

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE: ZELIS REPRICING ANTITRUST
LITIGATION

This Document Relates To:

All Actions

Lead Action Case No.: 1:25-cv-10734-BEM

Consolidated with Case Nos.:

1:25-CV-11092-BEM

1:25-CV-11167-BEM

1:25-CV-11537-BEM

**DEFENDANT AETNA, INC.'S
MOTION TO COMPEL ARBITRATION WITH RESPECT TO DR. DENNIS C. AYER,
DDS, LLC**

Defendant Aetna Inc. (“Aetna”) respectfully moves this Court, pursuant to the Federal Arbitration Act (“FAA”) (9 U.S.C. § 1 *et seq.*), for an order compelling the individual arbitration of claims asserted in the Amended and Consolidated Class Action Complaint (“Consolidated Complaint”), dated June 11, 2025 (ECF No. 39), against Aetna by Plaintiff Dennis C. Ayer, DDS, LLC, and staying Dr. Ayer’s action against Aetna until any arbitration is resolved. The grounds for this Motion are set forth in the accompanying Memorandum in Support and Exhibit A thereto.

Dated: August 11, 2025

Respectfully submitted,

/s/
George A. Borden (#552302)
Jonathan B. Pitt (*pro hac vice*)
Katherine Trefz (*pro hac vice*)
Williams and Connolly LLP
680 Maine Ave SW
Washington, DC 20024

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Counsel for Aetna Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on this 11th day of August, 2025, the foregoing was filed with the Court's electronic filing system, which will send electronic notice of this filing to all counsel of record.

/s/ Katherine Trefz
Katherine Trefz

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**AETNA INC.'S MEMORANDUM IN SUPPORT OF MOTION TO COMPEL
ARBITRATION WITH RESPECT TO DR. DENNIS C. AYER, DDS, LLC**

I. Introduction

Plaintiff Dr. Dennis C. Ayer, DDS, LLC (“Ayer”), is a contracted, In-Network provider with Aetna. Through the Dental Provider Agreement, Dr. Ayer agreed to adjudicate “[a]ny controversy or claim arising out of or relating to this Agreement” by binding arbitration. *See* Ex. A § 8.3. Pursuant to Federal Arbitration Action Sections 3 and 4, 9 U.S.C. §§ 3-4, the Court should compel Dr. Ayer to arbitrate his claims against Aetna, and the Court should stay his claims as to Aetna while arbitration proceeds.

II. Background

As discussed in more detail in Defendants’ Joint Motion to Dismiss, the Amended Consolidated Complaint (“ACC”) in this case alleges, on behalf of assorted providers, that “Commercial Payers,” through the use of Zelis, have conspired to downwardly adjust out-of-network (“OON”) payment rates to providers, in violation of the antitrust laws. In particular, the complaint focuses on the use of Zelis’s repricing products and services in connection with reimbursement of OON medical care. For the reasons discussed in the Joint Motion to Dismiss, the Complaint fails to state a claim. But as to Dr. Ayer, those claims fail for the additional

reason that, even were they sufficient to survive a motion to dismiss, they must be arbitrated because they are subject to valid and binding arbitration clauses.

Dr. Ayer has a Dental Provider Agreement with Aetna. That Agreement is attached as Exhibit A. Dr. Ayer's Agreement governs the terms, rate, and obligation as a provider with respect to Aetna subscribers, and the circumstances under which Aetna pays the provider. *E.g.*, Ex. A § 4.0. The Agreement also includes a provision governing out-of-network claims. "Provider may bill or charge Members . . . [for] services that are not Covered Services . . . [if] the Member was advised in writing prior to the services being rendered that the specific services may not be Covered Services [and] the Member agreed in writing to pay for such services after being so advised." Ex. A § 4.3.1. Dr. Ayer's Agreement also contains a broad requirement to arbitrate "any controversy or claim arising out of or relating to this Agreement[.]" Ex. A § 8.3.

III. Argument

It is well understood that "[t]he Federal Arbitration Act [("FAA")] requires courts to enforce private arbitration agreements . . . [t]he FAA treats these agreements as 'contract[s]', and courts must enforce arbitration contracts according to their terms.'" *Barbosa v. Midland Credit Mgmt., Inc.*, 981 F.3d 82, 87 (1st Cir. 2020) (quoting *Biller v. S-H OpCo Greenwich Bay Manor, LLC*, 961 F.3d 502, 508 (1st Cir. 2020)) (internal citations omitted). Arbitration should be compelled under the FAA if the movant demonstrates "that a valid agreement to arbitrate exists, that the movant is entitled to invoke the arbitration clause, that the other party is bound by that clause, and that the claim asserted comes within the clause's scope." *Biller*, 961 F.3d at 508. (quoting *Dialysis Access Ctr., LLC v. RMS Lifeline, Inc.*, 638 F.3d 367, 375 (1st Cir. 2011)). Each of these elements has been satisfied. The Court should compel arbitration and stay Dr. Ayer's action as to Aetna.

A. A Valid Agreement to Arbitrate Exists and Dr. Ayer is Bound to Arbitrate Disputes with Aetna

1. Dr. Ayer has a Valid Agreement Requiring Arbitration

The arbitration agreement at issue meets the first three requirements outlined in *Biller*. First, Dr. Ayer has a contract with Aetna. Second, that contract contains an arbitration provision: Dr. Ayer agreed through that contract to arbitrate any disputes with Aetna “arising out of or relating to” the Agreement. *See* Ex. A § 8.3 (“Any controversy of claim arising out of or relating to this Agreement . . . shall be settled by binding arbitration.”). Aetna is one of the counterparties to that agreement, and may invoke that clause.¹ There is no indication or reasonable argument that the arbitration agreement is invalid or unenforceable.

2. Dr. Ayer’s Claims Fall Within the Scope of the Agreement

Where an enforceable arbitration agreement exists, the FAA requires courts to compel arbitration so long as the dispute is within the scope of that agreement. The FAA “codifies the ‘fundamental principle that arbitration is a matter of contract.’” *Toth v. Everly Well, Inc.*, 118 F.4th 403, 409 (1st Cir. 2024) (quoting *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 67 (2010)). It “provides that arbitration agreements in commercial contracts ‘shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.’” *Id.* (citation omitted). Where an agreement exists, “the court must order parties to arbitrate any claims subject to the agreement.” *Id.* (citation omitted).

Dr. Ayer’s allegations in this case fall within the scope of the Agreement because they “arise out of or relate to” his Agreement. The Complaint challenges Aetna’s conduct with respect to OON reimbursements made to providers. Dr. Ayer’s agreement governs the relationship

¹ The introductory language to the agreement provides that the agreement is between Dr. Ayer and “Aetna Health, Inc. . . . on behalf of itself and its Affiliates.” Ex. A at 3.

between Dr. Ayer and Aetna, including the services that are considered in- and out-of-network, as well as the terms, rates, and obligations of the provider, and how the provider should submit requests for payment to Aetna. Indeed, his Agreement specifically contemplates what he may do when services are not covered by a member's plan, i.e., when the services provided are out of network. Ex. A § 4.3.1 (“Provider may bill or charge Members . . . [for] services that are not Covered Services . . . [if] the Member was advised in writing prior to the services being rendered that the specific services may not be Covered Services [and] the Member agreed in writing to pay for such services after being so advised.”). Those are the types of claims at issue in Dr. Ayer's Complaint. *See, e.g.*, ACC ¶¶ 6, 205. No language in the arbitration clause suggests that antitrust claims are excluded from its scope. Accordingly, his claims here fall directly within the scope of the arbitration clause.

Even if this court were to have doubt about the scope of the arbitration clause, any doubt should be resolved in favor of arbitration. “The Supreme Court [has] made clear that where an agreement to arbitrate some issues exists, and there is a dispute over the scope of the arbitration agreement, the law requires that those matters be presumed to be arbitrable ‘unless it is clear that the arbitration clause has not included them.’” *Vaiano v. United Nat'l Corp.*, 733 F. Supp. 3d 32, 44 (D. Mass. 2024) (quoting *Bossé v. N.Y. Life Ins. Co.*, 992 F.3d at 31). “The FAA reflects a ‘liberal federal policy favoring arbitration agreements’ . . . in which there is a presumption that ‘any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration[.]’” *Bosse v. N.Y. Life Ins. Co.*, 992 F.3d at 31 (citations omitted). “Ambiguities as to the scope of the arbitration clause itself [must be] resolved in favor of arbitration.” *Vaiano*, 733 F. Supp. 3d at 44 (citation omitted).

