

COURT FILE NUMBER: 25-2581252
25-2582159

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE BANKRUPTCY AND
INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED

IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF TRAKOPOLIS IoT CORP.

IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF TRAKOPOLIS SaaS CORP.

APPLICANTS: TRAKOPOLIS IoT CORP. and TRAKOPOLIS SaaS CORP.

DOCUMENT: **SUPPLEMENTAL AFFIDAVIT OF CHRIS BURCHELL**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

OSLER, HOSKIN & HARCOURT LLP

Barristers & Solicitors
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Calgary, AB T2P 5H1

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File Number: 1205888

SUPPLEMENTAL AFFIDAVIT OF CHRIS BURCHELL

Sworn on January 9, 2020

I, Chris Burchell, of the City of Calgary, in the Province of Alberta, make oath and say that:

1. I am the Chief Restructuring Officer of Trakopolis IoT Corp. ("**Trakopolis IoT**") and Trakopolis SaaS Corp. ("**Trakopolis SaaS**") and, together with Takopolis IoT, "**Trakopolis**" or the "**Companies**"). I have served as Chief Restructuring Officer since November 2019, and have been a director of Trakopolis since October 2016. Prior to joining Trakopolis, I was a Managing

Director, Investment Banking, at Cormark Securities Inc. (“**Cormark**”). Prior to joining Cormark in 2006, I held various investment banking positions with Scotia Capital Inc.

2. As such, I have personal knowledge of the matters to which I depose in this Affidavit, except where stated to be based on information and belief, in which I believe such information to be true. In preparing this Affidavit, I have consulted with Trakopolis’s management team and advisors and reviewed relevant documents and information concerning Trakopolis’s operations, financial affairs and marketing activities.

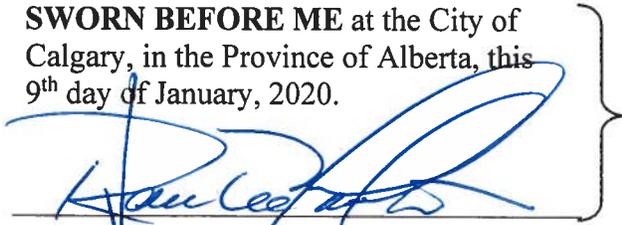
3. I swear this Affidavit supplemental to the Affidavit I swore in these proceedings on December 31, 2019 (my “**December 31 Affidavit**”) to update the Court on developments since I swore my December 31 Affidavit. Capitalized terms used in this Supplemental Affidavit but not otherwise defined shall have the same meaning as given to them in my December 31 Affidavit.

4. Since the swearing of my December 31 Affidavit, Trakopolis and the Purchaser negotiated and executed an APA Amending Agreement, dated January 8, 2020 (the “**APA Amending Agreement**”) which, most significantly, amended the list of Assumed Contracts, Essential Contracts, and Consent Required Contracts to exclude certain contracts previously included in the APA, and include certain contracts previously excluded from the APA, based on the Purchaser’s conclusion of its due diligence.

5. A copy of the APA Amending Agreement with confidential and commercially sensitive information redacted is attached as **Exhibit “A”** hereto. An unredacted copy of the APA Amending Agreement is also exhibited to my Supplemental Confidential Affidavit sworn concurrently in these proceedings.

6. I swear this Affidavit in support of the relief set out in Trakopolis's Application, filed 6, 2020.

SWORN BEFORE ME at the City of Calgary, in the Province of Alberta, this 9th day of January, 2020.



Commissioner for Oaths/Notary Public in and for the Province of Alberta
RANDAL S. VAN de MOSSELAER
Barrister & Solicitor



Chris Burchell

This is Exhibit "A" to the Supplemental Affidavit of Chris Burchell
sworn before me this 9th day of January 2020.



Notary Public/Commissioner for Oaths in and for Alberta

TANDAL S. VAN de MOSSELAER
Barrister & Solicitor

AMENDMENT NO. 1 TO ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of the ____ day of January, 2020.

BETWEEN:

TRAKOPOLIS IoT CORP., a company incorporated under the laws of the Province of Alberta ("**IoT**"), and **TRAKOPOLIS SaaS CORP.**, a company incorporated under the laws of the Province of Alberta ("**SaaS**"),

(hereinafter collectively called "**Trakopolis**" or the "**Vendor**")

OF THE FIRST PART

- and -

1234600 B.C. LTD., a company incorporated under the laws of the Province of British Columbia,

(hereinafter called the "**Purchaser**")

OF THE SECOND PART

RECITALS:

WHEREAS

- A. The Vendor and Purchaser are Parties to an asset purchase agreement dated the 20th day of December 2019 (the "**Agreement**");
- B. The Parties wish to amend certain terms of the Purchase Agreement as set forth in this agreement (this "**Amending Agreement**"); and
- C. Capitalized terms not otherwise defined herein shall have the meanings given to the in the Purchase Agreement,

NOW THEREFORE IN CONSIDERATION of the premises and the mutual agreements in this Agreement, and for other consideration (the receipt and sufficiency of which are acknowledged by each Party), the Parties agree as follows.

ARTICLE 1 AMENDMENTS

1.1 Amendments to Section 2.2

The Parties hereby agree that Section 2.2 is deleted and replaced with the following:

"In the event that there are any Assumed Contracts which are not assignable in whole or in part without the consent, approval or waiver of another party or parties to them and that such Contracts are either Contracts with customers of the Vendor (each, a "**Consent Required Customer Contract**") or that such Contracts are set out in Appendix 7 to Schedule A hereto (the "**Consent Required Scheduled Contracts**"), and collectively with the Consent Required Customer Contracts, the "**Consent Required Contracts**") then:

(a) with respect to Consent Required Scheduled Contracts, if any such consents, approvals or waivers or Assignment Orders therefor have not yet been obtained as of the Closing Date, then nothing in this Agreement will be construed as an assignment of any such Consent Required Scheduled Contract and the Purchaser shall have no liability or obligation whatsoever in respect of any such Consent Required Scheduled Contract and all such Consent Required Scheduled Contracts shall be deemed to be Excluded Contracts;

(b) until the Business Day that is the day prior to the hearing for the Approval and Vesting Order or with respect to Consent Required Customer Contracts, March 31, 2020 (each an "**Assignment Option Date**"), the Vendor shall: (i) prior to the Closing Date use commercially reasonable efforts to obtain any such consent, approval or waiver and shall regularly apprise the Purchaser on the status of same; and (ii) following the Closing Date, subject to the terms and conditions of this Agreement, co-operate with the Purchaser and execute and deliver any assignment documentation on behalf of the Vendor. The Purchaser shall provide its reasonable cooperation to assist the Vendor in obtaining any such consent, approval or waiver;

(c) if any consent, approval or waiver is not obtained for any Consent Required Contract prior to the applicable Assignment Option Date, then, the Vendor shall obtain Assignment Order(s) with respect to such Consent Required Contracts and the Purchaser will provide reasonable assurances to the Court, in respect of such application for an Assignment Order, that the Purchaser will perform the applicable obligations of the Consent Required Contracts which are the subject of such Assignment Order including, without limitation, providing materials to be served and filed in connection with any motion pursuant to section 84.1 of the BIA;

(d) once the consent, approval or waiver to the assignment of a Consent Required Contract is obtained or the assignment of such Assumed Contract has been ordered by the Court pursuant to an Assignment Order, such Consent Required Contract shall be deemed to be assigned to the Purchaser on Closing;

(e) other than as described above in respect of Consent Required Contracts, the Vendor is not required to provide notice to counterparties of the assignment of other Assumed Contracts.

