

Dated 23 March 2020

LONDON UNDERGROUND LIMITED (1)
and
Arlington Fleet Services Limited (2)

FRAMEWORK AGREEMENT
for the overhaul of Wagons - TransPlant
SERVICES
CONTRACT REFERENCE NUMBER: TfL 01223

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THIS AGREEMENT is made the day of 23 March

2020

BETWEEN:

- (1) **London Underground Limited** a company registered in England and Wales under number 01900907 and having its registered office at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the “**Company**” which expression shall include its successors and assigns); and
- (2) **Arlington Fleet Services Limited** a company registered in England and Wales under number 04979804 and having its registered office at Rail Works, Gate 2, Campbell Road, Eastleigh, SO50 5AD (the “**Supplier**”).

BACKGROUND

- (A) The Supplier carries on the business of providing the Services.
- (B) The Company wishes to buy and the Supplier wishes to provide the Services on the terms and conditions set out in the Agreement.
- (C) This Agreement may be utilised by the Company or any other member of the TfL Group. The Greater London Authority, any of the London boroughs, the Metropolitan Police Service, or any functional body (as defined in the GLA Act) may, if the Supplier so agrees, contract with the Supplier on the terms set out in this Agreement.

THIS DEED WITNESSES as follows:

1 Definitions and Interpretation

1.1 In the Agreement and each Contract the following definitions shall have the following meanings:

“**Additional Services**” means services which are requested by the Company to be provided by the Supplier in accordance with the terms of any Contract in addition to those set out in the Specification.

“**Agreement**” means these terms and conditions, including the Schedules, as amended, varied or supplemented from time to time.

“**Applicable Laws** ” means, depending on the context, all or any laws, statutes, proclamations, recommendations, codes of practice, by-laws, directives, Regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law or any European Union legislation (including any declarations of conformity) at any time or from time to

time in force in the United Kingdom and which are or may become applicable to each Contract, any agreement or document referred to in each Contract, or for the performance of the Services.

“BAFO” means ‘best and final offer’.

“Cessation Plan” means a plan agreed between the parties or determined by the Company in accordance with Clause 49.1 to give effect to a Declaration of Ineffectiveness or a Public Procurement Termination Event.

“Commencement Date” means the date specified in Schedule 1.

“Company’s Representative” means the person set out in the section headed ‘Company’s Representative’ in the relevant Order.

“Competent Authority” means any legislative, judicial, regulatory or administrative body or agency (or any subdivision of any of them) of the United Kingdom or of the European Union or any supranational body which has rulemaking power or whose directives, decisions, instructions, rulings, laws or regulations are directly enforceable against either of the parties in connection with the performance of the Agreement.

“Confidential Information” means any information given orally or in writing which is a trade or business secret or method; technical know-how; personal data which relates to a living individual who can be identified from that information; information relating to any crime, breach of statutory duty or criminal investigations; information relating to the protection of prominent persons, national security, counter-terrorism or other information relating to the provision of police services for any national or international purpose; information relating to the Company’s obligations in accordance with sections 118 to 121 of the Railways Act 1993; confidential financial information including but not limited to taxation information and returns to shareholders; and any other information that a party would reasonably expect to be able to protect by virtue of business confidentiality provisions.

“Consequential Loss” means in relation to a breach of this Agreement or any Contract or other circumstances in which a party is entitled to recover any costs, expenses or liabilities suffered or incurred, loss of profit, loss of revenue, loss of contract, loss of goodwill and/or other financial loss resulting from such breach and whether or not the party committing the breach knew, or ought to have known, that such loss would be likely to be suffered as a result of such breach.

“Contract” means a contract as defined in Clause 3.1.

“Contractual Documentation” means all documentation and information agreed to be delivered by the Supplier in accordance with each Contract including without limitation records, reports, documents, papers, unpatented designs, drawings, data specifications, manufacturing or work

processes, testing procedures, relevant computer data and all other technical business and similar information originated by or on behalf of the Supplier in accordance with each Contract.

“Contract Information” means (i) each Contract and Agreement in its entirety (including from time to time agreed changes to any Contract and/or Agreement) and (ii) data extracted from the invoices submitted pursuant to Clause 9.1 which shall consist of the Supplier’s name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount.

“Contract Reference Number” means the number shown on the front page of the Agreement.

“Contract Variation Procedure” means the procedure set out in Schedule 5.

“Data Protection Legislation” means:

- (a) any legislation from time to time in the United Kingdom which implements the European Community’s Directive 95/46/EC and Directive 2002/58/EC, including but not limited to the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003;
- (b) from 25 May 2018 only, the Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the “General Data Protection Regulation”);
- (c) any other legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data (as such terms are defined in section 1(1) of the Data Protection Act 1998); and
- (d) any statutory codes of practice issued by the Information Commissioner’s Office of the United Kingdom in relation to such legislation.

“Declaration of Ineffectiveness” means a declaration of ineffectiveness in relation to any Contract made by a court of competent jurisdiction in accordance with Regulation 98 of the Public Contracts Regulations 2015 (as amended) or Regulation 113(2)(a) or Regulation 118(3) of the Utilities Contracts Regulations 2016 (as amended).

“Dispute” has the meaning given to that term in Clause 38.1.

“Documentation” means all documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and/or other material produced or supplied by or on behalf of the Supplier in the performance of each Contract and whether in paper form or stored electronically.

“Environmental Claim” means receipt by the Company in connection with any pollution or contamination of the environment of:

- (a) any written claim, demand, suit or notice from a third party, including a Regulatory Authority (**“Regulatory Authority”** means any government entity or other public or quasi-public authority or privatised utility having responsibility for any matters concerning the environment, or Environmental Law) or any order of the court of competent jurisdiction in connection with an alleged breach of Environmental Law; or
- (b) any charge or condition imposed by any Regulatory Authority or any notice served by any Regulatory Authority requiring Remediation (including any written indication from any Regulatory Authority that a requirement to carry out Remediation will be imposed on the Company unless the Company agrees to carry out Remediation voluntarily).

“Environmental Law” means all and any laws, including common law, legislation, codes of practice, notices, judgments, decrees, regulations, applicable clean-up standards, circulars, guidance notes (statutory or otherwise), as may be enacted, adopted, amended or supplemented, concerning the protection of human health, or the environment or the conditions of the work place.

“Excepted Liabilities” means the liability of the Supplier for:

- (a) any Liquidated Damages payable;
- (b) any abatements for performance levied in accordance with this Agreement or any Contract;
- (c) Losses against which the Supplier is entitled to an indemnity under any policy of insurance (or would have been entitled but for any breach or failure to maintain such insurance);
- (d) Losses caused by fraudulent acts or acts of a criminal nature; and
- (e) Losses caused by the Supplier committing a Prohibited Act or Safety Breach.

“Excess Costs” has the meaning given to that term in Clause 23.6.

“Existing Contracts” means any and all contracts, whether current, expired or terminated, pursuant to which goods or services have been supplied or provided by the Supplier (in the capacity of contractor or subcontractor) to the Company or any member of the TfL Group.

“Force Majeure Event” means any of the following (or any circumstances arising as a consequence of any of the following) if and only to the extent that such event or circumstances is

or are not caused by, and their effects are beyond the reasonable control of, a party affected by such an event or circumstances and which have an adverse effect on the party affected by such an event or circumstances and such party's ability to perform its obligations under the Agreement or any Contract and is not an event or circumstances (i) whose effect the party affected by such an event is otherwise required to avoid or provide against (other than by way of insurance) under the Agreement or any Contract or (ii) which the party affected by such an event could reasonably have avoided or provided against:

- (a) war, invasions, acts of foreign enemies, hostilities (whether war be declared or undeclared), civil war, rebellion, revolutions, insurrection, military or usurped power, confiscation, or requisition by or under the order of any government or public or local authority;
- (b) civil unrest;
- (c) any act of terrorism or a specific threat of terrorism which results in the partial or total, temporary or long term closure of the Underground Network;
- (d) lightning, earthquake or subject to (f) below, extraordinary storm;
- (e) fire;
- (f) flooding, other than flooding caused by rising water table or by weather conditions (including extraordinary storm);
- (g) tunnel collapse;
- (h) compliance with the provision of sections 118 to 121 of the Railways Act 1993;
- (i) nuclear, chemical or biological contamination including ionizing radiation or contamination by radioactivity from any nuclear fuel or nuclear waste from the combustion of nuclear fuel or radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (j) the discovery of fossils, antiquities or other material which in each case is required to be exhumed or unexploded bombs; and
- (k) strikes, lock outs or other industrial action being in each case industry-wide.

“Free Issue Materials” means materials, apparatus and components supplied by the Company to the Supplier without charge and intended for use by the Supplier exclusively in the provision of Services under each Contract.

“Greater London” has the meaning ascribed to it in the GLA Act.

“Greater London Authority Act” or **“GLA Act”** means the Greater London Authority Act 1999 relating to the formation of the Greater London Authority.

“Infrastructure Manager” has the meaning ascribed to it in the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

“Intellectual Property Rights” means any intellectual property rights in any part of the world and includes but is not limited to all rights to, and interests in, any patents (including supplementary protection certificates), designs, trade-marks, service marks, trade and business names and get up, moral rights, domain names, copyright and neighbouring rights, databases, semi-conductors, know how, knowledge, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not) whether registered or not in respect of any technology, technique, concept, idea, style, scheme, formula, system, logo, mark or other matter or thing, existing or conceived, used, developed or produced by any person, together with all applications and rights to apply for registration or protection of such rights, Confidential Information relating to those rights, material embodying those rights and in each case rights of a similar or corresponding character.

[**“Interest Rate”** means the percentage above the base rate from time to time of the Bank of England as specified in Schedule 1.]

[**“Key Personnel”** means Supplier Personnel identified as such in Schedule 1 and any changes to the same that are made in accordance with Clause 18.]

“Liquidated Damages” means the sums identified and calculated in accordance with Schedule 1.

London Living Wage” means the basic hourly wage (before tax, other deduction and any increase for overtime) as may be revised from time to time by the Mayor or any other relevant Competent Authority.

“Losses” means any expense, liability, loss, claims, fines, damages, costs (including reasonable legal and other professional fees and disbursements), penalties, settlements and judgments incurred by the Company, its employees or agents (which for the avoidance of doubt, shall include a Replacement Employer).

“Mayor” means the person from time to time holding the office of Mayor of London as established by the GLA Act.

“Mini-Competition” means a competitive process which the Company may from time to time utilise to select a Supplier to provide the Services.

“Nominated Representatives” has the meaning given to that term in Clause 38.2.

“Notice to Proceed” has the meaning given to that term in Clause 23.7(b).

“Notified Sum” has the meaning given to that term in Clause 9.7.

“Operator” means a person with statutory duties to provide or secure the provision for Greater London of public passenger services by railway or a person who secures the provision of such services through appropriate contractual arrangements.

“Order” means an order which, unless the parties agree otherwise, shall be substantially in the form set out in Schedule 4, entered into by the Company and the Supplier.

“Order Commencement Date” means the date on which the Supplier is to commence providing the Services as specified as such on each Order or such other date as may be agreed between the parties in accordance with the terms of each Contract.

“Order Completion Date” means the date by which the Services are to be performed as specified as such in each Order or such other date as may be agreed between the parties in accordance with the terms of each Contract.

“Order Price” means the amount stated under the heading “Order Price” in the relevant Order.

“Order Programme” means the programme of work set out in each Order for the provision of the Services which has been submitted by the Supplier and approved by the Company. The programme may be varied from time to time subject to the terms and conditions of the relevant Contract or otherwise by agreement in writing between the Supplier and the Company.

“Payment Application” has the meaning given to that term in Clause 9.1.

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

“Policies” means the policies set out in Clause 20.3.

“Prescribed Period” has the meaning given to that term in Clause 9.8.

“Processing” or “processing” has the meaning given to it in the Data Protection Legislation.

“Prohibited Act” means:

- (a) offering or agreeing to give to any servant, employee, officer or agent of the Company any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of the Agreement, any Contract or any other contract with the Company; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to the Agreement, any Contract or any other contract with the Company; or
- (b) entering into the Agreement, any Contract or any other contract with the Company with which commission has been paid or has been agreed to be paid by the Supplier or on its behalf or to its knowledge unless, before such contracts were entered into, particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Company; or
- (c) committing an offence
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts,in relation to the Agreement, any Contract or any other contract with the Company; or
- (d) defrauding or attempting to defraud the Company.

“Proposal” means the Supplier’s offer to provide the Services in response to a Request Form.

“Public Procurement Termination Event” means:

- (a) the Agreement or any Contract has been subject to any substantial modification which would require a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015 or Regulation 88(8) of the Utilities Contracts Regulations 2016; or
- (b) if the Company determines that the Agreement or any Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations contained under the EU Treaties and applicable procurement Regulations.

“Quality and Safety Plan” means the Supplier’s quality and safety plan set out in Schedule 6 as amended from time to time.

“QUENSH” has the meaning given to it in Schedule 6.

“Regulations” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

“Remediation” means any or all investigation, sampling, analysing, removing, remedying, cleaning up, abating, containing, controlling or ameliorating the presence in or effects on the Environment of any contamination or pollution including, but without limitation, the removal, treatment and disposal of material and the treatment and monitoring of ground waters and gases and emissions and the obtaining of expert technical, legal and other professional advice (including all project management functions).

“Request Form” means the request form produced by the Company detailing the Company’s requirements for a Proposal from the relevant Supplier.

“Responsible Procurement Policy” means the policy document entitled the "GLA Group Responsible Procurement Policy" dated March 2006, updated in January 2008 and as may be amended.

“Safety Breach” means a material breach of any obligation under any Contract caused by the gross incompetence of or wilful default by the Supplier (or anyone employed by or acting on behalf of the Supplier) or any of its agents which has materially affected the safe operation of the Underground Network or the safety of the Company’s customers, staff or any other person.

“Services” means the services stated in the Specification to be performed by the Supplier and any Additional Services.

“Specification” means the description of the Services set out in Schedule 3 and Appendix 1 to the relevant Order (or referenced in the relevant Order) to be provided by the Supplier in accordance with the Agreement.

“Standards” means the Category 1 and 2 Standards and Draft Category 1 and 2 Standards and such European, British and International Standards and associated Codes of Practice required by the Company for the Supplier to perform the Services in accordance with good industry practice. A full set of current Standards is available for the Supplier’s use on-line at the LU Standards e-library or as notified to the Supplier.

“Supplier Personnel” means all employees, agents or consultants of the Supplier and the Supplier’s subcontractors from time to time.

“Supplier’s Representative” means the person set out in the section headed ‘Supplier Representative’ in the relevant Order.

“Term” means the duration as specified in Schedule 1.

“TfL” or **“Transport for London”** means Transport for London, a statutory body set up by the Greater London Authority Act.

“TfL Group” means Transport for London and all of its subsidiaries and their subsidiaries (as defined in Section 1159 of the Companies Act 2006) from time to time, together with Crossrail Limited (company number 04212657) and reference to any **“member of the TfL Group”** refers to TfL or any such subsidiary.

“Transparency Commitment” means TfL’s commitment (applying to TfL, the Company and the rest of the TfL Group) to publish contracts, tender documents, and data from invoices received in accordance with the Local Government Transparency Code 2015 and TfL’s own published transparency commitments.

“Underground Network” means the stations and depots (wherever situate), assets, systems, track and other buildings which are used in the maintenance and provision of the underground service known as “London Underground”.

“VAT” means value added tax as provided for in the Value Added Tax Act 1994 and legislation (whether delegated or otherwise) supplemental thereto, or in any primary or secondary legislation promulgated by the European Union or any official body or agency of the European Union, and any similar sales, consumption or turnover tax replacing or introduced in addition to the foregoing.

“Variation Order” means the written authorisation from the Company to a Variation Proposal in accordance with the Contract Variation Procedure.

“Variation Proposal” means the written proposal put by the Company or the Supplier to vary any Contract and/or this Agreement in accordance with the Contract Variation Procedure in substantially the form set out in Appendix 1 to Schedule 5.

“Working Day” means any day of the week (other than Saturday or Sunday) which is not an English bank holiday, or public holiday.

- 1.2 The headings in the Agreement and each Contract are only for convenience and shall not affect its interpretation.
- 1.3 Where appropriate, the singular includes the plural and vice versa.

- 1.4 A reference to a Clause or a Schedule shall be to a Clause of or, as the case may be, a Schedule to, the Agreement and each Contract and references to the Agreement or any Contract include its recitals and Schedules.
- 1.5 References to (or to any specified provision of) the Agreement, any Contract or any other document shall be construed as references to the Agreement, that Contract, that provision or that document as in force for the time being and as from time to time amended in accordance with the terms of the Agreement and any Contract.
- 1.6 Reference to any Applicable Laws and Standards also includes a reference to the Applicable Laws and Standards as from time to time amended, extended or re-enacted.
- 1.7 References to the “**Company**” shall include its successors, transferees and assignees.
- 1.8 References to a person, firm or company shall include any individual company, unincorporated association or body (including a partnership or joint venture) or other entity whether or not having a separate legal personality.
- 1.9 Where the Agreement is utilised by another member of the TfL Group, references in a Contract to “the Company” shall, unless the context otherwise requires, be to a member of the TfL Group.
- 1.10 In the event that a conflict, ambiguity or inconsistency exists between the documents comprising the Agreement, the order of priority for the purpose of construction in descending order shall be:
- (a) the Clauses of the Agreement;
 - (b) the Schedules to the Agreement (equal priority but subject to Clause 1.11); and
 - (c) any other document referred to in, or incorporated by reference into, the Agreement.
- 1.11 The documents that make up the Schedules shall be taken as being mutually explanatory of one another. In the event of any conflict between any provision of the Clauses of the Agreement and a provision of any other Schedule then the Clauses of the Agreement shall take precedence except where the conflicting part of the other Schedule is explicitly expressed to take precedence over any specific part of the Clauses of the Agreement.
- 1.12 In the event of any inconsistency between the terms of the Agreement and the terms of any Order, the terms set out in the Order shall prevail.

2 Duration and Option to Extend

- 2.1 The Agreement shall commence on the Commencement Date and continues in force for the Term unless terminated earlier in accordance with this Agreement and subject to Clause 2.3.

2.2 Expiry or termination of the Agreement shall not, in and of itself give rise to an expiry or termination of the Contract and each Contract shall continue for the term set out in the relevant Contract.

2.3 The Company shall at its own discretion be entitled at any time prior to the expiry of the Term to inform the Supplier of its intention to extend the Term of the Agreement by a period of up to [12 months]. The provisions of the Agreement shall continue to apply mutatis mutandis to any such extension of the Term (other than this Clause 2.3 containing the option to extend). On receipt of such notice from the Company by the Supplier, the Agreement shall be deemed extended accordingly.

3 Supplier's Primary Obligations

3.1 The Supplier shall provide the Services to the Company in accordance with:

- (a) the terms set out in the Agreement (including the Schedules); and
- (b) the terms of the Orders which may from time to time be entered into by the Company and the Supplier,

each Order together with the terms of the Agreement comprising a separate and distinct contract and herein referred to as a "**Contract**".

3.2 When Services are required by the Company, the Company shall give the Supplier an Order for the Services to be performed and each Order so given shall be final, unless varied in accordance with the Contract Variation Procedure.

3.3 The Supplier shall ensure and warrants to the Company that the Services will:

- (a) be performed by appropriately qualified and trained personnel exercising the highest standard of diligence, care and skill;
- (b) be performed in accordance with the Order Programme;
- (c) conform to all Applicable Laws (including but not limited to any law and regulations applicable to the Company or the Underground Network);
- (d) comply with all Standards and any additional standards listed in Schedule 1 or in the Specification, or in the Order; and
- (e) comply with the requirements of the Company set out in each Contract and all lawful and reasonable directions of the Company.

- 3.4 The Supplier warrants to the Company that it has entered into and executed the Agreement by its duly authorised representatives in accordance with all procedures required by its governing laws and contractual documents.
- 3.5 The Supplier warrants to the Company that it has the right to grant to the Company and any member of the TfL Group all licences (including without limitation all rights to sub-licence) of all and any Intellectual Property Rights as contemplated in the Agreement and each Contract.
- 3.6 The Supplier warrants to the Company that, as at the date of this Agreement and of each Contract, it has not been in any of the situations referred to in Regulation 57(1) of the Public Contracts Regulations 2015 and should therefore have been excluded from the procurement procedure in accordance with those Regulations or Regulation 80(2) of the Utilities Contracts Regulations 2016.
- 3.7 The Supplier shall perform its obligations under each Contract in accordance with the requirements of the ISO 9000 and ISO 14000 series as appropriate to the provision of the Services *and the Quality and Safety Plan*, or any equivalent international quality assurance standards as may be accepted as an alternative in the absolute discretion of the Company.
- 3.8 It shall be the responsibility of the Supplier to obtain, at its cost, all necessary approvals, licences, permits and consents in relation to the performance of the Services, including, but not limited to, those required by any Applicable Laws and Standards.
- 3.9 Unless otherwise stated in any Order, the Supplier shall provide all equipment, support services and other facilities necessary for the performance of its obligations under each Contract.
- 3.10 For the avoidance of doubt, neither a communication from the Company nor the review or acceptance of the Services waives, limits or amends in any way any warranties, liabilities or responsibilities of the Supplier under this Agreement and each Contract.
- 3.11 The Supplier shall be responsible for the accuracy of all Contractual Documentation and shall pay the Company any extra costs occasioned by any discrepancies, errors or omissions therein. The Supplier shall at its own expense carry out any alterations or remedial work necessitated by such errors, omissions or discrepancies and modify the relevant documents or information accordingly.
- 3.12 The Supplier shall train at the sole cost of the Supplier any of the Company's employees, TfL employees and any of their contractors or agents as required by the Company in accordance with the Specification.
- 3.13 Not Used

4 Not Used

5 Records and Audit

5.1 The Supplier shall, and shall procure that its subcontractors shall, maintain a true and correct set of records including personnel records relating to all aspects of their performance of each Contract and all transactions related to each Contract and the Agreement. For the avoidance of doubt, such records shall include but are not limited to:

- (a) all necessary information for the evaluation of claims or variations;
- (b) management accounts, information from management information systems and any other management records;
- (c) accounting records (in hard copy as well as computer readable data);
- (d) subcontract files (including proposals of successful and unsuccessful bidders, bids, rebids etc);
- (e) original estimates;
- (f) estimating worksheets;
- (g) correspondence;
- (h) variation and claims files (including documentation covering negotiated settlements);
- (i) general ledger entries detailing cash and trade discounts and rebates;
- (j) commitments (agreements and leases) greater than £5,000;
- (k) detailed inspection records; and
- (l) such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, reconciliations against BAFO pricing and project plans, in each case which have not already been provided to the Company.

5.2 The Supplier agrees, and shall procure that its subcontractors agree, to retain all such records in such a manner as the Company may reasonably instruct for a period of not less than twelve (12) years after completion of performance under each Contract. In the absence of specific instructions as to the method of storage, the Supplier shall retain his records in an orderly and logical fashion.

- 5.3 The Company and its authorised representatives and any party legally authorised to inspect any part of the Underground Network shall have the right to inspect and audit any of the records referred to in Clause 5.1 at any time during the period referred to in Clause 5.2.
- 5.4 The Supplier shall promptly provide all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:
- (a) granting or procuring the grant of access to any premises used in performance of each Contract, whether the Supplier's own premises or otherwise;
 - (b) granting or procuring the grant of access to any equipment (including all computer hardware, software and databases) used (whether exclusively or non-exclusively) in the performance of the Supplier's obligations under each Contract, wherever situated and whether the Supplier's own equipment or otherwise;
 - (c) making any contracts and other documents and records required to be maintained under each Contract available for inspection;
 - (d) providing a reasonable number of copies of any contracts and other documents or records reasonably required by the Company's auditor and/or granting copying facilities to the Company's auditor for the purposes of making such copies; and
 - (e) complying with the Company's reasonable requests for access to senior personnel engaged in the Supplier's performance of each Contract.
- 5.5 The Supplier shall maintain an effective and economical programme for monitoring and maintaining product quality, planned and developed in conjunction with any other functions of the Supplier necessary to satisfy each Contract's requirements.
- 5.6 The Supplier shall permit the Company's authorised representatives access and facilities (as required and when notified) for the purpose of systems and product quality audits including but not limited to access to documentation showing results of testing and inspection, certificates of conformance and safety-related documents. The Supplier shall provide the Company with a copy of any or all of the records listed in Clause 5.1, free of charge within thirty (30) days of the Company's request for the same.
- 5.7 The Supplier shall, and shall ensure that any subcontractor or sub-supplier shall, ensure that appropriate security systems are in place to prevent unauthorised access to, extraction of, or alteration to, data during any audit undertaken pursuant to the Agreement and each Contract.

6 Company's Obligations

- 6.1 The Company shall pay the Supplier the Order Price for the Services in accordance with the terms of the relevant Contract.
- 6.2 Payment of the Order Price shall not affect any claims or rights which the Company may have against the Supplier and shall not be an admission by the Company that the Supplier has performed its obligations under the relevant Contract properly.
- 6.3 The Agreement is not an exclusive arrangement and nothing in the Agreement operates to prevent the Company from engaging any other organisation or person to perform services similar to, or the same as, the Services.

7 Additional Services

The Company may, at any time during the term of any Contract, request the Supplier to provide a quotation for the supply of Additional Services in accordance with the Contract Variation Procedure and Schedule 5. If a Variation Order is made in respect of such Additional Services, the Order shall be amended to include such Additional Services, the Order Completion Date for them and the quoted price.

8 Variation

- 8.1 Unless the parties agree otherwise in writing, any variation to any Contract shall be made under the Contract Variation Procedure.
- 8.2 The Supplier shall not proceed to implement any variation unless there has been a Variation Order.

9 Price and Payment

- 9.1 The prices for the Services shall be the Order Price set out in the Order using the rates and prices set out in Schedule 2. The prices for the Services or any Order Price shall only be changed in accordance with the Contract Variation Procedure.
- 9.2 The Supplier shall submit an application for payment of the relevant portion of the Order Price using the rates and prices set out in Schedule 2 to the Company's Representative for the Services following the completion of the Services to the satisfaction of the Company (a "**Payment Application**"). Each Payment Application shall specify the sum that the Supplier considers will become due on the payment due date and the basis upon which that sum is calculated. The Supplier shall submit any supporting documents that are reasonably necessary to enable the Company's Representative to assess and verify the Payment Application.

- 9.3 The payment shall become due for the purposes of the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 ("**HGCRA**") on the date on which the Company's Representative receives the Payment Application.
- 9.4 The Company's Representative shall assess and verify the Payment Application in a timely manner. The Company's Representative shall notify the Supplier in writing not later than *[seven (7) days after the date of receiving the Payment Application of:*
- (a) the amount (if any) the Company's Representative considers to be due at the payment due date (which amount shall be net of any discount to which the Company is entitled); and
 - (b) the basis on which the amount was calculated, a "**Payment Certification**".

It is immaterial for the purposes of this Clause 9.4 that the amounts referred to in Clause 9.4(a)) or Clause 9.4(b) may be zero. Where the Company fails to comply with its obligations under this Clause 9.4 and there is an undue delay in assessing and verifying the Payment Application, the Payment Certification shall be regarded as issued for the purposes of Clause 9.7 after a reasonable time has passed. A notification given under this Clause 9.4 shall constitute a payment notice for the purposes of section 110A of the HGCRA.

- 9.5 Within six (6) days of receipt of a Payment Certification the Supplier shall issue a VAT invoice for the amount stated in that Payment Certification to the Company.
- 9.6 The final date for payment ("**Final Date for Payment**") [for the purposes of the HGCRA shall be thirty (30) days after the date on which the Company's Representative received the Payment Application except if the Supplier fails to issue a VAT invoice in accordance with the timescale set out in Clause 9.5 (and such failure is not due to any failure by the Company to comply with its obligations in Clause 9.4 then the Final Date for Payment shall be extended by the additional number of days taken by the Supplier to issue the VAT invoice] [shall be ten (10) days after the date on which the Company's Representative received the applicable VAT invoice.
- 9.7 Subject to Clause 9.8 and Clause 9.9, the Company shall pay the Supplier the sum referred to in the Company's Representative's Payment Certification pursuant to Clause 9.4 (the "**Notified Sum**") on or before the Final Date for Payment.
- 9.8 If the Company intends to pay less than the Notified Sum the Company or the Company's Representative (as the case may be) should notify the Supplier in writing not later than one (1) day prior (the "**Prescribed Period**") to the Final Date for Payment of:

- (a) the amount (if any) that it considers to be due on the date the notice is served and the basis upon which that sum is calculated; or
- (b) if there is more than one basis, each basis and the amount attributable to it.

It is immaterial for the purposes of this Clause 9.8 that the amounts referred to in Clause 9.8(a) and Clause 9.8(b) may be zero. Where a notice is given under this Clause 9.8, the Company's obligation to pay the Notified Sum under Clause 9.7 applies only in respect of the sum specified pursuant to this Clause 9.8.

9.9 Notwithstanding Clauses 9.7 and 9.8, if the Supplier is subject to an event set out in Clause 23.1(d) or other like event after the Prescribed Period, the Company shall not be required to pay the Supplier the Notified Sum on or before the Final Date for Payment.

9.10 The Order Price shall be fixed and inclusive of all expenses and disbursements.

9.11 The Order Price shall not include VAT and, to the extent that such VAT is properly chargeable, it shall be charged at the rate in force on the date of the Payment Application and will be shown as a separate item on all such Payment Applications.

9.12 In addition to any other rights of the Company whether at law or equity under this Agreement or any Contract, whenever under or arising out of this Agreement, any Contract or any other contract between the Company and the Supplier

- (a) any sum of money is recoverable from or payable by the Supplier; or

- (b) any Losses are reasonably and properly owed to, or incurred by, the Company or any member of the TfL Group

then the same may be set-off against and/or deducted and/or withheld from any sum then due or which at any time thereafter may become due to the Supplier under this Agreement or any Contract.

9.13 All Payment Applications shall be submitted separately for each Contract and all such payment applications shall clearly show the Contract Reference Number, the Order number (as indicated on the relevant Order), the date of the Order, the Order Price and any associated Variation Order. Supporting documentary information shall be submitted to the Company's Representative for all Payment Applications submitted by the Supplier. The Company's Representative shall from time to time agree with the Supplier the detailed information required in relation to all such Payment Applications and the Supplier shall provide such information as is reasonably required.

9.14 All sums payable to the Company by the Supplier under each Contract shall be paid in full, free of any present or future taxes, levies, duties, charges, fees or withholdings and without any

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deduction, restriction, conditions, withholding, set-off or counterclaim whatsoever; and if the Supplier is compelled by law to make any deduction or withholding, the Supplier shall gross up the payment so that the net sum received by the Company will be equal to the full amount which the Company would have received had no such deduction or withholding been made.

10 Supplier Performance

- 10.1 On the date that the Company's Representative receives the first Payment Application and every four (4) weeks after that date the Company shall assess the Supplier's performance under the Agreement and each Contract in accordance with Schedule 10.
- 10.2 The Company shall have the right to:
- (a) abate the Supplier for failure to meet the key performance indicators stated in Schedule 10; and
 - (b) use the escalation process stated in Schedule 10 to rectify any unsatisfactory performance by the Supplier in its performance of the Agreement and any Contract or any failure by the Supplier to meet the performance standards set out in Schedule 10.

11 Access and Time for Performance of the Services

- 11.1 The Company shall give the Supplier access to the parts of the Underground Network required for the performance of the Services in accordance with the provisions of this Clause 11.
- 11.2 Subject to the provisions of Clause 11, the Company shall use reasonable endeavours to give access to such parts of the Underground Network to the Supplier on the dates and times on which it has stated that it requires such access.
- 11.3 The Supplier acknowledges that the Company does not guarantee uninterrupted or exclusive possession to any parts of the Underground Network and that its access to some parts of the Underground Network may be limited in accordance with the Agreement and each Contract.
- 11.4 Where the Supplier requires access to the Underground Network to carry out the Services it shall:
- (a) apply for access at the earliest available opportunity; and
 - (b) provide the Company's Representative without delay with such additional information as the Company's Representative may reasonably require in respect of the Supplier's access requests.
- 11.5 The Company shall confirm access bookings in accordance with this Clause 11. The Company does not warrant or guarantee to the Supplier that such access will be granted. If any request for

access is rejected, the Company shall advise the Supplier and agree with the Supplier alternative dates for resubmission. The rejection of an access request shall not entitle the Supplier to an extension of time.

- 11.6 If the Supplier fails to apply for access in accordance with this Clause 11, the Company shall not be liable for any delays or costs arising and the Supplier shall be responsible for any failure to comply with the terms of the Agreement and any Contract.
- 11.7 The Supplier shall as soon as practicable, take all steps to avoid, overcome or minimise the cancellation or alteration of approved access. If the Supplier fails to use any booked access, for whatever reason, it shall within twenty-four (24) hours report each instance to the Company's Representative setting out all details including the part of the Underground Network affected, the duration of any delay and the reasons for the delay or cancellation so far as the Supplier is aware.
- 11.8 The Supplier shall ensure that all booked access is used efficiently with minimal disruption and disturbance to others or damage to the Underground Network. The Supplier shall make good any such damage at its own cost at the earliest opportunity and to the reasonable satisfaction of the Company's Representative.
- 11.9 The Supplier shall indemnify and keep indemnified the Company in respect of any claims by third parties relating to the disruption, delay or cancellation of their access due to the actions or omissions of the Supplier.
- 11.10 Prior to returning any part of the Underground Network to the Company at the end of any period of booked access, the Supplier shall clear away and remove all of its facilities, plant, equipment, rubbish and surplus goods and materials and shall leave that part of the Underground Network in a clean and workmanlike condition to the satisfaction of the Company's Representative.
- 11.11 If the Supplier fails to comply with the requirements of Clause 11.10 within such reasonable time as may be allowed by the Company's Representative, then the Company may dispose of those items as the Company sees fit and at the Supplier's cost, which cost if met by the Company shall become a debt due from the Supplier to the Company and is deductible or recoverable by the Company from any monies due or which may become due to the Supplier under this Agreement and any Contract.
- 11.12 Where the Supplier is denied booked access to any part of the Underground Network, through no fault of the Supplier, the Supplier shall be entitled to an extension of time in accordance with Clause 26.2.
- 11.13 Without limiting any other remedy, if the Services are not performed in accordance with this Agreement and any Contract then the Company shall be entitled to require the Supplier to re-

perform the Services in accordance with any such Contract at no extra cost within five (5) Working Days.

- 11.14 The Supplier shall ensure that the Services are satisfactorily completed by the Order Completion Date. The time of the performance of the Services shall be of the essence in respect of each Contract.
- 11.15 The Supplier shall ensure that the Services are satisfactorily completed by the Order Completion Date. If the Services are not performed by the Order Completion Date stated in the relevant Order then, without limiting any other remedy, the Company shall be entitled to deduct from the price payable for such Services or to claim from the Supplier by way of Liquidated Damages for delay the amount stated in Schedule 1 for the period of delay stated in Schedule 1 up to a maximum of the percentage stated in Schedule 1 of the price payable for such Services. The Company shall not be entitled to deduct such amount from the price payable for such Services or to claim such amount from the Supplier by way of Liquidated Damages for delay to the extent that the delay is due to (i) a default or other act of prevention of the Company, its agents, employees or contractors (other than the Supplier) or (ii) a Force Majeure Event or a (iii) Permitted Delay Event.
- 11.16 The Supplier accepts that the amount of Liquidated Damages under this Agreement and any Contract constitutes a genuine pre-estimate of the loss that would be suffered by the Company as a result of the Supplier's failure to perform the Services by the Order Completion Date.
- 11.17 In the event that all or any of the obligations of the Supplier under this Agreement and any Contract to pay Liquidated Damages are held to be unenforceable, the Supplier agrees to pay the Company damages in respect of all actual Losses suffered by the Company due to the circumstances in respect of which Liquidated Damages would have been payable if the relevant obligation had been enforceable including, without limitation, loss of profit, loss of use, loss of revenues, loss of production and loss of savings. The damages payable by the Supplier in accordance with this Clause 11 shall not exceed the amounts which would have been payable if the relevant obligation(s) to pay Liquidated Damages had been enforceable save where such obligation(s) are held to be unenforceable as a result of any argument or proceedings raised or brought by the Supplier that such obligation(s) are unenforceable, in which case the amount of such damages shall be unlimited.

12 Work on Company's Sites

- 12.1 During the term of each Contract, the Supplier shall:

- (a) ensure the personnel used in the provision of the Services are competent, properly trained and supervised and hold appropriate qualifications or certifications in accordance with any Applicable Laws and Standards;
- (b) ensure that all employees and agents of the Supplier including any of the Supplier's subcontractors working on the Company's or third parties' sites comply with the sites' local safety arrangements and undergo any relevant induction or training necessary and comply with all reasonable instructions of the Company or third party;
- (c) notwithstanding the terms of Clause 12.1(d), accept full responsibility for its subcontractors and ensure that such subcontractors adhere to the terms and conditions of each Contract;
- (d) supply the Company with a list of all personnel working on the Company's or third parties' site and notify the Company in writing of any changes to the identity of such personnel within one (1) Working Day of such change taking place;
- (e) ensure that no employees or agents of the Supplier including any of the Supplier's subcontractors use the Company's or a third parties' site equipment without the prior written consent of the Company or the relevant third party;
- (f) carry out the Services in such a manner as not to endanger or interfere in any way with the railway, the Company or any railway operator. The Supplier shall strictly observe all rules and regulations set out or referred to in the Agreement and any further instructions, rules and regulations which it may from time to time receive from the Company's Representative for the working, protection and return of the railway or for the protection of persons on or adjacent to the railway; and
- (g) attend the Company or any third party in order to advise on the effects of the Supplier's actions or proposed actions in respect to the Services on the integrity and/or functionality of any other aspect of the railway.

12.2 Without prejudice to Clauses 12.1(a) to (g) the parties shall co-operate with one another and act reasonably and in good faith in and about the performance of their respective obligations and the exercise of their respective rights under each Contract.

13 Free Issue Materials

13.1 In the event of the Company supplying Free Issue Materials to the Supplier under any Contract the cost of which has been included in calculating the Order Price, the Order Price shall be reduced by the amount included in the Order Price for the materials which have been replaced by such Free Issue Materials.

- 13.2 Any Free Issue Materials supplied by the Company to the Supplier shall remain the property of the Company and the Supplier shall ensure that all Free Issue Materials are properly labelled as the property of the Company and are kept separate from and not mixed with any materials owned or in the possession of the Supplier or with any materials supplied to it by third parties.
- 13.3 The Supplier shall properly store all Free Issue Materials and other property of the Company whilst the same are in the Supplier's possession and protect the same from damage by exposure to the weather and shall take every reasonable precaution against accident or damage to the same from any cause. The Supplier shall be liable for all loss thereof or damage to such Free Issue Materials and other property of the Company whilst the same are in the Supplier's possession or in the possession of any subcontractor of the Supplier except where such loss or damage is solely due to any negligent act or omission of the Company or its employees.

14 Environmental Claims

- 14.1 The Supplier shall indemnify the Company against Losses and Remediation costs in respect of any Environmental Claims which may arise out of or by reason of the Supplier's performance, non-performance or part performance of each Contract to the extent that such Losses and Remediation costs are due to any act, negligence, breach of contract, breach of statutory duty, error, omission or default by the Supplier, its employees, subcontractors or agents.
- 14.2 The Supplier shall notify the Company's Representative and the Company as soon as it becomes aware that any Remediation is or will become necessary on any part of the Company's site.
- 14.3 Where the Supplier discovers or suspects that the site has been contaminated or polluted by another party, the Supplier shall notify the Company's Representative and the Company of the identity of the other party, where known. The Supplier shall not without the prior written consent of the Company undertake any environmental investigations on site or commission or undertake any Remediation. The Supplier shall provide the Company with a separate record of the costs of any Remediation as soon as possible after such costs are incurred.
- 14.4 In the event that the Supplier commissions an environmental assessment, the Supplier shall use reasonable endeavours to procure that the environmental assessment includes an acknowledgement by its authors that the Company can rely on any reports, recommendations or summaries prepared in relation to the environmental assessment.
- 14.5 The Supplier shall provide to the Company's Representative:

- (a) copies of all environment-related permissions, permits, consents, licenses, registrations and authorisations required for him to carry out the Services (for the purposes of this Clause 14.5, the “authorisations”);
- (b) copies of any amendments to the authorisations;
- (c) notification of any revocations, suspensions, cancellations, withdrawals, adverse amendments or refusals to provide any of the authorisations; and
- (d) notification of any event or circumstance that is likely to cause the revocation, suspension, cancellation, withdrawal, adverse amendment or refusal to provide any of the authorisations.]

