

Form A
Contact Information
Request for Proposal Number 6691 Z1

Form A should be completed and submitted with each response to this solicitation. This is intended to provide the State with information on the bidder's name and address, and the specific person(s) who are responsible for preparation of the bidder's response.

Preparation of Response Contact Information	
Bidder Name:	Wichita State University
Bidder Address:	1845 Fairmount Wichita, Kansas 67260-0007
Contact Person & Title:	Dr. Shirley Lefever, Executive Vice President & Provost
E-mail Address:	proposals@wichita.edu
Telephone Number (Office):	316-978-3285
Telephone Number (Cellular):	n/a

Each bidder should also designate a specific contact person who will be responsible for responding to the State if any clarifications of the bidder's response should become necessary. This will also be the person who the State contacts to set up a presentation/demonstration, if required.

Communication with the State Contact Information	
Bidder Name:	Wichita State University on behalf of its Environmental Finance Center
Bidder Address:	Wichita State University on behalf of its Environmental Finance Center 1845 Fairmount, Wichita, Kansas 67260-0007
Contact Person & Title:	Tonya Bronleewe, Director, Wichita State Environmental Finance Center
E-mail Address:	Tonya.bronleewe@wichita.edu
Telephone Number (Office):	316-978-6638
Telephone Number (Cellular):	n/a

Wichita State University hereby acknowledges Addendum #1 to Request for Proposal Number 6691 Z1, issued on May 10, 2022.

REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES FORM

BIDDER MUST COMPLETE THE FOLLOWING

By signing this Request for Proposal for Contractual Services form, the bidder guarantees compliance with the procedures stated in this Solicitation and agrees to the terms and conditions unless otherwise indicated in writing and certifies that bidder maintains a drug free workplace.

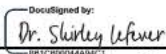
Per Nebraska's Transparency in Government Procurement Act, Neb. Rev Stat § 73-603 DAS is required to collect statistical information regarding the number of contracts awarded to Nebraska Contractors. This information is for statistical purposes only and will not be considered for contract award purposes.

_____ NEBRASKA CONTRACTOR AFFIDAVIT: Bidder hereby attests that bidder is a Nebraska Contractor. "Nebraska Contractor" shall mean any bidder who has maintained a bona fide place of business and at least one employee within this state for at least the six (6) months immediately preceding the posting date of this Solicitation.

_____ I hereby certify that I am a Resident disabled veteran or business located in a designated enterprise zone in accordance with Neb. Rev. Stat. § 73-107 and wish to have preference, if applicable, considered in the award of this contract.

_____ I hereby certify that I am a blind person licensed by the Commission for the Blind & Visually Impaired in accordance with Neb. Rev. Stat. § 71-8611 and wish to have preference considered in the award of this contract.

FORM MUST BE SIGNED USING INK OR VIA DOCUSIGN

FIRM:	Wichita State University
COMPLETE ADDRESS:	1845 Fairmount, Wichita, Kansas 67260-0007
TELEPHONE NUMBER:	316-978-3285
DATE:	5/23/2022
SIGNATURE:	
TYPED NAME & TITLE OF SIGNER:	Dr. Shirley Lefever, Executive Vice President & Provost

DocuSigned by:
Shirley Lefever
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WICHITA STATE
UNIVERSITY

HUGO WALL SCHOOL
OF PUBLIC AFFAIRS

Environmental Finance Center

BUILDING TMF CAPACITY FOR BOARDS/OWNERS OF NEBRASKA DRINKING WATER SYSTEMS

Nebraska Department of Environment & Energy

Proposal by: Environmental Finance Center,
Wichita State University

Tonya Bronleewe, Director
tonya.bronleewe@wichita.edu

EPA Region 7 (NE, KS, IA, MO)
Environmental Finance Center
www.wichita.edu/efc

Wichita State University
1845 Fairmount St.
Wichita, KS 67260

Table of Contents

1. CORPORATE OVERVIEW	2
a. Bidder Identification and Information.....	2
b. Financial Statements	2
c. Change of Ownership	2
d. Office Location.....	2
e. Relationships with the State of Nebraska	2
f. Bidder’s Employee Relations to the State	3
g. Bidder Performance.....	3
h. Summary of Bidder’s Corporate Experience	4
i. Summary of Bidder’s proposed Personnel/Management Approach.....	7
j. Subcontractors.....	7
2. TECHNICAL APPROACH.....	8
a. Methodology	8
b. # Board/Owner Regional Workshops.....	10
c. Max attendees.....	11
d. Promotion/Marketing/Registration/Evaluation.....	11
e. # per year.....	12
f. Individual Systems Needs.....	12
g. Scheduling, exit surveys, recommendations/requests, follow-up surveys.....	13

Appendix 1: Staff Resumes

Appendix 2: Deviations and Sections II-IV

1. CORPORATE OVERVIEW

a. Bidder Identification and Information

Wichita State University
on behalf of its Environmental Finance Center
Hugo Wall School of Public Affairs
1845 Fairmount St.
Wichita, KS 67260-0007

A State Educational Institution of Kansas, established in 1895

b. Financial Statements

Wichita State University is audited as part of the State of Kansas; the most recent Statewide audit may be found here: <https://admin.ks.gov/offices/accounts-reports/state-agencies/finance/annual-comprehensive-financial-report/statewide-single-audit-report>. Additionally, Wichita State University's Annual Financial Report is posted on the University website here: https://www.wichita.edu/services/controller/documents/fobt_GASB_FY2021.pdf.

c. Change of Ownership

No Change in ownership anticipated. Wichita State University is a state educational institution of Kansas.

d. Office Location

Wichita State University
Environmental Finance Center
1845 Fairmount St.
Wichita, KS 67260-0155

e. Relationships with the State of Nebraska

The Wichita State University Environmental Finance Center completed a project titled Intergovernmental Agreement (Contract) Agreement No. AWIN-01 between the Nebraska Department of Environmental Quality and Wichita State University back in 2012. Wichita State University may have had other agreements with the State of Nebraska; however, WSU is responding on behalf of its the Environmental Finance Center at WSU for this bid event.

f. Bidder's Employee Relations to the State

No parties in this proposal have been State of Nebraska employees in the past ten (10) years.

No State of Nebraska employees are employed by the Environmental Finance Center or is a subcontractor, as of the date of this proposal.

g. Bidder Performance

The Environmental Finance Center has not had a contract terminated for default during the past five (5) years.

The Environmental Finance Center has not had a contract terminated for convenience, non-performance, non-allocation of funds, or any other reason in the past five (5) years.

h. Summary of Bidder's Corporate Experience

Project Name	Project Description	Time Period	Scheduled and Actual Completion Dates	Bidders Responsibilities	Contact/Reference
<p>Building TMF Capacity for Small Water/Wastewater Systems</p> <p><i>Funding Agency: Federal, EPA</i></p> <p><i>WSU EFC is a subcontractor to the Southwest EFC on this national project.</i></p>	<p>Training, technical assistance, and resource development for water and wastewater systems that serve 10,000 or less.</p> <p>More than 25 training, resource or one-on-one system assistance topics are available for states and communities to select according to their needs. Some of the topics include, but are not limited to: asset management, water loss, board/elected official training, TMF capacity development, compliance, workforce recruitment/retention/succession planning, customer affordability, rates and fiscal planning, capital improvement planning, customer service, and more.</p>	8/1/21 - 1/31/23	<p>Scheduled completion date is on track for 1/31/23.</p> <p>All deliverables and reporting completed on time.</p>	<p>WSU EFC staff provide:</p> <ul style="list-style-type: none"> *23 trainings - in person and virtual *20 technical/practical assistance for individual systems on topics of their choice *Resources: 2 blog posts, 3 podcasts, 2 educational videos, 1 peer-to-peer learning session 	<p>Heather Himmelberger, Director, Southwest Environmental Finance Center</p> <p>Southwest Environmental Finance Center, Centennial Engineering Center, Suite 3020, Department of Civil Engineering, MSC 01 1070, 1 University of New Mexico, Albuquerque, NM 87131</p> <p>Phone: 505-277-0644</p> <p>Website: www.swefc.unm.edu</p>
<p>KanCap: Elected Officials Training for Water Boards and Councils</p>	<p>Training for drinking water utility boards/councils on their technical, managerial, and financial (TMF) roles and responsibilities to build local</p>	Annual contract on the state fiscal year	All training and reporting completed on time, annually.	WSU EFC staff participate with other partners (Kansas Municipal Utilities and Ranson Citycode Financial) to lead training for drinking	Brad Mears, Executive Director, Kansas Municipal Utilities

<p><i>Funding Agency: State, Kansas Department of Health and Environment</i></p> <p><i>WSU EFC is a subcontractor to Kansas Municipal Utilities on this project.</i></p>	<p>capacity to comply with federal and state regulations and the Safe Drinking Water Act.</p>	<p>(July 1- June 30).</p> <p>Contract awarded previous 5 years.</p>		<p>water boards and councils covering TMF topics.</p> <p>4-6 training sessions are held each year, scheduled throughout the state.</p>	<p>Kansas Municipal Utilities, 2090 E. Avenue A, McPherson, KS 67460</p> <p>Phone: 620-241-1423</p> <p>Website: www.kmunet.org</p>
<p>Capacity Development Strategy Implementation: Asset Management and Financial Planning</p> <p><i>Funding Agency: State, Kansas Department of Health and Environment</i></p> <p><i>WSU EFC is the prime contractor on this project.</i></p> <p><i>WSU EFC provides subcontracts to</i></p>	<p>Implementation of the Kansas Capacity Development Strategy for Public Water Supply Systems. This project includes:</p> <ol style="list-style-type: none"> 1) A.M. Kan Work - Asset management training to help water systems achieve and maintain TMF capacity. Training includes the EPA's 5-components of asset management. 2) AM Assistance to individual systems 3) Coordination of the asset management users group (AMUG) 4) Rates and Finance Training – rate setting and financial management 	<p>Annual contract on the state fiscal year (July 1- June 30).</p> <p>Contract awarded previous 5 years.</p>	<p>All training and reporting completed on time.</p>	<p>WSU EFC staff provides:</p> <ul style="list-style-type: none"> *Training development *6 Asset Management and Rates and Finance trainings each year, one in each region of the state *At least 2 Rate Tool trainings annually *At least 2 AMUG meetings annually to learn and share as a network of water systems implementing asset management principles 	<p>Cathy Tucker-Vogel, Public Water Supply Section Chief, Kansas Department of Health and Environment</p> <p>Kansas Department of Health and Environment, 1000 SW Jackson St. Suite 420 Topeka, Ks 66612</p> <p>Phone: 785-368-7130</p>

<i>Kansas Municipal Utilities, Ranson Citycode Financial, and WSU T3 (for rate tool programming)</i>	5) Kansas Rate Checkup Tool trainings, tool development and hosting			*Assistance to individual systems as requested by KDHE and water systems *Development, improvement and maintenance of the Kansas Rate Checkup Tool	
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No subcontracts are anticipated for this project.

i. Summary of Bidder’s proposed Personnel/Management Approach

EFC Staff Member	Title	Project Role	Reporting Relationship
Tonya Bronleewe	Director	Administration, Reporting, Trainer, Evaluation development	Overall project oversight, Financial operations, Administrative report to NDEE
Brian Bohnsack	Program Manager	Project Lead, NDEE Communication, Scheduling, Reporting, Evaluation development, Trainer	Collects all project reports, Project reports to NDEE and EFC Director
Nicholas Willis	Senior Program Manager	Trainer, Resource development	Reports to project lead
Jeff Severin	Program Manager	Trainer, Resource development	Reports to project lead
John Colclazier	Program Manager	Trainer, Resource development	Reports to project lead
Michelle Dehaven	Program Manager	Trainer, Evaluation development, Evaluation data collection and analysis, Marketing material development, Marketing implementation, Website development	Reports to project lead
Baylee Vieyra	Program Manager	Trainer, Resource development	Reports to project lead

EFC staff trainers’ resumes can be found in the Appendix of this document.

Wichita State University’s Office of Research will be responsible for contract negotiation and award compliance, as well as financial reporting, on behalf of the Environmental Finance Center at Wichita State University, should this contract be awarded.

j. Subcontractors

No subcontracts are anticipated for this project.

2. TECHNICAL APPROACH

a. Methodology

ORGANIZATIONAL BACKGROUND. The EPA Region 7 Environmental Finance Center (EFC) at Wichita State University was established to provide environmental and environmental finance training, technical assistance and applied research to each state in EPA Region 7, which includes Nebraska, Kansas, Iowa, and Missouri. The mission of the EFC is to build capacity for addressing environmental challenges, with the long-term vision of communities across the four states that are empowered to take actions that enhance their environmental and financial health to improve quality of life for everyone.

ORGANIZATIONAL EXPERIENCE. The EFC has provided trainings in Nebraska since its inception in 2010. These have involved topics such as asset management, utility rates and finances, energy management, sustainable utility management and water conservation and drought planning. These trainings have been stand-alone trainings and conducted in conjunction with the joint AWWA/WEF/APWA conference and the League of Nebraska Municipalities. Additional trainings have been provided to tribal utilities and boards in Nebraska.

