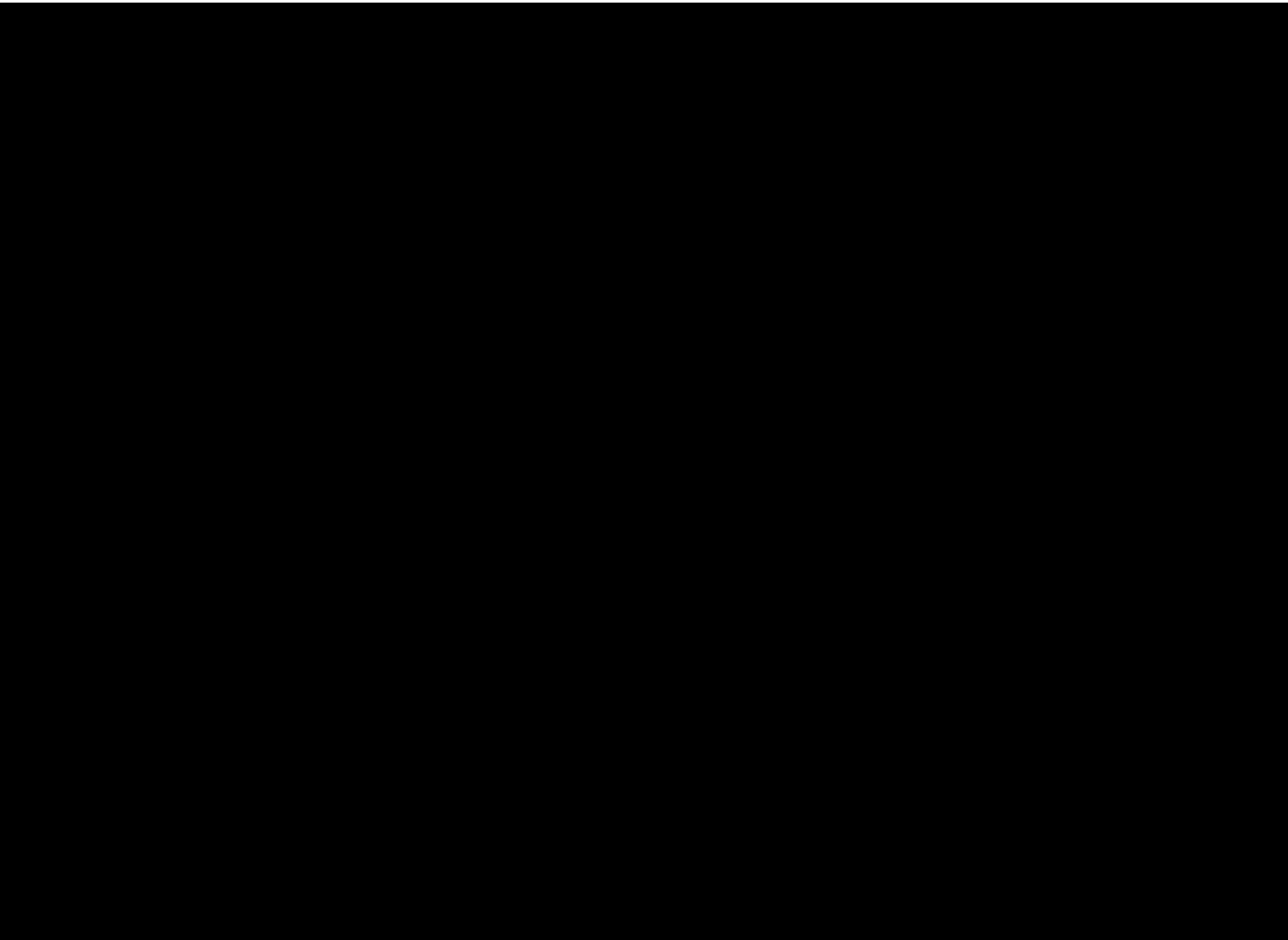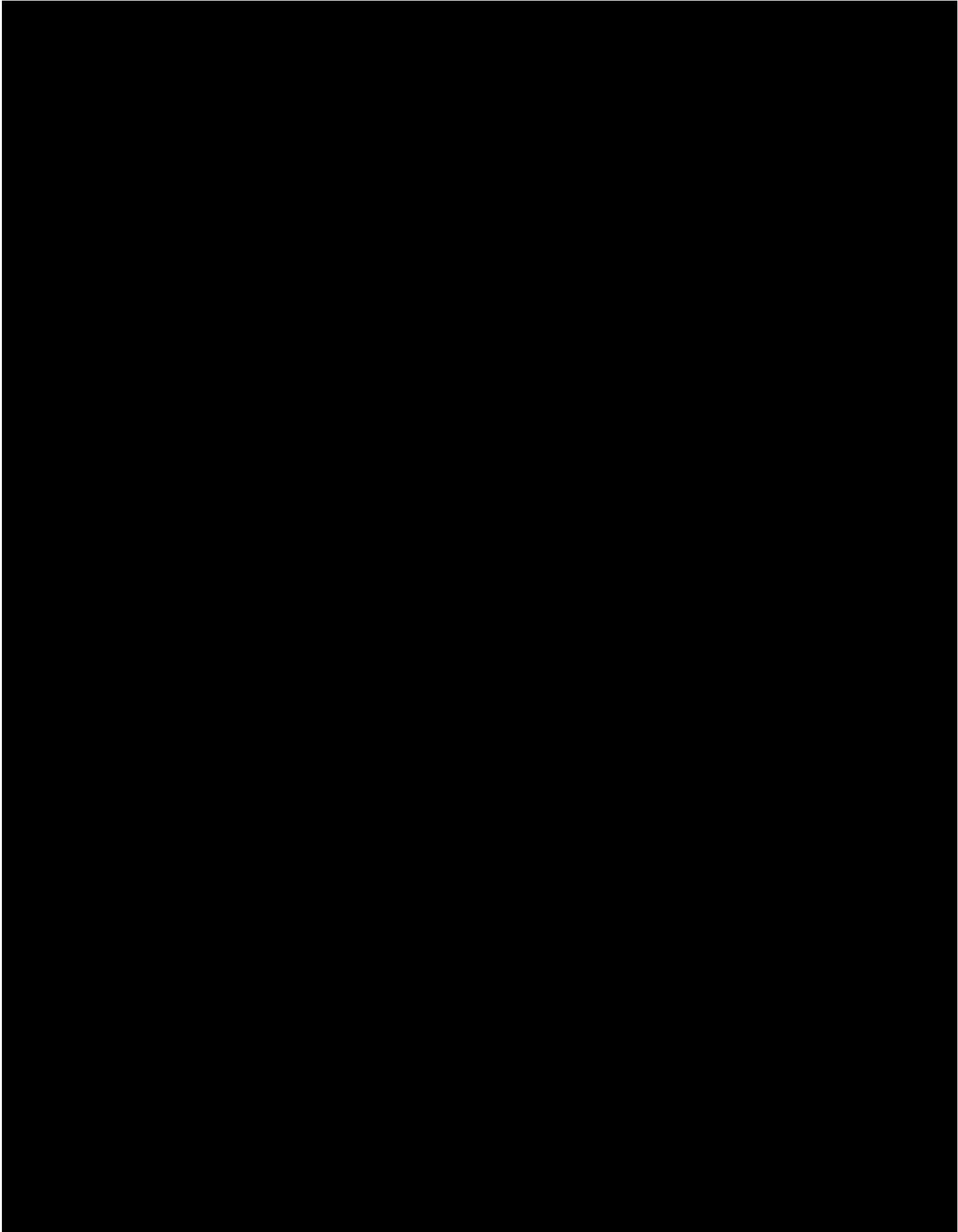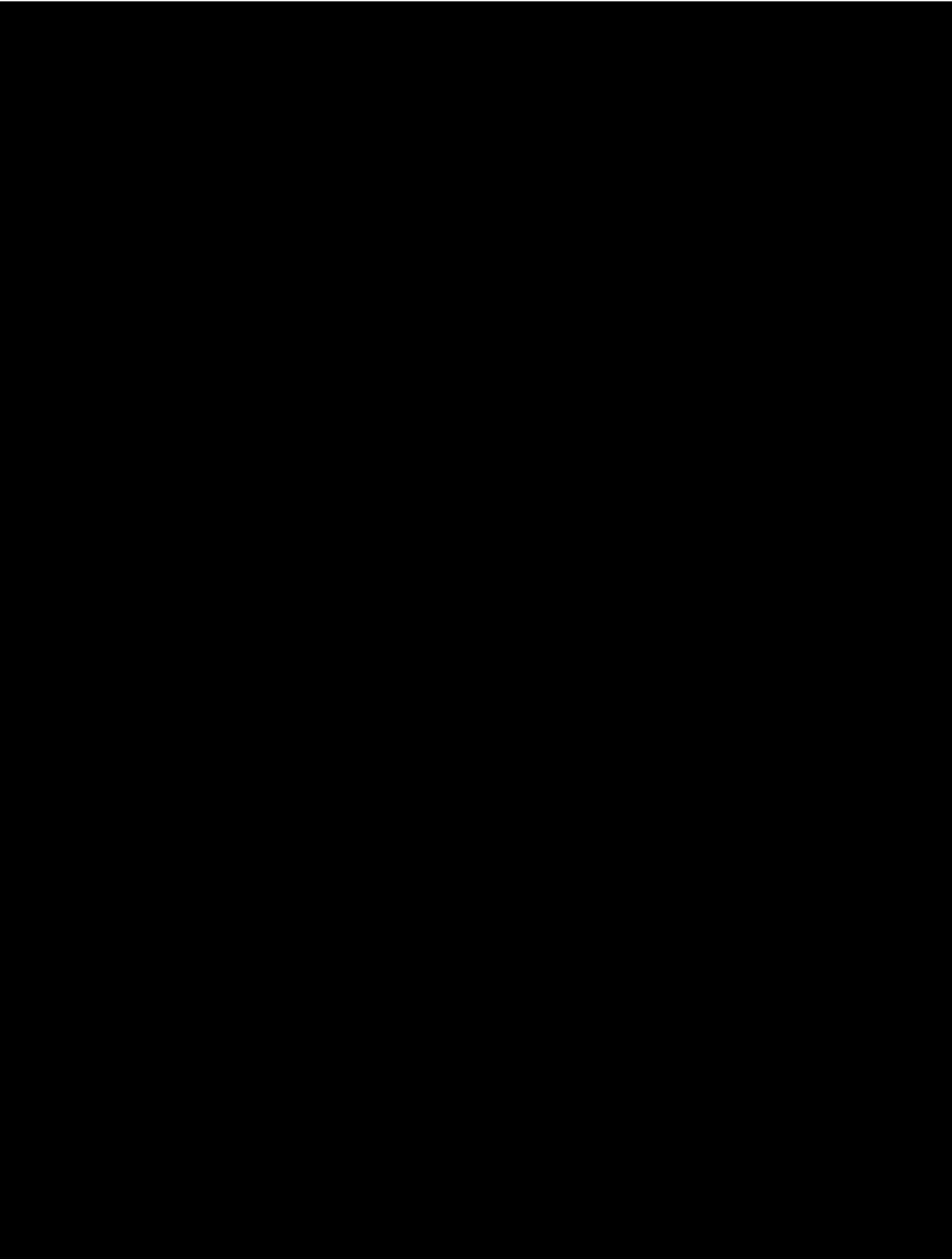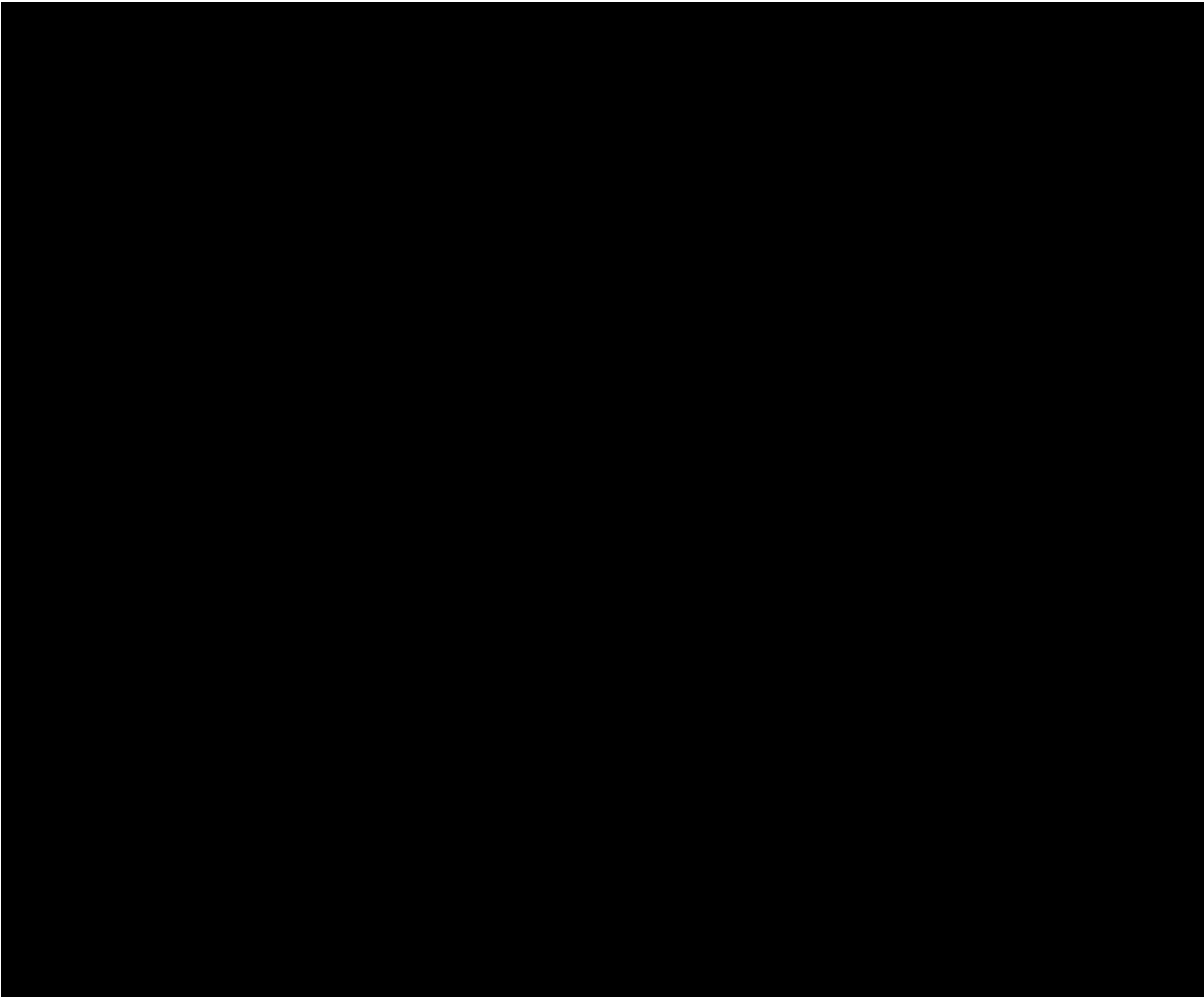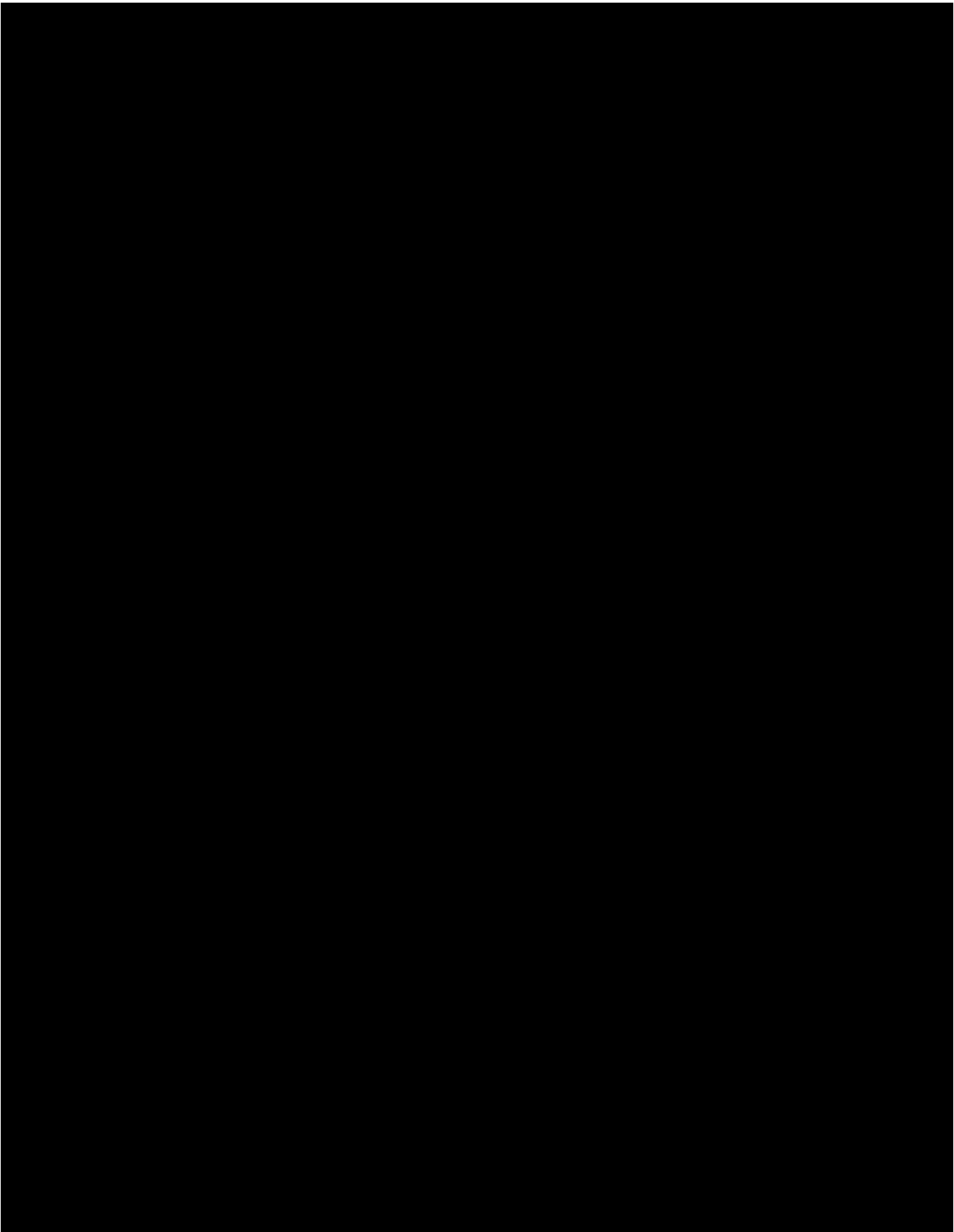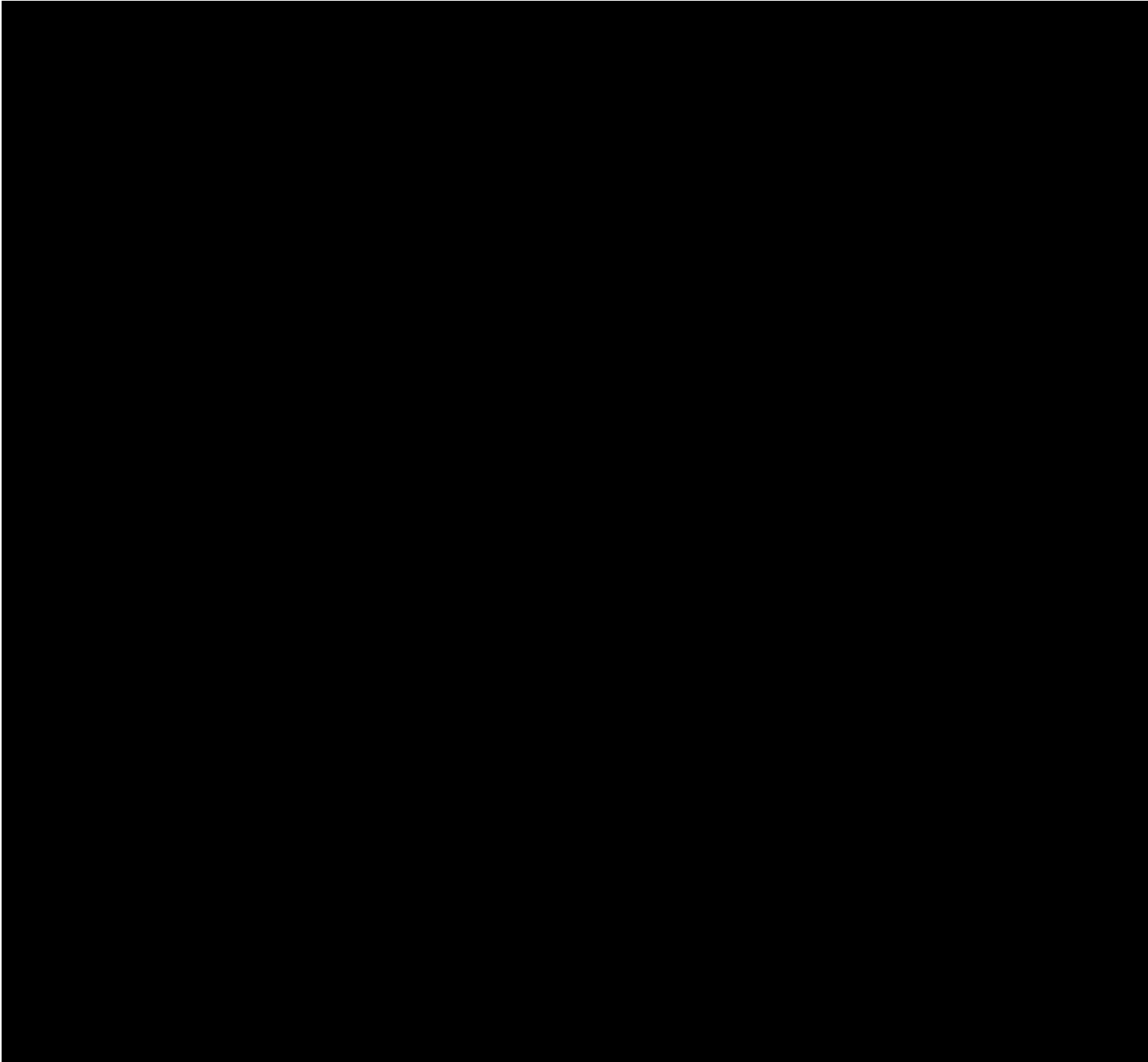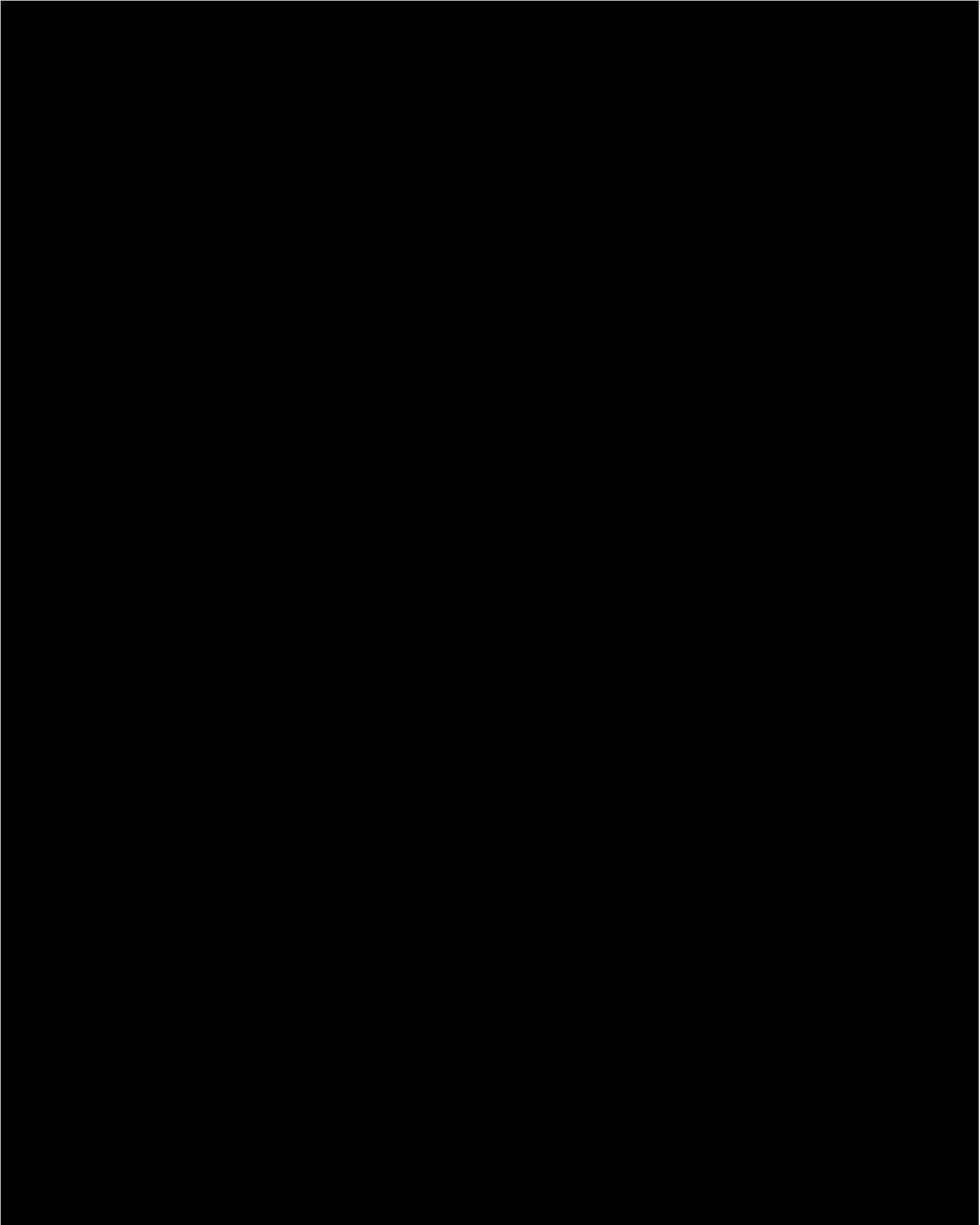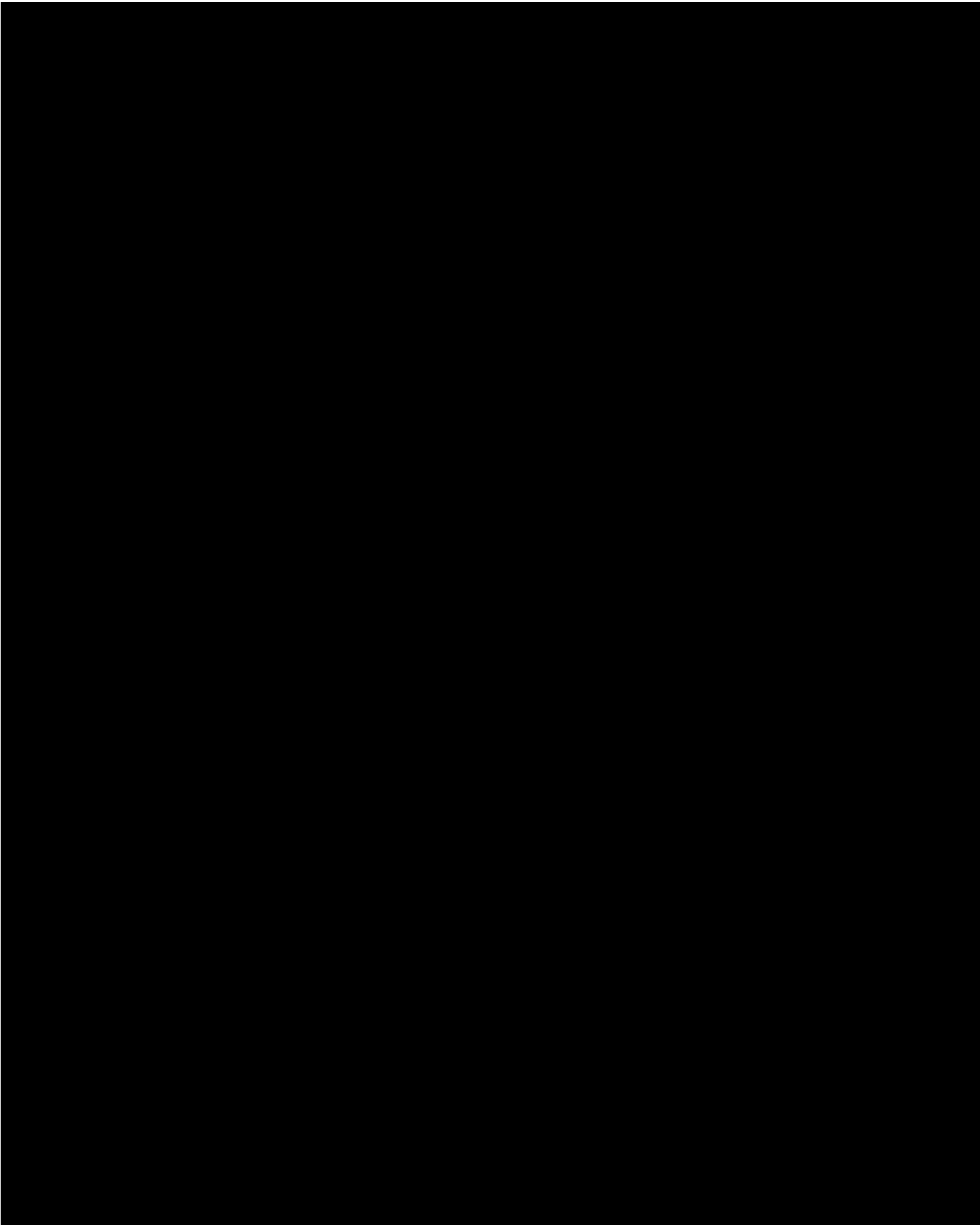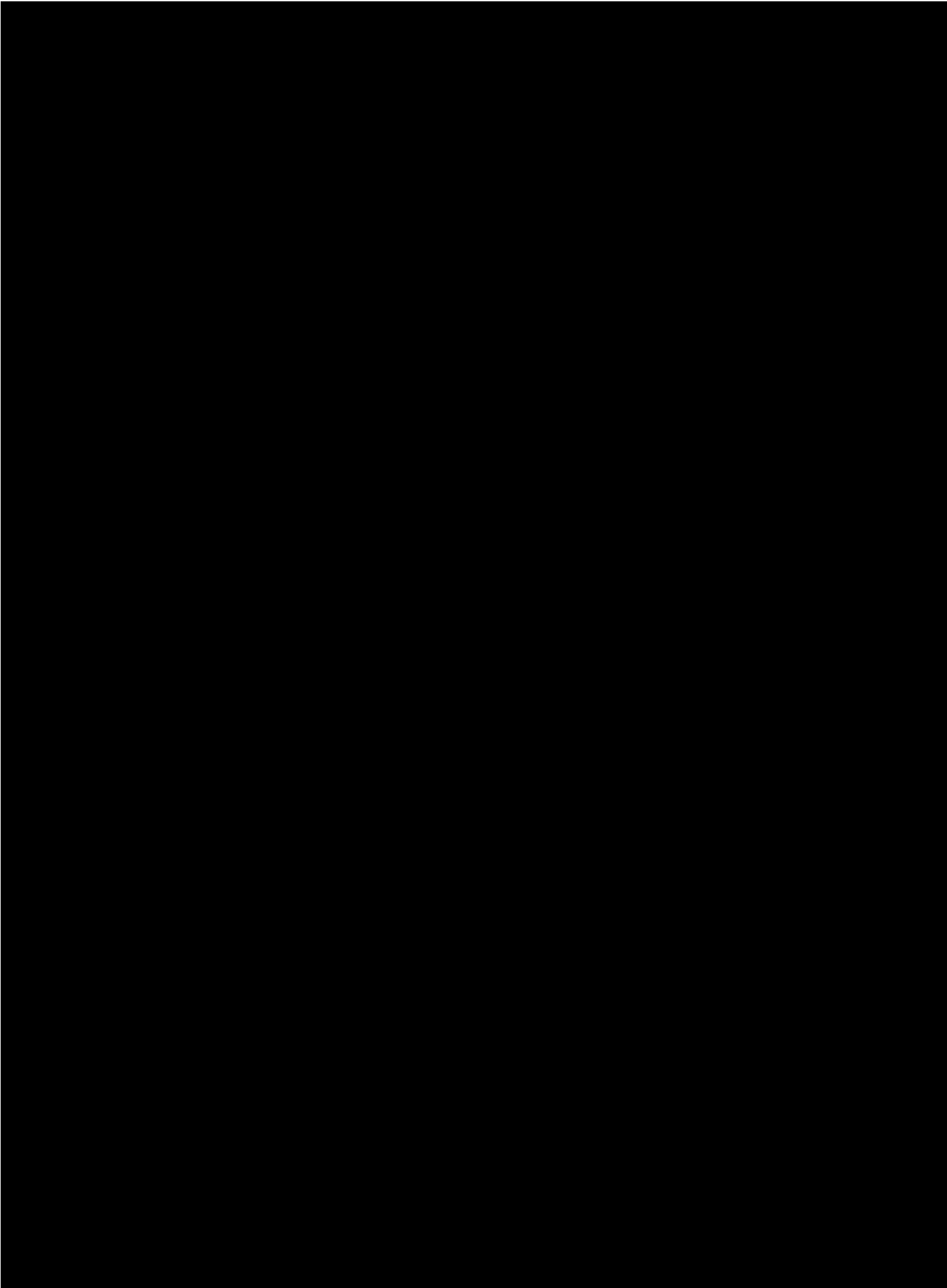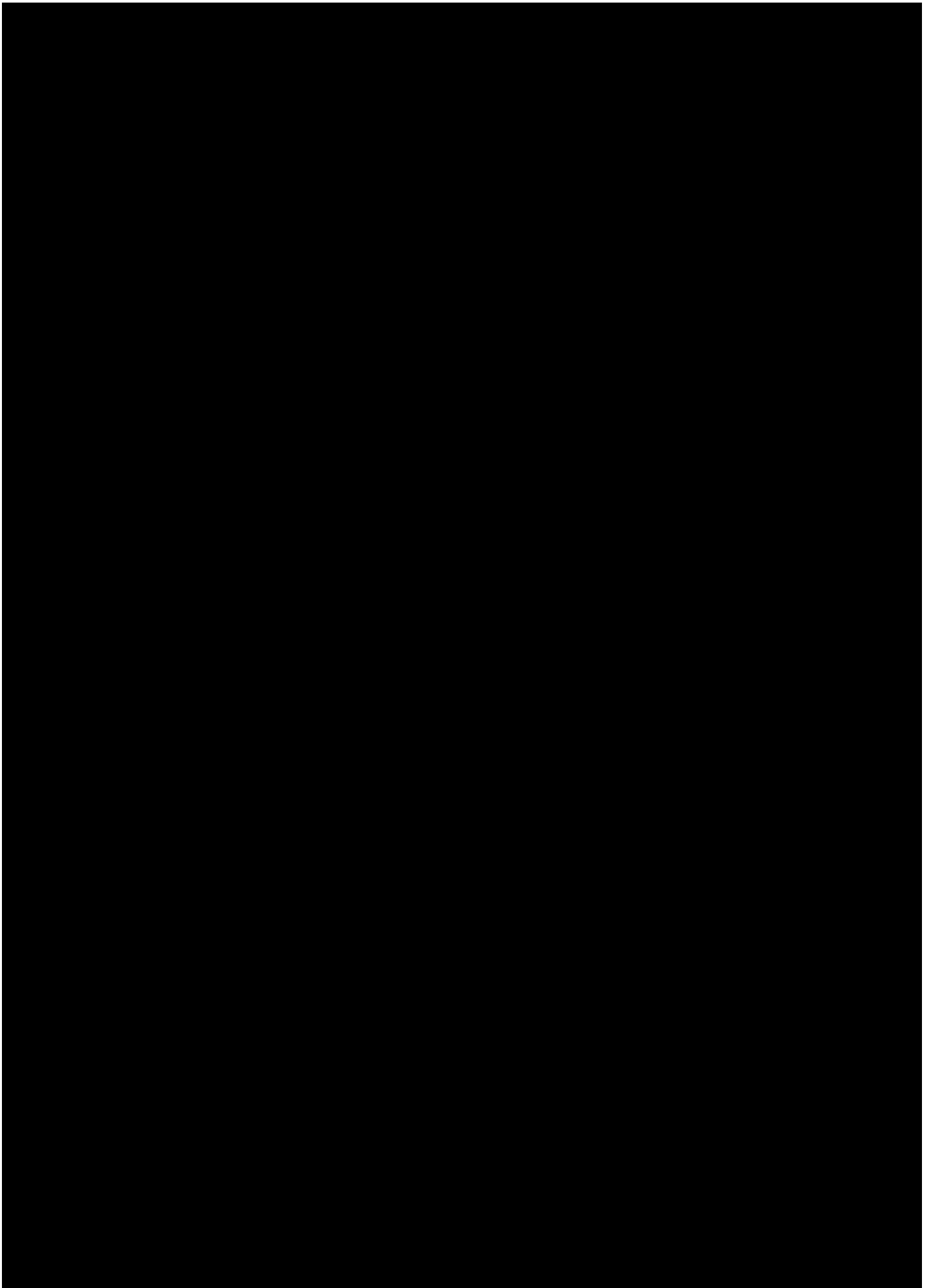
Exhibit 4-1
PERFORMANCE IMPROVEMENT PLAN ADDENDUM TEMPLATE
<u>**Contract Services**</u>
Materials Management

<u>**AIM:**</u> All SFGH services provided through contractual agreement are provided safely and effectively for patient care and support services, annually.

