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February 10, 2017

RESS & OVERNIGHT COURIER

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: Application by Ontario Power Generation Inc. for 2017-2021 Payment Amounts (EB-2016-0152) – Confidential Treatment re Undertaking Responses (Request #3)

On February 10, 2017, in accordance with the commitment made in its response to JT1.13, Ontario Power Generation Inc. (“**OPG**”) filed a revised response to JT1.13, which included Amendment 2 to the SNC/AECON JV’s Extended Services Master Services Agreement (“**ESMSA**”) as Attachment 5.

In accordance with Rule 10 of the Ontario Energy Board’s (“**OEB**” or “**Board**”) *Rules of Practice and Procedure* and section 5.3 of the OEB’s *Practice Direction on Confidential Filings* (the “**Practice Direction**”), OPG hereby requests confidential treatment for portions of Attachment 5 to JT1.13.

OPG has organized this confidentiality submission into the following attachments:

Attachment A: Non-Confidential, redacted version of Attachment 5 to the response to JT1.13. This item is intended to be placed on the public record. Please note that while this item may be marked “Confidential”, the version that contains redactions is no longer confidential.

Attachment B: Confidential, unredacted version of Attachment 5 to the response to JT1.13. This item is intended to be treated confidentially, and should only be provided to intervenors or their representatives who sign or have already signed, a Declaration and Undertaking in the prescribed form in this proceeding. The specific portions of this document that constitute the confidential information are marked with red boxes.

As an interim measure for efficiency, prior to the OEB making its final determination on OPG’s request for confidential treatment, OPG will provide each intervenor that signs or has signed a Declaration and Undertaking in the prescribed form and files, or has filed, it with the Board a copy of the confidential material that is included in Attachment B.

On a final determination, should the OEB grant OPG's request for confidentiality, OPG proposes that the OEB order the confidential information to be disclosed, subject to any conditions the OEB may find appropriate, to only those persons that by then have signed, or that subsequently sign, a Declaration and Undertaking in the prescribed form in this proceeding.

In addition, consistent with section 6.2 of the Practice Direction, OPG requests that during oral proceedings any reference to information, which the Board has determined to be confidential, be conducted *in camera* so as to preserve its confidential nature.

In the event that the confidentiality request is refused, in whole or in part, and OPG in turn requests that some or all of the information that is the subject of this request be withdrawn in accordance with section 5.1.12 of the Practice Direction, all persons in possession of the said information will be required to promptly destroy or return the information to the OEB Secretary for destruction.

Reasons for Requesting Confidential Treatment

Attachment 5 to the response to JT1.13 should be protected as confidential because it includes OPG and third party commercially sensitive information such as labour rates and pricing information. As the information for which confidential treatment is sought is updated information for which OPG similarly claimed as confidential in its submissions on May 26, 2016, OPG repeats its submissions:

“OPG has three ESMSA-type contractors with respect to its work at its nuclear facilities. OPG retains the sole discretion to issue a work request to any of the ESMSA contractors. Each ESMSA contractor remains in competition with the others in respect of the work offered by OPG. Disclosure of the redacted portions of the ESMSA at Ex. D2-2-3, Attachment 10 would disclose commercially sensitive pricing information and would prejudice OPG's competitive position. It could also significantly interfere with its negotiations and existing relationships with the other ESMSA-type contractors.”

OPG notes that the OEB has granted confidential treatment of this information in the past iterations of the ESMSA in Procedural Order #3 and the Decision and Order on Confidentiality dated January 31, 2017.

The specific rationale for each particular request, listed by page number, is set out in Appendix 'A'.

Respectfully submitted,

[Original signed by]

Barbara Reuber

Cc: John Beauchamp (OPG) via email
Charles Keizer (Torys LLP) via email
Crawford Smith (Torys LLP) via email

APPENDIX 'A'

Affected Undertaking Responses and Attachments

JT#	Attachment Number	Name of the Document	Location of Confidential Information	Reason for Confidentiality
JT1.13	Attachment 5	Amendment 2 for the ESMSA with the SNC/AECON JV	p. 1, 2 of the PDF	Under the Decision and Order on Confidentiality dated January 31, 2017, on page 5, the OEB found that specific numbers are to be kept confidential. These numbers are consistent with that finding. In addition, the same information was found to be confidential in the DRP Reports and in OPG's response to JT1.6.
			p. 8-40 of the PDF	Under Procedural Order 3, on page 11, at item 6, the OEB found that Schedule 4 of the ESMSA was to be treated as confidential. This is an updated iteration of that same schedule.

ATTACHMENT 'A'

Non-Confidential, Redacted Documents

Amendment Agreement Number 2

THIS AGREEMENT is made as of January 1, 2017.

BETWEEN:

ONTARIO POWER GENERATION INC., a corporation existing under the laws of Ontario ("OPG")

and

AECON CONSTRUCTION GROUP INC., a corporation existing under the laws of Canada, and **SNC-LAVALIN NUCLEAR INC.**, a corporation existing under the laws of Canada, acting jointly and severally (collectively, the "**Contractor**") doing business as a contractual joint venture known as the "**SLN-AECON, a Joint Venture**".

RECITALS

- A. OPG and the Contractor entered into an extended services master services agreement dated as of December 19, 2014, as amended by Amendment Agreement Number 1 dated as of July 7, 2015 (collectively, the "**Original Agreement**").
- B. OPG and the Contractor have agreed to further amend the Original Agreement as set forth herein.

For value received, the Parties agree as follows:

1. Interpretation

Any defined term used in this Agreement that is not defined in this Agreement has the meaning given to that term in the Original Agreement.

2. Change to Section 1.1 (Definitions)

Section 1.1 of the Original Agreement is hereby amended by:

- (a) deleting Section 1.1(jjj) (Performance Fee Pool) in its entirety and replacing it with the following:

"(jjj) **Performance Fee Pool** means, at any point in time, the amount representing [REDACTED] of the total amount of each Application for Payment accepted by OPG under this Agreement (except any Application for Payment in respect of Fixed Price Work, payment of the Performance Fee or the Core Team Services Fee or any amounts in respect of EPSCA travel and subsistence and training) during the relevant calendar year.";

Amendment 2 to the Extended Services Master Services Agreement with AECON Construction Group Inc. and SNC-Lavalin Nuclear Inc., made as of December 19, 2014

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- (b) deleting Section 1.1(dddd) (Reimbursable Labour Costs) in its entirety and replacing it with the following:

“(dddd) **Reimbursable Labour Costs** means, in respect of each applicable Purchase Order, all labour costs for hourly and salaried personnel which are incurred by the Contractor in good faith for direct labour employed or contracted by the Contractor in the performance of the Work, calculated in accordance with the Reimbursable Labour Costs Table.”;

- (c) deleting Section 1.1(nnnn) (Statutory Burdens) in its entirety and replacing it with the following:

“(nnnn) **Statutory Burdens** means any statutory assessments incurred by the Contractor in good faith for direct labour employed or contracted by the Contractor in the performance of any Work, such as CPP, EI, WSIB and employee health tax. For greater certainty, the applicable Statutory Burdens are included in the Reimbursable Labour Costs for non-trades personnel and in the Statutory Burdens Multiplier for the Reimbursable Labour Costs for trades personnel.”; and

- (d) adding Section 1.1(nnnn.1) (Statutory Burdens Multiplier) which will read as follows:

“(nnnn.1) **Statutory Burdens Multiplier** means, in respect of Reimbursable Labour Costs for trades, a fixed percentage calculated in accordance with Part 2 of Schedule 4 which is used to calculate the total Reimbursable Labour Costs for trades personnel.”.

3. Change to Section 5.2 (Performance Fee)

Section 5.2 of the Original Agreement is hereby amended by deleting Section 5.2(a) (Addition to Performance Fee Pool) in its entirety and replacing it with the following:

“(a) **Addition to Performance Fee Pool.** In respect of each Application for Payment accepted by OPG under this Agreement (except any Application for Payment in respect of Fixed Price Work, payment of the Performance Fee or the Core Team Services Fee or any amounts in respect of EPSCA travel and subsistence and training), ■ of the total amount of the Application for Payment shall be withheld and added to the Performance Fee Pool.”.

4. Change to Section 8.1 (Pricing)

Section 8.1 of the Original Agreement is hereby amended by:

- (a) Deleting Section 8.1(k) (Rate Escalation for Trades) in its entirety and replacing it with the following:

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- “(k) **Rate Escalation for Trades.** The Total Base Wage Packages (which, for greater certainty, exclude the applicable Statutory Burdens included in the Statutory Burdens Multiplier) for trades personnel determined under the applicable collective agreements will be escalated in accordance with such collective agreements. For purposes of this Section 8.1(k), “Total Base Wage Packages” mean the sum of amounts of wages, vacation pay, holiday pay, benefits, pension and other similar compensation items required to be paid by employers under the applicable collective agreements.”;
- (b) deleting Section 8.1(l) (Rate Escalation for Non-Trades) in its entirety and replacing it with the following:
- “(l) **Rate Escalation for Non-Trades.** Subject to Section 8.1(m):
- (i) the base salaries of the non-trades personnel who are Core Team members and whose positions are specified in Schedule 2, which base salaries are set out in rate sheets attached to the Purchase Order for the Core Team (as such base salaries may be updated from time to time with the prior written approval of OPG’s MSA Representative and the concurrence by the Steering Committee, as evidenced by a Notice to the Contractor signed by OPG’s MSA Representative); and
 - (ii) the rates (which, for greater certainty, include Statutory Burdens) set out in the Reimbursable Labour Costs Table that relate to non-trades personnel,
- will be escalated, beginning on April 1, 2016, at the rate per annum approved by the Steering Committee based on the average change in the following indices over the relevant period:
- (1) Consumer Price Index published by Statistics Canada;
 - (2) Consumer Price Index for Ontario published by Statistics Canada;
 - (3) CPI-XFET (CPI excluding food, energy and the effect of changes in indirect taxes) published by The Bank of Canada;
 - (4) Ontario Ministry of Labour - Collective Bargaining Highlights - Average Annual Wage Increase for Construction;
 - (5) EPSCA - Collective Agreements - Average Annual Wage Increase;
 - (6) PWU - Collective Agreements - Average Annual Wage Increase; and
 - (7) OPG Society Collective Agreement - Annual Wage Increase,
- or such other indices as the Steering Committee may recommend.”;

- (c) deleting Section 8.1(m) (Rate Escalation for Certain Non-Trades Personnel) in its entirety and replacing it with the following:

“(m) **Rate Escalation for Certain Non-Trades Personnel.** The rates (which, for greater certainty, include Statutory Burdens) set out in the Reimbursable Labour Costs Table that relate to non-trades personnel holding the position of general foreman will be escalated at the rate applicable to the trade supervised by such general foreman, as determined in accordance with the collective agreement applicable to the trade supervised by such general foreman.”;

- (d) deleting Section 8.1(q) (Adjustments to Reimbursable Labour Costs Table for Non-Trades Personnel) in its entirety and replacing it with the following:

“(q) **Adjustments to Reimbursable Labour Costs Table for Non-Trades Personnel.** Except for rate escalation set out in Sections 8.1(l) and 8.1(m), the Reimbursable Labour Costs for non-trades personnel (which, for greater certainty, include Statutory Burdens) set out in the Reimbursable Labour Costs Table relating to non-trades personnel will not be subject to any adjustments, unless such adjustments are: (i) required in exceptional circumstances; (ii) approved by OPG in writing prior to their use; and (iii) evidenced in an applicable Worksheet.”; and

- (e) adding Section 8.1(r) (Adjustments to Statutory Burdens Multiplier) which will read as follows:

“(r) **Adjustments to Statutory Burdens Multiplier.** The Statutory Burdens Multiplier will not be subject to any adjustments, unless such adjustments are: (i) required to place the Contractor in no better and no worse a position following a net increase or net decrease in costs due to changes to Statutory Burdens imposed by the applicable Governmental Authorities; (ii) approved by OPG in writing prior to its use; (iii) calculated in accordance with Part 2 of Schedule 4; and (iv) evidenced in a Notice to the Contractor signed by OPG’s MSA Representative. For greater certainty, the Statutory Burdens Multiplier will not be subject to any escalation.”.

5. Change to Section 8.3 (Applications for Payment)

Section 8.3 of the Original Agreement is hereby amended by deleting the first two sentences in Section 8.3(a) (Application for Payment) in their entirety and replacing with the following:

“In connection with each Purchase Order, the Contractor will submit to OPG on a timely basis, and in any event by the end of each month or as otherwise specified in the Purchase Order, an Application for Payment which includes an accurate summary of all of its costs for the Work incurred pursuant to that Purchase Order in the previous month or other period, as applicable. OPG will promptly review (and, at its option, audit) each Application for Payment, including, without limitation, the submitted costs against the

Reimbursable Labour Costs Table and the Reimbursable Non-Labour Costs Table, as applicable, to ensure that such Application for Payment complies with the requirements of this Agreement.”

6. Change to Section 8.4 (Payment Terms)

Section 8.4 of the Original Agreement is hereby amended by deleting the last three sentences in Section 8.4(a) (Payment Terms) in their entirety and replacing with the following:

“If OPG considers that any of the submitted costs are not Reimbursable Costs, OPG and the Contractor will work cooperatively to resolve the issue. If OPG and the Contractor cannot reach agreement with regard to any submitted cost, such dispute will be resolved in accordance with Section 11. If OPG and the Contractor agree that a submitted cost is a Reimbursable Cost, or if such submitted cost is determined to be a Reimbursable Cost pursuant to the dispute resolution mechanisms set out in Section 11, such submitted cost will be deemed to be a Reimbursable Cost and may be included in the next Application for Payment submitted to OPG.”

7. Change to Section 8.13 (Records and Audits)

Section 8.13 of the Original Agreement is hereby amended by:

(a) deleting Section 8.13(b)(1) in its entirety and replacing it with the following:

“(1) The Contractor will ensure that, for all Work performed under this Agreement, the Contractor, the Subcontractors and Augmented Staff retain all such records and documents as may be requested by OPG on an ongoing basis, which will include, without limitation, proper timesheets, equipment-related records, accounts, invoices and bank records which are necessary for OPG to verify the nature and quality of any such Work and the accuracy of invoices for submitted costs incurred by the Contractor hereunder for any such Work (whether by the Contractor's Personnel or Augmented Staff). Timesheets will identify the provider of the Work, the Work performed, the location of the Work, the relevant period of time during which the Work was performed and the hours incurred.”

(b) deleting Section 8.13(b)(2) in its entirety and replacing it with the following:

“(2) The Contractor's costs will be subject to audit by OPG on an ongoing basis during the term of this Agreement. The Contractor's costs will only be reimbursed if they are capable of being fully audited from source documents, as applicable, and if OPG is satisfied, on the basis of documentation provided to OPG by the Contractor, that such costs are Reimbursable Costs or, in respect of Goods, are the Contractor's actual cost (excluding any Canadian goods and services tax/harmonized sales tax levied under the *Excise Tax Act* (Canada)). For greater certainty, the Contractor's labour costs will only be

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reimbursed if they were calculated in accordance with the Reimbursable Labour Costs Tables.”

8. Change to Schedule 4 (Reimbursable Labour Costs Tables)

Schedule 4 of the Original Agreement is hereby deleted in its entirety and replaced with the revised document entitled “Schedule 4 – Reimbursable Labour Costs Tables” attached to this Agreement as Attachment A.

9. Original Agreement Remains in Full Force

Except for changes to the Original Agreement set out in this Agreement and any previous Amendments, the Original Agreement remains in full force, unamended.

The Parties have duly executed this Agreement as of the date first above written.

ONTARIO POWER GENERATION INC.

By:

Name:

Title:

Stephen E. Oliver
Chief Supply Officer
Stephen E. Oliver

AECON CONSTRUCTION GROUP INC.

By:

Name:

Title:

Ian Turnbull
Ian Turnbull
Name: Ian Turnbull
Title: Sr. V.P., Energy East

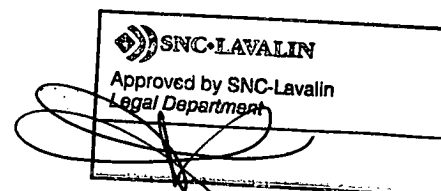
SNC-LAVALIN NUCLEAR INC.

