



Department  
for Environment  
Food & Rural Affairs

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[www.gov.uk/defra](http://www.gov.uk/defra)

[REDACTED]

Eunomia Research & Consulting Ltd  
37 Queen Square  
Bristol  
BS1 4QS

Your ref:

Our ref:      itt no: 8886

Date: 06<sup>th</sup> September 2021

FAO: [tenders@eunomia.co.uk](mailto:tenders@eunomia.co.uk)

Dear Tanzir,

**Award of contract for the supply of a research project: Waste Management Data Required for Extended Producer Responsibility in the UK – (i) Evidence Requirements for Linking Material Reprocessors and Exporters Back to Others in the Chain, (ii) Waste Composition.**

Following your proposal for the supply of services to carry out **Waste Management Data Required for Extended Producer Responsibility in the UK – (i) Evidence Requirements for Linking Material Reprocessors and Exporters Back to Others in the Chain, (ii) Waste Composition** to The Department for Environment, Food and Rural Affairs (Defra), we are pleased to award this contract to you.

This will start with an inception meeting (now scheduled for 2pm September 15th) and then delivery of work packages<sup>1</sup> and 2 and reports to Defra.

This letter (Award Letter) and its Annexes set out the terms of the contract between The Department for Environment, Food and Rural Affairs (Defra) as the Authority and Eunomia as the Supplier for the provision of the Services. Unless the context otherwise requires, capitalised expressions used in this Award Letter have the same meanings as in the terms and conditions of contract set out in Annex 1 to this Award Letter (the “**Conditions**”). In the event of any conflict between this Award Letter and the Conditions, this Award Letter shall

prevail. Please do not attach any Supplier terms and conditions to this Award Letter as they will not be accepted by the Authority and may delay the conclusion of the Agreement.

For the purposes of the Agreement, the Authority and the Supplier agree as follows:

1. The Services shall be performed at Eunomia, the Supplier's premises at Eunomia, 37 Queen Square, Bristol. BS1 4QS
2. The charges for the Services shall be as set out in Annex 2 / the Supplier's tender dated 17<sup>th</sup> August 2021.
3. The specification of the Services to be supplied is as set out in Annex 3 / the Supplier's tender dated 17<sup>th</sup> August 2021.
4. The Term shall commence on 13<sup>th</sup> September 2021 and the Expiry Date shall be 17<sup>th</sup> December 2021 unless extended or subject to early termination.
5. The address for notices of the Parties are:

Authority	Supplier
Waste and Recycling Department for Environment, Food and Rural Affairs (Defra) [REDACTED] [REDACTED] [REDACTED] [REDACTED]	Eunomia 37 Queen Square Bristol BS1 4QS [REDACTED] [REDACTED]

- The following persons are Key Personnel for the purposes of the Agreement:

Name	Title
[REDACTED]	■

1. For the purposes of the Agreement the [Staff Vetting Procedures/data security requirements/equality and diversity policy/ [and] environmental policy is.

<https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs>

The Authority may require the Supplier to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check. The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Services, relevant to the work of the Authority, or is of a type otherwise advised by the Authority (each such conviction a “**Relevant Conviction**”), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.

## Payment

Our preference is for all invoices to be sent electronically, quoting a valid purchase order number (PO Number), to [Accounts-Payable.def@govl.sscl.com](mailto:Accounts-Payable.def@govl.sscl.com). [REDACTED]

[REDACTED]. Alternatively, you may post to [ssd.ap@defra.gsi.gov.uk](mailto:ssd.ap@defra.gsi.gov.uk) (the Authority's preferred option); or SSCL AP, Defra, PO Box 790, Newport Gwent, NP10 8FZ. Within 10 working days of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.

To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Authority contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment. If you have a query regarding an outstanding payment please contact our Accounts Payable section either by email to [ssd.ap@defra.gsi.gov.uk](mailto:ssd.ap@defra.gsi.gov.uk) (the Authority's preferred option); or SSCL AP, Defra, PO Box 790, Newport Gwent, NP10 8FZ between 09:00-17:00 Monday to Friday.

## Liaison

[REDACTED]

We thank you for your co-operation to date and look forward to forging a successful working relationship resulting in a smooth and successful delivery of the Services. The [Authority] would be grateful if you could arrange the contract to be executed, by way of electronic signature, on behalf of Eunomia Research & Consulting Ltd and within 7 days by 15<sup>th</sup> September 2021.

Yours faithfully,

***Execution of this award notification letter is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000. The Contract will be formed on the date on which both Parties communicate acceptance of its terms on the Authority's e-Sourcing System.***

Signed for and on behalf of [insert name of Authority]

Name: [insert name] [insert job title]	Name: (Procurement)
Signature:	Signature:
Date:	Date:

We accept the terms set out in this Award letter and the annexed Conditions

Signed for and on behalf of [insert name of Supplier]

Name: [insert name] [insert job title]	
Signature:	Date:



Department  
for Environment  
Food & Rural Affairs

# Conditions of Contract

## Short Form - Services

**Waste Management Data Required for Extended Producer Responsibility in the UK – (i) Evidence Requirements for Linking Material Reprocessors and Exporters Back to Others in the Chain, (ii) Waste Composition.**

**Ecm 62262**

## **Annex 1**

### **Terms and Conditions of Contract for Services**

#### **1 Interpretation**

##### **1.1 In these terms and conditions:**

“Agreement”	means the contract between (i) the Customer acting as part of the Crown and (ii) the Supplier constituted by the Supplier’s countersignature of the Award Letter and includes the Award Letter and Annexes;
“Award Letter”	means the letter from the Customer to the Supplier printed above these terms and conditions;
“Central Government Body”	<p>means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"><li>(a) Government Department;</li><li>(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li><li>(c) Non-Ministerial Department; or</li><li>(d) Executive Agency;</li></ul>
“Charges”	means the charges for the Services as specified in the Award Letter;
“Confidential Information”	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
“Customer”	means the person named as Customer in the Award Letter;
“DPA”	means the Data Protection Act 1998;
“Expiry Date”	means the date for expiry of the Agreement as set out in the Award Letter;
“FOIA”	means the Freedom of Information Act 2000;

“Information”	has the meaning given under section 84 of the FOIA;
“Key Personnel”	means any persons specified as such in the Award Letter or otherwise notified as such by the Customer to the Supplier in writing;
“Party”	means the Supplier or the Customer (as appropriate) and “Parties” shall mean both of them;
“Personal Data”	means personal data (as defined in the DPA) which is processed by the Supplier or any Staff on behalf of the Customer pursuant to or in connection with this Agreement;
“Purchase Order Number”	means the Customer’s unique number relating to the supply of the Services;
“Request for Information”	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
“Services”	means the services to be supplied by the Supplier to the Customer under the Agreement;
“Specification”	means the specification for the Services (including as to quantity, description and quality) as specified in the Award Letter;
“Staff”	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where requested by the Customer, the Customer’s procedures for the vetting of personnel as provided to the Supplier from time to time;
“Supplier”	means the person named as Supplier in the Award Letter;
“Term”	means the period from the start date of the Agreement set out in the Award Letter to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In these terms and conditions, unless the context otherwise requires:



- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.2.5 the word 'including' shall be understood as meaning 'including without limitation'.

## **2 Basis of Agreement**

- 2.1 The Award Letter constitutes an offer by the Customer to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The offer comprised in the Award Letter shall be deemed to be accepted by the Supplier on receipt by the Customer of a copy of the Award Letter countersigned by the Supplier within [7] days of the date of the Award Letter.

## **3 Supply of Services**

- 3.1 In consideration of the Customer's agreement to pay the Charges, the Supplier shall supply the Services to the Customer for the Term subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Services, the Supplier shall:
  - 3.2.1 co-operate with the Customer in all matters relating to the Services and comply with all the Customer's instructions;
  - 3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;
  - 3.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
  - 3.2.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
  - 3.2.5 comply with all applicable laws; and
  - 3.2.6 provide all equipment, tools and vehicles and other items as are required to provide the Services.
- 3.3 The Customer may by written notice to the Supplier at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Supplier.

## **4 Term**

- 4.1 The Agreement shall take effect on the date specified in Award Letter and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
- 4.2 The Customer may extend the Agreement for a period of up to 6 months by giving not less than 10 Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

## **5 Charges, Payment and Recovery of Sums Due**

- 5.1 The Charges for the Services shall be as set out in the Award Letter and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 5.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
- 5.3 The Supplier shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.4 In consideration of the supply of the Services by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 5.5 If the Customer fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 5.4 after a reasonable time has passed.
- 5.6 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
- 5.7 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.8 Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
- 5.8.1 provisions having the same effects as clauses 5.3 to 5.7 of this Agreement; and
  - 5.8.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 5.3 to 5.8 of this Agreement.
  - 5.8.3 In this clause 5.8, "sub-contract" means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 5.9 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

## **6 Premises and equipment**

- 6.1 If necessary, the Customer shall provide the Supplier with reasonable access at reasonable

times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Customer's premises by the Supplier or the Staff shall be at the Supplier's risk.

- 6.2 If the Supplier supplies all or any of the Services at or from the Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Customer's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Customer's premises or any objects contained on the Customer's premises which is caused by the Supplier or any Staff, other than fair wear and tear.
- 6.3 If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.4 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Supplier shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 6.5 Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 6.6 Without prejudice to clause 3.2.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 6.7 The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing within 5 Working Days.

## **7 Staff and Key Personnel**

- 7.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
  - 7.1.1 refuse admission to the relevant person(s) to the Customer's premises;
  - 7.1.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
  - 7.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,and the Supplier shall comply with any such notice.
- 7.2 The Supplier shall:
  - 7.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
  - 7.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
  - 7.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.
- 7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave,

termination of employment or other extenuating circumstances.

- 7.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

## **8 Assignment and sub-contracting**

- 8.1 The Supplier shall not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 8.2 Where the Customer has consented to the placing of sub-contracts, the Supplier shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.
- 8.3 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

## **9 Intellectual Property Rights**

- 9.1 All intellectual property rights in any materials provided by the Customer to the Supplier for the purposes of this Agreement shall remain the property of the Customer but the Customer hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.
- 9.2 All intellectual property rights in any materials created or developed by the Supplier pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Supplier. If, and to the extent, that any intellectual property rights in such materials vest in the Customer by operation of law, the Customer hereby assigns to the Supplier by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).
- 9.3 The Supplier hereby grants the Customer:
- 9.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Services; and
  - 9.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:
    - (a) any intellectual property rights vested in or licensed to the Supplier on the date of the Agreement; and
    - (b) any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services,

including any modifications to or derivative versions of any such intellectual property rights, which the Customer reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.

- 9.4 The Supplier shall indemnify, and keep indemnified, the Customer in full against all costs,

expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

## **10 Governance and Records**

### **10.1 The Supplier shall:**

10.1.1 attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and

10.1.2 submit progress reports to the Customer at the times and in the format specified by the Customer.

10.2 The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

## **11 Confidentiality, Transparency and Publicity**

11.1 Subject to clause [Error! Reference source not found.11.2](#), each Party shall:

11.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

11.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

11.2 Notwithstanding clause [Error! Reference source not found.11.4](#), a Party may disclose Confidential Information which it receives from the other Party:

11.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;

11.2.2 to its auditors or for the purposes of regulatory requirements;

11.2.3 on a confidential basis, to its professional advisers;

11.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;

11.2.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and

11.2.6 where the receiving Party is the Customer:

(a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;

(b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;

(c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or

(d) in accordance with clause [Error! Reference source not found.12](#).

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 11.

11.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for the Customer to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

11.4 The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

## **12 Freedom of Information**

12.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

12.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;

12.1.2 transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

12.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and

12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

12.2 The Supplier acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

12.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

### 13 Protection of Personal Data and Security of Data

- 13.1 The Supplier shall, and shall procure that all Staff shall, comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with the Agreement.
- 13.2 Notwithstanding the general obligation in clause 13.1, where the Supplier is processing Personal Data for the Customer as a data processor (as defined by the DPA) the Supplier shall:
- 13.2.1 ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA;
  - 13.2.2 provide the Customer with such information as the Customer may reasonably request to satisfy itself that the Supplier is complying with its obligations under the DPA;
  - 13.2.3 promptly notify the Customer of:
    - (a) any breach of the security requirements of the Customer as referred to in clause [Error! Reference source not found.13.3](#); and
    - (b) any request for personal data; and
  - 13.2.4 ensure that it does not knowingly or negligently do or omit to do anything which places the Customer in breach of the Customer's obligations under the DPA.
- 13.3 When handling Customer data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Supplier from time to time.