Contract Name	Services Provided	Measure Name	Metric (What data is being collected?)
Nor-Cal Medical Temp EXAMPLE	Pharmacy personnel	Orientation Check List Completed within 7 Days of First Contact	NUM: # of orientation checklists completed within 7 Days DENOM: # of orientation checklists completed
1. Epic Hosting	Hosting of Epic Infrastructure and Management of Customer Premises Equipment	Performance and Uptime KPIs. Assure KPIs and Uptime metrics are met.	Monthly performance, uptime and KPI reports, via Epic's standard Hosting Monthly Status Reports and Hosting Operations Meetings, as described in Exhibit 4 – Hosting Services Scope of Work – Project Plan and Ongoing Review
2.		Growth monitoring. Monitor DPH growth to anticipate any changes to Epic/DPH connection, license etc. limits.	Quarterly – connection, data, growth rate reports via Epic's standard Hosting Monthly Status Reports and Hosting Operations Meetings, as described in Exhibit 4 – Hosting Services Scope of Work – Project Plan and Ongoing Review

|			
3.		**Security Review. Ensure security measures are up kept up to date and protect DPH data**	**Annual – provide security review, discuss changes to any security strategies, provide security reports as described in Exhibit 4 – Hosting Services Scope of Work – Security and Compliance**
4.		**Technology Review**	**Pre-release – provide preview of major release updates and discuss any major technology changes and impact, as described in Exhibit 4 – Hosting Services Scope of Work – Project Plan and Ongoing Review**
5.		**Disaster Recovery**	**Partner in Annual – Disaster recovery exercise, as described in Exhibit 4 – Hosting Services Scope of Work – Business Continuity and Disaster Recovery**
6.		**Root Cause Analysis**	**Upon request provide a Root Cause Analysis report for major events and Severity 1 incidents, as described in exhibit 5(a)**

Exhibit 4-2

Summary of Customer Premises Equipment Requirements
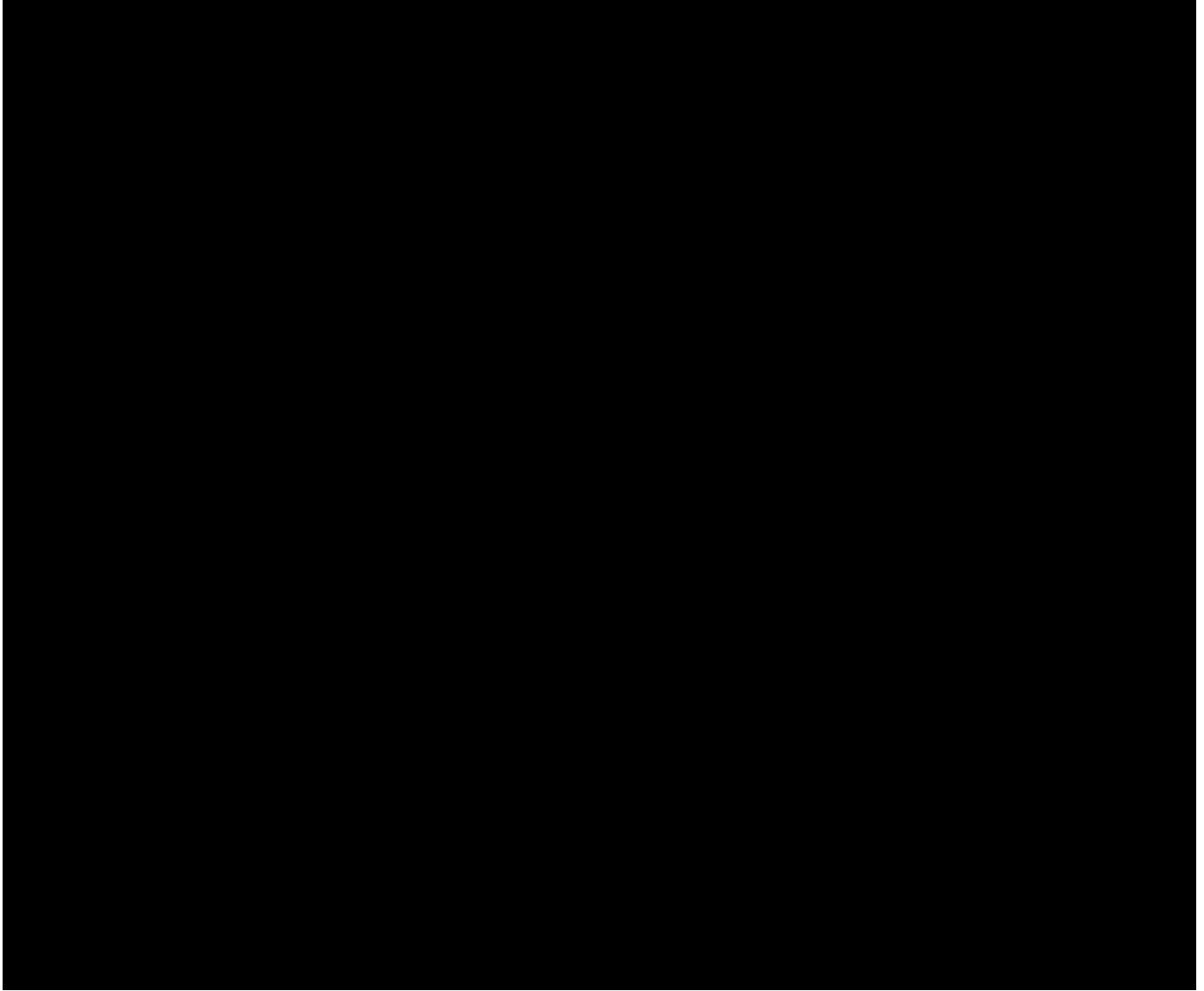
Exhibit 5(a)

Technical Support for Hosting Services

1. **TECHNICAL SUPPORT**

   [REDACTED]
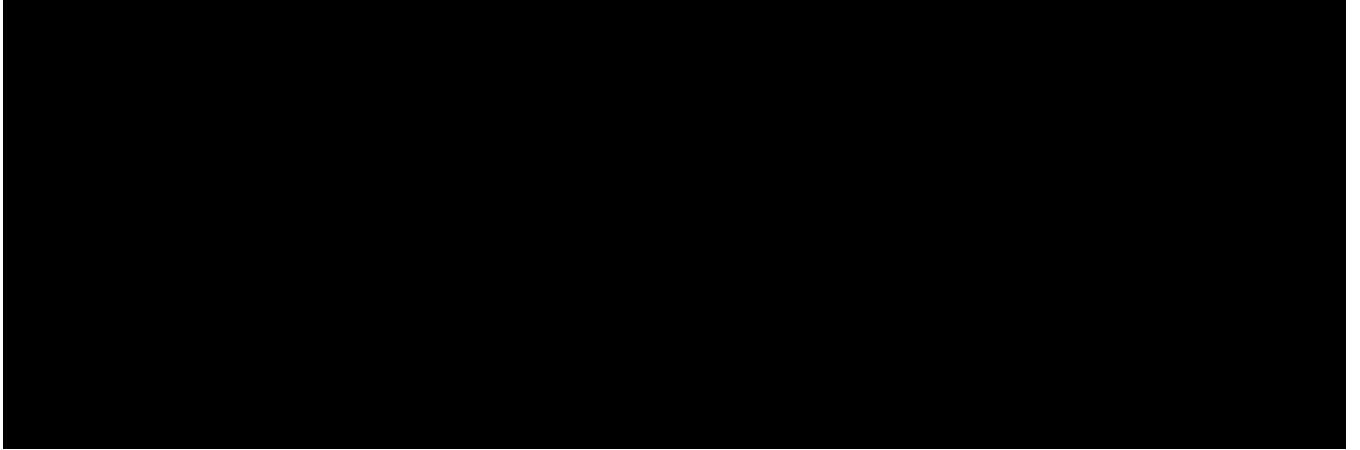
   b. **Application Updates; Supported Versions.** Epic will work with You to establish a regular maintenance window for Your Hosting Services related software updates (e.g., the Program Property, software components of the Hosting Services). Epic will perform the installation of Updates to the Program Property in Your Production Environment following the completion of Your internal testing. If Epic identifies a potential security risk to Epic's hosting operations, You agree to cooperate with Epic to promptly test and install any Updates to the Program Property and implement any related configuration or operational changes requested by Epic to mitigate such risk. [REDACTED]
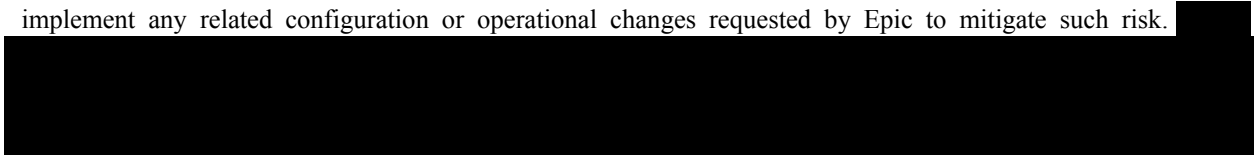
   c. **Operational Hosting Services Support.** Epic provides telephone consultation and assistance support to You through its Hosting Services technical support staff at any time, 24 hours per day and 7 days per week.

   [REDACTED]

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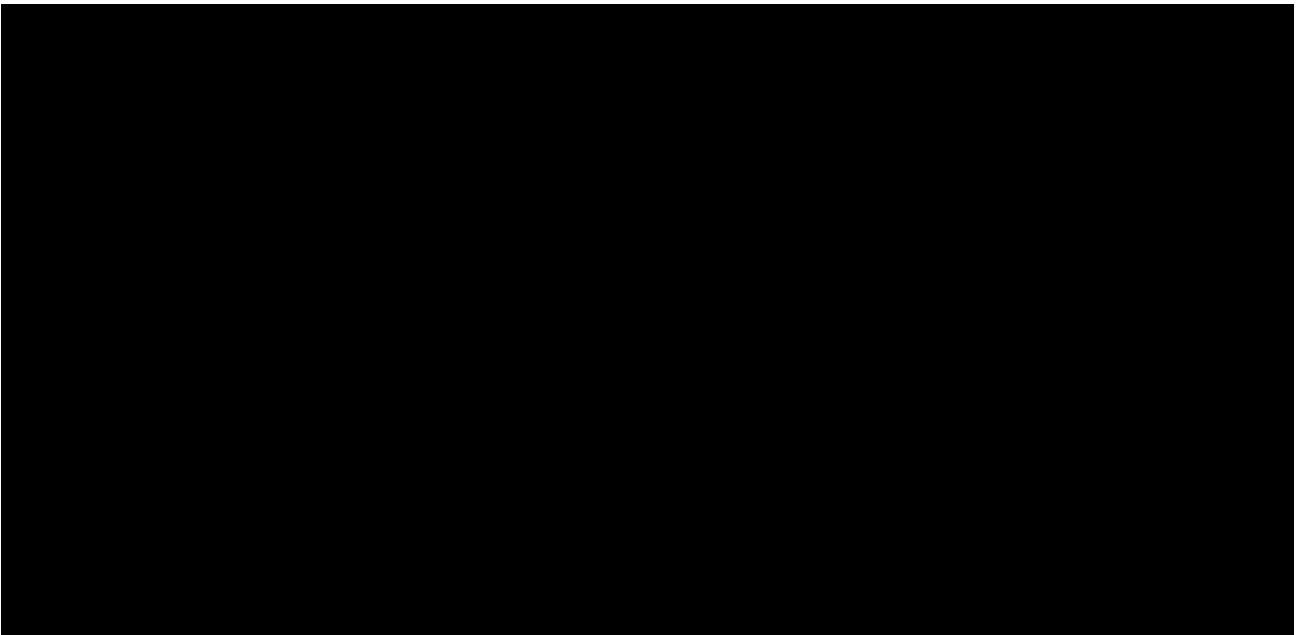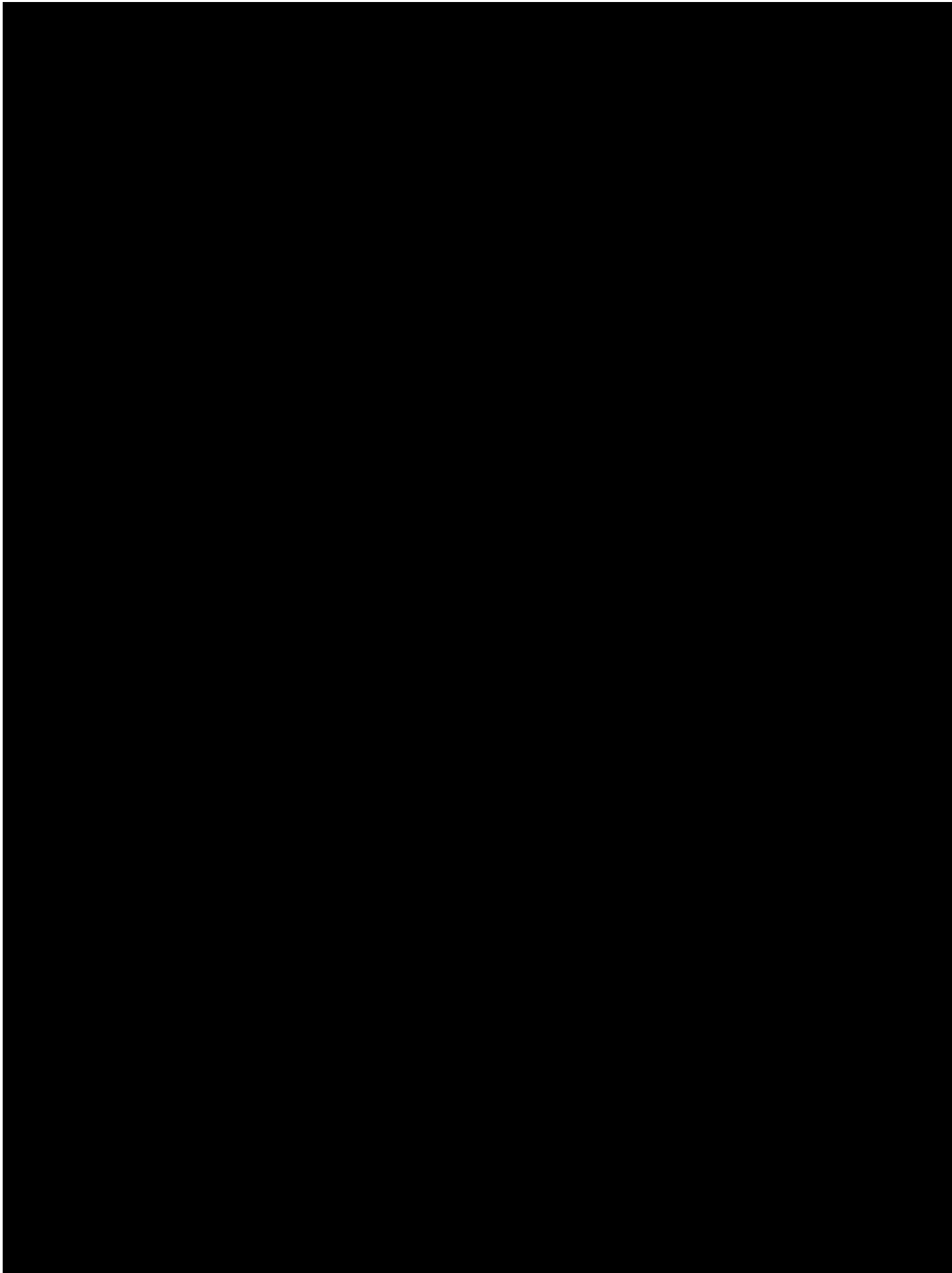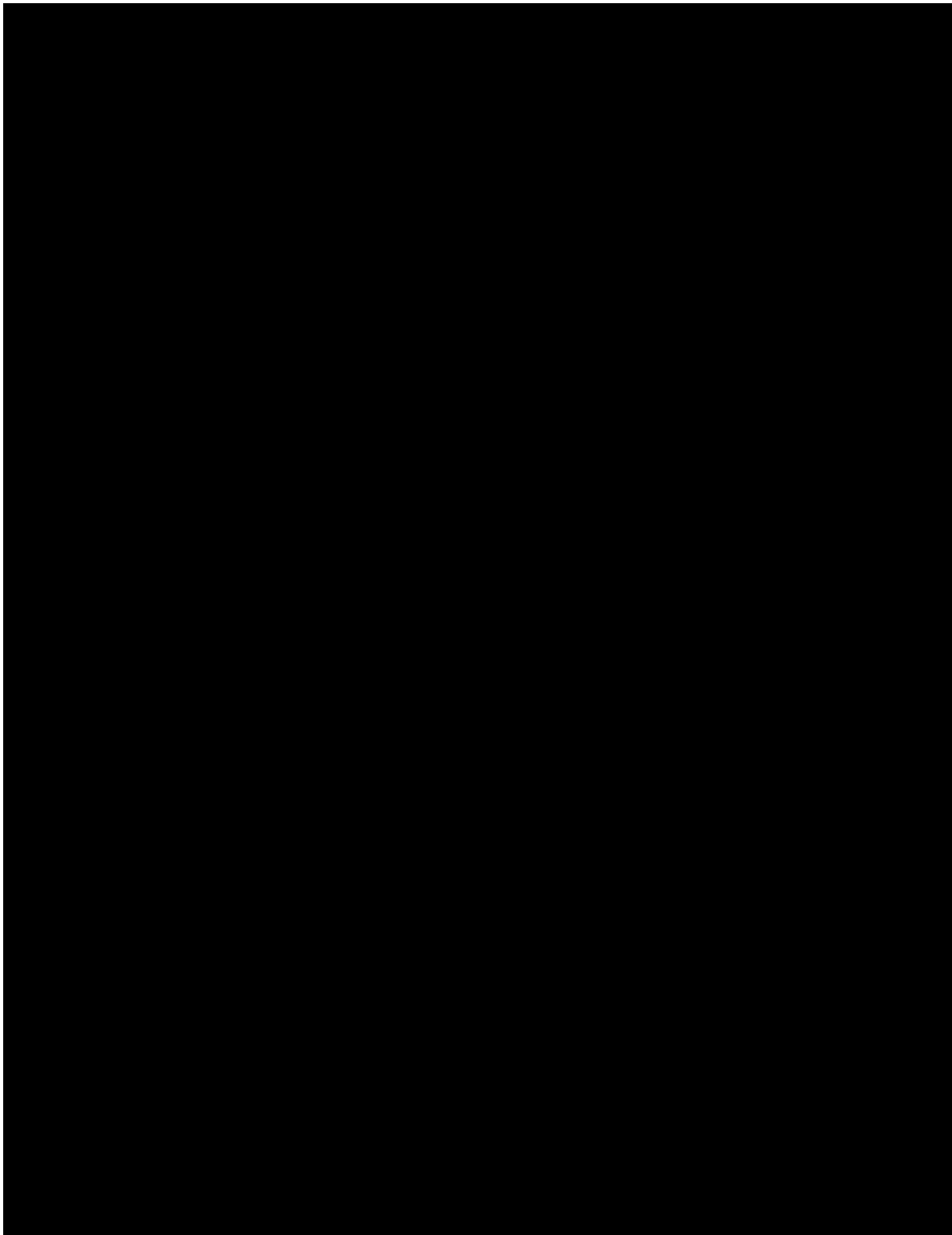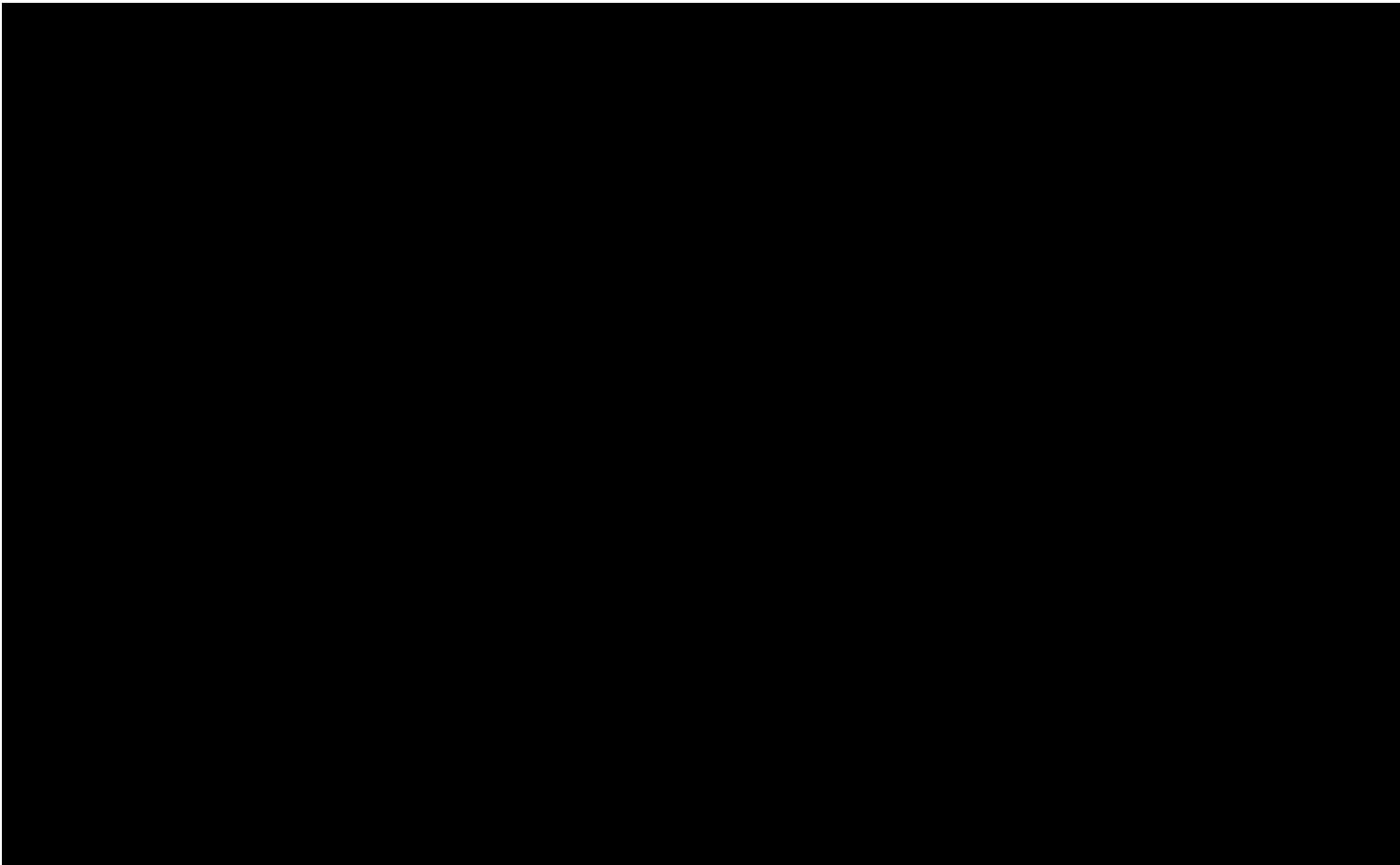
Exhibit 5(b)

Hosting Services Availability
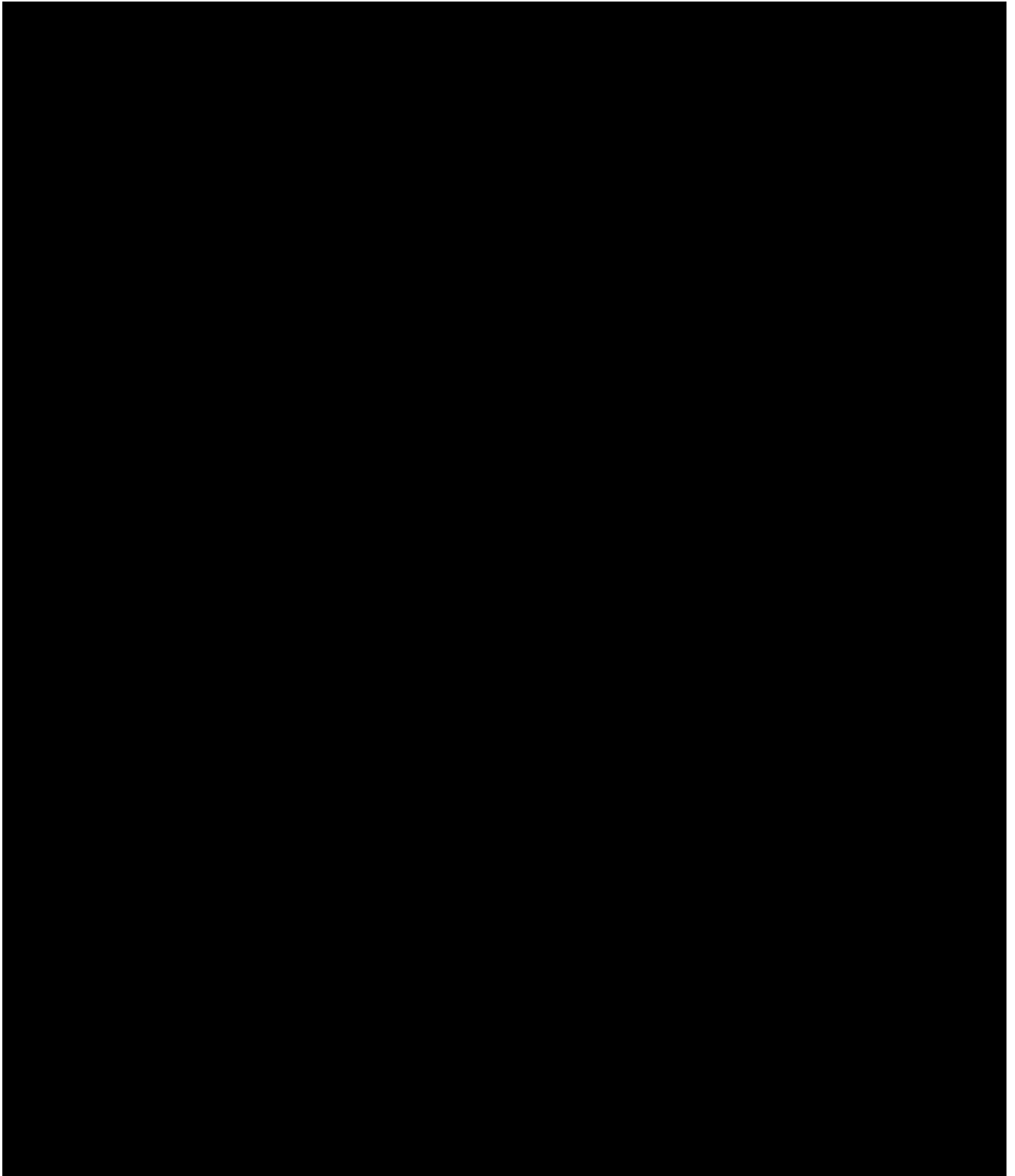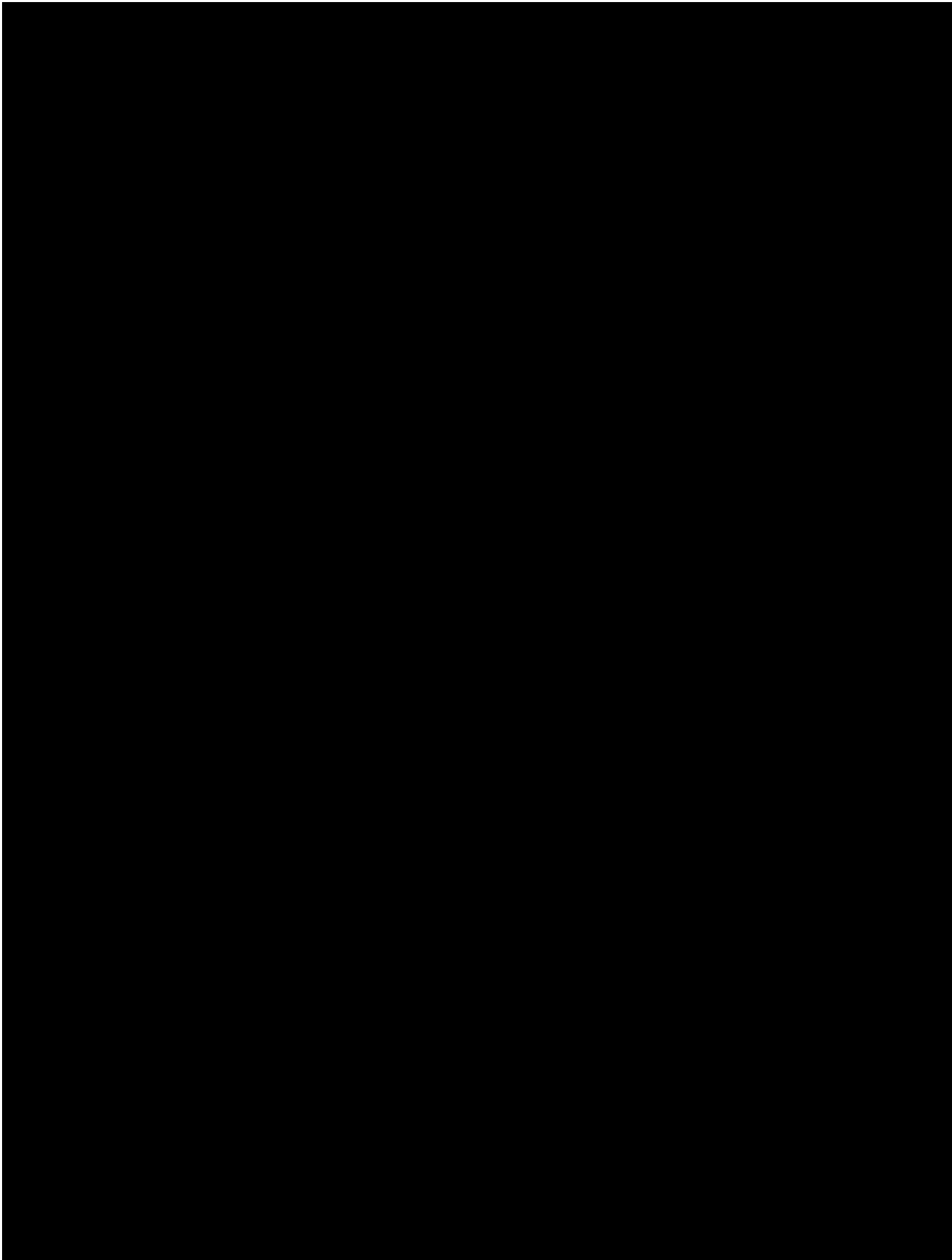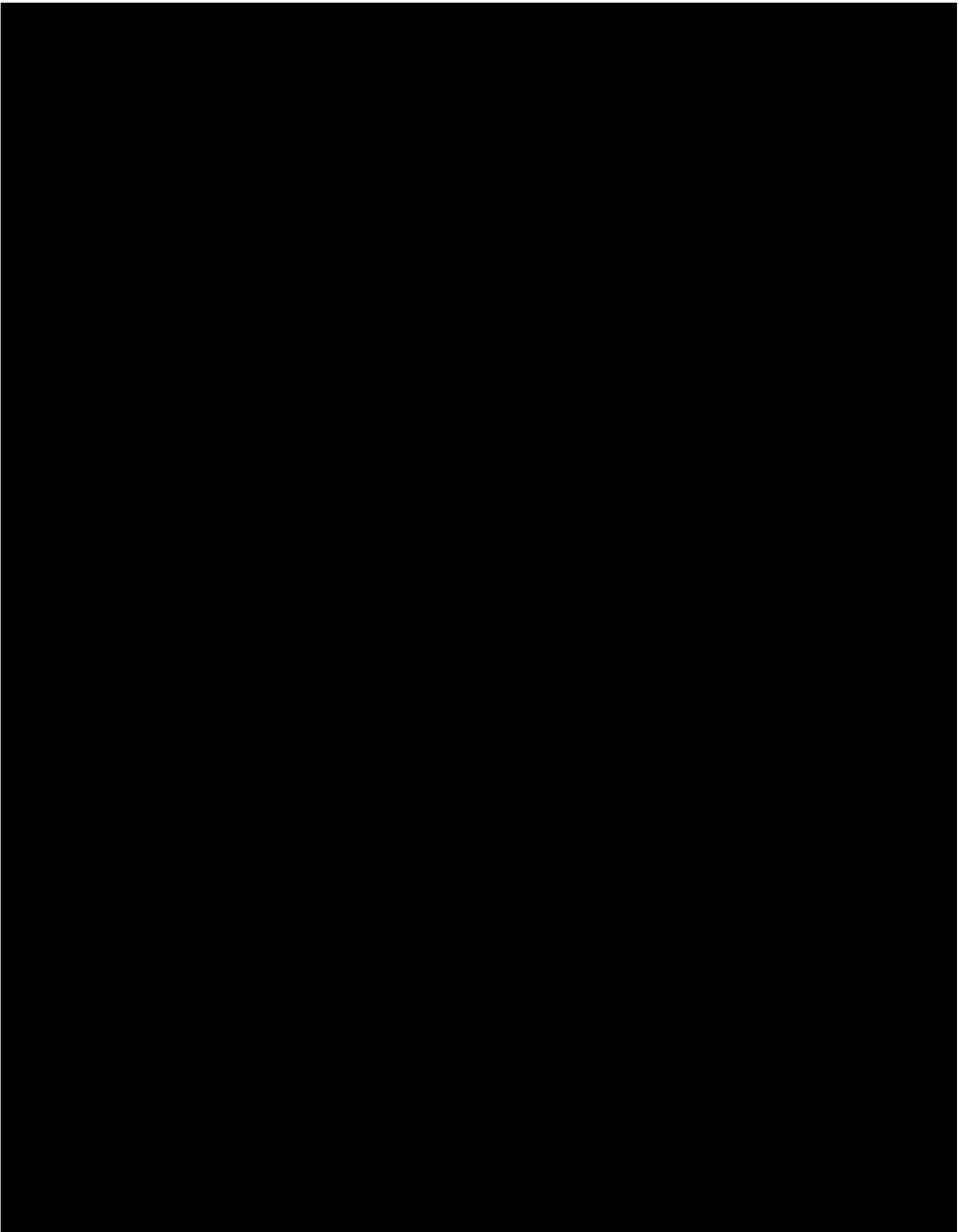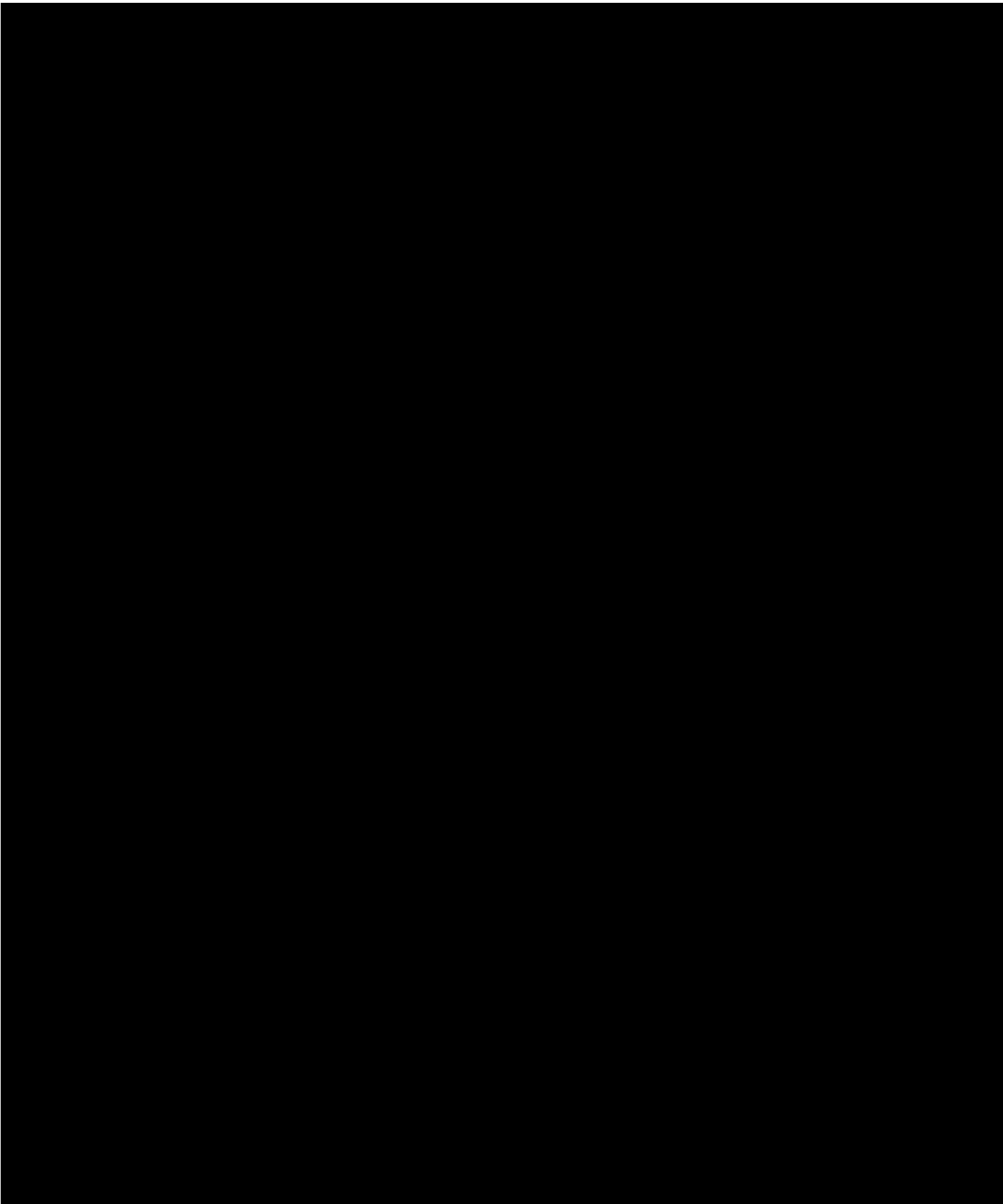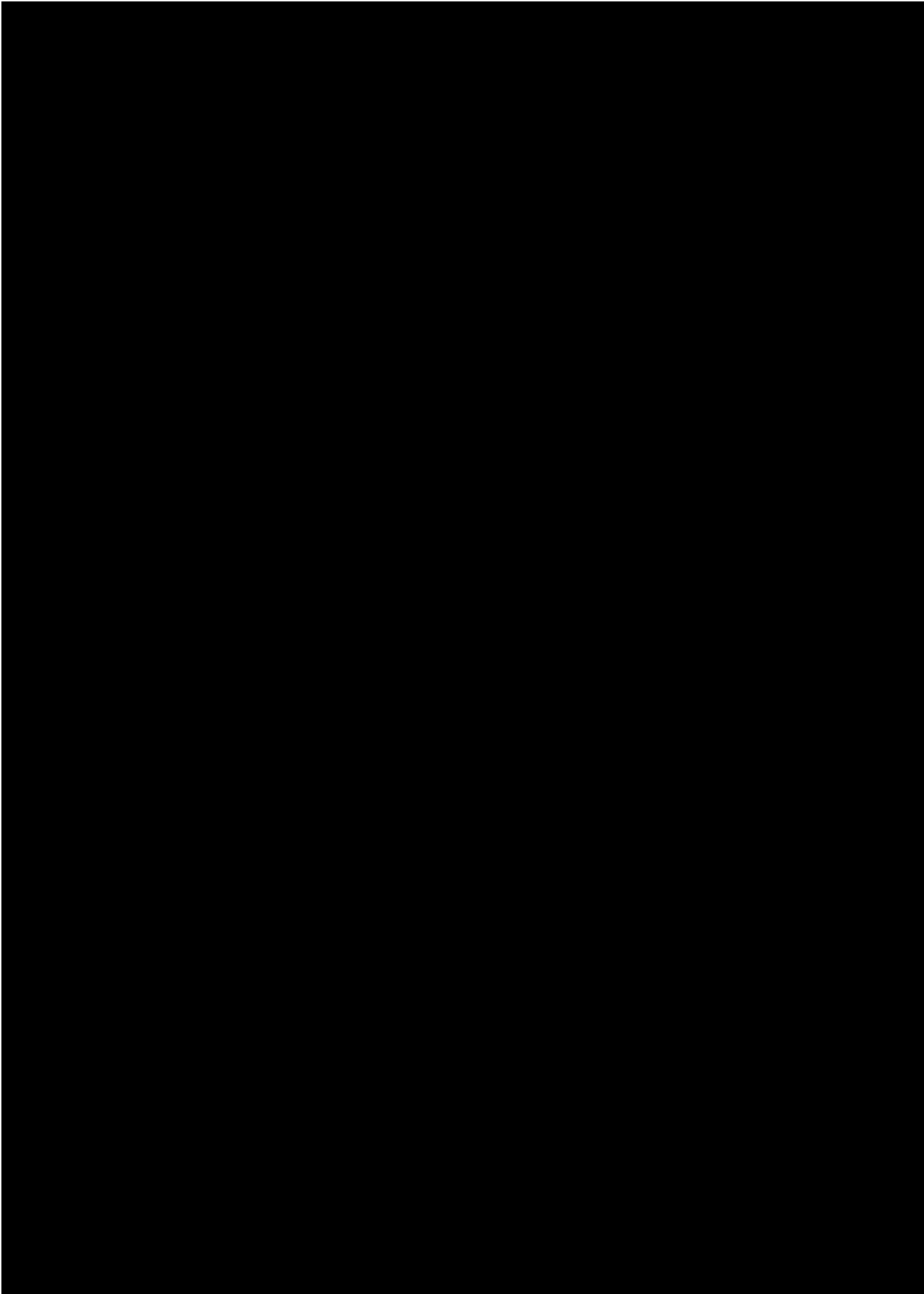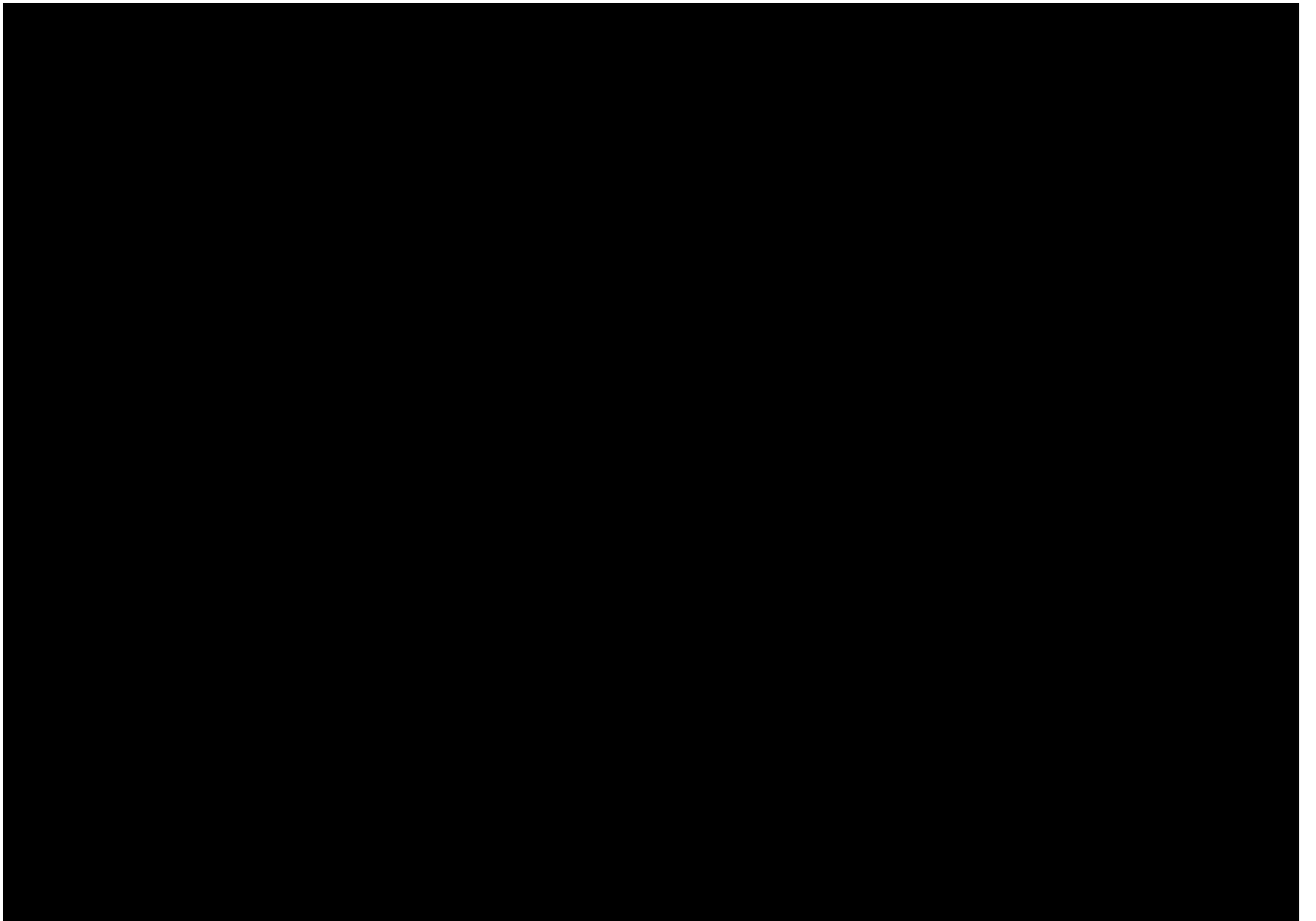
Exhibit 5(c)