With respect to each Consent Required Contract, subject to Closing and to either (i) the consent of the other parties thereto to the assignment thereof, or (ii) in the absence of such consent, the obtaining of an Assignment Order, the applicable Cure Costs related to such Consent Required Contract on Closing shall be paid by the Vendor by directing the Purchaser to pay such Cure Costs out of the proceeds of the Cash Purchase Price otherwise payable to the Vendor hereunder."

1.2 New Section 2.11

The Parties hereby agree that the following Section 2.11 is added to and forms part of the Purchase Agreement:

"2.11 Restricted Rights

(a) In addition to Section 2.2 and notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer any Consent Required Customer Contracts or any right thereunder if an attempted assignment or transfer (i) without the consent of a third Person or an Assignment Order, would constitute a breach or in any way adversely affect the rights of the Purchaser thereunder or (ii) is not permitted or enforceable under Applicable Law (collectively, "**Restricted Rights**"), without the consent of a third Person or an Assignment Order. The Vendor shall hold the Restricted Rights in trust for the Purchaser without further duty or obligation to otherwise preserve or protect the Restricted Rights and shall reasonably promptly pay to the Purchaser all amounts

collected by or paid to the Vendor in respect of all such Restricted Rights following the Closing Date, subject to payment of all liabilities in respect thereof by Purchaser (including reasonable compensation as set forth in paragraph (b) below), and all such amounts collected by or paid to the Vendor shall constitute Purchased Assets. The Vendor shall not, without the prior written consent of the Purchaser, agree to any modification of any Restricted Rights.

(b) Notwithstanding any other provision of this Agreement: (i) nothing in this Section 2.11 shall require any Vendor to renew any Restricted Rights once they have expired, (ii) any efforts required of the Vendor pursuant to this Section 2.11 shall (A) be subject to receipt of reasonable compensation in respect of all costs and expenses incurred in respect of or related to such arrangement, (B) be strictly on an interim basis and in no event required to continue beyond March 31, 2020, and (C) be of an administrative nature only, without any substantive function. The Purchaser shall reimburse the Vendor for any costs incurred and indemnify and hold the Vendor harmless from and against all Claims, incurred or asserted, as a result of or in connection with any actions taken pursuant to this Section 2.11.

(c) For the avoidance of doubt, the Parties acknowledge that the fact that any Consent Required Customer Contracts constitutes a Restricted Right shall not (i) constitute a breach of any covenant hereunder, (ii) entitle Purchaser to terminate this Agreement or (iii) result in any reduction of the Purchase Price payable hereunder. Any non-Restricted Right assigned pursuant to the terms of this Section 2.11 shall, when assigned, constitute an Assumed Contract hereunder from and after such date.

(d) Subject to the terms and conditions of this Agreement, the Vendor shall use commercially reasonable efforts during the period from the Closing Time to March 31, 2020 to execute on behalf of the Vendor any necessary consents or approvals in order to assign the Restricted Rights to the Purchaser, at the sole expense of the Purchaser. Furthermore, any Trustee in Bankruptcy appointed in respect of the Vendor shall be, and the Approval and Vesting Order shall provide that such Trustee in Bankruptcy shall be, authorized to take any and all steps available to the Vendor under this Agreement. The Purchaser will use its commercially reasonable efforts to solicit and obtain any such consent. Notwithstanding the foregoing, nothing in this Section 2.11 shall operate to prohibit or diminish in any way the right of a Vendor to dissolve, windup, make any filing under applicable bankruptcy or insolvency legislation or otherwise cease operations as it may determine in its sole discretion, or require any Vendor to breach any agreement, take any illegal action or commit fraud on any Person.”

1.3 Appendices 5,6 and 7 to Schedule A and Schedule C

The Parties hereby agree that Appendices 5, 6 and 7 to Schedule A and Schedule C are deleted and replaced with the attached.

1.4 No Other Amendment

Except as specifically amended hereby, the terms and conditions of the Agreement are unamended and remain in full force and effect.

ARTICLE 2 GENERAL

2.1 Governing Law

This Amending Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in Alberta (excluding any conflict of laws, rule or principle which might refer such interpretation to the laws of another jurisdiction). Each Party irrevocably submits to the exclusive jurisdiction of the Court with respect to any matter arising hereunder or related hereto. The parties exclude the application of the *UN Convention on Contracts for the International Sale of Goods*, as amended, replaced or re-enacted from time to time.

2.2 Further Assurances

Each Party shall do such acts and shall execute such further documents, conveyances, deeds, assignments, transfers and the like, and will cause the doing of such acts and will cause the execution of such further documents as are within its power as any other Party may in writing at any time and from time to time reasonably request be done and or executed, in order to give full effect to the provisions of this Amending Agreement.

2.3 Third Party Beneficiaries

Nothing in this Amending Agreement is intended expressly or by implication to, or shall, confer upon any Person other than the Parties, any rights or remedies of any kind.

2.4 Severability

If any provision of this Amending Agreement is determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction, that provision will be severed from this Amending Agreement and the remaining provisions will remain in full force and effect.

2.5 Counterparts

This Amending Agreement may be executed in any number of counterparts. Each executed counterpart shall be deemed to be an original. All executed counterparts taken together shall constitute one agreement.

[Remainder of page left intentionally blank]

IN WITNESS WHEREOF this Agreement has been executed by the Parties on the 8th day of January, 2020.

PURCHASER

1234600 B.C. LTD.

Per: _____

Name: James S. MacLean III
Title: President

Per:  _____

Name: Vincent Hsieh
Title: Secretary

VENDOR

TRAKOPOLIS IoT CORP.

Per: _____

Name: Chris Burchell
Title: Director

Per: _____

Name: Richard Clarke
Title: Chief Executive Officer
I/We have the authority to bind the corporation

VENDOR

TRAKOPOLIS SaaS CORP.

Per: _____

Name: Chris Burchell
Title: Director

Per: _____

Name: Richard Clarke
Title: Chief Executive Officer
I/We have the authority to bind the corporation

IN WITNESS WHEREOF this Agreement has been executed by the Parties on the _____ day of January, 2020.

PURCHASER

1234600 B.C. LTD.

Per: DocuSigned by:
James S. MacLean III
0F71576FAE7D4A6...
Name: James S. MacLean III
Title: President

Per: _____
Name: Vincent Hsieh
Title: Secretary

VENDOR

TRAKOPOLIS IoT CORP.

Per: _____
Name: Chris Burchell
Title: Director

Per: _____
Name: Richard Clarke
Title: Chief Executive Officer
I/We have the authority to bind the corporation

VENDOR

TRAKOPOLIS SaaS CORP.

Per: _____
Name: Chris Burchell
Title: Director

Per: _____
Name: Richard Clarke
Title: Chief Executive Officer
I/We have the authority to bind the corporation

IN WITNESS WHEREOF this Agreement has been executed by the Parties on the _____ day of January, 2020.