By:

Name:

Title:

Robert Stewart
Robert Stewart
Name: Robert Stewart
Title: Sr. V.P., Operations



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ATTACHMENT A

SCHEDULE 4

REIMBURSABLE LABOUR COSTS TABLES

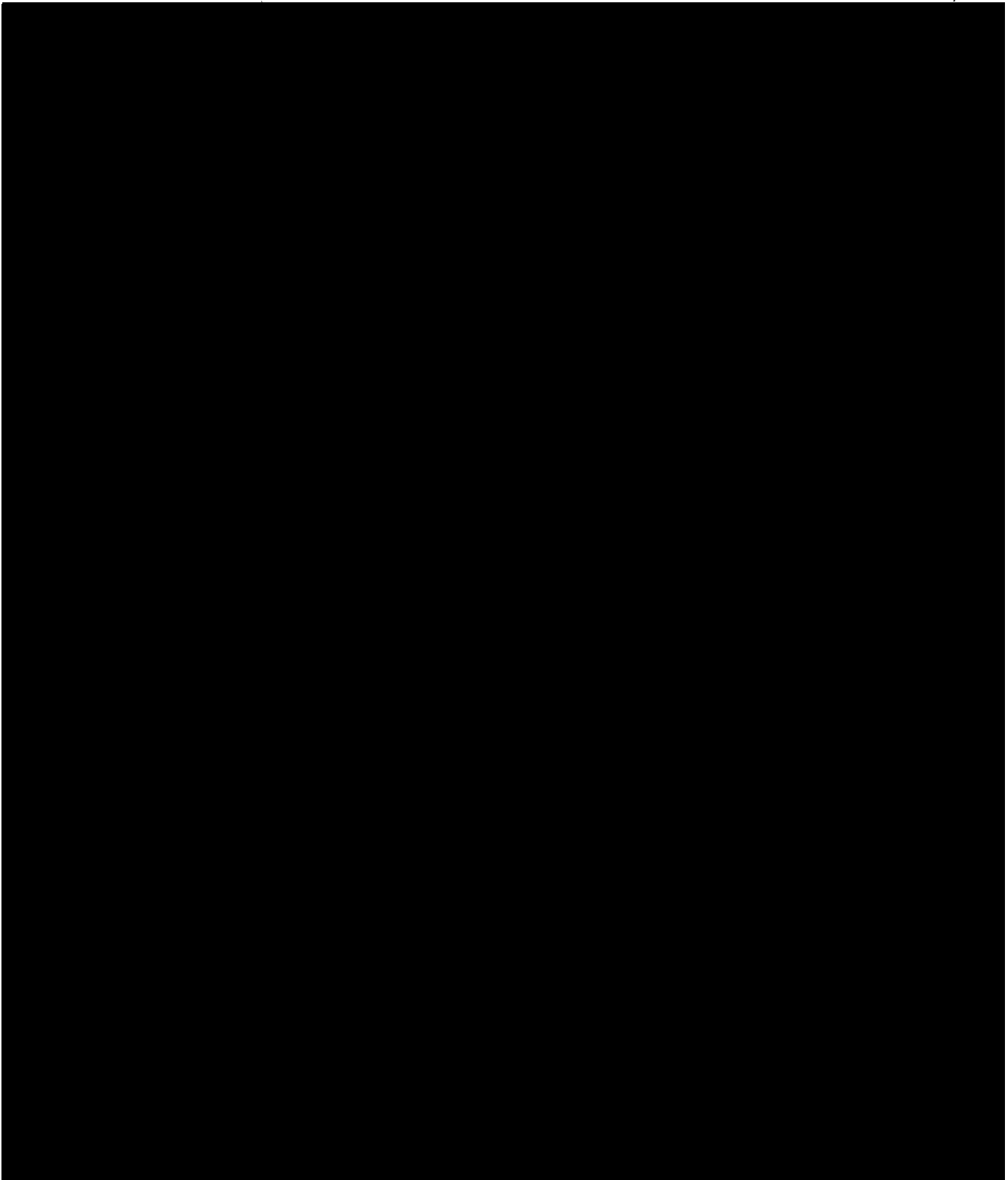
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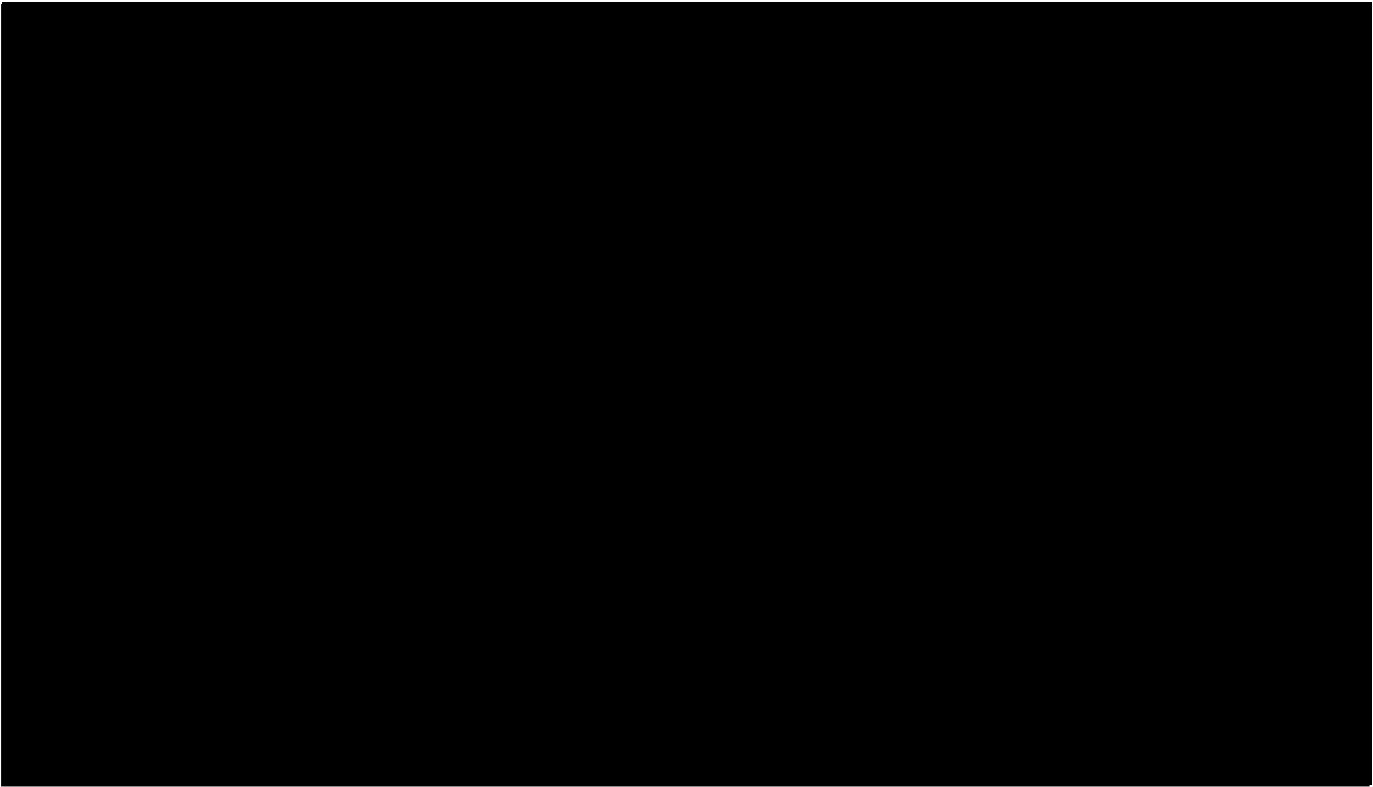
SCHEDULE 4