Response Time Guidelines
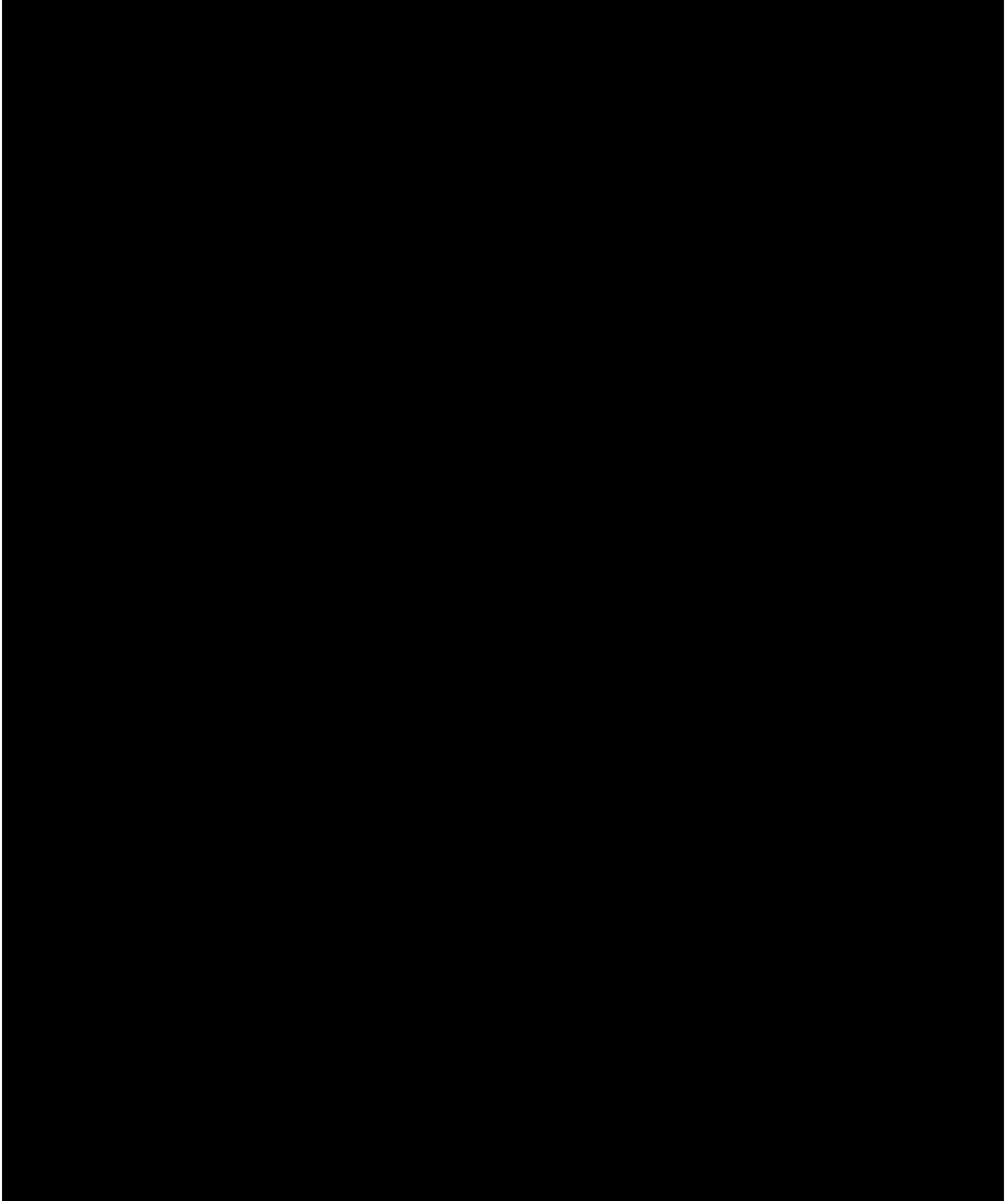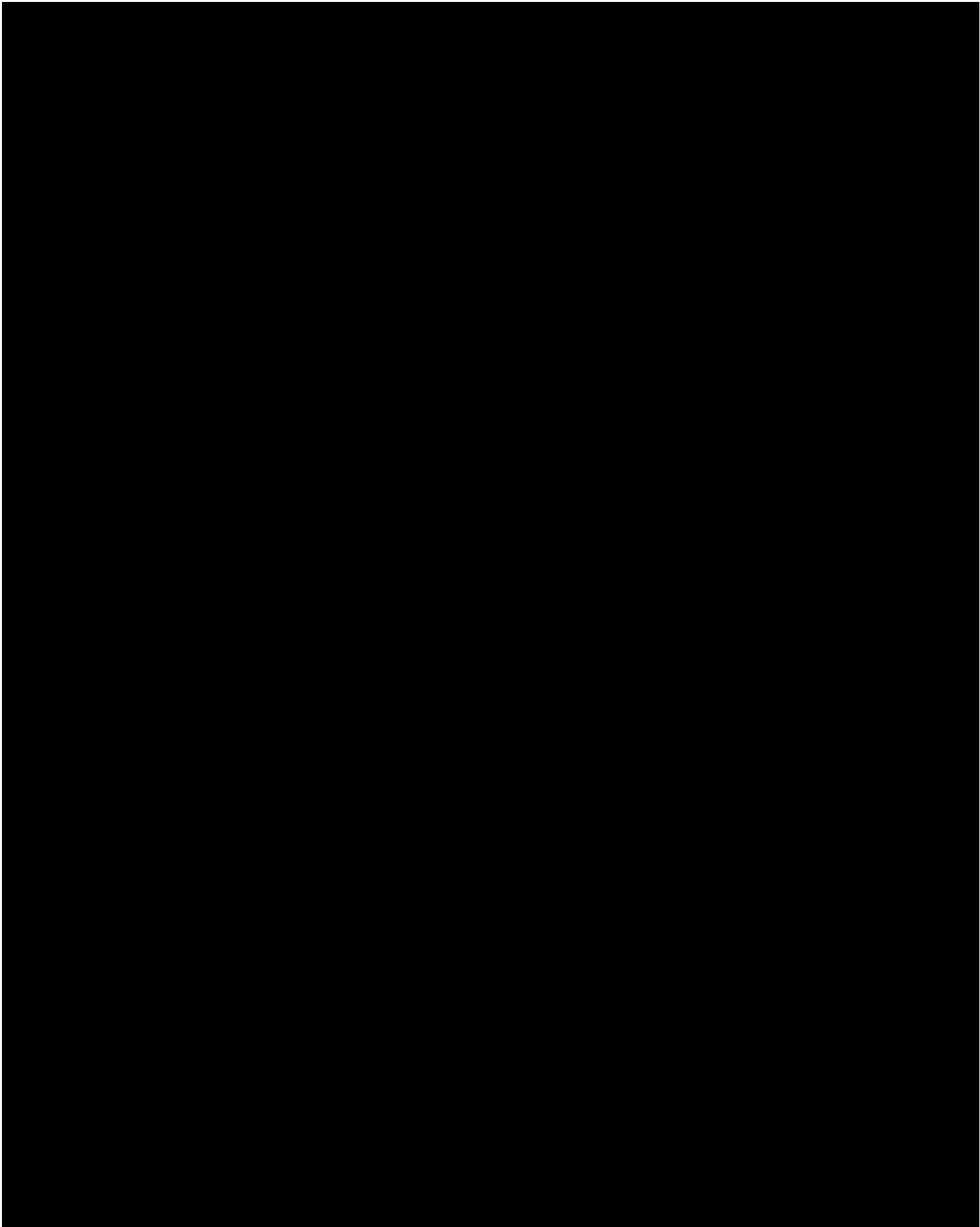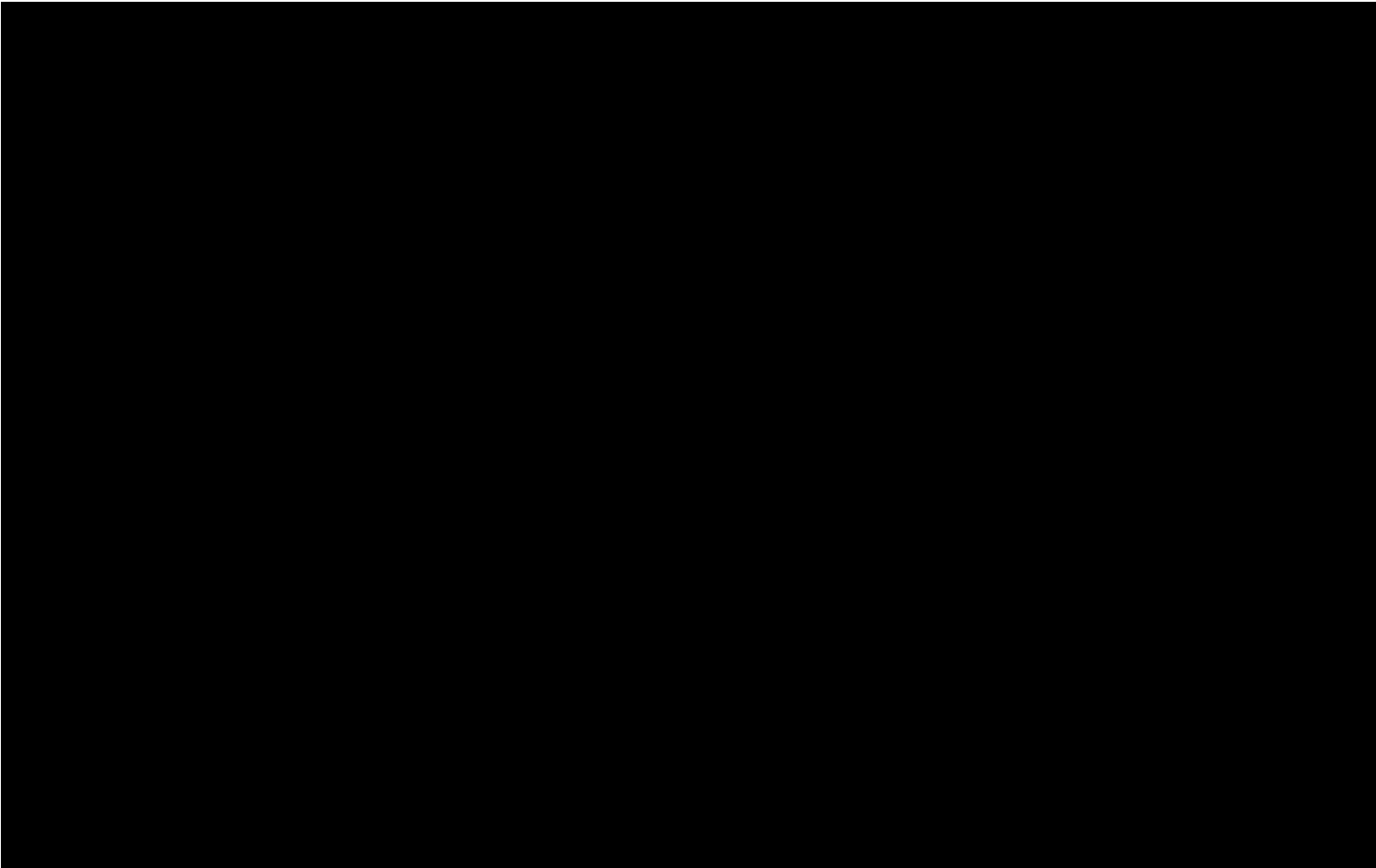
Exhibit 5(c)-1
System Health Metrics and KPI Index for Epic 2017 as of January 6, 2017

Background. This index details (i) the System Health Metrics, and (ii) a list of version and application-specific KPIs ███████████████████████████████████████

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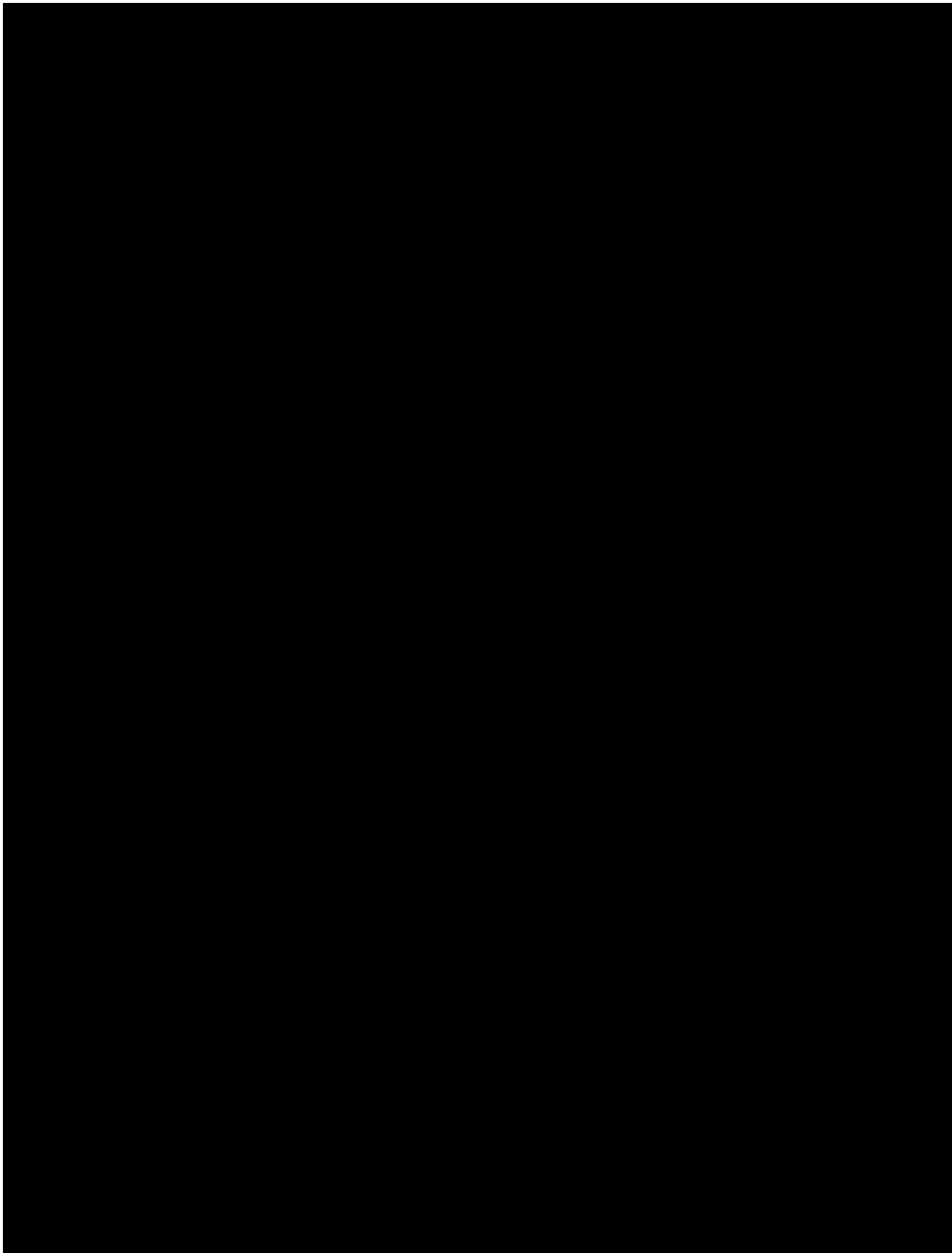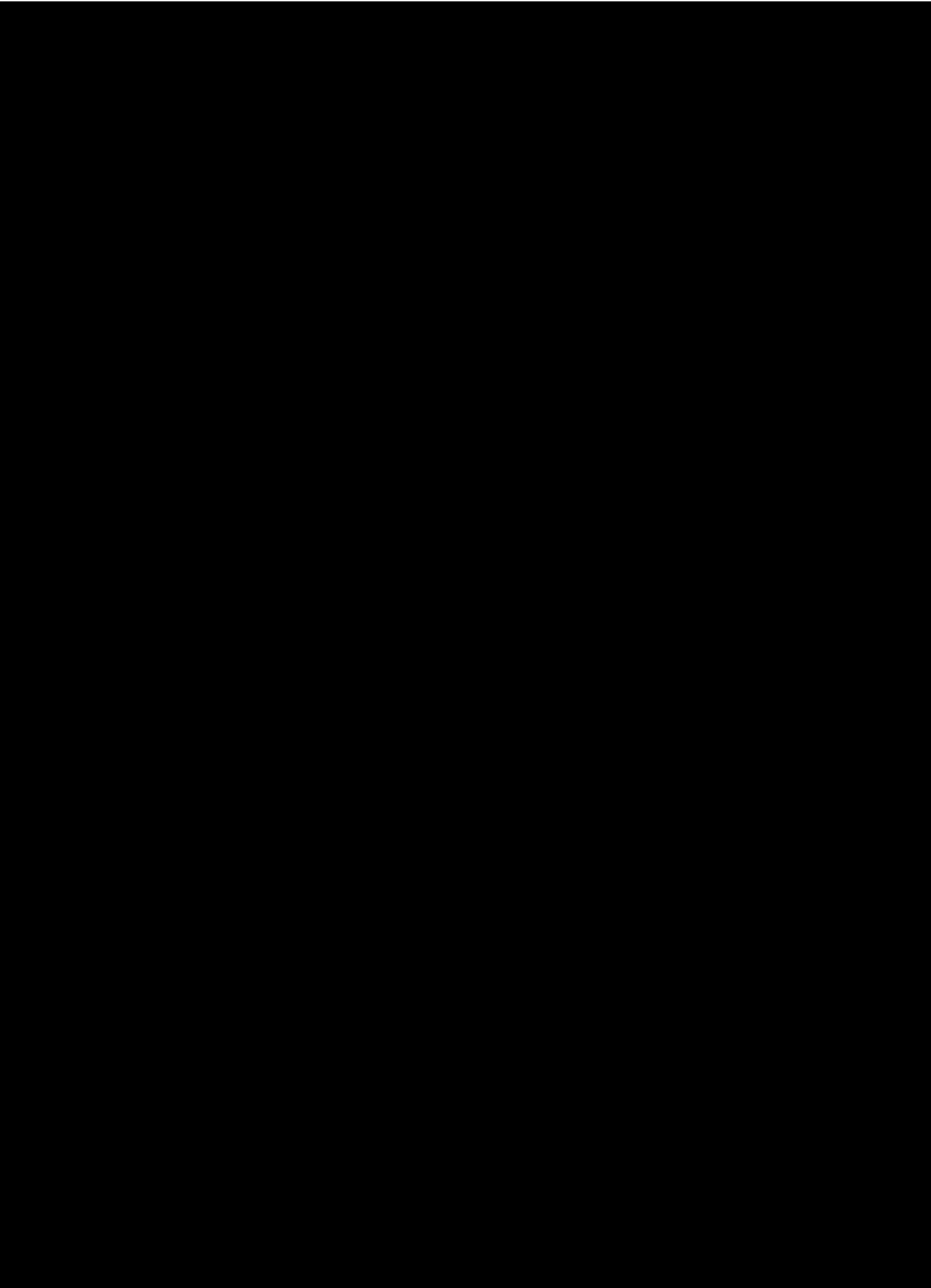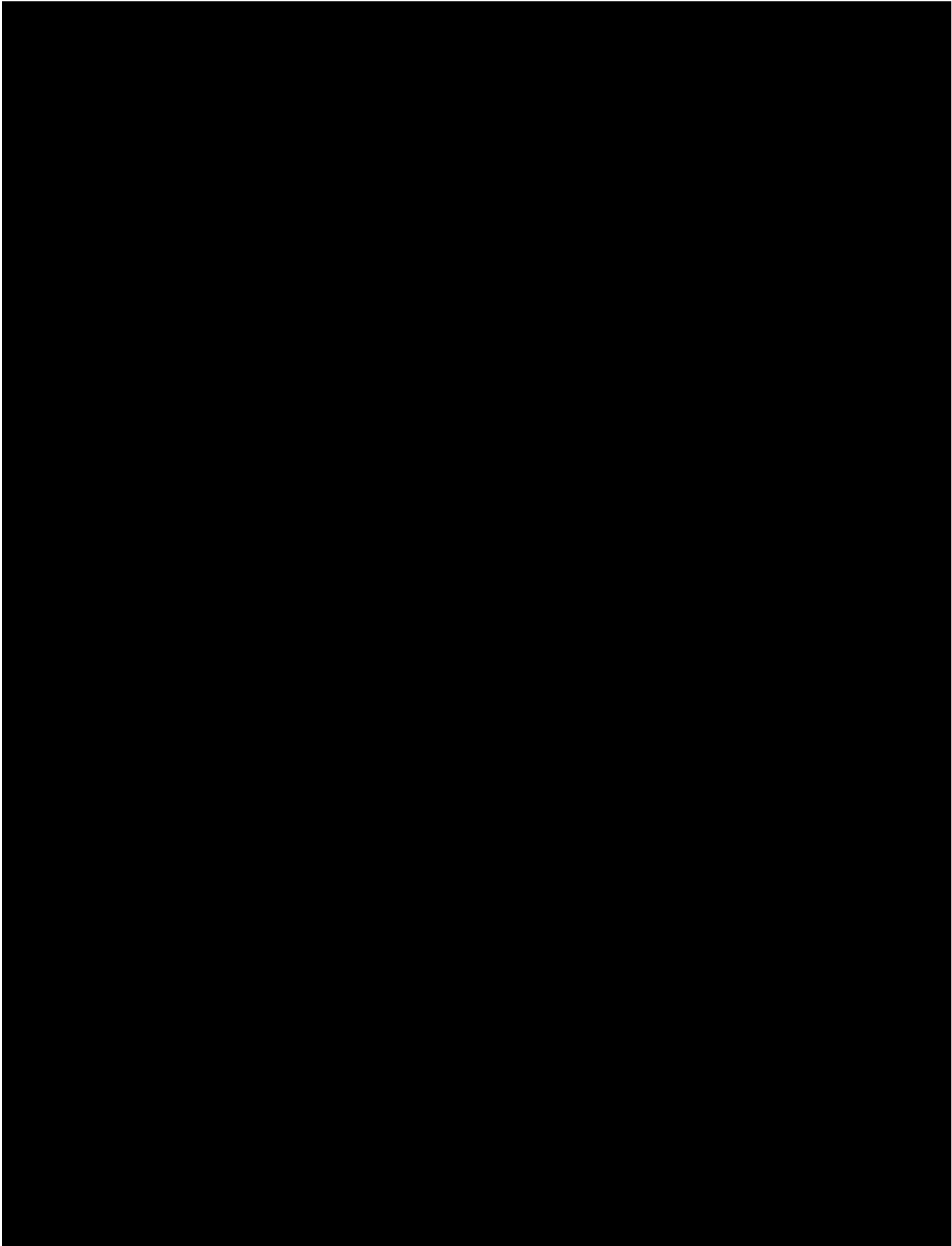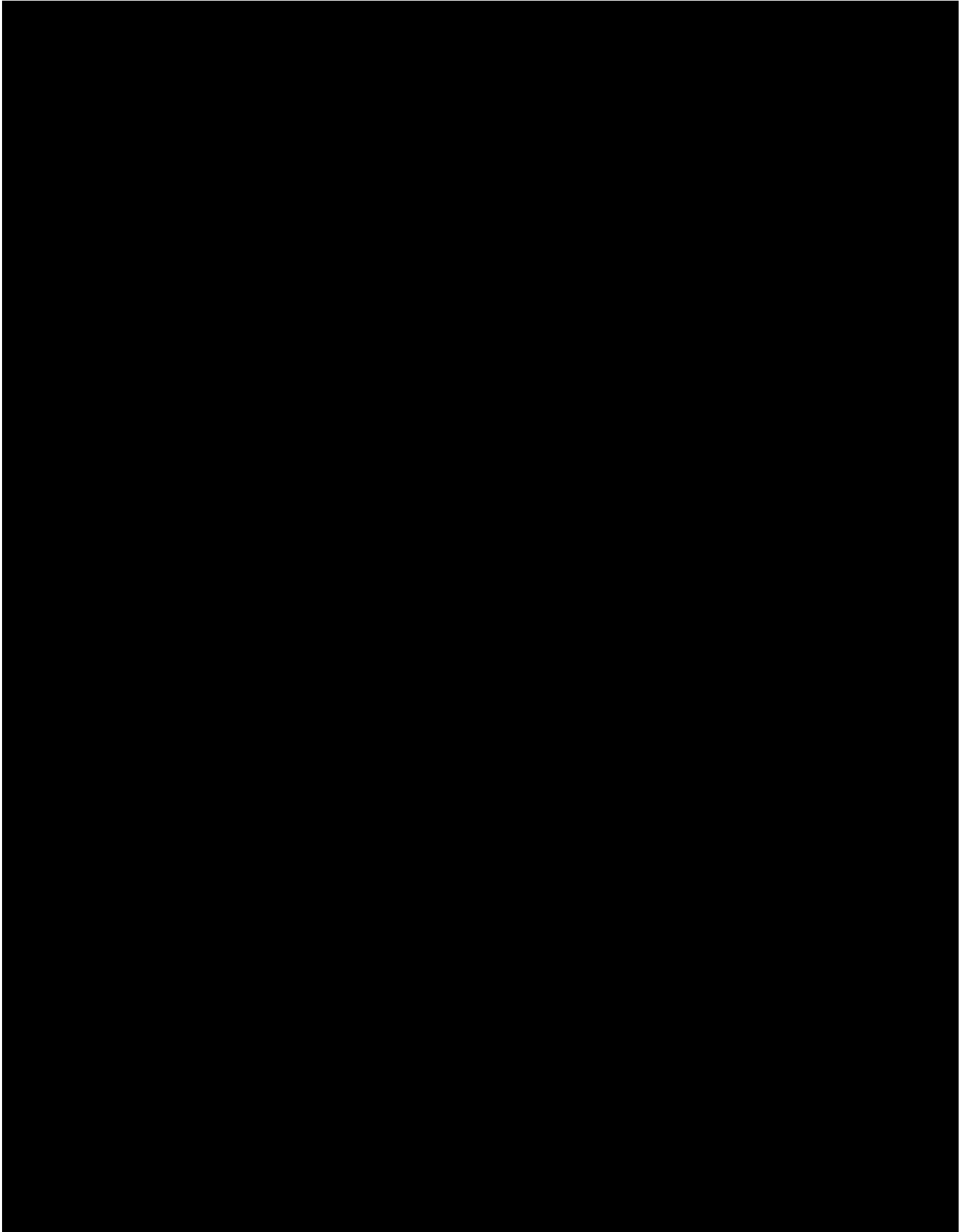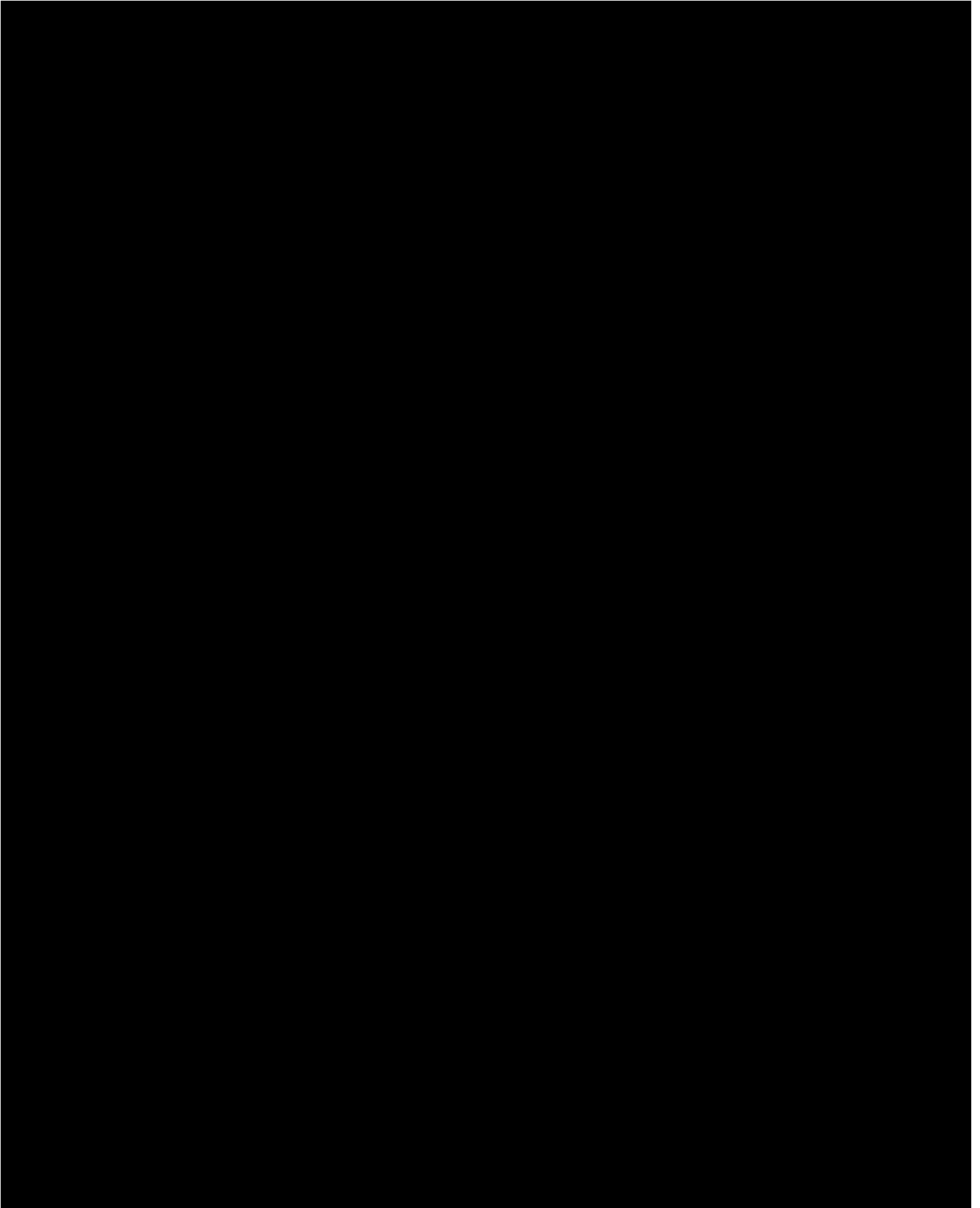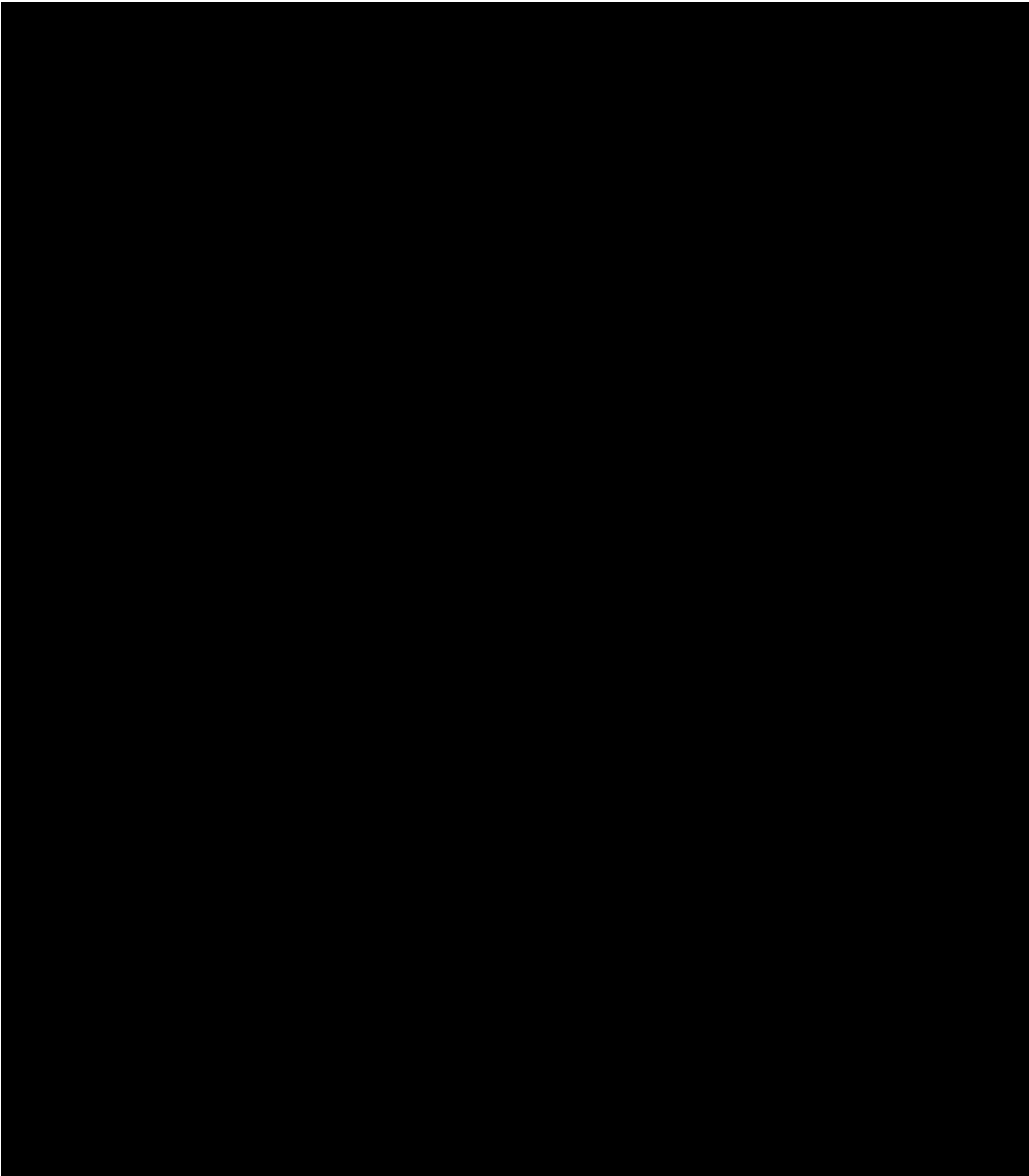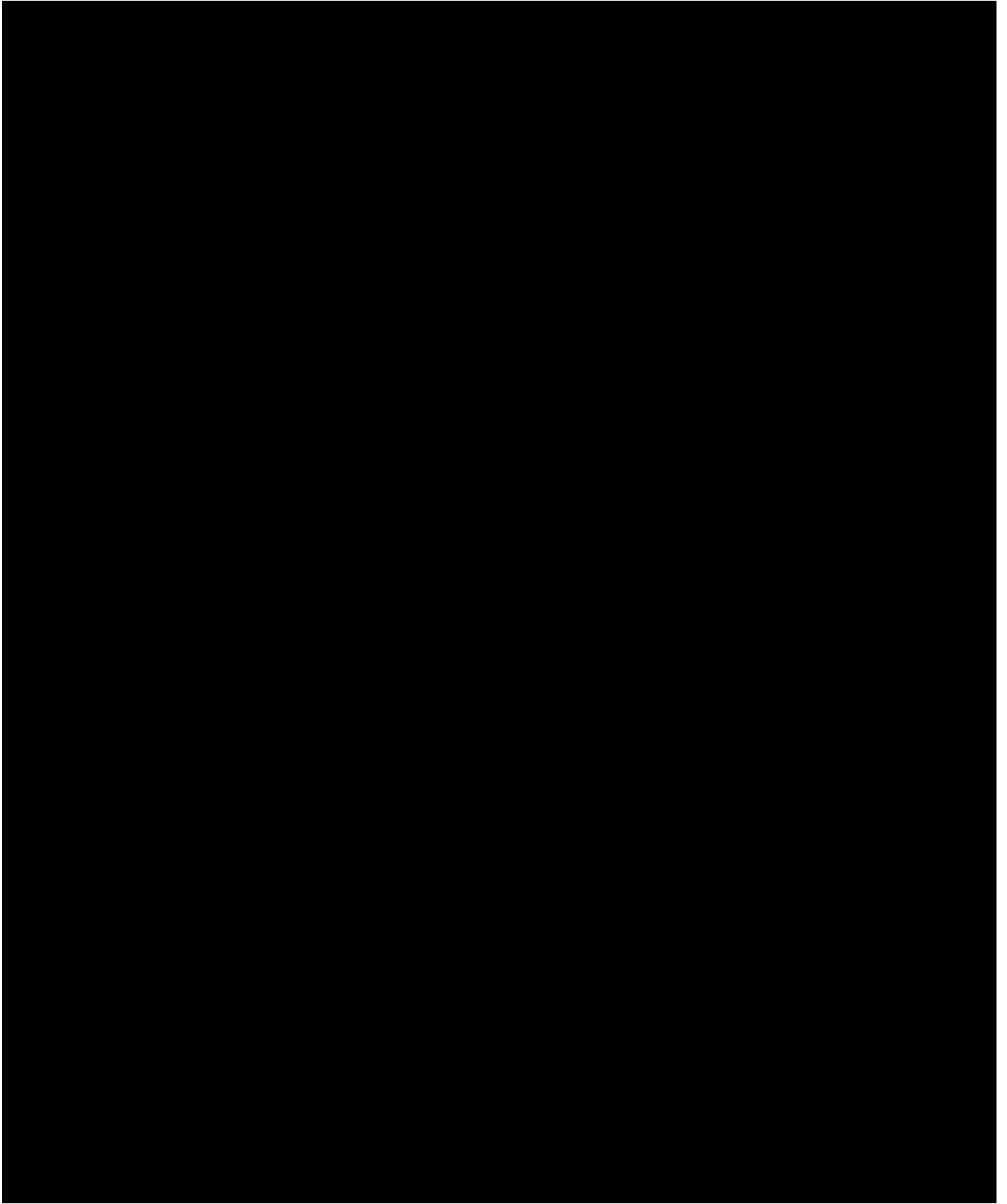
Exhibit 7

