

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

**MOTION FOR LEAVE TO FILE UNDER SEAL UNREDACTED VERSION OF A
DOCUMENT FILED IN CONNECTION WITH AETNA'S MOTION TO COMPEL
ARBITRATION WITH RESPECT TO DR. DENNIS C. AYER, DDS, LLC**

Pursuant to Local Rule 7.2, Defendant Aetna hereby moves for leave to file under seal or redacted an exhibit filed in connection with Aetna's Motion to Compel Arbitration With Respect To Dr. Dennis C. Ayer, DDS, LLC and Memorandum in Support, because it contains information confidential to Aetna and are current and proprietary. Aetna has filed a redacted version of the document publicly, and seeks to file an unredacted version of Exhibit A under seal.

Aetna respectfully requests the Court grant this motion and permit Aetna to file the Proposed Sealed Material under seal.

I. ARGUMENT

It is well established that "the public has a right of access to judicial records." *Siedle v. Putnam Inv. Inc.*, 147 F.3d 7, 9–10 (1st Cir. 1998). However, the right to access "is not unfettered." *Id.* at 10. "Important countervailing interests can, in given instances, overwhelm the usual presumption and defeat access." *Id.* When a party requests a seal order, the court "must

carefully balance the competing interests that are at stake in the particular case.” *Id.* The trial court has “considerable leeway” in making its decision. *Id.*

A party seeking to seal materials may “overcome the presumption of public access” by “demonstrat[ing] significant countervailing interests, like the existence of trade secrets in the documents or confidential business information.” *Bradford & Bigelow, Inc. v. Richardson*, 109 F. Supp. 3d 445, 448 (D. Mass. 2015); *see also Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (“In general, compelling reasons sufficient to outweigh the public’s interest in disclosure and justify sealing court records exist when such court files might have become a vehicle for improper purposes, such as the use of records to . . . release trade secrets.” (internal citations and quotations omitted)).

A. Compelling Reasons Exist to Seal the Proposed Sealed Material

Compelling reasons exist to seal Aetna’s confidential information. The material at issue, a confidential contract, contains Aetna’s confidential business information. The Agreement itself includes a confidentiality provision identifying the agreement as confidential at section 5.5. In particular, Aetna views the terms on which it is willing to contract with payors as proprietary business information, the disclosure of which could competitively disadvantage Aetna. The terms of the contracts reflect Aetna’s confidential business practices including the result of its negotiation with healthcare providers and the terms of payment. The material to be sealed is also current and in effect. The proprietary details within warrant sealing as Aetna maintains its contracts as strictly confidential to avoid exposure and loss in future business negotiations and in competing with its competitors. Huck Decl. ¶¶ 3-5.

Courts routinely seal the type of confidential business information that Aetna seeks to seal here. *Valassis Comms, Inc. v. News Corp.*, 2019 WL 10984156, *2 (S.D.N.Y. Mar. 11, 2019) (granting motions to seal specific contract provisions that “address[ed] exclusivity

arrangements, profit sharing details, pricing of contracts . . . payment terms, and [] commissions.”). The Court in *Valassis* found “that the presumption of access is low and does not outweigh [the Movants’] business interest in protecting the information.” *Id.* See also *Sheetz, Inc. v. City of Centerville*, 2025 WL 1413727, *3 (S.D. Ohio May 15, 2025) (granting Plaintiffs motion to seal or redact contract where Plaintiffs “compelling interest outweighs the public interest in release of the confidential information[.]”); *Glass Dimensions, Inc. v. State St. Corp.*, 0-10588-FDS, 2013 WL 6280085, at *1 (D. Mass. Dec. 3, 2013) (sealing appropriate where “Defendants . . . have a legitimate and significant interest in protecting the sensitive business information” and “[m]aintaining the [material under seal and redacted] will avoid the serious competitive injury that dissemination would more than likely entail.”).

Sealing is appropriate where, as here, the disclosing parties have represented that public disclosure of this type of confidential information would be detrimental to their business, and due to the nature of the materials to be sealed, there is no less restrictive alternative to filing the materials under seal. See, e.g., *Pfizer Inc. v. Teva Pharms. USA, Inc.*, 08-1331, 2009 WL 2256484, at *1 (D.N.J. July 28, 2009). Public disclosure of sensitive technical and commercial information poses a particular risk of harm in highly competitive markets, such as the healthcare industry. See, e.g., *Biomarin Pharm. Inc. v. Par Pharm., Inc.*, 15-1706, 2017 WL 11635034, at *1 (D.N.J. Jan. 19, 2017) (“public disclosure of [business development and technical information] would give competitors an unfair advantage in the [marketplace].”).

For the foregoing reasons, and for those stated in the accompanying Declaration of Anna Huck, compelling reasons exist to seal the Proposed Sealed Material.

B. Period of Impoundment

Pursuant to Local Rules 7.2(a) and (b), the proposed sealed documents should be impounded until further order of the Court, at which time Aetna request that the Court notify Aetna's counsel so that they may retrieve the impounded documents from the Court's files.

II. CONCLUSION

Aetna respectfully requests the Court grant Aetna leave to file the Proposed Sealed Material under seal.

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
Telephone: (202) 434-5000
gborden@wc.com

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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Leave to file granted on July 31, 2025

DECLARATION OF ANNA M. HUCK IN SUPPORT OF AETNA'S MOTION TO SEAL

I, Anna M. Huck, 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 Lead Director, Network Management, Dental at Aetna Inc. ("Aetna"). I am responsible for dental Network provider agreements.

2. The document sought to be sealed, attached as Exhibit A, is a current Aetna contract with provider Dennis Ayer.

3. Nearly every Aetna contract with providers and clients contains confidentiality provisions protecting against public disclosure given the sensitive nature of the information. The same is true with this contract, at section 5.5.

4. Aetna maintains the confidentiality of its provider contracts, which include information about Aetna's business practices and terms. The terms under which Aetna contracts with providers is proprietary, competitive business information, the disclosure of which could cause harm to Aetna.

5. Public disclosure of contract or negotiation information would create a substantial risk of competitor activity because it would help facilitate collusion between medical providers on contracting terms and dampen the incentives of providers to agree to certain provisions favorable to Aetna. Less favorable terms would in turn would harm Aetna's clients and members while also damaging Aetna's competitive standing in the marketplace. Public disclosure would harm Aetna's competitive standing in the marketplace and would harm provider competition and health insurance competition

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 Houston, Texas.

Anna M. Huck

Anna M. Huck

EXHIBIT A

REDACTED PUBLIC VERSION

20181121

DENTAL PROVIDER AGREEMENTTABLE OF CONTENTS

1.0	DEFINITIONS.....	3
2.0	PROVIDER SERVICES AND OBLIGATIONS.....	5
2.1	<u>PROVISION OF SERVICES</u>	5
2.2	<u>NON-DISCRIMINATION</u>	5
2.3	<u>PROVIDER REPRESENTATIONS</u>	6
2.4	<u>PROVIDER'S INSURANCE</u>	7
2.5	<u>PLAN PARTICIPATION</u>	7
2.6	<u>CONSENTS TO RELEASE MEDICAL INFORMATION</u>	7
2.7	<u>ENCOUNTER DATA</u>	7
3.0	COMPANY OBLIGATIONS.....	7
3.1	<u>COMPANY'S COVENANTS</u>	7
3.2	<u>COMPANY REPRESENTATIONS</u>	7
3.3	<u>COMPANY'S INSURANCE</u>	8
4.0	CLAIMS SUBMISSIONS, COMPENSATION AND MEMBER BILLING.....	8
4.1	<u>CLAIM SUBMISSION AND PAYMENT</u>	8
4.2	<u>COORDINATION OF BENEFITS</u>	9
4.3	<u>MEMBER BILLING</u>	9
5.0	COMPLIANCE WITH POLICIES.....	10
5.1	<u>POLICIES</u>	10
5.2	<u>NOTICES AND REPORTING</u>	10
5.3	<u>INFORMATION AND RECORDS</u>	11
5.4	<u>QUALITY, ACCREDITATION AND REVIEW ACTIVITIES</u>	11
5.5	<u>PROPRIETARY INFORMATION</u>	12
6.0	TERM AND TERMINATION.....	12
6.1	<u>TERM</u>	12
6.2	<u>TERMINATION WITHOUT CAUSE</u>	12
6.3	<u>TERMINATION FOR BREACH</u>	12
6.4	<u>IMMEDIATE TERMINATION OR SUSPENSION</u>	12
6.5	<u>OBLIGATIONS FOLLOWING TERMINATION</u>	13
6.6	<u>OBLIGATIONS DURING DISPUTE RESOLUTION PROCEEDINGS</u>	13
7.0	RELATIONSHIP OF THE PARTIES.....	13
7.1	<u>INDEPENDENT CONTRACTOR STATUS</u>	13
7.2	<u>USE OF NAME</u>	13
7.3	<u>INTERFERENCE WITH CONTRACTUAL RELATIONS</u>	14
8.0	DISPUTE RESOLUTION.....	14
8.1	<u>MEMBER GRIEVANCE DISPUTE RESOLUTION</u>	14
8.2	<u>PROVIDER DISPUTE RESOLUTION</u>	14
8.3	<u>ARBITRATION</u>	14
8.4	<u>ARBITRATION SOLELY BETWEEN PARTIES; NO CONSOLIDATION OR CLASS ACTION</u>	14
9.0	MISCELLANEOUS.....	14
9.1	<u>AMENDMENTS</u>	14
9.2	<u>WAIVER</u>	15

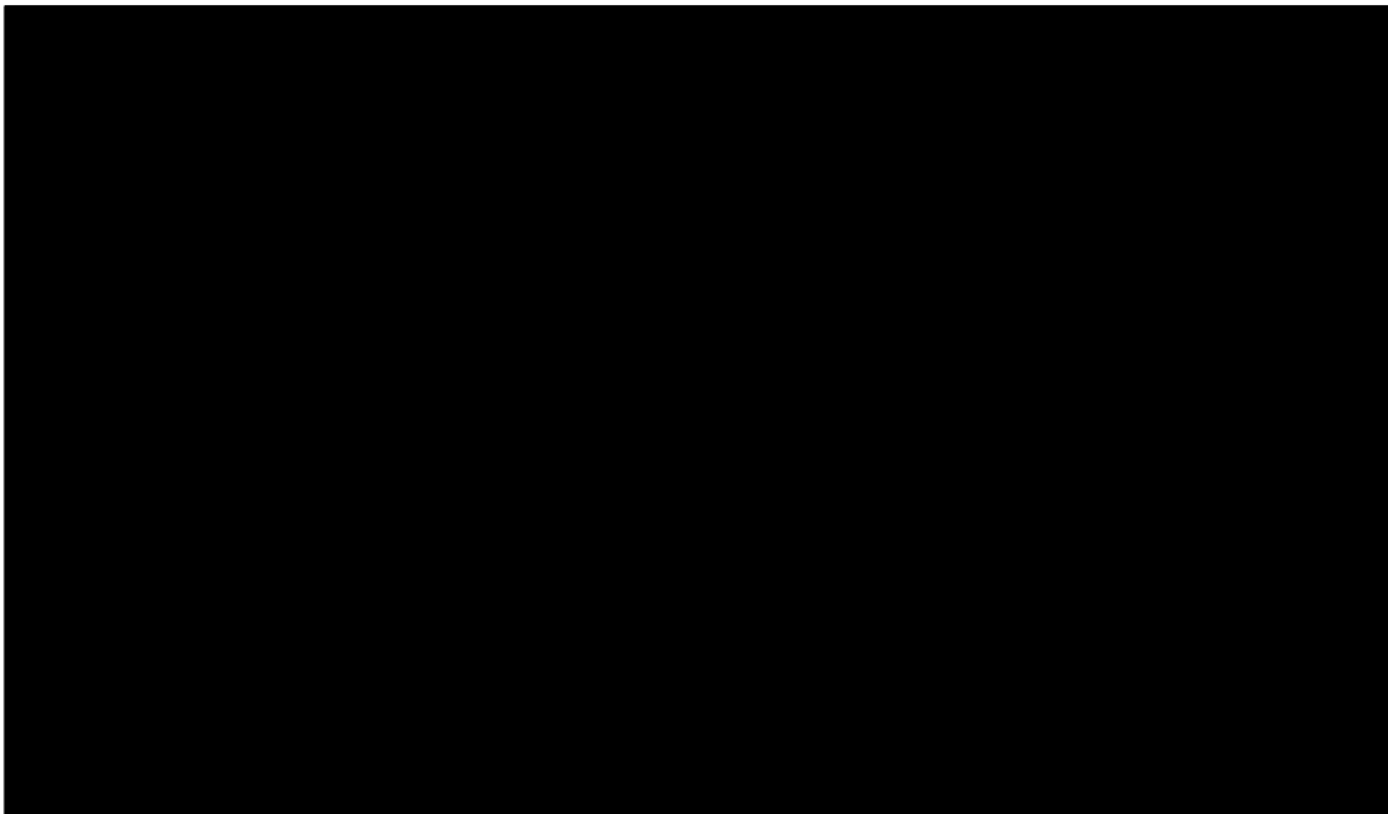
9.3	<u>GOVERNING LAW</u>	15
9.4	<u>LIABILITY</u>	15
9.5	<u>SEVERABILITY</u>	15
9.6	<u>SUCCESSORS; ASSIGNMENT</u>	15
9.7	<u>NOTICES</u>	15
9.8	<u>NON-EXCLUSIVITY</u>	16
9.9	<u>SURVIVAL</u>	16
9.11	<u>ENTIRE AGREEMENT</u>	17