15 Safety

- 15.1 The Supplier shall not endanger in any manner the health and safety of, or unreasonably interfere with the proper performance of the duties of, the Company’s employees or third parties or otherwise expose the Company to liability under any Applicable Laws and Standards, including (without limitation) the Health and Safety at Work etc. Act 1974, the Transport and Works Act 1992, or any statutory modifications or re-enactments thereof.
- 15.2 The Supplier shall act in accordance with the health and safety regulations and requirements stated in the Specification, including (but not limited to):
 - (a) the provisions of the Company’s Contract QUENSH Conditions that are indicated as being applicable to any Contract in the QUENSH menu set out in Schedule 6 (“QUENSH”) as amended from time to time; and
 - (b) the Company’s drug and alcohol principles as amended from time to time.
- 15.3 Section 20.1.1 (Alcohol and drugs) of QUENSH shall apply to each Contract as if the term “LU Premises” means any of the Company’s property where the Services are carried out and as if references to “LU” are references to the Company.
- 15.4 The Company may at its discretion carry out on the Supplier’s behalf any testing of the Supplier’s employees, subcontractors or agents for drugs or alcohol which each Contract requires the Supplier to carry out. The reasonable cost to the Company of carrying out the testing shall be paid by the Supplier.

16 Not Used

17 Independent Supplier

- 17.1 The Supplier is an independent supplier and is not and shall not hold itself out as, and shall procure that none of the Supplier's employees or subcontractors or their employees hold themselves out as, an agent of the Company. All personnel used by the Supplier in the performance of its obligations under each Contract shall be employees of the Supplier, or any subcontractor or agent of the Supplier.

18 Supplier Personnel

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- 18.1 For the purposes of this Clause 18:

“Current Service Provider” means any person, company or other legal entity which on or before the Commencement Date was the employer of any of the Transferring Employees, and which (for the avoidance of doubt) may include the Company.

“Replacement Employer” means any person to whom a Subsequent Relevant Employee may or does transfer under the Transfer Regulations on termination of the contract (or part of it);

“Relevant Claims and Liabilities” means all liabilities, obligations, proceedings, court or tribunal orders, losses, fines and penalties, damages, expenses, costs (including reasonable legal costs and disbursements) actions, claims and demands;

“Subsequent Transfer Date” means the time and date on which a Subsequent Relevant Employee transfers to a Replacement Employer by virtue of the Transfer Regulations;

“Subsequent Relevant Employee” means a person employed or engaged by the Supplier or relevant subcontractor from time to time in respect of any part of the Services who would transfer to a Replacement Employer by virtue of the Transfer Regulations on termination of the contract (or part of it);

“Transfer Regulations” means all or any of the following: the Transfer of Undertakings (Protection of Employment) Regulations 2006; the Transfer of Employment (Pension Protection) Regulations 2005; any other or further regulations, order or statutory instrument which apply or are capable of applying to a person to whom section 257 of the Pensions Act 2004 applies, as amended, replaced or extended from time to time and including any regulations or other

legislation which (either with or without modification) re-enacts, adopts, consolidates or enacts in rewritten form any such regulations; and

“Transferring Employees” means those employees of or those engaged by the Current Service Provider who transfer or have the right to transfer to the Supplier under the Transfer Regulations

- 18.2 The Supplier complies and procures that his subcontractors comply with any obligations which may arise out of a transfer to the Company or another person under the Transfer Regulations upon expiry of the Term or earlier termination of the Agreement.
- 18.3 At any time during the last twelve (12) months of the Agreement and/or during any period of notice terminating the Agreement, the Company may require the Supplier to provide, within a specified period of being requested, to the Company (or to any other person or persons nominated by the Company) such information as is reasonably required by the Company or such other persons relevant to the potential liabilities of the Company or any other person arising under the Transfer Regulations including but not limited to information on the following:
- (a) the names of employees (of the Supplier or its subcontractors) engaged in providing the Services, their salaries and other conditions of employment, ages and length of service;
 - (b) the method of organisation of the employees (of the Supplier or its subcontractors) engaged in providing Services and documentary evidence relating to such organisation;
 - (c) the proposals for informing and consulting with affected employees;
 - (d) details of collective agreements and union recognition agreements; and
 - (e) any other employee liability information within the meaning of the Transfer Regulations, and will in addition provide copies to the Company upon request of any communication with any potential or intended new consultant or the Supplier’s employees or their representatives relating to the effect on such employees of the expiry or termination of the Agreement.
- 18.4 The Supplier will provide the Company upon request with the name and address of a person within its organisation to whom all queries and requests for information under this clause 18 may be addressed. The Supplier will if required by the Company warrant that any information provided under Clause 18 is accurate, complete and not misleading, including any information supplied in relation to its subcontractors.
- 18.5 The Supplier will not and will procure that its subcontractors will not in the six months prior to the expiry of the Term or termination of the Agreement (or, where notice of termination is given of less than six (6) months, during any such period of notice) without the Company’s written consent:

- (a) re-organise or substantially alter the number or method of organisation or identity of the employees engaged in providing the Services, except to the extent that any such change is the result of a bona fide business reorganisation of the Supplier or the relevant subcontractor which is not related or confined to the employees engaged in providing the Services or the expiry of the Term or termination of the Agreement, or
- (b) make any increase to the salaries or any significant change to the terms and conditions of employment of the employees engaged in providing the Services, except where such increases or changes would have arisen in the ordinary course of the Supplier's or the relevant subcontractor's business and are not related to the expiry of the Term or termination of the Agreement (either because they are applied to all of the Supplier's or the relevant subcontractor's employees, whether or not engaged in providing the Services or otherwise) or are the result of a bona fide business reorganisation of the Supplier or the relevant subcontractor which is not related or confined to the employees engaged in providing the Services or relates to the expiry of the Term or termination of the Agreement.

18.6 The Supplier shall indemnify the Company against all Relevant Claims and Liabilities arising from or incurred by reason of any act or omission of the Supplier, its servants or agents in connection with or arising from or incurred by reason of the employment of the Transferring Employees, including but not limited to any claim against the Company or any other person for damages for breach of contract, or for compensation for unfair or wrongful dismissal or redundancy, or failure to provide comparable pension rates, or failure to provide information, or failure to inform or consult Transferring Employees, or in respect of death or personal injury, breach of statutory duty or any other claim in tort by a Transferring Employee, or by a person who would be a Transferring Employee but for any act or omission (including dismissal or constructive dismissal) of the Supplier, arising from the operation (or alleged operation) of the Transfer Regulations in relation to the Services.

18.7 The Supplier shall indemnify the Company and all Replacement Employers against all Relevant Claims and Liabilities arising from or related to:

- (a) any claim by a Subsequent Relevant Employee in respect of any default, failure or omission (or alleged default, failure or omission) by any person whatsoever concerning or arising from employment before a Subsequent Transfer Date in respect of which the Company or the Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations; and
- (b) any claim by any former or existing employee of the Supplier or relevant Subcontractor (other than a Subsequent Relevant Employee) in respect of which the Company or a

Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations.

- (c) In this Clause 18.7 “Relevant Claims and Liabilities” include those incurred by the Company by reason of any contract term between the Company and a Replacement Employer provided always that in relation to Relevant Claims and Liabilities which the Company may incur to a Replacement Employer, the Supplier shall not be required to indemnify the Company or the Replacement Employer for more than or with a greater scope than it would if such Relevant Claims and Liabilities were made against or incurred by the Company in providing an indemnity under this paragraph.

- 18.8 The provisions of this Clause 18 are without prejudice to the Transfer Regulations. For the avoidance of doubt, any remedies available to the Company for any breach by the Supplier of any provision of this Clause 18 shall be in addition to and not in substitution for any remedies available to the Company under any provision of the Transfer Regulations.

Key Personnel

- 18.9 [The Supplier shall ensure that each of the Key Personnel devotes substantially their whole time and effort to the performance of the Services. The Supplier shall take all reasonable steps to ensure it retains the services of the Key Personnel and shall not without the Company's prior written consent terminate their employment, remove or change Key Personnel or do any such thing which would cause any of the Key Personnel to resign.
- 18.10 The Supplier agrees to inform the Company of any changes to the Key Personnel where any relevant member of Key Personnel dies, suffers long term sickness or disability, is incapacitated by reason of ill health or accident from performing his or her duties for a period of or periods aggregating thirty (30) days in the preceding three (3) months, is guilty of gross or serious misconduct, goes on any period of statutory leave (other than holiday) or leaves the Supplier's employment.
- 18.11 The Supplier shall be responsible for the costs of replacing any member of Key Personnel with an appropriately qualified and competent replacement (including but not limited to, the cost of training any replacement to ensure that they can take over the vacated position efficiently and without disrupting the Services). The Supplier shall use all reasonable endeavours to ensure that any replacement for any member of Key Personnel is engaged and available to perform his or her role as soon as reasonably practicable and at least within seven (7) days of the expiry of the notice period of the relevant member of Key Personnel. Where termination of the relevant member of Key Personnel is due to gross or serious misconduct, a replacement shall be engaged and available to perform his/her role as soon as reasonably practicable and in any event within twenty-eight (28) days. Further, save where the relevant member of Key Personnel

being replaced has vacated the position immediately due to death, illness, gross misconduct or some other similar reason, the Supplier shall, at its own cost, ensure that the member of Key Personnel being replaced works in parallel with his or her replacement to hand over to them for a period of seven (7) days or any shorter period agreed between the parties.

- 18.12 A reasonable period before an offer of engagement is made to a replacement member of Key Personnel, the Supplier shall provide such information about and access to the relevant individual as the Company may reasonably require. The Company shall notify the Supplier if it objects to the appointment of an individual as a member of Key Personnel, together with its reasons for such objection. The Supplier shall comply with any request by the Company that a particular person should not become a member of Key Personnel.
- 18.13 The Company may change the list of Key Personnel on reasonable notice and subject to the consent of the Supplier, such consent not to be unreasonably withheld or delayed.
- 18.14 Not Used

19 London Living Wage

- 19.1 The Supplier shall, to the extent each Contract is for the provision of Services to be undertaken within Greater London or on the Underground Network:
- (a) ensure that none of its employees engaged in the provision of services under any Contract is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;
 - (b) provide to the Company such information concerning the application of the London Living Wage as the Company or its nominees may reasonably require;
 - (c) disseminate on behalf of the Company to its employees who are paid no more than the London Living Wage such perception questionnaires in relation to the London Living Wage as the Company or its nominees may reasonably require and promptly collate and return to the Company responses to such questionnaires;
 - (d) co-operate and provide all reasonable assistance to the Company and its nominees in monitoring the effect of the London Living Wage; and
 - (e) procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 19 and the provisions of this Clause 19 are included in any subcontract (of any tier).

19.2 The Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 19.

20 Responsible Procurement

20.1 The Supplier and the Company acknowledge and agree that the Mayor, in accordance with section 155 of the GLA Act has directed TfL and its subsidiaries (including the Company) to do all things reasonably necessary to comply with (inter alia) the Responsible Procurement Policy in its procurement activities.

20.2 The Supplier shall and shall procure that its subcontractors (of any tier) shall comply with, and shall provide such co-operation and assistance as may be reasonably requested by the Company to enable the Company to comply with, the Responsible Procurement Policy.

20.3 The Supplier acknowledges and agrees that the Company is required to develop a policy relating to the promotion of the procurement of goods and services in an ethical manner (the “**Ethical Sourcing Policy**”) which shall reflect and be consistent with the relevant principles of the Responsible Procurement Policy and the Supplier shall and shall procure that all of its subcontractors shall comply with such Ethical Sourcing Policy to the extent it does not conflict with the Responsible Procurement Policy.

20.4 The Supplier acknowledges and agrees that it (and its subcontractors) shall be required to comply with any changes to the Responsible Procurement Policy (and any adjustment or amendment to the Ethical Sourcing Policy as a result of such amendment or adjustment to the Responsible Procurement Policy).

20.5 The Supplier shall not be entitled to any addition to the Order Price in the event of any change to the Responsible Procurement Policy (and any change to the Ethical Sourcing Policy as a result of such change to the Responsible Procurement Policy).

20.6 The Supplier shall procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 20 and the provisions of this Clause 20 are included in any subcontract (of any tier).

20.7 The Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 20.

21 Failure to Perform

- 21.1 If the Supplier has not performed the Services in accordance with the terms of any Contract, without prejudice to any other rights the Company shall have under such Contract, the Company shall be entitled to require the Supplier to carry out such work as is necessary to rectify its non-performance which where necessary shall include re-performing the Services within the time period that the Company shall specify.
- 21.2 Without limiting any other remedy, if the Supplier fails to comply with the requirements of Clause 21.1, the Company shall be entitled to perform or procure the performance of the Services or part thereof itself or from a third party. Without prejudice to any other right or remedy of the Company hereunder or under the general law, all expenditure properly incurred by the Company exercising its rights under this Clause 21.2 is recoverable by the Company from the Supplier and the Company shall be entitled to deduct such amounts from any amount due or to become due to the Supplier under the Agreement.
- 21.3 For the purposes of Clause 21.3 the Supplier hereby grants to the Company and any third party the right to use any Intellectual Property Rights, Documentation, goods, materials and spares belonging to the Supplier or used by the Supplier in connection with the Agreement and any Contract as may be required by the Company to exercise its rights under Clause 21.3 and the Supplier shall provide all such co-operation and assistance as may be required by the Company to enable the Company to exercise its rights under Clause 21.3.

22 Intellectual Property Rights

22.1 Existing Contracts

The Agreement is entirely without prejudice to, and nothing in it is intended to, nor shall, in any way prejudice the rights of any member of the TfL Group in relation to intellectual property under or pursuant to Existing Contracts.

22.2 Vesting of Intellectual Property Rights created under the Agreement or any Contract

All Intellectual Property Rights created wholly or mainly in connection with the performance of, or in order to perform, the Agreement and each Contract shall vest in the Company. The Supplier shall procure that each of its subcontractors (of any tier) or other third party shall assign such Intellectual Property Rights to the Company.

22.3 Ownership of the Supplier's Intellectual Property Rights

Without prejudice to Clause 22.2, all Intellectual Property Rights owned by the Supplier or its subcontractors (of any tier) or other third party and which are not assigned to, or vested in, the

Company pursuant to Clause 22.2 shall remain or be vested in the Supplier, its subcontractors (of any tier) or other third party (as the case may be).

22.4 *Company's Licence to use the Supplier's Intellectual Property Rights*

The Company shall have and the Supplier hereby grants, and procures that its subcontractors (of any tier) or other third party grant, to the Company a worldwide, royalty-free, perpetual, irrevocable, non-exclusive licence (with the right to sub-licence such rights to any third party) to use and copy the Intellectual Property Rights referred to in Clause 22.3 for the purposes of:

- (a) understanding the Services;
- (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting, replacing, re-procuring and re-tendering the Services;
- (c) extending, interfacing with, integrating with, connecting into and adjusting the Services;
- (d) enabling the Company to carry out the operation, maintenance, repair, renewal and enhancement of the Underground Network;
- (e) executing and completing the Services; and
- (f) enabling the Company to perform its function and duties as Infrastructure Manager and Operator of the Underground Network.

22.5 *Provision of Supporting Documentation and Other Materials*

The Supplier shall:

- (a) promptly, and in any event by no later than such date as the Company may notify to the Supplier, provide at no charge to the Company, copies of any materials and items (including, without limitation, Documentation) in the Supplier's or subcontractor's (of any tier) or other third party's possession or control (or which ought reasonably to be in the Supplier's or subcontractor's (of any tier) or other third party's possession or control) which are referred to or relied upon in using and copying, or required in any way for the use and copying of, the Intellectual Property Rights referred to in Clauses 22.2, 22.3 and 22.4 above; and
- (b) keep copies of such materials, items and Documentation in a secure place where they will not deteriorate and undertake regular (and in any event not less than every three (3) months) integrity testing of the same and provide written evidence of such testing to the Company at regular intervals and in any event upon the Company's request.

22.6 *Company's Rights of Retention*

If the Supplier has not complied with its obligations under Clause 22.5(a), the Company shall be entitled to retain one quarter of the sums that would otherwise be due to the Supplier under each Contract until the Supplier has complied with its obligations under Clause 22.5(a).

22.7 *Company's Rights to the Software*

If the Supplier or any of its subcontractors providing software for incorporation into or operation of the Services stops trading, is subject to an insolvency event equivalent to any of those events set out in Clause 23.1 (including their equivalent in any jurisdiction to which the Supplier or any of its subcontractors is subject), makes known its intention to withdraw support of that software or fails to support that software in accordance with the terms of the Agreement and each Contract then the Supplier, at no charge to the Company, shall use its best endeavours to transfer or procure the transfer to the Company of all Intellectual Property Rights in that software.

22.8 *Company's Rights in relation to Other Procurement Activities*

For the avoidance of doubt, the Company shall be entitled to use and copy the materials, items and Documentation referred to in Clause 22.5 and anything in which the Intellectual Property Rights referred to in Clauses 22.2, 22.3 and 22.4 subsist for the purposes of inviting tenders or of procuring services the same as or similar to the Services for the carrying out of any activities in connection with the licence under Clause 22.4 subject always to the Company's requirements for tenderers to treat the same in the strictest confidence.

22.9 *Supplier's Indemnity against Third Party Intellectual Property Rights Infringement*

- (a) The Supplier shall indemnify and hold harmless the Company and any member of the TfL Group against any actions, claims, losses, demands, costs, charges or expenses that arise from, or are incurred by reason of, any infringement or alleged infringement of any Intellectual Property Rights belonging to any subcontractor (of any tier) or other third party and against all costs and damages of any kind which the Company may incur in connection with any actual or threatened proceedings before any court or arbitrator or any other dispute resolution forum. If required by the Company the Supplier shall conduct negotiations with any subcontractor (of any tier) or other third party and/or a defence in relation to any action, claim or demand referred to herein on behalf of the Company.
- (b) In the event of a claim of infringement of any Intellectual Property Rights the Supplier shall use all reasonable endeavours to make such alterations or adjustment to the method of providing the Services as may be necessary to ensure that the use and the provision of the Services continues in spite of such claim.

22.10 *Ownership of the Company's Intellectual Property Rights*

Intellectual Property Rights in all Documentation and in all other material and items supplied by the Company to the Supplier in connection with the Agreement and each Contract shall remain vested in the Company or the person owning such rights at the time the Documentation, material or items were supplied. The Supplier shall, if so requested, at any time, execute such documents and perform such acts as may be required fully and effectively to assure to the Company the rights referred to in this Clause.

22.11 Company's Intellectual Property Rights

The Supplier is not entitled to use in any manner whatsoever any Intellectual Property Rights belonging to the Company.

23 Termination and Suspension

23.1 The Company may terminate the Agreement and/or any individual Contract (in which case any remaining outstanding Contracts shall survive) immediately by notice in writing to the Supplier if:

- (a) the Supplier commits a breach of the Agreement and/or any Contract which in the case of a breach capable of remedy has not been remedied within five (5) Working Days, or such other period as may be agreed between the Supplier and the Company, of the Company serving notice on the Supplier requiring such remedy;
- (b) the Supplier or anyone employed by or acting on behalf of the Supplier (whether or not acting independently of the Supplier when committing any breach) commits a Safety Breach or Prohibited Act;
- (c) any limit on the Supplier's liability to pay Liquidated Damages is reached or exceeded; or
- (d) the Supplier enters into compulsory or voluntary liquidation (other than for the purpose of effecting a solvent reconstruction or amalgamation provided that if the company resulting from such reconstruction or amalgamation is a different legal entity it shall agree to be bound by and assume the obligations of the Supplier under each Contract) or is deemed unable to pay its debts as they fall due [in accordance with] [within the meaning of] Section 123(1) of the Insolvency Act 1986, or a meeting of its shareholders or directors is convened to consider any resolution for (or petition or file documents with the courts for) its administration or an administrative receiver, manager, administrator, liquidator, trustee or other similar officer is appointed or notice is given to appoint the same [or any similar or analogous procedure or step is taken in any jurisdiction]; or
- (e) a breach of the Supplier's obligations under Clause 44; or

- (f) the Supplier has, at the date of this Agreement or of each Contract, been in one of the situations referred to in Regulation 57(1) of the Public Contracts Regulations 2015 and should therefore have been excluded from the procurement procedure in accordance with those Regulations or Regulation 80(2) of the Utilities Contracts Regulations 2016 (without prejudice to the Company's rights of termination implied into the Agreement and each Contract by Regulation 73(3) of the Public Contracts Regulations 2015 or Regulation 89(3) of the Utilities Contracts Regulations 2016);
- (g) the Supplier fails to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law [or,
- (h) the Company becomes entitled to terminate in accordance with the escalation procedure set out in Schedule 10.

23.2 Without prejudice to Clause 23.1, the Company shall have the right:

- (a) to terminate the Agreement or any individual Contract (in which case the remaining outstanding Contracts shall survive) at any time by giving notice of not less than thirty (30) days to the Supplier in writing; or
- (b) at any time to require the Supplier to suspend provision of the Services by giving notice in writing (a "**Suspension Notice**") to the Supplier.

23.3 Without prejudice to the Company's right to terminate the Contract under Clauses 23.1 or 23.2 or at common law, the Company may terminate the Agreement or any Contract at any time following a Declaration of Ineffectiveness or a Public Procurement Termination Event in accordance with the provisions of Clause 49.1.

23.4 In the event that the Company terminates the Agreement and/or any Contract for any reason under this Clause 23, the Supplier shall, without prejudice to any other rights or remedies which the Company may have under the Agreement and such Contract or under general law, at the Company's option:

- (a) permit the Company to enter the Supplier's premises and take possession of any equipment, goods or Documentation which are the property of the Company;
- (b) permit the Company to place an order for the remaining Services with any other person or persons or complete the provision of such Services by its own workmen; and
- (c) promptly return to the Company any equipment, goods or Documentation which are the property of the Company and of which the Supplier or any of its subcontractors have possession.

In either such case, the Company shall be entitled to retain the benefit of any part of the Services already provided by the Supplier in accordance with the Agreement and any Contract, at the material time.

- 23.5 In the event that the Agreement and any such Contract is terminated, the liability of the Company shall be limited to payment to the Supplier for those Services provided in accordance with the Agreement and such Contract(s) up until the date of such termination.
- 23.6 Following a termination in accordance with Clause 23.1 (but not a termination in accordance with Clause 23.2(a)) the Supplier shall be liable for:
- (a) any Losses of whatever nature arising out of or in connection with the relevant breach; and
 - (b) where the Company exercises its rights under Clause 23.4(b) and in doing so incurs costs which are in excess of those which would have been incurred in relation to the due provision of the Services under the Agreement and the relevant Contract(s) by the Supplier ("**Excess Costs**"), such Excess Costs.
- 23.7 In the event that the Agreement and/or any Contract is suspended in accordance with Clause 23.2(b), the Supplier shall:
- (a) issue to the Company an application for payment in respect of those Services provided to the Company in accordance with the Agreement and the relevant Contract up until the date of such suspension; and
 - (b) not carry out any further work in connection with the provision of the Services until such time as the Company issues a notice lifting the suspension (a "**Notice to Proceed**").
- 23.8 In the event that the Agreement and/or any Contract is suspended in accordance with Clause 23.2(b), and such suspension continues for a period of twenty-eight (28) days, the Supplier shall be entitled to request that the Company serve a Notice to Proceed. In the event that no Notice to Proceed is issued by the Company within a further fourteen (14) days from such request of the Supplier, the Supplier shall be entitled to approach the Company with a request for a variation, in accordance with the Contract Variation Procedure.
- 23.9 In the event that the parties are unable to agree upon the variation requested under Clause 23.8, then a Dispute shall be deemed to have arisen and the matter shall be referred for resolution in accordance with Clause 38.
- 23.10 Termination of the Agreement and/or any Contract for whatever reason shall not affect the accrued rights of the parties arising in any way out of the Agreement and the relevant Contract

as at the date of termination and in particular but without limitation the right to recover damages against the other party.

- 23.11 If anyone employed by the Supplier, acting independently of the Supplier, commits a Safety Breach or Prohibited Act, then the Company may require the Supplier to exclude that individual from the Services with immediate effect and that individual may only resume the performance of the Services at the Company's absolute discretion.

24 Co-operation in Handover

- 24.1 The Supplier shall provide at no cost such reasonable assistance to the Company and to any third party nominated by the Company as the Company may require during the last six (6) months of the Agreement and in the three (3) months after the expiry of the Term (or, in the case of earlier termination for any reason, the period of three (3) months from the effective Agreement termination date) to facilitate the engagement of a successor supplier and/or the resumption by the Company of the performance of the Services and in such a manner so as not to unduly disrupt or hinder the Company's business.
- 24.2 Without prejudice to the generality of Clause 24.1 above, the Supplier shall on or prior to the expiry of the Term transfer to the Company such Documentation relating to the Services or full copies thereof as the Company may request.

25 Indemnity and Insurance

- 25.1 The Supplier shall be liable for, and shall indemnify the Company, including any of its employees, servants, agents, subcontractors, directors and officers and members of the TfL Group on an after-tax basis against all Losses suffered or incurred by the Company or any relevant member of the TfL Group, arising from or in connection with the performance or non-performance of the Supplier under the Agreement and each Contract:
- (a) in respect of death or personal injury to any person;
 - (b) in respect of loss of or damage to any property (including the Underground Network and any other property belonging to the Company or for which it is responsible);
 - (c) arising out of or in the course of or by reason of any act, omission, negligence or breach of contract or breach of statutory duty, wilful misconduct of the Supplier, its employees, agents or subcontractors; and
 - (d) arising under the Company's contracts with third parties,

and shall, at its own cost on the Company's request, defend the Company in any proceedings involving the same.

- 25.2 The Supplier shall not be liable to indemnify the Company or any member of the TfL Group under the indemnity in Clause 25.1 to the extent Losses are solely due to the negligence, breach of duty or breach of contract of the Company.
- 25.3 The Supplier's indemnity under Clause 25.1 and all other indemnities under the Agreement and each Contract shall remain in force for the duration of each Contract and for the period of [twelve (12)] years after the Order Completion Date or earlier termination of each Contract.
- 25.4 The Company may withhold from any sum due or which may become due to the Supplier any sum due to the Company as a result of the operation of Clause 25.1 provided that an appropriate notice to withhold payment has been served by the Company on the Supplier.
- 25.5 Other than in respect of the Losses (i) described in Clauses 25.1(a) and 25.1(d) above and (ii) Excepted Liabilities, neither party shall have any liability to the other for any Consequential Loss arising out of the performance of its obligations under or in connection with the Agreement and each Contract. Each party respectively undertakes not to sue the other party, TfL or any member of the TfL Group in respect of Consequential Loss.
- 25.6 Without prejudice to the obligation to indemnify the Company set out in Clauses 25.1, the Supplier undertakes to:
- (a) maintain at its own cost insurance which complies with the Employers' Liability (Compulsory Insurance) Act 1969 and any statutory orders made under such Act or any amendment or re-enactment thereof;
 - (b) maintain at its own cost an adequate level of public liability insurance in respect of the Supplier's liability for death or injury to any person and loss of or damage to property and being not less than £10,000,000 (ten million pounds) per occurrence;
 - (c) maintain at its own cost an adequate level of professional indemnity insurance commensurate with the risk and, where appropriate, being not less than £5,000,000 (five million pounds) per occurrence and in the aggregate per annum;
 - (d) ensure that the foregoing insurance policy or policies shall be or are effected with a reputable insurer. Such insurance shall be on terms approved by the Company (such approval not to be unreasonably withheld or delayed) and shall be maintained in force for a period not less than [twelve (12)] years after the completion of the Services;

- (e) ensure that any subcontractors also maintain adequate insurance having regard to the obligations under the contract which they are contracted to fulfil; and
- (f) produce within seven (7) days of any reasonable request by the Company and in any event before the commencement of any of the Services under any Contract satisfactory evidence in the form of a broker's letter or similar confirming the existence of insurance in accordance with the terms of this Clause 25.

25.7 The Supplier's liabilities under each Contract shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in Clause 25.6.

25.8 If the Supplier fails to maintain the insurance policies as provided in this Clause 25, the Company may effect and keep in force any such insurance and pay such premium or premiums at commercially competitive rates as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or which become due to the Supplier or recover the same as a debt due from the Supplier.

25.9 Not used

26 Force Majeure and Permitted Delay Events

26.1 *Force Majeure*

Neither party shall be in breach of its obligations under the Agreement or any Contract if there is any total or partial failure of performance by it of its duties and obligations under the Agreement or any Contract occasioned by any Force Majeure Event. If either party is unable to perform its duties and obligations under the Agreement or any Contract as a direct result of a Force Majeure Event, that party shall within one (1) Working Day of such event taking place give written notice to the other party specifying the event and the steps taken by it to minimise or overcome the effects of such event. The operation of the relevant Contract shall be suspended during the period (and only during the period) in which the Force Majeure Event continues. Without delay upon the Force Majeure Event ceasing to exist the party relying upon it shall give written notice to the other of this fact. If the Force Majeure Event continues for a period of more than twenty-eight (28) days and substantially affects the abilities of the Supplier to perform its obligations under the relevant Contract, the Company shall have the right to terminate such Contract immediately upon giving written notice of such termination to the Supplier.

26.2 *Permitted Delay Events*

- (a) If a delay is caused or either party can reasonably foresee delay occurring by reason of a Permitted Delay Event then the Supplier shall give notice to the Company's

Representative of the same and any claim for an extension of time to the Order Completion Date, within seven (7) days after the cause of any delay has arisen.

- (b) For the purposes of the Agreement or any Contract, the occurrence of one or more of the following shall constitute a "Permitted Delay Event":
- (i) any act of prevention, omission, default neglect or breach by the Company of an express obligation under the Agreement or any Contract; or
 - (ii) any variation of the Agreement or any Contract under Clause 8; or
 - (iii) any denial of access under Clause 11.12; or
 - (iv) the suspension of the Agreement or any Contract in accordance with Clause 23 (other than where the suspension is necessary by reason of default of the Supplier.
- (c) Where any delay in achieving the Order Completion Date arises, the Supplier shall be entitled to an extension to such Order Completion Date (either prospectively or retrospectively) but only to the extent that such delay is directly caused by a Permitted Delay Event that has a direct and material adverse effect on the Supplier's ability to perform the Services by the Order Completion Date and provided that the Supplier:
- (i) notifies the Company of the Permitted Delay Event in accordance with Clause 26.2(a) and subsequently provides such further information as the Company may reasonably require regarding the nature and likely duration of such event;
 - (ii) provides the Company with reasonable access to the Supplier's premises or of its subcontractors for investigating the validity of the potential Permitted Delay Event;
 - (iii) uses its reasonable endeavours to mitigate the delay to the Order Completion Date; and
 - (iv) shall not be entitled to an extension of time to the extent that the Permitted Delay Event was caused by or resulted from any act, omission, neglect, default or breach of the Agreement or any Contract by the Supplier, its subcontractors or employees.

27 Confidentiality

- 27.1 The Supplier undertakes to keep confidential and not to disclose to any third party (without the prior written consent of the Company) any Confidential Information supplied by the Company to the Supplier and shall use such information only for the purpose of the performance of his obligations under each Contract.

- 27.2 On the Company's request, the Supplier shall, so far as is reasonably possible:
- (a) transfer onto hard copies or other media in industry standard format and programming languages and deliver to the Company any Confidential Information in its possession or control supplied by the Company to the Supplier;
 - (b) return to the Company all copies (whether hard copy or other media) of such Confidential Information; and
 - (c) destroy, erase or otherwise expunge from its records, systems, databases or other forms of archive all such Confidential Information save to the extent that information needs to be retained for statutory purposes or tax purposes.
- 27.3 The Supplier shall ensure that all his subcontractors, suppliers, employees and agents perform his obligations in Clauses 27.1 and 27.2 as if they were the Supplier, and the Supplier shall be responsible to the Company for any act or omission by his subcontractors, suppliers, employees and agents in breach of such obligations.
- 27.4 The Supplier shall notify the Company promptly if the Supplier becomes aware of any breach of confidence by a subcontractor, supplier, employee or agent and shall give the Company all assistance the Company reasonably requires in connection with any proceedings the Company brings, or other steps the Company takes, against that subcontractor, supplier, employee or agent for such breach of confidence.
- 27.5 The Supplier shall not, either alone or jointly with others, publish any material relating to the Company, the Company's Representative, any Contract or the Services without the prior written consent of the Company.
- 27.6 The Supplier shall not, either alone or jointly with others, make any press, television, radio or other media announcement in connection with any Contract or the Services, or any Dispute arising under or in connection with any Contract.
- 27.7 The provisions of Clauses 27.1 to 27.6 shall not apply:
- (a) to any information which is already in the public domain at the time of its disclosure other than by breach of any Contract; or
 - (b) to any information which is required to be disclosed to the extent required by any applicable law, the regulations of any recognised stock exchange, any taxation authorities or by order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.

27.8 The Supplier acknowledges that damages would not be an adequate remedy for any breach of this Clause 27 by the Supplier and that (without prejudice to all other remedies to which the Company may be entitled as a matter of law) the Company shall be entitled to any form of equitable relief to enforce the provisions of this Clause.

28 Assignment and Subcontracting

28.1 The Supplier shall not assign, novate or subcontract any of its rights or obligations under the Agreement or any Contract or any part thereof without the prior written consent of the Company.

28.2 The subcontracting of all or any part of the Services to a subcontractor shall not relieve the Supplier of its obligations to perform the Services under any Contract. The Supplier shall be responsible for the acts and omissions of its subcontractors.

28.3 The Company may novate, assign, transfer or subcontract the Agreement and/or any Contract (or any part thereof) to any person at any time without the consent of the Supplier, provided the Company has given prior written notice to the Supplier.

28.4 Within seven (7) days of any written request by the Company to the Supplier, the Supplier shall execute a deed of novation in the form set out in Schedule 7 in favour of any person to whom the Agreement and/or any Contract is being novated.

28.5 For the purposes of Clauses 28.6 to 28.9:

“**Subcontract**” means a contract between the Supplier and a Subcontractor; and

“**Subcontractor**” means a subcontractor to the Supplier, being the counterparty of a contract with the Supplier involved in the supply of goods, facilities or services necessary for or related to the provision of the Services (or any part of them).

28.6 Subject to the Company’s prior written consent pursuant to Clause 28.1, where the Supplier subcontracts any or all of the Services, the Supplier shall include in each Subcontract (and procure that its Subcontractors (and any of their subcontractors of any tier) include in each of their subcontracts of any tier):

28.6.1 payment terms substantially similar to those set out in Clause 9, and

28.6.2 terms entitling the Supplier or (in respect of a subcontract below the first tier) the payer under the relevant subcontract to terminate that subcontract if the relevant subcontractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or labour law. On or before the Commencement Date or Order Commencement Date (as applicable), the Supplier shall notify the Company in writing of the name, contact details

and details of the legal representatives of any Subcontractor, to the extent that such information has not already been provided by the Supplier to the Company. The Supplier shall also immediately provide to the Company in writing the name, contact details and details of the legal representatives of each new Subcontractor which the Supplier subsequently involves in the Services after the Commencement Date or Order Commencement Date (as applicable).

28.7 The Company reserves the right to verify whether there are any grounds for excluding any Subcontractor under Regulation 57 of the Public Contracts Regulations 2015. Where necessary for the purpose of the Company's exercise of its right under this Clause 28.7, the Company may request that the information provided by the Supplier under Clause 28.7 shall be accompanied by one or more European Single Procurement Document(s) (within the meaning of Regulation 59 of the Public Contracts Regulations 2015) in respect of the relevant Subcontractor(s). Further, the Company:

28.7.1 shall require that the Supplier replace any Subcontractor in respect of which the verification has shown that there are compulsory grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015; and

28.7.2 may require that the Supplier replace any Subcontractor in respect of which the verification has shown that there are non-compulsory grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015.

28.8 The Supplier shall promptly notify the Company of any circumstances from time to time that might give rise to a right of the Company to require replacement of a subcontractor pursuant to Clauses 28.7.1 or 28.7.2.

28.9 The Company shall have no obligation to make any termination or compensation payment in respect of any termination pursuant to Clauses 28.7.1 or 28.7.2.

29 Company's and Supplier's Representative

Each party shall in respect of each Contract appoint one or more representatives to act on its behalf under each Contract. Each party shall advise the other party, in writing, of the names and contact details of its representatives and these shall be recorded in each Order. The Supplier shall not appoint such a representative without the prior written consent of the Company (which consent shall not be unreasonably withheld). Any party may, on giving reasonable notice to the other party, appoint an additional representative or replace an existing representative but the Supplier may only do so with the prior written consent of the Company. Each party shall be responsible for the acts, omissions, neglects and defaults of its representatives as if such acts,

omissions, neglects and defaults were its own. Each party will be bound by any decision made or action taken by its representatives.

30 Costs

Except as otherwise agreed each party shall bear its own costs incurred in connection with the negotiation, preparation and execution of the Agreement and each Contract.

31 Severance

If a provision of the Agreement or any Contract is, or becomes, invalid, unenforceable or illegal, that will not affect the legality, validity or enforceability of any other provision of the Agreement or any Contract, provided that the operation of this Clause 31 would not negate the commercial interest and purpose of the parties under the Agreement or any Contract.

32 Publicity

The text of any press release or other communication to be published by or in the media concerning the subject matter of any Contract or the Agreement shall require the prior written approval of the Company. No interviews concerning the same shall be given by the Supplier with the media without prior written approval from the Company of the content of such an interview.

33 Corrupt Gifts and Payments of Commission

- 33.1 The Supplier undertakes that it shall not and procures that its subcontractors and suppliers shall not enter into or offer to enter into any business arrangement with any servant, employee, officer or agent of the Company other than as a representative of the Company without the Company's prior written approval.
- 33.2 The Supplier undertakes that it shall not, and uses reasonable endeavours to procure that its subcontractors and suppliers shall not commit any Prohibited Acts or cause the Company to commit any equivalent act.
- 33.3 The Company shall have the right to audit any and all records necessary to confirm compliance with this Clause 33 at any time during performance of the Agreement and each Contract and during the twelve (12) year period following completion of performance.

34 Criminal Record Declarations

- 34.1 For the purposes of this Clause 34:

“Relevant Individual” means any servant, employee, officer, consultant or agent of either the Supplier or any subcontractor or supplier carrying out, or intended to carry out, any aspect of the Services; and

“Relevant Conviction” means any unspent criminal conviction relating to actual or potential acts of terrorism or acts which threaten national security.

- 34.2 The Supplier shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions (**“Declaration”**) or disclosure of any Relevant Convictions. A Declaration shall be procured prior to a Relevant Individual carrying out any of the Services. The Supplier shall confirm to the Company in writing on request or in any event not less than once in every year that each Relevant Individual has provided a Declaration. The Supplier shall procure that a Relevant Individual notifies the Supplier immediately if he commits a Relevant Conviction and the Supplier shall notify the Company in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.
- 34.3 The Supplier shall not engage or allow to act on behalf of the Supplier or any subcontractor in the performance of any aspect of the Services any Relevant Individual who has disclosed a Relevant Conviction.
- 34.4 The Company shall have the right in accordance with the audit rights set out in Clause 5 to audit and inspect the records of the Supplier and its subcontractors and its and their respective employees and agents in order to confirm and monitor compliance with this Clause 34 at any time during performance of the Agreement and/or any individual Contract.
- 34.5 If the Supplier fails to comply with the requirements under Clauses 34.2 and/or 34.3 the Company may, without prejudice to its rights under Clause 23.1, serve notice on the Supplier requiring the Supplier to remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from any Contract and/or the Company’s site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services unless (in the case of non-compliance with Clause 34.2) within seven (7) days of receipt of the notice the Supplier confirms to the Company that he has procured all of the relevant Declarations required under Clause 34.2.
- 34.6 A persistent breach of Clause 34.2 and/or Clause 34.3 by the Supplier shall entitle the Company to terminate the Agreement and/or any individual Contract in whole or in part with immediate effect in accordance with Clause 23.1(a).
- 34.7 In the event the Company becomes aware that a Relevant Individual has committed a Relevant Conviction, the Supplier shall remove or procure the removal (as the case may be) of such

Relevant Individual from any Contract and/or the Company's site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services.