PARENT GUARANTEE
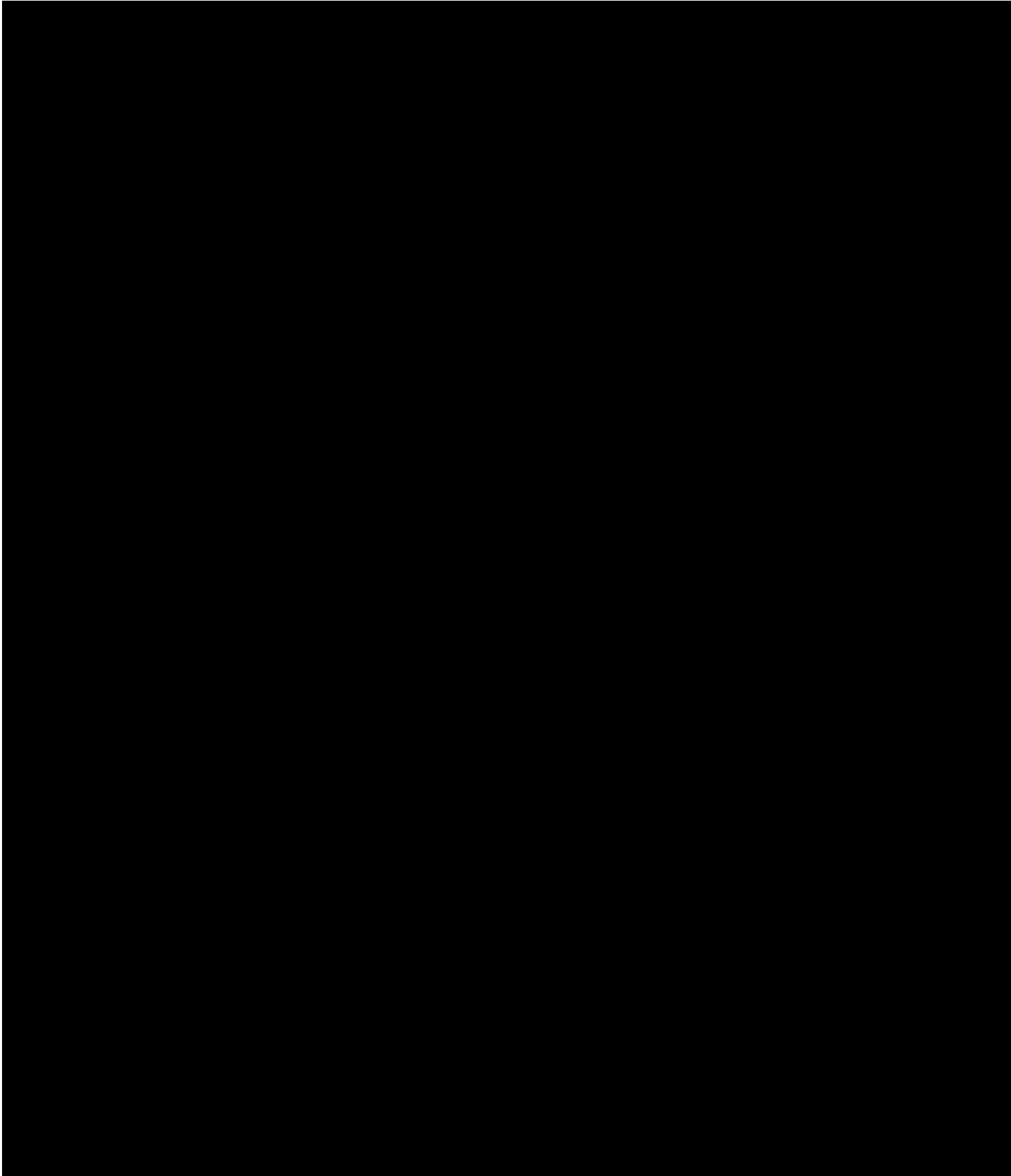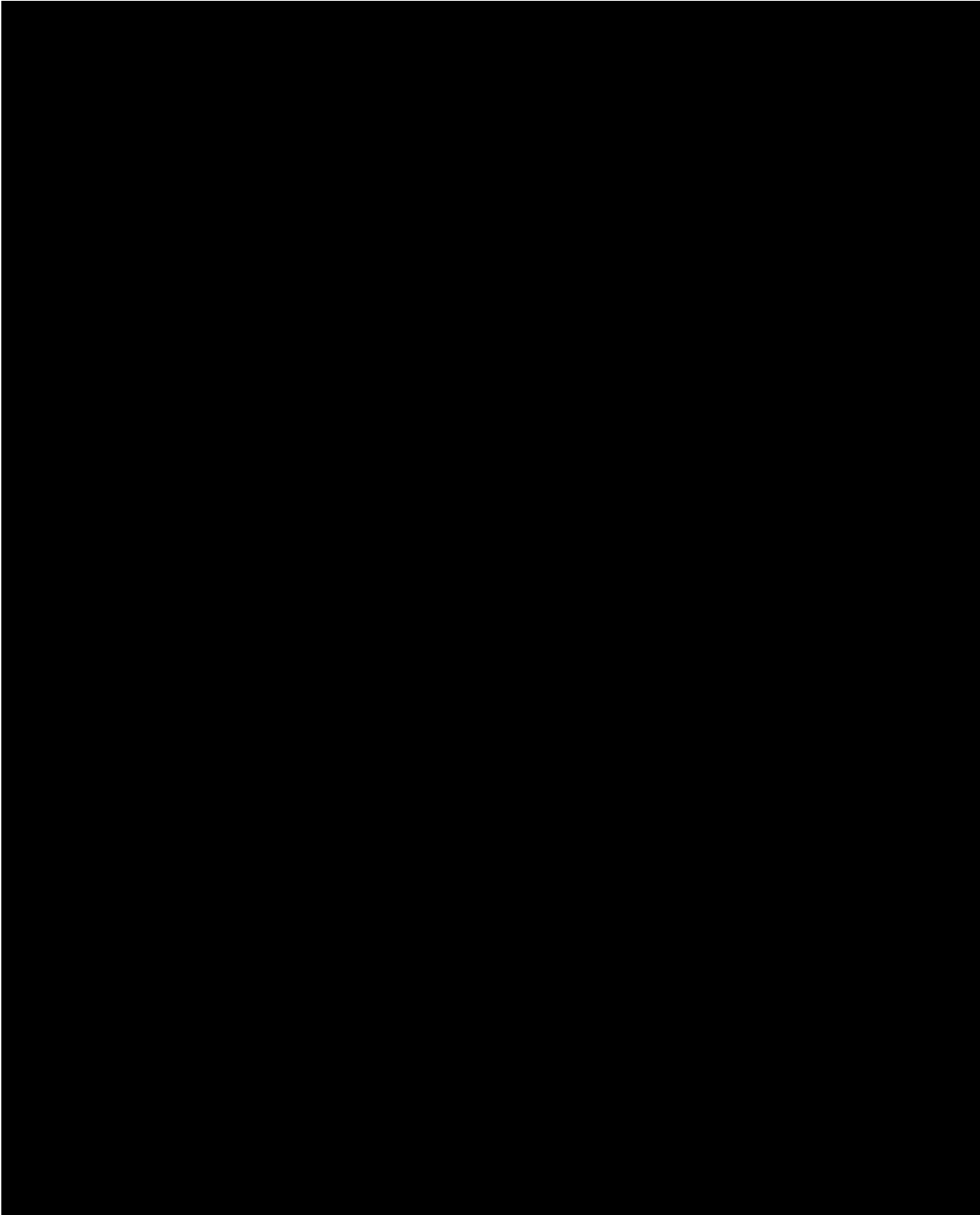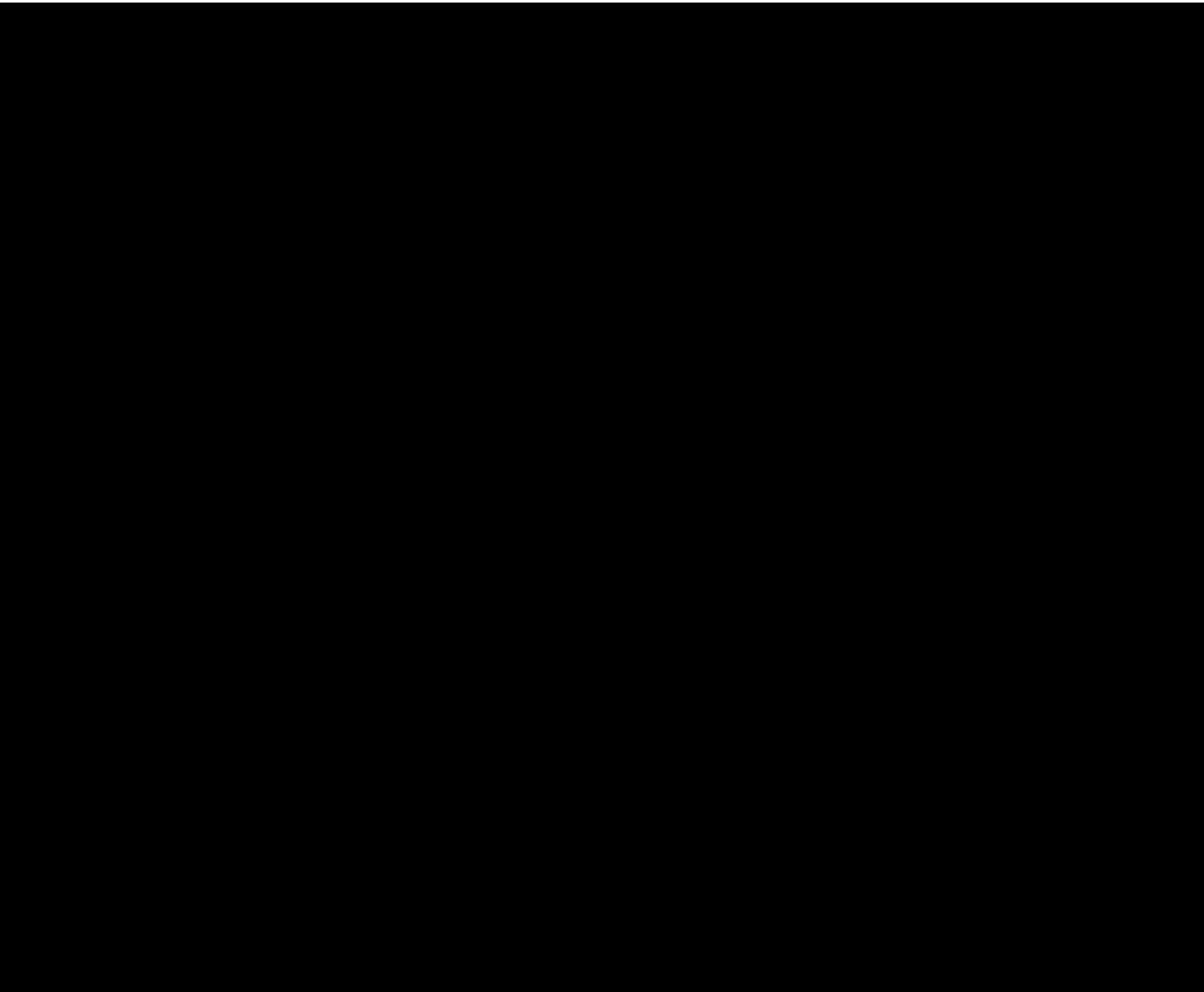
Exhibit 8
PUBLIC MEETING AND PUBLIC RECORDS DISCLOSURE PROCESS

Epic and City have negotiated a License, Support, and Hosting Agreement (the "Negotiated Agreement"), portions of which Epic asserts constitute, contain or reveal valuable trade secrets or other information belonging to Epic that is exempt from disclosure under the California Public Records Act and chapter 67 of the San Francisco Administrative Code (the "Sunshine Laws"). Accordingly, this Exhibit 8 sets forth the process for the disclosure of records pertaining to Epic under the Sunshine Laws, as agreed between the parties.

1. Epic will provide City a redacted version of the Negotiated Agreement from which Epic has removed information that it maintains is exempt from public disclosure under the Sunshine Laws ("Redacted Agreement").

2. Except as provided in Section 6 of this Exhibit 8, City agrees to not release (whether by pre-meeting posting or in response to a public records request) any version of the Negotiated Agreement other than the Redacted Agreement. In addition, City will inform the Board and any advisors to the Board regarding the portions of the Agreement that City has agreed to not release, as well as the requirements of this Exhibit 8.

3. If City receives a public records request pertaining to Epic (an "Epic Request") marked "Immediate Disclosure Request" in the manner described in Sec. 67.25 of the City of San Francisco Administrative Code for records pertaining to Epic not covered by section 2, City may disclose any redacted records it deems responsive ("Responsive Records") that Epic has previously provided to City. If the request seeks Responsive Records that Epic has not previously reviewed and redacted, City will use its best efforts to notify Epic of the request by immediately calling Epic's main reception line (608-271-9000), requesting to speak with an Epic attorney, referencing this section of this Exhibit 8 and apprising the attorney of the deadline by which the City must respond to the request. If Epic informs City in advance of that deadline that Epic intends to assert that Responsive Records are exempt from disclosure, then the department that received the Immediate Disclosure Request will withhold the records and if necessary will consult with the City Attorney's office regarding City's obligations under this Exhibit 8.

4. If City receives an Epic Request not covered by Sections 2 or 3 of this Exhibit 8, City will use best efforts to notify Epic by promptly providing a copy of such request and any Responsive Records, as well as the date by which the City must respond. If Epic, within two business days of receiving such notice, notifies City that Epic intends to assert that Responsive Records are exempt from disclosure, the department that received the request will withhold the records and if necessary will consult with the City Attorney's office regarding City's obligations under this Exhibit.

5. Epic's failure to timely (i.e., within the times stated in sections 3 and 4) notify the City that it will be asserting exemptions from disclosure shall be deemed Epic's consent to the City's disclosure of the Responsive Records. Otherwise, Epic will, promptly provide City a redacted version of the Responsive Records ("Redacted Records) from which Epic has

removed information that it maintains is exempt from public disclosure ("Redacted Records"), and City will release only those Redacted Records.

6. If any third-party initiates an action in Superior Court to compel the production of records not disclosed by reason of City following the agreed requirements of this Exhibit 8, Epic agrees to defend, indemnify, and hold City harmless from such third-party's claims, demands, causes of action, fees, costs, and directly and proximately caused damages of any kind, including any award of attorneys' fees. City will not release any Responsive Documents until such action is finally resolved (including, if pursued by Epic, the exhaustion of any appeals or other means to challenge the outcome of the initial action).

7. Epic agrees that it will not sue City for damages in connection with disclosure by the City of information that Epic asserts is exempt from disclosure, so long as such disclosure was inadvertent and the City uses reasonable efforts to mitigate the effects of the inadvertent disclosure and/or uses reasonable efforts to retrieve the information as appropriate.

8. Upon Epic's signature, this Agreement is effective as of the date of City's signature below.

CITY

EPIC SYSTEMS CORPORATION; EPIC HOSTING; and EPIC CITY GOVERNMENT, LLC

Date: Date:

By:_____

Barbara A. Garcia, MPA
Director of Health
San Francisco Department of Public Health

By:_____

Elias C. Selinger
Associate General Counsel

Approved as to Form:

Dennis J. Herrera
City Attorney

By:_____
Louise S. Simpson
Deputy City Attorney

Exhibit 9

San Francisco Board of Supervisors Ordinance

[The San Francisco Board of Supervisors Ordinance is to be added to the Agreement as this Exhibit 9 once it is available following the Effective Date of the Agreement.]

Care Everywhere Addendum

The following provisions apply to Your use of Care Everywhere to exchange patient information with Epic systems of other Epic customers who also license Care Everywhere ("Care Everywhere Customers" or "Care Epic Customers") and to exchange basic continuity of care information meeting the supported form with non-Epic systems, except as otherwise noted below. For the sake of clarity, the subset of Care Everywhere functionality supporting such exchanges between Epic systems was previously referred to as "Care Epic" and the subset of Care Everywhere functionality supporting such exchanges between Epic and non-Epic systems was previously referred to as "Care Elsewhere." References to Care Epic or Care Elsewhere in the Rules of the Road and Governing Council Procedures will be read in that context.

1. **Termination.** You may at any time disconnect from the Care Everywhere Network (referred to in the Governing Council Procedures as the CE Network or Network) or from any specific connection with a non-Epic system (each, a "Non-Network Connection"), thereby discontinuing all communications with all other Care Everywhere Customers and all Non-Network Connections or with that Non-Network Connection, respectively, and You will inform Epic of such disconnection as soon as possible under the circumstances, but in no event more than one (1) business day thereafter.