B. The Court Should Stay the Action as to Dr. Ayer as Against Aetna While the Dispute is Arbitrated.

“When a district court finds that a lawsuit involves an arbitrable dispute, and a party requests a stay pending arbitration, § 3 of the FAA compels the court to stay the proceeding.” *Smith v. Spizzirri*, 601 U.S. 472, 478 (2024); *see also* 9 U.S.C. § 3 (requiring that courts stay action until arbitration is completed). Thus, in the event the Court finds that this lawsuit involves an arbitrable dispute, it must stay this action until any subsequent arbitration is completed. *See id.*; *see also Vaiano*, 733 F. Supp. 3d at 39-40 (the “court may enforce a valid arbitration agreement ‘by staying existing litigation pending arbitration or compelling the parties to arbitrate and dismissing the action.’”) (quoting *Bekele v. Lyft, Inc.*, 199 F. Supp. 3d 284, 293 (D. Mass. 2016) (citing 9 U.S.C. §§ 3, 4), *aff’d*, 918 F.3d 181 (1st Cir. 2019)); *Bourque*, 764 F. Supp. 3d 11 (granting the motion to compel and staying the case pending completion of arbitration); *Buruk*, 732 F. Supp. 3d 165 (same). Accordingly, this court should stay the action in favor of arbitration.

IV. Conclusion

For the foregoing reasons, the Court should compel Dr. Ayer to arbitrate his claims against Aetna and stay his action against Aetna until any arbitration has been completed.

Dated: August 11, 2025

Respectfully submitted,

/s/ Katherine Trefz

George A. Borden (#552302)
Jonathan B. Pitt (*pro hac vice*)
Katherine Trefz (*pro hac vice*)
Williams and Connolly LLP
680 Maine Ave SW
Washington, DC 20024
Telephone: (202) 434-5000
gborden@wc.com

LOCAL RULE 7.1 CERTIFICATE

Pursuant to Local Rule 7.1(a)(2), the undersigned counsel certifies that counsel for Aetna, Inc. has conferred via email and phone with counsel for Plaintiffs and have attempted in good faith to resolve or narrow the issues in this Motion but have been unable to do so.

/s/ Katherine Trefz

Katherine Trefz

CERTIFICATE OF SERVICE

I hereby certify that, on this 11th day of August, 2025, the foregoing was filed with the Court's electronic filing system, which will send electronic notice of this filing to all counsel of record.

/s/ Katherine Trefz
Katherine Trefz

**UNITED STATES DISTRICT COURT
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Leave to file granted on July 31, 2025

**DECLARATION OF KATHERINE TREFZ IN SUPPORT OF AETNA'S MOTION TO
COMPEL**

I, Katherine Trefz, hereby state under penalty of perjury that the following statements are true and accurate to the best of my knowledge, and that I could testify to these matters if called to do so:

1. I am counsel for defendant Aetna Inc. ("Aetna"). I submit this declaration in support of Aetna's Motion to Compel Arbitration and accompanying Memorandum in support thereof.

2. Attached as Exhibit A is a redacted version of a true and correct copy of the November 2018 Dental Provider Agreement between Dr. Dennis Ayer and Aetna Health Inc. All provisions cited in Aetna's Memorandum have been filed publicly.

3. Aetna Health Inc. (Pennsylvania) is an affiliate of Aetna Inc.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on the 11th of August, 2025 in Washington, DC.

/s/ Katherine Trefz

Katherine Trefz

EXHIBIT A

REDACTED PUBLIC VERSION

20181121

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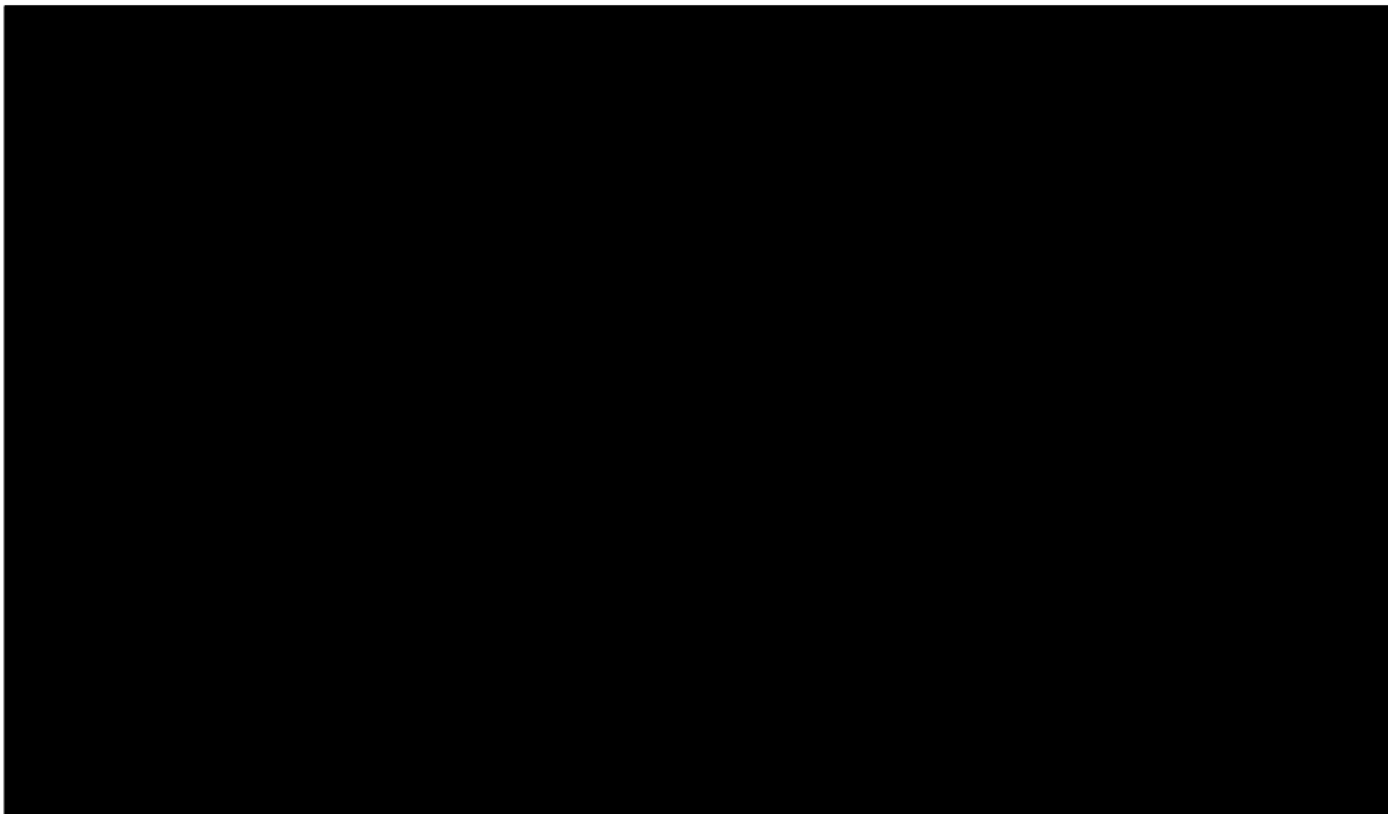
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DENTAL PROVIDER AGREEMENT

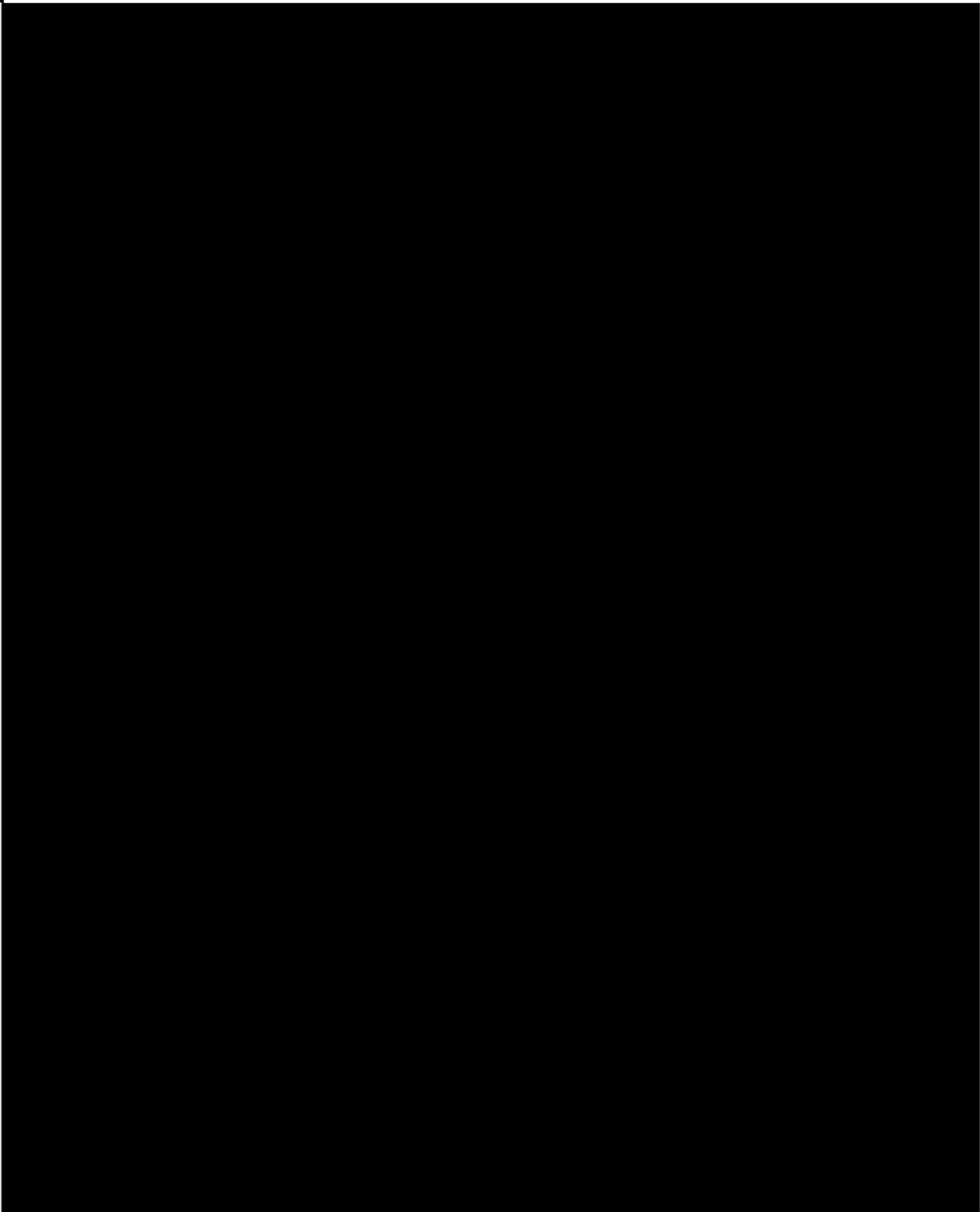
This Dental Provider Agreement ("Agreement") is made and entered into as of February 15, 2019 ("Effective Date") by and between Aetna Health Inc., a Pennsylvania corporation, on behalf of itself and its Affiliates (hereinafter "Company") and Dennis Ayer (hereinafter "Provider"). The Regulatory Compliance Addendum attached to this Agreement as Exhibit A is expressly incorporated into this Agreement and is binding upon the parties to this Agreement. In the event of any inconsistent or contrary language between the Regulatory Compliance Addendum and any other part of this Agreement, including but not limited to exhibits, attachments or amendments, the parties agree that, to the extent applicable, the provisions of the Regulatory Compliance Addendum shall prevail.