DENTAL PROVIDER AGREEMENT

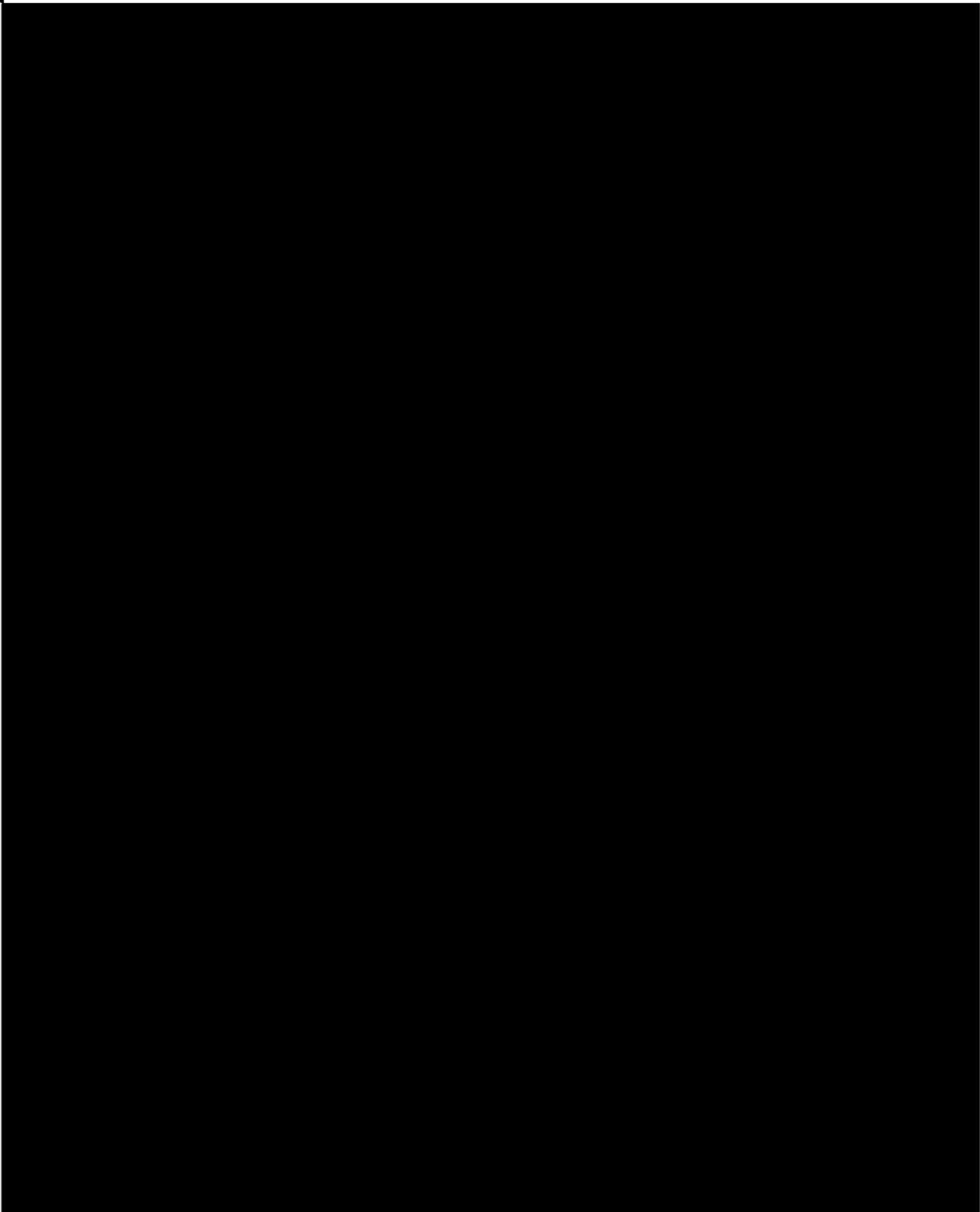
This Dental Provider Agreement ("Agreement") is made and entered into as of February 15, 2019 ("Effective Date") by and between Aetna Health Inc., a Pennsylvania corporation, on behalf of itself and its Affiliates (hereinafter "Company") and Dennis Ayer (hereinafter "Provider"). The Regulatory Compliance 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.

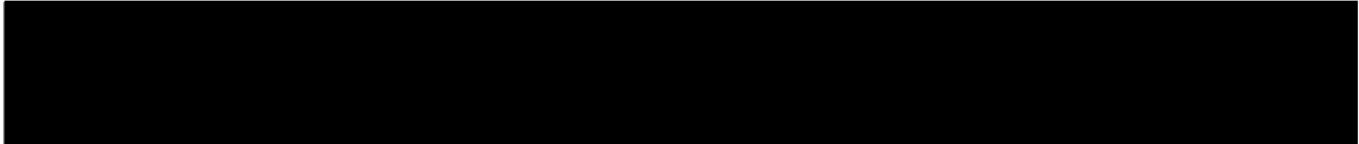
WHEREAS, Company contracts with certain dental providers to provide dental services to Members and in return for the provision of dental services by providers, Company will pay or arrange for the payment of claims for Covered Services under the terms of this Agreement.

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:

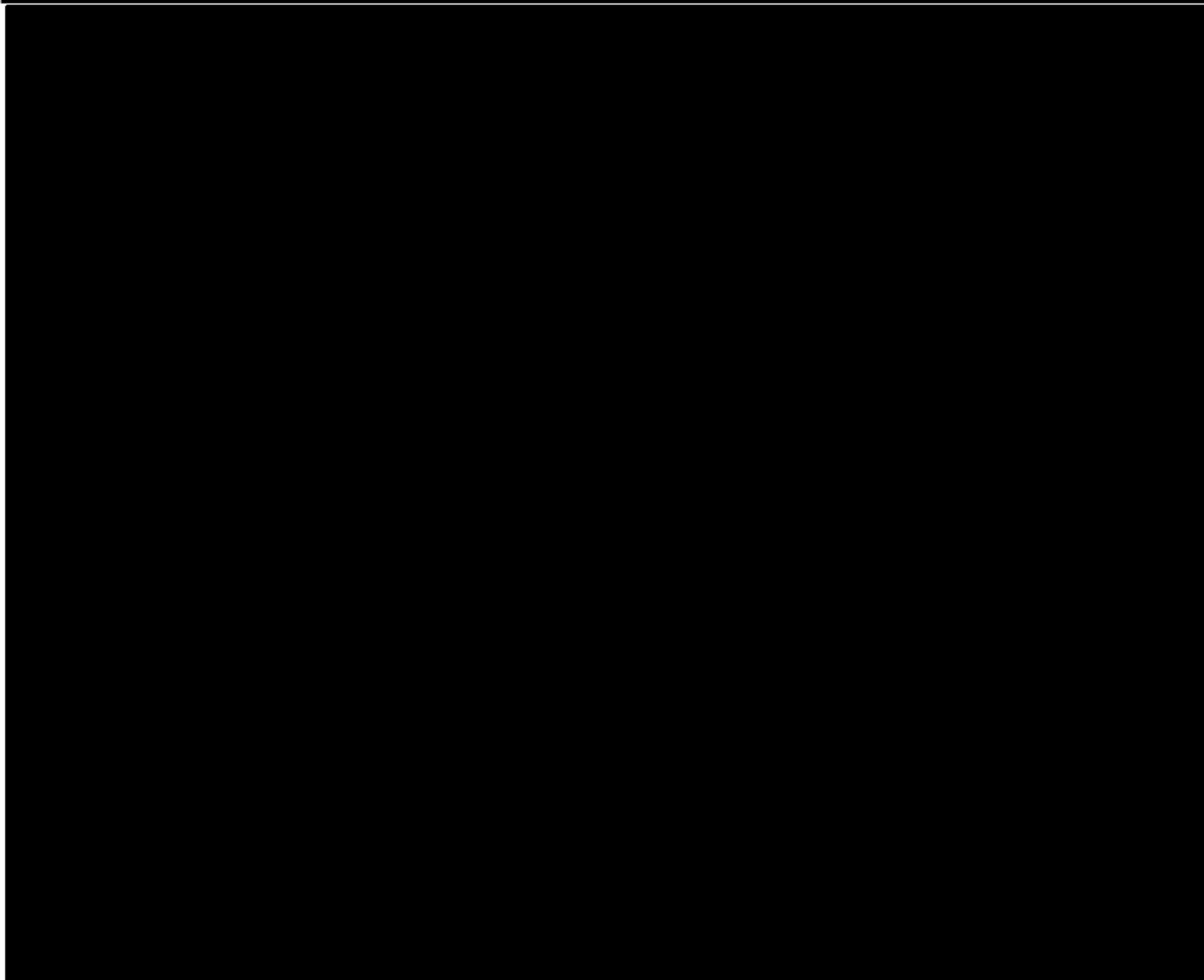
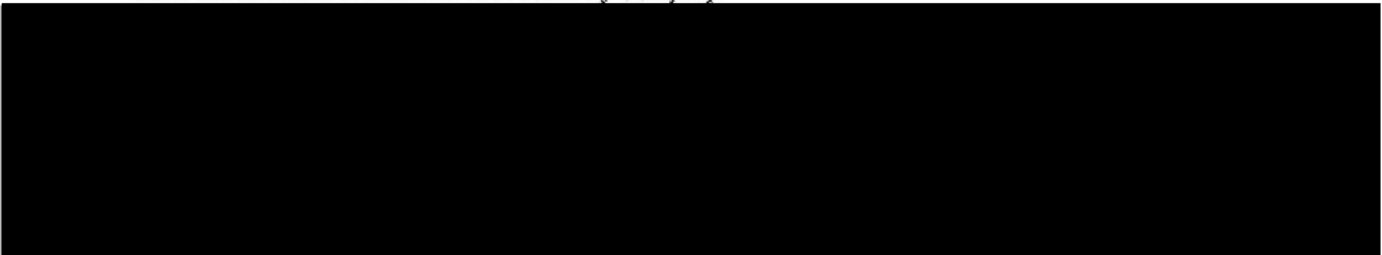