2. **Requirements.**
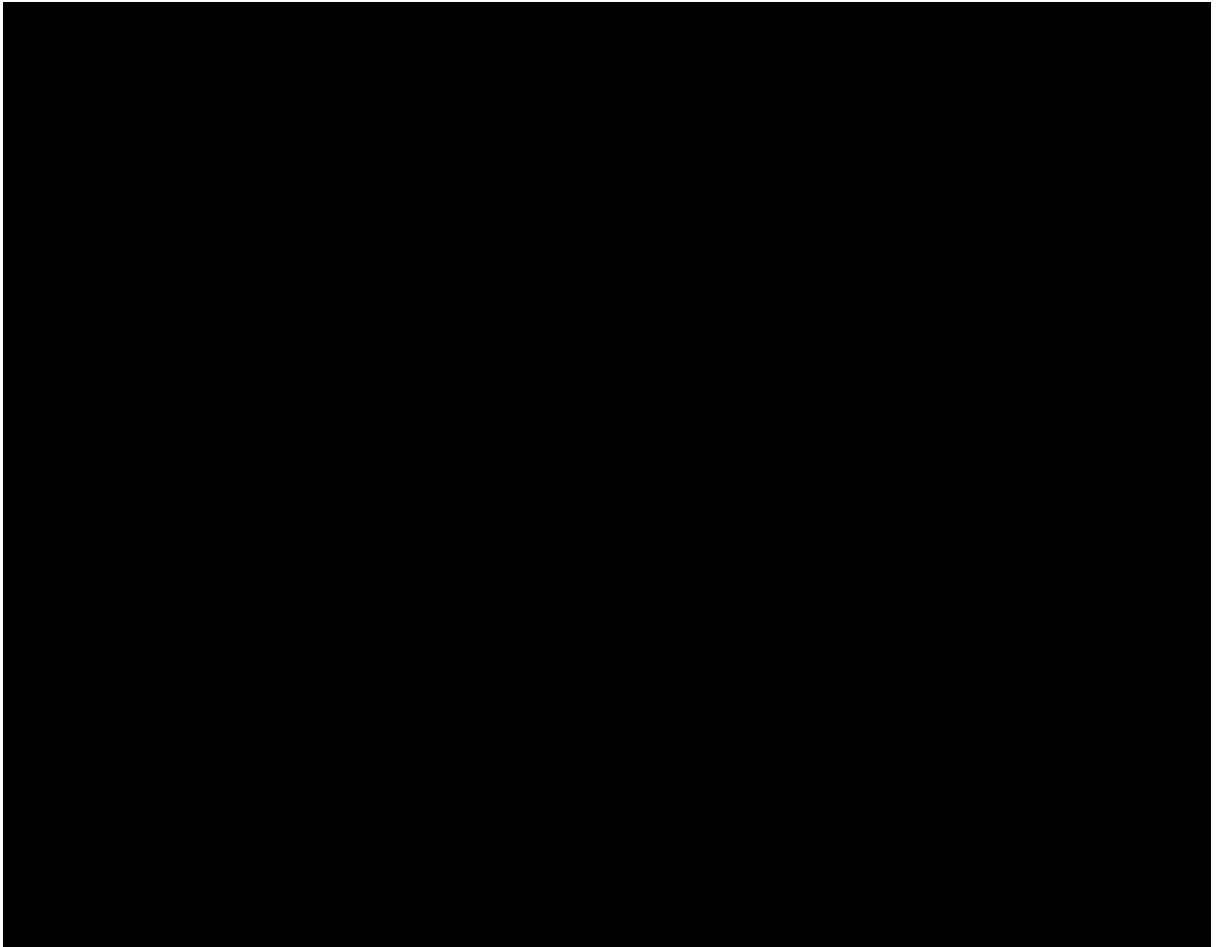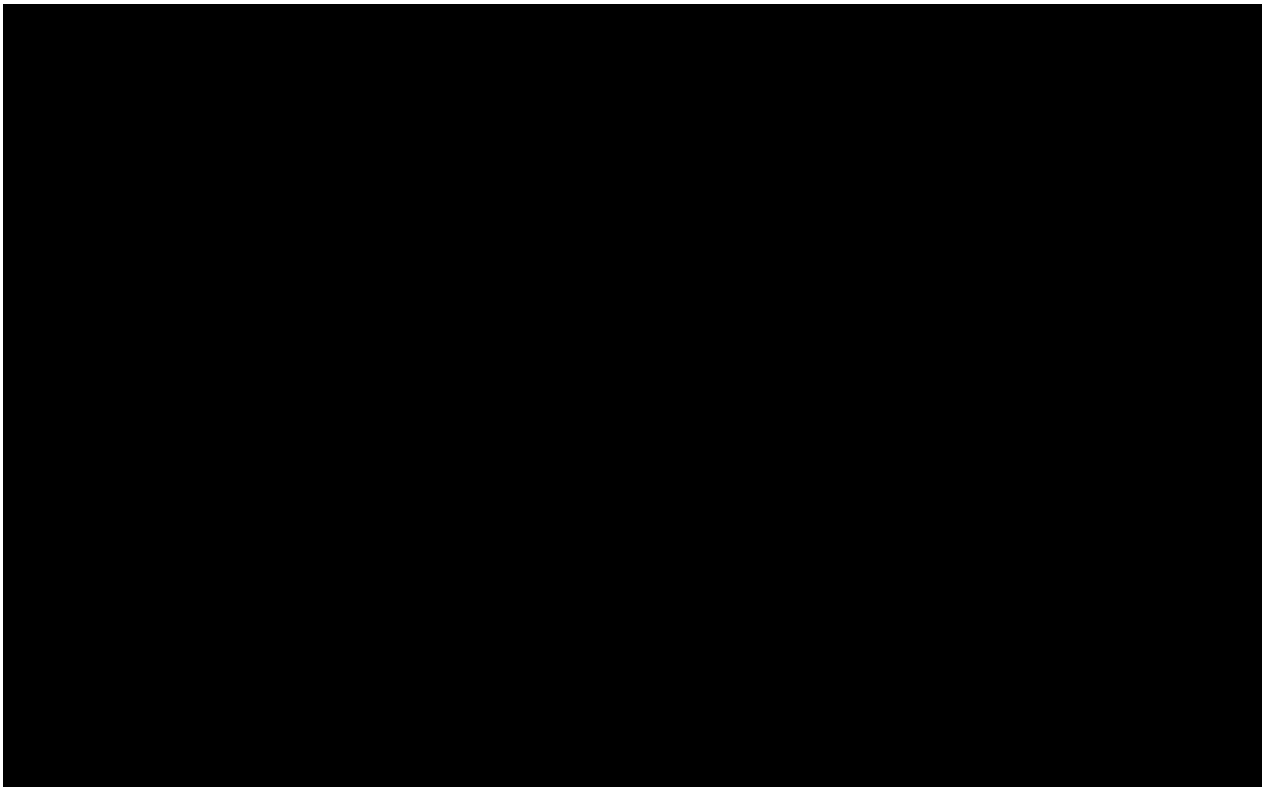
3. Indemnification Relating to Oversight Activities.
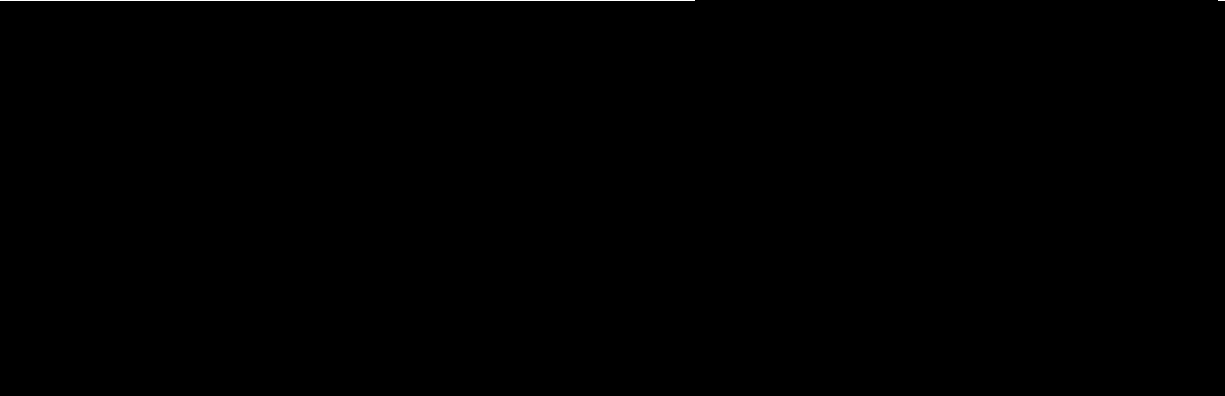
Therefore, to the extent permitted by the law applicable to You, You agree to hold harmless, indemnify, and defend the Governing Council (and to the extent Epic is providing any Oversight Activities, Epic), and each of their officers, employees, contractors, and agents (collectively the "Indemnitees") from and against any Claim brought by You, Your End Users or Your Patients asserted against the Indemnitees or any of them, arising out of, or in any way connected with the Oversight Activities including without limitation claims based on an Indemnitees' negligence.
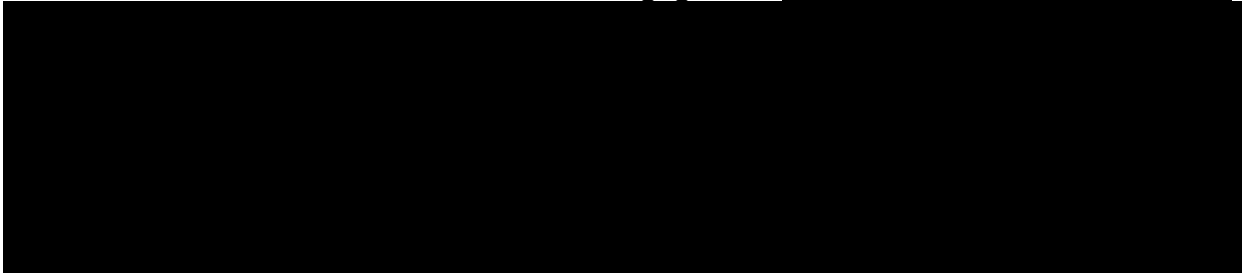
4. Authorization.
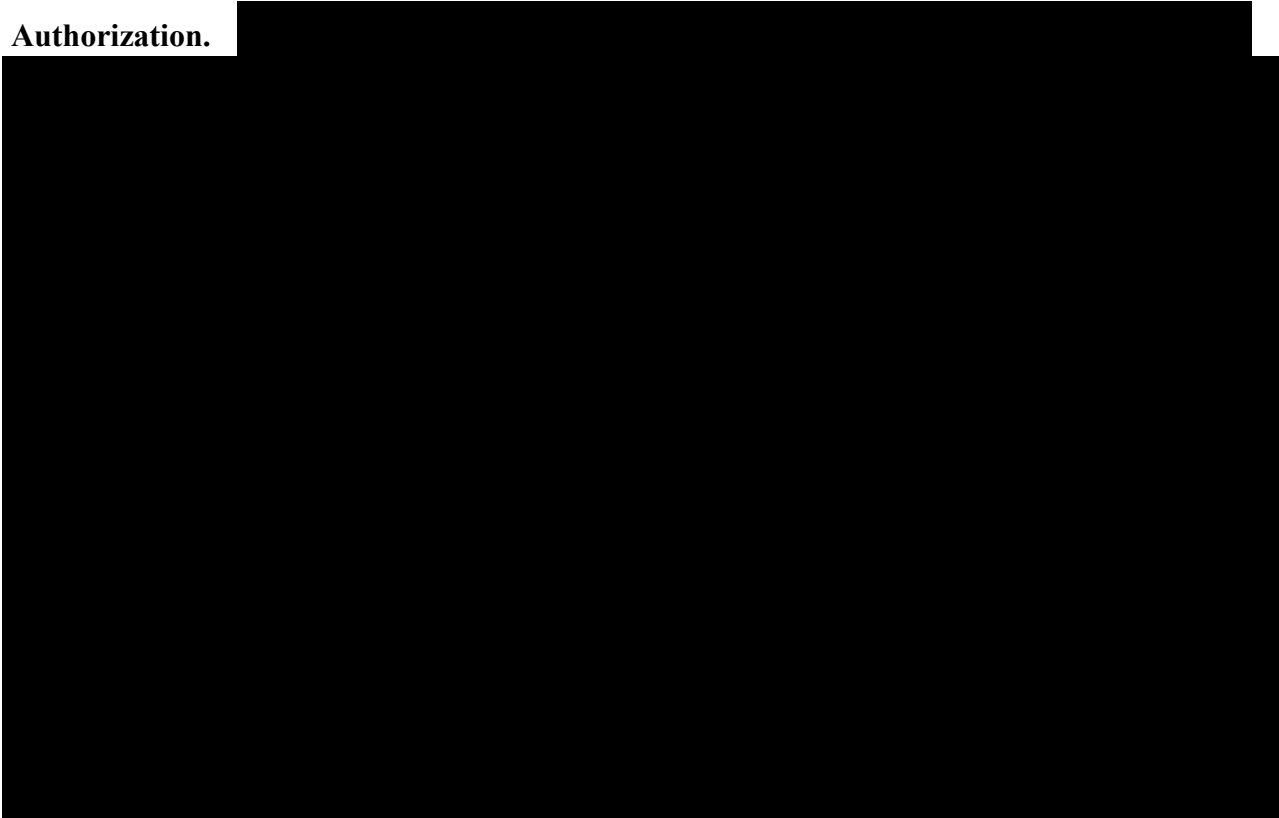
Exhibit A
Rules of the Road for the Care Everywhere Network
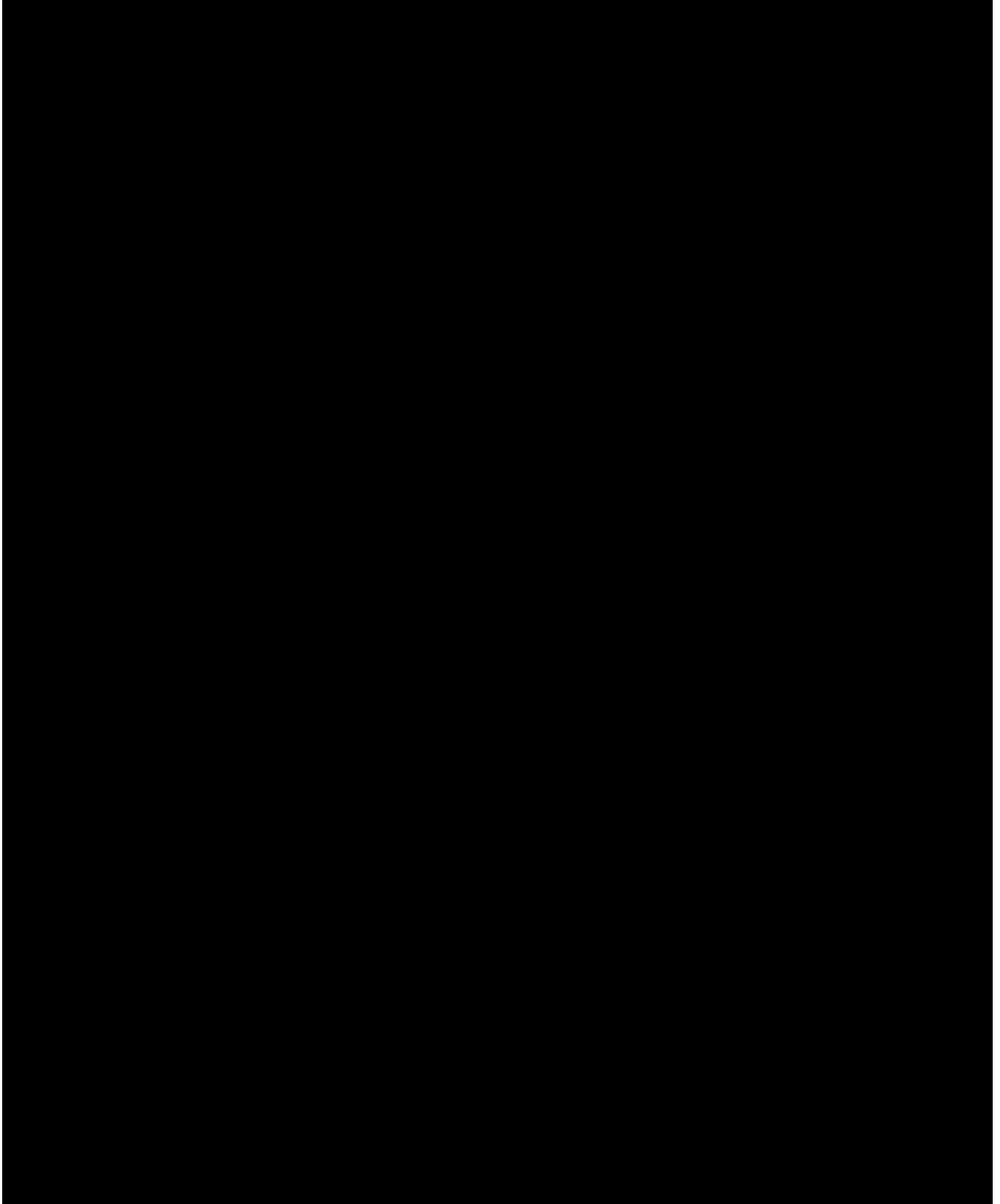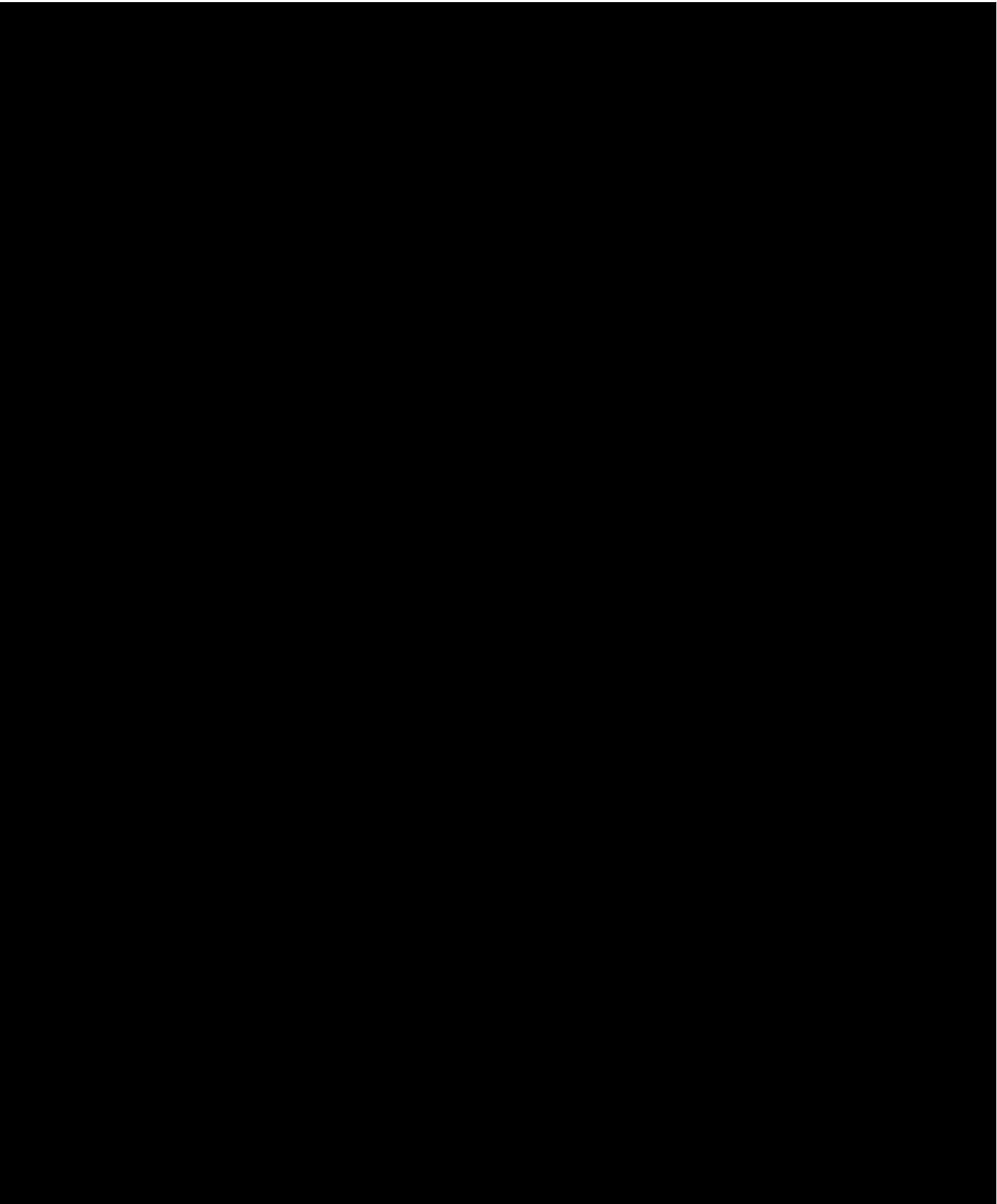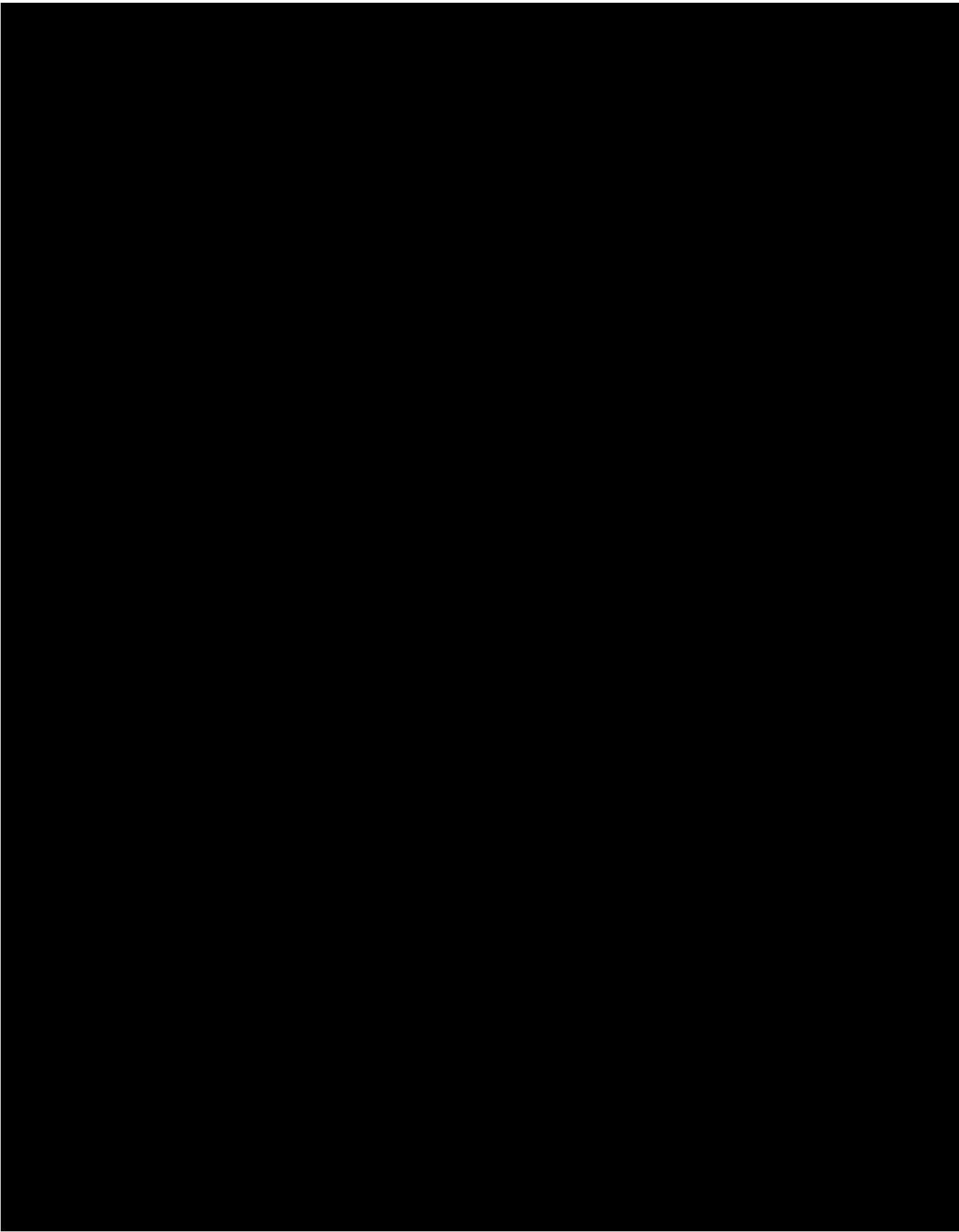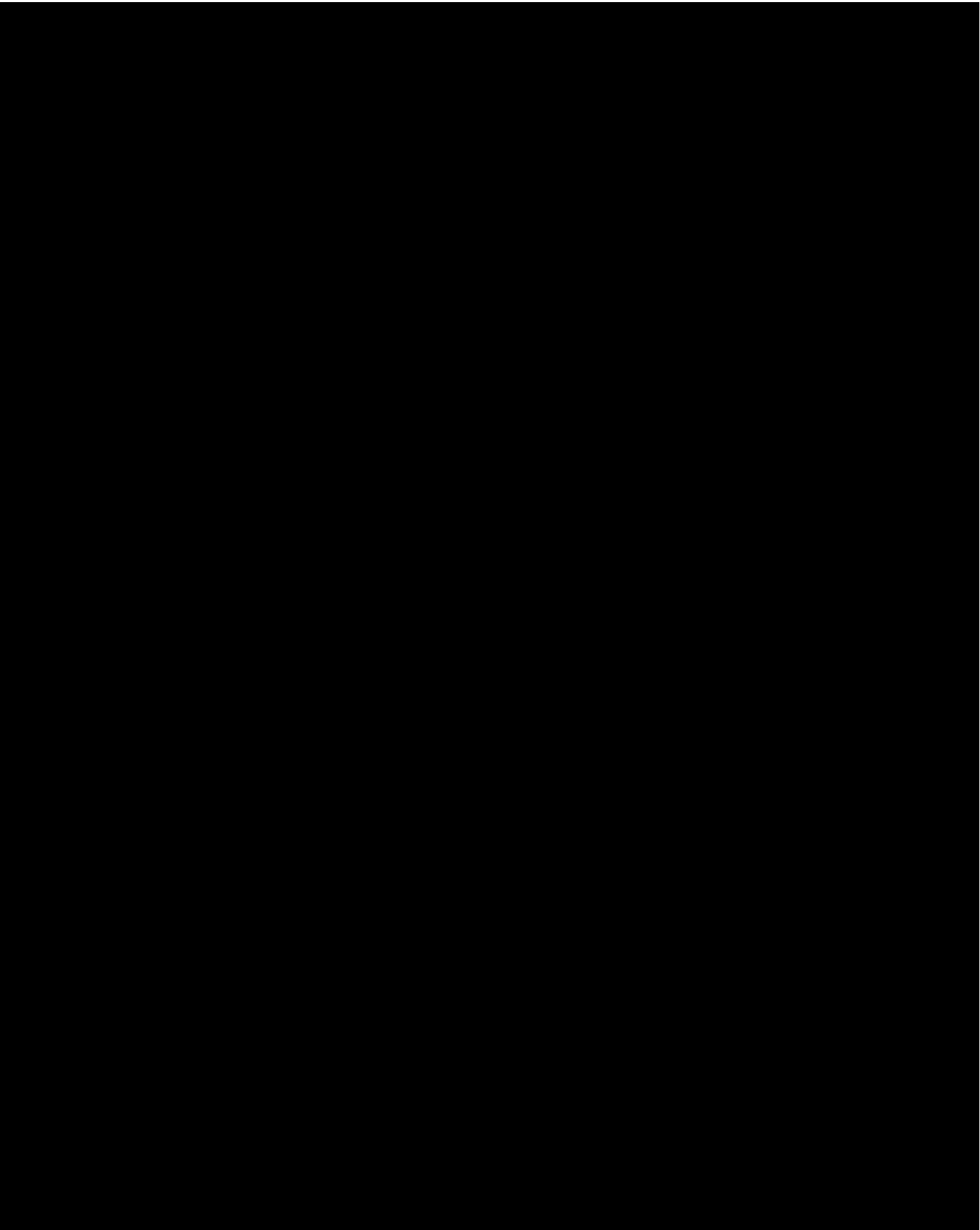
Appendix 1 to the Rules of the Road for Care Everywhere Network
Provisions Specific to Organizations Located in the Netherlands
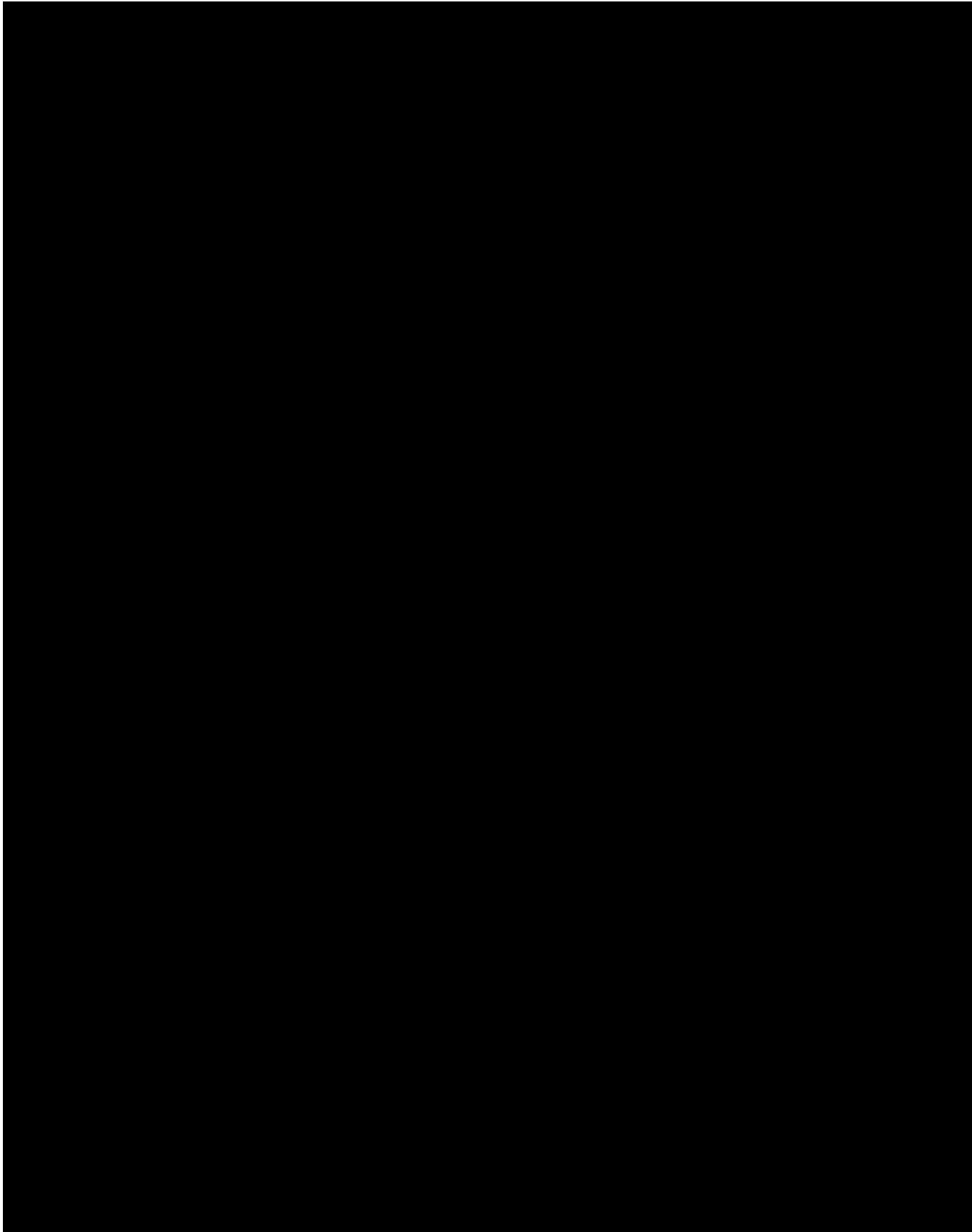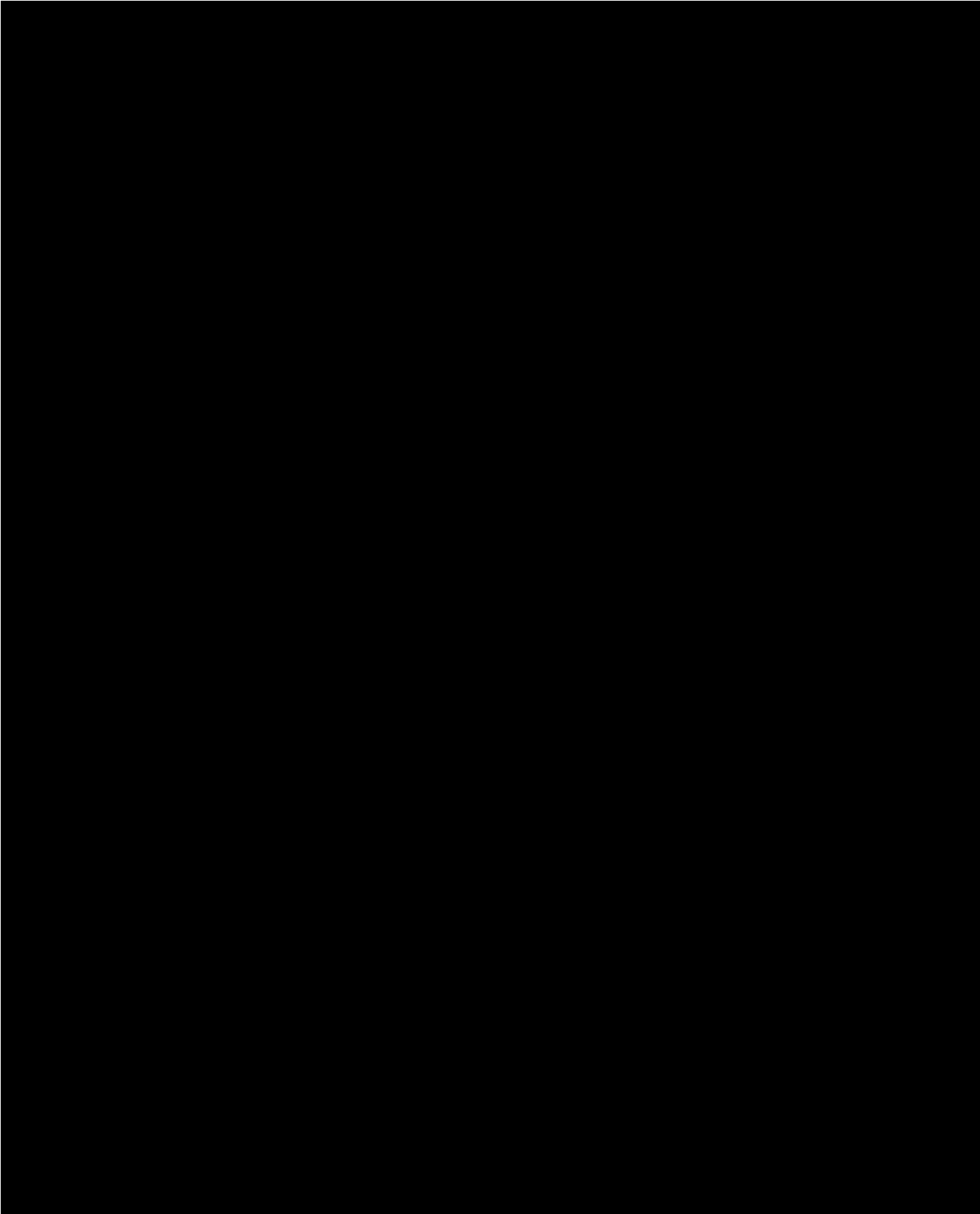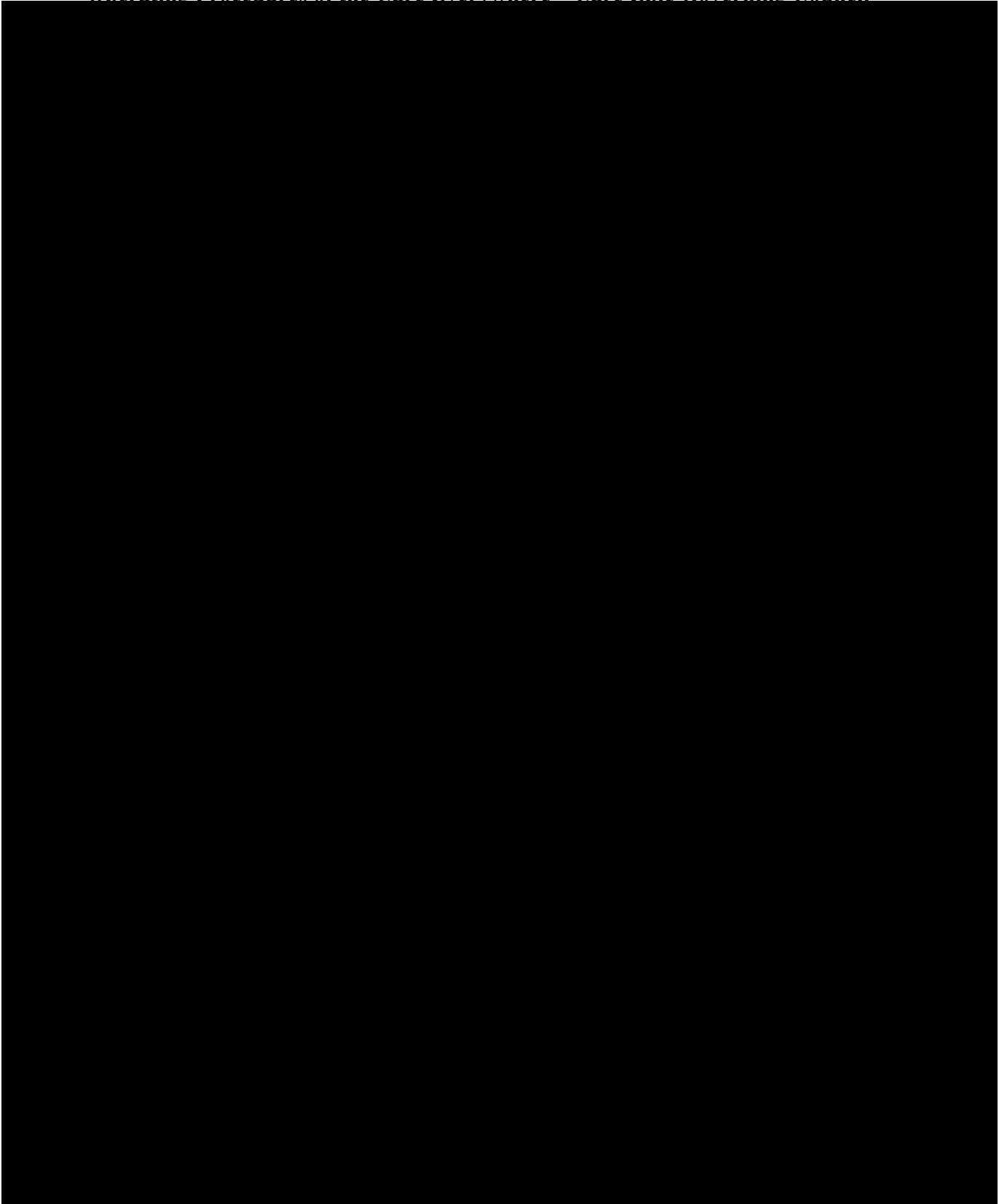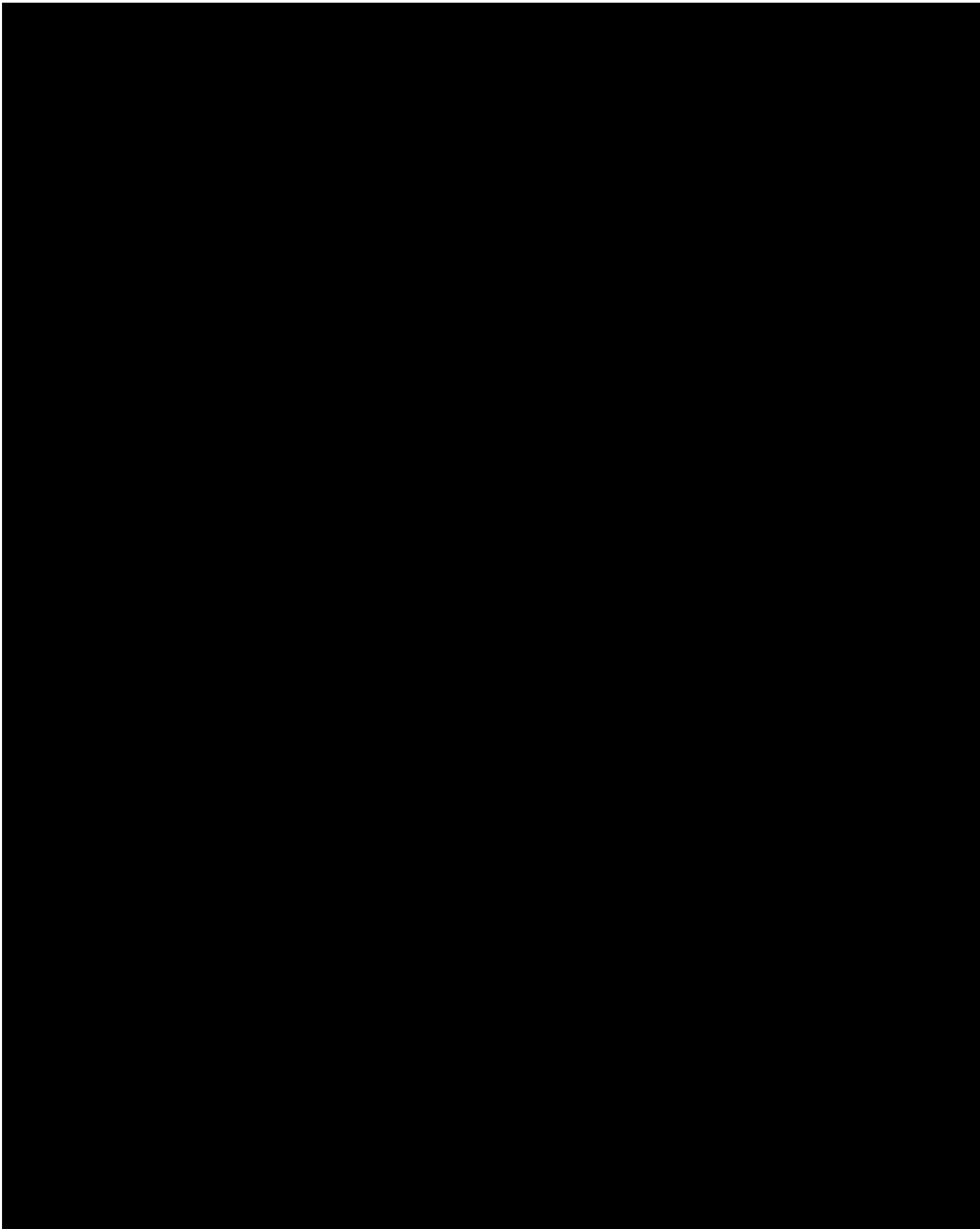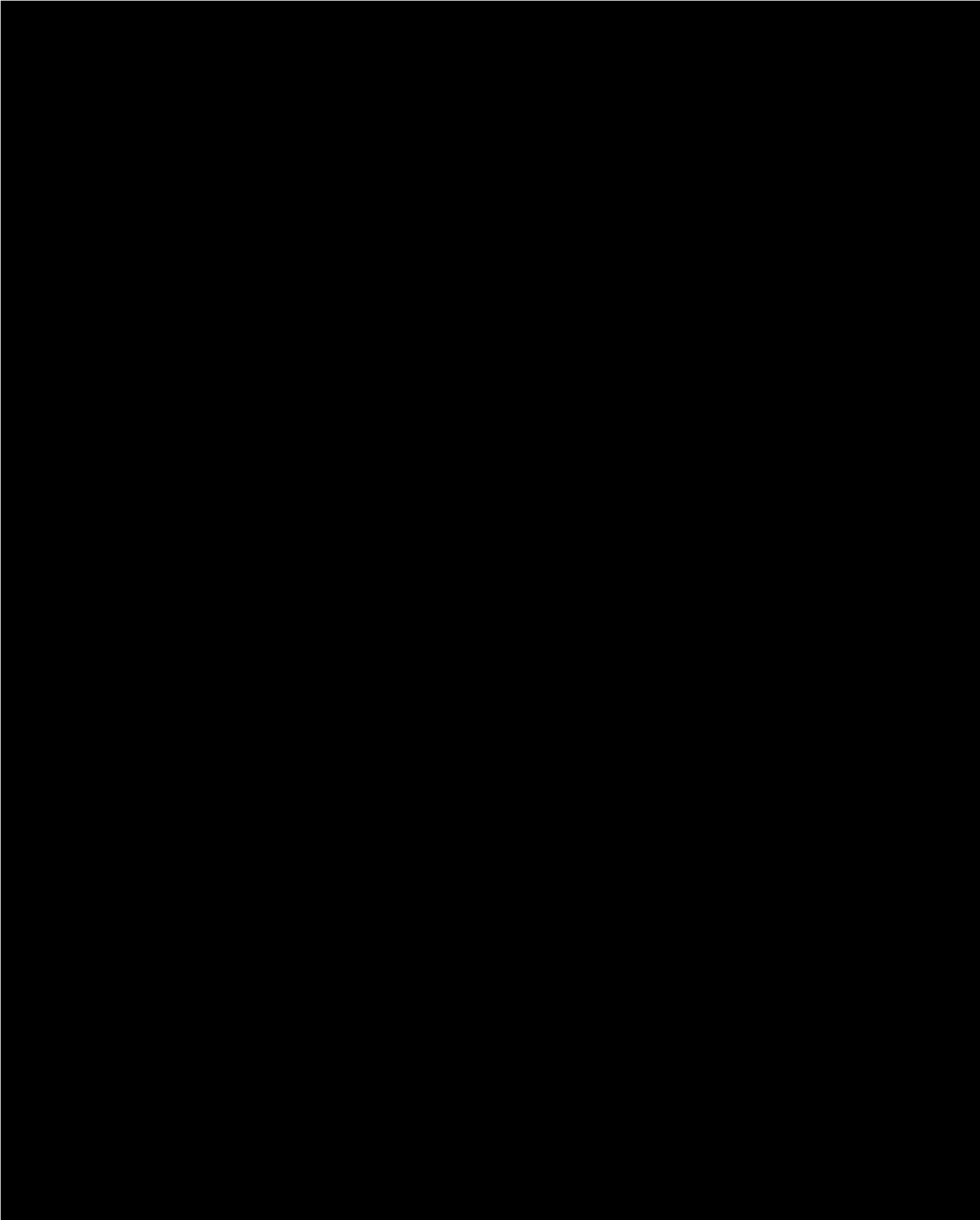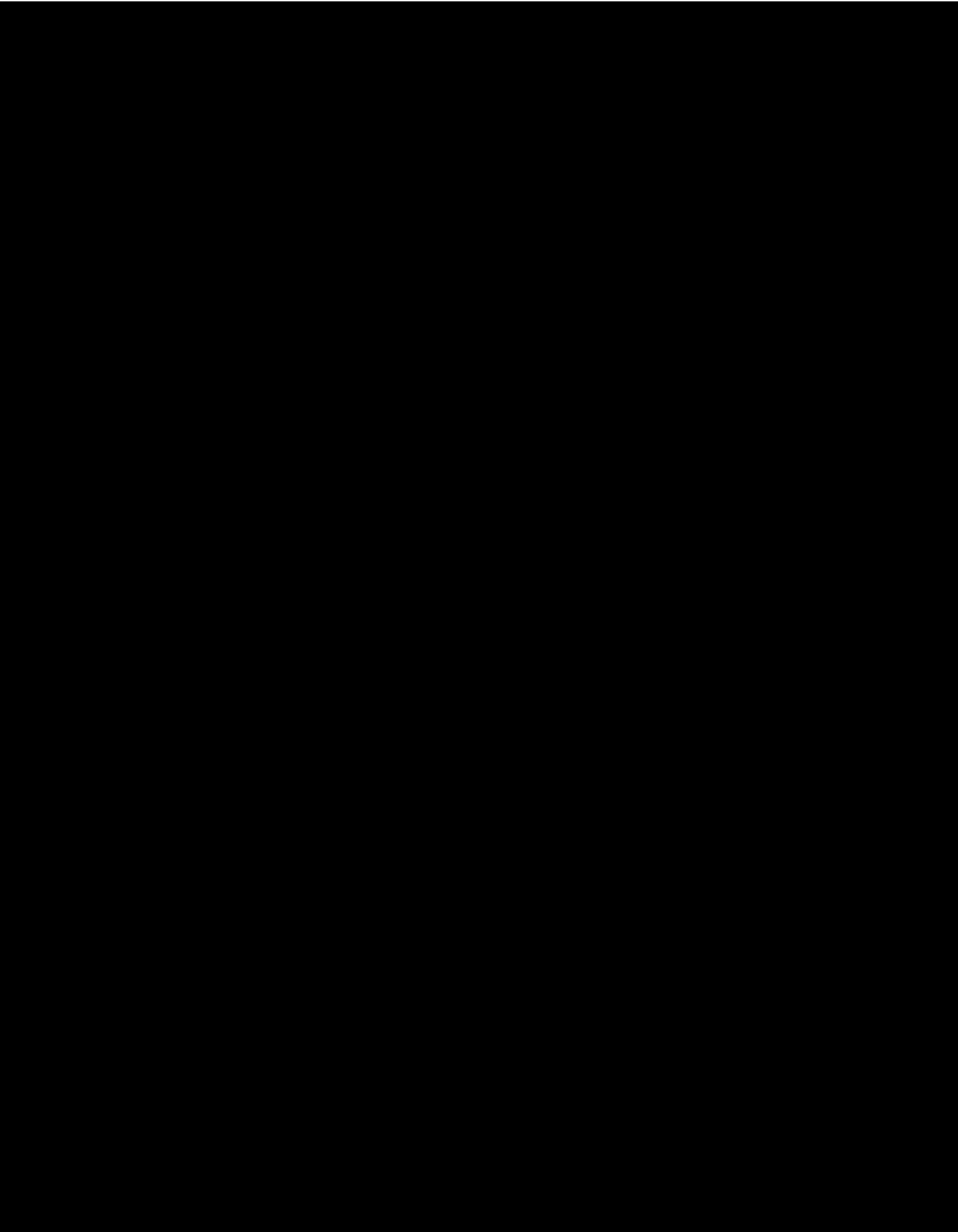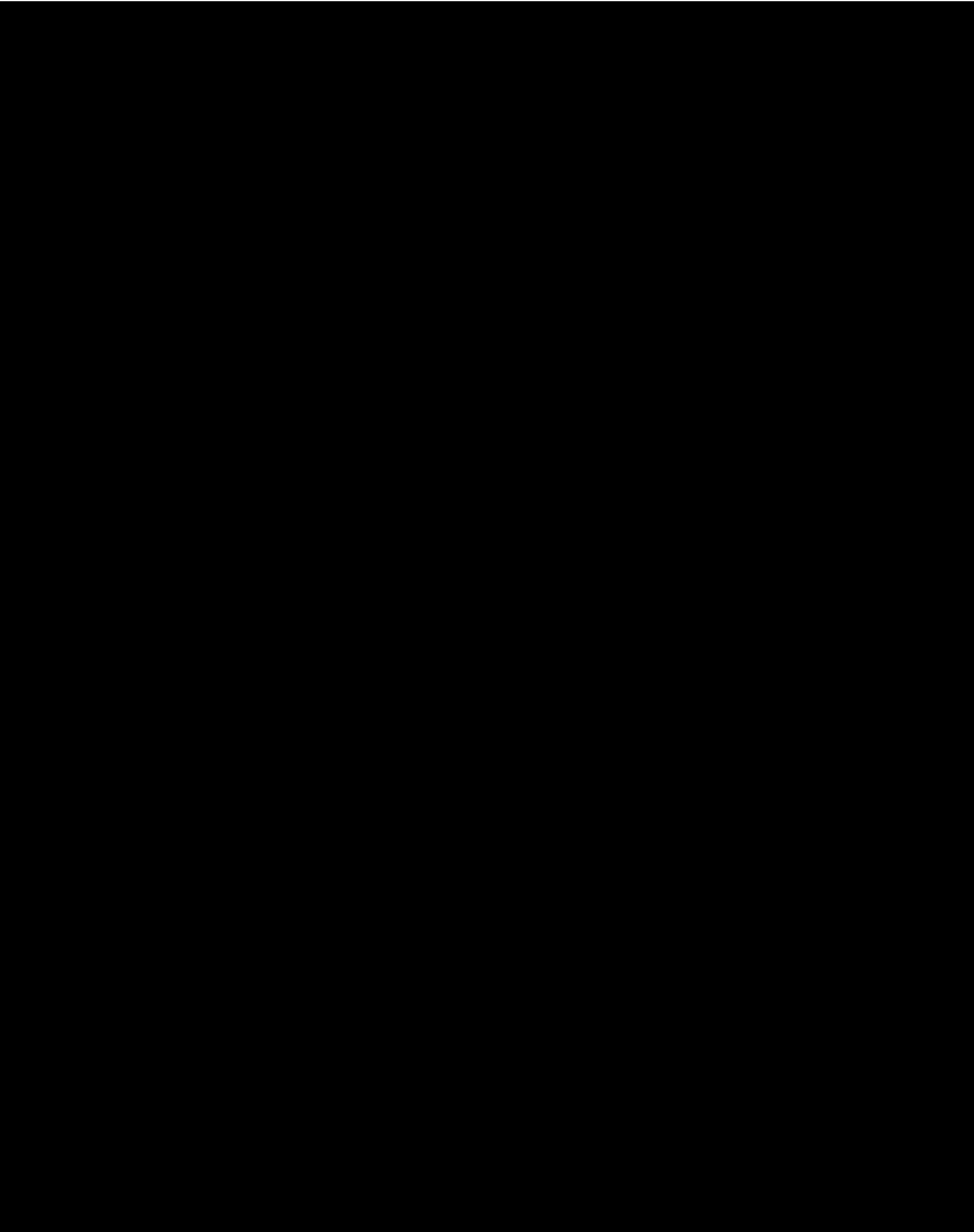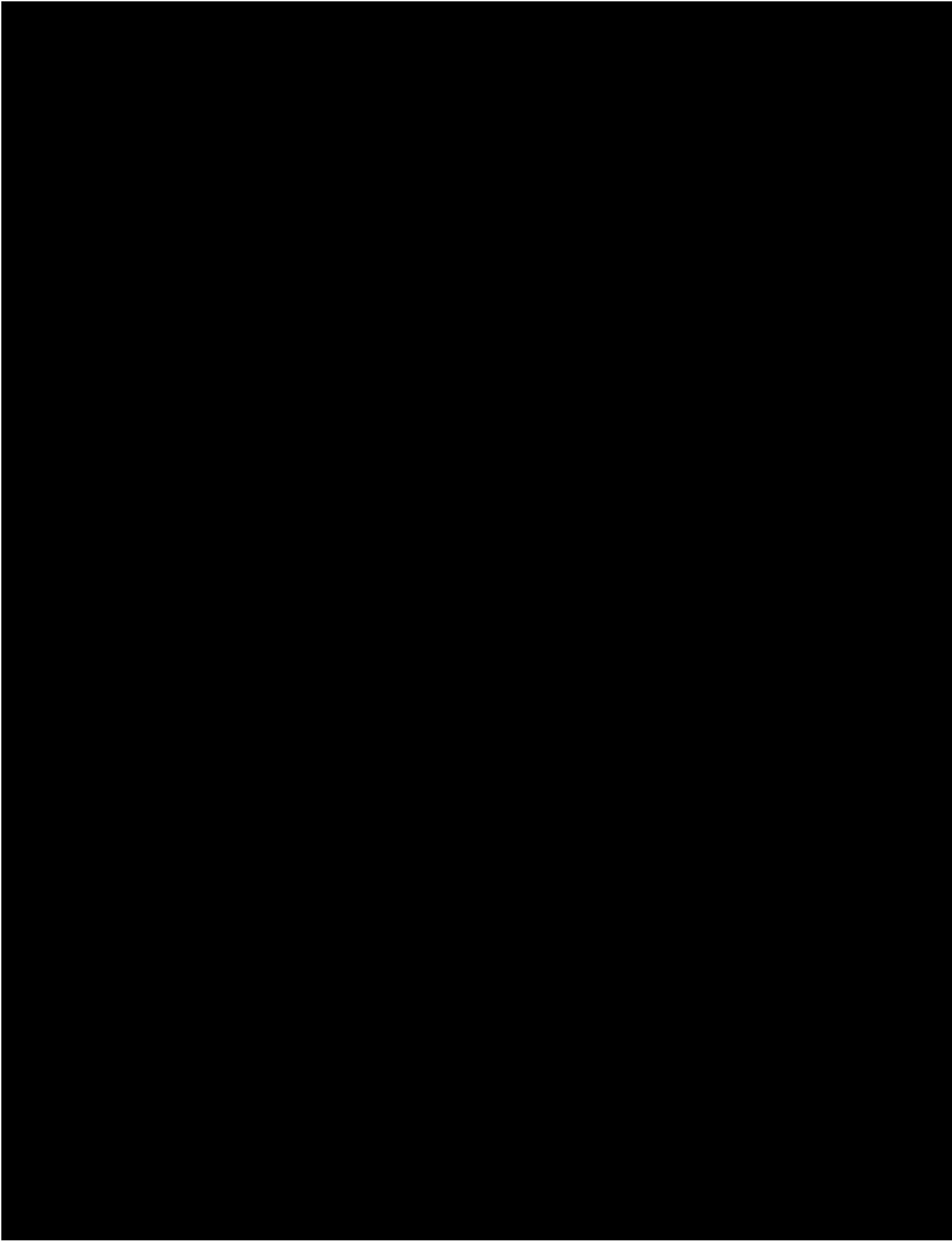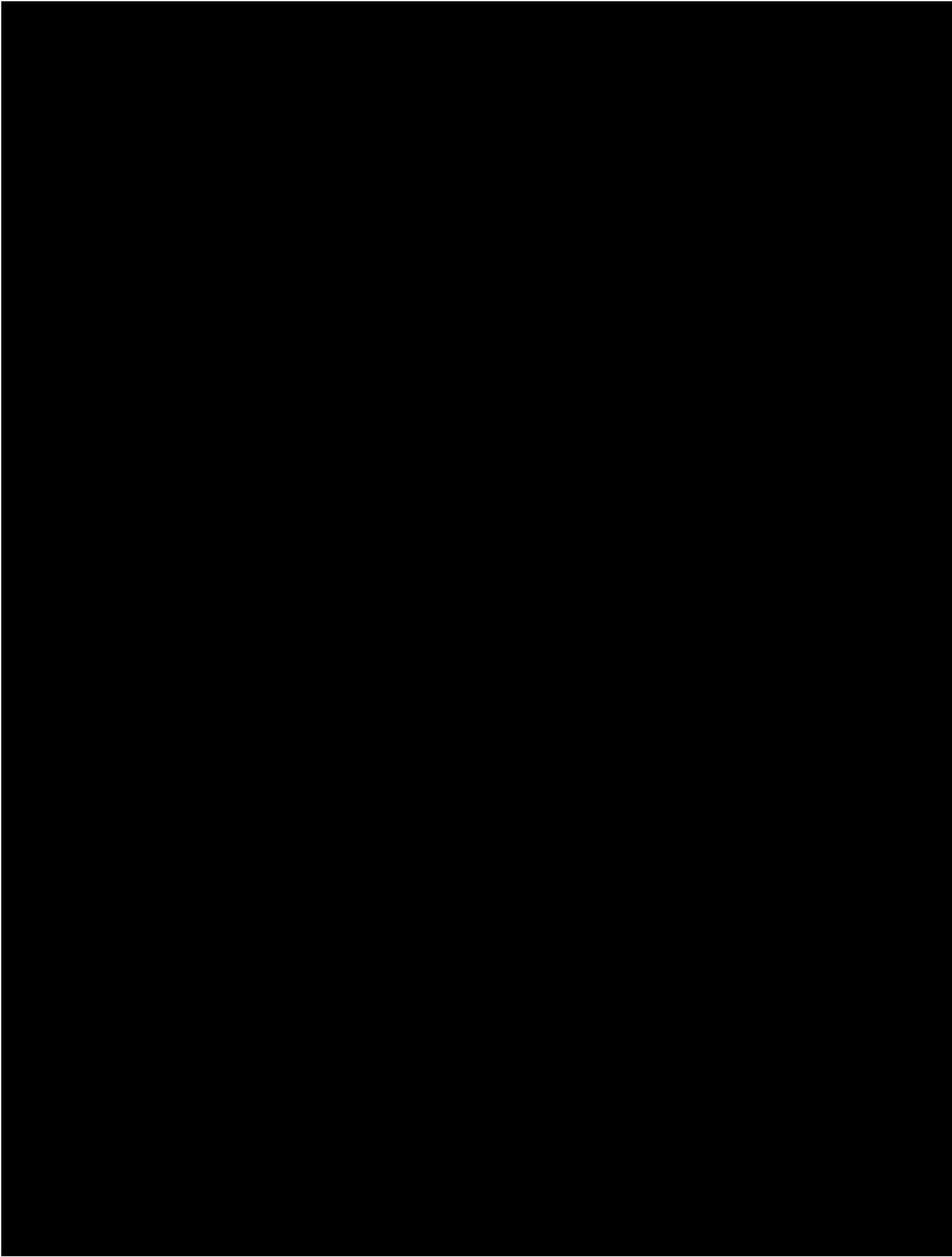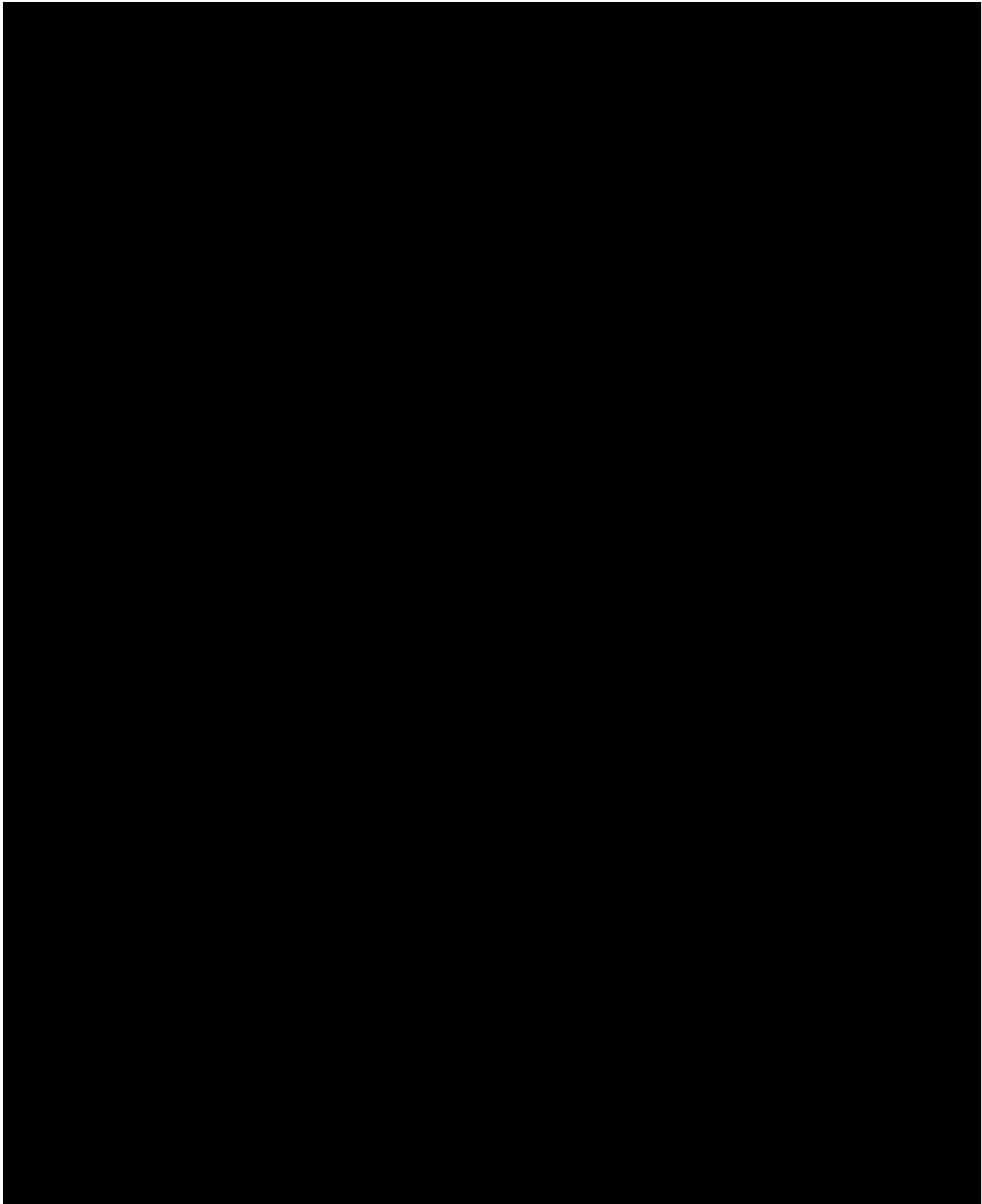
Attachment A
Care Everywhere Grievance Process Flow Diagram
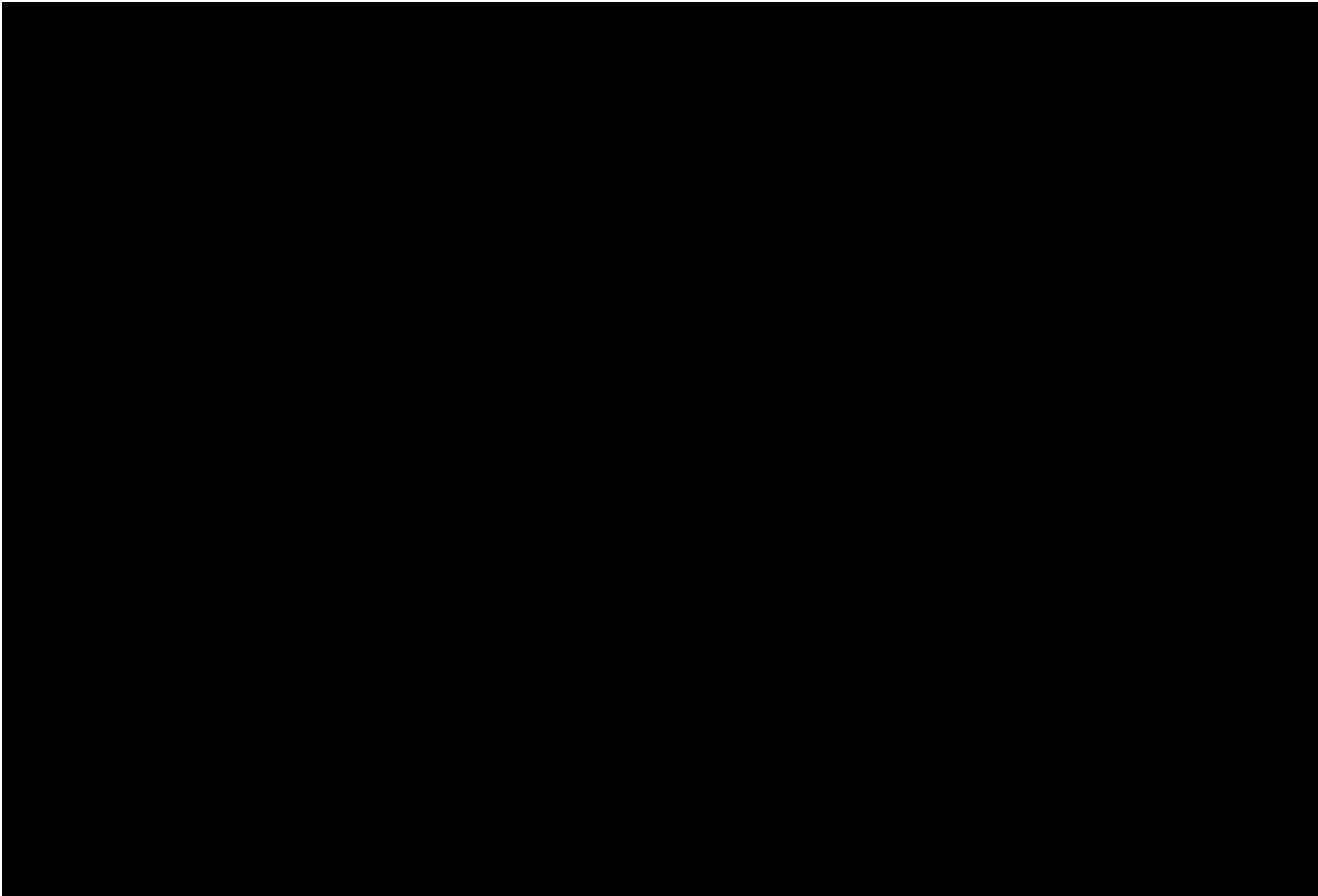
Attachment B
Care Everywhere Grievance Claim Form
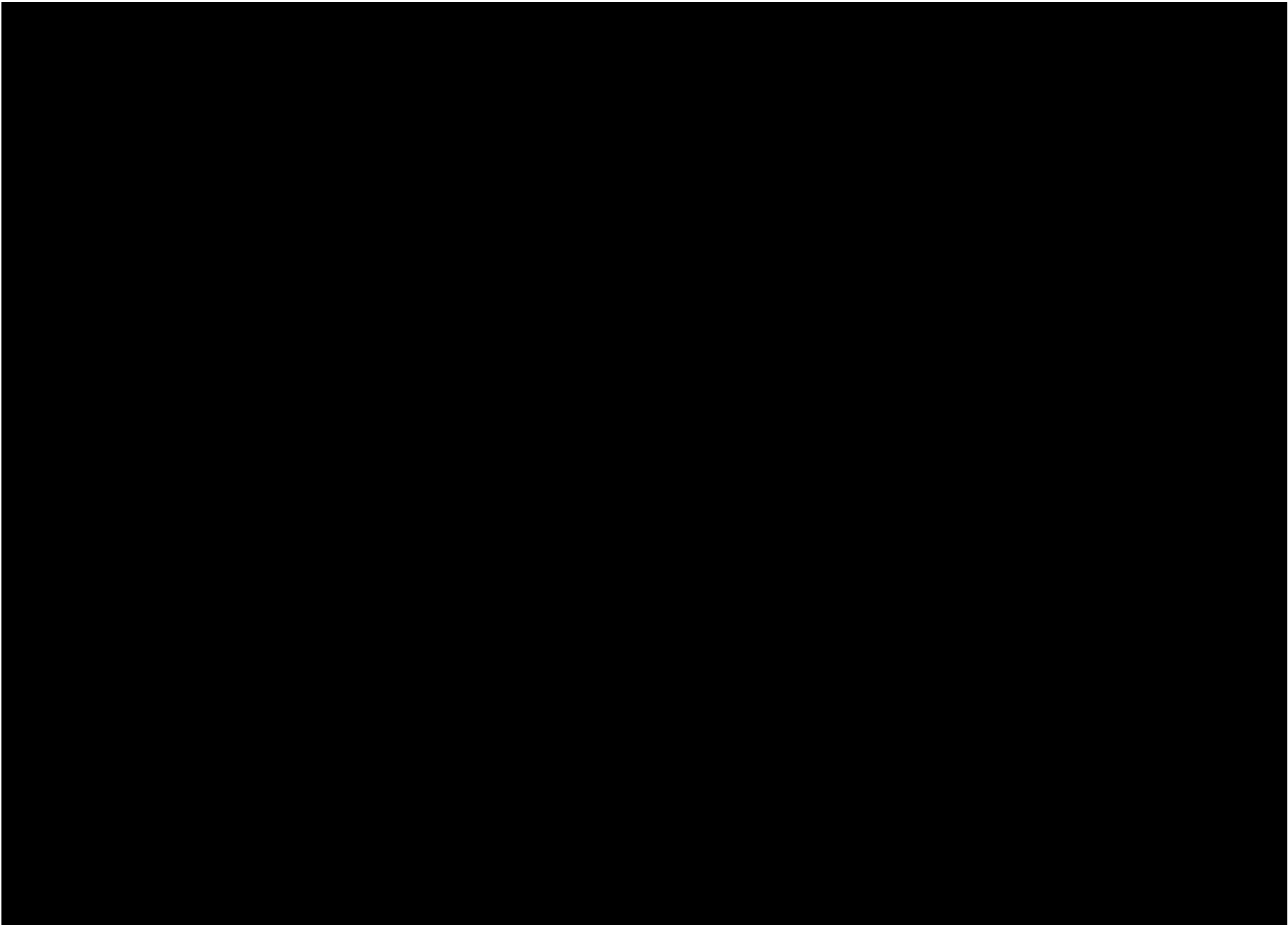
Attachment C
Care Everywhere Review Standards and Sanctions
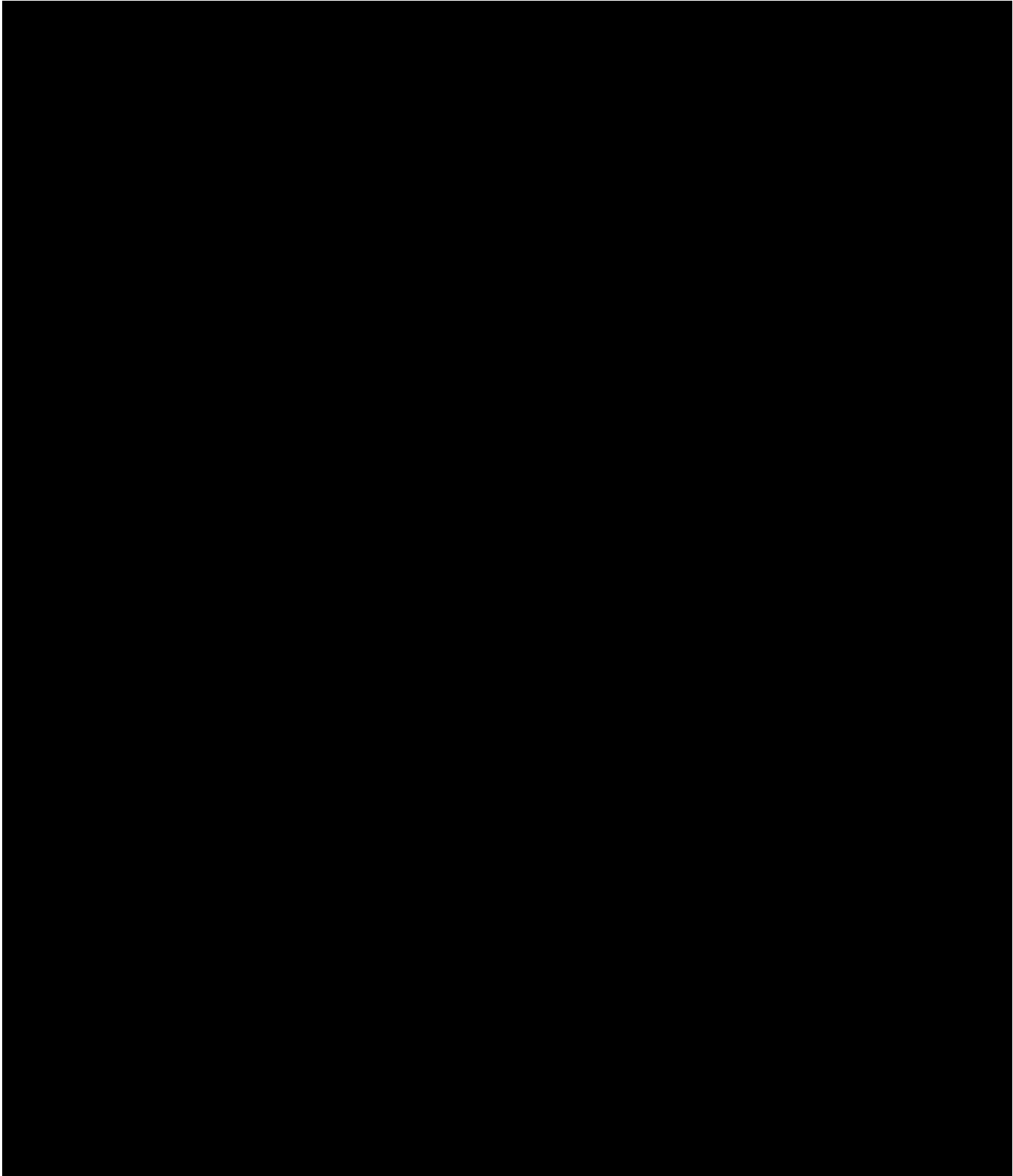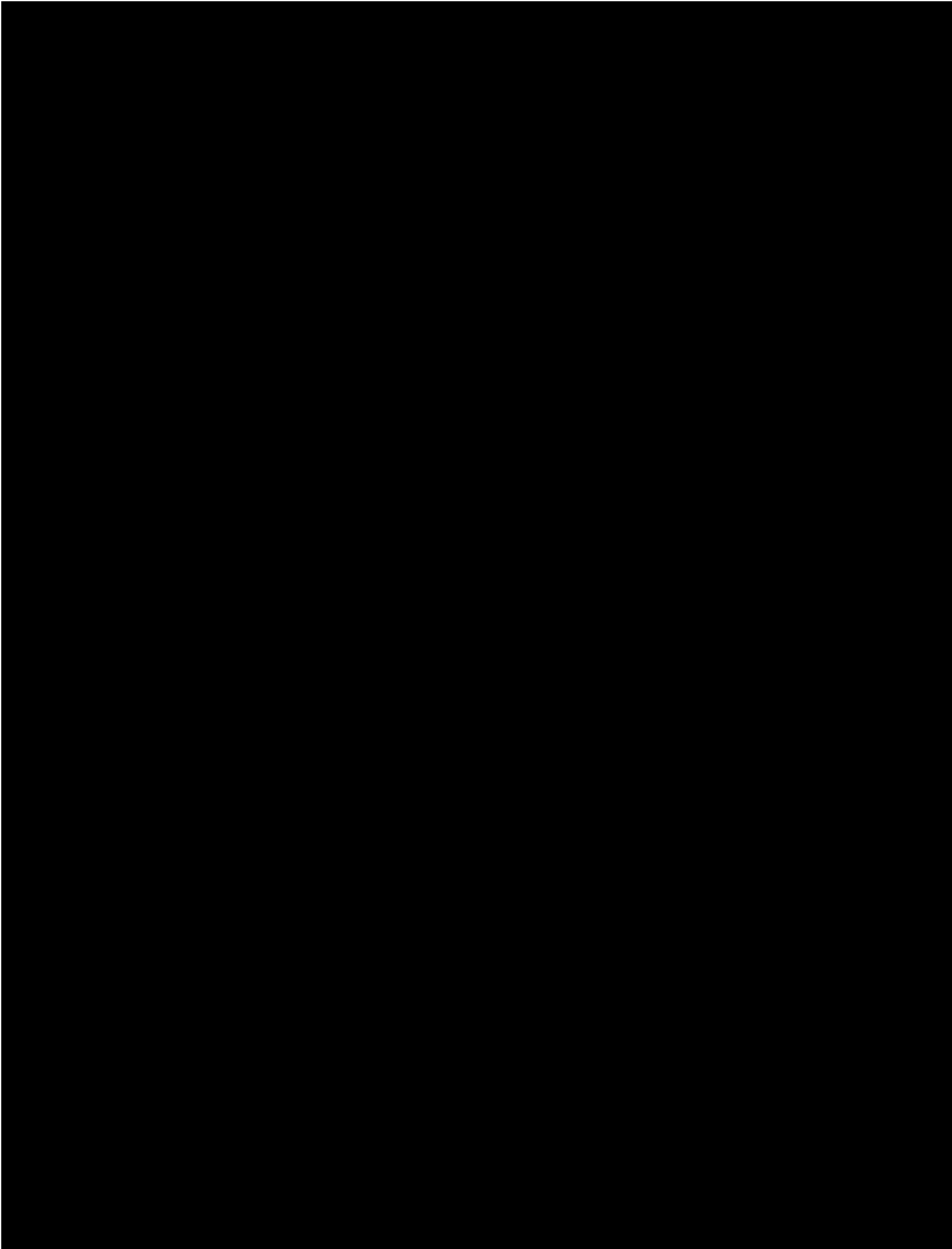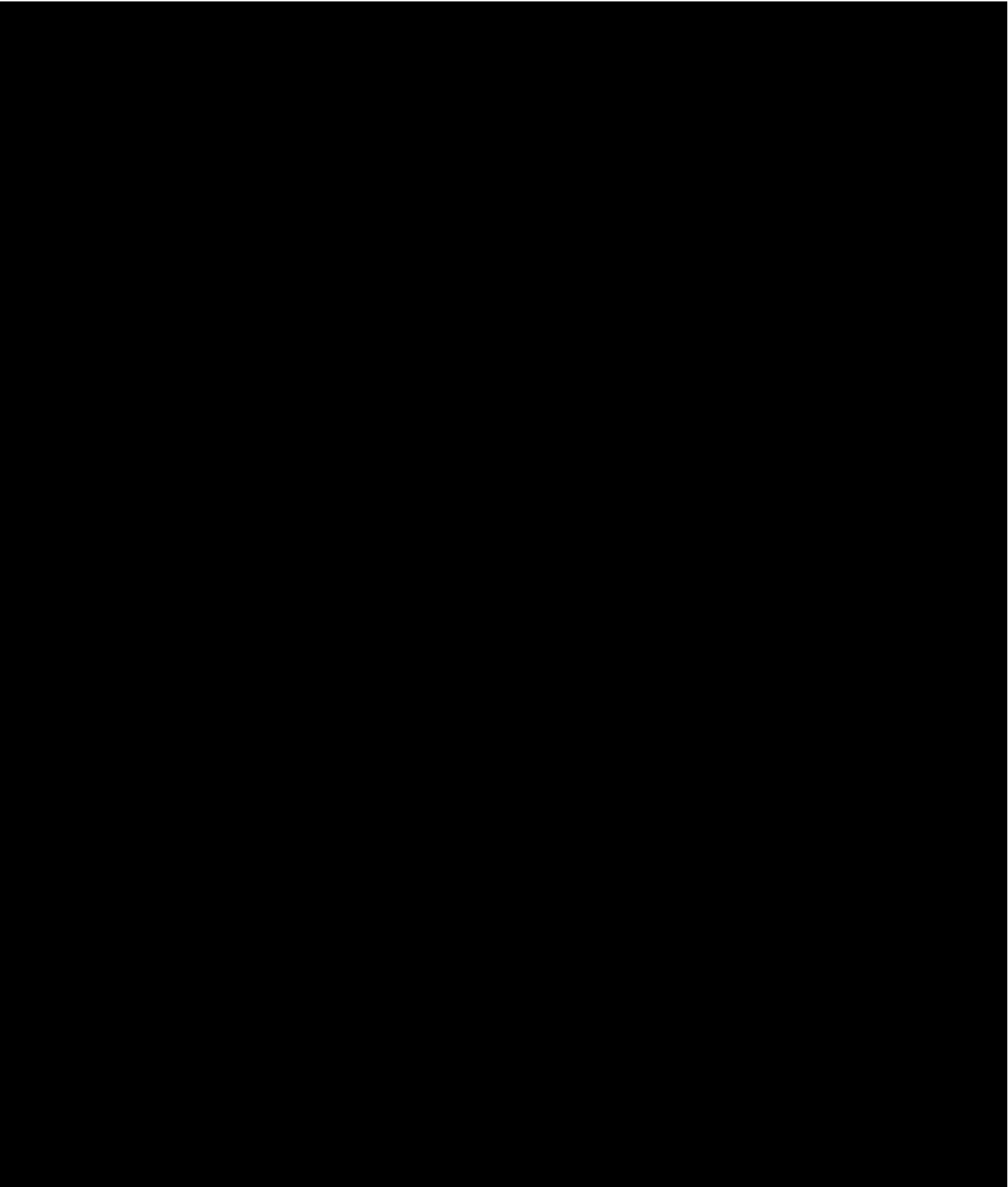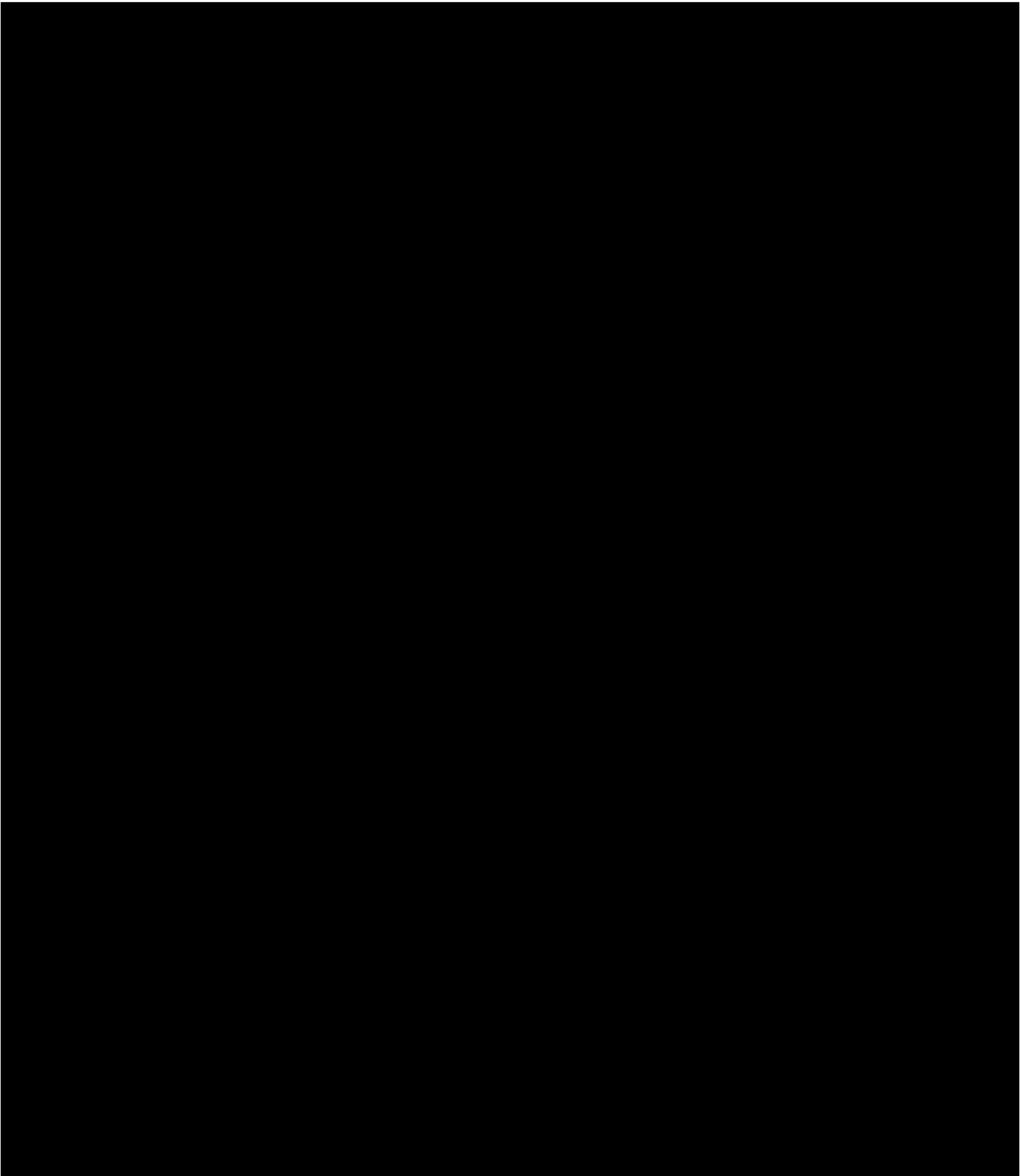
Attachment D