REIMBURSABLE LABOUR COSTS TABLES



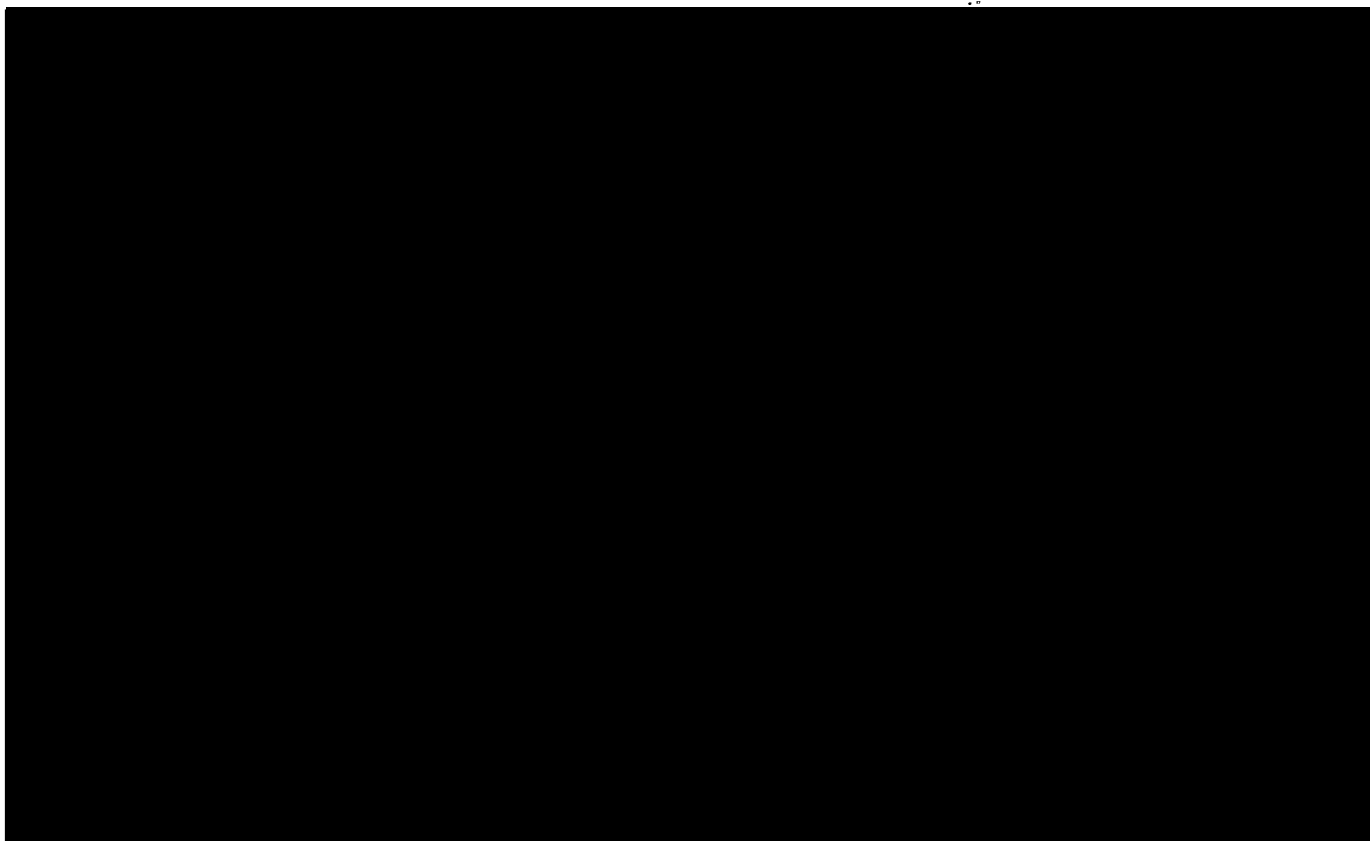
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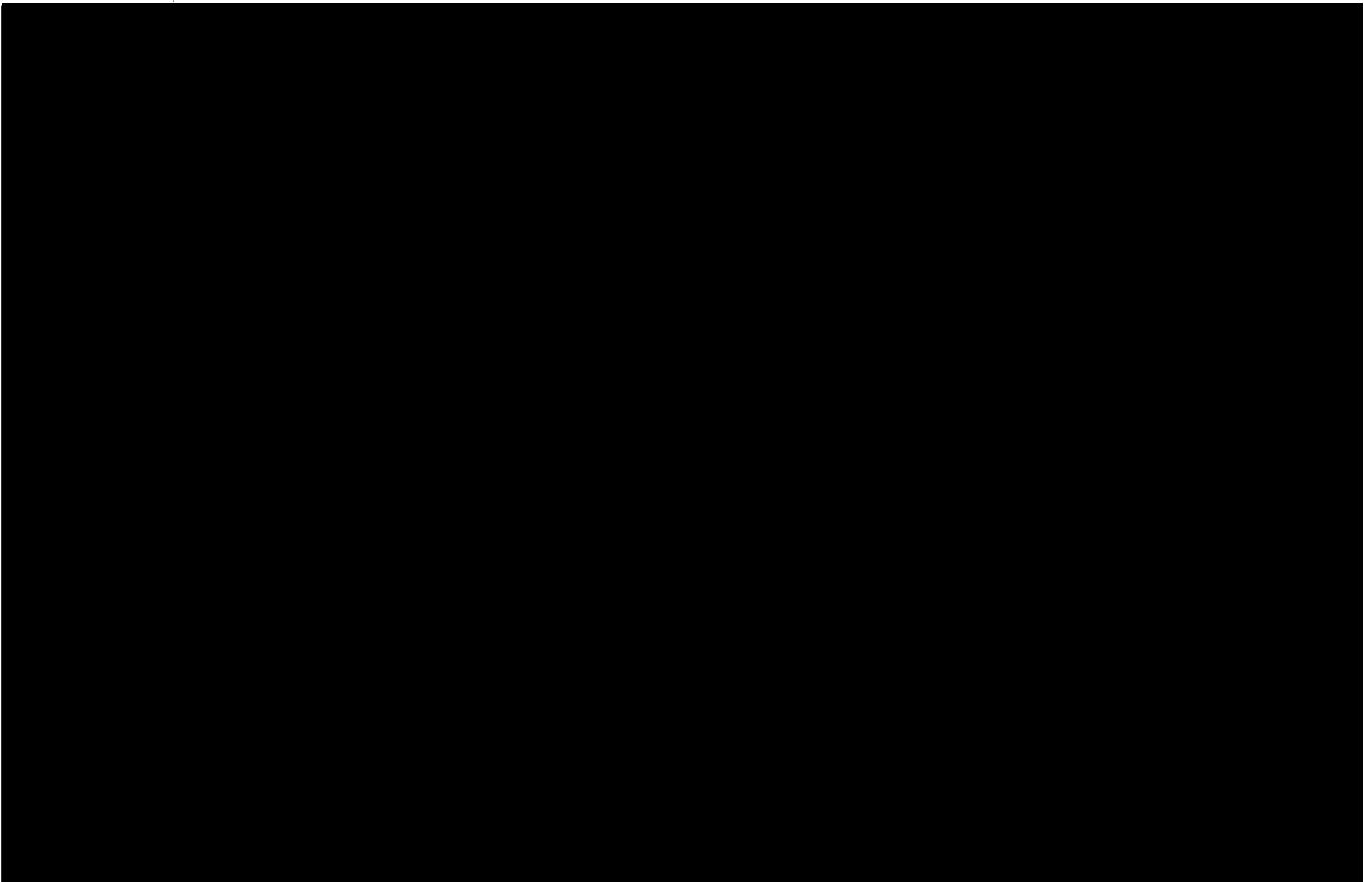
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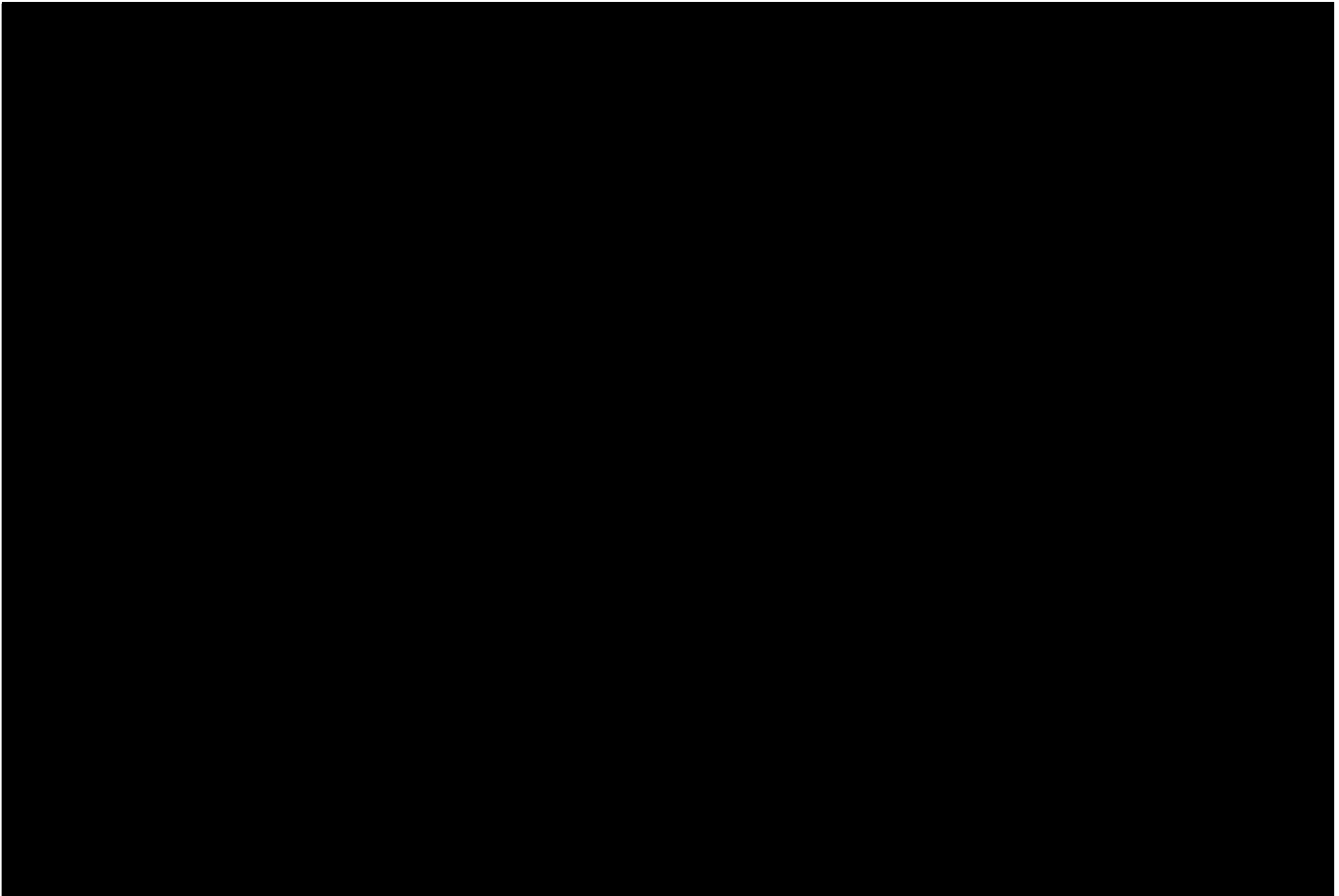
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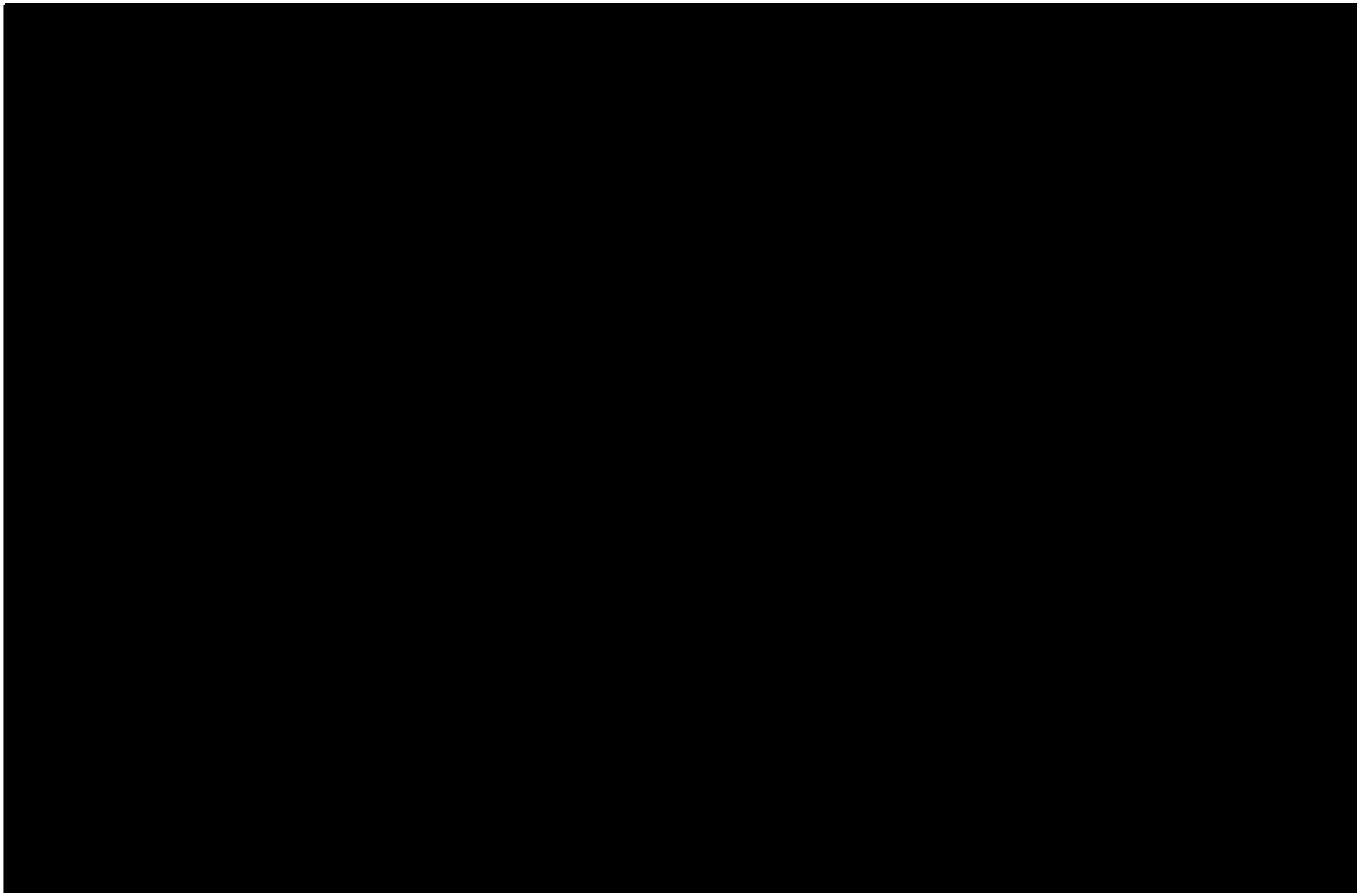
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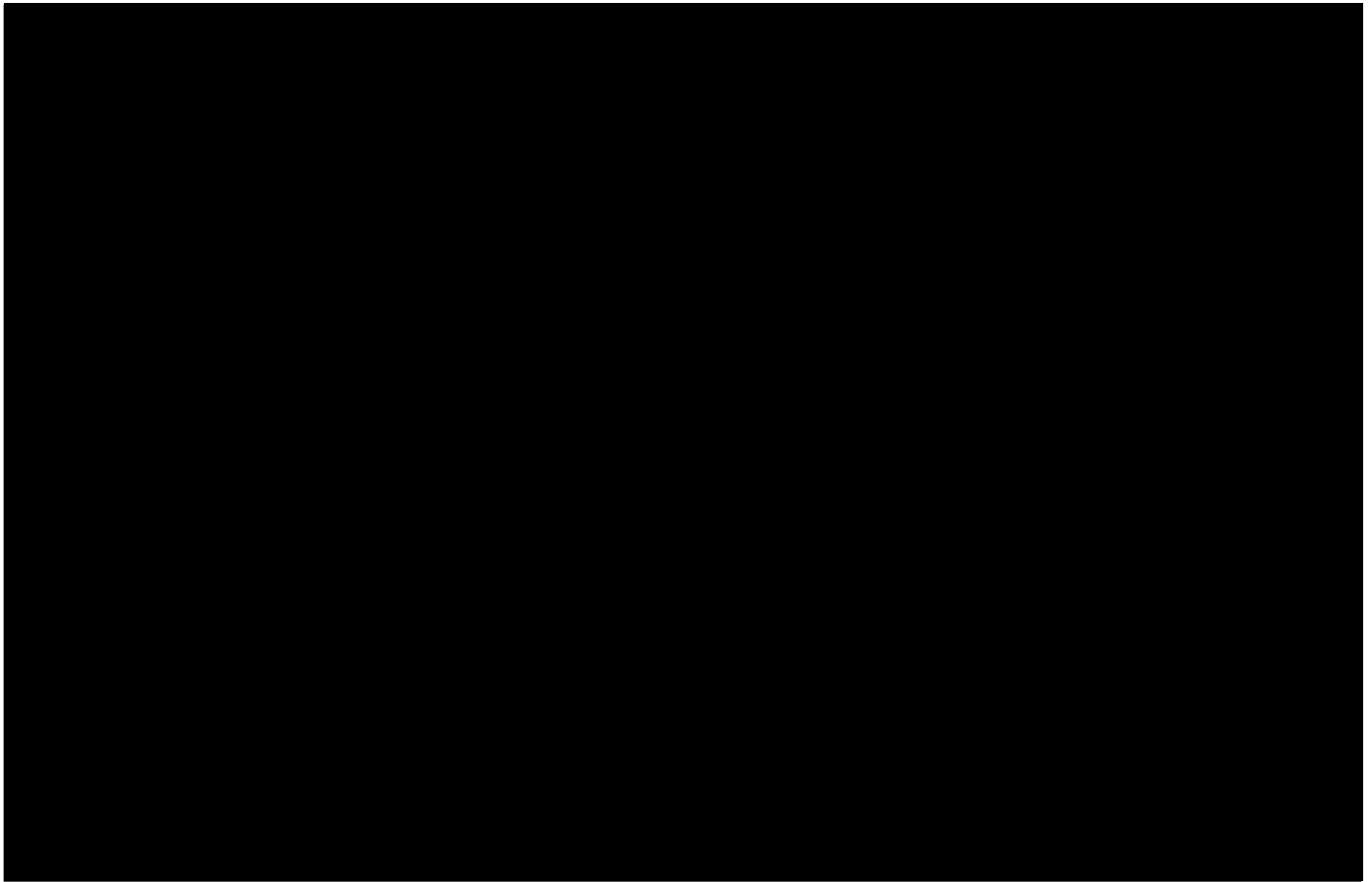