PURCHASER

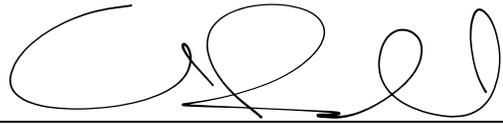
1234600 B.C. LTD.

Per: _____
Name: James S. MacLean III
Title: President

Per: _____
Name: Vincent Hsieh
Title: Secretary

VENDOR

TRAKOPOLIS IoT CORP.

Per: 
Name: Chris Burchell
Title: Director

Per: 
Name: Richard Clarke
Title: Chief Executive Officer
I/We have the authority to bind the corporation

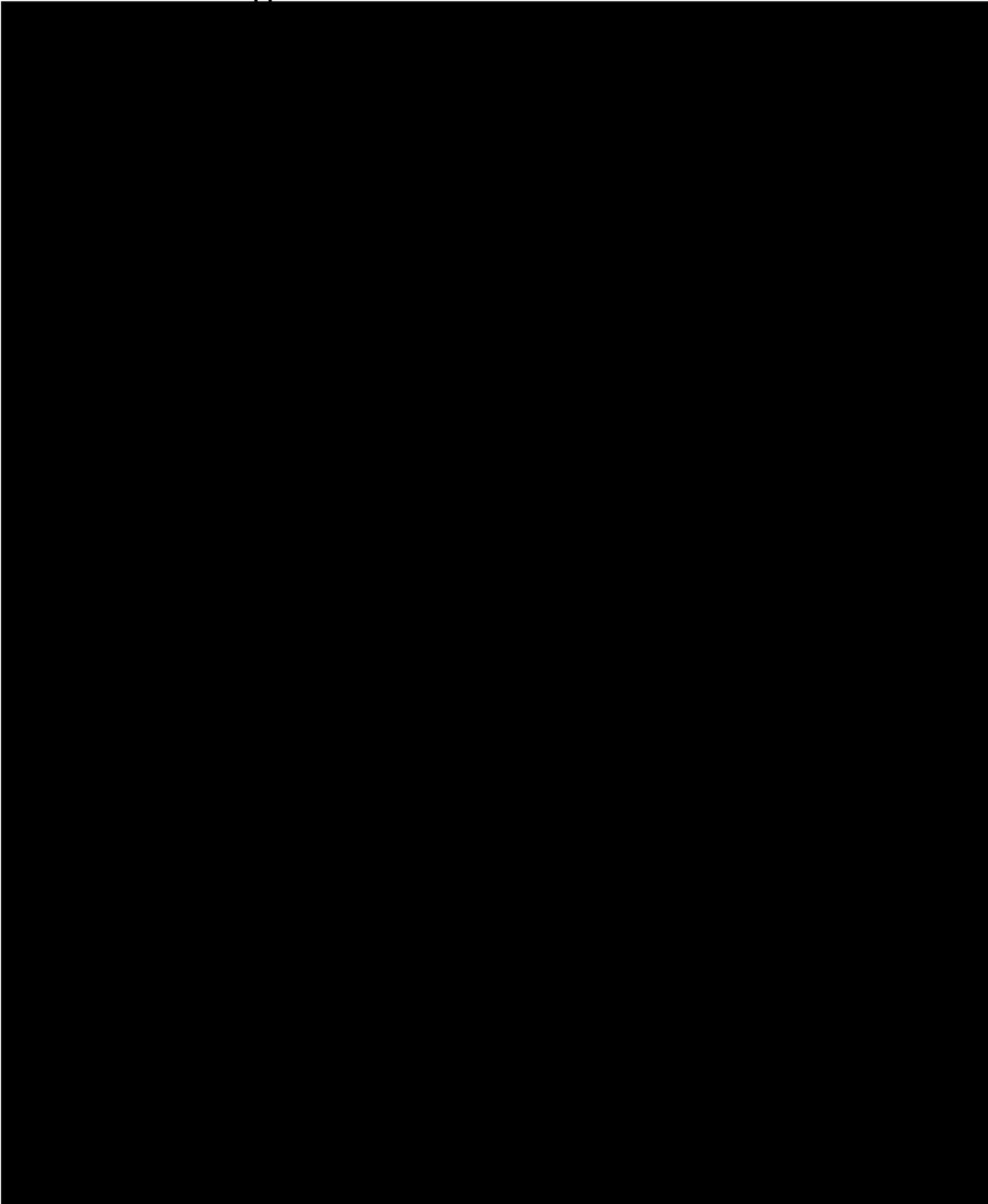
VENDOR

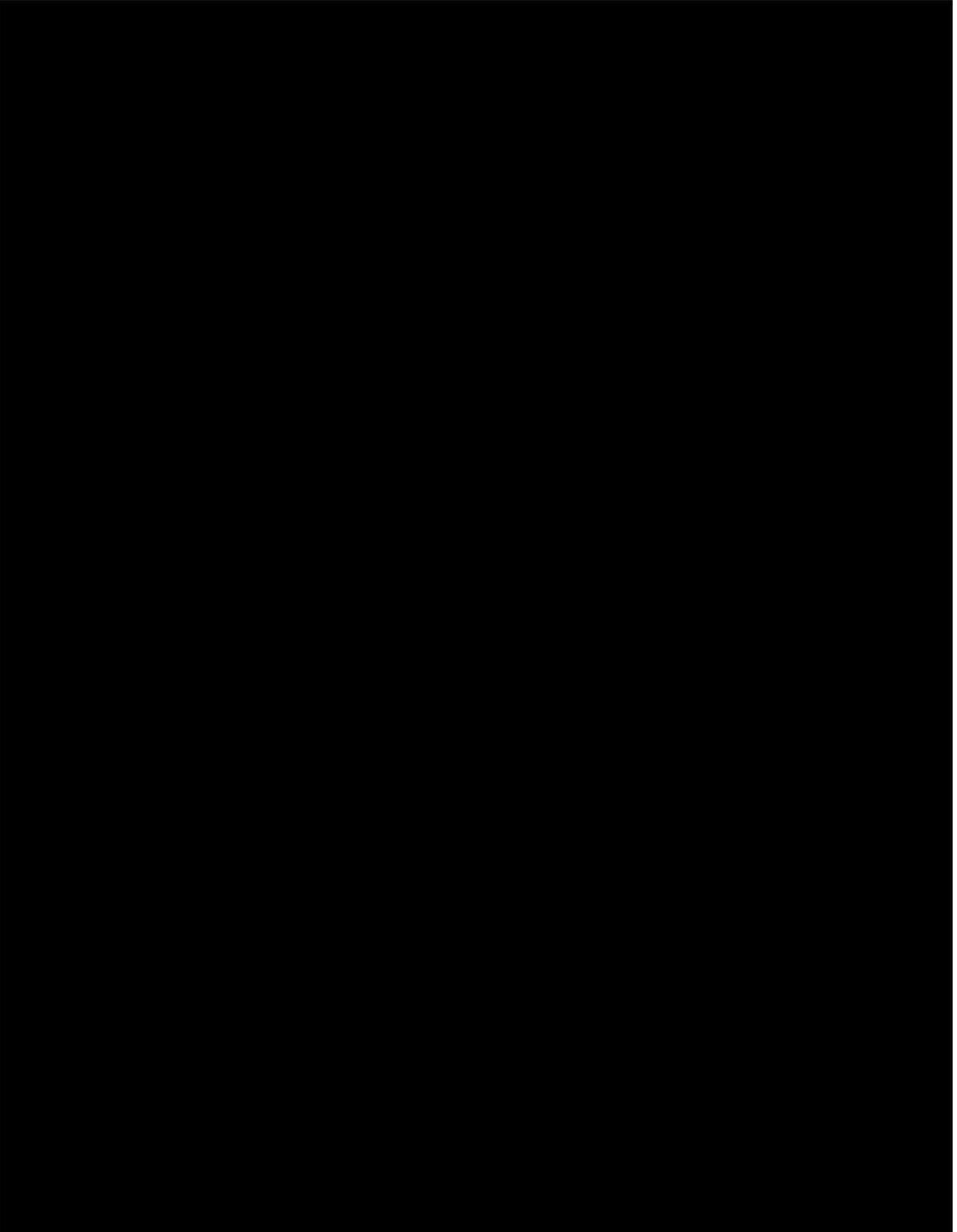
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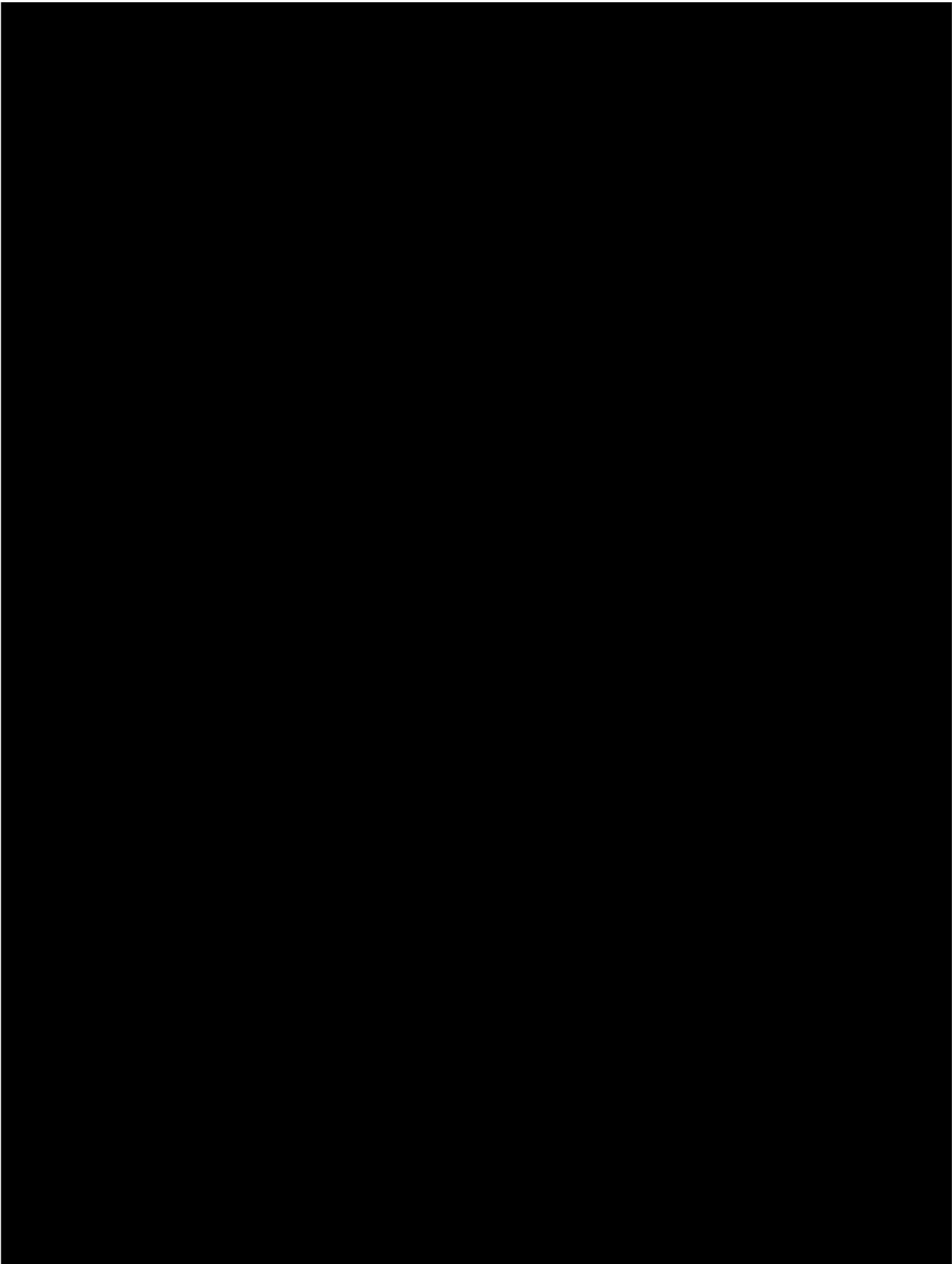
Per: 
Name: Chris Burchell
Title: Director

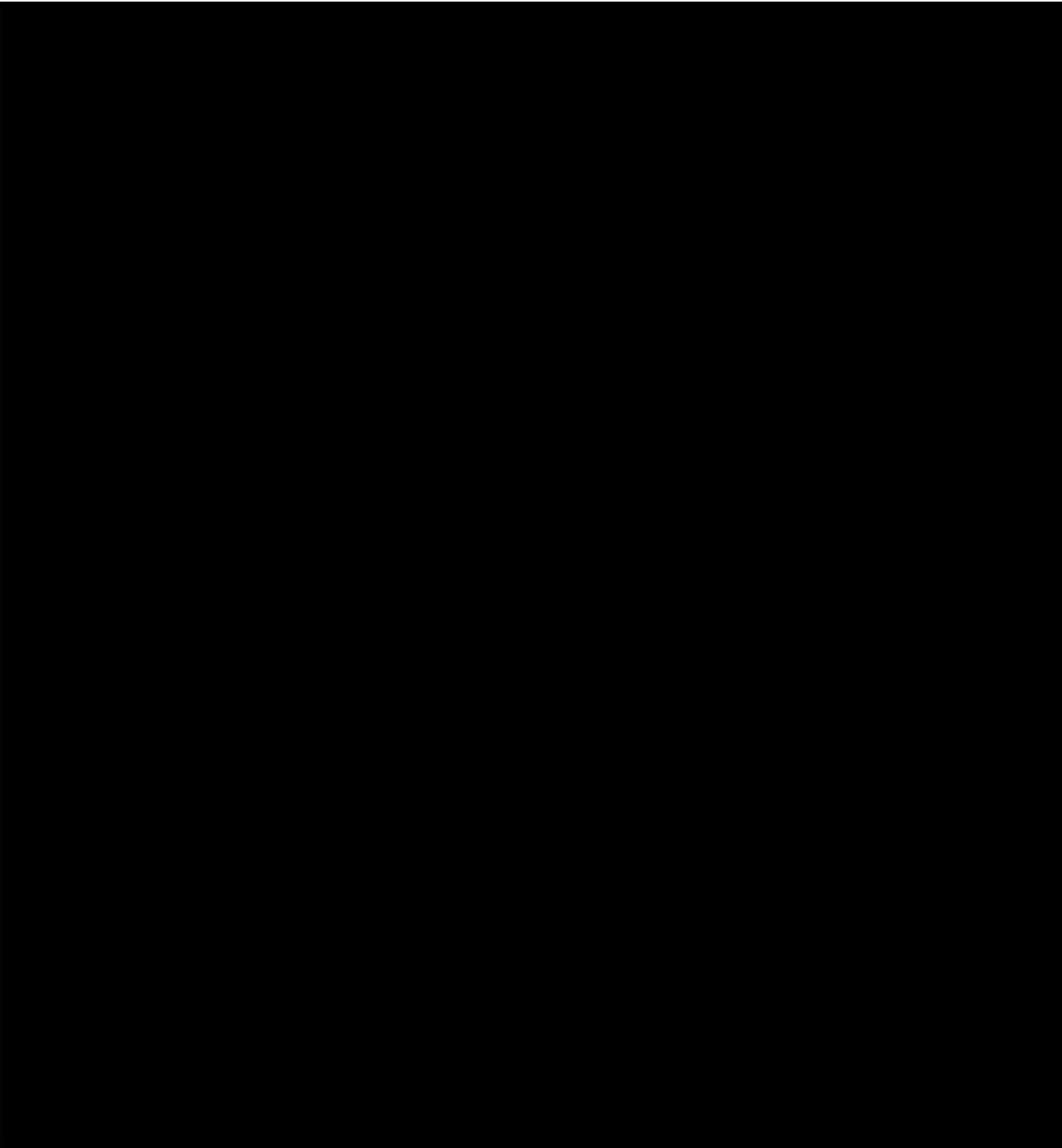
Per: 
Name: Richard Clarke
Title: Chief Executive Officer
I/We have the authority to bind the corporation