Care Everywhere Grievance Appeals Process Flow Diagram
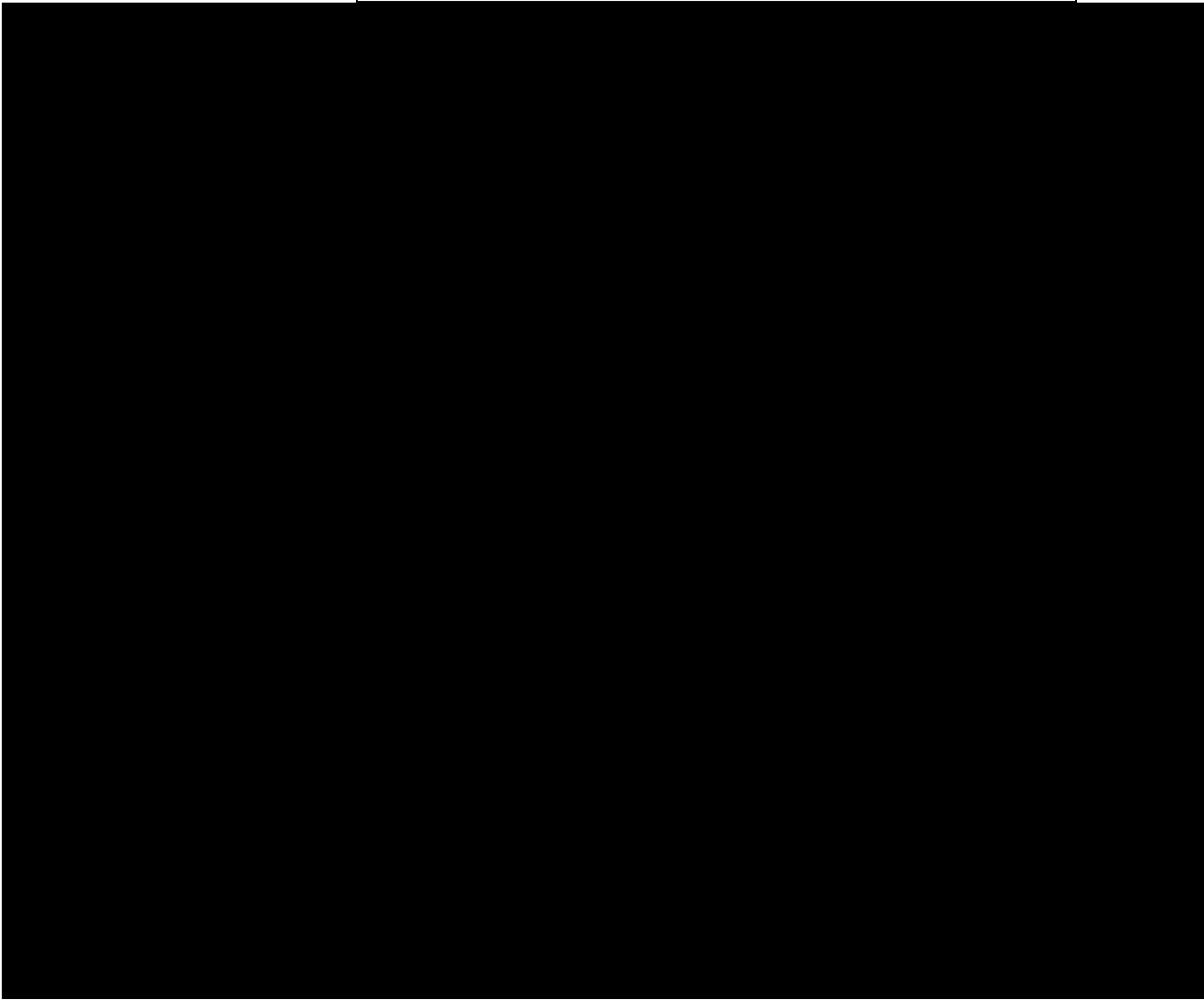
Carequality Addendum

Epic's Care Everywhere application ("Care Everywhere") allows Epic customers to exchange patient data with other Epic customers that also license Care Everywhere and to exchange continuity of care information meeting the supported form with organizations that are not using Epic software. Epic has entered into an arrangement with Carequality that allows Care Everywhere users to exchange patient data with other participants in Carequality (each, a "Carequality Participant") using the Carequality framework. The following provisions apply to Your use of Care Everywhere – Carequality Exchange (the "Carequality Functionality") to enable such exchanges.