### 14 Liability

- 14.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.
- 14.2 Subject always to clauses [Error! Reference source not found.14.3](#) and 14.4:
- 14.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and
  - 14.2.2 except in the case of claims arising under clauses 9.4 and 18.3, in no event shall the Supplier be liable to the Customer for any:
    - (a) loss of profits;
    - (b) loss of business;
    - (c) loss of revenue;
    - (d) loss of or damage to goodwill;
    - (e) loss of savings (whether anticipated or otherwise); and/or
    - (f) any indirect, special or consequential loss or damage.
- 14.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:



14.3.1 death or personal injury caused by its negligence or that of its Staff;

14.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or

14.3.3 any other matter which, by law, may not be excluded or limited.

14.4 The Supplier's liability under the indemnity in clause 9.4 and 18.3 shall be unlimited.

## 15 Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

## 16 Termination

16.1 The Customer may terminate the Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least 1 month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.

16.2 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:

16.2.1 (without prejudice to clause [Error! Reference source not found.46.2.5](#)), is in material breach of any obligation under the Agreement which is not capable of remedy;

16.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;

16.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;

16.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;

16.2.5 breaches any of the provisions of clauses 7.2, 11, [Error! Reference source not found.42](#), 13 and 17;

16.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.2.6) in consequence of debt in any jurisdiction; or

16.2.7 fails to comply with legal obligations in the fields of environmental, social or labour law.

16.3 The Supplier shall notify the Customer as soon as practicable of any change of control as referred to in clause [Error! Reference source not found.46.2.4](#) or any potential such change of control.

16.4 The Supplier may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.

16.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, [Error! Reference](#)



[source not found.42](#), 13, 14, 16.6, 17.4, 18.3, 19 and 20.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.

16.6 Upon termination or expiry of the Agreement, the Supplier shall:

- 16.6.1 give all reasonable assistance to the Customer and any incoming supplier of the Services; and
- 16.6.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.

## **17 Compliance**

17.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.

17.2 The Supplier shall:

- 17.2.1 comply with all the Customer's health and safety measures while on the Customer's premises; and
- 17.2.2 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

17.3 The Supplier shall:

- 17.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Supplier from time to time; and
- 17.3.2 take all reasonable steps to secure the observance of clause [Error! Reference source not found.47.3.4](#) by all Staff.

17.4 The Supplier shall supply the Services in accordance with the Customer's environmental policy as provided to the Supplier from time to time.

17.5 The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of:

- 17.5.1 the Official Secrets Acts 1911 to 1989; and
- 17.5.2 section 182 of the Finance Act 1989.

## **18 Prevention of Fraud and Corruption**

18.1 The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.

18.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

18.3 If the Supplier or the Staff engages in conduct prohibited by clause [Error! Reference source not found.48.4](#) or commits fraud in relation to the Agreement or any other contract with the Crown (including the Customer) the Customer may:

- 18.3.1 terminate the Agreement and recover from the Supplier the amount of any loss

suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or

18.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

## **19 Dispute Resolution**

19.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.

19.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause [Error! Reference source not found.19.4](#), the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the “**Mediator**”) chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.

19.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

## **20 General**

20.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.

20.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.

20.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.

20.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

20.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.

20.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

20.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

20.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

## 21 Notices

21.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause [Error! Reference source not found.21.3](#), e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:

21.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.

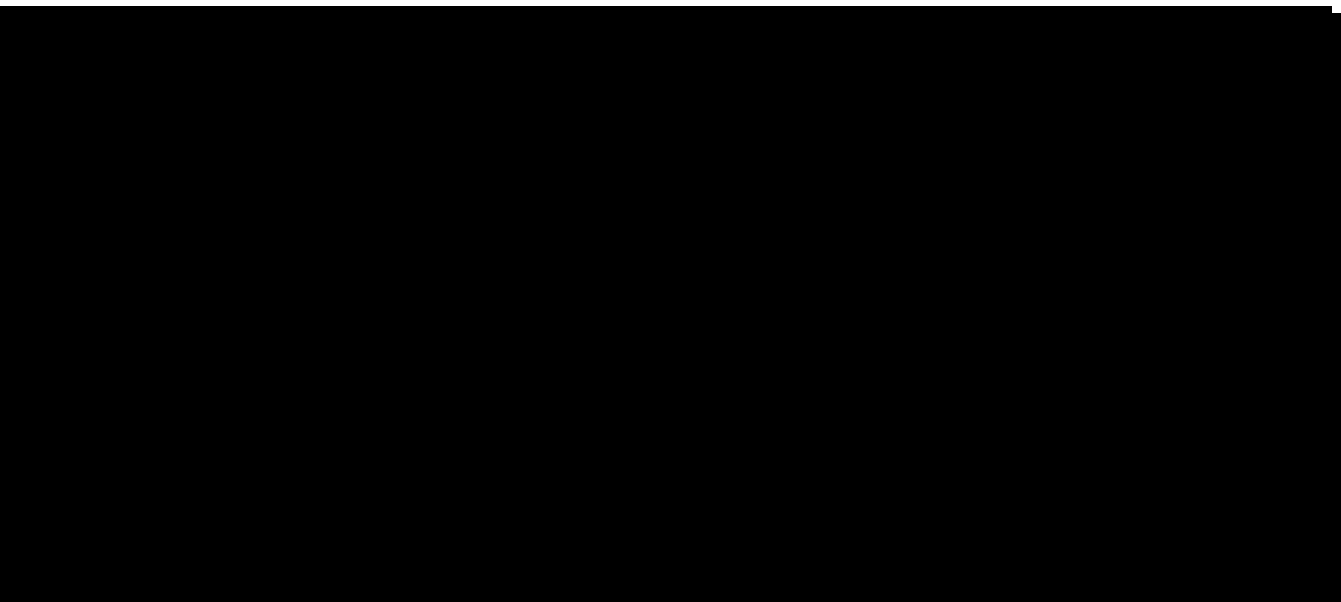
21.3 Notices under clauses [1515](#) (Force Majeure) and [1616](#) (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause [Error! Reference source not found.21.1](#).

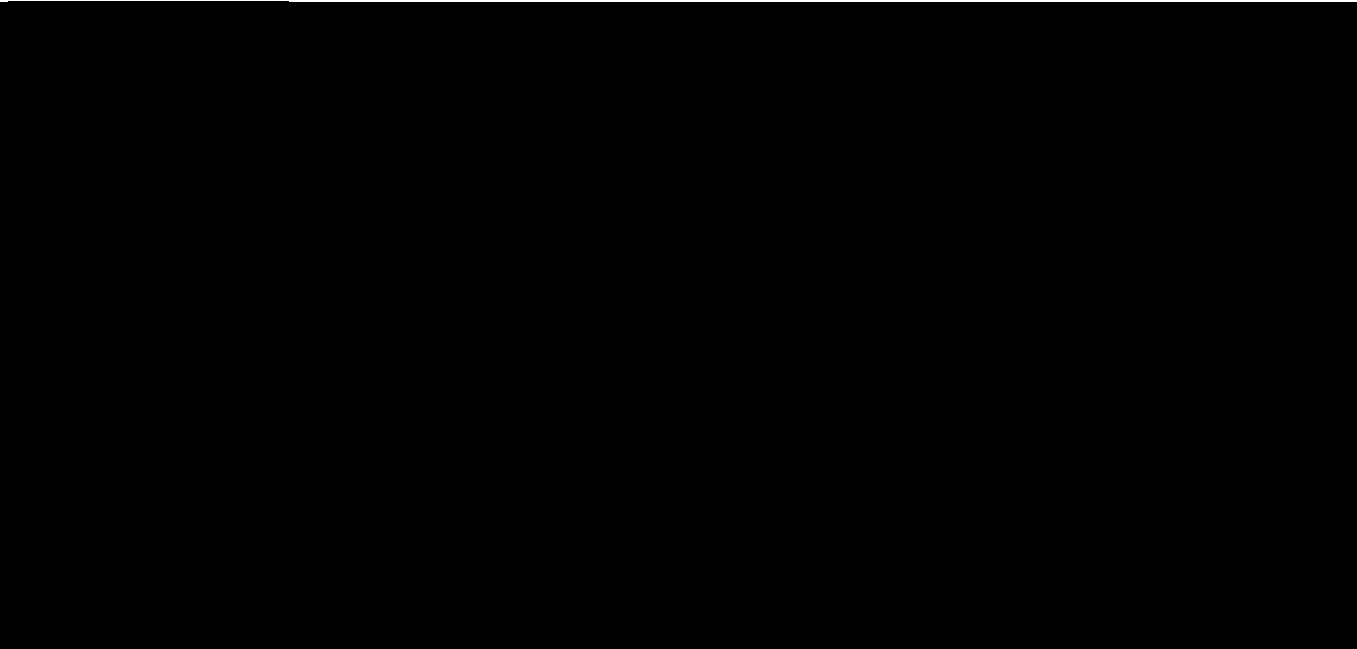
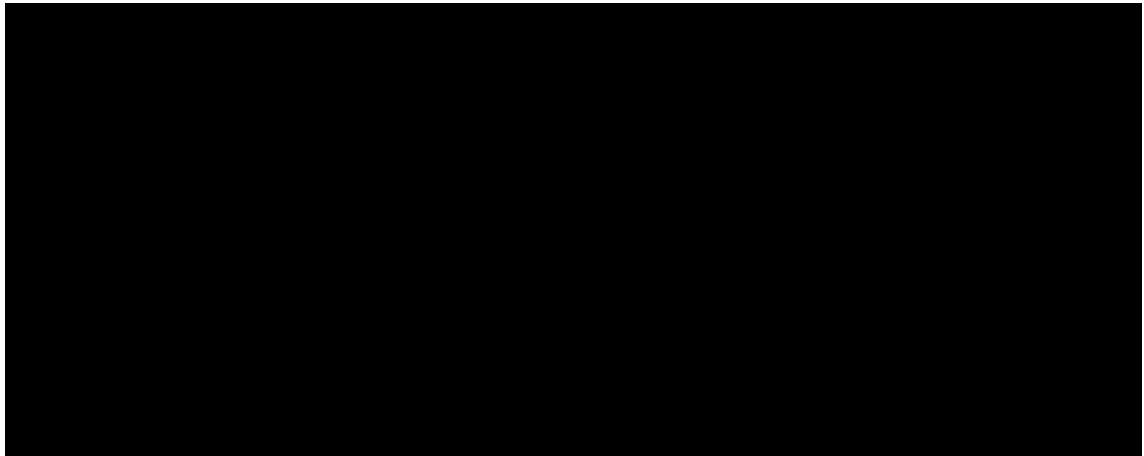
## 22 Governing Law and Jurisdiction

The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

## Annex 2 - Charges

1. The Authority shall pay to the Contractor no more than the fixed sum identified in Table 3 below: **GBP £39,825.00 as the Price.**
2. Subject to any Variation agreed in accordance with the terms of this Contract as set out in Clause 3.3, the amounts in Table 1 shall remain firm throughout the duration of the Contract.
3. In the event that the Contract is varied, the amounts in Table 1 below may be adjusted as agreed in writing, between the Authority and the Contractor and added as an addendum to the Contract to reflect the amount in table 3 Optional Milestone
4. The payment arrangements shall be as follows:
  - 4.1. Upon completion, to the satisfaction of the Authority, of the Services described in the Specification for each of the milestones set out in Table 1 below and upon delivery, to the satisfaction of the Authority, to the Authority of the corresponding milestone deliverables set out in Table 1 below; the Contractor shall submit an invoice to the Authority for the amounts set out in Table 1 in respect of each such milestone;
  - 4.2. Any and all such invoices shall comply with the requirements in section C of the Contract and the Contractor shall provide all further reasonable information and/or evidence of completion as the Authority shall reasonably require to demonstrate the satisfactory completion of the agreed milestones;
  - 4.3. The Authority shall pay all Valid Invoices in accordance with the payment terms in Clause C of the Contract to the bank account nominated by the Contractor in the invoice.





## **Annex 3 – Specification**

### **1. Aim of research**

- 1.1. To determine the standard of evidence needed to support successful extended producer responsibility (EPR) for packaging in terms of data and other information that links reprocessors and exporters back to others in the chain, the options for providing this, the standard of that evidence required to enable the system to be effectively enforced and the calculation of common metrics including municipal recycling rates. To identify how waste composition should be recorded for successful EPR for packaging.