Since 2014, the EFC has successfully led workshops and trainings on technical, managerial, and financial (TMF) capacity for drinking water system boards/owners. As the designers of the KanCap (Kansas Capacity Development) program and authors of the *KanCap Water Management Manual: A Guide for Water Boards*, the EFC is a nationally recognized leader in water system board/owner and staff training and professional development. The EFC is a community-focused organization that adapts training methods and topics to the needs of the clients and workshop attendees.

Using KanCap as a template, the EFC will develop drinking water system board/owner training that is specifically tailored to Nebraska, the needs of Nebraska Department of Environment and Energy (NDEE), and the communities identified and engaged through this program. Each time the EFC develops and conducts a training or workshop the location and relevant attending system needs are considered as the agenda is developed. One example of this adaptability is the evolution of the standard board/owner training from a full-day training to its current length of 4-hours based on years of evaluation feedback and input about the educational needs, availability, and interests of the attendees and collaborators.

AGENDA. EFC will develop a standardized agenda for the regional workshops in coordination with NDEE. However, EFC staff will coordinate with NDEE staff for each workshop to determine if sections or aspects of the training should be emphasized, deemphasized, or changed to meet the local systems' educational needs. For

example, the EFC may emphasize rates and finance and reduce portions on Nebraska open records and open meetings for a particular workshop if NDEE staff believe that this topic is the most important for participating systems.

TRAININGS/WORKSHOPS. A minimum of two (2) EFC staff will lead each regional workshop. At least one (1) EFC staff will attend the individual system trainings. Additional guest speakers and experts may be invited to participate if they will enhance the workshop agenda and goals.

Workshops and individual system trainings will feature a combination of lecture, group discussion, small group/breakout sessions, and practical exercises to help participants understand their roles and responsibilities in the oversight of the drinking water system.

Currently, the EFC has practical exercises developed for managerial capacity development, rates and financial management, capital improvement planning, and asset management training topics. Additional, practical exercises will be developed to provide real-world problem solving and critical thinking opportunities to training and workshop participants.

DURABLE RESOURCES. The WSU EFC will develop and source educational training materials and handouts specifically for the workshops and trainings that focus on the Nebraska Safe Drinking Water Act and its regulations and requirements for water systems and the learning objectives of each session. In addition, the EFC will compile and share existing resources from the EFC, EPA, other states' programs, trade associations, and other sources. A few of these existing potential resources include, but are not limited to:

- three short [videos](#) developed that describe boards/owners roles and responsibilities and the importance of asset management
- the [Nebraska Community Sustainability Tool](#) designed to help municipalities assess whether their water rates can support infrastructure investment
- [resources and training materials](#) for non-community systems

In addition, the WSU EFC will develop and host a dedicated *Nebraska board/owner workshop and training webpage* to provide attendees and others with a convenient, on-going source for water system board/owner TMF information.

EVALUATION. Program effectiveness will be evaluated directly after each workshop or training to assess learning and willingness to change. Then, 3-months after the events a second evaluation will be sent out to all participants to assess if behavior changes have taken place, to reiterate key learning objectives, and to provide ongoing encouragement for change. NDEE will be engaged when developing these

evaluation tools so that the program goals are measured through each evaluation question, and results and effectiveness are easily determined.

VIRTUAL OPTION. The EFC is able to conduct regional workshops and individual system trainings in-person or virtually. The system, NDEE, and the EFC can consider which format best fits the systems' needs for each workshop or training. All topics and teaching methods are able to transition from in-person to virtual. The EFC has experience providing virtual groups of 3-100 with breakout sessions, group discussions, and practical exercises for asset management, workforce development, rates and finance, and a number of other trainings. The EFC can create an engaging and educational agenda for all necessary topics.

Our asset management trainer often gets "best training I've ever had" on their virtual asset management professional development trainings. The EFC aims to create a fun and interactive learning environment, especially when training online.

Typically, the EFC uses the Zoom platform to conduct online educational opportunities. Through this platform the EFC is able to track and ensure a registrant's full participation through log-ins, log-outs, periodic polls, discussions, video, and other interactive elements. These regular interactive elements, keep participants engaged in the workshop/training, and provides easy participant tracking. The EFC can report any non-participation to NDEE.

b. # Board/Owner Regional Workshops

The WSU EFC will conduct at least four (4), up to six (6) regional workshops each year. At least one regional workshop will be completed in each of the four (4) NDEE regions annually. The locations and timing of these workshops will be based on input from NDEE staff and availability of targeted areas/systems. The workshops will be at least 3-hours in length, in recognition that many advisory board and council members are volunteers whose available time is limited. Likely, workshops will be held in the late afternoon to reduce or eliminate scheduling conflicts with board members' regular jobs. The EFC will remain flexible on workshop timing and will adjust as necessary, including scheduling trainings on weekends as needed.

Regional workshops, taught by at least two (2) EFC staff, will be held in person or virtually. The EFC has experience conducting engaging and interactive workshops and trainings for large (25+) and small groups (5-10) in person and virtually. The level of engagement does not diminish as trainings transition from in person to the virtual platform. Breakout/small group sessions are effective both in person and online. The EFC will defer to NDEE and the system to identify the preferred format.

c. Max attendees

The maximum number of regional workshop participants will be 35 when held in person, and 25 for virtual events. WSU EFC staff have led workshops with as many as 60 or more individuals in attendance. However, the large numbers can be problematic for ensuring quality, supervised participation in class exercises and can make location logistics more difficult.

d. Promotion/Marketing/Registration/Evaluation

PROMOTION/MARKETING. The EFC will use a variety of methods to promote and market the regional workshops:

- WSU EFC social media platforms (Facebook, Twitter, LinkedIn and Twitter)
- Direct email marketing developed by the EFC using Constant Contact – several rounds of promotional and event reminder emails are part of the EFC workshop marketing process that begins at least 6 weeks prior to the event date
- Coordination between EFC and NDEE to use existing NDEE communication systems and for NDEE to identify prioritized systems
- Coordination and communication with professional trade associations and other engaged organizations to promote on event calendars, in newsletters, etc.

The EFC will provide a copy of the marketing materials to NDEE for review, feedback, and approval. This may include an annual template in which all further marketing will be based. Or, if requested, for each individual regional workshop.

REGISTRATION. Registrations will be required for regional workshops in order to maintain the size of the classes. Registrations will be collected online through the EFC's event planning platform, but participants can also call to register. Registration is free and easy. Reminder emails are a part of the regular EFC event planning process.

Registration and participant lists will be provided to NDEE after each event, or as requested during the event planning process.

EVALUATION. The EFC will develop a post-event evaluation based on NDEE objectives to easily evaluate workshop effectiveness. All attendees will be provided an evaluation (electronic and/or paper-and-pen) at the completion of the workshops and classes.

Follow-up evaluations will be sent out three (3) months after each regional workshop to determine if TMF behavior, process, or system improvements have been made. Again, this follow-up evaluation will be developed in collaboration with NDEE to align participant questions with NDEE goals to ensure programmatic effectiveness and goal achievement.

Evaluations will be voluntary and anonymous. Individuals will be able to provide their contact information, if desired, to allow follow-up with questions and concerns. Evaluation results will be collected via Qualtrics software and the individual and collated responses will be provided to NDEE regularly.

e. # per year

The WSU EFC can provide up to six (6) individual system board trainings per year. The WSU EFC will try to maximize the efficiency of these trainings by scheduling them in close proximity geographically and on the calendar.

Individual system trainings, facilitated by at least one (1) EFC staff, can be held in person or virtually. The EFC has experience conducting engaging and interactive sessions with small groups (less than 10) in person and virtually. The level of engagement does not diminish as trainings transition from in person to the virtual platform. The EFC will defer to NDEE and the system to identify the preferred format.

f. Individual Systems Needs

The EFC is experienced in providing targeted asset management, board TMF, rates and finance, capital improvement planning, and other similar trainings for individual small systems. The EFC has provided, upon request, trainings for city staff interested in adopting asset management across their departments. For example,:

- in March of 2022, the EFC facilitated a 3-hour training for the City Council of Wakefield, KS, population 858. Five (5) city council members and the city clerk attended the training covering the managerial, financial and technical roles and responsibilities of boards that manage drinking water utilities.
- EFC staff are working with Moundridge, KS, a town of approximately 2,000 people, to begin asset management and capital improvement planning for their city. The individualized training focused primarily on water and wastewater utilities, but also included staff from police, streets, city administration and EMS. Follow-up work is planned to begin assessing the condition and criticality of sewer lift stations to develop capital and equipment replacement plans. Ultimately, this should feed into rates. We intend to do similar work on the water utility.

NDEE will provide the EFC with referrals to systems on the Priority List. Once a system is identified, EFC staff will seek input from both NDEE and the system about whether there are specific weaknesses that the training should focus on or if the training should focus on the traditional list of TMF topic areas (board/owner roles

and responsibilities, succession planning, public meeting regulations, rate setting capital reserves and the five core elements of asset management).

The EFC will adapt the training agenda to reflect the individual needs of a system and provide the agenda to NDEE for review, feedback, and acceptance. Examples of specific topics may include, but are not limited to, board/owner managerial roles and responsibilities, rates and financial components, succession planning and employee recruitment, or helping to prepare simple asset management inventories and plans.

Trainings for individual systems will vary in length. Trainings may be as short as two (2) hours or as long as six (6) hours, depending on system needs.

The EFC will provide educational and informational materials to the small systems in advance of the trainings when possible to enable participants to become familiar with the topics to be discussed.

g. Scheduling, exit surveys, recommendations/requests, follow-up surveys

SCHEDULING. After NDEE provides the EFC with the contact information for the system in need of training, having been issued an administrative order or requesting a training, the EFC will reach out to the system to schedule the training for a time that fits the system and the EFC trainer best, which may include evenings or weekends. The EFC will work with the system to identify a good location for the training depending on the size of the group (at least 5 required to attend).

In order to obtain a minimum of five (5) system attendees, the EFC will aim to register more than five (5) and communicate clearly to the system of the minimum attendance requirement. The EFC will collect potential attendee information and provide reminder emails, agendas, and list benefits of attendance to attempt to ensure all registered attendees attend.

The training agenda will be developed through conversations with the system and communication with NDEE regarding the needs of the system. EFC will provide the agenda to NDEE for review, feedback, and approval.

EVALUATION. The EFC will develop a post-event evaluation based on NDEE objectives to easily evaluate training effectiveness. All attendees will be provided an evaluation (electronic and/or paper-and-pen) at the completion of the training.

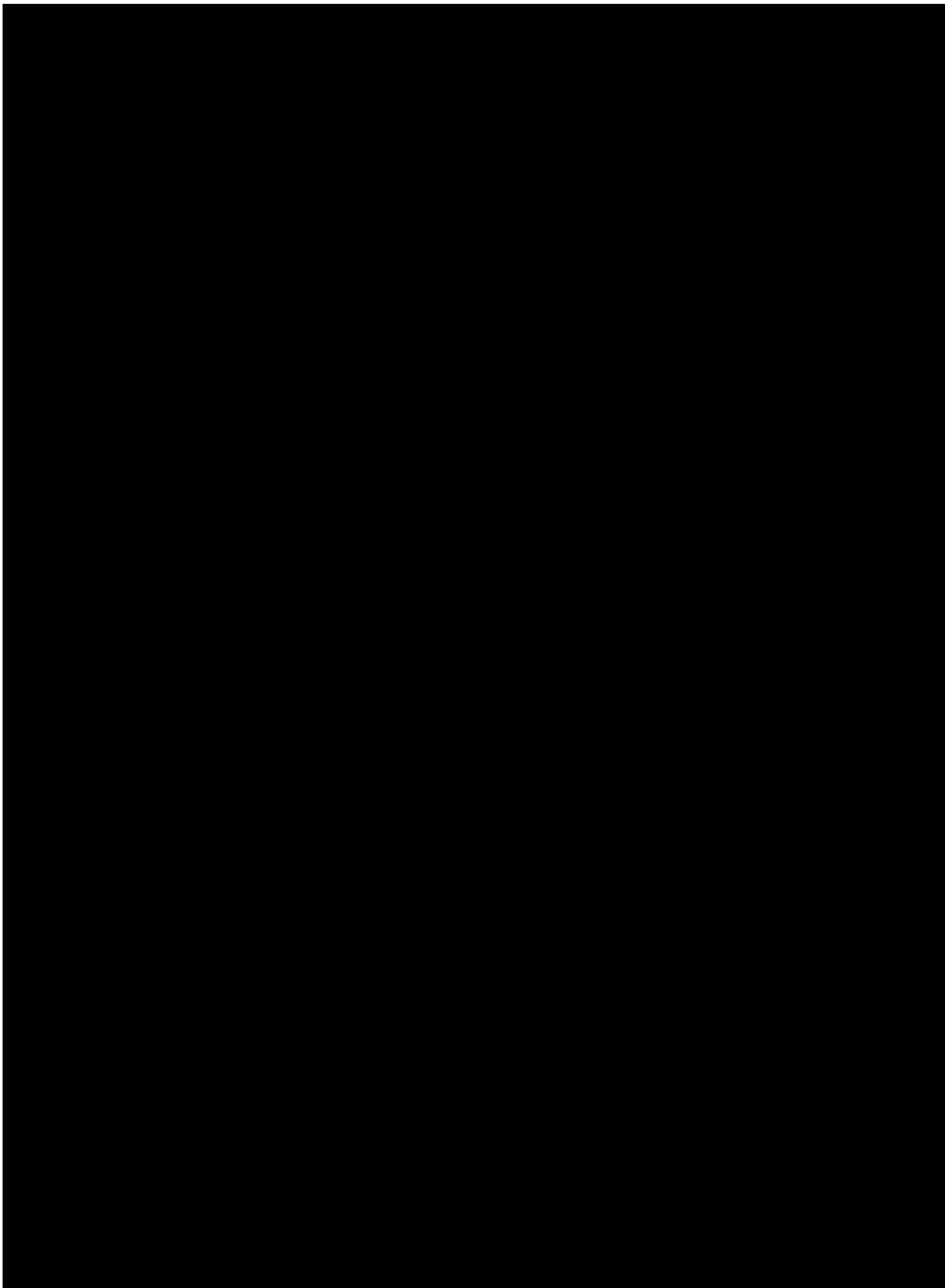
Follow-up evaluations will be sent out three (3) months after each individual system training to determine if TMF behavior, process, or system improvements have been made. Again, this follow-up evaluation will be developed in collaboration with NDEE

to align participant questions with NDEE goals to ensure programmatic effectiveness and goal achievement.