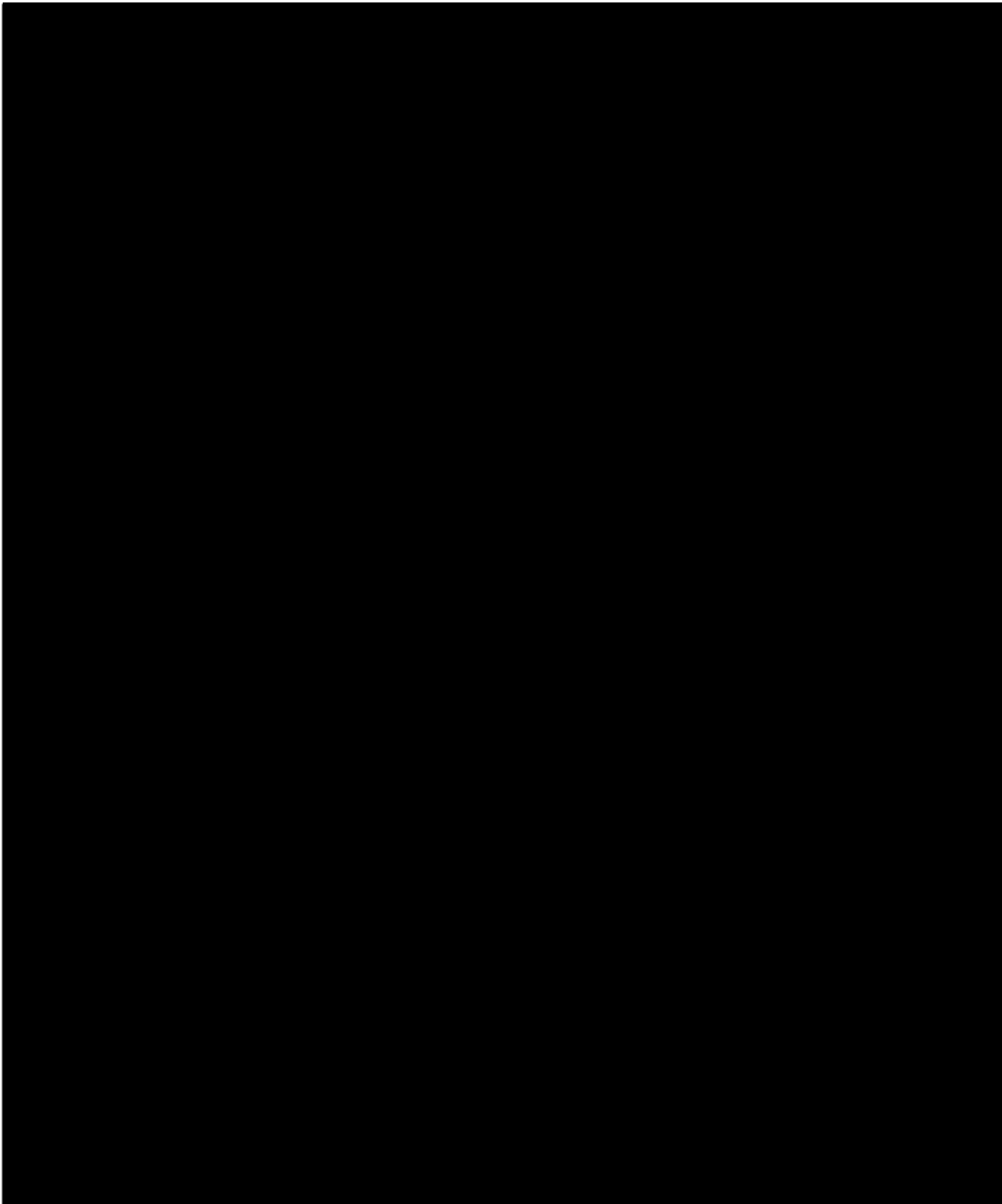
1.5 Confidential Information. Any information that identifies a Member and is related to the Member's participation in a Plan, the Member's physical or mental health or condition, the provision of dental care to the Member or payment for the provision of dental care to the Member. Confidential Information 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.

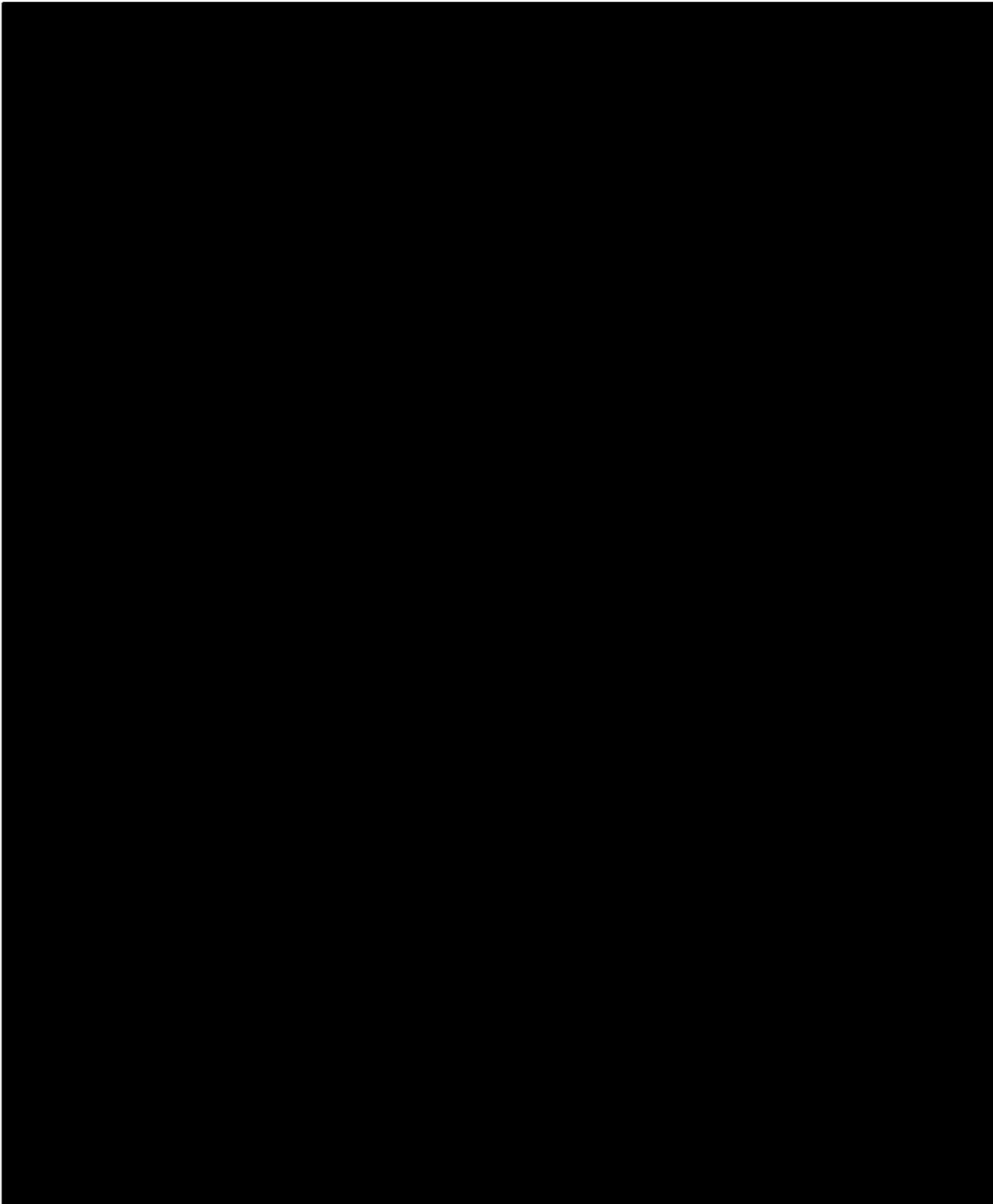


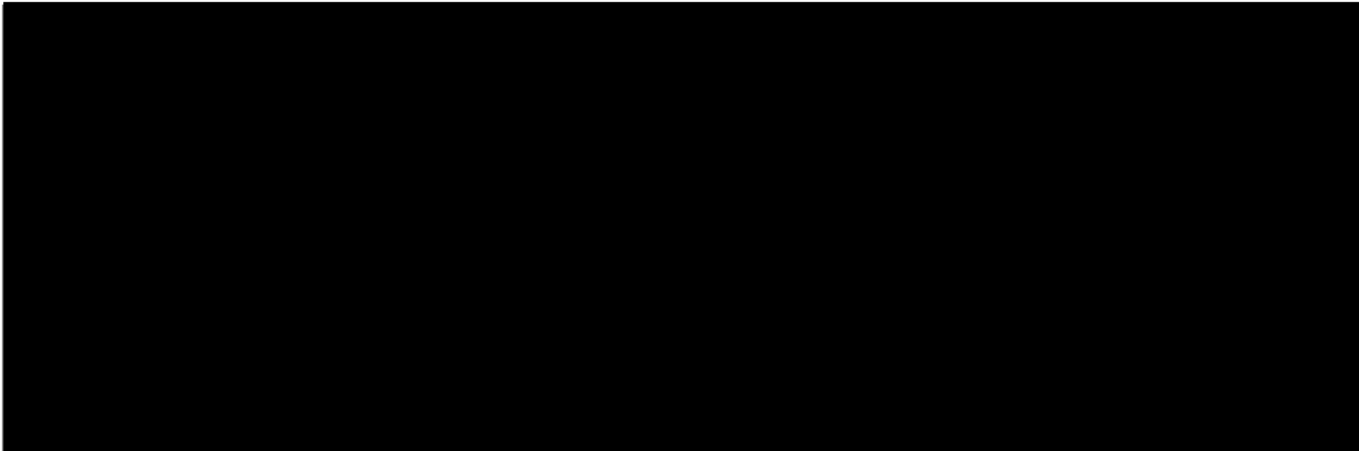


1.20 Proprietary Information. Any and all information, whether prepared by a Party, its advisors or otherwise, relating to such Party or the development, execution or performance of this Agreement or any future agreement between the Parties whether furnished prior to or after the Effective Date. Proprietary 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.