### **2. Background**

- 2.1. To successfully implement EPR for packaging, all stakeholders, including government need to be confident that all data requirement and availability issues, including financial data, are sufficiently covered to ensure high levels of transparency and to protect against the risk of fraud. The introduction of digital waste tracking may help fill some but perhaps not all data gaps. Modelling will also be helpful but is not likely to be sufficient in itself.
- 2.2. To be successful EPR must enable capture and flow of adequate ‘evidence’ (i.e. data and other information) from reprocessors and exporters back up the chain to the so called ‘First Points of Consolidation’ (see EPR consultation<sup>1</sup> for further explanation of this new category or waste site - Extended Producer Responsibility). The reasons for this are twofold:
- i. it will support mass balance monitoring of packaging, reducing the risk of fraud or misreporting, thereby increasing transparency and producer confidence in the system;
  - ii. it could help facilitate incentive payments for high quality collection, sorting and reprocessing to either to meet government-imposed targets or producers demands.
- 2.3. Key questions include:
- a) what value would this flow back of reprocessing evidence add in terms of increased transparency and reduced fraud;
  - b) what the evidence / data would look like in terms of reprocessing quality for different material types;
  - c) whether it is possible to / how would you set ‘acceptable’ or ‘average’ loss rates to help identify misreporting, fraud, or inefficiency within the system (especially where this data is passed back through several facilities or contracts); and
  - d) how quickly this evidence is likely to flow back through the system in order to substantiate the collection evidence.
- 2.4. It is expected that such evidence will form part of contractual arrangements that would see the evidence flow back through the value chain from the reprocessor, who could be required through legislation to pass this evidence on, to First Points of Consolidation and the First Points of Consolidation would be required to present adequate evidence of reprocessing to the EPR Scheme Administrator/s, taking account of acceptable losses. It is

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<sup>1</sup> <https://consult.defra.gov.uk/extended-producer-responsibility/extended-producer-responsibility-for-packaging>

thought that such an approach should strengthen feedback through the system on both quality and contamination.

- 2.5. Adequate data will also be required to ensure that government and other stakeholders can calculate standard metrics, particularly recycling rates by broad material type and potentially by quality.
- 2.6. For successful EPR there is also a need for granular data on waste composition and the Authority (Defra) and the Devolved Administrations need to know whether that should be predicated on, or developed from, existing EU waste data catalogue codes, Standard Industrial Classification (SIC) codes or based on a completely different descriptor and what role would such granular compositional data have in the context of accurately recording and reconciling material received at points of first consolidation to facilitate the netting off of material values, making accurate payments to waste collectors, and helping establish how to share collection and sorting costs between producers.
- 2.7. Electronic waste tracking might fill some of these data and information gaps, but at this stage the Authority cannot assume that it will definitely meet all the needs, so thought will need to be given to whether digital waste tracking (plus other compositional data that should flow from the proposed Materials Recovery Facility (MRF) regulation amendments<sup>2</sup>) is the only or best solution for the challenges set out above.
- 2.8. To meet these objectives Defra is commissioning a two-stage project. These are:
  - 2.8.1. **Work package 1:** will be a relatively 'light touch' scoping study which will set out the parameters of the issues in broad terms and explore where the main risks potentially are that would threaten successful and effective EPR.
  - 2.8.2. **Work package 2:** will investigate the high-risk areas emerging from WP 1 in more detail and explore and recommend options for solutions.
  - 2.8.3. Stakeholder engagement will be a very key part of the work, including around industry reporting.
  - 2.8.4. Progression into work package 2 will be dependent on successful delivery of work package 1.

### 3. Research Objectives

- 3.1. The Authority have outlined several objectives and associated research questions to be answered by this project.
  - a. To determine the standard of evidence needed to support successful EPR for packaging in terms of data and other information that links reprocessors and exporters to 'First Points of Consolidation' in the chain. In particular, what is the standard of evidence required around quantity and quality of material flows, including for EPR payments, quality incentives or potential target proposals?  
For example, would the proof of recycling require First Points of Consolidation to adequately link waste received with waste that leaves the site (via sorting, mixing and bulking of loads). And how would proof of packaging content received and processed by reprocessors and exporters be derived and measured?

- b. To identify the options for providing this, in particular the possible role of commercial contracts, waste tracking or regulation and any other possibilities, e.g. advances in distributed ledger technologies (beyond blockchain), drawing out the advantages and disadvantages of these and any other relevant information.
- c. To identify the standard of evidence required to guard against fraud and enable calculation of common metrics, including packaging recycling rates at national and regional level.
- d. To determine what value the flow back of reprocessing evidence would add in terms of increased transparency and reduced fraud, and information for supporting EPR payments.
- e. To determine what the evidence and data would look like in terms of reprocessing quality for different material types.
- f. To determine whether it is possible to / how would you set 'acceptable' or 'average' loss rates to help identify misreporting, fraud, or inefficiency within the system;
- g. To determine how quickly this evidence is likely to flow back through the system.
- h. Identify the role of waste data tracking in successful EPR and consider the extent to which the flow of evidence back from reproprocessors to First Points of Consolidation' could reduce the need / frequency of compositional analysis sampling at First Points of Consolidation and how WDT could help with this.
- i. To identify the options consistent with the data needs for successful EPR to enable a sufficient level of detail in waste composition reporting and potential links with WDT – eg use or build on EWC codes, SIC codes, or develop a completely new system?
- j. To determine if it is feasible and what the options would be for regulators to regulate or compliance monitor the evidence that is passed back to First Points of Consolidation from reproprocessors or exporters.

#### **4. Approach and Methodology**

- 4.1. The project will be divided into two work packages. Work package 1 will largely set out the parameters of the issues in broad terms and explore where the main risks potentially are. Work package 2 will investigate the high-risk areas emerging from WP 1 in more detail and explore and recommend options for solutions.
- 4.2. Stakeholder engagement will be a very key part of the work in both work packages.
- 4.3. **Work Package 1:** this will mainly address research objectives a, c, d, e, f, g, and h by, for example, identifying the standard and type of data and other information required to flow back from reproprocessors and exporters and the role of waste composition in EPR and implications for granularity.

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<sup>2</sup> Data via the material sampling and compositional analysis proposal as detailed on page 122 of the consultation (link at footnote 1)



4.4. **Work Package 2:** Work Package 2: this will mainly address research objectives b, i and j by, for example, considering:

- How available and collectable are the data to the required level of detail and frequency?
- Where are the main risks that would arise through not being able to obtain the data?
- How could these risks be managed?
- How can the data gaps be filled quickly, efficiently and by when?

Any other pertinent risks and the solutions to those

## 5. Payment

5.1. All payment will be made to the successful Contractor by invoice according to the agreed milestones. However, where there has been an overpayment made by the Authority to the Contractor, such monies shall be recoverable.

5.2. There will be two payment stages. The first payment (40% of total cost) will be made on completion of the interim report. The second and final payment (60% of total cost) will be on delivery of a satisfactory and final report.

## 6. Deliverables and Timelines

Inception Meeting	Inception meeting with the project steering group and supplier.	Week commencing 13 <sup>th</sup> September 2021
Progress updates	Fortnightly teleconference/phone call to update the Defra Project Officer on progress, with steering group participation if required technically.	Fortnightly or as issues arise.
Data analysis and outputs	Data collection, collation and analysis.	Ongoing throughout WP1 and then WP2, subject to successful delivery of WP 1
WP1 completed	Interim report, including provisional findings from WP1	Week commencing 11 <sup>th</sup> October
WP2 completed		Week commencing 22 <sup>nd</sup> November
Draft final report	Draft final report to include all outputs and supporting text. To be provided by e-mail to the	Week commencing 22 <sup>nd</sup> November 2021

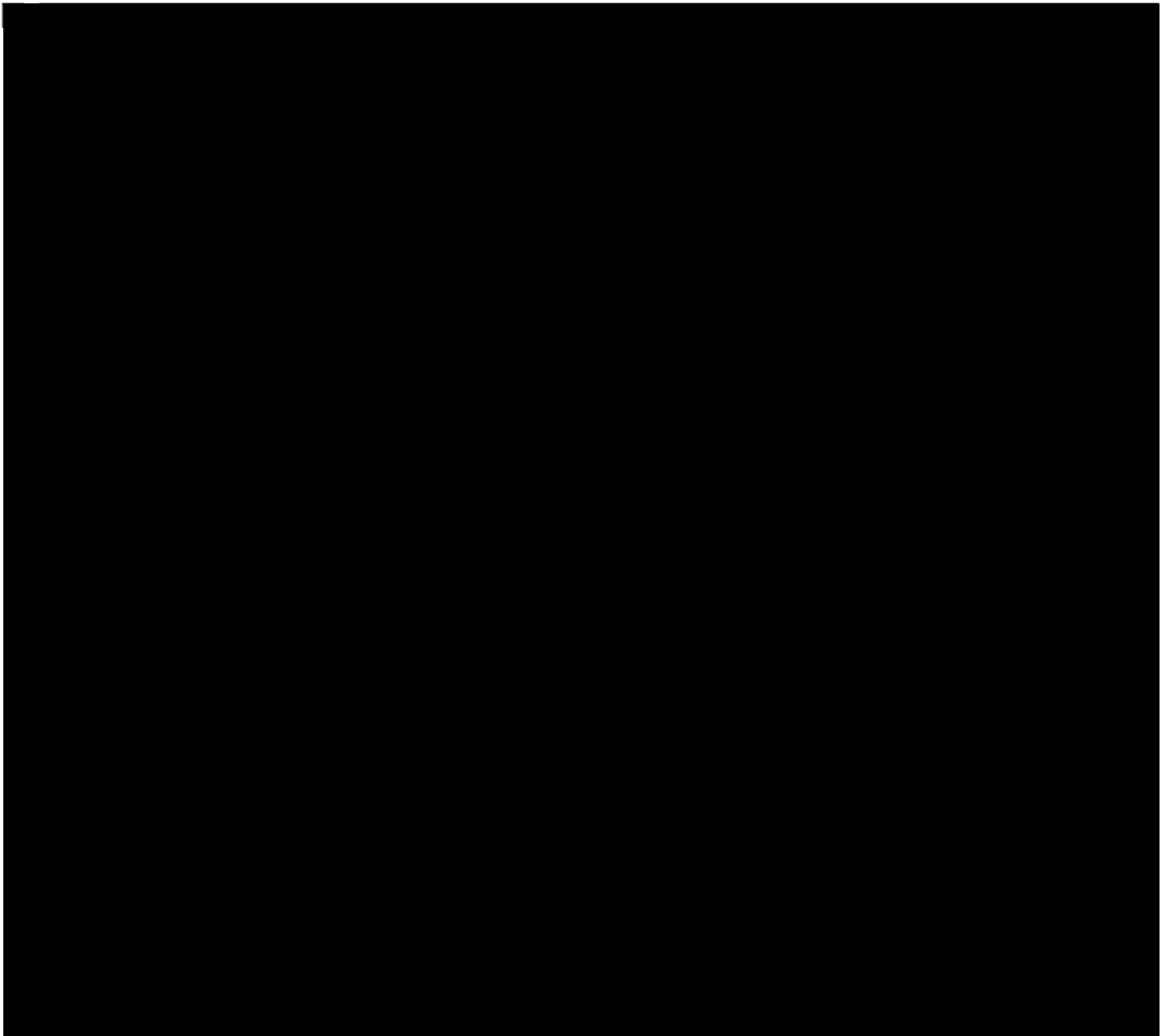
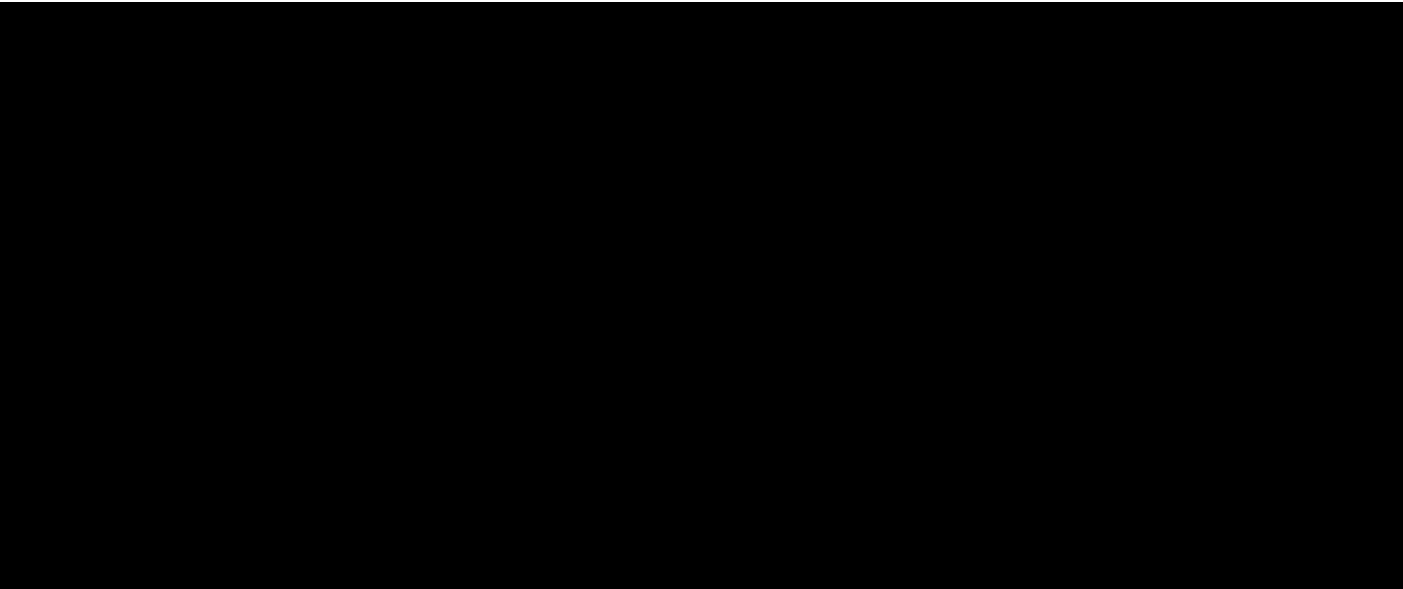
	Defra Project Officer.	
Final Report	<p>Final report, incorporating comments from the steering group on the draft report.</p> <p>To be provided by e-mail to the Defra Project Officer.</p>	By 03 <sup>rd</sup> December 2021 or within two weeks of receipt of Defra's comments, whichever is the later.