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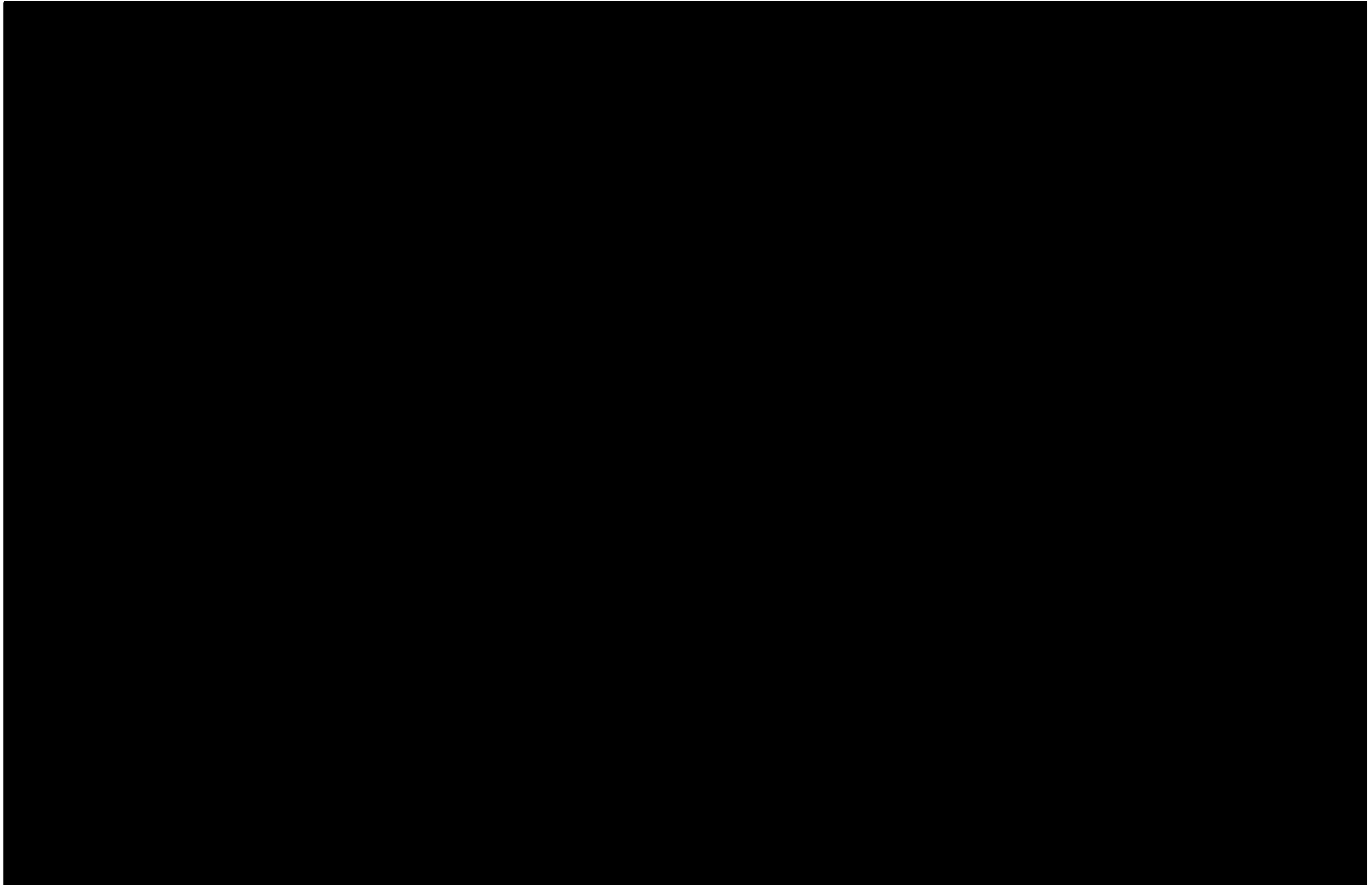
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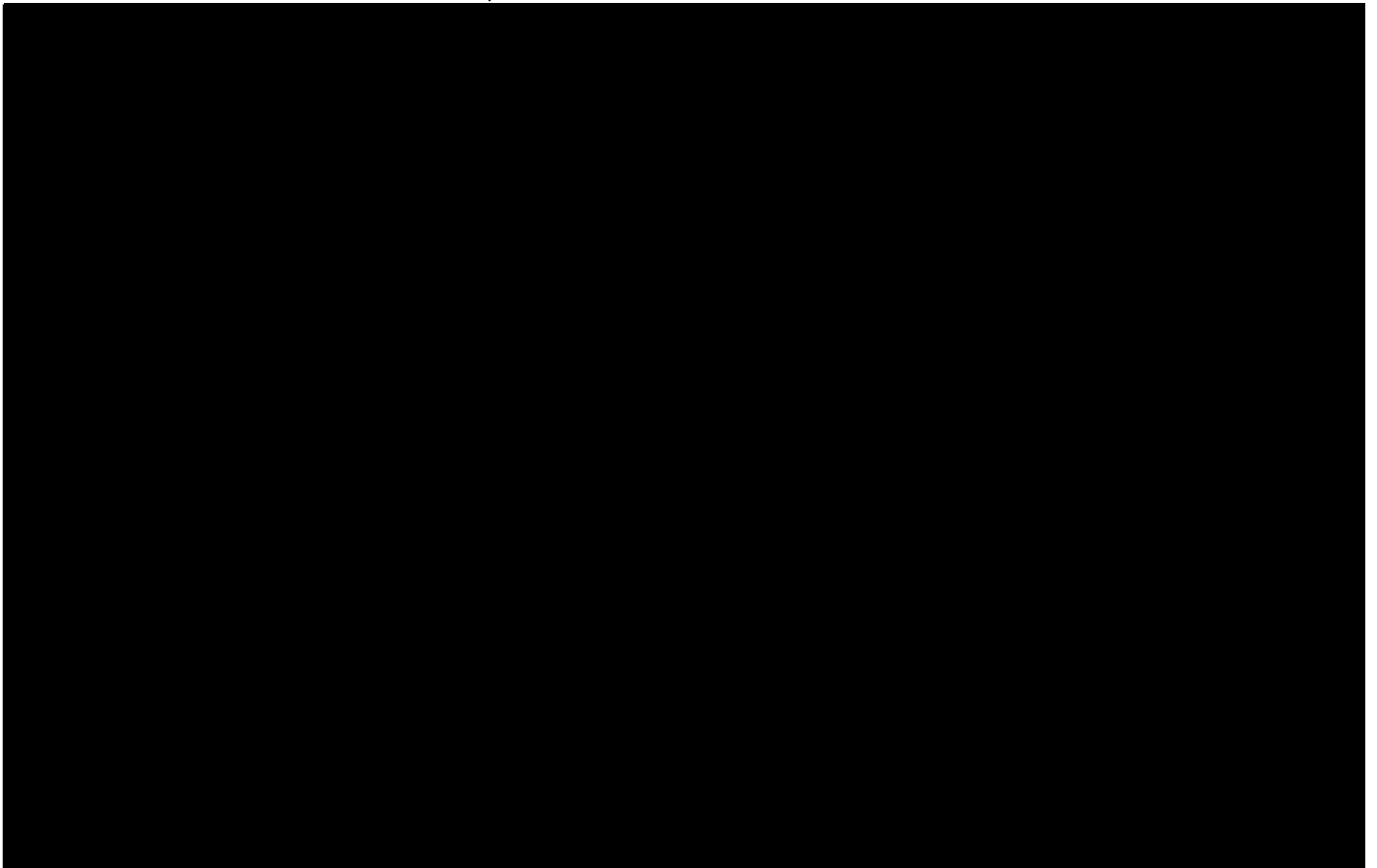
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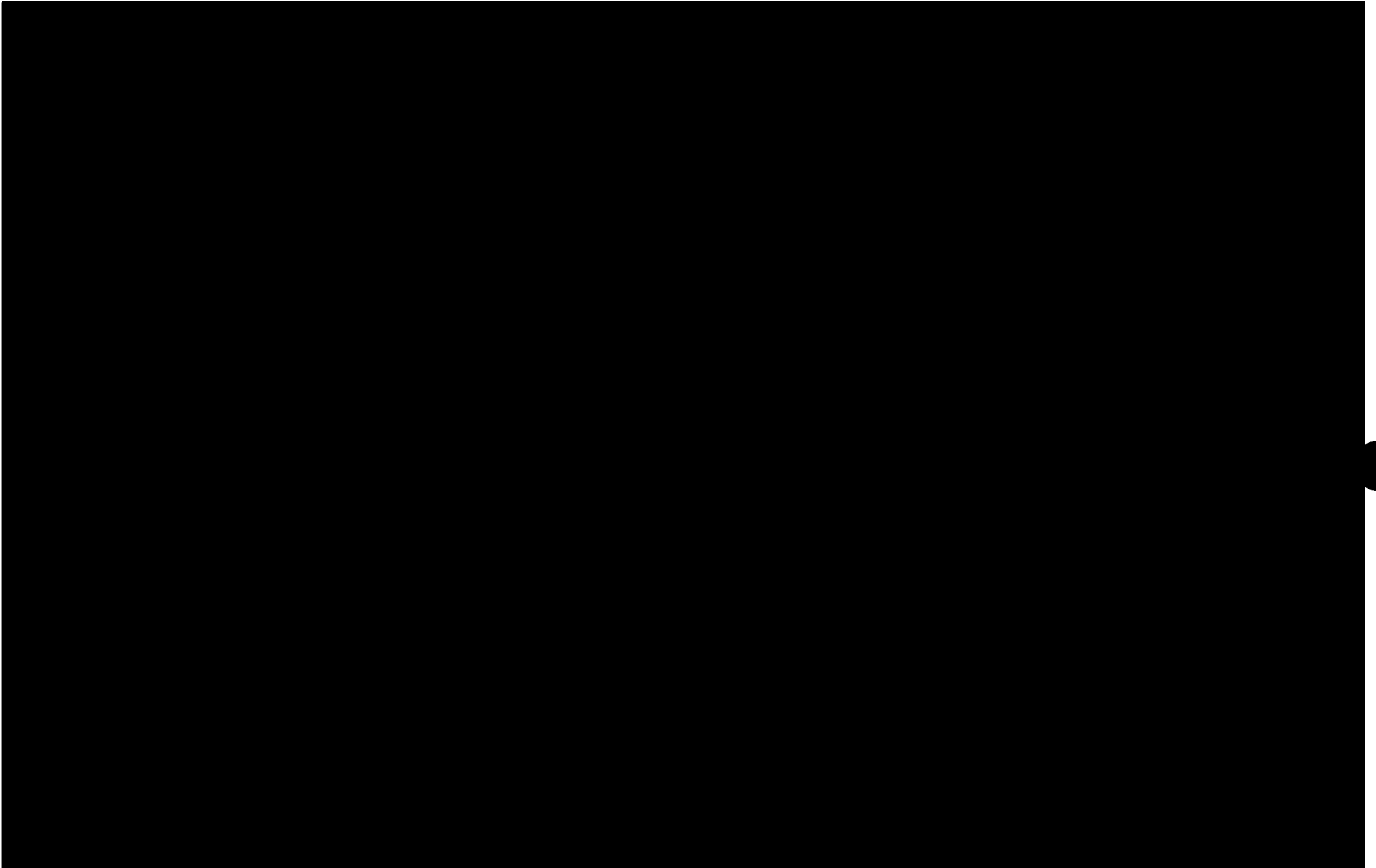
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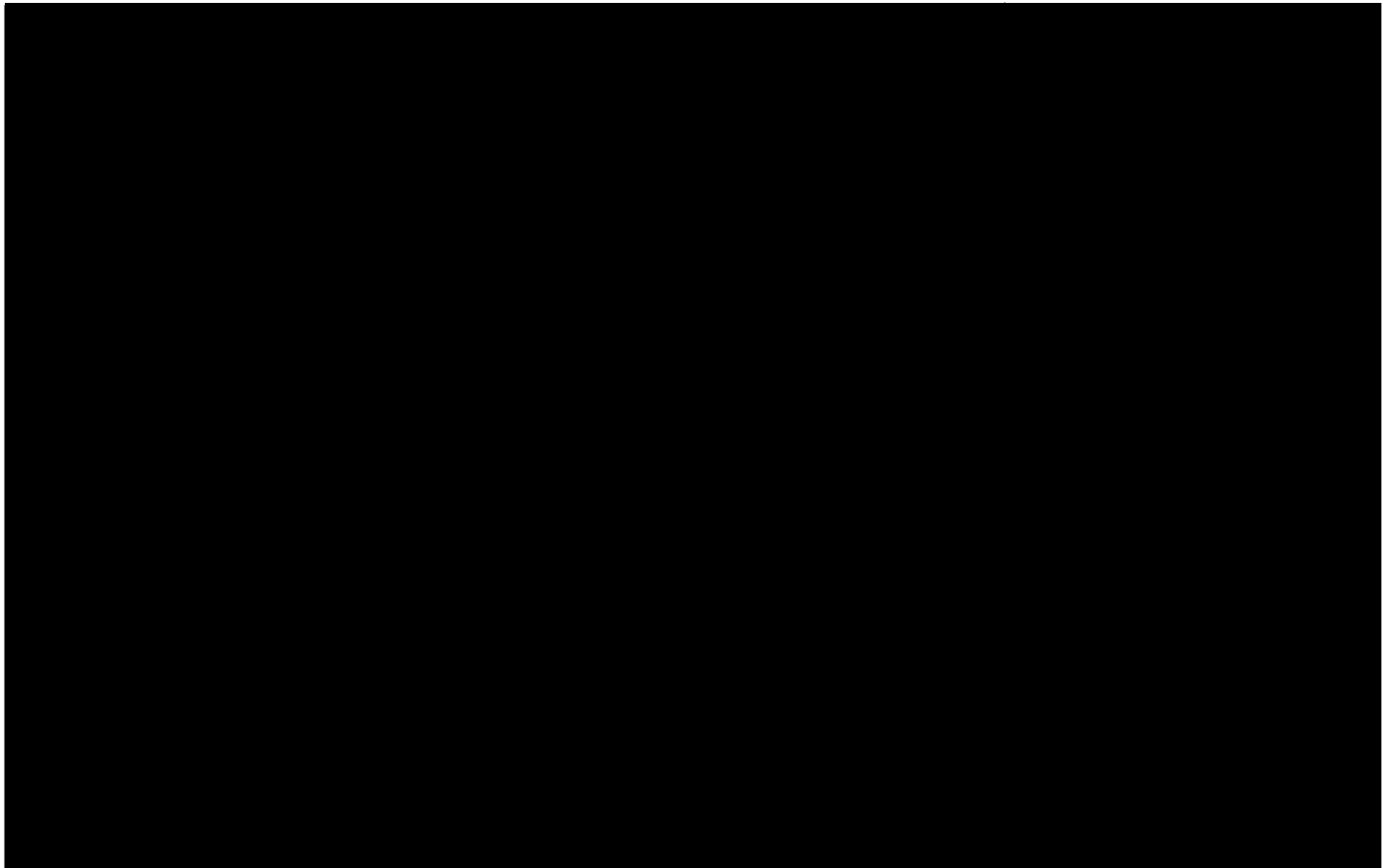
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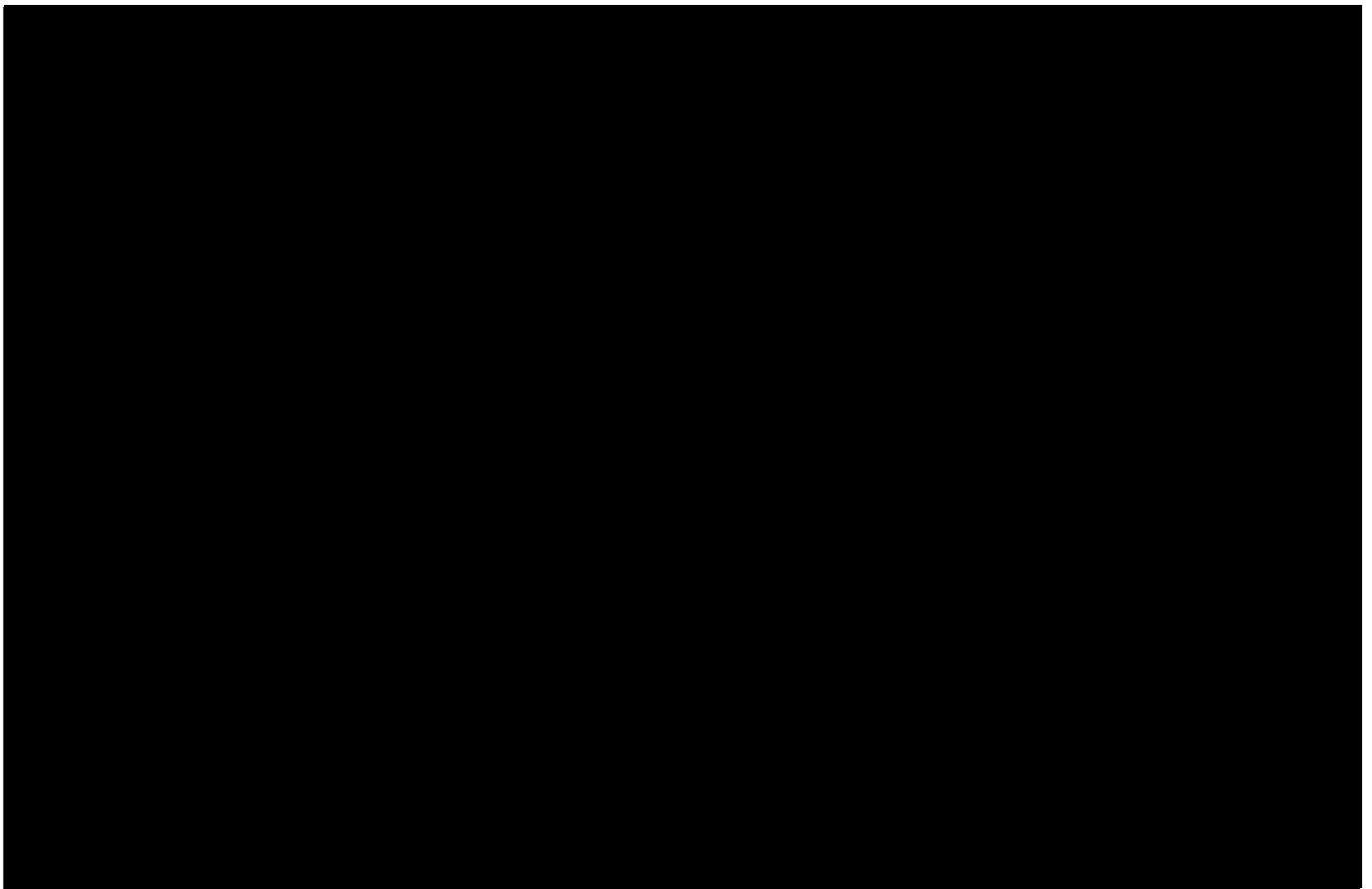