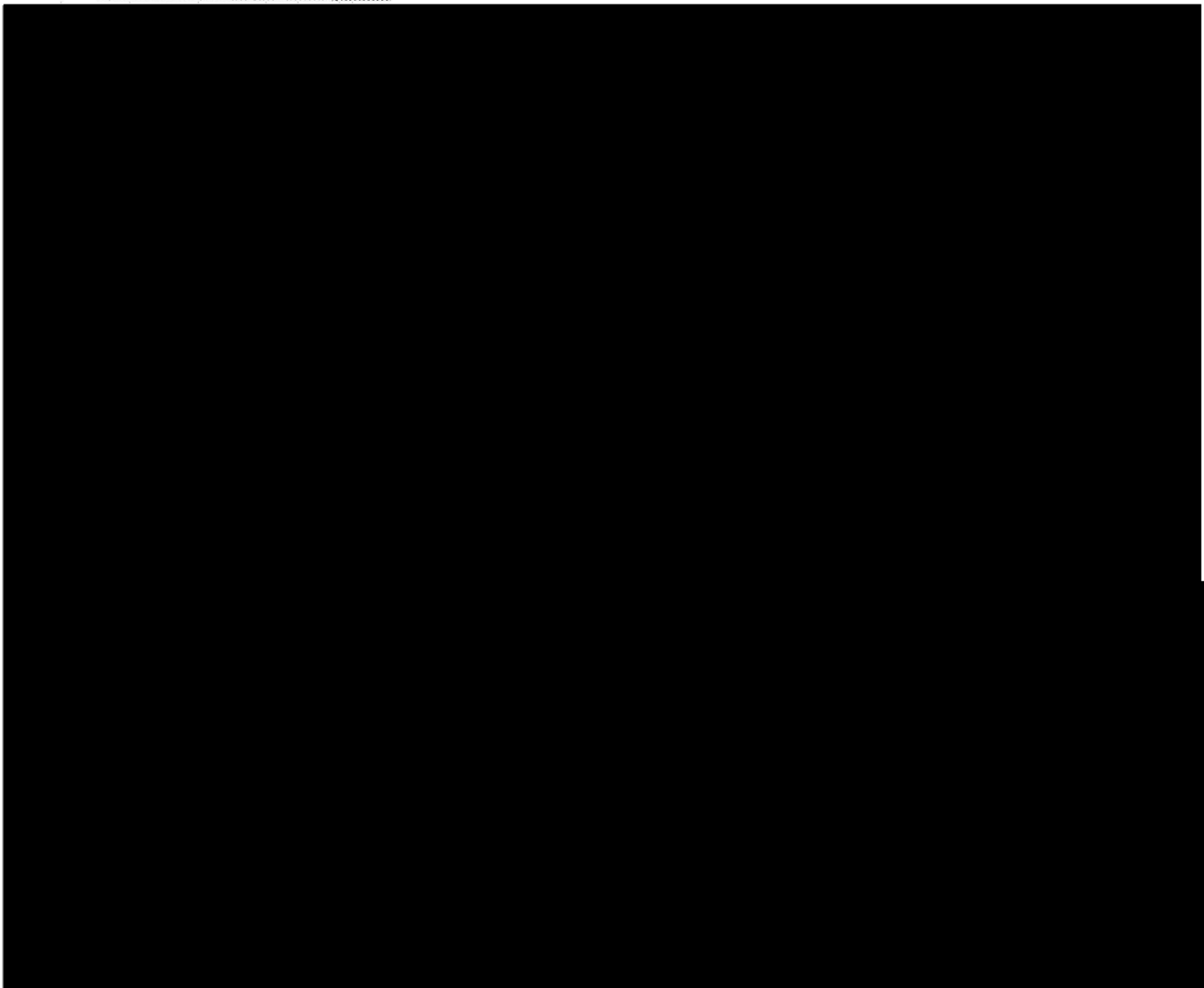


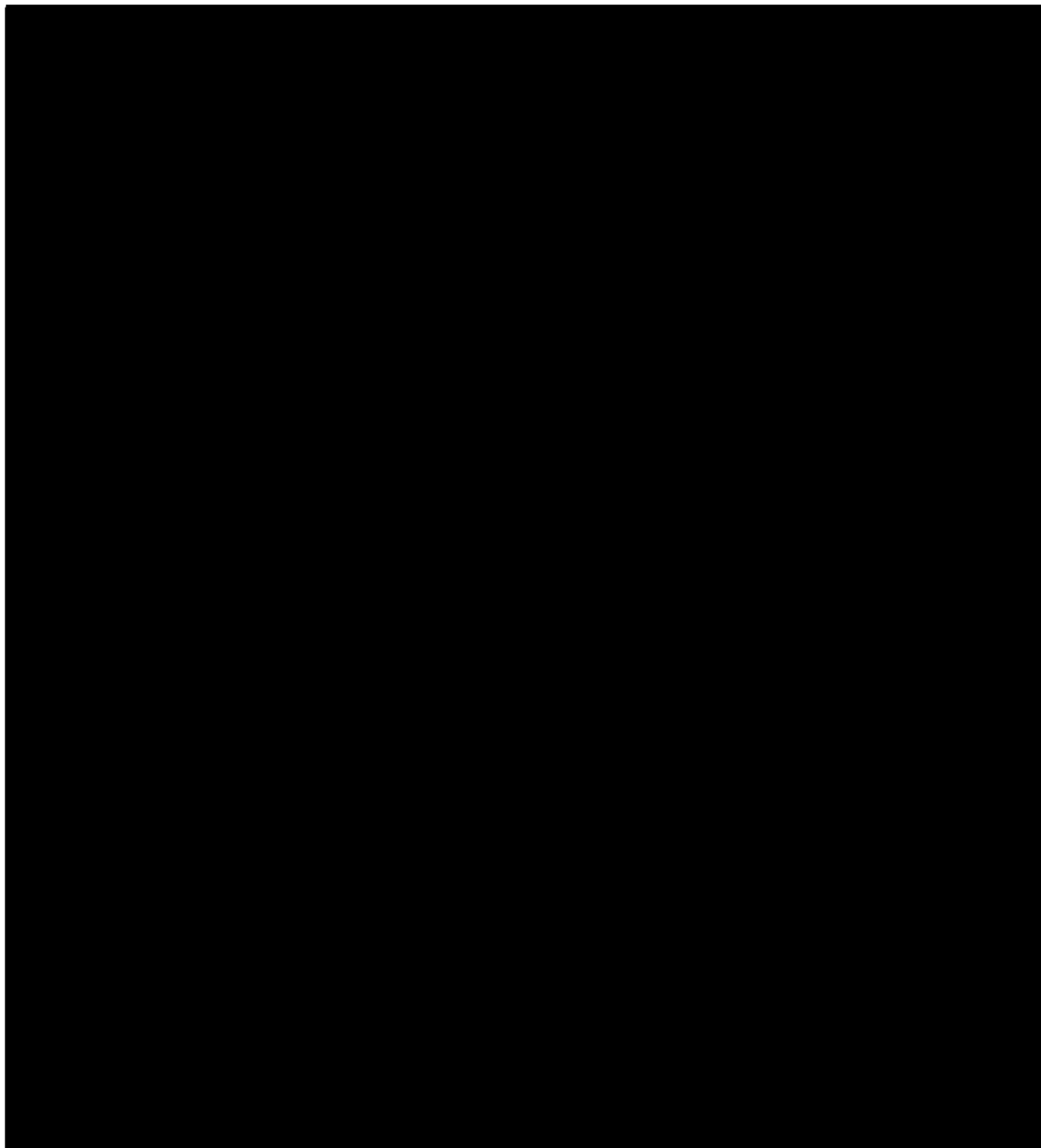




4.0 CLAIMS SUBMISSIONS, COMPENSATION AND MEMBER BILLING

4.1 Claim Submission and Payment.

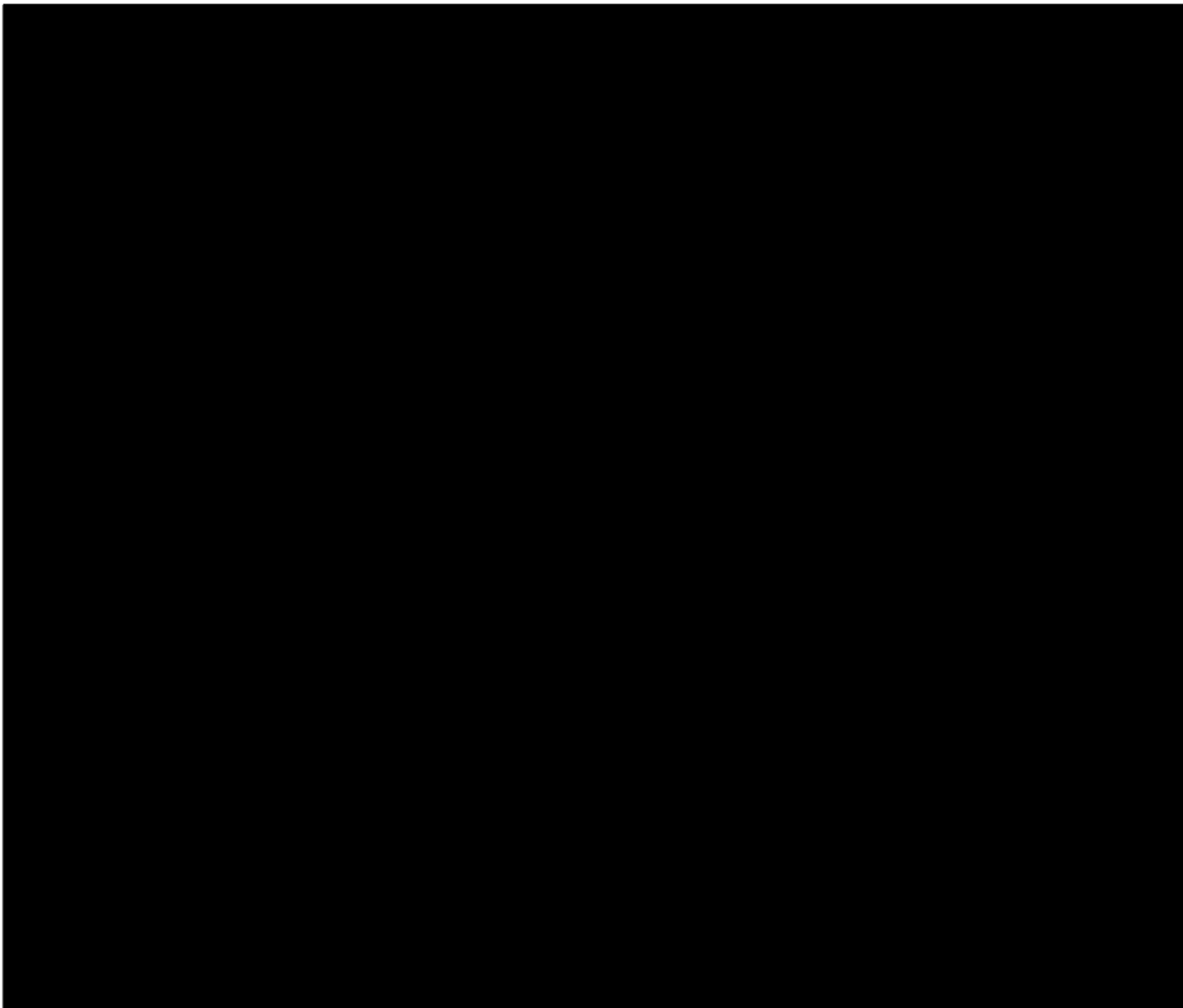


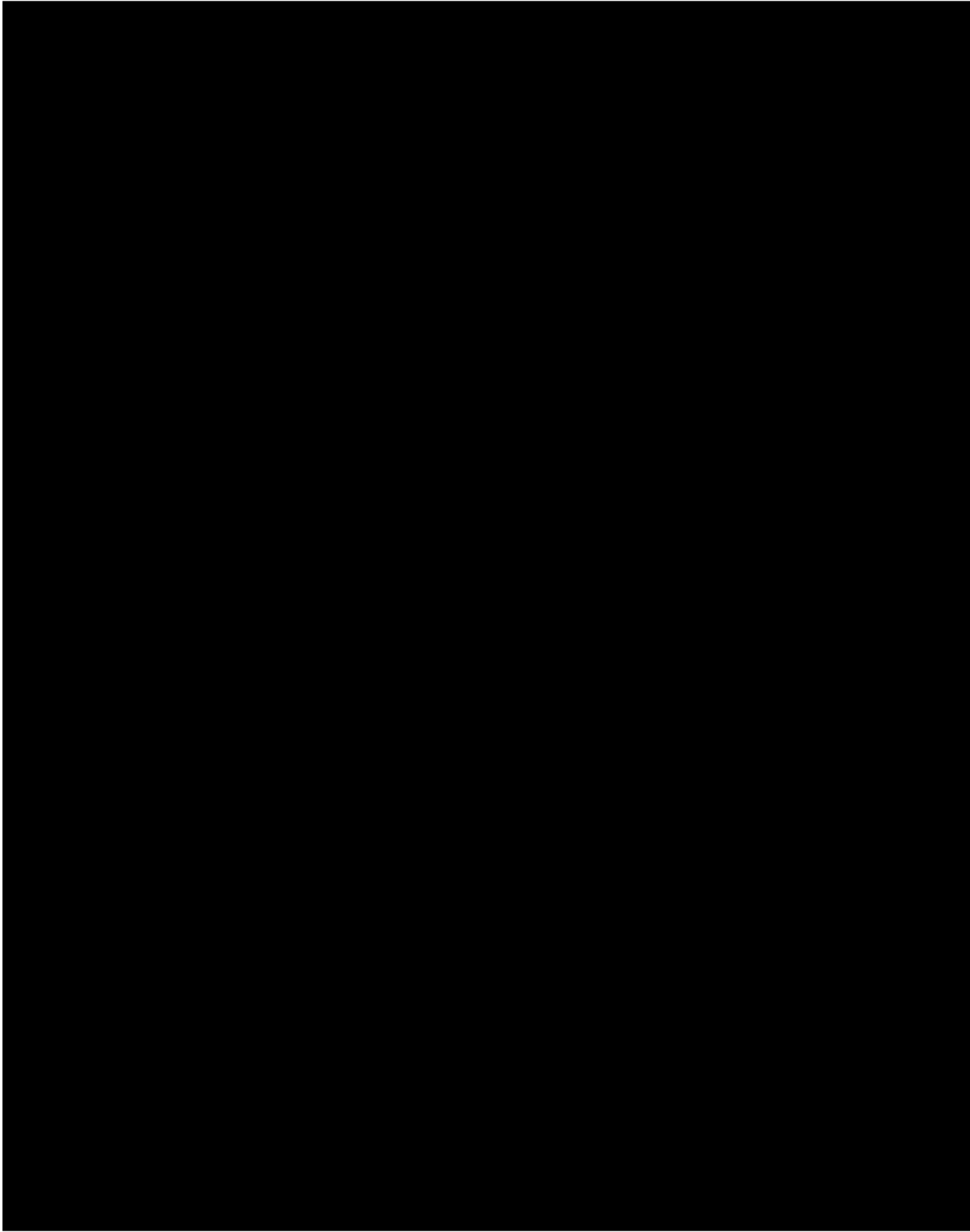


4.3 Member Billing.

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.