Evaluations will be voluntary and anonymous. Individuals will be able to provide their contact information, if desired, to allow follow-up with questions and concerns. Evaluation results will be collected via Qualtrics software and the individual and collated responses will be provided to NDEE regularly.

Appendix

Staff Resumes



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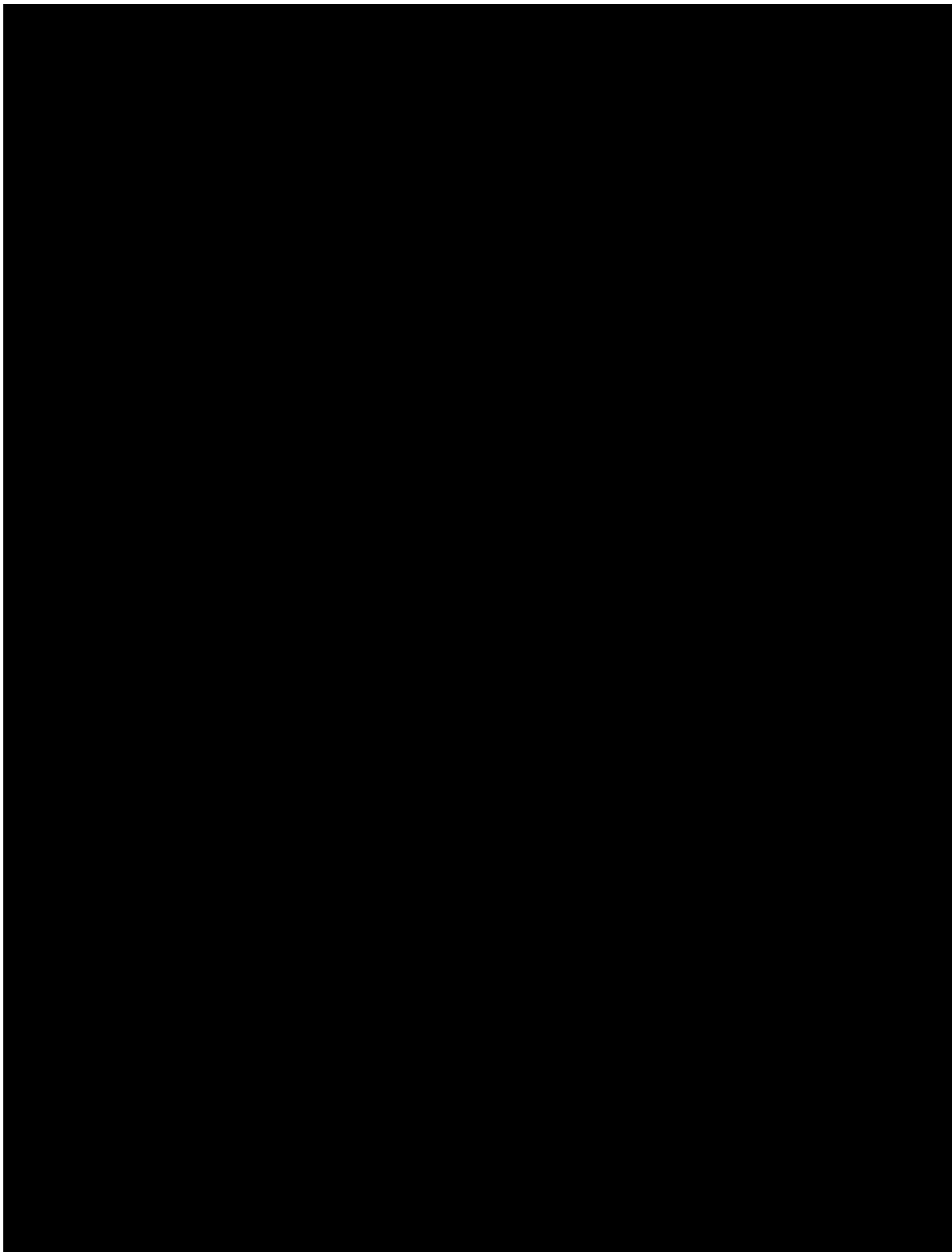
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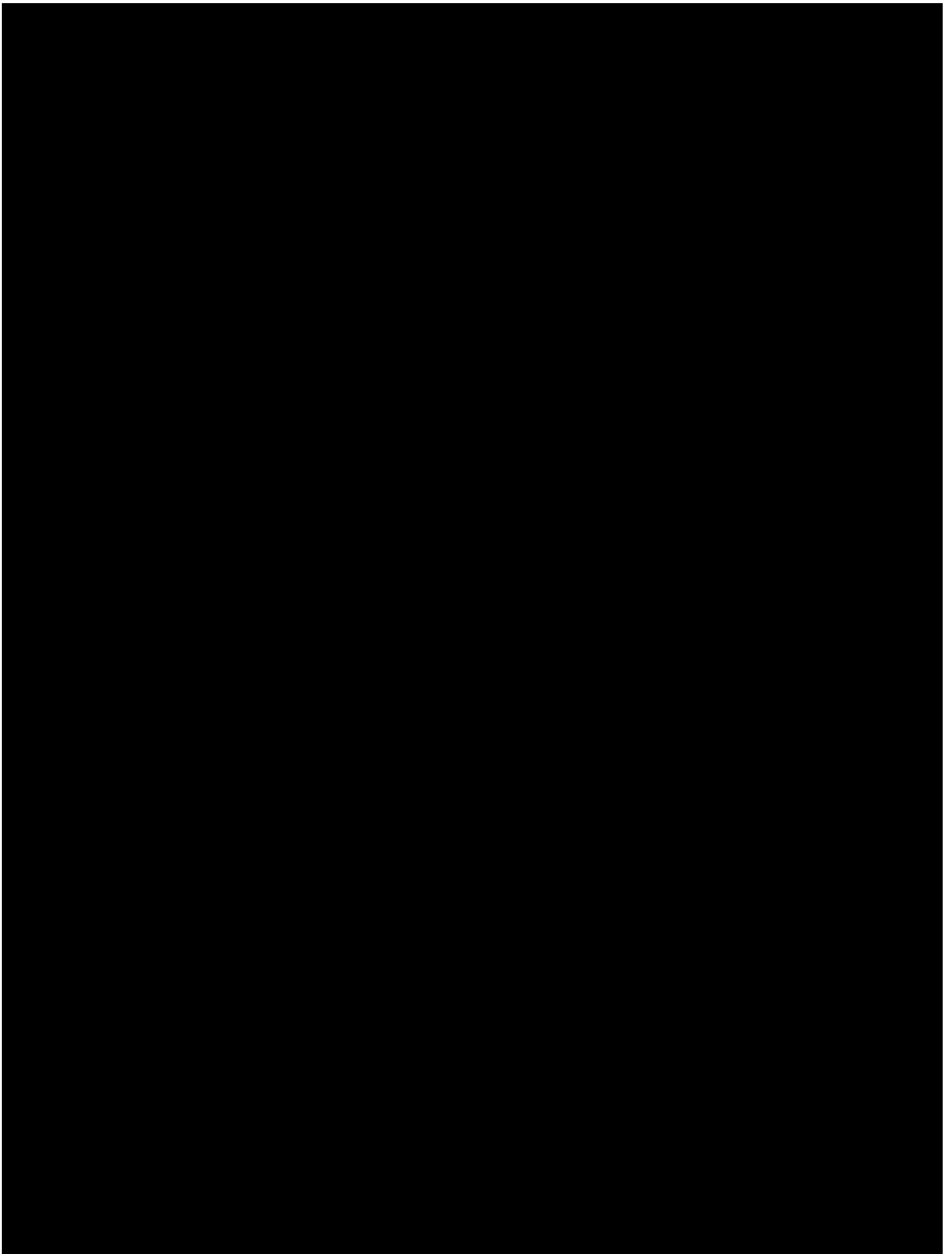
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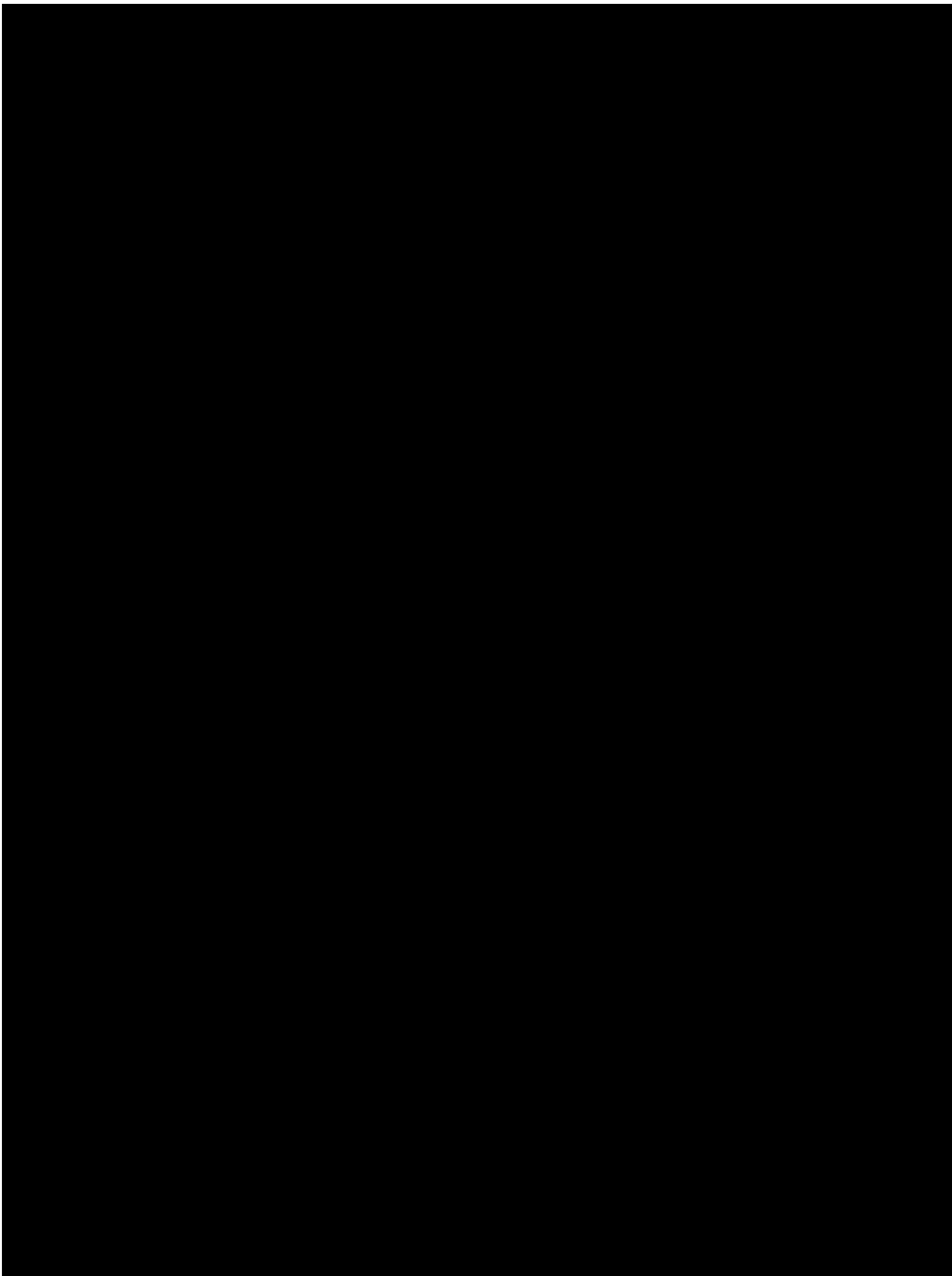
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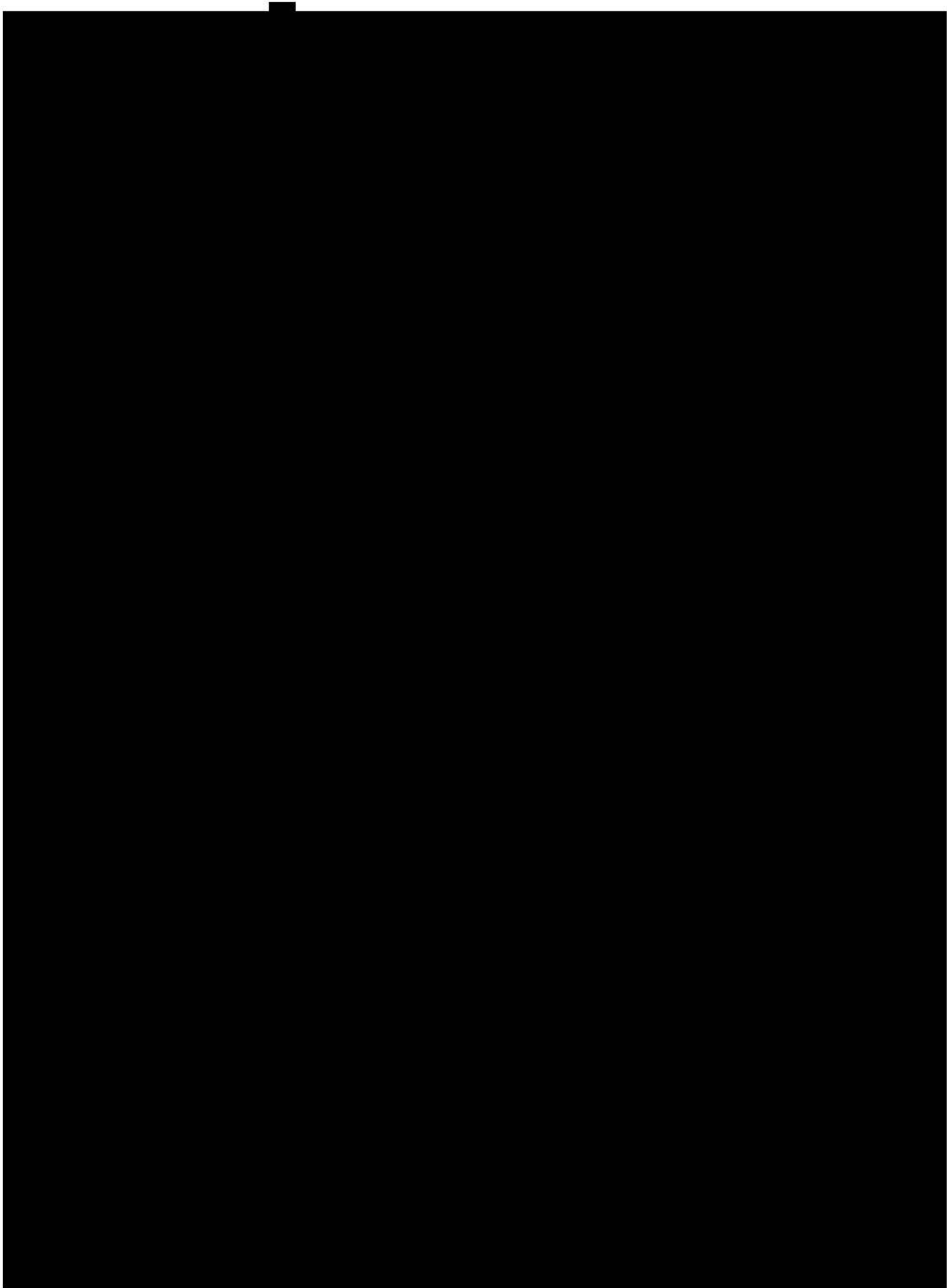