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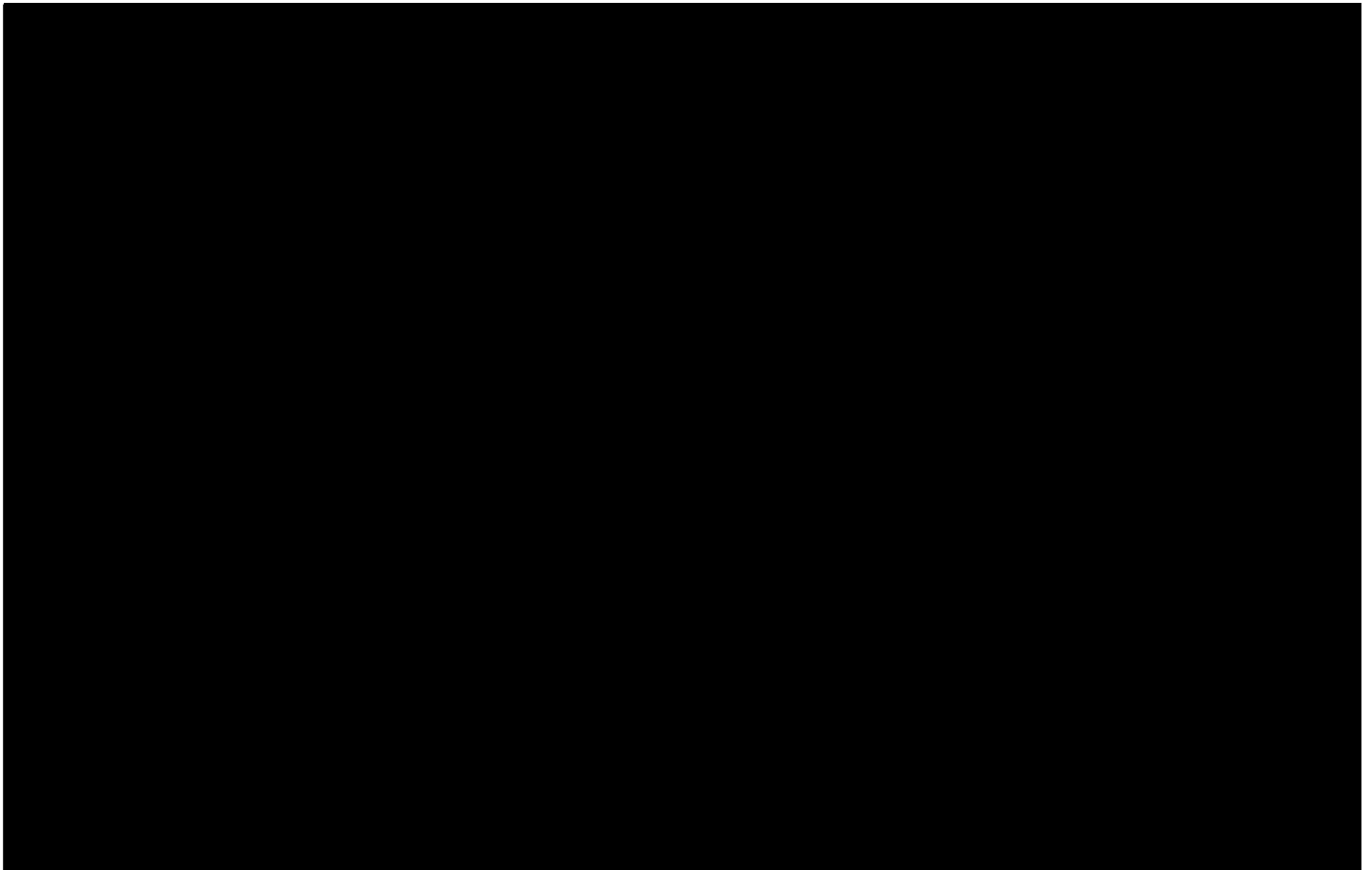
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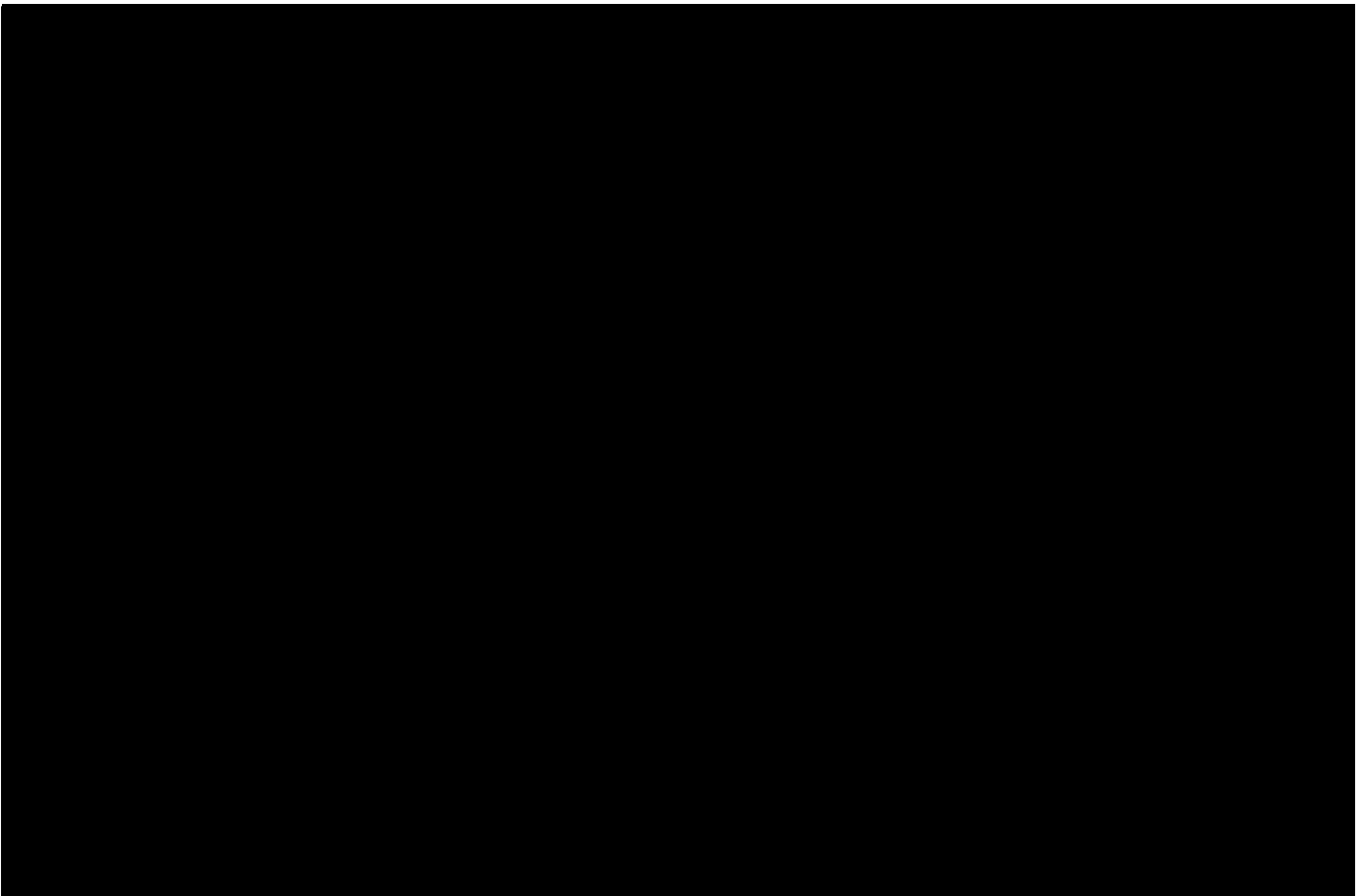
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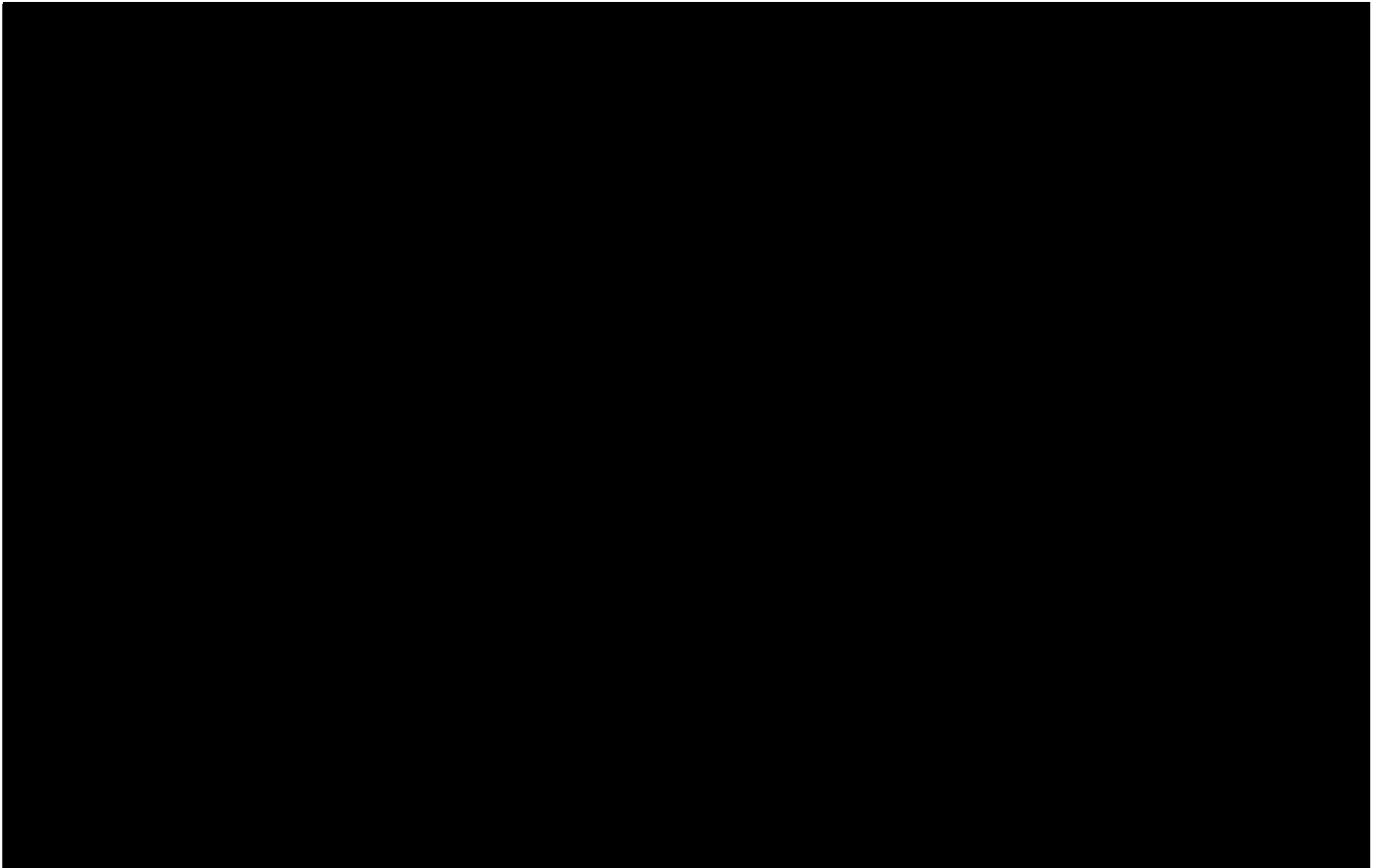
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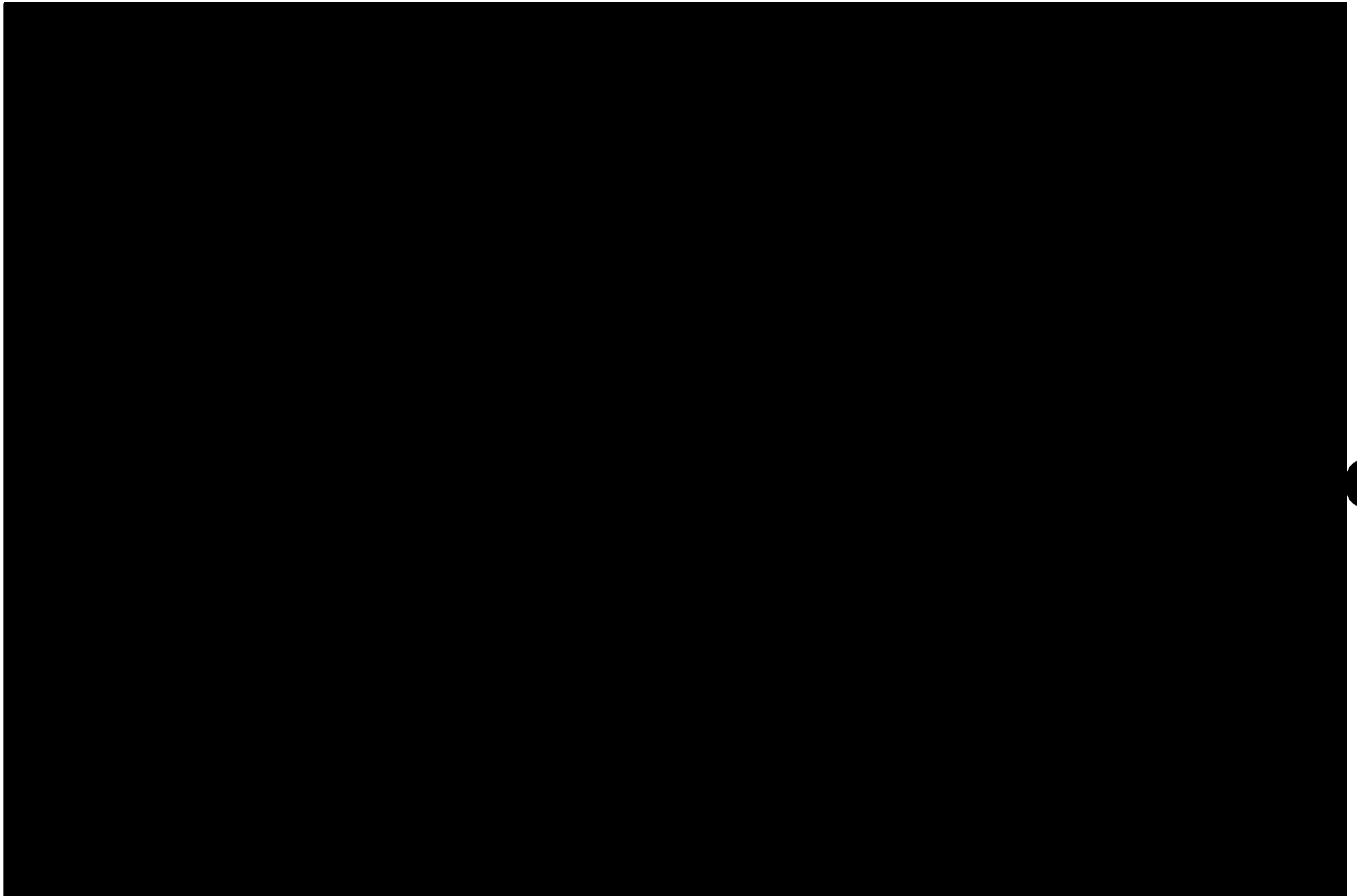
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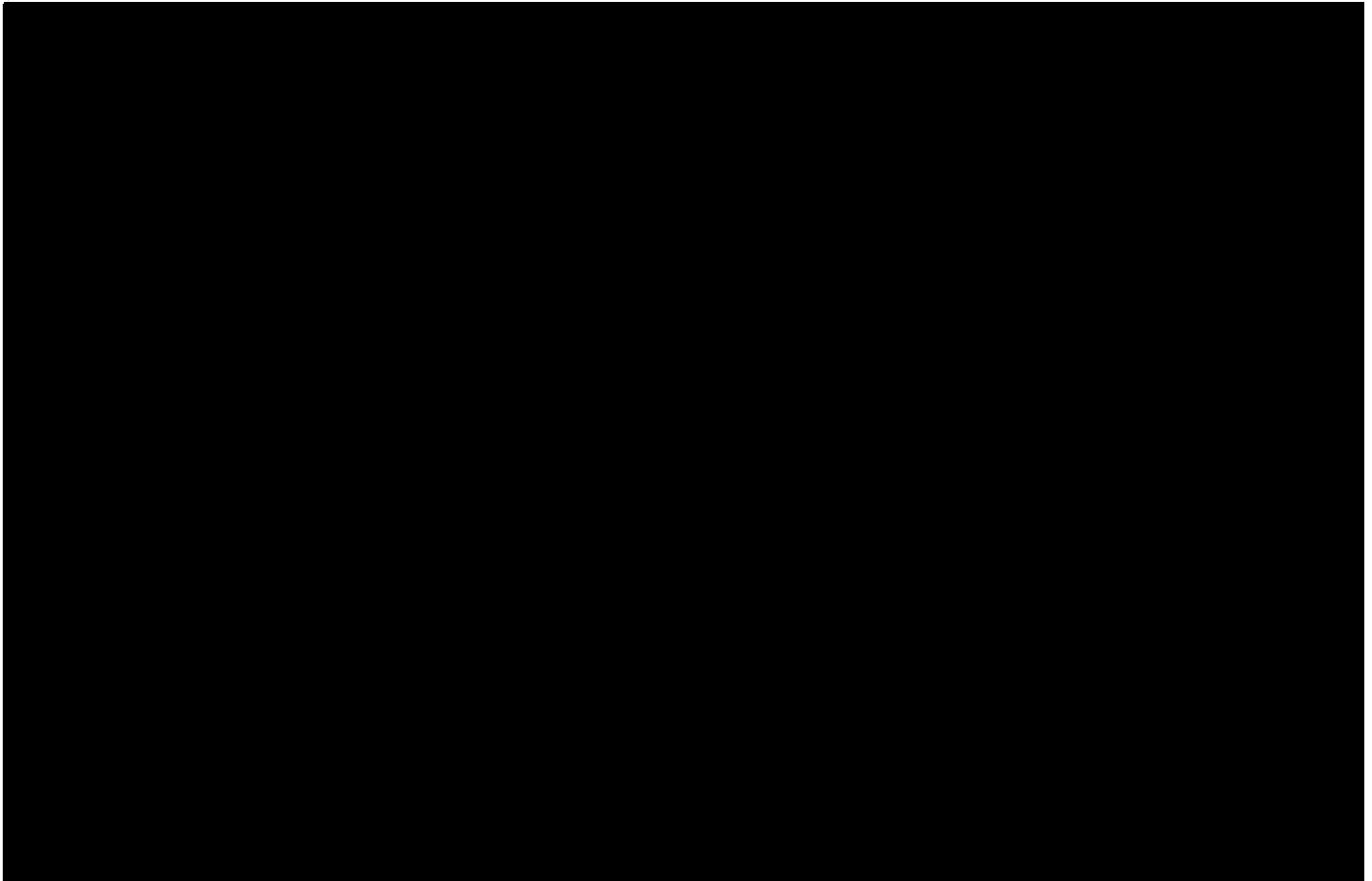
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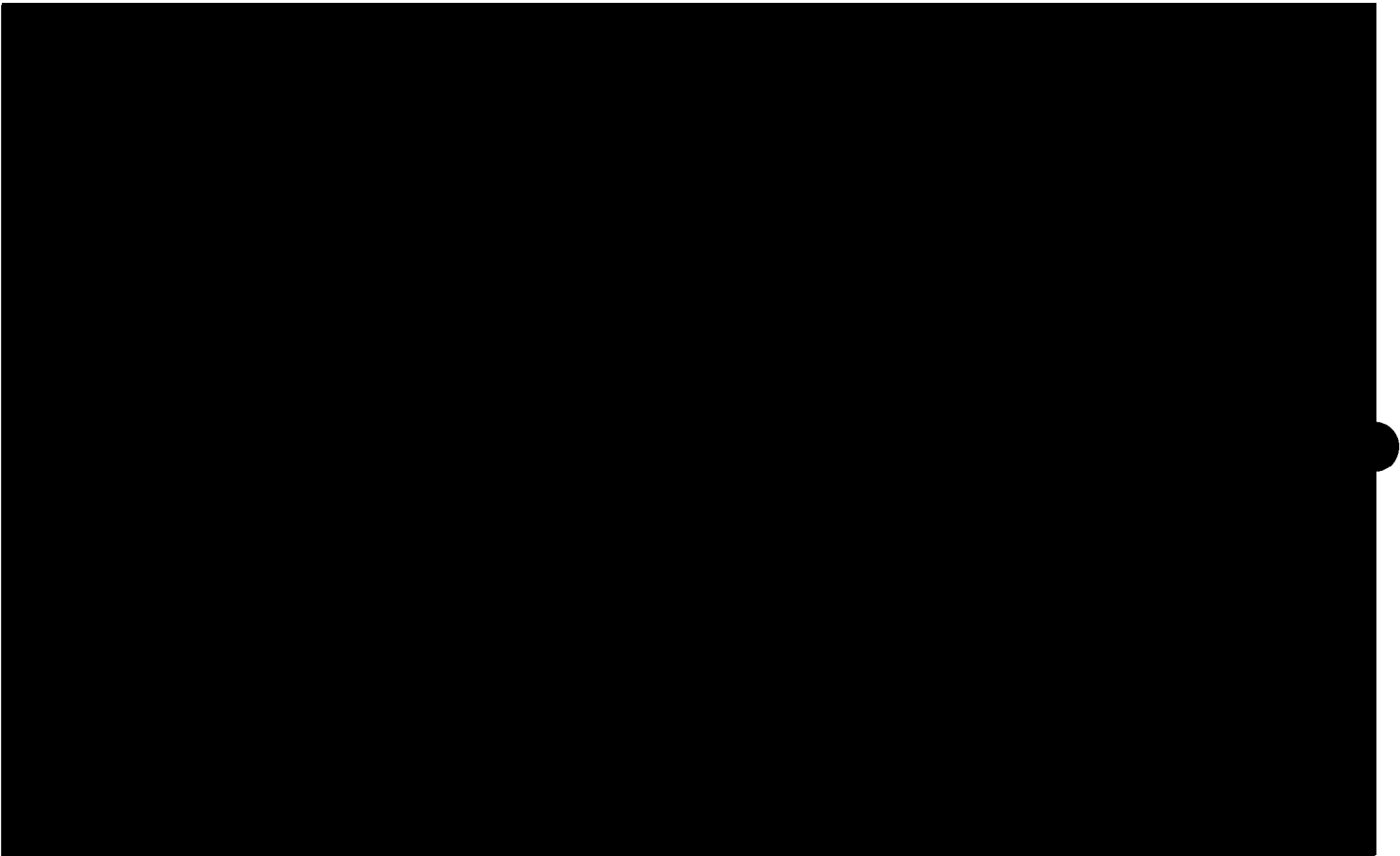