34.8 Nothing in this Clause 34 shall in any way waive, limit or amend any obligation of the Supplier to the Company arising under the Agreement and/or any individual Contract and the Supplier's responsibilities in respect of performance of the Services remain in full force and effect and the Supplier cannot claim any extra costs or time as a result of any actions under this Clause 34.

35 No Waiver

35.1 No failure or delay on the part of either party to exercise any right or remedy under the Agreement or any Contract shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be. The rights and remedies provided in the Agreement or any Contract are cumulative and are not exclusive of any rights or remedies provided by law.

35.2 No payment made by the Company shall indicate or be taken to indicate the Company's acceptance or approval of any part of the Services or any act or omission of the Supplier from any obligation or liability imposed upon the Supplier by any provision of the Agreement or otherwise.

36 Entire Contract

The Agreement embodies and sets forth the entire contract and understanding of the parties and shall supersede all prior oral or written contracts understandings or arrangements relating to the subject matter of the Agreement or any Contract. Except in the case of fraud, neither party shall be entitled to rely on any contract, understanding or arrangement which is not expressly set forth in the Agreement or any Contract.

37 Notices and Service of Process

37.1 Any notice or other document given under, or in connection with, the Agreement or any Contract must be in English and in writing and sent by letter or fax or delivered by hand to the other party's representatives in each case to the address below. The notice or other document will be effective as follows:

37.1.1 if the notice or other document is sent by letter, it will be effective when it is delivered;

37.1.1.2 if the notice or other document is sent by fax, it will be effective when it has been transmitted and the transmission report from the fax machine states that the entire fax has been sent successfully; and

37.1.1.3if the notice or other document is delivered by hand to the other party's representative, it will be effective immediately it is delivered.

The address and fax numbers of the Company and the Supplier are set out in Schedule 1.

If a party's details change, it must notify the other party promptly in writing of any such changes. The parties agree that proceedings arising out of or in connection with the Agreement or any Contract may be served in accordance with this Clause 37.1.

38 Dispute Resolution

38.1 Any question, dispute, difference or claim (a “**Dispute**”) shall be resolved in accordance with this Clause 38.

38.2 The parties shall use their reasonable endeavours to resolve any Dispute by a meeting between the Company's Representative and a suitably qualified and duly authorised representative of the Supplier (together the “**Nominated Representatives**”) which shall be convened to discuss such Dispute within fourteen (14) days of notification in writing by one party to the other of a matter in dispute.

38.3 If the Dispute has not been resolved within twenty-eight (28) days after the date of a meeting between the Nominated Representatives in accordance with Clause 38.2 (or if no such meeting was convened within twenty-eight (28) days after the date on which notification was served by one party on the other), the Dispute shall be referred as soon as practicable to [*the Company's Contracts and Procurement Manager and the Supplier's Managing Director*] or in the absence or unavailability of these personnel, persons of similar status deputised to resolve disputes on behalf of their respective companies.

38.4 If the Dispute has not been resolved within twenty-one (21) days of it being referred to [the Company's Contracts and Procurement Manager and the Supplier's Managing Director] or their deputies in accordance with Clause 38.3 either party may refer the matter for resolution in accordance with the provisions of Clause 41.

38.5 Clauses 38.1 to 38.4 are subject to the Supplier's rights (if any) under the HGCRA to refer a Dispute to adjudication at any time. Any such adjudication shall be in accordance with the Company's Adjudication Rules. For the purposes of this Clause 38.5, “**Adjudication Rules**” means the most recent edition of the Company's adjudication rules on the date of the notice referring adjudication.

39 Counterparts

39.1 The Agreement may be executed in several counterparts each of which shall be deemed an original and all of which shall constitute one and the same document.

40 Partnerships and Joint Ventures

40.1 If the Supplier is a partnership, the rights, obligations and liabilities of the partners in the partnership under the Agreement are joint and several. The Agreement and the liabilities of the partners under the Agreement shall not automatically terminate upon the death, retirement or resignation of any one or more members of such partnership or upon the admission of additional partner or partners. The partner or partners in the partnership shall use their reasonable endeavours to procure that any additional partner or partners enter into an agreement with the Company confirming his/her acceptance of the rights, obligations and liabilities of the Supplier under the Agreement.

40.2 If the Supplier comprises two (2) or more parties in joint venture, the rights, obligations and liabilities of each such party under the Agreement are joint and several.

40.3 Nothing in the Agreement shall constitute, or shall be deemed to constitute, a partnership between the parties. Except as expressly provided in the Agreement, neither party is deemed to be the agent of the other and neither party holds itself out as the agent of the other.

41 Governing Law and Jurisdiction

41.1 This Agreement and each Contract and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.

41.2 The Company and the Supplier submit, subject to the provisions of the Agreement and each Contract, to the exclusive jurisdiction of the courts of England and Wales provided that the Company has the right in its absolute discretion to enforce a judgement and/or to take proceedings in any other jurisdiction in which the Supplier is incorporated or in which any asset of the Supplier may be situated.

42 Contracts (Rights of Third Parties) Act 1999

42.1 Subject to the Replacement Employer's rights under Clause 18, no person except any member of the TfL Group may enforce the Agreement and any Contract by virtue of the Contracts (Rights of Third Parties) Act 1999, but this does not affect any other right or remedy of a third party arising at law.

42.2 Notwithstanding those rights referred to in Clause 42.1, the Company and the Supplier may agree to vary or rescind the Agreement or any Contract without the consent of any third party.

43 Bonds, Warranties and Guarantees

43.1 Where stated in Schedule 1, the Supplier shall at its own expense provide within seven (7) days of the Company's request the following:

43.1.1.1 an executed bond issued by a financial institution whose long term debt obligations are rated not less than A- by Standard & Poor's and/or A3 by Moody's in the form set out in Schedule 8 in favour of the Company;

43.1.1.2 an executed parent company guarantee from the ultimate holding company or other parent company of the Supplier (provided that such company's long-term debt obligations are rated not less than A- by Standard & Poor's and/or A3 by Moody's) in the form set out in Schedule 8 in favour of the Company.

43.2 The Supplier shall ensure that any bond required under Clause 43.1:

- (a) provides, in aggregate, credit protection for the Company in an amount of not less than the amount specified in Schedule 1; and
- (b) is renewed every twelve (12) months until expiry of the Term (or date of termination if earlier).

43.3 If at any time the existing bond and/or parent company guarantee cease(s) to meet the requirements of Clauses 43.1 and 43.2 then the Supplier shall replace such bond and/or parent company guarantee with a bond and/or parent company guarantee (as the case may be) that meets the requirements within seven (7) days.

43.4 If requested by the Company, the Supplier shall provide an accompanying legal opinion to the bond and/or parent company guarantee supplied under Clause 43.1 completed and signed by a qualified lawyer from the country in which the guarantor and/or parent company is resident in the form specified by the Company.

43.5 If any performance bond and/or parent company guarantee required by the relevant Contract is not procured by the Supplier and delivered to the Company in accordance with Clause 43.1, one quarter of the aggregate of the Order Price for the relevant Contract shall be retained in assessments of the amount due and shall not be payable to the Supplier until such documents have been delivered.

43.6 If required by the Company, the Supplier shall procure that the terms of any subcontract require the subcontractor, within seven (7) days of a written request by the Company to the subcontractor, to enter into:

43.6.1.1a collateral warranty in the form set out in Schedule 9 in favour of the Company and if requested by the Company, the Supplier shall require the subcontractor to provide an accompanying legal opinion completed and signed by a qualified lawyer from the country in which the subcontractor is resident in the form specified by the Company; and

43.6.1.2a parent company guarantee in the form provided by the Company from the ultimate holding company of the subcontractor in respect of any of the subcontractor's obligations under any collateral warranty required under this Clause 43.

43.7 If any warranty (including any accompanying parent company guarantee) required under Clause 43.6 is not delivered to the Company in accordance with Clause 43.6, one quarter of the aggregate of the Order Price relative to the Services supplied by the relevant subcontractor shall be retained in assessments of the amount due and is not payable until such warranty has been delivered.

44 Change of Control

The Supplier shall not without the prior written consent of the Company implement any change of ownership of the Supplier where such change relates to fifty per cent (50%) or more of the issued share capital of the Supplier.

45 Interest

45.1 If either party fails to pay to the other any amount payable in connection with the Agreement or any Contract on or before the due date for payment, interest shall accrue on the overdue amount from the due date for payment until the date of actual payment (whether before or after judgment) at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998. Any interest accruing under this Clause 45.1 shall be immediately payable by the paying party on demand.

Interest Rate. Any interest accruing under this Clause 45.1 shall be immediately payable by the paying party on demand.

45.2 Interest (if unpaid) arising on an overdue amount will be compounded monthly with the overdue amount but will remain immediately due and payable.

46 Freedom of Information

46.1 For the purposes of this Clause 46.1:

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

“Information” means information recorded in any form held by the Company or by the Supplier on behalf of the Company; and

“Information Request” means a request for any Information under the FOI Legislation.

46.2 The Supplier acknowledges that the Company:

46.2.1.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Company to enable the Company to comply with its obligations under the FOI Legislation; and

46.2.1.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Supplier.

46.3 Without prejudice to the generality of Clause 46.2 the Supplier shall and shall procure that its subcontractors (if any) shall:

46.3.1.1 transfer to the Company’s Representative (or such other person as may be notified by the Company to the Supplier) each Information Request relevant to the Agreement and/or any individual Contract, the Services or any member of the TfL Group that it or they (as the case may be) receive as soon as practicable and in any event within two (2) Working Days of receiving such Information Request; and

46.3.1.2 in relation to Information held by the Supplier on behalf of the Company, provide the Company with details about and/or copies of all such Information that the Company requests and such details and/or copies shall be provided within five (5) Working Days of a request from the Company (or such other period as the Company may reasonably specify), and in such forms as the Company may reasonably specify.

46.4 The Company shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Supplier shall not itself

respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Company.

47 Data Transparency

47.1 The Supplier acknowledges that the Company is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 27 and Clause 46, the Supplier hereby gives its consent for the Company to publish the Contract Information to the general public.

47.2 The Company may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Company may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Company may in its absolute discretion consult with the Supplier regarding any redactions to the Contract Information to be published pursuant to Clause 47.1. The Company shall make the final decision regarding publication and/or redaction of the Contract Information.

48 Survival

The provisions of Clauses 5 (Records and Audit), 9.11 (Set-Off), [14 (Environmental Claims)], 10 (Supplier's Personnel), 20 (Responsible Procurement), 43 (Bonds, Warranties and Guarantees), 22 (Intellectual Property Rights), 21 (Failure to Perform), 23 (Termination and Suspension), 25 (Indemnity and Insurance), 27 (Confidentiality), 31 (Severance), 32 (Publicity), 33 (Corrupt Gifts and Payments of Commission), 35 (No Waiver), 36 (Entire Contract), 37 (Notices and Service of Process), 38 (Dispute Resolution), 41 (Governing Law and Jurisdiction), 42 (Contracts (Rights of Third Parties) Act 1999), 46 (Freedom of Information), 39 (Data Transparency), 48 (Survival), 49.1 and 49.5 (Transport for London Group) will survive the termination or expiry of the Agreement and each Contract and continue in full force and effect, along with any other Clauses or Schedules of the Agreement and each Contract necessary to give effect to them. In addition, any other provision of the Agreement and each Contract which by its nature or implication (including in respect of any accrued rights and liabilities) is required to survive the termination will survive such termination as aforesaid.

49 Transport for London Group

49.1 Declaration of Ineffectiveness and Public Procurement Termination Event

49.1.1 Without prejudice to the Company's right to terminate the Agreement and/or any individual Contract under Clause 23.1, Clause 23.2(a) or at common law, the Company may terminate the Agreement and/or any individual Contract at any time in accordance with the provisions of this Clause 49.1 in the event that:

- 49.1.2 there is a Declaration of Ineffectiveness; or
- 49.1.3 there is a Public Procurement Termination Event (without prejudice to the Company's rights of termination implied into the Agreement and each Contract by Regulation 73(3) of the Public Contracts Regulations 2015 or by Regulation 89(3) of the Utilities Contracts Regulations 2016).
- 49.1.4 In the event that any court makes a Declaration of Ineffectiveness or there is a Public Procurement Termination Event, the Company shall notify the Supplier. The parties agree that the provisions of this Clause 49.1 shall apply as from the date of receipt by the Supplier of the notification of a Declaration of Ineffectiveness or a Public Procurement Termination Event. Where there is any conflict or discrepancy between the provisions of Clause 23.1 and this Clause 49.1 or the Cessation Plan, the provisions of this Clause 49.1 and the Cessation Plan prevail.
- 49.1.5 The Declaration of Ineffectiveness or the Public Procurement Termination Event shall not prejudice or affect any right, liability or remedy which has accrued or which shall accrue to either party prior to or after such Declaration of Ineffectiveness or Public Procurement Termination Event.
- 49.1.6 As from the date of receipt by the Supplier of the notification of the Declaration of Ineffectiveness or the Public Procurement Termination Event, the parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Company shall reasonably determine an appropriate Cessation Plan with the object of achieving:
- 49.1.6.1 an orderly and efficient cessation of the Services or (at the Company's request) a transition of the Services to the Company or such other entity as the Company may specify; and
- 49.1.6.2 minimal disruption or inconvenience to the Company or to public passenger transport services or facilities, in accordance with the provisions of this Clause 49.1 and to give effect to the terms of the Declaration of Ineffectiveness or the Public Procurement Termination Event.
- 49.1.7 Upon agreement, or determination by the Company of the Cessation Plan the parties shall comply with their respective obligations under the Cessation Plan.
- 49.1.8 The Company shall pay the Supplier's reasonable costs in assisting the Company in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or charges agreed as part of the Agreement and/or any individual Contract or as otherwise reasonably determined by the Company. Provided that the Company shall not be liable to the Supplier for any loss of profit, revenue goodwill or loss of opportunity

as a result of the early termination of the Agreement and/or any individual Contract in accordance with this Clause 49.1.

49.2 Crime and Disorder Act 1998

The Supplier acknowledges that Transport for London is under a duty under Section 17 of the Crime and Disorder Act 1998 (as amended by the Police and Justice Act 2006 and the Policing and Crime Act 2009) to:

- 49.2.1 have due regard to the impact of crime, disorder and community safety in the exercise of TfL's duties;
- 49.2.2 where appropriate, identify actions to reduce levels of crime and disorder; and
- 49.2.3 without prejudice to any other obligation imposed on the Company, exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, in its area:
 - 49.2.3.1 crime and disorder (including anti-social and other behaviour adversely affecting the local environment);
 - 49.2.3.2 the misuse of drugs, alcohol and other substances; and
 - 49.2.3.3 re-offending,

and in the performance of the Agreement and/or any individual Contract, the Supplier shall assist and co-operate with the Company and relevant members of the TfL Group and shall use reasonable endeavours to procure that its subcontractors assist and co-operate, with the Company and relevant members of the TfL Group to enable TfL to satisfy its duty.

49.3 The Company's business

The Supplier acknowledges that it:

- (a) has sufficient information about the Company and the Services;
- (b) is aware of the Company's processes and business;
- (c) has made all appropriate and necessary enquiries to enable it to carry out the Services in accordance with the Agreement and/or any individual Contract;
- (d) is aware of the purposes for which the Services are required; and

- (e) shall neither be entitled to any additional payment nor excused from any obligation or liability under the Agreement and/or any individual Contract due to any misinterpretation or misunderstanding by it of any fact relating to the Services.

49.4 Best value

The Supplier acknowledges that TfL is a best value authority for the purposes of the Local Government Act 1999 and as such the Company is required to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness. The Supplier shall assist the Company to discharge TfL's duty where possible, and in doing so, shall carry out any review of Services reasonably requested by the Company from time to time. The Supplier shall negotiate in good faith (acting reasonably) with the Company any changes to the Agreement and/or any individual Contract in order for the Company to achieve best value.

49.5 Data Protection and Cyber Security

49.5.1 The Supplier shall comply with all of its obligations under the Data Protection Legislation.

49.5.2 The Supplier shall follow the 10 Steps to Cyber Security issued by the National Cyber Security Centre (or equivalent or replacement guidance or requirements in place from time to time).

49.6 Conflict of Interest

49.6.1 The Supplier acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the carrying out of the Services or with any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Company.

49.6.2 The Supplier shall undertake ongoing and regular checks for any conflict of interest throughout the duration of the Agreement and/or any individual Contract and in any event not less than once in every six (6) months and shall notify the Company in writing immediately on becoming aware of any actual or potential conflict of interest with the carrying out of the Services under the Agreement and/or any individual Contract or with any member of the TfL Group and shall work with the Company to do whatever is necessary (including the separation of staff working on, and data relating to, the Services from the matter in question) to manage such conflict to the Company's satisfaction, provided that, where the Company is not so satisfied (in its absolute discretion) it shall be entitled to terminate the Agreement and/or any individual Contract.

49.7 Equality and Diversity and Modern Slavery

49.7.1 Without limiting the generality of any other provision of the Agreement and any Contract, the Supplier:

49.7.1.1 shall not unlawfully discriminate;

49.7.1.2 shall procure that its employees and agents do not unlawfully discriminate; and

49.7.1.3 shall use reasonable endeavours to procure that its subcontractors do not unlawfully discriminate when providing the Services,

within the meaning and scope of the Equality Act 2006, the Equality Act 2010 and any other relevant enactments in force from time to time in relation to discrimination in employment.

49.7.2 The Supplier acknowledges that the Company is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to:

49.7.2.1 eliminate unlawful discrimination on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation (all "**Protected Characteristics**") and marriage and civil partnership;

49.7.2.2 advance equality of opportunity between persons who share a Protected Characteristic and persons who do not share it; and

49.7.2.3 foster good relations between persons who share a Protected Characteristic and persons who do not.

In performing the Agreement and each Contract the Supplier shall assist and cooperate with the Company where possible in satisfying this duty.

49.7.3 The Supplier shall ensure that its staff, and those of its subcontractors who are engaged in the performance of the Agreement and each Contract comply with the Company's policies in relation to equal opportunities and diversity, workplace harassment and drugs and alcohol as may be updated from time to time. Copies of these policies are available from the Company at any time on request.

49.7.4 To the extent that the Company is required to assist or co-operate with TfL in compliance with its duties under the Equality Act 2010 (Specific Duties) Regulations 2011, the Supplier shall assist and co-operate with the Company where possible.

49.7.5 Where applicable to the Supplier, the Supplier shall comply with the Modern Slavery Act 2015 and any guidance issued by the Secretary of State under it.

49.8 Work Related Road Risk

49.8.1 For the purposes of Clauses 49.8.2 to 49.8.10 (inclusive) of this Agreement, the following expressions shall have the following meanings:

- “Approved Progressive Training”** An ongoing programme of personal development that uses a combination of theoretical, e-learning, practical and on the job training to ensure Drivers have the knowledge, skills and attitude to operate safely on urban roads and shall include:
- (a) Safe Urban Driving (“SUD”) training to be undertaken every five (5) years; or
 - (b) a training course, which in the reasonable opinion of the Company is an acceptable substitute to SUD; and
 - (c) one safety related FORS e-learning module to be undertaken every twelve (12) months;
- “Bronze Accreditation”** the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at:
www.fors-online.org.uk
- “Car-derived Van”** a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment;
- “Category N2 Lorry”** means a vehicle designed and constructed for the carriage of goods having a MAM exceeding 3,500 kilograms but not exceeding 12,000 kilograms;
- “Category N3 Lorry”** means a vehicle designed and constructed for the carriage of goods and having a MAM exceeding 12,000 kilograms;

“Collision Report”	a report detailing all collisions during the previous twelve (12) months involving injuries to persons or fatalities;
“Delivery and Servicing Vehicle”	a Lorry, a Van or a Car-derived Van;
“Driver”	any employee of the Supplier (including an agency or contracted driver), who operates Delivery and Servicing Vehicles on behalf of the Supplier while providing the Services;
“DVLA”	Driver and Vehicle Licensing Agency;
“Direct Vision Standard” or “DVS”	Direct Vision Standard, a performance based assessment and rating tool, as updated from time to time that measures how much direct vision a Driver has from a Category N3 Lorry cab in relation to other road users. Further information can be found at: www.tfl.gov.uk
“FORS”	the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating van and lorry fleets. It offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance;
“FORS Standard”	the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at: www.fors-online.org.uk
“Front Underrun Protection”	devices that are fitted at the front of Lorries and which comply with EC Directive 2000/40/EEC and the Road Vehicles (Construction and Use) Regulations 1986;
“Gold Accreditation”	the highest level of accreditation within the FORS Standard, the requirements of which are more

particularly described at:

www.fors-online.org.uk

“Lorry”	a vehicle with a MAM exceeding 3,500 kilograms;
“MAM”	the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road;
“Side Underrun Protection”	devices that are fitted between the front and rear axles of Lorries which comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986;
“Silver Accreditation”	the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk
“Van”	a vehicle with a MAM not exceeding 3,500 kilograms.

Fleet Operator Recognition Scheme Accreditation

49.8.2 Where the Supplier operates Delivery and Servicing Vehicles to provide the Services, it shall within 90 days of the Commencement Date:

- (a) (unless already registered) register for FORS or a scheme, which in the reasonable opinion of the Company, is an acceptable substitute to FORS (the “Alternative Scheme”); and
- (b) (unless already accredited) have attained the standard of Bronze Accreditation (or higher) or the equivalent within the Alternative Scheme and shall maintain the standard of Bronze Accreditation (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme. Alternatively, where the Supplier has attained Silver or Gold Accreditation, the

maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.

Safety Features on Lorries

49.8.3 The Supplier shall ensure that every Lorry, which it uses to provide the Services, shall have:

- (a) Side Underrun Protection fitted at a height not exceeding 550mm from the ground, unless the Supplier can demonstrate to the reasonable satisfaction of the Company that the Lorry will not perform the function for which it was built if the Side Underrun Protection is fitted;
- (b) Front Underrun Protection fitted at a height not exceeding 400mm from the ground, unless the Supplier can demonstrate to the reasonable satisfaction of the Company that the Lorry will not perform the function for which it was built if the Front Underrun Protection is fitted equipment fitted with an audible means of warning other road users of the Lorry's left manoeuvre;
- (c) prominent signage on the Lorry to warn cyclists and other road users of the dangers of the Lorry's near side blind spot and of getting too close to the Lorry; and
- (d) front, side and rear blind spots completely eliminated or minimised as far as practical and possible, through the use of direct vision, fully operational indirect vision aids and driver audible alerts.

Direct Vision Standard

49.8.4 Where applicable:

- (a) The Supplier shall comply with the Heavy Goods Vehicle Direct Vision Standard Schedule attached to this Agreement; and
- (b) the Supplier shall ensure that:
 - (i) from and including 1 October 2018, all Category N3 Lorries used in the provision of the Services achieve a minimum of a one (1) star Direct Vision Standard rating;
 - (ii) from and including 1 April 2020 all Category N3 Lorries used in the provision of the Services achieve a minimum of three (3) star Direct Vision Standard rating; and
 - (iii) so far as reasonably practicable, the conditions at all sites and locations within the control of the Supplier where:
 - (a) the Services are being delivered, or

- (b) in connection with the performance of the Services, any waste is being disposed of or supplies are being delivered to or from,

are appropriate for each Category N2 Lorry and Category N3 Lorry being used in the provisions of the Services. The Supplier shall not incur any costs or make any changes to the site(s) without the prior written consent of the Company.

Driver Licence Checks

49.8.5 Where the Supplier operates Delivery and Servicing Vehicles to provide the Services the Supplier shall ensure that:

- (a) it has a system in place to ensure all its Drivers hold a valid driving licence for the category of vehicle that they are tasked to drive, along with recording any endorsements, or restrictions on the Drivers licence; and
- (b) each of its Drivers engaged in the provision of the Services has a driving licence check with the DVLA or such equivalent before that Driver commences delivery of the Services and that the driving licence check with the DVLA or equivalent authority is repeated in accordance with either the following risk scale (in the case of the DVLA issued licences only), or the Supplier's risk scale, provided that the Supplier's risk scale has been approved in writing by the Company within the last 12 months:
 - (i) 0 – 5 points on the driving licence – six monthly checks;
 - (ii) 6– 8 points on the driving licence – quarterly checks; or
 - (iii) 9 or more points on the driving licence – monthly checks.

Driver Training

49.8.6 Where the Supplier operates Delivery and Servicing Vehicles to provide the Services the Supplier shall ensure that each of its Drivers attends Approved Progressive Training throughout the duration of the Contract.

Collision Reporting

49.8.7 Where the Supplier operates Delivery and Servicing Vehicles to provide the Services, the Supplier shall:

- (a) ensure that it has a system in place to capture, investigate and analyse road traffic collisions that results in fatalities, injury or damage to vehicles, persons or property and for generating Collision Reports; and

- (b) within 15 days of the Commencement Date, provide to the Company a Collision Report. The Supplier shall provide to the Company an updated Collision Report within five working days of a written request from the Company.

Self Certification of Compliance

49.8.8 Where the Supplier operates Delivery and Servicing Vehicles to provide the Services, within 90 days of the Commencement Date, the Supplier shall make a written report to the Company detailing its compliance with Clauses 49.8.2, 49.8.3, 49.8.4, 49.8.5, 49.8.6 and 49.8.7 of this Agreement (the "WRRR Self-certification Report"). The Supplier shall provide updates of the WRRR Self-certification Report to the Company on each three month anniversary of its submission of the initial WRRR Self-certification Report.

Obligations of the Supplier regarding subcontractors

49.8.9 The Supplier shall ensure that those of its sub-contractors who operate Category N2 Lorries, Category N3 Lorries, Vans and/or Car-derived Vans to provide the Services shall comply with the corresponding provisions of this Agreement:

- (a) Clause 49.8.2;
- (b) for Category N2 Lorries – Clauses 49.8.3, 49.8.5, 49.8.7 and 49.8.8;
- (c) for Category N3 Lorries – Clauses 49.8.3, 49.8.4, 49.8.5, 49.8.7, 49.8.8 and, where applicable, the appropriate provisions of the Heavy Goods Vehicle Direct Vision Standard Schedule; and
- (d) for Vans and Car-Derived Vans – Clauses, 49.8.7 and 49.8.8

as if those subcontractors were a party to this Agreement.

Failure to Comply with Work Related Road Risk Obligations

49.8.10 Without limiting the effect of any other clause of this Agreement or any Contract relating to termination, if the Supplier fails to comply with any of Clauses 49.8.2, 49.8.3, 49.8.4 (where applicable), 49.8.6, 49.8.7, 49.8.8, 49.8.8 and/or 49.8.9:

- (a) the Supplier has committed a material breach of this Agreement and any Contract; and

- (b) the Company may refuse the Supplier, its employees, agents and Delivery and Servicing Vehicles entry onto any property that is owned, occupied or managed by the Company for any purpose (including but not limited to deliveries).

50 CompeteFor

- 50.1 Without prejudice to Clause 28, the Supplier will, on a non-exclusive basis, use the CompeteFor electronic brokerage service (or such alternative web-based tool as the Company may direct from time to time) ("**CompeteFor**") to make available to other suppliers all appropriate opportunities, arising in connection with the Agreement and each Contract, to supply goods, works or services to the Supplier.
- 50.2 The Supplier will use all reasonable endeavours to ensure that its subcontractors (for the purposes of this Clause, the "**Supplier's Subcontractors**") use CompeteFor, on a non-exclusive basis, to make available to other subcontractors all appropriate opportunities, arising in connection with the Agreement and each Contract, to supply goods, works and services to the Supplier's Subcontractors.
- 50.3 The Supplier will monitor (and maintain a record of) the number, type and value of opportunities, arising in connection with the Agreement and each Contract, made available to other suppliers via CompeteFor, whether by the Supplier or the Supplier's Subcontractors, as required by this Clause 50.3, and will report this information on a quarterly basis by way of email to the Company's Representative.

Schedule 1
Detailed Terms

Commencement Date	23rd March 2020
Term	31 st March 2022
Framework Specification	See Schedule 3
Payment	[REDACTED]
Additional standards pursuant to Clause 3.3(d):	N/A
Security required pursuant to Clause 43.1: Bond	N/A Yes (Maybe requested by TfL)
Parent Company Guarantee	
Application for payment dates	N/A
Interest Rate pursuant to Clause 45	8%
The Liquidated Damages for delay for the purpose of Clause 11.15 payable for such Services are: The period of delay over which the Liquidated Damages shall be calculated for the purpose of Clause 11.15 is every:	[REDACTED]
[REDACTED]	[REDACTED]

The Suppliers total liability for the purpose of Clause 25.1 is	
The following Supplier Personnel are Key Personnel	

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

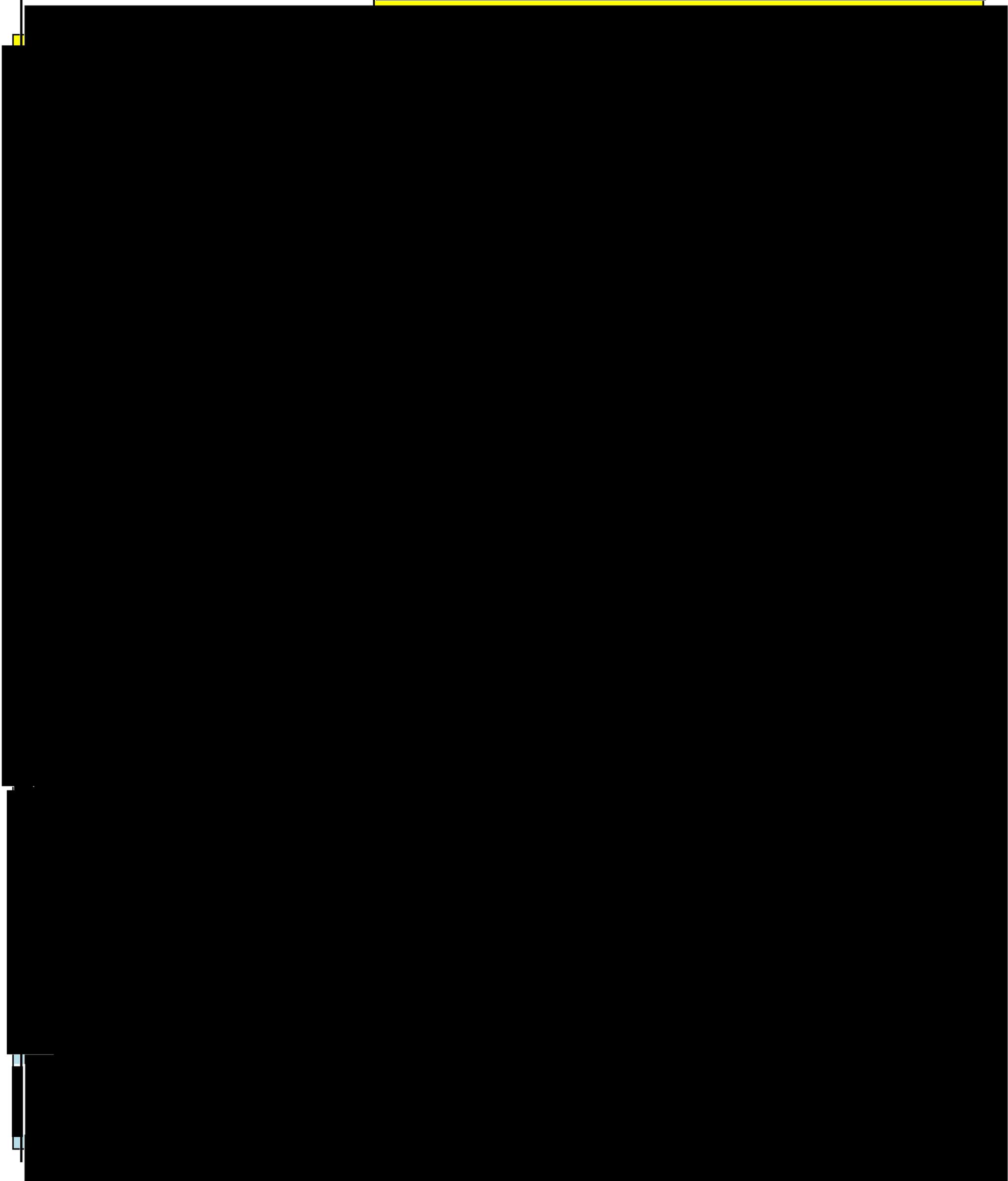
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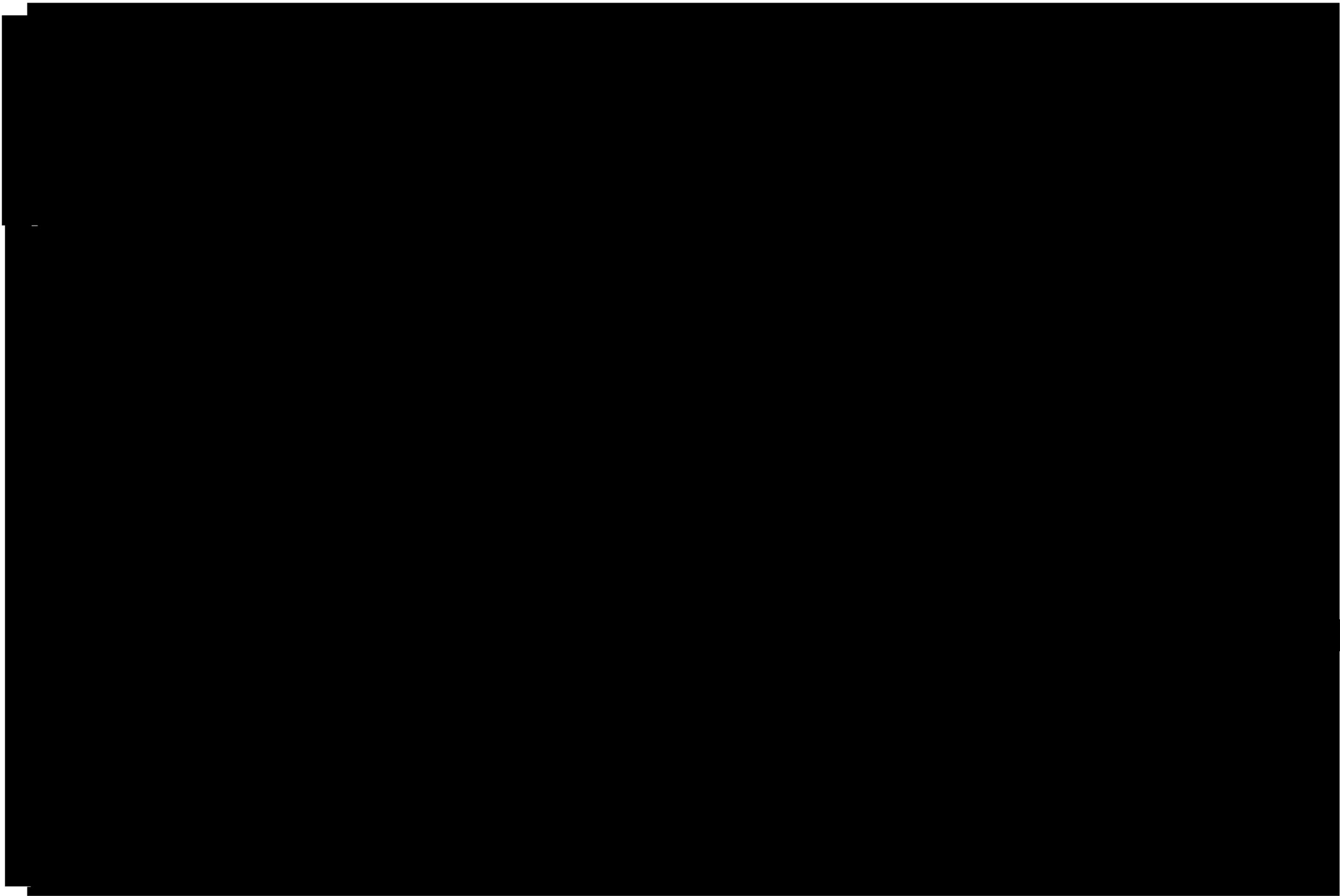