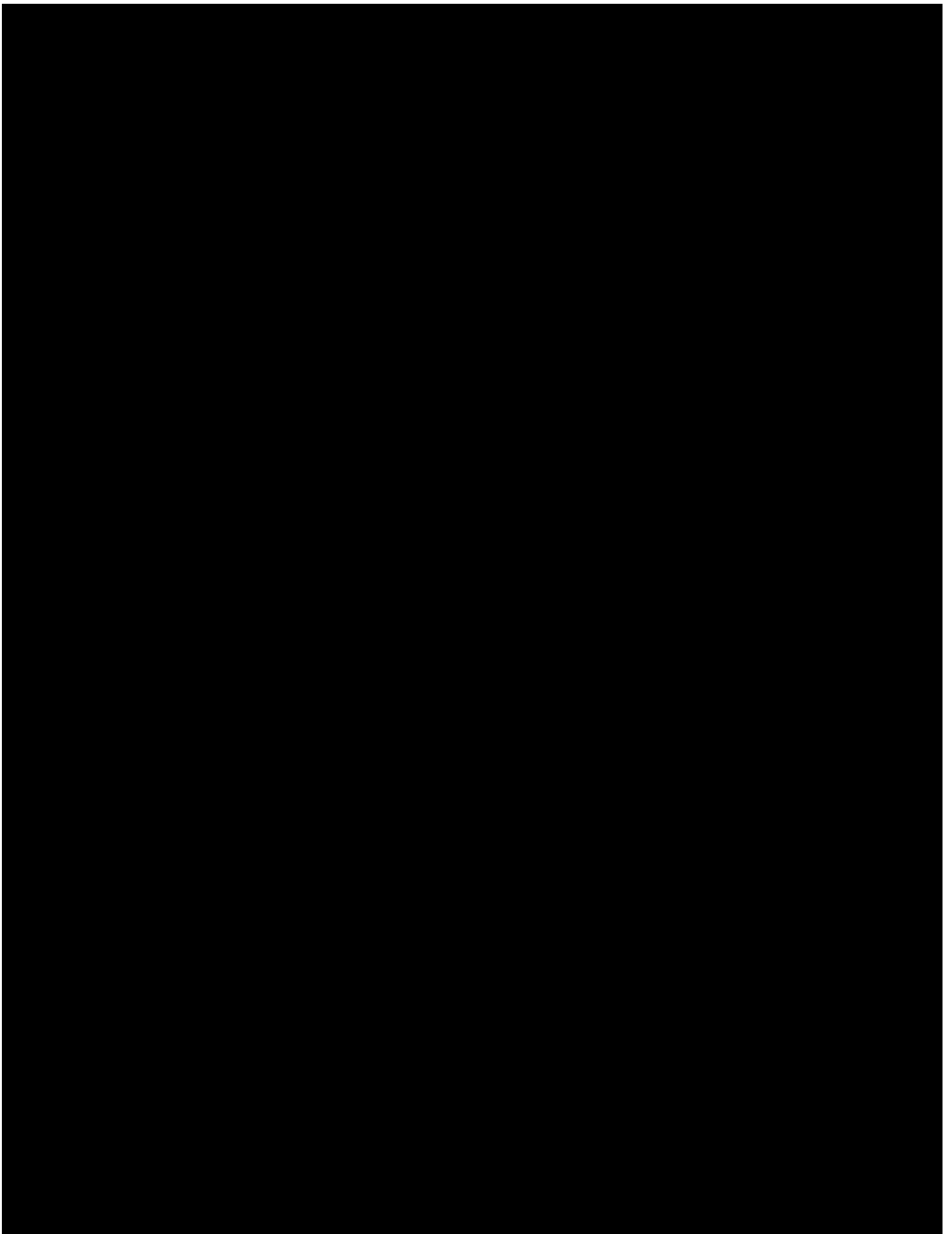
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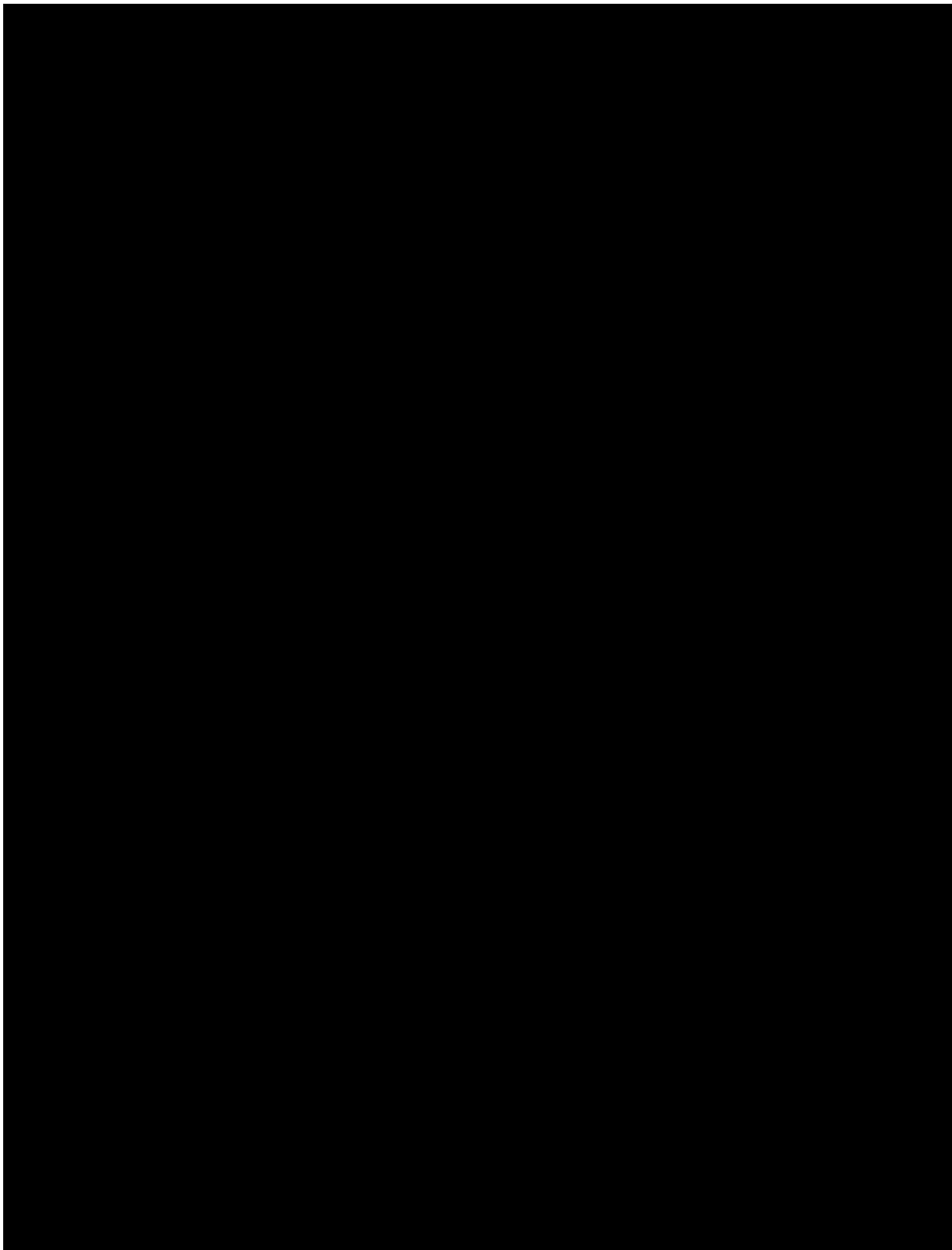