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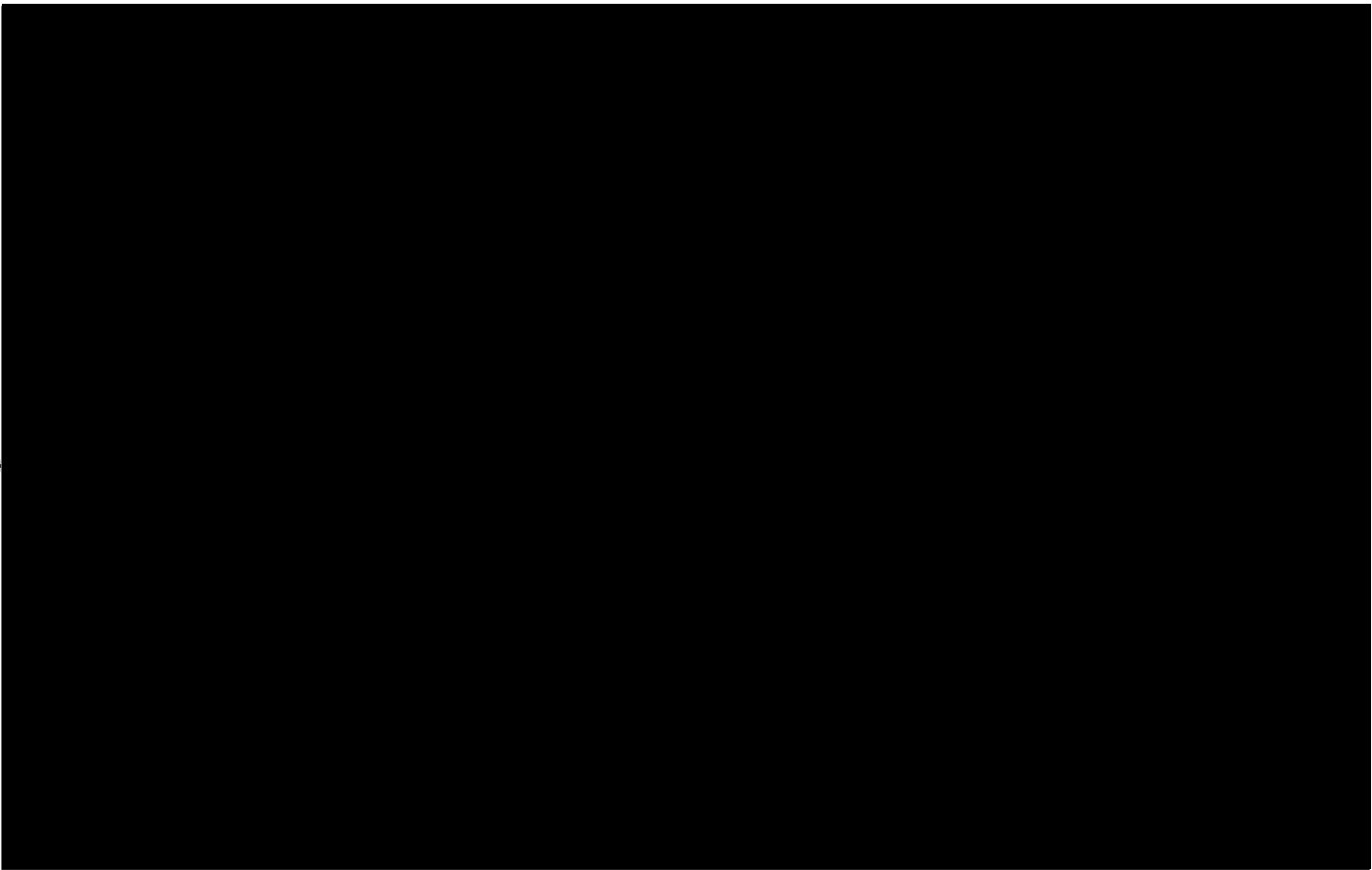
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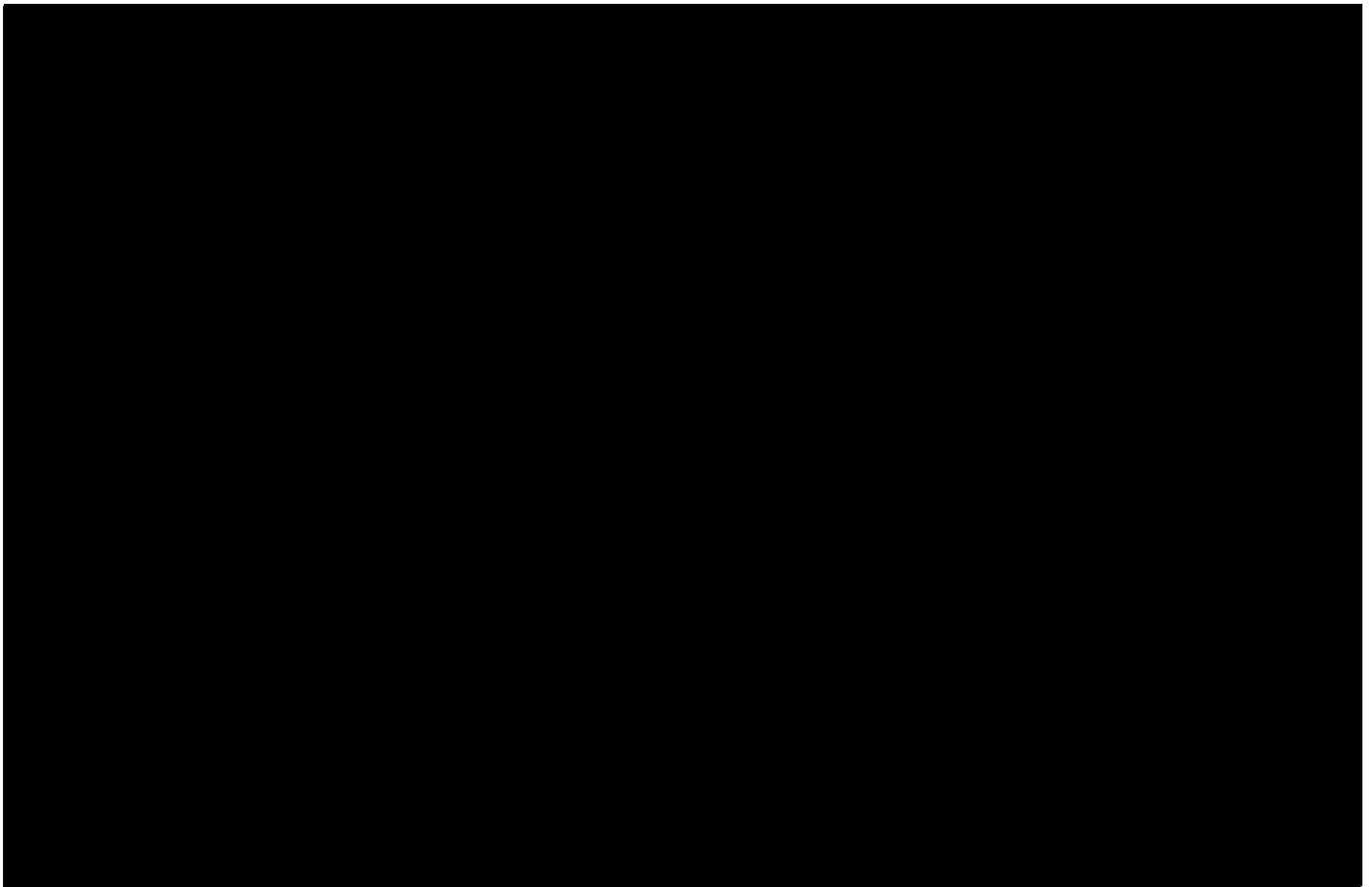
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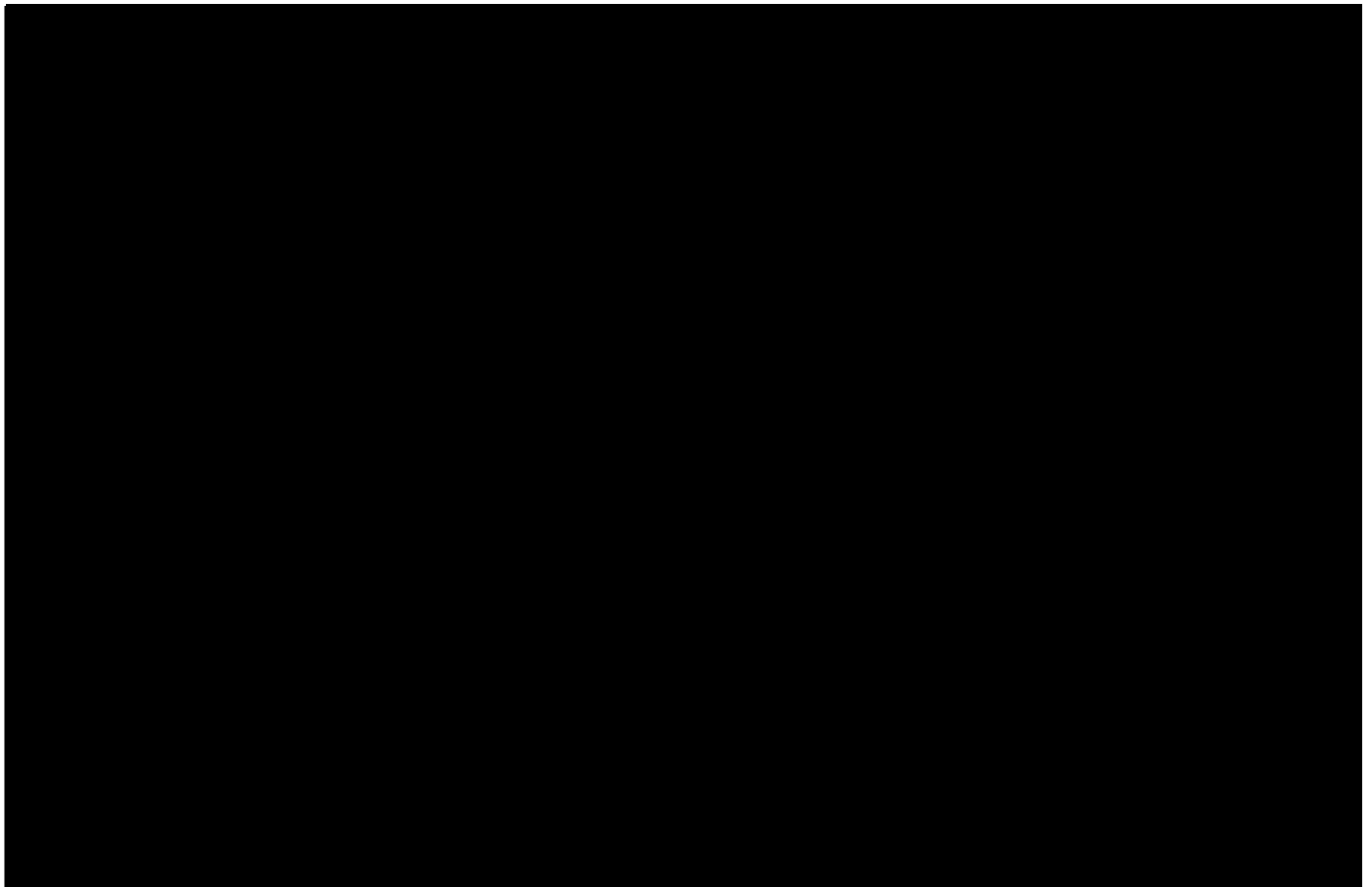
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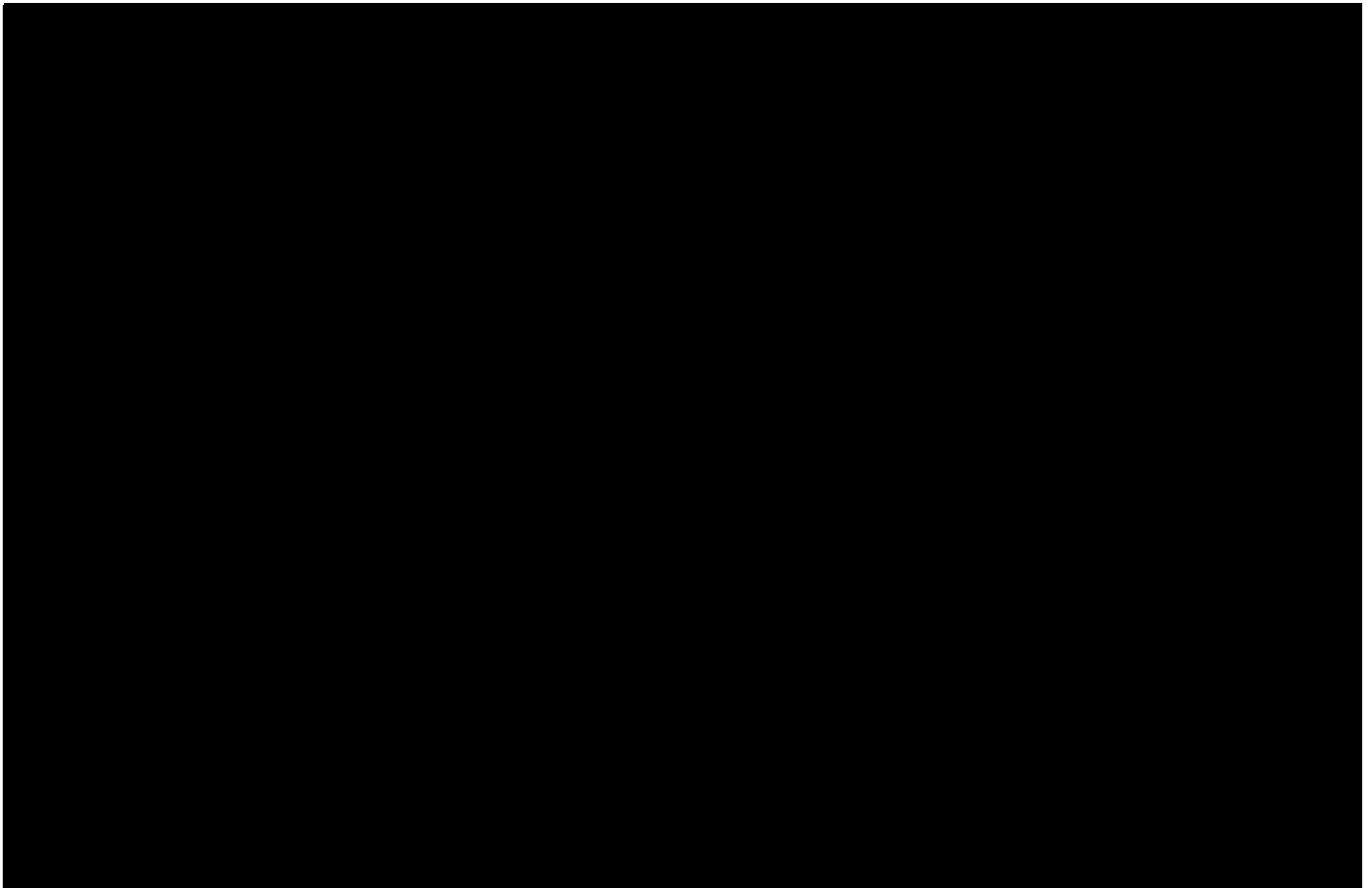
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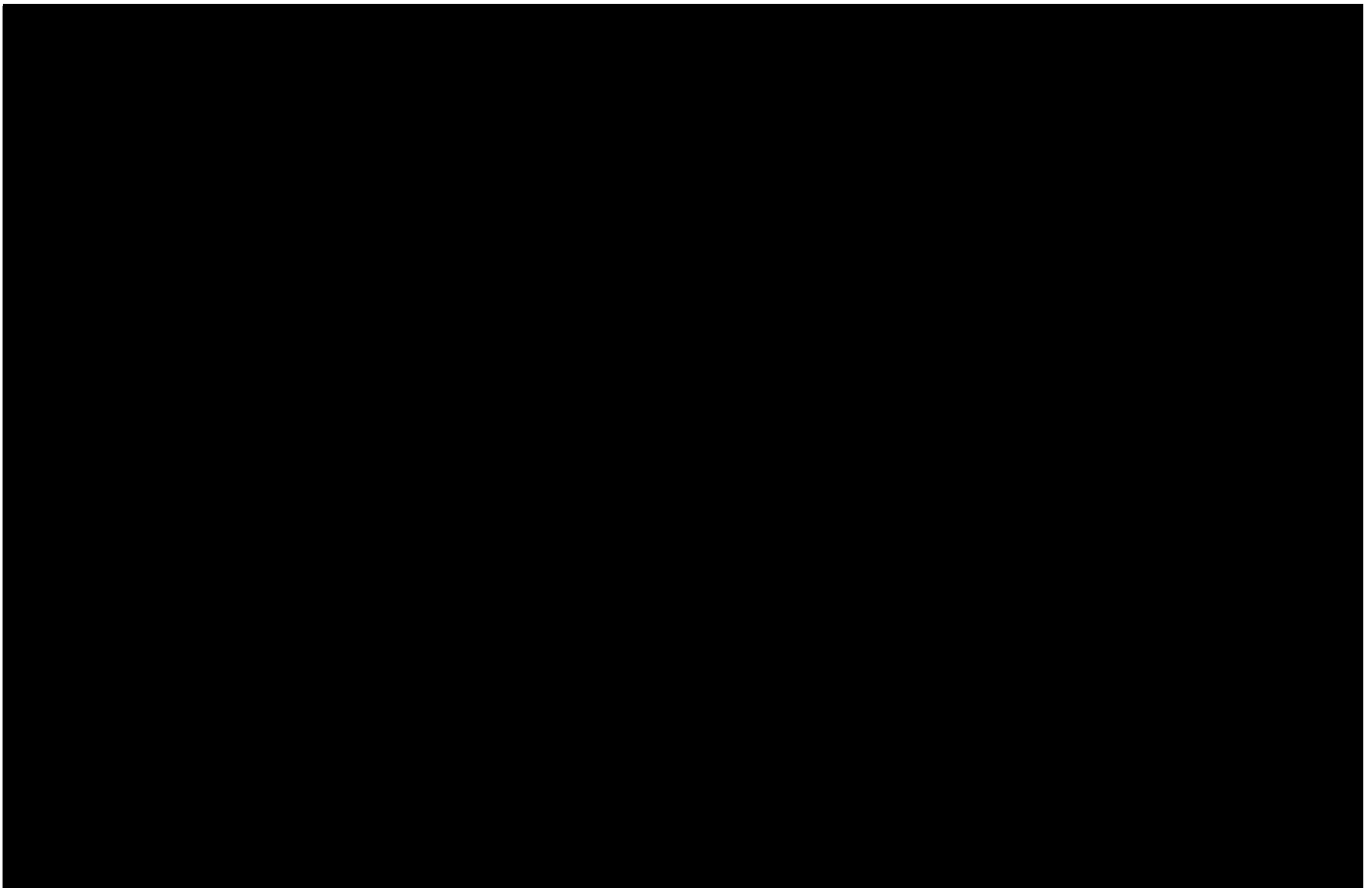