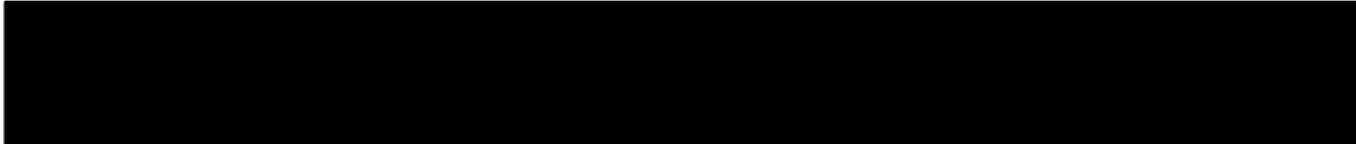
WHEREAS, Company contracts with certain dental providers to provide dental services to Members and in return for the provision of dental services by providers, Company will pay or arrange for the payment of claims for Covered Services under the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants, promises and undertakings in this Agreement, the sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties agree as follows:

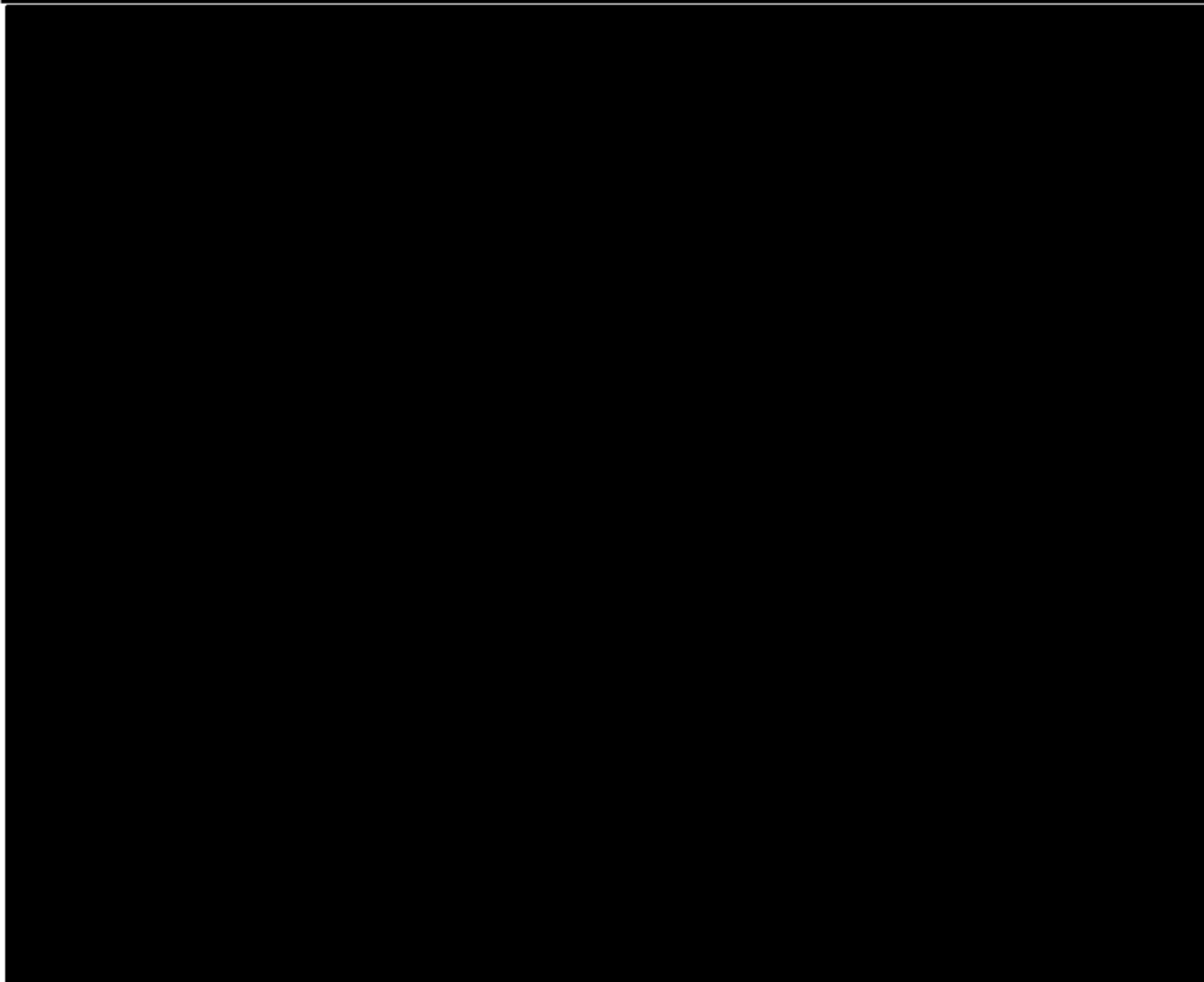
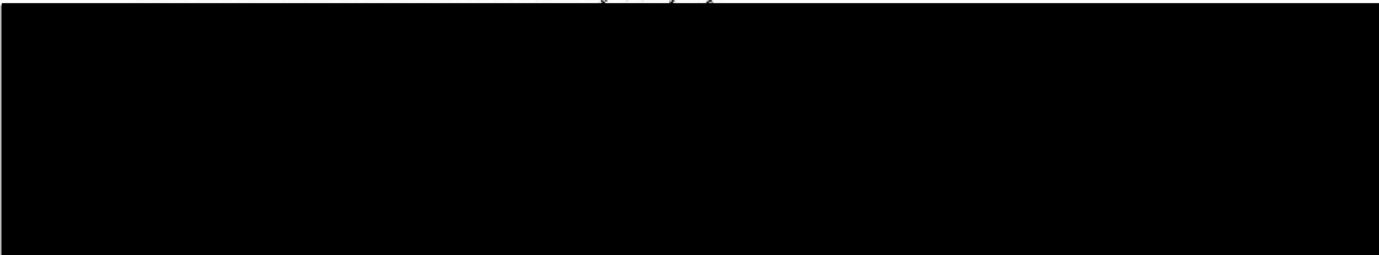


