

# **JCLI Terms & Conditions:**

## **Bromford and Castle Vale Flood Risk Management Scheme**

**January 2022**



The following two Forms of Contract will be deemed to operate and to be co-signed together as follows (the Form of Contract):

- 1) The Joint Committee for Landscape Industries (JCLI) Landscape Works Contract 2017 (JCLI LWC 2017) published by the Landscape Institute.
- 2) The Joint Committee for Landscape Industries (JCLI) Landscape Maintenance Works Contract 2017 (JCLI LMWC 2017) published by the Landscape Institute.

Note the application of the Environment Agency publication “*Constructing a Better Environment*”, a *Safety, Health, Environment and Wellbeing (SHEW) Code of Practice*. All landscape contractors (Contractors) should ensure they are conversant with its content that is applied to Services procured and delivered.

Part A Sections 1 and 2 below provide context to the application of the Form of Contract. Specific particulars for this contract at Bromford then follow in Part B.

## **PART A**

### **1) JCLI LWC 2017:**

FOR USE IN THE LANDSCAPE CONSTRUCTION / IMPLEMENTATION OF WORKS UNTIL THE DATE OF CERTIFICATION OF PRACTICAL COMPLETION.

# AGREEMENT

**This Agreement** is made the

**Between    The Employer**

of whose registered office

**And            The Contractor**

of whose registered office

<sup>1</sup> Where the Employer or Contractor is neither a company incorporated under the Companies Acts nor a company registered under the laws of another country, delete the references to the Company number and registered office. In the case of a company incorporated outside England and Wales, particulars of its place of incorporation should be inserted before its Company number.

Allow for the obligations, liabilities and services described therein against the headings set out below:

RECITALS:

First Recital: Add: “The Work will comprise as per Part B Section 1 of this document and as Clause A13/120 in the Landscape Specification”

Second Recital: The drawings are ENVIMMI001309-CH2-LH-00-SC-L0029 to –L0037. The reference to Work Schedules shall be deleted and replaced by “Schedule of Rates”.

ARTICLES:

Article 2 The Contract Sum has been detailed in Part B, Section 2a, Article 2.

Article 3 shall read: “For the purposes of this Contract, the Landscape Architect/Contract Administrator is:

“( a Chartered Landscape Architect acting as Contract Administrator) of the Environment Agency, National Environmental Assessment and Sustainability (NEAS)”.

Add the following paragraph: “The named Landscape Architect/Contract Administrator may delegate in writing his powers and duties under the Contract to other staff or professional consultants employed by the Environment Agency”.

Article 4: CDM Principal Designer

In the event that an individual piece of work under this contract requires a CDM Principal Designer, then add: “the representative duly authorised by the Programme and Contract Management Service (PCM) of the Environment Agency”.

Article 5:

For this contract the landscape works are being directly undertaken for the Environment Agency as Employer, but also as part of a larger engineering project. However, therefore the name of the civil engineering Contractor acting to fulfil the role of Principal Contractor and its representative will be added upon award of the contract.

When the Principal Contractor completes his work, the role of Principal Contractor will formally be transferred and it will be replaced by the name of the Landscape Contractor acting to fulfil the role of Principal Contractor.

Article 6:

Adjudication shall apply, but the initial stages of the dispute resolution process prior to Adjudication shall be as set out in the additional sub-clauses:

**DISPUTE RESOLUTION**

6.1 All disputes under or in connection with this agreement shall be referred first to negotiators nominated at a suitable and appropriate working level by the Environment Agency and the Contractor.

6.2 If the parties' negotiators are unable to resolve the dispute within a period of forty-five days from its being referred to them, the dispute shall be referred at the instance of either party to the parties' respective senior managers or directors (supported as necessary by their advisors).

- 6.3 If the parties' respective senior managers or directors are unable to resolve the dispute within forty-five days the dispute shall be referred to the Centre for Dispute Resolution who shall appoint a mediator and the parties shall then submit to the mediator's supervision of the resolution of the dispute.
- 6.4 Recourse to this dispute resolution procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until forty-five days after the appointment of the mediator.
- 6.5 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be put in writing and, once signed by a duly authorised representative of each of the parties, shall remain binding on the parties.
- 6.6 The parties shall bear their own legal costs of this dispute resolution procedure, but the costs and expenses of mediation shall be borne by the parties equally.
- 6.7 Any of the time limits in 6.1 to 6.7 above may be extended by mutual agreement. Such agreed extension shall not prejudice the right of either party to proceed to the next stage of resolution of adjudication.

Article 7:

Arbitration provisions of Article 7 and Schedule 1 apply but refer to Article 6 "Dispute Resolution" (sub-clauses 6.1 to 6.7) which shall take precedence prior to Adjudication being applied.

Article 8:

Legal proceedings apply.

CONTRACT PARTICULARS

Fourth Recital and Schedule 2: Insert the relevant Base Date (date for Contract Commencement).

Fourth Recital and Clause 4.2: Delete, "is a 'contractor'".

Fifth Recital:

It is considered that some elements of "construction" work defined in Section 3, JCLI Practice Note No 8 Revision 2 April 2017 or as superseded, will be undertaken. Since these elements are considered to be "construction work" as defined in the CDM Regulations 2015, then CDM Regulations would be assumed to apply. The project will be notifiable since the construction phase is likely to last more than 30 days, to have more than 20 workers working simultaneously at any point in the project or exceed 500 person days of "construction work". Contractors are advised that the Environment Agency Guidance requires for all projects involving digging of excavations, power tools and plant, that the definition of construction shall apply.

Sixth Recital: Not Applicable

Seventh Recital and Schedule 3: All apply with the exception of cost savings and value improvements (Supplemental Provision 3). The Employer's nominee will be the Contract Administrator and the Contractor's nominee will be the Contract Manager.

Article 7: Arbitration provisions of Article 7 and Schedule 1 apply but refer to Article 6 "Dispute Resolution" (sub-clauses 6.1 to 6.7) which shall take precedence prior to Adjudication being applied.

Clause 2.2:

The Date for Commencement of the Works is the date for commencement of the contract: This will be agreed and notified in writing with the contractor prior to an order being placed.

The Date for Completion will be the expected date for certification of practical completion of the works and will be notified in writing to the contractor.

Clause 2.8: Liquidated damages shall be calculated at a weekly rate or part thereof. A liquidated damages schedule is included in Part B and will be calculated once the contract has been awarded.

Clause 2.10A or 2.10B:

2.10A "Defects and establishment care of plants by Contractor" applies, 2.10B is deleted. The Rectification Period (formerly known as the defects liability period), from the date of practical completion is as follows:

- Grass: 12 months.
- Bulbs: 12 months.
- Shrubs, ordinary nursery stock trees, or other plants: 60 months.
- Semi mature advanced or extra heavy large nursery stock: 60 months. Defects shall be made good at 12 monthly intervals during this period.

The care of grass, bulbs, shrubs, trees and other plants after practical completion will be undertaken in conjunction with the Joint Committee for Landscape Industries (JCLI) Landscape Maintenance Works Contract 2017 (JCLI LMWC 2017) until the end of the Rectification Period outlined above.

Clause 2.13: Delete item and insert: "A Provisional Sum will not be included in the Contract Sum but works arising from theft or malicious damage may be instructed by the Landscape Architect/Contract Administrator using the tendered schedule of rates at the Employers cost".

Clause 4.3.1: The rate shall be 90 per cent.

Clause 4.4.1: The rate shall be 95 per cent.

Clauses 4.3, 4.4 and 4.8: Fluctuations provision; Schedule 2 does not apply.

Clauses 4.3, 4.4 and 4.8: Percentage addition for Schedule 2 (paragraph 13) is not applicable.

Add an additional Clause 4.8A prior to 4.8.1:

This additional Clause 4.8A shall be incorporated into the JCLI Works Contract:

"The Contractor shall supply within twelve months from the date of practical completion all documentation reasonably required for the computation of the amount to be certified by the Landscape Architect/Contract Administrator, including any amounts either ascertained or agreed under Clauses 3.6 or 3.7 hereof, and the Landscape Architect shall within 28 days of receipt of such documentation, provided that the Landscape Architect has issued the Certificate of Making Good under Clause 2.11 hereof, appertaining to the first twelve months defects liability, issue an interim certificate certifying the amount due to the contractor, being 95% of the total amount to be paid to the Contractor under this

contract so far or due to the Employer as the case may be, on completion of those defects referred to in the Certificate of Making Good. Such a sum shall, as from the fourteenth day after the date of the above interim certificate, be a debt payable as the case may be by the Employer to the Contractor or by the Contractor to the Employer”.

Clause 4.8.1: Add 60 months. The 5% retention of the works value certified at practical completion is retained for the full establishment aftercare maintenance period prior to release.

Clause 5.3: Contractor’s Public Liability insurance shall be £5 million.

Clause 5.4A: Applies.

Clauses 5.4B, 5.4C and 5.4D: Not applicable.

Clause 5.4A, 5.4B: Not applicable.

Clause 5.4D: Not applicable.

Clause 7.2: The Adjudicator shall be “the President or a Vice President of the Landscape Institute”.

Schedule 1 (Paragraph 2.1): The Arbitrator shall be “the President or a Vice President of the Landscape Institute”.

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***EXECUTION UNDER HAND***

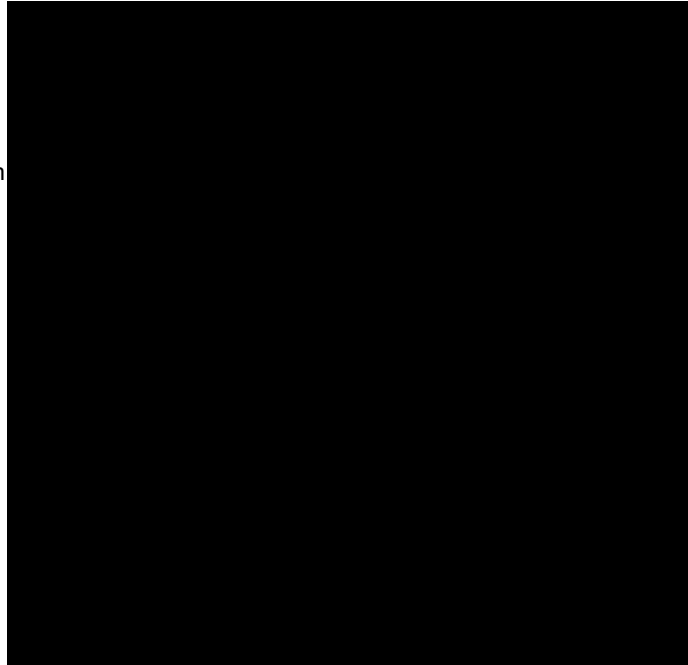
**AS WITNESS**

the hands of the Parties or their duly authorised representatives

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Signed by or on behalf of the Employer

in the presence of



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Signed by or on behalf of the Contractor

in the presence of





**2) JCLI LMWC 2017:**

FOR USE IN THE ESTABLISHMENT AFTERCARE MAINTENANCE OF A PROJECT (COVERING THE RECTIFICATION/DEFECTS PERIOD IN THE WORKS IMPLEMENTATION CONTRACT) UNTIL THE END OF MAINTENANCE (THE DATE OF CERTIFICATION OF COMPLETION).

Allow for the obligations, liabilities and services described therein against the headings set out below:

# AGREEMENT

**This Agreement** is made the

**Between    The Employer**

of whose registered office

**And            The Contractor**

of whose registered office is a

<sup>1</sup> Where the Employer or Contractor is neither a company incorporated under the Companies Acts nor a company registered under the laws of another country, delete the references to the Company number and registered office. In the case of a company incorporated outside England and Wales, particulars of its place of incorporation should be inserted before its Company number.