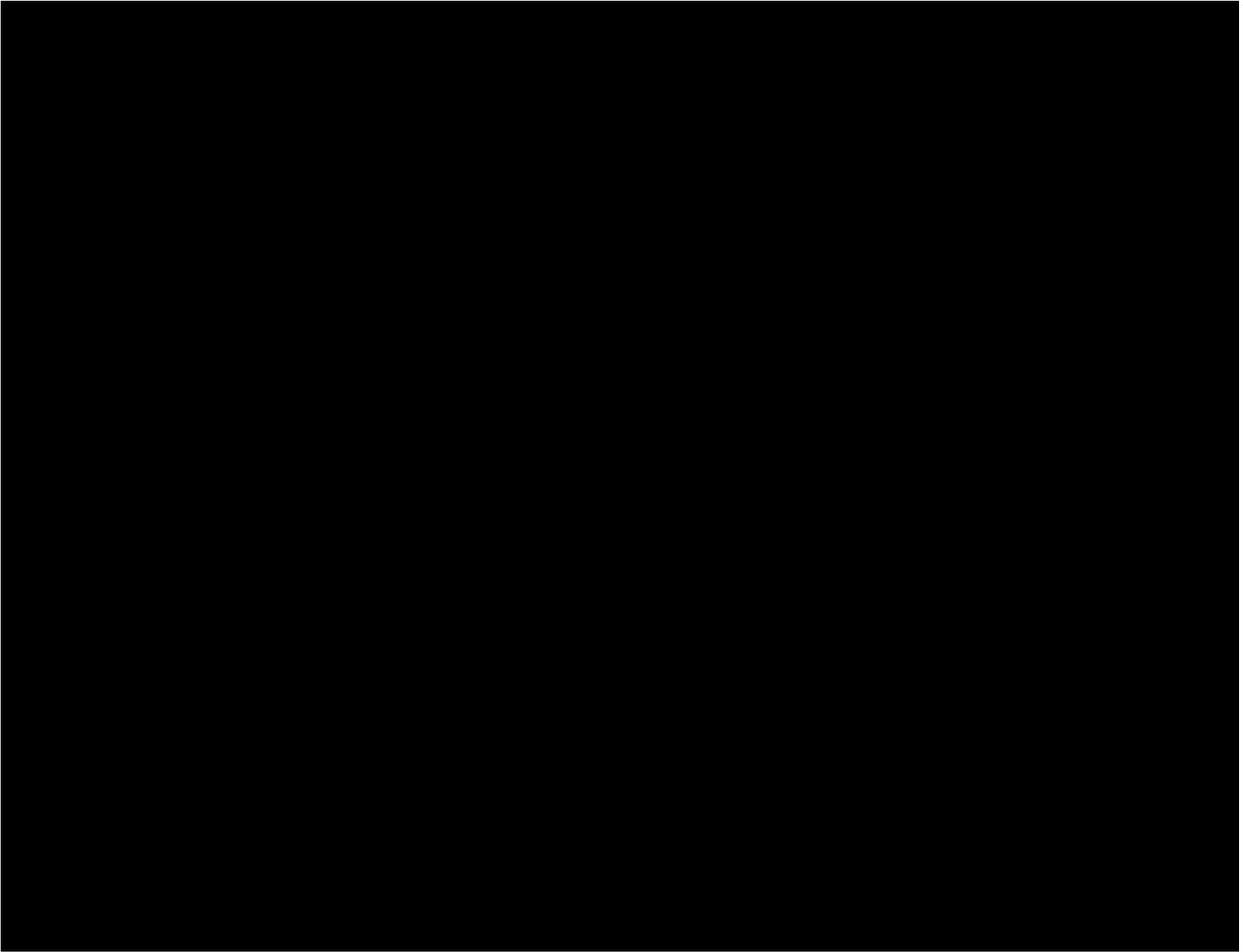
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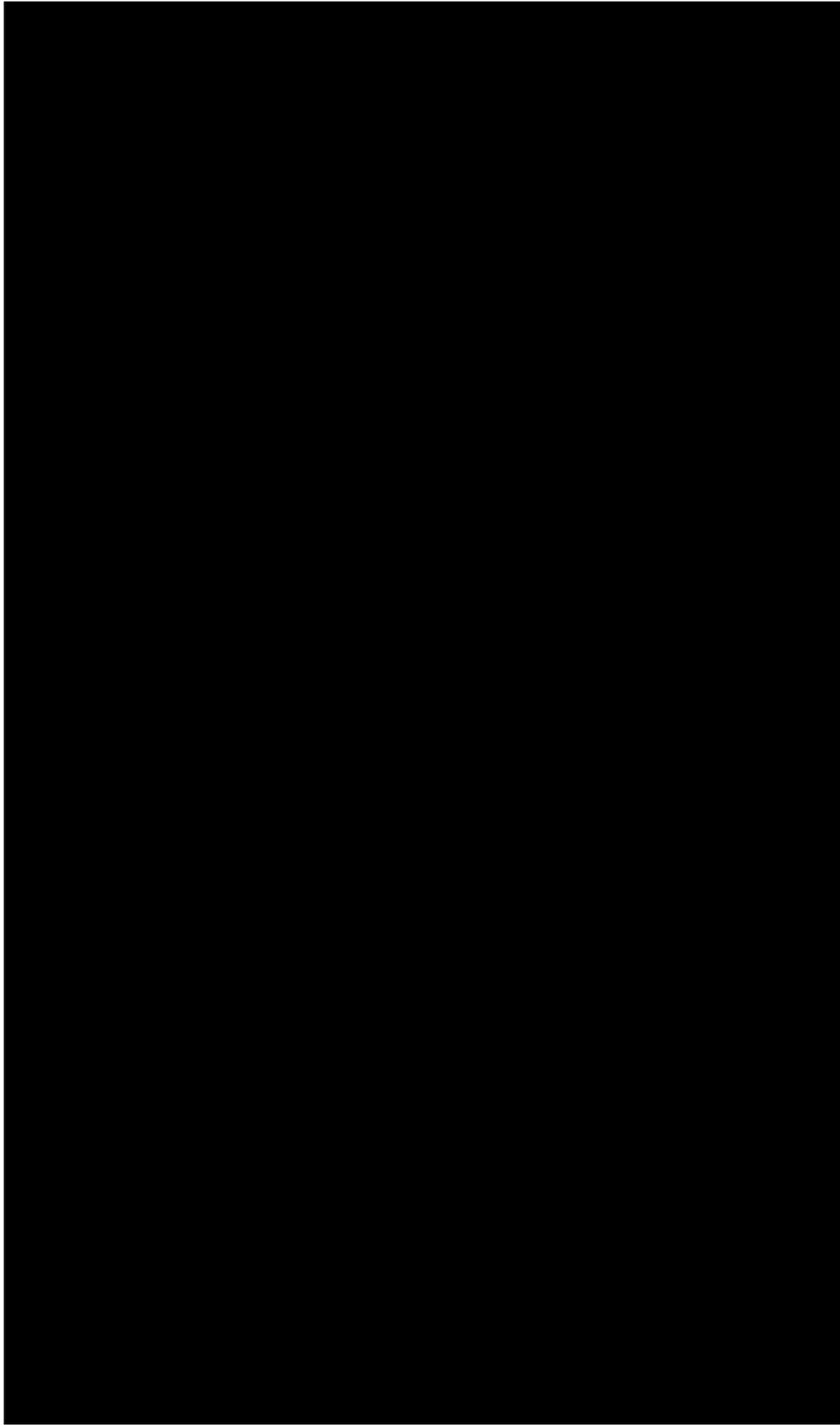


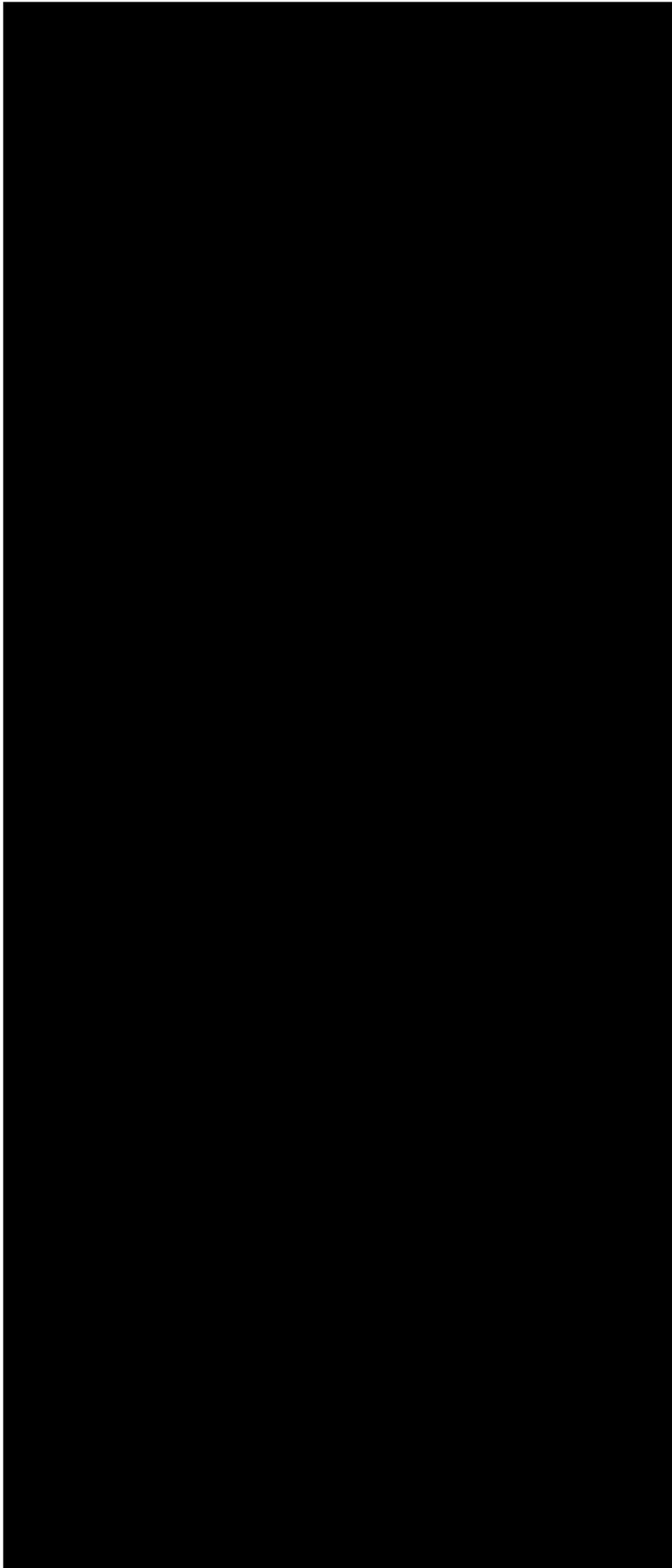


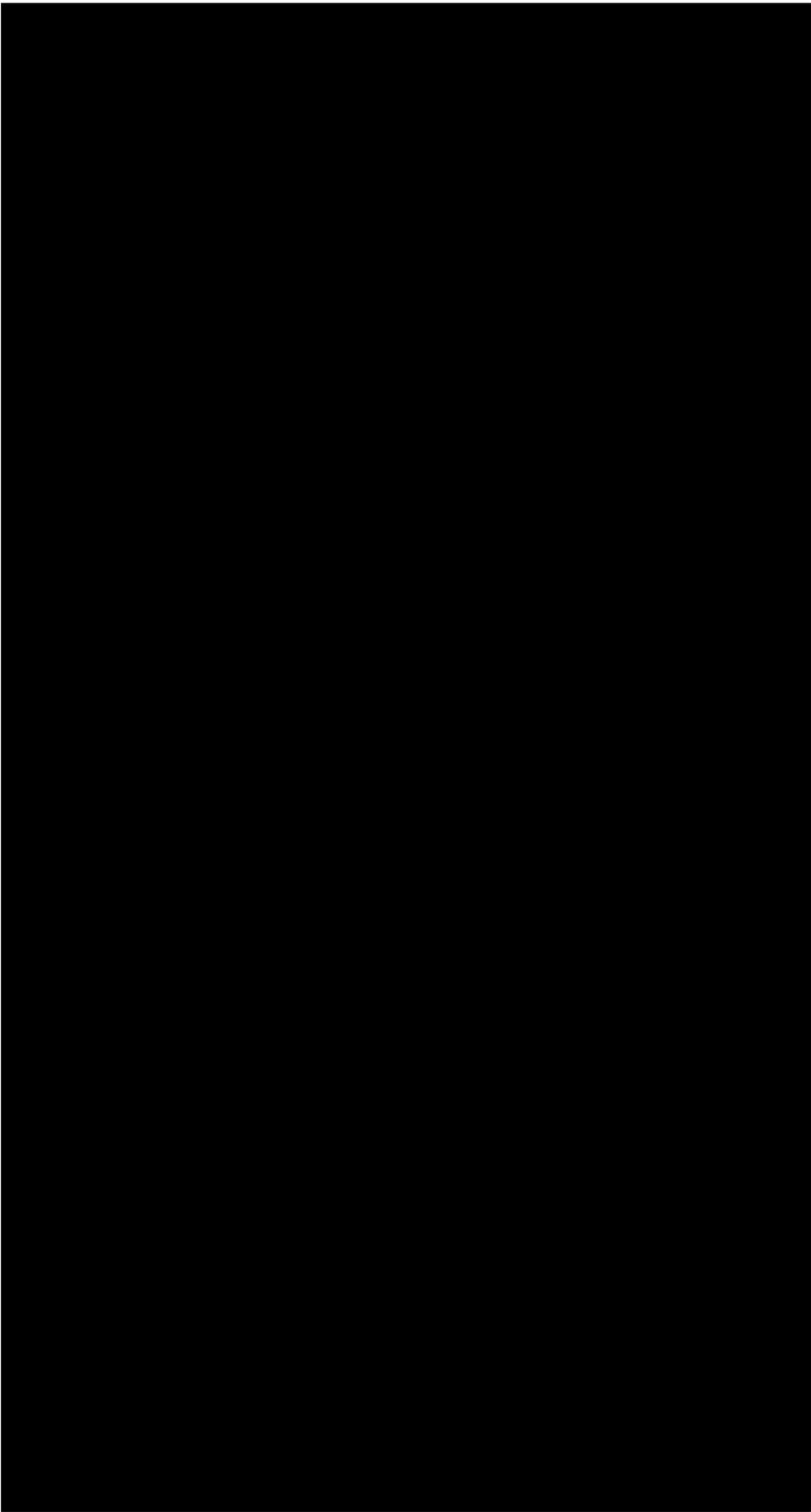


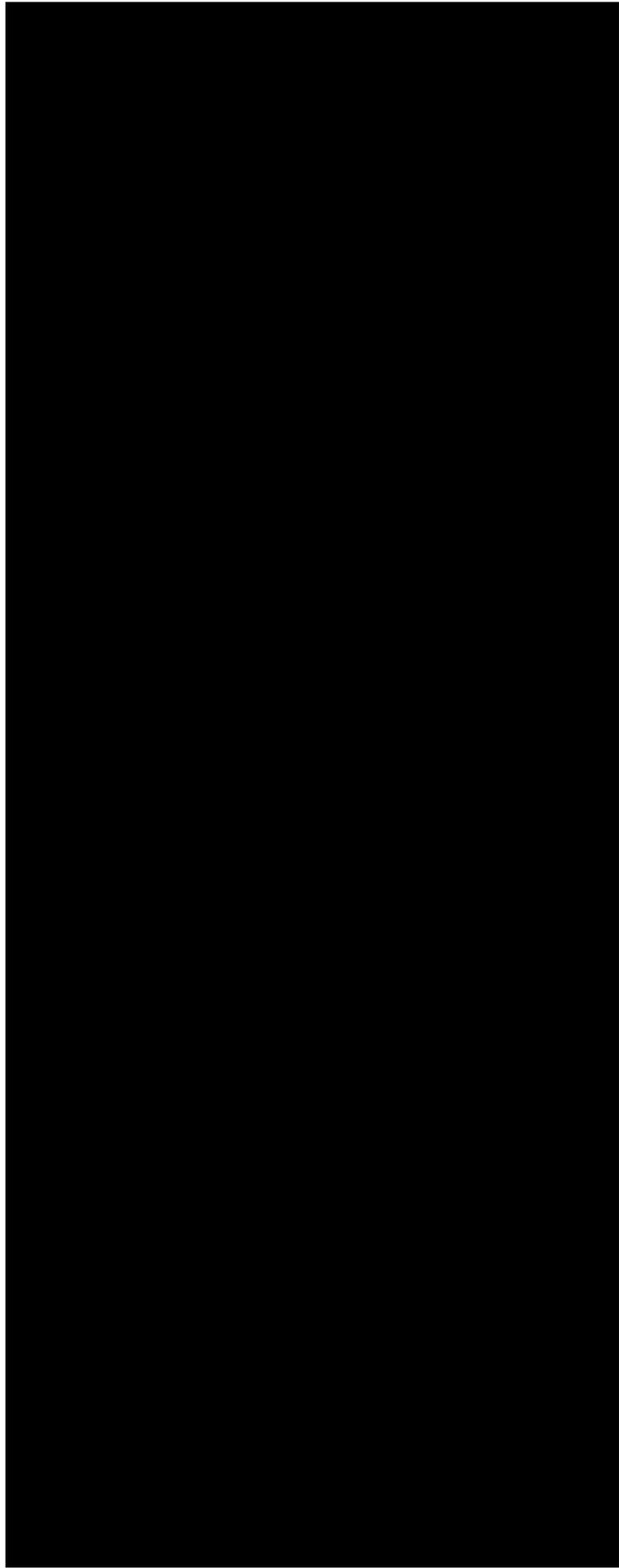
Schedule 2
Prices and Payment

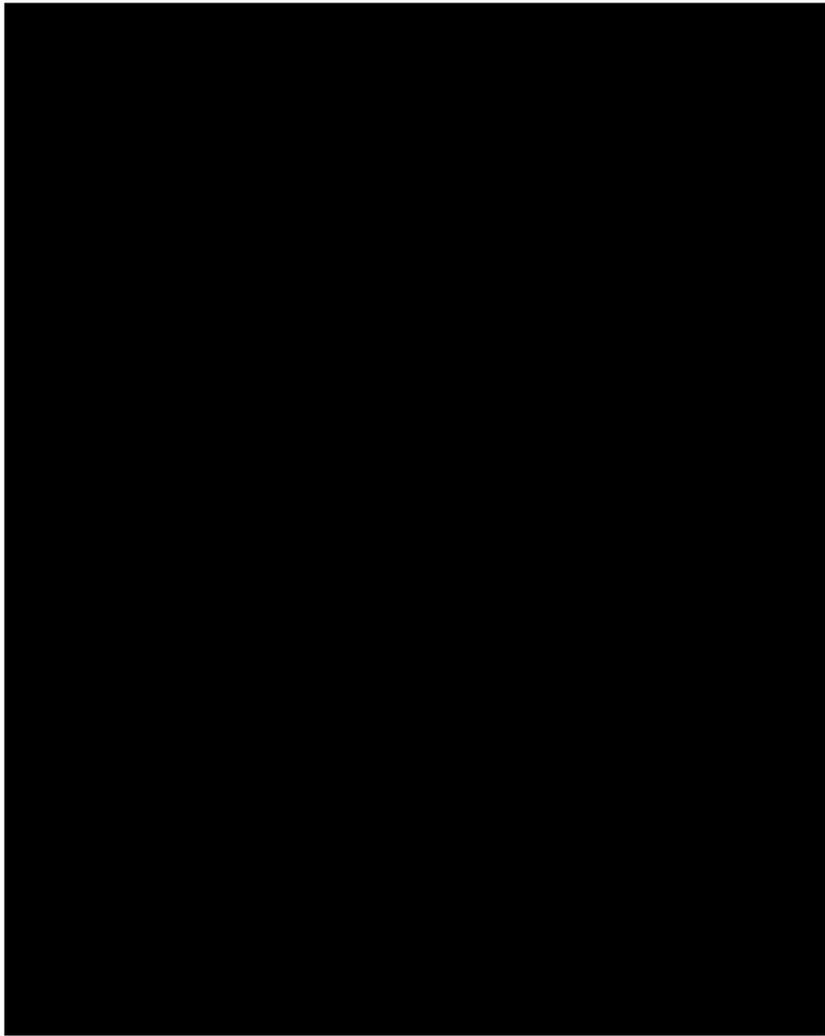


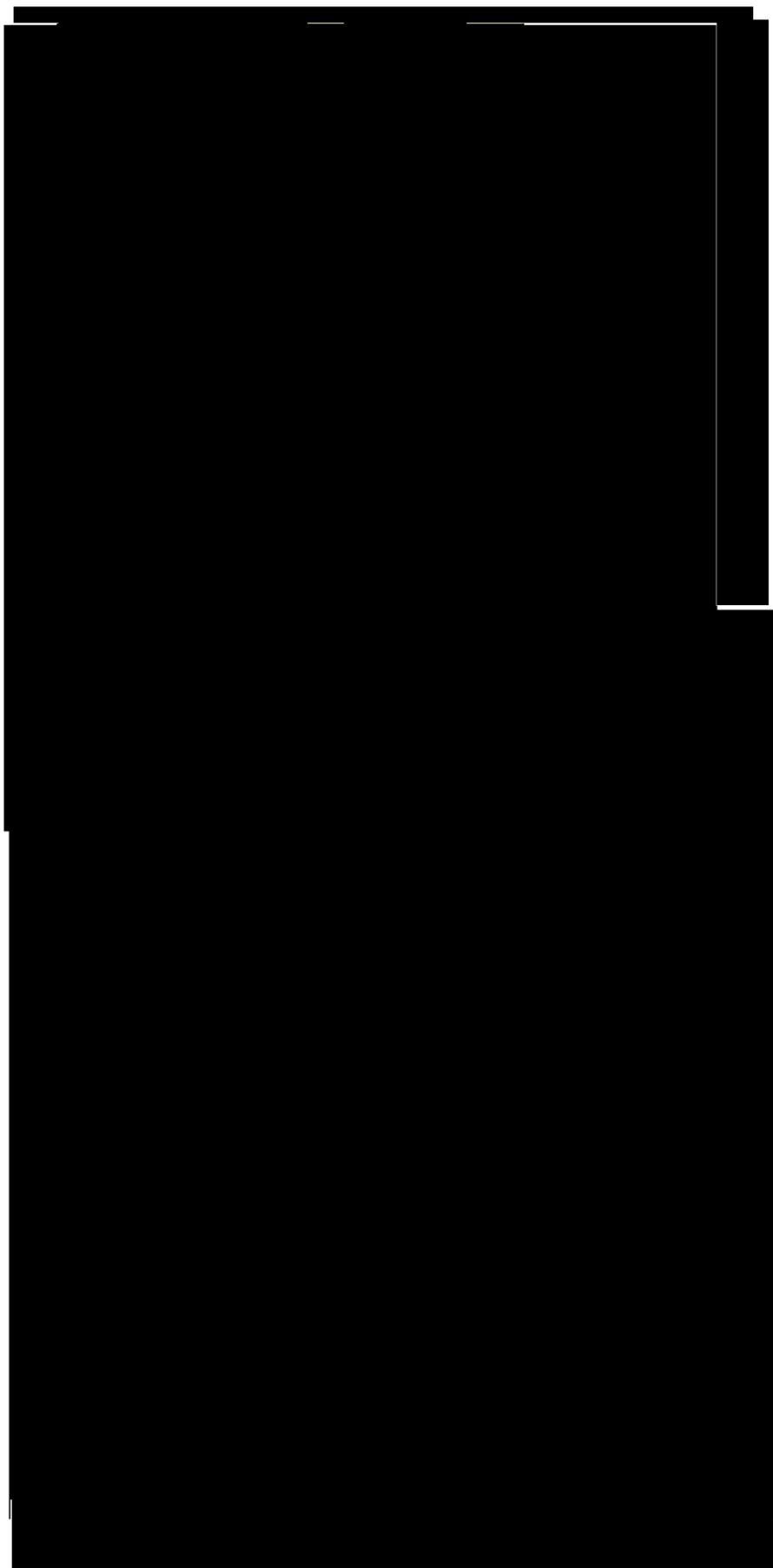


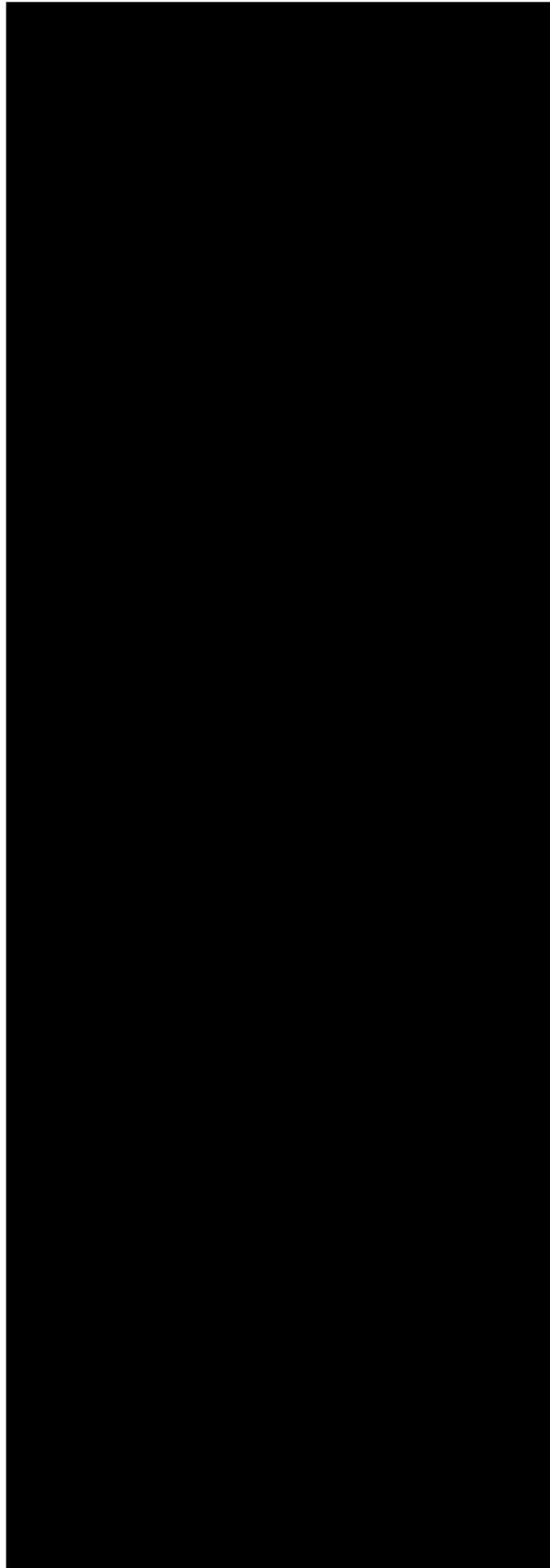




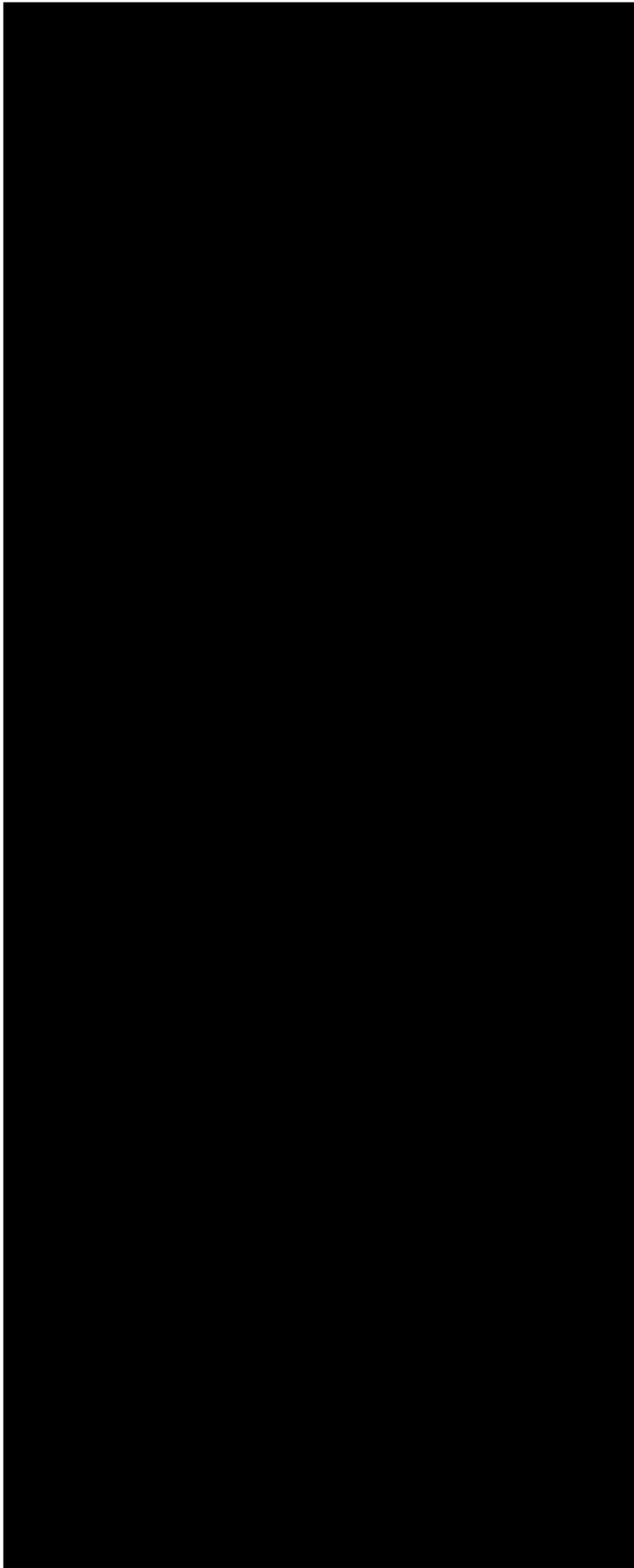


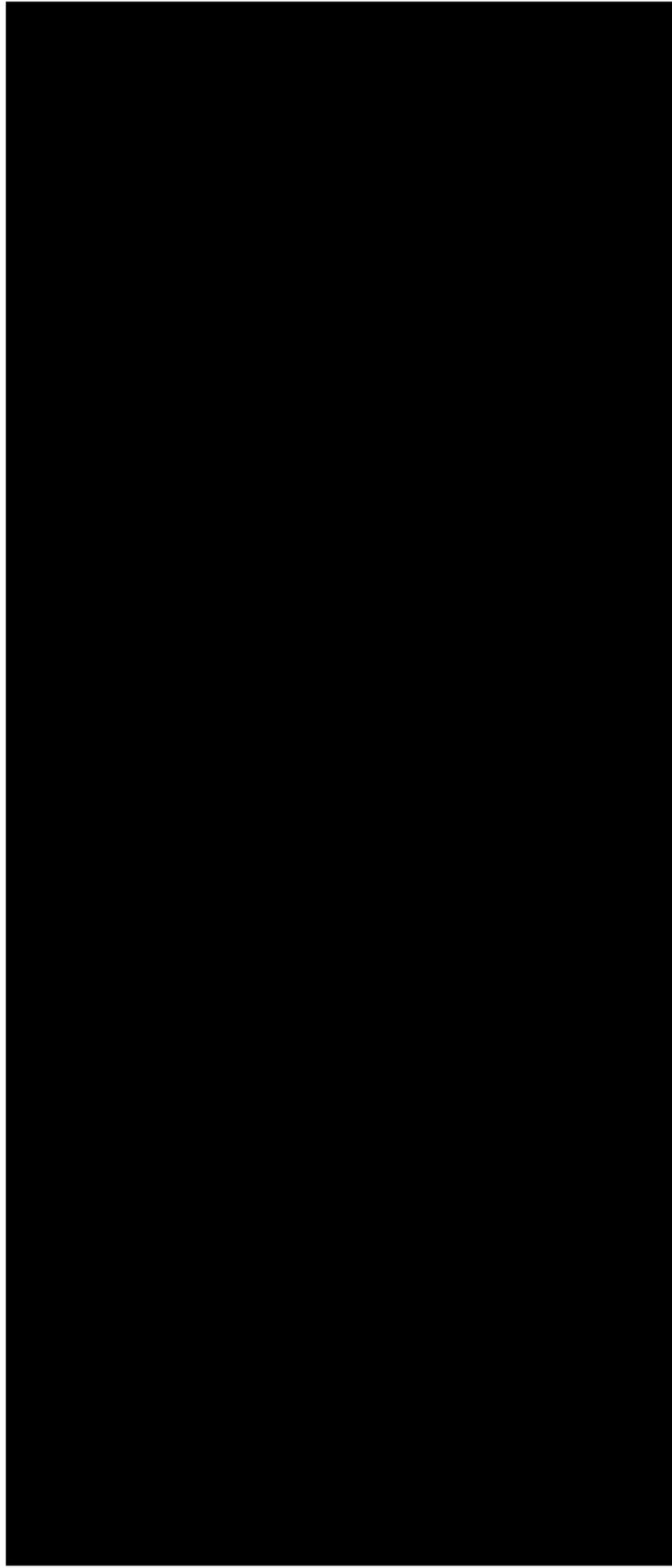


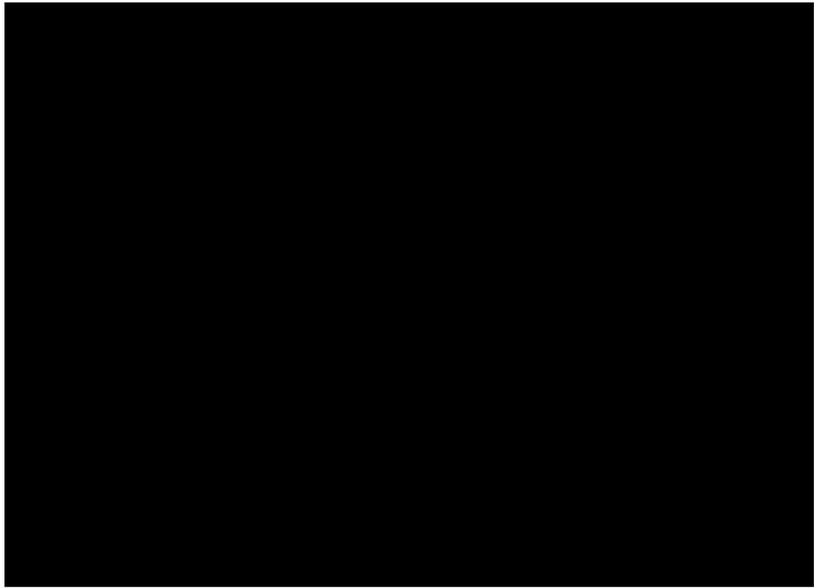


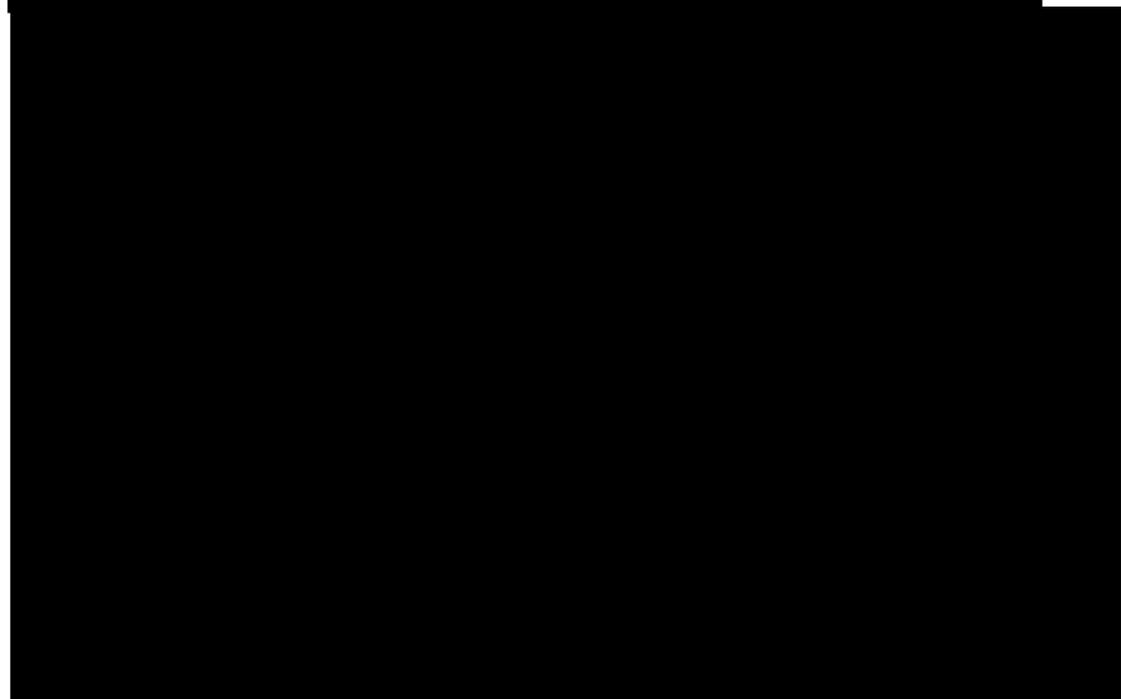
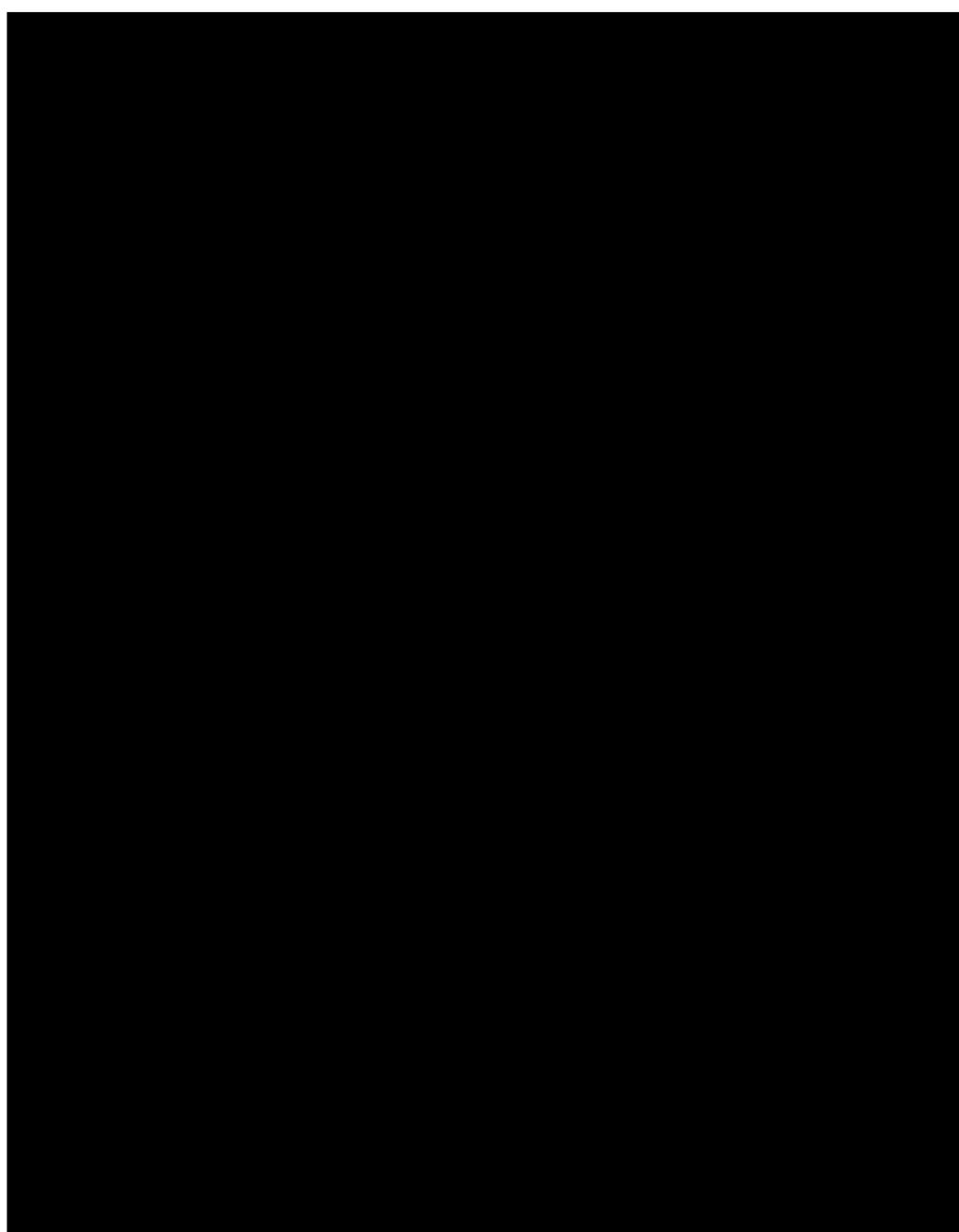