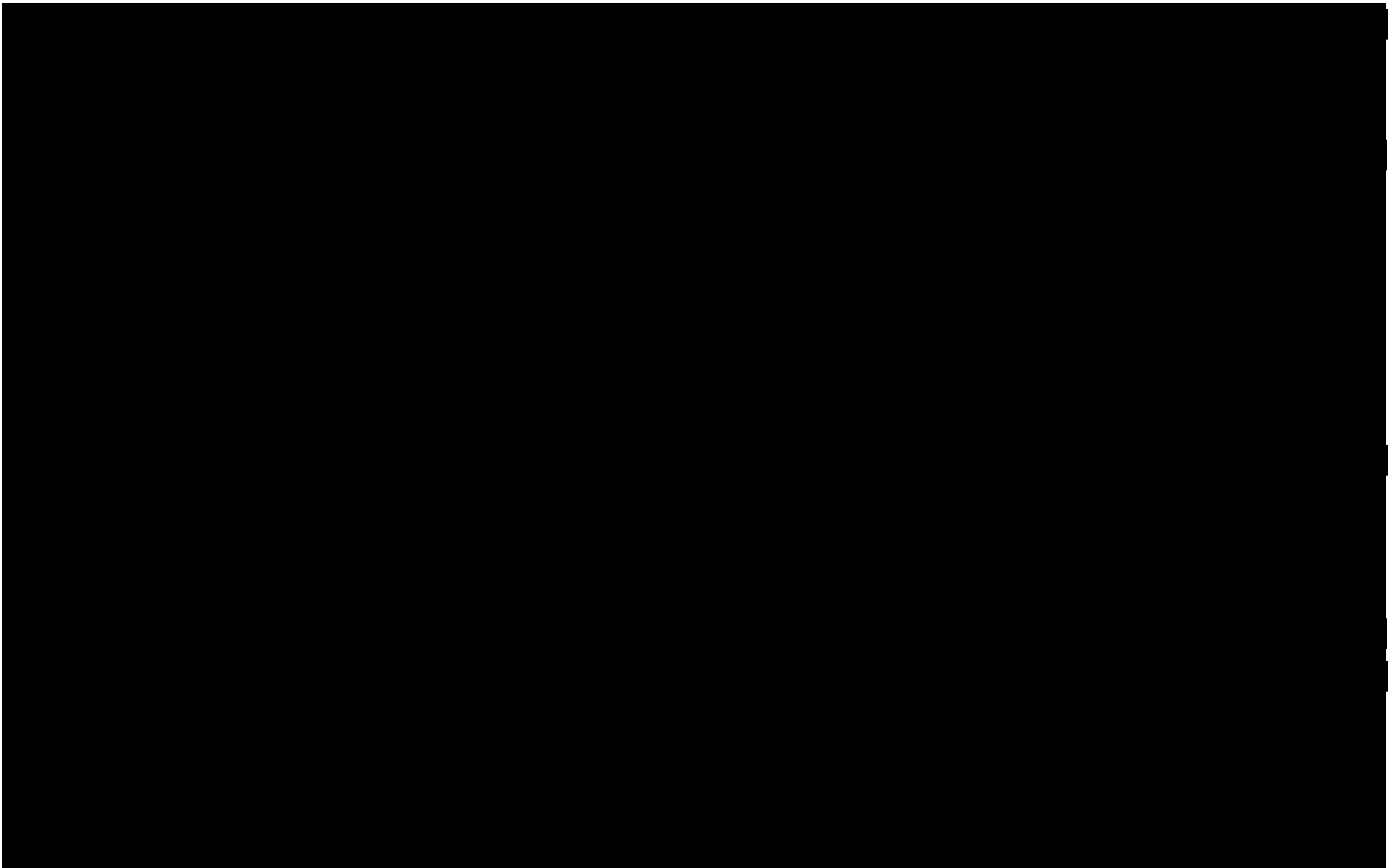
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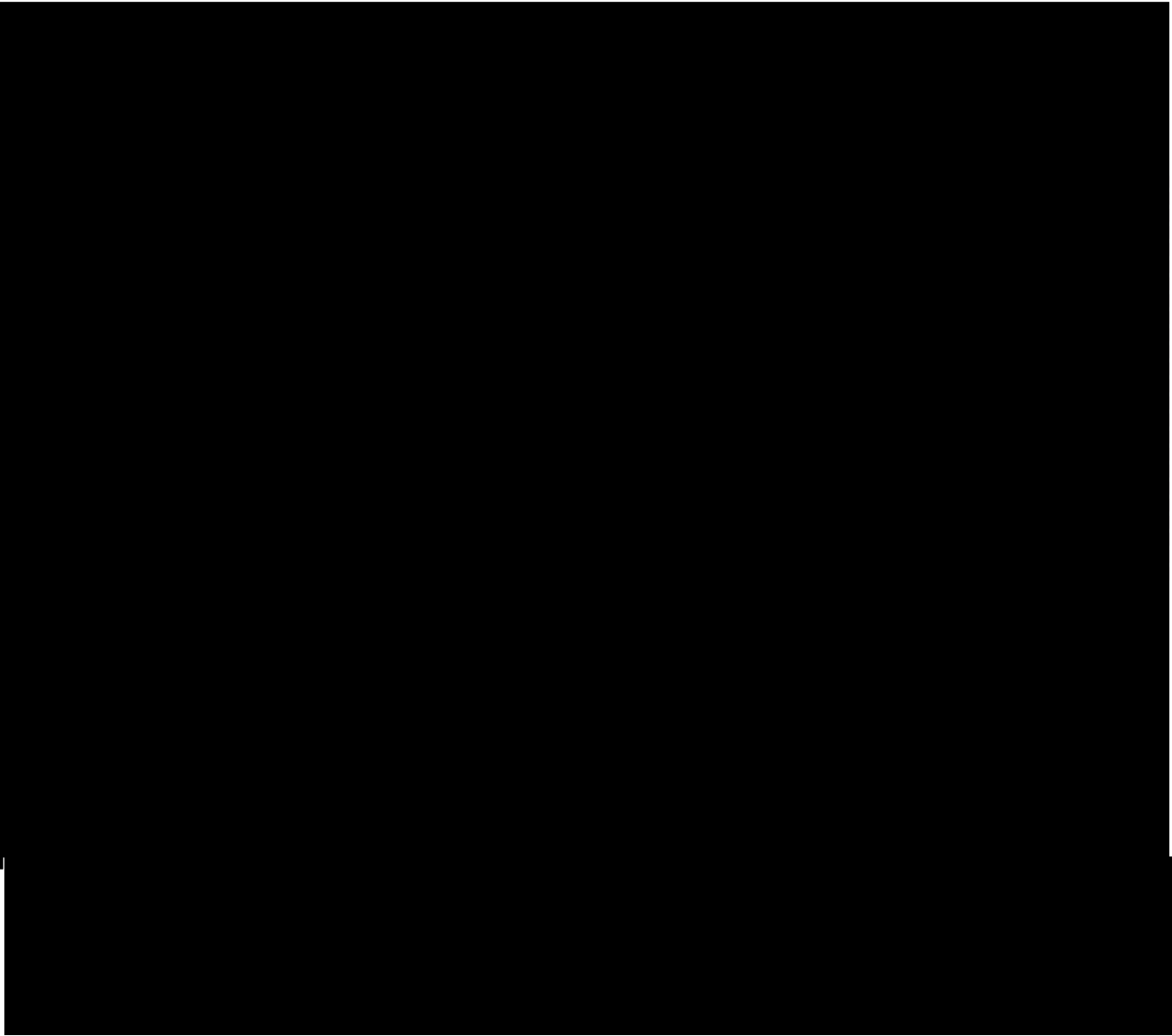
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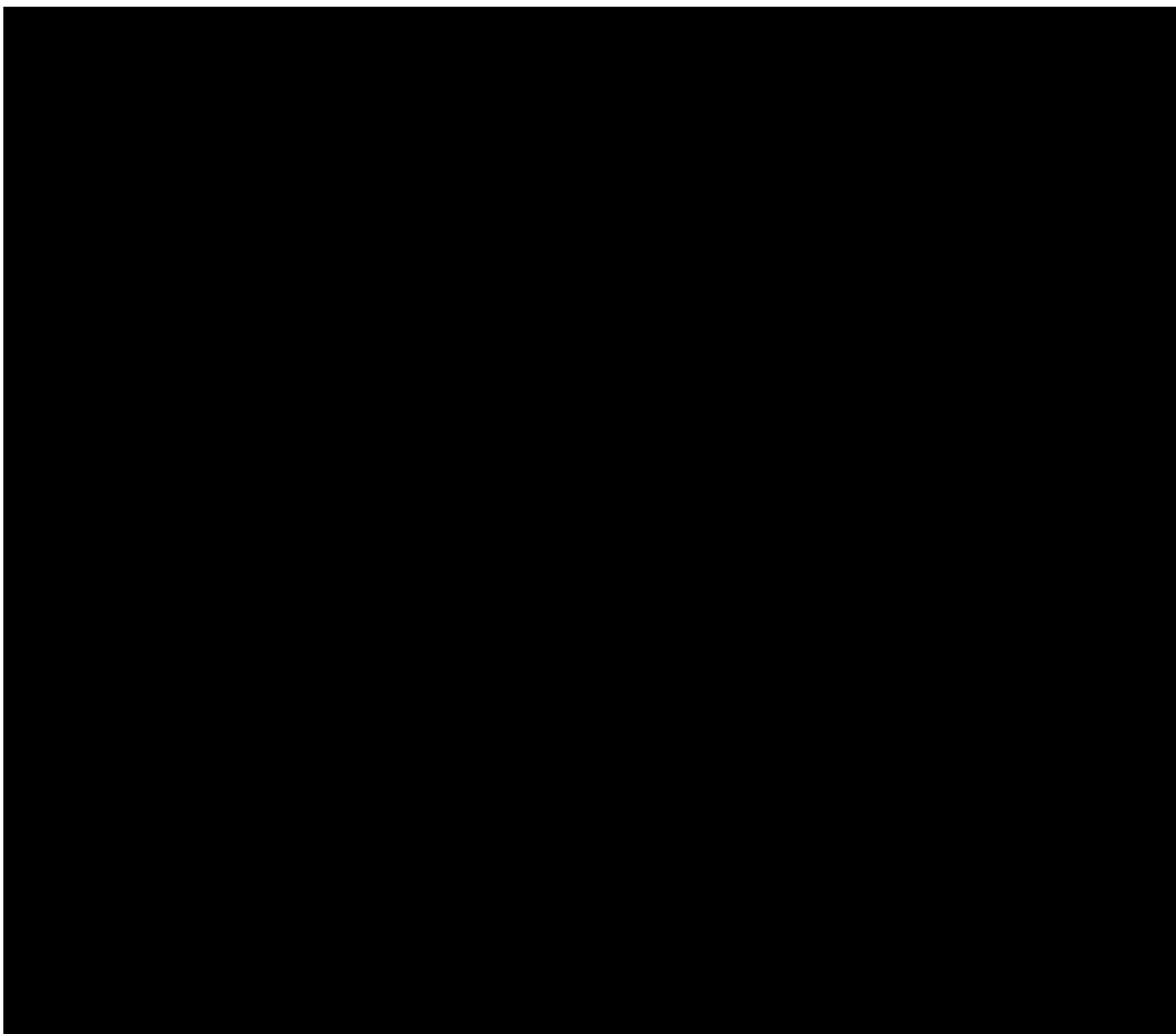
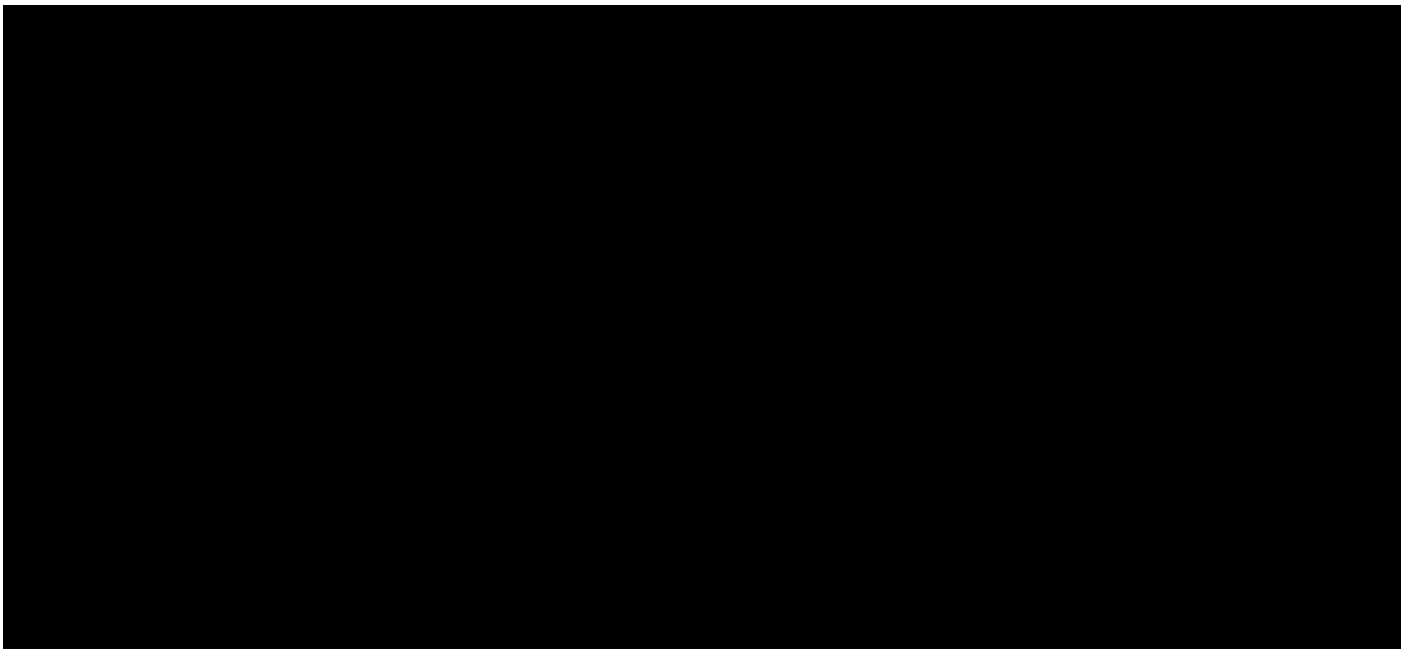
