

**PROJECT AGREEMENT
NEXT GENERATION KENTUCKY INFORMATION HIGHWAY PROJECT**

**The Commonwealth of Kentucky
(the “Authority”)
and
KentuckyWired Infrastructure Company, Inc.
 (“Project Co”)**

Dated: September 3, 2015

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PROJECT AGREEMENT

THIS PROJECT AGREEMENT dated as of September 3, 2015 is entered into:

BETWEEN:

The Commonwealth of Kentucky

(the “**Authority**”)

AND:

KentuckyWired Infrastructure Company, Inc.

(“**Project Co**”)

WHEREAS:

A. Pursuant to RFP 758 1500000003-5 issued July 11, 2014 (as amended from time to time, the “**RFP**”), the Authority selected Macquarie Infrastructure Developments LLC to design, build, finance, operate and maintain the NG-KIH System.

B. On December 22, 2014, the Authority and Macquarie Infrastructure Developments LLC entered into a master agreement (as amended from time to time, the “**Master Agreement**”) in respect of the Project, a copy of which is attached as Schedule 21 [Master Agreement].

C. Macquarie Infrastructure Developments LLC assigned its rights and obligations under the Master Agreement to Project Co.

D. The Authority and Project Co have agreed to enter into this Project Agreement whereby Project Co will design, build, finance, operate and maintain the NG-KIH System, all as more particularly described in this Project Agreement.

E. Project Co will, in turn, enter into the Project Implementation Agreement with Operations Co whereby Operations Co will design, build, operate and maintain the NG-KIH System, all as more particularly described in the Project Implementation Agreement.

F. The rights and obligations of the parties will be governed by the terms and conditions set out in this Project Agreement.

NOW THEREFORE THIS PROJECT AGREEMENT WITNESSES THAT, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. INTERPRETATION

1.1 Definitions

In this Project Agreement, unless the context otherwise requires, capitalized terms will have the meanings set out in Schedule 1 [Definitions and Interpretation]. Certain words and expressions

are defined within the schedules hereto and such definitions will apply, unless the context otherwise requires, in all other parts of this Project Agreement whether or not Schedule 1 [Definitions and Interpretation] contains a cross-reference to such definitions.

1.2 Interpretation

Unless the context otherwise requires, this Project Agreement will be interpreted and construed in accordance with the provisions set out in Schedule 1 [Definitions and Interpretation].

1.3 Schedules

The schedules hereto and the terms set out therein will be deemed fully a part of this Project Agreement.

2. GENERAL PROJECT TERMS

2.1 Term and Termination

The term of this Project Agreement (the “**Term**”) will commence on the Effective Date and will continue to the Expiration Date unless earlier terminated:

- (a) by the Authority at any time in its discretion, and at the convenience of the Authority, by notice stating that termination is for convenience pursuant to this Section 2.1(a);
- (b) by either party pursuant to Section 6.3 in connection with insufficient insurance;
- (c) by either party pursuant to Section 6.4 in connection with uncollectible Insurance Receivables;
- (d) by the Authority pursuant to Section 6.10 in connection with a Principal Insured Risk becoming Uninsurable;
- (e) by either party pursuant to Section 8.4(c) or 8.4(e) in connection with a Relief Event;
- (f) by either party pursuant to Section 8.6(c) or 8.6(d) in connection with a Force Majeure Event;
- (g) by the Authority pursuant to Section 12.4 in connection with a Project Co Event of Default; or
- (h) by Project Co pursuant to Section 13.3 in connection with an Authority Event of Default.

Unless otherwise specified, the Termination Date for such earlier terminations will be the date notice of termination is given by one party to the other party in accordance with this Project Agreement. Except as referred to in this Section 2.1, neither party will have the right to terminate this Project Agreement.

2.2 Document Deliveries

Concurrently with the execution and delivery of this Project Agreement:

- (a) Project Co will deliver to the Authority the documents described in Section 2 of Schedule 18 [Completion Documents]; and
- (b) the Authority will deliver to Project Co the documents described in Section 3 of Schedule 18 [Completion Documents].

2.3 Assumption of Risk

Except to the extent expressly allocated to the Authority or otherwise provided for under this Project Agreement, all risks, costs and expenses in relation to the performance by Project Co of its obligations under this Project Agreement are allocated to, and accepted by, Project Co as its entire and exclusive responsibility.

2.4 Opportunities

Except as expressly provided in this Project Agreement, or as may be specifically agreed in writing between the Authority and Project Co during the Term, the Authority reserves the right to all commercial and other opportunities for, or related to, the Project and the Lands.

2.5 General Duty of Project Co to Mitigate

In all cases where Project Co is entitled to receive from the Authority any compensation in addition to the payments described in Sections 3.1(a) and 3.1(b), costs, damages or extensions of time, Project Co will use all commercially reasonable efforts to mitigate such amount required to be paid by the Authority to Project Co under this Project Agreement, or the length of the extension of time. Upon request from the Authority, Project Co will promptly submit a detailed description, supported by all such documentation as the Authority may reasonably require, of the measures and steps taken by Project Co to mitigate and meet its obligations under this Section 2.5.

2.6 General Duty of Authority to Mitigate

In all cases where the Authority is entitled to receive from Project Co any compensation, costs or damages, but not in any other case, the Authority will use all commercially reasonable efforts to mitigate such amount required to be paid by Project Co to the Authority under this Project Agreement, provided that such obligation will not require the Authority to:

- (a) take any action which is contrary to the public interest, as determined by the Authority in its discretion, or applicable Law; or
- (b) alter the amount of any Deductions it is entitled to make in accordance with Schedule 8 [Payments].

The Authority will have no obligation to mitigate, implied or otherwise, except as set out in this Section 2.6 or as otherwise expressly set out in this Project Agreement. Upon request from Project Co, the Authority will promptly submit a detailed description, supported by all such

documentation as Project Co may reasonably require, of the measures and steps taken by the Authority to mitigate and meet its obligations under this Section 2.6.

2.7 Representatives

Project Co and the Authority will each have a Design and Construction Representative, appointed in accordance with and with the rights and responsibilities set out in Schedule 2 [Design and Construction Protocols], and an Operating Period Representative, appointed in accordance with and with the rights and responsibilities set out in Schedule 4 [Services Protocols and Specifications]. Project Co's Design and Construction Representative and Operating Period Representative may be the same person. The Authority may, in its discretion, appoint the same person to any or all of its Representative positions. From time to time, the Authority may by notice in writing to Project Co and Operations Co change the signing authority of any or all of the Authority Representatives and appoint or remove one or more other persons having signing authority.

2.8 Key Individuals

Attached as Schedule 17 [Key Individuals] is a list of persons (the "**Key Individuals**") that Project Co will utilize in undertaking the Design and the Construction. With respect to each of the Key Individuals:

- (a) Project Co will use commercially reasonable efforts to retain the Key Individuals to perform the duties for the period described in Schedule 17 [Key Individuals]; and
- (b) if for any reason a Key Individual resigns or is otherwise unavailable to perform the duties described in Schedule 17 [Key Individuals], Project Co will use commercially reasonable efforts to retain a replacement with similar expertise and experience to the unavailable Key Individual, satisfactory to the Authority, acting reasonably, and Project Co will not replace such Key Individual without the Authority's consent, acting reasonably.

No later than 6 months prior to the start of the Operating Period, Project Co will notify the Authority of the name and qualifications of the person designated by Project Co to be the "General Manager" or equivalent as of the start of the Operating Period, and such person will, from the date of such notice, be a Key Individual for the purposes of Section 2.8(b) above.

2.9 Naming

The Authority will have the exclusive right to name the NG-KIH System and any parts thereof.

2.10 Signs

Subject to Section 7.14 of Schedule 2 [Design and Construction Protocols], Project Co will not erect or maintain any signs on the Lands or the NG-KIH System, other than warning, safety and instructional signs or signs required by applicable Laws, without the written consent of the Authority.

2.11 Early Works

The parties acknowledge and agree that the early works undertaken pursuant to the Master Agreement (the “**Early Works**”) terminated on the Effective Date and that the Early Works performed prior to the Effective Date are deemed to have been undertaken by Project Co pursuant to this Project Agreement. Project Co accepts and assumes the risk, responsibility and liability for and in respect of the performance of the Early Works in accordance with the provisions of this Project Agreement.

2.12 Performance Security

The parties acknowledge and agree that the performance security required to be delivered by or on behalf of Project Co in connection with the Project is the performance security to be provided by the Design-Builder pursuant to the Design-Build Agreement and the Service Provider pursuant to the Services Contract.

3. AUTHORITY’S GENERAL OBLIGATIONS

3.1 Payments

Subject to Project Co meeting the requirements for payment set out in this Project Agreement, the Authority will pay Project Co amounts expressly provided for herein, including:

- (a) the Milestone Payment as set out in Schedule 8 [Payments];
- (b) the Availability Payments as set out in Schedule 8 [Payments];
- (c) the Termination Payments as set out in Schedule 9 [Compensation on Termination];
- (d) amounts owing under Section 3.6 (Purchase of Designated Equipment);
- (e) amounts owing under Section 6 (Insurance, Damage and Destruction);
- (f) amounts owing under Section 7 (Changes, Minor Works and Innovation Proposals);
- (g) amounts owing under Section 8 (Supervening Events);
- (h) amounts owing under Section 9 (Indemnities and Limits on Liabilities and Remedies); and
- (i) amounts owing pursuant to the final resolution of a Dispute in accordance with the Dispute Resolution Procedure set out in Schedule 13 [Dispute Resolution Procedure],

in accordance with the provisions of this Project Agreement and all applicable Laws.

3.2 Limitation on Payments

Other than the payments expressly provided for herein, Project Co will have no right to any further payment from the Authority in connection with the Design, Construction, Services or

System Refresh or otherwise in connection with the Project. The parties acknowledge and agree that, other than as expressly provided for herein, this Project Agreement is a fixed price contract pursuant to which Project Co takes the risk of cost overruns and is entitled to the benefit of cost saving. As such, the costs incurred by Project Co in connection with the Project, and the allocation of such costs, are within Project Co's sole discretion.

3.3 Provision of Lands

The Authority will make the Lands available for the Project in accordance with Schedule 7 [Lands] and the parties' rights and obligations in respect of the Lands are set out in such Schedule 7.

3.4 Permitting Assistance

The Authority shall, at its own cost, provide or cause to be provided such information, documentation and administrative assistance as Project Co may request and as the Authority may reasonably be able to provide, and shall execute such applications as are required to be in its name, to enable Project Co to obtain, maintain or renew any Permit or to demonstrate compliance with any Permit. The Authority shall provide or cause to be provided such information, documentation and assistance and/or execute such applications pursuant to this Section 3.4 within 10 Business Days of receipt of Project Co's request or such shorter period as is reasonable in the circumstances.

Subject to Section 8 (Supervening Events) and Section 2.1 of Schedule 7 [Lands], the Authority shall not be responsible for obtaining or for any delay in obtaining or for the failure of Project Co to obtain any Permit, unless such delay or failure is caused by any act or omission of the Authority. For greater certainty, the Authority shall not be obligated to:

- (a) exercise any other of its legal rights in order to avoid or eliminate the requirement to obtain any Permit; or
- (b) automatically grant to Project Co any Permit for which it is the authorizing entity.

The Authority will apply its usual procedures and criteria in considering applications from Project Co for any Permit. For greater certainty, nothing in this Project Agreement shall fetter the Authority's discretion in considering any application by Project Co for a Permit for which the Authority is the authorizing entity.

3.5 Authority's Representations and Warranties

The Authority represents and warrants to Project Co, as of the Effective Date, that:

- (a) the Authority has full power and capacity to enter into, carry out the transactions contemplated by and duly perform all its obligations contained in this Project Agreement and all other documents, instruments and agreements required to be executed and delivered by the Authority pursuant to this Project Agreement;
- (b) the execution and delivery of this Project Agreement and all other documents, instruments and agreements required to be executed and delivered by the Authority pursuant to this Project Agreement, and the completion of the transactions contemplated by this Project Agreement, have been duly authorized

by all necessary action on the part of the Authority, and this Project Agreement has been duly executed and delivered by the Authority and constitutes a legal, valid and binding obligation of the Authority enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application;

- (c) all required third party consents to the execution by the Authority of, and performance of its obligations under, this Project Agreement have been received;
- (d) to the extent that the chief officer selected by the Authority for the Project Has Knowledge, there are no facts or information relating to the Project which the Authority has not disclosed to Project Co and which, if learned by Project Co, would reasonably be expected to materially affect Project Co's evaluation of the risks Project Co is assuming pursuant to this Project Agreement, Operations Co's evaluation of the risks Operations Co is assuming pursuant to the Project Implementation Agreement or any Project Contractor's evaluation of the risks such Project Contractor is assuming pursuant to its Project Contract; and
- (e) the procurement process pursuant to which Project Co was selected to enter into this Project Agreement was conducted in accordance with the RFP and all applicable Laws, including KRS Chapter 45A of the Kentucky Model Procurement Code.

3.6 Purchase of Designated Equipment

The Authority will purchase the Designated Equipment and arrange for delivery of the Designated Equipment to Project Co (or as Project Co may direct) in accordance with the Designated Equipment Protocol. The Authority will, on the System Completion Date, make a payment to Project Co in the amount of \$1,354,000, which reflects the difference between the original budget for the Designated Equipment and \$28,646,000. In addition, to the extent that the amount actually paid by the Authority in respect of Designated Equipment is less than \$28,646,000 as a result of a change in the type or quantity of Designated Equipment required by Project Co, the Authority will, on the System Completion Date, make a further payment to Project Co in the amount of the difference between \$28,646,000 and the amount actually paid by the Authority in respect of Designated Equipment (taking into account changes in the type or quantity of Designated Equipment only).

3.7 Authority Common Carrier Covenant

The Authority covenants not to take or fail to take any action that would result in the designation of Project Co or any Project Co Person as a Common Carrier or in the application of the Common Carrier Regulations to Project Co, any Project Co Person or the NG-KIH System or any part thereof. The Authority acknowledges and agrees that the performance by Project Co or any Project Co Person of obligations under this Project Agreement, the Project Implementation Agreement or any Project Contract does not require any Person, including Project Co or any Project Co Person, to be regulated as a Common Carrier and such obligations are not intended to constitute common carriage under applicable Laws.

3.8 Authority Tax Monitoring and Compliance Covenant

The Authority understands that Project Co is causing the Kentucky Economic Development Finance Authority (“**KEDFA**”) to issue certain bonds (the “**Bonds**”), the interest on which is intended to be excluded from the gross income of the holders thereof, and loan the proceeds of the Bonds to Project Co in order to provide funds to design and construct the NG-KIH System.

The Authority covenants that it shall not take any action or inaction, nor fail to take any action or permit any action to be taken, if any such action or inaction would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds. Without limiting the generality of the foregoing, the Authority covenants that it will comply with the instructions and requirements of the Commonwealth Tax Certificate, which is attached as Exhibit B to the Tax Certificate and Agreement dated September 3, 2015, between Project Co and KEDFA and incorporated herein as if set forth fully herein. The Authority will, on a timely basis, provide Project Co and Operations Co with all necessary information with respect to the Authority’s Private Payment Monitoring Obligation (as defined in the Commonwealth Tax Certificate).

The Authority will provide funding to Project Co to cover any incremental costs of redeeming, defeasing or refinancing Bonds in connection with a Private Payment Remedial Action (as defined in the Commonwealth Tax Certificate).

Notwithstanding any other provision of this Project Agreement to the contrary, the covenants contained in this Section 3.8 shall survive the defeasance or payment in full of any and all the Bonds. As used in this Section 3.8, the term Bonds includes all obligations issued by KEDFA from time to time to finance or refinance the NG-KIH System.

3.9 Pole Attachment Agreements

The Authority will enter into each Pole Attachment Agreement required for the Project. During the Term, the Authority will, if applicable, renew each Pole Attachment Agreement no later than the expiration date set out in such Pole Attachment Agreement to ensure the continuous operation of the NG-KIH System. Subject to Project Co’s obligation to pay Pole Attachment Fees as set out in Section 3.5 of Appendix 4A [Services Specifications], the Authority will fulfill, or cause to be fulfilled, any of the other obligations under the Pole Attachment Agreements. The Authority will appoint Operations Co as its agent or designee pursuant to each Pole Attachment Agreement.

Since Pole Attachment Agreements had not been entered into with all Pole Providers as at the Effective Date, the parties acknowledge that there may be an increase or decrease in the Baseline Pole Attachment Costs.

Subject to the remaining provisions of this Section 3.9, Project Co will finalize a Simple Pole Attachment Agreement with each Pole Provider (other than a Material Telecommunications Company) in accordance with the Project Schedule and subject to the Authority’s right to review each Simple Pole Attachment Agreement before it is finalized in accordance with the agreed review procedure.

For clarity, Project Co will not be entitled to claim a Compensation Event in respect of any delay in obtaining a fully executed Simple Pole Attachment Agreement from each Pole Provider (other than a Material Telecommunications Company) during the Construction Period unless:

- (a) the Authority does not execute the finalized Simple Pole Attachment Agreement provided to the Authority by Project Co within 3 Business Days of receipt thereof; or
- (b) a Pole Provider refuses to enter into a Simple Pole Attachment Agreement.

For the five Pole Providers identified with a double asterisk in Appendix 8A [Baseline Pole Attachment Costs], Project Co will use commercially reasonable efforts to negotiate alternate (i) payment structures, including upfront payment of pole attachment rates, (ii) contract duration, including multi-year pole attachment agreements and/or (iii) other contractual terms and conditions that may result in a Complex Pole Attachment Agreement.

The Authority shall, at its own cost, provide or cause to be provided such information, documentation and assistance as Project Co may request and as the Authority may reasonably be able to provide to support the negotiation of any Complex Pole Attachment Agreement.

The parties agree to discuss certain of the Simple Pole Attachment Agreements that have been entered into by the Authority in order to determine whether approaching the relevant Pole Provider (each, a “**Targeted Pole Provider**”) could result in an amended commercial agreement with that Targeted Pole Provider (each, an “**Amended Pole Attachment Agreement**”) that would benefit the Project. The discussion between the parties will determine the list of Targeted Pole Providers to approach, if any, and the elements of the Complex Pole Attachment Agreement that would be presented to such Targeted Pole Provider (such as connections, trades, swaps). The parties will take into account any relevant factors in determining whether to approach a Targeted Pole Provider, including the impact or effect on the quality or delivery of the NG-KIH System or the Services, the relationship between the Authority and the Targeted Pole Provider and any negative impact or increased risk to Project Co, Operations Co, any Project Contractor or the Authority.

The parties acknowledge that the discussions between the parties referenced in the preceding paragraph and any negotiations with a Targeted Pole Provider resulting in an executed Amended Pole Attachment Agreement must occur during the Construction Period and in advance of any make-ready design work in respect of the Targeted Pole Provider’s poles (the “**Simple Pole Attachment Agreement Amendment Period**”).

If Project Co and the Targeted Pole Provider have negotiated an Amended Pole Attachment Agreement, Project Co will submit a Pole Attachment Proposal in accordance with Section 5 of Schedule 6 [Changes, Minor Works and Innovation Proposals]. The Authority agrees that it will not enter into an Amended Pole Attachment Agreement until it has completed the process set out in Section 5 of Schedule 6.

3.10 Procurement Protest or Challenge

The Authority will defend any protest or other challenge to the procurement process pursuant to which Project Co was selected to enter into this Project Agreement or to the Authority’s or Project Co’s right to proceed with the Project or any aspect thereof in connection with the procurement, to the extent that such protest or other challenge was denied following an initial review by the Secretary of the Finance and Administration Cabinet and the protester or challenger is seeking an injunction or other order of a court of competent jurisdiction resulting therefrom. The Authority will pay any costs incurred in defending the actions of the Authority related to the procurement process and the determination of the Secretary of the Finance and

Administration Cabinet. Project Co agrees to assist in the defense of the protest or challenge to the procurement process and will pay any costs incurred in defending the actions of Project Co related to the procurement process or to its interests in this Project Agreement. In connection with any legal proceedings related to a protest or other challenge to the procurement process as contemplated hereby, the parties, acting reasonably and in the best interests of the Project, will consider requesting that the protester or challenger be required to post an injunction bond.

4. PROJECT CO'S GENERAL OBLIGATIONS

4.1 General Obligations Re: Project

Subject to and in accordance with the provisions of this Project Agreement and all applicable Laws and Permits, Project Co will carry out the Design and Construction and perform the Services.

4.2 Records and Reports

Project Co will, at its own cost and expense, retain and maintain the records and reports referred to in Schedule 14 [Records and Reports] in accordance with such Schedule and in a form that is capable of audit by the Authority.

4.3 No Other Business

Project Co will not engage in any business or activity other than the business or activities conducted for the purpose of the Project or otherwise expressly permitted hereunder.

4.4 Project Co Persons

Project Co will, as between itself and the Authority, be responsible for, and not relieved of its obligations hereunder by, the acts, omissions, breaches, defaults, non-compliance, negligence and/or willful misconduct of any Project Co Person and all references in this Project Agreement to any act, omission, breach, default, non-compliance, negligence or willful misconduct of Project Co will be construed accordingly to include any act, omission, breach, default, non-compliance, negligence or willful misconduct committed by a Project Co Person.

4.5 Use of Sub-Contractors

Without limiting Section 4.4, the Authority acknowledges that Project Co may carry out the Design, Construction, Services and/or System Refresh by contracting such obligations to Operations Co, who will, in turn, contract all or part of its obligations under the Project Implementation Agreement to the Project Contractors, who may, in turn, contract all or part of their obligations under any Project Contract to one or more Sub-Contractors.

In respect of the Project:

- (a) Project Co will not contract with, or allow Operations Co or any of its Project Contractors or any Sub-Contractors to contract with, any Person that is a Restricted Person; and

- (b) Project Co will not utilize, and will not allow Operations Co or any of its Project Contractors or any Sub-Contractors to utilize, any materials from any Restricted State other than unprocessed raw materials and Non-Operative Components.

Notwithstanding the use of Operations Co, Project Contractors or Sub-Contractors, Project Co:

- (c) will not be relieved or excused from any of its obligations or liabilities under this Project Agreement; and
- (d) will remain liable to the Authority for the performance of all the covenants, obligations, agreements and conditions of this Project Agreement that are to be performed by Project Co.

4.6 Project Implementation Agreement and Project Contracts

Project Co will not:

- (a) terminate, or agree to or permit the termination of, all or any material part of the Project Implementation Agreement or any Project Contract except:
 - (1) as required to do so by the Authority pursuant to the provisions of this Project Agreement; or
 - (2) if there is an event of default under the Project Implementation Agreement or a Project Contract and Project Co terminates it in order to prevent or cure a Project Co Event of Default;
- (b) make, or agree to or permit the making of:
 - (1) any material amendment to the Project Implementation Agreement or any Project Contract, other than amendments (whether made by Change Certificate or otherwise) that are the direct and reasonable consequence of a Change; or
 - (2) any departure by any party from any material provision of the Project Implementation Agreement or any Project Contract;
- (c) permit Operations Co to assign or transfer to any Person any of Operations Co's rights or obligations under the Project Implementation Agreement, other than in accordance with the terms of the Project Implementation Agreement;
- (d) permit any Project Contractor to assign or transfer to any Person any of such Project Contractor's rights or obligations under a Project Contract, other than in accordance with the terms of such Project Contract; or
- (e) enter into, or permit the entering into of, any Project Contract other than those entered into on or before the Effective Date,

unless Project Co has, at its earliest practicable opportunity, submitted to the Authority notice of the proposed course of action (and any relevant documentation) and the Authority has consented to such course of action, such consent not to be unreasonably withheld or delayed.

The Authority will give or deny such consent within: (i) 15 Business Days of receipt of such notice and all relevant documentation, if Project Co is seeking to terminate the Project Implementation Agreement or a Project Contract and the Project Implementation Agreement or such Project Contract may, in accordance with its terms, be terminated immediately; and (ii) 30 Business Days of receipt of such notice and all relevant documentation in all other cases, and, if the Authority fails to give or deny its consent within such time periods, it will be deemed not to have given its consent. In determining whether to provide such consent and without limiting the Authority's discretion, it will be reasonable for the Authority to refuse its consent to the proposed course of action if:

- (f) the proposed assignee, transferee or party entering into the Project Implementation Agreement or any Project Contract is a Restricted Person; or
- (g) the proposed course of action could, in the reasonable opinion of the Authority, have a material adverse effect on the Authority or the Project.

4.7 Costs of Request for Consent

If Project Co requests consent to a proposed course of action pursuant to Section 4.6, Project Co will pay, without duplication, the Authority's reasonable internal administrative and personnel costs and all reasonable out-of-pocket costs in connection with considering any such request. At the time of such request, Project Co will make a payment to the Authority in the amount of \$5,000 (Index Linked) against its obligations under this Section 4.7. After the Authority renders its decision, the Authority will either refund any overpayment or invoice Project Co for any additional amounts owing under this Section 4.7 and Project Co will promptly pay such amount to the Authority.

4.8 Replacement Project Implementation Agreement or Project Contract

If the Project Implementation Agreement or any Project Contract at any time lapses, terminates, or otherwise ceases to be in full force and effect (whether by reason of expiration or otherwise), unless the goods, services or rights which were the subject matter of the Project Implementation Agreement or such Project Contract are no longer reasonably required for the Project or the Project Implementation Agreement or such Project Contract has been fully performed and all liabilities and obligations thereunder have been fully discharged:

- (a) Project Co will forthwith enter into, or cause to be entered into, a replacement contract or contracts upon the same or substantially similar terms as the contract so replaced (to the extent reasonably practicable); and
- (b) if the Authority and the relevant Project Contractor had entered into a Project Contractor Collateral Agreement with respect to the replaced Project Contract, Project Co will forthwith enter into, or cause the replacement Project Contractor to enter into, a Project Contractor Collateral Agreement.

4.9 Delivery of Amended Project Implementation Agreement or Project Contracts

If at any time any amendment is made to the Project Implementation Agreement or any Project Contract, or a replacement Project Implementation Agreement or Project Contract (or any agreement which materially affects the interpretation or application of the Project Implementation Agreement or any Project Contract) is entered into, Project Co will deliver to the

Authority a copy of each such amendment or agreement within 10 Business Days of the date of its execution or creation, certified as a true copy by an officer of Project Co.

4.10 Permits

- (a) Subject to Section 3.9, Section 8 (Supervening Events) and Section 2.1 of Schedule 7 [Lands], Project Co shall, at its own cost and risk and in accordance with the Project Schedule obtain, maintain and, as applicable, renew all Permits in accordance with Schedule 2 [Design and Construction Protocols] and comply with all Permits in accordance with their terms.
- (b) Where a Permit has requirements that may impose any conditions, liabilities or obligations on the Authority or any Authority Person, Project Co shall not obtain, amend or renew (other than upon the same terms and conditions) such Permit without the prior written consent of the Authority, not to be unreasonably withheld or delayed, provided that the Authority shall not be responsible for obtaining or for the failure of Project Co to obtain any Permit. The Authority shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on the Authority or any Authority Person by the requirements of any Permit obtained with the Authority's consent under this Section 4.10(b).
- (c) Project Co shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as the Authority may request and as Project Co may reasonably be able to provide to enable the Authority to demonstrate compliance with any Permit. Project Co shall provide or cause to be provided such information, documentation and assistance pursuant to this Section 4.10(c) within 10 Business Days of receipt of the Authority's request.

4.11 Project Co's Representations and Warranties

Project Co represents and warrants to the Authority that:

- (a) Project Co is a non-profit corporation duly created and validly existing under the laws of Kentucky and has full power and capacity to enter into, carry out the transactions contemplated by and duly perform all its obligations contained in this Project Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Project Agreement;
- (b) the information set out in Schedule 12 [Project Co's Ownership Information] is true and correct and, except as set out in Schedule 12 [Project Co's Ownership Information], there is, as at the date of this Project Agreement, no outstanding offer, agreement or other arrangement pursuant to which:
 - (1) any Person is obligated to subscribe for or take by means of transfer or by conversion any form of investment, security or voting rights in Project Co; or
 - (2) Project Co's formation documents will be amended or otherwise altered;

- (c) to Project Co's knowledge, none of Project Co, Persons who control Project Co, Operations Co, Persons who control Operations Co, the Project Contractors or the Sub-Contractors are Restricted Persons;
- (d) the execution and delivery of this Project Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Project Agreement, and the completion of the transactions contemplated by this Project Agreement, have been duly authorized by all necessary action on the part of Project Co, and this Project Agreement has been duly executed and delivered by Project Co and constitutes a legal, valid and binding obligation of Project Co enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application; and
- (e) all required third party consents to the execution by Project Co of, and performance of its obligations under, this Project Agreement have been received, other than any Permits and other approvals contemplated herein to be obtained after the Effective Date in connection with the Project.

4.12 Responses to Authority Inquiries

Unless otherwise specified in this Project Agreement, Project Co will respond in writing to all written inquiries received from the Authority as soon as reasonably practicable and in any event within 10 Business Days of receipt of such inquiry or such longer period as the circumstances and content of the inquiry may reasonably require.

4.13 Project Co Common Carrier Covenant

Project Co covenants not to take or fail to take any action that would result in the designation of Project Co or any Project Co Person as a Common Carrier or in the application of the Common Carrier Regulations to Project Co, any Project Co Person or the NG-KIH System or any part thereof. Project Co acknowledges and agrees that the performance by Project Co or any Project Co Person of obligations under this Project Agreement, the Project Implementation Agreement or any Project Contract is not intended to require any Person, including Project Co or any Project Co Person, to be regulated as a Common Carrier and such obligations are not intended to constitute common carriage under applicable Laws.

4.14 Project Co Tax Compliance Covenant

Project Co covenants that it shall not take any action or inaction, nor fail to take any action or permit any action to be taken, if any such action or inaction would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds. Without limiting the generality of the foregoing, Project Co covenants that it will comply with the instructions and requirements of the Tax Certificate and Agreement dated September 3, 2015, between Project Co and KEDFA and incorporated herein as if set forth fully herein. Project Co will, on a timely basis, provide KEDFA with all necessary information and, with respect to the Borrower's Rebate Requirement or Yield Reduction Payments (both as defined in the Borrower Tax Certificate) required to be paid, all necessary funds, in addition to any funds that are then available for such purpose in the Rebate Fund, to enable KEDFA to comply with all arbitrage and rebate requirements for federal income tax purposes.

Notwithstanding any other provision of this Project Agreement to the contrary, the covenants contained in this Section 4.14 shall survive the defeasance or payment in full of any and all the Bonds. As used in this Section 4.14, the term Bonds includes all obligations issued by KEDFA from time to time to finance or refinance the NG-KIH System.

4.15 Project Co's Obligations re Third Party Infrastructure Agreements

The Authority and Project Co acknowledge and agree that, as of the Effective Date, Project Co has negotiated non-binding term sheets (each, a **"Third Party Infrastructure Term Sheet"**) with the Third Party Infrastructure Providers, copies of which are attached as Schedule 20 [Third Party Infrastructure Term Sheets].

If, following the Effective Date, there is any change to a Third Party Infrastructure Term Sheet (including, for greater certainty, expiration thereof in accordance with its terms) or a Third Party Infrastructure Agreement that results in any change to Project Co's obligations under this Project Agreement, the scope or manner of carrying out the Project or Project Co's costs of carrying out the Project, the Authority shall issue a Change Directive in accordance with Section 2.17 of Schedule 6 [Changes, Minor Works and Innovation Proposals] in respect of such Change based on a description of the Change provided by Project Co to the Authority.

Project Co will use commercially reasonable efforts to manage the Third Party Infrastructure Providers in accordance with the terms of the Third Party Infrastructure Agreements and enforce its rights under the Third Party Infrastructure Agreements so as to mitigate the impact of any failure by a Third Party Infrastructure Provider to comply with the relevant Third Party Infrastructure Agreement or any breach by a Third Party Infrastructure Provider of any of its obligations under the relevant Third Party Infrastructure Agreement. Upon request from the Authority, Project Co will promptly submit a detailed description, supported by all such documentation as the Authority may reasonably require, of the measures and steps taken by Project Co to enforce its rights under each of the Third Party Infrastructure Agreements. The Authority acknowledges that the Maximum Availability Payment does not include any costs associated with any legal action required to enforce rights under the Third Party Infrastructure Agreements against the Third Party Infrastructure Providers.

In the event a Third Party Infrastructure Agreement involves any engineering, procurement or construction to be provided by a Third Party Infrastructure Provider, the term "manage" above shall not be construed as requiring Project Co to (a) provide any warranty as to that portion of the work, (b) exercise control over the quality of any engineering performed, (c) exercise control over the means and methods of construction or (d) exercise control over the safety of such Third Party Infrastructure Provider or such Third Party Infrastructure Provider's safety program.

The Authority shall provide or cause to be provided such information, documentation and assistance as Project Co may request and as the Authority may reasonably be able to provide to enable Project Co to enforce its rights under the Third Party Infrastructure Agreements.

In accordance with Section 8.2(h), if the Compensation Event described in (x) of the definition of Compensation Event occurs, the parties will consult and seek to agree on the steps to be taken by Project Co in enforcing its rights under the relevant Third Party Infrastructure Agreement. The parties acknowledge and agree that the compensation to which Project Co will be entitled in respect of any such Compensation Event will include, as a component of Project Co's Direct Losses, the reasonable cost of legal or professional services incurred by Project Co in connection with the enforcement of its rights. Project Co will not pursue any legal action to

enforce its rights under a Third Party Infrastructure Agreement without the prior written consent of the Authority.

5. FINANCING OF THE PROJECT

5.1 Compliance with Senior Financing Agreements

Project Co will keep the Senior Financing Agreements in good standing and will ensure that none of the terms and conditions of the Senior Financing Agreements will prevent Project Co from performing its obligations under this Project Agreement. If at any time Project Co receives a notice that an “event of default”, any event entitling the Senior Secured Creditors to enforce any security or any other similar event has occurred under the Senior Financing Agreements, Project Co will promptly and in any event within 5 Business Days of receipt of such notice, deliver to the Authority a copy of such notice.

5.2 Changes to Senior Financing Agreements

Project Co will not without the written consent of the Authority, not to be unreasonably withheld or delayed, terminate, amend, assign or otherwise modify the Senior Financing Agreements, or waive or exercise any of its rights under the Senior Financing Agreements or enter into any replacement Senior Financing Agreement or any agreement which affects the interpretation or application of any Senior Financing Agreements if such action would:

- (a) materially adversely affect Project Co’s ability to perform its obligations under this Project Agreement; or
- (b) have the effect of increasing any liability or potential liability of the Authority other than as contemplated in the Financial Model.

If at any time any amendment is made to any Senior Financing Agreement or Project Co enters into any replacement Senior Financing Agreement (or any agreement which affects the interpretation or application of any Senior Financing Agreement), Project Co will deliver to the Authority a copy of each such amendment or agreement within 5 Business Days of the date of its execution or creation, certified as a true copy by an officer of Project Co.

5.3 Restrictions on Refinancing

The Authority acknowledges and agrees that Project Co may enter into any Refinancing subject to compliance with the provisions of the Project Implementation Agreement and the Junior Loan Agreement.

5.4 Refinancing Process

If Project Co intends to undertake a Refinancing, Project Co will notify the Authority of such intention before the anticipated completion date of such Refinancing and will include with such notice all applicable information then available to Project Co in connection therewith. Project Co will promptly provide all other documents and information related to the proposed Refinancing as the Authority may reasonably request.

5.5 Authority Share of Refinancing Gain

The Authority will be entitled to receive 100% of any Refinancing Gain arising from a Qualifying Refinancing, calculated as at the time of such Qualifying Refinancing.

5.6 Payment to the Authority

The Authority may elect to receive any Refinancing Gain as:

- (a) a single payment to the NG-KIH Account;
- (b) a reduction, in accordance with Section 10.3, in the Availability Payments over the remainder of the Term; or
- (c) a combination of (a) and (b).

5.7 Calculation of Refinancing Gain

The Authority and Project Co will negotiate in good faith the basis and method of calculation of the Refinancing Gain, taking into account how the Authority has elected to receive the Refinancing Gain pursuant to Section 5.6 and the profile of the Refinancing Gain.

The Refinancing Gain will be calculated after taking into account:

- (a) the reasonable and proper costs that Project Co directly incurs in relation to the Refinancing (including, without limitation, any amounts required to be paid by Project Co to Operations Co pursuant to the Project Implementation Agreement or in connection with the Junior Debt);
- (b) any advisory fees; and
- (c) the Authority's reasonable internal administrative and personnel costs and all reasonable out-of-pocket costs incurred by the Authority in connection with any Refinancing,

which, in aggregate, may not exceed an amount equal to 2% of the par amount of the redeemed Bonds. If the Authority and Project Co are unable to agree on the basis and method of calculation of the Refinancing Gain, the Dispute will be determined in accordance with the Dispute Resolution Procedure.

5.8 Audit Rights

The Authority will have unrestricted rights of audit at any time (whether before or after the applicable event) over any proposed Financial Model, books, records and other documentation (including any aspect of the calculation of any Refinancing Gain) used in connection with any Refinancing or any other matter for which Project Co requires consent from the Authority under this Section 5 (Financing of the Project).

6. INSURANCE, DAMAGE AND DESTRUCTION

6.1 Insurance Coverage

Subject to Section 6.10(b), Project Co will take out, maintain in force, pay for and renew, or cause to be taken out, maintained in force, paid for and renewed, insurance for the Project as set out in Schedule 5 [Insurance Requirements].

6.2 Project Co's Obligations - Damage or Destruction During Construction Period

Without prejudice to Section 8 (Supervening Events), if the NG-KIH System is completely or substantially destroyed during the Construction Period, Project Co will repair, replace or restore those components of the NG-KIH System still under construction in accordance with the Design and Construction Specifications, subject only to:

- (a) applicable Laws; and
- (b) the Authority agreeing to pay to Project Co:
 - (1) the amount, if any, by which the cost of such repair, replacement or restoration exceeds the maximum amount of insurance coverage required under this Project Agreement for such risk (which, for greater certainty, is the maximum amount of coverage prior to any deductibles for which Project Co is responsible pursuant to Schedule 5 [Insurance Requirements]); or
 - (2) if no insurance coverage is required under this Project Agreement for such risk, an amount equal to the total costs of such repair, replacement or restoration,

and if the Authority agrees, the Authority will pay such amounts promptly upon receipt of one or more invoices from Project Co indicating that such amounts are due and payable by Project Co in connection with such repair, replacement or restoration.

For the purposes of this Section 6.2, the maximum amount of insurance coverage is in respect of insurance required to be obtained by Project Co, the full amount of coverage required under this Project Agreement for such risk prior to any deductibles for which Project Co is responsible pursuant to Schedule 5 [Insurance Requirements].

6.3 Insufficient Insurance

If:

- (a) the NG-KIH System is completely or substantially destroyed during the Construction Period;
- (b) the cost to repair, replace or restore those components of the NG-KIH System still under construction exceeds the maximum amount of insurance coverage (which, for greater certainty, is the maximum amount of coverage prior to any deductibles for which Project Co is responsible pursuant to Schedule 5

[Insurance Requirements]) required under this Project Agreement for the risk that caused the destruction; and

- (c) neither the Authority nor Project Co has agreed to pay the amount by which the cost to repair, replace or restore those components of the NG-KIH System still under construction exceeds the Insurance Proceeds and Insurance Receivables with respect to such destruction,

either party may, by notice to the other party and Operations Co, terminate this Project Agreement, in which case the Authority will pay compensation to Project Co in accordance with Section 4 of Schedule 9 [Compensation on Termination].

6.4 Uncollectible Insurance Receivables

If at any time while Project Co is relieved of its obligations under Section 6.2 by reason of the Relief Event described in Section (f) of the definition of Relief Event:

- (a) Project Co has complied with its obligations hereunder with respect to such Relief Event; and
- (b) notwithstanding such compliance by Project Co, collection of the applicable Insurance Receivables is not possible using commercially reasonable efforts,

either party may, by notice to the other party and Operations Co, terminate this Project Agreement, in which case the Authority will pay compensation to Project Co in accordance with Section 4 of Schedule 9 [Compensation on Termination].

6.5 Application of Insurance Proceeds If No Termination

Unless a party has terminated this Project Agreement (including pursuant to Section 6.3 or Section 6.4), Project Co will cause all:

- (a) applicable Insurance Proceeds which Project Co has received;
- (b) applicable Insurance Proceeds which Project Co is entitled to receive;
- (c) amounts which the Authority has agreed to pay as contemplated in Section 6.2(b); and
- (d) amounts which Project Co has agreed to pay to cover the amount by which the cost to repair, replace or restore the NG-KIH System exceeds the Insurance Proceeds and Insurance Receivables with respect to complete or substantial destruction,

to be applied to the reinstatement of the NG-KIH System in accordance with the terms of this Project Agreement.

6.6 Application of Insurance Proceeds In Case of Termination

If a party has terminated this Project Agreement pursuant to Section 6.3:

- (a) any Insurance Proceeds received prior to the Termination Payment Date by Project Co in respect of damage to the NG-KIH System and not already applied to the repair of such damage will first be applied towards the Termination Payment and any Insurance Proceeds remaining after such application will be paid to the Authority; and
- (b) on the Termination Payment Date, Project Co will assign to the Authority the benefit of all Insurance Receivables which have been taken into account in calculating the Termination Payment.

6.7 Standards of Repair, Replacement or Restoration

Any repair, replacement or restoration of the NG-KIH System or any part thereof pursuant to the provisions of Section 6.2 will be made or done in compliance with the Design and Construction Protocols and the Design and Construction Specifications, subject to any agreement made between the Authority and Project Co to revise the Design and Construction Protocols or the Design and Construction Specifications as they pertain to any repaired, replaced or restored NG-KIH System.

6.8 Mitigation

Project Co and the Authority will use all commercially reasonable efforts to mitigate the effects of any risks or claims covered by this Section 6 (Insurance, Damage and Destruction), including minimizing the amount of any costs and expenses which might result.

6.9 Risks Becoming Uninsurable

Each party will, forthwith upon Having Knowledge, notify the other if a Principal Insured Risk becomes or is expected to become Uninsurable. If both parties agree or it is determined in accordance with the Dispute Resolution Procedure that the relevant Principal Insured Risk is or is about to become Uninsurable and that the Principal Insured Risk being Uninsurable is not and will not be caused by the actions or omissions of Project Co or any Project Co Person or the Authority or any Authority Person contrary to Section 5.10 of Schedule 5 [Insurance Requirements], then the parties together with their respective insurance advisors will meet to discuss the means by which such Principal Insured Risk should be managed (including considering the feasibility of self-insurance by either party).

6.10 Consequences of Risks Becoming Uninsurable

If the requirements of Section 6.9 are satisfied but the parties cannot agree within 20 Business Days on how to manage a Principal Insured Risk that becomes Uninsurable (the “**Uninsurable Risk**”):

- (a) if the Uninsurable Risk is third party liability, the Authority shall terminate this Project Agreement whereupon Project Co will be entitled to compensation on termination as provided in Section 4 of Schedule 9 [Compensation on Termination]; or
- (b) if the Uninsurable Risk is not third party liability:

- (1) the Authority may, by notice to Project Co and Operations Co, terminate this Project Agreement whereupon Project Co will be entitled to compensation on termination as provided in Section 4 of Schedule 9 [Compensation on Termination]; or
- (2) if and for as long as the Authority has not terminated this Project Agreement under Section 6.10(b)(1):
 - (A) this Project Agreement will continue;
 - (B) neither Project Co nor the Authority will be obligated by this Project Agreement to maintain insurance in respect of the Uninsurable Risk and references in this Project Agreement to the insurance required by this Section 6 (Insurance, Damage and Destruction) or Schedule 5 [Insurance Requirements] will be construed accordingly;
 - (C) the Availability Payments will thereafter be adjusted in accordance with Section 10.3 by agreement of the parties, acting reasonably, or, failing such agreement, by the Dispute Resolution Procedure, from the date upon which the Uninsurable Risk became Uninsurable, to reflect any savings in Project Co's insurance cost as a result of Project Co not having to insure against the Uninsurable Risk; and
 - (D) the occurrence of the Uninsurable Risk will be deemed to be a Compensation Event unless the Authority, by notice to Project Co and Operations Co, terminates this Project Agreement whereupon Project Co will be entitled to compensation on termination as provided in Section 4 of Schedule 9 [Compensation on Termination].

6.11 Subrogation

If the Authority makes any payment to Project Co pursuant to the Compensation Event referred to in Section 6.10(b)(2)(D), then the Authority, to the extent of the amount paid, will be subrogated to Project Co's rights against any third party in respect of the occurrence or claim as a result of which the payment was made, other than any third party that was an insured under the last policy of insurance to cover the Uninsurable Risk before it became Uninsurable, to the extent the insurers did not have a right of subrogation against such third party.

6.12 Continuing Attempts to Insure Uninsurable Risks

When there is an Uninsurable Risk for which Project Co is responsible to obtain insurance under Schedule 5 [Insurance Requirements], Project Co will approach the insurance market on a regular basis and, in any event, at regular intervals of no longer than six months to establish whether the Uninsurable Risks remain Uninsurable. Following each such approach of the insurance market, Project Co will notify the Authority as to whether the Uninsurable Risks remain Uninsurable.

6.13 Uninsurable Risks Becoming Insurable

Where a risk that was previously an Uninsurable Risk ceases to be so and Project Co becomes aware or is informed by the Authority that this is the case, Project Co will forthwith take out, maintain and pay for or cause to be taken out, maintained and paid for insurance in accordance with the requirements of this Project Agreement in respect of the risk, and in any case:

- (a) Sections 6.9, 6.10 and 6.12 will no longer apply to the risk so long as it is not an Uninsurable Risk; and
- (b) the Availability Payments will be adjusted pursuant to Section 10.3 by agreement of the parties acting reasonably or, failing such agreement, by the Dispute Resolution Procedure, from the date upon which the Uninsurable Risk became insurable, to reflect any increase in Project Co's insurance cost as a result of having to insure the risk that ceased to be an Uninsurable Risk.

7. CHANGES, MINOR WORKS AND INNOVATION PROPOSALS

7.1 Changes Required by the Authority

The Authority may require and Project Co may request Changes in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals].

7.2 Innovation and Value Engineering

Project Co may submit an Innovation Proposal for consideration by the Authority in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals].

7.3 Minor Works

The Authority may require Minor Works in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals].

8. SUPERVENING EVENTS

8.1 Supervening Events

If:

- (a) a Compensation Event, Relief Event or Excusing Event occurs, Project Co may;
or
- (b) a Force Majeure Event or Eligible Change in Law Event occurs, either party may,

apply for relief from its obligations, extensions of time, claim compensation or claim a termination right under this Project Agreement to the extent provided in this Section 8 (Supervening Events). The "**Applicant**" means the party making such application.

8.2 Procedures Upon the Occurrence of a Supervening Event

The following procedure will apply if a Supervening Event occurs:

- (a) as soon as practicable, and in any event within 5 Business Days after the Applicant Has Knowledge that the Supervening Event has caused, or is reasonably likely to cause, an entitlement under this Section 8 (Supervening Events), the Applicant will give to the other party and Operations Co a notice (“**Supervening Event Notice**”) identifying the particular Supervening Event and summarizing, to the extent the Applicant Has Knowledge, the consequences and the nature of the Applicant’s claim;
- (b) within 10 Business Days after delivery by the Applicant of a Supervening Event Notice, to the extent the Applicant Has Knowledge, the Applicant will give to the other party and Operations Co:
 - (1) additional details, including available supporting documentation, in support of its claim; and
 - (2) if applicable, a detailed breakdown of all Direct Losses incurred or which will be incurred or other compensation or relief sought by Project Co, if it is the Applicant, as a result of the Supervening Event;
- (c) from time to time thereafter, the Applicant will notify the other party and Operations Co if at any time it receives or becomes aware of any further material information relating to the Supervening Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading. In particular, a party claiming relief as a result of a Force Majeure Event will notify the other party and Operations Co as soon as the Force Majeure Event has ceased and of the time when performance of its affected obligations can be resumed;
- (d) a party may make multiple but not duplicative claims in respect of a Supervening Event and both parties may make claims in respect of the same Supervening Event;
- (e) where the Authority is claiming the benefit of an Eligible Change in Law Event, Project Co will provide the Authority information reasonably requested in order to make its claim;
- (f) the Applicant must demonstrate:
 - (1) it could not have avoided such occurrence or the consequences of the Supervening Event by steps which it might reasonably be expected to have taken provided that, in the case of the Authority, the Authority is not required to take any steps that are referred to in Section 2.6;
 - (2) if applicable, the Supervening Event caused or will cause the Applicant to incur a Direct Loss, a delay in the Project Schedule or the need for relief from other obligations under this Project Agreement; and
 - (3) in the case of Project Co, it has complied with its mitigation obligations pursuant to Section 2.5 and in the case of the Authority, it has complied with its mitigation obligations pursuant to Section 2.6,

provided that, with respect to the Compensation Event described in (cc) of the definition of Compensation Event, Project Co's mitigation obligations shall not be interpreted as requiring Project Co to incur any costs associated with obtaining a sufficiently detailed description of any Site Location so as to enable Project Co to carry out its obligations under this Project Agreement by the date reasonably required by Project Co in accordance with the Project Schedule;

- (g) the Applicant will advise whether, in the Applicant's opinion, any amendments should be considered to this Project Agreement, the Project Implementation Agreement, any Project Contract or any Senior Financing Agreement as a result of the Supervening Event; and
- (h) the Authority, Project Co and Operations Co will meet within 15 Business Days of delivery of the Supervening Event Notice to consult and seek to agree to the effect of the Supervening Event and, if the Authority, Project Co and Operations Co, within 10 Business Days following the meeting, have not agreed to the occurrence or the effect of the Supervening Event, either the Authority or Project Co may refer the question of whether a Supervening Event has occurred, whether the conditions in Section 8.2(f) above have been satisfied or the extent of relief or compensation to which the affected party is entitled, for resolution in accordance with the Dispute Resolution Procedure.

8.3 Project Co's Entitlements Upon Occurrence of a Compensation Event

Subject to Section 8.12, if at any time a Compensation Event has occurred and Project Co has given the Authority a Supervening Event Notice related thereto:

- (a) Project Co is relieved from any liability or consequence (including termination by the Authority) under this Project Agreement arising from any delay or failure in performing any of its obligations under or in connection with this Project Agreement to the extent resulting from the Compensation Event;
- (b) the Availability Payments will be calculated as if the Compensation Event had not occurred based on the Reasonably Expected Performance of Project Co, except that any Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which Project Co would have recovered as a result of the Compensation Event if it had complied with the requirements of this Project Agreement or any policy of insurance maintained or required to be maintained under this Project Agreement will be deducted therefrom;
- (c) the Authority will pay to Project Co compensation in respect of a Compensation Event calculated on the basis that Project Co will be placed in no better or worse position than it would have been in had a Compensation Event not occurred and taking into consideration the following (without duplication):
 - (1) any Direct Losses (including the amount of any applicable insurance deductibles calculated without netting out Insurance Receivables) resulting from the Compensation Event;

- (2) any net increase or decrease in the costs of Project Co performing its obligations under this Project Agreement resulting from the Compensation Event; and
- (3) the Availability Payments payable to Project Co, taking into account the adjustments pursuant to Section 8.3(b) above;

except that:

- (4) any Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which Project Co would have recovered as a result of the Compensation Event if it had complied with the requirements of this Project Agreement or any policy of insurance maintained or required to be maintained under this Project Agreement will be deducted therefrom; and
 - (5) no Indirect Losses will be taken into consideration;
- (d) concurrent with the first payment of any compensation by the Authority under Section 8.3(c), Project Co will assign to the Authority its rights to all applicable Insurance Receivables (whether or not Project Co has made a claim); and
 - (e) if the Compensation Event occurs prior to the System Completion Date, the Project Schedule will be amended and the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and Longstop Date will be postponed by such time as is reasonable in the circumstances to take account of the effect of the delay caused by the Compensation Event, but the Expiration Date will not be extended.

8.4 Project Co's Entitlements Upon Occurrence of a Relief Event

Subject to Section 8.12, if at any time a Relief Event has occurred and Project Co has given the Authority a Supervening Event Notice related thereto:

- (a) Project Co is relieved from any liability or consequence (including termination by the Authority, except as provided for in this Section 8.4) under this Project Agreement arising from any delay or failure in performing any of its obligations under this Project Agreement to the extent resulting from the Relief Event, except that nothing will affect any entitlement of the Authority to make Deductions and the Authority will only be obligated to make Availability Payments to the extent that the performance or other criteria for Availability Payments are met in accordance with the applicable provisions of this Project Agreement notwithstanding the Relief Event;
- (b) if the Relief Event occurs prior to the System Completion Date:
 - (1) the Project Schedule will be amended and the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and Longstop Date will be postponed by such time as is reasonable in the circumstances to take account of the effect of the delay caused by the Relief Event, but the Expiration Date will not be extended;

- (2) for the period that Site Completion is delayed to a date after a Target Site Completion Date (as it was prior to having been postponed pursuant to Section 8.4(b)(1)) as a result of one or more of the Relief Events described in (c), (d), (e), (g), (h), (i) and (j) of the definition of Relief Event, the Authority will pay to Project Co the net Senior Debt Service Amount for such period, taking into account the total amount of Availability Payments actually being paid to Project Co during such period and the total amount of Availability Payments projected to be paid to Project Co during such period, less applicable Insurance Proceeds and insurance proceeds which Project Co would have recovered as a result of the Relief Event if it had complied with the requirements of this Project Agreement or any policy of insurance maintained or required to be maintained under this Project Agreement; and
 - (3) concurrent with the first payment of any amount by the Authority pursuant to Section 8.4(b)(2), Project Co will assign to the Authority its rights to all applicable Insurance Receivables (whether or not Project Co has made a claim);
- (c) if the Relief Event, or its effects, persists or is likely to persist for more than 180 days after the date a Supervening Event Notice is delivered by the Applicant, either party may at any time so long as such Relief Event is, or such effect is, continuing and subject to Section 14.2, terminate this Project Agreement by notice to the other party and Operations Co;
 - (d) if the Authority gives notice to Project Co and Operations Co under Section 8.4(c) terminating this Project Agreement, Project Co will have the option either to accept such notice or to respond in writing on or before the date falling 10 Business Days after the date of receipt of such notice stating that it requires this Project Agreement to continue, in which case Project Co's rights to relief under this Section 8.4 in respect of the Relief Event will cease and the Authority's termination notice will be deemed null and void;
 - (e) if Project Co gives notice to the Authority under Section 8.4(c) terminating this Project Agreement, the Authority will have the option either to accept such notice or to respond in writing on or before the date falling 15 Business Days after the date of receipt of such notice stating that it requires this Project Agreement to continue, in which case:
 - (1) Project Co's termination notice will be deemed null and void and Project Co, insofar as it is able to do so, will continue to perform its obligations in accordance with the provisions of this Project Agreement;
 - (2) the Relief Event will be deemed to constitute a Compensation Event occurring as of the date on which the Relief Event first occurred;
 - (3) at any time so long as the Supervening Event referred to in Section 8.4(e)(2) is continuing, the Authority may terminate this Project Agreement by notice to Project Co and Operations Co; and

- (4) Project Co may at any time so long as the Supervening Event referred to in Section 8.4(e)(2) is continuing after a further period of 180 days after the date on which Project Co delivered the termination notice pursuant to Section 8.4(c) terminate this Project Agreement by notice to the Authority;
- (f) if this Project Agreement is terminated pursuant to this Section 8.4, Project Co will be entitled to compensation on such termination in accordance with Section 4 of Schedule 9 [Compensation on Termination]; and
- (g) Deductions made while Project Co is entitled to relief under this Section 8.4 will not be counted for the purposes of Section 12.1(g) or Section 6.4 of Schedule 4 [Services Protocols and Specifications].

8.5 Project Co's Entitlements Upon Occurrence of an Excusing Event

Subject to Section 8.12, if during the Operating Period an Excusing Event has occurred and Project Co has given the Authority a Supervening Event Notice related thereto:

- (a) Project Co is relieved from any liability or consequence (including termination by the Authority) under this Project Agreement arising from any delay or failure in performing any of its obligations to the extent resulting from the Excusing Event; and
- (b) the Availability Payments will be calculated as if the Excusing Event had not occurred based on the Reasonably Expected Performance of Project Co, except that any Avoidable Costs and applicable Insurance Proceeds and Insurance Receivables and insurance proceeds which Project Co would have recovered if it had complied with the requirements of this Project Agreement or any policy of insurance maintained or required to be maintained under this Project Agreement will be deducted therefrom.

8.6 Parties' Entitlements Upon Occurrence of a Force Majeure Event

Subject to Section 8.12, if at any time a Force Majeure Event has occurred and the Applicant has given the other party and Operations Co a Supervening Event Notice related thereto:

- (a) the Applicant is relieved from any liability or consequence (including termination by the Authority, except as provided for in this Section 8.6) under this Project Agreement arising from any delay or failure in performing any of its obligations under this Project Agreement to the extent resulting from the Force Majeure Event, except that nothing will affect any entitlement of the Authority to make Deductions and the Authority will only be obligated to make Availability Payments to the extent that the performance or other criteria for Availability Payments are met notwithstanding the Force Majeure Event;
- (b) if the Applicant is Project Co and the Force Majeure Event occurs prior to the System Completion Date, the Project Schedule will be amended and the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and Longstop Date will be postponed by such time as is reasonable in the circumstances to take account of

the effect of the delay caused by the Force Majeure Event, but the Expiration Date will not be extended;

- (c) if a Force Majeure Event occurs and it, or its effects, persists or is likely to persist for more than 180 days after the date a Supervening Event Notice is delivered by the Applicant, either party may at any time so long as such Force Majeure Event is, or such effect is, continuing, terminate this Project Agreement by notice to the other party and Operations Co;
- (d) if Project Co gives notice to the Authority under Section 8.6(c) terminating this Project Agreement, the Authority will have the option either to accept such notice or to respond in writing on or before the date falling 15 Business Days after the date of receipt of such notice stating that it requires this Project Agreement to continue, in which case:
 - (1) Project Co's termination notice will be deemed null and void and Project Co, insofar as it is able to do so, will continue to perform its obligations in accordance with the provisions of this Project Agreement;
 - (2) the Force Majeure Event will be deemed to constitute a Compensation Event occurring as of the date the Force Majeure Event first occurred;
 - (3) at any time so long as the Supervening Event referred to in Section 8.6(d)(2) is continuing, the Authority may terminate this Project Agreement by notice to Project Co and Operations Co; and
 - (4) Project Co may at any time so long as the Supervening Event referred to in Section 8.6(d)(2) is continuing after a further period of 180 days after the date on which Project Co delivered the termination notice pursuant to Section 8.6(c), terminate this Project Agreement by notice to the Authority;
- (e) if this Project Agreement is terminated pursuant to Section 8.6(c), 8.6(d)(3) or 8.6(d)(4), Project Co will be entitled to compensation on such termination in accordance with Section 4 of Schedule 9 [Compensation on Termination]; and
- (f) Deductions made while Project Co is entitled to relief under this Section 8.6 will not be counted for the purposes of Section 12.1(g) or Section 6.4 of Schedule 4 [Services Protocols and Specifications].

8.7 Parties' Entitlements Upon Occurrence of an Eligible Change in Law Event

Subject to Section 8.12, if at any time an Eligible Change in Law Event has occurred and the Applicant has given the other party and Operations Co a Supervening Event Notice related thereto:

- (a) the Applicant will be entitled to compensation, or an increase or decrease in the Availability Payments, in respect of the Eligible Change in Law Event calculated on the basis that Project Co will be placed in no better or worse position than it would have been in had such Eligible Change in Law Event not occurred and taking into consideration the following (without duplication):

- (1) any Direct Losses (calculated without netting out Insurance Receivables) resulting from the Eligible Change in Law Event;
- (2) any net increase or decrease in the costs of Project Co performing the Design, Construction, Services or System Refresh, as applicable, resulting from the Eligible Change in Law Event; and
- (3) the Availability Payments payable to Project Co,

except that:

- (4) any Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which Project Co would have recovered if it had complied with the requirements of this Project Agreement or any policy of insurance maintained or required to be maintained under this Project Agreement will be deducted therefrom;

and concurrent with the first payment of any compensation by the Authority under this Section 8.7(a), Project Co will assign to the Authority its rights to all applicable Insurance Receivables (whether or not Project Co has made a claim); and

- (b) in the case of a Relevant Works Change in Law, Project Co will be entitled to compensation from the Authority in an amount equal to the Allowable Capital Expenditure in addition to any compensation payable pursuant to Section 8.7(a).

8.8 Parties' Entitlements Upon Occurrence of a Change in Law

Without limiting Section 8.4, Section 8.5 or Section 8.7:

- (a) if compliance by Project Co with a Change in Law is outside the scope of, or inconsistent with, Project Co's obligations under this Project Agreement, or would mean a change in Project Co's obligations under this Project Agreement or a change in the scope or manner of carrying out the Project, such Change in Law will be deemed to constitute a Change having effect from the time that such Change in Law takes effect, except that Project Co will not be entitled to any payment or other compensation other than as set out in Section 8.4, Section 8.5 or Section 8.7;
- (b) except as otherwise provided in this Project Agreement, including in Section 8.4, Section 8.5 or Section 8.7, Project Co will not be entitled to any other payment or compensation or relief in respect of any Change in Law or the consequences thereof; and
- (c) nothing in Section 8.4, Section 8.5 or Section 8.7 will be interpreted as relieving Project Co of its obligation, following any and all Changes in Law, to perform its obligations under this Project Agreement in compliance with all Laws.

8.9 Labor Disputes

If Project Co Has Knowledge of an actual or potential labor dispute that may affect any of the Design, Construction, Services or System Refresh, Project Co will promptly:

- (a) give notice thereof to the Authority, including all relevant information related to the dispute of which Project Co Has Knowledge; and
- (b) use commercially reasonable efforts to mitigate the effects of such labor dispute on the performance of any of the Design, Construction, Services or System Refresh, including by applying for relief to appropriate tribunals or courts if such labor dispute involves workers of Project Co, Operations Co, a Project Contractor and/or a Sub-Contractor.

Project Co acknowledges that if the labor dispute involves workers of Operations Co, a Project Contractor or Sub-Contractor, or of anyone employed by or through them, the Authority will not be required to provide any facilities, space or assistance in the NG-KIH System or on the Lands for the purposes of such workers or any applicable union.

8.10 Payments in Respect of Supervening Events

Payments between the parties and any adjustments to Availability Payments in respect of Supervening Events will be made in accordance with Section 10 (Lump Sum Payments and Availability Payment Adjustments).

8.11 Supervening Events Mitigated by Change

Nothing in this Project Agreement will limit the right of the Authority to perform or mitigate its obligations in respect of Supervening Events or the consequences of a Supervening Event by requiring a Change or Changes.

8.12 Delay in Notification

If a Supervening Event Notice or any required information is provided by an Applicant to the other party after the dates referred to in Section 8.2, then without prejudice to any other rights or remedies of the other party under this Project Agreement:

- (a) the Applicant will not be entitled to any compensation, extension of time or relief from its obligations under this Project Agreement to the extent that the amount thereof was increased or the ability to mitigate was adversely affected as a result of such delay in providing such notice or information; and
- (b) if the period of delay is 12 months or more, the rights of the Applicant with respect to the applicable Supervening Event will be of no further force or effect.

8.13 Equivalent Project Relief

The parties acknowledge that Project Co will share with Operations Co, who will, in turn, share with the Project Contractors, who will, in turn, share with Sub-Contractors, certain benefits to Project Co derived from the rights of Project Co under, and subject to the obligations and limitations under, this Project Agreement, including rights of Project Co under Section 8

(Supervening Events) (such rights, as qualified by such obligations and limitations, are collectively “**Project Co’s Rights**”). Accordingly:

- (a) any circumstance affecting Operations Co, a Project Contractor or a Sub-Contractor which, if such circumstance had affected Project Co directly would have given rise to a claim by Project Co pursuant to Project Co’s Rights, will, for the purpose of this Project Agreement, be deemed to be a circumstance affecting Project Co in respect of which Project Co may claim under and subject to Project Co’s Rights; and
- (b) amounts claimed by Operations Co, the Project Contractor or Sub-Contractor against Project Co in respect of any circumstance referred to in Section 8.13(a) above may be claimed by Project Co against the Authority under and subject to Project Co’s Rights, but whether or not the Authority is liable for such amounts will be determined under this Project Agreement as if the circumstance had affected Project Co directly,

provided that:

- (c) all such claims will be made and administered by Project Co and none of Operations Co, any Project Contractor or any Sub-Contractor will have any rights against the Authority, including under this Section 8.13;
- (d) in no event will the liability of the Authority under this Section 8.13 be greater than it would have been if Project Co had been directly affected by the circumstance referred to in Section 8.13(a) above; and
- (e) in no event will the Authority be liable under this Section 8.13 for any Direct Losses or other compensation that the Authority would not have been liable for if Project Co had been directly affected by the circumstance referred to in Section 8.13(a) above.

9. INDEMNITIES AND LIMITS ON LIABILITIES AND REMEDIES

9.1 Project Co’s Obligation to Indemnify

Project Co will indemnify and keep the Authority and each Authority Indemnified Person indemnified at all times from and against all Direct Losses that any such Person may sustain in connection with any claim made by one or more third parties (including for loss of or physical damage to property or assets), or any claim for, or in respect of, the death, personal injury, disease or illness of any Person, including any Authority Indemnified Person, arising by reason of any negligent act or omission or other tortious conduct of Project Co or any Project Co Person, except to the extent caused, or contributed to, by any negligent act or omission or other tortious conduct of the Authority or any Authority Person. For greater certainty, Section 4.4 applies to this Section 9.1. This Section 9.1 may be relied upon by the Authority Indemnified Persons and may be enforced directly by any of them against Project Co in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and Project Co.

9.2 Conduct of Third Person Claims

This Section 9.2 will apply to the conduct of claims made by a third Person against a party having or claiming to have with respect to such third Person claim, the benefit of an indemnity or a right to compensation under this Project Agreement. The party having, or claiming to have, the benefit of the indemnity or right to compensation is referred to as the “**Beneficiary**” and the party from whom the indemnity or compensation is sought is referred to as the “**Indemnifier**”. Accordingly, subject to the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Project Agreement:

- (a) if the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification or compensation under this Project Agreement in respect of the entire claim, the Beneficiary will give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt thereof;
- (b) the Indemnifier will be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations and the Beneficiary will give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;
- (c) in defending any claim described in Section 9.2(b) in which there is a conflict of interest between the Indemnifier and the Beneficiary, the Beneficiary may appoint independent legal counsel in respect of such claim and, if it is determined that the Beneficiary is entitled to indemnification by or compensation from the Indemnifier, all reasonable costs and expenses incurred by the Beneficiary in so doing will be included in the indemnity or compensation from the Indemnifier;
- (d) with respect to any claim conducted by the Indemnifier pursuant to Section 9.2(b), the Indemnifier will:
 - (1) keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (2) demonstrate to the Beneficiary, at the reasonable request of the Beneficiary, that the Indemnifier has sufficient means to pay all costs and expenses that it may incur by reason of conducting the claim; and
 - (3) not pay or settle such claims without the consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
- (e) the Beneficiary may take conduct of any defense, dispute, compromise or appeal of the claim and of any incidental negotiations if:
 - (1) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 9.2(b); or
 - (2) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 10 Business Days of the notice from

the Beneficiary under Section 9.2(a) or notifies the Beneficiary that it does not intend to take conduct of the claim; or

- (3) the Indemnifier fails to comply in any material respect with Section 9.2(d) above,

and, in the case of (3) above, the Beneficiary may pay or settle any claim on such terms as it thinks fit (provided such settlement is in monetary terms only) and without prejudice to its rights and remedies under this Project Agreement. Otherwise the Beneficiary will not pay or settle such claims without the consent of the Indemnifier, such consent not to be unreasonably withheld or delayed;

- (f) the Beneficiary may at any time give notice to the Indemnifier that it is retaining or taking over, as the case may be, the conduct of any defense, dispute, compromise, settlement or appeal of any claim, or of any incidental negotiations, to which Section 9.2(b) above applies. On receipt of such notice, the Indemnifier will promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and will provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section 9.2(f) (for the sake of clarity, for reasons other than as provided in Sections 9.2(e)(2) or 9.2(e)(3)), then the Indemnifier will be released from any liability under its indemnity under Section 9.1 or its obligation to provide compensation, as the case may be; and
- (g) in response to any claim of infringement or misappropriation or alleged infringement or misappropriation of the Intellectual Property rights of any Person, Project Co may replace such infringing or allegedly infringing item provided that:
 - (1) the replacement is performed without additional cost to the Authority; and
 - (2) the replacement has at least equal quality performance capabilities when used in conjunction with the NG-KIH System.

9.3 General Obligation to Pursue Third Person Recovery

If a party (the “**Paying Party**”) has paid to the other party (the “**Receiving Party**”) an amount in respect of any indemnity, Supervening Event or other liability hereunder (a “**Liability Payment**”), and the Receiving Party has a *bona fide* claim for recovery of any such Liability Payment from a third Person or under any insurance required pursuant to this Project Agreement, the Receiving Party will:

- (a) as directed by the Paying Party either:
 - (1) promptly make commercially reasonable efforts to pursue and recover such claim and provide evidence of such efforts to the Paying Party; or
 - (2) assign to the Paying Party the right to pursue and recover such claim and, at the Paying Party’s cost, provide reasonable cooperation in connection with the pursuit and recovery of such claim; and

- (b) if it subsequently recovers, or the Paying Party makes recovery on its behalf, (whether by payment, discount, credit, saving, relief or other benefit or otherwise) an amount which is directly referable to the fact, matter, event or circumstances giving rise to the payment of the Liability Payment, forthwith repay to the Paying Party an amount equal to the lesser of:
- (1) an amount equal to the sum recovered (or of the value of the recovery whether by discount, credit, saving, relief or otherwise) less any out of pocket costs and expenses properly incurred by the Receiving Party in recovering such sum; and
 - (2) the Liability Payment,

provided that the Paying Party will be repaid only to the extent that the amount of such recovery plus the Liability Payment exceeds the total loss or liability of the Receiving Party in respect of the fact, matter or circumstance giving rise to the Liability Payment.

For greater certainty, the above reference to a “third Person” will not include, in the case where the Authority is the Paying Party, Project Co and Project Co Persons and their respective employees, directors, officers and agents and will not include, in the case where Project Co is the Paying Party, the Authority and the Authority Indemnified Persons.

9.4 Waiver of Remedies

No failure to exercise, and no delay in exercising, any right or remedy under this Project Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Project Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

9.5 Remedies Cumulative

Subject to Sections 9.6, 9.7 and 9.8:

- (a) the rights and remedies of the parties under this Project Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise;
- (b) a party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter; and
- (c) no single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

9.6 Limitation on Authority’s Remedies

The Authority’s remedies in respect of any failure by Project Co:

- (a) to achieve Ring Completion of any Ring by the relevant Target Ring Completion Date or the relevant Outside Ring Completion Date will be limited to the Authority's rights pursuant to Section 11.1 of Schedule 2 [Design and Construction Protocols];
- (b) to achieve System Completion by the Target System Completion Date or the Longstop Date will be limited to the Authority's rights pursuant to Section 12.4; and
- (c) to perform the Services in accordance with this Project Agreement will be limited to Deductions in accordance with Schedule 8 [Payments],

provided that nothing in this Section 9.6 will limit the Authority's right to:

- (d) claim, on or after a termination of this Project Agreement, costs, losses, damages and expenses suffered or incurred by the Authority as a result of rectifying or mitigating the effects of any breach of this Project Agreement by Project Co except to the extent recovered by the Authority under this Project Agreement or taken into account to reduce any compensation payable by the Authority pursuant to Schedule 9 [Compensation on Termination];
- (e) make a claim for indemnification pursuant to Section 9.1;
- (f) deliver to Project Co and Operations Co a Dispute Notice or a notice of default or termination pursuant to Section 12 (Project Co Events of Default) and pursue all remedies in respect thereof; or
- (g) pursue any other express remedy available to the Authority under this Project Agreement or any equitable remedy, including injunctive relief and specific performance.

9.7 Limitation on Project Co's Remedies

To the extent Project Co has claimed for relief or compensation for a Supervening Event pursuant to Section 8 (Supervening Events), Project Co may not make any further claim against the Authority for costs, losses, damages or expenses incurred by Project Co, or for any other relief, in respect of such event, provided that nothing in this Section 9.7 will limit Project Co's right to:

- (a) deliver to the Authority a Dispute Notice or a notice of default or termination pursuant to Section 13 (Authority Events of Default) and pursue all remedies in respect thereof; or
- (b) pursue any other express remedy available to Project Co under this Project Agreement or any equitable remedy, including injunctive relief and specific performance.

9.8 Limits on Monetary Compensation

Every right to claim compensation or indemnification or reimbursement under this Project Agreement will be construed so that recovery is without duplication to any other amount

recoverable under this Project Agreement. Neither party will be entitled to make any claim against the other party for compensation, indemnification or reimbursement other than as provided under this Project Agreement.

9.9 No Liability for Indirect Losses

Unless specifically allowed in this Project Agreement, neither party to this Project Agreement will be liable to the other party, whether in contract or in tort or on any other basis whatsoever, for any Indirect Losses suffered or incurred by that other party.

9.10 No Liability for Governmental Activities

The Authority will not be liable to Project Co or any Project Co Person for any Direct Losses suffered or incurred as a result of damage to the NG-KIH System, whether arising from or related to Governmental Activities or otherwise, to the extent that such Direct Losses were directly or indirectly caused or contributed to by any willful misconduct, negligent act or omission or non-compliance with the terms of this Project Agreement by Project Co or any Project Co Person, including, for greater certainty but without limitation, the failure of Project Co or any Project Co Person to comply with the terms of the Design and Construction Plan, and, for greater certainty, the same shall not constitute a Compensation Event.

9.11 Authority's Right of Set Off

The Authority may set off any amounts owing by Project Co to the Authority under this Project Agreement against payments due by the Authority to Project Co under this Project Agreement.

9.12 Project Co's Right of Set Off

Project Co may set off any amounts owing by the Authority to Project Co under this Project Agreement against any payments due by Project Co to the Authority under this Project Agreement.

9.13 Undisputed Amounts and Interest on Disputed Amounts

Subject to Sections 9.11 and 9.12, a party will pay any undisputed portion of any disputed amount payable to the other party in accordance with this Project Agreement, but any disputed portion or amount will not be payable until the Dispute is resolved in accordance with the Dispute Resolution Procedure. If payment of any amount payable under this Project Agreement is delayed while the matter is in Dispute, upon resolution of the Dispute, interest will be payable on any amount determined payable pursuant to the Dispute Resolution Procedure at the Default Rate, compounded monthly, from the time such amount became payable under this Project Agreement until paid.

9.14 Interest on Overdue Amounts

If payment of any amount payable under this Project Agreement is not made when due (including Termination Payments payable pursuant to Schedule 9 [Compensation on Termination]), interest will be payable on such amount at the Default Rate, compounded monthly, from the time such amount became payable under this Project Agreement until paid. The party to whom payment is owed and overdue will notify the other party at least monthly of the overdue amount and the accrued interest on that amount.

10. LUMP SUM PAYMENTS AND AVAILABILITY PAYMENT ADJUSTMENTS

10.1 Lump Sum Payments

To the extent a party:

- (a) is entitled to payment from the other party under this Project Agreement, including in respect of a Change under Section 7 (Changes, Minor Works and Innovation Proposals), a Supervening Event under Section 8 (Supervening Events) or an indemnification claim under Section 9 (Indemnities and Limits on Liabilities and Remedies); or
- (b) is entitled to share in a benefit and to receive payment from the other party under this Project Agreement, including in respect of a Refinancing Gain under Section 5 (Financing of the Project), an Innovation Proposal under Section 7 (Changes, Minor Works and Innovation Proposals) or an Eligible Change in Law Event under Section 8 (Supervening Events),

the entitled party may make written demand for such payments from time to time after being entitled to payment and (i) in respect of any Direct Losses, after such Direct Losses have been incurred, and (ii) in respect of any shared benefit, after receipt by the other party of the shared benefit, and payment will be made in accordance with this Section 10 (Lump Sum Payments and Availability Payment Adjustments).

If the Authority is obligated to compensate, reimburse or otherwise pay Project Co, the Authority may, in its discretion, make such payment by lump sum payment or by payments that reasonably match the cash outlays of Project Co. The Authority may also direct Project Co to use any amounts standing to the credit of the NG-KIH Account for purposes of satisfying any such payment obligation.

If Project Co is obligated to compensate, reimburse or otherwise pay the Authority, the Authority may, in its discretion, require Project Co to make such payment:

- (c) by a lump sum payment, up to a maximum lump sum payment of \$500,000 (Index Linked) without the consent of Project Co, and any greater amount with the consent of Project Co, acting reasonably; or
- (d) by payments that reasonably match the cash inflows to Project Co or the averted cash outlays.

Lump sum payments and payments that reasonably match cash inflows, cash outlays or averted cash outlays will be due and payable within 20 Business Days of delivery of written demand supported by all relevant information.

The parties may agree to any other basis for payment.

10.2 Financing of Lump Sum Payment Amounts

If the Authority is obligated to compensate, reimburse or otherwise pay Project Co and exercises its discretion not to do so by a lump sum payment in accordance with Section 10.1, at the Authority's request, Project Co will use commercially reasonable efforts to obtain the

financing required to make such payment on the best terms reasonably available and, to the extent that Project Co is able to obtain such financing, there will be a corresponding increase made to the Availability Payments in accordance with Section 10.3.

The Authority will:

- (a) promptly pay to Project Co an amount equal to the reasonable out-of-pocket expenses incurred by Project Co in seeking such financing provided that the Authority approved such expenses prior to Project Co incurring them; and
- (b) provide concurrent interim financing of any expenditures and costs to be incurred by Project Co until the earlier of the date on which such financing is obtained or payment is made pursuant to Section 10.1.

The Authority acknowledges that the Senior Secured Creditors have no obligation to provide the financing referred to in this Section 10.2 or to subordinate or share their security.

10.3 Adjustments to Availability Payments

Subject to the Authority's discretion for the basis of payment under Section 10.1 or the parties' agreement to another basis for payment under Section 10.1, if either party gives notice to the other party that it wishes the parties to consider whether an entitlement to payment under this Project Agreement is more efficiently effected by adjustments (both increases and decreases) to Availability Payments, or if this Project Agreement requires that an entitlement be effected by such adjustments:

- (a) within 10 Business Days after such notice or after the determination that Availability Payments are required to be adjusted, Project Co will give notice to the Authority of the proposed adjustments to be made to the Availability Payments to achieve the objectives and outputs set out in Section 10.3(b). Such proposed adjustments will be ascertained by entering the relevant cost adjustments and losses into the Financial Model with effect from the relevant date determined in accordance with Section 10.3(c);
- (b) the adjustments to the calculation of the Availability Payments will be determined so that upon comparing the output of the Financial Model as at the adjustment date (after updating the Financial Model to reflect actual performance to date) before and after the proposed adjustments to Availability Payments, and taking into account the impact of such adjustments on the economics of the Project as reflected in the Financial Model, the timing of liability for taxation and the time when the adjustments to the Availability Payments will take effect, such comparison of the output from such Financial Model shows that:
 - (1) the rate of return in respect of equity subscribed in Operations Co and Junior Debt advanced to Project Co in accordance with the Financial Model prior to the Availability Payment adjustment will be unchanged except to the extent required to reflect:
 - (A) any material change in the risk profile of the Project arising in connection with the circumstance giving rise to the adjustment; or

- (B) any benefit to the parties, including in connection with an Innovation Proposal; and
- (2) Project Co would not, by reason of the effect of the occurrence of the adjustment or the consequential change in cash flow during the Term as shown in the Financial Model (as adjusted), be placed, in respect of any of the Senior Financing Agreements, in a position worse than it would have been in if the change had not occurred;
- (c) the relevant date for adjustments to the Availability Payments is:
 - (1) in the case of an adjustment occurring before a Site Completion Date, the Site Completion Date, unless otherwise agreed or specified in Schedule 6 [Changes, Minor Works and Innovation Proposals]; or
 - (2) in the case of an adjustment occurring after a Site Completion Date, the start of the next Payment Period in the Financial Model falling after the completion or implementation of the adjustments is achieved;
- (d) if within 10 Business Days after Project Co gives notice of the proposed adjustments the parties agree that the entitlement to payment should be effected by adjustments to the Availability Payments, or if this Project Agreement requires that the entitlement be effected by such adjustments, the parties will implement such adjustments and update the Financial Model accordingly; and
- (e) if completion or implementation of the adjustments is delayed beyond the scheduled date for completion or implementation by reference to which the Financial Model has been re-run in accordance with this Section 10.3 other than delay resulting from an audit under Section 10.4, the date of adjustment to the Availability Payments payable by the Authority will be delayed by a period equal to the delay in the completion or implementation of the required adjustments.

10.4 Audit of Financial Model

Prior to implementing any adjustments to the Availability Payments contemplated in Section 10.3, the Authority may, at its own expense, review and audit the revised Financial Model prepared by Project Co and Project Co will provide such information as is reasonably required by the Authority to conduct such audit.

11. AUTHORITY'S STEP-IN RIGHTS

11.1 Authority's Step-in Rights

If:

- (a) the Authority reasonably considers that a breach by Project Co of any obligation under this Project Agreement is likely to create an immediate and serious threat to the health or safety of any person, any property or the environment; or

- (b) notwithstanding that Project Co is not in breach of its obligations under this Project Agreement, the Authority reasonably considers the circumstances to constitute an Emergency,

then the Authority, acting reasonably, may either:

- (c) if it considers that there is sufficient time and that Project Co is likely to be willing and able to provide assistance, require Project Co by notice to take such steps as are necessary or expedient to mitigate or rectify such state of affairs, including, if applicable due to breach of any Project Contract or Sub-Contract, suspension of the Project Contractor or Sub-Contractor, and Project Co will use commercially reasonable efforts to comply with the Authority's requirements as soon as reasonably practicable; or
- (d) if it considers that there is not sufficient time or that Project Co is not likely to be willing and able to provide assistance, take such steps as it considers are appropriate (either itself or by engaging others) to mitigate or rectify such state of affairs and to ensure performance of the relevant Services to the standards required by this Project Agreement (or as close as possible to those standards as the circumstances permit). The Authority will carry out such steps as quickly as is practicable, and in such manner as will minimize interference with Project Co's performance of its obligations under this Project Agreement.

Project Co will ensure that the provisions contained in all applicable Sub-Contracts will not prevent or inhibit the Authority from exercising its rights under this Section 11 (Authority's Step-In Rights).

11.2 Authority's Rectification Rights

If the Authority gives notice to Project Co under Section 11.1(c) and Project Co either:

- (a) does not confirm, within 5 Business Days of such notice, or such shorter period as is appropriate in the case of an Emergency, that it is willing to take such steps as are required in such notice or present an alternative plan to the Authority to mitigate, rectify and protect against such circumstances that the Authority may, within a further 5 Business Days, accept or reject, acting reasonably; or
- (b) fails to take the steps as are referred to or required in such notice or accepted alternate plan within such time as set out in such notice or accepted alternate plan or within such time as the Authority, acting reasonably, will stipulate,

then the Authority may take such steps as it considers necessary or expedient to mitigate, rectify or protect against such circumstances either itself or by engaging others to take any such steps. Such steps may include the partial or total suspension of the right and obligation of Project Co to provide the relevant Services, but only for so long as the circumstances referred to in Section 11.1(a) or Section 11.1(b) subsist. If the circumstances referred to in Section 11.1(a) or Section 11.1(b) no longer subsist or Project Co has proposed a plan acceptable to the Authority, acting reasonably, for mitigating, rectifying and protecting against such circumstances, any suspension of the right and obligation of Project Co to provide any Services will cease and such right and obligation will once again be in full force and effect.

11.3 Notice of NG-KIH System Change

The Authority will notify Project Co and Operations Co of any NG-KIH System Change which the Authority intends to make pursuant to the exercise of the Authority's rights under Section 11.1(d) or Section 11.2 and provide Project Co a reasonable opportunity, taking into account all the circumstances, to comment on the proposed NG-KIH System Change. In making such NG-KIH System Change, the Authority will reasonably consider comments received in a timely manner from Project Co on the proposed NG-KIH System Change.

11.4 No Effect on Project Co's Design and Construction Responsibility

The exercise by the Authority of any of its rights under this Section 11 (Authority's Step-In Rights) will not reduce or affect in any way Project Co's responsibility under Section 4.1 of Schedule 2 [Design and Construction Protocols].

11.5 Allocation of Costs for Authority Actions

To the extent that any of the circumstances set out in Section 11.1 arise as a result of any breach by Project Co of its obligations under this Project Agreement, then Project Co will pay the Authority the amount of all direct costs and expenses reasonably incurred by the Authority in exercising its rights under Section 11.1 or Section 11.2 and an additional mark-up of 5% of such costs and expenses in respect of indirect costs and overhead not otherwise directly attributable to the exercise of such rights. In all other cases, any actions of the Authority under Section 11.1 and Section 11.2 will constitute a Compensation Event.

12. PROJECT CO EVENTS OF DEFAULT

12.1 Project Co Events of Default

For the purposes of this Project Agreement, "**Project Co Event of Default**" means any of the following events or circumstances:

- (a) the occurrence of a Project Co Material Breach that is not remedied in accordance with Section 12.3, including in accordance with the program for remediation produced by Project Co in accordance with Section 12.3, or the occurrence of a Project Co Material Breach for which a program for remediation has not been produced by Project Co in accordance with Section 12.3;
- (b) the occurrence of a Project Co Insolvency Event;
- (c) Project Co abandons the Project, other than pursuant to its right to suspend performance under Section 13.3 or due to a Supervening Event;
- (d) System Completion does not occur on or before the Longstop Date;
- (e) Project Co breaches Section 16.1 or a Change in Control occurs which is prohibited by Section 16.2;
- (f) Project Co breaches its obligations under this Project Agreement (other than as a consequence of a breach by the Authority of its obligations under this Project Agreement) which results in a criminal conviction related to health and safety

violations against Project Co or any Project Co Person or the Authority (an “**H&S Conviction**”), except that:

- (1) an H&S Conviction of Project Co, a Project Co Person or the Authority will not constitute a Project Co Event of Default if, within 60 Business Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project of each relevant Project Co Person is terminated or Project Co takes such other action against each such Project Co Person as is acceptable to the Authority acting reasonably; and
- (2) in determining whether to exercise any right of termination for a Project Co Event of Default pursuant to this Section 12.1(f), the Authority will:
 - (A) act in a reasonable and proportionate manner having regard to such matters as the gravity of the offence and the identity of the person committing the act leading to the H&S Conviction; and
 - (B) give all due consideration, where appropriate, to action other than termination of this Project Agreement;
- (g) subject to Sections 8.4(g) and 8.6(f), Project Co accumulates Deductions of \$6,500,000 (Index Linked) or more in any 12 consecutive month period during the Operating Period;
- (h) Project Co makes a representation or warranty in the body of this Project Agreement or Schedules 1 to 20 that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of the Project or the Services and, in the case of a false or misleading representation or warranty that is capable of being remedied, Project Co has not remedied such breach within 10 Business Days following notice from the Authority; or
- (i) if such consent is required under Section 5.3, Project Co carries out a Refinancing without the Authority’s consent,

unless caused by non-compliance by the Authority with any provision of this Project Agreement or any document, instrument or agreement delivered to Project Co as required under this Project Agreement or any negligent act or omission, or any willful misconduct, of the Authority or any Authority Person.

12.2 Notification

Project Co will notify the Authority of the occurrence, and details, of any Project Co Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Project Co Event of Default, in either case, promptly and in any event within 3 Business Days from the date that Project Co Has Knowledge of its occurrence.

12.3 Project Co Material Breach Cure and Remedial Program

After the occurrence of a Project Co Material Breach and while it is subsisting, the Authority may serve a notice on Project Co and Operations Co specifying in reasonable detail the type and nature of the Project Co Material Breach and:

- (a) Project Co will remedy such Project Co Material Breach referred to in such notice (if it is continuing) within 45 days of such notice; or
- (b) if either the Authority (as set out in its notice) or Project Co reasonably considers that a Project Co Material Breach cannot reasonably be remedied within 45 days of such notice, Project Co will deliver to the Authority within 15 Business Days of such notice a reasonable program (set out, if appropriate, in stages) for remedying the Project Co Material Breach, which program will specify in reasonable detail the manner in, and the latest date by, which the Project Co Material Breach is proposed to be remedied.

If Project Co puts forward a program in accordance with Section 12.3(b), the Authority will have 10 Business Days from receipt of the program within which to notify Project Co that the Authority, acting reasonably, does not accept the program. If the Authority notifies Project Co that it does not accept the program as being reasonable or does not respond within 10 Business Days from receipt of the program, the parties will use commercially reasonable efforts within the following 5 Business Days to agree to any necessary amendments to the program put forward. In the absence of an agreement within such 5 Business Days, the question of whether the program (as it may have been amended by agreement) will remedy such Project Co Material Breach in a reasonable manner and within a reasonable time period (and, if not, what would be a reasonable program) may be referred by either party for resolution in accordance with the Dispute Resolution Procedure.

12.4 Authority Termination Right

If:

- (a) a Project Co Material Breach is not remedied before the expiration of the period referred to in Section 12.3(a) and no program has been put forward by Project Co under Section 12.3(b);
- (b) Project Co puts forward a program pursuant to Section 12.3(b) which has been accepted by the Authority (including after agreement under Section 12.3 to amendments to the program) or has been determined to be reasonable pursuant to the Dispute Resolution Procedure and Project Co fails to remedy the Project Co Material Breach before the end date for the program;
- (c) any program put forward by Project Co pursuant to Section 12.3(b) is rejected by the Authority as not being reasonable, and, if such rejection is disputed by Project Co, the Dispute Resolution Procedure does not find against that rejection; or
- (d) any Project Co Event of Default other than a Project Co Material Breach occurs,

then the Authority may (if the Project Co Event of Default continues unwaived and unremedied), subject to the terms of the Lenders' Remedies Agreement, terminate this Project Agreement by notice to Project Co and Operations Co. The right of the Authority to terminate this Project Agreement under this Section 12.4 is in addition, and without prejudice, to any other right which the Authority may have in connection with Project Co's defaults hereunder.

For the purposes of Section 12.4(b), if Project Co's performance of the program is adversely affected by the occurrence of a Supervening Event or a breach by the Authority of its obligations under this Project Agreement, then, subject to Project Co complying with the mitigation and other requirements in this Project Agreement concerning such events, the time for performance of the program or any relevant element of it will be deemed to be extended by a period equal to the delay caused by such events which is agreed by the parties or determined in accordance with the Dispute Resolution Procedure.

12.5 Replacement of Non-Performing Service Provider

- (a) As an alternative to termination of this Project Agreement pursuant to Section 12.4, if:
- (1) the Authority has a right to terminate this Project Agreement due to a Project Co Event of Default that was caused, or contributed to, by the Service Provider; and
 - (2) the actions of the Service Provider constitute a breach under the Services Contract that entitles Project Co to terminate the Service Provider,

the Authority may, acting reasonably, require Project Co to terminate the Service Provider and ensure that a replacement Service Provider is appointed to provide the Services within 40 Business Days.

- (b) If the Authority exercises its rights under this Section 12.5, Project Co shall, within 10 Business Days, put forward a proposal for the interim management or provision of the Services until such time as a replacement Service Provider can be engaged by Project Co. If:
- (1) Project Co fails to submit a proposal for the interim management or provision of the Services, or the Authority is of the opinion, acting reasonably, that Project Co's proposal is not reasonably likely to result in adequate provision of the Services; and
 - (2) the parties cannot agree within a further 3 Business Days to a plan for the interim management or provision of the Services,

then, without prejudice to the other rights of the Authority under this Section 12.5,

- (3) the Authority itself may perform, or engage others (including a third party) to perform, the Services;
- (4) Project Co will pay the Authority the amount of all direct costs and expenses reasonably incurred by the Authority in exercising its rights pursuant to Section 12.5(b)(3) and an additional mark-up of 5% of such

costs and expenses in respect of indirect costs and overhead not otherwise directly attributable to the exercise of such rights; and

- (5) Project Co shall not be subject to Deductions in respect of those Services that are being performed by the Authority or a third party appointed by the Authority pursuant to Section 12.5(b)(3) to the extent and for the duration of time that Project Co is not performing those Services.

Any Dispute in respect of the interim management or provision of the Services will be determined in accordance with the Dispute Resolution Procedure.

- (c) Project Co's appointment of a replacement Service Provider pursuant to this Section 12.5 shall be subject to the following:
 - (1) the Authority's prior written consent, acting reasonably, as to the suitability of the replacement; and
 - (2) the replacement Service Provider entering into:
 - (A) a contract with Project Co upon the same or substantially similar terms as the Person so replaced; and
 - (B) a Project Contractor Collateral Agreement with the Authority and Project Co on the same terms as the Project Contractor Collateral Agreement entered into by the Person so replaced,

unless any material variations are approved by the Authority, acting reasonably.

- (d) If Project Co fails to terminate the Service Provider and to secure a replacement Service Provider in accordance with this Section 12.5, the Authority shall be entitled to exercise its termination rights in accordance with Section 12.4.
- (e) If Project Co terminates the Service Provider and secures a replacement Service Provider in accordance with this Section 12.5, any Deductions accrued by Project Co prior to such replacement will not be counted for the purposes of Section 12.1(g) or Section 6.4 of Schedule 4 [Services Protocols and Specifications].

12.6 The Authority's Costs

Project Co will reimburse the Authority for any and all reasonable costs incurred by the Authority in exercising any of its rights (including, but not limited to, any relevant increased administrative expenses and actual legal expenses) under this Section 12 (Project Co Events of Default).

13. AUTHORITY EVENTS OF DEFAULT

13.1 Authority Events of Default

For the purposes of this Project Agreement, "**Authority Event of Default**" means any of the following events or circumstances:

- (a) a failure by the Authority to pay any amount due and owing to Project Co under this Project Agreement on the due date (which amount is not being disputed in

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good faith) and the Authority has not remedied such failure to pay within 10 Business Days of notice from Project Co;

- (b) except as provided for in Section 13.1(a), a breach, or series of breaches, by the Authority of any term, covenant or undertaking to Project Co, or any representation or warranty made by the Authority to Project Co in this Project Agreement is incorrect when made, the consequence of which:
 - (1) has a material adverse effect on the performance of the Design, Construction, Services or System Refresh; or
 - (2) results in any material provision of this Project Agreement being unenforceable against the Authority,

and, as a result thereof, Project Co is reasonably likely to be materially deprived of the benefit of this Project Agreement;

- (c) if any material part of the NG-KIH System, the portion of the Lands on which the NG-KIH System is situated, or any interest in Project Co is expropriated by any Governmental Authority and as result thereof Project Co is reasonably likely to be materially deprived of the benefit of this Project Agreement; or
- (d) the Authority breaches Section 16.4.

13.2 Notification

The Authority will notify Project Co of the occurrence, and details, of any Authority Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to an Authority Event of Default, in either case, promptly and in any event within 3 Business Days from the date that the Authority Has Knowledge of its occurrence.

13.3 Project Co's Options

After the occurrence of an Authority Event of Default and while an Authority Event of Default is continuing, Project Co may, at its option exercise one or more of the following, as applicable:

- (a) in respect of the Design and the Construction prior to the System Completion Date, suspend performance by it of its obligations under this Project Agreement until such time as the Authority has demonstrated to the reasonable satisfaction of Project Co that it will perform and is capable of performing its obligations under this Project Agreement and the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and Longstop Date will be extended by the time such suspension is in effect;
- (b) in the case of an Authority Event of Default under Section 13.1(a), suspend performance by it of its obligations under this Project Agreement until the Authority has remedied such Authority Event of Default and the Target Site Completion Dates, Target Ring Completion Dates, Target System Completion Date, Outside Ring Completion Dates and Longstop Date will be extended by the

time such suspension is in effect and such additional time as may be reasonably required to return to normal operations following such suspension;

- (c) in the case of an Authority Event of Default under Sections 13.1(a), 13.1(b) or 13.1(c), serve notice on the Authority of the occurrence specifying details of such Authority Event of Default and if the relevant matter or circumstance has not been rectified or remedied by the Authority or otherwise within 45 days of such notice (or in the case of an Authority Event of Default under Section 13.1(b) or 13.1(c) such longer period as is reasonably required for the Authority to rectify or remedy such Authority Event of Default as long as the Authority is diligently pursuing such rectification or remedy), Project Co may serve a further notice on the Authority terminating this Project Agreement with immediate effect; or
- (d) in the case of an Authority Event of Default under Section 13.1(d), terminate this Project Agreement by notice to the Authority with immediate effect.

13.4 Project Co's Costs

The Authority will reimburse Project Co for any and all reasonable costs incurred by Project Co in exercising any of its rights (including, but not limited to, any relevant increased administrative expenses, interest expenses during Construction and actual legal and other expenses) under this Section 13 (Authority Events of Default).

14. PROCEDURE ON TERMINATION

14.1 Compensation on Termination

- (a) If this Project Agreement is terminated pursuant to its terms, compensation on termination will be determined and paid in accordance with Schedule 9 [Compensation on Termination].
- (b) If this Project Agreement is terminated by the Authority pursuant to Section 12.4, in lieu of paying the Project Co Default Termination Amount as a lump sum pursuant to Section 6.1 of Schedule 9 [Compensation on Termination], the Authority may, in its sole discretion and subject to providing notice to Project Co and Operations Co within 10 Business Days of the Termination Date, elect to pay the Project Co Default Termination Amount over the remaining period until the Expiration Date, subject to and in accordance with Sections 14.1(c), (d) and (e). If the Authority so elects, from the Termination Date and until the Expiration Date (such period, the "**Termination Payment Period**"), the Authority shall pay to Project Co the Scheduled Pro Rata Principal Repayment Amount on each principal repayment date set forth in the Senior Financing Agreements for the Senior Debt issued thereunder and falling due during the Termination Payment Period, in an aggregate amount not to exceed the Project Co Default Termination Amount.
- (c) Interest shall accrue on the unpaid Pro Rata Principal Amount for the Senior Debt issued and outstanding under the Senior Financing Agreements at a rate equal to the non-default interest rate provided for in the Senior Financing Agreements with respect to such Senior Debt for the period from (but excluding) the Termination Date to (and including) the Expiration Date (or the date on which

the Project Co Default Termination Amount is paid sooner pursuant to Section 14.1(d)). Such accrued and unpaid interest shall be paid on each interest payment date set forth in the Senior Financing Agreements for the Senior Debt issued thereunder and falling due during the Termination Payment Period.

- (d) The Authority may, in its sole discretion and at any time during the Termination Payment Period, pay all (but not part) of the then outstanding Project Co Default Termination Amount to Project Co as a lump sum.
- (e) Notwithstanding Section 14.1(b), the amount by which the Project Co Default Termination Sum exceeds the amount required to repay the Senior Debt, if any, will be paid to Project Co as a lump sum on the Termination Payment Date.

14.2 Transfer to the Authority of Assets, Contracts, etc.

On or promptly after the Termination Date:

- (a) if prior to the System Completion Date:
 - (1) in so far as any transfer will be necessary to fully and effectively transfer property to the Authority, Project Co will transfer to, and there will vest in, the Authority (or any New Project Co as may be appointed by the Authority) free from all financial encumbrances:
 - (A) such part of the NG-KIH System as has been constructed on or has become affixed to the Lands; and
 - (B) all construction materials on-hand to be affixed to the Lands or otherwise used in the NG-KIH System; and
 - (2) if the Authority so elects:
 - (A) the construction equipment will remain available to the Authority or the New Project Co for the purposes of completing the Design and Construction; and
 - (B) all other Project related materials will remain available to the Authority or the New Project Co for the purposes of completing the Design and Construction,

subject to payment by the Authority of the Design-Builder's reasonable charges;
- (b) if the Authority so elects, Project Co will cause any or all of the Project Contracts to be novated or assigned to the Authority, provided that:
 - (1) Project Co will not be obligated to assign to the Authority any of Project Co's rights to claim against the applicable Project Contractor that arose under such Project Contract prior to the date of such novation or assignment; and

- (2) if termination occurs under Section 13.3, the consent of the applicable Project Contractor will be required;
- (c) Project Co will, or will cause any Project Contractor to, offer to sell to the Authority at the Fair Market Value, free from any security interest all or any part of the stocks of material and other assets, vehicles, spare parts and other moveable property owned by Project Co or any Project Contractor and reasonably required by the Authority in connection with the operation of the NG-KIH System or the provision of the Services;
- (d) Project Co will deliver to the Authority (to the extent not already delivered to the Authority):
 - (1) all existing designs, network configurations, plans and other documents produced in connection with the NG-KIH System and in the control of Project Co;
 - (2) one complete set of existing "as built drawings" showing all alterations made to the NG-KIH System since the commencement of operation of the NG-KIH System; and
 - (3) one complete set of existing up to date maintenance, operation and training manuals for the NG-KIH System,subject to reasonable generally applicable third party licensing terms;
- (e) Project Co will use commercially reasonable efforts to ensure that the benefit of existing Project Intellectual Property and all warranties in respect of mechanical and electrical equipment used or made available by Project Co under this Project Agreement and included in the NG-KIH System but not previously assigned or licensed to the Authority are assigned, licensed or otherwise transferred to the Authority;
- (f) to the extent permitted by Law, Project Co will assign to the Authority (or any New Project Co as may be appointed by the Authority) all Permits;
- (g) Project Co will deliver to the Authority all records required to be kept by Project Co hereunder (Project Co having the right to retain copies thereof) unless such documents are:
 - (1) required by Law to be retained by Project Co, Operations Co, a Project Contractor or a Sub-Contractor, in which case complete copies will be delivered to the Authority; or
 - (2) privileged from production pending resolution of any outstanding Dispute, in which case such records will be delivered forthwith upon resolution of such Dispute, provided that any records that are necessary for the performance of the Design, Construction, Services or System Refresh will be delivered to the Authority no later than the Termination Payment Date; and

- (h) return to the Authority all Confidential Information of the Authority within the possession or control of Project Co, Operations Co, any Project Contractor or any Sub-Contractor.

Project Co will ensure that provision is made in all applicable contracts to ensure that the Authority will be in a position to exercise its rights, and Project Co will be in a position to comply with its obligations, under this Section 14.2 without additional payment or compensation to any Person.

14.3 Transition Out Arrangements

On the Expiration Date, Project Co will:

- (a) on request by the Authority, for a period not to exceed 6 months after the Expiration Date:
 - (1) co-operate fully with the Authority and any successor providing to the Authority services in the nature of any of the Services or any part of the Services to achieve a timely, safe, orderly, effective and efficient transition of the performance of services in the nature of the Services and to avoid or mitigate in so far as reasonably practicable any material interruption to the Services or risk to the health and safety of any person; and
 - (2) continue to provide the Services or any part of the Services required by the Authority and the Authority will pay to Project Co a reasonable price for such services determined with reference to Project Co's price for such Services prior to the Expiration Date;
- (b) subject to Section 14.3(a), as soon as practicable following the Expiration Date remove all property of Project Co or any Project Co Person that is not acquired by the Authority pursuant to Section 14.2 (or not belonging to the Authority) and if it has not done so within 20 Business Days after any notice from the Authority requiring it to do so the Authority may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and will hold any proceeds less all costs incurred to the credit and direction of Project Co;
- (c) subject to Section 14.3(a), on the Expiration Date deliver to the Authority:
 - (1) all keys, access codes and/or other devices required to operate the NG-KIH System in the control of Project Co; and
 - (2) any Project Intellectual Property required to be delivered by Project Co pursuant to Section 14.2(e);
- (d) subject to Section 14.3(a), as soon as practicable after the Expiration Date, vacate, and cause the Project Co Persons to vacate, those parts of the NG-KIH System over which Project Co has control and occupation and will leave such parts of the NG-KIH System in a safe, clean and orderly condition; and
- (e) comply with all requirements of Appendix 4B [Handback Requirements].

14.4 Project Co to Cooperate

If the Authority wishes to conduct a solicitation prior to the Expiration Date with a view to entering into an agreement for the provision of services (which may or may not be the same as, or similar to, the Services or any of them) following the expiration of this Project Agreement, the Authority will provide notice of same to Project Co and Operations Co and, upon receipt of any such notice from the Authority, Project Co will, prior to the Expiration Date, co-operate with the Authority fully in such solicitation process including by:

- (a) providing any information in Project Co's control or possession which the Authority may reasonably require to conduct such solicitation except that information which is commercially sensitive to Project Co or a Project Co Person (and, for such purpose commercially sensitive means information which would if disclosed to a competitor of Project Co or a Project Co Person give that competitor a competitive advantage over Project Co or the Project Co Person and thereby prejudice the business of Project Co or the Project Co Person); and
- (b) assisting the Authority by providing any participants in such solicitation process with access to the Lands and the NG-KIH System provided such access does not affect the Services in a way that results in any reduction in Availability Payments.

Project Co will be entitled to reimbursement for all reasonable out-of-pocket expenses and costs incurred in connection with the foregoing services.

14.5 Project Co Materials

In connection with all information, records, documents, data and other materials delivered by Project Co to the Authority as required pursuant to this Section 14 (Procedure on Termination) (collectively, the "**Project Co Materials**") Project Co shall deliver to the Authority a certificate of an officer of Project Co addressed to the Authority in form and substance satisfactory to the Authority, certifying, among other things:

- (a) all Project Co Materials delivered to the Authority are true, accurate and complete copies of the originals of all such Project Co Materials;
- (b) with respect to Project Co Materials that constitute agreements, understandings, indentures, contracts, leases, deeds of trust, licenses, options, instruments or other commitments between Project Co and any Persons:
 - (1) all are in good standing and in full force and effect with no amendments and Project Co is entitled to all rights and benefits thereunder;
 - (2) Project Co has complied with all terms thereof, has paid all amounts due thereunder, has not waived any rights thereunder and no default or breach exists in respect thereof on the part of any of the parties thereto and no event has occurred which, after the giving of notice or the lapse of time or both, would constitute such a default or breach; and
 - (3) all are valid and binding obligations of the parties thereto enforceable in accordance with their respective terms; and

- (c) other than Project Co Materials there no other material agreements, understandings, indentures, contracts, leases, deeds of trust, licenses, options, instruments or other commitments relating to the Project.

14.6 Continued Performance

Subject to Project Co's rights of suspension under Sections 13.3(a) and 13.3(b) and subject to the provisions of this Section 14 (Procedure on Termination), the parties will continue to perform their obligations under this Project Agreement (including the Authority continuing to make Availability Payments) notwithstanding the giving of any notice of default or notice of termination.

15. DISPUTE RESOLUTION

15.1 Procedure

Except as otherwise provided in this Project Agreement, any Dispute will be resolved in accordance with, and the parties will comply with, the Dispute Resolution Procedure set out in Schedule 13 [Dispute Resolution Procedure].

16. ASSIGNMENT/CHANGE IN CONTROL

16.1 Limitations on Assignment of Project by Project Co

Project Co will not assign, transfer or otherwise dispose of any interest in this Project Agreement, the Project Implementation Agreement or a Project Contract except:

- (a) as security, substantially in a form approved by the Authority, acting reasonably, prior to its grant for any loan made to Project Co under any Senior Financing Agreement and provided the Collateral Agent enters into the Lenders' Remedies Agreement;
- (b) in connection with the exercise of rights of the Collateral Agent under the Senior Financing Agreements in accordance with the Lenders' Remedies Agreement; or
- (c) otherwise:
 - (1) prior to the day (the "**Transfer Restriction Date**") that is one year after the System Completion Date, with the written consent of the Authority, which may be given or withheld in the Authority's discretion; and
 - (2) after the Transfer Restriction Date, with the written consent of the Authority, which will not be unreasonably withheld or delayed,

provided that, in the case of an assignment under Section 16.1(b) or 16.1(c), the assignee:

- (d) is not a Restricted Person; and
- (e) assumes all the obligations of Project Co under this Project Agreement.

16.2 Limitations on Change in Control

No Change in Control of Project Co will be permitted (whether by Project Co or otherwise) to occur except:

- (a) in connection with the exercise of rights of the Collateral Agent under the Senior Financing Agreements in accordance with the Lenders' Remedies Agreement, provided that such Change in Control does not result in a Restricted Person obtaining Control of Project Co;
- (b) arising from any bona fide open market transaction in any shares or other securities of Project Co or any other Person effected on a recognized public stock exchange;
- (c) if Control of Project Co following the Change in Control is held by one or more Affiliates of Project Co immediately prior to the Change in Control; or
- (d) otherwise:
 - (1) prior to the Transfer Restriction Date, with the written consent of the Authority, which may be given or withheld in the Authority's discretion; or
 - (2) after the Transfer Restriction Date, with the written consent of the Authority, which will not be unreasonably withheld or delayed.

16.3 Factors Authority May Consider

In determining whether to provide its consent under Section 16.1(c) or 16.2(d), the Authority may consider any factors that are relevant to the determination and, without limiting the generality of the foregoing, it will be reasonable for the Authority to refuse its consent if:

- (a) the proposed assignee or the new party in control of Project Co, as the case may be, is a Restricted Person;
- (b) the proposed assignee or the new party in control of Project Co, as the case may be, is, in the reasonable opinion of the Authority, not sufficiently creditworthy or having sufficient financial capacity taking into account the nature of the obligations under this Project Agreement; or
- (c) the assignment or Change in Control could, in the reasonable opinion of the Authority, have a material adverse effect on the Authority or the Project.

16.4 Limitations on Assignment of Project by Authority

The Authority will not assign, transfer or otherwise dispose of any interest in this Project Agreement unless:

- (a) the assignment, transfer or other disposition is to a department or agency of the Commonwealth of Kentucky;

- (1) having the legal capacity, power, authority and ability to become a party to and to perform the obligations of the Authority under this Project Agreement; and
 - (2) whose ability to discharge the payment obligations under this Project Agreement is equivalent in every respect to the Authority's ability to discharge the payment obligations under this Project Agreement;
- (b) the assignee assumes all the obligations of the Authority under this Project Agreement; and
 - (c) the assignment, transfer or other disposition in no way changes the nature of the payment obligations under this Project Agreement as a contractual obligation of the Commonwealth of Kentucky, regardless of the department or agency of the Commonwealth of Kentucky to which they are assigned.

16.5 Costs of Request for Consent

If Project Co requests consent to an assignment, transfer or disposition pursuant to Section 16.1 or to a Change in Control pursuant to Section 16.2, Project Co will pay the Authority's reasonable internal administrative and personnel costs and all reasonable out-of-pocket costs in connection with considering any such request. At the time of such request, Project Co will make a payment to the Authority in the amount of \$10,000 (Index Linked) against its obligation under this Section 16.5. After the Authority renders its decision, the Authority will either refund any over payment or invoice Project Co for any additional amounts owing under this Section 16.5 and Project Co will promptly pay such amount to the Authority.

17. GENERAL

17.1 Confidentiality

- (a) Subject to Section 17.1(b), each party will hold in confidence any Confidential Information received from the other party, except that this Section 17.1 will not restrict:
 - (1) Project Co from disclosing or granting access to such information to its professional advisers and consultants, to the extent necessary, to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Project Agreement and provided further that Project Co may, subject to obtaining confidentiality restrictions similar to those set out in this Project Agreement:
 - (A) provide to the Senior Secured Creditors and other potential lenders, equity providers, underwriters, arrangers, investment dealers, monoline insurers and their respective advisors such documents and other information as are reasonably required by them in connection with raising financing for the Project or complying with the terms of the Senior Financing Agreements or related agreements; and

- (B) provide to Operations Co or a Project Contractor and its advisors, or provide or cause to be provided to other third parties, Confidential Information which is necessary to enable Project Co to perform (or to cause to be performed) its obligations under this Project Agreement but which Confidential Information is not used by Operations Co or the Project Contractor, its advisors, or other third parties, as applicable, for any other purpose; and
- (2) the Authority from disclosing or granting access to such information to any department of the Commonwealth of Kentucky or any other Governmental Authority which requires the information in relation to the Project.
- (b) Subject to any restrictions on the Confidential Information which are imposed by a third party that may own any Confidential Information, the obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:
 - (1) which the party that disclosed the Confidential Information confirms in writing is not required to be treated as Confidential Information;
 - (2) which is or comes into the public domain otherwise than through any disclosure prohibited by this Project Agreement;
 - (3) to the extent any Person is required to disclose such Confidential Information by Law, including the Open Records Act;
 - (4) to the extent consistent with any Authority's policy concerning the Authority's Confidential Information, the details of which have been provided to Project Co in writing prior to the disclosure; or
 - (5) that is known to the recipient of the Confidential Information prior to disclosure to the recipient by the other party or becomes known to the recipient thereafter by way of disclosure to the recipient by any other Person who, to the knowledge of the recipient, is not under any obligation of confidentiality with respect thereto.
- (c) Without prejudice to any other rights and remedies that the other party may have, a party may be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of Section 17.1(a).
- (d) Project Co will be fully liable for any breach of confidentiality under this Section 17.1 by any Person to whom Project Co has disclosed or granted access to Confidential Information under this Section 17.1 to the same extent as if Project Co itself breached confidentiality under this Section 17.1.

17.2 Public Communications

Unless expressly provided in this Project Agreement or otherwise required by any Law, including the Open Records Act, (but only to that extent), neither party will make or permit to be made any public announcement or disclosure whether for publication in the press, radio,

television or any other medium of any Confidential Information or any matters relating thereto, without the consent of the other party (which will not be unreasonably withheld or delayed). The parties will comply with Schedule 16 [Communication Roles].

17.3 Law of Agreement

This Project Agreement is subject to the laws of the Commonwealth of Kentucky and any applicable federal laws and will be governed by and construed in accordance with such laws.

17.4 Venue

Any legal actions or proceedings brought by either party hereto against the other party shall be brought in state court in Franklin County, Kentucky in accordance with KRS 45A.245. Each party acknowledges the competence of such court and the convenience and propriety of the venue and agrees to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

17.5 Entire Agreement, Waivers and Consents in Writing

This Project Agreement and the instruments and documents to be executed and delivered pursuant to this Project Agreement constitute the entire agreement between the parties.

The parties acknowledge that, due to the size and complexity of the Project, they have clarified through extensive negotiation the contents of both the RFP and the proposal(s) (including any clarifications, modifications or amendments thereto) submitted in response to either the RFP or the Master Agreement.

Accordingly, the body of this Project Agreement and Schedules 1 to 20 expressly supersede the contents of both the RFP and the proposal(s) (including any clarifications, modifications or amendments thereto) submitted in response to either the RFP or the Master Agreement, other than the components of the original proposal required pursuant to Section 6, Item 6.1 (Transmittal Letter), Section 6, Item 6.2 (Disclosure of Violation of Statutes), Section 6, Item 6.3 (Kentucky Tax Registration Application), Section 6, Item 6.4 (Registration with the Secretary of State by a Foreign Entity), Section 6, Item 6.5 (Required Affidavits), Section 6, Item 6.6 (Completed and signed face of solicitation), Section 6, Item 6.7 (Signed face of latest addendum of the solicitation), Section 6, Item 6.8 (EEO Forms), Section 6, Item 6.9 (Vendor Background and Project Resources), Section 6, Item 6.10 (Comparable Experiences), Section 6, Item 6.11 (Financial Viability – Finance Partner and Concessionaire) and Section 6, Item 6.18 (Network Security Plan) of the RFP.

This Project Agreement also expressly supersedes all prior agreements and communications (both oral and written) between the parties hereto with respect to all matters contained herein or therein and, except as stated herein or in the instruments and documents to be executed and delivered pursuant hereto, contains all the representations and warranties of the respective parties. In addition, no waiver of any provision of this Project Agreement and no consent required pursuant to the terms of this Project Agreement is binding or effective unless it is in writing and signed by the party providing such waiver or consent.

17.6 Notices

Any notice or communication required or permitted to be given under this Project Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by electronic transmission to the address or electronic mail address of each party set out below:

If to the Authority:

The Commonwealth of Kentucky
Office of the Secretary
Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex Room 383
Frankfort, KY 40601

Attention: Secretary of the Finance and Administration Cabinet

With a copy to:

Office of Procurement Services
Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex Room 096
Frankfort, KY 40601

Attention: Stephanie Williams, Buyer
Email: StephanieR.Williams@ky.gov

If to Project Co:

KentuckyWired Infrastructure Company, LLC

Attention: Lori Hudson Flanery, Director
Email: [REDACTED]

With a copy to:

Office of Financial Management
Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex Room 076
Frankfort, KY 40601

Attention: Ryan Barrow, Executive Director
Email: Ryan.Barrow@ky.gov

With a copy to Operations Co:

KentuckyWired Operations Company, LLC
c/o Macquarie Infrastructure Developments LLC
Level 16, 125 West 55th Street
New York, NY 10019

Attention: Nicholas Hann
Email: Nick.Hann@macquarie.com

or to such other address or electronic mail address as any party may, from time to time, designate in the manner set out above.

Any such notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (b) if delivered by electronic mail during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:
 - (1) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or
 - (2) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

17.7 Further Assurances

The parties will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to this Project Agreement or for the purpose of establishing compliance with the representations, warranties and obligations of this Project Agreement.

17.8 Counterparts

This Project Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and this has the same effect as if the signatures on the counterparts were on a single copy of this Project Agreement so that it will not be necessary in making proof of this Project Agreement to produce or account for more than one such counterpart.

17.9 No Partnership

Nothing contained in this Project Agreement nor any action taken pursuant hereto or thereto will be deemed to constitute the Authority and Project Co a partnership, joint venture or any other similar such entity.

17.10 Survival

Notwithstanding any other provision of this Project Agreement, the provisions of Section 8 (Supervening Events) (if and to the extent a Compensation Event relates to a claim made by a third party against Project Co after the Termination Date), Section 9 (Indemnities and Limits on Liabilities and Remedies), Section 14 (Procedure on Termination), Section 15 (Dispute Resolution), Section 17.1, Appendix 4B [Handback Requirements], Schedule 9 [Compensation on Termination] and Schedule 13 [Dispute Resolution Procedure] will survive the expiration or any earlier termination of this Project Agreement.

[signature page follows]

IN WITNESS WHEREOF the parties hereto have executed this Project Agreement as of the day and year first above written.

THE COMMONWEALTH OF KENTUCKY

Per: *Lori Hudson Flanery*
Name: Lori Hudson Flanery
Title: Secretary, Kentucky Finance
& Administration Cabinet

I have the authority to bind the
Commonwealth.

**KENTUCKYWIRED INFRASTRUCTURE
COMPANY, INC.**

Per: *Steve Rucker*
Name: Steve Rucker
Title: Director

I have the authority to bind the corporation.

**SCHEDULE 1
DEFINITIONS AND INTERPRETATION**

1. DEFINITIONS

In this Project Agreement:

“Accounts Agreement” has the meaning given to it in the Senior Financing Agreements;

“Actual Coverage Amount” has the meaning set out in Schedule 5 [Insurance Requirements];

“Adjusted Pole Attachment Costs” has the meaning set out in Schedule 8 [Payments];

“Affiliate” in respect of:

- (a) a Person (other than Project Co) means any other Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such first Person; and
- (b) Project Co means:
 - (1) any Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, Project Co; or
 - (2) any Person owned, in whole or in part, by (i) Project Co or (ii) any Affiliate of Project Co under (b)(1) above, whether the ownership interest is direct or indirect and legal, beneficial or equitable;

“Allowable Capital Expenditure” means the Capital Expenditure incurred by Project Co as a direct consequence of a Relevant Works Change in Law;

“Amended Pole Attachment Agreement” has the meaning set out in Section 3.9;

“Applicant” has the meaning set out in Section 8.1;

“Authority” means the Commonwealth of Kentucky;

“Authority Activities” means any activities carried on or to be carried on by the Authority, or other Persons permitted by the Authority, on or connected to the NG-KIH System, related to the Project;

“Authority Event of Default” has the meaning set out in Section 13.1;

“Authority Indemnified Person” means:

- (a) any contractor or subcontractor (of any tier) of the Authority;
- (b) any representative or advisor (including any legal, financial and technical advisor) of the Authority or any Person referred to in (a) above, in each case acting in such capacity; and

- (c) any director, officer, employee or agent of the Authority or of any Person referred to in (a) or (b) above, in each case acting in such capacity;

“Authority Person” means:

- (a) any Site;
- (b) any director, officer, employee or agent of the Authority or any Site;
- (c) any representative, advisor (including any legal, financial and technical advisor), contractor or subcontractor (of any tier) of the Authority or any Site in any such Person’s capacity as a provider of services directly or indirectly to the Authority or any Site in connection with the Project, other than Project Co, Operations Co, the Project Contractors or the Sub-Contractors; or
- (d) any invitee of the Authority or any of the Authority Persons referred to above who enters upon the Lands;

“Availability” means the proportion of time a path is in an Available state during an observation period, as measured in accordance with ITU Recommendation R F 1703;

“Availability Payment” has the meaning set out in Schedule 8 [Payments];

“Available” means that the NG-KIH System, as measured at the relevant Demarcation Point, is capable of offering the applicable services set out in Appendix 3A [Product Service Catalog] for the applicable Site;

“Avoidable Costs”, when used in relation to an event or circumstance, means all costs and expenditures which:

- (a) are saved or avoided as a result of the event or circumstance or its effects; or
- (b) if Project Co acted reasonably and in accordance with this Project Agreement, would have been saved or avoided as a result of the event or circumstance or its effects;

“Bankruptcy Law” means the United States Bankruptcy Code, 11 U.S.C. 101 et seq., as amended from time to time and any successor statute thereto, and any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due;

“Base Date” means June 30, 2016;

“Baseline Pole Attachment Costs” has the meaning set out in Schedule 8 [Payments];

“Baseline Services Costs” has the meaning set out in Schedule 8 [Payments];

“Beneficiary” has the meaning set out in Section 9.2;

“Bonds” has the meaning set out in Section 3.8;

“Business Day” means a day other than a Saturday, Sunday or federal or state statutory holiday in the Commonwealth of Kentucky;

“Capital Expenditure” means an expenditure related to the Project which is treated as a capital expenditure in accordance with GAAP;

“Certificate of Site Completion” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Change” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Change Certificate” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Change Directive” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Change in Control” means with respect to a relevant Person any direct or indirect change in the ownership or Control of any legal, beneficial or equitable interest in any or all of the shares, units or equity in the relevant Person (including the control over the exercise of voting rights conferred on equity share capital, unit interests or equity interests or the control over the right to appoint or remove directors, a general partner or other managers), including changes arising from assignment or transfer of existing shares, units or equity, issuance of new shares, units or equity or amalgamation, merger, consolidation, amendment of a limited partnership certificate or other reorganization, or any other direct or indirect change which results in a Person or group of Persons, other than the equity holders of the relevant Person immediately prior to the change, directly or indirectly:

- (a) controlling the composition of the majority of the board of directors of the relevant Person or of a general partner or manager of the relevant Person;
- (b) controlling the decisions made by or on behalf of the relevant Person, including by controlling the voting power of the board of directors or by controlling the voting power of any class of shareholders or equity holders of the relevant Person, a general partner of the relevant Person or a manager of the relevant Person or otherwise;
- (c) holding equity (either beneficially or otherwise) of the relevant Person with a subscribed value (taking into account contributions to be made in the case of a limited partnership) of more than one half of the subscribed value (taking into account contributions to be made in the case of a limited partnership) or equity (either beneficially or otherwise) of the relevant Person with more than one half of the voting rights; or
- (d) having the ability to direct or cause the direction of the management, actions or policies of the relevant Person;

“Change in Law” means the coming into effect after the Effective Date of:

- (a) any final and non-appealable new Law; or

- (b) any final modification (including repeal or appeal) of any Law existing on such date,

which is binding on Project Co or the Authority, but excluding in each such case:

- (c) any lawful requirements of any Governmental Authority in effect on the Effective Date; and
- (d) any change in the interpretation of any Law, other than a judgment of a relevant court which changes binding precedent in the Commonwealth of Kentucky;

“Change Mark-Up” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Change Report” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Change Report Costs” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Charge” has the meaning set out in Schedule 7 [Lands];

“Collateral Agency and Account Agreement” means the collateral agency and account agreement between Project Co, as borrower, U.S. Bank National Association, as trustee, and U.S. Bank National Association, as collateral agent;

“Collateral Agent” means U.S. Bank National Association;

“COLO Equipment and Cabling” has the meaning set out in Schedule 8 [Payments];

“Commissioning” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Commissioning Plan” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Common Carrier” means any Person engaged as a common carrier for hire under applicable Law;

“Common Carrier Regulations” means any applicable Law governing Common Carriers;

“Compensation Event” means any of the following events or circumstances if and to the extent that it interferes adversely with, or causes a failure of, the carrying out of the Design, Construction, Services or System Refresh, causes an Outage or causes Direct Losses to Project Co or any Project Co Person:

- (a) a breach by the Authority of any of its obligations under this Project Agreement, including a failure of the Authority to grant, or cause to be granted, and to maintain, or cause to be maintained, the License as set out in Section 2.1 of Schedule 7 [Lands];
- (b) a breach of any representation or warranty by the Authority set out in this Project Agreement;

- (c) any misconduct of the Authority or an Authority Person, including unauthorized use of the NG-KIH System;
- (d) a negligent act or omission of the Authority or an Authority Person;
- (e) the discovery or exacerbation of any:
 - (1) Hazardous Substances located in, on, below or that have migrated to the Lands; or
 - (2) Hazardous Substances located in, on, below or that have migrated to any other location at which any aspect of the Project is performed, but only to the extent that Project Co's Direct Losses related thereto exceed \$200,000 in the aggregate over the Term,

in either case, other than Project Co Hazardous Substances;

- (f) if:
 - (1) the terms and conditions of any Permit, or the refusal to issue a Permit, require (i) the Construction to be performed in a manner that materially differs from the conceptual design prepared by Project Co as of the Effective Date or (ii) the creation of a new route in connection with the Project that differs from the conceptual design prepared by Project Co as of the Effective Date and Project Co's Direct Losses related thereto exceed \$25,000 in the aggregate over the Term;
 - (2) during the Construction Period, any Permit that falls into one of the Permit Classes set out in Appendix 2E [Expected Permit Timing] is not received within the Permit Delivery Time Period associated with the relevant Permit Class or, if a Permit (other than a Simple Pole Attachment Agreement) does not fall within one of the Permit Classes set out in Appendix 2E [Expected Permit Timing], there is an unreasonable delay in the receipt of such Permit, which delay has an impact on any critical path matter in the Project Schedule, provided that Project Co has submitted a complete and accurate Permit application and provided further that, in respect only of the Federal Permits, Project Co's Direct Losses related thereto exceed \$50,000 in the aggregate over the Term;
 - (3) notwithstanding (f)(2) above, the Authority does not execute a finalized Simple Pole Attachment Agreement provided to the Authority by Project Co within 3 Business Days of receipt thereof or any Pole Provider refuses to enter into a Simple Pole Attachment Agreement or a Complex Pole Attachment Agreement; or
 - (4) Project Co is required to obtain an Environmental Permit or any Permit that requires any Environmental Assessment to be performed on the Lands or any other location at which any aspect of the Project is performed;

- (g) the existence of any encumbrance enforceable against or affecting the Lands or the NG-KIH System;
- (h) the discovery of any human remains, relics or other articles or structures of historical, antiquarian or archaeological interest on, in, under or adjacent to the Lands or any other location at which any aspect of the Project is performed;
- (i) a Public Protest Action;
- (j) a lawful or unlawful strike, lockout, job action or other labor dispute by employees of the Authority or an Authority Person;
- (k) the existence of geotechnical conditions that are materially different from those reasonably anticipated in the conceptual design prepared by Project Co as of the Effective Date:
 - (1) on, in or under the Lands that will be utilized for the Huts;
 - (2) in connection with any water crossings, provided that Project Co has investigated and confirmed that the following are not viable options in advance of placing new conduit underground at a water crossing: attaching to an existing aerial crossing, pulling fiber through an existing underground conduit or an existing conduit on a bridge or placing new conduit on an existing bridge; or
 - (3) in connection with any wetlands, provided that Project Co has investigated and confirmed that the following are not viable options in advance of placing new conduit underneath the wetlands: attaching to an existing aerial crossing, pulling fiber through an existing underground conduit or an existing conduit on a bridge or placing new conduit on an existing bridge;
- (l) the event referred to in Section 6.10(b)(2)(D);
- (m) the event referred to in Section 8.4(e)(2);
- (n) the event referred to in Section 8.6(d)(2);
- (o) the actions referred to in Section 11.5 as constituting a Compensation Event;
- (p) the event referred to in Sections 7.11(a) or (c) of Schedule 2 [Design and Construction Protocols];
- (q) Project Co's compliance with a direction from the Authority under Section 3.3 of Schedule 13 [Dispute Resolution Procedure] when the matter in dispute is subsequently resolved, or settled, in Project Co's favor, unless relief has otherwise been provided pursuant to the Dispute Resolution Procedure;
- (r) the execution of works, other than usual or reasonably expected works, on the Lands or in respect of the NG-KIH System not forming part of this Project Agreement by:

- (1) the Authority;
- (2) any person permitted to execute such works by the Authority or any Authority Person; or
- (3) any Utility Company,

including any relocation of the NG-KIH System required due to the construction of a highway, pipeline or other infrastructure;

- (s) an activity undertaken by the Authority or any Authority Person in accordance with Section 2.4 that has a material adverse effect on Project Co's ability to perform the Design, Construction, Services and/or System Refresh;
- (t) if part of the NG-KIH System or part of the portion of the Lands on which the NG-KIH System is situated or any interest of Project Co is expropriated by any Governmental Authority and such expropriation is not an Authority Event of Default as set out in Section 13.1(c);
- (u) an event that causes a loss of or physical damage to any portion of the NG-KIH System at a Site Location;
- (v) an earthquake, tornado, hurricane, fire, wind storm, ice storm, mud slide, rock slide, flood, explosion, lightning or any other act of God that impacts:
 - (1) the aerial plant in excess of 15 pole spans or 3000 aerial feet of fiber;
 - (2) the underground plant in excess of 500 feet of fiber; or
 - (3) a combination of the aerial plant and the underground plant with an aggregate impact comparable to (1) or (2) above, assuming a ratio of 6 feet of aerial fiber being equal to 1 foot of underground fiber,

for each single event;

- (w) during the Construction Period, an injunction or other order of a court of competent jurisdiction resulting from a challenge to, or an expropriation that materially adversely interferes with, Project Co's right to access any lands, easements or other property (including, without limitation, access to the poles owned by any Utility Company);
- (x) a failure by a Third Party Infrastructure Provider to comply with the relevant Third Party Infrastructure Agreement, a breach by a Third Party Infrastructure Provider of any of its obligations under the relevant Third Party Infrastructure Agreement, a negligent act or omission of a Third Party Infrastructure Provider or the bankruptcy or insolvency of a Third Party Infrastructure Provider;
- (y) any change to the Site Access Plan that impacts the Project Schedule;
- (z) during the Construction Period, without limiting Project Co's obligation to provide stand-by power facilities for the NG-KIH System in accordance with the Design

and Construction Specifications, a failure by any Utility Company, local authority or other like body to perform works (which includes the approval of any application for work and the remediation of any pole violations not caused by Project Co) or provide services required to be provided by them, or requested of them, in a reasonably timely manner, or any unreasonable interference with the Construction by any such body as a result of maintenance or other work and, with respect to any make-ready work required to be performed by any Utility Company, local authority or other like body, a reasonably timely manner is deemed to mean approval of an application for make-ready work (without a restriction on the timing to commence such work) within 30 calendar days of receipt by the Utility Company, local authority or other like body of a complete and accurate application from Project Co and, if any of them require the self-performance of the make-ready work, then completion of such work within 5 weeks (for a Utility Company, local authority or other like body, other than a telecom carrier) and 12 weeks (for a telecom carrier) of the approval of the quote by Project Co;

- (aa) Project Co is required to obtain an easement or other right of access to any lands (other than the Lands) from a private landowner to carry out the Project in accordance with this Project Agreement, provided that the costs related thereto exceed \$200,000 in the aggregate over the Term;
- (bb) any Dispute in respect of a Change Directive issued pursuant to Section 4.15 (Project Co's Obligations re Third Party Infrastructure Agreements);
- (cc) a failure by the Authority to provide a sufficiently detailed description of each Site Location so as to enable Project Co to carry out its obligations under this Project Agreement by the date reasonably required by Project Co in accordance with the Project Schedule; or
- (dd) any other event which is expressly stated in this Project Agreement to constitute a Compensation Event,

except to the extent that any of such events arise or are contributed to, directly or indirectly, as a result of any willful misconduct, negligent act or omission or non-compliance with the terms of this Project Agreement by Project Co or any Project Co Person;

"Complex Pole Attachment Agreement" means any agreement with a Pole Provider that is not a Simple Pole Attachment Agreement and includes, but is not limited to, an agreement with specialized negotiated rates, extended term, trades, swaps or other subject matter not contemplated in a Simple Pole Attachment Agreement;

"Confidential Information" means:

- (a) information obtained in the course of performing the Services; and
- (b) information of a party that the party has designated as confidential at the time of disclosure and which is supplied, or to which access is granted, to or on behalf of the other party (whether before or after the Effective Date), either in writing, or in any other form, directly or indirectly pursuant to discussions with the other party and includes all analyses, compilations, studies and other documents whether

prepared by or on behalf of a party which contain or otherwise reflect or are derived from such designated information;

“Construction” means everything (other than Design) required to achieve System Completion, including the construction of the NG-KIH System, temporary works and the supply of all labor and materials, construction equipment, management, supervision and support of any kind or nature whatsoever required for the construction of the NG-KIH System and the supply, installation, testing and commissioning of all Equipment;

“Construction Period” means:

- (a) in respect of any Site, the period commencing on the Effective Date and ending on the Site Completion Date for that Site;
- (b) in respect of any Lateral, the period commencing on the Effective Date and ending on the Lateral Completion Date for that Lateral; and
- (c) in respect of any Ring, the period commencing on the Effective Date and ending on the Ring Completion Date for that Ring;

“Contract Year” means each of:

- (a) the period from the Effective Date to the next June 30;
- (b) each subsequent period of 12 calendar months commencing on July 1; and
- (c) the period from the July 1 immediately prior to the Termination Date to and including the Termination Date;

“Control” means, with respect to the relationship between or among two or more Persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person, and **“Controlled”** has a corresponding meaning;

“Controlling Party” with respect to a Person, means a Person, or a group of Persons acting jointly or in concert, who Control such first mentioned Person;

“Customary Industry Practice” means using standards, practices, methods and procedures to a good commercial standard, conforming to Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances;

“Debt” of any Person at any date means:

- (a) all obligations of such Person for borrowed money;

- (b) all obligations of such person evidenced by bonds, debentures, notes or other similar instruments;
- (c) all obligations of such person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business;
- (d) all obligations of such person under leases which are or should be, in accordance with GAAP, recorded as capital leases in respect of which such person is liable, except leases arising in the ordinary course of business;
- (e) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property);
- (f) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other similar instrument;
- (g) all Debt (as otherwise defined in this definition) of others secured by a Charge on any asset of such Person, provided such Debt (as otherwise defined in this definition) is assumed by such Person; and
- (h) all Debt (as otherwise defined in this definition) of others guaranteed directly or indirectly by such Person or as to which such Person has an obligation substantially the economic equivalent of a guarantee;

“Deduction” has the meaning set out in Schedule 8 [Payments];

“Default Rate” means, on any day, 2% per annum over the Prime Rate, provided that, with respect to any amount payable by the Authority, such rate shall not exceed the penalty for late payment prescribed by KRS 45.454;

“Deficiency” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Demarcation Point” means the physical point at which the NG-KIH System ends and another network begins;

“Design” means everything required for the design of the NG-KIH System, except for any design that is expressly excluded from Project Co’s responsibility under this Project Agreement;

“Design and Construction Plan” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Design and Construction Protocols” means the provisions of Schedule 2 [Design and Construction Protocols];

“Design and Construction Representative” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Design and Construction Specifications” mean the provisions of Schedule 3 [Design and Construction Specifications], which are comprehensive and reflect all of the design and construction requirements for the Project;

“Design-Build Agreement” means the design-build agreement between Operations Co and the Design-Builder, a certified copy of which has been delivered by Project Co to the Authority;

“Design-Builder” means NG-KIH Design-Build LLC or any assignee or replacement permitted under this Project Agreement;

“Designated Equipment” means the equipment listed in Appendix 3C [Designated Equipment];

“Designated Equipment Protocol” means the protocol in respect of the Designated Equipment set out in Appendix 3D [Designated Equipment Protocol];

“Development Change” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Development Change Record” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Development Change Record Confirmation” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Development Change Register” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Direct Losses” means in respect of a condition, event or omission, without duplication, all damages, losses, liabilities, penalties, fines, assessments, claims (including by third parties), actions, costs (including increased Capital Expenditures), expenses (including the reasonable cost of legal or professional services), demands and charges, whether arising under statute, contract or at common law, which result directly from such condition, event or omission:

- (a) net of related Insurance Proceeds and Insurance Receivables and any amount which the relevant party would have recovered (in respect of such condition, event or omission) if it had complied with the requirements of this Project Agreement or any policy of insurance maintained or required to be maintained under this Project Agreement;
- (b) excluding any Indirect Losses, except to the extent included in a third party claim; and
- (c) in the case of Project Co, without limiting the foregoing, including the full amount of the related loss or reduction of any Availability Payments (which includes, for clarity, the Senior Debt Service Amount), net of Avoidable Costs related to such condition, event or omission,

and, in calculating any amount of any additional Capital Expenditure, labor or similar cost claimed by Project Co under this definition of **“Direct Losses”**, Project Co will be entitled to add to such amounts the mark-ups referred to in Section 2.11 of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Disability-Owned Business Enterprise” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Disadvantaged Business Enterprise” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Dispute” means any disagreement, failure to agree or other dispute between the Authority and Project Co arising out of or in connection with this Project Agreement, including in respect of the interpretation, breach, performance, validity or termination of this Project Agreement, whether in the law of contract or any other area of law;

“Dispute Notice” has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

“Dispute Resolution Procedure” has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

“Distribution” means, without duplication or double counting, whether in cash or in kind, any:

- (a) distribution in respect of equity interests in any Person;
- (b) redemption or purchase of any equity interest in any Person or reduction of capital or the amount of a shareholder’s contribution or any other reorganization or variation to such Person’s capital;
- (c) payment in respect of Junior Debt (whether of fees, principal, interest including capitalized interest and interest on overdue interest, breakage costs, or otherwise and whether or not such items are included or excluded from the definition of Junior Debt);
- (d) payment, loan, contractual arrangement, including any management agreement or payment in respect thereof, or transfer of assets or rights, in each case to the extent made or entered into after the Effective Date and not in the ordinary course of business or not on commercially reasonable terms, including to any current or former shareholder or any current or former Affiliate of any current or former shareholder; and
- (e) conferral of any other benefit which is not conferred and received in the ordinary course of business or is not conferred or received on commercially reasonable terms, including to any current or former shareholder or any current or former Affiliate of any current or former shareholder,

and, where any such Distribution is not in cash, the equivalent cash value of such Distribution will be calculated;

“DMS” has the meaning set out in Schedule 14 [Records and Reports];

“Draft Market Testing Proposal” has the meaning set out in Schedule 19 [Market Testing Procedure];

“Early Works” has the meaning set out in Section 2.11;

“Effective Date” means the date of this Project Agreement;

“Eligible Change in Law Event” means the occurrence of:

- (a) a Relevant Change in Law; or
- (b) a Relevant Works Change in Law;

“Emergency” means any situation, event or circumstance that:

- (a) constitutes or may constitute a hazard to or jeopardizes or may jeopardize the health and safety of any persons or any part of or the whole of the NG-KIH System;
- (b) causes or may cause damage or harm to property, buildings and/or equipment; or
- (c) constitutes a state of emergency declared as such by any Governmental Authority,

and which requires immediate action to prevent and/or mitigate the occurrence (or risk of the occurrence) of the foregoing;

“Employee Information” has the meaning set out in Schedule 9 [Compensation on Termination];

“Employee Payments” has the meaning set out in Schedule 9 [Compensation on Termination];

“Environmental Assessment” means an environmental assessment of any kind, including an environmental impact assessment;

“Environmental Laws” means all Laws relating to the protection of human health and all plant, animal, land, water and air resources that may be affected by the Project;

“Environmental Permit” means any Permit required pursuant to Environmental Laws, including any Permit required pursuant to the National Environmental Policy Act or Section 404 of the Clean Water Act, as well as any Permit required by the U.S. Army Corps of Engineers, the United States Department of Agriculture, the National Park Service, the U.S. Fish and Wildlife Service, any Native American Tribe or the Kentucky Heritage Council;

“Equipment” means any passive or electronic components necessary to deliver the xWDM, Ethernet or IP/MPLS services as set out in Schedule 3 [Design and Construction Specifications];

“Equipment-Only Outage” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“Excusing Event” means any of the following events or circumstances if it occurs during the Operating Period and if and to the extent that it interferes adversely with, or causes a failure of, the performance of the Services or causes an Outage:

- (a) the carrying out by Project Co of Minor Works required by the Authority in accordance with this Project Agreement;
- (b) compliance by Project Co with an order or direction by police, fire officials, medical health officer or any comparable public authority having the legal authority to make such order or give such direction;
- (c) a Change in Law during the Operating Period;
- (d) without limiting Project Co's obligation to provide stand-by power facilities for the NG-KIH System in accordance with the Design and Construction Specifications:
 - (1) a failure or shortage of power;
 - (2) a failure by any Utility Company, local authority or other like body to perform works or provide services required to be provided by them in a reasonably timely manner; or
 - (3) any unreasonable interference with the Services by any Utility Company, local authority or other like body as a result of maintenance or other work;
- (e) a failure or underperformance of the telecommunications infrastructure that permits the transmission of data between the NG-KIH System and other internet networks, provided that such telecommunications infrastructure is owned and operated by a third party that is not an Affiliate of Project Co;
- (f) a cyber attack, cyber security failure or denial of service impacting the NG-KIH System;
- (g) any vandalism or theft of any component of the NG-KIH System;
- (h) an industry-wide shortage of key materials or equipment necessary for the performance by Project Co of its obligations under this Project Agreement;
- (i) an injunction or other order of a court of competent jurisdiction resulting from a challenge to the procurement process pursuant to which Project Co was selected to enter into this Project Agreement or to the Authority's or Project Co's right to proceed with the Project or any aspect thereof;
- (j) the First System Refresh is not complete by the date that is 11 years from the Effective Date or the Second System Refresh is not complete by the date that is 21 years from the Effective Date, in each case, in accordance with the System Refresh Baseline Requirements or such other requirements as may be agreed by the parties from time to time or the Authority does not initiate the Market Testing Procedure or complete the Market Testing Procedure in accordance with Schedule 19 [Market Testing Procedure];
- (k) an injunction or other order of a court of competent jurisdiction resulting from a challenge to, or an expropriation that materially adversely interferes with, Project Co's right to access any lands, easements or other property (including, without limitation, access to the poles owned by any Utility Company);

- (l) unauthorized access by any Person to a Site or the NG-KIH System; or
- (m) any other event which is expressly stated in this Project Agreement to constitute an Excusing Event,

except to the extent that any of such events arise or are contributed to, directly or indirectly, as a result of any willful misconduct, negligent act or omission or non-compliance with the terms of this Project Agreement by Project Co or any Project Co Person;

“Exempt Refinancing” means:

- (a) a change in taxation or change in accounting treatment pursuant to changes in Laws or GAAP;
- (b) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters that are solely in respect of:
 - (1) breach of representations, warranties, covenants or undertakings;
 - (2) movement of monies between the Project Accounts (as defined in the Senior Financing Agreements) in accordance with the terms of the Senior Financing Agreements;
 - (3) late or non-provision of information or consents;
 - (4) amendments to the Project Implementation Agreement, Project Contracts or Senior Financing Agreements;
 - (5) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Senior Financing Agreements);
 - (6) restrictions imposed by the Senior Secured Creditors on the dates at which the financing provided by the Senior Secured Creditors under the Senior Financing Agreements can be advanced to Project Co under the Senior Financing Agreements, and which are given as a result of any failure by Project Co to ensure that the Design and the Construction are carried out in accordance with the Project Schedule and which are notified in writing by Project Co or the Senior Secured Creditors to the Authority prior to being given;
 - (7) changes to milestones for drawdown set out in the Senior Financing Agreements and which are given as a result of any failure by Project Co to ensure that the Design and the Construction are carried out in accordance with the Project Schedule and which are notified in writing by Project Co or the Senior Secured Creditors to the Authority prior to being given;
 - (8) failure by Project Co to obtain any consents from Governmental Authorities required by the Senior Financing Agreements; or

- (9) voting by the Senior Secured Creditors and the voting arrangements between the Senior Secured Creditors in respect of the levels of approval required by them under the Senior Financing Agreements;
- (c) an amendment or variation of an agreement approved by the Authority as part of any Change; or
- (d) a Qualifying Bank Transaction;

“Expiration Date” means the date that is 30 years after the Effective Date;

“Fair Market Value” means the amount at which an asset or a liability would be exchanged in an arm’s length transaction between informed and willing parties, other than in a forced or liquidation sale;

“Federal Permit” means any Permit set out in Part 2 of Appendix 2E [Expected Permit Timing];

“Fiber Outage” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“Field Locations” has the meaning set out in Appendix 4A [Services Specifications];

“Financial Model” means Project Co’s financial model for the Project, a copy of which is attached as Schedule 15 [Financial Model], as updated or amended from time to time in accordance with the terms of this Project Agreement;

“First System Refresh” means the first refresh of the NG-KIH System in accordance with Schedule 19 [Market Testing Procedure];

“Force Majeure Event” means the occurrence after the Effective Date of:

- (a) war, civil war, armed conflict or terrorism;
- (b) nuclear, radioactive, chemical or biological contamination, except to the extent that such contamination arises or is contributed to, directly or indirectly, as a result of any willful misconduct, negligent act or omission or non-compliance with the terms of this Project Agreement by Project Co or a Project Co Person; or
- (c) pressure waves caused by devices traveling at supersonic speeds,

which directly causes a party to be unable to comply with all or a material part of its obligations under this Project Agreement;

“GAAP” means generally accepted accounting principles in effect in the United States as set by the American Institute of Certified Public Accountants;

“Governmental Activities” means the provision of all governmental services and the conduct of all activities provided in connection or otherwise associated with the Lands and/or the NG-KIH System by any Governmental Authority;

“Governmental Authority” means any federal, state, territorial, regional, county, municipal or local governmental authority, quasi-governmental authority, court, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other

subdivision, department or branch of any of the foregoing, having jurisdiction in any way over or in respect of any aspect of the performance of this Project Agreement or the Project;

“H&S Conviction” has the meaning set out in Section 12.1(f);

“Handback Amount” has the meaning set out in Appendix 4B [Handback Requirements];

“Handback Certificate” has the meaning set out in Appendix 4B [Handback Requirements];

“Handback Holdback” has the meaning set out in Appendix 4B [Handback Requirements];

“Handback Requirements” means the requirements set out in Appendix 4B [Handback Requirements];

“Handback Survey” has the meaning set out in Appendix 4B [Handback Requirements];

“Handback Works” has the meaning set out in Appendix 4B [Handback Requirements];

“Handback Works Plan” has the meaning set out in Appendix 4B [Handback Requirements];

“Has Knowledge”, “Have Knowledge” or “Having Knowledge” means:

- (a) for an individual, when information is acquired by the individual;
- (b) for a corporation, when information has come to the attention of:
 - (1) a director or officer of the corporation; or
 - (2) a senior employee of the corporation with responsibility for matters to which the information relates,
- (c) for a partnership other than a limited partnership, when any partner Has Knowledge under the other Sections of this definition or under this Section (c) or Section (d) below for any partner that is itself a partnership or when any member of a director-level or officer-level or similar position of the partnerships or a senior employee of the partnership with responsibility for matters to which the information relates;
- (d) for a limited partnership, when any general partner Has Knowledge under the other Sections of this definition or under this Section (d) or Section (c) above for any partner that is itself a partnership or when any member of a director-level or officer-level or similar position of the partnerships or a senior employee of the partnership with responsibility for matters to which the information relates; or
- (e) for the Authority, when information has come to the attention of:
 - (1) a director or officer of the Authority; or
 - (2) a senior employee of the Authority with responsibility for matters to which the information relates,

under circumstances in which a reasonable person would take cognizance of it;

“Hazardous Substance” means any hazardous waste, hazardous product, contaminant, toxic substance, deleterious substance, dangerous good, pollutant, waste, reportable substance and any other substance, in respect of which the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation or release into or presence in the environment is prohibited, controlled or regulated under Environmental Laws;

“Hut” means a physical structure used to house a Node Site at certain Sites;

“IEEE” means the Institute of Electrical and Electronics Engineers;

“Implementation Plan” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Income Tax” means any tax imposed on the income of a Person by any Governmental Authority;

“Indemnifier” has the meaning set out in Section 9.2;

“Independent Certifier” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Independent Certifier’s Monthly Report” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Index Linked” means that, with respect to an amount at any time, the amount is adjusted as at each July 1st commencing as of July 1, 2017 by:

- (a) multiplying it by the Materials Inflation Index as at the immediately preceding July; and
- (b) dividing it by the Materials Inflation Index as at the Base Date;

“Indirect Losses” means any loss of revenue, loss of profits, loss of use, loss of contract, loss of goodwill, loss of production, loss of business, loss of business opportunity or any exemplary, punitive or special damages or any consequential or indirect loss or damages of any nature claimed, suffered or allegedly suffered by:

- (a) Project Co or any Project Co Person (other than a Person who is a Project Co Person solely by virtue of being an invitee of Project Co or any Project Co Person); or
- (b) the Authority or any Authority Person (other than a Person who is an Authority Person solely by virtue of being an invitee of the Authority or any of Authority Persons) or an Authority Indemnified Person,

and shall be deemed not to include any loss of Availability Payments, the Milestone Payment (or any foregone interest thereon) or other amounts expressly payable by one party to the other party under this Project Agreement;

“Innovation Proposal” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Insurance Proceeds” means the amount of any insurance proceeds received by a Person in respect of a claim made under any policy of insurance required to be maintained under this Project Agreement other than:

- (a) any policy of insurance maintained by the Authority solely for the benefit of the Authority; and
- (b) for the purposes of Sections 6.3, 6.5 and 6.6, insurance proceeds received by Project Co or the Senior Secured Creditors from the delay in start-up insurance described in Section 2 of Schedule 5 [Insurance Requirements];

“Insurance Proceeds Account” has the meaning set out in Schedule 10 [Lenders’ Remedies Agreement];

“Insurance Receivables” means the amount of any insurance proceeds which a Person is entitled to receive pursuant to policies of insurance required to be maintained under this Project Agreement other than:

- (a) any policy of insurance maintained by the Authority solely for the benefit of the Authority; and
- (b) for the purposes of Sections 6.3, 6.5 and 6.6, insurance proceeds received by Project Co or the Senior Secured Creditors from the delay in start-up insurance described in Section 2 of Schedule 5 [Insurance Requirements];

“Intellectual Property” means any or all of the following and all rights, arising out of or associated therewith:

- (a) national, international and foreign patents, utility models, mask works, and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof;
- (b) inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data and customer lists, product formulations and specifications, and all documentation relating to any of the foregoing throughout the world;
- (c) copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto throughout the world;
- (d) industrial designs and any registrations and applications therefor throughout the world;
- (e) rights in any internet uniform resource locators (URLs), domain names, trade names, logos, slogans, designs, common law trade-marks and service marks, trade-mark and service mark registrations and applications therefor throughout the world;
- (f) data bases and data collections and all rights therein throughout the world;

- (g) moral and economic rights of authors and inventors, however denominated, throughout the world; and
- (h) any similar or equivalent rights to any of the foregoing anywhere in the world;

“Intended Uses” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“ITU” means the International Telecommunications Union;

“Junior Debt” means indebtedness issued by Project Co which ranks subordinate in all respects to the Senior Debt, excluding:

- (a) all amounts not actually paid to Project Co by cash advance, rights entitling Project Co to a cash advance, or other consideration;
- (b) all fees, including commitment fees and standby fees, paid or to be paid by Project Co; and
- (c) capitalized interest, and interest on overdue interest;

“Junior Loan Agreement” means the subordinated loan agreement between KEDFA, as issuer, and Project Co, as borrower, pursuant to which KEDFA agreed to loan the entire proceeds of the Series 2015 Subordinated Bonds to Project Co, together with any other subordinated loan agreement entered into between KEDFA and Project Co pursuant to which KEDFA agrees to loan the entire proceeds of a series of Additional Subordinated Bonds (as defined in the Collateral Agency and Account Agreement) to Project Co;

“KEDFA” has the meaning set out in Section 3.8;

“Key Individuals” has the meaning set out in Section 2.8;

“Labor Inflation Index” means the Employment Cost Index (ECI), Utilities, as published by the U.S. Bureau of Labor Statistics, seasonally adjusted, base period of December, 2005 = 100, or, if such index in its present form becomes unavailable, such similar index as may be agreed by the parties, acting reasonably, or failing agreement as determined by the Dispute Resolution Procedure;

“Lands” has the meaning set out in Schedule 7 [Lands];

“Lateral” means physical fiber from a Node Site or Ring to a Service Level 1 Site and/or Service Level 3 Site;

“Lateral Completion” means that Site Completion has been achieved for all Sites on a Lateral;

“Lateral Completion Date” means the date that Lateral Completion has been achieved in respect of a Lateral;

“Laws” means all validly enacted laws (including the common law), statutes, regulations, ordinances, treaties, judgments and decrees and all official directives, by-laws, rules, consents, approvals, authorizations, guidelines, orders and policies of any Governmental Authority having the force of law from time to time in the Commonwealth of Kentucky and the United States of

America, including, for greater certainty, those related to the issuance of Permits and any building codes;

“Lender Endorsements” has the meaning set out in Schedule 5 [Insurance Requirements];

“Lenders’ Remedies Agreement” means the agreement between the Authority, the Collateral Agent (on behalf of the Senior Secured Creditors), Project Co and Operations Co in the form set out in Schedule 10 [Lenders’ Remedies Agreement], as amended, supplemented or replaced from time to time in accordance with this Project Agreement;

“Liability Payment” has the meaning set out in Section 9.3;

“License” has the meaning set out in Schedule 7 [Lands];

“Longstop Date” means the date that is 12 months after the Target System Completion Date, as adjusted in accordance with this Project Agreement;

“Market Testing” has the meaning set out in Schedule 19 [Market Testing Procedure];

“Market Testing Date” has the meaning set out in Schedule 19 [Market Testing Procedure];

“Market Testing Meeting” has the meaning set out in Schedule 19 [Market Testing Procedure];

“Market Testing Procedure” means the procedure out in Schedule 19 [Market Testing Procedure];

“Market Testing Proposal” has the meaning set out in Schedule 19 [Market Testing Procedure];

“Master Agreement” has the meaning set out in Recital B of this Project Agreement;

“Material Telecommunications Company” has the meaning set out in Schedule 8 [Payments];

“Materials Inflation Index” means the Consumer Price Index for All Urban Consumers (CPI-U), as published by the U.S. Bureau of Labor Statistics, base period of 1982-84 = 100, or, if such index in its present form becomes unavailable, such similar index as may be agreed by the parties, acting reasonably, or failing agreement as determined by the Dispute Resolution Procedure;

“Maximum Availability Payment” has the meaning set out in Schedule 8 [Payments];

“Milestone Payment” has the meaning set out in Schedule 8 [Payments];

“Minor Works” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Minor Works Rates” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Minority-Owned Business Enterprise” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“NG-KIH Account” has the meaning given to it in the Senior Financing Agreements;

“NG-KIH PoP” or **“NG-KIH Point of Presence”** means a facility at a terminal or intermediate location along the NG-KIH System that permits access to the NG-KIH System and the secure co-location of multiple vendor/ISP equipment for interconnection to the NG-KIH System;

“NG-KIH System” means all of the electronic equipment, fiber cable, outside plant installations, building facilities, interface equipment, network services and customer services required to provide a fully functional and operating telecommunications carrier system over the Term of this Project Agreement;

“NG-KIH System Change” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Net Change Value” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“NOC” has the meaning set out in Appendix 4A [Services Specifications];

“Node Site” has the meaning set out in Schedule 8 [Payments];

“Nominal” means calculated in nominal terms at current prices recognizing adjustment for indexation in respect of forecast inflation;

“Non-Operative Components” means components of the NG-KIH System that are not capable of performing, nor of hosting inserted technology that is capable of performing, data extraction and transmission functions;

“Notifying Party” has the meaning set out in Schedule 5 [Insurance Requirements];

“Open Records Act” means KRS 61.870 through KRS 61.884;

“Operating Period” means:

- (a) in respect of any Site, the period commencing on the day following the Site Completion Date for that Site and ending on the Termination Date;
- (b) in respect of any Lateral, the period commencing on the day following the Lateral Completion Date for that Lateral and ending on the Termination Date; and
- (c) in respect of any Ring, the period commencing on the day following the Ring Completion Date for that Ring and ending on the Termination Date;

“Operating Period Representative” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“Operating Plan” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“Operations Co” means KentuckyWired Operations Company, LLC;

“Outage” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“Outage Deduction” has the meaning set out in Schedule 8 [Payments];

“Outside Ring Completion Date” means the date that is 6 months after the Target Ring Completion Date for a Ring, as adjusted in accordance with this Project Agreement;

“Outside Ring Completion Holdback” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Paying Party” has the meaning set out in Section 9.3;

“Payment Adjustment Report” has the meaning set out in Schedule 8 [Payments];

“Performance Monitoring Plan” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“Performance Monitoring Program” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“Permits” means all permissions, consents, approvals, certificates, permits, licenses, statutory agreements, zoning and by-law amendments and variances, and authorizations required from any Governmental Authority, and all necessary consents and agreements from any third parties, needed to carry out the Project in accordance with this Project Agreement;

“Permitted Debt” means:

- (a) trade or other similar indebtedness incurred in the ordinary course of business (unless being contested in good faith and with appropriate proceedings with an adequate reserve therefor in accordance with GAAP having been placed on the Project Co’s books and records);
- (b) Taxes and governmental charges, salaries, related employee payments and trade payables; and
- (c) contingent liabilities relating to the endorsement of negotiable instruments received in the normal course of business or incurred with respect to any Permit, the Project Implementation Agreement, any Project Contract or this Project Agreement,

but does not include any Senior Debt or Junior Debt;

“Person” means an individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, limited liability company, association, unincorporated organization, union or Governmental Authority;

“Planned Maintenance” means maintenance on the NG-KIH System that is set out in or scheduled pursuant to the Operations and Maintenance Plan and is in full compliance with all manufacturers’ recommendations;

“Pole Attachment Adjustment Mechanism” has the meaning set out in Schedule 8 [Payments];

“Pole Attachment Agreements” has the meaning set out in Schedule 8 [Payments];

“Pole Attachment Fees” means any amounts payable to a Pole Provider under a Pole Attachment Agreement;

“Pole Attachment Proposal” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Pole Provider” has the meaning set out in Schedule 8 [Payments];

“PoP” or **“Point of Presence”** means an access point to the internet;

“Preferred Service Tenderer” has the meaning set out in Schedule 19 [Market Testing Procedure];

“Preliminary Change Instruction” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Preliminary Estimate” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Prime Rate” means the annual rate of interest published in the Wall Street Journal as the WSJ prime rate from time to time;

“Principal Insured Risk” means a risk that would be insured against by policies for the insurance referred to in Sections 2 and 3 of Schedule 5 [Insurance Requirements];

“Project” means the design, construction, financing, testing, commissioning, provisioning, operation, maintenance and refresh of the NG-KIH System and all other works and ancillary services in accordance with this Project Agreement;

“Project Agreement” means this project agreement, including any recitals, schedules, appendices and attachments to this agreement, as amended or restated from time to time;

“Project Co” means KentuckyWired Infrastructure Company, Inc.;

“Project Co Default Termination Amount” means the Termination Payment calculated in accordance with Section 3.1 or Section 3.2 of Schedule 9 [Compensation on Termination];

“Project Co Event of Default” has the meaning set out in Section 12.1;

“Project Co Hazardous Substances” means any Hazardous Substances brought onto:

- (a) the Lands; or
- (b) any property acquired or accessed by Project Co or any Project Co Person in connection with the NG-KIH System,

by Project Co or any Project Co Person during the Term;

“Project Co Insolvency Event” means any of the following events:

- (a) a receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied

or enforced upon, the whole or any material part of the assets of Project Co and, if such proceedings are commenced against Project Co and are disputed by Project Co, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 90 days of such proceedings being instituted;

- (b) any voluntary or involuntary proceedings with respect to Project Co being commenced under the Bankruptcy Law and, if such proceedings are commenced against Project Co and are disputed by Project Co, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 90 days of such proceedings being instituted;
- (c) Project Co making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the Bankruptcy Law or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against Project Co under the Bankruptcy Law or otherwise and, if proceedings are commenced against Project Co and are disputed by Project Co, such proceedings are not stayed, dismissed or otherwise remedied within 90 days of such proceedings being instituted;
- (d) in any voluntary or involuntary case seeking liquidation, reorganization or other relief with respect to Project Co or its debts under any Bankruptcy Law or foreign bankruptcy, insolvency or other similar law now or hereafter in effect, this Project Agreement is rejected, including a rejection pursuant to 11 USC § 365 or any successor statute; or
- (e) Project Co voluntarily or involuntarily ceasing to carry on business;

“Project Co Material Breach” means:

- (a) a failure by Project Co to pay any amount due and owing to the Authority under this Project Agreement on the due date (which amount is not being disputed in good faith) and Project Co has not remedied such failure to pay within 10 Business Days following notice from the Authority;
- (b) a failure by Project Co to:
 - (1) maintain the policies of insurance required to be maintained by Project Co under this Project Agreement;
 - (2) maintain such policies on the terms required under this Project Agreement (including a failure to comply with its obligation under Schedule 5 [Insurance Requirements] to name the Authority as an insured party); or
 - (3) provide evidence to the Authority as required by the terms of this Project Agreement that such policies have been taken out, maintained, paid for and renewed in accordance with the terms of this Project Agreement; or
- (c) except as provided above, a breach (other than a breach for which a Deduction can be made), or series of breaches (other than a series of breaches for which