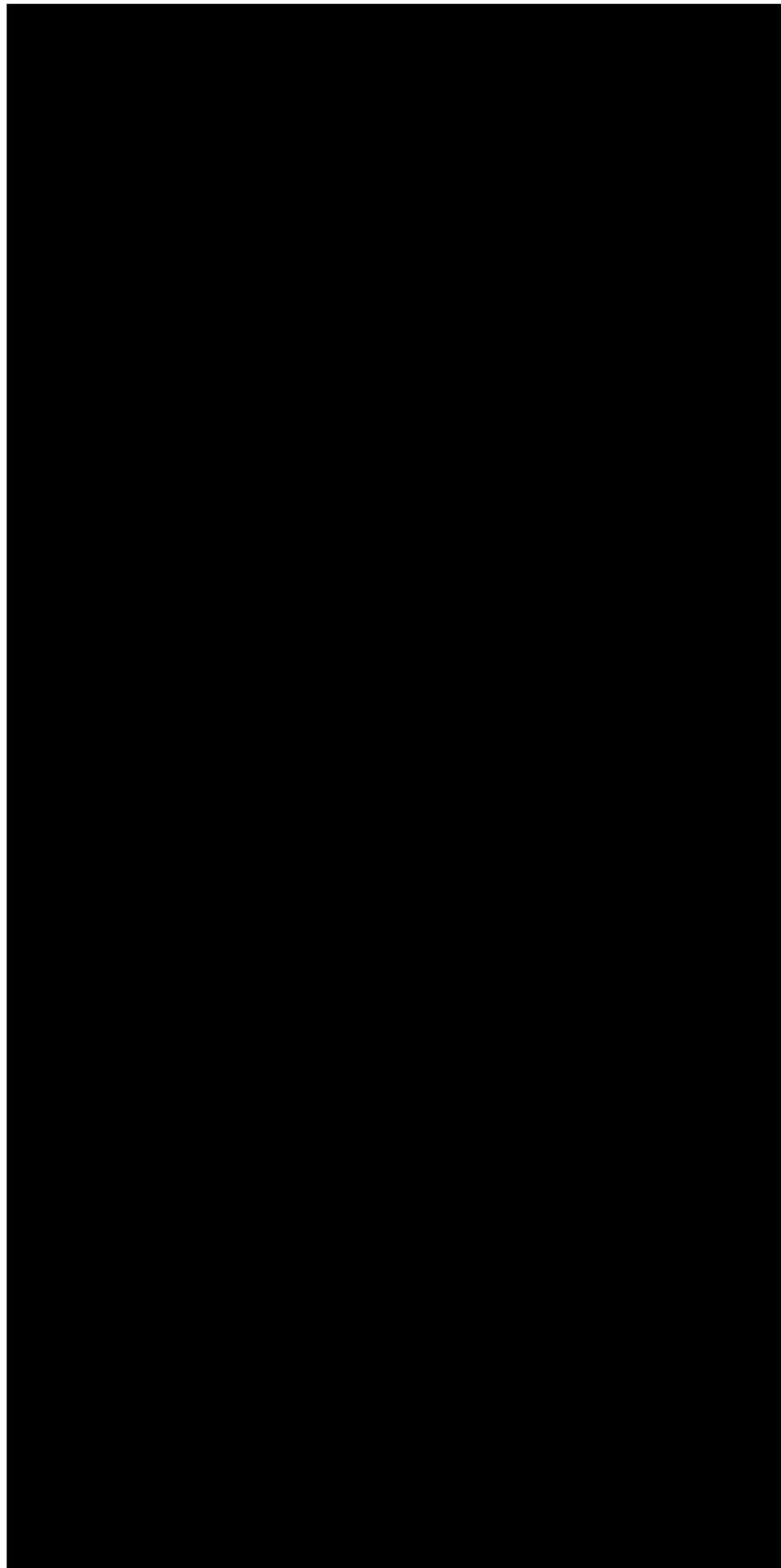




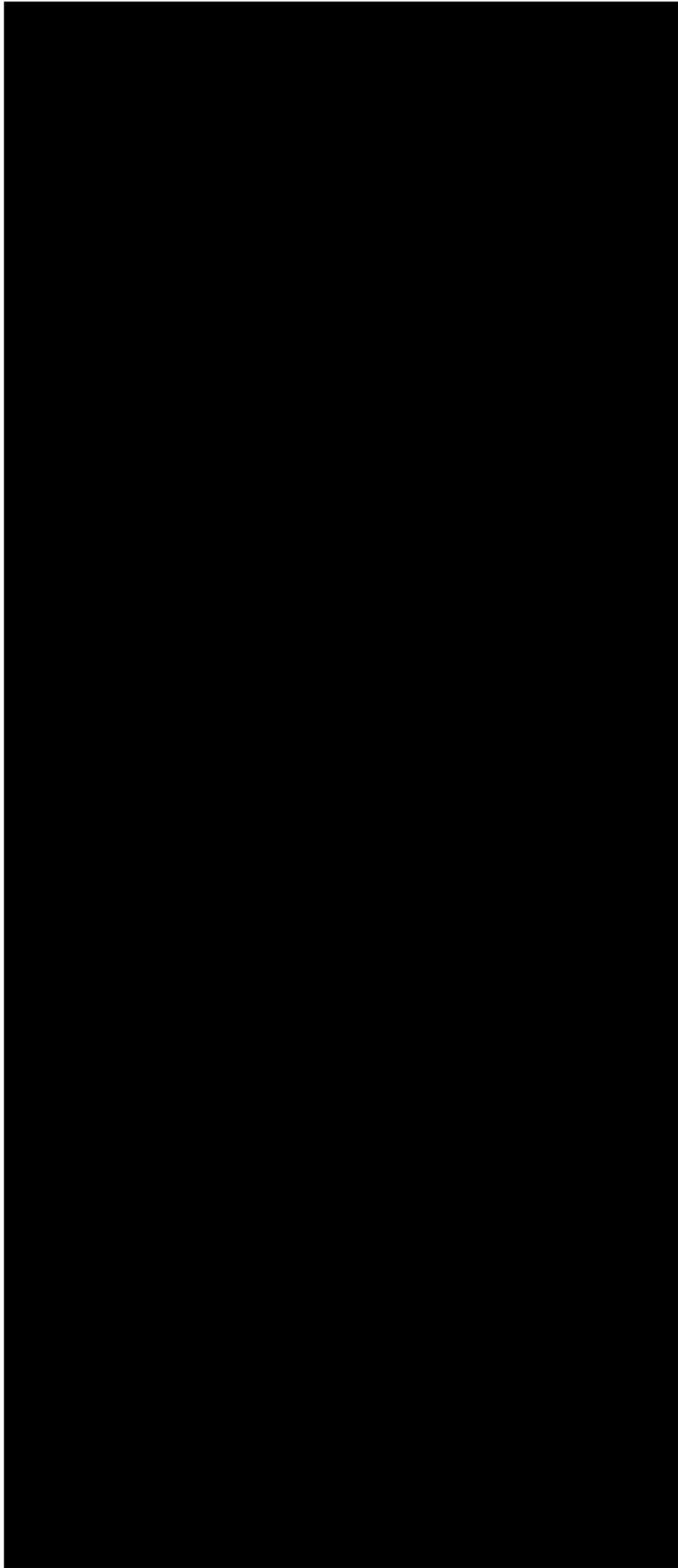


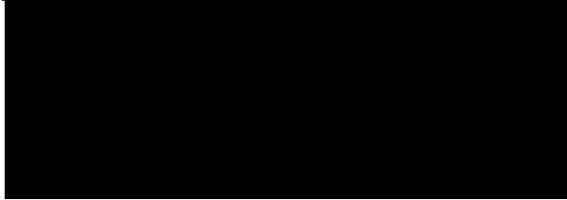
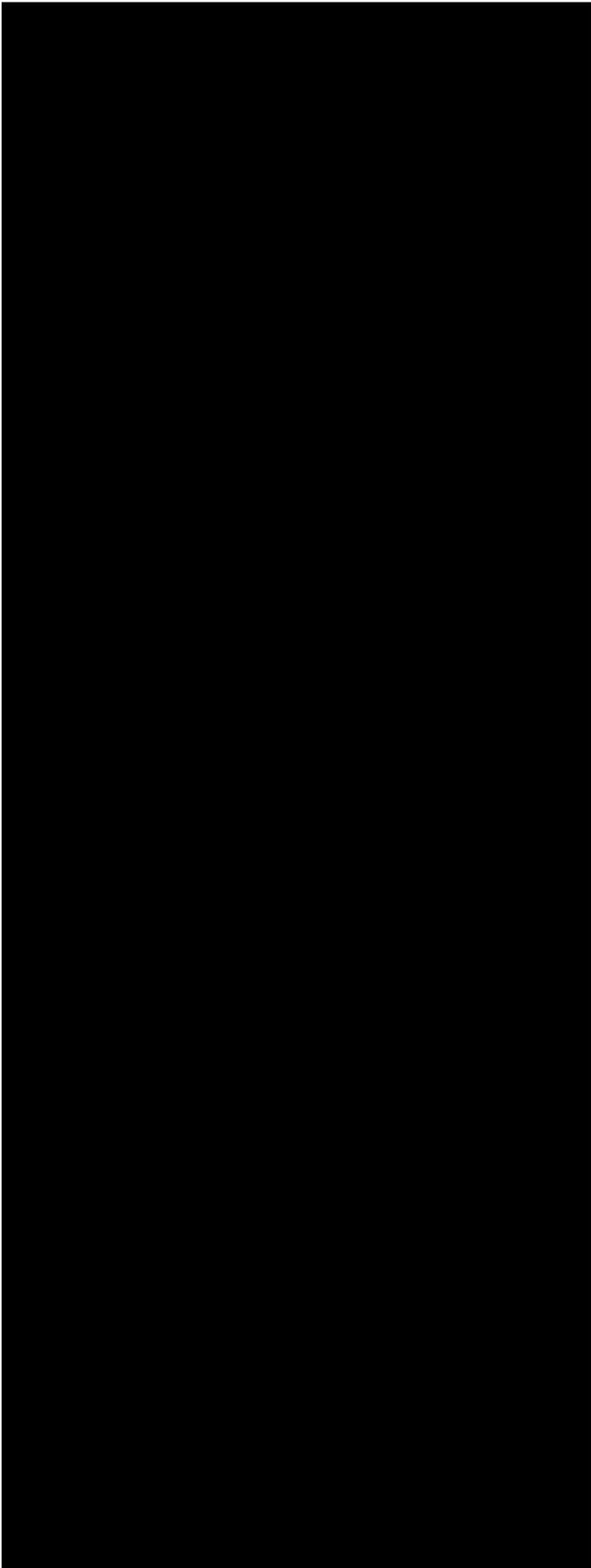


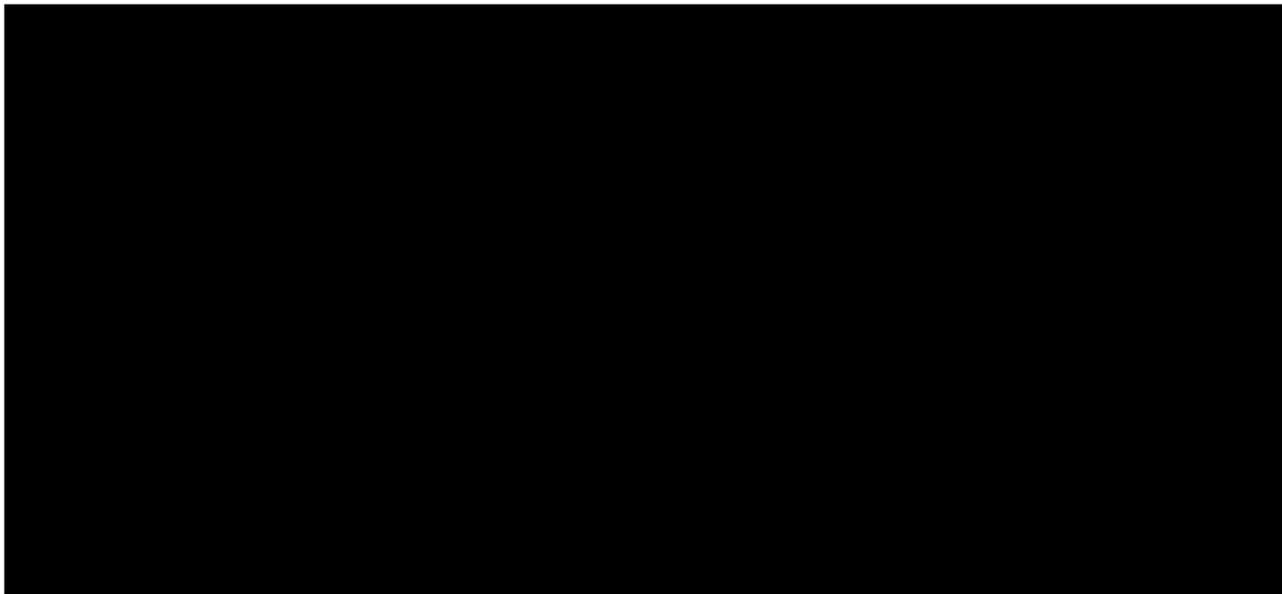


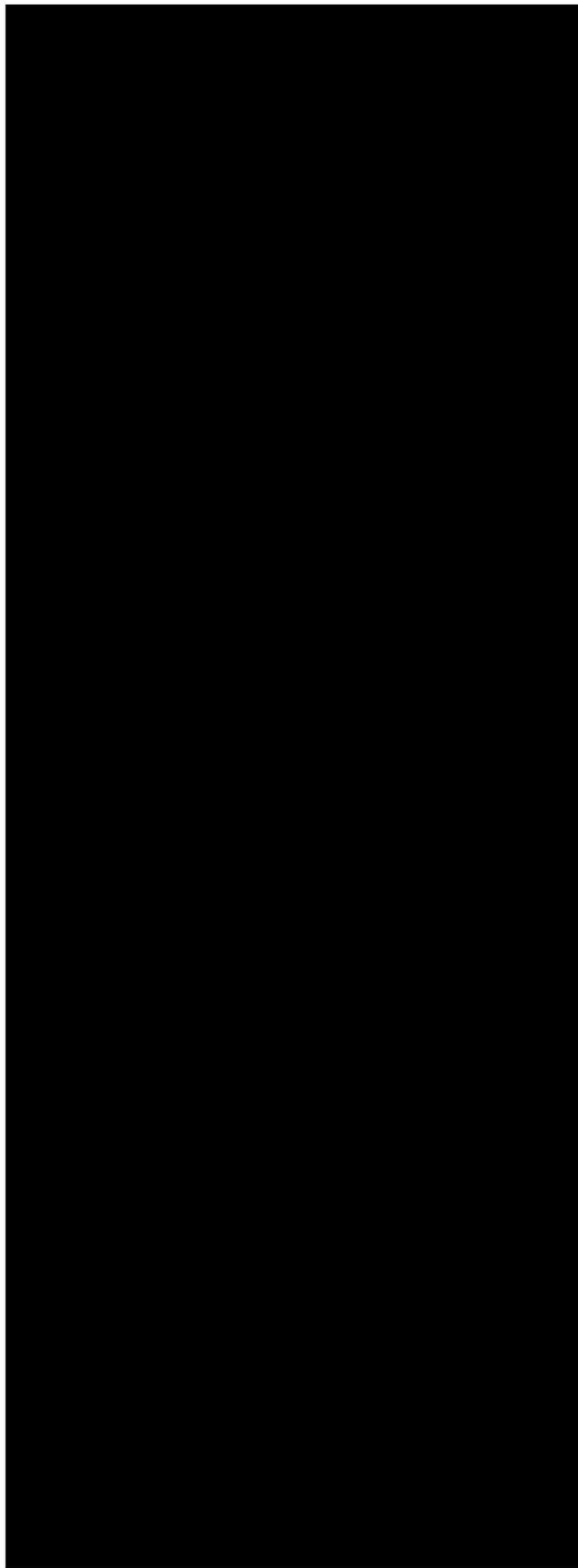




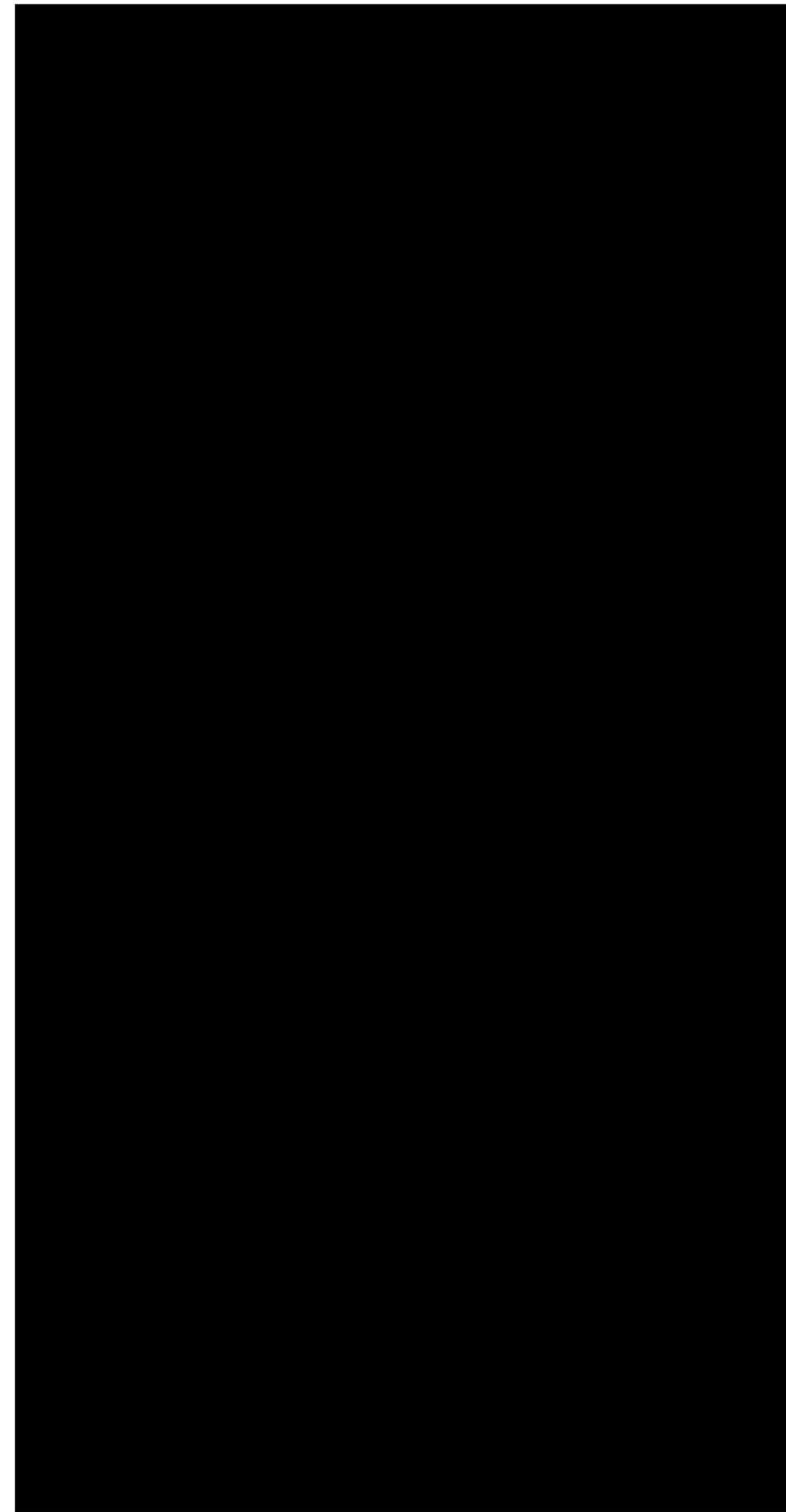


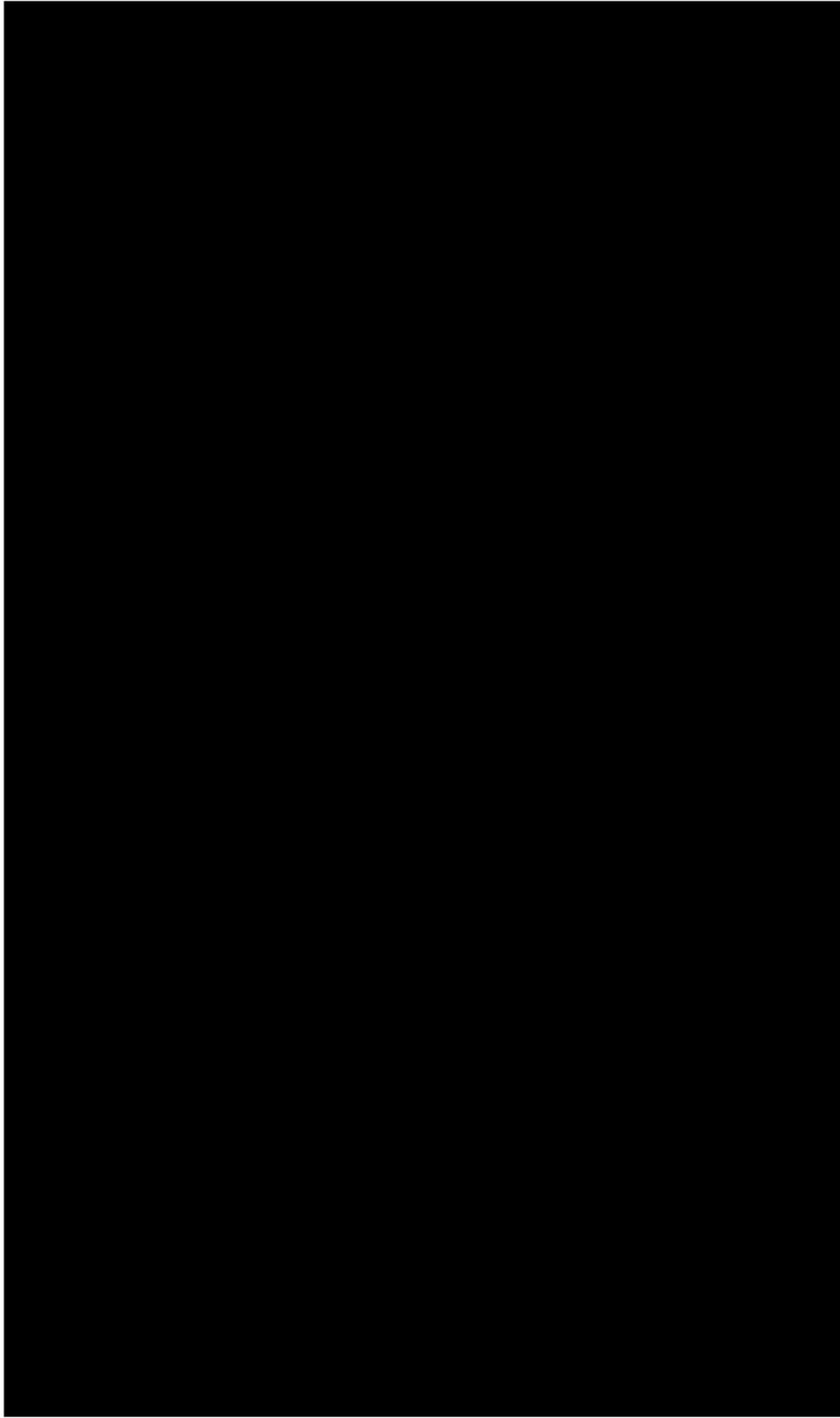




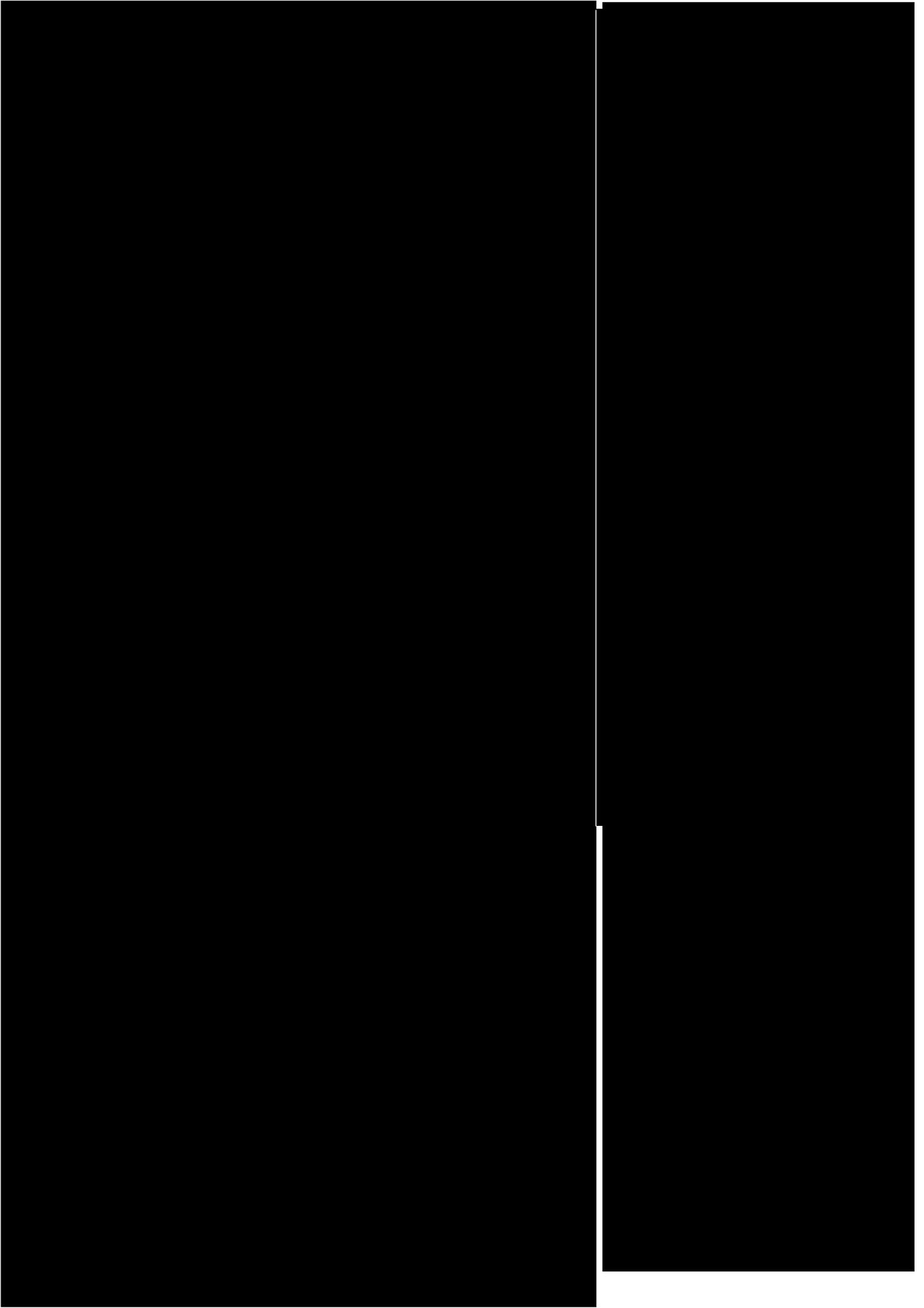




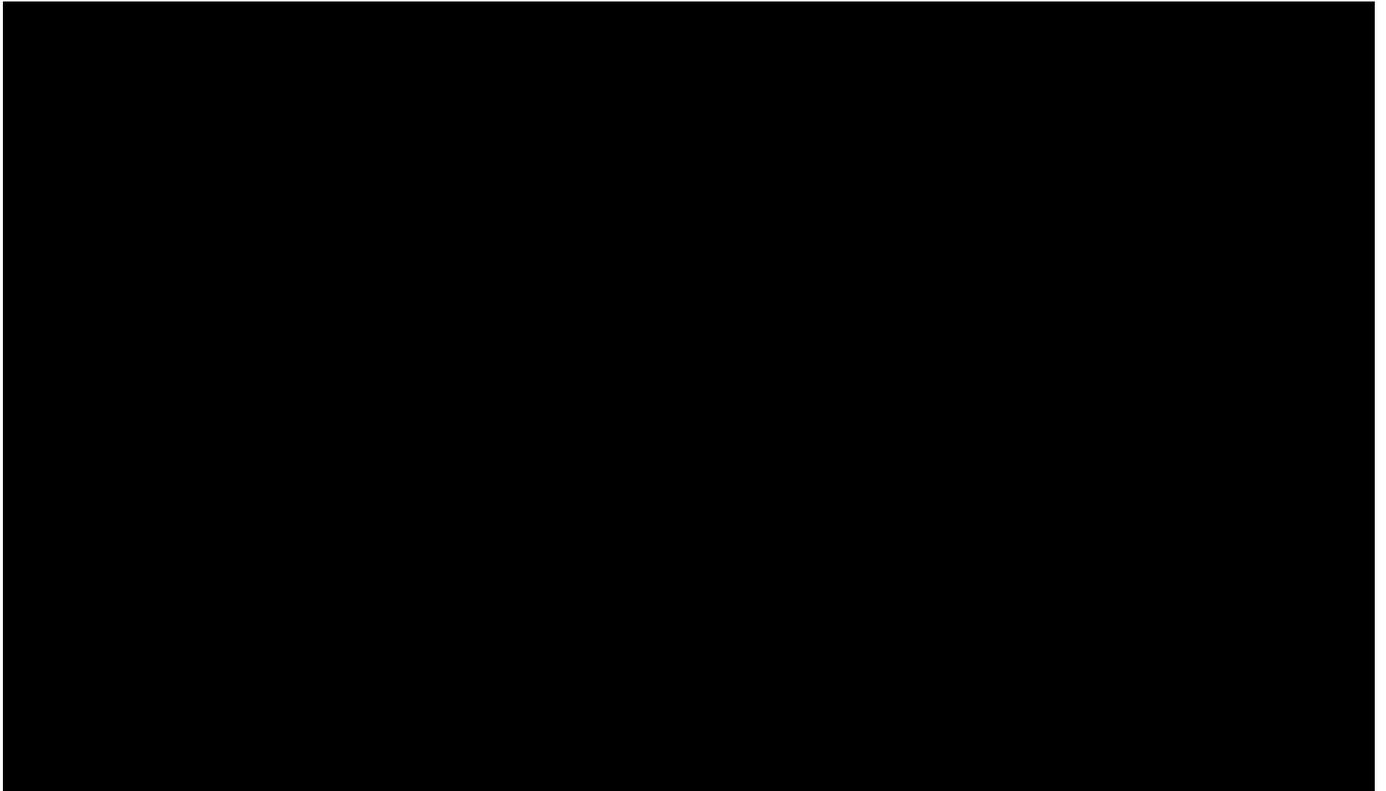




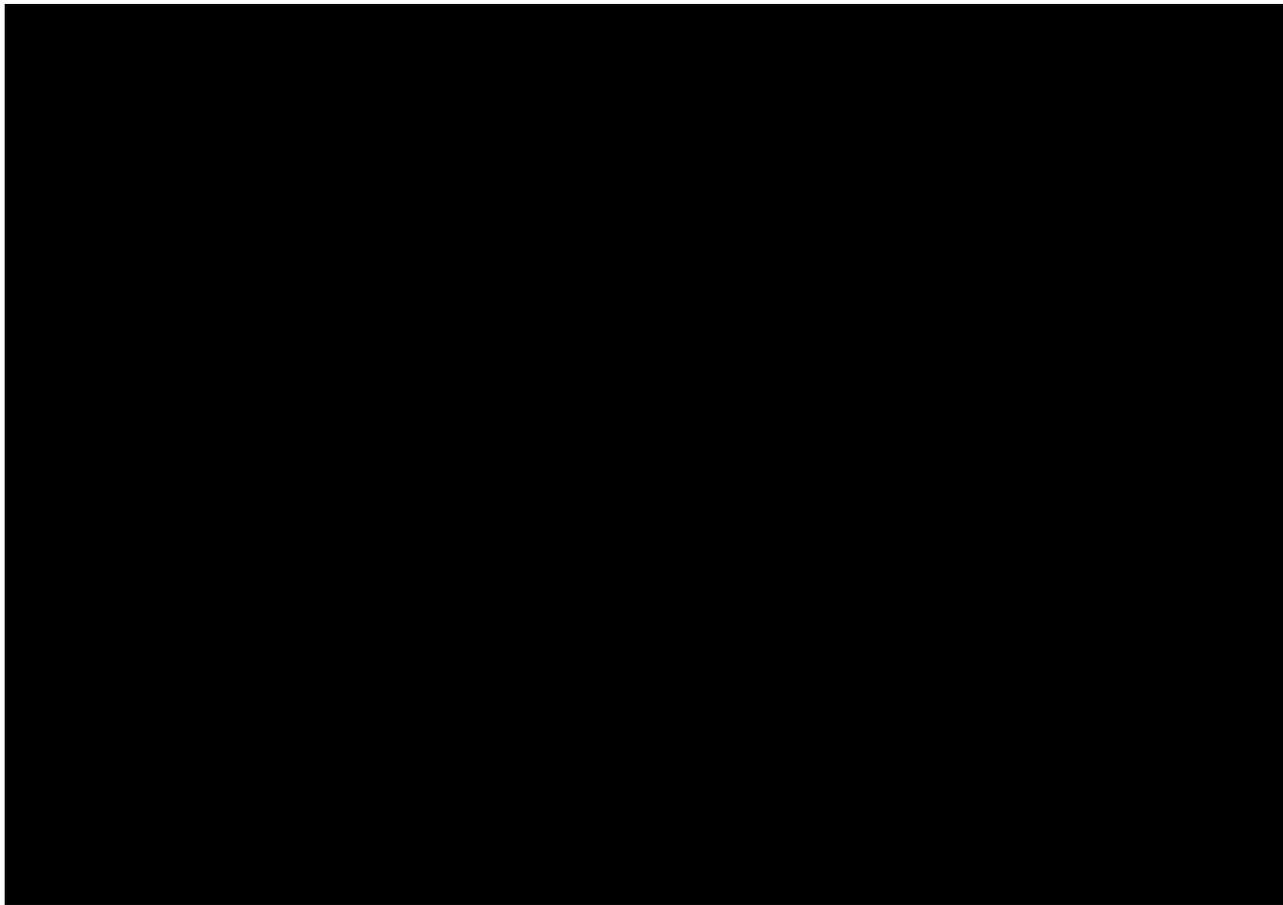
SCHEDULE 2

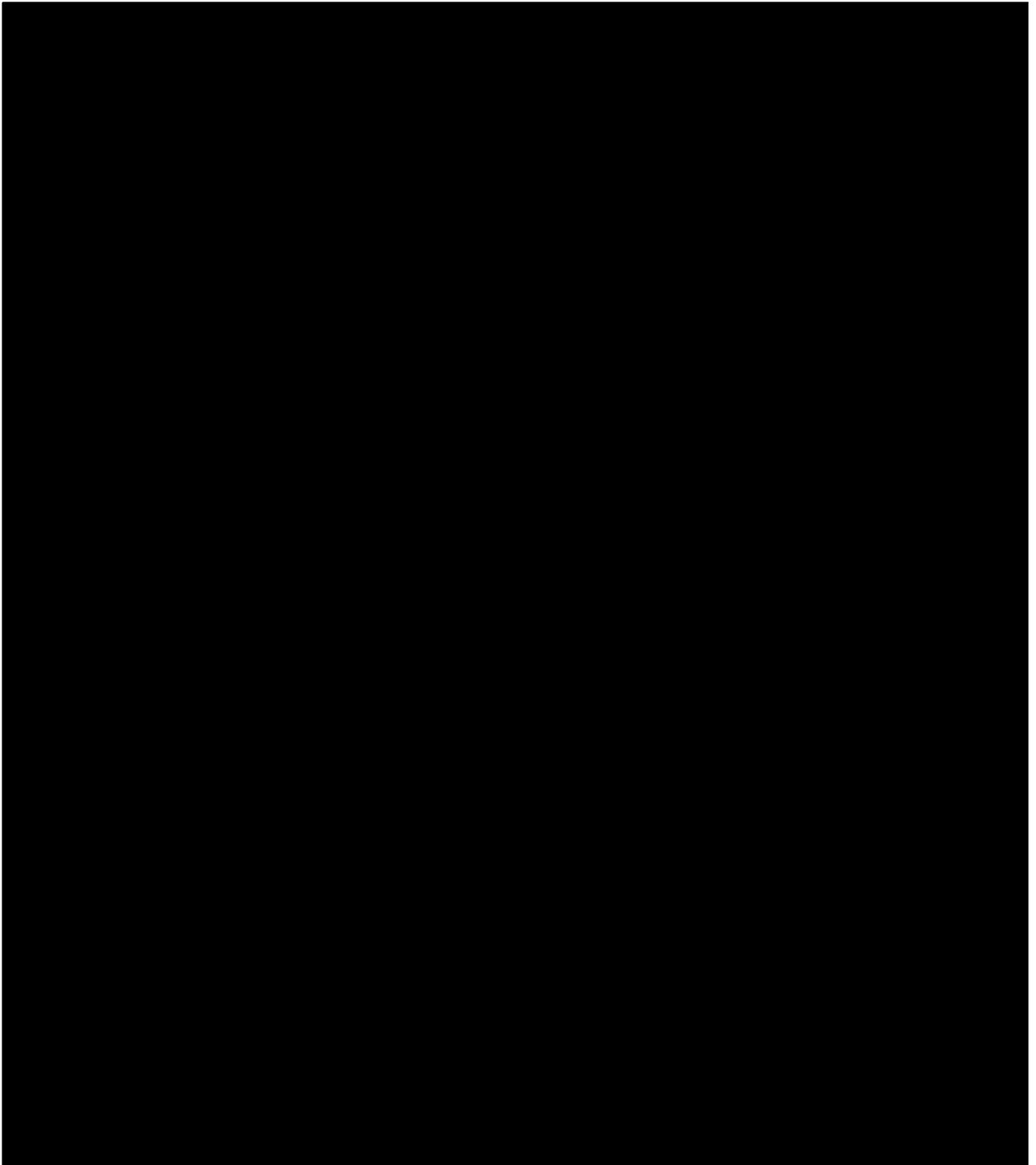


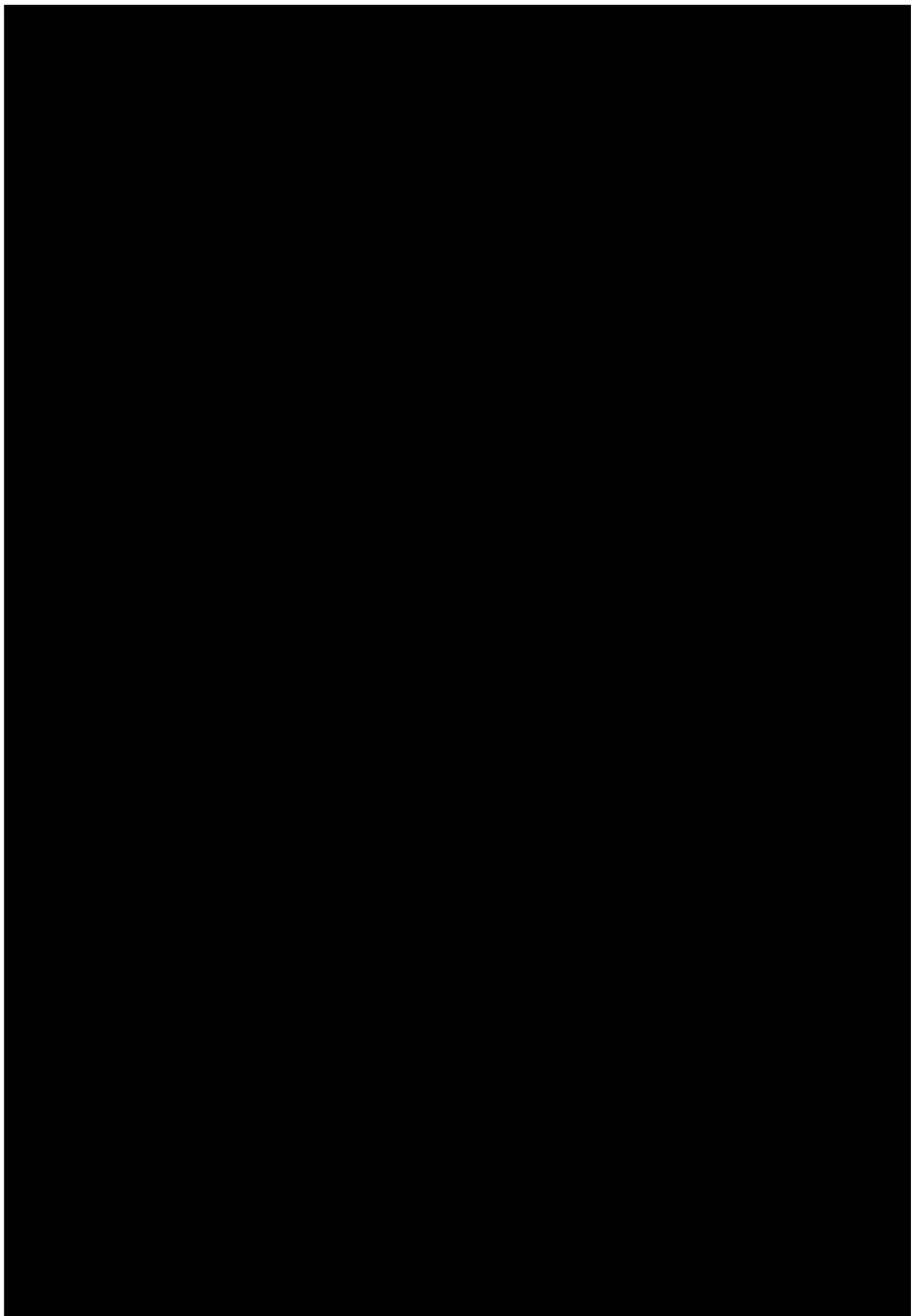
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Schedule 3
Wagon Overhaul Specification