**RECITALS:**

First Recital: Add: “The Work will comprise as per Part B Section 1 of this document and as Clause A13/120 in the Landscape Specification”

Second Recital: The drawings ENVIMMI001309-CH2-LH-00-SC-L0029 to L0037. The reference to Work Schedules shall be deleted and replaced by “Schedule of Rates”.

**ARTICLES:**

Article 2: Option B applies. The Contract Sum has been detailed in Part B, Section 2a, Article 2.

Article 3 shall read: “For the purposes of this Contract, the Landscape Architect/Contract Administrator is:

*“(Insert name of Chartered Landscape Architect acting as Contract Administrator) of the Environment Agency, National Environmental Assessment and Sustainability (NEAS)”.*

Add the following paragraph: “The named Landscape Architect/Contract Administrator may delegate in writing his powers and duties under the Contract to other staff or professional consultants employed by the Environment Agency”.

Article 4: Principal Designer

Soft landscape maintenance is not deemed to be “construction work” under the CDM Regulations 2015. Since this work forms part of a construction project which has been deemed to be “construction work”, then it will be deemed to be part of the construction project.

Article 5: Principal Contractor

For this contract the landscape works are being directly undertaken for the Environment Agency as Employer, but also as part of a larger engineering project, therefore the name of the civil engineering Contractor acting to fulfil the role of Principal Contractor and its representative will be added upon award of the contract.

When the Principal Contractor completes his work, the role of Principal Contractor will formally be transferred and it will be replaced by the name of the Landscape Contractor acting to fulfil the role of Principal Contractor.

Article 6:

Article 6 of JCLI LMWC 2017 applies, but the initial stages of the dispute resolution process prior to Adjudication shall be as set out in the additional sub-clauses:

**DISPUTE RESOLUTION**

6.1 All disputes under or in connection with this agreement shall be referred first to negotiators nominated at a suitable and appropriate working level by the Environment Agency and the Contractor.

6.2 If the parties' negotiators are unable to resolve the dispute within a period of forty five days from its being referred to them, the dispute shall be referred at the instance of either party to the parties' respective senior managers or directors (supported as necessary by their advisors).

- 6.3 If the parties' respective senior managers or directors are unable to resolve the dispute within forty five days the dispute shall be referred to the Centre for Dispute Resolution who shall appoint a mediator and the parties shall then submit to the mediator's supervision of the resolution of the dispute.
- 6.4 Recourse to this dispute resolution procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until forty-five days after the appointment of the mediator.
- 6.5 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be put in writing and, once signed by a duly authorised representative of each of the parties, shall remain binding on the parties.
- 6.6 The parties shall bear their own legal costs of this dispute resolution procedure, but the costs and expenses of mediation shall be borne by the parties equally.
- 6.7 Any of the time limits in 6.1 to 6.7 above may be extended by mutual agreement. Such agreed extension shall not prejudice the right of either party to proceed to the next stage of resolution of adjudication.

Article 7:

Arbitration provisions of Article 7 and Schedule 1 apply but refer to Article 6 "Dispute Resolution" (sub-clauses 6.1 to 6.7) which shall take precedence prior to Adjudication being applied.

Article 8:

Legal proceedings apply.

CONTRACT PARTICULARS

Article 2: Option B applies and A will be deleted.

Fourth Recital:

Delete the first and second asterisked items, leaving the third.

For the purpose of this contract, the CDM Regulations are deemed to apply. Therefore, retain the text: "The CDM Regulations do apply and Articles 4 and 5 and clause 3.9 are applicable (unless circumstances change)".

Note that should the scope of works change, the contractor is reminded that the definition of construction shall apply.

It is considered that some elements of "construction" work defined in Section 3, JCLI Practice Note No 8 Revision 2 April 2017 or as superseded, may be undertaken during establishment aftercare. Since these elements are considered to be "construction work" as defined in the CDM Regulations 2015, then CDM Regulations would be assumed to apply to this contract.

In the circumstances that the above criteria is likely to apply or be exceeded, then the project will become notifiable. This eventuality is allowed for in this contract document hence articles 4 and 5 and Clause 3.9 should not be deleted.

Fifth Recital: Not Applicable

Sixth Recital and Schedule 5: All apply with the exception of cost savings and value improvements (Supplemental Provision 3). The Employer's nominee will be the Contract Administrator and the Contractor's nominee will be the Contract Manager.

Article 7: Article 7 and Schedule 1 apply but refer to Article 6 "Dispute Resolution" (sub-clauses 6.1 to 6.7) which shall take precedence prior to Adjudication being applied.

Clause 2.2:

The Commencement Date is the date for commencement of the contract for the maintenance works.

The End Date for this contract will be 5 years from the date that practical completion is awarded.

Clause 3.5: Period to comply with written notice is 3 working days.

Clause 4.2.1: Periodic payment interval is 3 months (or routinely a longer interval as agreed with the CA) during the whole of the establishment aftercare period.

Clause 4.7: Delete the second asterisked item, leaving the first.

Liquidated damages shall be calculated at a weekly rate or part thereof. A liquidated damages schedule is included in Part B and will be calculated once the contract has been awarded.

Clause 4.8: This Bonus clause does not apply.

Clause 4.9 Inflation: Price Index shall be the Consumer Price Index, subject to the Contractors tendered reduction.

Clause 4.10 and Schedule 2 (Paragraph 12): Not applicable.

Clause 5.3: Contractor's Public Liability insurance shall be £5 million.

Clause 6.4.3: KPI's will be used to evaluate contractor performance. The following indicators will be applied to this contract:

- Three consecutive quarters below 70 = termination of contract
- Two RIDDOR or RAMS issues (score of 0) in a rolling 4 quarter reporting period = termination of contract
- Three occurrences a score of 0 or 1 for the same KPI in a rolling 4 quarter reporting period = termination of contract

Clause 6.8.2: One month.

Clause 6.10.1: One month.

Clause 7.2: The Adjudicator shall be the President or a Vice President of the Landscape Institute.

Schedule 1 (paragraph 2.1): Arbitration shall apply but refer to Article 6 "Dispute Resolution" (sub-clauses 6.1 to 6.7) which shall take precedence prior to Adjudication being applied.

Schedule 2 (paragraphs 1.1, 1.2, 1.5, 1.6, 2.1 and 2.2): Insert the relevant Base Date (date for Contract Commencement).

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***EXECUTION UNDER HAND***

**AS WITNESS**

the hands of the Parties or their duly authorised representatives

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Signed by or on behalf of the Employer

in the presence of

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Signed by or on behalf of the Contractor

in the presence of

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## **PART B**

### **SECTION 1 - Specifics of Bromford FAS contract**

**Landscape specification will apply along with relevant JCLI terms and conditions: -**

JCLI Landscape Works Contract 2017  
(JCLI LWC 2017)



JCLI Landscape Maintenance Works Contract  
2017 (JCLI LMWC 2017)



(Please also complete Section 2a)

(Please also complete Section 2b)

**Contract Lot:** Lot 1 - Bromford

**Nature of works:** To undertake landscape works implementation and 5 year's establishment aftercare as part of the Bromford FAS scheme.

**The date for Commencement of the works is:** 31<sup>st</sup> January 2022

**The date for Completion shall be:** 1<sup>st</sup> April 2027

**The dates for any Phasing of works is:** Should planting works not be completed prior to the end of March 2022, then any planting already completed satisfactorily prior to this date would be granted partial practical completion (Phase 1) and the remaining planting (Phase 2) would be undertaken to agreed dates in Autumn 2022 to achieve full practical completion.

Mobile tel.: [REDACTED]

Agreed date, time and location for pre-start meeting: To be confirmed upon appointment.

Requirement for any site-specific herbicide licences, permits to work and other approvals, or any applied for by the Environment Agency: Likely to be required for the following (but not necessarily exhaustive):

- Permit for the application and spraying of herbicide adjacent to watercourse.
- Water abstraction licence.



**SECTION 2a - JCLI LWC 2017 - Landscape Works Contract**

**RECITALS**

**Second Recital:** The Employer has had the following document prepared which show and describe the work to be done (tick appropriate box):

- ☒ The drawings numbered / listed in: ENVIMMI001309-CH2-LH-00-SC-L0029 to L0037.
- ☒ A Specification
- ☒ Work Schedules
- ☒ A Schedule of Liquidated Damages

**CONTRACT PARTICULARS**

Fourth Recital and  
Schedule 2: 31<sup>st</sup> January 2022

Fifth recital: Delete whichever does not apply:

- The CDM Regulations do apply and Articles 4 and 5 and clause 3.9 are applicable (unless circumstances change) **and**
- The project **is** notifiable.

Clause 2.2: The Date for Commencement of the Works is: 31<sup>st</sup> January 2022

The Date for Completion will be the expected date for

## **RECITALS**

**Second Recital:** the Employer has had the following documents prepared which show and describe the work to be undertaken relating to maintenance operations: (tick appropriate box):

- ☒ The drawings numbered ENVIMMI001309-CH2-LH-00-SC-L0029 to L0037.
- ☒ A Specification
- ☒ A Schedule of Rates
- ☒ A Schedule of Liquidated Damages