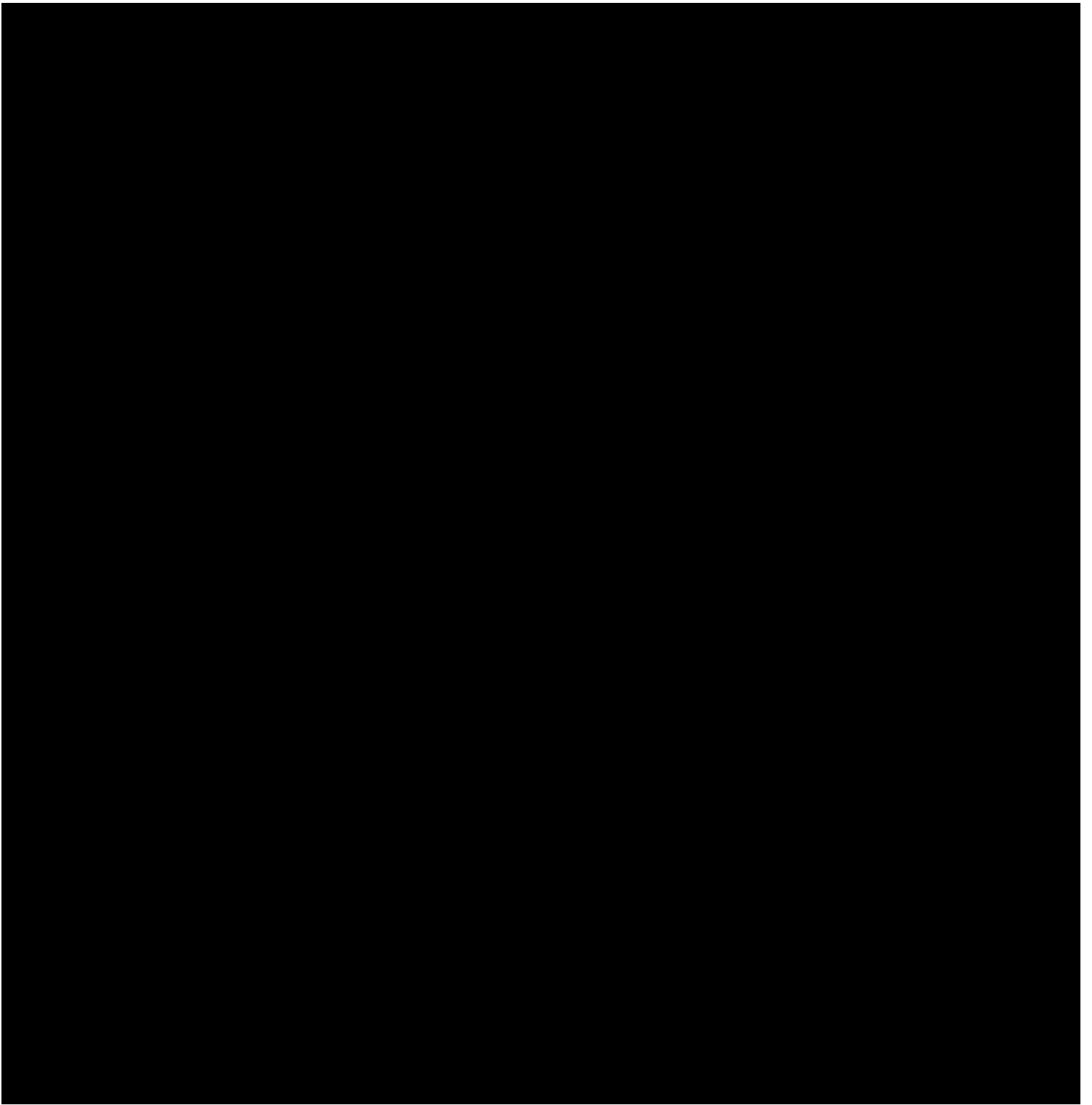
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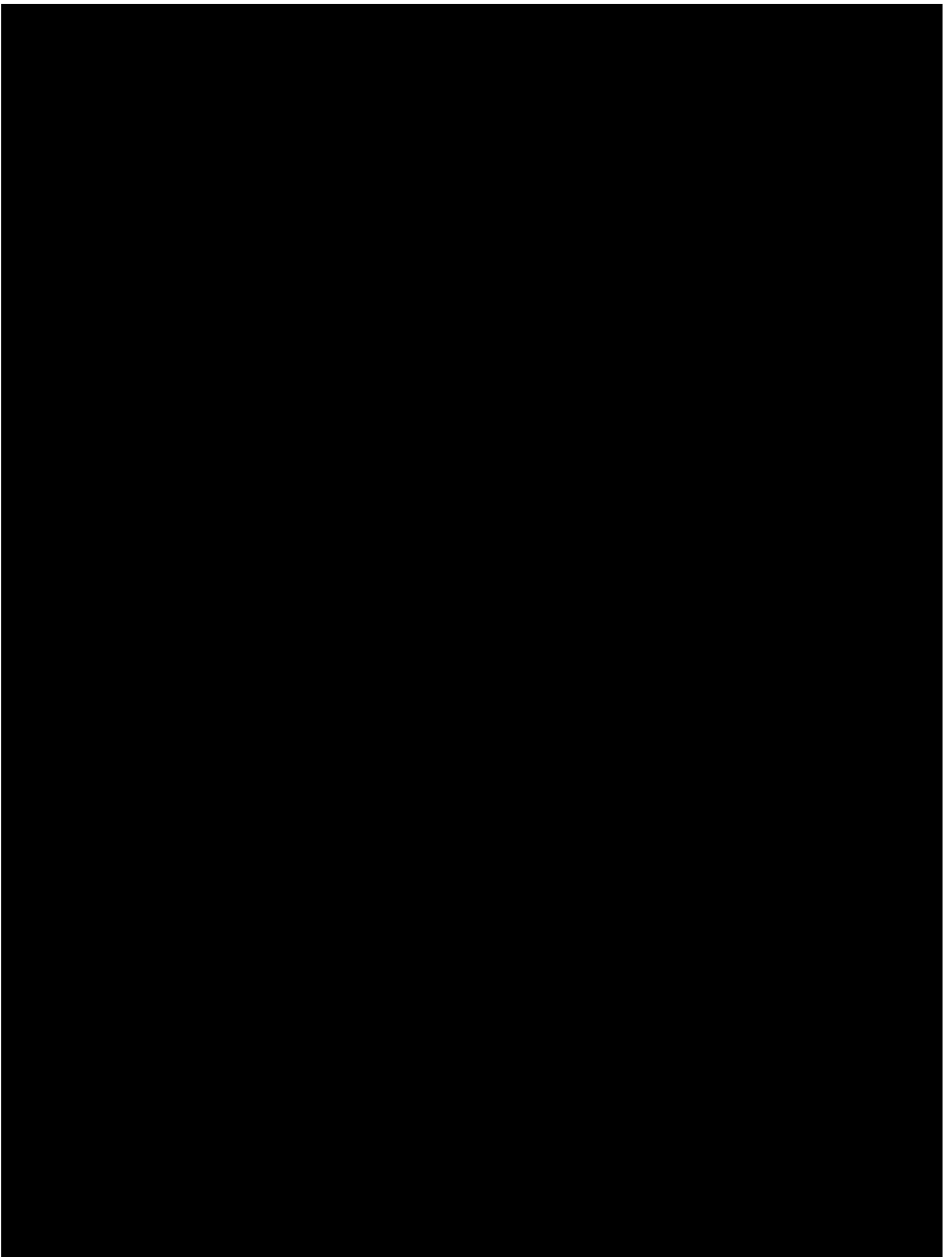
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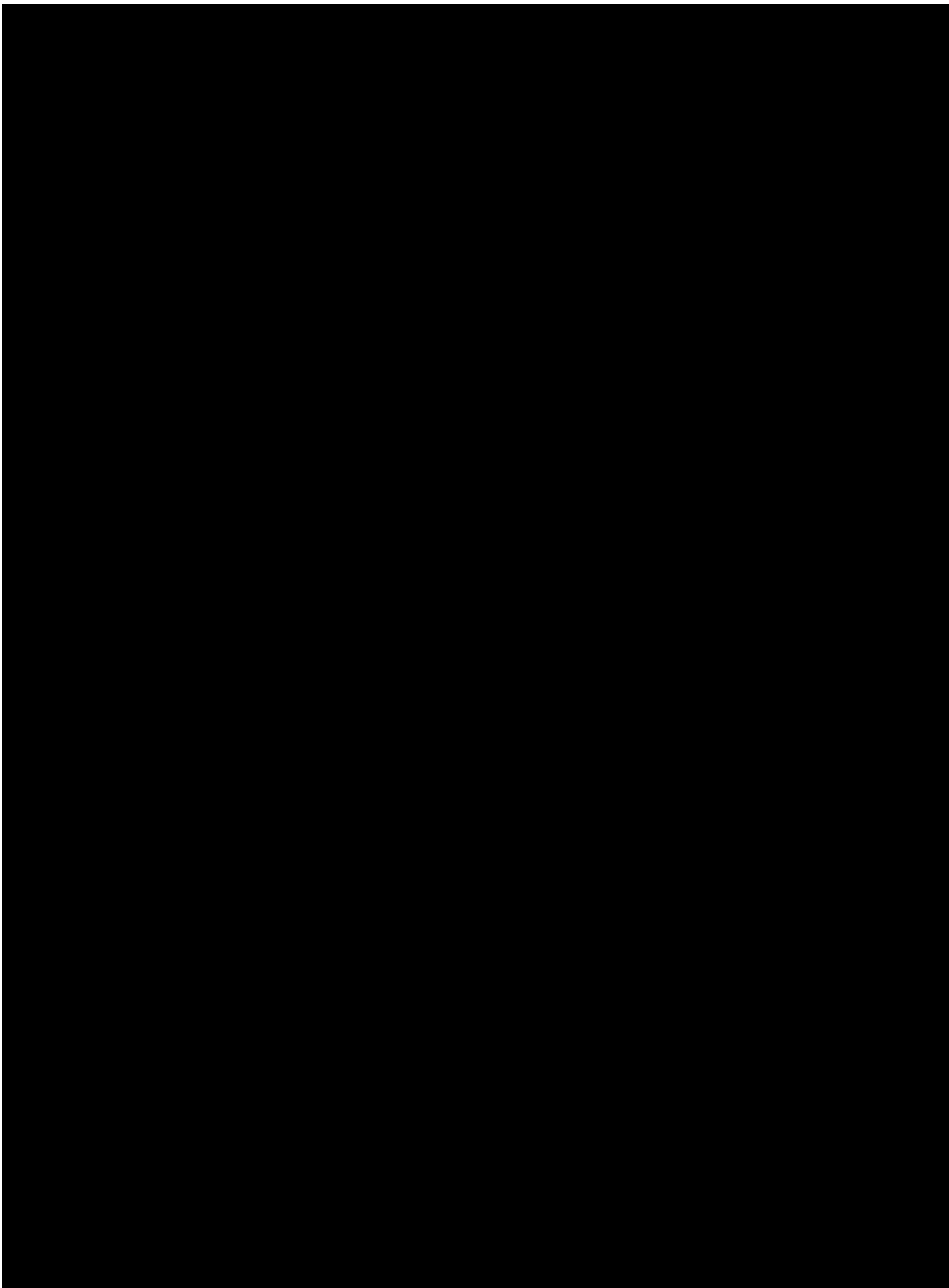
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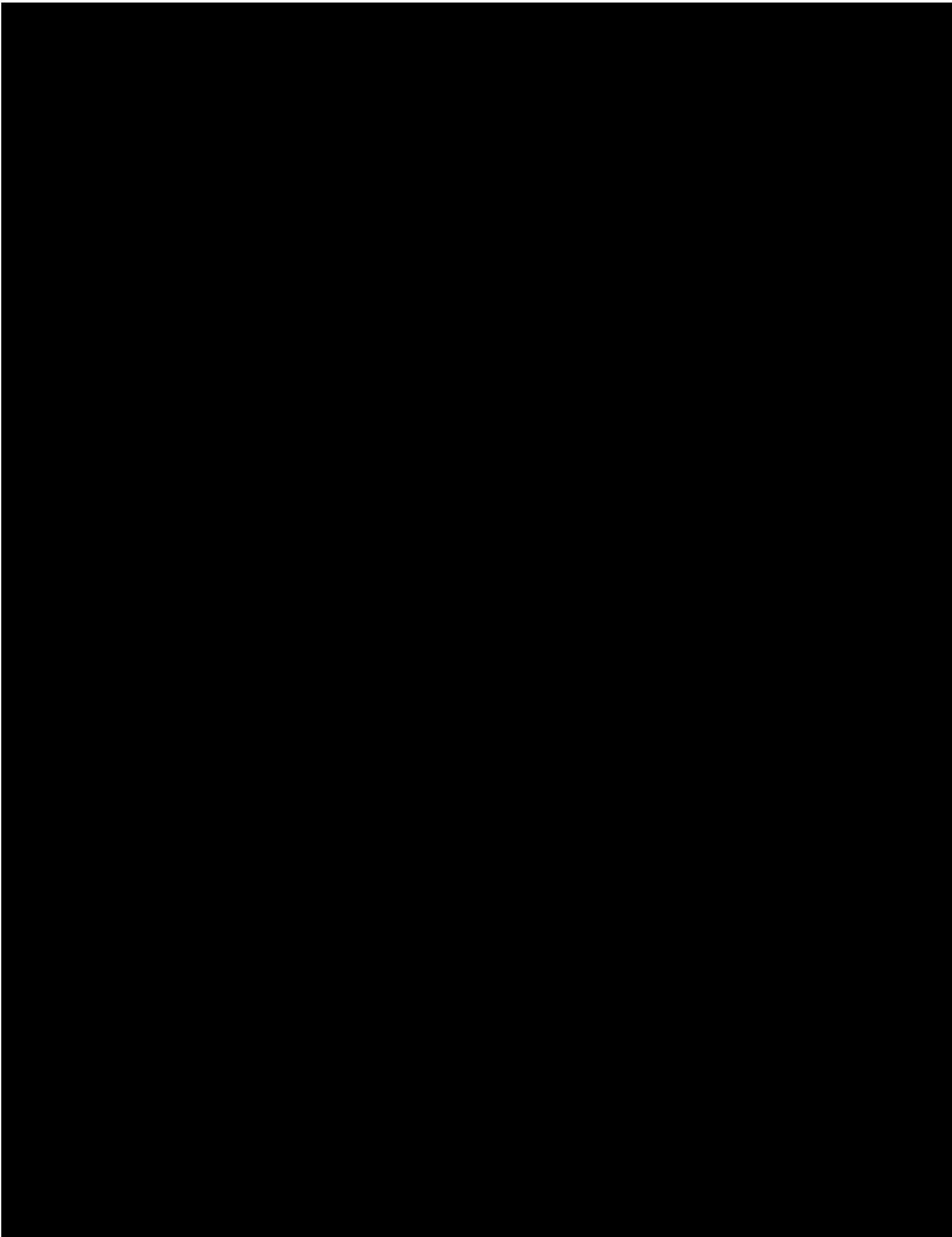