Deductions can be made), by Project Co of its obligations under this Project Agreement (other than as a consequence of a breach by the Authority of its obligations under this Project Agreement), which results in:

- (1) a risk to the safety of the public;
- (2) a risk of material liability of the Authority to third Persons or other material financial loss to the Authority;
- (3) a material adverse effect on the performance of the Design, Construction, Services or System Refresh and, as a result thereof, the Authority is reasonably likely to be materially deprived of the benefit of this Project Agreement; or
- (4) any material provision of this Project Agreement being unenforceable against Project Co and, as a result thereof, the Authority is reasonably likely to be materially deprived of the benefit of this Project Agreement,

and, in the case of a breach that is capable of being remedied, Project Co has not remedied such breach within 10 Business Days following notice from the Authority;

“Project Co Materials” has the meaning set out in Section 14.5;

“Project Co Person” means:

- (a) any director, officer, employee or agent of Project Co in each case acting as such;
- (b) Operations Co, any Project Contractor, any Sub-Contractor and any representative, advisor (including any legal and financial advisor) or contractor of Project Co, in any such Person’s capacity as a provider of services, work or materials, directly or indirectly to Project Co in connection with the Project; or
- (c) any invitee of Project Co or any of the Project Co Persons referred to in (a) or (b) above who enters upon the Lands,

but specifically excludes any Third Party Infrastructure Provider;

“Project Co Proposal” has the meaning set out in Schedule 19 [Market Testing Procedure];

“Project Co Proposal Validity Period” has the meaning set out in Schedule 19 [Market Testing Procedure];

“Project Co’s Rights” has the meaning set out in Section 8.13;

“Project Contract” means either the Design-Build Agreement or the Services Contract, and **“Project Contracts”** means both of them;

“Project Contractor” means either the Design-Builder or the Service Provider, and **“Project Contractors”** means both of them;

“Project Contractor Breakage Costs” has the meaning set out in Schedule 9 [Compensation on Termination];

“Project Contractor Collateral Agreement” means the agreement to be entered into between the Authority, a Project Contractor, Operations Co and Project Co in the form set out in Schedule 11 [Project Contractor Collateral Agreement], as amended, supplemented or replaced from time to time in accordance with this Project Agreement;

“Project Implementation Agreement” means the project implementation agreement between Project Co and Operations Co, a certified copy of which has been delivered by Project Co to the Authority;

“Project Implementation Costs” has the meaning set out in Schedule 9 [Compensation on Termination];

“Project Intellectual Property” means the Intellectual Property that is created, brought into existence, acquired, licensed or used by Project Co, Operations Co, any Project Contractor, any Sub-Contractor or any other third party, directly or indirectly, for the purposes of the Design, Construction, Services or System Refresh, or otherwise for the purposes of this Project Agreement, but does not include the Financial Model;

“Project Schedule” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Pro Rata Principal Amount” means, with respect to any Senior Debt issued and outstanding under the Senior Financing Agreements, an amount equal to the Project Co Default Termination Amount multiplied by a fraction whose numerator is the outstanding principal amount of such Senior Debt and the denominator is the aggregate principal amount of all Senior Debt issued and outstanding under the Senior Financing Agreements;

“Prospective Service Tenderers” has the meaning set out in Schedule 19 [Market Testing Procedure];

“Protected Personal Information” means an individual’s personal information that is considered confidential and privileged in accordance with applicable Law;

“Prudent Coverage Amount” has the meaning set out in Schedule 5 [Insurance Requirements];

“Public Protest Action” means any civil disobedience, protest action, riot, civil commotion, blockade or embargo, including any action taken or threatened to be taken, by any Person or Persons protesting or demonstrating against:

- (a) the carrying out of any part of the Project, including the construction of the NG-KIH System; or
- (b) the construction or operation of the NG-KIH System in general, occurring after the Effective Date,

but excluding any lawful or unlawful strike, lockout, job action or other labor dispute;

“Qualified Insurer” means a reputable insurer of good standing authorized to conduct business in the Commonwealth of Kentucky and having a financial strength rating of A- VIII or better with A.M. Best;

“Qualifying Bank Transaction” means:

- (a) the disposition by a Senior Lender to a Qualifying Institution of any of its rights or interests in the Senior Financing Agreements;
- (b) the grant by a Senior Lender to a Qualifying Institution of any rights of participation in respect of the Senior Financing Agreements; or
- (c) the disposition or grant by a Senior Lender to a Qualifying Institution of any other form of benefit or interest in either the Senior Financing Agreements or the revenues or assets of Project Co, whether by way of security or otherwise;

“Qualifying Institution” means any of the following:

- (a) a United States bank, saving and loan institution, trust company, insurance company, investment company, pension fund or other institution which has or manages at least \$500 million in assets, including entities wholly owned by any such institution;
- (b) an institution which is recognized or permitted under the law of any member state of the European Economic Area to carry on the business of a credit institution pursuant to Council Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other European Economic Area member state;
- (c) an institution which is recognized or permitted under the law of any member state of the Organization for Economic Cooperation and Development to carry on within the Organization for Economic Cooperation and Development member states the business of a credit institution, insurance company, investment company or pension fund and which has or manages at least \$500 million in assets, including entities wholly owned by any such institution; or
- (d) any other institution consented to in writing by the Authority;

“Qualifying Refinancing” means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing;

“Qualifying Service Tender” has the meaning set out in Schedule 19 [Market Testing Procedure];

“Quality Assurance Plan” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Quality Assurance Program” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Reasonably Expected Performance” shall be determined based on the following:

- (a) if a period of time equal or greater than 6 months has elapsed since the System Completion Date, an average of the Availability Payment amounts payable to Project Co during the previous 6 month period;
- (b) if a period of time greater than 1 month but less than 6 months has elapsed since the System Completion Date, an average of the Availability Payment amounts payable to Project Co since the System Completion Date; or
- (c) if a period of time equal to or less than 1 month has elapsed since the System Completion Date or if System Completion has not been achieved, the Maximum Availability Payment;

“Receiving Party” has the meaning set out in Section 9.3;

“Referee” has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

“Referee Agreement” has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

“Referee Notice” has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

“Refinancing” means:

- (a) Project Co incurring, creating, assuming or permitting to exist any Debt other than Permitted Debt;
- (b) any transaction in which the Authority, with the consent or at the request of Project Co, grants rights to any Person under an agreement similar to the Lenders’ Remedies Agreement or any other agreement that provides for step-in rights or similar rights to such Person, other than the Lenders’ Remedies Agreement entered into on the Effective Date;
- (c) any amendment, variation, novation, supplement or replacement of any Senior Debt or Senior Financing Agreement;
- (d) the exercise of any right, or the grant of any waiver or consent, under any Senior Financing Agreement;
- (e) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Senior Financing Agreements or Senior Debt or the creation or granting of any other form of benefit or interest in the Senior Financing Agreements, the Senior Debt or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or
- (f) any other arrangement put in place by Project Co or another Person which has an effect which is similar to any of (a) through (e) above or which has the effect of limiting Project Co’s ability to carry out any of the actions referred to in (a) through (e) above,

but excluding any financing pursuant to Section 10.2;

“Refinancing Gain” means either the reduction in Senior Debt Service Amounts over the remainder of the Term as a result of a Refinancing or the net proceeds of a Refinancing;

“Relevant Change in Law” means a change in the applicability of any taxes in connection with the Lands or the NG-KIH System relative to that which is described in Section 3.5 of Schedule 7 [Lands] or a Change in Law:

- (a) which specifically applies to:
 - (1) the Project or telecommunications-related projects procured and contracted on a basis similar to the Project;
 - (2) Project Co, Operations Co or Persons that have contracted on similar telecommunications-related projects procured and contracted with the Authority or another statutory or public body on a basis similar to the Project; or
 - (3) Persons holding shares or other evidences of ownership in Persons whose principal business is contracting on other similar telecommunications-related projects procured and contracted on a basis similar to the Project and not other Persons;
- (b) which principally affects or principally relates to the design, provision, operation or maintenance of telecommunications infrastructure and associated services; or
- (c) which results in the designation of Project Co or any Project Co Person as a Common Carrier or in the application of the Common Carrier Regulations to Project Co, any Project Co Person or the NG-KIH System or any part thereof,

and compliance with which would require a variation (as applicable) in the design, quality, scope, methodology or cost of the Design, Construction, Services or System Refresh;

“Relevant Works Change in Law” means a Change in Law (other than a Relevant Change in Law) which causes Project Co to incur Capital Expenditures to perform works affecting the NG-KIH System (being any work of alteration, addition, demolition or extension or variation in the quality or function of the NG-KIH System) which is not work which Project Co would otherwise be required to perform under this Project Agreement;

“Relief Event” means any of the following events or circumstances if and to the extent it interferes adversely with, or causes a failure of, the carrying out of the Design, Construction, Services or System Refresh or causes an Outage:

- (a) an earthquake, tornado, hurricane, fire, wind storm, ice storm, mud slide, rock slide, flood, explosion, lightning or any other act of God, in each case, to the extent it does not constitute a Compensation Event;
- (b) ionizing radiation to the extent it does not constitute a Force Majeure Event;
- (c) a lawful or unlawful strike, lockout, job action or other labor dispute generally affecting the construction, telecommunications maintenance or management industry or a significant sector thereof;

- (d) during the Construction Period, any delay of more than 3 days in respect of any critical path matter in the Project Schedule caused by compliance by Project Co with an order or direction by police, fire officials, medical health officer or any comparable public authority having the legal authority to make such order or give such direction;
- (e) a Change in Law during the Construction Period;
- (f) an unreasonable delay in the payment of any Insurance Receivables;
- (g) any accidental loss of or physical damage to the NG-KIH System or any portion thereof, except any portion of the NG-KIH System that has not been properly marked and GPS located by Project Co in accordance with the Design and Construction Specifications, or any roads servicing the Lands;
- (h) a blockade or embargo to the extent it does not constitute a Force Majeure Event;
- (i) during the Construction Period, an industry-wide shortage of key materials or equipment necessary for the performance by Project Co of its obligations under this Project Agreement, which shortage has an impact on any critical path matter in the Project Schedule;
- (j) during the Construction Period, an injunction or other order of a court of competent jurisdiction resulting from a challenge to the procurement process pursuant to which Project Co was selected to enter into this Project Agreement or to the Authority's or Project Co's right to proceed with the Project or any aspect thereof; or
- (k) any other event which is stated in this Project Agreement to constitute a Relief Event,

except to the extent that any of such events arise or are contributed to, directly or indirectly, as a result of any willful misconduct, negligent act or omission or non-compliance with the terms of this Project Agreement by Project Co or any Project Co Person;

"Repair" means a repair to the NG-KIH System undertaken at any time after the System Completion Date except for the completion of Deficiencies;

"Reporting Error" has the meaning set out in Schedule 8 [Payments];

"Representative" means, as the case may be, a Design and Construction Representative or an Operating Period Representative;

"Respond Deduction" has the meaning set out in Schedule 8 [Payments];

"Restoration Deduction" has the meaning set out in Schedule 8 [Payments];

"Restricted Person" means (i) any Person who, or (ii) any member of a group of Persons acting together, any one of whom:

- (a) has, directly or indirectly, its/his/her principal or controlling office in a country or state that is a Restricted State;
- (b) has as any part of its business the illegal manufacture, sale, distribution or promotion of narcotic substances or arms;
- (c) is or has been involved in the promotion, support, financing or carrying out of terrorism;
- (d) in the case of an individual, he or she (or in the case of a legal entity, any of the members of the board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence (other than a suspended sentence) for any criminal offence (other than minor traffic offences or misdemeanors) less than 5 years prior to the date at which the determination of whether the Person falls within this definition is being made;
- (e) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent or are in financial distress;
- (f) is subject to any claim of the Authority in any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the determination of whether the Person falls within this definition is being made and which (in respect of any such pending claim, if it were to be successful) would, in the Authority's view, in either case, be reasonably likely to materially affect the ability of Project Co to perform its obligations under this Project Agreement;
- (g) has been suspended or debarred by the United States Government or under the Kentucky Revised Statutes Chapter 45A and the applicable administrative regulations; or
- (h) is prohibited from holding a contract with the Commonwealth of Kentucky under Kentucky Revised Statutes Chapter 45A and the applicable administrative regulations; and

includes the Controlling Party of, and any Person Controlled by, a Person described in this definition;

"Restricted State" means any country or state subject to any economic or political sanctions imposed by the United States of America for reasons other than its trade or economic policies;

"Reviewed Drawings and Specifications" has the meaning set out in Schedule 2 [Design and Construction Protocols];

"RFP" has the meaning set out in Recital A of this Project Agreement;

"Ring" means each of Ring 1A, Ring 1B, Ring 2, Ring 3, Ring 4 and Ring 5, as represented in Appendix 3E [Design Map];

"Ring Availability" means that a Ring has achieved required redundancy;

“Ring Availability Date” means the date that Ring Availability has been achieved;

“Ring Completion” means that Site Completion has been achieved for all Sites on a Ring;

“Ring Completion Date” means the date that Ring Completion has been achieved in respect of a Ring;

“Rock Risk Amount” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Scheduled Pro Rata Principal Repayment Amount” means, with respect to any Senior Debt issued and outstanding under the Senior Financing Agreements and falling due for repayment on a certain date, an amount equal to the Project Co Default Termination Amount multiplied by a fraction whose numerator is the principal amount of Senior Debt then due and the denominator is the aggregate principal amount of all Senior Debt issued and outstanding under the Senior Financing Agreements on such date;

“Second System Refresh” means the second refresh of the NG-KIH System in accordance with Schedule 19 [Market Testing Procedure];

“Security Documents” has the meaning given to it in the Senior Financing Agreements;

“Senior Debt” means:

- (a) all amounts of principal and interest outstanding, including interest and default interest accrued, from Project Co to the Senior Secured Creditors under the Senior Financing Agreements, provided that default interest will not include any increased interest, fees or penalty amounts payable by Project Co for any reason other than a failure by Project Co to pay any amount when due;
- (b) all costs of early termination of interest rate or currency hedging arrangements and other breakage costs or make-whole amounts payable by Project Co to the Senior Secured Creditors as a result of a prepayment under the Senior Financing Agreements due to the termination of this Project Agreement; and
- (c) all other fees, costs and expenses for which Project Co is responsible under the Senior Financing Agreements;

“Senior Debt Service Amount” means, for any period, the principal and interest payable by Project Co to the Senior Secured Creditors in the normal course (which, for greater certainty, does not include breach or default circumstances) under the Senior Financing Agreements;

“Senior Executive” has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

“Senior Financing Agreements” means:

- (a) the Collateral Agency and Account Agreement;
- (b) the Senior Indenture;
- (c) the Senior Loan Agreement;

- (d) the Security Documents;
- (e) the Lenders' Remedies Agreement;
- (f) the direct agreement dated as of the Effective Date between Project Co, Operations Co, the Collateral Agent and the Design-Builder;
- (g) the direct agreement dated as of the Effective Date between Project Co, Operations Co, the Collateral Agent and the Service Provider; and
- (h) any other document, agreement or instrument which the Collateral Agent, the Authority and Project Co may from time to time agree (in writing) is a Senior Financing Agreement,

certified copies of each of which have been delivered by Project Co to the Authority, and as amended from time to time in accordance with the terms of this Project Agreement;

“Senior Indenture” means the trust indenture between KEDFA, as issuer, and U.S. Bank National Association, as trustee, pursuant to which KEDFA issued the Series 2015 Senior Bonds;

“Senior Loan Agreement” means the senior loan agreement between KEDFA, as issuer, and Project Co, as borrower, pursuant to which KEDFA agreed to loan the entire proceeds of the Series 2015 Senior Bonds to Project Co, together with any other senior loan agreement entered into between KEDFA and Project Co pursuant to which KEDFA agrees to loan the entire proceeds of a series of Additional Senior Bonds (as defined in the Collateral Agency and Account Agreement) to Project Co;

“Senior Secured Creditors” means U.S. Bank National Association, in its capacity as trustee pursuant to the Senior Indenture (on behalf of itself and the holders of the Series 2015 Senior Bonds and any Additional Senior Bonds issued pursuant to the Senior Indenture) and any holders of (and any representatives of) any Other Permitted Senior Secured Indebtedness (as defined in the Collateral Agency and Account Agreement);

“Service Level 1 Site” has the meaning set out in Schedule 8 [Payments];

“Service Level 3 Site” has the meaning set out in Schedule 8 [Payments];

“Service Provider” means LTS Kentucky Managed Technical Services LLC or any assignee or replacement permitted under this Project Agreement;

“Service Tender Requirements” has the meaning set out in Schedule 19 [Market Testing Procedure];

“Service Tenderers” has the meaning set out in Schedule 19 [Market Testing Procedure];

“Service Tender Validity Period” has the meaning set out in Schedule 19 [Market Testing Procedure];

“Services” means everything required to operate and maintain the NG-KIH System as set out in Schedule 4 [Services Protocols and Specifications] and Appendix 4A [Services Specifications],

but excluding the First System Refresh and the Second System Refresh except in accordance with Schedule 19 [Market Testing Procedure];

“Services Change” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Services Contract” means the services contract between Operations Co and the Service Provider, a certified copy of which has been delivered by Project Co to the Authority;

“Services Protocols and Specifications” means the provisions of Schedule 4 [Services Protocols and Specifications];

“Services Specifications” means the provisions of Appendix 4A [Services Specifications], which are comprehensive and reflect all of the service specifications required for the Project and required to meet the rigorous performance standards set out in Schedule 8 [Payments];

“Simple Pole Attachment Agreement” means a standard form pole attachment agreement that a Pole Provider provides to Project Co or that Project Co provides to a Pole Provider, that is not negotiated by the Pole Provider, Project Co or the Authority, and that requires only minor changes, additions or modifications necessary to create a binding agreement, such as the insertion of the Pole Provider’s suggested rate, the legal names of the contracting parties, contact names and numbers for notification and the effective date;

“Simple Pole Attachment Agreement Amendment Period” has the meaning set out in Section 3.9;

“Site” means any Person that is connected to the NG-KIH System under this Project Agreement, including each Node Site, Service Level 1 Site and Service Level 3 Site;

“Site Access Plan” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Site Completion” means that all of the following have been achieved in relation to a Site:

- (a) the Site is located on a Ring that has achieved Ring Availability;
- (b) the Independent Certifier has issued a Certificate of Site Completion with respect to the Site based on the criteria set out in Section 2.13 (Turn-up and Test Services) and Section 2.14 (Service Migration) of Schedule 3 [Design and Construction Specifications] and:
 - (1) pursuant to Section 2.13 (Turn-Up and Test Services) of Schedule 3, the Independent Certifier has received a turn-up and test package, including an MOP, Site turn-up and test results and Site acceptance test results; and
 - (2) pursuant to Section 2.14 (Service Migration) of Schedule 3, the Independent Certifier has received a service migration package, including network discovery data, network analysis data and the service migration method of procedure;

- (c) all necessary Permits have been issued for the use and operation of the Site;
and
- (d) Project Co has delivered to the Authority a report confirming completion of all Commissioning scheduled in the Commissioning Plan to be completed before Site Completion in respect of the Site;

“Site Completion Date” means the date when all criteria for Site Completion that have not been waived in writing have been satisfied as certified by the Independent Certifier in accordance with Schedule 2 [Design and Construction Protocols];

“Site Completion Deficiency” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Site Locations” has the meaning set out in Schedule 7 [Lands];

“Site Migration” has the meaning set out in Schedule 8 [Payments];

“Site Migration Date” has the meaning set out in Schedule 8 [Payments];

“Site Multiplier” has the meaning set out in Schedule 8 [Payments];

“Site Value” has the meaning set out in Schedule 8 [Payments];

“Sub-Contract” means any contract entered into by a Project Contractor (except Project Contracts), or a sub-contractor of a Project Contractor of any tier, with one or more Persons in connection with the carrying out of Project Co’s obligations under this Project Agreement, as amended or replaced from time to time;

“Sub-Contractor” means any Person that enters into a Sub-Contract;

“Submittals” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Submittal Schedule” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Suitable Substitute Project Co” has the meaning given to it in the Lenders’ Remedies Agreement;

“Supervening Event” means any of a Compensation Event, Relief Event, Excusing Event, Force Majeure Event or Eligible Change in Law Event;

“Supervening Event Notice” has the meaning set out in Section 8.2(a);

“System Completion” means that Site Completion has been achieved for all Sites;

“System Completion Date” means the date that System Completion has been achieved;

“System Outage” means an Outage that is not an Equipment-Only Outage;

“System Refresh” means the First System Refresh and the Second System Refresh;

“System Refresh Baseline Requirements” has the meaning set out in Schedule 19 [Market Testing Procedure];

“Target Ring Completion Dates” means the dates, as set out in the Project Schedule (as updated from time to time in accordance with Schedule 2 [Design and Construction Protocols]), that Project Co estimates that Ring Completion for each Ring will occur, and **“Target Ring Completion Date”** means any one of them;

“Target Site Completion Dates” means the dates, as set out in the Project Schedule (as updated from time to time in accordance with Schedule 2 [Design and Construction Protocols]), that Project Co estimates that Site Completion for each Site will occur, and **“Target Site Completion Date”** means any one of them;

“Target System Completion Date” means the date, as set out in the Project Schedule (as updated from time to time in accordance with Schedule 2 [Design and Construction Protocols]), that Project Co estimates System Completion will occur;

“Targeted Pole Provider” has the meaning set out in Section 3.9;

“Tax” or **“Taxes”** means, from time to time, all taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Authority (including income, capital (including large corporations), withholding, consumption, sales, use, transfer, goods and services or other value-added, excise, customs, anti-dumping, countervail, net worth, stamp, registration, franchise, payroll, employment, health, education, business, school, property, local improvement, development, education development and occupation taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and charges) together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection of, those taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges;

“Telecommunications Company” has the meaning set out in Schedule 8 [Payments];

“Term” has the meaning set out in Section 2.1;

“Termination Date” means the earlier of the Expiration Date or the date of earlier termination referred to in Section 2.1;

“Termination Payment” means the amount, if any, owing by the Authority to Project Co pursuant to Schedule 9 [Compensation on Termination];

“Termination Payment Date” means the date on which the Authority must make the Termination Payment as provided for in Schedule 9 [Compensation on Termination];

“Termination Payment Period” has the meaning set out in Section 14.1(b);

“Third Party Infrastructure Agreement” means, as applicable, each Third Party Infrastructure Term Sheet or definitive contractual agreement entered into by Project Co and a Third Party Infrastructure Provider;

“Third Party Infrastructure Providers” means MuniNet Fiber Agency and Cincinnati Bell Telephone Company LLC, and **“Third Party Infrastructure Provider”** means either of them;

“Third Party Infrastructure Term Sheet” has the meaning set out in Section 4.15;

“Transfer Restriction Date” has the meaning set out in Section 16.1(c)(1);

“Uninsurable” means, in relation to a risk:

- (a) insurance as required under this Project Agreement is not available in respect of the Project with Qualified Insurers; or
- (b) the insurance premium payable or the terms and conditions for insuring such risk at the levels and on the terms required by this Project Agreement are such that contractors, concessionaires, owners or others having a substantially similar interest in a project such as the Project in the United States are not generally insuring against such risk with Qualified Insurers,

except to the extent that any of such events arise or are contributed to, directly or indirectly, as a result of any willful misconduct, negligent act or omission or non-compliance with the terms of this Project Agreement by Project Co or any Project Co Person;

“Uninsurable Risk” has the meaning set out in Section 6.10;

“Unplanned Maintenance” means unanticipated maintenance on the NG-KIH System that is required in a timely manner and is conducted in accordance with the standards set out in the Operations and Maintenance Plan and in full compliance with all manufacturers’ recommendations;

“Updated Project Schedule” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Utility Company” means any Person, except a regional wastewater commission established pursuant to KRS 65.8905 and, for purposes of paragraphs (a), (b), (c), (d), and (f) below, a city, who owns, controls, operates or manages any facility used or to be used for or in connection with:

- (a) the generation, production, transmission or distribution of electricity to or for the public, for compensation, for lights, heat, power or other uses;
- (b) the production, manufacture, storage, distribution, sale or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power or other uses;
- (c) the transporting or conveying of gas, crude oil or other fluid substance by pipeline to or for the public, for compensation;
- (d) the diverting, developing, pumping, impounding, distributing or furnishing of water to or for the public, for compensation;
- (e) the transmission or conveyance over wire, in air or otherwise, of any message by telephone or telegraph for the public, for compensation; or

- (f) the collection, transmission or treatment of sewage for the public, for compensation, if the facility is a subdivision collection, transmission or treatment facility plant that is affixed to real property and is located in a county containing a city of the first class or is a sewage collection, transmission or treatment facility that is affixed to real property, that is located in any other county, and that is not subject to regulation by a metropolitan sewer district or any sanitation district created pursuant to KRS Chapter 220;

“Veteran-Owned Business Enterprise” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Wavelength” means an unique optical channel defined by the wavelength of operation; and

“Women-Owned Business Enterprise” has the meaning set out in Schedule 2 [Design and Construction Protocols].

2. INTERPRETATION

This Project Agreement will be interpreted according to the following provisions, except to the extent the context or the express provisions of this Project Agreement otherwise require:

- (a) the parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Project Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same;
- (b) the table of contents, headings and sub-headings, marginal notes and references to them in this Project Agreement are for convenience of reference only, do not constitute a part of this Project Agreement, and will not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Project Agreement;
- (c) each reference to a Section, Schedule, Appendix or Attachment is a reference to a Section of, Schedule to, Appendix to a Schedule to this Project Agreement; or each Attachment to an Appendix, and each Appendix is uniquely designated by using the number of the Schedule to which the Appendix is attached following by an alphabetical designator in sequence (for example, Appendix 4B [Handback Requirements] means the second Appendix attached to Schedule 4 [Services Protocols and Specifications]). A Schedule includes all of the Appendices attached to that Schedule. An Appendix includes all the Attachments attached to that Appendix;
- (d) each reference to an agreement, document, standard, principle or other instrument includes (subject to all relevant approvals and any other provision of this Project Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, replaced, novated or assigned, and a reference to an “amendment” and similar terms (including “amend” and “amended”) include a reference to supplement, alteration, substitute, variation, change and any other modification and similar terms;

- (e) each reference to a statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision;
- (f) each reference to time of day is a reference to Eastern Standard Time or Eastern Daylight Time, as the case may be;
- (g) words importing the singular include the plural and vice versa;
- (h) words importing a particular gender include all genders;
- (i) each reference to a public organization is deemed to include a reference to any successor(s) to such public organization or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such public organization;
- (j) unless the context otherwise requires, each reference to “parties” means the parties to this Project Agreement and each reference to a “party” means any one of the parties to this Project Agreement, provided however that a reference to a third party does not mean a party to this Project Agreement;
- (k) all monetary amounts are expressed in U.S. Dollars;
- (l) whenever this Project Agreement obliges a party (the “**Payor**”) to pay any amount to the other party (the “**Payee**”) in respect of any costs, expenses, fees, charges, liabilities, losses, claims or other sums incurred by the Payee:
 - (1) such obligation will be construed as applying only to so much of such sums as have been properly incurred on an arm’s length commercial basis or, where not incurred on an arm’s length commercial basis (including when the payment is made to an Affiliate of the Payee), so much of them as are proper and reasonable; and
 - (2) the Payee will, when requested by the Payor, provide supporting evidence of such costs, expenses, fees, charges, liabilities, losses, claims or other sums;
- (m) each requirement for a thing or action to be “in accordance with” or “in compliance with” any standard, code or specification or other requirement or stipulation means that such thing or action is to exceed or at least equal that standard, code, specification or other requirement or stipulation;
- (n) the words “include”, “includes” and “including” are to be construed as meaning “include without limitation”, “includes without limitation” and “including without limitation”, respectively;
- (o) whenever the terms “will” or “shall” are used in this Project Agreement in relation to Project Co or the Authority they shall be construed and interpreted as

synonymous and to read “Project Co shall” or “the Authority shall”, as the case may be;

- (p) when a party has “discretion”, it means that party has the sole, absolute and unfettered discretion, with no requirement to provide reasons unless specifically required under the provisions of this Project Agreement;
- (q) any consent contemplated to be given under this Project Agreement must be in writing;
- (r) general words are not given a restrictive meaning:
 - (1) if they are introduced by the word “other”, by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
 - (2) by reason of the fact that they are followed by particular examples intended to be embraced by those general words;
- (s) words or abbreviations which have well-known trade meanings are used in accordance with those meanings;
- (t) the expression “all commercially reasonable efforts” and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party’s obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent Person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that Person’s own benefit, provided that the foregoing will not require the Authority to:
 - (1) take any action which is contrary to the public interest, as determined by the Authority in its discretion; or
 - (2) undertake any mitigation measure that might be available arising out of its status as a public body that would not normally be available to a private commercial party;
- (u) the expressions “by Project Co” and “by or through Project Co” and expressions of like import are synonymous and mean by Project Co or by anyone employed by or through Project Co, including Project Co and all contractors, sub-contractors and suppliers of any tier and their respective officers, employees, consultants and agents;
- (v) all accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP, consistently applied;

- (w) where this Project Agreement requires the calculation of something that is calculated in the Financial Model, the calculation will be done in a manner consistent with the calculation methodology in the Financial Model;
- (x) if the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day;
- (y) in the event that any provision of this Project Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, unless severance of such provision would materially alter the essence of this Project Agreement for either party, the provision shall be fully severable and shall not affect the remaining provisions of this Project Agreement, and this Project Agreement shall be construed and enforced as if the illegal, invalid or unenforceable provision had not been included therein. The parties shall promptly meet and endeavor in good faith to negotiate new provisions to eliminate such illegality, invalidity or unenforceability as much as possible and to restore this Project Agreement as nearly as possible to its original intent and effect; and
- (z) to the extent permitted by applicable Law, each release, waiver of liability and indemnity in this Project Agreement expressed to be given in favor of a party is and will be interpreted as having been given in favor of and may be enforced by that party and, in the case of the Authority, by the Authority Indemnified Persons, and, in the case of Project Co, by Project Co Persons.

3. ORDER OF PRECEDENCE

In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Project Agreement, the provisions will prevail in the following order of precedence with each taking precedence over those listed subsequently:

- (a) the provisions establishing the higher quality, manner or method of performing the Design, Construction or Services, using the more stringent standards, will prevail, with the intent that the provisions which produce the higher quality with the higher levels of safety, reliability, durability, performance and service will prevail;
- (b) the provisions of the main body of this Project Agreement will prevail over any of the Schedules hereto other than Schedule 11 [Project Contractor Collateral Agreement] or Schedule 10 [Lenders' Remedies Agreement];
- (c) the provisions of the main body of this Project Agreement and all Schedules will prevail over Schedule 21 [Master Agreement];
- (d) the provisions of the Lenders' Remedies Agreement will prevail over the Project Contractor Collateral Agreements; and
- (e) if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Design, Construction, Services or System Refresh, the provision that applies to the specific part of the Design, Construction, Services or System Refresh shall

prevail for that specific part of the Design, Construction, Services or System Refresh.

4. FINANCIAL MODEL

Except where expressly referred to, the Financial Model and its contents will not be used to interpret, and will not affect the meaning of, this Project Agreement.

**SCHEDULE 2
DESIGN AND CONSTRUCTION PROTOCOLS**

1. DEFINITIONS

In this Schedule 2, in addition to the terms defined in Schedule 1 [Definitions and Interpretation]:

“Certificate of Site Completion” has the meaning set out in Section 13.3(a) of this Schedule 2;

“Commissioning” means to test, calibrate, certify or otherwise verify that the applicable equipment or portion of the NG-KIH System has been installed and is operating in accordance with any commissioning requirements set out in this Project Agreement, all applicable standards and Customary Industry Practice, the manufacturer’s requirements and specifications and the applicable criteria set forth in the Design and Construction Specifications, and **“Commission”** and **“Commissioned”** have corresponding meanings;

“Commissioning Plan” has the meaning set out in Section 12.1 of this Schedule 2;

“Deficiency” means any defect or fault, including omission, in the NG-KIH System which is the result of a failure by Project Co to comply with the Design and/or Construction obligations under this Project Agreement, including a failure by Project Co to comply with the requirements of Schedule 3 [Design and Construction Specifications];

“Design and Construction Plan” has the meaning set out in Section 5.1(a) of this Schedule 2;

“Design and Construction Representative” has the meaning set out in Section 2.1 of this Schedule 2;

“Disability-Owned Business Enterprise” means an individual, partnership, corporation, limited liability company or joint venture of any kind that is at least fifty-one percent (51%) owned and controlled by one or more persons who are United States citizens and a member(s) of a disabled group;

“Disadvantaged Business Enterprise” means any Disability-Owned Business Enterprise, Minority-Owned Business Enterprise, Veteran-Owned Business Enterprise or Women-Owned Business Enterprise;

“Implementation Plan” has the meaning set out in Section 10.4 of this Schedule 2;

“Independent Certifier” has the meaning set out in Section 3.1 of this Schedule 2;

“Independent Certifier’s Monthly Report” means the report produced by the Independent Certifier at the end of each month from the time Project Co first applies for a Certificate of Site Completion until the System Completion Date confirming the Site Migration Dates for each Site for which Project Co has applied for a Certificate of Site Completion during the period beginning 5 Business Days prior to the end of the preceding month and ending 5 Business Days prior to the end of the current month;

“Intended Uses” means the uses for the NG-KIH System as described in the Design and Construction Specifications;

“Minority-Owned Business Enterprise” means an individual, partnership, corporation, limited liability company or joint venture of any kind that is at least fifty-one percent (51%) owned and controlled by one or more persons who are United States citizens and a member(s) of a minority group;

“Outside Ring Completion Holdback” has the meaning set out in Section 11.1 of this Schedule 2;

“Project Schedule” has the meaning set out in Section 10.1 of this Schedule 2;

“Quality Assurance Plan” means the quality assurance plan prepared by Project Co, as revised and updated by Project Co from time to time;

“Quality Assurance Program” has the meaning set out in Section 9.2 of this Schedule 2;

“Reviewed Drawings and Specifications” has the meaning set out in Appendix 2B [Design Review];

“Rock Risk Amount” has the meaning set out in Section 14.1 of this Schedule 2;

“Site Access Plan” has the meaning set out in Section 10.1 of this Schedule 2;

“Site Completion Deficiency” has the meaning set out in Section 13.1 of this Schedule 2;

“Submittals” has the meaning set out in Appendix 2B [Design Review];

“Submittal Schedule” has the meaning set out in Appendix 2B [Design Review];

“Updated Project Schedule” has the meaning set out in Section 10.2 of this Schedule 2;

“Veteran-Owned Business Enterprise” means an individual, partnership, corporation, limited liability company or joint venture of any kind that is at least fifty-one percent (51%) owned and controlled by one or more veterans who are United States citizens; and

“Women-Owned Business Enterprise” means an individual, partnership, corporation, limited liability company or joint venture of any kind that is at least fifty-one percent (51%) owned and controlled by one or more women who are United States citizens.

2. PARTIES’ DESIGN AND CONSTRUCTION REPRESENTATIVES

2.1 Appointment of Representatives

Each party will, within 5 Business Days of the Effective Date, designate in writing a person (the **“Design and Construction Representative”**) to be the party’s single point of contact with respect to the Design and the Construction. Project Co’s Design and Construction Representative will be a Key Individual. Except as otherwise set out in this Project Agreement, all costs or expenses incurred by or with respect to a party’s Design and Construction Representative will be for the account of that party.

2.2 Replacement

Subject to Section 2.8 of this Project Agreement in respect of Key Individuals, a party may, at any time and in its own discretion by notice to the other party and Operations Co, change the person appointed as the party's Design and Construction Representative. If, for any reason, a party's Design and Construction Representative is unable or unwilling to continue, then the party will immediately appoint a replacement Design and Construction Representative. If, at any time, a party objects to a Design and Construction Representative of the other party, then the other party will give reasonable consideration to replacing the Design and Construction Representative with a person reasonably acceptable to the objecting party.

2.3 Authority of Representatives

A party's Design and Construction Representative will have full authority to act on behalf of and bind the party with respect to Design and Construction under this Project Agreement, including giving any review, acceptance, approval or confirmation which may be given by the Authority. Notwithstanding the above, a party's Design and Construction Representative will not have the authority to execute or agree to any amendments of or to give any waivers under this Project Agreement.

2.4 Review Procedure

The parties will follow the submittal schedule and design review process set out in Appendix 2B [Design Review].

2.5 Authority Not Responsible for Design or Construction

The Authority's review, acceptance, approval or confirmation of compliance with respect to any technical aspect of the Design or Construction, including pursuant to Appendix 2B [Design Review], will be for the Authority's benefit only, and no review, acceptance, approval or confirmation of compliance by the Authority's Design and Construction Representative or other representative of the Authority will in any way relieve Project Co of its obligations for all aspects of the Design and Construction of the NG-KIH System except as may be expressly set out in this Project Agreement.

3. INDEPENDENT CERTIFIER

3.1 Appointment

The parties will cooperate to jointly appoint a person (or firm of persons) (the "**Independent Certifier**"), who is:

- (a) qualified and experienced with respect to the design and construction of telecommunications projects similar to the Project; and
- (b) independent from both the Authority and Project Co (and who will be impartial to the parties),

to provide certification services during the Construction Period. The parties will enter into an agreement with the Independent Certifier on the terms generally as set out in Appendix 2A [Independent Certifier Agreement]. The parties confirm that Project Co may also appoint the

Independent Certifier to provide payment certification services in respect of the Design-Build Agreement.

3.2 Appointment and Replacement

If, within 20 Business Days of the Effective Date, the Independent Certifier has not been appointed, or if for any reason during the Construction Period the Independent Certifier is unable or unwilling to continue to perform the Independent Certifier services, or if the Independent Certifier's appointment has been terminated by the Authority and Project Co, then:

- (a) within 5 Business Days of the date that is 20 Business Days after the Effective Date (or within 5 Business Days of the date of termination of the Independent Certifier's appointment, if applicable), the Authority will provide the names of 3 candidates acceptable to the Authority for consideration by Project Co;
- (b) within 10 Business Days of receiving the candidate names, Project Co will notify the Authority of the candidates acceptable to Project Co, and the parties will cooperate to enter into a contract with an acceptable candidate generally in the form set out in Appendix 2A [Independent Certifier Agreement]; and
- (c) if none of the candidates are acceptable to Project Co, acting reasonably, or if for any reason an Independent Certifier is not appointed within 40 Business Days of the Effective Date (or within 20 Business Days of the date of termination of the Independent Certifier's appointment, if applicable), then either party may immediately apply to a judge of the state court in Franklin County, Kentucky for the selection of an Independent Certifier, providing the other party the opportunity to participate in the selection and appointment process.

3.3 Milestone Inspections and Report

In accordance with key milestone dates set out in the Project Schedule, the parties will require the Independent Certifier to:

- (a) consult with the Design-Builder and others involved in the Design; and
- (b) conduct inspections of the Construction,

and, within 20 Business Days of the relevant consultation and/or inspection, prepare and deliver to the Authority, Project Co and Operations Co a written report containing a description of:

- (c) the completed Design and Construction; and
- (d) the progress of the Design and Construction relative to the Updated Project Schedule, with an overview analysis of any variances.

3.4 Payment Certification

The parties may require the Independent Certifier to provide payment certification services in respect of the Design-Build Agreement and Sub-Contracts for parts of the Construction.

3.5 Application for Certificates of Site Completion

The parties will require the Independent Certifier to perform the obligations of the Independent Certifier described in Section 13 of this Schedule 2.

3.6 Project Co Obligations

Project Co will:

- (a) give the Independent Certifier such access to the Design and Construction as the Independent Certifier reasonably requests in order to be fully informed as to the progress of the Design and Construction, including access to drawings, specifications, schedules, records and other documents or data relating to the Design and Construction and including such information that is being produced by or in the possession of the Design-Builder or others;
- (b) enable the Independent Certifier to enter and inspect the Lands, in accordance with Section 4.5 of Appendix 2A [Independent Certifier Agreement];
- (c) permit the Independent Certifier to attend all Design and Construction meetings during the Construction Period, except to the extent Project Co and the Authority expressly otherwise agree; and
- (d) keep the Independent Certifier informed as to the progress of the Construction, including giving notice in accordance with Customary Industry Practice of any part of the work on the NG-KIH System which does not comply with the Design and Construction Specifications, and provide an opportunity for the Independent Certifier to review the field conditions.

3.7 No Responsibility for Design or Construction

Nothing in this Project Agreement (including this Schedule 2) or in the parties' agreement with the Independent Certifier will be interpreted as giving the Independent Certifier any responsibility or authority for any aspect of the Design or Construction, or as relieving Project Co of its responsibility for the Design and Construction as set out in this Project Agreement, and none of Project Co, Operations Co, the Design-Builder or any Sub-Contractor will be entitled to rely on any review, acceptance, approval or confirmation that the Independent Certifier may give with respect to the Design or Construction.

4. DESIGN AND CONSTRUCTION RESPONSIBILITIES

4.1 Design/Build Responsibility

Notwithstanding any other provision of this Project Agreement, Project Co will:

- (a) have complete responsibility for and control over the Design and Construction of the NG-KIH System; and
- (b) perform and complete the Design and Construction:

- (1) in accordance with all terms of this Project Agreement, including the terms of this Schedule 2 and the Design and Construction Specifications; and
- (2) so as to provide the NG-KIH System that at System Completion:
 - (A) is complete and operational and fit for the Intended Uses;
 - (B) is fully compliant with the applicable requirements set out in Schedule 3 [Design and Construction Specifications]; and
 - (C) will permit Project Co to provide the Services in accordance with the requirements of this Project Agreement.

Each of the obligations in Sections 4.1(b)(1) and 4.1(b)(2) of this Schedule 2 are independent obligations, and the fact that Project Co has satisfied one obligation will be no defense to an allegation that it has failed to satisfy another.

4.2 Standard of Performance for Design and Construction

Without limiting the other requirements of this Project Agreement, Project Co will perform the Design and Construction to the standards required by Schedule 3 [Design and Construction Specifications].

4.3 Deficiencies in Design or Construction

Project Co will, without cost to the Authority, and without limiting Project Co's obligations to perform the Services as set out in this Project Agreement, including Schedule 4 [Services Protocols and Specifications], correct any Deficiency that becomes apparent at any time during the Term, subject to the terms of this Project Agreement, including the Handback Requirements.

4.4 Compliance with Laws

Project Co will undertake and perform the Design and Construction in accordance with applicable Laws, and so that all applicable elements of the Design and Construction, including all workmanship, construction equipment and materials, and the supply and installation of NG-KIH System equipment, meet the requirements of applicable Laws. If there is any conflict or ambiguity between the provisions of applicable Laws, or between a provision of applicable Laws and the Design and Construction Specifications, or between provisions of the Design and Construction Specifications, then the provision of higher quality or higher standard will govern.

4.5 Permits for the Design and Construction

- (a) Subject to Section 3.9 (Pole Attachment Agreements) of this Project Agreement, Section 8 (Supervening Events) of this Project Agreement and the Authority's obligation in respect of zoning for all Site Locations, Project Co is responsible to obtain all Permits that are required for the performance of the Design and Construction.
- (b) Project Co will:

- (1) keep the Authority's Design and Construction Representative fully informed of the details of all discussions and negotiations with Governmental Authorities with respect to all Permits;
 - (2) provide access to copies of all applications relating to Permits and issued Permits for the Construction of the NG-KIH System in the DMS; and
 - (3) where practicable, provide reasonable advance notice to the Authority of any meetings with Governmental Authorities relating to Permits and, upon request by the Authority, permit a representative of the Authority to attend any such meetings.
- (c) Subject to Section 3.9 (Pole Attachment Agreements) of this Project Agreement, Section 8 (Supervening Events) of this Project Agreement and the Authority's obligation in respect of zoning for all Site Locations, Project Co assumes all risk and costs arising in relation to all Permits, including delays to the Project Schedule arising from delays in obtaining Permits or inability to obtain Permits, conditions of obtaining Permits or amendments to Permits as may be required.
- (d) The Authority will provide Project Co and Operations Co with such information within the Authority's possession, and co-operate with Project Co and Operations Co, as Project Co or Operations Co reasonably require in relation to all Permits.

5. DESIGN AND CONSTRUCTION PLAN

5.1 Design and Construction Plan

Project Co will:

- (a) prepare a design and construction plan and an installation plan and a traffic flow and control plan (the "**Design and Construction Plan**");
- (b) submit the Design and Construction Plan to the Authority within 20 Business Days of the Effective Date, which plan shall be reviewed by the Authority in accordance with Appendix 2B [Design Review]; and
- (c) comply with the reviewed Design and Construction Plan in the Design and Construction of the NG-KIH System.

6. DESIGN

6.1 Additional Design Considerations

In addition to other requirements of this Project Agreement, Project Co will undertake and perform the Design so that the Design:

- (a) is undertaken by a design team exercising such degree of care, skill and diligence as would reasonably be expected from consultants qualified to perform services similar in scope, nature and complexity to the Design, as of the date of this Project Agreement, and Project Co will appoint a design team that:

- (1) is so qualified;
 - (2) includes (as required by applicable Law or Customary Industry Practice) licensed or registered professional engineers and architects;
 - (3) has sufficient expertise and experience to expeditiously and efficiently perform all of the Design in a proper and professional manner to the standard set out in this Project Agreement; and
 - (4) has sufficient expertise and experience designing, constructing, operating and maintaining infrastructure in similar environmental and geotechnical conditions as in the Lands;
- (b) includes specific consideration of constructability, staging and equipment delivery restrictions and lifecycle cost issues at all stages of Design, as appropriate; and
 - (c) includes consideration of efficient and cost-effective operation and maintenance, including any environmentally sustainable operating practices.

6.2 Design Process

Project Co will undertake the Design in accordance with Appendix 2B [Design Review], including providing submittals to the Authority in accordance with the submittal schedule. This Section 6.2 does not limit Project Co's obligation to comply with any requirements set out in the Design and Construction Specifications in relation to the stages and requirements for the Design.

6.3 Design Change

Any revisions to drawings, specifications and equipment requested by the Authority and any other change to any Design described in the Reviewed Drawings and Specifications (other than a change required to bring the Design into conformity with this Project Agreement) requested by the Authority will be a Change and the terms of Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply.

6.4 Ownership of Design

With respect to ownership and property rights relating to the Design:

- (a) the Authority will not have an ownership interest in the Design, including any of the drawings or specifications prepared and produced by Project Co, Operations Co, the Design-Builder or any Sub-Contractor;
- (b) Project Co grants to the Authority, or will cause Operations Co, the Design-Builder and all Sub-Contractors to grant to the Authority, an irrevocable perpetual license giving the Authority the non-exclusive right to use the Design, including any of the documents and information listed in Section 7.18 of this Schedule 2:
 - (1) in connection with the NG-KIH System during and beyond the end of the Term and as long as the NG-KIH System exists, including for operational

purposes during the Term and for renovations, additions and alterations to the NG-KIH System; and

- (2) for reference purposes in connection with other operations, projects and facilities of the Authority; and
- (c) Project Co will execute and deliver through the DMS, or cause to be executed and delivered through the DMS, any and all further and other documents as the Authority may reasonably request to effect and record the license referred to in Section 6.4(b) of this Schedule 2.

7. CONSTRUCTION

7.1 Construction of the NG-KIH System

Project Co will perform the Construction in strict conformity with the Reviewed Drawings and Specifications, as may be modified and amended from time to time in accordance with the terms of this Project Agreement, and this obligation will be in addition to all other obligations of Project Co under this Project Agreement.

7.2 Amendments and Changes to the Drawings and Specifications

During the Construction, Project Co will submit all amendments or additions to the Reviewed Drawings and Specifications to the Authority's Design and Construction Representative for review under Appendix 2B [Design Review]. Any Changes during the Construction will be subject to the terms of Schedule 6 [Changes, Minor Works and Innovation Proposals].

7.3 Skilled Workers

Project Co will employ or cause Operations Co to cause the Design-Builder to employ a sufficient number of sufficiently skilled workers to perform the Construction in compliance with this Project Agreement. Trades and other workers will be licensed or registered as required by applicable Law or Customary Industry Practice.

7.4 Local Content Utilization

Subject to Section 7.3, Project Co will use commercially reasonable efforts to utilize, or cause Operations Co to cause the Design-Builder to utilize, local labor to perform no less than 60% of the total Construction man hours. No later than 60 days following the end of each calendar year during the Construction Period, Project Co will provide a report to the Authority detailing its efforts to utilize and actual utilization of local labor in the Construction.

7.5 Disadvantaged Business Enterprises

Project Co will use commercially reasonable efforts to utilize, or cause Operations Co to cause the Design-Builder to utilize, Disadvantaged Business Enterprises to perform no less than 10% of the total Construction man hours. No later than 60 days following the end of each calendar year during the Construction Period, Project Co will provide a report to the Authority detailing its efforts to utilize and actual utilization of Disadvantaged Business Enterprises in the Construction.

7.6 Control of the Construction

Project Co will have total control of the Construction and will effectively direct and supervise the Construction so that it is undertaken in compliance with the terms of this Project Agreement. Project Co will be responsible for all construction means, methods, techniques, sequences and procedures with respect to the Construction and for coordinating the various elements of the Construction, and nothing in this Project Agreement (including this Schedule 2) will be interpreted as giving any responsibility for the above to the Authority, the Authority's Design and Construction Representative or any other representative or agent of the Authority, or to the Independent Certifier.

7.7 Existing Utilities and Services

Project Co will:

- (a) confirm the location of, and protect all existing utilities and services that may be affected by the Construction; and
- (b) subject to Section 8 (Supervening Events) of this Project Agreement, relocate, or cause to be relocated, any existing utilities and services that conflict with the Construction.

All existing utilities and services to local communities must remain in operation at all times with interruption only with the prior written consent of the Authority's Design and Construction Representative.

7.8 Route and Lands Investigation

Subject to Section 8 (Supervening Events) of this Project Agreement or as otherwise expressly provided to the contrary in this Project Agreement and, for clarity, without derogating from the Authority's obligation to provide the License, Project Co will be deemed to have visually inspected portions of the planned route and Lands in relation to the performance of its obligations under this Project Agreement and to have satisfied itself and accepted all obvious risks and related responsibilities relating to the Construction on the planned route and Lands, including:

- (a) the adequacy of physical access to and through the Lands for the Construction;
- (b) vehicular access and parking;
- (c) traffic control and requirements for works on all roadways or public access right-of-ways;
- (d) temporary storage of building materials and equipment;
- (e) existing utilities and services on the Lands;
- (f) existing building structures to receive tie-ins; and
- (g) building components requiring demolition and disposal, if any.

7.9 Route and Lands Issues

Project Co will:

- (a) carry out the Construction in accordance with an approved Design and Construction Plan that includes the details for Project Co's phasing of all parts of the Construction;
- (b) perform all Construction activities within lands for which Project Co has been granted a license in accordance with Schedule 7 [Lands] or for which Project Co has otherwise obtained sufficient rights of access;
- (c) provide a community liaison officer to provide a single point of contact for local communities regarding construction and development issues;
- (d) before commencing the Construction, prepare and implement, in co-operation with the Authority, an emergency response plan for the Project; and
- (e) if Project Co performs any Construction-related activities outside of the Lands, without limiting any other provisions of this Project Agreement, including the Design and Construction Specifications, comply with all relevant Laws.

7.10 Authority's Access to the Lands

Subject to complying with all relevant safety procedures, including any relevant health and safety plans for the carrying out of the Construction and Project Co's, Operation Co's and/or the Design-Builder's site rules, the Authority's Design and Construction Representative and its delegates and any other person designated by the Authority will have access during normal working hours to:

- (a) attend the Lands and view the Construction; and
- (b) subject to obtaining the consent of Project Co's Design and Construction Representative, visit any other location where Construction is being performed for the purposes of general inspection and/or of attending any test or investigation being carried out in respect of the Construction or Commissioning.

The Authority's Design and Construction Representative and its delegates will have the right to attend all monthly progress meetings and site meetings, including meetings between Project Co, Operations Co and any Sub-Contractors.

Project Co will cooperate with the Authority to arrange for tours of the Lands or the NG-KIH System at reasonable times during Construction, in a way that does not interfere with the progress of the Construction.

Except as set out above or as otherwise provided for in this Project Agreement, the Authority will not grant any person access to the Lands or NG-KIH System during the Construction Period without the consent of Project Co, such consent not to be unreasonably withheld or delayed.

7.11 Inspection

Prior to the Site Completion Date of a Site, Project Co will, upon request by the Authority's Design and Construction Representative, which will include detailed reasons for the request, open up for inspection by the Authority's Design and Construction Representative any part of the Site which the Authority's Design and Construction Representative, acting reasonably, believes is defective and:

- (a) if the parties agree or if it is determined in accordance with the Dispute Resolution Procedure that there are no Deficiencies in the relevant part of the Site, then any delay caused by the exercise of such rights will be treated as a Compensation Event and be subject to Section 8.3 of this Project Agreement;
- (b) if the parties agree or if it is determined in accordance with the Dispute Resolution Procedure that there are Deficiencies in the relevant part of the Site, then:
 - (1) Project Co will rectify and make good such Deficiencies;
 - (2) any consequence of such rectification or making good Deficiencies will be carried out by Project Co at no cost to the Authority; and
 - (3) Project Co will not be entitled to any extension of time to the Project Schedule in relation to such rectification and making good of Deficiencies; and
- (c) if the parties are unable to reach agreement in accordance with (a) or (b) above, then the matter will, at the request of either party, be referred to the Dispute Resolution Procedure. If, in order to maintain compliance with the Project Schedule, it is necessary to proceed in respect of the matter in Dispute, the parties will proceed in accordance with the position of the Authority, provided that Project Co proceeding in accordance with the Authority's position will be a Compensation Event if the relevant matter in Dispute is determined in favor of Project Co.

7.12 Safety

Project Co will be solely responsible for safety during the Construction Period, including the safety of all persons on the Lands and any other location where the Construction is performed (whether on the Lands or any other location, lawfully or not) and members of the public, and will comply with the requirements of applicable Laws, including applicable construction safety legislation, regulations and codes.

7.13 Protection of the Environment and Property

Project Co will:

- (a) follow all environmental protection requirements and restrictions while performing the Construction;

- (b) protect the Authority's property (and any third party's property) from damage caused by the Construction, including buildings, roadways, drainage systems, landscaping, surfaces, services and infrastructure;
- (c) promptly notify the Authority of any damage to property caused by Project Co in undertaking the Construction, including any damage caused by site settlement or ground vibration; and
- (d) subject to Section 8 (Supervening Events) of this Project Agreement, promptly repair any damage to property caused by Project Co in undertaking the Construction, including any damage caused by site settlement or ground vibration.

7.14 Survey and Progress Monitoring

Project Co will conduct a pre-construction ride-out survey of the route and regular progress monitoring surveys in accordance with the Design and Construction Plan.

7.15 Signage

Project Co may erect signage on the Lands during Construction to identify Project Co, Operations Co and the Project Contractors, provided such signs are acceptable to the Authority's Design and Construction Representative, acting reasonably.

7.16 Temporary Works

During the Construction Period, Project Co will:

- (a) have the sole responsibility for the design, erection, operation, maintenance and removal of temporary structures and other temporary facilities and the design and execution of construction methods required in their use; and
- (b) subject to the Authority's obligation to provide utilities and services at all Site Locations, provide its own utilities and services necessary for Project Co's construction use, including power and water, and will not connect directly to existing Authority buildings or infrastructure except with the Authority's prior approval.

7.17 Project Management

Project Co will assign a project team, which will be headed by Project Co's Design and Construction Representative, to work in conjunction with the Authority's Design and Construction Representative. Project Co will provide overall project management, scheduling, reporting and financial management.

Project Co will initiate a kick-off meeting, on a mutually agreed upon date, after the Effective Date. The purpose of the kick-off meeting will be to confirm the working level contacts between the Authority, Project Co and any relevant third parties, to identify high level deployment schedules and to finalize the detailed project plan requirements.

Project Co will track and report status of both outside plant and inside plant Construction deliverables, including any impacts on the Project Schedule.

Other project management tasks include:

- (a) developing the Quality Assurance Plan and developing and implementing the Quality Assurance Program in accordance with Section 9.2 of this Schedule 2;
- (b) developing the Commissioning Plan in accordance with Section 12.1 of this Schedule 2;
- (c) creating and distributing meeting agendas and minutes;
- (d) administering the Change process;
- (e) ensuring circuits are documented and retained (circuit layout record assignments);
- (f) coordinating all corrective actions identified during inspections and audits;
- (g) capturing and tracking the resolution of any complaints about or damage by construction crews; and
- (h) documenting, mitigating and escalating Project-related issues to the Authority and maintaining a log of these issues, including actions in progress and resolution.

At the Authority's request, Project Co's Design and Construction Representative will attend meetings to update the Authority on the progress of the Construction and to discuss any issues that have arisen during the Construction Period.

7.18 Project Records

Notwithstanding any other provision of this Project Agreement:

- (a) As-Built Drawings and Specifications: Project Co will:
 - (1) no later than 4 months following Ring Completion in respect of any Ring, update the Reviewed Drawings and Specifications (with respect to the drawings, such update will be in approved electronic format), including all geospatial details and depth of cable, civil works, final NG-KIH POP floor plan layout, shop drawings and equipment rack mounted layouts and configurations, network element layouts and configurations, so as to produce accurate and complete as-built documents for the NG-KIH System, including any revisions permitted under this Project Agreement to the requirements of the Design and Construction Specifications or other provisions of this Project Agreement;
 - (2) make available the Reviewed Drawings and Specifications in approved electronic format to the Authority's Design and Construction Representative for review to permit the Authority's Design and

Construction Representative to monitor Project Co's compliance with the requirements of this provision and for the Authority's operational and other use; and

- (3) submit all electronic copies through the DMS in compliance with the standards established by the Authority from time to time for electronic copies.
- (b) Maintenance Manuals: Project Co will:
- (1) on or before System Completion, make available all maintenance manuals, specifications, warranties and related information, in written and/or electronic form, for all the equipment and systems that have been included in the Design and Construction of the NG-KIH System for review by the Authority's Design and Construction Representative; and
 - (2) organize and store such information in accordance with Schedule 14 [Records and Reports].
- (c) Design Records: Project Co will retain records of the Design process.
- (d) Minutes of Meetings: Project Co will retain minutes of all meetings between the Authority, Project Co and Operations Co relating to the Design and Construction. Project Co will circulate such minutes to the Authority's Design and Construction Representative for review and comment within the time period specified in this Project Agreement for the particular meeting or, if no time period is specified, then as soon as reasonably possible after the relevant meeting and a reasonable period before any subsequent meeting so that all parties may consider the minutes and take required actions in advance of the subsequent meeting.
- (e) Inspection Reports and Tests Results: Project Co will retain and maintain in the DMS official reports and certified test records of all inspections and tests which were undertaken as part of the Construction and/or Commissioning.
- (f) Monitoring Results: Project Co will retain all survey and monitoring records obtained in connection with Section 7.14 (Survey and Progress Monitoring).
- (g) Utility Plans: Project Co will retain utility plans for the NG-KIH System and the Lands.
- (h) Copies of all Permits: Project Co will retain copies of all Permits for the Construction of the NG-KIH System.
- (i) Signed Quality Assurance Plan: Project Co will retain a signed copy of the Quality Assurance Plan for the Construction and all records of the Quality Assurance Program implemented as required by this Project Agreement.

8. EQUIPMENT SUPPLY AND INSTALLATION

8.1 Design and Construction Requirements

Project Co will complete the Design and Construction to accommodate the installation, operation, repair and maintenance of all the NG-KIH System equipment, including, as required, all electrical and fiber optic connections, structural support, seismic restraints and space for efficient access, all as specified in Schedule 3 [Design and Construction Specifications].

9. QUALITY ASSURANCE

9.1 Quality of the Design and Construction

Project Co is solely responsible for the quality of the Design and Construction.

9.2 Quality Assurance Program

Project Co will develop and implement a quality assurance program (the “**Quality Assurance Program**”) in accordance with the Quality Assurance Plan.

9.3 Quality Review by the Authority

The Authority may, at its discretion, perform audits of the Quality Assurance Program and for that purpose Project Co will make available for review by the Authority, upon request from the Authority, all records of the Quality Assurance Program and the Quality Assurance Plan.

10. PROJECT SCHEDULE, SITE ACCESS PLAN, IMPLEMENTATION PLAN

10.1 Initial Project Schedule and Initial Site Access Plan

Attached as Appendix 2C [Initial Project Schedule] is the initial project schedule (the “**Project Schedule**”), which the parties have relied upon in entering into this Project Agreement. Attached as Appendix 2D [Initial Site Access Plan] is the initial site access plan (the “**Site Access Plan**”), which the parties have relied upon in entering into this Project Agreement. The Site Access Plan includes 24x7 access security codes (where applicable), site contact names, site contact emails, site contact phone numbers, security badges, specific access restrictions, general access notification requirements, rights and policies and any other site access requirements for all Project-related activities in respect of each of the Sites. Subject to Section 8 (Supervening Events) of this Project Agreement, the Site Access Plan may be updated by the Authority, as required from time to time, in consultation with Project Co and having regard to the impact of any changes on the Project Schedule.

10.2 Project Schedule Updates

Project Co will, as required from time to time until System Completion, but no less than once per calendar month by the 15th day of each month, in consultation with the Authority, update the Project Schedule so that it is at all times an accurate, reasonable and realistic representation of Project Co’s plans for the completion of the Design and Construction of the NG-KIH System in accordance with the requirements of this Project Agreement.

The updates will include:

- (a) adjustments resulting from Supervening Events and Changes, if any, as permitted by this Project Agreement;
- (b) best estimates of the following:
 - (1) the start and completion dates for the Design phases described in Section 6.2 of this Schedule 2;
 - (2) the commencement of Construction; and
 - (3) the planned start and completion dates of the major activities of Construction; and
- (c) the Target Site Completion Date for each Site, the Target Ring Completion Date for each Ring and the Target System Completion Date, which (except to the extent necessary to reflect adjustments made in accordance with Section 10.2(a) of this Schedule 2) may not be updated or otherwise changed without the prior consent of the Authority, acting reasonably.

Project Co will deliver an updated Project Schedule monthly to the Authority and the Independent Certifier and upon delivery the updated Project Schedule (the “**Updated Project Schedule**”) will be the Project Schedule under this Project Agreement in substitution for the previously issued Project Schedule. If, at any time, the Authority does not agree with the proposed updates that may be required to the Project Schedule, then the disagreement may be referred to the Dispute Resolution Procedure.

10.3 Failure to Update Project Schedule

If Project Co fails or refuses to deliver an Updated Project Schedule as required under Section 10.2 of this Schedule 2, then such failure or refusal will be deemed to be a Project Co Material Breach.

10.4 Implementation Plan

Project Co will develop an implementation plan (the “**Implementation Plan**”) that will be coordinated with the Project Schedule (as updated from time to time in accordance with Section 10.2 of this Schedule 2) and the Site Access Plan.

The Implementation Plan will include:

- (a) detail about the roles, responsibilities and inter-dependencies of the Authority, Project Co, Operations Co, the Design-Builder and any relevant third parties; and
- (b) schedules, best practices, MOP, communications plans, risk mitigation strategies, escalation procedures, action item registers and completion certification requirements.

The Implementation Plan will be completed and submitted to the Authority in a form to be agreed by the parties, acting reasonably.

10.5 Compliance with Project Schedule

Project Co will undertake the Design and Construction of the NG-KIH System in compliance with the Updated Project Schedule, as may be updated pursuant to this Project Agreement.

11. DELAY AND ACCELERATION

11.1 Delay in Achieving Outside Ring Completion Dates

If Project Co fails to achieve Site Completion of 90% of the Sites on a Ring by the relevant Outside Ring Completion Date, the Authority may suspend payment of that portion of the Availability Payment corresponding to the completed Sites on the Ring (the “**Outside Ring Completion Holdback**”) until such time as 90% of the Sites on the Ring have achieved Site Completion. Once Project Co achieves Site Completion of 90% of the Sites on the Ring, Project Co will be entitled to receive the Outside Ring Completion Holdback and the Authority will resume payment of that portion of the Availability Payment corresponding to the completed Sites on the Ring. For greater certainty, Project Co will not be entitled to suspend the Services as a result of the suspension of payment contemplated in this Section 11.1.

11.2 Acceleration to Advance Construction or Other Changes to Project Schedule

If, at any time, the Authority determines that it requires the Construction to proceed in advance of the Updated Project Schedule or other than in accordance with the Updated Project Schedule, then the Authority may give written notice to Project Co and Operations Co to provide the Authority with a written proposal to accelerate the Construction or otherwise modify the Updated Project Schedule.

If the Authority, acting reasonably, decides to proceed with the acceleration or other modification to the Updated Project Schedule:

- (a) the Authority will notify Project Co and Operations Co in writing;
- (b) Project Co will implement the directed acceleration or other modification to the Updated Project Schedule in accordance with its proposal;
- (c) the Authority will reimburse Project Co for costs that were described in Project Co’s proposal and reasonably incurred by Project Co (but not for any other costs); and
- (d) if the acceleration or other modification to the Updated Project Schedule involves a Change (other than to the Updated Project Schedule), then such Change will be made in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals].

12. COMMISSIONING AND OPERATIONAL READINESS

12.1 Commissioning Plan

Project Co will prepare a commissioning plan (the “**Commissioning Plan**”). The Commissioning Plan must be reasonable having regard to the requirements of this Project Agreement and will be developed and finalized as follows:

- (a) Project Co will deliver a draft of the Commissioning Plan to the Authority not more than 3 months following the Effective Date;
- (b) the Authority will provide its comments, if any, on the draft Commissioning Plan to Project Co and Operations Co within 30 days of receipt of the draft;
- (c) Project Co will deliver a revised draft of the Commissioning Plan to the Authority not less than 30 days after receipt of the Authority's comments on the draft;
- (d) the Authority will, within 30 days of receipt of the revised draft, advise Project Co and Operations Co whether the Authority accepts the Commissioning Plan or, if the Authority does not accept it, the Authority will provide its reasons for such non-acceptance in sufficient detail to allow Project Co to address them;
- (e) if the Authority does not accept the Commissioning Plan, the parties will, acting reasonably, diligently work together with a view to revising the Commissioning Plan to address the Authority's reasons for non-acceptance; and
- (f) if the Authority has not accepted the Commissioning Plan by the date that is 6 months following the Effective Date, Project Co may refer the Dispute to the Dispute Resolution Procedure to determine whether Project Co's proposed Commissioning Plan is reasonable.

13. COMPLETION

13.1 Site Completion Deficiency List

Prior to and as a condition of issuance of the Certificate of Site Completion, Project Co will, in cooperation with the Authority's Design and Construction Representative and the Independent Certifier, prepare a complete list of Deficiencies that are apparent upon inspection of the relevant Site at that time (the "**Site Completion Deficiencies**") and deliver to the Authority's Design and Construction Representative the list of Site Completion Deficiencies. Subject to the right of Project Co to refer matters to the Dispute Resolution Procedure as set out below, the list of Site Completion Deficiencies will include all items required by the Authority to be included on such list. The Authority or Project Co may refer matters relating to the accuracy or completeness of the list of Site Completion Deficiencies to the Dispute Resolution Procedure.

13.2 Advance Notice of Application for Site Completion

Project Co acknowledges that the Authority or the relevant Site, as applicable, will need sufficient time to notify existing service providers and the Independent Certifier will need sufficient time to complete any reviews, consult with the Authority and consider the list of Site Completion Deficiencies. Accordingly, Project Co will:

- (a) at least 45 days before Project Co expects to achieve Site Completion for a Site, deliver to the Independent Certifier, the Authority's Design and Construction Representative and, if applicable, the contact person for the relevant Site a notice setting out the anticipated Site Completion Date;

- (b) at least 15 Business Days before Project Co expects to achieve Site Completion for a Site, deliver to the Independent Certifier and the Authority's Design and Construction Representative a notice setting out:
 - (1) a description of all outstanding Design and Construction to be completed by Project Co prior to Site Completion; and
 - (2) the list of Site Completion Deficiencies; and
- (c) assist the Independent Certifier to make any advance reviews requested by the Independent Certifier.

13.3 Application for Certificate of Site Completion

If Project Co believes it has achieved the requirements for Site Completion in respect of a Site and complied with Section 13.2, then Project Co may apply to the Independent Certifier (with a copy to the Authority's Design and Construction Representative) for a Certificate of Site Completion.

No later than 5 Business Days after application by Project Co for a Certificate of Site Completion, the parties will require the Independent Certifier to review Project Co's application for Site Completion.

Within 5 Business Days of the Independent Certifier's review of Project Co's application for Site Completion, the Independent Certifier shall:

- (a) if Site Completion has been achieved, issue a certificate indicating that Site Completion has been achieved (a "**Certificate of Site Completion**"), together with comments on the list of Site Completion Deficiencies (if any); or
- (b) if Site Completion has not been achieved, provide Project Co and the Authority's Design and Construction Representative with a list of all incomplete Design and Construction (specifying the nature and extent of each incomplete item) that must be completed prior to Site Completion.

In accordance with the Independent Certifier Agreement, the Independent Certifier will, within 5 Business Days after the end of each month, deliver the Independent Certifier's Monthly Report for such month to the Authority, Project Co and Operations Co.

13.4 Correction of Deficiencies

Upon issuance of the Certificate of Site Completion, Project Co will proceed expeditiously to correct each Site Completion Deficiency as soon as reasonably possible.

14. ROCK RISK SHARING MECHANISM

14.1 Rock Risk Amount

The parties acknowledge and agree that the Contract Price under and as defined in the Design-Build Agreement includes \$21,770,681 in respect of rock risk (the "**Rock Risk Amount**"). The

parties further acknowledge and agree that, as Changes are implemented during the Construction Period, the Rock Risk Amount will be evaluated and adjusted if appropriate.

14.2 Monthly Reporting

On a monthly basis throughout the Construction Period, Project Co will provide, or cause Operations Co to cause the Design-Builder to provide, a report to the Authority detailing the use of the Rock Risk Amount on a per foot basis at \$37.14/foot, including all supporting information and documentation as the Authority may reasonably require to substantiate the Design-Builder's claims.

14.3 Rock Risk Sharing Mechanism

On the System Completion Date, if the Rock Risk Amount:

- (a) has been exceeded, the Authority will make a payment to Project Co in the amount of 80% of the amount by which the Rock Risk Amount has been exceeded; or
- (b) has not been fully used, Project Co will make a payment to the NG-KIH Account in the amount of 80% of the unused Rock Risk Amount.

**APPENDIX 2A
INDEPENDENT CERTIFIER AGREEMENT**

See attached.

**APPENDIX 2A
FORM OF INDEPENDENT CERTIFIER AGREEMENT**

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**APPENDIX 2A
FORM OF INDEPENDENT CERTIFIER AGREEMENT**

THIS INDEPENDENT CERTIFIER AGREEMENT dated as of ■, 2015 is entered into:

BETWEEN:

The Commonwealth of Kentucky

(the “**Authority**”)

AND:

KentuckyWired Infrastructure Company, Inc.

(“**Project Co**”)

AND:

■

(the “**Independent Certifier**”)

WHEREAS:

- A. The Authority and Project Co have entered into the Project Agreement.
- B. The Authority and Project Co wish to appoint the Independent Certifier, and the Independent Certifier wishes to accept such appointment, to perform certain services in connection with the Project Agreement.
- C. The Authority, Project Co and the Independent Certifier wish to enter into this Independent Certifier Agreement in order to record the terms by which the Independent Certifier will perform such services.

NOW THEREFORE THIS INDEPENDENT CERTIFIER AGREEMENT WITNESSES THAT, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. DEFINITIONS

1.1 Definitions

Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Independent Certifier Agreement will have the respective meanings given to such terms in the Project Agreement and:

“**Fee**” means the fees payable by the PA Parties to the Independent Certifier for the Functions, as such fees are specified and made payable in Schedule 2 [Fee];

“**Functions**” means:

- (a) all of the functions and obligations conferred on the Independent Certifier under the Project Agreement;
- (b) all of the functions and obligations conferred on the Independent Certifier under this Independent Certifier Agreement, including the functions described in Schedule 1 [Functions]; and
- (c) all other things or tasks which the Independent Certifier is required to do to comply with its obligations under this Independent Certifier Agreement;

“Functions Variation” means any change to the Functions;

“Independent Certifier Agreement” means this Independent Certifier Agreement and its Schedules;

“Intellectual Property” means any and all intellectual property rights throughout the world, whether subsisting now or in the future, including rights of any kind in inventions, patents, copyright, trademarks, service marks, industrial designs, integrated circuit topography rights, applications for registration of any of the foregoing, and know-how, trade secrets, confidential information and trade or business names;

“PA Parties” means, collectively, the Authority and Project Co;

“Project Agreement” means the project agreement dated ■, 2015 between the Authority and Project Co relating to the design, construction, financing, operation and maintenance for the NG-KIH System, as the same may be amended, supplemented or replaced from time to time; and

“Project Material” means all material:

- (a) provided to the Independent Certifier or created by or required to be created by any PA Party; and
- (b) provided by or created by or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Functions,

including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).

2. INTERPRETATION

2.1 Interpretation

The division of this Independent Certifier Agreement into Sections, the insertion of headings and the provision of a table of contents are for convenience only, do not form a part of this Independent Certifier Agreement and will not be used to affect the construction or interpretation of this Independent Certifier Agreement. The word “including” will not be construed as limiting the general term or statement immediately preceding. Unless otherwise specified:

- (a) each reference in this Independent Certifier Agreement to “Section” and “Schedule” is to a Section of, and a Schedule to, this Independent Certifier Agreement;

- (b) each reference to a statute is deemed to be a reference to that statute and any successor statute, and to the regulations made under that statute and any successor statute, as amended or re-enacted from time to time;
- (c) words importing the singular include the plural and vice versa and words importing gender include all genders;
- (d) references to time of day or date mean Eastern Standard Time or Eastern Daylight Time, as the case may be;
- (e) all references to amounts of money mean U.S. Dollars; and
- (f) an accounting term has the meaning assigned to it, and all accounting matters will be determined, in accordance with GAAP consistently applied.

2.2 Obligations and Exercise of Rights by the PA Parties

The obligations of the PA Parties under this Independent Certifier Agreement will be several. Except as specifically provided for in this Independent Certifier Agreement, the rights of the PA Parties under this Independent Certifier Agreement will be jointly exercised by each of the PA Parties.

3. ROLE OF THE INDEPENDENT CERTIFIER

3.1 Engagement

The PA Parties hereby appoint the Independent Certifier, and the Independent Certifier hereby accepts such appointment, to carry out the Functions in accordance with this Independent Certifier Agreement. The Independent Certifier will perform the Functions in accordance with this Independent Certifier Agreement.

3.2 Acknowledgement by Independent Certifier

The Independent Certifier hereby acknowledges in favor of the PA Parties that it has received a copy of the Project Agreement.

3.3 Standard of Care

The Independent Certifier will exercise the standard and skill, care and diligence in the performance of the Functions that would be expected of an expert professional experienced in providing services in the nature of the Functions for projects similar to the Project.

3.4 Duty of Independent Judgment

In exercising the Functions, the Independent Certifier will act:

- (a) impartially, honestly and independently;
- (b) reasonably, professionally and to the best of its abilities; and
- (c) in a timely manner:

- (1) in accordance with the times prescribed in this Independent Certifier Agreement or the Project Agreement, as applicable; or
- (2) where no times are prescribed, within 5 Business Days or such earlier time so as to enable the PA Parties to perform their respective obligations under the Project Agreement.

Although the Independent Certifier should take account of any opinions or representations made by the PA Parties, the Independent Certifier will not be bound to comply with any opinions or representations made by either of them in connection with any matter on which the Independent Certifier is required to exercise its professional judgment.

The Independent Certifier acknowledges that, as set out under the Project Agreement, the Independent Certifier's certifications will be final and binding on the PA Parties in respect of the issuance of a Certificate of Site Completion, and that the Independent Certifier will use its best skill and judgment in providing the Functions and making any certifications. A PA Party may dispute any other decision made by the Independent Certifier, including any list of Site Completion Deficiencies or list of incomplete Design and Construction that must be completed prior to Site Completion in respect of a Site.

3.5 Authority to Act

The Independent Certifier:

- (a) is an independent consultant and is not, and will not purport to be, a partner, joint venturer or agent of any PA Party;
- (b) other than as may be expressly set out in the Project Agreement, has no authority to give any directions to a PA Party or its officers, employees, contractors, consultants or agents; and
- (c) has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release a PA Party from any of its obligations under the Project Agreement unless jointly agreed in writing by the PA Parties.

3.6 Knowledge of the PA Parties' Requirements

The Independent Certifier warrants that:

- (a) it has and will be deemed to have informed itself fully of the requirements of the Project Agreement;
- (b) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Functions;
- (c) without limiting Sections 3.6(a) or 3.6(b), it has and will be deemed to have informed itself fully of all time limits and other requirements for any Function which the Independent Certifier carries out under the Project Agreement and this Independent Certifier Agreement;

- (d) it has and will be deemed to have informed itself fully of the nature of the work necessary for the performance of the Functions and the means of access to and facilities at the NG-KIH System and Lands including restrictions on any such access or protocols that are required; and
- (e) it has satisfied itself as to the correctness and sufficiency of its proposal for the Functions and that the Fee covers the cost of complying with all of the obligations under this Independent Certifier Agreement and of all matters and things necessary for the due and proper performance and completion of the Functions.

3.7 Co-ordination by Independent Certifier

The Independent Certifier will:

- (a) fully co-operate with the PA Parties and their designated representatives or agents;
- (b) carefully co-ordinate the Functions with the work and services performed by the PA Parties;
- (c) without limiting its obligations under Sections 3.4 and 3.7(b), perform the Functions so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the PA Parties; and
- (d) provide copies to all PA Parties of all reports, communications, certificates and other documentation that it provides to any PA Party.

3.8 Conflict of Interest

The Independent Certifier warrants that:

- (a) at the date of signing this Independent Certifier Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Independent Certifier Agreement; and
- (b) if, during the term of this Independent Certifier Agreement, any such conflict of interest or risk of conflict of interest arises, the Independent Certifier will immediately notify the PA Parties in writing of such conflict of interest or risk of conflict and take such steps, including withdrawal, as may be required by each of the PA Parties to avoid or mitigate the conflict of interest or risk of conflict of interest.

3.9 Independent Certifier Personnel

- (a) Subject to Section 3.9(b), the Independent Certifier will use the partners, directors or employees described in Schedule 3 [Independent Certifier Personnel] of this Independent Certifier Agreement in connection with the performance of the Functions and such persons' services will be available for so long as may be necessary to ensure the proper performance by the Independent Certifier of the Functions. Such persons will have full authority to act on behalf of the Independent Certifier for all purposes in connection with this Independent Certifier Agreement.

- (b) None of the persons listed in Schedule 3 [Independent Certifier Personnel] will be removed or replaced unless he/she ceases to work as a partner in or director or employee of the Independent Certifier or he/she is unable to work because of death or illness. The Independent Certifier will notify the PA Parties of any such circumstances and will be responsible for finding a replacement who will previously have been approved in writing by the PA Parties.

4. ROLE OF THE PA PARTIES

4.1 Assistance

The PA Parties agree to co-operate with and provide reasonable assistance to the Independent Certifier to familiarize the Independent Certifier with all necessary aspects of the Project to enable the Independent Certifier to carry out its obligations under this Independent Certifier Agreement.

4.2 Instructions in Writing

All instructions to the Independent Certifier by the PA Parties will be given in writing.

4.3 Information and Services

The PA Parties will each make available to the Independent Certifier, as soon as practicable from time to time, all information, documents and particulars necessary for the Independent Certifier to carry out the Functions, including such information, documents and particulars required in order for the Independent Certifier to determine whether the criteria for Site Completion in respect of a Site have been achieved, and will provide copies of all such information, documents and particulars to the other PA Party.

4.4 Additional Information

If any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Functions and have not been provided by Project Co or the Authority, as the case may be, then:

- (a) the Independent Certifier will give notice in writing to Project Co's Design and Construction Representative or the Authority's Design and Construction Representative, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and
- (b) Project Co or the Authority, as the case may be, will arrange the provision of the required information, documents or particulars.

4.5 Right to Enter and Inspect

Upon giving reasonable notice to Project Co's Design and Construction Representative, the Independent Certifier (and any person authorized by it) may enter and inspect the Lands, NG-KIH System and work in progress at any reasonable time in connection with the exercise or proposed exercise of rights under this Independent Certifier Agreement, subject to:

- (a) observance of the reasonable rules of Project Co as to safety and security for the Lands, NG-KIH System and work in progress;
- (b) not causing unreasonable delay to the carrying out of the Construction by reason of its presence at the Lands or NG-KIH System; and
- (c) not causing any damage to the Lands, NG-KIH System or work in progress.

4.6 PA Parties Not Relieved

Neither PA Party will be relieved from performing or observing its obligations, or from any other liabilities, under the Project Agreement as a result of either the appointment of, or any act or omission by, the Independent Certifier.

4.7 PA Parties not Liable

On no account will a PA Party be liable to another PA Party for any act or omission by the Independent Certifier whether under or purportedly under a provision of the Project Agreement, this Independent Certifier Agreement or otherwise, provided that any such act or omission will not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of either PA Party against or any obligation or liability of either PA Party to the other PA Party which would have existed regardless of such act or omission.

5. SUSPENSION

5.1 Notice

The Functions (or any part thereof) may be suspended at any time by the PA Parties:

- (a) if the Independent Certifier fails to comply with its obligations under this Independent Certifier Agreement, immediately by the PA Parties giving joint notice in writing to the Independent Certifier; or
- (b) in any other case, by the PA Parties giving 5 Business Days joint notice in writing to the Independent Certifier.

5.2 Costs of Suspension

The Independent Certifier will:

- (a) subject to the Independent Certifier complying with Section 8, be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 5.1(b) that constitutes a Functions Variation under Section 8; and
- (b) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Section 5.1(a).

5.3 Recommencement

The Independent Certifier will immediately recommence the carrying out of the Functions (or any part thereof) on receipt of a joint written notice from the PA Parties requiring it to do so.

6. INSURANCE AND LIABILITY

6.1 Independent Certifier's Professional Indemnity Insurance

- (a) The Independent Certifier will, at its cost, have in place:
- (1) professional errors and omissions insurance:
 - (A) in the amount of \$■ per claim and in the aggregate, a deductible of not more than \$■ per claim and from an insurer and on terms satisfactory to each of the PA Parties;
 - (B) with a term and extended reporting period from the date of this Independent Certifier Agreement until the expiration of 2 years from the cessation of the Functions; and
 - (C) covering liability which the Independent Certifier might incur as a result of a breach by it of its obligations or any breach of a duty owed by the Independent Certifier in a professional capacity to the PA Parties, or either of them, under or in connection with this Independent Certifier Agreement or the provision of the Functions; and
 - (2) at all times during the term of this Independent Certifier Agreement, comprehensive general liability insurance in the amount of \$■ per claim and in the aggregate, no deductible for personal injury or bodily injury, a deductible of not more than \$■ per occurrence for property damage, naming the Authority as an additional insured and from an insurer and on terms satisfactory to each of the PA Parties.
- (b) The Independent Certifier will:
- (1) ensure that each of the insurance policies described in Section 6.1(a):
 - (A) bears an endorsement to the effect that the insurer will not effect any adverse material change or amendment to the policy or any cancellation of the policy without first giving at least 30 Business Days prior written notice by registered mail to the Authority; and
 - (B) is obtained and maintained with reputable and Qualified Insurers licensed in the Commonwealth of Kentucky; and
 - (2) provide copies of each of the insurance policies described in Section 6.1(a) to each of the PA Parties upon request.

6.2 Workers' Compensation Insurance

The Independent Certifier will, at its own cost and at all times during the term of this Independent Certifier Agreement, insure its liability (including its common law liability) as required under any applicable workers compensation statute or regulation in relation to its employees engaged in the Functions.

7. PAYMENT FOR SERVICES

7.1 Fee

- (a) In consideration of the Independent Certifier performing the Functions in accordance with this Independent Certifier Agreement, the PA Parties will pay the Independent Certifier the Fee.
- (b) The Fee includes all taxes (except for Sales Taxes), disbursements and expenses (including accommodation, car rental, equipment and travel expenses), overheads and profit to perform the Functions.

7.2 Payment of Fee

- (a) The PA Parties will each pay half the Fee to the Independent Certifier in accordance with the payment schedule specified in Schedule 2 [Fee]. Each payment of the Fee due to the Independent Certifier with 30 days of receipt by the PA Parties of an invoice therefor, together with all supporting documentation reasonably required by either PA Parties.
- (b) The obligation on Project Co and the Authority to each pay half of the Fee to the Independent Certifier is not subject to joint and several liability and neither the Authority nor Project Co will have any liability whatsoever for the non-payment by the other of any fees or costs payable by such other party under this Independent Certifier Agreement.
- (c) Project Co acknowledges and agrees that if any amount due and payable by Project Co to the Independent Certifier is outstanding, the Independent Certifier will not have any obligation to Project Co to make any certification under the Project Agreement.

8. FUNCTIONS VARIATIONS

8.1 Notice of Functions Variation

- (a) If the Independent Certifier believes, other than a "Functions Variation Order" under Section 8.3, that any direction by the PA Parties constitutes or involves a Functions Variation it will:
 - (1) within 5 Business Days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the PA Parties that it considers that the direction constitutes or involves a Functions Variation; and
 - (2) within 15 Business Days after giving the notice under Section 8.1(a)(1), submit a written claim to each of the Authority's Design and Construction Representative and Project Co's Design and Construction Representative which includes detailed particulars of the claim, the amount of the claim and how it was calculated.
- (b) Regardless of whether the Independent Certifier considers that such a direction constitutes or involves a Functions Variation, the Independent Certifier will

continue to perform the Functions in accordance with this Independent Certifier Agreement and all directions, including any direction in respect of which notice has been given under this Section.

8.2 No Adjustment

If the Independent Certifier fails to comply with Section 8.1, the Fee will not be adjusted as a result of the relevant direction.

8.3 Functions Variation Procedure

- (a) The Authority's and Project Co's Design and Construction Representatives may jointly issue a document titled "Functions Variation Price Request" to the Independent Certifier, which will set out details of a proposed Functions Variation that the PA Parties are considering.
- (b) Within 7 Business Days after the receipt of a "Functions Variation Price Request", the Independent Certifier will provide each of the Authority's and Project Co's Design and Construction Representatives with a written notice in which the Independent Certifier sets out the effect that the proposed Functions Variation will have on the Fee.
- (c) Each of the Authority's and Project Co's Design and Construction Representatives may then jointly direct the Independent Certifier to carry out a Functions Variation by written document titled "Functions Variation Order", which will state either that:
 - (1) the Fee is adjusted as set out in the Independent Certifier's notice; or
 - (2) the adjustment (if any) to the Fee will be determined under Section 8.4.

8.4 Cost of Functions Variation

- (a) Subject to Section 8.2, the Fee will be adjusted for all Functions Variations carried out by the Independent Certifier or suspensions under Section 5.1(b) by:
 - (1) the amount (if any) stated in the "Functions Variation Order" in accordance with Section 8.3(c);
 - (2) if Section 8.4(a)(1) is not applicable, an amount determined pursuant to the fee schedule for Functions Variations in Schedule 2 [Fee]; or
 - (3) where such rates or prices set out in the fee schedule for Functions Variations in Schedule 2 [Fee] are not applicable, a reasonable amount to be agreed between the PA Parties and the Independent Certifier or, failing agreement, determined by the Authority's and Project Co's Design and Construction Representatives jointly, acting reasonably.
- (b) Any reductions in the Fee will be calculated on the same basis as any increases.

9. TERM AND TERMINATION

9.1 Term

Subject to earlier termination, this Independent Certifier Agreement will commence on the date first written above and continue in full force until:

- (a) 45 Business Days after the System Completion Date; or
- (b) such later date as may be mutually agreed between the PA Parties and the Independent Certifier.

9.2 Notice of Breach

If the Independent Certifier commits a breach of this Independent Certifier Agreement, the PA Parties may give written notice to the Independent Certifier:

- (a) specifying the breach; and
- (b) directing its rectification in the period specified in the notice, being a period not less than 5 Business Days from the date of service of the notice.

9.3 Termination for Breach

If the Independent Certifier fails to rectify the breach within the period specified in the notice issued under Section 9.2, the PA Parties may, without prejudice to any other rights of the PA Parties or either of them, immediately terminate this Independent Certifier Agreement.

9.4 Termination for Financial Difficulty

The PA Parties may, without prejudice to any other rights which the PA Parties or either of them may have, terminate this Independent Certifier Agreement immediately if:

- (a) events have occurred or circumstances exist which, in the opinion of the PA Parties, may result in or have resulted in insolvency or the control of the Independent Certifier passing to another body or corporation; or
- (b) the Independent Certifier has communications with its creditors with a view to entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

9.5 Termination for Convenience

Notwithstanding anything to the contrary in this Independent Certifier Agreement, the PA Parties may at any time terminate this Independent Certifier Agreement upon 30 days written notice to the Independent Certifier.

9.6 Independent Certifier's Rights upon Termination for Convenience

Upon a termination under Section 9.5, the Independent Certifier will:

- (a) be entitled to be reimbursed by the PA Parties for the value of the Functions performed by it to the date of termination; and
- (b) not be entitled to any damages or other compensation in respect of the termination and (without limitation) any amount in respect of:
 - (1) the lost opportunity to earn a profit in respect of the Functions not performed at the date of termination; and
 - (2) any lost opportunity to recover overheads from the turnover which would have been generated under this Independent Certifier Agreement but for it being terminated.

9.7 Procedure upon Termination

Upon completion of the Independent Certifier's engagement under this Independent Certifier Agreement or earlier termination of this Independent Certifier Agreement (whether under Sections 9.3, 9.4 or 9.5 or otherwise), the Independent Certifier will:

- (a) co-operate with the PA Parties;
- (b) hand to the PA Parties all Project Material and all other information concerning the Project held or prepared by the Independent Certifier; and
- (c) as and when required by the PA Parties, meet with them and such other persons nominated by them with a view to providing them with sufficient information to enable the PA Parties to execute the Project or the persons nominated to provide the Functions.

9.8 Effect of Termination

Except as otherwise expressly provided in this Independent Certifier Agreement, termination of this Independent Certifier Agreement will be without prejudice to any accrued rights and obligations under this Independent Certifier Agreement as at the date of termination (including the right of Project Co and the Authority to recover damages from the Independent Certifier).

9.9 Survival

Termination of this Independent Certifier Agreement will not affect the continuing rights and obligations of Project Co or the Authority and the Independent Certifier under Sections 6, 7, 9.6, 9.7, 9.8, 10, 11.7, 11.8 and this Section 9.9 or under any other Section which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

10. INDEMNITY

10.1 Indemnity

The Independent Certifier will indemnify and save harmless the PA Parties, and each of them, and their respective employees, agents, officers and directors from and against any and all losses incurred or suffered by any of them by reason of, resulting from, in connection with, or arising out of:

- (a) the breach of any representation, warranty, covenant, term, duty or obligation of the Independent Certifier set out in or arising under this Independent Certifier Agreement or the Project Agreement; or
- (b) any act or omission of the Independent Certifier in connection with the subject matters of this Independent Certifier Agreement.

11. GENERAL

11.1 Entire Agreement

This Independent Certifier Agreement and the Project Agreement constitute the entire agreement between the PA Parties and the Independent Certifier and supersede all communications, arrangements and agreements, either oral, written, made or entered into prior to the date of this Independent Certifier Agreement between the PA Parties and the Independent Certifier with respect to the subject matter of this Independent Certifier Agreement.

11.2 Negation of Employment

- (a) The Independent Certifier, its officers, employees, servants and agents and any other persons engaged by the Independent Certifier in the performance of the Functions will not by virtue of this Independent Certifier Agreement or the performance of the Functions become in the service or employment of the PA Parties for any purpose.
- (b) The Independent Certifier will be responsible for all matters requisite as employer of, or otherwise in relation to, such officers, employees, servants and agents and other persons who are engaged by the Independent Certifier.

11.3 Waiver

Failure by any PA Party or the Independent Certifier to enforce a provision of this Independent Certifier Agreement will not be construed as a waiver by that PA Party or the Independent Certifier of any right in respect of that provision, or any other provisions of this Independent Certifier Agreement.

11.4 Notices

Any notice or communication required or permitted to be given under this Independent Certifier Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by electronic transmission to the address or electronic mail address of each party set out below:

If to Project Co: ■
 ■

 Attention: ■
 Email: ■

With a copy to: ■
 ■

Attention: ■
Email: ■

If to the Authority: The Commonwealth of Kentucky
Finance and Administration Cabinet
Room 456, Capital Annex
Frankfort, KY 40601

Attention: Director
Email: ■

If to the Independent
Certifier: ■

■
Attention: ■
Email: ■

or to such other address or electronic mail address as any party may, from time to time, designate in the manner set out above.

Any such notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (b) if delivered by electronic mail during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:
 - (1) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or
 - (2) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

11.5 Transfer and Assignment

- (a) The Independent Certifier:
 - (1) will not assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement without the prior written consent of the PA Parties, which each PA Party may give or withhold in its absolute discretion; and

- (2) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Certifier from any obligation or liability under this Independent Certifier Agreement.
- (b) For the purposes of this Section 11.5, an assignment will be deemed to have occurred where there is a Change in Control of the Independent Certifier after the date of this Independent Certifier Agreement.
- (c) Each of the PA Parties may assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement in accordance with the terms of the Project Agreement.

11.6 Governing Laws and Venue

This Independent Certifier Agreement is subject to the laws of the Commonwealth of Kentucky and any applicable federal laws and will be governed by and construed in accordance with such laws. Any legal actions or proceeding brought by the Authority, Project Co or the Independent Certifier in connection with this Independent Certifier Agreement shall be brought in state court in Franklin County, Kentucky in accordance with KRS 45A.245. Each party acknowledges the competence of such court and the convenience and propriety of such venue and agrees to be bound by any judgement thereof and not to seek, and hereby waives, review of its merits by the court of any other jurisdiction.

11.7 Confidentiality

- (a) The Independent Certifier will ensure that:
 - (1) neither it nor any of its officers, employees, servants and agents disclose, or otherwise make public, any Project Material or any other information or material acquired in connection with or during the performance of the Functions without prior written approval of the PA Parties; and
 - (2) no Project Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Functions under this Independent Certifier Agreement.
- (b) The PA Parties may at any time require the Independent Certifier to give and to arrange for its officers, employees, servants and agents engaged in the performance of the Functions to give written undertakings, in the form of confidentiality agreements on terms required by the PA Parties, relating to the non-disclosure of confidential information, in which case the Independent Certifier will promptly arrange for such agreements to be executed and delivered.

11.8 Project Material

- (a) The PA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Project Material provided to the Independent Certifier or created or required to be created by any PA Party.
- (b) All title and ownership, including all Intellectual Property, in and to the Project Material created or required to be created by the Independent Certifier as part of,

or for the purposes of performing the Functions, is hereby assigned jointly to the Authority and Project Co on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Project Material, it will be assigned to the Authority and Project Co on creation. In addition, to the extent that copyright may subsist in such Project Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and the Independent Certifier will ensure that any agent or employee of Independent Certifier will have waived all such moral rights.

- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the PA Parties in order to confirm or perfect the assignment of Intellectual Property in the Project Material referred to in Section 11.8(b).

11.9 Time of the Essence

Time will be of the essence of this Independent Certifier Agreement and of the transactions contemplated by this Independent Certifier Agreement.

11.10 Amendment

No change or modification of this Independent Certifier Agreement will be valid unless it is in writing and signed by each party to this Independent Certifier Agreement.

11.11 Severability

If any provision of this Independent Certifier Agreement will be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Independent Certifier Agreement.

11.12 Enurement

Subject to the restrictions on transfer contained in this Independent Certifier Agreement, this Independent Certifier Agreement will enure to the benefit of and be binding on the parties and their respective heirs, executors, administrators, successors and assigns.

11.13 Counterparts

This Independent Certifier Agreement may be executed in any number of counterparts and all counterparts taken together will constitute one and the same instrument.

IN WITNESS WHEREOF the parties hereto have executed this Independent Certifier Agreement as of the day and year first above written.

THE COMMONWEALTH OF KENTUCKY

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Commonwealth.

**KENTUCKYWIRED INFRASTRUCTURE
COMPANY, INC.**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the corporation.

[INDEPENDENT CERTIFIER]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the corporation.

SCHEDULE 1 FUNCTIONS

The Independent Certifier will, subject to the provisions of the Project Agreement, provide the services as set out below and as further detailed in the Independent Certifier proposal and work plan attached as Appendix 1A [Independent Certifier Proposal and Work Plan]. The provisions of this Independent Certifier Agreement (other than the provisions of Appendix 1A [Independent Certifier Proposal and Work Plan]) will prevail over the provisions of Appendix 1A [Independent Certifier Proposal and Work Plan], provided that, in determining whether an ambiguity, conflict or inconsistency exists between Appendix 1A [Independent Certifier Proposal and Work Plan] and any other provision in this Independent Certifier Agreement, to the extent that Appendix 1A [Independent Certifier Proposal and Work Plan] includes additional requirements for higher standards of quality or performance or additional requirements for more extensive scope of work or services than otherwise required, no such ambiguity, conflict or inconsistency will be deemed to exist and the Independent Certifier's obligations hereunder will include compliance with all such additional requirements. In the event of a conflict between any provision of this Independent Certifier Agreement, including this Schedule 1 [Functions] and Appendix 1A [Independent Certifier Proposal and Work Plan], and a provision of the Project Agreement, the Project Agreement will prevail.

- (a) In accordance with key milestone dates set out in the Project Schedule, the Independent Certifier will:
 - (1) consult with the Design-Builder and others involved in the Design and Construction as required in the performance of its services;
 - (2) perform a desktop review of each application for Site Completion submitted by Project Co;
 - (3) make quarterly or, to the extent required, more frequent physical visits to:
 - (A) review progress and conduct inspections of the Construction;
 - (B) audit a sample of Certificates of Site Completion and Site Completion Deficiencies;
 - (C) resolve disputes regarding the award or denial of a Certificate of Site Completion or a list of Site Completion Deficiencies; and
 - (D) confirm the Ring Availability Date for Ring 1B,

and, within 20 Business Days of the relevant desktop review and/or inspection, prepare and deliver to the Authority and Project Co a written report containing a description of:

- (4) the completed Design and Construction; and
- (5) the progress of the Design and Construction relative to the Updated Project Schedule, with an overview analysis of any variances.

- (b) The Independent Certifier will, in cooperation with Project Co's Design and Construction Representative and the Authority's Design and Construction Representative, with respect to an application for Site Completion in respect of a Site, review and comment on the list of Site Completion Deficiencies.
- (c) No later than 5 Business Days after application by Project Co for a Certificate of Site Completion, the Independent Certifier will, in cooperation with Project Co's Design and Construction Representative and the Authority's Design and Construction Representative, complete a desktop review of the basis for Project Co's application for a Certificate of Site Completion in respect of that Site and, within a further 5 Business Days of such desktop review:
 - (1) if Site Completion has been achieved, issue a Certificate of Site Completion, together with comments on the list of Site Completion Deficiencies (if any) and attaching a copy of the list of Site Completion Deficiencies; or
 - (2) if Site Completion has not been achieved, provide Project Co and the Authority's Design and Construction Representative with a list of all incomplete Design and Construction that must be completed prior to Site Completion.
- (d) The Independent Certifier will, within 5 Business Days after the end of each month, deliver the Independent Certifier's Monthly Report for such month to the Authority, Project Co and Operations Co.

**APPENDIX 1A
INDEPENDENT CERTIFIER PROPOSAL AND WORK PLAN**

[NTD: To be attached.]

**SCHEDULE 2
FEE**

[NTD: This Schedule 2 will be developed having reference to the Independent Certifier's Proposal and Work Plan.]

**SCHEDULE 3
INDEPENDENT CERTIFIER PERSONNEL**

This schedule identifies key Independent Certifier personnel and the specific roles each will undertake

[NTD: Independent Certifier to add names, titles, roles and responsibilities of the Key Independent Certifier personnel.]

**APPENDIX 2B
DESIGN REVIEW**

1. SUBMITTALS

Except as expressly set out otherwise in this Project Agreement, the provisions of this Appendix 2B will apply to any and all drawings, specifications or other documents specifically pertaining to the KMZ file containing the GIS data regarding route level and building connections (“**Submittals**”) required or specified by this Project Agreement in respect of the Design and Construction to be submitted to, reviewed, accepted or otherwise processed by the Authority prior to Site Completion of a Site or after Site Completion of a Site in respect of the completion of Site Completion Deficiencies, including any and all subsequent revisions, amendments and changes thereto. A flow chart illustrating the review process is included as Appendix 2F [Review Process Flow Diagram].

2. SUBMITTAL SCHEDULE

- (a) The schedule for Submittals (the “**Submittal Schedule**”) is included as part of Appendix 2C [Initial Project Schedule]. The Submittal Schedule may be amended by agreement of the parties in accordance with the terms of this Section 2.
- (b) Any amendment to the Submittal Schedule will provide for a progressive and orderly flow of Submittals from Project Co to the Authority as appropriate to allow sufficient time for review of each Submittal by the Authority, taking into account both the resources necessary to be available to the Authority to conduct such review (as anticipated by or inferred from the Submittal Schedule).
- (c) Unless a longer period is agreed by the parties, required by this Project Agreement or is otherwise reasonably required by the Authority, the Authority will have 5 Business Days for review of a Submittal from the date the Authority received the Submittal. If the Submittal Schedule is inconsistent with the foregoing review period then it will be deemed to be amended to be consistent. If the Authority receives a Submittal after 12 p.m. (Eastern Time) on a Business Day, the 5 Business Day review period will commence on the next Business Day.
- (d) Project Co will, in scheduling Submittals, and in the performance of the Design and Construction, allow adequate time prior to performing the Design or the Construction that is the subject of the Submittals for review of the Submittals by the Authority, and for Project Co to make changes to the Submittals, the Design and/or the Construction as may be required to account for any comments received from the Authority.
- (e) If the Submittal Schedule indicates that a large number of Submittals will be made at one time, the Authority may, acting reasonably, request a longer period for review or a staggering of the Submittals, and Project Co will, acting reasonably, revise the Submittal Schedule accordingly, taking into account both the availability of resources required by the Authority to conduct such review and whether delay in the review of the subject matter of the Submittal will have a material impact on Project Co's ability to progress future anticipated Submittals and the Design or Construction in accordance with the Project Schedule.

- (f) Project Co will submit the then current Submittal Schedule to the Authority on a monthly basis until the System Completion Date. All amended Submittal Schedules will be required to meet all the requirements of this Section 2.
- (g) Project Co will submit all Submittals to the Authority in accordance with the then current Submittal Schedule.
- (h) Project Co will bear the risk of delays and additional costs caused as a result of the late submission of Submittals to the Authority, by Submittals which are rejected or required to be corrected and re-submitted in accordance with the terms of this Appendix 2B, or by changes in the Design and Construction required as a result of comments made by the Authority pursuant to this Appendix 2B.

3. GENERAL REQUIREMENTS FOR SUBMITTALS

- (a) Unless otherwise specified by the Authority, Project Co will deliver electronic copies of each Submittal to the Authority through the DMS, in a format acceptable to the Authority. Project Co will provide to the Authority, along with each Submittal, a summary page detailing the various documents in the Submittal.
- (b) All Submittals will be in English.
- (c) All Submittals required by this Project Agreement, by applicable Law or by Customary Industry Practice to be signed or sealed by persons with professional designations (including, where applicable, by registered professional engineers) will be so signed and/or sealed.
- (d) All Submittals will refer to the relevant provisions of the Design and Construction Specifications, the Services Protocols and Specifications (if applicable) and to any matter that has previously been subject to review. All Submittals (or covering documentation delivered with the Submittals) will include a statement confirming that the Submittals comply with, or identifying any elements of the NG-KIH System that for any reason vary from, the requirements of the Project Agreement, with particular reference to Schedule 2 [Design and Construction Protocols] and Schedule 3 [Design and Construction Specifications].
- (e) All Submittals will be clearly identified as a Submittal and will be delivered with appropriate DMS identifiers, which will include:
 - (1) the specific item or items in the Submittal that is subject to review by the Authority;
 - (2) Project Co's expectations for the Authority's review of the Submittal; and
 - (3) for each Submittal:
 - (A) the document number(s) or drawing number(s);
 - (B) revision numbers (if applicable);

- (C) document or drawing title(s);
 - (D) name of entity that prepared the Submittal;
 - (E) the Submittal history showing date and delivery information and/or log number of all previous submissions of that Submittal; and
 - (F) identification of any previous Submittal superseded by the current Submittal.
- (f) Project Co will compile and maintain, in the DMS, a register of the date, contents and status of the submission of all Submittals, including the date of receipt and content of all returned Submittals and comments thereon.

4. REVIEW PROCEDURE

- (a) The Authority will review and respond to each Submittal in accordance with the applicable time periods set out in the Submittal Schedule (as may be amended from time to time in accordance with this Appendix 2B).
- (b) Before commencing the Construction of a particular component of the Project, Project Co will submit to the Authority a Submittal describing that component, including all necessary Design and other information as the Authority may reasonably require, including any Design reports and calculations, for the Authority to conduct an appropriate review to confirm that the Design described in the Submittal conforms to the requirements of this Project Agreement.
- (c) The Authority will review Submittals submitted under Section 4(b) above and assign one of the following 4 comments on the summary page provided with the Submittal:
 - (1) "REVIEWED";
 - (2) "CORRECT DEFICIENCIES";
 - (3) "REJECTED"; or
 - (4) "NOT REVIEWED".
- (d) The comment "REVIEWED" will be assigned to those Submittals that, in the opinion of the Authority, acting reasonably, appear to conform to the requirements of this Project Agreement.
- (e) The comment "CORRECT DEFICIENCIES" will be assigned to those Submittals that, in the opinion of the Authority, acting reasonably, appear to generally conform to the requirements of this Project Agreement, but in which minor deficiencies have been found and identified by the Authority's review. Project Co will, to the extent necessary, correct these Submittals and provide a copy of such corrected Submittals to the Authority within 5 Business Days. Project Co may proceed on the portions of such Submittals that have not received comments but Project Co will not proceed on the portions of such Submittals that have received

the comment "CORRECT DEFICIENCIES" until Project Co obtains a comment that permits Project Co to proceed. Project Co will correct, revise and resubmit Submittals as often as may be required to obtain a comment that permits Project Co to proceed. If, at any time, it is discovered that Project Co has not corrected the deficiencies on Submittals that were correctly stamped "CORRECT DEFICIENCIES", then Project Co will be required to modify the Submittals and the relevant Design and Construction as required to correct the deficiencies and Project Co may be required, at the Authority's discretion, acting reasonably, to resubmit relevant Submittals.

- (f) The comment "REJECTED" will be assigned to those Submittals that, in the opinion of the Authority, acting reasonably, contain significant deficiencies or do not generally conform with the requirements of this Project Agreement. Project Co will correct and re-submit these Submittals within 5 Business Days after the comment has been provided to Project Co. The Authority will then review such corrected Submittals and assign a comment to the corrected Submittal. Project Co will correct, revise and resubmit Submittals as often as may be required to obtain a comment that permits Project Co to proceed. Except with the written consent of the Authority, Project Co will not proceed with any Design or Construction to which such Submittals receiving the comment "REJECTED" relate until Project Co obtains a comment that permits Project Co to proceed.
- (g) The comment "NOT REVIEWED" may be assigned to those Submittals that have not been reviewed by the Authority in detail because, in the opinion of the Authority, acting reasonably, the Submittals do not comply with the requirements of this Appendix 2B (including Section 4(b) above), are incomplete or otherwise insufficient for the purposes of a Design review, or are received by the Authority before the date scheduled in the Submittal Schedule. Project Co will correct and re-submit these Submittals within 5 Business Days or, if a later date is set out on the Submittal Schedule, by such later date. Project Co will correct, revise and resubmit Submittals as often as may be required to obtain a comment that permits Project Co to proceed. Project Co will not proceed with any Design or Construction to which such Submittals receiving the comment "NOT REVIEWED" relate until Project Co obtains a comment that permits Project Co to proceed.
- (h) If the Authority does not respond to a Submittal within the applicable time period for that Submittal as determined in accordance with Section 2(c) of this Appendix 2B, the Submittal will be deemed "REVIEWED" and Project Co may proceed with and implement the Design and Construction on the basis set forth in the applicable Submittal without any further action or documentation required.
- (i) Where the Authority issues the comment "CORRECT DEFICIENCIES", "REJECTED" or "NOT REVIEWED", the Authority will provide reasons for the comment, referencing particulars of the Section(s) of this Project Agreement that the Submittal fails to satisfy and, if requested by Project Co, the Authority will meet with Project Co to discuss the reasons for the comment.
- (j) If, at any time after assigning any comment to a Submittal or where Section 4(h) applies, the Authority or Project Co discovers deficiencies or any failure to conform to the requirements of this Project Agreement, the Authority or Project

Co, as the case may be, will promptly notify the other party of such deficiencies or non-conformance and the Authority may revise the comment assigned to any Submittal. If the parties agree or it is determined in accordance with the Dispute Resolution Procedure that the revised comment is correct, Project Co will make all such corrections to the Submittals and the Design and Construction.

- (k) For the purpose of facilitating and expediting the review and correction of Submittals, the Authority's and Project Co's Design and Construction Representatives will discuss and review any outstanding Submittals and any comments thereon.
- (l) Where an individual Submittal item is voluminous, the Authority at its discretion may elect to stamp only the cover page or first sheet of the Submittal with the appropriate comment, if any, and return to Project Co the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Project Co. Any pages not returned without such an explanation as to their status will be deemed to be "REVIEWED" by the Authority.
- (m) In lieu of returning a Submittal, the Authority may by email or letter, or through the DMS with a notification by email or letter, notify Project Co of the comment assigned to the Submittal and, if such comment is "CORRECT DEFICIENCIES", "REJECTED" or "NOT REVIEWED", the letter will contain comments in sufficient detail, including referencing applicable Section(s) of this Project Agreement, for Project Co to identify the correction sought.

5. REVIEWED DRAWINGS AND SPECIFICATIONS

- (a) The following Submittals will be deemed to be "**Reviewed Drawings and Specifications**":
 - (1) any Submittals which the Authority has marked as "REVIEWED" under Section 4(d) of this Appendix 2B;
 - (2) any portions of any Submittals that Project Co may proceed with under Section 4(e) of this Appendix 2B; and
 - (3) any Submittals which have been deemed "REVIEWED" by the Authority under Section 4(h) of this Appendix 2B.
- (b) Project Co's Design and Construction Representative will deliver promptly by email or letter, or through the DMS with a notification by email or letter, one complete electronic copy of the Reviewed Drawings and Specifications to the Independent Certifier.

6. DISPUTES

If Project Co disputes any comment issued by the Authority in respect of a Submittal made under Section 4 of this Appendix 2B, Project Co will promptly notify the Authority of the details of such Dispute and will submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The Authority will review the

Submittal, the reasons and supporting documentation and, within 7 Business Days after receipt thereof, will either confirm the original comment or notify Project Co of a revised comment. Nothing in this Section 6 will limit either party's right to refer a Dispute to the Dispute Resolution Procedure.

7. CHANGES

If Project Co considers that compliance with any comment made by the Authority in respect of a Submittal made under Section 4 of this Appendix 2B would lead to a Change, Project Co will, before taking into account such comment, notify the Authority. If it is agreed by the Authority that such comment would lead to a Change, then the procedure set out in Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply. If the parties are unable to reach agreement, then either party may refer the matter directly to the Referee in accordance with Schedule 13 [Dispute Resolution Procedure]. In all cases, the parties will cooperate to identify potential alternative solutions to any comments raised that would not lead to a Change.

8. EFFECT OF REVIEW BY AUTHORITY

For greater certainty, Section 2.5 (Authority Not Responsible for Design or Construction) of Schedule 2 [Design and Construction Protocols] applies to any review or comment by the Authority on any Submittal.

9. SUBMITTAL MEETINGS AND EXPLANATIONS

At any time, the Authority may, acting reasonably, require Project Co, including Project Co's consultants, Sub-Contractors and any other relevant personnel, at no additional cost to the Authority, to meet in person or virtually through screen sharing technology with representatives of the Authority and its advisors to answer questions regarding Project Co's Submittals or to explain to the Authority and the Authority's advisors the intent of Project Co's Submittals, including in relation to any Design and any associated documentation and as to its satisfaction of the requirements of this Project Agreement (including the Design and Construction Specifications). Project Co will, and will cause its consultants, Sub-Contractors and any other relevant personnel to, attend all meetings requested by the Authority and answer all questions asked by the Authority in accordance with this Section 9 as soon as practicable and, in any event, no later than 5 Business Days from the date it received the Authority's questions or such longer period as agreed by the parties.

10. REVISIONS

- (a) Project Co will ensure that each Submittal keeps the same, unique reference number throughout the review process, and that all subsequent revisions of the same Submittal are identified by a sequential revision number. Correspondence related to such Submittal will reference the reference number and revision number and maintain same in the DMS.
- (b) Re-submittals will clearly show all revisions from the previous Submittal. Submitted documents, including reports and manuals, will contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents will be used (e.g. deletions struck out and additions underscored). Revised portions of drawings will be clearly marked (with appropriate means to

visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision will be included on the drawing.

- (c) All revisions on electronic media will be marked up by the design checker and, where applicable, by the drafter and the drafting checker and will identify the persons who initialed the Submittal. Electronic versions of the Submittal will identify the persons who initialed the revisions to the Submittal.
- (d) Project Co will keep all Reviewed Drawings and Specifications current and available through the DMS. If any Reviewed Drawings and Specifications are revised as part of a Submittal, all other Reviewed Drawings and Specifications relying on or based on that Reviewed Drawings and Specifications will also be revised accordingly. All such revised Reviewed Drawings and Specifications will also be submitted with the Submittal to which it relates.

**APPENDIX 2C
INITIAL PROJECT SCHEDULE**

See attached.

Kentucky Information Highway

Summary Schedule

NGKIH Design Build LLC

Activity ID	Activity Name	Start	Finish	2016												2017												2018																							
				A	S	Oct	N	Dec	Jan	F	Mar	Apr	M	Jun	Jul	Aug	S	Oct	N	Dec	Jan	F	Mar	Apr	M	Jun	Jul	Aug	S	Oct	N	D	Jan	F	Mar	Apr	M	Jun	Jul	Aug	S	Oct	N	D							
KIH - Ring 1B				02-Nov-16, KIH - Ring 1B																																															
PROCUREMENT				16-Dec-15, PROCUREMENT																																															
POLE ATTACHMENT AGREEMENT				14-Aug-15, POLE ATTACHMENT AGREEMENT																																															
BACK BONE				29-Apr-16, BACK BONE																																															
Permitting				03-Mar-16, Permitting																																															
Engineering				07-Dec-15, Engineering																																															
Make Ready Engineering Approval				19-Nov-15, Make Ready Engineering Approval																																															
Make Ready Construction				18-Feb-16, Make Ready Construction																																															
Segment Construction				29-Apr-16, Segment Construction																																															
LATERAL				02-Nov-16, LATERAL																																															
Permitting				02-Feb-16, Permitting																																															
Engineering				10-Nov-15, Engineering																																															
Make Ready Engineering Approval				03-Nov-15, Make Ready Engineering Approval																																															
Make Ready Construction				16-Feb-16, Make Ready Construction																																															
Site Construction				02-Nov-16, Site Construction																																															
KIH - Ring 1A				09-Jan-17, KIH - Ring 1A																																															
PROCUREMENT				23-Oct-15, PROCUREMENT																																															
POLE ATTACHMENT AGREEMENT				14-Aug-15, POLE ATTACHMENT AGREEMENT																																															
BACK BONE				30-May-16, BACK BONE																																															
Permitting				24-Mar-16, Permitting																																															
Engineering				28-Jan-16, Engineering																																															
Make Ready Engineering Approval				21-Jan-16, Make Ready Engineering Approval																																															
Make Ready Construction				14-Apr-16, Make Ready Construction																																															
Segment Construction				30-May-16, Segment Construction																																															
LATERAL				09-Jan-17, LATERAL																																															
Permitting				08-Mar-16, Permitting																																															
Engineering				12-Jan-16, Engineering																																															
Make Ready Engineering Approval				28-Dec-15, Make Ready Engineering Approval																																															
Make Ready Construction				22-Mar-16, Make Ready Construction																																															
Site Construction				09-Jan-17, Site Construction																																															
KIH - Ring 2				26-Mar-17, KIH - Ring 2																																															
PROCUREMENT				23-May-16, PROCUREMENT																																															
POLE ATTACHMENT AGREEMENT				04-Jan-16, POLE ATTACHMENT AGREEMENT																																															
BACK BONE				31-Jan-17, BACK BONE																																															
Permitting				19-Sep-16, Permitting																																															
Engineering				22-Jul-16, Engineering																																															
Make Ready Engineering Approval				08-Jul-16, Make Ready Engineering Approval																																															
Make Ready Construction				03-Oct-16, Make Ready Construction																																															
Segment Construction				31-Jan-17, Segment Construction																																															
LATERAL				26-Mar-17, LATERAL																																															
Permitting				06-Oct-16, Permitting																																															
Engineering				10-Aug-16, Engineering																																															
Make Ready Engineering Approval				03-Aug-16, Make Ready Engineering Approval																																															
Make Ready Construction				27-Oct-16, Make Ready Construction																																															
Site Construction				26-Mar-17, Site Construction																																															

█ Remaining Level of Effort
 █ Actual Work
 █ Critical Remaining Work
█ Actual Level of Effort
 █ Remaining Work
 █ Summary

Kentucky Information Highway
 Summary Schedule
NGKIH Design Build LLC

Activity ID	Activity Name	Start	Finish	2016												2017												2018												
				A	S	Oct	N	Dec	Jan	F	Mar	Apr	M	Jun	Jul	Aug	S	Oct	N	Dec	Jan	F	Mar	Apr	M	Jun	Jul	Aug	S	Oct	N	D	Jan	F	Mar	Apr	M	Jun	Jul	Aug
KIH - Ring 3		10-Aug-15	31-Aug-17	31-Aug-17, KIH - Ring 3																																				
PROCUREMENT		08-Oct-15	02-Mar-16	02-Mar-16, PROCUREMENT																																				
POLE ATTACHMENT AGREEMENT		10-Aug-15	02-Nov-15	02-Nov-15, POLE ATTACHMENT AGREEMENT																																				
BACK BONE		15-Oct-15	07-Oct-16	07-Oct-16, BACK BONE																																				
Permitting		30-Dec-15	07-Jun-16	07-Jun-16, Permitting																																				
Engineering		15-Oct-15	11-Apr-16	11-Apr-16, Engineering																																				
Make Ready Engineering Approval		19-Nov-15	28-Mar-16	28-Mar-16, Make Ready Engineering Approval																																				
Make Ready Construction		21-Dec-15	21-Jun-16	21-Jun-16, Make Ready Construction																																				
Segment Construction		18-Feb-16	07-Oct-16	07-Oct-16, Segment Construction																																				
LATERAL		15-Oct-15	31-Aug-17	31-Aug-17, LATERAL																																				
Permitting		22-Jan-16	27-May-16	27-May-16, Permitting																																				
Engineering		15-Oct-15	01-Apr-16	01-Apr-16, Engineering																																				
Make Ready Engineering Approval		20-Nov-15	18-Mar-16	18-Mar-16, Make Ready Engineering Approval																																				
Make Ready Construction		22-Dec-15	13-Jun-16	13-Jun-16, Make Ready Construction																																				
Site Construction		26-Apr-16	31-Aug-17	31-Aug-17, Site Construction																																				
KIH - Ring 4		20-Apr-16	05-Jul-18	05-Jul-18, KIH - Ring 4																																				
PROCUREMENT		15-Jul-16	06-Dec-16	06-Dec-16, PROCUREMENT																																				
POLE ATTACHMENT AGREEMENT		20-Apr-16	14-Jul-16	14-Jul-16, POLE ATTACHMENT AGREEMENT																																				
BACK BONE		12-Sep-16	01-Nov-17	01-Nov-17, BACK BONE																																				
Permitting		17-Oct-16	09-Mar-17	09-Mar-17, Permitting																																				
Engineering		31-Oct-16	12-Jan-17	12-Jan-17, Engineering																																				
Make Ready Engineering Approval		12-Sep-16	20-Dec-16	20-Dec-16, Make Ready Engineering Approval																																				
Make Ready Construction		10-Oct-16	16-Mar-17	16-Mar-17, Make Ready Construction																																				
Segment Construction		21-Nov-16	01-Nov-17	01-Nov-17, Segment Construction																																				
LATERAL		08-Sep-16	05-Jul-18	05-Jul-18, LATERAL																																				
Permitting		27-Sep-16	05-Apr-17	05-Apr-17, Permitting																																				
Engineering		11-Oct-16	08-Feb-17	08-Feb-17, Engineering																																				
Make Ready Engineering Approval		08-Sep-16	11-Jan-17	11-Jan-17, Make Ready Engineering Approval																																				
Make Ready Construction		06-Oct-16	29-Mar-17	29-Mar-17, Make Ready Construction																																				
Site Construction		23-Jan-17	05-Jul-18	05-Jul-18, Site Construction																																				
KIH - Ring 5		21-Dec-16	31-Jul-18	31-Jul-18, KIH - Ring 5																																				
PROCUREMENT		03-Mar-17	24-Jul-17	24-Jul-17, PROCUREMENT																																				
POLE ATTACHMENT AGREEMENT		21-Dec-16	16-Mar-17	16-Mar-17, POLE ATTACHMENT AGREEMENT																																				
BACK BONE		21-Apr-17	08-Feb-18	08-Feb-18, BACK BONE																																				
Permitting		05-May-17	12-Sep-17	12-Sep-17, Permitting																																				
Engineering		19-May-17	17-Jul-17	17-Jul-17, Engineering																																				
Make Ready Engineering Approval		21-Apr-17	02-Jun-17	02-Jun-17, Make Ready Engineering Approval																																				
Make Ready Construction		19-May-17	28-Aug-17	28-Aug-17, Make Ready Construction																																				
Segment Construction		11-Jul-17	08-Feb-18	08-Feb-18, Segment Construction																																				
LATERAL		28-Apr-17	31-Jul-18	31-Jul-18, LATERAL																																				
Permitting		12-May-17	02-Oct-17	02-Oct-17, Permitting																																				
Engineering		19-May-17	04-Aug-17	04-Aug-17, Engineering																																				
Make Ready Engineering Approval		28-Apr-17	30-Jun-17	30-Jun-17, Make Ready Engineering Approval																																				
Make Ready Construction		26-May-17	26-Sep-17	26-Sep-17, Make Ready Construction																																				
Site Construction		01-Sep-17	31-Jul-18	31-Jul-18, Site Construction																																				

█ Remaining Level of Effort
 █ Actual Work
 █ Critical Remaining Work
█ Actual Level of Effort
 █ Remaining Work
 █ Summary

The schedule does not include a full integration or impact of the Cincinnati Bell Telephone Company or MuniNet Third Party deals. These deals will be integrated into the project schedule as detailed plans from Cincinnati Bell Telephone Company and MuniNet are made available. **Date: 17-Aug-15**

**APPENDIX 2D
INITIAL SITE ACCESS PLAN**

See attached.

APPENDIX 2D INITIAL SITE ACCESS PLAN

1. DEFINITIONS

In this Appendix 2D, in addition to the terms defined in Schedule 1 [Definitions and Interpretation]:

“**Access**” means access to the Sites as such access is set out in this Appendix 2D;

“**Escalation Protocol**” has the meaning set out in Section 4.3 of this Appendix 2D;

“**OM Access Protocol**” has the meaning set out in Section 4.2(a) of this Appendix 2D;

“**Primary Access**” means the Access required during the Construction Period and the Operating Period as set out in Sections 3.1(a) and 4.1(a) respectively;

“**Response Timeout**” has the meaning set out in Section 4.3(a)(2) of this Appendix 2D;

“**Secondary Access**” means has the meaning set out in Section 4.3(a)(1);

“**Site Representative**” has the meaning set out in Section 2.1(a) of this Appendix 2D;

“**Site Representative List**” has the meaning set out in Section 2.1(a) of this Appendix 2D and such other information as set out in Section 2.1(b); and

“**Site Timeout Minutes**” has the meaning set out in Section 5.1(a) of this Appendix 2D.

2. SITE REPRESENTATIVE LIST

2.1 Site Representative List

- (a) The Authority will provide Project Co with an accurate list (the “**Site Representative List**”) of all the individuals (each, a “**Site Representative**”) that will be responsible for coordinating Access. One Site Representative can be responsible for arranging Access at multiple Sites.
- (b) The Site Representative List will also include the following accurate information:
 - (1) Name
 - (2) Address (Office Location)
 - (3) Primary phone number
 - (4) Backup phone number
 - (5) Email address
 - (6) Name of the respective group/organization of the Site Representative

- (7) List of all Sites (with addresses) that are under the Site Representatives control
 - (8) Site access protocols
 - (9) Other information pertinent to performing work at the Site
 - (10) Ownership of the Site
 - (11) Site escalation name, phone number, email address
- (c) The Site Representative List for all Sites on Ring 1A and Ring 1B will be provided by the Authority to Project Co on the Effective Date.
 - (d) The Site Representative List for all Sites on Ring 2 through Ring 5 will be provided by the Authority to Project Co one month after the Effective Date.
 - (e) Project Co will coordinate a meeting with the designated Site Representatives, as may be required, prior to the commencement of Construction of the relevant Rings.

3. SITE ACCESS – CONSTRUCTION PERIOD

3.1 Access Requirements During Construction Period

- (a) The Authority will provide the following Primary Access to the Sites during the Construction Period:
 - (1) 24x7x365 access to outside plant construction route;
 - (2) 24x7x365 access to inside plant construction route and telecommunications room; and
 - (3) adequate parking for construction vehicles.
- (b) Project Co will coordinate Access with the designated Site Representative for each Site.
- (c) The designated Site Representative will work with Project Co to notify the Site of any work area closures associated with inside or outside Construction.

3.2 Escalation

- (a) Project Co will notify the Authority's Design and Construction Representative of any delay or other issue in gaining Access.
- (b) Project Co will be required to track and maintain written records (e.g. call logs, etc.) of all failures to achieve either Primary Access or Secondary Access to a Site. Project Co will generate a monthly report of any Access failures.

- (c) Project Co will notify the Authority of any repeated failures to Access a Site for each group/organization. Project Co and the Authority will jointly review the failures, determine root cause and corrective action as required.

4. SITE ACCESS – OPERATING PERIOD

4.1 Access Requirements During Operating Period

- (a) The Authority will provide the following Primary Access to the Sites during the Operating Period in order to enable Project Co to meet the performance standards set out in Section 2 of Schedule 8 [Payments]:
 - (1) Node Sites: 24x7x365 secured access.
 - (2) Service Level 1 Sites: 24x7x365 secured access.
 - (3) Service Level 3 Sites: Access during Regular Business Hours, Monday to Friday, excluding any statutory or bank holidays that fall on such days.

4.2 Operating Period Access Protocols

- (a) The Authority will establish the form of Access with the Site Representative and will document the protocol in an access protocol document (the “**OM Access Protocol**”) at least 30 days in advance of the Operating Period and provide it to Project Co for review and comment. Project Co will have 20 Business Days to respond in writing to a Site Representative’s proposal which will form the OM Access Protocol. If no written response is delivered by Project Co to the Site Representative within this timeframe, the proposal will be deemed accepted by Project Co.
- (b) For each Site, the OM Access Protocol will include the following accurate information:
 - (1) the identification number;
 - (2) the physical address;
 - (3) categorization as a Node Site, SL1 Site or SL3 Site;
 - (4) the defined access protocol (e.g. keycard, physical key, escort required, passcode, I.D. badges, any alternative measures such as an emergency contact number, etc.); and
 - (5) confirmation of requirements (e.g. letter of authorization for access, certificate of insurance, list of authorized personnel, etc.).

4.3 Escalation Protocol

- (a) The Authority, working with the Site Representative, will, based on the location, condition and resources at the Site, provide to Project Co:

- (1) Secondary Access: an alternative method that can only be used should the Primary Access fail such as an emergency contact phone number; and
- (2) Response Timeout: the period of time after which Project Co can notify the Authority that Access is not achievable, following Project Co's completed attempt to gain Primary Access and Secondary Access.

4.4 Notifying the Authority of a Response Timeout

- (a) Project Co will notify the Authority's Operating Period Representative of a Response Timeout with information as set out in Section 5.1(a) of this Appendix 2D.

4.5 Review of the Access Protocols

- (a) Project Co will review the OM Access Protocol for the relevant Sites with each Site Representative every 6 months.
- (b) Should the Site Representative or the Authority become aware of any planned or reasonably foreseeable changes to the Site that may impact the OM Access Protocol, Project Co must be notified in writing 30 days before the change occurs. If there is an immediate change, the Authority will immediately notify Project Co.
- (c) Following notification by the Site Representative or the Authority of such planned or reasonably foreseeable change, Project Co will have 30 days to advise the Site Representative as to the Access required, in order to ensure that the obligations in Schedule 8 [Payments] can be met, and request that such Access be reflected in the revised OM Access Protocol.
- (d) Project Co must update the relevant schedule in the Operating Plan within 15 days once revised protocols have been agreed with the Site Representative.

5. SITE ACCESS AND OUTAGES

5.1 Site Access and Outages

- (a) Project Co's NOC will be responsible for noting:
 - (1) the time at which Project Co notified the Authority in accordance with Section 4.3(a) of this Appendix 2D; and
 - (2) the time at which Access was regained at the Site,where the minutes that occur in between are defined as "**Site Timeout Minutes**".
- (b) To the extent the Site Timeout Minutes occur during an Outage that affects the Site, such minutes will be treated as follows:

- (1) Total Outage minutes, response times and restoration times will be calculated in accordance with Schedule 8 [Payments].
 - (2) Site Timeout Minutes will be deducted from the Total Outage minutes.
 - (3) Project Co will only incur Deductions in the event that the performance standards in Schedule 8 [Payments] are breached following the subtraction of the Site Timeout Minutes.
- (c) Project Co will be required to track and maintain written records (e.g. call logs, etc.) of all failures to achieve either Primary Access or Secondary Access to a Site. Project Co will generate a monthly report of any Access failures.
 - (d) Project Co will notify the Authority of any repeated Access failures for each group/organization. Project Co and the Authority will jointly review the failures, determine root cause and corrective action as required.
 - (e) In the event that the Authority disputes the calculation of Site Timeout Minutes, it can refer the matter to the Dispute Resolution Process within 30 days.

**APPENDIX 2E
EXPECTED PERMIT TIMING**

**Part 1
General Permits**

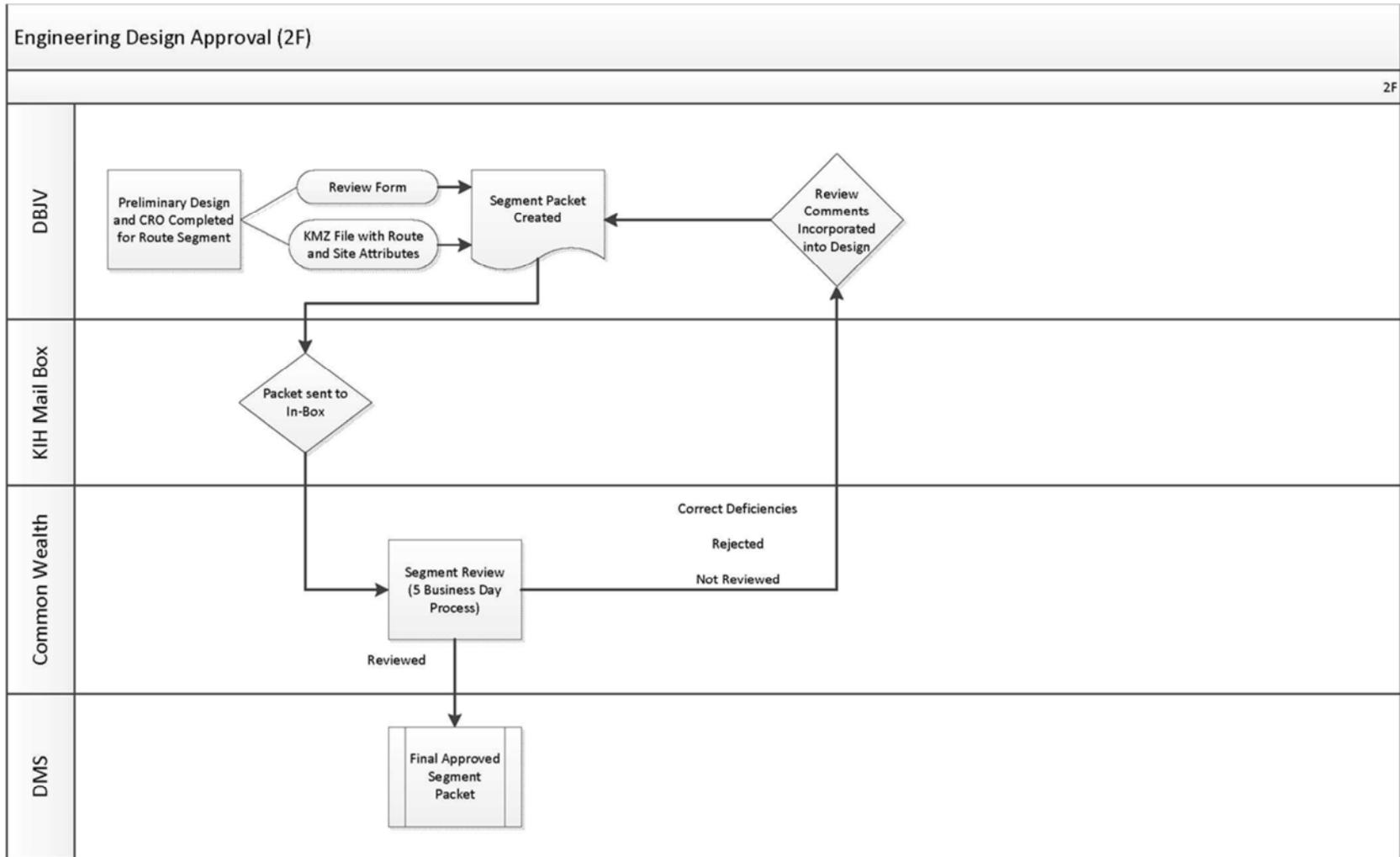
Permit Class	Permit Type	Permit Delivery Time Period
STATE (KYTC)	Encroachment Permit; FHA Review, ADHS Review	60 days
COUNTY	ROW/Encroachment Permit, Street Cut/Bore, Administrative Review, Informational	30 days
CITY	ROW/Encroachment Permit, Street Cut/Bore, Administrative Review, Informational	30 days
NATIONAL FOREST SERVICE	Special Use Permit	90 days
ARMY CORPS OF ENGINEERS	Nationwide 12 Permit, Section 10 Navigable Water Crossing	120 days
RR CROSSINGS	Encroachment Permit	90 days
ENVIRONMENTAL	Environmental	See Below

**Part 2
Federal Permits**

Permit Class	Permit Type	Citation as of Effective Date	Permit Delivery Time Period
Federal	NEPA Review	40 CFR Parts 1500-1508	One year
U.S. Army Corps of Engineers	Section 10 Nationwide Permit	33 CFR 330	Nationwide Permit - 45 days Individual Permit - 90 days

Permit Class	Permit Type	Citation as of Effective Date	Permit Delivery Time Period
U.S. Army Corps of Engineers	Section 404 Permit	33 CFR 330	Nationwide Permit - 90 days Individual Permit - 6 months
U.S. Environmental Protection Agency	Construction SPCC Plan(s)	40 CFR 112	No agency review
United States Fish and Wildlife Service	Endangered Species Act Compliance Informal Consultation	16 USC 1536	60 days
U.S. National Forest Service	Special Use Authorization	36 CFR 251	60 days
Federal	Encroachment Permit – Military/Federal Land	N/A	60 days

APPENDIX 2F
REVIEW PROCESS FLOW DIAGRAM



**SCHEDULE 3
DESIGN AND CONSTRUCTION SPECIFICATIONS**

1. OVERVIEW

1.1 Definitions

In this Schedule 3, in addition to the terms defined in Schedule 1 [Definitions and Interpretation]:

“**COLO Sites**” means those co-location Sites identified in Appendix 7A [Site Locations];

“**CPE**” means customer premise equipment managed by Project Co, unless otherwise stated;

“**Device Multicast Support**” means Equipment that can support seamless routing of multicast streams through the device;

“**DWDM**” means dense wave division multiplexing;

“**Equipment**” has the meaning set out in Schedule 1;

“**Huts**” means those Sites identified as Huts in Appendix 7A [Site Locations];

“**HQoS**” means hierarchal quality of service;

“**IOT**” means interoperability testing;

“**IP Multicast**” is a method of sending packets to selected group of receivers to minimize packet replication;

“**MOP**” means the method of procedure that outlines the detailed steps to be taken as part of the testing of a Site or Ring, which is determined using the information from the Site Survey and any applicable lab testing;

“**MPLS**” means multi-protocol label switching;

“**Multicast Service**” is an end to end service design to offer multicast as a service through the NG-KIH System;

“**Node**” means the Equipment installed at the Node Sites;

“**OTDR**” means optical time domain reflectometer;

“**OTN**” means optical transport network;

“**Product Service Catalog**” means those available services ranging from Layer 1 (optical transport) to Layer 3 (transparent routing) depending on the CPE deployed, as set out in Appendix 3A [Product Service Catalog] for Node Sites, Service Level 1 Sites and Service Level 3 Sites that connect to the NG-KIH System, which indicate services available for each of the following categories: optical transport services, Ethernet point to point services, Ethernet point to multipoint services, Ethernet multipoint to multipoint services, routed virtual private network services and internet access services;

“**QoS**” means quality of service;

“**ROADM**” means reconfigurable optical add drop multiplexers;

“**Site Surveys**” has the meaning set out in Section 2.1.1 of this Schedule 3; and

“**Site Survey Report**” has the meaning set out in Section 2.1.2.4 of this Schedule 3.

1.2 List of Appendices

Appendix	Title
3A	Product Service Catalog
3B	Migration Roles and Responsibilities
3C	Designated Equipment
3D	Designated Equipment Protocol
3E	Design Map

1.3 Network Build Counts

The NG-KIH System shall be based on the following:

1.3.1 31 Nodes

1.3.1.1 Nodes contain two categories: 17 Huts and 14 COLO Sites.

1.3.1.2 1 Flashwave 9500 system comprised of 2 chassis and 1 MX960 at 9 sites.

1.3.1.3 1 Flashwave 9500 system and 1 MX480 at 22 sites.

1.3.2 291 Service Level 1 Sites

1.3.2.1 2 6EX4300s

1.3.2.2 289 EX4300

1.3.3 775 Service Level 3 Sites

1.3.3.1 775 EX2200-C

1.3.4 Fiber Types

1.3.4.1 The Backbone will be constructed of 288 count fiber or a fiber count to be mutually agreed upon by the parties, taking into account any Third Party Infrastructure Agreements as may be applicable.

- 1.3.4.2 Laterals will be non-armored cable consisting of 144, 96, 72, 48 or 24 count fiber.

2. SCOPE OF WORK

2.1 Site Survey and Engineering

2.1.1 Overview

The site surveys (the “**Site Surveys**”) will determine the physical status of the Site Locations, including a determination of suitability for the installation of the Equipment. Project Co will perform Site Surveys and engineering at each of the Site Locations.

2.1.2 Scope

- 2.1.2.1 In connection with the Design and Construction Plan and Site Access Plan, Project Co shall schedule the Site Surveys as soon as possible and reasonably in advance.
- 2.1.2.2 A detailed Site Survey Report (the “**Site Survey Report**”) with pictures will be generated by Project Co. The Site Survey Report is a physical evaluation, and does not include evaluation of the optical design of the network elements or the operational status of existing alarms that may be in existing equipment.
- 2.1.2.3 Using the information provided in the Site Survey Report, Project Co will generate a detailed engineering design package.
- 2.1.2.4 The Site Surveys will determine the physical status of the site including a determination of suitability for the installation of the Equipment. A detailed Site Survey Report will be generated by the Project Co and will include:
 - 2.1.2.4.1 The site layout document(s);
 - 2.1.2.4.2 Determination of recommended network element, relay rack and cabinet placements;
 - 2.1.2.4.3 An itemized work task summary including installation details;
 - 2.1.2.4.4 Creation of detailed site/building layout drawings;
 - 2.1.2.4.5 Pictures taken (where allowed) of the front of the buildings, identifying the entrance and the general location of the existing equipment in the building. Where pictures are not allowed to be taken, the Authority shall provide the required pictures at no cost to Project Co;
 - 2.1.2.4.6 Inspection of the area where Equipment is to be installed, including an assessment of any existing ancillary equipment (i.e. existing relay racks, conduits, ducts, overhead or under floor structures etc.). Evaluate how well the Equipment would be protected and its environment including ventilation, dust, cleanliness, and temperature;

- 2.1.2.4.7 Inspection of the power systems and power connections. This includes inspection of fuse panels and available capacity;
 - 2.1.2.4.8 Evaluation of cabinet/rack grounding and grounding connections to include visual inspection and review of available grounding documentation for the Sites;
 - 2.1.2.4.9 If spares are to be located on a Site Location, determine their location, assess their protection and storage. Evaluation of card handling techniques, the presence of grounding straps, etc.;
 - 2.1.2.4.10 Evaluation of any other physical condition that may impact the NG-KIH System and implementation of services described within the Design and Construction Specifications;
 - 2.1.2.4.11 Identification of trouble areas, recommendations for corrective action and the long-term supportability and operational stability potential of the Equipment;
 - 2.1.2.4.12 Engineering and Construction requirements as required;
 - 2.1.2.4.13 Building access/entry for fiber entry;
 - 2.1.2.4.14 Location and details of termination/demark room; and
 - 2.1.2.4.15 Perform required engineering work applicable to the type of Site Location.
- 2.1.2.5 If the Site Survey identifies out of scope work activities and/or materials that would be required in advance of Project Co performing Construction, Project Co shall request the applicable Change in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals] or arrange for the Authority to perform the activities. Out of scope work may include but not limited to clearing the fiber path, rack or cabinet installation space, power systems and distribution as well as fiber distribution panels and alarm panels.
 - 2.1.2.6 Project Co will supply to the Authority the engineering requirements for paths, power and access to Sites.
 - 2.1.2.7 Install specification.

2.1.3 Authority Responsibilities

- 2.1.3.1 The Authority will provide:
 - 2.1.3.1.1 all power, building maintenance, janitorial and HVAC, at Sites. during both the Construction Period and the Operating Period;
 - 2.1.3.1.2 "¾" flame retardant plywood at each Site Location;

- 2.1.3.1.3 any out of scope work activities or any out of scope materials that would be required in advance of Project Co performing the Construction as identified on the Site Survey;
- 2.1.3.1.4 where possible, an electrical circuit to any standby generator located at an Authority owned Site Location;
- 2.1.3.1.5 one or two, as applicable, 120V/15A NEMA 5-15R receptacle outlets;
- 2.1.3.1.6 ambient temperature of equipment mounting location to be 0° to +45°C, allowing for internal cabinet temperatures in accordance with Equipment specifications;
- 2.1.3.1.7 external Ethernet or fiber cable interfaces to Juniper EX2200-C or EX4300 shelves;
- 2.1.3.1.8 surge protection devices that are not included with the cabinet design to protect copper cables exiting the building;
- 2.1.3.1.9 installed racks at COLO Sites; and
- 2.1.3.1.10 Fiber jumpers between Equipment and any existing equipment.

2.2 Outside Plant Design and Engineering

The NG-KIH System consists of a middle mile network consisting of fiber segments and sites as referred to in Section 1.3 of this Schedule 3. The Construction will consist of both aerial and underground construction methods using existing Utility Company rights of way and public easements, as well as easements provided by the Authority and those obtained by Project Co.

2.2.1 Scope

- 2.2.1.1 Project Co will provide the outside plant network design, engineering functions and specifications to include the following:
 - 2.2.1.1.1 Outside Plant Design
 - 2.2.1.1.2 Civil
 - 2.2.1.1.3 Environmental
 - 2.2.1.1.4 Structural
 - 2.2.1.1.5 Auto CAD/GIS
 - 2.2.1.1.6 Document Control
 - 2.2.1.1.7 Construction Manual
 - 2.2.1.1.8 Quality Control and Quality Assurance

2.2.1.2 Project Co will perform the following tasks related to outside plant network design and engineering:

2.2.1.2.1 Base mapping, to include, but not limited to the following:

1. Right-of-way information
2. Utility maps (poles, aerial, etc.)
3. Roadways (centerline, etc.)
4. Railroads
5. Streams
6. Bridges
7. County boundaries
8. Utility boundaries
9. Local Exchange Carrier boundaries

2.2.1.3 Preliminary Design to include but not limited to the following:

2.2.1.3.1 Overlay actual Site Locations onto base maps

2.2.1.3.2 Determine potential conflicts

2.2.1.3.3 Layout Backbone route to the Nodes

2.2.1.3.4 Layout lateral routes to the Sites

2.2.1.3.5 Determine aerial and underground routes

2.2.1.3.6 Provide site assessment results to the engineering team to incorporate into the network design contemplated in Section 2.3 of this Schedule 3.

2.2.1.3.7 Contact Utility Companies and right-of-way owners (Kentucky Transportation Cabinet and local jurisdictions) regarding fiber placement and adjust in the design as necessary

2.2.1.3.8 Identify environmental requirements and contact relevant entities and state, federal and local government agencies

2.2.1.4 Perform engineering/construction ride out to review design for:

2.2.1.4.1 Make ready engineering issues and concerns

1. Pole issues

2. Power attachments
3. Communication attachments
4. Height of each conductor attachment and proposed attachment height on the poles
5. Tree trimming required
6. Take photos and gather existing pole and span information for pole analysis

2.2.1.4.2 Produce final design of the NG-KIH System based on input from ride out and pole analysis (including pole loading analysis reports) performed by Project Co or the utility, depending on the requirements of the utility.

2.2.1.4.3 Generate final drawing packages as required for the Construction of the NG-KIH System:

1. Permitting
2. Construction
3. Profile drawings for road bores and duct placement
4. Regulatory compliance

2.3 Network Design and Engineering

2.3.1 Overview

Network design and engineering includes the full range of network engineering design, architecture standards, integration, including, but not limited to, concept development, planning, requirements definition and analysis, systems design, integration, and deployment. Network design and engineering will be based on Customary Industry Standards and specifications including applicable code and environmental and safety standards.

Project Co will perform end-to-end network design that incorporates the following high-level objectives:

- 2.3.1.1 Diverse connectivity and dual homing to Node Sites, based on the design.
- 2.3.1.2 IP routing at core and regional Nodes
- 2.3.1.3 Minimum 40 channel up to 8-degree reconfigurable optical add-drop multiplexer (ROADM) technology
- 2.3.1.4 Core device level redundancy
- 2.3.1.5 Support for prioritized traffic

2.3.1.6 Less than 50ms failover time in Core network

2.3.2 Scope

2.3.2.1 Network Planning: Project Co shall design the middle mile network using industry standards and best practices.

2.3.2.1.1 Develop standards and plan for the NG-KIH System

2.3.2.1.2 Document design objective

2.3.2.1.3 Analyze and recommend specific network elements that meet the approved design and plan criteria

2.3.2.2 Network Architecture: Project Co shall provide the analysis, standards, and decision support for the overall middle mile network architecture.

2.3.2.2.1 Create middle mile architecture based upon standards developed during design

2.3.2.2.2 Document overall architecture of the middle mile network

2.3.2.3 Network Engineering: Project Co shall engineer the middle mile network infrastructure for data communications; provide final engineering designs, system requirements and network data.

2.3.2.3.1 Define networking requirements

2.3.2.3.2 Develop network design, engineering and integration procedures that meet requirements and objectives

2.3.2.3.3 Recommend networking capacity thresholds

2.3.2.3.4 Develop and document network system specifications and topologies (e.g., router configurations, routing policies, routing diagrams/IP addressing tables, hardware/software listings, VLAN assignment, VPN assignment, multicast groups)

2.3.2.3.5 Document infrastructure configuration files and IP addressing schemes

2.3.2.4 Upon request of the Authority and pursuant to Schedule 6 [Changes, Minor Works and Innovation Proposals], Project Co will deliver any of the services set out in the Product Service Catalog

2.3.3 Design Requirements

2.3.3.1 DWDM Equipment. The optical transport domain consists of common ROADMs elements at main sites in the NG-KIH System. Each ROADM Node is capable of scaling up to 8 optical degrees each of which supports 88 wavelengths at 100Gbps; however, the current design includes varying

number of ROADM degrees as the requirements dictate. To facilitate the requirement for the 100G Ethernet transport cloud, Project Co deploys an OTN based centralized switch fabric that will provide 100Gbps network connectivity across every network optical connection of the Backbone network. The OTN switch fabric will support 100Gbps Ethernet cloud to share the bandwidth among the Backbone Sites. The design requirements of Project Co are:

2.3.3.1.1 Fiber termination on panels at the applicable Sites.

2.3.3.1.2 One 100 Gbps channel from Lexington to Cincinnati, and one 100 Gbps channel from Lexington to Louisville for peering connections to Internet 2.

2.3.3.1.3 One dedicated 100 Gbps Channel to interconnect Core MX960 Routers

2.3.3.1.4 One dedicated 100 Gbps Channel to create the Ethernet Cloud to connect Edge Routers to Core Routers

2.3.3.1.5 Different types of optical amps have been used fitting the required distances in the core.

2.3.3.1.6 DWDM equipment is DC based. AC power is supported with an add-on rectifier solution.

2.3.3.1.7 FW9500 configuration has been tailored for each Site regarding its requirements in terms of distance, site connectivity (degree), and optics. Any variation from this configuration will be subject to a Change.

2.3.3.2 Core Router

The design requirements of Project Co are:

2.3.3.2.1 Core routers at 9 Site Locations identified by the Authority in Appendix 7A [Site Locations].

2.3.3.2.2 Core routers have 100Gbps connectivity to other core routers.

2.3.3.2.3 Core routers will aggregate and interface with edge routers with a minimum single 10Gbps link to each connected edge router. In the future, it may be upgraded to multiple bundled interfaces.

2.3.3.2.4 Core routers will interface directly to optical transport platforms for the transportation of data traffic at 100Gbps.

2.3.3.2.5 Core router will function as mainly IP/MPLS units assuming function of Provider Edge (PE) and Provider (P) routers based on IETF industry standardized drafts.

2.3.3.2.6 Core routers will support MPLS based L2VPN, VPLS, L3VPN, BGP, IGP protocols and other industry standardized protocols.

2.3.3.2.7 Core routers support IPv6.

2.3.3.2.8 Core routers will interface directly to optical transport platforms for the transportation of data traffic.

2.3.3.2.9 Core routers will also assume function of route-reflector at least at 2 locations to provide route-reflection hence eliminating need to separate routers.

2.3.3.2.10 Core facing links will provide QoS at port level with hardware queues.

2.3.3.2.11 Client facing links can provide HQoS and per vlan QoS at ingress.

2.3.3.2.12 General model of QoS will leverage ingress policing and egress shaping.

2.3.3.2.13 Core routers can directly connect to CPE in the COLO Sites.

2.3.3.2.14 Core router 100Gbps links will be on redundant modules.

2.3.3.2.15 Client facing (CPE facing) links will be on the redundant modules when providing redundant uplink from the same CPE (such as LAG/LACP).

2.3.3.2.16 Design includes use of virtual route reflectors.

2.3.3.2.17 Design includes use of standardized features to interface with 3rd party units.

2.3.3.2.18 Service design includes use of IPv4 addresses.

2.3.3.2.19 Service design includes the use of BGP peering to Customer equipment if applicable.

2.3.3.2.20 Multicast is supported with PIM SSM, DM, SM and DVMRP. Juniper EX CPE will run IGMP to support customer multicast and at Core PIM, SSM, DM, SM and DVMRP (whichever is applicable) to enable multicast service.

2.3.3.3 Authority Responsibility

The Authority is required to setup appropriate configuration to enable Device Multicast Support, such as the appropriate Multicast Routing Protocol.

2.3.3.4 Edge Router

The design requirements are:

2.3.3.4.1 22 of the 31 Node Sites will contain MX480s.

2.3.3.4.2 Edge router has chassis level redundancy such as power, routing-engine/switch-fabric, and Uplink redundant modules.

2.3.3.4.3 Edge routers are designed with uplink connectivity to support an oversubscription ratio of 1:1.2 under normal operation, based on the bandwidth assigned in Appendix 7A [Site Locations] and subject to the outside plant and inside plant final design.

2.3.3.4.4 Edge router has a minimum of dual 10Gbps uplink connectivity between edge routers and nearest core routers, with upgradeable option to additional 10Gbps links.

2.3.3.4.5 Edge router has fully redundant 10Gbps uplinks to nearest core router.

2.3.3.4.6 Edge routers will interface directly to optical transport platforms for the transportation of data traffic at 10Gbps.

2.3.3.4.7 Edge router will function as mainly IP/MPLS units assuming function of Provider Edge (PE) and Provider (P) routers based on IETF industry standardized drafts.

2.3.3.4.8 Edge router will support MPLS based L2VPN, VPLS, L3VPN, BGP, IGP protocols and other industry standardized protocols.

2.3.3.4.9 Edge routers support IPv6.

2.3.3.4.10 Edge router will interface directly with optical transport platforms for the transportation of data traffic.

2.3.3.4.11 Core facing links on edge router will provide QoS at port level with hardware queues.

2.3.3.4.12 Client facing links on edge router will provide HQoS and per VLAN QoS at ingress.

2.3.3.4.13 General Model of QoS will leverage ingress policing and egress shaping.

2.3.3.4.14 Edge router can directly connect to Customer Managed CPE connections.

2.3.3.4.15 Core router 10Gbps up-links will be on redundant modules.

2.3.3.4.16 Client facing (CPE facing) links will be on the redundant modules when providing redundant uplink from the same CPE (such as LAG/LACP).

2.3.3.4.17 Design includes use of standardized features to interface with 3rd party units.

2.3.3.4.18 Service design includes use of IPv4 addresses.

2.3.3.4.19 Service design includes the use of BGP peering to Customer equipment.

2.3.3.4.20 Multicast is supported with PIM SSM, DM, SM and DVMRP. Juniper EX CPE will run IGMP to support customer multicast and at Core PIM, SSM, DM, SM and DVMRP (whichever is applicable) to enable multicast service.

2.3.3.5 Authority Responsibilities

The Authority is required to setup appropriate configuration to enable Device Multicast Support, such as the appropriate Multicast Routing Protocol.

2.3.3.6 Project Co. Customer Premise Equipment

The design requirements of Project Co are:

2.3.3.6.1 Redundant Configuration

1. Configuration based on EX4300.
2. 1G/10G redundant CPE will have power level redundancy and will offer 24 copper ports and 4x10Gbps ports.
3. CPE will be installed in cabinets.
4. Single CPE per cabinet per Site Location.
5. Based on the service levels, redundant uplinks can be offered either single-homed or dual-homed at both uplinks.
6. Uplink connectivity is assumed not to exceed 2x10G.
7. Client's connectivity is assumed not to exceed 2x10G.
8. QoS is provided at port level with 8 queues.
9. Ingress policing and egress shaping is assumed.
10. Limited layer 3 capability is provided with Advanced/Enhanced feature license set.
11. Every Service Level 1 Site and Service Level 3 Site is limited to a maximum fiber distance of 70 km for 1Gbps links and 80 km for 10Gbps links to the nearest connection point.

2.3.3.6.2 Non-Redundant Configuration

1. Configuration is based on EX2200-C.
2. 1Gbps non-redundant CPE will offer 12 copper ports 10/100/1000BaseT and 2x1Gbps dual purpose SFP ports.
3. CPE will be installed in cabinet.

4. Single CPE per cabinet per Site Location.
5. Based on the service levels, uplinks will be single-homed.
6. QoS is provided at port level with 8 queues.
7. Ingress policing and egress shaping is assumed.
8. A limited layer 3 capability is provided with no support of BGP.

2.3.3.7 Network Security

2.3.3.7.1 Network Infrastructure will be secured through built-in firewall filters and protecting the control plane on infrastructure devices. Configurations will be used to limit ICMP visibility, use prefix lists, access-list and management access.

2.3.3.7.2 No separate security appliance or device is included in the network design.

2.3.3.7.3 Remote management access will be secured through dedicated MPLS circuits.

2.3.3.7.4 Distributed Denial of Service (DDOS) will be mitigated, to the extent possible, via use of Remote Triggered Black Hole (RTBH) filtering per RFC 5635.

2.3.4 Documentation

- 2.3.4.1 High-Level Design Document. The document shall provide a high-level architectural overview of the NG-KIH System and significant design decisions to satisfy business and services requirements. The document will summarize the overall design, product platforms, network services and various technical components of the NG-KIH System.
- 2.3.4.2 Detailed Design Document. The document shall provide details of network features, protocols, configurations, and data to support service delivery across the NG-KIH System. The document will cover network services and various technical details of features that are provisioned for each network element across the NG-KIH System.
- 2.3.4.3 Bill of Materials. Full listing of the hardware and software components for each network element, by core network and Site, and quantities included in the design.
- 2.3.4.4 Product Service Catalog. The Product Service Catalog outlines available services for Service Level 1 Sites and Service Level 3 Sites connected to the NG-KIH System. Available services range from Layer 1 (optical transport) to Layer 3 (transparent routing) and depend on the CPE deployed.

2.3.5 Scope Exclusions

2.3.5.1 Core DWDM

2.3.5.1.1 In-shelf module level OTDR type functionality is not included in the design.

2.3.5.1.2 Colorless directionless contentionless technology is not included in the DWDM/ROADM design.

2.3.5.2 Core Routing

2.3.5.2.1 Hardware does not support HQoS on core facing 100G links.

2.3.5.2.2 Design excludes SFLOW/JFLOW/NETFLOW accounting and monitoring.

2.3.5.3 Edge Routing

2.3.5.3.1 Hardware does not support HQoS on core facing 100G links.

2.3.5.3.2 Design excludes SFLOW/JFLOW/NETFLOW accounting and monitoring.

2.3.5.4 Project Co. Managed Customer Premise Equipment

2.3.5.4.1 Redundant Configuration

1. Switch-Fabric/Routing engine level redundancy is not included.
2. Chassis redundancy is not included.
3. Per VLAN, QoS or HQoS is not included.
4. Limited Layer3 capability is provided with no MPLS or MPLS based VPNs or BGP support.

2.3.5.4.2 Non-Redundant Configuration

1. Switch-Fabric/Routing engine/power level redundancy is not included.
2. Chassis redundancy is not included.
3. Per VLAN, QoS or HQoS is not included.
4. Limited Layer3 capability is provided with no MPLS or MPLS based VPNs or BGP support.

2.3.5.4.3 Network Security

1. Security services to end users are not provided with the Equipment.

2.4 Interoperability Lab Services

2.4.1 Overview

Project Co shall build the lab for continuous testing and verification up to the Expiry Date and conduct the end-to-end interoperability testing of the NG-KIH System. The lab will be maintained by the Service Provider at the completion of the Construction Period.

2.4.1.1 Lab Objectives

2.4.1.1.1 Support interoperability testing.

1. Current and future new software release validation testing and verification.
2. Feature testing for current and future requirements.
3. Smooth, seamless, least interrupted feature and software rollouts.
4. Test and preempt against software bugs, apply bug fixes and check against network vulnerabilities.

2.4.1.2 Interoperability Testing (“IOT”) Objectives

2.4.1.2.1 Perform interoperability testing between all network elements, including CPE, core router, core edge routers and Optical/DWDM transport network elements.

2.4.1.2.2 Perform interoperability testing between external connection, peering points and core router, core edge routers and Optical/DWDM transport.

2.4.2 Scope

2.4.2.1 Test Methodology

2.4.2.1.1 Project Co shall develop a requirements document for testing to identify necessary functional areas to be validated.

2.4.2.1.2 Project Co shall develop the test plan for execution.

2.4.2.1.3 Project Co shall maintain version control of test documents and reported results.

2.4.2.1.4 Any services requested by the Authority that are not contained within the Product Service Catalog or architecture changes/additions must be made by way of a Change.

2.4.2.1.5 Testing is contingent upon available support from peering networks or vendors for equipment not required to be provided pursuant to this Schedule

3. This may include, but not limited to, external transport node, router, and switches.

2.4.3 Test Reporting

Upon completion of the testing, Project Co shall document the test results in a report which will contain the following:

- 2.4.3.1 Test Requirements
- 2.4.3.2 Test Architecture
- 2.4.3.3 Test Use Cases
- 2.4.3.4 Test Methodology
- 2.4.3.5 Relevant Test Configuration
- 2.4.3.6 Test Results
- 2.4.3.7 Test Conclusion

2.4.4 Scope Exclusions

- 2.4.4.1 Testing will be limited to items directly pertaining to the NG-KIH System infrastructure performance, but excluding any Third Party Infrastructure Provider's fiber and COLO equipment and cabling.
- 2.4.4.2 Testing of issues external to the NG-KIH System, including but not limited to customer applications, features, equipment, configurations.

2.5 Permitting

2.5.1 Overview

Project Co will research the requirements for and will obtain, as required, the necessary Permits (excluding Pole Attachment Agreements), and will produce the engineering drawings required based on the collection of the necessary information from the relevant Governmental Authorities for Permit submittal.