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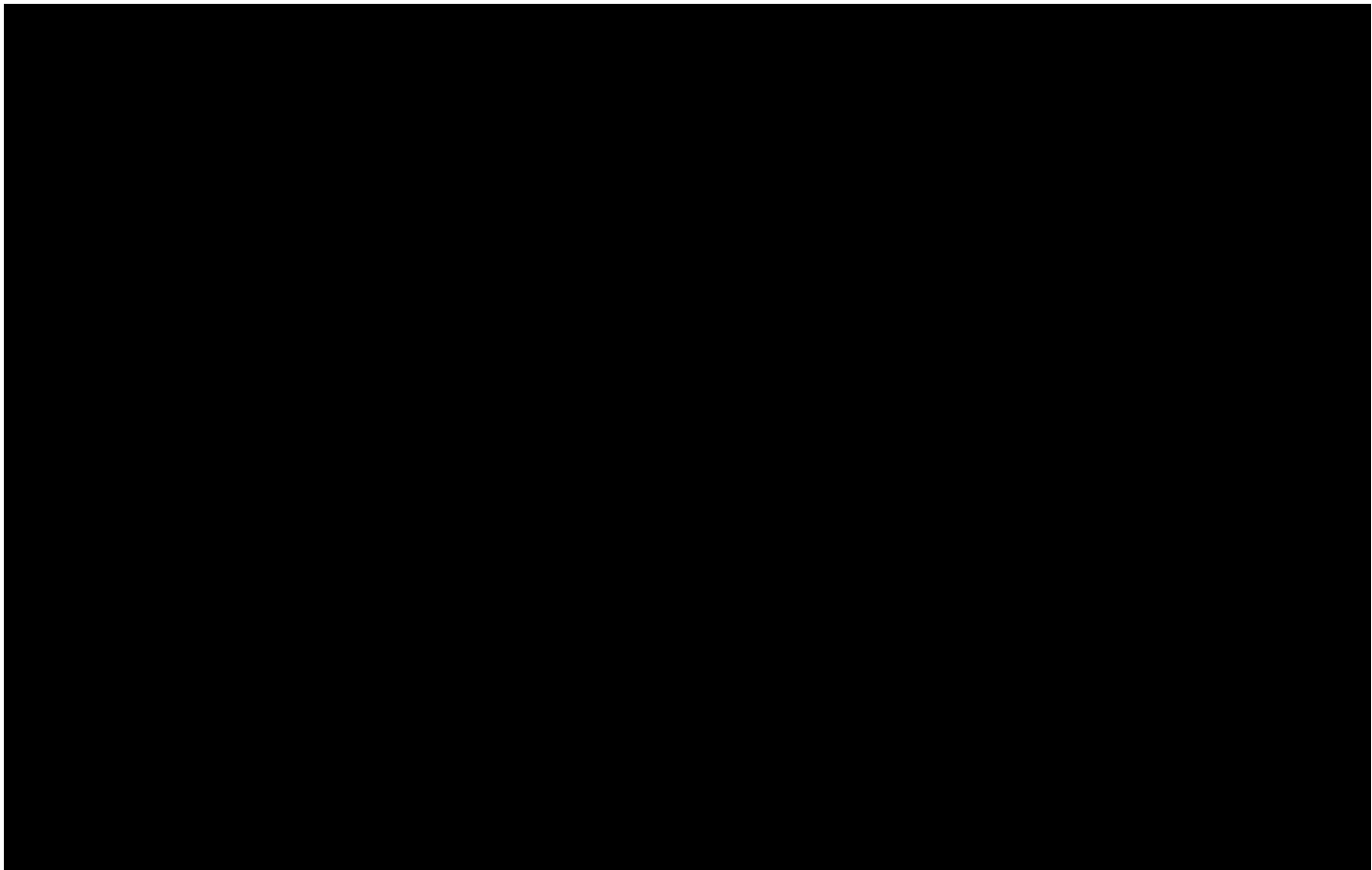
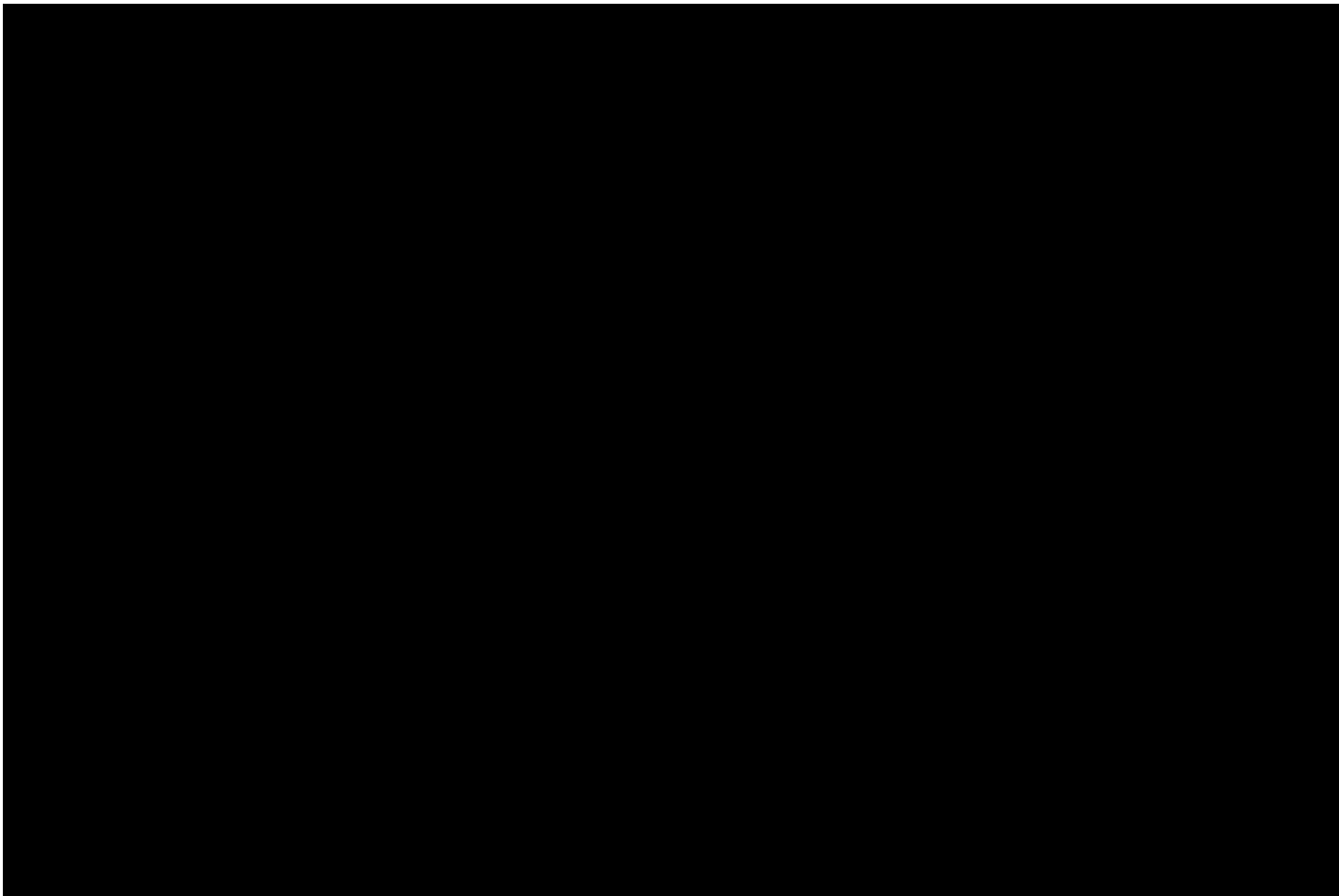
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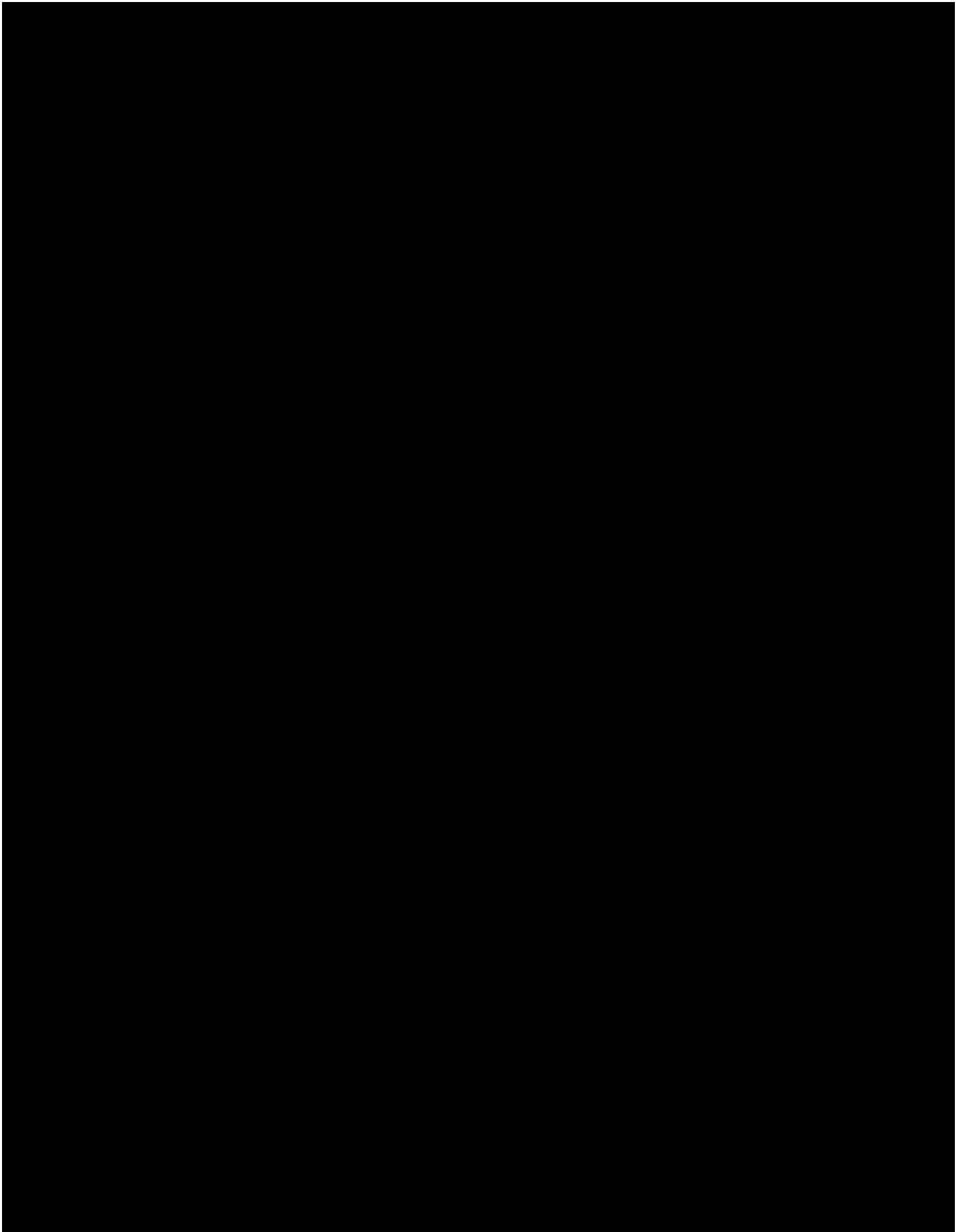