1. **Termination.**

2. **Requirements.**
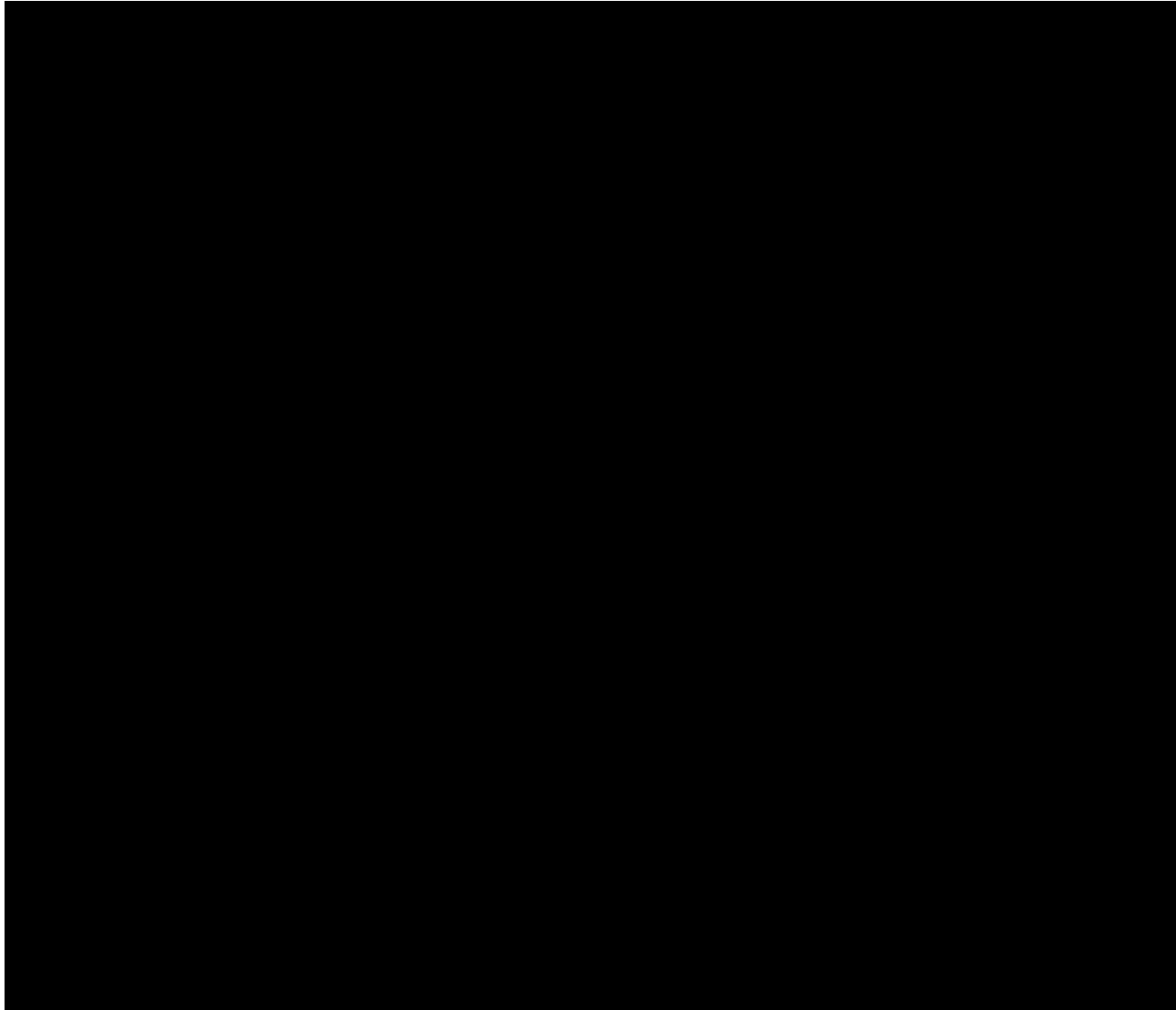
3. Escalation and Indemnification.
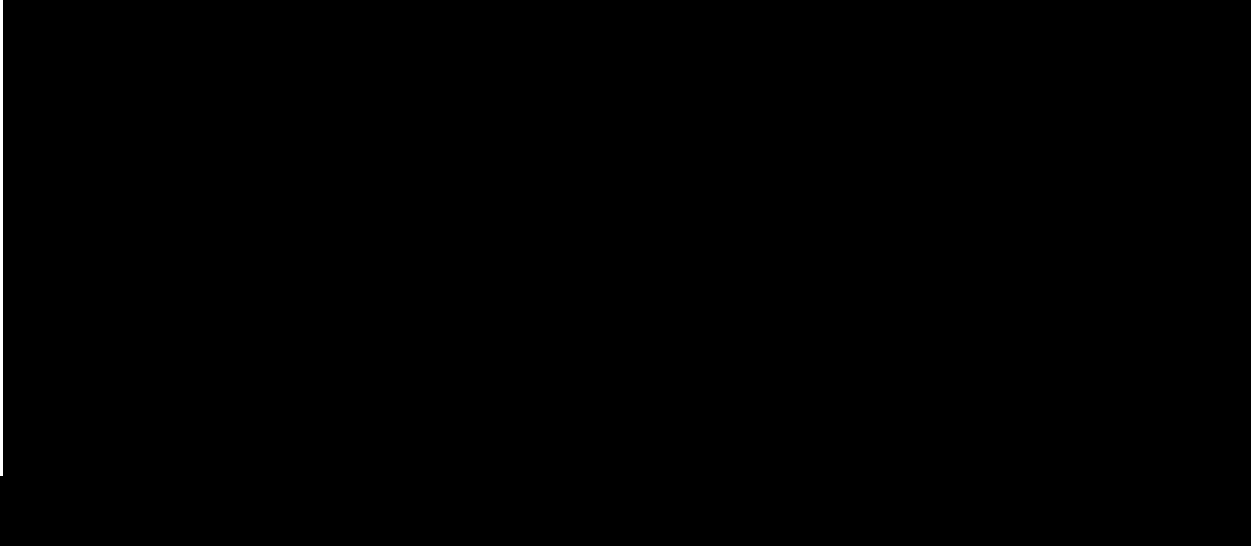
Therefore, to the extent permitted by the law applicable to You, You agree to hold harmless, indemnify, and defend Epic and its officers, employees, contractors,

and agents (collectively the "<u>Indemnitees</u>") from and against any Claim brought by any other Implementer, Carequality Connection, End User, or any of Your or their patients asserted against the Indemnitees or any of them, arising out of, or in any way connected with the Carequality Functionality, including without limitation claims based on an Indemnitee's negligence. For purposes of this Section 3(b) of this Addendum, "Claim" means a claim, damage, liability, claim of loss, lawsuit, cause of action, or other claim and includes without limitation, reasonable attorneys' fees. End User as used in this Section 3(b) is as defined in the Carequality Connection Terms.

Exhibit 1

Carequality® Connection Terms
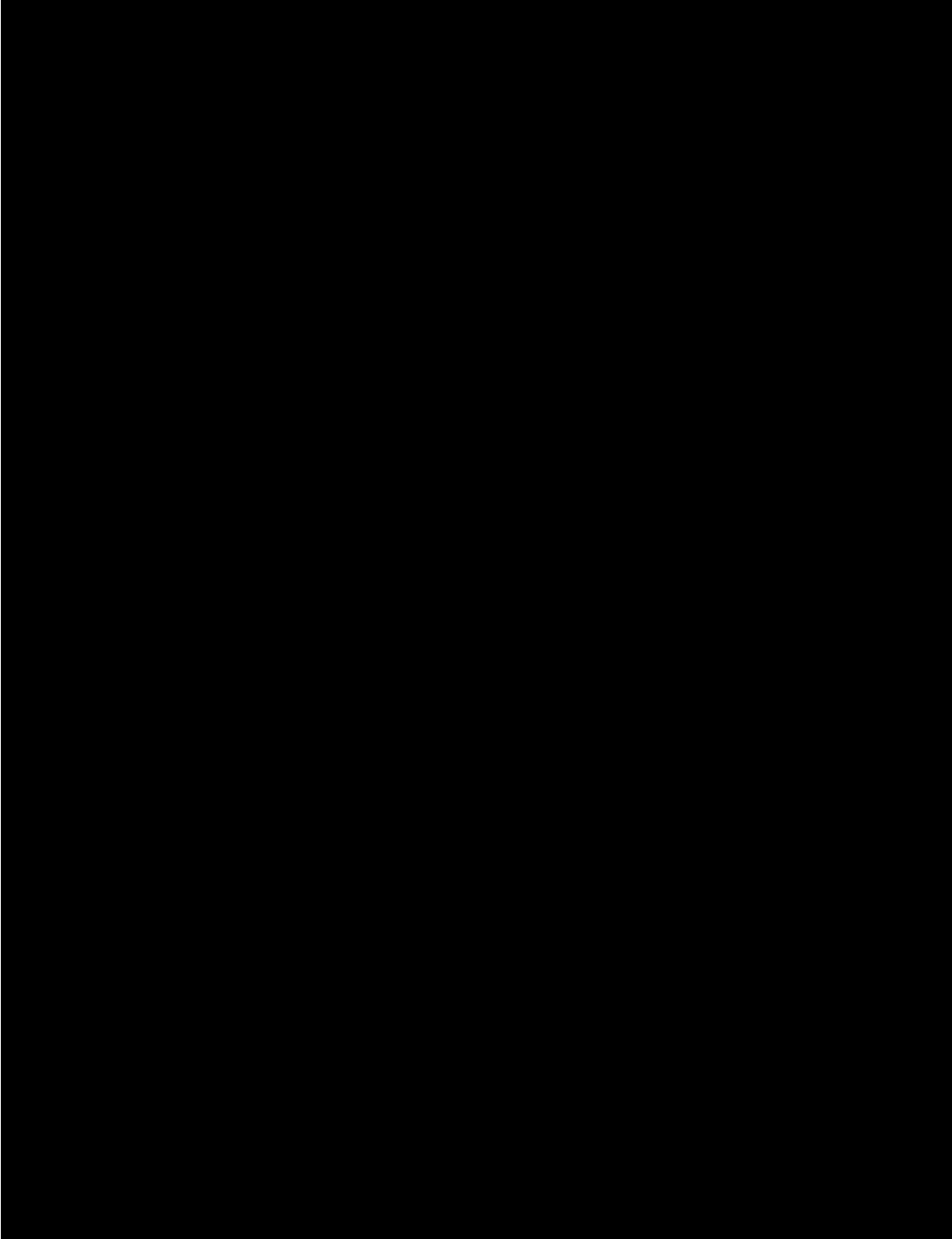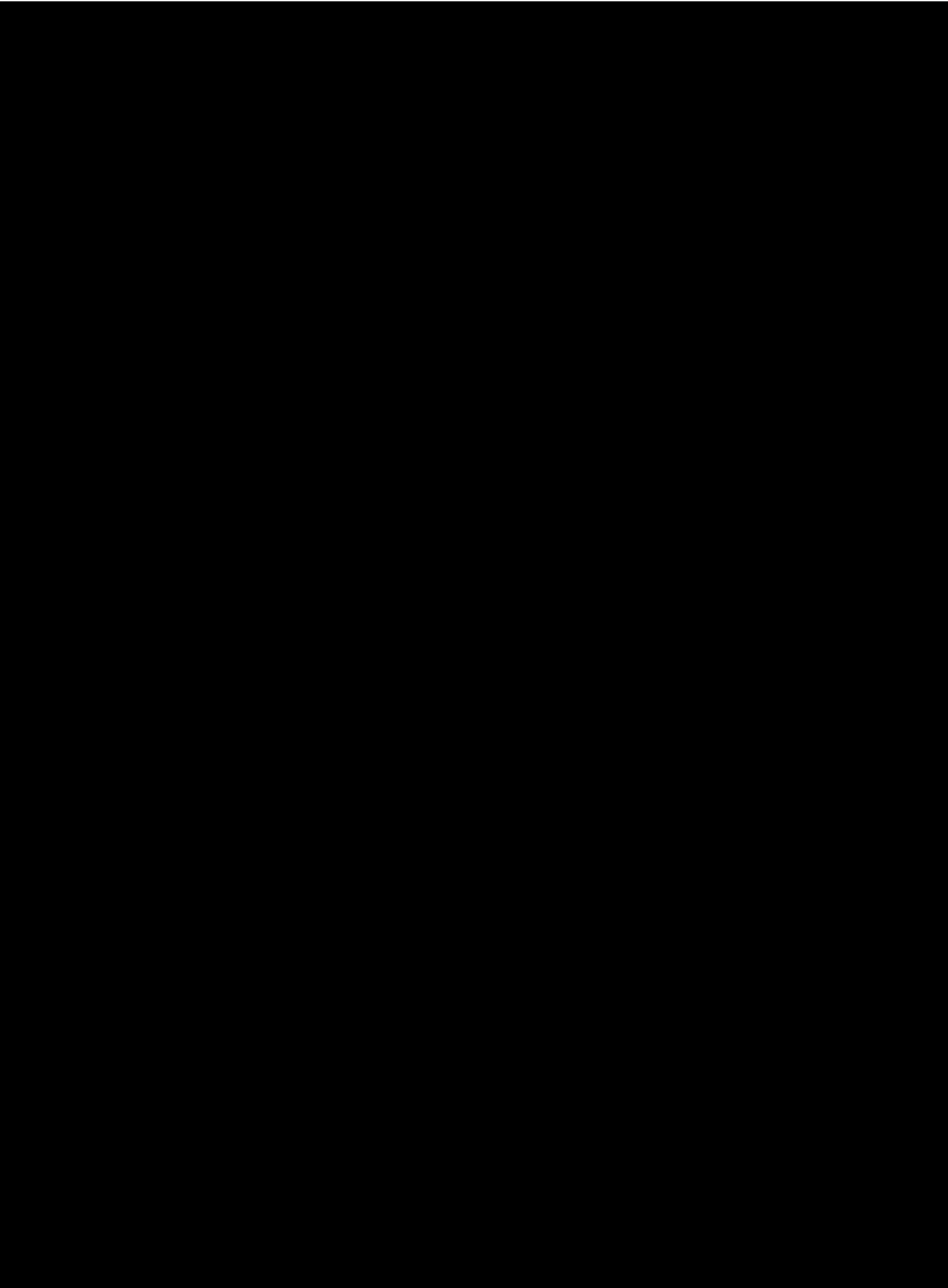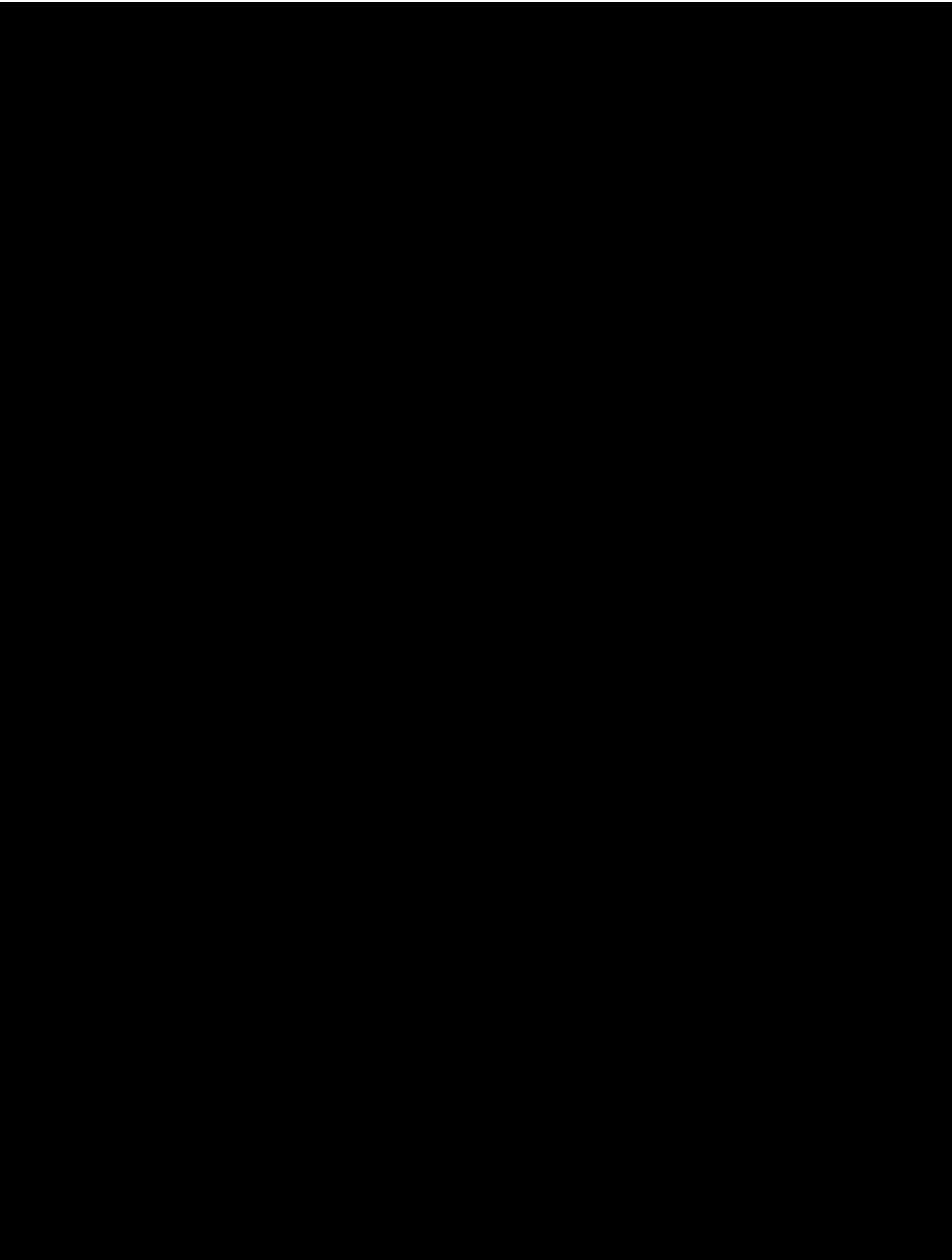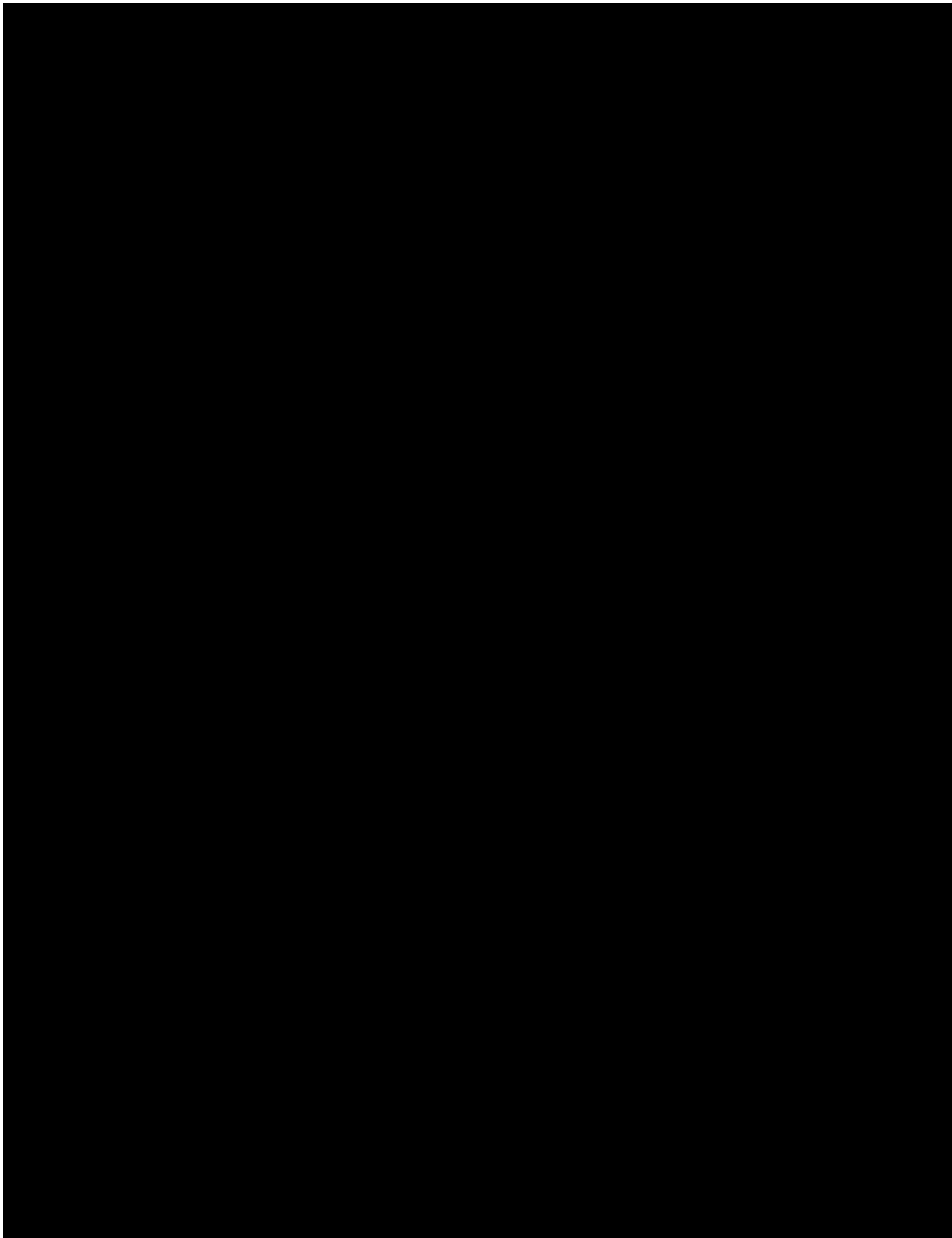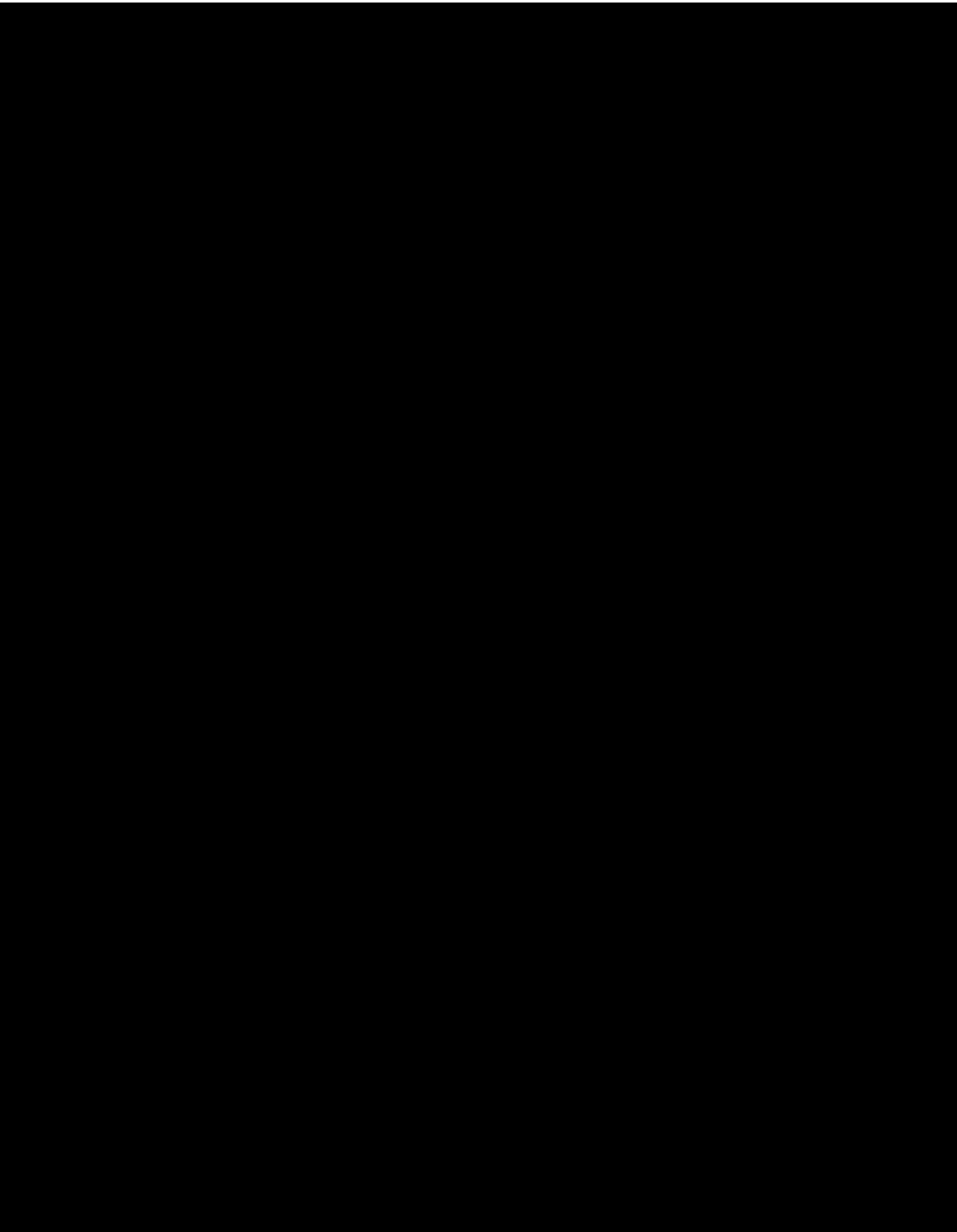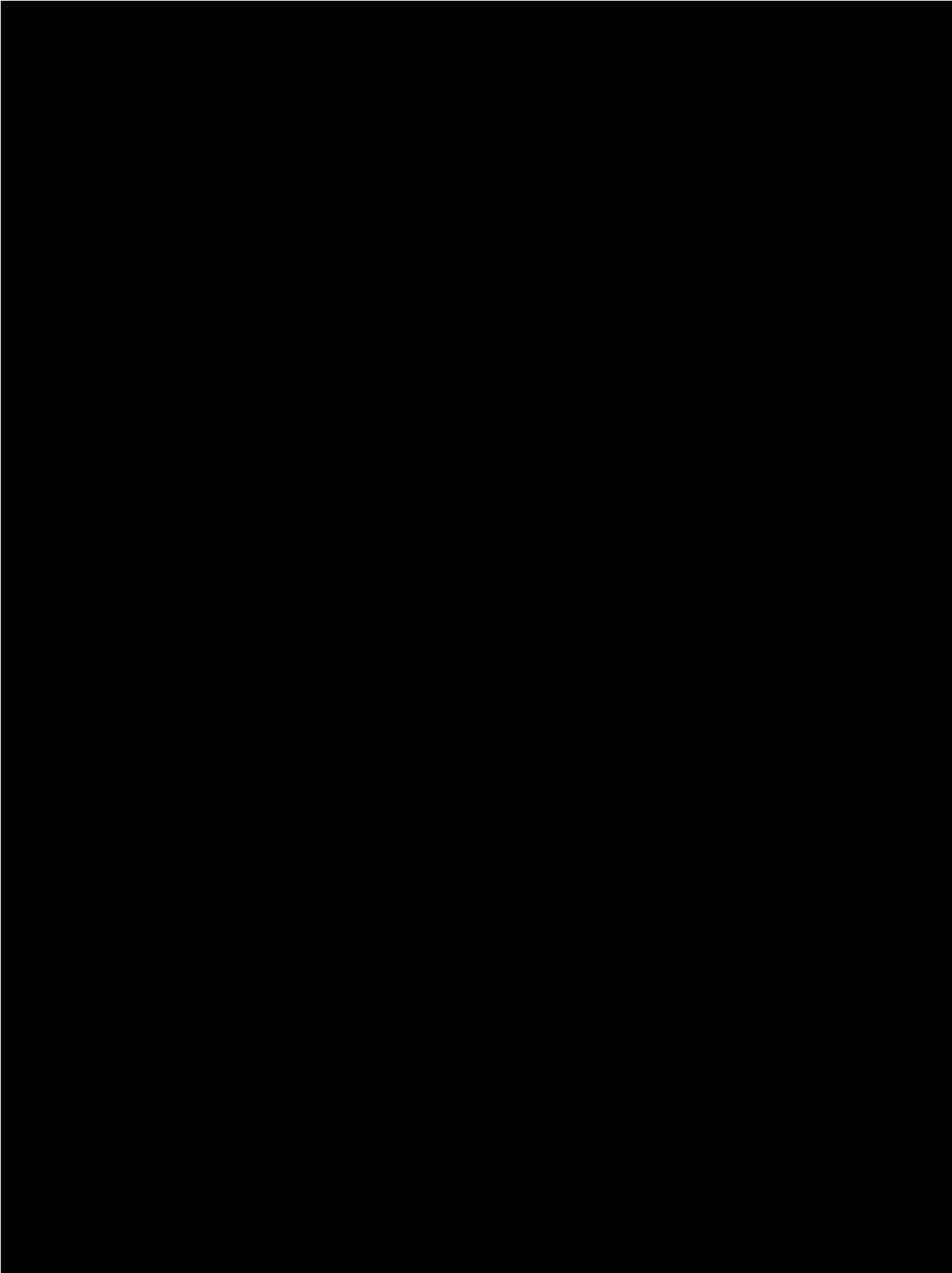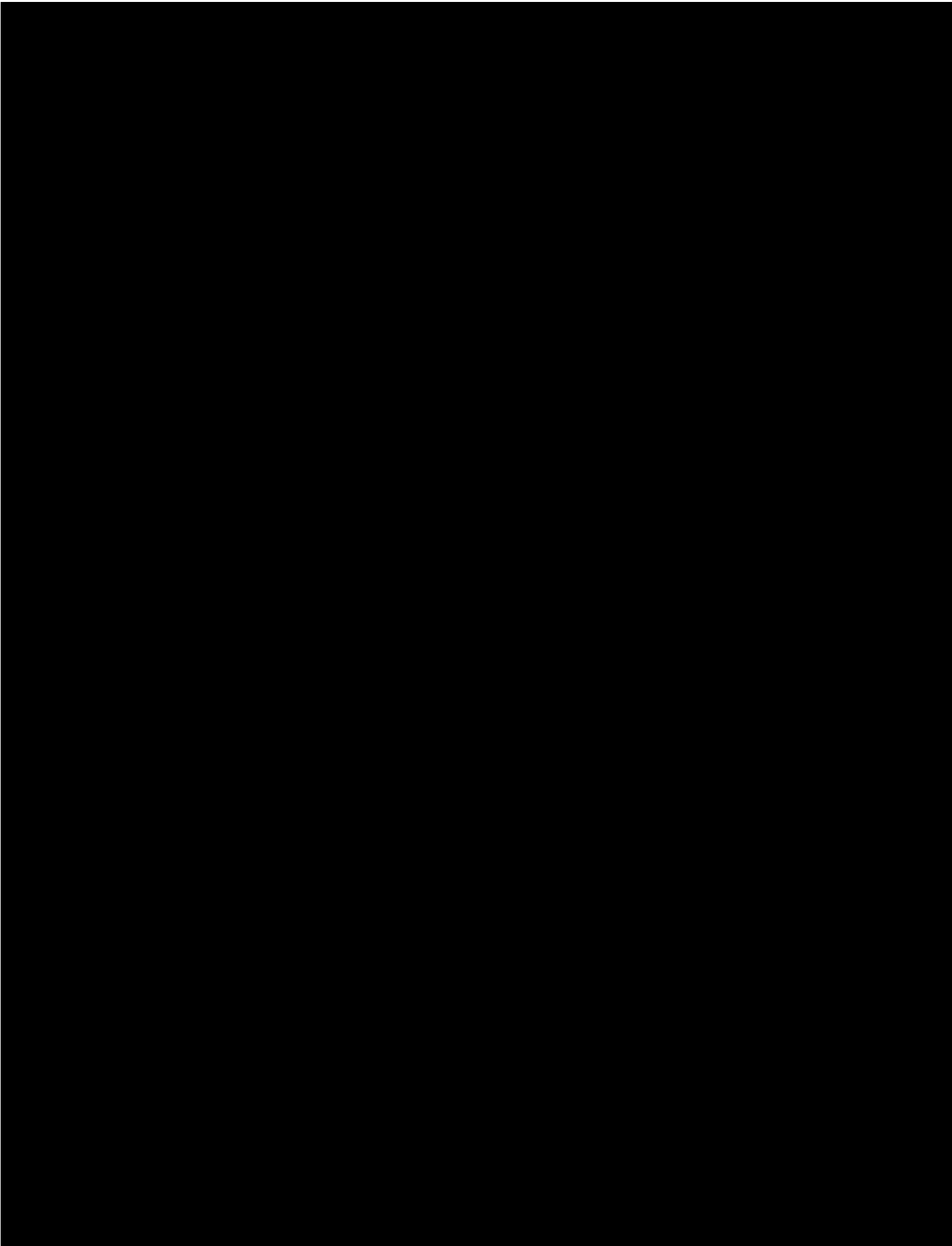
ACC-NCDR® Registry Communication Module Addendum

The following provisions apply to Your use of the ACC-NCDR® Registry Communication Module.