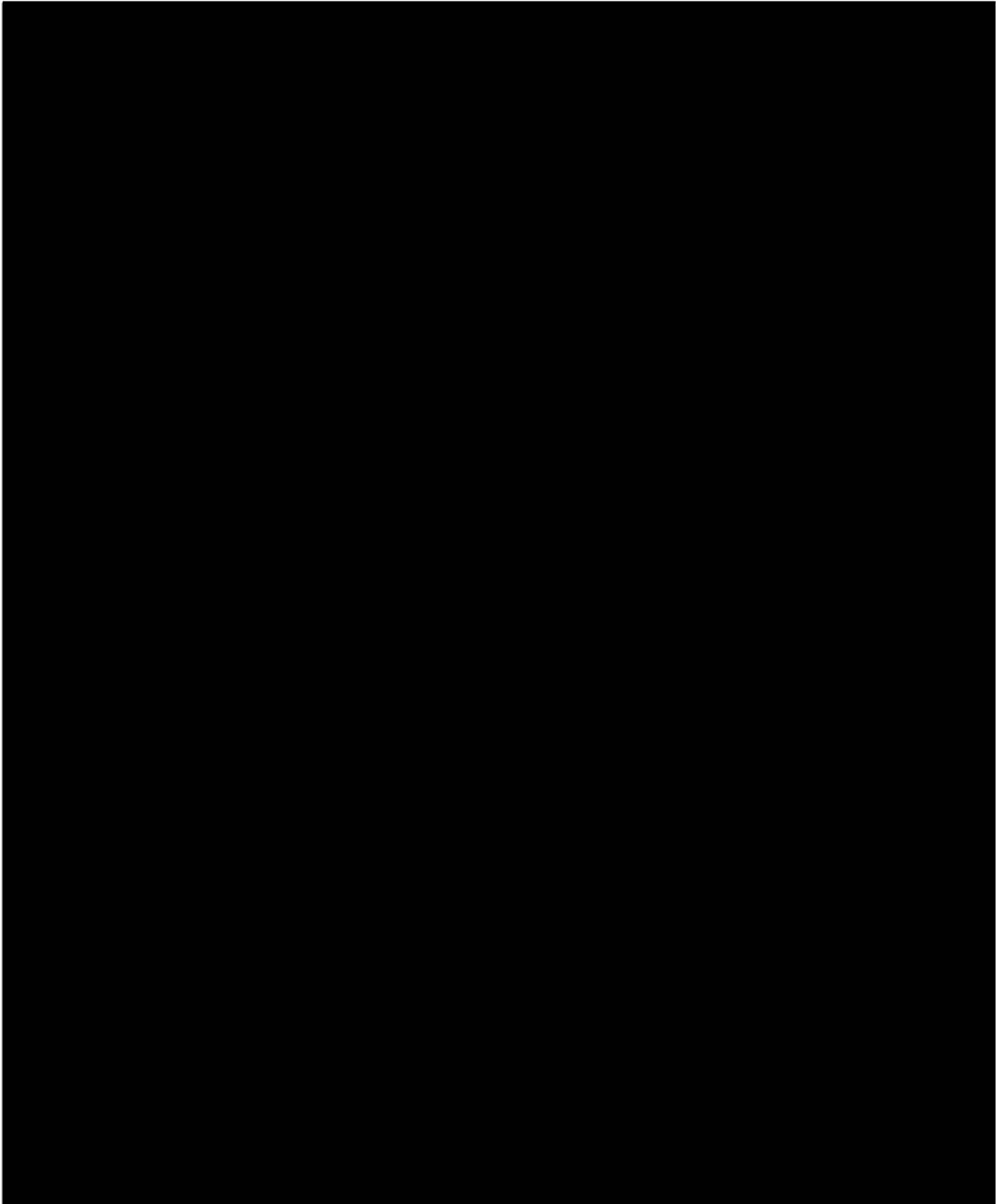


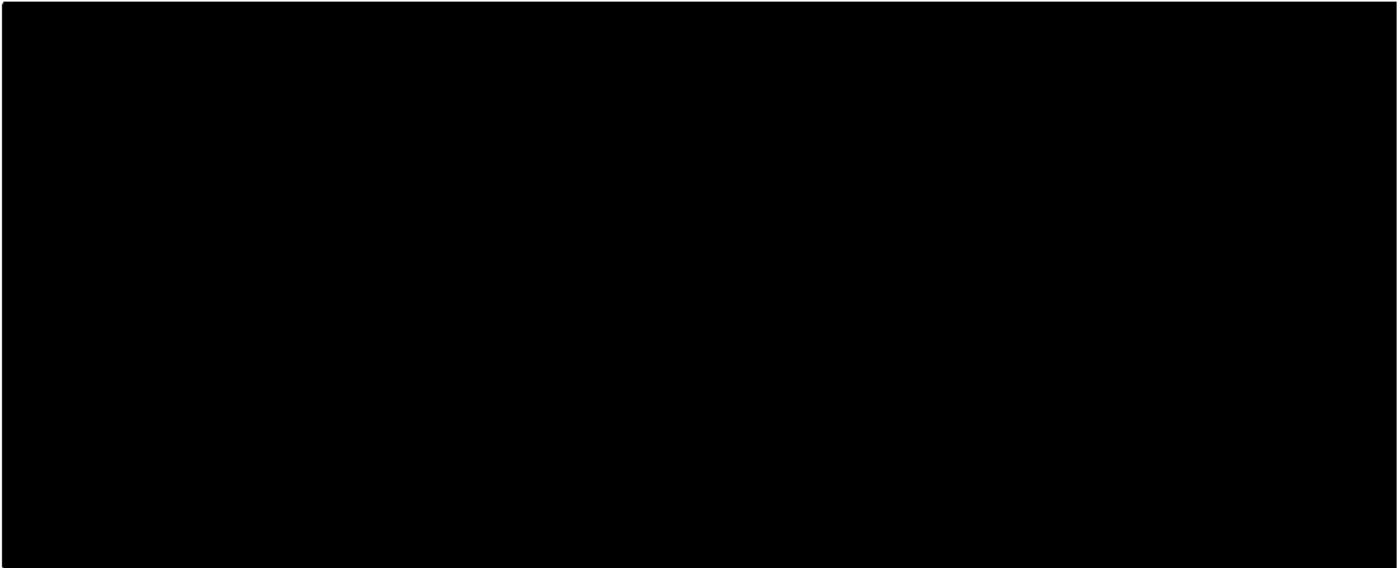


5.5 Proprietary Information.

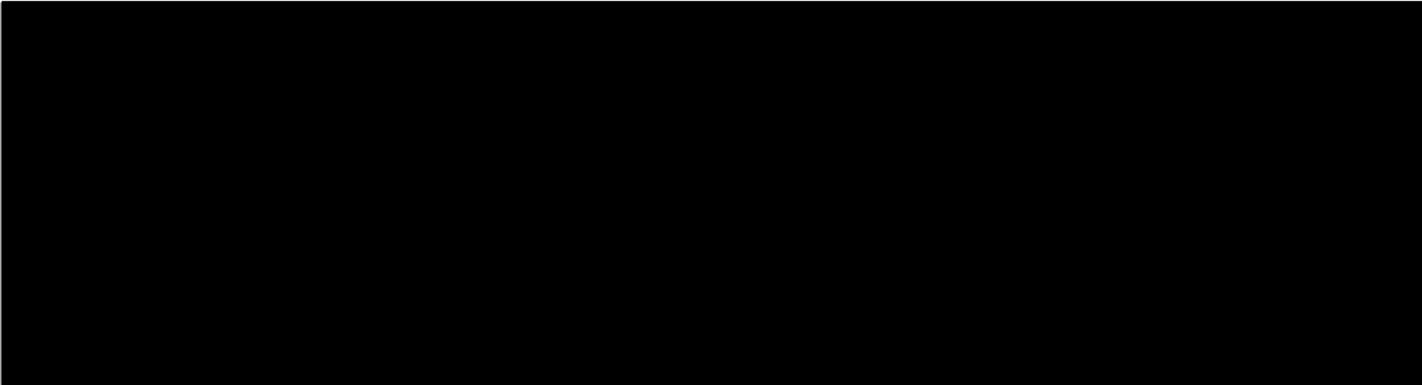
Each Party agrees that the Proprietary Information of the other Party is the exclusive property of such Party and that each Party has no right, title or interest in the Proprietary Information. Unless such Proprietary Information is otherwise publicly available, each Party agrees to keep the Proprietary 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.