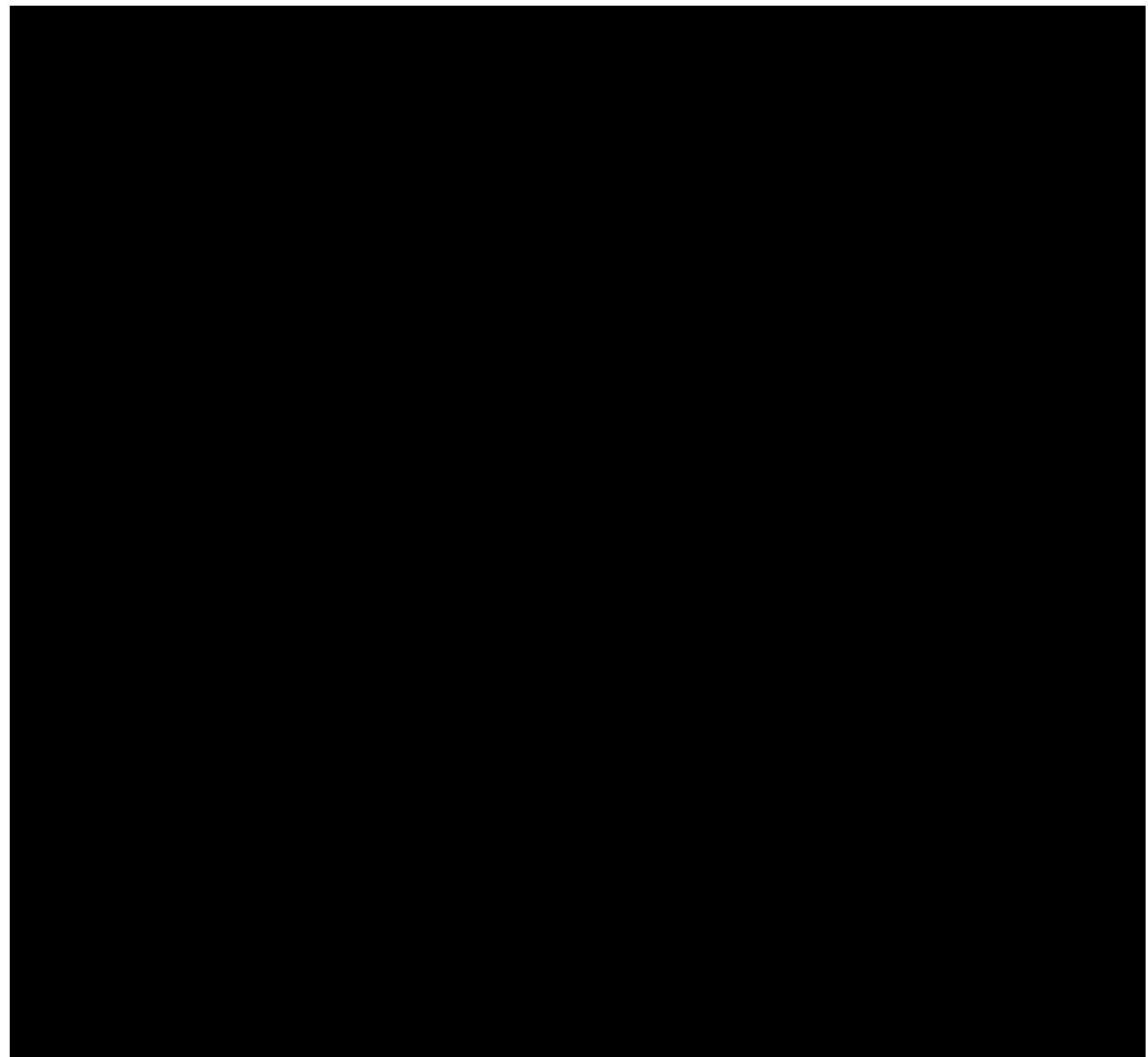
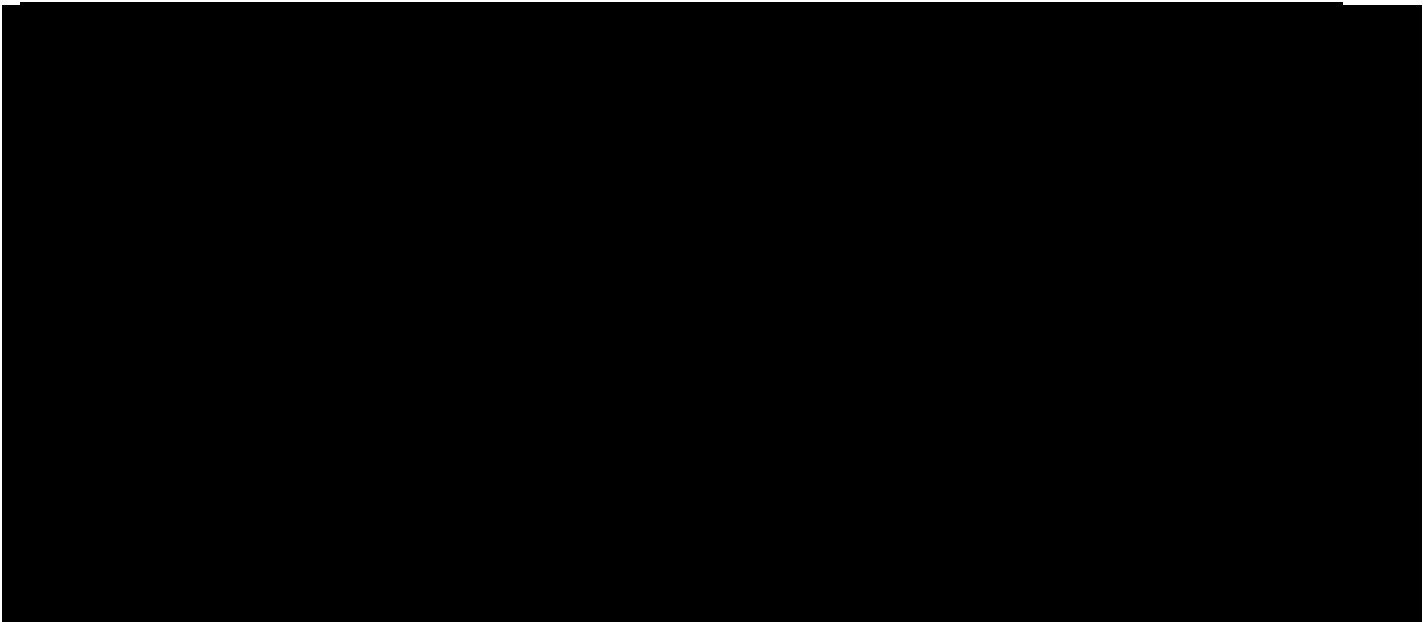