Appendix 5 to Schedule A – Assumed Contracts

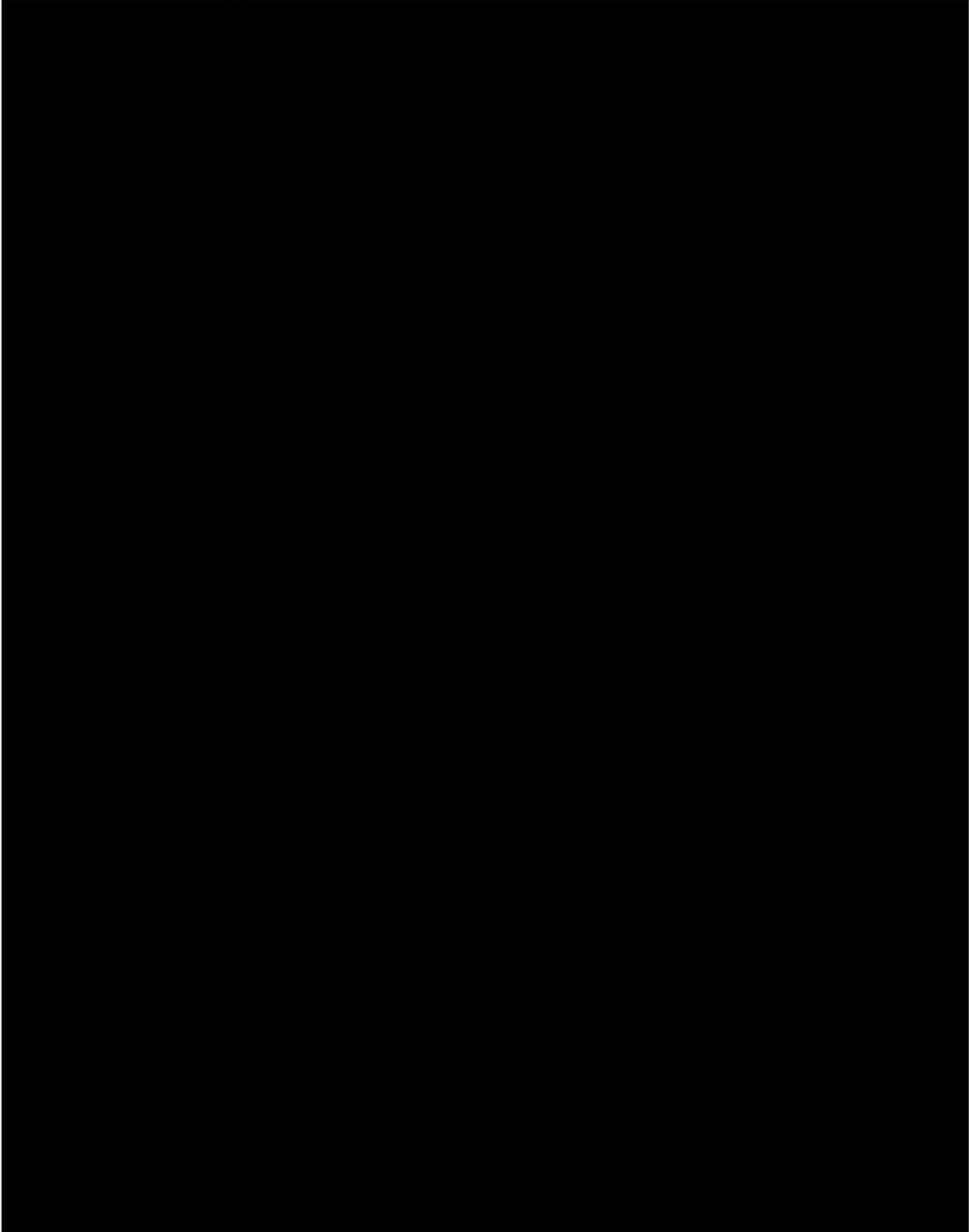