2.5.2 Scope

- 2.5.2.1 Types of Permits include but are not limited to the following:
 - 2.5.2.1.1 Stream and river crossings excluding environmental impact requirements
 - 2.5.2.1.2 Wetland crossings excluding environmental impact requirements
 - 2.5.2.1.3 Road and railroad crossings

2.5.2.1.4 Interstate highway crossings

2.5.2.2 Project Co will perform the following tasks:

2.5.2.2.1 Contact jurisdictions to determine and provide jurisdictional and permitting process requirements, including but not limited to:

1. Building Permits
2. Electrical Permits
3. Certificate of occupancy Permits
4. Traffic control Permits
5. Excavation Permits

2.5.2.2.2 Contact Utilities Companies to determine and provide the necessary requirements for utility construction permitting and approvals for obtaining right-of-way Permits.

2.5.2.2.3 Contact transportation authorities (highway, railroad, etc.) to determine and provide the necessary requirements to obtain the required Permits.

2.5.2.2.4 Determine any other Permits required and provide the documentation required to obtain such Permits.

2.5.2.2.5 Project Co's name and contact information is required to be placed in the notification section of the Permits.

2.5.2.3 Authority Responsibilities

The Authority will ensure that the Commonwealth of Kentucky, Transportation Cabinet will provide a single point of contact that will work with all twelve districts to expedite permitting and develop a standardized drawing requirement. The Authority will also fulfil its obligations in respect of Pole Attachment Agreements as set out in Section 3.9 of the Project Agreement.

2.6 Outside Plant Construction

2.6.1 Overview

Project Co will provide all aspects of NG-KIH fiber construction and the Authority will provide the Access required by Project Co as set out in Appendix 2D [Initial Site Access Plan]. Project Co will track and report on the execution of make-ready construction by third parties, Project Co or its subcontractors, terminate fiber at the optical fiber distribution panel and then test the fiber. Project Co will manage subcontractors regarding construction, safety and quality.

2.6.2 Scope

Project Co will perform the following tasks:

- 2.6.2.1 Maintain a list of qualified subcontractors that have been approved to perform the types of work described above.
- 2.6.2.2 Track hiring of local Kentucky resources.
- 2.6.2.3 Make ready Construction, if permitted by the Utility Company or telecom carrier, which will include, but not be limited to the following:
 - 2.6.2.3.1 Pole replacement (by Project Co, its subcontractors or third parties)
 - 2.6.2.3.2 Pole transfers (by Project Co, its subcontractors or third parties)
 - 2.6.2.3.3 Cable rearrangements (by Project Co, its subcontractors or third parties), which does not include remedying existing pole attachment or pole violations which do not comply with the most current version of the National Electric Safety Code or pole owner specification whichever is more stringent.
 - 2.6.2.3.4 Vegetation clearing (by Project Co, its subcontractors or third parties)
- 2.6.2.4 Aerial construction
 - 2.6.2.4.1 Place strand and guys
 - 2.6.2.4.2 Place cable
 - 2.6.2.4.3 Cable lashing
 - 2.6.2.4.4 Fiber storage loops
 - 2.6.2.4.5 Supporting hardware attached and applied
 - 2.6.2.4.6 Traffic control
 - 2.6.2.4.7 Right of way restoration
- 2.6.2.5 Underground and buried Construction
 - 2.6.2.5.1 Utility locates
 - 2.6.2.5.2 Traffic control
 - 2.6.2.5.3 Potholing will be provided as appropriate
 - 2.6.2.5.4 Directional bore, trench, or plow as appropriate
 - 2.6.2.5.5 Install conduit, tracer wire and fiber cable

2.6.2.5.6 Adequate and appropriate restoration applied according to local requirements

2.6.2.5.7 Setting cabinets, vaults, hand holes

2.6.2.6 Splicing and testing of fiber

2.6.2.6.1 Splicing by appropriate fusion splicing methods

2.6.2.6.2 Securing splices and slack loop as required

2.6.2.6.3 Terminate fibers in the fiber distribution panel as designed with the specified connector type.

2.6.2.6.4 Optical Time-Domain Reflectometer (OTDR) testing of the fibers at 1550 and 1625 nm and Power Meter testing at and 1550 nm and 1625 nm to be performed by Project Co for each backbone segment. In addition, testing at 1310 nm is will be done on all fibers used for laterals.

2.6.2.6.5 Splice loss to be less than 0.05 dB per event; or segment span splice loss in the aggregate shall not exceed 0.25 dB per km at 1550 and 0.35 dB at 1625nm bi-directionally averaged.

2.6.2.6.6 Fiber testing reports

2.6.2.7 Construction methods to be compliant with Customary Industry Practice.

2.6.2.8 Public facing construction personnel shall be badged with project ID and contact information.

2.7 Fiber Segment/Node Closeout and Handoff

2.7.1 Overview

Project Co will ensure that fibers are meeting performance specifications set out in this Schedule 3 prior to Equipment turn up and testing.

2.7.2 Scope

Tasks for the fiber segment/node closeout and handoff will include the following:

2.7.2.1 Handoff – Project Co will verify quality of workmanship, material standardization, permit closures and OTDR and power meter test results provided in report format.

2.7.2.2 Complete “as-built” drawings with digital photos and configuration documentation utilizing GIS format and CAD format for street level drawings.

2.7.2.3 Repair/replace/retest and document the fibers not meeting specifications set out in this Schedule 3.

2.8 Procurement of Equipment and License of Software

2.8.1 Overview

Project Co shall supply core and transport network Equipment. Subject to Section 3.6 of the Project Agreement, Project Co shall supply the outside plant materials based upon the requirements of these Design and Construction Specifications.

2.8.2 Scope

2.8.2.1 The core and transport network Equipment will be purchased from the relevant OEM.

2.8.2.2 The outside plant materials required for the Project are commodity type materials. Suppliers currently included in Project Co commodity program will be considered, along with industry specific suppliers that specialize in the materials required. Critical materials will be purchased by Project Co and these materials include:

2.8.2.2.1 Fiber optic cable

2.8.2.2.2 Fiber identification label (tube) to be placed on fiber at each pole and underground enclosure

2.8.2.2.3 Splice closures

2.8.2.2.4 Vaults

2.8.2.2.5 Underground duct

2.8.2.2.6 Strand and associated hardware, risers and riser guards

2.8.2.2.7 Huts and associated Equipment

2.9 Rack and Cabinet Integration

2.9.1 Overview

Project Co's will design and manufacture an indoor wall mount cabinet assembly to support the Juniper Networks® Ethernet Switch units as follows:

2.9.1.1 Ethernet Switch Cabinet Design:

2.9.1.1.1 One cabinet design to support AC powered Juniper Model EX2200-C-12T-2G Compact Ethernet Switch.

2.9.1.1.2 One cabinet design to support AC powered Juniper Model EX4300-24T Ethernet Switch.

2.9.1.2 Cabinet Installation:

2.9.1.2.1 The completed assemblies will include the equipment and hardware integral to the completed assembly. External cabling requirements and connections will not be included in the supplied materials or configurations.

2.9.2 Scope

Project Co will execute the following tasks:

- 2.9.2.1 Analyze the primary equipment requirements to support the network design configuration including:
 - 2.9.2.1.1 Circuit/port capacity
 - 2.9.2.1.2 Physical size
 - 2.9.2.1.3 Power requirements
 - 2.9.2.1.4 Operating temperature/thermal requirements
- 2.9.2.2 Identify ancillary equipment requirements to support the primary Equipment including:
 - 2.9.2.2.1 Fiber distribution panel requirements/port capacity
 - 2.9.2.2.2 Fiber jumper requirements
- 2.9.2.3 Identify equipment enclosure suitable to support primary Equipment and ancillary equipment including:
 - 2.9.2.3.1 Ventilation to support primary Equipment and ancillary equipment thermal requirements
 - 2.9.2.3.2 Locking features to promote cabinet security
 - 2.9.2.3.3 Mounting requirements to support weights
 - 2.9.2.3.4 Power/grounding provisions and requirements
 - 2.9.2.3.5 Alarm support capabilities as required
- 2.9.2.4 Create a complete set of manufacturing documentation to procure, build and test the cabinet configurations in the Project Co factory, including:
 - 2.9.2.4.1 Assembly, wiring, and testing documentation
 - 2.9.2.4.2 Change management and revision control per established TL9000 processes and metrics
- 2.9.2.5 Coordinate the creation of a comprehensive technical information bulletin (TIB) including:

- 2.9.2.5.1 Product identification/description
- 2.9.2.5.2 Primary Equipment/ancillary equipment specifications
- 2.9.2.5.3 Cabinet alarms
- 2.9.2.5.4 Grounding
- 2.9.2.5.5 Labeling
- 2.9.2.5.6 Wiring diagrams
- 2.9.2.5.7 Installation instructions
- 2.9.2.5.8 Support information
- 2.9.2.5.9 Ordering information
- 2.9.2.5.10 The Project Co contact information

2.9.2.6 In addition, Project Co will:

- 2.9.2.6.1 Validate rack requirements as part of Site Surveys
- 2.9.2.6.2 Review Project Co product specifications to determine rack requirements
- 2.9.2.6.3 Procure required racks
- 2.9.2.6.4 Deliver and install required racks in the location
- 2.9.2.6.5 Pull fiber to and terminate fiber at the fiber distribution panel

2.9.3 Rack and Cabinet Integration Design Assumptions

Project Co will design and manufacture an indoor wall mount cabinet assembly to support the Juniper Networks® Model EX2200-C and EX4300 Ethernet Switches as follows:

- 2.9.3.1 Ethernet Switch Cabinet Design I. One indoor wall mount cabinet design to support AC powered Juniper Model EX2200-C-12T-2G unit with the following specifications:
 - 2.9.3.1.1 Fiber Distribution Panel (FDP)
 1. 12 Port, type SC
 2. Patch/Splicing capability
 3. 1RU, 19" mounting

4. Fiber jumpers included

2.9.3.1.2 Equipment Cabinet

1. Front access
2. 25 x 21 x 7 in (H x W x D)
3. Louver ventilation
4. Removable front cover
5. Bellcore 216 hex lock
6. Provisions for alarm termination wire wrap block
7. Door alarm switch
8. Integral ground bar with 25 ft., #6 AWG ground cable
9. NEMA 5-15P power cord

2.9.3.1.3 Authority Requirements

1. Equipment cabinet capable of being mounted on ¾" flame retardant plywood, customer provided, at each location.
2. One 120VAC/15A NEMA 5-15R receptacle outlet within 6 feet of proposed cabinet installation location.
3. Ambient temperature of equipment mounting location to be 0° to +35°C, allowing for internal cabinet temperatures in accordance with Equipment specifications.
4. Fiber jumpers between Equipment and any other equipment.
5. Interfacing copper Ethernet cables.
6. Surge protection devices are not included with the cabinet design to protect copper cables exiting a building.

2.9.3.1.4 Certifications

1. Completed cabinet assembly will not be UL listed or registered.
2. Individual Equipment will bear listings, certifications as applicable.

2.9.3.2 Ethernet Switch Cabinet Design II. One cabinet design to support AC powered Juniper Model EX4300-24T Ethernet Switch unit with the following specifications:

2.9.3.2.1 Juniper Model EX4300-24T

1. Operating temperature range: 0° to +45°C

2.9.3.2.2 Fiber Distribution Panel (FDP)

1. 12 Port, type SC/UPC
2. Fiber patching/splicing capability
3. 1RU, 19" mounting

2.9.3.2.3 Equipment Cabinet

1. Front access
2. 25 x 21 x 7 in (H x W x D)
3. Louver ventilation
4. Removable front cover
5. Bellcore 216 hex lock
6. Provisions for alarm termination wire wrap block
7. Door alarm switch
8. Integral ground bar with 25 ft., #6 AWG ground cable
9. Dual NEMA 5-15P power cords]

2.9.3.2.4 Certifications

1. Completed cabinet assembly will not be UL listed or registered.
2. Individual Equipment will bear listings, certifications as applicable.

2.9.3.3 Fiber terminations at wall mount cabinets:

Fiber terminations will be terminated directly to the supplied FDP/splicing fiber panel. Fiber jumpers are supplied from the FDP panel to the Equipment.

2.9.4 Deliverables

2.9.4.1 Indoor wall mount cabinet design and assembly to support AC powered Juniper Model EX2200-C-12T-2G unit.

2.9.4.2 Indoor wall mount cabinet design and assembly to support AC powered Juniper Model EX4300-24T unit.

2.9.4.3 Supporting Technical Information Bulletin (TIB) documentation.

2.9.5 Exclusions

2.9.5.1.1 UL listing or registration of completed cabinet assemblies.

2.9.5.1.2 120V/15A NEMA 5-15R outlet(s), located within 6 feet of placement of cabinet assemblies at customer locations

2.10 Hut Configuration and Installation

2.10.1 Overview

2.10.1.1 Project Co will design the type of racks and the quantity of racks required for each Hut and supply the necessary Equipment.

2.10.1.2 Project Co will be responsible for the site preparation, including pouring the concrete pad, installing the Hut and rack, and terminating the fiber in the Hut/rack. Project Co will install and test the Equipment.

2.10.2 Scope

Project Co will execute the following tasks:

2.10.2.1 Pour concrete pad

2.10.2.2 Install Hut

2.10.2.3 Install rack

2.10.2.4 Clean up and restoration of the site

2.10.2.5 Install primary power from meet point into the Hut sub-panel

2.10.2.6 Provide and install battery back-up and generator system

2.10.2.7 Terminate fiber

2.10.2.8 End-to-end test fiber

2.10.2.9 Hut design document

2.11 COLO Sites

2.11.1 Scope

Project Co will install the Equipment into the COLO Site.

2.11.2 Authority Responsibilities

During the Term, the Authority is responsible for the following obligations and costs in relation to COLO Sites: rack, power, HVAC, cross connects, cabling, non-recurring charges or recurring charges, lease obligations (including securing space), interconnection fees and any other obligations or costs associated with the COLO Sites.

2.12 Equipment for Core and COLO Sites

2.12.1 Overview

Installation services shall be performed by Project Co in accordance with the manufacturer's recommended specifications and within the provisions of these Design and Construction Specifications.

2.12.2 Scope

Project Co shall develop the details of the installation activities upon completion of Site Survey Report. General tasks for installation work shall include:

- 2.12.2.1 Create an Installation specification using information gathered during the Site Survey(s).
- 2.12.2.2 Prepare installation MOP per TL9000 requirements.
- 2.12.2.3 Install Core or transport Equipment in accordance with the manufacturer's recommended specifications within 50 feet of cable termination point into the appropriate installed racks or bays.
- 2.12.2.4 Provide clean-up which includes removal of trash and packing material on a daily basis.
- 2.12.2.5 As-built installation specification.

2.12.3 Authority Responsibilities

The Authority will provide the existing service provider demark location in the building at all Node Sites and COLO Sites in order to facilitate Equipment installation and cutover.

2.13 Turn-Up and Test Services

2.13.1 Overview

Turn-up & test services shall be performed in accordance with the manufacturer's recommended specifications and within the provisions of the Implementation Plan. Project Co shall develop the MOP details of the turn-up and test activities at the completion of Site Surveys on a test by test and Site by Site basis. Turn-up & test activities are performed in the same trip to the Site. This includes turn-up & test for the Equipment at the Site.

2.13.2 Scope

2.13.2.1 Project Co shall supply the required test equipment to perform the turn-up & test services described within these Design and Construction Specifications. General tasks for turn-up & test activities shall include:

2.13.2.1.1 Prepare Turn-up & Test MOP per TL9000 requirements. The MOP includes the following sections and will be applied to all of the tests set out in this Section 2.12.2:

1. Introduction
2. Revision
3. Scope
4. Site Information
5. Contacts and Escalations
6. Daytime Windows
7. Maintenance Windows
8. Equipment and Materials Required
9. Tools Required
10. Service Impact Notes
11. General Information
12. Preparation
13. Procedure
14. Completion
15. Back-Out Procedure
16. Appendices

2.13.2.1.2 Site Turn-up and Test. A series of actions checks and tests to confirm the Site is operational and ready to be provisioned for traffic and includes the following actions:

1. verification that power requirements are within specifications set out in this Schedule 3, including primary and secondary power, ground and voltage levels;

2. conduct a visual inspection of Equipment installation and cabling as appropriate;
3. inventory, unbox, inspect, clean optical interfaces and slot cards if required. Includes verification of inventory on Site, unpacking the Equipment and inspecting for damage, and slotting of the units if required;
4. installation of common plug-In equipment - Includes installation of the fans, management units, and switch fabrics, and common equipment elements where applicable;
5. sequence up the power and initiate the software load;
6. confirm operation of Equipment and enter basic element provisioning;
7. perform loop back testing on the populated slots;
8. verify connectivity and communication with the NOC and confirm Equipment level alarm (against industry standards and/or thresholds set as mutually agreed, i.e. up/down, signal loss, traffic ID) reporting, if facilities exist; and
9. measure and set optical levels to connect the Site to the NG-KIH System in accordance with the specifications for the Equipment.

2.13.2.1.3 Acceptance Test. A series of actions and tests to integrate multiple Sites into the NG-KIH System and confirm the network's performance is within the acceptable range for the relevant Equipment. This is performed upon completion of the Site Turn-up and Test on a Site-by-Site basis on the Ring. Project Co engineers will use specific test & measurement tools following manufacturer turn-up and testing procedures, and will execute temporary circuit provisioning to enable end-to-end testing across the ring. Once all rings are operational, inter-ring operability and IP/MPLS failover requirements will be verified. Ethernet Services and DWDM Services will be tested as follows:

(a) Ethernet Services

1. Two Minute Bit Error Rate Test
2. One Minute Throughput Test of each packet size 64, 256, 1024, 1518 bytes, and jumbo frame (2000, 9000 and 9600)
3. Latency (RTD) Test
4. Frame Loss Test
5. Back to Back Test

(b) DWDM Services

1. Channel testing: all applicable channels will be tested across applicable Node Sites on the NG-KIH System for 15 minutes per channel.

2.13.2.2 Detailed test report showing the results of the tests performed per the steps identified in the MOPs to include the provisioning detail and light levels per standards and specifications as required by the Equipment.

2.14 Service Migration

2.14.1 Overview

Analyze the current Authority carrier network and develop an optimized strategy to migrate existing services, circuits and traffic from the current platform to the NG-KIH System. Service migration is conducted in three phases: discovery, analysis and migration.

2.14.2 Scope

2.14.2.1 Network Discovery: Project Co shall combine and complete an electronic and physical audit of the current network state. Items to be examined include:

2.14.2.1.1 Network topology

2.14.2.1.2 Circuit utilization

2.14.2.1.3 Fiber types and connectors

2.14.2.1.4 End-to-end connectivity

2.14.2.1.5 Working with the primary site contact, Project Co shall download site specific services, device databases and network configuration parameters enabling migration of existing services to the NG-KIH System.

2.14.2.1.6 Project Co and the Authority shall work together to ensure Sites on the current platform can communicate with Sites on the NG-KIH System.

2.14.2.2 Network Analysis: Project Co shall analyze legacy network environment to determine best method for service migration

2.14.2.2.1 Project Co shall develop site specific detailed MOP

2.14.2.2.2 Project Co shall create master design sheet which will:

1. Show full port correlations old and new systems
2. Create fully scripted commands for provisioning
3. Create fully scripted commands for migration

4. Create detailed fiber distribution and rewire information
5. Create fiber jumper run list including length, quantity and connector types

2.14.2.3 Migration Execution: Project Co shall migrate traffic from legacy platform to the NG-KIH System

2.14.2.3.1 Project Co shall perform comparative testing to validate the provisioning and functioning of the NG-KIH System versus the existing network.

2.14.2.4 Provisioning: Project Co shall provision traffic from legacy platform to the newly installed Service Level 1 Site and Service Level 3 Site platform. Project Co will remotely add the new circuits, activating new groups/slots/ports, IP route, routing tables for the transitioning customers within the NG-KIH System.

2.14.2.4.1 Project Co shall execute cutover of traffic as detailed in the MOP

2.14.2.4.2 Project Co will swing CPE fibers/ cables from old to new

2.14.2.4.3 Project Co shall verify alarms to ensure traffic is stable and provide detailed cut sheets to the Authority for status

2.14.2.4.4 Project Co to verify system stability with the Authority and the NOC

2.14.3 Authority Responsibilities

2.14.3.1 Provide information required by Project Co as set out in Section 2.14.2.1.5 and Section 2.14.2.1.6 of this Schedule 3;

2.14.3.2 Coordination between Service Level 1 Sites and Service Level 3 Sites and Project Co migration team in accordance with the Project Schedule or any amendments thereto;

2.14.3.3 Fiber jumpers between Equipment and any other equipment, pre-existing or otherwise;

2.14.3.4 Circuit ID and Circuit type i.e. Fiber SM or MMF, frame relay, DS-1, DS-3, OC-x, and Ethernet (as required);

2.14.3.5 Circuit ID port interface type, DSX-1 panel, DSX-3 panel, Ethernet patch panel, Fiber distribution panel SM or MMF interface (as required);

2.14.3.6 Current existing Circuit line protocol i.e. for a T-1 AMI or B8ZF (as required);

2.14.3.7 Work with Project Co to enable the connection and communication between the current network and the NG-KIH system; and

- 2.14.3.8 Any other responsibility set out in Appendix 3B [Service Migration Roles and Responsibilities] identified as an “Authority Responsibility” will be completed in accordance with the critical path timing set out in the Project Schedule.

2.14.4 Scope Exclusions

Decommissioning, de-installation and removal of replaced equipment.

2.15 Training

2.15.1 Overview

Project Co will provide training services, as selected by the Authority, at a mutually agreed Authority location in Kentucky regarding the use and maintenance of the Equipment incorporated into the NG-KIH System to the extent such training is included in the FNC Training Catalog, along with specific Juniper training as set out in the scope below.

2.15.2 Scope

Project Co to provide two (2) four (4) day classes for up to 6 Authority students each based on the various training courses for products in the NG-KIH System. The Authority will, in its sole discretion, select from the training courses offered by Project Co, including those in the FNC Training Catalog and/or Juniper courses offered by Juniper through FNC. The Authority will, in its sole discretion, select from the training courses offered by Project Co.

2.15.3 Authority Responsibility

- 2.15.3.1 The Authority to work cooperatively with Project Co on scheduling the classes selected by the Authority.
- 2.15.3.2 Student travel and living expenses while attending the training course.
- 2.15.3.3 The non-traffic lab equipment, servers, test equipment to be used for the training.
- 2.15.3.4 A classroom environment adequate to meet the student’s needs: network access to training lab server, an LCD projector, whiteboard and easel and one PC/laptop per every two students.

**APPENDIX 3A
PRODUCT SERVICE CATALOG**

1. Service Catalog Summary

The service catalog outlines available services for Service Level 1 Sites and Service Level 3 Sites connected to the NG-KIH System. Available services range from Layer 1 (optical transport) to Layer 3 (transparent routing) and depends on the CPE deployed. Optical transport services are restricted to 100G wavelength but Ethernet and Routed services can be provisioned with speeds ranging from 100Mbps to 10Gbps.

Available Speed	λ Service	Managed Ethernet Service			Managed Routed Service	
		PtP (E-LINE)	PtMP (E-TREE)	MPtMP (E-LAN)	L3VPN	Internet
100G	✓	✓	✗	✗	✗	✓
10G	✗	✓	✓	✓	✓	✓
Sub 10G	✗	✓	✓	✓	✓	✓
1G	✗	✓	✓	✓	✓	✓
Sub 1G	✗	✓	✓	✓	✓	✓

2. Optical Lambda Transport Services (OLTS)

Optical Lambda Transport Service is a high-bandwidth point to point wavelength service that is delivered on DWDM fiber optic links. Lambda services can be used to connect different Service Level 1 Sites and Service Level 3 Sites and/or large university campus and government buildings or to provide dedicated communication channels for stand-alone applications such as research/government data sharing, educational Web-hosting, Video, VoIP, data backup, or VPN access. Such services provide dedicated low latency with high bandwidths and feature strict SLAs with guaranteed speeds. The service can be offered at all ROADM locations. The CW network admins will have the option to hand-off 100 GE client lambda over this service.

3. Managed Ethernet Transport Services

3.1 Managed Ethernet Transport Services are delivered on the NG-KIH System for site connectivity. Managed Ethernet Transport Services carry the standardized features defined by IEEE 802.3 and will be implemented with and comply with the IEEE 802.3 standard, including QoS, high availability and resiliency, scalability, and operations, administration and maintenance.

3.2 Managed Ethernet Services are provided on MPLS based network using MPLS based Pseudowires and MPLS VPLS. By leveraging MPLS technology, these Managed Ethernet Transport services are protected at the MPLS layer across the Core Nodes.

3.3 The scalability of such services will allows the Authority to increase bandwidth, if required. If the Authority requires additional bandwidth such increase will be made by way of a Change. Managed Ethernet Transport Services exist between User-to-Network

interface (UNI) and Network-to-Network interface (NNI). UNI is defined as the demarcation point between existing or other equipment and the Equipment. Ethernet Virtual Connection (EVC) connects two or more UNIs for an Ethernet Service delivery and multiple EVCs can be multiplexed on the same UNI. There are three types of EVCs that can be delivered by this design.

3.3.1 Point-to-Point Ethernet Transport Services (E-TREE)

3.3.1.1 A Point-to-Point (E-Line) Ethernet Transport Service will provide Layer 2 Ethernet pipe between two end points. The service is defined between two UNIs and called Ethernet Private Lines. It is mostly used for Internet access or dedicated site to site connectivity. This service will provide an Ethernet connection that originates from one Ethernet port and ends at another which can be either port based or VLAN based.

3.3.2 Point-to-Multipoint Ethernet Transport Services (E-TREE)

3.3.2.1 The Point-to-Multipoint (Hub & Spoke) Ethernet Transport Service will utilize multiple point-to-point (E-Line) services which stem from a common Hub site (Root). Routing and routing policies across the Authority domain shall be undertaken by the Authority's IT staff.

3.3.3 Multipoint to Multipoint Ethernet Transport Services (E-LAN)

3.3.3.1 Multipoint-to-Multipoint E-LAN service will provide LAN based services connecting multiple end points in a single broadcast domain. This service is defined between more than two UNIs where any communication between parties is equally possible. This service can be used for multipoint L2 VPNs and transparent LAN service. In this service offering, the service can be used for setting up departmental or institution-based private VPNs. The service provides different Classes of Service (CoS) over scalable bandwidth.

4. Managed Layer 3 Virtual Private Network (L3VPN) Services

NG-KIH Managed L3VPN service extends routing capabilities between locations to create single routing domain. L3VPN service is based on MPLS Architecture. Layer 3 VPN service provides the Authority its own unique routing domain (instance). The Authority will be provided with a virtual routing instance with its own routing table. Managed L3VPN service is offered at any number of end points at various locations in the NG-KIH network footprint. All the handoffs in this service are IP based. A CPE router will be provided at Service Level 1 Sites and Service Level 3 Sites.

5. Internet Service

Internet Service connects end points to the Internet. The NG-KIH System provides high speed, dedicated Internet access over a fiber infrastructure. Choice of speed can range from 100Mbps to 10G and can be made available at 100G. Internet Service is delivered through Tier 1 ISPs connected to the NG-KIH network at various POPs. Internet access redundancy can be configured through dual homing of Service Level 1 Sites and Service Level 3 Sites to the Node Sites.

**APPENDIX 3B
MIGRATION ROLES AND RESPONSIBILITIES**

Discovery		
<p>The Authority will provide and/or coordinate access from the current network provider(s) to the detailed legacy circuit information required to migrate Sites, maintain site to site communications and establish communications between the old Authority network and the NG-KIH System. Information required can include network topology, design, statistics, details, history, current state, known issues and health. It is expected Project Co will work with the Authority’s Operating Representative and any required technical resources to identify and gather the necessary information to ensure first time migration success.</p>		
	Project Co	Authority
Network Topology	X	X
Circuit Utilization	X	X
Physical Fiber Types and Connectors	X	X
End-to-End Connectivity (Physical/Logical/Virtual)	X	X
Configuration Databases (Confirm Logical Configurations and Software - Version/Release/Features/Protocols)	X	X
Hardware (Environment/Equipment/Power)	X	X
Software (Version/Release/Features/Protocols)	X	X
Analysis		
	Project Co	Authority
Develop site specific detailed Method of Procedure (MOP)	X	X
Document full port correlations for old and new systems (Master Design Sheet - MDS)	X	X
Create fully scripted commands for provisioning (MDS)	X	
Create fully scripted commands for migration (MDS)	X	
Create fiber distribution/rewire information (MDS)	X	

Create fiber jumper run list including length, quantity, connector types (MDS)	X	
Develop project timeline and resource requirements	X	
Respond and Assist to outline rationale in legacy design, engineering, and configuration decisions, when necessary		X
Migration		
	Project Co	Authority
Perform testing to verify provisioning / wiring.	X	
Create master cutover plan	X	
Execute cutover of traffic as detailed within MOP	X	
Engineer to physically migrate CPE fibers/T1 cables from old to new	X	
On-board device under NOC Control	X	
Verify alarms to ensure traffic is stable	X	
Verify system stability with the commonwealth and the Network Operations Center (NOC).	X	
Provision traffic from legacy platform to the newly installed CAI platform.	X	
FNC will remotely add the new circuits, activating new groups/slots/ports, IP route, routing tables for the transitioning customers within the CW KIH Network.	X	
Provide detailed cut sheets to CW for circuit migration status	X	

**APPENDIX 3C
DESIGNATED EQUIPMENT**

See attached.

Material	Manufacturer	Model No.	Quantity	
288 Ribbon Fiber, all dielectric, gel-free, 24 Fibers per ribbon	OFS Corning	AT-3BE843X-288 288EV4-14100D53	9,532,829	\$17,349,038
144 Fiber, Loose Tube, All dielectric, gel-free, Single jacket	OFS Corning	AT-3BE12YT-144 144EU4-T4100D20	1,095,895	\$1,147,436
96 Fiber, Loose Tube, All dielectric, gel-free, Single jacket	OFS Corning	AT-3BE12YT-096 096EU4-T4100D20	936,863	\$679,752
72 Fiber, Loose Tube, All dielectric, gel-free, Single jacket	OFS Corning	AT-3BE12YT-072 072EU4-T4100D20	1,104,316	\$587,239
48 Fiber, Loose Tube, All dielectric, gel-free, Single jacket	OFS Corning	AT-3BE12YT-048 048EU4-T4100D20	4,942,042	\$1,903,093
24 Fiber, Loose Tube, All dielectric, gel-free, Single jacket	OFS Corning	AT-3BE12YT-024 024EU4-T4100D20	1,246,461	\$352,547
Splice Enclosure FOSC 450-B6 Series with (3) Ground Studs, Standard Basket, w/ 1 tray	TE Connectivity	FOSC450-B6-6-NT-0-B3V	2,545	\$535,340
Splice Enclosure FOSC 450-D6 Series with (3) Ground Studs, Standard Basket, w/ 1 tray,	TE Connectivity	FOSC450-D6-6-NT-0-D0V	732	\$227,345
Splice Tray FOSC 450-B Series Loose Tube, (2) SM-12 Modules	TE Connectivity	FOSC-ACC-B-TRAY-24-KIT	5,090	\$72,327
Splice Tray FOSC 450-D Series Ribbon, (R2)	TE Connectivity	FOSC-ACC-D-TRAYRIBN-24	8,784	\$290,590
Vault, Telecom/Utilities, Below-Grade, (30Wx48Lx36D) PolyConcrete, (vault only)	Highline Products	PHA304836	845	\$208,951
30x48 Split Cover w/ 1/4 Turn L-Bolt Lock & 2X Lifting Slot, Polymer Concrete, ANSI/SCTE 77-2010 Tier 15 Light Duty Load	Highline Products		424	\$100,678
30X48 Cover, Telecom/Utilities, Split, For Below-Grade, 3IN THK X 30IN W X 48IN L, Polymer Concrete, 4X 3/8IN-16 UNC Bolt Access Holes, 2X Lifting Slots, ANSI/SCTE 77-2010	Highline Products		423	\$96,313

Tier 22 Heavy Duty Load				
Vault, Telecom/Utilities, Below-Grade, (24x36Lx24D) PolyConcrete w/Drop-In Cover	Highline Products	PHA243624	1,923	\$501,411
Conduit, 1.25" dia, Smooth Wall, SDR 13.5 w/ 1250LB Pull Tape, HDPE, No Lube, Orange		SW1.25-SDR135-9483-O	2,537,258	\$922,437
1/4" EHS Galvanized Strand, 5,000 ft reels	Bekaert		14,469,233	\$2,384,430
Backup Generator, 50kW, Diesel, 200amp, 120/240V, 1-Phase, Outdoor-Steel, 210 Gallon	Generac Kohler	SD050-3-4I50REOZJE	21	\$305,002
Transfer Switch, 200amp, 120/240, 1-Phase, NEMA 3R	Generac Kohler	ATS 200-T	21	\$63,923
Communication Shelter, 10' W x 22' L x 9' Tall, (1) 3' W Steel Entry Door, Stone Aggretate Exterior, Painted "I" Beam Skid Frame, R11 Insulation, Vinyl Floor, 200 amp Dist Panel, fully wired w/ lighting, outlets, switches. (2) 3-ton 5kW AC units, (70') 12" cable ladder, (7) 19" Newton racks installed, Halo Ground System, Alarm contacts for door, smoke, hi/low temp, power fail, (1) Floor Penetration. KY Approved Drawings			21	\$918,148
			Total	\$28,646,000
** Note – Quantities above are estimated based on preliminary design as of July 10, 2015. These quantities are subject to change as final design is completed.				

**APPENDIX 3D
DESIGNATED EQUIPMENT PROTOCOL**

See attached.

APPENDIX 3D DESIGNATED EQUIPMENT PROTOCOL

The Authority is required to purchase the Designated Equipment pursuant to Section 3.6 of this Project Agreement and in accordance with the Project Schedule and this Appendix 3D.

EQUIPMENT AND MATERIALS

The Designated Equipment is listed in Appendix 3C [Designated Equipment]. As at the Effective Date, there are no purchases of equipment or materials required by the Authority, other than the Designated Equipment. The Authority agrees that the Designated Equipment will be delivered visibly undamaged to the appointed location at the time specified. The Authority represents and warrants that it will make all necessary undisputed payments required and will comply with all other terms and conditions of any purchase order or other documentation in respect of the Designated Equipment.

PROCESS

Quantities and Estimated Purchase Order Initiation and Delivery Dates:

The Authority will appoint a purchasing representative to coordinate, with the Design-Builder purchasing representative, the ordering activities of the Designated Equipment. The Authority will work with the Design-Builder purchasing representative to place the orders including allowing the Design-Builder purchasing representative the opportunity to review the purchase orders or other documentation prior to submission to the vendors. The type and quantity of the Designated Equipment and the exact delivery location address, time window and delivery date will be specified by the Design-Builder purchasing representative only.

The Design-Builder purchasing representative will advise the Authority purchasing representative 5 days in advance of the Authority Order Dates set out below. The applicable required order dates (the “**Authority Order Dates**”) for the various Designated Equipment types are:

20 weeks in advance of the required delivery date for fiber orders;

12 weeks in advance of the required delivery date for Hut orders; and

6 weeks in advance of the required delivery date for Bulk Material orders.

“**Bulk Materials**” means that portion of the Designated Equipment listed in Appendix 3C for vaults, covers, strand, splice closures, trays and conduit.

The quantities and delivery requirements for the Designated Equipment are estimated as follows:

- Approximately 25% of the quantities as reflected on Appendix 3C were ordered prior to the Effective Date for delivery from August through December 2015.
- 25% of the quantities as reflected on Appendix 3C must be ordered and added to the purchase orders each month at the rate of 5% per month commencing on the 1st day of

each month effective October 2015 to support Ring 1A & Ring 1B construction currently scheduled January 2016 through May 2016.

- 50% of the quantities as reflected on Appendix 3C must be ordered and purchased as indicated by the Design-Builder's purchasing representative, over the following two years from January 2016 through January 2018 to support Project Schedule for Rings 2-5.

All Bulk Materials will be purchased through a local Kentucky distributor selected by the Design-Builder and agreed to by the Authority, acting reasonably. The local Kentucky distributor will ship some materials directly to the construction subcontractors using an FCA destination basis which makes the distributor responsible for any shipping damage or loss. The local Kentucky distributor will also utilize two (2) Kentucky warehouses to stage and kit materials for smaller subcontractors. The Authority's and Design-Builder's purchasing representative will work with the distributor to determine the minimum/maximum inventory levels to be carried at each warehouse location. The Design-Builder will inform Authority whether the shipments will be direct shipments to the primary construction subcontractors (as defined below) or whether the shipments will be directed to the local warehouse facilities. The Design-Builder will provide regular updates to the Authority on the status of any orders and shipments and respond to inquiries from the Authority or Project Co within 1 Business Day.

The Hut enclosure will be purchased from a building manufacturer outside of Kentucky who will design, fabricate and deliver the enclosures to each Node Site Location in Kentucky. Backup generators and automatic transfer switches will be purchased by the Authority directly from the manufacturer and shipped directly to the Hut Location Sites where they are required.

Designated Equipment Delivery Locations:

The Authority acknowledges that the three primary construction subcontractors will establish various material staging yards around the Commonwealth of Kentucky to support local construction crews and deliveries of Designated Equipment shall be made directly to each primary construction subcontractor's staging yard and the purchase orders or other documentation will contemplate the unloading of the shipment by the transportation provider at the designated location. Huts will be delivered directly to the jobsite where each is being installed. The Authority will be responsible for paying the freight cost for all Designated Equipment deliveries on a prepaid and invoiced basis.

If the Authority anticipates a delay in the ordering or delivery of the Designated Equipment whether due to an Authority caused delay or for any other reason or the timely performance of any of the Authority's obligations in respect of the Designated Equipment, it will immediately notify Design-Builder purchasing representative.

Terms and Conditions of the Designated Equipment Purchase Orders:

In the event the Design-Builder purchasing representative is of the opinion that the purchase order terms and conditions do not support the Project Schedule, the Design-Builder purchasing representative will discuss the matter with the Authority's purchasing representative and resolution will be sought so as to not impact the Project Schedule or expose the Design-Builder to additional risk or costs. Additionally, when the Authority's representative is placing any purchase orders for the Designated Equipment it will contain the following terms and conditions:

- 1) The Design-Builder is authorized to act “as agent” on behalf of the Authority in regard to the purchase order or other documentation; however, the Design-Builder shall notify the Authority whenever they have acted as an agent thereof subject to the following sentence. For purposes of clarity, it is anticipated that the Design-Builder will act as the agent of the Authority for communicating with the material vendors, distributors and construction subcontractors regarding specific details of material orders such as shipping, delivery times, locations and quantities and it shall not be necessary for the Design-Builder to notify Authority each time it acts in that capacity.
- 2) The warranty term of the Designated Equipment will cover any shipping, storage and contractual warranty terms applicable to the Project (the specific warranty term to be confirmed with the Design-Builder’s representative).
- 3) The warranty applicable to the Designated Equipment is fully assignable to the Design-Builder. The specific warranty term can be confirmed with the Design-Builder’s purchase representative.
- 4) The risk of loss and title transfer of any particular shipment is clearly defined to allow the equipment and materials to come into the possession of the Design-Builder at a defined point (a designated warehouse or primary construction contractor’s materials staging yard) and to be included in the BAR insurance coverage.
- 5) Issues pertaining to the ordering and delivery of the Designated Equipment shall be handled as follows:
 - a) In the event the Authority fails to order Designated Equipment in accordance with the Authority Order Date or places an incorrect order or orders, the Design-Builder will assist the Authority in determining the source of the issue; however, it will be the Authority’s obligation to correct and reorder any Designated Equipment so as not to impact the Project Schedule or if the Authority is unable to do so it will be a breach of this Designated Equipment Protocol by the Authority. It shall be the Design-Builder’s responsibility to provide accurate and timely information, in accordance with this Designated Equipment Protocol, to the Authority as to the quantity of, or delivery dates for the Designated Equipment.
 - b) If the Designated Equipment is delivered late or damaged to either (i) the Design-Builder at the warehouse facility or (ii) directly to a construction subcontractor at its staging yard, in either (i) or (ii) through no fault of the Authority, the Design Builder agrees to assist the Authority in working with any supplier or transporter claims process on behalf of the Authority to collect documentation (paperwork and pictures) to support any Authority claim.

The parties agree that if the process and requirements set out in this Appendix 3D are not followed by the any party, the Project Schedule will be impacted. The parties acknowledge that they are relying on one another’s compliance with this Appendix 3D and each agrees to comply with all of its obligations hereunder.

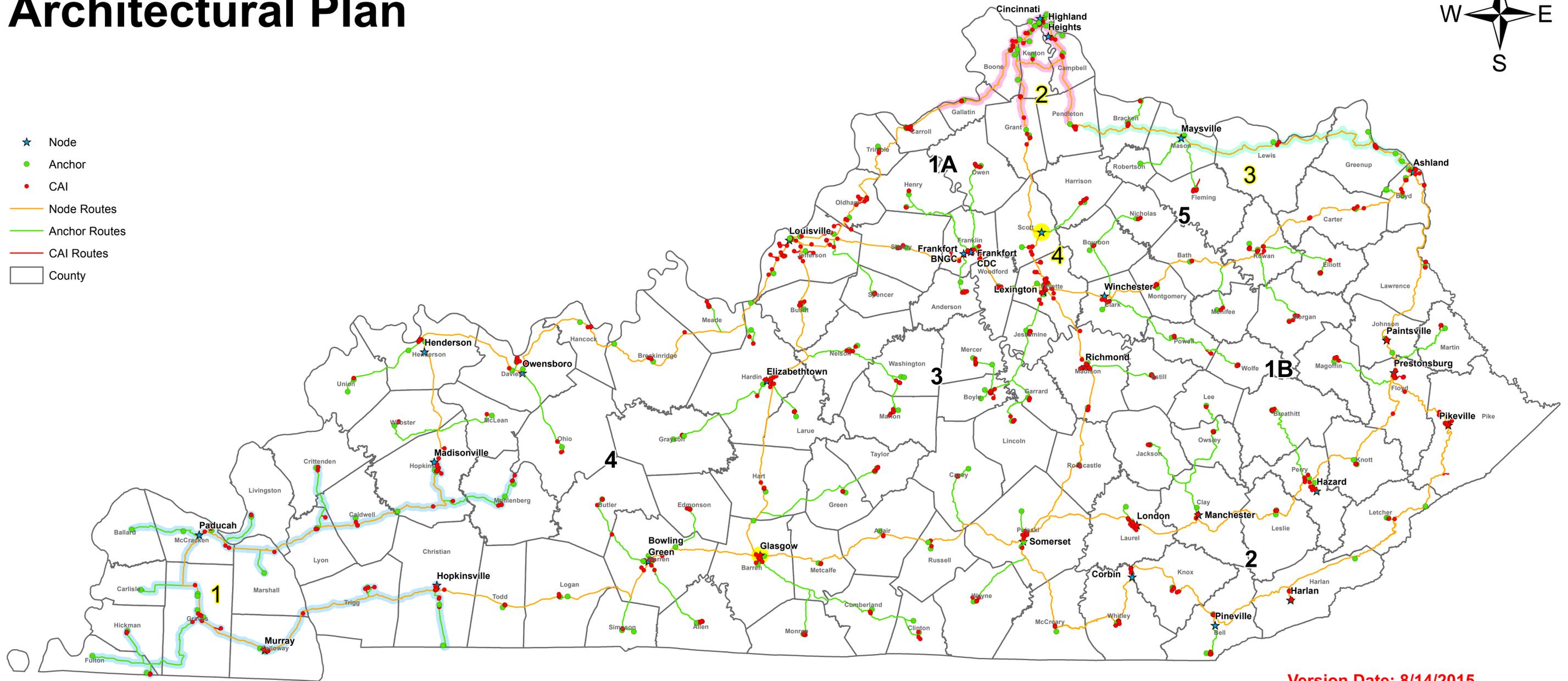
**APPENDIX 3E
DESIGN MAP**

See attached.

Appendix 3E Design Map Kentucky Information Highway Architectural Plan



- ★ Node
- Anchor
- CAI
- Node Routes
- Anchor Routes
- CAI Routes
- County



Version Date: 8/14/2015

1. Muninet: Co-build 246 route miles. Eliminate 25 route miles and co-locate 4 huts.
2. CBTS IRU: Eliminates 158 route miles and 1 hut location.
3. Ring 5 Option #2: Reduces 115 route miles backbone to 144 count fiber.
4. Georgetown Hut relocation.

PRELIMINARY
NOT TO BE USED FOR CONSTRUCTION

Type	Sites	Segments	Route Miles
Node	31	36	1759
Anchor	252	204	1226
CAI	815	1038	223
Total	1098	1278	3209

*Anchor Site count includes 25 Anchor Sites co-located at the 25 Node locations.



**SCHEDULE 4
SERVICES PROTOCOLS AND SPECIFICATIONS**

1. DEFINITIONS

In this Schedule 4, in addition to the terms defined in Schedule 1 [Definitions and Interpretation]:

“Equipment-Only Outage” means any or a combination of the following that renders the NG-KIH System not Available at any Site: (i) a condition with the Equipment that results in a total loss of traffic (xWDM, Ethernet, or IP/MPLS services), or (ii) a complete loss of traffic or routing capabilities due to an equipment outage;

“Fiber Outage” means a physical break that renders the NG-KIH System not Available at any Site caused by any event (including digging, rodent damage and environmental circumstances) which impairs the performance of fiber optic cable;

“Operating Period Representative” has the meaning set out in Section 2.1(a) of this Schedule 4;

“Operating Plan” has the meaning set out in Section 4.1 of this Schedule 4;

“Outage” means an Equipment-Only Outage or a Fiber Outage;

“Performance Monitoring Plan” means the performance monitoring plan prepared by Project Co, as revised and updated by Project Co from time to time; and

“Performance Monitoring Program” has the meaning set out in Section 6.1 of this Schedule 4.

2. ADMINISTRATION

2.1 Operating Period Representatives

- (a) Each party will, by October 31, 2015, designate in writing a person (the **“Operating Period Representative”**) to be the party’s single point of contact with respect to the Services. Project Co’s Operating Period Representative will be a Key Individual. Except as otherwise set out in this Project Agreement, each Party will bear all of its costs or expenses incurred by or with respect to a party’s Operating Period Representative.
- (b) Subject to Section 2.8 of this Project Agreement in respect of Key Individuals, a party may, at any time and in its own discretion by notice to the other party, change the person appointed as the party’s Operating Period Representative. If, for any reason, a party’s Operating Period Representative is unable or unwilling to continue, then the party will immediately appoint a replacement Operating Period Representative. If, at any time, a party objects to an Operating Period Representative of the other party, then the other party will give reasonable consideration to replacing the Operating Period Representative with a person reasonably acceptable to the objecting party.
- (c) A party’s Operating Period Representative will have full authority to act on behalf of and bind the party with respect to the Operating Period under this Project

Agreement, including giving any review, acceptance, approval or confirmation which may be given by the Authority. Notwithstanding the above, a party's Operating Period Representative will not have the authority to execute or agree to any amendments of or to give any waivers under this Project Agreement.

2.2 Annual Review

At least once per year during the Operating Period, the Parties shall meet to review the Project and this Project Agreement, including all applicable thresholds and timelines.

2.3 Authority Not Responsible for the Services

The Authority's rights of review, acceptance, approval or confirmation of compliance with respect to any aspect of the Services will be for the Authority's benefit only, and no acceptance, approval or confirmation of compliance by the Authority's Operating Period Representative or other representative of the Authority will in any way relieve Project Co of its obligation for all aspects of the Services except as may be expressly set out in this Project Agreement.

3. PERFORMANCE OF SERVICES

3.1 Delivery of Services

Project Co will, at all times during the Operating Period, provide the Services in accordance with the specifications set out in this Schedule 4 and Appendix 4A [Services Specifications], this Project Agreement and the Operating Plan then in effect.

3.2 Standards

Project Co will, at all times during the Operating Period, provide the Services:

- (a) in accordance with the standards set out in Schedule 3 [Design and Construction Specifications] and this Schedule 4 [Services Protocols and Specifications];
- (b) in compliance with all applicable Laws;
- (c) in compliance with all applicable Permits, including all reporting obligations thereof; and
- (d) in a manner based on sound technical and operational procedures in accordance with Customary Industry Practice.

If one or more of the foregoing standards is applicable to any particular Service, then the highest of such standards will apply, provided that, in all cases, such standard or standards will be applied taking into account the age, use and reasonable wear and tear of the NG-KIH System, but without altering the specifications or the Services required to be provided in accordance with this Project Agreement.

4. OPERATING PLAN

4.1 Operating Plan

Project Co will prepare an operations and maintenance plan (the "**Operating Plan**").

Schedule 4 - Services Protocols and Specifications
NG-KIH Project

4.2 Preparation of Operating Plan

Project Co will work co-operatively with the Authority's Operating Period Representative in the preparation of the Operating Plan, and any amendments thereto. The Operating Plan, and any amendments, must be reasonable having regard to the requirements of this Project Agreement and will be developed and finalized as follows:

- (a) the Authority will, acting reasonably, make itself available to consult with Project Co in connection with the development of the Operating Plan, and any amendments thereto;
- (b) Project Co will deliver a draft of the Operating Plan to the Authority on or prior to October 31, 2015;
- (c) the Authority will provide its comments, if any, on the draft Operating Plan to Project Co on or prior to December 31, 2015;
- (d) Project Co will deliver a revised draft of the Operating Plan to the Authority on or prior to January 31, 2016;
- (e) on or prior to February 19, 2016, the Authority will, advise Project Co whether the Authority accepts the Operating Plan, or, if the Authority does not accept the Operating Plan, the Authority will provide its reasons for such non-acceptance in sufficient detail to allow Project Co to address them;
- (f) if the Authority does not accept the Operating Plan, the parties will, acting reasonably, diligently work together with a view to revising the Operating Plan to address the Authority's reasons for non-acceptance; and
- (g) if the Authority has not accepted the Operating Plan by the date that is February 29, 2016, Project Co may refer the Dispute to the Dispute Resolution Procedure to determine whether Project Co's proposed Operating Plan is reasonable.

4.3 Amendment of the Operating Plan

Project Co will follow the review procedure described in Section 4.2 prior to amending any Operating Plan, except the date in Section 4.2(b) above will instead refer to the date that the amendment to the Operating Plan is delivered by Project Co to the Authority (the "**Delivery Date**"), the date in Section 4.2(c) will be removed and the new date will be 30 days from the Delivery Date, the date in Section 4.2(d) will be removed and the new date will be 50 days from the Delivery Date, the date in Section 4.2(e) will be removed and the new date will be 75 days from the Delivery Date and the date in Section 4.2(g) will be removed and the new date will be 4 months from the Delivery Date.

4.4 Authority Comments

Any comments provided by the Authority proposing changes to the Operating Plan submitted to it by Project Co under the review procedure described in Section 4.2 of this Schedule 4 are not considered Changes and will be completed at Project Co's cost and expense, unless any such proposed change would constitute a material change to this Project Agreement, in which case, the terms of Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply and such

proposed change will not be implemented except under a Change Certificate issued by the Authority. If and to the extent the Authority requires an amendment to the Operating Plan that it has previously reviewed and commented on (other than an amendment required to bring the Services into conformity with these Services Protocols and Specifications), such amendment will be a Change and the terms of Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply.

5. SERVICES

5.1 Described Services

Project Co will perform the services described in Appendix 4A [Services Specifications].

5.2 Additional Services

Project Co agrees that, in addition to the Services, it will provide all other ancillary and additional services as may be reasonably required to achieve the Services Specifications, but such ancillary and additional services do not include providing the Services on third party equipment or fiber.

6. PERFORMANCE MONITORING AND REPORTING

6.1 Project Co Performance Monitoring

Project Co will develop and at all times during the Operating Period have in place a performance monitoring program in accordance with the Performance Monitoring Plan (the "**Performance Monitoring Program**").

6.2 Reporting Requirements

Project Co will submit reports to the Authority's Operating Period Representative in accordance with the reporting requirements set out in Appendix 4A [Services Specifications] and Schedule 14 [Records and Reports].

6.3 Authority Inspection and Audit

Project Co will, on reasonable notice from the Authority:

- (a) permit the Authority to access, review and audit all records, information and reports maintained by Project Co in accordance with this Schedule 4;
- (b) ensure that the Performance Monitoring Program stores information and generates reports such that they are capable of, and readily available for, audit; and
- (c) facilitate and assist the Authority with any audit or inspection of the NG-KIH System, the Services or the Performance Monitoring Program undertaken by the Authority.

6.4 Increased Monitoring

If:

- (a) Project Co incurs Deductions of:
 - (1) \$275,000 (Index Linked) or more in any 1 month period;
 - (2) \$810,000 (Index Linked) or more in any 3 consecutive month period;
 - (3) \$1,600,000 (Index Linked) or more in any 6 consecutive month period; or
 - (4) \$3,250,000 (Index Linked) or more in any 12 consecutive month period;
or
- (b) a Reporting Error (whether related to the same type of Reporting Error or not) occurs on more than three occasions in any 12 consecutive month period,

the Authority may increase its monitoring of the performance by Project Co under this Project Agreement and carry out any inspections and audits which it reasonably requires for a period of up to 90 days. Project Co will reimburse the Authority for all reasonable costs and expenses incurred by the Authority in carrying out such additional monitoring, inspections and audits within 5 Business Days after the Authority delivers an invoice to Project Co for such amounts.

6.5 Authority's Right of Access

The Authority may, at all times during the Operating Period, without notice, access, audit and inspect the NG-KIH System and Project Co's delivery of the Services to confirm the performance by Project Co of its obligations under this Project Agreement and that the NG-KIH System is being maintained in accordance with the terms of this Project Agreement, provided that:

- (a) the Authority does not unreasonably interfere with the performance by Project Co of its obligations under this Project Agreement; and
- (b) the Authority complies with Project Co's safety and security policies, provided that Project Co has delivered copies of such policies to the Authority and such policies do not unreasonably impair or limit the Authority's ability to access all aspects of the NG-KIH System.

If the Parties agree, or if it is determined in accordance with the Dispute Resolution Procedure, that Project Co is performing its obligations under this Project Agreement and the NG-KIH System is being maintained in accordance with the terms of this Project Agreement, then, to the extent that the Authority's exercise of its rights under this Section 6.5 has materially interfered with Project Co's ability to perform the Services, such interference will be treated as an Excusing Event.

7. HANDBACK

7.1 Handback Requirements

Project Co will carry out the Handback Requirements in accordance with Appendix 4B [Handback Requirements].

APPENDIX 4A SERVICES SPECIFICATIONS

1. DEFINITIONS

In this Appendix 4A, in addition to the terms defined in Schedule 1 [Definitions and Interpretation]:

“**Access Point**” means a component of the NG-KIH System that transmits and receives data;

“**AHR Services**” means Advanced Hardware Replacement Services, as described in Section 3.2(b) of this Appendix 4A;

“**Change Control Request**” means the request to provide a change in the configuration of services to a Site Location and is described in Section 2.2(d)(2);

“**Circuit**” means the Access Point or section between two or multiple terminals over which one-way or two-way communications may be provided. A complete path may terminate between an access point “A” and a destination point “Z” and transverse over multiple access points. Each transition point or, section, between access points which the path is required to be configured is determined as a circuit. A circuit is also assigned a unique identifier between each termination point and section;

“**Complex Remote Change**” means a change affecting multiple supported devices, circuits, routing tables or users that can be performed remotely by a NOC provisioning technician, involves an element of risk and require a back out plan in the event problems are encountered and precautionary measures such as device backups are performed;

“**CPE**” means Customer Premise Equipment managed by Project Co unless otherwise stated;

“**Emergency Change**” means an immediate change in the logical or physical configuration of the NG-KIH System to accommodate an Emergency;

“**Equipment List**” means the list of equipment to be installed in the NG-KIH System;

“**Field Locations**” has the meaning set out in Section 2.1(b)(4) of this Appendix 4A;

“**MACD**” has the meaning set out in Section 2.3 of this Appendix 4A;

“**Monthly Fault History Report**” means the report described in Section 2.2(c) of this Appendix 4A;

“**Monthly Incident Report**” means the report described in Section 2.2(a) of this Appendix 4A;

“**Monthly Inventory Report**” means the report described in Section 2.2(b) of this Appendix 4A;

“**Monthly Service Request Report**” means the report described in Section 2.2(d) of this Appendix 4A;

“**NOC**” means the Network Operations Center provided by Project Co or a third party on behalf of Project Co;

“**NOC Incident Ticket**” has the meaning set out in Section 2.1(b)(1) of this Appendix 4A;

“**Product Service Catalog**” has the meaning set out in Schedule 3 [Design and Construction Specifications];

“**Service Request**” has the meaning set out in Section 2.3(a) of this Appendix 4A;

“**Service Request Order**” means the request to provide services to a Site and is described in Section 2.3(c)(3) of this Appendix 4A;

“**Simple Remote Change**” means a change affects a single supported device or circuit and can be performed remotely by a NOC provisioning technician;

“**Simple Remote Speed Change**” means a change that can be made remotely to existing circuits on a single device requiring only a change to the configuration profile of a device within the parameters and capabilities of the existing hardware and within the specifications of the Product Service Catalog;

“**Site Access Plan**” has the meaning set out in Schedule 3 [Design and Construction Specifications];

“**Ticketing System**” has the meaning set out in Section 2.1(b)(2) of this Appendix 4A; and

“**Web Portal**” means the web portal provided by Project Co and accessible by the Authority through the Authority’s two (2) licensed seats providing read-only remote access as further described in Section 2.2(f) of this Appendix 4A.

2. SCOPE OF WORK - OPERATIONS

2.1 Fault Management

(a) Overview

The combination of fault management, incident restoration, problem management, and configuration management fall under the overall umbrella of network management. Project Co will follow Customary Industry Practice network management, maintenance and incident resolution practices to meet or exceed the requirements set out in Section 2 of this Appendix 4A. This fault management is provided through dedicated, redundant and secure Multi-Protocol Label Switching (MPLS) connections between the two (2) geographically diverse NOC data networks and the two (2) geographically diverse Authority gateway elements operating on the NG-KIH System. Project Co will not take responsibility for failures in third party equipment or fiber.

(b) Scope

(1) Fault Management Services

Project Co shall utilize the NOC to remotely monitor the NG-KIH System 7 days a week x 24 hours per day x365 days per year to proactively manage potential network issues. The system monitoring, management

and reporting systems will receive, filter and correlate events and alarms generated by the NG-KIH System when threshold levels as defined in the Operating Plan are exceeded. Incidents may also be reported to the NOC by telephone or email. When an alarm is triggered, the NOC will generate an incident ticket ("**NOC Incident Ticket**"). If the Incident does not clear within 5 minutes a NOC Engineer will be assigned to the ticket to initiate troubleshooting and restoration efforts and will dispatch the ticket to the appropriate workgroup. The Authority's designated point(s) of contact will be notified of the issue.

(2) Incident and Alarm Notifications

A NOC Incident Ticket will indicate all available information in respect of the incident identified by Project Co's device management software tools deployed. At a minimum when the NOC Incident Ticket is first created it will include a time stamp and a description of the system impacted to the extent such information is available.

Project Co will correlate and filter incoming alarms based on the capabilities of the specific tools used for monitoring.

As soon as a network fault is detected, a NOC Incident Ticket will be opened in the NOC's event tracking system which generates all tickets (the "**Ticketing System**").

(3) NOC Incident Restoration

NOC Incident Restoration includes the activities necessary to correct abnormal and service effecting situations within the NG-KIH System. The NG-KIH System is an end-to-end network composed of network hardware and software, including the Node Sites and Service Level 1 Sites and Service Level 3 Sites. NOC Incident Restoration encompasses these components.

(4) NOC Dispatch Process

If necessary, the NOC personnel will confirm with the Authority's Operating Period Representative and, in accordance with the Site Access Plan, to obtain Access or make escort arrangements in order for the field technician to gain Access to the relevant Site, or the field locations that are applicable to the Project (the "**Field Locations**"). Once Access is confirmed or escort arrangements are made with the Authority's Operating Period Representative, the NOC personnel will contact the dispatch organization in the specific region required for the appropriate response time listed for the relevant Site or Field Locations.

If applicable, the Authority escort information will be provided to the dispatch field technician and/or construction crew by the NOC personnel. Arrangements for arrival time and any specific details for Access to the Site or Field Locations will be coordinated directly with the dispatched

technician and/or construction crew and the Authority appointed escort in accordance with the Site Access Plan.

Once at the relevant Site or Field Location, the dispatched field technician's and/or construction crew's arrival time is recorded by the NOC and they will contact the Authority's escort, if applicable, and gain Access to the Equipment at the Site so NOC Incident Restoration can be performed with the NOC.

The NOC will work closely with the field technicians and/or construction crew to coordinate the technician's troubleshooting actions through restoration at the relevant Site.

If an Authority person is available to assist at the Site, at the request of Project Co, the NOC may also work with an Authority person to verify power, provide a visual assessment of any equipment lamp indicators or reset the power on a piece of Equipment. For clarity, the Authority person's involvement will have no impact on how an Incident Ticket is managed or the Deduction regime.

(5) Problem Management

The problem management methodology is used to capture systemic issues that generate repeat NG-KIH System incidents, identify and isolate their root causes and define workarounds or temporary solutions while implementing permanent solutions. Project Co will utilize industry standard tools and techniques to find and eliminate these issues before they become critical issues. Critical issues are those issues that impact multiple Site Locations.

(6) Configuration Management

Configuration management is the detailed recording and updating of information that captures hardware and software configuration details. Such information typically includes the design and configurations of the NG-KIH System, hardware and software revisions, circuit routing information and other information needed for network remediation, restoration and proactive management. Details will be captured regularly and stored within the NOC's inventory list of Equipment. This information is then readily available for disaster recovery, network element recovery, product change notice validation, network simulation and other critical needs as they arise.

2.2 Standard Reporting

Project Co will provide standard reports at regular intervals in a consistent format that includes a statement of purpose, a summary of findings, data collection, conclusions and key recommendations from Project Co's Operating Period Representative. The following standard reports shall be provided as part of Project Co's Fault Management Services within fifteen (15) Business Days after the end of each reporting period:

(a) Monthly Incident Report

This report is designed to track and report the incidents that occur with each item of Equipment and tracked by Project Co monitoring tools and team. This will include the current status of individual Equipment incidents that are logged and tracked within the NOC's Ticketing System. In addition to the structure of the report as described above (Standard Reporting), this report shall include the following data:

- (1) Ticket number
- (2) Device name
- (3) Device type
- (4) Alarm severity (Minor, Major or Critical) if applicable
- (5) Incident description
- (6) Ticket open, issue restored and closed dates
- (7) Ticket status or state (open, closed, restored or pending)
- (8) Time to restore or resolve problem (MTTRespond or MTTRestore), if applicable

(b) Monthly Inventory Report

This report is designed to track and report on the NG-KIH System identified by Project Co's monitoring tools and team. In addition to the structure of the report as described above (Standard Reporting), this report shall include the following data:

- (1) Device name
- (2) Device location
- (3) Product type
- (4) Product software version
- (5) Product hardware version
- (6) Product software revision
- (7) Product hardware revision
- (8) Product IP address

(c) Monthly Fault History Report

This report is designed to track and report the alarms that are being opened and tracked by the NOC monitoring tools and team. This will include the current status by having the individual device alarms logged and tracked within the NOC's Ticketing System. The information gathered will be reviewed and analyzed by Project Co's NOC problem management team. Project Co's Operating Period Representative will report any trends found by Project Co's NOC problem management team and provide recommendations to address findings such as chronic problem resolution. In addition to the structure of the report as described above (Standard Reporting), this report shall include the following data:

- (1) Device name
 - (2) Device type
 - (3) Alarm severity (Minor, Major or Critical), including a time stamp of when the incident as reported
 - (4) Alarm type
 - (5) Alarm description
 - (6) Problem summary
 - (7) Problem status
 - (8) Problem restoration, including a time stamp of when the incident is restored
 - (9) Analysis
- (d) Monthly Service Request Reports

Changes within the NG-KIH System will be tracked and reported by the service request (provisioning) and change control process and reporting. In addition to the structure of the report as described above (Standard Reporting), these reports shall include the following data:

- (1) Monthly Service Request Report - The monthly service request report is designed to include any devices or services that are added to the NG-KIH System in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals] and will include data such as:
 - (i) Ticket number
 - (ii) Device name
 - (iii) Device type
 - (iv) Circuit ID
 - (v) Site address

- (vi) Status
 - (vii) Number of circuits to configure
 - (viii) Create date
 - (ix) Closed date
 - (x) Time to complete
- (2) Change Control Request Report - The change control request report will cover the changes within the existing environment of the NG-KIH System currently monitored by the NOC and will include such data as:
- (i) Ticket number
 - (ii) Device name
 - (iii) Device type
 - (iv) Circuit ID
 - (v) Change type
 - (vi) Summary
 - (vii) Status
 - (viii) Create date
 - (ix) Closed date

(e) Other Reports

An inventory report is a report that lists the inventory/assets within the managed NG-KIH System. Not all details may be available for all Equipment or Sites. Details will be captured automatically or manually by database backups from the Equipment or applications. Inventory reports are comprised of information input manually or available electronically.

Manual: device TID/hostname/system address, physical locations including site address, GPS coordinates, floor, aisle, rack and shelf location information.

Automatic: device type, serial number, date-of-manufacture, release or version numbers and quantity.

A circuit report which lists the circuit details within the managed NG-KIH System. Not all details may be available for all Equipment or Sites. Details will be captured automatically or manually by database backups from the Equipment or applications. Circuit reports are comprised of information input manually or available electronically

Manual: device TID/hostname/system address, physical locations including site address, GPS coordinates, floor, aisle, rack and shelf location information.

Automatic: device type, serial number, date-of-manufacture, release or version numbers and quantity.

(f) Remote Customer View

Two (2) licenses will be provided for remote customer view via the Web Portal accessed via the internet using a two factor authentication. With remote customer view access, the Authority will have the capability to view the status of the NG-KIH System, generate alarm, condition, configuration, and inventory reports, and other reports as may be developed in accordance with the Enhanced Performance Management. Date and query fields available include device status, IP address, device type, system name, and location. Fields are available for view access only and are restricted from updates. The Authority will be provided access to view tickets along with details of the trouble issue. The Authority's access will provide authorized users with "view-only access" to query, sort and select tickets for further review including the ability to view the ticket's various fields with their respective status and notes.

(g) Root Cause Analysis

Upon request, root cause analysis reports will be provided to the Authority in accordance with the Standard Reporting requirements set out in Section 2.2 of this Appendix 4A.

2.3 Service Provisioning

(a) Overview

Project Co shall perform remote provisioning work within the NG-KIH System. For the purposes of this Appendix 4A, Service Provisioning is referred to as logical Move, Add, Change and Disconnect (MACD). MACD requests are made by the Authority, implemented remotely by Project Co and characterized as Simple Remote Change, Complex Remote Change or Simple Remote Speed Change (the "**Service Request**"). MACD requests are performed remotely on Equipment and may include changes to one or more of the following parameters:

- (1) Circuits
- (2) Ports
- (3) Termination points
- (4) Routing tables
- (5) Access lists
- (6) Passwords

(b) Information Requirements from the Authority

Complete Services Request Form including the required information for provisioning into the NG-KIH System.

(c) Scope

(1) Project Co will be responsible for engineering the Service Request to ensure there is sufficient capacity in the NG-KIH System to implement the Service Request. In the event that a Service Request is not achievable given the NG-KIH System's configuration at the time of the request, the Authority can withdraw the Service Request or proceed in accordance with the terms of Schedule 6 [Changes, Minor Works and Innovation Proposals]. Project Co will undertake the following activities in accordance with the Operating Plan to determine whether the Service Request is achievable in the existing configuration of the NG-KIH System at the time such request is submitted by the Authority:

(i) Complete the pre-engineering service request with specific details necessary to satisfy the Service Request.

(ii) Method of procedures will be coordinated and completed in advance of scheduled need, when applicable.

(2) MACDs are pre-engineered and performed remotely by Project Co, subject to receipt from the Authority of the information described in Section 2.3(b).

(i) Move: The function of remotely moving an existing circuit from one termination point to another in the NG-KIH System.

(ii) Add: The function of remotely adding a new circuit, activating new groups/slots/ports, IP route, routing tables or users within the NG-KIH System.

(iii) Change: The function of remotely changing a group configuration, user level settings, circuit parameters for operations, IP routing in a switched network or DNS Proxy block/unblocks.

(iv) Logical Disconnect: The disconnect of a logical or virtual circuit. The requested action is to remotely disconnect a logical circuit when circuit resources are no longer required. Logical disconnect examples include configuration changes relating to the disconnection or deletion of a port, circuit, or other resources which no longer have purpose on the NG-KIH System.

(3) Project Co will implement remote, logical MACD tasks via the NOC. A service request ticket will be created by the NOC which will be used for scheduling, tracking, notification and detailing the specifics of the Service Request (a "**Service Request Order**").

- (4) Details of the requested change will be documented within the relevant Service Request Order.
 - (5) Notification of start and finish times to the Service Request will be sent to the Authority.
 - (6) Service Request Orders are processed during business hours Monday-Friday, Central time, excluding the NOC's observed holidays. MACDs with any maintenance requiring after-hours or weekend work will require special scheduling. MACDs will be conducted during pre-arranged timeframes after confirmation of request and Project Co personnel assignments have been established. Partial, incorrect and/or incomplete requests are excluded from these timeframes and will be returned for resubmission. For further clarity, the provisioning provided during the initial transition to the NG-KIH System and any System Refresh are not considered MACDs.
 - (7) Project Co administrators will work with the Authority for scheduling MACD implementations. Timeframes for Authority MACD requests will be established as agreed to between the parties and, if possible, within the established timeframes listed in Section 2.6 of this Appendix 4A.
- (d) Simple Remote Speed Change
- (1) A Simple Remote Speed Change is made remotely to existing circuits on a single device requiring only a change to the configuration profile of the device within the parameters and capabilities of the existing hardware and within the specifications of the Product Service Catalog.
 - (2) Simple Remote Speed Changes require existing circuit information be available to the NOC.
 - (3) Changes are made to the configuration of a circuit profile enabling port speed increase or decrease for the requested circuit.
- (e) Expedited Requests
- (1) Expedited requests can be either simple or complex type changes. These requests are based around network security requirements, emergency rerouting of services, removal of terminated employee access codes and other requirements which can be implemented remotely.
 - (2) Expedited requests scheduling – Scheduled within one business day after all specific details are received verified and accepted for the change requested.
 - (3) Number of expedited requests cannot exceed more than 20% of the total monthly requests (i.e. 4 per month to a maximum of 24 per year).
 - (4) Incomplete requests will be returned to the requestor to complete and return prior to scheduling the Service Request.

(f) MACD Quantities

- (1) Project Co will perform, when requested, a total of 120 annual MACDs as part of the Services. The Authority can only request a maximum of twenty (20) MACDs to be completed per month of the 120 annual MACDs included in the Services. Requested MACDs from one month and implemented in the following month will be calculated against the implemented period's MACD quantity. Unused MACDs will expire at the end of Contract Year.
- (2) Additional blocks of MACDs may be purchased as set out in subsection (3) below. An increase over the limit of 20 MACDs in a month can be requested via Schedule 6 [Changes, Minor Works and Innovation Proposals] with 20 Business Days' notice.
- (3) Additional blocks of ten (10) MACDs may be purchased at a price of \$5,250 through the Minor Works process set out in Schedule 6 [Changes, Minor Works and Innovation Proposals].

(g) Scope Exclusions

Requests for device additions, deletions, or complex requests with on-site services for installation or testing are not considered as simple MACD requests and will be supported as a Change. Examples:

- (1) Device addition or deletion from the managed network
- (2) On-site turn-up or testing requirements
- (3) Complex MACD requests which require multiple areas of scheduling, such as:
 - (i) Optical Wavelength Degree Addition
 - (ii) On-site assistance
 - (iii) Fiber testing
 - (iv) Splicing
 - (v) Equipment ordering and distribution
 - (vi) Carrier or provider coordination

2.4 Enhanced Performance Management

(a) Overview

Enhanced performance management aids in the maintenance, operations, and trouble clearing of the Node Sites and Service Level 1 Sites within the NG-KIH System. The performance management functions refer to in-service monitoring of equipment conditions and transmission quality using performance

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management parameter data registers. The enhanced performance management data is collected for critical equipment, SNMP traps as well as for facility section, line and path parameters.

(b) Scope

Project Co's Operating Period Representative will report any trends found by the Project Co's performance management team and provide recommendations to address findings such as chronic problem resolution. Performance management provides monitoring, evaluation, and reporting capabilities for network status and activity. Performance management services have been categorized into the following areas:

- (1) Performance monitoring - Performance monitoring entails providing a near real-time view of the NG-KIH System's performance. Proactive optical performance data such as circuit bit error rate, error seconds for path and other performance data will be reported.
- (2) Trend analysis – Is the process of reporting on long-term performance trends and performance degradation on the NG-KIH System based on historical reporting from archived data. Multiple and periodic conditions, alarms and performance data reported will be analyzed. If alarms, conditions or performance data is observed, they will be tracked, managed and reported as a trend. If a trend is identified, Project Co will work to identify and resolve the issue(s) causing the trend.
- (3) Proactive monitoring – Is the process of early notification of potential network problems based on historical performance statistics and threshold levels. The statistics of alarms, conditions and performance data will be used for proactive management and trend analysis.
- (4) Bandwidth utilization – Project Co shall provide graphical port based bandwidth utilization, errors and discard information (Packet Loss) for each service received by the Node Sites and Service Level 1 Sites.
- (5) Dynamic Reporting – Dynamic reporting provides performance monitoring dashboards and reports that provide analysis and provide near real-time health snapshots of the Equipment. Project Co's performance analyst will utilize a web-based interface to design, build, schedule and deliver reports.
- (6) Alarms, conditions and performance data reported are dependent on the equipment and element management system capability and/or software release capabilities.
- (7) The Authority will be provided with two (2) licenses that provide the ability to view the dynamic reports outlined in Section 2.2(f) on the Web Portal.

2.5 Emergency Requests

Emergency Requests are intended to address Emergencies as declared by the Authority. Examples include a network configuration to accommodate the setup of a government building as an emergency shelter or in the event of a disaster the reconfiguration of data center connections to accommodate increased bandwidth requirements. These requests can be processed outside the NOC's regular operating periods as defined in Section 2.3(c)(6) at the Minor Works Rates (Overtime Hourly Rates) in Schedule 6 [Changes, Minor Works and Innovation Proposals]. Within the NOC's operating periods as defined in Section 2.3(c)(6), the Minor Works Rates (Regular Hourly Rates) in Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply. Project Co will process Emergency Service Request Orders working with the Authority to gather information required to meet the Authority requirements. Project Co will seek to expedite Emergency Requests with timing dependent on the scope and complexity of the request.

2.6 Service Level Objectives

Project Co will be responsible for meeting the performance standards identified in Section 2 of Schedule 8 [Payments]. Any breach of the SLOs set out below will not constitute a Project Co Material Breach. The Service Level Objectives are specified solely for the purpose of setting parameters for high level service to the Sites and do not form any part of the Deduction Metrics set out in Schedule 8 [Payments].

	SLO	Monthly Target Condition	Monthly Boundary Condition
Enhanced Performance Management	Latency		
	End-to-End Service Delay	25ms for 3 consecutive polls 90% of the time	250% of target condition
	Jitter	10ms ±15% for 3 consecutive polls 90% of the time	300% of target condition
	Packet Loss		
	% of packets failed to be delivered on the Core network	<=0.1% 90% of the time.	>15% for 3 consecutive polls 90% of the time.
	Inbound / Outbound Metrics based on <80% utilization		
	Errors	<0.1% delivery failure 90% of the time.	>=0.1% for 3 consecutive polls 90% of the time.
	Discards	<0.1% delivery failure 90% of the time	>=0.1% for 3 consecutive polls 90% of the time

Provisioning	Simple Remote Change	90% scheduled within 5 business days and commissioned within 10 business days	50% scheduled within 5 business days and commissioned within 10 business days
	Simple Remote Speed Change	90% scheduled within 1 business days and commissioned within 5 business days	50% scheduled within 1 business days and commissioned within 5 business days
	Complex Remote Change	90% scheduled within 10 business days and commissioned within 30 business days	50% scheduled within 10 business days and commissioned within 30 business days
	Expedited Requests	90% scheduled within 1 business days and commissioned within 5 business days	50% scheduled within 1 business days and commissioned within 5 business days
Notification			
	Existing SLO	As outlined in Schedule 4 Appendix 4a	

Operation of the SLOs:

- (a) Provisioning and Notification SLOs will apply to all the Sites. All other SLOs apply only to the Rings, Node Sites and Service Level 1 Sites, in accordance with Section 2.4(a) of this Appendix 4A.
- (b) Project Co will track and record any breaches of the boundary conditions on a monthly basis and notify the Authority as part of the Performance Monitoring Plan.

2.7 Lab Services – Integration/Version Control

- (a) Overview

Project Co will build and maintain a lab environment to validate processes and procedures for software releases, replicate and test network management systems and tools, validate new functionality and feature release of software upgrades and resolution of trouble situations solely in respect of the NG-KIH System.

- (b) Scope

- (1) Obtain vendor software updates upon availability.
 - (2) Perform software upgrades and validate interoperability on equipment provided by Project Co as set out in the Equipment List New feature verification and/or regression testing, where applicable.
 - (3) Creation of documented test plan.
 - (4) Setup lab environment with respective equipment, configuration(s), and cabling to match the customer network environment.
 - (5) Document results of test plan for each element and sign-off approval.
 - (6) Verification of design functionality for new equipment refreshes.
 - (7) Testing of issues external to the NG-KIH System (i.e. the Authority applications, equipment, configurations) can be performed at an additional fee and as scheduling permits.
 - (8) Lab Location: The lab will be located at a third party facility.
 - (9) Equipment: The lab equipment and software required for the lab testing will be provided and owned by a third party.
- (c) Scope Exclusions

Testing will be limited to items directly pertaining to NG-KIH System infrastructure performance but does not include any testing of fiber provided by a Third Party Infrastructure Provider.

3. SCOPE OF WORK – MAINTENANCE

The maintenance scope of work referred to in this Section 3, includes the following activities, all of which are further described in the “Overview” sections set out below: Remote Technical Support, Equipment Advanced Hardware Replacement, Equipment On-Site Maintenance and Break/Fix, OSP Maintenance Break Fix, OSP Pole Attachments and OSP Cable Locates.

3.1 Remote Technical Support (RTS)

- (a) Overview

Project Co will provide unlimited remote technical support via the Web Portal and telephone support, through Project Co’s technical assistance center on the equipment supplied by Project Co as part of the NG-KIH System.

- (b) Scope

- (1) RTS telephone support includes:
 - (i) 7 days per week x 24 hours per day x 365 days per year phone access to an Project Co TSE (technical support engineer)

- (ii) Escalation to higher levels of expertise after reasonable investigation time
 - (iii) Escalation to an applicable product support engineer after reasonable investigation time by Tier II or Tier III technical support engineers
- (2) Automated escalation notifications to management (via e-mail) as set out in the Operating Plan
- (i) Overdue CSR state
 - (ii) Outage CSR logged
 - (iii) Outage CSR change of state

(3) Engineering Investigation Request (EIR)

EIRs are used as the primary means to request investigation of design issues found in product that has been released for deployment. The investigation is conducted by the product development team in cooperation with other Project Co organizations including, but not limited to the product support team and the technical assistance center.

(4) Unit Investigation Request (UIR)

UIRs are used as the primary means to request investigation of hardware product issues. The UIR process is designed to provide the Authority and Project Co employees with problem and failure analysis reporting for problems with any equipment listed in the Equipment List.

(5) Access to the Web Portal for online technical information and Customer Service Request management

The Web Portal provides access to the Authority to access product documentation, technical information bulletins (TIBs), product change notices (PCNs) and customer information releases (CIRs), browse the training catalog, schedule training, download product software, track product orders and create online return material authorizations (RMAs). Additionally, through the Web Portal the Authority can view CSRs, including categorized as trouble, maintenance or Service Requests. Service Requests are categorized as a move, add, change or disconnect.

(6) Software Maintenance

Project Co will provide the major, minor, and maintenance release level software that becomes generally available for the equipment set out in the Equipment List and only to Sites. Project Co will monitor major, minor and maintenance software releases that become available by the OEM for the licensed features on the equipment. Quarterly, Project Co will provide a report with the software updates for review by the Authority. Project Co

and the Authority will jointly develop a release plan for lab testing and implementation of software releases within the NG-KIH System.

3.2 Equipment Advanced Hardware Replacement

(a) Overview

This service includes the strategic stocking of new or refurbished fully tested equipment replacement spare units required for dispatch to the Project Co supported break/fix equipment at Sites when required.

(b) Scope

Project Co shall perform the AHR Services in accordance with the provisions of this Appendix 4A. AHR Services are comprised of the delivery of spare equipment to each Site for break/fix repair as well as the warehousing and inventory control of the Project Co supported equipment spares. The required spares are maintained in brick and mortar depots for delivery to the Sites 24 hours per day, 7 days per week, and 365 days per year. Once the NOC validates the need for spare equipment to be delivered to a Site, Project Co will deliver each spare(s) in accordance with the Design and Construction Specifications and these Services Specifications. Project Co will obtain and position required spares in the appropriate storage depots to meet the requirements set out in Section 3.3(b) of this Appendix 4A.

- (1) Project Co storage depots will be setup to house the supported Project Co and OEM equipment spares required to support the Node Sites, Service Level 1 Sites and Service Level 3 Sites within range of specified requirements set out in Section 3.3(b) of this Appendix 4A. Spares coverage will be sufficient to ensure Project Co can achieve the requirements of the Design and Construction Specifications and these Services Specifications.
- (2) Unless otherwise noted, the need for dispatching of any spare equipment shall be determined by the NOC.
- (3) The equipment spares required to manage the Node Sites, Service Level 1 Sites and Service Level 3 Sites will be owned and managed by Project Co and allocated to the NG-KIH System. The Authority defective units shall be traded for Project Co provided working spares based on a one for one swap in ownership.
- (4) Project Co will bear repair costs of defective units taken in trade from the Authority for advanced spare units supplied by Project Co to the Authority and restore repaired units to the Project Co AHR inventory.
 - (i) Defective units shall be returned to Project Co's customer returned goods department for repair and factory certification.
 - (ii) Project Co will manage the return of failed equipment for repair of defective units with the required equipment vendor.

- (iii) The refurbished units are brought up to the latest class “A” and “AC” product change notices per industry standards in GR-209-CORE, or the equivalent thereof.
- (iv) A database of serial numbers is maintained on repair items to identify any units that show chronic problems. These cards are pulled out of circulation and replaced.

3.3 Equipment On-Site Maintenance and Break/Fix

(a) Overview

On-site maintenance service supplements the fault management service through dispatch of experienced telecommunications field technicians with appropriate test equipment to the relevant Site when required for incident restoration. Under the direction of the NOC personnel, the dispatched field technicians will assist with troubleshooting as necessary to promptly return the NG-KIH System back to operational status prior to noted event failures or alarm conditions as seen by the NOC.

(b) Scope

- (1) Through incident restoration efforts, the NOC will identify that on-site assistance is required to isolate trouble within the NG-KIH System.
- (2) Depending on the nature and severity of the alarm, incident or trouble report condition noted by the NOC, the non-emergency restoration efforts will be scheduled within a mutually agreed maintenance window.
- (3) Emergency maintenance windows to implement emergency break/fix repairs to the NG-KIH System will be requested as needed and with as much advance notice as possible. It is understood these requests may occur at any time of any day.
- (4) The NOC personnel will, in accordance with the Site Access Plan, obtain Access or make escort arrangements for a field technician to gain Access to a Site or a Field Location.
- (5) Once Access or escort arrangements, if applicable, are made with the Authority’s Operating Representative the NOC personnel will contact the dispatch organization in the specific region required for the appropriate response time for the relevant Site.
- (6) The Authority escort information, if applicable, will be provided to the dispatch field technician by the NOC personnel. Arrangements for arrival time and any specific details for Access will be worked directly with the dispatched technician and the Authority appointed escort when required.
- (7) Once at the Site, the dispatched field technician’s arrival time will be recorded by the NOC and they will contact the Authority’s escort, if

applicable, and gain Access to the equipment location so event resolution can be performed with the NOC.

- (8) The field technicians will work closely with the NOC to coordinate the technician's troubleshooting actions through restoration and release from Site.
 - (9) Project Co will perform generator maintenance per manufacturer's specifications.
- (c) Prerequisites
- (1) The Authority contact is responsible for facilitating Project Co personnel access upon their arrival to the Site where the support is to be provided. If Project Co is unable to obtain Access to the relevant Site, the Authority agrees that Project Co has the right to invoice the Authority, and the Authority agrees to pay for dispatch fee including (living expenses, if applicable) for the applicable trip made by Project Co dispatched personnel. Provided a Project Co NOC or field technician follows the Site Access Plan, the fee charged to the Authority will not exceed \$150 (hotel, and meal) per diem for any single event. The Authority will not be charged unless the aggregate costs for all such events exceed \$10,000 per annum.
 - (2) If the Authority requests equipment that the Authority wants to have covered by this service to a site other than one already identified in Appendix 7A, Project Co will not be obligated to meet the mutually agreed upon response time until the Authority has advised Project Co of the new location and then the sooner of (a) Project Co advising the Authority that it has completed the deployment requirements for applicable personnel; or (b) 30 days elapse after the Authority advises Project Co of the new site.

3.4 OSP Maintenance Break Fix

(a) Overview

OSP on-site maintenance (OSP OSM) service supplements the fault management service through dispatch of experienced telecommunications field technicians with appropriate test equipment to the relevant Sites when required for incident restoration. Project Co is responsible for OSP OSM and break/fix as part of the Services. Subcontractors may perform some or all of the functions while responding to and addressing OSP OSM network "trouble" issues.

(b) Scope

Project Co will provide skilled, trained crews with working knowledge of the network, properly equipped and available 24 hours a day, 7 days a week, 365 days a year to provide OSP OSM and emergency break/fix repairs for the NG-KIH System. The field technicians and construction crews will work closely with the NOC personnel who will coordinate the field technicians' actions during their

time at the Site. The field technicians and crews will be equipped with appropriate testing and construction equipment and required supplies to complete repairs in a timely manner.

Once the NOC has made Access arrangements in accordance with the Site Access Plan with the Authority, the NOC will contact the Project Co technician and provide Access and escort information, as necessary. Arrangements for arrival time and any specific details for Access will be worked directly between the technician and the Authority's appointed escort when required. This may include access approval from local public emergency responders.

Once at the relevant Site or the Field Location, the dispatched field technicians will report arrival time to the NOC and the NOC will contact the Authority's escort, if applicable, and gain Access to the affected Site or Field Location so event resolution can be performed with the NOC.

Project Co is responsible for the following tasks, unless it is specifically indicated otherwise:

- (1) The materials and equipment shall be applied, installed, connected, erected, utilized, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processor, except as otherwise provided in Schedule 3 [Design and Construction Specifications].
- (2) Project Co and their contractors will be responsible for any traffic control, flagmen, traffic control plans and traffic control permits that are necessary for each repair event.
- (3) Project Co will conduct the work, provide traffic control and safe working conditions as required by permit, municipal, county, state, or federal regulations, industry standards, and as otherwise outlined in this Appendix 4A.
- (4) Project Co will provide collection and disposal of the equipment associated with the repair event.
- (5) Project Co will coordinate and work with the other utilities, local municipalities, county, city, state agencies or other third parties that may be involved in the work required.
- (6) Project Co shall carry a copy of Permits as required.
- (7) Project Co will be responsible for the restoration materials such as sod, decorative bark, concrete or asphalt repairs.
- (8) Project Co will require spare dark fibers equal, at a minimum, to 25% of the NG-KIH System's capacity for temporary traffic restoration. Spare dark fibers will be used on all backbone segments, spur fiber routes to the Service Level 1 Sites and spur routes to the Service Level 3 Sites. It will be the Authority's responsibility to fund capacity expansion should the

25% minimum be breached. For the purposes of planning for capacity expansion, Project Co will notify the Authority when there is less than 40% spare capacity available on any single segment. If the 25% minimum is breached, capacity will be evaluated and increased as mutually agreed to via a Change in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals].

- (9) Maintenance of generators installed during Construction at the Huts includes 4 preventative maintenance routines annually.

(c) Scope Exclusions

Preventative maintenance at COLO Sites includes equipment and/or cabling installed by Project Co.

- (1) HVAC Break/Fix and Maintenance at Huts and COLO Sites
- (2) Fire Suppression PM's and Maintenance/Break Fix
- (3) Housekeeping/Janitorial Services at the shelter locations
- (4) Landscaping, Weed Abatement and Snow Removal
- (5) Locks, Gates, Security and Fencing of compounds

3.5 OSP Pole Attachments

(a) Scope

Project Co will be responsible for maintaining current as-built drawings with utility pole attachment identification and pole ownership. The Pole Attachment Fees will be verified through continually updated OSP design records and periodic audits. Project Co, on behalf of the Authority, will make payment to the pole owners for the Pole Attachment Fees.

(b) Scope Exclusions

Pole replacements that exceed \$25,000 in aggregate over the Term and Pole Owner/Right of Way owner relocations of the Outside Plant facilities including but not limited to Aerial OSP fiber cable and attachments, underground conduit and manhole/handholes and fiber cable.

3.6 OSP Cable Locates

(a) Overview

Project Co or the Service Provider is an active member of the Kentucky811 utility locate network. This service provides a single phone number or Web access for scheduling the location and marking of the utility services.

(b) Scope

Services provided through membership in the Kentucky811 service kentucky811.org combined with cable locating and marking services that will be performed by Project Co. The Kentucky811 fee per locate request cost as well as the locate service per ticket cost will be the responsibility of Project Co.

Once the 811 service request is logged, a field technician will be dispatched to locate NG-KIH OSP underground conduit based fiber network facilities using a locating wire or metallic component of the fiber cable.

APPENDIX 4B HANDBACK REQUIREMENTS

1. DEFINITIONS

In this Appendix 4B, in addition to the definitions set out in Schedule 1 [Definitions and Interpretation] to this Agreement:

“Handback Inspections” has the meaning set out in Section 2.2(a) of this Appendix 4B;

“Handback Requirements” means the requirements for the condition of the NG-KIH System on the Expiration Date described in Section 2.1 of this Appendix 4B;

“Handback Works” has the meaning set out in Section 2.2(a)(2) of this Appendix 4B;

“Handback Workplan” has the meaning set out in Section 2.3(b) of this Appendix 4B; and

“Operational” means the NG-KIH System is free of alarm conditions.

2. NG-KIH SYSTEM HANDBACK

2.1 Handback Requirements

On the Expiration Date, the NG-KIH System shall be Operational.

2.2 Handback Inspections

- (a) Prior to the Expiry Date, Project Co and the Authority will conduct two joint inspections of the NG-KIH System (the **“Handback Inspections”**) that:
 - (1) identify the condition of the NG-KIH System and each of its equipment and software elements as of the date of such Handback Inspection in relation to the Handback Requirements; and
 - (2) identify any works required to ensure the NG-KIH System and its equipment and software elements will meet the Handback Requirements as at the Expiry Date (the **“Handback Works”**).
- (b) The first Handback Inspection shall take place at a time, specified by the Authority following consultation with Project Co, that is no more than 18 months and not less than 12 months prior to the Expiration Date. The second Handback Inspection shall take place at a time, specified by the Authority following consultation with Project Co, that is no more than 6 months and not less than 3 months prior to the Expiration Date.

2.3 Procedure Following Handback Inspections

- (a) Within 60 days following the first Handback Inspection and within 30 days following the second Handback Inspection, if the relevant Handback Inspection indicates that any Handback Works are required, Project Co shall prepare and deliver to the Authority a comprehensive work plan and schedule that details

Project Co's plans for completing the Handback Works identified during the relevant Handback Inspection.

- (b) The Authority shall review and provide any comments on the work plan within 10 days following the receipt of the work plan described in Section 2.3(a). Once agreed upon between the parties, acting reasonably, such work plan will be considered the "**Handback Workplan**".
- (c) The Handback Workplan will only apply to equipment set out in the Equipment List and only to Sites.
- (d) Project Co shall carry out the Handback Workplan so as to meet the Handback Requirements on the Expiration Date.

SCHEDULE 5 INSURANCE REQUIREMENTS

1. DEFINITIONS

In this Schedule 5, in addition to the terms defined in Schedule 1 [Definitions and Interpretation]:

“**Actual Coverage Amount**” has the meaning set out in Section 4.12 of this Schedule 5;

“**Notifying Party**” has the meaning set out in Section 4.12 of this Schedule 5; and

“**Prudent Coverage Amount**” has the meaning set out in Section 4.12 of this Schedule 5.

2. CONSTRUCTION PERIOD INSURANCE REQUIREMENTS

2.1 “All Risks” Builder’s Risk Insurance

During the Construction Period, Project Co shall, at its own expense, take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, course of construction insurance against “all risks” of physical loss or damage except to extent such loss or damage is caused by a Compensation Event, including delay in start-up covering all materials, property, structures and equipment purchased for, entering into or forming part of the NG-KIH System, while located anywhere within the United States of America during construction, erection, installation and testing of the NG-KIH System, which will include the following terms:

- (a) coverage in an amount not less than \$100,000,000 per occurrence and in the aggregate to replace the NG-KIH System to a minimum of all applicable codes, subject to the following principle extensions and sublimits:
 - (1) replacement cost valuation (property);
 - (2) most recent technology replacement cost valuation (equipment);
 - (3) flood (to policy limit with annual aggregate permitted);
 - (4) natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with annual aggregate permitted);
 - (5) for property insured under the policy and stored at an off-site location or in transit in the United States of America – minimum \$10,000,000 sublimit;
 - (6) the full value of all materials and equipment forming part of the NG-KIH System lifted on-site by cranes during the Construction;
 - (7) professional fees – minimum \$2,500,000 sublimit;
 - (8) firefighting expenses – minimum \$250,000 sublimit;
 - (9) debris removal and clean up – minimum \$1,000,000 sublimit;

- (10) expediting expenses – limited to 25% of damage/claim, subject to maximum \$2,000,000 sublimit;
 - (11) extra and expediting expenses – maximum \$5,000,000 sublimit;
 - (12) change in ordinance, including demolition, increased cost of repairs and replacement – minimum \$15,000,000 sublimit;
 - (13) valuable papers – minimum \$500,000 sublimit;
 - (14) accounts receivable;
 - (15) contamination clean-up or removal – minimum \$250,000 sublimit;
 - (16) \$10,000,000 of recurring soft costs;
 - (17) margin of profit for contractors;
 - (18) off premises services interruption (minimum 4 weeks);
 - (19) civil authority (minimum 4 weeks);
 - (20) prevention of ingress / egress (minimum 4 weeks);
 - (21) underground services, temporary buildings and structures, temporary boilers and pressure vessels, scaffolding, false work, forms, excavation, site preparation, landscaping and similar work;
 - (22) electronic data processing equipment and media, including the cost to restore from the application of by-laws or ordinances;
 - (23) non-vitiation;
 - (24) waiver of subrogation in favor of all named and unnamed insureds, including but not limited to Project Co, the Authority, Operations Co, the Project Contractors, the Collateral Agent, the Sub-Contractors, consultants and design professionals; and
 - (25) permit use and occupancy of the incomplete NG-KIH System by Project Co, Operations Co, the Project Contractors, the Sub-Contractors and the Authority prior to the relevant Site Completion Date, Lateral Completion Date or Ring Completion Date, as applicable;
- (b) delay in start-up coverage:
- (1) in an amount not less than \$31,200,000, sufficient to compensate Project Co for additional capital payments, additional interest for the extension of financing necessary for the completion of the Design and Construction, legal and accounting expenses, insurance premiums, building permits and other miscellaneous costs, various incurred fees, fixed operation and maintenance expenses, additional commissions, advertising, margin of profit for Operations Co, caused by the delay in Site Completion, Ring

- Completion or System Completion resulting from any perils insured under (a) above;
- (2) having an indemnity period not less than 12 months in respect of the NG-KIH System; and
 - (3) having a waiting period of not greater than 14 days;
- (c) deductibles, per occurrence, not exceeding the following amounts;
- (1) flood – \$500,000;
 - (2) earthquake – \$250,000;
 - (3) LEG 3 – \$250,000;
 - (4) for all other insured perils – \$100,000; and
 - (5) if more than one event occurs, only the highest deductible applies;
- (d) include, as named insureds, as their interests may appear the following entities:
- (1) Project Co;
 - (2) the Authority;
 - (3) Operations Co and the Project Contractors;
 - (4) all Sub-Contractors, consultants and sub-consultants as their interests may appear; and
- (e) include Lender Endorsements substantially in the form set out in Appendix 5A, including, without limitation, naming the Collateral Agent as additional insured and loss payee, and, with respect to the delay in start-up coverage referred to in Section 2.1(b) of this Schedule 5, name Project Co and the Collateral Agent as the exclusive loss payees.

2.2 Project Specific Commercial General Liability Insurance

During the Construction Period, Project Co will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, project specific commercial general liability insurance ISO form CG 00 01 4/13 on a wrap-up basis, which will include the following terms:

- (a) coverage in an amount of not less than \$2,000,000 per occurrence and \$4,000,000 in the annual aggregate for bodily injury, death and damage to property, including loss of use thereof, subject to the following principle extensions and sublimits:
 - (1) products & completed operations for a minimum of 10 years after the relevant Site Completion Date, Lateral Completion Date or Ring Completion Date, as applicable;

- (2) ongoing operations coverage during the warranty period;
 - (3) medical payments – \$10,000 per occurrence / \$10,000 aggregate;
 - (4) blanket written contractual liability;
 - (5) personal injury and advertising;
 - (6) cross liability and severability of interests;
 - (7) hazardous operation XCU (excavating / underpinning / pile driving / shoring / caisson work / work below ground surface / tunneling / grading and similar operations;
 - (8) watercraft (not in excess of 25 ft.) unless insured elsewhere, as applicable;
 - (9) non-vitiation; and
 - (10) waiver of subrogation in favor of all named and additional insureds as required by contract, including but not limited to Project Co, the Authority, Operations Co, the Project Contractors, all Sub-Contractors and the Collateral Agent;
- (b) a deductible not exceeding \$25,000 per occurrence and \$500,000 in the aggregate;
 - (c) include, as additional named insureds, using appropriate endorsements, Project Co, the Authority, Operations Co, the Project Contractors and the Sub-Contractors; and
 - (d) include Lender Endorsements substantially in the form set out in Appendix 5A, including, without limitation, naming the Collateral Agent as additional insured.

2.3 Worker's Compensation

During the Construction Period, Project Co will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, worker's compensation insurance for each employee in conformance with applicable Law, which will include the following terms:

- (a) a voluntary compensation endorsement;
- (b) an alternative employer endorsement;
- (c) an endorsement extending coverage to all states operations on an "in any" basis; and
- (d) if any work is over or adjacent to navigable waters, coverage for any claims arising from the Longshore and Harbor Workers' Compensation Act and/or the Merchant Marine Act of 1920.

2.4 Employer's Liability

During the Construction Period, Project Co will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, employer's liability insurance, which will include the following terms:

- (a) coverage in the amount of not less than \$1,000,000 per claim and in the aggregate against liability for death, bodily injury, illness or disease for all employees working on or about any Lands or otherwise engaged in the Design and Construction;
- (b) a deductible not exceeding \$1,000,000 per claim; and
- (c) include Project Co, Operations Co and the Authority as additional insureds.

2.5 Automobile Liability

During the Construction Period, Project Co will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, automobile liability coverage, which will include the following terms:

- (a) coverage in the amount of not less than \$1,000,000 per claim and in the aggregate, inclusive of defense, for accidental death, bodily injury, and property damage liability arising from the ownership, maintenance or use of all owned, non-owned, and hired vehicles used in the performance of the Design and Construction, including loading and unloading;
- (b) a deductible not exceeding \$1,000,000 per claim; and
- (c) include Project Co, Operations Co and the Authority as designated insureds.

2.6 Excess Liability

During the Construction Period, Project Co will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, umbrella/excess liability insurance in the amount of \$50,000,000 per occurrence/annual aggregate. Such policy or policies shall be excess of and follow form over the primary insurance required in Section 2.2.

2.7 Railroad Protective Liability

During the Construction Period, Project Co will take out, maintain in force and extend, or cause the Design-Builder and its Sub-Contractors, as appropriate, to take out, maintain in force and extend, railroad protective liability coverage as may be required by any railroad in connection with the Design and Construction performed across, under or adjacent to the railroad's tracks or railroad's right-of-way, which is in a form acceptable to the railroad and shall name the railroad as named insured.

2.8 Professional Liability

During the Construction Period, Project Co will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, project specific professional liability insurance, which will include the following terms:

- (a) coverage in an amount of not less than \$15,000,000 per claim and in the aggregate (inclusive of defense and related costs and supplementary payments) for all architectural, engineering, land surveying, environmental, landscape architectural, interior design /space planning, soil and material testing services, geotechnical services and procurement services, including their replacements and/or sub-consultants of any tier subject to the following principle extensions:
 - (1) primary insurance extension;
 - (2) include as insureds any present or former partner, executive officer, director, shareholder of any named insured while acting within their scope of duties for the named insured;
 - (3) claim defined as a written or oral demand for money or a written or oral allegation of liability or responsibility for a breach of professional duty in the rendering or failure to render professional services by an insured and resulting from a single error, omission or negligent act;
 - (4) lawyer fees and associated expenses incurred in the investigation, defense, settlement, arbitration or litigation of claims;
 - (5) duty to defend, even if the allegations are groundless, false or fraudulent;
 - (6) indemnification endorsement covering the vicarious liability of Project Co and Operations Co; and
 - (7) extended reporting period – minimum 60 months after the System Completion Date;
- (b) a deductible not exceeding \$500,000 per claim; and
- (c) include, as named insureds, the Project Contractors and all Sub-Contractors (as appropriate) and all engineering, architecture and other professional consultants that provide professional design services in connection with the Project.

2.9 Project Specific Pollution Liability (Contractor's Pollution Liability Wrap-up)

During the Construction Period, Project Co will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, project specific contractor's pollution liability wrap-up insurance, which will include the following terms:

- (a) coverage in the amount of not less than \$25,000,000 per claim and in the aggregate inclusive of defense and all costs and expenses subject to the following principle extensions:

- (1) third party bodily injury and third party contamination;
 - (2) hazardous substances released or exacerbation of pre-existing contamination at the NG-KIH System or the Lands due to construction activities during the policy period;
 - (3) microbial matter (including fungus/mold);
 - (4) release from unknown underground / above ground storage tanks due to construction activities;
 - (5) disposal site (reporting required);
 - (6) emergency response costs – minimum \$1,000,000 sublimit;
 - (7) completed operations period – minimum 10 years after the System Completion Date; and
 - (8) waiver of subrogation in favor of all additional insureds, including but not limited to any and all indemnified parties where required by contract and the Collateral Agent;
- (b) a deductible not exceeding \$50,000 per claim and \$200,000 in the aggregate;
- (c) include, as named insureds, the following entities:
- (1) Project Co;
 - (2) the Authority;
 - (3) Operations Co and the Project Contractors; and
 - (4) all Sub-Contractors, consultants and sub-consultants; and
- (d) include Lender Endorsements substantially in the form set out in Appendix 5A, including, without limitation, naming the Collateral Agent as additional insured.

For clarity, the pollution liability wrap-up insurance shall only include coverage for environmental risks relating to the exacerbation of pre-existing contamination and any new pollutants related to the Project. The remediation of pre-existing contamination shall be the responsibility of the Authority.

2.10 Aircraft Liability

During the Construction Period, Project Co will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, aircraft liability insurance (if applicable), which will include the following terms:

- (a) coverage in the amount of not less than \$10,000,000 per occurrence for all owned and non-owned aircraft, including \$10,000,000 per occurrence for passenger hazard subject to the following principal extensions:

- (1) all aviation risks including the use of fixed or variable winged aircraft and helipads (if applicable);
 - (2) waiver of subrogation in favor of all additional insureds, including but not limited to Project Co, the Authority, Operations Co, the Project Contractors, the Collateral Agent, the Sub-Contractors; and
 - (3) include coverage for Project Co, Operations Co, the Project Contractors and all Sub-Contractors, as additional insureds, as applicable;
- (b) a deductible not exceeding an amount acceptable to the Authority, acting reasonably; and
- (c) include, as additional insureds, the Authority and the Collateral Agent.

2.11 Aircraft Cargo Insurance

During the Construction Period, Project Co will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, aircraft cargo insurance (if applicable) for losses arising from the physical damage to cargo while it is in transit by air for any of the materials, equipment or property supplied under or used during the Project and which are critical to achieve System Completion, which will include the following terms:

- (a) coverage in an amount not less than the full replacement value of the shipment subject to the following principal extensions;
 - (1) subject to the conditions of the Institute Cargo Clauses (all risks), including war and strikes extensions and including transit and storage where applicable;
 - (2) 50/50 clause; and
 - (3) warehouse to warehouse clause;
- (b) coverage for Project Co, Operations Co, the Project Contractors and all Sub-Contractors;
- (c) a deductible not exceeding an amount acceptable to the Authority, acting reasonably;
- (d) delay in start-up arising from the loss of a shipment subject to a minimum indemnity period acceptable to the Authority, acting reasonably; and
- (e) include, as loss payees, the Authority and the Collateral Agent, as their interests may appear.

2.12 Watercraft Liability

During the Construction Period, Project Co will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, watercraft liability insurance (if applicable), which will include the following terms:

- (a) coverage in the amount of not less than \$10,000,000 per occurrence for all owned and non-owned watercraft, including \$10,000,000 per occurrence for passenger hazard subject to a waiver of subrogation in favor of all named and unnamed insureds, including but not limited to, Project Co, the Authority, Operations Co, the Project Contractors, the Collateral Agent and the Sub-Contractors;
- (b) a deductible not exceeding an amount acceptable to the Authority, acting reasonably; and
- (c) include, as additional insureds, the Authority and the Collateral Agent.

2.13 "All Risks" Ocean Marine Cargo

During the Construction Period, Project Co will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, "all risks" ocean marine cargo insurance (if applicable) for any of the materials, equipment or property supplied under or used during the Project and which are critical to achieve System Completion, which will include the following terms:

- (a) coverage in an amount not less than the full replacement value of the shipment;
- (b) a deductible not exceeding an amount acceptable to the Authority, acting reasonably;
- (c) delay in start-up arising from the loss of a shipment subject to a minimum indemnity period acceptable to the Authority, acting reasonably; and
- (d) include, as loss payees, the Authority and the Collateral Agent, as their interests may appear.

2.14 Employee Dishonesty (Crime)

During the Construction Period, Project Co will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, employee dishonesty insurance against the fraudulent acts of employees of Project Co, which will include coverage in the amount of not less than \$1,000,000 per claim and will include the following principal extensions:

- (a) broad form money and securities;
- (b) money orders and counterfeit paper;
- (c) depositors' forgery;
- (d) computer fraud and funds transfer fraud;
- (e) audit expenses; and
- (f) credit card forgery.

3. OPERATING PERIOD INSURANCE REQUIREMENTS

3.1 Project Specific Commercial General Liability Insurance

During the Operating Period, Project Co will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, project specific commercial general liability insurance ISO Form CG 00 01 04/13 on a wrap-up basis, which will include the following terms:

- (a) coverage in an amount of not less than \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate for bodily injury, death and damage to property including loss of use thereof subject to the following principle extensions and sublimits;
 - (1) product and completed operations – \$2,000,000 in the aggregate;
 - (2) medical payments – \$10,000 (any one person);
 - (3) blanket written contractual liability;
 - (4) advertising and personal injury – \$1,000,000 (any one person);
 - (5) cross liability and severability of interests;
 - (6) hazardous operation XCU (excavating / underpinning / pile driving / shoring / caisson work / work below ground surface / tunneling / grading and similar operations;
 - (7) watercraft (not in excess of 25 ft.) unless insured elsewhere, as applicable;
 - (8) non-vitiation; and
 - (9) waiver of subrogation in favor of all additional insureds, including but not limited to the Collateral Agent;
- (b) a deductible not in excess of \$25,000 per occurrence and \$150,000 in the aggregate;
- (c) include, as additional named insureds, Project Co, the Authority, Operations Co and the Service Provider; and
- (d) include Lender Endorsements substantially in the form set out in Appendix 5A, including, without limitation, naming the Collateral Agent as additional insured.

3.2 Worker's Compensation

During the Operating Period, Project Co will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, worker's compensation insurance for each employee in conformance with applicable Law, which will include the following terms:

- (a) a voluntary compensation endorsement;

- (b) an alternative employer endorsement;
- (c) an endorsement extending coverage to all states operations on an “in any” basis; and
- (d) if any work is over or adjacent to navigable waters, coverage for any claims arising from the Longshore and Harbor Workers' Compensation Act and/or the Merchant Marine Act of 1920.

3.3 Employer’s Liability

During the Operating Period, Project Co will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, employer’s liability insurance, which will include the following terms:

- (a) coverage in the amount of not less than \$1,000,000 per claim and in the aggregate against liability for death, bodily injury, illness or disease for all employees working on or about any Lands or otherwise engaged in the Services;
- (b) a deductible not exceeding \$1,000,000 per claim; and
- (c) include Project Co, Operations Co and the Authority as additional insureds.

3.4 Automobile Liability

During the Operating Period, Project Co will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, automobile liability coverage, which will include the following terms:

- (a) coverage in the amount of not less than \$1,000,000 per claim and in the aggregate, inclusive of defense, for accidental death, bodily injury, and property damage liability arising from the ownership, maintenance or use of all owned, non-owned, and hired vehicles used in the performance of the Services, including loading and unloading;
- (b) a deductible not exceeding \$1,000,000 per claim; and
- (c) include Project Co, Operations Co and the Authority as designated insureds.

3.5 Excess Liability

During the Operating Period, Project Co will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, umbrella/excess liability insurance in the amount of \$25,000,000 per occurrence/annual aggregate. Such policy or policies shall be excess of and follow form over the primary insurance required in Section 3.1.

3.6 Project Specific Pollution Liability Insurance

During the Operating Period, Project Co will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, project specific pollution liability insurance covering the Service Provider’s or any Sub-Contractor’s acts or omissions causing or exacerbating pollution, which will include the following terms:

- (a) coverage in the amount of not less than \$5,000,000 per claim and in the annual aggregate (multi-year policies will be allowed) inclusive of defense and all costs and expenses subject to the following principle extensions:
 - (1) hazardous substances occurring or emanating from the Project that are due to a release(s) associated with restoration or maintenance of the NG-KIH System or the Lands during the operations activities;
 - (2) microbial matter (including fungus/mold);
 - (3) unknown underground / above ground storage tanks due to operations activities;
 - (4) disposal site (reporting required);
 - (5) emergency response costs – minimum \$1,000,000 sublimit; and
 - (6) optional extended reporting period – minimum 12 months in the event of termination of the Policy or termination of the Project Agreement;
- (b) waiver of subrogation in favor of all additional insureds, including but not limited to the Collateral Agent;
- (c) a deductible not exceeding \$250,000 per claim;
- (d) include, as named insureds, Project Co, the Authority, Operations Co and the Service Provider; and
- (e) include Lender Endorsements substantially in the form set out in Appendix 5A, including, without limitation, naming the Collateral Agent as additional insured.

For clarity, the pollution liability insurance shall only include coverage for environmental risks relating to the exacerbation of pre-existing contamination and any new pollutants related to the Project. The remediation of pre-existing contamination shall be the responsibility of the Authority.

3.7 Employee Dishonesty

During the Operating Period, Project Co will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, employee dishonesty insurance against the fraudulent acts of employees of Project Co which will include coverage in the amount of not less than \$1,000,000 per claim and will include the following principal extensions:

- (a) broad form money and securities;
- (b) money orders and counterfeit paper;
- (c) depositors' forgery;
- (d) computer fraud and funds transfer fraud;
- (e) audit expenses; and

- (f) credit card forgery.

3.8 Other Operating Period Insurance

During the Operating Period when construction, rehabilitation or major repair work is being carried out by or on behalf of Project Co under this Project Agreement and the risks associated with such work are not insured by the insurance described in the policies described in Section 2 (Construction Period Insurance Requirements) or Section 3 (Operating Period Insurance Requirements) of this Schedule 5, Project Co will, subject to Section 2 (Construction Period Insurance Requirements) of this Schedule 5, take out, maintain in force and renew or will cause to be taken out, maintained in force and renewed such insurance described in Section 2 (Construction Period Insurance Requirements) in such amounts, as a prudent owner would reasonably require, as determined by the Authority, acting reasonably, at least 10 Business Days before the commencement of the applicable period during which the insurance is required. To the extent such work is undertaken pursuant to a Change Certificate and such work is not covered in the policies described in Section 2 (Construction Period Insurance Requirements) or Section 3 (Operating Period Insurance Requirements) of this Schedule 5, the Change Certificate for such work will include such insurance coverage as the Authority, acting reasonably, considers necessary in the circumstances.

4. GENERAL INSURANCE PROVISIONS

4.1 Insurance Representative

Before commencing any Construction, Project Co will appoint an insurance representative who will communicate with the Authority and keep the Authority advised of all material matters related to insurance, including claims, possible claims and policy changes or amendments. Project Co will at all times maintain such a representative throughout the Term and Project Co will advise the Authority promptly of any change in such representative during the Term.

4.2 Cooperation with Insurer's Consultants

If an insurer or an insurer's appointed consultant, for underwriting purposes, in connection with a claim or as a term or condition of an insurance policy, needs to review any part of the performance of this Project Agreement, then the Authority and Project Co shall, and each of them shall require the Authority Persons and the Project Co Persons, respectively, to:

- (a) cooperate with the insurer and its consultant, including providing them with such information and documentation as they may reasonably require; and
- (b) allow the insurer and its consultant to attend meetings between Project Co and the Authority (or, as applicable, and if reasonably required by the insurer, between Project Co and those engaged by or through Project Co).

Project Co and the Authority covenant and agree with each other to do all acts, matters and things as may be reasonably necessary or required to expedite the adjustment of any claim for loss or damage covered by insurance hereunder so as to expedite the release and disposition of such insurance in the manner and for the purposes herein contemplated.

4.3 Additional Insurance

Except where specifically provided, none of the insurance coverage amounts or sublimits specified in this Schedule 5 limit the liability of Project Co with respect to any obligations of Project Co to the Authority arising under this Project Agreement. Project Co will obtain and maintain, or cause to be obtained and maintained, at its cost, all such other policies of insurance required by Law or which Project Co deems necessary having regard for the policies of insurance which prudent owners and operators of projects of similar scope and magnitude to the Project would maintain and obtain, or cause to be obtained and maintained, including directors and officers liability and corporate indemnification insurance.

4.4 Insurers and Terms of Policies

Project Co will ensure that all policies for the insurance pursuant to this Schedule 5 are obtained and maintained with Qualified Insurers and, subject to this Schedule 5, are in such forms and contain such terms and conditions which are equal to or better than those that would be obtained by prudent owners and operators of projects of similar scope and magnitude to the Project and, in addition to the required inclusions or permitted exclusions for each policy specifically described in this Schedule 5, include such other inclusions and exclusions as such prudent owner or operator would require or permit.

4.5 Downgrade of Insurer

In the event that any insurer's financial strength rating falls below B+ with A.M. Best, Project Co will, as soon as reasonably practicable and, in any event, within 30 Business Days, obtain and maintain a replacement for the relevant policy of insurance from a Qualified Insurer.

4.6 Particular Requirements of Policies

Without limiting the generality of this Schedule 5 and the provisions of Section 6 (Insurance, Damage and Destruction) of this Project Agreement, each project specific commercial policy of insurance required under this Project Agreement will:

- (a) bear an endorsement such that the insurer:
 - (1) will not effect any adverse material change or amendment to the policy without first giving at least 75 days' prior written notice by registered mail to the Authority and each of the other named insureds and loss payees;
 - (2) will provide at least 30 days' prior written notice of cancellation for non-payment of premium; and
 - (3) will provide at least 75 days' prior written notice of cancellation prior to the expiration of the term of such policy,

provided that all Construction Period insurances required under Sections 2.1 through 2.9 of this Schedule 5 will be non-cancellable except for non-payment of premium, material misrepresentation or concealment of facts;

- (b) contain an endorsement such that the policy will not be invalidated and coverage thereunder will not be denied to any insureds by reason of any breach or

violation of representations, declarations or conditions contained in the policy other than as a result of a negligent act, misrepresentation or omission of such insured; and

- (c) be primary and not require the sharing of any loss by any insurer of the Authority or any other named insured.

4.7 Evidence of Insurance

In respect of those policies of insurance required to be maintained by Project Co pursuant to this Schedule 5, upon the issue of each such policy and within 60 days following every renewal of each such policy, Project Co will deliver to the Authority a certificate of insurance or, with respect to project specific policies only, a certified copy of each such policy or other satisfactory evidence of adequate insurance. No review or approval of any insurance certificate or insurance policy by the Authority will derogate from or diminish such party's rights under this Project Agreement.

4.8 Claims

Project Co will:

- (a) in accordance with Schedule 14 [Records and Reports], maintain an electronic register of all claims and incidents that might reasonably result in a claim under any of the policies of insurance required by this Project Agreement and will allow the Authority to inspect such register at any time, which register will, for clarity, exclude any Protected Personal Information in accordance with applicable Law; and
- (b) notify the Authority and provide full particulars (excluding, for clarity, any Protected Personal Information in accordance with applicable Law) of any incident giving rise to a claim:
 - (1) within 5 Business Days after making any claim under any of the policies for the insurance required by this Project Agreement where the value of the claim exceeds \$25,000; or
 - (2) immediately:
 - (A) after any property loss; and
 - (B) after any claim (regardless of the value of the claim) involving personal injury or death, accompanied by full particulars of the incident giving rise to the claim.

4.9 Deductibles

Project Co will be responsible for the deductible portion of, or waiting period for, any claim made on any policy of insurance described in this Schedule 5.

4.10 Compliance

- (a) Project Co will comply with the terms, conditions and requirements of all policies for the insurance required by this Schedule 5 and will not do or omit to do, or permit to be done or omitted by any Project Co Person, anything on or with respect to the NG-KIH System or the Lands that could reasonably be expected to result in the cancellation of any insurance described in this Schedule 5, or that would reasonably be expected to entitle any insurer to refuse to pay any claim under the policy for any such insurance.
- (b) The Authority will not do, or permit to be done by any Authority Person, anything on or with respect to the NG-KIH System or the Lands that could reasonably be expected to result in the cancellation of any insurance described in this Schedule 5, or that would reasonably be expected to entitle any insurer to refuse to pay any claim under the policy for any such insurance.
- (c) The Authority and Project Co will, and Project Co will cause Operations Co, the Project Contractors and the Sub-Contractors to, comply with all insurance policy warranties made known to them.

4.11 Failure to Insure

Subject to Section 6.10 (Consequences of Risks becoming Uninsurable) of this Project Agreement, if Project Co fails or refuses to obtain or maintain in force any insurance required to be effected by it under this Schedule 5, or to provide evidence of such insurance and renewals in relation thereto as and when required and in accordance with this Schedule 5, the Authority will, without prejudice to any of its other rights under this Project Agreement or otherwise, have the right itself to procure such insurance, in which event any amounts paid by the Authority for that purpose together with all reasonable costs incurred by the Authority in procuring such insurance will become due and payable by Project Co to the Authority and the Authority may set off such amounts against any payments due by the Authority to Project Co under this Project Agreement.

4.12 Increase in Amount of Coverage

The Authority and Project Co will ensure that, throughout the Operating Period, the amounts of coverage in respect of the policies of insurance required to be obtained and kept in force under Section 3 of this Schedule 5 are not less than the greater of the amounts:

- (a) specified in Section 3.1; and
- (b) of coverage that would be obtained from time to time by prudent owners and operators of projects of similar scope and magnitude as the Project in respect of such policies of insurance,

(each, a **"Prudent Coverage Amount"**). If, at any time, a party (the **"Notifying Party"**) determines that the amount of coverage then in effect (the **"Actual Coverage Amount"**) in respect of any commercial policy of insurance required to be obtained and kept in force by a party under Section 3 of this Schedule 5, as applicable, is or will be less than the Prudent Coverage Amount, the Notifying Party will notify the other party in writing of such determination and, if both parties agree, or it is determined under the Dispute Resolution Procedure, that the

Actual Coverage Amount is or will be less than the Prudent Coverage Amount, the party responsible for effecting and maintaining such policy of insurance will forthwith cause the amount of coverage in respect thereof to be increased to an amount equal to at least the Prudent Coverage Amount.

4.13 Project Contractors and Sub-Contractors

Project Co will determine the applicable insurance coverage to be obtained by the Project Contractors and Sub-Contractors, provided that such insurance coverages will be consistent with insurance that prudent sub-contractors would be required to maintain for projects of similar scope and magnitude to the Project. Without limiting the generality of the foregoing, Project Co will cause the Project Contractors to take out, maintain in force and extend technology errors and omissions liability insurance during both the Construction Period and the Operating Period.

**APPENDIX 5A
LENDER ENDORSEMENTS**

With respect to any policy of insurance noted in Schedule 5 as requiring these Lender Endorsements, Project Co will use all reasonable efforts to have the underwriters of such policies include terms and endorsements substantially similar to those set out in this Appendix 5A with such changes and amendments as may reasonably be required in the context of the coverage provided under, and the wording contained in, each such policy.

Notwithstanding any other provision of this Policy, the following endorsement shall apply:

1. Definitions

In this endorsement:

“Authority” means The Commonwealth of Kentucky;

“Collateral Agent” means U.S. Bank National Association, a national banking association, in its capacity as collateral agent on behalf of itself and the other Senior Secured Creditors;

“Collateral Agency and Account Agreement” means the collateral agency and account agreement dated as of September 1, 2015 between Project Co, U.S. Bank National Association, as senior bonds trustee, U.S. Bank National Association, as subordinate bonds trustee, and the Collateral Agent;

“Insurance Proceeds Account” has the meaning set out in the Collateral Agency and Account Agreement;

“Insured” means those parties so described in the policy declarations;

“Insurers” means the insurer or insurers underwriting this Policy;

“Project” means the project described in the declarations to this Policy;

“Project Agreement” means the project agreement dated September 3, 2015 between Project Co and the Authority relating to the design, construction, financing, operation and maintenance of the NG-KIH System;

“Project Co” means KentuckyWired Infrastructure Company, Inc.; and

“Senior Secured Creditors” has the meaning given in the Collateral Agency and Account Agreement.

2. Separate Policy

All the provisions of this Policy (except for those relating to limits of liability) shall operate as if there were a separate policy covering each Insured. Accordingly, the liability of the Insurers under this Policy to any one of the Insured shall not be conditional upon the due observance and fulfillment of any other Insured of the terms of this Policy and of any duties imposed upon it relating thereto and shall not be affected by any failure in such observance or fulfillment of any such other Insured.

3. Interest of the Collateral Agent and the Authority

- 3.1 The Insurers acknowledge that the Collateral Agent and (in respect of third party liabilities) its officers, directors, employees, secondees and assigns are each additional insureds under this Policy and that the premium specified in this Policy provides consideration for their being insured parties.
- 3.2 The Insurers acknowledge that the Authority and (in respect of third party liabilities) its officers, directors, employees, secondees and assigns are each additional insureds under the sections of this Policy relating to property damage and third party liability risks and that the premium specified in this Policy provides consideration for their being insured parties.

4. Liability for Premium

Neither the Collateral Agent, nor the other Senior Secured Creditors, shall be liable for the payment of any premium under this Policy although they may choose to pay the premium.

5. Disclosure

- 5.1 The Collateral Agent shall have no duty of disclosure to Insurers in relation to the Policy.
- 5.2 The Insurers acknowledge to the Collateral Agent alone that (i) they have received adequate information in order to evaluate the risk of insuring Project Co in respect of the risks hereby insured on the assumption that such information is not materially misleading, (ii) there is no information which has been relied on or is required by Insurers in respect of their decision to co-insure the Collateral Agent or its officers, directors, employees, secondees and assigns, and (iii) in agreeing to enter into this Policy, they have not relied upon or taken into account any information supplied to them by the Collateral Agent. The acknowledgements provided by the Insurers in this Section 5.2 shall have no effect on any rights that Insurers might have had under or in relation to the Policy against any party (including Project Co) other than the Collateral Agent in the absence of such acknowledgements.
- 5.3 Non-disclosure or misrepresentation by one Insured shall not be attributable to any other Insured who did not actively participate in that non-disclosure or misrepresentation. Without prejudice to the protections afforded to the Insured by this endorsement, no one Insured represents or warrants the adequacy or accuracy of any information provided or representation made by or on behalf of any other Insured.

6. Non-Vitiation

- 6.1 The Insurers undertake to each Insured that the Policy will not be invalidated as regards the rights and interests of such Insured and that the Insurers will not seek to avoid any liability under this Policy because of any act, neglect, error or omission made by any other Insured, including any failure by any other Insured to disclose any material fact, circumstance or occurrence, any misrepresentation by any other Insured or any breach or non-fulfillment by any other Insured of any condition, warranty or provision contained in the policy.

6.2 The Insurers agree that no Insured shall be penalized or prejudiced in any way by any unintentional or inadvertent misrepresentation, non-disclosure, want of due diligence or breach of any declaration, terms, condition or warranty of this Policy (together “the Relevant Matter”), but that this shall not apply as regards the individual Insured responsible for the Relevant Matter if that Insured fails to notify the Insurers or the brokers through whom the Policy was placed as soon as reasonably practicable after the management or managers of that Insured become aware or are made aware of the Relevant Matter.

7. Cancellation

The Insurers agree that they will adhere to the cancellation provisions set out in Section 4.6(a) of Schedule 5 to the Project Agreement.

8. Changes in Cover

The Insurers shall give the Collateral Agent and the Authority at least 30 days’ notice in writing before any reduction in cover or increase in excess or deductible under this Policy takes effect. Nothing in this clause shall give the Insurers any right which they do not otherwise have to reduce cover or increase any excess or deductible under this Policy.

9. Amendments to Endorsement

During the term of this Policy, the provisions of this endorsement may only be amended by written agreement between Project Co, the Insurers and the Collateral Agent, such amendment to be endorsed on the Policy.

10. Notice of Claims

Notice of claim by the Authority, the Collateral Agent or any other party entitled to indemnity under the Policy shall, in the absence of manifest error, be accepted by Insurers as a valid notification of claim on behalf of all other Insureds subject to the full terms of the Policy.

11. Claim Payments/Loss Payee

11.1 Payments made in accordance with this Section 11 shall, to the extent of the payment, discharge the Insurers’ liability to pay Project Co or any other Insured.

11.2 In respect of property and machinery risks only, all claim payments or return premium shall be paid into the Insurance Proceeds Account or to such other account as the Collateral Agent may specify in writing.

11.3 In respect of the insurance under this Policy of third party liability risks only, all claim payments in respect of a third party liability shall be paid to person(s) whose claim(s) constitute the risk or liability insured against except in the case where the Insured has properly discharged its liability to such person(s), in which case the claim payment shall be paid to the Insurance Proceeds Account or such account as the Collateral Agent directs in writing.

- 11.4 In respect of the insurance under this Policy of loss of revenue risks only, all claim payments or return premiums shall be paid to the Insurance Proceeds Account or such other account as the Collateral Agent directs in writing.
- 11.5 Any return premiums shall be paid to the Insurance Proceeds Account or such other account as the Collateral Agent directs in writing.

12. Waiver of Subrogation

The Insurers waive all rights of subrogation howsoever arising which they may have or acquire against any Insured described within the appropriate Schedules arising out of any occurrence in respect of which any claim is admitted and is insured hereunder for the benefit of such Insured except against any:

- (a) such Insured (or officer, director, employee, agent or assign) who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate non-disclosure or deliberate breach of policy condition; or
- (b) consultant or equivalent professional party to the extent that their professional errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- (c) supplier or manufacturer to the extent that their errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- (d) such Insured to the extent that they are entitled to recover in respect of a loss under cover falling within sub-clause 13(a)–(e) below (or would be so insured if cover in the terms set out in this Policy had not been taken out).

13. Primary Insurance

The Insurers agree that this insurance provides the primary cover for risks insured under this Policy. In the event that any risk insured under this Policy is also insured under any other policy of insurance effected by any Insured, the Insurers agree to indemnify the Insured as if such other policy of insurance did not exist except in respect of:

- (a) excess layers of third party cover effected specifically for the Project;
- (b) any third party liability claim against the Insured which exceeds the applicable limit of indemnity under this Policy, in which case the liability of the Insurers for additional legal costs and expenses shall be limited to the proportion that the applicable limit of indemnity bears to the total claim against the Insured;
- (c) any claim under this Policy to which a Marine 50/50 Clause applies, if any;
- (d) any claim made under a Contingent Motor Liability extension to this Policy, if any;
or

- (e) any claim relating to a loss which is insured against (or would be insured but for a double insurance provision or similar or the application of a deductible) under:
 - (i) any other policy specifically effected for the construction or operational phase(s) of the Project; or
 - (ii) a latent or inherent defects policy or engineering or mechanical breakdown policy specifically effected for the Project;or a related business interruption insurance policy.

14. Notice of Security Interest

The Insurers acknowledge that, by an assignment contained in a general security agreement dated on or about the date hereof, Project Co assigned by way of security to the Collateral Agent all benefits and rights in respect of this insurance and all claims and returns of premiums in respect thereof to which the Insured is or may at a future time become entitled. The Insurers confirm that they have not been notified of any other assignment of or security interest in Project Co's interest in this insurance.

15. Notice

15.1 All notices or other communications under or in connection with the Policy will be given by fax, email or post. Any such notice given by Insurers will be deemed to be given on the earlier of:

15.1.1 if by fax or email, when transmitted but only if the sender's fax machine confirms successful transmission (if applicable); and

15.1.2 if by post, within 2 business days of release from the relevant Insurer's office.

15.2 The address, fax number and email address of the Collateral Agent for all notices under or in connection with the Policy are those notified from time to time by the Collateral Agent for this purpose to the insurance broker at the relevant time. The initial address, fax number and email address of the Collateral Agent is as follows:

Address: U.S. Bank National Association
Global Corporate Trust Services
One Financial Square
Louisville, KY 40202

Fax No: 502-562-6371
Attention: Amy Anders, Vice President
Email amy.anders@usbank.com

15.3 The address and email address of the Authority for all notices under or in connection with the Policy are those notified from time to time by the Authority for this purpose to the insurance broker at the relevant time. The initial address and email address of the Authority is as follows:

Address: The Commonwealth of Kentucky

Office of the Secretary
Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex Room 383
Frankfort, KY 40601

Attention: Secretary of the Finance and Administration Cabinet

With a copy to:

Office of Procurement Services
Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex Room 096
Frankfort, KY 40601

Attention: Stephanie Williams, Buyer
Email: StephanieR.Williams@ky.gov

16. Governing Law and Jurisdiction

The Policy shall be governed and interpreted in accordance with the laws of Kentucky. This endorsement overrides any conflicting provision in this Policy.

**SCHEDULE 6
CHANGES, MINOR WORKS AND INNOVATION PROPOSALS**

1. DEFINITIONS

In this Schedule 6, in addition to the terms defined in Schedule 1 [Definitions and Interpretation]:

“Change” means an NG-KIH System Change or a Services Change as the context requires;

“Change Certificate” means a certificate issued by the Authority describing and authorizing a Change, the value or method of valuation of the Change and, in the case of an NG-KIH System Change occurring prior to the Site Completion Date for a Site, the adjustment, if any, to the Project Schedule (including the Target Site Completion Date for such Site);

“Change Directive” means a written instruction issued by the Authority directing Project Co and Operations Co to immediately proceed with a Change, pending the finalization and issuance of a Change Certificate for that Change;

“Change Mark-Up” has the meaning set out in Section 2.11 of this Schedule 6;

“Change Report” means a written report prepared by Project Co in response to a Preliminary Change Instruction, containing the information described in Section 2.7 of this Schedule 6;

“Change Report Costs” has the meaning set out in Section 2.6(b)(3)(A) of this Schedule 6;

“Development Change” has the meaning set out in Section 7.1 of this Schedule 6;

“Development Change Record” has the meaning set out in Section 7.2 of this Schedule 6;

“Development Change Record Confirmation” has the meaning set out in Section 7.3 of this Schedule 6;

“Development Change Register” has the meaning set out in Section 7.6 of this Schedule 6;

“Innovation Proposal” has the meaning set out in Section 4.1 of this Schedule 6;

“Minor Works” means a Change that is requested by the Authority at any time during the Operating Period with a value that does not exceed \$25,000 (Index Linked);

“Minor Works Rates” has the meaning set out in Section 3.1(b) of this Schedule 6;

“NG-KIH System Change” means, during the Construction Period, a change, including an addition, deletion, alteration, substitution or otherwise, to Project Co’s Design and Construction obligations under this Project Agreement and, during the Operating Period, a change, including an addition, demolition, alteration, reconstruction or otherwise, to the NG-KIH System or any part thereof, other than a System Refresh;

“Net Change Value” has the meaning set out in Section 2.10(a) of this Schedule 6;

“Pole Attachment Proposal” has the meaning set out in Section 5.1 of this Schedule 6;

“Preliminary Change Instruction” has the meaning set out in Section 2.3 of this Schedule 6;

“**Preliminary Estimate**” has the meaning set out in Section 2.6(b)(1) of this Schedule 6; and

“**Services Change**” means a change, including an addition, deletion, alteration, substitution or otherwise, to Project Co’s Services obligations under this Project Agreement.

2. CHANGES

2.1 Changes Required by Authority or Requested by Project Co

At any time during the Term and without invalidating this Project Agreement, the Authority may require and Project Co may request Changes in accordance with this Schedule 6. Except to the extent that a Change Certificate expressly requires otherwise, Project Co will implement a Change in accordance with all the terms of this Project Agreement, including Schedule 2 [Design and Construction Protocols], Schedule 3 [Design and Construction and Specifications] and Schedule 4 [Service Protocols and Specifications].

2.2 No Entitlement to Perform a Change

Without prejudice to Project Co’s rights under this Project Agreement, including Section 8.3 (Project Co’s Entitlements Upon Occurrence of a Compensation Event), the Authority may, at any time after giving notice to Project Co and Operations Co, perform, or engage any person to perform, any work on the Lands or on the NG-KIH System that is not included in Project Co’s obligations under this Project Agreement. None of Project Co, Operations Co, the Project Contractors or the Sub-Contractors will have any right or entitlement to perform any such work. Project Co may submit a proposal to the Authority for the performance of such work, but nothing in this Project Agreement will obligate the Authority to consider or accept such proposal. If the Authority elects to have work performed by a third party on the Lands or on the NG-KIH System, the Authority shall require such third party to comply with Project Co’s reasonable and standard site safety and security requirements.

2.3 Preliminary Change Instruction

The Authority may, at any time during the Term, issue to Project Co and Operations Co an instruction (a “**Preliminary Change Instruction**”) describing a potential NG-KIH System Change or Services Change that the Authority is considering. A Preliminary Change Instruction will include sufficient description of the contemplated Change, including any requirements under Section 2.13(b) of this Schedule 6, to permit Project Co to prepare a Change Report.

2.4 Project Co Requested Change

Project Co may, at any time during the Term, deliver to the Authority a notice describing a potential NG-KIH System Change or Services Change that Project Co is requesting, which notice shall:

- (a) include sufficient description of the proposed Change to enable the Authority to evaluate it in full;
- (b) specify Project Co’s reasons for proposing the Change, including a detailed description of any value or benefit to be derived from the proposed Change;

- (c) indicate all reasonably foreseeable implications of the Change, including whether there are any costs or cost savings to the Authority and whether an adjustment to the Availability Payments or the Project Schedule is required; and
- (d) indicate the latest date by which a Preliminary Change Instruction must be issued in respect of the proposed Change.

If the Authority elects to consider the Change requested by Project Co, the Authority may issue to Project Co a Preliminary Change Instruction and the procedure set out in this Section 2 will apply.

2.5 Restrictions on Changes

The Authority will not, at any time during the Term, require, and Project Co may refuse to implement, a Change (including Minor Works) which:

- (a) would be contrary to Law;
- (b) would render the insurance policies required under this Project Agreement void or voidable and the Authority does not agree to provide replacement security satisfactory to Project Co, acting reasonably;
- (c) would cause the revocation of any Permit required by Project Co to perform its obligations under this Project Agreement, which Permit would not, using reasonable efforts, be capable of amendment or renewal;
- (d) would require a new Permit for Project Co to perform its obligations under this Project Agreement, which Permit would not, using reasonable efforts by Project Co or the Authority, as applicable, be obtainable;
- (e) would cause Project Co to be unable to obtain a Permit required by Project Co to perform its obligations under this Project Agreement, provided that such Permit was previously required but, at the time of the Preliminary Change Instruction, had not been obtained, which Permit would not, using reasonable efforts by Project Co or the Authority, as applicable, be obtainable; or
- (f) would materially and adversely affect the risk allocation and payment regime under this Project Agreement with respect to the Design, Construction or Services.

If Project Co, acting reasonably, determines that a Change is unacceptable because it contravenes one or more of the above, then Project Co will promptly give written notice to the Authority of its objection, with written reasons. If the Authority disagrees, then it may deliver a Dispute Notice to Project Co and Operations Co, and the parties will cooperate to have the issue resolved in a timely manner pursuant to the Dispute Resolution Procedure.

2.6 Delivery of Change Report

Subject to Section 2.5 of this Schedule 6:

- (a) as soon as practicable and, in any event, to the extent reasonably possible, within 15 Business Days after receipt of a Preliminary Change Instruction or such other period as the parties agree, acting reasonably, Project Co will, at its cost, prepare and deliver to the Authority a Change Report, signed by Project Co's Representative, for the contemplated Change described in the Preliminary Change Instruction; or
- (b) if the Net Change Value of the contemplated Change is likely to be more than \$50,000 (Index Linked) or if the costs of preparing a Change Report are likely to be more than \$5,000 (Index Linked), then:
 - (1) Project Co may, at its election within 5 Business Days after receipt of the Preliminary Change Instruction for such contemplated Change, or shall, if requested by the Authority, give notice to the Authority that it intends to first prepare and deliver a preliminary estimate (the "**Preliminary Estimate**") of the net cost of the contemplated Change;
 - (2) if Project Co has given notice as described in Section 2.6(b)(1), then, within 10 Business Days after provision of such notice, Project Co will, at its cost, prepare and deliver to the Authority an order of magnitude estimate of the net cost of the contemplated Change, and the Authority may give notice to Project Co and Operations Co to proceed with Section 2.6(b)(3) or, alternatively, to proceed with the preparation of the Change Report for the contemplated Change and Project Co will prepare and deliver the Change Report as soon as practicable and, in any event, to the extent reasonably possible, within 15 Business Days after receipt of such notice or such longer period as the parties agree acting reasonably;
 - (3) if the Authority has given notice to proceed as described in Section 2.6(b)(2), then, within 10 Business Days after receipt of such notice, Project Co will, at its cost, prepare and deliver to the Authority:
 - (A) a reasonable estimate of the out-of-pocket costs (the "**Change Report Costs**") that Project Co would incur to prepare the Change Report; and
 - (B) a Preliminary Estimate of the contemplated Change, in sufficient detail and accuracy to permit the Authority to make an informed decision as to whether to proceed with the contemplated Change, including, as appropriate:
 - (i) a preliminary cost estimate of the main elements of the contemplated Change;
 - (ii) a preliminary implementation schedule and work plan for the implementation of the contemplated Change; and
 - (iii) a description of the impact of the contemplated Change on the NG-KIH System during implementation or in the use of the NG-KIH System; and

- (4) the Authority may, within 10 Business Days following receipt of the Preliminary Estimate, or at any time if Project Co fails to comply with the time requirements set out in this Section 2.6(b), give notice to Project Co and Operations Co to proceed with the preparation of the Change Report for the contemplated Change and Project Co will prepare and deliver the Change Report as soon as practicable and, in any event, to the extent reasonably possible, within 15 Business Days after receipt of such notice or such longer period as the parties agree acting reasonably.

If Project Co prepares a Change Report pursuant to Section 2.6(b)(4) of this Schedule 6, and the Authority elects not to proceed with the contemplated Change, then the Authority will pay Project Co's substantiated Change Report Costs.

2.7 Change Report Contents

A Change Report will include:

- (a) if and to the extent a contemplated Change is an NG-KIH System Change:
 - (1) a description of the scope of the contemplated Change with respect to Design and/or Construction, as applicable;
 - (2) a comparison of the scope of the Design and Construction as a result of the contemplated Change as compared to the scope of the Design and Construction prior to the Change;
 - (3) subject to Section 2.12 of this Schedule 6, a description of any adjustments to the Project Schedule, including to any Target Site Completion Date, any Target Ring Completion Date, any Outside Ring Completion Date or the Target System Completion Date, which Project Co will require as a result of the implementation of the contemplated Change (including details of any corresponding adjustments required by Operations Co, any Project Contractor or any Sub-Contractors) and any compensation required under Section 2.10(d) of this Schedule 6; and
 - (4) a description of any impact of the contemplated Change on the performance of the Services;
- (b) if and to the extent a contemplated Change is a Services Change:
 - (1) a description of the scope of the contemplated Change with respect to the Services; and
 - (2) a comparison of the scope of the Services as a result of the contemplated Change as compared to the scope of the Services prior to the Change; and
- (c) for all contemplated Changes (in addition to the requirements of Section 2.7(a) or 2.7(b) of this Schedule 6, as applicable):

- (1) an estimate of all costs, if any, reasonably necessary for and directly associated with the contemplated Change, including the following (which will be shown separately if requested by the Authority), as applicable:
 - (A) all Design costs (based on the estimated number of hours reasonably required to perform any additional Design);
 - (B) all Construction labor, material and equipment costs, supported, as the case may be, by quotations from the applicable Project Contractor and Sub-Contractors;
 - (C) all Services labor, material and equipment costs, supported, as the case may be, by quotations from the applicable Project Contractor and Sub-Contractors;
 - (D) all additional costs of site management, including supervision of trade foremen, site overheads and site establishment and including, without duplication, any costs related to Project Co's or Operations Co's management and oversight of the Project that should reasonably be included in the contemplated Change;
 - (E) all costs of relevant Permits, including an amendment or renewal of a Permit, a new Permit or a Permit that is in the course of being obtained;
 - (F) all costs associated with services provided by professional advisors;
 - (G) all financing costs;
 - (H) if and to the extent a contemplated Change is an NG-KIH System Change that also materially affects the cost of the Services, all changes to the cost of the Services; and
 - (I) if and to the extent a contemplated Change is a Services Change that requires a material change to the NG-KIH System, all changes to the cost of the NG-KIH System;
- (2) an estimate of the cost savings, if any, resulting from the contemplated Change;
- (3) any proposal(s) as to how the contemplated Change could be accomplished at no net cost;
- (4) a description of any changes to the Senior Financing Agreements that would be required to reflect a change in the risk profile of the Project arising from the contemplated Change;
- (5) a description of any changes to the Availability Payments that are required to reflect the costs and cost savings referred to in Sections 2.7(c)(1) and 2.7(c)(2);

- (6) identification of any amounts payable by the Authority to Project Co, if any, other than the Availability Payments;
- (7) Project Co's proposal as to how any increased costs to Project Co resulting from the contemplated Change might be funded;
- (8) the value of the loss or reduction of benefits resulting from the contemplated Change;
- (9) a description of any additional consents or approvals required, including amendments, if any, of any Permits required to implement the contemplated Change;
- (10) a description of any impact on the obligations of Project Co under the Project Implementation Agreement or the Project Contracts;
- (11) a description of the extent to which the contemplated Change would interfere with Project Co's ability to comply with any of its obligations under this Project Agreement, the Project Implementation Agreement, the Project Contracts, any Sub-Contracts and any Permits;
- (12) the name of the Sub-Contractor(s) (if any) which Project Co or Operations Co intends to engage for the purposes of implementing the contemplated Change, together with a description of the qualifications of any such Sub-Contractor(s) so as to demonstrate the ability of such Sub-Contractor(s) to implement the contemplated Change;
- (13) a description of any further effects (including benefits and impairments) that Project Co foresees as being likely to result from the contemplated Change;
- (14) a description of any actions that would be reasonably required by the Authority to implement the contemplated Change;
- (15) a description of the steps Project Co will take to implement the contemplated Change, in such detail as is reasonable and appropriate in all the circumstances;
- (16) a description of any impact on expected usage of utilities for the current Contract Year and subsequent Contract Years; and
- (17) a description of the extent to which the contemplated Change may impact the ability of any Third Party Fiber Provider to perform any of its obligations under the relevant Third Party Fiber Agreement.

All of the costs described in this Section 2.7 will be provided in current applicable dollar amounts.

2.8 Justification and Supporting Documentation for Contemplated Change Estimates

The cost estimates included in a Change Report will be in sufficient detail to allow evaluation by the Authority and will include such supporting information and justification as is necessary to demonstrate that:

- (a) Project Co has used all reasonable efforts, including utilizing competitive quotes or tenders, to minimize the cost of a contemplated Change and maximize potential related cost savings;
- (b) Project Co, Operations Co, the Project Contractors and the Sub-Contractors have valued the Change as described in Section 2.9 of this Schedule 6, and have not included other margins or mark-ups;
- (c) the full amount of any and all expenditures that have been reduced or avoided (including any Capital Expenditure) have been fully taken into account; and
- (d) Project Co has mitigated or will mitigate the impact of the contemplated Change, including on the Project Schedule, the performance of the Services, the expected usage of utilities and the direct costs to be incurred.

The Authority may, at any time and in its sole discretion, seek competing cost estimates or alternative change estimates from contractors who are qualified to perform the contemplated Change for purposes of comparing and evaluating the cost estimates provided by Project Co.

2.9 Valuation of and Payment for Changes

The value and method of valuation of a Change will be as agreed by the parties. Failing agreement, the value of the Change will be deemed to be the net cost (or saving) of implementing the Change, calculated in accordance with Section 2.10 of this Schedule 6. If a Change has a net cost (a positive Net Change Value), the Authority will pay Project Co the Net Change Value plus the Change Mark-Up and any amounts due under Section 2.10(d) of this Schedule 6. If a Change has a net cost savings (a negative Net Change Value), Project Co will pay the Authority the Net Change Value. For clarity, unless otherwise agreed by the parties, the Authority will pay for any Change that requires a Capital Expenditure by way of lump sum payment or progress payments as such costs are incurred.

2.10 Net Change Value

- (a) The value of a Change (the “**Net Change Value**”) is the aggregate of the incremental costs (minus the aggregate cost savings) reasonably incurred to implement the Change, supported by invoices, purchase orders, time sheets and other customary industry documentation, as follows:
 - (1) Design: the incremental costs (or cost savings) of any Design incurred (or saved), based on the additional (or decreased) number of design consultant’s hours required to undertake the Change;
 - (2) Labor: the incremental costs incurred (or cost savings) for labor, based on the additional (or decreased) number of labor and direct labor-supervision hours required to undertake the Change (including allowance

for all payroll burdens such as overtime premiums (when paid), vacation pay, pensions, statutory payments, workers' compensation insurance, union dues, tool money, medical insurance and any other payments directly paid in the ordinary course, and including any severance and termination costs directly resulting from the Change);

- (3) Materials and Equipment: the incremental costs incurred (or cost savings) for the supply and delivery of such materials, consumables and equipment (including the cost of any associated testing, commissioning, spare parts, manuals and software, and including any related design and engineering), except that any changes to the Authority's cost of purchasing NG-KIH System equipment will not be included in the calculation of Net Change Value;
 - (4) Procurement Cost: the incremental costs incurred (or cost savings) to obtain and evaluate tenders and award a contract for work required for the Change that is to be tendered under Section 2.13(b) of this Schedule 6, and the supervision and management of such contract;
 - (5) Services: the incremental costs incurred (or cost savings), based on the number of personnel hours required to undertake the Change; and
 - (6) Miscellaneous: all other additional net costs or savings directly attributable to the Change, including project management, site management, supervision, site establishment, living and travel allowances, services provided by professional advisors, wastage, disposal, insurance, bonding, financing and Permits (including the amendment or renewal of an existing Permit or obtaining a new Permit), calculated at the cost or saving to Project Co or Operations Co;
- (b) any costs related to expenses that would have been incurred had the Change not taken place (to the extent such costs are not increased as a result of the Change) will not be considered directly attributable to the Change;
 - (c) the rates and charges applied in Section 2.10(a) above will be no greater than the market rates prevailing at the time of the implementation of the Change, paid between arm's length contracting parties; and
 - (d) subject to Section 2.12 of this Schedule 6, if a Change causes a delay in Site Completion, Ring Completion or System Completion and Project Co is entitled to an equitable adjustment of the Project Schedule (including the Target Site Completion Dates, the Target Ring Completion Dates, the Outside Ring Completion Dates and the Target System Completion Date) as a result of a Change, the cost of the Change will include an amount calculated on the basis that Project Co will be placed in no better or worse position than it would have been in had the Change and the delay in Site Completion, Ring Completion or System Completion not occurred and taking into consideration the following (without duplication):
 - (1) any net increase or decrease in the costs of Project Co performing its obligations under this Project Agreement or Operations Co performing its

obligations under the Project Implementation Agreement resulting solely from the Change and the delay, including any increased financing costs caused by a reduction in the amortization schedule for the Senior Debt;

- (2) the Availability Payments that would have otherwise been payable to Project Co;
- (3) no amount will be payable for Avoidable Costs or Indirect Losses; and
- (4) no amount will be payable to Senior Secured Creditors in connection with the consent to any Change unless the Change is a material Change, the consent is reasonably required under the Senior Financing Agreements and the amount payable is reasonable.

2.11 Mark-Up on Changes

If a Change has a positive Net Change Value, the Authority will pay a mark-up of 10% of the Net Change Value (the “**Change Mark-Up**”) to cover Project Co’s and Operations Co’s indirect, head office and other costs and profit.

2.12 Effect on the Project Schedule or Delays to Services

Project Co will use all reasonable efforts, as described in Section 2.5 of this Project Agreement, to minimize the effect of a Change on the Project Schedule (including the Target Site Completion Dates, the Target Ring Completion Dates, the Outside Ring Completion Dates and the Target System Completion Date) and the performance of the Services and, subject to the foregoing, Project Co will be entitled to an equitable adjustment of the Project Schedule (including the Target Site Completion Dates, the Target Ring Completion Dates, the Outside Ring Completion Dates and the Target System Completion Date) and the requirements for performance of the Services as a result of the Change. Without limiting the generality of the foregoing, the implementation of a Change, to the extent Project Co has identified the effect on the Services and such effect has been documented in a Change Certificate, but without duplication of relief that may be provided in a Change Certificate, will constitute an Excusing Event.

2.13 Agreement on a Change

Following receipt by the Authority of a Change Report prepared in accordance with Section 2.7 of this Schedule 6:

- (a) as soon as practicable and, in any event within 15 Business Days after the Authority receives a Change Report or such longer period as the parties agree acting reasonably, the Authority will deliver to Project Co and Operations Co any requests for clarifications or amendments, and the parties’ Representatives will meet and use all reasonable efforts to agree to the Change Report, including the costs, payments (including payment of costs and adjustments to Availability Payments, if any) and other information contained in the Change Report;
- (b) if the Authority is required by applicable Law or Governmental Authority to require Project Co to competitively tender any contract in relation to a

contemplated Change, Project Co will seek and evaluate competitive tenders for the proposed Change; and

- (c) the Authority may, in writing, modify a Preliminary Change Instruction at any time prior to the parties reaching an agreement on the Change Report for any matter relating to the Change Report or arising from the discussions in relation thereto, in which case Project Co will, as soon as practicable and, in any event, not more than 10 Business Days after receipt of such modification (or such longer period as the parties may agree acting reasonably), notify the Authority of any consequential changes to the Change Report.

2.14 Change Certificate

A Change will come into effect by the Authority issuing to Project Co and Operations Co a Change Certificate signed by the Authority's Representative. If the parties have agreed on the Change Report without amendment, it is sufficient for the Change Certificate to be signed by the Authority's Representative. Subject to Section 2.15, if the Change Report requires amendment, the Change Certificate comes into effect when signed by the Authority's Representative and Project Co's Representative. Subject to Section 2.17, Project Co will not proceed with a Change prior to receiving a signed Change Certificate from the Authority. A Change Certificate issued in accordance with this Section 2.14 will be binding upon the Authority and Project Co. Subject to Section 2.5 and Section 2.15(b) of this Schedule 6, upon receipt of a Change Certificate, Project Co will implement the Change without prejudice to Project Co's right to refer any question of valuation of the Change to the Dispute Resolution Procedure.

2.15 Disagreement on Change Report

If the parties do not agree on a Change Report, then the Authority may:

- (a) except in connection with a Change required pursuant to Section 2.16 of this Schedule 6, elect not to proceed with the Change described in the Preliminary Change Instruction; or
- (b) issue a Change Certificate to Project Co and Operations Co stating the Authority's determination of the matters referred to in the Change Report and, if Project Co disagrees with all or any of the determinations set out in the Change Certificate, then Project Co may deliver to the Authority a Dispute Notice, and Project Co will, without prejudice to its rights with respect to such Dispute, use all reasonable efforts to implement the Change as directed in the Change Certificate.

The Change Certificate referred to in Section 2.15(b) is effective when signed by the Authority's Representative alone.

2.16 Changes in Other Circumstances

The Authority will issue a Preliminary Change Instruction in respect of a deemed Change pursuant to Section 8.8(a) (Parties' Entitlements Upon Occurrence of a Change in Law) of this Project Agreement and any such Change will be subject to the processes and procedures outlined in this Schedule 6 in respect of Changes.

2.17 Change Directive

Subject to Section 2.5 of this Schedule 6 but notwithstanding any other provision of this Schedule 6, the Authority may, at any time, issue a Change Directive to Project Co and Operations Co, signed by the Authority's Representative, directing Project Co to proceed with a contemplated Change in which case the following will apply:

- (a) Project Co will proceed with the Change and the valuation and the time extensions and payment of any adjustments will be made as soon as reasonably possible after the implementation thereof in the same manner as a Change for which a Preliminary Change Instruction, Change Report and Change Certificate would be issued hereunder;
- (b) if Project Co has not previously done so, Project Co will, within 20 Business Days after the issuance of the Change Directive, provide a Change Report in accordance with the requirements of this Schedule 6 for a Change Report and Section 2.13(a) of this Schedule 6 will apply;
- (c) pending a final determination as to any time extensions or valuation and payment of any adjustments for a Change or any other matters in the Change Report delivered by Project Co pursuant to Section 2.17(b) of this Schedule 6, the Authority will pay Project Co amounts reasonably demonstrated by Project Co in writing from time to time to be payable for the Change, including reimbursement of amounts that Project Co reasonably incurs with respect to the Change;
- (d) if the parties agree on the Change Report, the Authority will issue a signed Change Certificate stating the parties' agreed determination of the matters referred to in the Change Report;
- (e) if the parties do not agree on a Change Report, the Authority will issue a signed Change Certificate stating the Authority's determination of the matters referred to in the Change Report; and
- (f) if Project Co disagrees with all or any of the determinations set out in the Change Certificate, Project Co may deliver to the Authority a Dispute Notice, and Project Co will, without prejudice to its rights with respect to such Dispute, continue to implement the Change as directed in the Change Directive.

The Authority may issue a Change Directive at any time in its discretion, including in the absence of a Preliminary Change Instruction, at any time following issuance of a Preliminary Change Instruction, if Project Co fails to provide a Change Report, if a Change Report or Change Certificate is not promptly agreed upon by the parties or if there is a Dispute in relation to a Preliminary Change Instruction, Change Report or Change Certificate (including a Dispute as to whether there is a Change), but not if there is a Dispute as to whether Project Co is entitled to refuse to implement the Change under Section 2.5 of this Schedule 6.

2.18 Modification of Processes and Procedures

Nothing in this Schedule 6 shall limit the ability of the parties to mutually, in writing, modify, simplify or waive some or all of the processes and procedures outlined in this Schedule 6 in respect of Changes.

3. MINOR WORKS

3.1 Minor Works Rates

The Minor Works Rates will be established and applied as follows:

- (a) The Minor Works Rates that will apply to the first Contract Year are as follows:

Salaried Personnel	Regular Hourly Rates (\$/hour)	Overtime Hourly Rates (\$/hour)
Senior Project Manager	\$195.00	\$292.50
Project Manager	\$161.19	\$241.78
ISP Installation Manager	\$181.26	\$271.89
ISP Test and Turn up Manager	\$181.26	\$271.89
ISP Senior Network Design and Solution Architect	\$245.00	\$367.50
ISP Network Design and Solution Architect	\$200.00	\$300.00
NOC Support Engineer	\$161.19	\$241.78
NOC/OSS Management Engineer	\$181.26	\$271.89
Construction Manager	\$155.00	\$232.50
Project Engineer	\$110.00	\$165.00
Cable Splicer/Tester	\$105.00	\$157.50
General Foreman	\$105.00	\$157.50
Aerial Team with Bucket Truck	\$250.00	\$375.00
Field Engineer/Installer	\$105.00	\$157.50
Systems Engineer	\$161.19	\$225.00
Senior Circuit Design Engineer	\$225.00	\$337.50
Circuit Design Engineer	\$181.26	\$225.00

- (b) Not less than 20 Business Days before the commencement of each subsequent Contract Year, Project Co will submit to the Authority, for review and approval by the Authority, any amendments to the categories and hourly rates set out in Section 3.1(a) (the “**Minor Works Rates**”) to be applied in respect of any request by the Authority for Minor Works to be completed during the next occurring Contract Year.
- (c) The Authority, acting reasonably, may identify amendments to the categories that may be required for Minor Works in the next applicable Contract Year. For greater certainty, the categories and Minor Works Rates will apply to the Project Contractors and Sub-Contractors unless otherwise agreed by the Authority.
- (d) The Minor Works Rates will be based on the actual hourly cost that will be paid to the individual (including allowance for all payroll burdens such as overtime premiums (when paid), vacation pay, pensions, statutory payments, workers’ compensation insurance, union dues, tool money, medical insurance and any other payments directly paid in the ordinary course), and will include a markup to cover overhead and profit, provided that the Minor Works Rates will not be greater than the prevailing market rates paid by arm’s length contracting parties.
- (e) If the parties are unable to agree on the categories and Minor Works Rates as required under Section 3.1(b) of this Schedule 6, the cost of Minor Works will be valued as described in Section 3.5 of this Schedule 6.

3.2 Direction for Minor Works

The Authority may, at any time during the Operating Period, request that Project Co perform Minor Works in respect of such Site as follows:

- (a) within 10 Business Days of a request in writing for Minor Works, Project Co will, at its own cost, prepare and deliver to the Authority a written price estimate covering the full scope of the requested Minor Works, based on the applicable Minor Works Rates or, if and to the extent the Minor Works Rates are not applicable, at cost plus 10%;
- (b) a Preliminary Change Instruction and a Change Report will not be required for Minor Works;
- (c) within 5 Business Days of receipt of a written price estimate from Project Co, the Authority will either:
 - (1) provide written direction for Project Co to proceed with the Minor Works, in which case, Project Co will, in a timely manner, carry out the Minor Works; or
 - (2) confirm that Project Co does not need to proceed with the Minor Works; and
- (d) the completed Minor Works will be a part of the completed NG-KIH System and, accordingly, as required by this Project Agreement, and without further payment, except for an appropriate adjustment to the Availability Payment to reflect the

effect, if any, on the cost of the Services and the payment required in accordance with Section 3.4 of this Schedule 6, Project Co will be responsible for all Services related to the completed Minor Works.

Project Co will not be entitled to charge the Authority for preparing a written price estimate in accordance with Section 3.2(a) above.

3.3 Project Co to Minimize Inconvenience

Prior to commencing any Minor Works, Project Co will notify the Authority of the estimated duration of the Minor Works so that the Authority and Project Co can agree upon a convenient time for carrying out the Minor Works in a manner that minimizes and mitigates inconvenience and disruption to the use of the NG-KIH System. Project Co will use all reasonable efforts to minimize the duration of any Minor Works and will schedule Minor Works as reasonably requested by the Authority, including doing works outside normal operating hours.

3.4 Payment for Minor Works

Project Co will, as of the end of a calendar month, invoice the Authority monthly for Minor Works completed in the calendar month, supported by appropriate invoices and work records, and the Authority will pay Project Co for all undisputed amounts by the date that is 30 days following receipt of the invoice for Minor Works performed in the previous calendar month.

3.5 Minor Works Disputes

Any Dispute arising in connection with Minor Works, including the price to be paid for Minor Works and the annual determination of the Minor Works Rates, will be resolved in accordance with the Dispute Resolution Procedure.

4. INNOVATION PROPOSALS

4.1 Innovation and Value Engineering

Project Co may, at any time, submit a proposal to the Authority (an “**Innovation Proposal**”) to implement modifications to the NG-KIH System and the Services, including through innovation or value engineering, for the purpose of achieving efficiencies and reducing the Availability Payments or the overall cost to the Authority of the NG-KIH System and the Services. Project Co must demonstrate to the Authority’s satisfaction that an Innovation Proposal is originated and initiated solely by Project Co (including by Project Co bearing all research and development costs) without the involvement of the Authority or its consultants and offers savings, innovation or efficiency that is not otherwise called for or provided by this Project Agreement.

4.2 Content of Innovation Proposal

An Innovation Proposal will:

- (a) set out all the information required in a Change Report as required under Section 2.7 of this Schedule 6, modified to apply to an Innovation Proposal;

- (b) specify Project Co's reasons and justification for proposing the Innovation Proposal and detail the value and benefits to the Authority of the Innovation Proposal;
- (c) request the Authority to consult with Project Co with a view to the Authority deciding whether to agree to the Innovation Proposal and, if so, what consequential changes the Authority may require;
- (d) indicate any implications of the Innovation Proposal, including a difference between the existing and the proposed requirements of this Project Agreement, and the comparative advantages of each to Project Co and the Authority;
- (e) indicate whether a payment by the Authority in respect of direct costs or a variation to the Availability Payments is proposed and, if so, give a detailed estimate of such proposed payment or variation;
- (f) indicate if there are any dates by which a decision by the Authority must be made; and
- (g) include such other information and documentation as may be reasonably requested by the Authority to fully evaluate and consider the Innovation Proposal.