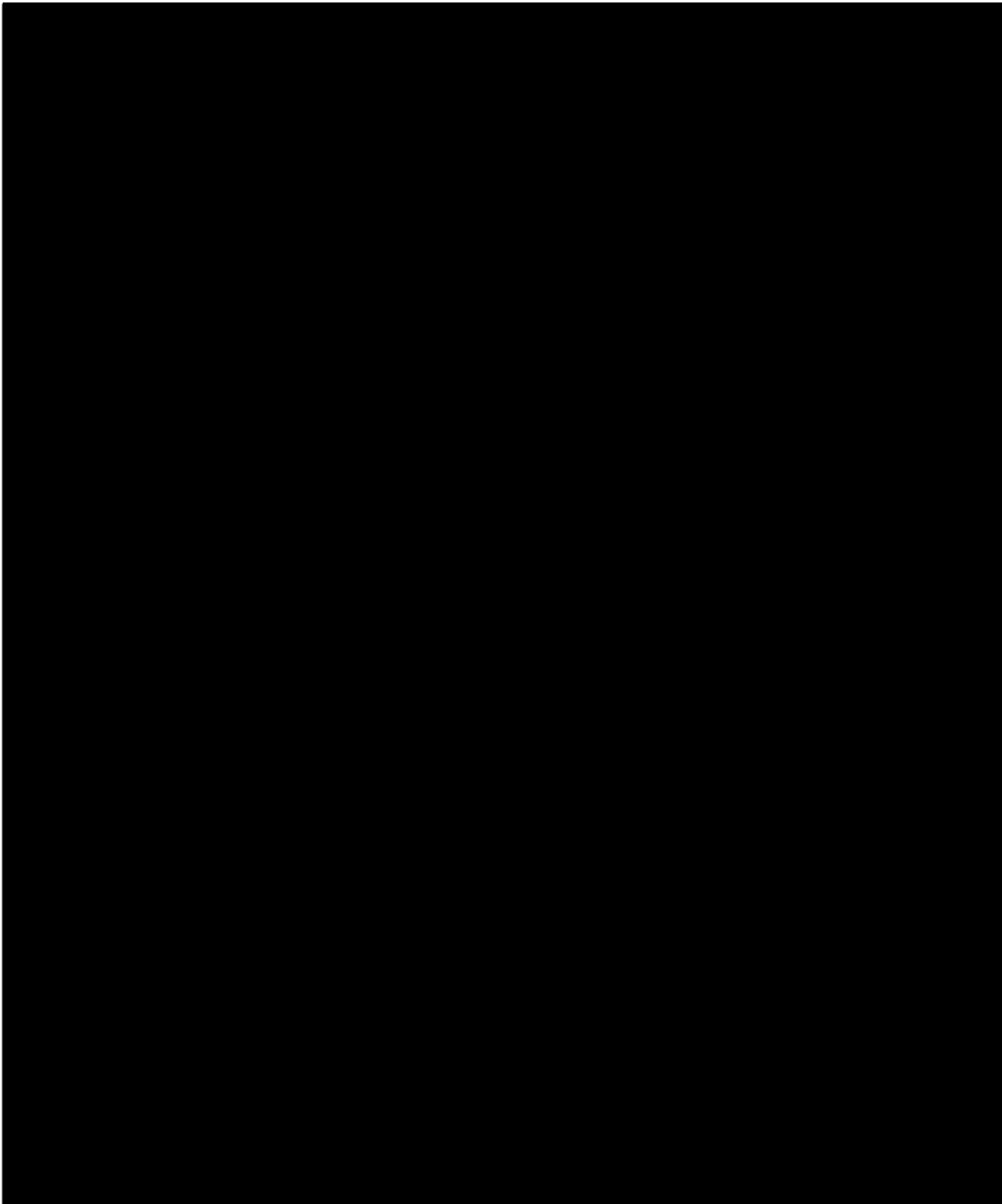
1.5 Confidential Information. Any information that identifies a Member and is related to the Member's participation in a Plan, the Member's physical or mental health or condition, the provision of dental care to the Member or payment for the provision of dental care to the Member. Confidential Information includes, without limitation, "individually identifiable health information," as defined in 45 C.F.R. § 160.103 and "non-public personal information" as defined in laws or regulations promulgated under the Gramm-Leach-Bliley Act of 1999.

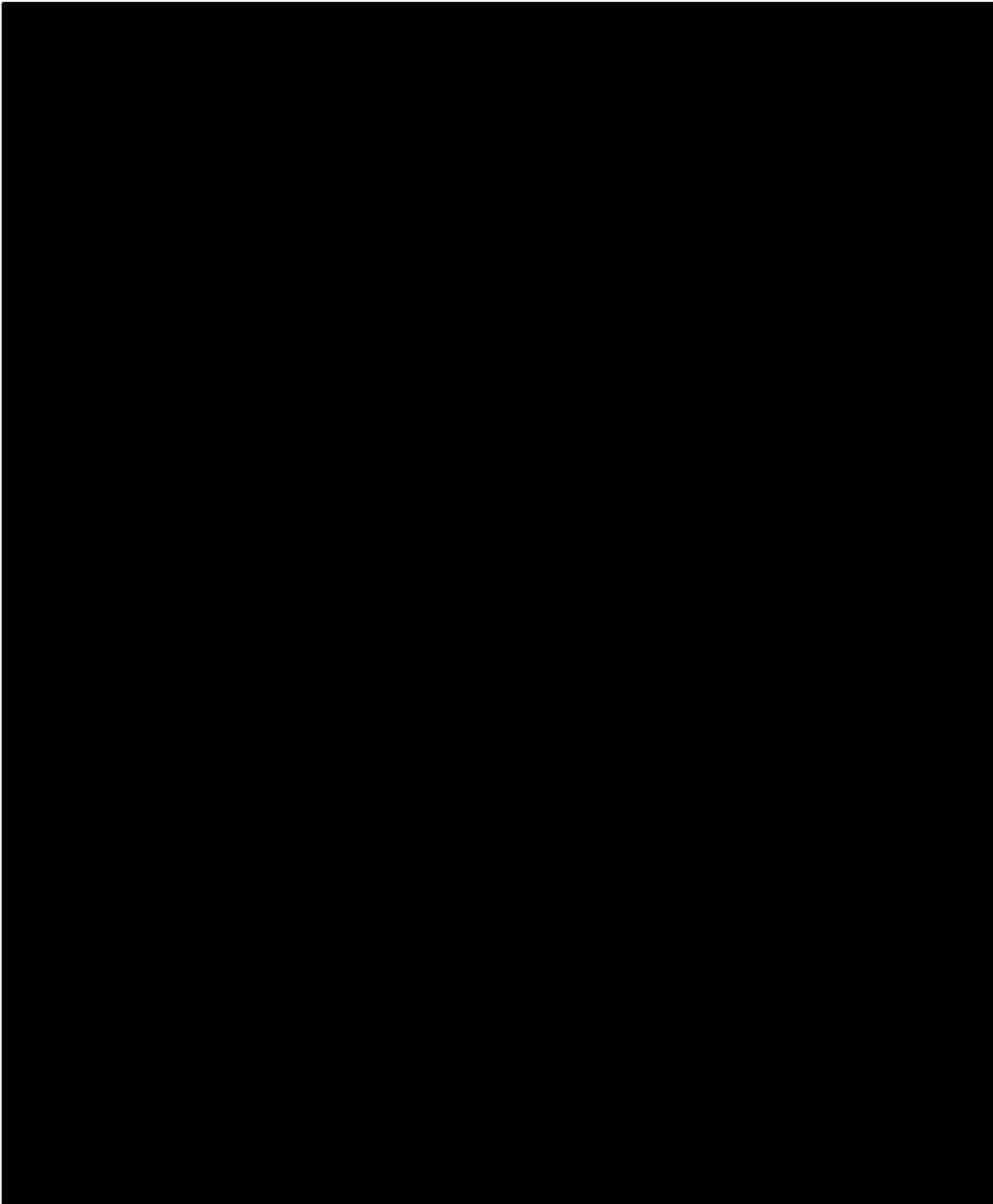


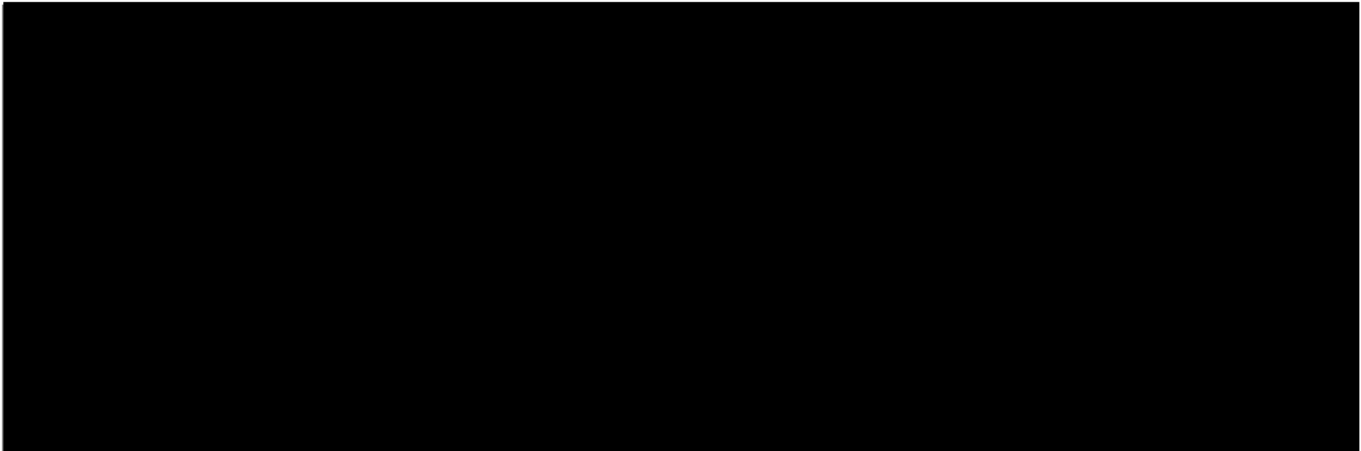


1.20 Proprietary Information. Any and all information, whether prepared by a Party, its advisors or otherwise, relating to such Party or the development, execution or performance of this Agreement or any future agreement between the Parties whether furnished prior to or after the Effective Date. Proprietary Information includes but is not limited to, with respect to Company, the development of a pricing structure, (whether written or oral) all financial information, rate schedules and financial terms which relate to Provider and which are furnished or disclosed to Provider by Company.