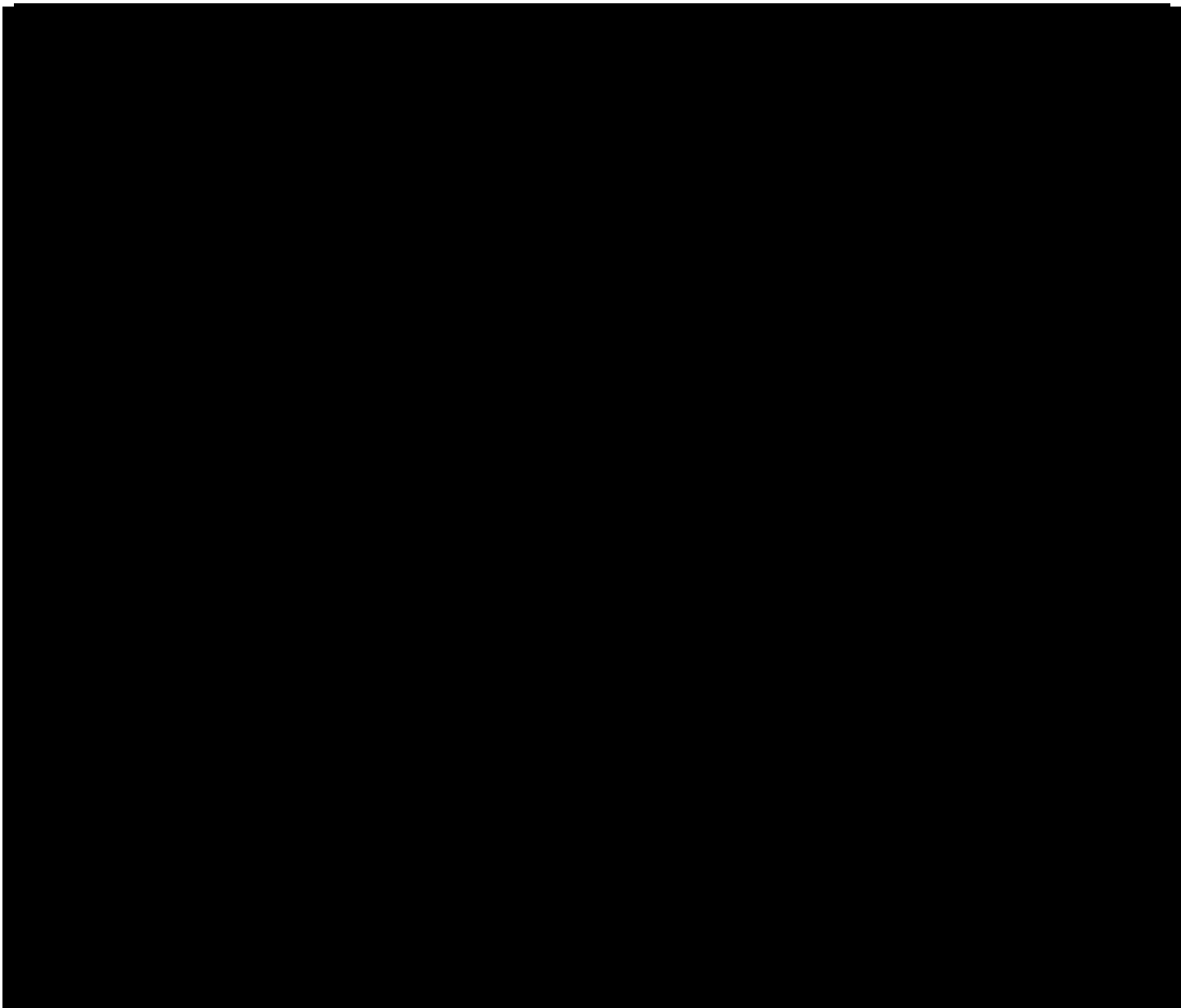
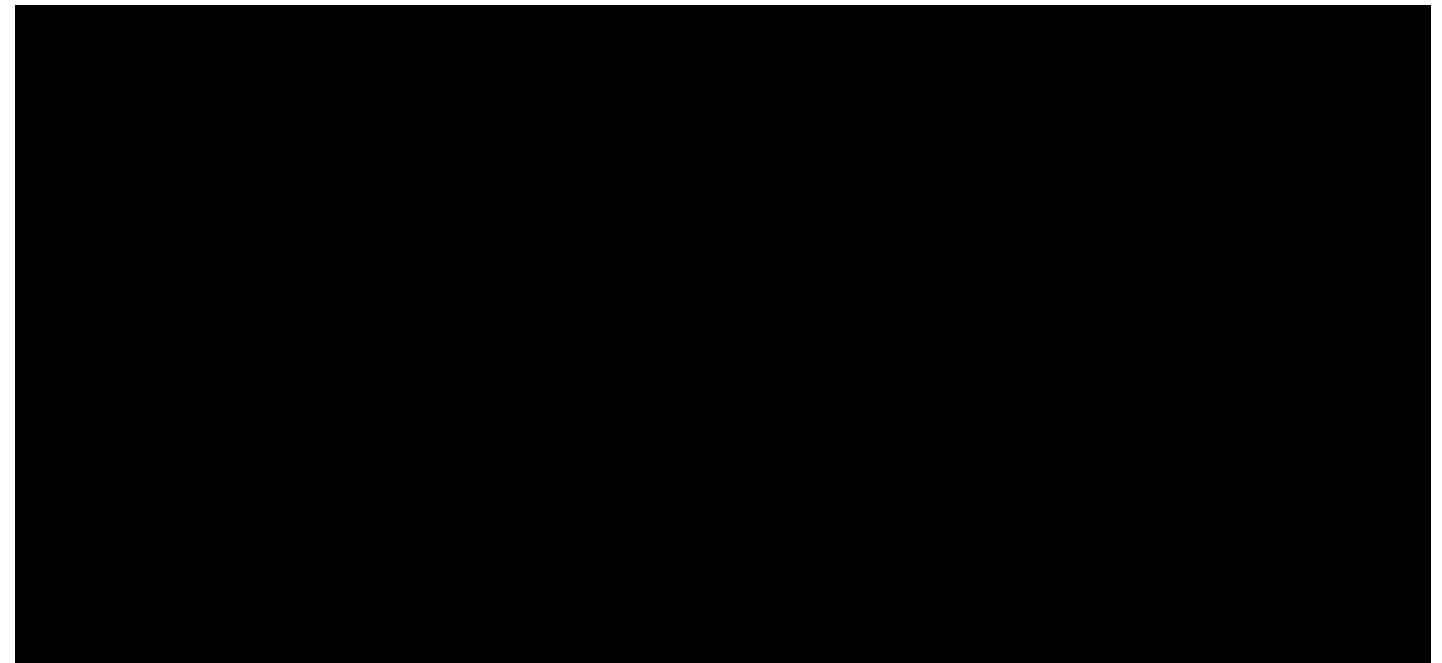