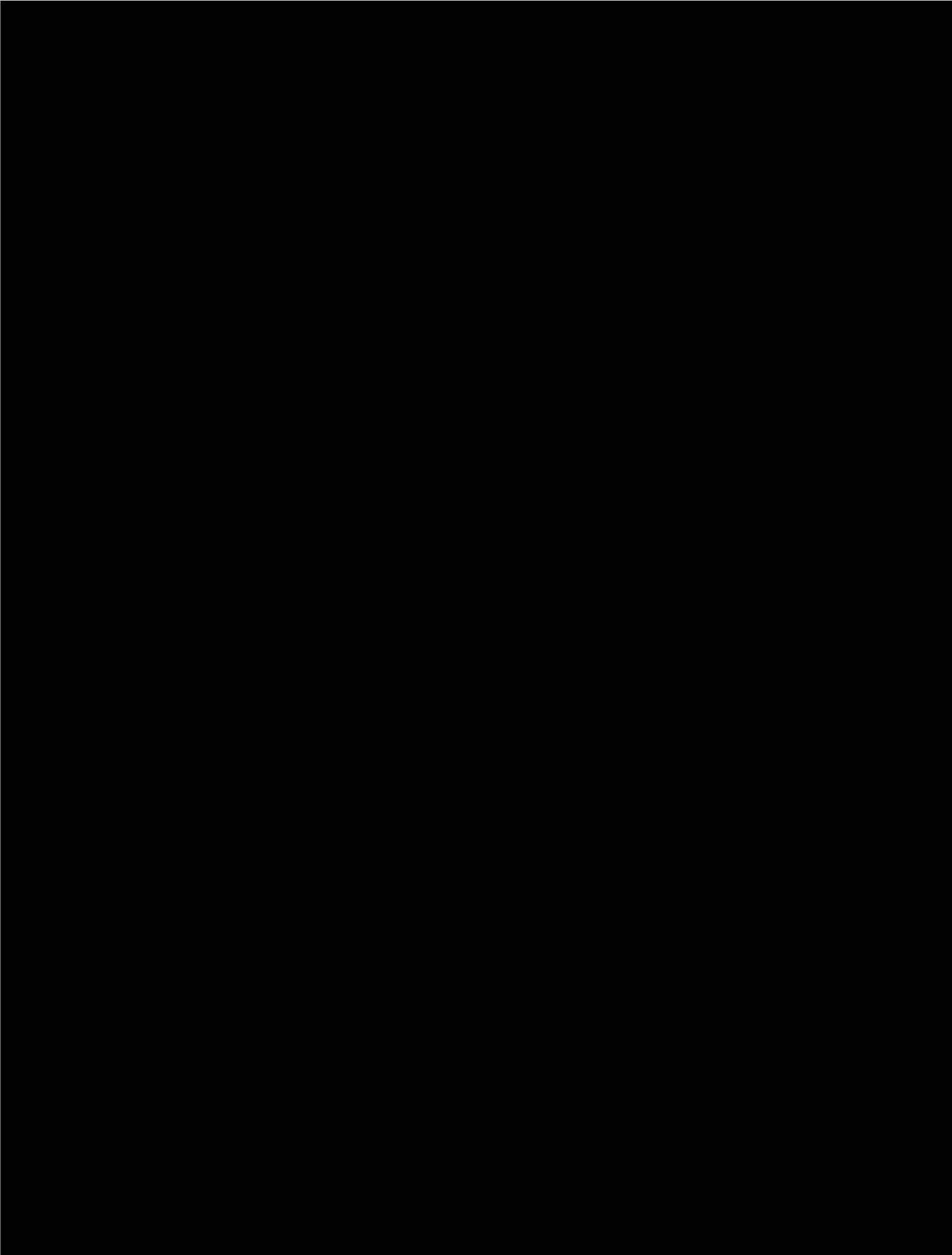


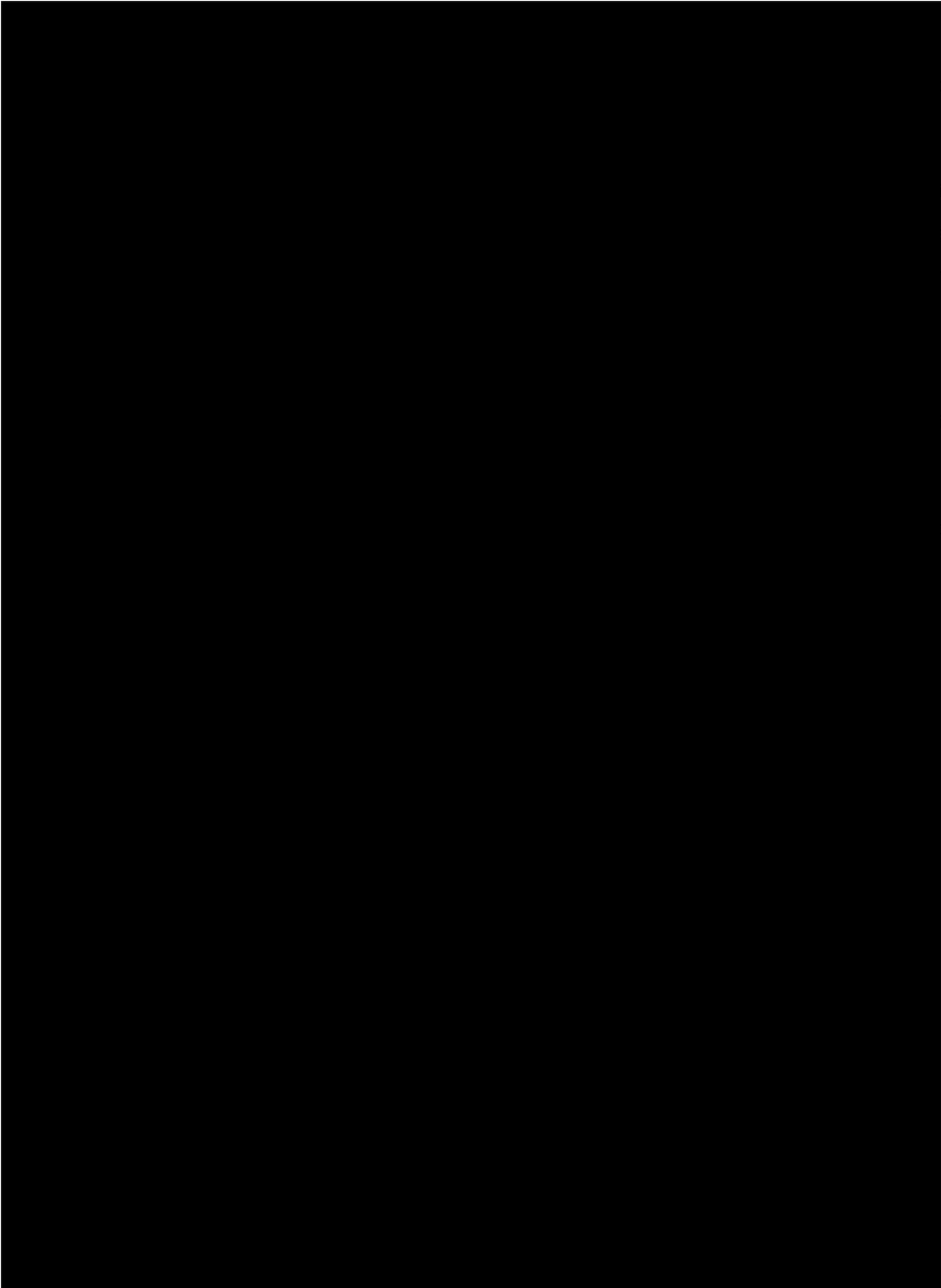
The first part of the document discusses the importance of maintaining accurate records in a business setting. It highlights how proper record-keeping can help in decision-making, legal compliance, and financial management. The text emphasizes that records should be organized, up-to-date, and easily accessible.

Next, the document addresses the challenges of data management in the digital age. It notes that while digital storage offers convenience, it also introduces risks such as data loss, security breaches, and information overload. Solutions like cloud storage, encryption, and regular backups are suggested to mitigate these risks.

The third section focuses on the role of technology in streamlining business processes. It describes how automation and software solutions can reduce manual errors, save time, and improve overall efficiency. Examples of such technologies include accounting software, project management tools, and customer relationship management systems.

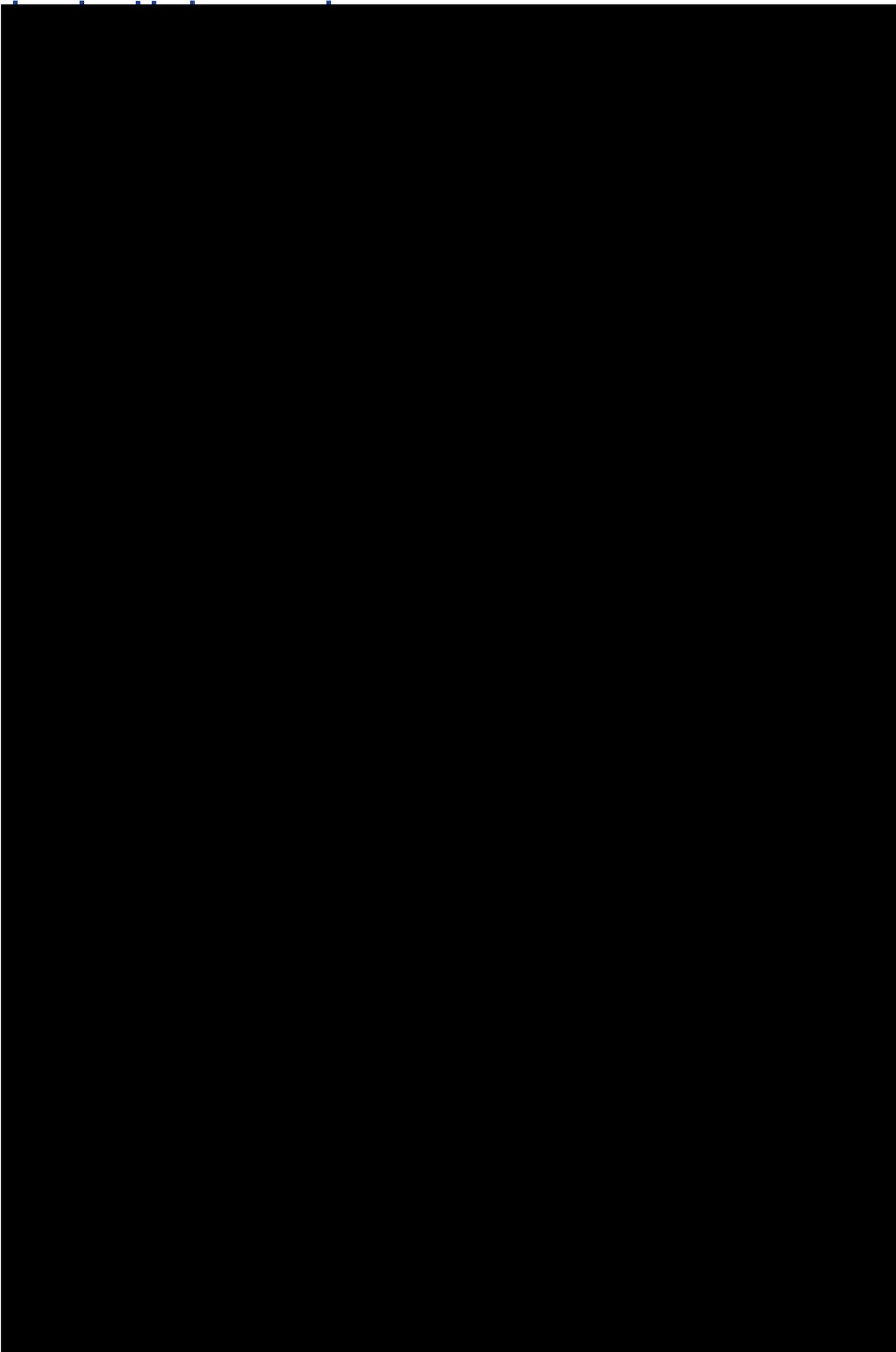
Finally, the document concludes by stressing the importance of employee training and awareness. It suggests that investing in education and professional development can lead to a more skilled and productive workforce. Regular training sessions and workshops are recommended to keep employees updated on the latest industry trends and technologies.





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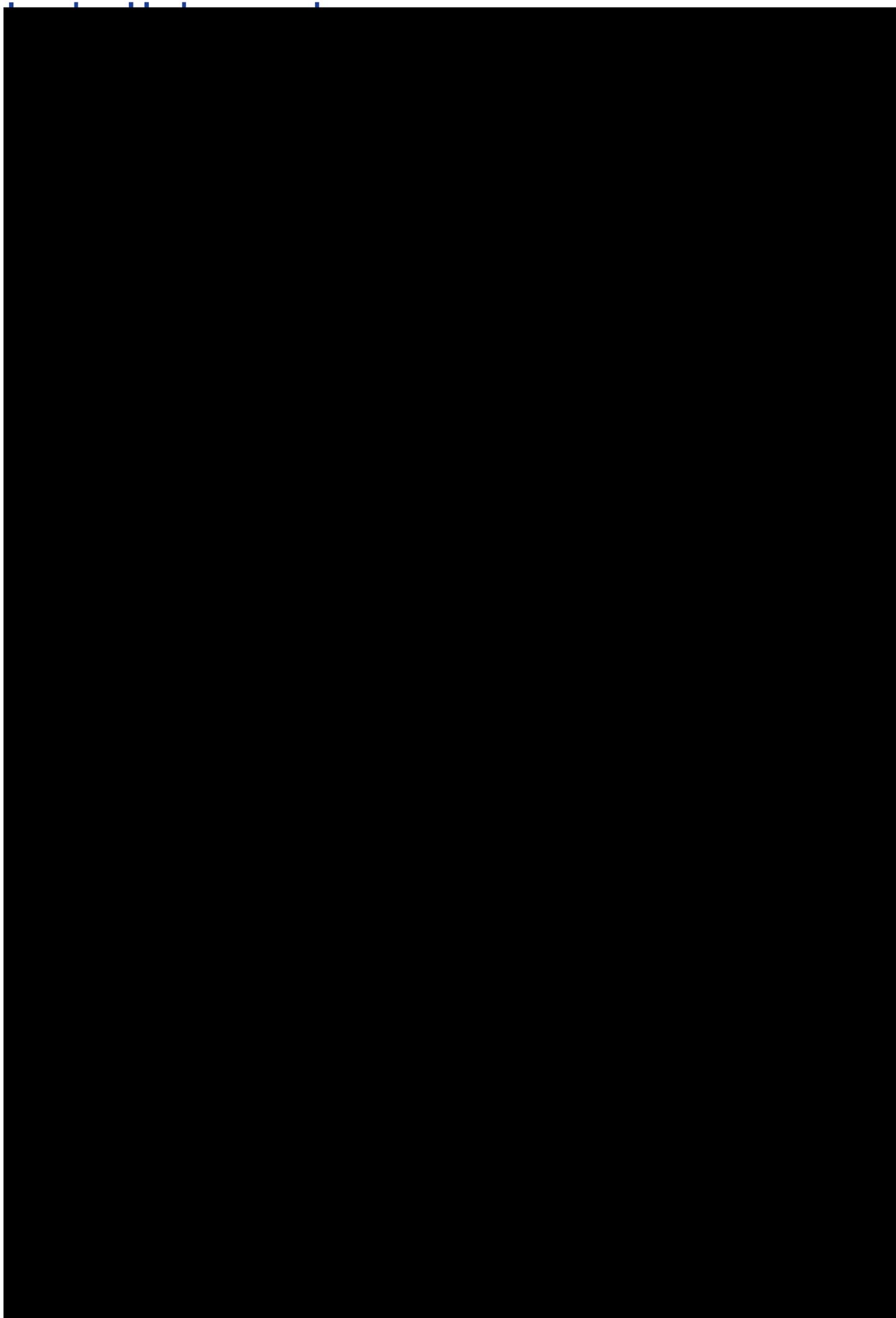


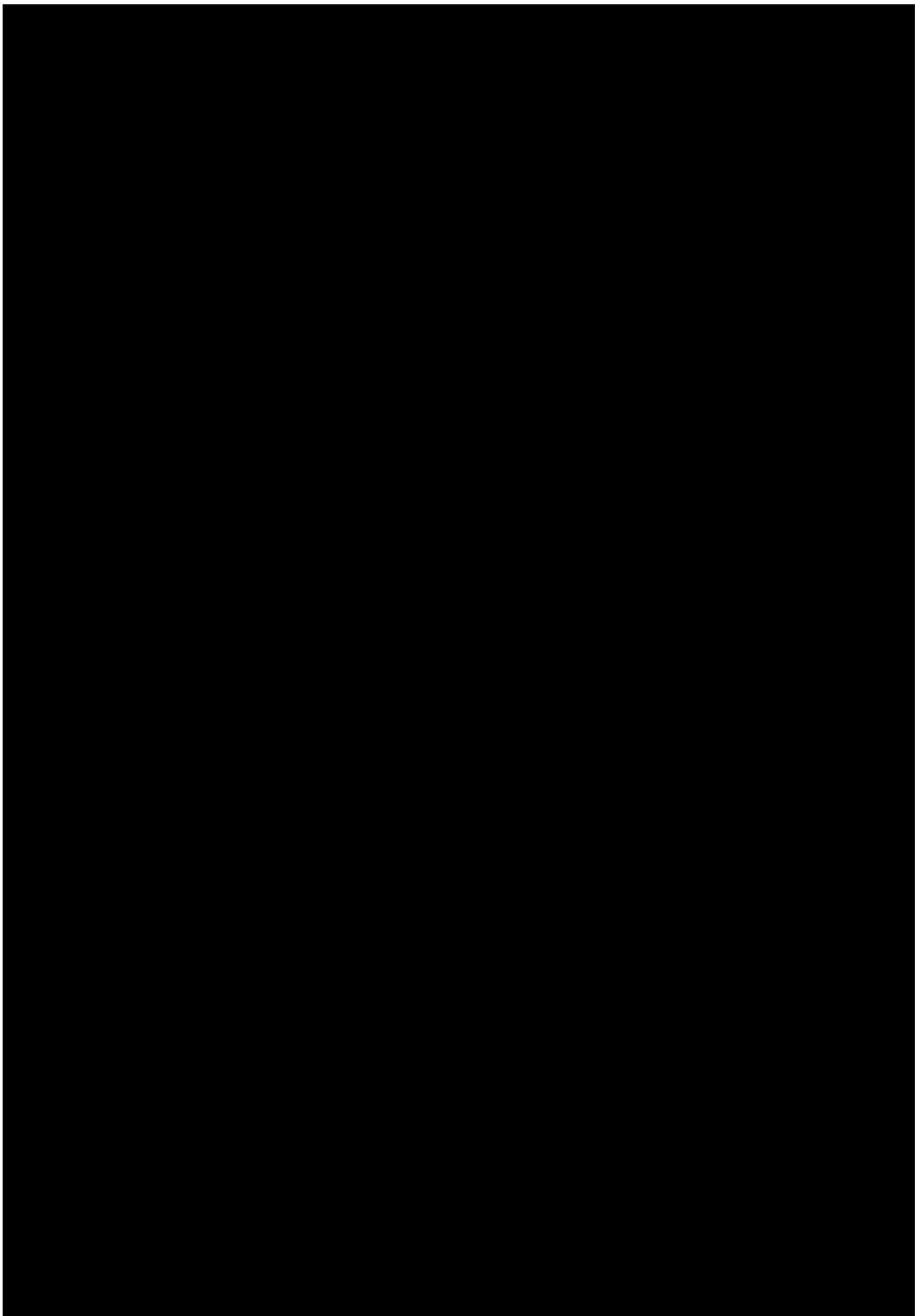
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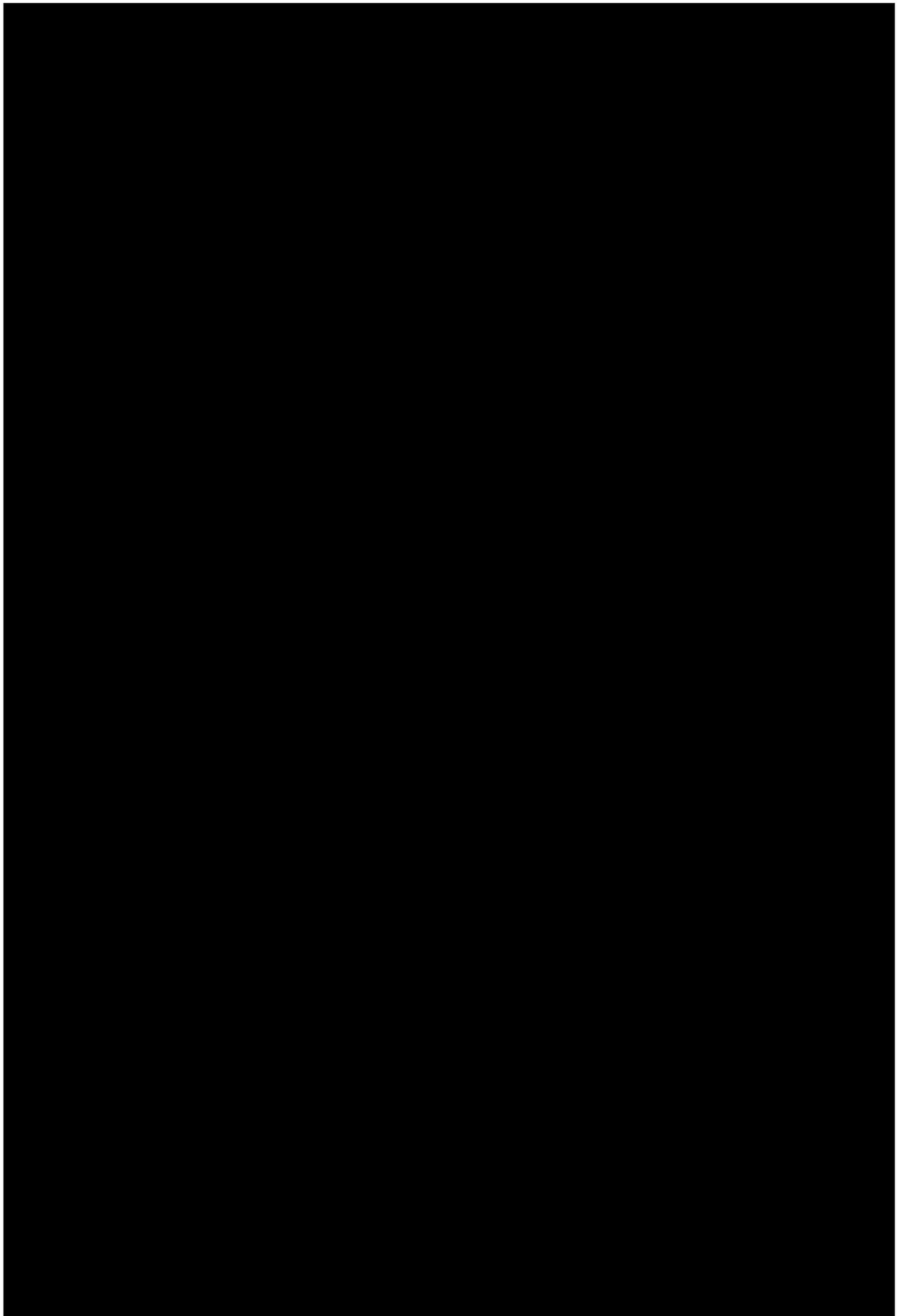
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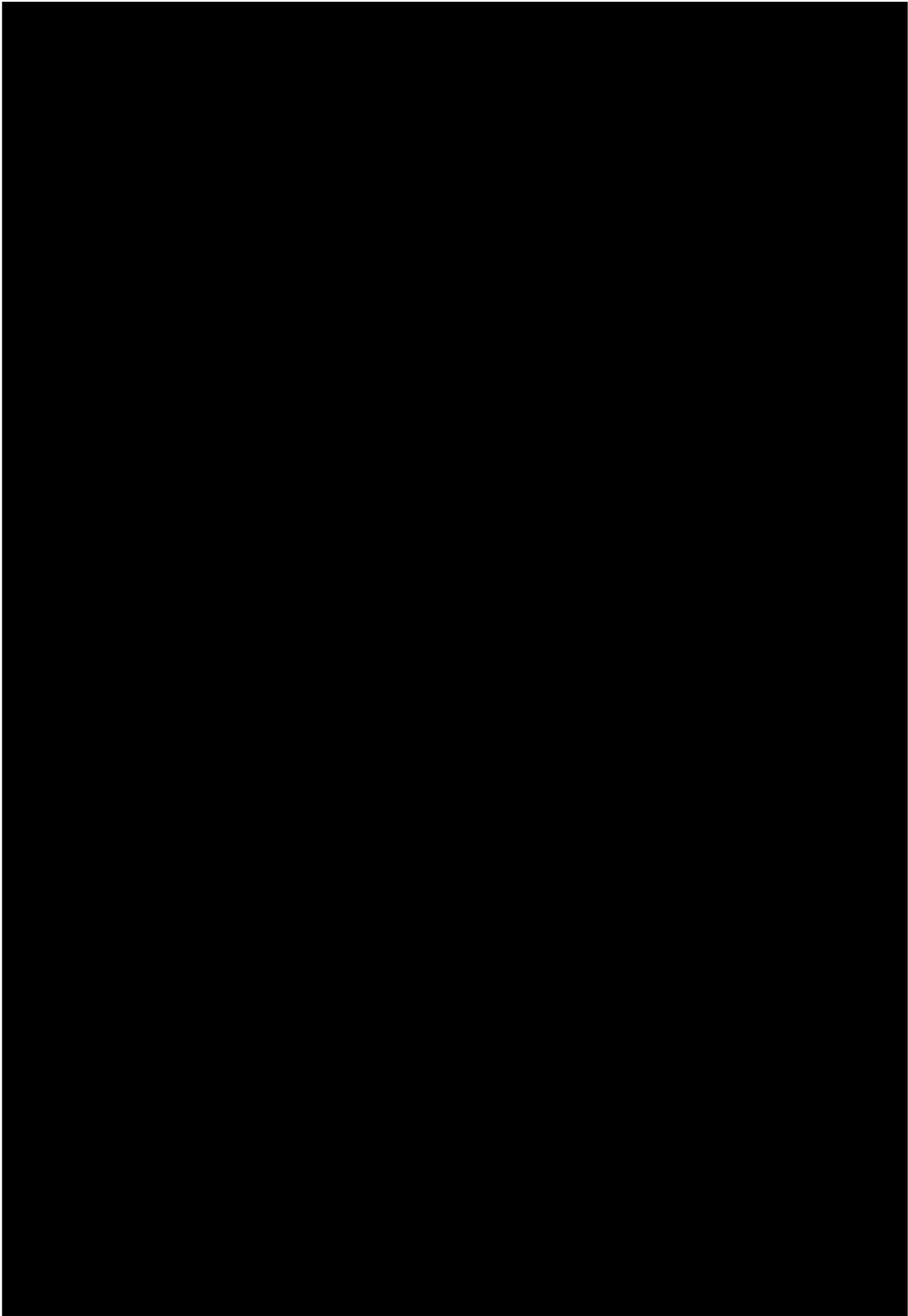
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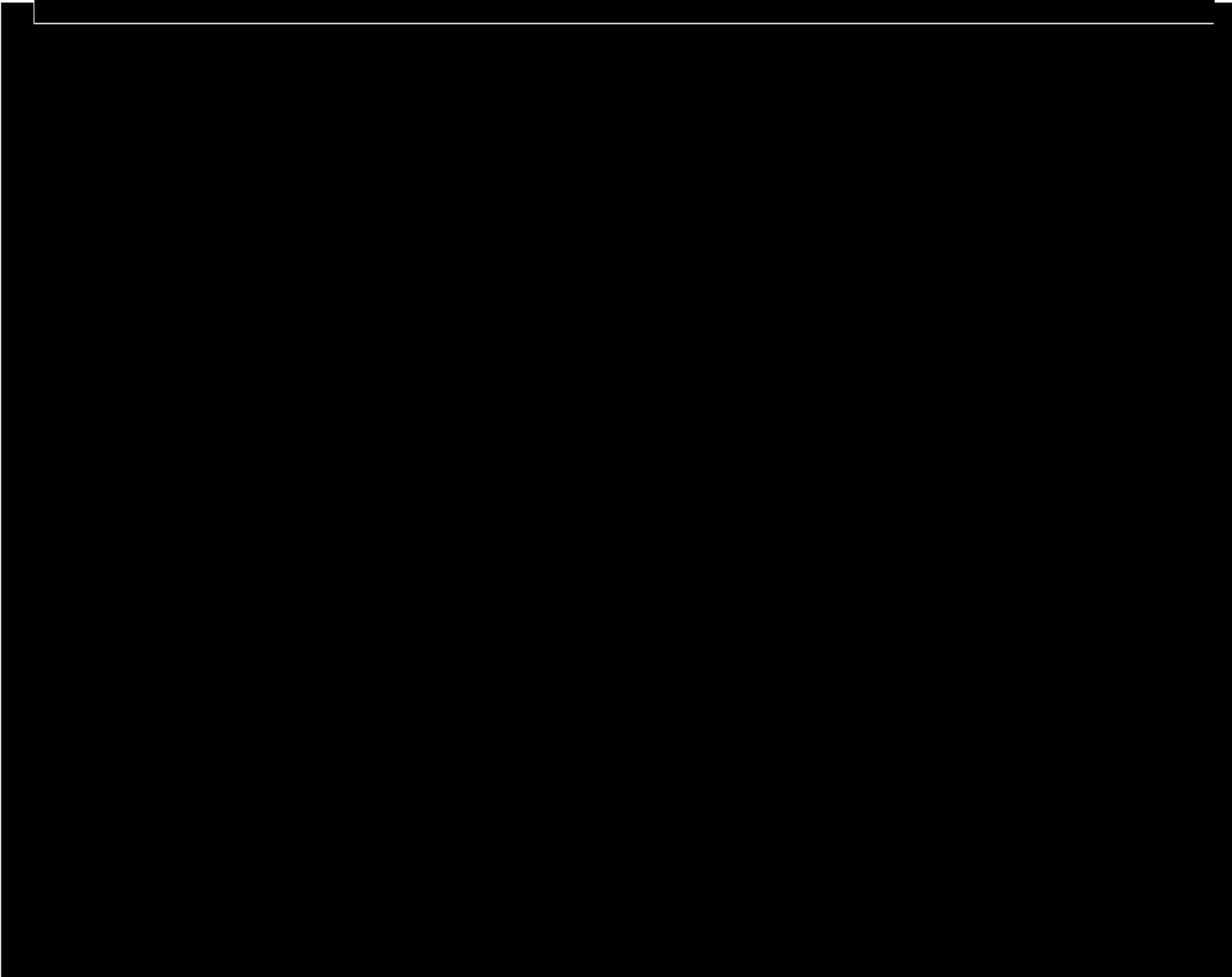
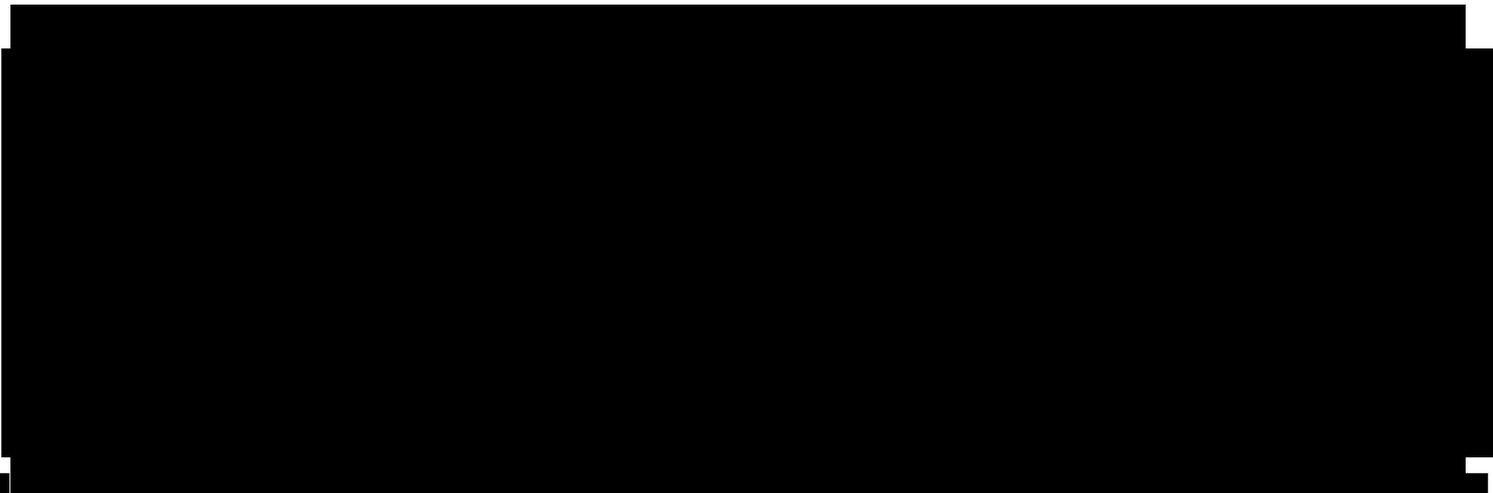
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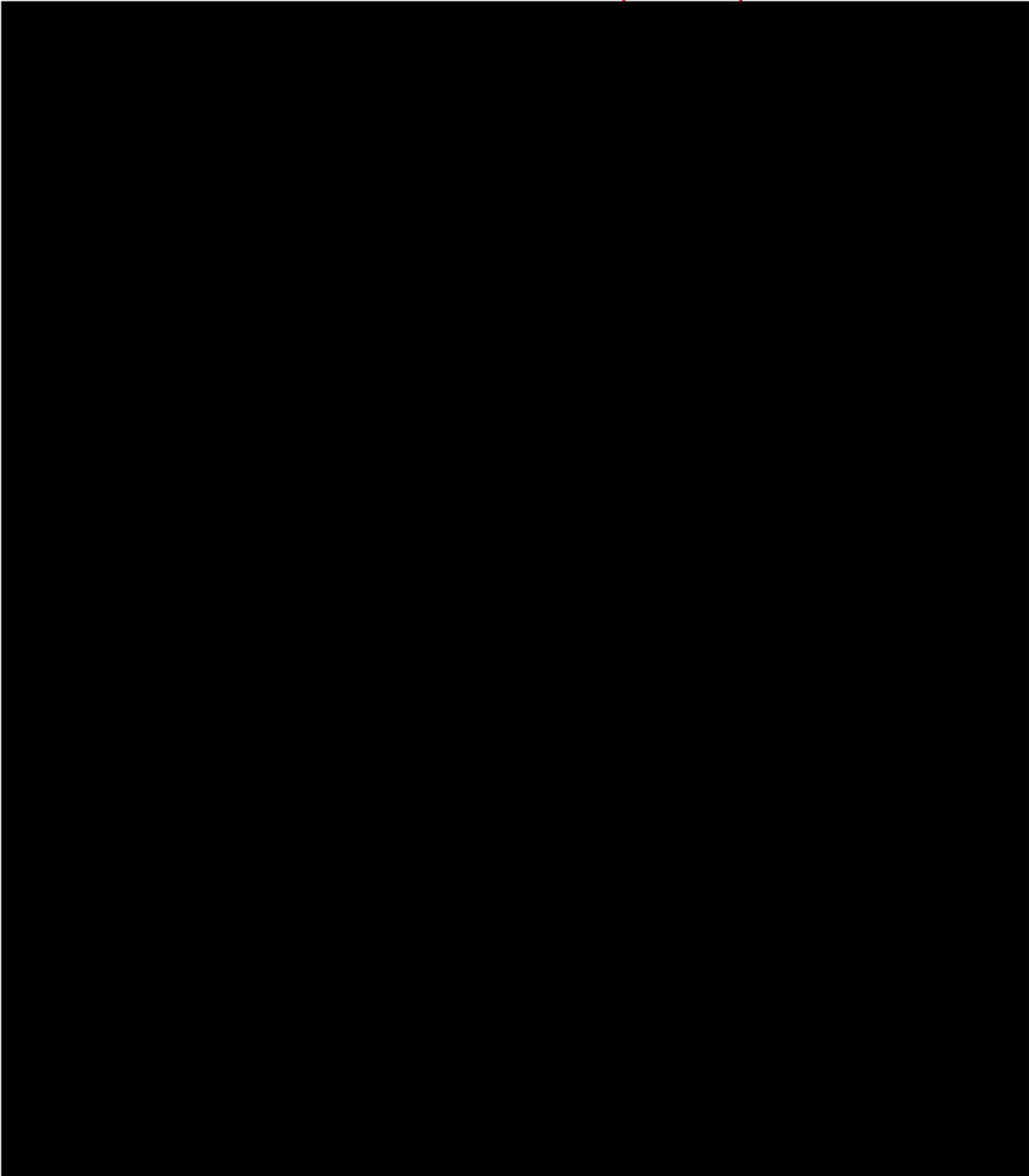