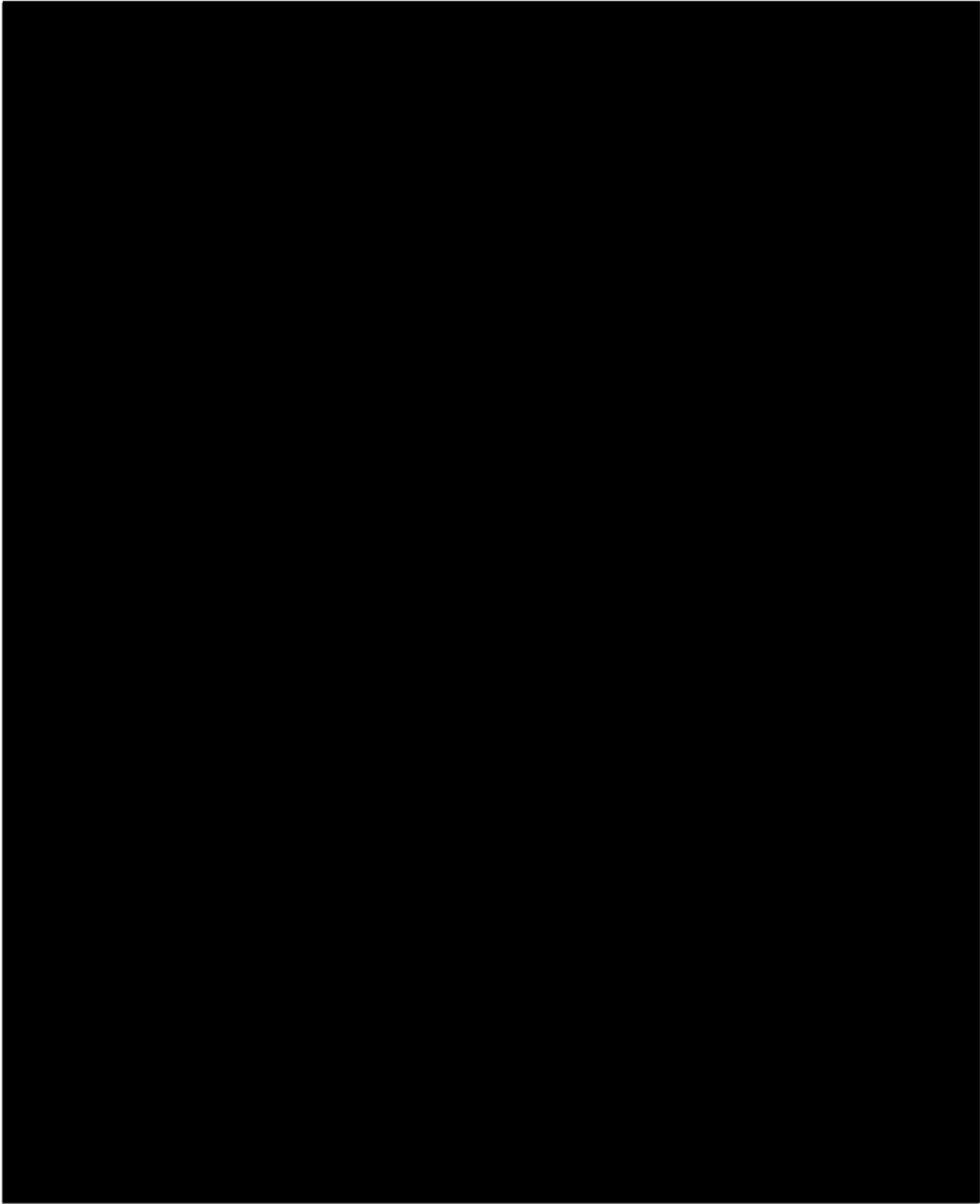
Any controversy or claim arising out of or relating to this Agreement including breach, termination, or validity of this Agreement, except for temporary, preliminary, or permanent injunctive relief or any other form of equitable relief, shall be settled by binding arbitration. The parties agree that 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.

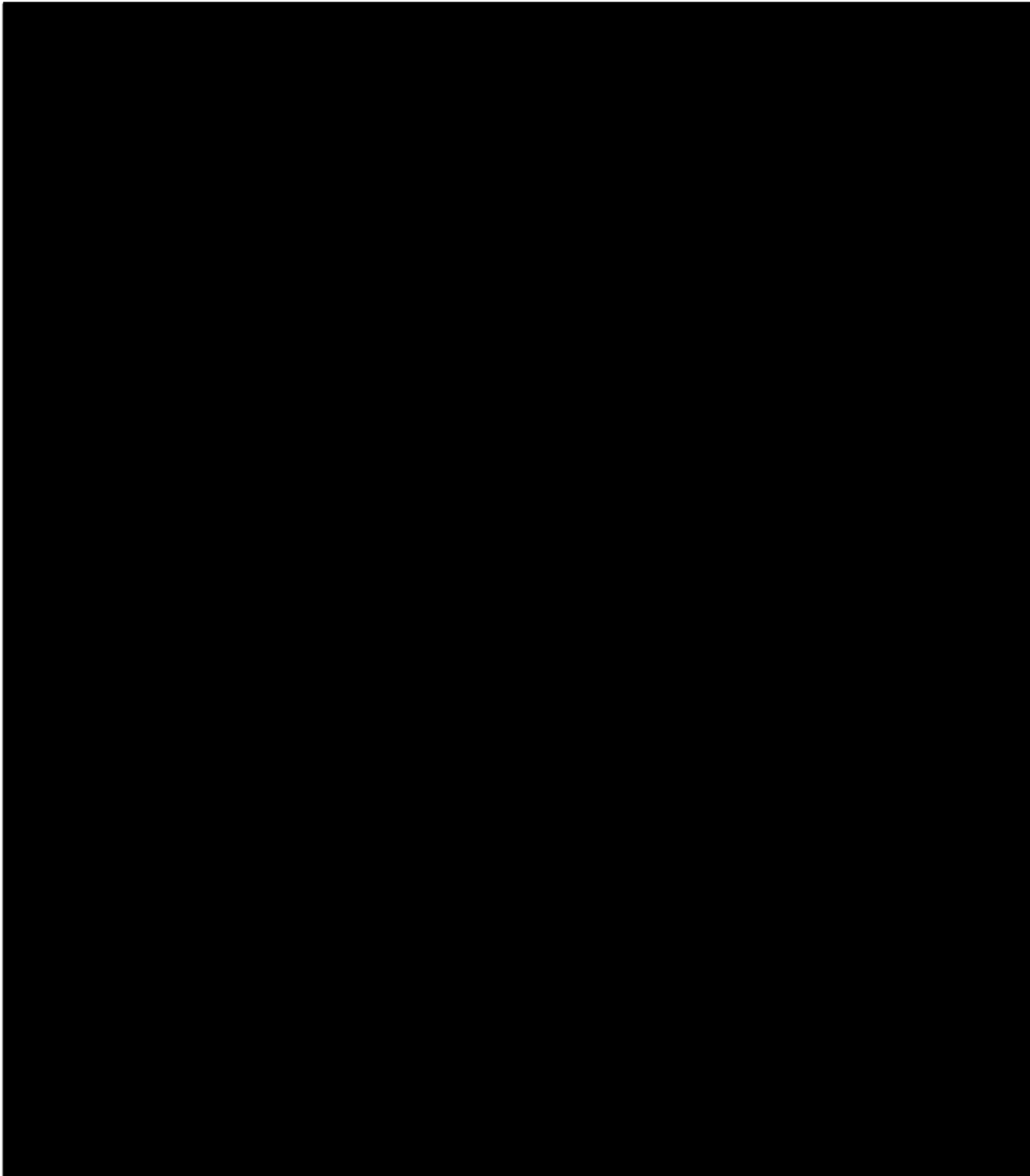
8.4 Arbitration Solely Between Parties; No Consolidation or Class Action.

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: 

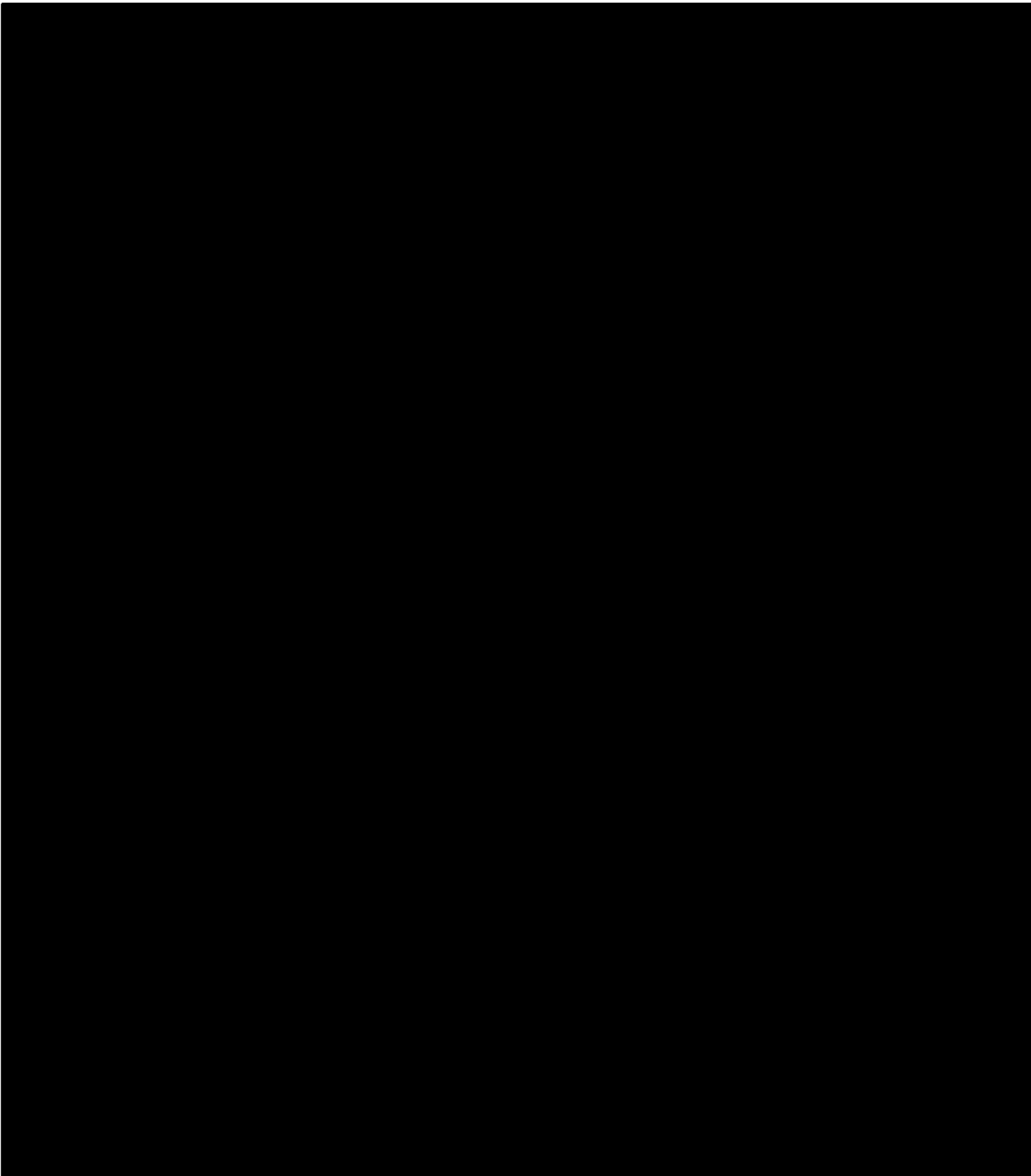
COMPANY *[This section is for Aetna information only]*