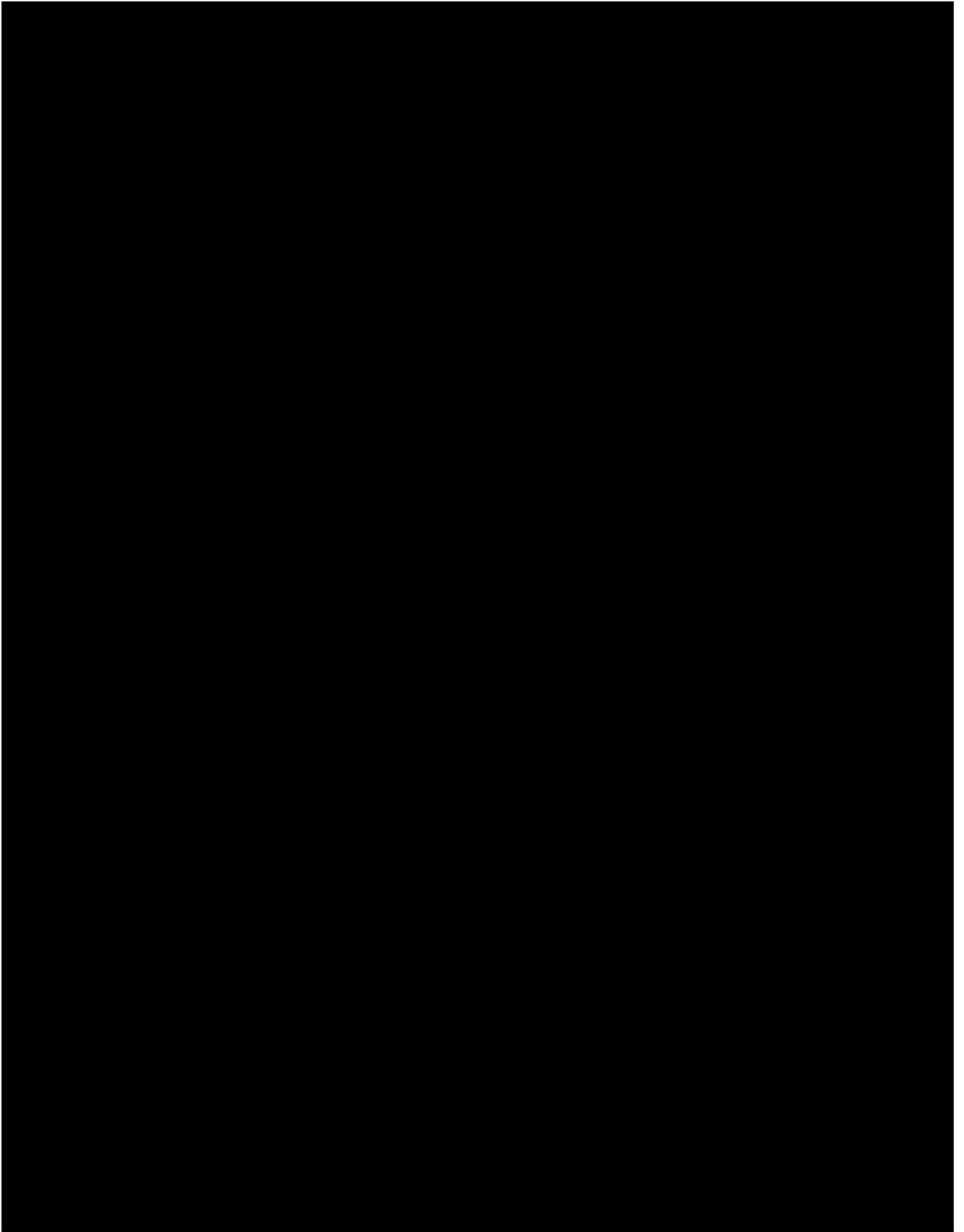


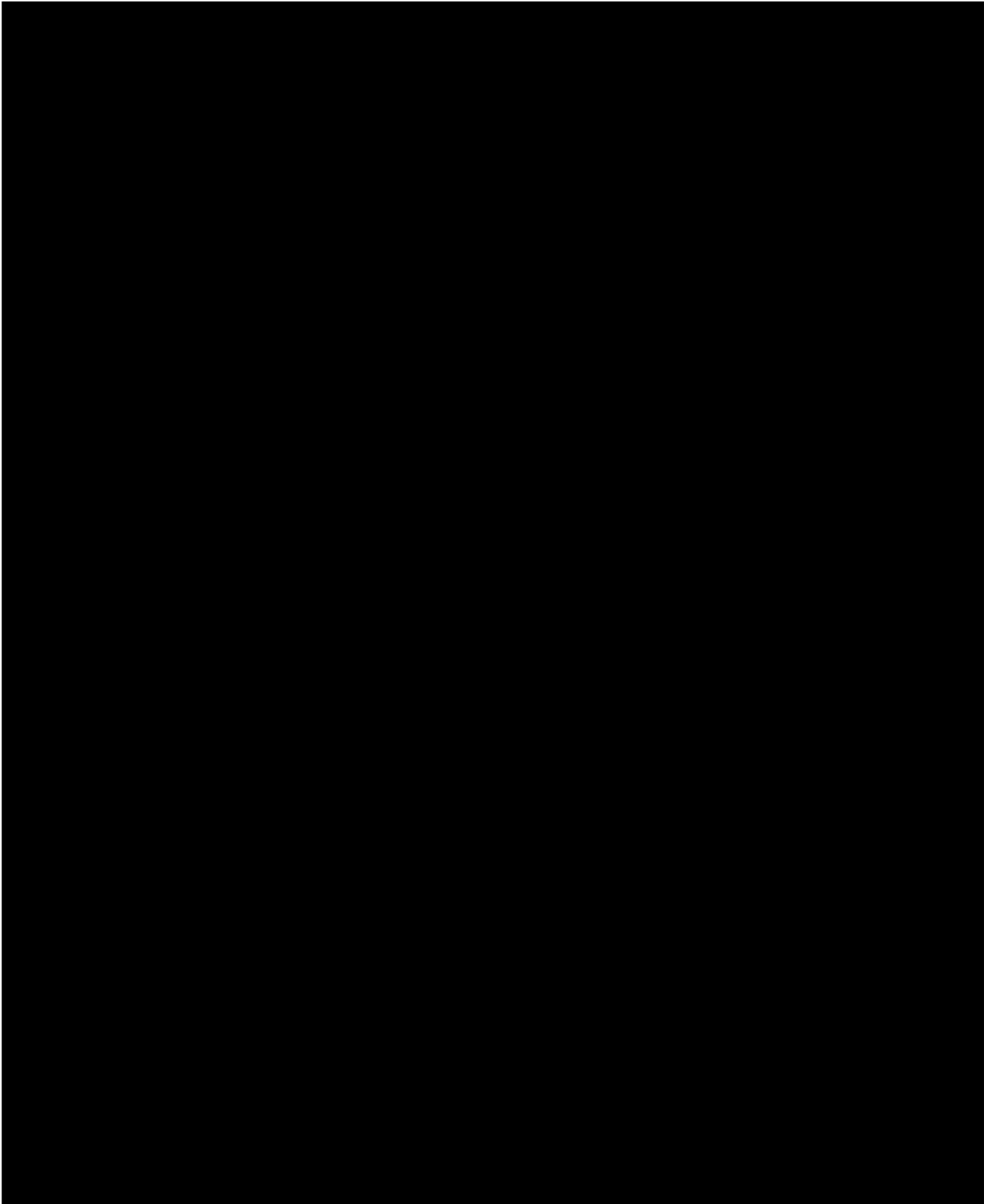


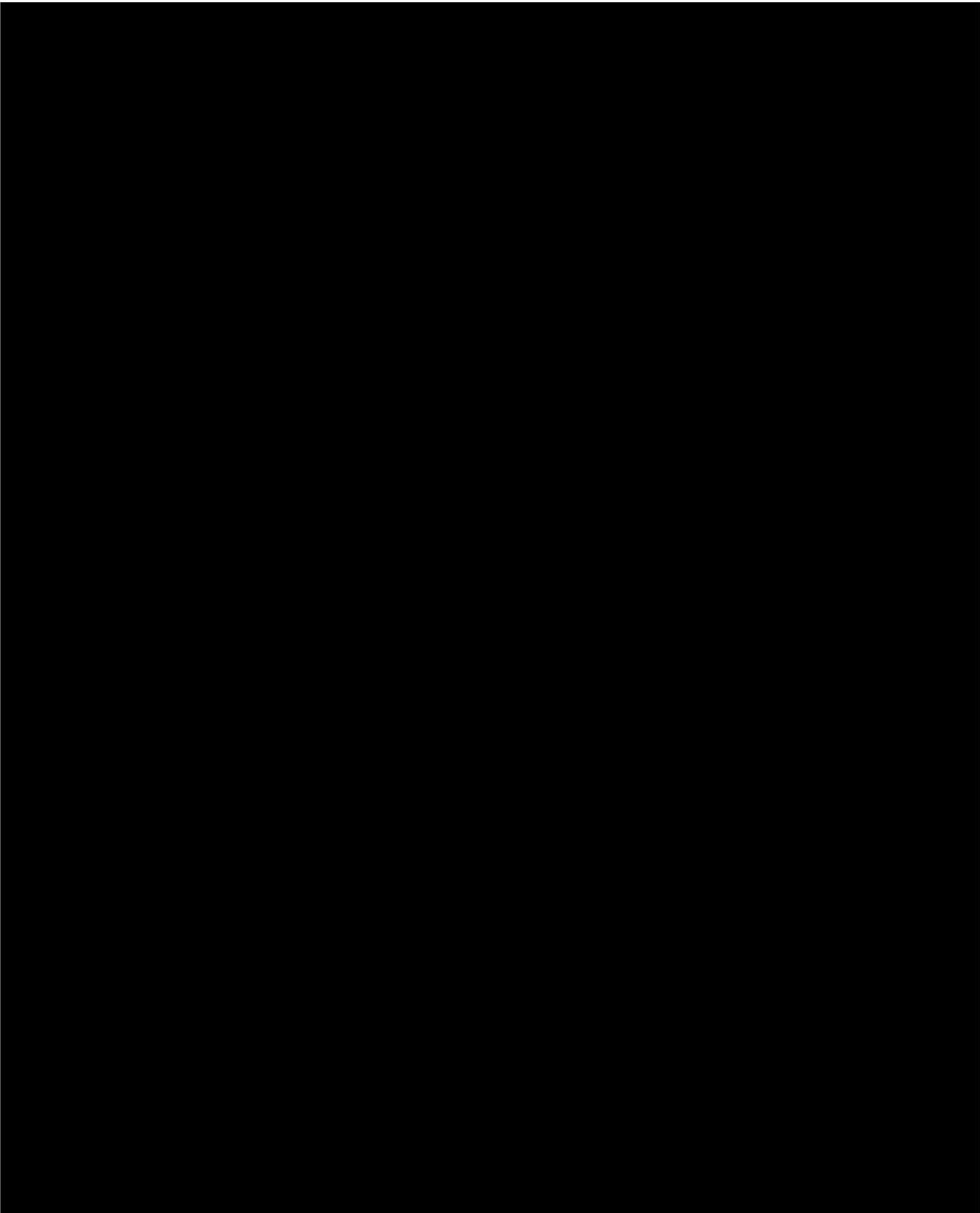