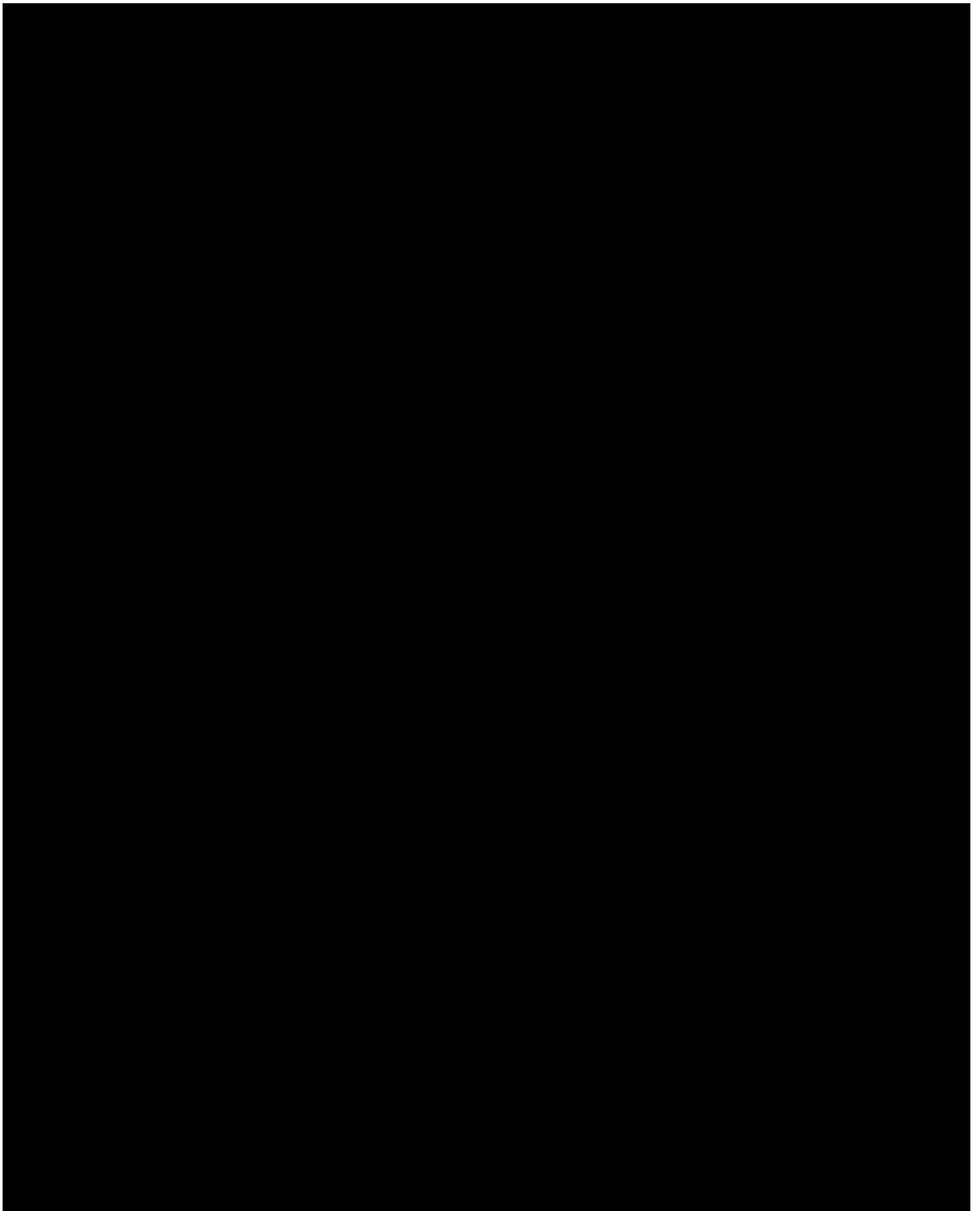
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REQUEST FOR PROPOSAL NUMBER	RELEASE DATE
RFP 6691 Z1	April 21, 2022
OPENING DATE AND TIME	PROCUREMENT CONTACT
May 24, 2022, 2:00 P.M. Central Time	Annette Walton

Wichita State University’s DEVIATIONS FROM THE REQUEST FOR PROPOSAL:

Wichita State University (WSU) submits these exceptions to the above referenced RFP 6691 Z1 documents. In the event of an award, WSU requests the ability to negotiate the award contract consistent with the exceptions shown in redline below.

~~Any entity awarded a contract or submitting a proposal or response to the solicitation agrees not to sue, file a claim, or make a demand of any kind, and will indemnify and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses, sustained or asserted against the State, arising out of, resulting from, or attributable to the posting of the contract or the proposals and responses to the solicitation, awards, and other documents.~~

WSU Response: As a state educational institution, WSU cannot agree to the blanket provisions of this paragraph. If awarded, WSU will need to insert language limiting and/or eliminating these provisions in accordance with the institution’s sovereign immunity.

Section I, F. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS (§ 21-2,203 Statutory)

~~All contractors~~To the extent applicable to WSU, contractor must be authorized to transact business in the State of Nebraska and comply with all Nebraska Secretary of State registration requirements. The bidder who is the recipient of an Intent to Award may be required to certify that it has complied and produced a true and exact copy of its current (within ninety (90) calendar days of the intent to award) Certificate of Good Standing, or in the case of a sole proprietorship, provide written documentation of sole proprietorship and complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at <http://das.nebraska.gov/materiel/purchasing.html>. This must be accomplished prior to execution of the contract.

As a state educational institution, WSU requests the modification above.

Section I, N. FAILURE TO COMPLY WITH REQUEST FOR PROPOSAL

Violation of the terms and conditions contained in this solicitation or any resulting contract, at any time before or after the award, shall be grounds for action by the State which may include, but is not limited to, the following:

1. Rejection of a bidder’s proposal;
2. Withdrawal of the Intent to Award;
3. Withdrawal of the Award;
4. Negative Vendor Performance Report(s);
5. Termination of the resulting contract;
6. Legal action; and
7. Suspension from further bidding ~~for that specific unit of bidder actually performing work under this Contract~~

WSU is a state educational institution of Kansas with multiple departments and units performing work under a variety of state contracts. As such, we request this clause be narrowed to apply only to the specific WSU department/unit performing work under this Contract, rather than the entire University.

II. TERMS AND CONDITIONS

Bidders should complete Sections II through VI as part of the proposal. Bidder is expected to read the Terms and Conditions and initial either accept, reject, or reject and provide alternative language for each clause. The bidder should also provide an explanation of why the clause was rejected or why the clause was rejected with alternative language provided. By signing the solicitation, bidder is agreeing to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the proposal. The State reserves the right to reject or negotiate the bidder's rejected or proposed alternative language.

If the State and bidder fail to agree on the final Terms and Conditions, the State reserves the right to reject the proposal. The State reserves the right to reject proposals that attempt to substitute the bidder's commercial contracts and/or documents for this solicitation.

Bidders must submit with the proposal any license, user agreement, service level agreement, or similar documents that the bidder wants incorporated in the Contract. The State will not consider incorporation of any document not submitted with the bidder's proposal. These documents shall be subject to negotiation and will be incorporated as addendums if agreed to by the Parties.

If a conflict or ambiguity arises after the Addendum to Contract Award has been negotiated and agreed to, the Addendum to Contract Award shall be interpreted as follows:

1. If only one Party has a particular clause, then that clause shall control;
2. If both Parties have a similar clause, but the clauses do not conflict, the clauses shall be read together;
3. If both Parties have a similar clause, but the clauses conflict, the State's clause shall control.

A. GENERAL

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X	<i>WSU requests to go silent on governing law.</i>

The Contract resulting from this solicitation shall incorporate the following documents:

1. Request for Proposal and Addenda;
2. Amendments to the solicitation;
3. Questions and Answers;
4. Contractor's proposal (Contractor's response to the solicitation and properly submitted documents); and
5. Amendments and Addendums to the Contract.

These documents constitute the entirety of the contract.

Unless otherwise specifically stated in a future contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) Amendments and addendums to the executed Contract with the most recent dated amendment or addendum, respectively, having the highest priority, 2) Amendments to solicitation 3) Questions and Answers, 4) the original solicitation document and any Addenda, and 5) the Contractor's submitted Proposal.

~~Any ambiguity or conflict in the contract discovered after its execution, not otherwise addressed herein, shall be resolved in accordance with the rules of contract interpretation as established in the State of Nebraska.~~

B. NOTIFICATION

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X	<i>Wichita State University requests reciprocal notice language to ensure all notices are timely received by the appropriate individuals. Names and addresses for notices sent to WSU have been provided.</i>

All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") that may be required or desired to be given by either party to the other shall be IN WRITING and addressed as follows: Contractor and State shall identify the contract manager who shall serve as the point of contact for the executed contract.

If to the State of Nebraska:

State shall identify the contract manager who shall serve as the point of contact for the executed contract

If to Wichita State University:

Attn: Office of Research
Wichita State University
1845 Fairmount, Campus Box 007
Wichita, Kansas 67260-0007

With a copy to:

Attn: General Counsel
Wichita State University
1845 Fairmount, Campus Box 205
Wichita, Kansas 672600-0205

~~Communications regarding the executed contract shall be in writing and shall be deemed to have been given if delivered personally, electronically or mailed.~~ All notices, requests, or communications shall be deemed effective upon receipt.

C. PCO'S REPRESENTATIVE

The State reserves the right to appoint a PCOs Representative to manage [or assist the PCO in managing] the contract on behalf of the State. The PCP's Representative will be appointed in writing, and the appointment document will specify the extent of the PCO's Representative authority and responsibilities. If a PCO's Representative is appointed, the Contractor will be provided a copy of the appointment document and is required to cooperate accordingly with the PCO's Representative. The PCO's Representative has no authority to bind the State to a contract, amendment, addendum, or other change or addition to the contract.

D. GOVERNING LAW (Statutory)

~~Notwithstanding any other provision of this contract, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that, (1) the State of Nebraska is a sovereign state and its authority to contract is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation; (2) this contract will be interpreted and enforced under the laws of the State of Nebraska; (3) any action to enforce the provisions of this agreement must be brought in the State of Nebraska per state law; (4) the person signing this contract on behalf of the State of Nebraska does not have the authority to waive the State's sovereign immunity, statutes, common law, or regulations; (5) the indemnity, limitation of liability, remedy, and other similar provisions of the final contract, if any, are entered into subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity; and, (6) all terms and conditions of the final contract, including but not limited to the clauses concerning third party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy or other similar provisions of the final contract are entered into specifically subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity.~~ INTENTIONALLY LEFT BLANK

The Parties must comply with all applicable local, state and federal laws, ordinances, rules, orders, and regulations.

E. BEGINNING OF WORK

The awarded Bidder shall not commence any billable work until a valid contract has been fully executed by the State. The awarded Bidder will be notified when work may begin.

F. AMENDMENT

This Contract may be amended only in writing, within scope, upon the agreement of both parties.

G. PRICES

Prices quoted shall be net, including transportation and delivery charges fully prepaid by the contractor, F.O.B. destination named in the RFP. No additional charges will be allowed for packing, packages, or partial delivery costs. When an arithmetic error has been made in the extended total, the unit price will govern.

Prices submitted on the cost proposal form shall remain fixed for the first year of the contract. Any request for a price increase subsequent to the first year of the contract shall not exceed five percent (5%) of the previous Contract period. Increases will be cumulative across the remaining periods of the contract. Requests for an increase must be submitted in writing to the State Purchasing Bureau a minimum of 120 days. Documentation may be required by the State to support the price increase.

The State reserves the right to deny any requested price increase. No price increases are to be billed to any State Agencies prior to written amendment of the contract by the parties.

The State will be given full proportionate benefit of any decreases for the term of the contract.

H. CHANGE ORDERS OR SUBSTITUTIONS

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
X			

The State and the Contractor, upon the written agreement, may make changes to the contract within the general scope of the solicitation. Changes may involve specifications, the quantity of work, or such other items as the State may find necessary or desirable. Corrections of any deliverable, service, or work required pursuant to the contract shall not be deemed a change. The Contractor may not claim forfeiture of the contract by reasons of such changes.

The Contractor shall prepare a written description of the work required due to the change and an itemized cost sheet for the change. Changes in work and the amount of compensation to be paid to the Contractor shall be determined in accordance with applicable unit prices if any, a pro-rated value, or through negotiations. The State shall not incur a price increase for changes that should have been included in the Contractor's proposal, were foreseeable, or result from difficulties with or failure of the Contractor's proposal or performance.

No change shall be implemented by the Contractor until approved by the State, and the Contract is amended to reflect the change and associated costs, if any. If there is a dispute regarding the cost, but both parties agree that immediate implementation is necessary, the change may be implemented, and cost negotiations may continue with both Parties retaining all remedies under the contract and law.

In the event any product is discontinued or replaced upon mutual consent during the contract period or prior to delivery, the State reserves the right to amend the contract to include the alternate product at the same price.

*****Contractor will not substitute any item that has been awarded without prior written approval of SPB*****

I. VENDOR PERFORMANCE REPORT(S)

The State may document any instance(s) of products or services delivered or performed which exceed or fail to meet the terms of the purchase order, contract, and/or solicitation specifications. The State Purchasing Bureau may contact the Vendor regarding any such report. Vendor performance report(s) will become a part of the permanent record of the Vendor.