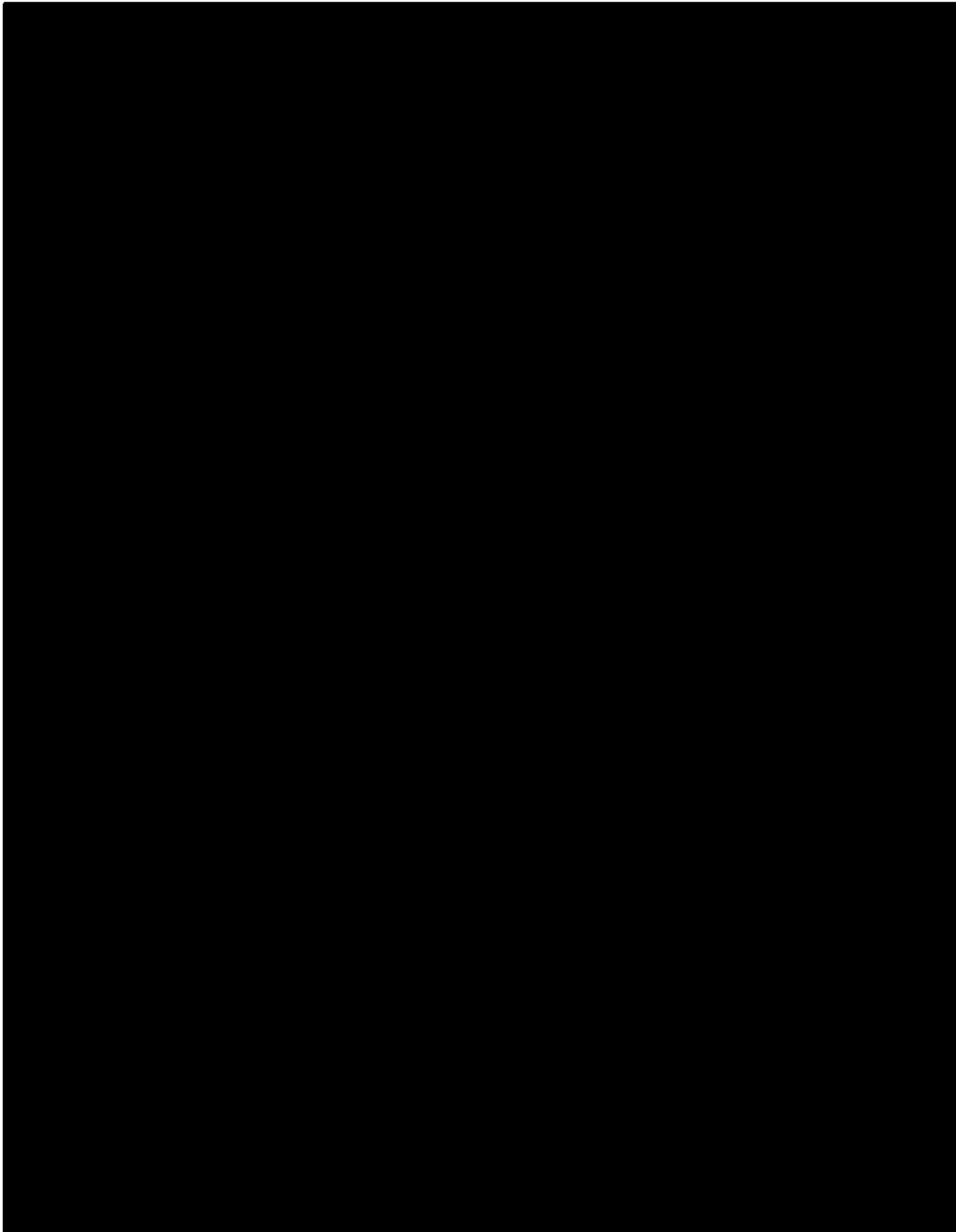
Signature: *Michelle Neuman*

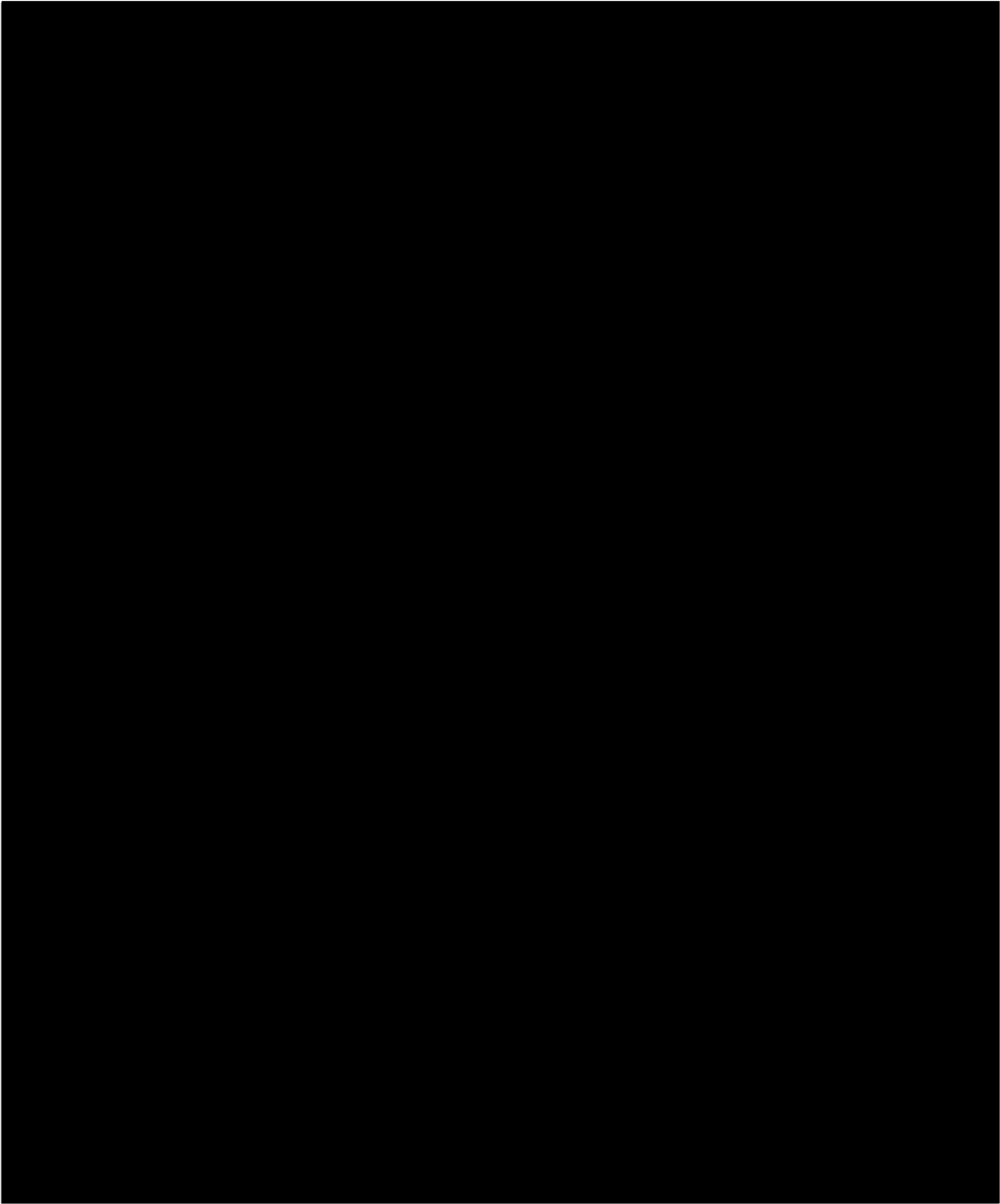
Printed Name: Michelle Neuman

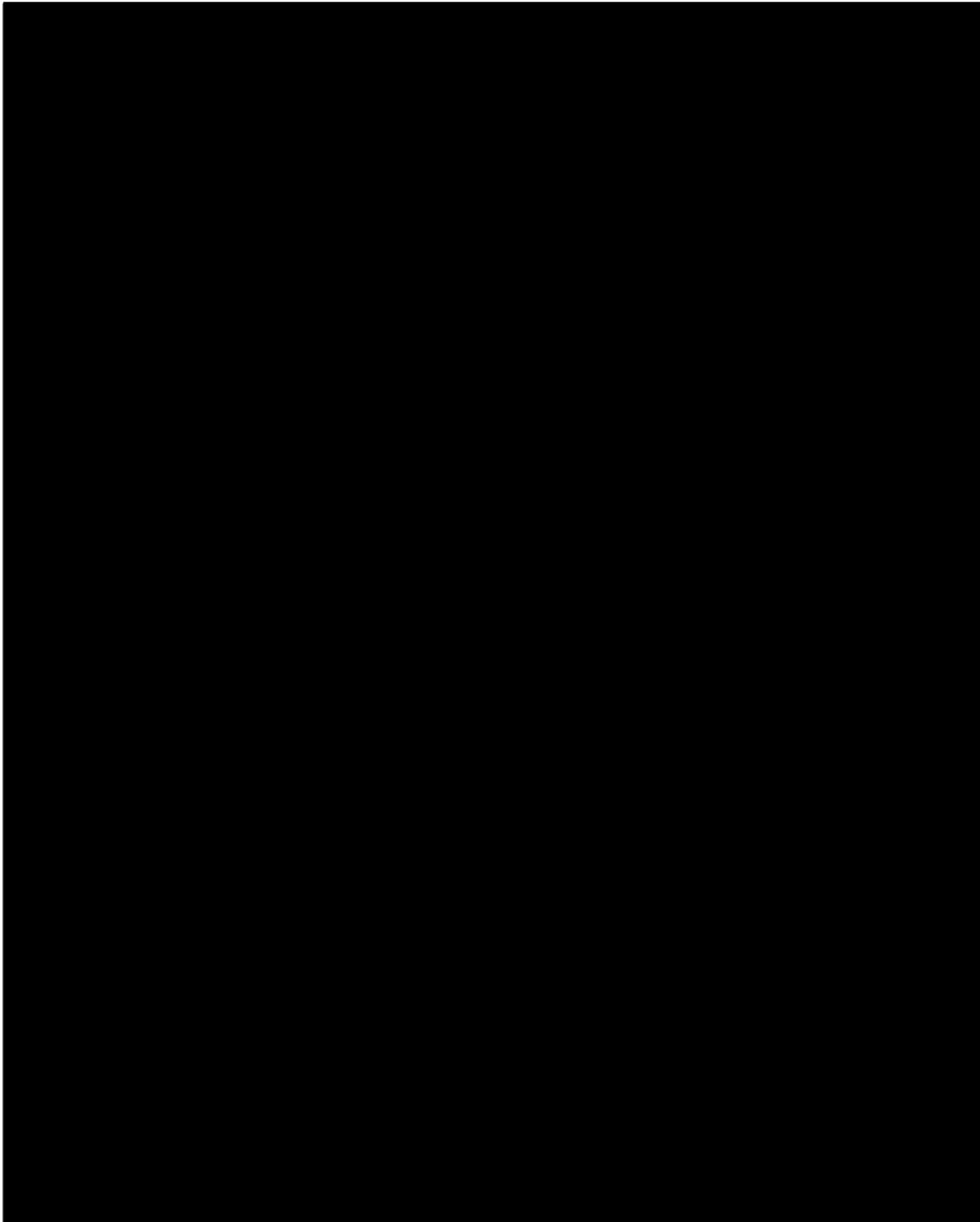
Title: Sr. Director, Aetna Regional Dental Management