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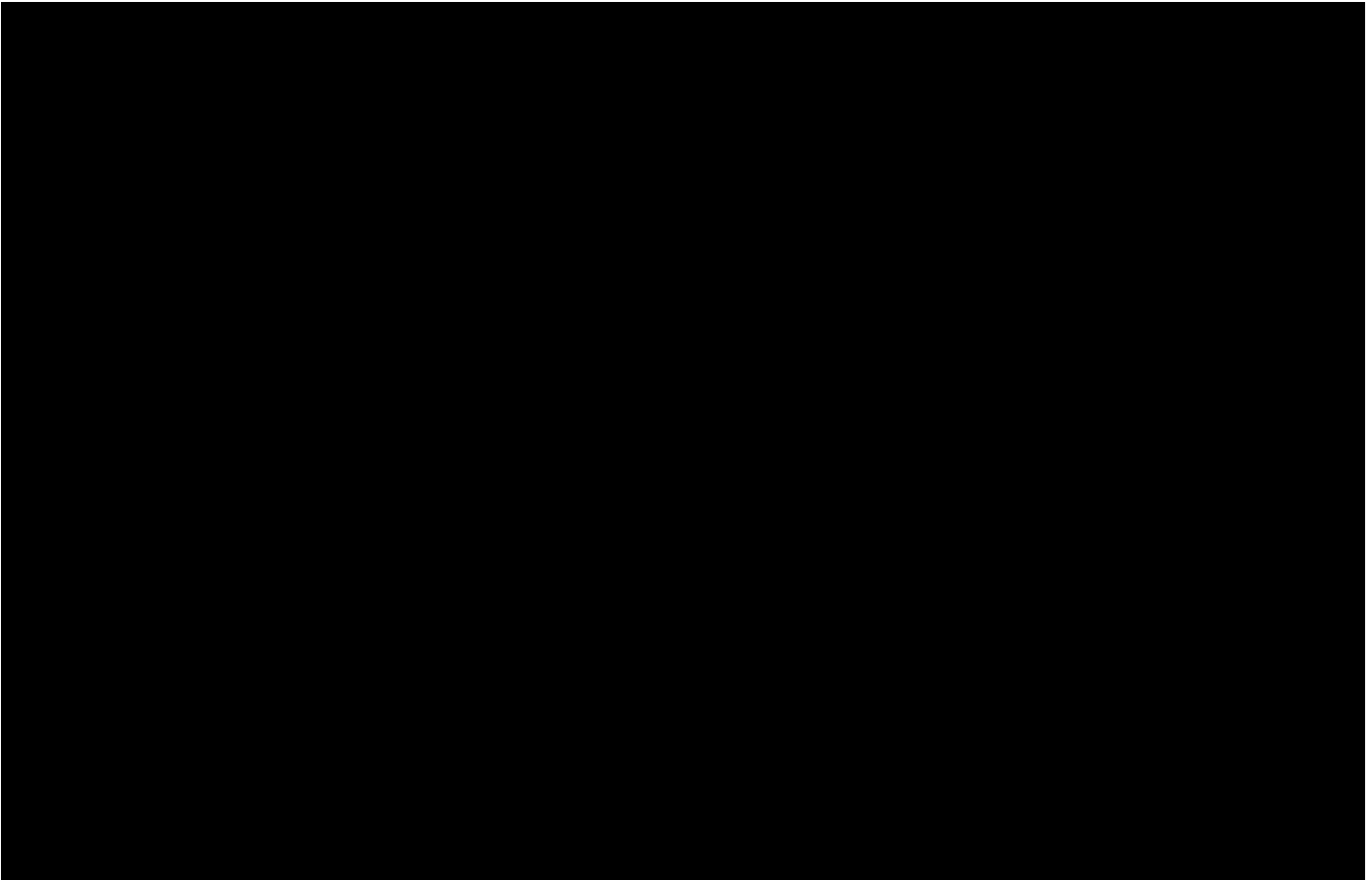
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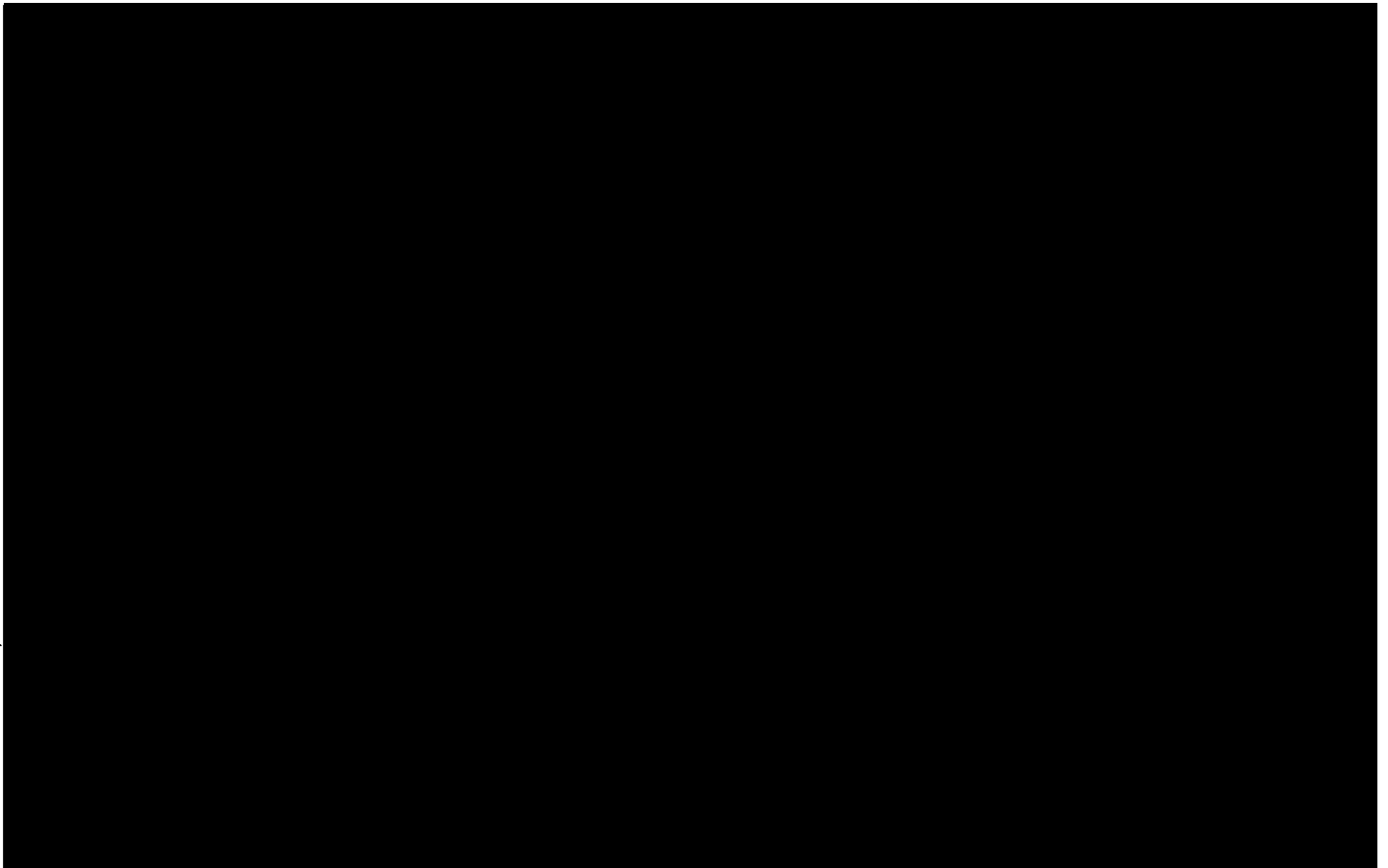
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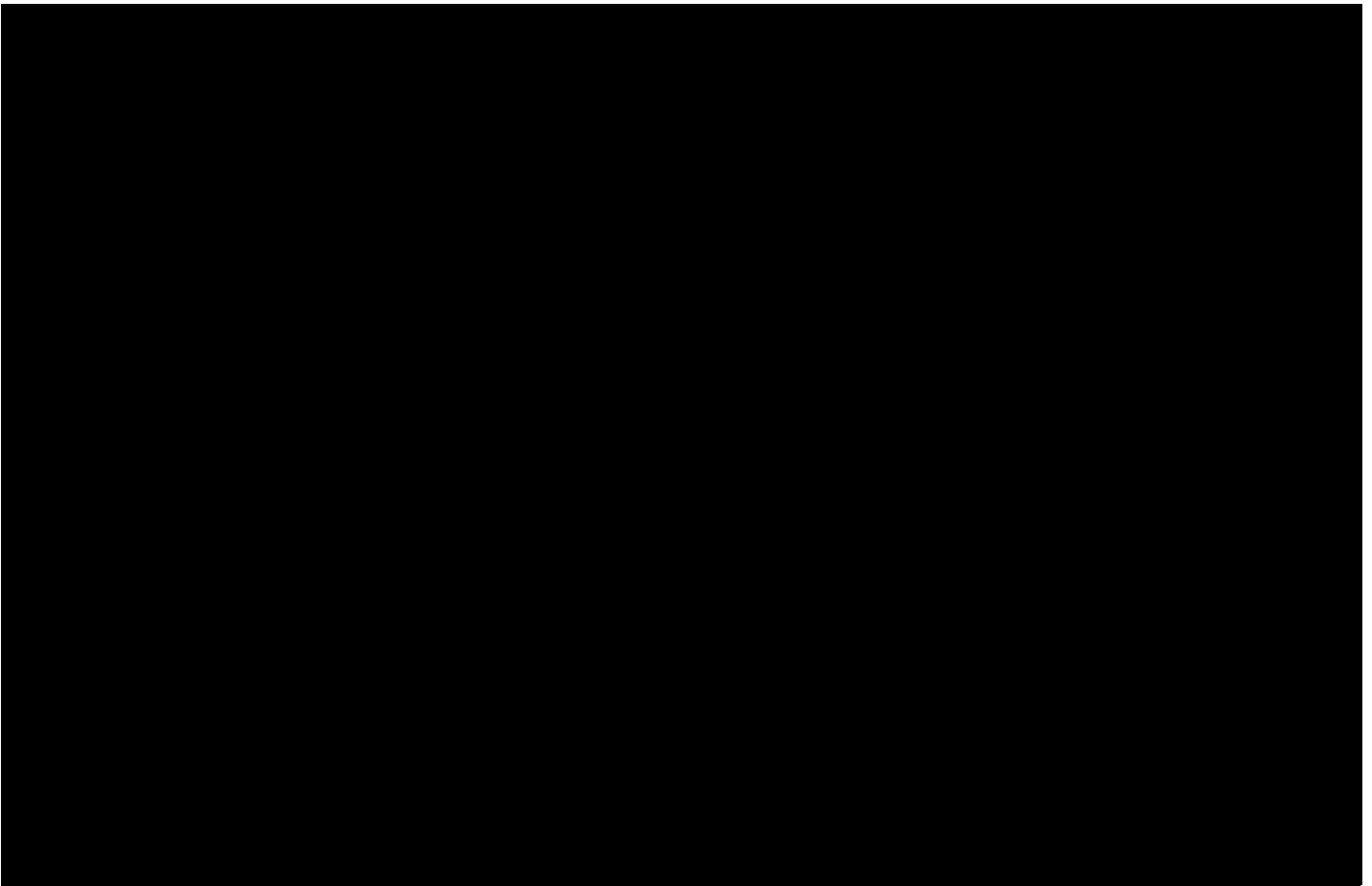
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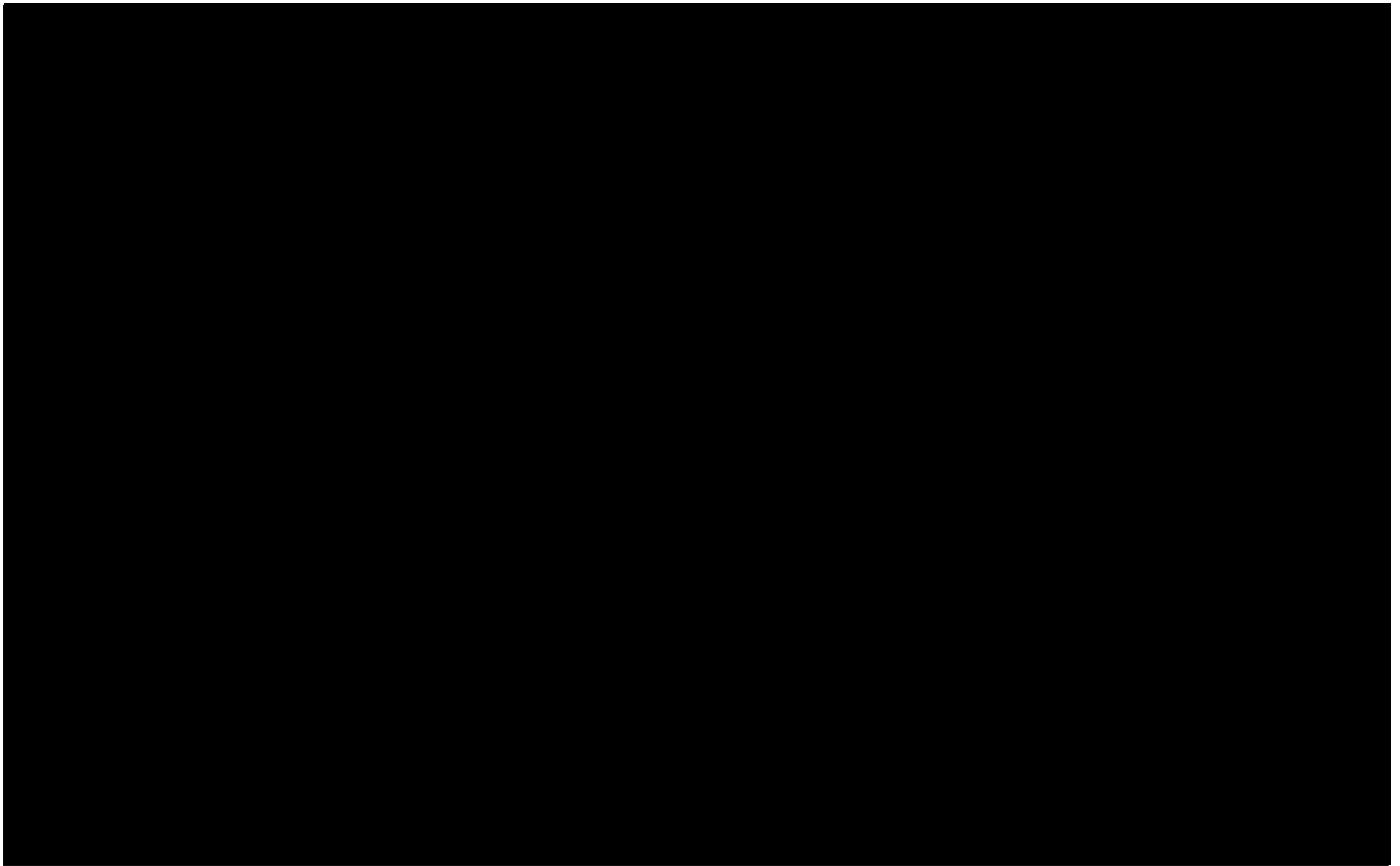
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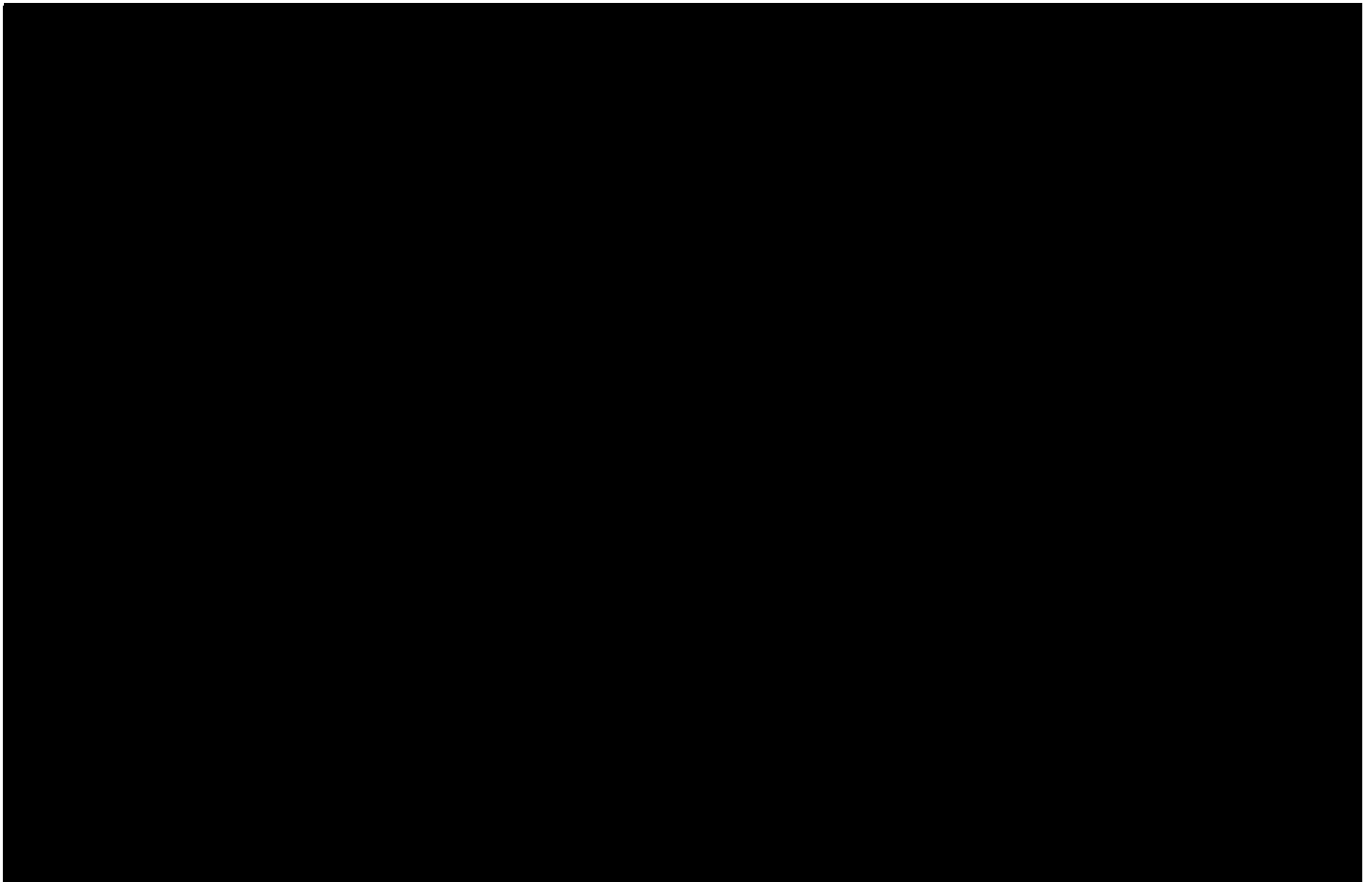