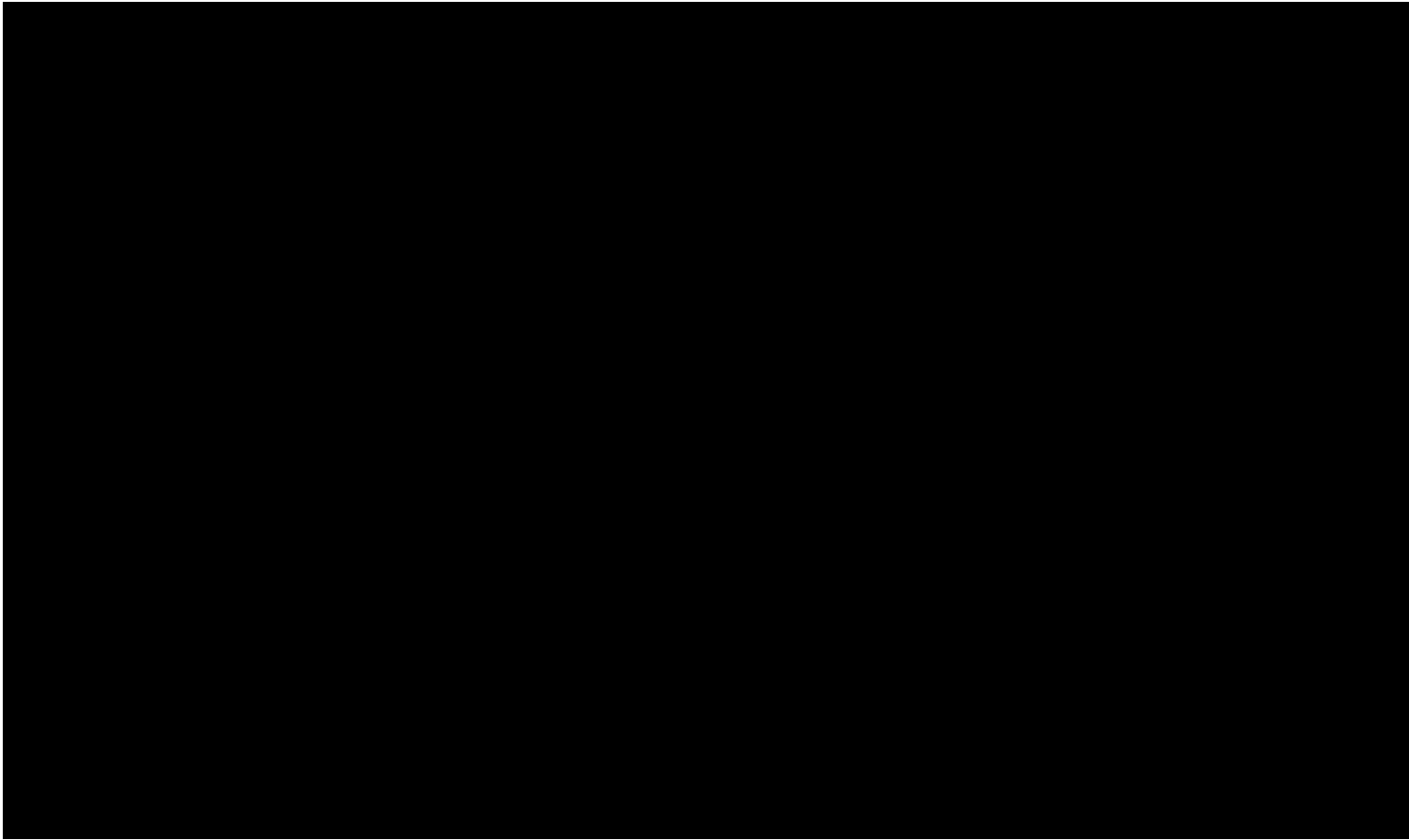
## **ARTICLES**

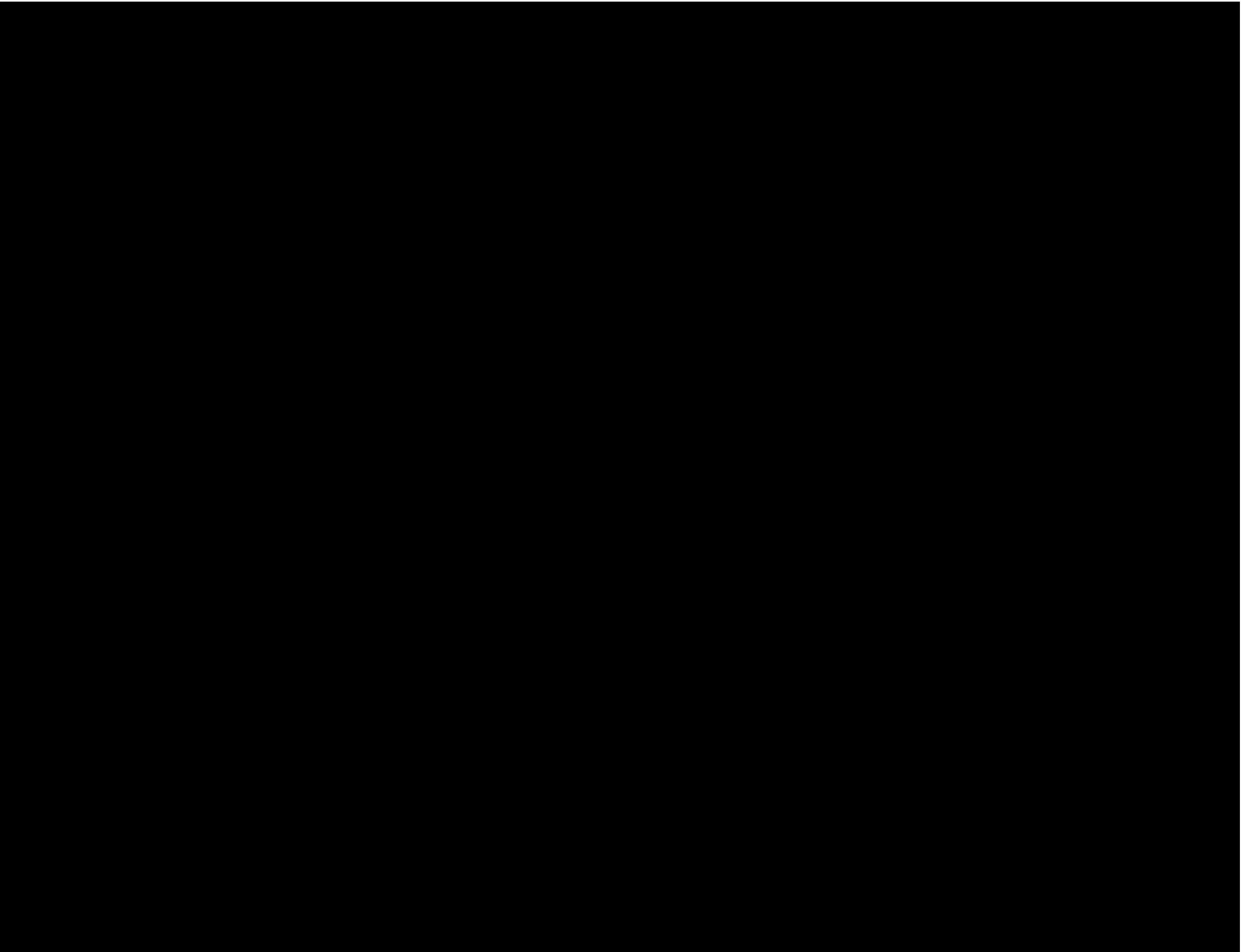
### **Article 2**

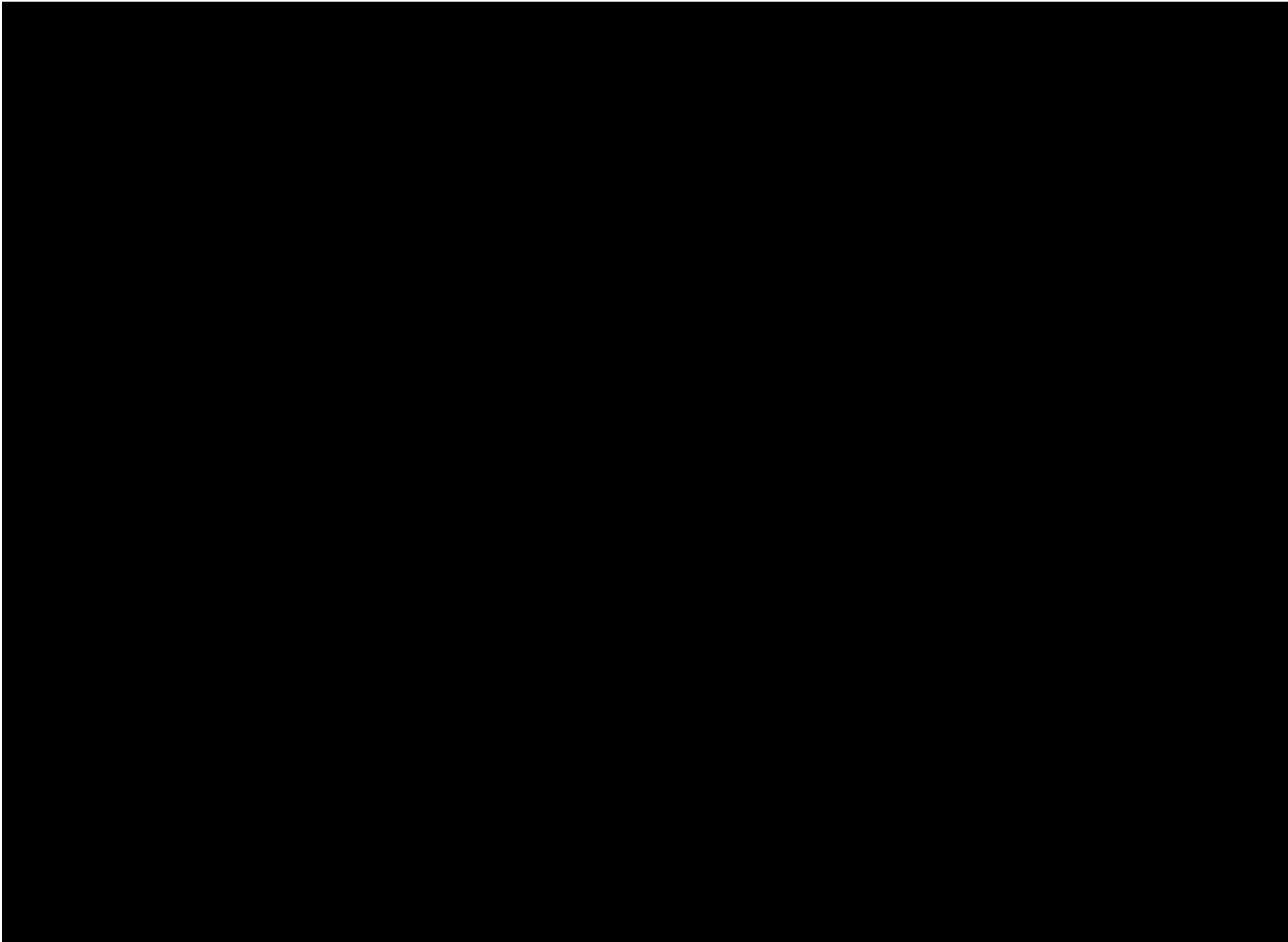
The Employer will pay the Contractor at the times and in the manner specified in the Conditions:

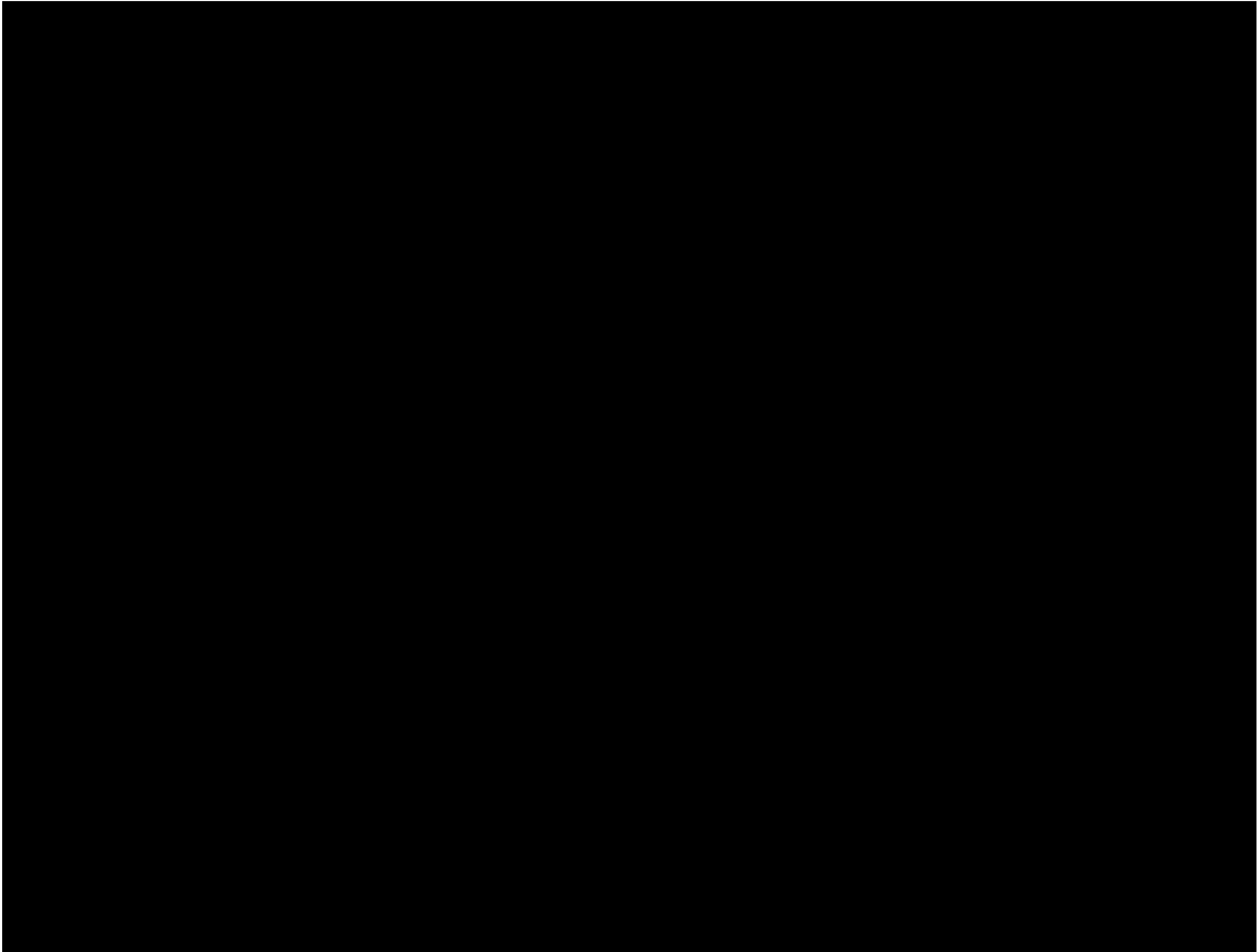
b) a VAT-exclusive sum calculated in accordance with the priced Schedule of Rates