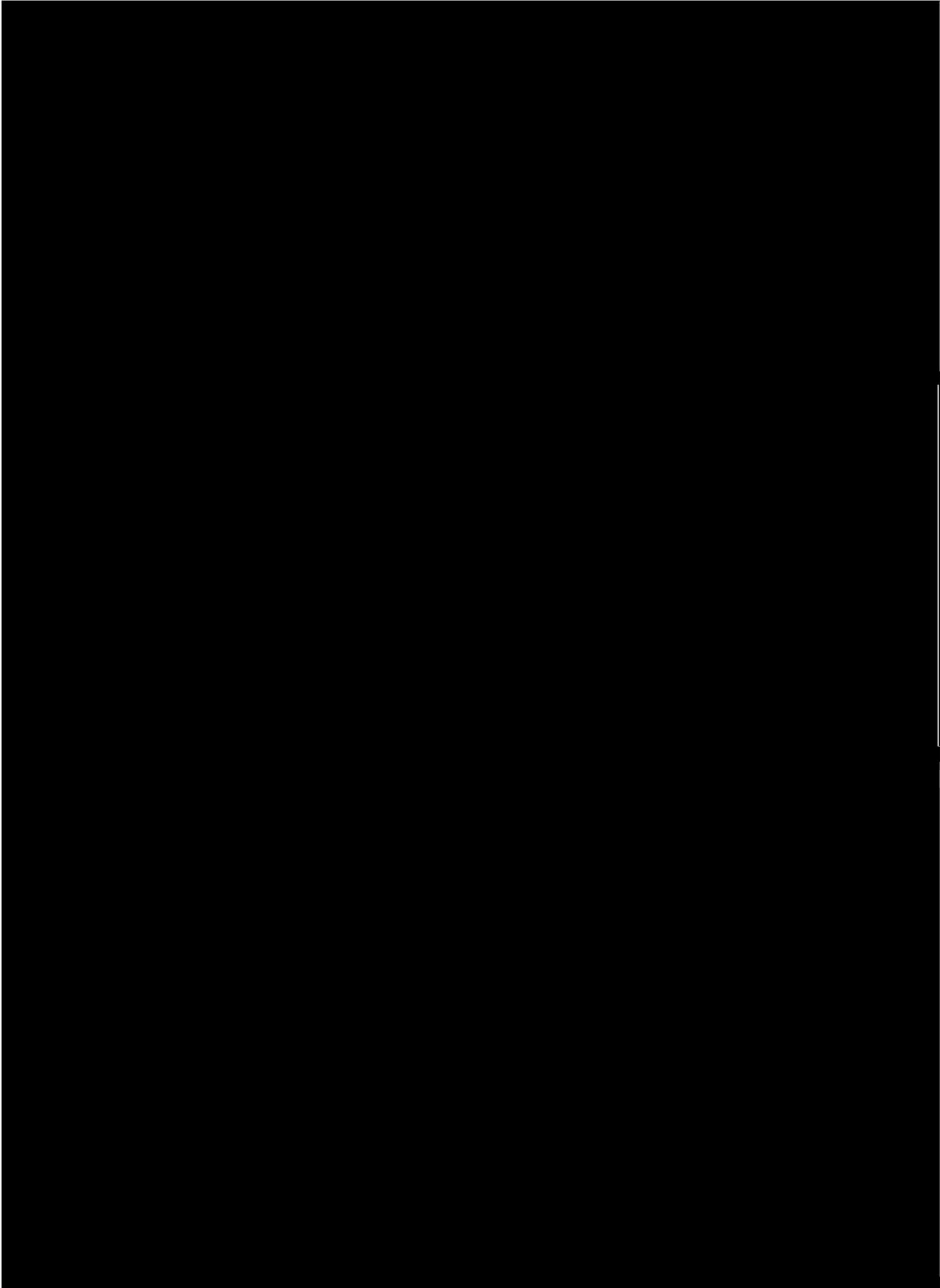


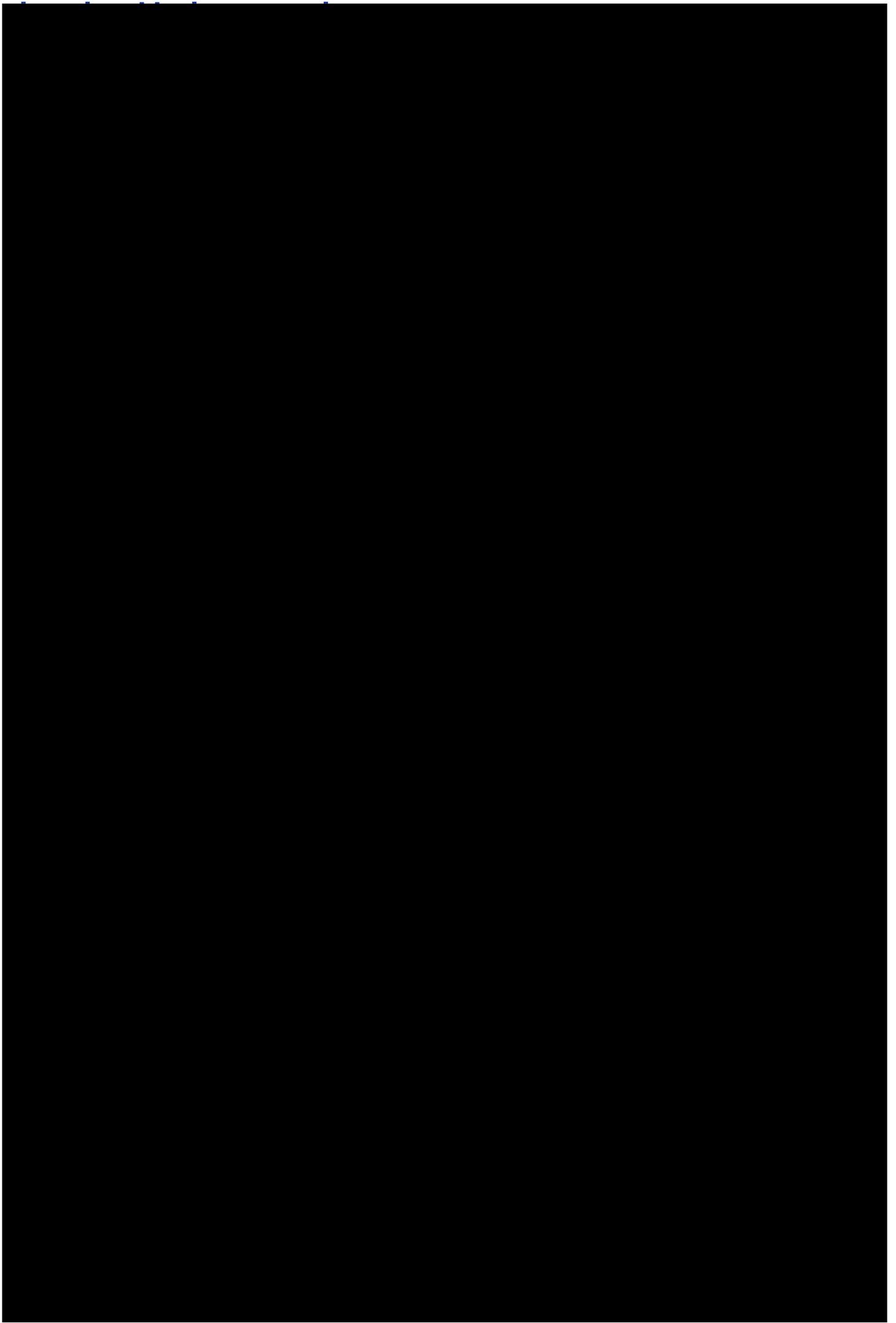


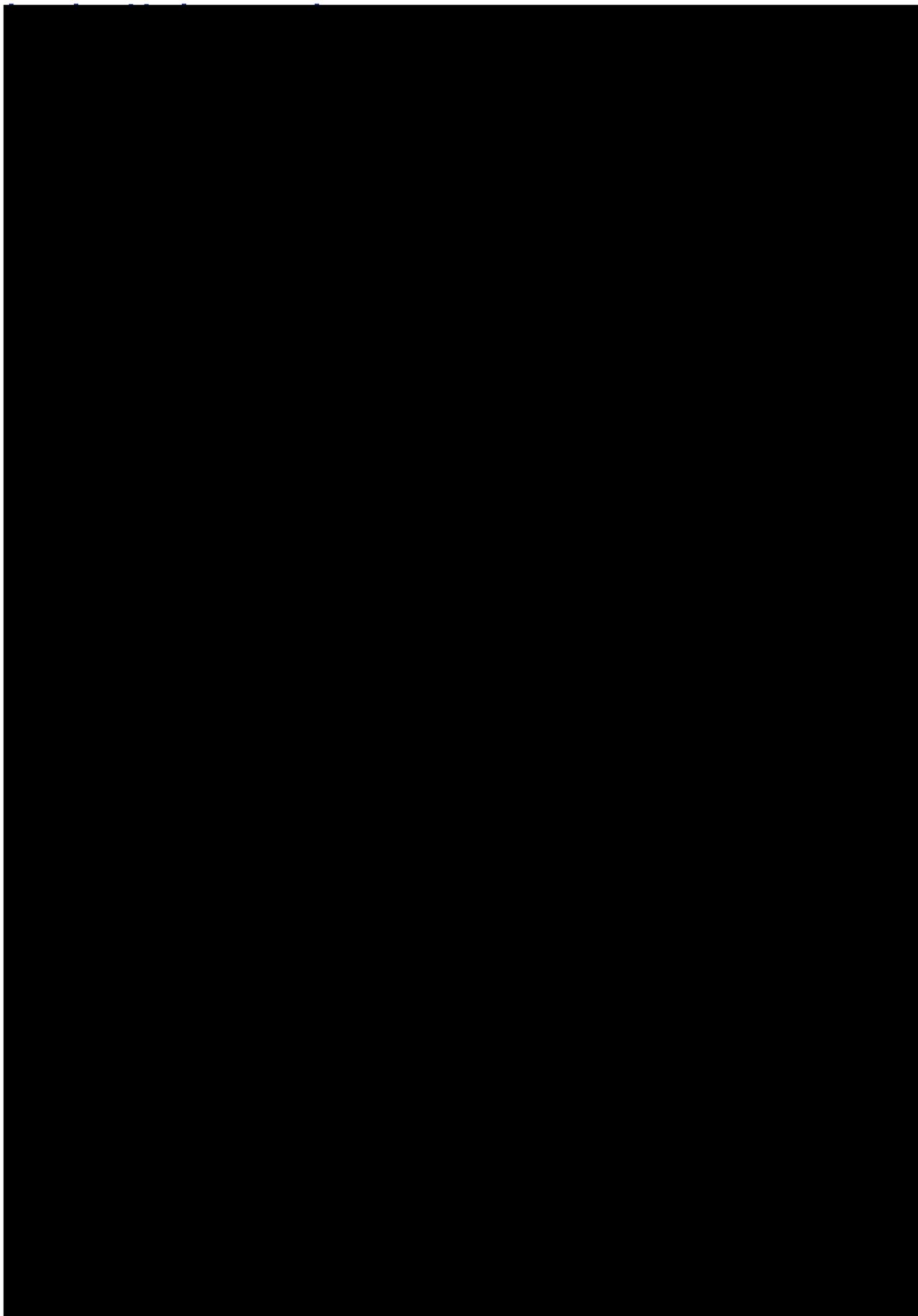




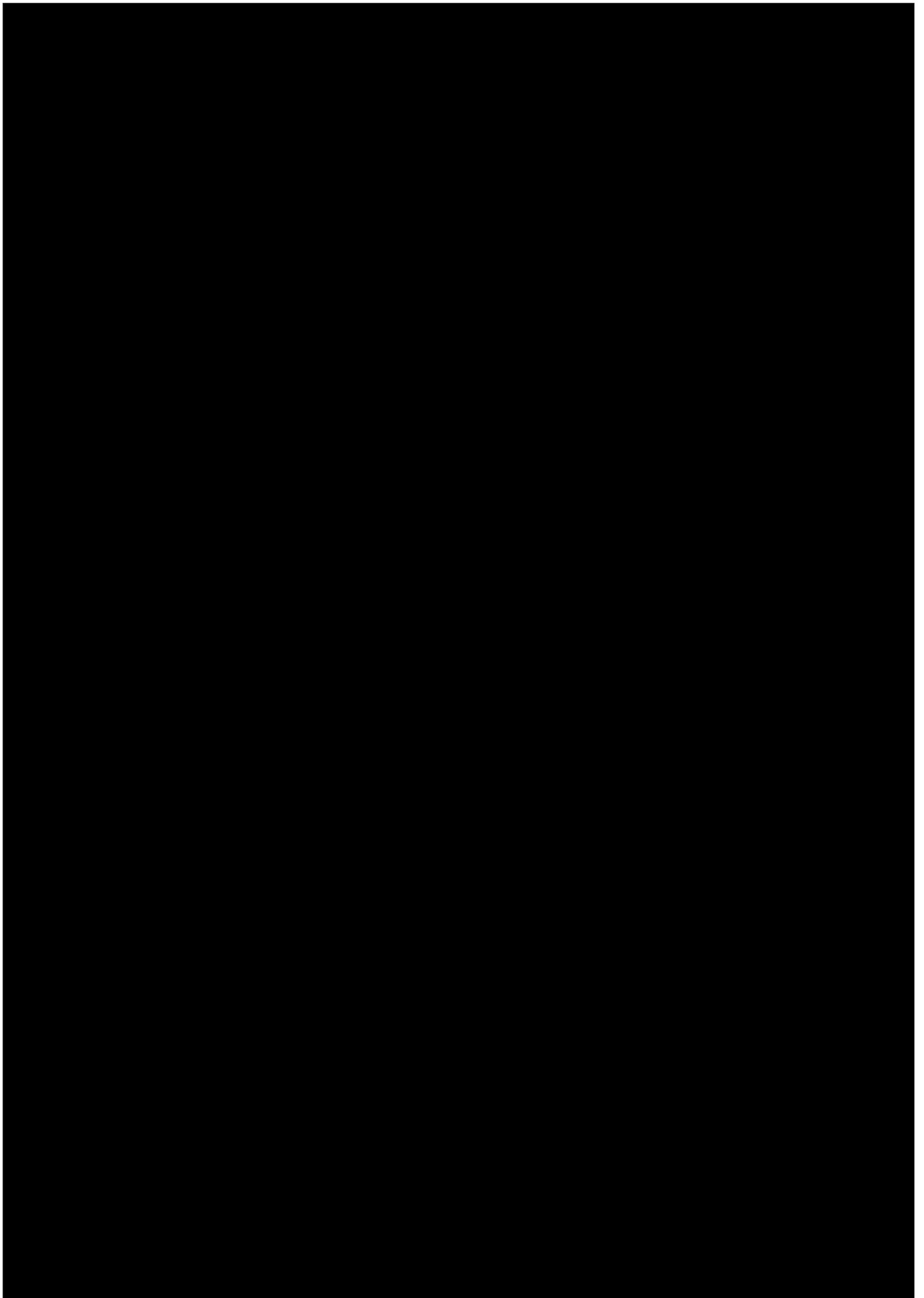


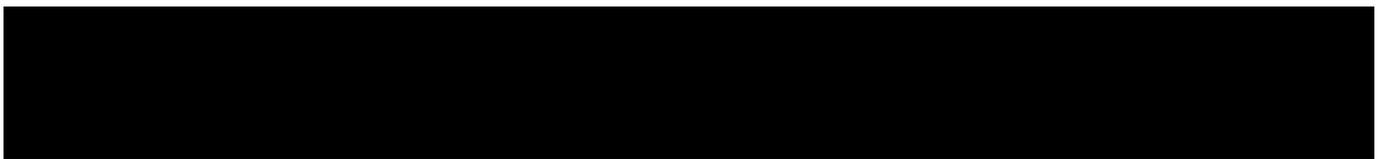
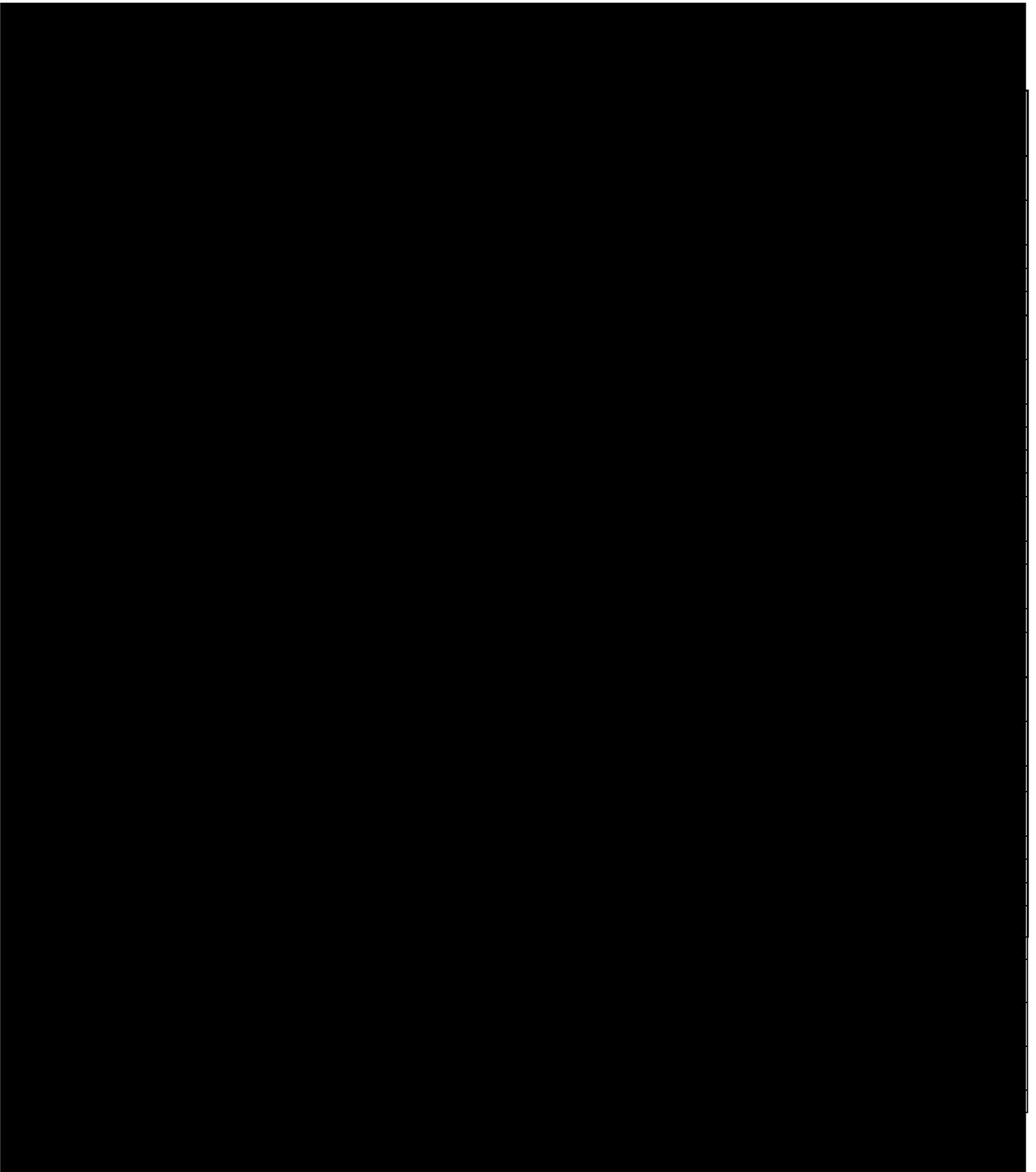


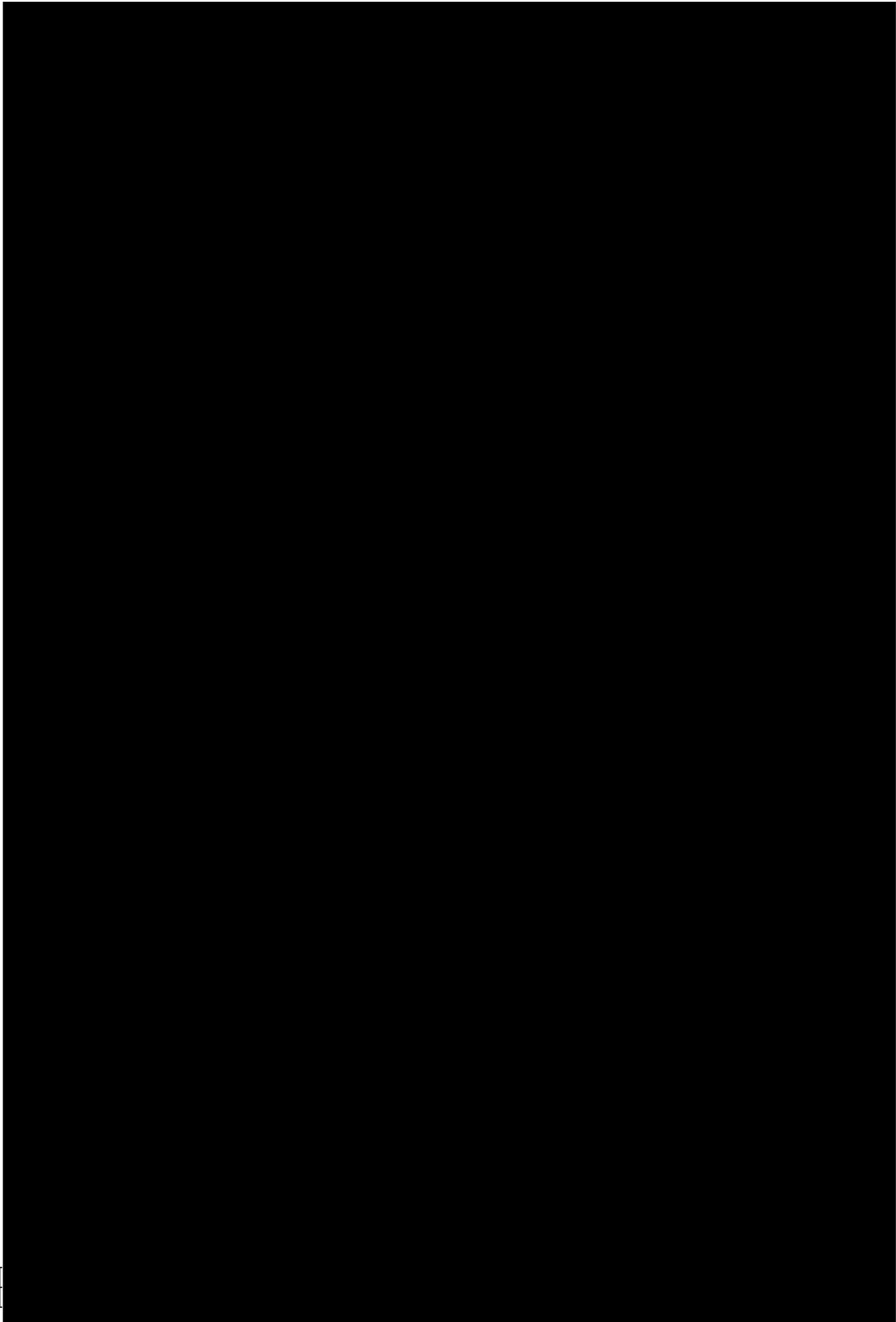


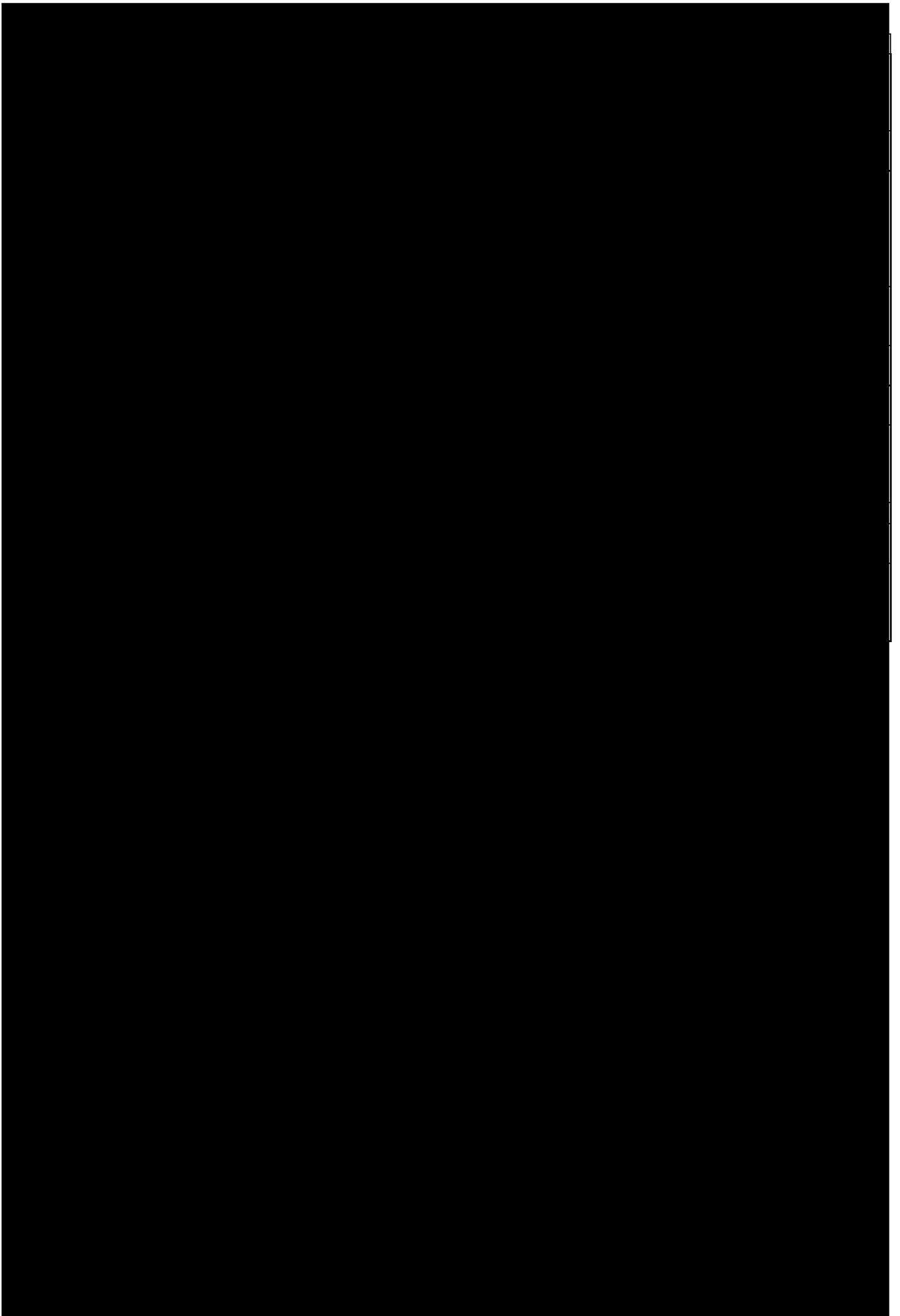


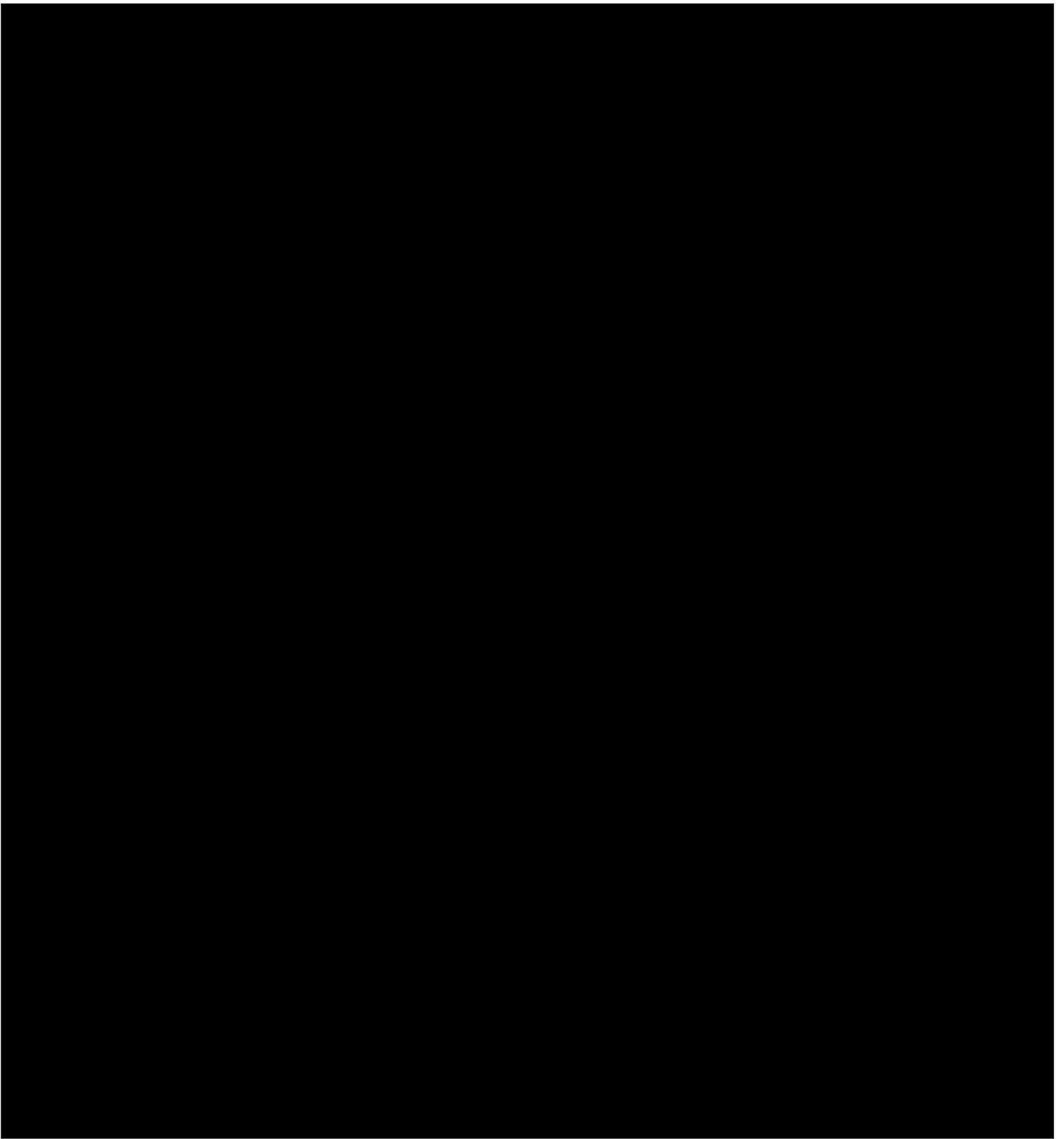


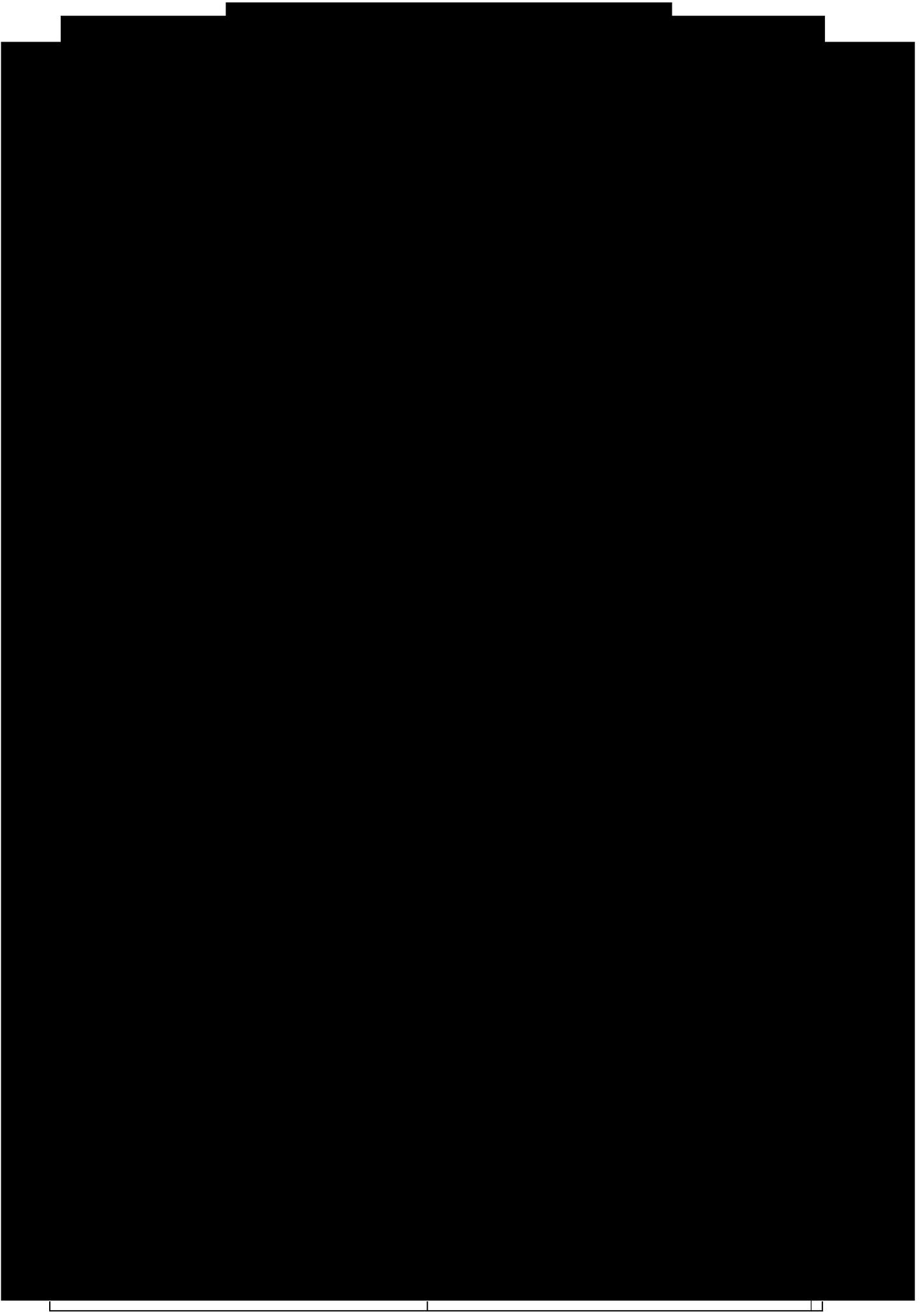


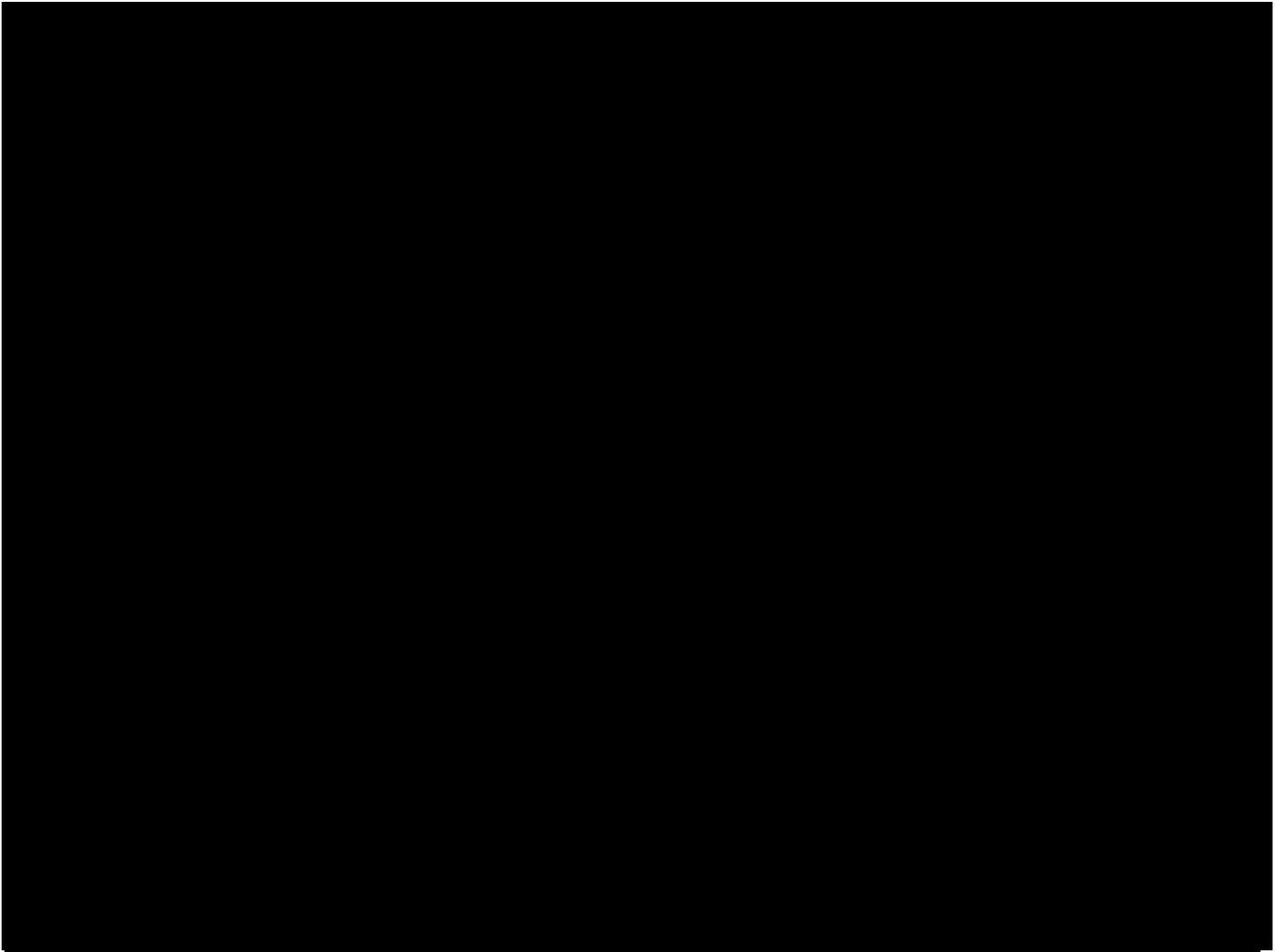
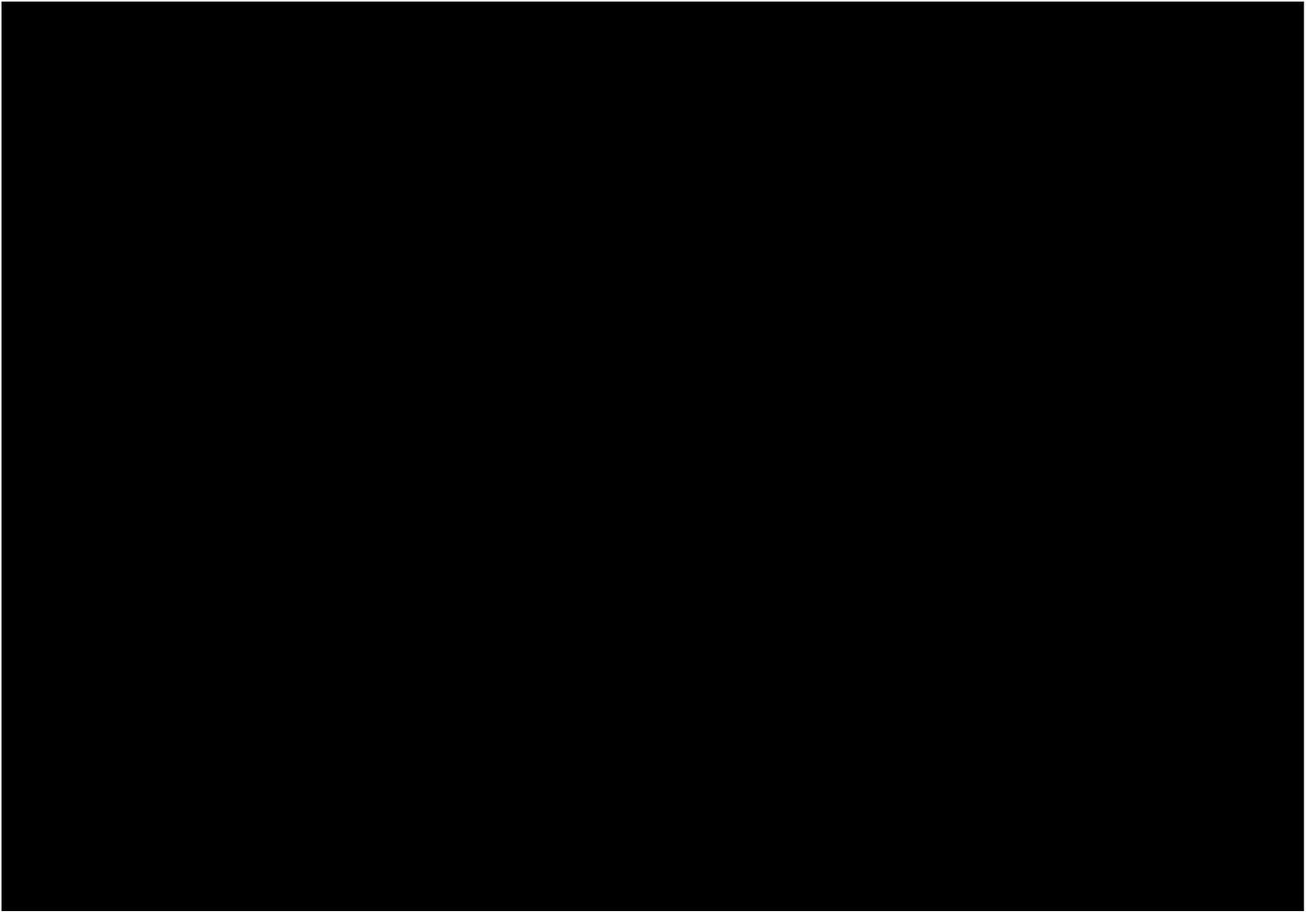


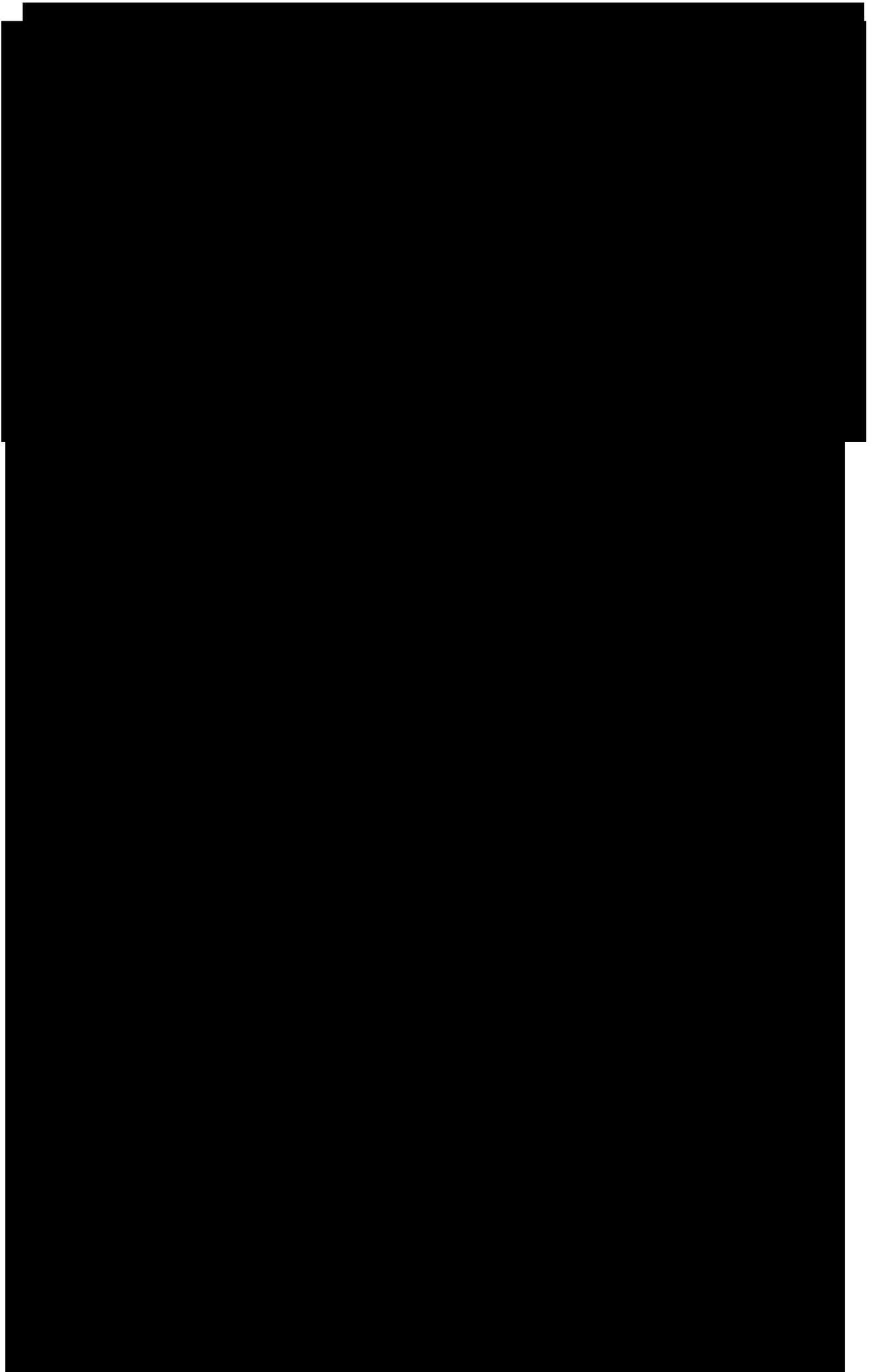


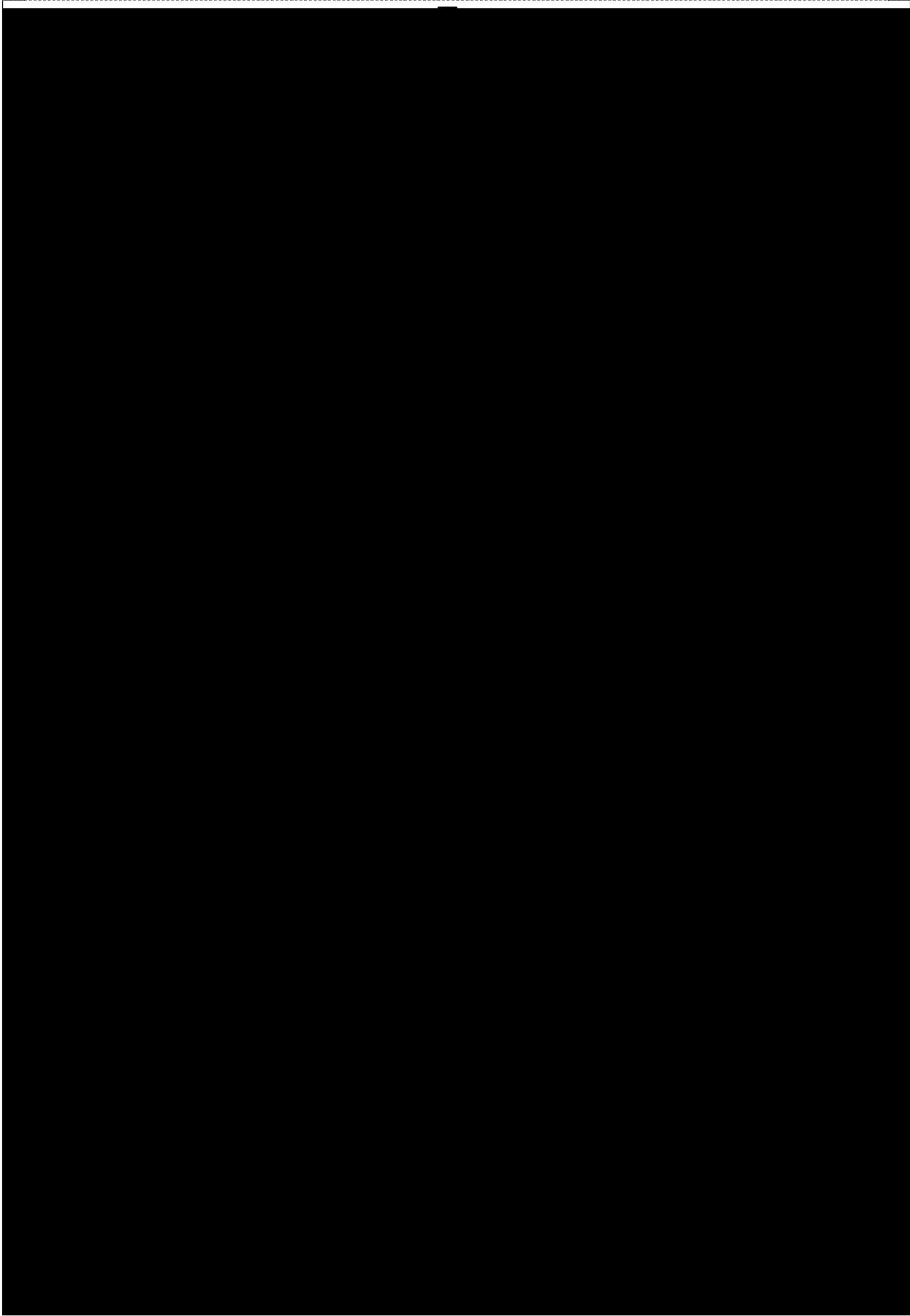












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Schedule 4 Form of Order

Master Agreement for the supply of Services Contract Reference Number: [•]

THIS ORDER IS AGREED AND ENTERED INTO BY THE COMPANY AND THE SUPPLIER PURSUANT TO, AND STRICTLY SUBJECT TO THE TERMS OF, THE ABOVE-REFERENCED MASTER AGREEMENT FOR THE SUPPLY OF SERVICES.