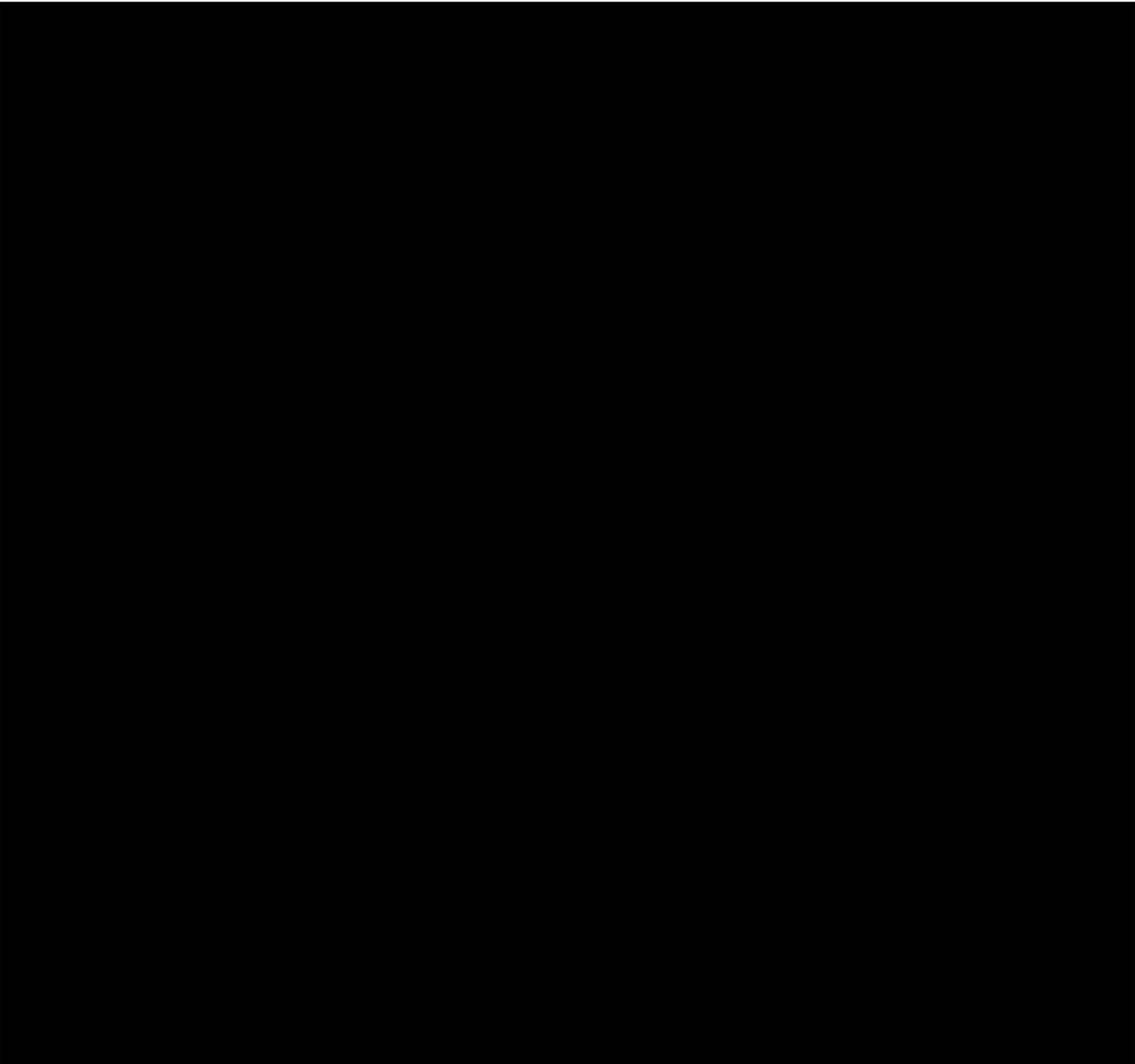
Appendix 6 to Schedule A – Essential Contracts