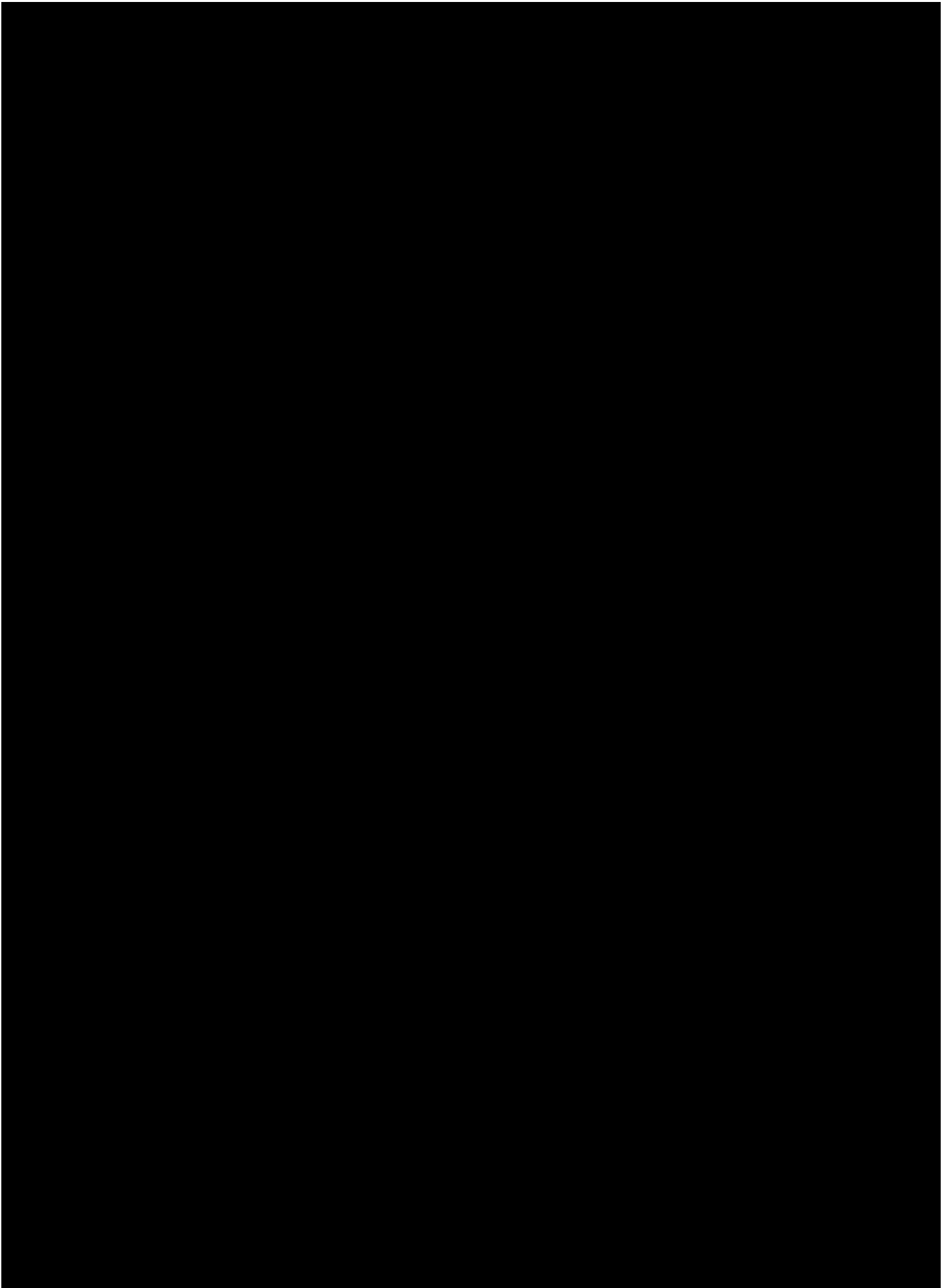


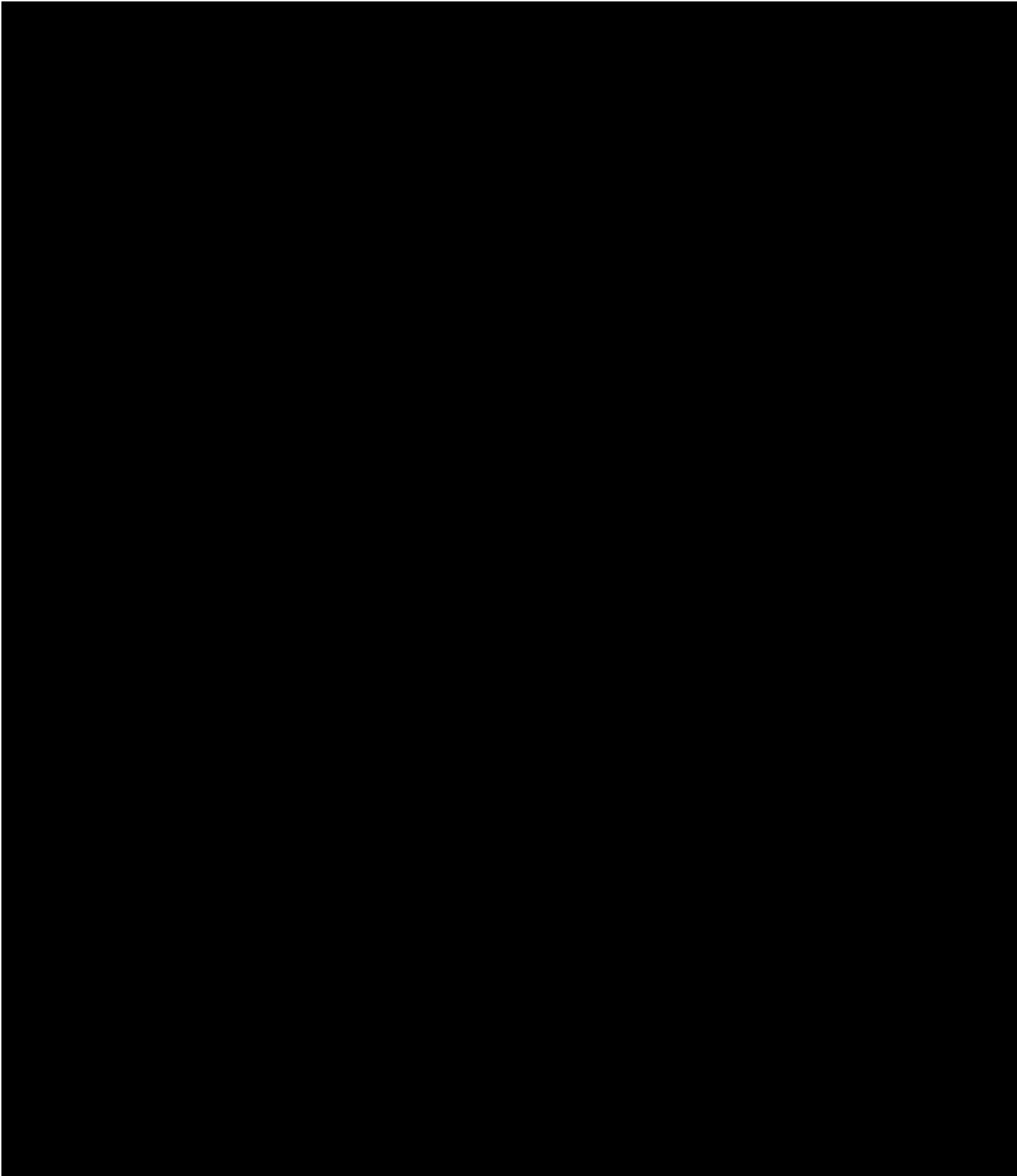


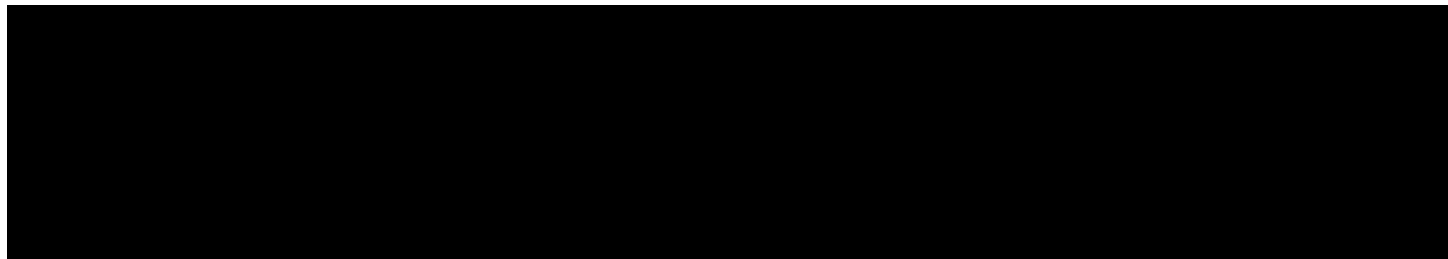
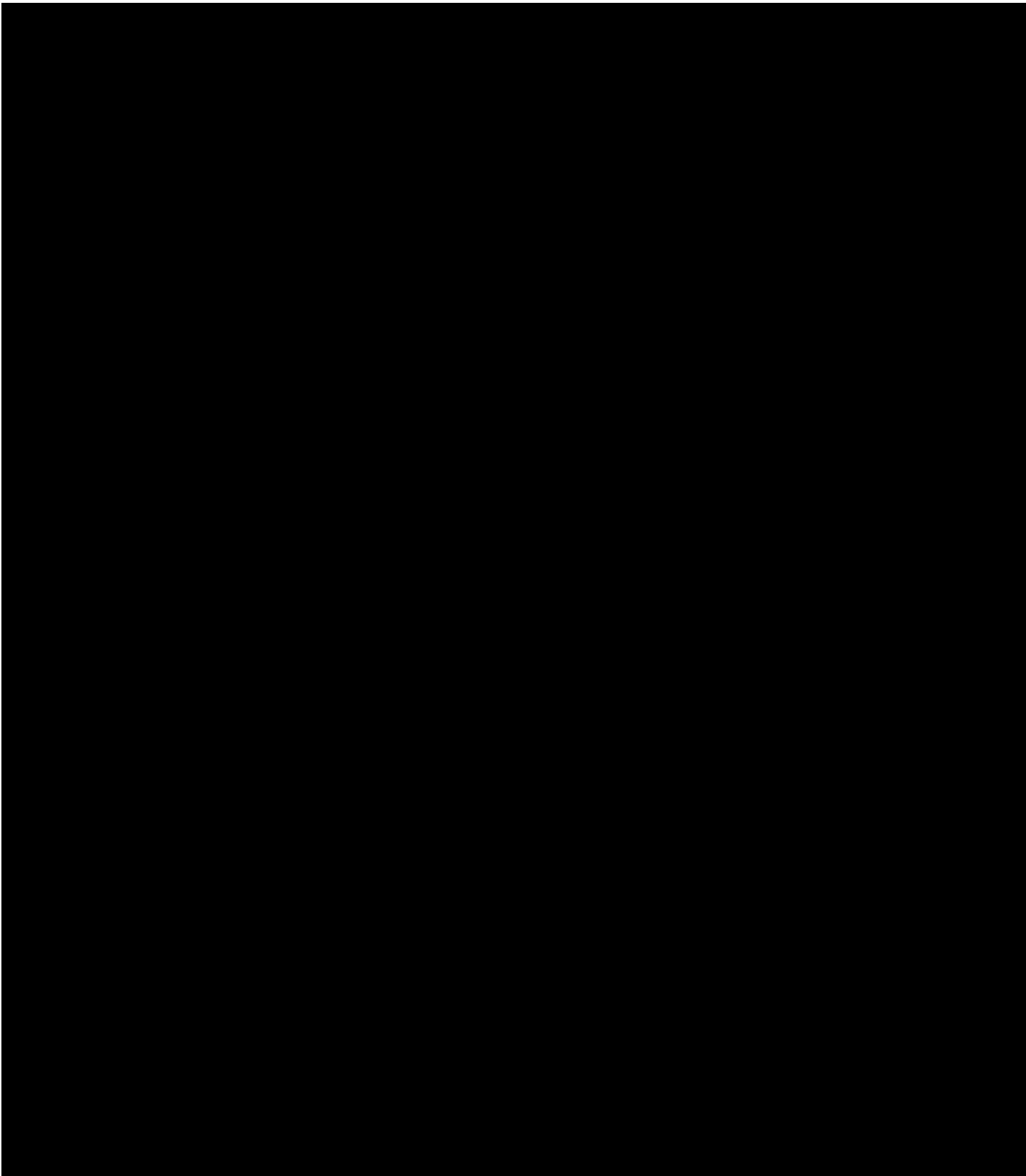
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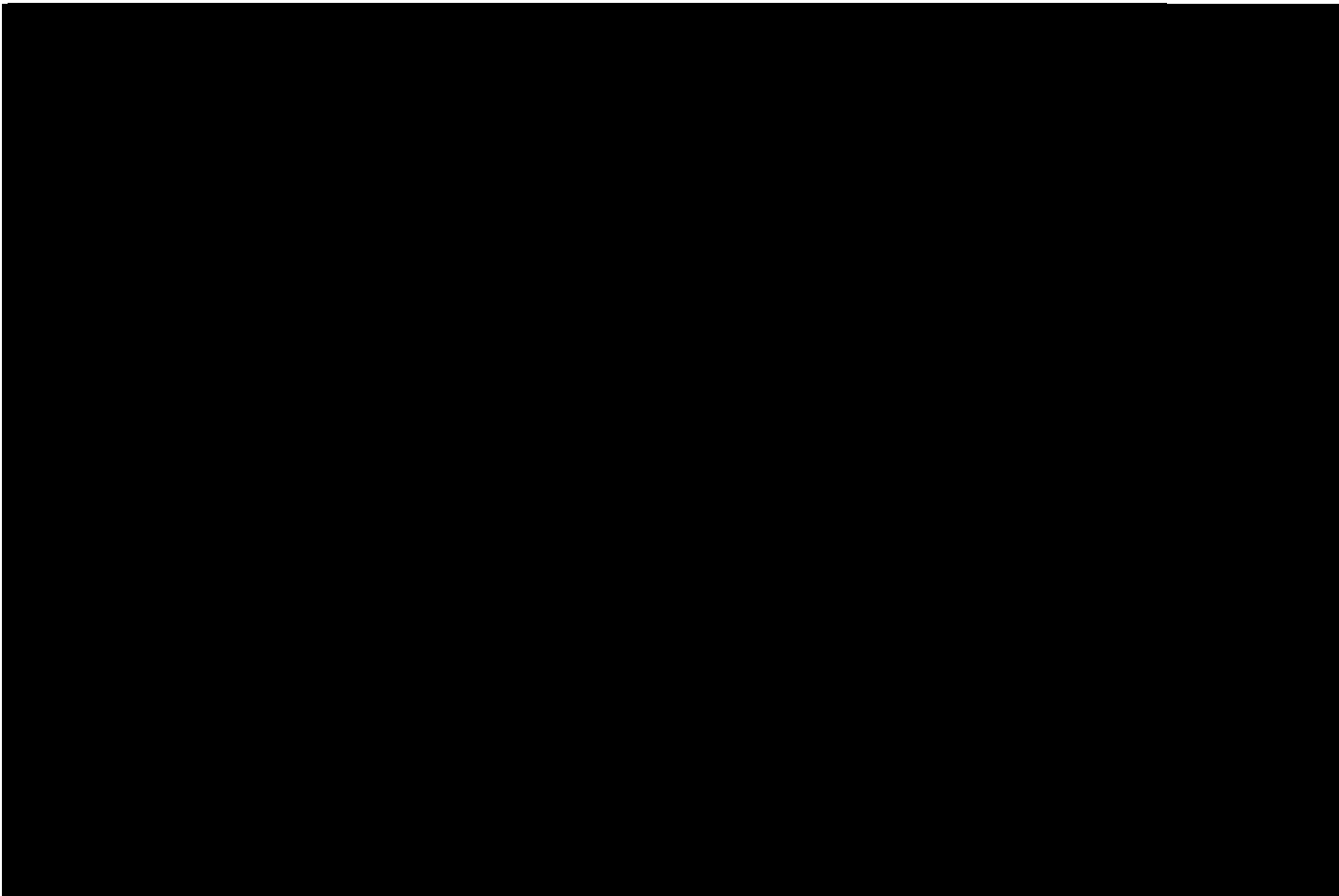
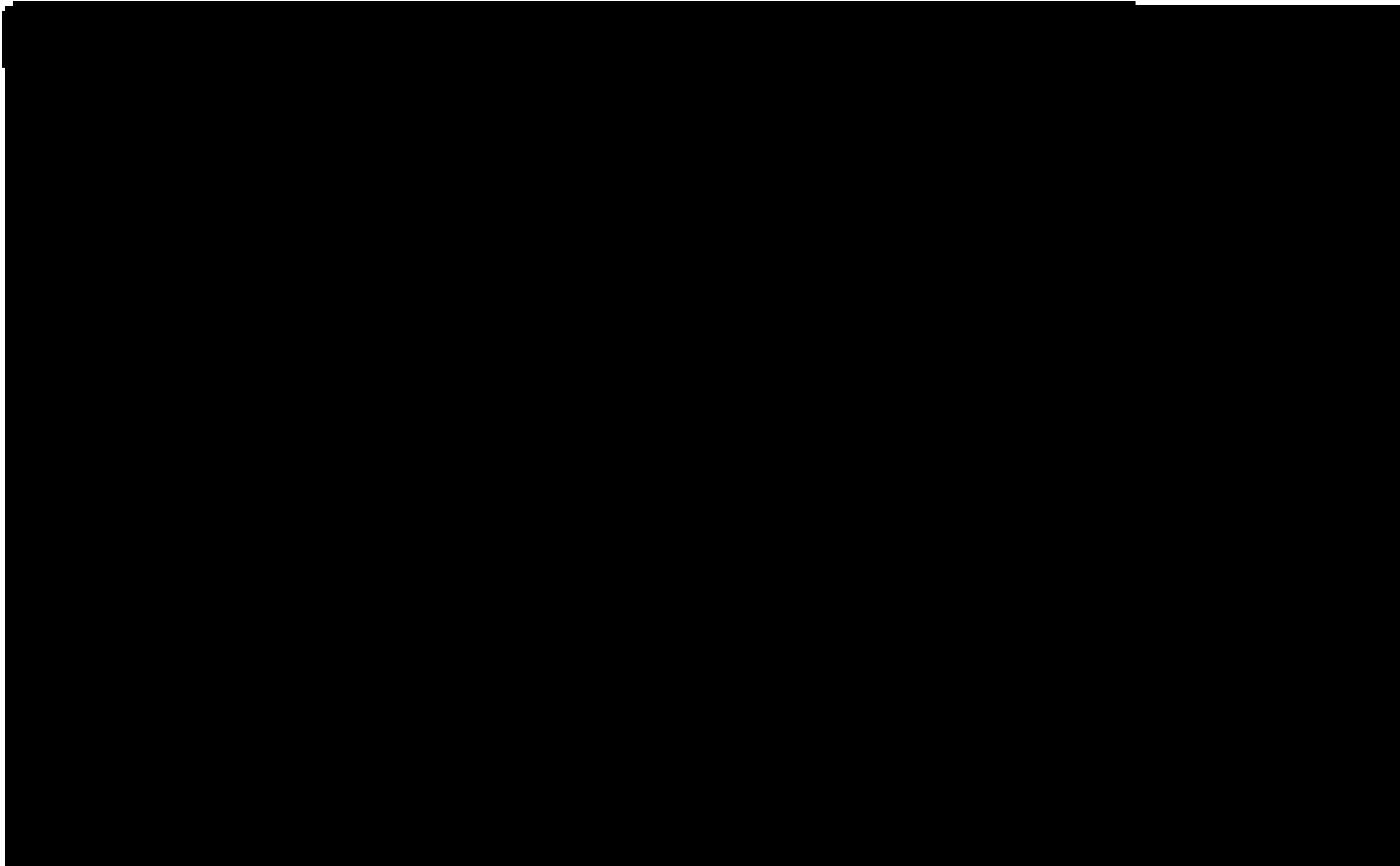




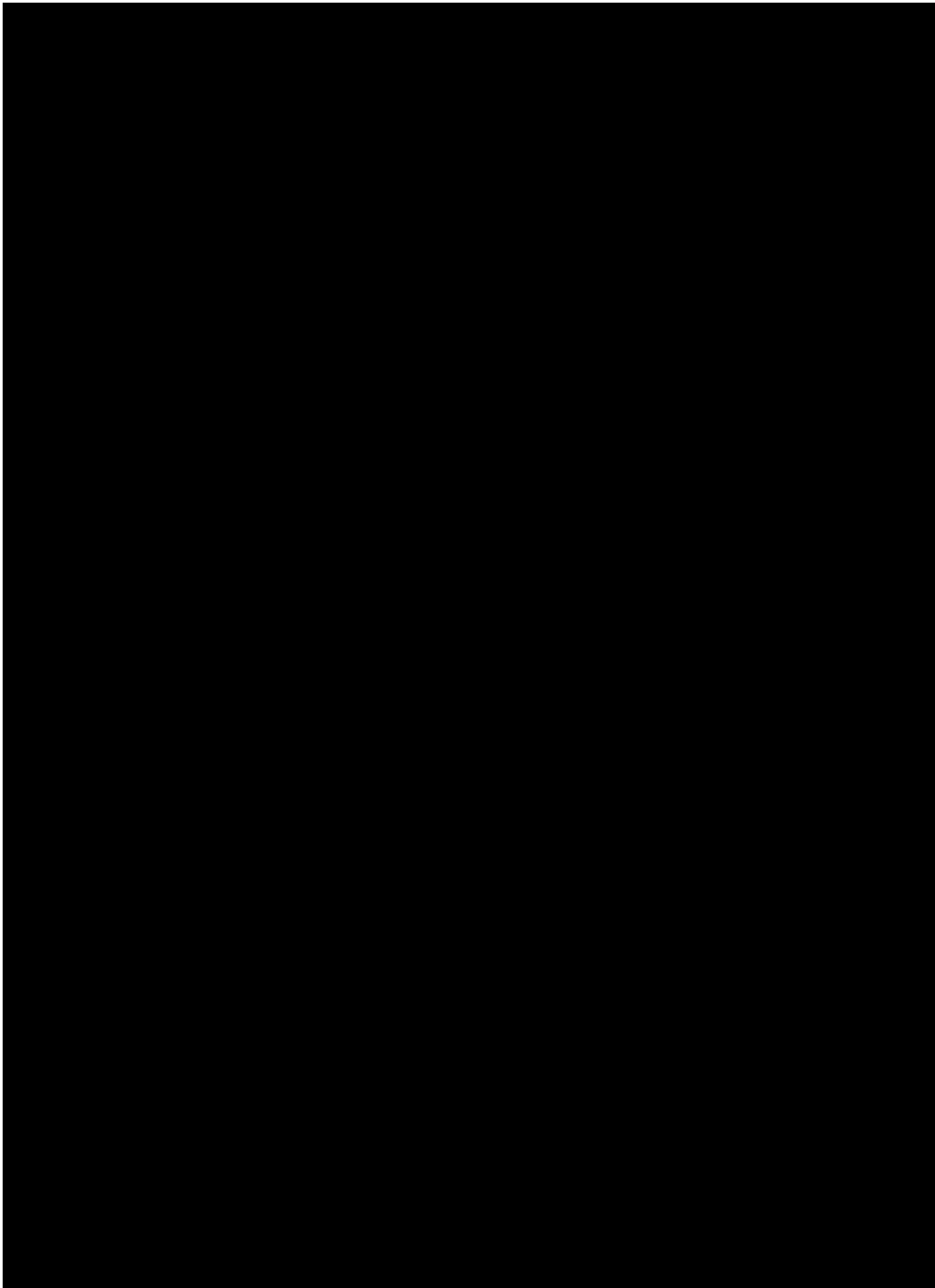
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