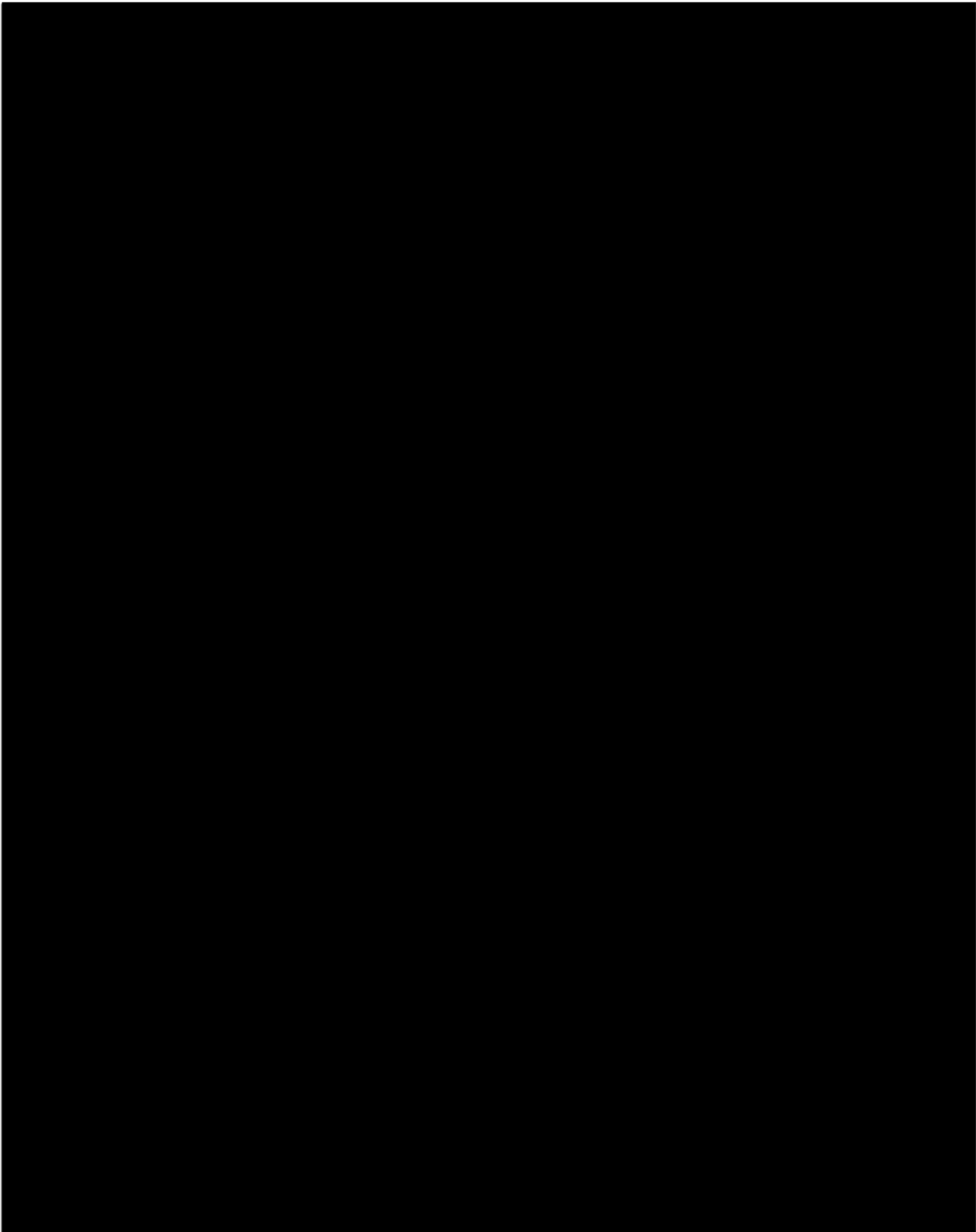
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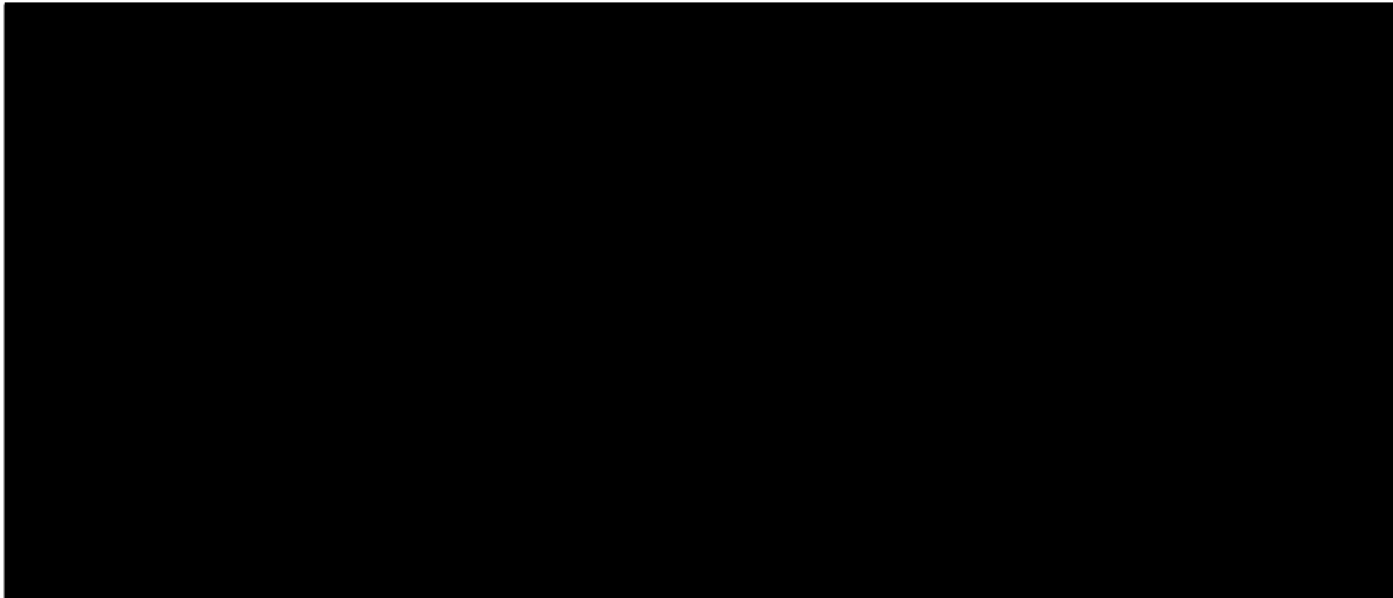


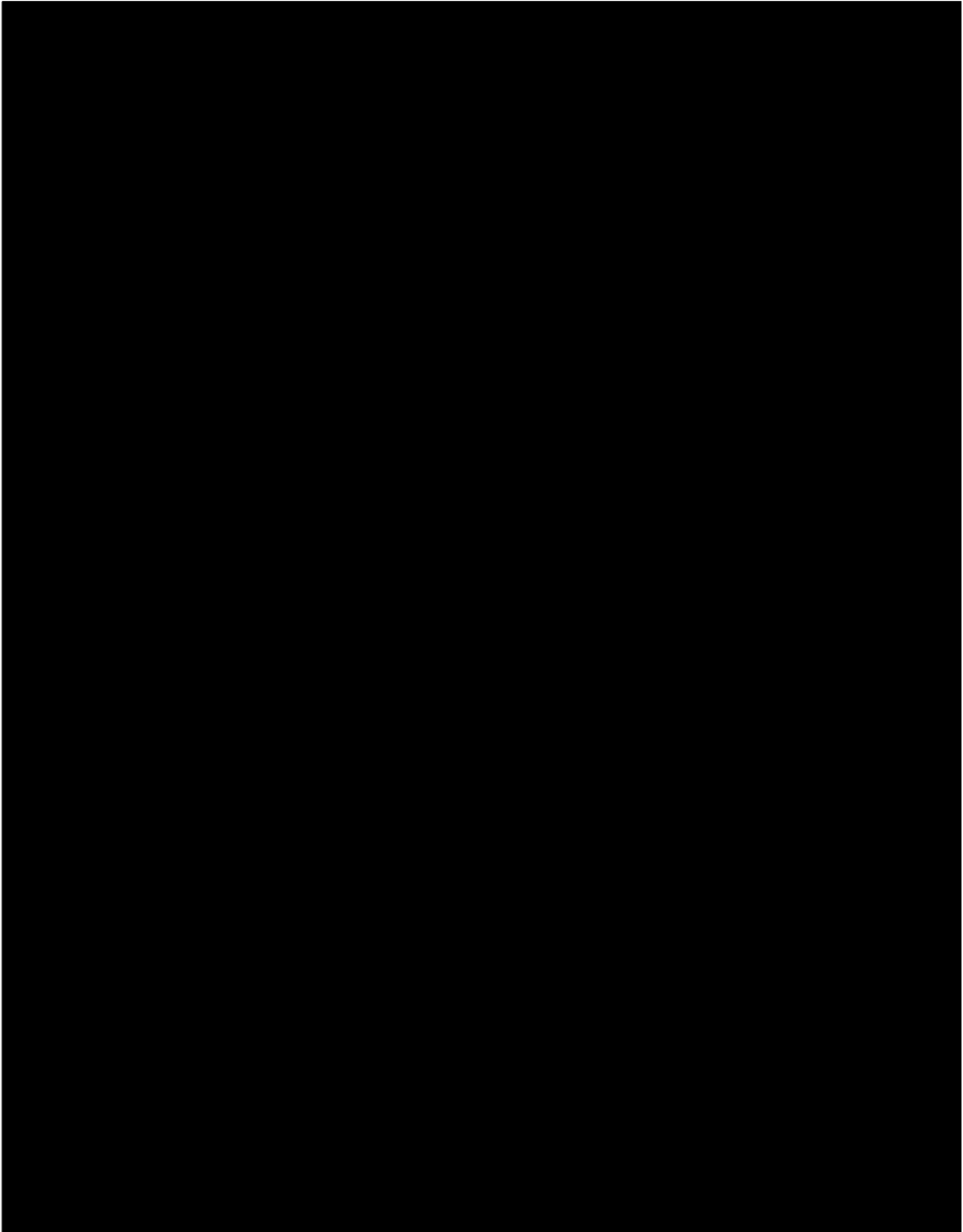




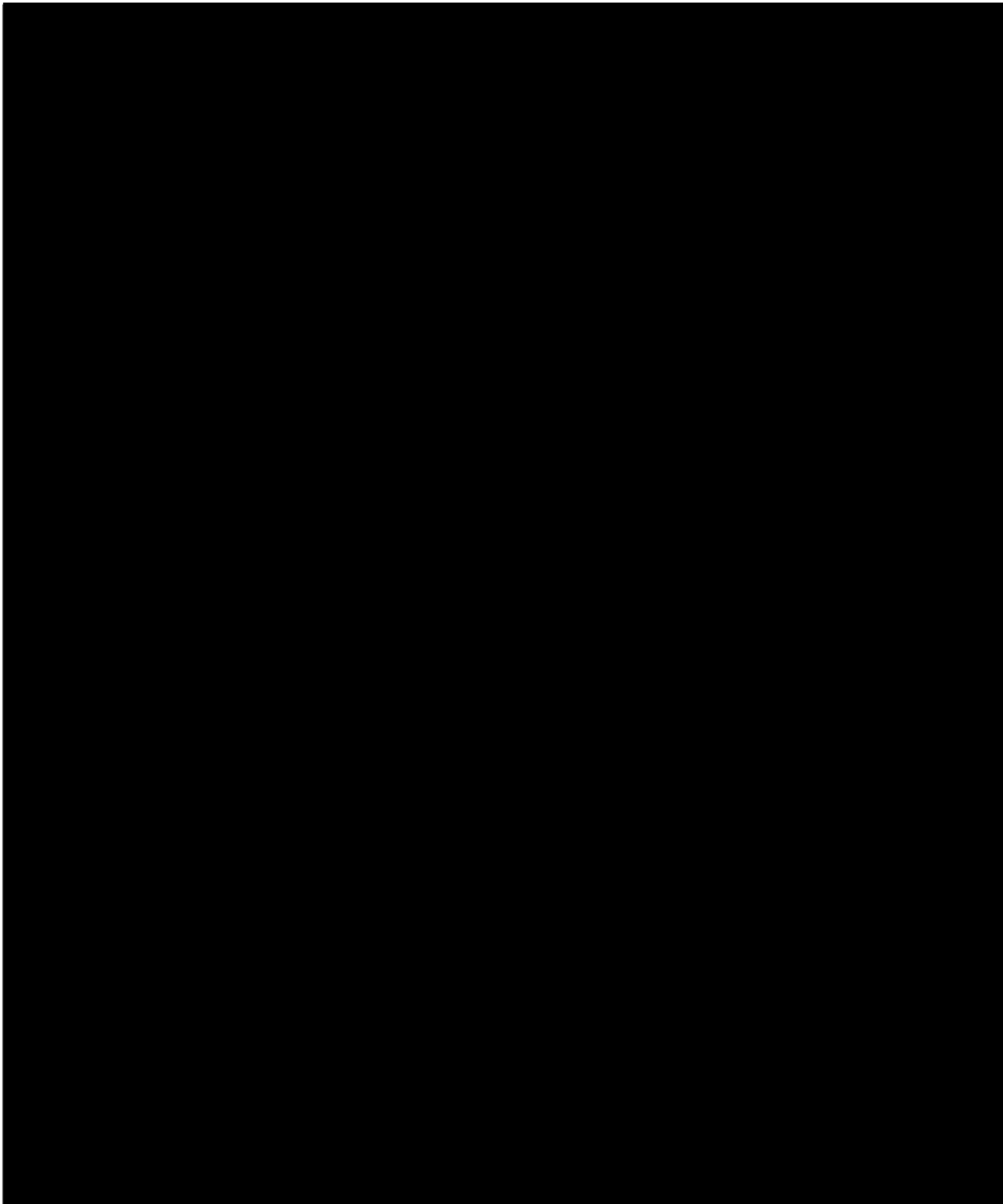












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Par PPO Plans