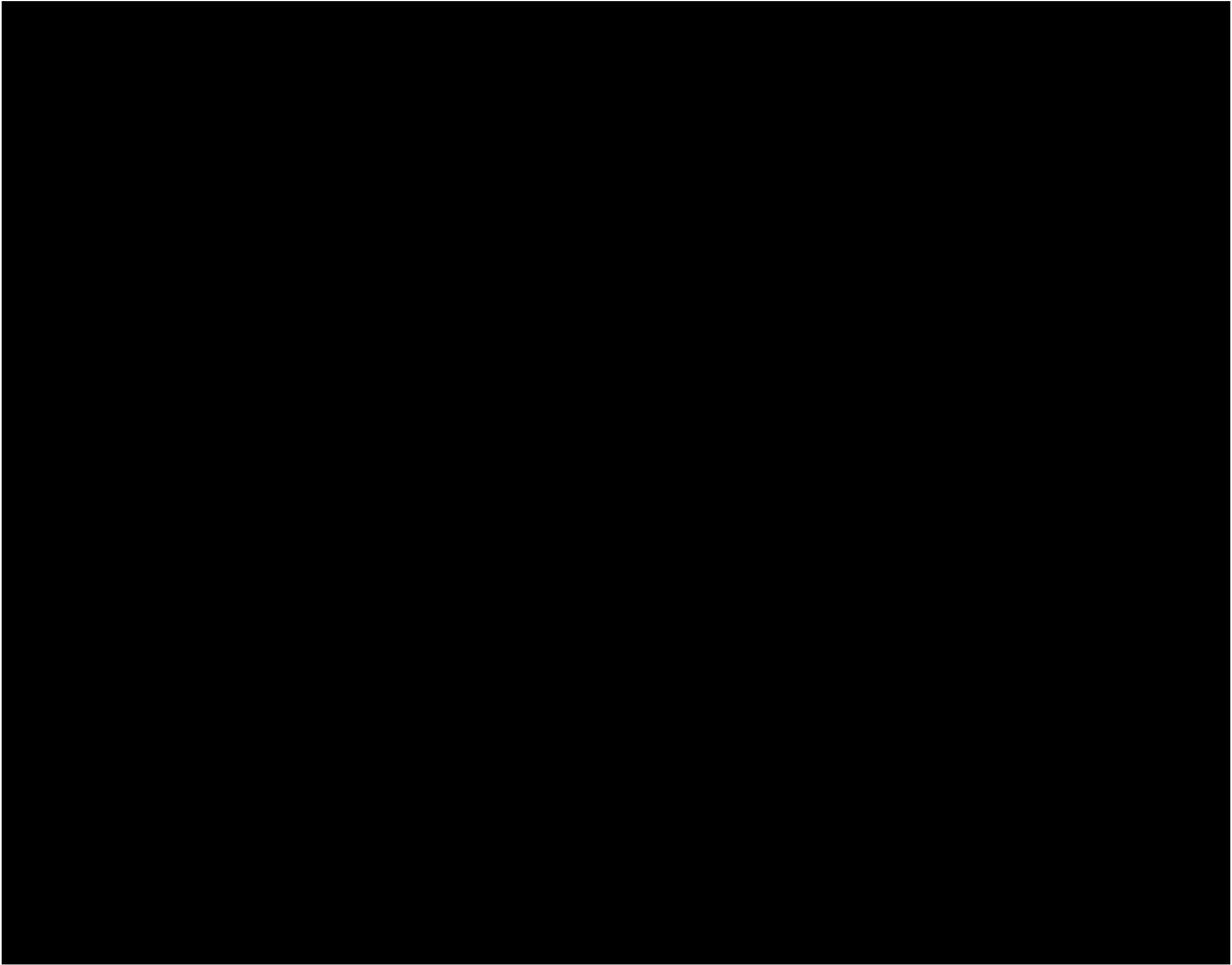
*The landscape works are being directly undertaken for the Environment Agency as Employer, and as part of a larger engineering project. The name of the Principal Contractor's representative will be added upon appointment.*