4.3 Costs of Developing Innovation Proposal

Project Co may deliver to the Authority preliminary information with respect to a proposed Innovation Proposal, but unless the Authority, in its discretion, agrees to pay or share the costs of developing an Innovation Proposal, the costs of investigating a potential Innovation Proposal will be borne entirely by Project Co.

4.4 Evaluation of Innovation Proposal

The Authority will evaluate and give consideration to an Innovation Proposal taking into account all relevant issues, including whether:

- (a) a change in the Availability Payments will occur;
- (b) the Innovation Proposal affects the quality or delivery of the NG-KIH System or the Services;
- (c) the Innovation Proposal will interfere with the relationship of the Authority with any third parties;
- (d) the financial strength of Project Co is sufficient to deliver the changed NG-KIH System or changed Services, as applicable;
- (e) the residual value of the NG-KIH System is affected; and
- (f) the Innovation Proposal materially affects the risks or costs to which the Authority is exposed,

and any other matter the Authority considers relevant. The Authority may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.

4.5 Acceptance and Implementation of Innovation Proposal

Notwithstanding any potential cost savings of an Innovation Proposal, the Authority is under no obligation to accept an Innovation Proposal and may, in its discretion, elect not to implement an Innovation Proposal. An Innovation Proposal that is accepted by the Authority will be implemented as a Change and Project Co will not implement an Innovation Proposal prior to the issuance of a Change Certificate.

4.6 Sharing Benefits of an Innovation Proposal

If the Innovation Proposal causes or will cause the costs of Project Co, Operations Co, a Project Contractor or a Sub-Contractor to decrease, after taking into account the agreed implementation and reasonably allocated development costs (incurred by Project Co, Operations Co, a Project Contractor or a Sub-Contractor) of the Innovation Proposal (taking into account any other uses of the Innovation Proposal by Project Co), the net savings in the costs of Project Co, Operations Co and such Project Contractor or Sub-Contractor will be shared by Project Co and the Authority in a manner to be agreed in connection with the acceptance of the Innovation Proposal by the Authority, and the Authority's share of the net savings will be reflected in a reduction of the Availability Payments.

5. POLE ATTACHMENT PROPOSALS

5.1 Pole Attachment Proposal

Project Co may, at any time during the Simple Pole Attachment Agreement Amendment Period, submit a proposal to the Authority (a "**Pole Attachment Proposal**") to implement modifications to the NG-KIH System and the Services, for the purpose of achieving efficiencies and reducing the Availability Payments or the overall cost to the Authority of the NG-KIH System and the Services in connection with a proposed Amended Pole Attachment Agreement.

5.2 Content of Pole Attachment Proposal

A Pole Attachment Proposal will:

- (a) set out all the information required in a Change Report as required under Section 2.7 of this Schedule 6, modified to apply to a Pole Attachment Proposal;
- (b) specify the parties' mutually agreed reasons and justification for considering the Amended Pole Attachment Agreement and detail the value and benefits to the Authority if the Amended Pole Attachment Agreement was entered into by the Authority;
- (c) request the Authority to consult with Project Co with a view to the Authority deciding whether to agree to the Pole Attachment Proposal and, if so, what consequential changes the Authority may require;

- (d) indicate any implications of the Pole Attachment Proposal, including a difference between the existing and the proposed requirements of this Project Agreement, and the comparative advantages of each to Project Co and the Authority;
- (e) indicate the variation to the Availability Payments that is proposed, including a detailed estimate of such proposed variation;
- (f) indicate if there are any dates by which a decision by the Authority must be made; and
- (g) include such other information and documentation as may be reasonably requested by the Authority to fully evaluate and consider the Pole Attachment Proposal.

5.3 Costs of Preparing the Pole Attachment Proposal

Project Co will deliver to the Authority preliminary information with respect to a proposed Pole Attachment Proposal and will pay the costs of preparing such Pole Attachment Proposal, provided that Project Co will seek the Authority's written approval prior to incurring any such costs.

5.4 Evaluation of Pole Attachment Proposal

The Authority will evaluate and give consideration to a Pole Attachment Proposal taking into account all relevant issues, including whether:

- (a) a change in the Availability Payments will occur;
- (b) the financial strength of Project Co is sufficient to deliver the changed NG-KIH System or changed Services, as applicable;
- (c) the residual value of the NG-KIH System is affected; and
- (d) the Pole Attachment Proposal materially affects the risks or costs to which the Authority, Project Co, Operations Co or any Project Contractor or Sub-Contractor is exposed,

and any other matter the Authority considers relevant. The Authority may request clarification or additional information regarding the Pole Attachment Proposal, and may request modifications to the Pole Attachment Proposal.

5.5 Acceptance and Implementation of Pole Attachment Proposal

Notwithstanding any potential cost savings of a Pole Attachment Proposal, the Authority is under no obligation to accept a Pole Attachment Proposal and may, in its discretion, elect not to implement a Pole Attachment Proposal. If Project Co prepares a Pole Attachment Proposal and the Authority elects not to implement the Pole Attachment Proposal, then, provided that Project Co obtained the Authority's prior written approval under Section 5.3, the Authority will pay Project Co's costs of preparing the Pole Attachment Proposal. A Pole Attachment Proposal that is accepted by the Authority will be implemented as a Change and Project Co will not implement a Pole Attachment Proposal prior to the issuance of a Change Certificate.

5.6 Sharing Benefits of a Pole Attachment Proposal

If the Pole Attachment Proposal causes or will cause the costs of Project Co, Operations Co, a Project Contractor or a Sub-Contractor to decrease, after taking into account the development and implementation costs of the Changes contemplated by the Pole Attachment Proposal, together with the costs of preparing the Pole Attachment Proposal, incurred by Project Co, Operations Co, a Project Contractor or a Sub-Contractor, the net savings in the costs of Project Co, Operations Co, the Project Contractor or the Sub-Contractor will be shared by Project Co and the Authority such that Project Co will receive 15% and the Authority will receive 85% of such net savings (except for any Pole Attachment Proposal involving Jackson Energy Cooperative, in respect of which the Authority will receive 100% of such net savings).

6. RESPONSIBILITY AND PAYMENT FOR CHANGES

6.1 Responsibility for Changes, Minor Works, Innovation Proposals and Pole Attachment Proposals

Except as specifically provided in this Project Agreement, the Authority will bear no risk or liability whatsoever arising from any Change, Minor Works, Innovation Proposal and Pole Attachment Proposals other than the liability to make payment in connection therewith. Notwithstanding the previous sentence, the Authority will pay to Project Co increased costs or any Direct Losses suffered by Project Co as a result of any particular design, materials, goods, workmanship or method of construction which the Authority specifies must be incorporated in a Change and which is subsequently shown to be defective (other than as a result of the default or negligence of Project Co or any Project Co Person), if Project Co objected in writing to the incorporation of such item prior to the issue of the relevant Change Certificate and such objection was rejected by the Authority.

6.2 Availability Payments in Respect of Changes, Minor Works, Innovation Proposals and Pole Attachment Proposals

Subject to Section 2.9 of this Schedule 6, any payments between the parties and any adjustments to Availability Payments in respect of Changes, Minor Works, Innovation Proposals and Pole Attachment Proposals will be made in accordance with any agreed basis for payment set out in the Change Certificate. The basis for payment may, at the Authority's discretion, include progress draws, milestone payments, lump sum payments, time and materials or maximum amounts. If no basis for payment is included in the Change Certificate, payment will be made in accordance with Section 10 (Lump Sum Payments and Availability Payment Adjustments) of this Project Agreement.

If payments between the parties and any adjustments to Availability Payments in respect of Changes, Minor Works, Innovation Proposals and Pole Attachment Proposals require an update to the Financial Model, Project Co will expeditiously update and will provide such updated Financial Model to the Authority, all in accordance with Section 10 (Lump Sum Payments and Availability Payment Adjustments) of this Project Agreement. The Authority may in its sole discretion waive or defer the requirements for Project Co to make such updates to the Financial Model in respect of Changes, Minor Works, Innovation Proposals and Pole Attachment Proposals. The updates to the Financial Model will be shown as of the relevant current date and, as applicable, the Base Date.

6.3 Consequential Amendments to Schedule 8

If the Change, Minor Works, Innovation Proposal or Pole Attachment Proposal affects any of the provisions of Schedule 8 [Payments], the parties will review and adjust such provisions as appropriate.

7. ALTERNATE CHANGE PROCESS DURING DESIGN AND CONSTRUCTION

7.1 Development Changes

The parties may, during the Construction Period, agree to utilize the process set out in this Section 7 rather than the process set out in Section 2 of this Schedule 6 for agreeing on and tracking Changes that:

- (a) on an individual basis, are less than \$10,000 in value (unless otherwise agreed by the parties), including “no cost” Changes;
- (b) on a cumulative basis, are less than \$50,000 in value (unless otherwise agreed by the parties);
- (c) do not result in a change in any Target Site Completion Date, any Target Ring Completion Date, any Outside Ring Completion Date or the Target System Completion Date;
- (d) do not result in a change to the Financial Model; and
- (e) would not fall within the scope of Section 2.5 of this Schedule 6,

(each, a “**Development Change**” and, collectively, the “**Development Changes**”).

7.2 Alternate Process

Where a party identifies a potential Development Change, that party may present the potential Development Change to the other party in a form, and with such supporting information, as it considers to be appropriate to the nature and complexity of the potential Development Change.

Where a party presents a potential Development Change, the parties’ respective Design and Construction Representatives will meet as soon as practicable to discuss the proposed Development Change and where:

- (a) the proposed Development Change meets the requirements of Section 7.1 of this Schedule 6; and
- (b) the parties reach agreement with respect to the value of the proposed Development Change and any contractual amendments required to implement the proposed Development Change,

Project Co will record the terms of the parties’ agreement with respect to the applicable Development Change (a “**Development Change Record**”). Promptly after preparing a Development Change Record, and in any event prior to implementation of the agreed Development Change, Project Co will deliver a copy of the Development Change Record to the Authority’s Design and Construction Representative.

7.3 Opportunity to Object

If, within 30 days after receipt of a Development Change Record, the Authority's Design and Construction Representative objects in writing to the Development Change Record on the basis that it is not an accurate representation of the parties' agreement, the parties will meet to discuss the Development Change and attempt to resolve the objection.

If an objection cannot be resolved, then the proposed Change will be deemed not to be a Development Change and will not be implemented by the parties, provided that either the Authority or Project Co will be permitted to pursue such Development Change in accordance with the Change process in accordance with this Schedule 6.

If an objection is resolved, then following such resolution, the parties will record the terms of the Development Change (the "**Development Change Record Confirmation**"), and such Development Change Record Confirmation will be signed on behalf of the parties.

7.4 Design and Construction Representatives

The Authority's Design and Construction Representative and Project Co's Design and Construction Representative will have authority to agree on the value of Development Changes and contractual amendments to implement such Development Changes.

7.5 Implementation

Where there is no objection to a proposed Development Change within the 10 Business Day period specified in Section 7.3 of this Schedule 6, the Development Change Record will become the Development Change Record Confirmation. Following the issue of a Development Change Record Confirmation, the parties will promptly proceed with implementation of the applicable Development Change on the terms set out in the applicable Development Change Record Confirmation.

7.6 Reconciliation

No later than the 10th day of each month, Project Co's Design and Construction Representative will prepare and deliver to the Authority's Design and Construction Representative, a register of all Development Changes agreed during the prior month (the "**Development Change Register**").

7.7 Development Change Register

Within 30 days after the issuance of 100% construction documents pursuant to the design review process set out in Appendix 2B [Design Review] or such earlier date as the parties otherwise agree, the Authority will prepare and deliver to Project Co and Operations Co a consolidated Change Certificate encompassing all of the agreed Development Changes, as set out in the applicable Development Change Registers, and any amounts owing by the Authority in respect of such Change Certificate shall be paid in accordance with Section 2.9 of this Schedule 6.

7.8 No Dispute

The parties agree that a failure to reach agreement with respect to a proposed Development Change pursuant to the procedure set out in this Section 7 shall not constitute a Dispute and shall not be referred for resolution to the Dispute Resolution Procedure.

SCHEDULE 7 LANDS

1. DEFINITIONS

In this Schedule 7, in addition to the terms defined in Schedule 1 [Definitions and Interpretation]:

“**Charge**” means any charge, mortgage, lien, pledge, judgment, execution, security interest, restriction, claim or encumbrance of any nature whatsoever, including any claims of a Governmental Authority;

“**Field Locations**” has the meaning set out in Appendix 4A [Services Specifications];

“**Lands**” means the right-of-way owned or controlled by the Authority in which a portion of the NG-KIH System will be constructed, all Site Locations and all Field Locations;

“**License**” has the meaning set out in Section 2.1(a) of this Schedule 7; and

“**Site Locations**” means each of the site locations more particularly described in Appendix 7A [Site Locations].

2. AUTHORITY’S OBLIGATIONS AND REPRESENTATIONS

2.1 Grant of License Over Lands

(a) From the Effective Date until the later of:

(1) the Termination Date; and

(2) the date the Authority no longer requires Project Co to provide the transitional services described in Section 14.3(a) of this Project Agreement,

the Authority shall grant or shall cause to be granted to Project Co a non-exclusive license of use and access to, on, under and over the Lands and the NG-KIH System to the extent required by Project Co to carry out the Project in accordance with this Project Agreement (the “**License**”).

(b) For clarity, the Authority will be responsible for ensuring that it has or will have such rights and interests in and to the Lands sufficient to permit the grant of the License free and clear of all encumbrances, restrictions or limitations, except for any encumbrances, restrictions or limitations which do not adversely affect, financially or otherwise, the License and the ability of Project Co to perform any of its obligations under this Project Agreement, including the ability to conduct the Design or Construction or perform the Services or System Refresh as contemplated by this Project Agreement. Project Co will be entitled to claim a Compensation Event to the extent that the Authority fails to provide access to the Lands in accordance with the License, whether as a result of the Authority failing to obtain and maintain rights and interests in and to the Lands sufficient to permit the grant of the License as contemplated in Section 2.1(a) or otherwise.

- (c) With respect to all Site Locations, the Authority will, during both the Construction Period and the Operating Period, be responsible for:
- (1) obtaining, maintaining and, as applicable, renewing any permits, consents, approvals or other authorizations required from any Governmental Authority related to zoning;
 - (2) providing all primary power and backup power and, if applicable, water;
 - (3) providing all building maintenance, janitorial services and HVAC break/fix and maintenance;
 - (4) performing all landscaping, weed abatement and snow removal; and
 - (5) providing locks, gates, security and fencing of the Site Location,
- in any case, as are required by Project Co to carry out the Project in accordance with this Project Agreement.
- (d) In consideration for the License granted in Section 2.1(a), Project Co will carry out the Design and Construction, subject to and in accordance with this Project Agreement.
- (e) Project Co may, for the same purposes described in Section 2.1(a), grant a sub-license to any Project Co Person, provided that any such sub-license will be subject to, and terminate upon, termination of the License.

2.2 Terms Affecting License Grant

Without limiting the other provisions of this Schedule 7, the following terms and conditions apply to the License:

- (a) no legal demise or other interest in land, and no interest in the NG-KIH System or any other improvements, is granted to Project Co or created by this Project Agreement;
- (b) the License is non-exclusive and no right to exclusive possession of the Lands or the NG-KIH System is granted to Project Co;
- (c) subject to Section 7.10 of Schedule 2 [Design and Construction Protocols], the Authority will be entitled at any time and from time to time to grant to Authority Persons and any other persons, including contractors and the general public, access to the Lands and the NG-KIH System; and
- (d) the Authority will ensure that Project Co has access to the Lands as required in accordance with the Site Access Plan.

3. PROJECT CO'S OBLIGATIONS AND ACKNOWLEDGMENTS

3.1 As Is Where Is

Subject to the provisions of Section 4.1 of this Schedule 7 and Section 8 (Supervening Events) of this Project Agreement, Project Co accepts the Lands and the License on an "as is, where is" basis.

3.2 Project Co Not to Encumber

Project Co will not, without the consent of the Authority:

- (a) grant or permit any Charge affecting or against the Lands or the NG-KIH System; or
- (b) do or omit to do, or cause, suffer or permit to be done or omitted to be done by any Project Co Person, anything that would result in any Charge against or affecting the Lands, the NG-KIH System or any asset, matter or thing that may be required to be delivered or transferred to the Authority on the Termination Date pursuant to Section 14.2 of this Project Agreement,

and will, at its own expense, promptly discharge and remove, or cause to be discharged and removed, any such Charge.

3.3 No Restriction on Authority Use or Development

Project Co acknowledges that the Authority may from time to time without restriction use, develop or re-develop, or permit the use, development or re-development of, the Lands or any portion thereof (including by way of subdivision) for any purpose and by any Person. To the extent such use, development or re-development adversely interferes with the License or adversely interferes with Project Co's ability to carry out the Design, Construction, Services and System Refresh, the Authority will initiate a Change to address such interference.

3.4 Title to NG-KIH System, Lands and Improvements

Neither Project Co nor any Project Co Person will acquire any property interest in or title to the NG-KIH System, the Lands or any other improvements to the Lands. As between Project Co, any Project Co Person and the Authority, title to and ownership of the NG-KIH System, the Lands and all other improvements to the Lands will at all times be vested in the Authority.

3.5 Ad Valorem Taxes, Franchise Fees and Telecommunications Taxes

The Authority acknowledges that none of the Authority, Project Co or any Project Co Person is subject to ad valorem taxes, franchise fees or telecommunications taxes, or payments in lieu of ad valorem taxes, franchise fees or telecommunications taxes, in respect of the Lands or the NG-KIH System. The Authority shall, at its own cost, provide or cause to be provided such information, documentation and administrative assistance as Project Co may request and as the Authority may reasonably be able to provide if any ad valorem taxes, franchise fees or telecommunications taxes, or payments in lieu of ad valorem taxes, franchise fees or telecommunications taxes, are levied against Project Co or any Project Co Person by any Governmental Authority in connection with the Lands or the NG-KIH System.

4. HAZARDOUS SUBSTANCES

4.1 Responsibility

Notwithstanding any other provision of this Project Agreement, Project Co will not be responsible for any Hazardous Substances on, in, under or adjacent to the Lands or any cost, expense or claim arising therefrom, other than any Project Co Hazardous Substances.

4.2 Process upon Discovery of Hazardous Substances

Upon the discovery of any Hazardous Substances, Project Co shall immediately inform the Authority and shall comply, and ensure compliance by all Project Co Persons, with applicable Law:

- (a) subject to Section 4.2(b), at the Authority's cost in respect of the discovery or exacerbation of:
 - (1) Hazardous Substances located in, on, below or that have migrated to the Lands; and
 - (2) Hazardous Substances located in, on, below or that have migrated to any other location at which any aspect of the Project is performed, but only to the extent that Project Co's Direct Losses related thereto exceed \$200,000 in the aggregate over the Term; and
- (b) at its own cost in respect of any Project Co Hazardous Substances.

Except to the extent required to prevent or mitigate an Emergency or to comply with applicable Law, Project Co shall not undertake any significant work in respect of any Hazardous Substances for which the Authority is responsible pursuant to Section 4.2(a) until the Authority has been given a reasonable opportunity to review the nature and extent of the matter and has instructed Project Co to proceed with such work.

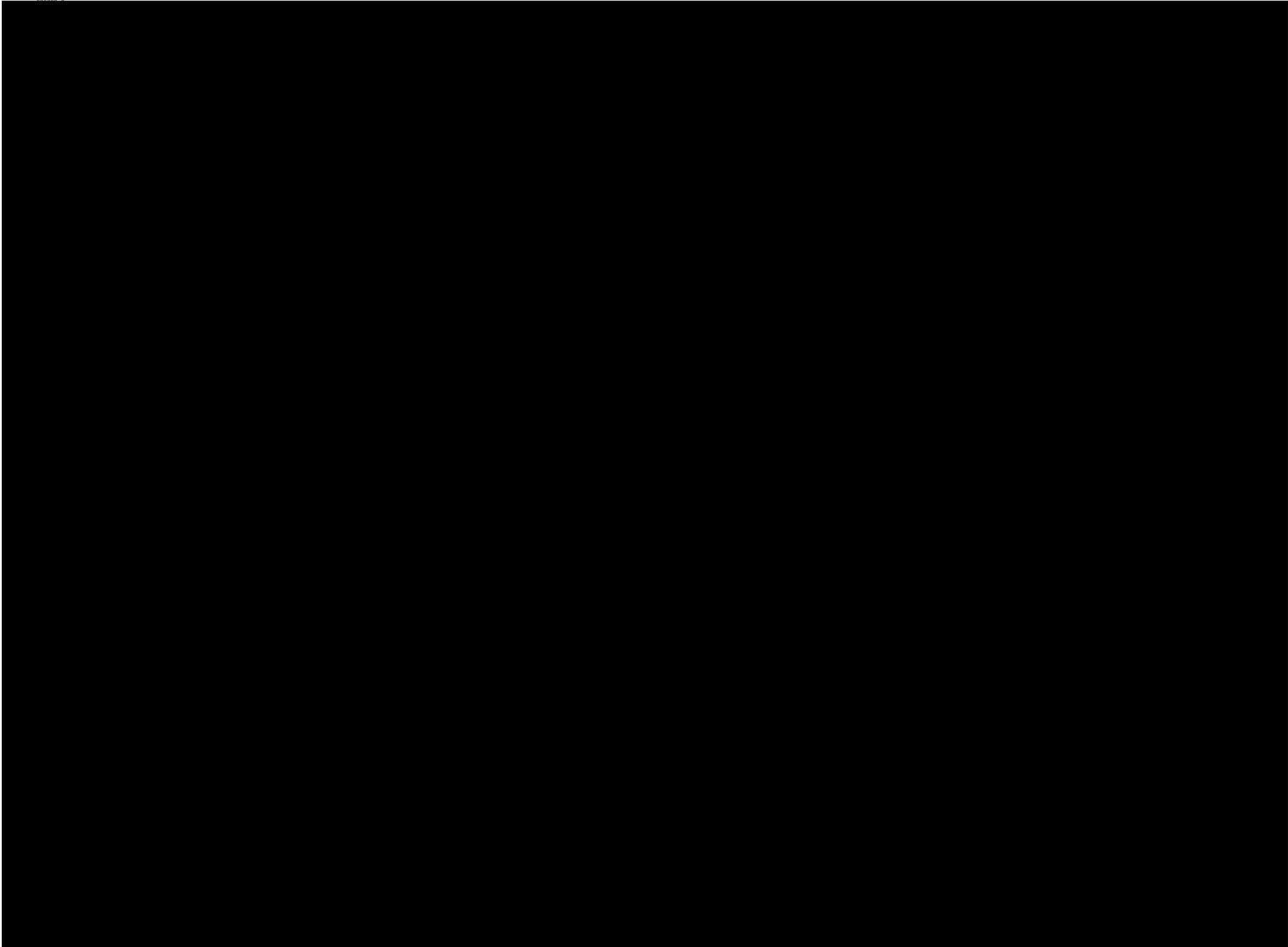
In the event that the Authority wishes Project Co to perform any additional actions in respect of any Hazardous Substances for which the Authority is responsible pursuant to Section 4.2(a), the Authority shall issue an instruction to Project Co specifying such actions and Project Co shall, acting as agent for the Authority, promptly and diligently comply with such instruction at the Authority's cost.

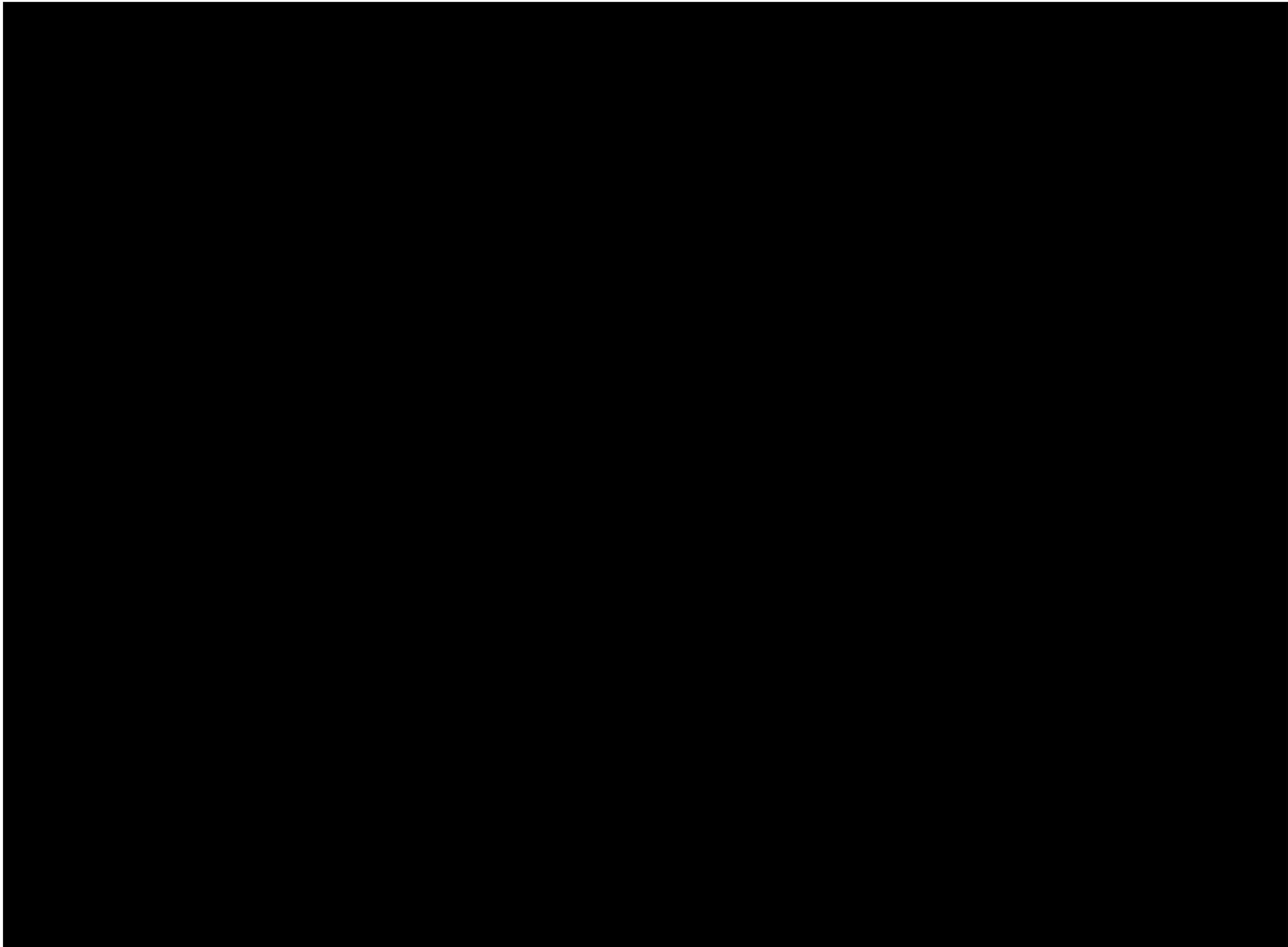
4.3 Restrictions on Use

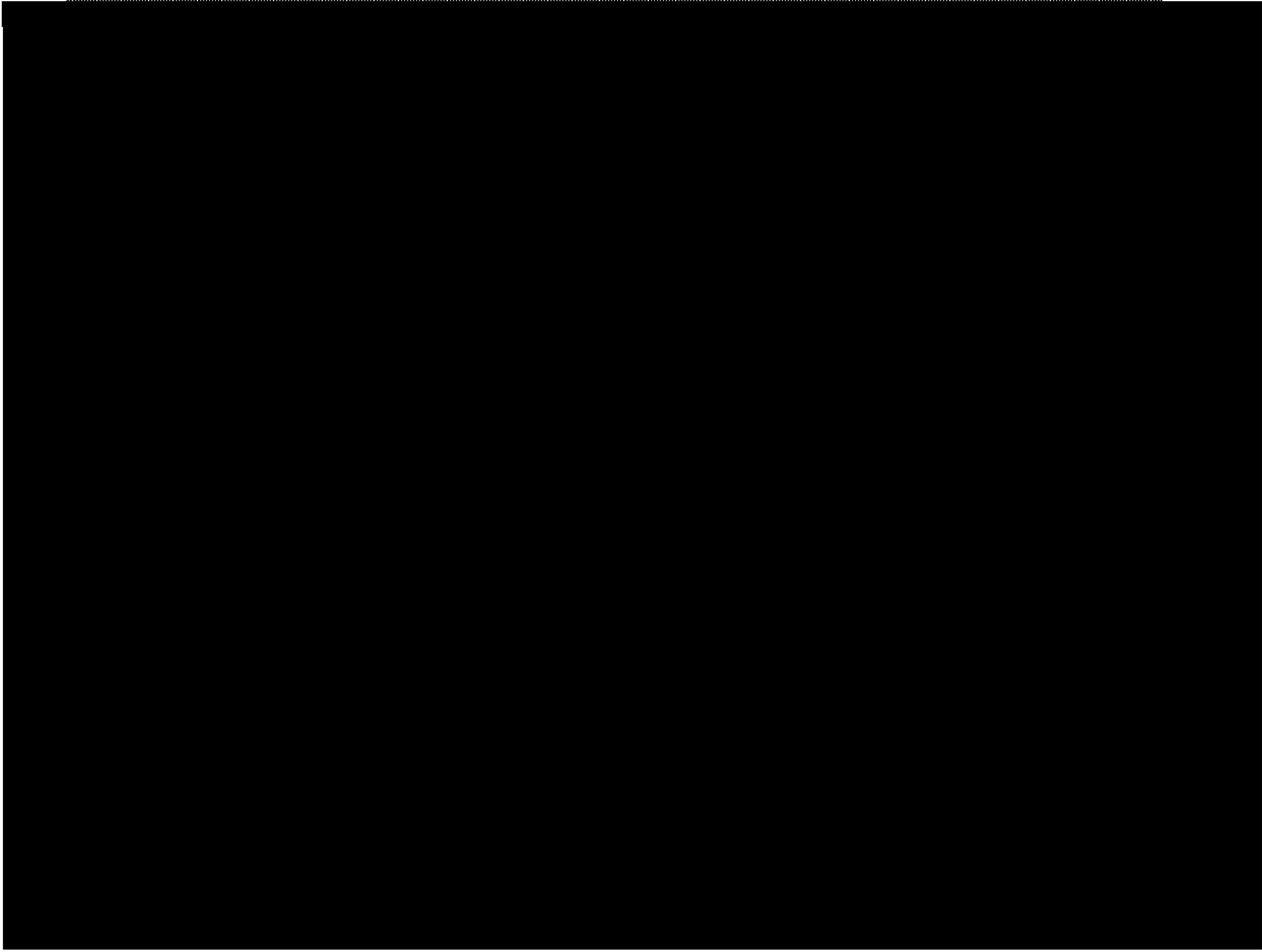
Unless otherwise expressly required or permitted under this Project Agreement, Project Co will not install, use or store on the Lands or adjacent property any materials, equipment or apparatus, the installation, use or storage of which is likely to cause or in fact causes the generation, accumulation or migration of any Hazardous Substance in contravention of any applicable Law. Without limiting the generality of the foregoing, Project Co will not use the Lands to dispose of, handle or treat any Hazardous Substances, in a manner that would cause the Lands, or any adjacent property, to become a contaminated site under applicable Law.

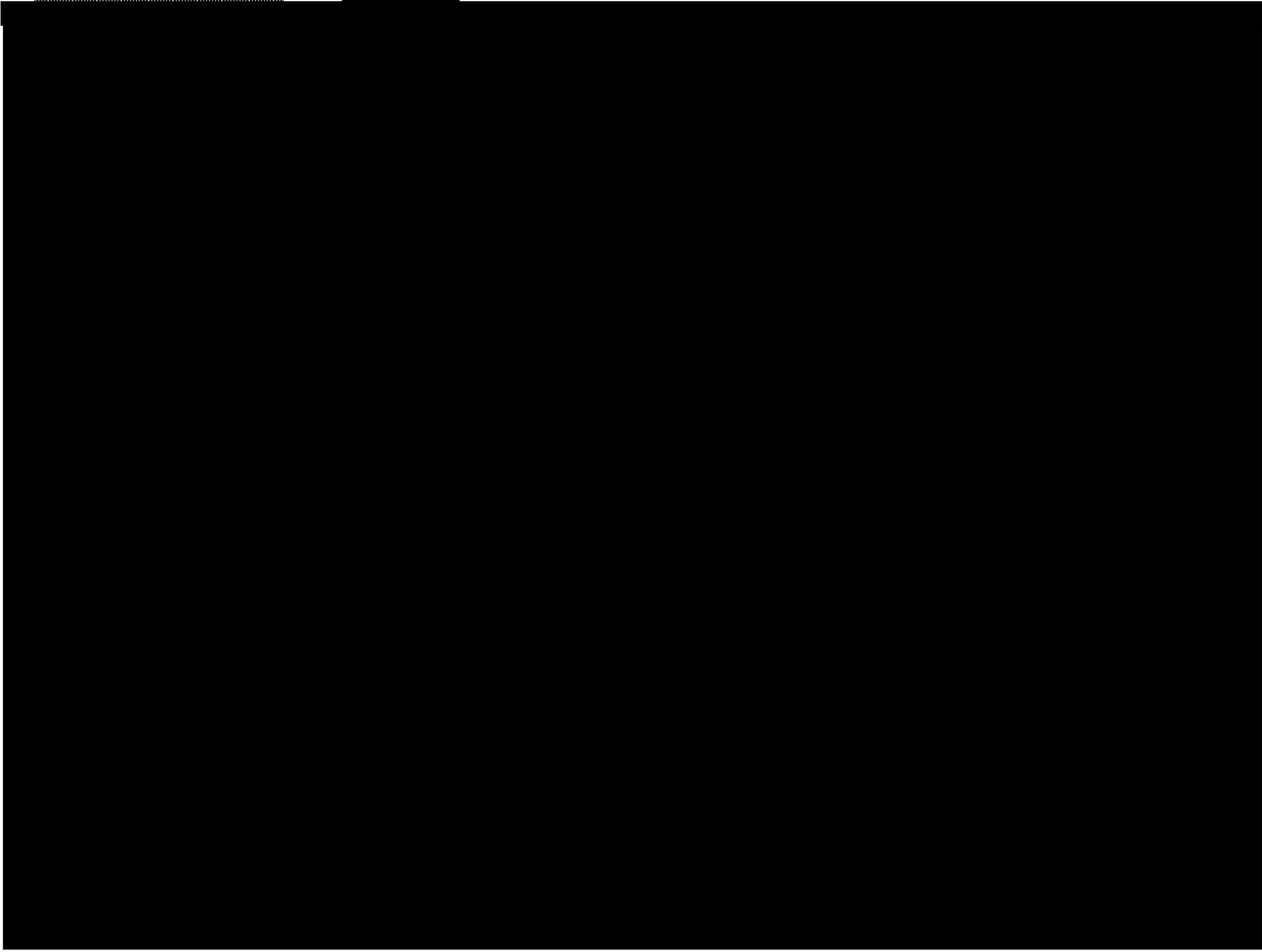
**APPENDIX 7A
SITE LOCATIONS**

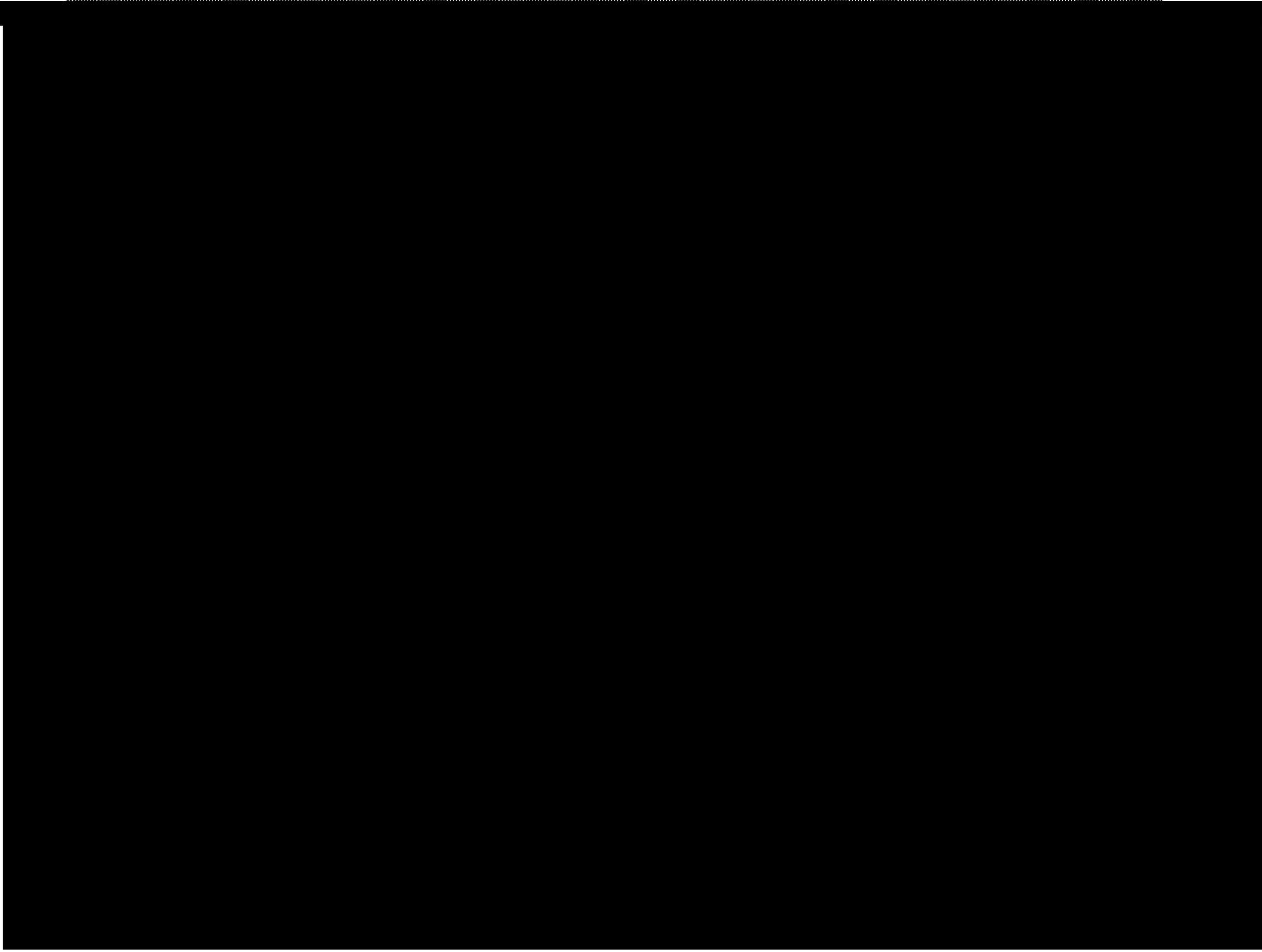
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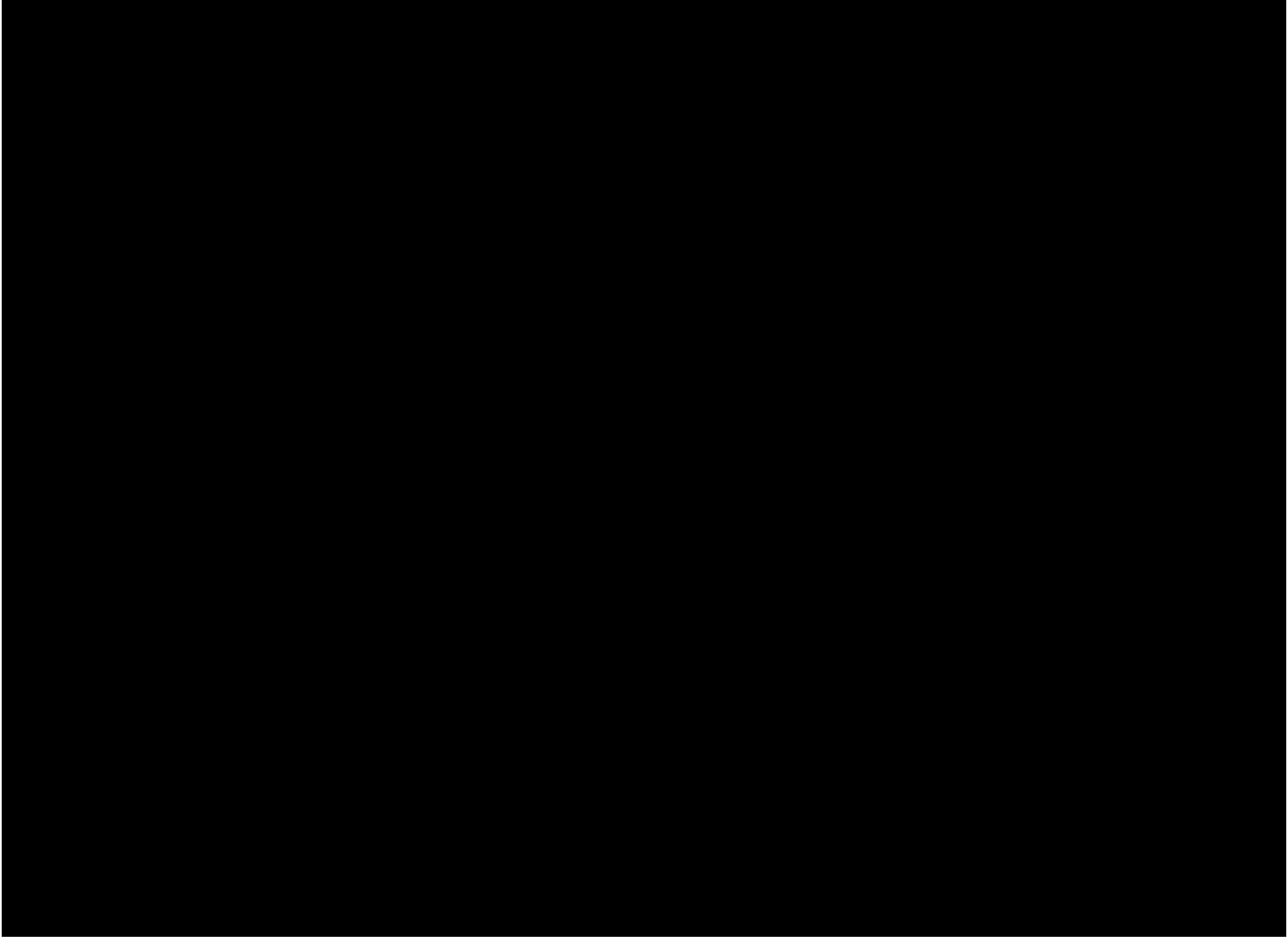


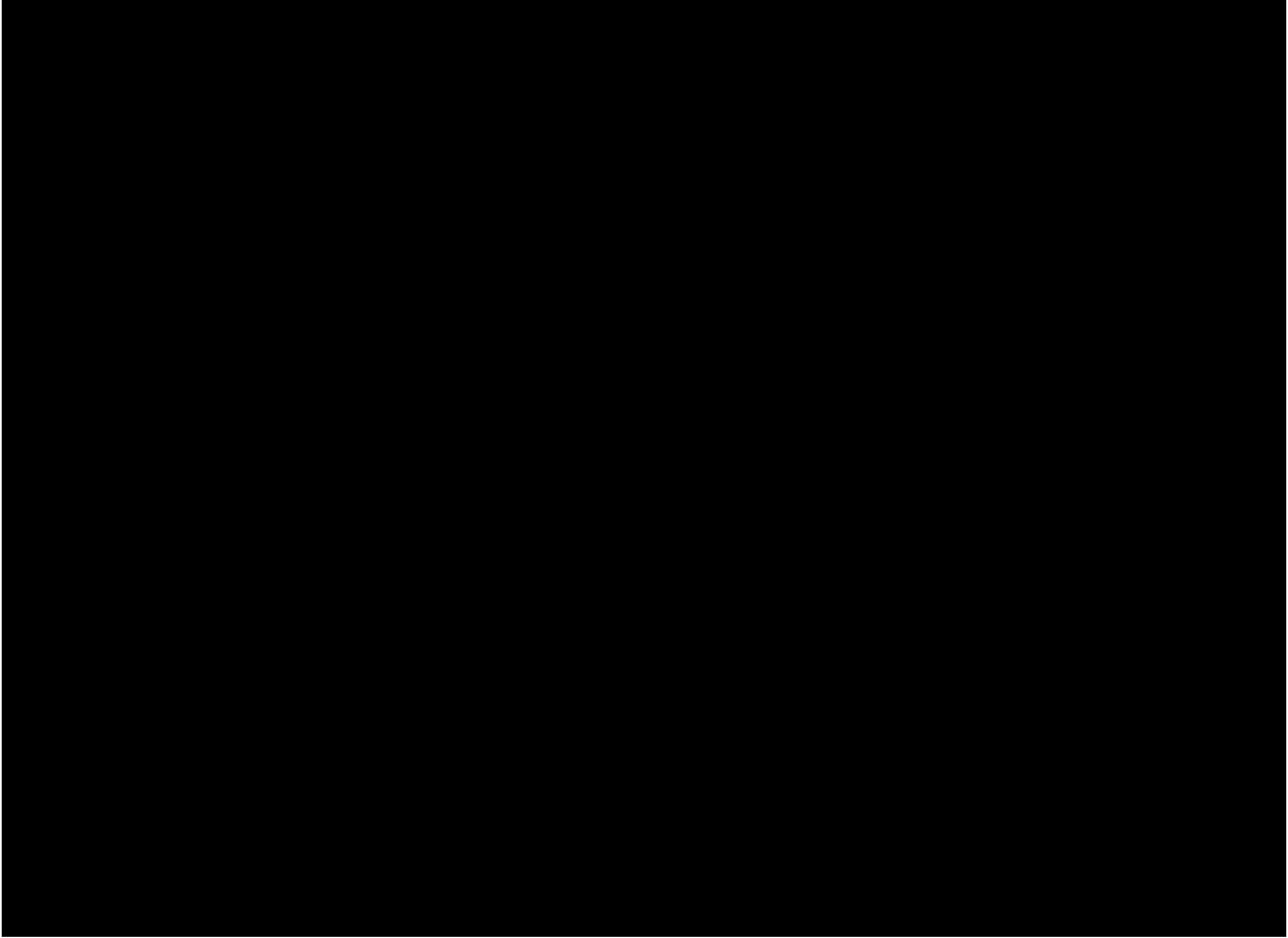


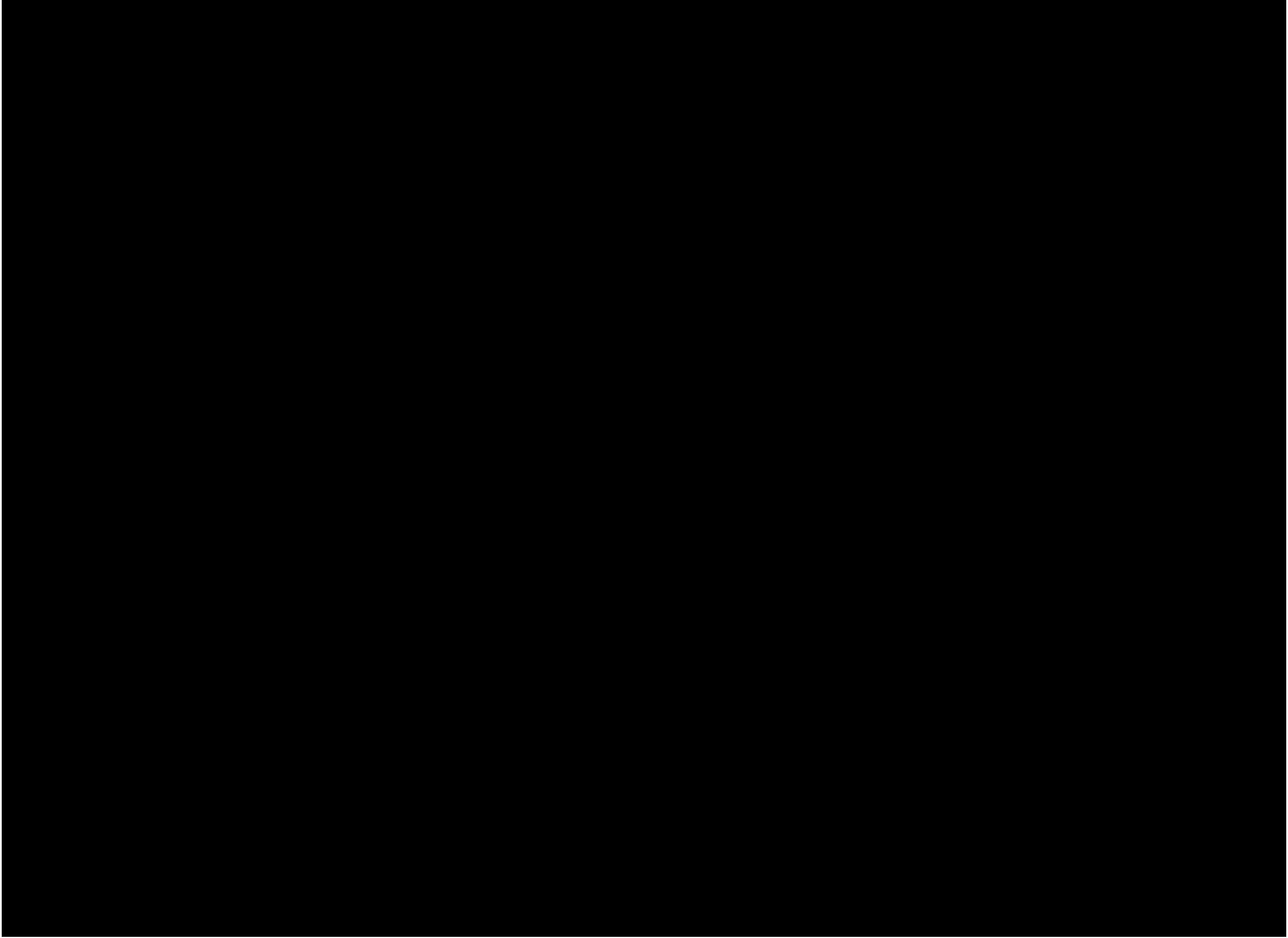


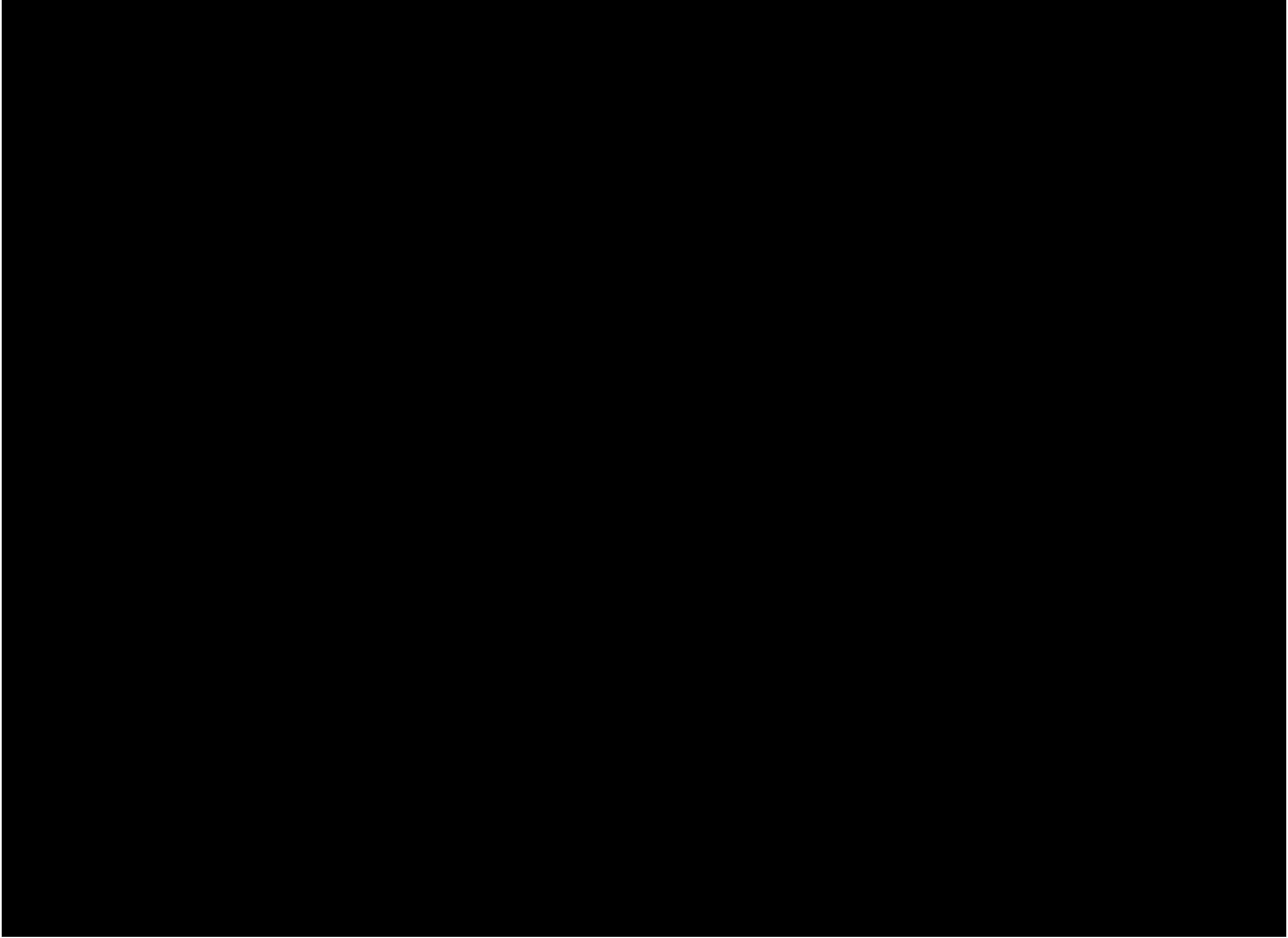


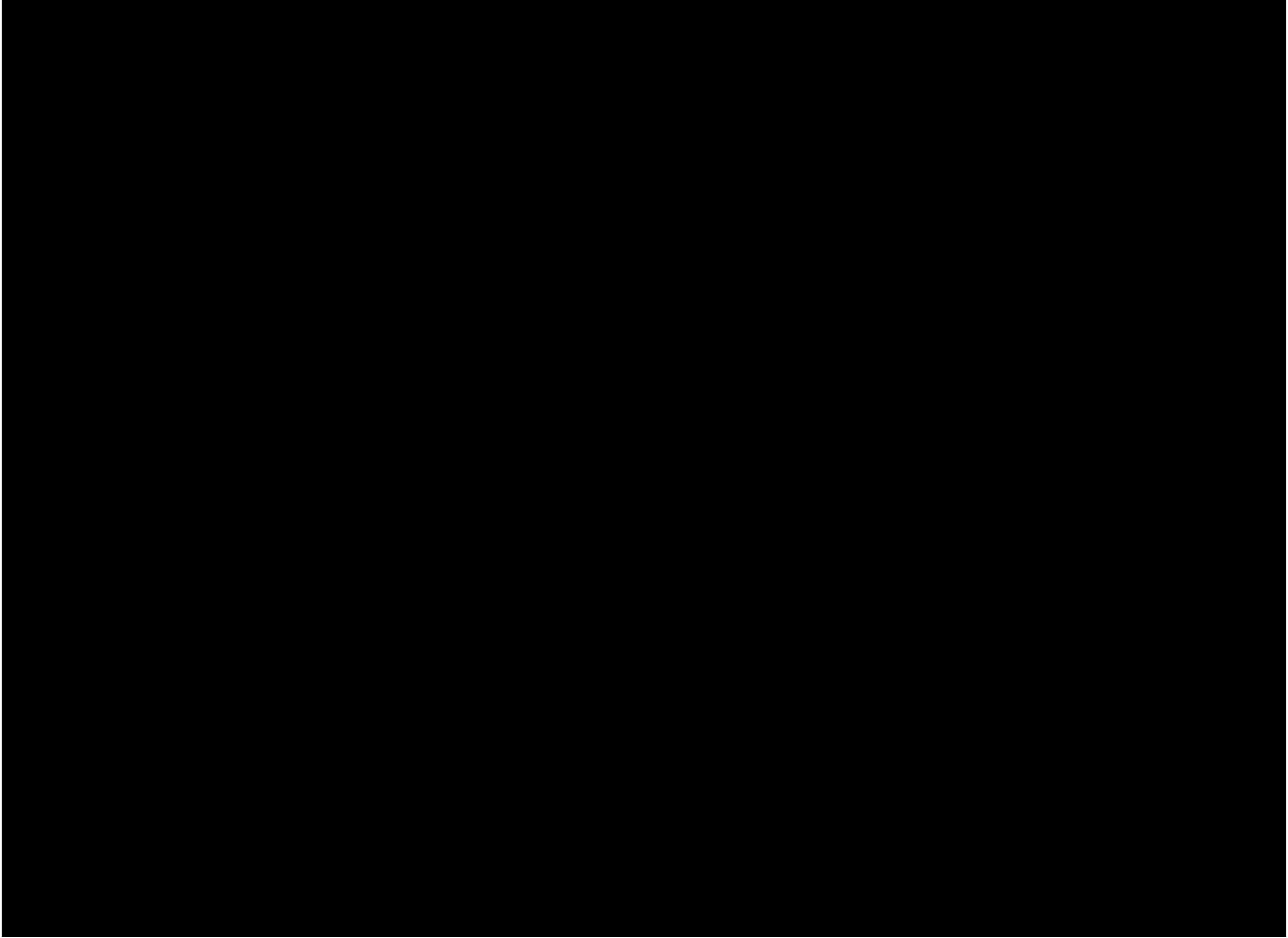


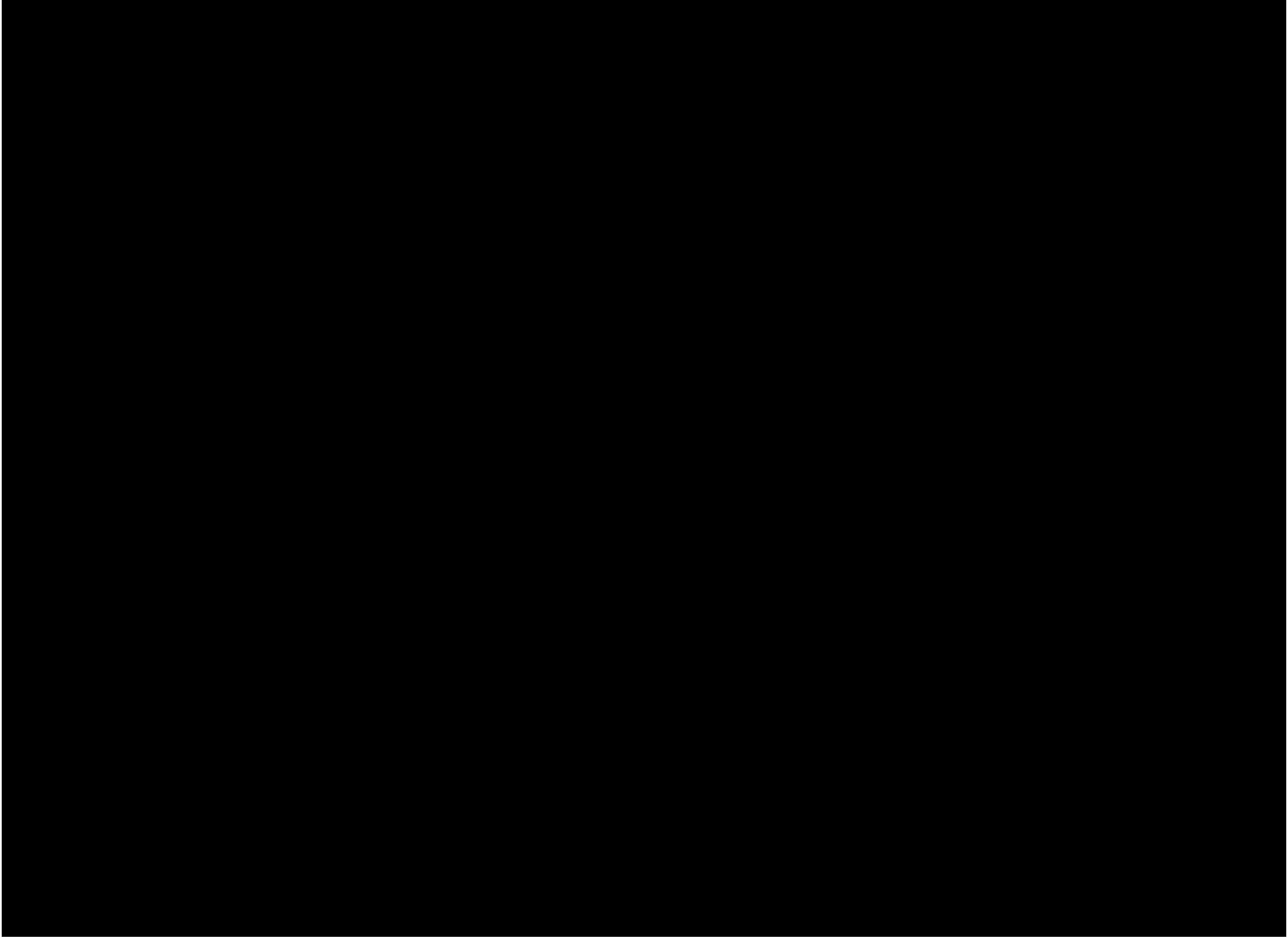


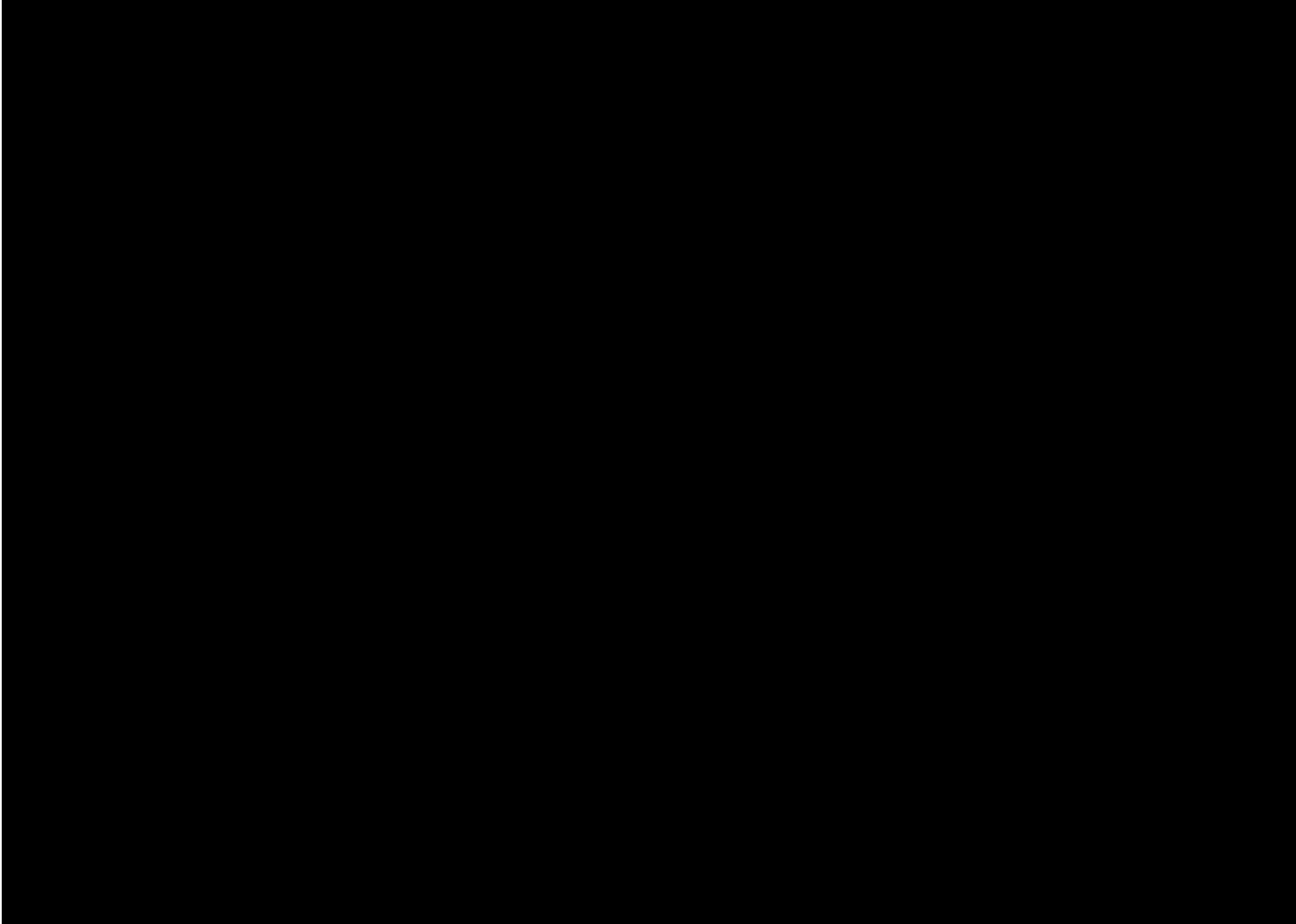


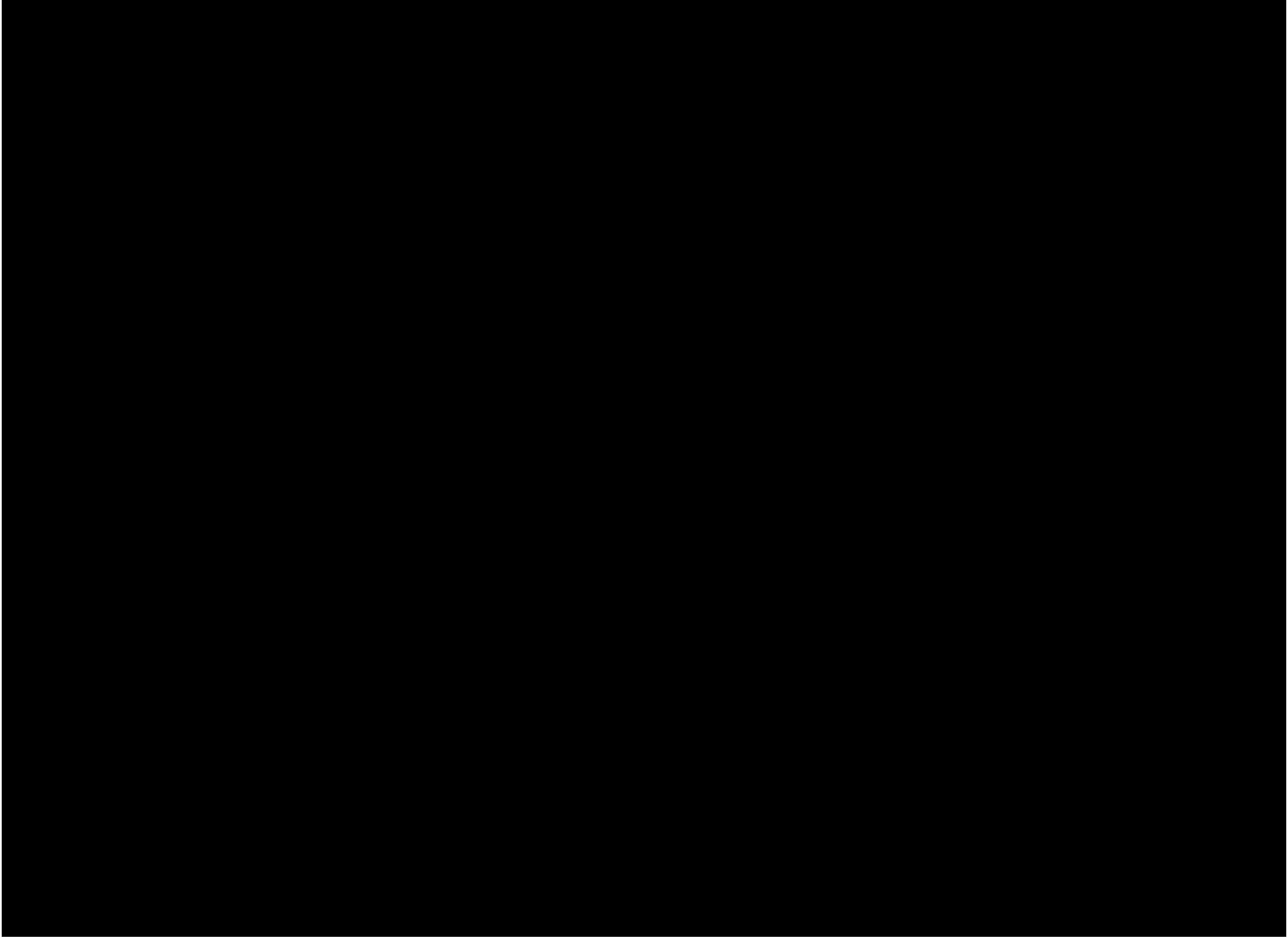


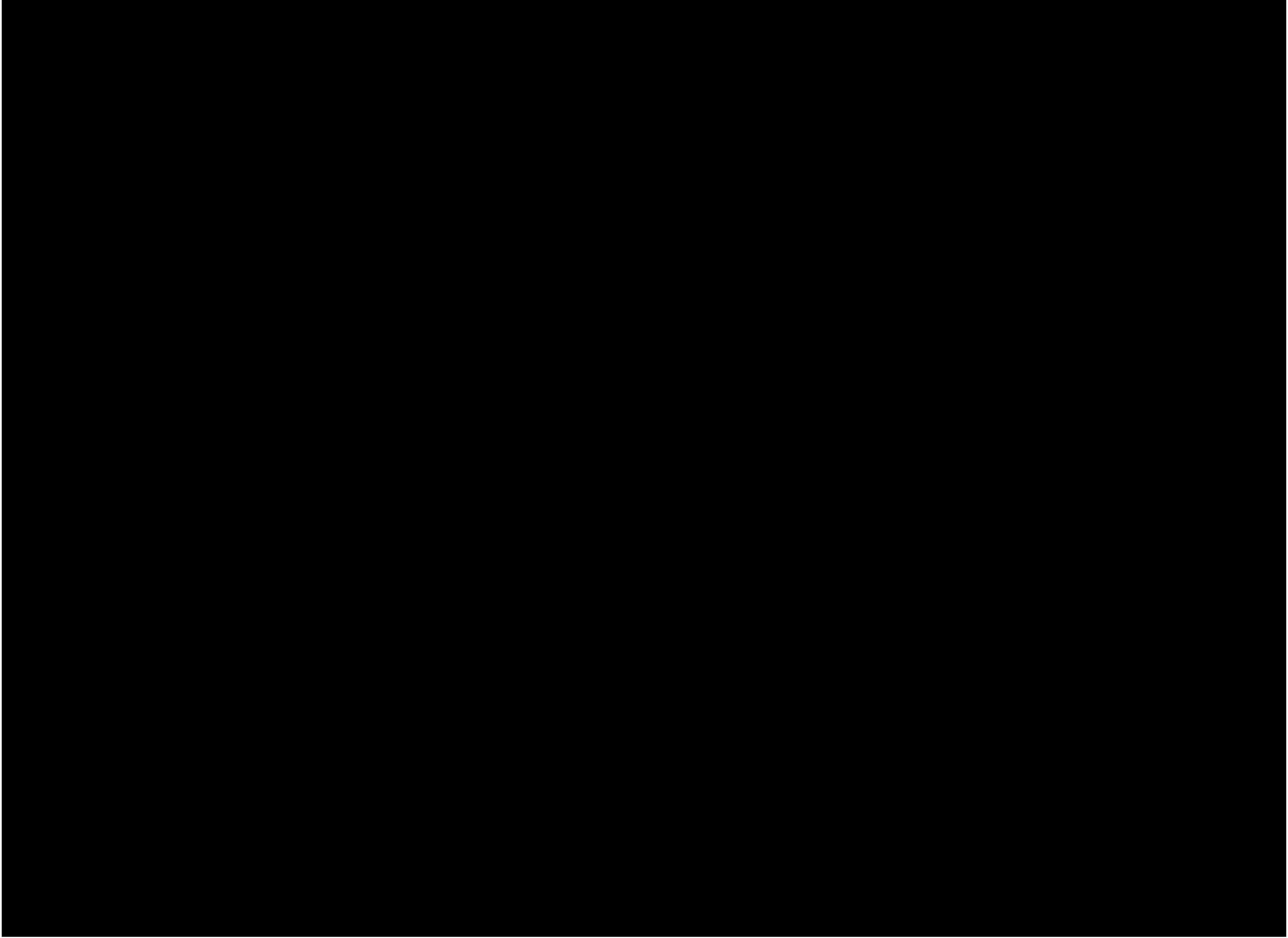


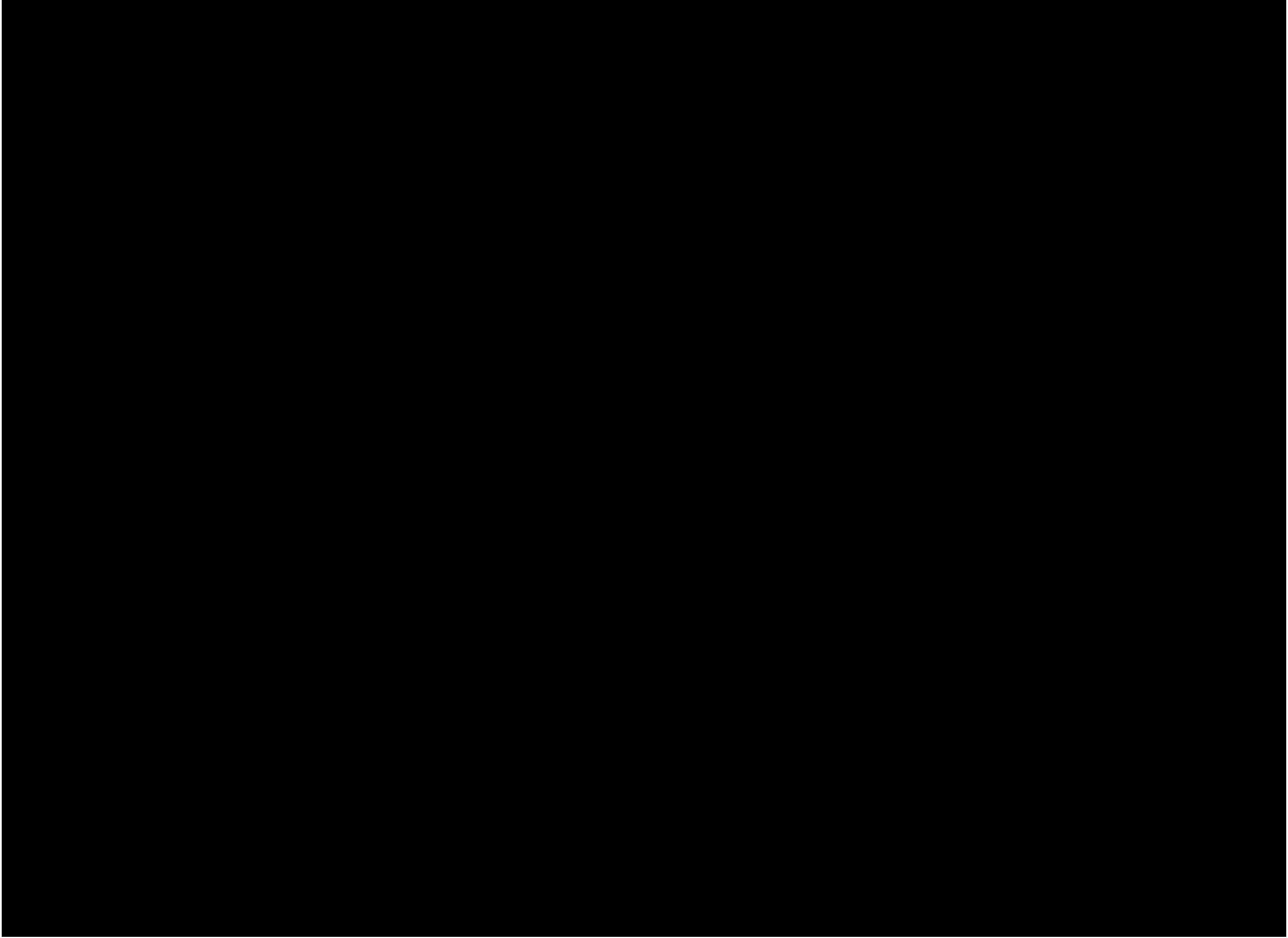


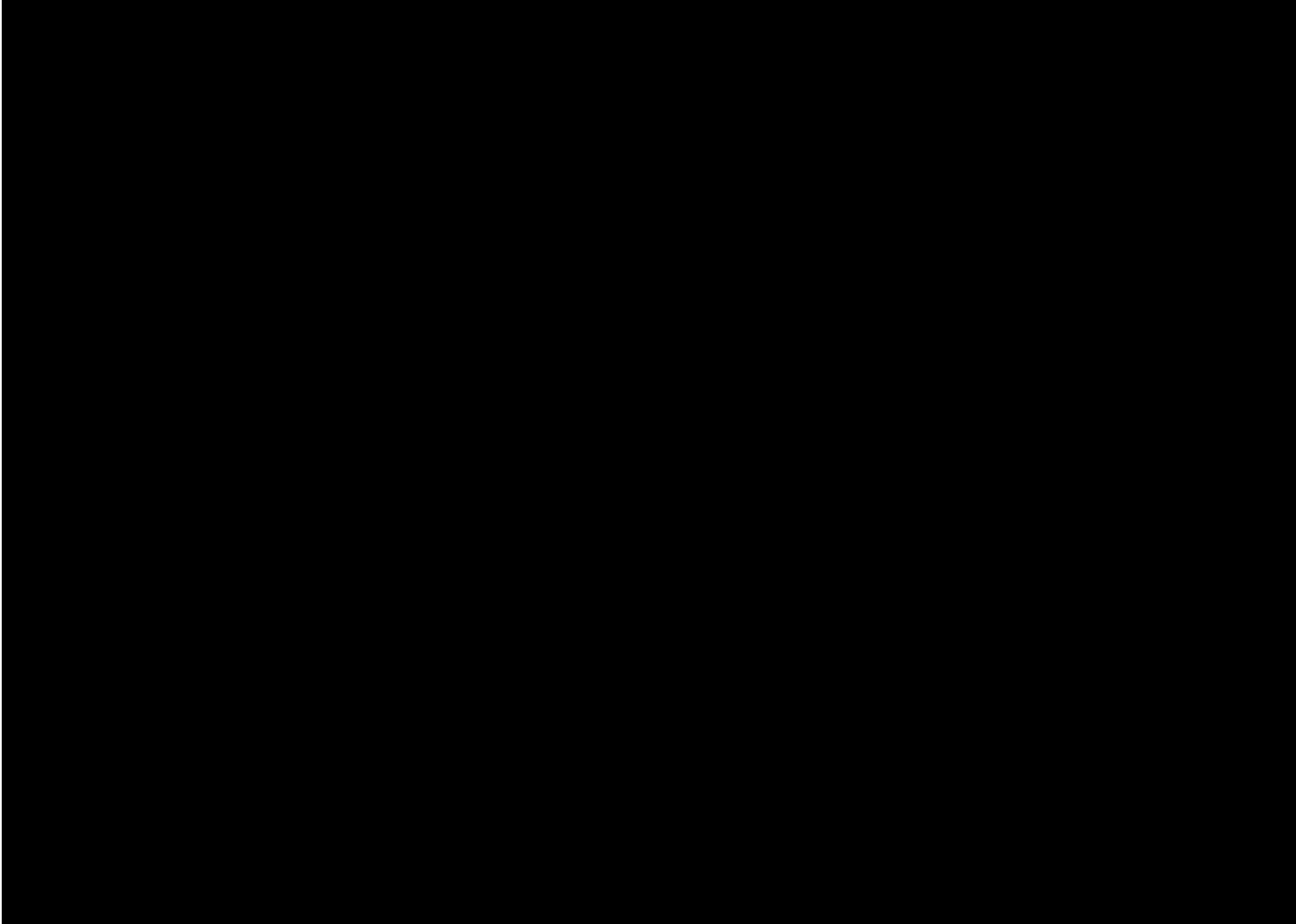


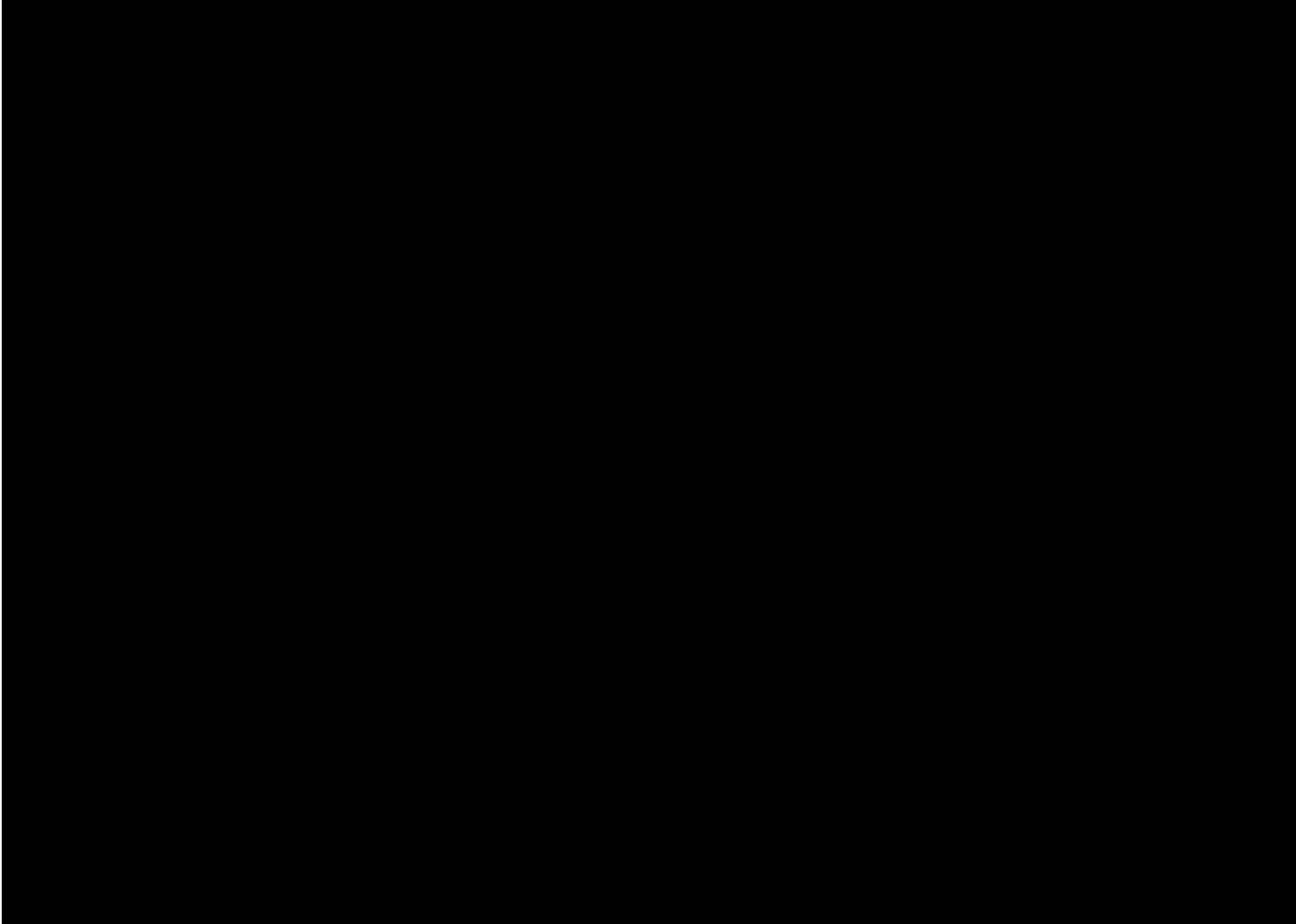


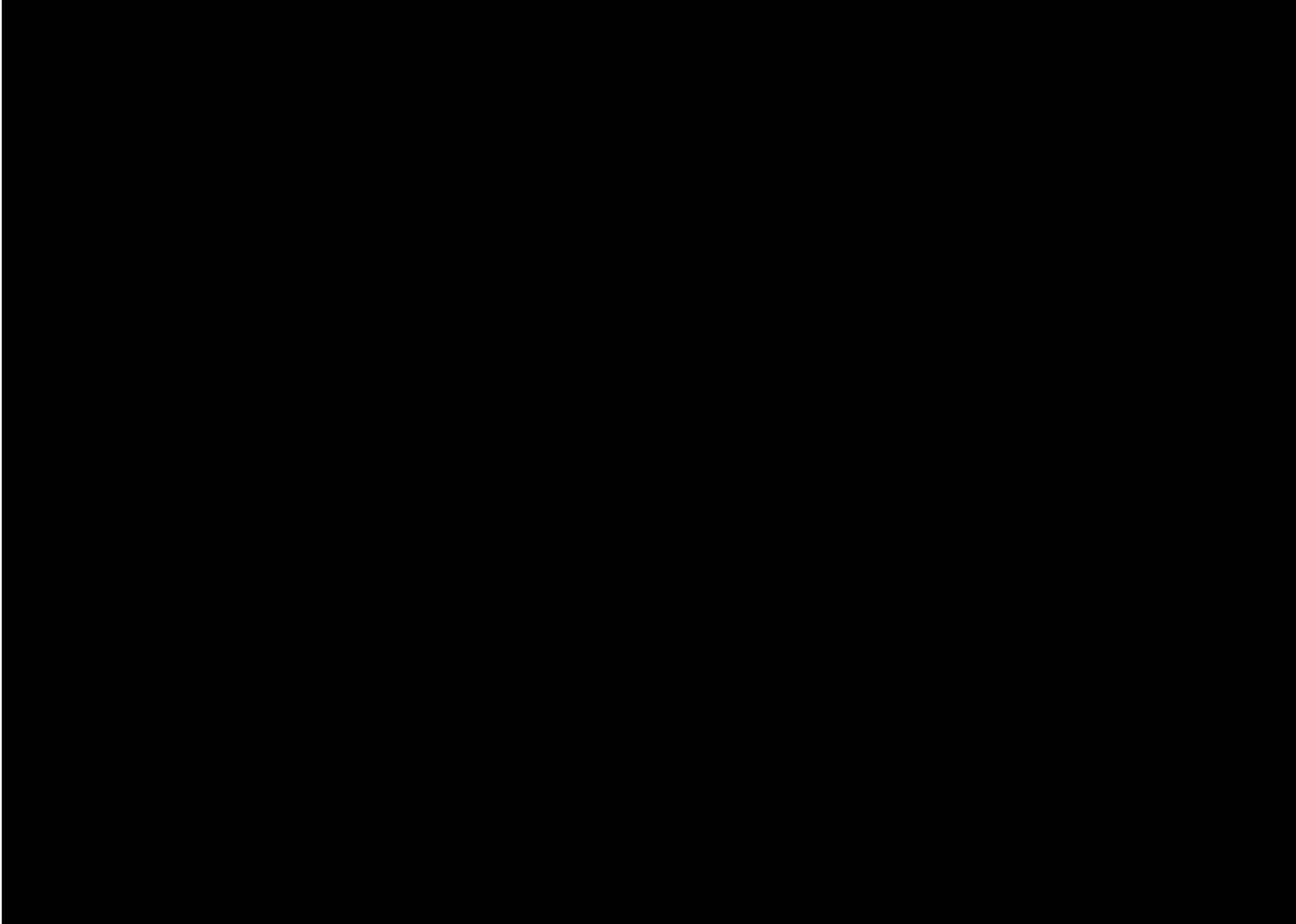


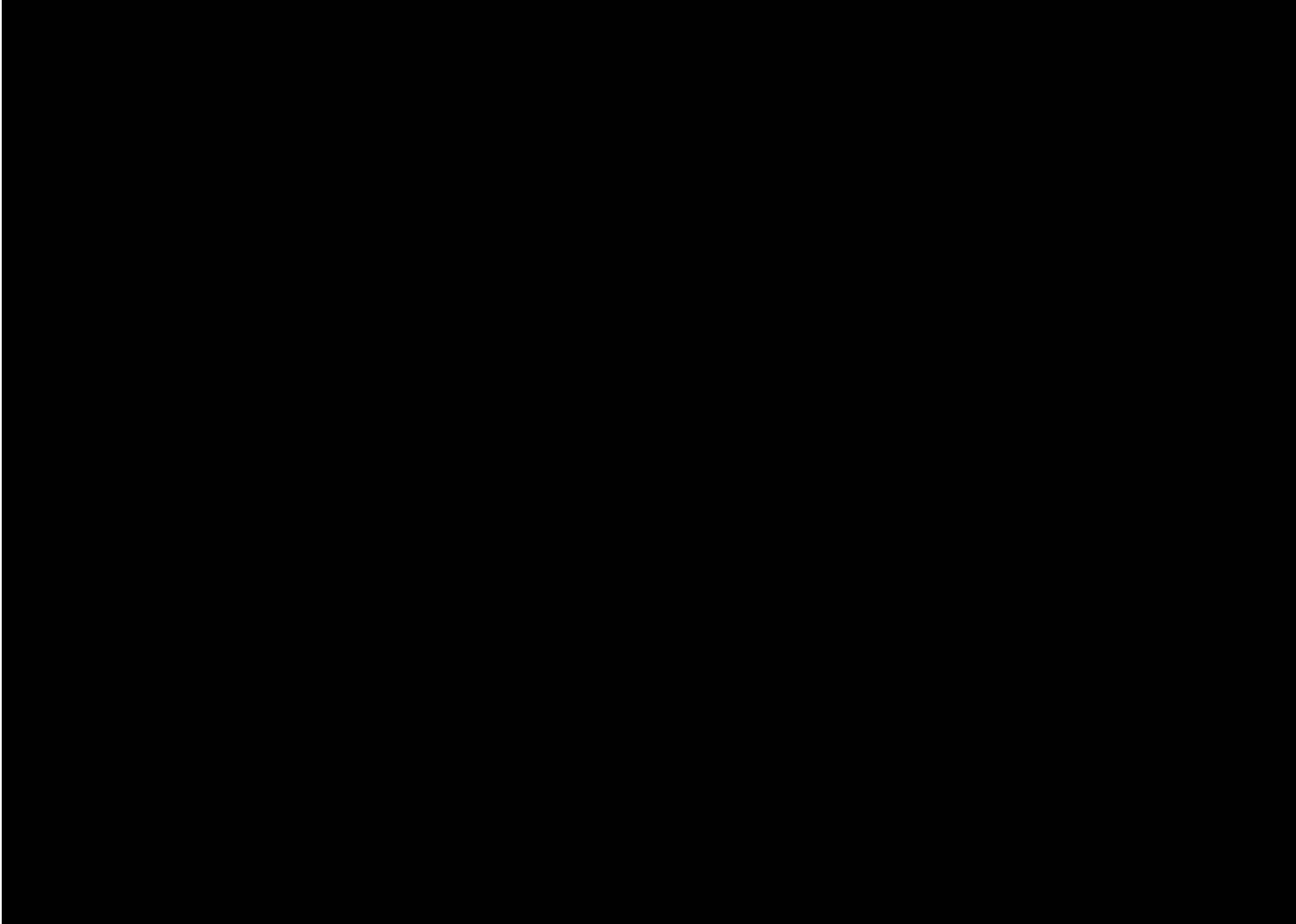


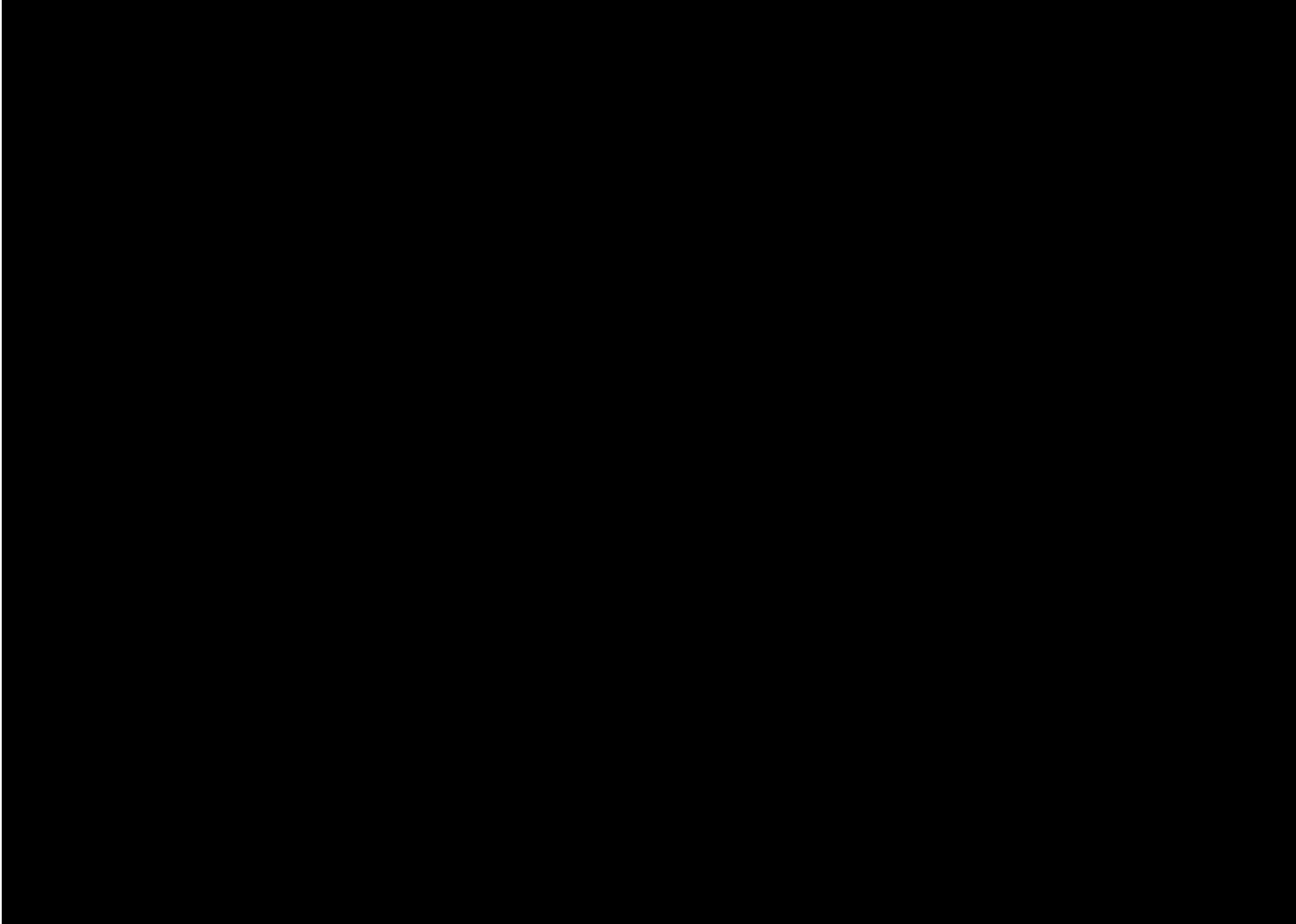


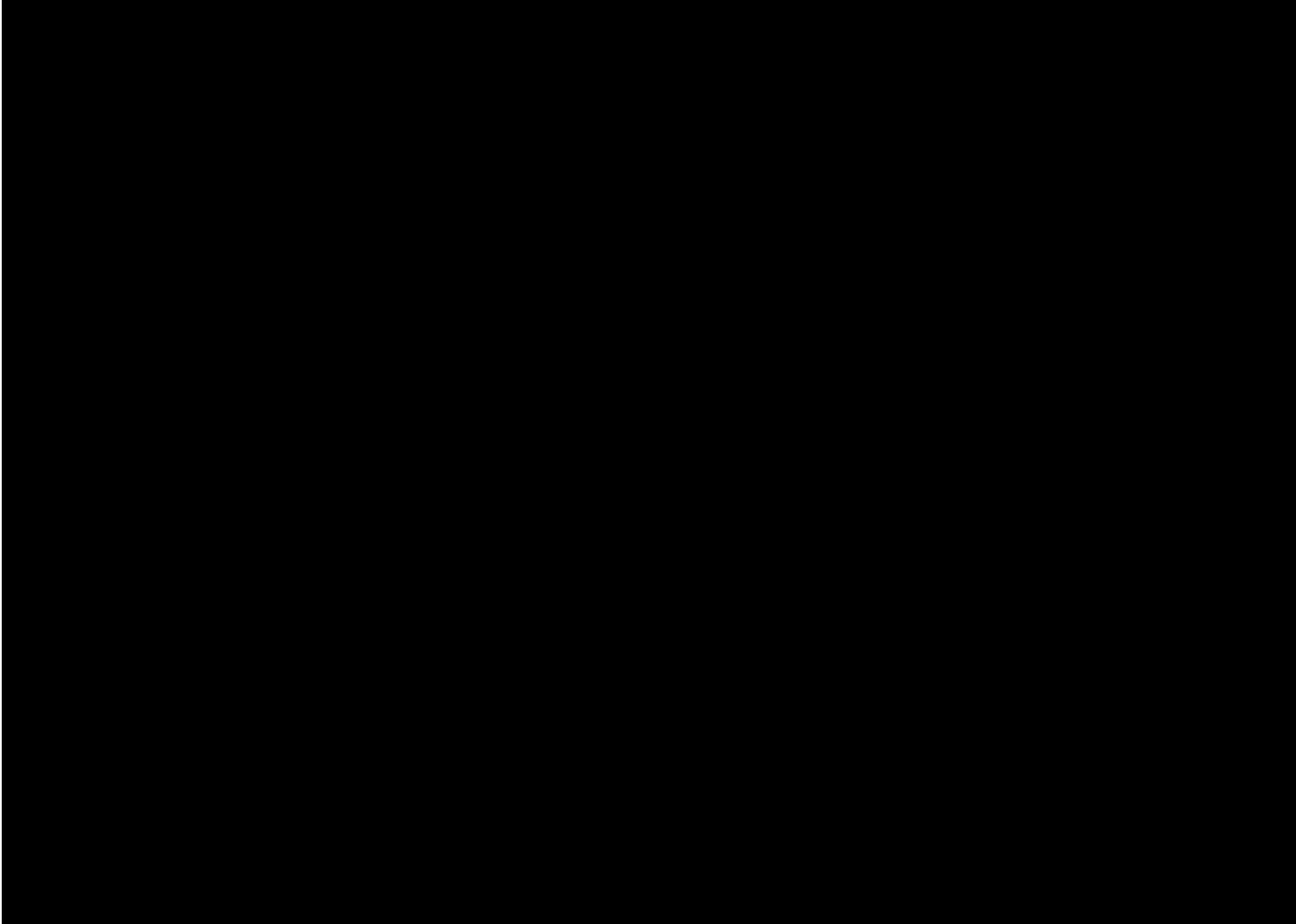


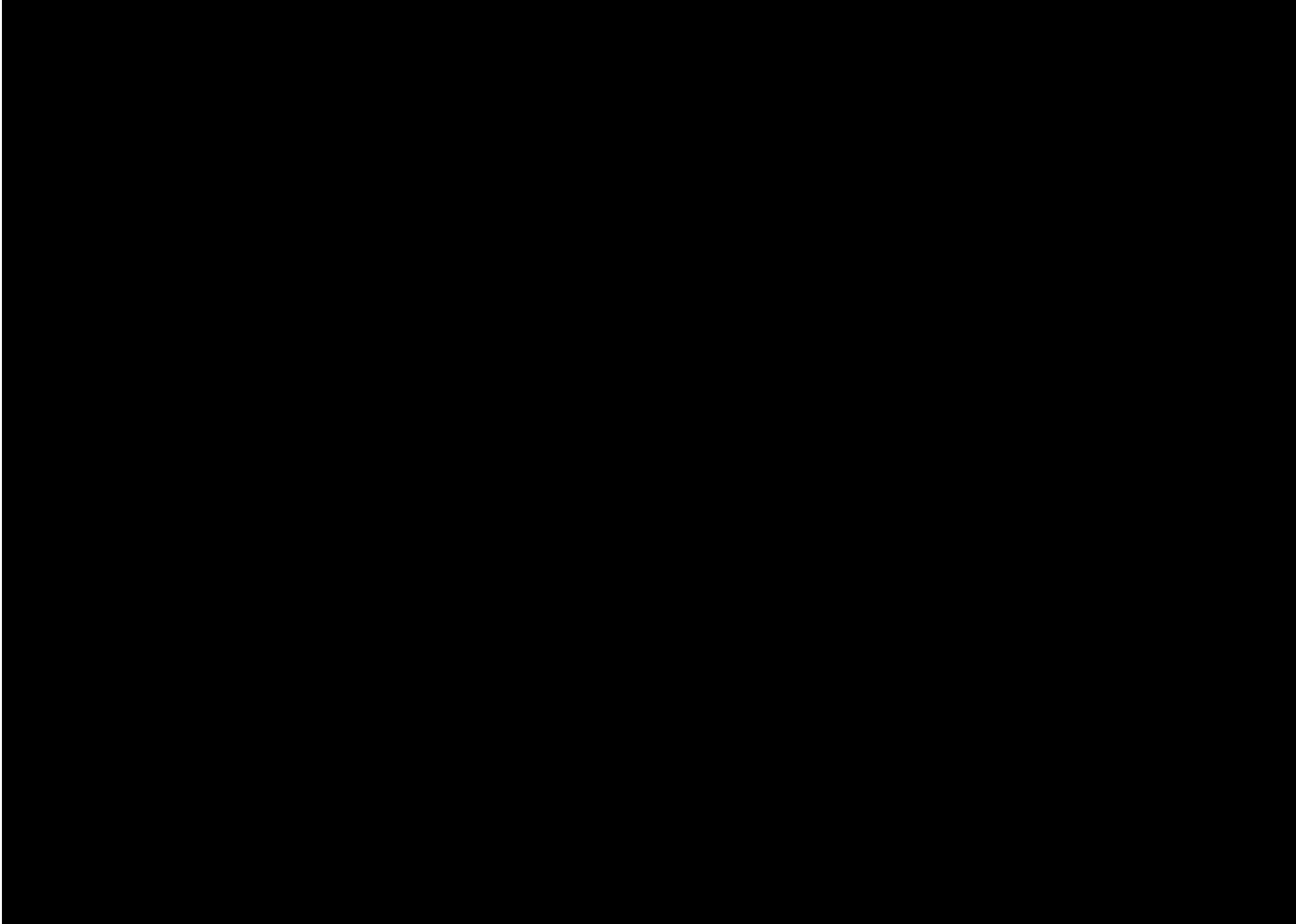


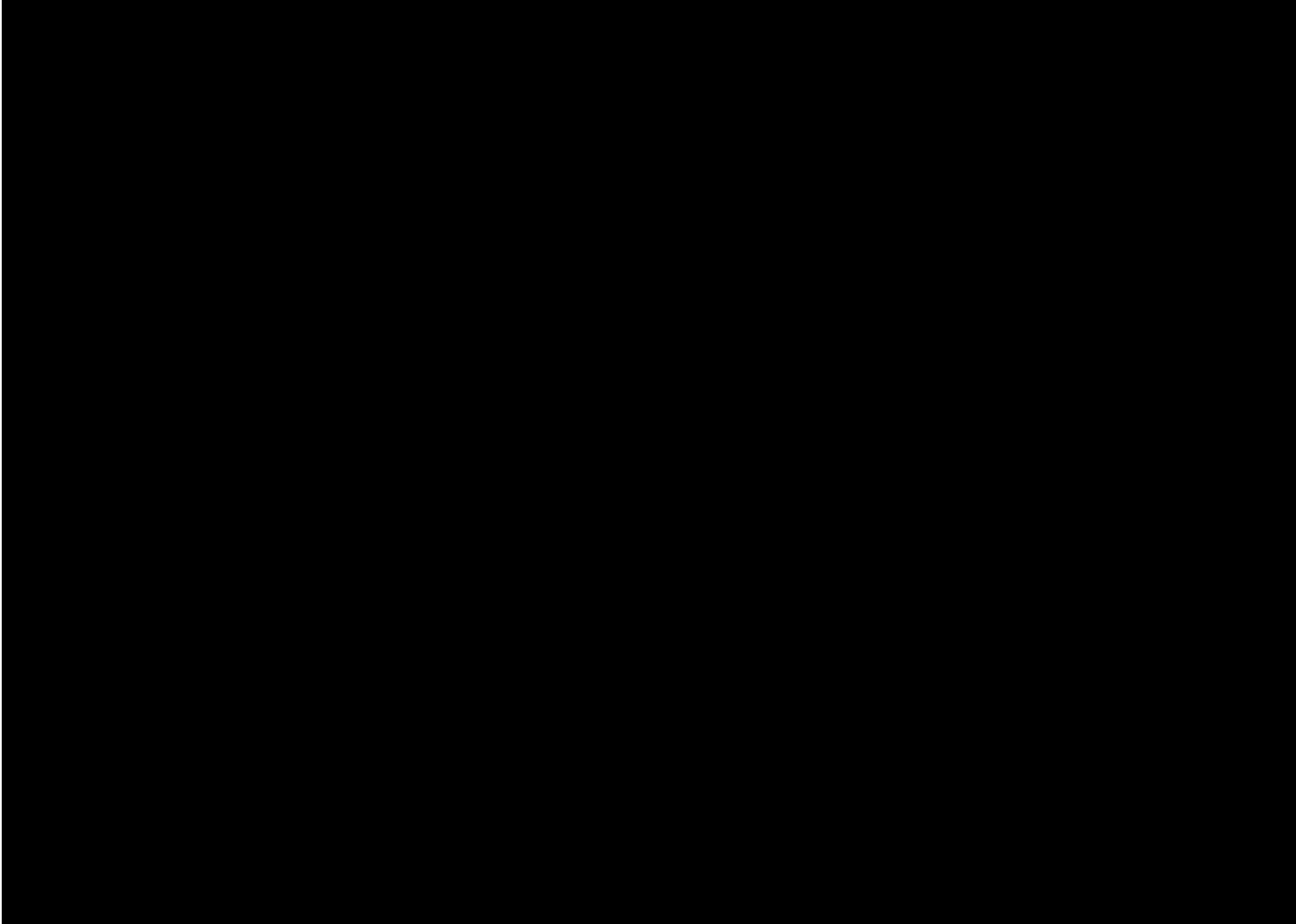


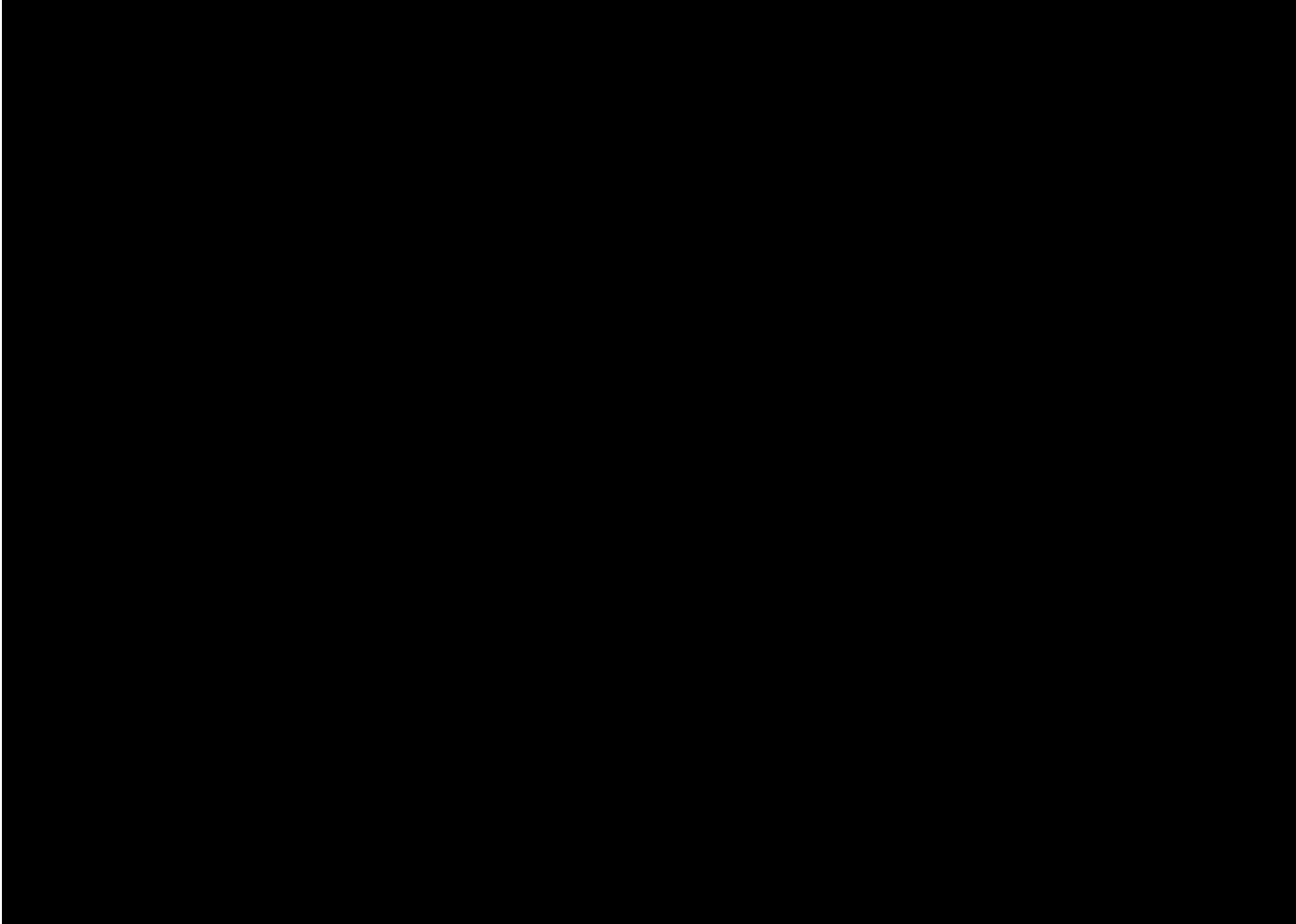


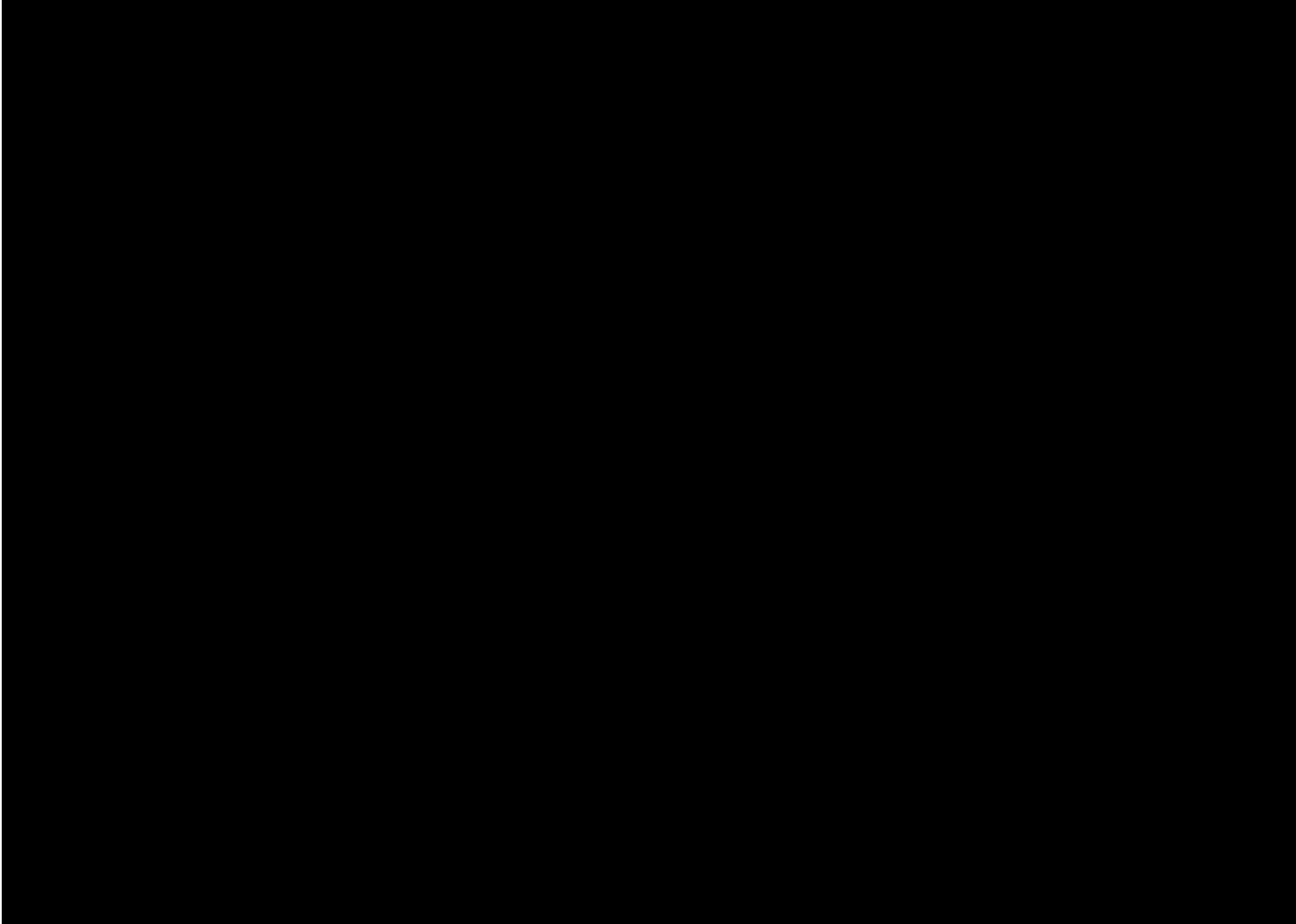


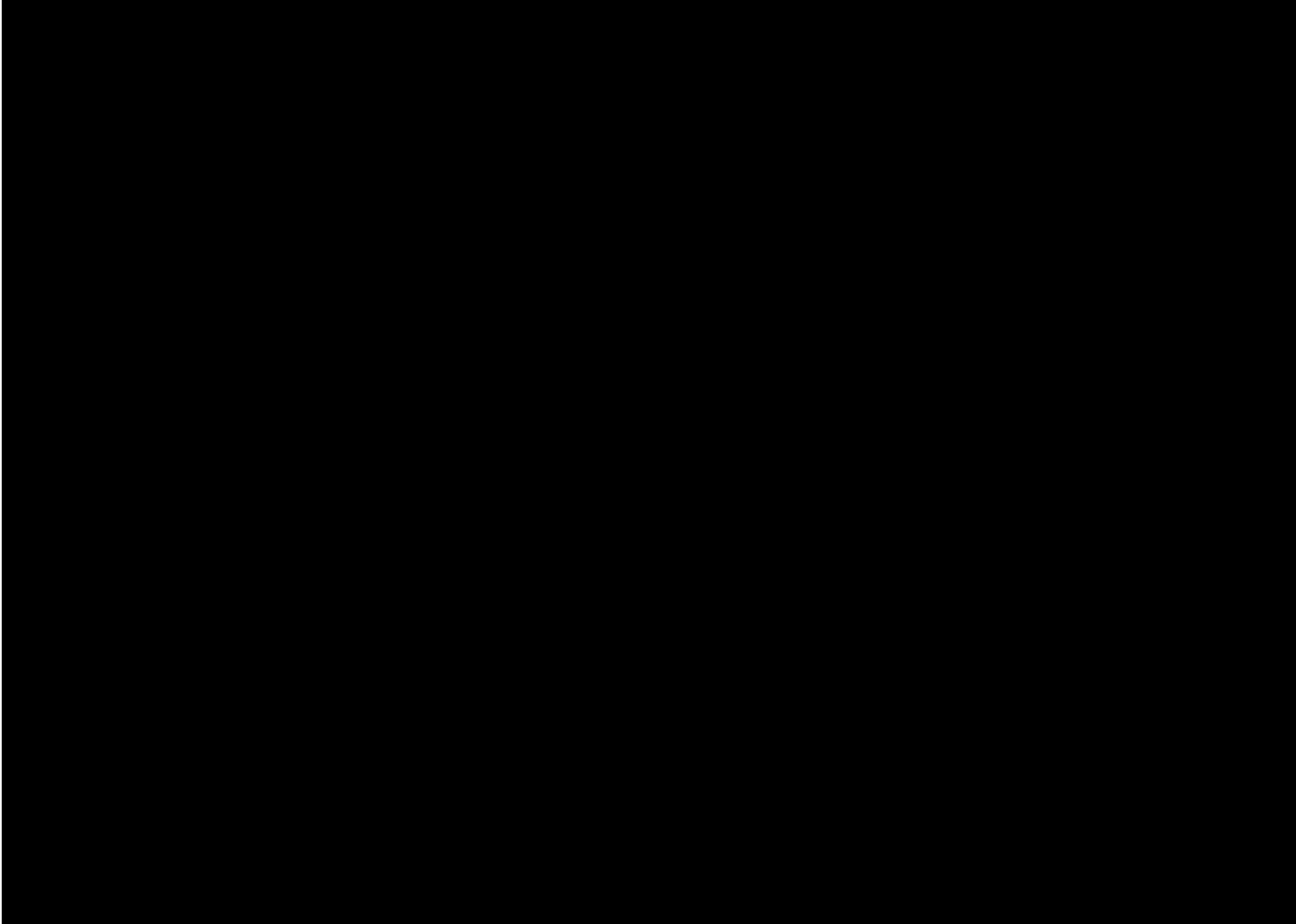












SCHEDULE 8 PAYMENTS

1. DEFINITIONS

In this Schedule 8, in addition to the terms defined in Schedule 1 [Definitions and Interpretation]:

“Adjusted Pole Attachment Costs” has the meaning set out in Section 6.2(a) of this Schedule 8;

“Availability Payment” means the sum calculated in accordance with Section 4.1 of this Schedule 8;

“Baseline Pole Attachment Costs” has the meaning set out in Section 6.1(c);

“Baseline Services Costs” means the costs that the Service Provider will incur to perform the Services, equal to \$9,165,220 at the Base Date, escalated in accordance with Section 4.4 of this Schedule 8 and otherwise amended only in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals]. For further certainty the Baseline Services Costs represents \$763,768 of the Maximum Availability Payment at the Base Date;

“COLO Equipment and Cabling” means any equipment or cabling at a COLO Site that is not provided by Project Co;

“Deduction” means a deduction from an Availability Payment, calculated in accordance with this Schedule 8;

“Material Telecommunications Company” means AT&T and Windstream;

“Maximum Availability Payment” means the payment described in Section 4.2 of this Schedule 8;

“Milestone Payment” has the meaning set out in Section 3 of this Schedule 8;

“Node Site” means one of the 31 core backbone nodes listed in Appendix 7A;

“Outage Deduction” means a Deduction which may be made in respect of an Outage;

“Payment Adjustment Report” has the meaning set out in Section 8 of this Schedule 8;

“Pole Attachment Adjustment Mechanism” has the meaning set out in Section 6 of this Schedule 8;

“Pole Attachment Agreement” means an agreement between the Authority and a Pole Provider granting the Authority the right to attach telecommunications equipment to a pole owned or managed by such Pole Provider and can be either a Simple Pole Attachment Agreement or a Complex Pole Attachment Agreement;

“Pole Provider” means any Utility Company, Telecommunications Company or entity listed in Appendix 8A [Baseline Pole Attachment Rates] that owns or manages poles on which the NG-KIH System must attach;

“Reporting Error” has the meaning set out in Section 8 of this Schedule 8;

“Respond Deduction” means a Deduction which may be made as a result of failing to meet the Mean Time to Respond performance standards shown in Section 2 of this Schedule 8;

“Restoration Deduction” means a Deduction which may be made as a result of failing to meet the Mean Time to Restore performance standards shown in Section 2 of this Schedule 8;

“Service Level 1 Site” or **“SL1 Site”** means a Site listed as such in Appendix 7A that will receive an enhanced level of service;

“Service Level 3 Site” or **“SL3 Site”** means a Site listed as such in Appendix 7A that will receive a standard level of service;

“Site Migration” means the time at which a Site is Available;

“Site Migration Date” means the initial date that Site Migration occurs as confirmed by the Independent Certifier in its monthly batching report;

“Site Multiplier” means the factor applied to a Node Site, Service Level 1 Site or a Service Level 3 Site, equal to 12, 6 or 1 respectively;

“Site Value” means the relative monthly value of a Site calculated for the purposes of the Maximum Availability Payment in accordance with Section 4.3, and calculated for the purposes of Deductions in accordance with Section 5.3 of this Schedule 8; and

“Telecommunications Company” means an entity that generates commercial revenues through the provision of telephone, cable or broadband services to residential or business customers.

2. DEDUCTION METRICS

2.1 Key Performance Indicators

The Deductions will be calculated in accordance with the table below. Deductions will not be applicable in respect of (i) any failure of the COLO and Cabling Equipment or (ii) any difference between any lower performance standards set out in any Third Party Infrastructure Agreement and the performance standards that form part of the Deduction Metrics set out in this Schedule 8 and applicable to Project Co. Project Co acknowledges its obligations in Section 4.15 of the Project Agreement and the Authority acknowledges that Project Co will not have any access to the Third Party Infrastructure Provider’s fiber or equipment and therefore will only be able to address a failure of the Third Party Infrastructure Provider’s performance standards once Project Co has become aware of such failure through the NOC.

Metric	Performance Standard	Deduction Regime					
Node Sites	Availability	99.9%, including all Outages	<i>Month 1</i> 10%	<i>Month 2</i> 25%	<i>Month 3</i> 50%	<i>Month 4</i> 75%	<i>Month 5</i> 100%
	Mean Time to Respond	4 hours with required resources, applicable to all Outages	<i>Range 1 (R1)</i> 4.00-4.50 Hours \$500 per event		<i>Range 2 (R2)</i> 4.50-5.00 Hours \$750 per event		<i>Range 3 (R3)</i> >5.00 Hours \$1,000 per event
	Mean Time to Restore	<u>Equipment-Only Outage:</u> 80% in 6 hours	6-10Hrs 10%	10-14Hrs 25%	14-18Hrs 50%	18-30Hrs 75%	>30Hrs 100%
		<u>Fiber Outage:</u> 12 hours	12-16Hrs 10%	16-20Hrs 25%	20-24Hrs 50%	24-36Hrs 75%	>36Hrs 100%
	Service Level 1	Availability	99.9% excluding Fiber Outages on the Laterals	<i>Month 1</i> 10%	<i>Month 2</i> 25%	<i>Month 3</i> 50%	<i>Month 4</i> 75%
Mean Time to Respond		4 hours with required resources, applicable to all Outages	<i>Range 1 (R1)</i> 4.0-4.5 Hours \$500 per event		<i>Range 2 (R2)</i> 4.50-5.00 Hours \$750 per event		<i>Range 3 (R3)</i> >5.00 Hours \$1,000 per event
Mean Time to Restore		<u>Equipment-Only Outage:</u> 8 hours	8-12Hrs 10%	12-16Hrs 25%	16-20Hrs 50%	20-32Hrs 75%	>32Hrs 100%
		<u>Fiber Outage:</u> No Deductions					
Service Level 3	Availability	99.0% excluding Fiber Outages on the Laterals	<i>Month 1</i> 10%	<i>Month 2</i> 25%	<i>Month 3</i> 50%	<i>Month 4</i> 75%	<i>Month 5</i> 100%
	Mean Time to Respond	90% within 5 hours with required resources, applicable to all Outages	5.0-6.0Hrs 10%	6.0-7.0Hrs 15%	7.0-8.0Hrs 20%	>8Hrs 100%	
	Mean Time to Restore	<u>Equipment-Only Outage:</u> 8 hours	8-12Hrs 10%	12-16Hrs 25%	16-20Hrs 50%	20-32Hrs 75%	>32Hrs 100%
		<u>Fiber Outage:</u> No Deductions					

where:

- (a) all time periods shown begin on the first minute past the hour, and end at the top of the hour. For further clarity, a time range of 8 to 12 hours refers to any time between 8 hours 1 minute and 12 hours 0 minutes, inclusive; and
- (b) all Outages measured in accordance with Sections 5.8, 5.9, 5.10 of this Schedule 8 will be rounded up to the nearest minute.

2.2 Deduction Percentage

- (a) The Deduction Percentage for the Availability performance standard applied in each month in respect of Outage Deductions for each specific category of Sites will depend on the number of consecutive months in which Project Co has not met the Availability performance standards required in Section 2.1 of this Schedule 8. For further clarity, the first month of infringement equates to a Deduction Percentage equal to 10%, increasing to 25%, 50%, 75% and 100% for consecutive infringements of two, three, four and five or more months, respectively.
- (b) The Deduction Percentage for the Mean Time to Respond performance standard applied in each month in respect of Respond Deductions for Service Level 3

Sites is calculated as the length of time by which Project Co's average incident response time exceeds the performance standard of responding within 5 hours, required in Section 2.1 of this Schedule 8. For further clarity, an average response time of between 5 hours 1 minute and 6 hours would result in a Deduction Percentage equal to 10%. For average response times between 6 hours 1 minute and 7 hours, 7 hours 1 minute to 8 hours and greater than 8 hours, the Deduction Percentage would be equal to 15%, 20% and 100% respectively.

- (c) The Deduction Percentage for the Mean Time to Restore performance standard applied in each month in respect of Restoration Deductions for each category of Sites is calculated as the length of time by which Project Co's average service restoration time exceeds the respective performance standard required in Section 2.1 of this Schedule 8 for Node Sites, Service Level 1 Sites or Service Level 3 Sites, as the context requires. For further clarity, an average breach of between 1 minute and 4 hours beyond the permissible restoration time in any given month would result in a Deduction Percentage equal to 10%. The Deduction Percentage escalates to 25%, 50%, 75% and 100% for average breaches of 4 hours 1 minute to 8 hours, 8 hours 1 minute to 12 hours, 12 hours 1 minute to 24 hours and greater than 24 hours beyond the permissible restoration time, respectively.

3. MILESTONE PAYMENT

- (a) The Authority shall pay to Project Co \$23,500,000 on the Ring Availability Date for Ring 1B (a "**Milestone Payment**"), or earlier at the Authority's election. For clarity, subject to compliance by Project Co with applicable federal grant reporting requirements set out in Schedule 14 [Records and Reports] and federal project wage payment requirements where applicable, the Authority will be responsible for satisfying any obligations related to obtaining grant monies or other funding necessary to make the Milestone Payment and obtaining such grant monies or other funding is not a condition to the Authority's obligation to make the Milestone Payment.
- (b) To the extent that the Authority's purchase of the Designated Equipment does not equal the Designated Equipment Value then Section 3.6 of the Project Agreement will apply.

4. AVAILABILITY PAYMENTS

4.1 Calculation of Availability Payments

During the Operating Period, the Authority will pay Project Co in respect of each month an Availability Payment. The Availability Payment is the Maximum Availability Payment for that month, less the sum of Outage Deductions, Respond Deductions and Restoration Deductions for that month, provided that if the Availability Payment in respect of any month (or part thereof, as the case may be), determined in accordance with this Section 4.1, is a negative amount, it shall be deemed to be zero.

4.2 Maximum Availability Payment

- (a) The Maximum Availability Payment prior to System Completion in respect of any month shall be the sum of:
- (1) the Site Value multiplied by the Site Multiplier for Service Level 1 Sites, multiplied by the number of Service Level 1 Sites that have achieved Site Migration prior to that month;
 - (2) for each Service Level 1 Site that achieved Site Migration during that month, the proportion of the Site Value reflecting the number of days from Site Migration to the month's end, multiplied by the Site Multiplier for Service Level 1 Sites;
 - (3) the Site Value multiplied by the Site Multiplier for Service Level 3 Sites, multiplied by the number of Service Level 3 Sites that have achieved Site Migration prior to that month;
 - (4) for each Service Level 3 Site that achieved Site Migration during that month, the proportion of the Site Value reflecting the number of days from Site Migration to the month's end, multiplied by the Site Multiplier for Service Level 3 Sites;
 - (5) all Changes approved by the Authority in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals];
 - (6) the Pole Attachment Renewal Adjustment, in accordance with Section 6 of this Schedule 8; and
 - (7) any adjustments made in accordance with Section 10.1 of this Schedule 8 or Section 10.3 of the Project Agreement.

where:

- (1) all components of the Maximum Availability Payment are escalated in accordance with Section 4.4 of this Schedule 8; and
 - (2) the stub period adjustments set out in subsections (2) and (4) above are measured from the first full day after the applicable Site Migration Date as confirmed by the Independent Certifier, and will be calculated and paid in accordance with Section 4.5 of this Schedule 8.
- (b) The Maximum Availability Payment after System Completion in respect of any month shall be \$2,378,363 at the Base Date, adjusted for the following parameters:
- (1) the Pole Attachment Renewal Adjustment, in accordance with Section 6 of this Schedule 8;
 - (2) the First System Refresh and the Second System Refresh, in accordance with Section 7 of this Schedule 8;
 - (3) the Market Testing completed at the first Market Testing Date and the second Market Testing Date in accordance with Section 7 of this Schedule 8;
 - (4) all Changes approved by the Authority in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals]; and

- (5) any adjustments made in accordance with Section 10.1 of this Schedule 8 or Section 10.3 of the Project Agreement

where:

- (1) all components of the Maximum Availability Payment are escalated in accordance with Section 4.4 of this Schedule 8.

4.3 Calculating the Site Value for the Maximum Availability Payment Prior to System Completion

- (a) For the purposes of calculating the Maximum Availability Payment prior to System Completion, the monthly Site Value at the Base Date is calculated as the Maximum Availability Payment at the Base Date, assuming System Completion, divided by the aggregate number of Service Level 1 Sites and Service Level 3 Sites, weighted according to their respective Site Multipliers, resulting in a Site Value for each Service Level 1 Site and each Service Level 3 Site;
- (b) The monthly Site Value at the Base Date, prior to System Completion, will be escalated annually at the end of each Fiscal Year commencing after the Base Date in accordance with Section 4.4(b) of this Schedule 8.

4.4 Annual Escalation of the Maximum Availability Payment

- (a) The Maximum Availability Payment after System Completion will be annually escalated at the end of each Fiscal Year after the Base Date in three tiers:
 - (1) \$1,472,248, applicable to the capital and financing tier, will be escalated at a fixed rate of 2.5% per annum, starting from the Base Date;
 - (2) \$394,848, applicable to the labor portion of the operations and maintenance tier, will be adjusted by the change percentage in the Labor Inflation Index, starting from the Base Date; and
 - (3) \$511,267, applicable to the remaining portion of the operations and maintenance tier will be adjusted by the change percentage in the Materials Inflation Index, starting from the Base Date.
- (b) For purposes of calculating the Maximum Availability Payment prior to System Completion, the Site Value at the Base Date will be annually escalated at the end of each Fiscal Year after the Base Date in three tiers:
 - (1) 61.9%, applicable to the capital and financing tier, will be escalated at a fixed rate of 2.5% per annum, starting from the Base Date;
 - (2) 16.6%, applicable to the labor portion of the operations and maintenance tier, will be adjusted by the change percentage in Labor Inflation Index, starting from the Base Date; and
 - (3) 21.5%, applicable to the remaining portion of the operations and maintenance tier, will be adjusted by the change percentage in the Materials Inflation Index, starting from the Base Date.

- (c) The Labor Inflation Index change percentage for each Fiscal Year will be calculated from the average of the quarterly published values, rounded to one decimal place, for the four quarters ending in June, September, December and March prior to the start of the relevant Fiscal Year, divided by the average of the four quarterly published values, rounded to one decimal place, for the four quarters ending in June, September, December and March of the preceding Fiscal Year, and expressed as an annual percentage change, rounded to one decimal place.
- (d) The Materials Inflation Index change percentage for each Fiscal Year will be calculated from the average of the monthly published values, rounded to three decimal places, for the twelve months ending March prior to the start of the relevant Fiscal Year, divided by the average of the monthly published values, rounded to three decimal places, for the twelve months ending in March of the preceding Fiscal Year, and expressed as an annual percentage change, rounded to one decimal place.

4.5 Stub Periods

- (a) The Independent Certifier's monthly batching report will list all the Service Level 1 Sites and Service Level 3 Sites that have achieved Site Migration in a given month *m*.
- (b) The Site Value for such Service Level 1 Sites and Service Level 3 Sites, will be adjusted to recognize the number of days that the Site was Available between Site Migration and the end of that month.
- (c) For further clarity, if a Site achieved Site Migration on the 15th day of a month, which has 30 days, the invoice submitted to the Authority for that month, by Project Co in accordance with Section 9 of this Schedule 8, would include a stub period adjustment equal to 50% of the Site Value for that Site, where 50% is calculated as 15 active days divided by 30 days in the month.
- (d) If Project Co submits an application for Site Migration in the final 5 Business Days of a given month, to the extent such Site Migration is certified as achieved, such achievement of Site Migration will be included in the following month's batching report from the Independent Certifier. The stub period adjustment for such Site will therefore be included in the invoice for the month following such Site Migration and will be calculated in accordance with Sections 4.5(b) and (c) above. For further clarity, in such case the stub period adjustment for the relevant Site will result in an amount greater than 100% of the Site Value multiplied by the Site Multiplier for such Site being included in the invoice for the month following Site Migration.

Worked Example 1: Calculating Escalation & the Stub Period Adjustment

It is September 30, 2017. The table below shows the Sites that were completed in the September quarter of 2017. The Site Value at the Base Date for a Service Level 3 Site was \$750, and the Site Value for each Site is split approximately 57% for the Fixed Inflation Index, 19% for the Labor Inflation Index and 24% for the Materials Inflation Index.

Site Category	Sites Migrated 30 June 2017	Site Migration Date July 2017	Site Migration Date August 2017	Site Migration Date September 2017
Node Sites	15	2 on Jul 6 1 on Jul 29	1 on Aug 15	2 on Sep 16
SL 1 Sites	100	5 on Jul 20	6 on Aug 7 3 on Aug 28	5 on Sep 3
SL 3 Sites	150	3 on Jul 31	10 on Aug 15	15 on Sep 24

The published escalation indices for the period are also shown in the table below.

month	ECI-U		CPI-U	
	Fiscal Year 2016	Fiscal Year 2017	Fiscal Year 2016	Fiscal Year 2017
April	-	-	235.787	249.967
May	-	-	236.599	251.216
June	132.5	135.8	237.805	252.472
July	-	-	238.994	253.735
August	-	-	240.189	255.003
September	133.3	136.7	241.390	256.278
October	-	-	242.597	257.560
November	-	-	243.810	258.848
December	134.2	137.5	245.029	260.142
January	-	-	246.254	261.442
February	-	-	247.485	262.750
March	135.0	138.4	248.723	264.063

Calculate the Maximum Availability Payment for September 2017, which will be invoiced to the Commonwealth 10 Business Days into October 2017. The Independent Certifier's Report captures only those Sites that achieve Site Migration within 5 Business Days before the end of September.

Calculation Steps:

- 1) Calculate the Escalation Indices

$$FI_{2017} = 1.025^1 = 1.025$$

$$LI_{2017} = \frac{(135.8 + 136.7 + 137.5 + 138.4)/4}{(132.5 + 133.3 + 134.2 + 135.0)/4} = 1.025$$

$$MI_{2017} = \frac{\left(\begin{array}{l} 249.967 + 251.216 + 252.472 + 253.735 + \\ 255.003 + 256.278 + 257.560 + 258.848 + \\ 260.142 + 261.442 + 262.750 + 264.063 \end{array} \right) / 12}{\left(\begin{array}{l} 235.787 + 236.599 + 237.805 + 238.994 + \\ 240.189 + 241.390 + 242.597 + 243.810 + \\ 245.029 + 246.254 + 247.485 + 248.723 \end{array} \right) / 12} = 1.062$$

2) Escalate the Site Value from the Base Date

The NG-KIH System is still under construction, and as such the Maximum Availability Payment will be calculated in accordance with Section 4.3 of this Schedule 8.

$$\begin{aligned} SV_{BaseDate} &= (\$750 \times 57\% + \$750 \times 19\% + \$750 \times 24\%) \\ SV_{1Q2017} &= (\$428 \times 1.025 + \$143 \times 1.025 + \$180 \times 1.062) = \$776 \\ SV_{SL1} &= \$4,656 \quad SV_{SL3} = \$776 \end{aligned}$$

3) Calculate the Maximum Availability Payment Made for Sites Connected For a Full Month

This calculation refers to Sites that have achieved Site Migration for at least a full month, and so it captures all Sites connected up to the Independent Certifier's cutoff date, which is 5 Business Days prior to the end of August, being the calendar month prior to the delivery of the Independent Certifier's monthly batching report for September 2017.

$$AP_{Max(Connected)} = \left(\begin{array}{l} (100 + 5 + 6) SL1s \times \$4,656 + \\ (150 + 3 + 10) SL3s \times \$776 \end{array} \right)$$

$$AP_{Max(Connected)} = (111 \times \$4,656 + 163 \times \$776) = \$643,304$$

4) Calculate the Additional Availability Payments Required for the Sites Connected During the stub period

The stub period adjustment captures the number of days that the Sites were active in the month that each Site achieved Site Migration. Three SL1 Sites connected on August 28, and as such were not included in the stub period calculation included in the prior invoice for the month of August, and are therefore included in the current invoice for the month of September and calculated in accordance with Section 4.5(d) of this Schedule 8. All the September completions applied to the Independent Certifier for Site Migration prior to the September cutoff date, and thus will be included in the stub period adjustment for the month of connection and calculated in accordance with Sections 4.5(b) and 4.5(c) of this Schedule 8.

$$AP_{Max,SL1} = \$4,656 \times \left[\begin{array}{l} 3 \times \left(\frac{3 \text{ Active Days}}{31 \text{ Days in August}} + 1 \right) \\ + \\ 5 \times \left(\frac{27 \text{ Active Days}}{30 \text{ Days in September}} \right) \end{array} \right] = \$36,272$$

$$AP_{Max,SL3} = \$776 \times 15 \times \left(\frac{6 \text{ Active Days}}{30 \text{ Days in September}} \right) = \$2,328$$

- 5) Add 3) and 4) to Calculate the Maximum Availability Payment for the Month

$$AP_{Max,9/17} = \$643,304 + \$36,272 + \$2,328 = \$681,904$$

5. DEDUCTIONS FROM AVAILABILITY PAYMENTS

5.1 Entitlement to Make Deductions

If, at any time after the Site Completion Date in respect of the relevant Site, an Outage which generates a NOC Incident Ticket occurs, the Authority will be entitled to make Deductions in accordance with this Schedule 8 in respect of that Outage from the Availability Payment for the relevant month, except that:

- (a) the aggregate of all Deductions that the Authority may make from an Availability Payment may not exceed the amount of the Maximum Availability Payment in respect of a month;
- (b) to the extent that an Outage is the result of an Excusing Event or a Compensation Event, the Authority will not be entitled to make Deductions;
- (c) Outages during planned maintenance windows will not contribute to Deductions;
- (d) Fiber Outages on a Lateral will not contribute to Outage Deductions for Service Level 1 Sites or Service Level 3 Sites;
- (e) Fiber Outages will not contribute to Restoration Deductions for Service Level 1 Sites or Service Level 3 Sites. To the extent that a Service Level 1 or Service Level 3 Site is not Available after restoration of a Fiber Outage on the Rings, an Equipment-Only Outage will commence from notification to the NOC of restoration of such Fiber Outage;
- (f) Project Co must trigger both the respond to 90% of Outages within 5 hours and 5 hour Mean Time to Respond performance standards to be eligible for Respond Deductions on Outages that affect Service Level 3 Sites; and
- (g) Project Co must trigger both the restore 80% of Equipment-Only Outages within 6 hours and 6 hour Mean Time to Restore performance standards to be eligible for Restoration Deductions on Equipment-Only Outages that affect the Node Sites.

5.2 Classification of Outage

The final classification of the type of Outage as an Equipment-Only Outage or a Fiber Outage will be made before the ticket in respect of such Outage is closed by the NOC. An Outage which is incorrectly classified may be re-classified only with the approval of the Authority, such approval not to be unreasonably withheld or delayed. If an Outage is re-classified, the

appropriate Deduction (if applicable) will be made and any Deduction incorrectly applied will be withdrawn.

5.3 Calculating the Site Value for Deductions

- (a) The Site Value applicable to the calculation of Deductions at the Base Date will be calculated as the Maximum Availability Payment at the Base Date, assuming that all Sites, including the Node Sites, have achieved Site Completion, divided by the aggregate number of Sites, including the Node Sites, weighted according to their respective Site Multipliers resulting in a Site Value for each Node Site, each Service Level 1 Site and each Service Level 3 Site.
- (b) The Site Value applicable to the calculation of Deductions at the Base Date will be separated into three escalation tiers, each of which will be escalated in accordance with the following formula:

$$SV_{D,m} = (\$508 \times FI_y) + (\$136 \times LI_y) + (\$176 \times MI_y)$$

where:

- $SV_{D,m}$ = Site Value in respect of month m
- FI_y = Fixed escalation of 2.50% annually, calculated in respect of Fiscal Year y as 1.025^y
- LI_y = Labor Inflation Index in respect of Fiscal Year y , calculated in accordance with Section 4.4(c)
- MI_y = Materials Inflation Index in respect of Fiscal Year y , calculated in accordance with Section 4.4(d)

5.4 Total Deductions

Subject to Section 5.1 of this Schedule 8, the total amount of the Deductions to be made in respect of each month m shall be determined in accordance with the following formula:

$$D_m = TOD_m + RSP_m + RST_m$$

where

- D_m = Total Deductions in respect of month m
- TOD_m = Total Outage Deductions for all Sites, for the relevant month m , calculated in accordance with Section 5.5 of this Schedule 8
- RSP_m = The Respond Deductions for all Sites for the relevant month m , calculated in accordance with Section 5.6 of this Schedule 8
- RST_m = The Restoration Deductions for all Sites for the relevant month m , calculated in accordance with Section 5.7 of this Schedule 8

5.5 Calculating Outage Deductions

Outage Deductions will apply and be calculated in accordance with Section 5.5(d) below in any month where the applicable performance standard set out in Section 2.1 of this Schedule 8 for the Availability of the Node Sites, Service Level 1 Sites or Service Level 3 Sites is not met. To determine if such performance standard is infringed, the Availability of Node Sites, Service Level 1 Sites or Service Level 3 Sites in any month is calculated in each case in accordance with Sections 5.5(a) to (c) below.

(a) Potential Monthly Availability

For the purposes of calculating the Availability of all Sites, the Potential monthly Availability is calculated as follows:

$$PMA_m = S_m \times d_m \times M$$

where:

- PMA_m = Potential Monthly Availability minutes in respect of month m
 S_m = The number of Node Sites, Service Level 1 Sites, or Service Level 3 Sites, as the context requires, that have achieved Site Completion prior to month m
 d_m = The number of days in month m
 M = The number of minutes in a day, being 1,440

(b) Outage Minutes During a Month

Outage Minutes for the Sites are calculated as follows:

$$TOM_m = \sum_m TOM_x = \sum_m (S_x \times OM_x)$$

where:

- TOM_m = Total Outage Minutes in respect of month m
 TOM_x = Total Outage Minutes in respect of an Outage x
 S_x = The number of Node Sites, Service Level 1 Sites, or Service Level 3 Sites, as the context requires, rendered not Available as a result of Outage x
 OM_x = The duration of Outage x , in minutes, calculated in accordance with Section 5.8 and Section 5.9 of this Schedule 8

(c) Monthly Availability

Monthly Availability in respect of month m , for the Sites, is calculated in accordance with the following formula:

$$MA_m = \frac{PMA_m - TOM_m}{PMA_m}$$

where:

- MA_m = Monthly Availability in respect of month m , expressed as a percentage and rounded to 2 decimal places
- PMA_m = Potential Monthly Availability for the Node Sites, Service Level 1 Sites or Service Level 3 Sites, as the context requires, in respect of month m , calculated in accordance with Section 5.5(a)
- TOM_m = Total Outage Minutes for the Node Sites, Service Level 1 Sites or Service Level 3 Sites, as the context requires, in respect of month m , calculated in accordance with Section 5.5(b)

(d) **Total Outage Deductions**

When applicable, Outage Deductions are calculated in accordance with the following formula:

$$TOD_m = SA_m \times SV_m \times SM \times DP_m$$

where:

- TOD_m = The Total Outage Deduction for the Node Sites, Service Level 1 Sites or Service Level 3 Sites, as the context requires, for the relevant month m
- SA_m = The simple average of Node Sites, Service Level 1 Sites or Service Level 3 Sites, as the context requires, affected by Outages in the relevant month m
- SV_m = The Site Value for the relevant month m , calculated in accordance with Section 5.3 of this Schedule 8
- SM = The applicable Site Multiplier for Node Sites, Service Level 1 Sites, or Service Level 3 Sites, equal to 12, 6 or 1, as the context requires
- DP_m = The Deduction Percentage for the Availability performance standard for the relevant month m for Node Sites, Service Level 1 Sites or Service Level 3 Sites, as the context requires, calculated in accordance with Section 2

Worked Example 2: Calculating Outage Deductions

It is March 2018. At the start of the month, Project Co had achieved Site Completion for 28 Node Sites, 250 Service Level 1 Sites and 500 Service Level 3 Sites. During March 2018, a further 13 Service Level 1 Sites and 29 Service Level 3 Sites achieve Site Completion. The Maximum Availability Payment for March 2018 is \$2.37 million, which corresponds to an escalated Site Value for Deductions of \$820.57.

The Outages that occurred in March 2018 are listed below.

Site Category	Equipment-Only Outages	Fiber Outages
Node Sites	<ul style="list-style-type: none"> • 1 x 5 Sites, 180 minutes • 1 x 3 Sites, 360 minutes 	<ul style="list-style-type: none"> • 1 x 4 Sites, 800 minutes • 1 x 1 Site, 953 minutes

Site Category	Equipment-Only Outages	Fiber Outages
	<ul style="list-style-type: none"> • 1 x 8 Sites, 30 minutes 	
Service Level 1 Sites	<ul style="list-style-type: none"> • 1 x 50 Sites, 250 minutes • 1 x 7 Sites, 600 minutes • 1 x 15 Sites, 140 minutes • 1 x 100 Sites, 60 minutes • 1 x 15 Sites, 400 minutes 	<p>Caused by Fiber Outages at Nodes</p> <ul style="list-style-type: none"> • 1 x 20 Sites, 1000 minutes • 1 x 5 Sites, 1150 minutes <p>Caused by Fiber Outages on Laterals</p> <ul style="list-style-type: none"> • Excluded from deductions calculation
Service Level 3 Sites	<ul style="list-style-type: none"> • 1 x 400 Sites, 180 minutes • 1 x 50 Sites, 450 minutes • 1 x 75 Sites, 65 minutes • 20 x 10 Sites, 50 minutes 	<p>Caused by Fiber Outages at Nodes</p> <ul style="list-style-type: none"> • 1 x 50 Sites, 2000 minutes • 1 x 10 Sites, 3500 minutes <p>Caused by Fiber Outages on Laterals</p> <ul style="list-style-type: none"> • Excluded from deductions calculation

Calculate Project Co's compliance with the Availability performance standard and, if applicable, calculate the total amount of deductions.

Node Sites: Calculation Steps:

- 1) Calculate Potential Monthly Availability

$$PMA_{\frac{3}{18}} = (28 \text{ Node Sites} \times 31 \text{ days} \times 1,440 \text{ minutes per day})$$

$$= 1,249,920 \text{ minutes}$$

- 2) Calculate Outage Minutes for the Month

$$TOM_{\frac{3}{18}} = (5 \times 180) + (3 \times 360) + (8 \times 30) + (4 \times 800) + (1 \times 953)$$

$$= 6,373 \text{ minutes}$$

- 3) Calculate Monthly Availability

$$MA_{\frac{3}{18}} = \frac{(1,249,920 \text{ minutes} - 6,373 \text{ minutes})}{1,249,920 \text{ minutes}} = 99.49\% < 99.90\%$$

Deductions Apply

- 4) Calculate Total Outage Deductions if Performance Standard is Breached

Assuming that Project Co met the 99.9% Availability requirement for Node Sites in the prior month, the Deduction Percentage for the period is equal to 10%.

$$TOD_{\frac{3}{18}} = \frac{5 + 3 + 8 + 4 + 1 \text{ Affected Sites}}{5 \text{ Outages}} \times \$820.57 \times 12 \text{ Node Multiplier} \times 10\%$$

$$TOD_{\frac{3}{18}} = \$4,136 \text{ Total Outage Deduction for Node Sites}$$

Service Level 1 Sites: Calculation Steps

- 1) Calculate Potential Monthly Availability

$$PMA_{\frac{3}{18}} = (250 \text{ minutes} \times 31 \text{ days} \times 1,440 \text{ minutes per day}) \\ = 11,160,000 \text{ minutes}$$

- 2) Calculate Outage Minutes for the Month

Fiber Outages on the laterals are excluded from the calculation of Outage Minutes.

$$TOM_{\frac{3}{18}} = \left(\begin{array}{l} (50 \times 250) + (7 \times 600) + (15 \times 140) + (100 \times 60) \\ + (15 \times 400) + (20 \times 1000) + (5 \times 1150) \end{array} \right) = 56,550 \text{ minutes}$$

- 3) Calculate Monthly Availability

$$MA_{\frac{3}{18}} = \frac{(11,160,000 \text{ minutes} - 56,500 \text{ minutes})}{11,160,000 \text{ minutes}} = 99.49\% < 99.90\%$$

Deductions Apply

- 4) Calculate Total Outage Deductions if Performance Standard is Breached

Assuming this is the second consecutive month Project Co has not met the 99.9% Availability requirement for Service Level 1 Sites, the Deduction Percentage for the period is equal to 25%.

$$TOD_{\frac{3}{18}} = \frac{50 + 7 + 15 + 100 + 15 + 20 + 5 \text{ Site Outages}}{7 \text{ Outages}} \\ \times \$820.57 \times 6 \text{ SL1 Multiplier} \times 25\%$$

$$TOD_{\frac{3}{18}} = \$37,277 \text{ Total Outage Deduction for SL1 Sites}$$

Service Level 3 Sites: Calculation Steps

- 1) Calculate Potential Monthly Availability

$$PMA_{\frac{3}{18}} = (500 \text{ minutes} \times 31 \text{ days} \times 1,440 \text{ minutes per day}) \\ = 22,320,000 \text{ minutes}$$

- 2) Calculate Outage Minutes for the Month

Only Outage Minutes that occur during Regular Business Hours are included in this calculation.

$$TOM_{\frac{3}{18}} = \left(\begin{array}{l} (400 \times 180) + (50 \times 450) + (75 \times 65) + (20 \times 10 \times 50) \\ + (50 \times 2000) + (10 \times 3500) \end{array} \right) \\ = 244,375 \text{ minutes}$$

3) Calculate Monthly Availability

$$MA_{\frac{3}{18}} = \frac{(22,320,000 \text{ minutes} - 244,375 \text{ minutes})}{22,320,000 \text{ minutes}} = 98.91\% < 99.00\%$$

Deductions Apply

4) Calculate Total Outage Deductions if Performance Standard is Breached

Assuming that Project Co met the 99.0% Availability requirement for Service Level 3 Sites in the prior month, the Deduction Percentage for the period is equal to 10%.

$$TOD_{3/18} = \frac{400 + 50 + 75 + (20 \times 10) + 50 + 10 \text{ (Sites)}}{25 \text{ Outages}} \times \$820.57 \times 1 \times 10\%$$

$$OD_{3/18} = \$2,577 \text{ Total Outage Deduction for SL3 Sites}$$

Total Outage Deductions

$$OD_{3/18} = \$4,136 \text{ (Nodes)} + \$37,277 \text{ (SL1)} + \$2,577 \text{ (SL3)} = \$43,990$$

5.6 Calculating Respond Deductions

(a) **Node Sites and Service Level 1 Sites**

Respond Deductions for Node Sites and Service Level 1 Sites are calculated on an occurrence basis. The monthly Respond Deductions are calculated as follows:

$$RSP_m = R1_m \times \$500 + R2_m \times \$750 + R3_m \times \$1,000$$

where:

- RSP_m = The Respond Deduction for Node Sites or Service Level 1 Sites, as the context requires, for the relevant month m
- $R1_m$ = The number of Outages for Node Sites or Service Level 1 Sites, as the context requires, for which Project Co's response time was between 4 hours 1 minute and 4 hours 30 minutes, in the relevant month m
- $R2_m$ = The number of Outages for Node Sites or Service Level 1 Sites, as the context requires, for which Project Co's response time was between 4 hours 31 minutes and 5 hours, in the relevant month m
- $R3_m$ = The number of Outages for Node Sites or Service Level 1 Sites, as the context requires, for which Project Co's response time was greater than 5 hours, in the relevant month m

(b) **Service Level 3 Sites**

Respond Deductions for Service Level 3 Sites are calculated on an occurrence basis and incorporate the performance standards set out in Section 2.1 above and as further described in Section 5.1(f) above.

(1) **Determine if the Service Level 3 Performance Standard is Breached**

Project Co's performance in responding to Outages at Service Level 3 Sites within 5 hours of notification for a given month m will be measured as follows:

$$RSP_m = \frac{\sum_m R}{\sum_m O}$$

where:

- RSP_m = Project Co's performance for month m in respect of responding to Outages within 5 hours of notification
- R = An occurrence in which Project Co responds to an Outage within 5 hours of notification
- O = The aggregate number of Outages in month m

(2) **Calculating the Mean Time to Respond to Outages**

The Mean Time to Respond to Outages for Service Level 3 Sites is calculated as follows:

$$MTTRSP_m = \frac{\sum_m OM}{\sum_m O}$$

where:

- $MTTRSP_m$ = The Mean Time to Respond to Outages impacting Service Level 3 Sites in the relevant month m
- $\sum_m OM$ = The aggregate number of minutes for Project Co to respond to all Outages impacting Service Level 3 Sites in the relevant month m
- $\sum_m O$ = The aggregate number of Outages in month m

(3) Monthly Deductions

If Project Co does not meet the performance standard of responding to 90% of Outages impacting Service Level 3 Sites within 5 hours of notification in a given month, and the Mean Time to Respond to Outages impacting Service Level 3 Sites in a month is more than 5 hours, the Monthly Respond Deductions are calculated in accordance with the following formula:

$$RSP_m = S3_m \times SV_m \times SM \times DP_m$$

where:

- RSP_m = The Respond Deduction for Service Level 3 Sites in the relevant month m
- $S3_m$ = The simple average of Service Level 3 Sites affected by the Outages in the relevant month m , rounded up to the nearest integer
- SV_m = The Site Value for the relevant month m , calculated in accordance with Section 5.3 of this Schedule 8.
- SM = The Site Multiplier for Service Level 3 Sites, equal to 1
- DP_m = The Deduction Percentage for breach of the Mean Time to Respond performance standard for the relevant month m for Service Level 3 Sites, calculated in accordance with Section 2 of this Schedule 8

(4) Total Respond Deductions

The total Respond Deductions for month m will be the sum of the Respond Deductions calculated in Sections 5.6(a) and 5.6(b)(3).

Worked Example:

It is May 2030. The Maximum Availability Payment for May 2030 is \$4.35 million, which corresponds to an escalated Site Value for Deductions of \$1,502.55. The Outages that occurred during May 2030 and Project Co's response time to each Outage are listed below:

Site Category	Equipment-Only Outages	Fiber Outages
Node Sites	<ul style="list-style-type: none"> • 1 x 60 minutes • 1 x 240 minutes • 1 x 45 minutes • 1 x 105 minutes 	<ul style="list-style-type: none"> • 1 x 375 minutes • 1 x 225 minutes • 1 x 300 minutes • 1 x 495 minutes
Service Level 1 Sites	<ul style="list-style-type: none"> • 5 x 180 minutes • 10 x 240 minutes • 8 x 300 minutes • 3 x 75 minutes 	<ul style="list-style-type: none"> • 5 x 600 minutes • 10 x 225 minutes • 5 x 270 minutes
Service Level 3 Sites	<ul style="list-style-type: none"> • 15 x 315 minutes, 30 sites each event • 25 x 285 minutes, 17 sites each event • 3 x 535 minutes, 100 sites each event 	<ul style="list-style-type: none"> • 1 x 1,990 minutes, 250 sites • 10 x 265 minutes, 78 sites each event • 8 x 325 minutes, 150 sites each event

Calculate Project Co's compliance with the Mean Time to Respond performance standard and, if applicable, calculate the total amount of deductions.

Calculation Steps: Node Sites

- 1) Calculate the Number of Performance Breaches and their Severity

Response times will be rounded up to the nearest minute. For example, a response time of 242 minutes and 30 seconds will be rounded up to 243 minutes, and will be categorized as an R1 performance breach.

$$R1 = 241 \text{ to } 270 \text{ minutes} = 0$$

$$R2 = 271 \text{ minutes to } 300 \text{ minutes} = 1$$

$$R3 = > 300 \text{ minutes} = 2$$

- 2) Calculate Respond Deductions for the Month

$$RSP_{5/30} = (0 \times \$500) + (1 \times \$750) + (2 \times \$1,000) = \$2,750$$

Calculation Steps: Service Level 1 Sites

- 1) Calculate the Number of Performance Breaches and their Severity

$$R1 = 241 \text{ to } 270 \text{ minutes} = 5$$

$$R2 = 271 \text{ minutes to } 300 \text{ minutes} = 8$$

$$R3 = > 300 \text{ minutes} = 5$$

- 2) Calculate Respond Deductions for the Month

$$RSP_{5/30} = (5 \times \$500) + (8 \times \$750) + (5 \times \$1,000) = \$13,500$$

Calculation Steps: Service Level 3 Sites

- 1) Calculate if the Service Level 3 Performance Standard is Breached

$$RSP = \frac{(25 + 10) \text{ Responses } < 5 \text{ Hours}}{(15 + 25 + 3 + 1 + 10 + 8) \text{ Outages}} = 56.4\%$$

$$56.4\% < 90.0\% = \text{Deductions Apply}$$

2) Calculate Mean Time to Respond for the Month

$$MTTRSP_{5/30} = \frac{\left(\frac{(15 \text{ Outages} \times 315 \text{ Minutes}) + (25 \times 285) + (3 \times 535) + (1 \times 1990) + (10 \times 265) + (8 \times 325)}{(15 + 25 + 3 + 1 + 10 + 8) \text{ Outages}} \right)}$$

$$MTTRSP_{5/30} = 334 \text{ minutes} > 5 \text{ hours}$$

First Tier of Deductions (10%)

3) Calculate Respond Deductions if Performance Standard is Breached

$$RSP_{5/30} = \frac{\left(\frac{(15 \text{ Outages} \times 30 \text{ Sites}) + (25 \times 17) + (3 \times 100) + (1 \times 250) + (10 \times 78) + (8 \times 150)}{(15 + 25 + 3 + 1 + 10 + 8) \text{ Outages}} \right) \times \$1,502.55 \times 1 \text{ SL1 Multiplier} \times 10\%}$$

$$RSD_{5/30} = \$8,252$$

Total Respond Deductions

$$RSP_{5/30} = \$2,750 + \$13,500 + \$8,252 = \$24,502$$

5.7 Calculating Restoration Deductions

Subject to Section 5.1 of this Schedule 8, the total amount of the Restoration Deductions to be made in respect of each month *m* shall be determined in accordance with the following formula:

$$RST_m = RST_{E,m} + RST_{F,m}$$

Where:

- RST_m = Restoration Deduction in respect of month *m*
- $RST_{E,m}$ = The aggregate of the Restoration Deduction for Equipment-Only Outages applicable to each of the Node Sites, Service Level 1 Sites and Service Level 3 Sites, for the relevant month *m*, calculated in accordance with this Section 5.7
- $RST_{F,m}$ = The Restoration Deduction for Fiber Outages relevant to Node Sites for the relevant month *m*, calculated in accordance with this Section 5.7

(a) **Restoration Deductions for Equipment-Only Outages**

Restoration Deductions in respect of Equipment-Only Outages impacting Node Sites will only apply if Project Co does not meet the performance standard of restoring 80% of such Equipment-Only Outages within 6 hours, calculated as follows:

1) Determine if Mean Time to Restore for Node Sites Infringes the Event Performance Standard

$$RST_m = \frac{\sum_m R}{\sum_m EO}$$

where:

RST_m = Project Co's performance for month m in respect of restoring 80% of Equipment-Only Outages at the Node Sites within 6 hours

R = An occurrence in which Project Co restores an Equipment-Only Outage at a Node Site within 6 hours of notification

EO = The aggregate number of Equipment-Only Outages at Node Sites in month m

2) Calculating the Mean Time to Restore for Equipment-Only Outages

The Mean Time to Restore for Equipment-Only Outages for the Sites is calculated as follows:

$$MTTR_{E,m} = \frac{\sum_m OM}{\sum_m O}$$

where:

$MTTR_{E,m}$ = The Mean Time to Restore all Equipment-Only Outages impacting Node Sites, Service Level 1 Sites or Service Level 3 Sites, as the context requires, for the relevant month m

$\sum_m OM$ = The aggregate number of minutes, for Project Co to restore Equipment-Only Outages impacting Node Sites, Service Level 1 Sites, or Service Level 3 Sites, as the context requires, for the relevant month m

$\sum_m O$ = The aggregate number of Equipment-Only Outages impacting Node Sites, Service Level 1 Sites, or Service Level 3 Sites, as the context requires, in month m

3) Monthly Restoration Deductions for Equipment-Only Outages

The monthly Restoration Deductions for Equipment-Only Outages for all Sites where the applicable performance standards have been infringed are calculated in accordance with the following formula:

$$RST_{E,m} = S_m \times SV_m \times SM \times DP_m$$

where:

- $RST_{E,m}$ = The Restoration Deduction applicable to Node Sites, Service Level 1 Sites or Service Level 3 Sites, as the context requires, for the relevant month m
- S_m = The simple average of Node Sites, Service Level 1 Sites or Service Level 3 Sites, as the context requires, affected by Equipment-Only Outages in the relevant month m , rounded up to the nearest integer
- SV_m = The Site Value for the relevant month m , calculated in accordance with Section 5.3 of this Schedule 8
- SM = The applicable Site Multiplier for Node Sites, Service Level 1 Sites or Service Level 3 Sites, as the context requires, equal to 12, 6 or 1 respectively
- DP_m = The Deduction Percentage for infringing the Mean Time to Restore performance standard for the relevant month m for Equipment-Only Outages impacting the Node Sites, Service Level 1 Sites or Service Level 3 Sites, as the context requires, calculated in accordance with Section 2 of this Schedule 8

(b) Performance Standard for Fiber Outages

The performance standard for Project Co to restore Fiber Outages for Node Sites is equal to a Mean Time to Restore of up to 12 hours.