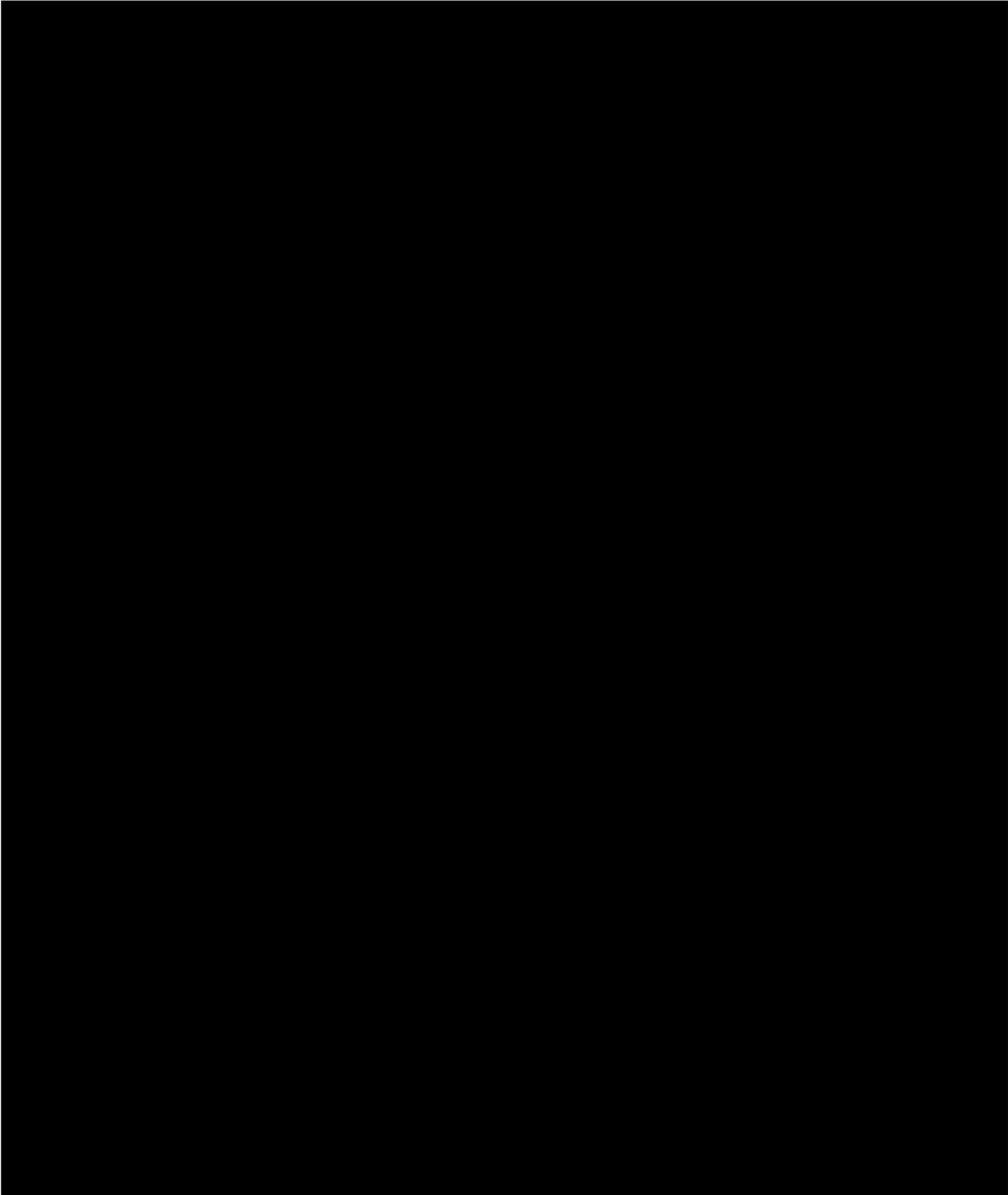


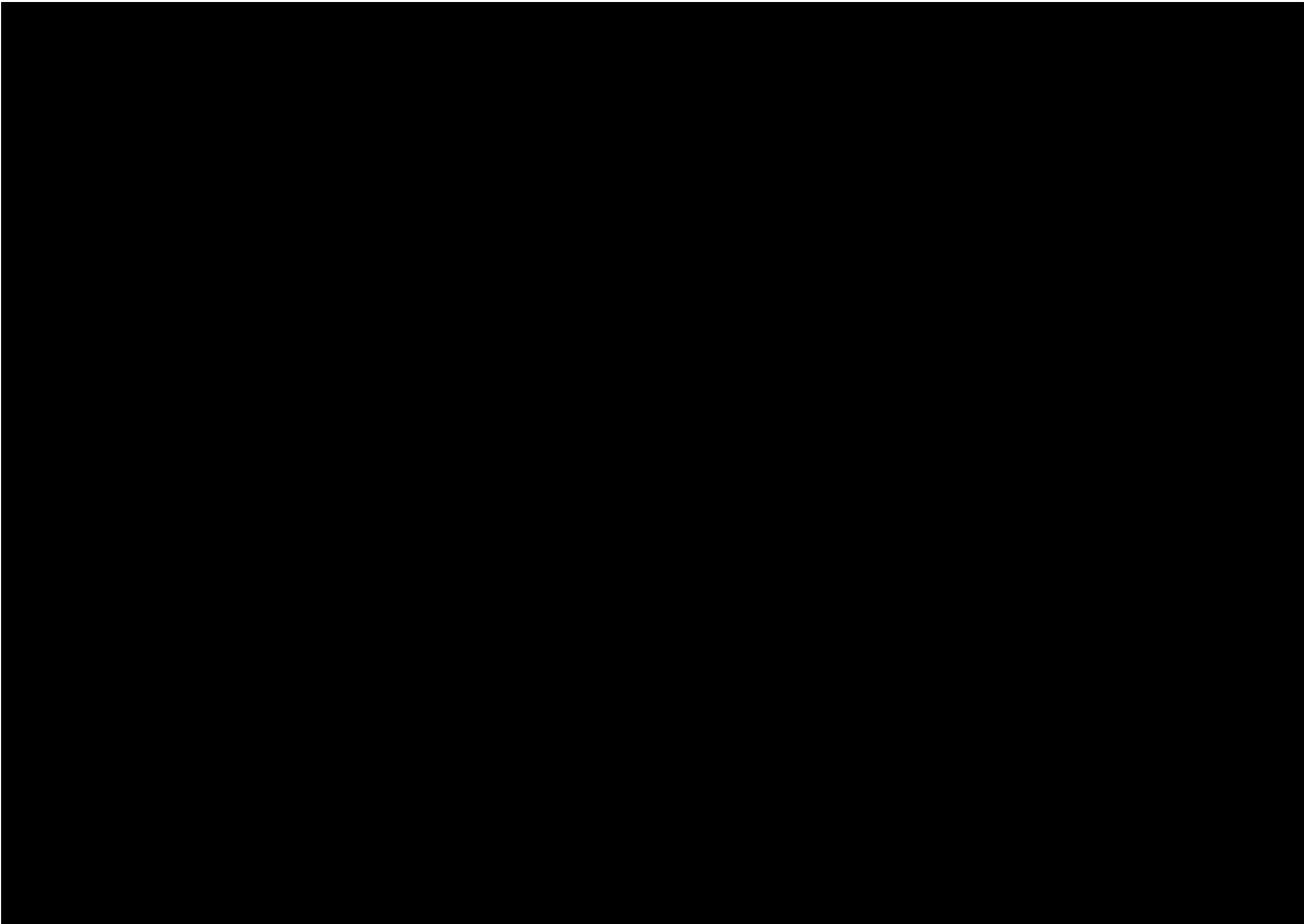






Appendix 7 to Schedule A – Consent Required Contracts





Schedule C – Excluded Contracts