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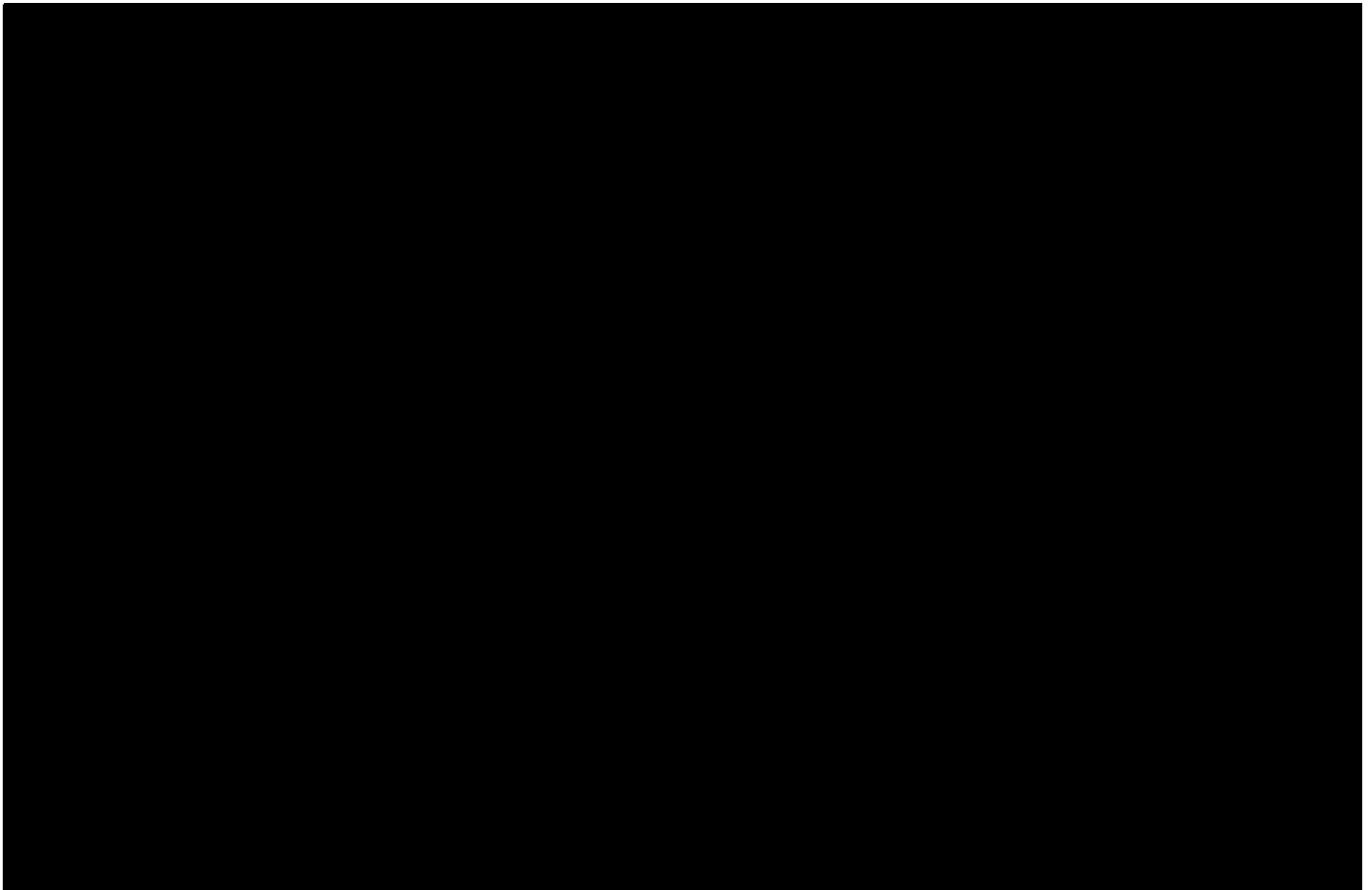
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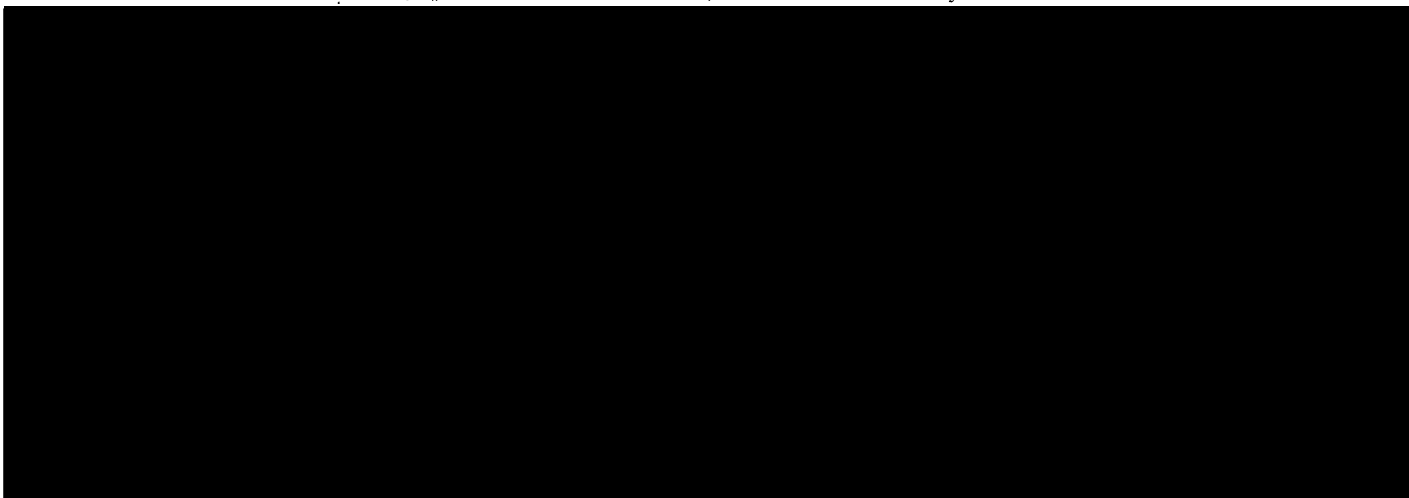
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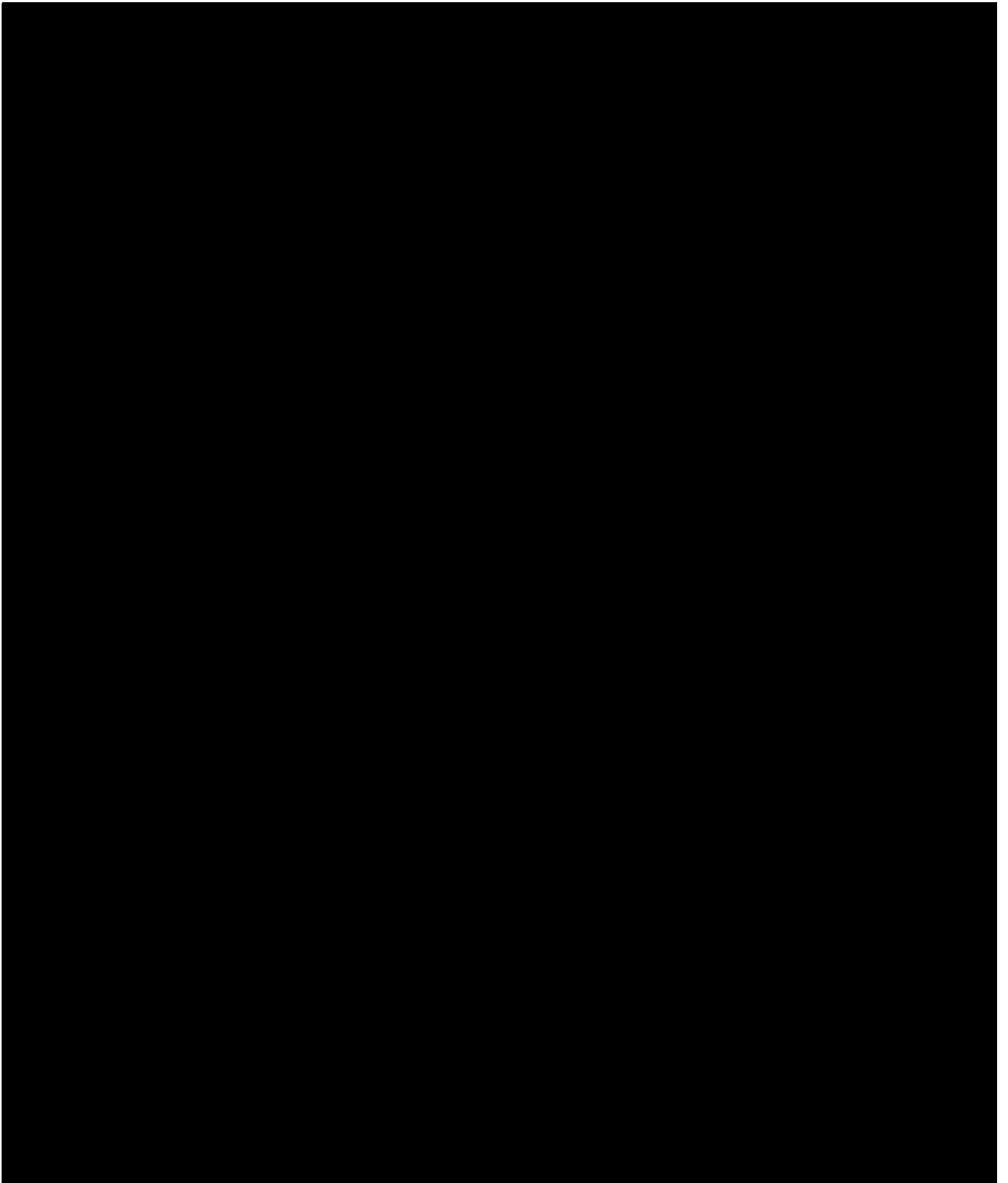
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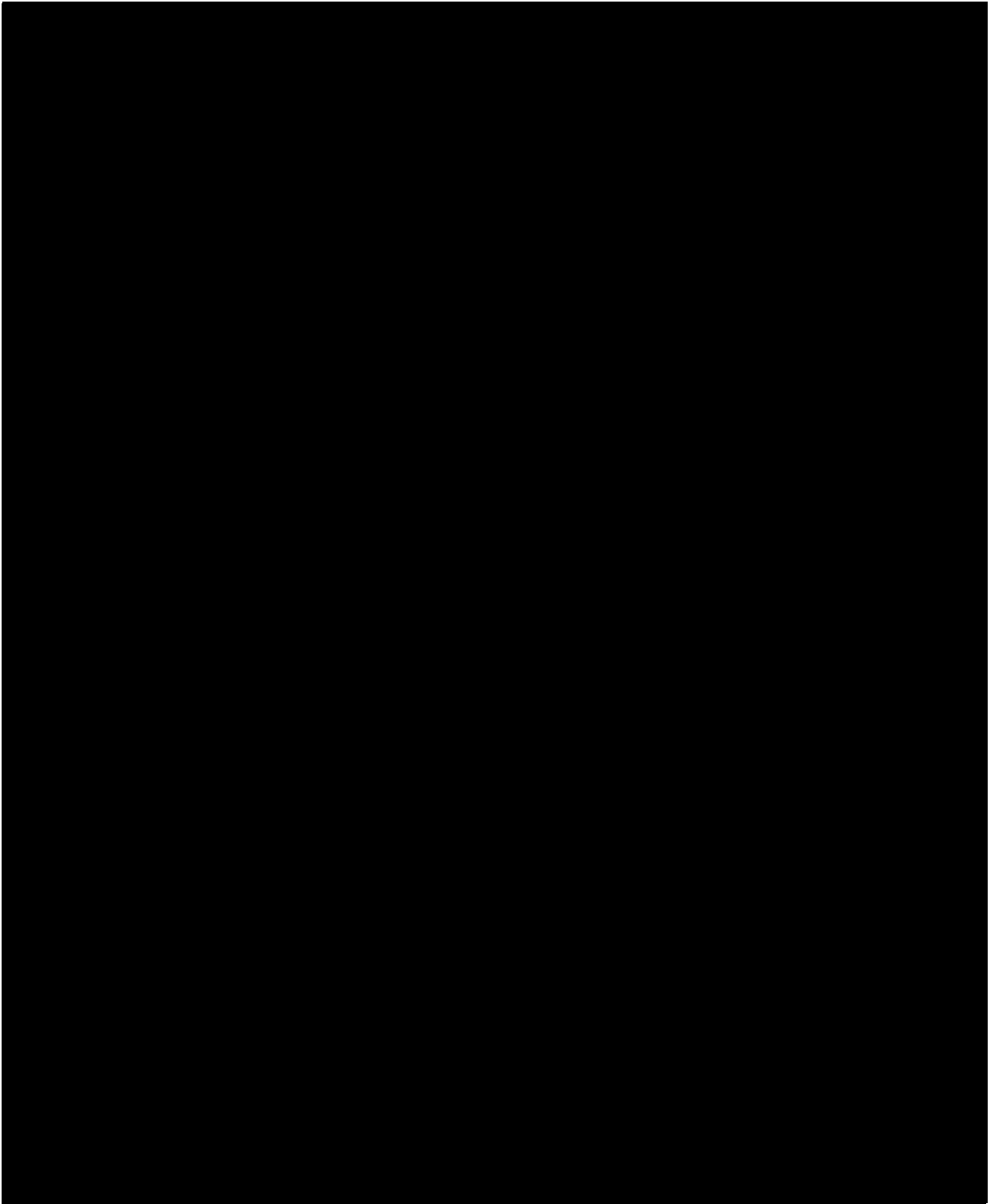
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ATTACHMENT 'B'

Confidential, Unredacted Documents