1) Calculating the Mean Time to Restore for Fiber Outages

The Mean Time to Restore for Fiber Outages impacting the Node Sites is calculated as follows:

$$MTTR_{F,m} = \frac{\sum_m OM_F}{\sum_m O}$$

where:

- $MTTR_{F,m}$ = The Mean Time to Restore all Fiber Outages impacting Node Sites for the relevant month m
- $\sum_m OM_F$ = The aggregate Restoration Time in month m in respect of Fiber Outages impacting Node Sites
- $\sum_m O$ = The aggregate number of Fiber Outages impacting Node Sites in month m

(c) Monthly Deductions for Restoration of Fiber Outages

Where the Mean Time to Restore for Fiber Outages impacting the Node Sites exceeds the performance standard set out in Section 5.7(b), the monthly Restoration Deductions for Fiber Outages impacting the Node Sites are calculated in accordance with the following formula:

$$RST_{F,m} = S_m \times SV_m \times SM \times DP_m$$

where:

- $RST_{F,m}$ = The Restoration Deduction for Fiber Outages on a Ring for the relevant month m
- S_m = The simple average of Node Sites, Service Level 1 Sites or Service Level 3 Sites, as the context requires, affected by Fiber Outages on the Ring in the relevant month m , rounded up to the nearest integer
- SV_m = The Site Value for the relevant month m , calculated in accordance with Section 5.3 of this Schedule 8
- SM = The Site Multiplier for Node Sites, Service Level 1 Sites or Service Level 3 Sites, as the context requires, equal to 12, 6 and 1 respectively
- DP_m = The Deduction Percentage for breach of the Mean Time to Restore performance standard for the relevant month m for Fiber Outages on a Ring, calculated in accordance with Section 2 of this Schedule 8

Worked Example:

It is May 2030. The Maximum Availability Payment for May 2030 is \$4.12 million, based on an escalated Site Value for Deductions of \$1,502.55. The Outages that occurred during May 2030 and Project Co's response time to each Outage are listed below:

Site Category	Equipment-Only Outages	Fiber Outages
Node Sites	<ul style="list-style-type: none"> • 1 x 760 minutes, 3 sites (breach) • 1 x 240 minutes, 5 sites • 1 x 650 minutes, 8 sites (breach) • 1 x 300 minutes, 2 sites 	<ul style="list-style-type: none"> • 1 x 1,500 minutes 5 Nodes, 30 SL1s, 100 SL3s • 1 x 1,000 minutes 3 Nodes, 13 SL1s, 25 SL3s • 1 x 2,500 minutes 1 Node, 3 SL1s, 5 SL3s • 1 x 480 minutes 10 Nodes, 100 SL1s, 250 SL3s
Service Level 1 Sites	<ul style="list-style-type: none"> • 5 x 1000 minutes, 50 sites each event • 10 x 650 minutes, 14 sites each event • 8 x 400 minutes, 26 sites each event • 3 x 200 minutes, 100 sites each event 	<ul style="list-style-type: none"> • Cuts on the Laterals are excluded from the deductions calculation
Service Level 3 Sites	<ul style="list-style-type: none"> • 15 x 615 minutes, 65 sites each event • 25 x 585 minutes, 15 sites each event • 3 x 2735 minutes, 237 sites each event 	<ul style="list-style-type: none"> • Cuts on the Laterals are excluded from the deductions calculation

Calculation Steps: Equipment-Only Outages for Node Sites

- 1) Determine if the Performance Standard is Breached

$$RST = \frac{(1 + 1) \text{ Restorations } < 6 \text{ Hours}}{(1 + 1 + 1 + 1) \text{ Outages}} = 50.0\%$$

50.0% < 80.0% = Deductions Apply

- 2) Calculate Mean Time to Restore for the Month

$$MTTR_{5/30} = \frac{(760 + 240 + 650 + 300 \text{ Outage Minutes})}{4 \text{ Outages}} = 487.50 \text{ minutes}$$

The Mean Time to Restore for the month, being 8 hours 8 minutes, places Project Co in the first tier of the Deduction Percentage, equal to 10%.

- 3) Calculate Restoration Deductions if Performance Standard is Breached

$$RST_{5/30} = \frac{(3 + 5 + 8 + 2) \text{ Sites Affected}}{4 \text{ Outages}} \times \$1,502.55 \times 12 \text{ Node Multiplier} \times 10\%$$

$$RST_{5/30} = \$9,015$$

Calculation Steps: Fiber Outages for Node Sites

- 1) Calculate the Performance Standard

$$DT = 12 \text{ hours}$$

- 2) Calculate Mean Time to Restore for the Month

$$MTTR_{5/30} = \frac{(1,500 + 1,000 + 2,500 + 480) \text{ Restore Times}}{4 \text{ Outages}} = 1,370 \text{ minutes}$$

22 hours 50 minutes > 12 hours

Deductions Apply

- 3) Calculate Restoration Deductions if Performance Standard is Breached

The Mean Time to Restore for the month is 22 hours, 50 minutes, placing Project Co in the third tier of the Deduction Percentage, equal to 50%.

$$RST_{5/30} = \frac{(5 + 3 + 1 + 10) \text{ Sites Affected}}{4 \text{ Outages}} \times \$1,502.55 \times 12 \text{ Node Multiplier} \times 50\%$$

$$RST_{5/30} = \$42,823$$

Calculation Steps: Equipment-Only Outages for Service Level 1 Sites

- 1) Calculate the Performance Standard

$$DT = 8 \text{ hours}$$

- 2) Calculate Mean Time to Restore for the Month

$$MTTR_{5/30} = \frac{((5 \text{ Outages} \times 1,000 \text{ min Restore time}) + (10 \times 650) + (8 \times 400) + (3 \times 200))}{(5 + 10 + 8 + 3) \text{ Outages}} = 588.46 \text{ average minutes}$$

$$9 \text{ hours } 49 \text{ minutes} > 8 \text{ hours}$$

Deductions Apply

- 3) Calculate Restoration Deductions if Performance Standard is Breached

The Mean Time to Restore for the month is 9 hours 49 minutes, placing Project Co in the first tier of Deduction Percentage, equal to 10%.

$$RST_{5/30} = \frac{(5 \text{ Outages} \times 50 \text{ Sites Affected}) + (10 \times 14) + (8 \times 26) + (3 \times 200)}{(5 + 10 + 8 + 3) \text{ Outages}} \times \$1,502.55 \times 6 \text{ SL 1 Multiplier} \times 10\%$$

$$RST_{5/30} = \$41,540$$

Calculation Steps: Equipment-Only Outages for Service Level 3 Sites

- 1) Calculate the Performance Standard

$$DT = 8 \text{ hours}$$

- 2) Calculate Mean Time to Restore for the Month

$$MTTR_{5/30} = \frac{(15 \times 615 + 25 \times 585 + 3 \times 2735)}{(15 + 25 + 3)} = 745.47 \text{ minutes}$$

$$12 \text{ hours } 25 \text{ minutes} > 8 \text{ hours}$$

Deductions Apply

3) Calculate Restoration Deductions if Performance Standard is Breached

The Mean Time to Restore for the month is 12 hours 25 minutes, placing Project Co in the second tier of Deduction Percentage, equal to 25%.

$$RST_{5/30} = \frac{(15 \text{ Outages} \times 65 \text{ Sites Affected}) + (25 \times 15) + (3 \times 237)}{(15 + 25 + 3) \text{ Outages}} \times \$1,502.55 \times 1 \text{ SL3 Multiplier} \times 25\%$$

$$RST_{5/30} = \$18,004$$

Total Restoration Deductions

$$RST_{5/30} = \$9,015 + \$42,823 + \$41,540 + \$18,004 = \$111,382$$

5.8 Duration of an Outage for Node Sites and Service Level 1 Sites

- (a) The duration of an Outage, and the duration of the restoration time in respect of such Outage for purposes of calculating Restoration Deductions in Section 5.7, in respect of Node Sites and Service Level 1 Sites, will:
 - (1) start at the time that the Network Operations Center creates a NOC Incident Ticket in the Ticketing System;
 - (2) end at the time that the Network Operations Center determines that all Node Sites or Service Level 1 Sites, as the context requires, are Available and the applicable NOC Incident Ticket is set to 'restored' in the Ticketing System; and
 - (3) exclude any minutes during which Project Co, the Project Contractors or the Sub-Contractors do not have Access to the Site or element of the NG-KIH System at the origin of the Outage.
- (b) Where an Outage persists from one month to the following month, the Outage is deemed to be one Outage occurring only in the month in which it starts in accordance with Section 5.8(a)(1) above. If the Outage persists into the subsequent month, all minutes in respect of that Outage will be captured in the month in which such Outage occurs. The start and end times for Outages described above will be logged by the Network Operations Center and reported to Project Co as part of the Performance Monitoring Report in Section 8.1 of this Schedule 8.

5.9 Duration of an Outage for Service Level 3 Sites

- (a) The duration of an Outage will, and the duration of the restoration time in respect of such Outage for purposes of calculating Restoration Deductions in Section 5.7, in respect of Service Level 3 Sites, will:
 - (1) start at the time that the Network Operations Center creates a NOC Incident Ticket in the Ticketing System;

- (2) end at the time that the Network Operations Center determines that all Service Level 3 Sites are Available and the applicable NOC Incident Ticket is set to 'restored' status in the Ticketing System;
 - (3) exclude all minutes between 5:00pm and 8:00am on the following day; and
 - (4) exclude any minutes during which Project Co, the Project Contractors or the Sub-Contractors do not have Access to the Site or element of the NG-KIH System at the origin of the Outage.
- (b) Where an Outage persists from one month to the following month, the Outage is deemed to be one Outage occurring only in the month in which it starts in accordance with Section 5.9(a)(1) above. If the Outage persists into the subsequent month, all minutes in respect of that Outage will be captured in the month in which such Outage occurs.
 - (c) The start and end times for Outages described above will be logged by the Network Operations Center and reported to Project Co as part of the Performance Monitoring Report in Section 8.1.

5.10 Duration of Response Times

The duration of the response time for an Outage for the purposes of calculating any Response Deduction in accordance with Section 5.6 will:

- (a) start at the time the Network Operations Center creates a NOC Incident Ticket in the Ticketing System;
- (b) in respect of any Equipment-Only Outage that does not require attendance by a field technician or construction crew at any Site or Field Location, end when the applicable NOC Incident Ticket is set to "acknowledged" status in the Ticketing System; and
- (c) in respect of any Equipment-Only Outage or Fiber Outage that does require attendance by a field technician or construction crew at a Site or Field Location, end when the field technician or construction crew has arrived at the applicable Site or Field Location.

6. POLE ATTACHMENT RENEWAL ADJUSTMENT

6.1 Pole Counts and Baseline Pole Attachment Costs

- (a) Project Co and the Authority have undertaken commercially reasonable efforts to confirm the number of poles owned or managed by the Pole Providers. The Baseline Pole Attachment Costs as of the Effective Date are calculated on Project Co's best estimates of such number of poles for the Material Telecommunications Companies.
- (b) The annual pole attachment rates and pole counts included in the Financial Model as at the Effective Date are set out in Appendix 8A.

- (c) The aggregate annual pole attachment costs set out in Appendix 8A as at the Effective Date and included in the Maximum Availability Payment, stated in terms of the Base Date, are \$973,081 (the “**Baseline Pole Attachment Costs**”).

6.2 Annual Reconciliation and Adjustment

- (a) At the end of each Fiscal Year, Project Co will deliver to the Authority an update of the information set out in Appendix 8A, which will include:
 - (1) the actual annual pole attachment rates for each Pole Attachment Agreement paid during the Fiscal Year, and which will apply for the following Fiscal Year; and
 - (2) an update of the actual pole count numbers for the Material Telecommunications Companies.

Project Co will further specify the aggregate annual pole attachment costs paid during such Fiscal Year based on the updated pole attachment rates specified in Section 6.2(a)(1) above and the updated pole count numbers for the Material Telecommunications Companies specified in Section 6.2(a)(2) above (the “**Adjusted Pole Attachment Costs**”). For greater certainty, changes in pole count numbers for any Pole Provider other than the Material Telecommunications Companies will not be included in any such update or determination of the Adjusted Pole Attachment Costs.

- (b) To the extent that the Adjusted Pole Attachment Costs are higher or lower than the Baseline Pole Attachment Costs, as indexed for the prior Fiscal Year in accordance with Section 4.4(d), then:
 - (1) Project Co will include the amount of the Adjusted Pole Attachment Costs minus such indexed Baseline Pole Attachment Costs as a positive or negative payment adjustment for the final month of the Fiscal Year, in accordance with Section 9.1(b)(2) of this Schedule 8; and
 - (2) the Baseline Pole Attachment Costs shall then be reset to equal the Adjusted Pole Attachment Costs, and the Maximum Availability Payment for the subsequent Fiscal Year shall be increased or decreased (prior to indexation in accordance with Section 4.4) so that the amount paid by the Authority for pole attachment costs reflects such reset Baseline Pole Attachment Costs.
- (c) For further clarity, the Adjusted Pole Attachment Costs will assume that all pole attachment costs are paid on a monthly basis, such that there will be no adjustment to the Maximum Availability Payment to reflect any annual prepayment of pole attachment costs.

6.3 Authority Rights and Obligations

- (a) Project Co will request revised pole attachment rates from each Pole Provider no less than 3 months prior to the expiry date of the most current Pole Attachment Agreement for such Pole Provider.

- (b) Within 10 days of receiving revised pole attachment rates from a Pole Provider, Project Co will notify the Authority of any increases in the renewal rate, including a comparison to the existing pole attachment rate for such Pole Provider.
- (c) No more than 4 weeks prior to the expiry of any Pole Attachment Agreement, the Authority will have the option to replace Project Co in negotiating the renewal rate with the applicable Pole Provider.

7. MARKET TESTING ADJUSTMENT

7.1 Project Co Proposal or Market Testing Proposal

- (a) Project Co will include in its Project Co Proposal the adjustment, relative to the Baseline Services Costs, that will be required to the Maximum Availability Payment to meet the revised Services Specifications.
- (b) If the Project Co Proposal is not accepted by the Authority in accordance with Schedule 19 [Market Testing Procedure], Project Co will, upon receipt of a Market Testing Proposal, calculate the adjustment that will be required to the Maximum Availability Payment to meet the revised Services Specifications.
- (c) If the Market Testing Proposal is not accepted by the Authority, no adjustment will be made to the Maximum Availability Payment.
- (d) Any adjustment required to the Maximum Availability Payment will be made in accordance with the provisions of Schedule 19 [Market Testing Procedure].
- (e) Project Co, as part of the inclusion of the required adjustment to the Maximum Availability Payment, will include any amendments to the escalation tiers described in Section 4.3(a).

7.2 System Refresh

- (a) In accordance with Schedule 19 [Market Testing Procedure], the annual costs and expected timeline of the First System Refresh and Second System Refresh will be included in the final Project Co Proposal or Market Testing Proposal that is approved by the Authority.
- (b) The Authority will have the option to fund the costs of the First System Refresh and the Second System Refresh through:
 - (1) a lump sum payment, covering 100% of the costs of the First System Refresh or the Second System Refresh, paid directly to Project Co at the commencement of the First System Refresh or Second System Refresh;
 - (2) temporary, monthly adjustments to the Availability Payment, made only during the periods in which works relevant to the First System Refresh or Second System Refresh are undertaken by Project Co, where such adjustments are sized to directly cover 100% of the costs of such works; or
 - (3) permanent monthly adjustments to the Availability Payment, where such adjustments are agreed between the Authority and Project Co with reference to the Financial Model. This payment option is subject to Project Co's ability, on a best efforts basis, to raise sufficient financing to

fund the capital costs of the First System Refresh or Second System Refresh.

- (c) In the event that neither the Project Co Proposal or the Market Testing Proposal is acceptable to the Authority, the provisions of Schedule 19 [Market Testing Procedure] will apply.

8. FAILURE BY PROJECT CO TO MONITOR OR REPORT

8.1 Performance Monitoring Report

The Performance Monitoring Report produced by Project Co for any Payment Period will be the initial source of the information regarding the performance of the Services for the relevant Payment Period for the purposes of calculating the relevant Deductions.

8.2 Reporting Errors

If any of the matters contained in a Performance Monitoring Report or other report submitted to the Authority are incorrect or the Performance Monitoring Report fails to refer to any Outage (each, a “**Reporting Error**”), then:

- (a) in the case of any Reporting Error which resulted in an overpayment by the Authority, Project Co will:
 - (1) if the Reporting Error occurred other than as a result of fraud, deliberate misrepresentation, gross negligence, incompetence or willful misconduct of Project Co, its employees or agents, or if the Reporting Error is discovered by Project Co and reported to the Authority prior to its discovery by the Authority, immediately pay to the Authority an amount equal to the amount overpaid by the Authority as a result of the Reporting Error, with interest at the Default Rate from the date of payment by the Authority to the date of repayment to the Authority; or
 - (2) if the Reporting Error occurred as a result of gross negligence or incompetence of Project Co, its employees or agents, Project Co will pay to the Authority an amount equal to twice the amount overpaid by the Authority as a result of the Reporting Error within thirty (30) days; or
 - (3) if the Reporting Error occurred as a result of fraud, deliberate misrepresentation, or willful misconduct, immediately pay to the Authority an amount equal to four times the amount overpaid by the Authority as a result of the Reporting Error; and
 - (4) the Authority may deduct the payments described in this Sections 8.2(a)(1) to (3) from the Availability Payment. Project Co will pay any amount left unpaid after application toward the Availability Payment within thirty (30) days; and
- (b) in the case of any Reporting Error which resulted in an underpayment by the Authority, the Authority will, if applicable, within thirty (30) days of the date the Authority approves of or agrees to the Reporting Error, acting reasonably, pay to Project Co an amount equal to the amount underpaid by the Authority as a result of the Reporting Error.

8.3 Parties to Advise of Reporting Errors

If, at any time, either the Authority or Project Co becomes aware of a Reporting Error, the party that discovers the Reporting Error will immediately advise the other party in writing of its nature and, if possible, its effect.

9. GENERAL PAYMENT PROVISIONS

9.1 Invoicing and Payment Arrangements

With respect to invoicing and payment the following will apply.

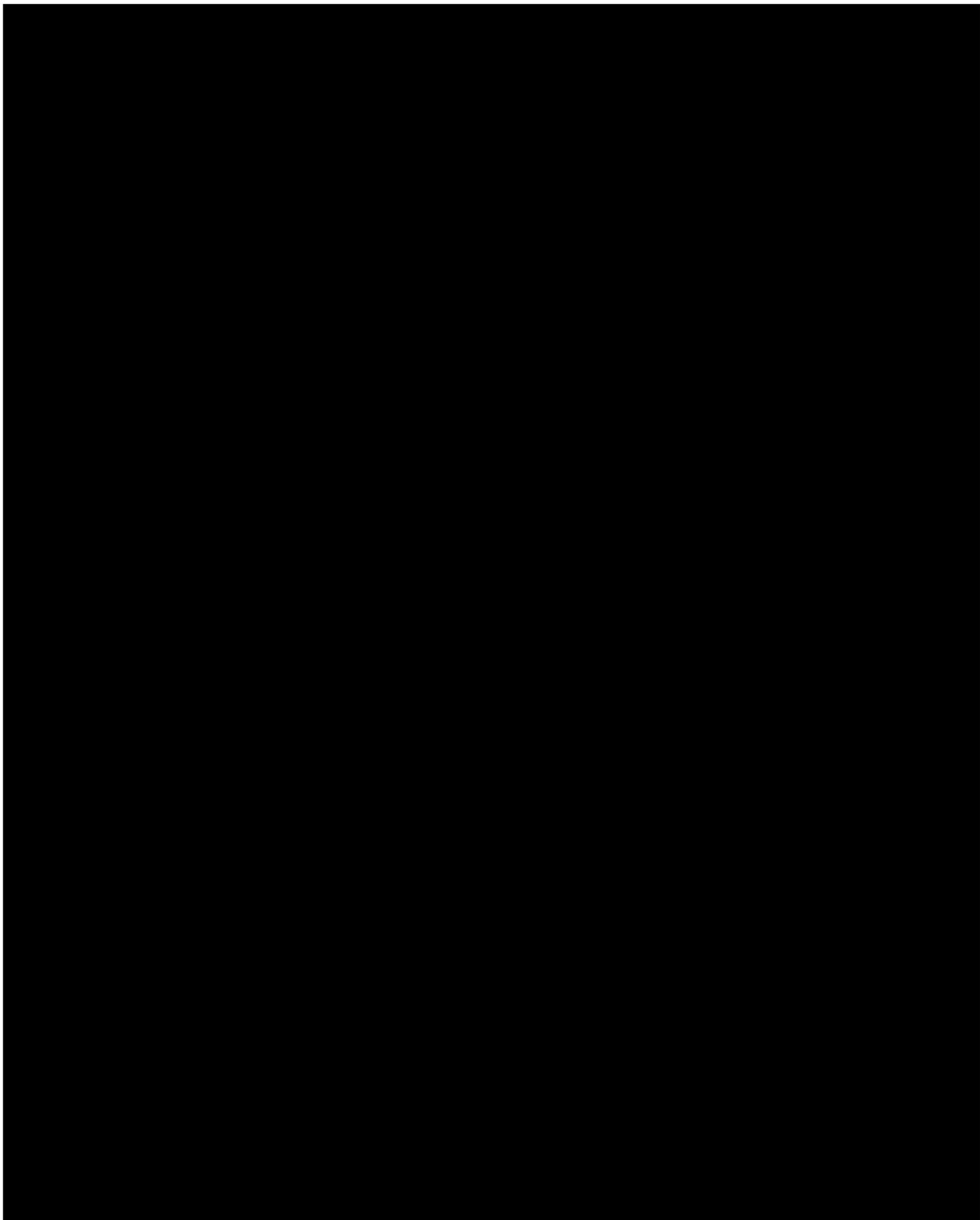
- (a) the Authority will pay all Availability Payments in arrears for each month;
- (b) within 10 Business Days following the commencement of each month, Project Co will provide the Authority with an invoice in a form agreed by the parties, acting reasonably, together with:
 - (1) a Performance Monitoring Report for the prior month; and
 - (2) a report (a “**Payment Adjustment Report**”) setting out any adjustments, including any applicable Deductions, to the Maximum Availability Payment for the prior month, and the amount of any over-payment or under-payment from any amount paid previously by the Authority;
- (c) the invoice will include as a minimum:
 - (1) the Availability Payment for the applicable month;
 - (2) any adjustments to a previous month, as set out in the applicable Payment Adjustment Report approved by the Authority;
 - (3) any amount owing to the Authority under this Project Agreement;
 - (4) any amount owing to Project Co under this Project Agreement; and
 - (5) the net amount owing by the Authority to Project Co, or by Project Co to the Authority, as applicable;
- (d) the Authority will:
 - (1) review each invoice submitted in accordance with this Section 9.1 within 5 Business Days;
 - (2) pay the amount approved by the Authority no later than 20 Business Days following receipt of the invoice; and
 - (3) concurrently advise Project Co of any amounts the Authority has not approved and the reasons for non-approval;
- (e) Project Co:
 - (1) will, after discussion and agreement with the Authority, clarify and resubmit an invoice for any amounts not approved by the Authority in any previously submitted invoice and the Authority will pay such agreed amounts in accordance with Section 9.1(d); and

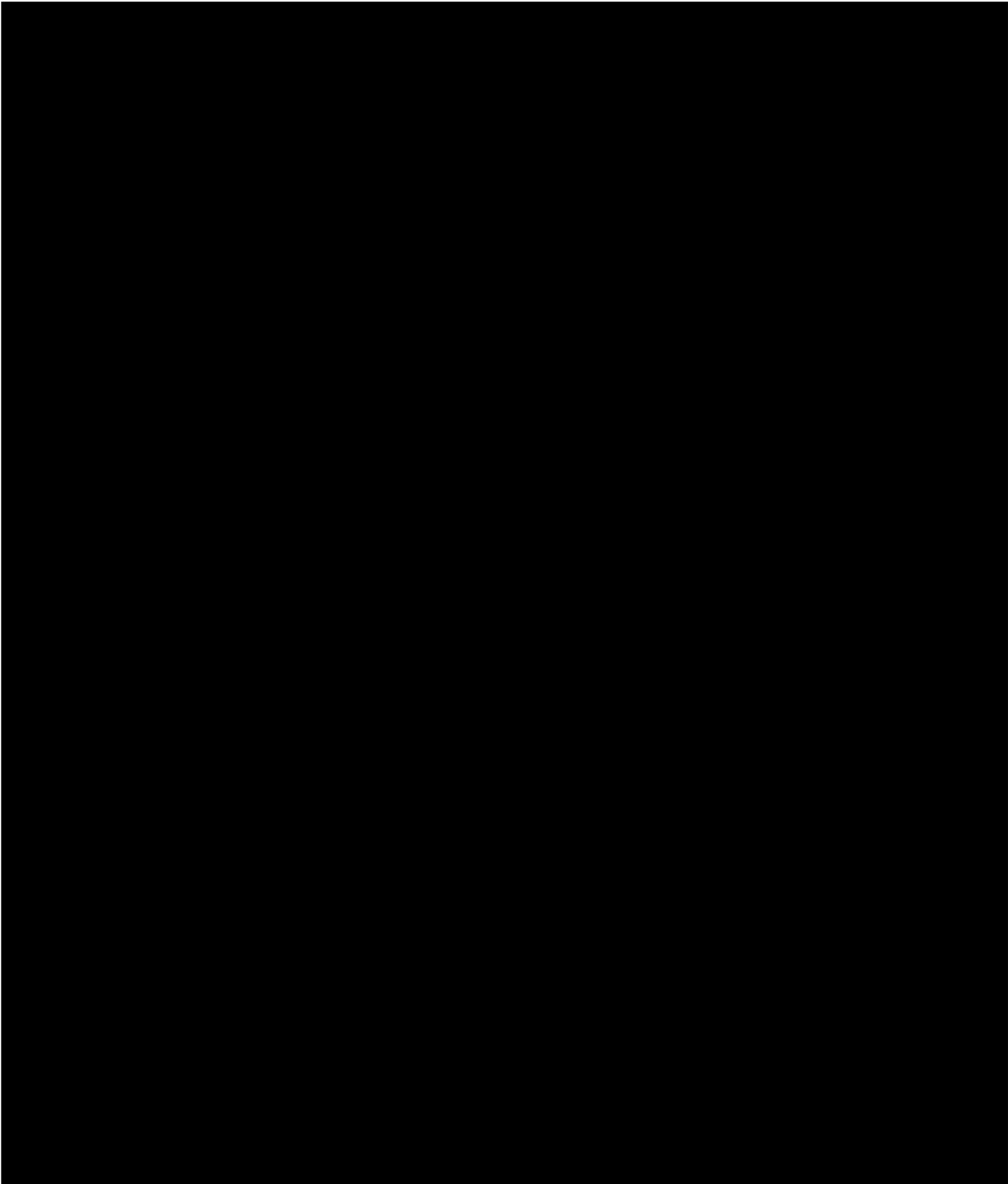
- (2) may refer for resolution pursuant to Dispute Resolution Procedure the amount of any invoice it has not agreed with the Authority;
- (f) the Authority will not be obligated to make any payment unless all conditions of payment in this Project Agreement have been satisfied;
- (g) Project Co will include with each invoice and Payment Adjustment Report such supporting documentation as is reasonably required to substantiate and confirm the invoiced amounts and amounts set out in each Payment Adjustment Report; and
- (h) no payment will be construed as an acceptance or approval of incomplete, defective or improper Design, Construction or Services or any other matter provided by Project Co which is not in conformance with the requirements of this Project Agreement, and will not operate to relieve Project Co from any of its obligations under this Project Agreement.

10. JOINT REVIEW OF PAYMENT MECHANISM

10.1 Joint Review of Payment Mechanism

The parties agree to meet on or about the fifth (5th) anniversary following the first Site Completion Date and on or about every tenth (10th) anniversary thereafter to consider and, if agreed between the parties, address by way of an adjustment to the Maximum Availability Payment any material or sustained increases or decreases in operation and maintenance costs that were not foreseeable as of the Effective Date, in the case of any such increases, to the extent that such increases have or are reasonably likely to have a material adverse effect on Project Co's ability to continue to perform its obligations under this Project Agreement.





**SCHEDULE 9
COMPENSATION ON TERMINATION**

1. DEFINITIONS

In this Schedule 9, in addition to the terms defined in Schedule 1 [Definitions and Interpretation]:

“Employee Information” means written details related to employees employed by Project Co or any of the Project Contractors or Sub-Contractors whose work (or any part of it) is work undertaken for the purposes of the Project, including:

- (a) the staffing plan and total number of such employees;
- (b) the employment costs for such employees;
- (c) the amount of severance payable to such employees used in the calculation of any Employee Payments and all relevant information used in determining such amounts; and
- (d) any other information that the Authority may reasonably require in relation to the calculation of any Employee Payments in respect of Project Co or any relevant Project Contractor or Sub-Contractor;

“Employee Payments” means any liability that has been reasonably incurred by Project Co arising as a result of termination of this Project Agreement under collective agreements, employment agreements or under any other agreements with employees of Project Co, including severance (whether accrued or not), vacation pay and sick pay accrued but excluding any Distribution;

“Project Contractor Breakage Costs” means the amount payable by Project Co to Operations Co under the terms of the Project Implementation Agreement or by Operations Co to a Project Contractor under the terms of a Project Contract as a direct result of the termination of the Project Implementation Agreement or such Project Contract as a consequence of the termination of this Project Agreement, including all cancellation fees, restocking costs and demobilization expenses, but reduced (without duplication) to the extent that:

- (a) Project Co, Operations Co, the Project Contractors and any Sub-Contractors fail to take all reasonable steps to mitigate such amount;
- (b) such amount relates to any agreements or arrangements entered into by Project Co, Operations Co, the Project Contractors or the Sub-Contractors other than in the ordinary course of business and on commercial arm’s length terms;
- (c) such amount is a Distribution; and
- (d) such amount includes any loss of overhead or profit of Operations Co, the Service Provider or its Sub-Contractors relating to any period or costs after the Termination Date (except to the extent they are properly included in any reasonable commercial breakage fee set out in the Project Implementation Agreement, Services Contract or applicable Sub-Contract); and

“Project Implementation Costs” means the total costs, expenses and fees that have been incurred by or on behalf of Project Co in connection with the Project.

2. TERMINATION AT AUTHORITY’S OPTION OR FOR AUTHORITY EVENT OF DEFAULT

2.1 Calculation of Termination Payment

If the Authority terminates this Project Agreement pursuant to Section 2.1(a) or Project Co terminates this Project Agreement pursuant to Section 13, the Authority will pay to Project Co a Termination Payment which will be calculated as the aggregate amount, without duplication, of:

- (a) the Senior Debt as at the Termination Date, with per diem interest on amounts falling within paragraph (a) of the definition of Senior Debt calculated at the non-default interest rate provided for such amounts in the Senior Financing Agreements for the period from (but excluding) the Termination Date until (and including) the Termination Payment Date;
- (b) the Employee Payments and the Project Contractor Breakage Costs;
- (c) any accrued but unpaid amounts owing and payable by the Authority to Project Co under this Project Agreement;
- (d) any Insurance Receivables, if and to the extent Project Co has assigned them to the Authority; and
- (e) the aggregate amount for which the then issued and outstanding shares in Operations Co and any amounts outstanding under Junior Debt could have been sold for Fair Market Value on the date immediately before the Termination Date based on the assumption that there has been no default by the Authority, that the sale is on a going concern basis and that no restrictions exist on the transfer of equity capital;

LESS, to the extent it is a positive amount, the aggregate amount, without duplication, of:

- (f) the aggregate of all credit balances in any bank accounts held by or on behalf of Project Co on the Termination Date that are secured in favor of the Senior Secured Creditors;
- (g) the value of any amounts due and payable from third parties (but only when received from third parties) but excluding any claims under a Project Contract or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co will assign any such claims under the Project Contracts or claims against other third parties to the Authority and give the Authority reasonable assistance in prosecuting such claims;
- (h) the market value of any other assets and rights, including any undrawn performance security, of Project Co (other than those transferred to the Authority pursuant to this Project Agreement) less liabilities of Project Co properly incurred

in carrying out its obligations under this Project Agreement as at the Termination Date to the extent realized before the Termination Payment Date, provided that no account will be taken of any liabilities and obligations of Project Co arising out of:

- (1) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (2) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms;
- (i) any amounts, including hedging termination amounts and other breakage costs, payable by the Senior Secured Creditors to Project Co as a result of a prepayment under the Senior Financing Agreements;
 - (j) any amounts received by the Senior Secured Creditors (or on their behalf) on or after the Termination Date and before the Termination Payment Date as a result of enforcing any other rights or security the Senior Secured Creditors may have under the Senior Financing Agreements in respect of Senior Debt (net of the reasonable and proper costs incurred in such enforcement); and
 - (k) any other amounts that the Authority is entitled to set off or deduct pursuant to Section 9.11 of this Project Agreement.

To the extent that the assets and rights referred to in Section 2.1(h) are not realized and applied pursuant thereto, Project Co will, on payment of the amount due under this Section 2.1, assign such assets and rights to the Authority.

If the aggregate of the amount calculated above is less than the Senior Debt plus the amount referred to in (b) above, then the Termination Payment will be increased so that it is equal to the aggregate of the Senior Debt plus the amount referred to in (b) above.

2.2 Notice to the Authority

As soon as practicable after termination of this Project Agreement by the Authority pursuant to Section 2.1(a) or by Project Co pursuant to Section 13, Project Co will, acting reasonably, notify the Authority of the Termination Payment claimed by Project Co as of an estimated Termination Payment Date and include in such notice the details and calculations of each component thereof, including a revised and up-to-date Financial Model and certificates from the Senior Secured Creditors as to the amounts owed to them. Project Co will provide to the Authority all such documentation and information as may be reasonably required by the Authority to substantiate the amount of the Termination Payment, including Employee Information. The Authority may request any additional documentation or information as may be reasonably required by the Authority to substantiate the amount of the Termination Payment claimed by Project Co, provided that provision of any such documentation or information shall not prevent the Authority from disputing the Termination Payment claimed by Project Co.

3. TERMINATION FOR PROJECT CO EVENT OF DEFAULT

3.1 Calculation of Termination Payment Prior to System Completion Date

If the Authority terminates this Project Agreement pursuant to Section 12.4 prior to the System Completion Date, the Authority will pay to Project Co a Termination Payment equal to the aggregate amount, without duplication, of:

- (a) the greater of:
 - (1) the documented Project Implementation Costs actually incurred by or on behalf of Project Co up to the Termination Date; and
 - (2) 80% of the Senior Debt outstanding on the Termination Date,

LESS, to the extent it is a positive amount, the aggregate amount, without duplication, of:

- (b) the aggregate of all credit balances in any bank accounts held by or on behalf of Project Co on the Termination Date that are secured in favor of the Senior Secured Creditors;
- (c) the market value of any other assets and rights, including any undrawn performance security, of Project Co (other than those transferred to the Authority pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date to the extent realized before the Termination Payment Date, provided that no account will be taken of any liabilities and obligations of Project Co arising out of:
 - (1) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (2) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms; and
- (d) the total of all Direct Losses reasonably incurred by the Authority as a result of the termination, including all reasonable costs of services, materials and equipment required to bring the condition of the NG-KIH System to the standard it would have been in if Project Co had complied with its obligations to carry out and complete the Design, Construction and Services in accordance with its obligations under this Project Agreement as of the Termination Date.

If the aggregate of the amount calculated above is greater than the Project Implementation Costs actually incurred by or on behalf of Project Co up to the Termination Date, then the Termination Payment will be decreased so that it is equal to the Project Implementation Costs actually incurred by or on behalf of Project Co up to the Termination Date.

3.2 Calculation of Termination Payment After System Completion Date

If the Authority terminates this Project Agreement pursuant to Section 12.4 after the System Completion Date, the Authority will pay to Project Co a Termination Payment equal to the aggregate amount, without duplication, of:

- (a) the greater of:
 - (1) the documented Project Implementation Costs actually incurred by or on behalf of Project Co up to the Termination Date, less the value of the accrued amortization of such Project Implementation Costs, provided that:
 - (A) accrued amortization will be determined by calculating, using a straight line amortization schedule, the total amount accrued through the Termination Date; and
 - (B) in no event shall such amount be greater than the amount of the Project Implementation Costs actually incurred by or on behalf of Project Co, less accrued amortization on the Termination Date as shown on the Financial Model projections as of the Effective Date; and
 - (2) 80% of the Senior Debt outstanding on the Termination Date,

LESS, to the extent it is a positive amount, the aggregate amount, without duplication, of:

- (b) the aggregate of all credit balances in any bank accounts held by or on behalf of Project Co on the Termination Date that are secured in favor of the Senior Secured Creditors;
- (c) the market value of any other assets and rights, including any undrawn performance security, of Project Co (other than those transferred to the Authority pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date to the extent realized before the Termination Payment Date, provided that no account will be taken of any liabilities and obligations of Project Co arising out of:
 - (1) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (2) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms; and
- (d) the total of all Direct Losses reasonably incurred by the Authority as a result of the termination, including all reasonable costs of services, materials and equipment required to bring the condition of the NG-KIH System to the standard

it would have been in if Project Co had complied with its obligations to carry out and complete the Design, Construction and Services in accordance with its obligations under this Project Agreement as of the Termination Date.

If the aggregate of the amount calculated above is greater than the Project Implementation Costs actually incurred by or on behalf of Project Co up to the Termination Date, then the Termination Payment will be decreased so that it is equal to the Project Implementation Costs actually incurred by or on behalf of Project Co up to the Termination Date.

3.3 Notice to the Authority

As soon as practicable after termination of this Project Agreement by the Authority pursuant to Section 12.4, the Authority will notify Project Co of the Direct Losses reasonably incurred by the Authority as a result of the termination and Project Co will, acting reasonably, notify the Authority of the Termination Payment claimed by Project Co as of an estimated Termination Payment Date and include in such notice the details and calculations of each component thereof. Project Co will provide to the Authority all such documentation and information as may be reasonably required by the Authority to substantiate the amount of the Termination Payment. The Authority may request any additional documentation or information as may be reasonably required by the Authority to substantiate the amount of the Termination Payment claimed by Project Co, provided that provision of any such documentation or information shall not prevent the Authority from disputing the Termination Payment claimed by Project Co.

3.4 Post-Termination Date Payment

If this Project Agreement is terminated in accordance with Section 12.4, during the period from the Termination Date to the date the Termination Payment is paid, the Authority will, on or before the later of:

- (a) 2 Business Days prior to each interest payment date under the Senior Financing Agreements; and
- (b) 3 Business Days after the Authority has received written notice from Project Co of the amount of interest payable by it on such interest payment date,

as an advance against the Termination Payment, pay to Project Co the interest payable on that interest payment date by Project Co to the Senior Secured Creditors in the normal course (which, for greater certainty, does not include breach or default circumstances) under the Senior Financing Agreements. The Authority may withhold payment under this Section 3.4 if the Authority has reasonable grounds to believe that the aggregate of that payment and all such previous payments would exceed the Termination Payment otherwise payable or the Availability Payments that would have been payable to Project Co had the Project Agreement not been terminated. All payments under this Section 3.4 will be deducted from the Termination Payment and any over-payment will be re-paid by Project Co no later than the Termination Payment Date.

4. NO-FAULT TERMINATION

4.1 Calculation of Termination Payment

If either the Authority or Project Co terminates this Project Agreement pursuant to Section 6.3, Section 6.4, Section 6.10, Section 8.4 or Section 8.6, the Authority will pay to Project Co a Termination Payment equal to the aggregate of:

- (a) the Senior Debt as at the Termination Payment Date, with per diem interest on amounts falling within paragraph (a) of the definition of Senior Debt calculated at the non-default interest rate provided for such amounts in the Senior Financing Agreements for the period from (but excluding) the Termination Date until (and including) the Termination Payment Date;
- (b) the Employee Payments and the Project Contractor Breakage Costs;
- (c) any accrued but unpaid amounts owing and payable by the Authority to Project Co under this Project Agreement;
- (d) the amount, if any, by which the Junior Debt exceeds the amount of all Distributions made in respect of Junior Debt; and
- (e) the amount, if any, by which the amount of capital contributed to Operations Co by its equity investors exceeds the amount of all Distributions made by Operations Co to its equity investors,

LESS:

- (f) the amount of any Distributions other than those referred to in (d) and (e) above; and
- (g) any other amounts that the Authority is entitled to set off or deduct pursuant to Section 9.11 of this Project Agreement.

If the aggregate of the amount calculated above is less than the Senior Debt plus the amount referred to in (b) above, then the Termination Payment will be increased so that it is equal to the aggregate of the Senior Debt plus the amount referred to in (b) above.

4.2 Notice to the Authority

As soon as practicable after termination of this Project Agreement by either the Authority or Project Co pursuant to Section 6.3, Section 6.4, Section 6.10, Section 8.4 or Section 8.6, Project Co will, acting reasonably, notify the Authority of the Termination Payment claimed by Project Co as of an estimated Termination Payment Date and include in such notice the details and calculations of each component thereof, including a revised and up-to-date Financial Model and certificates from the Senior Secured Creditors as to the amounts owed to them. Project Co will provide to the Authority all such documentation and information as may be reasonably required by the Authority to substantiate the amount of the Termination Payment, including Employee Information. The Authority may request any additional documentation or information as may be reasonably required by the Authority to substantiate the amount of the Termination Payment claimed by Project Co, provided that provision of any such documentation or

information shall not prevent the Authority from disputing the Termination Payment claimed by Project Co.

5. ADJUSTMENTS AND DISPUTES

5.1 Time Related Adjustments

The parties acknowledge and agree that the calculation of any Termination Payment pursuant to Section 2, 3 or 4 of this Schedule 9 is as of an estimated Termination Payment Date and that such estimated date may not be the actual Termination Payment Date for reasons which may include the existence of a Dispute. The parties will act reasonably in adjusting the amount of such calculated Termination Payment to reflect the actual Termination Payment Date.

5.2 Senior Debt

The Authority will be entitled to rely on one or more certificates of officers of the Senior Secured Creditors or their agent(s) as conclusive evidence of the amount of the Senior Debt. The receipt of this amount by Project Co, the Senior Secured Creditors or their agent(s) will discharge the Authority's obligation to pay any portion of compensation due to Project Co that is attributable to the Senior Debt.

5.3 Disputes

If:

- (a) the Authority does not agree with Project Co's determination of the Termination Payment under Section 2, 3 or 4 of this Schedule 9, the Authority may, within 30 days of the notice referred to in Section 2.2, 3.3 or 4.2 of this Schedule 9, as the case may be, refer the matter to the Dispute Resolution Procedure, including, without limitation, the review of the Dispute by the Secretary of the Finance and Administration Cabinet; or
- (b) Project Co does not agree with the Authority's determination of the Direct Losses reasonably incurred by the Authority as a result of the termination under Section 3 of this Schedule 9, Project Co may, within 30 days of the notice referred to in Section 3.3 of this Schedule 9 refer the matter to the Dispute Resolution Procedure, including, without limitation, the review of the Dispute by the Secretary of the Finance and Administration Cabinet.

If either party does not refer the matter to the Dispute Resolution Procedure within the periods provided for in (a) or (b) above, as applicable, such party will be deemed to have agreed to the amount of the applicable determination of the Termination Payment as of the estimated Termination Payment Date.

6. PAYMENTS

6.1 Termination Payment Date

Subject to Section 14.1 of this Project Agreement, the Termination Payment Date for any Termination Payment will be determined as follows:

- (a) if the amount thereof is agreed to by the Authority and Project Co, the earliest of:
 - (1) the date advised by the Authority; and
 - (2) 30 days after such agreement is reached; or
- (b) if the amount thereof is the subject of a Dispute, 30 days after the amount of the Termination Payment is determined under the Dispute Resolution Procedure, including, without limitation, the review of the Dispute by the Secretary of the Finance and Administration Cabinet,

provided that Project Co will not seek a judgment against the Authority in respect of any such Termination Payment unless such Termination Payment remains unpaid 365 days after the date of determination thereof. For clarity, the Authority will pay interest on any Termination Payment (as calculated prior to deducting any amounts pursuant to Section 3.4 of this Schedule 9) not paid when due in accordance with Section 9.14 of this Project Agreement.

6.2 Full Settlement

Any compensation paid by the Authority to Project Co under this Schedule 9 in the total amount owing hereunder or any agreement or determination that the Authority has no obligation to make any payment to Project Co under this Schedule 9 will be in full and final settlement of each party's rights and claims against the other for termination of this Project Agreement and any Project Contract, whether under contract, tort, restitution or otherwise, but without prejudice to:

- (a) any antecedent liability of either party to the other that arose prior to the date of termination of this Project Agreement (but not from the termination itself), to the extent any such liability has not already been taken into account in determining the Termination Payment; and
- (b) any liability of either party to the other that may arise after the date of termination of this Project Agreement (but not from the termination itself), including, for greater certainty, liabilities arising under the provisions of this Project Agreement which are intended by Section 17.10 of this Project Agreement to survive termination, to the extent any such liability has not already been taken into account in determining the Termination Payment.

SCHEDULE 10
LENDERS' REMEDIES AGREEMENT
NEXT GENERATION KENTUCKY INFORMATION HIGHWAY PROJECT

The Commonwealth of Kentucky
(the "Authority")
and
U.S. Bank National Association
(the "Collateral Agent")
and
KentuckyWired Infrastructure Company, Inc.
("Project Co")
and
KentuckyWired Operations Company, LLC
("Operations Co")

Dated: September 3, 2015

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**SCHEDULE 10
LENDERS' REMEDIES AGREEMENT**

THIS LENDERS' REMEDIES AGREEMENT dated as of September 3, 2015 is entered into:

BETWEEN:

The Commonwealth of Kentucky

(the "**Authority**")

AND:

U.S. Bank National Association

in its capacity as collateral agent on behalf of itself and the other Secured Parties
(the "**Collateral Agent**")

AND:

KentuckyWired Infrastructure Company, Inc.

("Project Co")

AND:

KentuckyWired Operations Company, LLC

("Operations Co")

WHEREAS:

- A. The Authority and Project Co have entered into the Project Agreement (as defined below).
- B. Project Co and Operations Co have entered into the Project Implementation Agreement (as defined below).
- C. Pursuant to the Senior Financing Agreements, the Senior Secured Creditors have agreed, subject to the terms and conditions contained therein, to make available to Project Co the credit facility specified therein to finance certain costs to be incurred and expenditures to be made by Project Co in connection with the Project.
- D. It is a condition precedent to the obligations of the Senior Secured Creditors under the Senior Financing Agreements that this Lenders' Remedies Agreement be executed and delivered by the parties.
- E. The Authority and Project Co have agreed under the terms of the Project Agreement to execute and deliver this Lenders' Remedies Agreement. Project Co and Operations Co have agreed under the terms of the Project Implementation Agreement to execute and deliver this Lenders' Remedies Agreement.

NOW THEREFORE THIS LENDERS' REMEDIES AGREEMENT WITNESSES THAT, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. INTERPRETATION

1.1 Definitions

Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Lenders' Remedies Agreement will have the respective meanings given to such terms in the Project Agreement and:

"Antecedent Liabilities" means, as at any time:

- (a) all amounts due and payable by Project Co to the Authority under the Project Agreement or by Operations Co to Project Co under the Project Implementation Agreement, as applicable, at such time; and
- (b) all obligations which should have, but have not, been performed and outstanding liabilities of Project Co under the Project Agreement or Operations Co under the Project Implementation Agreement, as applicable, in each case at such time;

"Appointed Representative" means the Senior Secured Creditors' Representative identified in a Step-In Notice;

"Bankruptcy Proceedings" means:

- (a) any:
 - (1) formal step (including petition, proposal, application, convening of a meeting or other proceeding) taken with a view to or for the purpose of considering;
 - (2) appointment of an Insolvency Officer in connection with;
 - (3) order or resolution passed in connection with; or
 - (4) formal agreement reached regarding,
a dissolution, bankruptcy, receivership, winding-up, liquidation, administration or other similar proceedings or any other proceeding seeking a stay of proceedings, reorganization, debt arrangement, compromise of the claims of creditors or any distribution of assets in respect of Project Co or Operations Co (whether voluntary or involuntary) made or commenced by any party under any Bankruptcy Law; or
- (b) any distress, attachment, sequestration or execution or other similar process affecting any of the assets of Project Co or Operations Co or any other similar process or event occurring in relation to Project Co's or Operations Co's assets in any other jurisdiction;

“Collateral Agency and Account Agreement” means the collateral agency and account agreement dated as of September 1, 2015 between Project Co, U.S. Bank National Association, as senior bonds trustee, U.S. Bank National Association, as subordinate bonds trustee, and the Collateral Agent;

“Collateral Agent’s Withdrawal Notice” has the meaning set out in Section 3.4;

“Deficiency” has the meaning set out in Section 9.4(b);

“Discharged Obligations” has the meaning set out in Section 6.4;

“Discharged Rights” has the meaning set out in Section 6.4;

“Event of Default” has the meaning set out in the Collateral Agency and Account Agreement;

“Indicative Notice” means either an Indicative Step-In Notice or an Indicative Transfer Notice given in accordance with Section 3.3;

“Indicative Notice Period” means:

- (a) where an Indicative Step-In Notice has been given, the period commencing on the date of delivery of such Indicative Step-In Notice and ending on the earlier of:
 - (1) the Step-In Date;
 - (2) the date of delivery of a Collateral Agent’s Withdrawal Notice; and
 - (3) 45 Business Days following the date of delivery of such Indicative Step-In Notice; or
- (b) where an Indicative Transfer Notice has been given, the period commencing on the date of delivery of such Indicative Transfer Notice and ending on the earlier of:
 - (1) the date on which any transfer in accordance with Section 6.1 becomes effective;
 - (2) the date of delivery of a Collateral Agent’s Withdrawal Notice; and
 - (3) 45 Business Days following the date of delivery of such Indicative Transfer Notice;

“Indicative Step-In Notice” has the meaning given to it in Section 3.3;

“Indicative Transfer Notice” has the meaning given to it in Section 3.3;

“Insolvency Officer” means any trustee, receiver, receiver and manager, liquidator, sequestrator, administrator or other custodian in connection with the insolvency of Project Co or Operations Co or any of their respective assets;

“Insurance Proceeds Account” has the meaning given to it in the Collateral Agency and Account Agreement;

“Lenders’ Remedies Agreement” means this lenders’ remedies agreement, as amended, supplemented or restated from time to time;

“Liability Report” has the meaning given in Section 3.5;

“Material Antecedent Liabilities” means Antecedent Liabilities that are:

- (a) financial liabilities; or
- (b) non-financial liabilities, the breach of which will trigger any remedy of the Authority under Section 12 (Project Co Events of Default) of the Project Agreement or Project Co under Section 12 (Operations Co Events of Default) of the Project Implementation Agreement, as applicable;

“New Agreements” has the meaning given in Section 10.2;

“Notice Period” means:

- (a) in respect of a Project Co Event of Default or an Operations Co Event of Default, as applicable, the Termination Notice Period; and
- (b) in respect of an Operations Co Financing Default, the Indicative Notice Period;

“Operations Co Event of Default” has the meaning set out in the Project Implementation Agreement;

“Operations Co Financing Default” has the meaning set out in the Collateral Agency and Account Agreement;

“Project Agreement” means the project agreement dated September 3, 2015 between the Authority and Project Co relating to the design, construction, financing, operation and maintenance of the NG-KIH System;

“Project Documents” means, collectively, the Project Agreement, the Project Implementation Agreement and any other agreement (other than this Lenders’ Remedies Agreement) entered into from time to time by the Authority and Project Co (with or without other parties) or by Project Co and Operation Co (with or without other parties) in connection with the Project, and **“Project Document”** means any one of the foregoing;

“Project Contract” means either the Design-Build Agreement or the Services Contract, and **“Project Contracts”** means both of them;

“Project Contractor” means either the Design-Builder or the Service Provider, and **“Project Contractors”** means both of them;

“Project Implementation Agreement” means the project implementation agreement dated September 3, 2015 between Project Co and Operations Co relating to the design, construction, operation and maintenance of the NG-KIH System;

“Reported Antecedent Liabilities” means the Antecedent Liabilities identified in the Liability Report;

“Revocation of Termination Notice” means a written notice from the Authority or Project Co, as applicable, to the Collateral Agent revoking a Termination Notice;

“Security Documents” has the meaning as set out in the Collateral Agency and Account Agreement;

“Senior Debt Discharge Date” means the date on which all amounts due and owing to the Senior Secured Creditors under the Senior Financing Agreements have been fully and irrevocably paid or discharged (whether or not as a result of enforcement) and the Senior Secured Creditors are under no further obligation to advance under the relevant Senior Financing Agreement;

“Senior Secured Creditors” has the meaning set out in the Collateral Agency and Account Agreement;

“Senior Secured Creditors’ Representative” means:

- (a) the Collateral Agent;
- (b) a receiver or receiver and manager of Operations Co appointed under or in connection with the Security Documents; or
- (c) any other Person approved by the Authority (such approval not to be unreasonably withheld or delayed);

“Step-In Date” means 5 Business Days after delivery of a Step-In Notice;

“Step-In Notice” means a notice given by the Collateral Agent to the Authority and Project Co pursuant to Section 4;

“Step-In Period” means, subject to Section 4.3, the period from the Step-In Date up to and including the earliest of:

- (a) the Step-Out Date;
- (b) the date of any transfer under Section 6;
- (c) the date of any termination under Section 4.5; and
- (d) the Expiration Date;

“Step-Out Date” means the date that is 20 Business Days after the date of a Step-Out Notice;

“Step-Out Notice” means a notice from the Collateral Agent or Appointed Representative to the Authority and Project Co pursuant to Section 5;

“Suitable Substitute Operations Co” means a Person approved by the Authority in accordance with Sections 6.2 and 6.3 as:

- (a) having the legal capacity, power and authority to become a party to and perform the obligations of Operations Co under the Project Implementation Agreement;
- (b) employing or contracting for the services of persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of Operations Co under the Project Implementation Agreement; and
- (c) not being a Restricted Person;

“Termination Notice” means a notice given by the Authority or Project Co, as applicable, to the Collateral Agent under Section 3; and

“Termination Notice Period” means the period beginning on the date of giving of a Termination Notice and ending on the earlier of:

- (a) the Step-In Date;
- (b) the date of service of a Revocation of Termination Notice; and
- (c) the proposed Termination Date (subject to the minimum notice requirements under Section 3.1(a)) set out in the Termination Notice.

1.2 Construction and Interpretation

Unless otherwise specified or the context otherwise requires, this Lenders’ Remedies Agreement will be interpreted according to the following provisions:

- (a) the parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Lenders’ Remedies Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same;
- (b) the table of contents, headings and sub-headings, marginal notes and references to them in this Lenders’ Remedies Agreement are for convenience of reference only, do not constitute a part of this Lenders’ Remedies Agreement, and will not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Lenders’ Remedies Agreement;
- (c) each reference in this Lenders’ Remedies Agreement to “Section” is to a section of this Lenders’ Remedies Agreement;
- (d) each reference to an agreement, document, standard, principle or other instrument includes (subject to all relevant approvals and any other provision of this Lenders’ Remedies Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, replaced, novated or assigned, and a reference to an “amendment” and similar terms (including “amend” and “amended”) include a reference to supplement,

alteration, substitute, variation, change and any other modification and similar terms;

- (e) each reference to a statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, orders, codes of practice, instruments or other subordinate legislation made under the relevant statute;
- (f) each reference to time of day is a reference to Eastern Standard time or Eastern Daylight time, as the case may be;
- (g) words importing the singular include the plural and vice versa;
- (h) words importing a particular gender include all genders;
- (i) each reference to a public organization is deemed to include a reference to any successor(s) to such public organization or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such public organization;
- (j) unless the context otherwise requires, each reference to “parties” means the parties to this Lenders’ Remedies Agreement and each reference to a “party” means any one of the parties to this Lenders’ Remedies Agreement, provided however that a reference to a third party does not mean a party to this Lenders’ Remedies Agreement;
- (k) all monetary amounts are expressed in U.S. Dollars;
- (l) the words “include”, “includes” and “including” are to be construed as meaning “include without limitation”, “includes without limitation” and “including without limitation”, respectively;
- (m) any consent contemplated to be given under this Lenders’ Remedies Agreement must be in writing;
- (n) general words are not given a restrictive meaning:
 - (1) if they are introduced by the word “other”, by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
 - (2) by reason of the fact that they are followed by particular examples intended to be embraced by those general words;
- (o) the expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of any party, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation;

- (p) all accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP;
- (q) if the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day; and
- (r) in the event that any provision of this Lenders' Remedies Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, unless severance of such provision would materially alter the essence of this Lenders' Remedies Agreement for any party, the provision shall be fully severable and shall not affect the remaining provisions of this Lenders' Remedies Agreement, and this Lenders' Remedies Agreement shall be construed and enforced as if the illegal, invalid or unenforceable provision had not been included therein. The parties shall promptly meet and endeavor in good faith to negotiate new provisions to eliminate such illegality, invalidity or unenforceability as much as is as possible and to restore this Lenders' Remedies Agreement as nearly as possible to its original intent and effect.

1.3 Law of Agreement

This Lenders' Remedies Agreement is subject to the laws of the Commonwealth of Kentucky and any applicable federal laws and will be governed by and construed in accordance with such laws.

1.4 Venue

Any legal actions or proceedings brought by any party hereto against any other party shall be brought in state court in Franklin County, Kentucky in accordance with KRS 45A.245. Each party acknowledges the competence of such court and the convenience and propriety of the venue and agrees to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

2. CONSENT TO SECURITY

2.1 Consent

The Authority acknowledges notice of, and consents to, the security interest granted by Project Co in favor of the Senior Secured Creditors under the Senior Financing Agreements over Project Co's rights under the Project Implementation Agreement and all other Project Documents to which Project Co is a party, Project Co's assets and Project Co's rights to Insurance Proceeds and Insurance Receivables.

Project Co acknowledges notice of, and consents to, the security interest granted by:

- (a) Operations Co in favor of the Senior Secured Creditors under the Senior Financing Agreements over Operations Co's rights under the Project Implementation Agreement and, subject to certain exclusions, all other Project Documents to which Operations Co is a party, Operations Co's assets and Operations Co's rights to Insurance Proceeds and Insurance Receivables; and

- (b) KentuckyWired Operations Holding Company, LLC in favor of the Senior Secured Creditors under the Senior Financing Agreements over the membership interests in Operations Co.

2.2 No Notice of Other Security

The Authority confirms that, as of the date of this Lenders' Remedies Agreement, it has not received written notice of any other security interest granted over Project Co's rights or the equity interests in Project Co other than pursuant to the Senior Financing Agreements. Project Co confirms that, as of the date of this Lenders' Remedies Agreement, it has not received written notice of any other security interest granted over Operations Co's rights or the equity interests in Operations Co other than pursuant to the Senior Financing Agreements.

2.3 Authority Obligations

Except as specifically provided for in this Lenders' Remedies Agreement, the Authority has no obligations (whether express, implied, collateral or otherwise) to the Collateral Agent or the Senior Secured Creditors in connection with this Lenders' Remedies Agreement, the Project Agreement, the Project Implementation Agreement or the Project. All of the obligations and liabilities given, undertaken or arising on the part of the Authority under this Lenders' Remedies Agreement are given solely to the Collateral Agent on behalf of the Senior Secured Creditors and do not confer any rights on or in favor of Project Co, any Affiliate of Project Co, Operations Co, any Affiliate of Operations Co or any other Person.

2.4 Rights not Prejudiced

The parties acknowledge that nothing in the Senior Financing Agreements, this Lenders' Remedies Agreement or any other agreement between any of them (including any giving by the Collateral Agent of a notice hereunder) will, except as between the Senior Secured Creditors, the Collateral Agent, the Authority and Project Co as expressly set out in this Lenders' Remedies Agreement, affect the rights of the Authority under the Project Agreement (but an exercise by the Authority of those rights will not preclude a proper exercise by the Collateral Agent of its rights under this Lenders' Remedies Agreement) or the rights of Project Co under the Project Implementation Agreement (but an exercise by Project Co of those rights will not preclude a proper exercise by the Collateral Agent of its rights under this Lenders' Remedies Agreement). For greater certainty and without limiting the generality of the foregoing, nothing in this Lenders' Remedies Agreement will limit, and the Authority will be entitled at all times in accordance with the provisions thereof to exercise the Authority's rights under Section 11.1(a) (Authority's Step-In Rights) of the Project Agreement and the related exercise of its rights under Section 11.2 (Authority's Rectification Rights) of the Project Agreement.

3. NOTICES

3.1 Termination Notice

The Authority will not terminate or deliver any notice terminating the Project Agreement and Project Co will not terminate or deliver any notice terminating the Project Implementation Agreement without giving to the Collateral Agent written notice (a "**Termination Notice**") stating:

- (a) that a Project Co Event of Default or an Operations Co Event of Default, as applicable, has occurred and the proposed Termination Date, which will be no sooner than 60 Business Days after the Termination Notice; and
- (b) the specific grounds for termination.

3.2 Notice of Operations Co Financing Default

Concurrently with delivery by it to Operations Co of any notice of an Operations Co Financing Default, the Collateral Agent will provide a copy of such notice to Project Co and the Authority, together with reasonable details of such Operations Co Financing Default.

3.3 Indicative Notice

Without prejudice to the Collateral Agent's rights under the Security Documents, at any time upon the occurrence of an Operations Co Financing Default and, where relevant to such Operations Co Financing Default, the continuance of such Operations Co Financing Default, the Collateral Agent may give notice to Project Co and the Authority of its intention to nominate a Senior Secured Creditors' Representative to step-in in accordance with Section 4.1 (an "**Indicative Step-In Notice**") or to effect a transfer in accordance with Section 6.1 (an "**Indicative Transfer Notice**").

3.4 Collateral Agent's Withdrawal Notice

If, at any time after the giving of an Indicative Notice or a Termination Notice, the Collateral Agent has determined that it is not, or is no longer, considering appointing a Senior Secured Creditors' Representative or effecting a transfer of Operations Co's rights and liabilities under the Project Implementation Agreement to a Suitable Substitute Operations Co in accordance with this Lenders' Remedies Agreement, the Collateral Agent will provide written notice (an "**Collateral Agent's Withdrawal Notice**") to the Authority and Project Co as soon as reasonably possible and thereafter the provisions of this Lenders' Remedies Agreement will not be applicable with respect to the event that led to such Indicative Notice or Termination Notice and the Authority or Project Co, as applicable, will be at liberty to take any and all action available to it under the Project Agreement, the Project Implementation Agreement and the other Project Documents.

3.5 Notice of Antecedent Liabilities

Unless a Collateral Agent's Withdrawal Notice has been given, not later than 20 Business Days after the date of delivery by the Authority or Project Co, as applicable, of a Termination Notice or the date of delivery by the Collateral Agent of an Indicative Notice, as the case may be, the Authority or Project Co, as applicable, will give the Collateral Agent a notice (the "**Liability Report**") containing details of:

- (a) any Material Antecedent Liabilities accrued and outstanding as of the date of delivery of the Termination Notice or Indicative Notice, as the case may be; and
- (b) any financial liabilities of which the Authority or Project Co, as applicable, is aware (after reasonable inquiry) that will fall due under the Project Agreement or the Project Implementation Agreement, as applicable, on or after the date of

delivery of the Termination Notice or Indicative Notice, as the case may be, and on or prior to:

- (1) in the case of a Termination Notice, the proposed Termination Date set out in that notice; and
- (2) in the case of an Indicative Notice, 20 Business Days after the date of delivery of the Indicative Notice.

3.6 Subsequent Authority Notice of Liabilities

After the delivery of the Liability Report, unless a Collateral Agent's Withdrawal Notice has been given, the Authority or Project Co, as applicable, will, promptly upon becoming aware of them, notify the Collateral Agent in writing of any additional Material Antecedent Liabilities arising on or after the date of delivery of the Termination Notice or Indicative Notice, as the case may be, and prior to the end of the Termination Notice Period or the Indicative Notice Period, as the case may be.

3.7 No Right to Terminate

The Authority will not terminate or deliver any notice terminating the Project Agreement and Project Co will not terminate or deliver any notice terminating the Project Implementation Agreement during any Notice Period, provided that, until the expiration of that period, the Authority will be entitled to require Project Co to remedy any Project Co Event of Default and will be entitled to exercise all rights under the Project Agreement other than termination of the Project Agreement and Project Co will be entitled to require Operations Co to remedy any Operations Co Event of Default and will be entitled to exercise all rights under the Project Implementation Agreement other than termination of the Project Implementation Agreement.

3.8 Payments to Account Designated by Collateral Agent

Project Co and the Collateral Agent hereby authorize and instruct the Authority, and the Authority agrees, to pay all sums payable by the Authority to Project Co under the Project Agreement, including any Termination Payment, to an account designated by the Collateral Agent.

3.9 Operations Co to Pursue Remedies

Without prejudice to the Collateral Agent's rights under the Security Documents, at any time upon the occurrence of an Event of Default and, where relevant to such Event of Default, the continuance of such Event of Default, Operations Co shall exercise its rights under Section 1.7 of the Project Implementation Agreement to pursue any rights, remedies or relief under the Project Agreement in the name of Project Co, including the right to any Termination Payment, at the Collateral Agent's request and in accordance with the Collateral Agent's directions.

4. STEP-IN

4.1 Step-In Notice

Subject to Section 4.3 and without prejudice to the Collateral Agent's rights under the Security Documents, the Collateral Agent may give the Authority and Project Co a notice (a "**Step-In**

Notice") at any time during an Indicative Notice Period or a Termination Notice Period, as the case may be.

4.2 Contents of Step-In Notice

In the Step-In Notice, the Collateral Agent will:

- (a) state that it intends to exercise its step-in rights under this Lenders' Remedies Agreement; and
- (b) identify the Appointed Representative.

4.3 One Step-In Period

There will be not more than one Step-In Period following any one Indicative Notice or Termination Notice.

4.4 Appointed Representative Rights

On the Step-In Date, the Appointed Representative will assume jointly and severally with Operations Co the rights of Operations Co under the Project Implementation Agreement, which rights are conditional on and may be exercised subject to performance of Operations Co's obligations under the Project Implementation Agreement. During the Step-In Period, the Authority and Project Co will deal with the Appointed Representative and not Operations Co. No Appointed Representative will be liable to the Authority, Project Co or Operations Co for any liabilities or obligations of Operations Co. An Appointed Representative who is also an Insolvency Officer will not, and will not be required to, assume or have any personal liability for any liabilities or obligations of Operations Co.

4.5 Authority Right to Terminate

The Authority will not terminate the Project Agreement and Project Co will not terminate the Project Implementation Agreement in whole or in part during the Step-In Period except as set out in this Section 4.5. The Authority will be entitled to terminate the Project Agreement during the Step-In Period by written notice to Project Co, the Collateral Agent and the Appointed Representative and Project Co will be entitled to terminate the Project Implementation Agreement during the Step-In Period by written notice to Operations Co, the Collateral Agent and the Appointed Representative:

- (a) if the Reported Antecedent Liabilities that are financial liabilities have not been paid to the Authority or Project Co, as applicable, on or before the Step-In Date or, if the due date for payment thereof is after the Step-In Date, have not been paid by the due date;
- (b) if amounts, of which the Authority or Project Co, as applicable, was not aware (after reasonable inquiry) at the time of the Liability Report, subsequently become payable and are not discharged by:
 - (1) if notice of the liability is given to the Collateral Agent at least 20 Business Days prior to the Step-In Date, the Step-In Date or, if the due date for payment thereof is after the Step-In Date, the due date;

- (2) if notice of the liability is given to the Collateral Agent within 20 Business Days before the Step-In Date and such liability is material (as stated by the Authority or Project Co, as applicable, acting reasonably, when it gives such notice or as stated by the Collateral Agent, acting reasonably, by notice to the Authority or Project Co, as applicable, within 5 Business Days of receipt of the notice from the Authority or Project Co, as applicable), 20 Business Days after the Step-In Date or, if later, the due date; or
- (3) otherwise, 20 Business Days after delivery of the notice or, if later, the due date;
- (c) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement (other than a Project Co Insolvency Event) or the Project Implementation Agreement (other than an Operations Co Insolvency Event), provided that, for the purposes of termination under the Project Agreement or the Project Implementation Agreement, as applicable, any Deductions that arose prior to the Step-In Date will not be taken into account during the Step-In Period;
- (d) on grounds arising prior to the Step-In Date (whether or not continuing at the Step-In Date) in accordance with the terms of the Project Agreement or the Project Implementation Agreement, as applicable, but only if the Appointed Representative is not using all reasonable efforts to remedy the relevant Antecedent Liabilities which are non-financial liabilities; or
- (e) if the System Completion Date does not occur on or before the date that is 6 months after the Longstop Date.

5. STEP-OUT

5.1 Step-Out Notice

The Collateral Agent or the Appointed Representative may at any time during the Step-In Period deliver to the Authority and Project Co a Step-Out Notice which specifies the Step-Out Date.

5.2 Expiration of Step-In Period

Upon the termination or expiration of the Step-In Period:

- (a) the rights of the Authority or Project Co, as applicable, against the Appointed Representative and the rights of the Appointed Representative against the Authority or Project Co, as applicable, will be cancelled; and
- (b) the Authority or Project Co, as applicable, will no longer deal with the Appointed Representative and will deal with Project Co in connection with the Project Agreement or Operations Co in connection with the Project Implementation Agreement, as applicable.

5.3 Project Co and Operations Co Remain Bound

Subject to Section 6.4, Project Co will continue to be bound by the terms of the Project Agreement and Operations Co will continue to be bound by the terms of the Project Implementation Agreement notwithstanding the occurrence of an Indicative Notice, a Step-In Notice, a Step-In Period, a Step-Out Notice, a Step-Out Date, any action by the Collateral Agent, the Appointed Representative or the Senior Secured Creditors or any provision of this Lenders' Remedies Agreement, and for greater certainty Project Co or Operations Co, as applicable, will be liable for any obligations and liabilities (including Deductions) arising prior to the expiration of the Step-In Period from actions or inactions of the Collateral Agent, the Appointed Representative or the Senior Secured Creditors. Project Co or Operations Co, as applicable, will remain liable for any unpaid amounts due and payable to the Authority by Project Co under the Project Agreement or to Project Co by Operations Co under the Project Implementation Agreement, as applicable, provided that Project Co or Operations Co, as applicable, will not be required to discharge such liability during the Step-In Period.

6. SENIOR SECURED CREDITOR REPLACEMENT OF OPERATIONS CO

6.1 Operations Co Transfer Notice

Subject to Section 6.2, at any time:

- (a) during a Termination Notice Period;
- (b) during an Indicative Notice Period; or
- (c) during a Step-In Period,

the Collateral Agent may, on 30 Business Days' notice to the Authority, Project Co and any Appointed Representative, take any action available to it to cause the transfer of Operations Co's rights and liabilities under the Project Implementation Agreement to a Suitable Substitute Operations Co in accordance with the provisions of Section 6.4.

6.2 Authority Consent

The Authority will notify the Collateral Agent as to whether any Person to whom the Collateral Agent proposes to transfer Operations Co's rights and liabilities under the Project Implementation Agreement is a Suitable Substitute Operations Co, not later than 30 Business Days after the date of receipt from the Collateral Agent of all information reasonably required by the Authority to decide whether the proposed transferee is a Suitable Substitute Operations Co.

6.3 Withholding of Consent

The Authority will not unreasonably withhold or delay its decision on whether the proposed transferee is a Suitable Substitute Operations Co and it will, without limitation, be reasonable for the Authority to withhold its consent:

- (a) if there are unremedied breaches under the Project Agreement and there is no remedial program acceptable to the Authority in respect of the breaches; or

- (b) based on any of the factors set out in Section 16.3 (Factors Authority May Consider) of the Project Agreement with respect to any transfer, including any assignment, to such Person or Change in Control resulting from the transfer.

6.4 Terms of Transfer

Upon the transfer referred to in Section 6.1 becoming effective:

- (a) Operations Co and Project Co will be released from their obligations under the Project Implementation Agreement to each other, including with respect to indemnification under the Project Implementation Agreement whether arising prior to or after such transfer (the “**Discharged Obligations**”);
- (b) the Suitable Substitute Operations Co and Project Co will assume obligations which are substantially similar to the Discharged Obligations, but owed to or assumed by the Suitable Substitute Operations Co instead of Operations Co;
- (c) the rights of Operations Co against Project Co under the Project Implementation Agreement and vice versa (the “**Discharged Rights**”) will be cancelled;
- (d) the Suitable Substitute Operations Co and Project Co will acquire rights against each other which differ from the Discharged Rights only insofar as they are exercisable by or against the Suitable Substitute Operations Co instead of Operations Co;
- (e) any subsisting ground for termination of the Project Agreement by the Authority or the Project Implementation Agreement by Project Co will be deemed to have no effect and any subsisting Termination Notice will be automatically revoked;
- (f) the Authority and Project Co will enter into a lenders’ remedies agreement with the Suitable Substitute Operations Co and a representative of Senior Secured Creditors lending to the Suitable Substitute Operations Co on substantially the same terms as this Lenders’ Remedies Agreement; and
- (g) any Deductions that arose prior to that time will not be taken into account after the transfer for the purposes of Section 12.1(g) of the Project Agreement and the Project Implementation Agreement and Section 6.4 of Schedule 4 to the Project Agreement and the Project Implementation Agreement.

For clarity, the Project Agreement will remain in full force and effect following the transfer referred to in Section 6.1 becoming effective.

7. INSURANCE

7.1 Release of Insurance Proceeds

Notwithstanding the other provisions of this Lenders’ Remedies Agreement and the terms and conditions of the Senior Financing Agreements, the Collateral Agent will only permit amounts to be released from the Insurance Proceeds Account in accordance with Section 6 (Insurance, Damage and Destruction) and Schedule 5 [Insurance Requirements] of the Project Agreement and will not exercise any rights under the Senior Financing Agreements or take any other steps

to prevent amounts being released from the Insurance Proceeds Account in accordance with Section 6 (Insurance, Damage and Destruction) and Schedule 5 [Insurance Requirements] of the Project Agreement.

8. COVENANTS

8.1 Authority Covenants

The Authority agrees with the Collateral Agent that the Authority will:

- (a) as soon as is reasonably practicable, at Operations Co's or the Collateral Agent's expense, take whatever action the Collateral Agent, an Appointed Representative or a Suitable Substitute Operations Co taking a transfer in accordance with Section 6 may reasonably require for perfecting any transfer or release under this Lenders' Remedies Agreement, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Collateral Agent or Appointed Representative or Suitable Substitute Operations Co reasonably requires;
- (b) not, prior to the Senior Debt Discharge Date, unless the Collateral Agent has (acting reasonably) consented in writing:
 - (1) appoint an Insolvency Officer;
 - (2) commence any Bankruptcy Proceedings;
 - (3) sanction, by voting or failing to vote, any Bankruptcy Proceedings and will, if requested to do so by the Collateral Agent, vote against any Bankruptcy Proceedings;
 - (4) without prejudice to its rights of set-off under the Project Agreement, including rights to take amounts owing by Project Co into account in calculating termination compensation payable, claim or prove as creditor or otherwise in competition with any Senior Secured Creditor in respect of any monies owing to it by Project Co for or on account of Project Co's liabilities under the Project Documents in the event of any Bankruptcy Proceedings; or
 - (5) take any action authorizing, or which might result in or is in furtherance of, any of the prohibited matters referred to in Sections 8.1(b)(1), (2), (3) or (4) above;
- (c) not take or fail to take any action (including amendments, waivers and enforcement action) with respect to any material agreement between the Authority and a third party, the effect of which would be reasonably likely to render the Authority unable to satisfy its obligations under the Project Agreement; and
- (d) not issue a Step-In Notice or Proposed Transfer Notice (as defined in the Design-Builder Collateral Agreement or the Service Provider Collateral Agreement, as applicable) under the Design-Builder Collateral Agreement or the Service

Provider Collateral Agreement, as applicable, at any time that the Senior Secured Creditors are validly exercising under any Senior Financing Agreement any step-in rights with respect to the Design-Build Agreement or the Services Contract, as applicable.

8.2 Project Co Covenants

Project Co agrees with the Collateral Agent that Project Co will:

- (a) as soon as is reasonably practicable, at Operations Co's or the Collateral Agent's expense, take whatever action the Collateral Agent, an Appointed Representative or a Suitable Substitute Operations Co taking a transfer in accordance with Section 6 may reasonably require for perfecting any transfer or release under this Lenders' Remedies Agreement, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Collateral Agent or Appointed Representative or Suitable Substitute Operations Co reasonably requires;
- (b) not, prior to the Senior Debt Discharge Date, unless the Collateral Agent has (acting reasonably) consented in writing:
 - (1) appoint an Insolvency Officer;
 - (2) commence any Bankruptcy Proceedings;
 - (3) sanction, by voting or failing to vote, any Bankruptcy Proceedings and will, if requested to do so by the Collateral Agent, vote against any Bankruptcy Proceedings;
 - (4) without prejudice to its rights of set-off under the Project Implementation Agreement, including rights to take amounts owing by Operations Co into account in calculating termination compensation payable, claim or prove as creditor or otherwise in competition with any Senior Secured Creditor in respect of any monies owing to it by Operations Co for or on account of Operations Co's liabilities under the Project Documents in the event of any Bankruptcy Proceedings; or
 - (5) take any action authorizing, or which might result in or is in furtherance of, any of the prohibited matters referred to in Sections 8.2(b)(1), 8.2(b)(2), 8.2(b)(3) or 8.2(b)(4) above; and
- (c) not take or fail to take any action (including amendments, waivers and enforcement action) with respect to any material agreement between Project Co and a third party, the effect of which would be reasonably likely to render Project Co unable to satisfy its obligations under the Project Implementation Agreement.

8.3 Collateral Agent Covenants

The Collateral Agent will promptly:

- (a) notify the Authority when it believes the Senior Debt Discharge Date will occur or has occurred, and in any event will so notify no later than 20 Business Days after its occurrence;
- (b) prior to the taking of any such action, notify the Authority of any decision by the Senior Secured Creditors to take action under any acceleration rights, security enforcement rights, step-in rights or transfer rights provisions of the Collateral Agency and Account Agreement, including those rights under Section 13.2 (Rights and Remedies Upon Default) of the Collateral Agency and Account Agreement, together with reasonable details of any such action;
- (c) unless notice is already provided under the above provisions, notify the Authority of any decision by the Senior Secured Creditors to:
 - (1) appoint an Insolvency Officer;
 - (2) commence any Bankruptcy Proceedings;
 - (3) sanction, by voting or failing to vote, any Bankruptcy Proceedings; or
 - (4) take any action authorizing, or which might result in or is in furtherance of, any of the matters referred to in Sections 8.3(c)(1), (2) or (3) above; and
- (d) upon request by the Authority, cause all security on any real or personal property comprised in the NG-KIH System to be promptly discharged and released on the date requested by the Authority (which will be on or after the Termination Date).

8.4 Operations Co Covenant

Operations Co acknowledges and consents to the arrangements set out in this Lenders' Remedies Agreement and agrees not to do or omit to do anything that may prevent any party from enforcing its rights under this Lenders' Remedies Agreement.

9. STEP-IN RIGHTS UNDER PROJECT CONTRACTS

9.1 Priority of Step-In Rights under Project Contracts

Subject to Sections 9.2 and 9.4, notwithstanding any provision in any Project Contractor Collateral Agreement, the Authority will not exercise any right it may have pursuant to a Project Contractor Collateral Agreement to step-in and assume or otherwise enforce (or cause a third party designated by the Authority to step-in and assume or otherwise enforce) Operations Co's rights and obligations under either of the Project Contracts (including the issuance of a step-in notice by the Authority pursuant to any Project Contractor Collateral Agreement), or to transfer or assign a Project Contract, unless:

- (a) within 30 Business Days of delivery by the relevant Project Contractor to the Authority of a Termination Notice as contemplated in Section 2.1 of the relevant Project Contractor Collateral Agreement, the Authority has not received a copy of a step-in notice delivered under the terms of the lenders' direct agreement in respect of such Project Contract (a "**Lenders' Step-In Notice**"); or

- (b) if (i) within 30 Business Days of delivery by the relevant Project Contractor to the Authority of a Termination Notice as contemplated in Section 2.1 of the relevant Project Contractor Collateral Agreement, the Authority has received a copy of a Lenders' Step-In Notice but (ii) within 60 Business Days of delivery by the relevant Project Contractor to the Authority of a Termination Notice as contemplated in Section 2.1 of the relevant Project Contractor Collateral Agreement, the Collateral Agent has not completed either a step-in and assumption of Operations Co's rights and obligations under the relevant Project Contract or a transfer or assignment thereof.

9.2 Step-in from Termination Date

Subject to Section 9.4, from the Termination Date, provided that the Authority has (if applicable) complied with Section 3.7 and Section 4.5 in terminating the Project Agreement, the Authority will be free to exercise its rights under any Project Contractor Collateral Agreement to step-in and assume (or cause a third party designated by the Authority to step-in and assume) Operations Co's rights and obligations under, or to transfer or assign, any Project Contract in accordance with a Project Contractor Collateral Agreement.

9.3 Release of Security

Subject to Section 9.4, the Collateral Agent will release and discharge (or cause to be released and discharged) at no cost to the Authority, and as soon as reasonably possible, all security in respect of each of the Project Contracts in respect of which any of Operations Co's rights or obligations thereunder are assumed, transferred or assigned by or to the Authority (or by or to a third party designated by the Authority) pursuant to a Project Contractor Collateral Agreement.

9.4 Retention of Security for Deficiency

Until such time as any Deficiency has been determined and an amount equal to the Deficiency has been recovered by the Senior Secured Creditors, the Senior Secured Creditors will be entitled to retain the benefit of the security in respect of claims and losses that Operations Co has as against the Project Contractor under the relevant Project Contract (or as against any guarantor of such Project Contract) that arose prior to the date of the assumption, transfer or assignment of the relevant Project Contract (or guarantee in respect of such Project Contract) by or to the Authority (or by or to a third party designated by the Authority), provided that:

- (a) the Senior Secured Creditors will not, and will not be entitled to, exercise any rights or enforce any security in respect of any such claim during the period from the date on which such assumption, transfer or assignment occurs to the Termination Date; and
- (b) the rights in relation to the security retained by the Senior Secured Creditors pursuant to this Section 9.4 may only be exercised if and to the extent that the Termination Payment actually paid by the Authority pursuant to Section 2 or Section 3 of Schedule 9 to the Project Agreement is less than the Senior Debt (the amount by which the Termination Payment is (or, in the reasonable opinion of the Collateral Agent, is likely to be) less than the Senior Debt being herein referred to as the "**Deficiency**").

Any amounts recovered by the Senior Secured Creditors pursuant to claims referred to in this Section 9.4, from the Termination Date to the date on which the Termination Payment and the amount of the Deficiency, if any, have been determined, will be held by the Collateral Agent in a segregated account on terms satisfactory to the Collateral Agent and the Authority, each acting reasonably, and, upon determination of the Termination Payment and the amount of the Deficiency, if any, such funds will be distributed to the Collateral Agent, to the extent of the Deficiency, if any, and the balance of such funds will be paid to the Authority.

9.5 Assignment of Project Contracts by Senior Secured Creditors

The Senior Secured Creditors will not transfer or assign any Project Contract except to a Suitable Substitute Operations Co in conjunction with a permitted transfer or assignment of the Project Agreement to that Suitable Substitute Operations Co in accordance with Section 6.

10. NEW AGREEMENTS

10.1 Applicability of Section 10

The provisions of this Section 10 shall apply only if there occurs an Operations Co Event of Default under Section 12.1(b) of the Project Implementation Agreement.

10.2 Termination of Project Implementation Agreement and Replacement with New Agreements

If this Section 10 is applicable and either (i) Project Co terminates the Project Implementation Agreement or (ii) Project Co receives notice that the Project Implementation Agreement is otherwise terminated, rejected, invalidated or rendered null and void by order of a bankruptcy court, then (a) Project Co shall deliver to the Collateral Agent notice of such event, and (b) the Collateral Agent, to the extent then permitted by Law, shall have the option to obtain from Project Co agreements to replace the Project Implementation Agreement, and, to the extent necessary, new ancillary agreements (together, the “**New Agreements**”) in accordance with and upon the terms and conditions of this Section 10.

10.3 Deliveries to Project Co

In order to exercise such option, the Collateral Agent or other Senior Secured Creditors' Representative must deliver to Project Co, within 60 days after Project Co delivers its notice of termination, (a) a request for New Agreements, (b) a written commitment that the Collateral Agent or other Senior Secured Creditors' Representative will enter into the New Agreements and pay all the amounts described in Section 10.5(a) and (c) below, and (c) originals of such New Agreements, duly executed and acknowledged by the Collateral Agent or other Senior Secured Creditors' Representative. If any of the foregoing is not delivered within such 60-day period, the option set forth in Section 10.2 in favor of the Collateral Agent and all other Senior Secured Creditors' Representatives shall automatically expire.

10.4 Authority to Enter into New Agreements

Within 30 days after timely receipt of the written commitment and New Agreements duly executed by the Collateral Agent or other Senior Secured Creditors' Representative, Project Co shall enter into the New Agreements to which Project Co is a party with the Collateral Agent or other Senior Secured Creditors' Representative, subject to any extension of such 30-day period

as Project Co deems necessary to clear any claims of Operations Co to continued rights and possession, custody or control of the Project, or otherwise.

10.5 Conditions to New Agreements Becoming Effective

Upon the execution by all parties and as conditions to the effectiveness of the New Agreements, the Collateral Agent or other Senior Secured Creditors' Representative shall perform all of the following:

- (a) pay to Project Co:
 - (1) any and all sums which would, at the time of the execution of the New Agreements, be due under the Project Implementation Agreement but for such termination; and
 - (2) the amount of any compensation on termination previously paid by Project Co under the Project Implementation Agreement, with interest thereon at the Prime Rate from the date the compensation on termination was paid until so reimbursed;
- (b) otherwise fully remedy any existing Operations Co Event of Default under the Project Implementation Agreement (provided, however, that any Operations Co Insolvency Event need not be remedied and with respect to any Operations Co Event of Default which cannot be cured until the Collateral Agent or other Senior Secured Creditors' Representative obtains possession, custody and control of the Project, it shall have such time, after it obtains such possession, custody and control as is necessary using all reasonable efforts to cure such Operations Co Event of Default); and
- (c) without duplication of amounts previously paid by Operations Co, pay to Project Co all reasonable costs, fees and expenses incurred by Project Co in connection with (i) such default and termination, (ii) the assertion of rights, interests and defenses in any bankruptcy or related proceeding, (iii) the recovery of possession, custody and control of the Project, (iv) all Project Co activities during its period of possession, custody and control of, and respecting, the Project, including permitting, design, acquisition, construction, equipping, maintenance, operation and management activities, minus the lesser of (A) the foregoing clause (iv) amount and (B) the amount of the Operations Co Payments, if any, that would have been paid during such period had the Project Implementation Agreement not been terminated and had there been no adjustments to such Operations Co Payments, and (v) the preparation, execution, and delivery of such New Agreements. Upon request of the Collateral Agent or other Senior Secured Creditors' Representative, Project Co will provide a written, documented statement of such costs, fees and expenses.

10.6 Assignment to Collateral Agent or other Senior Secured Creditors' Representative

Upon execution of the New Agreements and payment of all sums due Project Co pursuant to Section 10.5(a) and (c), Project Co shall assign and deliver to the Collateral Agent or other Senior Secured Creditors' Representative, without warranty or representation, all the property,

contracts, documents and information that Operations Co may have assigned and delivered to Project Co upon termination of the Project Implementation Agreement.

10.7 Terms of New Agreements

The New Agreements shall be effective as of the date of termination of the Project Implementation Agreement and shall run for the remainder of the Term. The New Agreements shall otherwise contain the same covenants, terms and conditions and limitations as the Project Implementation Agreement and ancillary agreements and documents that were binding on Project Co and Operations Co (except for any requirements which have been fulfilled by Operations Co prior to termination).

11. REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties by the Authority

The Authority represents and warrants to the Collateral Agent that:

- (a) the Authority has full power and capacity to enter into, carry out the transactions contemplated by and duly perform all its obligations contained in this Lenders' Remedies Agreement, the Project Agreement and all other documents, instruments and agreements required to be executed and delivered by the Authority pursuant to this Lenders' Remedies Agreement or the Project Agreement;
- (b) the execution and delivery of this Lenders' Remedies Agreement, the Project Agreement and all other documents, instruments and agreements required to be executed and delivered by the Authority pursuant to this Lenders' Remedies Agreement or the Project Agreement, and the completion of the transactions contemplated by this Lenders' Remedies Agreement and the Project Agreement, have been duly authorized by all necessary action on the part of the Authority, and this Lenders' Remedies Agreement and the Project Agreement have been duly executed and delivered by the Authority and constitute legal, valid and binding obligations of the Authority enforceable in accordance with their terms, except to the extent that enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application;
- (c) as of the date of the execution of this Lenders' Remedies Agreement, there is no Authority Event of Default, the Authority is not aware of any Project Co Event of Default and there exists no event or condition of which the Authority is aware that would, with the giving of notice or passage of time or both, constitute an Authority Event of Default or a Project Co Event of Default;
- (d) the execution and delivery by the Authority of this Lenders' Remedies Agreement, and the performance by the Authority of its obligations hereunder, will not conflict with any Laws applicable to the Authority that are valid and in effect on the date of execution and delivery; and
- (e) as of the date of the execution of this Lenders' Remedies Agreement, there is no action, suit, proceeding, investigation or litigation pending and served on the

Authority which challenges the Authority's authority to execute, deliver or perform, or the validity or enforceability of, this Lenders' Remedies Agreement.

11.2 Representations and Warranties by Project Co

Project Co represents and warrants to the Collateral Agent that:

- (a) Project Co is a non-profit corporation duly created and validly existing under the laws of Kentucky and has full power and capacity to enter into, carry out the transactions contemplated by and duly perform all its obligations contained in this Lenders' Remedies Agreement, the Project Agreement, the Project Implementation Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Lenders' Remedies Agreement, the Project Agreement or the Project Implementation Agreement;
- (b) the execution and delivery of this Lenders' Remedies Agreement, the Project Agreement, the Project Implementation Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Lenders' Remedies Agreement, the Project Agreement or the Project Implementation Agreement, and the completion of the transactions contemplated by this Lenders' Remedies Agreement, the Project Agreement and the Project Implementation Agreement, have been duly authorized by all necessary action on the part of Project Co, and this Lenders' Remedies Agreement, the Project Agreement and the Project Implementation Agreement have been duly executed and delivered by Project Co and constitute legal, valid and binding obligations of Project Co enforceable in accordance with their terms, except to the extent that enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application; and
- (c) as of the date of the execution of this Lenders' Remedies Agreement, there is no Project Co Event of Default, Project Co is not aware of any Authority Event of Default or Operations Co Event of Default and there exists no event or condition of which Project Co is aware that would, with the giving of notice or passage of time or both, constitute a Project Co Event of Default, an Authority Event of Default or an Operations Co Event of Default.

11.3 Representations and Warranties by Operations Co

Operations Co represents and warrants to the Collateral Agent that:

- (a) Operations Co is a limited liability company duly created and validly existing under the laws of Delaware and has full power and capacity to enter into, carry out the transactions contemplated by and duly perform all its obligations contained in this Lenders' Remedies Agreement, the Project Implementation Agreement and all other documents, instruments and agreements required to be executed and delivered by Operations Co pursuant to this Lenders' Remedies Agreement or the Project Implementation Agreement;

- (b) the execution and delivery of this Lenders' Remedies Agreement, the Project Implementation Agreement and all other documents, instruments and agreements required to be executed and delivered by Operations Co pursuant to this Lenders' Remedies Agreement or the Project Implementation Agreement, and the completion of the transactions contemplated by this Lenders' Remedies Agreement and the Project Implementation Agreement, have been duly authorized by all necessary action on the part of Operations Co, and this Lenders' Remedies Agreement and the Project Implementation Agreement have been duly executed and delivered by Operations Co and constitute legal, valid and binding obligations of Operations Co enforceable in accordance with their terms, except to the extent that enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application; and
- (c) as of the date of the execution of this Lenders' Remedies Agreement, there is no Operations Co Event of Default, Operations Co is not aware of any Project Co Event of Default and there exists no event or condition of which Operations Co is aware that would, with the giving of notice or passage of time or both, constitute an Operations Co Event of Default or an Project Co Event of Default.

11.4 Representations and Warranties by the Collateral Agent

The Collateral Agent represents and warrants to the Authority, Project Co and Operations Co that:

- (a) the Collateral Agent has full power and capacity to enter into, carry out the transactions contemplated by and duly perform all its obligations contained in this Lenders' Remedies Agreement and all other documents, instruments and agreements required to be executed and delivered by the Collateral Agent pursuant to this Lenders' Remedies Agreement;
- (b) this Lenders' Remedies Agreement has been duly executed and delivered by the Collateral Agent and constitutes a legal, valid and binding obligation of the Collateral Agent enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application; and
- (c) the Collateral Agent:
 - (1) has no ownership interest in any other party to this Lenders' Remedies Agreement or either Project Contractor; and
 - (2) does not Control, is not Controlled by and is not under common Control with any other party to this Lenders' Remedies Agreement or either Project Contractor.

12. ASSIGNMENT

12.1 Restriction on Assignment

No party to this Lenders' Remedies Agreement may assign or transfer all or any part of its rights or obligations under this Lenders' Remedies Agreement except as provided in this Section 12.

12.2 Assignment by Collateral Agent

The Collateral Agent may assign or transfer its rights and obligations under this Lenders' Remedies Agreement to a successor Collateral Agent in accordance with the Senior Financing Agreements without the consent of the Authority, provided that the Collateral Agent delivers to the Authority not less than 10 Business Days prior to such assignment or transfer a notice setting out such contact information regarding the assignee or transferee as the Authority may reasonably require and provided the assignee or transferee is not a Restricted Person.

12.3 Assignment by Senior Secured Creditors

Any Senior Secured Creditor may assign or transfer its rights and obligations under the Senior Financing Agreements in accordance with the terms of the Senior Financing Agreements without the consent of the Authority, provided the assignee or transferee is not a Restricted Person.

12.4 Assignment by Authority

The Authority will assign or transfer its rights and obligations under this Lenders' Remedies Agreement to any permitted assignee of its interest in the Project Agreement in accordance with Section 16.4 of the Project Agreement, concurrently with the assignment of the Project Agreement to such assignee, and the Collateral Agent and the Senior Secured Creditors will cooperate with the Authority in completing the formalities of any transfer or assignment including by executing any additional documents as may be reasonably required by the Authority.

12.5 New Agreement

If Section 12.2 applies in relation to the Collateral Agent, the Authority, Project Co and Operations Co will, upon request by the new Collateral Agent, enter into a new lenders' remedies agreement with the new Collateral Agent on substantially the same terms as this Lenders' Remedies Agreement.

13. GENERAL

13.1 Term

This Lenders' Remedies Agreement will remain in effect until the earlier of:

- (a) the Senior Debt Discharge Date; and
- (b) subject to compliance with Section 6.4(f) above, the date of transfer of Operations Co's rights and liabilities under the Project Implementation Agreement to a Suitable Substitute Operations Co pursuant to Section 6.

13.2 Conflict or Inconsistency

If there is any conflict or inconsistency between the provisions of this Lenders' Remedies Agreement and the Project Agreement, as between the Collateral Agent and the Authority, the provisions of this Lenders' Remedies Agreement will prevail. If there is any conflict or inconsistency between the provisions of this Lenders' Remedies Agreement and the Project Implementation Agreement, as between the Collateral Agent and Project Co, the provisions of this Lenders' Remedies Agreement will prevail.

13.3 Entire Agreement

Unless otherwise stated in this Lenders' Remedies Agreement, this Lenders' Remedies Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Lenders' Remedies Agreement. No party has relied on any representation except as expressly set out in this Lenders' Remedies Agreement.

13.4 Waiver

The failure of any party to exercise any contractual right or remedy will not constitute a waiver thereof and no waiver will be effective, unless it is communicated in writing to the other party. A waiver of any right or remedy arising from a breach of this Lenders' Remedies Agreement will not constitute a waiver of any right or remedy arising from any other breach of this Lenders' Remedies Agreement.

13.5 Counterparts

This Lenders' Remedies Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and this has the same effect as if the signatures on the counterparts were on a single copy of this Lenders' Remedies Agreement so that it will not be necessary in making proof of this Lenders' Remedies Agreement to produce or account for more than one such counterpart.

13.6 Confidentiality

The Collateral Agent will be bound to comply with the confidentiality obligations on the part of Project Co contained in the Project Agreement in relation to all information matters obtained from any other party under or in connection with the Project.

13.7 Notices

Any notice or communication required or permitted to be given under this Lenders' Remedies Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by electronic transmission to the address or electronic mail address of each party set out below:

If to the Authority:

The Commonwealth of Kentucky
Office of the Secretary

Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex Room 383
Frankfort, KY 40601

Attention: Secretary of the Finance and Administration Cabinet

with a copy to:

Office of Procurement Services
Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex Room 096
Frankfort, KY 40601

Attention: Stephanie Williams, Buyer
Email: StephanieR.Williams@ky.gov

If to the Collateral Agent:

U.S. Bank National Association
Global Corporate Trust Services
One Financial Square
Louisville, KY 40202

Attention: Amy Anders, Vice President
Email: amy.anders@usbank.com

If to Project Co:

KentuckyWired Infrastructure Company, LLC

Attention: Lori Hudson Flanery, Director
Email: 

with a copy to:

Office of Financial Management
Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex Room 076
Frankfort, KY 40601

Attention: Ryan Barrow, Executive Director
Email: Ryan.Barrow@ky.gov

If to Operations Co:

KentuckyWired Operations Company, LLC
c/o Macquarie Infrastructure Developments LLC
Level 16, 125 West 55th Street
New York, NY 10019

Attention: Nicholas Hann
Email: Nick.Hann@macquarie.com

or to such other address or electronic mail address as any party may, from time to time, designate in the manner set out above.

Any such notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (b) if delivered by electronic mail during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:
 - (1) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or
 - (2) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

13.8 No Partnership or Agency

Nothing in this Lenders' Remedies Agreement will be construed as creating a partnership or as constituting the Senior Secured Creditors, the Collateral Agent, the Appointed Representative, any other Senior Secured Creditors' Representative or a Suitable Substitute Operations Co as an agent of the Authority. No such person will hold itself out as having any authority or power to bind the Authority in any way.

13.9 Remedies Cumulative

The rights and remedies under this Lenders' Remedies Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

13.10 Disputes

Any dispute between any of the parties with respect to any of the subject matters of this Lenders' Remedies Agreement will be resolved in accordance with, and the parties will comply

with, the Dispute Resolution Procedure, and Schedule 13 [Dispute Resolution Procedure] of the Project Agreement is deemed to be incorporated, *mutatis mutandis*, in this Lenders' Remedies Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Lenders' Remedies Agreement as of the day and year first above written.

THE COMMONWEALTH OF KENTUCKY

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Commonwealth.

U.S. BANK NATIONAL ASSOCIATION

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the corporation.

KENTUCKYWIRED INFRASTRUCTURE COMPANY, INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the corporation.

**KENTUCKYWIRED OPERATIONS COMPANY,
LLC**

Per:

Name:

Title:

Per:

Name:

Title:

I/We have the authority to bind the corporation.

SCHEDULE 11
DESIGN-BUILDER COLLATERAL AGREEMENT
NEXT GENERATION KENTUCKY INFORMATION HIGHWAY PROJECT

The Commonwealth of Kentucky
(the “Authority”)
and
NG-KIH Design-Build LLC
(the “Design-Builder”)
and
KentuckyWired Infrastructure Company, Inc.
(“Project Co”)
and
KentuckyWired Operations Company, LLC
(“Operations Co”)

Dated: September 3, 2015

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**SCHEDULE 11
DESIGN-BUILDER COLLATERAL AGREEMENT**

THIS DESIGN-BUILDER COLLATERAL AGREEMENT dated as of September 3, 2015 is entered into:

BETWEEN:

The Commonwealth of Kentucky
(the “**Authority**”)

AND:

NG-KIH Design-Build LLC
(the “**Design-Builder**”)

AND:

KentuckyWired Infrastructure Company, Inc.
(“**Project Co**”)

AND:

KentuckyWired Operations Company, LLC
(“**Operations Co**”)

WHEREAS:

- A. The Authority and Project Co have entered into an agreement dated as of September 3, 2015 (the “**Project Agreement**”) whereby Project Co has agreed to design, build, finance, operate and maintain the NG-KIH System (the “**Project**”), all as more particularly described in the Project Agreement.
- B. Project Co and Operations Co have entered into an agreement dated as of September 3, 2015 (the “**Project Implementation Agreement**”) whereby Operations Co has agreed to design, build, operate and maintain the NG-KIH System, all as more particularly described in the Project Implementation Agreement.
- C. Operations Co and the Design-Builder have entered into an agreement dated as of September 3, 2015 (the “**Design-Build Agreement**”) whereby the Design-Builder has agreed to carry out the Design and the Construction.
- D. It is a condition of the Design-Build Agreement that the Design-Builder enter into this Design-Builder Collateral Agreement with the Authority, Project Co and Operations Co.
- E. The Authority and Project Co have agreed under the terms of the Project Agreement to execute and deliver this Design-Builder Collateral Agreement.

F. Project Co and Operations Co have agreed under the terms of the Project Implementation Agreement to execute and deliver this Design-Builder Collateral Agreement.

NOW THEREFORE THIS DESIGN-BUILDER COLLATERAL AGREEMENT WITNESSES THAT, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. INTERPRETATION

1.1 Definitions

Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Design-Builder Collateral Agreement will have the respective meanings given to such terms in the Project Agreement and:

“Design-Build Agreement” has the meaning set out in Recital C;

“Design-Builder Collateral Agreement” means this agreement, as amended, supplemented or restated from time to time;

“Project” has the meaning set out in Recital A;

“Project Agreement” has the meaning set out in Recital A;

“Project Implementation Agreement” has the meaning set out in Recital B;

“Proposed Transfer Date” has the meaning set out in Section 4.1;

“Proposed Transfer Notice” has the meaning set out in Section 4.1;

“Proposed Step-In Date” has the meaning set out in Section 3.1;

“Proposed Substitute” has the meaning set out in Section 4.1;

“Step-In Date” means the date the Authority delivers the Step-In Undertaking;

“Step-In Notice” has the meaning set out in Section 3.1;

“Step-In Period” means the period commencing on the Step-In Date and ending on the earliest of:

- (a) the Step-Out Date;
- (b) the Transfer Effective Date; and
- (c) the termination date of the Design-Build Agreement as permitted under Section 3.8;

“Step-In Undertaking” has the meaning set out in Section 3.5;

“**Step-Out Date**” has the meaning set out in Section 3.9;

“**Termination Notice**” has the meaning set out in Section 2.1;

“**Transfer Agreement**” has the meaning set out in Section 4.5(b); and

“**Transfer Effective Date**” means the effective date of the Transfer Agreement.

1.2 Construction and Interpretation

Unless otherwise specified or the context otherwise requires, this Design-Builder Collateral Agreement will be interpreted according to the provisions set out in Sections 2 and 3(b) of Schedule 1 [Definitions and Interpretation] to the Project Agreement, except that references in such section to Project Co will also be deemed to be references to Operations Co and the Design-Builder.

1.3 Law of Agreement

This Design-Builder Collateral Agreement is subject to the laws of the Commonwealth of Kentucky and any applicable federal laws and will be governed by and construed in accordance with such laws.

1.4 Venue

Any legal actions or proceedings brought by any party hereto against any other party shall be brought in state court in Franklin County, Kentucky in accordance with KRS 45A.245. Each party acknowledges the competence of such court and the convenience and propriety of the venue and agrees to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

2. TERMINATION NOTICE AND AUTHORITY TERMINATION

2.1 Termination Notice

The Design-Builder will not terminate the Design-Build Agreement without first giving the Authority at least 45 days’ notice specifying the grounds for such termination (the “**Termination Notice**”).

2.2 Survival of Design-Build Agreement

Notwithstanding any provision of the Design-Build Agreement to the contrary, on termination of the Project Agreement by the Authority, the parties agree that the Design-Build Agreement will not come to an end, except in accordance with the terms of this Design-Builder Collateral Agreement.

2.3 Suspension Notice

The Design-Builder will not exercise any right it may have under the Design-Build Agreement to temporarily suspend its performance thereunder, unless:

- (a) the Design-Builder first delivers a notice (a “**Suspension Notice**”) to the Authority detailing the event that has occurred that entitles it to exercise such

right and stating that it intends to exercise such suspension right, together with details of any sums which are due and payable but unpaid by Operations Co and any other material obligations or liabilities which should have been performed or discharged by Operations Co under the Design-Build Agreement, in each case as at the date of such Suspension Notice; and

(b) both:

- (1) the Design-Builder has confirmed in writing to the Authority that the Senior Secured Creditors have not agreed to pay the Design-Builder in accordance with the Design-Build Agreement for work performed by it during the period commencing on the date (the “**Suspension Date**”) when it, but for the provisions of this Section 2.3, would have been entitled to suspend its performance under the Design-Build Agreement and ending no sooner than 45 days after the Suspension Date; and
- (2) within 5 Business Days of receipt of confirmation from the Design-Builder pursuant to Section 2.3(b)(1), the Authority has not agreed, by written notice to the Design-Builder, to pay the Design-Builder in accordance with the Design-Build Agreement for work performed by it during the period (the “**No Suspension Period**”) commencing on the Suspension Date and ending on the earliest to occur of:
 - (A) the date on which the Senior Secured Creditors exercise any of their step-in or transfer rights pursuant to and in accordance with, respectively, Section 4 or Section 6 of the Lenders’ Remedies Agreement;
 - (B) the date from which the Senior Secured Creditors agree to pay the Design-Builder as contemplated under Section 2.3(b)(1); and
 - (C) the Step-In Date,

except that, if the Authority provides a written notice to the Design-Builder pursuant to Section 2.3(b)(2) and thereafter fails to make payment to the Design-Builder of any undisputed amount payable pursuant to and in accordance with the Design-Build Agreement for work performed by the Design-Builder during the No Suspension Period, the No Suspension Period will terminate and the Design-Builder may thereafter exercise any right it may have to temporarily suspend its performance under the Design-Build Agreement.

3. STEP-IN AND STEP-OUT

3.1 Step-In Notice

Subject to Section 3.2, if the Authority has terminated the Project Agreement in accordance with its terms or if the Authority has received a Termination Notice, the Authority may give notice to the Design-Builder (a “**Step-In Notice**”) of the intention of the Authority to issue a Step-In Undertaking on a specified date (the “**Proposed Step-In Date**”) provided that such Proposed Step-In Date is:

- (a) no later than 30 days after termination of the Project Agreement if the Project Agreement was terminated by the Authority; and
- (b) no later than 30 days after delivery of the Termination Notice to the Authority.

3.2 Lenders' Step-In Rights

The Authority will not issue a Step-In Notice at any time that the Senior Secured Creditors are validly exercising any Step-In rights with respect to the Project under:

- (a) the Lenders' Remedies Agreement;
- (b) any Senior Financing Agreement; or
- (c) any direct agreement entered into between the Design-Builder and the Senior Secured Creditors with respect to the Design-Build Agreement,

and the running of all notice periods and timelines set out in Section 3.1 will be suspended until such time as the Senior Secured Creditors are no longer exercising, or are no longer permitted to exercise, such rights under the Lenders' Remedies Agreement, any Senior Financing Agreement or any such direct agreement. The Design-Builder will provide copies of all relevant notices delivered by it to, or to it by, the Senior Secured Creditors in respect of the exercise of such rights so as to enable the Authority and the Design-Builder to determine, in accordance with this Section 3.2 the notice periods and timelines set out in Section 3.1.

3.3 Notice of Obligations and Step-In Undertaking

Not less than 5 Business Days prior to the Proposed Step-In Date, the Design-Builder will give notice to the Authority of any sums that are due and payable but unpaid by Operations Co and of any other material obligations or liabilities that should have been performed or discharged by Operations Co under the Design-Build Agreement, in each case as at the date of the Step-In Notice.

3.4 Update of Obligations

Not less than 2 Business Days prior to the Proposed Step-In Date, the Design-Builder will give notice to the Authority of any change in such sums, obligations or liabilities referred to in Section 3.3.

3.5 Delivery of Step-In Undertaking

On or before the Proposed Step-In Date, the Authority may deliver to the Design-Builder a written undertaking to the Design-Builder (the "**Step-In Undertaking**") undertaking to the Design-Builder to:

- (a) pay or procure the payment to the Design-Builder, within 15 Business Days of demand by the Design-Builder, of any sum due and payable or accruing due and payable but unpaid by Operations Co to the Design-Builder under the Design-Build Agreement before the Step-In Date, provided that the Design-Builder has notified the Authority of such amounts in accordance with Sections 3.3 and 3.4;

- (b) perform or discharge or procure the performance or discharge of any unperformed or undischarged obligations of Operations Co under the Design-Build Agreement that will have fallen due for performance or discharge before the Step-In Date and of which the Authority has been notified by the Design-Builder in accordance with Sections 3.3 and 3.4;
- (c) pay or procure the payment of any sum due and payable by Operations Co under the Design-Build Agreement as a result of either any work or services performed during the Step-In Period or any act or omission occurring during the Step-In Period which arises from any act or omission occurring after the Step-In Date; and
- (d) perform or discharge or procure the performance or discharge of any obligations of Operations Co under the Design-Build Agreement as a result of any act or omission occurring during the Step-In Period that arises from any act or omission occurring after the Step-In Date.

3.6 Limits on Authority Liability on Step-In

The Authority will not be required to assume any liability under a Step-In Undertaking for any outstanding obligations or liabilities of Operations Co to the Design-Builder:

- (a) that existed as of the Step-In Date; and
- (b) of which the Authority has not been notified pursuant to Sections 3.3 and 3.4.

3.7 Non-Delivery of the Step-In Undertaking

If the Authority does not deliver the Step-In Undertaking on or before the Proposed Step-In Date, the Step-In Notice will be deemed to have been withdrawn and the rights and obligations of the parties will be construed as if the Step-In Notice had not been given.

3.8 Effect of Step-In Undertaking

During any Step-In Period, the Design-Builder will continue to observe and perform its duties and obligations under the Design-Build Agreement and will only be entitled to exercise its rights of termination under the Design-Build Agreement:

- (a) by reference to a default under the Design-Build Agreement arising during the Step-In Period (other than to the extent that an Operations Co Insolvency Event constitutes such a default), provided that no event of default by Project Co under the Project Agreement or Operations Co under the Project Implementation Agreement will entitle the Design-Builder to exercise such rights of termination during the Step-In Period;
- (b) if the Authority fails to pay when due any amount owed to the Design-Builder or fails to perform or discharge when falling due for performance or discharge any obligation under the Step-In Undertaking; or
- (c) if such rights of termination arise in circumstances where there is no default under the Design-Build Agreement by the Authority or the Design-Builder.

3.9 Step-Out

The Authority may, at any time, terminate the Step-In Period by giving the Design-Builder at least 20 Business Days' notice specifying the date on which the Step-In Period will terminate (the "**Step-Out Date**").

3.10 Effect of Step-Out

The Authority will be released from the Step-In Undertaking on the expiration or termination of the Step-In Period, provided that the Authority has performed and discharged in full, or procured the performance and discharge in full, of any of the Authority's obligations under the Step-In Undertaking arising on or before the expiration or termination of the Step-In Period.

3.11 Payment by Operations Co

Operations Co will pay to the Authority on demand any amounts of which the Authority has been notified by the Design-Builder pursuant to Sections 3.3 and 3.4 and that were paid by the Authority or a Proposed Substitute to the Design-Builder pursuant to this Design-Builder Collateral Agreement. Any such amounts will constitute amounts due and payable by Operations Co to the Authority under this Design-Builder Collateral Agreement.

4. TRANSFER

4.1 Proposed Substitute

At any time that the Authority is entitled to give a Step-In Notice pursuant to Section 3.1 or at any time during the Step-In Period, the Authority may give notice (a "**Proposed Transfer Notice**") to the Design-Builder that it wishes itself or another person (a "**Proposed Substitute**") to assume, by way of sale, assignment, transfer or other disposal, the rights and obligations of Operations Co under the Design-Build Agreement and specifying a date (the "**Proposed Transfer Date**"):

- (a) if the Authority has terminated the Project Agreement but has not given a Step-In Notice, no later than 15 Business Days after termination of the Project Agreement;
- (b) if the Design-Builder has given a Termination Notice but the Authority has not given a Step-In Notice, no later than expiration of the Termination Notice; and
- (c) if the Authority has given a Step-In Notice (whether or not the Step-In Period has commenced), no later than 20 Business Days after the date of the Proposed Transfer Notice.

Subject to Section 3, the Design-Builder will not be entitled to terminate the Design-Build Agreement during the notice period specified in a Proposed Transfer Notice.

4.2 Consent to Transfer

If the Proposed Transfer Notice specifies the Authority as the Proposed Substitute, the Design-Builder's consent to the transfer will be deemed to have automatically been given. If the Proposed Substitute is not the Authority, a transfer in accordance with a Proposed Transfer

Notice will only be effective if the Design-Builder consents to that transfer in writing in accordance with Section 4.3, and the Authority will (as soon as practicable) supply the Design-Builder with the following information:

- (a) the name and registered address of the Proposed Substitute;
- (b) the names of the shareholders in the Proposed Substitute and the share capital owned by each of them;
- (c) the names of the directors and the secretary of the Proposed Substitute;
- (d) details of the means by which it is proposed to finance the Proposed Substitute (including the extent to which such finance is committed and any conditions precedent as to its availability for drawing); and
- (e) details of the technical competence of the Proposed Substitute and the resources (including contractual arrangements) which are to be available to the Proposed Substitute to enable it to perform its obligations under the Design-Build Agreement.

4.3 Grant of Consent

The Design-Builder may withhold or delay consent to a transfer only if the Proposed Substitute is not the Authority and the Authority has failed to show to the Design-Builder's satisfaction (acting reasonably) that:

- (a) the Proposed Substitute has the legal capacity, power and authority to become a party to and perform the obligations of Operations Co under the Design-Build Agreement; and
- (b) the technical competence and financial standing of, and the technical and financial resources available to, the Proposed Substitute are sufficient to perform the obligations of Operations Co under the Design-Build Agreement.

Within 5 Business Days of the receipt of a Proposed Transfer Notice and all information required under Section 4.2, the Design-Builder will notify the Authority in writing that it has consented to the transfer or, if the Design-Builder has not consented, will provide to the Authority an explanation of its reasons to withhold its consent.

4.4 Consent Withheld

If the Design-Builder withholds its consent to a Proposed Transfer Notice, the Authority may give one or more subsequent Proposed Transfer Notices, pursuant to the provisions of Section 4.1, containing changed particulars relating to the same Proposed Substitute or particulars relating to another Proposed Substitute that the Authority reasonably believes would fulfill the requirements of Sections 4.3, provided that only one Proposed Transfer Notice may be outstanding at any one time, and provided further that:

- (a) if a Step-In Notice has not been issued, any revised Proposed Transfer Date will be a date falling no later than the date specified in Section 4.1(a) or 4.1(b), as the case may be; and

- (b) if a Step-In Notice has been issued, any revised Proposed Transfer Date will be a date falling no later than the date specified in Section 4.1(c).

4.5 Implementation of Transfer

If the Design-Builder consents or is deemed to have consented to a transfer pursuant to a Proposed Transfer Notice, then on the Proposed Transfer Date:

- (a) the Proposed Substitute will become a party to the Design-Build Agreement in place of Operations Co and, thereafter, will be treated as if it was and had always been named as a party to the Design-Build Agreement in place of Operations Co; and
- (b) the Design-Builder, Operations Co and the Proposed Substitute will enter into a transfer agreement (the “**Transfer Agreement**”) and any other requisite agreements, in form and substance satisfactory to the Design-Builder, acting reasonably, pursuant to which:
 - (1) the Proposed Substitute will be granted all of the rights of Operations Co under the Design-Build Agreement; and
 - (2) the Proposed Substitute will assume all of the obligations and liabilities of Operations Co under the Design-Build Agreement.

4.6 Effect of Transfer

On and after the Transfer Effective Date:

- (a) the Design-Builder will owe its obligations under the Design-Build Agreement, whether arising before, on or after such date, to the Proposed Substitute; and
- (b) if the Authority has entered into a Step-In Undertaking, the Authority will be released from the Step-In Undertaking, provided that all obligations of the Authority under the Step-In Undertaking that have accrued up to the Transfer Effective Date have been fully and unconditionally discharged.

The Authority and the Design-Builder will use reasonable efforts to agree to any amendments to the Design-Build Agreement reasonably necessary to reflect the fact that the Project Agreement may have terminated at the time of the Transfer Effective Date.

4.7 Termination After Transfer

After the Transfer Effective Date, the Design-Builder will only be entitled to exercise its rights of termination under the Design-Build Agreement:

- (a) in respect of any Operations Co Event of Default arising after that date in accordance with the Design-Build Agreement; or
- (b) if the Proposed Substitute does not discharge the obligations and liabilities referred to in Section 4.5(b)(2) assumed by it under the Transfer Agreement that

relate to matters arising prior to the end of any Step-In Period within 15 Business Days following the Transfer Effective Date.

5. RIGHTS AND OBLIGATIONS UNDER THE DESIGN-BUILD AGREEMENT

5.1 Rights of Termination

If:

- (a) no Step-In Notice or Proposed Transfer Notice is given before a Termination Notice expires or within 15 Business Days after termination of the Project Agreement by the Authority;
- (b) a Step-In Undertaking is not issued on or before the Proposed Step-In Date;
- (c) the Step-In Notice is withdrawn or, pursuant to Section 3.7, is deemed to have been withdrawn;
- (d) the Step-In Period ends before the occurrence of the Transfer Effective Date;
- (e) in the absence of a Step-In Undertaking, the Design-Builder reasonably withholds its consent to a transfer pursuant to a Proposed Transfer Notice, in accordance with Section 4.3, and does not subsequently grant consent to a transfer in accordance with Section 4.4 on or before the Proposed Transfer Date;
- (f) in the absence of a Step-In Undertaking, a Transfer Agreement is not entered into on the Proposed Transfer Date;
- (g) the Design-Builder is entitled to terminate the Design-Build Agreement under Section 3.8 or 4.7; or
- (h) the Authority exercises its right to Step-Out under Section 3.9, then on the Step-Out Date,

the Design-Builder may:

- (i) exercise all of its rights under the Design-Build Agreement and act upon any and all grounds for termination available to it in relation to the Design-Build Agreement whenever occurring; and
- (j) pursue any and all claims and exercise any and all rights and remedies against Operations Co.

5.2 Operations Co's Obligations to Continue

Until completion of a transfer pursuant to Section 4.5, Operations Co will continue to be liable for all its obligations and liabilities, whenever occurring, under or arising from the Design-Build Agreement notwithstanding:

- (a) the service of a Step-In Notice or the issue of a Step-In Undertaking or the expiration of the Step-In Period or the release of a Step-In Undertaking;

- (b) the service of a Proposed Transfer Notice; or
- (c) any other provision of this Design-Builder Collateral Agreement.

6. REVOCATION OF NOTICES

A Termination Notice and a Step-In Notice may each be revoked (in writing to the recipient) by the party giving them before the expiration of their respective notice periods. Upon any such revocation, the rights and obligations of the parties will be construed as if the relevant notice had not been given.

7. ASSIGNMENT

7.1 Binding on Successors and Assigns

This Design-Builder Collateral Agreement will be binding on and will enure to the benefit of the parties and their respective successors and permitted assigns.

7.2 Restriction on Assignment

No party will assign or transfer any part of its respective rights or obligations under this Design-Builder Collateral Agreement without the prior consent of the other parties hereto (such consent not to be unreasonably withheld or delayed), provided that:

- (a) the Authority will be entitled, without the consent of any other party, to transfer all its rights and obligations hereunder to any person to whom it assigns or otherwise disposes of the benefit of the Project Agreement in accordance with Section 16.4 of the Project Agreement; and
- (b) the Design-Builder will assign or transfer all its rights and obligations under this Design-Builder Collateral Agreement to any person to whom it assigns or transfers all its rights and obligations under the Design-Build Agreement in accordance with the terms of the Design-Build Agreement and the Project Agreement.

8. GENERAL

8.1 Notices

Any notice or communication required or permitted to be given under this Design-Builder Collateral Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by electronic transmission to the address or electronic mail address of each party set out below:

If to the Authority:

The Commonwealth of Kentucky
Office of the Secretary
Finance and Administration Cabinet
702 Capitol Avenue

Capitol Annex Room 383
Frankfort, KY 40601

Attention: Secretary of the Finance and Administration Cabinet

with a copy to:

Office of Procurement Services
Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex Room 096
Frankfort, KY 40601

Attention: Stephanie Williams, Buyer
Email: StephanieR.Williams@ky.gov

If to the Design-Builder:

NG-KIH Design-Build LLC
c/o Overland Contracting Inc.
10950 Grandview #34
Overland Park, KS 66210

Attention: Dean Siegrist
Email: siegristDA@bv.com

with a copy to:

LTS Solutions (USA) LLC
9330 Corporate Drive, Suite 407
Selma, TX 78108

Attention: Allen Hemrich
Email: Allen.Hemrich@ledcor.com

If to Project Co:

KentuckyWired Infrastructure Company, LLC


Attention: Lori Hudson Flanery, Director
Email: 

with a copy to:

Office of Financial Management
Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex Room 076
Frankfort, KY 40601

Attention: Ryan Barrow, Executive Director
Email: Ryan.Barrow@ky.gov

If to Operations Co:

KentuckyWired Operations Company, LLC
c/o Macquarie Infrastructure Developments LLC
Level 16, 125 West 55th Street
New York, NY 10019

Attention: Nicholas Hann
Email: Nick.Hann@macquarie.com

or to such other address or electronic mail address as any party may, from time to time, designate in the manner set out above.

Any such notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (b) if delivered by electronic mail during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:
 - (1) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or
 - (2) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

8.2 Entire Agreement

Unless otherwise stated in this Design-Builder Collateral Agreement, this Design-Builder Collateral Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Design-Builder Collateral Agreement. No party has relied on any representation except as expressly set out in this Design-Builder Collateral Agreement.

8.3 Waiver

The failure of any party to exercise any contractual right or remedy will not constitute a waiver thereof, and no waiver will be effective unless it is communicated in writing to the other party. A waiver of any right or remedy arising from a breach of this Design-Builder Collateral Agreement will not constitute a waiver of any right or remedy arising from any other breach of this Design-Builder Collateral Agreement.

8.4 No Partnership or Agency

Nothing in this Design-Builder Collateral Agreement will be construed as creating a partnership or as constituting the Design-Builder as an agent of the Authority. The Design-Builder will not hold itself out as having any authority or power to bind the Authority in any way.

8.5 Conflicting Agreements

If there is any conflict or inconsistency between the provisions of this Design-Builder Collateral Agreement and the Project Agreement, the provisions of the Project Agreement will prevail.

8.6 Remedies Cumulative

The rights and remedies under this Design-Builder Collateral Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

8.7 Counterparts

This Design-Builder Collateral Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and this has the same effect as if the signatures on the counterparts were on a single copy of this Design-Builder Collateral Agreement so that it will not be necessary in making proof of this Design-Builder Collateral Agreement to produce or account for more than one such counterpart.

8.8 Disputes

Any dispute between any of the parties with respect to any of the subject matters of this Design-Builder Collateral Agreement or any disagreement between any of the parties with respect to any matter that, by the express terms of this Design-Builder Collateral Agreement, is to be agreed upon by the parties will be resolved in accordance with, and the parties will comply with, the Dispute Resolution Procedure set out in the Project Agreement, provided that, for greater certainty, the parties acknowledge that, during a Step-In Period or after the Transfer Effective Date, any dispute with respect to any of the subject matters of the Design-Build Agreement will be resolved in accordance with the applicable dispute resolution procedure thereunder.

IN WITNESS WHEREOF the parties have executed this Design-Builder Collateral Agreement as of the day and year first above written.

THE COMMONWEALTH OF KENTUCKY

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Commonwealth.

NG-KIH DESIGN-BUILD LLC

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the corporation.

**KENTUCKYWIREDFRASTRUCTURE
COMPANY, INC.**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the corporation.

**KENTUCKYWIRED OPERATIONS COMPANY,
LLC**

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have the authority to bind the corporation.

**SCHEDULE 12
PROJECT CO'S OWNERSHIP INFORMATION**

Project Co represents and warrants that the following information is true and correct as of the date of this Project Agreement:

1. Name: KentuckyWired Infrastructure Company, Inc.
2. Date of Incorporation: June 24, 2015
3. Incorporation Number: 0925724.09
4. Jurisdiction of Incorporation: Commonwealth of Kentucky
5. Members: None
6. Directors: Lori Hudson Flanery
Steve Rucker
Robin Fields Kinney
7. Summary of any constitutional, contractual or other special voting rights, restrictions on powers of directors or similar matters relevant to the control of Project Co: Refer to Articles of Incorporation and Bylaws

**SCHEDULE 13
DISPUTE RESOLUTION PROCEDURE**

1. DEFINITIONS

In this Schedule 13, in addition to the terms defined in Schedule 1 [Definitions and Interpretation]:

“**Dispute Notice**” has the meaning set out in Section 2.2 of this Schedule 13;

“**Dispute Resolution Procedure**” has the meaning set out in Section 2.1 of this Schedule 13;

“**Referee**” has the meaning set out in Section 2.5 of this Schedule 13;

“**Referee Agreement**” has the meaning set out in Section 2.5(c) of this Schedule 13;

“**Referee Notice**” has the meaning set out in Section 2.5 of this Schedule 13; and

“**Senior Executive**” means an executive who is in a position of authority above that of the party’s Representative and, subject only to approval of the board of directors or similar governing body, has full authority to resolve and settle a Dispute.

2. DISPUTE RESOLUTION

2.1 Procedure

Unless both parties otherwise agree, all Disputes will be resolved in accordance with the provisions of this Schedule 13 (the “**Dispute Resolution Procedure**”), provided that the decision of the Independent Certifier that Site Completion has been achieved in respect of any Site is final and binding on the parties solely in respect of determining the commencement of Availability Payments. Except for the foregoing, any other Dispute related to the decision of the Independent Certifier that Site Completion has been achieved in respect of any Site may be the subject of a Dispute and may be subject to the Dispute Resolution Procedure.

2.2 Dispute Notice

The Dispute Resolution Procedure may be commenced by either party giving written notice to the other party (the “**Dispute Notice**”) briefly setting out the pertinent facts, the remedy or relief sought and the grounds on which such remedy or relief is sought.

2.3 Project Representative Negotiation

Within 5 Business Days of one party receiving a Dispute Notice from the other, or such longer period as the parties may agree, a Representative of each party will meet and make good faith efforts to resolve the Dispute by without prejudice negotiations.

2.4 Senior Executive Negotiation

If the Dispute is not resolved pursuant to Section 2.3 of this Schedule 13 within 5 Business Days (or such longer period as the parties may agree) of the first meeting of the Representatives, a Senior Executive of each party will meet and make good faith efforts to resolve the Dispute by without prejudice negotiations.

2.5 Fast Track Referee Process

If the Dispute is not resolved pursuant to Section 2.4 of this Schedule 13 within 5 Business Days (or such longer period as the parties may agree) of the first meeting of the Senior Executives, either party may, by written notice to the other party (a “**Referee Notice**”), request the appointment of a referee (the “**Referee**”) as provided under the terms of this Section 2.5. The Referee will be appointed as an expert to resolve the Dispute and will participate in the resolution of the Dispute as set out below:

- (a) if the Referee Notice is given during the Construction Period, then the Independent Certifier will, as of the end of the 2nd Business Day following the delivery of the Referee Notice, be deemed the Referee unless:
 - (1) within 2 Business Days of the delivery of the Referee Notice, either (i) the parties agree that another person would be more suitable considering the nature of the Dispute, or (ii) either party gives written notice that it objects to the Independent Certifier acting as Referee in relation to the Dispute; or
 - (2) for any reason the Independent Certifier is unable to perform the duties of the Referee,

and, in either case, the Referee will be appointed in the manner described in Section 2.5(b) of this Schedule 13;

- (b) if the Dispute Notice is given during the Operating Period or Section 2.5(a) of this Schedule 13 requires that this Section 2.5(b) applies, the parties will appoint a Referee in the following manner:
 - (1) within 2 Business Days of the delivery of a Referee Notice, each party will submit in writing to the other party the names of no more than 2 candidates for Referee who are independent of the parties, experienced in the resolution of similar disputes and immediately available to perform the role of Referee in respect of the Dispute at hand;
 - (2) if a party has an objection to a proposed candidate, it will give written notice of such objection with reasons to the other party; and
 - (3) if, for any reason, within 3 Business Days of the delivery of a Referee Notice, a Referee has not been appointed, then either party or both parties may apply to a judge of the state court in Franklin County, Kentucky to select a Referee in relation to the Dispute;
- (c) the parties will enter into an agreement with the Referee generally in the form attached as Appendix 13A (the “**Referee Agreement**”), such agreement to be entered into no later than 2 Business Days after the Referee’s appointment;
- (d) the Referee’s fees and expenses will be shared equally by the Authority and Project Co, provided that the Authority will pay the full amount of the Referee’s fees and expenses on the day that such fees and expenses are due (including any advances on fees and expenses) in accordance with the Referee Agreement

and Project Co will reimburse the Authority for Project Co's share of all such fees and expenses within 5 Business Days of receipt of a written demand from the Authority, failing which the Authority will be entitled to deduct the amount of Project Co's share of the Referee's fees and expenses from amounts otherwise due to Project Co under the provisions of this Project Agreement;

- (e) the Referee will conduct an impartial review of the Dispute in such manner as the Referee thinks fit, including carrying out on-site inspections and interviews with any persons that the Referee thinks fit;
- (f) the parties will comply with all reasonable requests from the Referee for additional information, documents and access to personnel which the Referee considers necessary for the review;
- (g) any submission or documentation in respect of the Dispute provided to the Referee by a party will also be provided to the other party;
- (h) the Referee may, with the written approval of both parties, retain other professional persons or experts to assist with the review and will pay due regard to any request by either party for him to retain such other professional persons or experts;
- (i) the Referee will not be obliged to conduct his inquiries in the presence of the parties or receive submissions from the parties, except to the extent that the Referee thinks fit, and may render his decision notwithstanding the failure of a party to participate in the proceedings;
- (j) the Referee will render a brief, written, reasoned and impartial decision on the Dispute, with copies to both parties within 5 Business Days of the signing by the Referee and both parties of the Referee Agreement referred to in Section 2.5(c) of this Schedule 13, or such longer period as agreed to in writing by both parties;
- (k) the Referee's decision will be in the form of a proposed determination of the rights of the parties having regard to the Referee's understanding of the relevant contractual provisions, the applicable law and the facts as agreed by the parties or as best the Referee is able to determine them;
- (l) each party acknowledges the value of having the Referee render a timely decision regarding the Dispute and, if the Referee is unable to render his decision within the time set or as extended by mutual agreement of the parties, then the parties will request that the Referee provide to the parties within such time such analysis of the Dispute as the Referee is able to make within that time and describe the further work the Referee recommends would be required in order to arrive at a reasoned decision;
- (m) subject to the provisions of Section 3.3 of this Schedule 13, a decision of a Referee is not binding on the parties but is intended to assist the parties to reach agreement with respect to the Dispute;
- (n) the proceedings under this Section 2.5 will be confidential and all information, data or documentation disclosed or delivered by either party to the Referee as a

result of or in connection with his duties as Referee will be treated as confidential and neither of the parties nor the Referee will, except as would be permitted under Section 17 of this Project Agreement, disclose to any Person any such information, data or documentation unless the parties otherwise agree in writing, provided that nothing contained in this provision will prevent the submission in any subsequent proceedings of any evidence other than evidence that came into existence for the express purpose of submission to, or assistance of, the Referee; and

- (o) the proceedings by or before a Referee will be without prejudice in any subsequent proceedings.

2.6 Commencement of Proceedings

If the Dispute is not completely resolved by agreement between the parties within 10 Business Days of the receipt of the Referee's decision or analysis pursuant to Section 2.5 of this Schedule 13 (or such longer period as the parties may agree) or within 10 Business Days of the date on which the Referee's decision or analysis ought to have been received under Section 2.5 of this Schedule 13, either party may, pursuant to KRS 45A.230, present the Dispute to the Secretary of the Finance and Administration Cabinet for resolution. If the Secretary is unable to resolve the Dispute to the mutual satisfaction of the parties within 120 days, the provisions of KRS 45A.235 shall apply and either party may commence proceedings in respect of the Dispute in state court in Franklin County, Kentucky in accordance with KRS 45A.245 and, for clarity, the provisions of Section 17.4 of this Project Agreement will apply to any such proceedings.

3. GENERAL

3.1 Other Remedies

Nothing contained in this Schedule 13 will preclude a party from initiating a proceeding in state court in Franklin County, Kentucky for the purpose of obtaining an effective emergency or provisional remedy to protect its rights as necessary in the circumstances, including obtaining temporary and preliminary injunctive relief and other orders, whether before or after the Dispute has been initiated by a Dispute Notice.

3.2 Strict Compliance with Time Limits

The parties acknowledge that timely resolution of Disputes is mutually beneficial and the time limits set out in this Schedule 13, or as otherwise agreed by the parties, will therefore be strictly complied with and enforced.

3.3 Interim Decision

If a Dispute occurs then the Authority and Project Co will in good faith carry out their respective obligations under this Project Agreement pending resolution of the Dispute pursuant to the Dispute Resolution Procedure. Prior to resolution of the Dispute, the Authority may, in its discretion by written notice to Project Co, direct Project Co to proceed in respect of the matter in Dispute or any related matter and Project Co will comply with and implement the direction. Such direction will be without prejudice to Project Co's rights to compensation or other rights under this Project Agreement. Nothing in this Schedule 13 will limit the Authority's right to require a Change.

**APPENDIX 13A
REFEREE AGREEMENT**

BETWEEN:

[Name of Referee] (the "Referee")

AND:

The Commonwealth of Kentucky (the "Authority")

AND:

KentuckyWired Infrastructure Company, Inc. ("Project Co")

We write to confirm your appointment as a Referee under the project agreement dated September 3, 2015 between the Authority and Project Co (the "**Project Agreement**"). The terms of your appointment are as contained in Section 2.5 of Schedule 13 [Dispute Resolution Procedure] to the Project Agreement.

We confirm our agreement for you to review the Dispute(s) described in the Dispute Notice in accordance with the provisions of the Project Agreement, and to perform the functions of a Referee as described in Section 2.5 of Schedule 13 [Dispute Resolution Procedure] to the Project Agreement.

A copy of the Project Agreement and related materials will be forwarded to you shortly.

We confirm that your daily/hourly rate for fees is \$ _____. In addition to your invoiced fees, the Authority will pay any and all reasonable disbursements incurred in providing your services. Please submit your invoices on a monthly basis directly to _____ **[Insert name of Authority's Construction or Operating Period Representative, as applicable]** (the "**Authority's Representative**"). The Authority will make payment within 30 calendar days of receipt.

Please confirm your agreement to the terms as set out in this letter by signing a copy of the enclosed letter and returning it to the Authority's Representative.

Yours truly,

Authorized Signatory of the Referee

Date

Authorized Signatory of the Authority

Date

Authorized Signatory of Project Co

Date

**SCHEDULE 14
RECORDS AND REPORTS**

1. GENERAL REQUIREMENTS

- (a) Project Co will retain and maintain all the records (including superseded records) referred to in Section 2 of this Schedule 14 as follows:
- (1) in accordance with this Schedule 14 and other applicable terms of this Project Agreement;
 - (2) in an organized manner;
 - (3) in a form that is capable of audit;
 - (4) in accordance with the requirements of Customary Industry Practice;
 - (5) having due regard to the guidelines and policies of the Authority related to the retention of records, including any requirements of the Authority's records retention policy for state agencies that are applicable to the Project, provided by the Authority to Project Co and Operations Co;
 - (6) in accordance with Project Co's normal business practices; and
 - (7) in accordance with GAAP.

The parties acknowledge and agree that this Schedule 14 is comprehensive of Project Co's record keeping and reporting obligations under this Project Agreement.

- (b) If specifically requested by the Authority, acting reasonably, in respect of certain records, Project Co will retain and maintain for inspection original records in hard copy form at an agreed location in Kentucky. Project Co will maintain all other records electronically in readable and accessible form on the DMS (as defined below), subject to archiving in accordance with any requirements of the Authority's records retention policy for state agencies that are applicable to the Project and Customary Industry Practice.
- (c) Any drawings or plans required to be made or supplied pursuant to this Project Agreement will be of a size appropriate to show the detail to be depicted clearly without magnifying aids. If, by prior agreement with Project Co and Operations Co, the Authority has agreed to accept microfilm, microfiche or other electronic storage media (which must include secure back up facilities), Project Co will make or supply, or have made or supplied, drawings and other documents in such agreed upon form.
- (d) Project Co will retain and maintain all records referred to in Section 2 of this Schedule 14 in sufficient detail, in appropriate categories and generally in such a manner to enable each party to comply with its obligations and exercise its rights under this Project Agreement.

- (e) Project Co will retain and maintain all records referred to in Section 2 of this Schedule 14 until the Termination Date.
- (f) If the Authority gives notice to Project Co and Operations Co that the Authority wishes to receive any of the records on the Termination Date, then Project Co will, at the cost and expense of the Authority, deliver or cause to be delivered such records to the Authority electronically (unless hard copies were specifically requested by the Authority in accordance with Section 1.2(b)) and otherwise in the manner as the Authority specifies, acting reasonably.
- (g) Project Co will provide a comprehensive computerized document management system (“**DMS**”) that will include:
 - (1) records and information related to the Design, Construction and Services delivered under this Project Agreement;
 - (2) ten licenses for access by the Authority (through online web access or other access acceptable to the Authority) to all information required to be provided by Project Co to the Authority, such that the Authority will be able to read, copy, download and search all such information without payment, subject to archiving in accordance with any requirements of the Authority’s records retention policy for state agencies that are applicable to the Project and Customary Industry Practice;
 - (3) file index or layout describing the logical locations and separation of information within the DMS, as well as formal instructions on accessing and navigating the DMS;
 - (4) software necessary to operate the DMS and which interfaces with the Authority’s information technology systems, provided that any changes required and resulting from an upgrade to, or change by, the Authority to its systems will be paid for by the Authority;
 - (5) backup and storage in safe custody of the data, materials and documents in accordance with Customary Industry Practice; and
 - (6) records and details of specific license requirements.

The Authority acknowledges and agrees that the DMS contemplated in this Schedule 14 satisfies the requirements of the Master Agreement with respect to the establishment of a web-based data site.

- (h) Within 20 Business Days after the end of each Contract Year, Project Co will deliver to the Authority a report, in form and substance satisfactory to the Authority, acting reasonably, detailing, to the best of Project Co’s knowledge at the time of any such report:
 - (1) any and all liabilities, claims and demands, including contingent liabilities, claims and demands, that Project Co has or may have against the Authority or that may be owing by the Authority to Project Co; and

- (2) any and all liabilities, claims and demands, including contingent liabilities, claims and demands, that a third party (excluding Operations Co and the Project Contractors) has or may have against Project Co or Operations Co or that may be owing by Project Co or Operations Co to a third party (excluding Operations Co and the Project Contractors).

The parties acknowledge and agree that the contents of any such report or the failure to mention any matter in any such report will not limit either party's rights or remedies against the other party as contemplated by this Project Agreement.

- (i) Project Co will provide to the Authority:
 - (1) not later than 120 days after the end of each fiscal year of Project Co, a copy of Project Co's audited financial statements prepared in accordance with GAAP, consistently applied;
 - (2) not later than 120 days after the end of each fiscal year of Operations Co, a copy of Operations Co's audited financial statements prepared in accordance with GAAP, consistently applied;
 - (3) not later than 45 Business Days after the end of each fiscal quarter of Project Co, a copy of Project Co's unaudited quarterly financial statements; and
 - (4) not later than 45 Business Days after the end of each fiscal quarter of Operations Co, a copy of Operations Co's unaudited quarterly financial statements,

together with copies of all related directors' and auditors' reports and all other notices and circulars to shareholders or partners, all of which documents will be treated by the Authority as Confidential Information of Project Co or Operations Co, as applicable.

- (j) The Authority and its employees, agents and other representatives may, at any time at the Authority's expense, conduct an audit, examination or investigation of all the records (including superseded records) referred to in this Schedule 14. Project Co will make available its facilities and records and provide reasonable assistance, including providing copies, in the conduct of and, without limiting Schedule 6 [Changes, Minor Works and Innovation Proposals], implement any recommendations from the Authority arising from the audit, examination or investigation.

2. RECORDS TO BE KEPT

Project Co will retain, and will require Operations Co and its Project Contractors to retain, the following:

- (a) this Project Agreement, the Project Implementation Agreement, the Project Contracts, the Senior Financing Agreements and all other documents and instruments in respect of any financing, including all amendments to such agreements;

- (b) the Financial Model, including the following in respect of the Financial Model:
 - (1) all prior versions;
 - (2) all amendments and modifications;
 - (3) all related or incidental reports; and
 - (4) written operating instructions in sufficient detail to allow the Authority to access and review all formulas, coding, data and other inputs;
- (c) the as-built drawings, plan, records and other Design and Construction documentation described in Schedule 2 [Design and Constructions Protocols] and Schedule 3 [Design and Construction Specifications], including any revisions or amendments to such documents, including up-to-date CAD drawings for the NG-KIH System and all Services, linked to, and compatible with, the Authority's information systems;
- (d) all documents relating to the appointment and supervision of Project Co's Design and Construction Representative and the Independent Certifier;
- (e) all documents relating to all Permits, including applications, refusals and appeals;
- (f) all notices, reports, test reports, results and certificates relating to the Design, and Construction, including as described in Schedule 2 [Design and Construction Protocols] or in Schedule 3 [Design and Construction Specifications];
- (g) all records relating to any inspections of the NG-KIH System conducted under applicable Laws or by or for any Governmental Authority;
- (h) all orders or other requirements issued to Project Co or Operations Co by any Governmental Authority;
- (i) all operation and maintenance manuals, procedures, guidelines, policies and other similar records in respect of the NG-KIH System, including all information electronically and manually recorded by the NOC;
- (j) all testing certificates in respect of maintenance of the NG-KIH System and its equipment and appropriate documentation and records (in particular those relating to any aspects of safety or statutory compliance) relating thereto;
- (k) all records of telephone calls, emails and other notices delivered to the NOC and all responses from the NOC in respect of such notices;
- (l) all electronically and manually recorded information with respect to the provision of the Services;
- (m) all electronically and manually recorded information with respect to actions initiated by Project Co, Operations Co or the Service Provider to respond to and rectify Outages;

- (n) all electronically or manually recorded reports and information related to safety and security of Sites, including the date and time of such incidents;
- (o) a comprehensive electronic inventory control system and asset register that provides up-to-date records for all NG-KIH System equipment;
- (p) comprehensive maintenance records for the NG-KIH System, including the date, time and scope of each such activity;
- (q) all Performance Monitoring Reports and the information and data used to prepare such reports;
- (r) all certificates, permits, licenses, registrations or warranties related to the provision of the Services;
- (s) all documents relating to Supervening Events claimed by Project Co under this Project Agreement and the consequences thereof;
- (t) all notices delivered to or received from the Authority's Representative;
- (u) all documents relating to a referral to the Dispute Resolution Procedure;
- (v) all documents submitted in connection with any Change;
- (w) all documents relating to a Change in Control of Project Co or Operations Co;
- (x) all documents relating to a Refinancing (other than an Exempt Refinancing);
- (y) all tax invoices, assessments, returns and other records applicable to the Project (other than any income tax records for Project Co or Operations Co or records pertaining to other taxes personal to Project Co or Operations Co);
- (z) all records required by Law (including in relation to health and safety matters) to be maintained by Project Co or Operations Co with respect to the Design, Construction and Services;
- (aa) all documents relating to insurance and insurance claims, including details of any approach of the insurance market to establish whether an Uninsurable Risk remains Uninsurable in accordance with Section 6.12 of this Project Agreement;
- (bb) a written register of all claims and incidents that might reasonably result in a claim under any of the policies of insurance required by this Project Agreement, excluding any Protected Personal Information, in accordance with Section 4.8 of Schedule 5 [Insurance Requirements] to this Project Agreement;
- (cc) all information related to worker's compensation claims arising from the Project, including the number of claims made, the number of claims paid and the amount of each claim, excluding any Protected Personal Information;
- (dd) the financial accounts of Project Co and Operations Co referred to in Section 1(i) of this Schedule 14; and

- (ee) all other documents, records, notices or certificates required to be produced or maintained by Project Co or Operations Co pursuant to the express terms of this Project Agreement, the Project Implementation Agreement or any Project Contract.

**SCHEDULE 15
FINANCIAL MODEL**

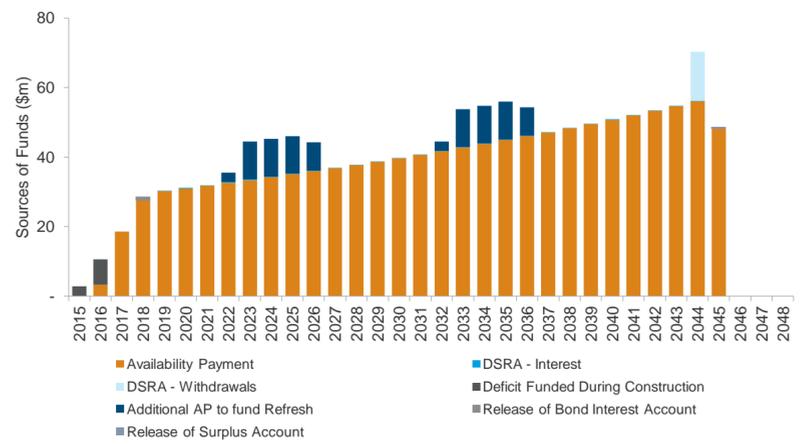
See attached.



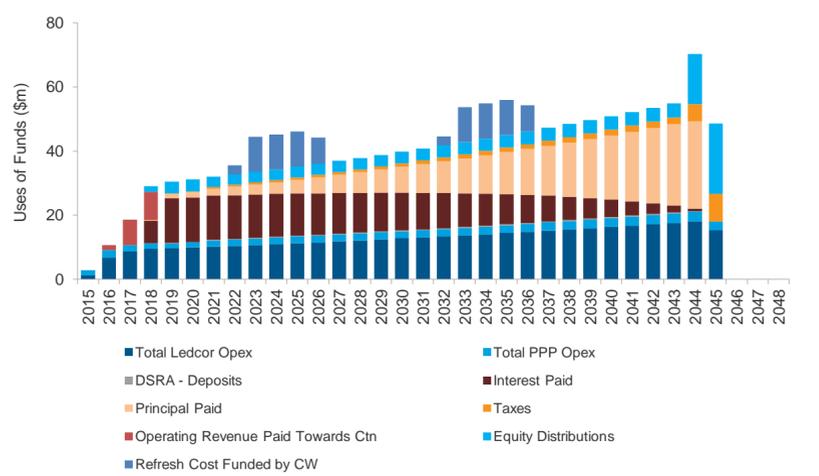
Alignment Option Summaries

Key Metrics			
Total Availability Payment (Monthly, \$2015)	[\$000s]	2,320,354	
Total Availability Payment (Monthly, \$2016)	[\$000s]	2,378,363	
Total Funding Required	[\$000s]	383,777	
Designated Equipment	[\$000s]	28,646	
Commonwealth Contribution	[\$000s]	(30,000)	
Milestone Payment	[\$000s]	(23,500)	
Revenue During Construction	[\$000s]	(37,118)	
Interest Earned During Construction	[\$000s]	(1,801)	
Private Capital Raised	[\$000s]	320,004	
LLCR	[x]	1.25x	Avg
DSCR	[x]	1.25x	1.25x
Year of Min DSCR	[year]	30-Jun-20	
Gearing	[%]	93.02%	
Debt / (D + E + RC)	[%]	83.12%	
Returns			OpCo
IRR	[%]		12.00%

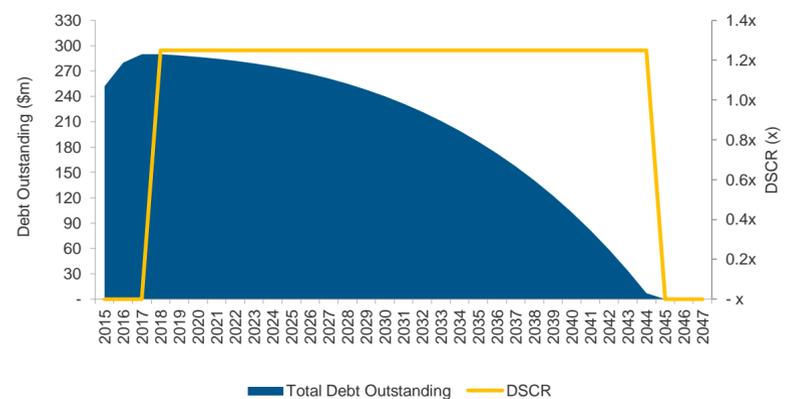
Sources of Funds: Operations (Chart Not Audited)



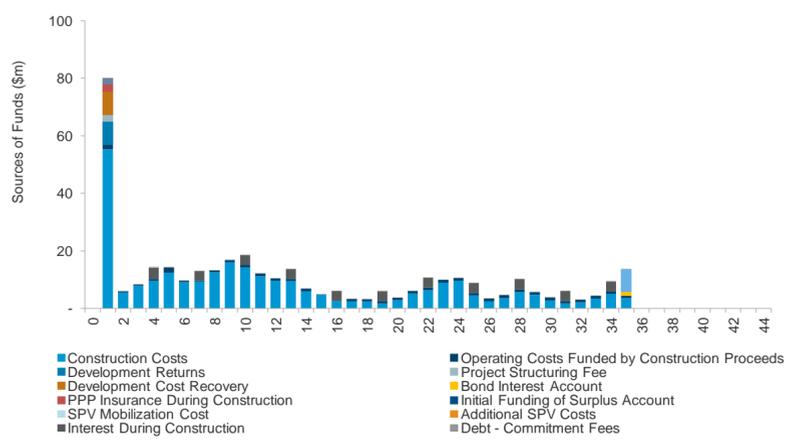
Uses of Funds: Operations (Chart Not Audited)



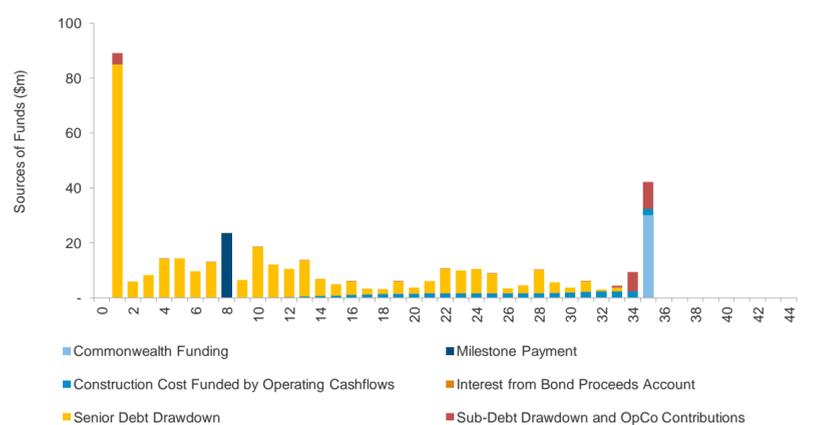
Debt Outstanding & DSCR (Chart Not Audited)



Use of Funds: Constructions (Chart Not Audited)



Sources of Funds: Constructions (Chart Not Audited)



Sources & Uses: Construction

Sources			
Commonwealth Contribution	[\$000s]	30,000	7.27%
Milestone Payment	[\$000s]	23,500	5.70%
Revenue During Construction	[\$000s]	37,118	9.00%
Series 2015B - Taxable	[\$000s]	57,996	14.06%
Series 2015A - Tax Exempt	[\$000s]	231,950	56.24%
Senior Bond Premiums / (Discounts)	[\$000s]	8,303	2.01%
Sub Debt & OpCo Contributions	[\$000s]	21,756	5.28%
Interest Earned During Construction	[\$000s]	1,801	0.44%
Total Sources	[\$000s]	412,423	100.00%

Uses			
Construction Costs	[\$000s]	274,849	66.64%
Designated Equipment Purchased by Authority	[\$000s]	28,646	6.95%
Contractor O&M During Construction	[\$000s]	22,149	5.37%
SPV Costs During Construction	[\$000s]	7,004	1.70%
Development Returns	[\$000s]	8,248	2.00%
Development Cost Recovery	[\$000s]	8,178	1.98%
Project Structuring Fee	[\$000s]	2,062	0.50%
LC Cost	[\$000s]	507	0.12%
Financing Costs	[\$000s]	2,082	0.50%
Commitment Fees	[\$000s]	268	0.06%
Reserves - Others	[\$000s]	1,468	0.36%
Reserves - DSRA	[\$000s]	7,647	1.85%
Construction Period Insurance	[\$000s]	2,612	0.63%
Interest During Construction	[\$000s]	37,701	9.14%
Upfront IRU Costs	[\$000s]	9,000	2.18%
Taxes During Construction	[\$000s]	2	0.00%
Total Uses	[\$000s]	412,423	100.00%

Sources & Uses: Operations

Sources During Operations			
Commonwealth Availability Payments	[\$000s]	1,186,541	91.04%
Additional AP to Fund Refresh	[\$000s]	87,403	6.71%
Operating Costs Funded by Ctn Proceeds	[\$000s]	10,153	0.78%
DSRA - Interest	[\$000s]	3,331	0.26%
DSRA - Withdrawals	[\$000s]	14,156	1.09%
Release of Surplus Account	[\$000s]	404	0.03%
Release from Bond Interest Account	[\$000s]	1,318	0.10%
Working Capital Interest During Ops	[\$000s]	-	-%
Total Sources	[\$000s]	1,303,307	100.00%

Uses During Operations			
SPV O&M	[\$000s]	70,948	5.44%
Contractor O&M	[\$000s]	391,054	30.00%
Refresh	[\$000s]	87,403	6.71%
Taxes Paid During Operations	[\$000s]	43,237	3.32%
Senior Debt Interest Paid	[\$000s]	262,876	20.17%
Reinvestments of Operating Cashflows	[\$000s]	18,118	1.39%
Senior Debt Principal Paid	[\$000s]	289,946	22.25%
Sub-Debt and OpCo Distributions (Net of Taxes)	[\$000s]	133,215	10.22%
DSRA - Deposits	[\$000s]	6,510	0.50%
Total Uses	[\$000s]	1,303,307	100.00%

**SCHEDULE 16
COMMUNICATION ROLES**

The Authority and Project Co will, throughout the Term, share responsibilities for communications, including community relations, stakeholder consultation, media relations and emergency communications on the terms set out in this Schedule 16.

1. GENERAL

- 1.1 Project Co will consult and cooperate with the Authority regarding communications activities relating to the Project.
- 1.2 The desired outcome of communications activities is to inform the public and other stakeholders about the progress, value and benefits of the Project and to develop and maintain support for the Project.
- 1.3 Communications strategies and plans involving the interests of both parties are to be prepared on a joint basis, with one party taking a lead role and the other a supporting role, as described in this Schedule 16.
- 1.4 Where communications strategies and plans involve the interests of both parties, each party will give the other a reasonable opportunity (taking into account the need for timely communications) to consider communications strategies and plans initiated by the other and, if information is supplied by a party, it should include or be accompanied by sufficient explanatory or other material to enable the information to be properly considered.
- 1.5 Project Co will consider and, acting reasonably, take into account public and other stakeholder input in regard to its plans for the Design, Construction and Services.
- 1.6 This Schedule 16 is a guideline and may be amended by mutual agreement. For clarity, non-compliance with this Schedule 16 by Project Co will not constitute a Project Co Event of Default and non-compliance with this Schedule 16 by the Authority will not constitute an Authority Event of Default.
- 1.7 Project Co acknowledges that nothing in this Schedule 16 limits any requirements for compliance with applicable Law and that the Authority may be required to make disclosure of information under applicable Law, including the Open Records Act.
- 1.8 Project Co acknowledges that the Authority will be free to disclose (including on websites) this Project Agreement and any and all terms hereof, except for those portions that would not be required to be disclosed under applicable Law. The Authority will consult with Project Co prior to such disclosure.
- 1.9 Except for Section 1.8, this Schedule 16 is subject to the parties' obligations in respect of confidentiality and public communications pursuant to Sections 17.1 and 17.2 of this Project Agreement.

2. CATEGORIES OF COMMUNICATIONS

The following categories of communications are covered by this Schedule 16 and each category applies during the Construction Period and the Operating Period:

- (a) **Communications Planning:** developing plans and strategies in support of the Project, including integrating the categories of communication listed in Section 6 of this Schedule 16;
- (b) **Community Relations:** keeping all key audiences (as identified in communications plans) informed, including providing overall Project information about schedule, design, construction and services, using any and all appropriate communications tools and tactics;
- (c) **Consultation:** engaging in discussions with Project stakeholders throughout each period;
- (d) **Media Relations:** providing the media with Project updates and responding to issues raised by the media; and
- (e) **Emergency Communications:** preparing and implementing crisis communications planning and preparedness.

3. LEAD AND SUPPORTING ROLES

- 3.1 Within each category of communications set out in Section 6 of this Schedule 16, Project Co will play either a lead or supporting role, working with the Authority to achieve the desired communications outcomes. These roles may be different for the different periods of the Project.
- 3.2 For all categories of communication, and whether communication occurs as part of a lead or supporting role, no advertising that involves payment by Project Co or the Authority to a third party may include Project Co, the Authority or the Project unless Project Co or the Authority obtains the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

4. LEAD RESPONSIBILITIES

The following is an overview of the responsibilities associated with lead roles:

- (a) developing a communications plan including all activities for which the party is identified as lead and having regard to the input of the supporting party, which communications plan will be updated on an annual basis;
- (b) approving communication tactics in response to specific circumstances, unless otherwise indicated in this Schedule 16;
- (c) implementing its role in approved plans;
- (d) achieving the outcomes set out in the annual communication plans;

- (e) maintaining constructive and positive relationships with the public and other stakeholders;
- (f) providing information, as required by the supporting party and its team members, to support communication and consultation activities;
- (g) as relevant to its lead role, organizing, attending and participating in community and other stakeholder consultation meetings and carrying out other communication activities to consult with and report back to the community and other stakeholders, which may include, depending on effectiveness, open houses, information updates, public displays, advertising, website creation, maintenance updates, construction notices, milestone celebration events, news releases and tours, and directing inquiries to the supporting party as appropriate;
- (h) assuming responsibility for costs related to carrying out lead responsibilities, in the amounts and in the manner outlined in approved strategies and plans;
- (i) monitoring whether the Design, Construction and Services are conducted in a manner consistent with strategic communication plans and advising the parties of any material inconsistency; and
- (j) having a trained media relations spokesperson available to respond to media requests.

5. SUPPORTING RESPONSIBILITIES

The following is an overview of the responsibilities associated with supporting roles:

- (a) assisting with the development and implementation of communication plans, including drafting of initial plans and other communication documents, such as maps and other presentation material for public communications, as directed by the lead party;
- (b) obtaining approval for communication tactics before implementation;
- (c) implementing its role in approved plans;
- (d) maintaining constructive and positive relationships with the public and other stakeholders;
- (e) providing information, as required by the lead party and its team members, to support communication and consultation activities;
- (f) as relevant to its supporting role, organizing, attending and participating in community and other stakeholder consultation meetings and carrying out other communication activities to consult with and report back to the community and other stakeholders, which may include, depending on effectiveness, open houses, information updates, public displays, advertising, website creation, maintenance updates, construction notices, milestone celebration events, news releases and tours, and directing inquiries to the lead party as appropriate;

- (g) assuming responsibility for costs related to carrying out supporting responsibilities, in the amounts and in the manner outlined approved strategies and plans; and
- (h) having a local, trained media relations spokesperson available to respond to media requests.