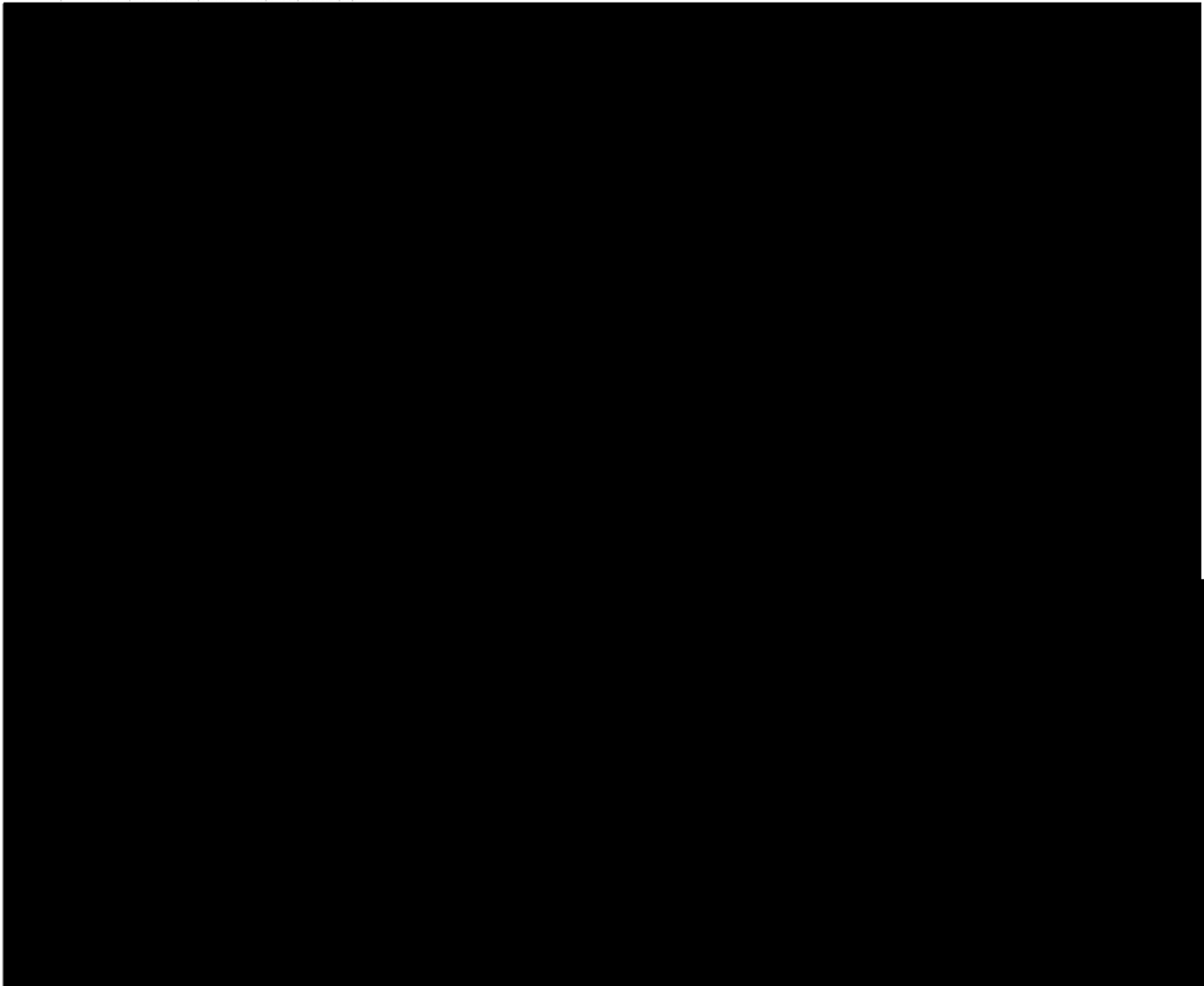


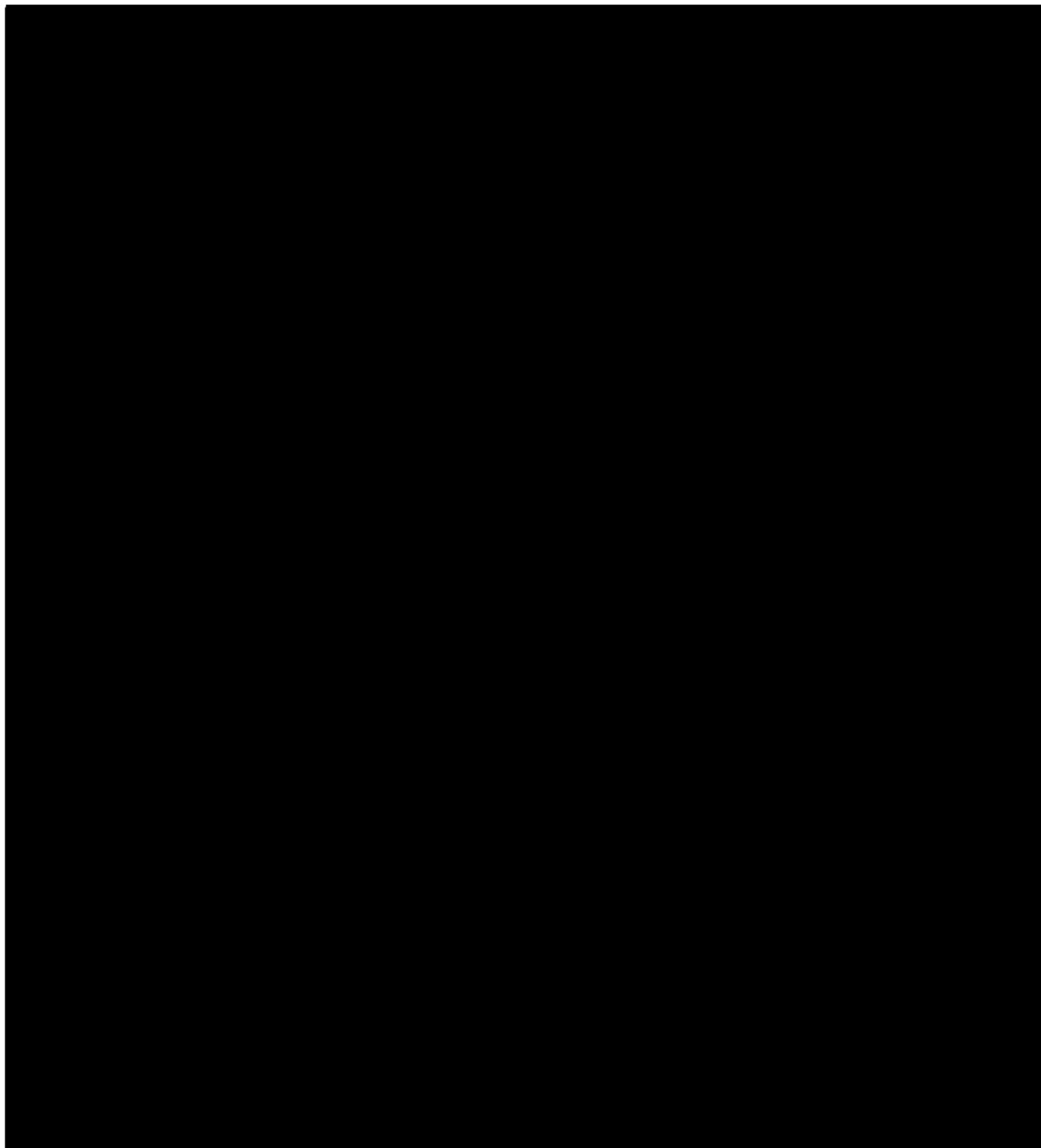




4.0 CLAIMS SUBMISSIONS, COMPENSATION AND MEMBER BILLING

4.1 Claim Submission and Payment.

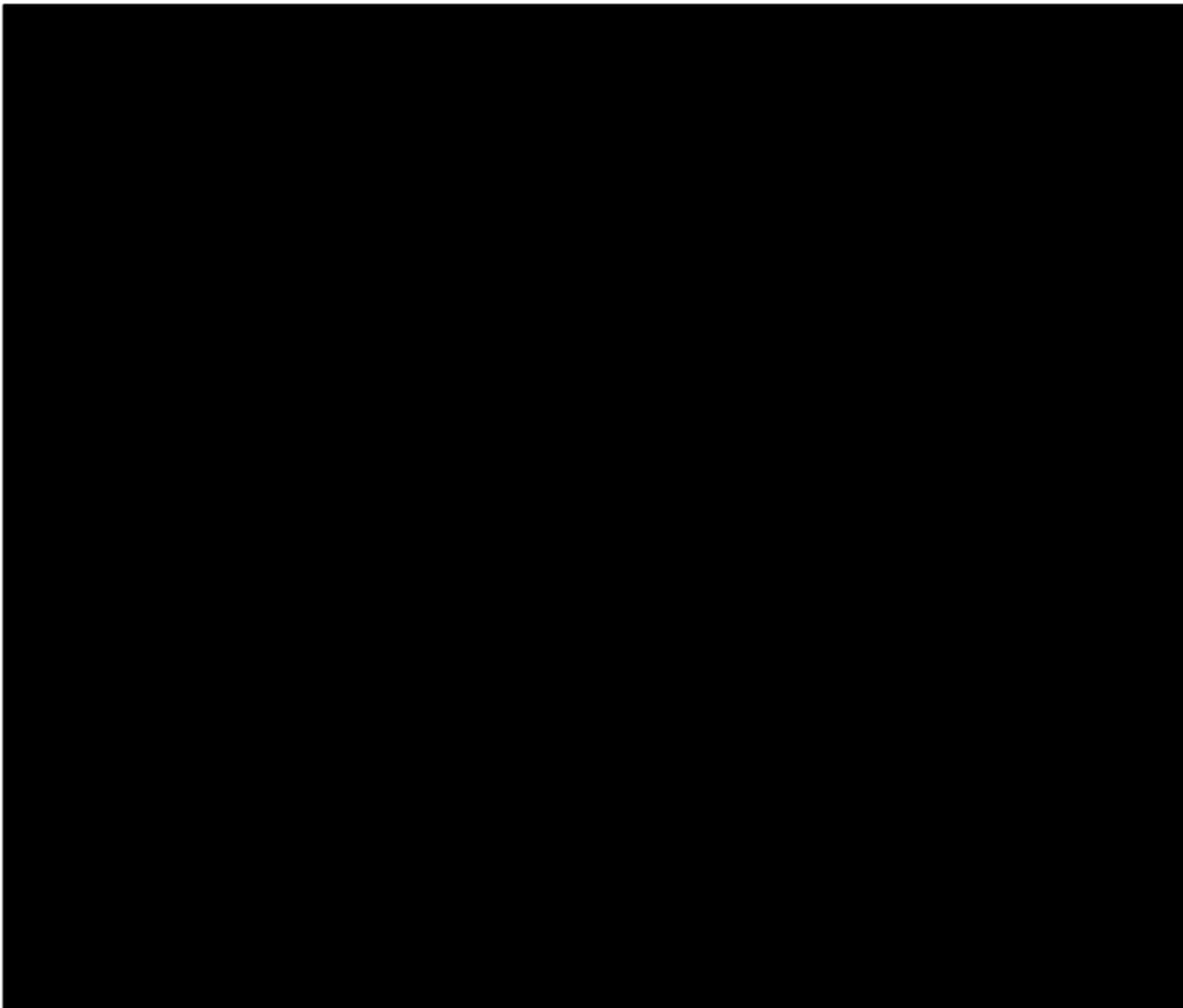


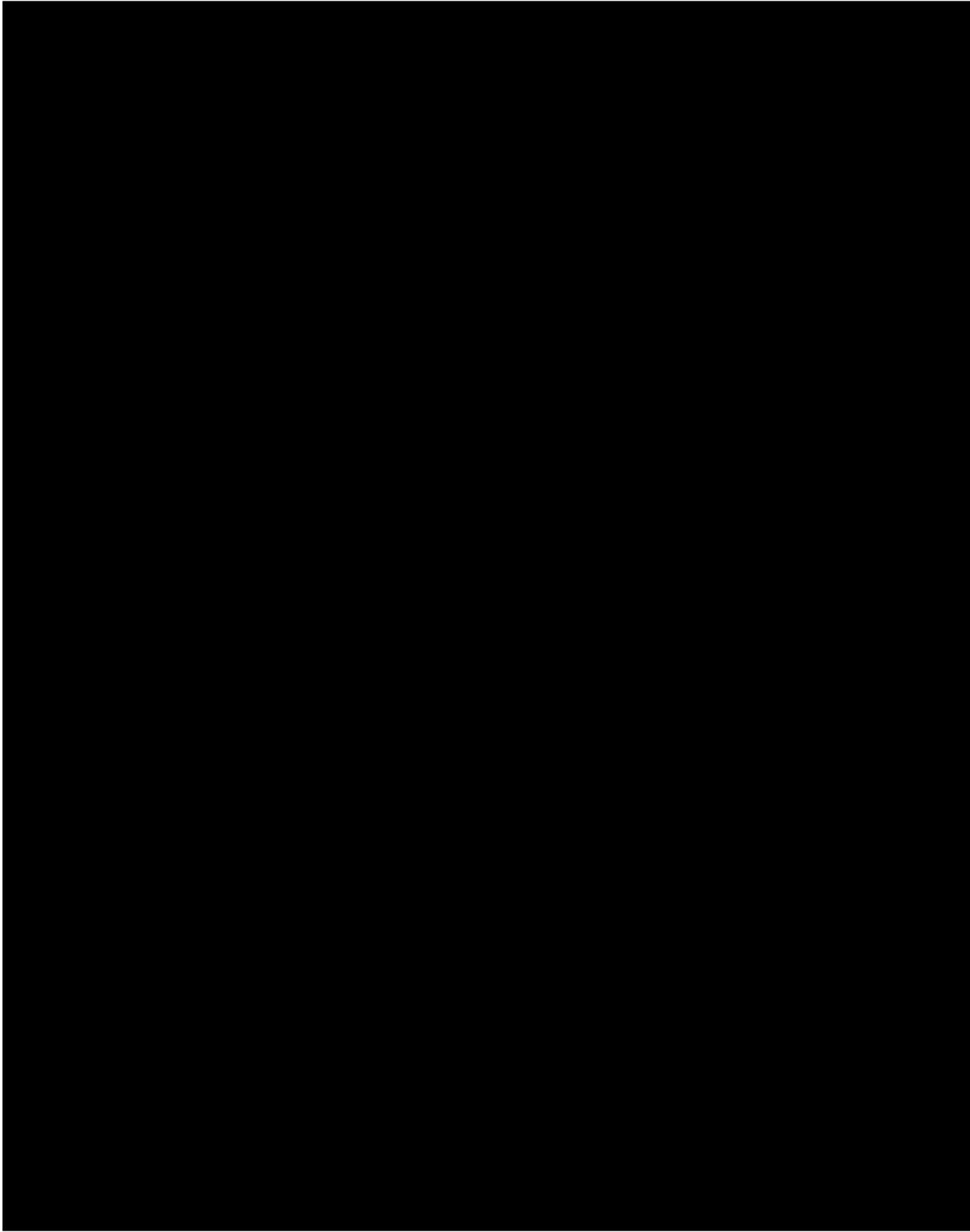


4.3 Member Billing.

4.3.1 Permitted Billing of Members. Provider may bill or charge Members only in the following circumstances: (a) applicable Copayments, Coinsurance and/or Deductibles not collected at the time that Covered Services are rendered; (b) a Payor becomes insolvent or otherwise fails to pay Provider in accordance with applicable Federal law or regulation (e.g., ERISA) provided that Provider has first exhausted all reasonable efforts to obtain payment from the Payor; (c) Provider shall not institute or

maintain any collection activities or proceed with any action at law or in equity against a Member to collect any sums that are owed by a Payor to Provider unless Provider provides at least thirty (30) days prior notice to Company of Provider's intent to institute such an action, and (d) services that are not Covered Services only if: (i) the Member's Plan provides and/or Company confirms that the specific services are not Covered Services; (ii) the Member was advised in writing prior to the services being rendered that the specific services may not be Covered Services; and (iii) the Member agreed in writing to pay for such services after being so advised. Except where prohibited by State law, Provider must extend discounts for services that are not Covered Services or Reduced Fee Services. If State law prohibits mandatory discounts on services that are not Covered Services or Reduced Fee Services, Provider may voluntarily apply the negotiated rate for such services. Notwithstanding the foregoing, Provider may bill Member for Reduced Fee Services in accordance with Section 4.1.2 above. Provider acknowledges that Company's denial or adjustment of payment to Provider based on Company's performance of utilization management as described in Section 4.1.3 or otherwise is not a denial of Covered Services under this Agreement or under the terms of a Plan, except if Company confirms otherwise under this Section 4.3. Provider may bill or charge individuals who were not Members at the time that services were rendered.