J. NOTICE OF POTENTIAL CONTRACTOR BREACH

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X	

If Contractor breaches the contract or anticipates breaching the contract, the Contractor shall immediately give written notice to the State. The notice shall explain the breach or potential breach, a proposed cure, and may include a request for a waiver of the breach if so desired. The State may, in its discretion, temporarily or permanently waive the breach. ~~By granting a waiver, the State does not forfeit any rights or remedies to which the State is entitled by law or equity, or pursuant to the provisions of the contract.~~ Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.

K. BREACH

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X	

Either Party may terminate the contract, in whole or in part, if the other Party breaches its duty to perform its obligations under the contract in a timely and proper manner. Termination requires written notice of default and a ~~thirty-sixty (3060)~~ calendar day (or longer at the non-breaching Party's discretion considering the gravity and nature of the default) cure period. Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. In case of default of the Contractor, the State may contract the service from other sources and hold the Contractor responsible for any excess cost occasioned thereby. ~~State is obligated to mitigate the costs from the Contractor's breach or default.~~ The State may recover from the Contractor as damages the difference between the costs of covering the breach. Notwithstanding any clause to the contrary, the State may also recover the contract price together with any incidental or consequential damages defined in UCC Section 2-715, but less expenses saved in consequence of Contractor's breach.

The State's failure to make payment shall not be a breach, and the Contractor shall retain all available statutory remedies and protections, including, but not limited to, charging interest to the State (Refer to Prompt Payment Act).

L. NON-WAIVER OF BREACH

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X	

Allowing time to cure or the acceptance of late performance with or without objection or reservation by a Party shall not waive any rights of the Party, including, but not limited to the right to ~~immediate~~ terminate the contract for the same or a different breach following the applicable cure period, or constitute a waiver of the requirement of timely performance of any obligations remaining to be performed.

M. SEVERABILITY

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:

X			
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If any term or condition of the contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the provision held to be invalid or illegal.

N. INDEMNIFICATION

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X	<i>Wichita State University is a state educational institution of Kansas and unable to indemnify other parties. WSU's liability is limited under the Kansas Tort Claims Act (K.S.A. 65-7101 et. seq.) (KTCA).</i>

1. GENERAL

To the extent allowable under the Kansas Tort Claims Act (K.S.A. 65-7101 et seq.), the Contractor agrees to defend, indemnify, and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all third party claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, and costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State for personal injury, death, or property loss or damage, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Contractor, its employees, subcontractors, consultants, representatives, and agents, resulting from this contract, except to the extent such Contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

2. PERSONNEL

The Contractor shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel, including subcontractors and employees, provided by the Contractor.

3. SELF-INSURANCE

The State of Nebraska is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01 (Reissue 2008). If there is a presumed loss under the provisions of this agreement, Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 – 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (§81-8,294), Tort (§81-8,209), and Contract Claim Acts (§81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 et seq. and under any other provisions of law and accepts liability under this agreement to the extent provided by law.

4. The Parties acknowledge that Attorney General for the State of Nebraska is required by statute to represent the legal interests of the State, and that any provision of this indemnity clause is subject to the statutory authority of the Attorney General.

O. ATTORNEY'S FEES

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
	X		

~~In the event of any litigation, appeal, or other legal action to enforce any provision of the contract, the Parties agree to pay all expenses of such action, as permitted by law and if ordered by the court, including attorney's fees and costs, if the other Party prevails.~~

P. ASSIGNMENT, SALE, OR MERGER

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
X			

Either Party may assign the contract upon mutual written agreement of the other Party. Such agreement shall not be unreasonably withheld.

The Contractor retains the right to enter into a sale, merger, acquisition, internal reorganization, or similar transaction involving Contractor's business. Contractor agrees to cooperate with the State in executing amendments to the contract to allow for the transaction. If a third party or entity is involved in the transaction, the Contractor will remain responsible for performance of the contract until such time as the person or entity involved in the transaction agrees in writing to be contractually bound by this contract and perform all obligations of the contract.

Q. CONTRACTING WITH OTHER NEBRASKA POLITICAL SUB-DIVISIONS OF THE STATE OR ANOTHER STATE

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
X			

The Contractor may, but shall not be required to, allow agencies, as defined in Neb. Rev. Stat. §81-145, to use this contract. The terms and conditions, including price, of the contract may not be amended. The State shall not be contractually obligated or liable for any contract entered into pursuant to this clause. A listing of Nebraska political subdivisions may be found at the website of the Nebraska Auditor of Public Accounts.

The Contractor may, but shall not be required to, allow other states, agencies or divisions of other states, or political subdivisions of other states to use this contract. The terms and conditions, including price, of this contract shall apply to any such contract, but may be amended upon mutual consent of the Parties. The State of Nebraska shall not be contractually or otherwise obligated or liable under any contract entered into pursuant to this clause. The State shall be notified if a contract is executed based upon this contract.

R. FORCE MAJEURE

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
X			

Neither Party shall be liable for any costs or damages, or for default resulting from its inability to perform any of its obligations under the contract due to a natural or manmade event outside the control and not the fault of the affected Party ("Force Majeure Event"). The Party so affected shall immediately make a written request for relief to the other Party and shall have the burden of proof to justify the request. The other Party may grant the relief requested; relief

may not be unreasonably withheld. Labor disputes with the impacted Party's own employees will not be considered a Force Majeure Event.

S. CONFIDENTIALITY

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X	<i>See requested edit below. All materials and information must be clearly marked in order to be regarded as confidential information.</i>

All materials and information clearly marked confidential provided by the Parties or acquired by a Party ~~on behalf of from~~ the other Party shall be regarded as confidential information ("Confidential Information"). All ~~materials and information provided or acquired Confidential Information~~ shall be handled in accordance with federal and state law, ~~and ethical standards~~. Should said confidentiality be breached by a receiving Party, the receiving Party shall notify the ~~other disclosing~~ Party immediately of said breach and ~~take the Parties shall coordinate immediate~~ corrective action.

Confidential Information shall not include information already lawfully in the public domain or known to the receiving Party without restriction (as evidenced by competent records), or generally known in the relevant trade or industry, when first received from the disclosing Party. Confidential Information will lose its status as Confidential Information hereunder if it becomes publicly available through no wrongful act of the receiving Party, is lawfully disclosed to the receiving Party without restriction by a source other than the disclosing Party, or is developed by the receiving Party entirely independently without use of or reference to the disclosing Party's Confidential Information.

Each party shall preserve in confidence any Confidential Information received hereunder for a period of ten (10) years (the "Protection Period"). Except as set forth herein, for the duration of the Protection Period, a receiving Party will not disclose Confidential Information received hereunder to any third party without the disclosing Party's prior written consent. Nothing herein shall prevent a receiving Party from disclosing Confidential Information as required by law or court order.

It is incumbent upon the Parties to ~~inform officers and employees of the penalties for improper disclosure imposed by~~ adhere to the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, to the extent that such law applies to each Party, if at all. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable by 5 U.S.C. 552a (m)(1), provides that any officer or employee, who by virtue of his/her employment or official position has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

T. EARLY TERMINATION

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X	<i>See requested edits below. WSU is entitled to compensation for all work performed or services / products provided, as well as any noncancellable commitments.</i>

The contract may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the contract at any time.
2. The State, in its sole discretion, may terminate the contract for any reason upon 30 calendar day's written notice to the Contractor. Such termination shall not relieve the Contractor of warranty or other service obligations incurred under the terms of the contract. In the event of termination, the Contractor shall be

entitled to payment, determined on a pro rata basis, for products or services ~~satisfactorily~~ performed or provided.

3. The State may terminate the contract immediately for the following reasons:
- a. if directed to do so by statute;
 - b. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
 - c. a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;
 - d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders;
 - e. an involuntary proceeding has been commenced by any Party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least 60 calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;
 - f. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;
 - g. Contractor intentionally discloses ~~C~~onfidential ~~I~~information in violation of this Agreement;
 - h. Contractor has or announces it will discontinue support of the deliverable; and,
 - i. In the event funding is no longer available.

U. CONTRACT CLOSEOUT

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		x	<i>WSU, as a state university, must retain ownership of all intellectual property it develops.</i>

Upon contract closeout for any reason the Contractor shall within 30 days, unless stated otherwise herein:

1. Transfer all completed or partially completed deliverables to the State;
2. Transfer ownership and title to all completed or partially completed deliverables to the State;
3. Return to the State all information and data, unless the Contractor is permitted to keep the information or data by contract or rule of law. Contractor may retain one copy of any information or data as required to comply with applicable work product documentation standards or as are automatically retained in the course of Contractor's routine back up procedures;
4. Cooperate with any successor Contactor, person or entity in the assumption of any or all of the obligations of this contract;
5. Cooperate with any successor Contactor, person or entity with the transfer of information or data related to this contract;
6. Return or vacate any ~~s~~State owned real or personal property; and,
7. Return all data in a mutually acceptable format and manner.

All rights, title, and interest to all intellectual property attributable solely to one or more employees of Contractor and arising out of or during the course of performing this Agreement shall vest in Contractor. Nothing in this Section should be construed to require the Contractor to surrender intellectual property, real or personal property, or information or data owned by the Contractor for which the State has no legal claim.

III. CONTRACTOR DUTIES

A. INDEPENDENT CONTRACTOR / OBLIGATIONS

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X	

It is agreed that the Contractor is an independent contractor and that nothing contained herein is intended or should be construed as creating or establishing a relationship of employment, agency, or a partnership.

The Contractor is solely responsible for fulfilling the contract. The Contractor or the Contractor's representative shall be the sole point of contact regarding all contractual matters.

The Contractor shall secure, at its own expense, all personnel required to perform the services under the contract. The personnel the Contractor uses to fulfill the contract shall have no contractual or other legal relationship with the State; they shall not be considered employees of the State and shall not be entitled to any compensation, rights or benefits from the State, including but not limited to, tenure rights, medical and hospital care, sick and vacation leave, severance pay, or retirement benefits.

By-name personnel commitments made in the Contractor's proposal shall not be changed without the prior written approval of the State. Replacement of these personnel, if approved by the State, shall be with personnel of equal or greater ability and qualifications.

All personnel assigned by the Contractor to the contract shall be employees of the Contractor or a subcontractor and shall be fully qualified to perform the work required herein. Personnel employed by the Contractor or a subcontractor to fulfill the terms of the contract shall remain under the sole direction and control of the Contractor or the subcontractor respectively.

With respect to its employees, the Contractor agrees to be solely responsible for the following as applicable:

1. Any and all pay, benefits, and employment taxes and/or other payroll withholding;
2. Any and all vehicles used by the Contractor's employees, including all insurance required by state-Kansas law;
3. Damages incurred by Contractor's employees within the scope of duties under the contract;
4. Maintaining Workers' Compensation and health insurance that complies with state-Kansas and federal law and submitting any reports on such insurance to the extent required by governing law;
5. Determining the hours to be worked and the duties to be performed by the Contractor's employees; and,
6. All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination alleged against the Contractor, its officers, agents, or subcontractors or subcontractor's employees)

If the Contractor intends to utilize any subcontractor, the subcontractor's level of effort, tasks, and time allocation should be clearly defined in the contractor's proposal. The Contractor shall agree that it will not utilize any subcontractors not specifically included in its proposal in the performance of the contract without the prior written authorization of the State.

The State reserves the right to require the Contractor to reassign or remove from the project any Contractor or subcontractor's employees.

Contractor shall insure that the terms and conditions contained in any contract with a subcontractor does not conflict with the terms and conditions of this contract.

The Contractor shall include a similar provision, for the protection of the State, in the contract with any subcontractor engaged to perform work on this contract.

B. EMPLOYEE WORK ELIGIBILITY STATUS

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		x	<i>Contractor is an agency of the State of Kansas, and therefore usually requires its contracts to be governed by Kansas law. As a compromise, we request that the parties stay silent as to which state's laws will govern this agreement.</i>

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at <http://das.nebraska.gov/materiel/purchasing.html>
2. The completed United States Attestation Form should be submitted with the solicitation response.
3. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
4. The Contractor understands and agrees that lawful presence in the United States is required, and the Contractor may be disqualified, or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION (Statutory)

The Contractor shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. ~~The Nebraska Fair Employment Practice Act prohibits Contractors of the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensation, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin (Neb. Rev. Stat. §§ 48-1101 to 48-1125). The Contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Contractor shall insert a similar provision in all subcontracts for goods and services to be covered by any contract resulting from this solicitation.~~

D. COOPERATION WITH OTHER CONTRACTORS

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
x			

Contractor may be required to work with or in close proximity to other contractors or individuals that may be working on same or different projects. The Contractor shall agree to cooperate with such other contractors or individuals, and shall not commit or permit any act which may interfere with the performance of work by any other contractor or individual. Contractor is not required to compromise Contractor's intellectual property or proprietary information unless expressly required to do so by this contract.

E. PERMITS, REGULATIONS, LAWS

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
X			

The contract price shall include the cost of all royalties, licenses, permits, and approvals, whether arising from patents, trademarks, copyrights or otherwise, that are in any way involved in the contract. The Contractor shall obtain and pay for all royalties, licenses, and permits, and approvals necessary for the execution of the contract. The Contractor must guarantee that it has the full legal right to the materials, supplies, equipment, software, and other items used to execute this contract.

F. OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X	<i>As a Kansas university, Contractor must retain ownership of all intellectual property it develops. However, we can offer you a license to use the intellectual property developed in the course of the agreement, as laid out below.</i>

~~Contractor grants t~~The State ~~shall have the unlimited~~a non-exclusive, non-sublicensable, non-assignable, royalty-free license right to publish, duplicate, use, and disclose all information and data developed or obtained by the Contractor on behalf of the State pursuant to this contract.

G. INSURANCE REQUIREMENTS

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
	X		<i>WSU is a State of Kansas entity and relies on the provisions of the Kansas Tort Claims Act (K.S.A. 71-6101 et. seq.) for claims against the State of Kansas.</i>

~~The Contractor shall throughout the term of the contract maintain insurance as specified herein and provide the State a current Certificate of Insurance/Acord Form (COI) verifying the coverage. The Contractor shall not commence work on the contract until the insurance is in place. If Contractor subcontracts any portion of the Contract the Contractor must, throughout the term of the contract, either:~~

- ~~1. Provide equivalent insurance for each subcontractor and provide a COI verifying the coverage for the subcontractor;~~
- ~~2. Require each subcontractor to have equivalent insurance and provide written notice to the State that the Contractor has verified that each subcontractor has the required coverage; or,~~
- ~~3. Provide the State with copies of each subcontractor's Certificate of Insurance evidencing the required coverage.~~

~~The Contractor shall not allow any subcontractor to commence work until the subcontractor has equivalent insurance. The failure of the State to require a COI, or the failure of the Contractor to provide a COI or require subcontractor insurance shall not limit, relieve, or decrease the liability of the Contractor hereunder.~~

~~If by the terms of any insurance a mandatory deductible is required, or if the Contractor elects to increase the mandatory deductible amount, the Contractor shall be responsible for payment of the amount of the deductible in the event of a paid claim.~~

~~Notwithstanding any other clause in this Contract, the State may recover up to the liability limits of the insurance policies required herein.~~

~~4. **WORKERS' COMPENSATION INSURANCE**~~

~~The Contractor shall take out and maintain during the life of this contract the statutory Workers' Compensation and Employer's Liability Insurance for all of the contractor's employees to be engaged in work on the project under this contract and, in case any such work is sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the subcontractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. **The policy shall include a waiver of subrogation in favor of the State. The COI shall contain the mandatory COI subrogation waiver language found hereinafter.** The amounts of such insurance shall not be less than the limits stated hereinafter. For employees working in the State of Nebraska, the policy must be written by an entity authorized by the State of Nebraska Department of Insurance to write Workers' Compensation and Employer's Liability Insurance for Nebraska employees.~~

~~5. **COMMERCIAL GENERAL LIABILITY INSURANCE AND COMMERCIAL AUTOMOBILE LIABILITY INSURANCE**~~

~~The Contractor shall take out and maintain during the life of this contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect Contractor and any subcontractor performing work covered by this contract from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under this contract, whether such operation be by the Contractor or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.~~

~~The Commercial General Liability Insurance shall be written on an **occurrence basis**, and provide Premises/Operations, Products/Completed Operations, Independent Contractors, Personal Injury, and Contractual Liability coverage. **The policy shall include the State, and others as required by the contract documents, as Additional Insured(s). This policy shall be primary, and any insurance or self insurance carried by the State shall be considered secondary and non-contributory. The COI shall contain the mandatory COI liability waiver language found hereinafter.** The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non owned, and Hired vehicles.~~

REQUIRED INSURANCE COVERAGE	
COMMERCIAL GENERAL LIABILITY	
General Aggregate _____	\$2,000,000
Products/Completed _____ Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 per occurrence
Bodily Injury/Property Damage _____	\$1,000,000 per occurrence
Medical Payments	\$10,000 any one person
Damage to Rented Premises (Fire)	\$300,000 each occurrence
Contractual	Included
Independent Contractors	Included
<i>If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.</i>	
WORKER'S COMPENSATION	
Employers Liability Limits	\$500K/\$500K/\$500K
Statutory Limits All States	Statutory State of Nebraska
USL&H Endorsement	Statutory
Voluntary Compensation	Statutory
COMMERCIAL AUTOMOBILE LIABILITY	
Bodily Injury/Property Damage _____	\$1,000,000 combined single limit
Include All Owned, Hired & Non Owned Automobile liability	Included
UMBRELLA/EXCESS LIABILITY	
Over Primary Insurance _____	\$5,000,000 per occurrence
PROFESSIONAL LIABILITY	
All Other Professional Liability (Errors & Omissions)	\$1,000,000 Per Claim / Aggregate
COMMERCIAL CRIME	
Crime/Employee Dishonesty Including 3rd Party Fidelity	\$1,000,000
CYBER LIABILITY	
Breach of Privacy, Security Breach, Denial of Service, Remediation, Fines and Penalties	\$1,000,000
MANDATORY COI SUBROGATION WAIVER LANGUAGE _____	
"Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska."	
MANDATORY COI LIABILITY WAIVER LANGUAGE	
"Commercial General Liability & Commercial Automobile Liability policies shall name the State of Nebraska as an Additional Insured and the policies shall be primary and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory as additionally insured."	

6. ~~EVIDENCE OF COVERAGE~~

~~The Contractor shall furnish the Contract Manager, with a certificate of insurance coverage complying with the above requirements prior to beginning work at:~~

Agency Name: State Purchasing Bureau
 Attn: Annette Walton
 Solicitation Number: 6691 Z1
 Contract Number:
 E-mail address: annette.walton@nebraska.gov

~~These certificates or the cover sheet shall reference the RFP number, and the certificates shall include the name of the company, policy numbers, effective dates, dates of expiration, and amounts and types of coverage afforded. If the State is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall be responsible for all reasonable costs properly attributable thereto.~~

~~Reasonable notice of cancellation of any required insurance policy must be submitted to the contract manager as listed above when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.~~

~~7. DEVIATIONS~~

~~The insurance requirements are subject to limited negotiation. Negotiation typically includes, but is not necessarily limited to, the correct type of coverage, necessity for Workers' Compensation, and the type of automobile coverage carried by the Contractor.~~

H. ANTITRUST

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X	

The Contractor, subject to the duties of the Kansas Attorney General, hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

I. CONFLICT OF INTEREST

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X	

By submitting a proposal, Bbidder certifies that no relationship exists between the bidder and any person or entity which either is, or gives the appearance of, a conflict of interest related to this request for proposal or project.

Bidder further certifies that bidder will not employ any individual known by bidder to have a conflict of interest nor shall Bbidder knowingly take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its contractual obligations hereunder or which creates an actual or appearance of conflict of interest.

If there is an actual or perceived conflict of interest, bBidder shall provide with its proposal a full disclosure of the facts describing such actual or perceived conflict of interest and a proposed mitigation plan for consideration. The State will then consider such disclosure and proposed mitigation plan and either approve or reject as part of the overall bid evaluation.

J. STATE PROPERTY

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
	X		<i>See requested edit to this section. WSU's liability is limited by Kansas Tort Claims Act (K.S.A. 75-6101 et. seq.)</i>

The Contractor shall be responsible for the proper care and custody of any State-owned property which is furnished for the Contractor's use during the performance of the contract. ~~The Contractor shall reimburse the State for any loss or damage of such property; normal wear and tear is expected.~~

K. SITE RULES AND REGULATIONS

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
X			

The Contractor shall use its best efforts to ensure that its employees, agents, and subcontractors comply with site rules and regulations while on State premises. If the Contractor must perform on-site work outside of the daily operational hours set forth by the State, it must make arrangements with the State to ensure access to the facility and the equipment has been arranged. No additional payment will be made by the State on the basis of lack of access, unless the State fails to provide access as agreed to in writing between the State and the Contractor.

L. ADVERTISING

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X	<i>Please see requested change making this provision mutual below.</i>

The Contractor agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its goods or services are endorsed or preferred by the State. Any publicity releases pertaining to the project shall not be issued without prior written approval from ~~the State~~ both parties.

M. DISASTER RECOVERY/BACK UP PLAN

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
	X		

~~The Contractor shall have a disaster recovery and back up plan, of which a copy should be provided upon request to the State, which includes, but is not limited to equipment, personnel, facilities, and transportation, in order to continue delivery of goods and services as specified under the specifications in the contract in the event of a disaster.~~

N. DRUG POLICY

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
X			

Contractor certifies it maintains a drug free workplace environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the State.

O. WARRANTY

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X	

Despite any clause to the contrary, the Contractor represents and warrants that its services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry applicable standards for the performance of such services and shall comply in all respects with the requirements of this Agreement. ~~For any breach of this warranty, the Contractor shall, for a period of 90 days from performance of the service, perform the services again, at no cost to the State, or if Contractor is unable to perform the services as warranted, Contractor shall reimburse the State all fees paid to Contractor for the unsatisfactory services. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.~~

IV. PAYMENT

A. PROHIBITION AGAINST ADVANCE PAYMENT (Statutory)

Neb. Rev. Stat. §§ 81-2403 states, “[n]o goods or services shall be deemed to be received by an agency until all such goods or services are completely delivered and finally accepted by the agency.”

B. TAXES (Statutory)

The State is not required to pay taxes and assumes no such liability as a result of this solicitation. The Contractor may request a copy of the Nebraska Department of Revenue, Nebraska Resale or Exempt Sale Certificate for Sales Tax Exemption, Form 13. Any property tax payable on the Contractor’s equipment which may be installed in a state-owned facility is the responsibility of the Contractor.

C. INVOICES

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
X			

Invoices for payments must be submitted by the Contractor to the agency requesting the services with sufficient detail to support payment.

Payment to contractor will be made as follows: 90% after each individual training or regional workshop with the remaining 10% made after all complete follow-up surveys are submitted to NDEE.

1. Board/owner training and regional workshops initial invoice for the 90%:
 - a. The contractor shall submit a report and invoice no later than ten business days following each training or workshop to include:
 - i. The individual name(s) of the contractor(s) providing assistance; The names of each individual that participated, including operator license number (if applicable) and the System name and identification number (NE31XXXXX) each individual represented; and
 - ii. The date, location, start and end times of the individual training or workshop.
 - b. The contractor shall submit the following documentation for each workshop:
 - i. Survey from each individual in attendance;
 - ii. Agenda;
 - iii. List of materials and/or resources provided to each System; and
 - iv. Written recommendation/request for additional assistance.

2. Board/owner training and regional workshops final invoice for remaining 10%:
 - a. The contractor shall submit an invoice for the remainder of contracted payment following completion of follow-up surveys for each individual board training, and completion of follow-up surveys with each System that attended a regional workshop. Submittal of all follow-up surveys must be made with the invoice. Other items to include:
 - i. The System name and identification number (NE31XXXXX); and
 - ii. The date and location of training or workshop pertaining to the follow-up surveys.

The terms and conditions included in the Contractor’s invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

D. INSPECTION AND APPROVAL

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X	<i>See requested edit to G, below.</i>

Final inspection and approval of all work required under the contract shall be performed by the designated State officials.

The State and/or its authorized representatives shall have the right to enter any premises where the Contractor or subcontractor duties under the contract are being performed, and to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be at agreed upon times and in a manner that will not delay work.

E. PAYMENT (Statutory)

Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. § 81-2403). The State may require the Contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any goods and services provided by the Contractor prior to the Effective Date of the contract, and the Contractor hereby waives any claim or cause of action for any such services.

F. LATE PAYMENT (Statutory)

The Contractor may charge the responsible agency interest for late payment in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §§ 81-2401 through 81-2408).

G. SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS (Statutory)

The State's obligation to pay amounts due on the Contract for a fiscal years following the current fiscal year is contingent upon legislative appropriation of funds. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal year(s) for which such funds are not appropriated. The State will give the Contractor written notice 30 calendar days prior to the effective date of termination. All obligations of the State to make payments after the termination date will cease. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been **satisfactorily** completed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.

H. RIGHT TO AUDIT (First Paragraph is Statutory)

The State shall have the right to audit the Contractor's performance of this contract upon a 30 days' written notice. Contractor shall utilize generally accepted accounting principles, and shall maintain the accounting records, and other records and information relevant to the contract to enable the State to audit the contract. (Neb. Rev. Stat. § 84-304 et seq.) The State may audit, and the Contractor shall maintain, the Information during the term of the contract and for a period of five (5) years after the completion of this contract or until all issues or litigation are resolved, whichever is later. The Contractor shall make the Information available to the State at Contractor's place of business or a location acceptable to both Parties during normal business hours. If this is not practical or the Contractor so elects, the Contractor may provide electronic or paper copies of the Information. The State reserves the right to examine, make copies of, and take notes on any Information relevant to this contract, regardless of the form or the Information, how it is stored, or who possesses the Information. Under no circumstance will the Contractor be required to create or maintain documents not kept in the ordinary course of contractor's business operations, nor will contractor be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to contractor.

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X	

The Parties shall pay their own costs of the audit unless the audit finds a previously undisclosed overpayment by the State. ~~If a previously undisclosed overpayment exceeds one percent (1%) of the total contract billings, or if fraud, material misrepresentations, or non performance is discovered on the part of the Contractor, the Contractor shall reimburse the State for the total costs of the audit.~~ Overpayments and audit costs owed to the State shall be paid within 90 days of written notice of the claim. The Contractor agrees to correct any material weaknesses or condition found as a result of the audit.