6. ALLOCATION OF LEAD AND SUPPORTING ROLES

The lead and supporting roles will be allocated as set out in the following table, unless otherwise required by the Authority in consultation with Project Co:

PERIOD	CATEGORY	LEAD	SUPPORTING
Construction Period	Communications Planning	Authority	Project Co
	Community Relations	Authority	Project Co
	Consultation	Authority	Project Co
	Media Relations	Authority	Project Co
	Emergency Communications	Authority	Project Co
Operating Period	Construction	Project Co	Authority
	Communications Planning	Project Co	Authority
	Community Relations	Project Co	Authority
	Consultation	Project Co	Authority
	Media Relations	Project Co	Authority
	Emergency Communications	Project Co	Authority

7. AUTHORITY RIGHT TO STEP IN AT PROJECT CO'S COST

If Project Co is required to take a lead role in accordance with Section 6 of this Schedule 16 but fails to comply with its obligations under this Schedule 16 in any material respect, the Authority may, upon 5 Business Days' notice to Project Co, which notice shall describe such failure, undertake and assume the lead role obligations of Project Co, at the expense of Project Co, including all direct costs of engaging third party assistance with communication responsibilities and all Direct Losses of the Authority in connection with fulfilling Project Co's obligations under this Schedule 16. If the Authority determines that Project Co has resumed compliance with its lead role obligations within 5 Business Days of receiving such notice from the Authority, the Authority shall not exercise its rights hereunder.

**SCHEDULE 17
KEY INDIVIDUALS**

Name of Key Individual	Capacity	Applicable Period of Term
Operations Co:		
Mike Lee	Project Co Lead	Construction Period and Operating Period
Shaun Greffard	Project Co's Design and Construction Representative	Effective Date to System Completion
Trent Edwards	Project Co's Operating Period Representative	Construction Period and Operating Period
Design-Builder:		
Dean Siegrist	Design-Builder Representative	Effective Date to System Completion
Barry Baker	Construction Lead	Effective Date to System Completion
Max Comstock	Design Lead	Effective Date to System Completion
Service Provider:		
Trent Edwards	Service Provider Representative	Operating Period
Harinder Gill	Service Provider Product Solutions Manager	Operating Period
Todd Richard	Service Provider Design Support	Construction Period and Operating Period
Jan Summarell	Operations Team Lead	Operating Period

**SCHEDULE 18
COMPLETION DOCUMENTS**

1. GENERAL

In this Schedule 18, “certified” will mean that the relevant document is certified (for and on behalf of the relevant corporation or other entity and without personal liability) by an authorized signatory of the relevant corporation or other entity as a true and complete copy in full force and effect and unamended as of the date of the relevant certificate.

2. DOCUMENTS TO BE DELIVERED BY PROJECT CO

Unless an original document is specifically referred to below, Project Co will deliver to the Authority a certified copy of each of the following documents in accordance with Section 2.2(a) of this Project Agreement:

- (a) an original of this Project Agreement, executed by Project Co;
- (b) the Senior Financing Agreements, executed by the parties to such agreements;
- (c) a certification from Project Co that the Senior Financing Agreements are unconditional and all conditions to the availability of funds to Project Co under the Senior Financing Agreements have been satisfied or waived, accompanied by evidence of the same;
- (d) the Lenders’ Remedies Agreement, executed by the parties to such agreement (other than the Authority);
- (e) the Project Implementation Agreement, executed by the parties to such agreement;
- (f) the Design-Build Agreement, executed by the parties to such agreement;
- (g) the Services Contract, executed by the parties to such agreement;
- (h) the following documents executed by the parties thereto:
 - (1) from the Design-Builder:
 - (A) a letter of credit as security for the Design-Builder’s obligations; and
 - (B) a guarantee from each of Ledcor Contractors Group Inc. and BVH, Inc. with respect to the Design-Build Agreement; and
 - (2) from the Service Provider:
 - (A) a letter of credit as security for the Service Provider’s obligations; and
 - (B) a guarantee from Ledcor Contractors Group Inc. with respect to the Services Contract,

in each case, which performance and other security will provide for a novation or assignment to the Authority if the Authority exercises its rights under the Design-Builder Collateral Agreement or the Service Provider Collateral Agreement, as applicable;

- (i) an original of the Design-Builder Collateral Agreement, executed by the parties to such agreement (other than the Authority);
- (j) an original of the opinion of counsel to the Design-Builder in respect of the Design-Build Agreement and the Design-Builder Collateral Agreement, such opinion to be in a form acceptable to the Authority and its counsel, acting reasonably;
- (k) an original of the opinion of counsel to each of Ledcor Contractors Group Inc. and BVH, Inc. in respect of the guarantee given in support of the Design-Build Agreement, such opinion to be in a form acceptable to the Authority and its counsel, acting reasonably;
- (l) an original of the Service Provider Collateral Agreement, executed by the parties to such agreement (other than the Authority);
- (m) an original of the opinion of counsel to the Service Provider in respect of the Services Contract and the Service Provider Collateral Agreement, such opinion to be in a form acceptable to the Authority and its counsel, acting reasonably;
- (n) an original of the opinion of counsel to Ledcor Contractors Group Inc. in respect of the guarantee given in support of the Services Contract, such opinion to be in a form acceptable to the Authority and its counsel, acting reasonably;
- (o) the interface agreement between the Design-Builder, the Service Provider and Operations Co, executed by the parties to such agreement;
- (p) a certificate of an authorized signatory of Project Co certifying true copies of the following:
 - (1) an authorizing resolution of the board of directors of Project Co;
 - (2) incumbency of the authorized signatories of Project Co; and
 - (3) the constating documents of Project Co;
- (q) a certificate from Project Co certifying that no injunction or restraining order or other decision, ruling or order of a court or administrative tribunal of competent jurisdiction being in effect which prohibits, restrains, limits or imposes conditions on the ability of Project Co to perform its obligations under this Project Agreement;
- (r) a certificate of an authorized signatory of Operations Co certifying true copies of the following:
 - (1) an authorizing resolution of the board of directors of Operations Co;

- (2) incumbency of the authorized signatories of Operations Co; and
- (3) the constating documents of Operations Co;
- (s) a certificate of an authorized signatory of each of the Design-Builder, Ledcor Contractors Group Inc. and BVH, Inc. certifying true copies of the following:
 - (1) an authorizing resolution of the board of directors of the Design-Builder, Ledcor Contractors Group Inc. or BVH, Inc., as applicable;
 - (2) incumbency of the authorized signatories of the Design-Builder, Ledcor Contractors Group Inc. or BVH, Inc., as applicable; and
 - (3) the constating documents of the Design-Builder, Ledcor Contractors Group Inc. or BVH, Inc., as applicable;
- (t) a certificate of an authorized signatory of each of the Service Provider and Ledcor Contractors Group Inc. certifying true copies of the following:
 - (1) an authorizing resolution of the board of directors of the Service Provider or Ledcor Contractors Group Inc., as applicable;
 - (2) incumbency of the authorized signatories of the Service Provider or Ledcor Contractors Group Inc., as applicable; and
 - (3) the constating documents of the Service Provider or Ledcor Contractors Group Inc., as applicable;
- (u) a certificate of good standing for Project Co;
- (v) a statement of registration in the Commonwealth of Kentucky for Operations Co, the Design-Builder and the Service Provider;
- (w) a copy of an insurance binder or certificates of insurance for all policies required to be taken out by or on behalf of Project Co for the Construction Period in accordance with this Project Agreement;
- (x) an original notice of appointment of Representatives to be appointed by Project Co under this Project Agreement;
- (y) an original of the opinion from counsel to Project Co that Project Co exists, has the power and capacity to enter into this Project Agreement, the Project Implementation Agreement, the Senior Financing Agreements, the Lenders' Remedies Agreement, the Design-Builder Collateral Agreement and the Service Provider Collateral Agreement, and that such documents have been duly authorized, executed and delivered by Project Co, create valid and binding obligations, and are enforceable against Project Co in accordance with their terms, in a form acceptable to the Authority and its counsel, acting reasonably, and including originals of relevant certificates and other documents relied upon by Project Co's counsel;

- (z) the certificates and opinions required to be delivered by Project Co pursuant to the Senior Financing Agreements, including, without limitation, the Borrower Tax Certificate referred to in Section 4.14 of this Project Agreement;
- (aa) a certificate from Project Co certifying Schedule 15 [Financial Model], and the electronic version of the same, are true and correct copies of the Financial Model;
- (bb) an audit of the Financial Model; and
- (cc) such other documents as the parties may agree, each acting reasonably.

3. DOCUMENTS TO BE DELIVERED BY THE AUTHORITY

Unless an original document is specifically referred to below, the Authority will deliver to Project Co a certified copy of each of the following documents in accordance with Section 2.2(b) of this Project Agreement:

- (a) an original of this Project Agreement, executed by the Authority;
- (b) an original copy of the Lenders' Remedies Agreement, executed by the Authority;
- (c) an original of the Design-Builder Collateral Agreement, executed by the Authority;
- (d) an original of the Service Provider Collateral Agreement, executed by the Authority;
- (e) a certificate of an authorized signatory of the Authority certifying:
 - (1) the Authority has taken all necessary action to authorize the execution and delivery of, and the performance of its obligations under, this Project Agreement, the Lenders' Remedies Agreement, the Design-Builder Collateral Agreement and the Service Provider Collateral Agreement; and
 - (2) the identity and signature of the authorized delegate(s) of the Authority;
- (f) a certificate from the Authority certifying that no injunction or restraining order or other decision, ruling or order of a court or administrative tribunal of competent jurisdiction being in effect which prohibits, restrains, limits or imposes conditions on the ability of the Authority to perform its obligations under this Project Agreement;
- (g) an original notice of appointment of the Representatives to be appointed by the Authority under this Project Agreement;
- (h) an original of the opinion from counsel to the Authority that the Authority has the power and capacity to enter into this Project Agreement, the Lenders' Remedies Agreement, the Design-Builder Collateral Agreement and the Service Provider Collateral Agreement, and that such documents have been duly authorized, executed and delivered by the Authority, create valid and binding obligations, and

are enforceable against the Authority in accordance with their terms, in a form acceptable to Project Co and its counsel and Operations Co and its counsel, in each case, acting reasonably, and including originals of relevant certificates and other documents relied upon by the Authority's counsel;

- (i) the certificates and opinions required to be delivered by the Authority pursuant to the Senior Financing Agreements, including, without limitation, the Commonwealth Tax Certificate referred to in Section 3.8 of this Project Agreement; and
- (j) such other documents as the parties may agree, each acting reasonably.

**SCHEDULE 19
MARKET TESTING PROCEDURE**

1. DEFINITIONS

In this Schedule 19, in addition to the terms defined in Schedule 1 [Definitions and Interpretation]:

“Draft Market Testing Proposal” has the meaning given in Section 3.2(a) of this Schedule 19;

“Market Testing” means the process described in Section 3 of this Schedule 19;

“Market Testing Date” means the date that is 30 months prior to the tenth anniversary of the Effective Date and the date that is 30 months prior to the twentieth anniversary of the Effective Date;

“Market Testing Meeting” means a meeting convened in accordance with Section 3 of this Schedule 19;

“Market Testing Proposal” means the final version of the Draft Market Testing Proposal, as agreed by the parties or as determined, in either case, in accordance with this Schedule 19;

“Preferred Service Tenderer” means, following a Market Testing, the Service Tenderer selected to provide the Services and undertake the relevant System Refresh in accordance with the provisions of Section 3.5 of this Schedule 19;

“Project Co Proposal” has the meaning given in Section 3.1(b) of this Schedule 19;

“Project Co Proposal Validity Period” has the meaning given in Section 3.1(b) of this Schedule 19;

“Prospective Service Tenderers” means those persons who express an interest in being requested, or are identified by the parties pursuant to Section 3.3(a) of this Schedule 19, to prepare and submit tenders for the Services and the relevant System Refresh;

“Qualifying Service Tender” means a tender received from a Service Tenderer which complies with the Service Tender Requirements;

“Service Tender Requirements” means the form and requirements of the tender documents to be sent to Service Tenderers as agreed or determined in accordance with the provisions of this Schedule 19;

“Service Tenderers” means those of the Prospective Service Tenderers selected to submit tenders in accordance with Section 3.3 of this Schedule 19;

“Service Tender Validity Period” means the period within which tenders from the Service Tenderers are to be valid, which period shall exceed the Project Co Proposal Validity Period; and

“System Refresh Baseline Requirements” has the meaning given in Section 3.1(a)(2) of this Schedule 19.

2. GENERAL OBLIGATIONS

2.1 Market Testing Dates

- (a) The Market Testing of the Services and the relevant System Refresh shall be the responsibility of Project Co and shall be carried out in accordance with this Schedule 19 so that the Preferred Service Tenderer shall, if appointed to act as the service provider for purposes of providing the Services and undertaking the relevant System Refresh, commence provision of the Services on (i) the earlier of completion of the First System Refresh (provided that such date is not earlier than the date that is 10 years from the Effective Date) and the date that is 11 years from the Effective Date to the earlier of completion of the Second System Refresh and the date that is 21 years from the Effective Date or (ii) the earlier of completion of the Second System Refresh and the date that is 21 years from the Effective Date to the Expiration Date, as applicable, and the relevant System Refresh on the relevant Market Testing Date (or such other date as the parties may agree in accordance with the transition provisions contemplated in Section 3.1(a)(3)).
- (b) Subject to the provisions of Section 8 (Supervening Events), if, for any reason, the applicable Market Testing is not complete on the relevant Market Testing Date, Project Co shall remain responsible to ensure the continued provision of the Services (but not, for greater certainty, the relevant System Refresh), and the Authority shall be responsible to continue to pay Project Co as provided in this Project Agreement for the continued provision of the Services pending completion of the applicable Market Testing. The pricing of such Services shall, pending the establishment of new pricing as contemplated under this Schedule 19, be the same pricing as prevailed before the relevant Market Testing commenced and shall be paid in accordance with Schedule 8 [Payments].

3. MARKET TESTING

3.1 Preparing for Market Testing

- (a) At least 24 months before each Market Testing Date, the parties shall hold Market Testing Meetings in respect of the Services and the First System Refresh or the Second System Refresh, as applicable, to:
 - (1) review the Services Specifications and other applicable provisions of this Project Agreement related to the Services, including, without limitation, the provision of Schedule 5 [Insurance Requirements], and agree on appropriate amendments to such provisions having reference to Customary Industry Practice and prevailing market standards in effect at that time;
 - (2) establish the specifications for the First System Refresh or the Second System Refresh, as applicable, having reference to the existing Services Specifications and prevailing market standards in effect at that time (the “**System Refresh Baseline Requirements**”);

- (3) agree on appropriate transition provisions in the event that the Authority does not accept a Project Co Proposal and a Preferred Service Tenderer is appointed to provide the Services and undertake the relevant System Refresh; and
 - (4) agree on revised Service Specifications and specifications for the First System Refresh or the Second System Refresh, as applicable, within 12 months of the initial Market Testing Date, including the preparation of the Draft Market Testing Proposal.
- (b) If the parties agree on revised Services Specifications and the System Refresh Baseline Requirements for the First System Refresh or Second System Refresh, as applicable, Project Co shall, within 20 Business Days of such agreement, submit a proposal to the Authority (a "**Project Co Proposal**") setting out the price at which the Service Provider then providing the Services would agree to continue providing the Services from (i) the earlier of completion of the First System Refresh (provided that such date is not earlier than the date that is 10 years from the Effective Date) and the date that is 11 years from the Effective Date to the earlier of completion of the Second System Refresh and the date that is 21 years from the Effective Date or (ii) the earlier of completion of the Second System Refresh and the date that is 21 years from the Effective Date to the Expiration Date, as applicable, and undertake the First System Refresh or Second System Refresh, as applicable, including, without limitation, the price of any insurances to be provided by either Operations Co or the Service Provider in respect of such Services and the First System Refresh or Second System Refresh, as applicable, which proposal will remain valid for a period of 60 days following delivery thereof (the "**Project Co Proposal Validity Period**").
 - (c) The Authority will notify Project Co and Operations Co within 15 Business Days of receipt a Project Co Proposal whether or not such Project Co Proposal is acceptable to the Authority.
 - (d) If the Project Co Proposal is acceptable to the Authority, then Project Co shall confirm the appointment of the Service Provider then providing the Services to continue providing the Services at the pricing set out in the Project Co Proposal and undertake the First System Refresh or Second System Refresh, as applicable, for the price set out set out in the Project Co Proposal.
 - (e) If the Project Co Proposal is not acceptable to the Authority, then the parties shall hold Market Testing Meetings to discuss and seek to agree upon the Service Tender Requirements, which shall be in sufficient detail to allow Project Co to determine the Preferred Service Tenderer and shall include, without limitation:
 - (1) the delivery date by which a Qualifying Service Tenderer is required to submit a Qualifying Service Tender;
 - (2) a statement of the Service Tender Validity Period;
 - (3) details of the tender evaluation criteria;
 - (4) the information Service Tenderers are required to provide; and

- (5) details of the required financial capacity and performance security/guarantees to be provided to support the Preferred Service Tenderer's obligations.
- (f) Any tender evaluation criteria established by Project Co and made available to the Service Tenderers as part of the Service Tender Requirements must be objective and impartial.
- (g) Project Co shall provide at least one month's prior written notice to the Authority of the time, place and agenda for the first Market Testing Meeting. Thereafter, each subsequent Market Testing Meeting shall be convened on not less than 7 days' notice, with such notice identifying the agenda items to be discussed at the Market Testing Meeting. In an emergency, a Market Testing Meeting may be called at any time on such notice as may be reasonable in the circumstances. The parties shall hold Market Testing Meetings as often as necessary.
- (h) If Project Co and the Authority are unable to agree on any matter referred to in this Section 3.1, either party may refer the matter for resolution in accordance with Schedule 13 [Dispute Resolution Procedure].

3.2 Market Testing Proposal

- (a) Project Co shall prepare and deliver to the Authority, no later than 12 months before the relevant Market Testing Date, a draft market testing proposal (the "**Draft Market Testing Proposal**") describing in detail Project Co's proposals for the Market Testing. The Draft Market Testing Proposal shall describe all of the matters referred to in, and agreed pursuant to, Section 3.1 of this Schedule 19 and the form of contract which the Preferred Service Tenderer will be required to accept.
- (b) The Authority may, within 10 days of the Authority's receipt of the Draft Market Testing Proposal, provide comments and request amendments to the Draft Market Testing Proposal.
- (c) If Project Co and the Authority are unable to agree on any matter relating to the Draft Market Testing Proposal within 30 days of the Authority's receipt of the Draft Market Testing Proposal, either party may refer the matter for resolution in accordance with Schedule 13 [Dispute Resolution Procedure].
- (d) It shall be a principle of the Market Testing Proposal that, unless otherwise agreed by the parties, the allocation of risk to the Preferred Service Tenderer, if appointed to act as the service provider, shall not be materially greater or materially less than such allocation to the service provider whom the Preferred Service Tenderer is to replace.

3.3 Selection of Service Tenderers

- (a) Project Co shall be responsible for compiling the list of Prospective Service Tenderers, which may include the current Service Provider.

- (b) Project Co shall be responsible for selecting the Service Tenderers from the list of Prospective Service Tenderers on the basis of relevant criteria, including:
 - (1) the financial standing of the Prospective Service Tenderers;
 - (2) the technical, managerial and other relevant experience and ability of the Prospective Service Tenderers, taking into account any relevant customer references; and
 - (3) any other basis or Service Tender Requirements identified pursuant to Section 3.1(e) of this Schedule 19.
- (c) Project Co shall not select any person as a Prospective Service Tenderer if such person does not, or could not reasonably be considered to, comply with and meet any of the criteria referred to in Section 3.3(b) of this Schedule 19.

3.4 Service Tendering Process

- (a) Project Co shall be responsible for managing and coordinating the Market Testing in an efficient and fair manner in accordance with the Market Testing Proposal (and in particular, but without limitation, the Service Tender Requirements) and shall ensure that only Service Tenderers selected in accordance with this Schedule 19 are invited to submit tenders.
- (b) All tenders will be assessed on the basis of relevant criteria, including their compliance with the Service Tender Requirements and the value for money that the tenders represent for the Authority.
- (c) Project Co shall bear all costs, fees and expenses associated with Market Testing.
- (d) The Authority may, at its own cost, appoint a monitor for the purpose of monitoring and reporting to the Authority on Project Co's compliance with all requirements for Market Testing. Such monitor shall be entitled to attend all meetings and processes relating to Market Testing, including, without limitation, evaluation meetings and processes, and inspect copies of all the tender documentation, bids and evaluation documentation.
- (e) In the event that Project Co does not comply with all requirements for Market Testing, then, without limiting any other remedies of the Authority under this Project Agreement or otherwise, Project Co shall re-perform the relevant Market Testing in accordance with such requirements.

3.5 Preferred Service Tenderers

- (a) Following expiry of the Service Tender Validity Period, Project Co shall, subject to the provisions of this Section 3.5, determine which Service Tenderer (the "**Preferred Service Tenderer**") offers the Qualifying Service Tender in respect of the Services and the relevant System Refresh, that represents, as the case may be, the best value for money for the Authority.

- (b) Immediately upon making the aforesaid determination of the Preferred Service Tenderer, Project Co shall supply to the Authority a copy of its tender evaluation, together with sufficient supporting information concerning the tender evaluation to enable the Authority to analyze and understand the basis for Project Co's determination.
- (c) If the Authority does not agree with Project Co's determination in the case of any Qualifying Service Tender, the Authority may, within 30 days of being provided with the tender evaluation, dispute such determination and, if the parties do not resolve such Dispute within a further 30 days, the Dispute shall be referred for resolution in accordance with Schedule 13 [Dispute Resolution Procedure].

3.6 Appointment

- (a) Project Co shall ensure that the Preferred Service Tenderer is appointed to provide and enter into contracts to provide the Services and undertake the relevant System Refresh on the basis set out in its Qualifying Service Tender.
- (b) Where Project Co believes that only one Qualifying Service Tender is likely to be submitted, or where only one Qualifying Service Tender is in fact submitted, then Project Co will provide notice thereof to the Authority. If the parties conclude that such Market Testing was adequate, then Project Co shall confirm the appointment of such Qualifying Service Tender to provide the Services and the relevant System Refresh.
- (c) Project Co shall provide any Service Tenderer which is unsuccessful in being selected as a Preferred Service Tenderer with an appropriate explanation of the reasons behind its non-selection, if so requested by the party in question.

3.7 Adjustments to Project Agreement

- (a) On the acceptance of a Project Co Proposal or appointment of a Preferred Service Tenderer, the Project Agreement will be amended to reflect the revised Services Specifications and the System Refresh Baseline Requirements for the First System Refresh or Second System Refresh, as applicable, and any other changes necessary to reflect the Market Testing.
- (b) Without limiting the generality of the foregoing, the Availability Payments shall be adjusted in accordance with Schedule 8 [Payments] and Schedule 8 [Payments] shall be amended to reflect payment by the Authority for the relevant System Refresh.
- (c) Any alteration to the Availability Payments or Schedule 8 [Payments] shall take effect on the earlier of completion of the First System Refresh (provided that such date is not earlier than the date that is 10 years from the Effective Date) and the date that is 11 years from the Effective Date or the earlier of completion of the Second System Refresh and the date that is 21 years from the Effective Date, as applicable.

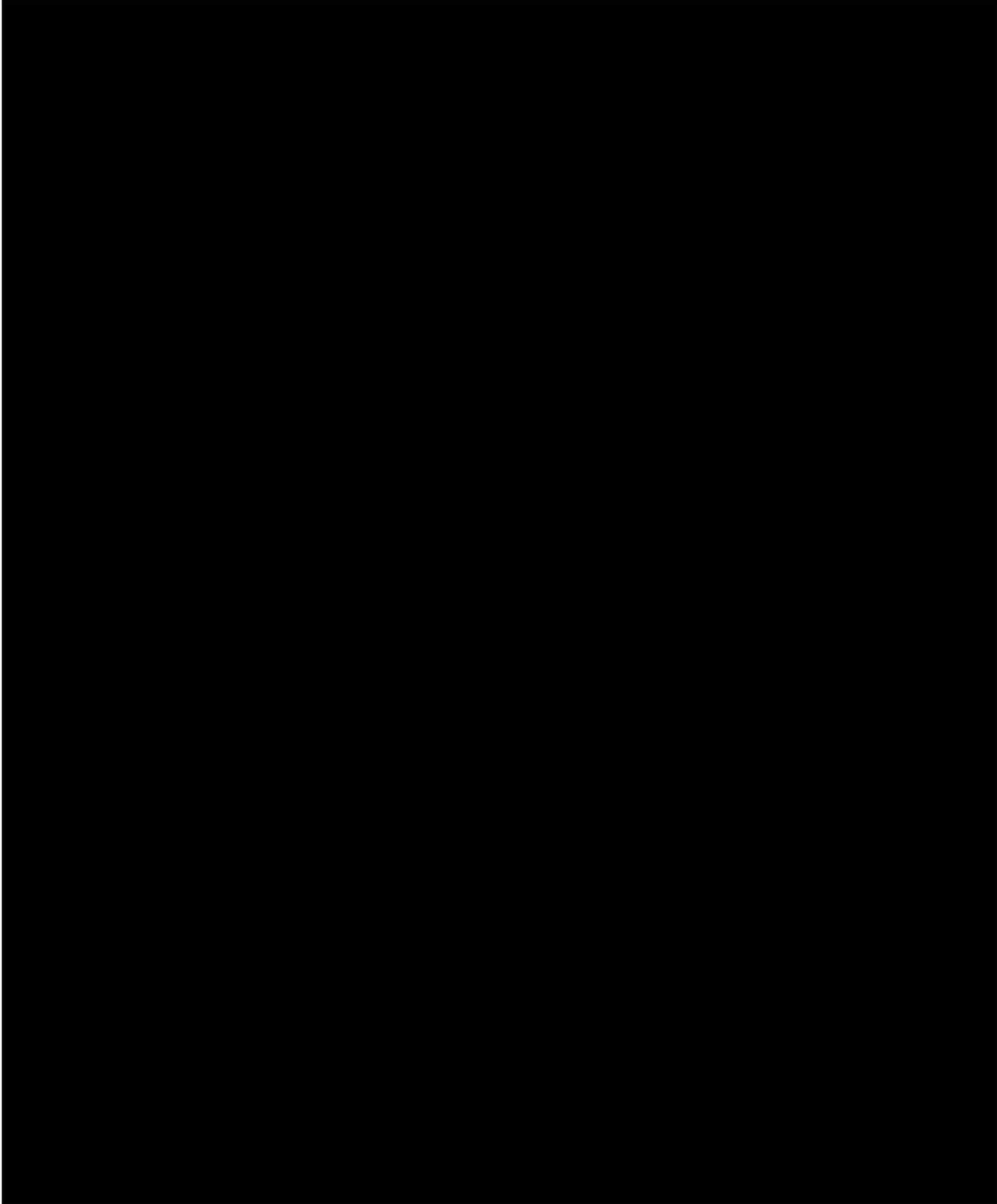
3.8 Information Requirements

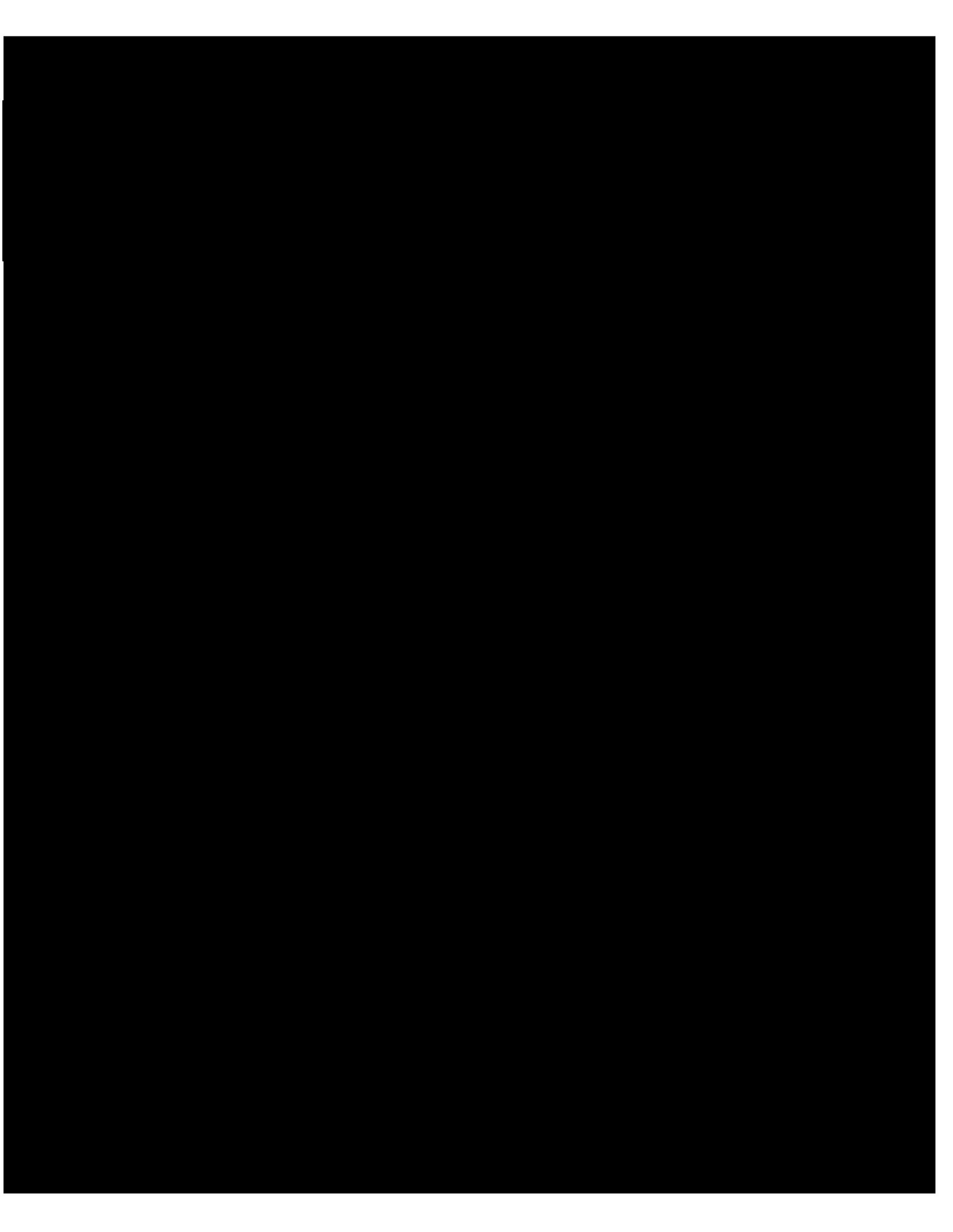
- (a) Without prejudice to any of Project Co's other obligations under this Project Agreement, including, without limitation, under Schedule 14 [Records and Reports], Project Co shall:
- (1) maintain a full record and audit trail of each Market Testing and make all such records, including details of all tenders received, available for inspection by the Authority, the Authority Representative and other authorized representatives on reasonable notice from the Authority;
 - (2) provide to the Authority, in a comprehensive and accurate manner, all information necessary to enable the Authority to review and assess all matters relating to the Market Testing; and
 - (3) certify to the Authority within 30 days of expiry of the Service Tender Validity Period that there has been full compliance with all requirements relating to ensuring equality of information provided to, and treatment of, Service Tenderers.

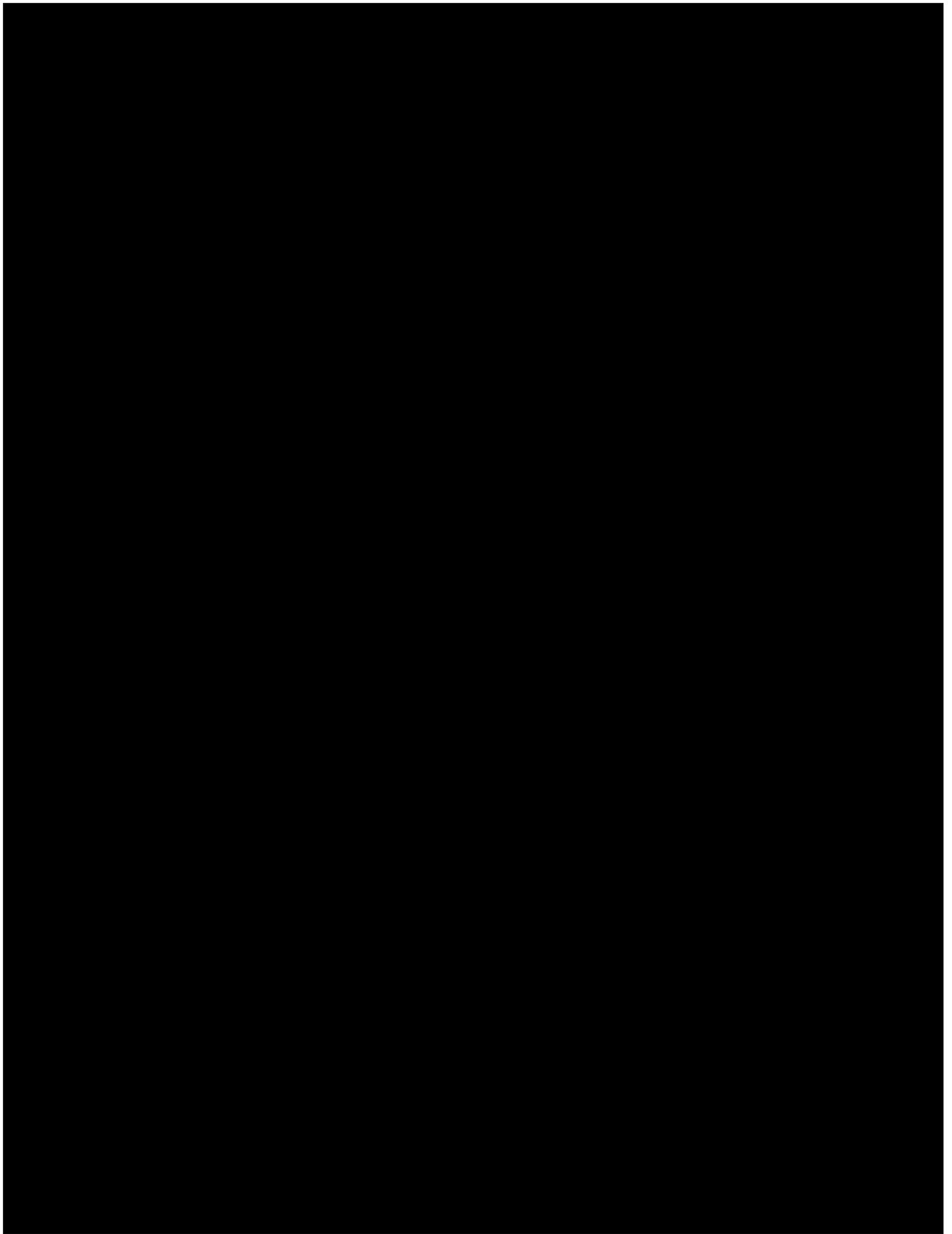
**SCHEDULE 20
THIRD PARTY INFRASTRUCTURE TERM SHEETS**

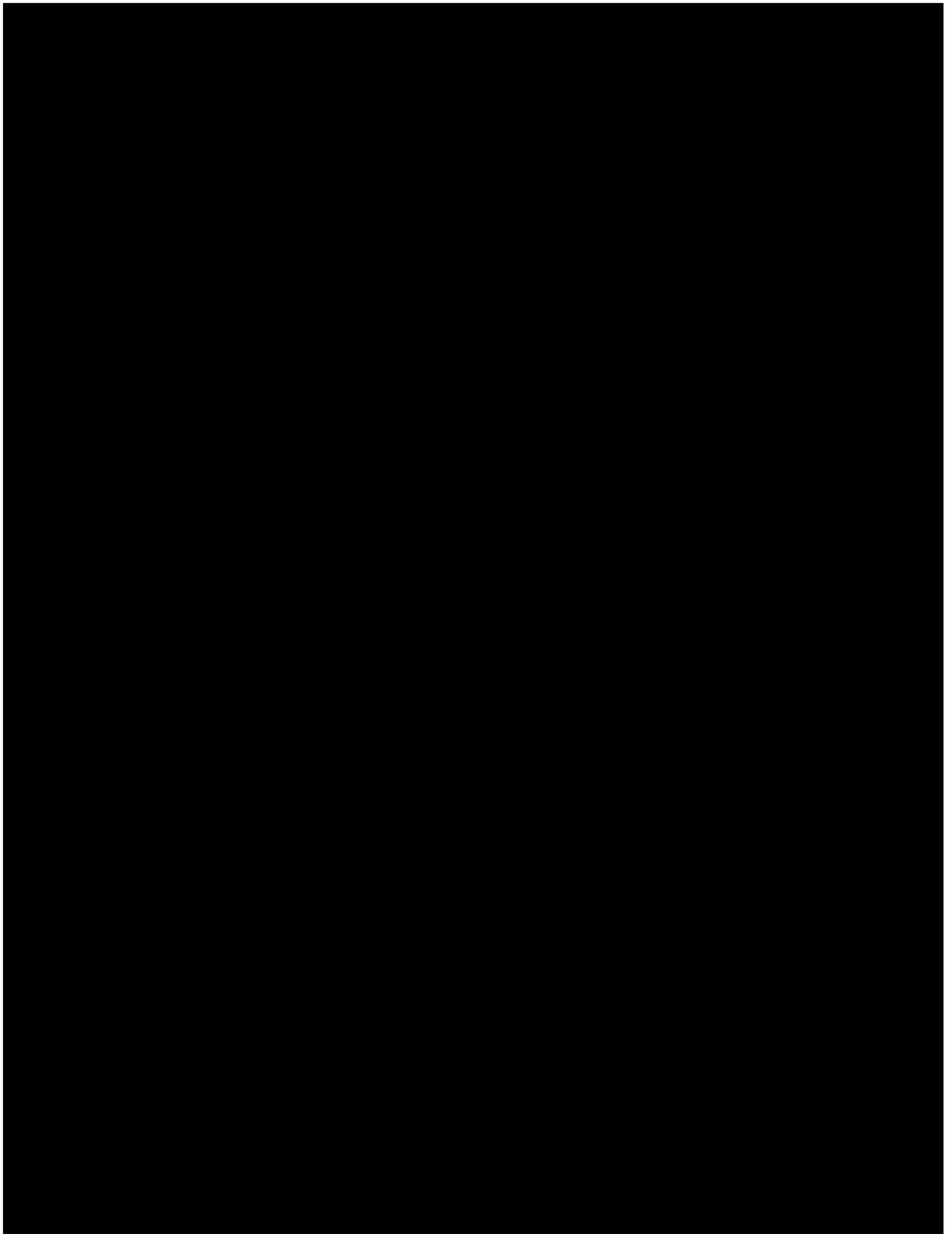
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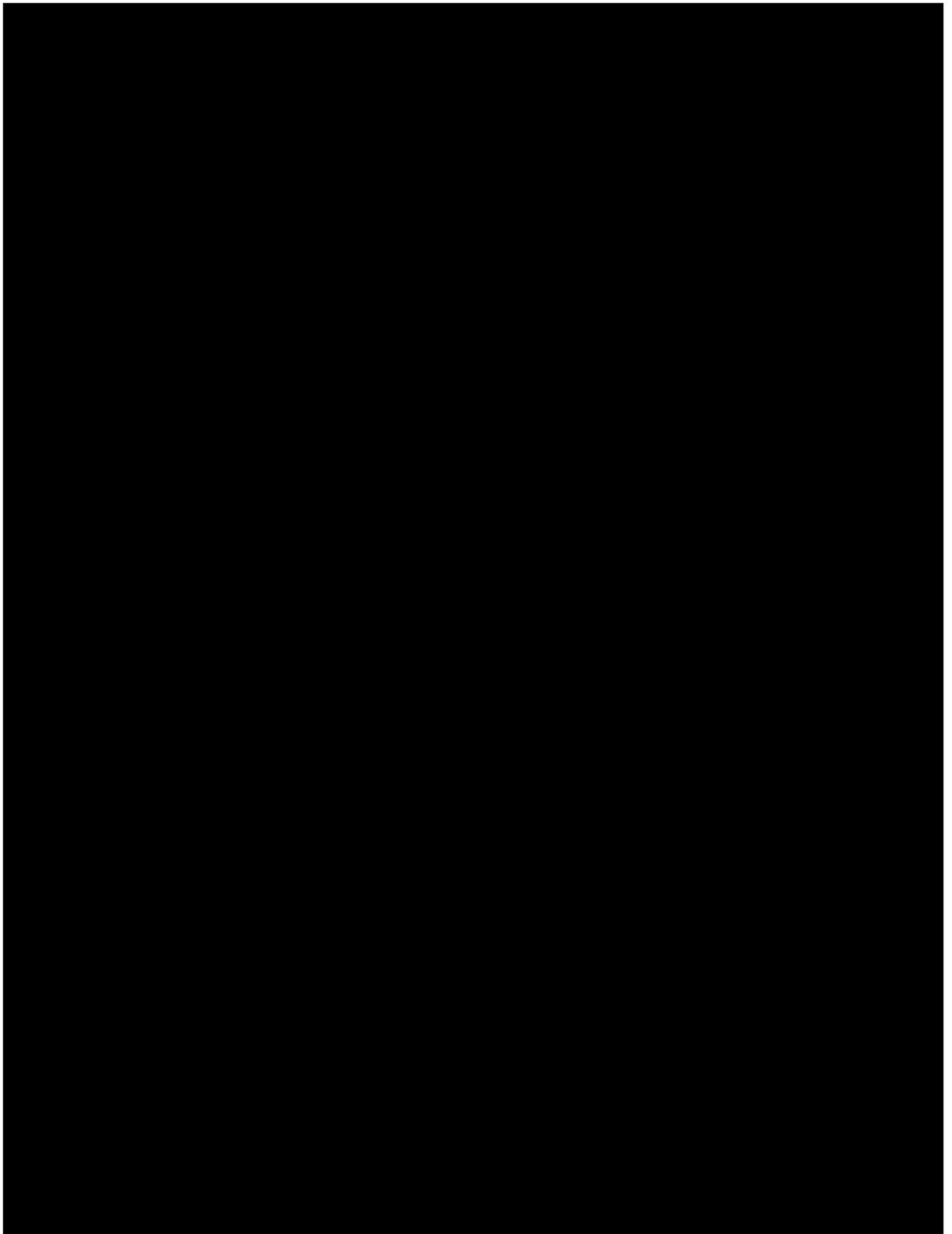
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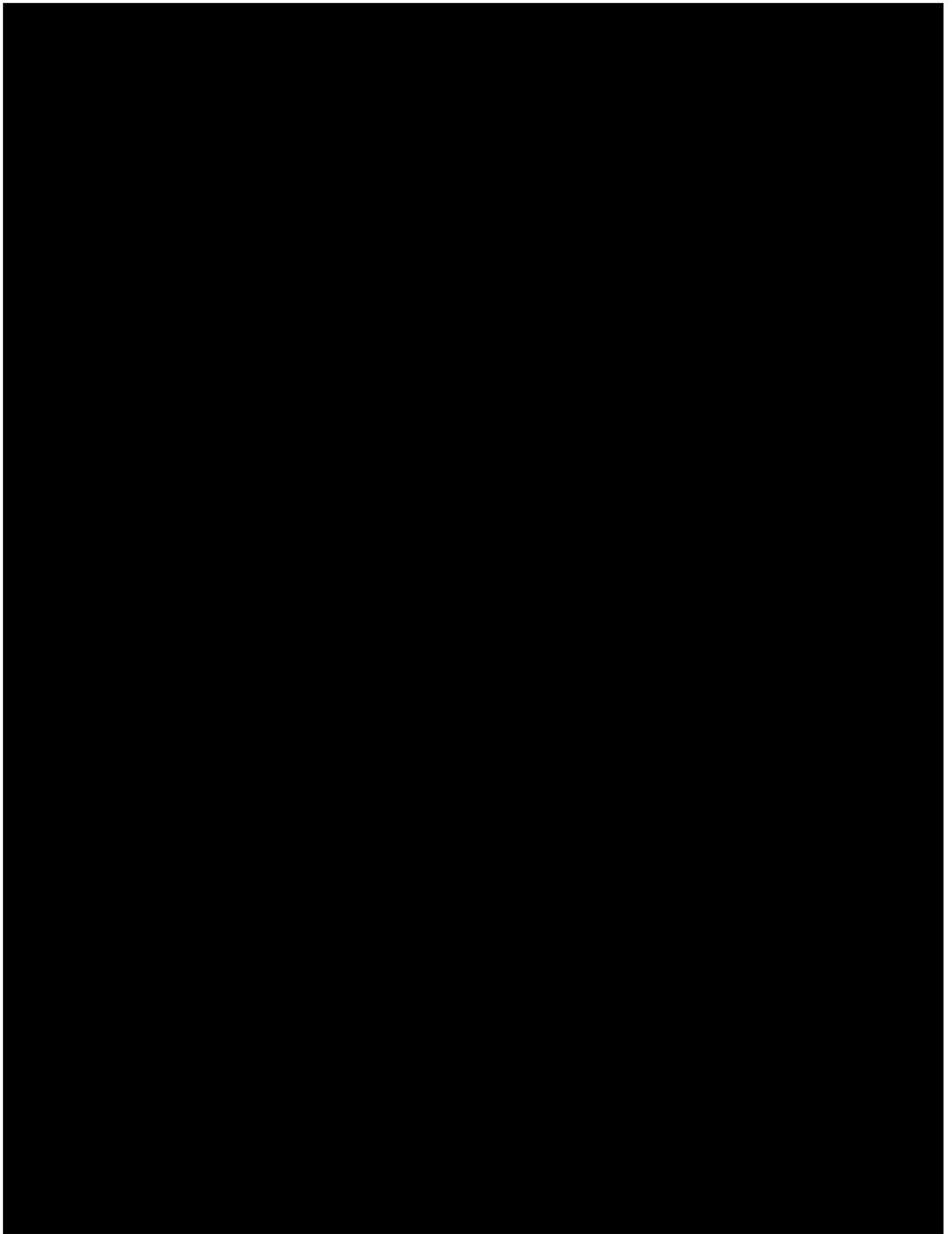