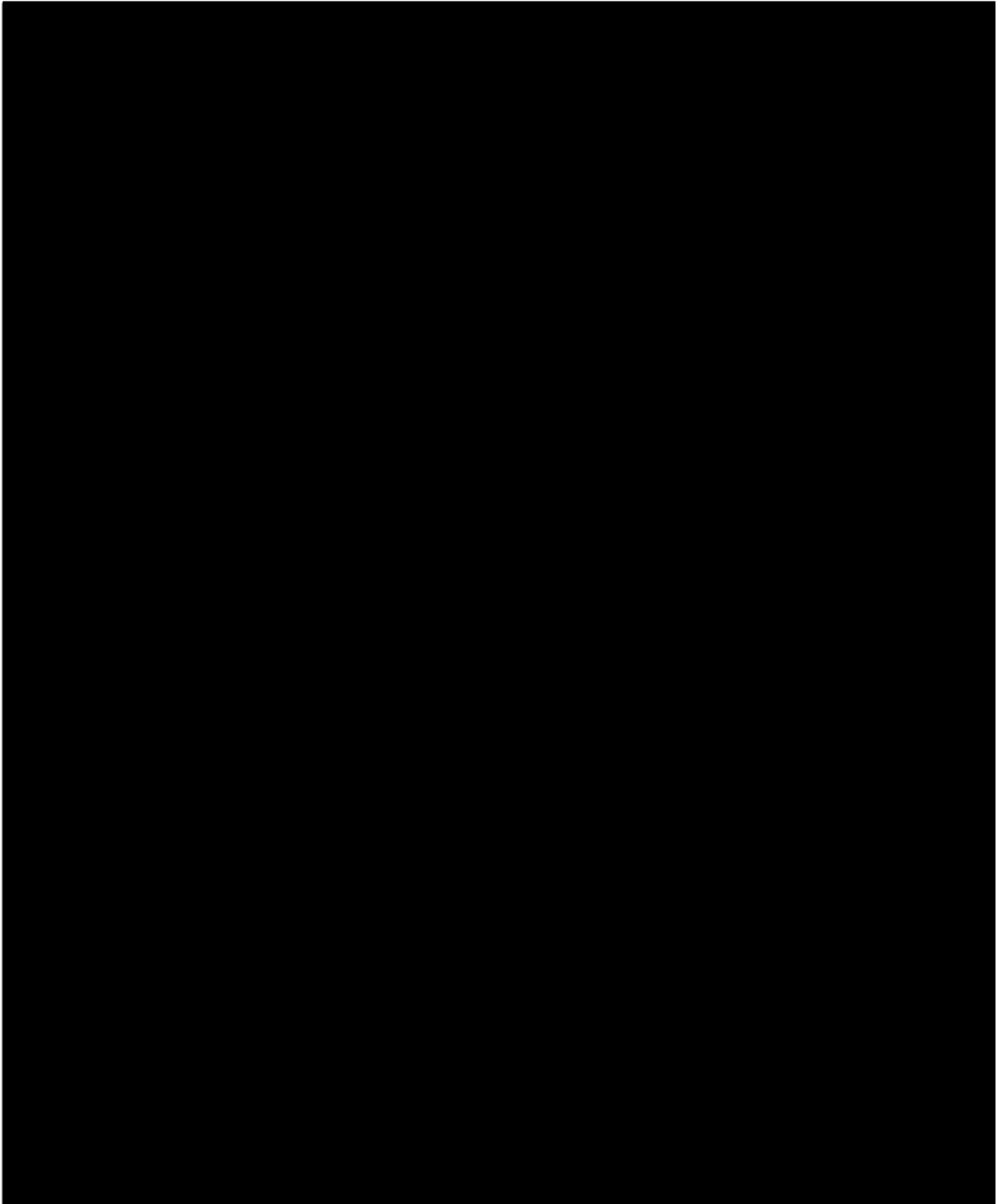


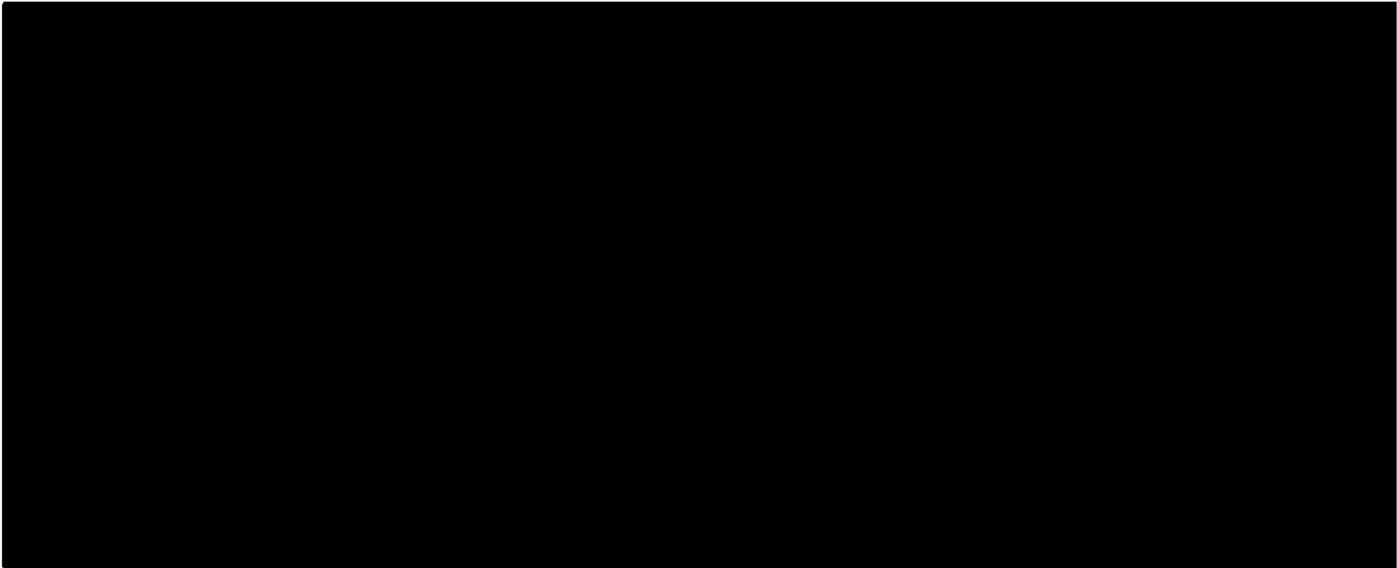


5.5 Proprietary Information.

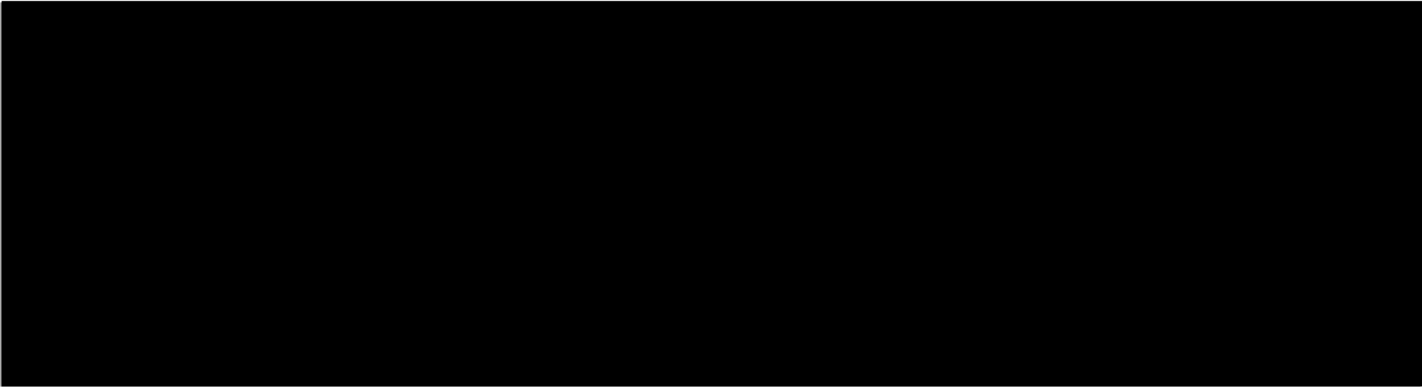
Each Party agrees that the Proprietary Information of the other Party is the exclusive property of such Party and that each Party has no right, title or interest in the Proprietary Information. Unless such Proprietary Information is otherwise publicly available, each Party agrees to keep the Proprietary Information and this Agreement strictly confidential and agrees not to disclose any Proprietary Information or the contents of this Agreement to any third party without the other Party's consent, except (i) to governmental authorities having jurisdiction, (ii) in the case of Company's disclosure to Members, Plan Sponsors, consultants or vendors under contract with Company, and (iii) in the case of Provider's disclosure to Members for the purposes of advising Members of potential treatment options and costs. Except as otherwise required under applicable Federal or state law, each Party agrees to not use any Proprietary Information of the other Party, and at the request of the other Party to this Agreement, return any Proprietary Information upon termination of this Agreement for whatever reason. Notwithstanding the foregoing, Provider is encouraged to discuss Company's provider payment methodology with its patients, including descriptions of the methodology under which the Provider is paid. In addition, Provider through its staff may freely communicate with patients about their treatment options, regardless of benefit coverage limitations. This Section 5.5 shall survive the termination of this Agreement for one (1) year, regardless of the cause of termination.