Notes: 1. Please confirm receipt of this Order immediately by [fax/email] to the Company's Representative.
 2. Please quote the Contract Reference Number and the Order number in all correspondence and on all Payment Applications.
 3. Please address all correspondence and enquiries to the Company's Representative.

Company:	London Underground Limited
Supplier:	
Contract Reference Number:	
Order Number:	
Order Title:	
Company's Representative: Address for service of notices: Telephone: Fax:	
Supplier Representative: Address for service of notices: Telephone: Fax:	
Delivery Address	
Order Commencement Date:	
Order Completion Date:	
Order Specification:	<i>[As set out in Appendix 1] [Specification reference number []]</i>
Order Programme:	
Order Price (exclusive of VAT):	
Order Payment Profile [and application for payment dates]:	Please see Error! Reference source not found.
Additional Comments/Special Instructions:	

--	--

Schedule 5

Contract Variation Procedure

- 1 The cost of any Variation Order shall be agreed between the parties taking account of the reasons why the Variation Order was required.
- 2 The Company may propose a variation by completing Part A of the Variation Proposal and supplying three (3) copies of it to the Supplier. Within five (5) Working Days of receipt, or such other time as may be agreed by the Company, the Supplier shall complete Part B of the Variation Proposal and shall supply two (2) copies of the Variation Proposal to the Company. The Company shall be entitled, at any time within thirty (30) days of receipt, to instruct and authorise the Supplier to proceed with the variation on the terms so set out by each party by completing and signing Part C of one copy of the Variation Proposal (which, following such signature, will be referred to as a “**Variation Order**”) and supplying such Variation Order to the Supplier. The relevant part(s) of the Agreement and any Contract shall thereupon be varied accordingly.
- 3 The Supplier may propose a variation, after requesting the issue by the Company of a Variation Proposal variation number, by completing Parts A and B of a Variation Proposal and supplying two (2) copies of it to the Company. The Company shall be entitled, at any time within thirty (30) days of receipt, to instruct the Supplier to proceed with the variation on the terms so set out by the Supplier by completing and signing Part C of one copy of the Variation Proposal (which, following such signature, will be referred to as a “**Variation Order**”) and supplying such Variation Order to the Supplier. The relevant part(s) of the Agreement and any Contract shall thereupon be varied accordingly.
- 4 The Supplier may indicate in a Variation Proposal that the price is an estimated price but, if it does so, it shall supply a firm price to the Company in writing at least seven (7) days before the expiry of the time within which the Company is entitled to instruct the Supplier to proceed with the variation.
- 5 The price indicated by the Supplier must be the full price and shall cover all costs associated with the variation. If appropriate a range of prices may be shown corresponding to the extent of the Services to be carried out.
- 6 In an emergency, both parties shall use their reasonable endeavours to expedite the actions permitted or required under the Contract Variation Procedure.
- 7 The Company will not accept any retrospective claims for additional work caused by a variation which has not been approved by the Company in accordance with the Contract Variation Procedure before the commencement of such additional work.

- 8.1 All authorised additional work resulting from any Variation Proposal shall be priced in accordance with any applicable rates set out in Schedule 5.
- 8.2 The Supplier shall at all times act reasonably and shall price each Variation Proposal at the least possible additional cost to the Company that it is reasonably and economically practicable for the Supplier to offer and which has the least possible impact on the terms of the Agreement and any Contract, including but not limited to, the Specification and the Order Programme.
9. Strict adherence to the procedure described in this Schedule 5 shall be a condition precedent to any addition to the price for the Services. If the Supplier does not adhere to each paragraph in this Schedule 5 then the Supplier shall not be entitled to any addition to the price for the Services notwithstanding that the Supplier may have supplied additional or varied Services.

Appendix 1
Form of Variation Proposal/Variation Order

To:	From:
------------	--------------

Contract Reference:
Variation Number:
Variation Title:

PART A (TO BE COMPLETED BY THE ORIGINATOR OF THE VARIATION ORDER)	
Description of change:	
Reason for changes and impact (if any) on Agreement:	
Variation Proposal Authorised by:	Proposal Date:
PART B (TO BE COMPLETED BY THE SUPPLIER)	
Price Breakdown Note: If a further breakdown is needed please append details as a separate sheet.	
Expected Delivery Date:	
Supplier's Representative:	
Print Name:	Signature: Date:
Completed document to be returned to the Company's Representative	
PART C (TO BE COMPLETED BY THE COMPANY'S REPRESENTATIVE)	
Comment on Parts A and B:	
Variation Authorisation	
Company's Representative:	
Print Name:	Signature: Date:

Schedule 6
Quality and Safety Plan

'Contractor will supply these during the mobilisation period'

lieu of the liability of the Company and agrees to be bound by the terms of the Contract in every way as if the New Company were and had been a party to the Contract at all times in lieu of the Company;

2.3 for the avoidance of doubt, it is hereby expressly agreed that:

2.3.1 any and all rights, claims, counter-claims, demands and other remedies of the Supplier against the Company accrued under or in connection with the Contract prior to the date hereof shall be exercisable and enforceable by the Supplier against the New Company; and

2.3.2 any and all rights, claims, counter-claims, demands and other remedies of the Company against the Supplier accrued under or in connection with the Contract prior to the date hereof shall be exercisable by the New Company against the Supplier.

2.4 the Company transfers its rights and obligations under the Contract to the New Company.

3. A person who is not a party to this Deed may not enforce any of its terms by virtue of the Contracts (Rights of Third Parties) Act 1999.

Executed as a deed by the parties and delivered on the date of this Deed

Executed as a deed by affixing the Common Seal of)

London Underground Limited)

in the presence of: -) *[Authorised Signatory]*

Executed as a Deed by [SUPPLIER])

acting by)

) Authorised Signatory

and).....

) Authorised Signatory

Executed as a Deed by [NEW COMPANY]

)

acting by

)

) Authorised Signatory

and

).....

) Authorised Signatory

Schedule 8
Form of Parent Company Guarantee and Performance Bond

THIS GUARANTEE is made the _____ day of _____ 201

BETWEEN:

- (1) [] a company registered in England and Wales under number [] and having its registered office at [] (the "**Guarantor**");
- (2) [] company registered in England and Wales under number [] and having its registered office at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Company**" which expression shall include its successors in title and assigns); and
- (3) [] company registered in England and Wales under number [] and having its registered office at [] (the "**Supplier**").

WHEREAS:

- (A) This Guarantee is supplemental to a contract (the "**Contract**") for the carrying out of [] at [] made between (1) the Company and (2) the Supplier.
- (B) The Guarantor has agreed to guarantee to the Company the due and punctual performance of the Contract by the Supplier in the manner hereinafter appearing.
- (C) The Supplier is a party to this Guarantee in order to confirm its request that the Guarantor provide this Guarantee on the terms set out herein.

NOW IT IS HEREBY AGREED as follows:

1. The Guarantor unconditionally guarantees to the Company the proper and punctual performance and observance by the Supplier of all its obligations, warranties, duties, undertakings and responsibilities under the Contract and shall forthwith make good any default thereunder on the part of the Supplier and the Guarantor shall pay or be responsible for the payment by the Supplier to the Company of all sums of money, liabilities, awards, losses, damages, costs, charges and expenses that may be or become due and payable under or arising out of the Contract in accordance with its terms or otherwise by reason or in consequence of any such default on the part of the Supplier.
2. This Guarantee shall be a continuing guarantee and indemnity and accordingly shall remain in full force and effect until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed or observed by the Supplier under or arising out of the Contract have been duly and completely performed and observed in full.
3. The Guarantee is in addition to and not in substitution for any other security or warranty which the Company may at any time hold for the performance of any obligations, warranties, duties and

undertakings under the Contract and may be enforced by the Company without first taking any proceedings or exhausting any right or remedy against the Supplier or any other person or taking any action to enforce any other security, bond or guarantee.

4. The Guarantor shall be under no greater obligation or greater liability under this Guarantee than it would have been under the Contract if it had been named as the Supplier in the Contract.
5. The obligations and liabilities hereunder shall remain in full force and effect and shall not be affected, lessened, impaired or discharged by:
 - (a) any alteration or variation to the terms of the Contract;
 - (b) any alteration in the extent or nature or sequence or method or timing or scope of the works, services or supplies to be carried out under the Contract;
 - (c) any extension of time being given to the Supplier or any other indulgence or concession to the Supplier or any forbearance, forgiveness or any other thing done, omitted or neglected to be done under the Contract;
 - (d) any other bond, security or guarantee now or hereafter held for all or any part of the obligations of the Supplier under the Contract;
 - (e) the release, modification, exchange or waiver of any such bond, security or guarantee;
 - (f) any amalgamation or reconstruction or dissolution including liquidation of the Supplier;
 - (g) the making of a winding up order, the appointment of a provisional liquidator, the passing of a resolution for winding up, liquidation, administration, receivership or insolvency of the Supplier;
 - (h) any legal limitation, disability or incapacity relating to the Supplier (whether or not known to you);
 - (i) any invalidity in, irregularity affecting or unenforceability of the obligations of the Supplier under the Contract;
 - (j) the termination of the Contract; or
 - (k) anything the Company or the Supplier may do or omit or neglect to do including, but without limitation, the assertion of or failure or delay to assert any right or remedy of the Company or the pursuit of any right or remedy by the Company.
6. Until all amounts which may be or become payable and all liabilities, obligations, warranties, duties and undertakings in respect of the Supplier's obligations have been irrevocably paid, performed or discharged in full, the Guarantor shall not, after a claim has been made or by virtue of any payment, performance or discharge by it under this Guarantee:

- (a) be subrogated to any rights, security or moneys held, received or receivable by the Company or be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of the Guarantor's liability under this Guarantee;
 - (b) claim, rank, prove or vote as a creditor of the Supplier or its estate in competition with the Company unless the Company so directs; or
 - (c) receive, claim or have the benefit of any payment distribution or security from or on account of the Supplier, or exercise any right of set-off against the Supplier unless the Company so directs.
7. This Guarantee is irrevocable.
8. The benefit of this Guarantee may be assigned by the Company at any time to any assignee of the benefit of the whole of the Contract. No further or other assignments shall be permitted.
9. The Guarantor:
- (a) gives the guarantee contained in this Guarantee as principal obligor and not merely as surety;
 - (b) agrees to indemnify the Company on written demand against any loss or liability suffered by it if any provision set out in the Contract guaranteed by the Guarantor becomes unenforceable, invalid or illegal, and
 - (c) waives any right it may have of first requiring the Company to proceed against, or enforce any other rights or security or claim payment from, any person before claiming from the Guarantor under this Guarantee.
10. Until all amounts which may be or become payable in respect of the Supplier's obligations have been irrevocably paid in full by the Guarantor, the Company may:
- (a) refrain from applying or enforcing any other moneys, security or rights held or received by the Company in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and
 - (b) hold in a suspense account any moneys received from the Supplier on account of these Supplier's obligations or on account of the Guarantor's liability under this Guarantee.
11. The Company is entitled to make any number of demands under this Guarantee.
12. The invalidity, illegality or unenforceability in whole of or in part of any provisions of this Guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this Guarantee.

13. This Guarantee may be executed in any number of counterparts each of which shall be an original and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

14. No person other than TfL (as such term is defined in the Contract) and its subsidiaries (as defined in section 1159 of the Companies Act 2006) shall have any right to claim or remedy under or pursuant to this Guarantee and the provisions of the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.

15. This Guarantee, executed and delivered as a deed, shall be governed by and interpreted according to the laws of England and the Courts of England shall have exclusive jurisdiction save that the Company shall have the right to bring proceedings in the courts of any other jurisdiction in which any of the Guarantor’s assets may be situated.

16. *[For non-UK resident Guarantors only:*

For the purposes of this Guarantee the Guarantor hereby appoints of..... [to be a London address] to accept service of process on its behalf, and service on the said at the said address shall be deemed to be good service on the Guarantor; and the Guarantor hereby irrevocably agrees not to revoke or terminate such appointment).]

Executed as a deed by the parties and delivered on the date of this Guarantee

Executed as a Deed by [GUARANTOR])
acting by)
) Authorised Signatory
and).....
) Authorised Signatory

Executed as a deed by affixing the Common Seal of)
[COMPANY])
in the presence of: -)

.....

[Authorised Signatory]

Executed as a Deed by [SUPPLIER]

)

acting by

)

) Authorised Signatory

and

).....

) Authorised Signatory

□

FORM OF ON DEMAND PERFORMANCE BOND WITH ANNEX 1

BOND

(Letterhead of Guarantor)

To: [Company name] (its successors in title and assigns)

Contract Bond No. [•]

1. Whereas our clients [•] (the “**Supplier**”) have entered into a contract with you dated [•] (the “**Contract**”) in respect of [•], we [•] (the “**Guarantor**”, which term shall include our successors in title and assigns) hereby irrevocably undertake as a primary obligation upon first demand in writing made by you upon us from time to time or at any time to pay to you on each occasion the sum demanded by you within five (5) banking days upon service of your demand.

PROVIDED THAT:

2. This Bond shall come into force on the date hereof.
3. Any demand hereunder shall be substantially in the form of Annex 1 to this Bond, and as between you and us the facts set out in that demand shall be: (a) deemed to be true and (b) accepted by us as conclusive evidence for the purposes of this Bond that the amount claimed in the demand is due and payable to you hereunder, it being our intention that the event upon which payment must be made hereunder is the service of your demand without any rights on our part to raise any objections, irrespective of the validity or the effectiveness of the Contract and the obligations arising thereunder and irrespective of the underlying facts or their significance under the Contract.
4. All sums payable under this Bond shall be paid in pounds sterling to such bank account as may be specified in your demand in immediately available funds, free of any restriction or condition and free and clear of and without any deduction or withholding whether for or on account of tax, by way of set-off, or otherwise, except to the extent required by law.
5. For the purpose of this paragraph 5, the expression “Expiry Date” means [•]. Our liability hereunder shall be limited as follows:
 - (a) we shall have no liability in respect of any demand received after the Expiry Date; and
 - (b) in respect of a demand or demands received on or before the Expiry Date, our liability shall not exceed the aggregate sum of £ [•].
6. Our obligations hereunder shall remain in full force and effect and shall not in any way be affected, reduced or discharged by:

- (a) any alteration to the terms of the Contract made by agreement between you and the Supplier; and/or
 - (b) any defence, counterclaim, set-off or other deduction available to the Supplier under the Contract; and/or
 - (c) any alteration in the extent or nature or sequence or method or timing of the works/services to be carried out under the Contract; and/or
 - (d) any time being given to the Supplier or any other indulgence or concession to the Supplier or any forbearance, forgiveness or any other thing done, omitted or neglected to be done under the Contract; and/or
 - (e) any other bond, security or guarantee now or hereafter held by you for all or any part of the obligations of the Supplier under the Contract; and/or
 - (f) the release or waiver of any such other bond, security or guarantee; and/or
 - (g) any amalgamation or reconstruction or dissolution including liquidation or change in control or constitution of the Supplier; and/or
 - (h) the termination of the Contract; and/or
 - (i) any other event which might operate to discharge a guarantor at law or in equity.
7. Terms defined in the Contract and not otherwise defined herein shall have the same meaning in this Bond unless inconsistent with the context.
8. This Bond shall be governed by, and interpreted according to, the laws of England and the Courts of England shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this Bond and any matter arising from it save that you shall have the right to bring proceedings in the Courts of any other jurisdiction in which any of our assets may be situated.
9. This Bond may be assigned or transferred without our prior consent to any member of the TfL Group. Any other assignment or transfer of this Bond by either party shall require the consent of the other party, such consent not to be unreasonably withheld or delayed.
10. This bond may not be amended, varied or supplemented in any manner whatsoever without your prior written consent, other than in accordance with its express terms.
11. Each of the provisions of this bond is severable and distinct from the others, and if at any time any such provision is or becomes ineffective, inoperable, invalid or unenforceable it shall be severed and deemed to be deleted from this bond, and in such event the remaining provisions of this bond shall continue to have full force and effect.
12. All bank charges and other fees payable in relation to or in connection with this bond are for the account of the Manufacturer and you shall have no liability or responsibility therefor.

13. Except to the extent it is inconsistent with the express terms of this bond, this bond is subject to the ICC Uniform Rules for Demand Guarantees, 2010 revision, ICC Publication No. 758.

Executed as a deed by the parties and delivered on the date of this Bond.

Executed as a Deed by [GUARANTOR])
acting by)
) Authorised Signatory
and)
) Authorised Signatory

Executed as a deed by affixing the Common Seal of)
[COMPANY])
in the presence of:-)

.....
[Authorised Signatory]

ANNEX 1

Form of Demand from the Company to the Guarantor

Dear Sirs

[Contract Title]

Contract No: [•] (the “Contract”)

We refer to the Bond given by you to us dated [•].

An event has occurred of the type described in Clause [•] of the Contract.

We hereby demand payment from you of the sum of £[•] under the Bond. Please make payment by CHAPS made payable to **[Company name / bank account details]**.

Yours faithfully

.....

[Company name]

Windsor House

42-50 Victoria Street

London

SW1H 0TL

Schedule 9
Form of Collateral Warranty

THIS AGREEMENT is made the _____ day of _____ 201[]

BETWEEN : -

- (1) **London Underground Limited** registered in England and Wales under number: 01900907 and having its registered office at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Company**");

- (2) [_____] a company registered in England and Wales under number: [.....] and having its registered office at [.....] (the "**Sub-Contractor**"); and

- (3) [_____] a company registered in England and Wales under number: [.....] and having its registered office at [.....] (the "**Supplier**").

WHEREAS :-

- (A) The Company has entered into a contract with the Supplier (the "**Main Contract**") pursuant to which the Supplier is to undertake and complete the following services: [_____] (the "**Services**").

- (B) The Sub-Contractor has submitted a tender to the Supplier for the carrying out and completion of certain parts (the "**Sub-Contract Services**") of the Services referred to above as more particularly described in the tender.

NOW IN CONSIDERATION of the payment of £1 (one pound) by the Company to the Sub-Contractor (receipt of which the Sub-Contractor hereby acknowledges) IT IS HEREBY AGREED as follows:

- 1. The Sub-Contractor warrants to the Company that:
 - (a) the Sub-Contract Services have been and will be carried out with the skill and care to be expected of appropriately qualified and experienced professional contractors with

experience in carrying out works or services of a similar type, nature and complexity to the Sub-Contract Services;

- (b) reasonable skill and care has been and will continue to be exercised in connection with:
 - (i) the design of any goods, works or services to the extent that the Sub-Contractor has or will be responsible for such design;
 - (ii) the selection of all goods and materials comprised in the Sub-Contract Services (in so far as such goods and materials have been or will be selected by the Sub-Contractor);
 - (iii) the satisfaction of any performance specification or requirement in so far as the same are included or referred to in the contract between the Supplier and the Sub-Contractor in relation to the Sub-Contract Services (the “**Sub-Contract**”);
 - (iv) the execution and completion of the Sub-Contract Services;
 - (v) the Sub-Contract Services will, on completion of the Main Contract, comply with all Applicable Laws and Standards (as such capitalised terms are defined in the Main Contract);
- (c) the Sub-Contract Services will be reasonably fit for the purposes for which they are intended (awareness of which purposes the Sub-Contractor hereby acknowledges) and in particular but without limitation will be so fit for the period and with a rate of deterioration reasonably to be expected of high quality, reliable, well designed and engineered goods, materials and construction; and
- (d) it has the right to grant to the Company all licences (including without limitation all rights to sub-licence) of all intellectual property rights as contemplated in this Agreement.

For the purposes of construing the warranties in this Clause 1 references to the Sub-Contract Services shall include any part of the Sub-Contract Services. Each warranty shall be construed as a separate warranty and shall not be limited by reference to, or reference from, the terms of any other warranty or any other term of the Sub-Contract.

2. The Sub-Contractor shall, save in so far as he is delayed by any event in respect of which the Supplier is granted an extension of time under the Main Contract for completion of the Services:
 - (a) execute, complete [and maintain] the Sub-Contract Services in accordance with the provisions of the Sub-Contract; and
 - (b) ensure that the Supplier shall not become entitled to any extension of time for completion of the Services or to claim any additional payment under the Main Contract due to any failure or delay by the Sub-Contractor.
3. The Sub-Contractor shall from time to time supply the Company and the Supplier with such information as either may reasonably require.
4. To the extent that the intellectual property rights in any and all Documents have not already vested in the Company or the Supplier, the Sub-Contractor hereby grants to the Company an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Sub-Contractor incorporated or referred to in them for the following purposes:
 - (a) understanding the Services;
 - (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting, replacing, re-procuring and re-tendering the Services;
 - (c) extending, interfacing with, integrating with, connecting into and adjusting the Services;
 - (d) enabling the Company to carry out the operation, maintenance repair, renewal and enhancement of the Underground Network (as such capitalised terms are defined in the Main Contract);
 - (e) executing and completing the Services; and
 - (f) enabling the Company to perform its functions and duties as Infrastructure Manager and Operator of the Underground Network (as such capitalised terms are defined in the Main Contract)

provided always that the Supplier shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall carry the right to grant sub-

licences and shall be transferable to third parties without the prior consent of the Sub-Contractor.

For the purposes of this Clause, the term “**Documents**” shall mean documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Sub-Contractor in connection with the Sub-Contract (whether in existence or to be made).

5. The Sub-Contractor agrees:

- (a) on request at any time to give the Company or any persons authorised by the Company access to the material referred to in Clause 4 and at the Company’s expense to provide copies of any such material; and
- (b) at the Sub-Contractor’s expense to provide the Company with a set of all such material on completion of the Sub-Contract Services.

6. The parties hereby agree that:

- (a) this Agreement shall be personal to the Sub-Contractor;
- (b) the Company may assign the benefit of this Agreement to any third party;
- (c) the rights and remedies contained in this Agreement are cumulative and shall not exclude any other right or remedy available to either party in law or equity.

7. The Sub-Contractor warrants and undertakes to the Company that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Sub-Contract and that, insofar as he is responsible for the design of the Sub-Contract Services, he has professional indemnity insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in respect of each and every claim which may be made against the Sub-Contractor in respect of the Sub-Contract Services. The Sub-Contractor shall maintain such professional indemnity insurance for a period of 12 years from completion of the Services provided such insurance remains available at commercially reasonable rates and shall notify the Company forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Sub-Contractor’s insurance claims record.

8. If any dispute of any kind whatsoever arises between the parties in connection with this Agreement or the Sub-Contract Services which raises issues which are in opinion of the Company the same as or substantially the same as issues raised in a related dispute (the "**Related Dispute**") between the Company and the Supplier and such Related Dispute has already been referred to a conciliator or arbitrator appointed under the provisions to that effect contained in the Main Contract, then the Sub-Contractor hereby agrees that the Company may at his discretion by giving notice in writing to the Sub-Contractor refer the dispute arising out of this Agreement or the Sub-Contract Services to the adjudicator, conciliator, arbitrator or other party (the "**Appointed Party**") appointed to determine the Related Dispute. In this event the Appointed Party shall have power to give such directions for the determination of the dispute and the Related Dispute as he may think fit and to make such awards as may be necessary in the same way as if the procedure of the High Court as to joining one or more defendants or joint co-defendants or third parties was available to the parties and to him.
9. (a) Neither the Sub-Contractor nor the Supplier shall exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated the Sub-Contract or discontinue or suspend the performance of any of its duties or obligations thereunder or treat the Sub-Contract as determined without first giving to the Supplier or the Sub-Contractor (as applicable) not less than 35 days prior written notice of its intention to do so, with a copy to the Company, specifying the Sub-Contractor's or Supplier's grounds for terminating or treating as terminated the Sub-Contract or discontinuing or suspending its performance thereof or treating the Sub-Contract as determined.
- (b) If the Main Contract is terminated for any reason, within 35 days of such termination the Company may give written notice to the Sub-Contractor and to the Supplier (a "**Step-in Notice**") that the Company or its appointee shall henceforth become the Supplier under the Sub-Contract in accordance with the terms of sub-clause (c) below.
- (c) With effect from the date of the service of any Step-in Notice:
- (i) the Company or its appointee shall be substituted in the Sub-Contract as the Supplier thereunder in place of the Supplier and references in the Sub-Contract to the Supplier shall be construed as references to the Company or its appointee;
- (ii) the Sub-Contractor shall be bound to continue with the performance of its duties and obligations under the Sub-Contract and any exercise or purported exercise by the Sub-Contractor prior to the date of the Step-in Notice of any

right to terminate or treat as terminated the Sub-Contract or to discontinue or suspend the performance of any of its duties or obligations thereunder or to treat the Sub-Contract as automatically determined shall be of no effect;

(iii) the Company shall become bound by the terms and conditions of the Sub-Contract in respect of all obligations and duties of the Supplier thereunder which fall to be performed after the date of the Step-in Notice and shall promptly thereafter make payment of any amounts properly due to the Sub-Contractor as at the date of the Step-in Notice and still outstanding; and

(iv) the Supplier shall be released from further performance of the duties and obligations of the Supplier under the Sub-Contract after the date of the Step-in Notice, but without prejudice to any rights and remedies of:

(1) the Sub-Contractor against the Supplier in respect of any matter or thing done or omitted to be done by the Supplier on or before the date of the Step-in Notice; and

(2) the Supplier against the Sub-Contractor in respect of any matter or thing done or omitted to be done by the Sub-Contractor on or before the date of the Step-in Notice.

(d) Notwithstanding anything contained in this Agreement and notwithstanding any payments which may be made by the Company to the Sub-Contractor, the Company shall not be under any obligation to the Sub-Contractor and the Sub-Contractor shall not be under any obligation to the Company unless the Company shall have served a Step-in Notice pursuant to Clause 9(b) above.

10. The Sub-Contractor's liabilities, duties and obligations hereunder shall be no greater and of no longer duration than the liabilities, duties and obligations which the Sub-Contractor owes to the Supplier under the Sub-Contract.

11. The Sub-Contractor further undertakes to indemnify the Company from and against the consequences of any breach by the Sub-Contractor of any of the warranties, covenants and undertakings contained in this Agreement.

12. The rights and benefits conferred upon the Company by this Agreement are in addition to any other rights and remedies that the Company may have against the Sub-Contractor including, without prejudice to the generality of the foregoing, any remedies in negligence.

- 13. Nothing contained in this Agreement shall in any way limit the obligations of the Supplier to the Company arising under the Main Contract or otherwise undertaken by the Supplier to the Company in relation to the Sub-Contract Services.
- 14. No amendment to this Agreement shall be valid unless it is in writing and signed by all parties.
- 15. Any person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- 16. This Agreement shall be governed by and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

Executed as deed by the parties and delivered on the date of this Agreement.

Executed as a deed by affixing the Common Seal of)
 London Underground Limited)
 in the presence of:-)

.....

[Authorised Signatory]

Executed as a Deed by [SUB-CONTRACTOR])
 acting by)
) Authorised Signatory
 and)
) Authorised Signatory

Executed as a Deed by [SUPPLIER]

)

acting by

)

) Authorised Signatory

and

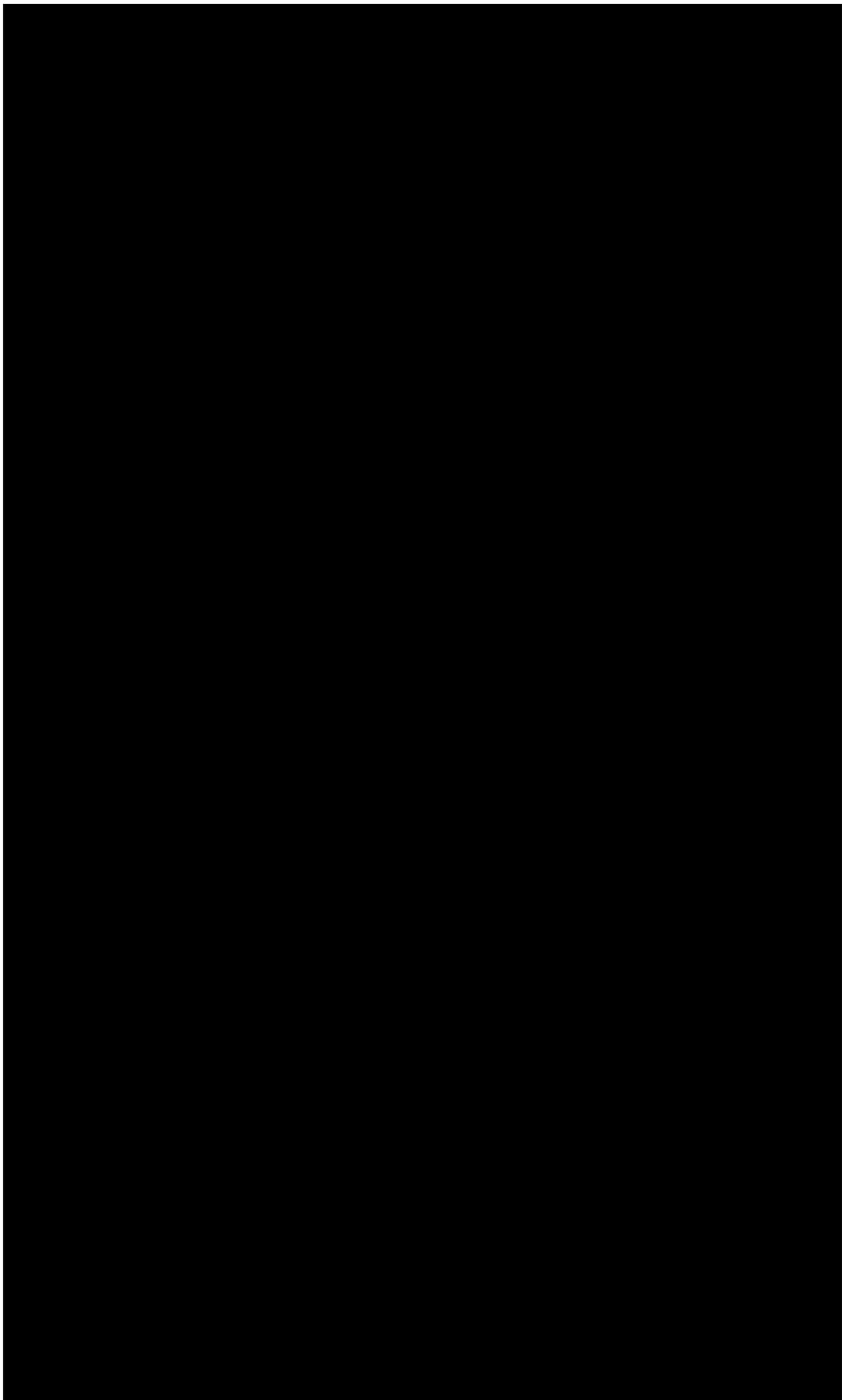
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) Authorised Signatory

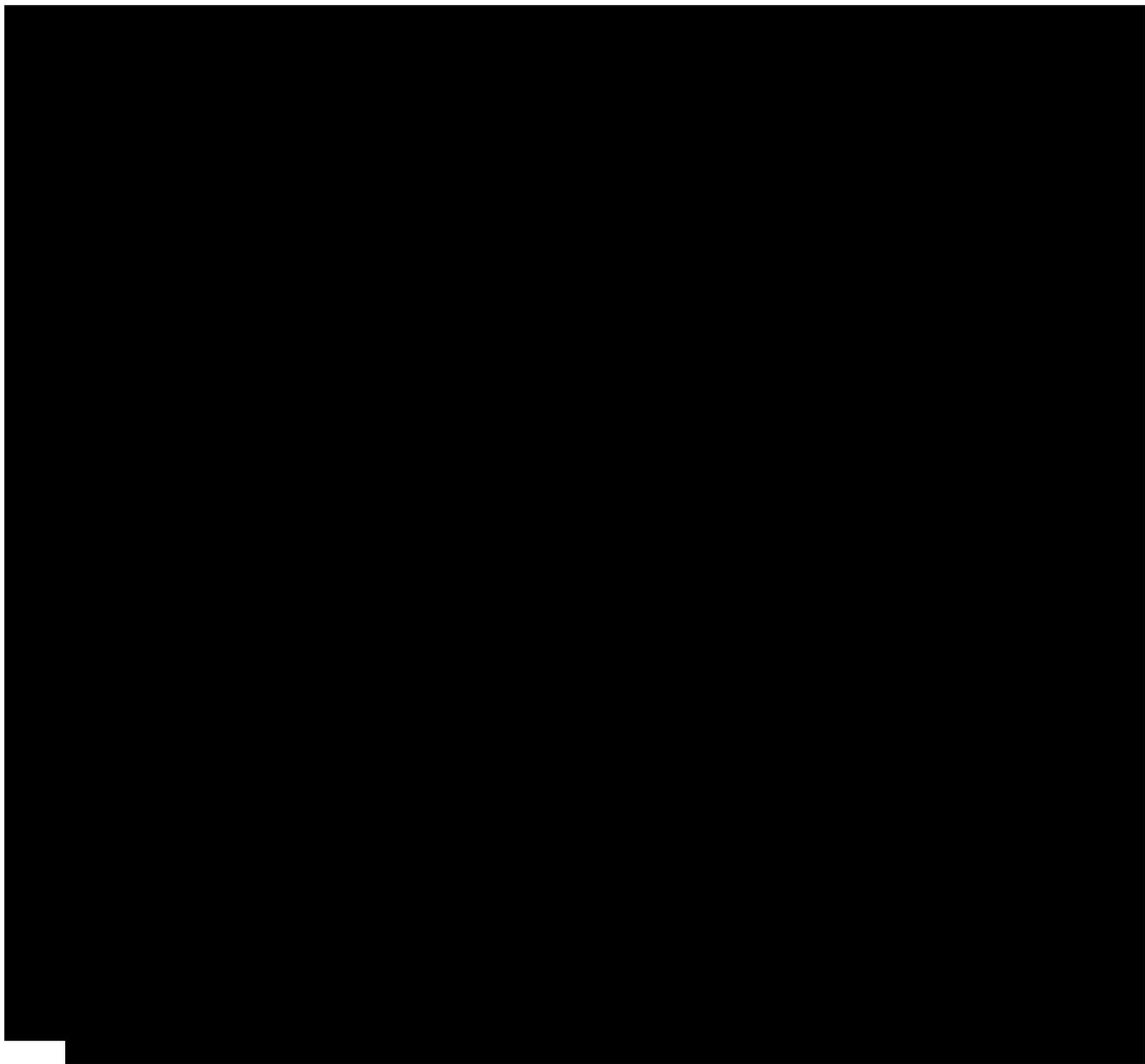
Schedule 10
Supplier Performance

[REDACTED]

[REDACTED]







Schedule 11

Heavy Goods Vehicle Direct Vision Standard