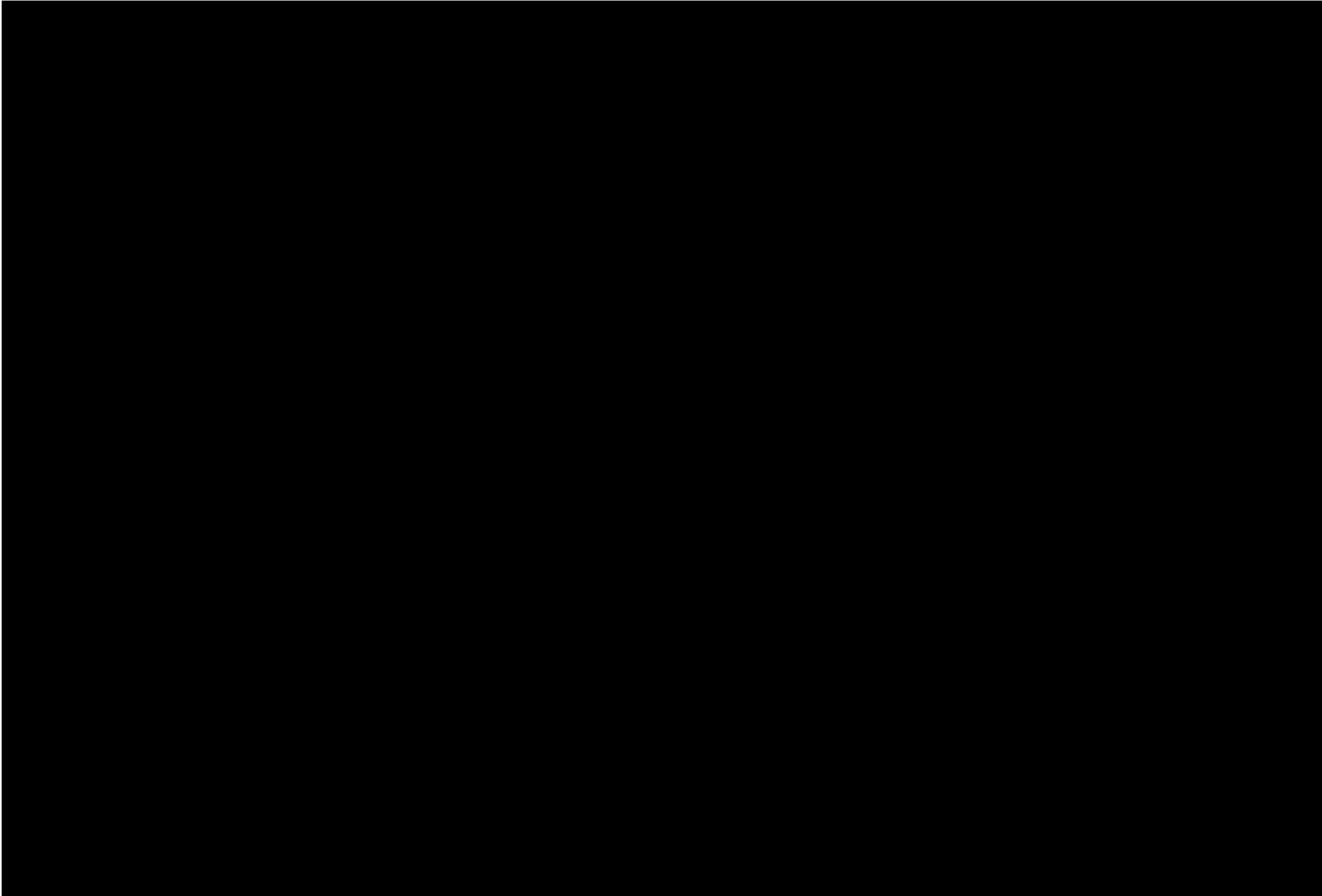






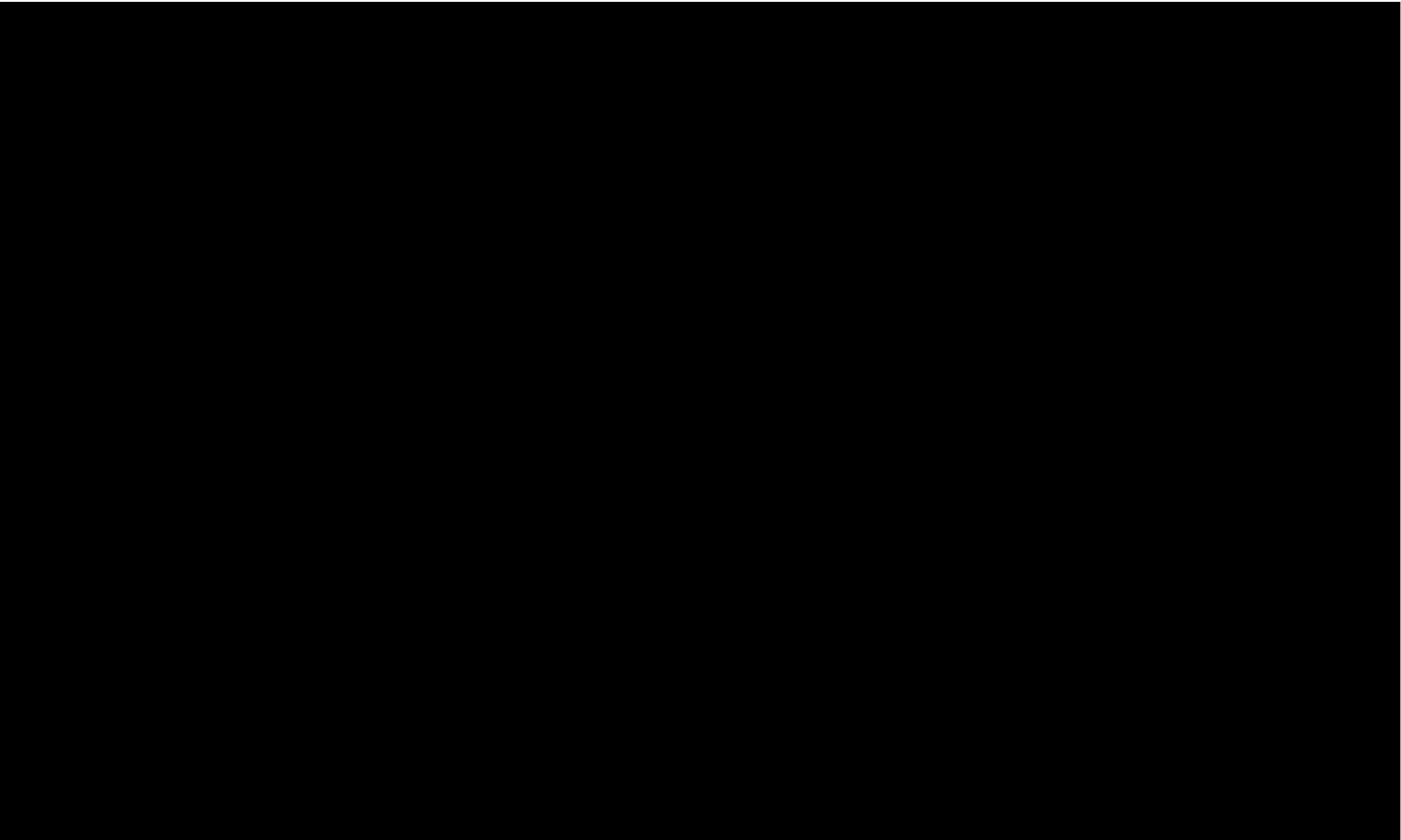


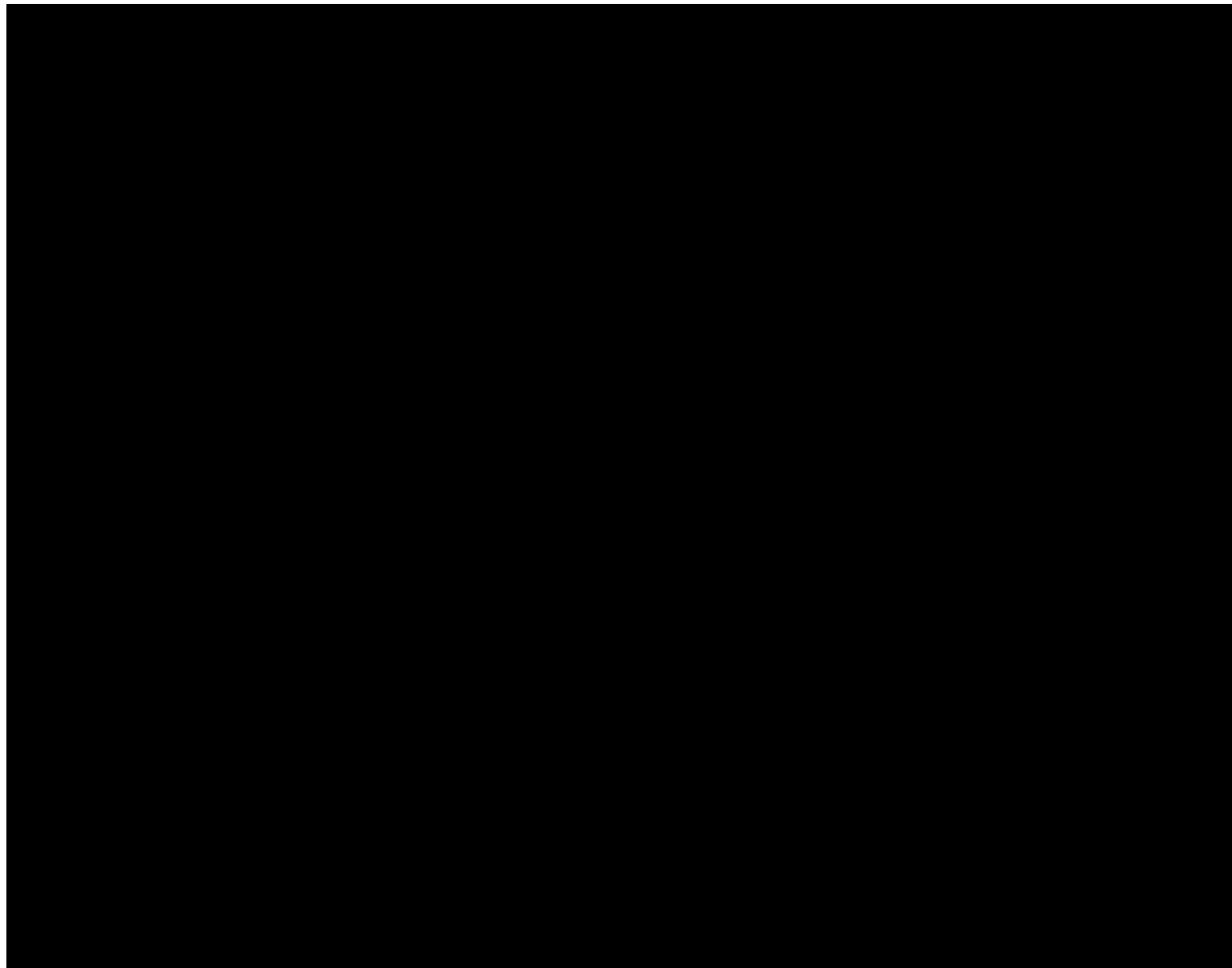


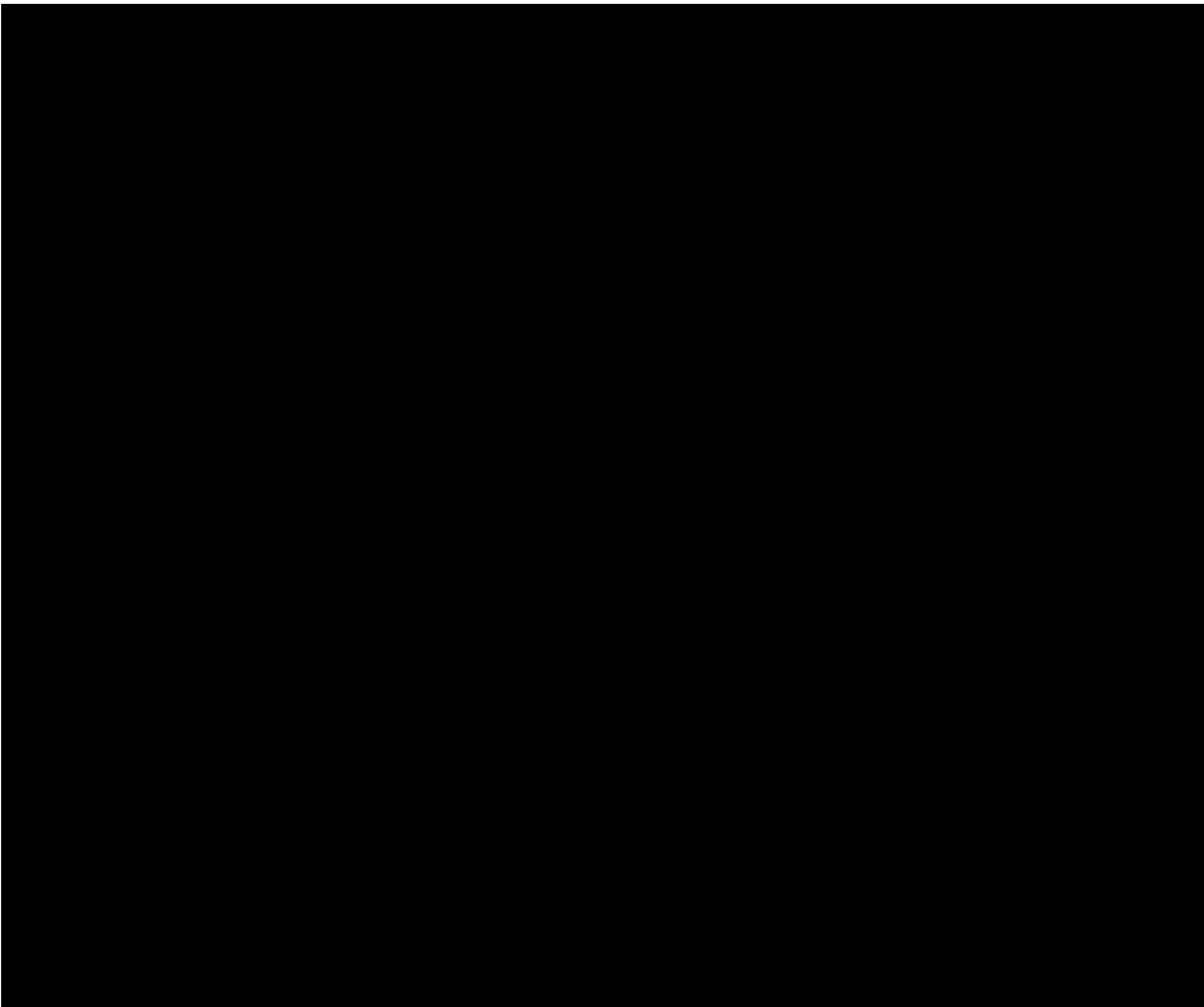




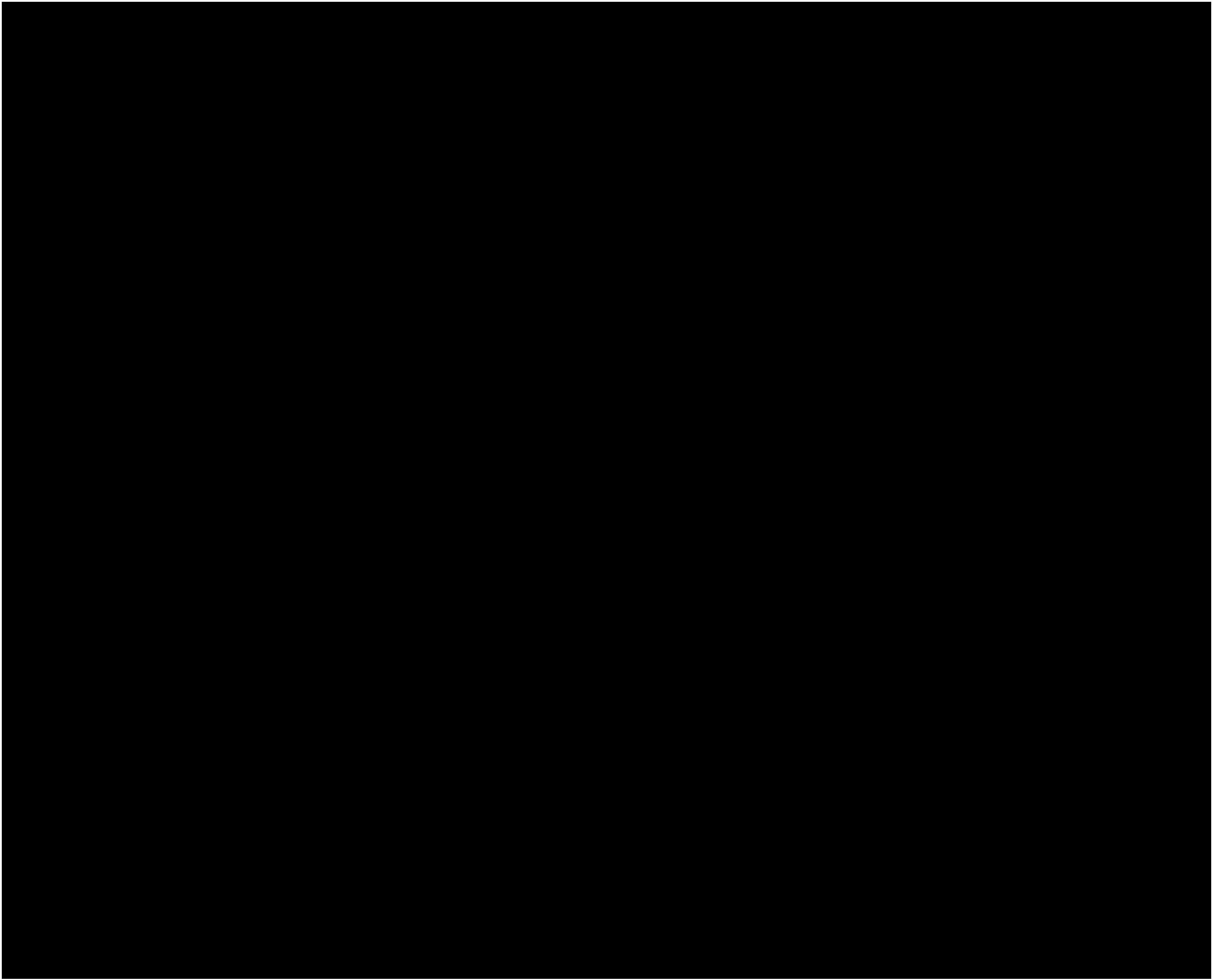


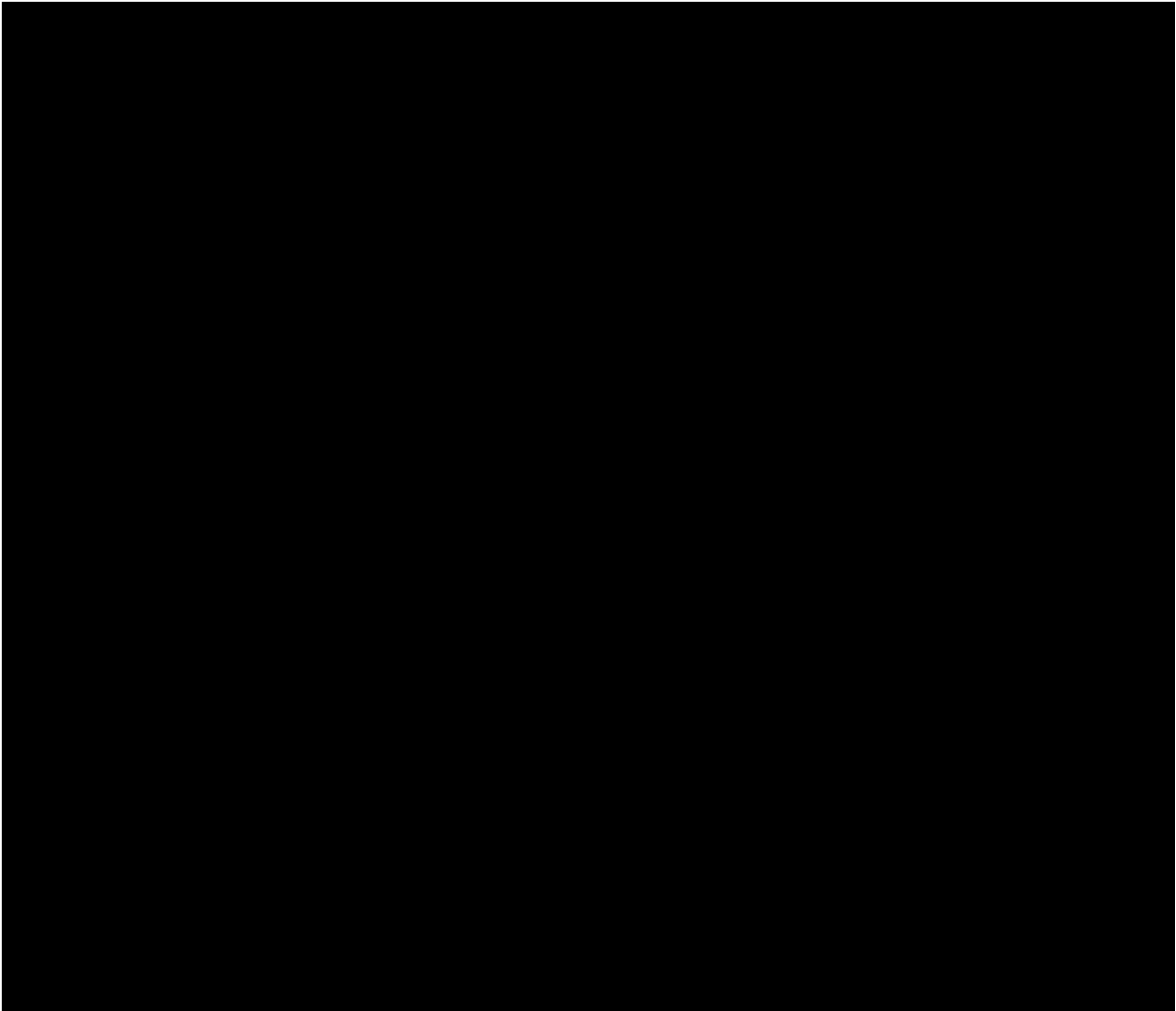


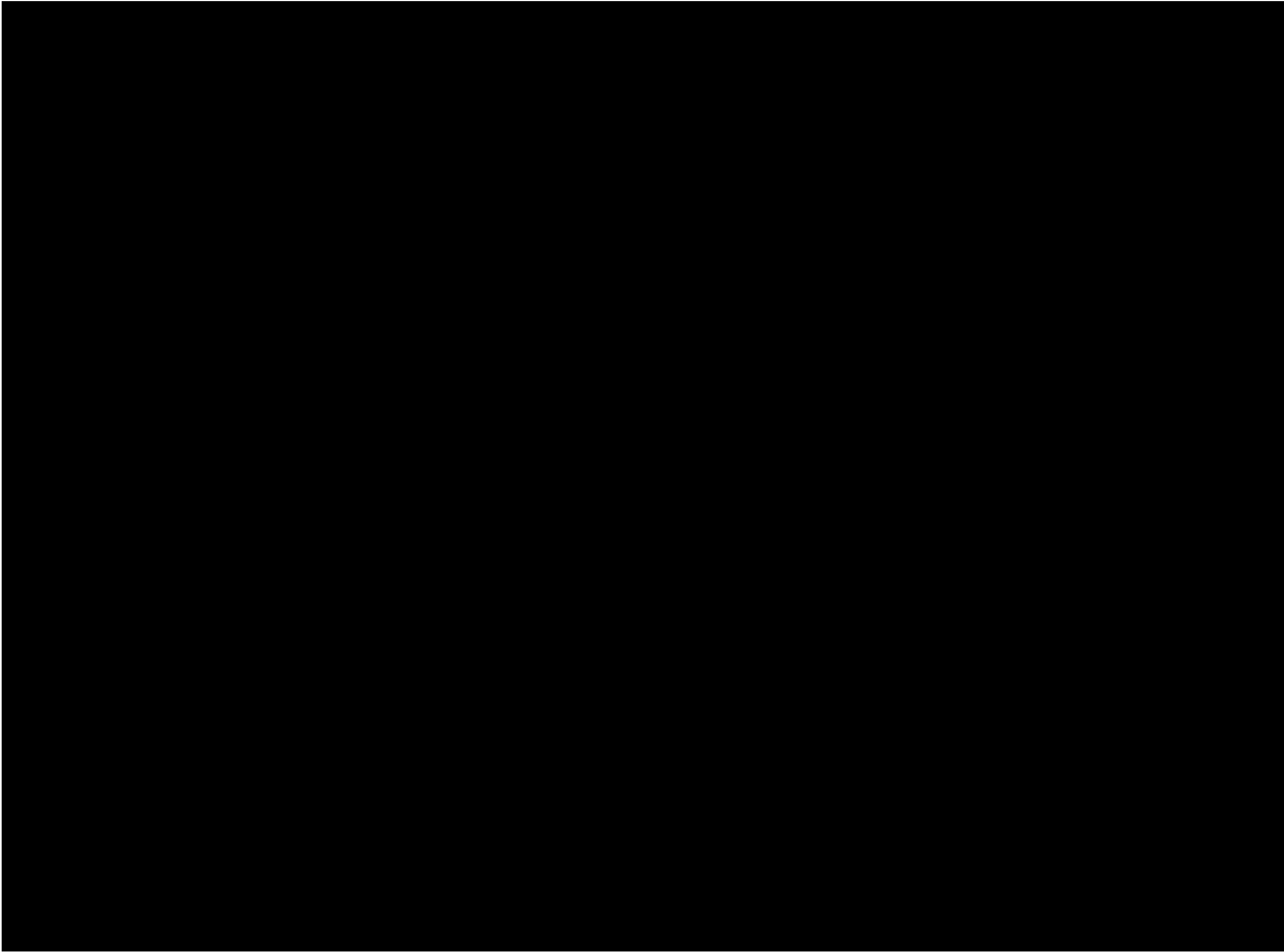




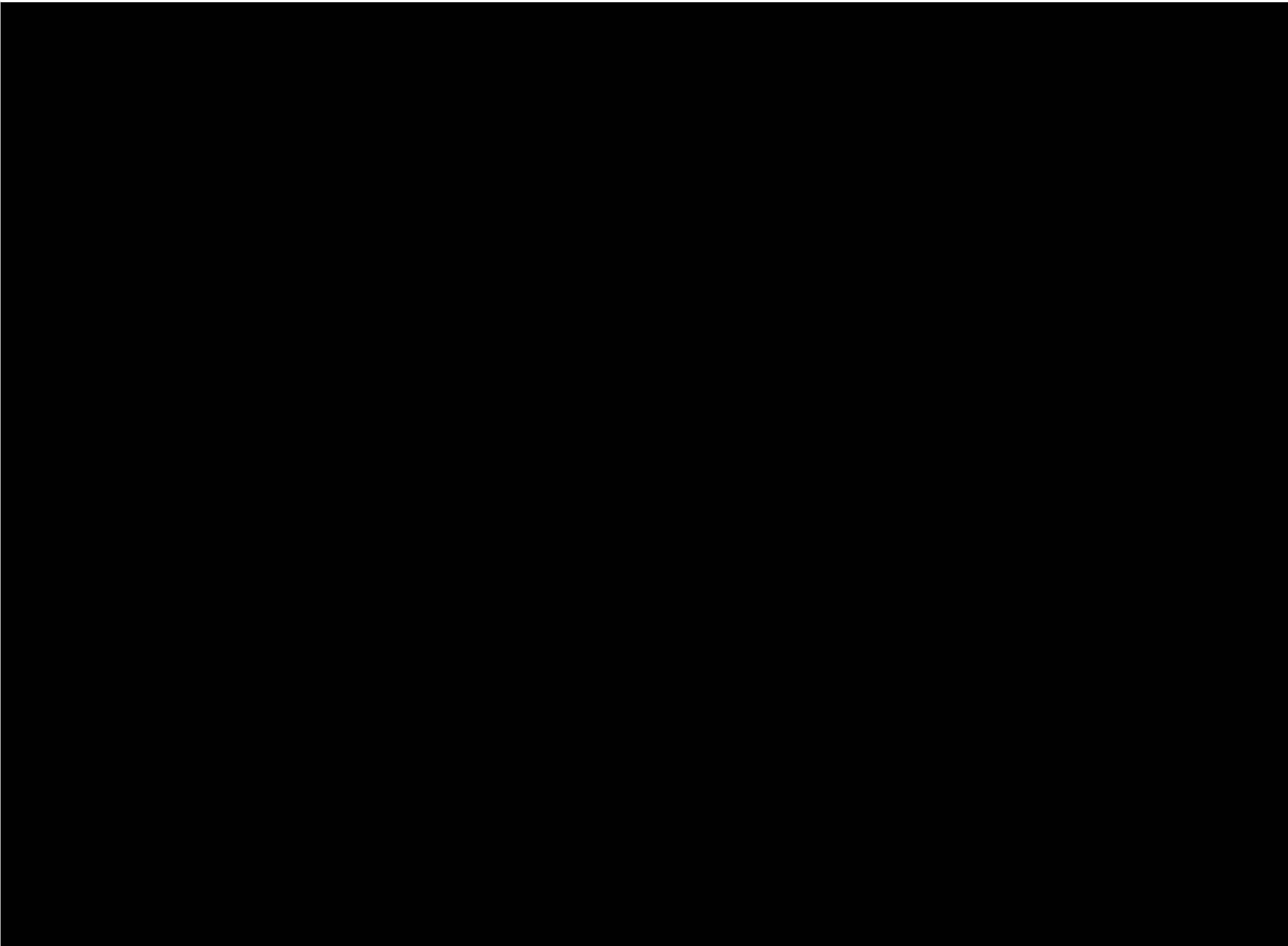


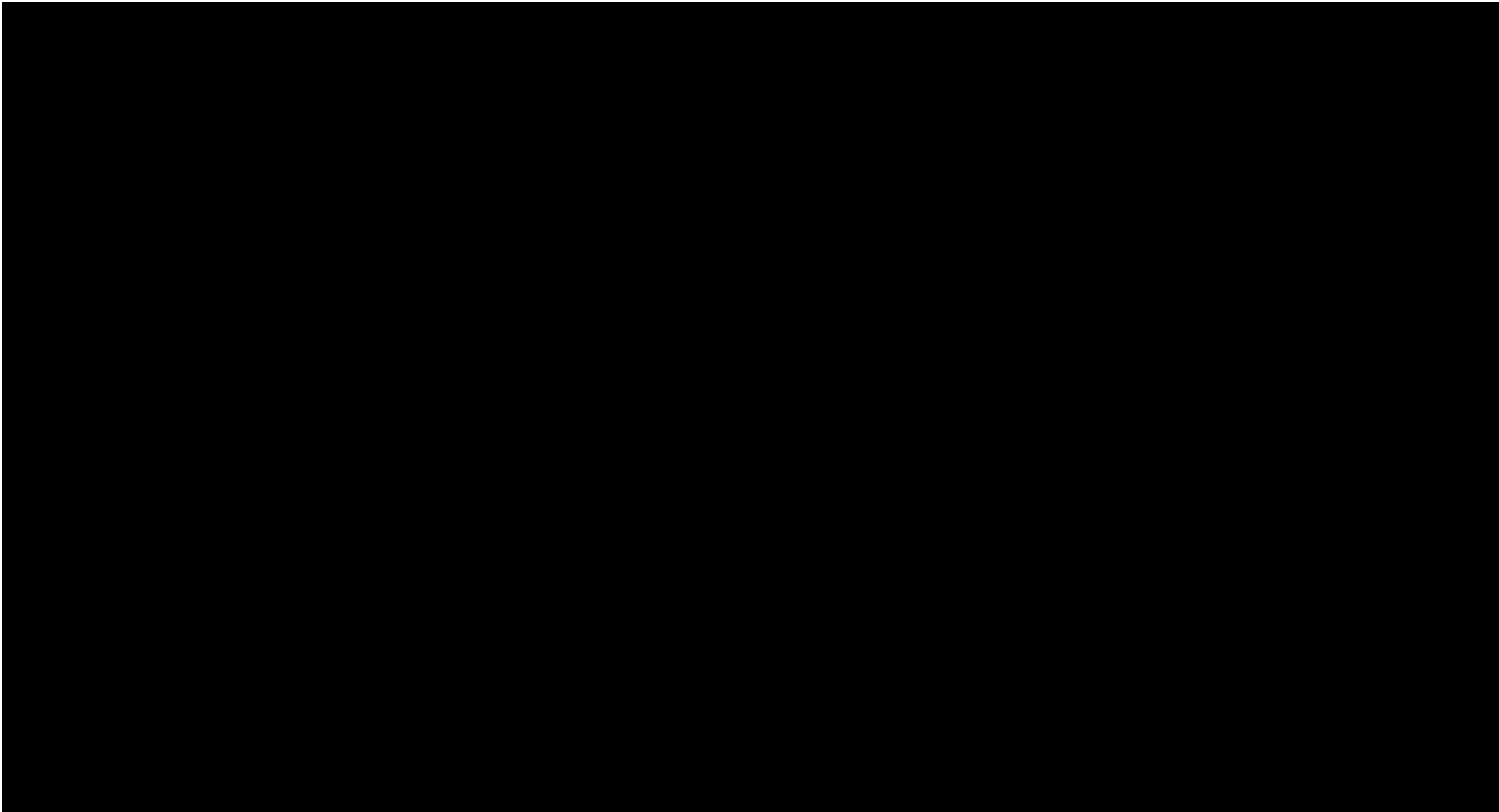


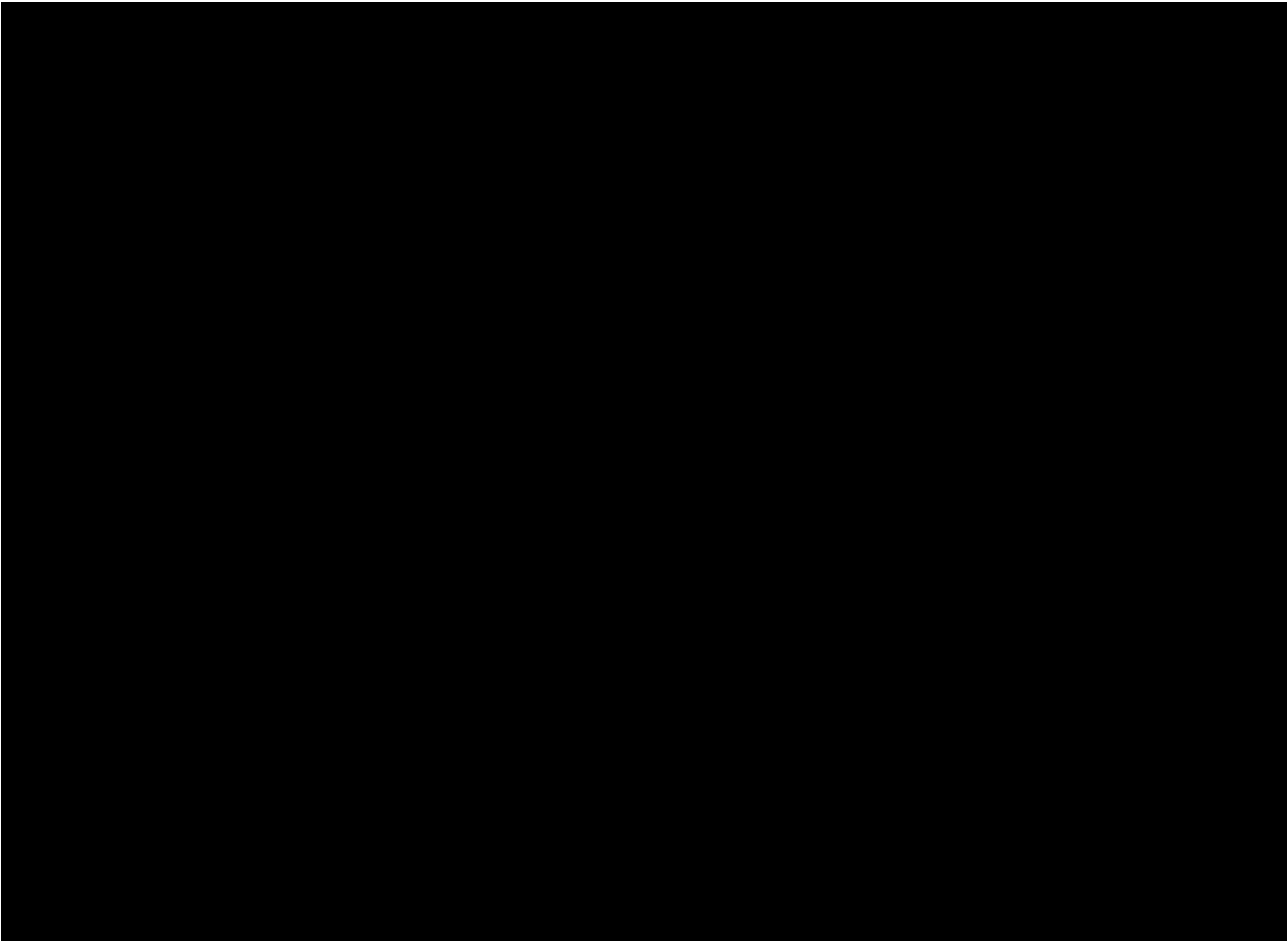


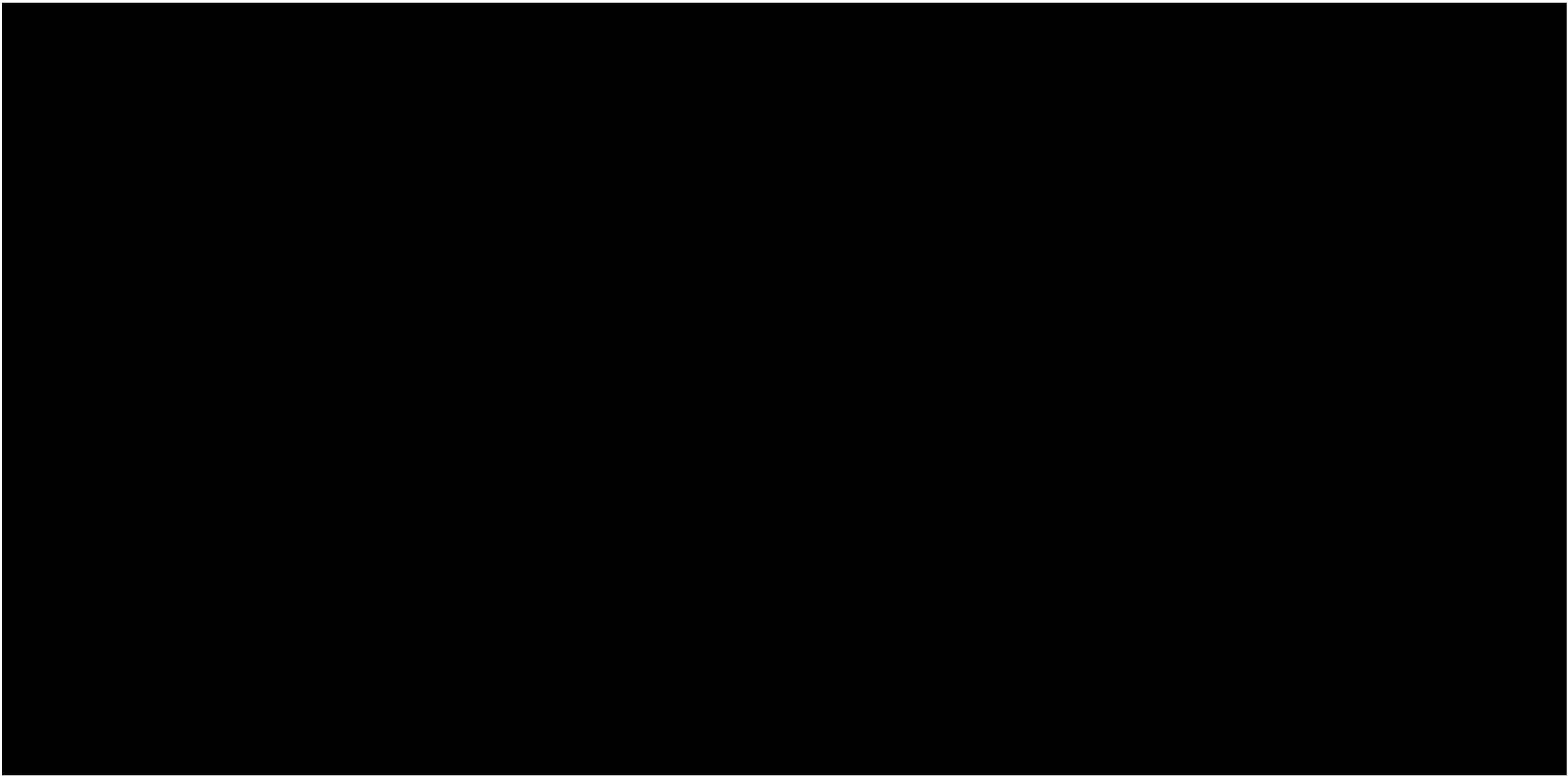


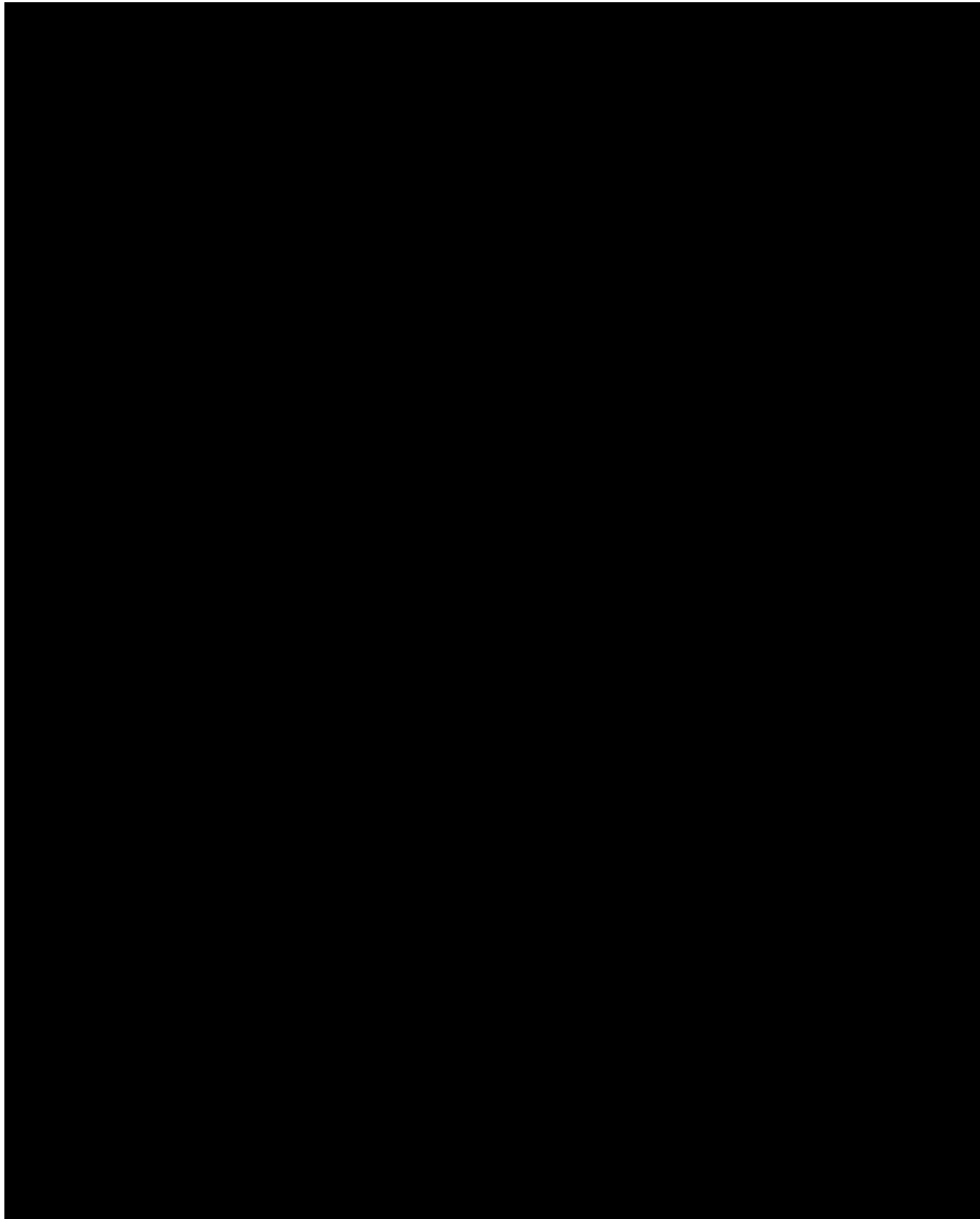














*Bromford and Castle Vale FRMS*

**Landscape Contract Scoping document**

Landscape Lot 1

*Version: 1*

*Issue Date: 03/09/2021*



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# 1: Project Description

## 1.1 Project Description

The Environment Agency (EA) will be carrying out planting as part of the Bromford and Castle Vale Flood Risk Management Scheme (FRMS), providing mitigation for vegetation lost due