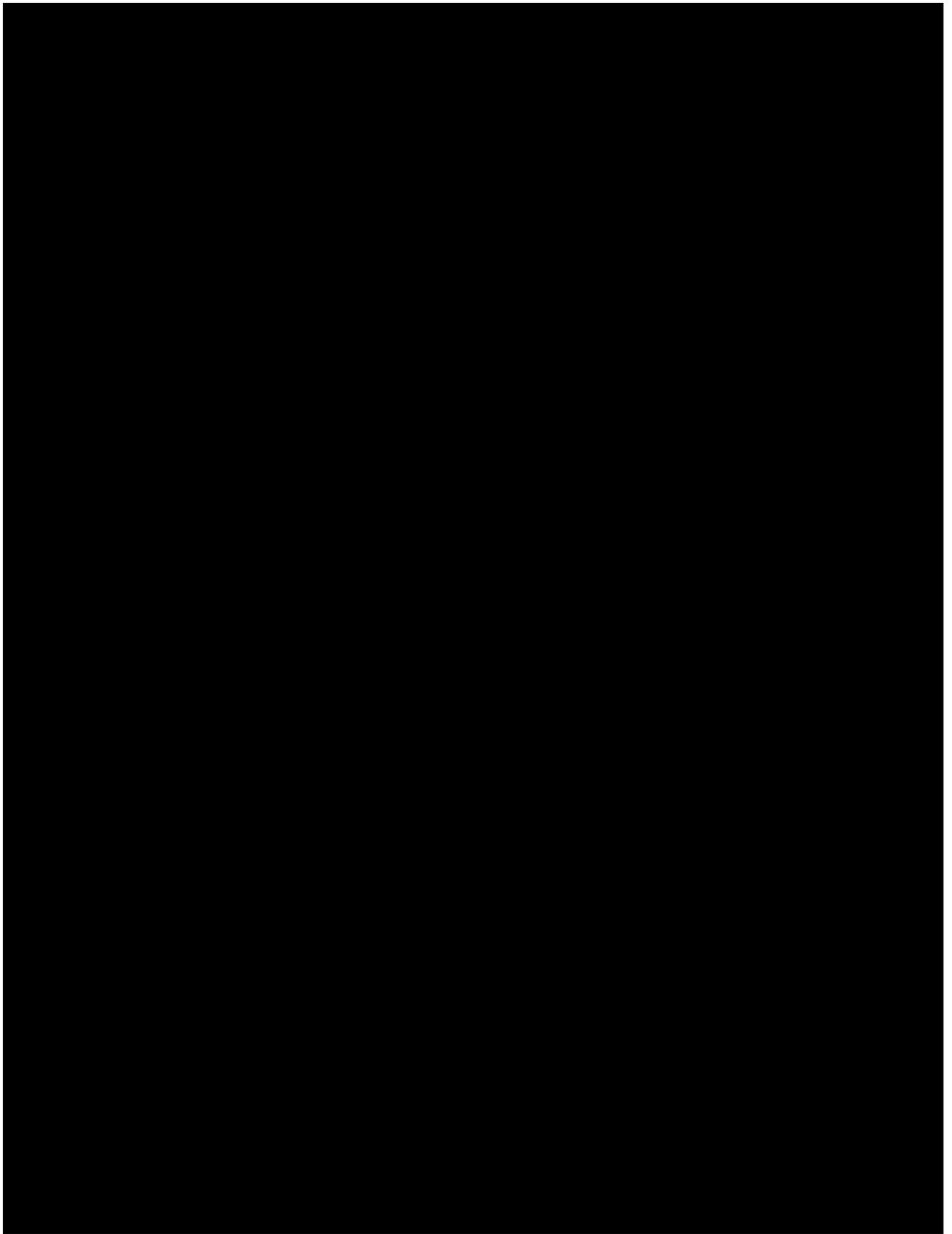


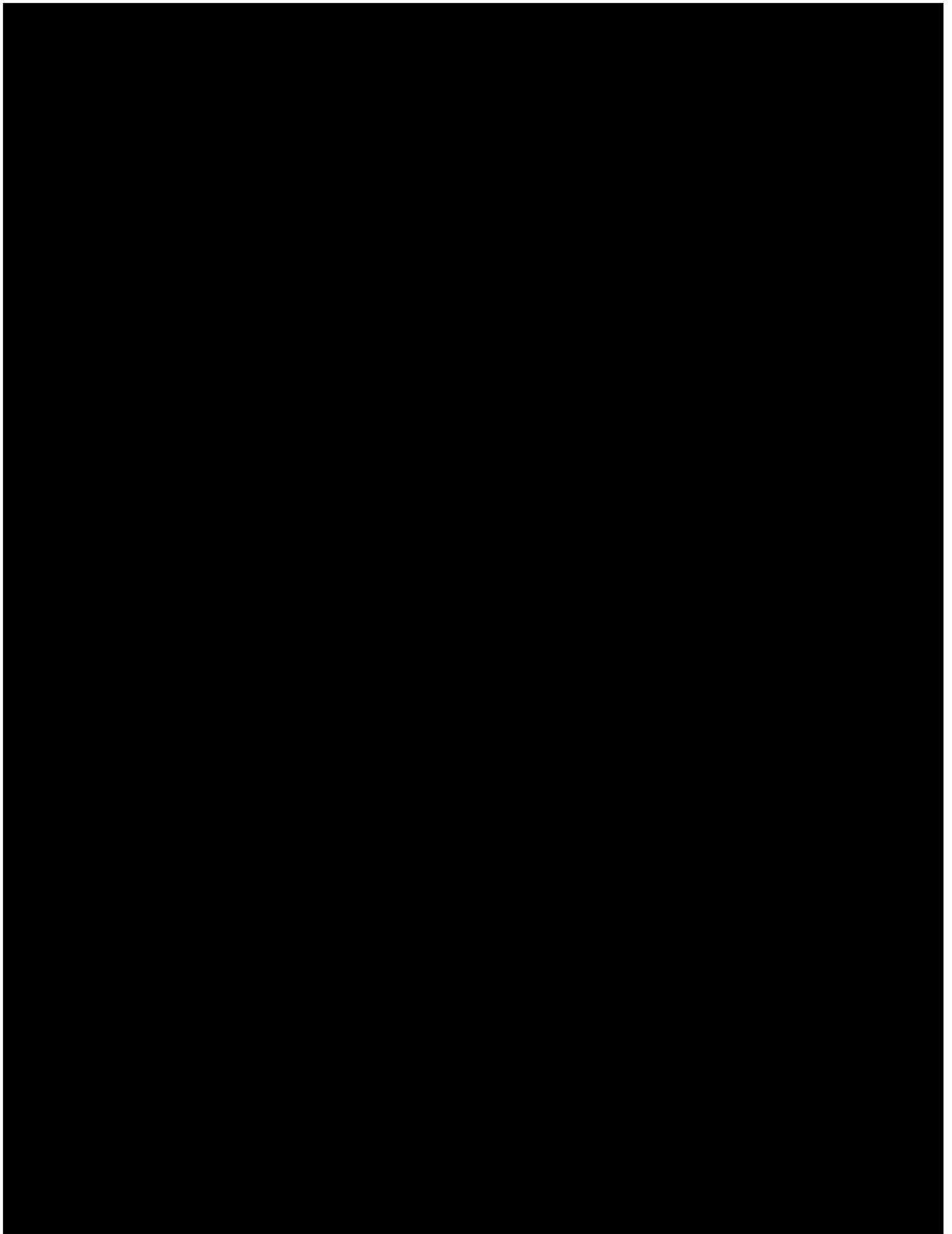


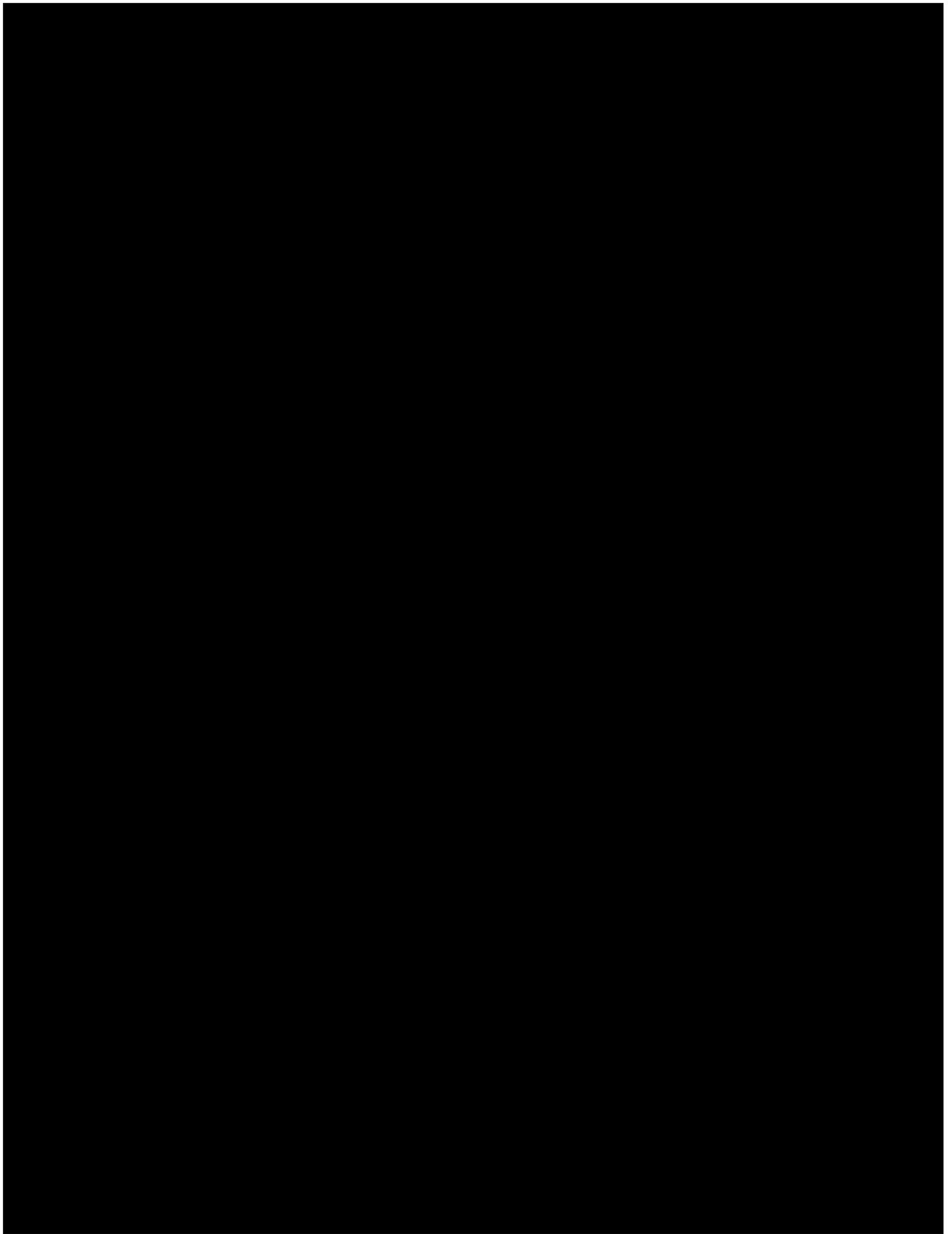


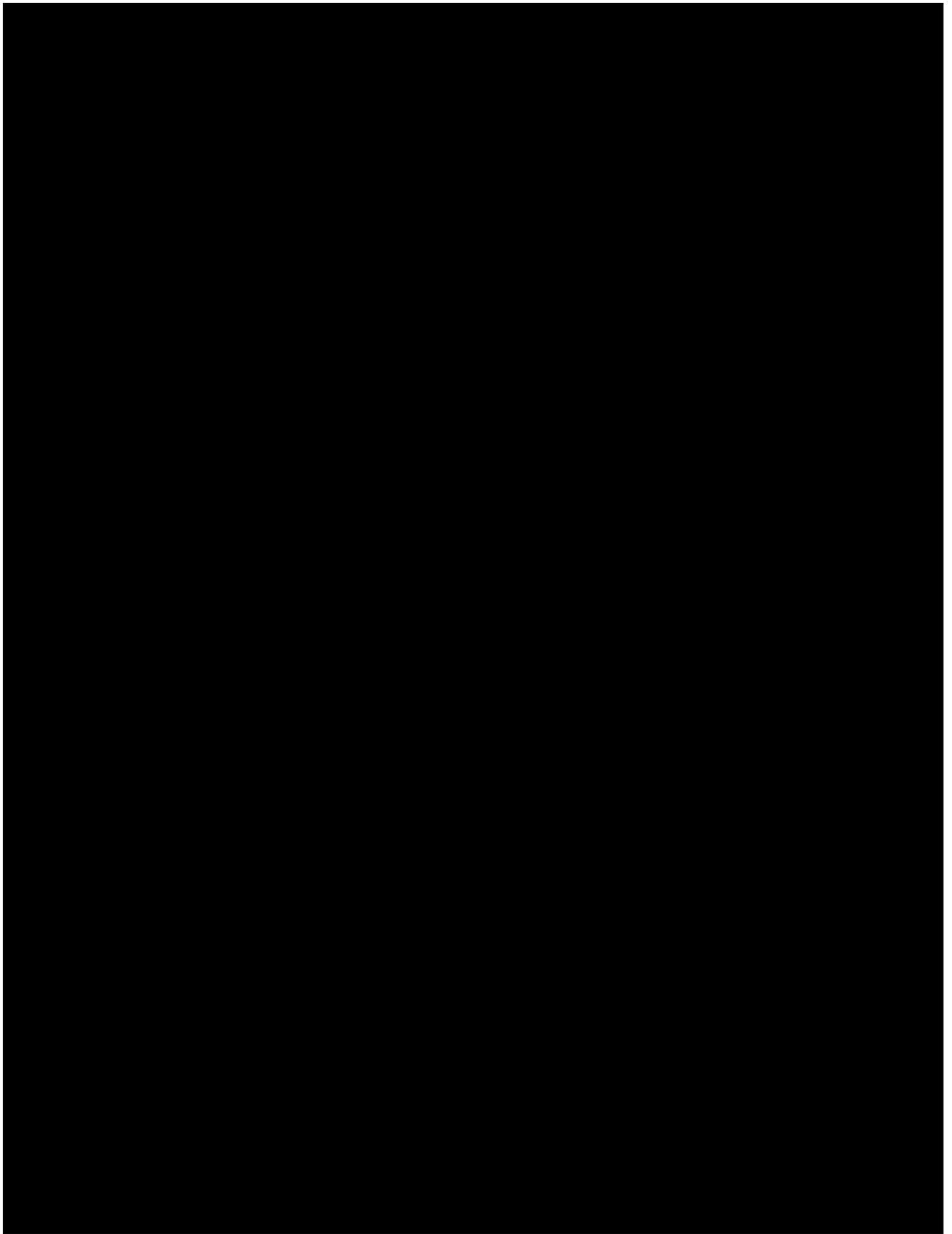


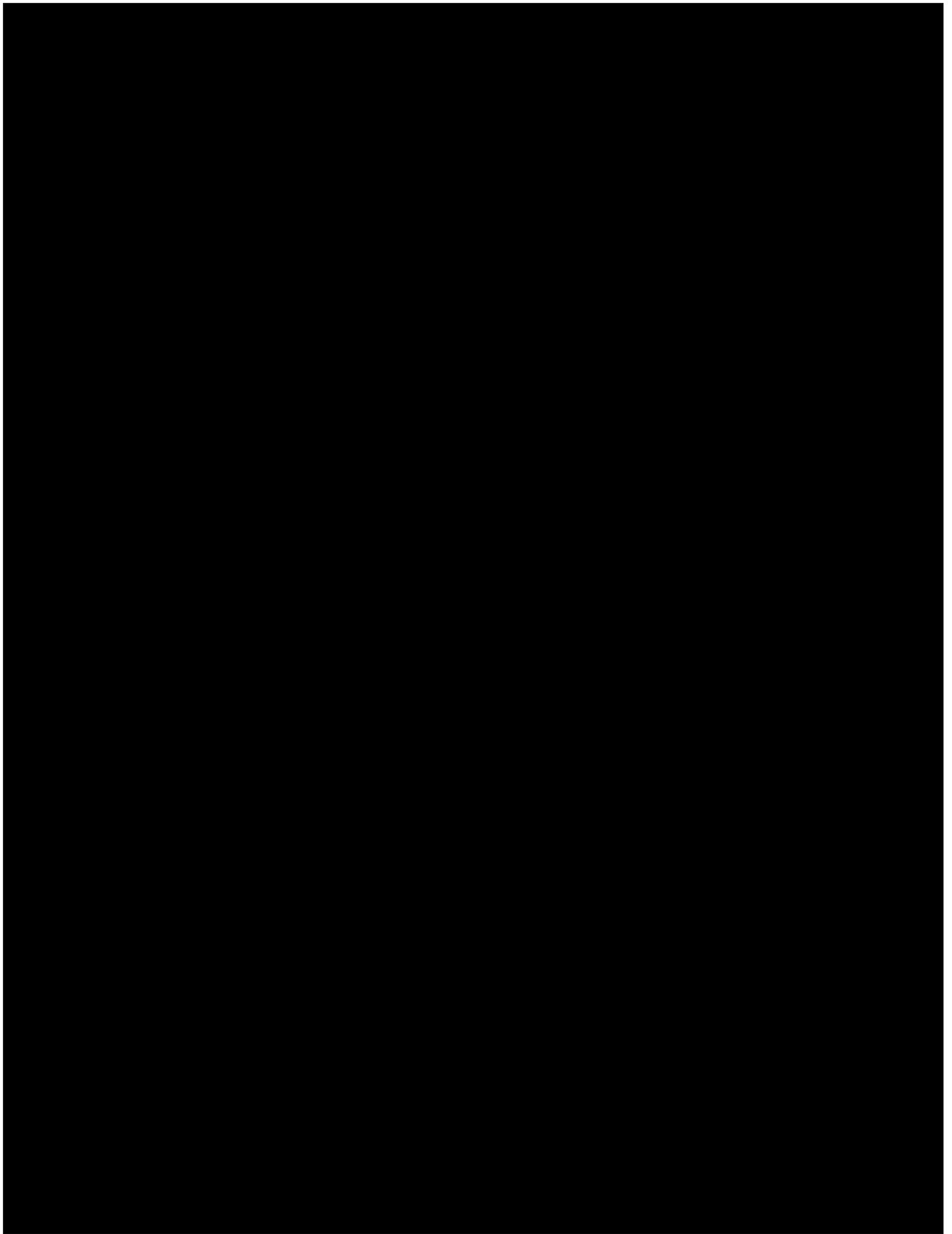


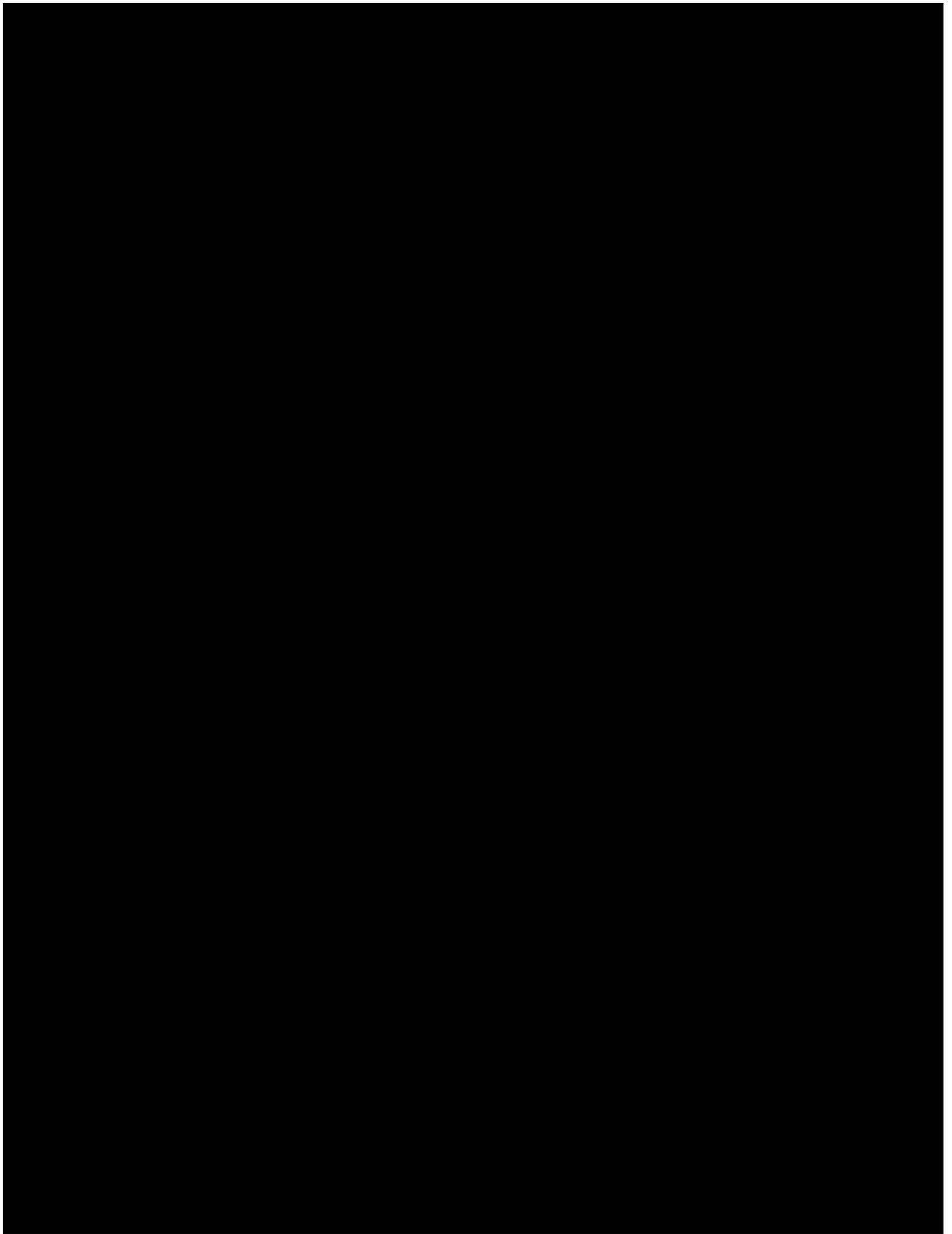


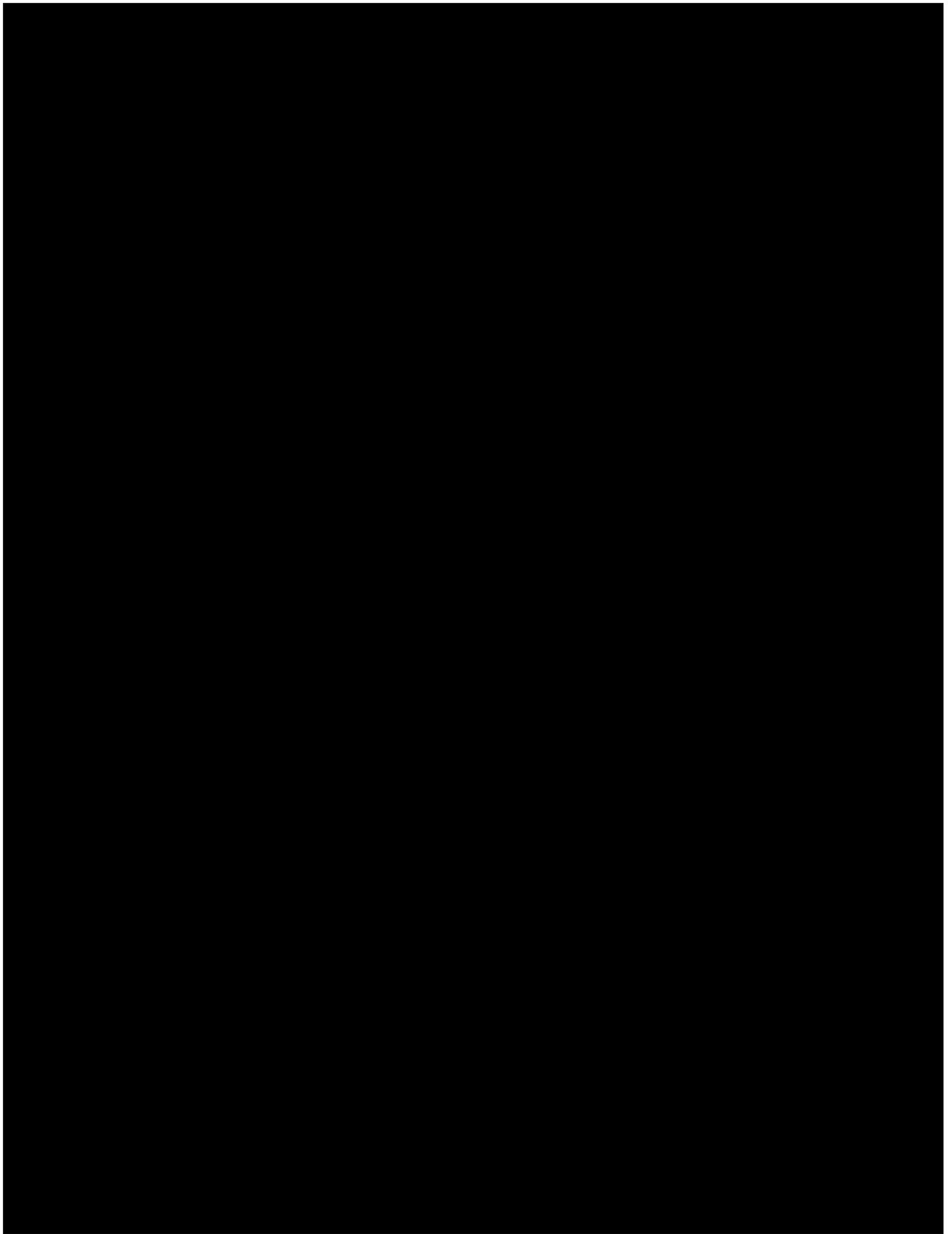


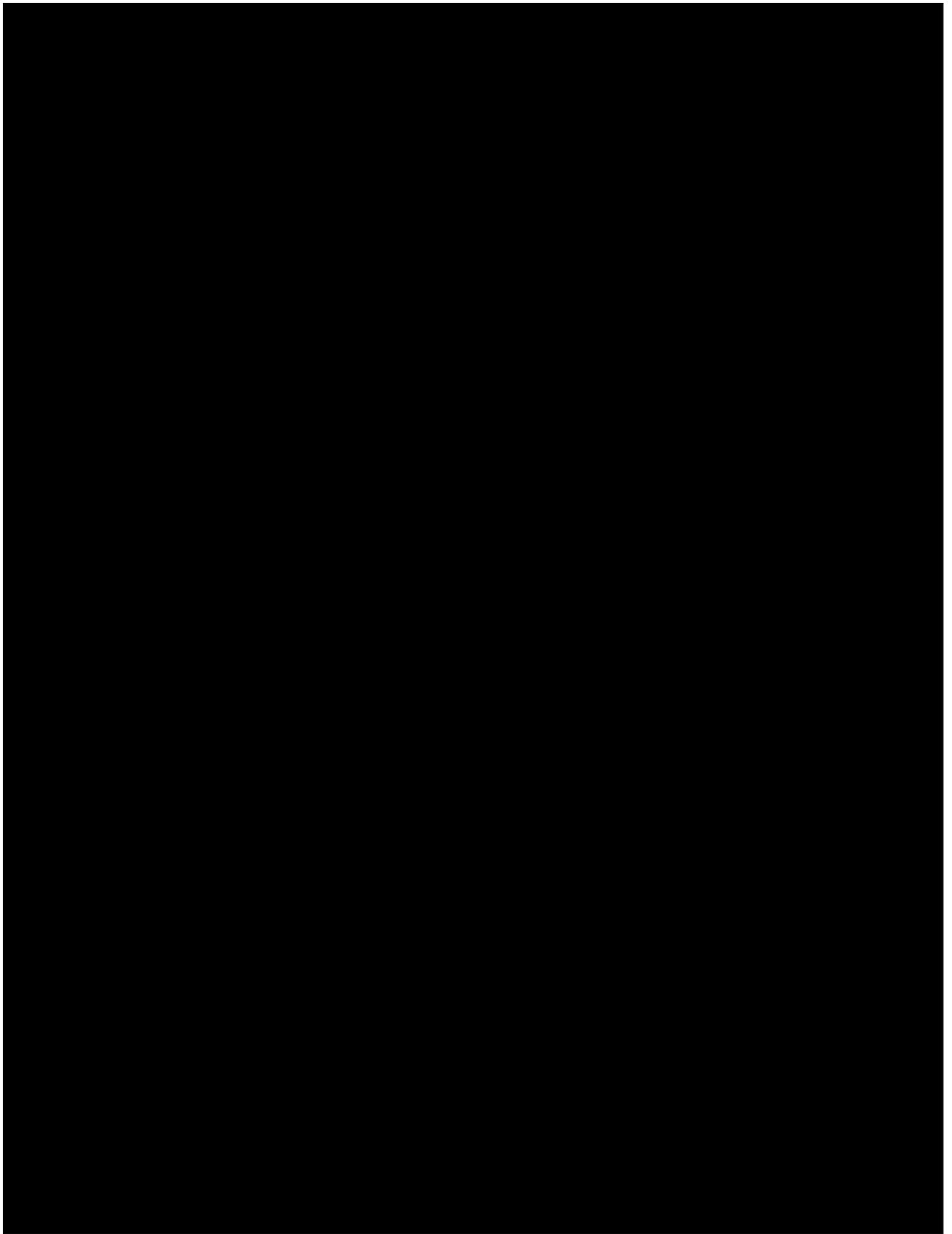


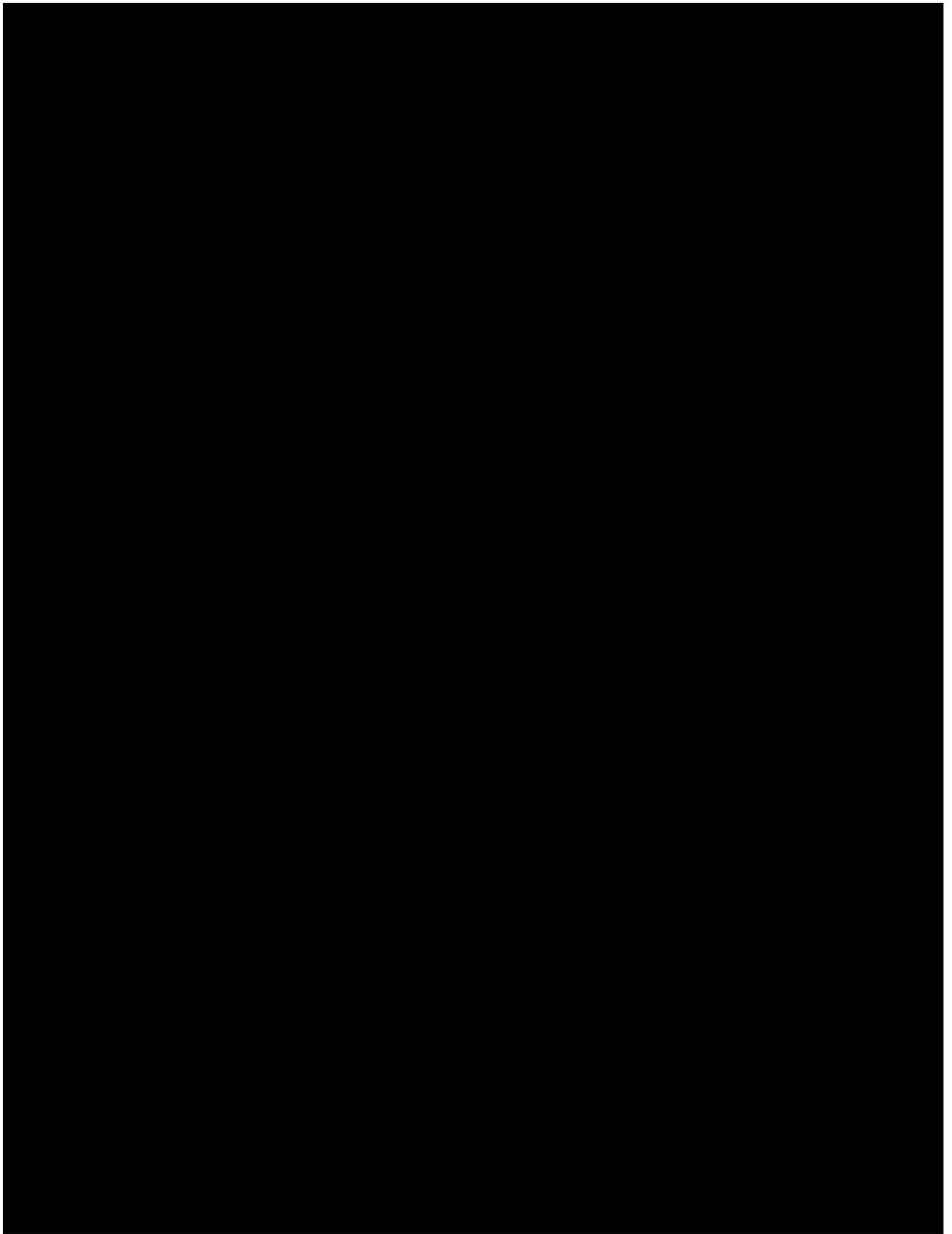


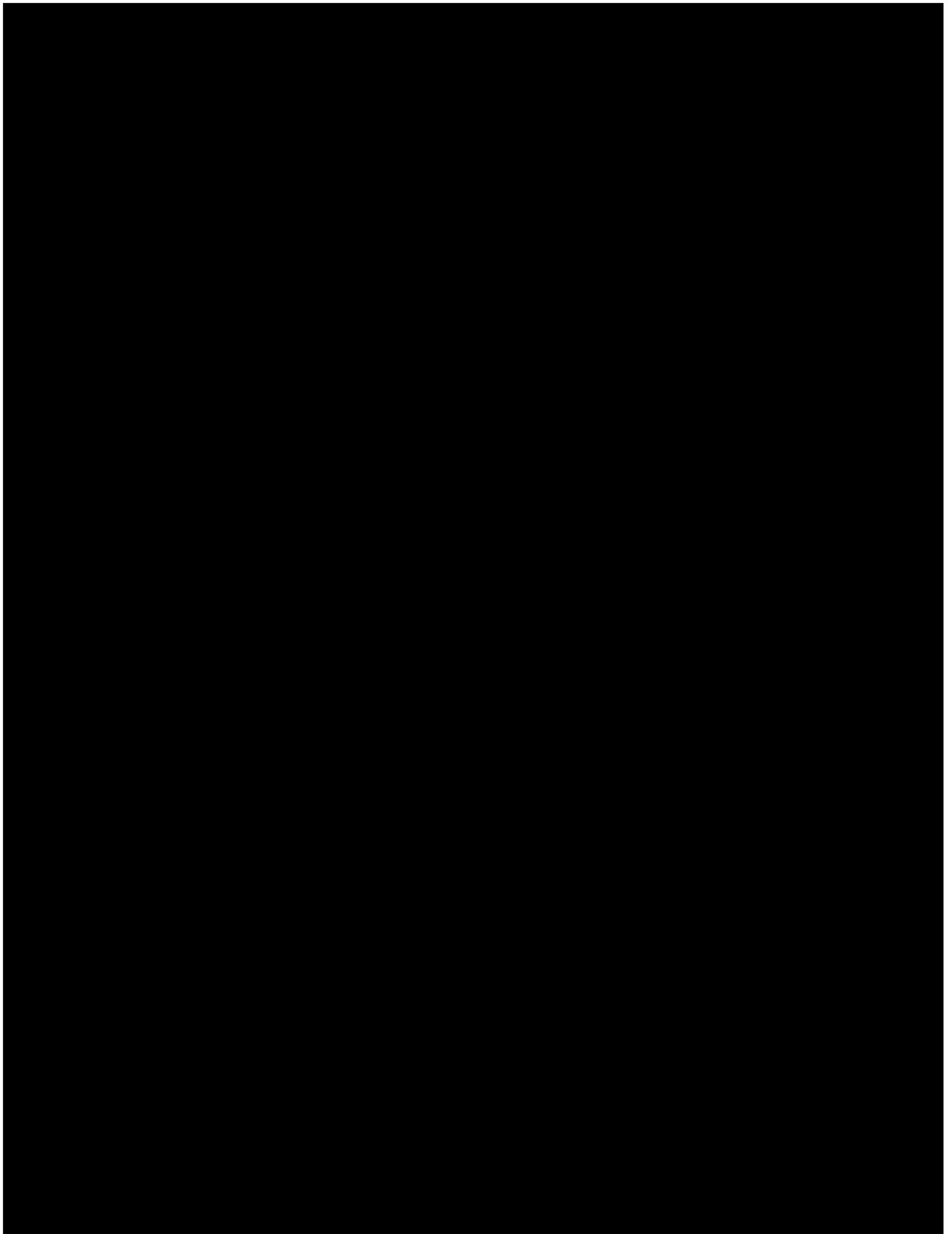


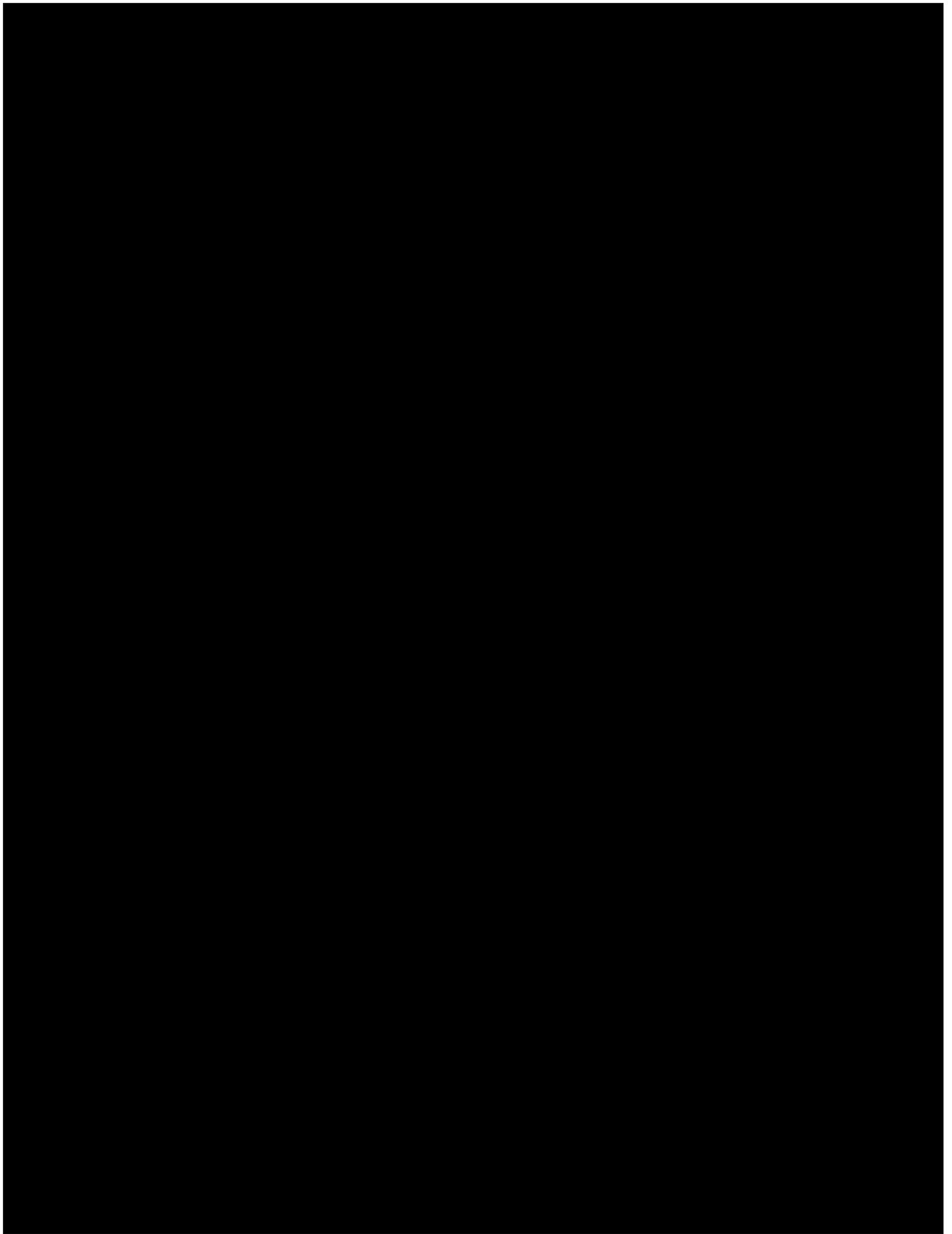


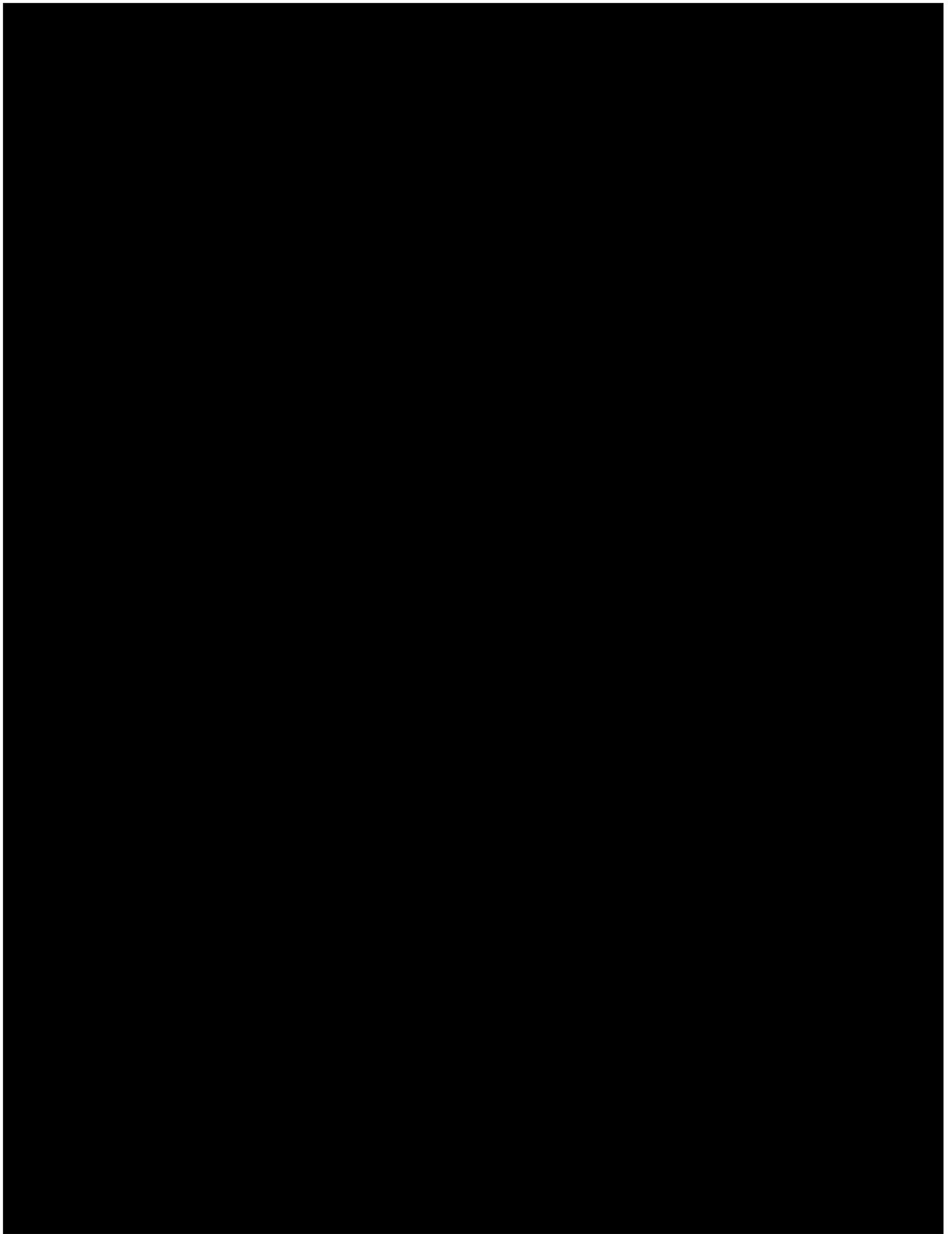


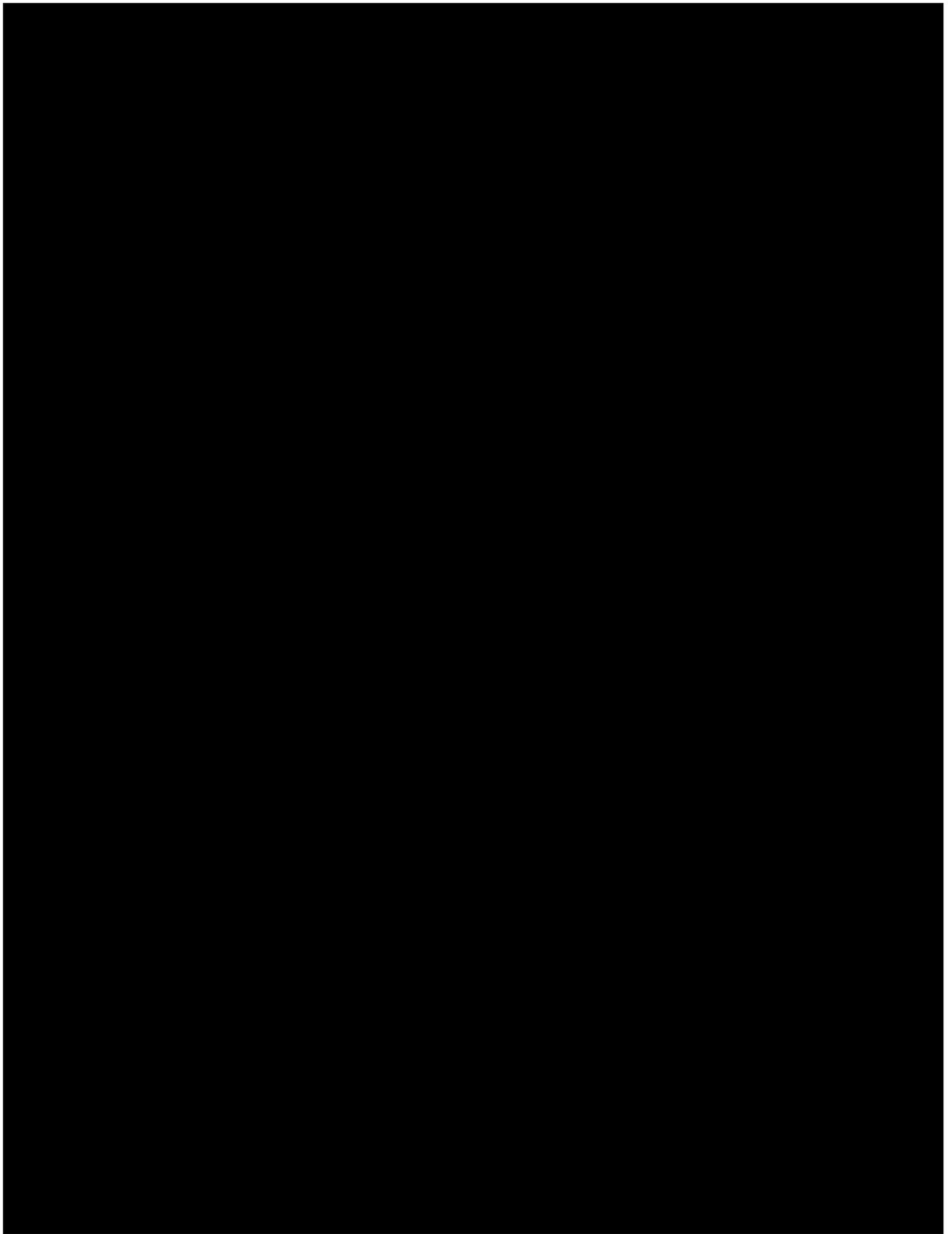


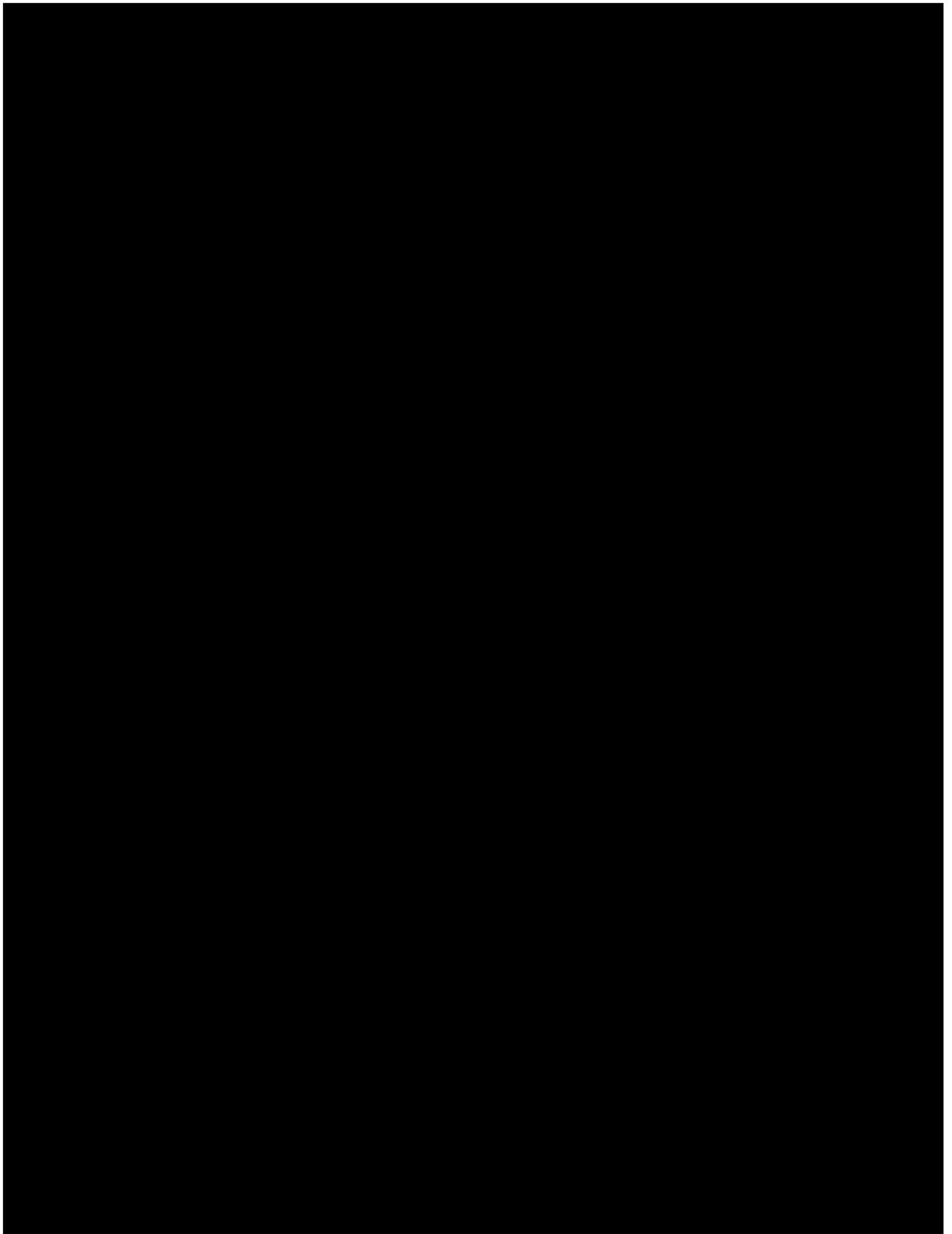


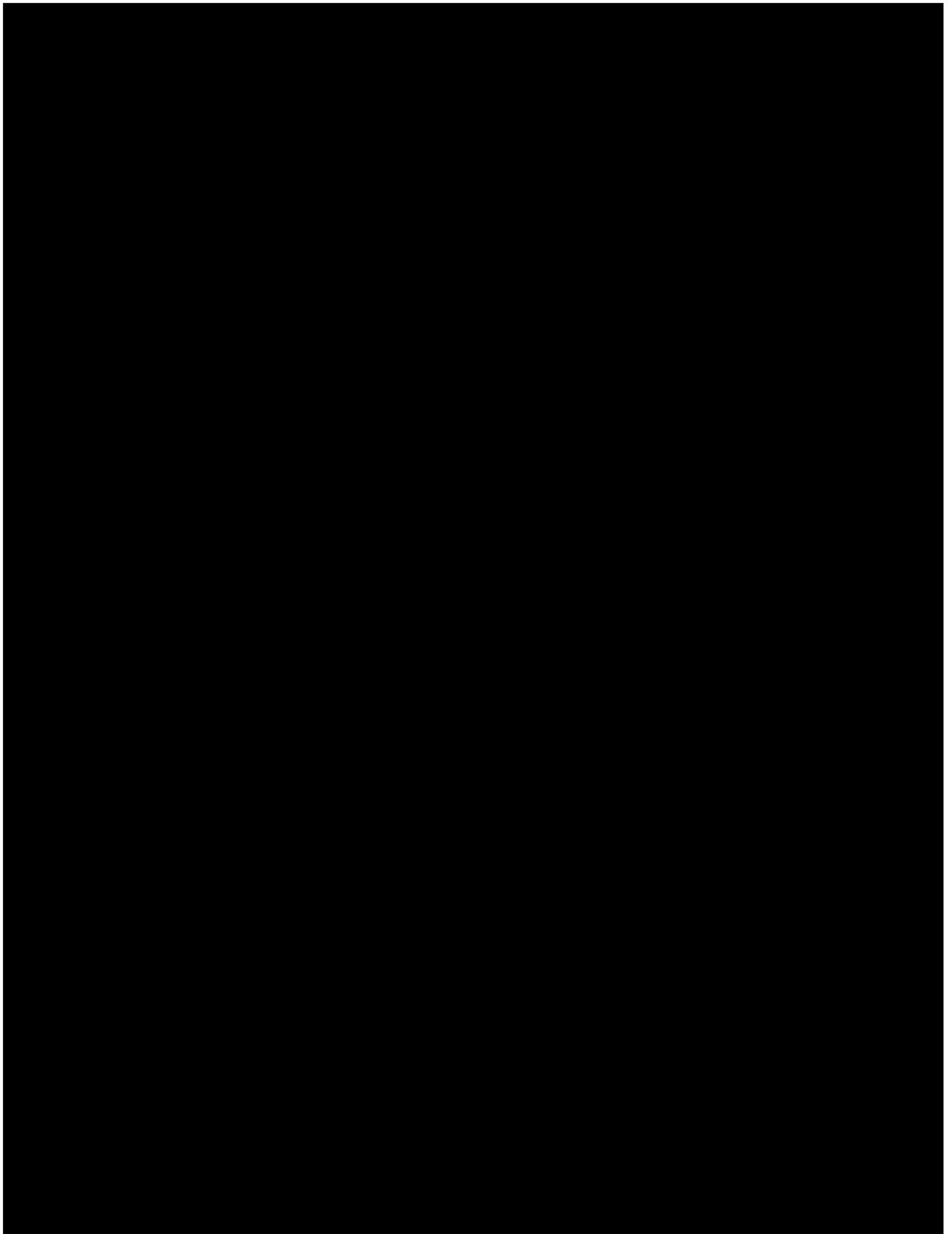


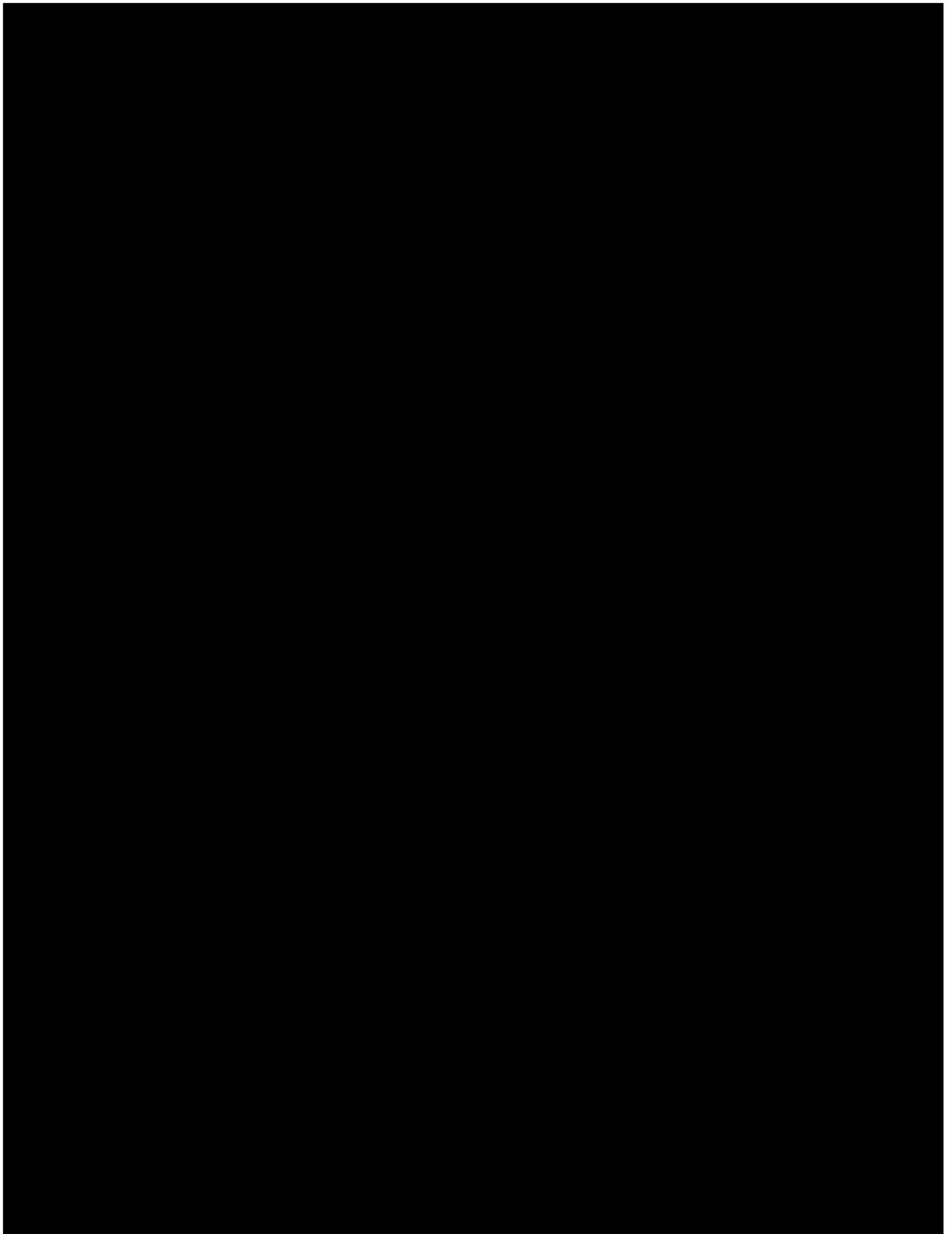


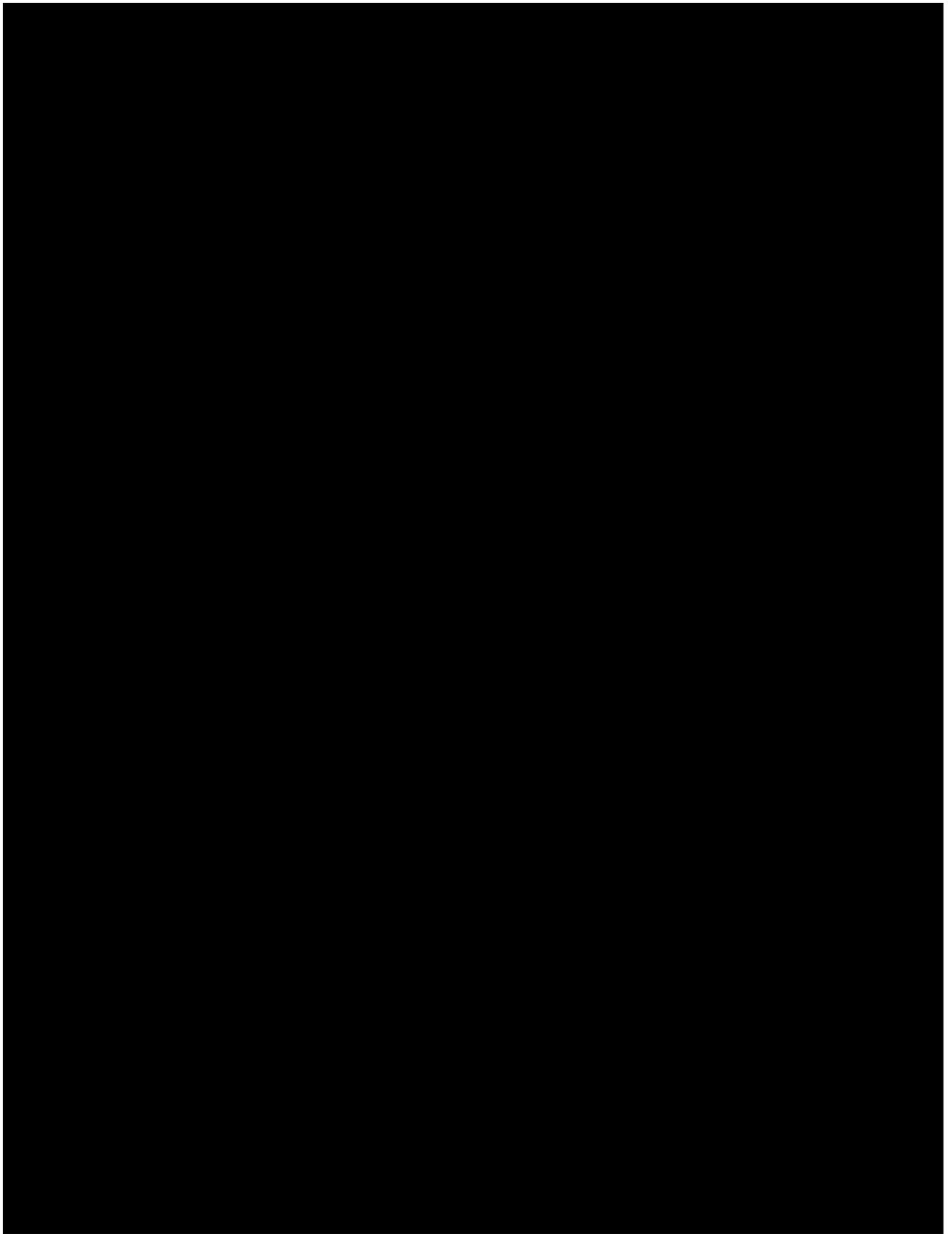


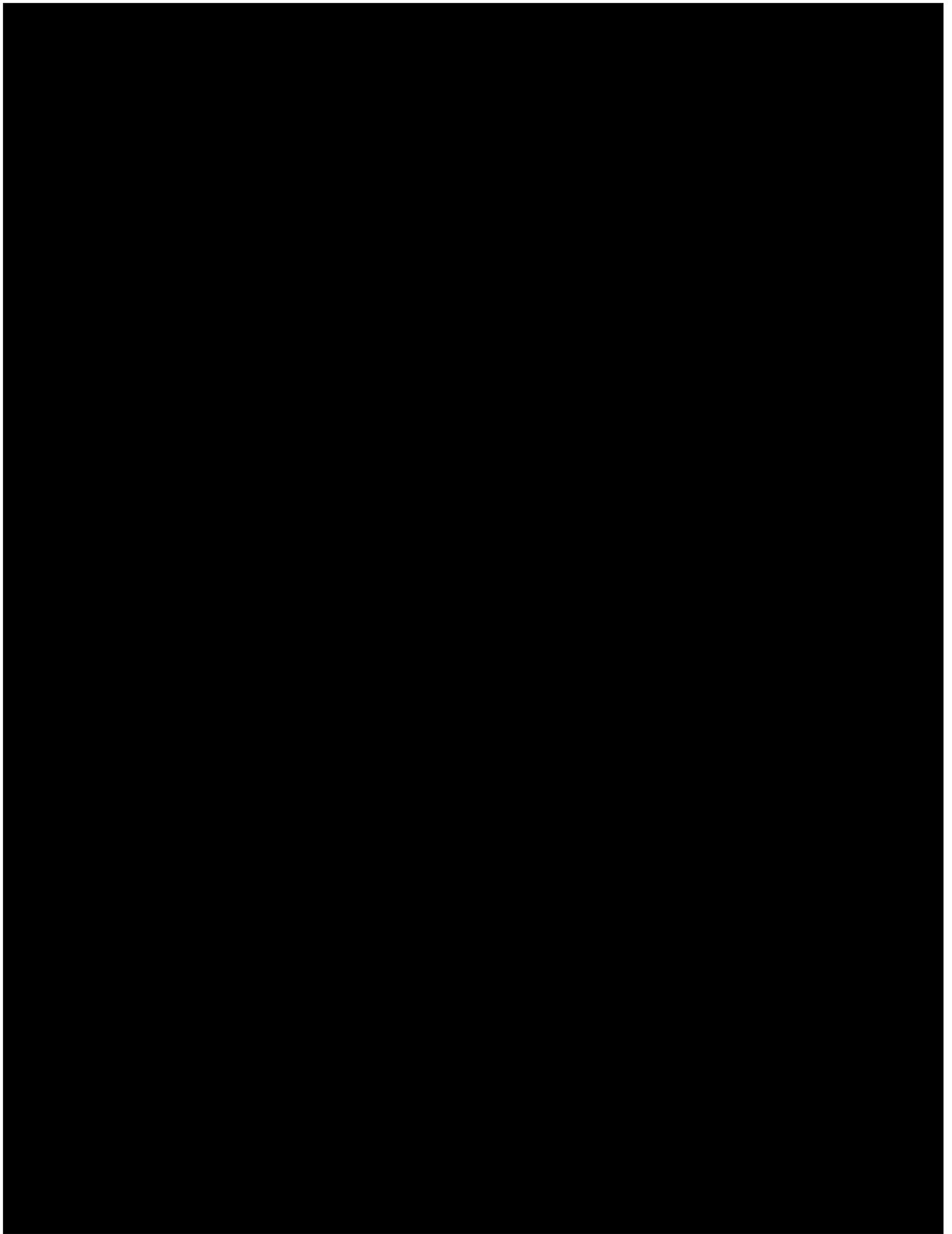


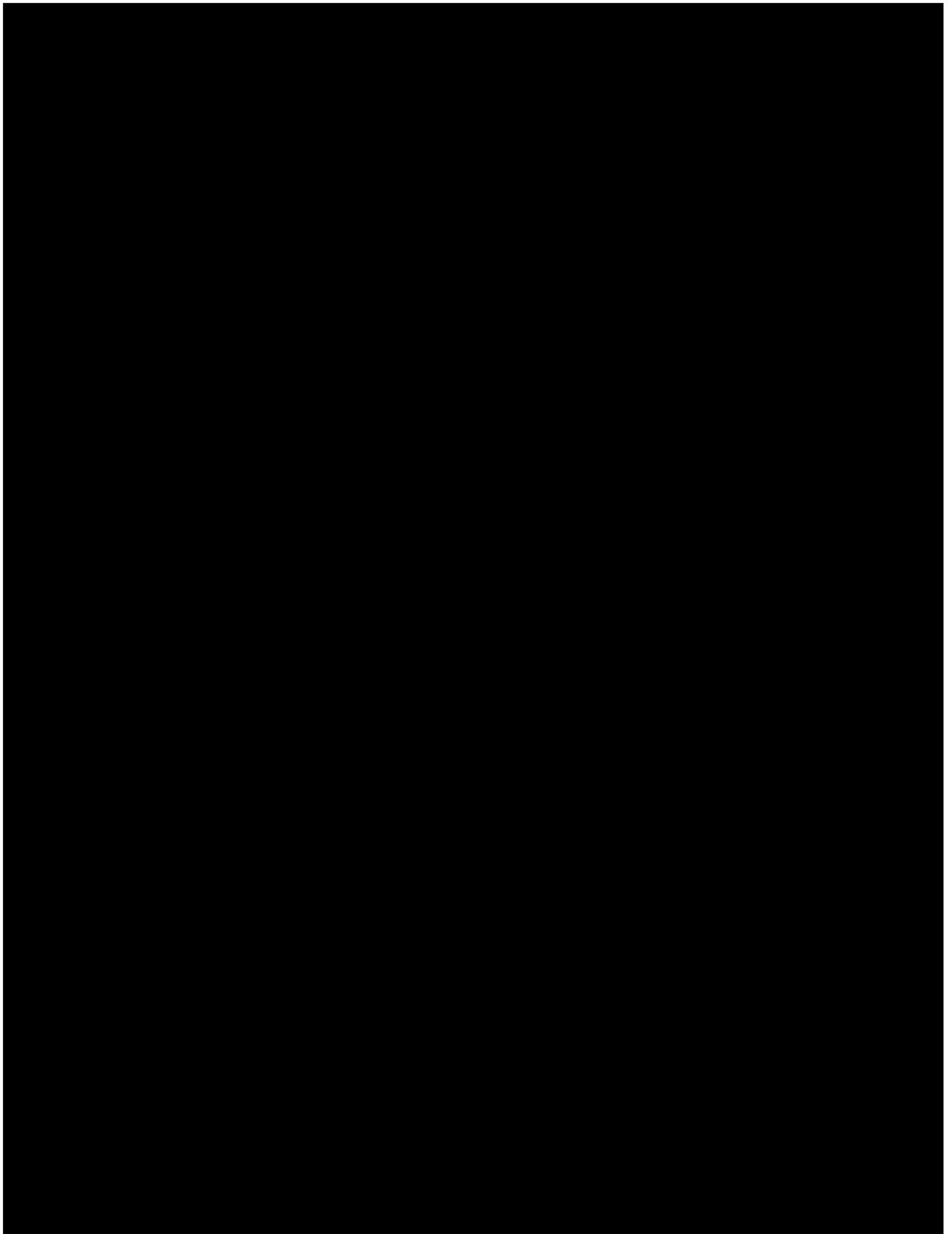


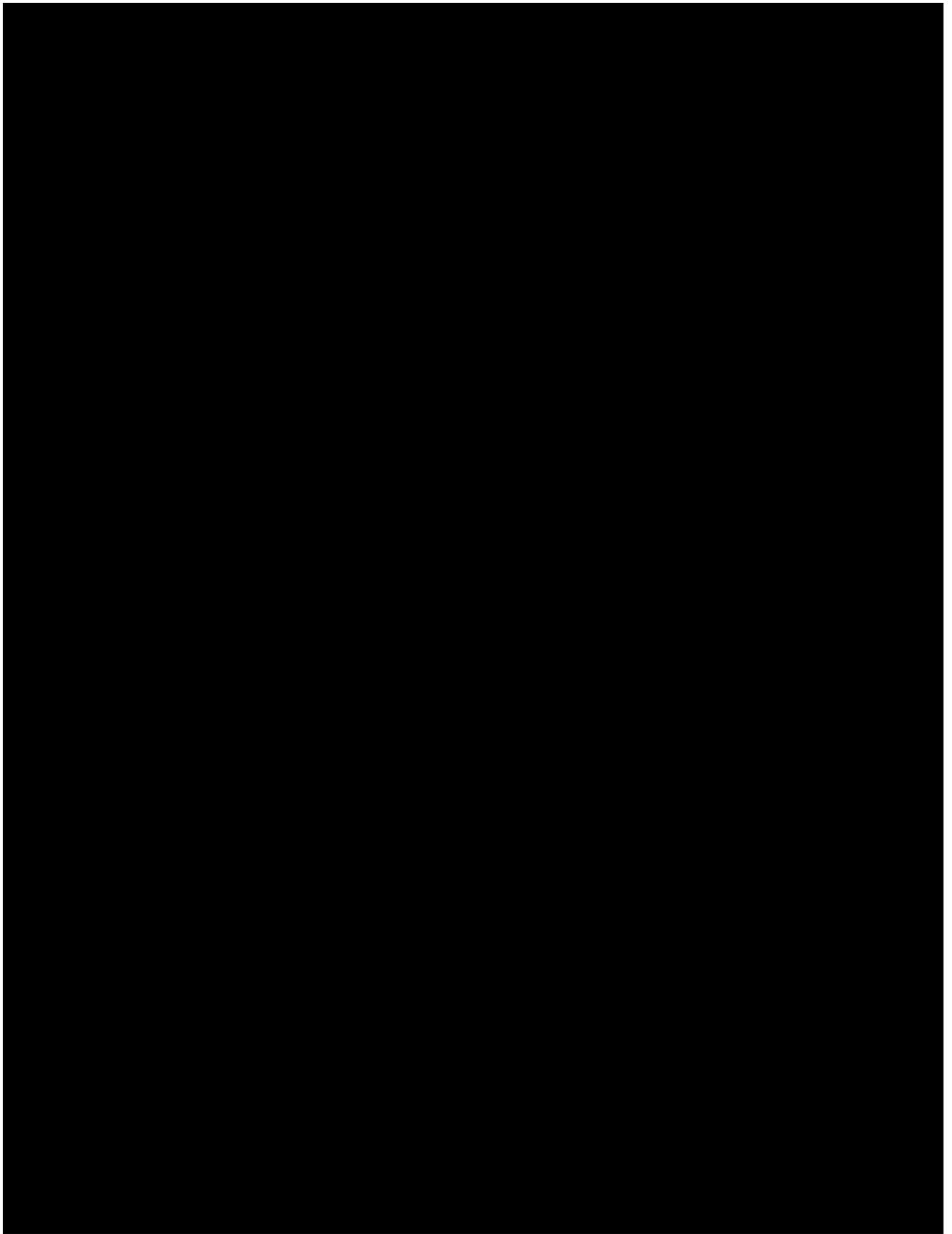


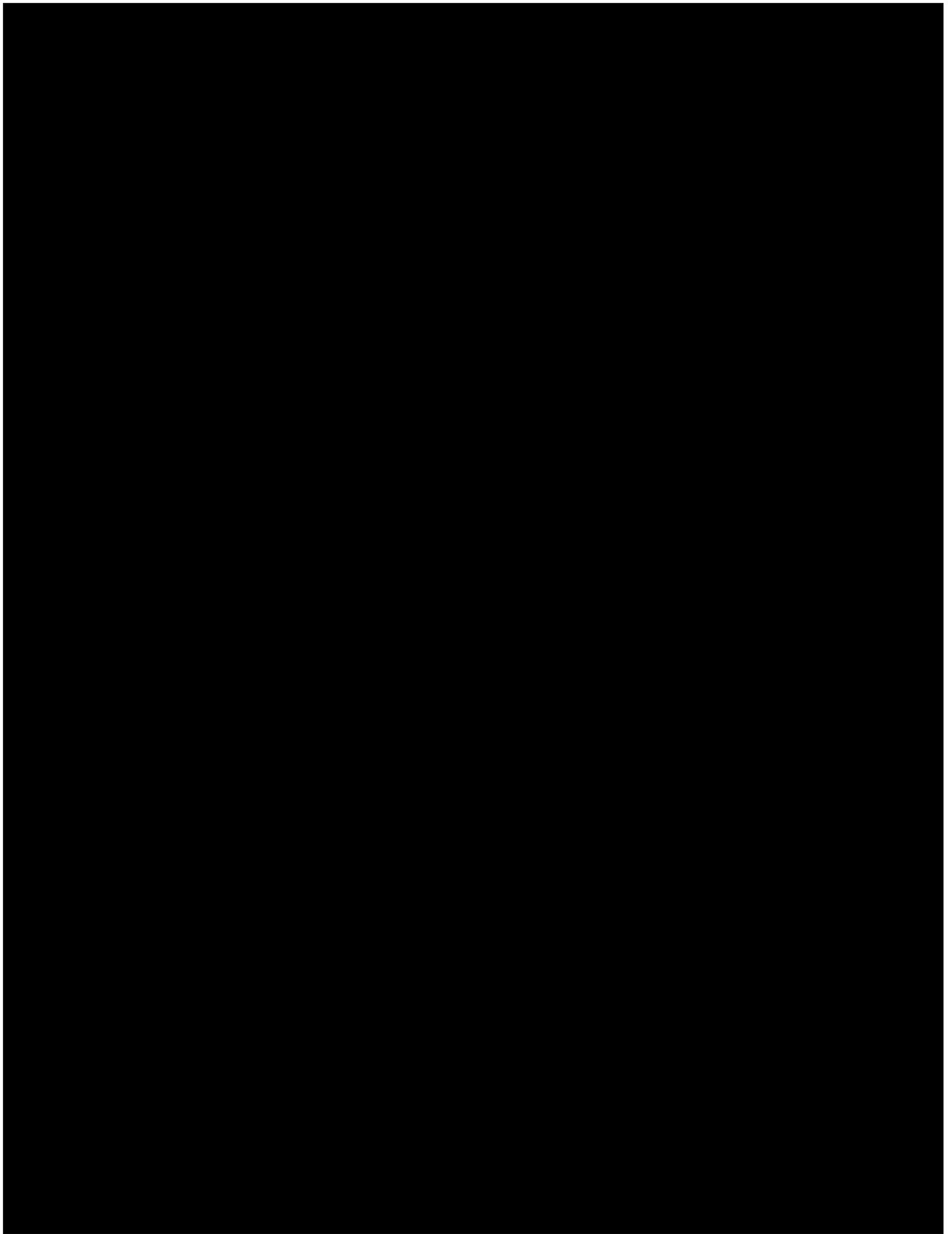


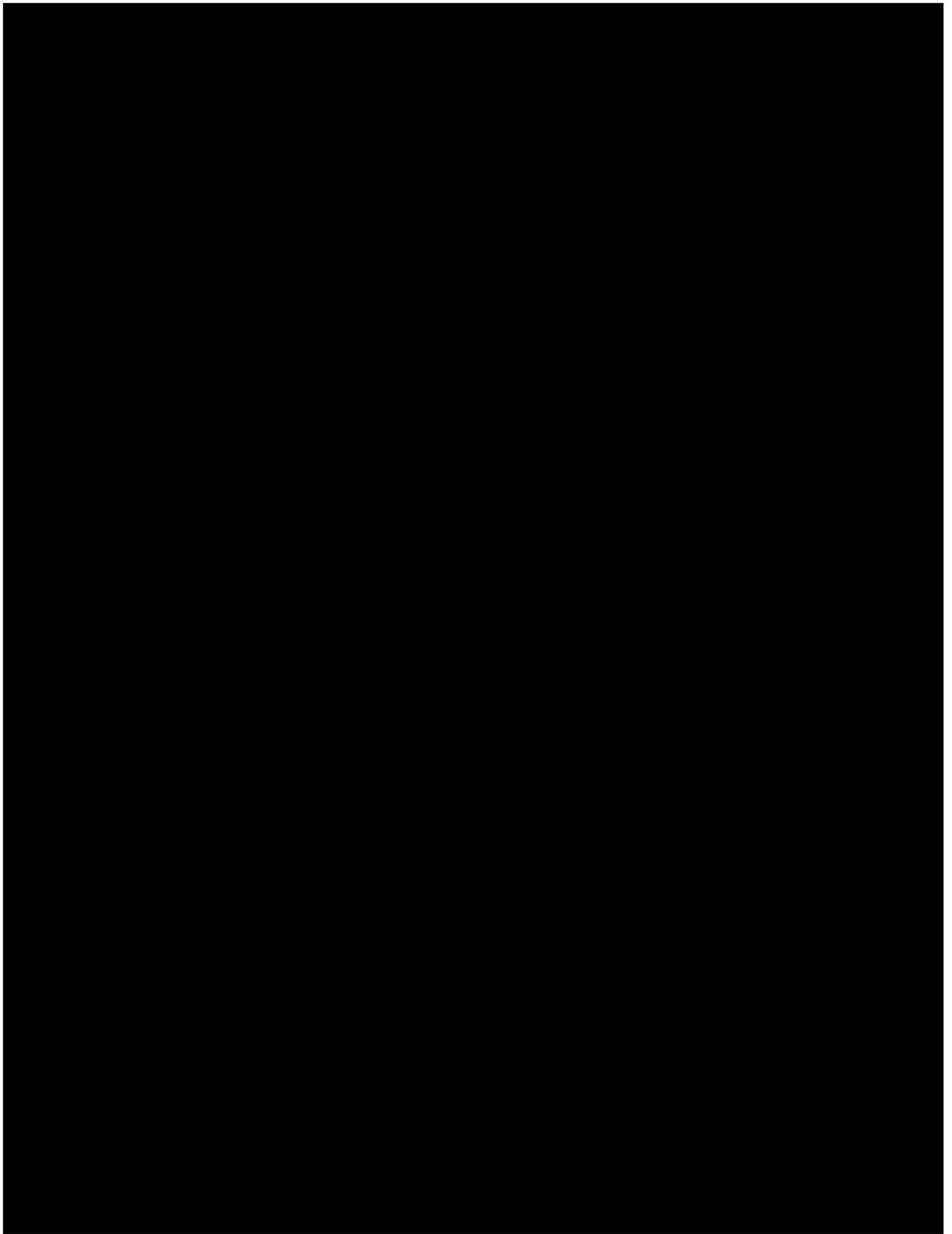


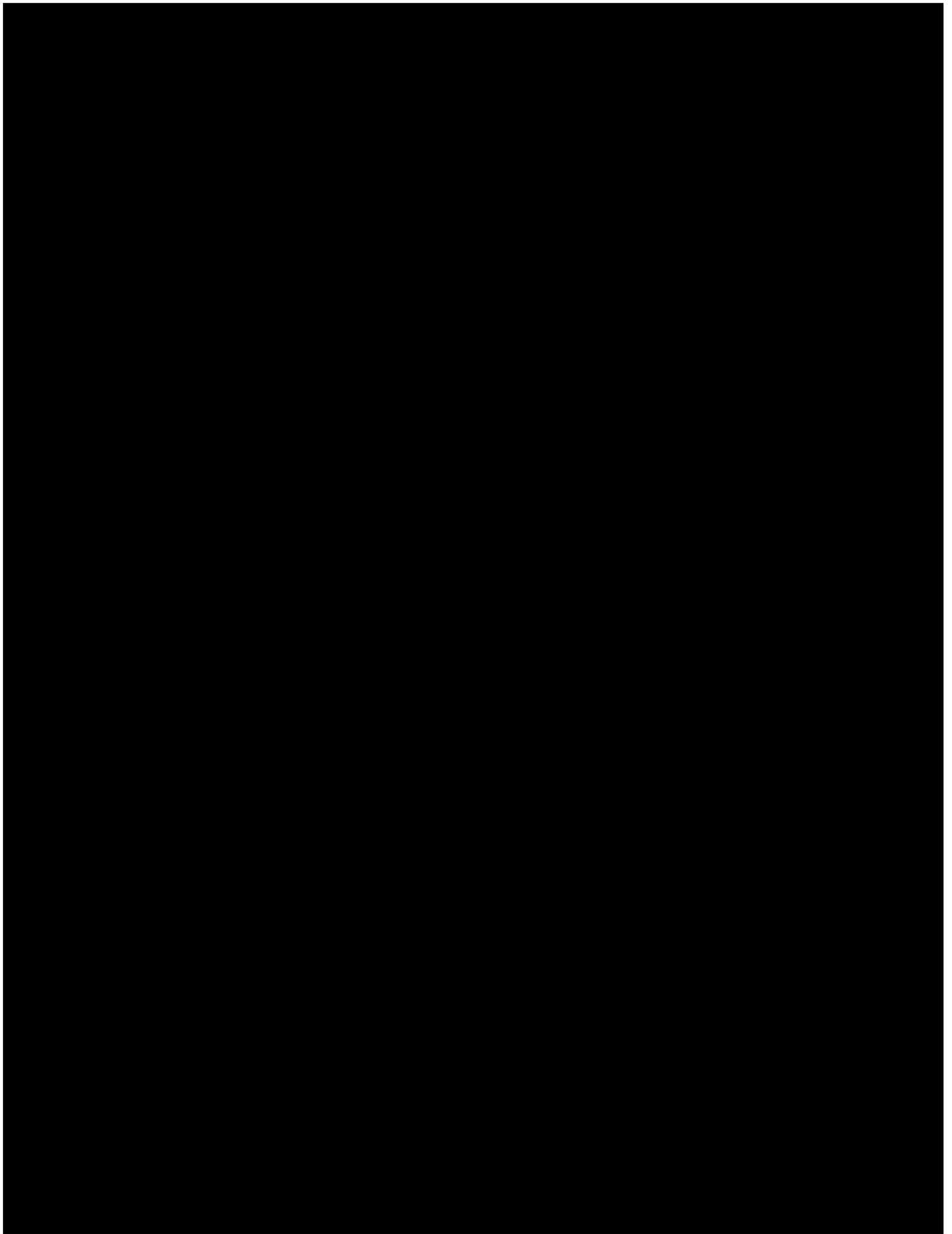


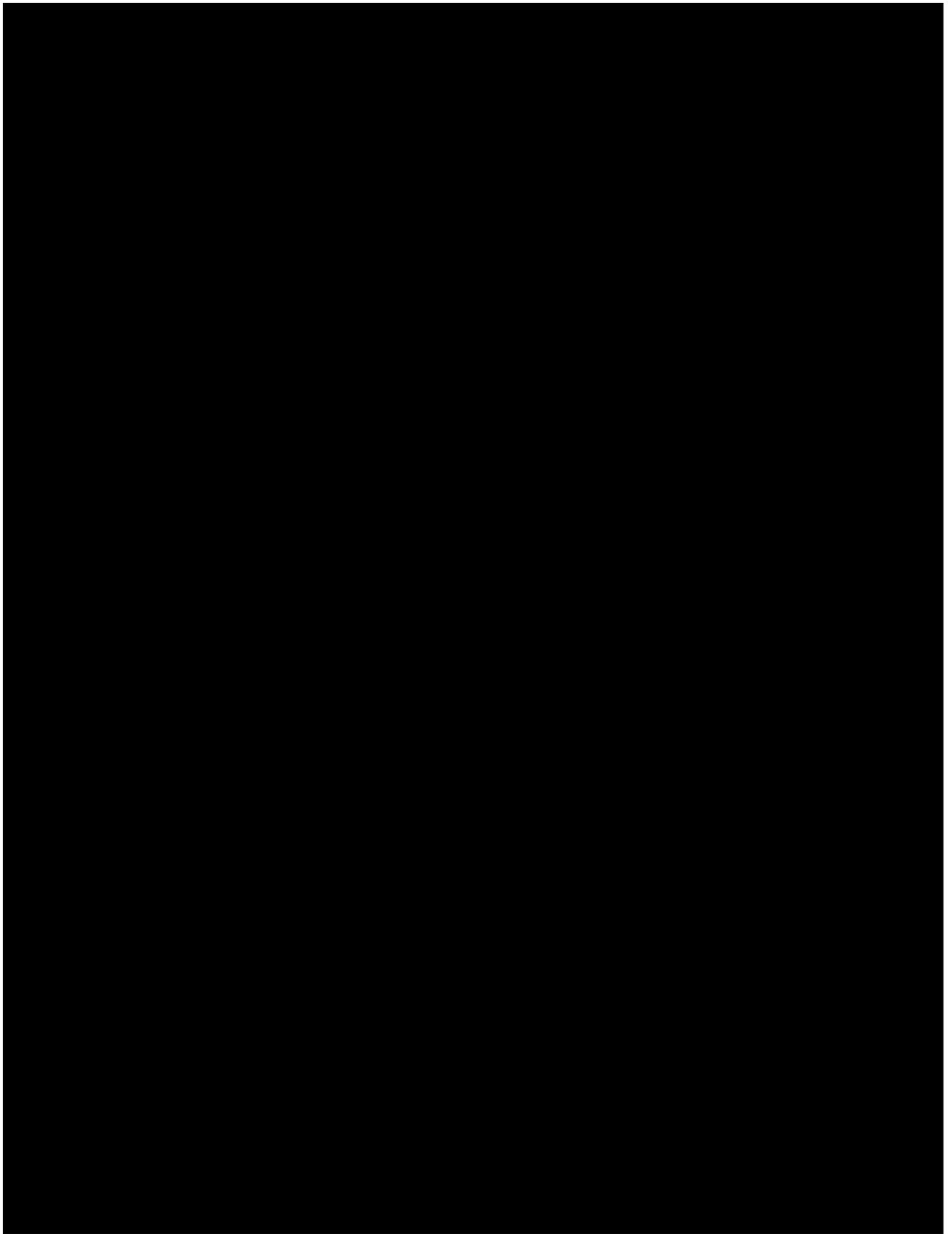


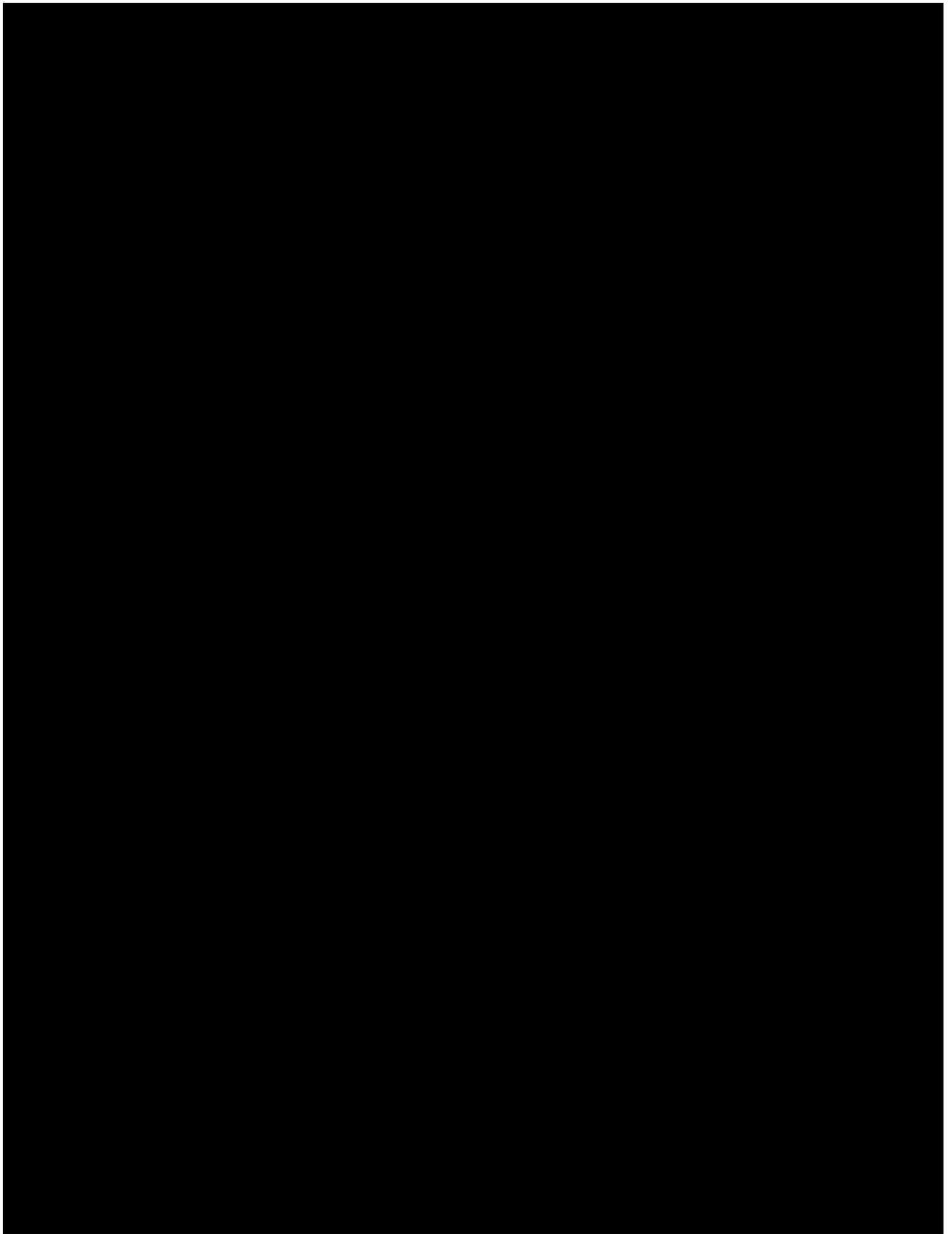


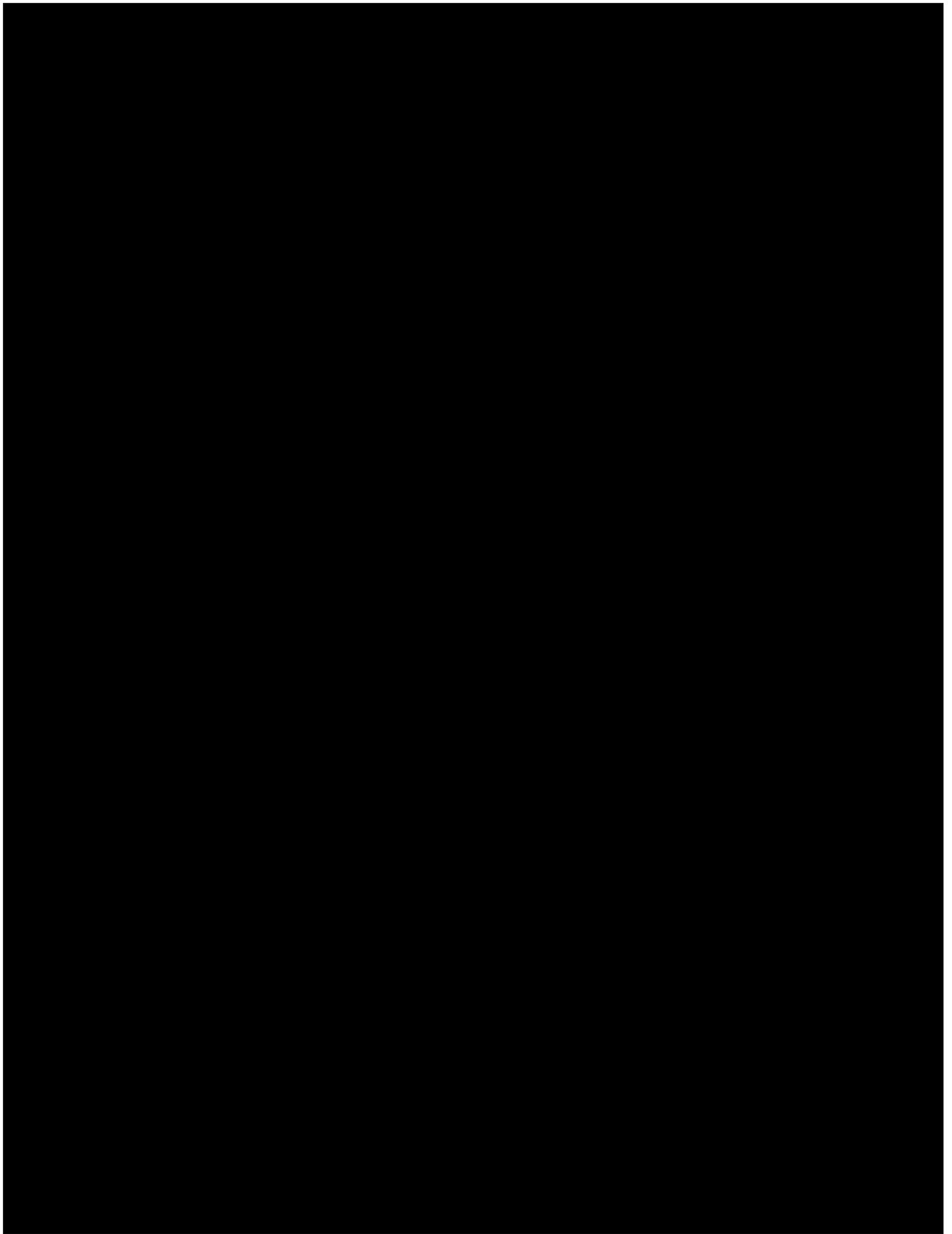


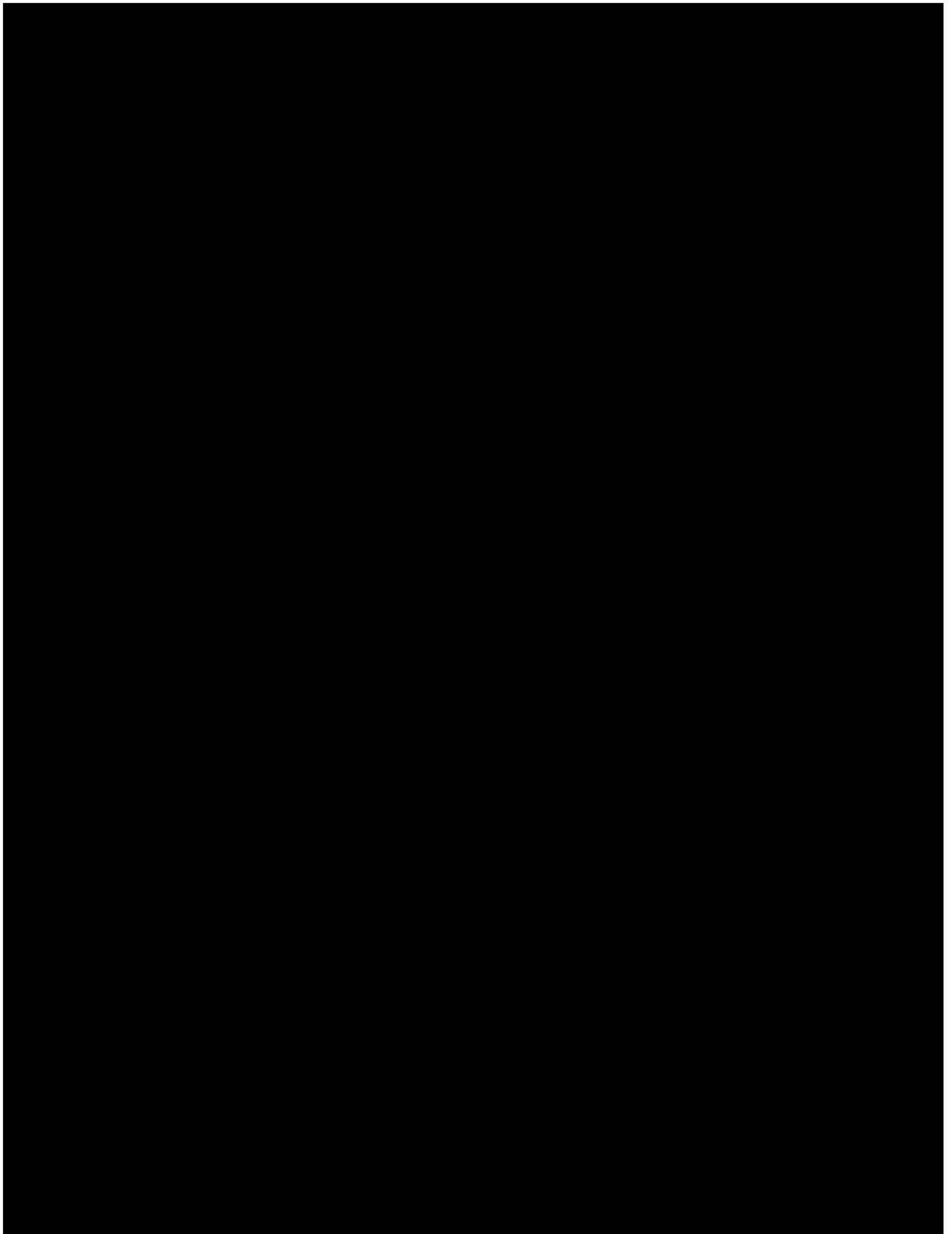


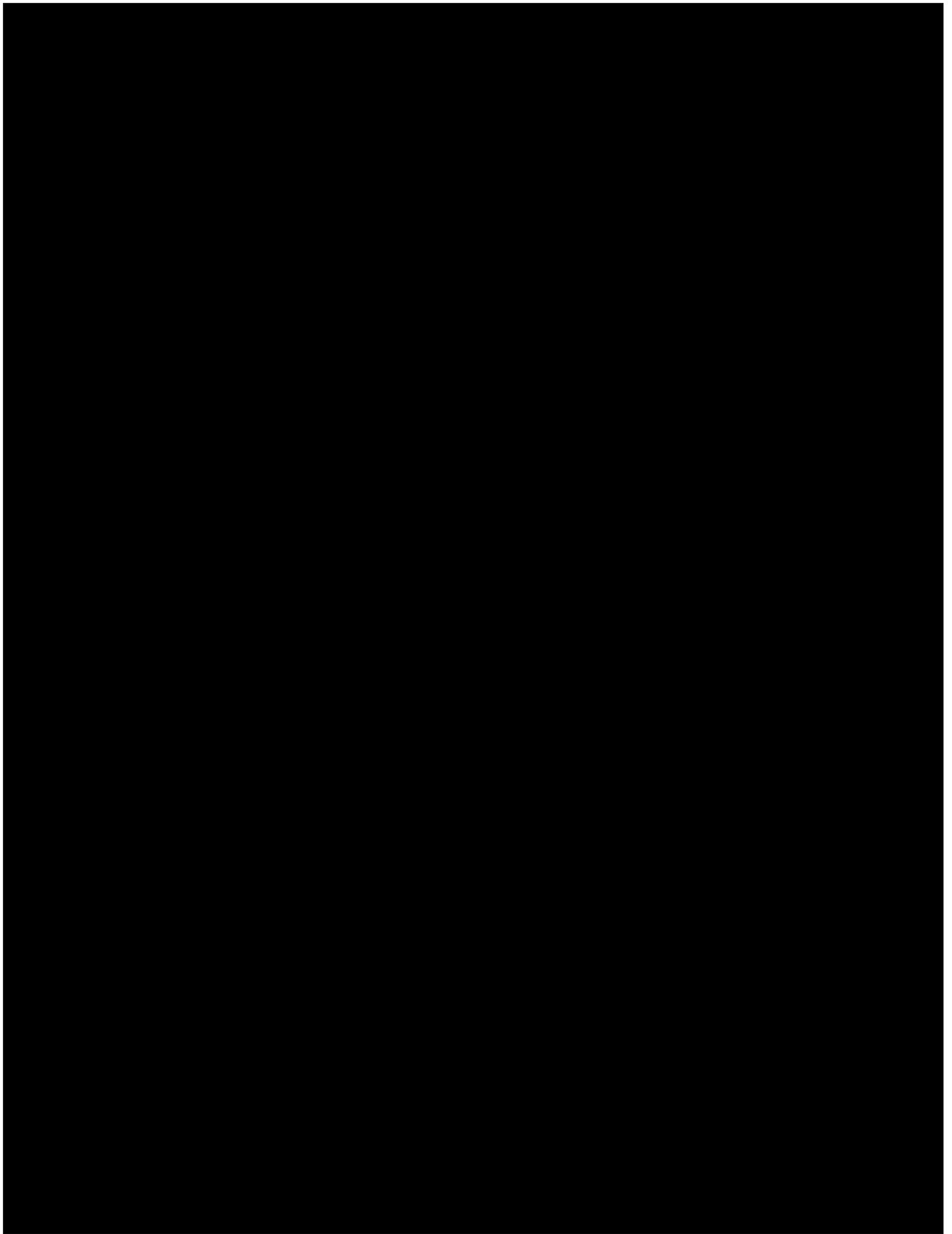


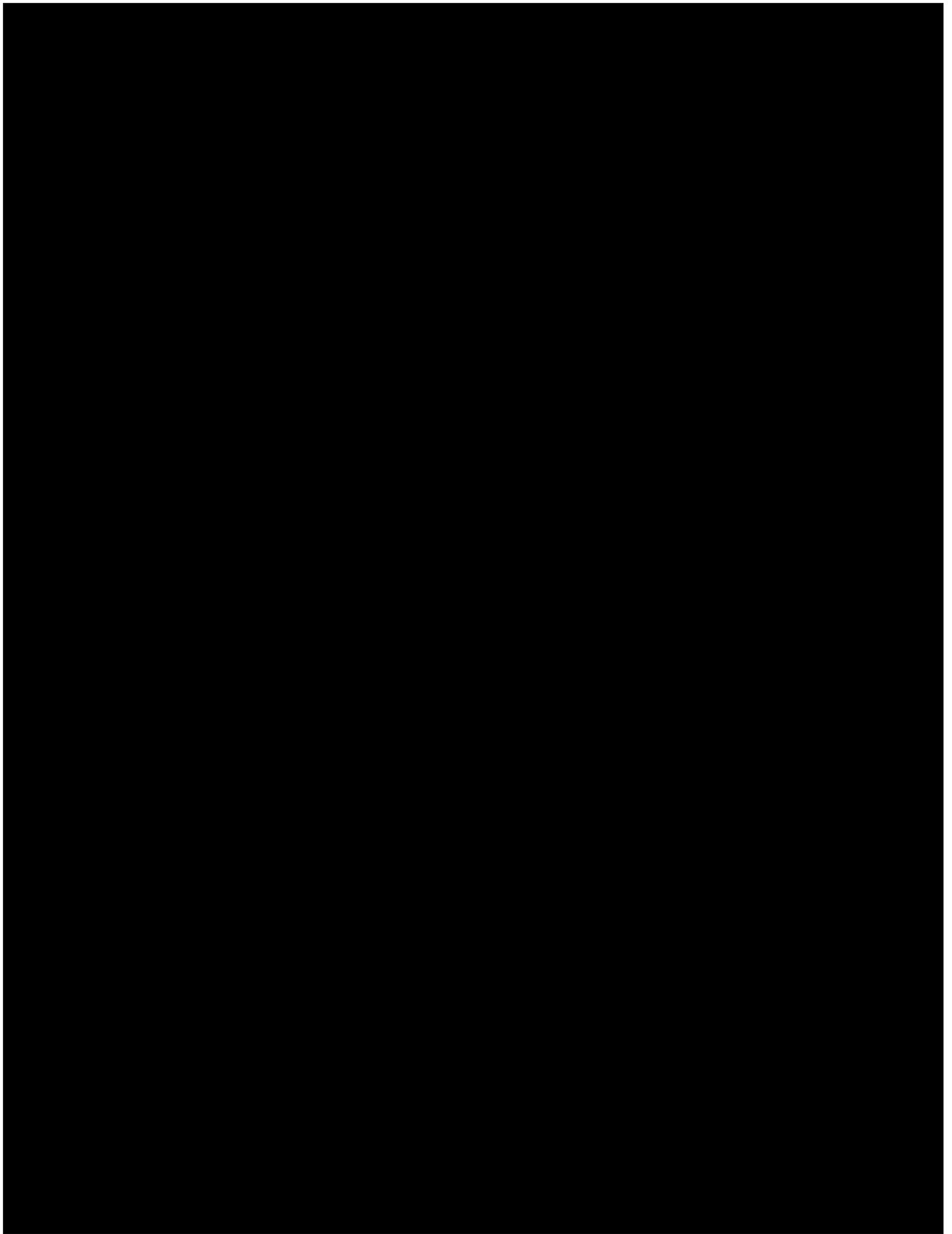


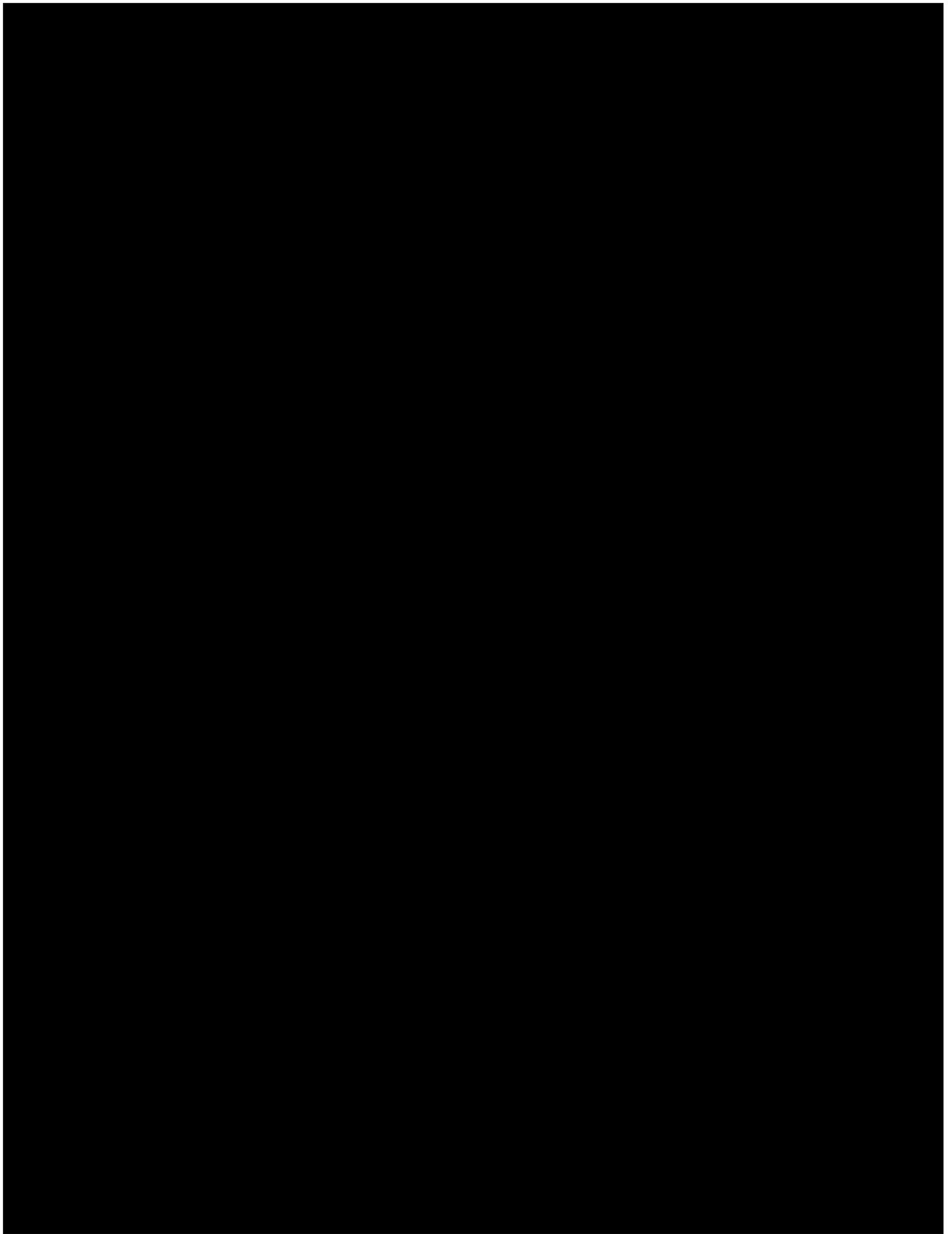


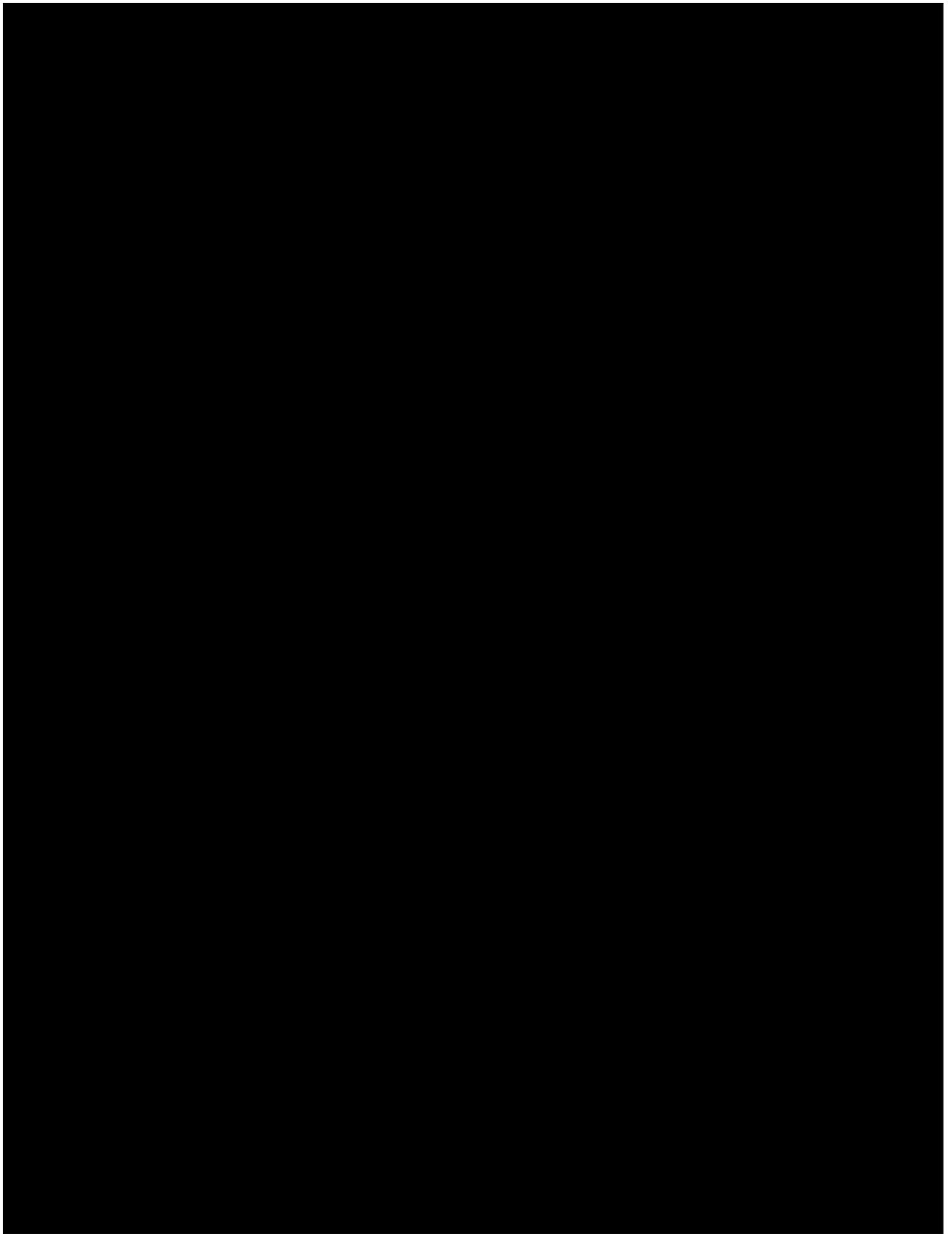


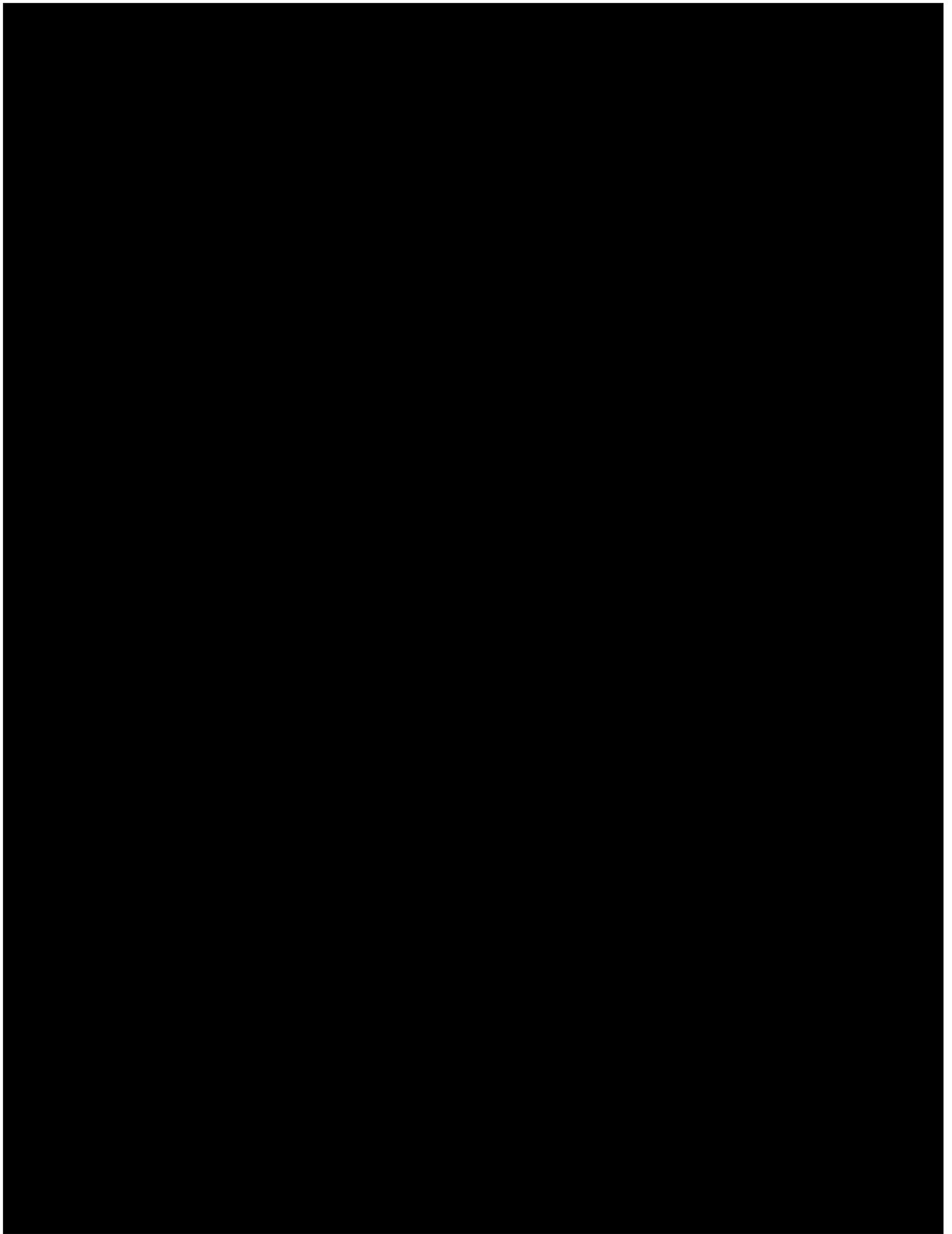


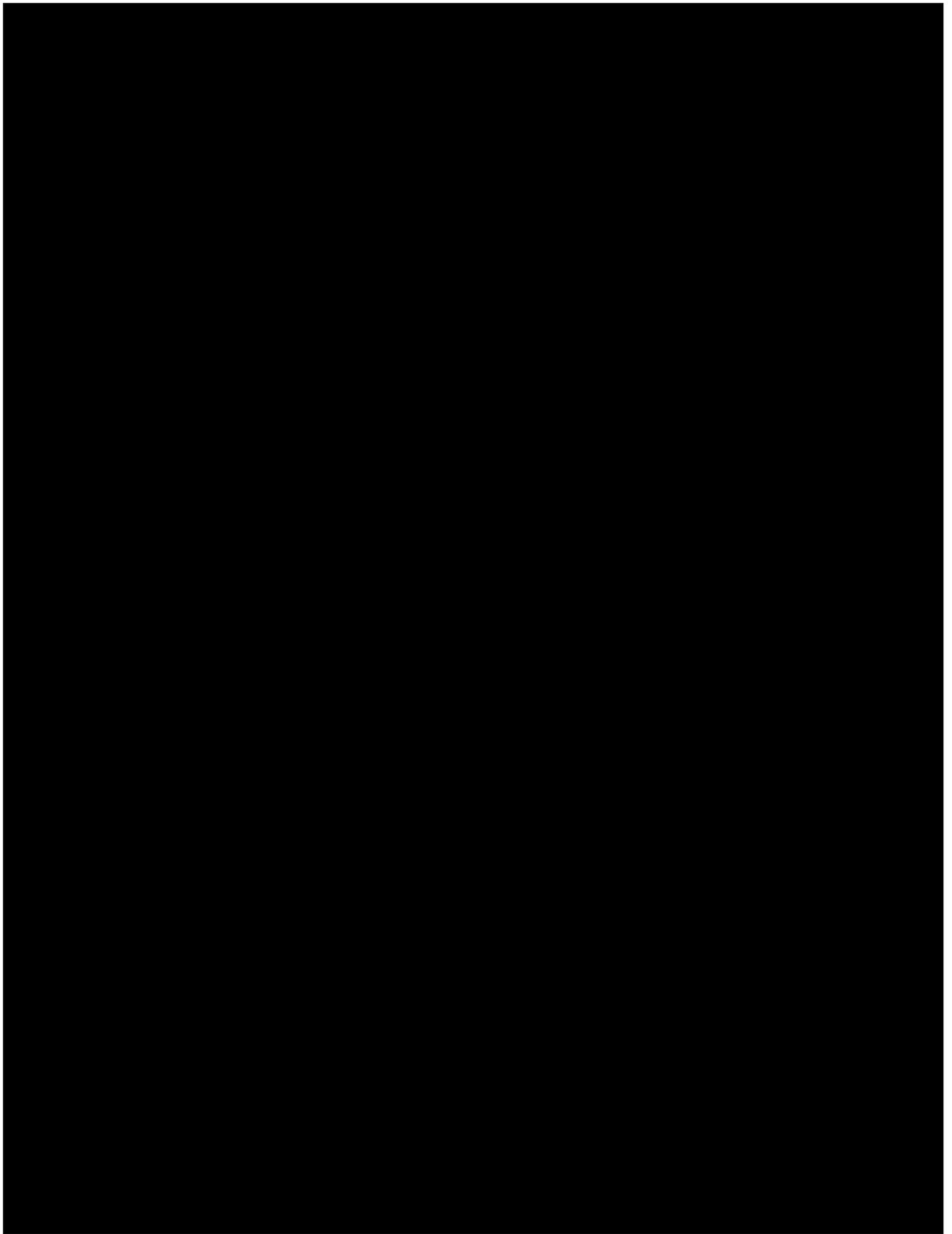


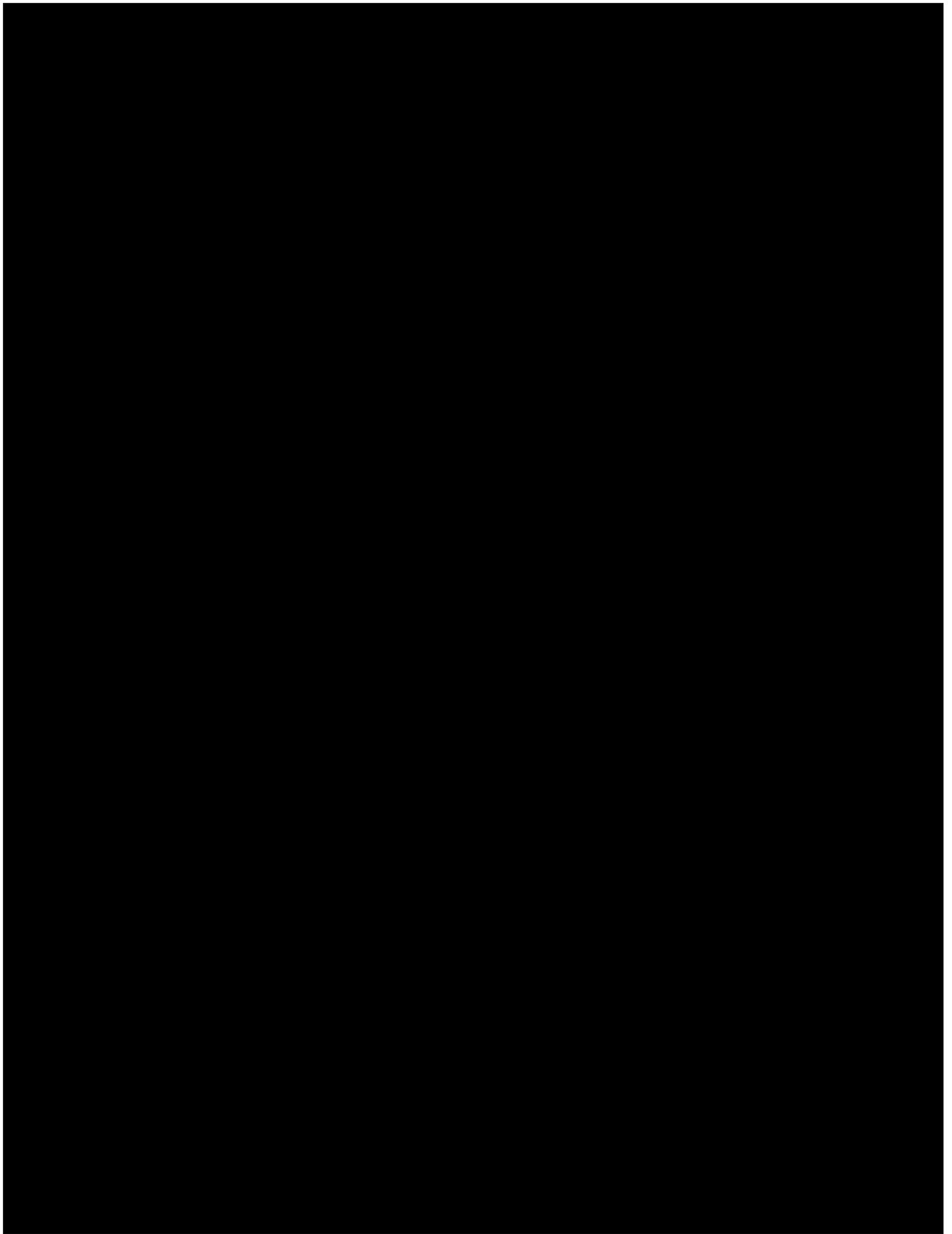


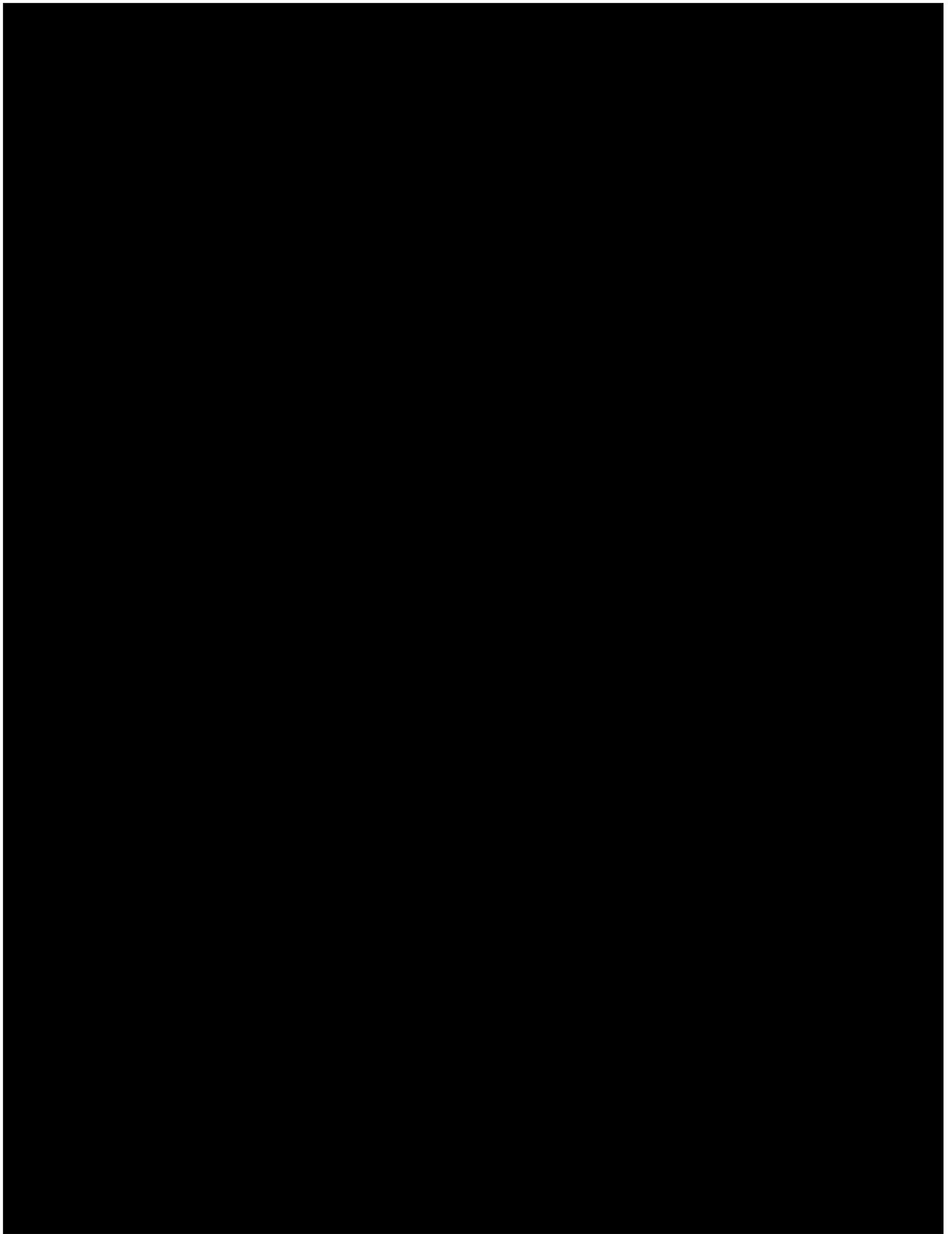


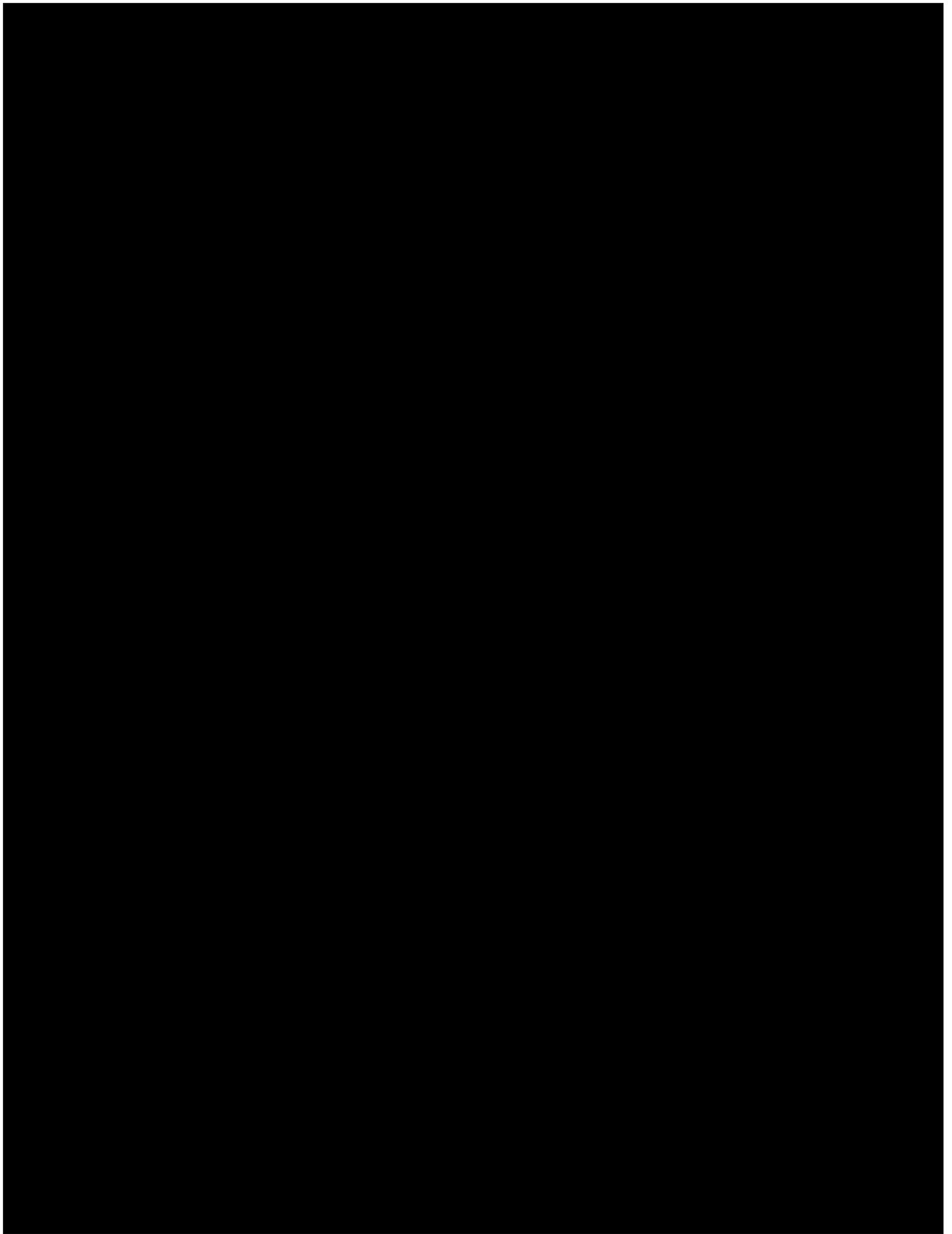


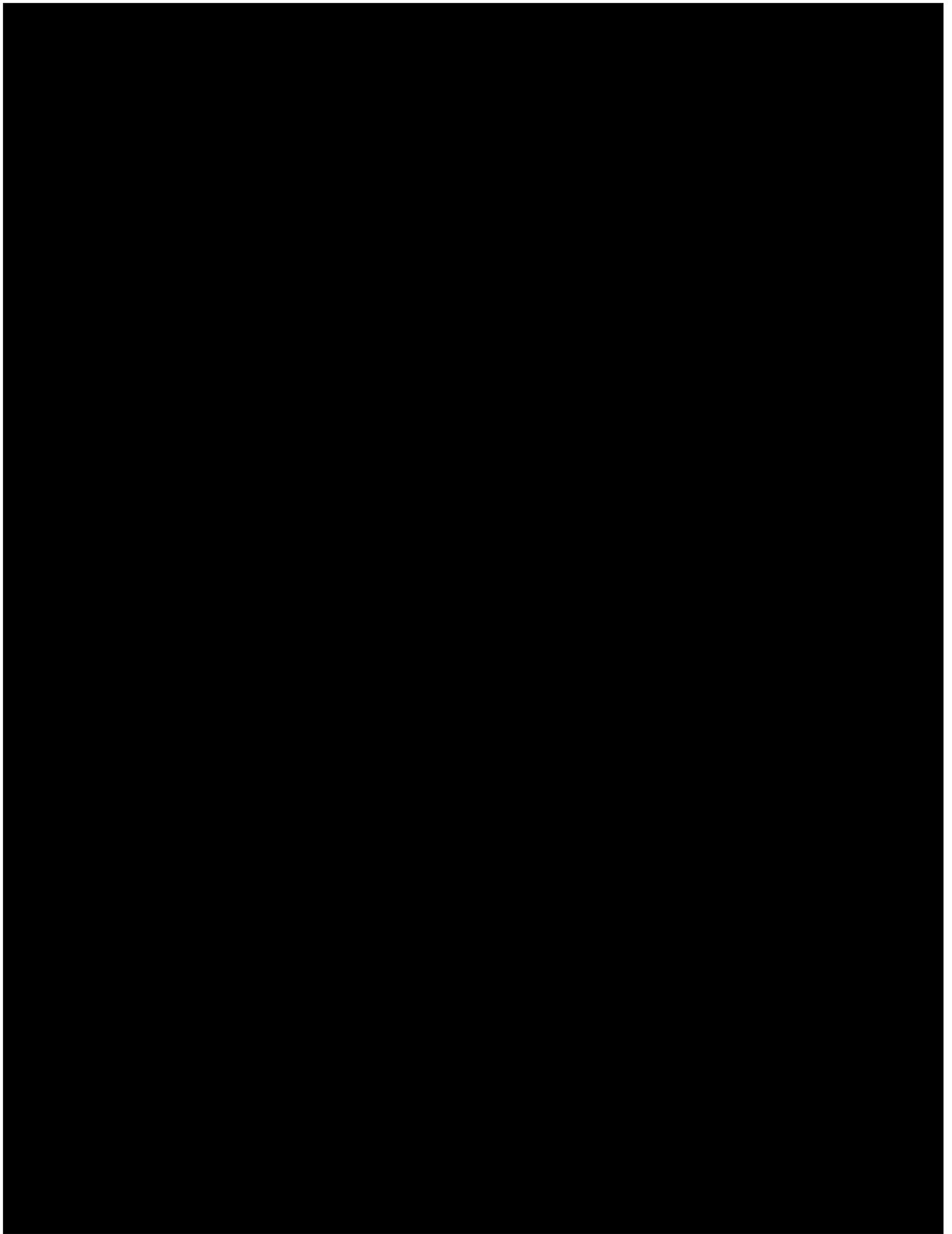


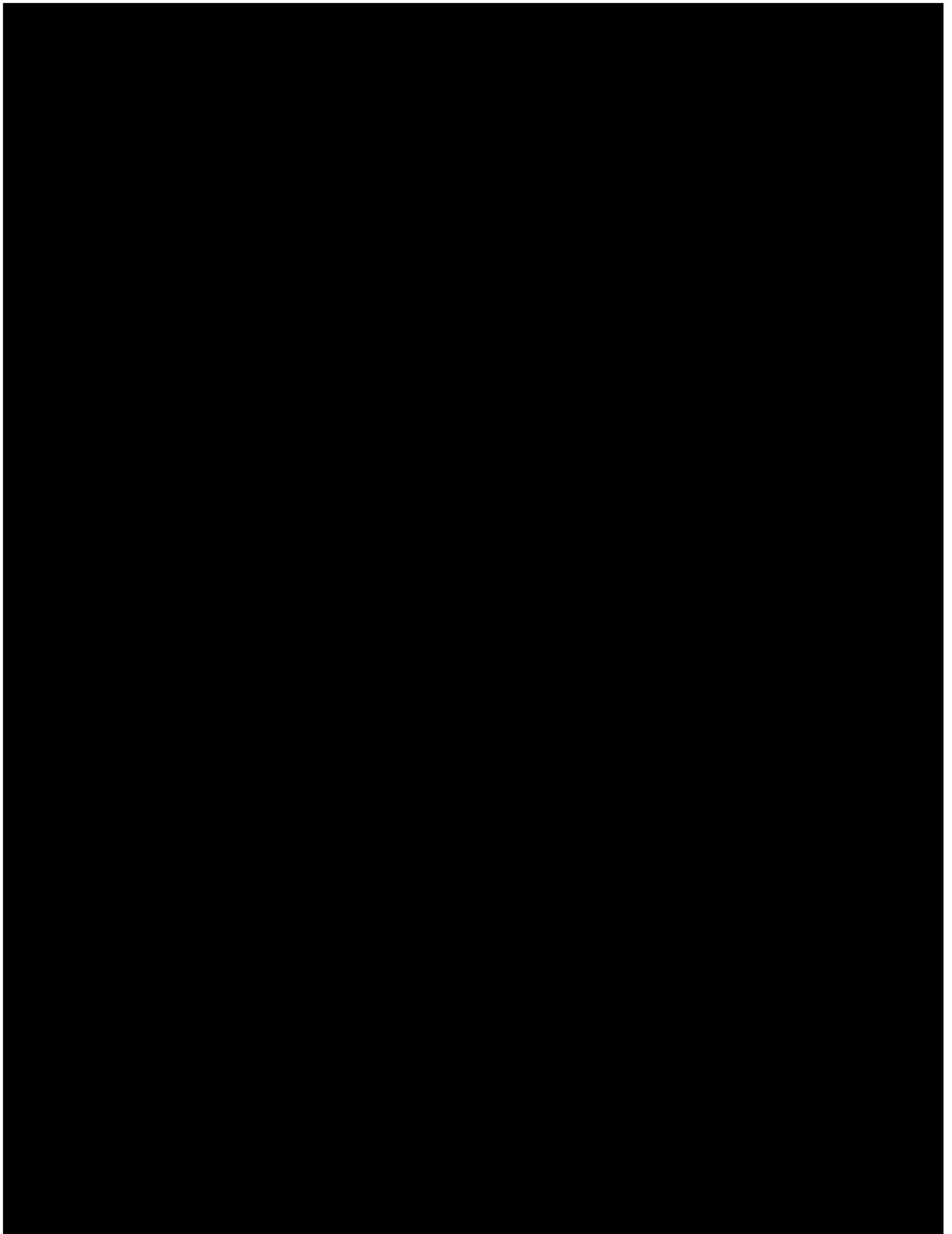


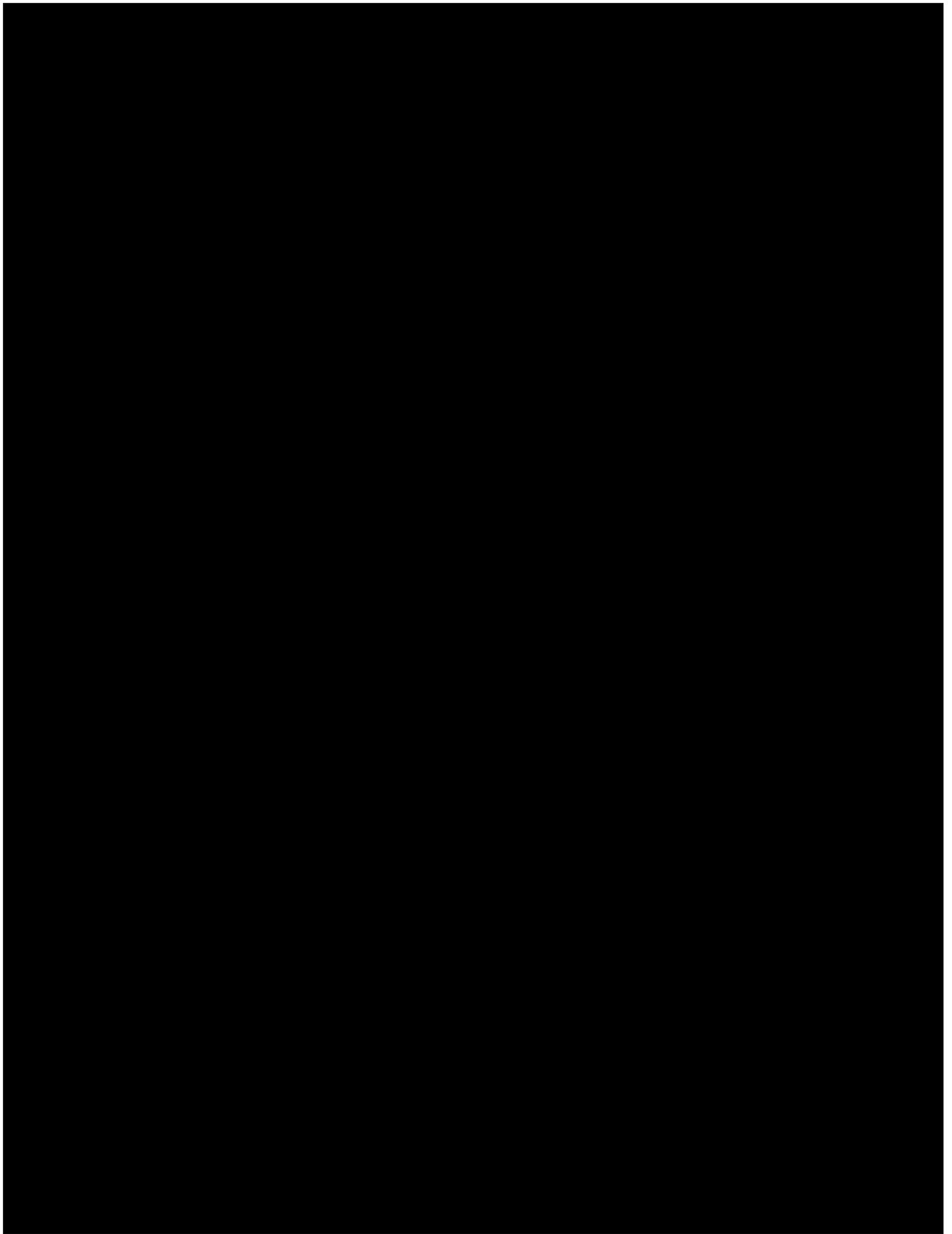


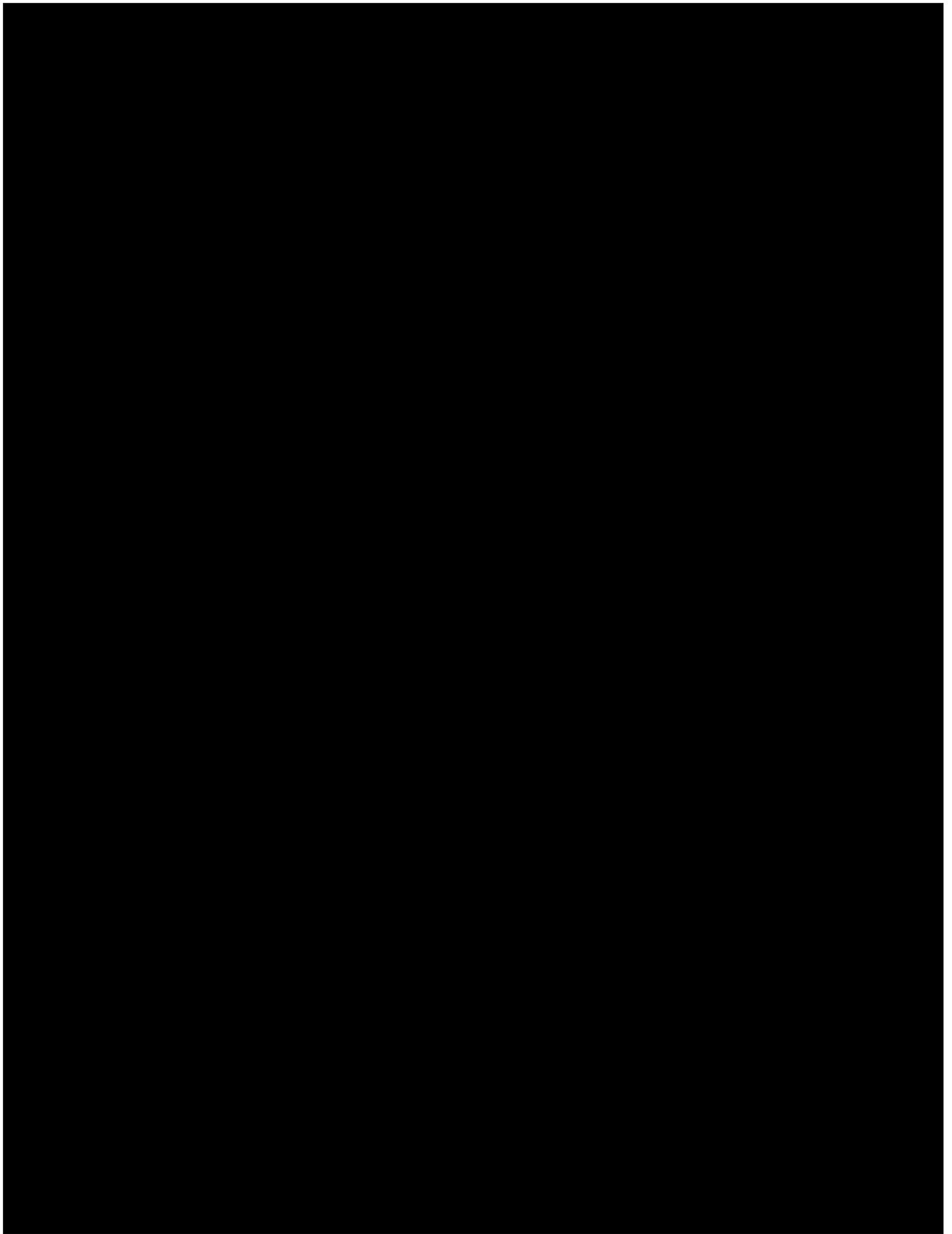


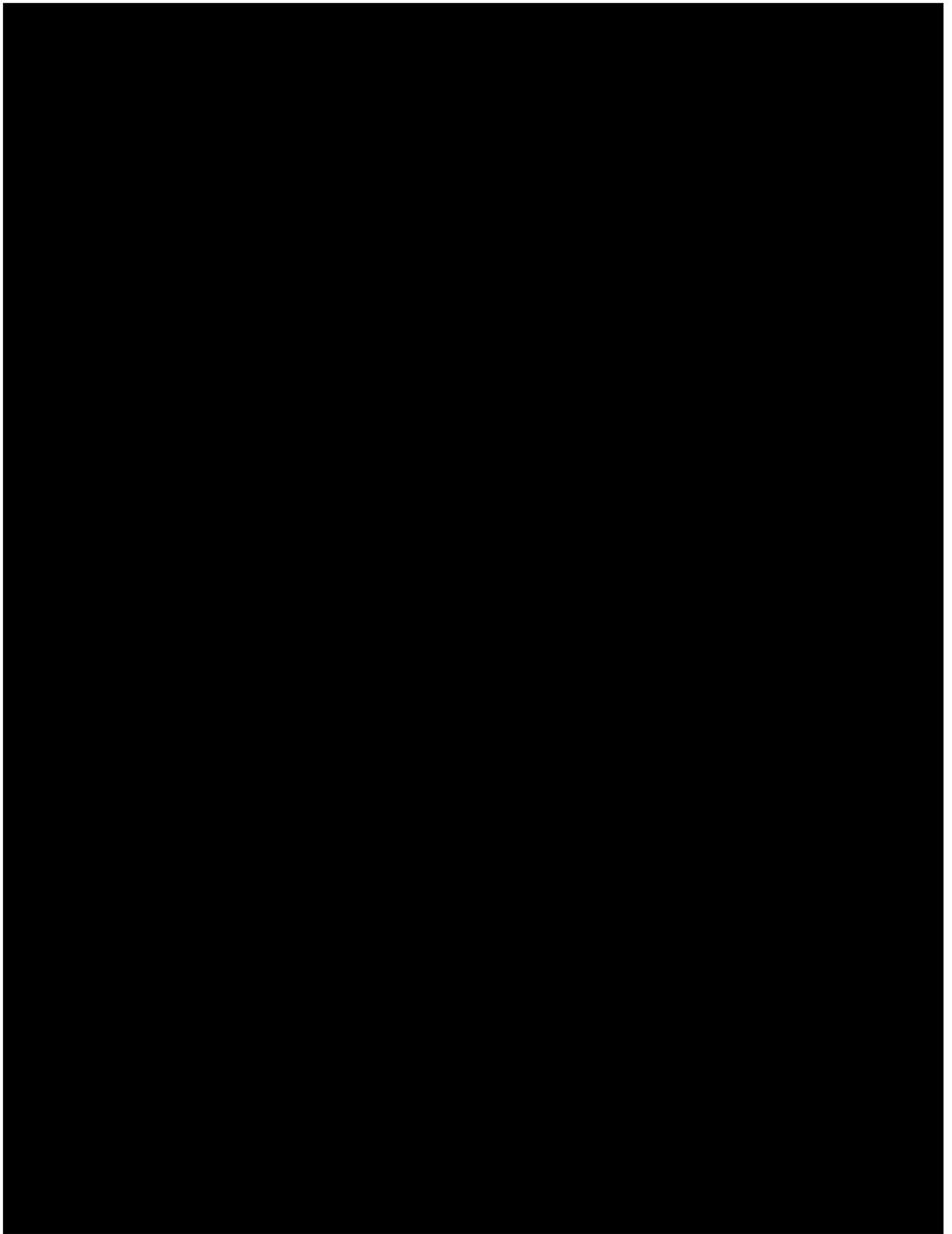


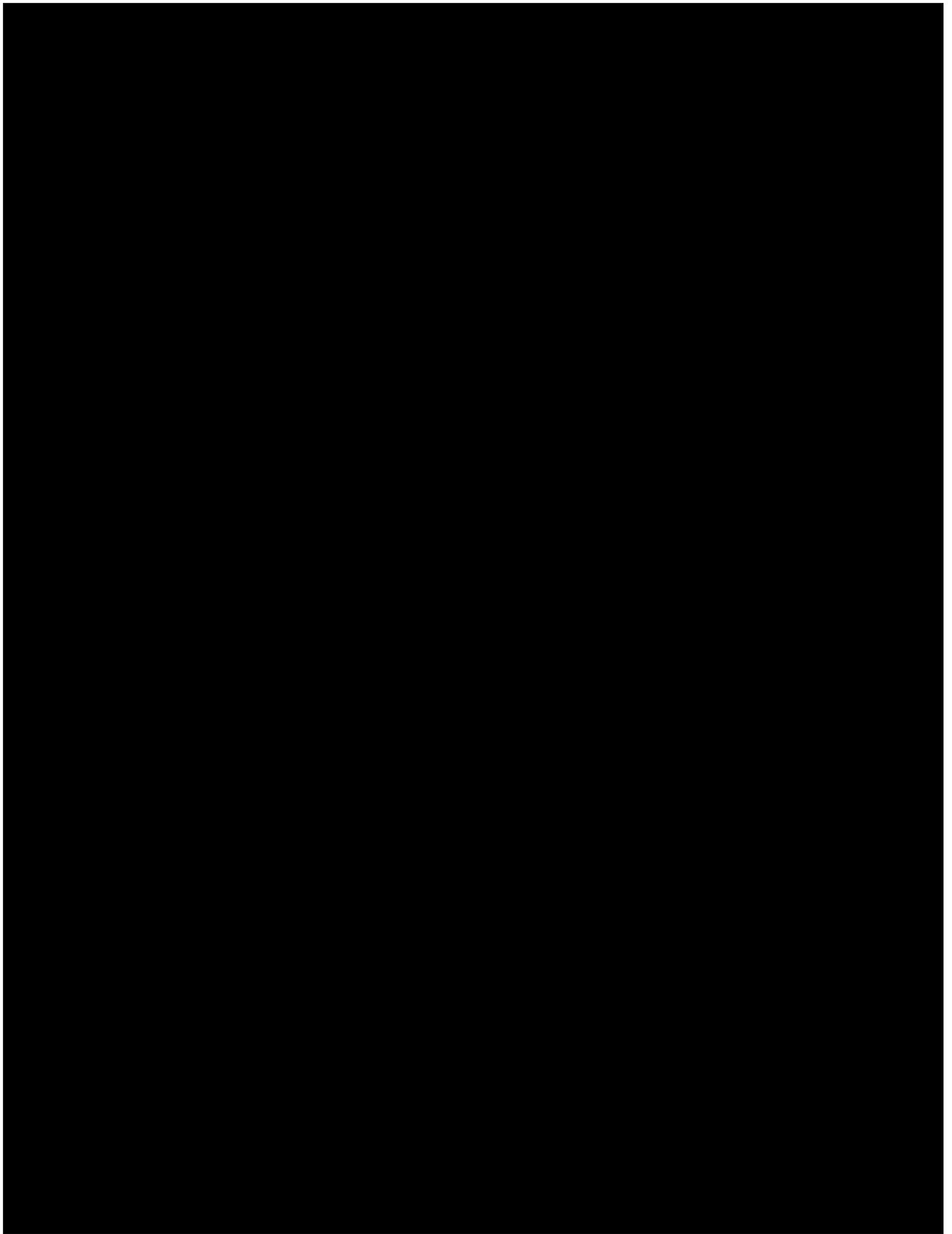


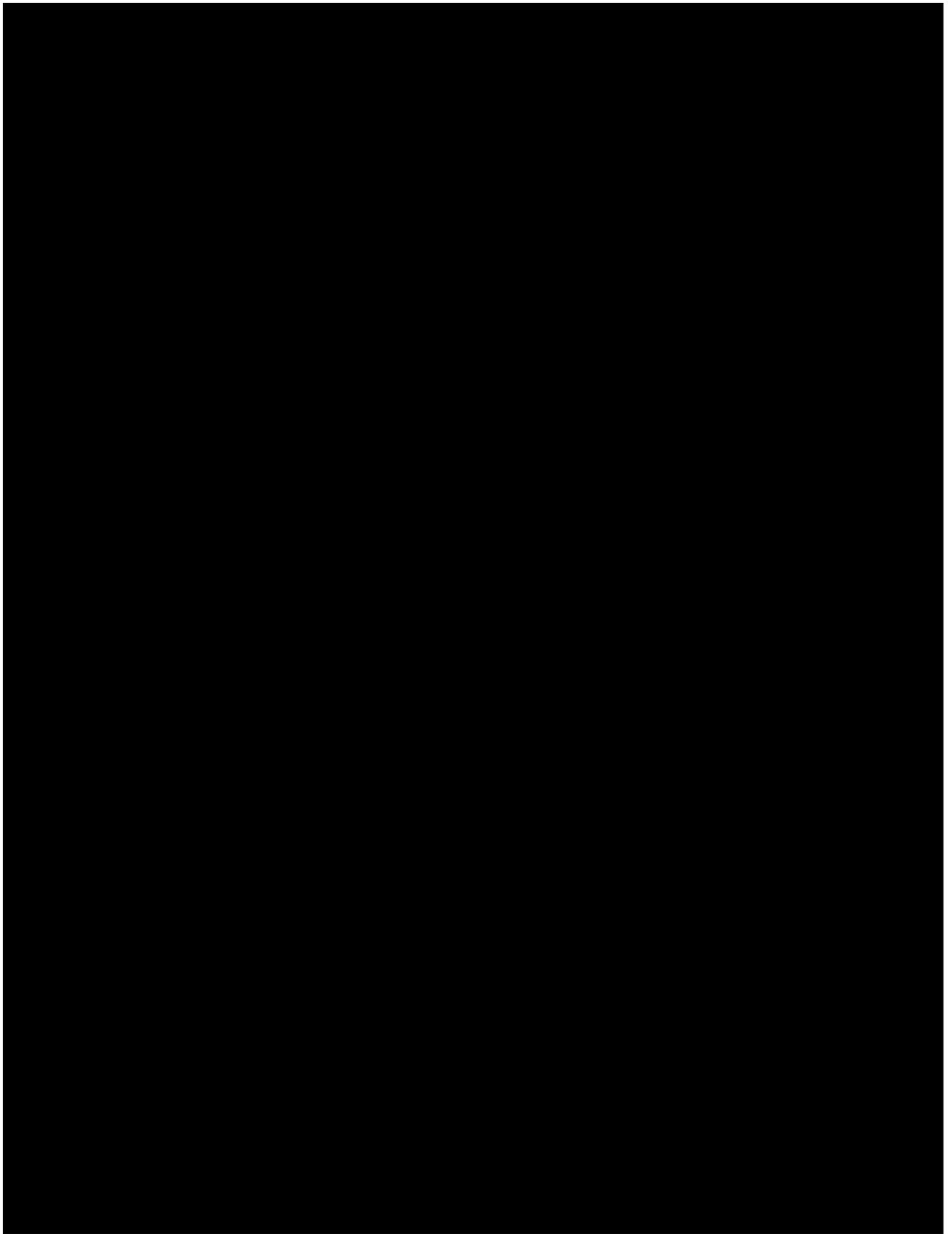


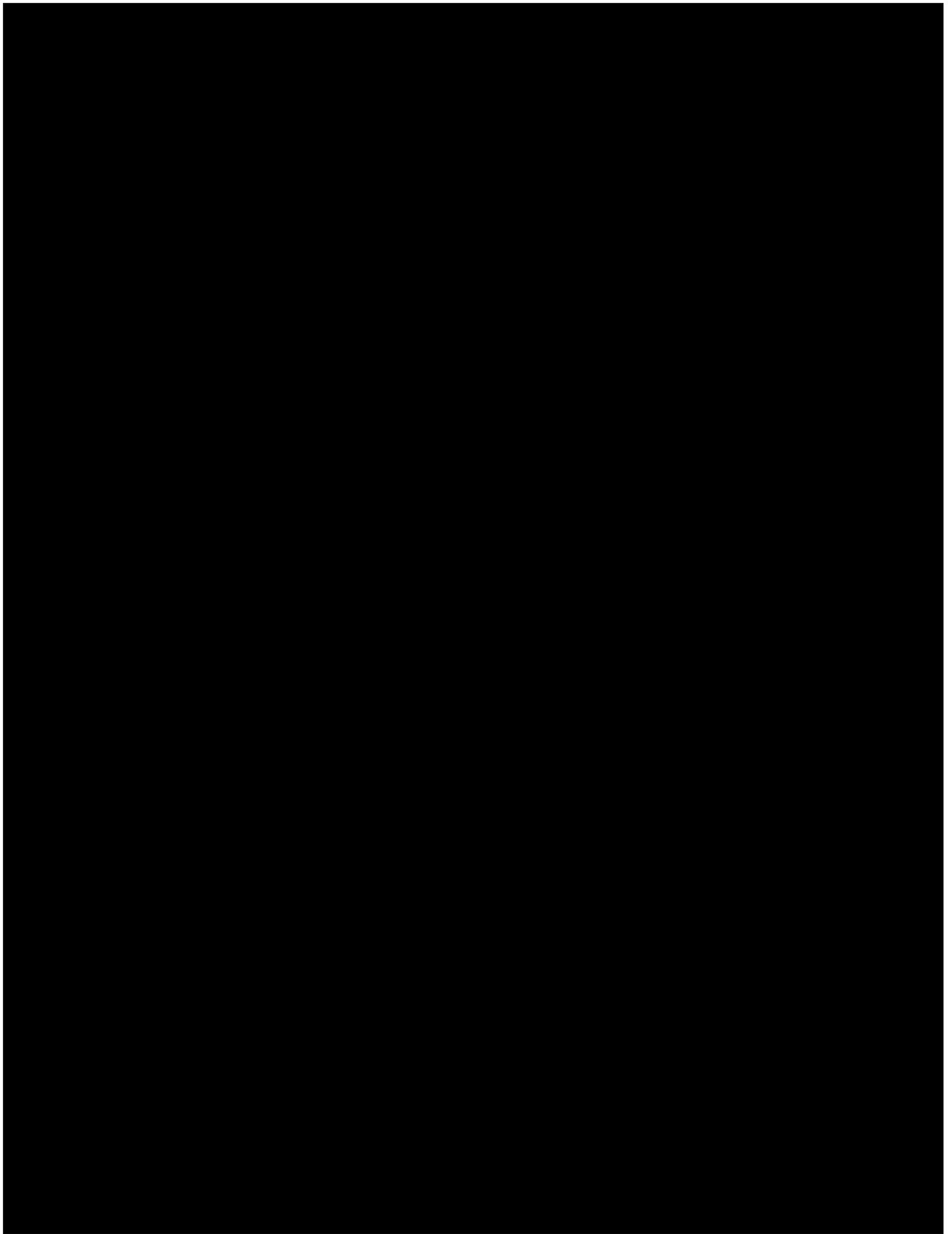


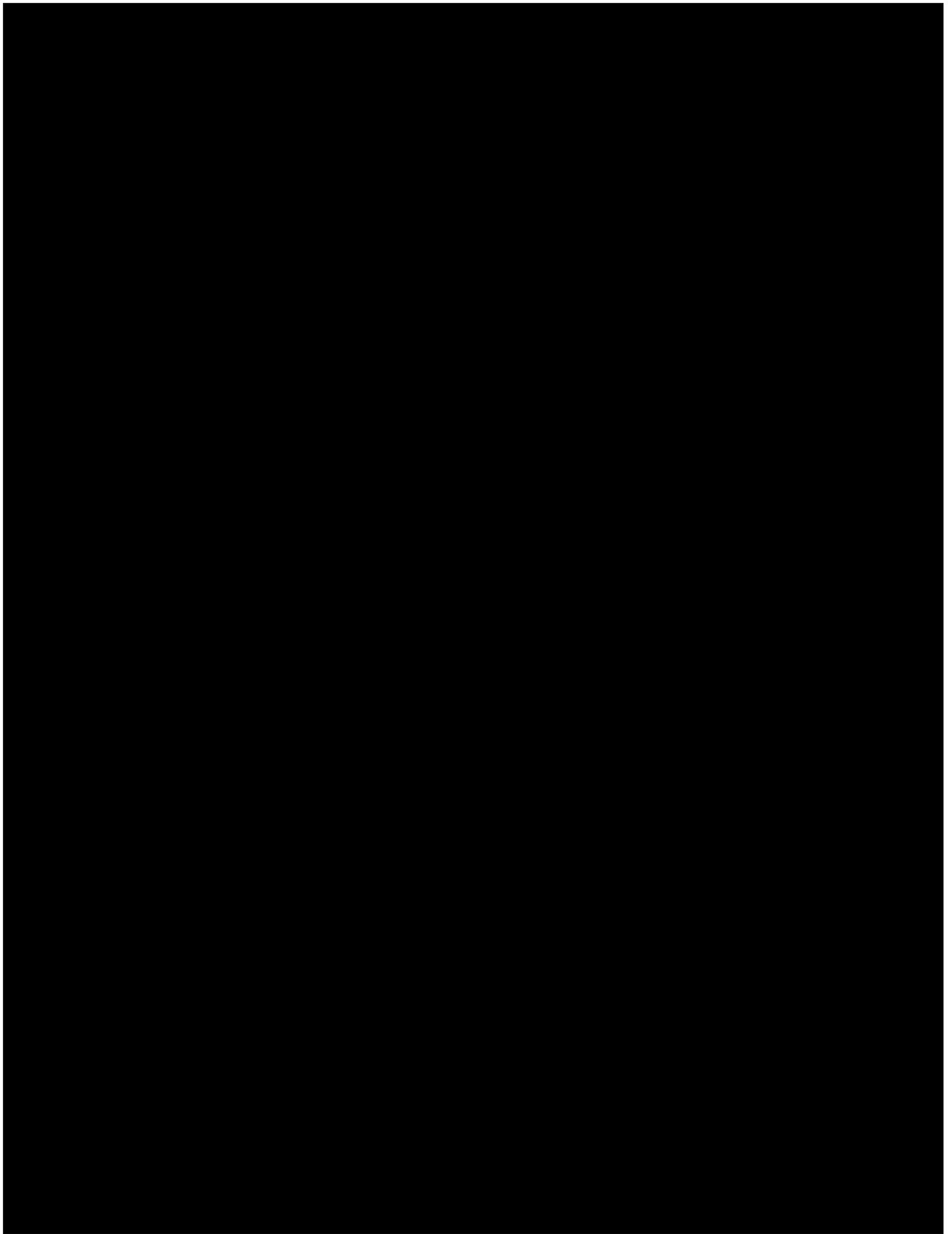


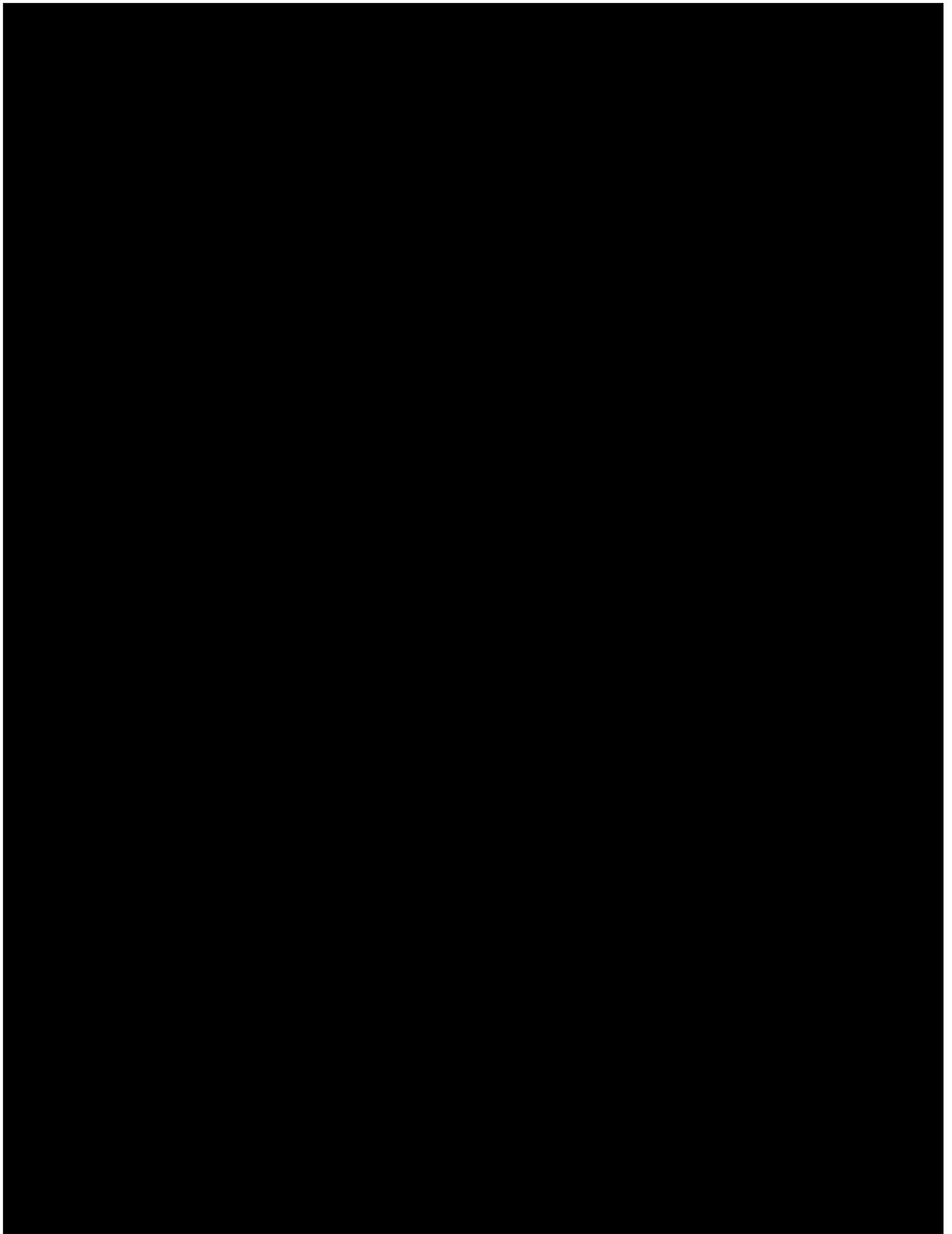


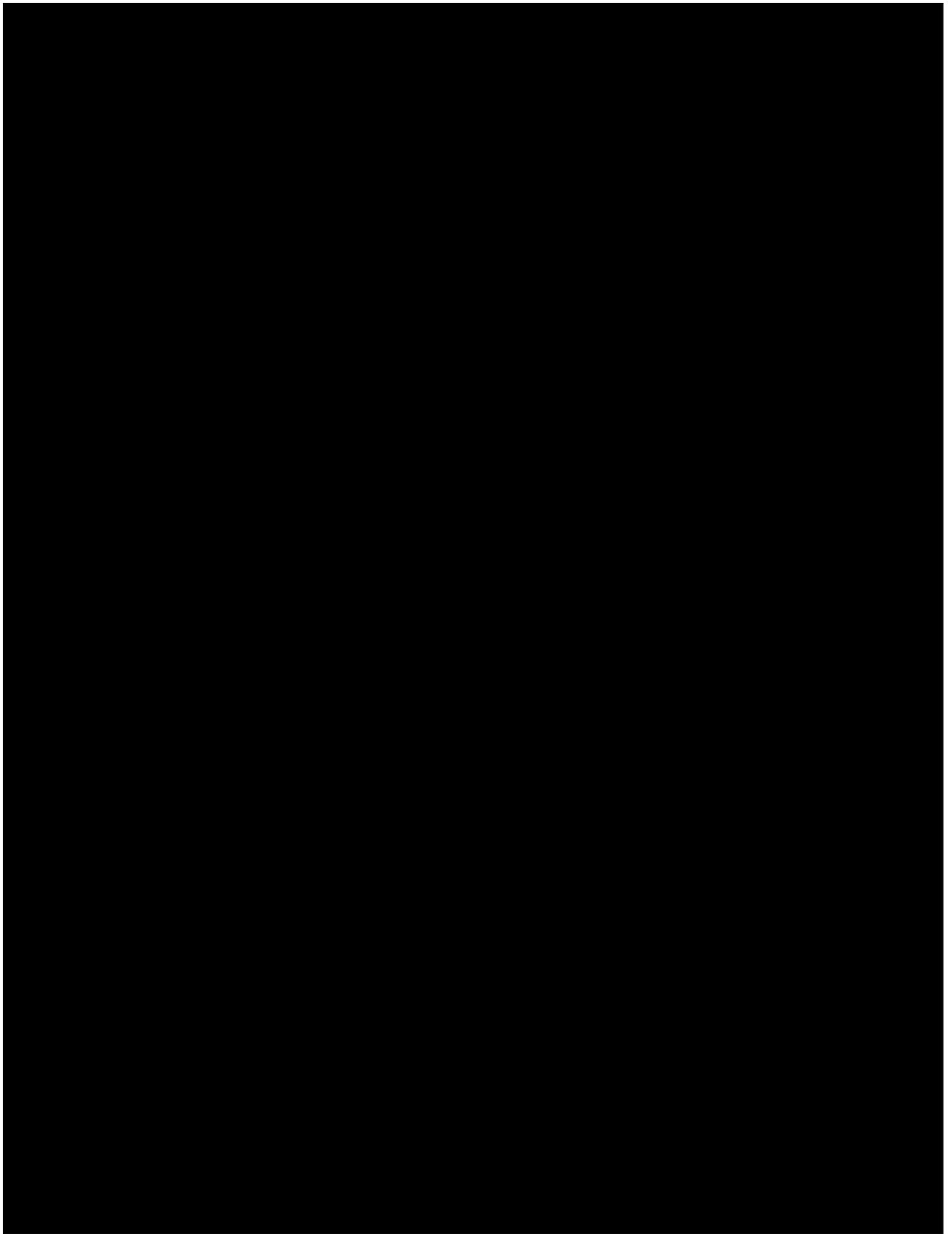


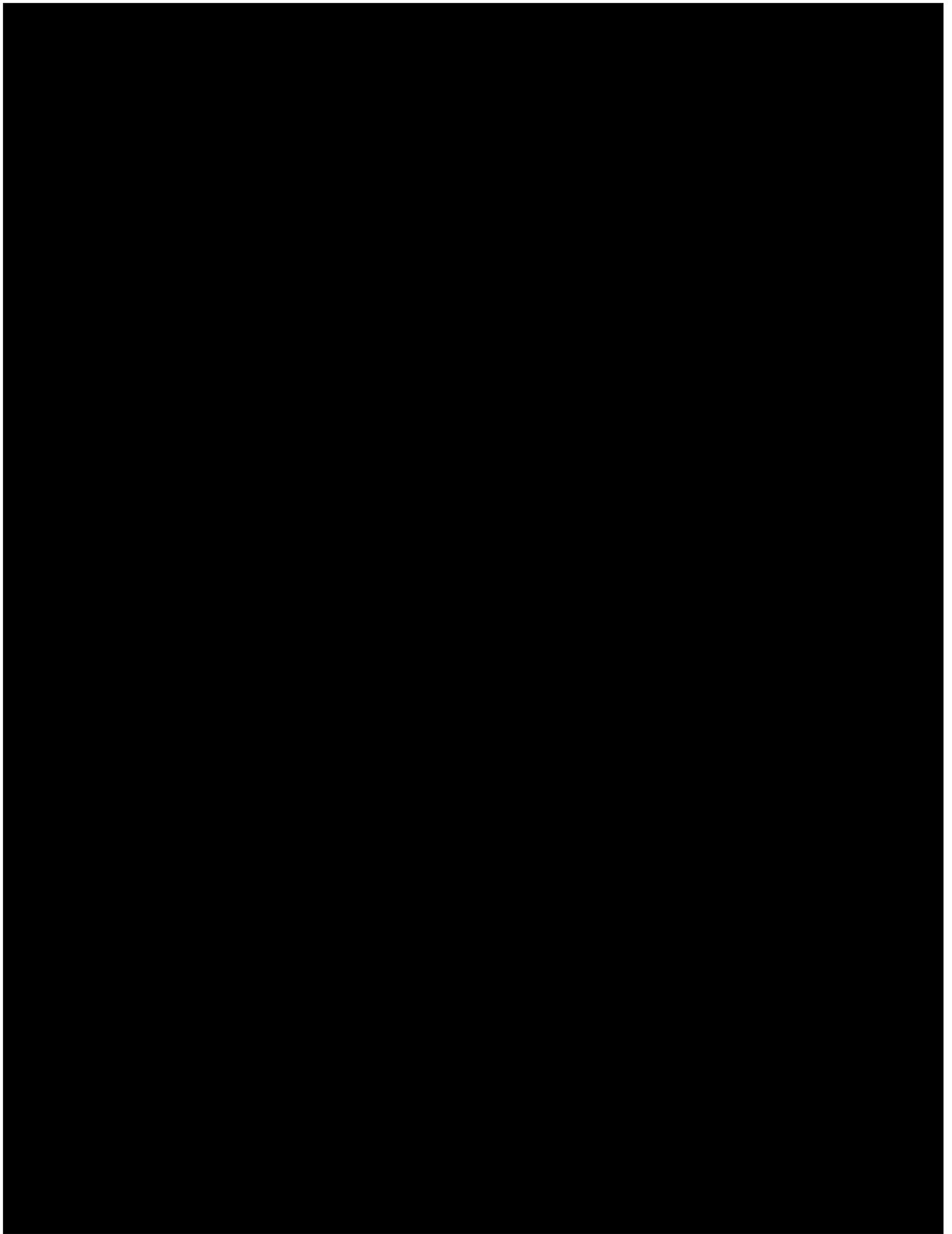


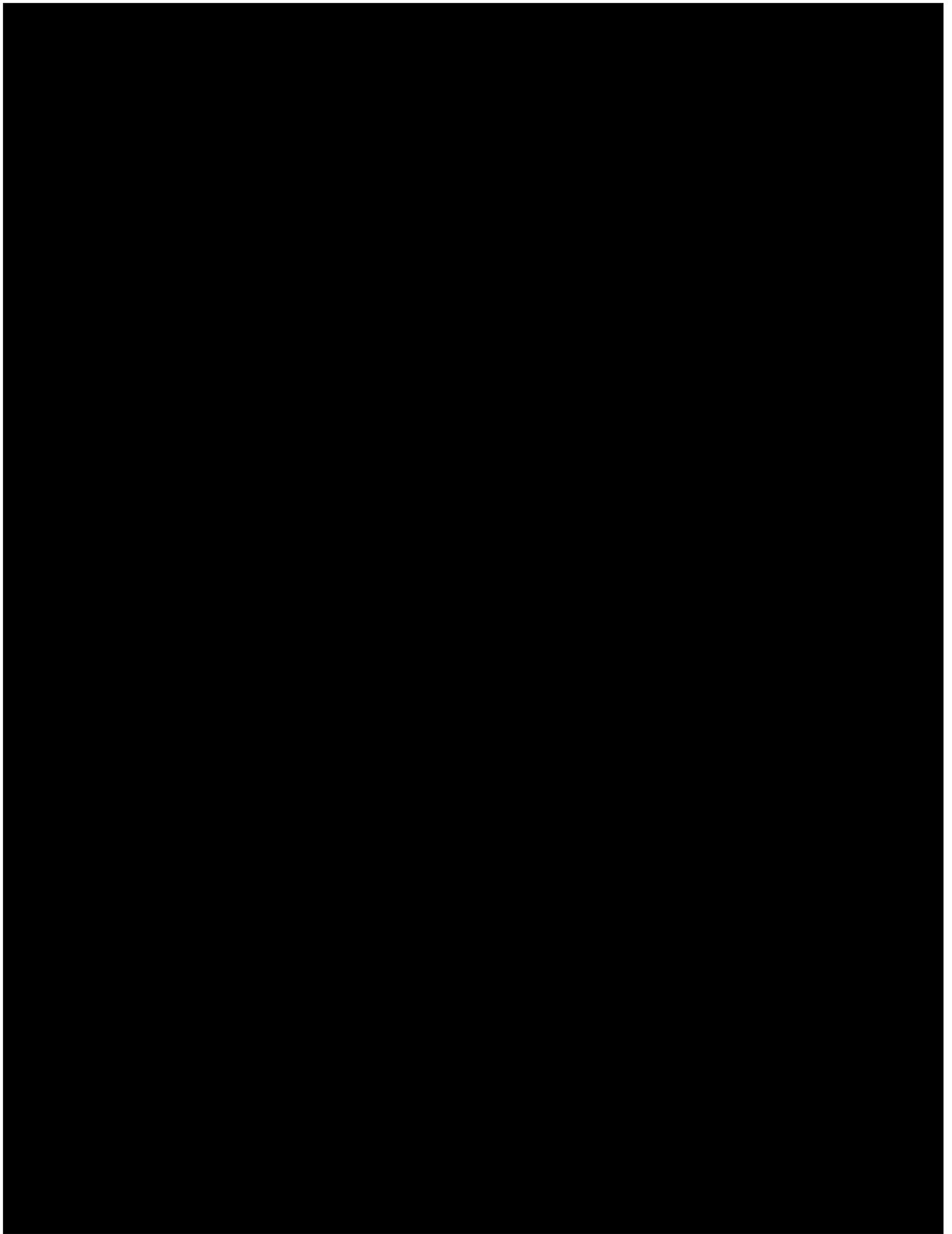


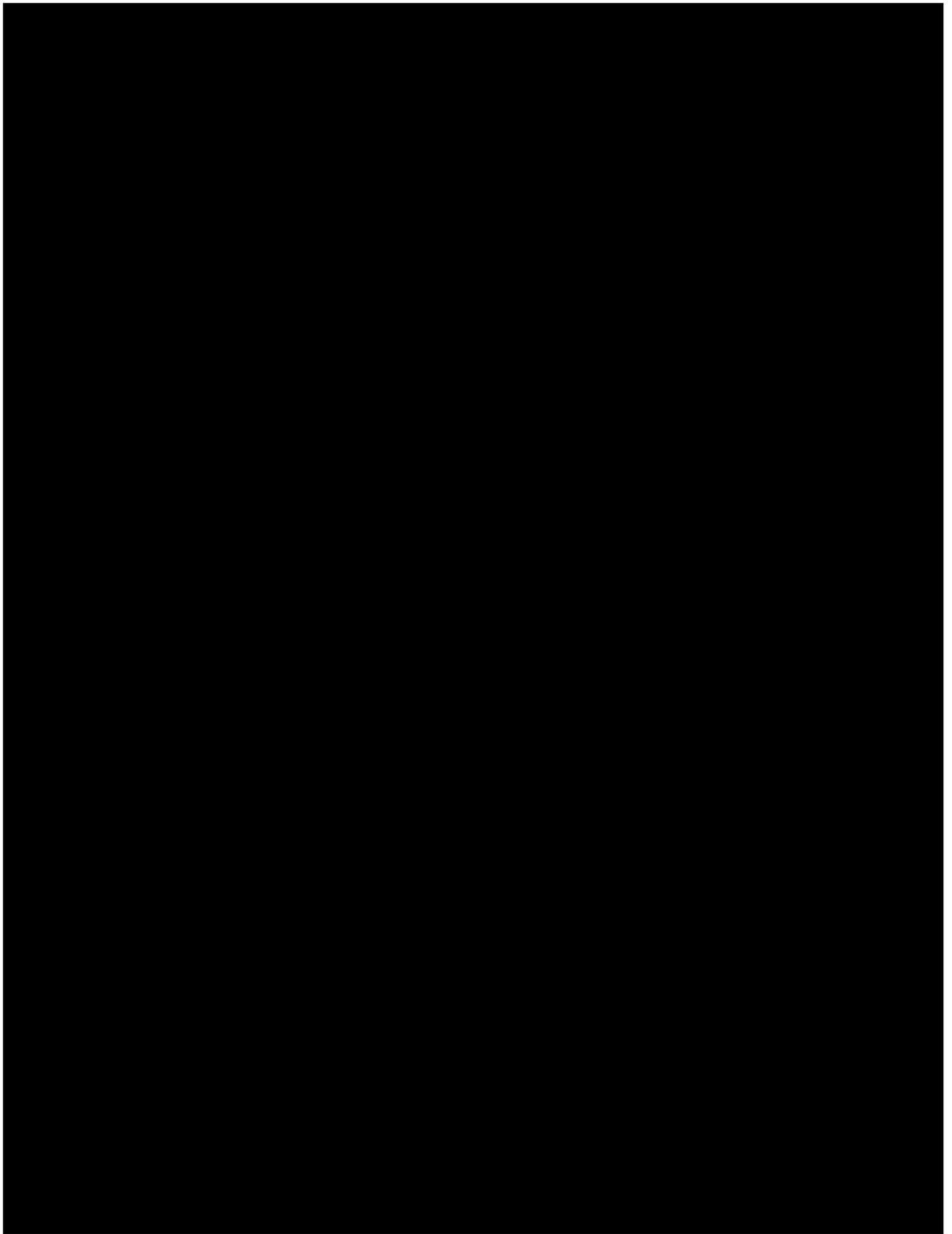


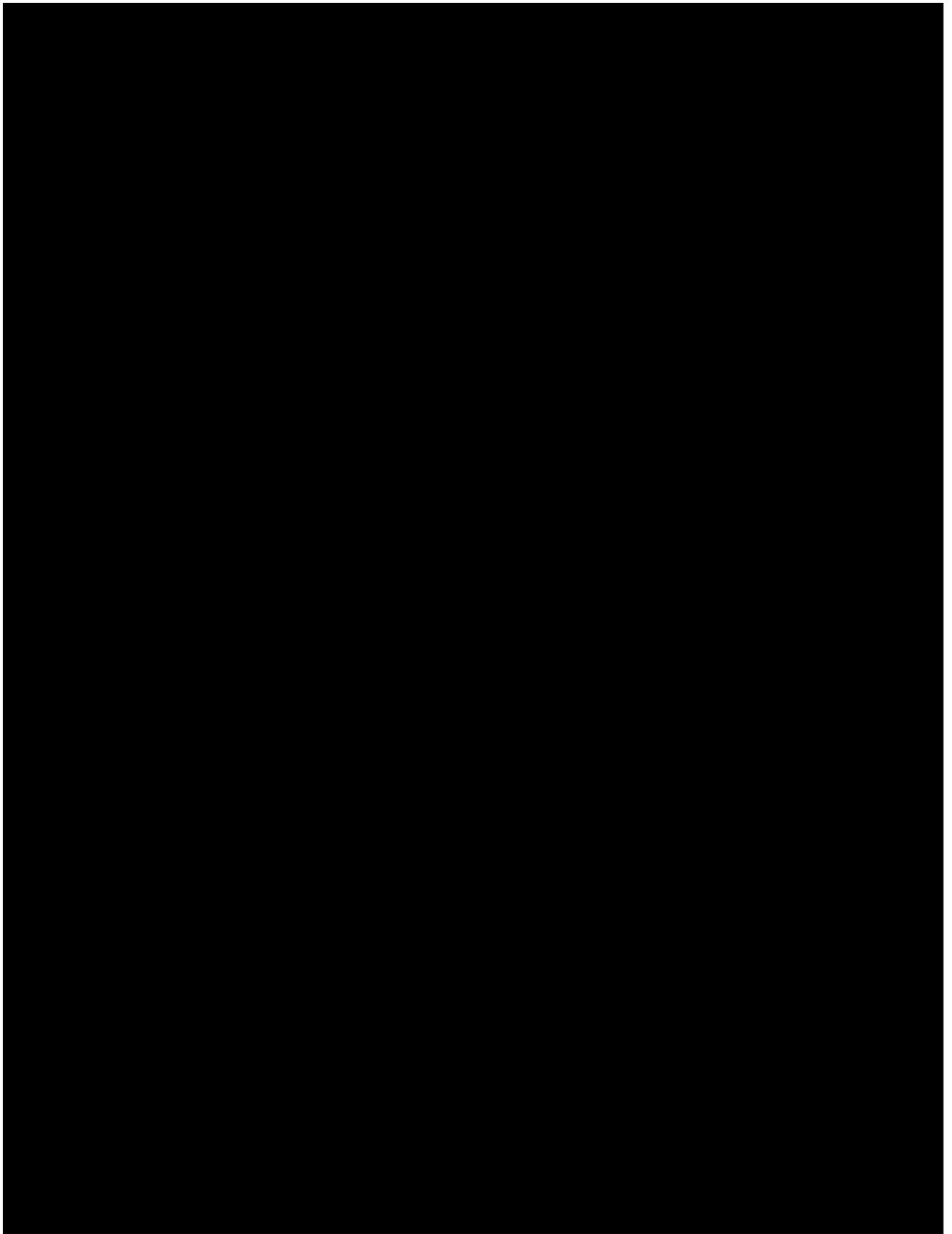


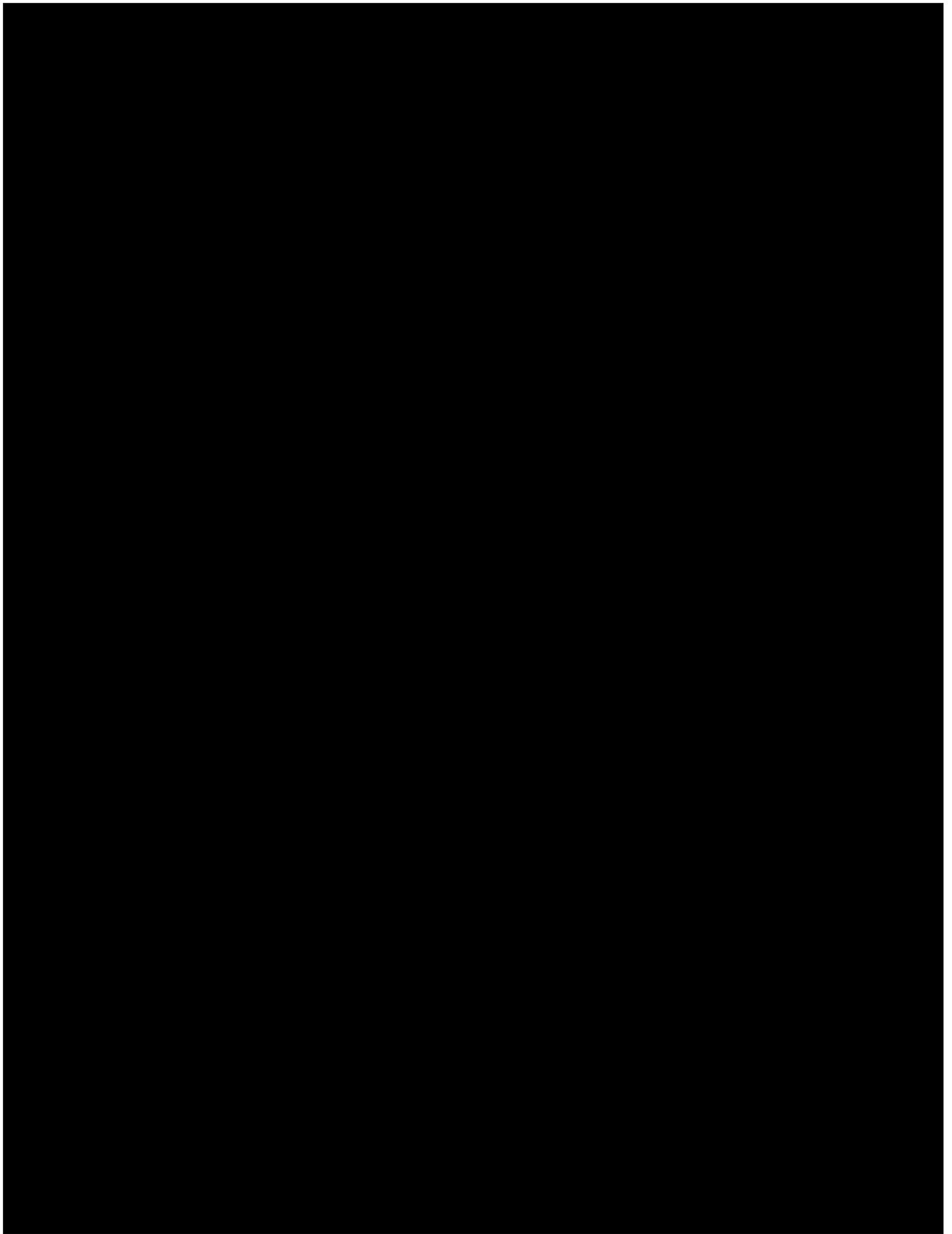


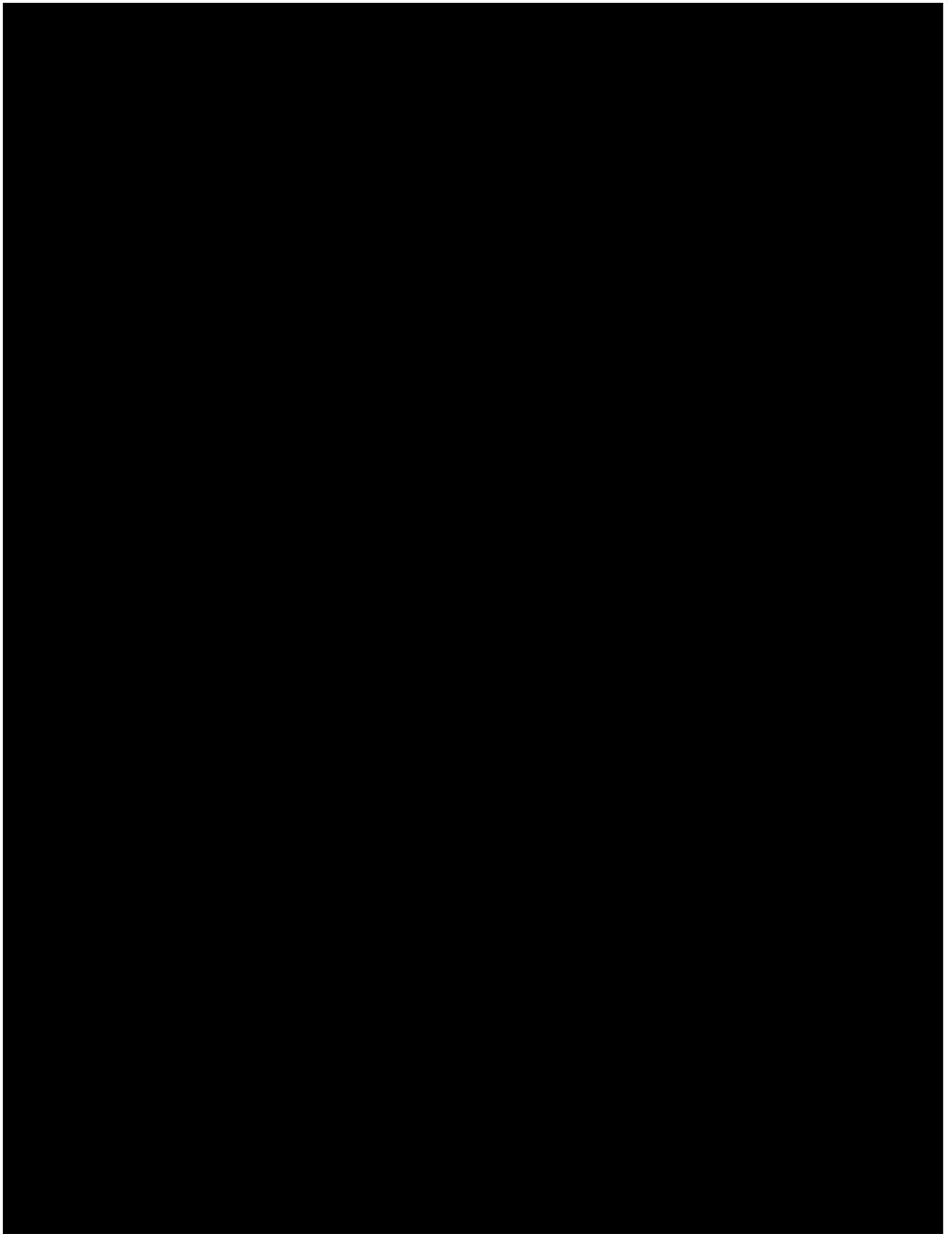


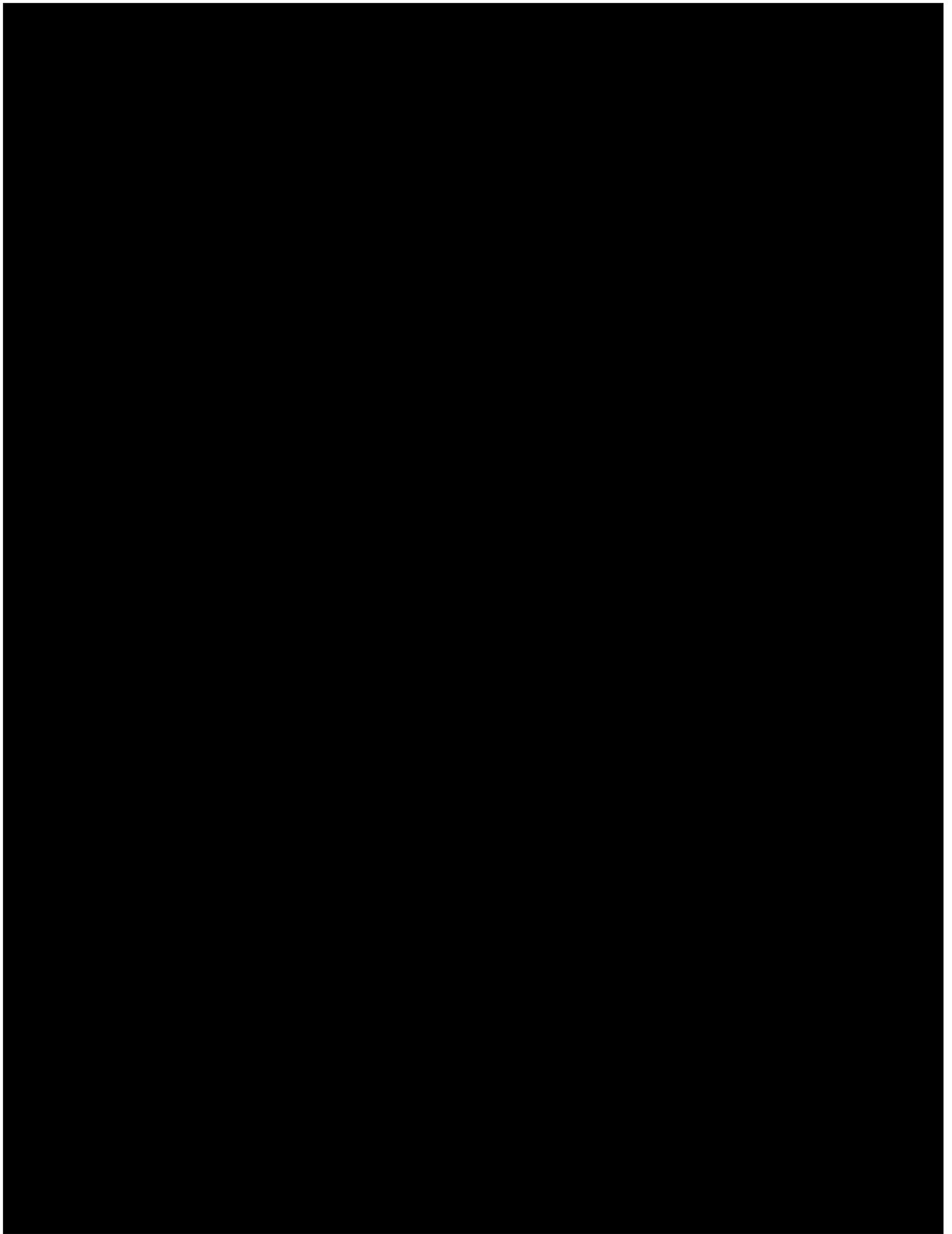


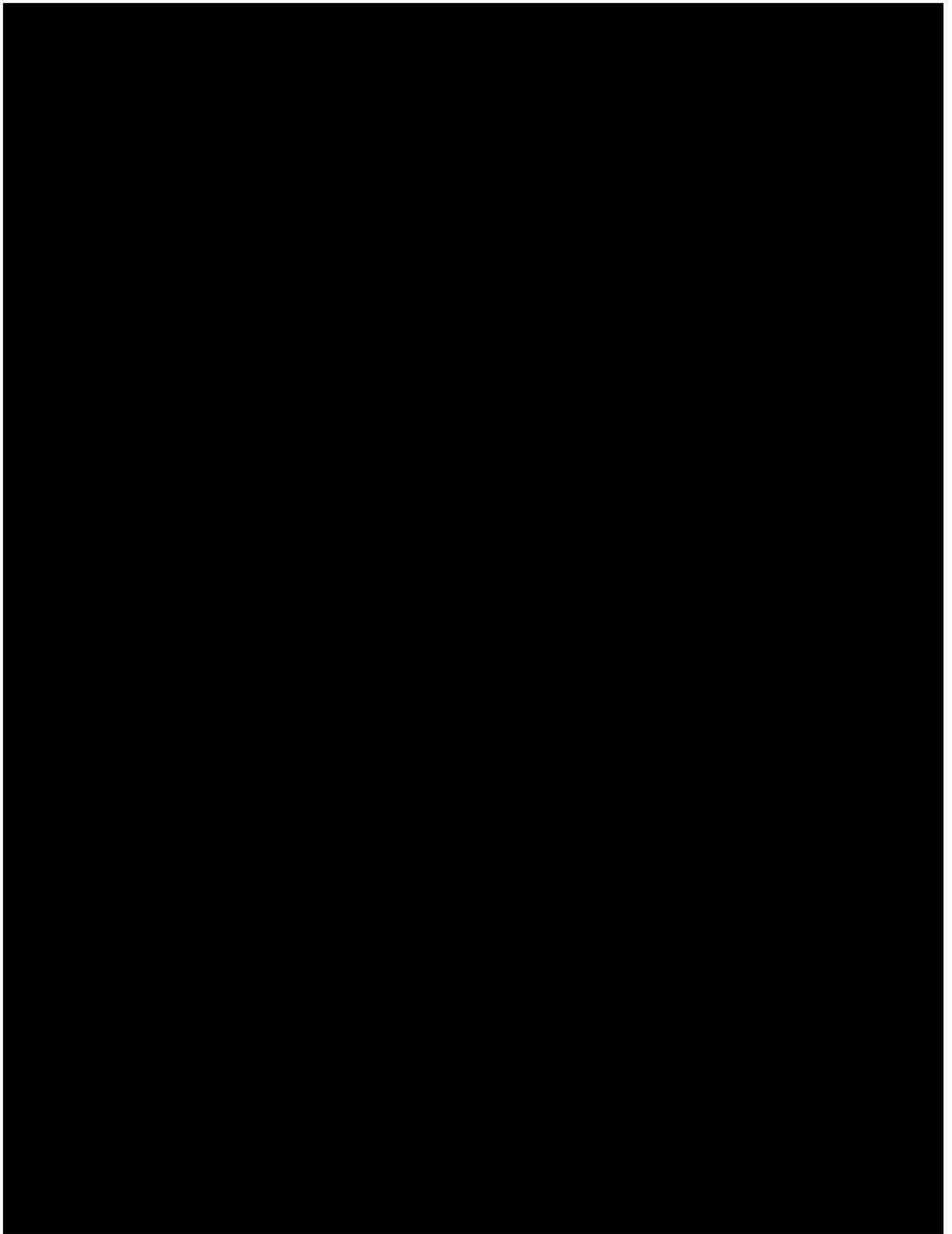


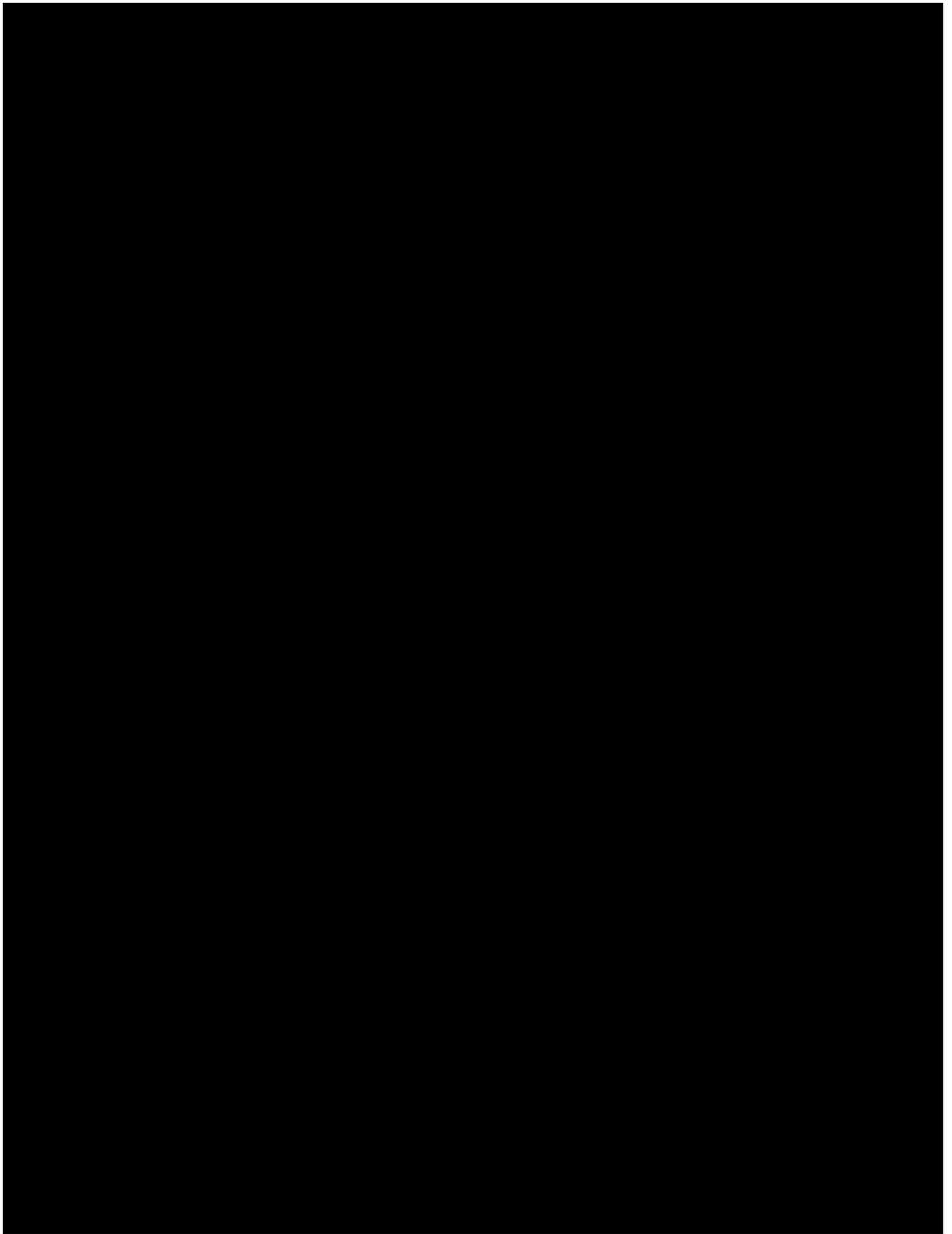


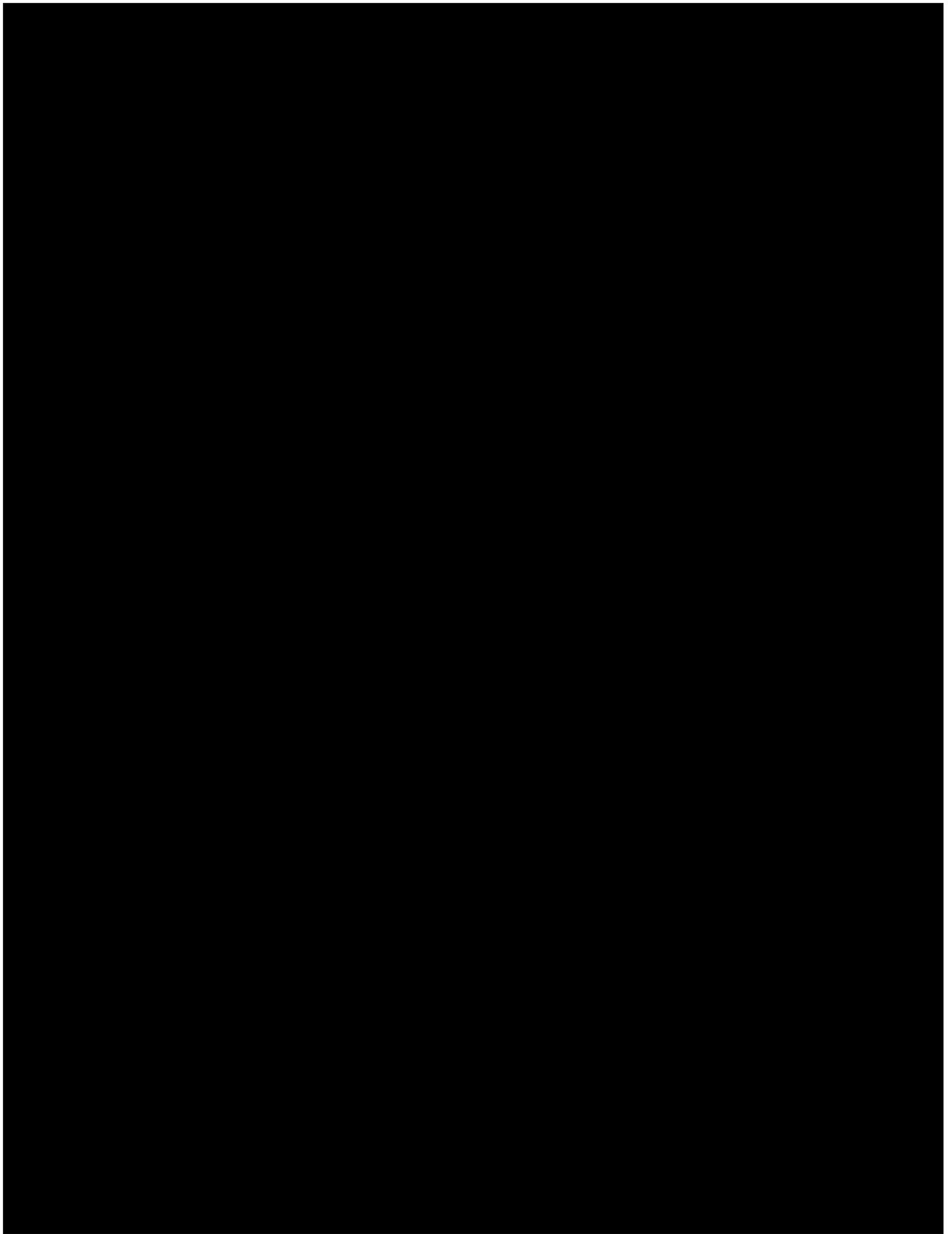


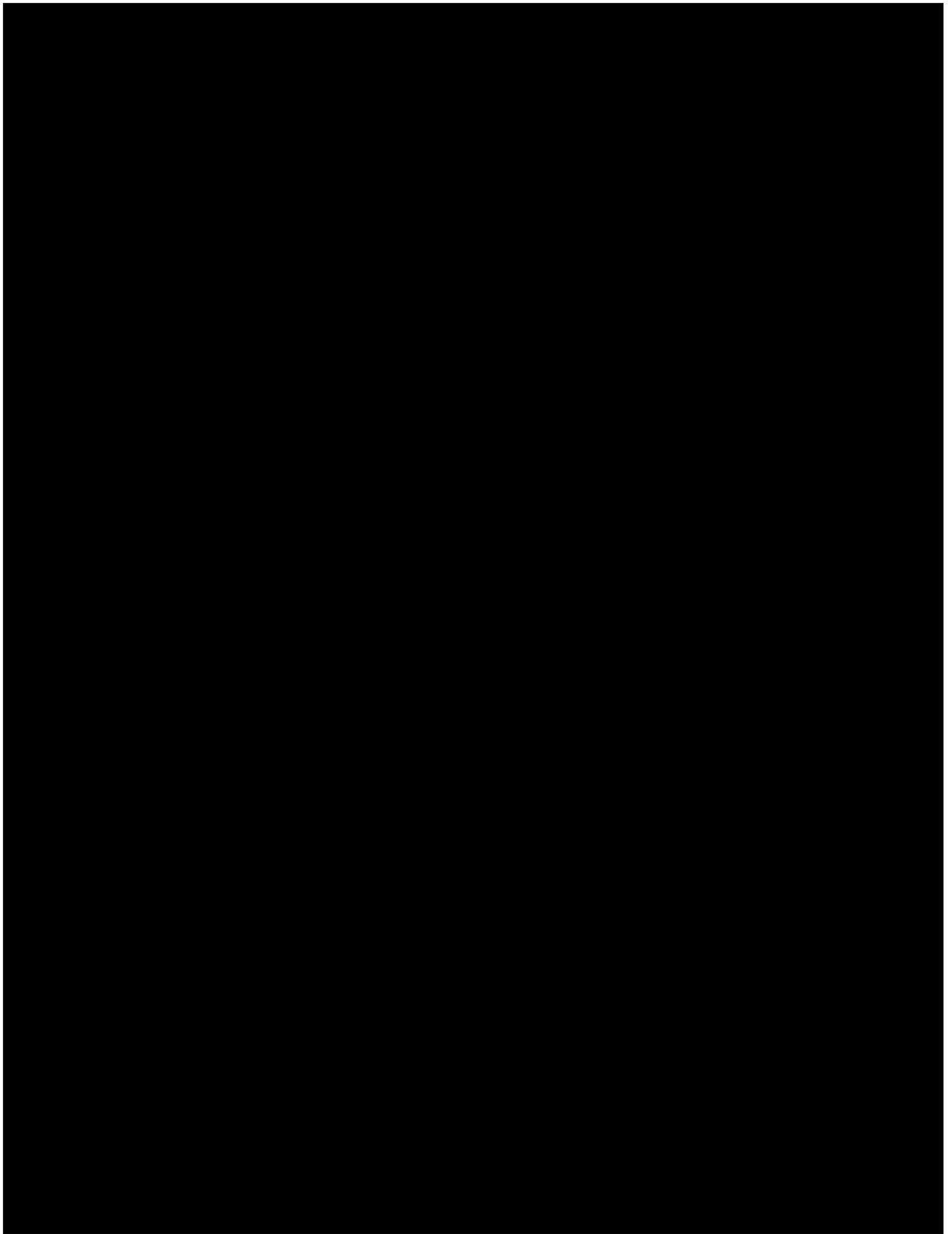


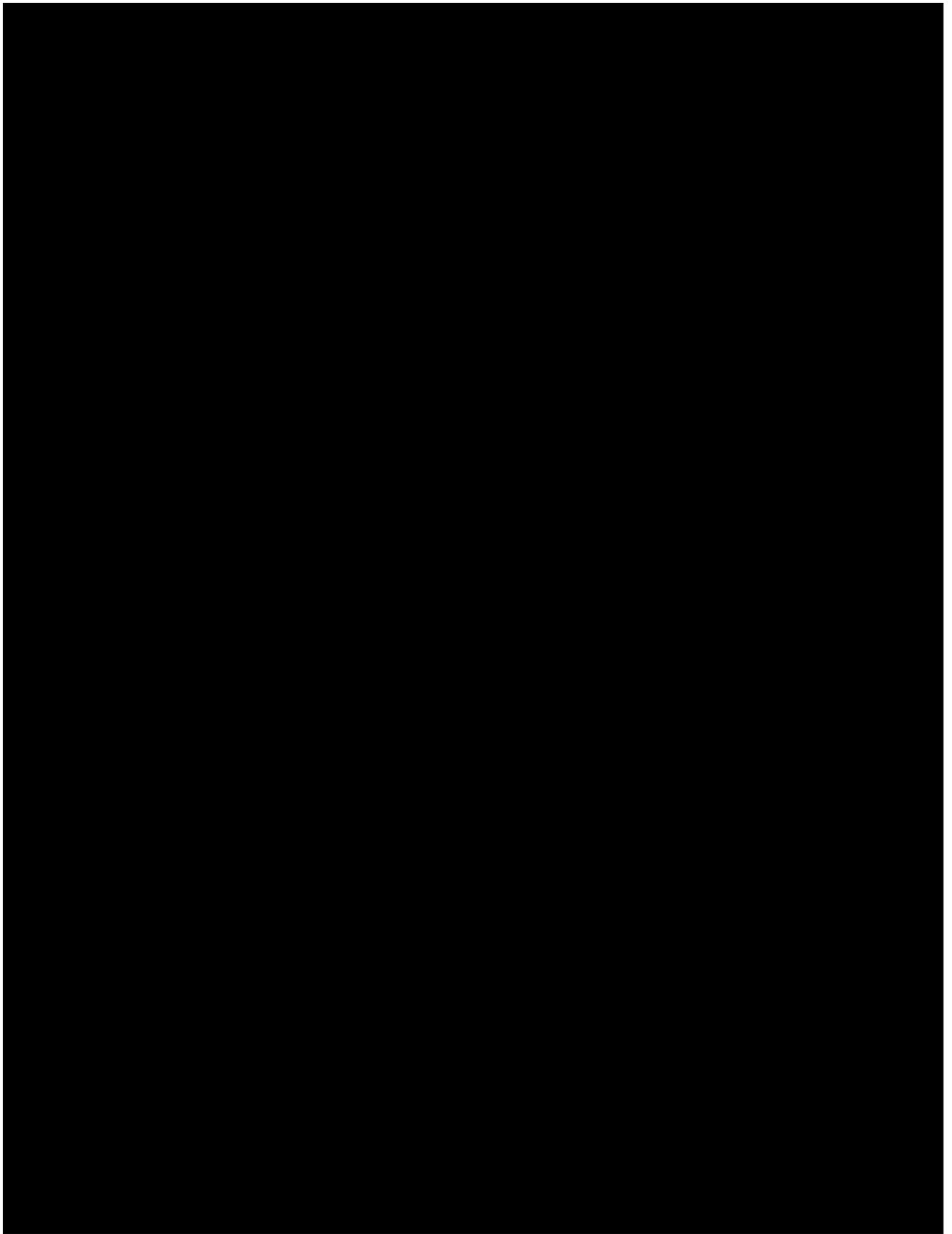


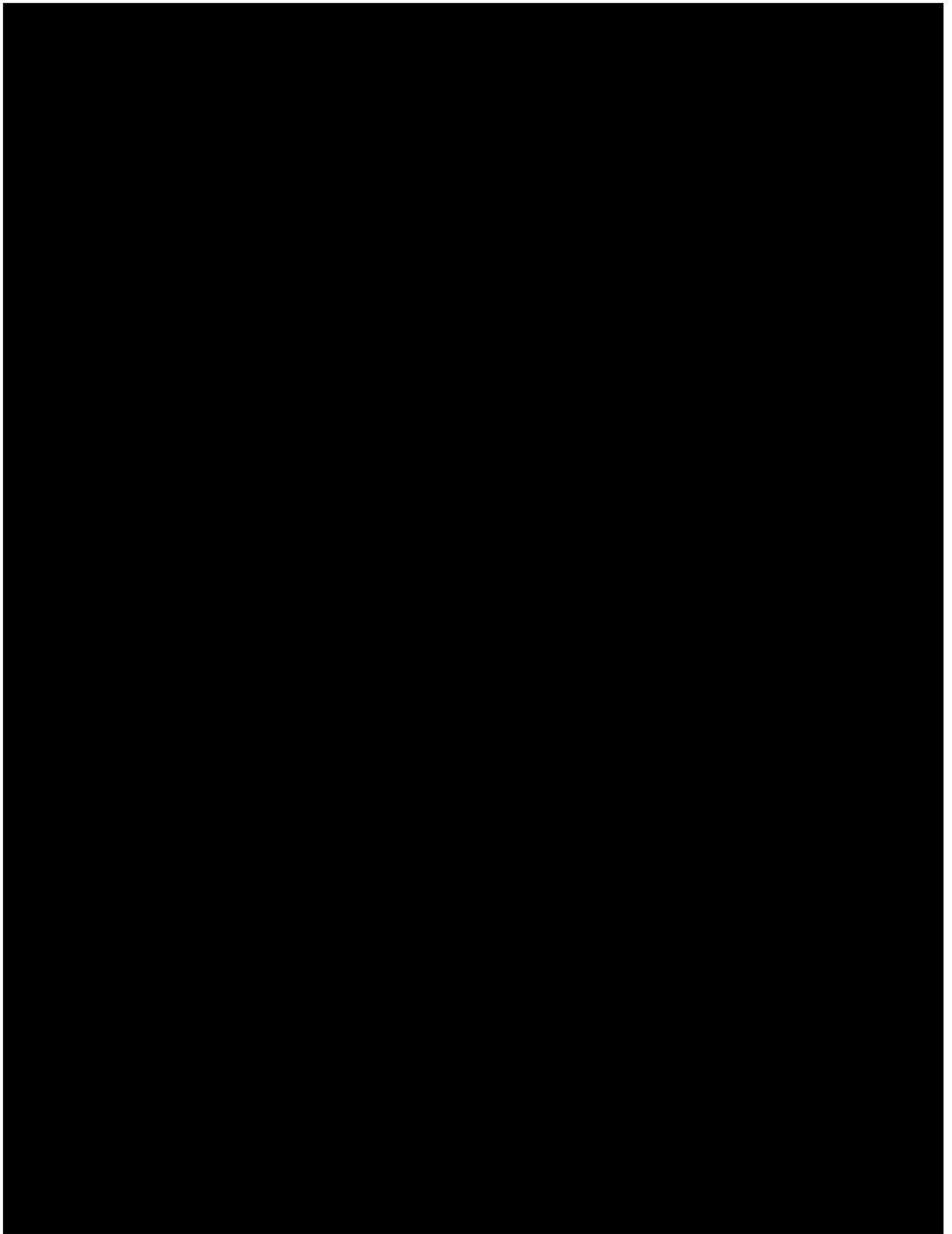


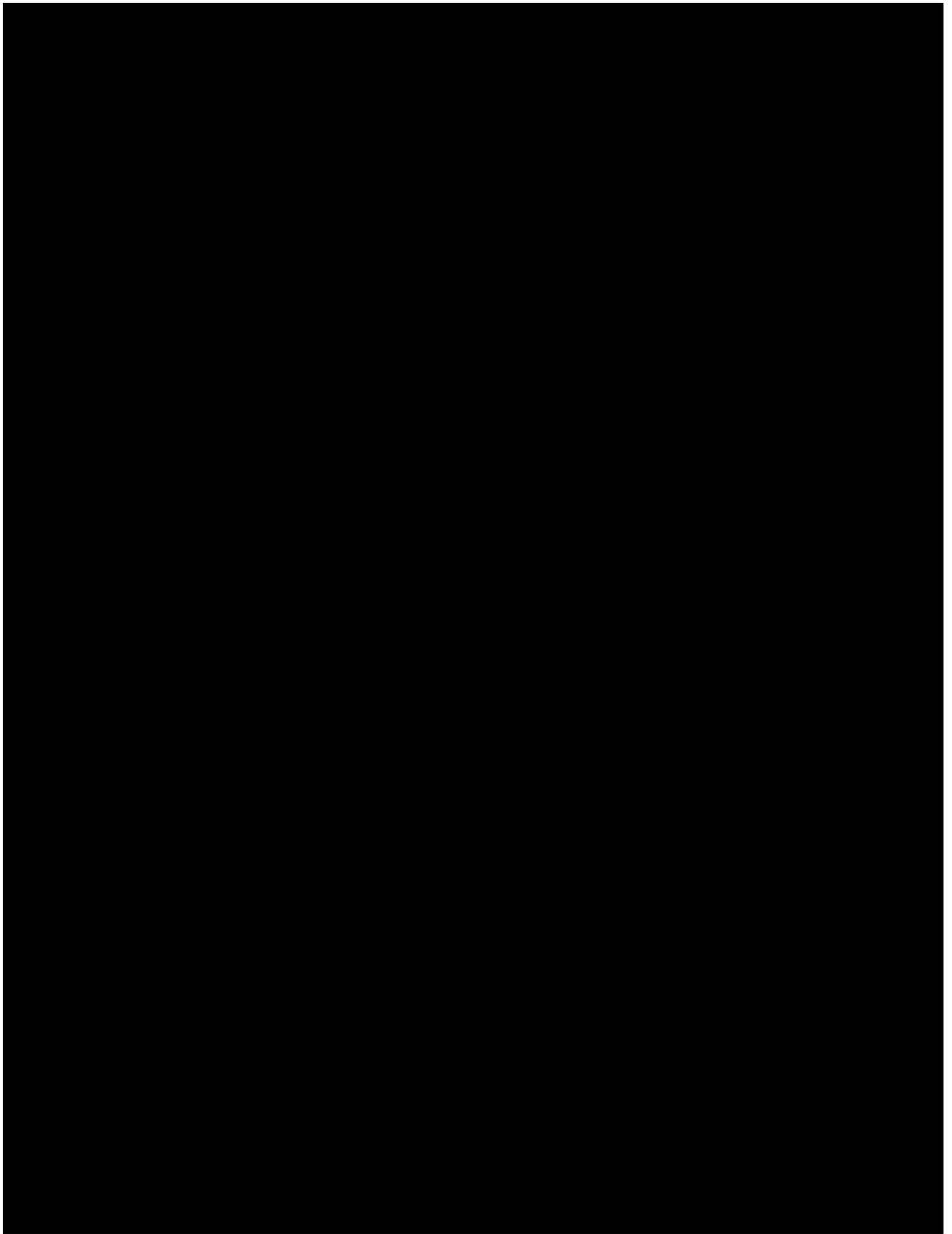


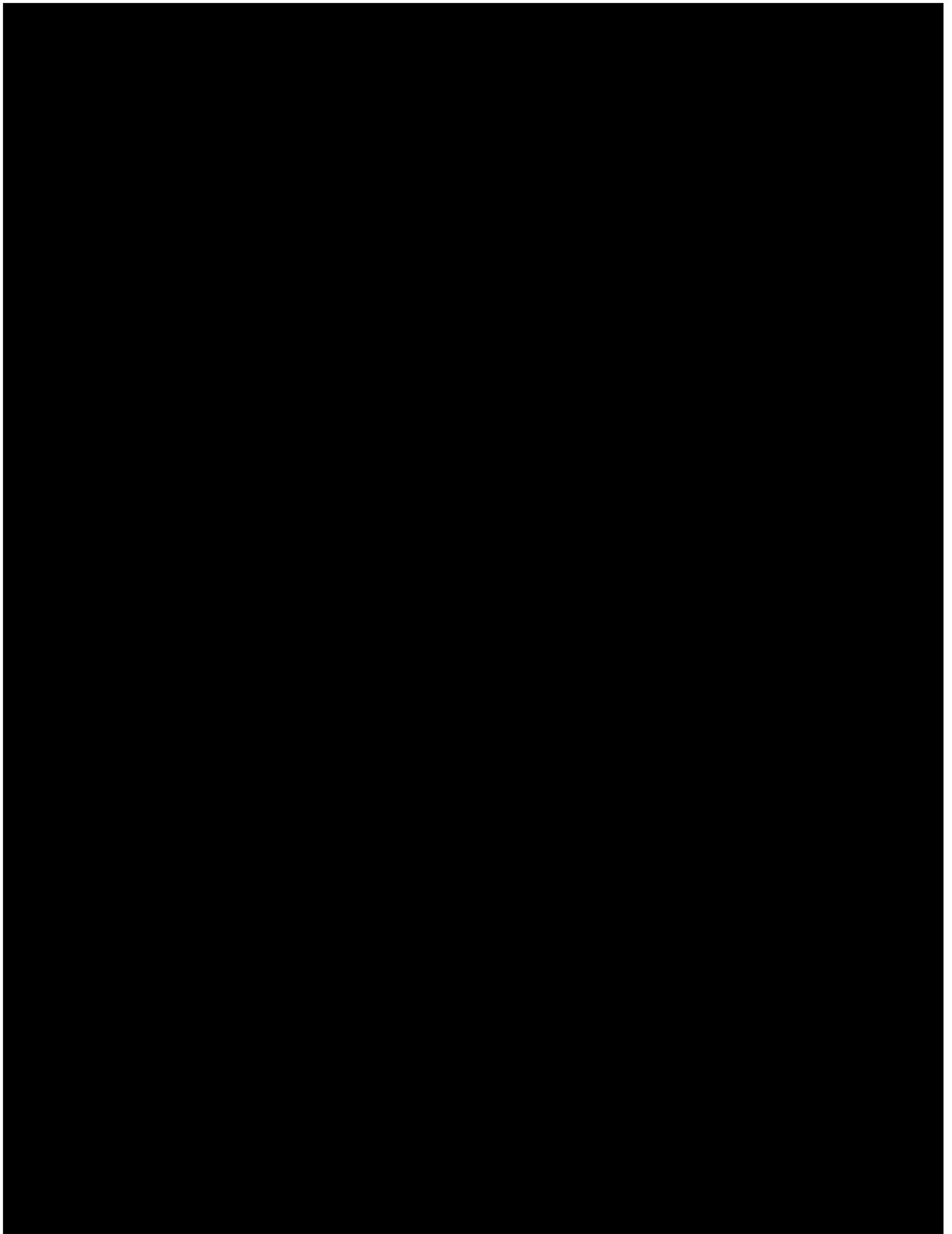


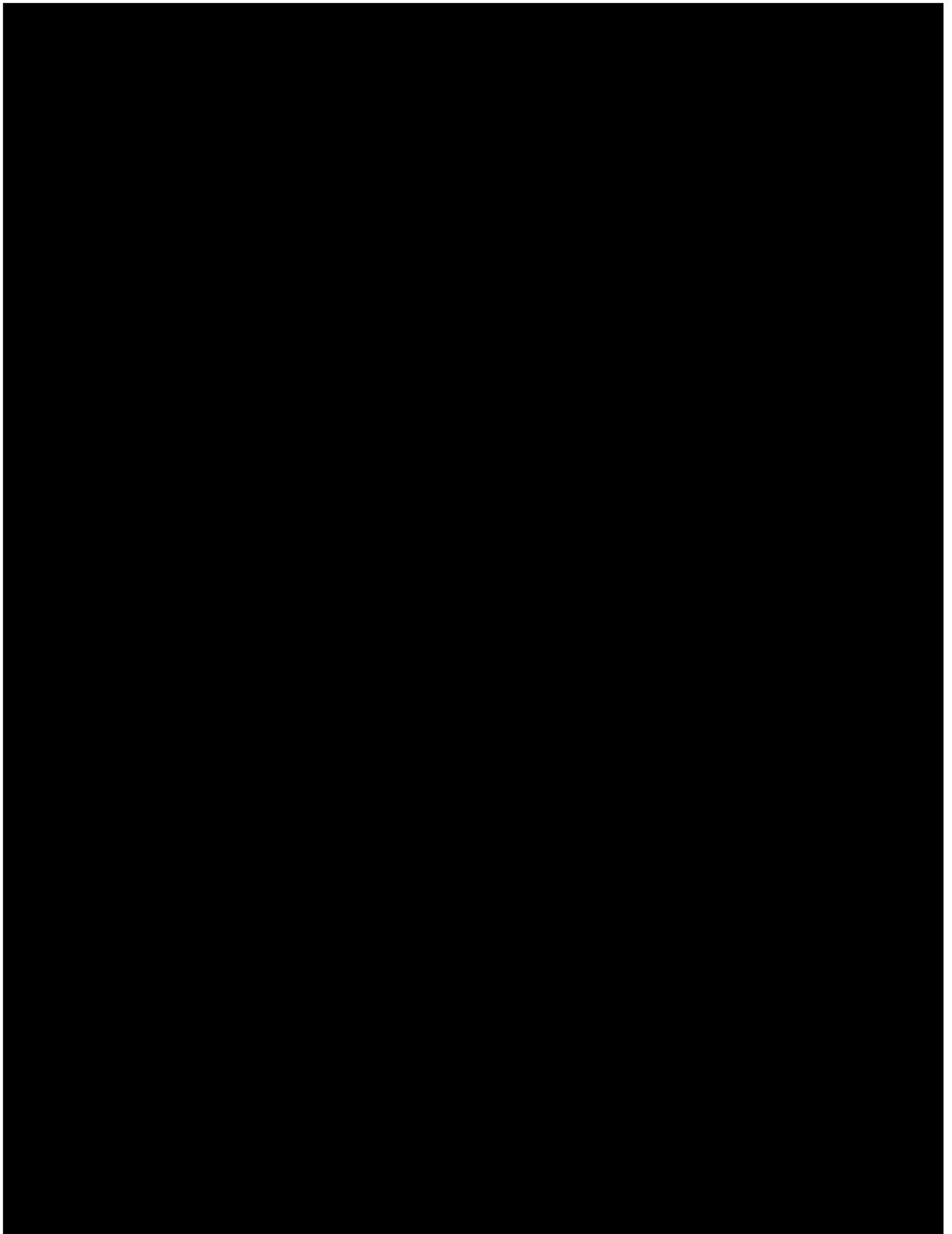


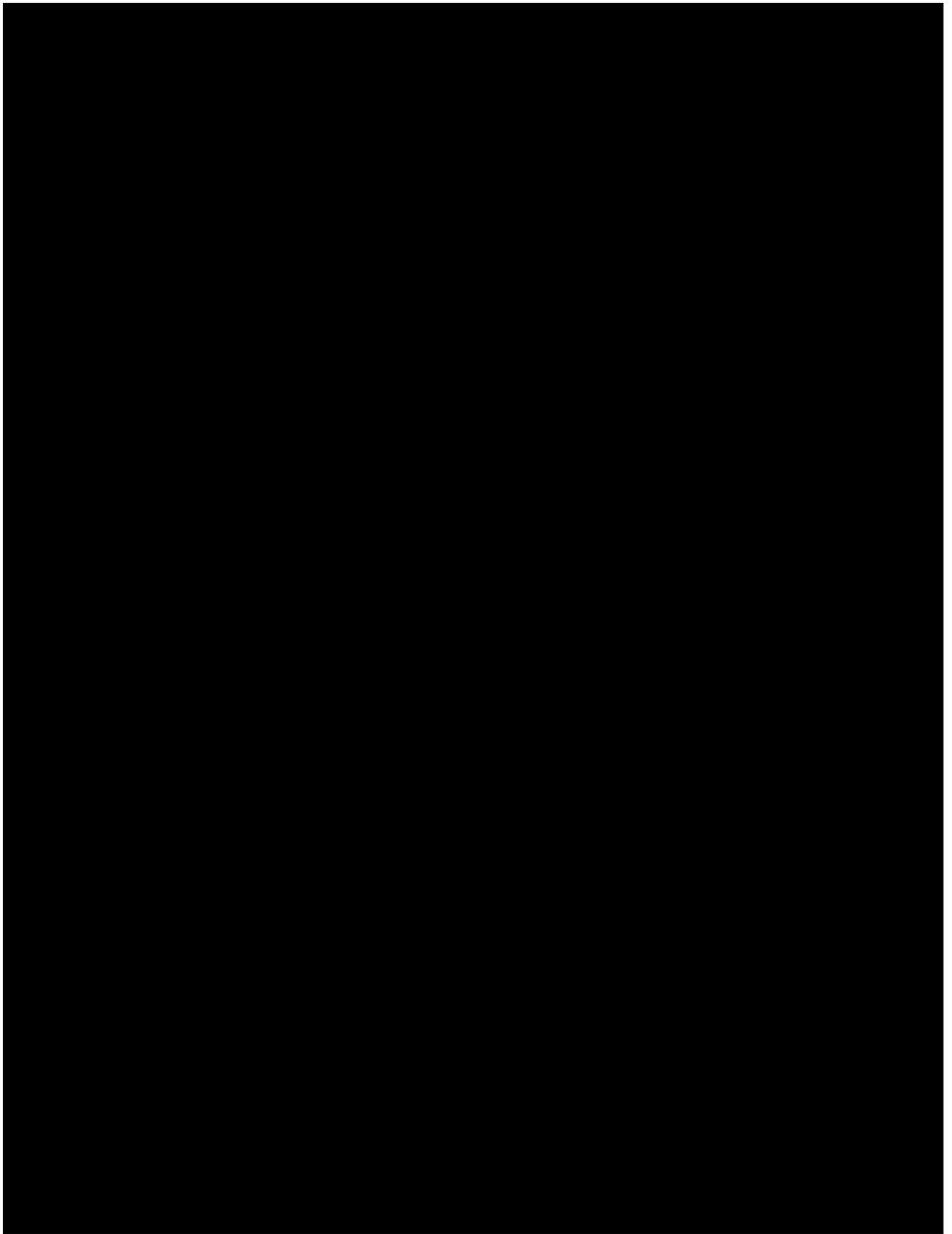


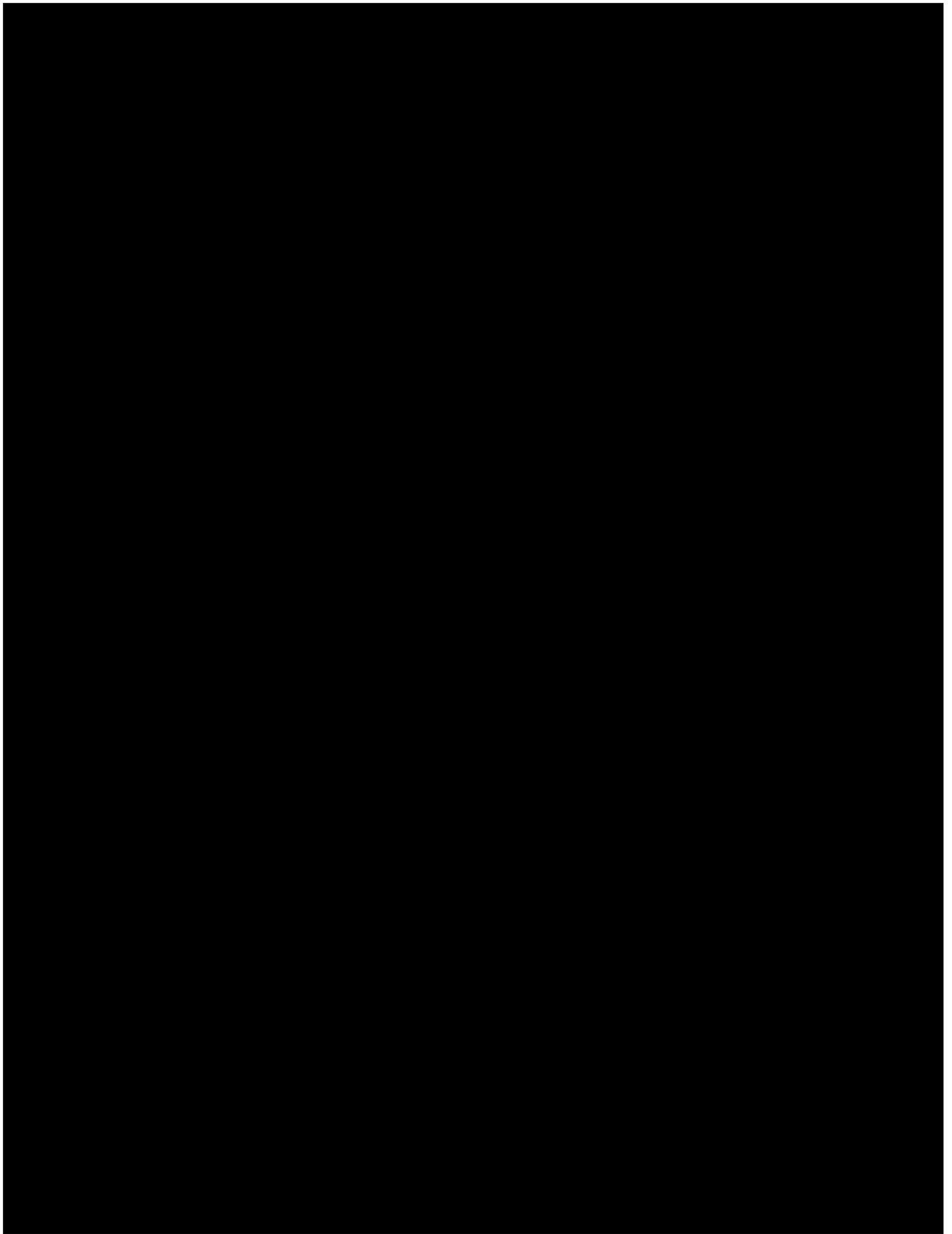












**SCHEDULE 21
MASTER AGREEMENT**

See attached.

ATTACHMENT A
AMENDED AND RESTATED MASTER AGREEMENT
FOR
NEXT GENERATION
KENTUCKY INFORMATION HIGHWAY (NG-KIH) INITIATIVE
CONCESSIONAIRE PARTNER

BETWEEN
THE COMMONWEALTH OF KENTUCKY Finance and Administration
Cabinet

AND
MACQUARIE INFRASTRUCTURE DEVELOPMENTS LLC
Level 16, 125 West 55th Street
New York, New York 10019

Contact Person:
Nicholas Hann
Senior Managing Director
Suite 2400
550 Burrard Street Vancouver BC V6C 2B5
Canada
Telephone: 604-605-1779 Fax: 604-605-1634
Nicholas.hann@macquarie.com

MA 758 1500000563

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WHEREAS, pursuant to KRS 45A.605, the Commonwealth of Kentucky, by and through the Finance and Administration Cabinet (the "Commonwealth"), has the authority to enter into contracts for the development of an information highway on behalf of state agencies and other specified entities;

WHEREAS, the Commonwealth has established networks for the use of state government, institutions of higher learning, K-12 education and local governments;

WHEREAS, the Commonwealth, through its government agencies, educational entities, local government and other stakeholders, supports the finance, design, construction, operation, maintenance and refreshing of the Next Generation Kentucky Information Highway middle mile infrastructure ("NG-KIH" or "Project") to serve the public sector, private interests and Kentucky's citizens;

WHEREAS, the NG-KIH will consist of a statewide dark fiber middle-mile network constructed to provide communication services based on an optical fiber backbone which will improve the quality, reliability, and access to network services across the Commonwealth;

WHEREAS, the Commonwealth issued RFP 758 1500000003-5 ("RFP" or "Solicitation") through a competitive bidding process to select a long-term vendor/partner to assist with this Project;

WHEREAS, Macquarie Infrastructure Developments, LLC ("Contractor"), having acknowledged and accepted, as of the date of submission of Contractor's proposal, the initial terms and scope of the Project as set forth in the RFP, as amended, bid upon the Solicitation and continues to design and develop all aspects of the Project in cooperation with the Commonwealth;

WHEREAS, Contractor has extensive experience in the design, implementation, financing and operation of complex public-private telecommunications projects and was awarded the contract;

WHEREAS, this Agreement is an amendment and restatement of that certain Master Agreement for Next Generation Kentucky Information Highway Initiative Concessionaire Partner between the Commonwealth and the Contractor dated December 19, 2014 to reflect, among other amendments, the inclusion of LTS as a contributor to the Work Product, to establish an Interim Milestone availability proposal and to reflect the terms and conditions applicable to certain early works (Phase 1), which will form part of the scope of the Concession Agreement, but will be performed by LTS and OCI (or through a joint venture entity once formed between LTS and OCI or any of their affiliates) (individually or collectively referred to herein as the "DB

Contractors”) in advance of the effective date of the Concession Agreement in order to maintain the anticipated project schedule;

WHEREAS, the Commonwealth and the Contractor have agreed to further amend this Agreement to reflect the terms and conditions applicable to certain further early works (Phase 2), which will form part of the scope of the Concession Agreement, but will be performed by the DB Contractors in advance of the effective date of the Concession Agreement in order to maintain the anticipated project schedule;

WHEREAS, following execution of the Master Agreement executed December 19, 2014, with feedback from placement agents and underwriters, a viable financing plan utilizing tax-exempt and taxable municipal securities was identified as an alternative to the corporate (taxable) financing that had previously been the basis of the Contractor’s financial plan;

WHEREAS, in connection with the adoption of this financial plan, the Commonwealth and the Contractor agree to enter into this Fourth Amended and Restated Master Agreement;

NOW, THEREFORE, in consideration of the mutual covenants expressed herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Commonwealth and Contractor (collectively referred to as “Parties”), hereby covenant and agree as follows:

This Amended and Restated Master Agreement (“Agreement”) is entered into, by and between the Commonwealth and Contractor.

The Commonwealth and Contractor agree to the following:

I. Scope of Contract

The purpose of this Agreement is to engage Contractor to explore the feasibility of the finance, design, construction, operation, maintenance, and refreshing of the NG-KIH initiative (the feasibility phase being the “Initial Project” and the ultimate implementation of the NG-KIH under the Concession Agreement being the “Project”) and to exclusively negotiate the Concession Agreement between the Parties governing the Project.

II. Contract Components and Order of Precedence

The Commonwealth’s acceptance of Contractor’s proposal in response to Solicitation RFP 758 1500000003, indicated by the issuance of a Contract Award by the Office of Procurement Services, shall create a valid agreement between the Parties consisting of the following:

- A. procurement statutes, regulations and policies (adopted as regulations or otherwise incorporated therein pursuant to KRS Chapter 13A);
- B. any written agreements between the Parties;

- C. any addenda to Solicitation RFP 758 1500000003;
- D. Solicitation RFP 758 1500000003 and all attachments;
- E. any Best and Final Offer;
- F. any clarifications concerning the Contractor's proposal in response to Solicitation RFP 758 1500000003;
- G. Contractor's proposal, as finally amended and agreed to, in response to Solicitation RFP 758 1500000003.

In the event of any conflict between or among the provisions contained in the foregoing, the order of precedence shall be as enumerated above. With respect to items C, D, E, F and G above, the Solicitation and associated RFP process is complete and there will be no further amendments thereto.

III. Negotiated Items

1. Definitions as used herein, capitalized terms shall have the meanings set forth in Attachment C or as further defined in the Agreement.
2. Milestones

- **The Parties agree to work cooperatively and in good faith to achieve three (3) Milestones, as further defined in Attachment D: (1) Guaranteed Maximum Pricing; (2) Interim Milestone; and (3) Financial Close Milestone.**

The indicative timeline for the Milestones is as follows:

- Contractor shall deliver a Guaranteed Maximum Pricing proposal on or before March 28, 2015, or such later date as the Parties agree, acting reasonably. The Commonwealth acknowledges receipt of such proposal on such date;
 - Contractor shall deliver an Interim Milestone availability payment proposal on May 31, 2015, or such later date as the Parties agree, acting reasonably; and
 - The Parties shall seek to achieve the Financial Close Milestone within two (2) months of the Contractor's delivery to the Commonwealth of the Interim Milestone availability payment proposal and the Financial Close Milestone Workplan, or such longer period as the Parties agree, acting reasonably.
- a. The Parties agree to work cooperatively and in good faith to finalize the scope, budget, deliverables and time line, as may be applicable, for each Milestone as described in the "Milestone Workplan." The Milestone Workplans are set forth at Attachment D. However, the

Parties agree to negotiate in good faith as to the final Milestone Workplan for each Milestone.

- b. At or prior to the conclusion of the previous Milestone, Contractor shall submit the Milestone Workplan for the subsequent Milestone, or in the case of the Financial Close Milestone, the Financial Close Milestone deliverables as set forth in Attachment D (the "Deliverables"), to the Commonwealth for approval. Within ten (10) days of the Commonwealth's receipt of the Milestone Workplan or the Deliverables, the Commonwealth must either formally accept or reject the Milestone Workplan or the Deliverables, as applicable. During this ten (10) day review period, the Contractor may, in consultation with the Commonwealth, continue developing plans and taking reasonable and appropriate actions to advance to the next Milestone, however it is under no obligation to do so. If the Commonwealth accepts the Milestone Workplan, then the Commonwealth shall provide Contractor with a notice that it may proceed based on the Milestone Workplan (the "Notice to Proceed"). If the Commonwealth does not formally accept or reject the Milestone Workplan within ten (10) days, then Contractor may, in its sole discretion, either (a) continue to develop the Project and work toward Financial Close or (b) treat inaction as a "Default" subject to cure as set forth in Section III.8. of this Agreement. In the event that Contractor continues to develop the Project in its sole discretion, all provisions of this Agreement continue in full force and effect. In the case of the Deliverables, if the Commonwealth accepts the Deliverables, then the Commonwealth shall provide Contractor with notice that it accepts all Deliverables and request executed versions of all executable Deliverables. If the Commonwealth does not formally accept or reject the Deliverables within ten (10) days, then Contractor may, in its sole discretion, treat inaction as a "Default" subject to cure as set forth in Section III.8. of this Agreement. Should the Commonwealth not formally accept or reject a proposed Milestone Workplan or the Deliverables within ten (10) days of receipt, such Milestone Workplan or Deliverables shall be subject to change, including without limitation the proposed financial close schedule, construction schedule, and any cost proposals. Furthermore, should the Commonwealth accept or not formally reject a proposed Milestone Workplan or the Deliverables within ten (10) days of receipt, the project proposals therein, including the price and schedule proposals, shall supersede prior milestone proposals. The Commonwealth acknowledges that the GMP Milestone was submitted and delivered in compliance with the obligations and requirements set out in this Agreement.
- c. At the conclusion of the GMP Milestone, Contractor shall submit a summary of the conclusions and results of the Milestone ("Working

Assumptions"). The Parties acknowledge that these Working Assumptions are the basis for the subsequent Milestones and commit to apply the Working Assumptions to the subsequent Milestones and the Concession Agreement.

- d. For purposes of workload planning, the Commonwealth shall use good faith efforts to accommodate and adapt to Contractor's proposed Milestone Workplan, within the practical limitations on availability of the Commonwealth's personnel appropriate for performing the types of services in question. Contractor shall accommodate and adapt its proposed Milestone Workplan to the practical limitations on availability of personnel of the Commonwealth.
- e. Upon Completion of each Milestone set forth in the Milestone Workplan in Attachment D, the Commonwealth and Contractor agree to review this Agreement to determine if any amendments or modifications are necessary.
- f. Contractor agrees that the costs of each Milestone shall not exceed the Total Costs as set forth in Attachment D. Provided, however, subsequent Milestone budgets may be amended by mutual agreement of the Parties.

3. Open Book Process

The Parties commit to an Open Book Process for developing the costs and financing terms for the Project. Contractor will share the proposals it receives from third parties and will provide the Commonwealth the opportunity to review, comment on and reasonably approve all Costs. Contractor intends to run competitive best value processes for selection of legal, technical and other advisors and for selection of lenders or other debt providers.

4. Contractor's Obligations

Contractor shall:

- a. use commercially reasonable efforts to achieve each Milestone in accordance with the Milestone Workplan;
- b. design the Initial Project and each Milestone, as applicable, in accordance herewith and all applicable laws, regulations and ordinances;
- c. advance all incurred External Costs and incurred Internal Costs as set forth in the Milestone Workplan;

- d. In the event that Contractor will not be able to achieve a Milestone in accordance with the budget and/or schedule set forth in the Milestone Workplan, provide reasonable notice of not less than seven (7) days to the Commonwealth and negotiate in good faith with the Commonwealth as to a revised budget and/or schedule;
- e. Conduct a weekly conference call to provide the Commonwealth with progress reports regarding the current Milestone;
- f. Ensure that there is sufficient auditing capability to track actions taken by Contractor and its staff; and
- g. As needed, but at least at the beginning and conclusion of each Milestone, attend in-person meetings with Commonwealth representatives at a mutually agreed upon location.

5. Commonwealth's Obligations

The Commonwealth shall:

- a. Provide Contractor with support as mutually agreed upon and reasonably necessary for Contractor to achieve the Milestones, including without limitation providing reasonable access to Commonwealth staff, key stakeholders, permitting agencies, and other relevant parties;
- b. Provide any relevant information requested by Contractor or its subcontractors;
- c. Provide timely feedback on all plans and proposals submitted to the Commonwealth by Contractor, including without limitation the Milestone Workplan;
- d. In the event of termination as provided herein, reimburse Contractor; pursuant to this Agreement and 200 Ky. Admin. Reg. 5:312.
- e. In the event that Contractor will not be able to achieve a Milestone in accordance with the budget and/or schedule set forth in the Milestone Workplan, negotiate in good faith with the Contractor as to a revised budget and/or schedule;
- f. Participate in weekly conference calls regarding Milestone progress reports;
- g. As needed, but at least at the beginning and conclusion of each Milestone, attend in-person meetings with Contractor representatives at a mutually agreed upon location;

6. Work Product/Ownership

- a. Upon the earlier of Financial Close or a termination prior to Financial Close, the Commonwealth will assume ownership of all Work Product so that future development of the NG-KIH can be leveraged from the analysis already undertaken, but not for any commercial sale to third parties. "Work Product" refers to all materials presented by Contractor and its subcontractors to the Commonwealth, except for the Models, plans, specifications and related design information created by Fujitsu Network Communications, Inc. and its affiliates (collectively, "FNC"), Overland Contracting, Inc. and its affiliates (collectively "OCI") and LTS Managed Technical Services, LLC and its affiliates (collectively "LTS") (the "FNC Design", "OCI Design" and "LTS Design", respectively). Further, Work Product includes, but is not limited to, all network design and engineering information, contract drafts, reports from third party advisors, cost estimates, and financial models, etc. Contractor shall be granted a non-exclusive license to use such Work Product after the transfer of ownership (subject to any lawful public disclosure requirements). Furthermore, following a termination prior to Financial Close, the Commonwealth shall not be permitted to provide such Work Product to another concessionaire for use in a "Similar Project," subject to the Parties' negotiations. The Commonwealth acknowledges and agrees that in the event that the Commonwealth provides the Work Product to a third party, the Contractor, FNC, OCI and LTS, as applicable, shall not be liable for and the Commonwealth expressly waives any claim for any fees, penalties, claims, obligations, damages, costs, expenses, fines, demands and causes of action arising in connection with or related to the Commonwealth's or such third party's use of the Work Product.
- b. Prior to the earlier of Financial Close or termination, all Work Product, and all copies thereof, shall remain exclusively the property of Contractor and its subcontractors, including FNC, OCI and LTS, as applicable, notwithstanding any delivery of copies thereof to the Commonwealth.
- c. Contractor may prepare one or more financial models in connection with this Agreement and/or the Initial Project ("Models"). The Models may include financial models developed for consideration and potential use by the Contractor, Commonwealth and capital providers and advisers to the Project. The Models are anticipated to show forward estimates of future cash flows and are based on Contractor's best understanding of future outcomes at the current time.

While the Models will be prepared in good faith, unless and until expressly included within the Concession Agreement, neither Contractor nor any of its affiliates, nor their respective directors, officers, employees, advisors or agents, nor any other person, have made, or are making, any representation or warranty as to the completeness, accuracy, reliability or appropriateness of the Models or any of their respective contents or outputs, and no legal or other commitments or obligations shall arise by reason of the provision of the Models or their respective contents, or any outputs derived. The information contained in the Models will not be independently verified by Contractor. Accordingly, neither Contractor nor any of its affiliates, nor their respective directors, officers, employees, advisors or agents, nor any other person, shall be liable for any direct, indirect or consequential loss suffered by any person as a result of relying on any statement in or omission from the Models or any other information provided in connection therewith.

- d. Notwithstanding any other provision in this Agreement, Contractor, FNC, OCI and LTS, respectively, will retain all of their respective intellectual property rights in relation to the Models and the underlying technology and engineering specifications set forth in the FNC Design, OCI Design and LTS Design, as applicable, including patent, trademark, copyright and rights to confidential information, but excluding any agency or other third party intellectual property rights. However, Contractor and any of its subcontractors, as applicable, will grant the Commonwealth a royalty-free, perpetual, irrevocable license to use the Models, and such technology. As set forth in the Solicitation, Contractor, FNC, OCI, LTS and any other subcontractors agree to maintain an archival copy in data store of any software or other intellectual property, as applicable, that shall be available to the Commonwealth in the event the Contractor, FNC, OCI, LTS or any other subcontractors are unable to continue the business for financial or other business reasons.
- e. The Commonwealth may insert other variables or assumptions to consider alternative scenarios or outcomes. However, Contractor will not be responsible for failure of a Model or for output errors resulting from incorrect or inappropriate inputs by Commonwealth. Notwithstanding the foregoing, the Commonwealth may not use, reproduce or adapt any Model other than in relation to the Initial Project, including all expansions thereto, without Contractor's prior written consent. In addition, data, outcomes and estimates and forecasts contained in or derived from Models shall only be disseminated beyond the Commonwealth's directors, officers, employees and advisors of the Initial Project in accordance with a joint and collaborative plan derived by the mutual cooperation of

the parties. Contractor does not represent that estimates or forecasts derived from any Model will actually be achieved or that the assumptions, variables and other inputs used in any Model are reasonable, reliable or accurate.

- f. The Models may contain forward-looking statements, forecasts, estimates, projections and opinions ("Forward Statements"). No representation is made or will be made that any Forward Statements will be achieved or will prove correct. Actual future results and operations could vary materially from the Forward Statements. Similarly no representation is given that the assumptions disclosed in the Models upon which Forward Statements may be based are reasonable. The Commonwealth acknowledges that circumstances may change and the contents of the Models may become outdated as a result.
- g. In further consideration of Contractor allowing the Commonwealth access to the Models and the information contained therein, the Commonwealth agrees that the Commonwealth will make no claim against Contractor, its partners (including LTS, OCI and FNC), employees or affiliates, that relates in any way to any Model, any information contained therein, or the Commonwealth' access to any Model.
- h. The Commonwealth shall not disclose records identified and prominently marked as such by Contractor as proprietary or constituting trade secrets, including without limitation the Models, or any information related thereto, in response to a request made pursuant to the Open Records Act as such records are exempt under KRS 61.878(1)(c). The Commonwealth shall assert such exemption in response to any request for disclosure of the records identified by Contractor as proprietary or constituting trade secrets, including without limitation the Models, or any information related thereto. Furthermore, the Commonwealth shall give Contractor reasonable notice of any such record request and give the Contractor the right to defend its information against disclosure. The Commonwealth and Contractor shall cooperate with each other and participate if requested by the other in any appeal based upon an exemption contained within KRS 68.878(1)(c).

7. Web-Based Data Site

A secure web-based data site will be used as an electronic repository of the Work Product and Models, and will be available to approved transaction participants, including anyone the Commonwealth reasonably approves to receive any portion of the Work Product and Models for use in connection with the Project. This will be the means by which all Work Product and Models will be transmitted and made available to the Commonwealth. All

Work Product and Models will be made available in real-time subject to reasonable practicalities. The web-based data site shall be constructed, administered and hosted by Contractor.

The Commonwealth shall not disclose records identified by Contractor and prominently marked as such by Contractor as proprietary or constituting trade secrets, including without limitation the Models, or any information related thereto, in response to a request made pursuant to the Open Records Act as such records are exempt under KRS 61.878(1)(c). The Commonwealth shall assert such exemption in response to any request for disclosure of the records identified by Contractor as proprietary or constituting trade secrets, including without limitation the Models, or any information related thereto. Furthermore, the Commonwealth shall give Contractor reasonable notice of any such record request and give the Contractor the right to defend its information against disclosure. The Commonwealth and the Contractor shall cooperate with each other and participate if requested by the other Party in any appeal based upon an exemption contained within KRS 68.878(1)(c).

8. *Right to Cure*

In the event of the occurrence and continuance of a Default by either Party, the Commonwealth or Contractor, as applicable, may in writing request a thirty (30) day period in which to cure the Default. If the Party is unable to cure the Default within that period, the Default may be considered as a basis to terminate this Agreement as set forth in Section III.26.

9. *No Third Party Beneficiaries*

Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

10. *No Joint Venture, Partnership or Alter Ego; Independent Contractor*

Nothing contained in this Agreement, any document executed in connection herewith or any other Agreement with any other party shall be construed as making the Parties joint partners, joint venturers or alter egos of each other or any other entity. Contractor shall at all times remain an independent contractor of Commonwealth.

11. *Notice, Confirmation of Force Majeure Event; Suspension of Performance*

Upon giving written notice to the other Party, a Party affected by a Force Majeure Event shall be released without any liability on its part from the

performance of its obligations under this Agreement, but only to the extent and only for the period that its performance of such obligations is prevented by a Force Majeure Event. Such notice shall include a description of the nature of the Force Majeure Event, and its cause and possible consequences. The Party claiming a Force Majeure Event shall promptly notify the other party of the termination of such event.

The Party invoking the Force Majeure Event shall provide to the other Party confirmation of the existence of the circumstances constituting a Force Majeure Event. Such evidence may consist of a statement or certificate of an appropriate governmental department or agency where available, or a statement describing in detail the facts claimed to constitute a Force Majeure Event.

During the period that the performance by one of the Parties of its obligations under this Agreement has been suspended by reason of a Force Majeure Event, the other Party may likewise suspend the performance of all or part of its obligations hereunder to the extent that such suspension is commercially reasonable.

12. Letter of Credit

Upon Financial Close, with regards to Contractor's performance, Contractor will provide a letter of credit with commercially reasonable terms ("Letter of Credit") or at the option of the Contractor an alternative security package, in form and substance reasonably acceptable to the Commonwealth. The alternative security package shall also provide that the Commonwealth is a co-obligee in addition to the lenders provided therein.

- a. From Financial Close until completion of the Project, the Contractor shall provide the alternative security package referenced in III.12, for at a minimum, an amount equal to \$10,000,000.00.
- b. The Letter of Credit shall be in the form of an irrevocable letter of credit from an approved bank, as may amended in the Concession Agreement, and must be presentable for payment in New York City. The Letter of Credit shall only be transferable in its entirety (but not in part) to the lenders, the collateral agent or agencies of the Commonwealth. The Commonwealth shall only provide a Transfer Letter of Credit to the issuing bank for transfers to agencies of the Commonwealth, the collateral agent or lenders, as may be modified in the Concession Agreement.
- c. The Letter of Credit (or a replacement letter of credit provided prior to the expiration or termination of the Letter of Credit)

shall be in full force and effect from the date provided to Commonwealth until the applicable date referenced in Section III. The Commonwealth, or the subsequent beneficiary, shall provide a Reduction Notice to the issuing bank of the Letter of Credit, with a copy to Contractor, in the commercial customary form within two business days of the Substantial Completion Date and the Final Acceptance Date, respectively, adjusting the amount of the Letter of Credit as provided in Section III.

- d. The Letter of Credit may be drawn upon by Commonwealth, or subsequent beneficiary, in Dollars in the United States of America from time to time (a) to the extent amounts are due and owing under the Concession Agreement from Contractor to the Commonwealth under Section III as may be amended in the Concession Agreement, (b) at any time when there are fewer than thirty (30) days remaining prior to the expiration of such Letter of Credit and the expiring letter of credit has not been replaced by a new letter of credit to be effective no later than such expiration; provided that a letter of credit is still required to be in place under this Section, as may be amended in the Concession Agreement, (c) at any time when the credit rating of the institution providing the Letter of Credit has been downgraded (or withdrawn) such that it no longer qualifies as an approved bank, and Contractor has not replaced such Letter of Credit with a new letter of credit from an approved bank within 15 business days after the date of the relevant downgrade or (d) at any time, if a Contractor Default has occurred and is continuing.
- e. Contractor's sole remedy in connection with an improper draw on the Letter of Credit shall be to obtain from the Commonwealth, or subsequent beneficiary, a refund of the proceeds of such improper draw and the reasonable costs Contractor incurs as a result of such improper draw; provided that at the time of such refund Contractor increases the amount of the Letter of Credit to the amount then required under applicable provisions of the Concession Agreement. Contractor acknowledges that an improper draw on the Letter of Credit could not under any circumstances cause Contractor injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy. Accordingly, Contractor covenants (a) not to request or instruct the issuer of the Letter of Credit to refrain from paying any legitimate sight draft presented with respect to the Letter of Credit and (b) not to commence or pursue any legal proceeding seeking, and Contractor irrevocably waives and relinquishes

any right, to enjoin, restrain, prevent, stop or delay any legitimate draw on the Letter of Credit.

- f. To the extent the Commonwealth, or subsequent beneficiary, draws on the Letter of Credit under the circumstances set forth in Section III. and the basis for such draw is subsequently cured, The Commonwealth, or subsequent beneficiary, shall return to Contractor the funds so drawn (to the extent not applied as part of such cure) and the Letter of Credit will be restored for the full amount of such draw prior to the return of such funds, if such Letter of Credit was not already replaced as part of the cure.

13. Agreement Claims

The Parties acknowledge that KRS 45A.225 to 45A.290 governs contract claims.

14. Limitation of Liability

The liability of the Commonwealth related to contractual damages is set forth in KRS 45A.245.

15. Changes and Modifications to the Agreement

Pursuant to KRS 45A.210 (1) and 200 KAR 5:311, no modification or change of any provision in this Contract shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the Contractor and the Commonwealth, and incorporated as a written amendment to this Contract and processed through the Office of Procurement Services and approved by the Finance and Administration Cabinet prior to the effective date of such modification or change pursuant to KRS 45A.210(1) and 200 KAR 5:311. Memoranda of understanding, written clarifications, and/or correspondence shall not be construed as amendments to this Agreement. The Parties shall establish a detailed change order process prior to Financial Close to accommodate any required changes to the Project, and such change order process shall also be part of the Concession Agreement.

If the Contractor finds at any time that existing conditions make modification of this Agreement necessary, it shall promptly report such matters to the Commonwealth for consideration and decision.

16. Changes in Scope

The Commonwealth may, at any time by written order, make changes within the general scope of this Agreement. No changes in scope are to be conducted except with the approval of the Commonwealth.

Notwithstanding the foregoing, Contractor shall not be bound by any unilateral material changes in scope, and any change in scope, unilateral or agreed upon, must provide for additional compensation to the Contractor, in form and substance, as mutually agreed to by the Parties in writing.

17. Assignment

This Agreement shall not be assigned in whole or in part without the prior written consent of the non-assigning Party. Notwithstanding the foregoing, the Commonwealth consents to Contractor assigning its rights and obligations hereunder to an appropriate Affiliate or a special purpose entity to carry out the terms of this Agreement, provided that the Contractor requires the Affiliate to be bound by the terms of this Agreement pursuant to a written agreement.. In the event of the Affiliate transferee's insolvency, involuntary or voluntary bankruptcy, dissolution or the termination of this Agreement for Contractor's failure to perform, the Commonwealth may step in and assume responsibility for, and control of, the Project, subject to coordination with secured lenders in connection with the exercise of remedies upon default. The Parties will develop detailed default and termination provisions with respect to the foregoing sentence in the Concession Agreement.

18. Payment

The Commonwealth will make payment within thirty (30) working days of receipt of Contractor's invoice or of acceptance of goods and/or services in accordance with KRS 45.453 and KRS 45.454.

Payments are predicated upon successful completion and acceptance of the described work, services, supplies, or commodities, and delivery of the required documentation. Invoices for payment shall be submitted to the Commonwealth's designated representative.

19. Contractor Cooperation in Related Efforts

The Commonwealth may undertake or award other contracts for additional or related work, services, supplies, or commodities, and the Contractor shall fully cooperate with such other contractors and Commonwealth employees. The Contractor shall not commit or permit any act that will materially interfere with the performance of work by any other contractor or by Commonwealth employees. The Commonwealth shall ensure that such other contractor or its employees will not commit or permit any act that will materially interfere with Contractor's work performance.

20. Contractor Affiliation

"Affiliate" shall mean an entity that controls or is under common control with Contractor together with any fund or investment vehicle managed or advised by any such entity, or a fund or investment vehicle which has delegated to any such entity responsibility for the management of its interest in the Project. If any Affiliate directly involved in the Project shall take any action related to this Agreement that, if done by the Contractor, would constitute a material breach of this Agreement and would also materially impair Contractor's or the Commonwealth's ability to perform the Agreement, the same shall be deemed a breach by Contractor. Actions by Affiliates that do not relate to or adversely impact the Parties' rights and obligations under this Agreement shall not be considered breaches.

21. Commonwealth Property

The Contractor shall be responsible for the proper custody and care of any Commonwealth-owned property furnished for Contractor's use in connections with the performance of this Agreement. The Contractor shall reimburse the Commonwealth for its actual loss or damage, normal wear and tear excepted.

22. Confidentiality of Agreement Terms

The Contractor and the Commonwealth agree that all information communicated between them before the effective date of this Agreement shall be received in strict confidence and shall not be disclosed by the receiving party, its agents, or employees without prior written consent of the other party. Such material will be kept confidential subject to Commonwealth and Federal public information disclosure laws.

Upon signing of this Agreement by all Parties, terms of this Agreement become available to the public, pursuant to the provisions of the Kentucky Revised Statutes, subject to any exemptions to disclosure set forth in KRS 61.878, which the Commonwealth agrees to assert

The Contractor shall have an appropriate agreement with its subcontractors extending these confidentiality requirements to all subcontractors' employees.

23. Confidential Information

a. If either Party provides or has provided Confidential Information prominently designated as such to the other Party, the receiving Party shall hold such information in confidence and shall afford it the same care and protection that it affords to its own confidential and proprietary information (which in any case shall be not less than reasonable care) to avoid disclosure to or unauthorized use by any third party, except as otherwise provided below. All Confidential Information shall be used by the receiving Party only for the intended purposes set forth in this

Agreement. Except as otherwise required by law, after the receiving Party's need for Confidential Information has expired, or upon the reasonable request of the disclosing Party, or promptly following the termination or expiration of this Agreement, the receiving Party shall destroy or return to the disclosing Party all Confidential Information, including all copies of such information, and all notes, summaries, or other writings reflecting Confidential Information. The receiving Party shall not reproduce Confidential Information, except to the extent reasonably necessary to perform under this Agreement, or as otherwise may be permitted in writing by the disclosing Party.

b. Contractor shall comply with the provisions of the Privacy Act of 1974 and instruct its employees to use the same degree of care as it uses with its own data to keep confidential information concerning client data, the business of the Commonwealth, its financial affairs, its relations with its citizens and its employees, as well as any other information which may be specifically classified as confidential by the Commonwealth in writing to the Contractor. All Federal and State Regulations and Statutes related to confidentiality shall be applicable to the Contractor. The Contractor shall have an appropriate agreement with its employees, and any subcontractor employees, to that effect, provided however, that the foregoing will not apply to:

i. Information which the Commonwealth has released in writing from being maintained in confidence;

ii. Information which at the time of disclosure is in the public domain by having been printed and published and available to the public in libraries or other public places where such data is usually collected; or

iii. Information, which, after disclosure, becomes part of the public domain as defined above, through no act of the Contractor.

24. Permits, Licenses, Taxes and Commonwealth Registration

The Contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances of all Federal, State, and local governments in which work under this Agreement is performed.

The Contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Agreement. Such registration is obtained from the Secretary of State, who will also provide the certification thereof. Additional local registration or license may be required.

The Contractor shall pay any sales, use, and personal property taxes arising out of this Agreement and the transaction contemplated hereby. Any other taxes levied upon this Agreement, the transaction, or the

equipment or services delivered pursuant hereto shall be borne by the Contractor, or as otherwise mutually agreed to in the Concession Agreement.

25. Provisions for Termination of the Contract

This Agreement shall be subject to the termination provisions set forth in 200 Ky. Admin. Reg. 5:312.

26. Reimbursement of Costs

In the event of a termination that does not arise from a material default solely by Contractor, in accordance with 200 Ky. Admin. Reg. 5:312 the Contractor may request reimbursement of its costs. Provided, however, the costs Contractor may recover shall not exceed the Total Costs set forth in Exhibit A. The Parties agree to establish a cost process to be utilized during each Milestone to permit the Parties to monitor the costs incurred.

27. Bankruptcy

In the event the Contractor becomes the subject debtor in a case pending under the Federal Bankruptcy Code, the Commonwealth's right to terminate this Agreement may be subject to the rights of a trustee in bankruptcy to assume or assign this Agreement. The trustee shall not have the right to assume or assign this Agreement unless the trustee (a) promptly cures all defaults under this Agreement; (b) promptly compensates the Commonwealth for the monetary damages incurred as a result of such default, and (c) provides adequate assurance of future performance, as determined by the Commonwealth.

28. Conformance with Commonwealth & Federal Laws/Regulations

This Contract is subject to the laws of the Commonwealth of Kentucky and where applicable Federal law. Any litigation with respect to this Contract shall be brought in state court in Franklin County, Kentucky in accordance with KRS 45A.245.

29. Access to Records

Contractor constitutes a "contractor," as defined in KRS 45A.030 (9) and agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this Agreement for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process, including without limitation items identified as proprietary or confidential, including

without limitation the Models, Work Product, trade secrets, any information related to the web-based secure data site and all other Confidential Information, shall not be deemed as directly pertinent to this Agreement and shall be exempt from disclosure as provided in KRS 61.878(1)(c), or any other applicable exemption contained with KRS 61.878. The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Open Records Act, KRS 61.870 to 61.884, including the exemption from disclosure contained in KRS 61.878, which the Commonwealth agrees to assert.

In the event of a dispute between Contractor and the contracting agency, the Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004. (See Attachment B).

30. *Prohibitions of Certain Conflicts of Interest*

In accordance with KRS 45A.340, the Parties mutually represent and warrant, and each of the Parties rely upon such representation and warranty, that to the best of their respective knowledge neither party presently has any actual identifiable interest and shall not acquire any actual identifiable interest, which would directly conflict with the performance of their respective obligations under this Agreement.

The Parties further mutually represent and warrant that in the performance of the Agreement, no person having any such interest shall be employed by either party. In accordance with KRS 45A.340 and KRS 11A.040 (4), the Parties both agree that they shall not knowingly allow any official or employee of the Commonwealth who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Agreement to voluntarily acquire any ownership interest, direct or indirect, in this Agreement prior to the completion of this Agreement.

31. *Intentionally Left Blank*

32. *Agencies to Be Served*

This Agreement shall be for use by all Agencies of the Commonwealth of Kentucky as defined in 45A.605.

33. *Extending the Contract Use to Other Agencies*

The Commonwealth reserves the right, with the consent of the Contractor, to offer this Agreement to other state agencies and stakeholders.

34. Term of Agreement

The term of this Agreement shall begin on December 19, 2014, and at Financial Close shall continue upon completion of the Concession Agreement for a period of thirty (30) years.

Notwithstanding the foregoing, if the Commonwealth fails to approve any Milestone Work Plan as envisioned in Section III.2.c., or fails to consummate Financial Close on agreed upon terms, Contractor may terminate this Agreement, subject to Section III.8., and seek reimbursement for Costs in accordance with Section III.27.

Upon final termination of the Concession Agreement, Contractor shall provide all relevant data in a form that can be practically converted to any subsequent system of the Commonwealth's reasonable choice in accordance with the Concession Agreement. The Commonwealth and Contractor will cooperate to this end with any subsequent vendor of the Commonwealth's choice, in a timely and efficient manner.

35. Notices

All programmatic communications with regard to day-to-day performance under this Agreement are to be made to the agency technical contact(s) identified below.

Mike Hayden, Director
Finance and Administration Cabinet
Room 456
Capitol Annex
Frankfort, KY 40601
502-564-782-2535
mike.hayden@ky.gov

All communications of a contractual or legal nature are to be made to the Commonwealth buyer. The Commonwealth reserves the right to change the contacts throughout the life cycle of any agreement awarded as a result of this RFP.

Stephanie R. Williams, CPPO, CPPS, MPA
Assistant Director
Finance and Administration Cabinet
Office of Procurement Services (OPS)
Division of Technology Services Procurement
(502) 564-8621
stephanier.williams@ky.gov

36. Subcontractors

Contractor is permitted to make subcontract(s) with any other party for furnishing any of the work or services herein. Contractor shall be solely responsible for performance of the entire Agreement whether or not subcontractors are used. The Commonwealth shall not be involved in the relationship between Contractor and any subcontractor. Any issues that arise as a result of this relationship shall be resolved by Contractor. All references to the Contractor shall be construed to encompass both the Contractor and any subcontractors of the Contractor.

37. Reporting Requirements

In conjunction with and in addition to all specific reports and notices required in the Agreement, the Contractor shall be required to provide the following reporting to the Commonwealth:

- a. Weekly progress reports regarding the current Milestone, including but not limited to, a report of any material events, developments or circumstances arising in relation to issues identified by the Commonwealth, including but not limited to, the Project schedule and budget, since the last weekly report;
- b. On a frequency to be reasonably determined by the Commonwealth, provide reports detailing the fulfillment of all contractual obligations to include, but not be limited to, acquisition of required insurances, mandated licenses and permits, executed financial documentation, and audited financial model;
- c. On a frequency to be reasonably determined by the Commonwealth, provide compliance reports itemizing safeguards in place to ensure adherence to the NIST Special Publication 800-53 Security Control Framework;
- d. Such other periodic reports as the Commonwealth may from time to time reasonably require; and
- e. Throughout each Milestone, a response delivered in a timely manner to any inquiry reasonably made by the Commonwealth in relation to any aspect of the relevant business of the Contractor, the Project, the O&M, or this Agreement.

Provided that, to the extent that such reporting includes sensitive data, as defined by the enterprise standards, it must be delivered to the Commonwealth in a confidential manner. All electronic transmissions of sensitive data must, at a minimum, comply with the Commonwealth Office of Technology Enterprise Standard 5100 documented at <https://Qotsource.kv.Qov/docushare/dsweb/Get/Document-301110/>.

The Parties agree that this is not an extensive list of reporting requirements governing the entire Agreement. The Parties agree further that future reporting requirements will be addressed by the Commonwealth and Contractor as the need arises based on the Milestone objectives agreed to by both Parties. Specific metrics and deliverables requisite to achieve the corresponding reporting will be implemented at that time.

IV. PHASE 1 EARLY WORKS

1. Phase 1 Early Works

The Commonwealth hereby authorizes the Contractor to engage the DB Contractors to proceed with the Phase 1 Early Works in an amount not to exceed the Phase 1 Early Works Price and in accordance with the other terms and conditions set out in this Section IV. The scope of the Phase 1 Early Works will not be modified without the agreement in writing of the Commonwealth and the Contractor. The Commonwealth acknowledges that the DB Contractors may subcontract certain aspects of the Phase 1 Early Works.

2. Phase 1 Early Works Term

The Phase 1 Early Works will be performed from June 15, 2015, to July 15, 2015 (the "Phase 1 Early Works Term").

3. Applicable Terms

Notwithstanding any provision to the contrary, the Commonwealth and the Contractor acknowledge and agree that only the following Sections in this Agreement will be applicable to the Phase 1 Early Works: Section III.5(d), III.6(h), III.8 (excluding a payment breach), III.9-11, III.13, III.15 (excluding the last sentence of the first paragraph), III.16, III.17, III.18, III.19, III.21, III.22-25, III.26, III.27, III.28, III.29, III.30, III.35, III.36, Section V, Section VI and Schedule C [Definitions] to the extent that capitalized terms used in this Section IV are not otherwise defined in this Section IV.