I. DEFINITIONS.

All capitalized terms used in this Addendum and not defined herein but defined in the Agreement shall have the meanings assigned to such terms in the Agreement.

"ACCF" means the American College of Cardiology Foundation.

"ACC-NCDR® Benchmarks" means the aggregate information derived by an ACC-NCDR® Registry from data submitted to such ACC-NCDR® Registry.

"ACC-NCDR® Registry" means any one of the supported registries maintained by the ACCF to which You may submit pertinent data using the ACC-NCDR® Registry Communication Module.

"Application Specifications" means the requirements for the data submitted to an ACC-NCDR® Registry using the ACC-NCDR® Registry Communication Module.

"Participant" means an institution or practice (or a defined and consistent grouping within such an institution or practice) that is enrolled in one or more ACC-NCDR® Registries and eligible to submit pertinent data to such registry or registries.

II. LICENSE.

A. *Participant Requirement*. Each of Your or Your Affiliates' institutions or practices (or a defined and consistent grouping within such institutions or practices) (each a "Site") that accesses or uses the ACC-NCDR® Registry Communication Module must be a Participant in the ACC-NCDR® Registry or Registries to which such Site submits data, and You will limit access to the ACC-NCDR® Registry Communication Module only to such Sites. In addition, prior to Epic activating the license key for the ACC-NCDR® Registry Communication Module for use with the applicable ACC-NCDR® Registry, You will provide to Epic evidence satisfactory to Epic of such enrollment by those Sites in that ACC-NCDR® Registry to which such Sites will submit data using the ACC-NCDR® Registry Communication Module. If at any time during a Subscription Year (as defined below), any Site that accesses or uses the ACC-NCDR® Registry Communication Module is no longer a Participant or stops participating in an ACC-NCDR® Registry, You shall immediately provide Epic with written notice, and You shall, or shall permit Epic to, deactivate such Site's access to such ACC-NCDR® Registry.

B. *Benchmark Data*. You will not enter the ACC-NCDR® Benchmarks into the Program Property (including without limitation the ACC-NCDR® Registry Communication Module) for reporting purposes.

C.   *Updates*. You understand that the ACCF specifies the Application Specifications. If the ACCF modifies the Application Specifications You will install any upgrades to the ACC-NCDR® Registry Communication Module Epic provides to You to address the changes to the Application Specifications prior to the time the ACCF requires Participants to utilize such updated specifications to submit data. You acknowledge that if You do not upgrade to an updated ACC-NCDR® Registry Communication Module You may not be able to submit data to ACC-NCDR® Registries.

D.   *Ownership.* Epic does not own any right, title, or interest in the any data stored by or entered into the ACC-NCDR® Registry Communication Module.

III.   TERM.

A.   *Term and Subscription Fees*.   The subscription year for the ACC-NCDR® Registry Communication Module is from January 1 to December 31 (a "Subscription Year"). For each Subscription Year, You will pay Epic the then-current annual subscription fee with respect to Your use of the ACC-NCDR® Registry Communication Module with the applicable ACC-NCDR® Registry.   The initial annual subscription fee for use of the ACC-NCDR® Registry Communication Module with the applicable ACC-NCDR® Registry shall be prorated from the date Epic first activates the license key for the ACC-NCDR® Registry Communication Module for use with that ACC-NCDR® Registry to December 31 of that Subscription Year. In subsequent Subscription Years, the full annual subscription fee for such use will be due each January 31. Notwithstanding anything in the Agreement, subscription fees are subject to annual increases and increases due to increases in Your Licensed Volume. If Your Licensed Volume increases, any incremental annual subscription fees for the ACC-NCDR® Registry Communication Module will be due beginning as of the date the previous Licensed Volume was exceeded. If there is any change in the then-current annual subscription fee (other than for increases in Your Licensed Volume), Epic will provide You with written notice of such new fee on or before December 15 of the then current Subscription Year. Notwithstanding anything contained herein to the contrary, if at any time none of the Sites is a Participant or is participating in any ACC-NCDR® Registries, then You shall immediately provide Epic with written notice, Your license to the ACC-NCDR® Registry Communication Module shall immediately terminate, and You shall permit Epic to deactivate the ACC-NCDR® Registry Communication Module.

B.   *Amendment to Addendum.* Epic reserves the right to amend this Addendum in order to comply with the contractual requirements of the ACCF related to Epic's licensing of the ACC-NCDR® Registry Communication Module. Epic will provide You with written notice of its intent to amend this Addendum and shall provide You with the proposed amendment by December 15 of the current Subscription Year.

C.   *Right to Terminate.* Upon receipt of a notice under Section III.A. (regarding a change in the annual subscription fee) or under Section III.B. (regarding an amendment of this Addendum), You will have fifteen (15) days to provide Epic with written notice terminating Your use of the ACC-NCDR® Registry Communication Module if You are not willing to accept the change in the annual subscription fee or amendment(s) to the Addendum.

IV.   NOTICE.

The ACC-NCDR® Registry Communication Module incorporates aspects of the ACCF Specifications, including data forms, formats, definitions, codes, and codebooks, file specifications, file transfer protocols, procedural guides, application specifications, and publications and reports developed by the ACCF in support of the operation of the ACC-NCDR® Registries which are the sole and exclusive property of the ACCF.

INTERSYSTEMS CACHÉ SOFTWARE ADDENDUM

A part of the software supplied to You by Epic consists of the software (either M or Caché, as applicable) from InterSystems Corporation of Cambridge, Massachusetts. The following terms and conditions apply to the sublicense of the Sublicensed Software from Epic to You, the User, as required and authorized by InterSystems.

1.   REPRESENTATION OR WARRANTIES OF INTERSYSTEMS

EXCEPT AS EXPRESSLY PROVIDED HEREIN, INTERSYSTEMS DOES NOT MAKE AND SHALL NOT BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE CONDITION, MERCHANTABILITY, TITLE, DESIGN, OPERATION OR FITNESS FOR A PARTICULAR PURPOSE OF THE SUBLICENSED SOFTWARE OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE SUBLICENSED SOFTWARE.

   a.   InterSystems hereby represents and warrants as follows:

   (i)   InterSystems has (a) valid title to the Sublicensed Software, free of all liens, encumbrances, restrictions and claims of others, (b) the right to license the same to Epic, and (c) the right to license Epic to grant sublicenses of the type granted to User by Epic.

   (ii)   Any Sublicensed Software services performed hereunder or under any Sublicensed Software maintenance agreement between InterSystems and Epic shall be performed by highly skilled personnel qualified to perform such services and such services shall be performed in a professional and workmanlike manner in accordance with the then prevailing standards of the computer services industry.

   (iii)   The Sublicensed Software and its use do not and will not violate or infringe upon any currently issued United States patent or any copyright, trade secret or other property right (whether conferred by statute, code, common law, or otherwise) of any other person or entity that is valid or enforceable in the United States or in any country in which Epic now maintains or hereafter maintains any office, property or data processing services.

   (iv)   The Sublicensed Software, as delivered by InterSystems, is free from material defects in manufacturing and materials and shall operate substantially in conformance with the Applicable Specifications relating to such Sublicensed Software until thirty (30) days after the later of (a) initial delivery of the Sublicensed Software to User, and (b) the date when User first uses the Epic Program Property, whether for testing, training, processing of patient data or other purpose (the "Software Warranty Period").

   b.   During the Software Warranty Period, InterSystems shall promptly provide, through Epic and at no charge to User, corrections, modifications or additions to the Sublicensed Software in the event that Epic notifies InterSystems in writing of any substantive errors in the Sublicensed

Software. User shall assist Epic and, upon request, InterSystems, in identifying the circumstances in which any such substantive errors are discovered and, if requested by Epic or InterSystems, shall document the existence of the same. In no event shall InterSystems have any responsibility to correct any data base errors or errors or damages caused by or arising out of hardware defects or input errors or resulting from changes to or modifications of the Sublicensed Software made by Epic or User without the express written approval of InterSystems.

c. All warranty claims or other claims pursuant to this section shall be made to InterSystems through Epic.

d. The foregoing representations and warranties are by InterSystems only. Epic makes no representations or warranties pursuant to, and Epic shall have no liability arising out of, this section.

2. INDEMNIFICATION OF INTERSYSTEMS

a. InterSystems shall, and hereby agrees to, indemnify, defend, and hold harmless User and its officers, employees, agents, and representatives, from and against any and all third-party claims, actions damages, liabilities, costs, and expenses (including, without limitation, reasonable attorneys' fees and expenses arising out of the defense of any claim, whether proven or not) arising from or based upon a breach by InterSystems of any of its representations or warranties in Section 1(a)(i) or 1(a)(iii) above.

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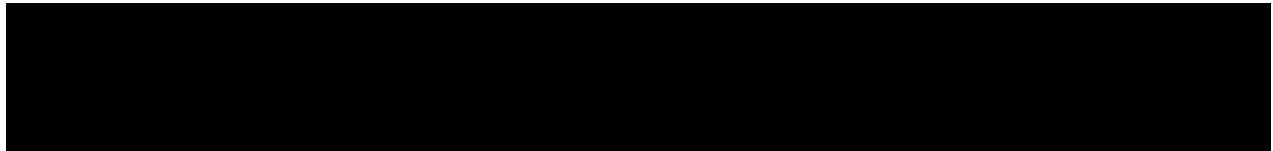
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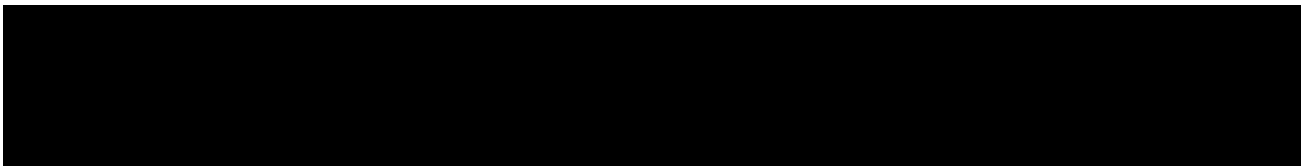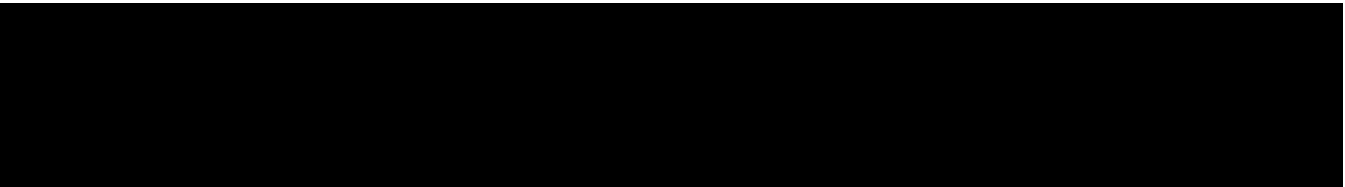
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j. *MAHC-10*

   i. The fall risk assessment tool used for the validation research was the MAHC-10. The MAHC-10 consists of the required ten core elements, initial instructions, scoring mechanism and threshold for risk, all of which may not be altered or changed in any way.

   ii. The word "MAHC-10" must remain on the form or be embedded with the tool.

   iii. Credit must be given to the Missouri Alliance for Home Care.

k. *MEDCIN Nomenclature and MEDCIN Search*

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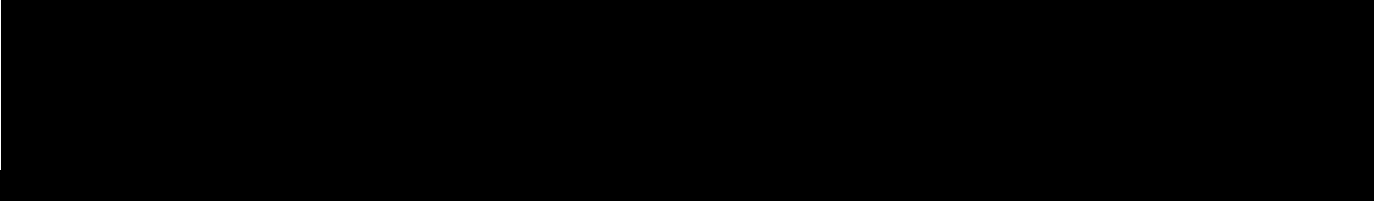
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EXHIBIT A

Product 1: Pediatric Telephone Triage Algorithms – After Hours Version

1.   Description. Professional version written for use in call centers by nurses to manage After Hours telephone triage calls for providers or payors. Supplemented by Pediatric After Care Instructions designed to be shared with callers after a triage call and include the details of how to treat the symptom or problem at home. Each Pediatric After Care Instruction topic provides an expanded version of what the triage nurse has discussed with them in care advice.

2.   Associated Deliverables: then-available topics

Pediatric Telephone Triage Algorithms

- Professional version written for physicians and nurses
- Dispositions, questions and care advice can be customized

Pediatric After Care Instructions

- Written in an instructional, self-care format
- Align with care advice given in the Pediatric Telephone Triage Algorithms
- Written at a 6th grade health literacy level

3.   Additional Sublicense Restrictions:

- Pediatric After Care Instructions may be used only in connection with the Pediatric Telephone Triage Algorithms. Not sublicensed as a standalone product for printed handouts.

Product 2: Pediatric Telephone Triage Protocols – Office Hours Version

1.   Description. Designed for use in call centers, physician practices, or clinics during daytime (office) hours. Supplemented by Pediatric After Care Instructions designed to be shared with callers after a triage call and include the details of how to treat the symptom or problem at home. Each Pediatric After Care Instruction topic provides an expanded version of what the triage nurse has discussed with them in care advice.

2.   Associated Deliverables: then-available topics

Pediatric Telephone Triage Protocols

- Currently available in physician offices in book format (Publisher: American Academy of Pediatrics).

Pediatric After Care Instructions

- Written in an instructional, self-care format
- Align with care advice given in the Pediatric Telephone Triage Algorithms
- Written at a 6th grade health literacy level

3.   Additional Sublicense Restrictions:

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(C) OBLIGATIONS UPON TERMINATION

If for any reason the Agreement or the Subscription is terminated (or the Trial License is terminated other than by conversion to a Subscription), You shall immediately delete all copies of the Adult Medical Content then in Your possession and warrant to Epic that

You have done so. The terms of Section 3 and Sections 5 through 9 of this Addendum shall survive termination of the Agreement, the Trial License or the Subscription.

3. OWNERSHIP AND PROPRIETARY RIGHTS

Dr. Thompson retains ownership of all rights in the Adult Medical Content and of all proprietary technology embodied therein. The Adult Medical Content shall at all times remain the property of Dr. Thompson, and You shall have no right, title or interest therein, except as expressly provided by this Addendum.

You may modify the Adult Medical Content (including modifications to format and storage media) in order to more efficiently use the Adult Medical Content. In the event of modification: (i) You shall assume full responsibility for any such new or modified content; (ii) You will maintain all copyright notices for the Adult Medical Content as required below in Section 3; and (iii) Dr. Thompson shall retain ownership of all copyrights and other intellectual property in the Adult Medical Content.

You understand and acknowledge that Dr. Thompson's rights of literary property and copyright in the Adult Medical Content are reserved and retained by Dr. Thompson at all times. You agree not to remove or destroy any copyright notices, confidentiality legends or proprietary markings placed upon or contained within the Adult Medical Content. You may apply private labels to the names of the data sets that comprise the Adult Medical Content, but in each case You shall provide prominent credit to Dr. Thompson as the author of the Adult Medical Content in all written materials used to market or advertise any materials, goods, services, operations (including web pages or sites on the World Wide Web) or other items that contain all or a portion of the Adult Medical Content. You may also refer to the Adult Medical Content by the descriptive names set forth in Exhibit A.

4. MAINTENANCE

The maintenance program for the Adult Medical Content is included with Your annual subscription fee and begins on the Conversion Date. Maintenance includes telephone consultation and assistance regarding the Adult Medical Content during Epic's regular business hours and any Updates for the Adult Medical Content subscribed for by You that are received by Epic for distribution to sublicensees of the Adult Medical Content. You agree to submit all questions, requests for assistance and feedback regarding the Adult Medical Content to Epic, and not directly to Dr. Thompson or his agents. Epic will discuss Your questions, requests and feedback with Dr. Thompson and provide such support to You as is appropriate and in accordance with Epic's agreement with Dr. Thompson, and may forward Your questions or refer You to Dr. Thompson or his agents.

5. USE OF THE ADULT MEDICAL CONTENT

You represent and warrant that no portion of the Adult Medical Content will be used in any way by You or any of Your employees or agents unless that portion has been reviewed, amended as necessary and approved by a medical director or medical advisory panel who or

which You have designated as responsible for overseeing its use. It is Your responsibility to keep the Adult Medical Content up to date. Use of the Adult Medical Content requires the intellect and judgment of the user. The Adult Medical Content is most suitable for use by physicians and nurse practitioners. Nurses and physician assistants should receive training before using the Adult Medical Content, and non-licensed and non-health professionals (for example, secretaries) should not use the Adult Medical Content.

6. **DISCLAIMERS**

THE ADULT MEDICAL CONTENT IS BEING PROVIDED AND IN EACH CASE SHALL BE PROVIDED TO YOU STRICTLY "AS IS" WITHOUT WARRANTY OF ANY KIND. UNDER NO CIRCUMSTANCES SHALL EPIC OR DR. THOMPSON BE RESPONSIBLE FOR THE ACCURACY, SAFETY, EFFICACY OR COMPLETENESS OF THE ADULT MEDICAL CONTENT. NEITHER EPIC NOR DR. THOMPSON MAKES ANY REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED) PURSUANT TO THIS ADDENDUM AND EPIC AND DR. THOMPSON EACH DISCLAIM ANY WARRANTIES WITH RESPECT TO THE ADULT MEDICAL CONTENT, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF TITLE, ACCURACY, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE PROGRAM PROEPRTY OR THE ADULT MEDICAL CONTENT. YOU ACKNOWLEDGE THAT NO EMPLOYEE OF EPIC OR ANY OTHER PARTY IS AUTHORIZED TO MAKE ANY REPRESENTATIONS OR WARRANTY NOT IN THIS AGREEMENT. EPIC AND DR. THOMPSON EACH DISCLAIM ANY RESPONSIBILITY FOR ANY HARMFUL CONSEQUENCE, LOSS, INJURY OR DAMAGE ASSOCIATED WITH THE USE AND APPLICATION OF INFORMATION OR ADVICE CONTAINED IN THE ADULT MEDICAL CONTENT.

7. **LIMITATION OF LIABILITY**

IN NO EVENT SHALL DR. THOMPSON OR ANY OF HIS SUPPLIERS OR AGENTS BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION) ARISING OUT OF THE USE OR INABILITY TO USE THE ADULT MEDICAL CONTENT, EVEN IF DR. THOMPSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

EPIC SHALL HAVE NO LIABILITY WHATSOEVER ARISING OUT OF OR RELATING TO THIS ADDENDUM OR USE OF THE ADULT MEDICAL CONTENT, AND YOU HEREBY AGREE TO WAIVE ANY AND ALL CLAIMS THAT YOU MAY HAVE AGAINST EPIC ASSOCIATED WITH THE ADULT MEDICAL CONTENT OR

USE OF THE ADULT MEDICAL CONTENT, EVEN IF EPIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIMS OR DAMAGES.

8. THIRD PARTY BENEFICIARY

Dr. Thompson is an intended third-party beneficiary to this Addendum. Provisions of this Addendum are made expressly for the benefit of Dr. Thompson and are enforceable by both Epic and Dr. Thompson. Any unauthorized transfer or disclosure of the Adult Medical Content not otherwise permitted under this Addendum may cause great harm to Dr. Thompson, and You agree that in such event Dr. Thompson or Epic shall have a right to injunctive relief from a court of competent jurisdiction.

9. MISCELLANEOUS

This Addendum shall be governed by and construed in accordance with the laws of the State of Wisconsin, without giving effect to its conflict of laws principles, and any action (whether by alternative dispute resolution or in court) arising under this Addendum shall be brought exclusively in Wisconsin. You and Epic consent to the personal jurisdiction of the state and federal courts located in Wisconsin.

The provisions of this Addendum shall be considered as severable, so that the invalidity or unenforceability of any provisions will not affect the validity or enforceability of the remaining provisions; provided that no such severability shall be effective if it materially changes the economic benefit of this Addendum to either party.

The terms and conditions in the Agreement and this Addendum state the entire agreement with You relating to the Adult Medical Content, and supersede any prior agreement, whether written or oral, relating to the subject matter hereof.

Exhibit A

Product 1: Adult Telephone Triage Algorithms – After Hours Version

1.   Description. Professional version written for use in call centers by nurses to manage After Hours telephone triage calls for providers or payors.

2.   Associated Deliverables: then-available topics

- Professional version written for physicians and nurses
- Dispositions, questions and care advice can be customized

Product 2: Adult Telephone Triage Protocols – Office Hours Version

1.   Description. Designed for use in call centers, physician practices, or clinics during daytime (office) hours.

2.   Associated Deliverables: then-available topics

   ▪ Currently available in physician offices in book format (Publisher: American Academy of Pediatrics).

Blood Product Administration Module Addendum

1. You acknowledge that, as of the Effective Date of this Agreement, Epic has listed the Blood Product Administration Module (the "BPAM") as a medical device with the United States Food and Drug Administration ("FDA"), and You agree to the following additional terms with respect to the BPAM:

   a. *Intended Use/Indications for Use*. As of the date of this Agreement, the BPAM's intended use/indications for use are as follows: The BPAM is a software module intended for use by healthcare professionals to assist in the identification of patients and blood products for transfusion. The BPAM is based on a modular design allowing it to be used with a host electronic health record system. The BPAM can, through use of barcode technology, assist healthcare professionals in verifying patient identity at the bedside. The BPAM receives and manages information from orders placed from a host system and blood product information from an external blood bank system. The BPAM incorporates system-controlled logic that can require a positive match of the patient, the blood product to be administered, and information received from the external blood bank system. The BPAM can also check a blood product's documented expiration date for appropriateness. Blood administration information entered in the BPAM is transmitted to the host system for storage.

   b. *Clinical Judgment Required*. Although the BPAM can display warning messages that may help inform a clinician of potential safety concerns (e.g., the blood product to be administered not matching the relevant order, or the blood product being expired), You agree that the clinician can also manually verify that he is administering the intended blood product and that the blood product has not expired. You also agree that the BPAM is not intended to serve as a substitute for a clinician's professional judgment and decision making, and a clinician should not delay a needed blood transfusion because of documentation or software workflow issues. You agree that You are responsible for training Your Personnel accordingly.

   c. *Testing*. You agree to conduct the installation, inspection, and any required testing of the BPAM in accordance with Epic's instructions and procedures. Before using the BPAM or any related Updates in a Production Directory, You agree to test and inspect such Item or Update to Your satisfaction, using testing materials provided by Epic where available, and You agree to document such testing and inspection. You also agree to perform such testing in an environment other than a Production Directory, and to confirm that the testing indicates no unresolved failure points or signs of improper installation before using the BPAM in a Production Directory.

   d. *Maintenance Program*. Notwithstanding anything to the contrary in the Agreement, if You terminate Your participation in the Maintenance Program with respect to the BPAM, You will permit Epic to employ a key that disables Your access to that Item. You also agree to install all required Updates to the BPAM that are made available to You by Epic, except to the extent an Epic Director of Technical Services informs You in writing of an exception to this requirement.

e. *Reporting*.   You acknowledge that both manufacturers and user facilities of medical devices listed with the FDA are subject to reporting obligations, including, but not limited to, the requirements of 21 C.F.R. Part 803.   You agree to cooperate with requests for information by Epic with respect to any potentially reportable event involving the BPAM. You also agree to promptly inform Epic of any report You decide to make to the FDA about the BPAM.

g. *Marketing*.   You acknowledge that medical devices are subject to certain FDA marketing restrictions.   You agree to comply with such restrictions.   For the sake of clarity, this includes that You will not market the BPAM for any use other than the intended use/indications for use listed in Section 2(a) of this Addendum.

h. *Labeling*.   You agree not to substantively change any labeling (as such term is defined in 21 U.S.C § 321(m) and interpreted by the FDA) for the BPAM that is provided by Epic.

Push Notifications Addendum

1. Push Notifications is limited to use by Your Personnel and their patients (as applicable) who use a then-supported version of one or more Push Notifications-enabled Epic mobile applications and who have agreed to, and are continuously in compliance with, any end-user license agreement(s) associated with such mobile application(s). If, following the date of this Agreement, Epic enables use of Push Notifications with any future mobile application, additional fees and/or an amendment to the Agreement may be required for such use. The license to Push Notifications is between You and Epic and nothing in these terms creates any third party beneficiary. Push Notifications is also limited to use with supported mobile operating systems. A list of currently available mobile operating systems is available in the Documentation Manuals.
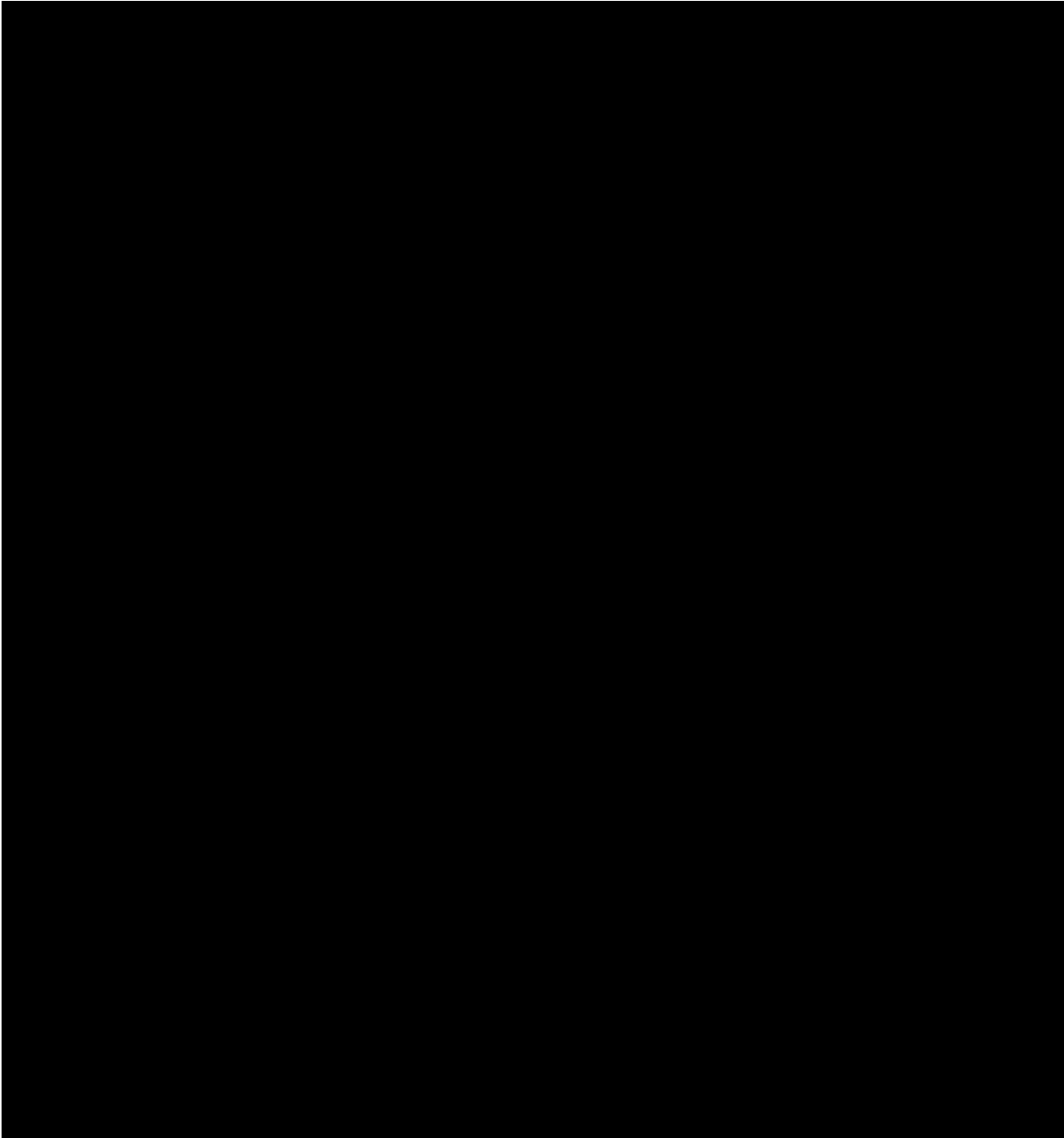
MyChart Self-Branded Application Libraries Addendum

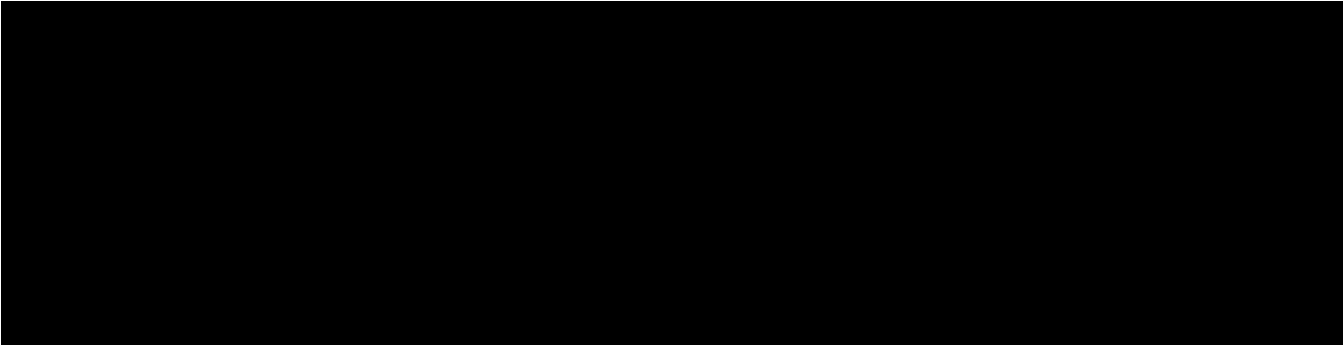1. **Epic-submitted Branded Application Requirements.**
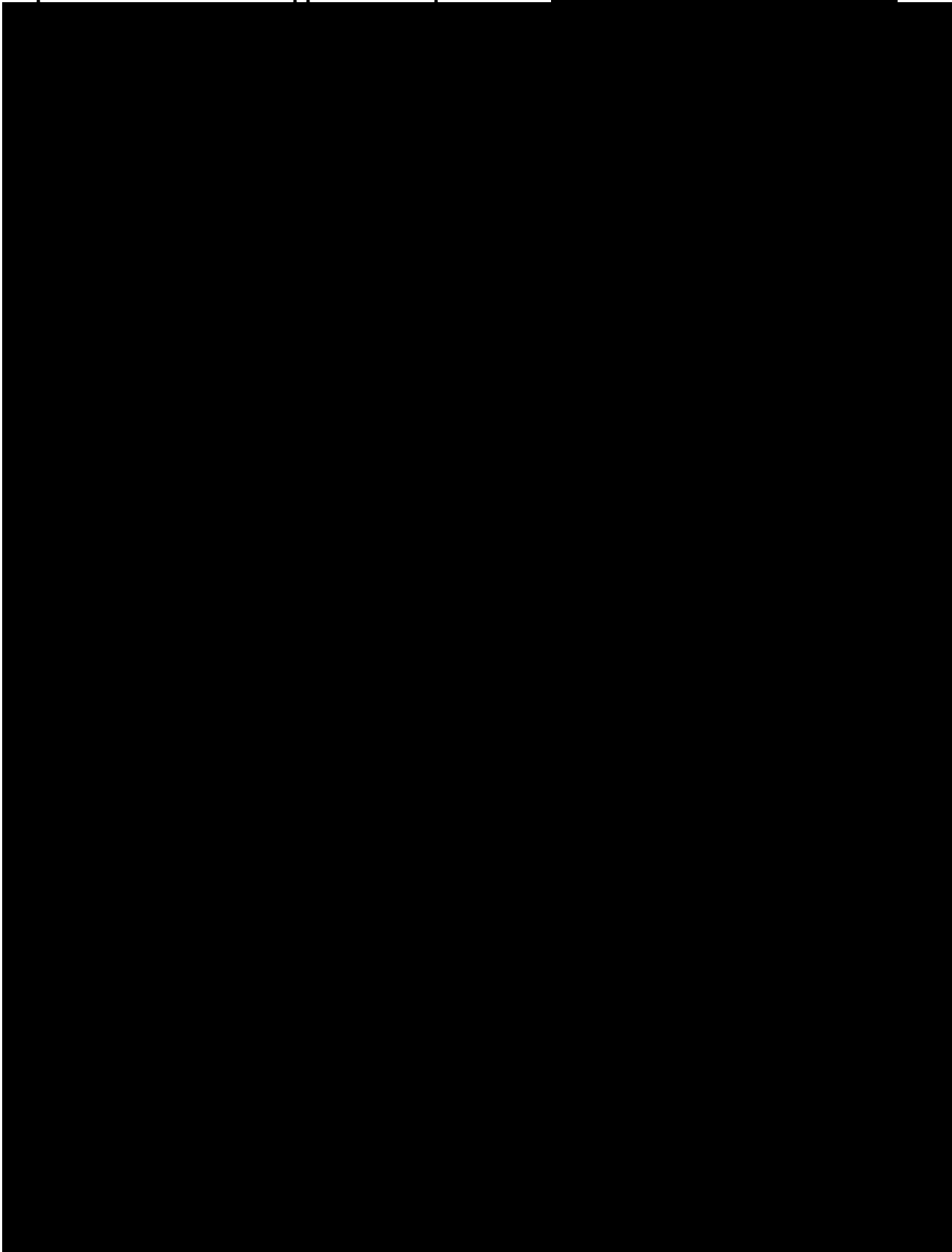
2. **Other Terms.**

   a. Except as required in subsection 2(b) below, You may not use any Epic trademark or logo in Your Branded App (including the names Epic and MyChart and the MyChart logo) or in any marketing, advertising, or description of Your Branded App (including on an App Store) without Epic's prior written consent.

   b. You must retain any copyright, trademark, or similar notices in the MyChart Self-Branded Application Libraries and may not disable, obscure or change any such notices generated as a result of the MyChart Self-Branded Application Libraries.

   c. Epic is not obligated to support or maintain any particular version of Your Branded App or of the base Epic mobile applications, and Epic may continue to issue Updates for, at its sole discretion, its version of the MyChart mobile applications as well as any Program Property licensed to You under the Agreement (e.g., MyChart Shared Patient Record server code) that interact with Your Branded App or that may be necessary for Your Branded App to communicate or operate properly.

   d. If You elect to have Epic release Your Branded App, then You agree to defend or settle, indemnify, and hold Epic Indemnitees harmless from any claim by, or on behalf of, any third party or person claiming damage which is brought against Epic Indemnitees, to the extent such claim arises out of or relates to Your Branded App or the development, licensing, distribution, marketing, or use of Your Branded App. You will obtain Epic's prior written consent to any settlement or judgment in which You agree to any finding of fault of Epic, obligation or liability for which Epic is responsible, or any defect in the Program Property.

   e. You understand that Epic's MyChart mobile applications are not currently listed as medical devices with the United States Food and Drug Administration ("FDA"). You agree that You will not use or market Your Branded App in a manner that would make Your Branded App subject to FDA regulation. If, in the future, You become aware that Your Branded App is, or is likely to become, subject to regulation by the FDA, You will promptly notify Epic and fully cooperate with Epic regarding any regulatory obligations and Epic's actions with respect to such obligations, which may include steps necessary to avoid such obligations.

Predictive Analytics Addendum

[redacted]

a. *Clinical Judgement and Validation.* Epic has tested the Predictive Analytics Models using its standard testing methodologies and certain available data sets. However, because of the number of factors (including the variability of patient populations) that can influence the reliability of statistical models, You must also review, validate and modify (as needed) the Predictive Analytics Tools for clinical and operational appropriateness with Your data before You use them in a live, patient care environment. In addition, although Predictive Analytics Tools may display relevant contextual information about patients, they are not intended to serve as a substitute for a clinician's professional experience, judgment and decision making. Clinicians should exercise appropriate clinical judgment.

b. *Regulatory Changes.* In the future, if Epic believes any Predictive Analytics Tool likely is or will become subject to regulation as a medical device, Epic may modify or disable the applicable functionality. You and Epic will reasonably cooperate in activities related to the relevant regulation (for example, by adjusting Your workflows, installing an Update released by Epic, and/or entering into an amendment to modify the license terms for the affected functionality). In addition, if Epic informs You that it will permanently disable Your access to one or more Predictive Analytics Models because it is no longer licensing software that is regulated as a medical device, Epic will repay to You the prorated license fee You have paid Epic for such Predictive Analytics Model(s), if any, less depreciation calculated on a straight line basis over a ten (10) year period from the date of this Agreement.

[redacted]