to the construction works, as well as environmental enhancements of an area of Public Open Space located to the north of Bromford Drive. New trees will replace those removed to provide continued screening of the M6 motorway, but also continued succession of tree cover into the long term to ensure the “green lung” is retained. Where appropriate, wildflower seeding will replace amenity grassland that is disturbed by construction, to increase the diversity of grassland species. This benefits wildlife, and also provides seasonal and colour interest along with bulb planting for the open space users. Woodland is proposed in areas of the scheme that are not part of the circulation space so that they can develop as undisturbed areas of habitat for wildlife.

## 1.2 Scope of Works

The landscape contract comprises implementation and establishment aftercare for specimen tree, woodland and scrub planting, as well as bulb planting.

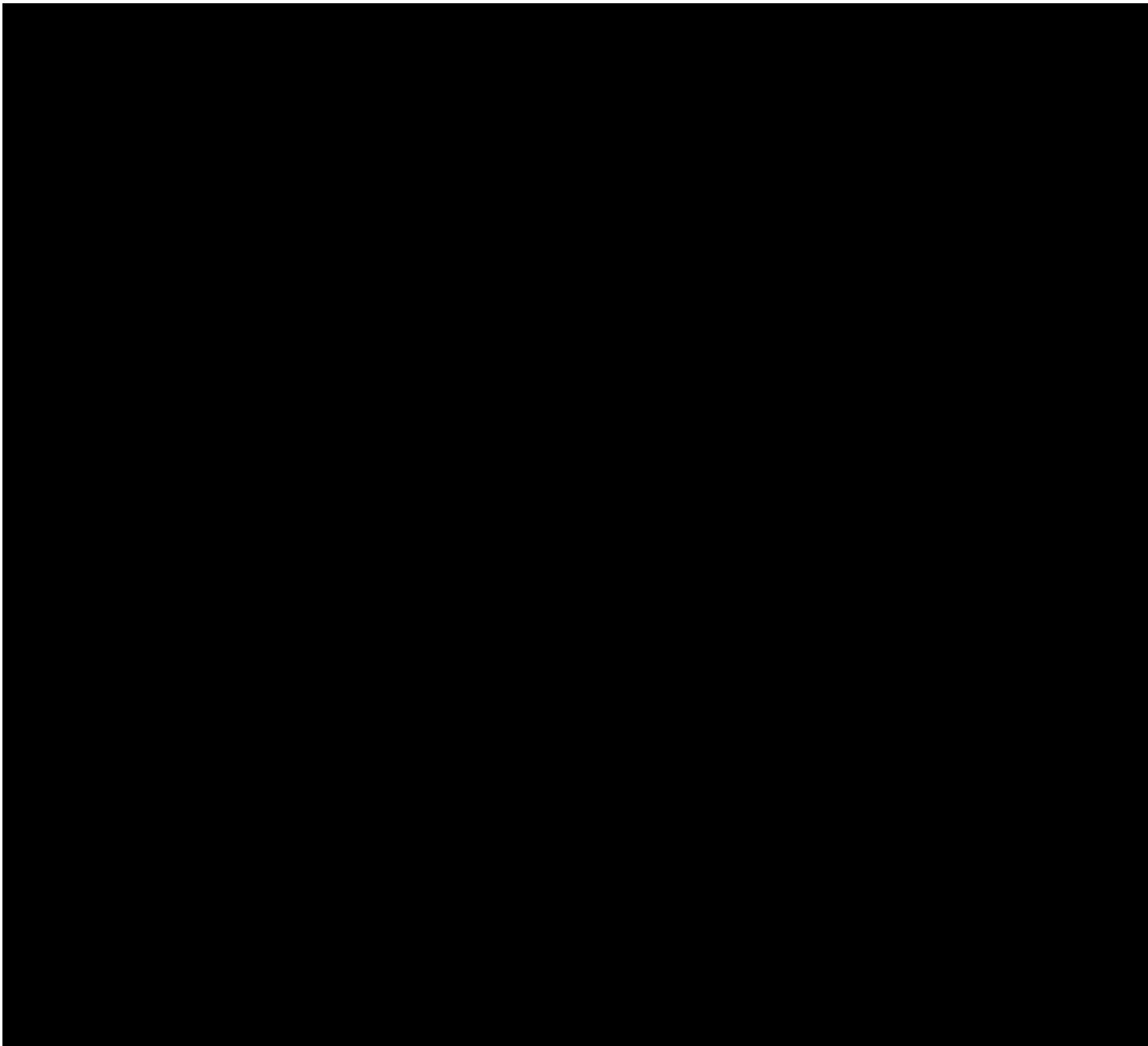
Grass seeding of flood embankments, the reinstatement of areas of amenity grass and seeding of wildflower meadow will be undertaken by others. Areas of established embankment and amenity grass and wildflower areas will be handed over to BCC for long term maintenance.

- Production of standard Risk Assessments and Method Statements (RAMS) and a site specific programme of works.
- Provision of soil analysis and an associated Interpretative Report.
- Hire and maintenance of a 3 in 1 welfare facility.
- Clearance of ground for woodland and scrub planting areas.
- Supply and implementation of 88827 bulbs.
- Implementation and establishment aftercare of 355 heavy standard trees, including the installation of tree protection tubes.
- Implementation and establishment aftercare of 77m of hedgerow.
- Aftercare maintenance of 29,942m<sup>2</sup> wildflower area.
- Annual litter picking.
- Annual maintenance and top-up of mulch.
- Weed control by hand and cutting.
- Installation of 3 backless benches.

## 1.4 Programme details and timing

Main Construction Completed:	March 2022
Construction Defect Period End:	March 2023

Landscape Implementation Start:	January 2022
Landscape Establishment Start:	March 2022
5 Year Aftercare period Ends:	March 2027





## **Document Library – Lot 1 - Bromford**

The documents listed below which were part of the tender pack also form part of the contract.

### Documents

- 21 08 12 Bromford\_Landscapes Specification
- Bromford\_Scoping document
- JCLI amendments + Contract Particulars - Bromford

### Drawings

- ENVIMMI001309-CH2-LH-521-DR-L-0029
- ENVIMMI001309-CH2-LH-521-DR-L-0030
- ENVIMMI001309-CH2-LH-521-DR-L-0031
- ENVIMMI001309-CH2-LH-522-DR-L-0032
- ENVIMMI001309-CH2-LH-521-DR-L-0033
- ENVIMMI001309-CH2-LH-523-DR-L-0034
- ENVIMMI001309-CH2-LH-521-DR-L-0035
- ENVIMMI001309-CH2-LH-521-DR-L-0036
- ENVIMMI001309-CH2-LH-00-SC-L-0037