4. Access

The Commonwealth hereby permits the Contractor to provide the DB Contractors a non-exclusive license to access any of the lands that the Commonwealth owns or controls, including any right-of-ways, in order to complete any of the Phase 1 Early Works.

5. Representation by the Commonwealth

The Commonwealth represents and warrants to the Contractor that as of the date of this Agreement the Commonwealth has the power, capacity and authority to

enter into this Agreement and to observe and perform all the covenants, agreements, terms and conditions to be observed and performed by the Commonwealth in accordance with the terms of this Agreement.

6. Termination

Upon the occurrence of Financial Close:

- a. This Section IV of the Agreement will be deemed to be terminated and of no force and effect; and
- b. all Early Works undertaken under this Agreement in advance of Financial Close will be deemed to have been undertaken by or on behalf of the Concessionaire pursuant to the Concession Agreement.

7. Termination of the Project

If for any reason prior to Financial Close the Commonwealth gives written notice to the Contractor that Financial Close will not be achieved, or Financial Close has not occurred by September 10, 2015, or that either the Commonwealth or the Contractor is terminating its efforts to achieve Financial Close, then upon such notice this Section IV will be deemed to be terminated and of no force and effect (except for payment obligations arising out of such termination) and the Contractor will immediately, in consultation with the Commonwealth, take all reasonable steps to ensure that the DB Contractors wind up all outstanding Phase 1 Early Works at minimum cost.

8. The Commonwealth's Discretion to Terminate all or a portion of the Phase 1 Early Works

At any time prior to Financial Close, and for any reason, the Commonwealth may direct the Contractor, upon five (5) days' written notice, to cease the undertaking of some or all of the Phase 1 Early Works, in which event the Contractor will immediately, in consultation with the Commonwealth, take all reasonable steps to wind up such Early Works at minimum cost.

9. Ownership of Phase 1 Early Works After Termination

If the Phase 1 Early Works are terminated for any reason prior to Financial Close, then the Commonwealth will be entitled to the full benefit of any Phase 1 Early Works for which the Commonwealth has made payment pursuant to this Agreement, including:

- a. any design drawings, calculations, survey mapping, and other design and routing information; and

- b. any contractual rights for the procurement of fiber and/or cable (collectively, the “Early Works Product”)

and in that event the Contractor will use reasonable efforts to obtain from the DB Contractor a formal assignment, transfer or other documentation, if applicable, or take other steps as the Commonwealth may reasonably request in order for the Commonwealth to obtain and receive such benefit. The transfer and delivery of the Early Works Product shall be on an ‘as is where is basis’ and the Contractor will prepare the Early Works Product in good faith based on the information that is available to the Contractor at the time the Early Works Product is prepared.

10. Limitation of Liability

Notwithstanding any provision to the contrary in this Section IV or any other applicable provision in this Agreement, and specifically in relation to the Phase 1 Early Works, the Commonwealth will only be required to pay the Phase 1 Early Works Price and those other applicable payments on termination set out in Section IV paragraph 12 of this Agreement to the Contractor. For clarity, such amounts will not exceed the Phase 1 Early Works Price and the Demobilization Threshold but will be in addition to the Total Costs set forth in Exhibit A. If the Phase 1 Early Works are terminated for any reason prior to Financial Close, the Contractor’s liability will be limited to the Phase 1 Early Works Price.

11. Payment – Termination by Financial Close

If the Phase 1 Early Works are terminated upon reaching Financial Close as provided by paragraph 6 of this Section IV, then no payment will be required under this Agreement, and the payment obligations under the Concession Agreement shall apply.

12. Payment – Termination other than by Financial Close

If the Phase 1 Early Works are terminated other than due to the occurrence of Financial Close, the Commonwealth will pay to the Contractor (and the Contractor will immediately pay to the DB Contractors) an amount calculated based on the portion of the Phase 1 Early Works Price attributable to the portion of the Phase 1 Early Works that has been completed plus a reasonable amount for demobilization costs and termination costs to subcontractors, the amount of such demobilization costs and termination costs not to exceed 7.5% of the Phase 1 Early Works Price (the “Demobilization Threshold”).

The Contractor will pass through the itemized invoice that it receives from the DB Contractor to the Commonwealth for the amount payable under this paragraph 12 (if any), and provide reasonable supporting documentation for the Commonwealth to consider pursuant to 200 KAR 5:312. The Commonwealth will approve and pay the Contractor (and the Contractor will immediately pay the DB Contractor) within 30 days after receipt of the invoice. The Commonwealth

acknowledges that if a portion of the invoice provided by the Contractor is in dispute, the Commonwealth will approve and pay the undisputed portion of the invoice within the 30 days. Notwithstanding any provision to the contrary in this Section IV or any other applicable provision in this Agreement, and specifically in relation to the Phase 1 Early Works, this paragraph 12 will apply in the event of termination for any reason of this Agreement prior to Financial Close.

The Commonwealth acknowledges and agrees that if Phase 1 Early Works is terminated early subject to this paragraph 12 or some or all of the scope of the Phase 1 Early Works cease in accordance with Section IV paragraph 8, then schedule and costs associated with any of the Milestones or proposals as set forth in this Agreement may be subject to change, subject to the Commonwealth's approval of such changes, not to be unreasonably withheld, and subject to such changes being as a direct result of changes to or termination of the Phase 1 Early Works. Should the Commonwealth not approve proposed changes to schedule and costs contemplated in this paragraph 12, and prepared by the Contractor acting reasonably, then paragraph 7 of this Section IV shall apply. In the event that the Commonwealth intends to terminate the Phase 1 Early Works pursuant to this paragraph 12 or cease some or all of the Phase 1 Early Works in accordance with Section IV paragraph 8, it shall provide notice to the Contractor. Within three (3) Business Days of receipt of such notice from the Commonwealth, the Contractor will provide the Commonwealth with an estimate of the impact on the schedule and costs associated with the termination of the Phase 1 Early Works pursuant to this paragraph 12 or cease some or all of the Phase 1 Early Works in accordance with Section IV paragraph 8.

13. Monthly Payment Certificates

Each of the DB Contractors will, within 10 days after the end of each month, provide the Commonwealth a statement of the Phase 1 Early Works completed for that month and the relevant amount that would be payable under paragraph 12 of this Section IV in respect of such Phase 1 Early Works, calculated based on the portion of the Phase 1 Early Works Price attributable to the portion of the Phase 1 Early Works that has been completed. For greater certainty, this paragraph 13 does not require payment by the Commonwealth.

V. Phase 2 Early Works

1. Phase 2 Early Works

The Commonwealth hereby authorizes the Contractor to engage the DB Contractors to proceed with the Phase 2 Early Works in an amount not to exceed the Phase 2 Early Works Price and in accordance with the other terms and conditions set out in this Section V. The Phase 2 Early Works will be performed in accordance with the requirements set out in Attachment H [Design and Construction Protocols]. The scope of the Phase 2 Early Works will not be modified without the agreement in writing of the Commonwealth and the

Contractor. The Commonwealth acknowledges that the DB Contractors may subcontract certain aspects of the Phase 2 Early Works. The Commonwealth further acknowledges that a component of the Phase 2 Early Works is the pole make-ready applications which will require the Commonwealth to enter into various pole attachment agreements in order to further the make-ready construction required that is also part of the Phase 2 Early Works. The Commonwealth agrees to execute any pole attachment agreement that the Contractor provides to the Commonwealth within 3 Business Days of receiving such agreements.

2. Phase 2 Early Works Term

The Phase 2 Early Works will be performed from July 16, 2015 to September 3, 2015 (the "Phase 2 Early Works Term").

3. Applicable Terms

Notwithstanding any provision to the contrary, the Commonwealth and the Contractor acknowledge and agree that Section IV.3 (and specifically only those sections referenced therein), IV.4, IV.6, IV.7 (and the reference to Section IV therein will also be a reference to this Section V), IV.8, IV.9, and IV.11 will be applicable to Phase 2 Early Works. References in such sections to Phase 1 Early Works will also be read to include Phase 2 Early Works.

4. Access

The Commonwealth hereby permits the Contractor to provide the DB Contractors a non-exclusive license to access any of the lands that the Commonwealth owns or controls, including any right-of-ways, in order to complete any of the Phase 2 Early Works.

5. Limitation of Liability

Notwithstanding any provision to the contrary in this Section V or any other applicable provision in this Agreement, and specifically in relation to the Phase 2 Early Works, the Commonwealth will only be required to pay the Phase 2 Early Works Price and those other applicable payments on termination set out in Section V, paragraph 6 of this Agreement to the Contractor. For clarity, such amounts will not exceed the Phase 2 Early Works Price and the Demobilization Phase 2 Threshold but will be in addition to the Total Costs set forth in Exhibit A.

If the Phase 2 Early Works are terminated for any reason prior to Financial Close, the Contractor's liability will be limited to Phase 2 Early Works Price.

Neither party will be liable to the other party, whether in contract or in tort or on any other basis whatsoever, for any Indirect Losses suffered or incurred by that other party in relation to the Phase 2 Early Works.

6. Payment – Termination other than Financial Close

If the Phase 2 Early Works are terminated other than due to the occurrence of Financial Close, the Commonwealth will pay to the Contractor, into a client account specified by the Contractor, (and the Contractor will immediately pay to the DB Contractors) an amount calculated based on the portion of the Phase 2 Early Works Price attributable to the portion of the Phase 2 Early Works that has been completed plus a reasonable amount for demobilization costs and termination costs to subcontractors, the amount of such demobilization costs and termination costs not to exceed 7.5% of the Phase 2 Early Works Price (the “Demobilization Phase 2 Threshold”).

The Contractor will pass through the itemized invoice that it receives from the DB Contractor to the Commonwealth for the amount payable under this paragraph 5 (if any), and provide reasonable supporting documentation for the Commonwealth to consider pursuant to 200 KAR 5:312. The Commonwealth will approve and pay the Contractor (and the Contractor will immediately pay the DB Contractor) within 30 days after receipt of the invoice. The Commonwealth acknowledges that if a portion of the invoice provided by the Contractor is in dispute, the Commonwealth will approve and pay the undisputed portion of the invoice within the 30 days. Notwithstanding any provision to the contrary in this Section V or any other applicable provision in this Agreement, and specifically in relation to the Phase 2 Early Works, this paragraph 6 will apply in the event of termination for any reason of this Agreement prior to Financial Close.

The Commonwealth acknowledges and agrees that if Phase 2 Early Works is terminated early subject to this paragraph 6 or some or all of the scope of the Phase 2 Early Works cease in accordance with Section IV paragraph 8, then schedule and costs associated with any of the Milestones or proposals as set forth in this Agreement may be subject to change, subject to the Commonwealth’s approval of such changes, not to be unreasonably withheld, and subject to such changes being as a direct result of changes to or termination of the Phase 2 Early Works. Should the Commonwealth not approve proposed changes to schedule and costs contemplated in this paragraph 6, and prepared by the Contractor acting reasonably, then paragraph 7 of Section IV shall apply. In the event that the Commonwealth intends to terminate the Phase 2 Early Works pursuant to this paragraph 6 or cease some or all of the Phase 2 Early Works in accordance with Section IV paragraph 8, it shall provide notice to the Contractor. Within three (3) Business Days of receipt of such notice from the Commonwealth, the Contractor will provide the Commonwealth with an estimate of the impact on the schedule and costs associated with the termination of the Phase 2 Early Works pursuant to this paragraph 6 or cease some or all of the Phase 2 Early Works in accordance with Section IV paragraph 8.

7. Monthly Payment Certificates

Each of the DB Contractors will, within 10 days after the end of each month, provide the Commonwealth a statement of the Phase 2 Early Works completed for that month and the relevant amount that would be payable under paragraph 7 of this Section V in respect of such Phase 2 Early Works, calculated based on the portion of the Phase 2 Early Works Price attributable to the portion of the Phase 2 Early Works that has been completed. For greater certainty, this paragraph 7 does not require payment by the Commonwealth.

8. Insurance

The Contractor will require the DB Contractors to place the insurance coverage described in Attachment G [Insurance] in the amounts and on the terms stated in Attachment G and for the Phase 2 Early Works Term.

VI. Relationship of the Parties

The Contractor agrees to cooperate and support the Commonwealth's efforts to procure financing for the Project. The Commonwealth acknowledges and agrees that (i) any discussions, communications, conferences, negotiations and undertakings by the Contractor in connection with the financing of the Project will be effected and negotiated in an arm's length commercial transaction between the Commonwealth, Project Co and the Contractor, (ii) in connection with any offer or sale of municipal securities to finance the Project and with the process leading to such transaction, the Contractor is acting solely as a principal and is not the agent or fiduciary of the Commonwealth or Project Co., and (iii) the Commonwealth has its own and legal and financial advisors. The Contractor intends to be a purchaser of a portion of the bonds and has financial and other interests that differ from those of the Commonwealth and Project Co. It is expressly understood and agreed between the Commonwealth and the Contractor that the Contractor is not acting as an underwriter or selling agent for the Commonwealth or Project Co in connection with any issuance or sale of municipal securities.

VII. Entire Agreement

This Agreement and the attached Exhibits to this Agreement constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

VII. Approvals

This Agreement is subject to the terms and conditions as stated. By executing this Agreement, the parties verify that they are authorized to bind this Agreement and that they accept the terms of this Agreement.

This Agreement may be executed electronically in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement.

This Agreement is invalid until properly approved and executed by the Finance and Administration Cabinet.

1st Party: MACQUARIE INFRASTRUCTURE DEVELOPMENTS LLC, as Contracting Agent ("Contractor ")

Nick Butcher
Printed name



Signature

Manager
Title

September 1, 2015

Date

Andrew Ancone
Printed name



Signature

Manager
Title

September 1, 2015

Date

2nd Party: COMMONWEALTH OF KENTUCKY, FINANCE AND ADMINISTRATION CABINET ("Commonwealth")

Lori Hudson Flanery
Printed name



Signature

Secretary, Finance Cabinet
Title

September 2, 2015

Date

Approved by the Finance and Administration Cabinet, Office of Procurement Services

Donald R. Speer

Printed name

Donald R. Speer

Signature

Executive Director

Title

9/2/15

Date

Approved as to form and legality

Geni Gingsby

ATTACHMENT B

SECRETARY'S ORDER 11-004

FINANCE AND ADMINISTRATION CABINET

Vendor Document Disclosure

WHEREAS, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a mechanism should be created which would provide for review and assistance to an Executive Branch agency if said agency cannot obtain access to documents that it deems necessary to conduct a review of the records of a private vendor that holds a contract to provide goods and/or services to the Commonwealth; and

WHEREAS, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a mechanism should be created which would provide for review and assistance to an Executive Branch agency if said agency cannot obtain access to documents that it deems necessary during the course of an audit, investigation or any other inquiry by an Executive Branch agency that involves the review of documents; and

WHEREAS, KRS 42.014 and KRS 12.270 authorizes the Secretary of the Finance and Administration Cabinet to establish the internal organization and assignment of functions which are not established by statute relating to the Finance and Administration Cabinet; further, KRS Chapter 45A.050 and 45A.230 authorizes the Secretary of the Finance and Administration Cabinet to procure, manage and control all supplies and services that are procured by the Commonwealth and to intervene in controversies among vendors and state agencies; and

NOW, THEREFORE, pursuant to the authority vested in me by KRS 42.014, KRS 12.270, KRS 45A.050, and 45A.230, I, Lori H. Flanery, Secretary of the Finance and Administration Cabinet, do hereby order and direct the following:

- I. Upon the request of an Executive Branch agency, the Finance and Administration Cabinet ("FAC") shall formally review any dispute arising where the agency has requested documents from a private vendor that holds a state contract and the vendor has refused access to said documents under a claim that said documents are not directly pertinent or relevant to the agency's inquiry upon which the document request was predicated.
- II. Upon the request of an Executive Branch agency, the FAC shall formally review any situation where the agency has requested documents that the agency deems necessary to conduct audits, investigations or any other formal inquiry where a dispute has arisen as to what documents are necessary to conclude the inquiry.

- III. Upon receipt of a request by a state agency pursuant to Sections I & II, the FAC shall consider the request from the Executive Branch agency and the position of the vendor or party opposing the disclosure of the documents, applying any and all relevant law to the facts and circumstances of the matter in controversy. After FAC's review is complete, FAC shall issue a Determination which sets out FAC's position as to what documents and/or records, if any, should be disclosed to the requesting agency. The Determination shall be issued within 30 days of receipt of the request from the agency. This time period may be extended for good cause.
- IV. If the Determination concludes that documents are being wrongfully withheld by the private vendor or other party opposing the disclosure from the state agency, the private vendor shall immediately comply with the FAC's Determination. Should the private vendor or other party refuse to comply with FAC's Determination, then the FAC, in concert with the requesting agency, shall effectuate any and all options that it possesses to obtain the documents in question, including, but not limited to, jointly initiating an action in the appropriate court for relief.
- V. Any provisions of any prior Order that conflicts with the provisions of this Order shall be deemed null and void.

ATTACHMENT C DEFINITIONS

"Business Day" means any day that is not a weekend or a holiday in the Commonwealth of Kentucky.

"Completion" means the completion of a Milestone in accordance with the respective scope and deliverables for each Milestone outlined in this Agreement.

"Concessionaire" means the entity, other than the Commonwealth, that enters into the Concession Agreement.

"Concession Agreement" means the long-term agreement between the Commonwealth and the Contractor pursuant to which the Commonwealth procures the Contractor's services to design, build, finance, operate and maintain the state-wide fiber-optic middle-mile network to be called the Next Generation Kentucky Information Highway.

"Confidential Information" means all commercially sensitive, secret, or otherwise confidential business, financial, marketing, or technical information, and other confidential information belonging to a Party, including, but not limited to, the terms of this Agreement. Confidential Information shall not include information that (a) is or becomes (other than by disclosure by the other Party) publicly known, (b) is furnished by the Party to others without restrictions similar to those imposed by this Agreement, (c) is rightfully in the other Party's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement, (d) is obtained from a source other than the Party without the obligation of confidentiality, (e) is disclosed with the written consent of the Party or (f) is independently developed by employees or agents of the other Party who can be shown to have had no access to the Confidential Information. Any reports or other documents or items (including software) that result from the use of the Confidential Information by the other Party shall be treated with respect to confidentiality in the same manner as the Confidential Information.

"Costs" shall mean the sum of External Costs and Internal Costs.

"Customary Industry Practice" means using standards, practices, methods and procedures to a good commercial standard, conforming to Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.

"DB Contractors" has the meaning set out in the recitals of this Agreement.

"Demobilization Threshold: has the meaning set out in Section IV paragraph 12 of this Agreement.

"Default" shall (i) have the same definition as in 200 Ky. Admin. Reg. 5:312 or (ii) either Party fails to timely perform any material covenant, condition, agreement, and/or provision contained in this Agreement, subject to Section III.26 of this Agreement.

“Deficiency” means any defect or fault, including omission, in the NG-KIH System which is the result of a failure by Project Co to comply with the Design and/or Construction obligations under this Agreement.

“Design” means everything required for the design of the NG-KIH System in connection with the Phase 1 Early Works and the Phase 2 Early Works.

“External Costs” are costs incurred by the Contractor relating to discrete workstreams undertaken by third party consultants, as well as the Contractor’s and its subcontractors’ out of pocket expenses, as required by the Milestone Workplan to achieve each Milestone, and as set forth in such Milestone’s pre-agreed upon budget. In the absence of any updates thereto, Milestone budgets shall be those outlined in Exhibit A of this Agreement.

“Field Locations” means those locations on the Lands that are not Site Locations.

“Financial Close” means the when the Project financing is secured, the Parties have entered into the Concession Agreement, and the Project formally commences.

“Financial Close Milestone” means the delivery by the Contractor to the Commonwealth of the Deliverables set out in Attachment D.

“Force Majeure Event” means, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; the inability of Contractor to access Community Anchor Institutions sites; acts of public enemies and terrorists; orders or restraints of the Federal Government of the United States, or any of their departments, agencies or officials; insurrections; riots; landslides; earthquakes; storms; droughts; floods; explosions; breakage or accidents to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party and not due to their respective negligence.

“Governmental Authority” means any federal, state, territorial, regional, county, municipal or local governmental authority, quasi-governmental authority, court, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, having jurisdiction in any way over or in respect of any aspect of the performance of this Agreement or the Project.

“Guaranteed Maximum Pricing” means a not-to-exceed dollar amount of the availability payment required for the Project, as agreed to by the Parties.

“Indirect Losses” means any loss of revenue, loss of profits, loss of use, loss of contract, loss of goodwill, loss of production, loss of business, loss of business opportunity or any exemplary, punitive or special damages or any consequential or indirect loss or damages of any nature claimed, suffered or allegedly suffered by:

- (a) Contractor or any director, officer, employee or agent of Contractor, in each case acting as such; or

- (b) the Client or any director, officer, employee or agent of Client, in each case acting as such;

and shall be deemed not to include the Phase 1 Early Works Price or the Phase 2 Early Works Price or other amounts expressly payable by one party to the other under this Agreement.

"Interim Milestone" means the delivery by Contractor to the Commonwealth of an updated availability payment reflecting the viability of third-party transactions, if such transactions are viable from both a risk and cost perspective, and incorporates refinements to the greenfield project proposal, with a specific focus on the key drivers set out in Attachment D.

"Internal Costs" are the Contractor's pre-agreed lump sums for internal staff time cost incurred in connection with a Milestone on the Project, and which expenses are set forth in a Milestone's budget in advance and pre-agreed upon by all Parties in writing before the beginning such Milestone.

"Lands" means the right-of-way owned or controlled by the Client in which a portion of the NG-KIH System will be constructed, all Site Locations and all Field Locations.

"Laws" means all validly enacted laws (including the common law), statutes, regulations, ordinances, treaties, judgments and decrees and all official directives, by-laws, rules, consents, approvals, authorizations, guidelines, orders and policies of any Governmental Authority having the force of law from time to time in the Commonwealth of Kentucky and the United States of America, including, for greater certainty, those related to the issuance of Permits and any building codes.

"Milestone" means a discrete subpart of the Initial Project with deliverables, budgets, and deadlines, all as pre-agreed upon by the Parties in accordance with this Agreement, and following which there may exist certain opportunities for either Party to terminate this Agreement, subject to any applicable termination conditions. The Milestones are set forth in Section III. 2. of this Agreement.

"Models" has the meaning set forth in Section III. 6.

"NG-KIH System" means all of the electronic equipment, fiber cable, outside plant installations, building facilities, interface equipment, network services and customer services required to provide the fully functional and operating telecommunications carrier system contemplated by the Client.

"Notice" means any written notice required hereunder, which shall be delivered in accordance with Section III.35 of this Agreement.

"Open Book Process" means full transparency for the Commonwealth into the Contractor's proposed models, financial vehicles, cost proposals, technical specifications, operational role and responsibilities, and any other aspect of the Project, such that the Commonwealth fully understands each aspect of the Project, including profit and direct and indirect expenses. As between the Parties there shall be no aspect

of or information related to Project which is not shared, with the exception of proprietary information, information that consists of internal drafts or relates to Contractor's internal approvals process required to arrange and potentially provide financing for the Project.

"Open Records Act" means the Kentucky Open Records Act set forth at Kentucky Revised Statute 61.870 et. seq.

"Project Co" means KentuckyWired Infrastructure Company, LLC.

"Permits" means all permissions, consents, approvals, certificates, permits, licenses, statutory agreements, zoning and by-law amendments and variances, and authorizations required from any Governmental Authority, and all necessary consents and agreements from any third parties, needed to carry out the Project in accordance with this Agreement.

"Person" means an individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, limited liability company, association, unincorporated organization, union or Governmental Authority.

"Phase 1 Early Works" has the meaning set out in Attachment E [Phase 1 Early Works].

"Phase 1 Early Works Term" has the meaning set out in Section IV paragraph 2.

"Phase 1 Early Works Price" has the meaning set out in Attachment E [Phase 1 Early Works].

"Phase 2 Early Works" has the meaning set out in Attachment F [Phase 2 Early Works].

"Phase 2 Early Works Term" has the meaning set out in Section V paragraph 2.

"Phase 2 Early Works Price" has the meaning set out in Attachment F [Phase 2 Early Works].

"Similar Project" means a project to design, build, finance, operate and maintain, under a long term concession agreement, a regional or statewide information highway infrastructure of similar scope, terms and conditions to the Project for the use and benefit of the Commonwealth, its agencies or subsections of government, or any commercial user in addition thereto.

"Site Locations" means each of the site locations more particularly described in Attachment I [Site Locations].

"Working Assumptions" has the meaning set forth in Section II.2(d) of this Agreement.

ATTACHMENT D
MILESTONE WORKPLAN

Milestone	Details
I-Guaranteed Maximum Price (“GMP”)	<p>Contractor will provide the Commonwealth a not-to-exceed dollar amount of the availability payment required for the NGKIH. The availability payment will be based on a detailed list of Working Assumptions.</p> <p>The scope items for this Milestone will be:</p> <ul style="list-style-type: none"> • Engage all necessary advisors for this Milestone; • List of Working Assumptions on which the not-to exceed availability payment is based, including the actions that the Parties can take, individually or together, to reduce the GMP; • Negotiated, detailed term sheet for the Concession Agreement; • Proposed detailed scope, schedule and budget to reach Commercial Close; • Provide the Commonwealth a proposal summarizing the above deliverables and providing a not-to-exceed availability payment; • For the avoidance of doubt the Working Assumptions will include reasonable assumptions regarding the financing terms, including interest rates, applicable to debt sourced for the Project but changes in the financing terms, including the interest rates, post the GMP will result in upward or downward adjustments to the not to exceed GMP; and • Commonwealth to confirm that it has the legal authority to enter into the transaction. <p>This Milestone has been completed.</p>
II - Interim Milestone	<p>During this Milestone, the Contractor will work to provide the Commonwealth an updated availability payment that reflects the viability of third-party transactions, if such transactions are viable from both a risk and cost perspective, and incorporates refinements to the greenfield project proposal, based on diligence completed at such time</p> <p>The scope items for this Milestone will be:</p> <ul style="list-style-type: none"> • Refine greenfield project proposal through continued diligence and design work; • Pursue third party contracts which improve the affordability of the project; • Engage all necessary advisors for the Initial Project; • Proposed detailed scope, schedule and budget to reach Financial Close

	<p>Contractor's obligations under the Milestone will be considered complete once Contractor submits an updated availability payment estimate to the Commonwealth, which includes evidence, including without limitation letters of intent, term sheets, etc., reasonably satisfactory to the Commonwealth of any third party transaction to be considered as part of the updated availability payment.</p>
<p>III - Financial Close Milestone ("FC")</p>	<p>During this Milestone, final, executable contracts (including the Concession Agreement, DB Contract and O&M Contract and Interface Agreement) will be negotiated and provided to the Commonwealth, and all financing will be arranged for the transaction.</p> <p>The deliverables for this Milestone will be:</p> <ul style="list-style-type: none"> • Due diligence reports from Contractor advisors; • Executable fixed price, date certain, design-build agreement (the "DB Contract"); • Executable fixed price long-term operating, maintenance and refresh agreement (the "O&M Contract"); • Executable Concession Agreement, including without limitation a performance standards regime, and project design build schedule; • Detailed term sheet of a Wholesaler Agreement, including without limitation a revenue sharing mechanism; • Executable financing documentation; • Audited financial model; and • Proof of required insurances. <p>Contractor's obligations under this Milestone will be complete once the Contractor has satisfied the above deliverables.</p>

**EXHIBIT A
MILESTONE BUDGETS
(assuming Tax Exempt Financing)**

External Costs	GMP (actual)	Interim Milestone	To FC	At FC	Total
Project Counsel	160	450	368	545	1,523
Local Counsel	28	100	100	100	328
Underwriters' Counsel	-	100	250	-	350
Sponsors' Bond Counsel	-	55	275	-	330
Issuer Bond Counsel	-	-	100	-	100
Subcontractor Counsel (Ledcor)	-	120	120	-	240
Lenders' Technical Advisor	-	150	50	-	200
Sponsors Insurance	-	40	-	(40)	0
Lenders Insurance	-	20	-	-	20
Rating Agencies	-	300	-	210	510
Tax Advisor	-	75	75	-	150
Accounting Advisor	-	25	25	-	50
Model Audit	-	-	65	-	65
Stakeholder Relations	25	25	-	150	200
Out of Pockets	82	60	60	-	202
Contingency	-	184	103	-	287
External Total	295	1,704	1,591	965	4,554
Internal Costs	(actual)	Milestone	To FC	At FC	Total
Macquarie	(5)	250	300	-	545
First Solutions	100	255	170	-	525
Ledcor	-	205	205	-	410
Fujitsu	100	151	227	-	477
Black & Veatch	200	536	528	-	1,264
Internal Total	395	1,397	1,430	-	3,221
Total Cost	690	3,101	3,020	965	7,775

ATTACHMENT E PHASE 1 EARLY WORKS

The Phase 1 Early Works will consist of services and procurement scope as set out below in connection with the Project.

Engineering

In order to support the earlier commencement of make-ready construction and maintain an adequate engineering design buffer against the pace of construction, additional engineering resources will be added to the Project. The additional resources will continue the detailed design and accelerate the existing rate of production. In addition, make ready and construction permit applications will be submitted in advanced of the anticipated project schedule.

Deliverables:

- Pole Make-Ready Applications
- Environmental Consulting for Ring 1A & 1B
- Detail Design Drawings
- Anchor location field engineering
- Permit Drawings
- Permit Applications for Ring 1B
- Make-Ready estimate approval

Procurement

Procurement resources will be assigned to initiate equipment & material take-offs and the placement of orders for long-lead materials. The fiber order will be placed and the cost exposure is estimated at a 15% restocking fee. Full cost exposure would occur upon shipment of the material. Fiber order can be cancelled 30 days prior to delivery.

Deliverables:

- Purchase Orders for Long Lead items
 - Order Huts for Ring 1A & 1B

- Fiber Order 104 miles
- Purchase Orders for Make Ready Materials
- Subcontracts with contractors
- Confirmed delivery dates for long lead items

Phase 1 Early Works Price

The Phase 1 Early Works Price is \$2,957,000.00 and is broken down as follows:

Early Works	Phase 1	
	Jun 15-30	July 1-15
Labor - Eng, Proc., PMO, CM	940,000	988,000
Material - Fiber, Make-ready	-	207,000
Field Engineering Sub	335,000	130,000
Subcontractor		
Expenses - Travel, Per Diem, Vehicles	182,000	175,000
Total	1,457,000	1,500,000
	Phase 1 Total	2,957,000

For clarity, the Phase 1 Early Works Price is in addition to the Total Costs (set out in Exhibit A) that may be payable by the Commonwealth to the Contractor in accordance with this Agreement and the Phase 1 Early Works can be completed during the Phase 2 Early Works Term to the extent that the Phase 1 Early Works are not completed during Phase 1 Early Works Term but only up to, and not exceeding, the Phase 1 Early Works Price.

Attachment F Phase 2 Early Works

The Phase 2 Early Works will consist of services and procurement scope as set out below in connection with the Project.

Engineering

Engineering activity will be a continuation of the engineering work started in Phase 1 Early Works. During Phase 2 Early Works, the work will expand beyond the I-75 spine and Ring 1B to include Ring 1A.

Deliverables:

- Pole Make-Ready Applications
- Detail Design Drawings
- Anchor location field engineering
- Permit Drawings
- Permit Applications for Ring 1A & 1B
- Make-Ready estimate approval

Procurement

The Phase 2 Early Works activity will be a continuation of the procurement started in Phase 1 Early Works. Additional fiber and make-ready material orders will be issued as the engineering progresses. Similar to Phase 1 Early Works, the cost exposure for the fiber order is estimated at a 15% restocking fee. Full cost exposure would occur upon shipment of the material. The fiber order can be cancelled 30 days prior to delivery.

Deliverables:

- Purchase Orders for Long Lead items
 - Fiber Order 314 miles
 - Purchase Orders for Make Ready Materials
- Subcontracts with contractors
- Confirmed delivery dates for long lead items

Construction

The make-ready construction will commence as Utilities return aerial make-ready applications with approved estimates.

Deliverables:

- Make-ready construction
 - Make-ready subcontracts issued
 - Initial 85 miles of make-ready construction in progress
- Begin placement of strand along routes as make-ready is cleared

Phase 2 Early Works Price

The Phase 2 Early Works Price is \$4,895,000 and is broken down as follows:

Early Works	Phase 2	
	July 16-31	Aug 1-15
Labor - Eng, Proc., PMO, CM	988,000	1,122,000
Material - Fiber, Make-ready	311,000	646,000
Field Engineering Sub	130,000	
Subcontractor	660,000	660,000
Expenses - Travel, Per Diem, Vehicles	175,000	203,000
Total	2,264,000	2,631,000
	Phase 2 Total	4,895,000

The Client acknowledges that the Phase 2 Early Works Price may be exceeded in the Phase 2 Early Works Term but only to the extent that a portion of the Phase 1 Early Works Price was not expended in the Phase 1 Early Works Term in connection with Phase 1 Early Works. Further, the Client confirms that if either the Phase 1 Early Works Price or the Phase 2 Early Works Price has not been expended by the Contractor, then the Contractor may include the costs incurred in respect of the insurance coverage obtained for the Phase 2 Early Works, but only if this Agreement is terminated and costs are incurred for terminating any insurance coverage that was bound in the Phase 2 Early Works Term.

ATTACHMENT G INSURANCE

PHASE 2 CONSTRUCTION PERIOD INSURANCE REQUIREMENTS

“All Risks” Builder’s Risk Insurance

During the Phase 2 Early Works Term, Macquarie shall, at its own expense, take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, course of construction insurance against “all risks” of physical loss or damage except as otherwise mutually agreed to by the parties, including delay in start-up covering all materials, property, structures and equipment purchased for, entering into or forming part of the NG-KIH System, while located anywhere within the United States of America during construction, erection, installation and testing of the NG-KIH System, which will include the following terms:

- coverage in an amount not less than \$100,000,000 per occurrence and in the aggregate to replace the NG-KIH System to a minimum of all applicable codes, subject to the following principle extensions and sublimits:
- replacement cost valuation (property);
- most recent technology replacement cost valuation (equipment);
- flood (to policy limit with annual aggregate permitted);
- natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with annual aggregate permitted);
- for property insured under the policy and stored at an off-site location or in transit in the United States of America – minimum \$10,000,000 sublimit;
- the full value of all materials and equipment forming part of the NG-KIH System lifted on-site by cranes during the Construction;
- professional fees – minimum \$2,500,000 sublimit;
- firefighting expenses – minimum \$250,000 sublimit;
- debris removal and clean up – minimum \$1,000,000 sublimit;
- expediting expenses – limited to 25% of damage/claim, subject to maximum \$2,000,000 sublimit;
- extra and expediting expenses – maximum \$5,000,000 sublimit;

- change in ordinance, including demolition, increased cost of repairs and replacement – minimum \$15,000,000 sublimit;
- valuable papers – minimum \$500,000 sublimit;
- accounts receivable;
- contamination clean-up or removal – minimum \$250,000 sublimit;
- \$31.2 million of recurring soft costs;
- margin of profit for contractors;
- off premises services interruption (minimum 4 weeks);
- civil authority (minimum 4 weeks);
- prevention of ingress / egress (minimum 4 weeks);
- underground services, temporary buildings and structures, temporary boilers and pressure vessels, scaffolding, false work, forms, excavation, site preparation, landscaping and similar work;
- electronic data processing equipment and media, including the cost to restore from the application of by-laws or ordinances;
- non-vitiation;
- waiver of subrogation in favor of all named and unnamed insureds, including but not limited to Project Co, the Authority, Operations Co, the Project Contractors, the Collateral Agent, the Sub-Contractors, consultants and design professionals, except where a loss is caused by or resulting from any error in the Design or any other design professional error or omission; and
- permit use and occupancy of the incomplete NG-KIH System by Project Co, Operations Co, the Project Contractors, the Sub-Contractors and the Authority prior to the relevant Site Completion Date, Lateral Completion Date or Ring Completion Date, as applicable;
- delay in start-up coverage: in an amount not less than \$31.2 million sufficient to compensate Project Co for additional capital payments, additional interest for the extension of financing necessary for the completion of the Design and Construction, legal and accounting expenses, insurance premiums, building permits and other miscellaneous costs, various incurred fees, fixed operation and maintenance expenses, additional commissions, advertising, margin of profit for Operations Co,

caused by the delay in Site Completion, Ring Completion or System Completion resulting from any perils insured under (a) above;

- having an indemnity period not less than 12 months in respect of the NG-KIH System; and
- having a waiting period of not greater than 14 days;
- deductibles, per occurrence, not exceeding the following amounts;
- flood – \$500,000;
- earthquake – \$250,000;
- LEG 3 – \$250,000;
- for all other insured perils – \$100,000; and
- if more than one event occurs, only the highest deductible applies;

Include, as named insureds, as their interests may appear the following entities: KentuckyWired Infrastructure Company, Inc. (“Project Co”); The Commonwealth of Kentucky (referred to herein as the Commonwealth); KentuckyWired Operations Company, LLC (“Operations Co”); NG-KIH Design-Builder LLC (the joint venture to be formed by the DB Contractors and also referred to as the Design-Builder in connection with the Project); LTS Kentucky Managed Technical Services LLC (also referred to as the Service Provider in connection with the Project; and all sub-contractors of the Design-Builder or the Service Provider in connection with the Project, consultants and sub-consultants as their interests may appear.

Include Lender Endorsements substantially in the form agreed to by the parties including, without limitation, naming the U.S. Bank National Association (“Collateral Agent”) as additional insured and loss payee, and, with respect to the delay in start-up coverage referred to above in this Attachment G, name the Client and the Collateral Agent as the exclusive loss payees.

Commercial General Liability Insurance

During the Early Works Phase 2, Macquarie will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, commercial general liability insurance, which will include the following terms:

- coverage in an amount of \$2,000,000 per occurrence and \$4,000,000 in the annual aggregate for bodily injury, death and damage to property, including loss of use thereof, subject to the following principle extensions and sublimits:
- products & completed operations ongoing operations coverage during the warranty period;

- medical payments;
- contractual liability;
- personal injury and advertising;
- cross liability, separation of insureds and/or severability of interests;
- hazardous operation XCU (excavating / underpinning / pile driving / shoring / caisson work / work below ground surface / tunneling / grading and similar operations;
- waiver of subrogation in favor of all additional insureds as required by contract, including but not limited to Project Co, the Authority, Operations Co, the Project Contractors and the Collateral Agent;
- a deductible not exceeding \$500,000 per occurrence;

Include, as additional insureds, using the appropriate endorsements, KentuckyWired Infrastructure Company, Inc. ("Project Co"), the Commonwealth of Kentucky (also referred to as the Client), and KentuckyWired Operations Company, LLC ("Operations Co").

Worker's Compensation

During the Early Works Phase 2, Macquarie will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, worker's compensation insurance for each employee in conformance with applicable Law, which will include the following terms:

- a voluntary compensation endorsement;
- an alternative employer endorsement;
- an endorsement extending coverage to all states operations on an "in any" basis; and
- if any work is over or adjacent to navigable waters, coverage for any claims arising from the Longshore and Harbor Workers' Compensation Act and/or the Merchant Marine Act of 1920.

Employer's Liability

During the Early Works Phase 2, Macquarie will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, employer's liability insurance, which will include the following terms:

- coverage in the amount of \$1,000,000 per claim and in the aggregate against liability for death, bodily injury, illness or disease for all employees

working on or about any Lands or otherwise engaged in the Design and Construction; and

- a deductible not exceeding \$1,000,000 per claim.

Automobile Liability

During the Early Works Phase 2, Macquarie will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, automobile liability coverage, which will include the following terms:

- coverage in the amount of \$1,000,000 combined single limit, inclusive of defense, for accidental death, bodily injury, and property damage liability arising from the ownership, maintenance or use of all owned, non-owned, and hired vehicles used in the performance of the Design and Construction, including loading and unloading; and
- a deductible not exceeding \$1,000,000 per claim.

Include KentuckyWired Infrastructure Company, Inc., the Commonwealth of Kentucky (also referred to as the Client) and KentuckyWired Operations Company, LLC (“Operations Co”) as additional insureds.

Excess Liability

During the Early Works Phase 2, the Macquarie will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, umbrella/excess liability insurance in the amount of \$50,000,000 per occurrence/annual aggregate. Such policy or policies shall be excess of and follow form over the primary insurance required in this Schedule 2D.

Professional Liability

During the Early Works Phase 2, DB Contractors will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, which will include the following terms:

- coverage in an amount of not less than \$15,000,000 per claim and in the aggregate (inclusive of defense and related costs and supplementary payments) for all architectural, engineering, land surveying, environmental, landscape architectural, interior design /space planning, soil and material testing services, geotechnical services and procurement services, including their replacements and/or sub-consultants of any tier subject to the following principle extensions:
- primary insurance extension;
- include as insureds any present or former partner, executive officer, director, shareholder of any named insured while acting within their scope of duties for the named insured;

- claim defined as a written or oral demand for money or a written or oral allegation of liability or responsibility for a breach of professional duty in the rendering or failure to render professional services by an insured and resulting from a single error, omission or negligent act;
- lawyer fees and associated expenses incurred in the investigation, defense, settlement, arbitration or litigation of claims;
- duty to defend, even if the allegations are groundless, false or fraudulent;
- a deductible not exceeding \$500,000 per claim.

Contractors Pollution Liability

During the Early Works Phase 2, Macquarie will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, contractor's pollution liability insurance, which will include the following terms:

- coverage in the amount of not less than \$25,000,000 per claim and in the aggregate inclusive of defense and all costs and expenses subject to the following principle extensions:
- third party bodily injury and third party contamination;
- hazardous substances released completed operations period; and
- waiver of subrogation in favor of all additional insureds, including but not limited to any and all indemnified parties where required by contract and the Collateral Agent; and
- a deductible not exceeding \$1,000,000 per claim.

Include, as additional insureds, the following entities: KentuckyWired Infrastructure Company, Inc. ("Project Co"); The Commonwealth of Kentucky (also referred to herein as the "Client"); and KentuckyWired Operations Company, LLC ("Operations Co").

Include Lender Endorsements substantially in the form as mutually agreed to by the parties, including, without limitation, naming the U.S. Bank National Association ("Collateral Agent") as additional insured.

For clarity, the pollution liability insurance shall only include coverage for environmental risks relating to the exacerbation of pre-existing contamination and any new pollutants related to the Project. The remediation of pre-existing contamination shall be the responsibility of the Client.

Employee Dishonesty (Crime)

During the Early Works Phase 2, Macquarie will take out, maintain in force and extend, or cause to be taken out, maintained in force and extended, employee dishonesty insurance against the fraudulent acts of employees of KentuckyWired Infrastructure Company, Inc. ("Project Co"), which will include coverage in the amount of not less than \$1,000,000 per claim and will include the following principal extensions:

- broad form money and securities;
- money orders and counterfeit paper;
- depositors' forgery;
- computer fraud and funds transfer fraud;
- audit expenses; and
- credit card forgery.

Attachment H

Design and Construction Protocols

1. RESPONSIBILITIES

1.1 Phase 1 Early Works and Phase 2 Early Works Responsibility

Notwithstanding any other provision of this Agreement, Contractor will:

- (a) have complete responsibility for and control over the Phase 1 Early Works and the Phase 2 Early Works; and
- (b) perform and complete the Phase 1 Early Works and the Phase 2 Early Works in accordance with this Attachment H.

1.2 Grant of License by Client

During the Phase 2 Early Works Term, until termination of the this Agreement, the Client shall grant or shall cause to be granted to Contractor a non-exclusive license of use and access to, on, under and over the Lands and the NG-KIH System to the extent required by Contractor to carry out the Project in accordance with this Agreement (the "License").

For clarity, the Client will be responsible for ensuring that it has or will have such rights and interests in and to the Lands sufficient to permit the grant of the License free and clear of all encumbrances, restrictions or limitations, except for any encumbrances, restrictions or limitations which do not adversely affect, financially or otherwise, the License and the ability of Contractor to perform any of its obligations under this Agreement, including the ability to conduct the Phase 1 Early Works and the Phase 2 Early Works.

1.3 TERMS AFFECTING THE LICENSE GRANT

Without limiting the other provisions of this Attachment, the following terms and conditions apply to the License:

- (a) no legal demise or other interest in land, and no interest in the NG-KIH System or any other improvements, is granted to Contractor or created by this Agreement; and
- (b) the License is non-exclusive and no right to exclusive possession of the Lands or the NG-KIH System is granted to Contractor.

1.4 Deficiencies in Phase 1 Early Works and Phase 2 Early Works

Contractor will, without cost to the Client, correct any Deficiency that becomes apparent at any time during the Phase 1 Early Works or the Phase 2 Early Works.

1.5 Compliance with Laws

Contractor will undertake and perform the Phase 1 Early Works and the Phase 2 Early Works in accordance with applicable Laws, and so that all applicable elements of the Phase 1 Early Works and the Phase 2 Early Works, including all workmanship, construction equipment and materials meet the requirements of applicable Laws.

1.6 Permits for Phase 1 Early Works and Phase 2 Early Works

- (a) Contractor is responsible to obtain all Permits that are required for the performance of the Phase 1 Early Works and the Phase 2 Early Works.
- (b) Contractor assumes all risk and costs arising in relation to all Permits arising from delays in obtaining Permits or inability to obtain Permits, conditions of obtaining Permits or amendments to Permits as may be required.
- (c) Client will provide Contractor with such information within the Client's possession, and co-operate with Contractor, as Contractor reasonably requires in relation to all Permits.

2. DESIGN

2.1 Additional Design Considerations

During the Phase 1 Early Works Term and the Phase 2 Early Works Term, Contractor will undertake and perform the Design so that the Design is undertaken by a design team exercising such degree of care, skill and diligence as would reasonably be expected from consultants qualified to perform services similar in scope, nature and complexity to the Design and Contractor will appoint a design team that:

- (a) is so qualified;
- (b) includes (as required by applicable Law or Customary Industry Practice) licensed or registered professional engineers and architects;
- (c) has sufficient expertise and experience to expeditiously and efficiently perform all of the Design in a proper and professional manner to the standard set out in this Attachment H; and
- (d) has sufficient expertise and experience designing, constructing, operating and maintaining infrastructure in similar environmental and geotechnical conditions as in the Lands.

3. MAKE-READY CONSTRUCTION

3.1 Skilled Workers

Contractor will employ a sufficient number of sufficiently skilled workers to perform the Phase 1 Early Works and the Phase 2 Early Works in compliance with this Attachment

H. Trades and other workers will be licensed or registered as required by applicable Law or Customary Industry Practice.

3.2 Control of Phase 1 Early Works and Phase 2 Early Works

Contractor will have total control of the Phase 1 Early Works and the Phase 2 Early Works and will effectively direct and supervise such work so that it is undertaken in compliance with the terms of this Attachment H. Contractor will be responsible for all construction means, methods, techniques, sequences and procedures with respect to the Phase 1 Early Works and the Phase 2 Early Works and for coordinating the various elements of such work, and nothing in this Attachment H will be interpreted as giving any responsibility for the above to the Client or any representative or agent of the Client.

3.3 Existing Utilities and Services

Contractor will confirm the location of, and protect all existing utilities and services that may be affected by the Phase 1 Early Works or the Phase 2 Early Works.

3.4 Route and Lands Issues

Contractor will:

- (a) perform all Phase 1 Early Works and Phase 2 Early Works activities within lands for which the Contractor has been granted the License in accordance with this Attachment or for which Contractor has otherwise obtained sufficient rights of access;
- (b) if the Contractor performs any Phase 1 Early Works or Phase 2 Early Works-related activities outside of the Lands, without limiting any other provisions of this Agreement, will comply with all relevant Laws.

3.5 Safety

Contractor will be solely responsible for safety, during the Phase 1 Early Works Term and Phase 2 Early Works Term, including the safety of all persons on the Lands and any other location where the Phase 1 Early Works or Phase 2 Early Works is performed (whether on the Lands or any other location, lawfully or not) and members of the public, and will comply with the requirements of applicable Laws, including applicable construction safety legislation, regulations and codes.

3.6 Protection of the Environment and Property

Contractor will:

- (a) follow all environmental protection requirements and restrictions while performing the Phase 1 Early Works and Phase 2 Early Works; and
- (b) protect the Client's property (and any third party's property) from damage caused by the Phase 1 Early Works and Phase 2 Early Works, including buildings, roadways, drainage systems, landscaping, surfaces, services and infrastructure.

4. QUALITY ASSURANCE

4.1 Quality of Phase 1 Early Works and Phase 2 Early Works

Contractor is solely responsible for the quality of the Phase 1 Early Works and the Phase 2 Early Works.

ASSIGNMENT OF MASTER AGREEMENT

THIS ASSIGNMENT dated as of September 3, 2015 is entered into:

BETWEEN:

The Commonwealth of Kentucky

(the “**Authority**”)

AND:

Macquarie Infrastructure Developments LLC

(“**Macquarie**”)

AND:

KentuckyWired Infrastructure Company, Inc.

(“**Project Co**”)

AND:

OpenFiber Kentucky Company, LLC

(the “**Wholesaler**”)

WHEREAS:

- A. Pursuant to RFP 758 1500000003-5 issued July 11, 2014 (as amended from time to time, the “**RFP**”), the Authority selected Macquarie to design, build, finance, operate and maintain the NG-KIH System (the “**Project**”).
- B. On December 22, 2014, the Authority and Macquarie entered into a master agreement (as amended from time to time, the “**Master Agreement**”) in respect of the Project.
- C. On or about the date hereof, the Authority and Project Co will enter into a project agreement (the “**Project Agreement**”) whereby Project Co will agree to design, build, finance, operate and maintain the NG-KIH System, all as more particularly described in the Project Agreement.
- D. On or about the date hereof, Project Co and KentuckyWired Operations Company, LLC (“**Operations Co**”) will enter into a project implementation agreement (the “**Project Implementation Agreement**”) whereby Operations Co will agree to design, build, operate and maintain the NG-KIH System, all as more particularly described in the Project Implementation Agreement.
- E. On or about the date hereof, the Authority, Macquarie, the Wholesaler and Operations Co will enter into a business development agreement (the “**Wholesaler Business Development Agreement**”) in respect of the commercialization of additional capacity

made available by the Project for third party users, all as more particularly described in the Wholesaler Business Development Agreement.

NOW THEREFORE THIS ASSIGNMENT WITNESSES THAT, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. INTERPRETATION

1.1 Definitions

Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Assignment will have the respective meanings given to such terms in the Project Agreement.

1.2 Construction and Interpretation

Unless otherwise specified or the context otherwise requires, (a) words importing the singular include the plural and vice versa; (b) words importing a particular gender include all genders; (c) the words "include", "includes" and "including" are to be construed as meaning "include without limitation", "includes without limitation" and "including without limitation", respectively; and (d) in the event that any provision of this Assignment shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, unless severance of such provision would materially alter the essence of this Assignment for any party, the provision shall be fully severable and shall not affect the remaining provisions of this Assignment, and this Assignment shall be construed and enforced as if the illegal, invalid or unenforceable provision had not been included therein.

2. ASSIGNMENT AND ASSUMPTION

2.1 Assignment to and Assumption by Project Co

Subject to Section 2.2, Macquarie hereby assigns to Project Co all of the rights, obligations, covenants and liabilities of Macquarie under the Master Agreement. Subject to Section 2.2, Project Co hereby assumes all of the rights, obligations, covenants and liabilities of Macquarie under the Master Agreement and agrees to comply with and be responsible for the performance of all of the obligations, covenants and liabilities of Macquarie under the Master Agreement as if Project Co was the original party thereto in the place of Macquarie.

2.2 Assignment to and Assumption by Wholesaler

Macquarie hereby assigns to the Wholesaler, and the Wholesaler assumes, all of the rights, obligations, covenants and liabilities of Macquarie under the Master Agreement related to the commercialization of additional capacity made available by the Project for third party users, including the obligation to deliver a detailed term sheet related to the Wholesaler Agreement. The Wholesaler hereby assumes all of the rights, obligations, covenants and liabilities of Macquarie under the Master Agreement related to the commercialization of additional capacity made available by the Project for third party users, including the obligation to deliver a detailed term sheet related to the Wholesaler Agreement, and agrees to comply with and be responsible

for the performance of all such obligations, covenants and liabilities of Macquarie under the Master Agreement as if the Wholesaler was the original party thereto in the place of Macquarie.

2.3 Written Agreements

The parties acknowledge and agree that the written agreements between the Parties referred to in Section II of the Master Agreement are the Project Agreement in respect of the Project and the Wholesaler Business Development Agreement in respect of the commercialization of additional capacity made available by the Project for third party users.

3. CONSENT TO ASSIGNMENT

3.1 Consent to Assignment

Pursuant to Section III.17 of the Master Agreement, the Authority hereby consents to the assignment by Macquarie of its rights, obligations, covenants and liabilities under the Master Agreement to Project Co and the Wholesaler.

4. GENERAL

4.1 Law of Agreement

This Assignment is subject to the laws of the Commonwealth of Kentucky and any applicable federal laws and will be governed by and construed in accordance with such laws.

4.2 Venue

Any legal actions or proceedings brought by any party hereto against any other party shall be brought in state court in Franklin County, Kentucky in accordance with KRS 45A.245. Each party acknowledges the competence of such court and the convenience and propriety of the venue and agrees to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

4.3 Entire Agreement

Unless otherwise stated in this Assignment, this Assignment constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Assignment. No party has relied on any representation except as expressly set out in this Assignment.

4.4 Further Assurances

The parties will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to this Assignment.

4.5 Counterparts

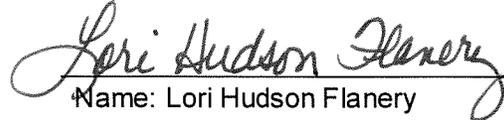
This Assignment may be executed in any number of counterparts, each of which will be deemed to be an original, and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment so that it will not be necessary in making proof of this Assignment to produce or account for more than one such counterpart.

[signature page follows]

IN WITNESS WHEREOF the parties hereto have executed this Assignment as of the day and year first above written.

THE COMMONWEALTH OF KENTUCKY

Per:



Name: Lori Hudson Flanery

Title: Secretary, Kentucky Finance
& Administration Cabinet

I have the authority to bind the Commonwealth.

**MACQUARIE INFRASTRUCTURE
DEVELOPMENTS LLC**

Per:

Name:

Title:

Per:

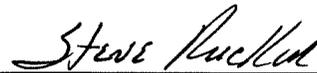
Name:

Title:

I/We have the authority to bind the corporation.

**KENTUCKYWIRED INFRASTRUCTURE
COMPANY, INC.**

Per:



Name: Steve Rucker

Title: Director

I have the authority to bind the corporation.

IN WITNESS WHEREOF the parties hereto have executed this Assignment as of the day and year first above written.

THE COMMONWEALTH OF KENTUCKY

Per: _____

Name: Lori Hudson Flanery

Title: Secretary, Kentucky Finance
& Administration Cabinet

I have the authority to bind the Commonwealth.

**MACQUARIE INFRASTRUCTURE
DEVELOPMENTS LLC**

Per: _____



Name: NICK BUTCHER

Title: MANAGER

Per: _____



Name: ANDREW ANCONE

Title: MANAGER

I/We have the authority to bind the corporation.

**KENTUCKYWIRED INFRASTRUCTURE
COMPANY, INC.**

Per: _____

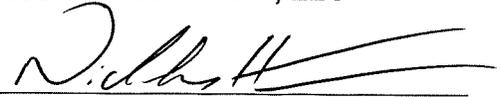
Name: Steve Rucker

Title: Director

I have the authority to bind the corporation.

OPENFIBER KENTUCKY COMPANY, LLC

Per:



Name: NICHOLAS HANIN

Title: MANAGER

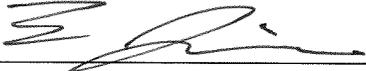
Per:

Name:

Title:

I/We have the authority to bind the corporation.

OPENFIBER KENTUCKY COMPANY, LLC

Per: 
Name: Eliot Jamison
Title: Manager

Per: _____
Name:
Title:

I/We have the authority to bind the corporation.

**DESIGN-BUILDER COLLATERAL AGREEMENT
NEXT GENERATION KENTUCKY INFORMATION HIGHWAY PROJECT**

**The Commonwealth of Kentucky
(the “Authority”)
and
NG-KIH Design-Build LLC
(the “Design-Builder”)
and
KentuckyWired Infrastructure Company, Inc.
 (“Project Co”)
and
KentuckyWired Operations Company, LLC
 (“Operations Co”)**

Dated: September 3, 2015

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DESIGN-BUILDER COLLATERAL AGREEMENT

THIS DESIGN-BUILDER COLLATERAL AGREEMENT dated as of September 3, 2015 is entered into:

BETWEEN:

The Commonwealth of Kentucky

(the “**Authority**”)

AND:

NG-KIH Design-Build LLC

(the “**Design-Builder**”)

AND:

KentuckyWired Infrastructure Company, Inc.

(“**Project Co**”)

AND:

KentuckyWired Operations Company, LLC

(“**Operations Co**”)

WHEREAS:

- A. The Authority and Project Co have entered into an agreement dated as of September 3, 2015 (the “**Project Agreement**”) whereby Project Co has agreed to design, build, finance, operate and maintain the NG-KIH System (the “**Project**”), all as more particularly described in the Project Agreement.
- B. Project Co and Operations Co have entered into an agreement dated as of September 3, 2015 (the “**Project Implementation Agreement**”) whereby Operations Co has agreed to design, build, operate and maintain the NG-KIH System, all as more particularly described in the Project Implementation Agreement.
- C. Operations Co and the Design-Builder have entered into an agreement dated as of September 3, 2015 (the “**Design-Build Agreement**”) whereby the Design-Builder has agreed to carry out the Design and the Construction.
- D. It is a condition of the Design-Build Agreement that the Design-Builder enter into this Design-Builder Collateral Agreement with the Authority, Project Co and Operations Co.
- E. The Authority and Project Co have agreed under the terms of the Project Agreement to execute and deliver this Design-Builder Collateral Agreement.

Design-Builder Collateral Agreement
NG-KIH Project

F. Project Co and Operations Co have agreed under the terms of the Project Implementation Agreement to execute and deliver this Design-Builder Collateral Agreement.

NOW THEREFORE THIS DESIGN-BUILDER COLLATERAL AGREEMENT WITNESSES THAT, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. INTERPRETATION

1.1 Definitions

Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Design-Builder Collateral Agreement will have the respective meanings given to such terms in the Project Agreement and:

“**Design-Build Agreement**” has the meaning set out in Recital C;

“**Design-Builder Collateral Agreement**” means this agreement, as amended, supplemented or restated from time to time;

“**Project**” has the meaning set out in Recital A;

“**Project Agreement**” has the meaning set out in Recital A;

“**Project Implementation Agreement**” has the meaning set out in Recital B;

“**Proposed Transfer Date**” has the meaning set out in Section 4.1;

“**Proposed Transfer Notice**” has the meaning set out in Section 4.1;

“**Proposed Step-In Date**” has the meaning set out in Section 3.1;

“**Proposed Substitute**” has the meaning set out in Section 4.1;

“**Step-In Date**” means the date the Authority delivers the Step-In Undertaking;

“**Step-In Notice**” has the meaning set out in Section 3.1;

“**Step-In Period**” means the period commencing on the Step-In Date and ending on the earliest of:

- (a) the Step-Out Date;
- (b) the Transfer Effective Date; and
- (c) the termination date of the Design-Build Agreement as permitted under Section 3.8;

“**Step-In Undertaking**” has the meaning set out in Section 3.5;

“**Step-Out Date**” has the meaning set out in Section 3.9;

“**Termination Notice**” has the meaning set out in Section 2.1;

“**Transfer Agreement**” has the meaning set out in Section 4.5(b); and

“**Transfer Effective Date**” means the effective date of the Transfer Agreement.

1.2 Construction and Interpretation

Unless otherwise specified or the context otherwise requires, this Design-Builder Collateral Agreement will be interpreted according to the provisions set out in Sections 2 and 3(b) of Schedule 1 [Definitions and Interpretation] to the Project Agreement, except that references in such section to Project Co will also be deemed to be references to Operations Co and the Design-Builder.

1.3 Law of Agreement

This Design-Builder Collateral Agreement is subject to the laws of the Commonwealth of Kentucky and any applicable federal laws and will be governed by and construed in accordance with such laws.

1.4 Venue

Any legal actions or proceedings brought by any party hereto against any other party shall be brought in state court in Franklin County, Kentucky in accordance with KRS 45A.245. Each party acknowledges the competence of such court and the convenience and propriety of the venue and agrees to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

2. TERMINATION NOTICE AND AUTHORITY TERMINATION

2.1 Termination Notice

The Design-Builder will not terminate the Design-Build Agreement without first giving the Authority at least 45 days’ notice specifying the grounds for such termination (the “**Termination Notice**”).

2.2 Survival of Design-Build Agreement

Notwithstanding any provision of the Design-Build Agreement to the contrary, on termination of the Project Agreement by the Authority, the parties agree that the Design-Build Agreement will not come to an end, except in accordance with the terms of this Design-Builder Collateral Agreement.

2.3 Suspension Notice

The Design-Builder will not exercise any right it may have under the Design-Build Agreement to temporarily suspend its performance thereunder, unless:

- (a) the Design-Builder first delivers a notice (a “**Suspension Notice**”) to the Authority detailing the event that has occurred that entitles it to exercise such

Design-Builder Collateral Agreement
NG-KIH Project

right and stating that it intends to exercise such suspension right, together with details of any sums which are due and payable but unpaid by Operations Co and any other material obligations or liabilities which should have been performed or discharged by Operations Co under the Design-Build Agreement, in each case as at the date of such Suspension Notice; and

(b) both:

- (1) the Design-Builder has confirmed in writing to the Authority that the Senior Secured Creditors have not agreed to pay the Design-Builder in accordance with the Design-Build Agreement for work performed by it during the period commencing on the date (the “**Suspension Date**”) when it, but for the provisions of this Section 2.3, would have been entitled to suspend its performance under the Design-Build Agreement and ending no sooner than 45 days after the Suspension Date; and
- (2) within 5 Business Days of receipt of confirmation from the Design-Builder pursuant to Section 2.3(b)(1), the Authority has not agreed, by written notice to the Design-Builder, to pay the Design-Builder in accordance with the Design-Build Agreement for work performed by it during the period (the “**No Suspension Period**”) commencing on the Suspension Date and ending on the earliest to occur of:
 - (A) the date on which the Senior Secured Creditors exercise any of their step-in or transfer rights pursuant to and in accordance with, respectively, Section 4 or Section 6 of the Lenders’ Remedies Agreement;
 - (B) the date from which the Senior Secured Creditors agree to pay the Design-Builder as contemplated under Section 2.3(b)(1); and
 - (C) the Step-In Date,

except that, if the Authority provides a written notice to the Design-Builder pursuant to Section 2.3(b)(2) and thereafter fails to make payment to the Design-Builder of any undisputed amount payable pursuant to and in accordance with the Design-Build Agreement for work performed by the Design-Builder during the No Suspension Period, the No Suspension Period will terminate and the Design-Builder may thereafter exercise any right it may have to temporarily suspend its performance under the Design-Build Agreement.

3. STEP-IN AND STEP-OUT

3.1 Step-In Notice

Subject to Section 3.2, if the Authority has terminated the Project Agreement in accordance with its terms or if the Authority has received a Termination Notice, the Authority may give notice to the Design-Builder (a “**Step-In Notice**”) of the intention of the Authority to issue a Step-In Undertaking on a specified date (the “**Proposed Step-In Date**”) provided that such Proposed Step-In Date is:

- (a) no later than 30 days after termination of the Project Agreement if the Project Agreement was terminated by the Authority; and
- (b) no later than 30 days after delivery of the Termination Notice to the Authority.

3.2 Lenders' Step-In Rights

The Authority will not issue a Step-In Notice at any time that the Senior Secured Creditors are validly exercising any Step-In rights with respect to the Project under:

- (a) the Lenders' Remedies Agreement;
- (b) any Senior Financing Agreement; or
- (c) any direct agreement entered into between the Design-Builder and the Senior Secured Creditors with respect to the Design-Build Agreement,

and the running of all notice periods and timelines set out in Section 3.1 will be suspended until such time as the Senior Secured Creditors are no longer exercising, or are no longer permitted to exercise, such rights under the Lenders' Remedies Agreement, any Senior Financing Agreement or any such direct agreement. The Design-Builder will provide copies of all relevant notices delivered by it to, or to it by, the Senior Secured Creditors in respect of the exercise of such rights so as to enable the Authority and the Design-Builder to determine, in accordance with this Section 3.2 the notice periods and timelines set out in Section 3.1.

3.3 Notice of Obligations and Step-In Undertaking

Not less than 5 Business Days prior to the Proposed Step-In Date, the Design-Builder will give notice to the Authority of any sums that are due and payable but unpaid by Operations Co and of any other material obligations or liabilities that should have been performed or discharged by Operations Co under the Design-Build Agreement, in each case as at the date of the Step-In Notice.

3.4 Update of Obligations

Not less than 2 Business Days prior to the Proposed Step-In Date, the Design-Builder will give notice to the Authority of any change in such sums, obligations or liabilities referred to in Section 3.3.

3.5 Delivery of Step-In Undertaking

On or before the Proposed Step-In Date, the Authority may deliver to the Design-Builder a written undertaking to the Design-Builder (the "**Step-In Undertaking**") undertaking to the Design-Builder to:

- (a) pay or procure the payment to the Design-Builder, within 15 Business Days of demand by the Design-Builder, of any sum due and payable or accruing due and payable but unpaid by Operations Co to the Design-Builder under the Design-Build Agreement before the Step-In Date, provided that the Design-Builder has notified the Authority of such amounts in accordance with Sections 3.3 and 3.4;

- (b) perform or discharge or procure the performance or discharge of any unperformed or undischarged obligations of Operations Co under the Design-Build Agreement that will have fallen due for performance or discharge before the Step-In Date and of which the Authority has been notified by the Design-Builder in accordance with Sections 3.3 and 3.4;
- (c) pay or procure the payment of any sum due and payable by Operations Co under the Design-Build Agreement as a result of either any work or services performed during the Step-In Period or any act or omission occurring during the Step-In Period which arises from any act or omission occurring after the Step-In Date; and
- (d) perform or discharge or procure the performance or discharge of any obligations of Operations Co under the Design-Build Agreement as a result of any act or omission occurring during the Step-In Period that arises from any act or omission occurring after the Step-In Date.

3.6 Limits on Authority Liability on Step-In

The Authority will not be required to assume any liability under a Step-In Undertaking for any outstanding obligations or liabilities of Operations Co to the Design-Builder:

- (a) that existed as of the Step-In Date; and
- (b) of which the Authority has not been notified pursuant to Sections 3.3 and 3.4.

3.7 Non-Delivery of the Step-In Undertaking

If the Authority does not deliver the Step-In Undertaking on or before the Proposed Step-In Date, the Step-In Notice will be deemed to have been withdrawn and the rights and obligations of the parties will be construed as if the Step-In Notice had not been given.

3.8 Effect of Step-In Undertaking

During any Step-In Period, the Design-Builder will continue to observe and perform its duties and obligations under the Design-Build Agreement and will only be entitled to exercise its rights of termination under the Design-Build Agreement:

- (a) by reference to a default under the Design-Build Agreement arising during the Step-In Period (other than to the extent that an Operations Co Insolvency Event constitutes such a default), provided that no event of default by Project Co under the Project Agreement or Operations Co under the Project Implementation Agreement will entitle the Design-Builder to exercise such rights of termination during the Step-In Period;
- (b) if the Authority fails to pay when due any amount owed to the Design-Builder or fails to perform or discharge when falling due for performance or discharge any obligation under the Step-In Undertaking; or
- (c) if such rights of termination arise in circumstances where there is no default under the Design-Build Agreement by the Authority or the Design-Builder.

3.9 Step-Out

The Authority may, at any time, terminate the Step-In Period by giving the Design-Builder at least 20 Business Days' notice specifying the date on which the Step-In Period will terminate (the "**Step-Out Date**").

3.10 Effect of Step-Out

The Authority will be released from the Step-In Undertaking on the expiration or termination of the Step-In Period, provided that the Authority has performed and discharged in full, or procured the performance and discharge in full, of any of the Authority's obligations under the Step-In Undertaking arising on or before the expiration or termination of the Step-In Period.

3.11 Payment by Operations Co

Operations Co will pay to the Authority on demand any amounts of which the Authority has been notified by the Design-Builder pursuant to Sections 3.3 and 3.4 and that were paid by the Authority or a Proposed Substitute to the Design-Builder pursuant to this Design-Builder Collateral Agreement. Any such amounts will constitute amounts due and payable by Operations Co to the Authority under this Design-Builder Collateral Agreement.

4. TRANSFER

4.1 Proposed Substitute

At any time that the Authority is entitled to give a Step-In Notice pursuant to Section 3.1 or at any time during the Step-In Period, the Authority may give notice (a "**Proposed Transfer Notice**") to the Design-Builder that it wishes itself or another person (a "**Proposed Substitute**") to assume, by way of sale, assignment, transfer or other disposal, the rights and obligations of Operations Co under the Design-Build Agreement and specifying a date (the "**Proposed Transfer Date**"):

- (a) if the Authority has terminated the Project Agreement but has not given a Step-In Notice, no later than 15 Business Days after termination of the Project Agreement;
- (b) if the Design-Builder has given a Termination Notice but the Authority has not given a Step-In Notice, no later than expiration of the Termination Notice; and
- (c) if the Authority has given a Step-In Notice (whether or not the Step-In Period has commenced), no later than 20 Business Days after the date of the Proposed Transfer Notice.

Subject to Section 3, the Design-Builder will not be entitled to terminate the Design-Build Agreement during the notice period specified in a Proposed Transfer Notice.

4.2 Consent to Transfer

If the Proposed Transfer Notice specifies the Authority as the Proposed Substitute, the Design-Builder's consent to the transfer will be deemed to have automatically been given. If the Proposed Substitute is not the Authority, a transfer in accordance with a Proposed Transfer

Notice will only be effective if the Design-Builder consents to that transfer in writing in accordance with Section 4.3, and the Authority will (as soon as practicable) supply the Design-Builder with the following information:

- (a) the name and registered address of the Proposed Substitute;
- (b) the names of the shareholders in the Proposed Substitute and the share capital owned by each of them;
- (c) the names of the directors and the secretary of the Proposed Substitute;
- (d) details of the means by which it is proposed to finance the Proposed Substitute (including the extent to which such finance is committed and any conditions precedent as to its availability for drawing); and
- (e) details of the technical competence of the Proposed Substitute and the resources (including contractual arrangements) which are to be available to the Proposed Substitute to enable it to perform its obligations under the Design-Build Agreement.

4.3 Grant of Consent

The Design-Builder may withhold or delay consent to a transfer only if the Proposed Substitute is not the Authority and the Authority has failed to show to the Design-Builder's satisfaction (acting reasonably) that:

- (a) the Proposed Substitute has the legal capacity, power and authority to become a party to and perform the obligations of Operations Co under the Design-Build Agreement; and
- (b) the technical competence and financial standing of, and the technical and financial resources available to, the Proposed Substitute are sufficient to perform the obligations of Operations Co under the Design-Build Agreement.

Within 5 Business Days of the receipt of a Proposed Transfer Notice and all information required under Section 4.2, the Design-Builder will notify the Authority in writing that it has consented to the transfer or, if the Design-Builder has not consented, will provide to the Authority an explanation of its reasons to withhold its consent.

4.4 Consent Withheld

If the Design-Builder withholds its consent to a Proposed Transfer Notice, the Authority may give one or more subsequent Proposed Transfer Notices, pursuant to the provisions of Section 4.1, containing changed particulars relating to the same Proposed Substitute or particulars relating to another Proposed Substitute that the Authority reasonably believes would fulfill the requirements of Sections 4.3, provided that only one Proposed Transfer Notice may be outstanding at any one time, and provided further that:

- (a) if a Step-In Notice has not been issued, any revised Proposed Transfer Date will be a date falling no later than the date specified in Section 4.1(a) or 4.1(b), as the case may be; and

- (b) if a Step-In Notice has been issued, any revised Proposed Transfer Date will be a date falling no later than the date specified in Section 4.1(c).

4.5 Implementation of Transfer

If the Design-Builder consents or is deemed to have consented to a transfer pursuant to a Proposed Transfer Notice, then on the Proposed Transfer Date:

- (a) the Proposed Substitute will become a party to the Design-Build Agreement in place of Operations Co and, thereafter, will be treated as if it was and had always been named as a party to the Design-Build Agreement in place of Operations Co; and
- (b) the Design-Builder, Operations Co and the Proposed Substitute will enter into a transfer agreement (the “**Transfer Agreement**”) and any other requisite agreements, in form and substance satisfactory to the Design-Builder, acting reasonably, pursuant to which:
 - (1) the Proposed Substitute will be granted all of the rights of Operations Co under the Design-Build Agreement; and
 - (2) the Proposed Substitute will assume all of the obligations and liabilities of Operations Co under the Design-Build Agreement.

4.6 Effect of Transfer

On and after the Transfer Effective Date:

- (a) the Design-Builder will owe its obligations under the Design-Build Agreement, whether arising before, on or after such date, to the Proposed Substitute; and
- (b) if the Authority has entered into a Step-In Undertaking, the Authority will be released from the Step-In Undertaking, provided that all obligations of the Authority under the Step-In Undertaking that have accrued up to the Transfer Effective Date have been fully and unconditionally discharged.

The Authority and the Design-Builder will use reasonable efforts to agree to any amendments to the Design-Build Agreement reasonably necessary to reflect the fact that the Project Agreement may have terminated at the time of the Transfer Effective Date.

4.7 Termination After Transfer

After the Transfer Effective Date, the Design-Builder will only be entitled to exercise its rights of termination under the Design-Build Agreement:

- (a) in respect of any Operations Co Event of Default arising after that date in accordance with the Design-Build Agreement; or
- (b) if the Proposed Substitute does not discharge the obligations and liabilities referred to in Section 4.5(b)(2) assumed by it under the Transfer Agreement that

relate to matters arising prior to the end of any Step-In Period within 15 Business Days following the Transfer Effective Date.

5. RIGHTS AND OBLIGATIONS UNDER THE DESIGN-BUILD AGREEMENT

5.1 Rights of Termination

If:

- (a) no Step-In Notice or Proposed Transfer Notice is given before a Termination Notice expires or within 15 Business Days after termination of the Project Agreement by the Authority;
- (b) a Step-In Undertaking is not issued on or before the Proposed Step-In Date;
- (c) the Step-In Notice is withdrawn or, pursuant to Section 3.7, is deemed to have been withdrawn;
- (d) the Step-In Period ends before the occurrence of the Transfer Effective Date;
- (e) in the absence of a Step-In Undertaking, the Design-Builder reasonably withholds its consent to a transfer pursuant to a Proposed Transfer Notice, in accordance with Section 4.3, and does not subsequently grant consent to a transfer in accordance with Section 4.4 on or before the Proposed Transfer Date;
- (f) in the absence of a Step-In Undertaking, a Transfer Agreement is not entered into on the Proposed Transfer Date;
- (g) the Design-Builder is entitled to terminate the Design-Build Agreement under Section 3.8 or 4.7; or
- (h) the Authority exercises its right to Step-Out under Section 3.9, then on the Step-Out Date,

the Design-Builder may:

- (i) exercise all of its rights under the Design-Build Agreement and act upon any and all grounds for termination available to it in relation to the Design-Build Agreement whenever occurring; and
- (j) pursue any and all claims and exercise any and all rights and remedies against Operations Co.

5.2 Operations Co's Obligations to Continue

Until completion of a transfer pursuant to Section 4.5, Operations Co will continue to be liable for all its obligations and liabilities, whenever occurring, under or arising from the Design-Build Agreement notwithstanding:

- (a) the service of a Step-In Notice or the issue of a Step-In Undertaking or the expiration of the Step-In Period or the release of a Step-In Undertaking;

- (b) the service of a Proposed Transfer Notice; or
- (c) any other provision of this Design-Builder Collateral Agreement.

6. REVOCATION OF NOTICES

A Termination Notice and a Step-In Notice may each be revoked (in writing to the recipient) by the party giving them before the expiration of their respective notice periods. Upon any such revocation, the rights and obligations of the parties will be construed as if the relevant notice had not been given.

7. ASSIGNMENT

7.1 Binding on Successors and Assigns

This Design-Builder Collateral Agreement will be binding on and will enure to the benefit of the parties and their respective successors and permitted assigns.

7.2 Restriction on Assignment

No party will assign or transfer any part of its respective rights or obligations under this Design-Builder Collateral Agreement without the prior consent of the other parties hereto (such consent not to be unreasonably withheld or delayed), provided that:

- (a) the Authority will be entitled, without the consent of any other party, to transfer all its rights and obligations hereunder to any person to whom it assigns or otherwise disposes of the benefit of the Project Agreement in accordance with Section 16.4 of the Project Agreement; and
- (b) the Design-Builder will assign or transfer all its rights and obligations under this Design-Builder Collateral Agreement to any person to whom it assigns or transfers all its rights and obligations under the Design-Build Agreement in accordance with the terms of the Design-Build Agreement and the Project Agreement.

8. GENERAL

8.1 Notices

Any notice or communication required or permitted to be given under this Design-Builder Collateral Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by electronic transmission to the address or electronic mail address of each party set out below:

If to the Authority:

The Commonwealth of Kentucky
Office of the Secretary
Finance and Administration Cabinet
702 Capitol Avenue

Capitol Annex Room 383
Frankfort, KY 40601

Attention: Secretary of the Finance and Administration Cabinet

with a copy to:

Office of Procurement Services
Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex Room 096
Frankfort, KY 40601

Attention: Stephanie Williams, Buyer
Email: StephanieR.Williams@ky.gov

If to the Design-Builder:

NG-KIH Design-Build LLC
c/o Overland Contracting Inc.
10950 Grandview #34
Overland Park, KS 66210

Attention: Dean Siegrist
Email: siegristDA@bv.com

with a copy to:

LTS Solutions (USA) LLC
9330 Corporate Drive, Suite 407
Selma, TX 78108

Attention: Allen Hemrich
Email: Allen.Hemrich@ledcor.com

If to Project Co:

KentuckyWired Infrastructure Company, LLC


Attention: Lori Hudson Flanery, Director
Email: 

with a copy to:

Office of Financial Management
Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex Room 076
Frankfort, KY 40601

Attention: Ryan Barrow, Executive Director
Email: Ryan.Barrow@ky.gov

If to Operations Co:

KentuckyWired Operations Company, LLC
c/o Macquarie Infrastructure Developments LLC
Level 16, 125 West 55th Street
New York, NY 10019

Attention: Nicholas Hann
Email: Nick.Hann@macquarie.com

or to such other address or electronic mail address as any party may, from time to time, designate in the manner set out above.

Any such notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (b) if delivered by electronic mail during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:
 - (1) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or
 - (2) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

8.2 Entire Agreement

Unless otherwise stated in this Design-Builder Collateral Agreement, this Design-Builder Collateral Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Design-Builder Collateral Agreement. No party has relied on any representation except as expressly set out in this Design-Builder Collateral Agreement.

8.3 Waiver

The failure of any party to exercise any contractual right or remedy will not constitute a waiver thereof, and no waiver will be effective unless it is communicated in writing to the other party. A waiver of any right or remedy arising from a breach of this Design-Builder Collateral Agreement will not constitute a waiver of any right or remedy arising from any other breach of this Design-Builder Collateral Agreement.

8.4 No Partnership or Agency

Nothing in this Design-Builder Collateral Agreement will be construed as creating a partnership or as constituting the Design-Builder as an agent of the Authority. The Design-Builder will not hold itself out as having any authority or power to bind the Authority in any way.

8.5 Conflicting Agreements

If there is any conflict or inconsistency between the provisions of this Design-Builder Collateral Agreement and the Project Agreement, the provisions of the Project Agreement will prevail.

8.6 Remedies Cumulative

The rights and remedies under this Design-Builder Collateral Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

8.7 Counterparts

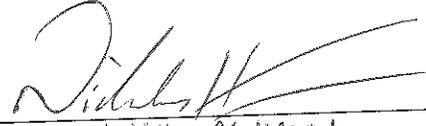
This Design-Builder Collateral Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and this has the same effect as if the signatures on the counterparts were on a single copy of this Design-Builder Collateral Agreement so that it will not be necessary in making proof of this Design-Builder Collateral Agreement to produce or account for more than one such counterpart.

8.8 Disputes

Any dispute between any of the parties with respect to any of the subject matters of this Design-Builder Collateral Agreement or any disagreement between any of the parties with respect to any matter that, by the express terms of this Design-Builder Collateral Agreement, is to be agreed upon by the parties will be resolved in accordance with, and the parties will comply with, the Dispute Resolution Procedure set out in the Project Agreement, provided that, for greater certainty, the parties acknowledge that, during a Step-In Period or after the Transfer Effective Date, any dispute with respect to any of the subject matters of the Design-Build Agreement will be resolved in accordance with the applicable dispute resolution procedure thereunder.

KENTUCKYWIRE OPERATIONS COMPANY,
LLC

Per:



Name: NICHOLAS HANN

Title: MANAGER

Per:

Name:

Title:

I/We have the authority to bind the company.

**KENTUCKYWIRED OPERATIONS COMPANY,
LLC**

Per:



Name: Eliot Jamison

Title: Manager

Per:

Name:

Title:

I/We have the authority to bind the company.

IN WITNESS WHEREOF the parties have executed this Design-Builder Collateral Agreement as of the day and year first above written.

THE COMMONWEALTH OF KENTUCKY

Per: 

Name: Lori Hudson Flanery
Title: Secretary, Kentucky Finance
& Administration Cabinet

I have the authority to bind the Commonwealth.

NG-KIH DESIGN-BUILD LLC

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the company.

**KENTUCKYWIRED INFRASTRUCTURE
COMPANY, INC.**

Per: 
Name: Steve Rucker
Title: Director

I have the authority to bind the corporation.

IN WITNESS WHEREOF the parties have executed this Design-Builder Collateral Agreement as of the day and year first above written.

THE COMMONWEALTH OF KENTUCKY

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NG-KIH DESIGN-BUILD LLC

Per:

Name:
Title:
Per: 

Name:
Title:

I/We have the authority to bind the company.

**KENTUCKYWIRE INFRASTRUCTURE
COMPANY, INC.**

Per:

Name: Steve Rucker
Title: Director

I have the authority to bind the corporation.

IN WITNESS WHEREOF the parties have executed this Design-Builder Collateral Agreement as of the day and year first above written.

THE COMMONWEALTH OF KENTUCKY

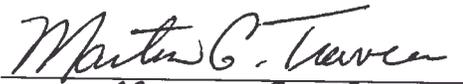
Per:

Name: Lori Hudson Flanery
Title: Secretary, Kentucky Finance
& Administration Cabinet

I have the authority to bind the Commonwealth.

NG-KIH DESIGN-BUILD LLC

Per:



Name: MARTIN G. TRAVERS
Title: Principle Member



Per:

Name:
Title:

I/We have the authority to bind the company.

**KENTUCKYWIRED INFRASTRUCTURE
COMPANY, INC.**

Per:

Name: Steve Rucker
Title: Director

I have the authority to bind the corporation.

**LENDERS' REMEDIES AGREEMENT
NEXT GENERATION KENTUCKY INFORMATION HIGHWAY PROJECT**

**The Commonwealth of Kentucky
(the "Authority")
and
U.S. Bank National Association
(the "Collateral Agent")
and
KentuckyWired Infrastructure Company, Inc.
("Project Co")
and
KentuckyWired Operations Company, LLC
("Operations Co")**

Dated: September 3, 2015

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LENDERS' REMEDIES AGREEMENT

THIS LENDERS' REMEDIES AGREEMENT dated as of September 3, 2015 is entered into:

BETWEEN:

The Commonwealth of Kentucky

(the "**Authority**")

AND:

U.S. Bank National Association

in its capacity as collateral agent on behalf of itself and the other Secured Parties
(the "**Collateral Agent**")

AND:

KentuckyWired Infrastructure Company, Inc.

("Project Co")

AND:

KentuckyWired Operations Company, LLC

("Operations Co")

WHEREAS:

- A. The Authority and Project Co have entered into the Project Agreement (as defined below).
- B. Project Co and Operations Co have entered into the Project Implementation Agreement (as defined below).
- C. Pursuant to the Senior Financing Agreements, the Senior Secured Creditors have agreed, subject to the terms and conditions contained therein, to make available to Project Co the credit facility specified therein to finance certain costs to be incurred and expenditures to be made by Project Co in connection with the Project.
- D. It is a condition precedent to the obligations of the Senior Secured Creditors under the Senior Financing Agreements that this Lenders' Remedies Agreement be executed and delivered by the parties.
- E. The Authority and Project Co have agreed under the terms of the Project Agreement to execute and deliver this Lenders' Remedies Agreement. Project Co and Operations Co have agreed under the terms of the Project Implementation Agreement to execute and deliver this Lenders' Remedies Agreement.

Lenders' Remedies Agreement
NG-KIH Project

NOW THEREFORE THIS LENDERS' REMEDIES AGREEMENT WITNESSES THAT, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. INTERPRETATION

1.1 Definitions

Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Lenders' Remedies Agreement will have the respective meanings given to such terms in the Project Agreement and:

"Antecedent Liabilities" means, as at any time:

- (a) all amounts due and payable by Project Co to the Authority under the Project Agreement or by Operations Co to Project Co under the Project Implementation Agreement, as applicable, at such time; and
- (b) all obligations which should have, but have not, been performed and outstanding liabilities of Project Co under the Project Agreement or Operations Co under the Project Implementation Agreement, as applicable, in each case at such time;

"Appointed Representative" means the Senior Secured Creditors' Representative identified in a Step-In Notice;

"Bankruptcy Proceedings" means:

- (a) any:
 - (1) formal step (including petition, proposal, application, convening of a meeting or other proceeding) taken with a view to or for the purpose of considering;
 - (2) appointment of an Insolvency Officer in connection with;
 - (3) order or resolution passed in connection with; or
 - (4) formal agreement reached regarding,
a dissolution, bankruptcy, receivership, winding-up, liquidation, administration or other similar proceedings or any other proceeding seeking a stay of proceedings, reorganization, debt arrangement, compromise of the claims of creditors or any distribution of assets in respect of Project Co or Operations Co (whether voluntary or involuntary) made or commenced by any party under any Bankruptcy Law; or
- (b) any distress, attachment, sequestration or execution or other similar process affecting any of the assets of Project Co or Operations Co or any other similar process or event occurring in relation to Project Co's or Operations Co's assets in any other jurisdiction;

“Collateral Agency and Account Agreement” means the collateral agency and account agreement dated as of September 1, 2015 between Project Co, U.S. Bank National Association, as senior bonds trustee, U.S. Bank National Association, as subordinate bonds trustee, and the Collateral Agent;

“Collateral Agent’s Withdrawal Notice” has the meaning set out in Section 3.4;

“Deficiency” has the meaning set out in Section 9.4(b);

“Discharged Obligations” has the meaning set out in Section 6.4;

“Discharged Rights” has the meaning set out in Section 6.4;

“Event of Default” has the meaning set out in the Collateral Agency and Account Agreement;

“Indicative Notice” means either an Indicative Step-In Notice or an Indicative Transfer Notice given in accordance with Section 3.3;

“Indicative Notice Period” means:

- (a) where an Indicative Step-In Notice has been given, the period commencing on the date of delivery of such Indicative Step-In Notice and ending on the earlier of:
 - (1) the Step-In Date;
 - (2) the date of delivery of a Collateral Agent’s Withdrawal Notice; and
 - (3) 45 Business Days following the date of delivery of such Indicative Step-In Notice; or
- (b) where an Indicative Transfer Notice has been given, the period commencing on the date of delivery of such Indicative Transfer Notice and ending on the earlier of:
 - (1) the date on which any transfer in accordance with Section 6.1 becomes effective;
 - (2) the date of delivery of a Collateral Agent’s Withdrawal Notice; and
 - (3) 45 Business Days following the date of delivery of such Indicative Transfer Notice;

“Indicative Step-In Notice” has the meaning given to it in Section 3.3;

“Indicative Transfer Notice” has the meaning given to it in Section 3.3;

“Insolvency Officer” means any trustee, receiver, receiver and manager, liquidator, sequestrator, administrator or other custodian in connection with the insolvency of Project Co or Operations Co or any of their respective assets;

“Insurance Proceeds Account” has the meaning given to it in the Collateral Agency and Account Agreement;

“Lenders’ Remedies Agreement” means this lenders’ remedies agreement, as amended, supplemented or restated from time to time;

“Liability Report” has the meaning given in Section 3.5;

“Material Antecedent Liabilities” means Antecedent Liabilities that are:

- (a) financial liabilities; or
- (b) non-financial liabilities, the breach of which will trigger any remedy of the Authority under Section 12 (Project Co Events of Default) of the Project Agreement or Project Co under Section 12 (Operations Co Events of Default) of the Project Implementation Agreement, as applicable;

“New Agreements” has the meaning given in Section 10.2;

“Notice Period” means:

- (a) in respect of a Project Co Event of Default or an Operations Co Event of Default, as applicable, the Termination Notice Period; and
- (b) in respect of an Operations Co Financing Default, the Indicative Notice Period;

“Operations Co Event of Default” has the meaning set out in the Project Implementation Agreement;

“Operations Co Financing Default” has the meaning set out in the Collateral Agency and Account Agreement;

“Project Agreement” means the project agreement dated September 3, 2015 between the Authority and Project Co relating to the design, construction, financing, operation and maintenance of the NG-KIH System;

“Project Documents” means, collectively, the Project Agreement, the Project Implementation Agreement and any other agreement (other than this Lenders’ Remedies Agreement) entered into from time to time by the Authority and Project Co (with or without other parties) or by Project Co and Operation Co (with or without other parties) in connection with the Project, and **“Project Document”** means any one of the foregoing;

“Project Contract” means either the Design-Build Agreement or the Services Contract, and **“Project Contracts”** means both of them;

“Project Contractor” means either the Design-Builder or the Service Provider, and **“Project Contractors”** means both of them;

“Project Implementation Agreement” means the project implementation agreement dated September 3, 2015 between Project Co and Operations Co relating to the design, construction, operation and maintenance of the NG-KIH System;

“Reported Antecedent Liabilities” means the Antecedent Liabilities identified in the Liability Report;

“Revocation of Termination Notice” means a written notice from the Authority or Project Co, as applicable, to the Collateral Agent revoking a Termination Notice;

“Security Documents” has the meaning as set out in the Collateral Agency and Account Agreement;

“Senior Debt Discharge Date” means the date on which all amounts due and owing to the Senior Secured Creditors under the Senior Financing Agreements have been fully and irrevocably paid or discharged (whether or not as a result of enforcement) and the Senior Secured Creditors are under no further obligation to advance under the relevant Senior Financing Agreement;

“Senior Secured Creditors” has the meaning set out in the Collateral Agency and Account Agreement;

“Senior Secured Creditors’ Representative” means:

- (a) the Collateral Agent;
- (b) a receiver or receiver and manager of Operations Co appointed under or in connection with the Security Documents; or
- (c) any other Person approved by the Authority (such approval not to be unreasonably withheld or delayed);

“Step-In Date” means 5 Business Days after delivery of a Step-In Notice;

“Step-In Notice” means a notice given by the Collateral Agent to the Authority and Project Co pursuant to Section 4;

“Step-In Period” means, subject to Section 4.3, the period from the Step-In Date up to and including the earliest of:

- (a) the Step-Out Date;
- (b) the date of any transfer under Section 6;
- (c) the date of any termination under Section 4.5; and
- (d) the Expiration Date;

“Step-Out Date” means the date that is 20 Business Days after the date of a Step-Out Notice;

“Step-Out Notice” means a notice from the Collateral Agent or Appointed Representative to the Authority and Project Co pursuant to Section 5;

“Suitable Substitute Operations Co” means a Person approved by the Authority in accordance with Sections 6.2 and 6.3 as:

- (a) having the legal capacity, power and authority to become a party to and perform the obligations of Operations Co under the Project Implementation Agreement;
- (b) employing or contracting for the services of persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of Operations Co under the Project Implementation Agreement; and
- (c) not being a Restricted Person;

“Termination Notice” means a notice given by the Authority or Project Co, as applicable, to the Collateral Agent under Section 3; and

“Termination Notice Period” means the period beginning on the date of giving of a Termination Notice and ending on the earlier of:

- (a) the Step-In Date;
- (b) the date of service of a Revocation of Termination Notice; and
- (c) the proposed Termination Date (subject to the minimum notice requirements under Section 3.1(a)) set out in the Termination Notice.

1.2 Construction and Interpretation

Unless otherwise specified or the context otherwise requires, this Lenders’ Remedies Agreement will be interpreted according to the following provisions:

- (a) the parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Lenders’ Remedies Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same;
- (b) the table of contents, headings and sub-headings, marginal notes and references to them in this Lenders’ Remedies Agreement are for convenience of reference only, do not constitute a part of this Lenders’ Remedies Agreement, and will not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Lenders’ Remedies Agreement;
- (c) each reference in this Lenders’ Remedies Agreement to “Section” is to a section of this Lenders’ Remedies Agreement;
- (d) each reference to an agreement, document, standard, principle or other instrument includes (subject to all relevant approvals and any other provision of this Lenders’ Remedies Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, replaced, novated or assigned, and a reference to an “amendment” and similar terms (including “amend” and “amended”) include a reference to supplement,

alteration, substitute, variation, change and any other modification and similar terms;

- (e) each reference to a statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, orders, codes of practice, instruments or other subordinate legislation made under the relevant statute;
- (f) each reference to time of day is a reference to Eastern Standard time or Eastern Daylight time, as the case may be;
- (g) words importing the singular include the plural and vice versa;
- (h) words importing a particular gender include all genders;
- (i) each reference to a public organization is deemed to include a reference to any successor(s) to such public organization or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such public organization;
- (j) unless the context otherwise requires, each reference to “parties” means the parties to this Lenders’ Remedies Agreement and each reference to a “party” means any one of the parties to this Lenders’ Remedies Agreement, provided however that a reference to a third party does not mean a party to this Lenders’ Remedies Agreement;
- (k) all monetary amounts are expressed in U.S. Dollars;
- (l) the words “include”, “includes” and “including” are to be construed as meaning “include without limitation”, “includes without limitation” and “including without limitation”, respectively;
- (m) any consent contemplated to be given under this Lenders’ Remedies Agreement must be in writing;
- (n) general words are not given a restrictive meaning:
 - (1) if they are introduced by the word “other”, by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
 - (2) by reason of the fact that they are followed by particular examples intended to be embraced by those general words;
- (o) the expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of any party, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation;

- (p) all accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP;
- (q) if the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day; and
- (r) in the event that any provision of this Lenders' Remedies Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, unless severance of such provision would materially alter the essence of this Lenders' Remedies Agreement for any party, the provision shall be fully severable and shall not affect the remaining provisions of this Lenders' Remedies Agreement, and this Lenders' Remedies Agreement shall be construed and enforced as if the illegal, invalid or unenforceable provision had not been included therein. The parties shall promptly meet and endeavor in good faith to negotiate new provisions to eliminate such illegality, invalidity or unenforceability as much as is as possible and to restore this Lenders' Remedies Agreement as nearly as possible to its original intent and effect.

1.3 Law of Agreement

This Lenders' Remedies Agreement is subject to the laws of the Commonwealth of Kentucky and any applicable federal laws and will be governed by and construed in accordance with such laws.

1.4 Venue

Any legal actions or proceedings brought by any party hereto against any other party shall be brought in state court in Franklin County, Kentucky in accordance with KRS 45A.245. Each party acknowledges the competence of such court and the convenience and propriety of the venue and agrees to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

2. CONSENT TO SECURITY

2.1 Consent

The Authority acknowledges notice of, and consents to, the security interest granted by Project Co in favor of the Senior Secured Creditors under the Senior Financing Agreements over Project Co's rights under the Project Implementation Agreement and all other Project Documents to which Project Co is a party, Project Co's assets and Project Co's rights to Insurance Proceeds and Insurance Receivables.

Project Co acknowledges notice of, and consents to, the security interest granted by:

- (a) Operations Co in favor of the Senior Secured Creditors under the Senior Financing Agreements over Operations Co's rights under the Project Implementation Agreement and, subject to certain exclusions, all other Project Documents to which Operations Co is a party, Operations Co's assets and Operations Co's rights to Insurance Proceeds and Insurance Receivables; and

- (b) KentuckyWired Operations Holding Company, LLC in favor of the Senior Secured Creditors under the Senior Financing Agreements over the membership interests in Operations Co.

2.2 No Notice of Other Security

The Authority confirms that, as of the date of this Lenders' Remedies Agreement, it has not received written notice of any other security interest granted over Project Co's rights or the equity interests in Project Co other than pursuant to the Senior Financing Agreements. Project Co confirms that, as of the date of this Lenders' Remedies Agreement, it has not received written notice of any other security interest granted over Operations Co's rights or the equity interests in Operations Co other than pursuant to the Senior Financing Agreements.

2.3 Authority Obligations

Except as specifically provided for in this Lenders' Remedies Agreement, the Authority has no obligations (whether express, implied, collateral or otherwise) to the Collateral Agent or the Senior Secured Creditors in connection with this Lenders' Remedies Agreement, the Project Agreement, the Project Implementation Agreement or the Project. All of the obligations and liabilities given, undertaken or arising on the part of the Authority under this Lenders' Remedies Agreement are given solely to the Collateral Agent on behalf of the Senior Secured Creditors and do not confer any rights on or in favor of Project Co, any Affiliate of Project Co, Operations Co, any Affiliate of Operations Co or any other Person.

2.4 Rights not Prejudiced

The parties acknowledge that nothing in the Senior Financing Agreements, this Lenders' Remedies Agreement or any other agreement between any of them (including any giving by the Collateral Agent of a notice hereunder) will, except as between the Senior Secured Creditors, the Collateral Agent, the Authority and Project Co as expressly set out in this Lenders' Remedies Agreement, affect the rights of the Authority under the Project Agreement (but an exercise by the Authority of those rights will not preclude a proper exercise by the Collateral Agent of its rights under this Lenders' Remedies Agreement) or the rights of Project Co under the Project Implementation Agreement (but an exercise by Project Co of those rights will not preclude a proper exercise by the Collateral Agent of its rights under this Lenders' Remedies Agreement). For greater certainty and without limiting the generality of the foregoing, nothing in this Lenders' Remedies Agreement will limit, and the Authority will be entitled at all times in accordance with the provisions thereof to exercise the Authority's rights under Section 11.1(a) (Authority's Step-In Rights) of the Project Agreement and the related exercise of its rights under Section 11.2 (Authority's Rectification Rights) of the Project Agreement.

3. NOTICES

3.1 Termination Notice

The Authority will not terminate or deliver any notice terminating the Project Agreement and Project Co will not terminate or deliver any notice terminating the Project Implementation Agreement without giving to the Collateral Agent written notice (a "**Termination Notice**") stating:

- (a) that a Project Co Event of Default or an Operations Co Event of Default, as applicable, has occurred and the proposed Termination Date, which will be no sooner than 60 Business Days after the Termination Notice; and
- (b) the specific grounds for termination.

3.2 Notice of Operations Co Financing Default

Concurrently with delivery by it to Operations Co of any notice of an Operations Co Financing Default, the Collateral Agent will provide a copy of such notice to Project Co and the Authority, together with reasonable details of such Operations Co Financing Default.

3.3 Indicative Notice

Without prejudice to the Collateral Agent's rights under the Security Documents, at any time upon the occurrence of an Operations Co Financing Default and, where relevant to such Operations Co Financing Default, the continuance of such Operations Co Financing Default, the Collateral Agent may give notice to Project Co and the Authority of its intention to nominate a Senior Secured Creditors' Representative to step-in in accordance with Section 4.1 (an "**Indicative Step-In Notice**") or to effect a transfer in accordance with Section 6.1 (an "**Indicative Transfer Notice**").

3.4 Collateral Agent's Withdrawal Notice

If, at any time after the giving of an Indicative Notice or a Termination Notice, the Collateral Agent has determined that it is not, or is no longer, considering appointing a Senior Secured Creditors' Representative or effecting a transfer of Operations Co's rights and liabilities under the Project Implementation Agreement to a Suitable Substitute Operations Co in accordance with this Lenders' Remedies Agreement, the Collateral Agent will provide written notice (an "**Collateral Agent's Withdrawal Notice**") to the Authority and Project Co as soon as reasonably possible and thereafter the provisions of this Lenders' Remedies Agreement will not be applicable with respect to the event that led to such Indicative Notice or Termination Notice and the Authority or Project Co, as applicable, will be at liberty to take any and all action available to it under the Project Agreement, the Project Implementation Agreement and the other Project Documents.

3.5 Notice of Antecedent Liabilities

Unless a Collateral Agent's Withdrawal Notice has been given, not later than 20 Business Days after the date of delivery by the Authority or Project Co, as applicable, of a Termination Notice or the date of delivery by the Collateral Agent of an Indicative Notice, as the case may be, the Authority or Project Co, as applicable, will give the Collateral Agent a notice (the "**Liability Report**") containing details of:

- (a) any Material Antecedent Liabilities accrued and outstanding as of the date of delivery of the Termination Notice or Indicative Notice, as the case may be; and
- (b) any financial liabilities of which the Authority or Project Co, as applicable, is aware (after reasonable inquiry) that will fall due under the Project Agreement or the Project Implementation Agreement, as applicable, on or after the date of

delivery of the Termination Notice or Indicative Notice, as the case may be, and on or prior to:

- (1) in the case of a Termination Notice, the proposed Termination Date set out in that notice; and
- (2) in the case of an Indicative Notice, 20 Business Days after the date of delivery of the Indicative Notice.

3.6 Subsequent Authority Notice of Liabilities

After the delivery of the Liability Report, unless a Collateral Agent's Withdrawal Notice has been given, the Authority or Project Co, as applicable, will, promptly upon becoming aware of them, notify the Collateral Agent in writing of any additional Material Antecedent Liabilities arising on or after the date of delivery of the Termination Notice or Indicative Notice, as the case may be, and prior to the end of the Termination Notice Period or the Indicative Notice Period, as the case may be.

3.7 No Right to Terminate

The Authority will not terminate or deliver any notice terminating the Project Agreement and Project Co will not terminate or deliver any notice terminating the Project Implementation Agreement during any Notice Period, provided that, until the expiration of that period, the Authority will be entitled to require Project Co to remedy any Project Co Event of Default and will be entitled to exercise all rights under the Project Agreement other than termination of the Project Agreement and Project Co will be entitled to require Operations Co to remedy any Operations Co Event of Default and will be entitled to exercise all rights under the Project Implementation Agreement other than termination of the Project Implementation Agreement.

3.8 Payments to Account Designated by Collateral Agent

Project Co and the Collateral Agent hereby authorize and instruct the Authority, and the Authority agrees, to pay all sums payable by the Authority to Project Co under the Project Agreement, including any Termination Payment, to an account designated by the Collateral Agent.

3.9 Operations Co to Pursue Remedies

Without prejudice to the Collateral Agent's rights under the Security Documents, at any time upon the occurrence of an Event of Default and, where relevant to such Event of Default, the continuance of such Event of Default, Operations Co shall exercise its rights under Section 1.7 of the Project Implementation Agreement to pursue any rights, remedies or relief under the Project Agreement in the name of Project Co, including the right to any Termination Payment, at the Collateral Agent's request and in accordance with the Collateral Agent's directions.

4. STEP-IN

4.1 Step-In Notice

Subject to Section 4.3 and without prejudice to the Collateral Agent's rights under the Security Documents, the Collateral Agent may give the Authority and Project Co a notice (a "**Step-In**

Notice") at any time during an Indicative Notice Period or a Termination Notice Period, as the case may be.

4.2 Contents of Step-In Notice

In the Step-In Notice, the Collateral Agent will:

- (a) state that it intends to exercise its step-in rights under this Lenders' Remedies Agreement; and
- (b) identify the Appointed Representative.

4.3 One Step-In Period

There will be not more than one Step-In Period following any one Indicative Notice or Termination Notice.

4.4 Appointed Representative Rights

On the Step-In Date, the Appointed Representative will assume jointly and severally with Operations Co the rights of Operations Co under the Project Implementation Agreement, which rights are conditional on and may be exercised subject to performance of Operations Co's obligations under the Project Implementation Agreement. During the Step-In Period, the Authority and Project Co will deal with the Appointed Representative and not Operations Co. No Appointed Representative will be liable to the Authority, Project Co or Operations Co for any liabilities or obligations of Operations Co. An Appointed Representative who is also an Insolvency Officer will not, and will not be required to, assume or have any personal liability for any liabilities or obligations of Operations Co.

4.5 Authority Right to Terminate

The Authority will not terminate the Project Agreement and Project Co will not terminate the Project Implementation Agreement in whole or in part during the Step-In Period except as set out in this Section 4.5. The Authority will be entitled to terminate the Project Agreement during the Step-In Period by written notice to Project Co, the Collateral Agent and the Appointed Representative and Project Co will be entitled to terminate the Project Implementation Agreement during the Step-In Period by written notice to Operations Co, the Collateral Agent and the Appointed Representative:

- (a) if the Reported Antecedent Liabilities that are financial liabilities have not been paid to the Authority or Project Co, as applicable, on or before the Step-In Date or, if the due date for payment thereof is after the Step-In Date, have not been paid by the due date;
- (b) if amounts, of which the Authority or Project Co, as applicable, was not aware (after reasonable inquiry) at the time of the Liability Report, subsequently become payable and are not discharged by:
 - (1) if notice of the liability is given to the Collateral Agent at least 20 Business Days prior to the Step-In Date, the Step-In Date or, if the due date for payment thereof is after the Step-In Date, the due date;

- (2) if notice of the liability is given to the Collateral Agent within 20 Business Days before the Step-In Date and such liability is material (as stated by the Authority or Project Co, as applicable, acting reasonably, when it gives such notice or as stated by the Collateral Agent, acting reasonably, by notice to the Authority or Project Co, as applicable, within 5 Business Days of receipt of the notice from the Authority or Project Co, as applicable), 20 Business Days after the Step-In Date or, if later, the due date; or
- (3) otherwise, 20 Business Days after delivery of the notice or, if later, the due date;
- (c) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement (other than a Project Co Insolvency Event) or the Project Implementation Agreement (other than an Operations Co Insolvency Event), provided that, for the purposes of termination under the Project Agreement or the Project Implementation Agreement, as applicable, any Deductions that arose prior to the Step-In Date will not be taken into account during the Step-In Period;
- (d) on grounds arising prior to the Step-In Date (whether or not continuing at the Step-In Date) in accordance with the terms of the Project Agreement or the Project Implementation Agreement, as applicable, but only if the Appointed Representative is not using all reasonable efforts to remedy the relevant Antecedent Liabilities which are non-financial liabilities; or
- (e) if the System Completion Date does not occur on or before the date that is 6 months after the Longstop Date.

5. STEP-OUT

5.1 Step-Out Notice

The Collateral Agent or the Appointed Representative may at any time during the Step-In Period deliver to the Authority and Project Co a Step-Out Notice which specifies the Step-Out Date.

5.2 Expiration of Step-In Period

Upon the termination or expiration of the Step-In Period:

- (a) the rights of the Authority or Project Co, as applicable, against the Appointed Representative and the rights of the Appointed Representative against the Authority or Project Co, as applicable, will be cancelled; and
- (b) the Authority or Project Co, as applicable, will no longer deal with the Appointed Representative and will deal with Project Co in connection with the Project Agreement or Operations Co in connection with the Project Implementation Agreement, as applicable.

5.3 Project Co and Operations Co Remain Bound

Subject to Section 6.4, Project Co will continue to be bound by the terms of the Project Agreement and Operations Co will continue to be bound by the terms of the Project Implementation Agreement notwithstanding the occurrence of an Indicative Notice, a Step-In Notice, a Step-In Period, a Step-Out Notice, a Step-Out Date, any action by the Collateral Agent, the Appointed Representative or the Senior Secured Creditors or any provision of this Lenders' Remedies Agreement, and for greater certainty Project Co or Operations Co, as applicable, will be liable for any obligations and liabilities (including Deductions) arising prior to the expiration of the Step-In Period from actions or inactions of the Collateral Agent, the Appointed Representative or the Senior Secured Creditors. Project Co or Operations Co, as applicable, will remain liable for any unpaid amounts due and payable to the Authority by Project Co under the Project Agreement or to Project Co by Operations Co under the Project Implementation Agreement, as applicable, provided that Project Co or Operations Co, as applicable, will not be required to discharge such liability during the Step-In Period.

6. SENIOR SECURED CREDITOR REPLACEMENT OF OPERATIONS CO

6.1 Operations Co Transfer Notice

Subject to Section 6.2, at any time:

- (a) during a Termination Notice Period;
- (b) during an Indicative Notice Period; or
- (c) during a Step-In Period,

the Collateral Agent may, on 30 Business Days' notice to the Authority, Project Co and any Appointed Representative, take any action available to it to cause the transfer of Operations Co's rights and liabilities under the Project Implementation Agreement to a Suitable Substitute Operations Co in accordance with the provisions of Section 6.4.

6.2 Authority Consent

The Authority will notify the Collateral Agent as to whether any Person to whom the Collateral Agent proposes to transfer Operations Co's rights and liabilities under the Project Implementation Agreement is a Suitable Substitute Operations Co, not later than 30 Business Days after the date of receipt from the Collateral Agent of all information reasonably required by the Authority to decide whether the proposed transferee is a Suitable Substitute Operations Co.

6.3 Withholding of Consent

The Authority will not unreasonably withhold or delay its decision on whether the proposed transferee is a Suitable Substitute Operations Co and it will, without limitation, be reasonable for the Authority to withhold its consent:

- (a) if there are unremedied breaches under the Project Agreement and there is no remedial program acceptable to the Authority in respect of the breaches; or

- (b) based on any of the factors set out in Section 16.3 (Factors Authority May Consider) of the Project Agreement with respect to any transfer, including any assignment, to such Person or Change in Control resulting from the transfer.

6.4 Terms of Transfer

Upon the transfer referred to in Section 6.1 becoming effective:

- (a) Operations Co and Project Co will be released from their obligations under the Project Implementation Agreement to each other, including with respect to indemnification under the Project Implementation Agreement whether arising prior to or after such transfer (the “**Discharged Obligations**”);
- (b) the Suitable Substitute Operations Co and Project Co will assume obligations which are substantially similar to the Discharged Obligations, but owed to or assumed by the Suitable Substitute Operations Co instead of Operations Co;
- (c) the rights of Operations Co against Project Co under the Project Implementation Agreement and vice versa (the “**Discharged Rights**”) will be cancelled;
- (d) the Suitable Substitute Operations Co and Project Co will acquire rights against each other which differ from the Discharged Rights only insofar as they are exercisable by or against the Suitable Substitute Operations Co instead of Operations Co;
- (e) any subsisting ground for termination of the Project Agreement by the Authority or the Project Implementation Agreement by Project Co will be deemed to have no effect and any subsisting Termination Notice will be automatically revoked;
- (f) the Authority and Project Co will enter into a lenders’ remedies agreement with the Suitable Substitute Operations Co and a representative of Senior Secured Creditors lending to the Suitable Substitute Operations Co on substantially the same terms as this Lenders’ Remedies Agreement; and
- (g) any Deductions that arose prior to that time will not be taken into account after the transfer for the purposes of Section 12.1(g) of the Project Agreement and the Project Implementation Agreement and Section 6.4 of Schedule 4 to the Project Agreement and the Project Implementation Agreement.

For clarity, the Project Agreement will remain in full force and effect following the transfer referred to in Section 6.1 becoming effective.

7. INSURANCE

7.1 Release of Insurance Proceeds

Notwithstanding the other provisions of this Lenders’ Remedies Agreement and the terms and conditions of the Senior Financing Agreements, the Collateral Agent will only permit amounts to be released from the Insurance Proceeds Account in accordance with Section 6 (Insurance, Damage and Destruction) and Schedule 5 [Insurance Requirements] of the Project Agreement and will not exercise any rights under the Senior Financing Agreements or take any other steps

to prevent amounts being released from the Insurance Proceeds Account in accordance with Section 6 (Insurance, Damage and Destruction) and Schedule 5 [Insurance Requirements] of the Project Agreement.

8. COVENANTS

8.1 Authority Covenants

The Authority agrees with the Collateral Agent that the Authority will:

- (a) as soon as is reasonably practicable, at Operations Co's or the Collateral Agent's expense, take whatever action the Collateral Agent, an Appointed Representative or a Suitable Substitute Operations Co taking a transfer in accordance with Section 6 may reasonably require for perfecting any transfer or release under this Lenders' Remedies Agreement, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Collateral Agent or Appointed Representative or Suitable Substitute Operations Co reasonably requires;
- (b) not, prior to the Senior Debt Discharge Date, unless the Collateral Agent has (acting reasonably) consented in writing:
 - (1) appoint an Insolvency Officer;
 - (2) commence any Bankruptcy Proceedings;
 - (3) sanction, by voting or failing to vote, any Bankruptcy Proceedings and will, if requested to do so by the Collateral Agent, vote against any Bankruptcy Proceedings;
 - (4) without prejudice to its rights of set-off under the Project Agreement, including rights to take amounts owing by Project Co into account in calculating termination compensation payable, claim or prove as creditor or otherwise in competition with any Senior Secured Creditor in respect of any monies owing to it by Project Co for or on account of Project Co's liabilities under the Project Documents in the event of any Bankruptcy Proceedings; or
 - (5) take any action authorizing, or which might result in or is in furtherance of, any of the prohibited matters referred to in Sections 8.1(b)(1), (2), (3) or (4) above;
- (c) not take or fail to take any action (including amendments, waivers and enforcement action) with respect to any material agreement between the Authority and a third party, the effect of which would be reasonably likely to render the Authority unable to satisfy its obligations under the Project Agreement; and
- (d) not issue a Step-In Notice or Proposed Transfer Notice (as defined in the Design-Builder Collateral Agreement or the Service Provider Collateral Agreement, as applicable) under the Design-Builder Collateral Agreement or the Service

Provider Collateral Agreement, as applicable, at any time that the Senior Secured Creditors are validly exercising under any Senior Financing Agreement any step-in rights with respect to the Design-Build Agreement or the Services Contract, as applicable.

8.2 Project Co Covenants

Project Co agrees with the Collateral Agent that Project Co will:

- (a) as soon as is reasonably practicable, at Operations Co's or the Collateral Agent's expense, take whatever action the Collateral Agent, an Appointed Representative or a Suitable Substitute Operations Co taking a transfer in accordance with Section 6 may reasonably require for perfecting any transfer or release under this Lenders' Remedies Agreement, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Collateral Agent or Appointed Representative or Suitable Substitute Operations Co reasonably requires;
- (b) not, prior to the Senior Debt Discharge Date, unless the Collateral Agent has (acting reasonably) consented in writing:
 - (1) appoint an Insolvency Officer;
 - (2) commence any Bankruptcy Proceedings;
 - (3) sanction, by voting or failing to vote, any Bankruptcy Proceedings and will, if requested to do so by the Collateral Agent, vote against any Bankruptcy Proceedings;
 - (4) without prejudice to its rights of set-off under the Project Implementation Agreement, including rights to take amounts owing by Operations Co into account in calculating termination compensation payable, claim or prove as creditor or otherwise in competition with any Senior Secured Creditor in respect of any monies owing to it by Operations Co for or on account of Operations Co's liabilities under the Project Documents in the event of any Bankruptcy Proceedings; or
 - (5) take any action authorizing, or which might result in or is in furtherance of, any of the prohibited matters referred to in Sections 8.2(b)(1), 8.2(b)(2), 8.2(b)(3) or 8.2(b)(4) above; and
- (c) not take or fail to take any action (including amendments, waivers and enforcement action) with respect to any material agreement between Project Co and a third party, the effect of which would be reasonably likely to render Project Co unable to satisfy its obligations under the Project Implementation Agreement.

8.3 Collateral Agent Covenants

The Collateral Agent will promptly:

- (a) notify the Authority when it believes the Senior Debt Discharge Date will occur or has occurred, and in any event will so notify no later than 20 Business Days after its occurrence;
- (b) prior to the taking of any such action, notify the Authority of any decision by the Senior Secured Creditors to take action under any acceleration rights, security enforcement rights, step-in rights or transfer rights provisions of the Collateral Agency and Account Agreement, including those rights under Section 13.2 (Rights and Remedies Upon Default) of the Collateral Agency and Account Agreement, together with reasonable details of any such action;
- (c) unless notice is already provided under the above provisions, notify the Authority of any decision by the Senior Secured Creditors to:
 - (1) appoint an Insolvency Officer;
 - (2) commence any Bankruptcy Proceedings;
 - (3) sanction, by voting or failing to vote, any Bankruptcy Proceedings; or
 - (4) take any action authorizing, or which might result in or is in furtherance of, any of the matters referred to in Sections 8.3(c)(1), (2) or (3) above; and
- (d) upon request by the Authority, cause all security on any real or personal property comprised in the NG-KIH System to be promptly discharged and released on the date requested by the Authority (which will be on or after the Termination Date).

8.4 Operations Co Covenant

Operations Co acknowledges and consents to the arrangements set out in this Lenders' Remedies Agreement and agrees not to do or omit to do anything that may prevent any party from enforcing its rights under this Lenders' Remedies Agreement.

9. STEP-IN RIGHTS UNDER PROJECT CONTRACTS

9.1 Priority of Step-In Rights under Project Contracts

Subject to Sections 9.2 and 9.4, notwithstanding any provision in any Project Contractor Collateral Agreement, the Authority will not exercise any right it may have pursuant to a Project Contractor Collateral Agreement to step-in and assume or otherwise enforce (or cause a third party designated by the Authority to step-in and assume or otherwise enforce) Operations Co's rights and obligations under either of the Project Contracts (including the issuance of a step-in notice by the Authority pursuant to any Project Contractor Collateral Agreement), or to transfer or assign a Project Contract, unless:

- (a) within 30 Business Days of delivery by the relevant Project Contractor to the Authority of a Termination Notice as contemplated in Section 2.1 of the relevant Project Contractor Collateral Agreement, the Authority has not received a copy of a step-in notice delivered under the terms of the lenders' direct agreement in respect of such Project Contract (a "**Lenders' Step-In Notice**"); or

- (b) if (i) within 30 Business Days of delivery by the relevant Project Contractor to the Authority of a Termination Notice as contemplated in Section 2.1 of the relevant Project Contractor Collateral Agreement, the Authority has received a copy of a Lenders' Step-In Notice but (ii) within 60 Business Days of delivery by the relevant Project Contractor to the Authority of a Termination Notice as contemplated in Section 2.1 of the relevant Project Contractor Collateral Agreement, the Collateral Agent has not completed either a step-in and assumption of Operations Co's rights and obligations under the relevant Project Contract or a transfer or assignment thereof.

9.2 Step-in from Termination Date

Subject to Section 9.4, from the Termination Date, provided that the Authority has (if applicable) complied with Section 3.7 and Section 4.5 in terminating the Project Agreement, the Authority will be free to exercise its rights under any Project Contractor Collateral Agreement to step-in and assume (or cause a third party designated by the Authority to step-in and assume) Operations Co's rights and obligations under, or to transfer or assign, any Project Contract in accordance with a Project Contractor Collateral Agreement.

9.3 Release of Security

Subject to Section 9.4, the Collateral Agent will release and discharge (or cause to be released and discharged) at no cost to the Authority, and as soon as reasonably possible, all security in respect of each of the Project Contracts in respect of which any of Operations Co's rights or obligations thereunder are assumed, transferred or assigned by or to the Authority (or by or to a third party designated by the Authority) pursuant to a Project Contractor Collateral Agreement.

9.4 Retention of Security for Deficiency

Until such time as any Deficiency has been determined and an amount equal to the Deficiency has been recovered by the Senior Secured Creditors, the Senior Secured Creditors will be entitled to retain the benefit of the security in respect of claims and losses that Operations Co has as against the Project Contractor under the relevant Project Contract (or as against any guarantor of such Project Contract) that arose prior to the date of the assumption, transfer or assignment of the relevant Project Contract (or guarantee in respect of such Project Contract) by or to the Authority (or by or to a third party designated by the Authority), provided that:

- (a) the Senior Secured Creditors will not, and will not be entitled to, exercise any rights or enforce any security in respect of any such claim during the period from the date on which such assumption, transfer or assignment occurs to the Termination Date; and
- (b) the rights in relation to the security retained by the Senior Secured Creditors pursuant to this Section 9.4 may only be exercised if and to the extent that the Termination Payment actually paid by the Authority pursuant to Section 2 or Section 3 of Schedule 9 to the Project Agreement is less than the Senior Debt (the amount by which the Termination Payment is (or, in the reasonable opinion of the Collateral Agent, is likely to be) less than the Senior Debt being herein referred to as the "**Deficiency**").

Any amounts recovered by the Senior Secured Creditors pursuant to claims referred to in this Section 9.4, from the Termination Date to the date on which the Termination Payment and the amount of the Deficiency, if any, have been determined, will be held by the Collateral Agent in a segregated account on terms satisfactory to the Collateral Agent and the Authority, each acting reasonably, and, upon determination of the Termination Payment and the amount of the Deficiency, if any, such funds will be distributed to the Collateral Agent, to the extent of the Deficiency, if any, and the balance of such funds will be paid to the Authority.

9.5 Assignment of Project Contracts by Senior Secured Creditors

The Senior Secured Creditors will not transfer or assign any Project Contract except to a Suitable Substitute Operations Co in conjunction with a permitted transfer or assignment of the Project Agreement to that Suitable Substitute Operations Co in accordance with Section 6.

10. NEW AGREEMENTS

10.1 Applicability of Section 10

The provisions of this Section 10 shall apply only if there occurs an Operations Co Event of Default under Section 12.1(b) of the Project Implementation Agreement.

10.2 Termination of Project Implementation Agreement and Replacement with New Agreements

If this Section 10 is applicable and either (i) Project Co terminates the Project Implementation Agreement or (ii) Project Co receives notice that the Project Implementation Agreement is otherwise terminated, rejected, invalidated or rendered null and void by order of a bankruptcy court, then (a) Project Co shall deliver to the Collateral Agent notice of such event, and (b) the Collateral Agent, to the extent then permitted by Law, shall have the option to obtain from Project Co agreements to replace the Project Implementation Agreement, and, to the extent necessary, new ancillary agreements (together, the **"New Agreements"**) in accordance with and upon the terms and conditions of this Section 10.

10.3 Deliveries to Project Co

In order to exercise such option, the Collateral Agent or other Senior Secured Creditors' Representative must deliver to Project Co, within 60 days after Project Co delivers its notice of termination, (a) a request for New Agreements, (b) a written commitment that the Collateral Agent or other Senior Secured Creditors' Representative will enter into the New Agreements and pay all the amounts described in Section 10.5(a) and (c) below, and (c) originals of such New Agreements, duly executed and acknowledged by the Collateral Agent or other Senior Secured Creditors' Representative. If any of the foregoing is not delivered within such 60-day period, the option set forth in Section 10.2 in favor of the Collateral Agent and all other Senior Secured Creditors' Representatives shall automatically expire.

10.4 Authority to Enter into New Agreements

Within 30 days after timely receipt of the written commitment and New Agreements duly executed by the Collateral Agent or other Senior Secured Creditors' Representative, Project Co shall enter into the New Agreements to which Project Co is a party with the Collateral Agent or other Senior Secured Creditors' Representative, subject to any extension of such 30-day period

as Project Co deems necessary to clear any claims of Operations Co to continued rights and possession, custody or control of the Project, or otherwise.

10.5 Conditions to New Agreements Becoming Effective

Upon the execution by all parties and as conditions to the effectiveness of the New Agreements, the Collateral Agent or other Senior Secured Creditors' Representative shall perform all of the following:

- (a) pay to Project Co:
 - (1) any and all sums which would, at the time of the execution of the New Agreements, be due under the Project Implementation Agreement but for such termination; and
 - (2) the amount of any compensation on termination previously paid by Project Co under the Project Implementation Agreement, with interest thereon at the Prime Rate from the date the compensation on termination was paid until so reimbursed;
- (b) otherwise fully remedy any existing Operations Co Event of Default under the Project Implementation Agreement (provided, however, that any Operations Co Insolvency Event need not be remedied and with respect to any Operations Co Event of Default which cannot be cured until the Collateral Agent or other Senior Secured Creditors' Representative obtains possession, custody and control of the Project, it shall have such time, after it obtains such possession, custody and control as is necessary using all reasonable efforts to cure such Operations Co Event of Default); and
- (c) without duplication of amounts previously paid by Operations Co, pay to Project Co all reasonable costs, fees and expenses incurred by Project Co in connection with (i) such default and termination, (ii) the assertion of rights, interests and defenses in any bankruptcy or related proceeding, (iii) the recovery of possession, custody and control of the Project, (iv) all Project Co activities during its period of possession, custody and control of, and respecting, the Project, including permitting, design, acquisition, construction, equipping, maintenance, operation and management activities, minus the lesser of (A) the foregoing clause (iv) amount and (B) the amount of the Operations Co Payments, if any, that would have been paid during such period had the Project Implementation Agreement not been terminated and had there been no adjustments to such Operations Co Payments, and (v) the preparation, execution, and delivery of such New Agreements. Upon request of the Collateral Agent or other Senior Secured Creditors' Representative, Project Co will provide a written, documented statement of such costs, fees and expenses.

10.6 Assignment to Collateral Agent or other Senior Secured Creditors' Representative

Upon execution of the New Agreements and payment of all sums due Project Co pursuant to Section 10.5(a) and (c), Project Co shall assign and deliver to the Collateral Agent or other Senior Secured Creditors' Representative, without warranty or representation, all the property,

contracts, documents and information that Operations Co may have assigned and delivered to Project Co upon termination of the Project Implementation Agreement.

10.7 Terms of New Agreements

The New Agreements shall be effective as of the date of termination of the Project Implementation Agreement and shall run for the remainder of the Term. The New Agreements shall otherwise contain the same covenants, terms and conditions and limitations as the Project Implementation Agreement and ancillary agreements and documents that were binding on Project Co and Operations Co (except for any requirements which have been fulfilled by Operations Co prior to termination).

11. REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties by the Authority

The Authority represents and warrants to the Collateral Agent that:

- (a) the Authority has full power and capacity to enter into, carry out the transactions contemplated by and duly perform all its obligations contained in this Lenders' Remedies Agreement, the Project Agreement and all other documents, instruments and agreements required to be executed and delivered by the Authority pursuant to this Lenders' Remedies Agreement or the Project Agreement;
- (b) the execution and delivery of this Lenders' Remedies Agreement, the Project Agreement and all other documents, instruments and agreements required to be executed and delivered by the Authority pursuant to this Lenders' Remedies Agreement or the Project Agreement, and the completion of the transactions contemplated by this Lenders' Remedies Agreement and the Project Agreement, have been duly authorized by all necessary action on the part of the Authority, and this Lenders' Remedies Agreement and the Project Agreement have been duly executed and delivered by the Authority and constitute legal, valid and binding obligations of the Authority enforceable in accordance with their terms, except to the extent that enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application;
- (c) as of the date of the execution of this Lenders' Remedies Agreement, there is no Authority Event of Default, the Authority is not aware of any Project Co Event of Default and there exists no event or condition of which the Authority is aware that would, with the giving of notice or passage of time or both, constitute an Authority Event of Default or a Project Co Event of Default;
- (d) the execution and delivery by the Authority of this Lenders' Remedies Agreement, and the performance by the Authority of its obligations hereunder, will not conflict with any Laws applicable to the Authority that are valid and in effect on the date of execution and delivery; and
- (e) as of the date of the execution of this Lenders' Remedies Agreement, there is no action, suit, proceeding, investigation or litigation pending and served on the

Authority which challenges the Authority's authority to execute, deliver or perform, or the validity or enforceability of, this Lenders' Remedies Agreement.

11.2 Representations and Warranties by Project Co

Project Co represents and warrants to the Collateral Agent that:

- (a) Project Co is a non-profit corporation duly created and validly existing under the laws of Kentucky and has full power and capacity to enter into, carry out the transactions contemplated by and duly perform all its obligations contained in this Lenders' Remedies Agreement, the Project Agreement, the Project Implementation Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Lenders' Remedies Agreement, the Project Agreement or the Project Implementation Agreement;
- (b) the execution and delivery of this Lenders' Remedies Agreement, the Project Agreement, the Project Implementation Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Lenders' Remedies Agreement, the Project Agreement or the Project Implementation Agreement, and the completion of the transactions contemplated by this Lenders' Remedies Agreement, the Project Agreement and the Project Implementation Agreement, have been duly authorized by all necessary action on the part of Project Co, and this Lenders' Remedies Agreement, the Project Agreement and the Project Implementation Agreement have been duly executed and delivered by Project Co and constitute legal, valid and binding obligations of Project Co enforceable in accordance with their terms, except to the extent that enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application; and
- (c) as of the date of the execution of this Lenders' Remedies Agreement, there is no Project Co Event of Default, Project Co is not aware of any Authority Event of Default or Operations Co Event of Default and there exists no event or condition of which Project Co is aware that would, with the giving of notice or passage of time or both, constitute a Project Co Event of Default, an Authority Event of Default or an Operations Co Event of Default.

11.3 Representations and Warranties by Operations Co

Operations Co represents and warrants to the Collateral Agent that:

- (a) Operations Co is a limited liability company duly created and validly existing under the laws of Delaware and has full power and capacity to enter into, carry out the transactions contemplated by and duly perform all its obligations contained in this Lenders' Remedies Agreement, the Project Implementation Agreement and all other documents, instruments and agreements required to be executed and delivered by Operations Co pursuant to this Lenders' Remedies Agreement or the Project Implementation Agreement;

- (b) the execution and delivery of this Lenders' Remedies Agreement, the Project Implementation Agreement and all other documents, instruments and agreements required to be executed and delivered by Operations Co pursuant to this Lenders' Remedies Agreement or the Project Implementation Agreement, and the completion of the transactions contemplated by this Lenders' Remedies Agreement and the Project Implementation Agreement, have been duly authorized by all necessary action on the part of Operations Co, and this Lenders' Remedies Agreement and the Project Implementation Agreement have been duly executed and delivered by Operations Co and constitute legal, valid and binding obligations of Operations Co enforceable in accordance with their terms, except to the extent that enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application; and
- (c) as of the date of the execution of this Lenders' Remedies Agreement, there is no Operations Co Event of Default, Operations Co is not aware of any Project Co Event of Default and there exists no event or condition of which Operations Co is aware that would, with the giving of notice or passage of time or both, constitute an Operations Co Event of Default or an Project Co Event of Default.

11.4 Representations and Warranties by the Collateral Agent

The Collateral Agent represents and warrants to the Authority, Project Co and Operations Co that:

- (a) the Collateral Agent has full power and capacity to enter into, carry out the transactions contemplated by and duly perform all its obligations contained in this Lenders' Remedies Agreement and all other documents, instruments and agreements required to be executed and delivered by the Collateral Agent pursuant to this Lenders' Remedies Agreement;
- (b) this Lenders' Remedies Agreement has been duly executed and delivered by the Collateral Agent and constitutes a legal, valid and binding obligation of the Collateral Agent enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application; and
- (c) the Collateral Agent:
 - (1) has no ownership interest in any other party to this Lenders' Remedies Agreement or either Project Contractor; and
 - (2) does not Control, is not Controlled by and is not under common Control with any other party to this Lenders' Remedies Agreement or either Project Contractor.

12. ASSIGNMENT

12.1 Restriction on Assignment

No party to this Lenders' Remedies Agreement may assign or transfer all or any part of its rights or obligations under this Lenders' Remedies Agreement except as provided in this Section 12.

12.2 Assignment by Collateral Agent

The Collateral Agent may assign or transfer its rights and obligations under this Lenders' Remedies Agreement to a successor Collateral Agent in accordance with the Senior Financing Agreements without the consent of the Authority, provided that the Collateral Agent delivers to the Authority not less than 10 Business Days prior to such assignment or transfer a notice setting out such contact information regarding the assignee or transferee as the Authority may reasonably require and provided the assignee or transferee is not a Restricted Person.

12.3 Assignment by Senior Secured Creditors

Any Senior Secured Creditor may assign or transfer its rights and obligations under the Senior Financing Agreements in accordance with the terms of the Senior Financing Agreements without the consent of the Authority, provided the assignee or transferee is not a Restricted Person.

12.4 Assignment by Authority

The Authority will assign or transfer its rights and obligations under this Lenders' Remedies Agreement to any permitted assignee of its interest in the Project Agreement in accordance with Section 16.4 of the Project Agreement, concurrently with the assignment of the Project Agreement to such assignee, and the Collateral Agent and the Senior Secured Creditors will cooperate with the Authority in completing the formalities of any transfer or assignment including by executing any additional documents as may be reasonably required by the Authority.

12.5 New Agreement

If Section 12.2 applies in relation to the Collateral Agent, the Authority, Project Co and Operations Co will, upon request by the new Collateral Agent, enter into a new lenders' remedies agreement with the new Collateral Agent on substantially the same terms as this Lenders' Remedies Agreement.

13. GENERAL

13.1 Term

This Lenders' Remedies Agreement will remain in effect until the earlier of:

- (a) the Senior Debt Discharge Date; and
- (b) subject to compliance with Section 6.4(f) above, the date of transfer of Operations Co's rights and liabilities under the Project Implementation Agreement to a Suitable Substitute Operations Co pursuant to Section 6.

13.2 Conflict or Inconsistency

If there is any conflict or inconsistency between the provisions of this Lenders' Remedies Agreement and the Project Agreement, as between the Collateral Agent and the Authority, the provisions of this Lenders' Remedies Agreement will prevail. If there is any conflict or inconsistency between the provisions of this Lenders' Remedies Agreement and the Project Implementation Agreement, as between the Collateral Agent and Project Co, the provisions of this Lenders' Remedies Agreement will prevail.

13.3 Entire Agreement

Unless otherwise stated in this Lenders' Remedies Agreement, this Lenders' Remedies Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Lenders' Remedies Agreement. No party has relied on any representation except as expressly set out in this Lenders' Remedies Agreement.

13.4 Waiver

The failure of any party to exercise any contractual right or remedy will not constitute a waiver thereof and no waiver will be effective, unless it is communicated in writing to the other party. A waiver of any right or remedy arising from a breach of this Lenders' Remedies Agreement will not constitute a waiver of any right or remedy arising from any other breach of this Lenders' Remedies Agreement.

13.5 Counterparts

This Lenders' Remedies Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and this has the same effect as if the signatures on the counterparts were on a single copy of this Lenders' Remedies Agreement so that it will not be necessary in making proof of this Lenders' Remedies Agreement to produce or account for more than one such counterpart.

13.6 Confidentiality

The Collateral Agent will be bound to comply with the confidentiality obligations on the part of Project Co contained in the Project Agreement in relation to all information matters obtained from any other party under or in connection with the Project.

13.7 Notices

Any notice or communication required or permitted to be given under this Lenders' Remedies Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by electronic transmission to the address or electronic mail address of each party set out below:

If to the Authority:

The Commonwealth of Kentucky
Office of the Secretary

Lenders' Remedies Agreement
NG-KIH Project

Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex Room 383
Frankfort, KY 40601

Attention: Secretary of the Finance and Administration Cabinet

with a copy to:

Office of Procurement Services
Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex Room 096
Frankfort, KY 40601

Attention: Stephanie Williams, Buyer
Email: StephanieR.Williams@ky.gov

If to the Collateral Agent:

U.S. Bank National Association
Global Corporate Trust Services
One Financial Square
Louisville, KY 40202

Attention: Amy Anders, Vice President
Email: amy.anders@usbank.com

If to Project Co:

KentuckyWired Infrastructure Company, LLC

Attention: Lori Hudson Flanery, Director
Email: [REDACTED]

with a copy to:

Office of Financial Management
Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex Room 076
Frankfort, KY 40601

Attention: Ryan Barrow, Executive Director
Email: Ryan.Barrow@ky.gov

If to Operations Co:

KentuckyWired Operations Company, LLC
c/o Macquarie Infrastructure Developments LLC
Level 16, 125 West 55th Street
New York, NY 10019

Attention: Nicholas Hann
Email: Nick.Hann@macquarie.com

or to such other address or electronic mail address as any party may, from time to time, designate in the manner set out above.

Any such notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (b) if delivered by electronic mail during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:
 - (1) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or
 - (2) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

13.8 No Partnership or Agency

Nothing in this Lenders' Remedies Agreement will be construed as creating a partnership or as constituting the Senior Secured Creditors, the Collateral Agent, the Appointed Representative, any other Senior Secured Creditors' Representative or a Suitable Substitute Operations Co as an agent of the Authority. No such person will hold itself out as having any authority or power to bind the Authority in any way.

13.9 Remedies Cumulative

The rights and remedies under this Lenders' Remedies Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

13.10 Disputes

Any dispute between any of the parties with respect to any of the subject matters of this Lenders' Remedies Agreement will be resolved in accordance with, and the parties will comply

with, the Dispute Resolution Procedure, and Schedule 13 [Dispute Resolution Procedure] of the Project Agreement is deemed to be incorporated, *mutatis mutandis*, in this Lenders' Remedies Agreement.

**KENTUCKYWIRED OPERATIONS COMPANY,
LLC**

Per:



Name: ~~NICHOLAS HAMLIN~~

Title: ~~MANAGER~~

Per:

Name:

Title:

I/We have the authority to bind the company.

KENTUCKYWIRED OPERATIONS COMPANY,
LLC

Per:



Name: Eliot Jamison
Title: Manager

Per:

Name:
Title:

I/We have the authority to bind the company.

IN WITNESS WHEREOF the parties hereto have executed this Lenders' Remedies Agreement as of the day and year first above written.

THE COMMONWEALTH OF KENTUCKY

Per: *Lori Hudson Flanery*
Name: Lori Hudson Flanery

Title: Secretary, Kentucky Finance
& Administration Cabinet

I have the authority to bind the Commonwealth.

U.S. BANK NATIONAL ASSOCIATION

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the association.

**KENTUCKYWIRED INFRASTRUCTURE
COMPANY, INC.**

Per: *Steve Rucker*
Name: Steve Rucker
Title: Director

I have the authority to bind the corporation.

**SERVICE PROVIDER COLLATERAL AGREEMENT
NEXT GENERATION KENTUCKY INFORMATION HIGHWAY PROJECT**

**The Commonwealth of Kentucky
(the “Authority”)**

and

**LTS Kentucky Managed Technical Services LLC
(the “Service Provider”)**

and

**KentuckyWired Infrastructure Company, Inc.
(“Project Co”)**

and

**KentuckyWired Operations Company, LLC
(“Operations Co”)**

Dated: September 3, 2015

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SERVICE PROVIDER COLLATERAL AGREEMENT

THIS SERVICE PROVIDER COLLATERAL AGREEMENT dated as of September 3, 2015 is entered into:

BETWEEN:

The Commonwealth of Kentucky

(the “**Authority**”)

AND:

LTS Kentucky Managed Technical Services LLC

(the “**Service Provider**”)

AND:

KentuckyWired Infrastructure Company, Inc.

(“**Project Co**”)

AND:

KentuckyWired Operations Company, LLC

(“**Operations Co**”)

WHEREAS:

- A. The Authority and Project Co have entered into an agreement dated as of September 3, 2015 (the “**Project Agreement**”) whereby Project Co has agreed to design, build, finance, operate and maintain the NG-KIH System (the “**Project**”), all as more particularly described in the Project Agreement.
- B. Project Co and Operations Co have entered into an agreement dated as of September 3, 2015 (the “**Project Implementation Agreement**”) whereby Operations Co has agreed to design, build, operate and maintain the NG-KIH System, all as more particularly described in the Project Implementation Agreement.
- C. Operations Co and the Service Provider have entered into an agreement dated as of September 3, 2015 (the “**Services Contract**”) whereby the Service Provider has agreed to carry out the Services.
- D. It is a condition of the Services Contract that the Service Provider enter into this Service Provider Collateral Agreement with the Authority, Project Co and Operations Co.
- E. The Authority and Project Co have agreed under the terms of the Project Agreement to execute and deliver this Service Provider Collateral Agreement.

F. Project Co and Operations Co have agreed under the terms of the Project Implementation Agreement to execute and deliver this Service Provider Collateral Agreement.

NOW THEREFORE THIS SERVICE PROVIDER COLLATERAL AGREEMENT WITNESSES THAT, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. INTERPRETATION

1.1 Definitions

Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Service Provider Collateral Agreement will have the respective meanings given to such terms in the Project Agreement and:

“**Project**” has the meaning set out in Recital A;

“**Project Agreement**” has the meaning set out in Recital A;

“**Project Implementation Agreement**” has the meaning set out in Recital B;

“**Proposed Transfer Date**” has the meaning set out in Section 4.1;

“**Proposed Transfer Notice**” has the meaning set out in Section 4.1;

“**Proposed Step-In Date**” has the meaning set out in Section 3.1;

“**Proposed Substitute**” has the meaning set out in Section 4.1;

“**Service Provider Collateral Agreement**” means this agreement, as amended, supplemented or restated from time to time;

“**Services Contract**” has the meaning set out in Recital C;

“**Step-In Date**” means the date the Authority delivers the Step-In Undertaking;

“**Step-In Notice**” has the meaning set out in Section 3.1;

“**Step-In Period**” means the period commencing on the Step-In Date and ending on the earliest of:

- (a) the Step-Out Date;
- (b) the Transfer Effective Date; and
- (c) the termination date of the Services Contract as permitted under Section 3.8;

“**Step-In Undertaking**” has the meaning set out in Section 3.5;

“**Step-Out Date**” has the meaning set out in Section 3.9;

“**Termination Notice**” has the meaning set out in Section 2.1;

“**Transfer Agreement**” has the meaning set out in Section 4.5(b); and

“**Transfer Effective Date**” means the effective date of the Transfer Agreement.

1.2 Construction and Interpretation

Unless otherwise specified or the context otherwise requires, this Service Provider Collateral Agreement will be interpreted according to the provisions set out in Sections 2 and 3(b) of Schedule 1 [Definitions and Interpretation] to the Project Agreement, except that references in such section to Project Co will also be deemed to be references to Operations Co and the Service Provider.

1.3 Law of Agreement

This Service Provider Collateral Agreement is subject to the laws of the Commonwealth of Kentucky and any applicable federal laws and will be governed by and construed in accordance with such laws.

1.4 Venue

Any legal actions or proceedings brought by any party hereto against any other party shall be brought in state court in Franklin County, Kentucky in accordance with KRS 45A.245. Each party acknowledges the competence of such court and the convenience and propriety of the venue and agrees to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

2. TERMINATION NOTICE AND AUTHORITY TERMINATION

2.1 Termination Notice

The Service Provider will not terminate the Services Contract without first giving the Authority at least 45 days’ notice specifying the grounds for such termination (the “**Termination Notice**”).

2.2 Survival of Services Contract

Notwithstanding any provision of the Services Contract to the contrary, on termination of the Project Agreement by the Authority, the parties agree that the Services Contract will not come to an end, except in accordance with the terms of this Service Provider Collateral Agreement.

3. STEP-IN AND STEP-OUT

3.1 Step-In Notice

Subject to Section 3.2, if the Authority has terminated the Project Agreement in accordance with its terms or if the Authority has received a Termination Notice, the Authority may give notice to the Service Provider (a “**Step-In Notice**”) of the intention of the Authority to issue a Step-In Undertaking on a specified date (the “**Proposed Step-In Date**”) provided that such Proposed Step-In Date is:

- (a) no later than 30 days after termination of the Project Agreement if the Project Agreement was terminated by the Authority; and
- (b) no later than 30 days after delivery of the Termination Notice to the Authority.

3.2 Lenders' Step-In Rights

The Authority will not issue a Step-In Notice at any time that the Senior Secured Creditors are validly exercising any Step-In rights with respect to the Project under:

- (a) the Lenders' Remedies Agreement;
- (b) any Senior Financing Agreement; or
- (c) any direct agreement entered into between the Service Provider and the Senior Secured Creditors with respect to the Services Contract,

and the running of all notice periods and timelines set out in Section 3.1 will be suspended until such time as the Senior Secured Creditors are no longer exercising, or are no longer permitted to exercise, such rights under the Lenders' Remedies Agreement, any Senior Financing Agreement or any such direct agreement. The Service Provider will provide copies of all relevant notices delivered by it to, or to it by, the Senior Secured Creditors in respect of the exercise of such rights so as to enable the Authority and the Service Provider to determine, in accordance with this Section 3.2 the notice periods and timelines set out in Section 3.1.

3.3 Notice of Obligations and Step-In Undertaking

Not less than 5 Business Days prior to the Proposed Step-In Date, the Service Provider will give notice to the Authority of any sums that are due and payable but unpaid by Operations Co and of any other material obligations or liabilities that should have been performed or discharged by Operations Co under the Services Contract, in each case as at the date of the Step-In Notice.

3.4 Update of Obligations

Not less than 2 Business Days prior to the Proposed Step-In Date, the Service Provider will give notice to the Authority of any change in such sums, obligations or liabilities referred to in Section 3.3.

3.5 Delivery of Step-In Undertaking

On or before the Proposed Step-In Date, the Authority may deliver to the Service Provider a written undertaking to the Service Provider (the "**Step-In Undertaking**") undertaking to the Service Provider to:

- (a) pay or procure the payment to the Service Provider, within 15 Business Days of demand by the Service Provider, of any sum due and payable or accruing due and payable but unpaid by Operations Co to the Service Provider under the Services Contract before the Step-In Date, provided that the Service Provider has notified the Authority of such amounts in accordance with Sections 3.3 and 3.4;

- (b) perform or discharge or procure the performance or discharge of any unperformed or undischarged obligations of Operations Co under the Services Contract that will have fallen due for performance or discharge before the Step-In Date and of which the Authority has been notified by the Service Provider in accordance with Sections 3.3 and 3.4;
- (c) pay or procure the payment of any sum due and payable by Operations Co under the Services Contract as a result of either any work or services performed during the Step-In Period or any act or omission occurring during the Step-In Period which arises from any act or omission occurring after the Step-In Date; and
- (d) perform or discharge or procure the performance or discharge of any obligations of Operations Co under the Services Contract as a result of any act or omission occurring during the Step-In Period that arises from any act or omission occurring after the Step-In Date.

3.6 Limits on Authority Liability on Step-In

The Authority will not be required to assume any liability under a Step-In Undertaking for any outstanding obligations or liabilities of Operations Co to the Service Provider:

- (a) that existed as of the Step-In Date; and
- (b) of which the Authority has not been notified pursuant to Sections 3.3 and 3.4.

3.7 Non-Delivery of the Step-In Undertaking

If the Authority does not deliver the Step-In Undertaking on or before the Proposed Step-In Date, the Step-In Notice will be deemed to have been withdrawn and the rights and obligations of the parties will be construed as if the Step-In Notice had not been given.

3.8 Effect of Step-In Undertaking

During any Step-In Period, the Service Provider will continue to observe and perform its duties and obligations under the Services Contract and will only be entitled to exercise its rights of termination under the Services Contract:

- (a) by reference to a default under the Services Contract arising during the Step-In Period (other than to the extent that an Operations Co Insolvency Event constitutes such a default), provided that no event of default by Project Co under the Project Agreement or Operations Co under the Project Implementation Agreement will entitle the Service Provider to exercise such rights of termination during the Step-In Period;
- (b) if the Authority fails to pay when due any amount owed to the Service Provider or fails to perform or discharge when falling due for performance or discharge any obligation under the Step-In Undertaking; or
- (c) if such rights of termination arise in circumstances where there is no default under the Services Contract by the Authority or the Service Provider.

3.9 Step-Out

The Authority may, at any time, terminate the Step-In Period by giving the Service Provider at least 20 Business Days' notice specifying the date on which the Step-In Period will terminate (the "**Step-Out Date**").

3.10 Effect of Step-Out

The Authority will be released from the Step-In Undertaking on the expiration or termination of the Step-In Period, provided that the Authority has performed and discharged in full, or procured the performance and discharge in full, of any of the Authority's obligations under the Step-In Undertaking arising on or before the expiration or termination of the Step-In Period.

3.11 Payment by Operations Co

Operations Co will pay to the Authority on demand any amounts of which the Authority has been notified by the Service Provider pursuant to Sections 3.3 and 3.4 and that were paid by the Authority or a Proposed Substitute to the Service Provider pursuant to this Service Provider Collateral Agreement. Any such amounts will constitute amounts due and payable by Operations Co to the Authority under this Service Provider Collateral Agreement.

4. TRANSFER

4.1 Proposed Substitute

At any time that the Authority is entitled to give a Step-In Notice pursuant to Section 3.1 or at any time during the Step-In Period, the Authority may give notice (a "**Proposed Transfer Notice**") to the Service Provider that it wishes itself or another person (a "**Proposed Substitute**") to assume, by way of sale, assignment, transfer or other disposal, the rights and obligations of Operations Co under the Services Contract and specifying a date (the "**Proposed Transfer Date**"):

- (a) if the Authority has terminated the Project Agreement but has not given a Step-In Notice, no later than 15 Business Days after termination of the Project Agreement;
- (b) if the Service Provider has given a Termination Notice but the Authority has not given a Step-In Notice, no later than expiration of the Termination Notice; and
- (c) if the Authority has given a Step-In Notice (whether or not the Step-In Period has commenced), no later than 20 Business Days after the date of the Proposed Transfer Notice.

Subject to Section 3, the Service Provider will not be entitled to terminate the Services Contract during the notice period specified in a Proposed Transfer Notice.

4.2 Consent to Transfer

If the Proposed Transfer Notice specifies the Authority as the Proposed Substitute, the Service Provider's consent to the transfer will be deemed to have automatically been given. If the Proposed Substitute is not the Authority, a transfer in accordance with a Proposed Transfer

Notice will only be effective if the Service Provider consents to that transfer in writing in accordance with Section 4.3, and the Authority will (as soon as practicable) supply the Service Provider with the following information:

- (a) the name and registered address of the Proposed Substitute;
- (b) the names of the shareholders in the Proposed Substitute and the share capital owned by each of them;
- (c) the names of the directors and the secretary of the Proposed Substitute;
- (d) details of the means by which it is proposed to finance the Proposed Substitute (including the extent to which such finance is committed and any conditions precedent as to its availability for drawing); and
- (e) details of the technical competence of the Proposed Substitute and the resources (including contractual arrangements) which are to be available to the Proposed Substitute to enable it to perform its obligations under the Services Contract.

4.3 Grant of Consent

The Service Provider may withhold or delay consent to a transfer only if the Proposed Substitute is not the Authority and the Authority has failed to show to the Service Provider's satisfaction (acting reasonably) that:

- (a) the Proposed Substitute has the legal capacity, power and authority to become a party to and perform the obligations of Operations Co under the Services Contract; and
- (b) the technical competence and financial standing of, and the technical and financial resources available to, the Proposed Substitute are sufficient to perform the obligations of Operations Co under the Services Contract.

Within 5 Business Days of the receipt of a Proposed Transfer Notice and all information required under Section 4.2, the Service Provider will notify the Authority in writing that it has consented to the transfer or, if the Service Provider has not consented, will provide to the Authority an explanation of its reasons to withhold its consent.

4.4 Consent Withheld

If the Service Provider withholds its consent to a Proposed Transfer Notice, the Authority may give one or more subsequent Proposed Transfer Notices, pursuant to the provisions of Section 4.1, containing changed particulars relating to the same Proposed Substitute or particulars relating to another Proposed Substitute that the Authority reasonably believes would fulfill the requirements of Sections 4.3, provided that only one Proposed Transfer Notice may be outstanding at any one time, and provided further that:

- (a) if a Step-In Notice has not been issued, any revised Proposed Transfer Date will be a date falling no later than the date specified in Section 4.1(a) or 4.1(b), as the case may be; and

- (b) if a Step-In Notice has been issued, any revised Proposed Transfer Date will be a date falling no later than the date specified in Section 4.1(c).

4.5 Implementation of Transfer

If the Service Provider consents or is deemed to have consented to a transfer pursuant to a Proposed Transfer Notice, then on the Proposed Transfer Date:

- (a) the Proposed Substitute will become a party to the Services Contract in place of Operations Co and, thereafter, will be treated as if it was and had always been named as a party to the Services Contract in place of Operations Co; and
- (b) the Service Provider, Operations Co and the Proposed Substitute will enter into a transfer agreement (the “**Transfer Agreement**”) and any other requisite agreements, in form and substance satisfactory to the Service Provider, acting reasonably, pursuant to which:
 - (1) the Proposed Substitute will be granted all of the rights of Operations Co under the Services Contract; and
 - (2) the Proposed Substitute will assume all of the obligations and liabilities of Operations Co under the Services Contract.

4.6 Effect of Transfer

On and after the Transfer Effective Date:

- (a) the Service Provider will owe its obligations under the Services Contract, whether arising before, on or after such date, to the Proposed Substitute; and
- (b) if the Authority has entered into a Step-In Undertaking, the Authority will be released from the Step-In Undertaking, provided that all obligations of the Authority under the Step-In Undertaking that have accrued up to the Transfer Effective Date have been fully and unconditionally discharged.

The Authority and the Service Provider will use reasonable efforts to agree to any amendments to the Services Contract reasonably necessary to reflect the fact that the Project Agreement may have terminated at the time of the Transfer Effective Date.

4.7 Termination After Transfer

After the Transfer Effective Date, the Service Provider will only be entitled to exercise its rights of termination under the Services Contract:

- (a) in respect of any Operations Co Event of Default arising after that date in accordance with the Services Contract; or
- (b) if the Proposed Substitute does not discharge the obligations and liabilities referred to in Section 4.5(b)(2) assumed by it under the Transfer Agreement that relate to matters arising prior to the end of any Step-In Period within 15 Business Days following the Transfer Effective Date.

5. RIGHTS AND OBLIGATIONS UNDER THE SERVICES CONTRACT

5.1 Rights of Termination

If:

- (a) no Step-In Notice or Proposed Transfer Notice is given before a Termination Notice expires or within 15 Business Days after termination of the Project Agreement by the Authority;
- (b) a Step-In Undertaking is not issued on or before the Proposed Step-In Date;
- (c) the Step-In Notice is withdrawn or, pursuant to Section 3.7, is deemed to have been withdrawn;
- (d) the Step-In Period ends before the occurrence of the Transfer Effective Date;
- (e) in the absence of a Step-In Undertaking, the Service Provider reasonably withholds its consent to a transfer pursuant to a Proposed Transfer Notice, in accordance with Section 4.3, and does not subsequently grant consent to a transfer in accordance with Section 4.4 on or before the Proposed Transfer Date;
- (f) in the absence of a Step-In Undertaking, a Transfer Agreement is not entered into on the Proposed Transfer Date;
- (g) the Service Provider is entitled to terminate the Services Contract under Section 3.8 or 4.7; or
- (h) the Authority exercises its right to Step-Out under Section 3.9, then on the Step-Out Date,

the Service Provider may:

- (i) exercise all of its rights under the Services Contract and act upon any and all grounds for termination available to it in relation to the Services Contract whenever occurring; and
- (j) pursue any and all claims and exercise any and all rights and remedies against Operations Co.

5.2 Operations Co's Obligations to Continue

Until completion of a transfer pursuant to Section 4.5, Operations Co will continue to be liable for all its obligations and liabilities, whenever occurring, under or arising from the Services Contract notwithstanding:

- (a) the service of a Step-In Notice or the issue of a Step-In Undertaking or the expiration of the Step-In Period or the release of a Step-In Undertaking;
- (b) the service of a Proposed Transfer Notice; or
- (c) any other provision of this Service Provider Collateral Agreement.

Service Provider Collateral Agreement
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6. REVOCATION OF NOTICES

A Termination Notice and a Step-In Notice may each be revoked (in writing to the recipient) by the party giving them before the expiration of their respective notice periods. Upon any such revocation, the rights and obligations of the parties will be construed as if the relevant notice had not been given.

7. ASSIGNMENT

7.1 Binding on Successors and Assigns

This Service Provider Collateral Agreement will be binding on and will enure to the benefit of the parties and their respective successors and permitted assigns.

7.2 Restriction on Assignment

No party will assign or transfer any part of its respective rights or obligations under this Service Provider Collateral Agreement without the prior consent of the other parties hereto (such consent not to be unreasonably withheld or delayed), provided that:

- (a) the Authority will be entitled, without the consent of any other party, to transfer all its rights and obligations hereunder to any person to whom it assigns or otherwise disposes of the benefit of the Project Agreement in accordance with Section 16.4 of the Project Agreement; and
- (b) the Service Provider will assign or transfer all its rights and obligations under this Service Provider Collateral Agreement to any person to whom it assigns or transfers all its rights and obligations under the Services Contract in accordance with the terms of the Services Contract and the Project Agreement.

8. GENERAL

8.1 Notices

Any notice or communication required or permitted to be given under this Service Provider Collateral Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by electronic transmission to the address or electronic mail address of each party set out below:

If to the Authority:

The Commonwealth of Kentucky
Office of the Secretary
Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex Room 383
Frankfort, KY 40601

Attention: Secretary of the Finance and Administration Cabinet

with a copy to:

Service Provider Collateral Agreement
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Office of Procurement Services
Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex Room 096
Frankfort, KY 40601

Attention: Stephanie Williams, Buyer
Email: StephanieR.Williams@ky.gov

If to the Service Provider:

LTS Kentucky Managed Technical Services LLC
188 Columbia Lane E
Shepherdsville, KY 40165

Attention: Jan Summarell
Email: jan.summarell@ledcor.com

If to Project Co:

KentuckyWired Infrastructure Company, LLC


Attention: Lori Hudson Flanery, Director
Email: 

with a copy to:

Office of Financial Management
Finance and Administration Cabinet
702 Capitol Avenue
Capitol Annex Room 076
Frankfort, KY 40601

Attention: Ryan Barrow, Executive Director
Email: Ryan.Barrow@ky.gov

If to Operations Co:

KentuckyWired Operations Company, LLC
c/o Macquarie Infrastructure Developments LLC
Level 16, 125 West 55th Street
New York, NY 10019

Attention: Nicholas Hann
Email: Nick.Hann@macquarie.com

or to such other address or electronic mail address as any party may, from time to time, designate in the manner set out above.

Any such notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (b) if delivered by electronic mail during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:
 - (1) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or
 - (2) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

8.2 Entire Agreement

Unless otherwise stated in this Service Provider Collateral Agreement, this Service Provider Collateral Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Service Provider Collateral Agreement. No party has relied on any representation except as expressly set out in this Service Provider Collateral Agreement.

8.3 Waiver

The failure of any party to exercise any contractual right or remedy will not constitute a waiver thereof, and no waiver will be effective unless it is communicated in writing to the other party. A waiver of any right or remedy arising from a breach of this Service Provider Collateral Agreement will not constitute a waiver of any right or remedy arising from any other breach of this Service Provider Collateral Agreement.

8.4 No Partnership or Agency

Nothing in this Service Provider Collateral Agreement will be construed as creating a partnership or as constituting the Service Provider as an agent of the Authority. The Service Provider will not hold itself out as having any authority or power to bind the Authority in any way.

8.5 Conflicting Agreements

If there is any conflict or inconsistency between the provisions of this Service Provider Collateral Agreement and the Project Agreement, the provisions of the Project Agreement will prevail.

8.6 Remedies Cumulative

The rights and remedies under this Service Provider Collateral Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in

equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

8.7 Counterparts

This Service Provider Collateral Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and this has the same effect as if the signatures on the counterparts were on a single copy of this Service Provider Collateral Agreement so that it will not be necessary in making proof of this Service Provider Collateral Agreement to produce or account for more than one such counterpart.

8.8 Disputes

Any dispute between any of the parties with respect to any of the subject matters of this Service Provider Collateral Agreement or any disagreement between any of the parties with respect to any matter that, by the express terms of this Service Provider Collateral Agreement, is to be agreed upon by the parties will be resolved in accordance with, and the parties will comply with, the Dispute Resolution Procedure set out in the Project Agreement, provided that, for greater certainty, the parties acknowledge that, during a Step-In Period or after the Transfer Effective Date, any dispute with respect to any of the subject matters of the Services Contract will be resolved in accordance with the applicable dispute resolution procedure thereunder.

IN WITNESS WHEREOF the parties have executed this Service Provider Collateral Agreement as of the day and year first above written.

THE COMMONWEALTH OF KENTUCKY

Per:



Name: Lori Hudson Flanery

Title: Secretary, Kentucky Finance
& Administration Cabinet

I have the authority to bind the Commonwealth.

**LTS KENTUCKY MANAGED TECHNICAL
SERVICES LLC**

Per:

Name:

Title:

Per:

Name:

Title:

I/We have the authority to bind the company.

**KENTUCKYWIRE INFRASTRUCTURE
COMPANY, INC.**

Per:



Name: Steve Rucker

Title: Director

I have the authority to bind the corporation.

IN WITNESS WHEREOF the parties have executed this Service Provider Collateral Agreement as of the day and year first above written.

THE COMMONWEALTH OF KENTUCKY

Per: _____

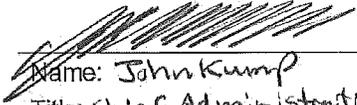
Name: Lori Hudson Flanery

Title: Secretary, Kentucky Finance
& Administration Cabinet

I have the authority to bind the Commonwealth.

**LTS KENTUCKY MANAGED TECHNICAL
SERVICES LLC**

Per: _____


Name: John Kump

Title: Chief Administration officer

Per: _____

Name:

Title:

I/We have the authority to bind the company.

**KENTUCKYWIRED INFRASTRUCTURE
COMPANY, INC.**

Per: _____

Name: Steve Rucker

Title: Director

I have the authority to bind the corporation.

**KENTUCKYWIRE OPERATIONS COMPANY,
LLC**

Per:


Name: NICHOLAS HANN
Title: MANAGER

Per:

Name:

Title:

I/We have the authority to bind the company.

KENTUCKYWIRED OPERATIONS COMPANY,
LLC

Per:



Name: Eliot Jamison
Title: Manager

Per:

Name:
Title:

I/We have the authority to bind the company.