6.0 TERM AND TERMINATION





8.0 DISPUTE RESOLUTION




8.3 Arbitration.

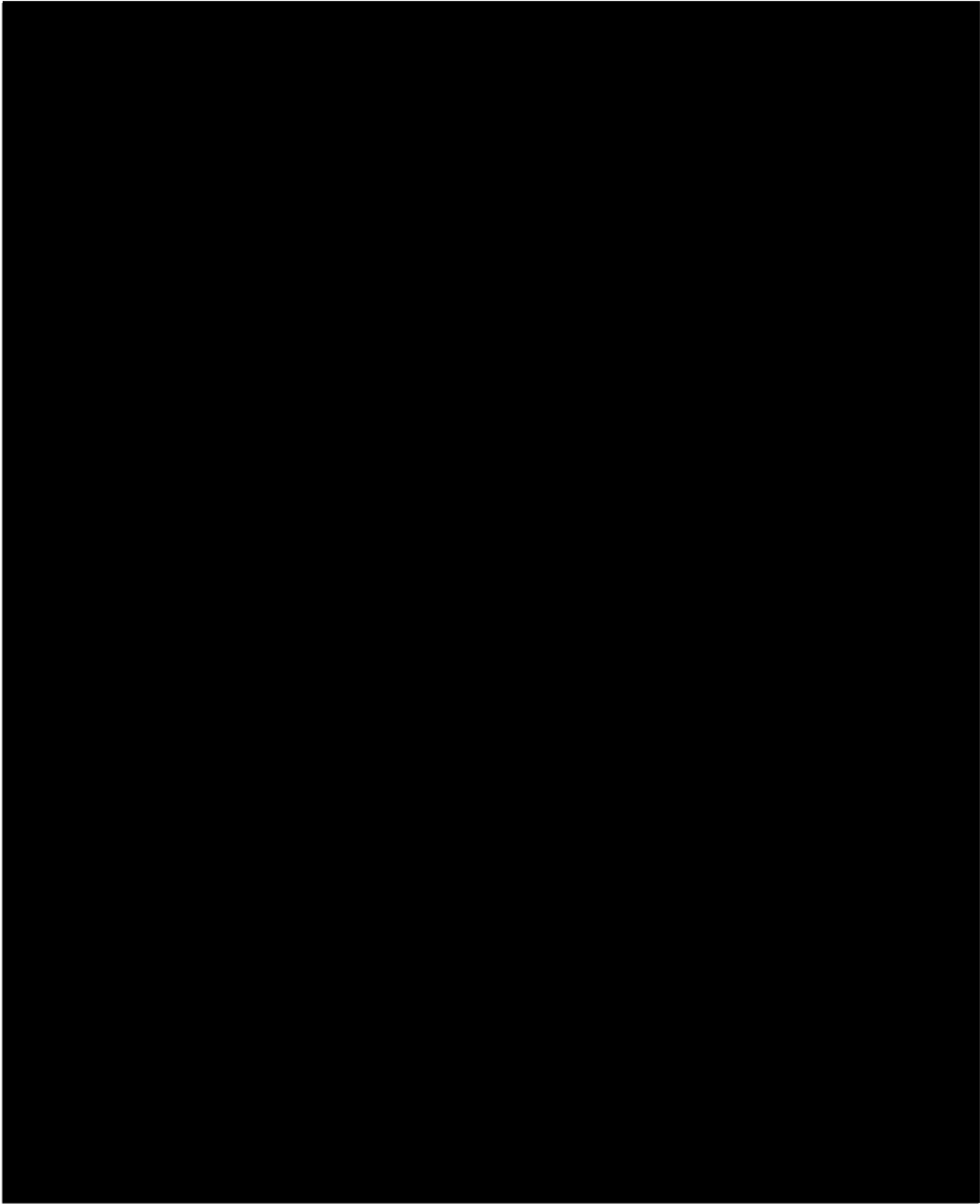
Any controversy or claim arising out of or relating to this Agreement including breach, termination, or validity of this Agreement, except for temporary, preliminary, or permanent injunctive relief or any other form of equitable relief, shall be settled by binding arbitration. The parties agree that the AAA Optional Rules for Emergency Measures of Protection shall not apply to the proceedings. Upon mutual consent of the parties, the arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the AAA Healthcare Payor-Provider Rules, except to the extent modified by this arbitration provision. If a party believes that the arbitrator has committed an error of law or legal reasoning, the party can appeal to a court of competent jurisdiction to correct any such error of law or legal reasoning. Depositions for discovery purposes shall not be permitted. The arbitrator may award only monetary damages in accordance with this Agreement.

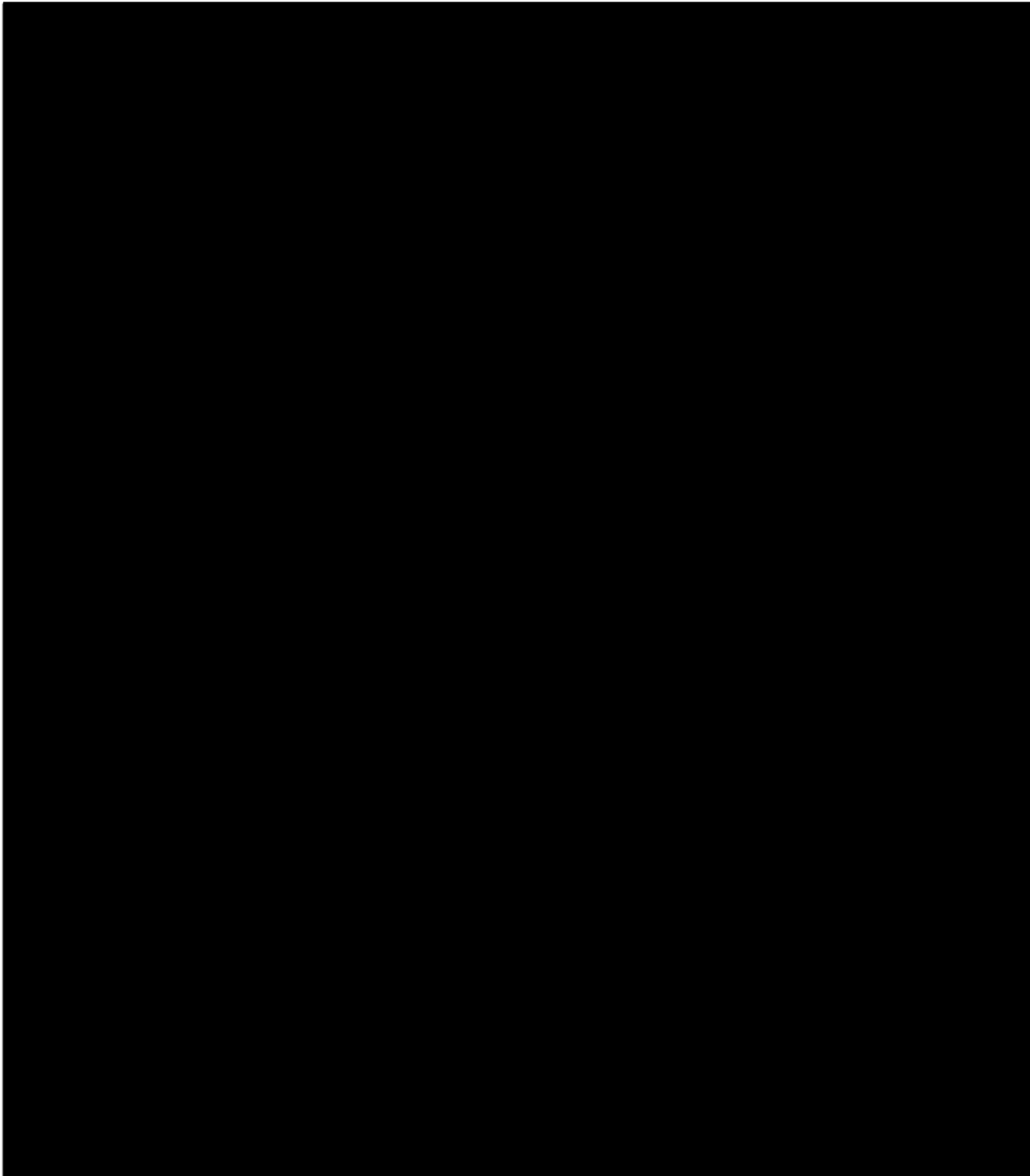
8.4 Arbitration Solely Between Parties; No Consolidation or Class Action.

Any arbitration or other proceeding related to a dispute arising under this Agreement shall be conducted solely between them. Neither Party shall request, nor consent to any request, that their dispute be joined or consolidated for any purpose, including without limitation any class action or similar procedural device, with any other proceeding between such Party and any third party.

9.0 MISCELLANEOUS







9.11 Entire Agreement.

This Agreement (including any attached schedules) constitutes the complete and sole contract between the Parties regarding the subject matter described above and supersedes any and all prior or contemporaneous oral or written representations, communications, proposals or agreements not expressly included in this Agreement and may not be contradicted or varied by evidence of prior, contemporaneous or subsequent oral representations, communications, proposals, agreements, prior course of dealings or discussions of the Parties.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement by their duly authorized officers, intending to be legally bound hereby.

PROVIDER


Signature: *Dennis Ayer*

Printed Name: Dennis Ayer

Title: DDS Owner

Ex: DDS, DMD, TIN Owner etc.

Date: 11/8/2018

FEDERAL TAX I.D. NUMBER: 

COMPANY *[This section is for Aetna information only]*

Signature: *Michelle Neuman*

Printed Name: Michelle Neuman

Title: Sr. Director, Aetna Regional Dental Management

Date 2/15/19

